''(b) SAVINGS PROVISION FOR REGULATIONS.—A regulation, rule, or order in effect under a provision of title 10, United States Code, replaced by a provision of that title enacted by sections 1661 through 1664 shall continue in effect under the corresponding provision so enacted until repealed, amended, or superseded.

''(c) GENERAL SAVINGS PROVISION.—An action taken, or a right that matured, under a provision of title 10, United States Code, replaced by a provision of that title enacted by sections 1661 through 1664 shall be treated as having been taken, or having matured, under the corresponding provision so enacted.''

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[1] So in original. Two items for chapter 19 have been enacted.

[2] Chapter heading amended by Pub. L. 116–92 without corresponding amendment of subtitle analysis.

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AMENDMENT OF ANALYSIS

Pub. L. 116–283, div. A, title XVIII, §§1801(d), 1811(a), 1816(a), 1824(b), 1825(l), 1831(l), 1833(a)(2), 1841(a)(2), 1846(a), 1856(a), 1866(a), 1873(f), Jan. 1, 2021, 134 Stat. 4151, 4164, 4181, 4205, 4208, 4217, 4226, 4243, 4247, 4273, 4279, 4290, made amendments to this analysis, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law. These amendments have been executed to this analysis to reflect the text of Part V of subtitle A (§3001 et seq.), effective Jan. 1, 2022, currently set out in the Code as a preview. See 2021 Amendment note below. For additional amendments by Pub. L. 116–283 effective Jan. 1, 2022, that have not yet been executed, see note below.

Pub. L. 116–283, div. A, title XVIII, §§1801(d), 1808(a)(4), 1821(a)(4), 1851(d)(2), 1872(b)(2), 1880(b), 1881(b), 1882(a)(2), Jan. 1, 2021, 134 Stat. 4151, 4159, 4195, 4273, 4289, 4293, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this analysis is amended as follows:

(1) by amending part IV heading to read as follows: "SERVICE, SUPPLY, AND PROPERTY";

(2) by striking the items for chapters 137, 139, 140, 142, 144, 144B, 148, and 149; and

(3) by amending the item for chapter 141 to read "Miscellaneous Provisions Relating to Property", starting with section 2381.

AMENDMENTS

2021—Pub. L. 116–283, div. A, title XVIII, §§1808(a)(4), 1811(a), 1816(a), 1821(a)(4), 1824(b), 1825(*l*), 1831(*l*), 1833(a)(2), 1841(a)(2), 1846(a), 1851(d)(2), 1856(a), 1866(a), 1872(b)(2), 1873(f), 1880(b), 1881(b), 1882(a)(2), Jan. 1, 2021, 134 Stat. 4159, 4164, 4181, 4195, 4205, 4208, 4217, 4226, 4243, 4247, 4273, 4279, 4289, 4290, 4293, substituted "SERVICE, SUPPLY, AND PROPERTY" for "SERVICE, SUPPLY, AND PROCUREMENT" in heading of part IV and "Miscellaneous Provisions Relating to Property" for "Miscellaneous Procurement Provisions" in item for chapter 141, struck out items for chapters 137 "Procurement Generally", 139 "Research and Development", 140 "Procurement of Commercial Products and Commercial Services", 142 "Procurement Technical Assistance Cooperative Agreement Program", 144 "Major Defense Acquisition Programs", 144B "Weapon Systems Development and Related Matters", 148 "National Defense Technology and Industrial Base, Defense Reinvestment, and Defense Conversion", and 149 "Defense Acquisition System", added items for chapters 221 to 225, 241 to 244, 253, 257, 271, 272, and 275, items for subpart E and chapters 301 to 309 and for subpart F and chapters 321 to 327, and items for chapters 341, 343, 381 to 385, and 387 to 389 and struck out former items for chapters 221 "Planning and Solicitation Generally", 223 "Planning and Solicitation Relating to Particular Items or Services", 241 "Awarding of Contracts", 243 "Specific Types of Contracts", 253 "Emergency and Rapid Acquisitions", 271 "Truthful Cost or Pricing Data", 275 "Proprietary Contractor Data and Technical Data", and 285 "Small Business Programs", former items for subpart E "special categories of contracting: major defense acquisition programs and major systems" including chapters 301 "Major Defense Acquisition Programs", 303 "Weapon Systems Development and Related Matters", and 305 "Other Matters Relating to Major Systems" and for subpart F "special categories of contracting: research, development, test, and evaluation" including chapters 321 "Research and Development Generally", 323 "Innovation", 325 "Department of Defense Laboratories", 327 "Research and Development Centers and Facilities", and 329 "Operational Test and Evaluation; Developmental Test and Evaluation", and former items for chapters 341 "Contracting for Performance of Civilian Commercial or Industrial Type Functions", 343 "Acquisition of Services", 381 "Defense Industrial Base Generally", 383 "Loan Guarantee Programs", and 385 "Procurement Technical Assistance Cooperative Agreement Program".

Pub. L. 116–283, title X, §1081(a)(1)–(3), Jan. 1, 2021, 134 Stat. 3870, added second item for chapter 19 and item for chapter 113 and substituted "2375" for "2377" in item for chapter 140.

2019—Pub. L. 116–92, div. A, title XVII, §1731(a)(1), (2), Dec. 20, 2019, 133 Stat. 1812, as amended by Pub. L. 116–283, div. A, title X, §1081(c)(8), Jan. 1, 2021, 134 Stat. 3873, substituted "240a" for "251" in item for chapter 9A and "Cyber Scholarship Program" for "Information Security Scholarship Program" in item for chapter 112.

2018—Pub. L. 115–232, div. A, title VIII, §§801(b), 836(e)(12), Aug. 13, 2018, 132 Stat. 1831, 1870, substituted "Procurement of Commercial Products and Commercial Services" for "Procurement of Commercial Items" and "2377" for "2375" in item for chapter 140 and added item for part V containing items for subparts A to I and chapters 201 to 385.

2017—Pub. L. 115–91, div. A, title X, §1081(d)(4), Dec. 12, 2017, 131 Stat. 1600, amended directory language of Pub. L. 114–328, §805(a)(2). See 2016 Amendment note below.

Pub. L. 115–91, div. A, title X, §1002(a)(2), Dec. 12, 2017, 131 Stat. 1537, added item for chapter 9A.

2016—Pub. L. 114–328, div. A, title VIII, §846(2), title XII, §1241(*o*)(1), Dec. 23, 2016, 130 Stat. 2292, 2512, redesignated item for chapter 13 "The Militia" as 12 and substituted "246" for "311", redesignated item for chapter 15 "Insurrection" as 13 and substituted "251" for "331", redesignated item for chapter 17 "Arming of American Vessels" as 14 and substituted "261" for "351", redesignated item for chapter 18 "Military Support for Civilian Law Enforcement Agencies" as 15 and substituted "271" for "371", added item for chapter 16, and struck

out item for chapter 144A ''Major Automated Information System Programs''.

Pub. L. 114–328, div. A, title VIII, §805(a)(2), Dec. 23, 2016, 130 Stat. 2255, as amended by Pub. L. 115–91, div. A, title X, §1081(d)(4), Dec. 12, 2017, 131 Stat. 1600, added item for chapter 144B.

2015—Pub. L. 114–92, div. A, title X, §1081(a)(1), Nov. 25, 2015, 129 Stat. 1000, substituted ''Cyber Matters'' for ''Cyber matters'' in first item for chapter 19.

2014—Pub. L. 113–291, div. A, title XVI, §1632(d), Dec. 19, 2014, 128 Stat. 3640, added first item for chapter 19.

2013—Pub. L. 113–66, div. A, title X, §1091(a)(1), Dec. 26, 2013, 127 Stat. 875, substituted ''Nuclear Posture'' for ''Nuclear posture'' in item for chapter 24.

Pub. L. 112–239, div. A, title X, §1031(b)(2), Jan. 2, 2013, 126 Stat. 1918, added item for chapter 24.

2011—Pub. L. 111–383, div. A, title VIII, §861(b), title X, §1075(b)(1), Jan. 7, 2011, 124 Stat. 4292, 4368, substituted ''1030'' for ''1031'' in item for chapter 53 and added item for chapter 149.

2009—Pub. L. 111–84, div. A, title X, §1073(a)(1), Oct. 28, 2009, 123 Stat. 2472, substituted ''1580'' for ''1581'' in item for chapter 81 and ''2551'' for ''2541'' in item for chapter 152.

2008—Pub. L. 110–181, div. A, title X, §1068(a)(4)(B), Jan. 28, 2008, 122 Stat. 326, substituted ''Insurrection'' for ''Enforcement of the Laws to Restore Public Order'' in item for chapter 15.

2006—Pub. L. 109–366, §3(a)(2), Oct. 17, 2006, 120 Stat. 2630, added item for chapter 47A.

Pub. L. 109–364, div. A, title VIII, §816(a)(2), title X, §1076(a)(4)(A), div. B, title XXVIII, §2851(c)(1), Oct. 17, 2006, 120 Stat. 2326, 2405, 2495, substituted ''Enforcement of the Laws to Restore Public Order'' for ''Insurrection'' in item for chapter 15 and added items for chapters 144A and 173.

2004—Pub. L. 108–375, div. A, title V, §532(e), title X, §1084(d)(1), Oct. 28, 2004, 118 Stat. 1900, 2061, substituted ''480'' for ''481'' in item for chapter 23, added item for chapter 107, and redesignated former item for chapter 107 as item for chapter 106A.

2003—Pub. L. 108–136, div. A, title IX, §921(d)(8), title X, §1045(a)(1), Nov. 24, 2003, 117 Stat. 1569, 1612, substituted ''Geospatial-Intelligence'' for ''Imagery and Mapping'' in item for chapter 22 and ''2700'' for ''2701'' in item for chapter 160.

2001—Pub. L. 107–107, div. A, title IX, §911(b), title X, §1048(a)(1), Dec. 28, 2001, 115 Stat. 1196, 1222, struck out period after ''1111'' in item for chapter 56 and added item for chapter 135.

2000—Pub. L. 106–398, §1 [[div. A], title VII, §713(a)(2), title IX, §922(a)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–184, 1654A–236, added items for chapters 56 and 112.

1999—Pub. L. 106–65, div. A, title V, §586(c)(1), title VII, §721(c)(2), Oct. 5, 1999, 113 Stat. 638, 694, added item for chapter 50 and substituted ''Deceased Personnel'' for ''Death Benefits'' and ''1471'' for ''1475'' in item for chapter 75.

1997—Pub. L. 105–85, div. A, title III, §§355(c)(2), 371(a)(2), (c)(5), title V, §591(a)(2), title X, §§1073(a)(1), (2), 1074(d)(2), Nov. 18, 1997, 111 Stat. 1694, 1705, 1762, 1900, 1910, substituted ''481'' for ''471'' in item for chapter 23, added items for chapters 80 and 136, and substituted ''2460'' for ''2461'' in item for chapter 146, ''Commissaries and Exchanges and Other Morale, Welfare, and Recreation Activities'' for ''Utilities and Services'' in item for chapter 147, ''2500'' for ''2491'' in item for chapter 148, and ''2541'' for ''2540'' in item for chapter 152.

1996—Pub. L. 104–201, div. A, title XI, §1123(a)(1), (2), title XVI, §1633(c)(3), Sept. 23, 1996, 110 Stat. 2687, 2688, 2751, substituted ''National Imagery and Mapping Agency'' for ''Miscellaneous Studies and Reports'' and ''441'' for ''451'' in item for chapter 22, added item for chapter 23, substituted ''Civilian Defense Intelligence Employees'' for ''Defense Intelligence Agency and Central Imagery Office Civilian Personnel'' in item for chapter 83, and struck out item for chapter 167 ''Defense Mapping Agency''.

Pub. L. 104–106, div. A, title V, §§568(a)(2), 569(b)(2), title X, §1061(a)(2), (b)(2), Feb. 10, 1996, 110 Stat. 335, 351, 442, added items for chapters 76 and 88 and struck out items for chapters 89 ''Volunteers Investing in Peace and Security'' and 171 ''Security and Control of Supplies''.

1994—Pub. L. 103–359, title V, §501(b)(2), Oct. 14, 1994, 108 Stat. 3429, substituted ''Defense Intelligence Agency and Central Imagery Office Civilian Personnel'' for ''Defense Intelligence Agency Civilian Personnel'' in item for chapter 83.

Pub. L. 103–355, title VIII, §8101(b), Oct. 13, 1994, 108 Stat. 3389, added item for chapter 140.

Pub. L. 103–337, div. A, title V, §554(a)(2), Oct. 5, 1994, 108 Stat. 2773, added item for chapter 22.

1993—Pub. L. 103–160, div. A, title VIII, §828(b)(1), Nov. 30, 1993, 107 Stat. 1713, struck out item for chapter 135 ''Encouragement of Aviation''.

1992—Pub. L. 102–484, div. A, title XIII, §1322(a)(2), div. D, title XLII, §4271(b)(1), Oct. 23, 1992, 106 Stat. 2553, 2695, added items for chapters 89 and 148 and struck out former items for chapters 148 ''Defense Industrial Base'', 149 ''Manufacturing Technology'', and 150 ''Development of Dual-Use Critical Technologies''.

1991—Pub. L. 102–190, div. A, title X, §1061(a)(26)(C)(ii), Dec. 5, 1991, 105 Stat. 1474, effective Oct. 1, 1993, struck out item for chapter 85 ''Procurement Management Personnel''.

Pub. L. 102–190, div. A, title VIII, §821(f), title X, §§1002(a)(2), 1061(a)(27)(A), title XI, §1112(b)(2), Dec. 5, 1991, 105 Stat. 1432, 1455, 1474, 1501, substituted ''Defense Budget Matters'' for ''Regular Components'' and inserted ''221'' in item for chapter 9, substituted ''Original Appointments of Regular Officers in Grades Above Warrant Officer Grades'' for ''Appointments in Regular Components'' in item for chapter 33, added item for chapter 33A, substituted ''Manufacturing'' for ''Maufacturing'' in item for chapter 149, added items for chapters 150 and 152, struck out item for former chapter 150 ''Issue to Armed Forces'' and struck out item for former chapter 151 ''Issue of Serviceable Material Other Than to Armed Forces''.

Pub. L. 102–25, title VII, §701(e)(1), (2), Apr. 6, 1991, 105 Stat. 114, added item for chapter 85 and in item for chapter 108 inserted ''2161''.

1990—Pub. L. 101–510, div. A, title II, §247(a)(2)(B), title V, §502(a)(2), title VIII, §823(b)(1), title IX, §911(b)(3), title XII, §1202(b), title XVIII, §1801(a)(2), Nov. 5, 1990, 104 Stat. 1523, 1557, 1602, 1626, 1656, 1757, added item for chapter 58, struck out item for chapter 85 ''Procurement Management Personnel'', added item for chapter 87, substituted ''Department of Defense Schools'' for ''Granting of Advanced Degrees at Department of Defense Schools'' in item for chapter 108, substituted ''Support of Science, Mathematics, and Engineering Education'' for ''National Defense Science and Engineering Graduate Fellowships'' in item for chapter 111, added item for chapter 149 and redesignated former item for chapter 149 as item for chapter 150, and added item for chapter 172.

1989—Pub. L. 101–189, div. A, title VIII, §843(d)(2), title IX, §931(e)(2), title XVI, §1622(d)(2), Nov. 29, 1989, 103 Stat. 1517, 1535, 1605, substituted ''Training and Education'' for ''Training'' in item for part III, added item for chapter 111, and substituted ''Cooperative Agreements'' for ''Acquisition and Cross-Servicing Agreements'' in item for chapter 138.

1988—Pub. L. 100–456, div. A, title III, §§342(a)(2), 344(b)(2), title VIII, §821(b)(2), title XI, §1104(b), Sept. 29, 1988, 102 Stat. 1961, 1962, 2016, 2046, substituted ''Support for'' for ''Cooperation With'' and ''Agencies'' for ''Officials'' in item for chapter 18, substituted ''Defense Industrial Base'' for ''Buy American Requirements'' in item for chapter 148, substituted ''Property Records and Report of Theft or Loss of Certain Property'' for ''Property Records'' in item for chapter 161, and added item for chapter 171.

Pub. L. 100–370, §§1(c)(3), (e)(2), 2(a)(2), 3(a)(2), July 19, 1988, 102 Stat. 841, 845, 854, 855, added items for chapters 54, 134, 146, and 148.

1987—Pub. L. 100–180, div. A, title III, §332(c), title VII, §711(b), Dec. 4, 1987, 101 Stat. 1080, 1111, substituted ''Humanitarian and Other Assistance'' for ''Humanitarian and Civic Assistance Provided in Conjunction With Military Operations'' in item for chapter 20 and ''Financial Assistance Programs'' for ''Scholarship Program'' in item for chapter 105.

Pub. L. 100–26, §§7(c)(1), 9(b)(4), Apr. 21, 1987, 101 Stat. 280, 287, added item for chapter 21, substituted ''Acquisition and Cross-Servicing Agreements with NATO Allies and Other Countries'' for ''North Atlantic Treaty Organization Acquisition and Cross-Servicing Agreements'' in item for chapter 138, substituted ''Major Defense Acquisition Programs'' for ''Oversight of Cost Growth in Major Programs'' and ''2430'' for ''2431'' in item for chapter 144, and substituted ''2721'' for ''2701'' in item for chapter 161.

1986—Pub. L. 99–661, div. A, title III, §333(a)(2), title XIII, §1343(a)(22), Nov. 14, 1986, 100 Stat. 3859, 3994, added item for chapter 20 and substituted ''2341'' for ''2321'' in item for chapter 138.

Pub. L. 99–499, title II, §211(a)(2), Oct. 17, 1986, 100 Stat. 1725, added item for chapter 160.

Pub. L. 99–433, title IV, §401(b), title VI, §605, Oct. 1, 1986, 100 Stat. 1030, 1075a, added items for chapters 2, 6, 38, and 144, inserted ''and Functions'' in item for chapter 3, substituted ''Office of the Secretary of Defense'' for ''Department of Defense'' in item for chapter 4, substituted ''151'' for ''141'' as the section number in the item for chapter 5, reenacted item for chapter 7 without change, and inserted ''and Department of Defense Field Activities'' in item for chapter 8.

Pub. L. 99–399, title VIII, §806(d)(2), Aug. 27, 1986, 100 Stat. 888, added item for chapter 110.

1985—Pub. L. 99–145, title VI, §671(a)(2), title IX, §924(a)(2), Nov. 8, 1985, 99 Stat. 663, 698, added items for chapters 85 and 109.

1984—Pub. L. 98–525, title VII, §705(a)(2), title XII, §1241(a)(2), Oct. 19, 1984, 98 Stat. 2567, 2606, substituted ''Members of the Selected Reserve'' for ''Enlisted Members of the Selected Reserve of the Ready Reserve'' in item for chapter 106 and added item for chapter 142.

1983—Pub. L. 98–94, title IX, §925(a)(2), title XII, §1268(15), Sept. 24, 1983, 97 Stat. 648, 707, added item for chapter 74, and substituted ''or'' for ''and'' in item for chapter 60.

1982—Pub. L. 97–295, §1(50)(D), Oct. 12, 1982, 96 Stat. 1300, added item for chapter 167.

Pub. L. 97–269, title V, §501(b), Sept. 27, 1982, 96 Stat. 1145, added item for chapter 8.

Pub. L. 97–214, §2(b), July 12, 1982, 96 Stat. 169, added item for chapter 169.

1981—Pub. L. 97–89, title VII, §701(a)(2), Dec. 4, 1981, 95 Stat. 1160, added item for chapter 83.

Pub. L. 97–86, title IX, §905(a)(2), Dec. 1, 1981, 95 Stat. 1116, added item for chapter 18.

1980—Pub. L. 96–513, title V, §§501(1), 511(29), (54)(B), (99), Dec. 12, 1980, 94 Stat. 2907, 2922, 2925, 2929, added item for chapter 32, substituted ''531'' for ''541'' as section number in item for chapter 33, substituted ''34'' for ''35'' as chapter number of chapter relating to appointments as reserve officers, added items for chapters 35 and 36, substituted ''Reserve Components: Standards and Procedures for Retention and Promotion'' for ''Retention of Reserves'' in item for chapter 51, added item for chapter 60, substituted ''1251'' for ''1255'' as section number in item for chapter 63, substituted ''Retirement of Warrant Officers'' for ''Retirement'' in item for chapter 65, substituted ''1370'' for ''1371'' as section number in item for chapter 69, amended item for chapter 73 to read: ''Annuities Based on Retired or Retainer Pay'', and capitalized ''Assistance'', ''Persons'', ''Enlisting'', ''Active'', and ''Duty'' in item for chapter 107.

Pub. L. 96–450, title IV, §406(b), Oct. 14, 1980, 94 Stat. 1981, added item for chapter 108.

Pub. L. 96–342, title IX, §901(b), Sept. 8, 1980, 94 Stat. 1114, added item for chapter 107.

Pub. L. 96–323, §2(b), Aug. 4, 1980, 94 Stat. 1019, added item for chapter 138.

1977—Pub. L. 95–79, title IV, §402(b), July 30, 1977, 91 Stat. 330, added item for chapter 106.

1972—Pub. L. 92–426, §2(b), Sept. 21, 1972, 86 Stat. 719, added items for chapters 104 and 105.

Pub. L. 92–425, §2, Sept. 21, 1972, 86 Stat. 711, amended item for chapter 73 by inserting ''; Survivor Benefit Plan'' after ''Pay'' which could not be executed as directed in view of amendment by Pub. L. 87–381. See 1961 Amendment note below.

1968—Pub. L. 90–377, §2, July 5, 1968, 82 Stat. 288, added item for chapter 48.

1967—Pub. L. 90–83, §3(2), Sept. 11, 1967, 81 Stat. 220, struck out item for chapter 80 ''Exemplary Rehabilitation Certificates''.

1966—Pub. L. 89–690, §2, Oct. 15, 1966, 80 Stat. 1017, added item for chapter 80.

1964—Pub. L. 88–647, title I, §101(2), title II, §201(2), Oct. 13, 1964, 78 Stat. 1064, 1069, added items for chapters 102 and 103.

1962—Pub. L. 87–651, title II, §203, Sept. 7, 1962, 76 Stat. 519, added item for chapter 4.

Pub. L. 87–649, §3(2), Sept. 7, 1962, 76 Stat. 493, added item for chapter 40.

1961—Pub. L. 87–381, §1(2), Oct. 4, 1961, 75 Stat. 810, substituted ''Retired Serviceman's Family Protection Plan'' for ''Annuities Based on Retired or Retainer Pay'' in item for chapter 73.

1958—Pub. L. 85–861, §§1(21), (26), (33), 33(a)(4)(B), Sept. 2, 1958, 72 Stat. 1443, 1450, 1455, 1564, substituted ''General Service Requirements'' for ''Service Requirements for Reserves'' in item for chapter 37, ''971'' for ''[No present sections]'' in item for chapter 49, ''Medical and Dental Care'' for ''Voting by Members of Armed Forces'' in item for chapter 55, and struck out ''Care of the Dead'' and substituted ''1475'' for ''1481'' in item for chapter 75.

PART I—ORGANIZATION AND GENERAL MILITARY POWERS

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AMENDMENTS

2021—Pub. L. 116–283, div. A, title X, §1081(a)(1), Jan. 1, 2021, 134 Stat. 3870, added second item for chapter 19.

2019—Pub. L. 116–92, div. A, title XVI, §1631(a)(2)(B), title XVII, §1731(a)(1), Dec. 20, 2019, 133 Stat. 1742, 1812, substituted ''240a'' for ''251'' in item for chapter 9A and ''Cyber and Information Operations Matters'' for ''Cyber Matters'' in first item for chapter 19.

[1] So in original. Two items for chapter 19 have been enacted.

[2] So in original. The period probably should not appear.

2017—Pub. L. 115–91, div. A, title X, §1002(a)(2), Dec. 12, 2017, 131 Stat. 1537, added item for chapter 9A.

2016—Pub. L. 114–328, div. A, title XII, §1241(*o*)(1), Dec. 23, 2016, 130 Stat. 2512, redesignated item for chapter 13 ''The Militia'' as 12 and substituted ''246'' for ''311'', redesignated item for chapter 15 ''Insurrection'' as 13 and substituted ''251'' for ''331'', redesignated item for chapter 17 ''Arming of American Vessels'' as 14 and substituted ''261'' for ''351'', redesignated item for chapter 18 ''Military Support for Civilian Law Enforcement Agencies'' as 15 and substituted ''271'' for ''371'', and added item for chapter 16.

2015—Pub. L. 114–92, div. A, title X, §1081(a)(1), Nov. 25, 2015, 129 Stat. 1000, substituted ''Cyber Matters'' for ''Cyber matters'' in first item for chapter 19.

2014—Pub. L. 113–291, div. A, title XVI, §1632(d), Dec. 19, 2014, 128 Stat. 3640, added first item for chapter 19.

2013—Pub. L. 113–66, div. A, title X, §1091(a)(1), Dec. 26, 2013, 127 Stat. 875, substituted ''Nuclear Posture'' for ''Nuclear posture'' in item for chapter 24.

Pub. L. 112–239, div. A, title X, §1031(b)(2), Jan. 2, 2013, 126 Stat. 1918, added item for chapter 24.

2008—Pub. L. 110–181, div. A, title X, §1068(a)(4)(B), Jan. 28, 2008, 122 Stat. 326, substituted ''Insurrection'' for ''Enforcement of the Laws to Restore Public Order'' in item for chapter 15.

2006—Pub. L. 109–364, div. A, title X, §1076(a)(4)(A), Oct. 17, 2006, 120 Stat. 2405, substituted ''Enforcement of the Laws to Restore Public Order'' for ''Insurrection'' in item for chapter 15.

2004—Pub. L. 108–375, div. A, title X, §1084(d)(1), Oct. 28, 2004, 118 Stat. 2061, substituted ''480'' for ''481'' in item for chapter 23.

2003—Pub. L. 108–136, div. A, title IX, §921(d)(8), Nov. 24, 2003, 117 Stat. 1569, substituted ''Geospatial-Intelligence'' for ''Imagery and Mapping'' in item for chapter 22.

1997—Pub. L. 105–85, div. A, title X, §1073(a)(1), Nov. 18, 1997, 111 Stat. 1900, substituted ''481'' for ''471'' in item for chapter 23.

1996—Pub. L. 104–201, div. A, title XI, §1123(a)(2), Sept. 23, 1996, 110 Stat. 2688, substituted ''National Imagery and Mapping Agency'' for ''Miscellaneous Studies and Reports'' and ''441'' for ''451'' in item for chapter 22 and added item for chapter 23.

1994—Pub. L. 103–337, div. A, title V, §554(a)(2), Oct. 5, 1994, 108 Stat. 2773, added item for chapter 22.

1991—Pub. L. 102–190, div. A, title X, §1002(a)(2), Dec. 5, 1991, 105 Stat. 1455, substituted ''Defense Budget Matters'' for ''Regular Components'' and inserted ''221'' in item for chapter 9.

1988—Pub. L. 100–456, div. A, title XI, §1104(b), Sept. 29, 1988, 102 Stat. 2046, substituted ''Support for'' for ''Cooperation With'' and ''Agencies'' for ''Officials'' in item for chapter 18.

1987—Pub. L. 100–180, div. A, title III, §332(c), Dec. 4, 1987, 101 Stat. 1080, substituted ''Humanitarian and Other Assistance'' for ''Humanitarian and Civic Assistance Provided in Conjunction With Military Operations'' in item for chapter 20.

Pub. L. 100–26, §9(b)(4), Apr. 21, 1987, 101 Stat. 287, added item for chapter 21.

1986—Pub. L. 99–661, div. A, title III, §333(a)(2), Nov. 14, 1986, 100 Stat. 3859, added item for chapter 20.

Pub. L. 99–433, title VI, §605(a), Oct. 1, 1986, 100 Stat. 1075a, added items for chapters 2 and 6, inserted ''and Functions'' in item for chapter 3, substituted ''Office of the Secretary of Defense'' for ''Department of Defense'' in item for chapter 4, substituted ''151'' for ''141'' as section number in item for chapter 5, reenacted item for chapter 7 without change, and inserted ''and Department of Defense Field activities'' in item for chapter 8.

1982—Pub. L. 97–269, title V, §501(b), Sept. 27, 1982, 96 Stat. 1145, added item for chapter 8.

1981—Pub. L. 97–86, title IX, §905(a)(2), Dec. 1, 1981, 95 Stat. 1116, added item for chapter 18.

1962—Pub. L. 87–651, title II, §203, Sept. 7, 1962, 76 Stat. 519, added item for chapter 4.

CHAPTER 1—DEFINITIONS

Sec.
101. Definitions.

§101. Definitions

(a) IN GENERAL.—The following definitions apply in this title:

(1) The term ''United States'', in a geographic sense, means the States and the District of Columbia.

[(2) Repealed. Pub. L. 109–163, div. A, title X, §1057(a)(1), Jan. 6, 2006, 119 Stat. 3440.]

(3) The term ''possessions'' includes the Virgin Islands, Guam, American Samoa, and the Guano Islands, so long as they remain possessions, but does not include any Commonwealth.

(4) The term ''armed forces'' means the Army, Navy, Air Force, Marine Corps, Space Force, and Coast Guard.

(5) The term ''uniformed services'' means—

(A) the armed forces;

(B) the commissioned corps of the National Oceanic and Atmospheric Administration; and

(C) the commissioned corps of the Public Health Service.

(6) The term ''department'', when used with respect to a military department, means the executive part of the department and all field headquarters, forces, reserve components, installations, activities, and functions under the control or supervision of the Secretary of the department. When used with respect to the Department of Defense, such term means the executive part of the department, including the executive parts of the military departments, and all field headquarters, forces, reserve components, installations, activities, and functions under the control or supervision of the Secretary of Defense, including those of the military departments.

(7) The term ''executive part of the department'' means the executive part of the Department of Defense, Department of the Army, Department of the Navy, or Department of the Air Force, as the case may be, at the seat of government.

(8) The term ''military departments'' means the Department of the Army, the Department of the Navy, and the Department of the Air Force.

(9) The term ''Secretary concerned'' means—

(A) the Secretary of the Army, with respect to matters concerning the Army;

(B) the Secretary of the Navy, with respect to matters concerning the Navy, the Marine Corps, and the Coast Guard when it is operating as a service in the Department of the Navy;

(C) the Secretary of the Air Force, with respect to matters concerning the Air Force and the Space Force; and

(D) the Secretary of Homeland Security, with respect to matters concerning the Coast Guard when it is not operating as a service in the Department of the Navy.

(10) The term ''service acquisition executive'' means the civilian official within a military department who is designated as the service acquisition executive for purposes of regulations and procedures providing for a service acquisition executive for that military department.

(11) The term ''Defense Agency'' means an organizational entity of the Department of Defense—

(A) that is established by the Secretary of Defense under section 191 of this title (or under the second sentence of section 125(d) of this title (as in effect before October 1, 1986)) to perform a supply or service activity common to more than one military department (other than such an entity that is designated by the Secretary as a Department of Defense Field Activity); or

(B) that is designated by the Secretary of Defense as a Defense Agency.

(12) The term ''Department of Defense Field Activity'' means an organizational entity of the Department of Defense—

(A) that is established by the Secretary of Defense under section 191 of this title (or under the second sentence of section 125(d) of this title (as in effect before October 1, 1986)) to perform a supply or service activity common to more than one military department; and

(B) that is designated by the Secretary of Defense as a Department of Defense Field Activity.

(13) The term ''contingency operation'' means a military operation that—

(A) is designated by the Secretary of Defense as an operation in which members of the armed forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force; or

(B) results in the call or order to, or retention on, active duty of members of the uniformed services under section 688, 12301(a), 12302, 12304, 12304a, 12305, or 12406 of this title, chapter 13 of this title, section 3713 of title 14, or any other provision of law during a war or during a national emergency declared by the President or Congress.

(14) The term ''supplies'' includes material, equipment, and stores of all kinds.

(15) The term ''pay'' includes basic pay, special pay, retainer pay, incentive pay, retired pay, and equivalent pay, but does not include allowances.

(16) The term ''congressional defense committees'' means—

(A) the Committee on Armed Services and the Committee on Appropriations of the Senate; and

(B) the Committee on Armed Services and the Committee on Appropriations of the House of Representatives.

(17) The term ''base closure law'' means the following:

(A) Section 2687 of this title.

(B) The Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note).

(C) Title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 10 U.S.C. 2687 note).

(18) The term ''acquisition workforce'' means the persons serving in acquisition positions within the Department of Defense, as designated pursuant to section 1721(a) of this title.

(b) Personnel Generally.—The following definitions relating to military personnel apply in this title:

(1) The term ''officer'' means a commissioned or warrant officer.

(2) The term ''commissioned officer'' includes a commissioned warrant officer.

(3) The term ''warrant officer'' means a person who holds a commission or warrant in a warrant officer grade.

(4) The term ''general officer'' means an officer of the Army, Air Force, or Marine Corps serving in or having the grade of general, lieutenant general, major general, or brigadier general.

(5) The term ''flag officer'' means an officer of the Navy or Coast Guard serving in or having the grade of admiral, vice admiral, rear admiral, or rear admiral (lower half).

(6) The term ''enlisted member'' means a person in an enlisted grade.

(7) The term ''grade'' means a step or degree, in a graduated scale of office or military rank, that is established and designated as a grade by law or regulation.

(8) The term ''rank'' means the order of precedence among members of the armed forces.

(9) The term ''rating'' means the name (such as ''boatswain's mate'') prescribed for members of an armed force in an occupational field. The term ''rate'' means the name (such as ''chief boatswain's mate'') prescribed for members in the same rating or other category who are in the same grade (such as chief petty officer or seaman apprentice).

(10) The term ''original'', with respect to the appointment of a member of the armed forces in a regular or reserve component, refers to that member's most recent appointment in that component that is neither a promotion nor a demotion.

(11) The term ''authorized strength'' means the largest number of members authorized to be in an armed force, a component, a branch, a grade, or any other category of the armed forces.

(12) The term ''regular'', with respect to an enlistment, appointment, grade, or office, means enlistment, appointment, grade, or office in a regular component of an armed force.

(13) The term ''active-duty list'' means a single list for the Army, Navy, Air Force, Marine Corps, or Space Force (required to be maintained under section 620 of this title) which contains the names of all officers of that armed force, other than officers described in section 641 of this title, who are serving on active duty.

(14) The term ''medical officer'' means an officer of the Medical Corps of the Army, an officer of the Medical Corps of the Navy, or an officer in the Air Force designated as a medical officer.

(15) The term ''dental officer'' means an officer of the Dental Corps of the Army, an officer of the Dental Corps of the Navy, or an officer of the Air Force designated as a dental officer.

(16) The term ''Active Guard and Reserve'' means a member of a reserve component who is on active duty pursuant to section 12301(d) of this title or, if a member of the Army National Guard or Air National Guard, is on full-time National Guard duty pursuant to section 502(f) of title 32, and who is performing Active Guard and Reserve duty.

(c) RESERVE COMPONENTS.—The following definitions relating to the reserve components apply in this title:

(1) The term ''National Guard'' means the Army National Guard and the Air National Guard.

(2) The term ''Army National Guard'' means that part of the organized militia of the several States and Territories, Puerto Rico, and the District of Columbia, active and inactive, that—

(A) is a land force;

(B) is trained, and has its officers appointed, under the sixteenth clause of section 8, article I, of the Constitution;

(C) is organized, armed, and equipped wholly or partly at Federal expense; and

(D) is federally recognized.

(3) The term ''Army National Guard of the United States'' means the reserve component of the Army all of whose members are members of the Army National Guard.

(4) The term ''Air National Guard'' means that part of the organized militia of the several States and Territories, Puerto Rico, and the District of Columbia, active and inactive, that—

(A) is an air force;

(B) is trained, and has its officers appointed, under the sixteenth clause of section 8, article I, of the Constitution;

(C) is organized, armed, and equipped wholly or partly at Federal expense; and

(D) is federally recognized.

(5) The term ''Air National Guard of the United States'' means the reserve component of the Air Force all of whose members are members of the Air National Guard.

(6) The term ''reserve'', with respect to an enlistment, appointment, grade, or office, means enlistment, appointment, grade, or office held as a Reserve of one of the armed forces.

(7) The term ''reserve active-status list'' means a single list for the Army, Navy, Air Force, or Marine Corps (required to be maintained under section 14002 of this title) that contains the names of all officers of that armed force except warrant officers (including commissioned warrant officers) who are in an active status in a reserve component of the Army, Navy, Air Force, or Marine Corps and are not on an active-duty list.

(d) DUTY STATUS.—The following definitions relating to duty status apply in this title:

(1) The term ''active duty'' means full-time duty in the active military service of the United States. Such term includes full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as a service school by law or by the Secretary of the military department concerned. Such term does not include full-time National Guard duty.

(2) The term ''active duty for a period of more than 30 days'' means active duty under a call or order that does not specify a period of 30 days or less.

(3) The term ''active service'' means service on active duty or full-time National Guard duty.

(4) The term ''active status'' means the status of a member of a reserve component who is not in the inactive Army National Guard or inactive Air National Guard, on an inactive status list, or in the Retired Reserve.

(5) The term ''full-time National Guard duty'' means training or other duty, other than inactive duty, performed by a member of the Army National Guard of the United States or the Air National Guard of the United States in the member's status as a member of the National Guard of a State or territory, the Commonwealth of Puerto Rico, or the District of Columbia under section 316, 502, 503, 504, or 505 of title 32 for which the member is entitled to pay from the United States or for which the member has waived pay from the United States.

(6)(A) The term ''active Guard and Reserve duty'' means active duty performed by a member of a reserve component of the Army, Navy, Air Force, or Marine Corps, or full-time National Guard duty performed by a member of the National Guard pursuant to an order to full-time National Guard duty, for a period of 180 consecutive days or more for the purpose of organizing, administering, recruiting, instructing, or training the reserve components.

(B) Such term does not include the following:

(i) Duty performed as a member of the Reserve Forces Policy Board provided for under section 10301 of this title.

(ii) Duty performed as a property and fiscal officer under section 708 of title 32.

(iii) Duty performed for the purpose of interdiction and counter-drug activities for which funds have been provided under section 112 of title 32.

(iv) Duty performed as a general or flag officer.

(v) Service as a State director of the Selective Service System under section 10(b)(2) of the Military Selective Service Act (50 U.S.C. 3809(b)(2)).

(7) The term ''inactive-duty training'' means—

(A) duty prescribed for Reserves by the Secretary concerned under section 206 of title 37 or any other provision of law; and

(B) special additional duties authorized for Reserves by an authority designated by the Secretary concerned and performed by them on a voluntary basis in connection with the prescribed training or maintenance activities of the units to which they are assigned.

Such term includes those duties when performed by Reserves in their status as members of the National Guard.

(e) FACILITIES AND OPERATIONS.—The following definitions relating to facilities and operations apply in this title:

(1) RANGE.—The term ''range'', when used in a geographic sense, means a designated land or water area that is set aside, managed, and used for range activities of the Department of Defense. Such term includes the following:

(A) Firing lines and positions, maneuver areas, firing lanes, test pads, detonation pads, impact areas, electronic scoring sites, buffer zones with restricted access, and exclusionary areas.

(B) Airspace areas designated for military use in accordance with regulations and procedures prescribed by the Administrator of the Federal Aviation Administration.

(2) RANGE ACTIVITIES.—The term ''range activities'' means—

(A) research, development, testing, and evaluation of military munitions, other ordnance, and weapons systems; and

(B) the training of members of the armed forces in the use and handling of military munitions, other ordnance, and weapons systems.

(3) OPERATIONAL RANGE.—The term ''operational range'' means a range that is under the jurisdiction, custody, or control of the Secretary of a military department and—

(A) that is used for range activities, or

(B) although not currently being used for range activities, that is still considered by the Secretary to be a range and has not been put to a new use that is incompatible with range activities.

(4) MILITARY MUNITIONS.—(A) The term ''military munitions'' means all ammunition products and components produced for or used by the armed forces for national defense and security, including ammunition products or components under the control of the Department of Defense, the Coast Guard, the Department of Energy, and the National Guard.

(B) Such term includes the following:

(i) Confined gaseous, liquid, and solid propellants.

(ii) Explosives, pyrotechnics, chemical and riot control agents, smokes, and incendiaries, including bulk explosives and chemical warfare agents.

(iii) Chemical munitions, rockets, guided and ballistic missiles, bombs, warheads, mortar rounds, artillery ammunition, small arms ammunition, grenades, mines, torpedoes, depth charges, cluster munitions and dispensers, and demolition charges.

(iv) Devices and components of any item specified in clauses (i) through (iii).

(C) Such term does not include the following:

(i) Wholly inert items.

(ii) Improvised explosive devices.

(iii) Nuclear weapons, nuclear devices, and nuclear components, other than nonnuclear components of nuclear devices that are managed under the nuclear weapons program of the Department of Energy after all required sanitization operations under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) have been completed.

(5) UNEXPLODED ORDNANCE.—The term ''unexploded ordnance'' means military munitions that—

(A) have been primed, fused, armed, or otherwise prepared for action;

(B) have been fired, dropped, launched, projected, or placed in such a manner as to constitute a hazard to operations, installations, personnel, or material; and

(C) remain unexploded, whether by malfunction, design, or any other cause.

(6) ENERGY RESILIENCE.—The term ''energy resilience'' means the ability to avoid, prepare for, minimize, adapt to, and recover from anticipated and unanticipated energy disruptions in order to ensure energy availability and reliability sufficient to provide for mission assurance and readiness, including mission essential operations related to readiness, and to execute or rapidly reestablish mission essential requirements.

(7) ENERGY SECURITY.—The term ''energy security'' means having assured access to reliable supplies of energy and the ability to protect and deliver sufficient energy to meet mission essential requirements.

(8) MILITARY INSTALLATION RESILIENCE.—The term ''military installation resilience'' means the capability of a military installation to avoid, prepare for, minimize the effect of, adapt to, and recover from extreme weather events, or from anticipated or unanticipated changes in environmental conditions, that do, or have the potential to, adversely affect the military installation or essential transportation, logistical, or other necessary resources outside of the military installation that are necessary in order to maintain, improve, or rapidly reestablish installation mission assurance and mission-essential functions.

(f) RULES OF CONSTRUCTION.—In this title—

(1) ''shall'' is used in an imperative sense;

(2) ''may'' is used in a permissive sense;

(3) ''no person may * * *'' means that no person is required, authorized, or permitted to do the act prescribed;

(4) ''includes'' means ''includes but is not limited to''; and

(5) ''spouse'' means husband or wife, as the case may be.

(g) REFERENCE TO TITLE 1 DEFINITIONS.—For other definitions applicable to this title, see sections 1 through 5 of title 1.

(Aug. 10, 1956, ch. 1041, 70A Stat. 3; Pub. L. 85–861, §§1(1), 33(a)(1), Sept. 2, 1958, 72 Stat. 1437, 1564; Pub. L. 86–70, §6(a), June 25, 1959, 73 Stat. 142; Pub. L. 86–624, §4(a), July 12, 1960, 74 Stat. 411; Pub. L. 87–649, §6(f)(1), Sept. 7, 1962, 76 Stat. 494; Pub. L. 90–235, §7(a)(1), Jan. 2, 1968, 81 Stat. 762; Pub. L. 90–623, §2(1), Oct. 22, 1968, 82 Stat. 1314; Pub. L. 92–492, §1, Oct. 13, 1972, 86 Stat. 810; Pub. L. 96–513, title I, §§101, 115(a), title V, §501(2), Dec. 12, 1980, 94 Stat. 2839, 2877, 2907; Pub. L. 97–22, §2(a), July 10, 1981, 95 Stat. 124; Pub. L. 97–86, title IV, §405(b)(1), Dec. 1, 1981, 95 Stat. 1105; Pub. L. 98–525, title IV, §414(a)(1), Oct. 19, 1984, 98 Stat. 2518; Pub. L. 99–145, title V,

§ 514(b)(1), Nov. 8, 1985, 99 Stat. 628; Pub. L. 99–348, title III, § 303, July 1, 1986, 100 Stat. 703; Pub. L. 99–433, title III, § 302, Oct. 1, 1986, 100 Stat. 1022; Pub. L. 100–26, § 7(i), (k)(1), Apr. 21, 1987, 101 Stat. 282, 283; Pub. L. 100–180, div. A, title XII, §§ 1231(1), (20), 1233(a)(2), Dec. 4, 1987, 101 Stat. 1160, 1161; Pub. L. 100–456, div. A, title XII, § 1234(a)(1), Sept. 29, 1988, 102 Stat. 2059; Pub. L. 101–510, div. A, title XII, § 1204, Nov. 5, 1990, 104 Stat. 1658; Pub. L. 102–190, div. A, title VI, § 631(a), Dec. 5, 1991, 105 Stat. 1380; Pub. L. 102–484, div. A, title X, § 1051(a), Oct. 23, 1992, 106 Stat. 2494; Pub. L. 103–337, div. A, title V, § 514, title XVI, §§ 1621, 1671(c)(1), Oct. 5, 1994, 108 Stat. 2753, 2960, 3014; Pub. L. 104–106, div. A, title XV, § 1501(c)(1), Feb. 10, 1996, 110 Stat. 498; Pub. L. 104–201, div. A, title V, § 522, Sept. 23, 1996, 110 Stat. 2517; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 108–136, div. A, title X, §§ 1042(a), 1043(a), 1045(a)(2), Nov. 24, 2003, 117 Stat. 1608, 1610, 1612; Pub. L. 108–375, div. A, title X, § 1084(a), Oct. 28, 2004, 118 Stat. 2060; Pub. L. 109–163, div. A, title X, §§ 1056(c)(1), 1057(a)(1), (2), Jan. 6, 2006, 119 Stat. 3439, 3440; Pub. L. 109–364, div. A, title V, § 524, Oct. 17, 2006, 120 Stat. 2193; Pub. L. 111–383, div. A, title VIII, § 876, Jan. 7, 2011, 124 Stat. 4305; Pub. L. 112–81, div. A, title V, § 515(b), Dec. 31, 2011, 125 Stat. 1395; Pub. L. 112–239, div. A, title VI, § 681(a), Jan. 2, 2013, 126 Stat. 1795; Pub. L. 114–328, div. A, title X, § 1081(b)(1)(A)(i), Dec. 23, 2016, 130 Stat. 2417; Pub. L. 115–91, div. B, title XXVIII, § 2831(d), Dec. 12, 2017, 131 Stat. 1858; Pub. L. 115–232, div. A, title III, § 312(f), title XII, § 1204(a)(3), div. B, title XXVIII, § 2805(e), Aug. 13, 2018, 132 Stat. 1711, 2017, 2263; Pub. L. 116–92, div. A, title IX, §§ 952(c), 958(a)(1), Dec. 20, 2019, 133 Stat. 1562, 1567; Pub. L. 116–283, div. A, title IX, § 924(a), title X, § 1081(a)(5), Jan. 1, 2021, 134 Stat. 3820, 3871.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
101(1)	50:351 (clause (b)).	Sept. 16, 1942, ch. 561, § 401 (clause (b)); added Apr. 1, 1944, ch. 150, § 401 (clause (b)); restated Apr. 19, 1946, ch. 142, § 401 (clause (b)), 60 Stat. 102.
101(2)	32:4c (1st 33 words).	
101(3)	[No source].	
101(4)	50:901(e).	
101(5)	5:181–1(c) (for definition purposes); 5:411a(a) (for definition purposes); 5:626(c) (for definition purposes).	July 9, 1952, ch. 608, § 101(d) (less 2d sentence), (e), (g), § 702 (for definition purposes), 66 Stat. 481, 482, 501.
101(6)	[No source].	
101(7)	5:171(b) (last 23 words of clause (1), for definition purposes).	
101(8)	10:600(a); 34:135(a).	July 26, 1947, ch. 343, §§ 205(c) (for definition purposes), 206(a) (for definition purposes), 207(c) (for definition purposes), 61 Stat. 501, 502.
101(9)	[No source].	
101(10)	32:2 (for definition purposes); 32:4b (for definition purposes).	
101(11)	50:1112(a) (for definition purposes).	
101(12)	10:1835 (less last 16 words, for definition purposes); 32:2 (for definition purposes); 32:4b (for definition purposes).	July 26, 1947, ch. 343, § 201(b) (last 31 words of clause (1), for definition purposes); restated Aug. 10, 1949, ch. 412, § 4 (last 31 words of clause (1) of 201(b), for definition purposes), 63 Stat. 579.
101(13)	50:1112(b) (for definition purposes).	
101(14)	5:181–3(b) (less last sentence); 10:1a(b) (less last sentence); 10:1801(b) (less last sentence); 37:231(c) (1st sentence, for definition purposes); 50:901(g).	June 3, 1916, ch. 134, § 62 (1st 36 words of last proviso), 39 Stat. 198. June 3, 1916, ch. 134, § 117 (for definition purposes), 39 Stat. 212.
101(15)	[No source].	
101(16)	10:600(b); 34:135(b).	June 3, 1916, ch. 134, § 71 (for definition purposes); added June 15, 1933, ch. 87, § 9 (for definition purposes), 48 Stat. 157; Oct. 12, 1949, ch. 681, § 530 (for definition purposes), 63 Stat. 837; July 9, 1952, ch. 608, § 803 (9th par., for definition purposes), 66 Stat. 505.
101(17)	5:181–3(b) (last sentence); 10:1a(b) (last sentence); 10:1801(b) (last sentence); 50:551(9).	
101(18)	[No source].	
101(19)	[No source].	
101(20)	[No source].	
101(21)	[No source].	
101(22)	10:1036e(d) (for definition purposes); 34: 440m(d) (for definition purposes).	
101(23)	[No source].	Sept. 19, 1951, ch. 407, §§ 2(b), 305 (less last 16 words, for definition purposes), 65 Stat. 326, 330.
101(24)	[No source].	
101(26)	[No source].	
101(27)	[No source].	
101(28)	[No source].	
101(29)	[No source].	June 28, 1950, ch. 383, § 2(b), 64 Stat. 263; July 9, 1952, ch. 608, § 807(a), 66 Stat. 508.
101(30)	[No source].	
101(31)	50:901(d) (less 2d sentence).	
101(32)	[No source].	Oct. 12, 1949, ch. 681, § 102(c) (1st sentence, for definition purposes), 63 Stat. 804.
101(33)	[No source].	
101(34)	[No source].	
		May 5, 1950, ch. 169, § 1 (Art. 1 (clause (9))), 64 Stat. 108.
		May 29, 1954, ch. 249, § 2(a), (b), 68 Stat. 157.
		June 29, 1948, ch. 708, § 306(d) (for definition purposes), 62 Stat. 1089.

The definitions in clauses (3), (15), (18)–(21), (23)–(30), and (31)–(33) reflect the adoption of terminology which, though undefined in the source statutes restated in this title, represents the closest practicable approximation of the ways in which the terms defined have been most commonly used. A choice has been made where established uses conflict.

In clause (2), the definition of ''Territory'' in 32:4c is executed throughout this revised title by specific reference, where applicable, to the Territories, Puerto Rico and the Canal Zone.

In clause (4), the definition of ''armed forces'' is based on the source statute instead of 50:551(2), which does not include an express reference to the Marine Corps. The words ''including all components thereof'' are omitted as surplusage.

In clause (5), the term ''Department'' is defined to give it the broad sense of ''Establishment'', to conform to the source statute and the usage preferred by the Department of Defense, instead of the more limited sense defined by 5:421g(a) and 423a(a), and 10:1a(d) and 1801(d).

In clause (6), the term ''executive part of the department'' is created for convenience in referring to what is described in the source statutes for this title as ''department'' in the limited sense of the executive part at the seat of government. This is required by the adoption of the word ''department'' in clause (5) to cover the broader concept of ''establishment''.

In clause (8), the term ''Secretary concerned'' is created and defined for legislative convenience.

In clause (9), a definition of ''National Guard'' is inserted for clarity.

In clause (10)(A), the words ''a land force'' are substituted for 32:2 (as applicable to Army National Guard). The National Defense Act of 1916, § 117 (last 66 words), 39 Stat. 212, is not contained in 32:2. It is also omitted from the revised section as repealed by the Act of February 28, 1925, ch. 374, § 3, 43 Stat. 1081.

In clauses (10) and (11), the word ''Army'' is inserted to distinguish the organizations defined from their Air Force counterparts.

In clauses (10) and (12), the words ''unless the context or subject matter otherwise requires'' and ''as provided in this title'', in 32:4b, are omitted as surplusage.

In clauses (10)(B) and (12)(B), the words ''has its officers appointed'' are substituted for the word ''officered'', in 32:4b.

In clauses (11) and (13), only that much of the description of the composition of the Army National Guard of the United States and the Air National Guard of the United States is used as is necessary to distinguish these reserve components, respectively, from the other reserve components.

In clause (12)(A), the words ''an air force'' are substituted for the words ''for which Federal responsibility has been vested in the Secretary of the Air Force or the Department of the Air Force pursuant to law'', in 10:1835, and for 32:2 (as applicable to Air National Guard), to make the definition of ''Air National Guard'' parallel with the definition of ''Army National Guard'', and to make explicit the intent of Congress, in creating the Air National Guard, that the organized militia henceforth should consist of three mutually exhaustive classes comprising the Army, Air, and Naval militia.

In clause (14), the definition of ''officer'' is based on the source statutes instead of 50:551(5), which excludes warrant officers. The reference to appointment in 10:1a(b) (2d sentence and 10:1801(b) (2d sentence), and the words ''commissioned warrant officer'', ''flight officer'', and ''either permanent or temporary'', in 37:231(c) (1st sentence), are omitted as surplusage. 5:181–3(b) (1st sentence), 10:1a(b) (1st sentence), and 10:1801(b) (1st sentence) are omitted as covered by the definitions in clauses (14) and (16) of the revised section and by section 3062(c) and section 8062(d) of this title.

In clause (16), the words ''unless otherwise qualified'', ''permanent or temporary'', and ''in the Army, Navy, Air Force, Marine Corps, or Coast Guard, including any component thereof'' are omitted as surplusage. The word ''person'' is substituted for the word ''officer''.

In clause (22), the definition of ''active duty'' is based on the definition of ''active Federal service'' in the source statute, since it is believed to be closer to general usage than the definition in 50:901(b), which excludes active duty for training from the general concept of active duty.

1958 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
101(25)	50:1181(6).	Sept. 3, 1954, ch. 1257, §102(6), 68 Stat. 1150.

The words '', other than a commissioned warrant officer,'' are inserted to reflect 50:1181(1).

[Clause (35).] The word ''original'' is defined to make clear that when used in relation to an appointment it refers to the member's first appointment in his current series of appointments and excludes any appointment made before a lapse in service.

REFERENCES IN TEXT

Section 125(d) of this title, referred to in subsec. (a)(12)(A), was repealed by Pub. L. 99–433, title III, §301(b)(1), Oct. 1, 1986, 100 Stat. 1022.

The Defense Base Closure and Realignment Act of 1990, referred to in subsec. (a)(17)(B), is part A of title XXIX of div. B of Pub. L. 101–510, Nov. 5, 1990, 104 Stat. 1808, as amended, which is set out as a note under section 2687 of this title. For complete classification of this Act to the Code, see Tables.

The Defense Authorization Amendments and Base Closure and Realignment Act, referred to in subsec. (a)(17)(C), is Pub. L. 100–526, Oct. 24, 1988, 102 Stat. 2623, as amended. Title II of the Act is set out as a note under section 2687 of this title. For complete classification of this Act to the Code, see Short Title of 1988 Amendment note set out under section 2687 of this title and Tables.

The Atomic Energy Act of 1954, referred to in subsec. (e)(4)(C)(iii), is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, §1, 68 Stat. 919, which is classified principally to chapter 23 (§2011 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of Title 42 and Tables.

CODIFICATION

Pub. L. 107–296, §1704(b)(1), which directed amendment of section 101(9) of this title by substituting of ''of Homeland Security'' for ''of Transportation'' wherever appearing, could not be executed because there is no section 101(9).

AMENDMENTS

2021—Subsec. (a)(13)(B). Pub. L. 116–283, §1081(a)(5), substituted ''section 3713'' for ''section 712''.

Subsec. (b)(13). Pub. L. 116–283, §924(a), substituted ''Marine Corps, or Space Force'' for ''or Marine Corps''.

2019—Subsec. (a)(4). Pub. L. 116–92, §952(c), inserted ''Space Force,'' after ''Marine Corps,''.

Subsec. (a)(9)(C). Pub. L. 116–92, §958(a)(1), inserted ''and the Space Force'' after ''concerning the Air Force''.

2018—Subsec. (a)(13)(B). Pub. L. 115–232, §1204(a)(3), substituted ''chapter 13'' for ''chapter 15''.

Subsec. (e)(6). Pub. L. 115–232, §312(f), struck out ''task critical assets and other'' before ''mission essential operations''.

Subsec. (e)(8). Pub. L. 115–232, §2805(e), added par. (8).

2017—Subsec. (e)(6), (7). Pub. L. 115–91 added pars. (6) and (7).

2016—Subsec. (d)(6)(B)(v). Pub. L. 114–328 substituted ''(50 U.S.C. 3809(b)(2))'' for ''(50 U.S.C. App. 460(b)(2))''.

2013—Subsec. (a)(13)(B). Pub. L. 112–239 inserted ''section 712 of title 14,'' after ''chapter 15 of this title,''.

2011—Subsec. (a)(13)(B). Pub. L. 112–81 inserted ''12304a,'' after ''12304,''.

Subsec. (a)(18). Pub. L. 111–383 added par. (18).

2006—Subsec. (a)(2). Pub. L. 109–163, §1057(a)(1), struck out par. (2) which read as follows: ''The term 'Territory' (except as provided in section 101(1) of title 32 for laws relating to the militia, the National Guard, the Army National Guard of the United States, and the Air National Guard of the United States) means any Territory organized after August 10, 1956, so long as it remains a Territory.''

Subsec. (a)(3). Pub. L. 109–163, §1057(a)(2), struck out ''Territory or'' before ''Commonwealth''.

Subsec. (b)(16). Pub. L. 109–364, §524(1), added par. (16).

Subsec. (d)(6)(A). Pub. L. 109–364, §524(2), struck out ''or full-time National Guard duty'' after ''means active duty'' and substituted ''pursuant to an order to full-time National Guard duty,'' for '', pursuant to an order to active duty or full-time National Guard duty''.

Subsec. (e)(4)(B)(ii). Pub. L. 109–163, §1056(c)(1), struck out comma after ''bulk explosives''.

2004—Subsec. (e)(3). Pub. L. 108–375 substituted ''Secretary of a military department'' for ''Secretary of Defense'' in introductory provisions.

2003—Subsec. (a)(9)(D). Pub. L. 108–136, §1045(a)(2), substituted ''Homeland Security'' for ''Transportation''.

Subsec. (a)(16), (17). Pub. L. 108–136, §1043(a), added pars. (16) and (17).

Subsecs. (e) to (g). Pub. L. 108–136, §1042(a), added subsec. (e) and redesignated former subsecs. (e) and (f) as (f) and (g), respectively.

1996—Subsec. (d)(4). Pub. L. 104–201 substituted ''a member of a reserve component'' for ''a reserve commissioned officer, other than a commissioned warrant officer,''.

Subsec. (d)(6)(B)(i). Pub. L. 104–160 substituted ''section 10301'' for ''section 175''.

1994—Subsec. (a)(13)(B). Pub. L. 103–337, §1671(c)(1), substituted ''688, 12301(a), 12302, 12304, 12305, or 12406'' for ''672(a), 673, 673b, 673c, 688, 3500, or 8500''.

Subsec. (c)(7). Pub. L. 103–337, §1621, added par. (7).

Subsec. (d)(6), (7). Pub. L. 103–337, §514, added par. (6) and redesignated former par. (6) as (7).

1992—Pub. L. 102–484 amended section generally, substituting subsecs. (a) to (f) for former pars. (1) to (47) which defined terms for purposes of this title.

1991—Par. (47). Pub. L. 102–190 added par. (47).

1990—Par. (46). Pub. L. 101–510 added par. (46).

1988—Pars. (3), (10), (12). Pub. L. 100–456 struck out ''the Canal Zone,'' after ''the Virgin Islands,'' in par. (3) and after ''Puerto Rico,'' in pars. (10) and (12).

1987—Par. (1). Pub. L. 100–26, §7(k)(1)(A), inserted ''The term'' after par. designation.

Par. (2). Pub. L. 100–26, §7(1)(k)(B), inserted ''the term'' after ''Air National Guard of the United States,''.

Pub. L. 100–180, §1233(a)(2), amended directory language of Pub. L. 100–26, §7(k)(1)(C), by adding par. (2) to those pars. excepted from direction that initial letter of first word after open quotation marks in each par. be made lowercase rather than uppercase.

Pars. (3) to (7). Pub. L. 100–26, §7(k)(1)(A), (C), inserted ''The term'' after par. designation and struck out uppercase letter of first word after open quotation marks and substituted lowercase letter.

Pars. (8) to (13). Pub. L. 100–26, §7(k)(1)(A), inserted ''The term'' after par. designation.

Par. (14). Pub. L. 100–180, §1231(1), inserted ''a'' after ''means''.

Pub. L. 100–26, §7(k)(1)(A), (C), inserted ''The term'' after par. designation and struck out uppercase letter of first word after open quotation marks and substituted lowercase letter.

Pars. (15) to (19). Pub. L. 100–26, §7(k)(1)(A), (C), inserted ''The term'' after par. designation and struck out uppercase letter of first word after open quotation marks and substituted lowercase letter.

Par. (20). Pub. L. 100–180, §1231(20), substituted ''The term 'rate'' for '''Rate'' in second sentence.

Pub. L. 100–26, §7(k)(1)(A), (C), inserted ''The term'' after par. designation and struck out uppercase letter of first word after open quotation marks and substituted lowercase letter.

Pars. (21) to (43). Pub. L. 100–26, §7(k)(1)(A), (C), inserted ''The term'' after par. designation and struck out uppercase letter of first word after open quotation marks and substituted lowercase letter.

Pars. (44), (45). Pub. L. 100–26, §7(i)(1), (k)(1)(A), inserted ''The term'' after par. designation and substituted ''October 1, 1986'' for ''the date of the enactment of the Goldwater-Nichols Department of Defense Reorganization Act of 1986''.

1986—Par. (43). Pub. L. 99–348 added par. (43).

Pars. (44), (45). Pub. L. 99–433 added pars. (44) and (45).

1985—Par. (41). Pub. L. 99–145 substituted ''rear admiral (lower half)'' for ''commodore''.

1984—Par. (22). Pub. L. 98–525, §414(a)(1)(A), inserted ''It does not include full-time National Guard duty.''

Par. (24). Pub. L. 98–525, §414(a)(1)(B), inserted ''or full-time National Guard duty''.

Par. (42). Pub. L. 98–525, §414(a)(1)(C), added par. (42).

1981—Par. (41). Pub. L. 97–86 substituted ''commodore'' for ''commodore admiral''.

Pub. L. 97–22 inserted ''or Coast Guard'' after ''Navy''.

1980—Par. (22). Pub. L. 96–513, §501(2), struck out ''duty on the active list,'' after ''It includes''.

Par. (36). Pub. L. 96–513, §115(a), struck out par. (36) which provided that ''dependent'', with respect to a female member of an armed force, did not include her husband, unless he was in fact dependent on her for his chief support, or her child, unless his father was dead or he was in fact dependent on her for his chief support.

Pars. (37) to (41). Pub. L. 96–513, §101, added pars. (37) to (41).

1972—Par. (2). Pub. L. 92–492 inserted ''Except as provided in section 101(1) of title 32 for laws relating to the militia, the National Guard, the Army National Guard of the United States,'' before ''Territory''.

1968—Par. (8)(D). Pub. L. 90–623 substituted ''Secretary of Transportation'' for ''Secretary of the Treasury''.

Par. 36. Pub. L. 90–235 added par. (36).

1962—Par. (31)(A). Pub. L. 87–649 substituted ''section 206 of title 37'' for ''section 301 of title 37''.

1960—Par. (2). Pub. L. 80–624 struck out reference to Hawaii.

1959—Par. (2). Pub. L. 80–70 struck out reference to Alaska.

1958—Par. (25). Pub. L. 85–861, §1(1), added par. (25).

Par. (35). Pub. L. 85–861, §33(a)(1), added par. (35).

Effective Date of 2013 Amendment

Pub. L. 112–239, div. A, title VI, §681(d), Jan. 2, 2013, 126 Stat. 1795, provided that:

''(1) Inclusion of prior orders.—The amendments made by this section [amending this section, section 12731 of this title, and section 3301 of Title 38, Veterans' Benefits] shall apply to any call or order to active duty authorized under section 712 [now 3713] of title 14, United States Code, on or after December 31, 2011, by the Secretary of the executive department in which the Coast Guard is operating.

''(2) Credit for prior service.—The amendments made by this section shall be deemed to have been enacted on December 31, 2011, for purposes of applying the amendments to the following provisions of law:

''(A) Section 5538 of title 5, United States Code, relating to nonreduction in pay.

''(B) Section 701 of title 10, United States Code, relating to the accumulation and retention of leave.

''(C) Section 12731 of title 10, United States Code, relating to age and service requirements for receipt of retired pay for non-regular service.''

Effective Date of 2002 Amendment

Pub. L. 107–296, title XVII, §1704(g), Nov. 25, 2002, 116 Stat. 2316, provided that: ''The amendments made by this section (other than subsection (f)) [see Tables for classification] shall take effect on the date of transfer of the Coast Guard to the Department [of Homeland Security].''

Effective Date of 1996 Amendment

Pub. L. 104–106, div. A, title XV, §1501(c), Feb. 10, 1996, 110 Stat. 498, provided that the amendment made by that section is effective as of Dec. 1, 1994, and as if included as an amendment made by the Reserve Officer Personnel Management Act, title XVI of Pub. L. 103–337, as originally enacted.

Effective Date of 1994 Amendment

Amendment by section 1671(c)(1) of Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, and amendment by section 1621 of Pub. L. 103–337 effective Oct. 1, 1996, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

Effective Date of 1987 Amendment

Pub. L. 100–180, div. A, title XII, §1233(c)[(1)], Dec. 4, 1987, 101 Stat. 1161, provided that: ''The amendments made by subsection (a) [amending this section, section 2432 of this title, and section 406b of Title 37, Pay and Allowances of the Uniformed Services] shall apply as if included in the enactment of the Defense Technical Corrections Act of 1987 (Public Law 100–26).''

Effective Date of 1981 Amendment

Pub. L. 97–86, title IV, §405(f), Dec. 1, 1981, 95 Stat. 1106, provided that: ''The amendments made by this section [amending this section, sections 525, 601, 611, 612, 619, 625, 634, 635, 637, 638, 645, 741, 5138, 5149, 5155, 5442, 5444, 5457, 5501, and 6389 of this title, section 201 of Title 37, Pay and Allowances of the Uniformed Services, and a provision set out as a note under section 611 of this title] shall take effect as of September 15, 1981.''

Effective Date of 1980 Amendment

Pub. L. 96–513, title VII, §701, Dec. 12, 1980, 94 Stat. 2955, provided that:

''(a) Except as provided in subsection (b), this Act and the amendments made by this Act [see Tables for classification] shall take effect on September 15, 1981.

''(b)(1) The authority to prescribe regulations under the amendments made by titles I through IV and under the provisions of title VI shall take effect on the date of the enactment of this Act [Dec. 12, 1980].

''(2) The amendment made by section 415 [enacting section 302(h) of Title 37, Pay and Allowances of the Uniformed Services] shall take effect as of July 1, 1980.

''(3) The amendments made by part B of title V shall take effect on the date of the enactment of this Act [Dec. 12, 1980].

"(4) Part D of title VI shall take effect on the date of the enactment of this Act [Dec. 12, 1980]."

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–623 intended to restate without substantive change the law in effect on Oct. 22, 1968, see section 6 of Pub. L. 90–623, set out as a note under section 5334 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–649 effective Nov. 1, 1962, see section 15 of Pub. L. 87–649, set out as an Inconsistent Provisions note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF 1958 AMENDMENT

Pub. L. 85–861, § 33(g), Sept. 2, 1958, 72 Stat. 1568, provided that: "This section [see Tables for classification] is effective as of August 10, 1956, for all purposes."

SHORT TITLE OF 2019 AMENDMENT

Pub. L. 116–92, div. A, title IX, § 951, Dec. 20, 2019, 133 Stat. 1561, provided that: "This subtitle [subtitle D (§§ 951–961) of div. A of Pub. L. 116–92, see Tables for classification] may be cited as the 'United States Space Force Act'."

SHORT TITLE OF 2018 AMENDMENT

Pub. L. 115–232, div. A, title VI, § 621(a), Aug. 13, 2018, 132 Stat. 1798, provided that: "This section [enacting section 1065 of this title and provisions set out as a note under section 1065 of this title] may be cited as the 'Purple Heart and Disabled Veterans Equal Access Act of 2018'."

SHORT TITLE OF 2016 AMENDMENT

Pub. L. 114–328, div. E, § 5001, Dec. 23, 2016, 130 Stat. 2894, provided that: "This division [div. E (§§ 5001–5542) of Pub. L. 114–328, see Tables for classification] may be cited as the 'Military Justice Act of 2016'."

SHORT TITLE OF 2009 AMENDMENT

Pub. L. 111–23, § 1(a), May 22, 2009, 123 Stat. 1704, provided that: "This Act [enacting sections 139c, 139d, 2334, and 2433a of this title, amending sections 139a, 181, 2306b, 2366a, 2366b, 2430, 2433, 2434, 2445c, 2501, and 2505 of this title and section 5315 of Title 5, Government Organization and Employees, enacting provisions set out as notes under sections 139a, 139c, 181, 2302, 2366a, 2366b, 2430, and 2433a of this title, and amending provisions set out as a note under section 2304 of this title] may be cited as the 'Weapon Systems Acquisition Reform Act of 2009'."

SHORT TITLE OF 2008 AMENDMENT

Pub. L. 110–317, § 1(a), Aug. 29, 2008, 122 Stat. 3526, provided that: "This Act [amending sections 1145, 1146, and 1174 of this title, sections 2108 and 8521 of Title 5, Government Organization and Employees, section 685 of Title 26, Internal Revenue Code, section 303a of Title 37, Pay and Allowances of the Uniformed Services, and sections 3011, 3012, 3702, and 4211 of Title 38, Veterans' Benefits, and enacting provisions set out as notes under section 2108 of Title 5 and section 685 of Title 26] may be cited as the 'Hubbard Act'."

Pub. L. 110–181, div. A, title VIII, § 800, Jan. 28, 2008, 122 Stat. 202, provided that: "This title [see Tables for classification] may be cited as the 'Acquisition Improvement and Accountability Act of 2007'."

Pub. L. 110–181, div. A, title XVIII, § 1801, Jan. 28, 2008, 122 Stat. 496, provided that: "This title [enacting section 10508 of this title, amending sections 113, 164, 526, 10501 to 10503, 10541, 14508, 14511, and 14512 of this title, and enacting provisions set out as notes under sections 113 and 164 of this title and section 104 of Title 32, National Guard] may be cited as the 'National Guard Empowerment Act of 2007'."

SHORT TITLE OF 2005 AMENDMENT

Pub. L. 109–148, div. A, title VIII, § 8126(a), Dec. 30, 2005, 119 Stat. 2728, which provided that this Act, probably meaning section 8126 of div. A of Pub. L. 109–148, which amended section 2554 of this title and section 5309 of Title 42, The Public Health and Welfare, and enacted provisions set out as notes under section 2554 of this title and section 301 of Title 5, Government Organization and Employees, could be cited as the "Support Our Scouts Act of 2005", was repealed by Pub. L. 109–364, div. A, title X, § 1071(f)(3), Oct. 17, 2006, 120 Stat. 2402.

SHORT TITLE OF 1999 AMENDMENT

Pub. L. 106–38, § 1, July 22, 1999, 113 Stat. 205, provided that: "This Act [enacting provisions set out as notes under section 2431 of this title and section 5901 of Title 22, Foreign Relations and Intercourse] may be cited as the 'National Missile Defense Act of 1999'."

SHORT TITLE OF 1991 AMENDMENT

Pub. L. 102–25, § 1, Apr. 6, 1991, 105 Stat. 75, provided that: "This Act [see Tables for classification] may be cited as the 'Persian Gulf Conflict Supplemental Authorization and Personnel Benefits Act of 1991'."

SHORT TITLE OF 1987 AMENDMENT

Pub. L. 100–26, § 1, Apr. 21, 1987, 101 Stat. 273, provided that: "This Act [see Tables for classification] may be cited as the 'Defense Technical Corrections Act of 1987'."

SHORT TITLE OF 1981 AMENDMENT

Pub. L. 97–22, § 1(a), July 10, 1981, 95 Stat. 124, provided that: "this Act [see Tables for classification] may be cited as the 'Defense Officer Personnel Management Act Technical Corrections Act'."

SHORT TITLE OF 1980 AMENDMENT

Pub. L. 96–513, § 1(a), Dec. 12, 1980, 94 Stat. 2835, provided that: "This Act [see Tables for classification] may be cited as the 'Defense Officer Personnel Management Act'."

SAVINGS PROVISION

Pub. L. 96–513, title VII, § 703, Dec. 12, 1980, 94 Stat. 2956, provided that: "Except as otherwise provided in this Act, the provisions of this Act and the amendments made by this Act [see Tables for classification] do not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before the effective date of this Act [see Effective Date of 1980 Amendment note above]."

RULE OF CONSTRUCTION RELATING TO USE OF MILITARY FORCE

Pub. L. 116–283, div. A, title XII, § 1299S, Jan. 1, 2021, 134 Stat. 4028, provided that: "Nothing in this Act [see Tables for classification] or any amendment made by this Act may be construed to authorize the use of military force."

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

LAWS IN SUSPENDED STATUS PRIOR TO 1980 AMENDMENT BY PUB. L. 96–513

Pub. L. 96–513, title VII, § 702, Dec. 12, 1980, 94 Stat. 2955, provided that: "If a provision of law that is in a

suspended status on the day before the effective date of this Act [see Effective Date of 1980 Amendment note above] is amended by this Act [see Tables for classification], the suspended status of that provision is not affected by that amendment.''

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Authority vested by this title in ''military departments'', ''the Secretary concerned'', or ''the Secretary of Defense'' to be exercised, with respect to commissioned officer corps of National Oceanic and Atmospheric Administration, by Secretary of Commerce or Secretary's designee, see section 3071 of Title 33, Navigation and Navigable Waters.

PUBLIC HEALTH SERVICE

Authority vested by this title in ''military departments'', ''the Secretary concerned'', or ''the Secretary of Defense'' to be exercised, with respect to commissioned officers of Public Health Service, by Secretary of Health and Human Services or his designee, see section 213a of Title 42, The Public Health and Welfare.

COORDINATION OF CERTAIN SECTIONS OF AN ACT WITH OTHER PROVISIONS OF THAT ACT

Pub. L. 116–283, div. A, title X, § 1081(g), Jan. 1, 2021, 134 Stat. 3875, provided that: ''For purposes of applying amendments made by provisions of this Act other than this section [see Tables for classification], the amendments made by this section shall be treated as having been enacted immediately before any such amendments by other provisions of this Act.''

Similar provisions were contained in the following prior acts:

Pub. L. 116–92, div. A, title XVII, § 1731(f), Dec. 20, 2019, 133 Stat. 1816.

Pub. L. 115–232, div. A, title X, § 1081(g), Aug. 13, 2018, 132 Stat. 1987.

Pub. L. 115–91, div. A, title X, § 1081(j), Dec. 12, 2017, 131 Stat. 1601.

Pub. L. 114–328, div. A, title X, § 1081(d), Dec. 23, 2016, 130 Stat. 2420.

Pub. L. 114–92, div. A, title X, § 1081(e), Nov. 25, 2015, 129 Stat. 1002.

Pub. L. 113–291, div. A, title X, § 1071(k), Dec. 19, 2014, 128 Stat. 3512.

Pub. L. 113–66, div. A, title X, § 1091(f), Dec. 26, 2013, 127 Stat. 877.

Pub. L. 112–239, div. A, title X, § 1076(m), Jan. 2, 2013, 126 Stat. 1956.

Pub. L. 109–364, div. A, title X, § 1071(i), Oct. 17, 2006, 120 Stat. 2403.

Pub. L. 107–107, div. A, title X, § 1048(j), Dec. 28, 2001, 115 Stat. 1230.

Pub. L. 106–398, § 1 [[div. A], title X, § 1087(h)], Oct. 30, 2000, 114 Stat. 1654, 1654A–294.

Pub. L. 106–65, div. A, title X, § 1066(e), Oct. 5, 1999, 113 Stat. 773.

Pub. L. 105–261, div. A, title X, § 1069(e), Oct. 17, 1998, 112 Stat. 2137.

Pub. L. 105–85, div. A, title X, § 1073(i), Nov. 18, 1997, 111 Stat. 1907.

Pub. L. 104–201, div. A, title X, § 1074(e), Sept. 23, 1996, 110 Stat. 2661.

Pub. L. 104–106, div. A, title XV, § 1506, Feb. 10, 1996, 110 Stat. 515.

Pub. L. 103–337, div. A, title X, § 1070(h), Oct. 5, 1994, 108 Stat. 2859.

Pub. L. 103–160, div. A, title XI, § 1182(h), Nov. 30, 1993, 107 Stat. 1774.

Pub. L. 102–484, div. A, title X, § 1055, Oct. 23, 1992, 106 Stat. 2503.

CONGRESSIONAL DEFENSE COMMITTEES DEFINED

The following provisions provided that the term ''congressional defense committees'' for purposes of the Acts in which they were contained has the meaning given that term in subsec. (a)(16) of this section:

Pub. L. 116–283, § 3, Jan. 1, 2021, 134 Stat. 3421.

Pub. L. 116–92, § 3, Dec. 20, 2019, 133 Stat. 1231.

Pub. L. 115–232, § 3, Aug. 13, 2018, 132 Stat. 1658.

Pub. L. 115–91, § 3, Dec. 12, 2017, 131 Stat. 1305.

Pub. L. 114–328, § 3, Dec. 23, 2016, 130 Stat. 2025.

Pub. L. 114–92, § 3, Nov. 25, 2015, 129 Stat. 745.

Pub. L. 113–291, § 3, Dec. 19, 2014, 128 Stat. 3312.

Pub. L. 113–66, § 3, Dec. 26, 2013, 127 Stat. 689.

Pub. L. 112–239, § 3, Jan. 2, 2013, 126 Stat. 1652.

Pub. L. 112–81, § 3, Dec. 31, 2011, 125 Stat. 1316.

Pub. L. 111–383, § 3, Jan. 7, 2011, 124 Stat. 4151.

Pub. L. 111–84, § 3, Oct. 28, 2009, 123 Stat. 2208.

Pub. L. 110–417, § 3, Oct. 14, 2008, 122 Stat. 4372.

Pub. L. 110–181, § 3, Jan. 28, 2007, 122 Stat. 23.

Pub. L. 109–364, § 3, Oct. 17, 2006, 120 Stat. 2100.

Pub. L. 109–163, § 3, Jan. 6, 2006, 119 Stat. 3152.

Pub. L. 108–375, § 3, Oct. 28, 2004, 118 Stat. 1825.

Pub. L. 109–148, div. A, title VIII, § 8028, Dec. 30, 2005, 119 Stat. 2704, provided that for purposes of Pub. L. 109–148 the term ''congressional defense committees'' means the Armed Services Committee of the House of Representatives, the Armed Services Committee of the Senate, the Subcommittee on Defense of the Committee on Appropriations of the Senate, and the Subcommittee on Defense of the Committee on Appropriations of the House of Representatives and, for any matter pertaining to basic allowance for housing, facilities sustainment, restoration and modernization, environmental restoration and the Defense Health Program, ''congressional defense committees'' also means the Subcommittee on Military Quality of Life and Veterans Affairs, and Related Agencies [subcommittee jurisdiction now in Subcommittee on Military Construction, Veterans Affairs, and Related Agencies and Subcommittee on Defense] of the Committee on Appropriations of the House of Representatives.

The following provisions defined the term ''congressional defense committees'' for purposes of the Acts in which they were contained to mean the Armed Services Committee of the House of Representatives, the Armed Services Committee of the Senate, the Subcommittee on Defense of the Committee on Appropriations of the Senate, and the Subcommittee on Defense of the Committee on Appropriations of the House of Representatives:

Pub. L. 111–118, div. A, title VIII, § 8028, Dec. 19, 2009, 123 Stat. 3434.

Pub. L. 110–329, div. C, title VIII, § 8028, Sept. 30, 2008, 122 Stat. 3627 (definition applies to div. C only).

Pub. L. 110–116, div. A, title VIII, § 8027, Nov. 13, 2007, 121 Stat. 1320.

Pub. L. 109–289, div. A, title VIII, § 8025, Sept. 29, 2006, 120 Stat. 1279.

Pub. L. 108–287, title VIII, § 8030, Aug. 5, 2004, 118 Stat. 977.

Pub. L. 108–87, title VIII, § 8031, Sept. 30, 2003, 117 Stat. 1079.

Pub. L. 107–248, title VIII, § 8031, Oct. 23, 2002, 116 Stat. 1543.

Pub. L. 107–117, div. A, title VIII, § 8034, Jan. 10, 2002, 115 Stat. 2255.

Pub. L. 106–259, title VIII, § 8034, Aug. 9, 2000, 114 Stat. 682.

Pub. L. 106–79, title VIII, § 8036, Oct. 25, 1999, 113 Stat. 1239.

The following provisions defined the term ''congressional defense committees'' for purposes of the Acts in which they were contained to mean the Committee on Armed Services and the Committee on Appropriations of the Senate and the Committee on Armed Services and the Committee on Appropriations of the House of Representatives:

Pub. L. 108–136, § 3, Nov. 24, 2003, 117 Stat. 1406.

Pub. L. 107–314, § 3, Dec. 2, 2002, 116 Stat. 2471.

Pub. L. 107–107, § 3, Dec. 28, 2001, 115 Stat. 1027.

Pub. L. 106–398, § 1 [§ 3], Oct. 30, 2000, 114 Stat. 1654, 1654A–19.

Pub. L. 106–65, § 3, Oct. 5, 1999, 113 Stat. 529.

Pub. L. 103–337, § 3, Oct. 5, 1994, 108 Stat. 2678.

Pub. L. 103–160, § 3, Nov. 30, 1993, 107 Stat. 1562.

Pub. L. 102–484, § 3, Oct. 23, 1992, 106 Stat. 2331.

Pub. L. 102–190, § 3, Dec. 5, 1991, 105 Stat. 1301.
Pub. L. 102–25, § 3(4), Apr. 6, 1991, 105 Stat. 77.
Pub. L. 101–510, § 3, Nov. 5, 1990, 104 Stat. 1498.
Pub. L. 101–189, § 4, Nov. 29, 1989, 103 Stat. 1364.

The following provisions defined the term ''congressional defense committees'' for purposes of the Acts in which they were contained to mean the National Security Committee of the House of Representatives, the Armed Services Committee of the Senate, the Subcommittee on Defense of the Committee on Appropriations of the Senate, and the Subcommittee on National Security of the Committee on Appropriations of the House of Representatives:

Pub. L. 105–262, title VIII, § 8036, Oct. 17, 1998, 112 Stat. 2305.

Pub. L. 105–56, title VIII, § 8038, Oct. 8, 1997, 111 Stat. 1229.

Pub. L. 104–208, div. A, title I, § 101(b) [title VIII, § 8040], Sept. 30, 1996, 110 Stat. 3009–71, 3009–97.

Pub. L. 104–61, title VIII, § 8049, Dec. 1, 1995, 109 Stat. 661.

The following provisions defined the term ''congressional defense committees'' for purposes of the Acts in which they were contained to mean the Committee on Armed Services and the Committee on Appropriations of the Senate and the Committee on National Security and the Committee on Appropriations of the House of Representatives:

Pub. L. 105–261, § 3, Oct. 17, 1998, 112 Stat. 1935.
Pub. L. 105–85, § 3, Nov. 18, 1997, 111 Stat. 1645.
Pub. L. 104–201, § 3, Sept. 23, 1996, 110 Stat. 2439.
Pub. L. 104–106, § 3, Feb. 10, 1996, 110 Stat. 204.

The following provisions defined the term ''congressional defense committees'' for purposes of the Acts in which they were contained to mean the Committees on Armed Services, the Committees on Appropriations, and the subcommittees on Defense of the Committee on Appropriations, of the Senate and the House of Representatives:

Pub. L. 103–335, title VIII, § 8056, Sept. 30, 1994, 108 Stat. 2631.

Pub. L. 103–139, title VIII, § 8067, Nov. 11, 1993, 107 Stat. 1455.

Pub. L. 102–172, title VIII, § 8116, Nov. 26, 1991, 105 Stat. 1203.

DEFINITIONS FOR PURPOSES OF PUB. L. 102–25

Pub. L. 102–25, § 3, Apr. 6, 1991, 105 Stat. 77, as amended by Pub. L. 102–190, div. A, title XII, § 1203(a), Dec. 5, 1991, 105 Stat. 1508, provided that: ''For the purposes of this Act [see Short Title of 1991 Amendment note above]:

''(1) The term 'Operation Desert Storm' means operations of United States Armed Forces conducted as a consequence of the invasion of Kuwait by Iraq (including operations known as Operation Desert Shield, Operation Desert Storm, and Operation Provide Comfort).

''(2) The term 'incremental costs associated with Operation Desert Storm' means costs referred to in [former] section 251(b)(2)(D)(ii) of the Balanced Budget and Emergency Deficit Control Act of 1985 ([former] 2 U.S.C. 901(b)(2)(D)(ii)).

''(3) The term 'Persian Gulf conflict' means the period beginning on August 2, 1990, and ending thereafter on the date prescribed by Presidential proclamation or by law.

''(4) The term 'congressional defense committees' has the meaning given that term in section 3 of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101–510; 104 Stat. 1498).''

CHAPTER 2—DEPARTMENT OF DEFENSE

Sec.
111. Executive department.
112. Department of Defense: seal.
113. Secretary of Defense.
113a. Transmission of annual defense authorization request.
114. Annual authorization of appropriations.
[114a. Renumbered.]
115. Personnel strengths: requirement for annual authorization.
115a. Annual defense manpower profile report and related reports.
[115b. Repealed.]
116. Annual operations and maintenance report.
117. Readiness reporting system.
118. Materiel readiness metrics and objectives for major defense acquisition programs.[1]
118a.[2] National Defense Sustainment and Logistics Review.
118a.[2] Quadrennial quality of life review.
[118b. Repealed.]
119. Special access programs: congressional oversight.
119a. Programs managed under alternative compensatory control measures: congressional oversight.
120. Department of Defense executive aircraft controlled by Secretaries of military departments.

AMENDMENTS

2021—Pub. L. 116–283, div. A, title III, §§ 341(b), 347(b), Jan. 1, 2021, 134 Stat. 3537, 3541, substituted ''Materiel readiness metrics and objectives for major defense acquisition programs'' for ''Annual report on major weapons systems sustainment'' in item 118 and added item 118a ''National Defense Sustainment and Logistics Review''.

2019—Pub. L. 116–92, div. A, title XVII, § 1731(b), Dec. 20, 2019, 133 Stat. 1816, amended directory language of Pub. L. 115–232, § 331(g)(2), and provided that the amendment is effective Aug. 13, 2018, and as if included in Pub. L. 115–232 as enacted. See 2018 Amendment note below.

Pub. L. 116–92, div. A, title XVII, § 1701(c)(2), Dec. 20, 2019, 133 Stat. 1795, which directed amendment of item 115a in the analysis for chapter 3 of this title by substituting ''profile report and related reports'' for ''requirements report'', was executed by making the substitution in item 115a in the analysis for this chapter, to reflect the probable intent of Congress.

Pub. L. 116–92, div. A, title III, § 351(a)(2), title X, § 1051(b), Dec. 20, 2019, 133 Stat. 1320, 1590, added items 118 and 120.

2018—Pub. L. 115–232, div. A, title III, § 331(g)(2), Aug. 13, 2018, 132 Stat. 1724, as amended by Pub. L. 116–92, div. A, title XVII, § 1731(b)(1), Dec. 20, 2019, 133 Stat. 1816, struck out '': establishment; reporting to congressional committees'' after ''system'' in item 117.

2016—Pub. L. 114–328, div. A, title IX, § 941(b)(2), title X, § 1062(b), title XI, § 1102(b), Dec. 23, 2016, 130 Stat. 2367, 2408, 2444, added item 119a and struck out items 115b ''Biennial strategic workforce plan'' and 118 ''Defense strategy review''.

2015—Pub. L. 114–92, div. A, title X, § 1081(b)(3), Nov. 25, 2015, 129 Stat. 1001, amended directory language of Pub. L. 113–291, § 1072(a)(2). See 2014 Amendment note below.

2014—Pub. L. 113–291, div. A, title X, § 1072(b)(2), Dec. 19, 2014, 128 Stat. 3517, struck out item 118b ''Quadrennial roles and missions review''.

Pub. L. 113–291, div. A, title X, § 1072(a)(2), Dec. 19, 2014, 128 Stat. 3516, as amended by Pub. L. 114–92, div. A, title X, § 1081(b)(3), Nov. 25, 2015, 129 Stat. 1001, substituted ''Defense Strategy Review'' for ''Quadrennial defense review'' in item 118.

2011—Pub. L. 112–81, div. A, title IX, § 935(a)(2), Dec. 31, 2011, 125 Stat. 1545, substituted ''Biennial strategic workforce plan'' for ''Annual strategic workforce plan'' in item 115b.

2009—Pub. L. 111–84, div. A, title XI, §§ 1108(a)(2), 1109(b)(2)(B)(ii), Oct. 28, 2009, 123 Stat. 2491, 2493, amend-

[1] So in original. Does not conform to section catchline.
[2] So in original. Two items 118a have been enacted.

ed item 115a generally, substituting ''Annual defense manpower requirements report'' for ''Annual manpower requirements report'', and added item 115b.

2008—Pub. L. 110–417, [div. A], title X, §1061(a)(1), Oct. 14, 2008, 122 Stat. 4612, added item 118b.

2002—Pub. L. 107–314, div. A, title V, §581(a)(2), title X, §1061(b), Dec. 2, 2002, 116 Stat. 2561, 2649, added item 113a and item 118a ''Quadrennial quality of life review''.

1999—Pub. L. 106–65, div. A, title IX, §901(a)(2), Oct. 5, 1999, 113 Stat. 717, added item 118.

1998—Pub. L. 105–261, div. A, title III, §373(a)(2), Oct. 17, 1998, 112 Stat. 1992, added item 117.

1994—Pub. L. 103–337, div. A, title XVI, §1671(b)(1), Oct. 5, 1994, 108 Stat. 3013, struck out item 115b ''Annual report on National Guard and reserve component equipment''.

1992—Pub. L. 102–484, div. A, title X, §1002(d)(1), Oct. 23, 1992, 106 Stat. 2480, struck out item 114a ''Multiyear Defense Program: submission to Congress; consistency in budgeting''.

1990—Pub. L. 101–510, div. A, title XIV, §1402(a)(3)(B), Nov. 5, 1990, 104 Stat. 1674, which directed amendment of item 114a by substituting ''Multiyear'' for ''Five-year'', was executed by substituting ''Multiyear'' for ''Five-Year'' as the probable intent of Congress.

Pub. L. 101–510, div. A, title XIII, §1331(1), title XIV, §1483(c)(1), Nov. 5, 1990, 104 Stat. 1673, 1715, substituted ''Personnel strengths: requirement for annual authorization'' for ''Annual authorization of personnel strengths; annual manpower requirements report'' in item 115, added items 115a and 115b, and struck out items 117 ''Annual report on North Atlantic Treaty Organization readiness'' and 118 ''Sale or transfer of defense articles: reports to Congress''.

1989—Pub. L. 101–189, div. A, title XVI, §1602(a)(2), Nov. 29, 1989, 103 Stat. 1597, added item 114a.

1987—Pub. L. 100–180, div. A, title XI, §1132(a)(2), Dec. 4, 1987, 101 Stat. 1152, added item 119.

1986—Pub. L. 99–433, title I, §101(a)(1), Oct. 1, 1986, 100 Stat. 994, added chapter heading and analysis of sections for chapter 2, consisting of items 111 to 118.

§111. Executive department

(a) The Department of Defense is an executive department of the United States.

(b) The Department is composed of the following:

(1) The Office of the Secretary of Defense.

(2) The Joint Chiefs of Staff.

(3) The Joint Staff.

(4) The Defense Agencies.

(5) Department of Defense Field Activities.

(6) The Department of the Army.

(7) The Department of the Navy.

(8) The Department of the Air Force.

(9) The unified and specified combatant commands.

(10) Such other offices, agencies, activities, and commands as may be established or designated by law or by the President.

(11) All offices, agencies, activities, and commands under the control or supervision of any element named in paragraphs (1) through (10).

(c) If the President establishes or designates an office, agency, activity, or command in the Department of Defense of a kind other than those described in paragraphs (1) through (9) of subsection (b), the President shall notify Congress not later than 60 days thereafter.

(Added Pub. L. 87–651, title II, §202, Sept. 7, 1962, 76 Stat. 517, §131; renumbered §111 and amended Pub. L. 99–433, title I, §101(a)(2), (b), Oct. 1, 1986, 100 Stat. 994, 995.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
131	5:171(a) (less last 10 words), (b).	July 26, 1947, ch. 343, §201(a) (less last 10 words), (b); restated Aug. 10, 1949, ch. 412, §4 (1st (less last 10 words) and 2d pars.), 63 Stat. 579.

The words ''There is established'', in 5 U.S.C. 171(a), are omitted as executed. 5 U.S.C. 171(b) (1st 26 words) is omitted as covered by the definitions of ''department'' and ''military departments'' in section 101(5) and (7), respectively, of this title. 5 U.S.C. 171(b) (27th through 49th words) is omitted as executed. 5 U.S.C. 171(b) (last 18 words) is omitted as surplusage.

AMENDMENTS

1986—Pub. L. 99–433 renumbered section 131 of this title as this section, designated existing provisions as subsec. (a), and added subsecs. (b) and (c).

CHANGE OF NAME

Pub. L. 104–106, div. A, title IX, §908, Feb. 10, 1996, 110 Stat. 406, provided that:

''(a) REDESIGNATION.—The agency in the Department of Defense known as the Advanced Research Projects Agency shall after the date of the enactment of this Act [Feb. 10, 1996] be designated as the Defense Advanced Research Projects Agency.

''(b) REFERENCES.—Any reference in any law, regulation, document, record, or other paper of the United States or in any provision of this Act to the Advanced Research Projects Agency shall be considered to be a reference to the Defense Advanced Research Projects Agency.''

SHORT TITLE OF 1986 AMENDMENT

Pub. L. 99–433, §1(a), Oct. 1, 1986, 100 Stat. 992, provided that: ''This Act [see Tables for classification] may be cited as the 'Goldwater-Nichols Department of Defense Reorganization Act of 1986'.''

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the Department of Defense, including the functions of the Secretary of Defense relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 121(g)(2), 183(2), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

Missions and functions of elements of Department of Defense as specified in classified annex to Pub. L. 104–201, and related personnel, assets, and balances of appropriations and authorizations of appropriations, transferred to National Imagery and Mapping Agency, see sections 1111 and 1113 of Pub. L. 104–201, set out as notes under section 441 of this title.

MODERNIZATION OF PROCESS USED BY THE DEPARTMENT OF DEFENSE TO IDENTIFY, TASK, AND MANAGE CONGRESSIONAL REPORTING REQUIREMENTS

Pub. L. 116–283, div. A, title IX, §908, Jan. 1, 2021, 134 Stat. 3799, provided that:

''(a) ONGOING ANALYSIS REQUIRED.—The Assistant Secretary of Defense for Legislative Affairs shall conduct on an ongoing basis an analysis of the process used by the Department of Defense to identify reports to Congress required by annual national defense authorization Acts, assign responsibility for preparation of such reports, and manage the completion and delivery of such reports to Congress for the purpose of identifying mechanisms to optimize and otherwise modernize the process.

''(b) CONSULTATION.—The Assistant Secretary shall conduct the analysis required by subsection (a) with

the assistance of and in consultation with the Chief Information Officer of the Department of Defense.

''(c) ELEMENTS.—The analysis required by subsection (a) shall include the following:

''(1) A business process reengineering of the process described in subsection (a).

''(2) An assessment of applicable commercially available analytics tools, technologies, and services in connection with such business process reengineering.

''(3) Such other actions as the Assistant Secretary considers appropriate for purposes of the analysis.''

AUTHORITY OF PRESIDENT TO EXTEND MILITARY LEADER APPOINTMENTS

Pub. L. 116–136, div. B, title III, § 13007, Mar. 27, 2020, 134 Stat. 522, provided that:

''(a) The President may extend the appointment of the Chief of Army Reserve as prescribed in section 7038(c) of title 10, United States Code, for the incumbent in that position as of the date of the enactment of this Act [Mar. 27, 2020] until the date of the appointment of the successor to such incumbent, notwithstanding any limitation otherwise imposed on such term by such section 7038(c).

''(b) The President may extend the appointment of the Chief of Navy Reserve as prescribed in section 8083(c) of title 10, United States Code, for the incumbent in that position as of the date of the enactment of this Act until the date of the appointment of the successor to such incumbent, notwithstanding any limitation otherwise imposed on such term by such section 8083(c).

''(c) The President may extend the appointment of the Chief of Staff of the Air Force prescribed in section 9033(a)(1) of title 10, United States Code, for the incumbent in that position as of the date of the enactment of this Act until the date of the appointment of the successor to such incumbent, notwithstanding any limitation otherwise imposed on such term by such section 9033(a)(1).

''(d) The President may extend the appointment of the Chief of Space Operations, as prescribed in section 9082(a)(2) of title 10, United States Code, for the incumbent in that position as of the date of the enactment of this Act until the date of the appointment of the successor to such incumbent, notwithstanding any limitation otherwise imposed on such term by such section 9082(a)(2).

''(e) The President may extend the appointment of the Chief of the National Guard Bureau as prescribed in section 10502(b) of title 10, United States Code, for the incumbent in that position as of the date of the enactment of this Act until the date of the appointment of the successor to such incumbent, notwithstanding any limitation otherwise imposed on such term by such section 10502(b).

''(f) The President may extend the appointment of Director, Army National Guard and Director, Air National Guard as prescribed in section 10506(a)(3)(D) of title 10, United States Code, for the incumbent in such position as of the date of the enactment of this Act until the date of the appointment of the successor to such incumbent, notwithstanding any limitation otherwise imposed on such term by such section 10506(a)(3)(D).

''(g) Notwithstanding paragraph (4) of section 10505(a) of title 10, United States Code, the Secretary of Defense may waive the limitations in paragraphs (2) and (3) of that section for a period of not more than 270 days.

''(h)(1) The President may delegate the exercise of the authorities in subsections (a) through (f) to the Secretary of Defense.

''(2) The Secretary of Defense may not redelegate the exercise of any authority delegated to the Secretary pursuant to paragraph (1), and may not delegate the exercise of the authority in subsection (g).''

TERMINATION OF REPORTING REQUIREMENTS

Pub. L. 116–92, div. A, title XVII, § 1702(a), (b), Dec. 20, 2019, 133 Stat. 1796, provided that:

''(a) TERMINATION.—Effective on December 30, 2021, each report described in subsection (b) that is still required to be submitted to Congress as of such effective date shall no longer be required to be submitted to Congress.

''(b) COVERED REPORTS.—A report described in this subsection is any of the following:

''(1) The report required by section 1696(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232) [132 Stat. 2171].

''(2) The report required by section 1071(b)(1) of the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115–91) [10 U.S.C. 2501 note].

''(3) The report required by section 1788a(d) of title 10, United States Code, as added by section 555 of such Act.

''(4) The report required under section 709(g) of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114–328; 10 U.S.C. 1071 note).

''(5) The report required by section 1292(a)(2) of such Act (22 U.S.C. 2751 note).

''(6) The quarterly report required by section 1236(c) of such Act [130 Stat. 2492].

''(7) The annual certification required by section 1666 of such Act (10 U.S.C. 2431 note) [section 1666 of Pub. L. 114–328 (130 Stat. 2617) is not classified to the Code].

''(8) The updates required under paragraph (3) of subsection (a) of section 1694 of such Act [130 Stat. 2637] to the report required under paragraph (1) of such subsection.

''(9) The notifications required by section 1695 of such Act [130 Stat. 2638].

''(10) The report required under section 522(g) of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114–92) [10 U.S.C. 503 note].''

REQUIREMENT FOR PREPARATION OF CERTAIN REPORTS TO CONGRESS BY CIVILIAN EMPLOYEES OF THE FEDERAL GOVERNMENT AND MEMBERS OF THE ARMED FORCES

Pub. L. 116–92, div. A, title XVII, § 1702(d), Dec. 20, 2019, 133 Stat. 1796, provided that:

''(1) REQUIREMENT.—Except as expressly otherwise provided in the provision of law requiring such report, any report submitted to Congress pursuant to a provision of a national defense authorization Act that is enacted on or after the date that is three years after the date of the enactment of this Act [Dec. 20, 2019] shall be written by civilian employees of the Federal Government, members of the Armed Forces, or both, and not by contractor employees of the Federal Government.

''(2) BRIEFING.—Not later than one year after the date of the enactment of this Act, the Secretary of Defense shall brief the Committees on Armed Services of the Senate and the House of Representatives on the actions to be taken to ensure compliance with the requirement in paragraph (1), including on any impediments to compliance with the requirement.''

Pub. L. 115–91, div. A, title X, § 1051(x), Dec. 12, 2017, 131 Stat. 1567, provided that: ''Effective on December 31, 2021, the reports required under the following provisions of title 10, United States Code, shall no longer be required to be submitted to Congress:

''(1) Section 113(c)(1).

''(2) Section 113(e).

''(3) Section 116.

''(4) Section 2432.''

EXEMPTION TO REPORT TERMINATION REQUIREMENTS

Pub. L. 115–91, div. A, title VIII, § 811(d)(2), Dec. 12, 2017, 131 Stat. 1460, provided that: ''Section 1080(a) of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114–92; 129 Stat. 1000; 10 U.S.C. 111 note), as amended by section 1061(j) of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114–328; 130 Stat. 2405; 10 U.S.C. 111 note), does not apply to the report required to be submitted to Con-

gress under section 2313a of title 10, United States Code.''

ORGANIZATIONAL STRATEGY FOR THE DEPARTMENT OF DEFENSE

Pub. L. 115–232, div. A, title IX, §918, Aug. 13, 2018, 132 Stat. 1925, provided that:

''(a) CROSS-FUNCTIONAL TEAM ON ELECTRONIC WARFARE.—

''(1) IN GENERAL.—Among the cross-functional teams established by the Secretary of Defense pursuant to subsection (c) of section 911 of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114–328; 130 Stat. 2345; 10 U.S.C. 111 note) [set out below] in support of the organizational strategy for the Department of Defense required by subsection (a) of that section, the Secretary shall establish a cross-functional team on electronic warfare.

''(2) ESTABLISHMENT AND ACTIVITIES.—The cross-functional team established pursuant to paragraph (1) shall be established in accordance with subsection (c) of section 911 of the National Defense Authorization Act for Fiscal Year 2017, and shall be governed in its activities in accordance with the provisions of such subsection (c).

''(3) DEADLINE FOR ESTABLISHMENT.—The cross-functional team required by paragraph (1) shall be established by not later than 90 days after the date of the enactment of this Act [Aug. 13, 2018].

''(b) ADDITIONAL CROSS-FUNCTIONAL TEAMS MATTERS.—

''(1) CRITERIA FOR DISTINGUISHING AMONG CROSS-FUNCTIONAL TEAMS.—Not later than 60 days after the date of the enactment of this Act [Aug. 13, 2018], the Secretary shall issue criteria that distinguish cross-functional teams under section 911 of the National Defense Authorization Act for Fiscal Year 2017 from other types of cross-functional working groups, committees, integrated product teams, and task forces of the Department.

''(2) PRIMARY RESPONSIBILITY FOR IMPLEMENTATION OF TEAMS.—The Deputy Secretary of Defense shall establish or designate an office within the Department that shall have primary responsibility for implementing section 911 of the National Defense Authorization Act for Fiscal Year 2017.''

Pub. L. 114–328, div. A, title IX, §911, Dec. 23, 2016, 130 Stat. 2345, provided that:

''(a) ORGANIZATIONAL STRATEGY REQUIRED.—

''(1) IN GENERAL.—Not later than September 1, 2017, the Secretary of Defense shall formulate and issue to the Department of Defense an organizational strategy for the Department that—

''(A) identifies the critical objectives and other organizational outputs for the Department that span multiple functional boundaries and would benefit from the use of cross-functional teams under this section to ensure collaboration and integration across organizations within the Department;

''(B) improves the manner in which the Department integrates the expertise and capacities of the functional components of the Department for effective and efficient achievement of such objectives and outputs;

''(C) improves the management of relationships and processes involving the Office of the Secretary of Defense, the Joint Staff, the combatant commands, the military departments, and the Defense Agencies with regard to such objectives and outputs;

''(D) improves the ability of the Department to work effectively in interagency processes with regard to such objectives and outputs in order to better serve the President; and

''(E) achieves an organizational structure that enhances performance with regard to such objectives and outputs.

''(2) ELEMENTS.—The strategy shall provide for the following:

''(A) The appropriate use of cross-functional teams to manage critical objectives and outputs of the Department described in paragraph (1)(A).

''(B) The furtherance and advancement of a collaborative, team-oriented, results-driven, and innovative culture within the Department that fosters an open debate of ideas and alternative courses of action, and supports cross-functional teaming and integration.

''(b) ACTIONS IN SUPPORT OF STRATEGY.—

''(1) STUDY.—The Department of Defense shall conduct a study of the following in order to determine how best to implement effective cross-functional teams in the Department to achieve the strategic objectives of the Secretary of Defense:

''(A) Lessons learned, as reflected in academic literature, business and management school case studies, and the work of leading management consultant firms, on the successful and failed application of cross-functional teams in the private sector and government, and on the cultural factors necessary to support effective cross-functional teams.

''(B) The historical and current use by the Department of cross-functional working groups, integrated process teams, councils, and committees, and the reasons why such entities have or have not achieved high levels of teamwork or effectiveness.

''(2) CONDUCT OF STUDY.—The study required by paragraph (1) shall be conducted by an independent organization with widely acknowledged expertise in modern organizational management and teaming selected by the Secretary for purposes of the study.

''(3) SCHEDULE.—The Secretary shall award any necessary contract for the study required by paragraph (1) pursuant to paragraph (2) by not later than March 15, 2017, and shall provide the results of the study to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] by not later than July 15, 2017.

''(c) CROSS-FUNCTIONAL TEAMS.—In support of the strategy required by subsection (a):

''(1) IN GENERAL.—The Secretary of Defense shall establish cross-functional teams to address critical objectives and outputs for such teams as are determined to be appropriate in accordance with the organizational strategy issued under subsection (a), with initial teams established by not later than September 30, 2017.

''(2) PURPOSES.—The purposes of cross-functional teams established pursuant to this subsection shall be, as determined appropriate by the Secretary—

''(A) to provide for effective collaboration and integration across organizational and functional boundaries in the Department of Defense;

''(B) to develop, at the direction of the Secretary, recommendations for comprehensive and fully integrated policies, strategies, plans, and resourcing decisions;

''(C) to make decisions on cross-functional issues, to the extent authorized by the Secretary and within parameters established by the Secretary; and

''(D) to provide oversight for and, as directed by the Secretary, supervise the implementation of approved policies, strategies, plans, and resourcing decisions approved by the Secretary.

''(3) GUIDANCE ON TEAMS.—Not later than September 30, 2017, the Secretary shall issue guidance—

''(A) addressing the role, authorities, reporting relationships, resourcing, manning, training, and operations of cross-functional teams established pursuant to this subsection;

''(B) delineating decision-making authority of such teams;

''(C) providing that the leaders of functional components of the Department that provide personnel to such teams respect and respond to team needs and activities; and

''(D) emphasizing that personnel selected for assignment to such teams shall faithfully represent the views and expertise of their functional components while contributing to the best of their ability to the success of the team concerned.

"(4) PARTICIPANTS.—In establishing a cross-functional team pursuant to this subsection, the Secretary shall consider personnel from the Office of the Secretary of Defense, the Joint Staff, the military departments, and the Defense Agencies in all functional areas that the Secretary considers appropriate.

"(5) TEAM PERSONNEL.—For each cross-functional team established by the Secretary pursuant to this subsection, the Secretary shall—

"(A) assign as leader of such team a senior qualified and experienced individual, who shall report directly to the Secretary regarding the activities of such team;

"(B) delegate to the team leader designated pursuant to subparagraph (A) authority to select members of such team from among civilian employees of the Department and members of the Armed Forces in any grade who are recommended for membership on such team by the head of a functional component of the Department within the Office of the Secretary of Defense, the Joint Staff, and the military departments, by the commander of a combatant command, or by the director of a Defense Agency;

"(C) provide the team leader with necessary full time support from team members, and the means to co-locate team members;

"(D) ensure that team members and all leaders in functional organizations that are in the supervisory chain for personnel serving on such team receive training in elements of successful cross-functional teams, including teamwork, collaboration, conflict resolution, and appropriately representing the views and expertise of their functional components; and

"(E) ensure that the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] are provided information on the progress and results of such team upon request.

"(6) TEAM STRATEGIES AND DECISION-MAKING AUTHORITY.—

"(A) IN GENERAL.—The Secretary shall ensure that the objectives of each cross-functional team established pursuant to this subsection are clearly established in writing, through a memorandum, statement, charter, or similar document.

"(B) METRICS.—To improve team performance and accountability, the Secretary shall task each team, as appropriate, to establish a strategy to achieve the objectives specified by the Secretary, metrics for evaluation of the achievement of such objectives by such team, and the alignment of individual and team goals for the achievement of such objectives by such team.

"(C) DELEGATION OF AUTHORITY.—The Secretary may delegate to a team any decision-making authority that, and shall delegate such authority as, the Secretary considers appropriate to permit such team to achieve the objectives established by the Secretary.

"(7) REVIEW OF TEAMS.—Not later than 18 months after the date on which the first cross-functional team is established pursuant to this subsection, the Secretary shall complete an analysis, with support from external experts in organizational and management sciences, of the successes and failures of teams established pursuant to this subsection, and determine how to apply the lessons learned from that analysis.

"(8) REPORT ON ESTABLISHMENT.—Not later than 18 months after the date of the enactment of this Act [Dec. 23, 2016], the Secretary shall submit to Congress a report on the establishment of cross-functional teams under this subsection, including descriptions from the leaders of teams established prior to the date on which this report is submitted of the manner in which the teams were designed and how they functioned.

"(d) DIRECTIVE ON COLLABORATIVE CULTURE AND BEHAVIOR.—The guidance issued by the Secretary of Defense pursuant to subsection (c)(3) shall also—

"(1) articulate the shared purposes, values, and principles for the operation of the Office of the Secretary of Defense that are required to promote a team-oriented, collaborative, results-driven culture within the Office to support the primary objectives of the Department of Defense;

"(2) ensure that collaboration across functional and organizational boundaries is an important factor in the performance review of leaders of cross-functional teams established pursuant to subsection (c), members of teams, and other appropriate leaders of the Department; and

"(3) identify key practices that senior leaders of the Department should follow with regard to leadership, organizational practice, collaboration, and the functioning of cross-functional teams, and the types of personnel behavior that senior leaders should encourage and discourage.

"(e) STREAMLINING OF ORGANIZATIONAL STRUCTURE AND PROCESSES OF OSD.—Not later than 18 months after the date of the enactment of this Act [Dec. 23, 2016], the Secretary of Defense shall take such actions as the Secretary considers appropriate to streamline the organizational structure and processes of the Office of the Secretary of Defense in order to increase spans of control, achieve a reduction in layers of management, eliminate unnecessary duplication between the Office and the Joint Staff, and reduce the time required to complete standard processes and activities.

"(f) TRAINING FOR INDIVIDUALS NOMINATED FOR APPOINTMENT FOR OSD POSITIONS CONFIRMED BY THE SENATE.—

"(1) IN GENERAL.—Within three months of the appointment of an individual to a position in the Office of the Secretary of Defense appointable by and with the advice and consent of the Senate, the individual shall complete a course of instruction in leadership, modern organizational practice, collaboration, and the operation of teams described in subsection (c).

"(2) WAIVER.—The President may waive the requirement in paragraph (1) with respect to an individual if the Secretary determines in writing that the individual possesses, through training and experience, the skill and knowledge otherwise to be provided through a course of instruction as described in that paragraph.

"(g) COMPTROLLER GENERAL OF THE UNITED STATES ASSESSMENTS.—

"(1) BIANNUAL REPORT ON ASSESSMENTS.—Not later than six months after the date of the enactment of this Act [Dec. 23, 2016], and every six months thereafter through December 31, 2019, the Comptroller General of the United States shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report setting forth a comprehensive assessment of the actions taken under this section during the six-month period ending on the date of such report and cumulatively since the date of the enactment of this Act.

"(2) ASSESSMENT TEAM.—The Comptroller General may establish within the Government Accountability Office a team of analysts to assist the Comptroller General in the performance assessments required by this subsection."

TEMPORARY CONTINUATION OF CERTAIN DEPARTMENT OF DEFENSE REPORTING REQUIREMENTS

Pub. L. 114–328, div. A, title X, §1061, Dec. 23, 2016, 130 Stat. 2400, as amended by Pub. L. 115–91, div. A, title X, §§1051(u)–(w), 1081(d)(11), (12), Dec. 12, 2017, 131 Stat. 1566, 1567, 1600; Pub. L. 115–232, div. A, title III, §314(b)(2), title VIII, §813(i)(1), Aug. 13, 2018, 132 Stat. 1712, 1851, provided that:

"(a) EXCEPTIONS TO REPORTS TERMINATION PROVISION.—Section 1080 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114–92; 129 Stat. 1000; 10 U.S.C. 111 note) does not apply to any report required to be submitted to Congress by the Department of Defense, or by any officer, official, component, or element of the Department, pursuant to a pro-

vision of law specified in this section, notwithstanding the enactment of the reporting requirement by an annual national defense authorization Act or the inclusion of the report in the list of reports prepared by the Secretary of Defense pursuant to subsection (c) of such section 1080.

''(b) FINAL TERMINATION DATE FOR SUBMITTAL OF EXEMPTED REPORTS.—

''(1) IN GENERAL.—Except as provided in paragraph (2), each report required pursuant to a provision of law specified in this section that is still required to be submitted to Congress as of December 31, 2021, shall no longer be required to be submitted to Congress after that date.

''(2) REPORTS EXEMPTED FROM TERMINATION.—The termination dates specified in paragraph (1) and section 1080 of the National Defense Authorization Act for Fiscal Year 2016 do not apply to the following:

''(A) The submission of the reports on the National Military Strategy and Risk Assessment under section 153(b)(3) of title 10, United States Code.

''(B) The submission of the future-years defense program (including associated annexes) under section 221 of title 10, United States Code.

''(C) The submission of the future-years mission budget for the military programs of the Department of Defense under section 221 of such title.

''(D) The submission of audits of contracting compliance by the Inspector General of the Department of Defense under section 1601(b) of the National Defense Authorization Act for Fiscal Year 2014 (Public Law 113–66; 10 U.S.C. 2533a note).

''(c) REPORTS REQUIRED BY TITLE 10, UNITED STATES CODE.—Subject to subsection (b), subsection (a) applies to reporting requirements contained in the following sections of title 10, United States Code:

''(1) Section 113(i).
''(2) [Former] Section 117(e).
''(3) [Section] 118a(d).
''(4) Section 119(a) and (b).
''(5) Section 127b(f).
''(6) Section 139(h).
''(7) [Former] Section 139b(d).
''(8) Sections [sic] 153(c).
''(9) Section 171a(e) and (g)(2).
''(10) Section 179(f).
''(11) Section 196(d)(1), (d)(4), and (e)(3).
''(12) Section 223a(a).
''(13) Section 225(c)[.]
''(14) Section 229.
''(15) Section 231.
''[(16) Repealed. Pub. L. 115–232, div. A, title VIII, §813(i)(1)(A), Aug. 13, 2018, 132 Stat. 1852.]
''(17) Section 238.
''(18) Section 341(f) of title 10, United States Code, as amended by section 1246 of this Act.
''(19) Section 401(d).
''(20) Section 407(d).
''(21) Section 481a(c).
''(22) Section 482(a).
''(23) Section 488(c).
''(24) Section 494(b).
''(25) Section 526(j).
''(26) Section 946(c) (Article 146 of the Uniform Code of Military Justice).
''(27) Section 981(c).
''(28) Section 1116(d).
''(29) Section 1566(c)(3).
''(30) Section 1557(e).
''(31) Section 1781a(e).
''(32) Section 1781c(h) [now 1781c(g)].
''(33) Section 2011(e) [now 322(e)].
''(34) Section 2166(i) [now 343(i)].
''(35) Section 2218(h).
''(36) Section 2228(e).
''(37) Section 2229(d).
''(38) Section 2229a.
''(39) Section 2249c(c) [now 345(c)].
''(40) Section 2275.
''[(41) Repealed. Pub. L. 115–232, div. A, title VIII, §813(i)(1)(A), Aug. 13, 2018, 132 Stat. 1852.]
''(42) Section 2367(d).
''(43) Section 2399(g).
''(44) Section 2445b.
''(45) Section 2464(d).
''(46) Section 2466(d).
''(47) Section 2504.
''(48) Section 2561(c).
''(49) Section 2684a(g).
''(50) Section 2687a.
''(51) Section 2711.
''(52) Sections [sic] 2884(b) and (c).
''(53) Section 2911(a) and (b)(3) [now 2911(c) and (d)(3)].
''(54) Section 2925.
''(55) Section 2926(e)(4).
''(56) Section 4361(d)(4)(B) [now 7461(d)(4)(B)].
''(57) Section 4721(e) [now 7271(e)].
''(58) Section 6980(d)(4)(B) [now 8480(d)(4)(B)].
''(59) Section 7310(c) [now 8680(c)].
''(60) Section 9361(d)(4)(B) [now 9461(d)(4)(B)].
''(61) Section 10216(c).
''(62) Section 10541.
''(63) Section 10543.
''(64) Section 10504(b).
''(65) Section 235.
''(66) Section 115a.
''(67) Section 2193b(g).

''(d) REPORTS REQUIRED BY NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2015.—Subject to subsection (b), subsection (a) applies to reporting requirements contained in the following sections of the Carl Levin and Howard P. 'Buck' McKeon National Defense Authorization Act for Fiscal Year 2015 (Public Law 113–291):

''(1) Section 546(d) [now 546(e)] (10 U.S.C. 1561 note).
''(2) Section 1003[A] (10 U.S.C. 221 note).
''[(3) Repealed. Pub. L. 115–232, div. A, title VIII, §813(i)(1)(B), Aug. 13, 2018, 132 Stat. 1852.]
''(4) Section 1055 (128 Stat. 3498).
''(5) Section 1204(b) (10 U.S.C. 2249e note) [now 10 U.S.C. 362 note].
''(6) Section 1205(e) (128 Stat. 3537).
''(7) Section 1206(e) (10 U.S.C. 2282 note).
''(8) Section 1211 (128 Stat. 3544).
''(9) Section 1225 (128 Stat. 3550).
''(10) Section 1235 (128 Stat. 3558).
''(11) Section 1245 (128 Stat. 3566).
''(12) Section 1253(b) (22 U.S.C. 2151 note).
''(13) Section 1275(b) (128 Stat. 3591).
''(14) Section 1343 (128 Stat. 3605; 50 U.S.C. 3743).
''(15) Section 1650 (128 Stat. 3653).
''(16) Section 1662(c)(2) and (d)(2) (128 Stat. 3657; [former] 10 U.S.C. 2431 note).
''(17) Section 2821(a)(3) (10 U.S.C. 2687 note).
''(18) Section 1209(d) (128 Stat. 3542).

''(e) REPORTS REQUIRED BY NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2014.—Subject to subsection (b), subsection (a) applies to reporting requirements contained in the following sections of the National Defense Authorization Act for Fiscal Year 2014 (Public Law 113–66):

''(1) Section 704(e) (10 U.S.C. 1074 note).
''(2) Sections [sic] 713(f), (g), and (h) ([former] 10 U.S.C. 1071 note).
''(3) Section 904(d)(2) (10 U.S.C. 111 note).
''(4) [Former] Section 1205(f)(3) ([Former] 32 U.S.C. 107 note).

''(f) REPORTS REQUIRED BY NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2013.—Subject to subsection (b), subsection (a) applies to reporting requirements contained in the following sections of the National Defense Authorization Act for Fiscal Year 2013 (Public Law 112–239):

''[(1) Repealed. Pub. L. 115–232, div. A, title VIII, §813(i)(1)(C), Aug. 13, 2018, 132 Stat. 1852.]
''(2) Section 904(h)(1) and (2) (10 U.S.C. 133 note) [now 10 U.S.C. 133a note].
''(3) Section 1009 (126 Stat. 1906).

''(4) Section 1023 (126 Stat. 1911).

''(5) Section 1052(b)(4) (126 Stat. 1936; 49 U.S.C. 40101 note) [now 49 U.S.C. 44802 note].

''(g) REPORTS REQUIRED BY NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2011.—Subject to subsection (b), subsection (a) applies to reporting requirements contained in the following sections of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (Public Law 111–383):

''(1) Section 123 (10 U.S.C. 167 note).

''(2) Section 1216(c) (124 Stat. 4392).

''[(3) Repealed. Pub. L. 115–232, div. A, title VIII, § 813(i)(1)(D), Aug. 13, 2018, 132 Stat. 1852.]

''(4) Section 1631(d) (10 U.S.C. 1561 note).

''(h) REPORTS REQUIRED BY NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2010.—Subject to subsection (b), subsection (a) applies to reporting requirements contained in the following sections of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84):

''(1) Section 711(d) (10 U.S.C. 1071 note).

''(2) Section 1003(b) (10 U.S.C. 2222 note).

''[(3) Repealed. Pub. L. 115–232, div. A, title VIII, § 813(i)(1)(E), Aug. 13, 2018, 132 Stat. 1852.]

''(4) Section 1245 (123 Stat. 2542) [10 U.S.C. 113 note].

''(5) Section 1806 (10 U.S.C. 948a note).

''(i) REPORTS REQUIRED BY OTHER LAWS.—Subject to subsection (b), subsection (a) applies to reporting requirements contained in the following provisions of law:

''(1) Sections [sic] 1412(i) and (j) of the National Defense Authorization Act, 1986 [probably should be ''Department of Defense Authorization Act, 1986''] (50 U.S.C. 1521), as amended by section 1421 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (Public Law 111–383).

''(2) Section 1703 of the National Defense Authorization Act for Fiscal Year 1994 (50 U.S.C. 1523).

''(3) Section 717(c) of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104–106; 10 U.S.C. 1073 note).

''(4) Section 234 of the National Defense Authorization Act for Fiscal Year 1998 (50 U.S.C. 2367).

''(5) Section 1309(c) of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105–85; 10 U.S.C. 113 note).

''(6) Section 1237(b)(2) of the [Strom Thurmond] National Defense Authorization Act for Fiscal Year 1999 (Public Law 105–261; 50 U.S.C. 1701 note).

''(7) Section 1202 of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106–65; 10 U.S.C. 113 note).

''(8) Section 232(h)(2) [probably should be ''232(h)(3)''] of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107–107; [former] 10 U.S.C. 2431 note).

''(9) Section 366(a)(5) and (c)(2) of the Bob Stump National Defense Authorization Act for Fiscal Year 2003 (Public Law 107–314; 10 U.S.C. 113 note).

''(10) Section 1208(f) of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (Public Law 108–375; 118 Stat. 2086).

''(11) Section 1208(d) of the National Defense Authorization Act for [Fiscal Year] 2006 (Public Law 109–163; 119 Stat. 3459).

''(12) Section 1405(d) of the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109–163; 10 U.S.C. 801 note).

''(13) Section 122(f)(1) of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109–364; 120 Stat. 2104).

''(14) Section 721 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109–364; 120 Stat. 2294) [10 U.S.C. 1074 note].

''[(15) Repealed. Pub. L. 115–232, div. A, title VIII, § 813(i)(1)(F), Aug. 13, 2018, 132 Stat. 1852.]

''(16) Section 1517(f) of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109–364; 120 Stat. 2443).

''[(17) Repealed. Pub. L. 115–232, div. A, title VIII, § 813(i)(1)(F), Aug. 13, 2018, 132 Stat. 1852.]

''(18) Section 1034(d) of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110–181; 122 Stat. 309) [10 U.S.C. 272 note].

''(19) Section 1107(d) of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110–181; 122 Stat. 358) [10 U.S.C. 2358 note].

''(20) Section 1233(f) of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110–181; 122 Stat. 393).

''(21) Section 1234(e) of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110–181; 122 Stat. 394).

''(22) Section 219(c) of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110–417; 10 U.S.C. 2358 note).

''(23) Section 533(i) of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110–417; 10 U.S.C. prec. 701 note).

''[(24) Repealed. Pub. L. 115–232, div. A, title VIII, § 813(i)(1)(F), Aug. 13, 2018, 132 Stat. 1852.]

''(25) Section 1201(b)(1) of the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112–81; 125 Stat. 1619).

''(26) Section 1236 of the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112–81; 125 Stat. 1641).

''(27) Section 103A(b)(3) [probably should be ''103a(b)(3)''] of the Sikes Act (16 U.S.C. 670c–1(b)(3)).

''(28) Section 1511(h) of the Armed Forces Retirement Home Act of 1991 (24 U.S.C. 411(h)).

''(29) Section 901(f) [now 901(g)] of the Office of National Drug Control Policy Reauthorization Act of 2006 (Public Law 109–469; 32 U.S.C. 112 note), as added by section 1008 of the National Defense Authorization Act for Fiscal Year 2013 (Public Law 112–239).

''(30) Section 14 of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98h–5).

''(31) Section 105A(b) of the Uniformed and Overseas Citizens Absentee Voting Act (52 U.S.C. 20308(b)), as added by section 586 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84).

''(32) Section 112(f) of title 32, United States Code.

''(33) Section 310b(i)(2) [probably should be ''301b(i)(2)''] of title 37, United States Code.

''(34) Section 509(k) of title 32, United States Code.

''(35) Section 1022(c) of the National Defense Authorization Act for [Fiscal Year] 2004 (Public Law 108–136; 10 U.S.C. 371 note [probably should be ''10 U.S.C. 271 note'']).

''(j) [Amended section 1080(a) of Pub. L. 114–92, set out below.]

''(k) REPORT TO CONGRESS.—Not later than February 1, 2017, the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report that includes each of the following:

''(1) A list of all reports that are required to be submitted to Congress as of the date of the enactment of this Act [Dec. 23, 2016] that will no longer be required to be submitted to Congress as of November 25, 2017.

''(2) For each such report, a citation to the provision of law under which the report is or was required to be submitted.''

[Pub. L. 115–91, div. A, title X, § 1051(u)–(w), Dec. 12, 2017, 131 Stat. 1566, 1567, provided that the amendments made by section 1051(u)–(w) to section 1061 of Pub. L. 114–328, set out above, are effective as of Dec. 23, 2016, and as if included in section 1061 as enacted.]

REDUCTION IN AMOUNTS AVAILABLE FOR DEPARTMENT OF DEFENSE HEADQUARTERS, ADMINISTRATIVE, AND SUPPORT ACTIVITIES

Pub. L. 114–92, div. A, title III, § 346(a), (b), (d), Nov. 25, 2015, 129 Stat. 796, as amended by Pub. L. 115–91, div. A, title IX, §§ 922, 923, Dec. 12, 2017, 131 Stat. 1525; Pub. L. 116–92, div. A, title IX, § 901(b), Dec. 20, 2019, 133 Stat. 1542, provided that:

''(a) PLAN FOR ACHIEVEMENT OF COST SAVINGS.—

''(1) IN GENERAL.—Commencing not later than 120 days after the date of the enactment of this Act [Nov.

25, 2015], the Secretary of Defense shall implement a plan to ensure that the Department of Defense achieves not less than $10,000,000,000 in cost savings from the headquarters, administrative, and support activities of the Department during the period beginning with fiscal year 2015 and ending with fiscal year 2019. The Secretary shall ensure that at least one half of the required cost savings are programmed for fiscal years before fiscal year 2018.

''(2) TREATMENT OF SAVINGS PURSUANT TO HEADQUARTERS REDUCTION.—Documented savings achieved pursuant to the headquarters reduction requirement in subsection (b), other than savings achieved in fiscal year 2020, shall count toward the cost savings required by paragraph (1).

''(3) TREATMENT OF SAVINGS PURSUANT TO MANAGEMENT ACTIVITIES.—Documented savings in the human resources management, health care management, financial flow management, information technology infrastructure and management, supply chain and logistics, acquisition and procurement, and real property management activities of the Department during the period referred to in paragraph (1) may be counted toward the cost savings required by paragraph (1).

''(4) TREATMENT OF SAVINGS PURSUANT TO FORCE STRUCTURE REVISIONS.—Savings or reductions to military force structure or military operating units of the Armed Forces may not count toward the cost savings required by paragraph (1).

''(5) REPORTS.—The Secretary shall include with the budget for the Department of Defense for each of fiscal years 2017, 2018, and 2019, as submitted to Congress pursuant to section 1105 of title 31, United States Code, a report describing and assessing the progress of the Department in implementing the plan required by paragraph (1) and in achieving the cost savings required by that paragraph.

''(6) COMPTROLLER GENERAL ASSESSMENTS.—Not later than 90 days after the submittal of each report required by paragraph (5), the Comptroller General of the United States shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report setting forth the assessment of the Comptroller General of the report and of the extent to which the Department of Defense is in compliance with the requirements of this section.

''(b) HEADQUARTERS REDUCTIONS.—

''(1) IN GENERAL.—Not later than 90 days after the date of the enactment of this Act [Nov. 25, 2015], the Secretary of Defense shall modify the headquarters reduction plan required by section 904 of the National Defense Authorization Act for Fiscal Year 2014 (Public Law 113–66; 127 Stat. 816; 10 U.S.C. 111 note) to ensure that it achieves savings in the total funding available for major Department of Defense headquarters activities by fiscal year 2020 that are not less than 25 percent of the baseline amount. The modified plan shall establish a specific savings objective for each major headquarters activity in each fiscal year through fiscal year 2020. The budget for the Department of Defense for each fiscal year after fiscal year 2016 shall reflect the savings required by the modified plan.

''(2) BASELINE AMOUNT.—For the purposes of this subsection, the baseline amount is the amount authorized to be appropriated by this Act [see Tables for classification] for fiscal year 2016 for major Department of Defense headquarters activities, adjusted by a credit for reductions in such headquarters activities that are documented, as of the date that is 90 days after the date of the enactment of this Act, as having been accomplished in earlier fiscal years in accordance with the December 2013 directive of the Secretary of Defense on headquarters reductions. The modified plan issued pursuant to paragraph (1) shall include an overall baseline amount for all of the major Department of Defense headquarters activities that credits reductions accomplished in earlier fiscal years in accordance with the December 2013 directive, and a specific baseline amount for each such headquarters activity that credits such reductions.

''(3) MAJOR DEPARTMENT OF DEFENSE HEADQUARTERS ACTIVITIES DEFINED.—In this subsection, the term 'major Department of Defense headquarters activities' means the following:

''(A) Each of the following organizations:

''(i) The Office of the Secretary of Defense and the Joint Staff.

''(ii) The Office of the Secretary of the Army and the Army Staff.

''(iii) The Office of the Secretary of the Navy, the Office of the Chief of Naval Operations, and Headquarters, Marine Corps.

''(iv) The Office of the Secretary of the Air Force and the Air Staff.

''(v) The Office of the Chief, National Guard Bureau, and the National Guard Joint Staff.

''(B)(i) Except as provided in clause (ii), headquarters elements of each of the following:

''(I) The combatant commands, the sub-unified commands, and subordinate commands that directly report to such commands.

''(II) The major commands of the military departments and the subordinate commands that directly report to such commands.

''(III) The component commands of the military departments.

''(IV) The Defense Agencies, the Department of Defense field activities, and the Office of the Inspector General of the Department of Defense.

''(V) Department of Defense components that report directly to the organizations specified in subparagraph (A).

''(ii) Subordinate commands and direct-reporting components otherwise described in clause (i) that do not have significant functions other than operational, operational intelligence, or tactical functions, or training for operational, operational intelligence, or tactical functions, are not headquarters elements for purposes of this subsection.

''(4) IMPLEMENTATION.—Not later than 120 days after the date of the enactment of this Act [Nov. 25, 2015], the Secretary shall revise applicable guidance on the Department of Defense major headquarters activities as needed to—

''(A) incorporate into such guidance the definition of the term 'major Department of Defense headquarters activities' as provided in paragraph (3);

''(B) ensure that the term 'headquarters element', as used in paragraph (3)(B), is consistently applied within such guidance to include—

''(i) senior leadership and staff functions of applicable commands and components; and

''(ii) direct support to senior leadership and staff functions of applicable commands and components and to higher headquarters;

''(C) ensure that the budget and accounting systems of the Department of Defense are modified to track funding for the major Department of Defense headquarters activities as separate funding lines; and

''(D) identify and address any deviation from the specific savings objective established for a headquarters activity in the modified plan issued by the Secretary pursuant to the requirement in paragraph (1).

''(5) MANNER OF CARRYING OUT REDUCTIONS.—

''(A) IN GENERAL.—The Secretary of Defense shall implement the headquarters reduction plan referred to in paragraph (1), as modified pursuant to that paragraph, so that reductions in major Department of Defense headquarters activities pursuant to the plan are carried out only after consideration of—

''(i) the current manpower levels of major Department of Defense headquarters activities;

''(ii) the historic manpower levels of major Department of Defense headquarters activities;

''(iii) the mission requirements of major Department of Defense headquarters activities; and

''(iv) the anticipated staffing needs of major Department of Defense headquarters activities necessary to meet national defense objectives.

''(B) CONFORMING MODIFICATION OF PLAN FOR ACHIEVEMENT OF COST SAVINGS.—The Secretary of Defense shall modify the plan for achievement of cost savings required by subsection (a) to take into account the requirement specified in subparagraph (A).

''(6) CERTIFICATIONS ON COST SAVINGS ACHIEVED.—Not later than 120 days after the date of the enactment of this paragraph [Dec. 12, 2017], and not later than 60 days after the end of each of fiscal years 2018 through 2020, the Director of Cost Assessment and Program Evaluation shall certify to the Secretary of Defense, and to the congressional defense committees, the following:

''(A) The validity of the cost savings achieved for each major Department of Defense headquarters activity during the previous fiscal year, including the cost of personnel detailed by another Department entity to the headquarters activity.

''(B) Whether the cost savings achieved for each major Department of Defense headquarters activity during that fiscal year met the savings objective for the headquarters activity for that fiscal year, as established pursuant to paragraph (1).

''(d) SUNSET.—No action is required under this section with respect to any fiscal year after fiscal year 2019.''

TERMINATION OF REQUIREMENT FOR SUBMITTAL TO CONGRESS OF REPORTS REQUIRED OF DEPARTMENT OF DEFENSE BY STATUTE

Pub. L. 114–92, div. A, title X, §1080, Nov. 25, 2015, 129 Stat. 1000, as amended by Pub. L. 114–328, div. A, title X, §1061(j), Dec. 23, 2016, 130 Stat. 2405, provided that:

''(a) TERMINATION.—Effective November 25, 2017, each report described in subsection (b) that is still required to be submitted to Congress as of such date shall no longer be required to be submitted to Congress.

''(b) COVERED REPORTS.—A report described in this subsection is a report that is required to be submitted to Congress by the Department of Defense, or by any officer, official, component, or element of the Department, by any annual national defense authorization Act as of April 1, 2015.

''(c) REPORT TO CONGRESS.—Not later than February 1, 2016, the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report that includes each of the following:

''(1) A list of all reports described in subsection (b).

''(2) For each such report, a citation to the provision of law under which the report is required to be submitted.

''(3) Draft legislation that would repeal each such report.''

STREAMLINING OF DEPARTMENT OF DEFENSE MANAGEMENT HEADQUARTERS

Pub. L. 113–66, div. A, title IX, §904, Dec. 26, 2013, 127 Stat. 816, as amended by Pub. L. 113–291, div. A, title IX, §905(e), Dec. 19, 2014, 128 Stat. 3472, provided that:

''(a) PLAN REQUIRED.—Not later than 180 days after the date of the enactment of this Act [Dec. 26, 2013], the Secretary of Defense shall develop a plan for streamlining Department of Defense management headquarters by changing or reducing the size of staffs, eliminating tiers of management, cutting functions that provide little or no added value, and consolidating overlapping and duplicative programs and offices.

''(b) ELEMENTS OF PLAN.—The plan required by subsection (a) shall include the following for each covered organization:

''(1) A description of the planned changes or reductions in staffing and services provided by military personnel, civilian personnel, and contractor personnel.

''(2) A description of the planned changes or reductions in management, functions, and programs and offices.

''(3) The estimated cumulative savings to be achieved over a 10-fiscal-year period beginning with fiscal year 2015, and estimated savings to be achieved for each of fiscal years 2015 through 2024.

''(c) COVERED ORGANIZATION.—In this section, the term 'covered organization' includes each of the following:

''(1) The Office of the Secretary of Defense.

''(2) The Joint Staff.

''(3) The Defense Agencies.

''(4) The Department of Defense field activities.

''(5) The headquarters of the combatant commands.

''(6) Headquarters, Department of the Army, including the Office of the Secretary of the Army, the Office of the Chief of Staff of the Army, and the Army Staff.

''(7) The major command headquarters of the Army.

''(8) The Office of the Secretary of the Navy, the Office of the Chief of Naval Operations, and Headquarters, United States Marine Corps.

''(9) The major command headquarters of the Navy and the Marine Corps.

''(10) Headquarters, Department of the Air Force, including the Office of the Secretary of the Air Force, the Office of the Air Force Chief of Staff, and the Air Staff.

''(11) The major command headquarters of the Air Force.

''(12) The National Guard Bureau.

''(d) REPORTS.—

''(1) INITIAL REPORT.—Not later than 180 days after the date of the enactment of this Act, the Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] the plan required by subsection (a).

''(2) STATUS REPORT.—The Secretary shall include with the Department of Defense materials submitted to Congress with the budget of the President for each of fiscal years 2017 through 2024 (as submitted to Congress pursuant to section 1105 of title 31, United States Code) a report describing the implementation of the plan required by subsection (a) during the preceding fiscal year and any modifications to the plan required due to changing circumstances. Each such report shall include the following:

''(A) A summary of savings achieved for each covered organization in the fiscal year covered by such report.

''(B) A description of the savings through changes, consolidations, or reductions in staffing and services provided by military personnel, civilian personnel, and contractor personnel in the fiscal year covered by such report.

''(C) A description of the savings through changes, consolidations, or reductions in management, functions, and programs and offices, or other associated cost drivers, including a discussion of how the changes, consolidations, or reductions were prioritized, in the fiscal year covered by such report.

''(D) In any case in which savings under the plan fall short of the objective of the plan for the fiscal year covered by such report, an explanation of the reasons for the shortfall.

''(E) A description of any modifications to the plan made during the fiscal year covered by such report, and an explanation of the reasons for such modifications, including the risks of, and capabilities gained or lost by implementing, such modifications.

''(F) A description of how the plan supports or affects current Department of Defense strategic guidance, policy, and mission requirements, including the quadrennial defense review, the Unified Com-

mand Plan, and the strategic choices and management review.

"(G) A description of the associated costs specifically addressed by the savings."

[For termination, effective Dec. 31, 2021, of annual reporting provisions in section 904(d)(2) of Pub. L. 113–66, set out above, see section 1061 of Pub. L. 114–328, set out as a note above.]

MILITARY ACTIVITIES IN CYBERSPACE

Pub. L. 112–81, div. A, title IX, §954, Dec. 31, 2011, 125 Stat. 1551, provided that: "Congress affirms that the Department of Defense has the capability, and upon direction by the President may conduct offensive operations in cyberspace to defend our Nation, Allies and interests, subject to—

"(1) the policy principles and legal regimes that the Department follows for kinetic capabilities, including the law of armed conflict; and

"(2) the War Powers Resolution (50 U.S.C. 1541 et seq.)."

INTERAGENCY POLICY COORDINATION

Pub. L. 110–181, div. A, title IX, §952, Jan. 28, 2008, 122 Stat. 291, provided that:

"(a) PLAN REQUIRED.—Not later than 180 days after the date of the enactment of this Act [Jan. 28, 2008], the Secretary of Defense shall develop and submit to Congress a plan to improve and reform the Department of Defense's participation in and contribution to the interagency coordination process on national security issues.

"(b) ELEMENTS.—The elements of the plan shall include the following:

"(1) Assigning either the Under Secretary of Defense for Policy or another official to be the lead policy official for improving and reforming the interagency coordination process on national security issues for the Department of Defense, with an explanation of any decision to name an official other than the Under Secretary and the relative advantages and disadvantages of such decision.

"(2) Giving the official assigned under paragraph (1) the following responsibilities:

"(A) To be the lead person at the Department of Defense for the development of policy affecting the national security interagency process.

"(B) To serve, or designate a person to serve, as the representative of the Department of Defense in Federal Government forums established to address interagency policy, planning, or reforms.

"(C) To advocate, on behalf of the Secretary, for greater interagency coordination and contributions in the execution of the National Security Strategy and particularly specific operational objectives undertaken pursuant to that strategy.

"(D) To make recommendations to the Secretary of Defense on changes to existing Department of Defense regulations or laws to improve the interagency process.

"(E) To serve as the coordinator for all planning and training assistance that is—

"(i) designed to improve the interagency process or the capabilities of other agencies to work with the Department of Defense; and

"(ii) provided by the Department of Defense at the request of other agencies.

"(F) To serve as the lead official in Department of Defense for the development of deployable joint interagency task forces.

"(c) FACTORS TO BE CONSIDERED.—In drafting the plan, the Secretary of Defense shall also consider the following factors:

"(1) How the official assigned under subsection (b)(1) shall provide input to the Secretary of Defense on an ongoing basis on how to incorporate the need to coordinate with other agencies into the establishment and reform of combatant commands.

"(2) How such official shall develop and make recommendations to the Secretary of Defense on a regular or an ongoing basis on changes to military and civilian personnel to improve interagency coordination.

"(3) How such official shall work with the combatant command that has the mission for joint warfighting experimentation and other interested agencies to develop exercises to test and validate interagency planning and capabilities.

"(4) How such official shall lead, coordinate, or participate in after-action reviews of operations, tests, and exercises to capture lessons learned regarding the functioning of the interagency process and how those lessons learned will be disseminated.

"(5) The role of such official in ensuring that future defense planning guidance takes into account the capabilities and needs of other agencies.

"(d) RECOMMENDATION ON CHANGES IN LAW.—The Secretary of Defense may submit with the plan or with any future budget submissions recommendations for any changes to law that are required to enhance the ability of the official assigned under subsection (b)(1) in the Department of Defense to coordinate defense interagency efforts or to improve the ability of the Department of Defense to work with other agencies.

"(e) ANNUAL REPORT.—If an official is named by the Secretary of Defense under subsection (b)(1), the official shall annually submit to Congress a report, beginning in the fiscal year following the naming of the official, on those actions taken by the Department of Defense to enhance national security interagency coordination, the views of the Department of Defense on efforts and challenges in improving the ability of agencies to work together, and suggestions on changes needed to laws or regulations that would enhance the coordination of efforts of agencies.

"(f) DEFINITION.—In this section, the term 'interagency coordination', within the context of Department of Defense involvement, means the coordination that occurs between elements of the Department of Defense and engaged Federal Government agencies for the purpose of achieving an objective.

"(g) CONSTRUCTION.—Nothing in this provision shall be construed as preventing the Secretary of Defense from naming an official with the responsibilities listed in subsection (b) before the submission of the report required under this section."

COMMISSION ON REVIEW OF OVERSEAS MILITARY FACILITY STRUCTURE OF THE UNITED STATES

Pub. L. 108–132, §128, Nov. 22, 2003, 117 Stat. 1382, as amended by Pub. L. 108–271, §8(b), July 7, 2004, 118 Stat. 814; Pub. L. 108–324, div. A, §127, Oct. 13, 2004, 118 Stat. 1229, established the Commission on the Review of the Overseas Military Facility Structure of the United States to conduct a thorough study of matters relating to the military facility structure of the United States overseas, directed the Commission to submit a report to the President and Congress not later than Aug. 15, 2005, and provided that the Commission would terminate 45 days after such date.

COMMISSION TO ASSESS UNITED STATES NATIONAL SECURITY SPACE MANAGEMENT AND ORGANIZATION

Pub. L. 106–65, div. A, title XVI, subtitle C, Oct. 5, 1999, 113 Stat. 813, as amended by Pub. L. 106–398, §1 [[div. A], title X, §1091], Oct. 30, 2000, 114 Stat. 1654, 1654A–300, established Commission To Assess United States National Security Space Management and Organization for purpose of assessing (1) manner in which military space assets may be exploited to provide support for United States military operations, (2) current interagency coordination process regarding operation of national security space assets, (3) relationship between intelligence and nonintelligence aspects of national security space, and potential costs and benefits of partial or complete merger of programs, projects, (4) manner in which military space issues are addressed by professional military education institutions, (5) potential costs and benefits of establishing changes to exist-

ing organizational structure of Department of Defense for national security space management and organization, and (6) advisability of certain actions relating to assignment of specified officers in United States Space Command; and further provided for report to Congress and Secretary of Defense on its findings and conclusions not later than six months after first meeting, submission to Congress by Secretary of Defense of assessment of Commission's report not later than 90 days after submission of Commission's report, and for termination of Commission 60 days after submission of its report to Congress.

COMMISSION ON NATIONAL MILITARY MUSEUM

Pub. L. 106–65, div. B, title XXIX, Oct. 5, 1999, 113 Stat. 881, as amended by Pub. L. 107–107, div. A, title X, §1048(g)(9), Dec. 28, 2001, 115 Stat. 1228, established the Commission on the National Military Museum to conduct a study regarding construction of a national military museum in the National Capital Area, directed that appointments to the Commission be made not later than 90 days after Oct. 5, 1999, directed the Commission to convene its first meeting not later than 60 days after all appointments, directed the Commission to submit a report to Congress not later than 12 months after its first meeting, and provided for the termination of the Commission 60 days after submission of its report.

PROHIBITION ON RESTRICTION OF ARMED FORCES UNDER KYOTO PROTOCOL TO UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE

Pub. L. 105–261, div. A, title XII, §1232, Oct. 17, 1998, 112 Stat. 2155, provided that:

''(a) IN GENERAL.—Notwithstanding any other provision of law, no provision of the Kyoto Protocol to the United Nations Framework Convention on Climate Change, or any regulation issued pursuant to such protocol, shall restrict the training or operations of the United States Armed Forces or limit the military equipment procured by the United States Armed Forces.

''(b) WAIVER.—A provision of law may not be construed as modifying or superseding the provisions of subsection (a) unless that provision of law—

''(1) specifically refers to this section; and

''(2) specifically states that such provision of law modifies or supersedes the provisions of this section.

''(c) MATTERS NOT AFFECTED.—Nothing in this section shall be construed to preclude the Department of Defense from implementing any measure to achieve efficiencies or for any other reason independent of the Kyoto Protocol.''

APPLICABILITY OF CERTAIN PAY AUTHORITIES TO MEMBERS OF SPECIFIED INDEPENDENT STUDY ORGANIZATIONS

Pub. L. 105–85, div. A, title X, §1081, Nov. 18, 1997, 111 Stat. 1916, provided that:

''(a) APPLICABILITY OF CERTAIN PAY AUTHORITIES.—(1) An individual who is a member of a commission or panel specified in subsection (b) and is an annuitant otherwise covered by section 8344 or 8468 of title 5, United States Code, by reason of membership on the commission or panel is not subject to the provisions of that section with respect to such membership.

''(2) An individual who is a member of a commission or panel specified in subsection (b) and is a member or former member of a uniformed service is not subject to the provisions of subsections (b) and (c) of section 5532 of such title with respect to membership on the commission or panel.

''(b) SPECIFIED ENTITIES.—Subsection (a) applies—

''(1) effective as of September 23, 1996, to members of the National Defense Panel established by section 924 of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104–201; 110 Stat. 2626) [formerly set out below]; and

''(2) effective as of October 9, 1996, to members of the Commission on Servicemembers and Veterans Transition Assistance established by section 701 of the Veterans' Benefits Improvements Act of 1996 (Public Law 104–275; 110 Stat. 3346; 38 U.S.C. 545 note).''

MISSION OF WHITE HOUSE COMMUNICATIONS AGENCY

Pub. L. 104–201, div. A, title IX, §912, Sept. 23, 1996, 110 Stat. 2623, as amended by Pub. L. 109–163, div. A, title IX, §906, Jan. 6, 2006, 119 Stat. 3402, provided that:

''(a) TELECOMMUNICATIONS SUPPORT AND AUDIOVISUAL SUPPORT SERVICES.—The Secretary of Defense shall ensure that the activities of the White House Communications Agency in providing support services on a nonreimbursable basis for the President from funds appropriated for the Department of Defense for any fiscal year are limited to the provision of telecommunications support and audiovisual support services to the President and Vice President and to related elements (as defined in regulations of that agency and specified by the President with respect to particular individuals within those related elements).

''(b) OTHER SUPPORT.—Support services other than telecommunications and audiovisual support services described in subsection (a) may be provided by the Department of Defense for the President through the White House Communications Agency on a reimbursable basis.

''(c) WHITE HOUSE COMMUNICATIONS AGENCY.—For purposes of this section, the term 'White House Communications Agency' means the element of the Department of Defense within the Defense Communications Agency that is known on the date of the enactment of this Act [Sept. 23, 1996] as the White House Communications Agency and includes any successor agency.''

MILITARY FORCE STRUCTURE REVIEW

Pub. L. 104–201, div. A, title IX, subtitle B, Sept. 23, 1996, 110 Stat. 2623, directed Secretary of Defense, in consultation with Chairman of the Joint Chiefs of Staff, to complete in 1997 a review of defense program of United States, which was to include comprehensive examination of defense strategy, force structure, force modernization plans, infrastructure, budget plan, and other elements of defense program and policies with view toward determining and expressing defense strategy of United States and establishing revised defense program through year 2005, further established National Defense Panel to complete review and report to Secretary not later than Dec. 1, 1997, further directed Secretary to submit final report to Congress not later than Dec. 15, 1997, and provided for termination of Panel 30 days after submission of report to Secretary.

COMMISSION ON ROLES AND MISSIONS OF ARMED FORCES

Pub. L. 103–160, div. A, title IX, subtitle E, Nov. 30, 1993, 107 Stat. 1738, as amended by Pub. L. 103–337, div. A, title IX, §923(a)(1), (2), (b)–(d), Oct. 5, 1994, 108 Stat. 2830, 2831, established the Commission on Roles and Missions of the Armed Forces to review the efficacy and appropriateness of post-Cold War era allocations of roles, missions, and functions among the Armed Forces and to evaluate and report on alternatives and make recommendations for changes, directed that appointments to the Commission be made within 45 days after Nov. 30, 1993, and that the Commission convene its first meeting within 30 days of all appointments, and thereafter submit a report not later than one year after the date of its first meeting, directed the Secretary of Defense to submit comments on the report not later than 90 days following receipt, and provided for the termination of the Commission on the last day of the sixteenth month after its first meeting or no earlier than

30 days after submission of comments by the Secretary of Defense.

TERMINATION OF DEPARTMENT OF DEFENSE REPORTING REQUIREMENTS DETERMINED BY SECRETARY OF DEFENSE TO BE UNNECESSARY OR INCOMPATIBLE WITH EFFICIENT MANAGEMENT OF DEPARTMENT OF DEFENSE

Pub. L. 103–160, div. A, title XI, §1151, Nov. 30, 1993, 107 Stat. 1758, provided that:

''(a) TERMINATION OF REPORT REQUIREMENTS.—Unless otherwise provided by a law enacted after the date of the enactment of this Act [Nov. 30, 1993], each provision of law requiring the submittal to Congress (or any committee of Congress) of any report specified in the list submitted under subsection (b) shall, with respect to that requirement, cease to be effective on October 30, 1995.

''(b) PREPARATION OF LIST.—(1) The Secretary of Defense shall submit to Congress a list of each provision of law that, as of the date specified in subsection (c), imposes upon the Secretary of Defense (or any other officer of the Department of Defense) a reporting requirement described in paragraph (2). The list of provisions of law shall include a statement or description of the report required under each such provision of law.

''(2) Paragraph (1) applies to a requirement imposed by law to submit to Congress (or specified committees of Congress) a report on a recurring basis, or upon the occurrence of specified events, if the Secretary determines that the continued requirement to submit that report is unnecessary or incompatible with the efficient management of the Department of Defense.

''(3) The Secretary shall submit with the list an explanation, for each report specified in the list, of the reasons why the Secretary considers the continued requirement to submit the report to be unnecessary or incompatible with the efficient management of the Department of Defense.

''(c) SUBMISSION OF LIST.—The list under subsection (a) shall be submitted not later than April 30, 1994.

''(d) SCOPE OF SECTION.—For purposes of this section, the term 'report' includes a certification, notification, or other characterization of a communication.

''(e) INTERPRETATION OF SECTION.—This section does not require the Secretary of Defense to review each report required of the Department of Defense by law.''

REPORT PROVISIONS PREVIOUSLY TERMINATED BY GOLDWATER-NICHOLS ACT

Pub. L. 101–510, div. A, title XIII, §1321, Nov. 5, 1990, 104 Stat. 1670, provided that section 1322 of Pub. L. 101–510, with respect to Goldwater-Nichols terminations, repeals certain provisions of law containing terminated report requirements and section 1323 of Pub. L. 101–510, with respect to such terminations, restores effectiveness of selected other provisions of law containing such requirements and described Goldwater-Nichols terminations for purposes of such repeals or restorations.

RESTORATION OF CERTAIN REPORTING REQUIREMENTS OF TITLE 10 TERMINATED BY GOLDWATER-NICHOLS ACT

Pub. L. 101–510, div. A, title XIII, §1323, Nov. 5, 1990, 104 Stat. 1672, restored effectiveness of following report and notification provisions previously terminated by section 602(c) of the Goldwater-Nichols Department of Defense Reorganization Act of 1986, Pub. L. 99–433, formerly set out below: (1) the quarterly report required by section 127(c) of this title relating to emergency and extraordinary expenses, (2) the notifications required by section 2672a(b) of this title relating to urgent acquisitions of interests in land, (3) the notifications required by section 7308(c) of this title relating to the transfer or gift of obsolete, condemned, or captured vessels, and (4) the notifications required by section 7309(b) of this title relating to construction or repair of vessels in foreign shipyards.

GOLDWATER-NICHOLS DEPARTMENT OF DEFENSE REORGANIZATION ACT OF 1986; CONGRESSIONAL DECLARATION OF POLICY

Pub. L. 99–433, §3, Oct. 1, 1986, 100 Stat. 993, provided that: ''In enacting this Act [see Short Title of 1986 Amendment note above], it is the intent of Congress, consistent with the congressional declaration of policy in section 2 of the National Security Act of 1947 (50 U.S.C. 401) [now 50 U.S.C. 3002]—

''(1) to reorganize the Department of Defense and strengthen civilian authority in the Department;

''(2) to improve the military advice provided to the President, the National Security Council, and the Secretary of Defense;

''(3) to place clear responsibility on the commanders of the unified and specified combatant commands for the accomplishment of missions assigned to those commands;

''(4) to ensure that the authority of the commanders of the unified and specified combatant commands is fully commensurate with the responsibility of those commanders for the accomplishment of missions assigned to their commands;

''(5) to increase attention to the formulation of strategy and to contingency planning;

''(6) to provide for more efficient use of defense resources;

''(7) to improve joint officer management policies; and

''(8) otherwise to enhance the effectiveness of military operations and improve the management and administration of the Department of Defense.''

REDUCTION OF REPORTING REQUIREMENTS

Pub. L. 99–433, title VI, §602, Oct. 1, 1986, 100 Stat. 1066, as amended by Pub. L. 100–180, div. A, title XIII, §1314(a)(4), Dec. 4, 1987, 101 Stat. 1175; Pub. L. 101–189, div. A, title II, §243, Nov. 29, 1989, 103 Stat. 1402; Pub. L. 101–510, div. A, title XIII, §1324, Nov. 5, 1990, 104 Stat. 1673; Pub. L. 102–83, §5(c)(2), Aug. 6, 1991, 105 Stat. 406, directed Secretary of Defense to compile a list of all provisions of law in effect on or after Oct. 1, 1986, and before Feb. 1, 1987, which require President or any official or employee of Department of Defense to submit a report, notification, or study to Congress or any committee of Congress and to submit this list not later than six months after Oct. 1, 1986, with any recommendation or draft of legislation to implement any changes in law recommended by the Secretary.

LEGISLATION TO MAKE REQUIRED CONFORMING CHANGES IN LAW

Pub. L. 99–433, title VI, §604, Oct. 1, 1986, 100 Stat. 1075a, directed Secretary of Defense, not later than six months after Oct. 1, 1986, to submit to Committees on Armed Services of Senate and House of Representatives a draft of legislation to make any technical and conforming changes to title 10, United States Code, and other provisions of law that are required or should be made by reason of the amendments made by Pub. L. 99–433.

READINESS STATUS OF MILITARY FORCES OF THE NORTH ATLANTIC TREATY ORGANIZATION; ASSESSMENT, FINDINGS, AND REPORT TO CONGRESSIONAL COMMITTEES

Pub. L. 96–107, title VIII, §808, Nov. 9, 1979, 93 Stat. 814, which directed Secretary of Defense to report annually to Congress on readiness of military forces of NATO, was repealed and restated as section 133a (renumbered §117 and repealed) of this title by Pub. L. 97–295, §§1(2)(A), 6(b), Oct. 12, 1982, 96 Stat. 1287, 1314.

DEFENSE MANPOWER COMMISSION

Pub. L. 93–155, title VII, §§701–708, Nov. 16, 1973, 87 Stat. 609–611, established the Commission; provided for

its composition, duties, powers, compensation, staff, appropriations, and use of General Services Administration; and directed that interim reports to President and Congress be submitted and that Commission terminate 60 days after its final report which was to be submitted not more than 24 months after appointment of Commission.

AIR FORCE RESERVE AND AIR NATIONAL GUARD OF UNITED STATES; STUDY AND INVESTIGATION OF RELATIVE STATUS; ADVANTAGES AND DISADVANTAGES OF ALTERNATIVES; MODERNIZATION AND MANPOWER NEEDS; REPORT TO PRESIDENT AND CONGRESS

Pub. L. 93–155, title VIII, § 810, Nov. 16, 1973, 87 Stat. 618, directed the Secretary of Defense to study the relative status of the Air Force Reserve and the Air National Guard of the United States; to measure the effects on costs and combat capability as well as other advantages and disadvantages of (1) merging the Reserve into the Guard, (2) merging the Guard into the Reserve, and (3) retaining the status quo; and to consider the modernization needs and manpower problems of both; and also directed that a report of such study be submitted to the President and to the Congress no later than Jan. 31, 1975.

REORGANIZATION PLAN NO. 6 OF 1953

Eff. June 30, 1953, 18 F.R. 3743, 67 Stat. 638, as amended Aug. 6, 1958, Pub. L. 85–559, § 10(b), 72 Stat. 521; Sept. 7, 1962, Pub. L. 87–651, title III, § 307C, 76 Stat. 526

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, April 30, 1953, pursuant to the provisions of the Reorganization Act of 1949, approved June 20, 1949, as amended [see 5 U.S.C. 901 et seq.].

DEPARTMENT OF DEFENSE

SECTION 1. TRANSFERS OF FUNCTIONS

(a) All functions of the Munitions Board, the Research and Development Board, the Defense Supply Management Agency, and the Director of Installations are hereby transferred to the Secretary of Defense.

(b) The selection of the Director of the Joint Staff by the Joint Chiefs of Staff, and his tenure, shall be subject to the approval of the Secretary of Defense.

(c) The selection of the members of the Joint Staff by the Joint Chiefs of Staff, and their tenure, shall be subject to the approval of the Chairman of the Joint Chiefs of Staff.

(d) The functions of the Joint Chiefs of Staff with respect to managing the Joint Staff and the Director thereof are hereby transferred to the Chairman of the Joint Chiefs of Staff.

SEC. 2. ABOLITION OF AGENCIES AND FUNCTIONS

(a) There are hereby abolished the Munitions Board, the Research and Development Board, and the Defense Supply Management Agency.

(b) The offices of Chairman of the Munitions Board, Chairman of the Research and Development Board, Director of the Defense Supply Management Agency, Deputy Director of the Defense Supply Management Agency, and Director of Installations are hereby abolished.

(c) The Secretary of Defense shall provide for winding up any outstanding affairs of the said abolished agency, boards, and offices, not otherwise provided for in this reorganization plan.

(d) The function of guidance to the Munitions Board in connection with strategic and logistic plans as required by section 213(c) of the National Security Act of 1947, as amended [section 171h(c) of former Title 5], is hereby abolished.

SEC. 3. ASSISTANT SECRETARIES OF DEFENSE

[Repealed. Pub. L. 85–599, § 10(b), Aug. 6, 1958, 72 Stat. 521, eff. six months after Aug. 6, 1958. Section authorized appointment of six additional Assistant Secretaries and prescribed their duties and compensation.]

SEC. 4. GENERAL COUNSEL

[Repealed. Pub. L. 87–651, title III, § 307C, Sept. 7, 1962, 76 Stat. 526. Section authorized appointment of a General Counsel for the Department of Defense. See section 140 of this title.]

SEC. 5. PERFORMANCE OF FUNCTIONS

[Repealed. Pub. L. 87–651, title III, § 307C, Sept. 7, 1962, 76 Stat. 526. Section authorized the Secretary of Defense from time to time to make such provisions as he deemed appropriate authorizing the performance by any other officer, or by any agency or employee, of the Department of any function of the Secretary. See section 113 of this title.]

SEC. 6. MISCELLANEOUS PROVISIONS

(a) The Secretary of Defense may from time to time effect such transfers within the Department of Defense of any of the records, property, and personnel affected by this reorganization plan, and such transfers of unexpended balances (available or to be made available for use in connection with any affected function or agency) of appropriations, allocations, and other funds of such Department, as he deems necessary to carry out the provisions of this reorganization plan.

(b) Nothing herein shall affect the compensation of the Chairman of the Military Liaison Committee (63 Stat. 762).

EXECUTIVE ORDER NO. 12049

Ex. Ord. No. 12049, Mar. 27, 1978, 43 F.R. 13363, as amended by Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055; Ex. Ord. No. 12608, Sept. 9, 1987, 52 F.R. 34617, which provided for establishment of Defense Economic Adjustment Program and continued the Economic Adjustment Committee, was superseded by Ex. Ord. No. 12788, Jan. 15, 1992, 57 F.R. 2213, set out as a note under section 2391 of this title.

§ 112. Department of Defense: seal

The Secretary of Defense shall have a seal for the Department of Defense. The design of the seal is subject to approval by the President. Judicial notice shall be taken of the seal.

(Added Pub. L. 87–651, title II, § 202, Sept. 7, 1962, 76 Stat. 517, § 132; renumbered § 112 and amended Pub. L. 99–433, title I, §§ 101(a)(2), 110(d)(1), Oct. 1, 1986, 100 Stat. 994, 1002.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
132	5:171a(e).	July 26, 1947, ch. 343, § 202(e); added Aug. 10, 1949, ch. 412, § 5 (10th par.), 63 Stat. 580.

AMENDMENTS

1986—Pub. L. 99–433 renumbered section 132 of this title as this section and substituted ‘‘Department of Defense: seal’’ for ‘‘Seal’’ in section catchline.

§ 113. Secretary of Defense

(a) There is a Secretary of Defense, who is the head of the Department of Defense, appointed from civilian life by the President, by and with the advice and consent of the Senate. A person may not be appointed as Secretary of Defense within seven years after relief from active duty as a commissioned officer of a regular component of an armed force.

(b) The Secretary is the principal assistant to the President in all matters relating to the Department of Defense. Subject to the direction of

the President and to this title and section 2 of the National Security Act of 1947 (50 U.S.C. 3002) he has authority, direction, and control over the Department of Defense.

(c) The Secretary shall report annually in writing to the President and the Congress on the expenditures, work, and accomplishments of the Department of Defense during the period covered by the report, together with—

(1) a report from each military department on the expenditures, work, and accomplishments of that department;

(2) a report from each military department on the status of diversity and inclusion in such department;

(3) itemized statements showing the savings of public funds, and the eliminations of unnecessary duplications, made under sections 125 and 191 of this title; and

(4) such recommendations as he considers appropriate.

(d) Unless specifically prohibited by law, the Secretary may, without being relieved of his responsibility, perform any of his functions or duties, or exercise any of his powers through, or with the aid of, such persons in, or organizations of, the Department of Defense as he may designate.

(e)(1) The Secretary shall include in his annual report to Congress under subsection (c)—

(A) a description of the major military missions and of the military force structure of the United States for the next fiscal year;

(B) an explanation of the relationship of those military missions to that force structure; and

(C) the justification for those military missions and that force structure.

(2) In preparing the matter referred to in paragraph (1), the Secretary shall take into consideration the content of the annual national security strategy report of the President under section 108 of the National Security Act of 1947 (50 U.S.C. 3043) for the fiscal year concerned.

(f) When a vacancy occurs in an office within the Department of Defense and the office is to be filled by a person appointed from civilian life by the President, by and with the advice and consent of the Senate, the Secretary of Defense shall inform the President of the qualifications needed by a person serving in that office to carry out effectively the duties and responsibilities of that office.

(g)(1)(A) Except as provided in subparagraph (E), in January every four years, and intermittently otherwise as may be appropriate, the Secretary of Defense shall provide to the Secretaries of the military departments, the Chiefs of Staff of the armed forces, the commanders of the unified and specified combatant commands, and the heads of all Defense Agencies and Field Activities of the Department of Defense and other elements of the Department specified in paragraphs (1) through (10) of section 111(b) of this title, and to the congressional defense committees, a defense strategy. Each strategy shall be known as the ''national defense strategy'', and shall support the most recent national security strategy report of the President under section 108 of the National Security Act of 1947 (50 U.S.C. 3043).

(B) Each national defense strategy shall including the following:

(i) The priority missions of the Department of Defense, and the assumed force planning scenarios and constructs.

(ii) The assumed strategic environment, including the most critical and enduring threats to the national security of the United States and its allies posed by state or non-state actors, and the strategies that the Department will employ to counter such threats and provide for the national defense.

(iii) A strategic framework prescribed by the Secretary that guides how the Department will prioritize among the threats described in clause (ii) and the missions specified pursuant to clause (i), how the Department will allocate and mitigate the resulting risks, and how the Department will make resource investments.

(iv) The roles and missions of the armed forces to carry out the missions described in clause (i), and the assumed roles and capabilities provided by other United States Government agencies and by allies and international partners.

(v) The force size and shape, force posture, defense capabilities, force readiness, infrastructure, organization, personnel, technological innovation, and other elements of the defense program necessary to support such strategy.

(vi) The major investments in defense capabilities, force structure, force readiness, force posture, and technological innovation that the Department will make over the following five-year period in accordance with the strategic framework described in clause (iii).

(vii) Strategic goals related to diversity and inclusion in the armed forces, and an assessment of measures of performance related to the efforts of the armed forces to reflect the diverse population of the United States eligible to serve in the armed forces.

(viii) A strategic framework prescribed by the Secretary that guides how the Department will prioritize and integrate activities relating to sustainment of major defense acquisition programs, core logistics capabilities (as described under section 2464 of this title), commercial logistics capabilities, and the national technology and industrial base (as defined in section 2500 of this title).

(ix) A strategic framework prescribed by the Secretary that guides how the Department will specifically address contested logistics, including major investments for related infrastructure, logistics-related authorities, force posture, related emergent technology and advanced computing capabilities, operational resilience, and operational energy, over the following five-year period to support such strategy.

(C) The Secretary shall seek the military advice and assistance of the Chairman of the Joint Chiefs of Staff in preparing each national defense strategy required by this subsection.

(D) Each national defense strategy under this subsection shall be presented to the congressional defense committees in classified form with an unclassified summary.

(E) In a year following an election for President, which election results in the appointment

by the President of a new Secretary of Defense, the Secretary shall present the national defense strategy required by this subsection as soon as possible after appointment by and with the advice and consent of the Senate.

(F) In February of each year in which the Secretary does not submit a new defense strategy as required by paragraph (A), the Secretary shall submit to the congressional defense committees an assessment of the current national defense strategy, including an assessment of the implementation of the strategy by the Department and an assessment whether the strategy requires revision as a result of changes in assumptions, policy, or other factors.

(2)(A) In implementing the requirement in paragraph (1), the Secretary, with the advice of the Chairman of the Joint Chiefs of Staff, shall each year provide to the officials and officers referred in paragraph (1)(A) written guidance (to be known as ''Defense Planning Guidance'') establishing goals, priorities, and objectives, including fiscal constraints, to direct the preparation and review of the program and budget recommendations of all elements of the Department, including—

(i) the priority military missions of the Department, including the assumed force planning scenarios and constructs;

(ii) the force size and shape, force posture, defense capabilities, force readiness, infrastructure, organization, personnel, technological innovation, and other elements of the defense program necessary to support the strategy required by paragraph (1);

(iii) the resource levels projected to be available for the period of time for which such recommendations and proposals are to be effective; and

(iv) a discussion of any changes in the strategy required by paragraph (1) and assumptions underpinning the strategy, as required by paragraph (1).

(B) The guidance required by this paragraph shall be produced in February each year in order to support the planning and budget process. A comprehensive briefing on the guidance shall be provided to the congressional defense committees at the same time as the submission of the budget of the President (as submitted to Congress pursuant to section 1105(a) of title 31) for the fiscal year beginning in the year in which such guidance is produced.

(3)(A) In implementing the requirement in paragraph (1) and in conjunction with the reporting requirement in section 2687a of this title, the Secretary, with the approval of the President and the advice of the Chairman of the Joint Chiefs of Staff, shall, on the basis provided in subparagraph (E), provide to the officials and officers referred to in paragraph (1)(A) written guidance (to be known as ''Contingency Planning Guidance'' or ''Guidance for Employment of the Force'') on the preparation and review of contingency and campaign plans, including plans for providing support to civil authorities in an incident of national significance or a catastrophic incident, for homeland defense, and for military support to civil authorities.

(B) The guidance required by this paragraph shall include the following:

(i) A description of the manner in which limited existing forces and resources shall be prioritized and apportioned to achieve the objectives described in the strategy required by paragraph (1).

(ii) A description of the relative priority of contingency and campaign plans, specific force levels, and supporting resource levels projected to be available for the period of time for which such plans are to be effective.

(C) The guidance required by this paragraph shall include the following:

(i) Prioritized global, regional, and functional policy objectives that the armed forces should plan to achieve, including plans for deliberate and contingency scenarios.

(ii) Policy and strategic assumptions that should guide military planning, including the role of foreign partners.

(iii) Guidance on global posture and global force management.

(iv) Security cooperation priorities.

(v) Specific guidance on United States and Department nuclear policy.

(D) The guidance required by this paragraph shall be the primary source document to be used by the Chairman of the Joint Chiefs of Staff in—

(i) executing the global military integration responsibilities described in section 153 of this title; and

(ii) developing implementation guidance for the Joint Chiefs of Staff and the commanders of the combatant commands.

(E) The guidance required by this paragraph shall be produced every two years, or more frequently as needed.

(4)(A) In implementing the requirement in paragraph (1), the Secretary, with the advice of the Chairman of the Joint Chiefs of Staff, shall each year produce, and submit to the congressional defense committees, a report (to be known as the ''Global Defense Posture Report'') that shall include the following:

(i) A description of major changes to United States forces, capabilities, and equipment assigned and allocated outside the United States, focused on significant alterations, additions, or reductions to such global defense posture that are required to execute the strategy and plans of the Department.

(ii) A description of the supporting network of infrastructure, facilities, pre-positioned stocks, and war reserve materiel required for execution of major contingency plans of the Department.

(iii) A list of all enduring locations, including main operating bases, forward operating sites, and cooperative security locations.

(iv) A description of the status of treaty, access, cost-sharing, and status-protection agreements with foreign nations.

(v) A summary of the priority posture initiatives for each region by the commanders of the combatant commands.

(vi) For each military department, a summary of the implications for overseas posture of any force structure changes.

(vii) A description of the costs incurred outside the United States during the preceding fiscal year in connection with operating,

maintaining, and supporting United States forces outside the United States for each military department, broken out by country, and whether for operation and maintenance, infrastructure, or transportation.

(viii) A description of the amount of direct support for the stationing of United States forces provided by each host nation during the preceding fiscal year.

(B) The report required by this paragraph shall be submitted to the congressional defense committees as required by subparagraph (A) by not later than April 30 each year.

(C) In this paragraph, the term ''United States'', when used in a geographic sense, includes the territories and possessions of the United States.

(h) The Secretary of Defense shall keep the Secretaries of the military departments informed with respect to military operations and activities of the Department of Defense that directly affect their respective responsibilities.

(i)(1) The Secretary of Defense shall transmit to Congress each year a report that contains a comprehensive net assessment of the defense capabilities and programs of the armed forces of the United States and its allies as compared with those of their potential adversaries.

(2) Each such report shall—

(A) include a comparison of the defense capabilities and programs of the armed forces of the United States and its allies with the armed forces of potential adversaries of the United States and allies of the United States;

(B) include an examination of the trends experienced in those capabilities and programs during the five years immediately preceding the year in which the report is transmitted and an examination of the expected trends in those capabilities and programs during the period covered by the future-years defense program submitted to Congress during that year pursuant to section 221 of this title;

(C) include a description of the means by which the Department of Defense will maintain the capability to reconstitute or expand the defense capabilities and programs of the armed forces of the United States on short notice to meet a resurgent or increased threat to the national security of the United States;

(D) reflect, in the overall assessment and in the strategic and regional assessments, the defense capabilities and programs of the armed forces of the United States specified in the budget submitted to Congress under section 1105 of title 31 in the year in which the report is submitted and in the five-year defense program submitted in such year; and

(E) identify the deficiencies in the defense capabilities of the armed forces of the United States in such budget and such five-year defense program.

(3) The Secretary shall transmit to Congress the report required for each year under paragraph (1) at the same time that the President submits the budget to Congress under section 1105 of title 31 in that year. Such report shall be transmitted in both classified and unclassified form.

(j)(1) Not later than April 8 of each year, the Secretary of Defense shall submit to the congressional defense committees a report on the cost of stationing United States forces outside of the United States. Each such report shall include a detailed statement of the following:

(A) The costs incurred outside the United States in connection with operating, maintaining, and supporting United States forces outside the United States, including all direct and indirect expenditures of United States funds in connection with such stationing.

(B) The amount of direct and indirect support for the stationing of United States forces provided by each host nation.

(2) In this subsection, the term ''United States'', when used in a geographic sense, includes the territories and possessions of the United States.

(k) The Secretary of Defense, with the advice and assistance of the Chairman of the Joint Chiefs of Staff, shall provide annually to the Secretaries of the military departments and to the commanders of the combatant commands written guidelines to direct the effective detection and monitoring of all potential aerial and maritime threats to the national security of the United States. Those guidelines shall include guidance on the specific force levels and specific supporting resources to be made available for the period of time for which the guidelines are to be in effect.

(*l*)(1) The Secretary of Defense, in coordination with the Secretary of the Department in which the Coast Guard is operating, shall establish metrics to measure—

(A) efforts to reflect across all grades comprising the officer and enlisted corps of each armed force the diverse population of the United States eligible to serve in the armed forces; and

(B) the efforts of the armed forces to generate and maintain a ready military force that will prevail in war, prevent and deter conflict, defeat adversaries, and succeed in a wide range of contingencies.

(2) In implementing the requirement in paragraph (1), the Secretary of Defense, in coordination with the Secretary of the Department in which the Coast Guard is operating, shall—

(A) ensure that data elements, data collection methodologies, and reporting processes and structures pertinent to each metric established pursuant to that paragraph are comparable across the armed forces, to the extent practicable;

(B) establish standard classifications that members of the armed forces may use to self-identify their gender, race, or ethnicity, which classifications shall be consistent with Office of Management and Budget Number Directive 15, entitled 'Race and Ethnic Standards for Federal Statistics and Administrative Reporting', or any successor directive;

(C) define conscious and unconscious bias with respect to matters of diversity and inclusion, and provide guidance to eliminate such bias;

(D) conduct a barrier analysis to review demographic diversity patterns across the military life cycle, starting with enlistment or accession into the armed forces, in order to—

(i) identify barriers to increasing diversity;

(ii) develop and implement plans and processes to resolve or eliminate any barriers to diversity; and

(iii) review the progress of the armed forces in implementing previous plans and processes to resolve or eliminate barriers to diversity;

(E) develop and implement plans and processes to ensure that advertising and marketing to promote enlistment or accession into the armed forces is representative of the diverse population of the United States eligible to serve in the armed forces; and

(F) meet annually with the Secretaries of the military departments, the Chairman of the Joint Chiefs of Staff, and the Chiefs of Staff of the Armed Forces to assess progress toward diversity and inclusion across the armed forces and to elicit recommendations and advice for enhancing diversity and inclusion in the armed forces [1]

(m) Accompanying each national defense strategy provided to the congressional defense committees in accordance with subsection (g)(1)(D), the Secretary of Defense, in coordination with the Secretary of the Department in which the Coast Guard is operating, shall provide a report that sets forth a detailed discussion, current as of the preceding fiscal year, of the following:

(1) The number of officers and enlisted members of the armed forces, including the reserve components, disaggregated by gender, race, and ethnicity, for each grade in each armed force.

(2) The number of members of the armed forces, including the reserve components, who were promoted during the fiscal year covered by such report, disaggregated by gender, race, and ethnicity, for each grade in each armed force, and of the number so promoted, the number promoted below, in, and above the applicable promotion zone.

(3) The number of members of the armed forces, including the reserve components, who were enlisted or accessed into the armed forces during the fiscal year covered by such report, disaggregated by gender, race, and ethnicity, in each armed force.

(4) The number of graduates of each military service academy during the fiscal year covered by such report, disaggregated by gender, race, and ethnicity, for each military department and the United States Coast Guard.

(5) The number of members of the armed forces, including the reserve components, who reenlisted or otherwise extended a commitment to military service during the fiscal year covered by such report, disaggregated by gender, race, and ethnicity, for each grade in each armed force.

(6) An assessment of the pool of officers best qualified for promotion to grades O–9 and O–10, disaggregated by gender, race, and ethnicity, in each military department and the United States Coast Guard.

(7) Any other matter the Secretary considers appropriate.

(n) INFORMATION TO ACCOMPANY FUNDING REQUEST FOR CONTINGENCY OPERATION.—Whenever the President submits to Congress a request for appropriations for costs associated with a contingency operation that involves, or likely will involve, the deployment of more than 500 members of the armed forces, the Secretary of Defense shall submit to Congress a report on the objectives of the operation. The report shall include a discussion of the following:

(1) What clear and distinct objectives guide the activities of United States forces in the operation.

(2) What the President has identified on the basis of those objectives as the date, or the set of conditions, that defines the endpoint of the operation.

(*o*) NOTIFICATION OF CERTAIN OVERSEAS CONTINGENCY OPERATIONS FOR PURPOSES OF INSPECTOR GENERAL ACT OF 1978.—The Secretary of Defense shall provide the Chair of the Council of Inspectors General on Integrity and Efficiency written notification of the commencement or designation of a military operation as an overseas contingency operation upon the earlier of—

(1) a determination by the Secretary that the overseas contingency operation is expected to exceed 60 days; or

(2) the date on which the overseas contingency operation exceeds 60 days.

(Added Pub. L. 87–651, title II, §202, Sept. 7, 1962, 76 Stat. 517, §133; amended Pub. L. 96–513, title V, §511(3), Dec. 12, 1980, 94 Stat. 2920; Pub. L. 97–252, title XI, §1105, Sept. 8, 1982, 96 Stat. 739; Pub. L. 97–295, §1(1), Oct. 12, 1982, 96 Stat. 1287; renumbered §113 and amended Pub. L. 99–433, title I, §§101(a)(2), 102, 110(b)(2), (d)(2), title III, §301(b)(2), title VI, §603(b), Oct. 1, 1986, 100 Stat. 994, 996, 1002, 1022, 1075; Pub. L. 100–26, §7(d)(1), Apr. 21, 1987, 101 Stat. 280; Pub. L. 100–180, div. A, title XII, §1214, Dec. 4, 1987, 101 Stat. 1157; Pub. L. 100–370, §1(*o*)(1), July 19, 1988, 102 Stat. 850; Pub. L. 100–456, div. A, title VII, §731, title XI, §1101, Sept. 29, 1988, 102 Stat. 2003, 2042; Pub. L. 101–189, div. A, title XVI, §1622(c)(1), Nov. 29, 1989, 103 Stat. 1604; Pub. L. 101–510, div. A, title XIII, §1322(a)(1), Nov. 5, 1990, 104 Stat. 1671; Pub. L. 102–190, div. A, title III, §341, Dec. 5, 1991, 105 Stat. 1343; Pub. L. 103–337, div. A, title X, §1070(a)(1), title XVI, §1671(c)(2), Oct. 5, 1994, 108 Stat. 2855, 3014; Pub. L. 104–106, div. A, title XV, §§1501(a)(8)(B), 1502(a)(3), 1503(a)(1), Feb. 10, 1996, 110 Stat. 495, 502, 510; Pub. L. 104–201, div. A, title XII, §1255(c), Sept. 23, 1996, 110 Stat. 2698; Pub. L. 105–85, div. A, title IX, §903, Nov. 18, 1997, 111 Stat. 1854; Pub. L. 105–261, div. A, title IX, §915(a), title XII, §1212(b), Oct. 17, 1998, 112 Stat. 2101, 2152; Pub. L. 106–65, div. A, title X, §1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 110–181, div. A, title IX, §903(a), title XVIII, §1815(e), Jan. 28, 2008, 122 Stat. 273, 500; Pub. L. 111–383, div. A, title V, §514(b), Jan. 7, 2011, 124 Stat. 4213; Pub. L. 112–81, div. A, title IX, §933(a), title X, §1064(1), Dec. 31, 2011, 125 Stat. 1543, 1586; Pub. L. 112–239, div. A, title X, §1076(f)(1), Jan. 2, 2013, 126 Stat. 1951; Pub. L. 113–291, div. A, title X, §1071(c)(1), (2), Dec. 19, 2014, 128 Stat. 3508; Pub. L. 114–92, div. A, title X, §1060(a), Nov. 25, 2015,

[1] So in original. Probably should be followed by period.

129 Stat. 987; Pub. L. 114–328, div. A, title IX, § 941(a), Dec. 23, 2016, 130 Stat. 2365; Pub. L. 115–91, div. A, title X, §§ 1051(a)(1), 1081(a)(1), Dec. 12, 2017, 131 Stat. 1560, 1594; Pub. L. 115–232, div. A, title X, § 1041, Aug. 13, 2018, 132 Stat. 1954; Pub. L. 116–92, div. A, title XVII, §§ 1731(a)(3), 1732(a), Dec. 20, 2019, 133 Stat. 1812, 1816; Pub. L. 116–283, div. A, title V, § 551(a)(1), title VIII, § 811(a)(1), title XVIII, § 1883(b)(2), Jan. 1, 2021, 134 Stat. 3627, 3748, 4294.)

AMENDMENT OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1883(b)(2), Jan. 1, 2021, 134 Stat. 4151, 4294, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, except as otherwise provided in title XVIII of Pub. L. 116–283, in title 10, United States Code, each reference in the text of such title to a source section that is redesignated by title XVIII of Pub. L. 116–283, is amended by striking such reference and inserting a reference to the appropriate section as so redesignated. See 2021 Amendment note below.

HISTORICAL AND REVISION NOTES

1962 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
133(a) ...... 133(b) ...... 133(c) ...... 133(d)	5:171(a) (last 10 words). 5:171a(a). 5:171a(b). 5:171a(d). 5:171a–1. 5:171a(f). 5:171n(a) (as applicable to 5:171a(f)). [Uncodified: 1953 Reorg. Plan No. 6, § 5, eff. June 30, 1953, 67 Stat. 639]. 5:171n(a).	July 26, 1947, ch. 343, §§ 201(a) (last 10 words), 202(a),(b); restated Aug. 10, 1949, ch. 412, §§ 4 (last 10 words of 1st par.), 5 (1st and 2d pars.), 63 Stat. 579, 580. July 26, 1947, ch. 343, § 202(d); added Apr. 2, 1949, ch. 47, § 1; restated Aug. 10, 1949, ch. 412, § 5 (9th par.); restated Aug. 6, 1958, Pub. L. 85–599, § 3(b), 72 Stat. 516. July 26, 1947, ch. 343, § 202(f); added Aug. 10, 1949, ch. 412, § 5 (11th par.), 63 Stat. 581. July 26, 1947, ch. 343, § 308(a) (as applicable to § 202(f)), 61 Stat. 509. July 9, 1952, ch. 608, § 257(e), 66 Stat. 497; Sept. 3, 1954, ch. 1257, § 702(c), 68 Stat. 1189. 1953 Reorg. Plan No. 6, § 5, eff. June 30, 1953, 67 Stat. 639.

In subsection (a), the last sentence is substituted for 5 U.S.C. 171a(a) (proviso).

In subsection (b), the words ''this title and section 401 of title 50'' are substituted for 5 U.S.C. 171a(b) (13th through 30th words of last sentence), since those words merely described the coverage of this title and section 401 of title 50.

In subsection (c), the words ''during the period covered by the report'' are inserted for clarity. The following substitutions are made: ''under section 125 of this title'' for ''pursuant to the provisions of this Act'' since 125 of this title relates to the duty of the Secretary of Defense to take action to save public funds and to eliminate duplication in the Department of Defense; and the last 22 words of clause (3) for 5 U.S.C. 171a–1 (last 13 words).

In subsection (d), section 5 of 1953 Reorganization Plan No. 6 is omitted as covered by 5 U.S.C. 171a(f).

1982 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
133(e)	10:133 (note).	Oct. 7, 1975, Pub. L. 94–106, § 812, 89 Stat. 540.

The words ''prepare and'' are omitted as surplus.

1988 ACT

Subsection (k) is based on Pub. L. 100–202, § 101(b) [title VIII, § 8042], 101 Stat. 1329–69.

Section 8042 of the FY88 Defense Appropriations Act (Public Law 100–202) established a requirement for the Secretary of Defense to submit an annual report on the cost of stationing United States forces overseas. Under that section, the annual report is to be sent to the Committees on Appropriations of the two Houses. In codifying that section as section 113(k) of title 10, the committee added the two Armed Services Committees as committees to be sent the annual report. This minor change from the source law does not change the nature of the report to be submitted.

The committee notes that the source section does not specify the period of time to be covered by the report. In the absence of statutory language specifying the period to be covered by the report, it would seem reasonable to conclude that the report should cover the previous fiscal year. The committee notes, however, that the report of the Senate Appropriations Committee on its FY88 defense appropriations bill (S. Rpt. 100–235) states that this new annual report ''should cover the budget years and the 2 previous fiscal years'' (page 54). The committee believes that such a requirement may be unnecessarily burdensome and in any case, if such a requirement is intended, should be stated in the statute. In the absence of clear intent, the provision is proposed to be codified without specifying the period of time to be covered by the annual report.

In codifying this provision, the committee also changed the term ''United States troops'' in the source law to ''United States forces'' for consistency in usage in title 10 and as being preferable usage. No change in meaning is intended. The committee also changed ''overseas'' to ''outside the United States'' and defined ''United States'' for this purpose to include the territories and possessions of the United States. The committee was concerned that the term ''overseas'' read literally could include Hawaii or Guam, an interpretation clearly not intended in enacting section 8042. The committee notes that the Senate report referred to above states ''For the purposes of this report [meaning the new DOD annual report], U.S. forces stationed overseas are considered to be those outside of the United States and its territories.''. The committee extrapolates from this statement that provisions in the report requirement relating to expenditures ''overseas'' and costs incurred ''overseas'' are also to be construed as relating to matters outside the United States and its territories and has prepared the codified provision accordingly.

REFERENCES IN TEXT

The Inspector General Act of 1978, referred to in subsec. (*o*), is Pub. L. 95–452, Oct. 12, 1978, 92 Stat. 1101, which is set out in the Appendix to Title 5, Government Organization and Employees.

AMENDMENTS

2021—Subsec. (c)(2) to (4). Pub. L. 116–283, § 551(a)(1)(A), added par. (2) and redesignated former pars. (2) and (3) as (3) and (4), respectively.

Subsec. (g)(1)(B)(vii). Pub. L. 116–283, § 551(a)(1)(B), added cl. (vii).

Subsec. (g)(1)(B)(viii). Pub. L. 116–283, § 1883(b)(2), substituted ''section 4801'' for ''section 2500''.

Pub. L. 116–283, § 881(a)(1), added cl. (viii).

Subsec. (g)(1)(B)(ix). Pub. L. 116–283, § 811(a)(1), added cl. (ix).

Subsecs. (*l*) to (*o*). Pub. L. 116–283, §551(a)(1)(C), (D), added subsecs. (*l*) and (m) and redesignated former subsecs. (m) and (n) as (n) and (*o*), respectively.

2019—Subsec. (j)(1). Pub. L. 116–92, §1731(a)(3), inserted ''the'' before ''congressional defense committees''.

Subsec. (n). Pub. L. 116–92, §1732(a), added subsec. (n).

2018—Subsec. (g)(2) to (4). Pub. L. 115–232 added pars. (2) to (4) and struck out former pars. (2) to (4) which related to annual provision of written policy guidance for preparation and review of program recommendations and budget proposals, provision every two years of written policy guidance for preparation and review of contingency plans including those providing support to civil authorities in an incident of national significance or a catastrophic incident, and provision to congressional defense committees of a detailed classified briefing summarizing such guidance not later than Feb. 15 in any calendar year in which guidance is required.

2017—Subsec. (c). Pub. L. 115–91, §1051(a)(1)(A), redesignated par. (1) as subsec. (c) and subpars. (A) to (C) of former par. (1) as pars. (1) to (3), respectively, and struck out former par. (2) which read as follows: ''At the same time that the Secretary submits the annual report under paragraph (1), the Secretary shall transmit to the President and Congress a separate report from the Reserve Forces Policy Board on any reserve component matter that the Reserve Forces Policy Board considers appropriate to include in the report.''

Subsec. (j)(1). Pub. L. 115–91, §1081(a)(1), substituted ''congressional defense committees'' for ''the Committee on Armed Services and the Committee on Appropriations of the Senate and the Committee on Armed Services and the Committee on Appropriations of the House of Representatives'' in introductory provisions.

Subsec. (*l*). Pub. L. 115–91, §1051(a)(1)(B), struck out subsec. (*l*) which listed items to be included in the Secretary's annual report to Congress under subsec. (c).

2016—Subsec. (g). Pub. L. 114–328 amended subsec. (g) generally. Prior to amendment, subsec. (g) required Secretary of Defense to provide annually to Department of Defense heads written policy guidance for preparation and review of program recommendations and budget proposals, to provide to the Chairman of the Joint Chiefs of Staff written policy guidance for contingency plans for homeland defense and for military support to civil authorities, and to include in budget materials submitted to Congress summaries of the guidance developed and summaries of any plans developed in accordance with that guidance.

2015—Subsec. (g)(3). Pub. L. 114–92 added par. (3).

2014—Subsec. (b). Pub. L. 113–291, §1071(c)(1), substituted ''(50 U.S.C. 3002)'' for ''(50 U.S.C. 401)''.

Subsec. (e)(2). Pub. L. 113–291, §1071(c)(2), substituted ''(50 U.S.C. 3043)'' for ''(50 U.S.C. 404a)''.

2013—Subsec. (c)(2). Pub. L. 112–239 struck out ''on'' after ''Board on''.

2011—Subsec. (c)(2). Pub. L. 111–383 substituted ''on any reserve component matter'' for ''the reserve programs of the Department of Defense and on any other matters''.

Subsec. (j)(1)(A) to (C). Pub. L. 112–81, §1064(1)(A), added subpar. (B), redesignated former subpar. (B) as (A), and struck out former subpars. (A) and (C) which read as follows:

''(A) Costs incurred in the United States and costs incurred outside the United States in connection with the stationing of United States forces outside the United States.

''(C) The effect of such expenditures outside the United States on the balance of payments of the United States.''

Subsec. (j)(2), (3). Pub. L. 112–81, §1064(1)(B), (C), redesignated par. (3) as (2) and struck out former par. (2) which read as follows: ''Each report under this subsection shall be prepared in consultation with the Secretary of Commerce.''

Subsec. (*l*). Pub. L. 112–81, §933(a), amended subsec. (*l*) generally. Prior to amendment, subsec. (*l*) related to contents of the Secretary's annual report to Congress under subsec. (c).

2008—Subsec. (a). Pub. L. 110–181, §903(a), substituted ''seven'' for ''10''.

Subsec. (g)(2). Pub. L. 110–181, §1815(e), substituted ''contingency plans, including plans for providing support to civil authorities in an incident of national significance or a catastrophic incident, for homeland defense, and for military support to civil authorities'' for ''contingency plans''.

1999—Subsec. (j)(1). Pub. L. 106–65 substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security'' in introductory provisions.

1998—Subsec. (*l*). Pub. L. 105–261, §915(a), added subsec. (*l*).

Subsec. (m). Pub. L. 105–261, §1212(b), added subsec. (m).

1997—Subsec. (g)(2). Pub. L. 105–85 struck out ''annually'' after ''Staff, shall provide'' and inserted ''be provided every two years or more frequently as needed and shall'' after ''Such guidance shall''.

1996—Subsec. (c). Pub. L. 104–201, §1255(c)(2)–(5), inserted ''(1)'' after ''(c)'', redesignated former pars. (1), (2), and (4) as subpars. (A), (B), and (C), respectively, inserted ''and'' at end of subpar. (B), and added par. (2).

Subsec. (c)(3). Pub. L. 104–201, §1255(c)(1), struck out par. (3) which read as follows: ''a report from the Reserve Forces Policy Board on the reserve programs of the Department of Defense, including a review of the effectiveness of chapters 51, 337, 361, 363, 549, 573, 837, 861 and 863 of this title, as far as they apply to reserve officers; and''.

Pub. L. 104–106, §1501(a)(8)(B), made technical correction to directory language of Pub. L. 103–337, §1671(c)(2). See 1994 Amendment note below.

Subsec. (i)(2)(B). Pub. L. 104–106, §1503(a)(1), substituted ''the period covered by the future-years defense program submitted to Congress during that year pursuant to section 221'' for ''the five years covered by the five-year defense program submitted to Congress during that year pursuant to section 114(g)''.

Subsec. (j)(1). Pub. L. 104–106, §1502(a)(3), substituted ''Committee on Armed Services and the Committee on Appropriations of the Senate and the Committee on National Security and the Committee on Appropriations of the'' for ''Committees on Armed Services and Committees on Appropriations of the Senate and''.

1994—Subsec. (c)(3). Pub. L. 103–337, §1671(c)(2), as amended by Pub. L. 104–106, §1501(a)(8)(B), which directed the substitution of ''1219 and 1401 through 1411 of this title'' for ''51, 337, 361, 363, 549, 573, 837, 861 and 863 of this title, as far as they apply to reserve officers'', effective Oct. 1, 1996, could not be executed because of the intervening amendment by Pub. L. 104–201, §1255(c)(1). See 1996 Amendment note above.

Subsec. (e)(2). Pub. L. 103–337, §1070(a)(1), substituted ''section 108'' for ''section 104''.

1991—Subsec. (i)(2)(C) to (E). Pub. L. 102–190 added subpar. (C) and redesignated former subpars. (C) and (D) as (D) and (E), respectively.

1990—Subsecs. (i) to (*l*). Pub. L. 101–510 redesignated subsecs. (j) to (*l*) as (i) to (k), respectively, and struck out former subsec. (i) which read as follows: ''The Secretary of Defense shall submit to Congress a written report, not later than February 15 of each fiscal year, recommending the amount of funds to be appropriated to the Department of Defense for the next fiscal year for functions relating to the formulation and carrying out of Department of Defense policies on the control of technology transfer and activities related to the control of technology transfer. The Secretary shall include in that report the proposed allocation of the funds requested for such purpose and the number of personnel proposed to be assigned to carry out such activities during such fiscal year.''

1989—Subsec. (j)(2)(B). Pub. L. 101–189 substituted ''five-year defense program'' for ''Five-Year Defense Program''.

1988—Subsec. (j). Pub. L. 100–456, §731, designated existing provisions as par. (1), struck out provision requiring that each report be transmitted in both a clas-

sified and an unclassified form, and added pars. (2) and (3).

Subsec. (k). Pub. L. 100–370 added subsec. (k).

Subsec. (*l*). Pub. L. 100–456, §1101, added subsec. (*l*).

1987—Subsec. (e)(2). Pub. L. 100–26 inserted "(50 U.S.C. 404a)" after "National Security Act of 1947".

Subsec. (j). Pub. L. 100–180 added subsec. (j).

1986—Pub. L. 99–433, §110(d)(2), struck out ": appointment; powers and duties; delegation by" at end of section catchline.

Subsecs. (a) to (e). Pub. L. 99–443, §101(a)(2), redesignated subsecs. (a) to (e) of section 133 of this title as subsecs. (a) to (e) of this section.

Pub. L. 99–433, §301(b)(2), substituted "sections 125 and 191" for "section 125" in subsec. (c)(2).

Pub. L. 99–433, §603(b), amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: "After consulting with the Secretary of State, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives before February 1 of each year a written report on—

"(1) the foreign policy and military force structure for the next fiscal year;

"(2) the relationship of that policy and structure to each other; and

"(3) the justification for the policy and structure."

Subsecs. (f) to (h). Pub. L. 99–433, §102, added subsecs. (f) to (h).

Subsec. (i). Pub. L. 99–433, §§101(a)(2), 110(b)(2), successively redesignated subsec. (h) of section 138 of this title as subsec. (h) of section 114 of this title and then as subsec. (i) of this section.

1982—Subsec. (e). Pub. L. 97–295 added subsec. (e).

Subsec. (i) [formerly §138(h)]. Pub. L. 97–252, §1105, added subsec. (h). See 1986 Amendment note above.

1980—Subsec. (b). Pub. L. 96–513 substituted "section 2 of the National Security Act of 1947 (50 U.S.C. 401)" for "section 401 of title 50".

Effective Date of 2021 Amendment

Amendment by section 1883(b)(2) of Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

Effective Date of 2017 Amendment

Pub. L. 115–91, div. A, title X, §1051(z), Dec. 12, 2017, 131 Stat. 1568, provided that: "Except as provided in subsections (u), (v), and (w) [amending section 1061 of Pub. L. 114–328, set out as a note under section 111 of this title] the amendments made by this section [see Tables for classification] shall take effect on the later of—

"(1) the date of the enactment of this Act [Dec. 12, 2017]; or

"(2) November 25, 2017."

Effective Date of 1996 Amendment

Pub. L. 104–106, div. A, title XV, §1501(f)(3), Feb. 10, 1996, 110 Stat. 501, provided that: "The amendments made by this section [see Tables for classification] shall take effect as if included in the Reserve Officer Personnel Management Act [Pub. L. 103–337, div. A, title XVI] as enacted on October 5, 1994."

Effective Date of 1994 Amendment

Amendment by section 1671(c)(2) of Pub. L. 103–337 effective Oct. 1, 1996, see section 1691(b)(1) of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

Effective Date of 1980 Amendment

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

Termination of Reporting Requirements

For termination, effective Dec. 31, 2021, of provisions in subsecs. (c)(1) and (e) of this section requiring submittal of annual report to Congress, see section 1051(x) of Pub. L. 115–91, set out as a note under section 111 of this title.

For termination, effective Dec. 31, 2021, of provisions in subsec. (i) of this section requiring submittal of annual report to Congress, see section 1061 of Pub. L. 114–328, set out as a note under section 111 of this title.

Transfer of Responsibilities and Functions Relating to Electromagnetic Spectrum Operations

Pub. L. 116–283, div. A, title I, §152, Jan. 1, 2021, 134 Stat. 3440, provided that:

"(a) Transfer.—Not later than two years after the date of the enactment of this Act [Jan. 1, 2021] and in accordance with the plan developed pursuant to subsection (b), the Secretary of Defense shall transfer to an appropriate entity within the Department of Defense all the responsibilities and functions of the Commander of the United States Strategic Command that are germane to electromagnetic spectrum operations (EMSO), including—

"(1) advocacy for joint electronic warfare capabilities;

"(2) providing contingency electronic warfare support to other combatant commands; and

"(3) supporting combatant command joint training and planning related to electromagnetic spectrum operations.

"(b) Plan for Transfer of Responsibilities.—

"(1) In general.—Not later than 180 days before the date of the transfer of responsibilities required by subsection (a), the Secretary shall develop a plan to carry out the transfer.

"(2) Considerations.—In developing the plan required by paragraph (1), the Secretary shall consider the following:

"(A) All appropriate entities having potential for designation as the receiving electromagnetic spectrum operations organization, including elements of the Joint Staff, the functional and geographic combatant commands, Department of Defense offices and agencies, and other organizations, including the establishment of a new entity for that purpose within any such entity.

"(B) Whether the receiving electromagnetic spectrum operations organization should have a unitary structure or hybrid structure (in which operational and capability development and direction are headed by separate organizations).

"(C) The resources required by the receiving electromagnetic spectrum operations organization to fulfill the responsibilities and functions specified in subsection (a).

"(D) The results of the evaluations carried out pursuant to subsections (c) and (d).

"(3) Submittal to congress.—Not later than 180 days before the date of the transfer of responsibilities required by subsection (a), the Secretary shall submit to Congress the following:

"(A) The plan developed under paragraph (1).

"(B) The construct and elements of the receiving electromagnetic spectrum operations organization under the plan, including the allocation of responsibilities among senior officials in such organization.

"(C) The analysis conducted to determine the electromagnetic spectrum operations organization, including the input in the plan or analysis of the results of consultation with any independent entities involved in development of the plan.

"(D) The resources required to implement the plan, and a timeline for the receiving electromagnetic spectrum operations organization to reach initial operational capability and full operational capability.

"(c) Evaluations of Armed Forces.—

"(1) In general.—Not later than October 1, 2021, and annually thereafter through 2025, the Chief of Staff of the Army, the Chief of Naval Operations, the Chief of Staff of the Air Force, the Commandant of

the Marine Corps, and the Chief of Space Operations shall each carry out an evaluation of the ability of the Armed Force concerned to perform electromagnetic spectrum operations missions required by each of the following:

"(A) The Electromagnetic Spectrum Superiority Strategy.

"(B) The Joint Staff-developed concept of operations for electromagnetic spectrum operations.

"(C) The operations and contingency plans of the combatant commands.

"(2) ELEMENTS.—Each evaluation under paragraph (1) shall include assessment of the following:

"(A) Current programs of record, including—

"(i) the ability of weapon systems to perform missions in contested electromagnetic spectrum environments; and

"(ii) the ability of electronic warfare capabilities to disrupt adversary operations.

"(B) Future programs of record, including—

"(i) the need for distributed or network-centric electronic warfare and signals intelligence capabilities; and

"(ii) the need for automated and machine learning- or artificial intelligence-assisted electronic warfare capabilities.

"(C) Order of battle.

"(D) Individual and unit training.

"(E) Tactics, techniques, and procedures, including—

"(i) maneuver, distribution of assets, and the use of decoys; and

"(ii) integration of nonkinetic and kinetic fires.

"(d) EVALUATIONS OF COMBATANT COMMANDS.—

"(1) IN GENERAL.—Not later than October 1, 2021, and annually thereafter through 2025, the Commander of the United States European Command, the Commander of the United States Pacific Command, and the Commander of the United States Central Command shall each carry out an evaluation of the plans and posture of the command concerned to execute the electromagnetic spectrum operations envisioned in each of the following:

"(A) The Electromagnetic Spectrum Superiority Strategy.

"(B) The Joint Staff-developed concept of operations for electromagnetic spectrum operations.

"(2) ELEMENTS.—Each evaluation under paragraph (1) shall include assessment of the following:

"(A) Operation and contingency plans.

"(B) The manning, organizational alignment, and capability of joint electromagnetic spectrum operations cells.

"(C) Mission rehearsal and exercises.

"(D) Force positioning, posture, and readiness.

"(e) SEMIANNUAL BRIEFING.—Not less frequently than twice each year until January 1, 2026, the Vice Chairman of the Joint Chiefs of Staff shall brief the Committees on Armed Services of the Senate and the House of Representatives on the implementation of this section by each of the Joint Staff, the Armed Forces, and the combatant commands."

APPLICATION OF ARTIFICIAL INTELLIGENCE TO THE DEFENSE REFORM PILLAR OF THE NATIONAL DEFENSE STRATEGY

Pub. L. 116–283, div. A, title II, §234, Jan. 1, 2021, 134 Stat. 3483, provided that:

"(a) IDENTIFICATION OF USE CASES.—The Secretary of Defense, acting through such officers and employees of the Department of Defense as the Secretary considers appropriate, including the chief data officers and chief management officers of the military departments, shall identify a set of no fewer than five use cases of the application of existing artificial intelligence enabled systems to support improved management of enterprise acquisition, personnel, audit, or financial management functions, or other appropriate management functions, that are consistent with reform efforts that support the National Defense Strategy.

"(b) PROTOTYPING ACTIVITIES ALIGNED TO USE CASES.—The Secretary, acting through the Under Secretary of Defense for Research and Engineering and in coordination with the Director of the Joint Artificial Intelligence Center and such other officers and employees as the Secretary considers appropriate, shall pilot technology development and prototyping activities that leverage commercially available technologies and systems to demonstrate new artificial intelligence enabled capabilities to support the use cases identified under subsection (a).

"(c) BRIEFING.—Not later than October 1, 2021, the Secretary shall provide to the congressional defense committees [Committee on Armed Services and Committee on Appropriations of the Senate and House of Representatives] a briefing summarizing the activities carried out under this section."

PUBLIC AVAILABILITY OF REPORTS

Pub. L. 116–283, div. A, title V, §551(a)(2), Jan. 1, 2021, 134 Stat. 3629, provided that: "Not later than 72 hours after submitting to the congressional defense committees [Committee on Armed Services and Committee on Appropriations of the Senate and House of Representatives] a report required by subsection (m) of section 113 of title 10, United States Code (as amended by paragraph (1)), the Secretary of Defense shall make the report available on an Internet website of the Department of Defense available to the public. In so making a report available, the Secretary shall ensure that any data included in the report is made available in a machine-readable format that is downloadable, searchable, and sortable."

CONSTRUCTION OF METRICS

Pub. L. 116–283, div. A, title V, §551(a)(3), Jan. 1, 2021, 134 Stat. 3629, provided that:

"(A) WITH MERIT-BASED PROCESSES.—Any metric established pursuant to subsection (*l*) of section 113 of title 10, United States Code (as so amended [subsec. (*l*) added by section 551(a)(1)(D) of Pub. L. 116–283]), may not be used in a manner that undermines the merit-based processes of the Department of Defense and the Coast Guard, including such processes for accession, retention, and promotion.

"(B) WITH OTHER MATTERS.—Any such metric may not be used to identify or specify specific quotas based upon diversity characteristics. The Secretary concerned shall continue to account for diversified language and cultural skills among the total force of the Armed Forces."

INTERIM GUIDANCE

Pub. L. 116–283, div. A, title VIII, §811(a)(3), Jan. 1, 2021, 134 Stat. 3749, provided that: "Not later than October 1, 2021, the Secretary of Defense shall publish interim guidance to carry out the requirements of this subsection [amending this section and section 133b of this title]."

SAFEGUARDING DEFENSE-SENSITIVE UNITED STATES INTELLECTUAL PROPERTY, TECHNOLOGY, AND OTHER DATA AND INFORMATION

Pub. L. 116–283, div. A, title VIII, §837, Jan. 1, 2021, 134 Stat. 3760, provided that:

"(a) IN GENERAL.—The Secretary of Defense shall, in coordination with relevant departments and agencies—

"(1) identify policies and procedures protecting defense-sensitive United States intellectual property, technology, and other data and information, including hardware and software, from acquisition by the government of China; and

"(2) to the extent that the Secretary determines that such policies and procedures are insufficient to provide such protection, develop additional policies and procedures.

"(b) MATTERS CONSIDERED.—In developing the policies and procedures under subsection (a), the Secretary shall take the following actions:

''(1) Establish and maintain a list of critical national security technology that may require certain restrictions on current or former employees, contractors, or subcontractors (at any tier) of the Department of Defense that contribute to such technology.

''(2) Review the existing authorities under which employees of the Department of Defense may be subject to post-employment restrictions with foreign governments and with organizations subject to foreign ownership, control, or influence.

''(3) Identify additional measures that may be necessary to enhance the authorities described in paragraph (2).

''(c) POST-EMPLOYMENT MATTERS.—The Secretary shall consider mechanisms to restrict current or former employees of contractors or subcontractors (at any tier) of the Department of Defense that contribute significantly and materially to a technology referred to in subsection (b)(1) from working directly for companies wholly owned by the government of China, or for companies that have been determined by a cognizant Federal agency to be under the ownership, control, or influence of the government of China.''

ARCTIC PLANNING, RESEARCH, AND DEVELOPMENT

Pub. L. 116–283, div. A, title X, § 1060, Jan. 1, 2021, 134 Stat. 3857, provided that:

''(a) ARCTIC PLANNING AND IMPLEMENTATION.—

''(1) IN GENERAL.—The Secretary of Defense and the Chairman of the Joint Chiefs of Staff shall continue assessing potential multi-domain risks in the Arctic, identifying capability and capacity gaps in the current and projected force, and planning for and implementing the training, equipping, and doctrine requirements necessary to mitigate such risks and gaps.

''(2) TRAINING.—In carrying out paragraph (1), the Secretary may direct the Armed Forces to conduct training in the Arctic or training relevant to military operations in the Arctic.

''(b) ARCTIC RESEARCH AND DEVELOPMENT PROGRAM.—

''(1) IN GENERAL.—If the Secretary of Defense determines that there are capability or capacity gaps for the Armed Forces in the Arctic, the Secretary may conduct research and development on the current and future requirements and needs of the Armed Forces for operations in the Arctic.

''(2) ELEMENTS.—Research and development conducted under paragraph (1) may include the following:

''(A) Development of doctrine to address any identified gaps, including the study of existing doctrine of partners and allies of the United States.

''(B) Development of materiel solutions for operating in extreme weather environments of the Arctic, including equipment for individual members of the Armed Forces, ground vehicles, and communications systems.

''(C) Development of a plan for fielding future weapons platforms able to operate in Arctic conditions.

''(D) Development of capabilities to monitor, assess, and predict environmental and weather conditions in the Arctic and the effect of such conditions on military operations.

''(E) Determining requirements for logistics and sustainment of the Armed Forces operating in the Arctic.''

REPORTING OF ADVERSE EVENTS RELATING TO CONSUMER PRODUCTS ON MILITARY INSTALLATIONS

Pub. L. 116–283, div. A, title X, § 1082, Jan. 1, 2021, 134 Stat. 3875, provided that:

''(a) IN GENERAL.—The Secretary of Defense shall issue to the military departments guidance to encourage the reporting of any adverse event related to a consumer product that occurs on a military installation on the appropriate consumer product safety website.

''(b) DEFINITIONS.—In this section:

''(1) The term 'adverse event' means—

''(A) any event that indicates that a consumer product—

''(i) fails to comply with an applicable consumer product safety rule or with a voluntary consumer product safety standard upon which the Consumer Product Safety Commission has relied under section 9 of the Consumer Product Safety Act (15 U.S.C. 2058);

''(ii) fails to comply with any other rule, regulation, standard, or ban under that Act or any other Act enforced by the Commission;

''(iii) contains a defect that could create a substantial product hazard described in section 15(a)(2) of the Consumer Product Safety Act (15 U.S.C. 2064(a)(2)); or

''(iv) creates an unreasonable risk of serious injury or death; or

''(B) any other harm described in subsection (b)(1)(A) of section 6A of the Consumer Product Safety Act (15 U.S.C. 2055a) and required to be reported in the database established under subsection (a) of that section.

''(2) The term 'consumer product' has the meaning given that term in section 3 of the Consumer Product Safety Act (15 U.S.C. 2052).''

IMPLEMENTATION OF THE WOMEN, PEACE, AND SECURITY ACT OF 2017

Pub. L. 116–283, div. A, title XII, § 1210E, Jan. 1, 2021, 134 Stat. 3917, provided that:

''(a) IN GENERAL.—During the period beginning on the date of the enactment of this Act [Jan. 1, 2021] and ending on September 30, 2025, the Secretary of Defense shall undertake activities consistent with the Women, Peace, and Security Act of 2017 (Public Law 115–68; 131 Stat. 1202 [22 U.S.C. 2152j to 2152j–4]) and with the guidance specified in this section, including—

''(1) implementation of the Department of Defense plan entitled 'Women, Peace, and Security Strategic Framework and Implementation Plan' published in June 2020, or any successor plan;

''(2) establishing Department of Defense-wide policies and programs that advance the implementation of the Act, including military doctrine and Department-specific and combatant command-specific programs;

''(3) ensuring the Department has sufficient qualified personnel to advance implementation of that Act, including by hiring and training full-time equivalent personnel, as necessary, and establishing roles, responsibilities, and requirements for such personnel;

''(4) as appropriate, the deliberate integration of relevant training curriculum for members of the Armed Forces across all ranks; and

''(5) security cooperation activities that further the implementation of that Act.

''(b) BUILDING PARTNER DEFENSE INSTITUTION AND SECURITY FORCE CAPACITY.—

''(1) INCORPORATION OF GENDER ANALYSIS AND PARTICIPATION OF WOMEN INTO SECURITY COOPERATION ACTIVITIES.—Consistent with the Women, Peace, and Security Act of 2017 (Public Law 115–68; 131 Stat. 1202), the Secretary of Defense, in coordination with the Secretary of State, shall incorporate participation by women and the analysis described in the Women's Entrepreneurship and Economic Empowerment Act of 2018 (Public Law 115–428; 132 Stat. 5509 [see Tables for classification]) into the institutional and national security force capacity-building activities of security cooperation programs carried out under title 10, United States Code, including, as appropriate, by—

''(A) incorporating gender analysis and women, peace, and security priorities into educational and training materials and programs authorized by section 333 of title 10, United States Code;

''(B) advising on the recruitment, employment, development, retention, and promotion of women in such national security forces, including by—

''(i) identifying existing military career opportunities for women;

''(ii) exposing women and girls to careers available in such national security forces and the skills necessary for such careers; and

''(iii) encouraging women's and girls' interest in such careers by highlighting as role models women of the United States and applicable foreign countries in uniform;

''(C) addressing sexual harassment and abuse against women within such national security forces;

''(D) integrating gender analysis into security sector policy, planning, and training for such national security forces; and

''(E) improving infrastructure to address the requirements of women serving in such national security forces, including appropriate equipment for female security and police forces.

''(2) BARRIERS AND OPPORTUNITIES.—Partner country assessments conducted in the course of Department security cooperation activities to build the capacity of the national security forces of foreign countries shall include attention to the barriers and opportunities with respect to strengthening recruitment, employment, development, retention, and promotion of women in the military forces of such partner countries.

''(c) DEPARTMENT-WIDE POLICIES ON WOMEN, PEACE, AND SECURITY.—Not later than 90 days after the date of the enactment of this Act [Jan. 1, 2021], the Secretary of Defense shall initiate a process to establish standardized policies described in subsection (a)(2).

''(d) FUNDING.—The Secretary of Defense may use funds authorized to be appropriated in each fiscal year to the Department of Defense for operation and maintenance as specified in the table in section 4301 for carrying out the full implementation of the Women, Peace, and Security Act of 2017 (Public Law 115–68; 131 Stat. 1202) and the guidance on the matters described in paragraphs (1) through (5) of subsection (a) and subparagraphs (A) through (E) of subsection (b)(1).

''(e) ANNUAL REPORT.—Not later than one year after the date of the enactment of this Act, and annually thereafter through 2025, the Secretary of Defense shall submit to the appropriate committees of Congress a report on the steps the Department has taken to implement the Women, Peace, and Security Act of 2017, including—

''(1) implementation of defense lines of effort outlined in the June 2020 Department of Defense 'Women, Peace, and Security Strategic Framework and Implementation Plan' and described in paragraphs (1) through (5) of subsection (a) and subparagraphs (A) through (E) of subsection (b)(1), as appropriate; and

''(2) an enumeration of the funds used in such implementation and an identification of funding shortfalls, if any, that may inhibit implementation.

''(f) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this section, the term 'appropriate committees of Congress' means—

''(1) the Committee on Armed Services and the Committee on Foreign Relations of the Senate; and

''(2) the Committee on Armed Services and the Committee on Foreign Affairs of the House of Representatives.''

PACIFIC DETERRENCE INITIATIVE

Pub. L. 116–283, div. A, title XII, §1251(a)–(f), Jan. 1, 2021, 134 Stat. 3951–3954, provided that:

''(a) IN GENERAL.—The Secretary of Defense shall establish an initiative, to be known as the 'Pacific Deterrence Initiative' (in this section referred to as the 'Initiative'), to carry out prioritized activities to enhance the United States deterrence and defense posture in the Indo-Pacific region, assure allies and partners, and increase capability and readiness in the Indo-Pacific region.

''(b) PURPOSE.—The Initiative required under subsection (a) shall carry out the following prioritized activities to improve the design and posture of the joint force in the Indo-Pacific region, primarily west of the International Date Line:

''(1) Modernize and strengthen the presence of the United States Armed Forces, including those with advanced capabilities.

''(2) Improve logistics and maintenance capabilities and the pre-positioning of equipment, munitions, fuel, and materiel.

''(3) Carry out a program of exercises, training, experimentation, and innovation for the joint force.

''(4) Improve infrastructure to enhance the responsiveness and resiliency of the United States Armed Forces.

''(5) Build the defense and security capabilities, capacity, and cooperation of allies and partners.

''(c) FUNDING.—Of the amounts authorized to be appropriated by this Act for the Department of Defense for fiscal year 2021, $2,234,958,000 is authorized to be made available to carry out the Initiative required under subsection (a), as specified in the funding tables in division D of this Act [div. D of Pub. L. 116–283, 134 Stat. 4422–4523, see Tables for classification].

''(d) PLAN REQUIRED.—Not later than February 15, 2021, and annually thereafter, the Secretary, in consultation with the Commander of the United States Indo-Pacific Command, shall submit to the congressional defense committees a report on future year activities and resources for the Initiative that includes the following:

''(1) A description of the activities and resources for the first fiscal year beginning after the date of submission of the report and the plan for not fewer than the four following fiscal years, organized by the activities described in paragraphs (1) through (5) of subsection (b).

''(2) A summary of progress made towards achieving the purposes of the Initiative.

''(3) A summary of the activity, resource, capability, infrastructure, and logistics requirements necessary to achieve measurable progress in reducing risk to the joint force's ability to achieve objectives in the region, including through investments in—

''(A) active and passive defenses against unmanned aerial systems and theater cruise, ballistic, and hypersonic missiles;

''(B) advanced long-range precision strike systems;

''(C) command, control, communications, computers, intelligence, surveillance, and reconnaissance systems;

''(D) test range capacity, capability, and coordination;

''(E) dispersed, resilient, and adaptive basing to support distributed operations, including expeditionary airfields and ports;

''(F) advanced critical munitions;

''(G) pre-positioned forward stocks of fuel, munitions, equipment, and materiel;

''(H) distributed logistics and maintenance capabilities;

''(I) strategic mobility assets;

''(J) improved interoperability and information sharing with allies and partners;

''(K) information operations capabilities;

''(L) bilateral and multilateral military exercises and training with allies and partners; and

''(M) use of security cooperation authorities to further build partner capacity.

''(4) A detailed timeline to achieve the requirements identified under paragraph (3).

''(5) A detailed explanation of any significant modifications to such requirements, as compared to plans previously submitted under this subsection.

''(6) Any other matter, as determined by the Secretary.

''(e) BUDGET DISPLAY INFORMATION.—The Secretary shall include a detailed budget display for the Initiative in the materials of the Department of Defense in support of the budget of the President (submitted to Congress pursuant to section 1105 of title 31, United

States Code) for fiscal year 2022 and each fiscal year thereafter that includes the following information:

''(1) The resources necessary for the Initiative to carry out the activities required under subsection (b) for the applicable fiscal year and not fewer than the four following fiscal years, organized by the activities described in paragraphs (1) through (5) of that subsection.

''(2) With respect to procurement accounts—

''(A) amounts displayed by account, budget activity, line number, line item, and line item title; and

''(B) a description of the requirements for such amounts specific to the Initiative.

''(3) With respect to research, development, test, and evaluation accounts—

''(A) amounts displayed by account, budget activity, line number, program element, and program element title; and

''(B) a description of the requirements for such amounts specific to the Initiative.

''(4) With respect to operation and maintenance accounts—

''(A) amounts displayed by account title, budget activity title, line number, and subactivity group title; and

''(B) a description of the specific manner in which such amounts will be used.

''(5) With respect to military personnel accounts—

''(A) amounts displayed by account, budget activity, budget subactivity, and budget subactivity title; and

''(B) a description of the requirements for such amounts specific to the Initiative.

''(6) With respect to each project under military construction accounts (including with respect to unspecified minor military construction and amounts for planning and design), the country, location, project title, and project amount by fiscal year.

''(7) With respect to the activities described in subsection (b)—

''(A) amounts displayed by account title, budget activity title, line number, and subactivity group title; and

''(B) a description of the specific manner in which such amounts will be used.

''(8) With respect to each military service—

''(A) amounts displayed by account title, budget activity title, line number, and subactivity group title; and

''(B) a description of the specific manner in which such amounts will be used.

''(9) With respect to the amounts described in each of paragraphs (2)(A), (3)(A), (4)(A), (5)(A), (6), (7)(A), and (8)(A), a comparison between—

''(A) the amount in the budget of the President for the following fiscal year;

''(B) the amount projected in the previous budget of the President for the following fiscal year;

''(C) a detailed summary of funds obligated for the Initiative during the preceding fiscal year; and

''(D) a detailed comparison of funds obligated for the Initiative during the previous fiscal year to the amount of funds requested for such fiscal year.

''(f) BRIEFINGS REQUIRED.—Not later than March 1, 2021, and annually thereafter, the Secretary shall provide to the congressional defense committees a briefing on the budget proposal and programs, including the budget display information for the applicable fiscal year required by subsection (e).''

COOPERATIVE PROGRAM WITH VIETNAM TO ACCOUNT FOR VIETNAMESE PERSONNEL MISSING IN ACTION

Pub. L. 116–283, div. A, title XII, § 1254, Jan. 1, 2021, 134 Stat. 3955, provided that:

''(a) IN GENERAL.—The Secretary of Defense, in coordination with the Secretary of State, is authorized to carry out a cooperative program with the Ministry of Defense of Vietnam to assist in accounting for Vietnamese personnel missing in action.

''(b) PURPOSE.—The purpose of the cooperative program under subsection (a) is to carry out the following activities:

''(1) Collection, digitization, and sharing of archival information.

''(2) Building the capacity of Vietnam to conduct archival research, investigations, and excavations.

''(3) Improving DNA analysis capacity.

''(4) Increasing veteran-to-veteran exchanges.

''(5) Other support activities the Secretary of Defense considers necessary and appropriate.''

PUBLIC REPORTING OF CHINESE MILITARY COMPANIES OPERATING IN THE UNITED STATES

Pub. L. 116–283, div. A, title XII, § 1260H, Jan. 1, 2021, 134 Stat. 3965, provided that:

''(a) DETERMINATION.—The Secretary of Defense shall identify each entity the Secretary determines, based on the most recent information available, is operating directly or indirectly in the United States or any of its territories and possessions, that is a Chinese military company.

''(b) REPORTING AND PUBLICATION.—

''(1) ANNUAL REPORT.—Not later than April 15, 2021, and annually thereafter until December 31, 2030, the Secretary shall submit to the Committees on Armed Services of the Senate and the House of Representatives a list of each entity identified pursuant to subsection (a) to be a Chinese military company, in classified and unclassified forms, and shall include in such submission, as applicable, an explanation of any entities deleted from such list with respect to a prior list.

''(2) CONCURRENT PUBLICATION.—Concurrent with the submission of each list described in paragraph (1), the Secretary shall publish the unclassified portion of such list in the Federal Register.

''(3) ONGOING REVISIONS.—The Secretary shall make additions or deletions to the most recent list submitted under paragraph (1) on an ongoing basis based on the latest information available.

''(c) CONSULTATION.—The Secretary may consult with the head of any appropriate Federal department or agency in making the determinations described in subsection (a) and shall transmit a copy of each list submitted under subsection (b)(1) to the heads of each appropriate Federal department and agency.

''(d) DEFINITIONS.—In this section:

''(1) CHINESE MILITARY COMPANY.—The term 'Chinese military company'—

''(A) does not include natural persons; and

''(B) means an entity that is—

''(i)(I) directly or indirectly owned, controlled, or beneficially owned by, or in an official or unofficial capacity acting as an agent of or on behalf of, the People's Liberation Army or any other organization subordinate to the Central Military Commission of the Chinese Communist Party; or

''(II) identified as a military-civil fusion contributor to the Chinese defense industrial base; and

''(ii) engaged in providing commercial services, manufacturing, producing, or exporting.

''(2) MILITARY-CIVIL FUSION CONTRIBUTOR.—The term 'military-civil fusion contributor' includes any of the following:

''(A) Entities knowingly receiving assistance from the Government of China or the Chinese Communist Party through science and technology efforts initiated under the Chinese military industrial planning apparatus.

''(B) Entities affiliated with the Chinese Ministry of Industry and Information Technology, including research partnerships and projects.

''(C) Entities receiving assistance, operational direction or policy guidance from the State Administration for Science, Technology and Industry for National Defense.

''(D) Any entities or subsidiaries defined as a 'defense enterprise' by the State Council of the People's Republic of China.

''(E) Entities residing in or affiliated with a military-civil fusion enterprise zone or receiving assist-

ance from the Government of China through such enterprise zone.

''(F) Entities awarded with receipt of military production licenses by the Government of China, such as a Weapons and Equipment Research and Production Unit Classified Qualification Permit, Weapons and Equipment Research and Production Certificate, Weapons and Equipment Quality Management System Certificate, or Equipment Manufacturing Unit Qualification.

''(G) Entities that advertise on national, provincial, and non-governmental military equipment procurement platforms in the People's Republic of China.

''(H) Any other entities the Secretary determines is appropriate.

''(3) PEOPLE'S LIBERATION ARMY.—The term 'People's Liberation Army' means the land, naval, and air military services, the People's Armed Police, the Strategic Support Force, the Rocket Force, and any other related security element within the Government of China or the Chinese Communist Party that the Secretary determines is appropriate.''

REVIEW OF DEPARTMENT OF DEFENSE COMPLIANCE WITH ''PRINCIPLES RELATED TO THE PROTECTION OF MEDICAL CARE PROVIDED BY IMPARTIAL HUMANITARIAN ORGANIZATIONS DURING ARMED CONFLICTS''

Pub. L. 116–283, div. A, title XII, §1299J, Jan. 1, 2021, 134 Stat. 4012, provided that:

''(a) REVIEW.—Not later than 180 days after the date of the enactment of this Act [Jan. 1, 2021], the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives any available results of the review requested on October 3, 2016, by the Secretary of Defense of compliance of all relevant Department of Defense orders, rules of engagement, directives, regulations, policies, practices, and procedures, with the 'Principles Related to the Protection of Medical Care Provided by Impartial Humanitarian Organizations During Armed Conflicts'.

''(b) ADDITIONAL REQUIREMENT.—The Secretary of Defense shall continue to ensure that all Department of Defense orders, rules of engagement, directives, regulations, policies, practices, and procedures that were reviewed as described in subsection (a), including any other guidance, training, or standard operating procedures relating to the protection of health care during armed conflict, are consistent with the 'Principles Related to the Protection of Medical Care Provided by Impartial Humanitarian Organizations During Armed Conflicts'.''

INDEPENDENT ASSESSMENT ON GENDER AND COUNTERING VIOLENT EXTREMISM

Pub. L. 116–92, div. A, title X, §1047, Dec. 20, 2019, 133 Stat. 1588, provided that:

''(a) IN GENERAL.—The Secretary of Defense, in consultation with the Secretary of State, shall seek to enter into a contract with a nonprofit entity or a federally funded research and development center independent of the Department of Defense and the Department of State to conduct research and analysis on the relationship between gender and violent extremism.

''(b) ELEMENTS.—The research and analysis conducted under subsection (a) shall include consideration of the following:

''(1) The probable causes and historical trends of women's participation in violent extremist organizations.

''(2) Potential ways in which women's participation in violent extremism is likely to change in the near- and medium-term.

''(3) The relationship between violent extremism and each of the following:

''(A) Gender-based violence, abduction, and human trafficking.

''(B) The perceived role or value of women at the community level, including with respect to property and inheritance rights and bride-price and dowry.

''(C) Community opinions of killing or harming of women.

''(D) Violations of girls' rights, including child, early, and forced marriage and access to education.

''(4) Ways for the Department of Defense to engage and support women and girls who are vulnerable to extremist behavior and activities as a means to counter violent extremism and terrorism.

''(c) UTILIZATION.—The Secretary of Defense and the Secretary of State shall utilize the results of the research and analysis conducted under subsection (a) to inform the strategic and operational objectives of the geographic combatant command, where appropriate. Such utilization shall be in accordance with the Women, Peace, and Security Act of 2017 (Public Law 115–68; 22 U.S.C. 2152j et seq.).

''(d) REPORTS.—

''(1) IN GENERAL.—Not later than 270 days after the date of the enactment of this Act [Dec. 20, 2019], the nonprofit entity or federally funded research and development center with which the Secretary of Defense enters into the contract under subsection (a) shall submit to the Secretary of Defense and Secretary of State a report on the results of the research and analysis required by subsection (a).

''(2) SUBMISSION TO CONGRESS.—Not later than one year after the date of the enactment of this Act, the Secretary of Defense shall submit to the appropriate congressional committees each of the following:

''(A) A copy of the report submitted under paragraph (1) without change.

''(B) Any comments, changes, recommendations, or other information provided by the Secretary of Defense and the Secretary of State relating to the research and analysis required by subsection (a) and contained in such report.

''(3) APPROPRIATE CONGRESSIONAL COMMITTEES.—In this paragraph, the term 'appropriate congressional committees' means—

''(A) the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives];

''(B) the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives; and

''(C) the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate.''

TRANSMITTAL TO CONGRESS OF REQUESTS FOR ASSISTANCE FROM OTHER DEPARTMENTS OF THE FEDERAL GOVERNMENT THAT ARE APPROVED BY THE DEPARTMENT OF DEFENSE

Pub. L. 116–92, div. A, title XVII, §1707, Dec. 20, 2019, 133 Stat. 1799, provided that:

''(a) REQUESTS FOLLOWING APPROVAL.—Not later than seven calendar days after the Department of Defense approves a Request for Assistance from the Department of Homeland Security or the Department of Health and Human Services, the Secretary of Defense shall electronically transmit to the Committees on Armed Services of the Senate and the House of Representatives a copy of such Request for Assistance.

''(b) OFFICIAL RESPONSES TO APPROVED REQUESTS.—At the same time the Secretary of Defense submits to the Secretary of Homeland Security or the Secretary of Health and Human Services an official response of the Department of Defense approving a Request for Assistance from the Department of Homeland Security or the Department of Health and Human Services, as applicable, the Secretary of Defense shall electronically transmit to the Committees on Armed Services of the Senate and the House of Representatives a copy of such official response.''

ACTIONS TO INCREASE ANALYTIC SUPPORT

Pub. L. 116–92, div. A, title XVII, §1709, Dec. 20, 2019, 133 Stat. 1801, provided that:

''(a) IN GENERAL.—The Secretary of Defense shall direct the Under Secretary of Defense for Policy, the Director of the Joint Staff, and the Director of Cost Assessment and Program Evaluation, in consultation with the Secretary of each of the military services, to jointly develop and implement a plan to strengthen the analytic capabilities, expertise, and processes necessary to implement the national defense strategy, as required under section 113(g) of title 10, United States Code.

''(b) ELEMENTS.—The plan under subsection (a) shall include—

''(1) an assessment of the decision support capability of the Department of Defense to support decision-making, specifically the analytic expertise available to inform senior leader decisions that link national defense strategy objectives with approaches to competing effectively across the full spectrum of engagement against strategic competitors;

''(2) an analytic approach to force structure development, including an assessment of the major elements, products, and milestones of the force planning process of the Department;

''(3) the conclusions and recommendations of the Defense Planning and Analysis Community initiative;

''(4) the progress of the Department in implementing the recommendations of the Comptroller General of the United States set forth in Government Accountability Office Report (GAO-19-40C);

''(5) the progress of the Under Secretary, the Chairman of the Joint Chiefs of Staff, and the Director of Cost Assessment and Program Evaluation in implementing paragraph (5) of section 134(b) of title 10, United States Code, as added by section 902(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115-232); and

''(6) such other matters as the Secretary of Defense determines to be appropriate.

''(c) BRIEFING REQUIRED.—Not later than March 1, 2020, the Secretary of Defense shall provide to the congressional defense committees [Committees on Armed Services and Appropriations of Senate and House of Representatives] a briefing on the plan under subsection (a).''

OVERSIGHT OF DEPARTMENT OF DEFENSE EXECUTE ORDERS

Pub. L. 116–92, div. A, title XVII, §1744, Dec. 20, 2019, 133 Stat. 1842, provided that:

''(a) REVIEW OF EXECUTE ORDERS.—Not later than 30 days after receiving a written request by the Chairman or Ranking Member of a congressional defense committee, the Secretary of Defense shall provide the committee, including appropriately designated staff of the committee, with—

''(1) an execute order approved by the Secretary or the commander of a combatant command for review; and

''(2) a detailed briefing on such execute order.

''(b) EXCEPTION.—

''(1) IN GENERAL.—In extraordinary circumstances necessary to protect operations security or the sensitivity of the execute order, the Secretary may limit review of an execute order. A determination that extraordinary circumstances exist for purposes of this paragraph may only be made by the Secretary and the decision to limit the review of an execute order may not be delegated.

''(2) SUMMARY AND OTHER INFORMATION.—In extraordinary circumstances described in paragraph (1) with respect to an execute order, within 30 days of receiving a written request under subsection (a), the Secretary shall provide to the committee concerned, including appropriately designated staff of the committee—

''(A) a written explanation of the extraordinary circumstances that led to the determination by the Secretary to limit review of the execute order; and

''(B) a detailed summary of the execute order and other information necessary for the conduct of the oversight duties of the committee.

''(c) QUARTERLY REPORT.—Not later than 30 days after the date on which the budget of the President is submitted to Congress under section 1105(a) of title 31, United States Code, for fiscal year 2021 and every 90 days thereafter, the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of Senate and House of Representatives] a comprehensive report identifying and summarizing all execute orders approved by the Secretary or the commander of a combatant command in effect for the Department of Defense as of the date of the report.''

PROHIBITION AND REMOVAL OF NAMES RELATED TO THE CONFEDERACY ON DEPARTMENT OF DEFENSE ASSETS; COMMISSION ESTABLISHED

Pub. L. 116–283, div. A, title III, §370, Jan. 1, 2021, 134 Stat. 3553, provided that:

''(a) REMOVAL.—Not later than three years after the date of the enactment of this Act [Jan. 1, 2021], the Secretary of Defense shall implement the plan submitted by the commission described in paragraph (b) and remove all names, symbols, displays, monuments, and paraphernalia that honor or commemorate the Confederate States of America (commonly referred to as the 'Confederacy') or any person who served voluntarily with the Confederate States of America from all assets of the Department of Defense.

''(b) IN GENERAL.—The Secretary of Defense shall establish a commission relating to assigning, modifying, or removing of names, symbols, displays, monuments, and paraphernalia to assets of the Department of Defense that commemorate the Confederate States of America or any person who served voluntarily with the Confederate States of America.

''(c) DUTIES.—The Commission shall—

''(1) assess the cost of renaming or removing names, symbols, displays, monuments, or paraphernalia that commemorate the Confederate States of America or any person who served voluntarily with the Confederate States of America;

''(2) develop procedures and criteria to assess whether an existing name, symbol, monument, display, or paraphernalia commemorates the Confederate States of America or person who served voluntarily with the Confederate States of America;

''(3) recommend procedures for renaming assets of the Department of Defense to prevent commemoration of the Confederate States of America or any person who served voluntarily with the Confederate States of America;

''(4) develop a plan to remove names, symbols, displays, monuments, or paraphernalia that commemorate the Confederate States of America or any person who served voluntarily with the Confederate States of America from assets of the Department of Defense, within the timeline established by this Act; and

''(5) include in the plan procedures and criteria for collecting and incorporating local sensitivities associated with naming or renaming of assets of the Department of Defense.

''(d) MEMBERSHIP.—The Commission shall be composed of eight members, of whom—

''(1) four shall be appointed by the Secretary of Defense;

''(2) one shall be appointed by the Chairman of the Committee on Armed Services of the Senate;

''(3) one shall be appointed by the Ranking Member of the Committee on Armed Services of the Senate;

''(4) one shall be appointed by the Chairman of the Committee on Armed Services of the House of Representatives; and

''(5) one shall be appointed by the Ranking Member of the Committee on Armed Services of the House of Representatives.

''(e) APPOINTMENT.—Members of the Commission shall be appointed not later than 45 days after the date of the enactment of this Act [Jan. 1, 2021].

''(f) INITIAL MEETING.—The Commission shall hold its initial meeting on the date that is 60 days after the enactment of this Act.

"(g) BRIEFINGS AND REPORTS.—Not later than October 1, 2021, the Commission shall brief the Committees on Armed Services of the Senate and House of Representatives detailing the progress of the requirements under subsection (c). Not later than October 1, 2022, and not later than 90 days before the implementation of the plan in subsection (c)(4), the Commission shall present a briefing and written report detailing the results of the requirements under subsection (c), including:

"(1) A list of assets to be removed or renamed.

"(2) Costs associated with the removal or renaming of assets in subsection (g)(1).

"(3) Criteria and requirements used to nominate and rename assets in subsection (g)(1).

"(4) Methods of collecting and incorporating local sensitivities associated with the removal or renaming of assets in subsection (g)(1).

"(h) FUNDING.—

"(1) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated $2,000,000 to carry out this section.

"(2) OFFSET.—The amount authorized to be appropriated by the Act [sic] for fiscal year 2021 for Operations and Maintenance, Army, sub activity group 434 - other personnel support is hereby reduced by $2,000,000.

"(i) ASSETS DEFINED.—In this section, the term 'assets' includes any base, installation, street, building, facility, aircraft, ship, plane, weapon, equipment, or any other property owned or controlled by the Department of Defense.

"(j) EXEMPTION FOR GRAVE MARKERS.—Shall not cover monuments but shall exempt grave markers. [sic] Congress expects the commission to further define what constitutes a grave marker."

Pub. L. 116–92, div. A, title XVII, §1749, Dec. 20, 2019, 133 Stat. 1848, provided that:

"(a) PROHIBITION ON NAMES RELATED TO THE CONFEDERACY.—In naming a new asset or renaming an existing asset, the Secretary of Defense or the Secretary of a military department may not give a name to an asset that refers to, or includes a term referring to, the Confederate States of America (commonly referred to as the 'Confederacy'), including any name referring to—

"(1) a person who served or held leadership within the Confederacy; or

"(2) a Confederate battlefield victory.

"(b) ASSET DEFINED.—In this section, the term 'asset' includes any base, installation, facility, aircraft, ship, equipment, or any other property owned or controlled by the Department of Defense or a military department.

"(c) SAVINGS CLAUSE.—Nothing in this section may be construed as requiring a Secretary concerned to initiate a review of previously named assets."

INSTALLATION AND MAINTENANCE OF FIRE EXTINGUISHERS IN DEPARTMENT OF DEFENSE FACILITIES

Pub. L. 116–92, div. B, title XXVIII, §2861, Dec. 20, 2019, 133 Stat. 1899, provided that: "The Secretary of Defense shall ensure that portable fire extinguishers are installed and maintained in all Department of Defense facilities, in accordance with requirements of national model fire codes developed by the National Fire Protection Association and the International Code Council that require redundancy and extinguishers throughout occupancies regardless of the presence of other suppression systems or alarm systems."

ANNUAL REPORT ON CIVILIAN CASUALTIES IN CONNECTION WITH UNITED STATES MILITARY OPERATIONS

Pub. L. 115–91, div. A, title X, §1057, Dec. 12, 2017, 131 Stat. 1572, as amended by Pub. L. 115–232, div. A, title X, §1062, Aug. 13, 2018, 132 Stat. 1970; Pub. L. 116–92, div. A, title XVII, §1703(a), Dec. 20, 2019, 133 Stat. 1797, provided that:

"(a) ANNUAL REPORT REQUIRED.—Not later than May 1 each year, the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of Senate and House of Representatives] a report on civilian casualties caused as a result of United States military operations during the preceding year.

"(b) ELEMENTS.—Each report under subsection (a) shall set forth the following:

"(1) A list of all the United States military operations, including each specific mission, strike, engagement, raid, or incident, during the year covered by such report that were confirmed, or reasonably suspected, to have resulted in civilian casualties.

"(2) For each military operation listed pursuant to paragraph (1), each of the following:

"(A) The date.

"(B) The location.

"(C) An identification of whether the operation occurred inside or outside of a declared theater of active armed conflict.

"(D) The type of operation.

"(E) An assessment of the number of civilian and enemy combatant casualties, including a differentiation between those killed and those injured.

"(3) A description of the process by which the Department of Defense investigates allegations of civilian casualties resulting from United States military operations, including how the Department incorporates information from interviews with witnesses, civilian survivors of United States operations, and public reports or other nongovernmental sources.

"(4) A description of—

"(A) steps taken by the Department to mitigate harm to civilians in conducting such operations; and

"(B) in the case of harm caused by such an operation to a civilian, any ex gratia payment or other assistance provided to the civilian or the family of the civilian.

"(5) A description of any allegations of civilian casualties made by public or non-governmental sources formally investigated by the Department of Defense.

"(6) A description of the general reasons for any discrepancies between the assessments of the United States and reporting from nongovernmental organizations regarding non-combatant deaths resulting from strikes and operations undertaken by the United States.

"(7) The definitions of 'combatant' and 'non-combatant' used in the preparation of the report, which shall be consistent with the laws of armed conflict.

"(8) Any update or modification to any report under this section during a previous year.

"(9) Any other matters the Secretary of Defense determines are relevant.

"(c) USE OF SOURCES.—In preparing a report under this section, the Secretary of Defense shall take into account relevant and credible all-source reporting, including information from public reports and nongovernmental sources.

"(d) FORM.—Each report under subsection (a) shall be submitted in unclassified form, but may include a classified annex. The unclassified form of each report shall, at a minimum, be responsive to each element under subsection (b) of a report under subsection (a), and shall be made available to the public at the same time it is submitted to Congress (unless the Secretary certifies in writing that the publication of such information poses a threat to the national security interests of the United States).

"(e) SUNSET.—The requirement to submit a report under subsection (a) shall expire on the date that is seven years after the date of the enactment of this Act [Dec. 12, 2017]."

[Pub. L. 116–92, div. A, title XVII, §1703(b), Dec. 20, 2019, 133 Stat. 1797, provided that: "The Law Revision Counsel is directed to place such section 1057 [section 1057 of Pub. L. 115–91, set out above] in a note following section 113 of title 10, United States Code."]

DELEGATION OF FUNCTIONS

Functions of President under various sections delegated to Secretary of Defense, see Ex. Ord. No. 10621,

July 1, 1955, 20 F.R. 4759, as amended by Ex. Ord. No. 11294, Aug. 4, 1966, 31 F.R. 10601; see Ex. Ord. No. 10661, Feb. 27, 1956, 21 F.R. 1315; see Ex. Ord. No. 11390, Jan. 22, 1968, 33 F.R. 841; all set out as notes under section 301 of Title 3, The President.

EMERGENCY PREPAREDNESS FUNCTIONS

For assignment of certain emergency preparedness functions to Secretary of Defense, see Parts 1, 2, and 5 of Ex. Ord. No. 12656, Nov. 18, 1988, 53 F.R. 47491, set out as a note under section 5195 of Title 42, The Public Health and Welfare.

ORDER OF SUCCESSION

For order of succession during any period when the Secretary has died, resigned, or is otherwise unable to perform the functions and duties of the office of Secretary, see Ex. Ord. No. 13533, Mar. 1, 2010, 75 F.R. 10163, listed in a table under section 3345 of Title 5, Government Organization and Employees.

IMPROVED CRIME REPORTING

Pub. L. 115–232, div. A, title V, § 546, Aug. 13, 2018, 132 Stat. 1765, provided that:

''(a) TRACKING PROCESS.—The Secretary of Defense, in consultation with the secretaries of the military departments, shall establish a consolidated tracking process for the Department of Defense to ensure increased oversight of the timely submission of crime reporting data to the Federal Bureau of Investigation under section 922(g) of title 18, United States Code, and Department of Defense Instruction 5505.11, 'Fingerprint Card and Final Disposition Report Submission Requirements'. The tracking process shall, to the maximum extent possible, standardize and automate reporting and increase the ability of the Department to track such submissions.

''(b) LETTER REQUIRED.—Not later than July 1, 2019, the Secretary of Defense shall submit a letter to the Committees on Armed Services of the Senate and House of Representatives that details the tracking process under subsection (a).''

CRITICAL TECHNOLOGIES LIST

Pub. L. 115–232, div. A, title X, § 1049, Aug. 13, 2018, 132 Stat. 1961, provided that:

''(a) LIST REQUIRED.—The Secretary of Defense shall establish and maintain a list of acquisition programs, technologies, manufacturing capabilities, and research areas that are critical for maintaining the national security technological advantage of the United States over foreign countries of special concern. The list shall be accompanied by a justification for inclusion of items on the list, including specific performance and technical figures of merit.

''(b) USE OF LIST.—The Secretary may use the list required under subsection (a) to—

''(1) guide the recommendations of the Secretary in any interagency determinations conducted pursuant to Federal law relating to technology protection, including relating to export licensing, deemed exports, technology transfer, and foreign direct investment;

''(2) inform the Secretary while engaging in interagency processes on promotion and protection activities involving acquisition programs and technologies that are necessary to achieve and maintain the national security technology advantage of the United States and that are supportive of military requirements and strategies;

''(3) inform the Department's activities to integrate acquisition, intelligence, counterintelligence and security, and law enforcement to inform requirements, acquisition, programmatic, and strategic courses of action for technology protection;

''(4) inform development of research investment strategies and activities and develop innovation centers and an emerging technology industrial base through the employment of financial assistance from the United States Government through appropriate statutory authorities and programs;

''(5) identify opportunities for alliances and partnerships in key research and development areas to achieve and maintain a national security technology advantage; and

''(6) carry out such other purposes as identified by the Secretary.

''(c) PUBLICATION.—The Secretary shall—

''(1) publish the list required under subsection (a) by not later than December 31, 2018; and

''(2) update such list at least annually.''

GUIDANCE ON THE ELECTRONIC WARFARE MISSION AREA AND JOINT ELECTROMAGNETIC SPECTRUM OPERATIONS

Pub. L. 115–232, div. A, title X, § 1053, Aug. 13, 2018, 132 Stat. 1966, provided that:

''(a) PROCESSES AND PROCEDURES FOR INTEGRATION.—The Secretary of Defense shall—

''(1) establish processes and procedures to develop, integrate, and enhance the electronic warfare mission area and the conduct of joint electromagnetic spectrum operations in all domains across the Department of Defense; and

''(2) ensure that such processes and procedures provide for integrated defense-wide strategy, planning, and budgeting with respect to the conduct of such operations by the Department, including activities conducted to counter and deter such operations by malign actors.

''(b) DESIGNATED SENIOR OFFICIAL.—

''(1) IN GENERAL.—The Secretary shall designate a senior official of the Department of Defense (hereinafter referred to as the 'designated senior official'), who shall implement and oversee the processes and procedures established under subsection (a). The designated senior official shall be designated by the Secretary from among individuals serving in the Department as civilian employees or members of the Armed Forces who are, equivalent in grade or rank, at or below the level of Under Secretary of Defense. The designated senior official shall oversee the cross-functional team established pursuant to subsection (c) and serve as an ex-officio member of the Electronic Warfare Executive Committee established in March 2015.

''(2) RESPONSIBILITIES.—The designated senior official shall have, with respect to the implementation and oversight of the processes and procedures established under subsection (a), the following responsibilities:

''(A) Overseeing the implementation of the strategy developed by the Electronic Warfare Executive Committee for the conduct and execution of the electronic warfare mission area and joint electromagnetic spectrum operations by the Department, coordinated across all relevant elements of the Department, including both near-term and long-term guidance for the conduct of such operations.

''(B) Providing recommendations to the Electronic Warfare Executive Committee on resource allocation to support the capability development and investment in the electronic warfare and joint electromagnetic spectrum operation mission areas.

''(C) Proposing electronic warfare governance, management, organizational, and operational reforms to Secretary of Defense, after review and comment by the Electronic Warfare Executive Committee.

''(3) ANNUAL CERTIFICATION ON BUDGETING FOR CERTAIN CAPABILITIES.—Each budget for fiscal years 2020 through 2024 submitted by the President to Congress pursuant to section 1105(a) of title 31, United States Code, shall include the same information that was required to be submitted annually under section 1053(b) of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84; 123 Stat. 2459) for each of fiscal years 2011 through 2015 and an assessment by the senior designated official as to whether sufficient funds are requested in such budget for anticipated activities in such fiscal year for each of the following:

''(A) The development of an electromagnetic battle management capability for joint electromagnetic spectrum operations.

''(B) The establishment and operation of associated joint electromagnetic spectrum operations cells.

''(c) CROSS-FUNCTIONAL TEAM FOR ELECTRONIC WARFARE.—

''(1) ESTABLISHMENT REQUIRED.—The Secretary shall, in accordance with section 911(c) of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114–328; 130 Stat. 2345; 10 U.S.C. 111 note), establish a cross-functional team for electronic warfare in order to identify gaps in electronic warfare and joint electromagnetic spectrum operations, capabilities, and capacities within the Department across personnel, procedural, and equipment areas.

''(2) SPECIFIC DUTIES.—The cross-functional team established pursuant to paragraph (1) shall provide recommendations to the senior designated official to address gaps identified as described in that paragraph.

''(d) PLANS AND REQUIREMENTS FOR ELECTRONIC WARFARE.—

''(1) IN GENERAL.—The Secretary shall require the designated senior official to task the cross-functional team established pursuant to subsection (c) to develop requirements and specific plans for addressing personnel, capability, and capacity gaps in the electronic warfare mission area, and plans for future warfare in that domain (including maintaining a roadmap for the current future-years defense program under section 221 of title 10, United States Code).

''(2) UPDATE OF STRATEGY.—Not later than 180 days after the date of the enactment of this Act [Aug. 13, 2018], and biennially thereafter, the Electronic Warfare Executive Committee, in coordination with the cross-functional team shall—

''(A) update the strategy of the Department of Defense entitled 'The DOD Electronic Warfare Strategy' and dated June 2017, to include the roadmap developed by the cross-functional team pursuant to in paragraph (1); and

''(B) submit the updated strategy to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives].

''(3) ELEMENTS.—The requirements and plans and associated roadmap developed by the cross-functional team pursuant to paragraph (1) shall include the following:

''(A) An accounting of the efforts undertaken in support of the strategy referred to in paragraph (2)(A) and to implement applicable elements of Department of Defense Directive 3222.04, dated May 10, 2017, or any subsequent updates to such directive.

''(B) A description of any updates or changes to the strategy since its issuance, and a description of any anticipated updates or changes to the strategy as a result of the designation of the designated senior official.

''(C) An assessment of vulnerabilities identified in the May 2015 Electronic Warfare assessment by the Defense Science Board.

''(D) An assessment of the capability of joint forces to conduct joint electromagnetic spectrum operations against near-peer adversaries and any capability or capacity gaps in such capability that need to be addressed, including an assessment of the ability of joint forces to conduct coordinated military operations to exploit, attack, protect, and manage the electromagnetic environment in the signals intelligence, electronic warfare, and spectrum management mission areas, including the capability to conduct integrated cyber and electronic warfare on the battlefield, for all level 3 and level 4 contingency plans (as such plans are described in Joint Publication 5-0 of the Joint Chiefs of Staff, entitled 'Joint Planning' and dated June 16, 2017).

''(E) A review of the roles and functions of offices within the Joint Staff, the Office of the Secretary of Defense, and the combatant commands with primary responsibility for joint electromagnetic spectrum policy and operations.

''(F) A description of any assumptions about the roles and contributions of the Department, in coordination with other departments and agencies of the United States Government, with respect to the strategy.

''(G) A description of actions, performance metrics, and projected timelines for achieving key capabilities for electronic warfare and joint electromagnetic spectrum operations to correspond to the thematic goals identified in the strategy and as addressed by the roadmap.

''(H) An analysis of any personnel, resourcing, capability, authority, or other gaps to be addressed in order to ensure effective implementation of the strategy across all relevant elements of the Department, including an update on each of the following:

''(i) The development of an electromagnetic battle management capability for joint electromagnetic spectrum operations.

''(ii) The establishment and operation of joint electromagnetic spectrum operations cells at combatant command locations.

''(iii) The integration and synchronization of cyber and electromagnetic activities.

''(I) An investment framework and projected timeline for addressing any gaps described by subparagraph (H).

''(J) In consultation with the Director of the Defense Intelligence Agency—

''(i) comprehensive assessments of the electronic warfare capabilities of the Russian Federation and the People's Republic of China, which shall include—

''(I) electronic warfare doctrine;

''(II) order of battle on land, sea, air, space, and cyberspace; and

''(III) expected direction of technology and research over the next 10 years; and

''(ii) a review of vulnerabilities with respect to electronic systems, such as the Global Positioning System, and Department-wide abilities to conduct countermeasures in response to electronic warfare attacks.

''(K) A review of the sufficiency of experimentation, testing, and training infrastructure, ranges, instrumentation, and threat simulators required to support the development of electromagnetic spectrum capabilities.

''(L) A plan, and the estimated cost and schedule of implementing the plan, to conduct joint campaign modeling and wargaming for joint electromagnetic spectrum operations.

''(M) Any other matters as the Secretary considers appropriate.

''(4) PERIODIC STATUS REPORTS.—Not later than 90 days after the requirements and plans required by paragraph (1) are submitted in accordance with paragraph (2), and every 180 days thereafter during the three-year period beginning on the date such plans and requirements are first submitted in accordance with paragraph (2), the designated senior official shall submit to the congressional defense committees a report describing the status of the efforts of the Department in accomplishing the tasks specified in subparagraphs (A) through (I) and (K) through (M) of paragraph (3).

''(5) COMPREHENSIVE ASSESSMENTS AND REVIEW.—Not later than 270 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the congressional defense committees the comprehensive assessments and review required under paragraph (3)(J).

''(e) TRAINING AND EDUCATION.—Consistent with the elements under subsection (d)(3) of the plans and requirements required by subsection (d)(1), the cross-functional team established pursuant to subsection (c) shall provide the senior designated official recommendations for programs to provide training and education to such members of the Armed Forces and civilian employees of the Department as the Secretary

considers appropriate in order to ensure that such members and employees understand the roles and vulnerabilities associated with electronic warfare and dependence on the electromagnetic spectrum.''

UNITED STATES POLICY WITH RESPECT TO FREEDOM OF NAVIGATION AND OVERFLIGHT

Pub. L. 115–232, div. A, title X, §1086, Aug. 13, 2018, 132 Stat. 1992, provided that:

''(a) DECLARATION OF POLICY.—It is the policy of the United States to fly, sail, and operate throughout the oceans, seas, and airspace of the world wherever international law allows.

''(b) IMPLEMENTATION OF POLICY.—In furtherance of the policy set forth in subsection (a), the Secretary of Defense should—

''(1) plan and execute a robust series of routine and regular air and naval presence missions throughout the world and throughout the year, including for critical transportation corridors and key routes for global commerce;

''(2) in addition to the missions executed pursuant to paragraph (1), execute routine and regular air and maritime freedom of navigation operations throughout the year, in accordance with international law, including, but not limited to, maneuvers beyond innocent passage; and

''(3) to the maximum extent practicable, execute the missions pursuant to paragraphs (1) and (2) with regional partner countries and allies of the United States.''

REPORT ON MILITARY AND COERCIVE ACTIVITIES OF THE PEOPLE'S REPUBLIC OF CHINA IN SOUTH CHINA SEA

Pub. L. 115–232, div. A, title XII, §1262, Aug. 13, 2018, 132 Stat. 2061, provided that:

''(a) IN GENERAL.—Except as provided in subsection (d), immediately after the commencement of any significant reclamation, assertion of an excessive territorial claim, or militarization activity by the People's Republic of China in the South China Sea, including any significant military deployment or operation or infrastructure construction, the Secretary of Defense, in coordination with the Secretary of State, shall submit to the appropriate congressional committees, and release to the public, a report on the military and coercive activities of China in the South China Sea in connection with such activity.

''(b) ELEMENTS OF REPORT TO PUBLIC.—Each report on the commencement of a significant reclamation, an assertion of an excessive territorial claim, or a militarization activity under subsection (a) shall include a short narrative on, and one or more corresponding images of, such commencement of a significant reclamation, assertion of an excessive territorial claim, or militarization activity.

''(c) FORM.—

''(1) SUBMISSION TO CONGRESS.—Any report under subsection (a) that is submitted to the appropriate congressional committees shall be submitted in unclassified form, but may include a classified annex.

''(2) RELEASE TO PUBLIC.—If a report under subsection (a) is released to the public, such report shall be so released in unclassified form.

''(d) WAIVER.—

''(1) RELEASE OF REPORT TO PUBLIC.—The Secretary of Defense may waive the requirement in subsection (a) for the release to the public of a report on the commencement of any significant reclamation, an assertion of an excessive territorial claim, or a militarization activity by the People's Republic of China in the South China Sea if the Secretary determines that the release to the public of a report on such activity under that subsection in the form required by subsection (c)(2) would have an adverse effect on the national security interests of the United States.

''(2) NOTICE TO CONGRESS.—If the Secretary issues a waiver under paragraph (1) with respect to a report on an activity, not later than 48 hours after the Secretary issues such waiver, the Secretary shall submit to the appropriate congressional committees written notice of, and justification for, such waiver.

''(e) APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.—In this section, the term 'appropriate congressional committees' means—

''(1) the congressional defense committees [Committees on Armed Services and Appropriations of Senate and House of Representatives]; and

''(2) the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives.''

STRATEGIC PLAN TO IMPROVE CAPABILITIES OF DEPARTMENT OF DEFENSE TRAINING RANGES AND INSTALLATIONS

Pub. L. 115–232, div. B, title XXVIII, §2862, Aug. 13, 2018, 132 Stat. 2283, provided that:

''(a) PLAN REQUIRED.—The Secretary of Defense shall develop and implement a comprehensive strategic plan to identify and address deficits in the capabilities of Department of Defense training ranges to support current and anticipated readiness requirements to execute the National Defense Strategy (NDS).

''(b) EVALUATION.—As part of the preparation of the strategic plan, the Secretary shall conduct an evaluation of the following:

''(1) The adequacy of current training range resources to include the ability to train against near-peer or peer threats in a realistic 5th Generation environment.

''(2) The adequacy of current training enablers to meet current and anticipated demands of the Armed Forces.

''(c) ELEMENTS.—The strategic plan shall include the following:

''(1) An integrated priority list of location-specific proposals and/or infrastructure project priorities, with associated Department of Defense Form 1391 documentation, required to both address any limitations or constraints on current Department resources, including any climatically induced impacts or shortfalls, and achieve full spectrum training (integrating virtual and constructive entities into live training) against a more technologically advanced peer adversary.

''(2) Goals and milestones for tracking actions under the plan and measuring progress in carrying out such actions.

''(3) Projected funding requirements for implementing actions under the plan.

''(d) DEVELOPMENT AND IMPLEMENTATION.—The Under Secretary of Defense for Acquisition and Sustainment, as the principal staff assistant to the Secretary on installation management, shall have lead responsibility for developing and overseeing implementation of the strategic plan and for coordination of the discharge of the plan by components of the Department.

''(e) REPORT ON IMPLEMENTATION.—Not later than April 1, 2020, the Secretary shall, through the Under Secretary of Defense for Acquisition and Sustainment, submit to Congress a report on the progress made in implementing this section, including the following:

''(1) A description of the strategic plan.

''(2) A description of the results of the evaluation conducted under subsection (b).

''(3) Such recommendations as the Secretary considers appropriate with respect to improvements of the capabilities of training ranges and enablers.

''(f) PROGRESS REPORTS.—Not later than April 1, 2019, and annually thereafter for 3 years, the Secretary shall, through the Under Secretary, submit to Congress a report setting forth the following:

''(1) A description of the progress made during the preceding fiscal year in implementing the strategic plan.

''(2) A description of any additional actions taken, or to be taken, to address limitations and constraints on training ranges and enablers.

''(3) Assessments of individual training ranges addressing the evaluation conducted under subsection (b).

"(g) ADDITIONAL REPORT ELEMENT.—Each report under subsections (e) and (f) shall also include a list of significant modifications to training range inventory, such as range closures or expansions, during the preceding fiscal year, including any limitations or impacts due to climatic conditions."

IMPROVEMENT OF UPDATE PROCESS FOR POPULATING MISSION DATA FILES USED IN ADVANCED COMBAT AIRCRAFT

Pub. L. 115–91, div. A, title II, § 224, Dec. 12, 2017, 131 Stat. 1334, provided that:

"(a) IMPROVEMENTS TO UPDATE PROCESS.—

"(1) IN GENERAL.—The Secretary of Defense shall take such actions as may be necessary to improve the process used to update the mission data files used in advanced combat aircraft of the United States so that such updates can occur more quickly.

"(2) REQUIREMENTS.—In improving the process under paragraph (1), the Secretary shall ensure the following:

"(A) That under such process, updates to the mission data files are developed, operationally tested, and loaded onto systems of advanced combat aircraft while in theaters of operation in a time-sensitive manner to allow for the distinguishing of threats, including distinguishing friends from foes, loading and delivery of weapon suites, and coordination with allied and coalition armed forces.

"(B) When updates are made to the mission data files, all areas of responsibility (AoRs) are included.

"(C) The process includes best practices relating to such mission data files that have been identified by industry and allies of the United States.

"(D) The process improves the exchange of information between weapons systems of the United States and weapon systems of allies and partners of the United States, with respect to such mission data files.

"(b) CONSULTATION AND PILOT PROGRAMS.—In carrying out subsection (a), the Secretary shall consult the innovation organizations resident in the Department of Defense and may consider carrying out a pilot program under another provision of this Act [see Tables for classification].

"(c) REPORT.—Not later than March 31, 2018, the Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the actions taken by the Secretary under subsection (a)(1) and how the process described in such subsection has been improved."

DEPARTMENT OF DEFENSE ENGAGEMENT WITH COVERED NON-FEDERAL ENTITIES

Pub. L. 115–91, div. A, title X, § 1088, Dec. 12, 2017, 131 Stat. 1604, provided that:

"(a) REVIEW OF CURRENT GUIDANCE.—Not later than 120 days after the date of the enactment of this Act [Dec. 12, 2017], the Secretary of Defense and the Secretary of State shall jointly conduct a review of the guidance of the Department of Defense applicable to Department of Defense engagements with covered non-Federal entities.

"(b) ADDITIONAL GUIDANCE.—If the Secretary of Defense and the Secretary of State determine pursuant to the review under subsection (a) that additional guidance is required in connection with Department of Defense engagements with covered non-Federal entities, the Secretary of Defense, with the concurrence of the Secretary of State, shall, by not later than 180 days after the date of the enactment of this Act, issue such additional guidance as the Secretaries consider appropriate in light of the review. Any such additional guidance shall be consistent with—

"(1) applicable law, as in effect on the date of the enactment of this Act;

"(2) Department of Defense guidance with respect to solicitation and preferential treatment, as in effect on the date of the enactment of this Act, including such guidance specified in the Department of Defense Joint Ethics Regulations; and

"(3) the principle that the Department of State and the United States Agency for International Development are the principal United States agencies with primary responsibility for providing and coordinating humanitarian and economic assistance.

"(c) BRIEFING.—Not later than 150 days after the date of the enactment of this Act, the Secretary of Defense and the Secretary of State shall jointly provide to the Committees on Armed Services of the Senate and the House of Representatives, the Committee on Foreign Relations of the Senate, and the Committee on Foreign Affairs of the House of Representatives a briefing on the findings of the review required under subsection (a).

"(d) COVERED NON-FEDERAL ENTITY DEFINED.—In this section, the term 'covered non-Federal entity' means an organization that—

"(1) is based in the United States;

"(2) has an independent board of directors and is subject to independent financial audits;

"(3) is substantially privately-funded;

"(4) is described in section 501(c)(3) of the Internal Revenue Code of 1986 [26 U.S.C. 501(c)(3)] and is exempt from taxation under section 501(a) of such Code [26 U.S.C. 501(a)];

"(5) provides international assistance; and

"(6) has a stated mission of supporting United States military missions abroad."

NOTICE TO CONGRESS OF TERMS OF DEPARTMENT OF DEFENSE SETTLEMENT AGREEMENTS

Pub. L. 115–91, div. A, title X, § 1096, Dec. 12, 2017, 131 Stat. 1614, provided that:

"(a) REQUEST OF SETTLEMENT AGREEMENTS.—At the request of the Chairman, in coordination with the Ranking Member, of the Committee on Armed Services of the Senate or the House of Representatives or the Chairman, in coordination with the Ranking Member, of the Committee on Appropriations of the Senate or the House of Representatives, the Secretary of Defense shall make available (in an appropriate manner with respect to classified or other protected information) to the Chairman and Ranking Member of the requesting committee a settlement agreement (including a consent decree) in any civil action in a court of competent jurisdiction involving the Department of Defense, a military department, or a Defense Agency.

"(b) PROVISION OF SETTLEMENT AGREEMENTS.—The Secretary shall take all necessary steps to ensure the settlement agreement is provided to the Chairman and Ranking Member of the requesting committee, including by making any necessary requests to a court with competent jurisdiction over the settlement."

STRATEGY TO COUNTER THREATS BY THE RUSSIAN FEDERATION

Pub. L. 115–91, div. A, title XII, § 1239, Dec. 12, 2017, 131 Stat. 1666, provided that:

"(a) STRATEGY REQUIRED.—The Secretary of Defense, in coordination with the Secretary of State and in consultation with each of the Secretaries of the military departments, the Joint Chiefs of Staff, and the commanders of each of the regional and functional combatant commands, shall develop and implement a comprehensive strategy to counter threats by the Russian Federation.

"(b) REPORT REQUIRED.—

"(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act [Dec. 12, 2017], the Secretary of Defense shall submit to the appropriate congressional committees a report on the strategy required by subsection (a).

"(2) ELEMENTS.—The report required by this subsection shall include the following elements:

"(A) An evaluation of strategic objectives and motivations of the Russian Federation.

"(B) A detailed description of Russian threats to the national security of the United States, includ-

ing threats that may pose challenges below the threshold of armed conflict.

''(C) A discussion of how the strategy complements the National Defense Strategy and the National Military Strategy.

''(D) A discussion of the ends, ways, and means inherent to the strategy.

''(E) A discussion of the strategy's objectives with respect to deterrence, escalation control, and conflict resolution.

''(F) A description of the military activities across geographic regions and military functions and domains that are inherent to the strategy.

''(G) A description of the posture, forward presence, and readiness requirements inherent to the strategy.

''(H) A description of the roles of the United States Armed Forces in implementing the strategy, including—

''(i) the role of United States nuclear capabilities;

''(ii) the role of United States space capabilities;

''(iii) the role of United States cyber capabilities;

''(iv) the role of United States conventional ground forces;

''(v) the role of United States naval forces;

''(vi) the role of United States air forces; and

''(vii) the role of United States special operations forces.

''(I) An assessment of the force requirements needed to implement and sustain the strategy.

''(J) A description of the logistical requirements needed to implement and sustain the strategy.

''(K) An assessment of the technological research and development requirements needed to implement and sustain the strategy.

''(L) An assessment of the training and exercise requirements needed to implement and sustain the strategy.

''(M) An assessment of the budgetary resource requirements needed to implement and sustain the strategy through December 31, 2030.

''(N) An analysis of the adequacy of current authorities and command structures for countering unconventional warfare.

''(O) Recommendations for improving the counter-unconventional warfare capabilities, authorities, and command structures of the Department of Defense.

''(P) A discussion of how the strategy provides a framework for future planning and investments in regional defense initiatives, including the European Deterrence Initiative.

''(Q) A plan to increase conventional precision strike weapon stockpiles in the United States European Command's areas of responsibility, which shall include necessary increases in the quantities of such stockpiles that the Secretary of Defense determines will enhance deterrence and warfighting capability of the North Atlantic Treaty Organization forces.

''(R) A plan to counter the military capabilities of the Russian Federation, which, in addition to elements the Secretary of Defense determines to be appropriate, shall include recommendations for—

''(i) improving the capability of United States Armed Forces to operate in a Global Positioning System (GPS)-denied or GPS-degraded environment;

''(ii) improving the capability of United States Armed Forces to counter Russian unmanned aircraft systems, electronic warfare, and long-range precision strike capabilities; and

''(iii) countering unconventional capabilities and hybrid threats from the Russian Federation.

''(3) FORM.—The report required by this subsection shall be submitted in unclassified form but may contain a classified annex.''

CULTURAL HERITAGE PROTECTION COORDINATOR

Pub. L. 115–91, div. A, title XII, §1279C, Dec. 12, 2017, 131 Stat. 1702, provided that: ''Not later than 90 days after the date of the enactment of this Act [Dec. 12, 2017], the Secretary of Defense shall designate an employee of the Department of Defense to serve concurrently as the Coordinator for Cultural Heritage Protection, who shall be responsible for—

''(1) coordinating the existing obligations of the Department of Defense for the protection of cultural heritage, including the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, and other obligations for the protection of cultural heritage; and

''(2) coordinating with the Cultural Heritage Coordinating Committee convened by the Secretary of State for the national security interests of the United States, as appropriate.''

EXCEPTION TO LIMITATION AGAINST APPOINTMENT OF PERSONS AS SECRETARY OF DEFENSE WITHIN SEVEN YEARS OF RELIEF FROM ACTIVE DUTY AS REGULAR COMMISSIONED OFFICERS OF THE ARMED FORCES

Pub. L. 115–2, §1, Jan. 20, 2017, 131 Stat. 6, provided for an exception to the seven-year limitation under subsec. (a) of this section for the first person appointed as Secretary of Defense after Jan. 20, 2017.

PILOT PROGRAM ON MODERNIZATION AND FIELDING OF ELECTROMAGNETIC SPECTRUM WARFARE SYSTEMS AND ELECTRONIC WARFARE CAPABILITIES

Pub. L. 114–328, div. A, title II, §234, Dec. 23, 2016, 130 Stat. 2064, provided that:

''(a) PILOT PROGRAM.—

''(1) IN GENERAL.—The Secretary of Defense may carry out a pilot program on the modernization and fielding of electromagnetic spectrum warfare systems and electronic warfare systems.

''(2) SELECTION.—If the Secretary carries out the pilot program under paragraph (1), the Electronic Warfare Executive Committee shall select from the list described in section 240(b)(4) [130 Stat. 2070] a total of 10 electromagnetic spectrum warfare systems and electronic warfare systems across at least two military departments for modernization and fielding under the pilot program.

''(b) TERMINATION.—The pilot program authorized by subsection (a) shall terminate on September 30, 2023.

''(c) FUNDING.—For the purposes of this pilot program, funds authorized to be appropriated for electromagnetic spectrum warfare and electronic warfare may be used for the development and fielding of electromagnetic spectrum warfare systems and electronic warfare capabilities.

''(d) DEFINITIONS.—In this section:

''(1) The term 'electromagnetic spectrum warfare' means electronic warfare that encompasses military communications and sensing operations that occur in the electromagnetic operational domain.

''(2) The term 'electronic warfare' means military action involving the use of electromagnetic and directed energy to control the electromagnetic spectrum or to attack the enemy.''

IMPROVED DEPARTMENT OF DEFENSE PREVENTION OF AND RESPONSE TO HAZING IN THE ARMED FORCES

Pub. L. 114–328, div. A, title V, §549, Dec. 23, 2016, 130 Stat. 2129, provided that:

''(a) ANTI-HAZING DATABASE.—The Secretary of Defense shall provide for the establishment and use of a comprehensive and consistent data-collection system for the collection of reports, including anonymous reports, of incidents of hazing involving a member of the Armed Forces. The Secretary shall issue department-wide guidance regarding the availability and use of the database, including information on protected classes, such as race and religion, who are often the victims of hazing.

''(b) IMPROVED TRAINING.—Each Secretary of a military department, in consultation with the Chief of

Staff of each Armed Force under the jurisdiction of such Secretary, shall seek to improve training to assist members of the Armed Forces [to] better recognize, prevent, and respond to hazing at all command levels.

''(c) ANNUAL REPORTS ON HAZING.—

''(1) REPORT REQUIRED.—Not later than January 31 of each year through January 31, 2021, each Secretary of a military department, in consultation with the Chief of Staff of each Armed Force under the jurisdiction of such Secretary, shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report containing a description of efforts during the previous year—

''(A) to prevent and to respond to incidents of hazing involving members of the Armed Forces;

''(B) to track and encourage reporting, including reporting anonymously, incidents of hazing in the Armed Force; and

''(C) to ensure the consistent implementation of anti-hazing policies.

''(2) ADDITIONAL ELEMENTS.—Each report required by this subsection also shall address the same elements originally addressed in the anti-hazing reports required by section 534 of the National Defense Authorization Act for Fiscal Year 2013 (Public Law 112–239; 126 Stat. 1726 [1727]).''

NOTIFICATION ON THE PROVISION OF DEFENSE SENSITIVE SUPPORT

Pub. L. 114–328, div. A, title X, §1055, Dec. 23, 2016, 130 Stat. 2399, as amended by Pub. L. 115–232, div. A, title X, §1042, Aug. 13, 2018, 132 Stat. 1956; Pub. L. 116–92, div. A, title X, §1054, Dec. 20, 2019, 133 Stat. 1591, provided that:

''(a) LIMITATION.—The Secretary of Defense may provide defense sensitive support to a non-Department of Defense Federal department or agency only after the Secretary has determined that such support—

''(1) is consistent with the mission and functions of the Department of Defense;

''(2) does—

''(A) not significantly interfere with the mission or functions of the Department; or

''(B) interfere with the mission and functions of the Department of Defense but such support is in the national security interest of the United States; and

''(3) has been requested by the head of a non-Department of Defense Federal department or agency who has certified to the Secretary that the department or agency has reasonably attempted to use capabilities and resources internal to the department or agency.

''(b) NOTICE REQUIRED.—

''(1) IN GENERAL.—Except as provided in paragraph (3), before providing defense sensitive support to a non-Department of Defense Federal department or agency, the Secretary of Defense shall notify the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives], and, when the part of the Department of Defense providing the sensitive support is a member of the intelligence community, the congressional intelligence committees of the Secretary's intent to provide such support.

''(2) CONTENTS.—Notice provided under paragraph (1) shall include the following:

''(A) A description of the support to be provided.

''(B) A description of how the support is consistent with the mission and functions of the Department.

''(C) A description of the required duration of the support.

''(D) A description of the initial costs for the support.

''(E) A description of how the support—

''(i) does not significantly interfere with the mission or functions of the Department; or

''(ii) significantly interferes with the mission or functions of the Department but is in the national security interest of the United States.

''(3) TIME SENSITIVE SUPPORT.—In the event that the provision of defense sensitive support is time-sensitive, the Secretary—

''(A) may provide notification under paragraph (1) after providing the support; and

''(B) shall provide such notice as soon as practicable after providing such support, but not later than 48 hours after providing the support.

''(4) REVERSE DEFENSE SENSITIVE SUPPORT REQUEST.—The Secretary shall notify the congressional defense committees (and the congressional intelligence committees with respect to matters relating to members of the intelligence community) of requests made by the Secretary to a non-Department of Defense Federal department or agency for support that requires special protection from disclosure in the same manner and containing the same information as the Secretary notifies such committees of defense sensitive support requests under paragraphs (1) and (3).

''(5) SUSTAINMENT COSTS.—If the Secretary determines that sustainment costs will be incurred as a result of the provision of defense sensitive support, the Secretary, not later than 15 days after the initial provision of such support, shall certify to the congressional defense committees (and the congressional intelligence committees with respect to matters relating to members of the intelligence community) that such sustainment costs will not interfere with the ability of the Department to execute operations, accomplish mission objectives, and maintain readiness.

''(c) DEFENSE SENSITIVE SUPPORT DEFINED.—In this section, the term 'defense sensitive support' means support provided by the Department of Defense to a non-Department of Defense Federal department or agency that requires special protection from disclosure.''

WOMEN'S MILITARY SERVICE MEMORIALS AND MUSEUMS

Pub. L. 115–91, div. A, title III, §342, Dec. 12, 2017, 131 Stat. 1361, provided that:

''(a) IN GENERAL.—The Secretary of Defense may provide not more than $5,000,000 in financial support for the acquisition, installation, and maintenance of exhibits, facilities, historical displays, and programs at military service memorials and museums that highlight the role of women in the military. The Secretary may enter into a contract, partnership, or grant with a nonprofit organization for the purpose of performing such acquisition, installation, and maintenance.

''(b) PURPOSES.—The contracts, partnerships, or grants shall be limited to serving the purposes of—

''(1) preserving the history of the 3,000,000 women who have served in the United States Armed Forces;

''(2) managing an archive of artifacts, historic memorabilia, and documents related to servicewomen;

''(3) maintaining a women veterans' oral history program; and

''(4) conducting other educational programs related to women in service.''

Pub. L. 114–328, div. B, title XXVIII, §2833, Dec. 23, 2016, 130 Stat. 2740, provided that:

''(a) AUTHORIZATION.—The Secretary of Defense may provide not more than $5,000,000 in financial support for the acquisition, installation, and maintenance of exhibits, facilities, historical displays, and programs at military service memorials and museums that highlight the role of women in the military. The Secretary may enter into a contract with a nonprofit organization for the purpose of performing such acquisition, installation, and maintenance.

''(b) OFFSET.—Of the funds authorized to be appropriated by section 301 [130 Stat. 2072] for operation and maintenance, Army, and available for the National Museum of the United States Army, not more than $5,000,000 shall be provided, at the discretion of the Secretary of Defense, to carry out activities under subsection (a).''

STRATEGIC FRAMEWORK FOR DEPARTMENT OF DEFENSE SECURITY COOPERATION

Pub. L. 114–92, div. A, title XII, § 1202, Nov. 25, 2015, 129 Stat. 1036, provided that:

''(a) STRATEGIC FRAMEWORK.—

''(1) IN GENERAL.—The Secretary of Defense, in consultation with the Secretary of State, shall develop and issue to the Department of Defense a strategic framework for Department of Defense security cooperation to guide prioritization of resources and activities.

''(2) ELEMENTS.—The strategic framework required by paragraph (1) shall include the following:

''(A) Discussion of the strategic goals of Department of Defense security cooperation programs, overall and by combatant command, and the extent to which these programs—

''(i) support broader strategic priorities of the Department of Defense; and

''(ii) complement and are coordinated with Department of State security assistance programs to achieve United States Government goals globally, regionally, and, if appropriate, within specific programs.

''(B) Identification of the primary objectives, priorities, and desired end-states of Department of Defense security cooperation programs.

''(C) Identification of challenges to achieving the primary objectives, priorities, and desired end-states identified under subparagraph (B), including—

''(i) constraints on Department of Defense resources, authorities, and personnel;

''(ii) partner nation variables and conditions, such as political will, absorptive capacity, corruption, and instability risk, that impact the likelihood of a security cooperation program achieving its primary objectives, priorities, and desired end-states;

''(iii) constraints or limitations due to bureaucratic impediments, interagency processes, or congressional requirements;

''(iv) validation of requirements; and

''(v) assessment, monitoring, and evaluation.

''(D) A methodology for assessing the effectiveness of Department of Defense security cooperation programs in making progress toward achieving the primary objectives, priorities, and desired end-states identified under subparagraph (B), including an identification of key benchmarks for such progress.

''(E) Any other matters the Secretary of Defense determines appropriate.

''(3) FREQUENCY.—The Secretary of Defense shall, at a minimum, update the strategic framework required by paragraph (1) on a biennial basis and shall update or supplement the strategic framework as appropriate to address emerging priorities.

''(b) REPORT.—

''(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act [Nov. 25, 2015], and on a biennial basis thereafter, the Secretary of Defense, in consultation with the Secretary of State, shall submit to the appropriate congressional committees a report on the strategic framework required by subsection (a).

''(2) FORM.—The report required by paragraph (1) shall be submitted in an unclassified form, but may include a classified annex.

''(3) DEFINITION.—In this subsection, the term 'appropriate congressional committees' means—

''(A) the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives]; and

''(B) the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives.

''(c) SUNSET.—This section shall cease to be effective on the date that is 6 years after the date of the enactment of this Act.''

ROLE OF SECRETARY OF DEFENSE IN DEVELOPMENT OF GENDER-NEUTRAL OCCUPATIONAL STANDARDS

Pub. L. 113–291, div. A, title V, § 524(a), Dec. 19, 2014, 128 Stat. 3361, as amended by Pub. L. 114–92, div. A, title V, § 525, Nov. 25, 2015, 129 Stat. 813, provided that: ''The Secretary of Defense shall ensure that the gender-neutral occupational standards being developed by the Secretaries of the military departments pursuant to section 543 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160; 10 U.S.C. 113 note), as amended by section 523 of the National Defense Authorization Act for Fiscal Year 2014 (Public Law 113–66; 127 Stat. 756)—

''(1) accurately predict performance of actual, regular, and recurring duties of a military occupation;

''(2) are applied equitably to measure individual capabilities; and

''(3) measure the combat readiness of combat units, including special operations forces.''

FEMALE PERSONAL PROTECTION GEAR

Pub. L. 113–291, div. A, title V, § 524(b), Dec. 19, 2014, 128 Stat. 3362, provided that: ''The Secretary of Defense shall direct each Secretary of a military department to take immediate steps to ensure that combat equipment distributed to female members of the Armed Forces—

''(1) is properly designed and fitted; and

''(2) meets required standards for wear and survivability.''

OFFICE OF NET ASSESSMENT

Pub. L. 113–291, div. A, title IX, § 904, Dec. 19, 2014, 128 Stat. 3471, provided that:

''(a) INDEPENDENT OFFICE REQUIRED.—The Secretary of Defense shall establish and maintain an independent organization within the Department of Defense to develop and coordinate net assessments of the standing, trends, and future prospects of the military capabilities and potential of the United States in comparison with the military capabilities and potential of other countries or groups of countries, so as to identify emerging or future threats or opportunities for the United States.

''(b) DIRECT REPORT TO THE SECRETARY OF DEFENSE.—The head of the office established and maintained pursuant to subsection (a) shall report directly to the Secretary of Defense without intervening authority and may communicate views on matters within the responsibility of the office directly to the Secretary without obtaining the approval or concurrence of any other official within the Department of Defense.''

CLARIFICATION OF POLICIES ON MANAGEMENT OF SPECIAL USE AIRSPACE OF DEPARTMENT OF DEFENSE

Pub. L. 113–291, div. A, title X, § 1076, Dec. 19, 2014, 128 Stat. 3519, required the Secretary of Defense to issue guidance, no later than 90 days after Dec. 19, 2014, to clarify the policies of the Department with respect to special use airspace and to provide a briefing, no later than 120 days after Dec. 19, 2014, on the status of implementing the guidance.

PROVISION OF MILITARY SERVICE RECORDS TO THE SECRETARY OF VETERANS AFFAIRS IN AN ELECTRONIC FORMAT

Pub. L. 113–66, div. A, title V, § 525, Dec. 26, 2013, 127 Stat. 757, provided that:

''(a) PROVISION IN ELECTRONIC FORMAT.—In accordance with subsection (b), the Secretary of Defense, in consultation with the Secretary of Veterans Affairs, shall make the covered records of each member of the Armed Forces available to the Secretary of Veterans Affairs in an electronic format.

''(b) DEADLINE FOR PROVISION OF RECORDS.—With respect to a member of the Armed Forces who is discharged or released from the Armed Forces on or after January 1, 2014, the Secretary of Defense shall ensure that the covered records of the member are made avail-

able to the Secretary of Veterans Affairs not later than 90 days after the date of the member's discharge or release.

''(c) SHARING OF PROTECTED HEALTH INFORMATION.—For purposes of the regulations promulgated under section 264(c) of the Health Insurance Portability and Accountability Act of 1996 (Public Law 104–191; 42 U.S.C. 1320d–2 note), making medical records available to the Secretary of Veterans Affairs under subsection (a) shall be treated as a permitted disclosure.

''(d) RECORDS CURRENTLY AVAILABLE TO SECRETARY OF VETERANS AFFAIRS.—The Secretary of Veterans Affairs, in consultation with the Secretary of Defense, shall ensure that the covered records of members of the Armed Forces that are available to the Secretary of Veterans Affairs as of the date of the enactment of this Act [Dec. 26, 2013] are made electronically accessible and available as soon as practicable after that date to the Veterans Benefits Administration.

''(e) COVERED RECORDS DEFINED.—In this section, the term 'covered records' means, with respect to a member of the Armed Forces—

''(1) service treatment records;

''(2) accompanying personal records;

''(3) relevant unit records; and

''(4) medical records created by reason of treatment or services received pursuant to chapter 55 of title 10, United States Code.''

STRATEGY FOR FUTURE MILITARY INFORMATION OPERATIONS CAPABILITIES

Pub. L. 113–66, div. A, title X, § 1096, Dec. 26, 2013, 127 Stat. 880, provided that:

''(a) STRATEGY REQUIRED.—The Secretary of Defense shall develop and implement a strategy for developing and sustaining through fiscal year 2020 information operations capabilities for future contingencies. The Secretary shall submit such strategy to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] by not later than 180 days after the date of the enactment of this Act [Dec. 26, 2013].

''(b) CONTENTS OF STRATEGY.—The strategy required by subsection (a) shall include each of the following:

''(1) A plan for the sustainment of existing capabilities that have been developed during the ten-year period prior to the date of the enactment of this Act, including such capabilities developed using funds authorized to be appropriated for overseas contingency operations determined to be of enduring value for continued sustainment.

''(2) A discussion of how the capabilities referred to in paragraph (1) are integrated into policy, doctrine, and operations.

''(3) An assessment of the force structure that is required to sustain operational planning and potential contingency operations, including the integration across the active and reserve components.

''(4) Estimates of the steady-state resources needed to support the force structure referred to in paragraph (3), as well as estimates for resources that might be needed based on selected operational plans, contingency plans, and named operations.

''(5) An assessment of the impact of how new and emerging technologies can be incorporated into policy, doctrine, and operations.

''(6) A description of ongoing research into new capabilities that may be needed to fill any identified gaps and programs that might be required to develop such capabilities.

''(7) Potential policy implications or legal challenges that may prevent the integration of new and emerging technologies into the projected force structure.

''(8) Potential policy implications or challenges to the better leveraging of capabilities from interagency partners.''

PROHIBITION OF RETALIATION AGAINST MEMBERS OF THE ARMED FORCES FOR REPORTING A CRIMINAL OFFENSE

Pub. L. 113–66, div. A, title XVII, § 1709(a), (b), Dec. 26, 2013, 127 Stat. 962, as amended by Pub. L. 113–291, div. A, title X, § 1071(g)(5), Dec. 19, 2014, 128 Stat. 3511, required the prescription, no later than 120 days after Dec. 26, 2013, of regulations prohibiting retaliation against an alleged victim or other member of the Armed Forces who reports a criminal offense.

REVIEW AND POLICY REGARDING DEPARTMENT OF DEFENSE INVESTIGATIVE PRACTICES IN RESPONSE TO ALLEGATIONS OF UNIFORM CODE OF MILITARY JUSTICE VIOLATIONS

Pub. L. 113–66, div. A, title XVII, § 1732, Dec. 26, 2013, 127 Stat. 975, required a review, by no later than 180 days after Dec. 26, 2013, of the practices of the military criminal investigative organizations in response to allegations of Uniform Code of Military Justice violations and required the development of a uniform policy regarding the use of case determinations to record the results of investigations of such allegations.

DESIGNATION OF DEPARTMENT OF DEFENSE SENIOR OFFICIAL FOR ENTERPRISE RESOURCE PLANNING SYSTEM DATA CONVERSION

Pub. L. 112–239, div. A, title IX, § 903, Jan. 2, 2013, 126 Stat. 1866, directed the designation, by no later than 90 days after Jan. 2, 2013, of a Department of Defense senior official with principal responsibility for coordination and management oversight of data conversion for all enterprise resource planning systems of the Department.

ELECTRONIC WARFARE STRATEGY OF THE DEPARTMENT OF DEFENSE

Pub. L. 112–239, div. A, title X, § 1061(a), (b), Jan. 2, 2013, 126 Stat. 1939, directed the Secretary of Defense to review and update guidance related to electronic warfare and directed the Commander of the United States Strategic Command to update and issue guidance regarding the responsibilities of the Command with regard to joint electronic warfare capabilities.

UNITED STATES PARTICIPATION IN HEADQUARTERS EUROCORPS

Pub. L. 112–239, div. A, title XII, § 1275, Jan. 2, 2013, 126 Stat. 2027, provided that:

''(a) PARTICIPATION AUTHORIZED.—The Secretary of Defense may, with the concurrence of the Secretary of State, authorize the participation of members of the Armed Forces as members of the staff of Headquarters Eurocorps for the purpose of supporting the North Atlantic Treaty Organization (NATO) activities of the NATO Rapid Deployable Corps Eurocorps.

''(b) MEMORANDUM OF UNDERSTANDING.—

''(1) REQUIREMENT.—The participation of members of the Armed Forces as members of the staff of Headquarters Eurocorps shall be in accordance with the terms of one or more memoranda of understanding entered into by the Secretary of Defense, with the concurrence of the Secretary of State, and Headquarters Eurocorps.

''(2) COST-SHARING ARRANGEMENTS.—If Department of Defense facilities, equipment, or funds are used to support Headquarters Eurocorps, the memoranda of understanding under paragraph (1) shall provide details of any cost-sharing arrangement or other funding arrangement.

''(c) LIMITATION ON NUMBER OF MEMBERS PARTICIPATING AS STAFF.—Not more than two members of the Armed Forces may participate as members of the staff of Headquarters Eurocorps, until the Secretary of Defense submits to the Committees on Armed Services of

the Senate and the House of Representatives a report setting forth the following:

''(1) A certification by the Secretary of Defense that the participation of more than two members of the Armed Forces in Headquarters Eurocorps is in the national interests of the United States.

''(2) A description of the benefits of the participation of the additional members proposed by the Secretary.

''(3) A description of the plans for the participation of the additional members proposed by the Secretary, including the grades and posts to be filled.

''(4) A description of the costs associated with the participation of the additional members proposed by the Secretary.

''(d) NOTICE ON PARTICIPATION OF NUMBER OF MEMBERS ABOVE CERTAIN CEILING.—Not more than 10 members of the Armed Forces may participate as members of the staff of Headquarters Eurocorps unless the Secretary of Defense submits to the Committees on Armed Services of the Senate and the House of Representatives a notice that the number of members so participating will exceed 10 members.

''(e) AVAILABILITY OF APPROPRIATED FUNDS.—

''(1) AVAILABILITY.—Funds appropriated to the Department of Defense for operation and maintenance are available as follows:

''(A) To pay the United States' share of the operating expenses of Headquarters Eurocorps.

''(B) To pay the costs of the participation of members of the Armed Forces participating as members of the staff of Headquarters Eurocorps, including the costs of expenses of such participants.

''(2) LIMITATION.—No funds may be used under this section to fund the pay or salaries of members of the Armed Forces who participate as members of the staff of the Headquarters, North Atlantic Treaty Organization (NATO) Rapid Deployable Corps under this section.

''(f) HEADQUARTERS EUROCORPS DEFINED.—In this section, the term 'Headquarters Eurocorps' refers to the multinational military headquarters, established on October 1, 1993, which is one of the High Readiness Forces (Land) associated with the Allied Rapid Reaction Corps of NATO.''

STRATEGY TO COUNTER IMPROVISED EXPLOSIVE DEVICES IN PAKISTAN AND AFGHANISTAN

Pub. L. 112–87, title V, § 503, Jan. 3, 2012, 125 Stat. 1896, directed the establishment of a strategy to identify and counter network activity and operations in Pakistan and Afghanistan regarding improvised explosive devices and required a report and implementation of the strategy no later than 120 days after Jan. 3, 2012.

DESIGNATION OF DEPARTMENT OF DEFENSE SENIOR OFFICIAL WITH PRINCIPAL RESPONSIBILITY FOR AIRSHIP PROGRAMS

Pub. L. 112–81, div. A, title IX, § 903, Dec. 31, 2011, 125 Stat. 1532, directed the Secretary of Defense to designate an official to have principal responsibility for the airship programs of the Department and to set forth the responsibilities of that official by no later than 180 days after Dec. 31, 2011.

AUTHORITY TO SUPPORT OPERATIONS AND ACTIVITIES OF THE OFFICE OF SECURITY COOPERATION IN IRAQ

Pub. L. 112–81, div. A, title XII, § 1215, Dec. 31, 2011, 125 Stat. 1631, as amended by Pub. L. 112–239, div. A, title XII, § 1211(a)–(c), Jan. 2, 2013, 126 Stat. 1982; Pub. L. 113–66, div. A, title XII, § 1214(a)–(c), Dec. 26, 2013, 127 Stat. 906; Pub. L. 113–291, div. A, title XII, § 1237, Dec. 19, 2014, 128 Stat. 3562; Pub. L. 114–92, div. A, title XII, § 1221, Nov. 25, 2015, 129 Stat. 1047; Pub. L. 114–328, div. A, title XII, § 1223, Dec. 23, 2016, 130 Stat. 2486; Pub. L. 115–91, div. A, title XII, § 1224(a), (b)(1), (c), Dec. 12, 2017, 131 Stat. 1654; Pub. L. 115–232, div. A, title XII, § 1235(a), (b)(1), (c), Aug. 13, 2018, 132 Stat. 2041, 2042; Pub. L. 116–92, div. A, title XII, § 1223, Dec. 20, 2019, 133 Stat. 1641; Pub. L. 116–283, div. A, title XII, § 1223, Jan. 1, 2021, 134 Stat. 3930, provided that:

''(a) AUTHORITY.—The Secretary of Defense may support United States Government security cooperation activities in Iraq by providing funds for the operations and activities of the Office of Security Cooperation in Iraq.

''(b) TYPES OF SUPPORT.—The operations and activities for which the Secretary may provide funds under the authority in subsection (a) may include life support and transportation and personal security.

''(c) LIMITATION ON AMOUNT.—The total amount of funds provided under the authority in subsection (a) in fiscal year 2021 may not exceed $25,000,000.

''(d) SOURCE OF FUNDS.—Funds for purposes of subsection (a) for fiscal year 2021 shall be derived from amounts available for that fiscal year for operation and maintenance for the Air Force.

''(e) COVERAGE OF COSTS IN CONNECTION WITH SALES OF DEFENSE ARTICLES OR DEFENSE SERVICES TO IRAQ.—The President shall ensure that any letter of offer for the sale to Iraq of any defense articles or defense services issued after the date of the enactment of this Act [Dec. 31, 2011] includes appropriate administrative charges, consistent with the provisions of the Arms Export Control Act (22 U.S.C. 2751 et seq.).

''(f) ADDITIONAL AUTHORITY FOR ACTIVITIES OF OSCI.—

''(1) IN GENERAL.—During fiscal year 2019, the Secretary of Defense, with the concurrence of the Secretary of State, may authorize the Office of Security Cooperation in Iraq to conduct activities to support the following:

''(A) Defense institution building to mitigate capability gaps and promote effective and sustainable defense institutions.

''(B) Professionalization, strategic planning and reform, financial management, manpower management, and logistics management of military and other security forces with a national security mission.

''(2) REQUIRED ELEMENTS.—The activities of the Office of Security Cooperation in Iraq conducted under paragraph (1) shall include elements that promote the following:

''(A) Observance of and respect for human rights and fundamental freedoms.

''(B) Military professionalism.

''(C) Respect for legitimate civilian authority within Iraq.

''(3) SUNSET.—The authority provided in this subsection shall terminate on the date that is 90 days after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2020 [Pub. L. 116–92, approved Dec. 20, 2019].

''(g) REPORTS.—

''(1) IN GENERAL.—Not later than September 30, 2020, and every 180 days thereafter until the authority in this section expires, the Secretary of Defense shall, in consultation with the Secretary of State, submit to the appropriate committees of Congress a report on the activities of the Office of Security Cooperation in Iraq.

''(2) ELEMENTS.—Each report under this subsection shall include the following:

''(A) A description of capability gaps in the security forces of Iraq that also addresses capability gaps relating to intelligence matters, protection of Iraq airspace, and logistics and maintenance, and a description of the extent, if any, to which the Government of Iraq has requested assistance in addressing such capability gaps.

''(B) A description of the activities of the Office of Security Cooperation in Iraq and the extent, if any, to which United States security assistance and security cooperation activities are intended to address the capability gaps described pursuant to subparagraph (A).

''(C) A description of how the activities of the Office of Security Cooperation in Iraq are coordinated with, and complement and enhance, the assistance

provided pursuant to section 1236 of the Carl Levin and Howard P. 'Buck' McKeon National Defense Authorization Act for Fiscal Year 2015.

''(D) A description of end use monitoring programs, and any other programs or procedures, used to improve accountability for equipment provided to the Government of Iraq.

''(E) A description of the measures of effectiveness used to evaluate the activities of the Office of the Security Cooperation in Iraq, and an analysis of any determinations to expand, alter, or terminate specific activities of the Office based on such evaluations.

''(F) An evaluation of the effectiveness of United States efforts to promote respect for human rights, military professionalism, and respect for legitimate civilian authority in Iraq.

''(3) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this subsection, the term 'appropriate committees of Congress' means—

''(A) the Committee on Armed Services, the Committee on Foreign Relations, and the Committee on Appropriations of the Senate; and

''(B) the Committee on Armed Services, the Committee on Foreign Affairs, and the Committee on Appropriations of the House of Representatives.

''(h) LIMITATION ON AVAILABILITY OF FUNDS.—Of the amount made available for fiscal year 2021 to carry out this section, not more than $15,000,000 may be obligated or expended for the Office of Security Cooperation in Iraq until the date on which the Secretary of Defense provides to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives], the Committee on Foreign Affairs of the House of Representatives, and the Committee on Foreign Relations of the Senate the following:

''(1) A staffing plan to reorganize the Office in a manner similar to that of other security cooperation offices in the region that—

''(A) emphasizes the placement of personnel with regional or security cooperation expertise in key leadership positions;

''(B) closes duplicative or extraneous sections;

''(C) includes the number and type of validated billets funded by the Department of Defense necessary to support the Office; and

''(D) outlines the process and provides a timeline for validating billets funded by the Department of State necessary to support the Office.

''(2) A progress report with respect to the initiation of bilateral engagement with the Government of Iraq with the objective of establishing a joint mechanism for security assistance planning, including a five-year security assistance roadmap for developing sustainable military capacity and capabilities and enabling defense institution building and reform.

''(3) A plan to transition the preponderance of funding for the activities of the Office from current sources to the Foreign Military Financing Administrative Fund and the Foreign Military Sales Trust Fund Administrative Surcharge Account in future years.''

[Section 1235(b)(1)(B) and (c) of Pub. L. 115–232 made identical amendment to subsec. (d) of section 1215 of Pub. L. 112–81, set out above.]

COUNTER-IMPROVISED EXPLOSIVE DEVICE INITIATIVES DATABASE

Pub. L. 111–383, div. A, title I, §124, Jan. 7, 2011, 124 Stat. 4159, provided that:

''(a) COMPREHENSIVE DATABASE.—

''(1) IN GENERAL.—The Secretary of Defense, acting through the Director of the Joint Improvised Explosive Device Defeat Organization, shall develop and maintain a comprehensive database containing appropriate information for coordinating, tracking, and archiving each counter-improvised explosive device initiative within the Department of Defense. The database shall, at a minimum, ensure the visibility of each counter-improvised explosive device initiative.

''(2) USE OF INFORMATION.—Using information contained in the database developed under paragraph (1), the Secretary, acting through the Director of the Joint Improvised Explosive Device Defeat Organization, shall—

''(A) identify and eliminate redundant counter-improvised explosive device initiatives;

''(B) facilitate the transition of counter-improvised explosive device initiatives from funding under the Joint Improvised Explosive Device Defeat Fund to funding provided by the military departments; and

''(C) notify the appropriate personnel and organizations prior to a counter-improvised explosive device initiative being funded through the Joint Improvised Explosive Device Defeat Fund.

''(3) COORDINATION.—In carrying out paragraph (1), the Secretary shall ensure that the Secretary of each military department coordinates and collaborates on development of the database to ensure its interoperability, completeness, consistency, and effectiveness.

''(b) METRICS.—The Secretary of Defense, acting through the Director of the Joint Improvised Explosive Device Defeat Organization, shall—

''(1) develop appropriate means to measure the effectiveness of counter-improvised explosive device initiatives; and

''(2) prioritize the funding of such initiatives according to such means.

''(c) COUNTER-IMPROVISED EXPLOSIVE DEVICE INITIATIVE DEFINED.—In this section, the term 'counter-improvised explosive device initiative' means any project, program, or research activity funded by any component of the Department of Defense that is intended to assist or support efforts to counter, combat, or defeat the use of improvised explosive devices.''

PROGRAMS TO COMMEMORATE ANNIVERSARIES OF THE KOREAN WAR

Pub. L. 111–383, div. A, title V, §574, Jan. 7, 2011, 124 Stat. 4223, authorized the Secretary of Defense to conduct a program to commemorate the 60th anniversary of the Korean War, authorized the establishment of a Department of Defense Korean War Commemoration Fund, and directed the Inspector General of the Department of Defense to submit to Congress a report containing an accounting of various funds no later than 60 days after the end of the commemorative program.

Pub. L. 105–85, div. A, title X, §1083, Nov. 18, 1997, 111 Stat. 1918, as amended by Pub. L. 105–129, §1(b)(1), Dec. 1, 1997, 111 Stat. 2551; Pub. L. 105–261, div. A, title X, §1067(a), (c), Oct. 17, 1998, 112 Stat. 2134; Pub. L. 106–65, div. A, title X, §1052(a), (b)(1), (c), Oct. 5, 1999, 113 Stat. 764; Pub. L. 107–107, div. A, title X, §1048(g)(6), (i)(1), Dec. 28, 2001, 115 Stat. 1228, 1229; Pub. L. 107–314, div. A, title X, §1069, Dec. 2, 2002, 116 Stat. 2660, authorized the Secretary of Defense to conduct a program to commemorate the 50th anniversary of the Korean War during fiscal years 2000 through 2004, provided that up to $10,000,000 of funds appropriated for the Army for such fiscal years be made available for the program, and directed the Secretary to submit to Congress a report containing an accounting not later than 60 days after completion of all activities and ceremonies.

REPORT ON ORGANIZATIONAL STRUCTURE AND POLICY GUIDANCE OF THE DEPARTMENT OF DEFENSE REGARDING INFORMATION OPERATIONS

Pub. L. 111–383, div. A, title IX, §943, Jan. 7, 2011, 124 Stat. 4341, required a report on the organizational structure and policy guidance of the Department of Defense with respect to information operations to be submitted to Congress no later than 90 days after Jan. 7, 2011, and a revised directive on information operations to be prescribed upon submittal of the report.

BIENNIAL REPORT ON NUCLEAR TRIAD

Pub. L. 111–383, div. A, title X, §1054, Jan. 7, 2011, 124 Stat. 4358, which provided that, not later than March 1

of each even-numbered year, beginning March 1, 2012, the Secretary of Defense was to submit to the Committees on Armed Services and Appropriations of the Senate and the House of Representatives a report on the nuclear triad, was repealed by Pub. L. 115–91, div. A, title X, § 1051(p)(4), Dec. 12, 2017, 131 Stat. 1565.

TREATMENT OF SUCCESSOR CONTINGENCY OPERATION TO OPERATION IRAQI FREEDOM

Pub. L. 111–383, div. A, title X, § 1077, Jan. 7, 2011, 124 Stat. 4379, provided that: ''Any law applicable to Operation Iraqi Freedom shall apply in the same manner and to the same extent to the successor contingency operation known as Operation New Dawn, except as specifically provided in this Act [see Tables for classification], any amendment made by this Act, or any other law enacted after the date of the enactment of this Act [Jan. 7, 2011].''

POLICY AND REQUIREMENTS TO ENSURE THE SAFETY OF FACILITIES, INFRASTRUCTURE, AND EQUIPMENT FOR MILITARY OPERATIONS

Pub. L. 111–84, div. A, title VIII, § 807, Oct. 28, 2009, 123 Stat. 2404, provided that:

''(a) POLICY.—It shall be the policy of the Department of Defense that facilities, infrastructure, and equipment that are intended for use by military or civilian personnel of the Department in current or future military operations should be inspected for safety and habitability prior to such use, and that such facilities should be brought into compliance with generally accepted standards for the safety and health of personnel to the maximum extent practicable and consistent with the requirements of military operations and the best interests of the Department of Defense, to minimize the safety and health risk posed to such personnel.

''(b) REQUIREMENTS.—Not later than 60 days after the date of the enactment of this Act [Oct. 28, 2009], the Secretary of Defense shall—

''(1) ensure that each contract or task or delivery order entered into for the construction, installation, repair, maintenance, or operation of facilities for use by military or civilian personnel of the Department complies with the policy established in subsection (a);

''(2) ensure that contracts entered into prior to the date that is 60 days after the date of the enactment of this Act comply with such policy to the maximum extent practicable;

''(3) define the term 'generally accepted standards' with respect to fire protection, structural integrity, electrical systems, plumbing, water treatment, waste disposal, and telecommunications networks for the purposes of this section; and

''(4) provide such exceptions and limitations as may be needed to ensure that this section can be implemented in a manner that is consistent with the requirements of military operations and the best interests of the Department of Defense.''

DEFENSE INTEGRATED MILITARY HUMAN RESOURCES SYSTEM DEVELOPMENT AND TRANSITION

Pub. L. 111–84, div. A, title IX, § 932, Oct. 28, 2009, 123 Stat. 2433, as amended by Pub. L. 113–291, div. A, title IX, § 901(n)(1), Dec. 19, 2014, 128 Stat. 3469; Pub. L. 115–91, div. A, title X, § 1081(b)(1)(D), Dec. 12, 2017, 131 Stat. 1597, established a Defense Integrated Military Human Resources System development and transition Council to provide advice on the modernization of the integrated pay and personnel systems, required a report to Congress on actions taken, and went out of effect after Sept. 30, 2013.

ANNUAL REPORT ON MILITARY POWER OF IRAN

Pub. L. 111–84, div. A, title XII, § 1245, Oct. 28, 2009, 123 Stat. 2542, as amended by Pub. L. 113–66, div. A, title XII, § 1232(a), Dec. 26, 2013, 127 Stat. 920; Pub. L. 113–291, div. A, title XII, § 1277, Dec. 19, 2014, 128 Stat. 3592; Pub. L. 114–92, div. A, title XII, § 1231(a)–(d), Nov. 25, 2015, 129 Stat. 1057, 1058; Pub. L. 114–328, div. A, title XII, § 1225(a), Dec. 23, 2016, 130 Stat. 2487; Pub. L. 115–91, div. A, title XII, § 1225(a), Dec. 12, 2017, 131 Stat. 1655; Pub. L. 115–232, div. A, title XII, § 1236, Aug. 13, 2018, 132 Stat. 2042, provided that:

''(a) ANNUAL REPORT.—Not later than January 30 of each year, the Secretary of Defense shall submit to Congress a report, in both classified and unclassified form, on the current and future military strategy of Iran.

''(b) MATTERS TO BE INCLUDED.—The report required under subsection (a) shall include a description of the security posture of Iran, including at least the following:

''(1) A description and assessment of Iranian grand strategy, security strategy, and military strategy, including—

''(A) the goals of Iran's grand strategy, security strategy, and military strategy.

''(B) trends in Iran's strategy that would be designed to establish Iran as the leading power in the Middle East and to enhance the influence of Iran in other regions of the world;

''(C) Iranian strategy regarding other countries in the region, including other specified countries; and

''(D) Iranian strategy regarding offensive cyber capabilities and defensive cyber capabilities.

''(2) An assessment of the capabilities of Iran's conventional forces, including—

''(A) the size and capabilities of Iran's conventional forces;

''(B) an analysis of the effectiveness of Iran's conventional forces when facing United States forces in the region and other specified countries;

''(C) a description of Iranian military doctrine; and

''(D) an estimate of the funding provided for each branch of Iran's conventional forces.

''(3) An assessment of Iran's unconventional forces and related activities, including—

''(A) the size and capability of Iranian special operations units, including the Iranian Revolutionary Guard Corps–Quds Force;

''(B) the types and amount of support, including funding, lethal and non-lethal supplies, and training, provided to groups designated by the United States as foreign terrorist organizations and regional militant groups, including Hezbollah, Hamas, the Houthis, and the Special Groups in Iraq, in particular those forces as having been assessed as to be willing to carry out terrorist operations on behalf of Iran or in response to a military attack by another country on Iran;

''(C) an analysis of the effectiveness of Iran's unconventional forces when facing United States forces in the region and other specified countries in the region;

''(D) an estimate of the amount of funds spent by Iran to develop and support special operations forces and terrorist groups;

''(E) a description of the structure of Iran's global network of terrorist and criminal groups and an analysis of the capability of such network of groups and how such network of groups operates to support and reinforce Iran's grand strategy;

''(F) Iran's cyber capabilities, including—

''(i) Iran's ability to use proxies and other actors to mask its cyber operations;

''(ii) Iran's ability to target United States governmental and nongovernmental entities and activities; and

''(iii) cooperation with or assistance from state and non-state actors in support or enhancement of Iran's cyber capabilities;

''(G) Iranian ability to manipulate the information environment both domestically and against the interests of the United States and its allies.

''(4) An assessment of Iranian capabilities related to nuclear and missile forces, including—

''(A) a summary of nuclear weapons capabilities and developments in the preceding year;

''(B) a summary of the capabilities of Iran's ballistic missile forces, including developments in the preceding year, the size of Iran's ballistic missile forces and Iran's cruise missile forces, and the locations of missile launch sites;

''(C) a detailed analysis of the effectiveness of Iran's ballistic missile forces and Iran's cruise missile forces when facing United States forces in the region and other specified countries; and

''(D) an estimate of the amount of funding expended by Iran since 2004 on programs to develop a capability to build nuclear weapons or to enhance Iran's ballistic missile forces.

''(5) An assessment of transfers to and from Iran of military equipment, technology, and training from or to non-Iranian sources or destinations, including transfers that pertain to nuclear development, ballistic missiles, and chemical, biological, and advanced conventional weapons, weapon systems, and delivery vehicles.

''(6) An assessment of the use of civilian transportation assets and infrastructure, including commercial aircraft, airports, commercial vessels, and seaports, used to transport illicit military cargo to or from Iran, including military personnel, military goods, weapons, military-related electric parts, and related components.

''(7) An assessment of military-to-military cooperation between Iran and foreign counties [sic], including Cuba, North Korea, Pakistan, the Russian Federation, Sudan, Syria, Venezuela, and any other country designated by the Secretary of Defense with additional reference to cooperation and collaboration on the trafficking or development of nuclear, biological, chemical, and advanced conventional weapons, weapon systems, and delivery vehicles.

''(8) An assessment of the extent to which the commercial aviation sector of Iran knowingly provides financial, material, or technological support to the Islamic Revolutionary Guard Corps, the Ministry of Defense and Armed Forces Logistics of Iran, the Bashar al-Assad regime, Hezbollah, Hamas, Kata'ib Hezbollah, or any other foreign terrorist organization.

''(c) DEFINITIONS.—In this section:

''(1) IRAN'S CONVENTIONAL FORCES.—The term 'Iran's conventional forces'—

''(A) means military forces of the Islamic Republic of Iran designed to conduct operations on sea, air, or land, other than Iran's unconventional forces and Iran's ballistic missile forces and Iran's cruise missile forces; and

''(B) includes Iran's Army, Iran's Air Force, Iran's Navy, and elements of the Iranian Revolutionary Guard Corps, other than the Iranian Revolutionary Guard Corps–Quds Force.

''(2) IRAN'S UNCONVENTIONAL FORCES.—The term 'Iran's unconventional forces'—

''(A) means forces of the Islamic Republic of Iran that carry out missions typically associated with special operations forces; and

''(B) includes—

''(i) the Iranian Revolutionary Guard Corps–Quds Force; and

''(ii) any organization that—

''(I) has been designated a terrorist organization by the United States;

''(II) receives assistance from Iran; and

''(III)(aa) is assessed as being willing in some or all cases of carrying out attacks on behalf of Iran; or

''(bb) is assessed as likely to carry out attacks in response to a military attack by another country on Iran.

''(3) IRAN'S BALLISTIC MISSILE FORCES.—The term 'Iran's ballistic missile forces' means those elements of the military forces of Iran that employ ballistic missiles.

''(4) IRAN'S CRUISE MISSILE FORCES.—The term 'Iran's cruise missile forces' means those elements of the military forces of Iran that employ cruise missiles capable of flights less than 500 kilometers.

''(5) SPECIFIED COUNTRIES.—The term 'specified countries' means the countries in the same geographic region as Iran, including Israel, Lebanon, Syria, Jordan, Iraq, Afghanistan, Saudi Arabia, Turkey, Bahrain, Kuwait, the United Arab Emirates, Armenia, and Azerbaijan.

''(d) TERMINATION.—The requirement to submit the report required under subsection (a) shall terminate on December 31, 2025.''

[Pub. L. 115–91, div. A, title XII, §1225(b), Dec. 12, 2017, 131 Stat. 1655, provided that: ''The amendments made by this section [amending section 1245 of Pub. L. 111–84, set out above] shall take effect on the date of the enactment of this Act [Dec. 12, 2017], and shall apply with respect to reports required to be submitted under section 1245 of the National Defense Authorization Act for Fiscal Year 2010 [Pub. L. 111–84] after that date.'']

[Pub. L. 114–328, div. A, title XII, §1225(b), Dec. 23, 2016, 130 Stat. 2487, provided that: ''The amendment made by subsection (a) [amending section 1245 of Pub. L. 111–84, set out above] shall take effect on January 1, 2018, and shall apply with respect to reports required to be submitted under section 1245 of the National Defense Authorization Act for Fiscal Year 2010 [Pub. L. 111–84] on or after that date.'']

[Pub. L. 114–92, div. A, title XII, §1231(e), Nov. 25, 2015, 129 Stat. 1058, provided that: ''The amendments made by this section [amending section 1245 of Pub. L. 111–84, set out above] shall take effect on the date of the enactment of this Act [Nov. 25, 2015], and shall apply with respect to reports required to be submitted under section 1245 of the National Defense Authorization Act for Fiscal Year 2010 [Pub. L. 111–84], as so amended, after that date.'']

[Pub. L. 113–66, div. A, title XII, §1232(b), Dec. 26, 2013, 127 Stat. 920, provided that: ''The amendments made by this section [amending section 1245 of Pub. L. 111–84, set out above] shall take effect on the date of the enactment of this Act [Dec. 26, 2013] and shall apply with respect to reports required to be submitted under section 1245 of the National Defense Authorization Act for Fiscal Year 2010 [Pub. L. 111–84], as so amended, on or after that date.'']

[For termination, effective Dec. 31, 2021, of annual reporting provisions in section 1245 of Pub. L. 111–84, set out above, see section 1061 of Pub. L. 114–328, set out as a note under section 111 of this title.]

REQUIREMENT FOR COMMON GROUND STATIONS AND PAYLOADS FOR MANNED AND UNMANNED AERIAL VEHICLE SYSTEMS

Pub. L. 110–417, [div. A], title I, §144, Oct. 14, 2008, 122 Stat. 4382, required the establishment of a policy and an acquisition strategy for intelligence, surveillance, and reconnaissance payloads and ground stations for manned and unmanned aerial vehicle systems and submission of a report containing the policy and acquisition strategy no later than 120 days after Oct. 14, 2008.

REPORT ON COMMAND AND CONTROL STRUCTURE FOR MILITARY FORCES OPERATING IN AFGHANISTAN

Pub. L. 110–417, [div. A], title XII, §1216, Oct. 14, 2008, 122 Stat. 4633, as amended by Pub. L. 111–84, div. A, title XII, §1229, Oct. 28, 2009, 123 Stat. 2528, required a report on the command and control structure for military forces operating in Afghanistan to be submitted in December of 2008, with a subsequent update as warranted by any modifications to the command and control structure.

PROGRAM TO COMMEMORATE 50TH ANNIVERSARY OF THE VIETNAM WAR

Pub. L. 110–181, div. A, title V, §598, Jan. 28, 2008, 122 Stat. 141, provided that:

''(a) COMMEMORATIVE PROGRAM AUTHORIZED.—The Secretary of Defense may conduct a program to commemorate the 50th anniversary of the Vietnam War. In

conducting the commemorative program, the Secretary shall coordinate, support, and facilitate other programs and activities of the Federal Government, State and local governments, and other persons and organizations in commemoration of the Vietnam War.

''(b) SCHEDULE.—The Secretary of Defense shall determine the schedule of major events and priority of efforts for the commemorative program in order to ensure achievement of the objectives specified in subsection (c).

''(c) COMMEMORATIVE ACTIVITIES AND OBJECTIVES.—The commemorative program may include activities and ceremonies to achieve the following objectives:

''(1) To thank and honor veterans of the Vietnam War, including personnel who were held as prisoners of war or listed as missing in action, for their service and sacrifice on behalf of the United States and to thank and honor the families of these veterans.

''(2) To highlight the service of the Armed Forces during the Vietnam War and the contributions of Federal agencies and governmental and non-governmental organizations that served with, or in support of, the Armed Forces.

''(3) To pay tribute to the contributions made on the home front by the people of the United States during the Vietnam War.

''(4) To highlight the advances in technology, science, and medicine related to military research conducted during the Vietnam War.

''(5) To recognize the contributions and sacrifices made by the allies of the United States during the Vietnam War.

''(d) NAMES AND SYMBOLS.—The Secretary of Defense shall have the sole and exclusive right to use the name 'The United States of America Vietnam War Commemoration', and such seal, emblems, and badges incorporating such name as the Secretary may lawfully adopt. Nothing in this section may be construed to supersede rights that are established or vested before the date of the enactment of this Act [Jan. 28, 2008].

''(e) COMMEMORATIVE FUND.—

''(1) ESTABLISHMENT AND ADMINISTRATION.—If the Secretary establishes the commemorative program under subsection (a), the Secretary the Treasury shall establish in the Treasury of the United States an account to be known as the 'Department of Defense Vietnam War Commemoration Fund' (in this section referred to as the 'Fund'). The Fund shall be administered by the Secretary of Defense.

''(2) USE OF FUND.—The Secretary shall use the assets of the Fund only for the purpose of conducting the commemorative program and shall prescribe such regulations regarding the use of the Fund as the Secretary considers to be necessary.

''(3) DEPOSITS.—There shall be deposited into the Fund—

''(A) amounts appropriated to the Fund;

''(B) proceeds derived from the Secretary's use of the exclusive rights described in subsection (d);

''(C) donations made in support of the commemorative program by private and corporate donors; and

''(D) funds transferred to the Fund by the Secretary from funds appropriated for fiscal year 2008 and subsequent years for the Department of Defense.

''(4) AVAILABILITY.—Subject to subsection (g)(2), amounts deposited under paragraph (3) shall constitute the assets of the Fund and remain available until expended.

''(5) BUDGET REQUEST.—The Secretary of Defense may establish a separate budget line for the commemorative program. In the budget justification materials submitted by the Secretary in support of the budget of the President for any fiscal year for which the Secretary establishes the separate budget line, the Secretary shall—

''(A) identify and explain any amounts expended for the commemorative program in the fiscal year preceding the budget request;

''(B) identify and explain the amounts being requested to support the commemorative program for the fiscal year of the budget request; and

''(C) present a summary of the fiscal status of the Fund.

''(f) ACCEPTANCE OF VOLUNTARY SERVICES.—

''(1) AUTHORITY TO ACCEPT SERVICES.—Notwithstanding section 1342 of title 31, United States Code, the Secretary of Defense may accept from any person voluntary services to be provided in furtherance of the commemorative program. The Secretary of Defense shall prohibit the solicitation of any voluntary services if the nature or circumstances of such solicitation would compromise the integrity or the appearance of integrity of any program of the Department of Defense or of any individual involved in the program.

''(2) REIMBURSEMENT OF INCIDENTAL EXPENSES.—The Secretary may provide for reimbursement of incidental expenses incurred by a person providing voluntary services under this subsection. The Secretary shall determine which expenses are eligible for reimbursement under this paragraph.

''(g) FINAL REPORT.—

''(1) REPORT REQUIRED.—Not later than 60 days after the end of the commemorative program, if established by the Secretary of Defense under subsection (a), the Secretary shall submit to Congress a report containing an accounting of—

''(A) all of the funds deposited into and expended from the Fund;

''(B) any other funds expended under this section; and

''(C) any unobligated funds remaining in the Fund.

''(2) TREATMENT OF UNOBLIGATED FUNDS.—Unobligated amounts remaining in the Fund as of the end of the commemorative period specified in subsection (b) shall be held in the Fund until transferred by law.

''(h) LIMITATION ON EXPENDITURES.—Total expenditures from the Fund, using amounts appropriated to the Department of Defense, may not exceed $5,000,000 for fiscal year 2008 or for any subsequent fiscal year to carry out the commemorative program.

''(i) FUNDING.—Of the amount authorized to be appropriated pursuant to section 301(5) [122 Stat. 53] for Defense-wide activities, $1,000,000 shall be available for deposit in the Fund for fiscal year 2008 if the Fund is established under subsection (e).''

Proc. No. 8829, May 25, 2012, 77 F.R. 32875, provided:

As we observe the 50th anniversary of the Vietnam War, we reflect with solemn reverence upon the valor of a generation that served with honor. We pay tribute to the more than 3 million servicemen and women who left their families to serve bravely, a world away from everything they knew and everyone they loved. From Ia Drang to Khe Sanh, from Hue to Saigon and countless villages in between, they pushed through jungles and rice paddies, heat and monsoon, fighting heroically to protect the ideals we hold dear as Americans. Through more than a decade of combat, over air, land, and sea, these proud Americans upheld the highest traditions of our Armed Forces.

As a grateful Nation, we honor more than 58,000 patriots—their names etched in black granite—who sacrificed all they had and all they would ever know. We draw inspiration from the heroes who suffered unspeakably as prisoners of war, yet who returned home with their heads held high. We pledge to keep faith with those who were wounded and still carry the scars of war, seen and unseen. With more than 1,600 of our service members still among the missing, we pledge as a Nation to do everything in our power to bring these patriots home. In the reflection of The Wall, we see the military family members and veterans who carry a pain that may never fade. May they find peace in knowing their loved ones endure, not only in medals and memories, but in the hearts of all Americans, who are forever grateful for their service, valor, and sacrifice.

In recognition of a chapter in our Nation's history that must never be forgotten, let us renew our sacred

commitment to those who answered our country's call in Vietnam and those who awaited their safe return. Beginning on Memorial Day 2012, the Federal Government will partner with local governments, private organizations, and communities across America to participate in the Commemoration of the 50th Anniversary of the Vietnam War—a 13-year program to honor and give thanks to a generation of proud Americans who saw our country through one of the most challenging missions we have ever faced. While no words will ever be fully worthy of their service, nor any honor truly befitting their sacrifice, let us remember that it is never too late to pay tribute to the men and women who answered the call of duty with courage and valor. Let us renew our commitment to the fullest possible accounting for those who have not returned. Throughout this Commemoration, let us strive to live up to their example by showing our Vietnam veterans, their families, and all who have served the fullest respect and support of a grateful Nation.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim May 28, 2012, through November 11, 2025, as the Commemoration of the 50th Anniversary of the Vietnam War. I call upon Federal, State, and local officials to honor our Vietnam veterans, our fallen, our wounded, those unaccounted for, our former prisoners of war, their families, and all who served with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fifth day of May, in the year of our Lord two thousand twelve, and of the Independence of the United States of America the two hundred and thirty-sixth.

BARACK OBAMA.

ACCESS TO MILITARY INSTALLATIONS

Pub. L. 116–283, div. A, title X, §1090, Jan. 1, 2021, 134 Stat. 3879, provided that:

''(a) ESTABLISHMENT OF VETTING PROCEDURES.—

''(1) IN GENERAL.—Not later than 90 days after the date of the enactment of this Act [Jan. 1, 2021], the Secretary of Defense shall establish procedures to vet covered individuals for eligibility for physical access to Department of Defense installations and facilities within the United States.

''(2) CRITERIA FOR PROCEDURES.—The procedures established under paragraph (1) shall include biographic and biometric screening of covered individuals, continuous review of whether covered individuals should continue to be authorized for physical access, biographic checks of the immediate family members of covered individuals, and any other measures that the Secretary determines appropriate for vetting.

''(3) INFORMATION REQUIRED.—The Secretary shall identify the information required to conduct the vetting under this section.

''(4) COLLECTION OF INFORMATION.—The Secretary shall—

''(A) collect the information required to vet individuals under the procedures established under this subsection;

''(B) as required for the effective implementation of this section, seek to enter into agreements with the relevant departments and agencies of the United States to facilitate the sharing of information in the possession of such departments and agencies concerning covered individuals; and

''(C) ensure that the initial vetting of covered individuals is conducted as early and promptly as practicable, to minimize disruptions to United States programs to train foreign military students.

''(b) DETERMINATION AUTHORITY.—

''(1) REVIEW OF VETTING RESULTS.—The Secretary shall assign to an organization within the Department with responsibility for security and counterintelligence the responsibility of—

''(A) reviewing the results of the vetting of a covered individual conducted under subsection (a); and

''(B) making a recommendation regarding whether such individual should be given physical access to a Department of Defense installation or facility.

''(2) NEGATIVE RECOMMENDATION.—If the recommendation with respect to a covered individual under paragraph (1)(B) is that the individual should not be given physical access to a Department of Defense installation or facility—

''(A) such individual may only be given such access if such access is authorized by the Secretary of Defense or the Deputy Secretary of Defense; and

''(B) the Secretary of Defense shall ensure that the Secretary of State is promptly provided with notification of such recommendation.

''(c) ADDITIONAL SECURITY MEASURES.—

''(1) SECURITY MEASURES REQUIRED.—The Secretary of Defense shall ensure that—

''(A) all Department of Defense common access cards issued to foreign nationals in the United States comply with the credentialing standards issued by the Office of Personnel Management;

''(B) all such common access cards issued to foreign nationals in the United States include a visual indicator as required by the standard developed by the Department of Commerce National Institute of Standards and Technology;

''(C) physical access by covered individuals is limited, as appropriate, to those Department of Defense installations or facilities within the United States directly associated with the training or education or necessary for such individuals to access authorized benefits;

''(D) a policy is in place covering possession of firearms on Department of Defense property by covered individuals;

''(E) covered individuals who have been granted physical access to Department of Defense installations and facilities are incorporated into the Insider Threat Program of the Department of Defense; and

''(F) covered individuals are prohibited from transporting, possessing, storing, or using personally owned firearms on Department of Defense installations or property consistent with the Secretary of Defense policy memorandum dated January 16, 2020, or any successor policy guidance that restricts transporting, possessing, storing, or using personally owned firearms on Department of Defense installations or property.

''(2) EFFECTIVE DATE.—The security measures required under paragraph (1) shall take effect on the date that is 181 days after the date of the enactment of this Act [Jan. 1, 2021].

''(3) NOTIFICATION REQUIRED.—Upon the establishment of the security measures required under paragraph (1), the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives notice of the establishment of such security measures.

''(d) REPORTING REQUIREMENTS.—

''(1) REPORT.—Not later than two years after the date of the enactment of this Act, the Secretary of Defense shall submit to the appropriate congressional committees a report on the implementation and effects of this section. Such report shall include a description of—

''(A) any positive or negative effects on the training of foreign military students as a result of this section;

''(B) the effectiveness of the vetting procedures implemented pursuant to this section in preventing harm to members of the Armed Forces and United States persons;

''(C) any mitigation strategies used to address any negative effects of the implementation of this section; and

''(D) a proposed plan to mitigate any ongoing negative effects to the vetting and training of foreign military students by the Department of Defense.

''(2) REPORT BY COMPTROLLER GENERAL.—Not later than three years after the date of the enactment of this Act, the Comptroller General of the United States shall submit to the appropriate congressional committees an unclassified report (which may contain a classified annex) on the safety and security of United States personnel and international students assigned to United States military bases participating in programs authorized under chapter 5 of part II of the Foreign Assistance Act of 1961 (22 U.S.C. 2347 et seq.) (relating to international military education and training), particularly with respect to whether—

''(A) relevant United States diplomatic and consular personnel properly vet foreign personnel participating in such programs and entering such bases;

''(B) existing screening protocols with respect to such vetting include counter-terrorism screening and are sufficiently effective at ensuring the safety and security of United States personnel and international students assigned to such bases; and

''(C) whether existing screening protocols with respect to such vetting are in compliance with applicable requirements of section 362 of title 10, United States Code, and sections 502B and 620M of the Foreign Assistance Act of 1961 (22 U.S.C. 2304 and 2378d).

''(e) DEFINITIONS.—In this section:

''(1) The term 'appropriate congressional committees' means—

''(A) the Committee on Armed Services and the Committee on Foreign Relations of the Senate; and

''(B) the Committee on Armed Services and the Committee on Foreign Affairs of the House of Representatives.

''(2) The term 'covered individual' means any foreign national (except foreign nationals of Australia, Canada, New Zealand, and the United Kingdom who have been granted a security clearance that is reciprocally accepted by the United States for access to classified information) who—

''(A) is seeking physical access to a Department of Defense installation or facility within the United States; and

''(B) is—

''(i) selected, nominated, or accepted for training or education for a period of more than 14 days occurring on a Department of Defense installation or facility within the United States; or

''(ii) an immediate family member accompanying any foreign national who has been selected, nominated, or accepted for such training or education.

''(3) The term 'United States' means the several States, the District of Columbia, the Commonwealth of Puerto Rico, and Guam.

''(4) The term 'immediate family member' with respect to any individual means the parent, step-parent, spouse, sibling, step-sibling, half-sibling, child, or step-child of the individual.''

Pub. L. 115–232, div. A, title VI, §626, Aug. 13, 2018, 132 Stat. 1802, provided that:

''(a) PROCEDURES FOR ACCESS OF SURVIVING SPOUSES REQUIRED.—The Secretary of Defense, acting jointly with the Secretary of Homeland Security, shall establish procedures by which an eligible surviving spouse may obtain unescorted access, as appropriate, to military installations in order to receive benefits to which the eligible surviving spouse may be entitled by law or policy.

''(b) PROCEDURES FOR ACCESS OF NEXT OF KIN AUTHORIZED.—

''(1) IN GENERAL.—The Secretary of Defense, acting jointly with the Secretary of Homeland Security, may establish procedures by which the next of kin of a covered member of the Armed Forces, in addition to an eligible surviving spouse, may obtain access to military installations for such purposes and under such conditions as the Secretaries jointly consider appropriate.

''(2) NEXT OF KIN.—If the Secretaries establish procedures pursuant to paragraph (1), the Secretaries shall jointly specify the individuals who shall constitute next of kin for purposes of such procedures.

''(c) CONSIDERATIONS.—Any procedures established under this section shall—

''(1) be applied consistently across the Department of Defense and the Department of Homeland Security, including all components of the Departments;

''(2) minimize any administrative burden on a surviving spouse or dependent child, including through the elimination of any requirement for a surviving spouse to apply as a personal agent for continued access to military installations in accompaniment of a dependent child;

''(3) take into account measures required to ensure the security of military installations, including purpose and eligibility for access and renewal periodicity; and

''(4) take into account such other factors as the Secretary of Defense or the Secretary of Homeland Security considers appropriate.

''(d) DEADLINE.—The procedures required by subsection (a) shall be established by the date that is not later than one year after the date of the enactment of this Act [Aug. 13, 2018].

''(e) DEFINITIONS.—In this section:

''(1) The term 'eligible surviving spouse' means an individual who is a surviving spouse of a covered member of the Armed Forces, without regard to whether the individual remarries after the death of the covered member of the Armed Forces.

''(2) The term 'covered member of the Armed Forces' means a member of the Armed Forces who dies while serving—

''(A) on active duty; or

''(B) on such reserve duty as the Secretary of Defense and the Secretary of Homeland Security may jointly specify for purposes of this section.''

Pub. L. 114–328, div. A, title III, §346, Dec. 23, 2016, 130 Stat. 2085, as amended by Pub. L. 115–91, div. B, title XXVIII, §2819, Dec. 12, 2017, 131 Stat. 1853, provided that:

''(a) IN GENERAL.—Not later than one year after the date of the enactment of this Act [Dec. 23, 2016], the Secretary of Defense shall establish policies under which covered drivers may be authorized to access military installations.

''(b) ELEMENTS.—The policies established under subsection (a)—

''(1) shall include the terms and conditions under which a covered driver may be authorized to access a military installation;

''(2) may require a transportation company or transportation network company and a covered driver to enter into a written agreement with the Department of Defense as a precondition for obtaining authorization to access a military installation;

''(3) shall be consistent across military installations, to the extent practicable;

''(4) shall be designed to promote the expeditious entry of covered drivers onto military installations for purposes of providing commercial transportation services;

''(5) shall place appropriate restrictions on entry into sensitive areas of military installations;

''(6) shall be designed, to the extent practicable, to give covered drivers access to barracks areas, housing areas, temporary lodging facilities, hospitals, and community support facilities;

''(7) shall require transportation companies and transportation network companies—

''(A) to track, in real-time, the location of the entry and exit of covered drivers onto and off of military installations; and

''(B) to provide, on demand, the information described in subparagraph (A) to appropriate personnel and agencies of the Department; and

''(8) shall take into account force protection requirements and ensure the protection and safety of

members of the Armed Forces, civilian employees of the Department of Defense, and the families of such members and employees.

"(c) CONFIDENTIALITY OF INFORMATION.—The Secretary shall ensure that any information provided to the Department by a transportation company or transportation network company under subsection (b)(7)—

"(1) is treated as confidential and proprietary information of the company that is exempt from public disclosure pursuant to section 552 of title 5, United States Code (commonly known as the 'Freedom of Information Act'); and

"(2) except as provided in subsection (b)(7), is not disclosed to any person or entity without the express written consent of the company unless disclosure of such information is required by a court order.

"(d) DEFINITIONS.—In this section:

"(1) TRANSPORTATION COMPANY.—The term 'transportation company' means a corporation, partnership, sole proprietorship, or other entity outside of the Department of Defense that provides a commercial transportation service to a rider.

"(2) TRANSPORTATION NETWORK COMPANY.—The term 'transportation network company'—

"(A) means a corporation, partnership, sole proprietorship, or other entity, that uses a digital network to connect riders to covered drivers in order for the driver to transport the rider using a vehicle owned, leased, or otherwise authorized for use by the driver to a point chosen by the rider; and

"(B) does not include a shared-expense carpool or vanpool arrangement that is not intended to generate profit for the driver.

"(3) COVERED DRIVER.—The term 'covered driver'—

"(A) means an individual—

"(i) who is an employee of a transportation company or transportation network company or who is affiliated with a transportation company or transportation network company; and

"(ii) who provides a commercial transportation service to a rider; and

"(B) includes a vehicle operated by such individual for the purpose of providing such service."

[Pub. L. 115–91, div. B, title XXVIII, §2819(4)(C), Dec. 12, 2017, 131 Stat. 1853, which directed the insertion of "or transportation network company" after "transportation company" in section 346(d)(3)(A)(i) of Pub. L. 114–328, set out above, was not executed in light of the amendment made by section 2819(2) of Pub. L. 115–91, which directed the same insertion wherever appearing in subsec. (d).]

Pub. L. 114–328, div. A, title X, §1050, Dec. 23, 2016, 130 Stat. 2396, as amended by Pub. L. 116–92, div. B, title XXVIII, §2822, Dec. 20, 2019, 133 Stat. 1889, provided that:

"(a) ACCESS TO INSTALLATIONS FOR CREDENTIALED TRANSPORTATION WORKERS.—The Secretary of Defense, to the extent practicable, shall ensure that the Transportation Worker Identification Credential is accepted as a valid credential for unescorted access to Department of Defense installations by transportation workers.

"(b) CREDENTIALED TRANSPORTATION WORKERS WITH SECRET CLEARANCE.—TWIC-carrying transportation workers who also have a current Secret Level Clearance issued by the Department of Defense shall be considered exempt from further vetting when seeking unescorted access at Department of Defense facilities. Access security personnel shall verify such person's security clearance in a timely manner and provide them with unescorted access to complete their freight service."

Pub. L. 112–239, div. B, title XXVIII, §2812, Jan. 2, 2013, 126 Stat. 2150, required the Secretary of Defense to publish procedural requirements regarding access to military installations in the United States by individuals, including individuals performing work under a contract awarded by the Department of Defense, by no later than 180 days after Jan. 2, 2013.

Pub. L. 110–181, div. A, title X, §1069, Jan. 28, 2008, 122 Stat. 326, as amended by Pub. L. 110–417, [div. A], title X, §1059, Oct. 14, 2008, 122 Stat. 4611; Pub. L. 111–84, div. A, title X, §1073(c)(11), Oct. 28, 2009, 123 Stat. 2475, directed the Secretary of Defense to develop access standards applicable to all military installations in the United States by Feb. 1, 2009, submit the standards to Congress by Aug. 1, 2009, and implement the standards by Oct. 1, 2010.

PROTECTION OF CERTAIN INDIVIDUALS

Pub. L. 110–181, div. A, title X, §1074, Jan. 28, 2008, 122 Stat. 330, as amended by Pub. L. 113–66, div. A, title X, §1084(b)(2)(A), Dec. 26, 2013, 127 Stat. 872; Pub. L. 113–291, div. A, title X, §1046, Dec. 19, 2014, 128 Stat. 3494, which provided for protection of Department of Defense leadership and certain additional individuals within the military, Department of Defense, and certain foreign government representatives, was repealed by Pub. L. 114–328, div. A, title IX, §952(c)(3), Dec. 23, 2016, 130 Stat. 2375. See section 714 of this title.

AUTHORITY TO PROVIDE AUTOMATIC IDENTIFICATION SYSTEM DATA ON MARITIME SHIPPING TO FOREIGN COUNTRIES AND INTERNATIONAL ORGANIZATIONS

Pub. L. 110–181, div. A, title XII, §1208, Jan. 28, 2008, 122 Stat. 367, provided that:

"(a) AUTHORITY TO PROVIDE DATA.—The Secretary of Defense, with the concurrence of the Secretary of State, may authorize the Secretary of a military department or a commander of a combatant command to exchange or furnish automatic identification system data broadcast by merchant or private ships and collected by the United States to a foreign country or international organization pursuant to an agreement for the exchange or production of such data. Such data may be transferred pursuant to this section without cost to the recipient country or international organization.

"(b) DEFINITIONS.—In this section:

"(1) AUTOMATIC IDENTIFICATION SYSTEM.—The term 'automatic identification system' means a system that is used to satisfy the requirements of the Automatic Identification System under the International Convention for the Safety of Life at Sea, signed at London on November 1, 1974 (TIAS 9700) [see 33 U.S.C. 1602 and notes thereunder].

"(2) GEOGRAPHIC COMBATANT COMMANDER.—The term 'commander of a combatant command' means a commander of a combatant command (as such term is defined in section 161(c) of title 10, United States Code) with a geographic area of responsibility."

REPORT ON SUPPORT FROM IRAN FOR ATTACKS AGAINST COALITION FORCES IN IRAQ

Pub. L. 110–181, div. A, title XII, §1225, Jan. 28, 2008, 122 Stat. 375, which required the Secretary of Defense, in coordination with the Director of National Intelligence, to submit to the Committees on Armed Services and Appropriations of the Senate and the House of Representatives reports describing and assessing any support provided to anti-coalition forces in Iraq by Iran or its agents, the strategy and ambitions in Iraq of Iran, and any strategy or efforts by the United States to counter the activities of agents of Iran in Iraq, was repealed by Pub. L. 111–383, div. A, title XII, §1233(f)(2), Jan. 7, 2011, 124 Stat. 4397.

REQUIREMENT FOR SECRETARY OF DEFENSE TO PREPARE PLAN FOR RESPONSE TO NATURAL DISASTERS AND TERRORIST EVENTS

Pub. L. 110–181, div. A, title XVIII, §1814, Jan. 28, 2008, 122 Stat. 498, required, by June 1, 2008, the preparation and submission to Congress of a plan for coordinating the use of the National Guard and members of the Armed Forces on active duty when responding to natural disasters, acts of terrorism, and certain other disasters and submission of an update of the plan by June 1, 2010.

DETERMINATION OF DEPARTMENT OF DEFENSE CIVIL SUPPORT REQUIREMENTS

Pub. L. 110–181, div. A, title XVIII, § 1815(a)–(d), Jan. 28, 2008, 122 Stat. 499, provided that:

''(a) DETERMINATION OF REQUIREMENTS.—The Secretary of Defense, in consultation with the Secretary of Homeland Security, shall determine the military-unique capabilities needed to be provided by the Department of Defense to support civil authorities in an incident of national significance or a catastrophic incident.

''(b) PLAN FOR FUNDING CAPABILITIES.—

''(1) PLAN.—The Secretary of Defense shall develop and implement a plan, in coordination with the Secretaries of the military departments and the Chairman of the Joint Chiefs of Staff, for providing the funds and resources necessary to develop and maintain the following:

''(A) The military-unique capabilities determined under subsection (a).

''(B) Any additional capabilities determined by the Secretary to be necessary to support the use of the active components and the reserve components of the Armed Forces for homeland defense missions, domestic emergency responses, and providing military support to civil authorities.

''(2) TERM OF PLAN.—The plan required under paragraph (1) shall cover at least five years.

''(c) BUDGET.—The Secretary of Defense shall include in the materials accompanying the budget submitted for each fiscal year a request for funds necessary to carry out the plan required under subsection (b) during the fiscal year covered by the budget. The defense budget materials shall delineate and explain the budget treatment of the plan for each component of each military department, each combatant command, and each affected Defense Agency.

''(d) DEFINITIONS.—In this section:

''(1) The term 'military-unique capabilities' means those capabilities that, in the view of the Secretary of Defense—

''(A) cannot be provided by other Federal, State, or local civilian agencies; and

''(B) are essential to provide support to civil authorities in an incident of national significance or a catastrophic incident.

''(2) The term 'defense budget materials', with respect to a fiscal year, means the materials submitted to Congress by the Secretary of Defense in support of the budget for that fiscal year.''

MILITARY SEVERELY INJURED CENTER

Pub. L. 109–364, div. A, title V, § 564, Oct. 17, 2006, 120 Stat. 2222, provided that:

''(a) CENTER REQUIRED.—In support of the comprehensive policy on the provision of assistance to severely wounded or injured servicemembers required by section 563 of the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109–163; 119 Stat. 3269; 10 U.S.C. 113 note), the Secretary of Defense shall establish within the Department of Defense a center to augment and support the programs and activities of the military departments for the provision of such assistance, including the programs of the military departments referred to in subsection (c).

''(b) DESIGNATION.—The center established under subsection (a) shall be known as the 'Military Severely Injured Center' (in this section referred to as the 'Center').

''(c) PROGRAMS OF THE MILITARY DEPARTMENTS.—The programs of the military departments referred to in this subsection are the following:

''(1) The Army Wounded Warrior Support Program.

''(2) The Navy Safe Harbor Program.

''(3) The Palace HART Program of the Air Force.

''(4) The Marine for Life Injured Support Program of the Marine Corps.

''(d) ACTIVITIES OF CENTER.—

''(1) IN GENERAL.—The Center shall carry out such programs and activities to augment and support the programs and activities of the military departments for the provision of assistance to severely wounded or injured servicemembers and their families as the Secretary of Defense, in consultation with the Secretaries of the military departments and the heads of other appropriate departments and agencies of the Federal Government (including the Secretary of Labor and the Secretary of Veterans Affairs), determines appropriate.

''(2) DATABASE.—The activities of the Center under this subsection shall include the establishment and maintenance of a central database. The database shall be transparent and shall be accessible for use by all of the programs of the military departments referred to in subsection (c).

''(e) RESOURCES.—The Secretary of Defense shall allocate to the Center such personnel and other resources as the Secretary of Defense, in consultation with the Secretaries of the military departments, considers appropriate in order to permit the Center to carry out effectively the programs and activities assigned to the Center under subsection (d).''

Pub. L. 109–163, div. A, title V, § 563, Jan. 6, 2006, 119 Stat. 3269, provided that:

''(a) COMPREHENSIVE POLICY.—

''(1) POLICY REQUIRED.—Not later than June 1, 2006, the Secretary of Defense shall prescribe a comprehensive policy for the Department of Defense on the provision of assistance to members of the Armed Forces who incur severe wounds or injuries in the line of duty (in this section referred to as 'severely wounded or injured servicemembers').

''(2) CONSULTATION.—The Secretary shall develop the policy required by paragraph (1) in consultation with the Secretaries of the military departments, the Secretary of Veterans Affairs, and the Secretary of Labor.

''(3) INCORPORATION OF PAST EXPERIENCE AND PRACTICE.—The policy required by paragraph (1) shall be based on—

''(A) the experience and best practices of the military departments, including the Army Wounded Warrior Program, the Marine Corps Marine for Life Injured Support Program, the Air Force Palace HART program, and the Navy Wounded Marines and Sailors Initiative;

''(B) the recommendations of nongovernment organizations with demonstrated expertise in responding to the needs of severely wounded or injured servicemembers; and

''(C) such other matters as the Secretary of Defense considers appropriate.

''(4) PROCEDURES AND STANDARDS.—The policy shall include guidelines to be followed by the military departments in the provision of assistance to severely wounded or injured servicemembers. The procedures and standards shall be uniform across the military departments except to the extent necessary to reflect the traditional practices or customs of a particular military department. The procedures and standards shall establish a minimum level of support and shall specify the duration of programs.

''(b) ELEMENTS OF POLICY.—The comprehensive policy developed under subsection (a) shall address the following matters:

''(1) Coordination with the Severely Injured Joint Support Operations Center of the Department of Defense.

''(2) Promotion of a seamless transition to civilian life for severely wounded or injured servicemembers who are or are likely to be separated on account of their wound or injury.

''(3) Identification and resolution of special problems or issues related to the transition to civilian life of severely wounded or injured servicemembers who are members of the reserve components.

''(4) The qualifications, assignment, training, duties, supervision, and accountability for the performance of responsibilities for the personnel providing assistance to severely wounded or injured servicemembers.

"(5) Centralized, short-term and long-term case-management procedures for assistance to severely wounded or injured servicemembers by each military department, including rapid access for severely wounded or injured servicemembers to case managers and counselors.

"(6) The provision, through a computer accessible Internet website and other means and at no cost to severely wounded or injured servicemembers, of personalized, integrated information on the benefits and financial assistance available to such members from the Federal Government.

"(7) The provision of information to severely wounded or injured servicemembers on mechanisms for registering complaints about, or requests for, additional assistance.

"(8) Participation of family members.

"(9) Liaison with the Department of Veterans Affairs and the Department of Labor in order to ensure prompt and accurate resolution of issues relating to benefits administered by those agencies for severely wounded or injured servicemembers.

"(10) Data collection regarding the incidence and quality of assistance provided to severely wounded or injured servicemembers, including surveys of such servicemembers and military and civilian personnel whose assigned duties include assistance to severely wounded or injured servicemembers.

"(c) ADOPTION BY MILITARY DEPARTMENTS.—Not later than September 1, 2006, the Secretary of each military department shall prescribe regulations, or modify current regulations, on the policies and procedures of such military department on the provision of assistance to severely wounded or injured servicemembers in order to conform such policies and procedures to the policy prescribed under subsection (a)."

QUARTERLY REPORTS ON DEPARTMENT OF DEFENSE RESPONSE TO THREAT POSED BY IMPROVISED EXPLOSIVE DEVICES

Pub. L. 109–364, div. A, title XIV, §1402, Oct. 17, 2006, 120 Stat. 2433, which required the Secretary of Defense to submit quarterly reports on incidents involving the detonation or discovery of an improvised explosive device that involved United States or allied forces in Iraq and Afghanistan and on certain efforts of the Department of Defense to counter the threat of improvised explosive devices, was repealed by Pub. L. 112–81, div. A, title X, §1062(d)(5), Dec. 31, 2011, 125 Stat. 1585.

DATABASE OF EMERGENCY RESPONSE CAPABILITIES

Pub. L. 115–232, div. A, title X, §1084(b), Aug. 13, 2018, 132 Stat. 1990, provided that:

"(1) DEADLINE FOR ESTABLISHMENT.—The Secretary of Defense shall establish the database required by section 1406 of the John Warner National Defense Authorization Act for Fiscal Year 2007 [section 1406 of Pub. L. 109–364, set out below], as amended by subsection (a), by not later than one year after the date of the enactment of this Act [Aug. 13, 2018].

"(2) USE OF EXISTING DATABASE OR SYSTEM FOR CERTAIN CAPABILITIES.—The Secretary may meet the requirement with respect to the capabilities described in subsection (a)(1) of section 1406 of the John Warner National Defense Authorization Act for Fiscal Year 2007, as so amended, in connection with the database required by that section through the use or modification of current databases and tracking systems of the Department of Defense, including the Defense Readiness Reporting System, if the Secretary determines that such action will—

"(A) expedite compliance with the requirement; and

"(B) achieve such compliance at a cost not greater than the cost of establishing anew the database otherwise covered by the requirement."

Pub. L. 109–364, div. A, title XIV, §1406, Oct. 17, 2006, 120 Stat. 2436, as amended by Pub. L. 115–232, div. A, title X, §1084(a), Aug. 13, 2018, 132 Stat. 1990, provided that:

"(a) DATABASE REQUIRED.—The Secretary of Defense shall maintain a database of emergency response capabilities that includes the following:

"(1) The types of emergency response capabilities that each State's National Guard, as reported by the States, may be able to provide in response to a domestic natural or manmade disaster, both to their home States and under State-to-State mutual assistance agreements.

"(2) The types of emergency response capabilities that the Department of Defense may be able to provide in support of the National Response Plan's Emergency Support Functions, and identification of the units that provide these capabilities.

"(3) The types of emergency response cyber capabilities that the National Guard of each State and territory may be able to provide in response to domestic or natural man-made disasters, as reported by the States and territories, including—

"(A) capabilities that can be provided within the State or territory;

"(B) capabilities that can be provided under State-to-State mutual assistance agreements; and

"(C) capabilities for defense support to civil authorities.

"(4) The types of emergency response cyber capabilities of other reserve components of the Armed Forces identified by the Secretary that are available for defense support to civil authorities in response to domestic or natural man-made disasters.

"(b) INFORMATION REQUIRED TO KEEP DATABASE CURRENT.—In maintaining the database required by subsection (a), the Secretary shall identify and revise the information required to be reported and included in the database at least once every two years for purposes of keeping the database current."

REPORT REGARDING EFFECT ON MILITARY READINESS OF UNDOCUMENTED IMMIGRANTS TRESPASSING UPON OPERATIONAL RANGES

Pub. L. 109–163, div. A, title III, §354, Jan. 6, 2006, 119 Stat. 3204, provided that:

"(a) REPORT CONTAINING ASSESSMENT AND RESPONSE PLAN.—Not later than April 15, 2006, the Secretary of Defense shall submit to Congress a report containing—

"(1) an assessment of the impact on military readiness caused by undocumented immigrants whose entry into the United States involves trespassing upon operational ranges of the Department of Defense; and

"(2) a plan for the implementation of measures to prevent such trespass.

"(b) PREPARATION AND ELEMENTS OF ASSESSMENT.—The assessment required by subsection (a)(1) shall be prepared by the Secretary of Defense. The assessment shall include the following:

"(1) A listing of the operational ranges adversely affected by the trespass of undocumented immigrants upon operational ranges.

"(2) A description of the types of range activities affected by such trespass.

"(3) A determination of the amount of time lost for range activities, and the increased costs incurred, as a result of such trespass.

"(4) An evaluation of the nature and extent of such trespass and means of travel.

"(5) An evaluation of the factors that contribute to the use by undocumented immigrants of operational ranges as a means to enter the United States.

"(6) A description of measures currently in place to prevent such trespass, including the use of barriers to vehicles and persons, military patrols, border patrols, and sensors.

"(c) PREPARATION AND ELEMENTS OF PLAN.—The plan required by subsection (a)(2) shall be prepared jointly by the Secretary of Defense and the Secretary of Homeland Security. The plan shall include the following:

"(1) The types of measures to be implemented to improve prevention of trespass of undocumented immigrants upon operational ranges, including the spe-

cific physical methods, such as barriers and increased patrols or monitoring, to be implemented and any legal or other policy changes recommended by the Secretaries.

''(2) The costs of, and timeline for, implementation of the plan.

''(d) IMPLEMENTATION REPORTS.—Not later than September 15, 2006, March 15, 2007, September 15, 2007, and March 15, 2008, the Secretary of Defense shall submit to Congress a report detailing the progress made by the Department of Defense, during the period covered by the report, in implementing measures recommended in the plan required by subsection (a)(2) to prevent undocumented immigrants from trespassing upon operational ranges. Each report shall include the number and types of mitigation measures implemented and the success of such measures in preventing such trespass.

''(e) DEFINITIONS.—In this section, the terms 'operational range' and 'range activities' have the meaning given those terms in section 101(e) of title 10, United States Code.''

REPORTS BY OFFICERS AND SENIOR ENLISTED MEMBERS OF CONVICTION OF CRIMINAL LAW

Pub. L. 109–163, div. A, title V, § 554, Jan. 6, 2006, 119 Stat. 3264, directed the Secretary of Defense to prescribe regulations, to go into effect by 180 days after Jan. 6, 2006, that require certain officers and senior enlisted members to report a conviction for a violation of a criminal law of the United States that becomes final after Jan. 6, 2006.

PRESERVATION OF RECORDS PERTAINING TO RADIOACTIVE FALLOUT FROM NUCLEAR WEAPONS TESTING

Pub. L. 109–163, div. A, title X, § 1055, Jan. 6, 2006, 119 Stat. 3438, provided that:

''(a) PROHIBITION OF DESTRUCTION OF CERTAIN RECORDS.—The Secretary of Defense may not destroy any official record in the custody or control of the Department of Defense that contains information relating to radioactive fallout from nuclear weapons testing.

''(b) PRESERVATION AND PUBLICATION OF INFORMATION.—The Secretary of Defense shall identify, preserve, and make available any unclassified information contained in official records referred to in subsection (a).''

SAFE DELIVERY OF MAIL IN MILITARY MAIL SYSTEM

Pub. L. 109–163, div. A, title X, § 1071, Jan. 6, 2006, 119 Stat. 3446, provided that:

''(a) PLAN FOR SAFE DELIVERY OF MILITARY MAIL.—

''(1) PLAN REQUIRED.—The Secretary of Defense shall develop and implement a plan to ensure that the mail within the military mail system is safe for delivery. The plan shall provide for the screening of all mail within the military mail system in order to detect the presence of biological, chemical, or radiological weapons, agents, or pathogens or explosive devices before mail within the military mail system is delivered to its intended recipients.

''(2) FUNDING.—The budget justification materials submitted to Congress with the budget of the President for fiscal year 2007 and each fiscal year thereafter shall include a description of the amounts required in such fiscal year to carry out the plan.

''(b) REPORT ON SAFETY OF MAIL FOR DELIVERY.—

''(1) REPORT REQUIRED.—Not later than 120 days after the date of the enactment of this Act [Jan. 6, 2006], the Secretary shall submit to Congress a report on the safety of mail within the military mail system for delivery.

''(2) ELEMENTS.—The report shall include the following:

''(A) An assessment of any existing deficiencies in the military mail system in ensuring that mail within the military mail system is safe for delivery.

''(B) The plan required by subsection (a).

''(C) An estimate of the time and resources required to implement the plan.

''(D) A description of the delegation within the Department of Defense of responsibility for ensuring that mail within the military mail system is safe for delivery, including responsibility for the development, implementation, and oversight of improvements to the military mail system to ensure that mail within the military mail system is safe for delivery.

''(3) FORM.—The report shall be submitted in unclassified form, but may include a classified annex.

''(c) MAIL WITHIN THE MILITARY MAIL SYSTEM DEFINED.—

''(1) IN GENERAL.—In this section, the term 'mail within the military mail system' means—

''(A) any mail that is posted through the Military Post Offices (including Army Post Offices (APOs) and Fleet Post Offices (FPOs)), Department of Defense mail centers, military Air Mail Terminals, and military Fleet Mail Centers; and

''(B) any mail or package posted in the United States that is addressed to an unspecified member of the Armed Forces.

''(2) INCLUSIONS AND EXCEPTION.—The term includes any official mail posted by the Department of Defense. The term does not include any mail posted as otherwise described in paragraph (1) that has been screened for safety for delivery by the United States Postal Service before such posting.''

WAR-RELATED REPORTING REQUIREMENTS

Pub. L. 109–163, div. A, title XII, § 1221, Jan. 6, 2006, 119 Stat. 3462, as amended by Pub. L. 109–364, div. A, title XV, § 1518, Oct. 17, 2006, 120 Stat. 2443; Pub. L. 111–84, div. A, title XII, § 1233, Oct. 28, 2009, 123 Stat. 2531; Pub. L. 115–91, div. A, title XII, § 1266, Dec. 12, 2017, 131 Stat. 1691, provided that:

''(a) REPORT REQUIRED FOR OPERATION IRAQI FREEDOM, OPERATION ENDURING FREEDOM, AND OPERATION NOBLE EAGLE.—The Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives], in accordance with this section, a report on procurement and equipment maintenance costs for each of Operation Iraqi Freedom, Operation Enduring Freedom, and Operation Noble Eagle and on facility infrastructure costs associated with each of Operation Iraqi Freedom and Operation Enduring Freedom. The report shall include the following:

''(1) PROCUREMENT.—A specification of costs of procurement funding requested since fiscal year 2003, together with end-item quantities requested and the purpose of the request (such as replacement for battle losses, improved capability, increase in force size, restructuring of forces), shown by service.

''(2) EQUIPMENT MAINTENANCE.—A cost comparison of the requirements for equipment maintenance expenditures during peacetime and for such requirements during wartime, as shown by the requirements in each of Operation Iraqi Freedom, Operation Enduring Freedom, and Operation Noble Eagle. The cost comparison shall include—

''(A) a description of the effect of war operations on the backlog of maintenance requirements over the period of fiscal years 2003 to the time of the report; and

''(B) an examination of the extent to which war operations have precluded maintenance from being performed because equipment was unavailable.

''(3) OPERATION IRAQI FREEDOM AND OPERATION ENDURING FREEDOM INFRASTRUCTURE.—A specification of the number of United States military personnel that can be supported by the facility infrastructure in Iraq and Afghanistan and in the neighboring countries from where Operation Iraq Freedom and Operation Enduring Freedom are supported.

''(b) SUBMISSION REQUIREMENTS.—The report under subsection (a) shall be submitted not later than 180 days after the date of the enactment of this Act [Jan. 6, 2006]. The Secretary of Defense shall submit an updated report on procurement, equipment maintenance,

and military construction costs, as specified in subsection (a), concurrently with any request made to Congress after the date of the enactment of this Act for war-related funding.

''(c) QUARTERLY SUBMITTAL TO CONGRESS AND GAO OF CERTAIN REPORTS ON COSTS.—Not later than 45 days after the end of each fiscal year quarter, the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] and the Comptroller General of the United States the Department of Defense Supplemental and Cost of War Execution report for such fiscal year quarter.''

ANNUAL REPORT ON DEPARTMENT OF DEFENSE COSTS TO CARRY OUT UNITED NATIONS RESOLUTIONS

Pub. L. 109–163, div. A, title XII, § 1224, Jan. 6, 2006, 119 Stat. 3463, which provided that, no later than April 30 of each year, the Secretary of Defense was to submit a report to certain congressional committees on Department of Defense costs during the preceding fiscal year to carry out United Nations resolutions, was repealed by Pub. L. 115–91, div. A, title X, § 1051(k)(3), Dec. 12, 2017, 131 Stat. 1564.

REQUIREMENT FOR ESTABLISHMENT OF CERTAIN CRITERIA APPLICABLE TO GLOBAL POSTURE REVIEW

Pub. L. 109–163, div. A, title XII, § 1233, Jan. 6, 2006, 119 Stat. 3469, provided that:

''(a) CRITERIA.—As part of the Integrated Global Presence and Basing Strategy (IGPBS) developed by the Department of Defense that is referred to as the 'Global Posture Review', the Secretary of Defense, in consultation with the Chairman of the Joint Chiefs of Staff, shall develop criteria for assessing, with respect to each type of facility specified in subsection (c) that is to be located in a foreign country, the following factors:

''(1) The effect of any new basing arrangements on the strategic mobility requirements of the Department of Defense.

''(2) The ability of units deployed to overseas locations in areas in which United States Armed Forces have not traditionally been deployed to meet mobility response times required by operational planners.

''(3) The cost of deploying units to areas referred to in paragraph (2) on a rotational basis (rather than on a permanent basing basis).

''(4) The strategic benefit of rotational deployments through countries with which the United States is developing a close or new security relationship.

''(5) Whether the relative speed and complexity of conducting negotiations with a particular country is a discriminator in the decision to deploy forces within the country.

''(6) The appropriate and available funding mechanisms for the establishment, operation, and sustainment of specific Main Operating Bases, Forward Operating Bases, or Cooperative Security Locations.

''(7) The effect on military quality of life of the unaccompanied deployment of units to new facilities in overseas locations.

''(8) Other criteria as Secretary of Defense determines appropriate.

''(b) ANALYSIS OF ALTERNATIVES TO BASING OR OPERATING LOCATIONS.—The Secretary of Defense, in consultation with the Chairman of the Joint Chiefs of Staff, shall develop a mechanism for analyzing alternatives to any particular overseas basing or operating location. Such a mechanism shall incorporate the factors specified in each of paragraphs (1) through (5) of subsection (a).

''(c) MINIMAL INFRASTRUCTURE REQUIREMENTS FOR OVERSEAS INSTALLATIONS.—The Secretary of Defense shall develop a description of minimal infrastructure requirements for each of the following types of facilities:

''(1) Facilities categorized as Main Operating Bases.

''(2) Facilities categorized as Forward Operating Bases.

''(3) Facilities categorized as Cooperative Security Locations.

''(d) NOTIFICATION REQUIRED.—Not later than 30 days after an agreement is entered into between the United States and a foreign country to support the deployment of elements of the United States Armed Forces in that country, the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a written notification of such agreement. The notification under this subsection shall include the terms of the agreement, any costs to the United States resulting from the agreement, and a timeline to carry out the terms of the agreement.

''(e) ANNUAL BUDGET ELEMENT.—The Secretary of Defense shall submit to Congress, as an element of the annual budget request of the Secretary, information regarding the funding sources for the establishment, operation, and sustainment of individual Main Operating Bases, Forward Operating Bases, or Cooperative Security Locations.

''(f) REPORT.—Not later than March 30, 2006, the Secretary of Defense shall submit to Congress a report on the matters specified in subsections (a) through (c).''

PROCESSING OF FORENSIC EVIDENCE COLLECTION KITS AND ACQUISITION OF SUFFICIENT STOCKS OF SUCH KITS

Pub. L. 108–375, div. A, title V, § 573, Oct. 28, 2004, 118 Stat. 1921, provided that:

''(a) ELIMINATION OF BACKLOG, ETC.—The Secretary of Defense shall take such steps as may be necessary to ensure that—

''(1) the United States Army Criminal Investigation Laboratory has the personnel and resources to effectively process forensic evidence used by the Department of Defense within 60 days of receipt by the laboratory of such evidence;

''(2) consistent policies are established among the Armed Forces to reduce the time period between the collection of forensic evidence and the receipt and processing of such evidence by United States Army Criminal Investigation Laboratory; and

''(3) there is an adequate supply of forensic evidence collection kits—

''(A) for all United States military installations, including the military service academies; and

''(B) for units of the Armed Forces deployed in theaters of operation.

''(b) TRAINING.—The Secretary shall take such measures as the Secretary considers appropriate to ensure that personnel are appropriately trained—

''(1) in the use of forensic evidence collection kits; and

''(2) in the prescribed procedures to ensure protection of the chain of custody of such kits once used.''

POLICY FOR TIMELY NOTIFICATION OF NEXT OF KIN OF MEMBERS SERIOUSLY ILL OR INJURED IN COMBAT ZONES

Pub. L. 108–375, div. A, title VII, § 724, Oct. 28, 2004, 118 Stat. 1990, required the Secretary of Defense to prescribe a policy for providing timely notification to the next of kin of seriously ill or injured members in combat zones and to submit to Congress a copy of the policy no later than 120 days after Oct. 28, 2004.

SECRETARY OF DEFENSE CRITERIA FOR AND GUIDANCE ON IDENTIFICATION AND INTERNAL TRANSMISSION OF CRITICAL INFORMATION

Pub. L. 108–375, div. A, title IX, § 932, Oct. 28, 2004, 118 Stat. 2031, required the Secretary of Defense, no later than 120 days after Oct. 28, 2004, to establish criteria for determining categories of critical information that should be made known expeditiously to senior civilian and military officials in the Department of Defense.

PROGRAM TO COMMEMORATE 60TH ANNIVERSARY OF WORLD WAR II

Pub. L. 108–375, div. A, title X, § 1032, Oct. 28, 2004, 118 Stat. 2045, authorized the Secretary of Defense to con-

duct a program during fiscal year 2005 to commemorate the 60th anniversary of World War II.

PRESERVATION OF SEARCH AND RESCUE CAPABILITIES OF THE FEDERAL GOVERNMENT

Pub. L. 108–375, div. A, title X, §1085, Oct. 28, 2004, 118 Stat. 2065, as amended by Pub. L. 110–181, div. A, title III, §360(c), Jan. 28, 2008, 122 Stat. 78; Pub. L. 111–383, div. A, title X, §1075(i)(2), Jan. 7, 2011, 124 Stat. 4378, provided that: ''The Secretary of Defense may not reduce or eliminate search and rescue capabilities at any military installation in the United States unless the Secretary, after reviewing the search and rescue capabilities report prepared by the Secretary of the Air Force under section 360(a) of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110–181; 122 Stat. 77), first certifies to the Committees on Armed Services of the Senate and the House of Representatives that equivalent search and rescue capabilities will be provided, without interruption and consistent with the policies and objectives set forth in the United States National Search and Rescue Plan entered into force on January 1, 1999, by—

''(1) the Department of Interior, the Department of Commerce, the Department of Homeland Security, the Department of Transportation, the Federal Communications Commission, or the National Aeronautics and Space Administration; or

''(2) the Department of Defense, either directly or through a Department of Defense contract with an emergency medical service provider or other private entity to provide such capabilities.''

SUNKEN MILITARY CRAFT

Pub. L. 108–375, div. A, title XIV, Oct. 28, 2004, 118 Stat. 2094, provided that:

''SEC. 1401. PRESERVATION OF TITLE TO SUNKEN MILITARY CRAFT AND ASSOCIATED CONTENTS.

''Right, title, and interest of the United States in and to any United States sunken military craft—

''(1) shall not be extinguished except by an express divestiture of title by the United States; and

''(2) shall not be extinguished by the passage of time, regardless of when the sunken military craft sank.

''SEC. 1402. PROHIBITIONS.

''(a) UNAUTHORIZED ACTIVITIES DIRECTED AT SUNKEN MILITARY CRAFT.—No person shall engage in or attempt to engage in any activity directed at a sunken military craft that disturbs, removes, or injures any sunken military craft, except—

''(1) as authorized by a permit under this title;

''(2) as authorized by regulations issued under this title; or

''(3) as otherwise authorized by law.

''(b) POSSESSION OF SUNKEN MILITARY CRAFT.—No person may possess, disturb, remove, or injure any sunken military craft in violation of—

''(1) this section; or

''(2) any prohibition, rule, regulation, ordinance, or permit that applies under any other applicable law.

''(c) LIMITATIONS ON APPLICATION.—

''(1) ACTIONS BY UNITED STATES.—This section shall not apply to actions taken by, or at the direction of, the United States.

''(2) FOREIGN PERSONS.—This section shall not apply to any action by a person who is not a citizen, national, or resident alien of the United States, except in accordance with—

''(A) generally recognized principles of international law;

''(B) an agreement between the United States and the foreign country of which the person is a citizen; or

''(C) in the case of an individual who is a crew member or other individual on a foreign vessel or foreign aircraft, an agreement between the United States and the flag State of the foreign vessel or aircraft that applies to the individual.

''(3) LOAN OF SUNKEN MILITARY CRAFT.—This section does not prohibit the loan of United States sunken military craft in accordance with regulations issued by the Secretary concerned.

''SEC. 1403. PERMITS.

''(a) IN GENERAL.—The Secretary concerned may issue a permit authorizing a person to engage in an activity otherwise prohibited by section 1402 with respect to a United States sunken military craft, for archaeological, historical, or educational purposes, in accordance with regulations issued by such Secretary that implement this section.

''(b) CONSISTENCY WITH OTHER LAWS.—The Secretary concerned shall require that any activity carried out under a permit issued by such Secretary under this section must be consistent with all requirements and restrictions that apply under any other provision of Federal law.

''(c) CONSULTATION.—In carrying out this section (including the issuance after the date of the enactment of this Act [Oct. 28, 2004] of regulations implementing this section), the Secretary concerned shall consult with the head of each Federal agency having authority under Federal law with respect to activities directed at sunken military craft or the locations of such craft.

''(d) APPLICATION TO FOREIGN CRAFT.—At the request of any foreign State, the Secretary of the Navy, in consultation with the Secretary of State, may carry out this section (including regulations promulgated pursuant to this section) with respect to any foreign sunken military craft of that foreign State located in United States waters.

''SEC. 1404. PENALTIES.

''(a) IN GENERAL.—Any person who violates this title, or any regulation or permit issued under this title, shall be liable to the United States for a civil penalty under this section.

''(b) ASSESSMENT AND AMOUNT.—The Secretary concerned may assess a civil penalty under this section, after notice and an opportunity for a hearing, of not more than $100,000 for each violation.

''(c) CONTINUING VIOLATIONS.—Each day of a continued violation of this title or a regulation or permit issued under this title shall constitute a separate violation for purposes of this section.

''(d) IN REM LIABILITY.—A vessel used to violate this title shall be liable in rem for a penalty under this section for such violation.

''(e) OTHER RELIEF.—If the Secretary concerned determines that there is an imminent risk of disturbance of, removal of, or injury to any sunken military craft, or that there has been actual disturbance of, removal of, or injury to a sunken military craft, the Attorney General, upon request of the Secretary concerned, may seek such relief as may be necessary to abate such risk or actual disturbance, removal, or injury and to return or restore the sunken military craft. The district courts of the United States shall have jurisdiction in such a case to order such relief as the public interest and the equities of the case may require.

''(f) LIMITATIONS.—An action to enforce a violation of section 1402 or any regulation or permit issued under this title may not be brought more than 8 years after the date on which—

''(1) all facts material to the right of action are known or should have been known by the Secretary concerned; and

''(2) the defendant is subject to the jurisdiction of the appropriate district court of the United States or administrative forum.

''SEC. 1405. LIABILITY FOR DAMAGES.

''(a) IN GENERAL.—Any person who engages in an activity in violation of section 1402 or any regulation or permit issued under this title that disturbs, removes, or injures any United States sunken military craft shall pay the United States enforcement costs and

damages resulting from such disturbance, removal, or injury.

''(b) INCLUDED DAMAGES.—Damages referred to in subsection (a) may include—

''(1) the reasonable costs incurred in storage, restoration, care, maintenance, conservation, and curation of any sunken military craft that is disturbed, removed, or injured in violation of section 1402 or any regulation or permit issued under this title; and

''(2) the cost of retrieving, from the site where the sunken military craft was disturbed, removed, or injured, any information of an archaeological, historical, or cultural nature.

''SEC. 1406. RELATIONSHIP TO OTHER LAWS.

''(a) IN GENERAL.—Except to the extent that an activity is undertaken as a subterfuge for activities prohibited by this title, nothing in this title is intended to affect—

''(1) any activity that is not directed at a sunken military craft; or

''(2) the traditional high seas freedoms of navigation, including—

''(A) the laying of submarine cables and pipelines;

''(B) operation of vessels;

''(C) fishing; or

''(D) other internationally lawful uses of the sea related to such freedoms.

''(b) INTERNATIONAL LAW.—This title and any regulations implementing this title shall be applied in accordance with generally recognized principles of international law and in accordance with the treaties, conventions, and other agreements to which the United States is a party.

''(c) LAW OF FINDS.—The law of finds shall not apply to—

''(1) any United States sunken military craft, wherever located; or

''(2) any foreign sunken military craft located in United States waters.

''(d) LAW OF SALVAGE.—No salvage rights or awards shall be granted with respect to—

''(1) any United States sunken military craft without the express permission of the United States; or

''(2) any foreign sunken military craft located in United States waters without the express permission of the relevant foreign state.

''(e) LAW OF CAPTURE OR PRIZE.—Nothing in this title is intended to alter the international law of capture or prize with respect to sunken military craft.

''(f) LIMITATION OF LIABILITY.—Nothing in sections 4281 through 4287 and 4289 of the Revised Statutes ([former] 46 U.S.C. App. 181 et seq.) [see chapter 305 of Title 46, Shipping] or section 3 of the Act of February 13, 1893 (chapter 105; 27 Stat. 445; [former] 46 U.S.C. App. 192) [now 46 U.S.C. 30706], shall limit the liability of any person under this section.

''(g) AUTHORITIES OF THE COMMANDANT OF THE COAST GUARD.—Nothing in this title is intended to preclude or limit the application of any other law enforcement authorities of the Commandant of the Coast Guard.

''(h) PRIOR DELEGATIONS, AUTHORIZATIONS, AND RELATED REGULATIONS.—Nothing in this title shall invalidate any prior delegation, authorization, or related regulation that is consistent with this title.

''(i) CRIMINAL LAW.—Nothing in this title is intended to prevent the United States from pursuing criminal sanctions for plundering of wrecks, larceny of Government property, or violation of any applicable criminal law.

''SEC. 1407. ENCOURAGEMENT OF AGREEMENTS WITH FOREIGN COUNTRIES.

''The Secretary of State, in consultation with the Secretary of Defense, is encouraged to negotiate and conclude bilateral and multilateral agreements with foreign countries with regard to sunken military craft consistent with this title.

''SEC. 1408. DEFINITIONS.

''In this title:

''(1) ASSOCIATED CONTENTS.—The term 'associated contents' means—

''(A) the equipment, cargo, and contents of a sunken military craft that are within its debris field; and

''(B) the remains and personal effects of the crew and passengers of a sunken military craft that are within its debris field.

''(2) SECRETARY CONCERNED.—The term 'Secretary concerned' means—

''(A) subject to subparagraph (B), the Secretary of a military department; and

''(B) in the case of a Coast Guard vessel, the Secretary of the Department in which the Coast Guard is operating.

''(3) SUNKEN MILITARY CRAFT.—The term 'sunken military craft' means all or any portion of—

''(A) any sunken warship, naval auxiliary, or other vessel that was owned or operated by a government on military noncommercial service when it sank;

''(B) any sunken military aircraft or military spacecraft that was owned or operated by a government when it sank; and

''(C) the associated contents of a craft referred to in subparagraph (A) or (B),

if title thereto has not been abandoned or transferred by the government concerned.

''(4) UNITED STATES CONTIGUOUS ZONE.—The term 'United States contiguous zone' means the contiguous zone of the United States under Presidential Proclamation 7219, dated September 2, 1999 [43 U.S.C. 1331 note].

''(5) UNITED STATES INTERNAL WATERS.—The term 'United States internal waters' means all waters of the United States on the landward side of the baseline from which the breadth of the United States territorial sea is measured.

''(6) UNITED STATES TERRITORIAL SEA.—The term 'United States territorial sea' means the waters of the United States territorial sea under Presidential Proclamation 5928, dated December 27, 1988 [43 U.S.C. 1331 note].

''(7) UNITED STATES WATERS.—The term 'United States waters' means United States internal waters, the United States territorial sea, and the United States contiguous zone.''

REPORTS ON WEAPONS AND AMMUNITION OBTAINED BY IRAQ

Pub. L. 108–177, title III, § 358, Dec. 13, 2003, 117 Stat. 2621, directed the Director of the Defense Intelligence Agency, not later than one year after Dec. 13, 2003, to submit preliminary and final reports to committees of Congress on information obtained by the Department of Defense and the intelligence community on the conventional weapons and ammunition obtained by Iraq in violation of applicable resolutions of the United Nations Security Council adopted since the invasion of Kuwait by Iraq in 1990.

Pub. L. 108–136, div. A, title XII, § 1204, Nov. 24, 2003, 117 Stat. 1649, directed the Secretary of Defense, not later than one year after Nov. 24, 2003, to submit to committees of Congress a report on the acquisition by Iraq of weapons of mass destruction and associated delivery systems and the acquisition by Iraq of advanced conventional weapons.

STUDIES OF FLEET PLATFORM ARCHITECTURES FOR THE NAVY

Pub. L. 108–136, div. A, title II, § 216, Nov. 24, 2003, 117 Stat. 1418, directed the Secretary of Defense to provide for the performance of two independent studies of alternative future fleet platform architectures for the Navy

and to forward the results of each study to congressional defense committees not later than Jan. 15, 2005.

REPORT REGARDING IMPACT OF CIVILIAN COMMUNITY ENCROACHMENT AND CERTAIN LEGAL REQUIREMENTS ON MILITARY INSTALLATIONS AND RANGES AND PLAN TO ADDRESS ENCROACHMENT

Pub. L. 108–136, div. A, title III, §320, Nov. 24, 2003, 117 Stat. 1435, required a study on the impact of various civilian and environmental encroachment issues affecting military installations and operational ranges, a plan to respond to any encroachment issues found, and reports from 2004 to 2010 regarding the results of the study and progress being made on the encroachment response plan.

HIGH-PERFORMING ORGANIZATION BUSINESS PROCESS REENGINEERING PILOT PROGRAM

Pub. L. 108–136, div. A, title III, §337, Nov. 24, 2003, 117 Stat. 1445, established a pilot program designed to create, or continue the implementation of, high-performing organizations through the conduct of a Business Process Reengineering initiative at selected military installations and facilities.

ASSESSMENT BY SECRETARY OF DEFENSE

Pub. L. 108–136, div. A, title V, §517(b), Nov. 24, 2003, 117 Stat. 1461, directed the Secretary of Defense to submit to committees of Congress, not later than one year after Nov. 24, 2003, a description of the effects on reserve component recruitment and retention that have resulted from calls and orders to active duty and the tempo of such service, an assessment of the process for calling and ordering reserve members to active duty, preparing such members for active duty, processing such members into the force, and deploying such members, and a description of changes in the Armed Forces envisioned by the Secretary of Defense.

POLICY ON PUBLIC IDENTIFICATION OF CASUALTIES

Pub. L. 108–136, div. A, title V, §546, Nov. 24, 2003, 117 Stat. 1479, directed the Secretary of Defense, no later than 180 days after Nov. 24, 2003, to prescribe a policy on the public release of the names or other personally identifying information of casualties.

PLAN FOR PROMPT GLOBAL STRIKE CAPABILITY

Pub. L. 110–181, div. A, title II, §243, Jan. 28, 2008, 122 Stat. 51, required submission of a research, development, and testing plan for prompt global strike program objectives for fiscal years 2008 through 2013 and a plan for obligation and expenditure of funds available for prompt global strike for fiscal year 2008.

Pub. L. 108–136, div. A, title X, §1032, Nov. 24, 2003, 117 Stat. 1605, as amended by Pub. L. 110–181, div. A, title X, §1043, Jan. 28, 2008, 122 Stat. 311, required establishment of, and annual updates to, an integrated plan for developing, deploying, and sustaining a prompt global strike capability in the Armed Forces and submission of reports on the plan from 2004 to 2009.

REPORTS ON MILITARY OPERATIONS AND RECONSTRUCTION ACTIVITIES IN IRAQ AND AFGHANISTAN

Pub. L. 109–13, div. A, title I, §1024(c), May 11, 2005, 119 Stat. 253, provided that:

''(1) Each semiannual report to Congress required under a provision of law referred to in paragraph (2) shall include, in addition to the matters specified in the applicable provision of law, the following:

''(A) A statement of the cumulative total of all amounts obligated, and of all amounts expended, as of the date of such report for Operation Enduring Freedom.

''(B) A statement of the cumulative total of all amounts obligated, and of all amounts expended, as of the date of such report for Operation Iraqi Freedom.

''(C) An estimate of the reasonably foreseeable costs for ongoing military operations to be incurred during the 12-month period beginning on the date of such report.

''(2) The provisions of law referred to in this paragraph are as follows:

''(A) Section 1120 of the Emergency Supplemental Appropriations Act for Defense and for the Reconstruction of Iraq and Afghanistan, 2004 (Public Law 108–106; 117 Stat. 1219; 10 U.S.C. 113 note).

''(B) Section 9010 of the Department of Defense Appropriations Act, 2005 (Public Law 108–287; 118 Stat. 1008; 10 U.S.C. 113 note).''

Pub. L. 108–287, title IX, §9010, Aug. 5, 2004, 118 Stat. 1008, as amended by Pub. L. 108–324, div. B, §306, Oct. 13, 2004, 118 Stat. 1243, provided that:

''(a) Not later than April 30 and October 31 of each year, the Secretary of Defense shall submit to Congress a report on the military operations of the Armed Forces and the reconstruction activities of the Department of Defense in Iraq and Afghanistan.

''(b) Each report shall include the following information:

''(1) For each of Iraq and Afghanistan for the half-fiscal year ending during the month preceding the due date of the report, the amount expended for military operations of the Armed Forces and the amount expended for reconstruction activities, together with the cumulative total amounts expended for such operations and activities.

''(2) An assessment of the progress made toward preventing attacks on United States personnel.

''(3) An assessment of the effects of the operations and activities in Iraq and Afghanistan on the readiness of the Armed Forces.

''(4) An assessment of the effects of the operations and activities in Iraq and Afghanistan on the recruitment and retention of personnel for the Armed Forces.

''(5) For the half-fiscal year ending during the month preceding the due date of the report, the costs incurred for repair of Department of Defense equipment used in the operations and activities in Iraq and Afghanistan.

''(6) The foreign countries, international organizations, and nongovernmental organizations that are contributing support for the ongoing military operations and reconstruction activities, together with a discussion of the amount and types of support contributed by each during the half-fiscal year ending during the month preceding the due date of the report.

''(7) The extent to which, and the schedule on which, the Selected Reserve of the Ready Reserve of the Armed Forces is being involuntarily ordered to active duty under section 12302 of title 10, United States Code.

''(8) For each unit of the National Guard of the United States and the other reserve components of the Armed Forces on active duty pursuant to an order to active duty under section 12302 of title 10, United States Code, the following information:

''(A) The unit.

''(B) The projected date of return of the unit to its home station.

''(C) The extent (by percentage) to which the forces deployed within the United States and outside the United States in support of a contingency operation are composed of reserve component forces.''

Pub. L. 108–106, title I, §1120, Nov. 6, 2003, 117 Stat. 1219, provided that:

''(a) Not later than April 30 and October 31 of each year, the Secretary of Defense shall submit to Congress a report on the military operations of the Armed Forces and the reconstruction activities of the Department of Defense in Iraq and Afghanistan.

''(b) Each report shall include the following information:

''(1) For each of Iraq and Afghanistan for the half-fiscal year ending during the month preceding the due date of the report, the amount expended for mili-

tary operations of the Armed Forces and the amount expended for reconstruction activities, together with the cumulative total amounts expended for such operations and activities.

''(2) An assessment of the progress made toward preventing attacks on United States personnel.

''(3) An assessment of the effects of the operations and activities in Iraq and Afghanistan on the readiness of the Armed Forces.

''(4) An assessment of the effects of the operations and activities in Iraq and Afghanistan on the recruitment and retention of personnel for the Armed Forces.

''(5) For the half-fiscal year ending during the month preceding the due date of the report, the costs incurred for repair of Department of Defense equipment used in the operations and activities in Iraq and Afghanistan.

''(6) The foreign countries, international organizations, and nongovernmental organizations that are contributing support for the ongoing military operations and reconstruction activities, together with a discussion of the amount and types of support contributed by each during the half-fiscal year ending during the month preceding the due date of the report.

''(7) The extent to which, and the schedule on which, the Selected Reserve of the Ready Reserve of the Armed Forces is being involuntarily ordered to active duty under section 12304 of title 10, United States Code.

''(8) For each unit of the National Guard of the United States and the other reserve components of the Armed Forces on active duty pursuant to an order to active duty under section 12304 of title 10, United States Code, the following information:

''(A) The unit.

''(B) The projected date of return of the unit to its home station.

''(C) The extent (by percentage) to which the forces deployed within the United States and outside the United States in support of a contingency operation are composed of reserve component forces.''

UNIFORM FINANCIAL MANAGEMENT SYSTEM FOR DEPARTMENT OF DEFENSE TEST AND EVALUATION FACILITIES

Pub. L. 107–314, div. A, title II, § 233, Dec. 2, 2002, 116 Stat. 2490, directed the Secretary of Defense to implement a single financial management and accounting system for all test and evaluation facilities of the Department of Defense, with the goal that such system be implemented no later than Sept. 30, 2006.

TRAINING RANGE SUSTAINMENT PLAN, GLOBAL STATUS OF RESOURCES AND TRAINING SYSTEM, AND TRAINING RANGE INVENTORY

Pub. L. 107–314, div. A, title III, § 366, Dec. 2, 2002, 116 Stat. 2522, as amended by Pub. L. 109–364, div. A, title III, § 348, Oct. 17, 2006, 120 Stat. 2159; Pub. L. 110–181, div. A, title X, § 1063(c)(2), Jan. 28, 2008, 122 Stat. 322; Pub. L. 111–383, div. A, title X, § 1075(g)(2), Jan. 7, 2011, 124 Stat. 4376; Pub. L. 112–239, div. A, title III, § 311, Jan. 2, 2013, 126 Stat. 1691, provided that:

''(a) PLAN REQUIRED.—(1) The Secretary of Defense shall develop a comprehensive plan for using existing authorities available to the Secretary of Defense and the Secretaries of the military departments to address training constraints caused by limitations on the use of military lands, marine areas, and airspace that are available in the United States and overseas for training of the Armed Forces.

''(2) As part of the preparation of the plan, the Secretary of Defense shall conduct the following:

''(A) An assessment of current and future training range requirements of the Armed Forces.

''(B) An evaluation of the adequacy of current Department of Defense resources (including virtual and constructive training assets as well as military lands, marine areas, and airspace available in the United States and overseas) to meet those current and future training range requirements.

''(3) The plan shall include the following:

''(A) Proposals to enhance training range capabilities and address any shortfalls in current Department of Defense resources identified pursuant to the assessment and evaluation conducted under paragraph (2).

''(B) Goals and milestones for tracking planned actions and measuring progress.

''(C) Projected funding requirements for implementing planned actions.

''(D) Designation of an office in the Office of the Secretary of Defense and in each of the military departments that will have lead responsibility for overseeing implementation of the plan.

''(4) At the same time as the President submits to Congress the budget for fiscal year 2004, the Secretary of Defense shall submit to Congress a report describing the progress made in implementing this subsection, including—

''(A) the plan developed under paragraph (1);

''(B) the results of the assessment and evaluation conducted under paragraph (2); and

''(C) any recommendations that the Secretary may have for legislative or regulatory changes to address training constraints identified pursuant to this section.

''(5) At the same time as the President submits to Congress the budget for each fiscal year through fiscal year 2018, the Secretary shall submit to Congress a report describing the progress made in implementing the plan and any additional actions taken, or to be taken, to address training constraints caused by limitations on the use of military lands, marine areas, and airspace.

''(b) READINESS REPORTING IMPROVEMENT.—Not later than June 30, 2003, the Secretary of Defense, using existing measures within the authority of the Secretary, shall submit to Congress a report on the plans of the Department of Defense to improve the Global Status of Resources and Training System to reflect the readiness impact that training constraints caused by limitations on the use of military lands, marine areas, and airspace have on specific units of the Armed Forces.

''(c) TRAINING RANGE INVENTORY.—(1) The Secretary of Defense shall develop and maintain a training range inventory for each of the Armed Forces—

''(A) to identify all available operational training ranges;

''(B) to identify all training capacities and capabilities available at each training range; and

''(C) to identify training constraints caused by limitations on the use of military lands, marine areas, and airspace at each training range.

''(2) The Secretary of Defense shall submit an initial inventory to Congress at the same time as the President submits the budget for fiscal year 2004 and shall submit an updated inventory to Congress at the same time as the President submits the budget for each fiscal year through fiscal year 2018.

''(d) GAO EVALUATION.—The Secretary of Defense shall transmit copies of each report required by subsections (a) and (b) to the Comptroller General. Within 90 days of receiving a report, the Comptroller General shall submit to Congress an evaluation of the report.

''(e) ARMED FORCES DEFINED.—In this section, the term 'Armed Forces' means the Army, Navy, Air Force, and Marine Corps.''

DEVELOPMENT AND IMPLEMENTATION OF FINANCIAL MANAGEMENT ENTERPRISE ARCHITECTURE

Pub. L. 107–314, div. A, title X, § 1004, Dec. 2, 2002, 116 Stat. 2629, which required Secretary of Defense to develop a financial management enterprise architecture for all budgetary, accounting, finance, enterprise resource planning, and mixed information systems of the Department of Defense by May 1, 2003, was repealed by

Pub. L. 108–375, div. A, title III, § 332(f), Oct. 28, 2004, 118 Stat. 1856.

RELIABILITY OF DEPARTMENT OF DEFENSE FINANCIAL STATEMENTS

Pub. L. 107–107, div. A, title X, § 1008, Dec. 28, 2001, 115 Stat. 1204, as amended by Pub. L. 112–81, div. A, title X, § 1052, Dec. 31, 2011, 125 Stat. 1582; Pub. L. 113–188, title IV, § 401(b), Nov. 26, 2014, 128 Stat. 2019; Pub. L. 115–91, div. A, title X, §§ 1002(h), 1051(i)(2), Dec. 12, 2017, 131 Stat. 1542, 1563, provided that:

''[(a), (b) Repealed. Pub. L. 113–188, title IV, § 401(b)(1), Nov. 26, 2014, 128 Stat. 2019.]

''(c) INFORMATION TO AUDITORS.—Not later than the date that is 180 days prior to the date set by the Office of Management and Budget for the submission of financial statements of each year [sic], the Under Secretary of Defense (Comptroller) and the Assistant Secretary of each military department with responsibility for financial management and comptroller functions shall each provide to the auditors of the financial statement of that official's department for the fiscal year ending during the preceding month that official's preliminary management representation, in writing, regarding the expected reliability of the financial statement. The representation shall be consistent with guidance issued by the Director of the Office of Management and Budget and shall include the basis for the reliability assessment stated in the representation.

''[(d) to (f) Repealed. Pub. L. 115–91, div. A, title X, § 1002(h), Dec. 12, 2017, 131 Stat. 1542.]''

ANNUAL REPORT ON THE CONDUCT OF MILITARY OPERATIONS CONDUCTED AS PART OF OPERATION ENDURING FREEDOM

Pub. L. 107–314, div. A, title X, § 1043, Dec. 2, 2002, 116 Stat. 2646, required annual reports on the conduct of military operations conducted as part of Operation Enduring Freedom, starting June 15, 2003, and ending no later than 180 days after the date of the cessation of hostilities undertaken as part of Operation Enduring Freedom.

COMPREHENSIVE PLAN FOR IMPROVING THE PREPAREDNESS OF MILITARY INSTALLATIONS FOR TERRORIST INCIDENTS

Pub. L. 107–314, div. A, title XIV, § 1402, Dec. 2, 2002, 116 Stat. 2675, directed the Secretary of Defense to develop and submit to Congress a comprehensive plan for improving the preparedness of military installations for preventing and responding to terrorist attacks, directed the Comptroller General to review the plan, and required reports on the plan in 2004, 2005, and 2006.

POLICY CONCERNING RIGHTS OF INDIVIDUALS WHOSE NAMES HAVE BEEN ENTERED INTO DEPARTMENT OF DEFENSE OFFICIAL CRIMINAL INVESTIGATIVE REPORTS

Pub. L. 106–398, § 1 [[div. A], title V, § 552], Oct. 30, 2000, 114 Stat. 1654, 1654A–125, provided that:

''(a) POLICY REQUIREMENT.—The Secretary of Defense shall establish a policy creating a uniform process within the Department of Defense that—

''(1) affords any individual who, in connection with the investigation of a reported crime, is designated (by name or by any other identifying information) as a suspect in the case in any official investigative report, or in a central index for potential retrieval and analysis by law enforcement organizations, an opportunity to obtain a review of that designation; and

''(2) requires the expungement of the name and other identifying information of any such individual from such report or index in any case in which it is determined the entry of such identifying information on that individual was made contrary to Department of Defense requirements.

''(b) EFFECTIVE DATE.—The policy required by subsection (a) shall be established not later than 120 days after the date of the enactment of this Act [Oct. 30, 2000].''

TEST OF ABILITY OF RESERVE COMPONENT INTELLIGENCE UNITS AND PERSONNEL TO MEET CURRENT AND EMERGING DEFENSE INTELLIGENCE NEEDS

Pub. L. 106–398, § 1 [[div. A], title V, § 576], Oct. 30, 2000, 114 Stat. 1654, 1654A–138, directed the Secretary of Defense to conduct a three-year test program to determine the most effective peacetime structure and operational employment of reserve component intelligence assets and to establish a means to coordinate and transition the peacetime intelligence support network into use for meeting wartime needs, and to submit to Congress interim and final reports on such program not later than Dec. 1, 2004.

STUDY ON CIVILIAN PERSONNEL SERVICES

Pub. L. 106–398, § 1 [[div. A], title XI, § 1105], Oct. 30, 2000, 114 Stat. 1654, 1654A–311, directed the Secretary of Defense to conduct a study to assess the manner in which personnel services were provided for civilian personnel in the Department of Defense and to submit a report on such study to committees of Congress not later than Jan. 1, 2002.

PILOT PROGRAM FOR REENGINEERING EQUAL EMPLOYMENT OPPORTUNITY COMPLAINT PROCESS

Pub. L. 106–398, § 1 [[div. A], title XI, § 1111], Oct. 30, 2000, 114 Stat. 1654, 1654A–312, directed the Secretary of Defense to carry out a three-year pilot program to improve processes for the resolution of equal employment opportunity complaints by civilian employees of the Department of Defense, and directed the Comptroller General to submit to Congress a report on such program not later than 90 days following the end of the first and last full or partial fiscal years during which such program had been implemented.

WORK SAFETY DEMONSTRATION PROGRAM

Pub. L. 106–398, § 1 [[div. A], title XI, § 1112], Oct. 30, 2000, 114 Stat. 1654, 1654A–313, as amended by Pub. L. 107–314, div. A, title III, § 363, Dec. 2, 2002, 116 Stat. 2520, directed the Secretary of Defense to carry out a defense employees work safety demonstration program under which work safety models used by employers in the private sector would be adopted and any improvement to work safety records would be assessed, directed that such program would terminate on Sept. 30, 2003, and required the Secretary to submit interim and final reports on such program to committees of Congress not later than Dec. 1, 2003.

GAO STUDY ON BENEFITS AND COSTS OF UNITED STATES MILITARY ENGAGEMENT IN EUROPE

Pub. L. 106–398, § 1 [[div. A], title XII, § 1223], Oct. 30, 2000, 114 Stat. 1654, 1654A–328, directed the Comptroller General to conduct a study assessing the benefits and costs to the United States and United States national security interests of the engagement of United States forces in Europe and of United States military strategies used to shape the international security environment in Europe and to submit to committees of Congress a report on the results of such study not later than Dec. 1, 2001.

ESTABLISHMENT OF LOGISTICS STANDARDS FOR SUSTAINED MILITARY OPERATIONS

Pub. L. 106–65, div. A, title III, § 366, Oct. 5, 1999, 113 Stat. 578, as amended by Pub. L. 115–91, div. A, title X, § 1051(h), Dec. 12, 2017, 131 Stat. 1563, provided that:

''(a) ESTABLISHMENT OF STANDARDS.—The Secretary of each military department shall establish, for deployable units of each of the Armed Forces under the jurisdiction of the Secretary, standards regarding—

''(1) the level of spare parts that the units must have on hand; and

''(2) similar logistics and sustainment needs of the units.

"(b) BASIS FOR STANDARDS.—The standards to be established for a unit under subsection (a) shall be based upon the following:

"(1) The unit's wartime mission, as reflected in the war-fighting plans of the relevant combatant commanders.

"(2) An assessment of the likely requirement for sustained operations under each such war-fighting plan.

"(3) An assessment of the likely requirement for that unit to conduct sustained operations in an austere environment, while drawing exclusively on its own internal logistics capabilities.

"(c) SUFFICIENCY CAPABILITIES.—The standards to be established by the Secretary of a military department under subsection (a) shall reflect those spare parts and similar logistics capabilities that the Secretary considers sufficient for the units of each of the Armed Forces under the Secretary's jurisdiction to successfully execute their missions under the conditions described in subsection (b).

"(d) RELATION TO READINESS REPORTING SYSTEM.—The standards established under subsection (a) shall be taken into account in designing the comprehensive readiness reporting system for the Department of Defense required by section 117 of title 10, United States Code, and shall be an element in determining a unit's readiness status.

"(e) RELATION TO ANNUAL FUNDING NEEDS.—The Secretary of Defense shall consider the standards established under subsection (a) in establishing the annual funding requirements for the Department of Defense."

USE OF SMART CARD TECHNOLOGY IN THE DEPARTMENT OF DEFENSE

Pub. L. 106–65, div. A, title III, §373(a)–(g), Oct. 5, 1999, 113 Stat. 580, 581, designated the Navy as the lead agency for the development and implementation of a Smart Card program for the Department of Defense, required the Army and Air Force to establish project offices and cooperate with the Navy to develop implementation plans for using Smart Card technology, established a senior coordinating group, and provided for allocation of certain funds for the Navy to implement Smart Card technology.

SECRETARY OF DEFENSE REVIEW OF ARMY TECHNICIAN COSTING PROCESS

Pub. L. 106–65, div. A, title V, §526, Oct. 5, 1999, 113 Stat. 600, required Secretary of Defense to review process used by the Army to develop estimates of annual authorizations and appropriations required for civilian personnel of Department of the Army generally and for National Guard and Army Reserve technicians in particular and to report on results of review to the Committees on Armed Services of the Senate and House of Representatives not later than Mar. 31, 2000.

SURVEY OF MEMBERS LEAVING MILITARY SERVICE ON ATTITUDES TOWARD MILITARY SERVICE

Pub. L. 106–65, div. A, title V, §581, Oct. 5, 1999, 113 Stat. 633, directed the Secretary of Defense to develop and implement a survey on attitudes toward military service to be completed by all members of the Armed Forces who had been voluntarily discharged or separated or transferred from a regular to a reserve component between Jan. 1, 2000, and June 30, 2000, and to submit a report to Congress on the results of such survey not later than Oct. 1, 2000.

ANNUAL REPORT ON UNITED STATES MILITARY ACTIVITIES IN COLOMBIA

Pub. L. 106–65, div. A, title X, §1025, Oct. 5, 1999, 113 Stat. 748, which required the Secretary of Defense to submit an annual report regarding the deployments and assignments of the United States Armed Forces in Colombia, was repealed by Pub. L. 112–81, div. A, title X, §1062(j)(2), Dec. 31, 2011, 125 Stat. 1585.

REPORT ON NATO DEFENSE CAPABILITIES INITIATIVE

Pub. L. 106–65, div. A, title X, §1039, Oct. 5, 1999, 113 Stat. 756, as amended by Pub. L. 108–136, div. A, title X, §1031(h)(3), Nov. 24, 2003, 117 Stat. 1605, provided findings of Congress relating to the Defense Capabilities Initiative.

COMMEMORATION OF THE VICTORY OF FREEDOM IN THE COLD WAR

Pub. L. 106–65, div. A, title X, §1053, Oct. 5, 1999, 113 Stat. 764, as amended by Pub. L. 107–107, div. A, title X, §1048(g)(7), Dec. 28, 2001, 115 Stat. 1228, established a commission to review and make recommendations regarding the celebration of victory in the Cold War, directed the President to transmit to Congress a report on the content of a Presidential proclamation and a plan for appropriate ceremonies and activities, and authorized funds.

ANNUAL REPORT ON MILITARY AND SECURITY DEVELOPMENTS INVOLVING THE PEOPLE'S REPUBLIC OF CHINA

Pub. L. 106–65, div. A, title XII, §1202, Oct. 5, 1999, 113 Stat. 781, as amended by Pub. L. 107–107, div. A, title XII, §1221, Dec. 28, 2001, 115 Stat. 1252; Pub. L. 110–181, div. A, title XII, §1263, Jan. 28, 2008, 122 Stat. 407; Pub. L. 111–84, div. A, title XII, §1246(a)–(c), Oct. 28, 2009, 123 Stat. 2544, 2545; Pub. L. 112–81, div. A, title X, §1066(e)(1), title XII, §1238(a), Dec. 31, 2011, 125 Stat. 1589, 1642; Pub. L. 112–239, div. A, title XII, §1271, Jan. 2, 2013, 126 Stat. 2022; Pub. L. 113–66, div. A, title XII, §1242, Dec. 26, 2013, 127 Stat. 920; Pub. L. 113–291, div. A, title XII, §1252(a), Dec. 19, 2014, 128 Stat. 3571; Pub. L. 114–328, div. A, title XII, §1271(a), (b), Dec. 23, 2016, 130 Stat. 2538; Pub. L. 115–91, div. A, title XII, §1261, Dec. 12, 2017, 131 Stat. 1688; Pub. L. 115–232, div. A, title XII, §1260, Aug. 13, 2018, 132 Stat. 2059; Pub. L. 116–92, div. A, title XII, §1260, Dec. 20, 2019, 133 Stat. 1677; Pub. L. 116–283, div. A, title XII, §1260D, Jan. 1, 2021, 134 Stat. 3963, provided that:

"(a) ANNUAL REPORT.—Not later than January 31 of each year through January 31, 2022, the Secretary of Defense, in consultation with the heads of other Federal departments and agencies as appropriate, shall submit to the specified congressional committees a report, in both classified and unclassified form, on military and security developments involving the People's Republic of China. The report shall address the current and probable future course of military-technological development of the People's Liberation Army and the tenets and probable development of Chinese security strategy and military strategy, and of military organizations and operational concepts, through the next 20 years. The report shall also address United States-China engagement and cooperation on security matters during the period covered by the report, including through United States-China military-to-military contacts, and the United States strategy for such engagement and cooperation in the future.

"(b) MATTERS TO BE INCLUDED.—Each report under this section shall include analyses and forecasts of the following:

"(1) The goals and factors shaping Chinese security strategy and military strategy.

"(2) Trends in Chinese security and military behavior that would be designed to achieve, or that are inconsistent with, the goals described in paragraph (1).

"(3) The security situation in the Taiwan Strait.

"(4) Chinese strategy regarding Taiwan.

"(5) The size, location, and capabilities of Chinese strategic, land, sea, and air forces, including detailed analysis of those forces facing Taiwan.

"(6) China's overseas military basing and logistics infrastructure.

"(7) Developments in Chinese military doctrine and training.

"(8) Efforts, including by espionage and technology transfers through investment, industrial espionage, cybertheft, academia, and other means, by the People's Republic of China to develop, acquire, or gain

access to information, communication, space and other advanced technologies that would enhance military capabilities or otherwise undermine the Department of Defense's capability to conduct information assurance. Such analyses shall include an assessment of the damage inflicted on the Department of Defense by reason thereof.

''(9) An assessment of any challenges during the preceding year to the deterrent forces of the Republic of China on Taiwan, consistent with the commitments made by the United States in the Taiwan Relations Act (Public Law 96–8) [22 U.S.C. 3301 et seq.].

''(10) Developments in China's asymmetric capabilities, including its strategy and efforts to develop and deploy cyberwarfare and electronic warfare capabilities, details on the number of malicious cyber incidents originating from China against Department of Defense infrastructure, and associated activities originating or suspected of originating from China.

''(11) The strategy and capabilities of Chinese space and counterspace programs, including trends, global and regional activities, the involvement of military and civilian organizations, including state-owned enterprises, academic institutions, and commercial entities, and efforts to develop, acquire, or gain access to advanced technologies that would enhance Chinese military capabilities.

''(12) Developments in China's nuclear program, including the size and state of China's stockpile, its nuclear strategy and associated doctrines, its civil and military production capacities, and projections of its future arsenals.

''(13) A description of China's anti-access and area denial capabilities.

''(14) A description of China's command, control, communications, computers, intelligence, surveillance, and reconnaissance modernization program and its applications for China's precision guided weapons.

''(15) A description of the roles and activities of the People's Liberation Army Navy and those of China's paramilitary and maritime law enforcement vessels, including their capabilities, organizational affiliations, roles within China's overall maritime strategy, activities affecting United States allies and partners, and responses to United States naval activities.

''(16) In consultation with the Secretary of Energy and the Secretary of State, developments regarding United States-China engagement and cooperation on security matters.

''(17) The current state of United States military-to-military contacts with the People's Liberation Army, which shall include the following:

''(A) A comprehensive and coordinated strategy for such military-to-military contacts and updates to the strategy.

''(B) A summary of all such military-to-military contacts during the period covered by the report, including a summary of topics discussed and questions asked by the Chinese participants in those contacts.

''(C) A description of such military-to-military contacts scheduled for the 12-month period following the period covered by the report and the plan for future contacts.

''(D) The Secretary's assessment of the benefits the Chinese expect to gain from such military-to-military contacts.

''(E) The Secretary's assessment of the benefits the Department of Defense expects to gain from such military-to-military contacts, and any concerns regarding such contacts.

''(F) The Secretary's assessment of how such military-to-military contacts fit into the larger security relationship between the United States and the People's Republic of China.

''(G) The Secretary's certification whether or not any military-to-military exchange or contact was conducted during the period covered by the report in violation of section 1201(a) [10 U.S.C. 311 note].

''(18) An assessment of relations between China and the Russian Federation with respect to security and military matters.

''(19) Other military and security developments involving the People's Republic of China that the Secretary of Defense considers relevant to United States national security.

''(20) A description of Chinese military-to-military relationships with other countries, including the size and activity of military attache offices around the world and military education programs conducted in China for other countries or in other countries for the Chinese.

''(21) A description of any significant sale or transfer of military hardware, expertise, and technology to or from the People's Republic of China, including a forecast of possible future sales and transfers, a description of the implications of those sales and transfers for the security of the United States and its partners and allies in Asia, and a description of any significant assistance to and from any selling state with military-related research and development programs in China.

''(22) The status of the 5th generation fighter program of the People's Republic of China, including an assessment of each individual aircraft type, estimated initial and full operational capability dates, and the ability of such aircraft to provide air superiority.

''(23) A summary of the order of battle of the People's Liberation Army, including anti-ship ballistic missiles, theater ballistic missiles, and land attack cruise missile inventory.

''(24) A description of the People's Republic of China's military and nonmilitary activities in the South China Sea.

''(25) Any Chinese laws, regulations, or policies that could jeopardize the economic security of the United States.

''(26) The relationship between Chinese overseas investment, including the Belt and Road Initiative, the Digital Silk Road, and any state-owned or controlled digital or physical infrastructure projects of China, and Chinese security and military strategy objectives, including—

''(A) an assessment of the Chinese investments or projects likely, or with significant potential, to be converted into military assets of China;

''(B) an assessment of the Chinese investments or projects of greatest concern with respect to United States national security interests;

''(C) a description of any Chinese investment or project located in another country that is linked to military cooperation with such country, such as cooperation on satellite navigation or arms production;

''(D) an assessment of any Chinese investment, project, or associated agreement in or with another country that presents significant financial risk for the country or may undermine the sovereignty of such country; and

''(E) an assessment of the implications for United States military or governmental interests related to denial of access, compromised intelligence activities, and network advantages of Chinese investments or projects in other countries.

''(27) Efforts by the Government of the People's Republic of China to influence the media, cultural institutions, business, and academic and policy communities of the United States to be more favorable to its security and military strategy and objectives.

''(28) Efforts by the Government of the People's Republic of China to use nonmilitary tools in other countries, including diplomacy and political coercion, information operations, and economic pressure, including predatory lending practices, to support its security and military objectives.

''(29) Developments relating to the China Coast Guard, including an assessment of—

''(A) how the change in the Guard's command structure to report to China's Central Military

Commission affects the Guard's status as a law enforcement entity;

''(B) the implications of such command structure with respect to the use of the Guard as a coercive tool to conduct 'gray zone' activities in the East China Sea and the South China Sea; and

''(C) how the change in such command structure may affect interactions between the Guard and the United States Navy.

''(30) An assessment of the military-to-military relations between China and Russia, including an identification of mutual and competing interests.

''(31) An assessment of China's expansion of its surveillance state, including—

''(A) any correlation of such expansion with its oppression of its citizens or its threat to United States national security interests around the world; and

''(B) an overview of the extent to which such surveillance corresponds to an overall respect, or lack thereof, for human rights in China, especially for religious and ethnic minorities.

''(c) SPECIFIED CONGRESSIONAL COMMITTEES.—For purposes of this section, the term 'specified congressional committees' means the following:

''(1) The Committee on Armed Services, the Committee on Foreign Relations, and the Select Committee on Intelligence of the Senate.

''(2) The Committee on Armed Services, the Committee on Foreign Affairs, and the Permanent Select Committee on Intelligence of the House of Representatives.

''(d) REPORT ON SIGNIFICANT SALES AND TRANSFERS TO CHINA.—(1) The report to be submitted under this section not later than March 1, 2002, shall include in a separate section a report describing any significant sale or transfer of military hardware, expertise, and technology to the People's Republic of China. The report shall set forth the history of such sales and transfers since 1995, forecast possible future sales and transfers, and address the implications of those sales and transfers for the security of the United States and its friends and allies in Asia.

''(2) The report shall include analysis and forecasts of the following matters related to military cooperation between selling states and the People's Republic of China:

''(A) The extent in each selling state of government knowledge, cooperation, or condoning of sales or transfers of military hardware, expertise, or technology to the People's Republic of China.

''(B) An itemization of significant sales and transfers of military hardware, expertise, or technology from each selling state to the People's Republic of China that have taken place since 1995, with a particular focus on command, control, communications, and intelligence systems.

''(C) Significant assistance by any selling state to key research and development programs of China, including programs for development of weapons of mass destruction and delivery vehicles for such weapons, programs for development of advanced conventional weapons, and programs for development of unconventional weapons.

''(D) The extent to which arms sales by any selling state to the People's Republic of China are a source of funds for military research and development or procurement programs in the selling state.

''(3) The report under paragraph (1) shall include, with respect to each area of analysis and forecasts specified in paragraph (2)—

''(A) an assessment of the military effects of such sales or transfers to entities in the People's Republic of China;

''(B) an assessment of the ability of the People's Liberation Army to assimilate such sales or transfers, mass produce new equipment, or develop doctrine for use; and

''(C) the potential threat of developments related to such effects on the security interests of the United States and its friends and allies in Asia.

''(d) [probably should be (e)] STATE-OWNED OR CONTROLLED DIGITAL OR PHYSICAL INFRASTRUCTURE PROJECT OF CHINA.—

''(1) IN GENERAL.—For purposes of subsection (b)(26), the term 'state-owned or controlled digital or physical infrastructure project of China' means a transportation, energy, or information technology infrastructure project that is—

''(A) owned, controlled, under the direct or indirect influence of, or subsidized by—

''(i) the Government of the People's Republic of China, including any agency within such Government and any subdivision or other unit of government at any level of jurisdiction within China;

''(ii) any agent or instrumentality of such Government, including such agencies or subdivisions; or

''(iii) the Chinese Communist Party; or

''(B) a project of any Chinese company operating in a sector identified as a strategic industry in the Chinese Government's 'Made in China 2025' strategy to make China a 'manufacturing power' as a core national interest.

''(2) OWNED; CONTROLLED.—For purposes paragraph (1)(A), with respect to a project—

''(A) the term 'owned' means a majority or controlling interest, whether by value or voting interest, in that project, including through fiduciaries, agents, or other means; and

''(B) the term 'controlled' means the power by any means to determine or influence, directly or indirectly, important matters affecting the project, regardless of the level of ownership and whether or not that power is exercised.''

[Pub. L. 114–328, div. A, title XII, §1271(c), Dec. 23, 2016, 130 Stat. 2538, provided that: ''The amendments made by this section [amending section 1202 of Pub. L. 106–65, set out above] take effect on the date of the enactment of this Act [Dec. 23, 2016] and apply with respect to reports required to be submitted under subsection (a) of section 1202 of the National Defense Authorization Act for Fiscal Year 2000 [Pub. L. 106–65] on or after that date.'']

[Pub. L. 113–291, div. A, title XII, §1252(b), Dec. 19, 2014, 128 Stat. 3571, provided that: ''The amendment made by this section [amending section 1202 of Pub. L. 106–65, set out above] takes effect on the date of the enactment of this Act [Dec. 19, 2014] and applies with respect to reports required to be submitted under subsection (a) of section 1202 of the National Defense Authorization Act for Fiscal Year 2000 [Pub. L. 106–65] on or after that date.'']

[Pub. L. 112–81, div. A, title XII, §1238(b), Dec. 31, 2011, 125 Stat. 1642, provided that: ''The amendments made by this section [amending section 1202 of Pub. L. 106–65, set out above] shall take effect on the date of the enactment of this Act [Dec. 31, 2011], and shall apply with respect to reports required to be submitted under subsection (a) of section 1202 of the National Defense Authorization Act for Fiscal Year 2000 [Pub. L. 106–65], as so amended, on or after that date.'']

[Pub. L. 111–84, div. A, title XII, §1246(e), Oct. 28, 2009, 123 Stat. 2545, provided that:

[''(1) IN GENERAL.—The amendments made by this section [amending section 1202 of Pub. L. 106–65, set out above, and provisions set out as a note under section 311 of this title] shall take effect on the date of the enactment of this Act [Oct. 28, 2009], and shall apply with respect to reports required to be submitted under subsection (a) of section 1202 of the National Defense Authorization Act for Fiscal Year 2000 [Pub. L. 106–65, set out above], as so amended, on or after that date.

[''(2) STRATEGY AND UPDATES FOR MILITARY-TO-MILITARY CONTACTS WITH PEOPLE'S LIBERATION ARMY.—The requirement to include the strategy described in paragraph (11)(A) of section 1202(b) of the National Defense Authorization Act for Fiscal Year 2000, as so amended, in the report required to be submitted under section 1202(a) of such Act, as so amended, shall apply with respect to the first report required to be submitted under

section 1202(a) of such Act on or after the date of the enactment of this Act. The requirement to include updates to such strategy shall apply with respect to each subsequent report required to be submitted under section 1202(a) of such Act on or after the date of the enactment of this Act.'']

NUCLEAR MISSION MANAGEMENT PLAN

Pub. L. 106–65, div. C, title XXXI, § 3163(d), Oct. 5, 1999, 113 Stat. 945, provided that:

''(1) The Secretary of Defense shall develop and implement a plan to ensure the continued reliability of the capability of the Department of Defense to carry out its nuclear deterrent mission.

''(2) The plan shall do the following:

''(A) Articulate the current policy of the United States on the role of nuclear weapons and nuclear deterrence in the conduct of defense and foreign relations matters.

''(B) Establish stockpile viability and capability requirements with respect to that mission, including the number and variety of warheads required.

''(C) Establish requirements relating to the contractor industrial base, support infrastructure, and surveillance, testing, assessment, and certification of nuclear weapons necessary to support that mission.

''(3) The plan shall take into account the following:

''(A) Requirements for the critical skills, readiness, training, exercise, and testing of personnel necessary to meet that mission.

''(B) The relevant programs and plans of the military departments and the Defense Agencies with respect to readiness, sustainment (including research and development), and modernization of the strategic deterrent forces.''

REPORT ON SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM BENEFITS ASSISTANCE FOR MEMBERS OF ARMED FORCES

Pub. L. 105–262, title VIII, § 8119, Oct. 17, 1998, 112 Stat. 2331, as amended by Pub. L. 110–234, title IV, § 4002(b)(1)(B), (D), (E), (2)(K), May 22, 2008, 122 Stat. 1096, 1097; Pub. L. 110–246, § 4(a), title IV, § 4002(b)(1)(B), (D), (E), (2)(K), June 18, 2008, 122 Stat. 1664, 1857, 1858, directed the Secretary of Defense to submit to committees of Congress, at the same time that materials relating to Department of Defense funding for fiscal year 2001 were to be submitted, a report on supplemental nutrition assistance program benefits assistance for members of the Armed Forces.

DEFENSE REFORM INITIATIVE ENTERPRISE PILOT PROGRAM FOR MILITARY MANPOWER AND PERSONNEL INFORMATION

Pub. L. 106–65, div. A, title IX, § 924, Oct. 5, 1999, 113 Stat. 726, authorized the Secretary of Defense to designate the Secretary of the Navy as the Department of Defense executive agent for carrying out the pilot program described in Pub. L. 105–262, § 8147.

Pub. L. 105–262, title VIII, § 8147, Oct. 17, 1998, 112 Stat. 2341, established a defense reform initiative enterprise pilot program for military manpower and personnel information to be implemented no later than 6 months after Oct. 17, 1998.

OVERSIGHT OF DEVELOPMENT AND IMPLEMENTATION OF AUTOMATED IDENTIFICATION TECHNOLOGY

Pub. L. 105–261, div. A, title III, § 344, Oct. 17, 1998, 112 Stat. 1977, as amended by Pub. L. 106–65, div. A, title III, § 373(h), title X, § 1067(3), Oct. 5, 1999, 113 Stat. 581, 774, directed the Secretary of the Navy to allocate up to $25,000,000 of fiscal year 1999 funds for the purpose of making progress toward the issuance and use of Smart Cards throughout the Navy and the Marine Corps and to equip with Smart Card technology at least one carrier battle group, one carrier air wing, and one amphibious readiness group in each of the United States Atlantic and Pacific Commands not later than June 30, 1999, and directed the Secretary of Defense, not later than Mar. 31, 1999, to submit to congressional defense committees a plan for the use of Smart Card technology by each military department.

PILOT PROGRAM FOR ACCEPTANCE AND USE OF LANDING FEES CHARGED FOR USE OF DOMESTIC MILITARY AIRFIELDS BY CIVIL AIRCRAFT

Pub. L. 105–261, div. A, title III, § 377, Oct. 17, 1998, 112 Stat. 1993, as amended by Pub. L. 106–398, § 1 [[div. A], title III, § 387], Oct. 30, 2000, 114 Stat. 1654, 1654A–88, authorized pilot programs for each military department to demonstrate the use of landing fees as a source of funding for the operation and maintenance of airfields, required a report on the pilot programs by Mar. 31, 2003, and terminated the program as of Sept. 30, 2010.

REPORT ON TERMINOLOGY FOR ANNUAL REPORT REQUIREMENT

Pub. L. 105–261, div. A, title IX, § 915(b), Oct. 17, 1998, 112 Stat. 2102, directed the Secretary of Defense, not later than 90 days after Oct. 17, 1998, to submit to committees of Congress a report setting forth the definitions of the terms ''support'' and ''mission'' to use for purposes of the report requirement under subsec. (*l*) of this section.

PROGRAM TO INVESTIGATE FRAUD, WASTE, AND ABUSE WITHIN DEPARTMENT OF DEFENSE

Pub. L. 105–85, div. A, title III, § 392, Nov. 18, 1997, 111 Stat. 1717, as amended by Pub. L. 105–261, div. A, title III, § 374, Oct. 17, 1998, 112 Stat. 1992, provided that: ''The Secretary of Defense shall maintain a specific coordinated program for the investigation of evidence of fraud, waste, and abuse within the Department of Defense, particularly fraud, waste, and abuse regarding finance and accounting matters and any fraud, waste, and abuse occurring in connection with overpayments made to vendors by the Department of Defense, including overpayments identified under section 354 of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104–106; 10 U.S.C. 2461 note).''

COMMISSION ON MILITARY TRAINING AND GENDER-RELATED ISSUES

Pub. L. 105–85, div. A, title V, subtitle F, Nov. 18, 1997, 111 Stat. 1750, as amended by Pub. L. 105–261, div. A, title V, § 524, Oct. 17, 1998, 112 Stat. 2014; Pub. L. 106–65, div. A, title X, § 1066(c)(2), Oct. 5, 1999, 113 Stat. 773, established a Commission on Military Training and Gender-Related Issues to review requirements and restrictions regarding cross-gender relationships of members of the Armed Forces, to review the basic training programs of the Army, Navy, Air Force, and Marine Corps, and to make recommendations on improvements to those programs, requirements, and restrictions, and further provided for composition, powers, and duties of Commission, administrative matters, funding, an interim report to Congress not later than Oct. 15, 1998, and a final report to Congress not later than Mar. 15, 1999, and for termination of Commission 60 days after submission of final report.

COORDINATION OF DEPARTMENT OF DEFENSE CRIMINAL INVESTIGATIONS AND AUDITS

Pub. L. 105–85, div. A, title IX, § 907, Nov. 18, 1997, 111 Stat. 1856, directed the heads of the military department criminal investigative organizations and the heads of the defense auditing organizations to take action to conserve and share their resources and required the Secretary of Defense to submit to Congress an implementation plan by Dec. 31, 1997.

PROVISION OF ADEQUATE TROOP PROTECTION EQUIPMENT FOR ARMED FORCES PERSONNEL ENGAGED IN PEACE OPERATIONS; REPORT ON ANTITERRORISM ACTIVITIES AND PROTECTION OF PERSONNEL

Pub. L. 105–85, div. A, title X, § 1052, Nov. 18, 1997, 111 Stat. 1889, provided that:

"(a) PROTECTION OF PERSONNEL.—The Secretary of Defense shall take appropriate actions to ensure that units of the Armed Forces engaged in a peace operation are provided adequate troop protection equipment for that operation.

"(b) SPECIFIC ACTIONS.—In taking actions under subsection (a), the Secretary shall—

"(1) identify the additional troop protection equipment, if any, required to equip a division (or the equivalent of a division) with adequate troop protection equipment for peace operations; and

"(2) establish procedures to facilitate the exchange or transfer of troop protection equipment among units of the Armed Forces.

"(c) DESIGNATION OF RESPONSIBLE OFFICIAL.—The Secretary of Defense shall designate an official within the Department of Defense to be responsible for—

"(1) ensuring the appropriate allocation of troop protection equipment among the units of the Armed Forces engaged in peace operations; and

"(2) monitoring the availability, status or condition, and location of such equipment.

"(d) TROOP PROTECTION EQUIPMENT DEFINED.—In this section, the term 'troop protection equipment' means the equipment required by units of the Armed Forces to defend against any hostile threat that is likely during a peace operation, including an attack by a hostile crowd, small arms fire, mines, and a terrorist bombing attack.

"(e) REPORT ON ANTITERRORISM ACTIVITIES OF THE DEPARTMENT OF DEFENSE AND PROTECTION OF PERSONNEL.—Not later than 120 days after the date of the enactment of this Act [Nov. 18, 1997], the Secretary of Defense shall submit to Congress a report, in classified and unclassified form, on antiterrorism activities of the Department of Defense and the actions taken by the Secretary under subsections (a), (b), and (c). The report shall include the following:

"(1) A description of the programs designed to carry out antiterrorism activities of the Department of Defense, any deficiencies in those programs, and any actions taken by the Secretary to improve implementation of such programs.

"(2) An assessment of the current policies and practices of the Department of Defense with respect to the protection of members of the Armed Forces overseas against terrorist attack, including any modifications to such policies or practices that are proposed or implemented as a result of the assessment.

"(3) An assessment of the procedures of the Department of Defense for determining accountability, if any, in the command structure of the Armed Forces in instances in which a terrorist attack results in the loss of life at an overseas military installation or facility.

"(4) A detailed description of the roles of the Office of the Secretary of Defense, the Chairman of the Joint Chiefs of Staff, the Secretaries of the military departments, and the combatant commanders in providing guidance and support with respect to the protection of members of the Armed Forces deployed overseas against terrorist attack (both before and after the November 1995 bombing in Riyadh, Saudi Arabia) and how these roles have changed since the June 25, 1996, terrorist bombing at Khobar Towers in Dhahran, Saudi Arabia.

"(5) A description of the actions taken by the Secretary of Defense under subsections (a), (b), and (c) to provide adequate troop protection equipment for units of the Armed Forces engaged in a peace operation."

STUDY OF INVESTIGATIVE PRACTICES OF MILITARY CRIMINAL INVESTIGATIVE ORGANIZATIONS RELATING TO SEX CRIMES

Pub. L. 105–85, div. A, title X, § 1072, Nov. 18, 1997, 111 Stat. 1898, required the Secretary of Defense to provide for a study to be conducted by the National Academy of Public Administration of the policies, procedures, and practices of the military criminal investigative organizations for the conduct of investigations of complaints of sex crimes and other criminal sexual misconduct arising in the Armed Forces, required the Academy to submit a report to the Secretary not later than one year after Nov. 18, 1997, and directed the Secretary to submit the report and comments on the report to Congress not later than 30 days afterwards.

ANNUAL REPORT ON MORATORIUM ON USE BY ARMED FORCES OF ANTIPERSONNEL LANDMINES

Pub. L. 105–85, div. A, title XIII, § 1309, Nov. 18, 1997, 111 Stat. 1956, provided that:

"(a) FINDINGS.—Congress makes the following findings:

"(1) The United States has stated its support for a ban on antipersonnel landmines that is global in scope and verifiable.

"(2) On May 16, 1996, the President announced that the United States, as a matter of policy, would eliminate its stockpile of non-self-destructing antipersonnel landmines, except those used for training purposes and in Korea, and that the United States would reserve the right to use self-destructing antipersonnel landmines in the event of conflict.

"(3) On May 16, 1996, the President also announced that the United States would lead an effort to negotiate an international treaty permanently banning the use of all antipersonnel landmines.

"(4) The United States is currently participating at the United Nations Conference on Disarmament in negotiations aimed at achieving a global ban on the use of antipersonnel landmines.

"(5) On August 18, 1997, the administration agreed to participate in international negotiations sponsored by Canada (the so-called 'Ottawa process') designed to achieve a treaty that would outlaw the production, use, and sale of antipersonnel landmines.

"(6) On September 17, 1997, the President announced that the United States would not sign the antipersonnel landmine treaty concluded in Oslo, Norway, by participants in the Ottawa process because the treaty would not provide a geographic exception to allow the United States to stockpile and use antipersonnel landmines in Korea or an exemption that would preserve the ability of the United States to use mixed antitank mine systems which could be used to deter an armored assault against United States forces.

"(7) The President also announced a change in United States policy whereby the United States—

"(A) would no longer deploy antipersonnel landmines, including self-destructing antipersonnel landmines, by 2003, except in Korea;

"(B) would seek to field alternatives by that date, or by 2006 in the case of Korea;

"(C) would undertake a new initiative in the United Nations Conference on Disarmament to establish a global ban on the transfer of antipersonnel landmines; and

"(D) would increase its current humanitarian demining activities around the world.

"(8) The President's decision would allow the continued use by United States forces of self-destructing antipersonnel landmines that are used as part of a mixed antitank mine system.

"(9) Under existing law (as provided in section 580 of Public Law 104–107; 110 Stat. 751), on February 12, 1999, the United States will implement a one-year moratorium on the use of antipersonnel landmines by United States forces except along internationally recognized national borders or in demilitarized zones within a perimeter marked area that is monitored by military personnel and protected by adequate means to ensure the exclusion of civilians.

"(b) SENSE OF CONGRESS.—It is the sense of Congress that—

"(1) the United States should not implement a moratorium on the use of antipersonnel landmines by United States Armed Forces in a manner that would endanger United States personnel or undermine the

military effectiveness of United States Armed Forces in executing their missions; and

''(2) the United States should pursue the development of alternatives to self-destructing antipersonnel landmines.

''(c) ANNUAL REPORT.—Not later than December 31 each year, the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of Senate and House of Representatives] a report concerning antipersonnel landmines. Each such report shall include the Secretary's description of the following:

''(1) The military utility of the continued deployment and use by the United States of antipersonnel landmines.

''(2) The effect of a moratorium on the production, stockpiling, and use of antipersonnel landmines on the ability of United States forces to deter and defend against attack on land by hostile forces, including on the Korean peninsula.

''(3) Progress in developing and fielding systems that are effective substitutes for antipersonnel landmines, including an identification and description of the types of systems that are being developed and fielded, the costs associated with those systems, and the estimated timetable for developing and fielding those systems.

''(4) The effect of a moratorium on the use of antipersonnel landmines on the military effectiveness of current antitank mine systems.

''(5) The number and type of pure antipersonnel landmines that remain in the United States inventory and that are subject to elimination under the President's September 17, 1997, declaration on United States antipersonnel landmine policy.

''(6) The number and type of mixed antitank mine systems that are in the United States inventory, the locations where they are deployed, and their effect on the deterrence and warfighting ability of United States Armed Forces.

''(7) The effect of the elimination of pure antipersonnel landmines on the warfighting effectiveness of the United States Armed Forces.

''(8) The costs already incurred and anticipated of eliminating antipersonnel landmines from the United States inventory in accordance with the policy enunciated by the President on September 17, 1997.

''(9) The benefits that would result to United States military and civilian personnel from an international treaty banning the production, use, transfer, and stockpiling of antipersonnel landmines.''

[For termination, effective Dec. 31, 2021, of annual reporting provisions in section 1309(c) of Pub. L. 105–85, set out above, see section 1061 of Pub. L. 114–328, set out as a note under section 111 of this title.]

HATE CRIMES IN THE MILITARY

Pub. L. 104–201, div. A, title V, §571(a), (b), Sept. 23, 1996, 110 Stat. 2532, provided that:

''(a) HUMAN RELATIONS TRAINING.—(1) The Secretary of Defense shall ensure that the Secretary of each military department conducts ongoing programs for human relations training for all members of the Armed Forces under the jurisdiction of the Secretary. Matters to be covered by such training include race relations, equal opportunity, opposition to gender discrimination, and sensitivity to 'hate group' activity. Such training shall be provided during basic training (or other initial military training) and on a regular basis thereafter.

''(2) The Secretary of Defense shall also ensure that unit commanders are aware of their responsibilities in ensuring that impermissible activity based upon discriminatory motives does not occur in units under their command.

''(b) INFORMATION TO BE PROVIDED TO PROSPECTIVE RECRUITS.—The Secretary of Defense shall ensure that each individual preparing to enter an officer accession program or to execute an original enlistment agreement is provided information concerning the meaning of the oath of office or oath of enlistment for service in the Armed Forces in terms of the equal protection and civil liberties guarantees of the Constitution, and each such individual shall be informed that if supporting those guarantees is not possible personally for that individual, then that individual should decline to enter the Armed Forces.''

ANNUAL REPORT ON OPERATION PROVIDE COMFORT AND OPERATION ENHANCED SOUTHERN WATCH

Pub. L. 104–201, div. A, title X, §1041, Sept. 23, 1996, 110 Stat. 2640, required the Secretary of Defense to submit to Congress a report on Operation Provide Comfort and Operation Enhanced Southern Watch not later than Mar. 1 of each year and provided for the termination of the requirement with respect to each operation upon the termination of United States involvement in that operation.

ANNUAL REPORT ON EMERGING OPERATIONAL CONCEPTS

Pub. L. 104–201, div. A, title X, §1042, Sept. 23, 1996, 110 Stat. 2642, as amended by Pub. L. 106–65, div. A, title X, §1067(5), Oct. 5, 1999, 113 Stat. 774, directed Secretary of Defense to submit to Committees on Armed Services of the Senate and the House of Representatives a report on emerging operational concepts not later than March 1 of each year through 2000, prior to repeal by Pub. L. 106–65, div. A, title II, §241(b), Oct. 5, 1999, 113 Stat. 550.

GEORGE C. MARSHALL EUROPEAN CENTER FOR STRATEGIC SECURITY STUDIES

Pub. L. 104–201, div. A, title X, §1065, Sept. 23, 1996, 110 Stat. 2653, as amended by Pub. L. 108–136, div. A, title X, §1031(f)(2), Nov. 24, 2003, 117 Stat. 1604; Pub. L. 109–163, div. A, title IX, §903(c)(2), Jan. 6, 2006, 119 Stat. 3399, which related to participation by a European or Eurasian nation in Marshall Center programs and exemptions for members of Marshall Center Board of Visitors from certain requirements, was repealed by Pub. L. 114–328, div. A, title XII, §1241(e)(5)(B), Dec. 23, 2016, 130 Stat. 2507. See section 342(h)(1), (2) of this title.

Pub. L. 103–337, div. A, title XIII, §1306, Oct. 5, 1994, 108 Stat. 2892, as amended by Pub. L. 108–136, div. A, title XII, §1223, Nov. 24, 2003, 117 Stat. 1652; Pub. L. 109–163, div. A, title IX, §903(c)(1), Jan. 6, 2006, 119 Stat. 3399, which related to waiver of reimbursement of costs of educational activities of the George C. Marshall European Center for Security Studies for military officers and civilian officials from states located in Europe or the territory of the former Soviet Union, was repealed by Pub. L. 114–328, div. A, title XII, §1241(e)(5)(C), Dec. 23, 2016, 130 Stat. 2507. See section 342(h)(3) of this title.

PARTICIPATION OF MEMBERS, DEPENDENTS, AND OTHER PERSONS IN CRIME PREVENTION EFFORTS AT INSTALLATIONS

Pub. L. 104–201, div. A, title X, §1070, Sept. 23, 1996, 110 Stat. 2656, required the development of an incentive-based plan to encourage reporting of criminal activity occurring on military installations or involving members of the Armed Forces and submission to Congress of a report describing the plan by Feb. 1, 1997.

AVAILABILITY OF LOCATOR INFORMATION FOR ENFORCEMENT OF CHILD SUPPORT OBLIGATIONS OF MEMBERS OF THE ARMED FORCES

Pub. L. 104–193, title III, §363(a), Aug. 22, 1996, 110 Stat. 2247, as amended by Pub. L. 107–296, title XVII, §1704(e)(1)(A), Nov. 25, 2002, 116 Stat. 2315, provided that:

''(1) MAINTENANCE OF ADDRESS INFORMATION.—The Secretary of Defense shall establish a centralized personnel locator service that includes the address of each member of the Armed Forces under the jurisdiction of the Secretary. Upon request of the Secretary of Homeland Security, addresses for members of the Coast Guard shall be included in the centralized personnel locator service.

''(2) TYPE OF ADDRESS.—

''(A) RESIDENTIAL ADDRESS.—Except as provided in subparagraph (B), the address for a member of the

Armed Forces shown in the locator service shall be the residential address of that member.

''(B) DUTY ADDRESS.—The address for a member of the Armed Forces shown in the locator service shall be the duty address of that member in the case of a member—

''(i) who is permanently assigned overseas, to a vessel, or to a routinely deployable unit; or

''(ii) with respect to whom the Secretary concerned makes a determination that the member's residential address should not be disclosed due to national security or safety concerns.

''(3) UPDATING OF LOCATOR INFORMATION.—Within 30 days after a member listed in the locator service establishes a new residential address (or a new duty address, in the case of a member covered by paragraph (2)(B)), the Secretary concerned shall update the locator service to indicate the new address of the member.

''(4) AVAILABILITY OF INFORMATION.—The Secretary of Defense shall make information regarding the address of a member of the Armed Forces listed in the locator service available, on request, to the Federal Parent Locator Service established under section 453 of the Social Security Act [42 U.S.C. 653].''

REVIEW OF C4I BY NATIONAL RESEARCH COUNCIL

Pub. L. 104–106, div. A, title II, § 262, Feb. 10, 1996, 110 Stat. 236, directed the Secretary of Defense, not later than 90 days after Feb. 10, 1996, to request the National Research Council of the National Academy of Sciences to conduct a two-year review of current and planned service and defense-wide programs for command, control, communications, computers, and intelligence, and required the Secretary to provide that the Council submit interim reports and a final report on the review to the Department of Defense and committees of Congress.

STRATEGY AND REPORT ON AUTOMATED INFORMATION SYSTEMS OF DEPARTMENT OF DEFENSE

Pub. L. 104–106, div. A, title III, § 366, Feb. 10, 1996, 110 Stat. 275, directed the Secretary of Defense to develop a strategy for the development or modernization of automated information systems for the Department of Defense and to submit to Congress a report on the development of such strategy not later than Apr. 15, 1996.

REPORT CONCERNING APPROPRIATE FORUM FOR JUDICIAL REVIEW OF DEPARTMENT OF DEFENSE PERSONNEL ACTIONS

Pub. L. 104–106, div. A, title V, § 551, Feb. 10, 1996, 110 Stat. 318, directed the Secretary of Defense to establish an advisory committee to consider issues relating to the appropriate forum for judicial review of Department of Defense administrative personnel actions, required the committee to submit a report to the Secretary of Defense not later than Dec. 15, 1996, required the Secretary to transmit the committee's report to Congress not later than Jan. 1, 1997, and provided for the termination of the committee 30 days after the date of the submission of its report to Congress.

REQUIREMENTS FOR AUTOMATED INFORMATION SYSTEMS OF DEPARTMENT OF DEFENSE

Pub. L. 103–337, div. A, title III, § 381, Oct. 5, 1994, 108 Stat. 2738, required determinations, evaluations, and guidance regarding certain automated information systems, establishment of performance measures and management controls, and submission to Congress of reports in 1995, 1996, and 1997.

Pub. L. 104–201, div. A, title VIII, § 830, Sept. 23, 1996, 110 Stat. 2614, as amended by Pub. L. 104–208, div. A, title I, § 101(f) [title VIII, § 808(c)], Sept. 30, 1996, 110 Stat. 3009–314, 3009–394, provided that Secretary of Defense was to include in report submitted in 1997 under section 381(f) of Pub. L. 103–337 [set out above] a discussion of progress made in implementing div. E of Pub. L. 104–106 [§§ 5001–5703, see Tables for classification] and strategy for development or modernization of automated information systems for Department of Defense, and plans of Department of Defense for establishing an integrated framework for management of information resources within the Department, and provided further specifications of the elements to be included in the discussion.

ANNUAL REPORT ON PERSONNEL READINESS FACTORS BY RACE AND GENDER

Pub. L. 103–337, div. A, title V, § 533, Oct. 5, 1994, 108 Stat. 2760, which provided that the Secretary of Defense was to submit to Congress an annual report on trends in recruiting, retention, and personnel readiness, was repealed by Pub. L. 115–91, div. A, title X, § 1051(g), Dec. 12, 2017, 131 Stat. 1563.

VICTIMS' ADVOCATES PROGRAMS IN DEPARTMENT OF DEFENSE

Pub. L. 103–337, div. A, title V, § 534, Oct. 5, 1994, 108 Stat. 2761, provided that:

''(a) ESTABLISHMENT.—(1) The Secretary of Defense, acting through the Under Secretary of Defense for Personnel and Readiness, shall revise policies and regulations of the Department of Defense with respect to the programs of the Department of Defense specified in paragraph (2) in order to establish within each of the military departments a victims' advocates program.

''(2) Programs referred to in paragraph (1) are the following:

''(A) Victim and witness assistance programs.

''(B) Family advocacy programs.

''(C) Equal opportunity programs.

''(3) In the case of the Department of the Navy, separate victims' advocates programs shall be established for the Navy and the Marine Corps.

''(b) PURPOSE.—A victims' advocates program established pursuant to subsection (a) shall provide assistance described in subsection (d) to members of the Armed Forces and their dependents who are victims of any of the following:

''(1) Crime.

''(2) Intrafamilial sexual, physical, or emotional abuse.

''(3) Discrimination or harassment based on race, gender, ethnic background, national origin, or religion.

''(c) INTERDISCIPLINARY COUNCILS.—(1) The Secretary of Defense shall establish a Department of Defense council to coordinate and oversee the implementation of programs under subsection (a). The membership of the council shall be selected from members of the Armed Forces and officers and employees of the Department of Defense having expertise or experience in a variety of disciplines and professions in order to ensure representation of the full range of services and expertise that will be needed in implementing those programs.

''(2) The Secretary of each military department shall establish similar interdisciplinary councils within that military department as appropriate to ensure the fullest coordination and effectiveness of the victims' advocates program of that military department. To the extent practicable, such a council shall be established at each significant military installation.

''(d) ASSISTANCE.—(1) Under a victims' advocates program established under subsection (a), individuals working in the program shall principally serve the interests of a victim by initiating action to provide (A) information on available benefits and services, (B) assistance in obtaining those benefits and services, and (C) other appropriate assistance.

''(2) Services under such a program in the case of an individual who is a victim of family violence (including intrafamilial sexual, physical, and emotional abuse) shall be provided principally through the family advocacy programs of the military departments.

''(e) STAFFING.—The Secretary of Defense shall provide for the assignment of personnel (military or civilian) on a full-time basis to victims' advocates programs

established pursuant to subsection (a). The Secretary shall ensure that sufficient numbers of such full-time personnel are assigned to those programs to enable those programs to be carried out effectively.

''(f) IMPLEMENTATION DEADLINE.—Subsection (a) shall be carried out not later than six months after the date of the enactment of this Act [Oct. 5, 1994].

''(g) IMPLEMENTATION REPORT.—Not later than 30 days after the date on which Department of Defense policies and regulations are revised pursuant to subsection (a), the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives a report on the implementation (and plans for implementation) of this section.''

ASSISTANCE TO FAMILY MEMBERS OF KOREAN CONFLICT AND COLD WAR POW/MIAS WHO REMAIN UNACCOUNTED FOR

Pub. L. 103–337, div. A, title X, § 1031, Oct. 5, 1994, 108 Stat. 2838, provided that:

''(a) SINGLE POINT OF CONTACT.—The Secretary of Defense shall designate an official of the Department of Defense to serve as a single point of contact within the department—

''(1) for the immediate family members (or their designees) of any unaccounted-for Korean conflict POW/MIA; and

''(2) for the immediate family members (or their designees) of any unaccounted-for Cold War POW/MIA.

''(b) FUNCTIONS.—The official designated under subsection (a) shall serve as a liaison between the family members of unaccounted-for Korean conflict POW/MIAs and unaccounted-for Cold War POW/MIAs and the Department of Defense and other Federal departments and agencies that may hold information that may relate to such POW/MIAs. The functions of that official shall include assisting family members—

''(1) with the procedures the family members may follow in their search for information about the unaccounted-for Korean conflict POW/MIA or unaccounted-for Cold War POW/MIA, as the case may be;

''(2) in learning where they may locate information about the unaccounted-for POW/MIA; and

''(3) in learning how and where to identify classified records that contain pertinent information and that will be declassified.

''(c) ASSISTANCE IN OBTAINING DECLASSIFICATION.—The official designated under subsection (a) shall seek to obtain the rapid declassification of any relevant classified records that are identified.

''(d) REPOSITORY.—The official designated under subsection (a) shall provide all documents relating to unaccounted-for Korean conflict POW/MIAs and unaccounted-for Cold War POW/MIAs that are located as a result of the official's efforts to the National Archives and Records Administration, which shall locate them in a centralized repository.

''(e) DEFINITIONS.—For purposes of this section:

''(1) The term 'unaccounted-for Korean conflict POW/MIA' means a member of the Armed Forces or civilian employee of the United States who, as a result of service during the Korean conflict, was at any time classified as a prisoner of war or missing-in-action and whose person or remains have not been returned to United States control and who remains unaccounted for.

''(2) The term 'unaccounted-for Cold War POW/MIA' means a member of the Armed Forces or civilian employee of the United States who, as a result of service during the period from September 2, 1945, to August 21, 1991, was at any time classified as a prisoner of war or missing-in-action and whose person or remains have not been returned to United States control and who remains unaccounted for.

''(3) The term 'Korean conflict' has the meaning given such term in section 101(9) of title 38, United States Code.''

PLAN REQUIRING DISBURSING OFFICIALS OF DEPARTMENT OF DEFENSE TO MATCH DISBURSEMENTS TO PARTICULAR OBLIGATIONS

Pub. L. 113–76, div. C, title VIII, § 8067, Jan. 17, 2014, 128 Stat. 121, provided that: ''Section 8106 of the Department of Defense Appropriations Act, 1997 (titles I through VIII of the matter under subsection 101(b) of Public Law 104–208; 110 Stat. 3009–111; 10 U.S.C. 113 note) shall continue in effect to apply to disbursements that are made by the Department of Defense in fiscal year 2014.''

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 113–6, div. C, title VIII, § 8067, Mar. 26, 2013, 127 Stat. 313.

Pub. L. 112–74, div. A, title VIII, § 8068, Dec. 23, 2011, 125 Stat. 822.

Pub. L. 112–10, div. A, title VIII, § 8070, Apr. 15, 2011, 125 Stat. 73.

Pub. L. 111–118, div. A, title VIII, § 8073, Dec. 19, 2009, 123 Stat. 3445.

Pub. L. 110–329, div. C, title VIII, § 8073, Sept. 30, 2008, 122 Stat. 3637.

Pub. L. 110–116, div. A, title VIII, § 8076, Nov. 13, 2007, 121 Stat. 1332.

Pub. L. 109–289, div. A, title VIII, § 8074, Sept. 29, 2006, 120 Stat. 1291.

Pub. L. 109–148, div. A, title VIII, § 8083, Dec. 30, 2005, 119 Stat. 2717.

Pub. L. 108–287, title VIII, § 8091, Aug. 5, 2004, 118 Stat. 992.

Pub. L. 108–87, title VIII, § 8092, Sept. 30, 2003, 117 Stat. 1094.

Pub. L. 107–248, title VIII, § 8098, Oct. 23, 2002, 116 Stat. 1559.

Pub. L. 107–117, div. A, title VIII, § 8118, Jan. 10, 2002, 115 Stat. 2273.

Pub. L. 106–259, title VIII, § 8137, Aug. 9, 2000, 114 Stat. 704.

Pub. L. 104–208, div. A, title I, § 101(b) [title VIII, § 8106], Sept. 30, 1996, 110 Stat. 3009–71, 3009–111, as amended by Pub. L. 105–56, title VIII, § 8113, Oct. 8, 1997, 111 Stat. 1245; Pub. L. 105–277, div. C, title I, § 143, Oct. 21, 1998, 112 Stat. 2681–609; Pub. L. 106–79, title VIII, § 8135, Oct. 25, 1999, 113 Stat. 1268, provided that:

''(a) The Secretary of Defense shall require each disbursement by the Department of Defense in an amount in excess of $500,000 be matched to a particular obligation before the disbursement is made.

''(b) The Secretary shall ensure that a disbursement in excess of the threshold amount applicable under section (a) is not divided into multiple disbursements of less than that amount for the purpose of avoiding the applicability of such section to that disbursement.''

[Section 8113 of Pub. L. 105–56 provided that the amendment made by that section [amending section 101(b) [title VIII, § 8106] of Pub. L. 104–208] set out above, is effective June 30, 1998.]

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 104–61, title VIII, § 8102, Dec. 1, 1995, 109 Stat. 672.

Pub. L. 103–335, title VIII, § 8137, Sept. 30, 1994, 108 Stat. 2654.

NOTICE TO CONGRESS OF PROPOSED CHANGES IN COMBAT ASSIGNMENTS TO WHICH FEMALE MEMBERS MAY BE ASSIGNED

Pub. L. 103–160, div. A, title V, § 542, Nov. 30, 1993, 107 Stat. 1659, as amended by Pub. L. 106–398, § 1 [[div. A], title V, § 573(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–136; Pub. L. 107–107, div. A, title V, § 591, Dec. 28, 2001, 115 Stat. 1125, which generally required the Secretary of Defense to transmit to the Committees on Armed Services of the Senate and House of Representatives notice

of a proposed change in military personnel policies in order to make available to female members of the Armed Forces assignment to any type of combat unit, class of combat vessel, or type of combat platform that was not open to such assignments, and also required the Secretary to submit to Congress a report providing notice of certain proposed changes to the ground combat exclusion policy, was repealed and restated as section 652 of this title by Pub. L. 109–163, div. A, title V, §541(a)(1), (c), Jan. 6, 2006, 119 Stat. 3251, 3253.

GENDER-NEUTRAL OCCUPATIONAL PERFORMANCE STANDARDS

Pub. L. 103–160, div. A, title V, §543, Nov. 30, 1993, 107 Stat. 1660, as amended by Pub. L. 113–66, div. A, title V, §523, Dec. 26, 2013, 127 Stat. 756, provided that:

''(a) GENDER NEUTRALITY REQUIREMENT.—In the case of any military career designator that is open to both male and female members of the Armed Forces, the Secretary of Defense—

''(1) shall ensure that qualification of members of the Armed Forces for, and continuance of members of the Armed Forces in, that occupational career field is evaluated on the basis of an occupational standard, without differential standards or evaluation on the basis of gender;

''(2) may not use any gender quota, goal, or ceiling except as specifically authorized by law; and

''(3) may not change an occupational performance standard for the purpose of increasing or decreasing the number of women in that occupational career field.

''(b) REQUIREMENTS RELATING TO USE OF SPECIFIC PHYSICAL REQUIREMENTS.—(1) For any military career designator for which the Secretary of Defense determines that specific physical requirements for muscular strength and endurance and cardiovascular capacity are essential to the performance of duties, the Secretary shall prescribe specific physical requirements as part of the gender-neutral occupational standard for members in that career designator and shall ensure (in the case of a career designator that is open to both male and female members of the Armed Forces) that those requirements are applied on a gender-neutral basis.

''(2) Whenever the Secretary establishes or revises a physical requirement for a military career designator, a member serving in that military career designator when the new requirement becomes effective, who is otherwise considered to be a satisfactory performer, shall be provided a reasonable period, as determined under regulations prescribed by the Secretary, to meet the standard established by the new requirement. During that period, the new physical requirement may not be used to disqualify the member from continued service in that military career designator.

''(c) NOTICE TO CONGRESS OF CHANGES.—Whenever the Secretary of Defense proposes to implement changes to the gender-neutral occupational standard for a military career designator that are expected to result in an increase, or in a decrease, of at least 10 percent in the number of female members of the Armed Forces who enter, or are assigned to, that military career designator, the Secretary of Defense shall submit to Congress a report providing notice of the change and the justification and rationale for the change. Such changes may then be implemented only after the end of the 60-day period beginning on the date on which such report is submitted.

''(d) DEFINITIONS.—In this section:

''(1) GENDER-NEUTRAL OCCUPATIONAL STANDARD.—The term 'gender-neutral occupational standard', with respect to a military career designator, means that all members of the Armed Forces serving in or assigned to the military career designator must meet the same performance outcome-based standards for the successful accomplishment of the necessary and required specific tasks associated with the qualifications and duties performed while serving in or assigned to the military career designator.

''(2) MILITARY CAREER DESIGNATOR.—The term 'military career designator' refers to—

''(A) in the case of enlisted members and warrant officers of the Armed Forces, military occupational specialties, specialty codes, enlisted designators, enlisted classification codes, additional skill identifiers, and special qualification identifiers; and

''(B) in the case of commissioned officers (other than commissioned warrant officers), officer areas of concentration, occupational specialties, specialty codes, additional skill identifiers, and special qualification identifiers.''

SECURITY CLEARANCES

Pub. L. 103–337, div. A, title X, §1041, Oct. 5, 1994, 108 Stat. 2842, directed the Secretary of Defense to submit to Congress, not later than 90 days after the close of each of fiscal years 1995 through 2000, a report concerning the denial, revocation, or suspension of security clearances for Department of Defense military and civilian personnel, and for Department of Defense contractor employees, for that fiscal year.

Pub. L. 103–160, div. A, title XI, §1183, Nov. 30, 1993, 107 Stat. 1774, required a review of the procedural safeguards available to Department of Defense civilian employees facing denial or revocation of security clearances, a report on the review by Mar. 1, 1994, and revision of regulations governing security clearance procedures for Department of Defense civilian employees by May 15, 1994.

FOREIGN LANGUAGE PROFICIENCY TEST PROGRAM

Pub. L. 103–160, div. A, title V, §575, Nov. 30, 1993, 107 Stat. 1675, directed the Secretary of Defense to develop and carry out a test program for improving foreign language proficiency in the Department of Defense through improved management and other measures and to submit a report to committees of Congress not later than Apr. 1, 1994, containing a plan for the program, an explanation of the plan, and a discussion of proficiency pay adjustments, and provided for the program to begin on Oct. 1, 1994, or 180 days after the date of submission of the report and to terminate two years later.

INVESTIGATIONS OF DEATHS OF MEMBERS OF ARMED FORCES FROM SELF-INFLICTED CAUSES

Pub. L. 103–160, div. A, title XI, §1185, Nov. 30, 1993, 107 Stat. 1774, required the Secretary of Defense to review, not later than June 30, 1994, the procedures of the military departments for investigating deaths of members of the Armed Forces that may have resulted from self-inflicted causes, to submit to Congress, not later than July 15, 1994, a report on the review, and to prescribe, not later than Oct. 1, 1994, regulations governing the investigation of deaths of members of the Armed Forces that may have resulted from self-inflicted causes, required the Inspector General of the Department of Defense to review certain death investigations, and required the Secretary of Transportation to implement with respect to the Coast Guard the requirements that were imposed on the Secretary of Defense and the Inspector General of the Department of Defense.

PROGRAM TO COMMEMORATE WORLD WAR II

Pub. L. 102–484, div. A, title III, §378, Oct. 23, 1992, 106 Stat. 2387, as amended by Pub. L. 103–337, div. A, title III, §382(a), Oct. 5, 1994, 108 Stat. 2740, authorized the Secretary of Defense, during fiscal years 1993 through 1996, to conduct a program to commemorate the 50th anniversary of World War II and to coordinate, support, and facilitate commemoration programs and activities of Federal, State, and local governments.

REVIEW OF MILITARY FLIGHT TRAINING ACTIVITIES AT CIVILIAN AIRFIELDS

Pub. L. 102–484, div. A, title III, §383, Oct. 23, 1992, 106 Stat. 2392, required a review of the practices and procedures of the military departments regarding the use of

civilian airfields in flight training activities of the Armed Forces.

REPORT ON ACTIONS TO REDUCE DISINCENTIVES FOR DEPENDENTS TO REPORT ABUSE BY MEMBERS OF ARMED FORCES

Pub. L. 102–484, div. A, title VI, §653(d), Oct. 23, 1992, 106 Stat. 2429, directed the Secretary of Defense to transmit a report to Congress not later than Dec. 15, 1993, on actions that had been taken and were planned to be taken in the Department of Defense to reduce or eliminate disincentives for a dependent of a member of the Armed Forces abused by the member to report the abuse.

SURVIVOR NOTIFICATION AND ACCESS TO REPORTS RELATING TO SERVICE MEMBERS WHO DIE

Pub. L. 102–484, div. A, title X, §1072, Oct. 23, 1992, 106 Stat. 2508, provided that:

''(a) AVAILABILITY OF FATALITY REPORTS AND RECORDS.—

''(1) REQUIREMENT.—The Secretary of each military department shall ensure that fatality reports and records pertaining to any member of the Armed Forces who dies in the line of duty shall be made available to family members of the service member in accordance with this subsection.

''(2) INFORMATION TO BE PROVIDED AFTER NOTIFICATION OF DEATH.—Within a reasonable period of time after family members of a service member are notified of the member's death, but not more than 30 days after the date of notification, the Secretary concerned shall ensure that the family members—

''(A) in any case in which the cause or circumstances surrounding the death are under investigation, are informed of that fact, of the names of the agencies within the Department of Defense conducting the investigations, and of the existence of any reports by such agencies that have been or will be issued as a result of the investigations; and

''(B) are furnished, if the family members so desire, a copy of any completed investigative report and any other completed fatality reports that are available at the time family members are provided the information described in subparagraph (A) to the extent such reports may be furnished consistent with sections 552 and 552a of title 5, United States Code.

''(3) ASSISTANCE IN OBTAINING REPORTS.—(A) In any case in which an investigative report or other fatality reports are not available at the time family members of a service member are provided the information described in paragraph (2)(A) about the member's death, the Secretary concerned shall ensure that a copy of such investigative report and any other fatality reports are furnished to the family members, if they so desire, when the reports are completed and become available, to the extent such reports may be furnished consistent with sections 552 and 552a of title 5, United States Code.

''(B) In any case in which an investigative report or other fatality reports cannot be released at the time family members of a service member are provided the information described in paragraph (2)(A) about the member's death because of section 552 or 552a of title 5, United States Code, the Secretary concerned shall ensure that the family members—

''(i) are informed about the requirements and procedures necessary to request a copy of such reports; and

''(ii) are assisted, if the family members so desire, in submitting a request in accordance with such requirements and procedures.

''(C) The requirement of subparagraph (B) to inform and assist family members in obtaining copies of fatality reports shall continue until a copy of each report is obtained, or access to any such report is denied by competent authority within the Department of Defense.

''(4) WAIVER.—The requirements of paragraph (2) or (3) may be waived on a case-by-case basis, but only if the Secretary of the military department concerned determines that compliance with such requirements is not in the interests of national security.

''(b) REVIEW OF COMBAT FATALITY NOTIFICATION PROCEDURES.—

''(1) REVIEW.—The Secretary of Defense shall conduct a review of the fatality notification procedures used by the military departments. Such review shall examine the following matters:

''(A) Whether uniformity in combat fatality notification procedures among the military departments is desirable, particularly with respect to—

''(i) the use of one or two casualty notification and assistance officers;

''(ii) the use of standardized fatality report forms and witness statements;

''(iii) the use of a single center for all military departments through which combat fatality information may be processed; and

''(iv) the use of uniform procedures and the provision of a dispute resolution process for instances in which members of one of the Armed Forces inflict casualties on members of another of the Armed Forces.

''(B) Whether existing combat fatality report forms should be modified to include a block or blocks with which to identify the cause of death as 'friendly fire', 'U.S. ordnance', or 'unknown'.

''(C) Whether the existing 'Emergency Data' form prepared by members of the Armed Forces should be revised to allow members to specify provision for notification of additional family members in cases such as the case of a divorced service member who leaves children with both a current and a former spouse.

''(D) Whether the military departments should, in all cases, provide family members of a service member who died as a result of injuries sustained in combat with full and complete details of the death of the service member, regardless of whether such details may be graphic, embarrassing to the family members, or reflect negatively on the military department concerned.

''(E) Whether, and when, the military departments should inform family members of a service member who died as a result of injuries sustained in combat about the possibility that the death may have been the result of friendly fire.

''(F) The criteria and standards which the military departments should use in deciding when disclosure is appropriate to family members of a member of the military forces of an allied nation who died as a result of injuries sustained in combat when the death may have been the result of fire from United States armed forces and an investigation into the cause or circumstances of the death has been conducted.

''(2) REPORT.—The Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives a report on the review conducted under paragraph (1). Such report shall be submitted not later than March 31, 1993, and shall include recommendations on the matters examined in the review and on any other matters the Secretary determines to be appropriate based upon the review or on any other reviews undertaken by the Department of Defense.

''(c) DEFINITIONS.—In this section:

''(1) The term 'fatality reports' includes investigative reports and any other reports pertaining to the cause or circumstances of death of a member of the Armed Forces in the line of duty (such as autopsy reports, battlefield reports, and medical reports).

''(2) The term 'family members' means parents, spouses, adult children, and such other relatives as the Secretary concerned considers appropriate.

''(d) APPLICABILITY.—(1) Except as provided in paragraph (2), this section applies with respect to deaths of

members of the Armed Forces occurring after the date of the enactment of this Act [Oct. 23, 1992].

''(2) With respect to deaths of members of the Armed Forces occurring before the date of the enactment of this Act, the Secretary concerned shall provide fatality reports to family members upon request as promptly as practicable.''

LIMITATION ON SUPPORT FOR UNITED STATES CONTRACTORS SELLING ARMS OVERSEAS

Pub. L. 102–484, div. A, title X, § 1082, Oct. 23, 1992, 106 Stat. 2516, as amended by Pub. L. 108–136, div. A, title X, § 1031(d)(2), Nov. 24, 2003, 117 Stat. 1604, provided that:

''(a) SUPPORT FOR CONTRACTORS.—In the event that a United States defense contractor or industrial association requests the Department of Defense or a military department to provide support in the form of military equipment for any airshow or trade exhibition to be held outside the United States, such equipment may not be supplied unless the contractor or association agrees to reimburse the Treasury of the United States for—

''(1) all incremental costs of military personnel accompanying the equipment, including food, lodging, and local transportation;

''(2) all incremental transportation costs incurred in moving such equipment from its normally assigned location to the airshow or trade exhibition and return; and

''(3) any other miscellaneous incremental costs not included under paragraphs (1) and (2) that are incurred by the Federal Government but would not have been incurred had military support not been provided to the contractor or industrial association.

''(b) DEPARTMENT OF DEFENSE EXHIBITIONS.—(1) A military department may not participate directly in any airshow or trade exhibition held outside the United States unless the Secretary of Defense determines that it is in the national security interests of the United States for the military departments to do so.

''(2) The Secretary of Defense may not delegate the authority to make the determination referred to in paragraph (1)(A) [now par. (1)] below the level of the Under Secretary of Defense for Policy.

''(c) DEFINITION.—In this section, the term 'incremental transportation cost' includes the cost of transporting equipment to an airshow or trade exhibition only to the extent that the provision of transportation by the Department of Defense described in subsection (a)(2) does not fulfill legitimate training requirements that would otherwise have to be met.''

OVERSEAS MILITARY END STRENGTH

Pub. L. 102–484, div. A, title XIII, § 1302, Oct. 23, 1992, 106 Stat. 2545, which provided that on and after Sept. 30, 1996, no appropriated funds may be used to support an end strength level of members of the Armed Forces of the United States assigned to permanent duty ashore in nations outside the United States at any level in excess of 60 percent of the end strength level of such members on Sept. 30, 1992, with exceptions in the event of declarations of war or emergency, was repealed and restated as section 123b of this title by Pub. L. 103–337, § 1312(a), (c).

REPORTS ON OVERSEAS BASING

Pub. L. 111–84, div. A, title X, § 1063, Oct. 28, 2009, 123 Stat. 2469, as amended by Pub. L. 111–383, div. A, title X, § 1075(d)(14), Jan. 7, 2011, 124 Stat. 4373, required a report on the plan for basing of forces outside the United States to be submitted along with the 2009 quadrennial defense review and required the Secretary of Defense to notify Congress at least 30 days before the permanent relocation of a unit stationed outside the United States as of Oct. 28, 2009.

Pub. L. 102–484, div. A, title XIII, § 1304, Oct. 23, 1992, 106 Stat. 2546, as amended by Pub. L. 103–160, div. B, title XXIX, § 2924(a), Nov. 30, 1993, 107 Stat. 1931; Pub. L. 104–106, div. A, title XV, § 1502(c)(2)(A), Feb. 10, 1996, 110 Stat. 506, required annual reports through 1997 relating to basing plans, closures, and negotiations regarding military installations located outside the United States and required a report on the Federal budget implications before a basing agreement was entered into between the United States and a foreign country.

COMMISSION ON ASSIGNMENT OF WOMEN IN ARMED FORCES

Pub. L. 102–190, div. A, title V, part D, subpart 2, Dec. 5, 1991, 105 Stat. 1365, provided for the creation of a Commission on the Assignment of Women in the Armed Forces to assess the laws and policies restricting the assignment of female service members and the implications, if any, for the combat readiness of the Armed Forces of permitting female members to qualify for assignment to positions in some or all categories of combat positions, with a report to be submitted to the President no later than Nov. 15, 1992, and to the Congress no later than Dec. 15, 1992, containing recommendations as to what roles female members should have in combat and what laws and policies restricting such assignments should be repealed or modified, and further provided for powers and procedures of the Commission, personnel matters, payment of Commission expenses and other miscellaneous administrative provisions, termination of the Commission 90 days after submission of its final report, and test assignments of female service members to combat positions.

REQUIREMENTS RELATING TO EUROPEAN MILITARY PROCUREMENT PRACTICES

Pub. L. 102–190, div. A, title VIII, § 832, Dec. 5, 1991, 105 Stat. 1446, required various reviews relating to European procurement of American-made military goods and services and established a defense trade and cooperation working group.

DEPARTMENT OF DEFENSE USE OF NATIONAL INTELLIGENCE COLLECTION SYSTEMS

Pub. L. 102–190, div. A, title IX, § 924, Dec. 5, 1991, 105 Stat. 1454, required procedures for exercising national intelligence collection systems and exploitation organizations and required a report to be submitted to Congress no later than May 1, 1992.

FAMILY SUPPORT CENTER FOR FAMILIES OF PRISONERS OF WAR AND PERSONS MISSING IN ACTION

Pub. L. 102–190, div. A, title X, § 1083, Dec. 5, 1991, 105 Stat. 1482, authorized the President to establish a support center for families of prisoners of war or those missing in action in Southeast Asia.

REPORTS ON FOREIGN CONTRIBUTIONS AND COSTS OF OPERATION DESERT STORM

Pub. L. 102–25, title IV, Apr. 6, 1991, 105 Stat. 99, directed Director of Office of Management and Budget to submit to Congress a number of reports on incremental costs associated with Operation Desert Storm and amounts of contributions made to United States by foreign countries to offset those costs, with a final report due not later than Nov. 15, 1992, and directed Secretary of State and Secretary of the Treasury to jointly submit to Congress a number of reports on contributions made by foreign countries as part of international response to Persian Gulf crisis, with a final report due not later than Nov. 15, 1992.

CHILD CARE ASSISTANCE TO FAMILIES OF MEMBERS SERVING ON ACTIVE DUTY DURING PERSIAN GULF CONFLICT

Pub. L. 102–25, title VI, § 601, Apr. 6, 1991, 105 Stat. 105, as amended by Pub. L. 102–190, div. A, title X, § 1063(d)(1), Dec. 5, 1991, 105 Stat. 1476; Pub. L. 102–484, div. A, title X, § 1053(8), Oct. 23, 1992, 106 Stat. 2502, authorized the Secretary of Defense to provide child care assistance for families of members of the Armed Forces and the National Guard who had served on active duty

during the Persian Gulf conflict in Operation Desert Storm.

FAMILY EDUCATION AND SUPPORT SERVICES TO FAMILIES OF MEMBERS SERVING ON ACTIVE DUTY IN OPERATION DESERT STORM

Pub. L. 102–25, title VI, § 602, Apr. 6, 1991, 105 Stat. 106, as amended by Pub. L. 102–190, div. A, title X, § 1063(d)(2), Dec. 5, 1991, 105 Stat. 1476, authorized the Secretary of Defense to provide assistance to families of members of the Armed Forces and National Guard who had served on active duty during the Persian Gulf conflict in Operation Desert Storm in order to ensure that they would receive educational assistance and support services necessary to meet needs.

WITHHOLDING OF PAYMENTS TO INDIRECT-HIRE CIVILIAN PERSONNEL OF NONPAYING PLEDGING NATIONS

Pub. L. 102–25, title VI, § 608, Apr. 6, 1991, 105 Stat. 112, related to withholding payments to nations pledging to contribute to certain expenses of Operation Desert Shield but not paying the full amount pledged.

PROGRAMMING LANGUAGE FOR DEPARTMENT OF DEFENSE SOFTWARE

Pub. L. 102–396, title IX, § 9070, Oct. 6, 1992, 106 Stat. 1918, provided that: ''Notwithstanding any other provision of law, where cost effective, all Department of Defense software shall be written in the programming language Ada, in the absence of special exemption by an official designated by the Secretary of Defense.''

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 102–172, title VIII, § 8073, Nov. 26, 1991, 105 Stat. 1188.

Pub. L. 101–511, title VIII, § 8092, Nov. 5, 1990, 104 Stat. 1896.

CONTRIBUTIONS BY JAPAN TO SUPPORT OF UNITED STATES FORCES IN JAPAN

Pub. L. 101–511, title VIII, § 8105, Nov. 5, 1990, 104 Stat. 1902, as amended by Pub. L. 102–190, div. A, title X, § 1063(b), Dec. 5, 1991, 105 Stat. 1476, provided that:

''(a) PERMANENT CEILING ON UNITED STATES ARMED FORCES IN JAPAN.—After September 30, 1990, funds appropriated pursuant to an appropriation contained in this Act or any subsequent Act may not be used to support an end strength level of all personnel of the Armed Forces of the United States stationed in Japan at any level in excess of 50,000.

''(b) ANNUAL REDUCTION IN CEILING UNLESS SUPPORT FURNISHED.—Unless the President certifies to Congress before the end of each fiscal year that Japan has agreed to offset for that fiscal year the direct costs incurred by the United States related to the presence of all United States military personnel in Japan, excluding the military personnel title costs, the end strength level for that fiscal year of all personnel of the Armed Forces of the United States stationed in Japan may not exceed the number that is 5,000 less than such end strength level for the preceding fiscal year.

''(c) SENSE OF CONGRESS.—It is the sense of Congress that all those countries that share the benefits of international security and stability should share in the responsibility for that stability and security commensurate with their national capabilities. The Congress also recognizes that Japan has made a substantial pledge of financial support to the effort to support the United Nations Security Council resolutions on Iraq. The Congress also recognizes that Japan has a greater economic capability to contribute to international security and stability than any other member of the international community and wishes to encourage Japan to contribute commensurate with that capability.

''(d) EXCEPTIONS.—(1) This section shall not apply in the event of a declaration of war or an armed attack on Japan.

''(2) The President may waive the limitation in this section for any fiscal year if he declares that it is in the national interest to do so and immediately informs Congress of the waiver and the reasons for the waiver.

''(e) EFFECTIVE DATE.—This section shall take effect on the date of enactment of this Act [Nov. 5, 1990].''

Pub. L. 101–510, div. A, title XIV, § 1455, Nov. 5, 1990, 104 Stat. 1695, provided that:

''(a) PURPOSE.—It is the purpose of this section to require Japan to offset the direct costs (other than pay and allowances for United States military and civilian personnel) incurred by the United States related to the presence of United States military personnel in Japan.

''(b) PERMANENT CEILING ON UNITED STATES ARMED FORCES IN JAPAN.—Funds appropriated pursuant to an authorization contained in this Act or any subsequent Act may not be used to support an end strength level of all personnel of the Armed Forces of the United States stationed in Japan at any level in excess of 50,000.

''(c) SENSE OF CONGRESS ON ALLIED BURDEN SHARING.—(1) Congress recognizes that Japan has made a substantial pledge of financial support to the effort to support the United Nations Security Council resolutions on Iraq.

''(2) It is the sense of Congress that—

''(A) all countries that share the benefits of international security and stability should, commensurate with their national capabilities, share in the responsibility for maintaining that security and stability; and

''(B) given the economic capability of Japan to contribute to international security and stability, Japan should make contributions commensurate with that capability.

''(d) NEGOTIATIONS.—At the earliest possible date after the date of the enactment of this Act [Nov. 5, 1990], the President shall enter into negotiations with Japan for the purpose of achieving an agreement before September 30, 1991, under which Japan offsets all direct costs (other than pay and allowances for United States military and civilian personnel) incurred by the United States related to the presence of all United States military personnel stationed in Japan.

''(e) EXCEPTIONS.—(1) This section shall not apply in the event of a declaration of war or an armed attack on Japan.

''(2) This section may be waived by the President if the President—

''(A) declares an emergency or determines that such a waiver is required by the national security interests of the United States; and

''(B) immediately informs the Congress of the waiver and the reasons for the waiver.''

NATIONAL MILITARY STRATEGY REPORTS

Pub. L. 101–510, div. A, title IX, § 901, Nov. 5, 1990, 104 Stat. 1619, directed the Secretary of Defense to submit, with the Secretary's annual report to Congress during each of fiscal years 1992, 1993, and 1994, a report covering a period of at least ten years addressing threats facing the United States and strategic military plans to aid in the achievement of national objectives.

ANNUAL REPORT ON BALANCED TECHNOLOGY INITIATIVE

Pub. L. 101–189, div. A, title II, § 211(e), Nov. 29, 1989, 103 Stat. 1394, which required Secretary of Defense to submit annual report to congressional defense committees on Balanced Technology Initiative, was repealed by Pub. L. 104–106, div. A, title X, § 1061(*l*), Feb. 10, 1996, 110 Stat. 443.

MILITARY RELOCATION ASSISTANCE PROGRAMS

Pub. L. 101–189, div. A, title VI, § 661, Nov. 29, 1989, 103 Stat. 1463, which related to establishment by Secretary of Defense of programs to provide relocation assistance to members of Armed Forces and their families, was repealed and restated in section 1056 of this title by Pub. L. 101–510, div. A, title XIV, § 1481(c)(1), (3), Nov. 5, 1990, 104 Stat. 1705.

MILITARY CHILD CARE

Pub. L. 101–189, div. A, title XV, Nov. 29, 1989, 103 Stat. 1589, which provided that such title could be cited as the ''Military Child Care Act of 1989'', and which related to funding for military child care for fiscal year 1990, child care employees, parent fees, child abuse prevention and safety at facilities, parent partnerships with child development centers, report on 5-year demand for child care, subsidies for family home day care, early childhood education demonstration program, and deadline for regulations, was repealed and restated in subchapter II (§1791 et seq.) of chapter 88 of this title by Pub. L. 104–106, div. A, title V, §568(a)(1), (e)(2), Feb. 10, 1996, 110 Stat. 331, 336.

LEAD AGENCY FOR DETECTION OF TRANSIT OF ILLEGAL DRUGS

Pub. L. 100–456, div. A, title XI, §1102, Sept. 29, 1988, 102 Stat. 2042, which designated the Department of Defense as the single lead agency of the Federal Government for detection and monitoring of aerial and maritime transit of illegal drugs into the United States, was repealed and restated as section 124 of this title by Pub. L. 101–189, §1202(a)(1), (b).

ANNUAL ASSESSMENT OF SECURITY AT UNITED STATES BASES IN PHILIPPINES

Pub. L. 100–456, div. A, title XIII, §1309, Sept. 29, 1988, 102 Stat. 2063, directed Secretary of Defense to submit to Congress annual reports assessing security at United States military facilities in Republic of Philippines, prior to repeal by Pub. L. 102–484, div. A, title X, §1074, Oct. 23, 1992, 106 Stat. 2511.

DEPARTMENT OF DEFENSE OVERSEAS PERSONNEL; ACTIONS RESULTING IN MORE BALANCED SHARING OF DEFENSE AND FOREIGN ASSISTANCE SPENDING BURDENS BY UNITED STATES AND ALLIES; REPORTS TO CONGRESS; LIMITATION ON ACTIVE DUTY ARMED FORCES MEMBERS IN JAPAN AND REPUBLIC OF KOREA

Pub. L. 100–463, title VIII, §8125, Oct. 1, 1988, 102 Stat. 2270–41, as amended by Pub. L. 101–189, div. A, title XVI, §1623, Nov. 29, 1989, 103 Stat. 1606; Pub. L. 103–236, title I, §162(j), Apr. 30, 1994, 108 Stat. 408; Pub. L. 104–106, div. A, title XV, §1502(f)(1), Feb. 10, 1996, 110 Stat. 509; Pub. L. 106–65, div. A, title X, §1067(14), Oct. 5, 1999, 113 Stat. 775, provided that:

''(a)(1) Not later than March 1, 1989, the Secretary of Defense shall submit to Congress a report on the assignment of military missions among the member countries of North Atlantic Treaty Organization (NATO) and on the prospects for the more effective assignment of such missions among such countries.

''(2) The report shall include a discussion of the following:

''(A) The current assignment of military missions among the member countries of NATO.

''(B) Military missions for which there is duplication of capability or for which there is inadequate capability within the current assignment of military missions within NATO.

''(C) Alternatives to the current assignment of military missions that would maximize the military contributions of the member countries of NATO.

''(D) Any efforts that are underway within NATO or between individual member countries of NATO at the time the report is submitted that are intended to result in a more effective assignment of military missions within NATO.

''(b) The Secretary of Defense and the Secretary of State shall (1) conduct a review of the long-term strategic interests of the United States overseas and the future requirements for the assignment of members of the Armed Forces of the United States to permanent duty ashore outside the United States, and (2) determine specific actions that, if taken, would result in a more balanced sharing of defense and foreign assistance spending burdens by the United States and its allies. Not later than August 1, 1989, the Secretary of Defense and the Secretary of State shall transmit to Congress a report containing the findings resulting from the review and their determinations.

''[(c) Repealed. Pub. L. 103–236, title I, §162(j), Apr. 30, 1994, 108 Stat. 408.]

''(d) The President shall specify (separately by appropriation account) in the Department of Defense items included in each budget submitted to Congress under section 1105 of title 31, United States Code, (1) the amounts necessary for payment of all personnel, operations, maintenance, facilities, and support costs for Department of Defense overseas military units, and (2) the costs for all dependents who accompany Department of Defense personnel outside the Unied [sic] States.

''(e) Not later than May 1, 1989, the Secretary of Defense shall submit to the Committees on Armed Services and on Appropriations of the Senate and the House of Representatives a report that sets forth the total costs required to support the dependents who accompany Department of Defense personnel assigned to permanent duty overseas.

''(f) As of September 30 of each fiscal year, the number of members of the Armed Forces on active duty assigned to permanent duty ashore in Japan and the Republic of Korea may not exceed 94,450 (the number of members of the Armed Forces on active duty assigned to permanent duty ashore in Japan and the Republic of Korea on September 30, 1987). The limitation in the preceding sentence may be increased if and when (1) a major reduction of United States forces in the Republic of the Philippines is required because of a loss of basing rights in that nation, and (2) the President determines and certifies to Congress that, as a consequence of such loss, an increase in United States forces stationed in Japan and the Republic of Korea is necessary.

''(g)(1) After fiscal year 1990, budget submissions to Congress under section 1105 of title 31, United States Code, shall identify funds requested for Department of Defense personnel and units in permanent duty stations ashore outside the United States that exceed the amount of such costs incurred in fiscal year 1989 and shall set forth a detailed description of (A) the types of expenditures increased, by appropriation account, activity and program; and (B) specific efforts to obtain allied host nations' financing for these cost increases.

''(2) The Secretary of Defense shall notify in advance the Committee on Appropriations and the Committee on Armed Services of the Senate and the Committee on Appropriations and the Committee on Armed Services of the House of Representatives, through existing notification procedures, when costs of maintaining Department of Defense personnel and units in permanent duty stations ashore outside the United States will exceed the amounts as defined in the Department of Defense budget as enacted for that fiscal year. Such notification shall describe: (A) the type of expenditures that increased; and (B) the source of funds (including prior year unobligated balances) by appropriation account, activity and program, proposed to finance these costs.

''(3) In computing the costs incurred for maintaining Department of Defense personnel and forces in permanent duty stations ashore outside the United States compared with the amount of such costs incurred in fiscal year 1989, the Secretary shall—

''(A) exclude increased costs resulting from increases in the rates of pay provided for members of the Armed Forces and civilian employees of the United States Government and exclude any cost increases in supplies and services resulting from inflation; and

''(B) include (i) the costs of operation and maintenance and of facilities for the support of Department of Defense overseas personnel, and (ii) increased costs resulting from any decline in the foreign exchange rate of the United States dollar.

''(h) The provisions of subsections (f) and (g) shall not apply in time of war or during a national emergency declared by the President or Congress.

''(i) In this section—

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''(1) the term 'personnel' means members of the Armed Forces of the United States and civilian employees of the Department of Defense;

''(2) the term 'Department of Defense overseas personnel' means those Department of Defense personnel who are assigned to permanent duty ashore outside the United States; and

''(3) the term 'United States' includes the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.''

ANNUAL REPORT ON COSTS OF STATIONING UNITED STATES TROOPS OVERSEAS

Pub. L. 100–202, § 101(b) [title VIII, § 8042], Dec. 22, 1987, 101 Stat. 1329–43, 1329–69, which required Secretary of Defense to submit annual report on full costs of stationing United States troops overseas, etc., was repealed and restated in subsec. (k) [now (j)] of this section by Pub. L. 100–370, § 1(*o*).

REGULATIONS REGARDING EMPLOYMENT AND VOLUNTEER WORK OF SPOUSES OF MILITARY PERSONNEL

Pub. L. 100–180, div. A, title VI, § 637, Dec. 4, 1987, 101 Stat. 1106, required the Secretary of Defense to prescribe regulations regarding employment and volunteer work of spouses of military personnel by no later than 60 days after Dec. 4, 1987.

TEST PROGRAM FOR REIMBURSEMENT FOR ADOPTION EXPENSES

Pub. L. 100–180, div. A, title VI, § 638, Dec. 4, 1987, 101 Stat. 1106, as amended by Pub. L. 101–189, div. A, title VI, § 662, Nov. 29, 1989, 103 Stat. 1465; Pub. L. 101–510, div. A, title XIV, § 1484(*l*)(1), Nov. 5, 1990, 104 Stat. 1719, provided that the Secretary of Defense, with respect to members of the Armed Forces, and the Secretary of Transportation, with respect to members of the Coast Guard, were to carry out a test program providing for reimbursement for qualifying adoption expenses incurred by members of the Army, Navy, Air Force, or Marine Corps for adoption proceedings initiated after Sept. 30, 1987, and before Oct. 1, 1990, and for qualifying adoption expenses incurred by members of the Coast Guard for adoption proceedings initiated after Sept. 30, 1989, and before Oct. 1, 1990.

COUNTERINTELLIGENCE POLYGRAPH PROGRAM

Pub. L. 100–180, div. A, title XI, § 1121, Dec. 4, 1987, 101 Stat. 1147, as amended by Pub. L. 105–85, div. A, title X, § 1073(d)(5), Nov. 18, 1997, 111 Stat. 1906, which provided for a counterintelligence polygraph program to be carried out by the Secretary of Defense, was repealed and restated in section 1564a of this title by Pub. L. 108–136, div. A, title X, § 1041(a)(1),(b), Nov. 24, 2003, 117 Stat. 1607, 1608.

COORDINATION OF PERMANENT CHANGE OF STATION MOVES WITH SCHOOL YEAR

Pub. L. 99–661, div. A, title VI, § 612, Nov. 14, 1986, 100 Stat. 3878, provided that: ''The Secretary of each military department shall establish procedures to ensure that, to the maximum extent practicable within operational and other military requirements, permanent change of station moves for members of the Armed Forces under the jurisdiction of the Secretary who have dependents in elementary or secondary school occur at times that avoid disruption of the school schedules of such dependents.''

COMPARABLE BUDGETING FOR SIMILAR SYSTEMS

Pub. L. 99–500, § 101(c) [title X, § 955], Oct. 18, 1986, 100 Stat. 1783–82, 1783–173, and Pub. L. 99–591, § 101(c) [title X, § 955], Oct. 30, 1986, 100 Stat. 3341–82, 3341–173; Pub. L. 99–661, div. A, title IX, formerly title IV, § 955, Nov. 14, 1986, 100 Stat. 3953, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273, which provided that in preparing the defense budget for any fiscal year, the Secretary of Defense was to specifically identify each common procurement weapon system included in the budget, take all feasible steps to minimize variations in procurement unit costs for any such system as shown in the budget requests of the different armed forces requesting procurement funds for the system, and identify and justify in the budget all such variations in procurement unit costs for common procurement weapon systems, and that the Secretary of Defense carry out this section through the Assistant Secretary of Defense (Comptroller), was repealed and restated in section 2217 of this title by Pub. L. 100–370, § 1(d)(3).

ANNUAL REPORT TO CONGRESS ON IMPLEMENTATION OF JOINT OFFICER PERSONNEL POLICY

Pub. L. 99–433, title IV, § 405, Oct. 1, 1986, 100 Stat. 1032, required the Secretary of Defense to include in the Secretary's annual report to Congress under subsec. (c) of this section for each year from 1987 through 1991 a detailed report on the implementation of title IV of Pub. L. 99–433.

INITIAL REPORT TO CONGRESS

Pub. L. 99–433, title IV, § 406(g), Oct. 1, 1986, 100 Stat. 1034, required that the first report submitted by the Secretary of Defense under subsec. (c) of this section after Oct. 1, 1986, would contain as much of the information required by former section 667 of this title as had been available to the Secretary at the time of its preparation.

SECURITY AT MILITARY BASES ABROAD

Pub. L. 99–399, title XI, Aug. 27, 1986, 100 Stat. 894, directed the Secretary of Defense to report to Congress not later than June 30, 1987, on actions taken to review the security of each base and installation of the Department of Defense outside the United States, to improve the security of such bases and installations, and to institute a training program for members of the Armed Forces stationed outside the United States and their families concerning security and antiterrorism.

SURCHARGE FOR SALES BY ANIMAL DISEASE PREVENTION AND CONTROL CENTERS; FEE FOR VETERINARY SERVICES

Pub. L. 99–145, title VI, § 685(a), (b), (d), Nov. 8, 1985, 99 Stat. 666, provided that:

''(a) REQUIRED SURCHARGE.—The Secretary of Defense shall require that each time a sale is recorded at a military animal disease prevention and control center the person to whom the sale is made shall be charged a surcharge of $2.

''(b) DEPOSIT OF RECEIPTS IN TREASURY.—Amounts received from surcharges under this section shall be deposited in the Treasury in accordance with section 3302 of title 31.''

''(d) EFFECTIVE DATE.—This section shall take effect on October 1, 1985.''

Pub. L. 98–94, title X, § 1033, Sept. 24, 1983, 97 Stat. 672, as amended by Pub. L. 98–525, title VI, § 656, Oct. 19, 1984, 98 Stat. 2553, effective Oct. 1, 1985, required payment by a member of the Armed Forces of a $10 fee for veterinary services, prior to repeal by Pub. L. 99–145, title VI, § 685(c), (d), Nov. 8, 1985, 99 Stat. 666, effective Oct. 1, 1985.

MILITARY FAMILY POLICY AND PROGRAMS

Pub. L. 99–145, title VIII, Nov. 8, 1985, 99 Stat. 678, as amended by Pub. L. 99–661, div. A, title VI, § 653, Nov. 14, 1986, 100 Stat. 3890; Pub. L. 100–180, div. A, title VI, § 635, Dec. 4, 1987, 101 Stat. 1106; Pub. L. 100–456, div. A, title V, § 524, Sept. 29, 1988, 102 Stat. 1975, which provided that such title could be cited as the ''Military Family Act of 1985'', and which related to Office of Family Policy, transfer of Military Family Resource Center, surveys of military families, family members serving on advisory committees, employment opportunities for military spouses, youth sponsorship program, dependent student travel within United States, reloca-

tion and housing, food programs, reporting of child abuse, miscellaneous reporting requirements, and effective date, was repealed and restated in subchapter I (§1781 et seq.) of chapter 88 of this title by Pub. L. 104–106, div. A, title V, §568(a)(1), (e)(1), Feb. 10, 1996, 110 Stat. 329, 336.

PROHIBITION OF CERTAIN RESTRICTIONS ON INSTITUTIONS ELIGIBLE TO PROVIDE EDUCATIONAL SERVICES; PROVISION OF OFF-DUTY POSTSECONDARY EDUCATION SERVICES OVERSEAS

Pub. L. 99–145, title XII, §1212, Nov. 8, 1985, 99 Stat. 726, as amended by Pub. L. 101–189, div. A, title V, §518, Nov. 29, 1989, 103 Stat. 1443, provided that:

''(a) No solicitation, contract, or agreement for the provision of off-duty postsecondary education services for members of the Armed Forces of the United States, civilian employees of the Department of Defense, or the dependents of such members or employees may discriminate against or preclude any accredited academic institution authorized to award one or more associate degrees from offering courses within its lawful scope of authority solely on the basis of such institution's lack of authority to award a baccalaureate degree.

''(b) No solicitation, contract, or agreement for the provision of off-duty postsecondary education services for members of the Armed Forces of the United States, civilian employees of the Department of Defense, or the dependents of such members or employees, other than those for services at the graduate or postgraduate level, may limit the offering of such services or any group, category, or level of courses to a single academic institution. However, nothing in this section shall prohibit such actions taken in accordance with regulations of the Secretary of Defense which are uniform for all armed services as may be necessary to avoid unnecessary duplication of offerings, consistent with the purpose of this provision of ensuring the availability of alternative offerors of such services to the maximum extent feasible.

''(c)(1) The Secretary of Defense shall conduct a study to determine the current and future needs of members of the Armed Forces, civilian employees of the Department of Defense, and the dependents of such members and employees for postsecondary education services at overseas locations. The Secretary shall determine on the basis of the results of that study whether the policies and procedures of the Department in effect on the date of the enactment of the Department of Defense Authorization Act for Fiscal Years 1990 and 1991 [probably means date of enactment of Pub. L. 101–189, Nov. 29, 1989] with respect to the procurement of such services are—

''(A) consistent with the provisions of subsections (a) and (b);

''(B) adequate to ensure the recipients of such services the benefit of a choice in the offering of such services; and

''(C) adequate to ensure that persons stationed at geographically isolated military installations or at installations with small complements of military personnel are adequately served.

The Secretary shall complete the study in such time as necessary to enable the Secretary to submit the report required by paragraph (2)(A) by the deadline specified in that paragraph.

''(2)(A) The Secretary shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the results of the study referred to in paragraph (1), together with a copy of any revisions in policies and procedures made as a result of such study. The report shall be submitted not later than March 1, 1990.

''(B) The Secretary shall include in the report an explanation of how determinations are made with regard to—

''(i) affording members, employees, and dependents a choice in the offering of courses of postsecondary education; and

''(ii) whether the services provided under a contract for such services should be limited to an installation, theater, or other geographic area.

''(3)(A) Except as provided in subparagraph (B), no contract for the provision of services referred to in subsection (a) may be awarded, and no contract or agreement entered into before the date of the enactment of this paragraph [Nov. 29, 1989] may be renewed or extended on or after such date, until the end of the 60-day period beginning on the date on which the report referred to in paragraph (2)(A) is received by the committees named in that paragraph.

''(B) A contract or an agreement in effect on October 1, 1989, for the provision of postsecondary education services in the European Theater for members of the Armed Forces, civilian employees of the Department of Defense, and the dependents of such members and employees may be renewed or extended without regard to the limitation in subparagraph (A).

''(C) In the case of a contract for services with respect to which a solicitation is pending on the date of the enactment of this paragraph [Nov. 29, 1989], the contract may be awarded—

''(i) on the basis of the solicitation as issued before the date of the enactment of this paragraph;

''(ii) on the basis of the solicitation issued before the date of the enactment of this paragraph modified so as to conform to any changes in policies and procedures the Secretary determines should be made as a result of the study required under paragraph (1); or

''(iii) on the basis of a new solicitation.

''(d) Nothing in this section shall be construed to require more than one academic institution to be authorized to offer courses aboard a particular naval vessel.''

REPORT OF UNOBLIGATED BALANCES

Pub. L. 99–145, title XIV, §1407, Nov. 8, 1985, 99 Stat. 745, required reports on unobligated balances, prior to repeal by Pub. L. 99–661, div. A, title XIII, §1307(b), Nov. 14, 1986, 100 Stat. 3981.

DEFENSE INDUSTRIAL BASE FOR TEXTILE AND APPAREL PRODUCTS

Pub. L. 99–145, title XIV, §1456, Nov. 8, 1985, 99 Stat. 762, which directed Secretary of Defense to monitor capability of domestic textile and apparel industrial base to support defense mobilization requirements and to make annual reports to Congress on status of such industrial base, was repealed and restated in section 2510 of this title by Pub. L. 101–510, §826(a)(1), (b). Section 2510 of this title was repealed by Pub. L. 102–484, div. D, title XLII, §4202(a), Oct. 23, 1992, 106 Stat. 2659.

HOTLINE BETWEEN UNITED STATES AND RUSSIA

Pub. L. 99–85, Aug. 8, 1985, 99 Stat. 286, as amended by Pub. L. 103–199, title IV, §404(a), Dec. 17, 1993, 107 Stat. 2325, provided: ''That the Secretary of Defense may provide to Russia, as provided in the Exchange of Notes Between the United States of America and the Union of Soviet Socialist Republics Concerning the Direct Communications Link Upgrade, concluded on July 17, 1984, such equipment and services as may be necessary to upgrade or maintain the Russian part of the Direct Communications Link agreed to in the Memorandum of Understanding between the United States and the Soviet Union signed June 20, 1963. The Secretary shall provide such equipment and services to Russia at the cost thereof to the United States.

''SEC. 2. (a) The Secretary of Defense may use any funds available to the Department of Defense for the procurement of the equipment and providing the services referred to in the first section.

''(b) Funds received from Russia as payment for such equipment and services shall be credited to the appropriate account of Department of Defense.''

[Pub. L. 103–199, title IV, §404(b), Dec. 17, 1993, 107 Stat. 2325, provided that: ''The amendment made by subsection (a)(2) [amending section 2(b) of Pub. L. 99–85, set out above] does not affect the applicability of section 2(b) of that joint resolution to funds received from the Soviet Union.'']

CONSOLIDATION OF FUNCTIONS OF MILITARY TRANSPORTATION COMMANDS PROHIBITED

Pub. L. 97–252, title XI, §1110, Sept. 8, 1982, 96 Stat. 747, provided that none of funds appropriated pursuant to an authorization of appropriations could be used for purpose of consolidating any functions being performed on Sept. 8, 1982, by Military Traffic Management Command of Army, Military Sealift Command of Navy, or Military Airlift Command of Air Force with any function being performed on such date by either or both of the other commands, prior to repeal by Pub. L. 99–433, title II, §213(a), Oct. 1, 1986, 100 Stat. 1018.

REPORTS TO CONGRESS ON RECOMMENDATIONS WITH RESPECT TO ELIMINATION OF WASTE, FRAUD, ABUSE, AND MISMANAGEMENT IN DEPARTMENT OF DEFENSE

Pub. L. 97–86, title IX, §918, Dec. 1, 1981, 95 Stat. 1132, directed Secretary of Defense, not later than Jan. 15, 1982 and 1983, to submit to Congress reports containing recommendations to improve efficiency and management of, and to eliminate waste, fraud, abuse, and mismanagement in, operation of Department of Defense, and to include each recommendation by Comptroller General since Jan. 1, 1979, for elimination of waste, fraud, abuse, or mismanagement in Department of Defense with a statement as to which have been adopted and, to extent practicable actual and projected cost savings from each, and which have not been adopted and, to extent practicable, projected cost savings from each and an explanation of why each such recommendation was not adopted.

MILITARY INSTALLATIONS TO BE CLOSED IN UNITED STATES, GUAM, OR PUERTO RICO; STUDIES TO DETERMINE POTENTIAL USE

Pub. L. 94–431, title VI, §610, Sept. 30, 1976, 90 Stat. 1365, authorized Secretary of Defense to conduct studies with regard to possible use of military installations being closed and to make recommendations with regard to such installations, prior to repeal by Pub. L. 97–86, title IX, §912(b), Dec. 1, 1981, 95 Stat. 1123. See section 2391 of this title.

REPORTS TO CONGRESSIONAL COMMITTEES ON FOREIGN POLICY AND MILITARY FORCE STRUCTURE

Pub. L. 94–106, title VIII, §812, Oct. 7, 1975, 89 Stat. 540, which directed Secretary of Defense, after consultation with Secretary of State, to prepare and submit not later than January 31 of each year to Committees on Armed Services of Senate and House of Representatives a written annual report on foreign policy and military force structure of United States for next fiscal year, how such policy and force structure relate to each other, and justification for each, was repealed and restated as subsec. (e) of section 133 [now §113] of this title by Pub. L. 97–295, §§1(1), 6(b).

REPORT TO CONGRESS ON SALE OR TRANSFER OF DEFENSE ARTICLES

Pub. L. 94–106, title VIII, §813, Oct. 7, 1975, 89 Stat. 540, as amended by Pub. L. 95–79, title VIII, §814, July 30, 1977, 91 Stat. 337; Pub. L. 97–252, title XI, §1104, Sept. 8, 1982, 96 Stat. 739, which directed Secretary of Defense to report to Congress on any letter proposing to transfer $50,000,000 or more of defense articles, detailing impact of such a sale on readiness, adequacy of price for replacement, and armed forces needs and supply for each article, was repealed and restated as section 133b (renumbered §118 and repealed) of this title by Pub. L. 97–295, §§1(2)(A), 6(b).

PROCUREMENT OF AIRCRAFT, MISSILES, NAVAL VESSELS, TRACKED COMBAT VEHICLES, AND OTHER WEAPONS; AUTHORIZATION OF APPROPRIATIONS FOR PROCUREMENT, RESEARCH, DEVELOPMENT, TEST, AND EVALUATION ACTIVITIES; SELECTED RESERVE OF RESERVE COMPONENTS: ANNUAL AUTHORIZATION OF PERSONNEL STRENGTH

Pub. L. 86–149, title IV, §412, Aug. 10, 1959, 73 Stat. 322, as amended by Pub. L. 87–436, §2, Apr. 27, 1962, 76 Stat. 55; Pub. L. 88–174, title VI, §610, Nov. 7, 1963, 77 Stat. 329; Pub. L. 89–37, title III, §304, June 11, 1965, 79 Stat. 128; Pub. L. 90–168, §6, Dec. 1, 1967, 81 Stat. 526; Pub. L. 91–121, title IV, §405, Nov. 19, 1969, 83 Stat. 207; Pub. L. 91–441, title V, §§505, 509, Oct. 7, 1970, 84 Stat. 912, 913; Pub. L. 92–129, title VII, §701, Sept. 28, 1971, 85 Stat. 362; Pub. L. 92–436, title III, §302, title VI, §604, Sept. 26, 1972, 86 Stat. 736, 739, was repealed by Pub. L. 93–155, title VIII, §803(b)(1), Nov. 16, 1973, 87 Stat. 615. See sections 114 to 116 of this title.

REGULATIONS GOVERNING LIQUOR SALES; PENALTIES

Act June 19, 1951, ch. 144, title I, §6, 65 Stat. 88, as amended by Pub. L. 99–145, title XII, §1224(b)(2), Nov. 8, 1985, 99 Stat. 729, provided that: ''Subject to section 2683(c) of title 10, United States Code, the Secretary of Defense is authorized to make such regulations as he may deem to be appropriate governing the sale, consumption, possession of or traffic in beer, wine, or any other intoxicating liquors to or by members of the Armed Forces or the National Security Training Corps at or near any camp, station, post, or other place primarily occupied by members of the Armed Forces or the National Security Training Corps. Any person, corporation, partnership, or association who knowingly violates the regulations which may be made hereunder shall, unless otherwise punishable under the Uniform Code of Military Justice [10 U.S.C. 801 et seq.], be deemed guilty of a misdemeanor and be punished by a fine of not more than $1,000 or imprisonment for not more than twelve months, or both.''

EX. ORD. NO. 12765. DELEGATION OF CERTAIN DEFENSE RELATED AUTHORITIES OF PRESIDENT TO SECRETARY OF DEFENSE

Ex. Ord. No. 12765, June 11, 1991, 56 F.R. 27401, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3 of the United States Code, and my authority as Commander in Chief of the Armed Forces of the United States, it is hereby ordered as follows:

SECTION 1. The Secretary of Defense is hereby designated and empowered, without the approval, ratification, or other action by the President, to exercise the authority vested in the President by section 749 of title 10 of the United States Code to assign the command without regard to rank in grade to any commissioned officer otherwise eligible to command when two or more commissioned officers of the same grade or corresponding grades are assigned to the same area, field command, or organization.

SEC. 2. The Secretary of Defense is hereby designated and empowered, without the approval, ratification, or other action by the President, to exercise the authority vested in the President by section 7299a(a) of title 10 of the United States Code to direct that combatant vessels and escort vessels be constructed in a Navy or private yard, as the case may be, if the requirement of the Act of March 27, 1934 (ch. 95, 48 Stat. 503) that the first and each succeeding alternate vessel of the same class be constructed in a Navy yard is inconsistent with the public interest.

SEC. 3. For vessels, and for any major component of the hull or superstructure of vessels to be constructed or repaired for any of the armed forces, the Secretary of Defense is hereby designated and empowered, without the approval, ratification, or other action by the President, to exercise the authority vested in the President by section 7309(b) of title 10 of the United States Code to authorize exceptions to the prohibition in section 7309(a) of title 10 of the United States Code. Such exceptions shall be based on a determination that it is in the national security interest of the United States to authorize an exception. The Secretary of Defense shall transmit notice of any such determination to the Congress, as required by section 7309(b).

SEC. 4. The Secretary of Defense may redelegate the authority delegated to him by this order, in accordance with applicable law.

SEC. 5. This order shall be effective immediately.

GEORGE BUSH.

WAIVER OF LIMITATION WITH RESPECT TO END STRENGTH LEVEL OF U.S. ARMED FORCES IN JAPAN FOR FISCAL YEAR 1991

Memorandum of the President of the United States, May 14, 1991, 56 F.R. 23991, provided:

Memorandum for the Secretary of Defense

Consistent with section 8105(d)(2) of the Department of Defense Appropriation Act, 1991 (Public Law 101–511; 104 Stat. 1856) [set out above], I hereby waive the limitation in section 8105(b) which states that the end strength level for each fiscal year of all personnel of the Armed Forces of the United States stationed in Japan may not exceed the number that is 5,000 less than such end strength level for the preceding fiscal year, and declare that it is in the national interest to do so.

You are authorized and directed to inform the Congress of this waiver and of the reasons for the waiver contained in the attached justification, and to publish this memorandum in the Federal Register.

GEORGE BUSH.

JUSTIFICATION PURSUANT TO SECTION 8105(d)(2) OF THE DEPARTMENT OF DEFENSE APPROPRIATIONS ACT, 1991 (PUBLIC LAW NO. 101–511; 104 STAT. 1856)

In January of this year the Department of Defense signed a new Host Nation Support Agreement with the Government of Japan in which that government agreed to pay all utility and Japanese labor costs incrementally over the next five years (worth $1.7 billion). Because United States forward deployed forces stationed in Japan have regional missions in addition to the defense of Japan, we did not seek to have the Government of Japan offset all of the direct costs incurred by the United States related to the presence of all United States military personnel in Japan (excluding military personnel title costs).

§ 113a. Transmission of annual defense authorization request

(a) TIME FOR TRANSMITTAL.—The Secretary of Defense shall transmit to Congress the annual defense authorization request for a fiscal year during the first 30 days after the date on which the President transmits to Congress the budget for that fiscal year pursuant to section 1105 of title 31.

(b) DEFENSE AUTHORIZATION REQUEST DEFINED.—In this section, the term ''defense authorization request'', with respect to a fiscal year, means a legislative proposal submitted to Congress for the enactment of the following:

(1) Authorizations of appropriations for that fiscal year, as required by section 114 of this title.

(2) Personnel strengths for that fiscal year, as required by section 115 of this title.

(3) Authority to carry out military construction projects, as required by section 2802 of this title.

(4) Any other matter that is proposed by the Secretary of Defense to be enacted as part of the annual defense authorization bill for that fiscal year.

(Added Pub. L. 107–314, div. A, title X, §1061(a), Dec. 2, 2002, 116 Stat. 2649; amended Pub. L. 108–136, div. A, title X, §1044(a), Nov. 24, 2003, 117 Stat. 1612.)

AMENDMENTS

2003—Subsec. (b)(3), (4). Pub. L. 108–136 added par. (3) and redesignated former par. (3) as (4).

§ 114. Annual authorization of appropriations

(a) No funds may be appropriated for any fiscal year to or for the use of any armed force or obligated or expended for—

(1) procurement of aircraft, missiles, or naval vessels;

(2) any research, development, test, or evaluation, or procurement or production related thereto;

(3) procurement of tracked combat vehicles;

(4) procurement of other weapons;

(5) procurement of naval torpedoes and related support equipment;

(6) military construction;

(7) the operation and maintenance of any armed force or of the activities and agencies of the Department of Defense (other than the military departments);

(8) procurement of ammunition; or

(9) other procurement by any armed force or by the activities and agencies of the Department of Defense (other than the military departments);

unless funds therefor have been specifically authorized by law.

(b) In subsection (a)(6), the term ''military construction'' includes any construction, development, conversion, or extension of any kind which is carried out with respect to any military facility or installation (including any Government-owned or Government-leased industrial facility used for the production of defense articles and any facility to which section 2353 of this title applies), any activity to which section 2807 of this title applies, any activity to which chapter 1803 of this title applies, and advances to the Secretary of Transportation for the construction of defense access roads under section 210 of title 23. Such term does not include any activity to which section 2821 or 2854 of this title applies.

(c)(1) The size of the Special Defense Acquisition Fund established pursuant to chapter 5 of the Arms Export Control Act (22 U.S.C. 2795 et seq.) may not exceed $2,500,000,000.

(2) Notwithstanding section 37(a) of the Arms Export Control Act (22 U.S.C. 2777(a)), amounts received by the United States pursuant to subparagraph (A) of section 21(a)(1) of that Act (22 U.S.C. 2761(a)(1))—

(A) shall be credited to the Special Defense Acquisition Fund established pursuant to chapter 5 of that Act (22 U.S.C. 2795 et seq.), as authorized by section 51(b)(1) of that Act (22 U.S.C. 2795(b)(1)), but subject to the limitations in paragraphs (1) and (3) and other applicable law; and

(B) to the extent not so credited, shall be deposited in the Treasury as miscellaneous receipts as provided in section 3302(b) of title 31.

(3) Of the amount of annual obligations from the Special Defense Acquisition Fund in each of fiscal years 2018 through 2022, not less than 20 percent shall be for funds to procure and stock precision guided munitions that may be required by partner and allied forces to enhance the effectiveness of current or future contributions of such forces to overseas contingency operations conducted or supported by the United States.

(d) Funds may be appropriated for the armed forces for use as an emergency fund for research,

development, test, and evaluation, or related procurement or production, only if the appropriation of the funds is authorized by law after June 30, 1966.

(e) In each budget submitted by the President to Congress under section 1105 of title 31, amounts requested for procurement of equipment for the reserve components of the armed forces (including the National Guard) shall be set forth separately from other amounts requested for procurement for the armed forces.

(f) In each budget submitted by the President to Congress under section 1105 of title 31, amounts requested for procurement of ammunition for the Navy and Marine Corps, and for procurement of ammunition for the Air Force, shall be set forth separately from other amounts requested for procurement.

(Added Pub. L. 93–155, title VIII, §803(a), Nov. 16, 1973, 87 Stat. 612, §138; amended Pub. L. 94–106, title VIII, §801(a), Oct. 7, 1975, 89 Stat. 537; Pub. L. 94–361, title III, §302, July 14, 1976, 90 Stat. 924; Pub. L. 96–107, title III, §303(b), Nov. 9, 1979, 93 Stat. 806; Pub. L. 96–342, title X, §1001(a)(1), (b)–(d)(1), Sept. 8, 1980, 94 Stat. 1117–1119; Pub. L. 96–513, title I, §102, title V, §511(4), Dec. 12, 1980, 94 Stat. 2840, 2920; Pub. L. 97–22, §2(b), July 10, 1981, 95 Stat. 124; Pub. L. 97–86, title III, §302, title IX, §§901(a), 902, 903, Dec. 1, 1981, 95 Stat. 1104, 1113, 1114; Pub. L. 97–113, title I, §108(b), Dec. 29, 1981, 95 Stat. 1524; Pub. L. 97–214, §4, July 12, 1982, 96 Stat. 170; Pub. L. 97–252, title IV, §402(a), title XI, §§1103, 1105, Sept. 8, 1982, 96 Stat. 725, 738, 739; Pub. L. 97–295, §1(3), (4), Oct. 12, 1982, 96 Stat. 1289; Pub. L. 98–525, title XIV, §1405(2), Oct. 19, 1984, 98 Stat. 2621; Pub. L. 99–145, title XII, §1208, title XIV, §1403, Nov. 8, 1985, 99 Stat. 723, 743; renumbered §114 and amended Pub. L. 99–433, title I, §§101(a)(2), 110(b)(1)–(9), (11), Oct. 1, 1986, 100 Stat. 994, 1001, 1002; Pub. L. 99–661, div. A, title I, §105(d), title XIII, §1304(a), Nov. 14, 1986, 100 Stat. 3827, 3979; Pub. L. 100–26, §7(j)(1), Apr. 21, 1987, 101 Stat. 282; Pub. L. 100–180, div. A, title XII, §1203, Dec. 4, 1987, 101 Stat. 1154; Pub. L. 101–189, div. A, title XVI, §1602(b), Nov. 29, 1989, 103 Stat. 1597; Pub. L. 101–510, div. A, title XIV, §1481(a)(1), Nov. 5, 1990, 104 Stat. 1704; Pub. L. 104–106, div. A, title XV, §1501(c)(2), Feb. 10, 1996, 110 Stat. 498; Pub. L. 104–201, div. A, title X, §1005, Sept. 23, 1996, 110 Stat. 2632; Pub. L. 114–328, div. A, title XII, §1202(a), (b), Dec. 23, 2016, 130 Stat. 2474; Pub. L. 115–91, div. A, title XII, §1203(a), Dec. 12, 2017, 131 Stat. 1642; Pub. L. 116–283, div. A, title XVIII, §1844(e)(1), Jan. 1, 2021, 134 Stat. 4246.)

AMENDMENT OF SUBSECTION (b)

Pub. L. 116–283, div. A, title XVIII, §§1801(d), 1844(e)(1), Jan. 1, 2021, 134 Stat. 4151, 4246, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, subsection (b) of this section is amended by striking ''section 2353'' and inserting ''section 4141''. See 2021 Amendment note below.

HISTORICAL AND REVISION NOTES

1982 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
138(c)(5) ..	10:138 (note).	Aug. 5, 1974, Pub. L. 93–365, §502, 88 Stat. 404.
138(i)	10:135 (note).	June 11, 1965, Pub. L. 89–37, §305, 79 Stat. 128.

In subsection (c)(5), the words ''It is the sense of Congress that'' are omitted as unnecessary. The words ''Secretary of Defense'' are substituted for ''Department of Defense'' the first time it appears because the responsibility is in the head of the agency. The word ''Therefore'' is omitted as surplus. The word ''complete'' is substituted for ''full'', and the word ''personnel'' is substituted for ''manpower'' except in the phrase ''manpower requirements'', for consistency.

In subsection (i), the words ''may be . . . only if'' are substituted for ''No . . . may be . . . unless'' to use the positive voice. The words ''after June 30, 1966'' are substituted for ''after that date'' for clarity.

REFERENCES IN TEXT

The Arms Export Control Act, referred to in subsec. (c), is Pub. L. 90–629, Oct. 22, 1968, 82 Stat. 1320, as amended. Chapter 5 of the Arms Export Control Act is classified generally to subchapter V (§2795 et seq.) of chapter 39 of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 2751 of Title 22 and Tables.

PRIOR PROVISIONS

Provisions similar to those in subsec. (c)(2) of this section were contained in Pub. L. 101–165, title IX, §9017, Nov. 21, 1989, 103 Stat. 1133, which was set out as a note below, prior to repeal by Pub. L. 101–510, §1481(a)(2).

Prior similar provisions were contained in Pub. L. 86–149, title IV, §412, Aug. 10, 1959, 73 Stat. 322, as amended by Pub. L. 87–436, §2, Apr. 27, 1962, 76 Stat. 55; Pub. L. 88–174, title VI, §610, Nov. 7, 1963, 77 Stat. 329; Pub. L. 89–37, title III, §304, June 11, 1965, 79 Stat. 128; Pub. L. 90–168, §6, Dec. 1, 1967, 81 Stat. 526; Pub. L. 91–121, title IV, §405, Nov. 19, 1969, 83 Stat. 207; Pub. L. 91–441, title V, §§505, 509, Oct. 7, 1970, 84 Stat. 912, 913; Pub. L. 92–129, title VII, §701, Sept. 28, 1971, 85 Stat. 362; Pub. L. 92–436, title III, §302, title VI, §604, Sept. 26, 1972, 86 Stat. 736, 739, prior to repeal by Pub. L. 93–155, §803(b)(1).

AMENDMENTS

2021—Subsec. (b). Pub. L. 116–283 substituted ''section 4141'' for ''section 2353''.

2017—Subsec. (c)(3). Pub. L. 115–91 substituted ''Of the amount of annual obligations from the Special Defense Acquisition Fund in each of fiscal years 2018 through 2022, not less than 20 percent shall be for funds to procure'' for ''Of the amount available in the Special Defense Acquisition Fund in any fiscal year after fiscal year 2016, $500,000,000 may be used in such fiscal year only to procure''.

2016—Subsec. (c)(1). Pub. L. 114–328, §1202(a), substituted ''$2,500,000,000'' for ''$1,070,000,000''.

Subsec. (c)(2)(A). Pub. L. 114–328, §1202(b)(1), substituted ''limitations in paragraphs (1) and (3)'' for ''limitation in paragraph (1)''.

Subsec. (c)(3). Pub. L. 114–328, §1202(b)(2), added par. (3).

1996—Subsec. (b). Pub. L. 104–106 substituted ''chapter 1803'' for ''chapter 133''.

Subsec. (f). Pub. L. 104–201 added subsec. (f).

1990—Subsec. (c). Pub. L. 101–510 designated existing provisions as par. (1) and added par. (2).

1989—Subsecs. (f), (g). Pub. L. 101–189 struck out subsecs. (f) and (g) which read as follows:

''(f) The amounts of the estimated expenditures and proposed appropriations necessary to support pro-

grams, projects, and activities of the Department of Defense included pursuant to paragraph (5) of section 1105(a) of title 31 in the budget submitted to Congress by the President under such section for any fiscal year or years and the amounts specified in all program and budget information submitted to Congress by the Department of Defense in support of such estimates and proposed appropriations shall be mutually consistent unless, in the case of each inconsistency, there is included detailed reasons for the inconsistency.

''(g) The Secretary of Defense shall submit to Congress not later than April 1 of each year, the five-year defense program (including associated annexes) used by the Secretary in formulating the estimated expenditures and proposed appropriations included in such budget to support programs, projects, and activities of the Department of Defense.''

1987—Subsec. (e). Pub. L. 100–26 redesignated subsec. (f) as (e).

Subsec. (f). Pub. L. 100–180 added subsec. (f).

Pub. L. 100–26, § 7(j)(1), redesignated subsec. (f) as (e).

Subsec. (g). Pub. L. 100–180, § 1203, added subsec. (g).

1986—Pub. L. 99–433, § 101(a)(2), renumbered section 138 of this title as this section.

Pub. L. 99–433, § 110(b)(1), struck out ''and personnel strengths for the armed forces; annual manpower requirements and operations and maintenance reports'' at end of section catchline.

Subsec. (a)(6). Pub. L. 99–433, § 110(b)(3), struck out ''(as defined in subsection (f))'' after ''military construction''.

Subsec. (b). Pub. L. 99–433, § 110(b)(4), (5), (8), redesignated subsec. (f)(1) as (b). Former subsec. (b) redesignated section 115(a) of this title.

Subsec. (c). Pub. L. 99–661, § 1304(a), substituted ''$1,070,000,000'' for ''$1,000,000,000''.

Pub. L. 99–433, § 110(b)(4), (5), (11), redesignated subsec. (g) as (c). Former subsec. (c) redesignated section 115(b) of this title.

Subsec. (d). Pub. L. 99–433, § 110(b)(4), (5), (11), redesignated subsec. (i) as (d). Former subsec. (d) redesignated section 115(c) of this title.

Subsec. (e). Pub. L. 99–433, § 110(b)(6), (7), redesignated subsec. (e) as section 116(a) of this title.

Subsec. (f). Pub. L. 99–661, § 105(d), added subsec. (f).

Subsec. (f)(1). Pub. L. 99–433, § 110(b)(8), redesignated subsec. (f)(1) as (b).

Subsec. (f)(2). Pub. L. 99–433, § 110(b)(9), redesignated subsec. (f)(2) as section 116(b) of this title.

Subsec. (g). Pub. L. 99–433, § 110(b)(11), redesignated subsec. (g) as (c).

Subsec. (h). Pub. L. 99–433, § 110(b)(2), redesignated subsec. (h) as section 113(i) of this title.

Subsec. (i). Pub. L. 99–433, § 110(b)(11), redesignated subsec. (i) as (d).

1985—Subsec. (b)(3). Pub. L. 99–145, § 1208, added par. (3).

Subsec. (g). Pub. L. 99–145, § 1403, substituted ''$1,000,000,000'' for ''$300,000,000 in fiscal year 1982, may not exceed $600,000,000 in fiscal year 1983, and may not exceed $900,000,000 in fiscal year 1984 or any fiscal year thereafter''.

1984—Subsec. (g). Pub. L. 98–525 inserted ''(22 U.S.C. 2795 et seq.)''.

1982—Subsec. (c)(1)(A). Pub. L. 97–252, § 402(a), authorized increase in fiscal year end-strength authorizations determined by the Secretary of Defense to be in the national interest.

Subsec. (c)(5). Pub. L. 97–295, § 1(3), added par. (5).

Subsec. (f)(1). Pub. L. 97–214 substituted '', any activity to which section 2807 of this title applies, any activity to which chapter 133 of this title applies, and advances to the Secretary of Transportation for the construction of defense access roads under section 210 of title 23'' for ''but excludes any activity to which section 2673 or 2674, or chapter 133, of this title apply, or to which section 406(a) of Public Law 85–241 (42 U.S.C. 1594i) applies'' and inserted provision that ''military construction'' does not include any activity to which section 2821 or 2854 of this title applies.

Subsec. (g). Pub. L. 97–252, § 1103, limited size of Special Defense Acquisition Fund to $600,000,000 in fiscal year 1983, striking out such sum as a limit in any fiscal year thereafter, and limited size of Fund to $900,000,000 in fiscal year 1984 or any fiscal year thereafter.

Subsec. (h). Pub. L. 97–252, § 1105, added subsec. (h).

Subsec. (i). Pub. L. 97–295, § 1(4), added subsec. (i).

1981—Subsec. (a)(8), (9). Pub. L. 97–86, § 901(a), added pars. (8) and (9).

Subsec. (b). Pub. L. 97–86, § 902, designated existing provisions as par. (1), substituted ''authorize the average personnel strength'' for ''authorize the personnel strength'', and added par. (2).

Subsec. (c)(3)(D)(iii)(I). Pub. L. 97–22 struck out ''and active military service'' after ''active commissioned service''.

Subsec. (c)(4). Pub. L. 97–86, § 903, added par. (4).

Subsec. (e)(3), (4). Pub. L. 97–86, § 302, struck out pars. (3) and (4) which required the Secretary to include in each report a projection of the combat readiness of specified military units proposed to be maintained during the next fiscal year.

Subsec. (g). Pub. L. 97–113 added subsec. (g).

1980—Pub. L. 96–342, § 1001(d)(1), substituted ''Annual authorization of appropriations and personnel strengths for the armed forces; annual manpower requirements and operations and maintenance reports'' for ''Secretary of Defense: Annual authorization of appropriations for armed forces'' in section catchline.

Subsec. (a). Pub. L. 96–342, § 1001(a)(1), (b)(1), in cl. (6) substituted reference to subsec. (f) for reference to subsec. (e), and added cl. (7).

Subsec. (c)(1). Pub. L. 96–513, § 102(a), designated existing provisions as subpar. (A) and added subpars. (B) and (C).

Subsec. (c)(3)(D). Pub. L. 96–513, § 102(b), substituted provisions relating to expanded coverage in the annual report of the Secretary of Defense for provisions under which the report had formerly covered only the estimated requirements in members on active duty during the next fiscal year, the estimated number of commissioned officers in each grade on active duty and to be promoted during the next fiscal year, and an analysis of the distribution by grade of commissioned officers on active duty at the time the report was prepared.

Subsec. (e). Pub. L. 96–342, § 1001(b)(2), (3), added subsec. (e). Former subsec. (e) redesignated (f)(1).

Subsec. (f). Pub. L. 96–513, § 511(4), substituted ''(42 U.S.C. 1594i)'' for ''(71 Stat. 556)'' in par. (1), and substituted ''In subsection (e)'' for ''In subsection (f)'' in par. (2).

Pub. L. 96–342, § 1001(b)(2), (c), redesignated subsec. (e) as (f), substituted ''(1) In subsection (a)(6)'' for ''For purposes of subsection (a)(6) of this section'', and added par. (2).

1979—Subsec. (c)(3). Pub. L. 96–107 restructured existing provisions into subpars. (A) to (C) with minor changes in phraseology and added subpar. (D).

1976—Subsec. (c)(3). Pub. L. 94–361 required the report to Congress to identify, define, and group by mission and by region the types of military bases, installations, and facilities and to provide an explanation and justification of the relationship between the base structure and the proposed military force structure together with a comprehensive identification of base operating support costs and an evaluation of possible alternatives to reduce the costs.

1975—Subsec. (a)(6). Pub. L. 94–106, § 801(a)(1), added par. (6).

Subsec. (e). Pub. L. 94–106, § 801(a)(2), added subsec. (e).

Effective Date of 2021 Amendment

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

Effective Date of 2017 Amendment

Pub. L. 115–91, div. A, title XII, § 1203(b), Dec. 12, 2017, 131 Stat. 1642, provided that: ''The amendment made by

subsection (a) [amending this section] shall take effect as of October 1, 2017.''

EFFECTIVE DATE OF 2016 AMENDMENT

Pub. L. 114–328, div. A, title XII, §1202(a), Dec. 23, 2016, 130 Stat. 2474, provided that the amendment made by section 1202(a) is effective as of Oct. 1, 2016.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–106, div. A, title XV, §1501(c), Feb. 10, 1996, 110 Stat. 498, provided that the amendment made by that section is effective as of Dec. 1, 1994, and as if included as an amendment made by the Reserve Officer Personnel Management Act, title XVI of Pub. L. 103–337, as originally enacted.

EFFECTIVE DATE OF 1982 AMENDMENTS

Pub. L. 97–252, title IV, §402(b), Sept. 8, 1982, 96 Stat. 725, provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to end strengths for active-duty personnel authorized for fiscal years beginning after September 30, 1981.''

Amendment by Pub. L. 97–214 applicable with respect to funds appropriated for fiscal years beginning after Sept. 30, 1983, see section 12(b) of Pub. L. 97–214, set out as a note under section 2801 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97–86, title IX, §901(b), Dec. 1, 1981, 95 Stat. 1113, provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to funds appropriated for fiscal years beginning after September 30, 1982.''

EFFECTIVE DATE OF 1980 AMENDMENTS

Amendment by section 102 of Pub. L. 96–513 effective Sept. 15, 1981, but the authority to prescribe regulations under the amendment by Pub. L. 96–513 effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

Amendment by section 511(4) of Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513.

Pub. L. 96–342, title X, §1001(a)(2), Sept. 8, 1980, 94 Stat. 1118, provided that: ''The amendments made by paragraph (1) [amending this section] shall apply with respect to funds appropriated for fiscal years beginning after September 30, 1981.''

APPLICABILITY OF PROVISIONS RELATING TO FUNDS NOT HERETOFORE REQUIRED TO BE AUTHORIZED

Pub. L. 94–106, title VIII, §801(b), Oct. 7, 1975, 89 Stat. 537, provided that: ''The amendment provided by paragraph (2) of subsection (a) above [enacting subsec. (e) of this section] with respect to funds not heretofore required to be authorized shall only apply to funds authorized for appropriation for fiscal year 1977 and thereafter.''

AVAILABILITY OF APPROPRIATIONS

Pub. L. 101–165, title IX, §9017, Nov. 21, 1989, 103 Stat. 1133, which prohibited funding to be used for planning or executing programs which utilized amounts credited to the Department of Defense pursuant to section 2777(a) of Title 22, Foreign Relations and Intercourse, was repealed and restated in subsec. (c)(2) of this section by Pub. L. 101–510, div. A, title XIV, §1481(a), Nov. 5, 1990, 104 Stat. 1704.

The following general provisions, which had been repeated as fiscal year provisions in prior appropriation acts, were enacted as permanent law in the Department of Defense Appropriations Act, 1986, Pub. L. 99–190, §101(b) [title VIII, §§8005, 8006, 8009], Dec. 19, 1985, 99 Stat. 1185, 1202, 1203, 1204:

''SEC. 8005. [Authorized use of appropriated funds for expenses in connection with administration of occupied areas; payment of rewards for information leading to discovery of missing naval property or recovery thereof; payment of deficiency judgments and interests thereon arising out of condemnation proceedings; leasing of buildings and facilities; payments under contracts for maintenance of tools and facilities for twelve months; maintenance of defense access roads; purchase of milk for enlisted personnel; payments under leases for real or personal property, including maintenance; purchase of right-hand-drive vehicles not to exceed $12,000 per vehicle; payment of unusual cost overruns incident to ship overhaul, maintenance, and repair; payments from annual appropriations to industrial fund activities and/or under contract for changes in scope of ship overhaul, maintenance, and repair after expiration of such appropriations; and payments for depot maintenance contracts for twelve months; and was repealed and (except for section 8005(e)) restated in sections 2242(2), 2252, 2253(a)(2), 2389(b), 2410a, 2661(b), and 7313 of this title by Pub. L. 100–370, §1(e)(1), (h)(1), (2), (*l*)(3), (n)(1), (p)(3), July 19, 1988, 102 Stat. 844, 847, 849–851. Section 8005(c) was not restated in view of section 2676(e) [now 2664(e)] of this title.]

''SEC. 8006. [Authorized use of appropriated funds for military courts, boards, and commissions; utility services for buildings erected at private cost and buildings on military reservations authorized by regulations to be used for welfare and recreational purposes; and exchange fees, and losses in accounts of disbursing officers or agents; and was repealed and restated in sections 2242(3), 2490, and 2781 of this title by Pub. L. 100–370, §1(e)(1), (j)(1), (m)(1), (p)(3), July 19, 1988, 102 Stat. 844, 848, 849, 851.]

''SEC. 8009. [Provided for exemption from apportionment requirement; exceptions for cost of airborne alerts and cost of increased military personnel on active duty; and for reports to Congress; and was repealed and restated in section 2201 of this title by Pub. L. 100–370, §1(d)(1), July 19, 1988, 102 Stat. 841.]''

The following general provisions, that had been repeated as fiscal year provisions in prior appropriation acts, were enacted as permanent law in the Department of Defense Appropriation Act, 1984, Pub. L. 98–212, title VII, §§705–707, 723, 728, 735, 774, Dec. 8, 1983, 97 Stat. 1437, 1438, 1443, 1444, 1452:

''SEC. 705. [Authorized use of appropriated funds for insurance of official motor vehicles in foreign countries; advance payments for investigations in foreign countries; security guard services for protection of confidential files; and other necessary expenses; and was repealed and restated in sections 2241(b), 2242(1), (4), and 2253(a)(1) of this title by Pub. L. 100–370, §1(e)(1), (p)(1), July 19, 1988, 102 Stat. 844, 851.]

''SEC. 706. [Authorized use of appropriated funds for expenses incident to maintenance, pay, and allowances of prisoners of war, other persons in Army, Navy, or Air Force custody whose status was determined by Secretary concerned to be similar to prisoners of war, and persons detained in such custody pursuant to Presidential proclamation, and was repealed by Pub. L. 98–525, title XIV, §§1403(a)(1), 1404, Oct. 19, 1984, 98 Stat. 2621, effective Oct. 1, 1985. See section 956(5) of this title.]

''SEC. 707. [Authorized use of appropriated funds for acquisition of certain interests in land, and was repealed and restated in sections 2673 and 2828(h) of this title by Pub. L. 100–370, §1(*l*)(1), (2), (p)(1), July 19, 1988, 102 Stat. 849, 851.]

''SEC. 723. [Authorized use of appropriated funds for purchase of household furnishings, and automobiles from military and civilian personnel on duty outside continental United States, for purpose of resale at cost to incoming personnel, and for providing furnishings, without charge, in other than public quarters occupied by military or civilian personnel of Department of Defense on duty outside continental United States or in Alaska, and was repealed and restated in section 2251 of this title by Pub. L. 100–370, §1(e)(1), (p)(1), July 19, 1988, 102 Stat. 844, 851.]

''SEC. 728. [Prohibited use of appropriated funds for payment of costs of advertising by any defense contractor, except advertising for which payment is made

from profits, provided exemptions for advertising for personnel recruitment, procurement of scarce required items, and disposal of scrap or surplus materials, and was repealed by Pub. L. 100–370, § 1(p)(1), July 19, 1988, 102 Stat. 851. See section 2324(e)(1)(H) of this title.]

''SEC. 735. [Authorized use of appropriated funds for operation and maintenance of the active forces for welfare and recreation; hire of passenger motor vehicles; repair of facilities; modification of personal property; design of vessels; industrial mobilization; installation of equipment in public and private plants; military communications facilities on merchant vessels; acquisition of services, special clothing, supplies, and equipment; and expenses for the Reserve Officers' Training Corps and other units at educational institutions was amended by Pub. L. 98–525, title XIV, §§ 1403(a)(2), 1404, Oct. 19, 1984, 98 Stat. 2621, eff. Oct. 1, 1985, and was repealed and restated in sections 2241(a) and 2661(a) of this title by Pub. L. 100–370, § 1(e)(1), (*l*)(3), (p)(1), July 19, 1988, 102 Stat. 844, 849, 851.]

''SEC. 774. During the current fiscal year and subsequent fiscal years, for the purposes of the appropriation 'Foreign Currency Fluctuations, Defense' the foreign currency exchange rates used in preparing budget submissions shall be the foreign currency exchange rates as adjusted or modified, as reflected in applicable Committee reports on this Act.''

REPORTS

Pub. L. 114–328, div. A, title XII, § 1202(c), Dec. 23, 2016, 130 Stat. 2474, provided that:

''(1) INITIAL PLAN ON USE OF AUTHORITY.—Before exercising authority for use of amounts in the Special Defense Acquisition Fund in excess of the size of that Fund as of September 30, 2016, by reason of the amendments made by this section [amending this section], the Secretary of Defense shall, with the concurrence of the Secretary of State, submit to the appropriate committees of Congress a report on the plan for the use of such amounts.

''(2) QUARTERLY SPENDING PLAN.—Not later than 30 days before the beginning of each fiscal year quarter, the Secretary of Defense shall, with the concurrence of the Secretary of State, submit to the appropriate committees of Congress a detailed plan for the use of amounts in the Special Defense Acquisition Fund for such fiscal year quarter.

''(3) ANNUAL UPDATES.—Not later than 90 days after the end of each fiscal year, the Secretary of Defense shall, with the concurrence of the Secretary of State, submit to the appropriate committees of Congress a report setting forth the inventory of defense articles and services acquired, possessed, and transferred through the Special Defense Acquisition Fund in such fiscal year.

''(4) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this subsection, the term 'appropriate committees of Congress' has the meaning given that term in section 301(1) of title 10, United States Code (as added by section 1241(a)(3) of this Act).''

WITHDRAWAL OF UNITED STATES GROUND FORCES FROM REPUBLIC OF BOSNIA AND HERZEGOVINA

Pub. L. 105–85, div. A, title XII, §§ 1203, 1206, Nov. 18, 1997, 111 Stat. 1929, 1932, provided that:

''SEC. 1203. WITHDRAWAL OF UNITED STATES GROUND FORCES FROM REPUBLIC OF BOSNIA AND HERZEGOVINA.

''(a) LIMITATION.—No funds appropriated or otherwise made available for the Department of Defense for fiscal year 1998 or any subsequent fiscal year may be used for the deployment of any United States ground combat forces in the Republic of Bosnia and Herzegovina after June 30, 1998, unless the President, not later than May 15, 1998, and after consultation with the bipartisan leadership of the two Houses of Congress, transmits to Congress a certification—

''(1) that the continued presence of United States ground combat forces, after June 30, 1998, in the Republic of Bosnia and Herzegovina is required in order to meet the national security interests of the United States; and

''(2) that after June 30, 1998, it will remain United States policy that United States ground forces will not serve as, or be used as, civil police in the Republic of Bosnia and Herzegovina.

''(b) REPORT.—The President shall submit with the certification under subsection (a) a report that includes the following:

''(1) The reasons why that presence is in the national security interest of the United States.

''(2) The number of United States military personnel to be deployed in and around the Republic of Bosnia and Herzegovina and other areas of the former Yugoslavia after that date.

''(3) The expected duration of any such deployment.

''(4) The mission and objectives of the United States Armed Forces to be deployed in and around the Republic of Bosnia and Herzegovina and other areas of the former Yugoslavia after June 30, 1998.

''(5) The exit strategy of such forces.

''(6) The incremental costs associated with any such deployment.

''(7) The effect of such deployment on the morale, retention, and effectiveness of United States armed forces.

''(8) A description of the forces from other nations involved in a follow-on mission, shown on a nation-by-nation basis.

''(9) A description of the command and control arrangement established for United States forces involved in a follow-on mission.

''(10) An assessment of the expected threats to United States forces involved in a follow-on mission.

''(11) The plan for rotating units and personnel to and from the Republic of Bosnia and Herzegovina during a follow-on mission, including the level of participation by reserve component units and personnel.

''(12) The mission statement and operational goals of the United States forces involved in a follow-on mission.

''(c) REQUEST FOR SUPPLEMENTAL APPROPRIATIONS.—The President shall transmit to Congress with a certification under subsection (a) a supplemental appropriations request for the Department of Defense for such amounts as are necessary for the costs of any continued deployment beyond June 30, 1998.

''(d) CONSTRUCTION WITH PRESIDENT'S CONSTITUTIONAL AUTHORITY.—Nothing in this section shall be deemed to restrict the authority of the President under the Constitution to protect the lives of United States citizens.

''(e) CONSTRUCTION WITH APPROPRIATIONS PROVISION.—The provisions of this section are enacted, and shall be applied, as supplemental to (and not in lieu of) the provisions of section 8132 of the Department of Defense Appropriations Act, 1998 (Public Law 105–56) [111 Stat. 1250].

''SEC. 1206. DEFINITIONS.

''As used in this subtitle [subtitle A (§§ 1201–1206) of title XII of div. A of Pub. L. 105–85, enacting this note]:

''(1) DAYTON PEACE AGREEMENT.—The term 'Dayton Peace Agreement' means the General Framework Agreement for Peace in Bosnia and Herzegovina, initialed by the parties in Dayton, Ohio, on November 21, 1995, and signed in Paris on December 14, 1995.

''(2) IMPLEMENTATION FORCE.—The term 'Implementation Force' means the NATO-led multinational military force in the Republic of Bosnia and Herzegovina (commonly referred to as 'IFOR'), authorized under the Dayton Peace Agreement.

''(3) STABILIZATION FORCE.—The term 'Stabilization Force' means the NATO-led follow-on force to the Implementation Force in the Republic of Bosnia and Herzegovina and other countries in the region (commonly referred to as 'SFOR'), authorized under United Nations Security Council Resolution 1088 (December 12, 1996).

''(4) FOLLOW-ON MISSION.—The term 'follow-on mission' means a mission involving the deployment of

ground elements of the United States Armed Forces in the Republic of Bosnia and Herzegovina after June 30, 1998 (other than as described in section 1203(b)).

''(5) NATO.—The term 'NATO' means the North Atlantic Treaty Organization.''

BUDGET DETERMINATION BY DIRECTOR OF OMB

Pub. L. 102–484, div. D, title XLV, §4501, Oct. 23, 1992, 106 Stat. 2769, directed that amounts made available under Pub. L. 102–484 for defense programs covered by certain portions of that Act could be obligated for such programs only if expenditures for such programs had been determined by the Director of the Office of Management and Budget to be counted against the defense category of the discretionary spending limits for fiscal year 1993 for purposes of part C of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 900 et seq.), and required the President to submit to Congress a report listing amounts appropriated for fiscal year 1993 for programs that the Director had determined would not classify against the defense category.

CLASSIFIED ANNEX

Pub. L. 107–107, div. A, title X, §1002, Dec. 28, 2001, 115 Stat. 1202, provided that:

''(a) STATUS OF CLASSIFIED ANNEX.—The Classified Annex prepared by the committee of conference to accompany the conference report on the bill S. 1438 of the One Hundred Seventh Congress [Pub. L. 107–107] and transmitted to the President is hereby incorporated into this Act [see Tables for classification].

''(b) CONSTRUCTION WITH OTHER PROVISIONS OF ACT.—The amounts specified in the Classified Annex are not in addition to amounts authorized to be appropriated by other provisions of this Act.

''(c) LIMITATION ON USE OF FUNDS.—Funds appropriated pursuant to an authorization contained in this Act that are made available for a program, project, or activity referred to in the Classified Annex may only be expended for such program, project, or activity in accordance with such terms, conditions, limitations, restrictions, and requirements as are set out for that program, project, or activity in the Classified Annex.

''(d) DISTRIBUTION OF CLASSIFIED ANNEX.—The President shall provide for appropriate distribution of the Classified Annex, or of appropriate portions of the annex, within the executive branch of the Government.''

Similar provisions were contained in the following prior authorization or appropriation acts:

Pub. L. 106–398, §1 [[div. A], title X, §1002], Oct. 30, 2000, 114 Stat. 1654, 1654A–245.

Pub. L. 106–65, div. A, title X, §1002, Oct. 5, 1999, 113 Stat. 732.

Pub. L. 105–261, div. A, title X, §1002, Oct. 17, 1998, 112 Stat. 2111.

Pub. L. 105–85, div. A, title X, §1002, Nov. 18, 1997, 111 Stat. 1868.

Pub. L. 104–201, div. A, title X, §1002, Sept. 23, 1998, 110 Stat. 2631.

Pub. L. 104–106, div. A, title X, §1002, Feb. 10, 1996, 110 Stat. 414.

Pub. L. 103–337, div. A, title X, §1003, Oct. 5, 1994, 108 Stat. 2834.

Pub. L. 103–335, title VIII, §8084, Sept. 30, 1994, 108 Stat. 2637.

Pub. L. 103–160, div. A, title XI, §1103, Nov. 30, 1993, 107 Stat. 1749.

Pub. L. 103–139, title VIII, §8108, Nov. 11, 1993, 107 Stat. 1464.

Pub. L. 102–484, div. A, title X, §1006, Oct. 23, 1992, 106 Stat. 2482.

Pub. L. 102–396, title IX, §9126, Oct. 6, 1992, 106 Stat. 1931.

Pub. L. 102–190, div. A, title X, §1005, Dec. 5, 1991, 105 Stat. 1457.

Pub. L. 102–172, title VIII, §8124, Nov. 26, 1991, 105 Stat. 1206.

Pub. L. 101–511, title VIII, §8111, Nov. 5, 1990, 104 Stat. 1904.

Pub. L. 101–510, div. A, title XIV, §1409, Nov. 5, 1990, 104 Stat. 1681.

BUDGET ACT LIMITATION

Pub. L. 99–661, div. A, title XIII, §1304(b), Nov. 14, 1986, 100 Stat. 3979, provided that: ''New spending authority (as defined in section 401(c)(2) of the Congressional Budget Act of 1974 [2 U.S.C. 651(c)(2)]) provided by the amendment made by subsection (a) [amending this section] shall be effective for any fiscal year only to the extent or in such amounts as are provided in appropriation Acts.''

LIMITATION ON SOURCE OF FUNDS FOR NICARAGUAN DEMOCRATIC RESISTANCE

Pub. L. 99–661, div. A, title XIII, §1351, Nov. 14, 1986, 100 Stat. 3995, as amended by Pub. L. 104–106, div. A, title X, §1063(a), Feb. 10, 1996, 110 Stat. 444, provided that: ''Notwithstanding title II of the Military Construction Appropriations Act, 1987 [Pub. L. 99–500, §101(k) [title II], Oct. 18, 1986, 100 Stat. 1783–287, 1783–295, and Pub. L. 99–591, §101(k) [title II], Oct. 30, 1986, 100 Stat. 3341–287, 3341–295], or any other provision of law, funds appropriated or otherwise made available to the Department of Defense for any fiscal year for operation and maintenance may not be used to provide assistance for the democratic resistance forces in Nicaragua. If funds appropriated or otherwise made available to the Department of Defense for any fiscal year are authorized by law to be used for such assistance, funds for such purpose may only be derived from amounts appropriated or otherwise made available to the Department for procurement (other than ammunition).''

USE OF APPROPRIATED FUNDS TO SUPPORT REVENUE GENERATING ACTIVITIES IN LARGE METROPOLITAN AREAS PROHIBITED

Pub. L. 99–500, §101(c) [title IX, §9102], Oct. 18, 1986, 100 Stat. 1783–82, 1783–118, and Pub. L. 99–591, §101(c) [title IX, §9102], Oct. 30, 1986, 100 Stat. 3341–82, 3341–118, which provided that after Sept. 30, 1987, no appropriated funds could be used to support revenue generating morale, welfare, and recreation activities in large metropolitan areas, was repealed by Pub. L. 100–202, §101(b) [title VIII, §8099], Dec. 22, 1987, 101 Stat. 1329–43, 1329–78.

TRANSFER OF OPERATION AND MAINTENANCE APPROPRIATIONS UNOBLIGATED BALANCES TO FOREIGN CURRENCY FLUCTUATIONS, DEFENSE, APPROPRIATION

Pub. L. 97–377, title I, §101(c) [title VII, §791], Dec. 21, 1982, 96 Stat. 1865, which provided that no later than end of second fiscal year following fiscal year for which appropriations for Operation and Maintenance have been made available to Department of Defense, unobligated balances of such appropriations provided for fiscal year 1982 and thereafter could be transferred into appropriation ''Foreign Currency Fluctuations, Defense'' to be merged with and available for same time period and same purposes as appropriation to which transferred, except that any transfer made pursuant to any use of this authority was limited so that amount in appropriation did not exceed $970,000,000 at time of transfer, was repealed and restated in section 2779(d) of this title by Pub. L. 104–106, div. A, title IX, §911(b), (d)(2), (f), Feb. 10, 1996, 110 Stat. 406, 407, applicable only with respect to amounts appropriated for a fiscal year after fiscal year 1995.

WAIVER OF APPLICABILITY OF OMB CIRCULAR A–76 TO CONTRACTING OUT OF CERTAIN RESEARCH AND DEVELOPMENT ACTIVITIES

Pub. L. 96–107, title VIII, §802, Nov. 9, 1979, 93 Stat. 811, provided that:

''(a) Except as provided in subsection (b), neither the implementing instructions for, nor the provisions of, Office of Management and Budget Circular A–76 (issued on August 30, 1967, and reissued on October 18, 1976,

June 13, 1977, and March 29, 1979) shall control or be used for policy guidance for the obligation or expenditure of any funds which under section 138(a)(2) [now 114(a)(2)] of title 10, United States Code, are required to be specifically authorized by law.

"(b) Funds which under section 138(a)(2) [now 114(a)(2)] of title 10, United States Code, are required to be specifically authorized by law may be obligated or expended for operation or support of installations or equipment used for research and development (including maintenance support of laboratories, operation and maintenance of test ranges, and maintenance of test aircraft and ships) in compliance with the implementing instructions for and the provisions of such Office of Management and Budget Circular.

"(c) No law enacted after the date of the enactment of this Act [Nov. 9, 1979] shall be held, considered, or construed as amending, superseding, or otherwise modifying any provision of this section unless such law does so by specifically and explicitly amending, repealing, or superseding this section."

MANPOWER CONVERSION POLICIES; DEVELOPMENT FOR ANNUAL MANPOWER AUTHORIZATION REQUESTS; JUSTIFICATION FOR CONVERSION TO BE CONTAINED IN ANNUAL MANPOWER REQUIREMENTS REPORT TO CONGRESS

Pub. L. 93–365, title V, §502, Aug. 5, 1974, 88 Stat. 404, which provided that it was the sense of Congress that the Department of Defense use the least costly form of manpower consistent with military requirements and other needs of the Department of Defense, that in developing the annual manpower authorization requests to the Congress and in carrying out manpower policies, the Secretary of Defense was to consider the advantages of converting from one form of manpower to another (military, civilian, or private contract) for the performance of a specified job, and that a full justification of any conversion from one form of manpower to another be contained in the annual manpower requirements report to the Congress required by subsec. (c)(3) of this section, was repealed and restated as subsec. (c)(5) of this section by Pub. L. 97–295, §§1(3), 6(b).

[§ 114a. Renumbered § 221]

§ 115. Personnel strengths: requirement for annual authorization

(a) ACTIVE-DUTY AND SELECTED RESERVE END STRENGTHS TO BE AUTHORIZED BY LAW.—Congress shall authorize personnel strength levels for each fiscal year for each of the following:

(1) The end strength for each of the armed forces (other than the Coast Guard) for (A) active-duty personnel who are to be paid from funds appropriated for active-duty personnel unless on active duty pursuant to subsection (b), and (B) active-duty personnel and full-time National Guard duty personnel who are to be paid from funds appropriated for reserve personnel unless on active duty or full-time National Guard duty pursuant to subsection (b).

(2) The end strength for the Selected Reserve of each reserve component of the armed forces.

(b) CERTAIN RESERVES ON ACTIVE DUTY TO BE AUTHORIZED BY LAW.—(1) Congress shall annually authorize the maximum number of members of a reserve component permitted to be on active duty or full-time National Guard duty at any given time who are called or ordered to—

(A) active duty under section 12301(d) of this title for the purpose of providing operational support, as prescribed in regulation issued by the Secretary of Defense;

(B) full-time National Guard duty under section 502(f)(1)(B) of title 32 for the purpose of providing operational support when authorized by the Secretary of Defense;

(C) active duty under section 12301(d) of this title or full-time National Guard duty under section 502(f)(1)(B) of title 32 for the purpose of preparing for and performing funeral honors functions for funerals of veterans under section 1491 of this title;

(D) active duty or retained on active duty under sections 12301(g) of this title while in a captive status; or

(E) active duty or retained on active duty under 12301(h) or 12322 of this title for the purpose of medical evaluation or treatment.

(2) A member of a reserve component who exceeds either of the following limits shall be included in the strength authorized under subparagraph (A) or subparagraph (B), as appropriate, of subsection (a)(1):

(A) A call or order to active duty or full-time National Guard duty that specifies a period greater than three years.

(B) The cumulative periods of active duty and full-time National Guard duty performed by the member exceed 1095 days in the previous 1460 days.

(3) In determining the period of active service under paragraph (2), the following periods of active service performed by a member shall not be included:

(A) All periods of active duty performed by a member who has not previously served in the Selected Reserve of the Ready Reserve.

(B) All periods of active duty or full-time National Guard duty for which the member is exempt from strength accounting under paragraphs (1) through (8) of subsection (i).

(4) As part of the budget justification materials submitted by the Secretary of Defense to Congress in support of the end strength authorizations required under subparagraphs (A) and (B) of subsection (a)(1) for fiscal year 2009 and each fiscal year thereafter, the Secretary shall provide the following:

(A) The number of members, specified by reserve component, authorized under subparagraphs (A) and (B) of paragraph (1) who were serving on active duty or full-time National Guard duty for operational support beyond each of the limits specified under subparagraphs (A) and (B) of paragraph (2) at the end of the fiscal year preceding the fiscal year for which the budget justification materials are submitted.

(B) The number of members, specified by reserve component, on active duty for operational support who, at the end of the fiscal year for which the budget justification materials are submitted, are projected to be serving on active duty or full-time National Guard duty for operational support beyond such limits.

(C) The number of members, specified by reserve component, on active duty or full-time National Guard duty for operational support who are included in, and counted against, the end strength authorizations requested under subparagraphs (A) and (B) of subsection (a)(1).

(D) A summary of the missions being performed by members identified under subparagraphs (A) and (B).

(c) LIMITATION ON APPROPRIATIONS FOR MILITARY PERSONNEL.—No funds may be appropriated for any fiscal year to or for—

(1) the use of active-duty personnel or full-time National Guard duty personnel of any of the armed forces (other than the Coast Guard) unless the end strength for such personnel of that armed force for that fiscal year has been authorized by law;

(2) the use of the Selected Reserve of any reserve component of the armed forces unless the end strength for the Selected Reserve of that component for that fiscal year has been authorized by law; or

(3) the use of reserve component personnel to perform active duty or full-time National Guard duty under subsection (b) unless the strength for such personnel for that reserve component for that fiscal year has been authorized by law.

(d) MILITARY TECHNICIAN (DUAL STATUS) END STRENGTHS TO BE AUTHORIZED BY LAW.—Congress shall authorize for each fiscal year both the minimum end strength for non-temporary military technicians (dual status) and the end strength for temporary military technicians (dual status) for each reserve component of the Army and Air Force. Funds available to the Department of Defense for any fiscal year may not be used for the pay of a military technician (dual status) during that fiscal year unless the technician fills a position that is within the number of such positions authorized by law for that fiscal year for the reserve component of that technician. This subsection applies without regard to section 129 of this title. In each budget submitted by the President to Congress under section 1105 of title 31, the minimum end strength for non-temporary military technicians (dual status), and the end strength for temporary military technicians (dual status), requested for each reserve component of the Army and Air Force shall be specifically set forth.

(e) END-OF-QUARTER STRENGTH LEVELS.—(1) The Secretary of Defense shall prescribe and include in the budget justification documents submitted to Congress in support of the President's budget for the Department of Defense for any fiscal year the Secretary's proposed end-of-quarter strengths for each of the first three quarters of the fiscal year for which the budget is submitted, in addition to the Secretary's proposed fiscal-year end-strengths for that fiscal year. Such end-of-quarter strengths shall be submitted for each category of personnel for which end strengths are required to be authorized by law under subsection (a) or (d). The Secretary shall ensure that resources are provided in the budget at a level sufficient to support the end-of-quarter and fiscal-year end-strengths as submitted.

(2)(A) After annual end-strength levels required by subsections (a) and (d) are authorized by law for a fiscal year, the Secretary of Defense shall promptly prescribe end-of-quarter strength levels for the first three quarters of that fiscal year applicable to each such end-strength level. Such end-of-quarter strength levels shall be established for any fiscal year as levels to be achieved in meeting each of those annual end-strength levels authorized by law in accordance with subsection (a) (as such levels may be adjusted pursuant to subsection (f)) and subsection (d).

(B) At least annually, the Secretary of Defense shall establish for each of the armed forces (other than the Coast Guard) the maximum permissible variance of actual strength for an armed force at the end of any given quarter from the end-of-quarter strength established pursuant to subparagraph (A). Such variance shall be such that it promotes the maintaining of the strength necessary to achieve the end-strength levels authorized in accordance with subsection (a) (as adjusted pursuant to subsection (f)) and subsection (d).

(3) Whenever the Secretary establishes an end-of-quarter strength level under subparagraph (A) of paragraph (2), or modifies a strength level under the authority provided in subparagraph (B) of paragraph (2), the Secretary shall notify the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives of that strength level or of that modification, as the case may be.

(f) AUTHORITY FOR SECRETARY OF DEFENSE VARIANCES FOR ACTIVE-DUTY AND SELECTED RESERVE STRENGTHS.—Upon determination by the Secretary of Defense that such action is in the national interest, the Secretary may—

(1) increase the end strength authorized pursuant to subsection (a)(1)(A) for a fiscal year for any of the armed forces by a number equal to not more than 3 percent of that end strength;

(2) increase the end strength authorized pursuant to subsection (a)(1)(B) for a fiscal year for any of the armed forces by a number equal to not more than 2 percent of that end strength;

(3) vary the end strength authorized pursuant to subsection (a)(2) for a fiscal year for the Selected Reserve of any of the reserve components by a number equal to not more than 3 percent of that end strength; and

(4) increase the maximum strength authorized pursuant to subsection (b)(1) for a fiscal year for certain reserves on active duty for any of the reserve components by a number equal to not more than 10 percent of that strength.

(g) AUTHORITY FOR SERVICE SECRETARY VARIANCES FOR ACTIVE-DUTY AND SELECTED RESERVE END STRENGTHS.—(1) Upon determination by the Secretary of a military department that such action would enhance manning and readiness in essential units or in critical specialties or ratings, the Secretary may—

(A) increase the end strength authorized pursuant to subsection (a)(1)(A) for a fiscal year for the armed force under the jurisdiction of that Secretary or, in the case of the Secretary of the Navy, for any of the armed forces under the jurisdiction of that Secretary, by a number equal to not more than 2 percent of such authorized end strength; and

(B) increase the end strength authorized pursuant to subsection (a)(2) for a fiscal year for

the Selected Reserve of the reserve component of the armed force under the jurisdiction of that Secretary or, in the case of the Secretary of the Navy, for the Selected Reserve of the reserve component of any of the armed forces under the jurisdiction of that Secretary, by a number equal to not more than 2 percent of such authorized end strength.

(2) Any increase under paragraph (1)(A) of the end strength for an armed force for a fiscal year shall be counted as part of the increase for that armed force for that fiscal year authorized under subsection (f)(1). Any increase under paragraph (1)(B) of the end strength for the Selected Reserve of a reserve component of an armed force for a fiscal year shall be counted as part of the increase for that Selected Reserve for that fiscal year authorized under subsection (f)(3).

(h) ADJUSTMENT WHEN COAST GUARD IS OPERATING AS A SERVICE IN THE NAVY.—The authorized strength of the Navy under subsection (a)(1) is increased by the authorized strength of the Coast Guard during any period when the Coast Guard is operating as a service in the Navy.

(i) CERTAIN PERSONNEL EXCLUDED FROM COUNTING FOR ACTIVE-DUTY END STRENGTHS.—In counting personnel for the purpose of the end strengths authorized pursuant to subsection (a)(1), persons in the following categories shall be excluded:

(1) Members of a reserve component ordered to active duty under section 12301(a) of this title.

(2) Members of a reserve component in an active status ordered to active duty under section 12301(b) of this title.

(3) Members of the Ready Reserve ordered to active duty under section 12302 of this title.

(4) Members of the Selected Reserve of the Ready Reserve or members of the Individual Ready Reserve mobilization category described in section 10144(b) of this title ordered to active duty under section 12304 of this title.

(5) Members of the National Guard called into Federal service under section 12406 of this title.

(6) Members of the militia called into Federal service under chapter 13 of this title.

(7) Members of the National Guard on full-time National Guard duty under section 502(f)(1)(A) of title 32.

(8) Members of reserve components on active duty for training or full-time National Guard duty for training.

(9) Members of the Selected Reserve of the Ready Reserve on active duty to support programs described in section 1321(a) of the Department of Defense Cooperative Threat Reduction Act (50 U.S.C. 3711(a)).

(10) Members of the National Guard on active duty or full-time National Guard duty for the purpose of carrying out drug interdiction and counter-drug activities under section 112 of title 32.

(11) Members of a reserve component on active duty under section 10(b)(2) of the Military Selective Service Act (50 U.S.C. App. 460(b)(2))[1] for the administration of the Selective Service System.

(12) Members of the National Guard on full-time National Guard duty for the purpose of providing command, administrative, training, or support services for the National Guard Challenge Program authorized by section 509 of title 32.

(13) Members of the National Guard on full-time National Guard duty involuntarily and performing homeland defense activities under chapter 9 of title 32.

(Added Pub. L. 101–510, div. A, title XIV, §1483(a), Nov. 5, 1990, 104 Stat. 1710; amended Pub. L. 102–190, div. A, title III, §312(a), Dec. 5, 1991, 105 Stat. 1335; Pub. L. 104–106, div. A, title IV, §§401(c), 415, title V, §513(a)(1), title X, §1061(c), title XV, §1501(c)(3), Feb. 10, 1996, 110 Stat. 286, 288, 305, 442, 498; Pub. L. 105–85, div. A, title IV, §413(b), title V, §522(i)(1), Nov. 18, 1997, 111 Stat. 1720, 1736; Pub. L. 106–65, div. A, title IV, §415, Oct. 5, 1999, 113 Stat. 587; Pub. L. 106–398, §1 [[div. A], title IV, §422], Oct. 30, 2000, 114 Stat. 1654, 1654A–96; Pub. L. 107–107, div. A, title IV, §§421(a), 422, Dec. 28, 2001, 115 Stat. 1076, 1077; Pub. L. 107–314, div. A, title IV, §403, Dec. 2, 2002, 116 Stat. 2525; Pub. L. 108–136, div. A, title IV, §403(a), (b), Nov. 24, 2003, 117 Stat. 1450, 1451; Pub. L. 108–375, div. A, title IV, §416(a)–(d), title V, §512(b), Oct. 28, 2004, 118 Stat. 1866, 1867, 1880; Pub. L. 109–364, div. A, title X, §1071(a)(1), (g)(1)(A), Oct. 17, 2006, 120 Stat. 2398, 2402; Pub. L. 110–181, div. A, title IV, §§416(b), 417, Jan. 28, 2008, 122 Stat. 91, 92; Pub. L. 111–84, div. A, title IV, §418, Oct. 28, 2009, 123 Stat. 2268; Pub. L. 114–328, div. A, title IV, §416, Dec. 23, 2016, 130 Stat. 2093; Pub. L. 115–91, div. A, title X, §1081(a)(2), Dec. 12, 2017, 131 Stat. 1594; Pub. L. 115–232, div. A, title XII, §1204(a)(4), Aug. 13, 2018, 132 Stat. 2017; Pub. L. 116–283, div. A, title IV, §415(a), Jan. 1, 2021, 134 Stat. 3558.)

REFERENCES IN TEXT

Section 10(b)(2) of the Military Selective Service Act, referred to in subsec. (i)(11), was classified to section 460(b)(2) of the former Appendix to Title 50, War and National Defense, prior to editorial reclassification and renumbering as section 3809(b)(2) of Title 50.

PRIOR PROVISIONS

A prior section 115, added Pub. L. 93–155, title VIII, §803(a), Nov. 16, 1973, 87 Stat. 612, §138(b)–(d); amended Pub. L. 94–361, title III, §302, July 14, 1976, 90 Stat. 924; Pub. L. 96–107, title III, §303(b), Nov. 9, 1979, 93 Stat. 806; Pub. L. 96–513, title I, §102, Dec. 12, 1980, 94 Stat. 2840; Pub. L. 97–22, §2(b), July 10, 1981, 95 Stat. 124; Pub. L. 97–86, title IX, §§902, 903, Dec. 1, 1981, 95 Stat. 1113, 1114; Pub. L. 97–252, title IV, §402(a), Sept. 8, 1982, 96 Stat. 725; Pub. L. 97–295, §1(3), Oct. 12, 1982, 96 Stat. 1289; Pub. L. 99–145, title XII, §1208, Nov. 8, 1985, 99 Stat. 723; renumbered §115, Pub. L. 99–433, title I, §§101(a)(2), 110(b)(4), (5), Oct. 1, 1986, 100 Stat. 994, 1002; Pub. L. 99–661, div. A, title IV, §§411(c) [(d)], 413, Nov. 14, 1986, 100 Stat. 3861, 3862; Pub. L. 100–26, §7(j)(2), Apr. 21, 1987, 101 Stat. 283; Pub. L. 100–456, div. A, title VI, §641, Sept. 29, 1988, 102 Stat. 1987, related to annual authorization of personnel strengths and annual manpower requirements reports, prior to repeal and reenactment as sections 115, 115a, 115b [now 10541], 123a, and 129a of this title by Pub. L. 101–510, §1483(a), (b).

AMENDMENTS

2021—Subsec. (d). Pub. L. 116–283, §415(a)(2), which directed substitution of "the minimum end strength for non-temporary military technicians (dual status), and the end strength for temporary military technicians

[1] See References in Text note below.

(dual status), requested'' for ''the end strength requested for military technicians (dual status)'' in the third sentence, was executed in the fourth sentence, to reflect to the probable intent of Congress.

Pub. L. 116–283, §415(a)(1), substituted ''both the minimum end strength for non-temporary military technicians (dual status) and the end strength for temporary military technicians (dual status)'' for ''the end strength for military technicians (dual status)'' in the first sentence.

2018—Subsec. (i)(6). Pub. L. 115–232 substituted ''chapter 13'' for ''chapter 15''.

2017—Subsec. (i)(9). Pub. L. 115–91 substituted ''section 1321(a) of the Department of Defense Cooperative Threat Reduction Act (50 U.S.C. 3711(a))'' for ''section 1203(b) of the Cooperative Threat Reduction Act of 1993 (22 U.S.C. 5952(b))''.

2016—Subsec. (b)(1)(B), (C). Pub. L. 114–328, §416(1), substituted ''502(f)(1)(B)'' for ''502(f)(2)''.

Subsec. (i)(7). Pub. L. 114–328, §416(2), substituted ''502(f)(1)(A)'' for ''502(f)(1)''.

2009—Subsec. (g). Pub. L. 111–84 amended subsec. (g) generally. Prior to amendment, subsec. (g) related to authority for service secretary variances for active-duty end strengths.

2008—Subsec. (b)(4). Pub. L. 110–181, §416(b), added par. (4).

Subsec. (f)(3). Pub. L. 110–181, §417, substituted ''3 percent'' for ''2 percent''.

2006—Subsec. (a)(1)(A). Pub. L. 109–364, §1071(g)(1)(A), made technical correction to directory language of Pub. L. 108–375, §416(a)(1). See 2004 Amendment note below.

Subsec. (i). Pub. L. 109–364, §1071(a)(1)(A), struck out heading and text of subsec. (i) enacted by Pub. L. 108–375, §512(b). Text read as follows: ''In counting full-time National Guard duty personnel for the purpose of end-strengths authorized pursuant to subsection (a)(1), persons involuntarily performing homeland defense activities under chapter 9 of title 32 shall be excluded.''

Subsec. (i)(13). Pub. L. 109–364, §1071(a)(1)(B), added par. (13).

2004—Subsec. (a)(1)(A). Pub. L. 108–375, §416(a)(1), as amended by Pub. L. 109–364, §1071(g)(1)(A), inserted ''unless on active duty pursuant to subsection (b)'' after ''funds appropriated for active-duty personnel''.

Subsec. (a)(1)(B). Pub. L. 108–375, §416(a)(2), inserted ''unless on active duty or full-time National Guard duty pursuant to subsection (b)'' after ''reserve personnel''.

Subsec. (b). Pub. L. 108–375, §416(a)(4), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 108–375, §416(a)(3), redesignated subsec. (b) as (c). Former subsec. (c) redesignated (d).

Subsec. (c)(3). Pub. L. 108–375, §416(b), added par. (3).

Subsec. (d). Pub. L. 108–375, §416(a)(3), redesignated subsec. (c) as (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 108–375, §416(a)(3), redesignated subsec. (d) as (e). Former subsec. (e) redesignated (f).

Subsec. (e)(1). Pub. L. 108–375, §416(d)(1)(A), substituted ''subsection (a) or (d)'' for ''subsection (a) or (c)''.

Subsec. (e)(2). Pub. L. 108–375, §416(d)(1)(B), substituted ''subsections (a) and (d)'' for ''subsections (a) and (c)'' in subpar. (A) and substituted ''pursuant to subsection (f)) and subsection (d)'' for ''pursuant to subsection (e)) and subsection (c)'' in subpars. (A) and (B).

Subsec. (f). Pub. L. 108–375, §416(c)(1), struck out ''End'' after ''Reserve'' in heading.

Pub. L. 108–375, §416(a)(3), redesignated subsec. (e) as (f). Former subsec. (f) redesignated (g).

Subsec. (f)(4). Pub. L. 108–375, §416(c)(2)–(4), added par. (4).

Subsec. (g). Pub. L. 108–375, §416(a)(3), redesignated subsec. (f) as (g). Former subsec. (g) redesignated (h).

Subsec. (g)(2). Pub. L. 108–375, §416(d)(2), substituted ''subsection (f)(1)'' for ''subsection (e)(1)''.

Subsec. (h). Pub. L. 108–375, §416(a)(3), redesignated subsec. (g) as (h). Former subsec. (h) redesignated (i).

Subsec. (i). Pub. L. 108–375, §512(b), added subsec. (i) relating to certain full-time National Guard duty personnel excluded from counting for full-time National Guard duty end strengths.

Pub. L. 108–375, §416(d)(3), amended heading and text of subsec. (i) generally, substituting provisions relating to 12 categories of personnel excluded from counting for active-duty end strengths for provisions relating to 11 categories of active-duty personnel excluded from counting for active-duty end strengths.

Pub. L. 108–375, §416(a)(3), redesignated subsec. (h) as (i).

2003—Subsecs. (a), (b). Pub. L. 108–136, §403(b)(1), (2), inserted headings.

Subsec. (c). Pub. L. 108–136, §403(a)(1), (b)(3), redesignated subsec. (g) as (c), transferred it to appear after subsec. (b), and inserted heading. Former subsec. (c) redesignated (e).

Subsec. (d). Pub. L. 108–136, §403(a)(3), added subsec. (d). Former subsec. (d) redesignated (h).

Subsec. (e). Pub. L. 108–136, §403(a)(1), (b)(4), redesignated subsec. (c) as (e), transferred it to appear after subsec. (d), and inserted heading. Former subsec. (e) redesignated (g).

Subsec. (f). Pub. L. 108–136, §403(b)(5), inserted heading and, in par. (2), substituted ''subsection (e)(1)'' for ''subsection (c)(1)''.

Subsec. (g). Pub. L. 108–136, §403(a)(1), (b)(6), redesignated subsec. (e) as (g), transferred it to appear after subsec. (f), and inserted heading. Former subsec. (g) redesignated (c).

Subsec. (h). Pub. L. 108–136, §403(a)(2), (b)(7), redesignated subsec. (d) as (h), transferred it to appear at end of section, and inserted heading.

2002—Subsec. (c)(1). Pub. L. 107–314, §403(a), substituted ''3 percent'' for ''2 percent''.

Subsec. (f). Pub. L. 107–314, §403(b), added subsec. (f).

2001—Subsec. (c)(1). Pub. L. 107–107, §421(a), substituted ''2 percent'' for ''1 percent''.

Subsec. (d)(10), (11). Pub. L. 107–107, §422, added pars. (10) and (11).

2000—Subsec. (d)(9). Pub. L. 106–398 added par. (9).

1999—Subsec. (c)(3). Pub. L. 106–65 added par. (3).

1997—Subsec. (g). Pub. L. 105–85, §522(i)(1), inserted ''(dual status)'' after ''military technicians'' in first sentence and after ''military technician'' in second sentence.

Pub. L. 105–85, §413(b), inserted at end ''In each budget submitted by the President to Congress under section 1105 of title 31, the end strength requested for military technicians (dual status) for each reserve component of the Army and Air Force shall be specifically set forth.''

1996—Subsec. (a)(3). Pub. L. 104–106, §1061(c)(1), struck out par. (3) which read as follows: ''The average military training student loads for each of the armed forces (other than the Coast Guard).''

Subsec. (b). Pub. L. 104–106, §1061(c)(2), inserted ''or'' at end of par. (1), substituted a period for ''; or'' at end of par. (2), and struck out par. (3) which read as follows: ''training military personnel in the training categories described in subsection (f) of any of the armed forces (other than the Coast Guard) unless the average student load of that armed force for that fiscal year has been authorized by law.''

Subsec. (c)(1). Pub. L. 104–106, §401(c), substituted ''1 percent'' for ''0.5 percent''.

Subsec. (d)(1). Pub. L. 104–106, §1501(c)(3)(A), substituted ''section 12302'' for ''section 673''.

Subsec. (d)(2). Pub. L. 104–106, §1501(c)(3)(B), substituted ''section 12304'' for ''section 673b''.

Subsec. (d)(3). Pub. L. 104–106, §1501(c)(3)(C), substituted ''section 12406'' for ''section 3500 or 8500''.

Subsec. (d)(8). Pub. L. 104–106, §415, added par. (8).

Subsec. (f). Pub. L. 104–106, §1061(c)(3), struck out subsec. (f) which read as follows: ''Authorization under subsection (a)(3) is not required for unit or crew training student loads, but is required for student loads for the following individual training categories:

''(1) Recruit and specialized training.

''(2) Flight training.

''(3) Professional training in military and civilian institutions.

"(4) Officer acquisition training."

Subsec. (g). Pub. L. 104–106, §513(a)(1), added subsec. (g).

1991—Subsec. (a)(4). Pub. L. 102–190, §312(a)(1), struck out par. (4) which read as follows: "The end strength for civilian personnel for each component of the Department of Defense."

Subsec. (b)(2) to (4). Pub. L. 102–190, §312(a)(2), inserted "or" at end of par. (2), substituted a period for "; or" at end of par. (3), and struck out par. (4) which read as follows: "the use of the civilian personnel of any component of the Department of Defense unless the end strength for civilian personnel of that component for that fiscal year has been authorized by law."

EFFECTIVE DATE OF 2021 AMENDMENT

Pub. L. 116–283, div. A, title IV, §415(b), Jan. 1, 2021, 134 Stat. 3558, provided that: "The amendments made by subsection (a) [amending this section] shall take effect on the day after the date of the enactment of this Act [Jan. 1, 2021]. The amendment made by subsection (a)(2) shall apply with respect to budgets submitted by the President to Congress under section 1105 of title 31, United States Code, after such effective date."

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–364, div. A, title X, §1071(g), Oct. 17, 2006, 120 Stat. 2402, provided that the amendment made by section 1071(g)(1)(A) is effective as of Oct. 28, 2004, and as if included in Pub. L. 108–375 as enacted.

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–136, div. A, title IV, §403(d), Nov. 24, 2003, 117 Stat. 1452, provided that: "Subsection (d) of section 115 of title 10, United States Code, as added by subsection (a)(3), shall apply with respect to the budget request for fiscal year 2005 and thereafter."

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–106, div. A, title V, §513(a)(2), Feb. 10, 1996, 110 Stat. 305, provided that: "The amendment made by paragraph (1) [amending this section] does not apply with respect to fiscal year 1995."

Pub. L. 104–106, div. A, title XV, §1501(c), Feb. 10, 1996, 110 Stat. 498, provided that the amendment made by that section is effective as of Dec. 1, 1994, and as if included as an amendment made by the Reserve Officer Personnel Management Act, title XVI of Pub. L. 103–337, as originally enacted.

REGULATIONS

Pub. L. 108–375, div. A, title IV, §416(m), Oct. 28, 2004, 118 Stat. 1869, provided that: "The Secretary of Defense shall prescribe by regulation the meaning of the term 'operational support' for purposes of paragraph (1) of subsection (b) of section 115 of title 10, United States Code, as added by subsection (a)."

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

ADDITIONAL AUTHORITY FOR INCREASES OF ARMY ACTIVE DUTY PERSONNEL END STRENGTHS FOR FISCAL YEARS 2008 AND 2009

Pub. L. 108–375, div. A, title IV, §403, Oct. 28, 2004, 118 Stat. 1863, as amended by Pub. L. 109–163, div. A, title IV, §403, Jan. 6, 2006, 119 Stat. 3219; Pub. L. 109–364, div. A, title IV, §403, Oct. 17, 2006, 120 Stat. 2169, which authorized the Secretary of Defense, for each of fiscal years 2008 and 2009, to establish the active-duty end strengths for the Army and the Marine Corps at numbers greater than the numbers otherwise authorized by law up to the numbers equal to the fiscal-year 2007 baseline plus 20,000 with respect to the Army and plus 4,000 with respect to the Marine Corps, was repealed by Pub. L. 110–181, div. A, title IV, §403(h), Jan. 28, 2008, 122 Stat. 87.

AUTHORIZATION FOR INCREASE IN ACTIVE-DUTY END STRENGTHS FOR FISCAL YEAR 1996

Pub. L. 104–106, div. A, title IV, §432, Feb. 10, 1996, 110 Stat. 290, authorized $112,000,000 to be appropriated to the Department of Defense for fiscal year 1996 to increase the number of active-component military personnel for that fiscal year and provided that end-strength authorizations would each be deemed to be increased as necessary.

END STRENGTHS FOR MILITARY TECHNICIANS (DUAL STATUS)

Pub. L. 109–163, div. A, title IV, §413, Jan. 6, 2006, 119 Stat. 3221, which authorized the minimum number of military technicians (dual status) as of the last day of a fiscal year for each of the reserve components of the Army and the Air Force, was from the National Defense Authorization Act for Fiscal Year 2006 and was repeated in provisions of subsequent authorization acts which are not set out in the Code. Similar provisions were contained in the following prior authorization acts:

Pub. L. 108–375, div. A, title IV, §413, Oct. 28, 2004, 118 Stat. 1865.

Pub. L. 108–136, div. A, title IV, §413, Nov. 24, 2003, 117 Stat. 1453.

Pub. L. 107–314, div. A, title IV, §413, Dec. 2, 2002, 116 Stat. 2527.

Pub. L. 107–107, div. A, title IV, §413, Dec. 28, 2001, 115 Stat. 1070.

Pub. L. 106–398, §1 [[div. A], title IV, §413], Oct. 30, 2000, 114 Stat. 1654, 1654A–93.

Pub. L. 106–65, div. A, title IV, §413, Oct. 5, 1999, 113 Stat. 586.

Pub. L. 105–261, div. A, title IV, §413, Oct. 17, 1998, 112 Stat. 1997.

Pub. L. 105–85, div. A, title IV, §413(a), Nov. 18, 1997, 111 Stat. 1720.

Pub. L. 104–201, div. A, title IV, §413(a), Sept. 23, 1996, 110 Stat. 2507.

Pub. L. 104–106, div. A, title V, §513(b), Feb. 10, 1996, 110 Stat. 305.

COMPTROLLER GENERAL REVIEW OF PROPOSED ARMY END STRENGTH ALLOCATIONS

Pub. L. 104–106, title V, §552, Feb. 10, 1996, 110 Stat. 319, provided that, during fiscal years 1996 through 2001, the Comptroller General was (1) to analyze the plans of the Secretary of the Army for the allocation of assigned active component end strengths for the Army through the requirements process known as Total Army Analysis 2003 and through any subsequent similar requirements process of the Army that was conducted before 2002, (2) to consider whether the proposed active component end strengths and planned allocation of forces for that period was sufficient to implement the national military strategy, and (3) to submit to Congress an annual report by Mar. 1 of each year through 2002 on the Comptroller General's findings and conclusions, prior to repeal by Pub. L. 107–107, div. A, title V, §595, Dec. 28, 2001, 115 Stat. 1126.

EFFECT OF RESERVE COMPONENT ON COMPUTATION OF END STRENGTH LIMITATION FOR ACTIVE FORCES FOR FISCAL YEAR 1995

Pub. L. 103–337, div. A, title XIII, §1316(c), Oct. 5, 1994, 108 Stat. 2899, provided that a member of a reserve component who is on active duty under a call or order to active duty for 180 days or more for activities under former section 168 of this title shall not be counted (under subsec. (a)(1) of this section) against the appli-

cable end strength limitation for members of the Armed Forces on active duty for fiscal year 1995 prescribed in section 401 of Pub. L. 103–337, formerly set out below.

END STRENGTHS FOR ACTIVE FORCES

Pub. L. 109–163, div. A, title IV, § 401, Jan. 6, 2006, 119 Stat. 3218, which authorized specified strengths for Armed Forces active duty personnel as of Sept. 30, 2006, and provided that costs for that fiscal year of active duty personnel of the Army and the Marine Corps in excess of specified amounts would be paid out of funds authorized to be appropriated for that fiscal year for a contingent emergency reserve fund or as an emergency supplemental appropriation, was from the National Defense Authorization Act for Fiscal Year 2006 and was repeated in provisions of subsequent authorization acts which are not set out in the Code. Similar provisions were contained in the following prior authorization acts:

Pub. L. 108–375, div. A, title IV, § 401, Oct. 28, 2004, 118 Stat. 1862.

Pub. L. 108–136, div. A, title IV, § 401, Nov. 24, 2003, 117 Stat. 1450.

Pub. L. 107–314, div. A, title IV, § 401, Dec. 2, 2002, 116 Stat. 2524.

Pub. L. 107–107, div. A, title IV, § 401, Dec. 28, 2001, 115 Stat. 1069.

Pub. L. 106–398, § 1 [[div. A], title IV, § 401], Oct. 30, 2000, 114 Stat. 1654, 1654A–92.

Pub. L. 106–65, div. A, title IV, § 401, Oct. 5, 1999, 113 Stat. 585.

Pub. L. 105–261, div. A, title IV, § 401, Oct. 17, 1998, 112 Stat. 1995.

Pub. L. 105–85, div. A, title IV, § 401, Nov. 18, 1997, 111 Stat. 1719.

Pub. L. 104–201, div. A, title IV, § 401, Sept. 23, 1996, 110 Stat. 2503.

Pub. L. 104–106, div. A, title IV, § 401(a), Feb. 10, 1996, 110 Stat. 285.

Pub. L. 103–337, div. A, title IV, § 401, Oct. 5, 1994, 108 Stat. 2743.

Pub. L. 103–160, div. A, title IV, §§ 401, 403, Nov. 30, 1993, 107 Stat. 1639, 1640.

Pub. L. 102–484, div. A, title IV, §§ 401, 402, Oct. 23, 1992, 106 Stat. 2397.

Pub. L. 102–190, div. A, title IV, § 401, title VI, § 664, Dec. 5, 1991, 105 Stat. 1349, 1399.

Pub. L. 101–510, div. A, title IV, §§ 401, 402, Nov. 5, 1990, 104 Stat. 1543, 1544; Pub. L. 102–25, title II, §§ 201(a), 202, 205(a), Apr. 6, 1991, 105 Stat. 79, 80; Pub. L. 104–106, div. A, title XV, § 1502(c)(4)(A), Feb. 10, 1996, 110 Stat. 507.

Pub. L. 101–189, div. A, title IV, § 401, Nov. 29, 1989, 103 Stat. 1431, as amended by Pub. L. 101–510, div. A, title IV, § 401(d), Nov. 5, 1990, 104 Stat. 1544.

Pub. L. 100–456, div. A, title IV, § 401, Sept. 29, 1988, 102 Stat. 1963.

Pub. L. 100–180, div. A, title IV, § 401, Dec. 4, 1987, 101 Stat. 1081.

Pub. L. 99–661, div. A, title IV, § 401, Nov. 14, 1986, 100 Stat. 3859.

Pub. L. 99–145, title IV, § 401, Nov. 8, 1985, 99 Stat. 618.

Pub. L. 98–525, title IV, § 401, Oct. 19, 1984, 98 Stat. 2516.

Pub. L. 98–94, title IV, § 401, Sept. 24, 1983, 97 Stat. 629.

Pub. L. 97–252, title IV, § 401, Sept. 8, 1982, 96 Stat. 725.

Pub. L. 97–86, title IV, § 401, Dec. 1, 1981, 95 Stat. 1104, as amended by Pub. L. 97–252, title IX, § 903, Sept. 8, 1982, 96 Stat. 729.

Pub. L. 96–342, title III, § 301, Sept. 8, 1980, 94 Stat. 1082, as amended by Pub. L. 97–39, title III, § 301, Aug. 14, 1981, 95 Stat. 940.

Pub. L. 96–107, title III, § 301, Nov. 9, 1979, 93 Stat. 806.

Pub. L. 95–485, title III, § 301, Oct. 20, 1978, 92 Stat. 1613.

Pub. L. 95–79, title III, § 301, July 30, 1977, 91 Stat. 326.

Pub. L. 94–361, title III, § 301, July 14, 1976, 90 Stat. 924.

Pub. L. 94–106, title III, § 301, Oct. 7, 1975, 89 Stat. 532.

Pub. L. 93–365, title III, § 301, Aug. 5, 1974, 88 Stat. 401.

Pub. L. 93–155, title III, § 301, Nov. 16, 1973, 87 Stat. 607.

Pub. L. 92–436, title III, § 301, Sept. 26, 1972, 86 Stat. 735.

MINIMUM NUMBER OF NAVY HEALTH PROFESSIONS OFFICERS

Pub. L. 102–190, div. A, title VII, § 718(b), Dec. 5, 1991, 105 Stat. 1404, provided that, of the total number of officers authorized to be serving on active duty in Navy on last day of a fiscal year, 12,510 were to be available only for assignment to duties in health profession specialties, prior to repeal by Pub. L. 104–106, div. A, title V, § 564(d)(2), Feb. 10, 1996, 110 Stat. 327.

LIMITATIONS ON REDUCTIONS IN MEDICAL PERSONNEL

Pub. L. 101–510, div. A, title VII, § 711, Nov. 5, 1990, 104 Stat. 1582, as amended by Pub. L. 102–190, div. A, title VII, § 718(a), Dec. 5, 1991, 105 Stat. 1404, prohibited Secretary of Defense from reducing number of medical personnel of Department of Defense below baseline number unless Secretary certified to Congress that number of such personnel being reduced was excess to current and projected needs of military departments, and such reduction would not result in increase in cost of health care services provided under Civilian Health and Medical Program of the Uniformed Services, and, in case of military medical personnel, included in certification information on strength levels for individual category of medical personnel involved in reduction as of Sept. 30, 1989, projected requirements of Department over 5-fiscal year period following fiscal year in which certification was submitted for medical personnel in category of medical personnel involved, and strength level recommended for each component of Armed Forces for most recent fiscal year for which Secretary submitted recommendations pursuant to former section 115a(g)(1) of this title for personnel in category of medical personnel involved, prior to repeal by Pub. L. 104–106, div. A, title V, § 564(d)(1), Feb. 10, 1996, 110 Stat. 327. See section 129c of this title.

OPERATION DESERT SHIELD INCREASE IN END STRENGTHS OF ACTIVE DUTY PERSONNEL; AUTHORITY; CERTIFICATION

Pub. L. 101–510, div. A, title XI, § 1117, Nov. 5, 1990, 104 Stat. 1637, authorized Secretary of Defense, after determining that operational requirements of Operation Desert Shield so require, to increase the end strengths of active duty personnel for fiscal year 1991 by an amount not greater than 0.5 percent of the total end strengths authorized by section 401 of Pub. L. 101–510, set out above, and required certification by Secretary to Committees on Armed Services of Senate and House of Representatives of necessity of such increase, prior to repeal by Pub. L. 102–25, title II, § 204, Apr. 6, 1991, 105 Stat. 80.

§ 115a. Annual defense manpower profile report and related reports

(a) Not later than April 1 each year, the Secretary of Defense shall submit to Congress a defense manpower profile report. The report shall contain the Secretary's recommendations for—

(1) the annual active-duty end-strength level for each component of the armed forces for the next fiscal year; and

(2) the annual civilian personnel requirements level for each component of the Department of Defense for the next fiscal year and the civilian end-strength level for the prior fiscal year.

(b) The Secretary shall include in each report under subsection (a) justification for the strength levels recommended and an explanation of the relationship between the personnel strength levels recommended for that fiscal year and the national security policies of the United States in effect at the time.

(c) The Secretary shall include in each report under subsection (a) a detailed discussion of the manpower required for support and overhead functions within the armed forces and the Department of Defense.

(d) Not later than April 1 each year, the Secretary shall submit to Congress a report that sets forth, with respect to each armed force under the jurisdiction of the Secretary of a military department, the following:

(1) The number of positions that require warrant officers or commissioned officers serving on active duty in each of the officer grades during the current fiscal year and the estimated number of such positions for each of the next five fiscal years.

(2) The estimated number of officers that will be serving on active duty in each grade on the last day of the current fiscal year and the estimated numbers of officers that will be needed on active duty on the last day of each of the next five fiscal years.

(3) An estimate and analysis for the current fiscal year and for each of the next five fiscal years of gains to and losses from the number of members on active duty in each officer grade, including a tabulation of—

(A) retirements displayed by year of active commissioned service;

(B) discharges;

(C) other separations;

(D) deaths;

(E) promotions; and

(F) reserve and regular officers ordered to active duty.

(4) The opportunities for promotion of commissioned officers anticipated to be estimated pursuant to section 623(b)(4) of this title for the fiscal year in which such report is submitted for purposes of promotion selection boards convened pursuant to section 611 of this title during such fiscal year.

(e)(1) Not later than April 1 each year, the Secretary shall submit to Congress a report that sets forth recommendations for the end-strength levels for medical personnel for each component of the armed forces as of the end of the next fiscal year.

(2) For purposes of this subsection, the term ''medical personnel'' includes—

(A) in the case of the Army, members of the Medical Corps, Dental Corps, Nurse Corps, Medical Service Corps, Veterinary Corps, and Army Medical Specialist Corps;

(B) in the case of the Navy, members of the Medical Corps, Dental Corps, Nurse Corps, and Medical Service Corps;

(C) in the case of the Air Force, members designated as medical officers, dental officers, Air Force nurses, medical service officers, and biomedical science officers;

(D) enlisted members engaged in or supporting medically related activities; and

(E) such other personnel as the Secretary considers appropriate.

(f) Not later than June 1 each year, the Secretary shall submit to Congress a report that sets forth the following information with respect to personnel assigned to or supporting major Department of Defense headquarters activities:

(1) The military end strength and civilian full-time equivalents assigned to major Department of Defense headquarters activities for the preceding fiscal year.

(2) A summary of the replacement during the preceding fiscal year of contract workyears providing support to major Department of Defense headquarters activities with military end strength or civilian full-time equivalents, including an estimate of the number of contract workyears associated with the replacement of contracts performing inherently governmental or exempt functions.

(3) The plan for the continued review of contract personnel supporting major Department of Defense headquarters activities for possible conversion to military or civilian performance in accordance with section 2463 of this title.

(4) The amount of any adjustment in the limitation on personnel made by the Secretary of Defense or the Secretary of a military department, and, for each adjustment made pursuant to section 1111(b)(2) of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (10 U.S.C. 143 note), the purpose of the adjustment.

(g) Not later than April 1 each year, the Secretary shall submit to Congress a report on the Army and Air Force military technician programs. The report shall include a presentation, shown by reserve component and shown both as of the end of the preceding fiscal year and for the next fiscal year, of the following (displayed in the aggregate and separately for military technicians (dual status) and non-dual status military technicians):

(1) The number of military technicians required to be employed (as specified in accordance with Department of Defense procedures), the number authorized to be employed under Department of Defense personnel procedures, and the number actually employed.

(2) Within each of the numbers under paragraph (1)—

(A) the number applicable to a reserve component management headquarter organization; and

(B) the number applicable to high-priority units and organizations (as specified in section 10216(a) of this title).

(Added Pub. L. 101–510, div. A, title XIV, §1483(a), Nov. 5, 1990, 104 Stat. 1711; amended Pub. L. 102–190, div. A, title X, §1061(a)(1), Dec. 5, 1991, 105 Stat. 1472; Pub. L. 104–106, div. A, title V, §513(e), title X, §1061(d), Feb. 10, 1996, 110 Stat. 307, 442; Pub. L. 105–85, div. A, title V, §522(i)(2), Nov. 18, 1997, 111 Stat. 1736; Pub. L. 105–261, div. A, title IV, §403, Oct. 17, 1998, 112 Stat. 1996; Pub. L. 111–84, div. A, title XI, §1109(b)(1)–(2)(B)(i), Oct. 28, 2009, 123 Stat. 2492, 2493; Pub. L. 112–81, div. A, title IX, §934, Dec. 31, 2011, 125 Stat. 1544; Pub. L. 112–239, div. A, title V, §519(b), Jan. 2, 2013, 126 Stat. 1721; Pub. L. 115–91, div. A, title X, §1051(a)(2), Dec. 12, 2017, 131 Stat. 1560; Pub. L. 115–232, div. A, title V, §591, Aug. 13, 2018, 132 Stat. 1788; Pub. L. 116–92, div. A, title XVII, §1701(a)–(c)(1), Dec. 20, 2019, 133 Stat. 1794, 1795; Pub. L. 116–283, div. A, title V, §551(a)(4), Jan. 1, 2021, 134 Stat. 3629.)

REFERENCES IN TEXT

Section 1111(b)(2) of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009, referred to in subsec. (f)(4), is section 1111(b)(2) of Pub. L. 110–417, which is set out as a note under section 143 of this title.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 115(b)(1)(D), (3), (c)(2) of this title, prior to repeal by Pub. L. 101–510, § 1483(a).

AMENDMENTS

2021—Subsecs. (g), (h). Pub. L. 116–283 redesignated subsec. (h) as (g) and struck out former subsec. (g) which set out elements to be included in a required annual report to Congress.

2019—Pub. L. 116–92, § 1701(c)(1), substituted ''Annual defense manpower profile report and related reports'' for ''Annual defense manpower requirements report'' in section catchline.

Subsec. (a). Pub. L. 116–92, § 1701(a)(1)(A), in introductory provisions, substituted ''Not later than April 1 each year, the Secretary of Defense shall submit to Congress a defense manpower profile report.'' for ''The Secretary of Defense shall submit to Congress an annual defense manpower requirements report. The report, which shall be in writing, shall be submitted each year on the date on which the President submits to Congress the budget for the next fiscal year under section 1105 of title 31.''

Subsec. (a)(3). Pub. L. 116–92, § 1701(a)(1)(B)–(D), struck out par. (3) which read as follows: ''the projected number of contractor personnel full-time equivalents required to provide contract services (as that term is defined in section 235 of this title) for each component of the Department of Defense for the next fiscal year and the contractor personnel full-time equivalents that provided contract services for each component of the Department of Defense for the prior fiscal year as reported in the inventory of contracts for services required by section 2330a(c) of this title.''

Subsec. (b). Pub. L. 116–92, § 1701(a)(2), struck out ''(1)'' before ''The Secretary'' and struck out pars. (2) and (3) which read as follows:

''(2) The justification and explanation shall specify in detail for all major military force units (including each land force division, carrier and other major combatant vessel, air wing, and other comparable unit) the following:

''(A) Unit mission and capability.

''(B) Strategy which the unit supports.

''(3) The justification and explanation shall also specify in detail the manpower required to perform the medical missions of each of the armed forces and of the Department of Defense.''

Subsec. (c). Pub. L. 116–92, § 1701(a)(3), substituted ''discussion of the manpower required for support and overhead functions within the armed forces and the Department of Defense.'' for ''discussion of the following:

''(1) The manpower required for support and overhead functions within the armed forces and the Department of Defense.

''(2) The relationship of the manpower required for support and overhead functions to the primary combat missions and support policies.

''(3) The manpower required to be stationed or assigned to duty in foreign countries and aboard vessels located outside the territorial limits of the United States, its territories, and possessions.''

Subsec. (d). Pub. L. 116–92, § 1701(b)(1), substituted ''Not later than April 1 each year, the Secretary shall submit to Congress a report that sets forth'' for ''The Secretary shall also include in each such report''.

Subsec. (e)(1). Pub. L. 116–92, § 1701(b)(2), substituted ''Not later than April 1 each year, the Secretary shall submit to Congress a report that sets forth'' for ''In each such report, the Secretary shall also include''.

Subsec. (f). Pub. L. 116–92, § 1701(b)(3)(A), substituted ''Not later than June 1 each year, the Secretary shall submit to Congress a report that sets forth'' for ''The Secretary shall also include in each such report'' in introductory provisions.

Subsec. (f)(1). Pub. L. 116–92, § 1701(b)(3)(B), struck out ''and estimates of such numbers for the current fiscal year and subsequent fiscal years'' before period at end.

Subsec. (g). Pub. L. 116–92, § 1701(b)(4), substituted ''Not later than September 1 each year, the Secretary shall submit to Congress a report that sets forth a detailed discussion, current as of the preceding fiscal year,'' for ''In each report submitted under subsection (a), the Secretary shall also include a detailed discussion'' in introductory provisions and ''the fiscal year'' for ''the year'' in pars. (3) and (4).

Subsec. (h). Pub. L. 116–92, § 1701(b)(5), substituted ''Not later than April 1 each year, the Secretary shall submit to Congress a report'' for ''In each such report, the Secretary shall include a separate report'' in introductory provisions.

2018—Subsec. (a). Pub. L. 115–232, § 591(a), substituted ''on the date on which'' for ''not later than 45 days after the date on which'' in introductory provisions.

Subsec. (d)(4). Pub. L. 115–232, § 591(b), added par. (4).

2017—Subsec. (g). Pub. L. 115–91 struck out ''during fiscal years 2013 through 2017'' after ''subsection (a)'' in introductory provisions.

2013—Subsec. (g). Pub. L. 112–239 added subsec. (g).

2011—Subsec. (a)(2), (3). Pub. L. 112–81 added pars. (2) and (3) and struck out former par. (2) which read as follows: ''the annual civilian personnel end-strength level for each component of the Department of Defense for the next fiscal year.''

2009—Pub. L. 111–84, § 1109(b)(2)(B)(i), inserted ''defense'' before ''manpower'' in section catchline.

Subsec. (a). Pub. L. 111–84, § 1109(b)(2)(A), inserted ''defense'' before ''manpower requirements report'' in introductory provisions.

Subsec. (f). Pub. L. 111–84, § 1109(b)(1), added subsec. (f).

1998—Subsec. (a). Pub. L. 105–261, in introductory provisions, struck out '', not later than February 15 of each fiscal year,'' after ''submit to Congress'' and substituted ''The report, which shall be in writing, shall be submitted each year not later than 45 days after the date on which the President submits to Congress the budget for the next fiscal year under section 1105 of title 31. The report'' for ''The report shall be in writing and''.

1997—Subsec. (h). Pub. L. 105–85, § 522(i)(2)(A), inserted ''(displayed in the aggregate and separately for military technicians (dual status) and non-dual status military technicians)'' after ''of the following'' in introductory provisions.

Subsec. (h)(3). Pub. L. 105–85, § 522(i)(2)(B), struck out par. (3) which read as follows: ''Within each of the numbers under paragraph (1), the numbers of military technicians who are not themselves members of a reserve component (so-called 'single-status' technicians), with a further display of such numbers as specified in paragraph (2).''

1996—Subsec. (b)(2)(C). Pub. L. 104–106, § 1061(d)(1), struck out subpar. (C) which read as follows: ''Area of deployment and illustrative areas of potential deployment, including a description of any United States commitment to defend such areas.''

Subsec. (d). Pub. L. 104–106, § 1061(d)(3), redesignated subsec. (e) as (d) and struck out pars. (4) and (5) which read as follows:

''(4) An analysis of the distribution of each of the following categories of officers serving on active duty on the last day of the preceding fiscal year by grade in which serving and years of active commissioned service:

''(A) Regular officers.

''(B) Reserve officers on the active-duty list.

''(C) Reserve officers described in clauses (B) and (C) of section 523(b)(1) of this title.

''(D) Officers other than those specified in subparagraphs (A), (B), and (C) serving in a temporary grade.

''(5) An analysis of the number of officers and enlisted members serving on active duty for training as of the

last day of the preceding fiscal year under orders specifying an aggregate period in excess of 180 days and an estimate for the current fiscal year of the number that will be ordered to such duty, tabulated by—

''(A) recruit and specialized training;

''(B) flight training;

''(C) professional training in military and civilian institutions; and

''(D) officer acquisition training.''

Pub. L. 104–106, § 1061(d)(2), struck out subsec. (d) which read as follows: ''In each such report, the Secretary shall also—

''(1) identify, define, and group by mission and by region the types of military bases, installations, and facilities;

''(2) provide an explanation and justification of the relationship between this base structure and the proposed military force structure; and

''(3) provide a comprehensive identification of base operating support costs and an evaluation of possible alternatives to reduce those costs.''

Subsec. (e). Pub. L. 104–106, § 1061(d)(5), redesignated subsec. (g) as (e). Former subsec. (e) redesignated (d).

Subsec. (f). Pub. L. 104–106, § 1061(d)(4), struck out subsec. (f) which read as follows: ''In each such report, the Secretary shall also include recommendations for the average student load for each category of training for each component of the armed forces for the next three fiscal years. The Secretary shall include in the report justification for, and explanation of, the average student loads recommended.''

Subsec. (g). Pub. L. 104–106, § 1061(d)(5), redesignated subsec. (g) as (e).

Subsec. (h). Pub. L. 104–106, § 513(e), added subsec. (h).

1991—Subsec. (d)(3). Pub. L. 102–190 inserted ''provide'' before ''a comprehensive''.

CENTRALIZED DATABASE OF INFORMATION ON MILITARY TECHNICIAN POSITIONS

Pub. L. 113–291, div. A, title V, § 513, Dec. 19, 2014, 128 Stat. 3359, provided that:

''(a) CENTRALIZED DATABASE REQUIRED.—The Secretary of Defense shall establish and maintain a centralized database of information on military technician positions that will contain and set forth current information on all military technician positions of the Armed Forces.

''(b) ELEMENTS.—

''(1) IDENTIFICATION OF POSITIONS.—The database required by subsection (a) shall identify each military technician position, whether dual-status or non-dual status.

''(2) ADDITIONAL DETAILS.—For each military technician position identified pursuant to paragraph (1), the database required by subsection (a) shall include the following:

''(A) A description of the functions of the position.

''(B) A statement of the military necessity for the position.

''(C) A statement of whether the position is—

''(i) a general administration, clerical, or office service occupation; or

''(ii) directly related to the maintenance of military readiness.

''(c) CONSULTATION.—The Secretary of Defense shall establish the database required by subsection (a) in consultation with the Secretaries of the military departments.

''(d) IMPLEMENTATION REPORT.—Not later than September 1, 2015, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report describing the progress made in establishing the database required by subsection (a).''

ASSESSMENT OF STRUCTURE AND MIX OF ACTIVE AND RESERVE FORCES

Pub. L. 102–190, div. A, title IV, § 402, Dec. 5, 1991, 105 Stat. 1349, as amended by Pub. L. 102–484, div. A, title V, § 513(b), Oct. 23, 1992, 106 Stat. 2406, required Secretary of Defense to submit to Congress a report containing an assessment of alternatives relating to structure and mix of active and reserve forces appropriate for carrying out assigned missions in mid- to late-1990s and an evaluation and recommendations of Secretary and Chairman of Joint Chiefs of Staff as to mix or mixes of reserve and active forces considered acceptable to carry out expected future missions, and further provided for matters to be included in report and evaluation, commencement of assessment, submission of interim and final reports, and funding for assessment.

[§ 115b. Repealed. Pub. L. 114–328, div. A, title XI, § 1102(a), Dec. 23, 2016, 130 Stat. 2444]

Section, added Pub. L. 111–84, div. A, title XI, § 1108(a)(1), Oct. 28, 2009, 123 Stat. 2488; amended Pub. L. 112–81, div. A, title IX, § 935(a)(1), (b), (c), title X, § 1053, Dec. 31, 2011, 125 Stat. 1545, 1582; Pub. L. 113–291, div. A, title IX, § 911, Dec. 19, 2014, 128 Stat. 3472; Pub. L. 114–92, div. A, title VIII, § 841(b), Nov. 25, 2015, 129 Stat. 914, required Secretary of Defense to submit biennial strategic workforce plan.

A prior section 115b was renumbered section 10541 of this title.

§ 116. Annual operations and maintenance report

(a)(1) The Secretary of Defense shall submit to Congress a written report, not later than February 15 of each fiscal year, with respect to the operations and maintenance of the Army, Navy, Air Force, Marine Corps, and Space Force for the next fiscal year. The Secretary shall include in each such report recommendations for—

(A) the number of aircraft flying hours for the Army, Navy, Air Force, and Marine Corps for the next fiscal year, the number of ship steaming hours for the Navy for the next fiscal year, and the number of field training days for the combat arms battalions of the Army and Marine Corps for the next fiscal year;

(B) the number of ships over 3,000 tons (full load displacement) in each Navy ship classification on which major repair work should be performed during the next fiscal year; and

(C) the number of airframe reworks, aircraft engine reworks, and vehicle overhauls which should be performed by the Army, Navy, Air Force, and Marine Corps during the next fiscal year.

(2) The Secretary shall also include in each such report the justification for and an explanation of the level of funding recommended in the Budget of the President for the next fiscal year for aircraft flying hours, ship steaming hours, field training days for the combat arms battalions, major repair work to be performed on ships of the Navy, airframe reworks, aircraft engine reworks, and vehicle overhauls.

(b) The Secretary may submit the report required by subsection (a) by including the materials required in the report as an exhibit to the defense authorization request submitted pursuant to section 113a of this title in the fiscal year concerned.

(c) In this section:

(1) The term ''combat arms battalions'' means armor, infantry, mechanized infantry, air assault infantry, airborne infantry, ranger, artillery, and combat engineer battalions and armored cavalry and air cavalry squadrons.

(2) The term ''major repair work'' means, in the case of any ship to which subsection (a) is

applicable, any overhaul, modification, alteration, or conversion work which will result in a total cost to the United States of more than $10,000,000.

(Added Pub. L. 96–342, title X, § 1001(b)(3), (c)(2), Sept. 8, 1980, 94 Stat. 1118, 1119, § 138(e), (f)(2); amended Pub. L. 96–513, title V, § 511(4)(B), Dec. 12, 1980, 94 Stat. 2920; Pub. L. 97–86, title III, § 302, Dec. 1, 1981, 95 Stat. 1104; renumbered § 116 and amended Pub. L. 99–433, title I, §§ 101(a)(2), 110(b)(6), (7), (9), (10), Oct. 1, 1986, 100 Stat. 994, 1002; Pub. L. 105–85, div. A, title X, § 1073(a)(3), Nov. 18, 1997, 111 Stat. 1900; Pub. L. 112–81, div. A, title X, § 1064(2), Dec. 31, 2011, 125 Stat. 1586; Pub. L. 116–283, div. A, title IX, § 924(b)(1)(A), Jan. 1, 2021, 134 Stat. 3820.)

AMENDMENTS

2021—Subsec. (a)(1). Pub. L. 116–283 substituted ''Marine Corps, and Space Force'' for ''and Marine Corps'' in introductory provisions.

2011—Subsecs. (b), (c). Pub. L. 112–81 added subsec. (b) and redesignated former subsec. (b) as (c).

1997—Subsec. (b)(2). Pub. L. 105–85 substituted ''subsection (a)'' for ''such subsection''.

1986—Pub. L. 99–433 successively redesignated subsecs. (e) and (f)(2) of section 138 of this title as subsecs. (e) and (f)(2) of section 114 of this title and then as subsecs. (a) and (b), respectively, of this section, added section catchline, and made minor conforming changes in text.

1981—Subsec. (a)(3), (4), formerly § 138(e)(3), (4). Pub. L. 97–86 struck out pars. (3) and (4) which required the Secretary to include in each report a projection of the combat readiness of specified military units proposed to be maintained during the next fiscal year.

1980—Subsec. (b), formerly § 138(f)(2). Pub. L. 96–513 substituted ''In subsection (e)'' for ''In subsection (f)''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective Dec. 31, 2021, of provisions in this section requiring submittal of reports to Congress, see section 1051(x) of Pub. L. 115–91, set out as a note under section 111 of this title.

§ 117. Readiness reporting system

(a) REQUIRED READINESS REPORTING SYSTEM.—The Secretary of Defense shall establish a comprehensive readiness reporting system for the Department of Defense. The readiness reporting system shall measure in an objective, accurate, and timely manner the capability of the armed forces to carry out—

(1) the National Security Strategy prescribed by the President in the most recent annual national security strategy report under section 108 of the National Security Act of 1947 (50 U.S.C. 3043);

(2) the defense planning guidance provided by the Secretary of Defense pursuant to section 113(g) of this title; and

(3) the National Military Strategy prescribed by the Chairman of the Joint Chiefs of Staff.

(b) READINESS REPORTING SYSTEM CHARACTERISTICS.—In establishing and maintaining the readiness reporting system, the Secretary shall ensure—

(1) that the readiness reporting system and associated policies are applied uniformly throughout the Department of Defense, including between and among the joint staff and each of the armed forces;

(2) that is the single authoritative readiness reporting system for the Department, and that there shall be no military service specific systems;

(3) that readiness assessments are accomplished at an organizational level at, or below, the level at which forces are employed;

(4) that the reporting system include resources information, force posture, and mission centric capability assessments, as well as predicted changes to these attributes;

(5) that information in the readiness reporting system is continually updated, with (A) any change in the overall readiness status of a unit, or element of a unit, that is required to be reported as part of the readiness reporting system being reported within 24 hours of the event necessitating the change in readiness status, and (B) any change in the overall readiness status of an element of the training establishment or an element of defense infrastructure that is required to be reported as part of the readiness reporting system being reported within 72 hours of the event necessitating the change in readiness status; and

(6) that sufficient resources are provided to establish and maintain the system so as to allow reporting of changes in readiness status as required by this section.

(c) CAPABILITIES.—The readiness reporting system shall measure such factors relating to readiness as the Secretary prescribes, except that the system shall include the capability to do each of the following:

(1) Measure the readiness of units (both as elements of their respective armed force and as elements of joint forces) to conduct their designed and assigned missions.

(2) Measure the capability of training establishments to provide trained and ready forces for designed and assigned missions.

(3) Measure the capability of defense installations and facilities and other elements of Department of Defense infrastructure, both in the United States and abroad, to provide appropriate support to forces in the conduct of their designed and assigned missions.

(4) Measure critical warfighting deficiencies in unit capability.

(5) Measure critical warfighting deficiencies in training establishments and defense infrastructure.

(6) Measure the extent to which units of the armed forces remove serviceable parts, supplies, or equipment from one vehicle, vessel, or aircraft in order to render a different vehicle, vessel, or aircraft operational.

(d) REGULATIONS.—The Secretary shall prescribe regulations to carry out this section. In those regulations, the Secretary shall prescribe the established information technology system for Department of Defense reporting, specifically authorize exceptions to a single-system architecture, and identify the organizations, units, and entities that are subject to reporting in the readiness reporting system, what organization resources are subject to such reporting,

and the elements of the training establishment and of defense infrastructure that are subject to such reporting.

(Added Pub. L. 105–261, div. A, title III, § 373(a)(1), Oct. 17, 1998, 112 Stat. 1990; amended Pub. L. 106–65, div. A, title III, § 361(d)(1), title X, § 1067(1), Oct. 5, 1999, 113 Stat. 575, 774; Pub. L. 106–398, § 1 [[div. A], title III, § 371], Oct. 30, 2000, 114 Stat. 1654, 1654A–80; Pub. L. 108–136, div. A, title X, § 1031(a)(1), Nov. 24, 2003, 117 Stat. 1595; Pub. L. 112–239, div. A, title VIII, § 845(a), Jan. 2, 2013, 126 Stat. 1848; Pub. L. 113–291, div. A, title X, § 1071(c)(2), Dec. 19, 2014, 128 Stat. 3508; Pub. L. 115–91, div. A, title III, § 331(b), Dec. 12, 2017, 131 Stat. 1354; Pub. L. 115–232, div. A, title III, § 331(a)–(g)(1), Aug. 13, 2018, 132 Stat. 1723, 1724; Pub. L. 116–92, div. A, title III, § 361(a), Dec. 20, 2019, 133 Stat. 1325.)

PRIOR PROVISIONS

A prior section 117, added Pub. L. 97–295, § 1(2)(A), Oct. 12, 1982, 96 Stat. 1287, § 133a; renumbered § 117 and amended Pub. L. 99–433, title I, §§ 101(a)(2), 110(d)(3), Oct. 1, 1986, 100 Stat. 994, 1002, required annual report on North Atlantic Treaty Organization readiness, prior to repeal by Pub. L. 101–510, div. A, title XIII, § 1301(1), Nov. 5, 1990, 104 Stat. 1668.

AMENDMENTS

2019—Subsecs. (d) to (h). Pub. L. 116–92 redesignated subsec. (h) as (d) and struck out former subsecs. (d) to (g) which related to semi-annual and monthly joint readiness reviews, semi-annual report to congressional committees on most recent joint readiness review, quarterly report on monthly changes in current state of readiness, and annual report on operational contract support, respectively.

2018—Pub. L. 115–232, § 331(g)(1), struck out ‘‘: establishment; reporting to congressional committees’’ after ‘‘system’’ in section catchline.

Subsec. (b). Pub. L. 115–232, § 331(a)(1), inserted ‘‘and maintaining’’ after ‘‘establishing’’ in introductory provisions.

Subsec. (b)(1). Pub. L. 115–232, § 331(a)(2), substituted ‘‘reporting system and associated policies are applied uniformly throughout the Department of Defense, including between and among the joint staff and each of the armed forces’’ for ‘‘reporting system is applied uniformly throughout the Department of Defense’’.

Subsec. (b)(2) to (4). Pub. L. 115–232, § 331(a)(4), added pars. (2) to (4). Former pars. (2) and (3) redesignated (5) and (6), respectively.

Subsec. (b)(5). Pub. L. 115–232, § 331(a)(3), (5), redesignated par. (2) as (5) and inserted ‘‘, or element of a unit,’’ after ‘‘readiness status of a unit’’.

Subsec. (b)(6). Pub. L. 115–232, § 331(a)(3), redesignated par. (3) as (6).

Subsec. (c)(1). Pub. L. 115–232, § 331(b)(1), substituted ‘‘Measure the readiness of units’’ for ‘‘Measure, on a monthly basis, the capability of units’’ and ‘‘conduct their designed and assigned missions’’ for ‘‘conduct their assigned wartime missions’’.

Subsec. (c)(2), (3). Pub. L. 115–232, § 331(b)(2), (3), substituted ‘‘Measure’’ for ‘‘Measure, on an annual basis,’’ and ‘‘designed and assigned missions’’ for ‘‘wartime missions’’.

Subsec. (c)(4). Pub. L. 115–232, § 331(b)(4), substituted ‘‘Measure’’ for ‘‘Measure, on a monthly basis,’’.

Subsec. (c)(5). Pub. L. 115–232, § 331(b)(5), substituted ‘‘Measure’’ for ‘‘Measure, on an annual basis,’’.

Subsec. (c)(6) to (8). Pub. L. 115–232, § 331(b)(6), (7), redesignated par. (7) as (6), substituted ‘‘Measure’’ for ‘‘Measure, on a quarterly basis,’’, and struck out former pars. (6) and (8) which read as follows:

‘‘(6) Measure, on a monthly basis, the level of current risk based upon the readiness reporting system relative to the capability of forces to carry out their wartime missions.

‘‘(8) Measure, on an annual basis, the capability of operational contract support to support current and anticipated wartime missions of the armed forces.’’

Subsec. (d)(1)(A). Pub. L. 115–232, § 331(c), inserted ‘‘, which includes a validation of readiness data currency and accuracy’’ after ‘‘joint readiness review’’.

Subsec. (f). Pub. L. 115–232, § 331(d)(2), added subsec. (f). Former subsec. (f) redesignated (h).

Subsec. (g). Pub. L. 115–232, § 331(e), added subsec. (g).

Subsec. (h). Pub. L. 115–232, § 331(d)(1), (f), redesignated subsec. (f) as (h) and substituted ‘‘prescribe the established information technology system for Department of Defense reporting, specifically authorize exceptions to a single-system architecture, and identify the organizations, units, and entities that are subject to reporting in the readiness reporting system, what organization resources are subject to such reporting’’ for ‘‘prescribe the units that are subject to reporting in the readiness reporting system, what type of equipment is subject to such reporting’’.

2017—Subsec. (d). Pub. L. 115–91, § 331(b)(1)(A), substituted ‘‘Semi-annual’’ for ‘‘Quarterly’’ in heading.

Subsec. (d)(1)(A). Pub. L. 115–91, § 331(b)(1)(B), substituted ‘‘semi-annual’’ for ‘‘quarterly’’.

Subsec. (e). Pub. L. 115–91, § 331(b)(2), substituted ‘‘semi-annually’’ for ‘‘each quarter’’.

2014—Subsec. (a)(1). Pub. L. 113–291 substituted ‘‘(50 U.S.C. 3043)’’ for ‘‘(50 U.S.C. 404a)’’.

2013—Subsec. (c)(8). Pub. L. 112–239 added par. (8).

2003—Subsec. (e). Pub. L. 108–136 substituted ‘‘each quarter submit to the congressional defense committees a report in writing containing the results of the most recent joint readiness review under subsection (d)(1)(A)’’ for ‘‘each month submit to the Committee on Armed Services and the Committee on Appropriations of the Senate and the Committee on Armed Services and the Committee on Appropriations of the House of Representatives a report in writing containing the results of the most recent joint readiness review or monthly review conducted under subsection (d)’’.

2000—Subsec. (c)(7). Pub. L. 106–398 added par. (7).

1999—Subsec. (b)(2). Pub. L. 106–65, § 361(d)(1)(A), substituted ‘‘with (A) any change in the overall readiness status of a unit that is required to be reported as part of the readiness reporting system being reported within 24 hours of the event necessitating the change in readiness status, and (B) any change in the overall readiness status of an element of the training establishment or an element of defense infrastructure that is required to be reported as part of the readiness reporting system being reported within 72 hours’’ for ‘‘with any change in the overall readiness status of a unit, an element of the training establishment, or an element of defense infrastructure, that is required to be reported as part of the readiness reporting system, being reported within 24 hours’’.

Subsec. (c)(2), (3), (5). Pub. L. 106–65, § 361(d)(1)(B), substituted ‘‘an annual’’ for ‘‘a quarterly’’.

Subsec. (e). Pub. L. 106–65, § 1067(1), substituted ‘‘and the Committee on Armed Services’’ for ‘‘and the Committee on National Security’’.

REQUIREMENT TO INCLUDE FOREIGN LANGUAGE PROFICIENCY IN READINESS REPORTING SYSTEMS OF DEPARTMENT OF DEFENSE

Pub. L. 116–92, div. A, title III, § 366, Dec. 20, 2019, 133 Stat. 1328, provided that: ‘‘Not later than 90 days after the date of the enactment of this Act [Dec. 20, 2019], the Secretary of Defense and the Secretary of each military department shall include in the Global Readiness and Force Management Enterprise, for the appropriate billets with relevant foreign language requirements, measures of foreign language proficiency as a mandatory element of unit readiness reporting, to include the Defense Readiness Reporting Systems-Strategic (DRRS-S) and all other subordinate systems that report readiness data.’’

METRICS FOR ASSESSMENT OF READINESS OF CYBER MISSION FORCES

Pub. L. 116–92, div. A, title XVI, § 1634(b), (c), Dec. 20, 2019, 133 Stat. 1747, provided that:

''(b) METRICS.—

''(1) ESTABLISHMENT REQUIRED.—The Secretary of Defense shall establish metrics for the assessment of the readiness of the Cyber Mission Forces of the Department of Defense.

''(2) BRIEFINGS REQUIRED.—Not later than 90 days after the date of the enactment of this Act [Dec. 20, 2019] and quarterly thereafter until completion of the establishment of the metrics under paragraph (1), the Secretary shall provide a briefing to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] on such metrics, including progress as required pursuant to subsection (c).

''(c) MODIFICATION OF READINESS REPORTING SYSTEM.—Not later than 180 days after the date of the enactment of this Act [Dec. 20, 2019], the Secretary shall take such actions as the Secretary considers appropriate to ensure that the comprehensive readiness reporting system established pursuant to section 117(a) of title 10, United States Code, covers matters relating to the readiness of the Cyber Mission Forces—

''(1) using the metrics established pursuant to subsection (b)(1); and

''(2) in a manner that is consistent with sections 117 and 482 of such title.''

LIMITATION ON AVAILABILITY OF FUNDS FOR SERVICE-SPECIFIC DEFENSE READINESS REPORTING SYSTEMS

Pub. L. 115–232, div. A, title III, § 358, Aug. 13, 2018, 132 Stat. 1732, as amended by Pub. L. 116–92, div. A, title III, § 362, Dec. 20, 2019, 133 Stat. 1327, provided that:

''(a) LIMITATION.—None of the funds authorized to be appropriated by this Act [see Tables for classification] or otherwise made available for the Department of Defense for fiscal year 2019 for research, development, test, and evaluation or procurement, and available to develop service-specific Defense Readiness Reporting Systems (referred to in this section as 'DRRS') may be made available for such purpose except for required maintenance and in order to facilitate the transition to DRRS-Strategic (referred to in this section as 'DRRS-S').

''(b) PLAN.—Not later than February 1, 2019, the Under Secretary for Personnel and Readiness shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a resource and funding plan to include a schedule with relevant milestones on the elimination of service-specific DRRS and the migration of the military services and other organizations to DRRS-S.

''(c) TRANSITION.—The military services shall complete the transition to DRRS-S not later than October 1, 2020. The Secretary of Defense shall notify the congressional defense committees upon the complete transition of the services.

''(d) REPORTING REQUIREMENT.—

''(1) IN GENERAL.—The Under Secretary for Personnel and Readiness, the Under Secretary for Acquisition and Sustainment, and the Under Secretary for Research and Engineering, in coordination with the Secretaries of the military departments and other organizations with relevant technical expertise, shall establish a working group including individuals with expertise in application or software development, data science, testing, and development and assessment of performance metrics to assess the current process for collecting, analyzing, and communicating readiness data, and develop a strategy for implementing any recommended changes to improve and establish readiness metrics using the current DRRS-Strategic platform.

''(2) ELEMENTS.—The assessment conducted pursuant to paragraph (1) shall include—

''(A) identification of modern tools, methods, and approaches to readiness to more effectively and efficiently collect, analyze, and make decision based on readiness data; and

''(B) consideration of cost and schedule.

''(3) SUBMISSION TO CONGRESS.—Not later than February 1, 2020, the Secretary of Defense shall submit to the congressional defense committees the assessment conducted pursuant to paragraph (1).

''(e) DEFENSE READINESS REPORTING REQUIREMENTS.—To the maximum extent practicable, the Secretary of Defense shall meet defense readiness reporting requirements consistent with the recommendations of the working group established under subsection (d)(1).''

DEFENSE MATERIEL READINESS BOARD

Pub. L. 112–239, div. A, title XVI, § 1601(a), Jan. 2, 2013, 126 Stat. 2062, provided that: ''The Defense Materiel Readiness Board established pursuant to section 871 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110–181; 10 U.S.C. 117 note) [formerly set out below] is hereby disestablished.''

Pub. L. 112–239, div. A, title XVI, § 1601(b), Jan. 2, 2013, 126 Stat. 2062, provided that: ''The Department of Defense Strategic Readiness Fund established by section 872(d) of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110–181; 10 U.S.C. 117 note) [formerly set out below] is hereby closed.''

Pub. L. 110–181, div. A, title VIII, subtitle G, Jan. 28, 2008, 122 Stat. 260, which required Secretary of Defense to establish Defense Materiel Readiness Board to provide independent assessments of materiel readiness, materiel readiness shortfalls, and materiel readiness plans to Secretary of Defense and Congress; provided for designation of critical materiel readiness shortfalls; established Department of Defense Strategic Readiness Fund; and required Secretary of military department to notify Congress with respect to determination that use of a multiyear procurement contract would address a critical material readiness shortfall, was repealed by Pub. L. 112–239, div. A, title XVI, § 1601(c), Jan. 2, 2013, 126 Stat. 2062.

IMPLEMENTATION

Pub. L. 105–261, div. A, title III, § 373(b), (c), Oct. 17, 1998, 112 Stat. 1992, as amended by Pub. L. 106–65, div. A, title III, § 361(d)(2), Oct. 5, 1999, 113 Stat. 575, directed the Secretary of Defense to submit to Congress a report, not later than Mar. 1, 1999, setting forth a plan for implementation of this section, and required the Secretary to establish and implement the readiness reporting system required by this section so as to ensure that required capabilities would be attained not later than Apr. 1, 2000.

§ 118. Materiel readiness metrics and objectives for major weapon systems

(a) MATERIEL READINESS METRICS.—Each head of an element of the Department specified in paragraphs (1) through (10) of section 111(b) of this title shall establish and maintain materiel readiness metrics to enable assessment of the readiness of members of the armed forces to carry out—

(1) the strategic framework required by section 113(g)(1)(B)(vii) of this title; and

(2) guidance issued by the Secretary of Defense pursuant to section 113(g)(1)(B) of this title.

(b) REQUIRED METRICS.—At a minimum, the materiel readiness metrics required by subsection (a) shall address the materiel availability, operational availability, operational capability, and materiel reliability of each major weapon system by designated mission, design series, variant, or class.

(c) MATERIEL READINESS OBJECTIVES.—(1) Not later than one year after the date of the enactment of this subsection, each head of an element described in subsection (a) shall establish the

metrics required by subsection (b) necessary to support the strategic framework and guidance referred to in paragraph (1) and (2) of subsection (a).

(2) Annually, each head of an element described in subsection (a) shall review and revise the metrics required by subsection (b) and include any such revisions in the materials submitted to Congress in support of the budget of the President under section 1105 of title 31.

(d) BUDGET JUSTIFICATION.—Not later than five days after the date on which the Secretary of Defense submits to Congress the materials in support of the budget of the President for a fiscal year, the Secretary of Defense shall submit to the congressional defense committees an annual report on major weapons systems sustainment for the period covered by the future years defense program specified by section 221 of this title. Such report shall include—

(1) an assessment of the materiel availability, operational availability, and materiel reliability for each major weapon system; and

(2) a detailed explanation of any factors that could preclude the Department of Defense or any of the military departments from meeting applicable readiness goals or objectives.

(e) DEFINITIONS.—In this section:

(1) The term ''major weapon system'' has the meaning given in section 2379(f) of this title.

(2) The term ''materiel availability'' means a measure of the percentage of the total inventory of a major weapon system that is operationally capable of performing an assigned mission.

(3) The term ''materiel reliability'' means the probability that a major weapon system will perform without failure over a specified interval.

(4) The term ''operational availability'' means a measure of the percentage of time a major weapon system is operationally capable.

(5) The term ''operationally capable'' means a materiel condition indicating that a major weapon system is capable of performing its assigned mission and has no discrepancies with a subsystem of a major weapon system.

(Added Pub. L. 116–92, div. A, title III, § 351(a)(1), Dec. 20, 2019, 133 Stat. 1319; amended Pub. L. 116–283, div. A, title III, § 347(a), title X, § 1081(a)(6), title XVIII, § 1883(b)(2), Jan. 1, 2021, 134 Stat. 3540, 3871, 4294.)

AMENDMENT OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1883(b)(2), Jan. 1, 2021, 134 Stat. 4151, 4294, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, except as otherwise provided in title XVIII of Pub. L. 116–283, in title 10, United States Code, each reference in the text of such title to a source section that is redesignated by title XVIII of Pub. L. 116–283, is amended by striking such reference and inserting a reference to the appropriate section as so redesignated. See 2021 Amendment note below.

REFERENCES IN TEXT

The date of the enactment of this subsection, referred to in subsec. (c), is the date of enactment of Pub. L. 116–283, which was approved Jan. 1, 2021.

PRIOR PROVISIONS

A prior section 118, added Pub. L. 106–65, div. A, title IX, § 901(a)(1), Oct. 5, 1999, 113 Stat. 715; amended Pub. L. 107–107, div. A, title IX, § 921(a), Dec. 28, 2001, 115 Stat. 1198; Pub. L. 107–314, div. A, title IX, §§ 922, 923, Dec. 2, 2002, 116 Stat. 2623; Pub. L. 109–364, div. A, title X, § 1031(c)–(f), Oct. 17, 2006, 120 Stat. 2385, 2386; Pub. L. 110–181, div. A, title IX, §§ 941(b), 951(a), Jan. 28, 2008, 122 Stat. 287, 290; Pub. L. 111–84, div. A, title X, §§ 1002, 1073(a)(2), div. B, title XXVIII, § 2822(b), Oct. 28, 2009, 123 Stat. 2439, 2472, 2666; Pub. L. 111–383, div. A, title X, § 1071, Jan. 7, 2011, 124 Stat. 4364; Pub. L. 112–81, div. A, title VIII, § 820(a), title IX, § 942, Dec. 31, 2011, 125 Stat. 1501, 1548; Pub. L. 113–291, div. A, title X, §§ 1071(c)(2), (f)(1), 1072(a)(1), Dec. 19, 2014, 128 Stat. 3508, 3510, 3512, related to quadrennial defense strategy review by Secretary of Defense, prior to repeal by Pub. L. 114–328, div. A, title IX, § 941(b)(1), Dec. 23, 2016, 130 Stat. 2367.

Another prior section 118, added Pub. L. 97–295, § 1(2)(A), Oct. 12, 1982, 96 Stat. 1288, § 133b; renumbered § 118, Pub. L. 99–433, title I, § 101(a)(2), Oct. 1, 1986, 100 Stat. 994, required reports to Congress on sales or transfers of defense articles, prior to repeal by Pub. L. 101–510, div. A, title XIII, § 1301(2), Nov. 5, 1990, 104 Stat. 1668.

AMENDMENTS

2021—Pub. L. 116–283, § 347(a)(1), amended section catchline generally. Prior to amendment, catchline read as follows: ''Annual report on major weapons systems sustainment''.

Subsecs. (a) to (c). Pub. L. 116–283, § 347(a)(3), added subsecs. (a) to (c).

Subsec. (d). Pub. L. 116–283, § 347(a)(2), designated existing provisions as subsec. (d) and inserted heading.

Subsec. (d)(1). Pub. L. 116–283, § 347(a)(4)(A), substituted ''operational availability, and materiel reliability for each major weapon system'' for ''materiel reliability, and mean down time metrics for each major weapons system'' and inserted ''and'' at end.

Subsec. (d)(3). Pub. L. 116–283, § 1081(a)(6), which directed inserting ''and'' after '''materiel and operational capability','', could not be executed because of the prior amendment by section 347(a)(4)(C) of Pub. L. 116–283. See below.

Pub. L. 116–283, § 347(a)(4)(C), struck out par. (3). Text read as follows: ''an assessment of the validity and effectiveness of the definitions used to determine defense readiness, including the terms 'major weapons system', 'covered asset', 'total and required inventory', 'materiel and operational availability', 'materiel and operational capability', 'materiel and operational reliability'''.

Subsec. (e). Pub. L. 116–283, § 347(a)(5), added subsec. (e).

Subsec. (e)(1). Pub. L. 116–283, § 1883(b)(2), substituted ''section 3455'' for ''section 2379''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by 1883(b)(2) of Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 118a.[1] National Defense Sustainment and Logistics Review

(a) REVIEW REQUIRED.—Upon submission of each national defense strategy under section 113(g) of this title, the Secretary of Defense shall conduct a comprehensive review of the sustainment and logistics requirements necessary to support the force structure, force modernization, infrastructure, force deployment capabilities, and other elements of the defense pro-

[1] Another section 118a is set out after this section.

gram and policies of the United States during the subsequent 5-, 10-, and 25-year periods. Each such review shall be known as the 'National Defense Sustainment and Logistics Review'. Each such review shall be conducted in consultation with the Secretaries of the military departments, the Chiefs of Staff of the Armed Forces, all functional and geographic combatant commanders, and the Director of the Defense Logistics Agency.

(b) REPORT TO CONGRESS.—(1) Not later than the first Monday in February of the year following the fiscal year during which the National Defense Strategy was submitted under section 113(g) of this title, the Secretary shall submit to the congressional defense committees a report on the review required by subsection (a). Each such report shall include each of the following:

(A) An assessment of the strategic, operational, and tactical maritime logistics force (including non-military assets provided by Military Sealift Command, the Maritime Administration, and through the Voluntary Intermodal Sealift Agreement and Voluntary Tanker Agreement) required to support sealift, at sea logistics, and over-the-shore logistics of forces to meet steady state and contingency requirements and the strategic and intra-theater movement of supplies, personnel, and equipment.

(B) An assessment of the strategic, operational, and tactical airlift and tankers (including non-military assets provided by the Civil Reserve Air Fleet) required to meet steady state and contingency requirements.

(C) An assessment of the location, configuration, material condition, and inventory of prepositioned materiel, equipment, and war reserves programs, as well as the ability to store and distribute these items to deployed military forces, required to meet steady state and contingency requirements.

(D) An assessment of the location, infrastructure, and storage capacity for petroleum, oil, and lubricant products, as well as the ability to store, transport, and distribute such products from storage supply points to deployed military forces, required to meet steady state and contingency requirements.

(E) An assessment of the capabilities, capacity, and infrastructure of the Department of Defense organic industrial base and private sector industrial base required to meet steady-state and surge software and depot maintenance requirements.

(F) An assessment of the production capability, capacity, and infrastructure, of the Department of Defense organic industrial base and private sector industrial base required to meet steady-state and surge production requirements for ammunition and other military munitions.

(G) An assessment of the condition, capacity, location, and survivability under likely threats of military infrastructure located both inside the continental United States and outside the continental United States, including agreements with and infrastructure provided by international partners, required to generate, project, and sustain military forces to meet steady-state and contingency requirements.

(H) An assessment of the cybersecurity risks to military and commercial logistics networks and information technology systems.

(I) An assessment of the gaps between the requirements identified under subparagraphs (A) through (H) compared to the actual force structure and infrastructure capabilities, capacity, and posture and the risks associated with each gap as it relates to the ability to meet the national defense strategy.

(J) A discussion of the identified mitigations being pursued to address each gap and risk identified under subparagraph (I) as well as the initiatives and resources planned to address such gaps, as included in the Department of Defense budget request submitted during the same year as the report and the applicable future-years defense program.

(K) An assessment of the extent to which wargames incorporate logistics capabilities and threats and a description of the logistics constraints and restraints to operations identified through such wargames.

(L) An assessment of the ability of the Department of Defense, the Armed Forces, and the combatant commands to leverage and integrate emergent logistics related technologies and advanced computing systems.

(M) Such other matters the Secretary of Defense considers appropriate.

(2) In preparing the report under paragraph (1), the Secretary of Defense shall consult with, and consider the recommendations of, the Chairman of the Joint Chiefs of Staff.

(3) The report required under this subsection shall be submitted in classified form and shall include an unclassified summary.

(c) COMPTROLLER GENERAL REVIEW.—Not later than 180 days after the date on which Secretary submits each report required under subsection (b), the Comptroller General shall submit to the congressional defense committees a report that includes an assessment of each of the following:

(1) Whether the report includes each of the elements referred to in subsection (b).

(2) The strengths and weaknesses of the approach and methodology used in conducting the review required under subsection (a) that is covered by the report.

(3) Any other matters relating to sustainment that may arise from the report, as the Comptroller General considers appropriate.

(d) RELATIONSHIP TO BUDGET.—Nothing in this section shall be construed to affect section 1105(a) of title 31.

(Added Pub. L. 116–283, div. A, title III, § 341(a), Jan. 1, 2021, 134 Stat. 3535.)

DEADLINE FOR SUBMITTAL OF FIRST REPORT

Pub. L. 116–283, div. A, title III, § 341(c), Jan. 1, 2021, 134 Stat. 3537, provided that: ''Notwithstanding the deadline in subsection (b)(1) of section 118a of title 10, United States Code, as added by subsection (a), the Secretary of Defense shall submit the first report under such section not later than the date that is 18 months after the date of the enactment of this Act [Jan. 1, 2021], unless a new National Defense Strategy is released prior to such date.''

§ 118a.[1] Quadrennial quality of life review

(a) REVIEW REQUIRED.—(1) The Secretary of Defense shall every four years conduct a comprehensive examination of the quality of life of the members of the armed forces (to be known as the ''quadrennial quality of life review''). The review shall include examination of the programs, projects, and activities of the Department of Defense, including the morale, welfare, and recreation activities.

(2) The quadrennial quality of life review shall be designed to result in determinations, and to foster policies and actions, that reflect the priority given the quality of life of members of the armed forces as a primary concern of the Department of Defense leadership.

(b) CONDUCT OF REVIEW.—Each quadrennial quality of life review shall be conducted so as—

(1) to assess quality of life priorities and issues consistent with the most recent National Security Strategy prescribed by the President pursuant to section 108 of the National Security Act of 1947 (50 U.S.C. 3043);

(2) to identify actions that are needed in order to provide members of the armed forces with the quality of life reasonably necessary to encourage the successful execution of the full range of missions that the members are called on to perform under the national security strategy; and

(3) to identify other actions that have the potential for improving the quality of life of the members of the armed forces.

(c) CONSIDERATIONS.—The Secretary shall consider addressing the following matters as part of the quadrennial quality of life review:

(1) Infrastructure.

(2) Military construction.

(3) Physical conditions at military installations and other Department of Defense facilities.

(4) Budget plans.

(5) Adequacy of medical care for members of the armed forces and their dependents.

(6) Adequacy of housing and the basic allowance for housing and basic allowance for subsistence.

(7) Housing-related utility costs.

(8) Educational opportunities and costs.

(9) Length of deployments.

(10) Rates of pay and pay differentials between the pay of members and the pay of civilians.

(11) Retention and recruiting efforts.

(12) Workplace safety.

(13) Support services for spouses and children.

(14) Other elements of Department of Defense programs and Government policies and programs that affect the quality of life of members.

(d) SUBMISSION TO CONGRESSIONAL COMMITTEES.—(1) The Secretary shall submit a report on each quadrennial quality of life review to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives. The report shall include the following:

(A) The assumptions used in the review.

(B) The results of the review, including a comprehensive discussion of how the quality of life of members of the armed forces affects the national security strategy of the United States.

(2) The report shall be submitted in the year following the year in which the review is conducted, but not later than the date on which the President submits the budget for the next fiscal year to Congress under section 1105(a) of title 31.

(Added Pub. L. 107–314, div. A, title V, § 581(a)(1), Dec. 2, 2002, 116 Stat. 2559; amended Pub. L. 113–291, div. A, title X, § 1071(c)(2), Dec. 19, 2014, 128 Stat. 3508.)

[1] Another section 118a is set out preceding this section.

AMENDMENTS

2014—Subsec. (b)(1). Pub. L. 113–291 substituted ''(50 U.S.C. 3043)'' for ''(50 U.S.C. 404a)''.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective Dec. 31, 2021, of provisions in subsec. (d) of this section requiring submittal of report to Congress, see section 1061 of Pub. L. 114–328, set out as a note under section 111 of this title.

FIRST QUADRENNIAL QUALITY OF LIFE REVIEW

Pub. L. 107–314, div. A, title V, § 581(b), Dec. 2, 2002, 116 Stat. 2561, directed that the first quadrennial quality of life review under this section would be conducted during 2003, and that the report on such review was to be submitted not later than the date on which the President submitted the budget for fiscal year 2005 to Congress.

[§ 118b. Repealed. Pub. L. 113–291, div. A, title X, § 1072(b)(1), Dec. 19, 2014, 128 Stat. 3516]

Section, added Pub. L. 110–181, div. A, title IX, § 941(a), Jan. 28, 2008, 122 Stat. 286, related to quadrennial roles and missions review.

EFFECTIVE DATE OF REPEAL

Pub. L. 113–291, div. A, title X, § 1072(c), Dec. 19, 2014, 128 Stat. 3517, provided that: ''[Former] Section 118 of such title [meaning title 10, United States Code], as amended by subsection (a), and the amendments made by this section [amending former section 118 of this title and repealing this section], shall take effect on October 1, 2015.''

§ 119. Special access programs: congressional oversight

(a)(1) Not later than March 1 of each year, the Secretary of Defense shall submit to the defense committees a report on special access programs.

(2) Each such report shall set forth—

(A) the total amount requested for special access programs of the Department of Defense in the President's budget for the next fiscal year submitted under section 1105 of title 31; and

(B) for each program in that budget that is a special access program—

(i) a brief description of the program;

(ii) a brief discussion of the major milestones established for the program;

(iii) the actual cost of the program for each fiscal year during which the program has been conducted before the fiscal year during which that budget is submitted; and

(iv) the estimated total cost of the program and the estimated cost of the program

for (I) the current fiscal year, (II) the fiscal year for which the budget is submitted, and (III) each of the four succeeding fiscal years during which the program is expected to be conducted.

(3) In the case of a report under paragraph (1) submitted in a year during which the President's budget for the next fiscal year, because of multiyear budgeting for the Department of Defense, does not include a full budget request for the Department of Defense, the report required by paragraph (1) shall set forth—

(A) the total amount already appropriated for the next fiscal year for special access programs of the Department of Defense and any additional amount requested in that budget for such programs for such fiscal year; and

(B) for each program of the Department of Defense that is a special access program, the information specified in paragraph (2)(B).

(b)(1) Not later than February 1 of each year, the Secretary of Defense shall submit to the defense committees a report that, with respect to each new special access program, provides—

(A) notice of the designation of the program as a special access program; and

(B) justification for such designation.

(2) A report under paragraph (1) with respect to a program shall include—

(A) the current estimate of the total program cost for the program; and

(B) an identification of existing programs or technologies that are similar to the technology, or that have a mission similar to the mission, of the program that is the subject of the notice.

(3) In this subsection, the term ''new special access program'' means a special access program that has not previously been covered in a notice and justification under this subsection.

(c)(1) Whenever a change in the classification of a special access program of the Department of Defense is planned to be made or whenever classified information concerning a special access program of the Department of Defense is to be declassified and made public, the Secretary of Defense shall submit to the defense committees a report containing a description of the proposed change, the reasons for the proposed change, and notice of any public announcement planned to be made with respect to the proposed change.

(2) Except as provided in paragraph (3), any report referred to in paragraph (1) shall be submitted not less than 14 days before the date on which the proposed change or public announcement is to occur.

(3) If the Secretary determines that because of exceptional circumstances the requirement of paragraph (2) cannot be met with respect to a proposed change or public announcement concerning a special access program of the Department of Defense, the Secretary may submit the report required by paragraph (1) regarding the proposed change or public announcement at any time before the proposed change or public announcement is made and shall include in the report an explanation of the exceptional circumstances.

(d) Whenever there is a modification or termination of the policy and criteria used for designating a program of the Department of Defense as a special access program, the Secretary of Defense shall promptly notify the defense committees of such modification or termination. Any such notification shall contain the reasons for the modification or termination and, in the case of a modification, the provisions of the policy as modified.

(e)(1) The Secretary of Defense may waive any requirement under subsection (a), (b), or (c) that certain information be included in a report under that subsection if the Secretary determines that inclusion of that information in the report would adversely affect the national security. Any such waiver shall be made on a case-by-case basis.

(2) If the Secretary exercises the authority provided under paragraph (1), the Secretary shall provide the information described in that subsection with respect to the special access program concerned, and the justification for the waiver, jointly to the chairman and ranking minority member of each of the defense committees.

(f) A special access program may not be initiated until—

(1) the defense committees are notified of the program; and

(2) a period of 30 days elapses after such notification is received.

(g) In this section, the term ''defense committees'' means—

(1) the Committee on Armed Services and the Committee on Appropriations, and the Defense Subcommittee of the Committee on Appropriations, of the Senate; and

(2) the Committee on Armed Services and the Committee on Appropriations, and the Subcommittee on Defense of the Committee on Appropriations, of the House of Representatives.

(Added Pub. L. 100–180, div. A, title XI, § 1132(a)(1), Dec. 4, 1987, 101 Stat. 1151; amended Pub. L. 101–510, div. A, title XIV, §§ 1461, 1482(a), Nov. 5, 1990, 104 Stat. 1698, 1709; Pub. L. 104–106, div. A, title X, § 1055, title XV, § 1502(a)(4), Feb. 10, 1996, 110 Stat. 442, 502; Pub. L. 106–65, div. A, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 107–107, div. A, title X, § 1048(a)(2), Dec. 28, 2001, 115 Stat. 1222.)

AMENDMENTS

2001—Subsec. (g)(2). Pub. L. 107–107 substituted ''Subcommittee on Defense'' for ''National Security Subcommittee''.

1999—Subsec. (g)(2). Pub. L. 106–65 substituted ''Committee on Armed Services'' for ''Committee on National Security''.

1996—Subsec. (a)(1). Pub. L. 104–106, § 1055, substituted ''March 1'' for ''February 1''.

Subsec. (g). Pub. L. 104–106, § 1502(a)(4), added pars. (1) and (2) and struck out former pars. (1) and (2) which read as follows:

''(1) the Committees on Armed Services and Appropriations of the Senate and House of Representatives; and

''(2) the Defense Subcommittees of the Committees on Appropriations of the Senate and House of Representatives.''

1990—Subsec. (c). Pub. L. 101–510, § 1461(a), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''Whenever a change is made in the sta-

tus of a program of the Department of Defense as a special access program, the Secretary of Defense shall submit to the defense committees a report describing the change. Any such report shall be submitted not later than 30 days after the date on which the change takes effect.''

Subsec. (f). Pub. L. 101–510, § 1482(a)(2), added subsec. (f). Former subsec. (f) redesignated (g).

Pub. L. 101–510, § 1461(b), inserted ''and Appropriations'' after ''Armed Services'' in par. (1).

Subsec. (g). Pub. L. 101–510, § 1482(a)(1), redesignated subsec. (f) as (g).

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–510, div. A, title XIV, § 1482(d), Nov. 5, 1990, 104 Stat. 1710, provided that: ''The amendments made by this section [enacting section 2214 of this title and amending this section and section 1584 of this title] shall take effect on October 1, 1991.''

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective Dec. 31, 2021, of provisions in subsecs. (a) and (b) of this section requiring submittal of annual report to Congress, see section 1061 of Pub. L. 114–328, set out as a note under section 111 of this title.

INITIAL REPORTS ON SPECIAL ACCESS PROGRAMS

Pub. L. 100–180, div. A, title XI, § 1132(b), (c), Dec. 4, 1987, 101 Stat. 1152, required that the first report under subsec. (a) of this section set forth the amount that had been requested in the President's budget for each of the five previous fiscal years for special access programs of the Department of Defense and the amount appropriated for each such year for such programs, and required that the first report under subsec. (b) of this section cover existing special access programs.

§ 119a. Programs managed under alternative compensatory control measures: congressional oversight

(a) ANNUAL REPORT ON CURRENT PROGRAMS UNDER ACCMS.—

(1) IN GENERAL.—Not later than March 1 each year, the Secretary of Defense shall submit to the congressional defense committees a report on the programs being managed under alternative compensatory control measures in the Department of Defense.

(2) ELEMENTS.—Each report under paragraph (1) shall set forth the following:

(A) The total amount requested for programs being managed under alternative compensatory control measures in the Department in the budget of the President under section 1105 of title 31 for the fiscal year beginning in the fiscal year in which such report is submitted.

(B) For each program in that budget that is a program being managed under alternative compensatory control measures in the Department—

(i) a brief description of the program;

(ii) a brief discussion of the major milestones established for the program;

(iii) the actual cost of the program for each fiscal year during which the program has been conducted before the fiscal year during which that budget is submitted; and

(iv) the estimated total cost of the program and the estimated cost of the program for—

(I) the current fiscal year;

(II) the fiscal year for which that budget is submitted; and

(III) each of the four succeeding fiscal years during which the program is expected to be conducted.

(3) ELEMENTS ON PROGRAMS COVERED BY MULTIYEAR BUDGETING.—In the case of a report under paragraph (1) submitted in a year during which the budget of the President for the fiscal year concerned does not, because of multiyear budgeting for the Department, include a full budget request for the Department, the report required by paragraph (1) shall set forth—

(A) the total amount already appropriated for the next fiscal year for programs being managed under alternative compensatory control measures in the Department, and any additional amount requested in that budget for such programs for such fiscal year; and

(B) for each program that is a program being managed under alternative compensatory control measures in the Department, the information specified in paragraph (2)(B).

(b) ANNUAL REPORT ON NEW PROGRAMS UNDER ACCMS.—

(1) IN GENERAL.—Not later than February 1 each year, the Secretary shall submit to the congressional defense committees a report that, with respect to each new program being managed under alternative compensatory control measures in the Department, provides—

(A) notice of the designation of the program as a program being managed under alternative compensatory control measures in the Department; and

(B) a justification for such designation.

(2) ADDITIONAL ELEMENTS.—A report under paragraph (1) with respect to a program shall include—

(A) the current estimate of the total program cost for the program; and

(B) an identification of existing programs or technologies that are similar to the technology, or that have a mission similar to the mission, of the program that is the subject of the report.

(3) NEW PROGRAM BEING MANAGED UNDER ALTERNATIVE COMPENSATORY CONTROL MEASURES DEFINED.—In this subsection, the term ''new program being managed under alternative compensatory control measures'' means a program in the Department that has not previously been covered by a report under this subsection.

(c) REPORT ON CHANGE IN CLASSIFICATION OR DECLASSIFICATION OF PROGRAMS.—

(1) IN GENERAL.—Whenever a change in the classification of a program being managed under alternative compensatory control measures in the Department is planned to be made, or whenever classified information concerning a program being managed under alternative compensatory control measures in the Department is to be declassified and made public, the Secretary shall submit to the congressional defense committees a report containing a de-

scription of the proposed change, the reasons for the proposed change, and notice of any public announcement planned to be made with respect to the proposed change.

(2) DEADLINE FOR REPORT.—Except as provided in paragraph (3), a report required by paragraph (1) shall be submitted not less than 14 days before the date on which the proposed change or public announcement concerned is to occur.

(3) EXCEPTION.—If the Secretary determines that because of exceptional circumstances the requirement in paragraph (2) cannot be met with respect to a proposed change or public announcement concerning a program covered by paragraph (1), the Secretary may submit the report required by that paragraph regarding the proposed change or public announcement at any time before the proposed change or public announcement is made, and shall include in the report an explanation of the exceptional circumstances.

(d) MODIFICATION OF CRITERIA OR POLICY FOR DESIGNATING PROGRAMS UNDER ACCMS.—Whenever there is a modification or termination of the policy or criteria used for designating a program as a program being managed under alternative compensatory control measures in the Department, the Secretary shall promptly notify the congressional defense committees of such modification or termination. Any such notification shall contain the reasons for the modification or termination and, in the case of a modification, the provisions of the policy or criteria as modified.

(e) WAIVER.—

(1) IN GENERAL.—The Secretary may waive any requirement in subsection (a), (b), or (c) that certain information be included in a report under such subsection if the Secretary determines that inclusion of that information in the report would adversely affect the national security. Any such waiver shall be made on a case-by-case basis.

(2) NOTICE TO CONGRESS.—If the Secretary exercises the authority in paragraph (1), the Secretary shall provide the information described in the applicable subsection with respect to the program concerned, and the justification for the waiver, jointly to the chairman and ranking minority member of each of the congressional defense committees.

(f) LIMITATION ON INITIATION OF PROGRAMS UNDER ACCMS.—

(1) NOTICE AND WAIT.—Except as provided in paragraph (2), a program to be managed under alternative compensatory control measures in the Department may not be initiated until—

(A) the congressional defense committees are notified of the program; and

(B) a period of 30 days elapses after such notification is received.

(2) EXCEPTION.—If the Secretary determines that waiting for the regular notification process before initiating a program as described in paragraph (1) would cause exceptionally grave damage to the national security, the Secretary may begin a program to be managed under alternative compensatory control measures in the Department before such waiting period elapses. The Secretary shall notify the congressional defense committees within 10 days of initiating a program under this paragraph, including a justification for the determination of the Secretary that waiting for the regular notification process would cause exceptionally grave damage to the national security.

(Added Pub. L. 114–328, div. A, title X, § 1062(a), Dec. 23, 2016, 130 Stat. 2405; amended Pub. L. 116–92, div. A, title XVII, § 1731(a)(4), Dec. 20, 2019, 133 Stat. 1812.)

AMENDMENTS

2019—Subsecs. (a), (b). Pub. L. 116–92 substituted ‘‘ACCMS’’ for ‘‘AACMS’’ in subsec. heading.

§ 120. Department of Defense executive aircraft controlled by Secretaries of military departments

(a) IN GENERAL.—The Secretary of Defense shall ensure that the Chief of the Air Force Special Air Mission Office is given the responsibility for coordination of scheduling all Department of Defense executive aircraft controlled by the Secretaries of the military departments in order to support required use travelers.

(b) RESPONSIBILITIES.—(1) Not later than 180 days after the date of the enactment of this section, the Secretary of each of the military departments shall execute a memorandum of understanding with the Air Force Special Air Mission Office regarding oversight and management of executive aircraft controlled by that military department.

(2) The Secretary of Defense shall be responsible for prioritizing travel when requests exceed available executive airlift capability.

(3) The Secretary of a military department shall maintain overall authority for scheduling the required use travelers of that military department on executive aircraft controlled by the Secretary. When an executive aircraft controlled by the Secretary of a military department is not supporting required use travelers of that military department, the Secretary of the military department shall make such executive aircraft available for scheduling of other required use travelers.

(c) LIMITATIONS.—(1) The Secretary of Defense may not establish a new command and control organization to support aircraft.

(2) No executive aircraft controlled by the Secretary of a military department may be permanently stationed at any location without a required use traveler without the approval of the Secretary of Defense.

(d) DEFINITIONS.—In this section:

(1) The term ‘‘required use traveler’’ has the meaning given such term in Department of Defense directive 4500.56, as in effect on the date of the enactment of this section.

(2) The term ‘‘executive aircraft’’ has the meaning given such term in Department of Defense directive 4500.43, as in effect on the date of the enactment of this section.

(Added Pub. L. 116–92, div. A, title X, § 1051(a), Dec. 20, 2019, 133 Stat. 1590.)

REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsecs. (b) and (d), is the date of enactment of Pub. L. 116–92, which was approved Dec. 20, 2019.

CHAPTER 3—GENERAL POWERS AND FUNCTIONS

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AMENDMENTS

2021—Pub. L. 116–283, div. A, title IX, §911(a)(2), title X, §1052(b), Jan. 1, 2021, 134 Stat. 3801, 3850, added items 125a and 127f.

2018—Pub. L. 115–232, div. A, title X, §1081(a)(2), title XVI, §1631(c)(1), Aug. 13, 2018, 132 Stat. 1983, 2123, struck out item 130g ''Authorities concerning military cyber operations'' and made technical correction to and struck out items 130j ''Notification requirements for sensitive military cyber operations'' and 130k ''Notification requirements for cyber weapons''.

2017—Pub. L. 115–91, div. A, title XVI, §1631(b), Dec. 12, 2017, 131 Stat. 1738, added items 130j and 130k.

2016—Pub. L. 114–328, div. A, title X, §1036(f)(2), title XI, §1101(b)(2), title XII, §§1203(a)(2), 1245(b), title XVI, §§1662(a)(3), 1682(a)(2), 1697(b), Dec. 23, 2016, 130 Stat. 2392, 2444, 2476, 2520, 2614, 2624, 2640, added items 127e, 128, 130f, 130h, and 130i, substituted ''Civilian personnel management'' for ''Prohibition of certain civilian personnel management constraints'' in item 129, and struck out former items 127d ''Allied forces participating in combined operations: authority to provide logistic support, supplies, and services'', 128 ''Physical protection of special nuclear material: limitation on dissemination of unclassified information'', 130f ''Congressional notification of sensitive military operations'', and 130h ''Prohibitions on providing certain missile defense information to Russian Federation''.

2015—Pub. L. 114–92, div. A, title X, §1042(d)(2), title XVI, §§1642(b), 1671(a)(2), Nov. 25, 2015, 129 Stat. 977, 1116, 1130, added items 130g and 130h and substituted ''Department of Defense rewards program'' for ''Assistance in combating terrorism: rewards'' in item 127b.

2014—Pub. L. 113–291, div. A, title X, §1071(f)(2), Dec. 19, 2014, 128 Stat. 3510, substituted ''Treatment under Freedom of Information Act of certain critical infrastructure security information'' for ''Treatment under Freedom of Information Act of critical infrastructure security information'' in item 130e and ''Congressional notification of sensitive military operations'' for ''Congressional notification regarding sensitive military operations'' in item 130f.

2013—Pub. L. 113–66, div. A, title X, §§1041(a)(2), 1091(a)(2), Dec. 26, 2013, 127 Stat. 857, 875, added item 130f and substituted ''Treatment under Freedom of Information Act of critical infrastructure security information'' for ''Treatment under Freedom of Information Act of certain critical infrastructure security information'' in item 130e.

2011—Pub. L. 112–81, div. A, title VIII, §802(a)(2), title IX, §931(b), title X, §1091(b), Dec. 31, 2011, 125 Stat. 1485, 1543, 1605, added items 129d and 130e and substituted ''General policy for total force management'' for ''General personnel policy'' in item 129a.

Pub. L. 111–383, div. A, title X, §1061(a)(2), Jan. 7, 2011, 124 Stat. 4362, added item 122a.

2008—Pub. L. 110–417, [div. A], title IV, §416(c)(2), Oct. 14, 2008, 122 Stat. 4430, substituted ''Suspension of end-strength and other strength limitations in time of war or national emergency'' for ''Suspension of end-strength limitations in time of war or national emergency'' in item 123a.

Pub. L. 110–181, div. A, title X, §1063(a)(1)(B), Jan. 28, 2008, 122 Stat. 321, which directed amendment of chapter 3 of title 10 ''by revising the table of sections at the beginning of such chapter to reflect the redesignation and transfer made by paragraph (1)'', was executed to reflect the probable intent of Congress by amending the analysis to this chapter to reflect the redesignation and transfer made by section 1063(a)(1)(A) of Pub. L. 110–181, which redesignated the section 127c relating to allied forces participating in combined operations as 127d, and transferred it so as to appear immediately after section 127c relating to purchase of weapons overseas.

Pub. L. 110–181, div. A, title IX, §901(a)(2), Jan. 28, 2008, 122 Stat. 272, struck out item 130a ''Major Department of Defense headquarters activities personnel: limitation''.

2006—Pub. L. 109–364, div. A, title XII, §1201(b), title XIV, §1405(b), Oct. 17, 2006, 120 Stat. 2412, 2436, added items 127c, relating to allied forces participating in combined operations, and 130d.

Pub. L. 109–163, div. A, title XII, §1231(b), Jan. 6, 2006, 119 Stat. 3468, added item 127c relating to purchase of weapons overseas.

2003—Pub. L. 108–136, div. A, title VIII, §841(b)(2), Nov. 24, 2003, 117 Stat. 1552, substituted ''Authority to pro-

cure personal services'' for ''Experts and consultants: authority to procure services of'' in item 129b.

2002—Pub. L. 107–314, div. A, title X, §1065(b), Dec. 2, 2002, 116 Stat. 2656, added item 127b.

2000—Pub. L. 106–398, §1 [[div. A], title X, §1073(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–280, added item 130c.

1999—Pub. L. 106–65, div. A, title IX, §921(a)(2), title X, §1044(b), Oct. 5, 1999, 113 Stat. 723, 762, substituted ''Major Department of Defense headquarters activities personnel: limitation'' for ''Management headquarters and headquarters support activities personnel: limitation'' in item 130a and added item 130b.

1997—Pub. L. 105–85, div. A, title IX, §911(a)(2), Nov. 18, 1997, 111 Stat. 1858, added item 130a.

1996—Pub. L. 104–106, div. A, title XV, §1504(a)(8), Feb. 10, 1996, 110 Stat. 513, made technical correction to directory language of Pub. L. 103–337, §1312(a)(2). See 1994 Amendment note below.

Pub. L. 104–106, div. A, title V, §564(a)(2), title X, §1003(a)(2), Feb. 10, 1996, 110 Stat. 326, 417, substituted ''Operations for which funds are not provided in advance: funding mechanisms'' for ''Expenses for contingency operations'' in item 127a and added item 129c.

1994—Pub. L. 103–337, div. A, title XVI, §1671(b)(2), Oct. 5, 1994, 108 Stat. 3013, added item 123 and struck out former item 123 ''Suspension of certain provisions of law relating to reserve commissioned officers''.

Pub. L. 103–337, div. A, title XIII, §1312(a)(2), Oct. 5, 1994, 108 Stat. 2894, as amended by Pub. L. 104–106, div. A, title XV, §1504(a)(8), Feb. 10, 1996, 110 Stat. 513, added item 123b.

1993—Pub. L. 103–160, div. A, title XI, §1108(a)(2), Nov. 30, 1993, 107 Stat. 1752, added item 127a.

1990—Pub. L. 101–510, div. A, title XIV, §§1481(b)(2), 1483(c)(2), Nov. 5, 1990, 104 Stat. 1705, 1715, added items 123a, 129a, and 129b.

1989—Pub. L. 101–189, div. A, title XII, §1202(a)(2), Nov. 29, 1989, 103 Stat. 1563, added item 124.

1987—Pub. L. 100–180, div. A, title XI, §1123(b), Dec. 4, 1987, 101 Stat. 1150, added item 128.

Pub. L. 100–26, §9(b)(1), Apr. 21, 1987, 101 Stat. 287, struck out item 128 ''Funds transfers for foreign cryptologic support''.

1986—Pub. L. 99–433, title I, §110(c)(2), (e)(1), title II, §211(c)(2), Oct. 1, 1986, 100 Stat. 1002, 1003, 1017, inserted ''and Functions'' after ''General Powers'' in chapter heading, struck out item 124 ''Combatant commands: establishment; composition; functions; administration and support'', and added items 127 to 130.

1962—Pub. L. 87–651, title II, §201(b), Sept. 7, 1962, 76 Stat. 517, added items 124 to 126.

1958—Pub. L. 85–861, §1(2)(B), Sept. 2, 1958, 72 Stat. 1437, added items 122 and 123.

§121. Regulations

The President may prescribe regulations to carry out his functions, powers, and duties under this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 6.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
121	[No source].	[No source].

The revised section is inserted to make express the President's general authority to issue regulations, which has been expressly reflected in many laws and left to inference in the remainder.

§122. Official registers

The Secretary of a military department may have published, annually or at such other times as he may designate, official registers containing the names of, and other pertinent information about, such regular and reserve officers of the armed forces under his jurisdiction as he considers appropriate. The register may also contain any other list that the Secretary considers appropriate.

(Added Pub. L. 85–861, §1(2)(A), Sept. 2, 1958, 72 Stat. 1437.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
122	10 App.:20b. 34 App.:609.	July 24, 1956, ch. 677, §1, 70 Stat. 623.

§122a. Public availability of Department of Defense reports required by law

(a) IN GENERAL.—To the maximum extent practicable, on or after the date on which each report described in subsection (b) is submitted to Congress, the Secretary of Defense, acting through the Assistant to the Secretary of Defense for Public Affairs, shall ensure that the report is made available to the public by—

(1) posting the report on a publicly accessible Internet website of the Department of Defense; and

(2) upon request, transmitting the report by other means, as long as such transmission is at no cost to the Department.

(b) COVERED REPORTS.—(1) Except as provided in paragraph (2), a report described in this subsection is any report that is required by law to be submitted to Congress by the Secretary of Defense, or by any element of the Department of Defense.

(2) A report otherwise described in paragraph (1) is not a report described in this subsection if the report contains—

(A) classified information;

(B) proprietary information;

(C) information that is exempt from disclosure under section 552 of title 5 (commonly referred to as the ''Freedom of Information Act''); or

(D) any other type of information that the Secretary of Defense determines should not be made available to the public in the interest of national security.

(Added Pub. L. 111–383, div. A, title X, §1061(a)(1), Jan. 7, 2011, 124 Stat. 4362; amended Pub. L. 112–81, div. A, title X, §1068, Dec. 31, 2011, 125 Stat. 1589; Pub. L. 113–66, div. A, title X, §1081(a), Dec. 26, 2013, 127 Stat. 871; Pub. L. 115–91, div. A, title X, §1081(a)(3), Dec. 12, 2017, 131 Stat. 1594.)

AMENDMENTS

2017—Subsec. (a). Pub. L. 115–91 substituted ''acting through the Assistant to the Secretary of Defense for Public Affairs'' for ''acting through the Office of the Assistant Secretary of Defense for Public Affairs'' in introductory provisions.

2013—Subsec. (a). Pub. L. 113–66 amended subsec. (a) generally. Prior to amendment, text read as follows: ''The Secretary of Defense shall ensure that each report described in subsection (b) is

''(1) made available to the public, upon request submitted on or after the date on which such report is submitted to Congress, through the Office of the Assistant Secretary of Defense for Public Affairs; and

''(2) to the maximum extent practicable, transmitted in an electronic format.''

2011—Subsec. (a). Pub. L. 112–81 substituted pars. (1) and (2) for "made available to the public, upon request submitted on or after the date on which such report is submitted to Congress, through the Office of the Assistant Secretary of Defense for Public Affairs."

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 113–66, div. A, title X, §1081(b), Dec. 26, 2013, 127 Stat. 871, provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to reports submitted to Congress after the date of the enactment of this Act [Dec. 26, 2013]."

EFFECTIVE DATE

Pub. L. 111–383, div. A, title X, §1061(b), Jan. 7, 2011, 124 Stat. 4362, provided that: "Section 122a of title 10, United States Code (as added by subsection (a)), shall take effect 90 days after the date of the enactment of this Act [Jan. 7, 2011], and shall apply with respect to reports that are required by law to be submitted to Congress on or after that date."

PUBLIC AVAILABILITY OF DEPARTMENT OF DEFENSE LEGISLATIVE PROPOSALS

Pub. L. 116–283, div. A, title X, §1059, Jan. 1, 2021, 134 Stat. 3857, provided that: "Not later than 21 days after the transmission to the Committee on Armed Services of the Senate or the Committee on Armed Services of the House of Representatives of any official Department of Defense legislative proposal, the Secretary of Defense shall make publicly available on a website of the Department such legislative proposal, including any bill text and section-by-section analysis associated with the proposal."

PUBLIC AVAILABILITY OF TOP-LINE NUMBERS OF DEPLOYED MEMBERS OF THE ARMED FORCES

Pub. L. 115–232, div. A, title V, §595, Aug. 13, 2018, 132 Stat. 1789, provided that:

"(a) IN GENERAL.—Except as provided in subsection (b), the Secretary of Defense shall make publicly available, on a quarterly basis, on a website of the Department the top-line numbers of members of the Armed Forces deployed for each country as of the date of the submittal of the report and the total number of members of the Armed Forces so deployed during the quarter covered by the report.

"(b) WAIVER.—

"(1) IN GENERAL.—The Secretary may waive the requirement under subsection (a) in the case of a sensitive military operation if—

"(A) the Secretary determines the public disclosure of the number of deployed members of the Armed Forces could reasonably be expected to provide an operational military advantage to an adversary; or

"(B) members of the Armed Forces are deployed for a period that does not exceed 30 days.

"(2) NOTICE.— If the Secretary issues a waiver under this subsection, the Secretary shall submit to the Committees on Armed Services of the Senate and House of Representatives—

"(A) a notice of the waiver; and

"(B) the reasons for the determination to issue the waiver.

"(c) SENSITIVE MILITARY OPERATION DEFINED.—The term 'sensitive military operation' has the meaning given that term in section 130f(d) of title 10, United States Code."

§ 123. Authority to suspend officer personnel laws during war or national emergency

(a) In time of war, or of national emergency declared by Congress or the President after November 30, 1980, the President may suspend the operation of any provision of law relating to the promotion, involuntary retirement, or separation of commissioned officers of the Army, Navy, Air Force, Marine Corps, Space Force, or Coast Guard Reserve. So long as such war or national emergency continues, any such suspension may be extended by the President.

(b) Any such suspension shall, if not sooner ended, end on the last day of the two-year period beginning on the date on which the suspension (or the last extension thereof) takes effect or on the last day of the one-year period beginning on the date of the termination of the war or national emergency, whichever occurs first. With respect to the end of any such suspension, the preceding sentence supersedes the provisions of title II of the National Emergencies Act (50 U.S.C. 1621–1622) which provide that powers or authorities exercised by reason of a national emergency shall cease to be exercised after the date of the termination of the emergency.

(c) If a provision of law pertaining to the promotion of reserve officers is suspended under this section and if the Secretary of Defense submits to Congress proposed legislation to adjust the grades and dates of rank of reserve commissioned officers other than commissioned warrant officers, such proposed legislation shall, so far as practicable, be the same as that recommended for adjusting the grades and dates of rank of officers of the regular component of the armed force concerned.

(d) Upon the termination of a suspension made under the authority of subsection (a) of a provision of law otherwise requiring the separation or retirement of officers on active duty because of age, length of service or length of service in grade, or failure of selection for promotion, the Secretary concerned shall extend by up to 90 days the otherwise required separation or retirement date of any officer covered by the suspended provision whose separation or retirement date, but for the suspension, would have been before the date of the termination of the suspension or within 90 days after the date of such termination.

(Added Pub. L. 85–861, §1(2)(A), Sept. 2, 1958, 72 Stat. 1437; amended Pub. L. 86–559, §1(1), June 30, 1960, 74 Stat. 264; Pub. L. 89–718, §1, Nov. 2, 1966, 80 Stat. 1115; Pub. L. 90–130, §1(1), Nov. 8, 1967, 81 Stat. 374; Pub. L. 96–513, title V, §§501(3), 511(1), Dec. 12, 1980, 94 Stat. 2907, 2920; Pub. L. 97–22, §10(b)(1), July 10, 1981, 95 Stat. 137; Pub. L. 103–337, div. A, title XVI, §1622(a), Oct. 5, 1994, 108 Stat. 2961; Pub. L. 104–106, div. A, title XV, §1501(c)(4), Feb. 10, 1996, 110 Stat. 498; Pub. L. 107–107, div. A, title V, §508(b), Dec. 28, 2001, 115 Stat. 1090; Pub. L. 116–283, div. A, title IX, §924(b)(2)(A)(i), Jan. 1, 2021, 134 Stat. 3821.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
123	50:1199 (less applicability to National Guard).	Sept. 3, 1954, ch. 1257, §209 (less applicability to National Guard), 68 Stat. 1152.

In subsection (b), the words "the same as" are substituted for the word "comparable", since any necessary differences in the recommended legislation between Reserves and Regulars are fully taken account of in the words "So far as practicable".

REFERENCES IN TEXT

The National Emergencies Act, referred to in subsec. (b), is Pub. L. 94–412, Sept. 14, 1976, 90 Stat. 1255, as amended. Title II of the Act is classified generally to subchapter II (§1621 et seq.) of chapter 34 of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 50 and Tables.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 644 of this title prior to repeal by Pub. L. 103–337, §1622(b).

AMENDMENTS

2021—Subsec. (a). Pub. L. 116–283 substituted ''Marine Corps, Space Force,'' for ''Marine Corps,''.

2001—Subsec. (d). Pub. L. 107–107 added subsec. (d).

1996—Subsec. (a). Pub. L. 104–106 struck out ''281, 592, 1002, 1005, 1006, 1007, 1374, 3217, 3218, 3219, 3220, 3352(a) (last sentence),'' after ''armed force:'', ''5414, 5457, 5458, 5506,'' after ''3855,'', and ''8217, 8218, 8219,'' after ''6410,'' and substituted ''8855, 10214, 12003, 12004, 12005, 12007, 12202, 12213(a) (second sentence), 12642, 12645, 12646, 12647, 12771, 12772, and 12773'' for ''and 8855''.

1994—Pub. L. 103–337 substituted ''Authority to suspend officer personnel laws during war or national emergency'' for ''Suspension of certain provisions of law relating to reserve commissioned officers'' as section catchline and amended text generally, substituting subsecs. (a) to (c) for former subsecs. (a) and (b).

1981—Subsec. (a). Pub. L. 97–22 struck out references to sections 3494 and 8494.

1980—Subsec. (a). Pub. L. 96–513 struck out references to sections 3571, 3847, 5867, 8370, 8571, and 8847.

1967—Subsec. (a). Pub. L. 90–130 struck out reference to section 3391.

1966—Subsec. (a). Pub. L. 89–718 struck out reference to section 5907.

1960—Subsec. (a). Pub. L. 86–559 inserted references to sections 281, 3855, and 8855 and struck out references to sections 3841, 3842, 3849, 8841, 8842, and 8849.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–106, div. A, title XV, §1501(c), Feb. 10, 1996, 110 Stat. 498, provided that the amendment made by that section is effective as of Dec. 1, 1994, and as if included as an amendment made by the Reserve Officer Personnel Management Act, title XVI of Pub. L. 103–337, as originally enacted.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective Oct. 1, 1996, see section 1691(b)(1) of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97–22, §10(b), July 10, 1981, 95 Stat. 137, provided that the amendment made by that section is effective Sept. 15, 1981.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by section 501(3) of Pub. L. 96–513, striking out references to sections 3571, 5867, and 8571, effective Sept. 15, 1981, and amendment by section 511(1) of Pub. L. 96–513, striking out references to sections 3847, 8370, and 8847, effective Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

DELEGATION OF FUNCTIONS

Functions of President under this section delegated to Secretary of Defense, see section 1(11) of Ex. Ord. No. 11390, Jan. 22, 1968, 33 F.R. 841, set out as a note under section 301 of Title 3, The President.

DELEGATION OF AUTHORITY

Authority of President under this section as invoked by sections 2 and 3 of Ex. Ord. No. 13223, Sept. 14, 2001, 66 F.R. 48201, as amended, delegated to Secretary of Defense by section 4 of Ex. Ord. No. 13223, and authority of President under this section as invoked by section 2 of Ex. Ord. No. 13223 delegated to Secretary of Homeland Security by section 5 of Ex. Ord. No. 13223, as amended, set out as a note under section 12302 of this title.

§ 123a. Suspension of end-strength and other strength limitations in time of war or national emergency

(a) DURING WAR OR NATIONAL EMERGENCY.—(1) If at the end of any fiscal year there is in effect a war or national emergency, the President may waive any statutory end strength with respect to that fiscal year. Any such waiver may be issued only for a statutory end strength that is prescribed by law before the waiver is issued.

(2) When a designation of a major disaster or emergency (as those terms are defined in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122)) is in effect, the President may waive any statutory limit that would otherwise apply during the period of the designation on the number of members of a reserve component who are authorized to be on active duty under subparagraph (A) or (B) of section 115(b)(1) of this title, if the President determines the waiver is necessary to provide assistance in responding to the major disaster or emergency.

(b) TERMINATION OF WAIVER.—(1) Upon the termination of a war or national emergency with respect to which the President has exercised the authority provided by subsection (a)(1), the President may defer the effectiveness of any statutory end strength with respect to the fiscal year during which the termination occurs. Any such deferral may not extend beyond the last day of the sixth month beginning after the date of such termination.

(2) A waiver granted under subsection (a)(2) shall terminate not later than 90 days after the date on which the designation of the major disaster or emergency that was the basis for the waiver expires.

(c) STATUTORY END STRENGTH.—In this section, the term ''statutory end strength'' means any end-strength limitation with respect to a fiscal year that is prescribed by law for any military or civilian component of the armed forces or of the Department of Defense.

(Added Pub. L. 101–510, div. A, title XIV, §1483(b)(1), Nov. 5, 1990, 104 Stat. 1715; amended Pub. L. 107–107, div. A, title IV, §421(b), Dec. 28, 2001, 115 Stat. 1076; Pub. L. 110–417, [div. A], title IV, §416(a)–(c)(1), Oct. 14, 2008, 122 Stat. 4430.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 115(b)(4) of this title, prior to repeal by Pub. L. 101–510, § 1483(a).

AMENDMENTS

2008—Pub. L. 110–417 in section catchline substituted "Suspension of end-strength and other strength limitations in time of war or national emergency" for "Suspension of end-strength limitations in time of war or national emergency", in subsec. (a) designated existing provisions as par. (1) and added par. (2), and in subsec. (b) substituted "Termination of Waiver" for "Upon Termination of War or National Emergency" in heading, designated existing provisions as par. (1), substituted "subsection (a)(1)" for "subsection (a)", and added par. (2).

2001—Pub. L. 107–107 amended text generally. Prior to amendment, text read as follows: "If at the end of any fiscal year there is in effect a war or national emergency, the President may defer the effectiveness of any end-strength limitation with respect to that fiscal year prescribed by law for any military or civilian component of the armed forces or of the Department of Defense. Any such deferral may not extend beyond November 30 of the following fiscal year."

DELEGATION OF AUTHORITY

Authority of President under this section as invoked by sections 2 and 3 of Ex. Ord. No. 13223, Sept. 14, 2001, 66 F.R. 48201, as amended, delegated to Secretary of Defense by section 4 of Ex. Ord. No. 13223, and authority of President under this section as invoked by section 2 of Ex. Ord. No. 13223 delegated to Secretary of Homeland Security by section 5 of Ex. Ord. No. 13223, as amended, set out as a note under section 12302 of this title.

§ 123b. Forces stationed abroad: limitation on number

(a) END-STRENGTH LIMITATION.—No funds appropriated to the Department of Defense may be used to support a strength level of members of the armed forces assigned to permanent duty ashore in nations outside the United States at the end of any fiscal year at a level in excess of 203,000.

(b) EXCEPTION FOR WARTIME.—Subsection (a) does not apply in the event of a declaration of war or an armed attack on any member nation of the North Atlantic Treaty Organization, Japan, the Republic of Korea, or any other ally of the United States.

(c) PRESIDENTIAL WAIVER.—The President may waive the operation of subsection (a) if the President declares an emergency. The President shall immediately notify Congress of any such waiver.

(Added Pub. L. 103–337, div. A, title XIII, § 1312(a)(1), Oct. 5, 1994, 108 Stat. 2894.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in Pub. L. 102–484, div. A, title XIII, § 1302, Oct. 23, 1992, 106 Stat. 2545, which was set out as a note under section 113 of this title, prior to repeal by Pub. L. 103–337, § 1312(c).

EFFECTIVE DATE

Pub. L. 103–337, div. A, title XIII, § 1312(b), Oct. 5, 1994, 108 Stat. 2894, provided that: "Section 123b of title 10, United States Code, as added by subsection (a), does not apply with respect to a fiscal year before fiscal year 1996."

§ 124. Detection and monitoring of aerial and maritime transit of illegal drugs: Department of Defense to be lead agency

(a) LEAD AGENCY.—(1) The Department of Defense shall serve as the single lead agency of the Federal Government for the detection and monitoring of aerial and maritime transit of illegal drugs into the United States.

(2) The responsibility conferred by paragraph (1) shall be carried out in support of the counter-drug activities of Federal, State, local, and foreign law enforcement agencies.

(b) PERFORMANCE OF DETECTION AND MONITORING FUNCTION.—(1) To carry out subsection (a), Department of Defense personnel may operate equipment of the Department to intercept a vessel or an aircraft detected outside the land area of the United States for the purposes of—

(A) identifying and communicating with that vessel or aircraft; and

(B) directing that vessel or aircraft to go to a location designated by appropriate civilian officials.

(2) In cases in which a vessel or an aircraft is detected outside the land area of the United States, Department of Defense personnel may begin or continue pursuit of that vessel or aircraft over the land area of the United States.

(c) UNITED STATES DEFINED.—In this section, the term "United States" means the land area of the several States and any territory, commonwealth, or possession of the United States.

(Added Pub. L. 101–189, div. A, title XII, § 1202(a)(1), Nov. 29, 1989, 103 Stat. 1563; amended Pub. L. 102–190, div. A, title X, § 1088(b), Dec. 5, 1991, 105 Stat. 1485.)

PRIOR PROVISIONS

A prior section 124, added Pub. L. 87–651, title II, § 201(a), Sept. 7, 1962, 76 Stat. 514; amended Pub. L. 98–525, title XIII, § 1301(a), Oct. 19, 1984, 98 Stat. 2611; Pub. L. 99–145, title XIII, § 1303(a)(1), Nov. 8, 1985, 99 Stat. 738, related to establishment, composition, and functions of combatant commands, prior to repeal by Pub. L. 99–433, § 211(c)(1). See section 161 et seq. of this title. Similar provisions were contained in Pub. L. 100–456, div. A, title XI, § 1102, Sept. 29, 1988, 102 Stat. 2042, which was set out as a note under section 113 of this title, prior to repeal by Pub. L. 101–189, § 1202(b).

AMENDMENTS

1991—Subsec. (a). Pub. L. 102–190 designated existing provisions as par. (1) and added par. (2).

CONDITION ON DEVELOPMENT OF FORWARD OPERATING LOCATIONS FOR UNITED STATES SOUTHERN COMMAND COUNTER-DRUG DETECTION AND MONITORING FLIGHTS

Pub. L. 106–65, div. A, title X, § 1024, Oct. 5, 1999, 113 Stat. 748, provided that:

"(a) CONDITION.—Except as provided in subsection (b), none of the funds appropriated or otherwise made available to the Department of Defense for any fiscal year may be obligated or expended for the purpose of improving the physical infrastructure at any proposed forward operating location outside the United States from which the United States Southern Command may conduct counter-drug detection and monitoring flights until a formal agreement regarding the extent and use of, and host nation support for, the forward operating location is executed by both the host nation and the United States.

"(b) EXCEPTION.—The limitation in subsection (a) does not apply to an unspecified minor military con-

struction project authorized by section 2805 of title 10, United States Code.''

COUNTER-DRUG DETECTION AND MONITORING SYSTEMS PLAN

Pub. L. 102–484, div. A, title X, § 1043, Oct. 23, 1992, 106 Stat. 2492, provided that:

''(a) REQUIREMENTS OF DETECTION AND MONITORING SYSTEMS.—The Secretary of Defense shall establish requirements for counter-drug detection and monitoring systems to be used by the Department of Defense in the performance of its mission under section 124(a) of title 10, United States Code, as lead agency of the Federal Government for the detection and monitoring of the transit of illegal drugs into the United States. Such requirements shall be designed—

''(1) to minimize unnecessary redundancy between counter-drug detection and monitoring systems;

''(2) to grant priority to assets and technologies of the Department of Defense that are already in existence or that would require little additional development to be available for use in the performance of such mission;

''(3) to promote commonality and interoperability between counter-drug detection and monitoring systems in a cost-effective manner; and

''(4) to maximize the potential of using counter-drug detection and monitoring systems for other defense missions whenever practicable.

''(b) EVALUATION OF SYSTEMS.—The Secretary of Defense shall identify and evaluate existing and proposed counter-drug detection and monitoring systems in light of the requirements established under subsection (a). In carrying out such evaluation, the Secretary shall—

''(1) assess the capabilities, strengths, and weaknesses of counter-drug detection and monitoring systems; and

''(2) determine the optimal and most cost-effective combination of use of counter-drug detection and monitoring systems to carry out activities relating to the reconnaissance, detection, and monitoring of drug traffic.

''(c) SYSTEMS PLAN.—Based on the results of the evaluation under subsection (b), the Secretary of Defense shall prepare a plan for the development, acquisition, and use of improved counter-drug detection and monitoring systems by the Armed Forces. In developing the plan, the Secretary shall also make every effort to determine which counter-drug detection and monitoring systems should be eliminated from the counter-drug program based on the results of such evaluation. The plan shall include an estimate by the Secretary of the full cost to implement the plan, including the cost to develop, procure, operate, and maintain equipment used in counter-drug detection and monitoring activities performed under the plan and training and personnel costs associated with such activities.

''(d) REPORT.—Not later than six months after the date of the enactment of this Act [Oct. 23, 1992], the Secretary of Defense shall submit to Congress a report on the requirements established under subsection (a) and the results of the evaluation conducted under subsection (b). The report shall include the plan prepared under subsection (c).

''(e) LIMITATION ON OBLIGATION OF FUNDS.—(1) Except as provided in paragraph (2), none of the funds appropriated or otherwise made available for the Department of Defense for fiscal year 1993 pursuant to an authorization of appropriations in this Act [see Tables for classification] may be obligated or expended for the procurement or upgrading of a counter-drug detection and monitoring system, for research and development with respect to such a system, or for the lease or rental of such a system until after the date on which the Secretary of Defense submits to Congress the report required under subsection (d).

''(2) Paragraph (1) shall not prohibit obligations or expenditures of funds for—

''(A) any procurement, upgrading, research and development, or lease of a counter-drug detection and monitoring system that is necessary to carry out the evaluation required under subsection (b); or

''(B) the operation and maintenance of counter-drug detection and monitoring systems used by the Department of Defense as of the date of the enactment of this Act.

''(f) DEFINITION.—For purposes of this section, the term 'counter-drug detection and monitoring systems' means land-, air-, and sea-based detection and monitoring systems suitable for use by the Department of Defense in the performance of its mission—

''(1) under section 124(a) of title 10, United States Code, as lead agency of the Federal Government for the detection and monitoring of the aerial and maritime transit of illegal drugs into the United States; and

''(2) to provide support to law enforcement agencies in the detection, monitoring, and communication of the movement of traffic at, near, and outside the geographic boundaries of the United States.''

INTEGRATION OF COMMUNICATIONS NETWORK

Pub. L. 101–189, div. A, title XII, § 1204(a), Nov. 29, 1989, 103 Stat. 1564, provided that:

''(1) The Secretary of Defense shall integrate into an effective communications network the command, control, communications, and technical intelligence assets of the United States that are dedicated (in whole or in part) to the interdiction of illegal drugs into the United States.

''(2) The Secretary shall carry out this subsection in consultation with the Director of National Drug Control Policy.''

RESEARCH AND DEVELOPMENT

Pub. L. 101–189, div. A, title XII, § 1205, Nov. 29, 1989, 103 Stat. 1564, provided that: ''The Secretary of Defense shall ensure that adequate research and development activities of the Department of Defense, including research and development activities of the Defense Advanced Research Projects Agency, are devoted to technologies designed to improve—

''(1) the ability of the Department to carry out the detection and monitoring function of the Department under section 124 of title 10, United States Code, as added by section 1202; and

''(2) the ability to detect illicit drugs and other dangerous and illegal substances that are concealed in containers.''

TRAINING EXERCISES IN DRUG-INTERDICTION AREAS

Pub. L. 101–189, div. A, title XII, § 1206, Nov. 29, 1989, 103 Stat. 1564, provided that:

''(a) EXERCISES REQUIRED.—The Secretary of Defense shall direct that the armed forces, to the maximum extent practicable, shall conduct military training exercises (including training exercises conducted by the reserve components) in drug-interdiction areas.

''(b) REPORT.—(1) Not later than February 1 of 1991 and 1992, the Secretary shall submit to Congress a report on the implementation of subsection (a) during the preceding fiscal year.

''(2) The report shall include—

''(A) a description of the exercises conducted in drug-interdiction areas and the effectiveness of those exercises in the national counter-drug effort; and

''(B) a description of those additional actions that could be taken (and an assessment of the results of those actions) if additional funds were made available to the Department of Defense for additional military training exercises in drug-interdiction areas for the purpose of enhancing interdiction and deterrence of drug smuggling.

''(c) DRUG-INTERDICTION AREAS DEFINED.—For purposes of this section, the term 'drug-interdiction areas' includes land and sea areas in which, as determined by the Secretary, the smuggling of drugs into the United States occurs or is believed by the Secretary to have occurred.''

§ 125. Functions, powers, and duties: transfer, reassignment, consolidation, or abolition

(a) Subject to section 2 of the National Security Act of 1947 (50 U.S.C. 3002), the Secretary of Defense shall take appropriate action (including the transfer, reassignment, consolidation, or abolition of any function, power, or duty) to provide more effective, efficient, and economical administration and operation, and to eliminate duplication, in the Department of Defense. However, except as provided by subsections (b) and (c), a function, power, or duty vested in the Department of Defense, or an officer, official, or agency thereof, by law may not be substantially transferred, reassigned, consolidated, or abolished.

(b) Notwithstanding subsection (a), if the President determines it to be necessary because of hostilities or an imminent threat of hostilities, any function, power, or duty vested by law in the Department of Defense, or an officer, official, or agency thereof, including one assigned to the Army, Navy, Air Force, Marine Corps, or Space Force by section 7062(b), 8062, 8063, 9062(c), or 9081 of this title, may be transferred, reassigned, or consolidated. The transfer, reassignment, or consolidation remains in effect until the President determines that hostilities have terminated or that there is no longer an imminent threat of hostilities, as the case may be.

(c) Notwithstanding subsection (a), the Secretary of Defense may assign or reassign the development and operational use of new weapons or weapons systems to one or more of the military departments or one or more of the armed forces.

(Added Pub. L. 87–651, title II, § 201(a), Sept. 7, 1962, 76 Stat. 515; amended Pub. L. 89–501, title IV, § 401, July 13, 1966, 80 Stat. 278; Pub. L. 98–525, title XIV, § 1405(1), Oct. 19, 1984, 98 Stat. 2621; Pub. L. 99–433, title I, § 103, title III, § 301(b)(1), title V, § 514(c)(1), Oct. 1, 1986, 100 Stat. 996, 1022, 1055; Pub. L. 101–510, div. A, title XIII, § 1301(3), Nov. 5, 1990, 104 Stat. 1668; Pub. L. 113–291, div. A, title X, § 1071(c)(1), Dec. 19, 2014, 128 Stat. 3508; Pub. L. 115–232, div. A, title VIII, § 809(a), Aug. 13, 2018, 132 Stat. 1840; Pub. L. 116–283, div. A, title IX, § 924(b)(3)(A), (b)(6), Jan. 1, 2021, 134 Stat. 3821, 3822.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
125(a)	5:171a(c)(1), (2). 5:171n(a) (as applicable to 5:171a(c)(1)).	July 26, 1947, ch. 343, § 202(c)(1), (2), (4), (5), (6); added Aug. 10, 1949, ch. 412, § 5(3d, 4th, 6th, 7th, and 8th pars.); restated Aug. 6, 1958, Pub. L. 85–599, § 3(a), (1st, 2d, 5th, 6th, and 7th pars.), 72 Stat. 514, 515. July 26, 1947, ch. 343, § 308(a) (as applicable to § 202(c)(1), (5), (6)), 61 Stat. 509.
125(b)	5:171a(c)(5). 5:171n(a) (as applicable to 5:171a(c)(5)).	
125(c)	5:171a(c)(4).	
125(d)	5:171a(c)(6). 5:171n(a) (as applicable to 5:171a(c)(6)).	

In subsection (a), the following substitutions are made: ‘‘Except as provided by subsections (b) and (c)’’ for ‘‘except as otherwise provided in this subsection’’; ‘‘vested . . . by law’’ for ‘‘established by law to be performed by’’; ‘‘recommending’’ for ‘‘stating’’; ‘‘proposes’’ for ‘‘contemplates’’; and ‘‘the period’’ for ‘‘the thirty-day period or the forty-day period’’. The words ‘‘on the first day after’’ are inserted for clarity. The words ‘‘if carried out’’ are omitted as surplusage.

In subsection (b), the words ‘‘Notwithstanding subsection (a)’’ are substituted for the words ‘‘Notwithstanding other provisions of this subsection’’; and ‘‘Unless the President determines otherwise’’ for ‘‘subject to the determination of the President’’.

In subsection (c), the following substitutions are made: ‘‘Notwithstanding subsection (a)’’ for ‘‘Notwithstanding the provisions of paragraph (1) hereof’’; and ‘‘armed forces’’ for ‘‘services’’.

In subsection (d), the following substitutions are made: ‘‘In subsection (a) (1)’’ for ‘‘within the meaning of paragraph (1) hereof’’; and ‘‘considers’’ for ‘‘deems’’. The words ‘‘advantageous to the Government in terms of’’ are omitted as surplusage.

AMENDMENTS

2021—Subsec. (b). Pub. L. 116–283 substituted ‘‘Marine Corps, or Space Force’’ for ‘‘or Marine Corps’’ and ‘‘9062(c), or 9081’’ for ‘‘or 9062(c)’’.

2018—Subsec. (b). Pub. L. 115–232 substituted ‘‘section 7062(b), 8062, 8063, or 9062(c)’’ for ‘‘section 3062(b), 5062, 5063, or 8062(c)’’.

2014—Subsec. (a). Pub. L. 113–291 substituted ‘‘(50 U.S.C. 3002)’’ for ‘‘(50 U.S.C. 401)’’.

1990—Subsec. (c). Pub. L. 101–510 struck out at end ‘‘However, notwithstanding any other provision of this title or any other law, the Secretary of Defense shall not direct or approve a plan to initiate or effect a substantial reduction or elimination of a major weapons system until the Secretary of Defense has reported all the pertinent details of the proposed action to the Congress of the United States while the Congress is in session.’’

1986—Subsec. (a). Pub. L. 99–433, § 103(1), struck out provision under which the Secretary of Defense could substantially transfer, reassign, consolidate, or abolish functions, powers, or duties vested in the Department of Defense by law if the Secretary reported the details of the proposed transfer, reassignment, consolidation, or abolition to Congress and if Congress did not affirmatively reject the proposal.

Subsec. (b). Pub. L. 99–433, §§ 103(2), 514(c)(1), inserted ‘‘vested by law in the Department of Defense, or an officer, official, or agency thereof’’ and substituted ‘‘5062, 5063’’ for ‘‘5012, 5013’’.

Subsec. (d). Pub. L. 99–433, § 301(b)(1), struck out subsec. (d) which read as follows: ‘‘In subsection (a)(1), ‘major combatant function, power, or duty’ does not include a supply or service activity common to more than one military department. The Secretary of Defense shall, whenever he determines it will be more effective, economical, or efficient, provide for the performance of such an activity by one agency or such other organizations as he considers appropriate.’’

1984—Subsec. (a). Pub. L. 98–525 substituted ‘‘section 2 of the National Security Act of 1947 (50 U.S.C. 401)’’ for ‘‘section 401 of title 50’’.

1966—Subsec. (c). Pub. L. 89–501 required the Secretary of Defense to report to the Congress all the pertinent details regarding any substantial reduction or elimination of a major weapons system before action could be initiated or effected by the Department of Defense.

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115–232 effective Feb. 1, 2019, with provision for the coordination of amendments and special rule for certain redesignations, see section 800 of Pub. L. 115–232, set out as a note preceding section 3001 of this title.

RESOLUTIONS RELATING TO TRANSFERS, REASSIGNMENTS, CONSOLIDATIONS, OR ABOLITIONS OF COMBATANT FUNCTIONS

Pub. L. 87–651, title III, § 303, Sept. 7, 1962, 76 Stat. 525, provided that:

"(a) For the purposes of this section, any resolution reported to the Senate or the House of Representatives pursuant to the provisions of section 125 of title 10, United States Code, shall be treated for the purpose of consideration by either House, in the same manner as a resolution with respect to a reorganization plan reported by a committee within the meaning of the Reorganization Act of 1949 as in effect on July 1, 1958 (5 U.S.C. 133z and the following) [63 Stat. 203; 71 Stat. 611], and shall be governed by the provisions applicable to the consideration of any such resolution by either House of the Congress as provided by sections 205 and 206 of that Act [63 Stat. 207].

"(b) The provisions of this section are enacted by the Congress—

"(1) as an exercise of the rule-making power of the Senate and the House of Representatives, respectively, and as such they shall be considered as part of the rules of each House, respectively, and supersede other rules only to the extent that they are inconsistent therewith; and

"(2) with full recognition of the constitutional right of either House to change the rules (as far as relating to the procedure in that House) at any time, in the same manner and to the same extent as in the case of any other rule of that House."

§ 125a. Reform: improvement of efficacy and efficiency

(a) IN GENERAL.—The Secretary of Defense shall take such action as is necessary to reform the Department of Defense to improve the efficacy and efficiency of the Department, and to improve the ability of the Department to prioritize among and assess the costs and benefits of covered elements of reform.

(b) POLICY.—The Secretary shall develop a policy and issue guidance to implement reform within the Department and to improve the ability of the Department to prioritize among and assess the costs and benefits of covered elements of reform.

(c) FRAMEWORK FOR REFORM.—

(1) IN GENERAL.—Not later than February 1, 2022, the Secretary shall establish policies, guidance, and a consistent reporting framework to measure the progress of the Department toward covered elements of reform, including by establishing categories of reform, consistent metrics, and a process for prioritization of reform activities.

(2) SCOPE.—The framework required by paragraph (1) may address duties under the following:

(A) Section 125 of this title.
(B) Section 192 of this title.
(C) Section 2222 of this title.
(D) Section 1124 of title 31.
(E) Section 11319 of title 40.

(3) CONSULTATION.—The Secretary shall consult with the Deputy Secretary of Defense, the Performance Improvement Officer of the Department of Defense, the Chief Data Officer of the Department of Defense, the Chief Information Officer of the Department of Defense, and the financial managers of the military departments in carrying out activities under this subsection.

(d) COVERED ELEMENTS OF REFORM.—For purposes of this section and the policies, guidance, and reporting framework required by subsection (c), covered elements of reform may include the following:

(1) Business systems modernization.

(2) Enterprise business operations process reengineering.

(3) Expanded and modernized collection, management, dissemination, and visualization of data to support decision-making at all levels of the enterprise.

(4) Improvements in workforce training and education and increasing capabilities of the Department workforce to support and execute reform activities and business processes.

(5) Improvements to decision-making processes to enable cost savings, cost avoidance, or investments to develop process improvements.

(6) Such other elements as the Secretary considers appropriate.

(e) ANNUAL REPORT.—At the same time the budget of the President for a fiscal year is submitted to Congress pursuant to section 1105 of title 31, the Secretary shall, using the policies, guidance, and reporting framework required by subsection (c), submit to the congressional defense committees a report, including detailed narrative justifications and tradeoff analyses between options, on the actions of the Department as follows:

(1) The activities, expenditures, and accomplishments carried out or made to effect reform under this section during the fiscal year in which such budget is submitted.

(2) The proposed activities, expenditures, and accomplishments to effect reform under this section, and consistent with priorities established by the Secretary, during the fiscal year covered by such budget and each of the four succeeding fiscal years.

(Added Pub. L. 116–283, div. A, title IX, § 911(a)(1), Jan. 1, 2021, 134 Stat. 3800.)

IMPLEMENTING POLICIES, GUIDANCE, AND REPORTING FRAMEWORK

Pub. L. 116–283, div. A, title IX, § 911(b), Jan. 1, 2021, 134 Stat. 3801, provided that:

"(1) SUBMITTAL TO CONGRESS.—Not later than March 1, 2022, the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report setting forth the policies, guidance, and reporting framework established pursuant to subsection (c) of section 125a of title 10, United States Code (as added by subsection (a) of this section).

"(2) UPDATE.—Not later than 90 days after the date of the submittal to Congress of the report required by section 901(d) of this Act [10 U.S.C. 132a note], the Secretary shall update the reporting framework referred to in paragraph (1)."

§ 126. Transfer of funds and employees

(a) When a function, power, or duty or an activity of a department or agency of the Department of Defense is transferred or assigned to another department or agency of that department, balances of appropriations that the Secretary of Defense determines are available and needed to finance or discharge that function, power, duty, or activity, as the case may be, may, with the approval of the President, be transferred to the department or agency to which that function, power, duty or activity, as the case may be, is transferred, and used for any purpose for which those appropriations were originally available. Balances of appropriations so transferred shall—

(1) be credited to any applicable appropriation account of the receiving department or agency; or

(2) be credited to a new account that may be established on the books of the Department of the Treasury;

and be merged with the funds already credited to that account and accounted for as one fund. Balances of appropriations credited to an account under clause (1) are subject only to such limitations as are specifically applicable to that account. Balances of appropriations credited to an account under clause (2) are subject only to such limitations as are applicable to the appropriations from which they are transferred.

(b) When a function, power, or duty or an activity of a department or agency of the Department of Defense is transferred to another department or agency of that department, those civilian employees of the department or agency from which the transfer is made that the Secretary of Defense determines are needed to perform that function, power, or duty, or for that activity, as the case may be, may, with the approval of the President, be transferred to the department or agency to which that function, power, duty, or activity, as the case may be, is transferred. The authorized strength in civilian employees of a department or agency from which employees are transferred under this section is reduced by the number of employees so transferred. The authorized strength in civilian employees of a department or agency to which employees are transferred under this section is increased by the number of employees so transferred.

(Added Pub. L. 87–651, title II, §201(a), Sept. 7, 1962, 76 Stat. 516; amended Pub. L. 96–513, title V, §511(2), Dec. 12, 1980, 94 Stat. 2920.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
126(a)	5:172f(a). 5:171n(a) (as applicable to 5:172f(a)).	July 26, 1947, ch. 343, §407; added Aug. 10, 1949, ch. 412, §11 (21st and 22d pars.), 63 Stat. 589.
126(b)	5:172f (less (a)).	July 26, 1947, ch. 343, §308(a) (as applicable to §407), 61 Stat. 509.

In subsection (a), the words ''under authority of law'' are omitted as surplusage. The following substitutions are made: ''needed'' for ''necessary''; ''used'' for ''be available for use by''; and ''those appropriations'' for ''said funds''.

In subsection (b), 5 U.S.C. 172f(b) is restated to reflect more clearly its purpose to authorize ''transfers of personnel'' (Senate Report No. 366, 81st Congress, p. 23).

AMENDMENTS

1980—Subsec. (b) Pub. L. 96–513 substituted ''President'' for ''Director of the Bureau of the Budget''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

DELEGATION OF FUNCTIONS

Authority of President under subsec. (a) of this section to approve transfers of balances of appropriations provided for therein delegated to Director of Office of Management and Budget, see section 9(2) of Ex. Ord. No. 11609, July 22, 1971, 36 F.R. 13747, set out as a note under section 301 of Title 3, The President.

§127. Emergency and extraordinary expenses

(a) Subject to the limitations of subsection (c), and within the limitation of appropriations made for the purpose, the Secretary of Defense, the Inspector General of the Department of Defense, and the Secretary of a military department within his department, may provide for any emergency or extraordinary expense which cannot be anticipated or classified. When it is so provided in such an appropriation, the funds may be spent on approval or authority of the Secretary concerned or the Inspector General for any purpose he determines to be proper, and such a determination is final and conclusive upon the accounting officers of the United States. The Secretary concerned or the Inspector General may certify the amount of any such expenditure authorized by him that he considers advisable not to specify, and his certificate is sufficient voucher for the expenditure of that amount.

(b) The authority conferred by this section may be delegated by the Secretary of Defense to any person in the Department of Defense, by the Inspector General to any person in the Office of the Inspector General, or by the Secretary of a military department to any person within his department, with or without the authority to make successive redelegations.

(c)(1) Funds may not be obligated or expended in an amount in excess of $500,000 under the authority of subsection (a) or (b) until the Secretary of Defense has notified the congressional defense committees of the intent to obligate or expend the funds, and—

(A) in the case of an obligation or expenditure in excess of $1,000,000, 15 days have elapsed since the date of the notification; or

(B) in the case of an obligation or expenditure in excess of $500,000, but not in excess of $1,000,000, 5 days have elapsed since the date of the notification.

(2) Subparagraph (A) or (B) of paragraph (1) shall not apply to an obligation or expenditure of funds otherwise covered by such subparagraph if the Secretary of Defense determines that the national security objectives of the United States will be compromised by the application of the subparagraph to the obligation or expenditure. If the Secretary makes a determination with respect to an obligation or expenditure under the preceding sentence, the Secretary shall immediately notify the committees referred to in paragraph (1) that such obligation or expenditure is necessary and provide any relevant information (in classified form, if necessary) jointly to the chairman and ranking minority member (or their designees) of such committees.

(3) A notification under paragraph (1) and information referred to in paragraph (2) shall include the amount to be obligated or expended, as the case may be, and the purpose of the obligation or expenditure.

(4)(A) Notwithstanding paragraph (1), funds may not be obligated or expended in an amount in excess of $100,000 under the authority of subsection (a) or (b) for intelligence or counter-in-

telligence activities until the Secretary of Defense has notified the congressional defense committees and the congressional intelligence committees of the intent to obligate or expend the funds and 15 days have elapsed since the date of the notification.

(B) The Secretary of Defense may waive subparagraph (A) if the Secretary determines that such a waiver is necessary due to extraordinary circumstances that affect the national security of the United States. If the Secretary issues a waiver under this subparagraph, the Secretary shall submit to the congressional defense and congressional intelligence committees, by not later than 48 hours after issuing the waiver, written notice of and justification for the waiver.

(d) ANNUAL REPORT.—(1) Not later than December 1 each year, the Secretary of Defense shall submit—

(A) to the congressional defense committees a report on all expenditures during the preceding fiscal year under subsections (a) and (b); and

(B) to the congressional intelligence committees a report on expenditures relating to intelligence and counter-intelligence during the preceding fiscal year under subsections (a) and (b).

(2) Each report submitted under paragraph (1) shall include, for each individual expenditure covered by such report in an amount in excess of $100,000, the following:

(A) A detailed description of the purpose of such expenditure.

(B) The amount of such expenditure.

(C) An identification of the approving authority for such expenditure.

(D) A justification why other authorities available to the Department could not be used for such expenditure.

(E) Any other matters the Secretary considers appropriate.

(e) DEFINITION OF CONGRESSIONAL INTELLIGENCE COMMITTEES.—In this section, the term ''congressional intelligence committees'' means the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate.

(Added Pub. L. 94–106, title VIII, § 804(a), Oct. 7, 1975, 89 Stat. 538, § 140; amended Pub. L. 98–94, title XII, § 1268(2), Sept. 24, 1983, 97 Stat. 705; renumbered § 127 and amended Pub. L. 99–433, title I, §§ 101(a)(3), 110(d)(4), Oct. 1, 1986, 100 Stat. 994, 1002; Pub. L. 103–160, div. A, title III, § 361, Nov. 30, 1993, 107 Stat. 1627; Pub. L. 103–337, div. A, title III, § 378, Oct. 5, 1994, 108 Stat. 2737; Pub. L. 104–106, div. A, title IX, § 915, title XV, § 1502(a)(5), Feb. 10, 1996, 110 Stat. 413, 502; Pub. L. 106–65, div. A, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 108–136, div. A, title X, § 1031(a)(2), Nov. 24, 2003, 117 Stat. 1596; Pub. L. 115–91, div. A, title X, §§ 1041(a)–(c), 1081(a)(4), Dec. 12, 2017, 131 Stat. 1552, 1553, 1594; Pub. L. 116–92, div. A, title X, § 1012, title XVII, § 1731(a)(5), Dec. 20, 2019, 133 Stat. 1577, 1812.)

AMENDMENTS

2019—Subsec. (c)(1). Pub. L. 116–92, § 1731(a)(5), inserted ''the'' before ''congressional defense committees''.

Subsec. (d)(2). Pub. L. 116–92, § 1012, amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''Each report required to be submitted under paragraph (1) shall include a detailed explanation, by category of activity and approving authority (the Secretary of Defense, the Inspector General of the Department of Defense, and the Secretary of a military department), of the expenditures during the preceding fiscal year.''

2017—Subsec. (c)(1). Pub. L. 115–91, § 1081(a)(4), substituted ''congressional defense committees'' for ''the Committee on Armed Services and the Committee on Appropriations of the Senate and the Committee on Armed Services and the Committee on Appropriations of the House of Representatives'' in introductory provisions.

Subsec. (c)(4). Pub. L. 115–91, § 1041(a), added par. (4).

Subsec. (d). Pub. L. 115–91, § 1041(b), designated existing provisions as par. (1), substituted ''submit—'' for ''submit to the congressional defense committees a report on expenditures during the preceding fiscal year under subsections (a) and (b).'', added subpars. (A) and (B) of par. (1), and added par. (2).

Subsec. (e). Pub. L. 115–91, § 1041(c), added subsec. (e).

2003—Subsec. (d). Pub. L. 108–136 amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: ''In any case in which funds are expended under the authority of subsections (a) and (b), the Secretary of Defense shall submit a report of such expenditures on a quarterly basis to the Committee on Armed Services and the Committee on Appropriations of the Senate and the Committee on Armed Services and the Committee on Appropriations of the House of Representatives.''

1999—Subsecs. (c)(1), (d). Pub. L. 106–65 substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security''.

1996—Subsec. (c). Pub. L. 104–106, § 915(2), added subsec. (c). Former subsec. (c) redesignated (d).

Pub. L. 104–106, § 1502(a)(5), substituted ''Committee on Armed Services and the Committee on Appropriations of the Senate and the Committee on National Security and the Committee on Appropriations of'' for ''Committees on Armed Services and Appropriations of the Senate and''.

Subsec. (d). Pub. L. 104–106, § 915(1), redesignated subsec. (c), as amended by Pub. L. 104–106, §§ 1502(a)(5), 1506, as (d).

1994—Subsec. (c). Pub. L. 103–337 struck out par. (1) designation before ''In any case'' and struck out par. (2) which read as follows: ''The amount of funds expended by the Inspector General of the Department of Defense under subsections (a) and (b) during a fiscal year may not exceed $400,000.''

1993—Subsec. (a). Pub. L. 103–160, § 361(1), inserted '', the Inspector General of the Department of Defense,'' after ''the Secretary of Defense'' and ''or the Inspector General'' after ''the Secretary concerned'' and after ''The Secretary concerned''.

Subsec. (b). Pub. L. 103–160, § 361(2), inserted '', by the Inspector General to any person in the Office of the Inspector General,'' after ''the Department of Defense''.

Subsec. (c). Pub. L. 103–160, § 361(3), designated existing provisions as par. (1) and added par. (2).

1986—Pub. L. 99–433 renumbered section 140 of this title as this section and substituted ''Emergency'' for ''Emergencies'' in section catchline.

1983—Subsec. (a). Pub. L. 98–94 struck out ''of this section'' after ''subsection (c)''.

Subsec. (c). Pub. L. 98–94 struck out ''of this section'' after ''subsections (a) and (b)''.

CONSTRUCTION AUTHORITY OF SECRETARY OF DEFENSE UNDER DECLARATION OF WAR OR NATIONAL EMERGENCY

Pub. L. 97–99, title IX, § 903, Dec. 23, 1981, 95 Stat. 1382, which authorized the Secretary of Defense, in the event of a declaration of war or the declaration of a national emergency by the President, to undertake military construction without regard to any other provisions of law, was repealed and restated as section 2808 of this title by Pub. L. 97–214, §§ 2(a), 7(18), July 12, 1982, 96 Stat. 157, 174, effective Oct. 1, 1982.

§127a. Operations for which funds are not provided in advance: funding mechanisms

(a) IN GENERAL.—(1) The Secretary of Defense shall use the procedures prescribed by this section with respect to any operation specified in paragraph (2) that involves—

(A) the deployment (other than for a training exercise) of elements of the armed forces for a purpose other than a purpose for which funds have been specifically provided in advance; or

(B) the provision of humanitarian assistance, disaster relief, or support for law enforcement (including immigration control) for which funds have not been specifically provided in advance.

(2) This section applies to—

(A) any operation the incremental cost of which is expected to exceed $50,000,000; and

(B) any other operation the expected incremental cost of which, when added to the expected incremental costs of other operations that are currently ongoing, is expected to result in a cumulative incremental cost of ongoing operations of the Department of Defense in excess of $100,000,000.

Any operation the incremental cost of which is expected not to exceed $10,000,000 shall be disregarded for the purposes of subparagraph (B).

(3) This section does not provide authority for the President or the Secretary of Defense to carry out any operation, but establishes mechanisms for the Department of Defense by which funds are provided for operations that the armed forces are required to carry out under some other authority.

(b) WAIVER OF REQUIREMENT TO REIMBURSE SUPPORT UNITS.—(1) The Secretary of Defense shall direct that, when a unit of the armed forces participating in an operation described in subsection (a) receives services from an element of the Department of Defense that operates through the Defense Business Operations Fund (or a successor fund), such unit of the armed forces may not be required to reimburse that element for the incremental costs incurred by that element in providing such services, notwithstanding any other provision of law or any Government accounting practice.

(2) The amounts which but for paragraph (1) would be required to be reimbursed to an element of the Department of Defense (or a fund) shall be recorded as an expense attributable to the operation and shall be accounted for separately.

(c) TRANSFER AUTHORITY.—(1) Whenever there is an operation of the Department of Defense described in subsection (a), the Secretary of Defense may transfer amounts described in paragraph (3) to accounts from which incremental expenses for that operation were incurred in order to reimburse those accounts for those incremental expenses. Amounts so transferred shall be merged with and be available for the same purposes as the accounts to which transferred.

(2) The total amount that the Secretary of Defense may transfer under the authority of this section in any fiscal year is $200,000,000.

(3) Transfers under this subsection may only be made from amounts appropriated to the Department of Defense for any fiscal year that remain available for obligation, other than amounts within any operation and maintenance appropriation that are available for (A) an account (known as a budget activity 1 account) that is specified as being for operating forces, or (B) an account (known as a budget activity 2 account) that is specified as being for mobilization.

(4) The authority provided by this subsection is in addition to any other authority provided by law authorizing the transfer of amounts available to the Department of Defense. However, the Secretary may not use any such authority under another provision of law for a purpose described in paragraph (1) if there is authority available under this subsection for that purpose.

(5) The authority provided by this subsection to transfer amounts may not be used to provide authority for an activity that has been denied authorization by Congress.

(6) A transfer made from one account to another under the authority of this subsection shall be deemed to increase the amount authorized for the account to which the amount is transferred by an amount equal to the amount transferred.

[(d) Repealed. Pub. L. 108–136, div. A, title X, §1031(a)(3), Nov. 24, 2003, 117 Stat. 1596.]

(e) LIMITATIONS.—(1) The Secretary may not restore balances in the Defense Business Operations Fund through increases in rates charged by that fund in order to compensate for costs incurred and not reimbursed due to subsection (b).

(2) The Secretary may not restore balances in the Defense Business Operations Fund or any other fund or account through the use of unobligated amounts in an operation and maintenance appropriation that are available within that appropriation for (A) an account (known as a budget activity 1 account) that is specified as being for operating forces, or (B) an account (known as a budget activity 2 account) that is specified as being for mobilization.

(f) SUBMISSION OF REQUESTS FOR SUPPLEMENTAL APPROPRIATIONS.—It is the sense of Congress that whenever there is an operation described in subsection (a), the President should, not later than 90 days after the date on which notification is provided pursuant to subsection (a)(3), submit to Congress a request for the enactment of supplemental appropriations for the then-current fiscal year in order to provide funds to replenish the Defense Business Operations Fund or any other fund or account of the Department of Defense from which funds for the incremental expenses of that operation were derived under this section and should, as necessary, submit subsequent requests for the enactment of such appropriations.

(g) INCREMENTAL COSTS.—For purposes of this section, incremental costs of the Department of Defense with respect to an operation are the costs of the Department that are directly attributable to the operation (and would not have been incurred but for the operation). Incremental costs do not include the cost of property or services acquired by the Department that are paid for by a source outside the Department or out of funds contributed by such a source.

(h) RELATIONSHIP TO WAR POWERS RESOLUTION.—This section may not be construed as al-

tering or superseding the War Powers Resolution. This section does not provide authority to conduct any military operation.

(i) GAO COMPLIANCE REVIEWS.—The Comptroller General of the United States shall from time to time, and when requested by a committee of Congress, conduct a review of the defense funding structure under this section to determine whether the Department of Defense is complying with the requirements and limitations of this section.

(Added Pub. L. 103–160, div. A, title XI, § 1108(a)(1), Nov. 30, 1993, 107 Stat. 1751; amended Pub. L. 104–106, div. A, title X, § 1003(a)(1), Feb. 10, 1996, 110 Stat. 415; Pub. L. 108–136, div. A, title X, § 1031(a)(3), Nov. 24, 2003, 117 Stat. 1596; Pub. L. 111–383, div. A, title X, § 1075(b)(2), Jan. 7, 2011, 124 Stat. 4369; Pub. L. 112–81, div. A, title X, § 1061(1), Dec. 31, 2011, 125 Stat. 1583.)

REFERENCES IN TEXT

The War Powers Resolution, referred to in subsec. (h), is Pub. L. 93–148, Nov. 7, 1973, 87 Stat. 555, which is classified generally to chapter 33 (§ 1541 et seq.) of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 1541 of Title 50 and Tables.

AMENDMENTS

2011—Subsec. (a)(1)(A). Pub. L. 111–383, § 1075(b)(2)(A), substituted ''armed forces'' for ''Armed Forces''.

Subsec. (a)(3), (4). Pub. L. 112–81 redesignated par. (4) as (3) and struck out former par. (3) which read as follows: ''Whenever an operation to which this section applies is commenced or subsequently becomes covered by this section, the Secretary of Defense shall designate and identify that operation for the purposes of this section and shall promptly notify Congress of that designation (and of the identification of the operation).''

Subsec. (b)(1). Pub. L. 111–383, § 1075(b)(2)(B), substituted ''armed forces'' for ''Armed Forces'' in two places.

2003—Subsec. (d). Pub. L. 108–136 struck out subsec. (d) which required Secretary of Defense, within 45 days after identifying an operation pursuant to subsec. (a)(2), to submit a report to Congress relating to the funding, objectives, duration, cost, and exit criteria of the operation.

1996—Pub. L. 104–106 substituted ''Operations for which funds are not provided in advance: funding mechanisms'' for ''Expenses for contingency operations'' as section catchline and amended text generally. Prior to amendment, text consisted of subsecs. (a) to (h) relating to funding procedures for operations designated by the Secretary of Defense as National Contingency Operations.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–106, div. A, title X, § 1003(b), Feb. 10, 1996, 110 Stat. 417, provided that: ''The amendment to section 127a of title 10, United States Code, made by subsection (a) shall take effect on the date of the enactment of this Act [Feb. 10, 1996] and shall apply to any operation of the Department of Defense that is in effect on or after that date, whether such operation is begun before, on, or after such date of enactment. In the case of an operation begun before such date, any reference in such section to the commencement of such operation shall be treated as referring to the effective date under the preceding sentence.''

INCREMENTAL CONTINGENCY OPERATIONS COST REPORT

Pub. L. 114–113, div. C, title VIII, § 8093, Dec. 18, 2015, 129 Stat. 2373, provided that: ''The Department of Defense shall continue to report incremental contingency operations costs for Operation Inherent Resolve, Operation Freedom's Sentinel, and any named successor operations, on a monthly basis and any other operation designated and identified by the Secretary of Defense for the purposes of section 127a of title 10, United States Code, on a semi-annual basis in the Cost of War Execution Report as prescribed in the Department of Defense Financial Management Regulation Department of Defense Instruction 7000.14, Volume 12, Chapter 23 'Contingency Operations', Annex 1, dated September 2005.''

Similar provisions were contained in the following appropriation acts:

Pub. L. 113–235, div. C, title VIII, § 8097, Dec. 16, 2014, 128 Stat. 2276.

Pub. L. 113–76, div. C, title VIII, § 8092, Jan. 17, 2014, 128 Stat. 126.

§ 127b. Department of Defense rewards program

(a) AUTHORITY.—The Secretary of Defense may pay a monetary amount, or provide a payment-in-kind, to a person as a reward for providing United States Government personnel, or government personnel of allied forces participating in a combined operation with the armed forces, with information or nonlethal assistance that is beneficial to—

(1) an operation or activity of the armed forces, or of allied forces participating in a combined operation with the armed forces, conducted outside the United States against international terrorism; or

(2) force protection of the armed forces, or of allied forces participating in a combined operation with the armed forces.

(b) LIMITATION.—The amount or value of a reward provided under this section may not exceed $5,000,000.

(c) DELEGATION OF AUTHORITY.—(1) The authority of the Secretary of Defense under subsection (a) may be delegated only—

(A) to the Deputy Secretary of Defense and an Under Secretary of Defense, without further redelegation; and

(B) to the commander of a combatant command, but only for a reward in an amount or with a value not in excess of $1,000,000.

(2) A commander of a combatant command to whom authority to provide rewards under this section is delegated under paragraph (1) may further delegate that authority, but only for a reward in an amount or with a value not in excess of $10,000, except that such a delegation may be made to the commander's deputy commander, or to the commander of a command directly subordinate to that commander, without regard to such limitation. Such a delegation may be made to the commander of a command directly subordinate to the commander of a combatant command only with the approval of the Secretary of Defense, the Deputy Secretary of Defense, or an Under Secretary of Defense to whom authority has been delegated under subparagraph (1)(A).

(3)(A) Subject to subparagraph (B), an official who has authority delegated under paragraph (1) or (2) may use that authority, acting through government personnel of allied forces, to offer and make rewards.

(B) The Secretary of Defense shall prescribe policies and procedures for making rewards in the manner described in subparagraph (A),

which shall include guidance for the accountability of funds used for making rewards in that manner. The policies and procedures shall not take effect until 30 days after the date on which the Secretary submits the policies and procedures to the congressional defense committees. Rewards may not be made in the manner described in subparagraph (A) except under policies and procedures that have taken effect.

(d) COORDINATION.—(1) The Secretary of Defense shall prescribe policies and procedures for the offering and making of rewards under this section and otherwise for administering the authority under this section. Such policies and procedures shall be prescribed in consultation with the Secretary of State and the Attorney General and shall ensure that the making of a reward under this section does not duplicate or interfere with the payment of a reward authorized by the Secretary of State or the Attorney General.

(2) The Secretary of Defense shall consult with the Secretary of State regarding the making of any reward under this section in an amount or with a value in excess of $2,000,000.

(e) PERSONS NOT ELIGIBLE.—The following persons are not eligible to receive a reward under this section:

(1) A citizen of the United States.

(2) An officer or employee of the United States.

(3) An employee of a contractor of the United States.

(f) ANNUAL REPORT.—(1) Not later than February 1 of each year, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the administration of the rewards program under this section during the preceding fiscal year.

(2) Each report for a fiscal year under this subsection shall include the following:

(A) Information on the total amount expended during that fiscal year to carry out the rewards program under this section during that fiscal year.

(B) Specification of the amount, if any, expended during that fiscal year to publicize the availability of rewards under this section.

(C) With respect to each reward provided during that fiscal year—

(i) the amount or value of the reward and whether the reward was provided as a monetary payment or in some other form;

(ii) the recipient of the reward and the recipient's geographic location; and

(iii) a description of the information or assistance for which the reward was paid, together with an assessment of the significance and benefit of the information or assistance.

(D) A description of the status of program implementation in each geographic combatant command, including in which countries the program is being operated.

(E) A description of efforts to coordinate and de-conflict the authority under subsection (a) with similar rewards programs administered by the United States Government.

(F) An assessment of the effectiveness of the program in meeting its objectives.

(3) The Secretary may submit the report in classified form if the Secretary determines that it is necessary to do so.

(g) DETERMINATIONS BY THE SECRETARY.—A determination by the Secretary under this section is final and conclusive and is not subject to judicial review.

(h) REPORT ON DESIGNATION OF COUNTRIES FOR WHICH REWARDS MAY BE PAID.—Not later than 15 days after the date on which the Secretary designates a country as a country in which an operation or activity of the armed forces is occurring in connection with which rewards may be paid under this section, the Secretary shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the designation. Each report shall include the following:

(1) The country so designated.

(2) The reason and justification for the designation of the country.

(3) An estimate of the amount or value of the rewards to be paid as monetary payment or payment-in-kind under this section.

(Added Pub. L. 107–314, div. A, title X, § 1065(a), Dec. 2, 2002, 116 Stat. 2655; amended Pub. L. 109–163, div. A, title X, § 1056(c)(2), Jan. 6, 2006, 119 Stat. 3439; Pub. L. 109–364, div. A, title XIV, § 1401, Oct. 17, 2006, 120 Stat. 2433; Pub. L. 110–181, div. A, title X, § 1033, Jan. 28, 2008, 122 Stat. 307; Pub. L. 111–84, div. A, title X, § 1071, Oct. 28, 2009, 123 Stat. 2470; Pub. L. 111–383, div. A, title X, § 1031, Jan. 7, 2011, 124 Stat. 4351; Pub. L. 112–81, div. A, title X, §§ 1033, 1064(3), Dec. 31, 2011, 125 Stat. 1572, 1587; Pub. L. 112–239, div. A, title X, § 1021(a), Jan. 2, 2013, 126 Stat. 1911; Pub. L. 113–291, div. A, title X, § 1031, Dec. 19, 2014, 128 Stat. 3491; Pub. L. 114–92, div. A, title X, § 1042(a)–(d)(1), Nov. 25, 2015, 129 Stat. 976; Pub. L. 114–328, div. A, title X, § 1063, Dec. 23, 2016, 130 Stat. 2408.)

AMENDMENTS

2016—Subsec. (h)(2). Pub. L. 114–328, § 1063(1), inserted "and justification" after "reason".

Subsec. (h)(3). Pub. L. 114–328, § 1063(2), amended par. (3) generally. Prior to amendment, par. (3) read as follows: "A justification for the designation of the country for purposes of this section."

2015—Pub. L. 114–92, § 1042(d)(1), substituted "Department of Defense rewards program" for "Assistance in combating terrorism: rewards" in section catchline.

Subsec. (c)(3)(A). Pub. L. 114–92, § 1042(a)(1), substituted "subparagraph (B)" for "subparagraphs (B) and (C)".

Subsec. (c)(3)(C), (D). Pub. L. 114–92, § 1042(a)(2), struck out subpars. (C) and (D) which read as follows:

"(C) Rewards may not be made in the manner described in subparagraph (A) after September 30, 2015.

"(D) Not later than April 1, 2008, the Secretary of Defense shall submit to the congressional defense committees a report on the implementation of this paragraph. The report shall identify each reward made in the manner described in subparagraph (A) and, for each such reward—

"(i) identify the type, amount, and recipient of the reward;

"(ii) explain the reason for making the reward; and

"(iii) assess the success of the reward in advancing the effort to combat terrorism."

Subsec. (f)(2)(D) to (G). Pub. L. 114–92, § 1042(b), redesignated subpars. (E) to (G) as (D) to (F), respectively, inserted ", including in which countries the program is being operated" before period at end of subpar. (D), and

struck out former subpar. (D) which read as follows: ''Information on the implementation of paragraph (3) of subsection (c).''

Subsec. (h). Pub. L. 114–92, § 1042(c), added subsec. (h).

2014—Subsec. (c)(3)(C). Pub. L. 113–291 substituted ''September 30, 2015'' for ''September 30, 2014''.

2013—Subsec. (c)(3)(C). Pub. L. 112–239 substituted ''September 30, 2014'' for ''September 30, 2013''.

2011—Subsec. (c)(3)(C). Pub. L. 112–81, § 1033(1), substituted ''September 30, 2013'' for ''September 30, 2011''.

Pub. L. 111–383 substituted ''2011'' for ''2010''.

Subsec. (f)(1). Pub. L. 112–81, § 1064(3), which directed the substitution of ''February 1'' for ''December 1'', could not be executed because of the intervening amendment by Pub. L. 112–81, § 1033(2)(A). See note below.

Pub. L. 112–81, § 1033(2)(A), substituted ''February'' for ''December''.

Subsec. (f)(2)(C)(ii). Pub. L. 112–81, § 1033(2)(B)(i), inserted ''and the recipient's geographic location'' after ''reward''.

Subsec. (f)(2)(E) to (G). Pub. L. 112–81, § 1033(2)(B)(ii), added subpars. (E) to (G).

2009—Subsec. (c)(3)(C). Pub. L. 111–84 substituted ''2010'' for ''2009''.

2008—Subsec. (a). Pub. L. 110–181, § 1033(b)(1)(A), in introductory provisions, inserted '', or government personnel of allied forces participating in a combined operation with the armed forces,'' after ''United States Government personnel''.

Subsec. (a)(1). Pub. L. 110–181, § 1033(b)(1)(B), inserted '', or of allied forces participating in a combined operation with the armed forces,'' after ''armed forces''.

Subsec. (a)(2). Pub. L. 110–181, § 1033(b)(1)(C), inserted '', or of allied forces participating in a combined operation with the armed forces'' after ''armed forces''.

Subsec. (b). Pub. L. 110–181, § 1033(a)(1), substituted ''$5,000,000'' for ''$200,000''.

Subsec. (c)(1)(B). Pub. L. 110–181, § 1033(a)(2), substituted ''$1,000,000'' for ''$50,000''.

Subsec. (c)(3). Pub. L. 110–181, § 1033(b)(2), added par. (3).

Subsec. (d)(2). Pub. L. 110–181, § 1033(a)(3), substituted ''$2,000,000'' for ''$100,000''.

Subsec. (f)(2)(D). Pub. L. 110–181, § 1033(c), added subpar. (D).

2006—Subsec. (c)(2). Pub. L. 109–364 substituted ''$10,000'' for ''$2,500'', inserted '', or to the commander of a command directly subordinate to that commander,'' after ''deputy commander'', and inserted at end ''Such a delegation may be made to the commander of a command directly subordinate to the commander of a combatant command only with the approval of the Secretary of Defense, the Deputy Secretary of Defense, or an Under Secretary of Defense to whom authority has been delegated under subparagraph (1)(A).''

Subsec. (d)(1). Pub. L. 109–163 substituted ''Such policies'' for ''Such polices''.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective Dec. 31, 2021, of provisions in subsec. (f) of this section requiring submittal of annual report to Congress, see section 1061 of Pub. L. 114–328, set out as a note under section 111 of this title.

§ 127c. Purchase of weapons overseas: force protection

(a) AUTHORITY.—When elements of the armed forces are engaged in ongoing military operations in a country, the Secretary of Defense may, for the purpose of protecting United States forces in that country, purchase weapons from any foreign person, foreign government, international organization, or other entity located in that country.

(b) LIMITATION.—The total amount expended during any fiscal year for purchases under this section may not exceed $15,000,000.

(c) SEMIANNUAL CONGRESSIONAL REPORT.—In any case in which the authority provided in subsection (a) is used during the period of the first six months of a fiscal year, or during the period of the second six months of a fiscal year, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and Committee on Armed Services of the House of Representatives a report on the use of that authority during that six-month period. Each such report shall be submitted not later than 30 days after the end of the six-month period during which the authority is used. Each such report shall include the following:

(1) The number and type of weapons purchased under subsection (a) during that six-month period covered by the report, together with the amount spent for those weapons and the Secretary's estimate of the fair market value of those weapons.

(2) A description of the dispositions (if any) during that six-month period of weapons purchased under subsection (a).

(Added Pub. L. 109–163, div. A, title XII, § 1231(a), Jan. 6, 2006, 119 Stat. 3467.)

CODIFICATION

Another section 127c was renumbered section 127d of this title prior to being renumbered section 331 of this title.

[§ 127d. Renumbered § 331]

§ 127e. Support of special operations to combat terrorism

(a) AUTHORITY.—The Secretary of Defense may, with the concurrence of the relevant Chief of Mission, expend up to $100,000,000 during any fiscal year to provide support to foreign forces, irregular forces, groups, or individuals engaged in supporting or facilitating authorized ongoing military operations by United States special operations forces to combat terrorism.

(b) FUNDS.—Funds for support under this section in a fiscal year shall be derived from amounts authorized to be appropriated for that fiscal year for the Department of Defense for operation and maintenance.

(c) PROCEDURES.—

(1) IN GENERAL.—The authority in this section shall be exercised in accordance with such procedures as the Secretary shall establish for purposes of this section. The Secretary shall notify the congressional defense committees of any material change to such procedures.

(2) ELEMENTS.—The procedures required under paragraph (1) shall establish, at a minimum, each of the following:

(A) Policy, strategy, or other guidance for the execution of, and constraints within, activities conducted under this section.

(B) The processes through which activities conducted under this section are to be developed, validated, and coordinated, as appropriate, with relevant Federal entities.

(C) The processes through which legal reviews and determinations are made to comply with this section and ensure that the exercise of the authority in this section is consistent with the national security of the United States.

(d) NOTIFICATION.—

(1) IN GENERAL.—Not later than 15 days before exercising the authority in this section to make funds available to initiate support of an approved military operation or changing the scope or funding level of any support for such an operation by $1,000,000 or an amount equal to 20 percent of such funding level (whichever is less), or not later than 48 hours after exercising such authority if the Secretary determines that extraordinary circumstances that impact the national security of the United States exist, the Secretary shall notify the congressional defense committees of the use of such authority with respect to that operation. Any such notification shall be in writing.

(2) ELEMENTS.—A notification required by this subsection shall include the following:

(A) The type of support provided or to be provided to United States special operations forces and a description of the authorized ongoing operation.

(B) A description of the foreign forces, irregular forces, groups, or individuals engaged in supporting or facilitating the authorized ongoing operation who will receive support provided under this section.

(C) A detailed description of the support provided or to be provided to the recipient.

(D) The amount obligated under the authority to provide support.

(E) A detailed description of the legal and operational authorities related to the authorized ongoing operation, including relevant execute orders issued by the Secretary of Defense and combatant commanders related to the authorized ongoing operation, including an identification of operational activities United States Special Operations Forces are authorized to conduct under such execute orders.

(F) The duration for which the support is expected to be provided and an identification of the timeframe in which the provision of support will be reviewed by the combatant commander for a determination regarding the necessity of continuation of support.

(G) A description of the entities with which the recipients of support are engaged in hostilities and whether each such entity is covered under an authorization for use of military force.

(H) A description of the steps taken to ensure the support is consistent with United States national security objectives.

(I) A description of the steps taken to ensure that the recipients of support have not engaged in human rights violations.

(e) NOTIFICATION OF SUSPENSION OR TERMINATION OF SUPPORT.—

(1) IN GENERAL.—Not later than 48 hours after suspending or terminating support to any foreign force, irregular force, group, or individual under the authority in this section, the Secretary shall submit to the congressional defense committees a written notice of such suspension or termination.

(2) ELEMENTS.—Notice provided under paragraph (1) with respect to the suspension or termination of support shall include each of the following elements:

(A) A description of the reasons for the suspension or termination of such support.

(B) A description of any effects on regional, theatre, or global campaign plan objectives anticipated to result from the suspension or termination of such support.

(C) A plan for the suspension or termination of the support, and, in the case of support that is planned to be transitioned to another program of the Department of Defense or another Federal department or agency, a detailed description of the transition plan, including the resources, equipment, capabilities, and personnel associated with such plan.

(f) LIMITATION ON DELEGATION.—The authority of the Secretary to make funds available under this section for support of a military operation may not be delegated.

(g) CONSTRUCTION OF AUTHORITY.—Nothing in this section may be construed to constitute authority to conduct or provide statutory authorization for any of the following:

(1) A covert action, as such term is defined in section 503(e) of the National Security Act of 1947 (50 U.S.C. 3093(e)).

(2) An introduction of the armed forces, (including as such term is defined in section 8(c) of the War Powers Resolution (50 U.S.C. 1547(c)), into hostilities, or into situations where hostilities are clearly indicated by the circumstances, without specific statutory authorization within the meaning of section 5(b) of such Resolution (50 U.S.C. 1544(b)).

(3) Activities or support of activities, directly or indirectly, that are inconsistent with the laws of armed conflict.

(h) OVERSIGHT BY ASD FOR SOLIC.—The Assistant Secretary of Defense for Special Operations and Low Intensity Conflict shall have primary responsibility within the Office of the Secretary of Defense for oversight of policies and programs for support authorized by this section.

(i) BIANNUAL REPORTS.—

(1) REPORT ON PRECEDING CALENDAR YEAR.—Not later than 120 days after the last day of each fiscal year, the Secretary shall submit to the congressional defense committees a report on the support provided under this section during the preceding calendar year.

(2) REPORT ON CURRENT CALENDAR YEAR.—Not later than six months after the date of the submittal of the report most recently submitted under paragraph (1), the Secretary shall submit to the congressional defense committees a report on the support provided under this section during the first half of the calendar year in which the report under this paragraph is submitted.

(3) ELEMENTS.—Each report required by this subsection shall include, for the period covered by such report, the following:

(A) A summary of the ongoing military operations by United States special operations forces to combat terrorism that were supported or facilitated by foreign forces, irregular forces, groups, or individuals for which support was provided under this section.

(B) A description of the support or facilitation provided by such foreign forces, irreg-

ular forces, groups, or individuals to United States special operations forces.

(C) The type of recipients that were provided support under this section, identified by authorized category (foreign forces, irregular forces, groups, or individuals).

(D) The total amount obligated for support under this section, including budget details.

(E) The total amount obligated in prior fiscal years under this section and applicable preceding authority.

(F) The intended duration of support provided under this section.

(G) A description of the support or training provided to the recipients of support under this section.

(H) A value assessment of the support provided under this section, including a summary of significant activities undertaken by foreign forces, irregular forces, groups, or individuals to support operations by United States special operations forces to combat terrorism.

(Added Pub. L. 114–328, div. A, title XII, § 1203(a)(1), Dec. 23, 2016, 130 Stat. 2474; amended Pub. L. 115–91, div. A, title X, § 1031, Dec. 12, 2017, 131 Stat. 1550; Pub. L. 116–92, div. A, title X, § 1041, Dec. 20, 2019, 133 Stat. 1585; Pub. L. 116–283, div. A, title X, §§ 1051, 1081(a)(7), Jan. 1, 2021, 134 Stat. 3847, 3871.)

AMENDMENTS

2021—Subsec. (c). Pub. L. 116–283, § 1051(1), added subsec. (c) and struck out former subsec. (c). Prior to amendment, text read as follows: ''The authority in this section shall be exercised in accordance with such procedures as the Secretary shall establish for purposes of this section. The Secretary shall notify the congressional defense committees of any material modification of such procedures.''

Subsec. (d)(2)(G) to (I). Pub. L. 116–283, § 1051(2), added subpars. (G) to (I).

Subsecs. (e), (f). Pub. L. 116–283, § 1051(3), (4), added subsec. (e) and redesignated former subsec. (e) as (f). Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 116–283, § 1051(5), added subsec. (g) and struck out former subsec. (g). Prior to amendment, text read as follows: ''This section does not constitute authority to conduct a covert action, as such term is defined in section 503(e) of the National Security Act of 1947 (50 U.S.C. 3093(e)).''

Pub. L. 116–283, § 1051(3), redesignated subsec. (f) as (g).

Subsec. (h). Pub. L. 116–283, § 1081(a)(7), which directed the substitution of ''Low Intensity'' for ''Low-Intensity'' in subsec. (g) as redesignated by section 1051 of Pub. L. 116–283, was executed by making substitution in subsec. (h) as redesignated by section 1051, to reflect the probable intent of Congress.

Pub. L. 116–283, § 1051(3), reesignated subsec. (g) as (h). Former subsec. (h) redesignated (i).

Subsec. (i). Pub. L. 116–283, § 1051(3), reesignated subsec. (h) as (i).

2019—Subsec. (a). Pub. L. 116–92, § 1041(1), inserted ''authorized'' before ''ongoing military operations''.

Subsec. (d)(2)(A). Pub. L. 116–92, § 1041(2)(A), inserted ''and a description of the authorized ongoing operation'' before period at end.

Subsec. (d)(2)(B) to (D). Pub. L. 116–92, § 1041(2)(B), (C), added subpars. (B) and (C), redesignated former subpar. (C) as (D), and struck out former subpar. (B) which read as follows: ''The type of support provided or to be provided to the recipient of the funds.''.

Subsec. (d)(2)(E), (F). Pub. L. 116–92, § 1041(2)(D), added subpars. (E) and (F).

2017—Subsecs. (g), (h). Pub. L. 115–91, § 1031(a), added subsec. (g) and redesignated former subsec. (g) as (h).

Subsec. (h)(1). Pub. L. 115–91, § 1031(b)(1), substituted ''120 days after the last day of each fiscal year'' for ''March 1 each year''.

Subsec. (h)(2). Pub. L. 115–91, § 1031(b)(2), substituted ''six months after the date of the submittal of the report most recently submitted under paragraph (1)'' for ''September 1 each year'' and inserted ''under this paragraph'' after ''in which the report''.

§ 127f. Expenditure of funds for clandestine activities that support operational preparation of the environment

(a) AUTHORITY.—Subject to subsections (b) through (d), the Secretary of Defense may expend up to $15,000,000 in any fiscal year for clandestine activities for any purpose the Secretary determines to be proper for preparation of the environment for operations of a confidential nature. Such a determination is final and conclusive upon the accounting officers of the United States. The Secretary may certify the amount of any such expenditure authorized by the Secretary that the Secretary considers advisable not to specify, and the Secretary's certificate is sufficient voucher for the expenditure of that amount.

(b) FUNDS.—Funds for expenditures under this section in a fiscal year shall be derived from amounts authorized to be appropriated for that fiscal year for operation and maintenance, Defense-wide.

(c) LIMITATION ON DELEGATION.—The Secretary of Defense may not delegate the authority under this section with respect to any expenditure in excess of $250,000.

(d) EXCLUSION OF INTELLIGENCE ACTIVITIES.—(1) This section does not constitute authority to conduct, or expend funds for, intelligence, counterintelligence, or intelligence-related activities.

(2) In this subsection, the terms ''intelligence'' and ''counterintelligence'' have the meaning given those terms in section 3 of the National Security Act of 1947 (50 U.S.C. 3003).

(e) ANNUAL REPORT.—Not later than December 31 each year, the Secretary of Defense shall submit to the congressional defense committees a report on expenditures made under this section during the fiscal year preceding the year in which the report is submitted. Each report shall include, for each expenditure under this section during the fiscal year covered by such report—

(1) the amount and date of such expenditure;

(2) a detailed description of the purpose for which such expenditure was made;

(3) an explanation why other authorities available to the Department of Defense could not be used for such expenditure; and

(4) any other matters the Secretary considers appropriate.

(Added Pub. L. 116–283, div. A, title X, § 1052(a), Jan. 1, 2021, 134 Stat. 3849.)

§ 128. Control and physical protection of special nuclear material: limitation on dissemination of unclassified information

(a)(1) In addition to any other authority or requirement regarding protection from dissemination of information, and subject to section

552(b)(3) of title 5, the Secretary of Defense, with respect to special nuclear materials, shall prescribe such regulations, after notice and opportunity for public comment thereon, or issue such orders as may be necessary to prohibit the unauthorized dissemination of unclassified information pertaining to security measures, including security plans, procedures, and equipment for the physical protection of special nuclear material.

(2) The Secretary may prescribe regulations or issue orders under paragraph (1) to prohibit the dissemination of any information described in such paragraph only if and to the extent that the Secretary determines that the unauthorized dissemination of such information could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of—

(A) illegal production of nuclear weapons, or

(B) theft, diversion, or sabotage of special nuclear materials, equipment, or facilities.

(3) In making a determination under paragraph (2), the Secretary may consider what the likelihood of an illegal production, theft, diversion, or sabotage referred to in such paragraph would be if the information proposed to be prohibited from dissemination under this section were at no time available for dissemination.

(4) The Secretary shall exercise his authority under this subsection to prohibit the dissemination of any information described in paragraph (1)—

(A) so as to apply the minimum restrictions needed to protect the health and safety of the public or the common defense and security; and

(B) upon a determination that the unauthorized dissemination of such information could reasonably be expected to result in a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of—

(i) illegal production of nuclear weapons, or

(ii) theft, diversion, or sabotage of nuclear materials, equipment, or facilities.

(b) Nothing in this section shall be construed to authorize the Secretary to withhold, or to authorize the withholding of, information from the appropriate committees of the Congress.

(c) Any determination by the Secretary concerning the applicability of this section shall be subject to judicial review pursuant to section 552(a)(4)(B) of title 5.

(d) Information that the Secretary prohibits to be disseminated pursuant to subsection (a) that is provided to a State or local government shall remain under the control of the Department of Defense, and a State or local law authorizing or requiring a State or local government to disclose such information shall not apply to such information.

(Added Pub. L. 100–180, div. A, title XI, § 1123(a), Dec. 4, 1987, 101 Stat. 1149; amended Pub. L. 101–510, div. A, title XIII, § 1311(1), Nov. 5, 1990, 104 Stat. 1669; Pub. L. 108–136, div. A, title X, § 1031(a)(4), Nov. 24, 2003, 117 Stat. 1596; Pub. L. 114–328, div. A, title XVI, § 1662(a)(1), (2), Dec. 23, 2016, 130 Stat. 2614.)

PRIOR PROVISIONS

A prior section 128 was renumbered section 421 of this title.

AMENDMENTS

2016—Pub. L. 114–328, § 1662(a)(2), substituted "Control and physical protection" for "Physical protection" in section catchline.

Subsec. (d). Pub. L. 114–328, § 1662(a)(1), added subsec. (d).

2003—Subsec. (d). Pub. L. 108–136 struck out subsec. (d) which required the Secretary to prepare an annual report detailing the Secretary's application during the year of each regulation or order prescribed or issued under this section.

1990—Subsec. (d). Pub. L. 101–510 substituted "on an annual basis" for "on a quarterly basis".

§ 129. Civilian personnel management

(a) The civilian personnel of the Department of Defense shall be managed each fiscal year primarily on the basis of and consistent with (1) the total force management policies and procedures established under section 129a of this title, (2) the workload required to carry out the functions and activities of the department, and (3) the funds made available to the department for such fiscal year. The management of such personnel in any fiscal year shall not be subject solely to any constraint or limitation in terms of man years, end strength, full-time equivalent positions, or maximum number of employees. The Secretary of Defense and the Secretaries of the military departments may not be required to make a reduction in the number of full-time equivalent positions in the Department of Defense except in accordance with the requirements of this section and section 129a of this title.

(b) With respect to each budget activity within an appropriation for a fiscal year for operations and maintenance, the Secretary of Defense shall ensure that there are employed during that fiscal year employees in the number and with the combination of skills and qualifications that are necessary to carry out the functions within that budget activity as determined under the total force management policies and procedures established under section 129a of this title.

(c)(1) Not later than February 1 of each year—

(A) the Secretary of Defense shall submit to the congressional defense committees a report on the management of the civilian workforce of the Office of the Secretary of Defense and the Defense Agencies and Field Activities; and

(B) the Secretary of each military department shall submit to the congressional defense committees a report on the management of the civilian workforces under the jurisdiction of such Secretary.

(2) Each report under paragraph (1) shall contain, with respect to the civilian workforce under the jurisdiction of the official submitting the report, the following:

(A) An assessment of the projected size and associated cost of such civilian workforce in the current year and for each year in the future-years defense program.

(B) If the projected size and associated cost of such civilian workforce has changed from

the previous year's projected size and associated cost, an explanation of the reasons for the increase or decrease from the previous projection, including an explanation of any efforts to reduce the overall costs of the total force of military, civilian, and contract workforces.

(C) In the case of a transfer of functions between military, civilian, and contractor workforces, an explanation of the reasons for the transfer and the steps that have been taken to control the overall cost of the function to the Department.

(Added Pub. L. 97–86, title IX, § 904(a), Dec. 1, 1981, 95 Stat. 1114, § 140b; renumbered § 129, Pub. L. 99–433, title I, § 101(a)(3), Oct. 1, 1986, 100 Stat. 994; amended Pub. L. 99–661, div. A, title V, § 533, Nov. 14, 1986, 100 Stat. 3873; Pub. L. 102–190, div. A, title III, § 312(b), Dec. 5, 1991, 105 Stat. 1335; Pub. L. 104–106, div. A, title X, § 1031, Feb. 10, 1996, 110 Stat. 428; Pub. L. 104–201, div. A, title X, § 1074(a)(1), title XVI, § 1603, Sept. 23, 1996, 110 Stat. 2658, 2735; Pub. L. 105–85, div. A, title XI, § 1101, Nov. 18, 1997, 111 Stat. 1922; Pub. L. 106–65, div. A, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 112–81, div. A, title IX, § 932, Dec. 31, 2011, 125 Stat. 1543; Pub. L. 114–328, div. A, title XI, § 1101(a), (b)(1), Dec. 23, 2016, 130 Stat. 2443; Pub. L. 116–92, div. A, title XI, § 1103, Dec. 20, 2019, 133 Stat. 1596.)

AMENDMENTS

2019—Subsec. (a). Pub. L. 116–92, § 1103(1), in first sentence, substituted ''each fiscal year primarily'' for ''each fiscal year'', and in second sentence, substituted ''The management of such personnel in any fiscal year shall not be subject solely to any'' for ''Any'' and struck out ''shall be developed on the basis of those factors and shall be subject to adjustment solely for reasons of changed circumstances'' after ''number of employees''.

Subsec. (c)(2)(A). Pub. L. 116–92, § 1103(2)(A), inserted ''and associated cost'' after ''projected size''.

Subsec. (c)(2)(B). Pub. L. 116–92, § 1103(2), inserted ''and associated cost'' after ''projected size'' in two places and substituted ''to reduce the overall costs of the total force of military, civilian, and contract workforces.'' for ''that have been taken to identify offsetting reductions and avoid unnecessary overall growth in the size of the civilian workforce.''

2016—Pub. L. 114–328, § 1101(b)(1), amended section catchline generally, substituting ''Civilian personnel management'' for ''Prohibition of certain civilian personnel management constraints''.

Subsec. (a). Pub. L. 114–328, § 1101(a)(1), in first sentence, struck out ''solely'' before ''on the basis'', in second sentence, substituted ''Any'' for ''The management of such personnel in any fiscal year shall not be subject to any'' and inserted ''shall be developed on the basis of those factors and shall be subject to adjustment solely for reasons of changed circumstances'' after ''employees'', and in third sentence, substituted ''except in accordance with the requirements of this section and section 129a of this title.'' for ''unless such reduction is necessary due to a reduction in funds available to the Department or is required under a law that is enacted after February 10, 1996, and that refers specifically to this subsection.''

Subsec. (b). Pub. L. 114–328, § 1101(a)(2), (3), redesignated subsec. (d) as (b) and struck out former subsec. (b) which related to the number of, and the amount of funds available to be paid to, indirectly funded Government employees of the Department of Defense.

Subsec. (c). Pub. L. 114–328, § 1101(a)(2), (4), added subsec. (c) and struck out former subsec. (c) which defined the term ''indirectly funded Government employees''.

Subsecs. (d) to (f). Pub. L. 114–328, § 1101(a)(2), (3), redesignated subsec. (d) as (b) and struck out subsecs. (e) and (f) which read as follows:

''(e) Subsections (a), (b), and (c) apply to the Major Range and Test Facility Base (MRTFB) at the installation level.

''(f)(1) Not later than February 1 of each year, the Secretary of each military department and the head of each Defense Agency shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the management of the civilian workforce under the jurisdiction of that official.

''(2) Each report of an official under paragraph (1) shall contain the following:

''(A) The official's certification (i) that the civilian workforce under the jurisdiction of the official is not subject to any constraint or limitation in terms of man years, end strength, full-time equivalent positions, or maximum number of employees, and (ii) that, during the 12 months preceding the date on which the report is due, such workforce has not been subject to any such constraint or limitation.

''(B) A description of how the civilian workforce is managed.

''(C) A detailed description of the analytical tools used to determine civilian workforce requirements during the 12-month period referred to in subparagraph (A).''

2011—Subsec. (a). Pub. L. 112–81, § 932(1), inserted ''the total force management policies and procedures established under section 129a of this title, (2)'' after ''(1)'' and substituted ''department, and (3)'' for ''department and (2)''.

Subsec. (d). Pub. L. 112–81, § 932(2), substituted ''within that budget activity as determined under the total force management policies and procedures established under section 129a of this title.'' for ''within that budget activity for which funds are provided for that fiscal year.''

Subsec. (e). Pub. L. 112–81, § 932(3), struck out at end ''With respect to the MRTFB structure, the term 'funds made available' includes both direct appropriated funds and funds provided by MRTFB customers.''

1999—Subsec. (f)(1). Pub. L. 106–65 substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security''.

1997—Subsec. (f). Pub. L. 105–85 added subsec. (f).

1996—Subsec. (a). Pub. L. 104–201, § 1074(a)(1), substituted ''February 10, 1996,'' for ''the date of the enactment of the National Defense Authorization Act for Fiscal Year 1996''.

Pub. L. 104–106, § 1031(1), substituted ''constraint or limitation in terms of man years, end strength, full-time equivalent positions, or maximum number of employees. The Secretary of Defense and the Secretaries of the military departments may not be required to make a reduction in the number of full-time equivalent positions in the Department of Defense unless such reduction is necessary due to a reduction in funds available to the Department or is required under a law that is enacted after the date of the enactment of the National Defense Authorization Act for Fiscal Year 1996 and that refers specifically to this subsection.'' for ''man-year constraint or limitation.''

Subsec. (b)(2). Pub. L. 104–106, § 1031(2), substituted ''any constraint or limitation in terms of man years, end strength, full-time equivalent positions, or maximum number of employees'' for ''any end-strength''.

Subsec. (c)(1). Pub. L. 104–201, § 1603(1), inserted '', the Major Range and Test Facility Base,'' after ''industrial-type activities''.

Subsec. (d). Pub. L. 104–106, § 1031(3), added subsec. (d).

Subsec. (e). Pub. L. 104–201, § 1603(2), added subsec. (e).

1991—Subsec. (a). Pub. L. 102–190 substituted ''department and (2)'' for ''department, (2)'' and struck out '', and (3) the authorized end strength for the civilian personnel of the department for such fiscal year'' at end of first sentence.

1986—Pub. L. 99–661 designated existing provisions as subsec. (a) and added subsecs. (b) and (c).

Pub. L. 99–433 renumbered section 140b of this title as this section.

§ 129a. General policy for total force management

(a) POLICIES AND PROCEDURES.—The Secretary of Defense shall establish policies and procedures for determining the most appropriate and cost efficient mix of military, civilian, and contractor personnel to perform the mission of the Department of Defense.

(b) RISK MITIGATION OVER COST.—In establishing the policies and procedures under subsection (a), the Secretary shall clearly provide that attainment of a Department of Defense workforce sufficiently sized and comprised of the appropriate mix of personnel necessary to carry out the mission of the Department and the core mission areas of the armed forces takes precedence over cost. The Secretary may not reduce the civilian workforce programmed full-time equivalent levels unless the Secretary conducts an appropriate analysis of the impacts of such reductions on workload, military force structure, lethality, readiness, operational effectiveness, stress on the military force, and fully burdened costs.

(c) DELEGATION OF RESPONSIBILITIES.—The Secretary shall delegate responsibility for implementation of the policies and procedures established under subsection (a) as follows:

(1) The Under Secretary of Defense for Personnel and Readiness shall have overall responsibility for guidance to implement such policies and procedures.

(2) The Secretaries of the military departments and the heads of the Defense Agencies shall have overall responsibility for the requirements determination, planning, programming, and budgeting for such policies and procedures.

(3) The Under Secretary of Defense for Acquisition and Sustainment shall be responsible for ensuring that the defense acquisition system, as defined in section 2545 of this title, is consistent with such policies and procedures and with implementation pursuant to paragraph (1).

(4) The Under Secretary of Defense (Comptroller) shall be responsible for ensuring that the budget for the Department of Defense is consistent with such policies and procedures. The Under Secretary shall notify the congressional defense committees of any deviations from such policies and procedures that are recommended in the budget.

(d) USE OF PLAN, INVENTORY, AND LIST.—The policies and procedures established by the Secretary under subsection (a) shall specifically require the Department of Defense to use the following when making determinations regarding the appropriate workforce mix necessary to perform its mission:

(1) The inventory of contracts for services required by section 2330a(c) of this title.

(2) The list of activities required by the Federal Activities Inventory Reform Act of 1998 (Public Law 105–270; 31 U.S.C. 501 note).

(e) CONSIDERATIONS IN CONVERTING PERFORMANCE OF FUNCTIONS.— If conversion of functions to performance by either Department of Defense civilian personnel or contractor personnel is considered, the Under Secretary of Defense for Personnel and Readiness shall ensure compliance with—

(1) section 2463 of this title (relating to guidelines and procedures for use of civilian employees to perform Department of Defense functions); and

(2) section 2461 of this title (relating to public-private competition required before conversion to contractor performance).

(f) CONSTRUCTION WITH OTHER REQUIREMENTS.—Nothing in this title may be construed as authorizing—

(1) a military department or Defense Agency to directly convert a function to contractor performance without complying with section 2461 of this title;

(2) the use of contractor personnel for functions that are inherently governmental even if there is a military or civilian personnel shortfall in the Department of Defense;

(3) restrictions on the use by a military department or Defense Agency of contractor personnel to perform functions closely associated with inherently governmental functions, provided that—

(A) there are adequate resources to maintain sufficient capabilities within the Department in the functional area being considered for performance by contractor personnel; and

(B) there is adequate Government oversight of contractor personnel performing such functions;

(4) the establishment of numerical goals or budgetary savings targets for the conversion of functions to performance by either Department of Defense civilian personnel or for conversion to performance by contractor personnel; or

(5) the imposition of a civilian hiring freeze that may inhibit the implementation of the policies and procedures established under subsection (a).

(g) PERFORMANCE OF CIVILIAN FUNCTIONS BY MILITARY PERSONNEL.—(1) Functions performed by civilian personnel should not be performed by military personnel except—

(A) if the Secretary of the military department concerned determines in writing based on mission requirements that the performance of such functions by military personnel is cost-effective, taking into account the fully-burdened costs of the civilian, military, and contractor workforces, including the impact of the performance of such functions on military career progression or when required by military necessity; or

(B) such functions may be performed by military personnel for a period that does not exceed one year if the Secretary of the military department concerned determines that—

(i) the performance of such functions by military personnel is required to address critical staffing needs resulting from a reduction in personnel or budgetary resources by reason of an Act of Congress; and

(ii) the military department concerned is in compliance with the policies, procedures,

and analysis required by this section and section 129 of this title.

(2) In determining the workforce mix between civilian and military personnel, the Secretary of a military department shall reserve military personnel for the performance of the functions that, in the estimation of the Secretary, are required to be performed by military personnel in order to achieve national defense goals or in order to enable the proper functioning of the military department. In making workforce decisions, the Secretary shall account for the relative budgetary impact of military versus civilian personnel in determining the functions required to be performed by military personnel.

(Added Pub. L. 101–510, div. A, title XIV, § 1483(b)(2), Nov. 5, 1990, 104 Stat. 1715; amended Pub. L. 112–81, div. A, title IX, § 931(a), Dec. 31, 2011, 125 Stat. 1541; Pub. L. 114–328, div. A, title IX, § 914, Dec. 23, 2016, 130 Stat. 2350; Pub. L. 115–91, div. A, title X, §§ 1051(a)(6)(B), 1081(a)(5), Dec. 12, 2017, 131 Stat. 1560, 1594; Pub. L. 115–232, div. A, title IX, § 933, Aug. 13, 2018, 132 Stat. 1938; Pub. L. 116–92, div. A, title IX, § 902(1), title XI, § 1106, Dec. 20, 2019, 133 Stat. 1542, 1597; Pub. L. 116–283, div. A, title IX, § 912, title XVIII, §§ 1808(d)(1), 1883(b)(2), Jan. 1, 2021, 134 Stat. 3802, 4160, 4294.)

AMENDMENT OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1883(b)(2), Jan. 1, 2021, 134 Stat. 4151, 4294, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, except as otherwise provided in title XVIII of Pub. L. 116–283, in title 10, United States Code, each reference in the text of such title to a source section that is redesignated by title XVIII of Pub. L. 116–283, is amended by striking such reference and inserting a reference to the appropriate section as so redesignated. See 2021 Amendment note below.

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1808(d)(1), Jan. 1, 2021, 134 Stat. 4151, 4160, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, subsection (c)(3) of this section is amended by striking ''section 2545'' and inserting ''section 3001''. See 2021 Amendment note below.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 115(b)(5) of this title, prior to repeal by Pub. L. 101–510, § 1483(a).

AMENDMENTS

2021—Subsec. (b). Pub. L. 116–283, § 912, inserted at end ''The Secretary may not reduce the civilian workforce programmed full-time equivalent levels unless the Secretary conducts an appropriate analysis of the impacts of such reductions on workload, military force structure, lethality, readiness, operational effectiveness, stress on the military force, and fully burdened costs.''

Subsec. (c)(3). Pub. L. 116–283, § 1808(d)(1), substituted ''section 3001'' for ''section 2545''.

Subsec. (d)(1). Pub. L. 116–283, § 1883(b)(2), substituted ''section 4505(c)'' for ''section 2330a(c)''.

2019—Subsec. (c)(3). Pub. L. 116–92, § 902(1), substituted ''Under Secretary of Defense for Acquisition and Sustainment'' for ''Under Secretary of Defense for Acquisition, Technology, and Logistics''.

Subsec. (g)(1)(B). Pub. L. 116–92, § 1106, amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''if the performance of such functions by military personnel is required to address critical staffing needs resulting from a reduction in personnel or budgetary resources by reason of an Act of Congress, in which case such functions may not be performed by military personnel for a period in excess of one year.''

2018—Subsec. (g)(1)(A). Pub. L. 115–232 substituted ''is cost-effective, taking into account the fully-burdened costs of the civilian, military, and contractor workforces, including the impact of the performance of such functions on military career progression or when required by military necessity'' for '', including a permanent conversion of such functions to performance by military personnel, is cost-effective or required by a mission''.

2017—Subsec. (b). Pub. L. 115–91, § 1081(a)(5), struck out ''(as identified pursuant to section 118b of this title)'' after ''armed forces''.

Subsec. (d). Pub. L. 115–91, § 1051(a)(6)(B), redesignated pars. (3) and (4) as (1) and (2), respectively, and struck out former pars. (1) and (2) which read as follows:

''(1) The civilian strategic workforce plan (required by section 115b of this title).

''(2) The civilian positions master plan (required by section 1597(c) of this title).''

2016—Subsec. (g). Pub. L. 114–328 added subsec. (g).

2011—Pub. L. 112–81 amended section generally. Prior to amendment, text read as follows: ''The Secretary of Defense shall use the least costly form of personnel consistent with military requirements and other needs of the Department. In developing the annual personnel authorization requests to Congress and in carrying out personnel policies, the Secretary shall—

''(1) consider particularly the advantages of converting from one form of personnel (military, civilian, or private contract) to another for the performance of a specified job; and

''(2) include in each manpower requirements report submitted under section 115a of this title a complete justification for converting from one form of personnel to another.''

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by sections 1808(d)(1) and 1883(b)(2) of Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

STRATEGIC POLICY FOR THE RETROGRADE, RECONSTITUTION, AND REPLACEMENT OF OPERATING FORCES USED TO SUPPORT OVERSEAS CONTINGENCY OPERATIONS

Pub. L. 113–66, div. A, title III, § 324, Dec. 26, 2013, 127 Stat. 733, provided that:

''(a) ESTABLISHMENT OF POLICY.—

''(1) IN GENERAL.—The Secretary of Defense shall establish a policy setting forth the programs and priorities of the Department of Defense for the retrograde, reconstitution, and replacement of units and materiel used to support overseas contingency operations. The policy shall take into account national security threats, the requirements of the combatant commands, the current readiness of the operating forces of the military departments, and risk associated with strategic depth and the time necessary to reestablish required personnel, equipment, and training readiness in such operating forces.

''(2) ELEMENTS.—The policy required under paragraph (1) shall include the following elements:

''(A) Establishment and assignment of responsibilities and authorities within the Department for oversight and execution of the planning, organization, and management of the programs to reestablish the readiness of redeployed operating forces.

''(B) Guidance concerning priorities, goals, objectives, timelines, and resources to reestablish the

readiness of redeployed operating forces in support of national defense objectives and combatant command requirements.

"(C) Oversight reporting requirements and metrics for the evaluation of Department of Defense and military department progress on restoring the readiness of redeployed operating forces in accordance with the policy required under paragraph (1).

"(D) A framework for joint departmental reviews of military services' annual budgets proposed for retrograde, reconstitution, or replacement activities, including an assessment of the strategic and operational risk assumed by the proposed levels of investment across the Department of Defense.

"(b) IMPLEMENTATION PLAN.—

"(1) IN GENERAL.—Not later than 90 days after the date of the enactment of this Act [Dec. 26, 2013], the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a plan for implementation of the policy required under this section.

"(2) ELEMENTS.—The implementation plan required under paragraph (1) shall include the following elements:

"(A) The assignment of responsibilities and authorities for oversight and execution of the planning, organization, and management of the programs to reestablish the readiness of redeployed operating forces.

"(B) Establishment of priorities, goals, objectives, timelines, and resources to reestablish the readiness of redeployed operating forces in support of national defense objectives and combatant command requirements.

"(C) A description of how the plan will be implemented, including a schedule with milestones to meet the goals of the plan.

"(D) An estimate of the resources by military service and by year required to implement the plan, including an assessment of the risks assumed in the plan.

"(3) UPDATES.—Not later than one year after submitting the plan required under paragraph (1), and annually thereafter for two years, the Secretary of Defense shall submit to the congressional defense committees an update on progress toward meeting the goals of the plan.

"(c) COMPTROLLER GENERAL REPORT.—Not later than 120 days after the date of the enactment of this Act, and annually after the submittal of each update to the implementation plan under subsection (b), the Comptroller General of the United States shall review the implementation plan submitted under subsection (b) and the policy required by subsection (a), and submit to the congressional defense committees a report describing the findings of such review and progress made toward meeting the goals of the plan and including any additional information relating to the policy and plan that the Comptroller General determines appropriate."

SAVINGS TO BE ACHIEVED IN CIVILIAN PERSONNEL WORKFORCE AND SERVICE CONTRACTOR WORKFORCE OF THE DEPARTMENT OF DEFENSE

Pub. L. 112–239, div. A, title IX, §955, Jan. 2, 2013, 126 Stat. 1896, which related to efficiencies plan for the civilian personnel workforce and service contractor workforce of the Department of Defense, requiring specific savings, excluding certain expenses, setting reporting requirements, limiting transfers of functions, recommending application of certain funds saved to transition assistance for personnel separated from the Armed Forces, and providing definition of "service contractor workforce", was repealed by Pub. L. 114–328, div. A, title IX, §915, Dec. 23, 2016, 130 Stat. 2350.

CONVERSION OF MILITARY POSITIONS TO CIVILIAN POSITIONS

Pub. L. 104–106, div. A, title X, §1032, Feb. 10, 1996, 110 Stat. 429, as amended by Pub. L. 104–201, div. A, title XVI, §1601, Sept. 23, 1996, 110 Stat. 2734, directed Secretary of Defense, by Sept. 30, 1996, to convert at least 3,000 military positions to civilian positions and, not later than Mar. 31, 1996, submit to Congress a plan for the implementation of conversion.

PROHIBITION ON USE OF FUNDS TO ASSIGN SUPERVISOR'S TITLE OR GRADE BASED UPON NUMBER OF PEOPLE SUPERVISED

Pub. L. 104–61, title VIII, §8031, Dec. 1, 1995, 109 Stat. 658, provided that: "None of the funds appropriated during the current fiscal year and hereafter, may be used by the Department of Defense to assign a supervisor's title or grade when the number of people he or she supervises is considered as a basis for this determination: *Provided*, That savings that result from this provision are represented as such in future budget proposals."

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 103–335, title VIII, §8036, Sept. 30, 1994, 108 Stat. 2626.

Pub. L. 103–139, title VIII, §8040, Nov. 11, 1993, 107 Stat. 1449.

Pub. L. 102–396, title IX, §9053, Oct. 6, 1992, 106 Stat. 1914.

Pub. L. 102–172, title VIII, §8055, Nov. 26, 1991, 105 Stat. 1184.

Pub. L. 101–511, title VIII, §8063, Nov. 5, 1990, 104 Stat. 1888.

Pub. L. 101–165, title IX, §9085, Nov. 21, 1989, 103 Stat. 1147.

Pub. L. 100–463, title VIII, §8079, Oct. 1, 1988, 102 Stat. 2270–30.

Pub. L. 100–202, §101(b) [title VIII, §8105], Dec. 22, 1987, 101 Stat. 1329–43, 1329–81.

§129b. Authority to procure personal services

(a) AUTHORITY.—Subject to subsection (b), the Secretary of Defense and the Secretaries of the military departments may—

(1) procure the services of experts or consultants (or of organizations of experts or consultants) in accordance with section 3109 of title 5; and

(2) pay in connection with such services travel expenses of individuals, including transportation and per diem in lieu of subsistence while such individuals are traveling from their homes or places of business to official duty stations and return as may be authorized by law.

(b) CONDITIONS.—The services of experts or consultants (or organizations thereof) may be procured under subsection (a) only if the Secretary of Defense or the Secretary of the military department concerned, as the case may be, determines that—

(1) the procurement of such services is advantageous to the United States; and

(2) such services cannot adequately be provided by the Department of Defense.

(c) REGULATIONS.—Procurement of the services of experts and consultants (or organizations thereof) under subsection (a) shall be carried out under regulations prescribed by the Secretary of Defense.

(d) ADDITIONAL AUTHORITY FOR PERSONAL SERVICES CONTRACTS.—(1) In addition to the authority provided under subsection (a), the Secretary of Defense may enter into personal services contracts if the personal services—

(A) are to be provided by individuals outside the United States, regardless of their nation-

ality, and are determined by the Secretary to be necessary and appropriate for supporting the activities and programs of the Department of Defense outside the United States;

(B) directly support the mission of a defense intelligence component or counter-intelligence organization of the Department of Defense; or

(C) directly support the mission of the special operations command of the Department of Defense.

(2) The contracting officer for a personal services contract under this subsection shall be responsible for ensuring that—

(A) the services to be procured are urgent or unique; and

(B) it would not be practicable for the Department to obtain such services by other means.

(3) The requirements of section 3109 of title 5 shall not apply to a contract entered into under this subsection.

(Added Pub. L. 101–510, div. A, title XIV, § 1481(b)(1), Nov. 5, 1990, 104 Stat. 1704; amended Pub. L. 102–190, div. A, title X, § 1061(a)(2), Dec. 5, 1991, 105 Stat. 1472; Pub. L. 108–136, div. A, title VIII, § 841(a), (b)(1), Nov. 24, 2003, 117 Stat. 1552.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in Pub. L. 101–165, title IX, § 9002, Nov. 21, 1989, 103 Stat. 1129, which was set out as a note under section 2241 of this title, prior to repeal by Pub. L. 101–510, § 1481(b)(3).

AMENDMENTS

2003—Pub. L. 108–136, § 841(b)(1), substituted ''Authority to procure personal services'' for ''Experts and consultants: authority to procure services of'' in section catchline.

Subsec. (d). Pub. L. 108–136, § 841(a), added subsec. (d).

1991—Pub. L. 102–190 inserted ''of'' after ''services'' in section catchline.

§ 129c. Medical personnel: limitations on reductions

(a) LIMITATION ON REDUCTION.—For any fiscal year, the Secretary of Defense may not make a reduction in the number of medical personnel of the Department of Defense described in subsection (b) unless the Secretary makes a certification for that fiscal year described in subsection (c).

(b) COVERED REDUCTIONS.—Subsection (a) applies to a reduction in the number of medical personnel of the Department of Defense as of the end of a fiscal year to a number that is less than—

(1) 95 percent of the number of such personnel at the end of the immediately preceding fiscal year; or

(2) 90 percent of the number of such personnel at the end of the third fiscal year preceding the fiscal year.

(c) CERTIFICATION.—A certification referred to in subsection (a) with respect to reductions in medical personnel of the Department of Defense for any fiscal year is a certification by the Secretary of Defense to Congress that—

(1) the number of medical personnel being reduced is excess to the current and projected needs of the Department of Defense; and

(2) such reduction will not result in an increase in the cost of health care services provided under the Civilian Health and Medical Program of the Uniformed Services under chapter 55 of this title.

(d) POLICY FOR IMPLEMENTING REDUCTIONS.—Whenever the Secretary of Defense directs that there be a reduction in the total number of military medical personnel of the Department of Defense, the Secretary shall require that the reduction be carried out so as to ensure that the reduction is not exclusively or disproportionately borne by any one of the armed forces and is not exclusively or disproportionately borne by either the active or the reserve components.

(e) DEFINITION.—In this section, the term ''medical personnel'' means—

(1) the members of the armed forces covered by the term ''medical personnel'' as defined in section 115a(e)(2) of this title; and

(2) the civilian personnel of the Department of Defense assigned to military medical facilities.

(Added Pub. L. 104–106, div. A, title V, § 564(a)(1), Feb. 10, 1996, 110 Stat. 325; amended Pub. L. 105–85, div. A, title X, § 1073(a)(4), Nov. 18, 1997, 111 Stat. 1900.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in Pub. L. 101–510, div. A, title VII, § 711, Nov. 5, 1990, 104 Stat. 1582, as amended, which was set out as a note under section 115 of this title, prior to repeal by Pub. L. 104–106, § 564(d)(1).

AMENDMENTS

1997—Subsec. (e)(1). Pub. L. 105–85 substituted ''section 115a(e)(2)'' for ''section 115a(g)(2)''.

PROHIBITION ON CONVERSION OF MILITARY MEDICAL AND DENTAL POSITIONS TO CIVILIAN MEDICAL AND DENTAL POSITIONS

Pub. L. 110–181, div. A, title VII, § 721(a)–(d), Jan. 28, 2008, 122 Stat. 198, 199, as amended by Pub. L. 111–84, div. A, title VII, § 701, Oct. 28, 2009, 123 Stat. 2372, prohibited the Secretary of a military department from converting any military medical or dental position to a civilian medical or dental position on or after Oct. 1, 2007, and required restoration of certain converted positions to military positions, prior to repeal by Pub. L. 114–328, div. A, title VII, § 721(c), Dec. 23, 2016, 130 Stat. 2228.

REQUIREMENT TO CERTIFY AND REPORT ON CONVERSION OF MILITARY MEDICAL AND DENTAL POSITIONS TO CIVILIAN MEDICAL AND DENTAL POSITIONS

Pub. L. 109–364, div. A, title VII, § 742, Oct. 17, 2006, 120 Stat. 2306, which prohibited the Secretary of a military department from converting any military medical or dental position to a civilian medical or dental position in a fiscal year until the Secretary submitted to the Committees on Armed Services and Appropriations of the Senate and the House of Representatives with respect to that fiscal year a certification that the conversions within that department would not increase cost or decrease quality of care or access to care, was repealed by Pub. L. 110–181, div. A, title VII, § 721(e), Jan. 28, 2008, 122 Stat. 199.

PROHIBITION ON CONVERSIONS OF MILITARY MEDICAL AND DENTAL POSITIONS TO CIVILIAN MEDICAL POSITIONS UNTIL SUBMISSION OF CERTIFICATION

Pub. L. 109–163, div. A, title VII, § 744, Jan. 6, 2006, 119 Stat. 3360, provided that:

''(a) PROHIBITION ON CONVERSIONS.—

''(1) SUBMISSION OF CERTIFICATION.—A Secretary of a military department may not convert any military medical or dental position to a civilian medical or dental position until the Secretary submits to the Committees on Armed Services of the Senate and the House of Representatives a certification that the conversions within that department will not increase cost or decrease quality of care or access to care. Such a certification may not be submitted before June 1, 2006.

''(2) REPORT WITH CERTIFICATION.—A Secretary submitting such a certification shall include with the certification a written report that includes—

''(A) the methodology used by the Secretary in making the determinations necessary for the certification, including the extent to which the Secretary took into consideration the findings of the Comptroller General in the report under subsection (b)(3);

''(B) the results of a market survey in each affected area of the availability of civilian medical and dental care providers in such area in order to determine whether the civilian medical and dental care providers available in such area are adequate to fill the civilian positions created by the conversion of military medical and dental positions to civilian positions in such area; and

''(C) any action taken by the Secretary in response to recommendations in the Comptroller General report under subsection (b)(3).

''(b) REQUIREMENT FOR STUDY.—

''(1) IN GENERAL.—The Comptroller General shall conduct a study on the effect of conversions of military medical and dental positions to civilian medical or dental positions on the defense health program.

''(2) MATTERS COVERED.—The study shall include the following:

''(A) The number of military medical and dental positions, by grade and specialty, planned for conversion to civilian medical or dental positions.

''(B) The number of military medical and dental positions, by grade and specialty, converted to civilian medical or dental positions since October 1, 2004.

''(C) The ability of the military health care system to fill the civilian medical and dental positions required, by specialty.

''(D) The degree to which access to health care is affected in both the direct and purchased care system, including an assessment of the effects of any increased shifts in patient load from the direct care to the purchased care system, or any delays in receipt of care in either the direct or purchased care system because of lack of direct care providers.

''(E) The degree to which changes in military manpower requirements affect recruiting and retention of uniformed medical and dental personnel.

''(F) The degree to which conversion of the military positions meets the joint medical and dental readiness requirements of the uniformed services, as determined jointly by all the uniformed services.

''(G) The effect of the conversions of military medical positions to civilian medical and dental positions on the defense health program, including costs associated with the conversions, with a comparison of the estimated costs versus the actual costs incurred by the number of conversions since October 1, 2004.

''(H) The effectiveness of the conversions in enhancing medical and dental readiness, health care efficiency, productivity, quality, and customer satisfaction.

''(3) REPORT ON STUDY.—Not later than May 1, 2006, the Comptroller General shall submit to the Committees on Armed Services of the Senate and House of Representatives a report containing the results of the study under this section.

''(c) DEFINITIONS.—In this section:

''(1) The term 'military medical or dental position' means a position for the performance of health care functions within the Armed Forces held by a member of the Armed Forces.

''(2) The term 'civilian medical or dental position' means a position for the performance of health care functions within the Department of Defense held by an employee of the Department or of a contractor of the Department.

''(3) The term 'affected area' means an area in which military medical or dental positions were converted to civilian medical or dental positions before October 1, 2004, or in which such conversions are scheduled to occur in the future.

''(4) The term 'uniformed services' has the meaning given that term in section 1072(1) of title 10, United States Code.''

SPECIAL TRANSITION RULE FOR FISCAL YEAR 1996

Pub. L. 104–106, div. A, title V, § 564(b), Feb. 10, 1996, 110 Stat. 326, provided that, for purposes of applying subsec. (b)(1) of this section during fiscal year 1996, the number against which the percentage limitation of 95 percent was to be computed would be the number of medical personnel of the Department of Defense as of the end of fiscal year 1994, rather than the number as of the end of fiscal year 1995.

§ 129d. Disclosure to litigation support contractors

(a) DISCLOSURE AUTHORITY.—An officer or employee of the Department of Defense may disclose sensitive information to a litigation support contractor if—

(1) the disclosure is for the sole purpose of providing litigation support to the Government in the form of administrative, technical, or professional services during or in anticipation of litigation; and

(2) under a contract with the Government, the litigation support contractor agrees to and acknowledges—

(A) that sensitive information furnished will be accessed and used only for the purposes stated in the relevant contract;

(B) that the contractor will take all precautions necessary to prevent disclosure of the sensitive information provided to the contractor;

(C) that such sensitive information provided to the contractor under the authority of this section shall not be used by the contractor to compete against a third party for Government or non-Government contracts; and

(D) that the violation of subparagraph (A), (B), or (C) is a basis for the Government to terminate the litigation support contract of the contractor.

(b) DEFINITIONS.—In this section:

(1) The term ''litigation support contractor'' means a contractor (including an expert or technical consultant) under contract with the Department of Defense to provide litigation support.

(2) The term ''sensitive information'' means confidential commercial, financial, or proprietary information, technical data, or other privileged information.

(Added Pub. L. 112–81, div. A, title VIII, § 802(a)(1), Dec. 31, 2011, 125 Stat. 1484.)

§ 130. Authority to withhold from public disclosure certain technical data

(a) Notwithstanding any other provision of law, the Secretary of Defense may withhold

from public disclosure any technical data with military or space application in the possession of, or under the control of, the Department of Defense, if such data may not be exported lawfully outside the United States without an approval, authorization, or license under the Export Administration Act of 1979 (50 U.S.C. 4601 et seq.) or the Arms Export Control Act (22 U.S.C. 2751 et seq.). However, technical data may not be withheld under this section if regulations promulgated under either such Act authorize the export of such data pursuant to a general, unrestricted license or exemption in such regulations.

(b) Regulations under this section shall be published in the Federal Register for a period of no less than 30 days for public comment before promulgation. Such regulations shall address, where appropriate, releases of technical data to allies of the United States and to qualified United States contractors, including United States contractors that are small business concerns, for use in performing United States Government contracts.

(c) In this section, the term ''technical data with military or space application'' means any blueprints, drawings, plans, instructions, computer software and documentation, or other technical information that can be used, or be adapted for use, to design, engineer, produce, manufacture, operate, repair, overhaul, or reproduce any military or space equipment or technology concerning such equipment.

(Added Pub. L. 98–94, title XII, § 1217(a), Sept. 24, 1983, 97 Stat. 690, § 140c; amended Pub. L. 99–145, title XIII, § 1303(a)(3), Nov. 8, 1985, 99 Stat. 738; renumbered § 130 and amended Pub. L. 99–433, title I, §§ 101(a)(3), 110(d)(6), Oct. 1, 1986, 100 Stat. 994, 1003; Pub. L. 100–26, § 7(k)(3), Apr. 21, 1987, 101 Stat. 284; Pub. L. 101–510, div. A, title XIV, § 1484(b)(1), Nov. 5, 1990, 104 Stat. 1715; Pub. L. 114–328, div. A, title X, § 1081(b)(3)(A), Dec. 23, 2016, 130 Stat. 2418.)

REFERENCES IN TEXT

The Export Administration Act of 1979, referred to in subsec. (a), is Pub. L. 96–72, Sept. 29, 1979, 93 Stat. 503, which was classified principally to chapter 56 (§ 4601 et seq.) of Title 50, War and National Defense, prior to repeal by Pub. L. 115–232, div. A, title XVII, § 1766(a), Aug. 13, 2018, 132 Stat. 2232, except for sections 11A, 11B, and 11C thereof (50 U.S.C. 4611, 4612, 4613).

The Arms Export Control Act, referred to in subsec. (a), is Pub. L. 90–629, Oct. 22, 1968, 82 Stat. 1320, as amended, which is classified principally to chapter 39 (§ 2751 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 2751 of Title 22 and Tables.

AMENDMENTS

2016—Subsec. (a). Pub. L. 114–328 substituted ''(50 U.S.C. 4601 et seq.)'' for ''(50 U.S.C. App. 2401–2420)''.

1990—Subsecs. (b), (c). Pub. L. 101–510 substituted ''Regulations under this section'' for ''(1) Within 90 days after September 24, 1983, the Secretary of Defense shall propose regulations to implement this section. Such regulations'' in subsec. (b) and redesignated former subsec. (b)(2) as subsec. (c).

1987—Subsec. (b)(2). Pub. L. 100–26 inserted ''the term'' after ''In this section,''.

1986—Pub. L. 99–433 renumbered section 140c of this title as this section and substituted ''Authority'' for ''Secretary of Defense: authority'' in section catchline.

1985—Subsec. (b)(1). Pub. L. 99–145 substituted ''September 24, 1983'' for ''enactment of this section''.

[§ 130a. Repealed. Pub. L. 110–181, div. A, title IX, § 901(a)(1), Jan. 28, 2008, 122 Stat. 272]

Section, added Pub. L. 105–85, div. A, title IX, § 911(a)(1), Nov. 18, 1997, 111 Stat. 1857; amended Pub. L. 106–65, div. A, title IX, § 921(a)(1), Oct. 5, 1999, 113 Stat. 722; Pub. L. 106–398, § 1 [[div. A], title IX, § 941], Oct. 30, 2000, 114 Stat. 1654, 1654A–241; Pub. L. 108–375, div. A, title X, § 1084(d)(2), Oct. 28, 2004, 118 Stat. 2061, related to major Department of Defense headquarters activities personnel.

§ 130b. Personnel in overseas, sensitive, or routinely deployable units: nondisclosure of personally identifying information

(a) EXEMPTION FROM DISCLOSURE.—The Secretary of Defense and, with respect to the Coast Guard when it is not operating as a service in the Navy, the Secretary of Homeland Security may, notwithstanding section 552 of title 5, authorize to be withheld from disclosure to the public personally identifying information regarding—

(1) any member of the armed forces assigned to an overseas unit, a sensitive unit, or a routinely deployable unit; and

(2) any employee of the Department of Defense or of the Coast Guard whose duty station is with any such unit.

(b) EXCEPTIONS.—(1) The authority in subsection (a) is subject to such exceptions as the President may direct.

(2) Subsection (a) does not authorize any official to withhold, or to authorize the withholding of, information from Congress.

(c) DEFINITIONS.—In this section:

(1) The term ''personally identifying information'', with respect to any person, means the person's name, rank, duty address, and official title and information regarding the person's pay.

(2) The term ''unit'' means a military organization of the armed forces designated as a unit by competent authority.

(3) The term ''overseas unit'' means a unit that is located outside the United States and its territories.

(4) The term ''sensitive unit'' means a unit that is primarily involved in training for the conduct of, or conducting, special activities or classified missions, including—

(A) a unit involved in collecting, handling, disposing, or storing of classified information and materials;

(B) a unit engaged in training—

(i) special operations units;

(ii) security group commands weapons stations; or

(iii) communications stations; and

(C) any other unit that is designated as a sensitive unit by the Secretary of Defense or, in the case of the Coast Guard when it is not operating as a service in the Navy, by the Secretary of Homeland Security.

(5) The term ''routinely deployable unit'' means a unit that normally deploys from its permanent home station on a periodic or rotating basis to meet peacetime operational re-

quirements that, or to participate in scheduled training exercises that, routinely require deployments outside the United States and its territories. Such term includes a unit that is alerted for deployment outside the United States and its territories during an actual execution of a contingency plan or in support of a crisis operation.

(Added Pub. L. 106–65, div. A, title X, § 1044(a), Oct. 5, 1999, 113 Stat. 761; amended Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

AMENDMENTS

2002—Subsecs. (a), (c)(4)(C). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

§ 130c. Nondisclosure of information: certain sensitive information of foreign governments and international organizations

(a) EXEMPTION FROM DISCLOSURE.—The national security official concerned (as defined in subsection (h)) may withhold from public disclosure otherwise required by law sensitive information of foreign governments in accordance with this section.

(b) INFORMATION ELIGIBLE FOR EXEMPTION.—For the purposes of this section, information is sensitive information of a foreign government only if the national security official concerned makes each of the following determinations with respect to the information:

(1) That the information was provided by, otherwise made available by, or produced in cooperation with, a foreign government or international organization.

(2) That the foreign government or international organization is withholding the information from public disclosure (relying for that determination on the written representation of the foreign government or international organization to that effect).

(3) That any of the following conditions are met:

(A) The foreign government or international organization requests, in writing, that the information be withheld.

(B) The information was provided or made available to the United States Government on the condition that it not be released to the public.

(C) The information is an item of information, or is in a category of information, that the national security official concerned has specified in regulations prescribed under subsection (g) as being information the release of which would have an adverse effect on the ability of the United States Government to obtain the same or similar information in the future.

(c) INFORMATION OF OTHER AGENCIES.—If the national security official concerned provides to the head of another agency sensitive information of a foreign government, as determined by that national security official under subsection (b), and informs the head of the other agency of that determination, then the head of the other agency shall withhold the information from any public disclosure unless that national security official specifically authorizes the disclosure.

(d) LIMITATIONS.—(1) If a request for disclosure covers any sensitive information of a foreign government (as described in subsection (b)) that came into the possession or under the control of the United States Government before October 30, 2000, and more than 25 years before the request is received by an agency, the information may be withheld only as set forth in paragraph (3).

(2)(A) If a request for disclosure covers any sensitive information of a foreign government (as described in subsection (b)) that came into the possession or under the control of the United States Government on or after the date referred to in paragraph (1), the authority to withhold the information under this section is subject to the provisions of subparagraphs (B) and (C).

(B) Information referred to in subparagraph (A) may not be withheld under this section after—

(i) the date that is specified by a foreign government or international organization in a request or expression of a condition described in paragraph (1) or (2) of subsection (b) that is made by the foreign government or international organization concerning the information; or

(ii) if there are more than one such foreign governments or international organizations, the latest date so specified by any of them.

(C) If no date is applicable under subparagraph (B) to a request referred to in subparagraph (A) and the information referred to in that subparagraph came into possession or under the control of the United States more than 10 years before the date on which the request is received by an agency, the information may be withheld under this section only as set forth in paragraph (3).

(3) Information referred to in paragraph (1) or (2)(C) may be withheld under this section in the case of a request for disclosure only if, upon the notification of each foreign government and international organization concerned in accordance with the regulations prescribed under subsection (g)(2), any such government or organization requests in writing that the information not be disclosed for an additional period stated in the request of that government or organization. After the national security official concerned considers the request of the foreign government or international organization, the official shall designate a later date as the date after which the information is not to be withheld under this section. The later date may be extended in accordance with a later request of any such foreign government or international organization under this paragraph.

(e) INFORMATION PROTECTED UNDER OTHER AUTHORITY.—This section does not apply to information or matters that are specifically required in the interest of national defense or foreign policy to be protected against unauthorized disclosure under criteria established by an Executive order and are classified, properly, at the confidential, secret, or top secret level pursuant to such Executive order.

(f) DISCLOSURES NOT AFFECTED.—Nothing in this section shall be construed to authorize any official to withhold, or to authorize the withholding of, information from the following:

(1) Congress.

(2) The Comptroller General, unless the information relates to activities that the President designates as foreign intelligence or counterintelligence activities.

(g) REGULATIONS.—(1) The national security officials referred to in subsection (h)(1) shall each prescribe regulations to carry out this section. The regulations shall include criteria for making the determinations required under subsection (b). The regulations may provide for controls on access to and use of, and special markings and specific safeguards for, a category or categories of information subject to this section.

(2) The regulations shall include procedures for notifying and consulting with each foreign government or international organization concerned about requests for disclosure of information to which this section applies.

(h) DEFINITIONS.—In this section:

(1) The term ''national security official concerned'' means the following:

(A) The Secretary of Defense, with respect to information of concern to the Department of Defense, as determined by the Secretary.

(B) The Secretary of Homeland Security, with respect to information of concern to the Coast Guard, as determined by the Secretary, but only while the Coast Guard is not operating as a service in the Navy.

(C) The Secretary of Energy, with respect to information concerning the national security programs of the Department of Energy, as determined by the Secretary.

(2) The term ''agency'' has the meaning given that term in section 552(f) of title 5.

(3) The term ''international organization'' means the following:

(A) A public international organization designated pursuant to section 1 of the International Organizations Immunities Act (59 Stat. 669; 22 U.S.C. 288) as being entitled to enjoy the privileges, exemptions, and immunities provided in such Act.

(B) A public international organization created pursuant to a treaty or other international agreement as an instrument through or by which two or more foreign governments engage in some aspect of their conduct of international affairs.

(C) An official mission, except a United States mission, to a public international organization referred to in subparagraph (A) or (B).

(Added Pub. L. 106–398, § 1 [[div. A], title X, § 1073(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–277; amended Pub. L. 107–107, div. A, title X, § 1048(a)(3), (c)(1), Dec. 28, 2001, 115 Stat. 1222, 1226; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

REFERENCES IN TEXT

The International Organizations Immunities Act, referred to in subsec. (h)(3)(A), is title I of act Dec. 29, 1945, ch. 652, 59 Stat. 669, as amended, which is classified principally to subchapter XVIII (§ 288 et seq.) of chapter 7 of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 288 of Title 22 and Tables.

AMENDMENTS

2002—Subsec. (h)(1)(B). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

2001—Subsec. (b)(3)(C). Pub. L. 107–107, § 1048(a)(3), substituted ''subsection (g)'' for ''subsection (f)''.

Subsec. (d)(1). Pub. L. 107–107, § 1048(c)(1), substituted ''October 30, 2000,'' for ''the date of the enactment of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

§ 130d. Treatment under Freedom of Information Act of certain confidential information shared with State and local personnel

Confidential business information and other sensitive but unclassified homeland security information in the possession of the Department of Defense that is shared, pursuant to section 892 of the Homeland Security Act of 2002 (6 U.S.C. 482), with State and local personnel (as defined in such section) shall not be subject to disclosure under section 552 of title 5 by virtue of the sharing of such information with such personnel.

(Added Pub. L. 109–364, div. A, title XIV, § 1405(a), Oct. 17, 2006, 120 Stat. 2436.)

§ 130e. Treatment under Freedom of Information Act of certain critical infrastructure security information

(a) EXEMPTION.—The Secretary of Defense may exempt Department of Defense critical infrastructure security information from disclosure pursuant to section 552(b)(3) of title 5, upon a written determination that—

(1) the information is Department of Defense critical infrastructure security information; and

(2) the public interest consideration in the disclosure of such information does not outweigh preventing the disclosure of such information.

(b) DESIGNATION OF DEPARTMENT OF DEFENSE CRITICAL INFRASTRUCTURE SECURITY INFORMATION.—In addition to any other authority or requirement regarding protection from dissemination of information, the Secretary may designate information as being Department of Defense critical infrastructure security information, including during the course of creating such information, to ensure that such information is not disseminated without authorization. Information so designated is subject to the determination process under subsection (a) to determine whether to exempt such information from disclosure described in such subsection.

(c) INFORMATION PROVIDED TO STATE AND LOCAL GOVERNMENTS.—(1) Department of Defense critical infrastructure security information covered by a written determination under

subsection (a) or designated under subsection (b) that is provided to a State or local government shall remain under the control of the Department of Defense.

(2)(A) A State or local law authorizing or requiring a State or local government to disclose Department of Defense critical infrastructure security information that is covered by a written determination under subsection (a) shall not apply to such information.

(B) If a person requests pursuant to a State or local law that a State or local government disclose information that is designated as Department of Defense critical infrastructure security information under subsection (b), the State or local government shall provide the Secretary an opportunity to carry out the determination process under subsection (a) to determine whether to exempt such information from disclosure pursuant to subparagraph (A).

(d) DELEGATION.—The Secretary of Defense may delegate the authority to make a determination under subsection (a) to the Director of Administration and Management.

(e) TRANSPARENCY.—Each determination of the Secretary, or the Secretary's designee, under subsection (a) shall be made in writing and accompanied by a statement of the basis for the determination. All such determinations and statements of basis shall be available to the public, upon request, through the Office of the Director of Administration and Management.

(f) DEFINITION.—In this section, the term ''Department of Defense critical infrastructure security information'' means sensitive but unclassified information that, if disclosed, would reveal vulnerabilities in Department of Defense critical infrastructure that, if exploited, would likely result in the significant disruption, destruction, or damage of or to Department of Defense operations, property, or facilities, including information regarding the securing and safeguarding of explosives, hazardous chemicals, or pipelines, related to critical infrastructure or protected systems owned or operated by or on behalf of the Department of Defense, including vulnerability assessments prepared by or on behalf of the Department of Defense, explosives safety information (including storage and handling), and other site-specific information on or relating to installation security.

(Added Pub. L. 112–81, div. A, title X, § 1091(a), Dec. 31, 2011, 125 Stat. 1604; amended Pub. L. 114–92, div. A, title X, § 1081(a)(2), Nov. 25, 2015, 129 Stat. 1000; Pub. L. 114–328, div. A, title XVI, § 1662(b), Dec. 23, 2016, 130 Stat. 2614.)

AMENDMENTS

2016—Subsecs. (b), (c), (f). Pub. L. 114–328 added subsecs. (b) and (c), redesignated former subsec. (c) as (f), and struck out former subsec. (b). Prior to amendment, text of subsec. (b) read as follows: ''Department of Defense critical infrastructure security information covered by a written determination under subsection (a) that is provided to a State or local government shall remain under the control of the Department of Defense.''

2015—Pub. L. 114–92 substituted ''Treatment under Freedom of Information Act of certain critical infrastructure security information'' for ''Treatment under Freedom of Information Act of critical infrastructure security information'' in section catchline.

§ 130f. Notification requirements for sensitive military operations

(a) IN GENERAL.—The Secretary of Defense shall promptly submit to the congressional defense committees notice in writing of any sensitive military operation conducted under this title no later than 48 hours following such operation.

(b) PROCEDURES.—(1) The Secretary of Defense shall establish and submit to the congressional defense committees procedures for complying with the requirements of subsection (a) consistent with the national security of the United States and the protection of operational integrity. The Secretary shall promptly notify the congressional defense committees in writing of any changes to such procedures at least 14 days prior to the adoption of any such changes.

(2) The congressional defense committees shall ensure that committee procedures designed to protect from unauthorized disclosure classified information relating to national security of the United States are sufficient to protect the information that is submitted to the committees pursuant to this section.

(3) In the event of an unauthorized disclosure of a sensitive military operation covered by this section, the Secretary shall ensure, to the maximum extent practicable, that the congressional defense committees are notified immediately of the sensitive military operation concerned. The notification under this paragraph may be verbal or written, but in the event of a verbal notification a written notification shall be provided by not later than 48 hours after the provision of the verbal notification.

(c) BRIEFING REQUIREMENT.—The Secretary of Defense shall periodically brief the congressional defense committees on Department of Defense personnel and equipment assigned to sensitive military operations, including Department of Defense support to such operations conducted under the National Security Act of 1947 (50 U.S.C. 3001 et seq.).

(d) SENSITIVE MILITARY OPERATION DEFINED.—(1) Except as provided in paragraph (2), in this section, the term ''sensitive military operation'' means—

(A) a lethal operation or capture operation conducted by the armed forces or conducted by a foreign partner in coordination with the armed forces that targets a specific individual or individuals; or

(B) an operation conducted by the armed forces in self-defense or in defense of foreign partners, including during a cooperative operation.

(2) For purposes of this section, the term ''sensitive military operation'' does not include any operation conducted within Afghanistan, Syria, or Iraq.

(e) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to provide any new authority or to alter or otherwise affect the War Powers Resolution (50 U.S.C. 1541 et seq.), the Authorization for Use of Military Force (Public Law 107–40; 50 U.S.C. 1541 note), or any requirement under the National Security Act of 1947 (50 U.S.C. 3001 et seq.).

(f) COLLECTIVE SELF-DEFENSE NOTIFICATION REQUIREMENT.—Not later than 48 hours after the

date on which a foreign partner force has been designated as eligible for the provision of collective self-defense by the armed forces for the purposes of subsection (d)(1)(B), the Secretary of Defense shall provide to the congressional defense committees notice in writing of such designation.

(Added Pub. L. 113–66, div. A, title X, § 1041(a)(1), Dec. 26, 2013, 127 Stat. 856; amended Pub. L. 114–92, div. A, title X, § 1043, Nov. 25, 2015, 129 Stat. 977; Pub. L. 114–328, div. A, title X, § 1036(a)–(f)(1), Dec. 23, 2016, 130 Stat. 2391, 2392; Pub. L. 115–91, div. A, title X, § 1081(a)(6), Dec. 12, 2017, 131 Stat. 1594; Pub. L. 115–232, div. A, title X, § 1031(a), (b), Aug. 13, 2018, 132 Stat. 1953.)

References in Text

The National Security Act of 1947, referred to in subsecs. (c) and (e), is act July 26, 1947, ch. 343, 61 Stat. 495, which is classified principally to chapter 44 (§ 3001 et seq.) of Title 50, War and National Defense. For complete classification of this Act to the Code, see Tables.

The War Powers Resolution, referred to in subsec. (e), is Pub. L. 93–148, Nov. 7, 1973, 87 Stat. 555, which is classified generally to chapter 33 (§ 1541 et seq.) of Title 50, War and National Defense. For complete classification of this Resolution to the Code, see Short Title note set out under section 1541 of Title 50 and Tables.

Amendments

2018—Subsec. (d). Pub. L. 115–232, § 1031(a), amended subsec. (d) generally. Prior to amendment, text read as follows: ''The term 'sensitive military operation' means the following:

''(1) A lethal operation or capture operation—

''(A) conducted by the armed forces outside a declared theater of active armed conflict; or

''(B) conducted by a foreign partner in coordination with the armed forces that targets a specific individual or individuals.

''(2) An operation conducted by the armed forces outside a declared theater of active armed conflict in self-defense or in defense of foreign partners, including during a cooperative operation.''

Subsec. (f). Pub. L. 115–232, § 1031(b), added subsec. (f).

2017—Subsec. (b)(1). Pub. L. 115–91 inserted period at end.

2016—Pub. L. 114–328, § 1036(f)(1), amended section catchline generally, substituting ''Notification requirements for sensitive military operations'' for ''Congressional notification of sensitive military operations''.

Subsec. (a). Pub. L. 114–328, § 1036(a), (c)(1), inserted ''no later than 48 hours'' before ''following such operation'' and struck out at end ''Department of Defense support to operations conducted under the National Security Act of 1947 (50 U.S.C. 3001 et seq.) is addressed in the classified annex prepared to accompany the National Defense Authorization Act for Fiscal Year 2014.''

Subsec. (b)(1). Pub. L. 114–328, § 1036(b)(1), inserted at end ''The Secretary shall promptly notify the congressional defense committees in writing of any changes to such procedures at least 14 days prior to the adoption of any such changes''.

Subsec. (b)(3). Pub. L. 114–328, § 1036(b)(2), added par. (3).

Subsec. (c). Pub. L. 114–328, § 1036(c)(2), inserted before period at end '', including Department of Defense support to such operations conducted under the National Security Act of 1947 (50 U.S.C. 3001 et seq.)''.

Subsec. (d). Pub. L. 114–328, § 1036(d), substituted ''means the following:'' and pars. (1) and (2) for ''means a lethal operation or capture operation conducted by the armed forces outside the United States and outside a theater of major hostilities pursuant to—

''(1) the Authorization for Use of Military Force (Public Law 107–40; 50 U.S.C. 1541 note); or

''(2) any other authority except—

''(A) a declaration of war; or

''(B) a specific statutory authorization for the use of force other than the authorization referred to in paragraph (1).''

Subsecs. (e), (f). Pub. L. 114–328, § 1036(e), redesignated subsec. (f) as (e) and struck out former subsec. (e) which provided exception to notification requirement.

2015—Subsec. (e). Pub. L. 114–92 designated existing provisions as par. (1) and added par. (2).

Effective Date

Pub. L. 113–66, div. A, title X, § 1041(b), Dec. 26, 2013, 127 Stat. 857, provided that: ''Section 130f of title 10, United States Code, as added by subsection (a), shall apply with respect to any sensitive military operation (as defined in subsection (d) of such section) executed on or after the date of the enactment of this Act [Dec. 26, 2013].''

Comprehensive Department of Defense Policy on Collective Self-Defense

Pub. L. 116–92, div. A, title XVII, § 1754, Dec. 20, 2019, 133 Stat. 1853, provided that:

''(a) Comprehensive Policy Required.—The Secretary of Defense shall prescribe a comprehensive written policy for the Department of Defense on the issuance of authorization for, and the provision by members and units of the United States Armed Forces of, collective self-defense to designated foreign nationals, their facilities, and their property.

''(b) Elements.—The policy required by subsection (a) shall address the following:

''(1) Each basis under domestic and international law pursuant to which a member or unit of the United States Armed Forces has been or may be authorized to provide collective self-defense to designated foreign nationals, their facilities, or their property under each circumstance as follows:

''(A) Inside an area of active hostilities, or in a country or territory in which United States forces are authorized to conduct or support direct action operations.

''(B) Outside an area of active hostilities, or in a country or territory in which United States forces are not authorized to conduct direct action military operations.

''(C) When United States personnel, facilities, or equipment are not threatened, including both as described in subparagraph (A) and as described in subparagraph (B).

''(D) When members of the United States Armed Forces are not participating in a military operation as part of an international coalition.

''(E) Any other circumstance not encompassed by subparagraphs (A) through (D) in which a member or unit of the United States Armed Forces has been or may be authorized to provide such collective self-defense.

''(2) A list and explanation of any limitations imposed by law or policy on the provision of collective self-defense to designated foreign nationals, their facilities, and their property under any of the bases in domestic or international law in the circumstances enumerated in paragraph (1), and the conditions under which any such limitation applies.

''(3) The procedure by which a proposal that any member or unit of the United States Armed Forces provide collective self-defense in support of designated foreign nationals, their facilities, and their property is to be submitted, processed, and endorsed through offices, officers, and officials of the Department to the applicable approval authority for final decision, and a list of any information, advice, or opinion to be included with such proposal in order to inform appropriate action on such proposal by such approval authority.

''(4) The title and duty position of any officers and officials of the Department empowered to render a final decision on a proposal described in paragraph

(3), and the conditions applicable to, and limitations on, the exercise of such decisionmaking authority by each such officer or official.

''(5) A description of the Rules of Engagement applicable to the provision of collective self-defense to designated foreign nationals, their facilities, and their property under any of the bases in domestic or international law in the circumstances enumerated in paragraph (1), and the conditions under which any such Rules of Engagement would be modified.

''(6) A description of the process through which policy guidance pertaining to the authorization for, and the provision by members of the United States Armed Forces of, collective self-defense to designated foreign nationals, their facilities, and their property is to be disseminated to the level of tactical execution.

''(7) Such other matters as the Secretary considers appropriate.

''(c) REPORT ON POLICY.—

''(1) IN GENERAL.—Not later than 60 days after the date of the enactment of this Act [Dec. 20, 2019], the Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report setting forth the policy required by subsection (a).

''(2) DOD GENERAL COUNSEL STATEMENT.—The Secretary shall include in the report under paragraph (1) a statement by the General Counsel of the Department of Defense as to whether the policy prescribed pursuant to subsection (a) is consistent with domestic and international law.

''(3) FORM.—The report required by paragraph (1) may be submitted in classified form.

''(d) BRIEFING ON POLICY.—Not later than 30 days after the date of the submittal of the report required by subsection (c), the Secretary shall provide the congressional defense committees a classified briefing on the policy prescribed pursuant to subsection (a). The briefing shall make use of vignettes designated to illustrate real world application of the policy in each [of] the circumstances enumerated in subsection (b)(1).''

DEADLINE FOR SUBMITTAL OF PROCEDURES

Pub. L. 113–66, div. A, title X, § 1041(c), Dec. 26, 2013, 127 Stat. 857, provided that: ''The Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] the procedures required under section 130f(b) of title 10, United States Code, as added by subsection (a), by not later than 60 days after the date of the enactment of this Act [Dec. 26, 2013].''

[§ 130g. Renumbered § 394]

§ 130h. Prohibitions relating to missile defense information and systems

(a) CERTAIN ''HIT-TO-KILL'' TECHNOLOGY AND TELEMETRY DATA.—None of the funds authorized to be appropriated or otherwise made available for any fiscal year for the Department of Defense may be used to provide the Russian Federation with ''hit-to-kill'' technology and telemetry data for missile defense interceptors or target vehicles.

(b) OTHER SENSITIVE MISSILE DEFENSE INFORMATION.—None of the funds authorized to be appropriated or otherwise made available for any fiscal year for the Department of Defense may be used to provide the Russian Federation with—

(1) information relating to velocity at burnout of missile defense interceptors or targets of the United States; or

(2) classified or otherwise controlled missile defense information.

(c) EXCEPTION.—The prohibitions in subsections (a) and (b) shall not apply to the United States providing to the Russian Federation information regarding ballistic missile early warning.

(d) INTEGRATION.—None of the funds authorized to be appropriated or otherwise made available for any fiscal year for the Department of Defense may be obligated or expended to integrate a missile defense system of the Russian Federation or a missile defense system of the People's Republic of China into any missile defense system of the United States.

(e) SUNSET.—The prohibitions in subsections (a), (b), and (d) shall expire on January 1, 2026.

(Added Pub. L. 114–92, div. A, title XVI, § 1671(a)(1), Nov. 25, 2015, 129 Stat. 1129; amended Pub. L. 114–328, div. A, title X, § 1081(a)(1), title XVI, § 1682(a)(1), (b), Dec. 23, 2016, 130 Stat. 2417, 2623, 2624; Pub. L. 115–232, div. A, title XVI, § 1678, Aug. 13, 2018, 132 Stat. 2161; Pub. L. 116–283, div. A, title XVI, § 1642, Jan. 1, 2021, 134 Stat. 4062.)

AMENDMENTS

2021—Subsec. (e). Pub. L. 116–283 substituted ''January 1, 2026'' for ''January 1, 2021''.

2018—Subsec. (e). Pub. L. 115–232 substituted ''January 1, 2021'' for ''January 1, 2019''.

2016—Pub. L. 114–328, § 1682(a)(1)(C), added section catchline and struck out former section catchline which read as follows: ''Prohibitions on providing certain missile defense information to Russian Federation''.

Subsec. (c). Pub. L. 114–328, § 1081(a)(1), substituted ''subsections (a) and (b)'' for ''subsection (a) and (b)''.

Subsec. (d). Pub. L. 114–328, § 1682(a)(1)(B), added subsec. (d). Former subsec. (d) redesignated (e).

Pub. L. 114–328, § 1081(a)(1), substituted ''subsections (a) and (b)'' for ''subsection (a) and (b)''.

Subsec. (e). Pub. L. 114–328, § 1682(a)(1)(A), (b), redesignated subsec. (d) as (e) and amended it generally. Prior to amendment, text read as follows: ''The prohibitions in subsections (a) and (b) shall expire on January 1, 2017.''

§ 130i. Protection of certain facilities and assets from unmanned aircraft

(a) AUTHORITY.—Notwithstanding section 46502 of title 49, or any provision of title 18, the Secretary of Defense may take, and may authorize members of the armed forces and officers and civilian employees of the Department of Defense with assigned duties that include safety, security, or protection of personnel, facilities, or assets, to take, such actions described in subsection (b)(1) that are necessary to mitigate the threat (as defined by the Secretary of Defense, in consultation with the Secretary of Transportation) that an unmanned aircraft system or unmanned aircraft poses to the safety or security of a covered facility or asset.

(b) ACTIONS DESCRIBED.—(1) The actions described in this paragraph are the following:

(A) Detect, identify, monitor, and track the unmanned aircraft system or unmanned aircraft, without prior consent, including by means of intercept or other access of a wire communication, an oral communication, or an electronic communication used to control the unmanned aircraft system or unmanned aircraft.

(B) Warn the operator of the unmanned aircraft system or unmanned aircraft, including

by passive or active, and direct or indirect physical, electronic, radio, and electromagnetic means.

(C) Disrupt control of the unmanned aircraft system or unmanned aircraft, without prior consent, including by disabling the unmanned aircraft system or unmanned aircraft by intercepting, interfering, or causing interference with wire, oral, electronic, or radio communications used to control the unmanned aircraft system or unmanned aircraft.

(D) Seize or exercise control of the unmanned aircraft system or unmanned aircraft.

(E) Seize or otherwise confiscate the unmanned aircraft system or unmanned aircraft.

(F) Use reasonable force to disable, damage, or destroy the unmanned aircraft system or unmanned aircraft.

(2) The Secretary of Defense shall develop the actions described in paragraph (1) in coordination with the Secretary of Transportation.

(c) FORFEITURE.—Any unmanned aircraft system or unmanned aircraft described in subsection (a) that is seized by the Secretary of Defense is subject to forfeiture to the United States.

(d) REGULATIONS AND GUIDANCE.—(1) The Secretary of Defense and the Secretary of Transportation may prescribe regulations and shall issue guidance in the respective areas of each Secretary to carry out this section.

(2)(A) The Secretary of Defense and the Secretary of Transportation shall coordinate in the development of guidance under paragraph (1).

(B) The Secretary of Defense shall coordinate with the Secretary of Transportation and the Administrator of the Federal Aviation Administration before issuing any guidance or otherwise implementing this section if such guidance or implementation might affect aviation safety, civilian aviation and aerospace operations, aircraft airworthiness, or the use of airspace.

(e) PRIVACY PROTECTION.—The regulations prescribed or guidance issued under subsection (d) shall ensure that—

(1) the interception or acquisition of, or access to, communications to or from an unmanned aircraft system under this section is conducted in a manner consistent with the fourth amendment to the Constitution and applicable provisions of Federal law;

(2) communications to or from an unmanned aircraft system are intercepted, acquired, or accessed only to the extent necessary to support a function of the Department of Defense;

(3) records of such communications are not maintained for more than 180 days unless the Secretary of Defense determines that maintenance of such records—

(A) is necessary to support one or more functions of the Department of Defense; or

(B) is required for a longer period to support a civilian law enforcement agency or by any other applicable law or regulation; and

(4) such communications are not disclosed outside the Department of Defense unless the disclosure—

(A) would fulfill a function of the Department of Defense;

(B) would support a civilian law enforcement agency or the enforcement activities of a regulatory agency of the Federal Government in connection with a criminal or civil investigation of, or any regulatory action with regard to, an action described in subsection (b)(1); or

(C) is otherwise required by law or regulation.

(f) BUDGET.—The Secretary of Defense shall submit to Congress, as a part of the defense budget materials for each fiscal year after fiscal year 2018, a consolidated funding display that identifies the funding source for the actions described in subsection (b)(1) within the Department of Defense. The funding display shall be in unclassified form, but may contain a classified annex.

(g) SEMIANNUAL BRIEFINGS.—(1) On a semiannual basis during the five-year period beginning March 1, 2018, the Secretary of Defense and the Secretary of Transportation, shall jointly provide a briefing to the appropriate congressional committees on the activities carried out pursuant to this section. Such briefings shall include—

(A) policies, programs, and procedures to mitigate or eliminate impacts of such activities to the National Airspace System;

(B) a description of instances where actions described in subsection (b)(1) have been taken;

(C) how the Secretaries have informed the public as to the possible use of authorities under this section; and

(D) how the Secretaries have engaged with Federal, State, and local law enforcement agencies to implement and use such authorities.

(2) Each briefing under paragraph (1) shall be in unclassified form, but may be accompanied by an additional classified briefing.

(h) RULE OF CONSTRUCTION.—Nothing in this section may be construed to—

(1) vest in the Secretary of Defense any authority of the Secretary of Transportation or the Administrator of the Federal Aviation Administration under title 49; and

(2) vest in the Secretary of Transportation or the Administrator of the Federal Aviation Administration any authority of the Secretary of Defense under this title.

(i) PARTIAL TERMINATION.—(1) Except as provided by paragraph (2), the authority to carry out this section with respect to the covered facilities or assets specified in clauses (iv) through (viii) of subsection (j)(3)(C) shall terminate on December 31, 2023.

(2) The President may extend by 180 days the termination date specified in paragraph (1) if before November 15, 2023, the President certifies to Congress that such extension is in the national security interests of the United States.

(j) DEFINITIONS.—In this section:

(1) The term ''appropriate congressional committees'' means—

(A) the congressional defense committees;

(B) the Select Committee on Intelligence, the Committee on the Judiciary, and the Committee on Commerce, Science, and Transportation of the Senate; and

(C) the Permanent Select Committee on Intelligence, the Committee on the Judici-

ary, and the Committee on Transportation and Infrastructure of the House of Representatives.

(2) The term ''budget'', with respect to a fiscal year, means the budget for that fiscal year that is submitted to Congress by the President under section 1105(a) of title 31.

(3) The term ''covered facility or asset'' means any facility or asset that—

(A) is identified by the Secretary of Defense, in consultation with the Secretary of Transportation with respect to potentially impacted airspace, through a risk-based assessment for purposes of this section;

(B) is located in the United States (including the territories and possessions of the United States); and

(C) directly relates to the missions of the Department of Defense pertaining to—

(i) nuclear deterrence, including with respect to nuclear command and control, integrated tactical warning and attack assessment, and continuity of government;

(ii) missile defense;

(iii) national security space;

(iv) assistance in protecting the President or the Vice President (or other officer immediately next in order of succession to the office of the President) pursuant to the Presidential Protection Assistance Act of 1976 (18 U.S.C. 3056 note);

(v) air defense of the United States, including air sovereignty, ground-based air defense, and the National Capital Region integrated air defense system;

(vi) combat support agencies (as defined in paragraphs (1) through (4) of section 193(f) of this title);

(vii) special operations activities specified in paragraphs (1) through (9) of section 167(k) of this title;

(viii) production, storage, transportation, or decommissioning of high-yield explosive munitions, by the Department; or

(ix) a Major Range and Test Facility Base (as defined in section 196(i) of this title).

(4) The term ''defense budget materials'', with respect to a fiscal year, means the materials submitted to Congress by the Secretary of Defense in support of the budget for that fiscal year.

(5) The terms ''electronic communication'', ''intercept'', ''oral communication'', and ''wire communication'' have the meanings given those terms in section 2510 of title 18.

(6) The terms ''unmanned aircraft'' and ''unmanned aircraft system'' have the meanings given those terms in section 44801 of title 49.

(Added Pub. L. 114–328, div. A, title XVI, §1697(a), Dec. 23, 2016, 130 Stat. 2639; amended Pub. L. 115–91, div. A, title XVI, §1692, Dec. 12, 2017, 131 Stat. 1788; Pub. L. 116–92, div. A, title XVI, §1694, title XVII, §1731(a)(6), Dec. 20, 2019, 133 Stat. 1791, 1812; Pub. L. 116–283, div. A, title X, §1081(a)(8), title XVIII, §1845(c)(4), Jan. 1, 2021, 134 Stat. 3871, 4247.)

AMENDMENT OF SUBSECTION (j)(3)(C)(ix)

Pub. L. 116–283, div. A, title XVIII, §§1801(d), 1845(c)(4), Jan. 1, 2021, 134 Stat. 4151, 4247, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, subsection (j)(3)(C)(ix) of this section is amended by striking ''section 196(i)'' and inserting ''sections 4173(i)''. See 2021 Amendment note below.

REFERENCES IN TEXT

The Presidential Protection Assistance Act of 1976, referred to in subsec. (j)(3)(C)(iv), is Pub. L. 94–524, Oct. 17, 1976, 90 Stat. 2475, which enacted and amended provisions set out as notes under section 3056 of Title 18, Crimes and Criminal Procedure. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

2021—Subsec. (i)(1). Pub. L. 116–283, §1081(a)(8)(A), substituted ''of subsection (j)(3)(C) shall'' for ''of subsection (j)(3)(C shall'', resulting in no change in text. See 2019 Amendment notes and Coordination of Amendments by Pub. L. 116–92 note below.

Subsec. (j)(3)(C)(ix). Pub. L. 116–283, §1845(c)(4), substituted ''sections 4173(i)'' for ''section 196(i)''.

Subsec. (j)(6). Pub. L. 116–283, §1081(a)(8)(B), inserted a period at end.

2019—Subsec. (i). Pub. L. 116–92, §1694(a), substituted ''2023'' for ''2020'' in two places.

Subsec. (i)(1). Pub. L. 116–92, §1731(a)(6)(A), inserted ''(C)'' after ''subsection (j)(3)''.

Pub. L. 116–92, §1694(b)(1), which directed substitution of ''of subsection (j)(3)(C)'' for ''of subsection (j)(3)'', resulted in no change in text because of prior execution of amendment by Pub. L. 116–92, §1731(a)(6)(A). See Amendment note above and Coordination of Amendments by Pub. L. 116–92 note below.

Subsec. (j)(6). Pub. L. 116–92, §1731(a)(6)(B), substituted ''44802'' for ''40101''.

Pub. L. 116–92, §1694(b)(2), substituted ''in section 44801 of title 49'' for ''in section 331 of the FAA Modernization and Reform Act of 2012 (Public Law 112–95; 49 U.S.C. 44802 note).''

2017—Pub. L. 115–91 amended section generally. Prior to amendment, section related to protection of certain facilities and assets from unmanned aircraft and consisted of provisions relating to authority of Secretary of Defense, authorized actions, forfeiture, regulations, and definitions.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by section 1845(c)(4) of Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

COORDINATION OF AMENDMENTS BY PUB. L. 116–92

Amendments to this section by section 1731 of Pub. L. 116–92 to be treated as having been enacted immediately before amendments by other provisions of Pub. L. 116–92, see section 1731(f) of Pub. L. 116–92, set out as a Coordination of Certain Sections of an Act With Other Provisions of That Act note under section 101 of this title.

[§§ 130j, 130k. Renumbered §§ 395, 396]

CHAPTER 4—OFFICE OF THE SECRETARY OF DEFENSE

Sec.
131. Office of the Secretary of Defense.
132. Deputy Secretary of Defense.
[132a, 133. Repealed.]
133a. Under Secretary of Defense for Research and Engineering.
133b. Under Secretary of Defense for Acquisition and Sustainment.
134. Under Secretary of Defense for Policy.

Sec.
[134a, 134b. Repealed.]
135. Under Secretary of Defense (Comptroller).
136. Under Secretary of Defense for Personnel and Readiness.
[136a. Repealed.]
137. Under Secretary of Defense for Intelligence and Security.
137a. Deputy Under Secretaries of Defense.
138. Assistant Secretaries of Defense.
[138a to 138d. Repealed.]
139. Director of Operational Test and Evaluation.
139a. Director of Cost Assessment and Program Evaluation.
139b. Secretariat for Special Operations; Special Operations Policy and Oversight Council.
[139c. Repealed.]
[139d, 139e. Renumbered.]
140. General Counsel.
[140a to 140c. Renumbered.]
141. Inspector General.
142. Chief Information Officer.
143. Office of the Secretary of Defense personnel: limitation.
144. Director of Small Business Programs.
145. Principal Advisor on Countering Weapons of Mass Destruction.
146. Office of Local Defense Community Cooperation.
147. Chief Diversity Officer.

AMENDMENTS

2021—Pub. L. 116–283, div. A, title IX, §§ 901(a)(3), 902(b)(2), 905(a)(2), 913(a)(2), Jan. 1, 2021, 134 Stat. 3794, 3797, 3799, 3803, added items 146 and 147, substituted ''Secretariat for Special Operations; Special Operations Policy and Oversight Council'' for ''Special Operations Policy and Oversight Council'' in item 139b, and struck out item 132a ''Chief Management Officer''.

2019—Pub. L. 116–92, div. A, title XVI, § 1621(e)(1)(D), Dec. 20, 2019, 133 Stat. 1733, substituted ''Under Secretary of Defense for Intelligence and Security'' for ''Under Secretary of Defense for Intelligence'' in item 137.

2018—Pub. L. 115–232, div. A, title X, § 1082(a)(2), Aug. 13, 2018, 132 Stat. 1988, added item 145.

2017—Pub. L. 115–91, div. A, title X, § 1081(b)(1)(B), Dec. 12, 2017, 131 Stat. 1597, repealed Pub. L. 113–291, § 901(*l*)(1)(A). See 2014 Amendment note below.

Pub. L. 115–91, div. A, title IX, §§ 906(f)(2), 910(a)(2), Dec. 12, 2017, 131 Stat. 1514, 1517, substituted ''Chief Management Officer'' for ''Deputy Chief Management Officer'' in item 132a and ''Deputy Under Secretaries of Defense'' for ''Principal Deputy Under Secretaries of Defense'' in item 137a.

2016—Pub. L. 114–328, div. A, title IX, § 901(g)(2), Dec. 23, 2016, 130 Stat. 2342, effective on Feb. 1, 2018, added items 133a and 133b and struck out item 133 ''Under Secretary of Defense for Acquisition, Technology, and Logistics''.

Pub. L. 114–328, div. A, title IX, §§ 901(g)(1), 922(b)(2), Dec. 23, 2016, 130 Stat. 2342, 2356, added item 139b and struck out former item 139b ''Deputy Assistant Secretary of Defense for Developmental Test and Evaluation; Deputy Assistant Secretary of Defense for Systems Engineering: joint guidance'' and item 139c ''Deputy Assistant Secretary of Defense for Manufacturing and Industrial Base Policy''.

2014—Pub. L. 113–291, div. A, title IX, § 901(*l*)(1)(B), (C), Dec. 19, 2014, 128 Stat. 3468, added item 142 and struck out items 138a ''Assistant Secretary of Defense for Logistics and Materiel Readiness'', 138b ''Assistant Secretary of Defense for Research and Engineering'', 138c ''Assistant Secretary of Defense for Operational Energy Plans and Programs'', and 138d ''Assistant Secretary of Defense for Nuclear, Chemical, and Biological Defense Programs''.

Pub. L. 113–291, div. A, title IX, § 901(*l*)(1)(A), Dec. 19, 2014, 128 Stat. 3468, which directed substitution of ''Under Secretary of Defense for Business Management and Information'' for ''Deputy Chief Management Officer'' in item 132a, was repealed by Pub. L. 115–91, § 1081(b)(1)(B).

2013—Pub. L. 112–239, div. A, title X, § 1076(f)(2), Jan. 2, 2013, 126 Stat. 1952, struck out item 133b ''Deputy Under Secretary of Defense for Logistics and Materiel Readiness''.

2011—Pub. L. 111–383, div. A, title IX, § 901(k)(2)(A), Jan. 7, 2011, 124 Stat. 4325, added items 132a, 137a, 138b to 138d, and 139a to 139c, and struck out former items 133a ''Principal Deputy Under Secretary of Defense for Acquisition, Technology, and Logistics'', 134a ''Principal Deputy Under Secretary of Defense for Policy'', 136a ''Principal Deputy Under Secretary of Defense for Personnel and Readiness'', 137a ''Deputy Under Secretaries of Defense'', 139a ''Director of Defense Research and Engineering'', 139b ''Director of Operational Energy Plans and Programs'', 139c ''Director of Cost Assessment and Program Evaluation'', 139d ''Director of Developmental Test and Evaluation; Director of Systems Engineering: joint guidance'', and 142 ''Assistant to the Secretary of Defense for Nuclear and Chemical and Biological Defense Programs''.

2009—Pub. L. 111–84, div. A, title IX, §§ 905(a)(2), 906(c)(3), Oct. 28, 2009, 123 Stat. 2425, 2427, added items 133a, 134a, 136a, 137a, and 138a and struck out former items 133a ''Deputy Under Secretary of Defense for Acquisition and Technology'', 134a ''Deputy Under Secretary of Defense for Policy'', 134b ''Deputy Under Secretary of Defense for Technology Security Policy'', and 136a ''Deputy Under Secretary of Defense for Personnel and Readiness''.

Pub. L. 111–23, title I, §§ 101(a)(2), 102(a)(2), May 22, 2009, 123 Stat. 1706, 1713, added items 139c and 139d.

2008—Pub. L. 110–417, [div. A], title IX, § 902(b), Oct. 14, 2008, 122 Stat. 4566, added item 139b.

2006—Pub. L. 109–163, div. A, title IX, § 904(b)(2), Jan. 6, 2006, 119 Stat. 3400, added item 144.

2002—Pub. L. 107–314, div. A, title IX, § 901(b)(2), Dec. 2, 2002, 116 Stat. 2619, added items 137 and 139a and struck out former item 137 ''Director of Defense Research and Engineering''.

2001—Pub. L. 107–107, div. A, title IX, § 901(a)(2), Dec. 28, 2001, 115 Stat. 1194, added item 136a.

1999—Pub. L. 106–65, div. A, title IX, § 911(d)(3), Oct. 5, 1999, 113 Stat. 719, added items 133 and 133b and struck out former item 133 ''Under Secretary of Defense for Acquisition and Technology''.

1998—Pub. L. 105–261, div. A, title XV, § 1521(b)(2), Oct. 17, 1998, 112 Stat. 2179, added item 134b.

1997—Pub. L. 105–85, div. A, title IX, § 911(d)(2), Nov. 18, 1997, 111 Stat. 1859, added item 143.

1996—Pub. L. 104–106, div. A, title IX, § 904(a)(2), Feb. 10, 1996, 110 Stat. 403, substituted ''Nuclear and Chemical and Biological Defense Programs'' for ''Atomic Energy'' in item 142.

Pub. L. 104–106, div. A, title IX, § 903(a), (e)(3), Feb. 10, 1996, 110 Stat. 401, 402, which directed amendment of analysis, eff. Jan. 31, 1997, by striking out items 133a, 134a, 137, and 142, was repealed by Pub. L. 104–201, div. A, title IX, § 901, Sept. 23, 1996, 110 Stat. 2617.

1994—Pub. L. 103–337, div. A, title IX, § 903(a)(3), Oct. 5, 1994, 108 Stat. 2823, substituted ''Under Secretary of Defense (Comptroller)'' for ''Comptroller'' in item 135.

1993—Pub. L. 103–160, div. A, title IX, § 906(b), Nov. 30, 1993, 107 Stat. 1729, amended table of sections generally, inserting ''and Technology'' after ''Acquisition'' in items 133 and 133a, adding item 136, and redesignating former items 135, 136, 137, 138, 139, 140, and 141 as 137, 138, 135, 139, 140, 141, and 142, respectively.

1991—Pub. L. 102–190, div. A, title IX, § 901(a)(2), Dec. 5, 1991, 105 Stat. 1450, added item 134a.

1987—Pub. L. 100–180, div. A, title XII, § 1245(a)(2), Dec. 4, 1987, 101 Stat. 1165, added item 141.

Pub. L. 100–26, § 9(b)(2), Apr. 21, 1987, 101 Stat. 287, struck out item 140a ''Counterintelligence official reception and representation expenses'' and item 140b ''Authority to use proceeds from counterintelligence operations of the military departments''.

1986—Pub. L. 99–500, § 101(c) [title X, § 902(a)(2)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–131, and Pub. L. 99–591,

§ 101(c) [title X, § 902(a)(2)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–131; Pub. L. 99–661, div. A, title IX, formerly title IV, § 902(a)(2), Nov. 14, 1986, 100 Stat. 3911, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273, amended analysis identically adding item 133a.

Pub. L. 99–569, title IV, §§ 401(d), 403(b), Oct. 27, 1986, 100 Stat. 3196, 3197, added items 140a and 140b.

Pub. L. 99–433, title I, §§ 101(a)(6), 110(e)(2), Oct. 1, 1986, 100 Stat. 995, 1003, substituted ''Office of the Secretary of Defense'' for ''Department of Defense'' in chapter heading, and amended analysis generally, substituting items 131 to 140 for former items 131 ''Executive department'', 132 ''Seal'', 133 ''Secretary of Defense: appointment; powers and duties; delegation by'', 133a ''Secretary of Defense: annual report on North Atlantic Treaty Organization readiness'', 133b ''Sale or transfer of defense articles: reports to Congress'', 134 ''Deputy Secretary of Defense: appointment; powers and duties; precedence'', 134a ''Under Secretary of Defense for Acquisition: appointment'', 135 ''Under Secretary of Defense for Policy; Director of Defense Research and Engineering: appointments; powers and duties; precedence'', 136 ''Assistant Secretaries of Defense: appointment; powers and duties; precedence'', 136a ''Director of Operational Test and Evaluation: appointment, powers and duties'', 137 ''General Counsel: appointment; powers and duties'', 138 ''Annual authorization of appropriations and personnel strengths for the armed forces; annual manpower requirements and operations and maintenance reports'', 139 ''Secretary of Defense: weapons development and procurement schedules for armed forces; reports; supplemental reports'', 139a ''Oversight of cost growth in major programs: Selected Acquisition Reports'', 139b ''Oversight of cost growth in major programs: unit cost reports'', 139c ''Major defense acquisition programs: independent cost estimates'', 140 ''Emergencies and extraordinary expenses'', 140a ''Secretary of Defense: funds transfers for foreign cryptologic support'', 140b ''Prohibition of certain civilian personnel management constraints'', and 140c ''Secretary of Defense: authority to withhold from public disclosure certain technical data''.

Pub. L. 99–348, title V, § 501(e)(2), July 1, 1986, 100 Stat. 708, added item 134a and substituted ''Under Secretary of Defense for Policy; Director of Defense Research and Engineering: appointments'' for ''Under Secretaries of Defense: appointment'' in item 135.

1983—Pub. L. 98–94, title XII, §§ 1203(a)(2), 1211(a)(2), 1217(b), Sept. 24, 1983, 97 Stat. 683, 686, 690, added items 136a, 139c, and 140c.

1982—Pub. L. 97–295, § 1(2)(B), Oct. 12, 1982, 96 Stat. 1288, added items 133a and 133b.

Pub. L. 97–252, title XI, § 1107(a)(2), Sept. 8, 1982, 96 Stat. 745, added items 139a and 139b.

1981—Pub. L. 97–86, title IX, § 904(b), Dec. 1, 1981, 95 Stat. 1114, added item 140b.

1980—Pub. L. 96–450, title IV, § 401(b), Oct. 14, 1980, 94 Stat. 1977, added item 140a.

Pub. L. 96–342, title X, § 1001(d)(2), Sept. 8, 1980, 94 Stat. 1119, substituted ''Annual authorization of appropriations and personnel strengths for the armed forces; annual manpower requirements and operations and maintenance reports'' for ''Secretary of Defense: Annual authorization of appropriations for armed forces'' in item 138.

1977—Pub. L. 95–140, §§ 1(b), 2(b), Oct. 21, 1977, 91 Stat. 1172, 1173, substituted ''Deputy Secretary'' for ''Deputy Secretaries'' in item 134 and ''Under Secretaries of Defense'' for ''Director of Defense Research and Engineering'' in item 135.

1975—Pub. L. 94–106, title VIII, § 804(a), Oct. 7, 1975, 89 Stat. 538, added item 140.

1973—Pub. L. 93–155, title VIII, § 803(a), Nov. 16, 1973, 87 Stat. 612, added items 138 and 139.

1972—Pub. L. 92–596, § 4(3), Oct. 27, 1972, 86 Stat. 1318, substituted ''Deputy Secretaries'' for ''Deputy Secretary'' in item 134.

EFFECTIVE DATE OF 2017 AMENDMENT

Pub. L. 115–91, div. A, title IX, § 910(a)(2), Dec. 12, 2017, 131 Stat. 1517, which provided that the amendment made by section 910(a)(2) was effective Feb. 1, 2018, was repealed by Pub. L. 116–283, div. A, title IX, § 901(a)(2)(B), Jan. 1, 2021, 134 Stat. 3794.

Pub. L. 115–91, div. A, title X, § 1081(b)(1), Dec. 12, 2017, 131 Stat. 1597, provided that the amendment made by section 1081(b)(1)(B) is effective as of Dec. 23, 2016.

EFFECTIVE DATE OF 2016 AMENDMENT

Pub. L. 114–328, div. A, title IX, § 901(g)(2), Dec. 23, 2016, 130 Stat. 2342, provided that the amendment made by section 901(g)(2) is effective on Feb. 1, 2018.

EFFECTIVE DATE OF 2014 AMENDMENT

Pub. L. 113–291, div. A, title IX, § 901(*l*)(1)(A), Dec. 19, 2014, 128 Stat. 3468, which provided that the amendment made by section 901(*l*)(1)(A) was effective on the effective date specified in former section 901(a)(1) of Pub. L. 113–291, which was Feb. 1, 2017, was repealed by Pub. L. 115–91, div. A, title X, § 1081(b)(1)(B), Dec. 12, 2017, 131 Stat. 1597, effective as of Dec. 23, 2016.

§ 131. Office of the Secretary of Defense

(a) There is in the Department of Defense an Office of the Secretary of Defense. The function of the Office is to assist the Secretary of Defense in carrying out the Secretary's duties and responsibilities and to carry out such other duties as may be prescribed by law.

(b) The Office of the Secretary of Defense is composed of the following:

(1) The Deputy Secretary of Defense.

[(2) Repealed. Pub. L. 116–283, div. A, title IX, § 901(a)(2)(A), Jan. 1, 2021, 134 Stat. 3794.]

(3) The Under Secretaries of Defense, as follows:

(A) The Under Secretary of Defense for Research and Engineering.

(B) The Under Secretary of Defense for Acquisition and Sustainment.

(C) The Under Secretary of Defense for Policy.

(D) The Under Secretary of Defense (Comptroller).

(E) The Under Secretary of Defense for Personnel and Readiness.

(F) The Under Secretary of Defense for Intelligence and Security.

(4) Other officers who are appointed by the President, by and with the advice and consent of the Senate, and who report directly to the Secretary and Deputy Secretary without intervening authority, as follows:

(A) The Director of Cost Assessment and Program Evaluation.

(B) The Director of Operational Test and Evaluation.

(C) The General Counsel of the Department of Defense.

(D) The Inspector General of the Department of Defense.

(5) The Chief Information Officer of the Department of Defense, who reports directly to the Secretary and Deputy Secretary without intervening authority.

(6) The Deputy Under Secretaries of Defense.

(7) The Assistant Secretaries of Defense.

(8) Other officials provided for by law, as follows:

(A) The two Deputy Directors within the Office of the Director of Cost Assessment and Program Evaluation under section 139a(c) of this title.

(B) The Director of Small Business Programs appointed pursuant to section 144 of this title.

(C) The official designated under section 1501(a) of this title to have responsibility for Department of Defense matters relating to missing persons as set forth in section 1501 of this title.

(D) The Director of Military Family Readiness Policy under section 1781 of this title.

(E) The Director of the Office of Corrosion Policy and Oversight assigned pursuant to section 2228(a) of this title.

(F) The official designated under section 2438(a) of this title to have responsibility for conducting and overseeing performance assessments and root cause analyses for major defense acquisition programs.

(9) Such other offices and officials as may be established by law or the Secretary of Defense may establish or designate in the Office.

(c) Officers of the armed forces may be assigned or detailed to permanent duty in the Office of the Secretary of Defense. However, the Secretary may not establish a military staff in the Office of the Secretary of Defense.

(d) The Secretary of each military department, and the civilian employees and members of the armed forces under the jurisdiction of the Secretary, shall cooperate fully with personnel of the Office of the Secretary of Defense to achieve efficient administration of the Department of Defense and to carry out effectively the authority, direction, and control of the Secretary of Defense.

(Added Pub. L. 99–433, title I, § 104, Oct. 1, 1986, 100 Stat. 996; amended Pub. L. 103–160, div. A, title IX, § 906(a), Nov. 30, 1993, 107 Stat. 1729; Pub. L. 103–337, div. A, title IX, § 903(b)(1), Oct. 5, 1994, 108 Stat. 2823; Pub. L. 104–106, div. A, title IX, § 903(e)(1), Feb. 10, 1996, 110 Stat. 402; Pub. L. 104–201, div. A, title IX, § 901, Sept. 23, 1996, 110 Stat. 2617; Pub. L. 106–65, div. A, title IX, § 911(d)(1), Oct. 5, 1999, 113 Stat. 719; Pub. L. 107–314, div. A, title IX, § 901(b)(1), Dec. 2, 2002, 116 Stat. 2619; Pub. L. 110–181, div. A, title IX, § 904(a)(4), Jan. 28, 2008, 122 Stat. 274; Pub. L. 110–417, [div. A], title X, § 1061(b)(7), Oct. 14, 2008, 122 Stat. 4613; Pub. L. 111–383, div. A, title IX, § 901(b)(2), (m)(1), Jan. 7, 2011, 124 Stat. 4317, 4326; Pub. L. 113–291, div. A, title IX, § 901(a)(2), (b)(2), (j)(1)(A), (k)(1), (n)(1), Dec. 19, 2014, 128 Stat. 3463, 3467, 3469; Pub. L. 114–328, div. A, title IX, §§ 901(d), (f), 902(b), 933(a)(3), Dec. 23, 2016, 130 Stat. 2342, 2344, 2364; Pub. L. 115–91, div. A, title IX, §§ 906(d)(1), 910(c)(1), title X, § 1081(b)(1)(A), (D), (d)(9), Dec. 12, 2017, 131 Stat. 1513, 1518, 1597, 1600; Pub. L. 115–232, div. A, title X, § 1081(a)(3), (f)(1)(B), Aug. 13, 2018, 132 Stat. 1983, 1986; Pub. L. 116–92, div. A, title XVI, § 1621(e)(1)(A)(i), title XVII, § 1731(a)(7), Dec. 20, 2019, 133 Stat. 1733, 1812; Pub. L. 116–283, div. A, title IX, § 901(a)(2)(A), title XVIII, § 1847(e)(6)(A), Jan. 1, 2021, 134 Stat. 3794, 4257.)

AMENDMENT OF SUBSECTION (b)(8)(F)

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1847(e)(6)(A), Jan. 1, 2021, 134 Stat. 4151, 4257, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, subsection (b)(8) of this section is amended by striking ''section 2438(a)'' in the last subparagraph and inserting ''section 4273(a)''. See 2021 Amendment note below.

PRIOR PROVISIONS

A prior section 131 was renumbered section 111 of this title.

AMENDMENTS

2021—Subsec. (b)(2). Pub. L. 116–283, § 901(a)(2)(A), struck out par. (2) which read as follows: ''The Chief Management Officer of the Department of Defense.''

Subsec. (b)(8)(F). Pub. L. 116–283, § 1847(e)(6)(A), substituted ''section 4273(a)'' for ''section 2438(a)''.

2019—Subsec. (b)(3)(F). Pub. L. 116–92, § 1621(e)(1)(A)(i), substituted ''Under Secretary of Defense for Intelligence and Security'' for ''Under Secretary of Defense for Intelligence''.

Subsec. (b)(8)(F), (I). Pub. L. 116–92, § 1731(a)(7), redesignated subpar. (I) as (F).

2018—Subsec. (b)(4) to (9). Pub. L. 115–232, § 1081(f)(1)(B), redesignated pars. (5) to (10) as (4) to (9), respectively, and struck out former par. (4) which read as follows: ''The Deputy Chief Management Officer of the Department of Defense.''

Subsec. (b)(9)(B) to (H). Pub. L. 115–232, § 1081(a)(3), redesignated subpars. (E) to (H) as (B) to (E), respectively, and struck out former subpars. (B) to (D) which read as follows:

''(B) The Deputy Assistant Secretary of Defense for Developmental Test and Evaluation appointed pursuant to section 139b(a) of this title.

''(C) The Deputy Assistant Secretary of Defense for Systems Engineering appointed pursuant to section 139b(b) of this title.

''(D) The Deputy Assistant Secretary of Defense for Manufacturing and Industrial Base Policy appointed pursuant to section 139c of this title.''

Subsec. (b)(10). Pub. L. 115–232, § 1081(f)(1)(B), redesignated par. (10) as (9).

2017—Subsec. (b). Pub. L. 115–91, § 1081(b)(1)(A), repealed Pub. L. 113–291, § 901(j)(1)(A). See 2014 Amendment notes below.

Subsec. (b)(2) to (4). Pub. L. 115–91, § 910(c)(1), added par. (2) and redesignated pars. (2) to (4) as (3) to (5), respectively.

Subsec. (b)(5). Pub. L. 115–91, § 1081(d)(9), made technical correction to directory language of Pub. L. 114–328, § 902(b). See 2016 Amendment note below.

Pub. L. 115–91, § 910(c)(1)(A), redesignated par. (4) as (5). Former par. (5) redesignated (6).

Subsec. (b)(6). Pub. L. 115–91, § 910(c)(1)(A), redesignated par. (5) as (6). Former par. (6) redesignated (7).

Pub. L. 115–91, § 906(d)(1), amended par. (6) generally. Prior to amendment, par. (6) read as follows: ''The Principal Deputy Under Secretaries of Defense.''

Subsec. (b)(7) to (10). Pub. L. 115–91, § 910(c)(1)(A), redesignated pars. (6) to (9) as (7) to (10), respectively.

2016—Subsec. (b)(2). Pub. L. 114–328, § 901(f), added subpars. (A) and (B), redesignated former subpars. (B) to (E) as (C) to (F), respectively, and struck out former subpar. (A), which read as follows: ''The Under Secretary of Defense for Acquisition, Technology, and Logistics.''

Pub. L. 114–328, § 901(d), repealed Pub. L. 113–291, § 901(a)(2). See 2014 Amendment note below.

Subsec. (b)(5). Pub. L. 114–328, § 902(b), as amended by Pub. L. 115–91, § 1081(d)(9), inserted '', who reports directly to the Secretary and Deputy Secretary without intervening authority'' before period at end.

Subsec. (b)(8)(G). Pub. L. 114–328, § 933(a)(3), substituted ''Director of Military Family Readiness Policy'' for ''Director of Family Policy''.

2014—Subsec. (b)(2). Pub. L. 113–291, § 901(a)(2), which directed adding subpar. (A) reading ''The Under Secretary of Defense for Business Management and Information.'' and redesignating former subpars. (A) to (E)

as (B) to (F), respectively, was repealed by Pub. L. 114–328, §901(d).

Subsec. (b)(5) to (7). Pub. L. 113–291, §901(j)(1)(A), which directed striking out par. (5) and redesignating pars. (6) to (8) as (5) to (7), respectively, was repealed by Pub. L. 115–91, §1081(b)(1)(A).

Pub. L. 113–291, §901(b)(2), added par. (5) and redesignated former pars. (5) and (6) as (6) and (7), respectively. Former par. (7) redesignated (8).

Subsec. (b)(8). Pub. L. 113–291, §901(j)(1)(A)(ii), which directed redesignating par. (9) as (8), was repealed by Pub. L. 115–91, §1081(b)(1)(A).

Pub. L. 113–291, §901(k)(1), added subpar. (A) and redesignated former subpars. (A) to (H) as (B) to (I), respectively.

Pub. L. 113–291, §901(b)(2)(A), redesignated par. (7) as (8). Former par. (8) redesignated (9).

Subsec. (b)(9). Pub. L. 113–291, §901(j)(1)(A)(ii), which directed redesignating par. (9) as (8), was repealed by Pub. L. 115–91, §1081(b)(1)(A).

Pub. L. 113–291, §901(b)(2)(A), redesignated par. (8) as (9).

2011—Subsec. (a). Pub. L. 111–383, §901(m)(1), substituted ''the Secretary's'' for ''his''.

Subsec. (b). Pub. L. 111–383, §901(b)(2), amended subsec. (b) generally. Prior to amendment, subsec. (b) related to the composition of the Office of the Secretary of Defense.

2008—Subsec. (b)(3) to (9). Pub. L. 110–181, as amended by Pub. L. 110–417, added par. (3) and redesignated former pars. (3) to (8) as (4) to (9), respectively.

2002—Subsec. (b)(2) to (11). Pub. L. 107–314 added par. (2), redesignated pars. (6) to (11) as (3) to (8), respectively, and struck out former pars. (2) to (5) which read as follows:

''(2) The Under Secretary of Defense for Acquisition, Technology, and Logistics.

''(3) The Under Secretary of Defense for Policy.

''(4) The Under Secretary of Defense (Comptroller).

''(5) The Under Secretary of Defense for Personnel and Readiness.''

1999—Subsec. (b)(2). Pub. L. 106–65 substituted ''Under Secretary of Defense for Acquisition, Technology, and Logistics'' for ''Under Secretary of Defense for Acquisition and Technology''.

1996—Subsec. (b)(6) to (11). Pub. L. 104–106, §903(a), (e)(1), which directed amendment of subsec. (b), eff. Jan. 31, 1997, by striking out pars. (6) and (8) and redesignating pars. (7), (9), (10), and (11) as (6), (7), (8), and (9), respectively, was repealed by Pub. L. 104–201.

1994—Subsec. (b)(4). Pub. L. 103–337 substituted ''Under Secretary of Defense (Comptroller)'' for ''Comptroller''.

1993—Subsec. (b). Pub. L. 103–160 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''The Office of the Secretary of Defense is composed of the following:

''(1) The Deputy Secretary of Defense.

''(2) The Under Secretary of Defense for Acquisition.

''(3) The Under Secretary of Defense for Policy.

''(4) The Director of Defense Research and Engineering.

''(5) The Assistant Secretaries of Defense.

''(6) The Comptroller of the Department of Defense.

''(7) The Director of Operational Test and Evaluation.

''(8) The General Counsel of the Department of Defense.

''(9) The Inspector General of the Department of Defense.

''(10) Such other offices and officials as may be established by law or the Secretary of Defense may establish or designate in the Office.''

EFFECTIVE DATE OF 2021 AMENDMENT

Pub. L. 116–283, div. A, title IX, §901(a)(4), Jan. 1, 2021, 134 Stat. 3794, provided that: ''The repeals and amendments made by this subsection [amending this section and repealing section 132a of this title and provisions set out as notes preceding this section and under this section, sections 132 and 132a of this title, and section 5313 of Title 5, Government Organization and Employees] shall take effect on the date of the enactment of this Act [Jan. 1, 2021].''

Amendment by section 1847(e)(6)(A) of Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 2017 AMENDMENT

Pub. L. 115–91, div. A, title IX, §910(c), Dec. 12, 2017, 131 Stat. 1518, which provided that the amendment made by section 910(c)(1) was effective on Feb. 1, 2018, and immediately after the coming into effect of the amendments made by section 901 of Pub. L. 114–328, was repealed by Pub. L. 116–283, div. A, title IX, §901(a)(2)(B), Jan. 1, 2021, 134 Stat. 3794.

Pub. L. 115–91, div. A, title X, §1081(b)(1), Dec. 12, 2017, 131 Stat. 1597, provided that the amendment made by section 1081(b)(1)(A), (D) is effective as of Dec. 23, 2016.

Pub. L. 115–91, div. A, title X, §1081(d), Dec. 12, 2017, 131 Stat. 1599, provided that the amendment made by section 1081(d)(9) is effective as of Dec. 23, 2016, and as if included in Pub. L. 114–328 as enacted.

EFFECTIVE DATE OF 2016 AMENDMENT

Pub. L. 114–328, div. A, title IX, §901(f), Dec. 23, 2016, 130 Stat. 2342, provided that the amendment made by section 901(f) is effective on Feb. 1, 2018.

EFFECTIVE DATE OF 2014 AMENDMENT

Pub. L. 113–291, div. A, title IX, §901(a)(2), Dec. 19, 2014, 128 Stat. 3463, which provided that the amendment made by section 901(a)(2) was effective on the effective date specified in former section 901(a)(1) of Pub. L. 113–291, which was Feb. 1, 2017, was repealed by Pub. L. 114–328, div. A, title IX, §901(d), Dec. 23, 2016, 130 Stat. 2342.

Pub. L. 113–291, div. A, title IX, §901(j)(1), Dec. 19, 2014, 128 Stat. 3467, which provided that the amendment made by section 901(j)(1)(A) was effective on the effective date specified in former section 901(a)(1) of Pub. L. 113–291, which was Feb. 1, 2017, was repealed by Pub. L. 115–91, div. A, title X, §1081(b)(1)(A), Dec. 12, 2017, 131 Stat. 1597.

EFFECTIVE DATE OF 2011 AMENDMENT

Pub. L. 111–383, div. A, title IX, §901(p), Jan. 7, 2011, 124 Stat. 4327, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), this section [see Tables for classification] and the amendments made by this section shall take effect on January 1, 2011.

''(2) CERTAIN MATTERS.—Subsection (i) [enacting and amending provisions set out as notes under section 137a of this title] and the amendments made by that subsection, and subsection (*o*) [enacting provisions set out as a note under this section], shall take effect on the date of the enactment of this Act [Jan. 7, 2011].''

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–417 effective Jan. 28, 2008, and as if included in Pub. L. 110–181 as enacted, see section 1061(b) of Pub. L. 110–417, set out as a note under section 6382 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–106, div. A, title IX, §903(a), Feb. 10, 1996, 110 Stat. 401, which provided that the amendments made by section 903 of Pub. L. 104–106 (amending this section and sections 138, 176, 1056, 1216, 1587, and 10201 of this title, repealing sections 133a, 134a, 137, and 142 of this title, and amending provisions set out as a note under section 167 of this title) were to take effect on Jan. 31, 1997, was repealed by Pub. L. 104–201, div. A, title IX, §901, Sept. 23, 1996, 110 Stat. 2617.

OVERSIGHT OF REGISTERED SEX OFFENDER MANAGEMENT PROGRAM

Pub. L. 115–232, div. A, title V, § 544, Aug. 13, 2018, 132 Stat. 1763, provided that:

''(a) DESIGNATION OF OFFICIAL OR ENTITY.—The Secretary of Defense shall designate a single official or existing entity within the Office of the Secretary of Defense to serve as the official or entity (as the case may be) with principal responsibility in the Department of Defense for providing oversight of the registered sex offender management program of the Department.

''(b) DUTIES.—The official or entity designated under subsection (a) shall—

''(1) monitor compliance with Department of Defense Instruction 5525.20 and other relevant polices;

''(2) compile data on members serving in the military departments who have been convicted of a qualifying sex offense, including data on the sex offender registration status of each such member;

''(3) maintain statistics on the total number of active duty service members in each military department who are required to register as sex offenders; and

''(4) perform such other duties as the Secretary of Defense determines to be appropriate.

''(c) BRIEFING REQUIRED.—Not later than June 1, 2019, the Secretary of Defense shall provide to the Committee on Armed Services of the House of Representatives a briefing on—

''(1) the compliance of the military departments with the policies of the Department of Defense relating to registered sex offenders;

''(2) the results of the data compilation described in subsection (b)(2); and

''(3) any other matters the Secretary determines to be appropriate.

''(d) MILITARY DEPARTMENTS DEFINED.—In this section, the term 'military departments' has the meaning given that term in section 101(a)(8) of title 10, United States Code.''

FRAMEWORK FOR OVERSIGHT OF COUNTERING WEAPONS OF MASS DESTRUCTION POLICY, PROGRAMS, AND ACTIVITIES

Pub. L. 115–232, div. A, title X, § 1082(b), (c), Aug. 13, 2018, 132 Stat. 1988, provided that:

''(b) OVERSIGHT PLAN.—Not later than 180 days after the date of the enactment of this Act [Aug. 13, 2018], the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a plan to streamline the oversight framework of the Office of the Secretary of Defense, including any efficiencies and the potential to reduce, realign, or otherwise restructure current Assistant Secretary and Deputy Assistant Secretary positions with responsibilities for overseeing countering weapons of mass destruction policy, programs, and activities.

''(c) DIRECTIVE.—Not later than 90 days after the submission of the oversight plan under subsection (b), the Secretary of Defense shall issue a directive for the implementation of the oversight plan by the Countering Weapons of Mass Destruction-Unity of Effort Council.''

DESIGNATION OF OFFICE WITHIN OFFICE OF THE SECRETARY OF DEFENSE TO OVERSEE USE OF FOOD ASSISTANCE PROGRAMS BY MEMBERS OF THE ARMED FORCES ON ACTIVE DUTY

Pub. L. 115–91, div. A, title V, § 583, Dec. 12, 2017, 131 Stat. 1416, provided that: ''Not later than 90 days after the date of the enactment of this Act [Dec. 12, 2017], the Secretary of Defense shall designate an office or official within the Office of the Secretary of Defense for purposes as follows:

''(1) To discharge responsibility for overseeing the efforts of the Department of Defense to collect, analyze, and monitor data on the use of food assistance programs by members of the Armed Forces on active duty.

''(2) To establish and maintain relationships with other departments and agencies of the Federal Government to facilitate the discharge of the responsibility specified in paragraph (1).''

CHIEF MANAGEMENT OFFICER

Pub. L. 114–328, div. A, title IX, § 901(c)(1)–(3), Dec. 23, 2016, 130 Stat. 2341, which established the position of Chief Management Officer of the Department of Defense, effective Feb. 1, 2018, was repealed by Pub. L. 115–91, div. A, title IX, § 910(b)(1), Dec. 12, 2017, 131 Stat. 1517.

SECRETARY OF DEFENSE DELIVERY UNIT

Pub. L. 114–328, div. A, title IX, § 913, Dec. 23, 2016, 130 Stat. 2349, provided that:

''(a) IN GENERAL.—The Secretary of Defense serving in that position as of March 1, 2017, may establish within the Office of the Secretary of Defense a unit of personnel that shall be responsible for providing expertise and support throughout the Department of Defense in an effort to improve the implementation of policies and priorities across the Department. The unit may be known as the 'delivery unit'.

''(b) COMPOSITION.—The unit established pursuant to subsection (a) shall consist of not more than 30 individuals selected by the Secretary primarily from among individuals outside the Government who have significant experience and expertise in management consulting, organizational architecture, relationship management, or data analytics.

''(c) DUTIES.—The unit established pursuant to subsection (a) shall have the duties as follows:

''(1) To advise the Secretary on improving the implementation and delivery of policies and priorities of the Department, including making recommendations on establishing performance or implementation targets, assisting in the development of delivery plans to achieve targets, and monitoring and measuring progress.

''(2) To work across organizations, missions, and functions of the Department in order to identify obstacles to improving the implementation of policies and priorities of the Department, including organization, culture, and incentives, and to recommend options to the Secretary for addressing such obstacles.

''(d) SUNSET.—The unit established pursuant to subsection (a) shall sunset on January 31, 2021.''

REFERENCES

Pub. L. 113–291, div. A, title IX, § 901(n), Dec. 19, 2014, 128 Stat. 3469, as amended by Pub. L. 115–91, div. A, title X, § 1081(b)(1)(D), Dec. 12, 2017, 131 Stat. 1597, provided that:

''[(1) Repealed. Pub. L. 115–91, div. A, title X, § 1081(b)(1)(D), Dec. 12, 2017, 131 Stat. 1597.]

''(2) ASDEIE.—Any reference to the Assistant Secretary of Defense for Operational Energy Plans and Programs or to the Deputy Under Secretary of Defense for Installations and Environment in any provision of law or in any rule, regulation, or other paper of the United States shall be deemed to refer to the Assistant Secretary of Defense for Energy, Installations, and Environment.''

REDESIGNATION OF CERTAIN POSITIONS IN OFFICE OF SECRETARY OF DEFENSE

Pub. L. 111–383, div. A, title IX, § 901(a), Jan. 7, 2011, 124 Stat. 4317, provided that:

''(1) REDESIGNATION.—Positions in the Office of the Secretary of Defense are hereby redesignated as follows:

''(A) The Director of Defense Research and Engineering is redesignated as the Assistant Secretary of Defense for Research and Engineering.

''(B) The Director of Operational Energy Plans and Programs is redesignated as the Assistant Secretary of Defense for Operational Energy Plans and Programs [now Assistant Secretary of Defense for Energy, Installations, and Environment].

"(C) The Assistant to the Secretary of Defense for Nuclear and Chemical and Biological Defense Programs is redesignated as the Assistant Secretary of Defense for Nuclear, Chemical, and Biological Defense Programs.

"(2) REFERENCES.—Any reference in any law, rule, regulation, paper, or other record of the United States to an office of the Department of Defense redesignated by paragraph (1) shall be deemed to be a reference to such office as so redesignated."

INAPPLICABILITY OF APPOINTMENT REQUIREMENT TO CERTAIN INDIVIDUALS SERVING ON EFFECTIVE DATE

Pub. L. 111–383, div. A, title IX, §901(*o*), Jan. 7, 2011, 124 Stat. 4327, provided that:

"(1) IN GENERAL.—Notwithstanding this section [see Tables for classification] and the amendments made by this section, the individual serving as specified in paragraph (2) on December 31, 2010, may continue to serve in the applicable position specified in that paragraph after that date without the requirement for appointment by the President, by and with the advice and consent of the Senate.

"(2) COVERED INDIVIDUALS AND POSITIONS.—The individuals and positions specified in this paragraph are the following:

"(A) In the case of the individual serving as Director of Defense Research and Engineering, the position of Assistant Secretary of Defense for Research and Engineering.

"(B) In the case of the individual serving as Director of Operational Energy Plans and Programs, the position of Assistant Secretary of Defense for Operational Energy Plans and Programs.

"(C) In the case of the individual serving as Assistant to the Secretary of Defense for Nuclear and Chemical and Biological Defense Programs, the position of Assistant Secretary of Defense for Nuclear, Chemical, and Biological Defense Programs."

DEFENSE ACQUISITION WORKFORCE

Pub. L. 105–85, div. A, title IX, §912(a)–(e), Nov. 18, 1997, 111 Stat. 1860, 1861, required Secretary of Defense to accomplish reductions in defense acquisition personnel positions, to report on specific acquisition positions previously eliminated, to submit an implementation plan to streamline and improve acquisition organizations, to review acquisition organizations and functions, and to require certain duties of Task Force on Defense Reform.

REDUCTION OF PERSONNEL ASSIGNED TO OFFICE OF THE SECRETARY OF DEFENSE

Pub. L. 104–201, div. A, title IX, §903, Sept. 23, 1996, 110 Stat. 2617, which provided for phased reduction of number of personnel assigned to or employed in functions in Office of the Secretary of Defense, was repealed and restated in section 143 of this title by Pub. L. 105–85, div. A, title IX, §911(d)(1), (3), Nov. 18, 1997, 111 Stat. 1859, 1860.

ORGANIZATION OF OFFICE OF THE SECRETARY OF DEFENSE

Pub. L. 104–106, div. A, title IX, §901, Feb. 10, 1996, 110 Stat. 399, as amended by Pub. L. 104–201, div. A, title IX, §903(g), Sept. 23, 1996, 110 Stat. 2618, directed the Secretary of Defense to conduct a review of the organizations and functions of the Office of the Secretary of Defense and the personnel needed to carry out those functions, and to submit to the congressional defense committees a report containing findings, conclusions, and a plan for implementing recommendations not later than Mar. 1, 1996.

Pub. L. 99–433, title I, §109, Oct. 1, 1986, 100 Stat. 999, directed the Secretary of Defense, the Secretaries of the military departments, and the Chairman of the Joint Chiefs of Staff to conduct studies of the functions and organization of the Office of the Secretary of Defense, required the Secretaries of the military departments and the Chairman of the Joint Chiefs of Staff to submit reports on their studies to the Secretary of Defense, and directed the Secretary of Defense to submit a report on the Secretary's study to Congress not later than one year after Oct. 1, 1986.

§ 132. Deputy Secretary of Defense

(a) There is a Deputy Secretary of Defense, appointed from civilian life by the President, by and with the advice and consent of the Senate. The Deputy Secretary shall be appointed from among persons most highly qualified for the position by reason of background and experience, including persons with appropriate management experience. A person may not be appointed as Deputy Secretary of Defense within seven years after relief from active duty as a commissioned officer of a regular component of an armed force.

(b) The Deputy Secretary shall perform such duties and exercise such powers as the Secretary of Defense may prescribe. The Deputy Secretary shall act for, and exercise the powers of, the Secretary when the Secretary dies, resigns, or is otherwise unable to perform the functions and duties of the office.

(c) The Deputy Secretary takes precedence in the Department of Defense immediately after the Secretary.

(d) Until September 30, 2020, the Deputy Secretary of Defense shall lead the Guam Oversight Council and shall be the Department of Defense's principal representative for coordinating the interagency efforts in matters relating to Guam, including the following executive orders:

(1) Executive Order No. 13299 of May 12, 2003 (68 Fed. Reg. 25477; 48 U.S.C. note prec. 1451; relating to the Interagency Group on Insular Affairs).

(2) Executive Order No. 12788 of January 15, 1992, as amended (57 Fed. Reg. 2213; relating to the Defense Economic Adjustment Program).

(Added Pub. L. 87–651, title II, §202, Sept. 7, 1962, 76 Stat. 518, §134; amended Pub. L. 92–596, §4(1), Oct. 27, 1972, 86 Stat. 1318; Pub. L. 95–140, §1(a), Oct. 21, 1977, 91 Stat. 1172; renumbered §132 and amended Pub. L. 99–433, title I, §§101(a)(7), 110(d)(7), Oct. 1, 1986, 100 Stat. 995, 1003; Pub. L. 110–181, div. A, title IX, §§903(b), 904(a)(1), Jan. 28, 2008, 122 Stat. 273; Pub. L. 111–84, div. B, title XXVIII, §2831(a), Oct. 28, 2009, 123 Stat. 2669; Pub. L. 111–383, div. A, title IX, §901(c)(2), (m)(2), title X, §1075(b)(4), div. B, title XXVIII, §2821, Jan. 7, 2011, 124 Stat. 4321, 4326, 4369, 4465; Pub. L. 112–81, div. A, title IX, §902, Dec. 31, 2011, 125 Stat. 1532; Pub. L. 113–291, div. A, title IX, §901(k)(2), Dec. 19, 2014, 128 Stat. 3468; Pub. L. 114–328, div. A, title IX, §901(c)(4), Dec. 23, 2016, 130 Stat. 2341; Pub. L. 115–91, div. A, title IX, §910(b), Dec. 12, 2017, 131 Stat. 1517; Pub. L. 116–92, div. A, title XVII, §1731(a)(8), Dec. 20, 2019, 133 Stat. 1812.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
134(a)	5:171c(a) (1st sentence).	July 26, 1947, ch. 343, §203(a); added Aug. 10, 1949, ch. 412, §6(a) (1st par.), 63 Stat. 581.
134(b)	5:171c(a) (less 1st sentence and last 15 words of 2d sentence).	
134(c)	5:171c(a) (last 15 words of 2d sentence).	

In subsection (a), the last sentence is substituted for 5 U.S.C. 171c(a) (proviso).

REFERENCES IN TEXT

Executive Order No. 13299, referred to in subsec. (d)(1), was superseded by Ex. Ord. No. 13537, Apr. 14, 2010, 75 F.R. 20237, set out as a note preceding section 1451 of Title 48, Territories and Insular Possessions.

Executive Order No. 12788, referred to in subsec. (d)(2), is set out as a note under section 2391 of this title.

PRIOR PROVISIONS

A prior section 132 was renumbered section 112 of this title.

AMENDMENTS

2019—Subsecs. (d), (e). Pub. L. 116–92 redesignated subsec. (e) as (d).

2017—Subsecs. (c), (d). Pub. L. 115–91, §910(b)(2), redesignated subsec. (d) as (c) and struck out former subsec. (c) which read as follows: ''The Deputy Secretary serves as the Chief Management Officer of the Department of Defense.''

Pub. L. 115–91, §910(b)(1), repealed Pub. L. 114–328, §901(c)(4). See 2016 Amendment note below.

Subsec. (e). Pub. L. 115–91, §910(b)(1), repealed Pub. L. 114–328, §901(c)(4). See 2016 Amendment note below.

2016—Subsecs. (c) to (e). Pub. L. 114–328, §901(c)(4), which directed striking out subsec. (c) and redesignating subsecs. (d) and (e) as (c) and (d), respectively, was repealed by Pub. L. 115–91, §910(b)(1).

2014—Subsec. (b). Pub. L. 113–291 substituted ''dies, resigns, or is otherwise unable to perform the functions and duties of the office'' for ''is disabled or there is no Secretary of Defense''.

2011—Subsec. (a). Pub. L. 112–81 inserted ''The Deputy Secretary shall be appointed from among persons most highly qualified for the position by reason of background and experience, including persons with appropriate management experience.'' after first sentence.

Subsec. (c). Pub. L. 111–383, §901(c)(2), struck out at end ''The Deputy Secretary shall be assisted in this capacity by a Deputy Chief Management Officer, who shall be appointed from civilian life by the President, by and with the advice and consent of the Senate.''

Subsec. (d). Pub. L. 111–383, §1075(b)(4)(A), which directed redesignation of subsec. (d), as added by section 2831(a) of Pub. L. 111–84, as (e), could not be executed because of the prior amendment by Pub. L. 111–383, §901(m)(2). See below.

Pub. L. 111–383, §901(m)(2), redesignated subsec. (d) relating to duties of the Deputy Secretary of Defense relating to Guam, as (e).

Subsec. (e). Pub. L. 111–383, §2821, which directed substitution of ''September 30, 2020'' for ''September 30, 2015'' in subsec. (d), as added by section 2831(a) of Pub. L. 111–84, was executed in subsec. (e) to reflect the probable intent of Congress and the redesignation of subsec. (d) as (e) by Pub. L. 111–383, §901(m)(2). See below.

Pub. L. 111–383, §1075(b)(4), which directed redesignation of subsec. (d), as added by section 2831(a) of Pub. L. 111–84, as (e), and substitution of ''Guam Oversight Council'' for ''Guam Executive Council'', was executed by making the substitution in subsec. (e) because of the prior redesignation of subsec. (d) as (e) by Pub. L. 111–383, §901(m)(2). See below.

Pub. L. 111–383, §901(m)(2), redesignated subsec. (d) relating to duties of the Deputy Secretary of Defense relating to Guam, as (e).

2009—Subsec. (d). Pub. L. 111–84 added subsec. (d) relating to the Deputy Secretary of Defense leading the Guam Executive Council.

2008—Subsec. (a). Pub. L. 110–181, §903(b), substituted ''seven'' for ''ten''.

Subsecs. (c), (d). Pub. L. 110–181, §904(a)(1), added subsec. (c) and redesignated former subsec. (c) as (d).

1986—Pub. L. 99–433 renumbered section 134 of this title as this section and struck out '': appointment; powers and duties; precedence'' at end of section catchline.

1977—Pub. L. 95–140, §1(a)(4), substituted ''Deputy Secretary'' for ''Deputy Secretaries'' in section catchline.

Subsec. (a). Pub. L. 95–140, §1(a)(1), substituted ''There is a Deputy Secretary'' for ''There are two Deputy Secretaries'' and struck out ''a'' before ''Deputy Secretary''.

Subsec. (b). Pub. L. 95–140, §1(a)(2), substituted ''Deputy Secretary'' for ''Deputy Secretaries'' and ''Deputy Secretary'' for ''Deputy Secretaries, in the order of precedence, designated by the President''.

Subsec. (c). Pub. L. 95–140, §1(a)(3), substituted ''The Deputy Secretary takes'' for ''The Deputy Secretaries take''.

1972—Pub. L. 92–596 substituted ''Deputy Secretaries'' for ''Deputy Secretary'' in section catchline.

Subsec. (a). Pub. L. 92–596 substituted ''There are two Deputy Secretaries of Defense'' for ''There is a Deputy Secretary of Defense''.

Subsec. (b). Pub. L. 92–596 provided for the exercise of powers and duties consequent to the creation of a second Deputy Secretary.

Subsec. (c). Pub. L. 92–596 substituted ''The Deputy Secretaries take'' for ''The Deputy Secretary takes''.

EFFECTIVE DATE OF 2017 AMENDMENT

Pub. L. 115–91, div. A, title IX, §910(b)(1), Dec. 12, 2017, 131 Stat. 1517, which provided that the amendment made by section 910(b)(1) was effective on Jan. 31, 2018, was repealed by Pub. L. 116–283, div. A, title IX, §901(a)(2)(B), Jan. 1, 2021, 134 Stat. 3794.

Pub. L. 115–91, div. A, title IX, §910(b)(2), Dec. 12, 2017, 131 Stat. 1518, which provided that the amendment made by section 910(b)(2) was effective on Feb. 1, 2018, was repealed by Pub. L. 116–283, div. A, title IX, §901(a)(2)(B), Jan. 1, 2021, 134 Stat. 3794.

EFFECTIVE DATE OF 2016 AMENDMENT

Pub. L. 114–328, div. A, title IX, §901(c)(4), Dec. 23, 2016, 130 Stat. 2341, which provided that the amendment made by section 901(c)(4) was effective on Feb. 1, 2018, was repealed by Pub. L. 115–91, div. A, title IX, §910(b)(1), Dec. 12, 2017, 131 Stat. 1517.

EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by section 901(c)(2), (m)(2) of Pub. L. 111–383 effective Jan. 1, 2011, see section 901(p) of Pub. L. 111–383, set out as a note under section 131 of this title.

ORDER OF SUCCESSION

For order of succession during any period when the Secretary has died, resigned, or is otherwise unable to perform the functions and duties of the office of Secretary, see Ex. Ord. No. 13533, Mar. 1, 2010, 75 F.R. 10163, listed in a table under section 3345 of Title 5, Government Organization and Employees.

IMPROVEMENT OF THE STRATEGIC CAPABILITIES OFFICE OF THE DEPARTMENT OF DEFENSE

Pub. L. 116–92, div. A, title II, §233, Dec. 20, 2019, 133 Stat. 1277, provided that:

''(a) ORGANIZATION.—

''(1) AUTHORITY OF DEPUTY SECRETARY OF DEFENSE.—The Deputy Secretary of Defense shall exercise authority and direction over the Strategic Capabilities Office of the Department of Defense (referred to in this section as the 'Office').

''(2) AUTHORITY OF DIRECTOR.—The Director of the Office shall report directly to the Deputy Secretary of Defense.

''(3) DELEGATION.—In exercising authority and direction over the Office under subsection (a), the Deputy Secretary of Defense may delegate administrative, management, and other duties to the Director of the Defense Advanced Research Projects Agency, as needed, to effectively and efficiently execute the mission of the Office.

"(b) CROSS-FUNCTIONAL TEAMS.—

"(1) ESTABLISHMENT.—Not later than 180 days after the date of enactment of this Act [Dec. 20, 2019], the Deputy Secretary of Defense shall establish the following cross-functional teams to improve the effectiveness of the Office:

"(A) A transition cross-functional team to improve the efficiency and effectiveness with which the programs of the Office may be transitioned into—

"(i) research and development programs of the military services and other agencies of the Department of Defense; and

"(ii) programs of such services and agencies in operational use.

"(B) A technical cross functional team to improve the continuous technical assessment and review of the programs of the Office during program selection and execution.

"(2) MEMBERSHIP.—The Deputy Secretary of Defense shall select individuals to serve on the cross-functional teams described in paragraph (1) from among individuals in the defense research and engineering enterprise, acquisition community, Joint Staff, combatant commands, and other organizations, as determined to be appropriate by the Deputy Secretary."

ASSIGNMENT OF DUTIES

Pub. L. 110–181, div. A, title IX, §904(a)(2), Jan. 28, 2008, 122 Stat. 273, as amended by Pub. L. 113–291, div. A, title IX, §901(n)(1), Dec. 19, 2014, 128 Stat. 3469; Pub. L. 115–91, div. A, title X, §1081(b)(1)(D), Dec. 12, 2017, 131 Stat. 1597, provided that:

"(A) The Secretary of Defense shall assign duties and authorities relating to the management of the business operations of the Department of Defense.

"(B) The Secretary shall assign such duties and authorities to the Chief Management Officer as are necessary for that official to effectively and efficiently organize the business operations of the Department of Defense.

"(C) The Secretary shall assign such duties and authorities to the Deputy Chief Management Officer as are necessary for that official to assist the Chief Management Officer to effectively and efficiently organize the business operations of the Department of Defense.

"(D) The Deputy Chief Management Officer shall perform the duties and have the authorities assigned by the Secretary under subparagraph (C) and perform such duties and have such authorities as are delegated by the Chief Management Officer."

ASSIGNMENT OF MANAGEMENT DUTIES AND DESIGNATION OF THE CHIEF MANAGEMENT OFFICERS OF THE MILITARY DEPARTMENTS

Pub. L. 110–181, div. A, title IX, §904(b), Jan. 28, 2008, 122 Stat. 274, as amended by Pub. L. 113–291, div. A, title IX, §901(n)(1), Dec. 19, 2014, 128 Stat. 3469; Pub. L. 115–91, div. A, title X, §1081(b)(1)(D), Dec. 12, 2017, 131 Stat. 1597; Pub. L. 115–232, div. A, title X, §1081(f)(1)(E), Aug. 13, 2018, 132 Stat. 1987, provided that:

"(1) The Secretary of a military department shall assign duties and authorities relating to the management of the business operations of such military department.

"(2) The Secretary of a military department, in assigning duties and authorities under paragraph (1) shall designate the Under Secretary of such military department to have the primary management responsibility for business operations, to be known in the performance of such duties as the Chief Management Officer.

"(3) The Secretary shall assign such duties and authorities to the Chief Management Officer as are necessary for that official to effectively and efficiently organize the business operations of the military department concerned.

"(4) The Chief Management Officer of each military department shall promptly provide such information relating to the business operations of such department to the Chief Management Officer of the Department of Defense as is necessary to assist the Chief Management Officer in the performance of the duties assigned to such official."

[§ 132a. Repealed. Pub. L. 116–283, div. A, title IX, § 901(a)(1), Jan. 1, 2021, 134 Stat. 3794]

Section, added Pub. L. 111–383, div. A, title IX, §901(c)(1), Jan. 7, 2011, 124 Stat. 4320; amended Pub. L. 113–291, div. A, title IX, §901(a)(1), Dec. 19, 2014, 128 Stat. 3462; Pub. L. 114–328, div. A, title IX, §901(d), Dec. 23, 2016, 130 Stat. 2342; Pub. L. 115–91, div. A, title IX, §910(a)(1), Dec. 12, 2017, 131 Stat. 1516; Pub. L. 115–232, div. A, title IX, §921(a)(1), (2)(A), Aug. 13, 2018, 132 Stat. 1926; Pub. L. 116–92, div. A, title IX, §903(a)(2), Dec. 20, 2019, 133 Stat. 1555, related to establishment and responsibilities of the Chief Management Officer of the Department of Defense.

EFFECTIVE DATE OF 2017 AMENDMENT

Pub. L. 115–91, div. A, title IX, §910(a)(1), Dec. 12, 2017, 131 Stat. 1516, which provided that the amendment made by section 910(a)(1) was effective Feb. 1, 2018, was repealed by Pub. L. 116–283, div. A, title IX, §901(a)(2)(B), Jan. 1, 2021, 134 Stat. 3794.

TRANSFER OF DUTIES AND RESPONSIBILITIES OF THE CHIEF MANAGEMENT OFFICER

Pub. L. 116–283, div. A, title IX, §901(b)–(d), Jan. 1, 2021, 134 Stat. 3794, 3795, provided that:

"(b) IMPLEMENTATION.—Not later than one year after the date of the enactment of this Act [Jan. 1, 2021]—

"(1) each duty or responsibility that remains assigned to the Chief Management Officer of the Department of Defense shall be transferred to an officer or employee of the Department of Defense designated by the Secretary of Defense, except that any officer or employee so designated may not be an individual who served as the Chief Management Officer before the date of the enactment of this Act; and

"(2) the personnel, functions, and assets of the Office of the Chief Management Officer shall be transferred to such other organizations and elements of the Department as the Secretary considers appropriate.

"(c) REFERENCES.—Any reference in any law, regulation, guidance, instruction, or other document of the Federal Government to the Chief Management Officer of the Department of Defense shall be deemed to refer to the applicable officer or employee of the Department of Defense designated by the Secretary of Defense under subsection (b)(1).

"(d) REPORT.—Not later than one year after the date of the enactment of this Act [Jan. 1, 2021], the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report that sets forth such recommendations for legislative action as the Secretary considers appropriate for modifications to law to carry out this section and the repeals and amendments made by this section."

QUALIFICATIONS FOR APPOINTMENT AS DEPUTY CHIEF MANAGEMENT OFFICER OF A MILITARY DEPARTMENT

Pub. L. 115–232, div. A, title IX, §916, Aug. 13, 2018, 132 Stat. 1924, provided that:

"(a) DEPARTMENT OF THE ARMY.—An individual may not be appointed as Deputy Chief Management Officer of the Department of the Army unless the individual—

"(1) has significant experience in business operations or management in the public sector; or

"(2) has significant experience managing an enterprise in the private sector.

"(b) DEPARTMENT OF THE NAVY.—An individual may not be appointed as Deputy Chief Management Officer of the Department of the Navy unless the individual—

"(1) has significant experience in business operations or management in the public sector; or

"(2) has significant experience managing an enterprise in the private sector.

"(c) DEPARTMENT OF THE AIR FORCE.—An individual may not be appointed as Deputy Chief Management Officer of the Department of the Air Force unless the individual—

"(1) has significant experience in business operations or management in the public sector; or

"(2) has significant experience managing an enterprise in the private sector."

EXECUTION OF AUTHORITY IN SUBSECTION (c)

Pub. L. 115–232, div. A, title IX, §921(a)(2)(B), Aug. 13, 2018, 132 Stat. 1927, provided that: "In order to execute the authority in subsection (c) of section 132a of title 10, United States Code (as amended by subparagraph (A)), the Chief Management Officer of the Department of Defense shall do the following:

"(i) By April 1, 2019, develop an assessment of cost and expertise requirements to execute such authority.

"(ii) By September 1, 2019, develop guidance for Defense Agencies and Department of Defense Field Activities to delineate spending on enterprise business operations and develop a process to determine the adequacy of their budgets for such operations."

SERVICE OF INCUMBENT DEPUTY CHIEF MANAGEMENT OFFICER AS CHIEF MANAGEMENT OFFICER UPON COMMENCEMENT OF LATTER POSITION WITHOUT FURTHER APPOINTMENT

Pub. L. 115–91, div. A, title IX, §910(e), Dec. 12, 2017, 131 Stat. 1518, which provided that the individual serving in the position of Deputy Chief Management Officer of the Department of Defense as of February 1, 2018, could continue to serve as Chief Management Officer of the Department of Defense under this section, was repealed by Pub. L. 116–283, div. A, title IX, §901(a)(2)(B), Jan. 1, 2021, 134 Stat. 3794.

DEFENSE AGENCIES AND FIELD ACTIVITIES PROVIDING SHARED BUSINESS SERVICES

Pub. L. 115–91, div. A, title IX, §910(f), Dec. 12, 2017, 131 Stat. 1518, which related to initial reporting requirements and notice to Congress on transfer to the Chief Management Officer of the Department of Defense of oversight of shared business services, was repealed by Pub. L. 116–283, div. A, title IX, §901(a)(2)(B), Jan. 1, 2021, 134 Stat. 3794.

[§ 133. Repealed. Pub. L. 114–328, div. A, title IX, § 901(a)(1), Dec. 23, 2016, 130 Stat. 2339]

Section, added Pub. L. 99–348, title V, §501(a), July 1, 1986, 100 Stat. 707, §134a; renumbered §133 and amended Pub. L. 99–433, title I, §§101(a)(7), 110(c)(1), (d)(8), Oct. 1, 1986, 100 Stat. 995, 1002, 1003; Pub. L. 99–500, §101(c) [title X, §901], Oct. 18, 1986, 100 Stat. 1783–82, 1783–130, and Pub. L. 99–591, §101(c) [title X, §901], Oct. 30, 1986, 100 Stat. 3341–82, 3341–130; Pub. L. 99–661, div. A, title IX, formerly title IV, §901, Nov. 14, 1986, 100 Stat. 3910, renumbered title IX, Pub. L. 100–26, §3(5), Apr. 21, 1987, 101 Stat. 273; Pub. L. 100–456, div. A, title VIII, §809(d), Sept. 29, 1988, 102 Stat. 2013; Pub. L. 103–160, div. A, title IX, §904(b), Nov. 30, 1993, 107 Stat. 1728; Pub. L. 106–65, div. A, title IX, §911(a)(2), (d)(2), Oct. 5, 1999, 113 Stat. 717, 719; Pub. L. 107–107, div. A, title VIII, §801(a), Dec. 28, 2001, 115 Stat. 1174; Pub. L. 109–364, div. A, title X, §1071(a)(2), Oct. 17, 2006, 120 Stat. 2398; Pub. L. 110–181, div. A, title IX, §907, Jan. 28, 2008, 122 Stat. 277; Pub. L. 111–350, §5(b)(1), Jan. 4, 2011, 124 Stat. 3842; Pub. L. 113–291, div. A, title IX, §901(j)(2)(A), Dec. 19, 2014, 128 Stat. 3467; Pub. L. 114–92, div. A, title VIII, §825(b), Nov. 25, 2015, 129 Stat. 908; Pub. L. 115–91, div. A, title X, §1081(b)(1)(A), Dec. 12, 2017, 131 Stat. 1597, related to Under Secretary of Defense for Acquisition, Technology, and Logistics.

A prior section 133 was renumbered section 113 of this title.

CHANGE OF NAME

Pub. L. 106–65, div. A, title IX, §911(a)(1), Oct. 5, 1999, 113 Stat. 717, provided that the position of Under Secretary of Defense for Acquisition and Technology in the Department of Defense was redesignated as the Under Secretary of Defense for Acquisition, Technology, and Logistics, and any reference in any law, regulation, document, or other record of the United States to the Under Secretary of Defense for Acquisition and Technology was to be treated as referring to the Under Secretary of Defense for Acquisition, Technology, and Logistics.

Pub. L. 103–160, div. A, title IX, §904(a), (f), Nov. 30, 1993, 107 Stat. 1728, 1729, provided that the office of Under Secretary of Defense for Acquisition in the Department of Defense was redesignated as Under Secretary of Defense for Acquisition and Technology, the office of Deputy Under Secretary of Defense for Acquisition in the Department of Defense was redesignated as Deputy Under Secretary of Defense for Acquisition and Technology, and any reference to the Under Secretary of Defense for Acquisition or the Deputy Under Secretary of Defense for Acquisition in any provision of law other than this title, or in any rule, regulation, or other paper of the United States was to be treated as referring to the Under Secretary of Defense for Acquisition and Technology or the Deputy Under Secretary of Defense for Acquisition and Technology, respectively.

EFFECTIVE DATE OF REPEAL

Pub. L. 114–328, div. A, title IX, §901(a)(1), Dec. 23, 2016, 130 Stat. 2339, provided that the repeal of this section is effective Feb. 1, 2018.

§ 133a. Under Secretary of Defense for Research and Engineering

(a) UNDER SECRETARY OF DEFENSE.—There is an Under Secretary of Defense for Research and Engineering, appointed from civilian life by the President, by and with the advice and consent of the Senate. The Under Secretary shall be appointed from among persons who have an extensive technology, science, or engineering background and experience with managing complex or advanced technological programs. A person may not be appointed as Under Secretary within seven years after relief from active duty as a commissioned officer of a regular component of an armed force.

(b) DUTIES AND POWERS.—Subject to the authority, direction, and control of the Secretary of Defense, the Under Secretary shall perform such duties and exercise such powers as the Secretary may prescribe, including—

(1) serving as the chief technology officer of the Department of Defense with the mission of advancing technology and innovation for the armed forces (and the Department);

(2) establishing policies on, and supervising, all defense research and engineering, technology development, technology transition, appropriate prototyping activities, experimentation, and developmental testing activities and programs and unifying defense research and engineering efforts across the Department; and

(3) serving as the principal advisor to the Secretary on all research, engineering, and technology development activities and programs in the Department.

(c) PRECEDENCE IN DEPARTMENT OF DEFENSE.—

(1) PRECEDENCE IN MATTERS OF RESPONSIBILITY.—With regard to all matters for which

the Under Secretary has responsibility by the direction of the Secretary of Defense or by law, the Under Secretary takes precedence in the Department of Defense after the Secretary, the Deputy Secretary of Defense, and the Chief Management Officer of the Department of Defense.

(2) PRECEDENCE IN OTHER MATTERS.—With regard to all matters other than the matters for which the Under Secretary has responsibility by the direction of the Secretary or by law, the Under Secretary takes precedence in the Department of Defense after the Secretary, the Deputy Secretary, the Chief Management Officer, and the Secretaries of the military departments.

(Added Pub. L. 114–328, div. A, title IX, § 901(a)(1), Dec. 23, 2016, 130 Stat. 2339; amended Pub. L. 115–91, div. A, title IX, § 910(c)(2), Dec. 12, 2017, 131 Stat. 1518; Pub. L. 116–92, div. A, title IX, § 902(2), Dec. 20, 2019, 133 Stat. 1542.)

PRIOR PROVISIONS

A prior section 133a, added Pub. L. 99–500, § 101(c) [title X, § 902(a)(1)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–131, and Pub. L. 99–591, § 101(c) [title X, § 902(a)(1)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–131; Pub. L. 99–661, div. A, title IX, formerly title IV, § 902(a)(1), Nov. 14, 1986, 100 Stat. 3911, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; amended Pub. L. 103–160, div. A, title IX, § 904(c), Nov. 30, 1993, 107 Stat. 1728; Pub. L. 103–337, div. A, title X, § 1070(a)(2), Oct. 5, 1994, 108 Stat. 2855; Pub. L. 104–106, div. A, title IX, § 903(c)(1), Feb. 10, 1996, 110 Stat. 401; Pub. L. 104–201, div. A, title IX, § 901, Sept. 23, 1996, 110 Stat. 2617; Pub. L. 106–65, div. A, title IX, § 911(c), Oct. 5, 1999, 113 Stat. 718; Pub. L. 107–107, div. A, title X, § 1048(b)(1), Dec. 28, 2001, 115 Stat. 1225; Pub. L. 111–84, div. A, title IX, § 906(c)(1)(A), (2)(A), Oct. 28, 2009, 123 Stat. 2427, established the position of Principal Deputy Under Secretary of Defense for Acquisition, Technology, and Logistics, prior to repeal by Pub. L. 111–383, div. A, title IX, § 901(b)(1), (p), Jan. 7, 2011, 124 Stat. 4317, 4327, effective Jan. 1, 2011.

Another prior section 133a was renumbered section 117 of this title.

AMENDMENTS

2019—Subsec. (b)(2). Pub. L. 116–92 substituted ''appropriate prototyping activities,'' for ''prototyping,'' and struck out '', including the allocation of resources for defense research and engineering,'' after ''testing activities and programs''.

2017—Subsec. (c)(1). Pub. L. 115–91, § 910(c)(2)(A), substituted '', the Deputy Secretary of Defense, and the Chief Management Officer of the Department of Defense'' for ''and the Deputy Secretary of Defense''.

Subsec. (c)(2). Pub. L. 115–91, § 910(c)(2)(B), inserted ''the Chief Management Officer,'' after ''the Deputy Secretary,''.

EFFECTIVE DATE OF 2017 AMENDMENT

Pub. L. 115–91, div. A, title IX, § 910(c), Dec. 12, 2017, 131 Stat. 1518, provided that the amendment made by section 910(c)(2) is effective on Feb. 1, 2018, and immediately after the coming into effect of the amendments made by section 901 of Pub. L. 114–328 (see Tables for classification).

EFFECTIVE DATE

Pub. L. 114–328, div. A, title IX, § 901(a)(1), Dec. 23, 2016, 130 Stat. 2339, provided that this section is effective on Feb. 1, 2018.

SERVICE OF INCUMBENT USD FOR ATL IN POSITION

Pub. L. 114–328, div. A, title IX, § 901(a)(2), Dec. 23, 2016, 130 Stat. 2339, which provided that the Under Secretary of Defense for Acquisition, Technology, and Logistics serving as of Feb. 1, 2018, could continue as Under Secretary of Defense for Research and Engineering, without further appointment under this section, was repealed by Pub. L. 115–91, div. A, title IX, § 901, Dec. 12, 2017, 131 Stat. 1511.

REPORTS TO CONGRESS ON FAILURE TO COMPLY WITH RECOMMENDATIONS

Pub. L. 112–239, div. A, title IX, § 904(h), Jan. 2, 2013, 126 Stat. 1868, provided that:

''(1) REPORT REQUIRED.—Not later than 60 days after the end of each fiscal year, from fiscal year 2013 through fiscal year 2018, the Under Secretary of Defense for Acquisition, Technology, and Logistics shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on each case in which a major defense acquisition program, in the preceding fiscal year—

''(A) proceeded to implement a test and evaluation master plan notwithstanding a decision of the Deputy Assistant Secretary of Defense for Developmental Test and Evaluation to disapprove the developmental test and evaluation plan within that plan in accordance with former section 139b(a)(5)(B) of title 10, United States Code; or

''(B) proceeded to initial operational testing and evaluation notwithstanding a determination by the Deputy Assistant Secretary of Defense for Developmental Test and Evaluation on the basis of an assessment of operational test readiness that the program is not ready for operational testing.

''(2) MATTERS COVERED.—

''(A) For each program covered by paragraph (1)(A), the report shall include the following:

''(i) A description of the specific aspects of the developmental test and evaluation plan that the Deputy Assistant Secretary determined to be inadequate.

''(ii) An explanation of the reasons why the program disregarded the Deputy Assistant Secretary's recommendations with regard to those aspects of the developmental test and evaluation plan.

''(iii) The steps taken to address those aspects of the developmental test and evaluation plan and address the concerns of the Deputy Assistant Secretary.

''(B) For each program covered by paragraph (1)(B), the report shall include the following:

''(i) An explanation of the reasons why the program proceeded to initial operational testing and evaluation notwithstanding the findings of the assessment of operational test readiness.

''(ii) A description of the aspects of the approved testing and evaluation master plan that had to be set aside to enable the program to proceed to initial operational testing and evaluation.

''(iii) A description of how the program addressed the specific areas of concern raised in the assessment of operational test readiness.

''(iv) A statement of whether initial operational testing and evaluation identified any significant shortcomings in the program.

''(3) ADDITIONAL CONGRESSIONAL NOTIFICATION.—Not later than 30 days after any decision to conduct developmental testing on a major defense acquisition program without an approved test and evaluation master plan in place, the Under Secretary of Defense for Acquisition, Technology, and Logistics shall provide to the congressional defense committees a written explanation of the basis for the decision and a timeline for getting an approved plan in place.''

OVERSIGHT BY OFFICE OF UNDER SECRETARY OF DEFENSE FOR ACQUISITION, TECHNOLOGY, AND LOGISTICS OF EXERCISE OF ACQUISITION AUTHORITY BY COMBATANT COMMANDERS AND HEADS OF DEFENSE AGENCIES

Pub. L. 109–364, div. A, title IX, § 905, Oct. 17, 2006, 120 Stat. 2353, as amended by Pub. L. 110–181, div. A, title

IX, § 905, Jan. 28, 2008, 122 Stat. 275; Pub. L. 115–232, div. A, title VIII, § 812(a)(1)(C), Aug. 13, 2018, 132 Stat. 1846, provided that:

''(a) DESIGNATION OF OFFICIAL FOR OVERSIGHT.—The Secretary of Defense shall designate a senior acquisition official within the Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics to oversee the exercise of acquisition authority by—

''(1) any commander of a combatant command who is authorized by section 166b or 167 of title 10, United States Code, to exercise acquisition authority; and

''(2) any head of a Defense Agency who is designated by the Secretary of Defense to exercise acquisition authority.

''(b) GUIDANCE.—

''(1) IN GENERAL.—The senior acquisition official designated under subsection (a) shall develop guidance to ensure that the use of acquisition authority by commanders of combatant commands and the heads of Defense Agencies—

''(A) is in compliance with department-wide acquisition policy; and

''(B) is coordinated with acquisition programs of the military departments.

''(2) URGENT REQUIREMENTS.—Guidance developed under paragraph (1) shall take into account the need to fulfill the urgent requirements of the commanders of combatant commands and the heads of Defense Agencies and to ensure that those requirements are addressed expeditiously.

''(c) CONSULTATION.—The senior acquisition official designated under subsection (a) shall on a regular basis consult on matters related to requirements and acquisition with the commanders of combatant commands and the heads of Defense Agencies referred to in that subsection.

''(d) DEADLINE FOR DESIGNATION.—The Secretary of Defense shall make the designation required by subsection (a) not later than 180 days after the date of the enactment of this Act [Oct. 17, 2006].''

IMPROVEMENT IN DEFENSE RESEARCH AND PROCUREMENT LIAISON WITH ISRAEL

Pub. L. 100–456, div. A, title X, § 1006, Sept. 29, 1988, 102 Stat. 2040, as amended by Pub. L. 103–160, div. A, title IX, § 904(f), Nov. 30, 1993, 107 Stat. 1729; Pub. L. 106–65, div. A, title IX, § 911(a)(1), Oct. 5, 1999, 113 Stat. 717, which provided for the designation of a primary liaison between the procurement and research and development activities of the armed forces of the United States and Israel, was repealed by Pub. L. 115–232, div. A, title VIII, § 811(e), Aug. 13, 2018, 132 Stat. 1845.

§ 133b. Under Secretary of Defense for Acquisition and Sustainment

(a) UNDER SECRETARY OF DEFENSE.—There is an Under Secretary of Defense for Acquisition and Sustainment, appointed from civilian life by the President, by and with the advice and consent of the Senate. The Under Secretary shall be appointed from among persons who have an extensive system development, engineering, production, or management background and experience with managing complex programs. A person may not be appointed as Under Secretary within seven years after relief from active duty as a commissioned officer of a regular component of an armed force.

(b) DUTIES AND POWERS.—Subject to the authority, direction, and control of the Secretary of Defense, the Under Secretary shall perform such duties and exercise such powers as the Secretary may prescribe, including—

(1) serving as the chief acquisition and sustainment officer of the Department of Defense with the mission of delivering and sustaining timely, cost-effective capabilities for the armed forces (and the Department);

(2) establishing policies on, and supervising, all elements of the Department relating to acquisition (including system design, development, appropriate prototyping activities, and production, and procurement of goods and services) and sustainment (including logistics, maintenance, and materiel readiness);

(3) establishing policies for access to, and maintenance of, the defense industrial base and materials critical to national security, and policies on contract administration;

(4) establishing policies for, and providing oversight, guidance, and coordination with respect to, the nuclear command, control, and communications system;

(5) serving as—

(A) the principal advisor to the Secretary on acquisition and sustainment in the Department;

(B) the senior procurement executive for the Department for the purposes of section 1702(c) of title 41; and

(C) the Defense Acquisition Executive for purposes of regulations and procedures of the Department providing for a Defense Acquisition Executive;

(6) overseeing the modernization of nuclear forces, including the nuclear command, control, and communications system, and the development of capabilities to counter weapons of mass destruction, and serving as the chairman of the Nuclear Weapons Council and the co-chairman of the Council on Oversight of the National Leadership Command, Control, and Communications System;

(7) the authority to direct the Secretaries of the military departments and the heads of all other elements of the Department with regard to matters for which the Under Secretary has responsibility, except that the Under Secretary shall exercise advisory authority over service acquisition programs for which the service acquisition executive is the milestone decision authority;

(8) to the extent directed by the Secretary, exercising overall supervision of all personnel (civilian and military) in the Office of the Secretary of Defense with regard to matters for which the Under Secretary has responsibility, unless otherwise provided by law; and

(9) advising the Secretary on all aspects of acquisition and sustainment relating to—

(A) defense acquisition programs;

(B) core logistics capabilities (as described under section 2464 of this title); and

(C) the national technology and industrial base (as defined in section 2500 of this title).

(c) PRECEDENCE IN DEPARTMENT OF DEFENSE.—

(1) PRECEDENCE IN MATTERS OF RESPONSIBILITY.—With regard to all matters for which the Under Secretary has responsibility by the direction of the Secretary of Defense or by law, the Under Secretary takes precedence in the Department of Defense after the Secretary, the Deputy Secretary of Defense, the Chief Management Officer of the Department of Defense, and the Under Secretary of Defense for Research and Engineering.

(2) PRECEDENCE IN OTHER MATTERS.—With regard to all matters other than the matters for which the Under Secretary has responsibility by the direction of the Secretary or by law, the Under Secretary takes precedence in the Department of Defense after the Secretary, the Deputy Secretary, the Chief Management Officer, the Under Secretary of Defense for Research and Engineering, and the Secretaries of the military departments.

(Added Pub. L. 114–328, div. A, title IX, § 901(b), Dec. 23, 2016, 130 Stat. 2340; amended Pub. L. 115–91, div. A, title IX, §§ 902, 910(c)(3), Dec. 12, 2017, 131 Stat. 1511, 1518; Pub. L. 116–92, div. A, title IX, § 902(92), title XVI, § 1662(a), Dec. 20, 2019, 133 Stat. 1554, 1772; Pub. L. 116–283, div. A, title VIII, § 811(a)(2), title XVIII, § 1883(b)(2), Jan. 1, 2021, 134 Stat. 3749, 4294.)

AMENDMENT OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1883(b)(2), Jan. 1, 2021, 134 Stat. 4151, 4294, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, except as otherwise provided in title XVIII of Pub. L. 116–283, in title 10, United States Code, each reference in the text of such title to a source section that is redesignated by title XVIII of Pub. L. 116–283, is amended by striking such reference and inserting a reference to the appropriate section as so redesignated. See 2021 Amendment note below.

PRIOR PROVISIONS

A prior section 133b was renumbered section 138a of this title and was subsequently repealed.

Another prior section 133b was renumbered section 118 of this title and was subsequently repealed.

AMENDMENTS

2021—Subsec. (b)(9). Pub. L. 116–283, § 811(a)(2), added par. (9).

Subsec. (b)(9)(C). Pub. L. 116–283, § 1883(b)(2), substituted "section 4801" for "section 2500".

2019—Subsec. (b)(2). Pub. L. 116–92, § 902(92), inserted "appropriate prototyping activities," after "development,".

Subsec. (b)(4) to (8). Pub. L. 116–92, § 1662(a), added par. (4), redesignated former pars. (4) to (7) as (5) to (8), respectively, and in par. (6) inserted ", including the nuclear command, control, and communications system," after "modernization of nuclear forces".

2017—Subsec. (b)(6). Pub. L. 115–91, § 902, substituted "advisory authority" for "supervisory authority".

Subsec. (c)(1). Pub. L. 115–91, § 910(c)(3)(A), inserted "the Chief Management Officer of the Department of Defense," after "the Deputy Secretary of Defense,".

Subsec. (c)(2). Pub. L. 115–91, § 910(c)(3)(B), inserted "the Chief Management Officer," after "the Deputy Secretary,".

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by section 1883(b)(2) of Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 2017 AMENDMENT

Pub. L. 115–91, div. A, title IX, § 902, Dec. 12, 2017, 131 Stat. 1511, provided that the amendment made by section 902 is effective Feb. 1, 2018, and immediately after the coming into effect of the amendment made by section 901(b) of Pub. L. 114–328 (enacting this section).

Pub. L. 115–91, div. A, title IX, § 910(c), Dec. 12, 2017, 131 Stat. 1518, provided that the amendment made by section 910(c)(3) is effective on Feb. 1, 2018, and immediately after the coming into effect of the amendments made by section 901 of Pub. L. 114–328 (see Tables for classification).

EFFECTIVE DATE

Pub. L. 114–328, div. A, title IX, § 901(b), Dec. 23, 2016, 130 Stat. 2339, provided that this section is effective on Feb. 1, 2018.

§ 134. Under Secretary of Defense for Policy

(a) There is an Under Secretary of Defense for Policy, appointed from civilian life by the President, by and with the advice and consent of the Senate. A person may not be appointed as Under Secretary within seven years after relief from active duty as a commissioned officer of a regular component of an armed force.

(b)(1) The Under Secretary shall perform such duties and exercise such powers as the Secretary of Defense may prescribe.

(2) Subject to the authority, direction, and control of the Secretary of Defense, the Under Secretary shall be responsible and have overall direction and supervision for—

(A) the development, implementation, and integration across the Department of Defense of the National Defense Strategy (as described by section 113 of this title) and strategic policy guidance for the activities of the Department of Defense across all geographic regions and military functions and domains;

(B) the integration of the activities of the Department into the National Security Strategy of the United States;

(C) the development of policy guidance for the preparation of campaign and contingency plans by the combatant commands, and for the review of such plans;

(D) the preparation of policy guidance for the development of the global force posture; and

(E) the development of the Defense Planning Guidance that guides the formulation of program and budget requests by the military departments and other elements of the Department.

(3) Subject to the authority, direction, and control of the Secretary of Defense, the Under Secretary shall have responsibility for supervising and directing activities of the Department of Defense relating to export controls.

(4) Subject to the authority, direction, and control of the Secretary of Defense, the Under Secretary of Defense for Policy shall have overall direction and supervision for policy, program planning and execution, and allocation and use of resources for the activities of the Department of Defense for combating terrorism.

(5) Subject to the authority, direction, and control of the Secretary of Defense, the Under Secretary shall coordinate with the Chairman of the Joint Chiefs of Staff and the Director of Cost Assessment and Program Evaluation to—

(A) develop planning scenarios that describe the present and future strategic and operational environments by which to assess joint force capabilities and readiness; and

(B) develop specific objectives that the joint force should be ready to achieve, and conduct

assessments of the capability (in terms of both capacity and readiness) of the joint force to achieve such objectives.

(c) The Under Secretary takes precedence in the Department of Defense after the Secretary of Defense, the Deputy Secretary of Defense, the Under Secretary of Defense for Acquisition and Sustainment, the Under Secretary of Defense for Research and Engineering, and the Secretaries of the military departments.

(Added Pub. L. 99–433, title I, § 105(1), Oct. 1, 1986, 100 Stat. 997; amended Pub. L. 99–500, § 101(c) [title X, § 903(a)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–132, and Pub. L. 99–591, § 101(c) [title X, § 903(a)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–132; Pub. L. 99–661, div. A, title IX, formerly title IV, § 903(a), Nov. 14, 1986, 100 Stat. 3911, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; Pub. L. 103–160, div. A, title IX, § 904(d)(1), Nov. 30, 1993, 107 Stat. 1728; Pub. L. 105–261, div. A, title XV, § 1521(a), Oct. 17, 1998, 112 Stat. 2178; Pub. L. 106–65, div. A, title IX, § 911(d)(1), Oct. 5, 1999, 113 Stat. 719; Pub. L. 107–314, div. A, title IX, § 902(b), Dec. 2, 2002, 116 Stat. 2620; Pub. L. 110–181, div. A, title IX, § 903(c), Jan. 28, 2008, 122 Stat. 273; Pub. L. 113–291, div. A, title IX, § 901(j)(2)(B), Dec. 19, 2014, 128 Stat. 3467; Pub. L. 115–91, div. A, title X, § 1081(b)(1)(A), Dec. 12, 2017, 131 Stat. 1597; Pub. L. 115–232, div. A, title IX, § 902, Aug. 13, 2018, 132 Stat. 1921; Pub. L. 116–92, div. A, title IX, § 902(3), Dec. 20, 2019, 133 Stat. 1542.)

Codification

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

Prior Provisions

Provisions of this section were contained in section 135 of this title prior to amendment by Pub. L. 99–433.

A prior section 134 was renumbered section 132 of this title.

Amendments

2019—Subsec. (c). Pub. L. 116–92 substituted ''Under Secretary of Defense for Acquisition and Sustainment, the Under Secretary of Defense for Research and Engineering,'' for ''Under Secretary of Defense for Acquisition, Technology, and Logistics,''.

2018—Subsec. (b)(2). Pub. L. 115–232, § 902(a), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''The Under Secretary shall assist the Secretary of Defense—

''(A) in preparing written policy guidance for the preparation and review of contingency plans; and

''(B) in reviewing such plans.''

Subsec. (b)(5). Pub. L. 115–232, § 902(b), added par. (5).

2017—Pub. L. 115–91, § 1081(b)(1)(A), repealed Pub. L. 113–291, § 901(j)(2)(B). See 2014 Amendment note below.

2014—Subsec. (c). Pub. L. 113–291, § 901(j)(2)(B), which directed insertion of ''the Under Secretary of Defense for Business Management and Information,'' after ''the Deputy Secretary of Defense,'', was repealed by Pub. L. 115–91, § 1081(b)(1)(A).

2008—Subsec. (a). Pub. L. 110–181 substituted ''seven'' for ''10''.

2002—Subsec. (b)(4). Pub. L. 107–314 added par. (4).

1999—Subsec. (c). Pub. L. 106–65 substituted ''Under Secretary of Defense for Acquisition, Technology, and Logistics'' for ''Under Secretary of Defense for Acquisition and Technology''.

1998—Subsec. (b)(3). Pub. L. 105–261 added par. (3).

1993—Subsec. (c). Pub. L. 103–160 substituted ''Under Secretary of Defense for Acquisition and Technology'' for ''Under Secretary of Defense for Acquisition''.

1986—Subsec. (c). Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661 amended subsec. (c) identically, inserting ''the Under Secretary of Defense for Acquisition,''.

Effective Date of 2017 Amendment

Pub. L. 115–91, div. A, title IX, § 1081(b)(1), Dec. 12, 2017, 131 Stat. 1597, provided that the amendment made by section 1081(b)(1)(A) is effective as of Dec. 23, 2016.

Effective Date of 2014 Amendment

Pub. L. 113–291, div. A, title IX, § 901(j)(2), Dec. 19, 2014, 128 Stat. 3467, which provided that the amendment made by section 901(j)(2)(B) is effective on the effective date specified in former section 901(a)(1) of Pub. L. 113–291, which was Feb. 1, 2017, was repealed by Pub. L. 115–91, div. A, title X, § 1081(b)(1)(A), Dec. 12, 2017, 131 Stat. 1597.

Implementation of Amendments by Pub. L. 105–261

Pub. L. 105–261, div. A, title XV, § 1521(c), (d), Oct. 17, 1998, 112 Stat. 2179, provided that:

''(c) Time for Implementation.—The Secretary of Defense shall complete the actions necessary to implement the amendment made by subsection (a) [amending this section] and to establish the office of Deputy Under Secretary of Defense for Technology Security Policy in accordance with [former] section 134b of title 10, United States Code, as added by subsection (b), not later than 60 days after the date of the enactment of this Act [Oct. 17, 1998].

''(d) Report.—Not later than 90 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives [now Committee on Armed Services of the House of Representatives] a report on the plans of the Secretary for implementing the amendments made by subsections (a) and (b) [enacting former section 134b of this title and amending this section]. The report shall include the following:

''(1) A description of any organizational changes that are to be made within the Department of Defense to implement those amendments.

''(2) A description of the role of the Chairman of the Joint Chiefs of Staff in the export control activities of the Department of Defense after those subsections are implemented, together with a discussion of how that role compares to the Chairman's role in those activities before the implementation of those subsections.''

Responsibility for Policy on Civilian Casualty Matters

Pub. L. 115–232, div. A, title IX, § 936, Aug. 13, 2018, 132 Stat. 1939, as amended by Pub. L. 116–92, div. A, title XII, § 1282, Dec. 20, 2019, 133 Stat. 1706, provided that:

''(a) Designation of Senior Civilian Official.—Not later than 90 days after the date of the enactment of this Act [Aug. 13, 2018], the Under Secretary of Defense for Policy shall designate a senior civilian official of the Department of Defense within the Office of the Secretary of Defense at or above the level of Assistant Secretary of Defense to develop, coordinate, and oversee compliance with the policy of the Department relating to civilian casualties resulting from United States military operations.

''(b) Responsibilities.—The senior civilian official designated under subsection (a) shall ensure that the policy referred to in that subsection provides for—

''(1) uniform processes and standards across the combatant commands for accurately recording kinetic strikes by the United States military;

''(2) the development and dissemination of best practices for reducing the likelihood of civilian casualties from United States military operations;

''(3) the development of publicly available means appropriate to the specific regional circumstances, including an Internet-based mechanism, for the submittal to the United States Government of allega-

tions of civilian casualties resulting from United States military operations;

"(4) uniform processes and standards across the combatant commands for reviewing and investigating allegations of civilian casualties resulting from United States military operations, including the consideration of relevant information from all available sources;

"(5) uniform processes and standards across the combatant commands for—

"(A) acknowledging the responsibility of the United States military for civilian casualties resulting from United States military operations, including for acknowledging the status of any individuals killed or injured who were believed to be enemy combatants, but subsequently determined to be non-combatants; and

"(B) offering ex gratia payments or other assistance to civilians who have been injured, or to the families of civilians killed, as a result of United States military operations, as determined to be reasonable and culturally appropriate by the designated senior civilian official;

"(6) regular engagement with relevant intergovernmental and nongovernmental organizations;

"(7) public affairs guidance with respect to matters relating to civilian casualties alleged or confirmed to have resulted from United States military operations;

"(8) cultivating, developing, retaining, and disseminating—

"(A) lessons learned for integrating civilian protection into operational planning and identifying the proximate cause or causes of civilian casualties; and

"(B) practices developed to prevent, mitigate, or respond to such casualties; [and]

"(9) such other matters with respect to civilian casualties resulting from United States military operations as the designated senior civilian official considers appropriate.

"(c) COORDINATION.—The senior civilian official designated under subsection (a) shall develop and implement steps to increase coordination with the relevant Chiefs of Mission and other appropriate positions in the Department of State with respect to the policies required pursuant to subsection (a) and other matters or assistance related to civilian harm, resulting from military operations.

"(d) REPORT.—Not later than 180 days after the date of the enactment of this Act [Aug. 18, 2018], the senior civilian official designated under subsection (a) shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report that describes—

"(1) the policy developed by the senior civilian official under that subsection; and

"(2) the efforts of the Department to implement such policy.

"(e) BRIEFING.—Not later than 180 days after the date of the enactment of this subsection [Dec. 20, 2019], the senior civilian official designated under subsection (a) shall provide to the congressional defense committees a briefing on—

"(1) the updates made to the policy developed by the senior civilian official pursuant to this section; and

"(2) the efforts of the Department to implement such updates."

[§ 134a. Repealed. Pub. L. 111–383, div. A, title IX, § 901(b)(1), Jan. 7, 2011, 124 Stat. 4317]

Section, added Pub. L. 102–190, div. A, title IX, §901(a)(1), Dec. 5, 1991, 105 Stat. 1450; amended Pub. L. 104–106, div. A, title IX, §903(c)(2), Feb. 10, 1996, 110 Stat. 402; Pub. L. 104–201, div. A, title IX, §901, Sept. 23, 1996, 110 Stat. 2617; Pub. L. 111–84, div. A, title IX, §906(c)(1)(B), (2)(B), Oct. 28, 2009, 123 Stat. 2427, established the position of Principal Deputy Under Secretary of Defense for Policy.

PRIOR PROVISIONS

A prior section 134a was renumbered section 133 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Jan. 1, 2011, see section 901(p) of Pub. L. 111–383, set out as an Effective Date of 2011 Amendment note under section 131 of this title.

[§ 134b. Repealed. Pub. L. 111–84, div. A, title IX, § 905(a)(1), Oct. 28, 2009, 123 Stat. 2425]

Section, added Pub. L. 105–261, div. A, title XV, §1521(b)(1), Oct. 17, 1998, 112 Stat. 2178, related to the Deputy Under Secretary of Defense for Technology Security Policy.

§ 135. Under Secretary of Defense (Comptroller)

(a)(1) There is an Under Secretary of Defense (Comptroller), appointed from civilian life by the President, by and with the advice and consent of the Senate. A person may not be appointed as Under Secretary within seven years after relief from active duty as a commissioned officer of a regular component of the armed forces.

(2) The Under Secretary of Defense (Comptroller) shall be appointed from among persons who have significant budget, financial management, or audit experience in complex organizations.

(b) The Under Secretary of Defense (Comptroller) is the agency Chief Financial Officer of the Department of Defense for the purposes of chapter 9 of title 31. The Under Secretary of Defense (Comptroller) shall perform the duties assigned to the Under Secretary in section 2222 of this title and such additional duties and exercise such powers as the Secretary of Defense may prescribe.

(c) The Under Secretary of Defense (Comptroller) shall advise and assist the Secretary of Defense—

(1) in performing such budgetary and fiscal functions and duties, and in exercising such budgetary and fiscal powers, as are needed to carry out the powers of the Secretary;

(2) in supervising and directing the preparation of budget estimates of the Department of Defense;

(3) in establishing and supervising the execution of principles, policies, and procedures to be followed in connection with organizational and administrative matters relating to—

(A) the preparation and execution of budgets;

(B) fiscal, cost, operating, and capital property accounting; and

(C) progress and statistical reporting;

(4) in establishing and supervising the execution of policies and procedures relating to the expenditure and collection of funds administered by the Department of Defense; and

(5) in establishing uniform terminologies, classifications, and procedures concerning matters covered by paragraphs (1) through (4).

(d) In addition to any duties under subsection (c), the Under Secretary of Defense (Comptroller) shall, subject to the authority, direc-

tion, and control of the Secretary of Defense, do the following:

(1) Provide guidance and instruction on annual performance plans and evaluations to the following:

(A) The Assistant Secretaries of the military departments for financial management.

(B) Any other official of an agency, organization, or element of the Department of Defense with responsibility for financial management.

(2) Give directions to the military departments, Defense Agencies, and other organizations and elements of the Department of Defense regarding their financial statements and the audit and audit readiness of such financial statements.

(e) The Under Secretary of Defense (Comptroller) takes precedence in the Department of Defense after the Under Secretary of Defense for Policy.

(f) The Under Secretary of Defense (Comptroller) shall ensure that each of the congressional defense committees is informed, in a timely manner, regarding all matters relating to the budgetary, fiscal, and analytic activities of the Department of Defense that are under the supervision of the Under Secretary of Defense (Comptroller).

(Added Pub. L. 99–433, title I, § 107, Oct. 1, 1986, 100 Stat. 998, § 137; renumbered § 135 and amended Pub. L. 103–160, div. A, title IX, §§ 901(a)(2), 902(a)(1), (b), Nov. 30, 1993, 107 Stat. 1726, 1727; Pub. L. 103–337, div. A, title IX, § 903(a)(1), (2), Oct. 5, 1994, 108 Stat. 2823; Pub. L. 104–106, div. A, title XV, § 1502(a)(6), Feb. 10, 1996, 110 Stat. 502; Pub. L. 106–65, div. A, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 108–136, div. A, title X, § 1043(b)(1), Nov. 24, 2003, 117 Stat. 1610; Pub. L. 111–383, div. A, title IX, § 901(m)(3), Jan. 7, 2011, 124 Stat. 4326; Pub. L. 115–91, div. A, title IX, §§ 904(1), 905(a), 912(b), Dec. 12, 2017, 131 Stat. 1512, 1520.)

PRIOR PROVISIONS

A prior section 135 was renumbered section 138b of this title.

AMENDMENTS

2017—Subsec. (a). Pub. L. 115–91, § 905(a)(1), designated existing provisions as par. (1) and added par. (2).

Pub. L. 115–91, § 904(1), inserted at end "A person may not be appointed as Under Secretary within seven years after relief from active duty as a commissioned officer of a regular component of the armed forces."

Subsec. (b). Pub. L. 115–91, § 912(b), inserted "the duties assigned to the Under Secretary in section 2222 of this title and" after "shall perform".

Subsecs. (d) to (f). Pub. L. 115–91, § 905(a)(2), added subsec. (d) and redesignated former subsecs. (d) and (e) as (e) and (f), respectively.

2011—Subsec. (c)(5). Pub. L. 111–383 substituted "paragraphs" for "clauses".

2003—Subsec. (e). Pub. L. 108–136 struck out "(1)" before "The Under Secretary", substituted "each of the congressional defense committees" for "each congressional committee specified in paragraph (2)", and struck out par. (2) which read as follows: "The committees referred to in paragraph (1) are—

"(A) the Committee on Armed Services and the Committee on Appropriations of the Senate; and

"(B) the Committee on Armed Services and the Committee on Appropriations of the House of Representatives."

1999—Subsec. (e)(2)(B). Pub. L. 106–65 substituted "Committee on Armed Services" for "Committee on National Security".

1996—Subsec. (e). Pub. L. 104–106 designated existing provisions as par. (1), substituted "each congressional committee specified in paragraph (2) is" for "the Committees on Armed Services and the Committees on Appropriations of the Senate and House of Representatives are each", and added par. (2).

1994—Pub. L. 103–337, § 903(a)(2), substituted "Under Secretary of Defense (Comptroller)" for "Comptroller" as section catchline.

Subsec. (a). Pub. L. 103–337, § 903(a)(1)(A), substituted "an Under Secretary of Defense (Comptroller)" for "a Comptroller of the Department of Defense".

Subsecs. (b) to (e). Pub. L. 103–337, § 903(a)(1)(B), substituted "Under Secretary of Defense (Comptroller)" for "Comptroller" wherever appearing.

1993—Pub. L. 103–160, § 901(a)(2), renumbered section 137 of this title as this section.

Subsec. (b). Pub. L. 103–160, § 902(a)(1), inserted "The Comptroller is the agency Chief Financial Officer of the Department of Defense for the purposes of chapter 9 of title 31." after "(b)" and "additional" after "shall perform such".

Subsec. (d). Pub. L. 103–160, § 901(a)(2), added subsec. (d).

Subsec. (e). Pub. L. 103–160, § 902(b), added subsec. (e).

CHANGE OF NAME

Pub. L. 103–337, div. A, title IX, § 903(d), Oct. 5, 1994, 108 Stat. 2823, provided that: "Any reference to the Comptroller of the Department of Defense in any provision of law other than title 10, United States Code, or in any rule, regulation, or other paper of the United States shall be treated as referring to the Under Secretary of Defense (Comptroller)."

EFFECTIVE DATE OF 2017 AMENDMENT

Pub. L. 115–91, div. A, title IX, § 905(c), Dec. 12, 2017, 131 Stat. 1513, provided that: "The appointment qualifications imposed by the amendments made by subsection (a)(1) [amending this section] and the appointment qualifications imposed by subsection (b) [set out as a note below] shall apply with respect to appointments as Under Secretary of Defense (Comptroller) and Deputy Chief Financial Officer of the Department of Defense that are made on or after the date of the enactment of this Act [Dec. 12, 2017]."

EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by Pub. L. 111–383 effective Jan. 1, 2011, see section 901(p) of Pub. L. 111–383, set out as a note under section 131 of this title.

QUALIFICATION FOR APPOINTMENT AS DEPUTY CHIEF FINANCIAL OFFICER

Pub. L. 115–91, div. A, title IX, § 905(b), Dec. 12, 2017, 131 Stat. 1513, provided that: "The Deputy Chief Financial Officer of the Department of Defense shall be appointed from among persons who have significant budget, financial management, or audit experience in complex organizations."

§ 136. Under Secretary of Defense for Personnel and Readiness

(a) There is an Under Secretary of Defense for Personnel and Readiness, appointed from civilian life by the President, by and with the advice and consent of the Senate. A person may not be appointed as Under Secretary within seven years after relief from active duty as a commissioned officer of a regular component of the armed forces.

(b) Subject to the authority, direction, and control of the Secretary of Defense, the Under Secretary of Defense for Personnel and Readi-

ness shall perform such duties and exercise such powers as the Secretary of Defense may prescribe in the areas of military readiness, total force management, military and civilian personnel requirements, military and civilian personnel training, military and civilian family matters, exchange, commissary, and nonappropriated fund activities, personnel requirements for weapons support, National Guard and reserve components, and health affairs.

(c) The Under Secretary of Defense for Personnel and Readiness takes precedence in the Department of Defense after the Under Secretary of Defense (Comptroller).

(d) The Under Secretary of Defense for Personnel and Readiness is responsible, subject to the authority, direction, and control of the Secretary of Defense, for the monitoring of the operations tempo and personnel tempo of the armed forces. The Under Secretary shall establish, to the extent practicable, uniform standards within the Department of Defense for terminology and policies relating to deployment of units and personnel away from their assigned duty stations (including the length of time units or personnel may be away for such a deployment) and shall establish uniform reporting systems for tracking deployments.

(Added Pub. L. 103–160, div. A, title IX, §903(a), Nov. 30, 1993, 107 Stat. 1727; amended Pub. L. 104–106, div. A, title XV, §1503(a)(2), Feb. 10, 1996, 110 Stat. 510; Pub. L. 106–65, div. A, title IX, §923(a), title X, §1066(a)(1), Oct. 5, 1999, 113 Stat. 724, 770; Pub. L. 115–91, div. A, title IX, §904(2), Dec. 12, 2017, 131 Stat. 1512.)

PRIOR PROVISIONS

A prior section 136 was renumbered section 138 of this title.

AMENDMENTS

2017—Subsec. (a). Pub. L. 115–91 inserted at end ''A person may not be appointed as Under Secretary within seven years after relief from active duty as a commissioned officer of a regular component of the armed forces.''

1999—Subsec. (a). Pub. L. 106–65, §1066(a)(1), inserted ''advice and'' after ''by and with the''.

Subsec. (d). Pub. L. 106–65, §923(a), added subsec. (d).

1996—Subsec. (c). Pub. L. 104–106 substituted ''Under Secretary of Defense (Comptroller)'' for ''Comptroller''.

[§ 136a. Repealed. Pub. L. 111–383, div. A, title IX, § 901(b)(1), Jan. 7, 2011, 124 Stat. 4317]

Section, added Pub. L. 107–107, div. A, title IX, §901(a)(1), Dec. 28, 2001, 115 Stat. 1193; amended Pub. L. 111–84, div. A, title IX, §906(c)(1)(C), (2)(C), Oct. 28, 2009, 123 Stat. 2427, established the position of Principal Deputy Under Secretary of Defense for Personnel and Readiness.

PRIOR PROVISIONS

A prior section 136a was renumbered section 139 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Jan. 1, 2011, see section 901(p) of Pub. L. 111–383, set out as an Effective Date of 2011 Amendment note under section 131 of this title.

§ 137. Under Secretary of Defense for Intelligence and Security

(a) There is an Under Secretary of Defense for Intelligence and Security, appointed from civilian life by the President, by and with the advice and consent of the Senate. A person may not be appointed as Under Secretary within seven years after relief from active duty as a commissioned officer of a regular component of the armed forces.

(b) Subject to the authority, direction, and control of the Secretary of Defense, the Under Secretary of Defense for Intelligence and Security shall—

(1) have responsibility for the overall direction and supervision for policy, program planning and execution, and use of resources, for the activities of the Department of Defense that are part of the Military Intelligence Program;

(2) execute the functions for the National Intelligence Program of the Department of Defense under section 105 of the National Security Act of 1947 (50 U.S.C. 3038), as delegated by the Secretary of Defense;

(3) have responsibility for the overall direction and supervision for policy, program planning and execution, and use of resources, for personnel security, physical security, industrial security, and the protection of classified information and controlled unclassified information, related activities of the Department of Defense; and

(4) perform such duties and exercise such powers as the Secretary of Defense may prescribe in the area of intelligence.

(c) The protection of privacy and civil liberties in accordance with Federal law and the regulations and directives of the Department of Defense shall be a top priority for the Under Secretary of Defense for Intelligence and Security.

(d) The Under Secretary of Defense for Intelligence and Security takes precedence in the Department of Defense after the Under Secretary of Defense for Personnel and Readiness.

(Added Pub. L. 107–314, div. A, title IX, §901(a)(2), Dec. 2, 2002, 116 Stat. 2619; amended Pub. L. 115–91, div. A, title IX, §904(3), Dec. 12, 2017, 131 Stat. 1512; Pub. L. 115–232, div. A, title XVI, §1621, Aug. 13, 2018, 132 Stat. 2117; Pub. L. 116–92, div. A, title XVI, §1621(d), (e)(1)(A)(ii), (C), Dec. 20, 2019, 133 Stat. 1732, 1733.)

PRIOR PROVISIONS

A prior section 137 was renumbered section 138b of this title.

Another prior section 137 was renumbered section 135 of this title.

Another prior section 137 was renumbered section 140 of this title.

AMENDMENTS

2019—Pub. L. 116–92, §1621(e)(1)(C), substituted ''Under Secretary of Defense for Intelligence and Security'' for ''Under Secretary of Defense for Intelligence'' in section catchline.

Subsecs. (a), (b). Pub. L. 116–92, §1621(e)(1)(A)(ii), substituted ''Under Secretary of Defense for Intelligence and Security'' for ''Under Secretary of Defense for Intelligence''.

Subsec. (c). Pub. L. 116–92, §1621(d)(2), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 116–92, §1621(e)(1)(A)(ii), substituted ''Under Secretary of Defense for Intelligence and Security'' for ''Under Secretary of Defense for Intelligence''.

Pub. L. 116–92, §1621(d)(1), redesignated subsec. (c) as (d).

2018—Subsec. (b). Pub. L. 115–232 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''Subject to the authority, direction, and control of the Secretary of Defense, the Under Secretary of Defense for Intelligence shall perform such duties and exercise such powers as the Secretary of Defense may prescribe in the area of intelligence.''

2017—Subsec. (a). Pub. L. 115–91 inserted at end ''A person may not be appointed as Under Secretary within seven years after relief from active duty as a commissioned officer of a regular component of the armed forces.''

CHANGE OF NAME

Pub. L. 116–92, div. A, title XVI, §1621(a)–(c), Dec. 20, 2019, 133 Stat. 1732, provided that:

''(a) REDESIGNATION OF UNDER SECRETARY.—

''(1) IN GENERAL.—The Under Secretary of Defense for Intelligence is hereby redesignated as the Under Secretary of Defense for Intelligence and Security.

''(2) SERVICE OF INCUMBENT IN POSITION.—The individual serving as Under Secretary of Defense for Intelligence as of the date of the enactment of this Act [Dec. 20, 2019] may serve as Under Secretary of Defense for Intelligence and Security commencing as of that date without further appointment under section 137 of title 10, United States Code (as amended by subsection (c)(1)(A)(ii) [probably should be (e)(1)(A)(ii)]).

''(3) REFERENCE.—Any reference in any law, regulation, map, document, paper, or other record of the United States to the Under Secretary of Defense for Intelligence shall be deemed to be a reference to the Under Secretary of Defense for Intelligence and Security.

''(b) REDESIGNATION OF RELATED DEPUTY UNDER SECRETARY.—

''(1) IN GENERAL.—The Deputy Under Secretary of Defense for Intelligence is hereby redesignated as the Deputy Under Secretary of Defense for Intelligence and Security.

''(2) SERVICE OF INCUMBENT IN POSITION.—The individual serving as Deputy Under Secretary of Defense for Intelligence as of the date of the enactment of this Act may serve as Deputy Under Secretary of Defense for Intelligence and Security commencing as of that date without further appointment under section 137a of title 10, United States Code (as amended by subsection (c)(1)(B) [probably should be (e)(1)(B)]).

''(3) REFERENCE.—Any reference in any law, regulation, map, document, paper, or other record of the United States to the Deputy Under Secretary of Defense for Intelligence shall be deemed to be a reference to the Deputy Under Secretary of Defense for Intelligence and Security.

''(c) RULE OF CONSTRUCTION REGARDING EFFECTS OF REDESIGNATION.—Nothing in this section shall be construed to modify or expand the authorities, resources, responsibilities, roles, or missions of the Under Secretary of Defense for Intelligence and Security, as redesignated by this section.''

PLAN FOR INCORPORATION OF ENTERPRISE QUERY AND CORRELATION CAPABILITY INTO THE DEFENSE INTELLIGENCE INFORMATION ENTERPRISE

Pub. L. 112–81, div. A, title IX, §925, Dec. 31, 2011, 125 Stat. 1540, provided that:

''(a) PLAN REQUIRED.—

''(1) IN GENERAL.—The Under Secretary of Defense for Intelligence shall develop a plan for the incorporation of an enterprise query and correlation capability into the Defense Intelligence Information Enterprise (DI2E).

''(2) ELEMENTS.—The plan required by paragraph (1) shall—

''(A) include an assessment of all the current and planned advanced query and correlation systems which operate on large centralized databases that are deployed or to be deployed in elements of the Defense Intelligence Information Enterprise; and

''(B) determine where duplication can be eliminated, how use of these systems can be expanded, whether these systems can be operated collaboratively, and whether they can and should be integrated with the enterprise-wide query and correlation capability required pursuant to paragraph (1).

''(b) PILOT PROGRAM.—

''(1) IN GENERAL.—The Under Secretary shall conduct a pilot program to demonstrate an enterprisewide query and correlation capability through the Defense Intelligence Information Enterprise program.

''(2) PURPOSE.—The purpose of the pilot program shall be to demonstrate the capability of an enterprisewide query and correlation system to achieve the following:

''(A) To conduct complex, simultaneous queries by a large number of users and analysts across numerous, large distributed data stores with response times measured in seconds.

''(B) To be scaled up to operate effectively on all the data holdings of the Defense Intelligence Information Enterprise.

''(C) To operate across multiple levels of security with data guards.

''(D) To operate effectively on both unstructured data and structured data.

''(E) To extract entities, resolve them, and (as appropriate) mask them to protect sources and methods, privacy, or both.

''(F) To control access to data by means of on-line electronic user credentials, profiles, and authentication.

''(3) TERMINATION.—The pilot program conducted under this subsection shall terminate on September 30, 2014.

''(c) REPORT.—Not later than November 1, 2012, the Under Secretary shall submit to the appropriate committees of Congress a report on the actions undertaken by the Under Secretary to carry out this section. The report shall set forth the plan developed under subsection (a) and a description and assessment of the pilot program conducted under subsection (b).

''(d) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this section, the term 'appropriate committees of Congress' means—

''(1) the Committee on Armed Services, the Committee on Appropriations, and the Select Committee on Intelligence of the Senate; and

''(2) the Committee on Armed Services, the Committee on Appropriations, and the Permanent Select Committee on Intelligence of the House of Representatives.''

RELATIONSHIP TO AUTHORITIES UNDER NATIONAL SECURITY ACT OF 1947

Pub. L. 107–314, div. A, title IX, §901(d), Dec. 2, 2002, 116 Stat. 2620, as amended by Pub. L. 113–291, div. A, title X, §1071(d)(2), Dec. 19, 2014, 128 Stat. 3509, provided that: ''Nothing in section 137 of title 10, United States Code, as added by subsection (a), shall supersede or modify the authorities of the Secretary of Defense and the Director of Central Intelligence as established by the National Security Act of 1947 (50 U.S.C. 3001 et seq.).''

[Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director's capacity as the head of the intelligence community deemed to be a reference to the Director of National Intelligence. Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director's capacity as the head of the Central Intelligence Agency deemed to be a reference to the Director of the Central Intelligence Agency. See section 1081(a), (b) of Pub. L. 108–458, set out as a note under section 3001 of Title 50, War and National Defense.]

§ 137a. Deputy Under Secretaries of Defense

(a)(1) There are six Deputy Under Secretaries of Defense.

(2) The Deputy Under Secretaries of Defense shall be appointed from civilian life by the President, by and with the advice and consent of the Senate.

(3) The officials authorized under this section shall be the only Deputy Under Secretaries of Defense.

(b) Each Deputy Under Secretary of Defense shall be the first assistant to an Under Secretary of Defense and shall assist such Under Secretary in the performance of the duties of the position of such Under Secretary and shall act for, and exercise the powers of, such Under Secretary when such Under Secretary dies, resigns, or is otherwise unable to perform the functions and duties of the office.

(c)(1) One of the Deputy Under Secretaries is the Deputy Under Secretary of Defense for Research and Engineering.

(2) One of the Deputy Under Secretaries is the Deputy Under Secretary of Defense for Acquisition and Sustainment.

(3) One of the Deputy Under Secretaries is the Deputy Under Secretary of Defense for Policy.

(4) One of the Deputy Under Secretaries is the Deputy Under Secretary of Defense for Personnel and Readiness.

(5) One of the Deputy Under Secretaries is the Deputy Under Secretary of Defense (Comptroller).

(6) One of the Deputy Under Secretaries is the Deputy Under Secretary of Defense for Intelligence and Security, who shall be appointed from among persons who have extensive expertise in intelligence matters.

(d) The Deputy Under Secretaries of Defense take precedence in the Department of Defense after the Secretary of Defense, the Deputy Secretary of Defense, the Chief Management Officer of the Department of Defense, the Secretaries of the military departments, and the Under Secretaries of Defense. The Deputy Under Secretaries shall take precedence among themselves in the order prescribed by the Secretary of Defense.

(Added Pub. L. 111–84, div. A, title IX, § 906(a)(1), Oct. 28, 2009, 123 Stat. 2425; amended Pub. L. 111–383, div. A, title IX, § 901(b)(3), (k)(1)(A), Jan. 7, 2011, 124 Stat. 4318, 4325; Pub. L. 113–291, div. A, title IX, § 901(i)(1), (j)(2)(C), (k)(3), Dec. 19, 2014, 128 Stat. 3467, 3468; Pub. L. 115–91, div. A, title IX, § 906(a)–(c), (f)(1), title X, § 1081(b)(1)(A), Dec. 12, 2017, 131 Stat. 1513, 1514, 1597; Pub. L. 115–232, div. A, title X, § 1081(f)(1)(C), Aug. 13, 2018, 132 Stat. 1986; Pub. L. 116–92, div. A, title XVI, § 1621(e)(1)(B), Dec. 20, 2019, 133 Stat. 1733.)

Amendments

2019—Subsec. (c)(6). Pub. L. 116–92 substituted ''Deputy Under Secretary of Defense for Intelligence and Security'' for ''Deputy Under Secretary of Defense for Intelligence''.

2018—Subsec. (d). Pub. L. 115–232 substituted ''the Chief Management Officer of the Department of Defense, the Secretaries of the military departments, and the Under Secretaries of Defense'' for ''the Secretaries of the military departments, the Under Secretaries of Defense, and the Deputy Chief Management Officer of the Department of Defense''.

2017—Pub. L. 115–91, § 906(f)(1), amended section catchline generally, substituting ''Deputy Under Secretaries of Defense'' for ''Principal Deputy Under Secretaries of Defense''.

Subsec. (a)(1). Pub. L. 115–91, § 906(b), substituted ''six'' for ''five''.

Pub. L. 115–91, § 906(a), struck out ''Principal'' before ''Deputy Under''.

Subsec. (a)(2). Pub. L. 115–91, § 906(a), struck out ''Principal'' before ''Deputy Under''.

Subsec. (b). Pub. L. 115–91, § 906(a), struck out ''Principal'' before ''Deputy Under''.

Subsec. (c). Pub. L. 115–91, § 906(c), added pars. (1) and (2), redesignated former pars. (2) to (5) as (3) to (6), respectively, and struck out former par. (1) which read as follows: ''One of the Deputy Under Secretaries is the Deputy Under Secretary of Defense for Acquisition, Technology, and Logistics.''

Pub. L. 115–91, § 906(a), struck out ''Principal'' before ''Deputy Under'' wherever appearing.

Subsec. (d). Pub. L. 115–91, § 1081(b)(1)(A), repealed Pub. L. 113–291, § 901(j)(2)(C). See 2014 Amendment note below.

Pub. L. 115–91, § 906(a), struck out ''Principal'' before ''Deputy Under'' in two places.

2014—Subsec. (a)(3). Pub. L. 113–291, § 901(i)(1), added par. (3).

Subsec. (b). Pub. L. 113–291, § 901(k)(3), substituted ''dies, resigns, or is otherwise unable to perform the functions and duties of the office'' for ''is absent or disabled''.

Subsec. (d). Pub. L. 113–291, § 901(j)(2)(C), which directed substitution of ''and the Under Secretaries of Defense.'' for ''the military departments, the Under Secretaries of Defense, and the Deputy Chief Management Officer of the Department of Defense.'', was repealed by Pub. L. 115–91, § 1081(b)(1)(A).

2011—Pub. L. 111–383, § 901(k)(1)(A), substituted ''Principal Deputy Under Secretaries of Defense'' for ''Deputy Under Secretaries of Defense'' in section catchline.

Subsec. (a)(1). Pub. L. 111–383, § 901(b)(3)(A), substituted ''Principal Deputy Under'' for ''Deputy Under''.

Subsec. (a)(2). Pub. L. 111–383, § 901(b)(3)(B), struck out subpar. (A) and subpar. (B) designation and substituted ''The Principal Deputy Under Secretaries of Defense'' for ''The Deputy Under Secretaries of Defense referred to in paragraphs (4) and (5) of subsection (c)''. Prior to amendment, subpar. (A) read as follows: ''The Deputy Under Secretaries of Defense referred to in paragraphs (1) through (3) of subsection (c) shall be appointed as provided in the applicable paragraph.''

Subsec. (b). Pub. L. 111–383, § 901(b)(3)(A), substituted ''Principal Deputy Under'' for ''Deputy Under''.

Subsec. (c)(1). Pub. L. 111–383, § 901(b)(3)(C)(i), (ii), substituted ''One of the Principal Deputy'' for ''One of the Deputy'' and struck out ''appointed pursuant to section 133a of this title'' after ''Logistics''.

Subsec. (c)(2). Pub. L. 111–383, § 901(b)(3)(C)(i), (ii), substituted ''One of the Principal Deputy'' for ''One of the Deputy'' and struck out ''appointed pursuant to section 134a of this title'' after ''Policy''.

Subsec. (c)(3). Pub. L. 111–383, § 901(b)(3)(C)(i), (ii), substituted ''One of the Principal Deputy'' for ''One of the Deputy'' and struck out ''appointed pursuant to section 136a of this title'' after ''Readiness''.

Subsec. (c)(4). Pub. L. 111–383, § 901(b)(3)(C)(i), (iii), substituted ''One of the Principal Deputy Under Secretaries is'' for ''One of the Deputy Under Secretaries shall be''.

Subsec. (c)(5). Pub. L. 111–383, § 901(b)(3)(C)(i), (iii), (iv), substituted ''One of the Principal Deputy Under Secretaries is'' for ''One of the Deputy Under Secretaries shall be'' and inserted before period at end '', who shall be appointed from among persons who have extensive expertise in intelligence matters''.

Subsec. (d). Pub. L. 111–383, § 901(b)(3)(A), (D), substituted ''Principal Deputy Under'' for ''Deputy Under'' and inserted at end ''The Principal Deputy Under Secretaries shall take precedence among themselves in the order prescribed by the Secretary of Defense.''

EFFECTIVE DATE OF 2017 AMENDMENT

Pub. L. 115–91, div. A, title IX, § 906(c), Dec. 12, 2017, 131 Stat. 1513, provided that the amendment made by section 906(c) is effective on Feb. 1, 2018.

Pub. L. 115–91, div. A, title X, § 1081(b), Dec. 12, 2017, 131 Stat. 1597, provided that the amendment made by section 1081(b)(1)(A) is effective as of Dec. 23, 2016.

EFFECTIVE DATE OF 2014 AMENDMENT

Pub. L. 113–291, div. A, title IX, § 901(i)(1), Dec. 19, 2014, 128 Stat. 3467, provided that the amendment made by section 901(i)(1) is effective Jan. 1, 2015.

Pub. L. 113–291, div. A, title IX, § 901(j)(2), Dec. 19, 2014, 128 Stat. 3467, which provided that the amendment made by section 901(j)(2)(C) is effective on the effective date specified in former section 901(a)(1) of Pub. L. 113–291, which was Feb. 1, 2017, was repealed by Pub. L. 115–91, div. A, title X, § 1081(b)(1)(A), Dec. 12, 2017, 131 Stat. 1597.

EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by Pub. L. 111–383 effective Jan. 1, 2011, see section 901(p) of Pub. L. 111–383, set out as a note under section 131 of this title.

SAVINGS PROVISIONS

Pub. L. 111–84, div. A, title IX, § 906(e), Oct. 28, 2009, 123 Stat. 2428, provided that:

''(1) IN GENERAL.—Notwithstanding the amendments made by this section [enacting this section and amending sections 133a, 134a, 136a, 138, and former 138a of this title and sections 5314 and 5315 of Title 5, Government Organization and Employees], the individual serving in a position specified in paragraph (2) on the day before the date of the enactment of this Act [Oct. 28, 2009] may continue to serve in such position without the requirement for appointment by the President, by and with the advice and consent of the Senate, for a period of up to four years after the date of the enactment of this Act.

''(2) COVERED POSITIONS.—The positions specified in this paragraph are the following:

''(A) The Principal Deputy Under Secretary of Defense (Comptroller).

''(B) The Principal Deputy Under Secretary of Defense for Intelligence.''

TEMPORARY AUTHORITY FOR ADDITIONAL DUSDS

Pub. L. 111–383, div. A, title IX, § 901(i)(2), Jan. 7, 2011, 124 Stat. 4323, provided that: ''During the period beginning on the date of the enactment of this Act [Jan. 7, 2011] and ending on January 1, 2015, the Secretary of Defense may, in the Secretary's discretion, appoint not more than five Deputy Under Secretaries of Defense in addition to the five Principal Deputy Under Secretaries of Defense authorized by section 137a of title 10, United States Code (as amended by subsection (b)(3)).''

DELAYED LIMITATION ON NUMBER OF DEPUTY UNDER SECRETARIES OF DEFENSE

Pub. L. 111–84, div. A, title IX, § 906(a)(2), Oct. 28, 2009, 123 Stat. 2426, as amended by Pub. L. 111–383, div. A, title IX, § 901(i)(1), Jan. 7, 2011, 124 Stat. 4323, which provided that, effective Jan. 1, 2015, the five Deputy Under Secretaries of Defense authorized by section 137a of title 10 would be the only Deputy Under Secretaries of Defense, was repealed by Pub. L. 113–291, div. A, title IX, § 901(i)(2), Dec. 19, 2014, 128 Stat. 3467.

[Pub. L. 113–291, div. A, title IX, § 901(i)(2), Dec. 19, 2014, 128 Stat. 3467, provided that section 901(i)(2), which repealed section 906(a)(2) of Pub. L. 111–84, formerly set out above, is effective on the effective date specified in section 901(i)(1) of Pub. L. 113–291, which is Jan. 1, 2015.]

§ 138. Assistant Secretaries of Defense

(a)(1) There are 15 Assistant Secretaries of Defense.

(2) The Assistant Secretaries of Defense shall be appointed from civilian life by the President, by and with the advice and consent of the Senate.

(b)(1) The Assistant Secretaries shall perform such duties and exercise such powers as the Secretary of Defense may prescribe.

(2)(A) One of the Assistant Secretaries is the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict. He shall have as his principal duty the overall supervision (including oversight of policy and resources) of special operations activities (as defined in section 167(k) of this title) and low intensity conflict activities of the Department of Defense. The Assistant Secretary is the principal civilian adviser to the Secretary of Defense on special operations and low intensity conflict matters and (after the Secretary and Deputy Secretary) is the principal special operations and low intensity conflict official within the senior management of the Department of Defense. Subject to the authority, direction, and control of the Secretary of Defense, the Assistant Secretary shall do the following:

(i) Exercise authority, direction, and control of all special-operations peculiar administrative matters relating to the organization, training, and equipping of special operations forces through the administrative chain of command specified in section 167(f) of this title;.[1]

(ii) Assist the Secretary and the Under Secretary of Defense for Policy in the development and supervision of policy, program planning and execution, and allocation and use of resources for the activities of the Department of Defense for the following:

(I) Irregular warfare, combating terrorism, and the special operations activities specified by section 167(k) of this title.

(II) Integrating the functional activities of the headquarters of the Department to most efficiently and effectively provide for required special operations forces and capabilities.

(III) Such other matters as may be specified by the Secretary and the Under Secretary.

(B) In the discharge of the responsibilities specified in subparagraph (A)(i), the Assistant Secretary is immediately subordinate to the Secretary of Defense. Unless otherwise directed by the President, no officer below the Secretary may intervene to exercise authority, direction, or control over the Assistant Secretary in the discharge of such responsibilities.

(3) One of the Assistant Secretaries is the Assistant Secretary of Defense for Legislative Affairs. He shall have as his principal duty the overall supervision of legislative affairs of the Department of Defense.

(4) One of the Assistant Secretaries is the Assistant Secretary of Defense for Nuclear, Chemical, and Biological Defense Programs. The Assistant Secretary may communicate views on issues within the responsibility of the Assistant Secretary directly to the Secretary of Defense

[1] So in original.

and the Deputy Secretary of Defense without obtaining the approval or concurrence of any other official within the Department of Defense. The Assistant Secretary shall—

(A) advise the Secretary of Defense on nuclear energy, nuclear weapons, and chemical and biological defense;

(B) serve as the Staff Director of the Nuclear Weapons Council established by section 179 of this title; and

(C) perform such additional duties as the Secretary may prescribe.

(5) One of the Assistant Secretaries is the Assistant Secretary of Defense for Space Policy. The principal duty of the Assistant Secretary shall be the overall supervision of policy of the Department of Defense for space warfighting.

(6) One of the Assistant Secretaries is the Assistant Secretary of Defense for Industrial Base Policy. The Assistant Secretary shall—

(A) advise the Under Secretary of Defense for Acquisition and Sustainment on industrial base policies; and

(B) perform other duties as directed by the Under Secretary.

(7) One of the Assistant Secretaries is the Assistant Secretary of Defense for Energy, Installations, and Environment. The principal duty of the Assistant Secretary shall be the overall supervision of matters relating to energy, installations, and the environment for the Department of Defense.

(c) Except as otherwise specifically provided by law, an Assistant Secretary may not issue an order to a military department unless—

(1) the Secretary of Defense has specifically delegated that authority to the Assistant Secretary in writing; and

(2) the order is issued through the Secretary of the military department concerned.

(d) The Assistant Secretaries take precedence in the Department of Defense after the Secretary of Defense, the Deputy Secretary of Defense, the Chief Management Officer of the Department of Defense, the Secretaries of the military departments, the Under Secretaries of Defense, the officials serving in positions specified in section 131(b)(4) of this title, and the Deputy Under Secretaries of Defense. The Assistant Secretaries take precedence among themselves in the order prescribed by the Secretary of Defense.

(Added Pub. L. 87–651, title II, § 202, Sept. 7, 1962, 76 Stat. 518, § 136; amended Pub. L. 90–168, § 2(1), (2), Dec. 1, 1967, 81 Stat. 521; Pub. L. 91–121, title IV, § 404(a), Nov. 19, 1969, 83 Stat. 207; Pub. L. 92–215, § 1, Dec. 22, 1971, 85 Stat. 777; Pub. L. 92–596, § 4(2), Oct. 27, 1972, 86 Stat. 1318; Pub. L. 95–140, § 3(a), Oct. 21, 1977, 91 Stat. 1173; Pub. L. 96–107, title VIII, § 820(a), Nov. 9, 1979, 93 Stat. 819; Pub. L. 98–94, title XII, § 1212(a), Sept. 24, 1983, 97 Stat. 686; Pub. L. 99–433, title I, §§ 106, 110(d)(9), Oct. 1, 1986, 100 Stat. 997, 1003; Pub. L. 99–500, § 101(c) [title IX, § 9115(a)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–122, and Pub. L. 99–591, § 101(c) [title IX, § 9115(a)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–122; Pub. L. 99–661, div. A, title XIII, § 1311(a), Nov. 14, 1986, 100 Stat. 3983; Pub. L. 100–180, div. A, title XII, § 1211(a)(1), Dec. 4, 1987, 101 Stat. 1154; Pub. L. 100–453, title VII, § 702, Sept. 29, 1988, 102 Stat. 1912; Pub. L. 100–456, div. A, title VII, § 701, Sept. 29, 1988, 102 Stat. 1992; renumbered § 138 and amended Pub. L. 103–160, div. A, title IX, §§ 901(a)(1), (c), 903(c)(1), 905, Nov. 30, 1993, 107 Stat. 1726, 1727, 1729; Pub. L. 103–337, div. A, title IX, §§ 901(a), 903(b)(2), Oct. 5, 1994, 108 Stat. 2822, 2823; Pub. L. 104–106, div. A, title IX, §§ 902(a), 903(b), (e)(2), Feb. 10, 1996, 110 Stat. 401, 402; Pub. L. 104–201, div. A, title IX, § 901, Sept. 23, 1996, 110 Stat. 2617; Pub. L. 105–261, div. A, title IX, §§ 901(a), 902, Oct. 17, 1998, 112 Stat. 2091; Pub. L. 106–398, § 1 [[div. A], title IX, § 901], Oct. 30, 2000, 114 Stat. 1654, 1654A–223; Pub. L. 107–107, div. A, title IX, § 901(c)(1), Dec. 28, 2001, 115 Stat. 1194; Pub. L. 107–314, div. A, title IX, § 902(a), (c), (d), Dec. 2, 2002, 116 Stat. 2620, 2621; Pub. L. 109–364, div. A, title IX, § 901(a), Oct. 17, 2006, 120 Stat. 2350; Pub. L. 111–84, div. A, title IX, § 906(b)(2), Oct. 28, 2009, 123 Stat. 2426; Pub. L. 111–383, div. A, title IX, § 901(b)(4), Jan. 7, 2011, 124 Stat. 4319; Pub. L. 112–81, div. A, title III, § 314(a), Dec. 31, 2011, 125 Stat. 1357; Pub. L. 112–166, § 2(c)(1)(A), Aug. 10, 2012, 126 Stat. 1283; Pub. L. 112–239, div. A, title X, § 1076(f)(3), Jan. 2, 2013, 126 Stat. 1952; Pub. L. 113–291, div. A, title IX, §§ 901(f), (h)(1)–(3), (j)(2)(D), 902(a)(2), Dec. 19, 2014, 128 Stat. 3464, 3466, 3467, 3469; Pub. L. 114–92, div. A, title VIII, § 829, title X, § 1078(a), Nov. 25, 2015, 129 Stat. 911, 998; Pub. L. 114–328, div. A, title IX, §§ 901(e)(1), 922(a), Dec. 23, 2016, 130 Stat. 2342, 2354; Pub. L. 115–91, div. A, title IX, §§ 906(d)(2), 907, title X, § 1081(b)(1)(A), Dec. 12, 2017, 131 Stat. 1513, 1514, 1597; Pub. L. 115–232, div. A, title X, § 1081(f)(1)(D), Aug. 13, 2018, 132 Stat. 1987; Pub. L. 116–92, div. A, title IX, § 955(a), Dec. 20, 2019, 133 Stat. 1565; Pub. L. 116–283, div. A, title IX, §§ 902(a), 903, 904, Jan. 1, 2021, 134 Stat. 3795, 3797, 3798.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
136(a)	5:171c(c) (1st sentence).	July 26, 1947, ch. 343, § 202(c)(7) (less 1st 2 sentences); added Aug. 6, 1958, Pub. L. 85–599, § 3(a) (8th par., less 1st 2 sentences), 72 Stat. 516.
136(b)	5:171c(c) (1st 18 words of 2d sentence). 5:171c–2 (less 1st sentence). 5:171n(a) (as applicable to 5:172). 5:172.	July 26, 1947, ch. 343, § 203(c); added Aug. 10, 1949, ch. 412, § 6(a), (2d par.), 63 Stat. 581; redesignated Aug. 6, 1958, Pub. L. 85–599, §§ 9(a) (1st par., as applicable to § 203(c)), 10(a), 72 Stat. 520, 521.
136(c)	5:171a(c)(7) (3rd sentence).	
136(d)	5:171a(c)(7) (less 1st 3 sentences).	
136(e)	5:171c(c) (less 1st sentence and less 1st 18 words of 2d sentence).	July 26, 1947, ch. 343, § 302 (less 1st sentence); restated Aug. 10, 1949, ch. 412, § 10(b) (less 1st sentence) restated Aug. 10, 1956, ch. 1041, § 21 (less 1st sentence), 70A Stat. 629.
		July 26, 1947, ch. 343, § 308(a) (as applicable to § 401), 61 Stat. 509.
		July 26, 1947, ch. 343, § 401; added Aug. 10, 1949, ch. 412, § 11 (1st 2 pars.), 63 Stat. 585.

In subsection (b)(1), 5 U.S.C. 172(b) (last 13 words of 1st sentence) is omitted as surplusage, since they are only a general description of the powers of the Secretary of Defense under this title. 5 U.S.C. 171c–2 (less 1st sentence) is omitted as covered by 5 U.S.C. 171c(c) (1st 18 words of 2d sentence).

In subsection (d), the following substitutions are made: ''In carrying out subsection (c) and sections 3010, 3012(b) (last two sentences), 5011 (first two sentences), 5031(a) (last two sentences), 8010, and 8012(b) last two sentences of this title,'' for ''In implementation of this paragraph''; and ''members of the armed forces under the jurisdiction of his department'' for ''the military personnel in such department''. The words ''in a continuous effort'' are omitted as surplusage.

CODIFICATION

The text of section 138a(b) and (c) of this title, which was transferred to subsec. (b)(7) of this section and amended by Pub. L. 113–291, § 901(h)(1)(C)–(E), was based on Pub. L. 106–65, div. A, title IX, § 911(b)(1), Oct. 5, 1999, 113 Stat. 718, § 133b; renumbered § 138a and amended Pub. L. 111–84, div. A, title IX, § 906(b)(1), (c)(2)(D), Oct. 28, 2009, 123 Stat. 2426, 2427; Pub. L. 111–383, div. A, title IX, § 901(b)(5), Jan. 7, 2011, 124 Stat. 4319.

The text of section 138b of this title, which was transferred to subsec. (b)(8) of this section and amended by Pub. L. 113–291, § 901(h)(2), was based on Pub. L. 87–651, title II, § 202, Sept. 7, 1962, 76 Stat. 518, § 135; amended Pub. L. 92–596, § 4(2), Oct. 27, 1972, 86 Stat. 1318; Pub. L. 95–140, § 2(a), Oct. 21, 1977, 91 Stat. 1172; Pub. L. 99–348, title V, § 501(b)(1), (2), (e)(1), July 1, 1986, 100 Stat. 707, 708; Pub. L. 99–433, title I, § 105, Oct. 1, 1986, 100 Stat. 997; Pub. L. 99–500, § 101(c) [title X, § 903(b)(1)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–132, and Pub. L. 99–591, § 101(c) [title X, § 903(b)(1)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–132; Pub. L. 99–661, div. A, title IX, formerly title IV, § 903(b)(1), Nov. 14, 1986, 100 Stat. 3911, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; renumbered § 137 and amended Pub. L. 103–160, div. A, title IX, §§ 901(a)(1), 904(d)(1), Nov. 30, 1993, 107 Stat. 1726, 1728; Pub. L. 104–106, div. A, title IX, § 903(c)(3), Feb. 10, 1996, 110 Stat. 402; Pub. L. 104–201, div. A, title IX, § 901, Sept. 23, 1996, 110 Stat. 2617; Pub. L. 106–65, div. A, title IX, § 911(d)(1), Oct. 5, 1999, 113 Stat. 719; renumbered § 139a, Pub. L. 107–314, div. A, title IX, § 901(a)(1), Dec. 2, 2002, 116 Stat. 2619; Pub. L. 111–23, title I, § 104(a)(1), May 22, 2009, 123 Stat. 1717; renumbered § 138b and amended Pub. L. 111–383, div. A, title IX, § 901(b)(6), (k)(1)(B), Jan. 7, 2011, 124 Stat. 4319, 4325; Pub. L. 112–239, div. A, title IX, § 904(e)(1), Jan. 2, 2013, 126 Stat. 1867.

The text of section 138d of this title, which was transferred to subsec. (b)(10) of this section and amended by Pub. L. 113–291, § 901(h)(3), was based on Pub. L. 100–180, div. A, title XII, § 1245(a)(1), Dec. 4, 1987, 101 Stat. 1165, § 141; renumbered § 142, Pub. L. 103–160, div. A, title IX, § 901(a)(1), Nov. 30, 1993, 107 Stat. 1726; amended Pub. L. 104–106, div. A, title IX, §§ 903(c)(4), 904(a)(1), Feb. 10, 1996, 110 Stat. 402, 403; Pub. L. 104–201, div. A, title IX, § 901, Sept. 23, 1996, 110 Stat. 2617; Pub. L. 110–417, [div. A], title IX, § 905, Oct. 14, 2008, 122 Stat. 4568; renumbered § 138d and amended Pub. L. 111–383, div. A, title IX, § 901(b)(8), (k)(1)(D), Jan. 7, 2011, 124 Stat. 4320, 4325.

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

PRIOR PROVISIONS

A prior section 138 was renumbered section 139 of this title.

Another prior section 138 was renumbered by Pub. L. 99–433 as follows:

Section 138(a) was renumbered section 114(a) of this title.

Section 138(b) was renumbered successively as section 114(b) and section 115(a) of this title.

Section 138(c) was renumbered successively as section 114(c) and section 115(b) of this title.

Section 138(d) was renumbered successively as section 114(d) and section 115(c) of this title.

Section 138(e) was renumbered successively as section 114(e) and section 116(a) of this title.

Section 138(f)(1) was renumbered successively as section 114(f)(1) and section 114(b) of this title.

Section 138(f)(2) was renumbered successively as section 114(f)(2) and section 116(b) of this title.

Section 138(g) was renumbered successively as section 114(g) and section 114(c) of this title.

Section 138(h) was renumbered successively as section 114(h) and section 113(i) of this title.

Section 138(i) was renumbered successively as section 114(i) and section 114(d) of this title.

AMENDMENTS

2021—Subsec. (a)(1). Pub. L. 116–283, § 904(a), substituted ''15'' for ''14''.

Pub. L. 116–283, § 903(a), substituted ''14'' for ''13''.

Subsec. (b)(2). Pub. L. 116–283, § 902(a)(1)(A)–(C), (E), designated existing provisions as subpar. (A), redesignated former subpars. (A) and (B) as cls. (i) and (ii), respectively, of subpar. (A) and cls. (i) to (iii) of former subpar. (B) as subcls. (I) to (III), respectively, of subpar. (A)(ii), and added subpar. (B).

Subsec. (b)(2)(A). Pub. L. 116–283, § 902(a)(2), substituted ''section 167(k)'' for ''section 167(j)'' in introductory provisions.

Subsec. (b)(2)(A)(i). Pub. L. 116–283, § 902(a)(1)(D), inserted before period at end ''through the administrative chain of command specified in section 167(f) of this title;''.

Subsec. (b)(6). Pub. L. 116–283, § 903(b), added par. (6).

Subsec. (b)(7). Pub. L. 116–283, § 904(b), added par. (7).

2019—Subsec. (b)(5). Pub. L. 116–92 added par. (5).

2018—Subsec. (d). Pub. L. 115–232 inserted ''the Chief Management Officer of the Department of Defense,'' after ''the Deputy Secretary of Defense,'' and struck out ''the Deputy Chief Management Officer of the Department of Defense,'' after ''the Under Secretaries of Defense,''.

2017—Subsec. (a)(1). Pub. L. 115–91, § 907(a), substituted ''13'' for ''14''.

Subsec. (b)(2) to (6). Pub. L. 115–91, § 907(b), redesignated pars. (4) to (6) as (2) to (4), respectively, and struck out former pars. (2) and (3) which read as follows:

''(2) One of the Assistant Secretaries is the Assistant Secretary of Defense for Manpower and Reserve Affairs. In addition to any duties and powers prescribed under paragraph (1), the Assistant Secretary of Defense for Manpower and Reserve Affairs shall have as the principal duty of such Assistant Secretary the overall supervision of manpower and reserve affairs of the Department of Defense.

''(3) One of the Assistant Secretaries is the Assistant Secretary of Defense for Homeland Defense. He shall have as his principal duty the overall supervision of the homeland defense activities of the Department of Defense.''

Subsec. (d). Pub. L. 115–91, § 1081(b)(1)(A), repealed Pub. L. 113–291, § 901(j)(2)(D). See 2014 Amendment note below.

Pub. L. 115–91, § 906(d)(2), struck out ''Principal'' before ''Deputy Under Secretaries of Defense''.

2016—Subsec. (b)(4). Pub. L. 114–328, § 922(a), inserted at end ''Subject to the authority, direction, and control of the Secretary of Defense, the Assistant Secretary shall do the following:

''(A) Exercise authority, direction, and control of all special-operations peculiar administrative matters relating to the organization, training, and equipping of special operations forces.

''(B) Assist the Secretary and the Under Secretary of Defense for Policy in the development and supervision of policy, program planning and execution, and allocation and use of resources for the activities of the Department of Defense for the following:

''(i) Irregular warfare, combating terrorism, and the special operations activities specified by section 167(k) of this title.

''(ii) Integrating the functional activities of the headquarters of the Department to most efficiently and effectively provide for required special operations forces and capabilities.

''(iii) Such other matters as may be specified by the Secretary and the Under Secretary.''

Subsec. (b)(6) to (10). Pub. L. 114–328, § 901(e)(1), redesignated par. (10) as (6) and struck out former pars. (6)

to (9), which related to positions of Assistant Secretary of Defense for Acquisition, Assistant Secretary of Defense for Logistics and Materiel Readiness, Assistant Secretary of Defense for Research and Engineering, and Assistant Secretary of Defense for Energy, Installations, and Environment.

2015—Subsec. (b)(8). Pub. L. 114–92, § 1078(a), substituted ''shall periodically review and assess the technological maturity'' for ''shall—'', the designation for subpar. (A), and ''review and assess the technological maturity''; substituted period at end for ''; and''; and struck out subpar. (B) which read as follows: ''submit to the Secretary of Defense and to the congressional defense committees by March 1 of each year a report on the technological maturity and integration risk of critical technologies of the major defense acquisition programs of the Department of Defense for which a Milestone B approval occurred during the preceding fiscal year.''

Subsec. (b)(8)(A). Pub. L. 114–92, § 829(a), struck out ''periodically'' before ''review and assess'', inserted ''before the Milestone B approval for that program'' after ''Department of Defense'', and substituted ''each major defense acquisition program'' for ''the major defense acquisition programs'' and ''such review and assessment'' for ''such reviews and assessments''.

Subsec. (b)(8)(B). Pub. L. 114–92, § 829(b), inserted ''for which a Milestone B approval occurred during the preceding fiscal year'' after ''Department of Defense''.

2014—Subsec. (b)(2). Pub. L. 113–291, § 902(a)(2), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''One of the Assistant Secretaries is the Assistant Secretary of Defense for Reserve Affairs. He shall have as his principal duty the overall supervision of reserve component affairs of the Department of Defense.''

Subsec. (b)(7). Pub. L. 113–291, § 901(h)(1)(D), (E), transferred section 138a(c) of this title to subsec. (b)(7) of this section, inserted it at end, and redesignated pars. (1) to (3) as subpars. (A) to (C), respectively. The redesignation was executed to reflect the probable intent of Congress, notwithstanding directory language referring to the text transferred by subparagraph (C) of section 901(h)(1) instead of subparagraph (D).

Pub. L. 113–291, § 901(h)(1)(C), transferred section 138a(b) of this title to subsec. (b)(7) of this section and inserted it after first sentence.

Pub. L. 113–291, § 901(h)(1)(A), (B), in first sentence, inserted '', who shall be appointed from among persons with an extensive background in the sustainment of major weapons systems and combat support equipment'' after ''Readiness'' and struck out second sentence which read as follows: ''In addition to any duties and powers prescribed under paragraph (1), the Assistant Secretary of Defense for Logistics and Materiel Readiness shall have the duties specified in section 138a of this title.''

Subsec. (b)(8). Pub. L. 113–291, § 901(h)(2)(C)–(E), transferred section 138b(b)(1) and (2) of this title to subsec. (b)(8) of this section, inserted it at end, and realigned margins; redesignated pars. (1) and (2) as subpars. (A) and (B), respectively; in subpar. (A), struck out ''The Assistant Secretary of Defense for Research and Engineering, in consultation with the Director of Developmental Test and Evaluation, shall'' before ''periodically review'' and substituted ''; and'' for period at end; and, in subpar. (B), struck out ''The Assistant Secretary, in consultation with the Deputy Assistant Secretary of Defense for Developmental Test and Evaluation, shall'' before ''submit''.

Pub. L. 113–291, § 901(h)(2)(B), inserted ''The Assistant Secretary, in consultation with the Deputy Assistant Secretary of Defense for Developmental Test and Evaluation, shall—'' after ''Logistics may prescribe.''

Pub. L. 113–291, § 901(h)(2)(A), inserted text of section 138b(a) of this title after first sentence of subsec. (b)(8) of this section and struck out at end: ''In addition to any duties and powers prescribed under paragraph (1), the Assistant Secretary of Defense for Research and Engineering shall have the duties specified in section 138b of this title.''

Subsec. (b)(9). Pub. L. 113–291, § 901(f), amended par. (9) generally. Prior to amendment, par. (9) read as follows: ''One of the Assistant Secretaries is the Assistant Secretary of Defense for Operational Energy Plans and Programs. In addition to any duties and powers prescribed under paragraph (1), the Assistant Secretary of Defense for Operational Energy Plans and Programs shall have the duties specified in section 138c of this title.''

Subsec. (b)(10). Pub. L. 113–291, § 901(h)(3)(B), inserted text of section 138d(a) of this title at end of subsec. (b)(10) of this section, struck out ''of Defense for Nuclear, Chemical, and Biological Defense Programs'' before ''shall—'', and redesignated pars. (1) to (3) as subpars. (A) to (C), respectively.

Pub. L. 113–291, § 901(h)(3)(A), inserted text of section 138d(b) after first sentence of subsec. (b)(10) of this section and struck out at end: ''In addition to any duties and powers prescribed under paragraph (1), the Assistant Secretary of Defense for Nuclear, Chemical, and Biological Defense Programs shall have the duties specified in section 138d of this title.''

Subsec. (d). Pub. L. 113–291, § 901(j)(2)(D), which directed striking out ''the Deputy Chief Management Officer of the Department of Defense,'', was repealed by Pub. L. 115–91, § 1081(b)(1)(A).

2013—Subsec. (c)(3). Pub. L. 112–239 transferred subsec. (c)(3), relating to responsibilities of the Assistant Secretary of Defense for Operational Energy Plans and Programs regarding alternative fuel, to section 138c(c)(3) of this title.

2012—Subsec. (a)(1). Pub. L. 112–166 substituted ''14'' for ''16''.

Subsec. (c)(3). Pub. L. 112–81 added par. (3).

2011—Subsec. (a)(1). Pub. L. 111–383, § 901(b)(4)(A)(i), substituted ''16'' for ''12''.

Subsec. (a)(2). Pub. L. 111–383, § 901(b)(4)(A)(ii), struck out subpar. (A) and subpar. (B) designation and substituted ''The'' for ''The other''. Prior to amendment, subpar. (A) read as follows: ''The Assistant Secretary of Defense referred to in subsection (b)(7) shall be appointed as provided in that subsection.''

Subsec. (b)(2) to (6). Pub. L. 111–383, § 901(b)(4)(B)(i), substituted ''Secretaries is'' for ''Secretaries shall be''.

Subsec. (b)(7). Pub. L. 111–383, § 901(b)(4)(B)(ii), struck out ''appointed pursuant to section 138a of this title'' before period at end of first sentence.

Subsec. (b)(8) to (10). Pub. L. 111–383, § 901(b)(4)(B)(iii), added pars. (8) to (10).

Subsec. (d). Pub. L. 111–383, § 901(b)(4)(C), substituted ''the Deputy Chief Management Officer of the Department of Defense, the officials serving in positions specified in section 131(b)(4) of this title, and the Principal Deputy Under Secretaries of Defense'' for ''and the Director of Defense Research and Engineering''.

2009—Subsec. (a). Pub. L. 111–84, § 906(b)(2)(A), added subsec. (a) and struck out former subsec. (a), which read as follows: ''There are ten Assistant Secretaries of Defense, appointed from civilian life by the President, by and with the advice and consent of the Senate.''

Subsec. (b)(6), (7). Pub. L. 111–84, § 906(b)(2)(B), added pars. (6) and (7).

2006—Subsec. (a). Pub. L. 109–364 substituted ''ten'' for ''nine''.

2002—Subsec. (a). Pub. L. 107–314, § 902(d), which directed the repeal of Pub. L. 107–107, § 901(c), was executed by substituting ''nine'' for ''eight'' to reflect the probable intent of Congress. See 2001 Amendment note below.

Subsec. (b)(3). Pub. L. 107–314, § 902(a), added par. (3).

Subsec. (b)(6). Pub. L. 107–314, § 902(c), struck out par. (6) which read as follows:

''(6)(A) One of the Assistant Secretaries, as designated by the Secretary of Defense from among those Assistant Secretaries with responsibilities that include responsibilities related to combating terrorism, shall have, among that Assistant Secretary's duties, the duty to provide overall direction and supervision for policy, program planning and execution, and allocation and use of resources for the activities of the Depart-

ment of Defense for combating terrorism, including antiterrorism activities, counterterrorism activities, terrorism consequences management activities, and terrorism-related intelligence support activities.

''(B) The Assistant Secretary designated under subparagraph (A) shall be the principal civilian adviser to the Secretary of Defense on combating terrorism and (after the Secretary and Deputy Secretary) shall be the principal official within the senior management of the Department of Defense responsible for combating terrorism.

''(C) If the Secretary of Defense designates under subparagraph (A) an Assistant Secretary other than the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict, then the responsibilities of the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict related to combating terrorism shall be exercised subject to subparagraph (B).''

2001—Subsec. (a). Pub. L. 107–107, which substituted ''eight Assistant Secretaries of Defense'' for ''nine Assistant Secretaries of Defense'', was repealed by Pub. L. 107–314, § 902(d). See 2002 Amendment note above.

2000—Subsec. (b)(6). Pub. L. 106–398 added par. (6).

1998—Subsec. (a). Pub. L. 105–261, § 901(a), substituted ''nine'' for ''ten''.

Subsec. (b)(3). Pub. L. 105–261, § 902, struck out par. (3) which read as follows:

''(3)(A) One of the Assistant Secretaries shall be the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence. He shall have as his principal duty the overall supervision of command, control, communications, and intelligence affairs of the Department of Defense.

''(B) Notwithstanding subparagraph (A), one of the Assistant Secretaries established by the Secretary of Defense may be an Assistant Secretary of Defense for Intelligence, who shall have as his principal duty the overall supervision of intelligence affairs of the Department of Defense.

''(C) If the Secretary of Defense establishes an Assistant Secretary of Defense for Intelligence, the Assistant Secretary provided for under subparagraph (A) shall be the Assistant Secretary of Defense for Command, Control, and Communications and shall have as his principal duty the overall supervision of command, control, and communications affairs of the Department of Defense.''

1996—Subsec. (a). Pub. L. 104–106, § 902(a), substituted ''ten'' for ''eleven''.

Subsec. (b). Pub. L. 104–106, § 903(a), (b), which directed the general amendment of subsec. (b), eff. Jan. 31, 1997, designating par. (1) as entire subsec. and striking out pars. (2) to (5), was repealed by Pub. L. 104–201.

Subsec. (d). Pub. L. 104–106, § 903(a), (e)(2), which directed amendment of subsec. (d), eff. Jan. 31, 1997, by substituting ''and the Under Secretaries of Defense'' for ''the Under Secretaries of Defense, and the Director of Defense Research and Engineering'', was repealed by Pub. L. 104–201.

1994—Subsec. (a). Pub. L. 103–337, § 901(a), substituted ''eleven'' for ''ten''.

Subsec. (d). Pub. L. 103–337, § 903(b)(2), struck out ''and Comptroller'' after ''Under Secretaries of Defense''.

1993—Pub. L. 103–160, § 901(a)(1), renumbered section 136 of this title as this section.

Subsec. (a). Pub. L. 103–160, § 903(c)(1), substituted ''ten'' for ''eleven''.

Subsec. (b)(5). Pub. L. 103–160, § 905, added par. (5).

Subsec. (d). Pub. L. 103–160, § 901(c), inserted ''and Comptroller'' after ''Under Secretaries of Defense''.

1988—Subsec. (b)(3). Pub. L. 100–453 and Pub. L. 100–456 generally amended par. (3) identically. Prior to amendment, par. (3) read as follows: ''One of the Assistant Secretaries shall be the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence. He shall have as his principal duty the overall supervision of command, control, communications, and intelligence affairs of the Department of Defense.''

1987—Subsec. (b)(4). Pub. L. 100–180 inserted at end ''The Assistant Secretary is the principal civilian adviser to the Secretary of Defense on special operations and low intensity conflict matters and (after the Secretary and Deputy Secretary) is the principal special operations and low intensity conflict official within the senior management of the Department of Defense.''

1986—Pub. L. 99–433, § 110(d)(9), struck out '': appointment; powers and duties; precedence'' at end of section catchline.

Subsec. (b)(2), (3). Pub. L. 99–433, § 106(a)(1), (2), redesignated pars. (4) and (5) as pars. (2) and (3), respectively, and struck out former par. (2) relating to the Assistant Secretary of Defense for Health Affairs and former par. (3) relating to the Assistant Secretary of Defense for Manpower and Logistics.

Subsec. (b)(4). Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661, amended subsec. (b) identically, adding par. (4).

Pub. L. 99–433, § 106(a)(2), redesignated par. (4) as (2).

Subsec. (b)(5). Pub. L. 99–433, § 106(a)(2), redesignated par. (5) as (3).

Subsec. (b)(6). Pub. L. 99–433, § 106(a)(3), struck out par. (6) relating to Comptroller of Department of Defense. See section 135 of this title.

Subsec. (c)(1). Pub. L. 99–433, § 106(c)(1)(A), substituted ''the Assistant Secretary'' for ''him''.

Subsec. (c)(2). Pub. L. 99–433, § 106(c)(1)(B), struck out '', or his designee'' after ''concerned''.

Subsecs. (d), (e). Pub. L. 99–433, § 106(b), (c)(2), (3), redesignated subsec. (e) as (d), substituted ''the Under Secretaries of Defense, and the Director of Defense Research and Engineering'' for ''and the Under Secretaries of Defense'', inserted sentence directing that the Assistant Secretaries take precedence among themselves in the order prescribed by the Secretary of Defense, and struck out former subsec. (d) which directed the Secretary of each military department, his civilian assistants, and members of the armed forces under the jurisdiction of his department to cooperate fully with personnel of the Office of the Secretary of Defense to achieve efficient administration of the Department of Defense and to carry out effectively the authority, direction, and control of the Secretary of Defense.

1983—Subsec. (a). Pub. L. 98–94, § 1212(a)(1), substituted ''eleven'' for ''seven''.

Subsec. (b)(1). Pub. L. 98–94, § 1212(a)(2)(A), designated existing first sentence as par. (1).

Subsec. (b)(2). Pub. L. 98–94, § 1212(a)(2)(B), designated existing second and third sentences as par. (2).

Subsec. (b)(3). Pub. L. 98–94, § 1212(a)(2)(C), (D), designated existing fourth and fifth sentences as par. (3) and substituted ''Logistics'' for ''Reserve Affairs'' and ''logistics'' for ''reserve component''.

Subsec. (b)(4), (5). Pub. L. 98–94, § 1212(a)(2)(E), added pars. (4) and (5).

Subsec. (b)(6). Pub. L. 98–94, § 1212(a)(2)(F), designated existing sixth sentence as par. (6), substituted ''One of the Assistant Secretaries'' for ''In addition, one of the Assistant Secretaries'', redesignated pars. (1) to (5) as subpars. (A) to (E), respectively, redesignated former subpars. (A) to (D) as cls. (1) to (4), respectively, and in subpar. (E) substituted ''clauses (A) through (D)'' for ''clauses (1)–(4)''.

Subsec. (f). Pub. L. 98–94, § 1212(a)(3), struck out subsec. (f) which provided for appointment of a Deputy Assistant Secretary of Defense for Reserve Affairs within the Office of the Assistant Secretary of Defense for Manpower and Reserve Affairs. See subsec. (b)(4) of this section.

1979—Subsec. (a). Pub. L. 96–107 substituted ''seven'' for ''nine''.

1977—Subsec. (e). Pub. L. 95–140 inserted ''of Defense'' after ''Secretary'' and substituted ''Secretary of Defense'' for ''Secretaries of Defense'' and '', and the Under Secretaries of Defense'' for '', and the Director of Defense Research and Engineering''.

1972—Subsec. (e). Pub. L. 92–596 substituted ''Deputy Secretaries'' for ''Deputy Secretary''.

1971—Subsec. (a). Pub. L. 92–215 substituted ''nine'' for ''eight''.

1969—Subsec. (a). Pub. L. 91–121, § 404(a)(1), substituted ''eight'' for ''seven''.

Subsec. (b). Pub. L. 91–121, § 404(a)(2), provided for an Assistant Secretary of Defense for Health Affairs having as his principal duty the overall supervision of health affairs of Department of Defense.

1967—Subsec. (b). Pub. L. 90–168, § 2(1), inserted provisions for an Assistant Secretary of Defense for Manpower and Reserve Affairs with principal duty of overall supervision of manpower and reserve component affairs of Department of Defense.

Subsec. (f). Pub. L. 90–168, § 2(2), added subsec. (f).

EFFECTIVE DATE OF 2017 AMENDMENT

Pub. L. 115–91, div. A, title X, § 1081(b), Dec. 12, 2017, 131 Stat. 1597, provided that the amendment made by section 1081(b)(1)(A) is effective as of Dec. 23, 2016.

EFFECTIVE DATE OF 2014 AMENDMENT

Pub. L. 113–291, div. A, title IX, § 901(j)(2), Dec. 19, 2014, 128 Stat. 3467, which provided that the amendment made by section 901(j)(2)(D) is effective on the effective date specified in former section 901(a)(1) of Pub. L. 113–291, which was Feb. 1, 2017, was repealed by Pub. L. 115–91, div. A, title X, § 1081(b)(1)(A), Dec. 12, 2017, 131 Stat. 1597.

EFFECTIVE DATE OF 2012 AMENDMENT

Amendment by Pub. L. 112–166 effective 60 days after Aug. 10, 2012, and applicable to appointments made on and after that effective date, including any nomination pending in the Senate on that date, see section 6(a) of Pub. L. 112–166, set out as a note under section 113 of Title 6, Domestic Security.

EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by Pub. L. 111–383 effective Jan. 1, 2011, see section 901(p) of Pub. L. 111–383, set out as a note under section 131 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Pub. L. 98–94, title XII, § 1212(e), Sept. 24, 1983, 97 Stat. 687, provided that: ''The amendments made by this section [amending this section, sections 175, 3013, and 5034 of this title, and section 5315 of Title 5, Government Organization and Employees] shall take effect on October 1, 1983.''

EFFECTIVE DATE OF 1967 AMENDMENT

Pub. L. 90–168, § 7, Dec. 1, 1967, 81 Stat. 526, provided that: ''The provisions of this Act [see Short Title of 1967 Amendment note below] shall become effective on the first day of the first calendar month following the date of enactment [Dec. 1, 1967].''

SHORT TITLE OF 1967 AMENDMENT

Pub. L. 90–168, § 1, Dec. 1, 1967, 81 Stat. 521, provided: ''That this Act [amending this section, sections 175, 262, 264, 268, 269, 270, 511 [now 12103], 3014, 5034, 8014, and 8850 of this title, section 502 of Title 32, National Guard, and section 404 of Title 37, Pay and Allowances of the Uniformed Services, enacting sections 3021 [now 10302], 3038, 8021 [now 10305], and 8038 of this title, enacting provisions set out as notes under this section and section 8212 of this title, and amending provisions set out as a note under section 113 of this title] may be cited as the 'Reserve Forces Bill of Rights and Vitalization Act'.''

DOD DIRECTIVE ON RESPONSIBILITIES OF ASD SOLIC

Pub. L. 116–283, div. A, title IX, § 902(c), Jan. 1, 2021, 134 Stat. 3797, provided that:

''(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act [Jan. 1, 2021], the Secretary of Defense shall publish a Department of Defense directive establishing policy and procedures related to the exercise of authority, direction, and control of all special-operations peculiar administrative matters relating to the organization, training, and equipping of special operations forces by the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict as specified by section 138(b)(2)(A)(i) of title 10, United States Code, as amended by subsection (a)(1).

''(2) MATTERS FOR INCLUDING.—The directive required by paragraph (1) shall include the following:

''(A) A specification of responsibilities for coordination on matters affecting the organization, training, and equipping of special operations forces.

''(B) An identification and specification of updates to applicable documents and instructions of the Department of Defense.

''(C) Mechanisms to ensure the inclusion of the Assistant Secretary in all Departmental governance forums affecting the organization, training, and equipping of special operations forces.

''(D) Such other matters as the Secretary considers appropriate.

''(3) APPLICABILITY.— The directive required by paragraph (1) shall apply throughout the Department of Defense to all components of the Department of Defense.

''(4) LIMITATION ON AVAILABILITY OF CERTAIN FUNDING PENDING PUBLICATION.—Of the amounts authorized to be appropriated by this Act [see Tables for classification] for fiscal year 2021 for operation and maintenance, Defense-wide, and available for the Office of the Secretary of Defense, not more than 75 percent may be obligated or expended until the date that is 15 days after the date on which the Secretary publishes the directive required by paragraph (1).''

ASSIGNMENT OF RESPONSIBILITY FOR THE ARCTIC REGION WITHIN THE OFFICE OF THE SECRETARY OF DEFENSE

Pub. L. 116–283, div. A, title IX, § 907, Jan. 1, 2021, 134 Stat. 3799, provided that: ''The Assistant Secretary of Defense for International Security Affairs shall assign responsibility for the Arctic region to the Deputy Assistant Secretary of Defense for the Western Hemisphere or any other Deputy Assistant Secretary of Defense the Secretary of Defense considers appropriate.''

DEADLINE FOR COMPLETION OF FULL IMPLEMENTATION OF REQUIREMENTS IN CONNECTION WITH ORGANIZATION OF THE DEPARTMENT OF DEFENSE FOR MANAGEMENT OF SPECIAL OPERATIONS FORCES AND SPECIAL OPERATIONS

Pub. L. 115–232, div. A, title IX, § 917, Aug. 13, 2018, 132 Stat. 1925, provided that: ''The Secretary of Defense shall ensure that the implementation of section 922 of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114–328; 130 Stat. 2354) [enacting section 139b of this title and amending this section and section 167 of this title] and the amendments made by that section is fully complete by not later than 90 days after the date of the enactment of this Act [Aug. 13, 2018].''

LIMITATION ON MAXIMUM NUMBER OF DEPUTY ASSISTANT SECRETARIES OF DEFENSE

Pub. L. 115–91, div. A, title IX, § 908, Dec. 12, 2017, 131 Stat. 1514, provided that: ''The maximum number of Deputy Assistant Secretaries of Defense after the date of the enactment of this Act [Dec. 12, 2017] may not exceed 48.''

REDESIGNATION OF ASSISTANT SECRETARY OF DEFENSE FOR MANPOWER AND RESERVE AFFAIRS

Pub. L. 113–291, div. A, title IX, § 902(a)(1), Dec. 19, 2014, 128 Stat. 3469, provided that: ''The position of Assistant Secretary of Defense for Reserve Affairs is hereby redesignated as the Assistant Secretary of Defense for Manpower and Reserve Affairs. The individual serving in that position on the day before the date of the enactment of this Act [Dec. 19, 2014] may continue in office after that date without further appointment.''

DECREASE IN NUMBER OF ASSISTANT SECRETARIES OF DEFENSE

Pub. L. 112–166, §2(c)(1)(B)–(D), Aug. 10, 2012, 126 Stat. 1283, provided that:

''(B) ADMINISTRATION OF REDUCTION.—The Assistant Secretary of Defense positions eliminated in accordance with the reduction in numbers required by the amendment made by subparagraph (A) [amending this section] shall be—

''(i) the Assistant Secretary of Defense for Networks and Information Integration; and

''(ii) the Assistant Secretary of Defense for Public Affairs.

''(C) CONTINUED SERVICE OF INCUMBENTS.—Notwithstanding the requirements of this paragraph, any individual serving in a position described under subparagraph (B) on the date of the enactment of this Act [Aug. 10, 2012] may continue to serve in such position without regard to the limitation imposed by the amendment in subparagraph (A).

''(D) PLAN FOR SUCCESSOR POSITIONS.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall report to the congressional defense committees on his plan for successor positions, not subject to Senate confirmation, for the positions eliminated in accordance with the requirements of this paragraph.''

CHARTER OF THE ASSISTANT SECRETARY OF DEFENSE FOR SPECIAL OPERATIONS AND LOW INTENSITY CONFLICT

Pub. L. 100–180, div. A, title XII, §1211(a)(2)–(5), Dec. 4, 1987, 101 Stat. 1154, 1155, provided that:

''(2) The Secretary of Defense shall publish a directive setting forth the charter of the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict not later than 30 days after the date of the enactment of this Act [Dec. 4, 1987]. The directive shall set forth—

''(A) the duties and responsibilities of the Assistant Secretary;

''(B) the relationships between the Assistant Secretary and other Department of Defense officials;

''(C) any delegation of authority from the Secretary of Defense to the Assistant Secretary; and

''(D) such other matters as the Secretary considers appropriate.

''(3) On the date that such directive is published, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives—

''(A) a copy of the directive; and

''(B) a report explaining how the charter of the Assistant Secretary fulfills the provisions of section 136(b)(4) [now 138(b)(4)] of title 10, United States Code (as amended by paragraph (1)), that provide that the Assistant Secretary—

''(i) exercises overall supervision of special operations activities and low intensity conflict activities of the Department of Defense;

''(ii) is the principal civilian adviser to the Secretary of Defense on special operations and low intensity conflict matters; and

''(iii) is the principal special operations and low intensity conflict official (after the Secretary and Deputy Secretary) within the senior management of the Department of Defense.

''(4)(A) Until the office of Assistant Secretary of Defense for Special Operations and Low Intensity Conflict is filled for the first time by a person appointed from civilian life by the President, by and with the advice and consent of the Senate, the Secretary of the Army shall carry out the duties and responsibilities of that office.

''(B) Throughout the period of time during which the Secretary of the Army is carrying out the duties and responsibilities of that office, he shall submit to the Committees on Armed Services of the Senate and House of Representatives a monthly report on the administrative actions that he has taken and the policy guidance that he has issued to carry out such duties and responsibilities. Each such report shall also describe the actions that he intends to take and the guidance that he intends to issue to fulfill the provisions of section 136(b)(4) [now 138(b)(4)] of title 10, United States Code (as amended by paragraph (1)), along with a timetable for completion of such actions and issuance of such guidance. The first such report shall be submitted not later than 30 days after the date of the enactment of this Act [Dec. 4, 1987].

''(5) Until the first individual appointed to the position of Assistant Secretary of Defense for Special Operations and Low Intensity Conflict by the President, by and with the advice and consent of the Senate, leaves that office, that Assistant Secretary (and the Secretary of the Army when carrying out the duties and responsibilities of the Assistant Secretary) shall, with respect to the duties and responsibilities of that office, report directly, without intervening review or approval, to the Secretary of Defense personally or, as designated by the Secretary, to the Deputy Secretary of Defense personally.''

TEMPORARY INCREASE IN NUMBER OF ASSISTANT SECRETARIES OF DEFENSE

Pub. L. 100–180, div. A, title XIII, §1311, Dec. 4, 1987, 101 Stat. 1174, provided that until Jan. 20, 1989, the number of Assistant Secretaries of Defense authorized under subsec. (a) of this section and the number of positions at level IV of the Executive Schedule are each increased by one (to a total of 12).

[§§ 138a, 138b. Repealed. Pub. L. 113–291, div. A, title IX, § 901(h)(4), Dec. 19, 2014, 128 Stat. 3467]

Section 138a, added Pub. L. 106–65, div. A, title IX, §911(b)(1), Oct. 5, 1999, 113 Stat. 718, §133b; renumbered §138a and amended Pub. L. 111–84, div. A, title IX, §906(b)(1), (c)(2)(D), Oct. 28, 2009, 123 Stat. 2426, 2427; Pub. L. 111–383, div. A, title IX, §901(b)(5), Jan. 7, 2011, 124 Stat. 4319; Pub. L. 113–291, div. A, title IX, §901(h)(1)(C), (D), Dec. 19, 2014, 128 Stat. 3466, related to Assistant Secretary of Defense for Logistics and Materiel Readiness.

Section 138b, added Pub. L. 87–651, title II, §202, Sept. 7, 1962, 76 Stat. 518, §135; amended Pub. L. 92–596, §4(2), Oct. 27, 1972, 86 Stat. 1318; Pub. L. 95–140, §2(a), Oct. 21, 1977, 91 Stat. 1172; Pub. L. 99–348, title V, §501(b)(1), (2), (e)(1), July 1, 1986, 100 Stat. 707, 708; Pub. L. 99–433, title I, §105, Oct. 1, 1986, 100 Stat. 997; Pub. L. 99–500, §101(c) [title X, §903(b)(1)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–132, and Pub. L. 99–591, §101(c) [title X, §903(b)(1)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–132; Pub. L. 99–661, div. A, title IX, formerly title IV, §903(b)(1), Nov. 14, 1986, 100 Stat. 3911, renumbered title IX, Pub. L. 100–26, §3(5), Apr. 21, 1987, 101 Stat. 273; renumbered §137 and amended Pub. L. 103–160, div. A, title IX, §§901(a)(1), 904(d)(1), Nov. 30, 1993, 107 Stat. 1726, 1728; Pub. L. 104–106, div. A, title IX, §903(c)(3), Feb. 10, 1996, 110 Stat. 402; Pub. L. 104–201, div. A, title IX, §901, Sept. 23, 1996, 110 Stat. 2617; Pub. L. 106–65, div. A, title IX, §911(d)(1), Oct. 5, 1999, 113 Stat. 719; renumbered §139a, Pub. L. 107–314, div. A, title IX, §901(a)(1), Dec. 2, 2002, 116 Stat. 2619; Pub. L. 111–23, title I, §104(a)(1), May 22, 2009, 123 Stat. 1717; renumbered §138b and amended Pub. L. 111–383, div. A, title IX, §901(b)(6), (k)(1)(B), Jan. 7, 2011, 124 Stat. 4319, 4325; Pub. L. 112–239, div. A, title IX, §904(e)(1), Jan. 2, 2013, 126 Stat. 1867; Pub. L. 113–291, div. A, title IX, §901(h)(2)(C), Dec. 19, 2014, 128 Stat. 3466, related to Assistant Secretary of Defense for Research and Engineering.

[§ 138c. Repealed. Pub. L. 113–291, div. A, title IX, § 901(g)(2), Dec. 19, 2014, 128 Stat. 3466]

Section, added Pub. L. 110–417, [div. A], title IX, §902(a), Oct. 14, 2008, 122 Stat. 4564, §139b; renumbered §138c and amended Pub. L. 111–383, div. A, title IX,

§ 901(b)(7), (k)(1)(C), Jan. 7, 2011, 124 Stat. 4320, 4325; Pub. L. 112–81, div. A, title III, § 311, Dec. 31, 2011, 125 Stat. 1351; Pub. L. 112–239, div. A, title X, § 1076(f)(3), Jan. 2, 2013, 126 Stat. 1952; Pub. L. 113–66, div. A, title III, § 311, Dec. 26, 2013, 127 Stat. 728; Pub. L. 113–291, div. A, title IX, § 901(g)(1)(B), (D), Dec. 19, 2014, 128 Stat. 3464, 3465, related to Assistant Secretary of Defense for Operational Energy Plans and Programs.

[§ 138d. Repealed. Pub. L. 113–291, div. A, title IX, § 901(h)(4), Dec. 19, 2014, 128 Stat. 3467]

Section, added Pub. L. 100–180, div. A, title XII, § 1245(a)(1), Dec. 4, 1987, 101 Stat. 1165, § 141; renumbered § 142, Pub. L. 103–160, div. A, title IX, § 901(a)(1), Nov. 30, 1993, 107 Stat. 1726; amended Pub. L. 104–106, div. A, title IX, §§ 903(c)(4), 904(a)(1), Feb. 10, 1996, 110 Stat. 402, 403; Pub. L. 104–201, div. A, title IX, § 901, Sept. 23, 1996, 110 Stat. 2617; Pub. L. 110–417, [div. A], title IX, § 905, Oct. 14, 2008, 122 Stat. 4568; renumbered § 138d and amended Pub. L. 111–383, div. A, title IX, § 901(b)(8), (k)(1)(D), Jan. 7, 2011, 124 Stat. 4320, 4325, related to Assistant Secretary of Defense for Nuclear, Chemical, and Biological Defense Programs.

§ 139. Director of Operational Test and Evaluation

(a)(1) There is a Director of Operational Test and Evaluation in the Department of Defense, appointed from civilian life by the President, by and with the advice and consent of the Senate. The Director shall be appointed without regard to political affiliation and solely on the basis of fitness to perform the duties of the office of Director. The Director may be removed from office by the President. The President shall communicate the reasons for any such removal to both Houses of Congress.

(2) In this section:

(A) The term ''operational test and evaluation'' means—

(i) the field test, under realistic combat conditions, of any item of (or key component of) weapons, equipment, or munitions for the purpose of determining the effectiveness and suitability of the weapons, equipment, or munitions for use in combat by typical military users; and

(ii) the evaluation of the results of such test.

(B) The term ''major defense acquisition program'' means a Department of Defense acquisition program that is a major defense acquisition program for purposes of section 2430 of this title or that is designated as such a program by the Director for purposes of this section.

(b) The Director is the principal adviser to the Secretary of Defense, the Under Secretary of Defense for Acquisition and Sustainment, and the Under Secretary of Defense for Research and Engineering on operational test and evaluation in the Department of Defense and the principal operational test and evaluation official within the senior management of the Department of Defense. The Director shall—

(1) prescribe, by authority of the Secretary of Defense, policies and procedures for the conduct of operational test and evaluation in the Department of Defense;

(2) provide guidance to and consult with the Secretary of Defense, the Under Secretary of Defense for Acquisition and Sustainment, and the Under Secretary of Defense for Research and Engineering and the Secretaries of the military departments with respect to operational test and evaluation in the Department of Defense in general and with respect to specific operational test and evaluation to be conducted in connection with a major defense acquisition program;

(3) monitor and review all operational test and evaluation in the Department of Defense;

(4) coordinate operational testing conducted jointly by more than one military department or defense agency;

(5) review and make recommendations to the Secretary of Defense on all budgetary and financial matters relating to operational test and evaluation, including operational test facilities and equipment, in the Department of Defense; and

(6) monitor and review the live fire testing activities of the Department of Defense provided for under section 2366 of this title.

(c) The Director may communicate views on matters within the responsibility of the Director directly to the Secretary of Defense and the Deputy Secretary of Defense without obtaining the approval or concurrence of any other official within the Department of Defense. The Director shall consult closely with, but the Director and the Director's staff are independent of, the Under Secretary of Defense for Acquisition and Sustainment, the Under Secretary of Defense for Research and Engineering, and all other officers and entities of the Department of Defense responsible for acquisition.

(d) The Director may not be assigned any responsibility for developmental test and evaluation, other than the provision of advice to officials responsible for such testing.

(e)(1) The Secretary of a military department shall report promptly to the Director the results of all operational test and evaluation conducted by the military department and of all studies conducted by the military department in connection with operational test and evaluation in the military department.

(2) The Director may require that such observers as he designates be present during the preparation for and the conduct of the test part of any operational test and evaluation conducted in the Department of Defense.

(3) The Director shall have access to all records and data in the Department of Defense (including the records and data of each military department) that the Director considers necessary to review in order to carry out his duties under this section.

(4) The Director shall have prompt access to all data regarding modeling and simulation activity proposed to be used by military departments and defense agencies in support of operational or live fire test and evaluation of military capabilities. This access shall include data associated with verification, validation, and accreditation activities.

(f)(1) The Director of the Missile Defense Agency shall make available to the Director of Operational Test and Evaluation the results of all tests and evaluations conducted by the Missile Defense Agency and of all studies conducted by the Missile Defense Agency in connection

with tests and evaluations in the Missile Defense Agency.

(2) The Director of Operational Test and Evaluation may require that such observers as the Director designates be present during the preparation for and the conducting of any test and evaluation conducted by the Missile Defense Agency.

(3) The Director of Operational Test and Evaluation shall have access to all records and data in the Department of Defense (including the records and data of the Missile Defense Agency) that the Director considers necessary to review in order to carry out his duties under this subsection.

(g) The Director shall ensure that safety concerns developed during the operational test and evaluation of a weapon system under a major defense acquisition program are communicated in a timely manner to the program manager for that program for consideration in the acquisition decisionmaking process.

(h)(1) The Director shall prepare an annual report summarizing the operational test and evaluation activities (including live fire testing activities) of the Department of Defense during the preceding fiscal year.

(2) Each such report shall be submitted concurrently to the Secretary of Defense, the Under Secretary of Defense for Acquisition and Sustainment, the Under Secretary of Defense for Research and Engineering, the Secretaries of the military departments, and the Congress not later than January 31 of each year, through January 31, 2026.

(3) If the Director submits the report to Congress in a classified form, the Director shall concurrently submit an unclassified version of the report to Congress.

(4) The report shall include such comments and recommendations as the Director considers appropriate, including comments and recommendations on resources and facilities available for operational test and evaluation and levels of funding made available for operational test and evaluation activities. The report for a fiscal year shall also include an assessment of the waivers of and deviations from requirements in test and evaluation master plans and other testing requirements that occurred during the fiscal year, any concerns raised by the waivers or deviations, and the actions that have been taken or are planned to be taken to address the concerns.

(5) The Director shall solicit comments from the Secretaries of the military departments on each report of the Director to Congress under this section and include any comments as an appendix to the Director's report. The Director shall determine the amount of time available for the Secretaries to comment on the draft report on a case by case basis, and consider the extent to which substantive discussions have already been held between the Director and the military department. The Director shall reserve the right to issue the report without comment from a military department if the department's comments are not received within the time provided, and shall indicate any such omission in the report.

(i) The Director shall comply with requests from Congress (or any committee of either House of Congress) for information relating to operational test and evaluation in the Department of Defense.

(j) The President shall include in the Budget transmitted to Congress pursuant to section 1105 of title 31 for each fiscal year a separate statement of estimated expenditures and proposed appropriations for that fiscal year for the activities of the Director of Operational Test and Evaluation in carrying out the duties and responsibilities of the Director under this section.

(k) The Director shall have sufficient professional staff of military and civilian personnel to enable the Director to carry out the duties and responsibilities of the Director prescribed by law.

(Added Pub. L. 98–94, title XII, §1211(a)(1), Sept. 24, 1983, 97 Stat. 684, §136a; amended Pub. L. 99–348, title V, §501(c), July 1, 1986, 100 Stat. 708; renumbered §138 and amended Pub. L. 99–433, title I, §§101(a)(7), 110(d)(10), (g)(1), Oct. 1, 1986, 100 Stat. 995, 1003, 1004; Pub. L. 99–500, §101(c) [title X, §§903(c), 910(c)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–132, 1783–145, and Pub. L. 99–591, §101(c) [title X, §§903(c), 910(c)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–132, 3341–145; Pub. L. 99–661, div. A, title IX, formerly title IV, §§903(c), 910(c), Nov. 14, 1986, 100 Stat. 3912, 3924, renumbered title IX, Pub. L. 100–26, §3(5), Apr. 21, 1987, 101 Stat. 273; Pub. L. 100–26, §7(a)(1), (c)(2), Apr. 21, 1987, 101 Stat. 275, 280; Pub. L. 100–180, div. A, title VIII, §801, Dec. 4, 1987, 101 Stat. 1123; Pub. L. 101–189, div. A, title VIII, §802(b), title XVI, §1622(e)(1), Nov. 29, 1989, 103 Stat. 1486, 1605; Pub. L. 101–510, div. A, title XIV, §1484(k)(1), Nov. 5, 1990, 104 Stat. 1719; renumbered §139 and amended Pub. L. 103–160, div. A, title IX, §§901(a)(1), 904(d)(1), 907, Nov. 30, 1993, 107 Stat. 1726, 1728, 1730; Pub. L. 103–355, title III, §§3011–3013, Oct. 13, 1994, 108 Stat. 3331, 3332; Pub. L. 106–65, div. A, title IX, §911(d)(1), Oct. 5, 1999, 113 Stat. 719; Pub. L. 107–107, div. A, title II, §263, title X, §1048(b)(2), Dec. 28, 2001, 115 Stat. 1044, 1225; Pub. L. 107–314, div. A, title II, §235, Dec. 2, 2002, 116 Stat. 2491; Pub. L. 109–364, div. A, title II, §231(f), Oct. 17, 2006, 120 Stat. 2133; Pub. L. 110–181, div. A, title II, §221, Jan. 28, 2008, 122 Stat. 37; Pub. L. 110–417, [div. A], title II, §251(c), Oct. 14, 2008, 122 Stat. 4400; Pub. L. 114–328, div. A, title VIII, §845, Dec. 23, 2016, 130 Stat. 2292; Pub. L. 115–232, div. A, title VIII, §887(a), Aug. 13, 2018, 132 Stat. 1916; Pub. L. 116–92, div. A, title VIII, §815, title IX, §902(4), Dec. 20, 2019, 133 Stat. 1487, 1542; Pub. L. 116–283, div. A, title II, §271, title XVIII, §§1845(c)(1), 1846(i)(1), Jan. 1, 2021, 134 Stat. 3502, 4247, 4251.)

AMENDMENT OF SUBSECTIONS (a)(2)(B) AND (b)(6)

Pub. L. 116–283, div. A, title XVIII, §§1801(d), 1845(c)(1), 1846(i)(1), Jan. 1, 2021, 134 Stat. 4151, 4247, 4251, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is amended—

(1) in subsection (a)(2)(B), by striking ''section 2430'' and inserting ''section 4201'';

(2) in subsection (b)(6), by striking ''section 2366'' and inserting ''section 4172''.

See 2021 Amendment notes below.

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

PRIOR PROVISIONS

A prior section 139 was renumbered section 140 of this title.

Another prior section 139 was renumbered section 2431 of this title.

AMENDMENTS

2021—Subsec. (a)(2)(B). Pub. L. 116–283, § 1846(i)(1), substituted ''section 4201'' for ''section 2430''.

Subsec. (b)(6). Pub. L. 116–283, § 1845(c)(1), substituted ''section 4172'' for ''section 2366''.

Subsec. (h)(2). Pub. L. 116–283, § 271, substituted ''Engineering,'' for ''Engineering,,'' and '', through January 31, 2026'' for '', through January 31, 2025''.

2019—Subsec. (b). Pub. L. 116–92, § 902(4)(A), substituted '', the Under Secretary of Defense for Acquisition and Sustainment, and the Under Secretary of Defense for Research and Engineering'' for ''and the Under Secretary of Defense for Acquisition, Technology, and Logistics'' in two places.

Subsec. (c). Pub. L. 116–92, § 902(4)(B), substituted ''the Under Secretary of Defense for Acquisition and Sustainment, the Under Secretary of Defense for Research and Engineering,'' for ''the Under Secretary of Defense for Acquisition, Technology, and Logistics''.

Subsec. (h)(2). Pub. L. 116–92, § 902(4)(B), substituted ''the Under Secretary of Defense for Acquisition and Sustainment, the Under Secretary of Defense for Research and Engineering,'' for ''the Under Secretary of Defense for Acquisition, Technology, and Logistics''.

Pub. L. 116–92, § 815(1), substituted '', through January 31, 2025'' for '', through January 31, 2021''.

Subsec. (h)(5). Pub. L. 116–92, § 815(2), amended par. (5) generally. Prior to amendment, par. (5) read as follows: ''The Secretary of Defense and the Secretaries of the military departments may comment on any report of the Director to Congress under this subsection.''

2018—Subsec. (e)(4). Pub. L. 115–232 added par. (4).

2016—Subsec. (h)(2). Pub. L. 114–328, § 845(1), inserted ''the Secretaries of the military departments,'' after ''Logistics,'' and substituted ''January 31 of each year, through January 31, 2021'' for ''10 days after the transmission of the budget for the next fiscal year under section 1105 of title 31''.

Subsec. (h)(5). Pub. L. 114–328, § 845(2), inserted ''of Defense and the Secretaries of the military departments'' after ''Secretary''.

2008—Subsec. (b)(3) to (7). Pub. L. 110–417 redesignated pars. (4) to (7) as (3) to (6), respectively, and struck out former par. (3) which required the Director to provide guidance to and consult with the officials described in par. (2) of subsec. (b) with respect to operational test and evaluation or survivability testing (or both) within the Department of Defense of force protection equipment.

Subsecs. (f) to (k). Pub. L. 110–181 added subsec. (f) and redesignated former subsecs. (f) to (j) as (g) to (k), respectively.

2006—Subsec. (b)(3) to (7). Pub. L. 109–364 added par. (3) and redesignated former pars. (3) to (6) as (4) to (7), respectively.

2002—Subsec. (g). Pub. L. 107–314, § 235(b), designated first sentence as par. (1), second sentence as par. (2), third sentence as par. (3), fourth and fifth sentences as par. (4), and sixth sentence as par. (5).

Pub. L. 107–314, § 235(a), inserted after fourth sentence ''The report for a fiscal year shall also include an assessment of the waivers of and deviations from requirements in test and evaluation master plans and other testing requirements that occurred during the fiscal year, any concerns raised by the waivers or deviations, and the actions that have been taken or are planned to be taken to address the concerns.''

2001—Subsec. (c). Pub. L. 107–107, § 1048(b)(2), substituted ''Under Secretary of Defense for Acquisition, Technology, and Logistics'' for ''Under Secretary of Defense for Acquisition and Technology''.

Subsec. (f). Pub. L. 107–107, § 263(2), added subsec. (f). Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 107–107, § 1048(b)(2), substituted ''Under Secretary of Defense for Acquisition, Technology, and Logistics'' for ''Under Secretary of Defense for Acquisition and Technology''.

Pub. L. 107–107, § 263(1), redesignated subsec. (f) as (g). Former subsec. (g) redesignated (h).

Subsecs. (h) to (j). Pub. L. 107–107, § 263(1), redesignated subsecs. (g) to (i) as (h) to (j), respectively.

1999—Subsec. (b). Pub. L. 106–65 substituted ''Under Secretary of Defense for Acquisition, Technology, and Logistics'' for ''Under Secretary of Defense for Acquisition and Technology'' in introductory provisions and in par. (2).

1994—Subsec. (b)(6). Pub. L. 103–355, § 3012(a), added par. (6).

Subsec. (c). Pub. L. 103–355, § 3011, inserted ''The Director may communicate views on matters within the responsibility of the Director directly to the Secretary of Defense and the Deputy Secretary of Defense without obtaining the approval or concurrence of any other official within the Department of Defense.'' after ''(c)''.

Subsec. (f). Pub. L. 103–355, §§ 3012(b), 3013, in first sentence inserted ''(including live fire testing activities)'' after ''operational test and evaluation activities'' and after second sentence inserted ''If the Director submits the report to Congress in a classified form, the Director shall concurrently submit an unclassified version of the report to Congress.''

1993—Pub. L. 103–160, § 901(a)(1), renumbered section 138 of this title as this section.

Subsec. (b). Pub. L. 103–160, § 904(d)(1), substituted ''Under Secretary of Defense for Acquisition and Technology'' for ''Under Secretary of Defense for Acquisition'' in introductory provisions and in par. (2).

Subsec. (c). Pub. L. 103–160, § 907, struck out ''The Director reports directly, without intervening review or approval, to the Secretary of Defense personally.'' after ''(c)'' and substituted ''Under Secretary of Defense for Acquisition and Technology'' for ''Director of Defense Research and Engineering'' and ''responsible for acquisition'' for ''responsible for research and development''.

Subsec. (f). Pub. L. 103–160, § 904(d)(1), substituted ''Under Secretary of Defense for Acquisition and Technology'' for ''Under Secretary of Defense for Acquisition''.

1990—Subsec. (a)(2)(A). Pub. L. 101–510, § 1484(k)(1)(A), substituted ''(A) The term 'operational test and evaluation'' for ''(A) 'Operational test and evaluation''.

Subsec. (a)(2)(B). Pub. L. 101–510, § 1484(k)(1)(B), substituted ''(B) The term 'major defense acquisition program'' for ''(B) 'Major defense acquisition program''.

1989—Subsec. (a)(2)(A). Pub. L. 101–189, § 1622(e)(1)(A), which directed amendment of subpar. (A) by substituting ''(A) The term 'operational' '' for ''(A) 'Operational' '', could not be executed because a closing quotation mark did not follow ''Operational''.

Subsec. (a)(2)(B). Pub. L. 101–189, § 1622(e)(1)(B), which directed amendment of subpar. (B) by substituting ''(B) The term 'major' '' for ''(B) 'Major' '', could not be executed because a closing quotation mark did not follow ''Major''.

Subsec. (b)(4). Pub. L. 101–189, § 802(b)(1)(A), inserted ''and'' after ''defense agency;''.

Subsec. (b)(5), (6). Pub. L. 101–189, § 802(b)(1)(B), (C), redesignated par. (6) as (5) and struck out former par. (5) which read as follows: ''analyze the results of the operational test and evaluation conducted for each major defense acquisition program and, at the conclusion of such operational test and evaluation, report to the Secretary of Defense, to the Under Secretary of Defense for Acquisition, and to the Committees on Armed Services and on Appropriations of the Senate and House of Representatives as provided in subsection (c) on—

''(A) whether the test and evaluation performed was adequate; and

''(B) whether the test and evaluation results confirm that the items or components actually tested are effective and suitable for combat; and''.

Subsec. (c). Pub. L. 101–189, § 802(b)(2), (3), redesignated subsec. (d)(1) as (c) and struck out former subsec.

(c) which read as follows: ''Each report of the Director required under subsection (b)(5) shall be submitted to the committees specified in that subsection in precisely the same form and with precisely the same content as the report originally was submitted to the Secretary of Defense and the Under Secretary of Defense for Acquisition and shall be accompanied by such comments as the Secretary may wish to make on the report.''

Subsec. (d). Pub. L. 101–189, § 802(b)(4), redesignated former par. (2) of subsec. (d) as entire subsec. Former par. (1) of subsec. (d) redesignated subsec. (c).

Subsec. (f). Pub. L. 101–189, § 802(b)(5)–(7), redesignated subsec. (g)(1) as (f), substituted ''this subsection'' for ''this paragraph'', and struck out former subsec. (f) which read as follows:

''(1) Operational testing of a major defense acquisition program may not be conducted until the Director has approved in writing the adequacy of the plans (including the adequacy of projected levels of funding) for operational test and evaluation to be conducted in connection with that program.

''(2) A final decision within the Department of Defense to proceed with a major defense acquisition program beyond low-rate initial production may not be made until the Director has submitted to the Secretary of Defense the report with respect to that program required by subsection (b)(5) and the Committees on Armed Services and on Appropriations of the Senate and House of Representatives have received that report.''

Subsec. (g). Pub. L. 101–189, § 802(b)(6), (8), redesignated former par. (2) of subsec. (g) as entire subsec. (g), and redesignated former par. (1) of subsec. (g) as subsec. (f).

1987—Subsec. (a)(2)(B). Pub. L. 100–26, § 7(c)(2), substituted ''section 2430'' for ''section 2432(a)(1)''.

Subsec. (c). Pub. L. 100–26, § 7(a)(1), substituted ''to the Secretary of Defense and the Under Secretary of Defense for Acquisition and shall be accompanied by such comments as the Secretary may wish to make on the report.'' for ''to the Secretary, to the Under Secretary of Defense for Acquisition, and shall be accompanied by such comments as the Secretary of Defense may wish to make on such report.''

Subsec. (d). Pub. L. 100–180 designated existing provisions as par. (1) and added par. (2).

1986—Pub. L. 99–433, §§ 101(a)(7), 110(d)(10), renumbered section 136a of this title as this section, and struck out '': appointment; powers and duties'' at end of section catchline.

Subsec. (a)(2)(B). Pub. L. 99–433, § 110(g)(1), substituted ''section 2432(a)(1)'' for ''section 139a(a)(1)''.

Subsec. (b). Pub. L. 99–500 and Pub. L. 99–591, § 101(c) [§ 903(c)(1)–(3)] and Pub. L. 99–661, § 903(c)(1)–(3), amended subsec. (b) identically, in provisions preceding par. (1) and in par. (2), inserting ''and the Under Secretary of Defense for Acquisition'' and, in par. (5), inserting '', to the Under Secretary of Defense for Acquisition,''.

Subsec. (c). Pub. L. 99–500 and Pub. L. 99–591, § 101(c) [§ 903(c)(4)], and Pub. L. 99–661, § 903(c)(4), amended subsec. (c) identically by directing the insertion of '', to the Under Secretary of Defense for Acquisition,'' after ''Secretary of Defense'' the first place it appears which was executed by making the insertion after ''the Secretary'' the first place it appears as the probable intent of Congress.

Subsec. (d). Pub. L. 99–500 and Pub. L. 99–591, § 101(c) [§ 903(c)(5)], and Pub. L. 99–661, § 903(c)(5), amended subsec. (d) identically inserting ''personally'' after ''Secretary of Defense''.

Pub. L. 99–348 substituted ''Director of Defense Research and Engineering'' for ''Under Secretary of Defense for Research and Engineering''.

Subsec. (g)(1). Pub. L. 99–500 and Pub. L. 99–591, § 101(c) [§§ 903(c)(6), 910(c)], and Pub. L. 99–661, §§ 903(c)(6), 910(c), amended par. (1) identically, inserting '', the Under Secretary of Defense for Acquisition,'' and substituting ''10 days after transmission of the budget for the next fiscal year under section 1105 of title 31'' for ''January 15 immediately following the end of the fiscal year for which the report is prepared''.

Subsec. (i). Pub. L. 99–500 and Pub. L. 99–591, § 101(c) [§ 903(c)(7)], and Pub. L. 99–661, § 903(c)(7), amended section identically adding subsec. (i).

Effective Date of 2021 Amendment

Amendment by sections 1845(c)(1) and 1846(i)(1) of Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

Effective Date

Pub. L. 98–94, title XII, § 1211(c), Sept. 24, 1983, 97 Stat. 686, provided that: ''The amendments made by this section [enacting this section and amending section 5315 of Title 5, Government Organization and Employees] shall take effect on November 1, 1983.''

Termination of Reporting Requirements

For termination, effective Dec. 31, 2021, of provisions in subsec. (h) of this section requiring submittal of annual report to Congress, see section 1061 of Pub. L. 114–328, set out as a note under section 111 of this title.

Annual Assessment of Ballistic Missile Defense System

Pub. L. 116–92, div. A, title XVI, § 1689, Dec. 20, 2019, 133 Stat. 1789, provided that:

''(a) Annual Assessment.—As part of the annual report of the Director of Operational Test and Evaluation submitted to Congress under section 139 of title 10, United States Code, the Director shall include an assessment of the ballistic missile defense system and all of the elements of the system that have been fielded or are planned, as of the date of the assessment, including—

''(1) the operational effectiveness, suitability, and survivability of the ballistic missile defense system and the elements of the system that have been fielded or tested; and

''(2) the adequacy and sufficiency of the test program of such system as of the date of the assessment, including with respect to the operational realism of the tests.

''(b) Form.—Each assessment under subsection (a) may be submitted in unclassified form, and may include a classified annex.''

Additional Testing Data

Pub. L. 115–232, div. A, title VIII, § 887(b), Aug. 13, 2018, 132 Stat. 1916, provided that: ''Developmental Test and Evaluation activities under the leadership of the Under Secretary of Defense for Research and Engineering and the Under Secretary of Defense for Acquisition and Sustainment shall have prompt access to all data regarding modeling and simulation activity proposed to be used by military departments and defense agencies in support of developmental test and evaluation of military capabilities. This access shall include data associated with verification, validation, and accreditation activities.''

Review and Revision of Policies and Practices on Test and Evaluation; Inclusion in Strategic Plan; Report

Pub. L. 109–364, div. A, title II, § 231(b)–(e), Oct. 17, 2006, 120 Stat. 2132, 2133, provided that:

''(b) Review and Revision of Policies and Practices.—

''(1) Review.—During fiscal year 2007, the Under Secretary of Defense for Acquisition, Technology, and Logistics and the Director of Operational Test and Evaluation shall review Department of Defense policies and practices on test and evaluation in order to—

"(A) reaffirm the test and evaluation principles that should guide traditional acquisition programs; and

"(B) determine how best to apply appropriate test and evaluation principles to emerging acquisition approaches.

"(2) REVISED GUIDANCE.—If the Under Secretary determines as a result of the review under paragraph (1) that a revision of the policies and practices referred to in that paragraph is necessary, the Under Secretary and the Director shall jointly issue new or revised guidance for the Department of Defense on test and evaluation to address that determination.

"(c) ISSUES TO BE ADDRESSED.—In carrying out subsection (b), the Under Secretary shall address policies and practices on test and evaluation in order to—

"(1) ensure the performance of test and evaluation activities with regard to—

"(A) items that are acquired pursuant to the authority for rapid acquisition and deployment of items in section 806 of the Bob Stump National Defense Authorization Act for Fiscal Year 2003 [Pub. L. 107–314] (10 U.S.C. 2302 note);

"(B) programs that are conducted pursuant to the authority for spiral development in section 803 of the Bob Stump National Defense Authorization Act for Fiscal Year 2003 (Public Law 107–314; 116 Stat. 2603; 10 U.S.C. 2430 note), or other authority for the conduct of incremental acquisition programs;

"(C) systems that are acquired pursuant to other emerging acquisition approaches, as approved by the Under Secretary; and

"(D) equipment that is not subject to the operational test and evaluation requirements in sections 2366 and 2399 of title 10, United States Code, but that may require limited operational test and evaluation for the purpose of ensuring the safety and survivability of such equipment and personnel using such equipment; and

"(2) ensure the appropriate use, if any, of operational test and evaluation resources to assess technology readiness levels for the purpose of section 2366a of title 10, United States Code, and other applicable technology readiness requirements.

"(d) INCLUSION OF TESTING NEEDS IN STRATEGIC PLAN.—The Director, Test Resource Management Center, shall ensure that the strategic plan for Department of Defense test and evaluation resources developed pursuant to section 196 of title 10, United States Code—

"(1) reflects any testing needs of the Department of Defense that are identified as a result of activities under subsection (b); and

"(2) includes an assessment of the test and evaluation facilities, resources, and budgets that will be required to meet such needs.

"(e) REPORT TO CONGRESS.—Not later than nine months after the date of the enactment of this Act [Oct. 17, 2006], the Under Secretary and the Director of Operational Test and Evaluation shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the review conducted under paragraph (1) of subsection (b), including any new or revised guidance issued pursuant to paragraph (2) of that subsection."

§139a. Director of Cost Assessment and Program Evaluation

(a) APPOINTMENT.—There is a Director of Cost Assessment and Program Evaluation in the Department of Defense, appointed by the President, by and with the advice and consent of the Senate.

(b) INDEPENDENT ADVICE TO SECRETARY OF DEFENSE.—(1) The Director of Cost Assessment and Program Evaluation is the principal advisor to the Secretary of Defense and other senior officials of the Department of Defense, and shall provide independent analysis and advice to such officials, on the following matters:

(A) Matters assigned to the Director pursuant to this section and section 2334 of this title.

(B) Matters assigned to the Director by the Secretary pursuant to section 113 of this title.

(2) The Director may communicate views on matters within the responsibility of the Director directly to the Secretary of Defense and the Deputy Secretary of Defense without obtaining the approval or concurrence of any other official within the Department of Defense.

(c) DEPUTY DIRECTORS.—There are two Deputy Directors within the Office of the Director of Cost Assessment and Program Evaluation, as follows:

(1) The Deputy Director for Cost Assessment.

(2) The Deputy Director for Program Evaluation.

(d) RESPONSIBILITIES.—The Director of Cost Assessment and Program Evaluation shall serve as the principal official within the senior management of the Department of Defense for the following:

(1) Cost estimation and cost analysis for acquisition programs of the Department of Defense, and carrying out the duties assigned pursuant to section 2334 of this title.

(2) Analysis and advice on matters relating to the planning and programming phases of the Planning, Programming, Budgeting and Execution system, and the preparation of materials and guidance for such system, as directed by the Secretary of Defense, working in coordination with the Under Secretary of Defense (Comptroller).

(3) Analysis and advice for resource discussions relating to requirements under consideration in the Joint Requirements Oversight Council pursuant to section 181 of this title.

(4) Formulation of study guidance for analyses of alternatives for major defense acquisition programs and performance of such analyses, as directed by the Secretary of Defense.

(5) Review, analysis, and evaluation of programs for executing approved strategies and policies, ensuring that information on programs is presented accurately and completely, and assessing the effect of spending by the Department of Defense on the United States economy.

(6) Assessments of special access and compartmented intelligence programs, in coordination with the Under Secretary of Defense for Acquisition and Sustainment, the Under Secretary of Defense for Research and Engineering, and the Under Secretary of Defense for Intelligence and Security and in accordance with applicable policies.

(7) Assessments of alternative plans, programs, and policies with respect to the acquisition programs of the Department of Defense.

(8) Leading the development of improved analytical skills and competencies within the cost assessment and program evaluation workforce of the Department of Defense and improved tools, data, and methods to promote performance, economy, and efficiency in ana-

lyzing national security planning and the allocation of defense resources.

(9) Performing the duties assigned to the Director in section 2222 of this title.

(Added Pub. L. 111–23, title I, § 101(a)(1), May 22, 2009, 123 Stat. 1705, § 139c; renumbered § 139a and amended Pub. L. 111–383, div. A, title IX, § 901(f), title X, § 1075(b)(5), Jan. 7, 2011, 124 Stat. 4322, 4369; Pub. L. 112–239, div. A, title X, § 1076(f)(4), Jan. 2, 2013, 126 Stat. 1952; Pub. L. 115–91, div. A, title IX, § 912(c), Dec. 12, 2017, 131 Stat. 1521; Pub. L. 116–92, div. A, title IX, § 902(5), title XVI, § 1621(e)(1)(A)(iii), Dec. 20, 2019, 133 Stat. 1543, 1733; Pub. L. 116–283, div. A, title XVIII, § 1883(b)(2), Jan. 1, 2021, 134 Stat. 4294.)

AMENDMENT OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1883(b)(2), Jan. 1, 2021, 134 Stat. 4151, 4294, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, except as otherwise provided in title XVIII of Pub. L. 116–283, in title 10, United States Code, each reference in the text of such title to a source section that is redesignated by title XVIII of Pub. L. 116–283, is amended by striking such reference and inserting a reference to the appropriate section as so redesignated. See 2021 Amendment note below.

PRIOR PROVISIONS

A prior section 139a was renumbered section 138b of this title.

Another prior section 139a was renumbered section 2432 of this title.

AMENDMENTS

2021—Subsec. (b)(1)(A). Pub. L. 116–283, which directed that each reference in the text of title 10 to a section that was redesignated by title XVIII of Pub. L. 116–283, as such section was in effect before the redesignation, be amended by striking such reference and inserting a reference to the appropriate redesignated section, was not executed with respect to ''section 2334'', which was redesignated as multiple sections.

2019—Subsec. (d)(6). Pub. L. 116–92, § 1621(e)(1)(A)(iii), substituted ''Under Secretary of Defense for Intelligence and Security'' for ''Under Secretary of Defense for Intelligence''.

Pub. L. 116–92, § 902(5), substituted ''Under Secretary of Defense for Acquisition and Sustainment, the Under Secretary of Defense for Research and Engineering,'' for ''Under Secretary of Defense for Acquisition, Technology, and Logistics''.

2017—Subsec. (d)(9). Pub. L. 115–91 added par. (9).

2013—Subsec. (d)(4). Pub. L. 112–239, which directed amendment of par. (4) by inserting a period at end, was not executed to reflect the probable intent of Congress and the prior amendment by Pub. L. 111–383, § 1075(b)(5). See 2011 Amendment note below.

2011—Pub. L. 111–383, § 901(f), renumbered section 139c of this title as this section.

Subsec. (d)(4). Pub. L. 111–383, § 1075(b)(5), which directed amendment of section 139c of this title by inserting a period at the end of subsec. (d)(4), was executed to this section, to reflect the probable intent of Congress and the renumbering of section 139c of this title as this section by Pub. L. 111–383, § 901(f). See above.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by section 1883(b)(2) of Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by section 901(f) of Pub. L. 111–383 effective Jan. 1, 2011, see section 901(p) of Pub. L. 111–383, set out as a note under section 131 of this title.

TRANSFER OF PERSONNEL AND FUNCTIONS

Pub. L. 111–23, title I, § 101(c), May 22, 2009, 123 Stat. 1709, provided that:

''(1) TRANSFER OF FUNCTIONS.—The functions of the Office of Program Analysis and Evaluation of the Department of Defense, including the functions of the Cost Analysis Improvement Group, are hereby transferred to the Office of the Director of Cost Assessment and Program Evaluation.

''(2) TRANSFER OF PERSONNEL TO DEPUTY DIRECTOR FOR INDEPENDENT COST ASSESSMENT.—The personnel of the Cost Analysis Improvement Group are hereby transferred to the Deputy Director for Cost Assessment in the Office of the Director of Cost Assessment and Program Evaluation.

''(3) TRANSFER OF PERSONNEL TO DEPUTY DIRECTOR FOR PROGRAM ANALYSIS AND EVALUATION.—The personnel (other than the personnel transferred under paragraph (2)) of the Office of Program Analysis and Evaluation are hereby transferred to the Deputy Director for Program Evaluation in the Office of the Director of Cost Assessment and Program Evaluation.''

§ 139b. Secretariat for Special Operations; Special Operations Policy and Oversight Council

(a) SECRETARIAT FOR SPECIAL OPERATIONS.—

(1) IN GENERAL.—In order to fulfill the responsibilities of the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict specified in section 138(b)(2)(A)(i) of this title, there shall be within the Office of the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict an office to be known as the ''Secretariat for Special Operations''.

(2) PURPOSE.—The purpose of the Secretariat is to assist the Assistant Secretary in exercising authority, direction, and control with respect to the special operations-peculiar administration and support of the special operations command, including the readiness and organization of special operations forces, resources and equipment, and civilian personnel as specified in such section.

(3) DIRECTOR.—The Director of the Secretariat for Special Operations shall be appointed by the Secretary of Defense from among individuals qualified to serve as the Director. An individual serving as Director shall, while so serving, be a member of the Senior Executive Service.

(4) ADMINISTRATIVE CHAIN OF COMMAND.—For purposes of the support of the Secretariat for the Assistant Secretary in the fulfillment of the responsibilities referred to in paragraph (1), the administrative chain of command is as specified in section 167(f) of this title. Unless otherwise directed by the President, no officer below the Secretary of Defense (other than the Assistant Secretary) may intervene to exercise authority, direction, or control over the Secretariat in its support of the Assistant Secretary in the discharge of such responsibilities.

(b) SPECIAL OPERATIONS POLICY AND OVERSIGHT COUNCIL.—

(1) IN GENERAL.—In order to fulfill the responsibilities specified in section 138(b)(2)(A)(i)

of this title, the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict shall establish and lead a team known as the ''Special Operation Policy and Oversight Council'' (in this subsection referred to as the ''Council'').

(2) PURPOSE.—The purpose of the Council is to integrate the functional activities of the headquarters of the Department of Defense in order to most efficiently and effectively provide for special operations forces and capabilities. In fulfilling this purpose, the Council shall develop and continuously improve policy, joint processes, and procedures that facilitate the development, acquisition, integration, employment, and sustainment of special operations forces and capabilities.

(3) MEMBERSHIP.—The Council shall include the following:

(A) The Assistant Secretary.

(B) Appropriate senior representatives of each of the following:

(i) The Under Secretary of Defense for Research and Engineering.

(ii) The Under Secretary of Defense for Acquisition and Sustainment.

(iii) The Under Secretary of Defense (Comptroller).

(iv) The Under Secretary of Defense for Personnel and Readiness.

(v) The Under Secretary of Defense for Intelligence.

(vi) The General Counsel of the Department of Defense.

(vii) The other Assistant Secretaries of Defense under the Under Secretary of Defense for Policy.

(viii) The military departments.

(ix) The Joint Staff.

(x) The United States Special Operations Command.

(xi) Such other officers or Agencies, elements, or components of the Department of Defense as the Secretary of Defense considers appropriate.

(4) OPERATION.—The Council shall operate continuously.

(Added Pub. L. 114–328, div. A, title IX, § 922(b)(1), Dec. 23, 2016, 130 Stat. 2355; amended Pub. L. 115–91, div. A, title X, § 1081(a)(7), Dec. 12, 2017, 131 Stat. 1594; Pub. L. 116–92, div. A, title XVI, § 1621(e)(1)(A)(iv), Dec. 20, 2019, 133 Stat. 1733; Pub. L. 116–283, div. A, title IX, § 902(b)(1), Jan. 1, 2021, 134 Stat. 3795.)

PRIOR PROVISIONS

A prior section 139b, added Pub. L. 111–23, title I, § 102(a)(1), May 22, 2009, 123 Stat. 1710, § 139d; renumbered § 139b and amended Pub. L. 111–383, div. A, title IX, § 901(e), (f), (k)(1)(E), title X, § 1075(b)(6), Jan. 7, 2011, 124 Stat. 4321, 4322, 4325, 4369; Pub. L. 112–81, div. A, title VIII, § 835(b), Dec. 31, 2011, 125 Stat. 1507; Pub. L. 112–239, div. A, title IX, § 904(a)–(d), (f), (g), title X, § 1076(f)(5), Jan. 2, 2013, 126 Stat. 1866, 1867, 1952; Pub. L. 113–291, div. A, title II, § 221(a), Dec. 19, 2014, 128 Stat. 3330; Pub. L. 114–92, div. A, title VIII, § 832, title X, § 1078(b), Nov. 25, 2015, 129 Stat. 913, 998, related to Deputy Assistant Secretary of Defense for Developmental Test and Evaluation; Deputy Assistant Secretary of Defense for Systems Engineering; support of major defense acquisition programs; annual and biennial report requirements; and joint guidance in certain areas, prior to repeal by Pub. L. 114–328, div. A, title IX, § 901(e)(2), Dec. 23, 2016, 130 Stat. 2342.

Another prior section 139b was renumbered section 138c of this title.

Another prior section 139b was renumbered section 2433 of this title.

AMENDMENTS

2021—Pub. L. 116–283 amended section generally. Prior to amendment, section related to Special Operations Policy and Oversight Council.

2019—Subsec. (c)(2)(E). Pub. L. 116–92 substituted ''Under Secretary of Defense for Intelligence and Security'' for ''Under Secretary of Defense for Intelligence''.

2017—Subsec. (c)(2)(K). Pub. L. 115–91 inserted period at end.

[§ 139c. Repealed. Pub. L. 114–328, div. A, title IX, § 901(e)(2), Dec. 23, 2016, 130 Stat. 2342]

Section, added § 139e and renumbered § 139c, Pub. L. 111–383, div. A, title VII, § 896(a), title IX, § 901(f), Jan. 7, 2011, 124 Stat. 4314, 4322; amended Pub. L. 112–81, div. A, title VIII, § 855, Dec. 31, 2011, 125 Stat. 1521; Pub. L. 112–239, div. A, title IX, § 901(a), (b), title X, § 1076(a)(13), (b)(3), Jan. 2, 2013, 126 Stat. 1863, 1864, 1948, 1949; Pub. L. 114–328, div. A, title X, § 1081(b)(4)(A), Dec. 23, 2016, 130 Stat. 2419, related to Deputy Assistant Secretary of Defense for Manufacturing and Industrial Base Policy.

A prior section 139c was renumbered section 139a of this title.

Another prior section 139c was renumbered section 2434 of this title.

[§§ 139d, 139e. Renumbered §§ 139b, 139c]

§ 140. General Counsel

(a) There is a General Counsel of the Department of Defense, appointed from civilian life by the President, by and with the advice and consent of the Senate.

(b) The General Counsel is the chief legal officer of the Department of Defense. He shall perform such functions as the Secretary of Defense may prescribe.

(Added Pub. L. 87–651, title II, § 202, Sept. 7, 1962, 76 Stat. 519, § 137; amended Pub. L. 88–426, title III, § 305(9), Aug. 14, 1964, 78 Stat. 423; renumbered § 139 and amended Pub. L. 99–433, title I, §§ 101(a)(7), 110(d)(11), Oct. 1, 1986, 100 Stat. 995, 1003; renumbered § 140, Pub. L. 103–160, div. A, title IX, § 901(a)(1), Nov. 30, 1993, 107 Stat. 1726.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
137(a)	[Uncodified: 1953 Reorg. Plan No. 6, eff. June 30, 1953, § 4 (1st 25 words of 1st sentence), 67 Stat. 639].	1953 Reorg. Plan No. 6, eff. June 30, 1953, § 4, 67 Stat. 639.
137(b)	[Uncodified: 1953 Reorg. Plan No. 6, eff. June 30, 1953, § 4 (1st sentence, less 1st 25 words), 67 Stat. 639].	
137(c)	[Uncodified: 1953 Reorg. Plan No. 6, eff. June 30, 1953, § 4 (2d sentence), 67 Stat. 639].	

In subsection (b), the words ''from time to time'' are omitted as surplusage.

PRIOR PROVISIONS

A prior section 140 was renumbered section 141 of this title.

Another prior section 140 was renumbered section 127 of this title.

AMENDMENTS

1993—Pub. L. 103–160 renumbered section 139 of this title as this section.

1986—Pub. L. 99–433, §§101(a)(7), 110(d)(11), renumbered section 137 of this title as this section, and struck out ": powers and duties" at end of section catchline.

1964—Subsec. (c). Pub. L. 88–426 repealed subsec. (c) which related to compensation of General Counsel. See section 5315 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1964 AMENDMENT

For effective date of amendment by Pub. L. 88–426, see section 501 of Pub. L. 88–426.

[§140a. Renumbered §422]

PRIOR PROVISIONS

A prior section 140a was renumbered section 421 of this title.

[§140b. Renumbered §423]

PRIOR PROVISIONS

A prior section 140b was renumbered section 129 of this title.

[§140c. Renumbered §130]

§141. Inspector General

(a) There is an Inspector General of the Department of Defense, who is appointed as provided in section 3 of the Inspector General Act of 1978 (Public Law 95–452; 5 U.S.C. App. 3).

(b) The Inspector General performs the duties, has the responsibilities, and exercises the powers specified in the Inspector General Act of 1978.

(Added Pub. L. 99–433, title I, §108, Oct. 1, 1986, 100 Stat. 998, §140; renumbered §141, Pub. L. 103–160, div. A, title IX, §901(a)(1), Nov. 30, 1993, 107 Stat. 1726.)

REFERENCES IN TEXT

The Inspector General Act of 1978, referred to in text, is Pub. L. 95–452, Oct. 12, 1978, 92 Stat. 1101, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

PRIOR PROVISIONS

A prior section 141 was renumbered section 138d of this title.

Another prior section 141 of this title was contained in chapter 5 of this title, prior to amendment by Pub. L. 99–433. See note preceding section 151 of this title.

AMENDMENTS

1993—Pub. L. 103–160 renumbered section 140 of this title as this section.

INSPECTOR GENERAL OVERSIGHT OF DIVERSITY AND INCLUSION IN DEPARTMENT OF DEFENSE; SUPREMACIST, EXTREMIST, OR CRIMINAL GANG ACTIVITY IN THE ARMED FORCES

Pub. L. 116–283, div. A, title V, §554, Jan. 1, 2021, 134 Stat. 3633, provided that:

"(a) ESTABLISHMENT OF ADDITIONAL DEPUTY INSPECTOR GENERAL OF THE DEPARTMENT OF DEFENSE.—

"(1) IN GENERAL.—Not later than 90 days after the date of the enactment of this Act [Jan. 1, 2021], the Secretary of Defense shall appoint, in the Office of the Inspector General of the Department of Defense, an additional Deputy Inspector General who—

"(A) shall be a member of the Senior Executive Service of the Department; and

"(B) shall report directly to and serve under the authority, direction, and control of the Inspector General.

"(2) DUTIES.—Subject to the Inspector General Act of 1978 (Public Law 95–452; 5 U.S.C. App.), the Deputy Inspector General shall have the following duties:

"(A) Conducting and supervising audits, investigations, and evaluations of policies, programs, systems, and processes of the Department—

"(i) to determine the effect of such policies, programs, systems, and processes regarding personnel on diversity and inclusion in the Department; and

"(ii) to prevent and respond to supremacist, extremist, and criminal gang activity of a member of the Armed Forces, including the duties of the Inspector General under subsection (b).

"(B) Additional duties prescribed by the Secretary or Inspector General.

"(3) COORDINATION OF EFFORTS.—In carrying out the duties under paragraph (2), the Deputy Inspector General shall coordinate with, and receive the cooperation of the following:

"(A) The Inspector General of the Army.

"(B) The Inspector General of the Navy.

"(C) The Inspector General of the Air Force.

"(D) The other Deputy Inspectors General of the Department.

"(4) REPORTS.—

"(A) ONE-TIME REPORT.—Not later than 180 days after the date of the enactment of this Act, the Inspector General shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report describing, with respect to the Deputy Inspector General appointed under this subsection:

"(i) the duties and responsibilities to be assigned to such Deputy Inspector General;

"(ii) the organization, structure, staffing, and funding of the office established to support such Deputy Inspector General in the execution of such duties and responsibilities;

"(iii) challenges to the establishment of such Deputy Inspector General and such office, including any shortfalls in personnel and funding; and

"(iv) the date by which the Inspector General expects such Deputy Inspector General and the office will reach full operational capability.

"(B) SEMIANNUAL REPORTS.—Not later than 30 days after the end of the second and fourth quarters of each fiscal year beginning in fiscal year 2022, the Deputy Inspector General shall submit to the Secretary and the Inspector General a report including a summary of the activities of the Deputy Inspector General during the two fiscal quarters preceding the date of the report.

"(C) ANNUAL REPORTS.—The Deputy Inspector General shall submit, through the Secretary and Inspector General, to the Committees on Armed Services of the Senate and the House of Representatives annual reports presenting findings and recommendations regarding—

"(i) the effects of policies, programs, systems, and processes of the Department, regarding personnel, on diversity and inclusion in the Department; and

"(ii) the effectiveness of such policies, programs, systems, and processes in preventing and responding to supremacist, extremist, and criminal gang activity of a member of the Armed Forces.

"(D) OCCASIONAL REPORTS.—The Deputy Inspector General shall, from time to time, submit to the Secretary and the Inspector General additional reports as the Secretary or Inspector General may direct.

"(E) ONLINE PUBLICATION.—The Deputy Inspector General shall publish each report under this paragraph on a publicly accessible website of the Department not later than 21 days after submitting

such report to the Secretary, Inspector General, or the Committees on Armed Services of the Senate and the House of Representatives.

''(b) ESTABLISHMENT OF STANDARD POLICIES, PROCESSES, TRACKING MECHANISMS, AND REPORTING REQUIREMENTS FOR SUPREMACIST, EXTREMIST, AND CRIMINAL GANG ACTIVITY IN CERTAIN ARMED FORCES.—

''(1) IN GENERAL.—The Secretary of Defense shall establish policies, processes, and mechanisms, standard across the covered Armed Forces, that ensure that—

''(A) all allegations (and related information) that a member of a covered Armed Force has engaged in a prohibited activity, are referred to the Inspector General of the Department of Defense;

''(B) the Inspector General can document and track the referral, for purposes of an investigation or inquiry of an allegation described in paragraph (1), to—

''(i) a military criminal investigative organization;

''(ii) an inspector general;

''(iii) a military police or security police organization;

''(iv) a military commander;

''(v) another organization or official of the Department; or

''(vi) a civilian law enforcement organization or official;

''(C) the Inspector General can document and track the referral, to a military commander or other appropriate authority, of the final report of an investigation or inquiry described in subparagraph (B) for action;

''(D) the Inspector General can document the determination of whether a member described in subparagraph (A) engaged in prohibited activity;

''(E) the Inspector General can document whether a member of a covered Armed Force was subject to action (including judicial, disciplinary, adverse, or corrective administrative action) or no action, as the case may be, based on a determination described in subparagraph (D); and

''(F) the Inspector General can provide, or track the referral to a civilian law enforcement agency of, any information described in this paragraph.

''(2) REPORT.—Not later than December 1 of each year beginning after the date of the enactment of this Act [Jan. 1, 2021], the Secretary of Defense shall submit to the appropriate congressional committees a report on the policies, processes, and mechanisms implemented under paragraph (1). Each report shall include, with respect to the fiscal year preceding the date of the report, the following:

''(A) The total number of referrals received by the Inspector General under paragraph (1)(A);

''(B) The total number of investigations and inquiries conducted pursuant to a referral described in paragraph (1)(B);

''(C) The total number of members of a covered Armed Force who, on the basis of determinations described in paragraph (1)(D) that the members engaged in prohibited activity, were subject to action described in paragraph (1)(E), including—

''(i) court-martial,

''(ii) other criminal prosecution,

''(iii) non-judicial punishment under Article 15 of the Uniform Code of Military Justice [10 U.S.C. 815]; or

''(iv) administrative action, including involuntary discharge from the Armed Forces, a denial of reenlistment, or counseling.

''(D) The total number of members of a covered Armed Force described in paragraph (1)(A) who were not subject to action described in paragraph (1)(E), notwithstanding determinations described in paragraph (1)(D) that such members engaged in prohibited activity.

''(E) The total number of referrals described in paragraph (1)(F).

''(3) DEFINITIONS.—In this subsection:

''(A) The term 'appropriate congressional committees' means—

''(i) the Committee on the Judiciary and the Committee on Armed Services of the Senate; and

''(ii) the Committee on the Judiciary and the Committee on Armed Services of the House of Representatives.

''(B) The term 'covered Armed Force' means an Armed Force under the jurisdiction of the Secretary of a military department.

''(C) The term 'prohibited activity' means an activity prohibited under Department of Defense Instruction 1325.06, titled 'Handling Dissident and Protest Activities Among Members of the Armed Forces', or any successor instruction.''

§ 142. Chief Information Officer

(a) There is a Chief Information Officer of the Department of Defense, who shall be appointed by the President, by and with the advice and consent of the Senate, from among civilians who are qualified to serve as such officer.

(b)(1) The Chief Information Officer of the Department of Defense—

(A) is the Chief Information Officer of the Department of Defense for the purposes of sections 3506(a)(2) (other than with respect to business management) and 3544(a)(3) of title 44;

(B) has the responsibilities and duties specified in sections 11315 and 11319 of title 40 (other than with respect to business management);

(C) has the responsibilities specified for the Chief Information Officer in sections 2223(a) (other than with respect to business management) and 2224 of this title;

(D) exercises authority, direction, and control over the Information Assurance Directorate of the National Security Agency;

(E) exercises authority, direction, and control over the Defense Information Systems Agency, or any successor organization;

(F) has the responsibilities for policy, oversight, guidance, and coordination for all Department of Defense matters related to electromagnetic spectrum, including coordination with other Federal and industry agencies, coordination for classified programs, and in coordination with the Under Secretary for Personnel and Readiness, policies related to spectrum management workforce;

(G) has the responsibilities for policy, oversight, and guidance for matters related to precision navigation and timing; and

(H) has the responsibilities for policy, oversight, and guidance for the architecture and programs related to the information technology, networking, information assurance, cybersecurity, and cyber capability architectures of the Department.

(2)(A) The Secretary of Defense, acting through the Under Secretary of Defense (Comptroller), shall require the Secretaries of the military departments and the heads of the Defense Agencies with responsibilities associated with any activity specified in paragraph (1) to transmit the proposed budget for such activities for a fiscal year and for the period covered by the future-years defense program submitted to Congress under section 221 of this title for that fiscal year to the Chief Information Officer for review under subparagraph (B) before submit-

ting the proposed budget to the Under Secretary of Defense (Comptroller).

(B) The Chief Information Officer shall review each proposed budget transmitted under subparagraph (A) and, not later than January 31 of the year preceding the fiscal year for which the budget is proposed, shall submit to the Secretary of Defense a report containing the comments of the Chief Information Officer with respect to all such proposed budgets, together with the certification of the Chief Information Officer regarding whether each proposed budget is adequate.

(C) Not later than March 31 of each year, the Secretary of Defense shall submit to Congress a report specifying each proposed budget contained in the most-recent report submitted under subparagraph (B) that the Chief Information Officer did not certify to be adequate. The report of the Secretary shall include the following matters:

(i) A discussion of the actions that the Secretary proposes to take, together with any recommended legislation that the Secretary considers appropriate, to address the inadequacy of the proposed budgets specified in the report.

(ii) Any additional comments that the Secretary considers appropriate regarding the inadequacy of the proposed budgets.

(3)(A) The Secretary of a military department or head of a Defense Agency may not develop or procure information technology (as defined in section 11101 of title 40) that does not fully comply with such standards as the Chief Information Officer may establish.

(B) The Chief Information Officer shall implement and enforce a process for—

(i) developing, adopting, or publishing standards for information technology, networking, or cyber capabilities to which any military department or defense agency would need to adhere in order to run such capabilities on defense networks; and

(ii) certifying on a regular and ongoing basis that any capabilities being developed or procured meets such standards as have been published by the Department at the time of certification.

(C) The Chief Information Officer shall identify gaps in standards and mitigation plans for operating in the absence of acceptable standards.

(4) The Chief Information Officer shall perform such additional duties and exercise such powers as the Secretary of Defense may prescribe.

(c) The Chief Information Officer takes precedence in the Department of Defense with the officials serving in positions specified in section 131(b)(4) of this title. The officials serving in positions specified in section 131(b)(4) and the Chief Information Officer of the Department of Defense take precedence among themselves in the order prescribed by the Secretary of Defense.

(d) The Chief Information Officer of the Department of Defense shall report directly to the Secretary of Defense in the performance of duties under this section.

(Added and amended Pub. L. 113–291, div. A, title IX, § 901(b)(1), (j)(1)(B), Dec. 19, 2014, 128 Stat. 3463, 3467; Pub. L. 114–328, div. A, title IX, § 902(a), Dec. 23, 2016, 130 Stat. 2343; Pub. L. 115–91, div. A, title IX, § 909(a)–(d), title X, § 1081(b)(1)(A), Dec. 12, 2017, 131 Stat. 1514, 1515, 1597; Pub. L. 115–232, div. A, title IX, § 903, Aug. 13, 2018, 132 Stat. 1922; Pub. L. 116–92, div. A, title IX, § 903(a)(1), title XVI, § 1662(b), Dec. 20, 2019, 133 Stat. 1555, 1772; Pub. L. 116–283, div. A, title X, § 1081(a)(9), Jan. 1, 2021, 134 Stat. 3871.)

Prior Provisions

A prior section 142 of this title was renumbered section 138d of this title and subsequently repealed.

Another prior section 142 of this title was contained in chapter 5 of this title, prior to amendment by Pub. L. 99–433. See note preceding section 151 of this title.

Amendments

2021—Subsecs. (c), (d). Pub. L. 116–283 redesignated subsec. (c) relating to the direct report of the Chief Information Officer to the Secretary of Defense as (d) and struck out former subsec. (d) which read as follows: ''The Chief Information Officer of the Department of Defense takes precedence in the Department of Defense with the officials serving in positions specified in section 131(b)(4) of this title. The officials serving in positions specified in such section and the Chief Information Officer take precedence among themselves in the order prescribed by the Secretary of Defense.''

2019—Subsec. (b)(1)(A) to (C). Pub. L. 116–92, § 903(a)(1), struck out ''systems and'' after ''business''.

Subsec. (b)(1)(G) to (I). Pub. L. 116–92, § 1662(b), redesignated subpars. (H) and (I) as (G) and (H), respectively, and struck out former subpar. (G) which read as follows: ''has the responsibilities for policy, oversight, guidance, and coordination for nuclear command and control systems;''.

2018—Subsec. (b)(1)(A). Pub. L. 115–232, § 903(1), inserted ''(other than with respect to business systems and management)'' after ''sections 3506(a)(2)''.

Subsec. (b)(1)(B). Pub. L. 115–232, § 903(2), substituted ''sections 11315 and 11319 of title 40 (other than with respect to business systems and management)'' for ''section 11315 of title 40''.

Subsec. (b)(1)(C). Pub. L. 115–232, § 903(3), substituted ''sections 2223(a) (other than with respect to business systems and management) and 2224'' for ''sections 2222, 2223(a), and 2224''.

2017—Subsec. (a). Pub. L. 115–91, § 909(a), inserted before period at end '', who shall be appointed by the President, by and with the advice and consent of the Senate, from among civilians who are qualified to serve as such officer''.

Subsec. (b)(1)(I). Pub. L. 115–91, § 909(b), substituted ''the information technology, networking, information assurance, cybersecurity, and cyber capability architectures'' for ''the networking and cyber defense architecture''.

Subsec. (b)(2) to (4). Pub. L. 115–91, § 909(c), added pars. (2) and (3) and redesignated former par. (2) as (4).

Subsec. (c). Pub. L. 115–91, § 1081(b)(1)(A), repealed Pub. L. 113–291, § 901(j)(1)(B). See 2014 Amendment note below.

Pub. L. 115–91, § 909(d), added subsec. (c), relating to the direct report of the Chief Information Officer to the Secretary of Defense.

Subsec. (d). Pub. L. 115–91, § 909(d), added subsec. (d).

2016—Subsec. (b)(1)(E) to (I). Pub. L. 114–328 added subpars. (E) to (I).

2014—Subsec. (c). Pub. L. 113–291, § 901(j)(1)(B), which directed striking out subsec. (c), was repealed by Pub. L. 115–91, § 1081(b)(1)(A).

Effective Date of 2017 Amendment

Pub. L. 115–91, div. A, title IX, § 909(g), Dec. 12, 2017, 131 Stat. 1516, provided that: ''The amendments made by this section [amending this section] shall take effect on January 1, 2019.''

Pub. L. 115–91, div. A, title X, § 1081(b), Dec. 12, 2017, 131 Stat. 1597, provided that the amendment made by section 1081(b)(1)(A) is effective as of Dec. 23, 2016.

EFFECTIVE DATE OF 2014 AMENDMENT

Pub. L. 113–291, div. A, title IX, § 901(j)(1), Dec. 19, 2014, 128 Stat. 3467, which provided that the amendment made by section 901(j)(1)(B) is effective on the effective date specified in former section 901(a)(1) of Pub. L. 113–291, which was Feb. 1, 2017, was repealed by Pub. L. 115–91, div. A, title X, § 1081(b)(1)(A), Dec. 12, 2017, 131 Stat. 1597.

CRYPTOGRAPHIC MODERNIZATION SCHEDULES

Pub. L. 116–283, div. A, title I, § 153, Jan. 1, 2021, 134 Stat. 3442, provided that:

''(a) CRYPTOGRAPHIC MODERNIZATION SCHEDULES REQUIRED.—Each of the Secretaries of the military departments and the heads of relevant Defense Agencies and Department of Defense Field Activities shall establish and maintain a cryptographic modernization schedule that specifies, for each pertinent weapon system, command and control system, or data link under the jurisdiction of such Secretary or head, including those that use commercial encryption technologies (as relevant), the following:

''(1) The last year of use for applicable cryptographic algorithms.

''(2) Anticipated key extension requests for systems where cryptographic modernization is assessed to be overly burdensome and expensive or to provide limited operational utility.

''(3) The funding and deployment schedule for modernized cryptographic algorithms, keys, and equipment over the future-years defense program submitted to Congress pursuant to section 221 of title 10, United States Code, in 2021 together with the budget of the President for fiscal year 2022.

''(b) REQUIREMENTS FOR CHIEF INFORMATION OFFICER.—The Chief Information Officer of the Department of Defense shall—

''(1) oversee the construction and implementation of the cryptographic modernization schedules required by subsection (a);

''(2) establish and maintain an integrated cryptographic modernization schedule for the entire Department of Defense, collating the cryptographic modernization schedules required under subsection (a); and

''(3) in coordination with the Director of the National Security Agency and the Joint Staff Director for Command, Control, Communications, and Computers/Cyber, use the budget certification, standard-setting, and policy-making authorities provided in section 142 of title 10, United States Code, to amend Armed Force and Defense Agency and Field Activity plans for key extension requests and cryptographic modernization funding and deployment that pose unacceptable risk to military operations.

''(c) ANNUAL NOTICES.—Not later than January 1, 2022, and not less frequently than once each year thereafter until January 1, 2026, the Chief Information Officer and the Joint Staff Director shall jointly submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] notification of all—

''(1) delays to or planned delays of Armed Force and Defense Agency and Field Activity funding and deployment of modernized cryptographic algorithms, keys, and equipment over the previous year; and

''(2) changes in plans or schedules surrounding key extension requests and waivers, including—

''(A) unscheduled or unanticipated key extension requests; and

''(B) unscheduled or unanticipated waivers and nonwaivers of scheduled or anticipated key extension requests.''

SERVICE OF INCUMBENT WITHOUT FURTHER APPOINTMENT

Pub. L. 115–91, div. A, title IX, § 909(f), Dec. 12, 2017, 131 Stat. 1516, provided that: ''The individual serving in the position of Chief Information Officer of the Department of Defense as of January 1, 2019, may continue to serve in such position commencing as of that date without further appointment pursuant to section 142 of title 10, United States Code, as amended by this section.''

§ 143. Office of the Secretary of Defense personnel: limitation

(a) PERMANENT LIMI TATION ON OSD PERSONNEL.—The number of OSD personnel may not exceed 4,300.

(b) OSD PERSONNEL DEFINED.—For purposes of this section, the term ''OSD personnel'' means military and civilian personnel of the Department of Defense who are assigned to, or employed in, functions in the Office of the Secretary of Defense (including Direct Support Activities of that Office and the Washington Headquarters Services of the Department of Defense).

(c) LIMITATION ON REASSIGNMENT OF FUNCTIONS.—In carrying out reductions in the number of personnel assigned to, or employed in, the Office of the Secretary of Defense in order to comply with this section, the Secretary of Defense may not reassign functions solely in order to evade the requirements contained in this section.

(Added Pub. L. 105–85, div. A, title IX, § 911(d)(1), Nov. 18, 1997, 111 Stat. 1859; amended Pub. L. 106–65, div. A, title IX, § 921(c), Oct. 5, 1999, 113 Stat. 723; Pub. L. 114–328, div. A, title IX, § 903(a), Dec. 23, 2016, 130 Stat. 2344; Pub. L. 116–92, div. A, title IX, § 901(a)(1), Dec. 20, 2019, 133 Stat. 1541.)

CODIFICATION

Section, as added by Pub. L. 105–85, consists of text of Pub. L. 104–201, div. A, title IX, § 903(a)–(f), Sept. 23, 1996, 110 Stat. 2617. Section 903 of Pub. L. 104–201, which was formerly set out as a note under section 131 of this title, was repealed by Pub. L. 105–85, div. A, title IX, § 911(d)(3), Nov. 18, 1997, 111 Stat. 1860.

AMENDMENTS

2019—Subsec. (a). Pub. L. 116–92, § 901(a)(1)(A), substituted ''4,300'' for ''3,767''.

Subsec. (b). Pub. L. 116–92, § 901(a)(1)(B), substituted ''military and civilian personnel'' for ''military, civilian, and detailed personnel''.

2016—Subsec. (b). Pub. L. 114–328 substituted '', civilian, and detailed personnel'' for ''and civilian personnel''.

1999—Subsec. (a). Pub. L. 106–65, § 921(c)(1), substituted ''The number'' for ''Effective October 1, 1999, the number'' and ''3,767'' for ''75 percent of the baseline number''.

Subsec. (b). Pub. L. 106–65, § 921(c)(2), (3), redesignated subsec. (d) as (b) and struck out heading and text of former subsec. (b). Text read as follows: ''The number of OSD personnel—

''(1) as of October 1, 1997, may not exceed 85 percent of the baseline number; and

''(2) as of October 1, 1998, may not exceed 80 percent of the baseline number.''

Subsec. (c). Pub. L. 106–65, § 921(c)(2), (3), redesignated subsec. (e) as (c) and struck out heading and text of former subsec. (c). Text read as follows: ''For purposes of this section, the term 'baseline number' means the number of OSD personnel as of October 1, 1994.''

Subsecs. (d), (e). Pub. L. 106–65, § 921(c)(3), redesignated subsecs. (d) and (e) as (b) and (c), respectively.

Subsec. (f). Pub. L. 106–65, § 921(c)(2), struck out heading and text of subsec. (f). Text read as follows: ''If the Secretary of Defense determines, and certifies to Congress, that the limitation in subsection (b) with respect

to any fiscal year would adversely affect United States national security, the Secretary may waive the limitation under that subsection with respect to that fiscal year. If the Secretary of Defense determines, and certifies to Congress, that the limitation in subsection (a) during fiscal year 1999 would adversely affect United States national security, the Secretary may waive the limitation under that subsection with respect to that fiscal year. The authority under this subsection may be used only once, with respect to a single fiscal year.''

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–65, div. A, title IX, § 921(c), Oct. 5, 1999, 113 Stat. 723, provided that the amendment made by section 921(c) is effective Oct. 1, 1999.

EXCEPTIONS AND ADJUSTMENTS TO LIMITATIONS ON PERSONNEL

Pub. L. 110–417, [div. A], title XI, § 1111, Oct. 14, 2008, 122 Stat. 4619, as amended by Pub. L. 111–84, div. A, title XI, § 1109(a), Oct. 28, 2009, 123 Stat. 2492; Pub. L. 111–383, div. A, title X, § 1075(e)(17), Jan. 7, 2011, 124 Stat. 4375; Pub. L. 115–232, div. A, title VIII, § 809(b)(1), Aug. 13, 2018, 132 Stat. 1840, provided that:

''(a) EXCEPTION TO LIMITATIONS ON PERSONNEL.—For fiscal year 2009 and fiscal years thereafter, the baseline personnel limitations in sections 143, 194, 7014, 8014, and 9014 of title 10, United States Code (as adjusted pursuant to subsection (b)), shall not apply to—

''(1) acquisition personnel hired pursuant to the expedited hiring authority provided in section 1705(h) [now 1705(g)] of title 10, United States Code, as amended by section 833 of this Act, or otherwise hired with funds in the Department of Defense Acquisition Workforce Development Fund established in accordance with section 1705(a) of such title; or

''(2) personnel hired pursuant to a shortage category designation by the Secretary of Defense or the Director of the Office of Personnel Management.

''(b) AUTHORITY TO ADJUST LIMITATIONS ON PERSONNEL.—For fiscal year 2009 and fiscal years thereafter, the Secretary of Defense or a Secretary of a military department may adjust the baseline personnel limitations in sections 143, 194, 3014, 5014 and 8014 of title 10, United States Code, to—

''(1) fill a gap in the civilian workforce of the Department of Defense identified by the Secretary of Defense in a strategic human capital plan submitted to Congress in accordance with the requirements of [former] section 115b of such title; or

''(2) accommodate increases in workload or modify the type of personnel required to accomplish work, for any of the following purposes:

''(A) Performance of inherently governmental functions.

''(B) Performance of work pursuant to section 2463 of title 10, United States Code.

''(C) Ability to maintain sufficient organic expertise and technical capability.

''(D) Performance of work that, while the position may not exercise an inherently governmental function, nevertheless should be performed only by officers or employees of the Federal Government or members of the Armed Forces because of the critical nature of the work.''

§ 144. Director of Small Business Programs

(a) DIRECTOR.—There is a Director of Small Business Programs in the Department of Defense. The Director is appointed by the Secretary of Defense.

(b) OFFICE OF SMALL BUSINESS PROGRAMS.—The Office of Small Business Programs of the Department of Defense is the office that is established within the Office of the Secretary of Defense under section 15(k) of the Small Business Act (15 U.S.C. 644(k)). The Director of Small Business Programs is the head of such office.

(c) DUTIES AND POWERS.—(1) The Director of Small Business Programs shall, subject to paragraph (2), perform such duties regarding small business programs of the Department of Defense, and shall exercise such powers regarding those programs, as the Secretary of Defense may prescribe.

(2) Section 15(k) of the Small Business Act (15 U.S.C. 644(k)), except for the designations of the Director and the Office, applies to the Director of Small Business Programs.

(Added Pub. L. 109–163, div. A, title IX, § 904(b)(1), Jan. 6, 2006, 119 Stat. 3400.)

CHANGE OF NAME

Pub. L. 109–163, div. A, title IX, § 904(a), Jan. 6, 2006, 119 Stat. 3399, provided that:

''(1) POSITIONS REDESIGNATED.—The following positions within the Department of Defense are redesignated as follows:

''(A) The Director of Small and Disadvantaged Business Utilization of the Department of Defense is redesignated as the Director of Small Business Programs of the Department of Defense.

''(B) The Director of Small and Disadvantaged Business Utilization of the Department of the Army is redesignated as the Director of Small Business Programs of the Department of the Army.

''(C) The Director of Small and Disadvantaged Business Utilization of the Department of the Navy is redesignated as the Director of Small Business Programs of the Department of the Navy.

''(D) The Director of Small and Disadvantaged Business Utilization of the Department of the Air Force is redesignated as the Director of Small Business Programs of the Department of the Air Force.

''(2) OFFICES REDESIGNATED.—The following offices within the Department of Defense are redesignated as follows:

''(A) The Office of Small and Disadvantaged Business Utilization of the Department of Defense is redesignated as the Office of Small Business Programs of the Department of Defense.

''(B) The Office of Small and Disadvantaged Business Utilization of the Department of the Army is redesignated as the Office of Small Business Programs of the Department of the Army.

''(C) The Office of Small and Disadvantaged Business Utilization of the Department of the Navy is redesignated as the Office of Small Business Programs of the Department of the Navy.

''(D) The Office of Small and Disadvantaged Business Utilization of the Department of the Air Force is redesignated as the Office of Small Business Programs of the Department of the Air Force.

''(3) REFERENCES.—Any reference in any law, regulation, document, paper, or other record of the United States to a position or office redesignated by paragraph (1) or (2) shall be deemed to be a reference to the position or office as so redesignated.''

ROLE OF THE DIRECTORS OF SMALL BUSINESS PROGRAMS IN ACQUISITION PROCESSES OF THE DEPARTMENT OF DEFENSE

Pub. L. 112–239, div. A, title XVI, § 1611, Jan. 2, 2013, 126 Stat. 2063, provided that:

''(a) GUIDANCE REQUIRED.—The Secretary of Defense shall develop and issue guidance to ensure that the head of each Office of Small Business Programs of the Department of Defense is a participant as early as practicable in the acquisition processes—

''(1) of the Department, in the case of the Director of Small Business Programs in the Department of Defense; and

''(2) of the military department concerned, in the case of the Director of Small Business Programs in the Department of the Army, in the Department of the Navy, and in the Department of the Air Force.

''(b) MATTERS TO BE INCLUDED.—Such guidance shall, at a minimum—

''(1) require the Director of Small Business Programs in the Department of Defense—

''(A) to provide advice to the Defense Acquisition Board; and

''(B) to provide advice to the Information Technology Acquisition Board; and

''(2) require coordination between the chiefs of staff of the Armed Forces and the service acquisition executives, as appropriate (or their designees), and the Director of Small Business Programs in each military department as early as practical in the relevant acquisition processes.''

§ 145. Principal Advisor on Countering Weapons of Mass Destruction

The Secretary of Defense may designate, from among the personnel of the Office of the Secretary of Defense, a Principal Advisor on Countering Weapons of Mass Destruction. Such Principal Advisor shall coordinate the activities of the Department of Defense relating to countering weapons of mass destruction. The individual designated to serve as such Principal Advisor shall be an individual who was appointed to the position held by the individual by and with the advice and consent of the Senate.

(Added Pub. L. 115–232, div. A, title X, § 1082(a)(1), Aug. 13, 2018, 132 Stat. 1987.)

§ 146. Office of Local Defense Community Cooperation

(a) IN GENERAL.—There is in the Office of the Secretary of Defense an office to be known as the Office of Local Defense Community Cooperation (in this section referred to as the ''Office'').

(b) DIRECTOR.—The Office shall be headed by the Director of the Office of Local Defense Community Cooperation, who shall be appointed by the Under Secretary of Defense for Acquisition and Sustainment from among civilian employees of the Federal Government or private individuals who have the following:

(1) Experience in the interagency in the Executive Branch.

(2) Experience in the administration and management of Federal grants programs.

(c) DUTIES.—The Office shall—

(1) serve as the office in the Department of Defense with primary responsibility for—

(A) providing assistance to States, counties, municipalities, regions, and other communities to foster cooperation with military installations to enhance the military mission, achieve facility and infrastructure savings and reduced operating costs, address encroachment and compatible land use issues, support military families, and increase military, civilian, and industrial readiness and resiliency; and

(B) providing adjustment and diversification assistance to State and local governments under section 2391(b) of this title to achieve the objectives described in subparagraph (A);

(2) coordinate the provision of such assistance with other organizations and elements of the Department;

(3) provide support to the Economic Adjustment Committee established under Executive Order No. 12788 (57 Fed. Reg. 2213; 10 U.S.C. 2391 note) or any successor to such Committee; and

(4) carry out such other activities as the Under Secretary of Defense for Acquisition and Sustainment considers appropriate.

(d) ANNUAL REPORT TO CONGRESS.—Not later than June 1 each year, the Director of the Office of Local Defense Community Cooperation shall submit to the congressional defense committees a report on the activities of the Office during the preceding year, including the assistance provided pursuant to subsection (c)(1) during such year.

(Added Pub. L. 116–283, div. A, title IX, § 905(a)(1), Jan. 1, 2021, 134 Stat. 3798.)

LIMITATION ON INVOLUNTARY SEPARATION OF PERSONNEL

Pub. L. 116–283, div. A, title IX, § 905(b), Jan. 1, 2021, 134 Stat. 3799, provided that: ''No personnel of the Office of Local Defense Community Cooperation under section 146 of title 10, United States Code (as added by subsection (a)), may be involuntarily separated from service with that Office during the one-year period beginning on the date of the enactment of this Act [Jan. 1, 2021], except for cause.''

ADMINISTRATION OF PROGRAMS

Pub. L. 116–283, div. A, title IX, § 905(c), Jan. 1, 2021, 134 Stat. 3799, provided that: ''Any program, project, or other activity administered by the Office of Economic Adjustment of the Department of Defense as of the date of the enactment of this Act [Jan. 1, 2021] shall be administered by the Office of Local Defense Community Cooperation under section 146 of title 10, United States Code (as so added), after that date.''

§ 147. Chief Diversity Officer

(a) CHIEF DIVERSITY OFFICER.—(1) There is a Chief Diversity Officer of the Department of Defense, who shall be appointed by the Secretary of Defense.

(2) The Chief Diversity Officer shall be appointed from among persons who have an extensive management or business background and experience with diversity and inclusion. A person may not be appointed as Chief Diversity Officer within three years after relief from active duty as a commissioned officer of a regular component of an armed force.

(3) The Chief Diversity Officer shall report directly to the Secretary of Defense in the performance of the duties of the Chief Diversity Officer under this section.

(b) DUTIES.—The Chief Diversity Officer—

(1) is responsible for providing advice on policy, oversight, guidance, and coordination for all matters of the Department of Defense related to diversity and inclusion;

(2) advises the Secretary of Defense, the Secretaries of the military departments, and the heads of all other elements of the Department with regard to matters of diversity and inclusion;

(3) shall establish and maintain a Department of Defense strategic plan that publicly states a diversity definition, vision, and goals for the Department;

(4) shall define a set of strategic metrics that are directly linked to key organizational priorities and goals, actionable, and actively used to implement the strategic plan under paragraph (3);

(5) shall advise in the establishment of training in diversity dynamics and training in practices for leading diverse groups effectively;

(6) shall advise in the establishment of a strategic plan for diverse participation by institutions of higher education (including historically black colleges and universities and minority-serving institutions), federally funded research and development centers, and individuals in defense-related research, development, test, and evaluation activities;

(7) shall advise in the establishment of a strategic plan for outreach to, and recruiting from, untapped locations and underrepresented demographic groups;

(8) shall coordinate with, and be supported by, the Office of People Analytics on studies, assessments, and related work relevant to diversity and inclusion; and

(9) shall perform such additional duties and exercise such powers as the Secretary of Defense may prescribe.

(Added Pub. L. 116–283, div. A, title IX, §913(a)(1), Jan. 1, 2021, 134 Stat. 3802.)

EFFECTIVE DATE

Pub. L. 116–283, div. A, title IX, §913(c), Jan. 1, 2021, 134 Stat. 3804, provided that: ''This section [enacting this section and provisions set out as a note below] and the amendments made by this section shall take effect on February 1, 2021.''

SENIOR ADVISORS FOR DIVERSITY AND INCLUSION FOR THE MILITARY DEPARTMENTS AND COAST GUARD

Pub. L. 116–283, div. A, title IX, §913(b), Jan. 1, 2021, 134 Stat. 3803, provided that:

''(1) APPOINTMENT REQUIRED.—Each Secretary of a military department shall appoint within such military department a Senior Advisor for Diversity and Inclusion for such military department (and for the Armed Force or Armed Forces under the jurisdiction of such Secretary). The Commandant of the Coast Guard shall appoint a Senior Advisor for Diversity and Inclusion for the Coast Guard.

''(2) QUALIFICATIONS AND LIMITATION.—Each Senior Advisor for Diversity and Inclusion shall be appointed from among persons who have an extensive management or business background and experience with diversity and inclusion. A person may not be appointed as Senior Advisor for Diversity and Inclusion within three years after relief from active duty as a commissioned officer of a regular component of an Armed Force.

''(3) REPORTING.—A Senior Advisor for Diversity and Inclusion shall report directly to the Secretary of the military department within which appointed. The Senior Advisor for Diversity and Inclusion for the Coast Guard shall report directly to the Commandant of the Coast Guard.

''(4) DUTIES.—A Senior Advisor for Diversity and Inclusion, with respect to the military department and Armed Force or Armed Forces concerned—

''(A) is responsible for providing advice, guidance, and coordination for all matters related to diversity and inclusion;

''(B) shall advise in the establishment of training in diversity dynamics and training in practices for leading diverse groups effectively;

''(C) shall advise and assist in evaluations and assessments of diversity;

''(D) shall develop a strategic diversity and inclusion plan, which plan shall be consistent with the strategic plan developed and maintained pursuant to subsection (b)(3) of section 147 of title 10, United States Code (as added by subsection (a) of this section);

''(E) shall develop strategic goals and measures of performance related to efforts to reflect the diverse population of the United States eligible to serve in the Armed Forces, which goals and measures of performance shall be consistent with the strategic metrics defined pursuant to subsection (b)(4) of such section 147; and

''(F) shall perform such additional duties and exercise such powers as the Secretary of the military department concerned or the Commandant of the Coast Guard, as applicable, may prescribe.''

CHAPTER 5—JOINT CHIEFS OF STAFF

Sec.	
151.	Joint Chiefs of Staff: composition; functions.
152.	Chairman: appointment; grade and rank.
153.	Chairman: functions.
154.	Vice Chairman.
155.	Joint Staff.
[155a.	Repealed.]
156.	Legal Counsel to the Chairman of the Joint Chiefs of Staff.

PRIOR PROVISIONS

A prior chapter 5 related to Joint Chiefs of Staff, prior to the general revision of this chapter by Pub. L. 99–433, title II, §201, Oct. 1, 1986, 100 Stat. 1004, consisted of sections 141 to 143 as follows:

Section 141, acts Aug. 10, 1956, ch. 1041, 70A Stat. 6; Aug. 6, 1958, Pub. L. 85–599, §7, 72 Stat. 519; Sept. 7, 1962, Pub. L. 87–651, title II, §204, 76 Stat. 519; Oct. 20, 1978, Pub. L. 95–485, title VIII, §807, 92 Stat. 1622, provided for composition and functions of Joint Chiefs. See section 151 of this title.

Section 142, acts Aug. 10, 1956, ch. 1041, 70A Stat. 7; Sept. 7, 1962, Pub. L. 87–649, §14c(1), 76 Stat. 501; Oct. 19, 1984, Pub. L. 98–525, title XIII, §1301(b), 98 Stat. 2611, provided for appointment and duties of Chairman of Joint Chiefs. See sections 152 and 153 of this title.

Section 143, acts Aug. 10, 1956, ch. 1041, 70A Stat. 7; Aug. 6, 1958, Pub. L. 85–599, §5(a), 72 Stat. 517; Oct. 19, 1984, Pub. L. 98–525, title XIII, §1301(c), 98 Stat. 2611, provided for a Joint Staff. See section 155 of this title.

AMENDMENTS

2016—Pub. L. 114–328, div. A, title V, §502(a)(2), Dec. 23, 2016, 130 Stat. 2102, struck out item 155a ''Assistants to the Chairman of the Joint Chiefs of Staff for National Guard matters and Reserve matters''.

2013—Pub. L. 112–239, div. A, title V, §511(b), Jan. 2, 2013, 126 Stat. 1718, added item 155a.

2008—Pub. L. 110–417, [div. A], title X, §1061(a)(2), Oct. 14, 2008, 122 Stat. 4612, inserted period at end of item 156.

Pub. L. 110–181, div. A, title V, §543(e)(2), Jan. 28, 2008, 122 Stat. 115, added item 156.

1987—Pub. L. 100–180, div. A, title XIII, §1314(b)(1)(B), Dec. 4, 1987, 101 Stat. 1175, substituted ''grade and rank'' for ''rank'' in item 152.

1986—Pub. L. 99–433, title II, §201, Oct. 1, 1986, 100 Stat. 1005, amended chapter 5 heading and analysis generally, substituting items 151–155 for items 141–143.

§151. Joint Chiefs of Staff: composition; functions

(a) COMPOSITION.—There are in the Department of Defense the Joint Chiefs of Staff, headed by the Chairman of the Joint Chiefs of Staff. The Joint Chiefs of Staff consist of the following:

(1) The Chairman.

(2) The Vice Chairman.

(3) The Chief of Staff of the Army.

(4) The Chief of Naval Operations.

(5) The Chief of Staff of the Air Force.

(6) The Commandant of the Marine Corps.

(7) The Chief of the National Guard Bureau.
(8) The Chief of Space Operations.

(b) FUNCTION AS MILITARY ADVISERS.—(1) The Chairman of the Joint Chiefs of Staff is the principal military adviser to the President, the National Security Council, the Homeland Security Council, and the Secretary of Defense.

(2) The other members of the Joint Chiefs of Staff are military advisers to the President, the National Security Council, the Homeland Security Council, and the Secretary of Defense as specified in subsection (d).

(c) CONSULTATION BY CHAIRMAN.—(1) In carrying out his functions, duties, and responsibilities, the Chairman shall, as necessary, consult with and seek the advice of—

(A) the other members of the Joint Chiefs of Staff; and

(B) the commanders of the unified and specified combatant commands.

(2) Subject to subsection (d), in presenting advice with respect to any matter to the President, the National Security Council, the Homeland Security Council, or the Secretary of Defense, the Chairman shall, as he considers appropriate, inform the President, the National Security Council, the Homeland Security Council, or the Secretary of Defense, as the case may be, of the range of military advice and opinion with respect to that matter.

(d) ADVICE AND OPINIONS OF MEMBERS OTHER THAN CHAIRMAN.—(1) After first informing the Secretary of Defense and the Chairman, the members of the Joint Chiefs of Staff, individually or collectively, in their capacity as military advisors, may provide advice to the President, the National Security Council, the Homeland Security Council, or the Secretary of Defense on a particular matter on the judgment of the military member.

(2) A member of the Joint Chiefs of Staff (other than the Chairman) may submit to the Chairman advice or an opinion in disagreement with, or advice or an opinion in addition to, the advice presented by the Chairman to the President, the National Security Council, the Homeland Security Council, or the Secretary of Defense. If a member submits such advice or opinion, the Chairman shall present the advice or opinion of such member at the same time he presents his own advice to the President, the National Security Council, the Homeland Security Council, or the Secretary of Defense, as the case may be.

(3) The Chairman shall establish procedures to ensure that the presentation of his own advice to the President, the National Security Council, the Homeland Security Council, or the Secretary of Defense is not unduly delayed by reason of the submission of the individual advice or opinion of another member of the Joint Chiefs of Staff.

[(e) Repealed. Pub. L. 114–328, div. A, title IX, §921(a)(2)(C), Dec. 23, 2016, 130 Stat. 2351.]

(f) RECOMMENDATIONS TO CONGRESS.—After first informing the Secretary of Defense, a member of the Joint Chiefs of Staff may make such recommendations to Congress relating to the Department of Defense as he considers appropriate.

(g) MEETINGS OF JCS.—(1) The Chairman shall convene regular meetings of the Joint Chiefs of Staff.

(2) Subject to the authority, direction, and control of the President and the Secretary of Defense, the Chairman shall—

(A) preside over the Joint Chiefs of Staff;

(B) provide agenda for the meetings of the Joint Chiefs of Staff (including, as the Chairman considers appropriate, any subject for the agenda recommended by any other member of the Joint Chiefs of Staff);

(C) assist the Joint Chiefs of Staff in carrying on their business as promptly as practicable; and

(D) determine when issues under consideration by the Joint Chiefs of Staff shall be decided.

(Added Pub. L. 99–433, title II, §201, Oct. 1, 1986, 100 Stat. 1005; amended Pub. L. 102–484, div. A, title IX, §911(a), Oct. 23, 1992, 106 Stat. 2473; Pub. L. 109–163, div. A, title IX, §908(a), Jan. 6, 2006, 119 Stat. 3403; Pub. L. 112–81, div. A, title V, §512(a), Dec. 31, 2011, 125 Stat. 1393; Pub. L. 114–328, div. A, title IX, §921(a), Dec. 23, 2016, 130 Stat. 2351; Pub. L. 116–92, div. A, title IX, §953(c), Dec. 20, 2019, 133 Stat. 1564.)

AMENDMENTS

2019—Subsec. (a)(8). Pub. L. 116–92 added par. (8).

2016—Subsec. (b)(2). Pub. L. 114–328, §921(a)(2)(A), substituted "subsection (d)" for "subsections (d) and (e)".

Subsec. (c)(1). Pub. L. 114–328, §921(a)(1), substituted "as necessary" for "as he considers appropriate" in introductory provisions.

Subsec. (d). Pub. L. 114–328, §921(a)(2)(B), added par. (1) and redesignated former pars. (1) and (2) as (2) and (3), respectively.

Subsec. (e). Pub. L. 114–328, §921(a)(2)(C), struck out subsec. (e) which required members of the Joint Chiefs of Staff to provide advice on request to the President, the National Security Council, the Homeland Security Council, or the Secretary of Defense.

2011—Subsec. (a)(7). Pub. L. 112–81 added par. (7).

2006—Subsecs. (b), (c)(2), (d), (e). Pub. L. 109–163 inserted "the Homeland Security Council," after "the National Security Council," wherever appearing.

1992—Subsec. (a)(2) to (6). Pub. L. 102–484 added par. (2) and redesignated former pars. (2) to (5) as (3) to (6), respectively.

EFFECTIVE DATE OF 2019 AMENDMENT

Pub. L. 116–92, div. A, title IX, §953(c), Dec. 20, 2019, 133 Stat. 1564, provided that the amendment made by section 953(c) is effective on the date that is one year after Dec. 20, 2019.

§152. Chairman: appointment; grade and rank

(a) APPOINTMENT; TERM OF OFFICE.—(1) There is a Chairman of the Joint Chiefs of Staff, appointed by the President, by and with the advice and consent of the Senate, from the officers of the regular components of the armed forces. The Chairman serves at the pleasure of the President for a term of four years, beginning on October 1 of an odd-numbered year. The limitation does not apply in time of war.

(2) In the event of the death, retirement, resignation, or reassignment of the officer serving as Chairman before the end of the term for which the officer was appointed, an officer appointed to fill the vacancy shall serve as Chairman only for the remainder of the original term,

but may be reappointed as provided in paragraph (1).

(3) The President may extend to eight years the combined period of service of an officer as Chairman and Vice Chairman if the President determines that such action is in the national interest. The limitation in this paragraph does not apply in time of war.

(b) REQUIREMENT FOR APPOINTMENT.—(1) The President may appoint an officer as Chairman of the Joint Chiefs of Staff only if the officer has served as—

(A) the Vice Chairman of the Joint Chiefs of Staff;

(B) the Chief of Staff of the Army, the Chief of Naval Operations, the Chief of Staff of the Air Force, the Commandant of the Marine Corps, or the Chief of Space Operations; or

(C) the commander of a unified or specified combatant command.

(2) The President may waive paragraph (1) in the case of an officer if the President determines such action is necessary in the national interest.

(c) GRADE AND RANK.—The Chairman, while so serving, holds the grade of general, in the case of the Navy, admiral, or, in the case of an officer of the Space Force, the equivalent grade, and outranks all other officers of the armed forces. However, he may not exercise military command over the Joint Chiefs of Staff or any of the armed forces.

(Added Pub. L. 99–433, title II, § 201, Oct. 1, 1986, 100 Stat. 1006; amended Pub. L. 100–180, div. A, title XIII, § 1314(b)(1)(A), Dec. 4, 1987, 101 Stat. 1175; Pub. L. 114–328, div. A, title IX, § 921(b)(1), Dec. 23, 2016, 130 Stat. 2351; Pub. L. 116–283, div. A, title IX, § 924(b)(7)(A), Jan. 1, 2021, 134 Stat. 3822.)

AMENDMENTS

2021—Subsec. (b)(1)(B). Pub. L. 116–283, § 924(b)(7)(A)(i), which directed substitution of ''the Commandant of the Marine Corps, or the Chief of Space Operations'' for ''or the Commandant of the Marine Corps'' in subpar. (C), was executed by making the substitution in subpar. (B), to reflect the probable intent of Congress.

Subsec. (c). Pub. L. 116–283, § 924(b)(7)(A)(ii), which directed substitution of '', in the case of the Navy, admiral, or, in the case of an officer of the Space Force, the equivalent grade,'' for ''or, in the case of the Navy, admiral'', was executed by making the substitution for ''or, in the case of an officer of the Navy, admiral'', to reflect the probable intent of Congress.

2016—Subsec. (a)(1). Pub. L. 114–328, § 921(b)(1)(A), substituted ''four years, beginning on October 1 of an odd-numbered year. The limitation does not apply in time of war.'' for ''two years, beginning on October 1 of odd-numbered years. Subject to paragraph (3), an officer serving as Chairman may be reappointed in the same manner for two additional terms. However, in time of war there is no limit on the number of reappointments.''

Subsec. (a)(3). Pub. L. 114–328, § 921(b)(1)(B), added par. (3) and struck out former par. (3) which read as follows: ''An officer may not serve as Chairman or Vice Chairman of the Joint Chiefs of Staff if the combined period of service of such officer in such positions exceeds six years. However, the President may extend to eight years the combined period of service an officer may serve in such positions if he determines such action is in the national interest. The limitations of this paragraph do not apply in time of war.''

1987—Pub. L. 100–180 substituted ''grade and rank'' for ''rank'' in section catchline.

EFFECTIVE DATE OF 2016 AMENDMENT

Pub. L. 114–328, div. A, title IX, § 921(b)(2), Dec. 23, 2016, 130 Stat. 2351, provided that: ''The amendments made by paragraph (1) [amending this section] shall take effect on January 1, 2019, and shall apply to individuals appointed as Chairman of the Joint Chiefs of Staff on or after that date.''

§ 153. Chairman: functions

(a) PLANNING; ADVICE; POLICY FORMULATION.—Subject to the authority, direction, and control of the President and the Secretary of Defense, the Chairman of the Joint Chiefs of Staff shall be responsible for the following:

(1) STRATEGIC DIRECTION.—Assisting the President and the Secretary in providing for the strategic direction of the armed forces.

(2) STRATEGIC AND CONTINGENCY PLANNING.—In matters relating to strategic and contingency planning—

(A) developing strategic frameworks and preparing strategic plans, as required, to guide the use and employment of military force and related activities across all geographic regions and military functions and domains, and to sustain military efforts over different durations of time, as necessary;

(B) advising the Secretary on the production of the national defense strategy required by section 113(g) of this title and the national security strategy required by section 108 of the National Security Act of 1947 (50 U.S.C. 3043);

(C) preparing military analysis, options, and plans, as the Chairman considers appropriate, to recommend to the President and the Secretary;

(D) providing for the preparation and review of contingency plans which conform to policy guidance from the President and the Secretary; and

(E) preparing joint logistic and mobility plans to support national defense strategies and recommending the assignment of responsibilities to the armed forces in accordance with such plans.

(3) GLOBAL MILITARY INTEGRATION.—In matters relating to global military strategic and operational integration—

(A) providing advice to the President and the Secretary on ongoing military operations; and

(B) advising the Secretary on the allocation and transfer of forces among geographic and functional combatant commands, as necessary, to address transregional, multi-domain, and multifunctional threats.

(4) COMPREHENSIVE JOINT READINESS.—In matters relating to comprehensive joint readiness—

(A) evaluating the overall preparedness of the joint force to perform the responsibilities of that force under national defense strategies and to respond to significant contingencies worldwide;

(B) assessing the risks to United States missions, strategies, and military personnel that stem from shortfalls in military readiness across the armed forces, and developing risk mitigation options;

(C) advising the Secretary on critical deficiencies and strengths in joint force capabilities (including manpower, logistics, and mobility support) identified during the preparation and review of national defense strategies and contingency plans and assessing the effect of such deficiencies and strengths on meeting national security objectives and policy and on strategic plans;

(D) advising the Secretary on the missions and functions that are likely to require contractor or other external support to meet national security objectives and policy and strategy, and the risks associated with such support; and

(E) establishing and maintaining, after consultation with the commanders of the unified and specified combatant commands, a uniform system of evaluating the preparedness of each such command, and groups of commands collectively, to carry out missions assigned to the command or commands.

(5) JOINT CAPABILITY DEVELOPMENT.—In matters relating to joint capability development—

(A) identifying new joint military capabilities based on advances in technology and concepts of operation needed to maintain the technological and operational superiority of the armed forces, and recommending investments and experiments in such capabilities to the Secretary;

(B) performing military net assessments of the joint capabilities of the armed forces of the United States and its allies in comparison with the capabilities of potential adversaries;

(C) advising the Secretary under section 163(b)(2) of this title on the priorities of the requirements identified by the commanders of the unified and specified combatant commands;

(D) advising the Secretary on the extent to which the program recommendations and budget proposals of the military departments and other components of the Department of Defense for a fiscal year conform with the priorities established in national defense strategies and with the priorities established for the requirements of the unified and specified combatant commands;

(E) advising the Secretary on new and alternative joint military capabilities, and alternative program recommendations and budget proposals, within projected resource levels and guidance provided by the Secretary, in order to achieve greater conformance with the priorities referred to in subparagraph (D);

(F) assessing joint military capabilities and identifying, approving, and prioritizing gaps in such capabilities to meet national defense strategies, pursuant to section 181 of this title; and

(G) recommending to the Secretary appropriate trade-offs among life-cycle cost, schedule, performance, and procurement quantity objectives in the acquisition of materiel and equipment to support the strategic and contingency plans required by this paragraph in the most effective and efficient manner.

(6) JOINT FORCE DEVELOPMENT ACTIVITIES.—In matters relating to joint force development activities—

(A) developing doctrine for the joint employment of the armed forces;

(B) formulating policies and technical standards, and executing actions, for the joint training of the armed forces;

(C) formulating policies for coordinating the military education of members of the armed forces;

(D) formulating policies for development and experimentation on both urgent and long-term concepts for joint force employment, including establishment of a process within the Joint Staff for analyzing and prioritizing gaps in capabilities that could potentially be addressed by joint concept development using existing or modified joint force capabilities;

(E) formulating policies for gathering, developing, and disseminating joint lessons learned for the armed forces; and

(F) advising the Secretary on development of joint command, control, communications, and cybercapability, including integration and interoperability of such capability, through requirements, integrated architectures, data standards, and assessments.

(7) OTHER MATTERS.—In other matters—

(A) recommending to the Secretary, in accordance with section 166 of this title, a budget proposal for activities of each unified and specified combatant command;

(B) providing for representation of the United States on the Military Staff Committee of the United Nations in accordance with the Charter of the United Nations; and

(C) performing such other duties as may be prescribed by law or by the President or the Secretary.

(b) NATIONAL MILITARY STRATEGY.—

(1) NATIONAL MILITARY STRATEGY.—(A) The Chairman shall determine each even-numbered year whether to prepare a new National Military Strategy in accordance with this paragraph or to update a strategy previously prepared in accordance with this paragraph. The Chairman shall provide such National Military Strategy or update to the Secretary of Defense in time for transmittal to Congress pursuant to paragraph (3), including in time for inclusion in the report of the Secretary of Defense, if any, under paragraph (4).

(B) Each National Military Strategy (or update) under this paragraph shall be based on a comprehensive review conducted by the Chairman in conjunction with the other members of the Joint Chiefs of Staff and the commanders of the unified and specified combatant commands. Each update shall address only those parts of the most recent National Military Strategy for which the Chairman determines, on the basis of the review, that a modification is needed.

(C) Each National Military Strategy (or update) submitted under this paragraph shall describe how the military will support the objectives of the United States as articulated in—

(i) the most recent National Security Strategy prescribed by the President pursu-

ant to section 108 of the National Security Act of 1947 (50 U.S.C. 3043);

(ii) the most recent annual report of the Secretary of Defense submitted to the President and Congress pursuant to section 113 of this title;

(iii) the most recent national defense strategy presented by the Secretary of Defense pursuant to section 113 of this title;

(iv) the most recent policy guidance provided by the Secretary of Defense pursuant to section 113(g) of this title; and

(v) any other national security or defense strategic guidance issued by the President or the Secretary of Defense.

(D) At a minimum, each National Military Strategy (or update) submitted under this paragraph shall—

(i) assess the strategic environment, threats, opportunities, and challenges that affect the national security of the United States;

(ii) assess military ends, ways, and means to support the objectives referred to in subparagraph (C);

(iii) provide the framework for the assessment by the Chairman of military risk, and for the development of risk mitigation options;

(iv) develop military options to address threats and opportunities;

(v) assess joint force capabilities, capacities, and resources; and

(vi) establish military guidance for the development of the joint force and the total force building on guidance by the President and the Secretary of Defense as referred to in subparagraph (C).

(2) RISK ASSESSMENT.—(A) The Chairman shall prepare each year an assessment of the risks associated with the most current National Military Strategy (or update) under paragraph (1). The risk assessment shall be known as the ''Risk Assessment of the Chairman of the Joint Chiefs of Staff''. The Chairman shall complete preparation of the Risk Assessment in time for transmittal to Congress pursuant to paragraph (3), including in time for inclusion in the report of the Secretary of Defense, if any, under paragraph (4).

(B) The Risk Assessment shall do the following:

(i) As the Chairman considers appropriate, update any changes to the strategic environment, threats, objectives, force planning and sizing constructs, assessments, and assumptions that informed the National Military Strategy (or update) required by this section.

(ii) Identify and define the military strategic risks to United States interests and military risks in executing the National Military Strategy (or update).

(iii) Identify and define levels of risk, including an identification of what constitutes ''significant'' risk in the judgment of the Chairman.

(iv)(I) Identify and assess risk in the National Military Strategy (or update) by category and level and the ways in which risk might manifest itself, including how risk is projected to increase, decrease, or remain stable over time; and

(II) for each category of risk, assess the extent to which current or future risk increases, decreases, or is stable as a result of budgetary priorities, tradeoffs, or fiscal constraints or limitations as currently estimated and applied in the current future-years defense program under section 221 of this title.

(v) Identify and assess risk associated with the assumptions or plans of the National Military Strategy (or update) about the contributions of external support, as appropriate.

(vi) Identify and assess the critical deficiencies and strengths in force capabilities (including manpower, logistics, intelligence, and mobility support) identified during the preparation and review of the contingency plans of each unified combatant command, and identify and assess the effect of such deficiencies and strengths for the National Military Strategy (or update).

(3) SUBMITTAL OF NATIONAL MILITARY STRATEGY AND RISK ASSESSMENT TO CONGRESS.—(A) Not later than February 15 of each even-numbered year, the Chairman shall, through the Secretary of Defense, submit to the Committees on Armed Services of the Senate and the House of Representatives the National Military Strategy or update, if any, prepared under paragraph (1) in such year.

(B) Not later than February 15 each year, the Chairman shall, through the Secretary of Defense, submit to the Committees on Armed Services of the Senate and the House of Representatives the Risk Assessment prepared under paragraph (2) in such year.

(C) The National Military Strategy (or update) and Risk Assessment submitted under this subsection shall be classified in form, but shall include an unclassified summary.

(4) SECRETARY OF DEFENSE REPORTS TO CONGRESS.—(A) In transmitting a National Military Strategy (or update) or Risk Assessment to Congress pursuant to paragraph (3), the Secretary of Defense shall include in the transmittal such comments of the Secretary thereon, if any, as the Secretary considers appropriate.

(B) If the Risk Assessment transmitted under paragraph (3) in a year includes an assessment that a risk or risks associated with the National Military Strategy (or update) are significant, or that critical deficiencies in force capabilities exist for a contingency plan described in paragraph (2)(B)(vi), the Secretary shall include in the transmittal of the Risk Assessment the plan of the Secretary for mitigating such risk or deficiency. A plan for mitigating risk of deficiency under this subparagraph shall—

(i) address the risk assumed in the National Military Strategy (or update) concerned, and the additional actions taken or planned to be taken to address such risk using only current technology and force structure capabilities; and

(ii) specify, for each risk addressed, the extent of, and a schedule for expected mitiga-

tion of, such risk, and an assessment of the potential for residual risk, if any, after mitigation.

(c) ANNUAL REPORT ON COMBATANT COMMAND REQUIREMENTS.—(1) Not later than 25 days after the date on which the budget of the President for a fiscal year is submitted to Congress pursuant to section 1105(a) of title 31, the Chairman shall submit to the congressional defense committees a report on the requirements of the combatant commands established under section 161 of this title.

(2) Each report under paragraph (1) shall contain the following:

(A) A consolidation of the integrated priority lists of requirements of the combatant commands.

(B) The Chairman's views on the consolidated lists.

(C) A description of the extent to which the most recent future-years defense program (under section 221 of this title) addresses the requirements on the consolidated lists.

(D) A description of the funding proposed in the President's budget for the next fiscal year, and for the subsequent fiscal years covered by the most recent future-years defense program, to address each deficiency in readiness identified during the joint readiness review conducted under section 117 of this title for the first quarter of the current fiscal year.

(Added Pub. L. 99–433, title II, § 201, Oct. 1, 1986, 100 Stat. 1007; amended Pub. L. 106–65, div. A, title X, § 1033, Oct. 5, 1999, 113 Stat. 751; Pub. L. 106–398, § 1 [[div. A], title IX, § 905], Oct. 30, 2000, 114 Stat. 1654, 1654A–226; Pub. L. 107–107, div. A, title IX, § 921(b), Dec. 28, 2001, 115 Stat. 1198; Pub. L. 107–314, div. A, title X, § 1062(a)(1), Dec. 2, 2002, 116 Stat. 2649; Pub. L. 108–136, div. A, title IX, § 903, title X, § 1043(b)(2), Nov. 24, 2003, 117 Stat. 1558, 1610; Pub. L. 112–81, div. A, title VIII, § 820(b), title IX, § 941, Dec. 31, 2011, 125 Stat. 1501, 1548; Pub. L. 112–239, div. A, title VIII, § 845(b), title IX, §§ 951(a), 952, Jan. 2, 2013, 126 Stat. 1848, 1891, 1892; Pub. L. 113–66, div. A, title IX, § 905, Dec. 26, 2013, 127 Stat. 817; Pub. L. 113–291, div. A, title X, § 1071(c)(2), (g)(3), Dec. 19, 2014, 128 Stat. 3508, 3511; Pub. L. 114–92, div. A, title IX, § 901, title X, § 1081(a)(3), Nov. 25, 2015, 129 Stat. 956, 1000; Pub. L. 114–328, div. A, title IX, §§ 921(c), 943, title X, § 1064(c), Dec. 23, 2016, 130 Stat. 2351, 2369, 2409; Pub. L. 115–91, div. A, title X, § 1081(a)(8), (d)(10), Dec. 12, 2017, 131 Stat. 1594, 1600; Pub. L. 115–232, div. A, title IX, §§ 912, 913, Aug. 13, 2018, 132 Stat. 1923.)

AMENDMENTS

2018—Subsec. (a)(6)(D). Pub. L. 115–232, § 912, amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: ''formulating policies for concept development and experimentation for the joint employment of the armed forces;''.

Subsec. (b)(1)(D)(iii). Pub. L. 115–232, § 913(1), substituted ''military risk'' for ''military strategic and operational risks''.

Subsec. (b)(2)(B)(ii). Pub. L. 115–232, § 913(2), substituted ''military strategic risks to United States interests and military risks in executing the National Military Strategy (or update)'' for ''military strategic and operational risks to United States interests and the military strategic and operational risks in executing the National Military Strategy (or update)''.

2017—Subsec. (a). Pub. L. 115–91, § 1081(d)(10), made technical amendment to directory language of Pub. L. 114–328, § 921(c). See 2016 Amendment note below.

Pub. L. 115–91, § 1081(a)(8), in introductory provisions, inserted colon after ''the following''.

2016—Subsec. (a). Pub. L. 114–328, § 921(c), as amended by Pub. L. 115–91, § 1081(d)(10), amended the text of subsec. (a) generally. Prior to amendment, subsec. (a) related to Chairman's functions of planning, advice, and policy formulation.

Subsec. (b)(1). Pub. L. 114–328, § 943(a), amended par. (1) generally. Prior to amendment, par. (1) consisted of subpars. (A) to (F) and related to national military strategy.

Subsec. (b)(2)(A). Pub. L. 114–328, § 943(b)(1), substituted ''in the report'' for ''of the report'' in third sentence.

Subsec. (b)(2)(B). Pub. L. 114–328, § 943(b)(2)(A), inserted ''(or update)'' after ''National Military Strategy'' wherever appearing.

Subsec. (b)(2)(B)(ii). Pub. L. 114–328, § 943(b)(2)(B), substituted ''military strategic and operational risks to United States interests and the military strategic and operational risks in executing the National Military Strategy (or update).'' for ''strategic risks to United States interests and the military risks in executing the missions of the National Military Strategy (or update).''

Subsec. (b)(2)(B)(iii). Pub. L. 114–328, § 943(b)(2)(C), struck out ''distinguishing between the concepts of probability and consequences'' after ''levels of risk''.

Subsec. (b)(2)(B)(iv)(II). Pub. L. 114–328, § 943(b)(2)(D), struck out ''most'' before ''current future-years defense program''.

Subsec. (b)(2)(B)(v). Pub. L. 114–328, § 943(b)(2)(E), substituted ''of external support, as appropriate.'' for ''or support of—

''(I) other departments and agencies of the United States Government (including their capabilities and availability);

''(II) alliances, allies, and other friendly nations (including their capabilities, availability, and interoperability); and

''(III) contractors.''

Subsec. (b)(3)(C). Pub. L. 114–328, § 943(c), added subpar. (C).

Subsec. (c)(1). Pub. L. 114–328, § 1064(c), substituted ''Not later than 25 days after the date on which the budget of the President for a fiscal year is submitted to Congress pursuant to section 1105(a) of title 31'' for ''At or about the time that the budget is submitted to Congress for a fiscal year under section 1105(a) of title 31''.

2015—Subsec. (a)(5). Pub. L. 114–92, § 1081(a)(3), substituted ''Joint Force Development Activities'' for ''Joint force development activities'' in heading.

Subsec. (a)(5)(F). Pub. L. 114–92, § 901, added subpar. (F).

2014—Subsec. (a)(5). Pub. L. 113–291, § 1071(g)(3), amended Pub. L. 113–66, § 905(b). See 2013 Amendment note below.

Subsec. (b)(1)(C)(i). Pub. L. 113–291, § 1071(c)(2), substituted ''(50 U.S.C. 3043)'' for ''(50 U.S.C. 404a)''.

2013—Subsec. (a)(3)(F). Pub. L. 112–239, § 845(b), added subpar. (F).

Subsec. (a)(4)(F), (G). Pub. L. 112–239, § 951(a), added subpars. (F) and (G) and struck out former subpar. (F) which read as follows: ''Assessing military requirements for defense acquisition programs.''

Subsec. (a)(5). Pub. L. 113–66, § 905(b), as amended by Pub. L. 113–291, § 1071(g)(3), which directed substitution of ''JOINT FORCE DEVELOPMENT ACTIVITIES'' for ''DOCTRINE, TRAINING, AND EDUCATION'' in heading, was executed by making the substitution for ''DOCTRINE, TRAINING, AND EDUCATION'' to reflect the probable intent of Congress.

Subsec. (a)(5)(B). Pub. L. 113–66, § 905(a)(1), inserted ''and technical standards, and executing actions,'' after ''policies''.

Subsec. (a)(5)(C). Pub. L. 113–66, § 905(a)(2), struck out ''and training'' after ''education''.

Subsec. (a)(5)(D), (E). Pub. L. 113–66, §905(a)(3), added subpars. (D) and (E).

Subsec. (b). Pub. L. 112–239, §952(a), amended subsec. (b) generally. Prior to amendment, subsec. (b) related to risks under National Military Strategy.

Subsec. (d). Pub. L. 112–239, §952(b), struck out subsec. (d) which related to biennial review of National Military Strategy.

2011—Subsec. (a)(3)(C) to (E). Pub. L. 112–81, §820(b)(1), added subpar. (C) and redesignated former subpars. (C) and (D) as (D) and (E), respectively.

Subsec. (a)(4)(E). Pub. L. 112–81, §820(b)(2), inserted ''and contractor support'' after ''area of manpower''.

Subsec. (b)(1). Pub. L. 112–81, §941(1), substituted ''assessment of—'' for ''assessment of the nature and magnitude of the strategic and military risks associated with executing the missions called for under the current National Military Strategy.'' and added subpars. (A) and (B).

Subsec. (b)(2). Pub. L. 112–81, §941(2), inserted ''or that critical deficiencies in force capabilities exist for a contingency plan,'' after ''National Military Strategy is significant,'' and ''or deficiency'' before period at end.

Subsec. (d)(2)(I). Pub. L. 112–81, §820(b)(3)(A), added subpar. (I).

Subsec. (d)(3)(B). Pub. L. 112–81, §820(b)(3)(B), substituted ''the levels of support from allies and other friendly nations, and the levels of contractor support'' for ''and the levels of support from allies and other friendly nations''.

2003—Subsec. (b)(1). Pub. L. 108–136, §903(b), substituted ''of each odd-numbered year'' for ''each year''.

Subsec. (c). Pub. L. 108–136, §1043(b)(2), in par. (1), substituted ''congressional defense committees'' for ''committees of Congress named in paragraph (2)'', designated the second sentence of par. (1) as par. (2), in par. (2), substituted ''Each report under paragraph (1)'' for ''The report'', and struck out former par. (2) which read as follows: ''The committees of Congress referred to in paragraph (1) are the Committees on Armed Services and the Committees on Appropriations of the Senate and House of Representatives.''

Subsec. (d). Pub. L. 108–136, §903(a), added subsec. (d).

2002—Pub. L. 107–314 inserted subsec. (a) heading and redesignated subsecs. (c) and (d) as (b) and (c), respectively.

2001—Subsec. (a). Pub. L. 107–107, §921(b)(1), struck out ''(a) PLANNING; ADVICE; POLICY FORMULATION.—'' before ''Subject to the authority''.

Subsec. (b). Pub. L. 107–107, §921(b)(2), struck out heading and text of subsec. (b) which read as follows:

''(b) REPORT ON ASSIGNMENT OF ROLES AND MISSIONS.—(1) Not less than once every three years, or upon the request of the President or the Secretary of Defense, the Chairman shall submit to the Secretary of Defense a report containing such recommendations for changes in the assignment of functions (or roles and missions) to the armed forces as the Chairman considers necessary to achieve maximum effectiveness of the armed forces. In preparing each such report, the Chairman shall consider (among other matters) the following:

''(A) Changes in the nature of the threats faced by the United States.

''(B) Unnecessary duplication of effort among the armed forces.

''(C) Changes in technology that can be applied effectively to warfare.

''(2) The Chairman shall include in each such report recommendations for such changes in policies, directives, regulations, and legislation as may be necessary to achieve the changes in the assignment of functions recommended by the Chairman.''

2000—Subsec. (d)(1). Pub. L. 106–398, §1 [[div. A], title IX, §905(b)], substituted ''At or about the time that the budget is submitted to Congress for a fiscal year under section 1105(a) of title 31,'' for ''Not later than August 15 of each year,'' in introductory provisions.

Subsec. (d)(1)(C), (D). Pub. L. 106–398, §1 [[div. A], title IX, §905(a)], added subpars. (C) and (D).

1999—Subsecs. (c), (d). Pub. L. 106–65 added subsecs. (c) and (d).

EFFECTIVE DATE OF 2017 AMENDMENT

Pub. L. 115–91, div. A, title X, §1081(d), Dec. 12, 2017, 131 Stat. 1599, provided that the amendment made by section 1081(d)(10) is effective as of Dec. 23, 2016, and as if included in Pub. L. 114–328 as enacted.

EFFECTIVE DATE OF 2014 AMENDMENT

Pub. L. 113–291, div. A, title X, §1071(g), Dec. 19, 2014, 128 Stat. 3511, provided that the amendment made by section 1071(g)(3) is effective as of Dec. 26, 2013, and as if included in Pub. L. 113–66 as enacted.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective Dec. 31, 2021, of provisions in subsec. (c) of this section requiring submittal of annual report to Congress, see section 1061 of Pub. L. 114–328, set out as a note under section 111 of this title.

INCLUSION OF ASSESSMENT OF JOINT MILITARY TRAINING AND FORCE ALLOCATIONS IN QUADRENNIAL DEFENSE REVIEW AND NATIONAL MILITARY STRATEGY

Pub. L. 112–81, div. A, title III, §348, Dec. 31, 2011, 125 Stat. 1375, provided that: ''The assessments of the National Military Strategy conducted by the Chairman of the Joint Chiefs of Staff under section 153(b) of this title [sic; probably means Title 10, Armed Forces], and the quadrennial roles and missions review pursuant to [former] section 118b of this title [sic], shall include an assessment of joint military training and force allocations to determine—

''(1) the compliance of the military departments with the joint training, doctrine, and resource allocation recommendations promulgated by the Joint Chiefs of Staff; and

''(2) the effectiveness of the Joint Staff in carrying out the missions of planning and experimentation formerly accomplished by Joint Forces Command.''

COMMON MEASUREMENT OF OPERATIONS TEMPO AND PERSONNEL TEMPO

Pub. L. 105–85, div. A, title III, §326, Nov. 18, 1997, 111 Stat. 1679, provided that:

''(a) MEANS FOR MEASUREMENT.—The Chairman of the Joint Chiefs of Staff shall, to the maximum extent practicable, develop (1) a common means of measuring the operations tempo (OPTEMPO) of each of the Armed Forces, and (2) a common means of measuring the personnel tempo (PERSTEMPO) of each of the Armed Forces. The Chairman shall consult with the other members of the Joint Chiefs of Staff in developing those common means of measurement.

''(b) PERSTEMPO MEASUREMENT.—The measurement of personnel tempo developed by the Chairman shall include a means of identifying the rate of deployment for individual members of the Armed Forces in addition to the rate of deployment for units.''

ANNUAL ASSESSMENT OF FORCE READINESS

Pub. L. 103–160, div. A, title III, §376, Nov. 30, 1993, 107 Stat. 1637, provided for an annual assessment of readiness and capability of the Armed Forces by the Chairman of the Joint Chiefs of Staff to be submitted to Congress not later than March 1 of each of 1994, 1995, and 1996 and for interim assessments between annual submissions in the event of a significant change in readiness or capability of the Armed Forces.

REPORT OF CHAIRMAN OF JOINT CHIEFS OF STAFF ON ROLES AND MISSIONS OF ARMED FORCES

Pub. L. 102–484, div. A, title IX, §901, Oct. 23, 1992, 106 Stat. 2469, provided for the Secretary of Defense to transmit to Congress a copy of the first report relating to the roles and missions of the Armed Forces that was submitted by the Chairman of the Joint Chiefs of Staff under subsec. (b) of this section after Jan. 1, 1992, and

directed the Chairman to include in the report comments and recommendations.

TRANSITION PROVISIONS

Pub. L. 99–433, title II, § 204(a), (b), Oct. 1, 1986, 100 Stat. 1011, provided dates for establishment of the uniform system of evaluating the preparedness of each unified and specified combatant command and for submission of the first report.

§ 154. Vice Chairman

(a) APPOINTMENT.—(1) There is a Vice Chairman of the Joint Chiefs of Staff, appointed by the President, by and with the advice and consent of the Senate, from the officers of the regular components of the armed forces.

(2) The Chairman and Vice Chairman may not be members of the same armed force. However, the President may waive the restriction in the preceding sentence for a limited period of time in order to provide for the orderly transition of officers appointed to serve in the positions of Chairman and Vice Chairman.

(3) The Vice Chairman serves at the pleasure of the President for a single term of four years, beginning on October 1 of an odd-numbered year, except that the term may not begin in the same year as the term of a Chairman. In time of war, there is no limit on the number of reappointments.

(4)(A) The Vice Chairman shall not be eligible for promotion to the position of Chairman or any other position in the armed forces.

(B) The President may waive subparagraph (A) if the President determines such action is necessary in the national interest.

(b) REQUIREMENT FOR APPOINTMENT.—(1) The President may appoint an officer as Vice Chairman of the Joint Chiefs of Staff only if the officer—

(A) has the joint specialty under section 661 of this title; and

(B) has completed a full tour of duty in a joint duty assignment (as defined in section 664(f)[1] of this title) as a general or flag officer.

(2) The President may waive paragraph (1) in the case of an officer if the President determines such action is necessary in the national interest.

(c) DUTIES.—The Vice Chairman performs the duties prescribed for him as a member of the Joint Chiefs of Staff and such other duties as may be prescribed by the Chairman with the approval of the Secretary of Defense.

(d) FUNCTION AS ACTING CHAIRMAN.—When there is a vacancy in the office of Chairman or in the absence or disability of the Chairman, the Vice Chairman acts as Chairman and performs the duties of the Chairman until a successor is appointed or the absence or disability ceases.

(e) SUCCESSION AFTER CHAIRMAN AND VICE CHAIRMAN.—When there is a vacancy in the offices of both Chairman and Vice Chairman or in the absence or disability of both the Chairman and the Vice Chairman, or when there is a vacancy in one such office and in the absence or disability of the officer holding the other, the President shall designate a member of the Joint Chiefs of Staff to act as and perform the duties of the Chairman until a successor to the Chairman or Vice Chairman is appointed or the absence or disability of the Chairman or Vice Chairman ceases.

(f) GRADE AND RANK.—The Vice Chairman, while so serving, holds the grade of general or, in the case of an officer of the Navy, admiral and outranks all other officers of the armed forces except the Chairman. The Vice Chairman may not exercise military command over the Joint Chiefs of Staff or any of the armed forces.

(Added Pub. L. 99–433, title II, § 201, Oct. 1, 1986, 100 Stat. 1008; amended Pub. L. 100–456, div. A, title V, § 519(a)(1), Sept. 29, 1988, 102 Stat. 1972; Pub. L. 102–484, div. A, title IX, § 911(b)(1), Oct. 23, 1992, 106 Stat. 2473; Pub. L. 114–328, div. A, title IX, § 921(d)(1), (2), Dec. 23, 2016, 130 Stat. 2354.)

REFERENCES IN TEXT

Section 664(f) of this title, referred to in subsec. (b)(1)(B), was redesignated as section 664(d) of this title by Pub. L. 114–328, div. A, title V, § 510(g)(1), Dec. 23, 2016, 130 Stat. 2111.

AMENDMENTS

2016—Subsec. (a)(3). Pub. L. 114–328, § 921(d)(1), substituted ''for a single term of four years, beginning on October 1 of an odd-numbered year, except that the term may not begin in the same year as the term of a Chairman. In time of war, there is no limit on the number of reappointments.'' for ''for a term of two years and may be reappointed in the same manner for two additional terms. However, in time of war there is no limit on the number of reappointments.''

Subsec. (a)(4). Pub. L. 114–328, § 921(d)(2), added par. (4).

1992—Subsec. (c). Pub. L. 102–484, § 911(b)(1)(A), substituted ''the duties prescribed for him as a member of the Joint Chiefs of Staff and such other'' for ''such''.

Subsecs. (f), (g). Pub. L. 102–484, § 911(b)(1)(B), (C), redesignated subsec. (g) as (f) and struck out former subsec. (f) which read as follows: ''PARTICIPATION IN JCS MEETINGS.—The Vice Chairman may participate in all meetings of the Joint Chiefs of Staff, but may not vote on a matter before the Joint Chiefs of Staff except when acting as Chairman.''

1988—Subsec. (b)(1)(B). Pub. L. 100–456 substituted ''completed a full tour of duty in a joint duty assignment (as defined in section 664(f) of this title)'' for ''served in at least one joint duty assignment (as defined under section 668(b) of this title)''.

EFFECTIVE DATE OF 2016 AMENDMENT

Pub. L. 114–328, div. A, title IX, § 921(d)(3), Dec. 23, 2016, 130 Stat. 2354, provided that: ''The amendments made by this subsection [amending this section] shall take effect on January 1, 2021, and shall apply to individuals appointed as Vice Chairman of the Joint Chiefs of Staff on or after that date.''

EXTENSION OF TERM OF OFFICE OF VICE CHAIRMAN OF JOINT CHIEFS OF STAFF

Pub. L. 100–526, title I, § 107, Oct. 24, 1988, 102 Stat. 2625, authorized President to extend until June 1, 1989, term of office of officer serving as Vice Chairman of Joint Chiefs of Staff for term which began on Feb. 6, 1987.

WAIVER OF QUALIFICATIONS FOR APPOINTMENT AS VICE CHAIRMAN OF JOINT CHIEFS OF STAFF

Pub. L. 99–433, title II, § 204(c), Oct. 1, 1986, 100 Stat. 1011, authorized President, until Oct. 1, 1990, to waive certain requirements otherwise applicable for appointment of an officer as Vice Chairman of Joint Chiefs of Staff.

[1] See References in Text note below.

§155. Joint Staff

(a) APPOINTMENT OF OFFICERS TO JOINT STAFF.—(1) There is a Joint Staff under the Chairman of the Joint Chiefs of Staff. The Joint Staff assists the Chairman and, subject to the authority, direction, and control of the Chairman, the other members of the Joint Chiefs of Staff in carrying out their responsibilities.

(2) Officers of the armed forces (other than the Coast Guard) assigned to serve on the Joint Staff shall be selected by the Chairman in approximately equal numbers from—

(A) the Army;

(B) the Navy and the Marine Corps; and

(C) the Air Force and the Space Force.

(3) Selection of officers of an armed force to serve on the Joint Staff shall be made by the Chairman from a list of officers submitted by the Secretary of the military department having jurisdiction over that armed force. Each officer whose name is submitted shall be among those officers considered to be the most outstanding officers of that armed force. The Chairman may specify the number of officers to be included on any such list.

(b) DIRECTOR.—The Chairman of the Joint Chiefs of Staff, after consultation with the other members of the Joint Chiefs of Staff and with the approval of the Secretary of Defense, may select an officer to serve as Director of the Joint Staff.

(c) MANAGEMENT OF JOINT STAFF.—The Chairman of the Joint Chiefs of Staff manages the Joint Staff and the Director of the Joint Staff. The Joint Staff shall perform such duties as the Chairman prescribes and shall perform such duties under such procedures as the Chairman prescribes.

(d) OPERATION OF JOINT STAFF.—The Secretary of Defense shall ensure that the Joint Staff is independently organized and operated so that the Joint Staff supports the Chairman of the Joint Chiefs of Staff in meeting the congressional purpose set forth in the last clause of section 2 of the National Security Act of 1947 (50 U.S.C. 3002) to provide—

(1) for the unified strategic direction of the combatant forces;

(2) for their operation under unified command; and

(3) for their integration into an efficient team of land, naval, and air forces.

(e) PROHIBITION OF FUNCTION AS ARMED FORCES GENERAL STAFF.—The Joint Staff shall not operate or be organized as an overall Armed Forces General Staff and shall have no executive authority. The Joint Staff may be organized and may operate along conventional staff lines.

(f) TOUR OF DUTY OF JOINT STAFF OFFICERS.—(1) An officer who is assigned or detailed to permanent duty on the Joint Staff may not serve for a tour of duty of more than four years. However, such a tour of duty may be extended with the approval of the Secretary of Defense.

(2) In accordance with procedures established by the Secretary of Defense, the Chairman of the Joint Chiefs of Staff may suspend from duty and recommend the reassignment of any officer assigned to the Joint Staff. Upon receipt of such a recommendation, the Secretary concerned shall promptly reassign the officer.

(3) An officer completing a tour of duty with the Joint Staff may not be assigned or detailed to permanent duty on the Joint Staff within two years after relief from that duty except with the approval of the Secretary.

(4) Paragraphs (1) and (3) do not apply—

(A) in time of war; or

(B) during a national emergency declared by the President or Congress.

(g) COMPOSITION OF JOINT STAFF.—(1) The Joint Staff is composed of all members of the armed forces and civilian employees assigned or detailed to permanent duty in the executive part of the Department of Defense to perform the functions and duties prescribed under subsections (a) and (c).

(2) The Joint Staff does not include members of the armed forces or civilian employees assigned or detailed to permanent duty in a military department.

(h) PERSONNEL LIMITATIONS.—(1) The total number of members of the armed forces and civilian employees assigned or detailed to permanent duty for the Joint Staff may not exceed 2,250.

(2) Not more than 1,500 members of the armed forces on the active-duty list may be assigned or detailed to permanent duty for the Joint Staff.

(3) The limitations in paragraphs (1) and (2) do not apply in time of war.

(4) Each limitation in paragraphs (1) and (2) may be exceeded by a number equal to 15 percent of such limitation in time of national emergency.

(Added Pub. L. 99–433, title II, §201, Oct. 1, 1986, 100 Stat. 1009; amended Pub. L. 100–180, div. A, title XIII, §1314(b)(2), Dec. 4, 1987, 101 Stat. 1175; Pub. L. 101–510, div. A, title IX, §902, Nov. 5, 1990, 104 Stat. 1620; Pub. L. 102–484, div. A, title IX, §911(b)(2), Oct. 23, 1992, 106 Stat. 2473; Pub. L. 103–35, title II, §202(a)(8), May 31, 1993, 107 Stat. 101; Pub. L. 113–291, div. A, title X, §1071(c)(1), Dec. 19, 2014, 128 Stat. 3508; Pub. L. 114–328, div. A, title IX, §903(b)(1), Dec. 23, 2016, 130 Stat. 2344; Pub. L. 116–92, div. A, title IX, §901(a)(2)(A), Dec. 20, 2019, 133 Stat. 1541; Pub. L. 116–283, div. A, title IX, §924(b)(7)(B), Jan. 1, 2021, 134 Stat. 3822.)

AMENDMENTS

2021—Subsec. (a)(2)(C). Pub. L. 116–283 inserted ''and the Space Force'' after ''the Air Force''.

2019—Subsec. (h)(1). Pub. L. 116–92 substituted ''2,250'' for ''2,069''.

2016—Subsec. (h). Pub. L. 114–328 added subsec. (h).

2014—Subsec. (d). Pub. L. 113–291 substituted ''(50 U.S.C. 3002)'' for ''(50 U.S.C. 401)'' in introductory provisions.

1993—Subsec. (a)(1). Pub. L. 103–35 made technical amendment to directory language of Pub. L. 102–484. See 1992 Amendment note below.

1992—Subsec. (a)(1). Pub. L. 102–484, as amended by Pub. L. 103–35, struck out ''and the Vice Chairman'' before ''in carrying out''.

1990—Subsecs. (g), (h). Pub. L. 101–510 redesignated subsec. (h) as (g) and struck out former subsec. (g) which read as follows: ''LIMITATION ON SIZE OF JOINT STAFF.—(1) Effective on October 1, 1988, the total number of members of the armed forces and civilian personnel assigned or detailed to permanent duty on the Joint Staff may not exceed 1,627.

''(2) Paragraph (1) does not apply—

''(A) in time of war; or

''(B) during a national emergency declared by the President or Congress.''

1987—Subsec. (f)(4)(B). Pub. L. 100–180, §1314(b)(2)(A), inserted ''or Congress'' after ''by the President''.

Subsec. (g)(2)(B). Pub. L. 100–180, §1314(b)(2)(B), inserted ''the President or'' after ''declared by''.

EFFECTIVE DATE OF 2019 AMENDMENT

Pub. L. 116–92, div. A, title IX, §901(a)(2)(B), Dec. 20, 2019, 133 Stat. 1541, provided that: ''The amendment made by subparagraph (A) [amending this section] shall take effect on December 31, 2019, immediately after the coming into effect of the amendment made by section 903(b) of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114–328; 130 Stat. 2344) [amending this section], to which such amendments relate[.]''

EFFECTIVE DATE OF 2016 AMENDMENT

Pub. L. 114–328, div. A, title IX, §903(b)(2), Dec. 23, 2016, 130 Stat. 2344, provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect on December 31, 2019.''

EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103–35, title II, §202(b), May 31, 1993, 107 Stat. 102, provided that: ''The amendments made by this section [amending this section, sections 1079, 1086a, 1174a, 1463, 2323, 2347, 2391, and 2410d of this title, and sections 5013 and 5113 of former Title 36, Patriotic Societies and Observances, and amending provisions set out as notes under sections 664, 2350a, 2431, 2501, 2505, 10105, and 12681 of this title and section 5611 of Title 15, Commerce and Trade] shall apply as if included in the enactment of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102–484).''

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

ESTABLISHMENT OF CHAIRMAN'S CONTROLLED ACTIVITY WITHIN JOINT STAFF FOR INTELLIGENCE, SURVEILLANCE, AND RECONNAISSANCE

Pub. L. 115–91, div. A, title XVI, §1627, Dec. 12, 2017, 131 Stat. 1734, provided that:

''(a) CHAIRMAN'S CONTROLLED ACTIVITY.—The Chairman of the Joint Chiefs of Staff shall—

''(1) undertake the roles, missions, and responsibilities of, and preserve an equal or greater number of personnel billets than the amount of such billets previously prescribed for, the Joint Functional Component Command for Intelligence, Surveillance, and Reconnaissance of the United States Strategic Command; and

''(2) not later than 30 days after the date of the enactment of this Act [Dec. 12, 2017], establish an organization within the Joint Staff—

''(A) that is designated as the Joint Staff Intelligence, Surveillance, and Reconnaissance Directorate and Supporting Chairman's Controlled Activity;

''(B) for which the Chairman of the Joint Chiefs of Staff shall serve as the joint functional manager; and

''(C) that shall synchronize cross-combatant command intelligence, surveillance, and reconnaissance plans and develop strategies integrating all intelligence, surveillance, and reconnaissance capabilities provided by joint services, the National Reconnaissance Office, combat support intelligence agencies of the Department of Defense, and allies, to satisfy the intelligence needs of the combatant commands for the Department of Defense.

''(b) LEAD AGENT.—The Secretary of Defense shall designate the Secretary of the Air Force as the lead agent and sponsor for funding for the organization established under subsection (a)(2).

''(c) DATA COLLECTION AND ANALYSIS TO SUPPORT ISR ALLOCATION AND SYNCHRONIZATION PROCESSES.—In coordination with the Director of Cost Analysis and Program Evaluation, the Chairman of the Joint Chiefs of Staff shall issue guidance to the commanders of the geographical combatant commands that requires the commanders to collect sufficient and relevant data regarding the effectiveness of intelligence, surveillance, and reconnaissance measures in a manner that will—

''(1) enable the standardized, objective evaluation and analysis of that data with respect to the use and effectiveness of the intelligence, surveillance, and reconnaissance capabilities provided to the commanders; and

''(2) support recommendations made by the organization established under subsection (a)(2) to the Secretary of Defense regarding the allocation of intelligence, surveillance, and reconnaissance resources of the Department of Defense.''

INCREASED FLEXIBILITY IN USE OF FUNDS FOR JOINT STAFF EXERCISES

Pub. L. 109–364, div. A, title X, §1052, Oct. 17, 2006, 120 Stat. 2396, provided that:

''(a) IN GENERAL.—Amounts available to the Chairman of the Joint Chiefs of Staff for joint staff exercises may be available for any expenses as follows:

''(1) Expenses of the Armed Forces in connection with such exercises, including expense relating to self-deploying watercraft under the jurisdiction of a military department.

''(2) Expenses relating to the costs of port support activities in connection with such exercises, including transportation and port handling.

''(3) Expenses relating to the breakout and operation of prepositioned watercraft and lighterage for joint logistics and over the shore exercises in connection with such exercises.

''(b) SUPPLEMENT NOT SUPPLANT.—Any amounts made available by the Chairman of the Joint Chiefs of Staff under subsection (a) for expenses covered by that subsection are in addition to any other amounts available under law for such expenses.''

ASSISTANTS TO CHAIRMAN OF THE JOINT CHIEFS OF STAFF FOR NATIONAL GUARD MATTERS AND FOR RESERVE MATTERS

Pub. L. 105–85, div. A, title IX, §901, Nov. 18, 1997, 111 Stat. 1853, as amended by Pub. L. 109–163, div. A, title V, §515(h), Jan. 6, 2006, 119 Stat. 3237, which established the positions of Assistant to the Chairman of the Joint Chiefs of Staff for National Guard Matters and Assistant to the Chairman of the Joint Chiefs of Staff for Reserve Matters within the Joint Staff, was repealed and restated as former section 155a of this title by Pub. L. 112–239, §511(a), (c), Jan. 2, 2013, 126 Stat. 1717, 1718.

[§ 155a. Repealed. Pub. L. 114–328, div. A, title V, § 502(a)(1), Dec. 23, 2016, 130 Stat. 2102]

Section, added Pub. L. 112–239, div. A, title V, §511(a), Jan. 2, 2013, 126 Stat. 1717, related to Assistants to the Chairman of the Joint Chiefs of Staff for National Guard matters and Reserve matters.

PRIOR PROVISIONS

Provisions similar to those formerly contained in this section were contained in Pub. L. 105–85, div. A, title IX, §901, Nov. 18, 1997, 111 Stat. 1853, which was set out as a note under section 155 of this title, prior to repeal by Pub. L. 112–239, §511(c).

RETENTION OF GRADE OF INCUMBENTS IN POSITIONS ON EFFECTIVE DATE

Pub. L. 114–328, div. A, title V, §502(tt), as added by Pub. L. 115–91, div. A, title V, §506(a)(1), Dec. 12, 2017,

131 Stat. 1374, provided that: ''The grade of service of an officer serving as of the date of the enactment of this Act [Dec. 23, 2016, see below] in a position whose statutory grade is affected by an amendment made by this section [see Tables for classification] may not be reduced after that date by reason of such amendment as long as the officer remains in continuous service in such position after that date.''

[Pub. L. 115–91, div. A, title V, § 506(a)(2), Dec. 12, 2017, 131 Stat. 1374, provided that: ''The amendment made by paragraph (1) [enacting section 502(tt) of Pub. L. 114–328, set out above] shall take effect as of December 23, 2016, and be treated as if included in the enactment of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114–328).'']

§ 156. Legal Counsel to the Chairman of the Joint Chiefs of Staff

(a) IN GENERAL.—There is a Legal Counsel to the Chairman of the Joint Chiefs of Staff.

(b) SELECTION FOR APPOINTMENT.—Under regulations prescribed by the Secretary of Defense, the officer selected for appointment to serve as Legal Counsel to the Chairman of the Joint Chiefs of Staff shall be recommended by a board of officers convened by the Secretary of Defense that, insofar as practicable, is subject to the procedures applicable to selection boards convened under chapter 36 of this title.

(c) DUTIES.—(1) The Legal Counsel of the Chairman of the Joint Chiefs of Staff shall perform such legal duties in support of the responsibilities of the Chairman of the Joint Chiefs of Staff as the Chairman may prescribe.

(2) No officer or employee of the Department of Defense may interfere with the ability of the Legal Counsel to give independent legal advice to the Chairman of the Joint Chiefs of Staff and to the Joint Chiefs of Staff.

(Added Pub. L. 110–181, div. A, title V, § 543(e)(1), Jan. 28, 2008, 122 Stat. 115; amended Pub. L. 110–417, [div. A], title V, § 591, Oct. 14, 2008, 122 Stat. 4474; Pub. L. 111–84, div. A, title V, § 501(a), Oct. 28, 2009, 123 Stat. 2272; Pub. L. 114–328, div. A, title V, § 502(b), Dec. 23, 2016, 130 Stat. 2102.)

AMENDMENTS

2016—Subsecs. (c), (d). Pub. L. 114–328 redesignated subsec. (d) as (c) and struck out former subsec. (c). Prior to amendment, text of subsec. (c) read as follows: ''An officer appointed to serve as Legal Counsel to the Chairman of the Joint Chiefs of Staff shall be appointed in the regular grade of brigadier general or rear admiral (lower half).''

2009—Subsec. (c). Pub. L. 111–84 substituted ''be appointed in the regular'' for '', while so serving, hold the''.

2008—Subsec. (d). Pub. L. 110–417 designated existing provisions as par. (1) and added par. (2).

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–84, div. A, title V, § 501(b), Oct. 28, 2009, 123 Stat. 2272, provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Oct. 28, 2009], and shall apply with respect to individuals appointed as Legal Counsel to the Chairman of the Joint Chiefs of Staff on or after that date.''

CHAPTER 6—COMBATANT COMMANDS

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PRIOR PROVISIONS

Prior to enactment of this chapter by Pub. L. 99–433, provisions relating to combat commands were contained in section 124 of this title.

AMENDMENTS

2019—Pub. L. 116–92, div. A, title XVI, § 1601(b)(1), title XVII, § 1731(a)(9), Dec. 20, 2019, 133 Stat. 1722, 1812, inserted period at end of item 169 ''Subordinate unified command of the United States Strategic Command'' and then struck it out.

2018—Pub. L. 115–232, div. A, title VIII, § 812(a)(1)(B), title XVI, § 1601(a)(2), Aug. 13, 2018, 132 Stat. 1846, 2103, struck out item 167a ''Unified combatant command for joint warfighting experimentation: acquisition authority'' and added item 169.

2016—Pub. L. 114–328, div. A, title IX, § 923(b), title XII, § 1253(a)(2)(A), Dec. 23, 2016, 130 Stat. 2358, 2532, added item 167b and struck out item 168 ''Military-to-military contacts and comparable activities''.

2003—Pub. L. 108–136, div. A, title VIII, § 848(a)(2), Nov. 24, 2003, 117 Stat. 1555, added item 167a.

2001—Pub. L. 107–107, div. A, title XV, § 1512(b), Dec. 28, 2001, 115 Stat. 1273, added item 166b.

1994—Pub. L. 103–337, div. A, title XIII, § 1316(a)(2), Oct. 5, 1994, 108 Stat. 2899, added item 168.

1991—Pub. L. 102–190, div. A, title IX, § 902(b), Dec. 5, 1991, 105 Stat. 1451, added item 166a.

1986—Pub. L. 99–500, § 101(c) [title IX, § 9115(b)(2)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–124, and Pub. L. 99–591, § 101(c) [title IX, § 9115(b)(2)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–124; Pub. L. 99–661, div. A, title XIII, § 1311(b)(2), Nov. 14, 1986, 100 Stat. 3985, amended analysis identically adding item 167.

Pub. L. 99–433, title II, § 211(a), Oct. 1, 1986, 100 Stat. 1012, added chapter 6 heading and analysis.

§ 161. Combatant commands: establishment

(a) UNIFIED AND SPECIFIED COMBATANT COMMANDS.—With the advice and assistance of the Chairman of the Joint Chiefs of Staff, the President, through the Secretary of Defense, shall—

(1) establish unified combatant commands and specified combatant commands to perform military missions; and

(2) prescribe the force structure of those commands.

(b) PERIODIC REVIEW.—(1) The Chairman periodically (and not less often than every two years) shall—

(A) review the missions, responsibilities (including geographic boundaries), and force structure of each combatant command; and

(B) recommend to the President, through the Secretary of Defense, any changes to such missions, responsibilities, and force structures as may be necessary.

(2) Except during time of hostilities or imminent threat of hostilities, the President shall notify Congress not more than 60 days after—

(A) establishing a new combatant command; or

(B) significantly revising the missions, responsibilities, or force structure of an existing combatant command.

(c) DEFINITIONS.—In this chapter:

(1) The term ''unified combatant command'' means a military command which has broad, continuing missions and which is composed of forces from two or more military departments.

(2) The term ''specified combatant command'' means a military command which has broad, continuing missions and which is normally composed of forces from a single military department.

(3) The term ''combatant command'' means a unified combatant command or a specified combatant command.

(Added Pub. L. 99–433, title II, § 211(a), Oct. 1, 1986, 100 Stat. 1012.)

CHANGE OF NAME

Pub. L. 115–232, div. A, title XII, § 1251(a), Aug. 13, 2018, 132 Stat. 2053, provided that: ''The combatant command known as the United States Pacific Command shall be known as the 'United States Indo-Pacific Command'. Any reference to the United States Pacific Command in any law, regulation, map, document, record, or other paper of the United States shall be considered to be a reference to the United States Indo-Pacific Command.''

MATTERS TO BE CONSIDERED IN NEXT ASSESSMENT OF CURRENT MISSIONS, RESPONSIBILITIES, AND FORCE STRUCTURE OF UNIFIED COMBATANT COMMANDS

Pub. L. 104–201, div. A, title IX, § 905, Sept. 23, 1996, 110 Stat. 2619, required the Chairman of the Joint Chiefs of Staff to consider, as part of the next periodic review after Sept. 23, 1996, pursuant to subsec. (b) of this section: (1) whether there was an adequate distribution of responsibilities among the regional unified combatant commands; (2) whether fewer or differently configured commands would permit the United States to better execute warfighting plans; (3) whether any assets or activities were redundant; (4) whether warfighting requirements were adequate to justify current commands; (5) whether exclusion of certain nations from the Areas of Responsibility presented difficulties with respect to national security objectives in those areas; and (6) whether the boundary between the United States Central and European Commands could create command conflicts in the context of a major regional conflict in the Middle East.

INITIAL REVIEW OF COMBATANT COMMANDS

Pub. L. 99–433, title II, § 212, Oct. 1, 1986, 100 Stat. 1017, set out 10 areas to be covered in first review of missions, responsibilities, and force structure of unified combatant commands under subsec. (b) of this section, and directed that first report to President be made not later than Oct. 1, 1987.

DISESTABLISHMENT OF UNITED STATES JOINT FORCES COMMAND

Memorandum of President of the United States, Jan. 6, 2011, 76 F.R. 1977, provided:

Memorandum for the Secretary of Defense

Pursuant to my authority as Commander in Chief and under 10 U.S.C. 161, I hereby accept the recommendations of the Secretary of Defense and Chairman of the Joint Chiefs of Staff and approve the disestablishment of United States Joint Forces Command, effective on a date to be determined by the Secretary of Defense. I direct this action be reflected in the 2010 Unified Command Plan.

Pursuant to 10 U.S.C. 161(b)(2) and 3 U.S.C. 301, you are directed to notify the Congress on my behalf.

You are authorized and directed to publish this memorandum in the Federal Register.

BARACK OBAMA.

REVISIONS TO UNIFIED COMMAND PLAN

The following presidential memoranda approved and directed the implementation of a revised Unified Command Plan and directed notification to Congress consistent with subsec. (b)(2) of this section:

Memorandum of President of the United States, May 24, 2019, 84 F.R. 24977.

Memorandum of President of the United States, Apr. 6, 2011, 76 F.R. 19893.

ESTABLISHMENT OF UNITED STATES SPACE COMMAND AS A UNIFIED COMBATANT COMMAND

Memorandum of President of the United States, Dec. 18, 2018, 83 F.R. 65483, provided:

Memorandum for the Secretary of Defense

Pursuant to my authority as the Commander in Chief and under section 161 of title 10, United States Code, and in consultation with the Secretary of Defense and the Chairman of the Joint Chiefs of Staff, I direct the establishment, consistent with United States law, of United States Space Command as a functional Unified Combatant Command. I also direct the Secretary of Defense to recommend officers for my nomination and Senate confirmation as Commander and Deputy Commander of the new United States Space Command.

I assign to United States Space Command: (1) all the general responsibilities of a Unified Combatant Command; (2) the space-related responsibilities previously assigned to the Commander, United States Strategic Command; and (3) the responsibilities of Joint Force Provider and Joint Force Trainer for Space Operations Forces. The comprehensive list of authorities and responsibilities for United States Space Command will be included in the next update to the Unified Command Plan.

Consistent with section 161(b)(2) of title 10, United States Code, and section 301 of title 3, United States Code, you are directed to notify the Congress on my behalf.

You are authorized and directed to publish this memorandum in the Federal Register.

DONALD J. TRUMP.

§ 162. Combatant commands: assigned forces; chain of command

(a) ASSIGNMENT OF FORCES.—(1) As directed by the Secretary of Defense, the Secretaries of the military departments shall assign specified forces under their jurisdiction to unified and specified combatant commands or to the United States element of the North American Aerospace Defense Command to perform missions assigned to those commands. The Secretary of Defense shall ensure that such assignments are consistent with the force structure prescribed by the President for each combatant command.

(2) A force not assigned to a combatant command or to the United States element of the North American Aerospace Defense Command under paragraph (1) shall remain assigned to the military department concerned for carrying out the responsibilities of the Secretary of the military department concerned as specified in section 7013, 8013, or 9013 of this title, as applicable.

(3) A force assigned to a combatant command or to the United States element of the North American Aerospace Defense Command under this section may be transferred from the command to which it is assigned only—

(A) by authority of the Secretary of Defense; and

(B) under procedures prescribed by the Secretary and approved by the President.

(4) Except as otherwise directed by the Secretary of Defense, all forces assigned to a unified combatant command shall be under the command of the commander of that command. The preceding sentence applies to forces assigned to a specified combatant command only as prescribed by the Secretary of Defense.

(b) CHAIN OF COMMAND.—Unless otherwise directed by the President, the chain of command to a unified or specified combatant command runs—

(1) from the President to the Secretary of Defense; and

(2) from the Secretary of Defense to the commander of the combatant command.

(Added Pub. L. 99–433, title II, § 211(a), Oct. 1, 1986, 100 Stat. 1012; amended Pub. L. 100–180, div. A, title XIII, § 1313, Dec. 4, 1987, 101 Stat. 1175; Pub. L. 100–456, div. A, title VII, § 711, Sept. 29, 1988, 102 Stat. 1997; Pub. L. 104–201, div. A, title X, § 1073(a), Sept. 23, 1996, 110 Stat. 2657; Pub. L. 114–328, div. A, title IX, § 924, Dec. 23, 2016, 130 Stat. 2358; Pub. L. 115–91, div. A, title X, § 1081(a)(9), Dec. 12, 2017, 131 Stat. 1594; Pub. L. 115–232, div. A, title VIII, § 809(a), Aug. 13, 2018, 132 Stat. 1840.)

AMENDMENTS

2018—Subsec. (a)(2). Pub. L. 115–232 substituted ''section 7013, 8013, or 9013'' for ''section 3013, 5013, or 8013''.

2017—Subsec. (a)(4). Pub. L. 115–91 struck out comma after ''command of''.

2016—Subsec. (a)(1). Pub. L. 114–328, § 924(1), substituted ''As directed by the Secretary of Defense'' for ''Except as provided in paragraph (2)'' and ''specified forces'' for ''all forces'' and struck out ''Such assignments shall be made as directed by the Secretary of Defense, including direction as to the command to which forces are to be assigned.'' before ''The Secretary of Defense''.

Subsec. (a)(2). Pub. L. 114–328, § 924(2), added par. (2) and struck out former par. (2) which read as follows: ''Except as otherwise directed by the Secretary of Defense, forces to be assigned by the Secretaries of the military departments to the combatant commands or to the United States element of the North American Aerospace Defense Command under paragraph (1) do not include forces assigned to carry out functions of the Secretary of a military department listed in sections 3013(b), 5013(b), and 8013(b) of this title or forces assigned to multinational peacekeeping organizations.''

Subsec. (a)(4). Pub. L. 114–328, § 924(3)(B), struck out ''assigned to, and'' before ''under the command''.

Pub. L. 114–328, § 924(3)(A), which directed striking out ''operating with the geographic area'', was executed by striking out ''operating within the geographic area'' after ''all forces'' to reflect the probable intent of Congress.

1996—Subsec. (a)(1) to (3). Pub. L. 104–201 substituted ''North American Aerospace Defense Command'' for ''North American Air Defense Command''.

1988—Subsec. (a)(1) to (3). Pub. L. 100–456 inserted ''or to the United States element of the North American Air Defense Command''.

1987—Subsec. (a)(2). Pub. L. 100–180 inserted before period at end ''or forces assigned to multinational peacekeeping organizations''.

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115–232 effective Feb. 1, 2019, with provision for the coordination of amendments and special rule for certain redesignations, see section 800 of Pub. L. 115–232, set out as a note preceding section 3001 of this title.

IMPLEMENTATION OF ASSIGNMENT OF FORCES TO COMBATANT COMMANDS

Pub. L. 99–433, title II, § 214(a), Oct. 1, 1986, 100 Stat. 1018, provided that section 162(a) of this title shall be implemented not later than 90 days after Oct. 1, 1986.

§ 163. Role of Chairman of Joint Chiefs of Staff

(a) COMMUNICATIONS THROUGH CHAIRMAN OF JCS; ASSIGNMENT OF DUTIES.—Subject to the limitations in section 152(c) of this title, the President may—

(1) direct that communications between the President or the Secretary of Defense and the commanders of the unified and specified combatant commands be transmitted through the Chairman of the Joint Chiefs of Staff; and

(2) assign duties to the Chairman to assist the President and the Secretary of Defense in performing their command function.

(b) OVERSIGHT BY CHAIRMAN OF JOINT CHIEFS OF STAFF.—(1) The Secretary of Defense may assign to the Chairman of the Joint Chiefs of Staff responsibility for overseeing the activities of the combatant commands. Such assignment by the Secretary to the Chairman does not confer any command authority on the Chairman and does not alter the responsibility of the commanders of the combatant commands prescribed in section 164(b)(2) of this title.

(2) Subject to the authority, direction, and control of the Secretary of Defense, the Chairman of the Joint Chiefs of Staff serves as the spokesman for the commanders of the combatant commands, especially on the operational requirements of their commands. In performing such function, the Chairman shall—

(A) confer with and obtain information from the commanders of the combatant commands with respect to the requirements of their commands;

(B) evaluate and integrate such information;

(C) advise and make recommendations to the Secretary of Defense with respect to the requirements of the combatant commands, individually and collectively; and

(D) communicate, as appropriate, the requirements of the combatant commands to other elements of the Department of Defense.

(Added Pub. L. 99–433, title II, § 211(a), Oct. 1, 1986, 100 Stat. 1013.)

§ 164. Commanders of combatant commands: assignment; powers and duties

(a) ASSIGNMENT AS COMBATANT COMMANDER.—(1) The President may assign an officer to serve as the commander of a unified or specified combatant command only if the officer—

(A) has the joint specialty under section 661 of this title; and

(B) has completed a full tour of duty in a joint duty assignment (as defined in section 664(d) of this title) as a general or flag officer.

(2) The President may waive paragraph (1) in the case of an officer if the President determines that such action is necessary in the national interest.

(b) RESPONSIBILITIES OF COMBATANT COMMANDERS.—(1) The commander of a combatant command is responsible to the President and to the Secretary of Defense for the performance of missions assigned to that command by the President or by the Secretary with the approval of the President.

(2) Subject to the direction of the President, the commander of a combatant command—

(A) performs his duties under the authority, direction, and control of the Secretary of Defense; and

(B) is directly responsible to the Secretary for the preparedness of the command to carry out missions assigned to the command.

(3) Among the full range of command responsibilities specified in subsection (c) and as provided for in section 161 of this title, the primary duties of the commander of a combatant command shall be as follows:

(A) To produce plans for the employment of the armed forces to execute national defense strategies and respond to significant military contingencies.

(B) To take actions, as necessary, to deter conflict.

(C) To command United States armed forces as directed by the Secretary and approved by the President.

(c) COMMAND AUTHORITY OF COMBATANT COMMANDERS.—(1) Unless otherwise directed by the President or the Secretary of Defense, the authority, direction, and control of the commander of a combatant command with respect to the commands and forces assigned to that command include the command functions of—

(A) giving authoritative direction to subordinate commands and forces necessary to carry out missions assigned to the command, including authoritative direction over all aspects of military operations, joint training, and logistics;

(B) prescribing the chain of command to the commands and forces within the command;

(C) organizing commands and forces within that command as he considers necessary to carry out missions assigned to the command;

(D) employing forces within that command as he considers necessary to carry out missions assigned to the command;

(E) assigning command functions to subordinate commanders;

(F) coordinating and approving those aspects of administration and support (including control of resources and equipment, internal organization, and training) and discipline necessary to carry out missions assigned to the command; and

(G) exercising the authority with respect to selecting subordinate commanders, selecting combatant command staff, suspending subordinates, and convening courts-martial, as provided in subsections (e), (f), and (g) of this section and section 822(a) of this title, respectively.

(2)(A) The Secretary of Defense shall ensure that a commander of a combatant command has sufficient authority, direction, and control over the commands and forces assigned to the command to exercise effective command over those commands and forces. In carrying out this subparagraph, the Secretary shall consult with the Chairman of the Joint Chiefs of Staff.

(B) The Secretary shall periodically review and, after consultation with the Secretaries of the military departments, the Chairman of the Joint Chiefs of Staff, and the commander of the combatant command, assign authority to the commander of the combatant command for those aspects of administration and support that the Secretary considers necessary to carry out missions assigned to the command.

(3) If a commander of a combatant command at any time considers his authority, direction, or control with respect to any of the commands or forces assigned to the command to be insufficient to command effectively, the commander shall promptly inform the Secretary of Defense.

(d) AUTHORITY OVER SUBORDINATE COMMANDERS.—Unless otherwise directed by the President or the Secretary of Defense—

(1) commanders of commands and forces assigned to a combatant command are under the authority, direction, and control of, and are responsible to, the commander of the combatant command on all matters for which the commander of the combatant command has been assigned authority under subsection (c);

(2) the commander of a command or force referred to in clause (1) shall communicate with other elements of the Department of Defense on any matter for which the commander of the combatant command has been assigned authority under subsection (c) in accordance with procedures, if any, established by the commander of the combatant command;

(3) other elements of the Department of Defense shall communicate with the commander of a command or force referred to in clause (1) on any matter for which the commander of the combatant command has been assigned authority under subsection (c) in accordance with procedures, if any, established by the commander of the combatant command; and

(4) if directed by the commander of the combatant command, the commander of a command or force referred to in clause (1) shall advise the commander of the combatant command of all communications to and from other elements of the Department of Defense on any matter for which the commander of the combatant command has not been assigned authority under subsection (c).

(e) SELECTION OF SUBORDINATE COMMANDERS.—(1) An officer may be assigned to a position as the commander of a command directly subordinate to the commander of a combatant command or, in the case of such a position that is designated under section 601 of this title as a position of importance and responsibility, may be recommended to the President for assignment to that position, only—

(A) with the concurrence of the commander of the combatant command; and

(B) in accordance with procedures established by the Secretary of Defense.

(2) The Secretary of Defense may waive the requirement under paragraph (1) for the concurrence of the commander of a combatant command with regard to the assignment (or rec-

ommendation for assignment) of a particular officer if the Secretary of Defense determines that such action is in the national interest.

(3) The commander of a combatant command shall—

(A) evaluate the duty performance of each commander of a command directly subordinate to the commander of such combatant command; and

(B) submit the evaluation to the Secretary of the military department concerned and the Chairman of the Joint Chiefs of Staff.

(4) At least one deputy commander of the combatant command the geographic area of responsibility of which includes the United States shall be a qualified officer of a reserve component of the armed forces who is eligible for promotion to the grade of O–9, unless a reserve component officer is serving as commander of that combatant command.

(f) COMBATANT COMMAND STAFF.—(1) Each unified and specified combatant command shall have a staff to assist the commander of the command in carrying out his responsibilities. Positions of responsibility on the combatant command staff shall be filled by officers from each of the armed forces having significant forces assigned to the command.

(2) An officer may be assigned to a position on the staff of a combatant command or, in the case of such a position that is designated under section 601 of this title as a position of importance and responsibility, may be recommended to the President for assignment to that position, only—

(A) with the concurrence of the commander of such command; and

(B) in accordance with procedures established by the Secretary of Defense.

(3) The Secretary of Defense may waive the requirement under paragraph (2) for the concurrence of the commander of a combatant command with regard to the assignment (or recommendation for assignment) of a particular officer to serve on the staff of the combatant command if the Secretary of Defense determines that such action is in the national interest.

(g) AUTHORITY TO SUSPEND SUBORDINATES.—In accordance with procedures established by the Secretary of Defense, the commander of a combatant command may suspend from duty and recommend the reassignment of any officer assigned to such combatant command.

(h) SUPPORT TO CHAIRMAN OF THE JOINT CHIEFS OF STAFF.—The commander of a combatant command shall provide such information to the Chairman of the Joint Chiefs of Staff as may be necessary for the Chairman to perform the duties of the Chairman under section 153 of this title.

(Added Pub. L. 99–433, title II, § 211(a), Oct. 1, 1986, 100 Stat. 1013; amended Pub. L. 100–456, div. A, title V, § 519(a)(2), Sept. 29, 1988, 102 Stat. 1972; Pub. L. 110–181, div. A, title XVIII, § 1824(b), Jan. 28, 2008, 122 Stat. 501; Pub. L. 114–328, div. A, title V, § 516, title IX, § 921(e), Dec. 23, 2016, 130 Stat. 2113, 2354; Pub. L. 115–91, div. A, title X, § 1081(a)(10), Dec. 12, 2017, 131 Stat. 1594.)

AMENDMENTS

2017—Subsec. (a)(1)(B). Pub. L. 115–91 substituted ''section 664(d)'' for ''section 664(f)''.

2016—Subsec. (b)(3). Pub. L. 114–328, § 921(e)(1), added par. (3).

Subsec. (e)(4). Pub. L. 114–328, § 516, substituted ''a reserve component of the armed forces'' for ''the National Guard'' and ''a reserve component officer'' for ''a National Guard officer''.

Subsec. (h). Pub. L. 114–328, § 921(e)(2), added subsec. (h).

2008—Subsec. (e)(4). Pub. L. 110–181 added par. (4).

1988—Subsec. (a)(1)(B). Pub. L. 100–456 substituted ''completed a full tour of duty in a joint duty assignment (as defined in section 664(f) of this title)'' for ''served in at least one joint duty assignment (as defined under section 668(b) of this title)''.

EFFECTIVE DATE

Pub. L. 99–433, title II, § 214(c), Oct. 1, 1986, 100 Stat. 1019, provided that: ''Subsections (e), (f), and (g) of section 164 of title 10, United States Code (as added by section 211 of this Act), shall take effect at the end of the 90-day period beginning on the date of the enactment of this Act [Oct. 1, 1986], or on such earlier date as may be prescribed by the Secretary of Defense.''

CONSIDERATION OF RESERVE COMPONENT OFFICERS FOR APPOINTMENT TO CERTAIN COMMAND POSITIONS

Pub. L. 112–81, div. A, title V, § 518, Dec. 31, 2011, 125 Stat. 1397, provided that: ''Whenever officers of the Armed Forces are considered for appointment to the position of Commander, Army North Command or Commander, Air Force North Command, fully qualified officers of the National Guard and the Reserves shall be considered for appointment to such position.''

SENSE OF CONGRESS

Pub. L. 110–181, div. A, title XVIII, § 1824(a), Jan. 28, 2008, 122 Stat. 501, provided that: ''It is the sense of Congress that, whenever officers of the Armed Forces are considered for promotion to the grade of lieutenant general, or vice admiral in the case of the Navy, on the active duty list, officers in the reserve components of the Armed Forces who are eligible for promotion to such grade should be considered for promotion to such grade.''

WAIVER OF QUALIFICATIONS FOR ASSIGNMENT AS COMBATANT COMMANDER

Pub. L. 99–433, title II, § 214(b), Oct. 1, 1986, 100 Stat. 1018, authorized President, until Oct. 1, 1990, to waive, on a case-by-case basis, certain requirements provided for in subsec. (a) of this section relating to assignment of commanders of combatant commands.

§ 165. Combatant commands: administration and support

(a) IN GENERAL.—The Secretary of Defense, with the advice and assistance of the Chairman of the Joint Chiefs of Staff, shall provide for the administration and support of forces assigned to each combatant command.

(b) RESPONSIBILITY OF SECRETARIES OF MILITARY DEPARTMENTS.—Subject to the authority, direction, and control of the Secretary of Defense and subject to the authority of commanders of the combatant commands under section 164(c) of this title, the Secretary of a military department is responsible for the administration and support of forces assigned by him to a combatant command.

(c) ASSIGNMENT OF RESPONSIBILITY TO OTHER COMPONENTS OF DOD.—After consultation with the Secretaries of the military departments, the Secretary of Defense may assign the responsibility (or any part of the responsibility) for the administration and support of forces assigned to the combatant commands to other components

of the Department of Defense (including Defense Agencies and combatant commands). A component assigned such a responsibility shall discharge that responsibility subject to the authority, direction, and control of the Secretary of Defense and subject to the authority of commanders of the combatant commands under section 164(c) of this title.

(Added Pub. L. 99–433, title II, § 211(a), Oct. 1, 1986, 100 Stat. 1016.)

§ 166. Combatant commands: budget proposals

(a) COMBATANT COMMAND BUDGETS.—The Secretary of Defense shall include in the annual budget of the Department of Defense submitted to Congress a separate budget proposal for such activities of each of the unified and specified combatant commands as may be determined under subsection (b).

(b) CONTENT OF PROPOSALS.—A budget proposal under subsection (a) for funding of activities of a combatant command shall include funding proposals for such activities of the combatant command as the Secretary (after consultation with the Chairman of the Joint Chiefs of Staff) determines to be appropriate for inclusion. Activities of a combatant command for which funding may be requested in such a proposal include the following:

(1) Joint exercises.
(2) Force training.
(3) Contingencies.
(4) Selected operations.

(c) SOF TRAINING WITH FOREIGN FORCES.—A funding proposal for force training under subsection (b)(2) may include amounts for training expense payments authorized in section 322 of this title.

(Added Pub. L. 99–433, title II, § 211(a), Oct. 1, 1986, 100 Stat. 1016; amended Pub. L. 102–190, div. A, title X, § 1052(b), Dec. 5, 1991, 105 Stat. 1471; Pub. L. 115–91, div. A, title X, § 1081(a)(11), Dec. 12, 2017, 131 Stat. 1594.)

AMENDMENTS

2017—Subsec. (c). Pub. L. 115–91 substituted ''section 322'' for ''section 2011''.

1991—Subsec. (c). Pub. L. 102–190 added subsec. (c).

EFFECTIVE DATE

Pub. L. 99–433, title II, § 214(d), Oct. 1, 1986, 100 Stat. 1019, provided that: ''Section 166 of title 10, United States Code (as added by section 211 of this Act), shall take effect with budget proposals for fiscal year 1989.''

§ 166a. Combatant commands: funding through the Chairman of Joint Chiefs of Staff

(a) COMBATANT COMMANDER INITIATIVE FUND.—From funds made available in any fiscal year for the budget account in the Department of Defense known as the ''Combatant Commander Initiative Fund'', the Chairman of the Joint Chiefs of Staff may provide funds to the commander of a combatant command, upon the request of the commander, or, with respect to a geographic area or areas not within the area of responsibility of a commander of a combatant command, to an officer designated by the Chairman of the Joint Chiefs of Staff for such purpose. The Chairman may provide such funds for any of the activities named in subsection (b).

(b) AUTHORIZED ACTIVITIES.—Activities for which funds may be provided under subsection (a) are the following:

(1) Force training.
(2) Contingencies.
(3) Selected operations.
(4) Command and control.
(5) Joint exercises (including activities of participating foreign countries).
(6) Humanitarian and civic assistance, in coordination with the relevant chief of mission to the extent practicable, to include urgent and unanticipated humanitarian relief and reconstruction assistance.
(7) Military education and training to military and related civilian personnel of foreign countries (including transportation, translation, and administrative expenses).
(8) Personnel expenses of defense personnel for bilateral or regional cooperation programs.
(9) Force protection.
(10) Joint warfighting capabilities.

(c) PRIORITY.—The Chairman of the Joint Chiefs of Staff, in considering requests for funds in the Combatant Commander Initiative Fund, should give priority consideration to—

(1) requests for funds to be used for activities that would enhance the war fighting capability, readiness, and sustainability of the forces assigned to the commander requesting the funds;

(2) the provision of funds to be used for activities with respect to an area or areas not within the area of responsibility of a commander of a combatant command that would reduce the threat to, or otherwise increase, the national security of the United States; and

(3) the provision of funds to be used for urgent and unanticipated humanitarian relief and reconstruction assistance, particularly in a foreign country where the armed forces are engaged in a contingency operation.

(d) RELATIONSHIP TO OTHER FUNDING.—Any amount provided by the Chairman of the Joint Chiefs of Staff during any fiscal year out of the Combatant Commander Initiative Fund for an activity referred to in subsection (b) shall be in addition to amounts otherwise available for that activity for that fiscal year.

(e) LIMITATIONS.—(1) Of funds made available under this section for any fiscal year—

(A) not more than $20,000,000 may be used to purchase items with a unit cost in excess of $250,000;

(B) not more than $10,000,000 may be used to pay for any expenses of foreign countries participating in joint exercises as authorized by subsection (b)(5); and

(C) not more than $5,000,000 may be used to provide military education and training (including transportation, translation, and administrative expenses) to military and related civilian personnel of foreign countries as authorized by subsection (b)(7).

(2) Funds may not be provided under this section for any activity that has been denied authorization by Congress.

(f) INCLUSION OF NORAD.—For purposes of this section, the Commander, United States Element, North American Aerospace Defense Com-

mand shall be considered to be a commander of a combatant command.

(Added Pub. L. 102–190, div. A, title IX, § 902(a), Dec. 5, 1991, 105 Stat. 1450; amended Pub. L. 102–396, title IX, § 9128, Oct. 6, 1992, 106 Stat. 1935; Pub. L. 102–484, div. A, title IX, § 934, Oct. 23, 1992, 106 Stat. 2477; Pub. L. 103–35, title II, § 201(a), May 31, 1993, 107 Stat. 97; Pub. L. 105–85, div. A, title IX, § 902, Nov. 18, 1997, 111 Stat. 1854; Pub. L. 108–136, div. A, title IX, § 902(a)(2), (b), (c), Nov. 24, 2003, 117 Stat. 1558; Pub. L. 109–364, div. A, title IX, § 902, Oct. 17, 2006, 120 Stat. 2351; Pub. L. 111–84, div. A, title IX, § 904, Oct. 28, 2009, 123 Stat. 2424; Pub. L. 114–328, div. A, title VIII, § 833(b)(1)(C), Dec. 23, 2016, 130 Stat. 2284.)

AMENDMENTS

2016—Subsec. (e)(1)(A). Pub. L. 114–328 substituted ''$250,000'' for ''the investment unit cost threshold in effect under section 2245a of this title''.

2009—Subsec. (b)(6). Pub. L. 111–84, § 904(b), inserted ''in coordination with the relevant chief of mission to the extent practicable,'' after ''assistance,''.

Subsec. (e)(1)(A). Pub. L. 111–84, § 904(a), substituted ''$20,000,000'' for ''$10,000,000'' and ''the investment unit cost threshold in effect under section 2245a of this title'' for ''$15,000''.

2006—Subsec. (b)(6). Pub. L. 109–364, § 902(a), substituted ''civic assistance, to include urgent and unanticipated humanitarian relief and reconstruction assistance'' for ''civil assistance''.

Subsec. (c)(3). Pub. L. 109–364, § 902(b), added par. (3).

2003—Subsec. (a). Pub. L. 108–136, § 902(a)(2), substituted ''COMBATANT COMMANDER INITIATIVE FUND'' for ''CINC INITIATIVE FUND'' in heading and ''Combatant Commander Initiative Fund'' for ''CINC Initiative Fund'' in first sentence.

Subsec. (b)(10). Pub. L. 108–136, § 902(b), added par. (10).

Subsecs. (c), (d). Pub. L. 108–136, § 902(a)(2)(B), substituted ''Combatant Commander Initiative Fund'' for ''CINC Initiative Fund''.

Subsec. (e)(1)(A). Pub. L. 108–136, § 902(c)(1), substituted ''$10,000,000'' for ''$7,000,000''.

Subsec. (e)(1)(B). Pub. L. 108–136, § 902(c)(2), substituted ''$10,000,000'' for ''$1,000,000''.

Subsec. (e)(1)(C). Pub. L. 108–136, § 902(c)(3), substituted ''$5,000,000'' for ''$2,000,000''.

1997—Subsec. (b)(9). Pub. L. 105–85 added par. (9).

1993—Subsec. (a). Pub. L. 103–35, § 201(a)(1), substituted ''the Chairman of the Joint Chiefs of Staff may provide funds to the commander of a combatant command, upon the request of the commander, or, with respect to a geographic area or areas not within the area of responsibility of a commander of a combatant command, to an officer designated by the Chairman of the Joint Chiefs of Staff for such purpose'' for ''the Chairman of the Joint Chiefs of Staff may provide funds to the commander of a combatant command, upon the request of the commander, or to the Director of the Joint Staff with respect to an area or areas not within the area of responsibility of a commander of a combatant command.''

Subsec. (b)(7). Pub. L. 103–35, § 201(a)(2), struck out second of two identical parenthetical phrases at end of par. (7) which read as follows: ''(including transportation, translation, and administrative expenses)''.

1992—Subsec. (a). Pub. L. 102–484, § 934(a), which directed substitution of ''funds to the commander of a combatant command, upon the request of the commander, or, with respect to a geographic area or areas not within the area of responsibility of a commander of a combatant command, to an officer designated by the Chairman of the Joint Chiefs of Staff for such purpose.'' for ''funds, upon request,'' and all that follows through the period, could not be executed because the words did not appear subsequent to the amendment by Pub. L. 102–396, § 9128(a). See below.

Pub. L. 102–396, § 9128(a), substituted ''funds to the commander of a combatant command, upon the request of the commander, or to the Director of the Joint Staff with respect to an area or areas not within the area of responsibility of a commander of a combatant command.'' for ''funds, upon request, to the commanders of the combatant commands.''

Subsec. (b)(7). Pub. L. 102–396, § 9128(b), and Pub. L. 102–484, § 934(b), both inserted before period at end ''(including transportation, translation, and administrative expenses)''.

Subsec. (c). Pub. L. 102–484, § 934(c), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''The Chairman of the Joint Chiefs of Staff, in considering requests for funds in the CINC Initiative Fund, should give priority consideration to requests for funds to be used for activities that would enhance the war fighting capability, readiness, and sustainability of the forces assigned to the commander requesting the funds (c) PRIORITY.—The Chairman of the Joint Chiefs of Staff, in considering requests for funds in the CINC Initiative Fund or the provision of funds to the Director of the Joint Staff under subsection (a), should give priority consideration to—

''(1) requests for funds to be used for activities that would enhance the war fighting capability, readiness, and sustainability of the forces assigned to the commander requesting the funds; and

''(2) the provision of funds to be used for activities with respect to an area or areas not within the area of responsibility of a commander of a combatant command that would reduce the threat to, or otherwise increase, the national security of the United States..[sic]''

Pub. L. 102–396, § 9128(c), inserted before period at end ''(c) PRIORITY.—The Chairman of the Joint Chiefs of Staff, in considering requests for funds in the CINC Initiative Fund or the provision of funds to the Director of the Joint Staff under subsection (a), should give priority consideration to—

''(1) requests for funds to be used for activities that would enhance the war fighting capability, readiness, and sustainability of the forces assigned to the commander requesting the funds; and

''(2) the provision of funds to be used for activities with respect to an area or areas not within the area of responsibility of a commander of a combatant command that would reduce the threat to, or otherwise increase, the national security of the United States.''

Subsec. (e)(1)(C). Pub. L. 102–484, § 934(d), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''not more than $5,000,000 may be used to provide military education and training (including transportation, translation, and administrative expenses) to military and related civilian personnel of foreign countries as authorized by subsection (b)(7).''

Pub. L. 102–396, § 9128(d), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''not more than $500,000 may be used to provide military education and training to military and related civilian personnel of foreign countries as authorized by subsection (b)(7).''

REDESIGNATION OF CINC INITIATIVE FUND

Pub. L. 108–136, div. A, title IX, § 902(a)(1), (3), Nov. 24, 2003, 117 Stat. 1558, provided that:

''(1) The CINC Initiative Fund administered under section 166a of title 10, United States Code, is redesignated as the 'Combatant Commander Initiative Fund'.

''(3) Any reference to the CINC Initiative Fund in any other provision of law or in any regulation, document, record, or other paper of the United States shall be considered to be a reference to the Combatant Commander Initiative Fund.''

§ 166b. Combatant commands: funding for combating terrorism readiness initiatives

(a) COMBATING TERRORISM READINESS INITIATIVES FUND.—From funds made available in any

fiscal year for the budget account in the Department of Defense known as the ''Combating Terrorism Readiness Initiatives Fund'', the Chairman of the Joint Chiefs of Staff may provide funds to the commander of a combatant command, upon the request of the commander, or, with respect to a geographic area or areas not within the area of responsibility of a commander of a combatant command, to an officer designated by the Chairman of the Joint Chiefs of Staff for such purpose. The Chairman may provide such funds for initiating any activity named in subsection (b) and for maintaining and sustaining the activity for the fiscal year in which initiated and one additional fiscal year.

(b) AUTHORIZED ACTIVITIES.—Activities for which funds may be provided under subsection (a) are the following:

(1) Procurement and maintenance of physical security equipment.

(2) Improvement of physical security sites.

(3) Under extraordinary circumstances—

(A) physical security management planning;

(B) procurement and support of security forces and security technicians;

(C) security reviews and investigations and vulnerability assessments; and

(D) any other activity relating to physical security.

(c) PRIORITY.—The Chairman of the Joint Chiefs of Staff, in considering requests for funds in the Combating Terrorism Readiness Initiatives Fund, should give priority consideration to emergency or emergent unforeseen high-priority requirements for combating terrorism.

(d) RELATIONSHIP TO OTHER FUNDING.—Any amount provided by the Chairman of the Joint Chiefs of Staff for a fiscal year out of the Combating Terrorism Readiness Initiatives Fund for an activity referred to in subsection (b) shall be in addition to amounts otherwise available for that activity for that fiscal year.

(e) LIMITATION.—Funds may not be provided under this section for any activity that has been denied authorization by Congress.

(Added Pub. L. 107–107, div. A, title XV, § 1512(a), Dec. 28, 2001, 115 Stat. 1272.)

§ 167. Unified combatant command for special operations forces

(a) ESTABLISHMENT.—With the advice and assistance of the Chairman of the Joint Chiefs of Staff, the President, through the Secretary of Defense, shall establish under section 161 of this title a unified combatant command for special operations forces (hereinafter in this section referred to as the ''special operations command''). The principal function of the command is to prepare special operations forces to carry out assigned missions.

(b) ASSIGNMENT OF FORCES.—Unless otherwise directed by the Secretary of Defense, all active and reserve special operations forces of the armed forces stationed in the United States shall be assigned to the special operations command.

(c) GRADE OF COMMANDER.—The commander of the special operations command shall hold the grade of general or, in the case of an officer of the Navy, admiral while serving in that position, without vacating his permanent grade. The commander of such command shall be appointed to that grade by the President, by and with the advice and consent of the Senate, for service in that position.

(d) COMMAND OF ACTIVITY OR MISSION.—(1) Unless otherwise directed by the President or the Secretary of Defense, a special operations activity or mission shall be conducted under the command of the commander of the unified combatant command in whose geographic area the activity or mission is to be conducted.

(2) The commander of the special operations command shall exercise command of a selected special operations mission if directed to do so by the President or the Secretary of Defense.

(e) AUTHORITY OF COMBATANT COMMANDER.—(1) In addition to the authority prescribed in section 164(c) of this title, the commander of the special operations command shall be responsible for, and shall have the authority to conduct, all affairs of such command relating to special operations activities.

(2) Subject to the authority, direction, and control of the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict, the commander of such command shall be responsible for, and shall have the authority to conduct, the following functions relating to special operations activities (whether or not relating to the special operations command):

(A) Developing strategy, doctrine, and tactics.

(B) Preparing and submitting to the Secretary of Defense program recommendations and budget proposals for special operations forces and for other forces assigned to the special operations command.

(C) Exercising authority, direction, and control over the expenditure of funds—

(i) for forces assigned to the special operations command; and

(ii) for special operations forces assigned to unified combatant commands other than the special operations command, with respect to all matters covered by paragraph (4) and, with respect to a matter not covered by paragraph (4), to the extent directed by the Secretary of Defense.

(D) Training assigned forces.

(E) Conducting specialized courses of instruction for commissioned and noncommissioned officers.

(F) Validating requirements.

(G) Establishing priorities for requirements.

(H) Ensuring the interoperability of equipment and forces.

(I) Formulating and submitting requirements for intelligence support.

(J) Monitoring the promotions of special operations forces and coordinating with the military departments regarding the assignment, retention, training, professional military education, and special and incentive pays of special operations forces.

(3) The commander of the special operations command shall be responsible for—

(A) ensuring the combat readiness of forces assigned to the special operations command; and

(B) monitoring the preparedness to carry out assigned missions of special operations forces assigned to unified combatant commands other than the special operations command.

(4)(A) The commander of the special operations command shall be responsible for, and shall have the authority to conduct, the following:

(i) Development and acquisition of special operations-peculiar equipment.

(ii) Acquisition of special operations-peculiar material, supplies, and services.

(B) Subject to the authority, direction, and control of the Secretary of Defense, the commander of the command, in carrying out his functions under subparagraph (A), shall have authority to exercise the functions of the head of an agency under chapter 137 of this title.

(C)(i) The staff of the commander shall include a command acquisition executive, who shall be responsible for the overall supervision of acquisition matters for the special operations command. The command acquisition executive shall have the authority to—

(I) negotiate memoranda of agreement with the military departments to carry out the acquisition of equipment, material, supplies, and services described in subparagraph (A) on behalf of the command;

(II) supervise the acquisition of equipment, material, supplies, and services described in subparagraph (A), regardless of whether such acquisition is carried out by the command, or by a military department pursuant to a delegation of authority by the command;

(III) represent the command in discussions with the military departments regarding acquisition programs for which the command is a customer; and

(IV) work with the military departments to ensure that the command is appropriately represented in any joint working group or integrated product team regarding acquisition programs for which the command is a customer.

(ii) The command acquisition executive of the special operations command shall be responsible to the commander for rapidly delivering acquisition solutions to meet validated special operations-peculiar requirements, subordinate to the Defense Acquisition Executive in matters of acquisition, subject to the same oversight as the service acquisition executives, and included on the distribution list for acquisition directives and instructions of the Department of Defense.

(D) The staff of the commander shall include an inspector general who shall conduct internal audits and inspections of purchasing and contracting actions through the special operations command and such other inspector general functions as may be assigned.

(f) ADMINISTRATIVE CHAIN OF COMMAND.—(1) Unless otherwise directed by the President, the administrative chain of command to the special operations command runs—

(A) from the President to the Secretary of Defense;

(B) from the Secretary of Defense to the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict; and

(C) from the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict to the commander of the special operations command.

(2) For purposes of this subsection, administrative chain of command refers to the exercise of authority, direction and control with respect to the special operations-peculiar administration and support of the special operations command, including the readiness and organization of special operations forces, resources and equipment, and civilian personnel. It does not refer to the exercise of authority, direction, and control of operational matters that are subject to the operational chain of command of the commanders of combatant commands or the exercise of authority, direction, and control of personnel, resources, equipment, and other matters that are not special operations-peculiar that are the purview of the armed forces.

(g) BUDGET.—In addition to the activities of a combatant command for which funding may be requested under section 166(b) of this title, the budget proposal of the special operations command shall include requests for funding for—

(1) development and acquisition of special operations-peculiar equipment; and

(2) acquisition of other material, supplies, or services that are peculiar to special operations activities.

(h) INTELLIGENCE AND SPECIAL ACTIVITIES.—This section does not constitute authority to conduct any activity which, if carried out as an intelligence activity by the Department of Defense, would require a notice to the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives under title V of the National Security Act of 1947 (50 U.S.C. 3091 et seq.).

(i) REGULATIONS.—The Secretary of Defense shall prescribe regulations for the activities of the special operations command. Such regulations shall include authorization for the commander of such command to provide for operational security of special operations forces and activities.

(j) IDENTIFICATION OF SPECIAL OPERATIONS FORCES.—(1) Subject to paragraph (2), for the purposes of this section special operations forces are those forces of the armed forces that—

(A) are identified as core forces or as augmenting forces in the Joint Chiefs of Staff Joint Strategic Capabilities Plan, Annex E, dated December 17, 1985;

(B) are described in the Terms of Reference and Conceptual Operations Plan for the Joint Special Operations Command, as in effect on April 1, 1986; or

(C) are designated as special operations forces by the Secretary of Defense.

(2) The Secretary of Defense, after consulting with the Chairman of the Joint Chiefs of Staff and the commander of the special operations command, may direct that any force included within the description in paragraph (1)(A) or (1)(B) shall not be considered as a special operations force for the purposes of this section.

(k) SPECIAL OPERATIONS ACTIVITIES.—For purposes of this section, special operations activi-

ties include each of the following insofar as it relates to special operations:

(1) Direct action.

(2) Strategic reconnaissance.

(3) Unconventional warfare.

(4) Foreign internal defense.

(5) Civil affairs.

(6) Military information support operations.

(7) Counterterrorism.

(8) Humanitarian assistance.

(9) Theater search and rescue.

(10) Such other activities as may be specified by the President or the Secretary of Defense.

(*l*) BUDGET SUPPORT FOR RESERVE ELEMENTS.—(1) Before the budget proposal for the special operations command for any fiscal year is submitted to the Secretary of Defense, the commander of the command shall consult with the Secretaries of the military departments concerning funding for reserve component special operations units. If the Secretary of a military department does not concur in the recommended level of funding with respect to any such unit that is under the jurisdiction of the Secretary, the commander shall include with the budget proposal submitted to the Secretary of Defense the views of the Secretary of the military department concerning such funding.

(2) Before the budget proposal for a military department for any fiscal year is submitted to the Secretary of Defense, the Secretary of that military department shall consult with the commander of the special operations command concerning funding for special operations forces in the military personnel budget for a reserve component in that military department. If the commander of that command does not concur in the recommended level of funding with respect to reserve component special operations units, the Secretary shall include with the budget proposal submitted to the Secretary of Defense the views of the commander of that command.

(Added Pub. L. 99–500, § 101(c) [title IX, § 9115(b)(1)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–122, and Pub. L. 99–591, § 101(c) [title IX, § 9115(b)(1)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–122; Pub. L. 99–661, div. A, title XIII, § 1311(b)(1), Nov. 14, 1986, 100 Stat. 3983; amended Pub. L. 100–180, div. A, title XII, § 1211(d), Dec. 4, 1987, 101 Stat. 1156; Pub. L. 100–456, div. A, title VII, § 712, Sept. 29, 1988, 102 Stat. 1997; Pub. L. 102–88, title VI, § 602(c)(3), Aug. 14, 1991, 105 Stat. 444; Pub. L. 103–337, div. A, title IX, § 925, Oct. 5, 1994, 108 Stat. 2832; Pub. L. 110–181, div. A, title VIII, § 810, Jan. 28, 2008, 122 Stat. 217; Pub. L. 112–81, div. A, title X, § 1086(1), Dec. 31, 2011, 125 Stat. 1603; Pub. L. 113–66, div. A, title IX, § 903, Dec. 26, 2013, 127 Stat. 816; Pub. L. 113–291, div. A, title X, § 1071(c)(3), Dec. 19, 2014, 128 Stat. 3508; Pub. L. 114–328, div. A, title IX, § 922(c), Dec. 23, 2016, 130 Stat. 2356.)

REFERENCES IN TEXT

The National Security Act of 1947, referred to in subsec. (h), is act July 26, 1947, ch. 343, 61 Stat. 495. Title V of the Act is classified generally to subchapter III (§ 3091 et seq.) of chapter 44 of Title 50. For complete classification of this Act to the Code, see Tables.

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

Pub. L. 99–661 and Pub. L. 99–500 added identical sections.

AMENDMENTS

2016—Subsec. (e)(2). Pub. L. 114–328, § 922(c)(1)(A), substituted ‘‘Subject to the authority, direction, and control of the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict, the commander’’ for ‘‘The commander’’ in introductory provisions.

Subsec. (e)(2)(J). Pub. L. 114–328, § 922(c)(1)(B), added subpar. (J) and struck out former subpar. (J) which read as follows: ‘‘Monitoring the promotions, assignments, retention, training, and professional military education of special operations forces officers.’’

Subsecs. (f) to (*l*). Pub. L. 114–328, § 922(c)(2), added subsec. (f) and redesignated former subsecs. (f) to (k) as (g) to (*l*), respectively.

2014—Subsec. (g). Pub. L. 113–291 substituted ‘‘(50 U.S.C. 3091 et seq.)’’ for ‘‘(50 U.S.C. 413 et seq.)’’.

2013—Subsec. (e)(4)(C)(ii). Pub. L. 113–66 inserted ‘‘responsible to the commander for rapidly delivering acquisition solutions to meet validated special operations-peculiar requirements, subordinate to the Defense Acquisition Executive in matters of acquisition, subject to the same oversight as the service acquisition executives, and’’ after ‘‘shall be’’.

2011—Subsec. (j)(6). Pub. L. 112–81 added par. (6) and struck out former par. (6) which read as follows: ‘‘Psychological operations.’’

2008—Subsec. (e)(4)(C), (D). Pub. L. 110–181 added subpar. (C) and redesignated former subpar. (C) as (D).

1994—Subsec. (k). Pub. L. 103–337 added subsec. (k).

1991—Subsec. (g). Pub. L. 102–88 substituted ‘‘would require a notice’’ for ‘‘would require—

‘‘(1) a finding under section 662 of the Foreign Assistance Act of 1961 (22 U.S.C. 2422); or

‘‘(2) a notice’’ and ‘‘title V of the National Security Act of 1947 (50 U.S.C. 413 et seq.)’’ for ‘‘section 501(a)(1) of the National Security Act of 1947 (50 U.S.C. 413)’’.

1988—Subsec. (e). Pub. L. 100–456 revised and restated subsec. (e). Prior to amendment, subsec. (e) read as follows:

‘‘(1) In addition to the authority prescribed in section 164(c) of this title, the commander of the special operations command shall be responsible for, and shall have the authority to conduct, all affairs of such command relating to special operations activities, including the following functions:

‘‘(A) Developing strategy, doctrine, and tactics.

‘‘(B) Training assigned forces.

‘‘(C) Conducting specialized courses of instruction for commissioned and noncommissioned officers.

‘‘(D) Validating requirements.

‘‘(E) Establishing priorities for requirements.

‘‘(F) Ensuring combat readiness.

‘‘(G) Developing and acquiring special operations-peculiar equipment and acquiring special operations-peculiar material, supplies, and services.

‘‘(H) Ensuring the interoperability of equipment and forces.

‘‘(I) Formulating and submitting requirements for intelligence support.

‘‘(J) Monitoring the promotions, assignments, retention, training, and professional military education of special operations forces officers.

‘‘(2) The commander of such command shall be responsible for monitoring the preparedness of special operations forces assigned to other unified combatant commands to carry out assigned missions.

‘‘(3) Subject to the authority, direction, and control of the Secretary of Defense, the commander of the command, in carrying out his functions under paragraph (1)(G), shall have authority to exercise the functions of the head of an agency under chapter 137 of this title. The staff of the commander shall include an inspector general who shall conduct internal audits and inspections of purchasing and contracting actions through the special operations command and such other inspector general functions as may be assigned.’’

1987—Subsec. (e)(3). Pub. L. 100–180 added par. (3).

EFFECTIVE DATE

Pub. L. 99–500, §101(c) [title IX, §9115(i)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–125, Pub. L. 99–591, §101(c) [title IX, §9115(i)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–125, and Pub. L. 99–661, div. A, title XIII, §1311(i), Nov. 14, 1986, 100 Stat. 3986, provided that: ''Section 167 of title 10, United States Code (as added by subsection (b)), shall be implemented not later than 180 days after the date of the enactment of this Act [Oct. 18, 1986].''

PROCESSES AND PROCEDURES FOR NOTIFICATIONS REGARDING SPECIAL OPERATIONS FORCES

Pub. L. 116–92, div. A, title XVII, §1745, Dec. 20, 2019, 133 Stat. 1842, provided that:

''(a) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act [Dec. 20, 2019], the Secretary of Defense shall establish and submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] processes and procedures for providing notifications to the committees regarding members of special operations forces, as identified in section 167(j) of title 10, United States Code.

''(b) PROCESSES AND PROCEDURES.—The processes and procedures established under subsection (a) shall—

''(1) clarify the roles and responsibilities of the Secretaries of the military departments, the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict, and the Commander of United States Special Operations Command;

''(2) provide guidance relating to the types of matters that would warrant congressional notification, including awards, reprimands, incidents, and any other matters the Secretary determines necessary;

''(3) be consistent with the national security of the United States;

''(4) be designed to protect sensitive information during an ongoing investigation;

''(5) account for the privacy of members of the Armed Forces; and

''(6) take in to account existing processes and procedures for notifications to the congressional defense committees regarding members of the conventional Armed Forces.''

MEMORANDA OF AGREEMENT ON IDENTIFICATION AND DEDICATION OF ENABLING CAPABILITIES OF GENERAL PURPOSE FORCES TO FULFILL CERTAIN REQUIREMENTS OF SPECIAL OPERATIONS FORCES

Pub. L. 112–81, div. A, title IX, §904, Dec. 31, 2011, 125 Stat. 1533, provided that:

''(a) REQUIREMENT.—By not later than 180 days after the date of the enactment of this Act [Dec. 31, 2011] and annually thereafter, each Secretary of a military department shall enter into a memorandum of agreement with the Commander of the United States Special Operations Command that identifies or establishes processes and associated milestones by which numbers and types of enabling capabilities of the general purpose forces of the Armed Forces under the jurisdiction of such Secretary can be identified and dedicated to fulfill the training and operational requirements of special operations forces under the United States Special Operations Command.

''(b) FORMAT.—Such agreements may be accomplished in an annex to existing memoranda of agreement or through separate memoranda of agreement.''

COUNTERTERRORISM OPERATIONAL BRIEFING REQUIREMENT

Pub. L. 112–81, div. A, title X, §1031, Dec. 31, 2011, 125 Stat. 1570, required the Secretary of Defense, beginning not later than March 1, 2012, to provide to the Committees on Armed Services and Appropriations of the Senate and the House of Representatives quarterly briefings outlining Department of Defense counterterrorism operations and related activities involving special operations forces, prior to repeal by Pub. L. 113–66, div. A, title X, §1042(b), Dec. 26, 2013, 127 Stat. 857.

ANNUAL REPORTS ON USE OF COMBAT MISSION REQUIREMENTS FUNDS

Pub. L. 111–383, div. A, title I, §123, Jan. 7, 2011, 124 Stat. 4158, as amended by Pub. L. 112–81, div. A, title I, §145, Dec. 31, 2011, 125 Stat. 1326; Pub. L. 114–328, div. A, title I, §145, Dec. 23, 2016, 130 Stat. 2042, provided that:

''(a) ANNUAL REPORTS REQUIRED.—

''(1) IN GENERAL.—Not later than 30 days after the end of each fiscal year, the commander of the United States Special Operations Command shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the use of Combat Mission Requirements funds during the preceding fiscal year.

''(2) COMBAT MISSION REQUIREMENTS FUNDS.—For purposes of this section, Combat Mission Requirements funds are amounts available to the Department of Defense for Defense-wide procurement in the Combat Mission Requirements subaccount of the Defense-wide Procurement account.

''(b) ELEMENTS.—Each report under subsection (a) shall include, for the fiscal year covered by such report, the following:

''(1) The balance of the Combat Mission Requirements subaccount at the beginning of such year.

''(2) The balance of the Combat Mission Requirements subaccount at the end of such year.

''(3) Any transfer of funds into or out of the Combat Mission Requirements subaccount during such year, including the source of any funds transferred into the subaccount, and the objective of any transfer of funds out of the subaccount.

''(4) A description of any requirement—

''(A) approved for procurement using Combat Mission Requirements funds during such year; or

''(B) procured using such funds during such year.

''(5) With respect to each description of a requirement under paragraph (4), the amount of Combat Mission Requirements funds committed to the procurement or approved procurement of such requirement.

''(6) A table setting forth the Combat Mission Requirements approved during the fiscal year in which such report is submitted and the two preceding fiscal years, including for each such Requirement—

''(A) the title of such Requirement;

''(B) the date of approval of such Requirement; and

''(C) the amount of funding approved for such Requirement, and the source of such approved funds.

''(7) A statement of the amount of any unspent Combat Mission Requirements funds from the fiscal year in which such report is submitted and the two preceding fiscal years.

''(c) FORM.—Each report under subsection (a) shall be submitted in unclassified form, but may include a classified annex.''

[For termination, effective Dec. 31, 2021, of annual reporting provisions in section 123 of Pub. L. 111–383, set out above, see section 1061 of Pub. L. 114–328, set out as a note under section 111 of this title.]

RESOURCES FOR CINCSOF

Pub. L. 100–180, div. A, title XII, §1211(b), Dec. 4, 1987, 101 Stat. 1155, as amended by Pub. L. 104–106, div. A, title IX, §903(f)(5), Feb. 10, 1996, 110 Stat. 402; Pub. L. 104–201, div. A, title IX, §901, Sept. 23, 1996, 110 Stat. 2617, provided that: ''The Secretary of Defense shall provide sufficient resources for the commander of the unified combatant command for special operations forces established pursuant to section 167 of title 10, United States Code, to carry out his duties and responsibilities, including particularly his duties and responsibilities relating to the following functions:

''(1) Developing and acquiring special operations-peculiar equipment and acquiring special operations-peculiar material, supplies, and services.

"(2) Providing advice and assistance to the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict in the Assistant Secretary's overall supervision of the preparation and justification of the program recommendations and budget proposals for special operations forces.

"(3) Managing assigned resources from the major force program category for special operations forces of the Five-Year Defense Plan of the Department of Defense (as required to be created pursuant to subsection (e))."

MAJOR FORCE PROGRAM CATEGORY; PROGRAM AND BUDGET EXECUTION; GRADE FOR COMMANDERS OF CERTAIN AREA SPECIAL OPERATIONS COMMANDS

Pub. L. 102–484, div. A, title IX, §936(a), (b), Oct. 23, 1992, 106 Stat. 2479, provided that, during the period beginning on Feb. 1, 1993, and ending on Feb. 1, 1995, the provisions of Pub. L. 99–661, §1311(e), set out below, would apply as if the Secretary of Defense had designated the United States Southern Command and the United States Central Command for the purposes of that section, and required the Secretary of Defense to submit to Congress a report setting forth the Secretary's recommendations for the grade structure for the special operations forces component commander for each unified command not later than Mar. 1, 1994.

Pub. L. 100–180, div. A, title XII, §1211(e), Dec. 4, 1987, 101 Stat. 1156, directed that the major force program category for special operations forces of the Five-Year Defense Plan of the Department of Defense created pursuant to Pub. L. 99–661, §1311(c), set out below, was to be created not later than 30 days after Dec. 4, 1987, and required the Secretary of Defense to submit to committees of Congress on such date a report explaining the program recommendations and budget proposals included in such category and a certification that all program recommendations and budget proposals for special operations forces had been included.

Pub. L. 99–661, div. A, title XIII, §1311(c)–(e), Nov. 14, 1986, 100 Stat. 3985, 3986, provided that:

"(c) MAJOR FORCE PROGRAM CATEGORY.—The Secretary of Defense shall create for the special operations forces a major force program category for the Five-Year Defense Plan of the Department of Defense. The Assistant Secretary of Defense for Special Operations and Low Intensity Conflict, with the advice and assistance of the commander of the special operations command, shall provide overall supervision of the preparation and justification of program recommendations and budget proposals to be included in such major force program category.

"(d) PROGRAM AND BUDGET EXECUTION.—To the extent that there is authority to revise programs and budgets approved by Congress for special operations forces, such authority may be exercised only by the Secretary of Defense, after consulting with the commander of the special operations command.

"(e) GRADE FOR COMMANDERS OF CERTAIN AREA SPECIAL OPERATIONS COMMANDS.—The commander of the special operations command of the United States European Command, the United States Pacific Command [now United States Indo-Pacific Command], and any other unified combatant command that the Secretary of Defense may designate for the purposes of this section shall be of general or flag officer grade."

[Identical provisions were contained in section 101(c) [§9115(c)–(e)] of Pub. L. 99–500 and Pub. L. 99–591, which was repealed by Pub. L. 102–484, div. A, title IX, §936(c), Oct. 23, 1992, 106 Stat. 2479.]

REPORT ON CAPABILITIES OF UNITED STATES TO CONDUCT SPECIAL OPERATIONS AND ENGAGE IN LOW INTENSITY CONFLICTS

Pub. L. 99–500, §101(c) [title IX, §9115(h)(2)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–125, Pub. L. 99–591, §101(c) [title IX, §9115(h)(2)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–125, and Pub. L. 99–661, div. A, title XIII, §1311(h)(2), Nov. 14, 1986, 100 Stat. 3986, required President, not later than one year after the date of enactment, to transmit to Congress a report on capabilities of United States to conduct special operations and engage in low intensity conflicts, the report to include a description of deficiencies in such capabilities, actions being taken throughout executive branch to correct such deficiencies, the principal low intensity conflict threats to interests of United States, and the actions taken and to be taken to implement this section.

[§ 167a. Repealed. Pub. L. 115–232, div. A, title VIII, § 812(a)(1)(A), Aug. 13, 2018, 132 Stat. 1846]

Section, added Pub. L. 108–136, div. A, title VIII, §848(a)(1), Nov. 24, 2003, 117 Stat. 1554; amended Pub. L. 109–163, div. A, title VIII, §846(a), Jan. 6, 2006, 119 Stat. 3391; Pub. L. 110–181, div. A, title VIII, §825, Jan. 28, 2008, 122 Stat. 227, provided for delegation of limited acquisition authority to the commander of the unified combatant command for joint warfighting experimentation.

§ 167b. Unified combatant command for cyber operations

(a) ESTABLISHMENT.—(1) With the advice and assistance of the Chairman of the Joint Chiefs of Staff, the President, through the Secretary of Defense, shall establish under section 161 of this title a unified combatant command for cyber operations forces (hereinafter in this section referred to as the "cyber command").

(2) The principal mission of the Cyber Command is to direct, synchronize, and coordinate military cyberspace planning and operations to defend and advance national interests in collaboration with domestic and international partners.

(b) ASSIGNMENT OF FORCES.—(1) Active and reserve cyber forces of the armed forces shall be assigned to the Cyber Command through the Global Force Management Process, as approved by the Secretary of Defense.

(2) Cyber forces not assigned to Cyber Command remain assigned to combatant commands or service-retained.

(c) GRADE OF COMMANDER.—The commander of the cyber command shall hold the grade of general or, in the case of an officer of the Navy, admiral while serving in that position, without vacating that officer's permanent grade. The commander of such command shall be appointed to that grade by the President, by and with the advice and consent of the Senate, for service in that position.

(d) AUTHORITY OF COMBATANT COMMANDER.—(1) In addition to the authority prescribed in section 164(c) of this title, the commander of the cyber command shall be responsible for, and shall have the authority to conduct, all affairs of such command relating to cyber operations activities.

(2)(A) Subject to the authority, direction, and control of the Principal Cyber Advisor, the commander of such command shall be responsible for, and shall have the authority to conduct, the following functions relating to cyber operations activities (whether or not relating to the cyber command):

(i) Developing strategy, doctrine, and tactics.

(ii) Preparing and submitting to the Secretary of Defense program recommendations

and budget proposals for cyber operations forces and for other forces assigned to the cyber command.

(iii) Exercising authority, direction, and control over the expenditure of funds—

(I) for forces assigned directly to the cyber command; and

(II) for cyber operations forces assigned to unified combatant commands other than the cyber command, with respect to all matters covered by section 807 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114–92; 129 Stat. 886; 10 U.S.C. 2224 note) and, with respect to a matter not covered by such section, to the extent directed by the Secretary of Defense.

(iv) Training and certification of assigned joint forces.

(v) Conducting specialized courses of instruction for commissioned and noncommissioned officers.

(vi) Validating requirements.

(vii) Establishing priorities for requirements.

(viii) Ensuring the interoperability of equipment and forces.

(ix) Formulating and submitting requirements for intelligence support.

(x) Monitoring the promotion of cyber operation forces and coordinating with the military departments regarding the assignment, retention, training, professional military education, and special and incentive pays of cyber operation forces.

(B) The authority, direction, and control exercised by the Principal Cyber Advisor for purposes of this section is authority, direction, and control with respect to the administration and support of the cyber command, including readiness and organization of cyber operations forces, cyber operations-peculiar equipment and resources, and civilian personnel.

(C) Nothing in this section shall be construed as providing the Principal Cyber Advisor authority, direction, and control of operational matters that are subject to the operational chain of command of the combatant commands or the exercise of authority, direction, and control of personnel, resources, equipment, and other matters that are not cyber-operations peculiar and that are in the purview of the armed forces.

(3) The commander of the cyber command shall be responsible for—

(A) ensuring the combat readiness of forces assigned to the cyber command; and

(B) monitoring the preparedness to carry out assigned missions of cyber forces assigned to unified combatant commands other than the cyber command.

(C) The staff of the commander shall include an inspector general who shall conduct internal audits and inspections of purchasing and contracting actions through the cyber operations command and such other inspector general functions as may be assigned.

(e) Intelligence and Special Activities.—This section does not constitute authority to conduct any activity which, if carried out as an intelligence activity by the Department of Defense, would require a notice to the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives under title V of the National Security Act of 1947 (50 U.S.C. 3091 et seq.).

(Added Pub. L. 114–328, div. A, title IX, § 923(a), Dec. 23, 2016, 130 Stat. 2357; amended Pub. L. 115–91, div. A, title X, § 1081(a)(12), title XVI, § 1635, Dec. 12, 2017, 131 Stat. 1595, 1741; Pub. L. 116–283, div. A, title XVII, § 1701(1), Jan. 1, 2021, 134 Stat. 4079.)

References in Text

The National Security Act of 1947, referred to in subsec. (e), is act July 26, 1947, ch. 343, 61 Stat. 495. Title V of the Act is classified generally to subchapter III (§ 3091 et seq.) of chapter 44 of Title 50. For complete classification of this Act to the Code, see Tables.

Amendments

2021—Subsec. (a). Pub. L. 116–283, § 1701(1)(A), designated existing provisions as par. (1), struck out at end ''The principal function of the command is to prepare cyber operations forces to carry out assigned missions.'', and added par. (2).

Subsec. (b). Pub. L. 116–283, § 1701(1)(B), amended subsec. (b) generally. Prior to amendment, text read as follows: ''Unless otherwise directed by the Secretary of Defense, all active and reserve cyber operations forces of the armed forces stationed in the United States shall be assigned to the cyber command.''

2017—Subsec. (d). Pub. L. 115–91, § 1635, redesignated subsec. (e) as (d) and struck out former subsec. (d) which related to command of activity or mission.

Subsec. (e). Pub. L. 115–91, § 1635(2), redesignated subsec. (f) as (e). Former subsec. (e) redesignated (d).

Subsec. (e)(2)(A)(iii)(II). Pub. L. 115–91, § 1081(a)(12), substituted ''Fiscal Year 2016'' for ''Fiscal Year 2014''.

Subsec. (f). Pub. L. 115–91, § 1635(2), redesignated subsec. (f) as (e).

Elevation of U.S. Cyber Command to a Unified Combatant Command

Memorandum of President of the United States, Aug. 15, 2017, 82 F.R. 39953, provided:

Memorandum for the Secretary of Defense

Pursuant to my authority as the Commander in Chief and under sections 161 and 167b of title 10, United States Code, and in consultation with the Secretary of Defense and the Chairman of the Joint Chiefs of Staff, I direct that U.S. Cyber Command be established as a Unified Combatant Command. I also direct the Secretary of Defense to recommend an officer for my nomination and Senate confirmation as commander in order to establish U.S. Cyber Command as a Unified Combatant Command.

I assign to U.S. Cyber Command: (1) all the general responsibilities of a Unified Combatant Command; (2) the cyberspace-related responsibilities previously assigned to the Commander, U.S. Strategic Command; (3) the responsibilities of Joint Force Provider and Joint Force Trainer; and (4) all other responsibilities identified in section 167b of title 10, United States Code. The comprehensive list of authorities and responsibilities for U.S. Cyber Command will be included in the next update to the Unified Command Plan.

I further direct that the Secretary of Defense, in coordination with the Director of National Intelligence, provide a recommendation and, as appropriate, a plan to me regarding the future command relationship between the U.S. Cyber Command and the National Security Agency.

Consistent with section 161(b)(2) of title 10, United States Code, and section 301 of title 3, United States Code, you are directed to notify the Congress on my behalf.

You are authorized and directed to publish this memorandum in the Federal Register.

DONALD J. TRUMP.

[§ 168. Repealed. Pub. L. 114–328, div. A, title XII, § 1253(a)(1)(A), Dec. 23, 2016, 130 Stat. 2532]

Section, added Pub. L. 103–337, div. A, title XIII, §1316(a)(1), Oct. 5, 1994, 108 Stat. 2898; amended Pub. L. 104–106, div. A, title IV, §416, Feb. 10, 1996, 110 Stat. 289; Pub. L. 108–375, div. A, title IV, §416(e), Oct. 28, 2004, 118 Stat. 1868; Pub. L. 110–181, div. A, title XII, §1201, Jan. 28, 2008, 122 Stat. 363; Pub. L. 110–417, [div. A], title XII, §1202(a), Oct. 14, 2008, 122 Stat. 4622, related to military-to-military contacts and comparable activities.

UPDATE OF POLICY GUIDANCE ON AUTHORITY FOR ASSIGNMENT OF CIVILIAN EMPLOYEES OF THE DEPARTMENT OF DEFENSE AS ADVISORS TO FOREIGN MINISTRIES OF DEFENSE AND REGIONAL ORGANIZATIONS

Pub. L. 113–291, div. A, title X, §1047(b), Dec. 19, 2014, 128 Stat. 3495, required the Under Secretary of Defense for Policy to issue an update of the policy of the Department of Defense for assignment of civilian employees of the Department as advisors to foreign ministries of defense and regional organizations under the authority in section 1081 of Pub. L. 112–81, formerly set out as a note under this section.

Pub. L. 113–66, div. A, title X, §1094(a)(2), Dec. 26, 2013, 127 Stat. 878, required the Under Secretary of Defense for Policy to issue an update of the policy of the Department of Defense for assignment of civilian employees of the Department as advisors to foreign ministries of defense under the authority in section 1081 of Pub. L. 112–81, formerly set out as a note under this section.

DEFENSE INSTITUTION CAPACITY BUILDING PROGRAM

Pub. L. 112–81, div. A, title X, §1081, Dec. 31, 2011, 125 Stat. 1599, as amended by Pub. L. 113–66, div. A, title X, §1094(a)(1), (3)–(5), Dec. 26, 2013, 127 Stat. 878; Pub. L. 113–291, div. A, title X, §1047(a), (c), Dec. 19, 2014, 128 Stat. 3494, 3495; Pub. L. 114–92, div. A, title X, §1055(a)–(d)(1), Nov. 25, 2015, 129 Stat. 982, 983, which related to the Defense Institution Capacity Building Program, was repealed by Pub. L. 114–328, div. A, title XII, §1241(c)(3), Dec. 23, 2016, 130 Stat. 2500.

AUTHORITY FOR NON-RECIPROCAL EXCHANGES OF DEFENSE PERSONNEL BETWEEN THE UNITED STATES AND FOREIGN COUNTRIES

Pub. L. 111–84, div. A, title XII, §1207, Oct. 28, 2009, 123 Stat. 2514, as amended by Pub. L. 112–239, div. A, title XII, §1202, Jan. 2, 2013, 126 Stat. 1980; Pub. L. 114–92, div. A, title XII, §1204, Nov. 25, 2015, 129 Stat. 1039, which related to authority for non-reciprocal exchanges of defense personnel between the United States and foreign countries, was repealed by Pub. L. 114–328, div. A, title XII, §1242(c)(2), Dec. 23, 2016, 130 Stat. 2513.

AGREEMENTS FOR EXCHANGE OF DEFENSE PERSONNEL BETWEEN UNITED STATES AND FOREIGN COUNTRIES

Pub. L. 104–201, div. A, title X, §1082, Sept. 23, 1996, 110 Stat. 2672, which related to agreements for exchange of defense personnel between the United States and foreign countries, was repealed by Pub. L. 114–328, div. A, title XII, §1242(c)(1), Dec. 23, 2016, 130 Stat. 2513. See section 311 of this title.

[§ 169. Repealed. Pub. L. 116–92, div. A, title XVI, § 1601(a), Dec. 20, 2019, 133 Stat. 1722]

Section, added Pub. L. 115–232, div. A, title XVI, §1601(a)(1), Aug. 13, 2018, 132 Stat. 2101, related to United States Space Command for carrying out joint space warfighting operations. See chapter 908 of this title.

CHAPTER 7—BOARDS, COUNCILS, AND COMMITTEES

Sec.
171. Armed Forces Policy Council.
171a. Council on Oversight of the National Leadership Command, Control, and Communications System.
172. Explosive safety board.
173. Advisory personnel.
174. Advisory personnel: research and development.
175. Reserve Forces Policy Board.
176. Armed Forces Institute of Pathology.
177. American Registry of Pathology.
178. The Henry M. Jackson Foundation for the Advancement of Military Medicine.
179. Nuclear Weapons Council.
180. Service academy athletic programs: review board.
181. Joint Requirements Oversight Council.
182. Center for Excellence in Disaster Management and Humanitarian Assistance.
183. Department of Defense Board of Actuaries.
183a. Military Aviation and Installation Assurance Clearinghouse for review of mission obstructions.
[184 to 186. Renumbered or Repealed.]
187. Strategic Materials Protection Board.
188. Interagency Council on the Strategic Capability of the National Laboratories.
189. Communications Security Review and Advisory Board.
[190. Repealed.]

AMENDMENTS

2019—Pub. L. 116–92, div. A, title VIII, §810(b), title XVII, §1731(a)(10), Dec. 20, 2019, 133 Stat. 1487, 1813, substituted "Military Aviation and Installation Assurance Clearinghouse for review of mission obstructions" for "Military Aviation and Installation Assurance Siting Clearinghouse for review of mission obstructions" in item 183a and struck out item 190 "Defense Cost Accounting Standards Board".

2017—Pub. L. 115–91, div. A, title III, §§311(b)(4), 341(b)(2), Dec. 12, 2017, 131 Stat. 1348, 1361, substituted "Explosive safety board" for "Ammunition storage board" in item 172 and added item 183a.

2016—Pub. L. 114–328, div. A, title VIII, §820(b)(2), title IX, §904(b), title XII, §1241(*o*)(3), Dec. 23, 2016, 130 Stat. 2276, 2345, 2512, struck out items 184 "Regional Centers for Security Studies" and 185 "Financial Management Modernization Executive Committee" and, effective Oct. 1, 2018, added item 190.

2014—Pub. L. 113–291, div. A, title IX, §901(*l*)(2), title X, §1071(f)(3), Dec. 19, 2014, 128 Stat. 3468, 3510, struck out item 186 "Defense Business System Management Committee" and inserted period at end of item 189.

2013—Pub. L. 113–66, div. A, title II, §261(b), title X, §1052(a)(2), Dec. 26, 2013, 127 Stat. 725, 861, added items 171a and 189.

Pub. L. 112–239, div. A, title X, §1040(b), Jan. 2, 2013, 126 Stat. 1930, added item 188.

2008—Pub. L. 110–417, [div. A], title X, §1061(a)(3), Oct. 14, 2008, 122 Stat. 4612, inserted period at end of item 183.

Pub. L. 110–181, div. A, title IX, §906(a)(2), Jan. 28, 2008, 122 Stat. 277, added item 183.

2006—Pub. L. 109–364, div. A, title VIII, §843(b), title IX, §904(a)(2), Oct. 17, 2006, 120 Stat. 2339, 2353, substituted "Regional Centers for Security Studies" for "Department of Defense regional centers for security studies" in item 184 and added item 187.

2004—Pub. L. 108–375, div. A, title III, §332(b)(2), Oct. 28, 2004, 118 Stat. 1855, added item 186.

2002—Pub. L. 107–314, div. A, title X, §1041(a)(1)(B), Dec. 2, 2002, 116 Stat. 2645, struck out item 183 "Advisory committees: annual justification required".

2001—Pub. L. 107–107, div. A, title X, §1009(a)(2), Dec. 28, 2001, 115 Stat. 1208, added item 185.

2000—Pub. L. 106–398, §1 [[div. A], title IX, §912(a)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–229, added item 184.

1997—Pub. L. 105–85, div. A, title III, §382(a)(2), title IX, §904(b), Nov. 18, 1997, 111 Stat. 1711, 1855, added items 182 and 183.

1996—Pub. L. 104–106, div. A, title IX, § 905(a)(2), Feb. 10, 1996, 110 Stat. 404, added item 181.

1991—Pub. L. 102–190, div. A, title V, § 513(b), Dec. 5, 1991, 105 Stat. 1361, added item 180.

1986—Pub. L. 99–661, div. C, title I, § 3137(a)(2), Nov. 14, 1986, 100 Stat. 4066, added item 179.

1983—Pub. L. 98–132, § 2(a)(2), Oct. 17, 1983, 97 Stat. 849, inserted ''The Henry M. Jackson'' before ''Foundation'' in item 178.

Pub. L. 98–36, § 2(b), May 27, 1983, 97 Stat. 201, added item 178.

1976—Pub. L. 94–361, title VIII, § 811(c), July 14, 1976, 90 Stat. 936, added items 176 and 177.

§ 171. Armed Forces Policy Council

(a) There is in the Department of Defense an Armed Forces Policy Council consisting of—

(1) the Secretary of Defense, as Chairman, with the power of decision;

(2) the Deputy Secretary of Defense;

(3) the Under Secretary of Defense for Acquisition and Sustainment;

(4) the Under Secretary of Defense for Research and Engineering;

(5) the Secretary of the Army;

(6) the Secretary of the Navy;

(7) the Secretary of the Air Force;

(8) the Under Secretary of Defense for Policy;

(9) the Deputy Under Secretary of Defense for Acquisition and Technology;

(10) the Deputy Under Secretary of Defense for Research and Engineering;

(11) the Deputy Under Secretary of Defense for Acquisition and Sustainment;

(12) the Chairman of the Joint Chiefs of Staff;

(13) the Chief of Staff of the Army;

(14) the Chief of Naval Operations;

(15) the Chief of Staff of the Air Force;

(16) the Commandant of the Marine Corps; and

(17) the Chief of Space Operations.

(b) The Armed Forces Policy Council shall advise the Secretary of Defense on matters of broad policy relating to the armed forces and shall consider and report on such other matters as the Secretary of Defense may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 8; Pub. L. 85–599, § 9(c), Aug. 6, 1958, 72 Stat. 521; Pub. L. 92–596, § 5, Oct. 27, 1972, 86 Stat. 1318; Pub. L. 95–140, § 3(b), Oct. 21, 1977, 91 Stat. 1173; Pub. L. 98–94, title XII, § 1213, Sept. 24, 1983, 97 Stat. 687; Pub. L. 99–500, § 101(c) [title X, § 903(e)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–133, and Pub. L. 99–591, § 101(c) [title X, § 903(e)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–133; Pub. L. 99–661, div. A, title IX, formerly title IV, § 903(e), Nov. 14, 1986, 100 Stat. 3912, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; Pub. L. 103–160, div. A, title IX, § 904(d)(1), (3), Nov. 30, 1993, 107 Stat. 1728; Pub. L. 107–107, div. A, title X, § 1048(b)(2), Dec. 28, 2001, 115 Stat. 1225; Pub. L. 116–92, div. A, title IX, § 902(6), Dec. 20, 2019, 133 Stat. 1543; Pub. L. 116–283, div. A, title IX, § 924(b)(8), Jan. 1, 2021, 134 Stat. 3822.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
171(a)	5:171e (less last sentence).	July 26, 1947, ch. 343, § 210; restated Aug. 10, 1949, ch. 412, § 7(a), 63 Stat. 581.
171(b)	5:171e (last sentence).	

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

AMENDMENTS

2021—Subsec. (a)(17). Pub. L. 116–283 added par. (17).

2019—Subsec. (a)(3). Pub. L. 116–92, § 902(6)(A), substituted ''Under Secretary of Defense for Acquisition and Sustainment'' for ''Under Secretary of Defense for Acquisition, Technology, and Logistics''.

Subsec. (a)(4) to (16). Pub. L. 116–92, § 902(6)(B)–(E), added par. (4), redesignated former pars. (4) to (8) as (5) to (9), respectively, added pars. (10) and (11), and redesignated former pars. (9) to (13) as (12) to (16), respectively.

2001—Subsec. (a)(3). Pub. L. 107–107 substituted ''Under Secretary of Defense for Acquisition, Technology, and Logistics'' for ''Under Secretary of Defense for Acquisition and Technology''.

1993—Subsec. (a)(3). Pub. L. 103–160, § 904(d)(1), substituted ''Under Secretary of Defense for Acquisition and Technology'' for ''Under Secretary of Defense for Acquisition''.

Subsec. (a)(8). Pub. L. 103–160, § 904(d)(3), substituted ''Deputy Under Secretary of Defense for Acquisition and Technology'' for ''Deputy Under Secretary of Defense for Acquisition''.

1986—Subsec. (a)(3) to (13) Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661 amended subsec. (a) identically, redesignating pars. (3) to (11) as (4), (5), (6), (7), (9), (10), (11), (12), and (13), respectively, adding new pars. (3) and (8), and substituting ''the Under Secretary of Defense for Acquisition'' for ''the Under Secretaries of Defense'' in par. (7).

1983—Subsec. (a)(11). Pub. L. 98–94 added par. (11).

1977—Subsec. (a)(2). Pub. L. 95–140, § 3(b)(1), substituted ''the Deputy'' for ''a Deputy''.

Subsec. (a)(6). Pub. L. 95–140, § 3(b)(2), substituted ''the Under Secretaries of Defense;'' for ''the Director of Defense Research and Engineering;''.

1972—Subsec. (a)(2). Pub. L. 92–596 substituted ''a Deputy Secretary'' for ''the Deputy Secretary''.

1958—Subsec. (a)(6) to (10). Pub. L. 85–599 added par. (6) and redesignated former pars. (6) to (9) as (7) to (10), respectively.

SHORT TITLE OF 1983 AMENDMENT

Pub. L. 98–36, § 1, May 27, 1983, 97 Stat. 200, provided: ''That this Act [enacting section 178 of this title and amending section 2113 of this title] may be cited as the 'Foundation for the Advancement of Military Medicine Act of 1983'.''

§ 171a. Council on Oversight of the National Leadership Command, Control, and Communications System

(a) ESTABLISHMENT.—There is within the Department of Defense a council to be known as the ''Council on Oversight of the National Leadership Command, Control, and Communications System'' (in this section referred to as the ''Council'').

(b) MEMBERSHIP.—The members of the Council shall be as follows:

(1) The Under Secretary of Defense for Policy.

(2) The Under Secretary of Defense for Acquisition and Sustainment.

(3) The Vice Chairman of the Joint Chiefs of Staff.

(4) The Commander of the United States Strategic Command.

(5) The Director of the National Security Agency.

(6) The Chief Information Officer of the Department of Defense.

(7) Such other officers of the Department of Defense as the Secretary may designate.

(c) CO-CHAIR.—The Council shall be co-chaired by the Under Secretary of Defense for Acquisition and Sustainment and the Vice Chairman of the Joint Chiefs of Staff.

(d) RESPONSIBILITIES.—(1) The Council shall be responsible for oversight of the command, control, and communications system for the national leadership of the United States, including nuclear command, control, and communications, and including with respect to the integrated tactical warning and attack assessment systems, processes, and enablers, and continuity of the governmental functions of the Department of Defense.

(2) In carrying out the responsibility for oversight of the command, control, and communications system as specified in paragraph (1), the Council shall be responsible for the following:

(A) Oversight of performance assessments (including interoperability).

(B) Vulnerability identification and mitigation.

(C) Architecture development (including space system architectures and associated user terminals and ground segments).

(D) Resource prioritization.

(E) Such other responsibilities as the Secretary of Defense shall specify for purposes of this section.

(e) ANNUAL REPORTS.—During the period preceding January 31, 2021, at the same time each year that the budget of the President is submitted to Congress pursuant to section 1105(a) of title 31, and from time to time after such period at the discretion of the Council, the Council shall submit to the congressional defense committees a report on the activities of the Council. Each report shall include the following:

(1) A description and assessment of the activities of the Council during the previous fiscal year.

(2) A description of the activities proposed to be undertaken by the Council during the period covered by the current future-years defense program under section 221 of this title.

(3) Any changes to the requirements of the command, control, and communications system for the national leadership of the United States made during the previous year, along with an explanation for why the changes were made and a description of the effects of the changes to the capability of the system.

(4) A breakdown of each program element in such budget that relates to the system, including how such program element relates to the operation and sustainment, research and development, procurement, or other activity of the system.

(5) An assessment of the threats and vulnerabilities described in the reports and assessments collected under subsection (f) during the previous year, including any plans to address such threats and vulnerabilities.

(6) An assessment of the readiness of the command, control, and communications system for the national leadership of the United States and of each layer of the system, as that layer relates to nuclear command, control, and communications.

(f) COLLECTION OF ASSESSMENTS ON CERTAIN THREATS.—The Council shall collect and assess (consistent with the provision of classified information and intelligence sources and methods) all reports and assessments otherwise conducted by the intelligence community (as defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 3003(4))) regarding foreign threats, including cyber threats, to the command, control, and communications system for the national leadership of the United States and the vulnerabilities of such system to such threats.

(g) BUDGET AND FUNDING MATTERS.—(1) Not later than 30 days after the President submits to Congress the budget for a fiscal year under section 1105(a) of title 31, the Commander of the United States Strategic Command shall submit to the Chairman of the Joint Chiefs of Staff an assessment of—

(A) whether such budget allows the Federal Government to meet the required capabilities of the command, control, and communications system for the national leadership of the United States during the fiscal year covered by the budget and the four subsequent fiscal years; and

(B) if the Commander determines that such budget does not allow the Federal Government to meet such required capabilities, a description of the steps being taken to meet such required capabilities.

(2) Not later than 30 days after the date on which the Chairman of the Joint Chiefs of Staff receives the assessment of the Commander of the United States Strategic Command under paragraph (1), the Chairman shall submit to the congressional defense committees—

(A) such assessment as it was submitted to the Chairman; and

(B) any comments of the Chairman.

(3) If a House of Congress adopts a bill authorizing or appropriating funds for the activities of the command, control, and communications system for the national leadership of the United States that, as determined by the Council, provides insufficient funds for such activities for the period covered by such bill, the Council shall notify the congressional defense committees of the determination.

(h) NOTIFICATION OF ANOMALIES.—(1) The Secretary of Defense shall submit to the congressional defense committees written notification of an anomaly in the nuclear command, control, and communications system for the national leadership of the United States that is reported to the Secretary or the Council by not later than 14 days after the date on which the Secretary or the Council learns of such anomaly, as the case may be.

(2) In this subsection, the term ''anomaly'' means any unplanned, irregular, or abnormal event, whether unexplained or caused intentionally or unintentionally by a person or a system.

(i) REPORTS ON SPACE ARCHITECTURE DEVELOPMENT.—(1) Not less than 90 days before each of the dates on which a system described in paragraph (2) achieves Milestone A or Milestone B approval, the Under Secretary of Defense for Acquisition and Sustainment shall submit to the

congressional defense committees a report prepared by the Council detailing the implications of any changes to the architecture of such a system with respect to the systems, capabilities, and programs covered under subsection (d).

(2) A system described in this paragraph is any of the following:

(A) Advanced extremely high frequency satellites.

(B) The space-based infrared system.

(C) The integrated tactical warning and attack assessment system and its command and control system.

(D) The enhanced polar system.

(3) In this subsection, the terms ''Milestone A approval'' and ''Milestone B approval'' have the meanings given such terms in sections 2366(e) and 2366a(d) of this title.

(j) NOTIFICATION OF REDUCTION OF CERTAIN WARNING TIME.—(1) None of the funds authorized to be appropriated or otherwise made available to the Department of Defense for any fiscal year may be used to change any command, control, and communications system described in subsection (d)(1) in a manner that reduces the warning time provided to the national leadership of the United States with respect to a warning of a strategic missile attack on the United States unless—

(A) the Secretary of Defense notifies the congressional defense committees of such proposed change and reduction; and

(B) a period of one year elapses following the date of such notification.

(2) Not later than March 1, 2017, and each year thereafter, the Council shall determine whether the integrated tactical warning and attack assessment system and its command and control system have met all warfighter requirements for operational availability, survivability, and endurability. If the Council determines that such systems have not met such requirements, the Secretary of Defense and the Chairman of the Joint Chiefs of Staff shall jointly submit to the congressional defense committees—

(A) an explanation for such negative determination;

(B) a description of the mitigations that are in place or being put in place as a result of such negative determination; and

(C) the plan of the Secretary and the Chairman to ensure that the Council is able to make a positive determination in the following year.

(k) STATUS OF ACQUISITION PROGRAMS.—(1) On a quarterly basis, each program manager of a covered acquisition program shall transmit to the co-chairs of the Council, acting through the senior steering group of the Council, a report that identifies—

(A) the covered acquisition program;

(B) the requirements of the program;

(C) the development timeline of the program; and

(D) the status of the program, including whether the program is delayed and, if so, whether such delay will result in a program schedule delay.

(2) Not later than seven days after the end of each semiannual period, the co-chairs of the Council shall submit to the congressional defense committees a report that identifies, with respect to the reports transmitted to the Council under paragraph (1) for the two quarters in such period—

(A) each covered acquisition program that is delayed more than 180 days; and

(B) any covered acquisition program that should have been included in such reports but was excluded, and the reasons for such exclusion.

(3) In this subsection, the term ''covered acquisition program'' means each acquisition program of the Department of Defense that materially contributes to—

(A) the nuclear command, control, and communications systems of the United States; or

(B) the continuity of government systems of the United States.

(*l*) NATIONAL LEADERSHIP OF THE UNITED STATES DEFINED.—In this section, the term ''national leadership of the United States'' means the following:

(1) The President.

(2) The Vice President.

(3) Such other civilian officials of the United States Government as the President shall designate for purposes of this section.

(Added Pub. L. 113–66, div. A, title X, § 1052(a)(1), Dec. 26, 2013, 127 Stat. 859; amended Pub. L. 114–92, div. A, title XVI, § 1651, Nov. 25, 2015, 129 Stat. 1121; Pub. L. 114–328, div. A, title XVI, § 1661, Dec. 23, 2016, 130 Stat. 2613; Pub. L. 115–91, div. A, title X, § 1081(a)(13), title XVI, § 1654(a)(1), Dec. 12, 2017, 131 Stat. 1595, 1758; Pub. L. 116–92, div. A, title XVI, § 1661, Dec. 20, 2019, 133 Stat. 1772; Pub. L. 116–283, div. A, title X, § 1081(a)(10), title XVIII, §§ 1845(c)(2), 1883(b)(2), Jan. 1, 2021, 134 Stat. 3871, 4247, 4294.)

AMENDMENT OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1883(b)(2), Jan. 1, 2021, 134 Stat. 4151, 4294, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, except as otherwise provided in title XVIII of Pub. L. 116–283, in title 10, United States Code, each reference in the text of such title to a source section that is redesignated by title XVIII of Pub. L. 116–283, is amended by striking such reference and inserting a reference to the appropriate section as so redesignated. See 2021 Amendment note(s) below.

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1845(c)(2), Jan. 1, 2021, 134 Stat. 4151, 4247, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, subsection (i)(3) of this section is amended by striking ''section 2366(e)'' and inserting ''sections 4172(e)''. See 2021 Amendment note below.

AMENDMENTS

2021—Subsec. (i)(1). Pub. L. 116–283, § 1081(a)(10), substituted ''Acquisition'' for ''Acquisitions''.

Subsec. (i)(3). Pub. L. 116–283, § 1883(b)(2), substituted ''4251(d)'' for ''2366a(d)''.

Pub. L. 116–283, § 1845(c)(2), which directed substitution of ''sections 4172(e)'' for ''section 2366(e)'', was

executed by making the substitution for "sections 2366(e)", to reflect the probable intent of Congress.

2019—Pub. L. 116–92 substituted "and Sustainment" for ", Technology, and Logistics" wherever appearing.

2017—Subsec. (f). Pub. L. 115–91, §1081(a)(13)(A), substituted "(50 U.S.C. 3003(4)))" for "(50 U.S.C. 3003(4))".

Subsec. (i)(3). Pub. L. 115–91, §1081(a)(13)(B), substituted "sections 2366(e) and 2366a(d)" for "section 2366(e)".

Subsecs. (k), (*l*). Pub. L. 115–91, §1654(a)(1), added subsec. (k) and redesignated former subsec. (k) as (*l*).

2016—Subsec. (d)(1). Pub. L. 114–328, §1661(a)(1), inserted ", and including with respect to the integrated tactical warning and attack assessment systems, processes, and enablers, and continuity of the governmental functions of the Department of Defense" before period at end.

Subsec. (d)(2)(C). Pub. L. 114–328, §1661(a)(2), inserted "(including space system architectures and associated user terminals and ground segments)" before period at end.

Subsec. (e). Pub. L. 114–328, §1661(c)(1), substituted "During the period preceding January 31, 2021, at the same time each year that the budget of the President is submitted to Congress pursuant to section 1105(a) of title 31, and from time to time after such period at the discretion of the Council," for "At the same time each year that the budget of the President is submitted to Congress pursuant to section 1105(a) of title 31," in introductory provisions.

Subsec. (e)(6). Pub. L. 114–328, §1661(c)(2), added par. (6).

Subsecs. (i) to (k). Pub. L. 114–328, §1661(b), added subsecs. (i) and (j) and redesignated former subsec. (i) as (k).

2015—Subsec. (e)(5). Pub. L. 114–92, §1651(3), added par. (5).

Subsecs. (f) to (i). Pub. L. 114–92, §1651(1), (2), added subsec. (f) and redesignated former subsecs. (f) to (h) as (g) to (i), respectively.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by sections 1845(c)(2) and 1883(b)(2) of Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

DEPARTMENT OF DEFENSE INSTRUCTION

Pub. L. 115–91, div. A, title XVI, §1654(a)(2), Dec. 12, 2017, 131 Stat. 1759, provided that: "The Secretary of Defense shall issue a Department of Defense Instruction, or revise such an Instruction, to ensure that program managers carry out subsection (k)(1) of section 171a of title 10, United States Code, as added by paragraph (1)."

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective Dec. 31, 2021, of provisions in subsecs. (e) and (g)(2) of this section requiring submittal of annual report to Congress, see section 1061 of Pub. L. 114–328, set out as a note under section 111 of this title.

EXECUTION AND PROGRAMMATIC OVERSIGHT

Pub. L. 115–91, div. A, title XVI, §1654(b), Dec. 12, 2017, 131 Stat. 1759, provided that:

"(1) DATABASE.—Not later than one year after the date of the enactment of this Act [Dec. 12, 2017], the Chief Information Officer of the Department of Defense, as Executive Secretary of the Council on Oversight of the National Leadership Command, Control, and Communications System established under section 171a of title 10, United States Code (or a successor to the Chief Information Officer assigned responsibility for policy, oversight, guidance, and coordination for nuclear command and control systems), shall, in coordination with the Under Secretary of Defense for Acquisition and Sustainment, develop a database relating to the execution of all nuclear command, control, and communications acquisition programs of the Department of Defense with an approved Materiel Development Decision. The database shall be updated not less frequently than annually and upon completion of a major program element of such a program.

"(2) DATABASE ELEMENTS.—The database required by paragraph (1) shall include, at a minimum, the following elements for each program described in that paragraph, consistent with Department of Defense Instruction 5000.02:

"(A) Projected dates for Milestones A, B, and C, including cost thresholds and objectives for major elements of life cycle cost.

"(B) Projected dates for program design reviews and critical design reviews.

"(C) Projected dates for developmental and operation tests.

"(D) Projected dates for initial operational capability and final operational capability.

"(E) An acquisition program baseline.

"(F) Program acquisition unit cost and average procurement unit cost.

"(G) Contract type.

"(H) Key performance parameters.

"(I) Key system attributes.

"(J) A risk register.

"(K) Technology readiness levels.

"(L) Manufacturing readiness levels.

"(M) Integration readiness levels.

"(N) Any other critical elements that affect the stability of the program.

"(3) BRIEFINGS.—The co-chairs of the Council on Oversight of the National Leadership Command, Control, and Communications System shall brief the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] on the status of the database required by paragraph (1)—

"(A) not later than 180 days after the date of the enactment of this Act [Dec. 12, 2017]; and

"(B) upon completion of the database."

§ 172. Explosive safety board

(a) IN GENERAL.—The Secretary of Defense, acting through a joint board that includes members selected by the Secretaries of the military departments, composed of military officers designated as the chair and voting members of the board for each military department, and other civilian officers and employees of the Department of Defense, as necessary, shall provide oversight on storage and transportation of supplies of ammunition and components thereof for use of the Army, Navy, Air Force, Marine Corps, Space Force, and Coast Guard, with particular regard to keeping those supplies properly dispersed and stored and to preventing hazardous conditions from arising to endanger life and property inside or outside of storage reservations. When the Coast Guard is not operating as a service in the Department of the Navy, the Secretary of Homeland Security shall appoint an officer of the Coast Guard to serve as a voting member of the board.

(b) OVERSIGHT BY SECRETARIES OF THE MILITARY DEPARTMENTS.—The Secretaries of the military departments shall provide research, development, test, evaluation, and manufacturing oversight for energetic materials supporting military requirements.

(c) RESPONSIBILITIES OF CHAIR.—The chair of the explosive safety board shall carry out the following responsibilities:

(1) To act as the principal executive representative and advisor of the Secretary on explosive and chemical agent safety matters related to Department of Defense military munitions.

(2) To perform the hazard classification approval duties assigned to the chair.

(3) To preside over meetings of the explosive safety board.

(4) To direct the staff of the explosive safety board.

(5) To performs[1] other functions relating to explosives safety management, as directed by the Assistant Secretary of Defense for Sustainment.

(6) To provide impartial and objective advice related to explosives safety management to the Secretary of Defense and the heads of the military departments.

(7) To serve as the principal representative and advisor of the Department of Defense on matters relating to explosives safety management.

(8) To provide assistance and advice to the Under Secretary of Defense for Acquisition and Sustainment and the Deputy Director of Land Warfare and Munitions in munitions acquisition oversight and technology advancement for Department of Defense military munitions, especially in the areas of explosives and chemical agent safety and demilitarization.

(9) To provide assistance and advice to the Assistant Secretary of Defense for Logistics and Material Readiness in sustainment oversight of Department of Defense military munitions, especially in the areas of explosives and chemical agent safety, storage, transportation, and demilitarization.

(10) To develop and recommend issuances to define the functions of the explosive safety board.

(11) To establishes[1] joint hazard classification procedures with covered components of the Department.

(12) To make recommendations to the Under Secretary of Defense for Acquisition and Sustainment with respect to explosives and chemical agent safety tenets and requirements.

(13) To conducts[1] oversight of Department of Defense explosive safety management programs.

(14) To carry out such other responsibilities as the Secretary of Defense determines appropriate.

(d) RESPONSIBILITIES OF EXECUTIVE DIRECTOR AND CIVILIAN MEMBERS.—The executive director and civilian members of the explosive safety board shall—

(1) provide assistance to the chair in carrying out the responsibilities specified in subsection (c); and

(2) carry out such other responsibilities as the chair determines appropriate.

(e) MEETINGS.—(1) The explosive safety board shall meet not less frequently than quarterly.

(2) The chair shall submit to the congressional defense committees an annual report describing the activities conducted at the meetings of the board.

(f) EXCLUSIVE RESPONSIBILITIES.—The explosive safety board shall have exclusive responsibility within the Department of Defense for—

(1) recommending new and updated explosive and chemical agent safety regulations and standards to the Assistant Secretary of Defense for Energy Installations and Environment for submittal to the Under Secretary of Defense for Acquisition and Sustainment; and

(2) acting as the primary forum for coordination among covered components of the Department on all matters related to explosive safety management.

(g) COVERED COMPONENTS.—In this section, the covered components of the Department are each of the following:

(1) The Office of the Secretary of Defense.

(2) The military departments.

(3) The Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands.

(4) The Office of the Inspector General of the Department.

(5) The Defense Agencies.

(6) The Department of Defense field activities.

(7) All other organizational entities within the Department.

(Aug. 10, 1956, ch. 1041, 70A Stat. 8; Pub. L. 104–201, div. A, title IX, §909, Sept. 23, 1996, 110 Stat. 2621; Pub. L. 111–383, div. A, title X, §1075(b)(7), Jan. 7, 2011, 124 Stat. 4369; Pub. L. 115–91, div. A, title III, §341(a), (b)(1), Dec. 12, 2017, 131 Stat. 1361; Pub. L. 115–232, div. A, title III, §351, Aug. 13, 2018, 132 Stat. 1730; Pub. L. 116–283, div. A, title III, §351(a), title IX, §924(b)(2)(A)(ii), Jan. 1, 2021, 134 Stat. 3542, 3821.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
172(a)	50:83 (less last sentence).	May 29, 1928, ch. 853 (last par. under ''Ordnance Establishment''), 45 Stat. 928.
172(b)	50:83 (last sentence).	

In subsection (a), the words ''informed on stored'' are substituted for the words ''advised of storage''. The words ''particular regard'' are substituted for the words ''special reference''. The words ''inside or outside of'' are substituted for the words ''within or without''. The word ''selected'' is substituted for the word ''appointed'', since the filling of the position involved is not appointment to an office in the constitutional sense.

In subsection (b), the words ''in carrying out'' are substituted for the words ''in the execution of''.

AMENDMENTS

2021—Subsec. (a). Pub. L. 116–283, §924(b)(2)(A)(ii), substituted ''Marine Corps, Space Force,'' for ''Marine Corps,''.

Subsecs. (c) to (g). Pub. L. 116–283, §351(a), added subsecs. (c) to (g).

2018—Subsec. (a). Pub. L. 115–23 substituted ''Marine Corps, and Coast Guard'' for ''and Marine Corps'' and inserted at end ''When the Coast Guard is not operating as a service in the Department of the Navy, the Secretary of Homeland Security shall appoint an officer of the Coast Guard to serve as a voting member of the board.''

2017—Pub. L. 115–91, §341(b)(1), substituted ''Explosive safety'' for ''Ammunition storage'' in section catchline.

[1] So in original.

Pub. L. 115–91, § 341(a)(1)–(8), designated existing provisions as subsec. (a) and inserted heading, inserted ''that includes members'' after ''joint board'', substituted ''selected by the Secretaries of the military departments'' for ''selected by them'', inserted ''military'' before ''officers'', ''designated as the chair and voting members of the board for each military department'' after ''officers'', and ''and other'' before ''civilian officers'', and substituted ''as necessary'' for ''or both'' and ''provide oversight on storage and transportation of'' for ''keep informed on stored''.

Subsec. (b). Pub. L. 115–91, § 341(a)(9), added subsec. (b).

2011—Pub. L. 111–383 struck out subsec. (a) designation before ''The Secretaries'' and struck out subsec. (b) which read as follows: ''The board shall confer with and advise the Secretaries of the military departments in carrying out the recommendations in House Document No. 199 of the Seventieth Congress.''

1996—Subsec. (a). Pub. L. 104–201 substituted ''a joint board selected by them composed of officers, civilian officers and employees of the Department of Defense, or both'' for ''a joint board of officers selected by them''.

DEADLINE FOR APPOINTMENT

Pub. L. 116–283, div. A, title III, § 351(b), Jan. 1, 2021, 134 Stat. 3543, provided that: ''By not later than 90 days after the date of the enactment of this Act [Jan. 1, 2021], the Secretary of Defense shall take such steps as may be necessary to ensure that the explosive safety board of the Department of Defense, as authorized under section 172 of title 10, United States Code, has a chair who is a military officer and whose responsibilities include the day-to-day management of the explosive safety board and the responsibilities provided in subsection (c) of such section.''

§ 173. Advisory personnel

(a) The Secretary of Defense may establish such advisory committees and employ such part-time advisers as he considers necessary for the performance of his functions and those of the agencies under his control.

(b) A person who serves as a member of a committee may not be paid for that service while holding another position or office under the United States for which he receives compensation. Other members and part-time advisers shall (except as otherwise specifically authorized by law) serve without compensation for such service.

(Aug. 10, 1956, ch. 1041, 70A Stat. 8; Pub. L. 89–718, § 2, Nov. 2, 1966, 80 Stat. 1115; Pub. L. 104–106, div. A, title X, § 1061(e)(1), Feb. 10, 1996, 110 Stat. 443.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
173(a)	5:171j(a) (1st sentence, as applicable to Secretary of Defense).	July 26, 1947, ch. 343, § 303 (as applicable to Secretary of Defense); Aug. 10, 1949, ch. 412, § 10(c) (as applicable to Secretary of Defense); Sept. 3, 1954, ch. 1263, § 8 (as applicable to Secretary of Defense), 68 Stat. 1228.
173(b)	5:171j(a) (less 1st sentence, as applicable to Secretary of Defense).	
173(c)	5:171j(b) (as applicable to Secretary of Defense).	

In subsection (a), the words ''consistent with other provisions of sections 171–171n, 172–172j, 181–1, 181–2, 411a, 411b, and 626–626d of this title and sections 401–405 of Title 50'' are omitted as surplusage. The word ''establish'' is substituted for the word ''appoint'', since the filling of the position involved is not appointment to an office in the constitutional sense.

In subsection (b), the word ''Secretary'' is substituted for the words ''appointing authority''.

In subsection (c), the words ''as a part-time adviser'' are substituted for the words ''in any other part-time capacity for a department or agency'' to conform to subsections (a) and (b).

AMENDMENTS

1996—Subsec. (b). Pub. L. 104–106 substituted ''Other members and part-time advisers shall (except as otherwise specifically authorized by law) serve without compensation for such service.'' for ''Other members and part-time advisers may serve without compensation or may be paid not more than $50 for each day of service, as the Secretary determines.''

1966—Subsec. (c). Pub. L. 89–718 repealed subsec. (c) which provided that sections 281, 283, and 284 of title 18 did not apply to a person because of his service on a committee or as a part-time advisor under subsec. (a) of this section unless the unlawful act related to a matter directly involving a department or agency which he was advising or to a matter in which that department or agency was directly interested.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees in existence on Jan. 5, 1973, to terminate not later than the expiration of the 2-year period following Jan. 5, 1973, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. See section 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

§ 174. Advisory personnel: research and development

(a) The Secretary of each military department may establish such advisory committees and panels as are necessary for the research and development activities of his department and may employ such part-time advisers as he considers necessary to carry out those activities.

(b) A person who serves as a member of such a committee or panel may not be paid for that service while holding another position or office under the United States for which he receives compensation. Other members and part-time advisers shall (except as otherwise specifically authorized by law) serve without compensation for such service.

(c) The Secretary concerned may delegate any authority under this section to—

(1) the Under Secretary of his department;

(2) an Assistant Secretary of his department; or

(3) the chief, and one assistant to the chief, of any technical service, bureau, or office.

(Aug. 10, 1956, ch. 1041, 70A Stat. 9; Pub. L. 104–106, div. A, title X, § 1061(e)(1), Feb. 10, 1996, 110 Stat. 443.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
174(a)	5:235b (1st sentence). 5:475g (1st sentence). 5:628b (1st sentence).	July 16, 1952, ch. 882, §§ 1, 7 (as applicable to § 1), 66 Stat. 725, 726.
174(b)	5:235b (less 1st sentence). 5:475g (less 1st sentence). 5:628b (less 1st sentence).	

HISTORICAL AND REVISION NOTES—CONTINUED

Revised section	Source (U.S. Code)	Source (Statutes at Large)
174(c)	5:235h (as applicable to 5:235b). 5:475m (as applicable to 5:475g). 5:628h (as applicable to 5:628b).	

In subsection (a), the words "the conduct of" are omitted as surplusage.

In subsection (b), the words "or panel" are inserted for clarity. The words "Secretary concerned" are substituted for the words "appointing authority".

AMENDMENTS

1996—Subsec. (b). Pub. L. 104–106 substituted "Other members and part-time advisers shall (except as otherwise specifically authorized by law) serve without compensation for such service." for "Other members and part-time advisers may serve without compensation or may be paid not more than $50 for each day of service, as the Secretary concerned determines."

TERMINATION OF ADVISORY COMMITTEES

Advisory committees in existence on Jan. 5, 1973, to terminate not later than the expiration of the 2-year period following Jan. 5, 1973, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. See section 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

§175. Reserve Forces Policy Board

There is in the Office of the Secretary of Defense a Reserve Forces Policy Board. The functions, membership, and organization of that board are set forth in section 10301 of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 9; Pub. L. 90–168, §2(3), (4), Dec. 1, 1967, 81 Stat. 521; Pub. L. 98–94, title XII, §1212(b), Sept. 24, 1983, 97 Stat. 687; Pub. L. 98–525, title XIII, §1306, title XIV, §1405(4), Oct. 19, 1984, 98 Stat. 2613, 2622; Pub. L. 98–557, §21, Oct. 30, 1984, 98 Stat. 2870; Pub. L. 99–433, title V, §531(a)(1), Oct. 1, 1986, 100 Stat. 1063; Pub. L. 103–337, div. A, title IX, §921, title XVI, §1661(b)(3), Oct. 5, 1994, 108 Stat. 2829, 2981.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
175(a)	50:1008(a).	July 9, 1952, ch. 608, §257 (less (e)), 66 Stat. 497.
175(b)	50:1008(b).	
175(c)	50:1008(c).	
175(d)	50:1008(d) (less proviso).	
175(e)	50:1008(d) (proviso).	

In subsection (a), the word "are" is substituted for the words "is established", to make clear the continuing authority of the organization established by the source statute. Clauses (3), (4), and (5) are substituted for 50:1008(a)(iii) for clarity. In clauses (6), (7), (8), and (9), the word "designated" is substituted for the word "appointed", in 50:1008(iv), (v), (vi), and (vii), to make it clear that the positions described are not constitutional offices.

In subsection (b), the words "Regular Coast Guard or Coast Guard Reserve" are substituted for the words "Regular or Reserve * * * Coast Guard".

AMENDMENTS

1994—Pub. L. 103–337, §1661(b)(3), amended section generally, substituting single undesignated par. for former subsecs. (a) to (f) relating to establishment, composition, functions, and powers of Reserve Forces Policy Board.

Subsec. (a)(4). Pub. L. 103–337, §921(1), substituted "and an officer of the Regular Marine Corps each" for "or Regular Marine Corps".

Subsec. (a)(10). Pub. L. 103–337, §921(2)–(4), added par. (10).

1986—Subsec. (d). Pub. L. 99–433 substituted "3021" and "8021" for "3033" and "8033", respectively.

1984—Subsec. (b). Pub. L. 98–557 substituted "Regular or Reserve, to serve as voting members" for "regular or reserve, to serve as a voting member".

Pub. L. 98–525, §1306, substituted "two officers of the Coast Guard, regular or reserve" for "an officer of the Regular Coast Guard or the Coast Guard Reserve".

Subsec. (c). Pub. L. 98–525, §1405(4), inserted a comma following "Reserve Affairs".

1983—Subsec. (c). Pub. L. 98–94 substituted "Assistant Secretary of Defense for Reserve Affairs" for "Assistant Secretary of Defense for Manpower and Reserve Affairs".

1967—Subsec. (a)(2). Pub. L. 90–168, §2(3), substituted "the Assistant Secretary of the Army for Manpower and Reserve Affairs, the Assistant Secretary of the Navy for Manpower and Reserve Affairs, and the Assistant Secretary of the Air Force for Manpower and Reserve Affairs" for "the Secretary, the Under Secretary, or an Assistant Secretary designated under section 264(b) of this title, of each of the military departments".

Subsec. (b). Pub. L. 90–168, §2(4), substituted "Secretary of Transportation" for "Secretary of the Treasury" as the Secretary empowered to designate officers to serve on the Board and substituted "serve as a voting member" for "serve without vote as a member" in the description of the officer's service on the Board.

Subsec. (c). Pub. L. 90–168, §2(4), substituted "Assistant Secretary of Defense for Manpower and Reserve Affairs" for "Assistant Secretary of Defense designated under section 264(a) of this title".

Subsec. (d). Pub. L. 90–168, §2(4), inserted references to sections 5251 and 5252 of this title.

Subsec. (e). Pub. L. 90–168, §2(4), substituted "member of a committee or board prescribed under a section listed in subsection (d)" for "member of a committee under section 3033 or 8033 of this title".

Subsec. (f). Pub. L. 90–168, §2(4), added subsec. (f).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 1661(b)(3) of Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–94 effective Oct. 1, 1983, see section 1212(e) of Pub. L. 98–94 set out as a note under section 138 of this title.

EFFECTIVE DATE OF 1967 AMENDMENT

For effective date of amendment by Pub. L. 90–168, see section 7 of Pub. L. 90–168, set out as a note under section 138 of this title.

§176. Armed Forces Institute of Pathology

(a)(1) There is in the Department of Defense an Institute to be known as the Armed Forces Institute of Pathology (hereinafter in this section referred to as the "Institute"), which has the responsibilities, functions, authority, and relationships set forth in this section. The Institute shall be a joint entity of the three military departments, subject to the authority, direction, and control of the Secretary of Defense.

(2) The Institute shall consist of a Board of Governors, a Director, two Deputy Directors,

and a staff of such professional, technical, and clerical personnel as may be required.

(3) The Board of Governors shall consist of the Assistant Secretary of Defense for Health Affairs, who shall serve as chairman of the Board of Governors, the Assistant Secretary of Health and Human Services for Health, the Surgeons General of the Army, Navy, and Air Force, the Under Secretary for Health of the Department of Veterans Affairs, and a former Director of the Institute, as designated by the Secretary of Defense, or the designee of any of the foregoing.

(4) The Director and the Deputy Directors shall be appointed by the Secretary of Defense.

(b)(1) In carrying out the provisions of this section, the Institute is authorized to—

(A) contract with the American Registry of Pathology (established under section 177 of this title) for cooperative enterprises in medical research, consultation, and education between the Institute and the civilian medical profession under such conditions as may be agreed upon between the Board of Governors and the American Registry of Pathology;

(B) make available at no cost to the American Registry of Pathology such space, facilities, equipment, and support services within the Institute as the Board of Governors deems necessary for the accomplishment of their mutual cooperative enterprises; and

(C) contract with the American Registry of Pathology for the services of such professional, technical, or clerical personnel as are necessary to fulfill their cooperative enterprises.

(2) No contract may be entered into under paragraph (1) which obligates the Institute to make outlays in advance of the enactment of budget authority for such outlays.

(c) The Director is authorized, with the approval of the Board of Governors, to enter into agreements with the American Registry of Pathology for the services at any time of not more than six distinguished pathologists or scientists of demonstrated ability and experience for the purpose of enhancing the activities of the Institute in education, consultation, and research. Such pathologists or scientists may be appointed by the Director to administrative positions within the components or subcomponents of the Institute and may be authorized by the Director to exercise any or all professional duties within the Institute, notwithstanding any other provision of law. The Secretary of Defense, on a case-by-case basis, may waive the limitation on the number of distinguished pathologists or scientists with whom agreements may be entered into under this subsection if the Secretary determines that such waiver is in the best interest of the Department of Defense.

(d) The Secretary of Defense shall promulgate such regulations as may be necessary to prescribe the organization, functions, and responsibilities of the Institute.

(Added Pub. L. 94–361, title VIII, § 811(b), July 14, 1976, 90 Stat. 933; amended Pub. L. 96–513, title V, § 511(6), Dec. 12, 1980, 94 Stat. 2920; Pub. L. 101–189, div. A, title XVI, § 1621(a)(1), Nov. 29, 1989, 103 Stat. 1602; Pub. L. 103–160, div. A, title VII, § 733, Nov. 30, 1993, 107 Stat. 1697; Pub. L. 104–106, div. A, title IX, § 903(f)(1), Feb. 10, 1996, 110 Stat. 402; Pub. L. 104–201, div. A, title IX, § 901, Sept. 23, 1996, 110 Stat. 2617; Pub. L. 107–107, div. A, title X, § 1048(a)(4), Dec. 28, 2001, 115 Stat. 1222.)

AMENDMENTS

2001—Subsec. (a)(3). Pub. L. 107–107 substituted ''Under Secretary for Health'' for ''Chief Medical Director''.

1996—Subsec. (a)(3). Pub. L. 104–106, § 903(a), (f)(1), which directed amendment of subsec. (a)(3), eff. Jan. 31, 1997, by substituting ''official in the Department of Defense with principal responsibility for health affairs'' for ''Assistant Secretary of Defense for Health Affairs'' and ''Under Secretary for Health of the Department of Veterans Affairs'' for ''Chief Medical Director of the Department of Veterans Affairs'', was repealed by Pub. L. 104–201.

1993—Subsec. (c). Pub. L. 103–160 inserted at end ''The Secretary of Defense, on a case-by-case basis, may waive the limitation on the number of distinguished pathologists or scientists with whom agreements may be entered into under this subsection if the Secretary determines that such waiver is in the best interest of the Department of Defense.''

1989—Subsec. (a)(3). Pub. L. 101–189 substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

1980—Subsec. (a)(3). Pub. L. 96–513, § 511(6)(A), substituted ''Secretary of Health and Human Services'' for ''Secretary of Health, Education, and Welfare''.

Subsec. (b)(1)(A). Pub. L. 96–513, § 511(6)(B), inserted ''of this title'' after ''177''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

ESTABLISHMENT OF JOINT PATHOLOGY CENTER

Pub. L. 110–181, div. A, title VII, § 722, Jan. 28, 2008, 122 Stat. 199, provided that:

''(a) FINDINGS.—Congress makes the following findings:

''(1) The Secretary of Defense proposed to disestablish all elements of the Armed Forces Institute of Pathology, except the National Medical Museum and the Tissue Repository, as part of the recommendations of the Secretary for the closure of Walter Reed Army Medical Center in the 2005 round of defense base closure and realignment.

''(2) The Defense Base Closure and Realignment Commission altered, but did not reject, the proposal of the Secretary of Defense to disestablish the Armed Forces Institute of Pathology.

''(3) The Commission's recommendation that the Armed Forces Institute of Pathology's 'capabilities not specified in this recommendation will be absorbed into other DOD, Federal, or civilian facilities' provides the flexibility to retain a Joint Pathology Center as a Department of Defense or Federal entity.

''(b) SENSE OF CONGRESS.—It is the sense of Congress that the Armed Forces Institute of Pathology has provided important medical benefits to the Armed Forces and to the United States and that the Federal Government should retain a Joint Pathology Center.

''(c) ESTABLISHMENT.—

''(1) ESTABLISHMENT REQUIRED.—The President shall establish and maintain a Joint Pathology Center that shall function as the reference center in pathology for the Federal Government.

''(2) ESTABLISHMENT WITHIN DOD.—Except as provided in paragraph (3), the Joint Pathology Center shall be established in the Department of Defense, consistent with the final recommendations of the 2005 Defense Base Closure and Realignment Commission, as approved by the President.

''(3) ESTABLISHMENT IN ANOTHER DEPARTMENT.—If the President makes a determination, within 180 days after the date of the enactment of this Act [Jan. 28, 2008], that the Joint Pathology Center cannot be established in the Department of Defense, the Joint Pathology Center shall be established as an element of a Federal agency other than the Department of Defense. The President shall incorporate the selection of such agency into the determination made under this paragraph.

''(d) SERVICES.—The Joint Pathology Center shall provide, at a minimum, the following:

''(1) Diagnostic pathology consultation services in medicine, dentistry, and veterinary sciences.

''(2) Pathology education, to include graduate medical education, including residency and fellowship programs, and continuing medical education.

''(3) Diagnostic pathology research.

''(4) Maintenance and continued modernization of the Tissue Repository and, as appropriate, utilization of the Repository in conducting the activities described in paragraphs (1) through (3).''

NATIONAL MUSEUM OF HEALTH AND MEDICINE

Pub. L. 103–337, div. A, title X, §1067, Oct. 5, 1994, 108 Stat. 2851, as amended by Pub. L. 105–78, title VII, §702, Nov. 13, 1997, 111 Stat. 1524, provided that:

''(a) PURPOSE.—It is the purpose of this section—

''(1) to display and interpret the collections of the Armed Forces Institute of Pathology currently located at Walter Reed Medical Center; and

''(2) to designate the public facility of the Armed Forces Institute of Pathology as the National Museum of Health and Medicine.

''(b) DESIGNATION.—The public facility of the Armed Forces Institute of Pathology shall also be known as the National Museum of Health and Medicine.''

CONGRESSIONAL FINDINGS AND DECLARATION

Pub. L. 94–361, title VIII, §811(a), July 14, 1976, 90 Stat. 933, provided that:

''(1) The Congress hereby finds and declares that—

''(A) the Armed Forces Institute of Pathology offers unique pathologic support to national and international medicine;

''(B) the Institute contains the Nation's most comprehensive collection of pathologic specimens for study and a staff of prestigious pathologists engaged in consultation, education, and research;

''(C) the activities of the Institute are of unique and vital importance in support of the health care of the Armed Forces of the United States;

''(D) the activities of the Institute are also of unique and vital importance in support of the civilian health care system of the United States;

''(E) the Institute provides an important focus for the exchange of information between civilian and military medicine, to the benefit of both; and

''(F) it is important to the health of the American people and of the members of the Armed Forces of the United States that the Institute continue its activities in serving both the military and civilian sectors in education, consultation, and research in the medical, dental, and veterinary sciences.

''(2) The Congress further finds and declares that beneficial cooperative efforts between private individuals, professional societies, and other entities on the one hand and the Armed Forces Institute of Pathology on the other can be carried out most effectively through the establishment of a private corporation.''

§177. American Registry of Pathology

(a)(1) There is authorized to be established a nonprofit corporation to be known as the American Registry of Pathology which shall not for any purpose be an agency or establishment of the United States Government. The American Registry of Pathology shall be subject to the provisions of this section and, to the extent not inconsistent with this section, to the District of Columbia Nonprofit Corporation Act (D.C. Code, sec. 29–501 et seq.).

(2) The American Registry of Pathology shall have a Board of Members (hereinafter in this section referred to as the ''Board'') consisting of not less than eleven individuals who are representatives of the professional societies and organizations that support the activities of the American Registry of Pathology, of whom one shall be elected annually by the Board to serve as chairman.

(3) The American Registry of Pathology shall have a Director, who shall be appointed by the Board, and such other officers as may be named and appointed by the Board. Such officers shall be compensated at rates fixed by the Board and shall serve at the pleasure of the Board.

(4) The members of the initial Board shall serve as incorporators and shall take whatever actions are necessary to establish under the District of Columbia Nonprofit Corporation Act the corporation authorized by paragraph (1).

(5) The term of office of each member of the Board shall be four years, except that (A) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term, (B) the terms of office of members first taking office shall begin on the date of incorporation and shall expire, as designated at the time of their appointment and to the maximum extent practicable, one fourth at the end of one year, one fourth at the end of two years, one fourth at the end of three years, and one fourth at the end of four years, and (C) a member whose term has expired may serve until his successor has qualified. No member shall be eligible to serve more than two consecutive terms of four years each.

(6) Any vacancy in the Board shall not affect its powers, but such vacancy shall be filled in the manner in which the original appointment was made.

(b) In order to carry out the purposes of this section, the American Registry of Pathology is authorized to—

(1) enter into contracts with public and private organizations for the writing, editing, printing, and publishing of fascicles of tumor pathology, atlases, and other material;

(2) accept gifts and grants from and enter into contracts with individuals, private foundations, professional societies, institutions, and governmental agencies;

(3) enter into agreements with professional societies for the establishment and maintenance of Registries of Pathology; and

(4) serve as a focus for the interchange between military and civilian pathology and encourage the participation of medical, dental, and veterinary sciences in pathology for the mutual benefit of military and civilian medicine.

(c) In the performance of the functions set forth in subsection (b), the American Registry of Pathology is authorized to—

(1) enter into such other contracts, leases, cooperative agreements, or other transactions as the Board deems appropriate to conduct the

activities of the American Registry of Pathology; and

(2) charge such fees for professional services as the Board deems reasonable and appropriate.

(d) The American Registry of Pathology may transmit annually to its Board and supporting organizations referred to in subsection (a)(2) a comprehensive and detailed report of its operations, activities, and accomplishments.

(Added Pub. L. 94–361, title VIII, § 811(b), July 14, 1976, 90 Stat. 934; amended Pub. L. 98–525, title XIV, § 1405(5), Oct. 19, 1984, 98 Stat. 2622; Pub. L. 112–239, div. A, title V, § 585, Jan. 2, 2013, 126 Stat. 1768.)

REFERENCES IN TEXT

The District of Columbia Nonprofit Corporation Act, referred to in subsec. (a)(1), (4), is Pub. L. 87–569, Aug. 6, 1962, 76 Stat. 265, as amended, which is not classified to the Code.

AMENDMENTS

2013—Subsec. (a)(2). Pub. L. 112–239, § 585(1)(A), substituted ''the professional societies and organizations that support the activities of the American Registry of Pathology'' for ''those professional societies and organizations which sponsor individual registries of pathology at the Armed Forces Institute of Pathology'' and struck out at end ''Each such sponsor shall appoint one member to the Board for a term of four years.''

Subsec. (a)(3). Pub. L. 112–239, § 585(1)(B), struck out ''with the concurrence of the Director of the Armed Forces Institute of Pathology'' after ''shall be appointed by the Board''.

Subsec. (b). Pub. L. 112–239, § 585(2), redesignated pars. (2) to (5) as (1) to (4), respectively, and struck out former par. (1) which read as follows: ''enter into contracts with the Armed Forces Institute of Pathology for the provision of such services and personnel as may be necessary to carry out their cooperative enterprises;''.

Subsec. (d). Pub. L. 112–239, § 585(3), substituted ''annually to its Board and supporting organizations referred to in subsection (a)(2)'' for ''to the Director and the Board of Governors of the Armed Forces Institute of Pathology and to the sponsors referred to in subsection (a)(2) annually, and at such other times as it deems desirable,''.

1984—Subsec. (a)(1). Pub. L. 98–525 substituted ''sec. 29–501'' for ''sec. 29–1001''.

§ 178. The Henry M. Jackson Foundation for the Advancement of Military Medicine

(a) There is authorized to be established a nonprofit corporation to be known as the Henry M. Jackson Foundation for the Advancement of Military Medicine (hereinafter in this section referred to as the ''Foundation'') which shall not for any purpose be an agency or instrumentality of the United States Government. The Foundation shall be subject to the provisions of this section and, to the extent not inconsistent with this section, the Corporations and Associations Articles of the State of Maryland.

(b) It shall be the purpose of the Foundation (1) to carry out medical research and education projects under cooperative arrangements with the Uniformed Services University of the Health Sciences, (2) to serve as a focus for the interchange between military and civilian medical personnel, and (3) to encourage the participation of the medical, dental, nursing, veterinary, and other biomedical sciences in the work of the Foundation for the mutual benefit of military and civilian medicine.

(c)(1) The Foundation shall have a Council of Directors (hereinafter in this section referred to as the ''Council'') composed of—

(A) the Chairmen and ranking minority members of the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives (or their designees from the membership of such committees), who shall be ex officio members,

(B) the Dean of the Uniformed Services University of the Health Sciences, who shall be an ex officio member, and

(C) six members, each of whom shall be appointed at the expiration of the term of a member appointed under this subparagraph, as provided for in paragraph (2), by the members currently serving on the Council pursuant to this subparagraph and paragraph (2), including the member whose expiring term is so being filled by such appointment.

(2) The term of office of each member of the Council appointed under clause (C) of paragraph (1) shall be four years, except that any person appointed to fill a vacancy occurring before the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term.

(3) The Council shall elect a chairman from among its members.

(d)(1) The Foundation shall have an Executive Director who shall be appointed by the Council and shall serve at the pleasure of the Council. The Executive Director shall be responsible for the day-to-day operations of the Foundation and shall have such specific duties and responsibilities as the Council shall prescribe.

(2) The rate of compensation of the Executive Director shall be fixed by the Council.

(e) The initial members of the Council shall serve as incorporators and take whatever actions as are necessary to establish under the Corporations and Associations Articles of the State of Maryland the corporation authorized by subsection (a).

(f) Any vacancy in the Council shall not affect its powers, but shall be filled in the same manner in which the original designation or appointment was made.

(g) In order to carry out the purposes of this section, the Foundation is authorized to—

(1) enter into contracts with, accept grants from, and make grants to the Uniformed Services University of the Health Sciences for the purpose of carrying out cooperative enterprises in medical research, medical consultation, and medical education, including contracts for provision of such personnel and services as may be necessary to carry out such cooperative enterprises;

(2) enter into contracts with public and private organizations for the writing, editing, printing, and publishing of books and other material;

(3) take such action as may be necessary to obtain patents and licenses for devices and procedures developed by the Foundation and its employees;

(4) accept, hold, administer, invest, and spend any gift, devise, or bequest of real or personal property made to the Foundation;

(5) enter into contracts with individuals, public or private organizations, professional societies, and government agencies for the purpose of carrying out the functions of the Foundation;

(6) enter into such other contracts, leases, cooperative agreements, and other transactions as the Executive Director considers appropriate to conduct the activities of the Foundation; and

(7) charge such fees for professional services furnished by the Foundation as the Executive Director determines reasonable and appropriate.

(h) A person who is a full-time or part-time employee of the Foundation may not be an employee (full-time or part-time) of the Federal Government.

(i) The Council shall transmit to the President annually, and at such other times as the Council considers desirable, a report on the operations, activities, and accomplishments of the Foundation.

(Added Pub. L. 98–36, §2(a), May 27, 1983, 97 Stat. 200; amended Pub. L. 98–132, §2(a)(1), Oct. 17, 1983, 97 Stat. 849; Pub. L. 101–189, div. A, title VII, §726(b)(2), Nov. 29, 1989, 103 Stat. 1480; Pub. L. 104–106, div. A, title XV, §1502(a)(2), Feb. 10, 1996, 110 Stat. 502; Pub. L. 106–65, div. A, title X, §1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 115–232, div. A, title VII, §739, Aug. 13, 2018, 132 Stat. 1822; Pub. L. 116–92, div. A, title VII, §733(a), (b), Dec. 20, 2019, 133 Stat. 1461.)

AMENDMENTS

2019—Subsec. (c)(1)(C). Pub. L. 116–92, §733(a), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''six members appointed by the ex officio members of the Council designated in clauses (A) and (B).''

Subsec. (c)(2). Pub. L. 116–92, §733(b), substituted ''except that any person'' for ''except that—

''(A) any person'',

substituted period at end for ''; and'', and struck out subpar. (B) which read as follows: ''the terms of office of members first taking office shall expire, as designated by the ex officio members of the Council at the time of the appointment, two at the end of two years and two at the end of four years.''

2018—Subsec. (c)(1)(C). Pub. L. 115–232 substituted ''six members'' for ''four members''.

1999—Subsec. (c)(1)(A). Pub. L. 106–65 substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security''.

1996—Subsec. (c)(1)(A). Pub. L. 104–106 substituted ''Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives'' for ''Committees on Armed Services of the Senate and the House of Representatives''.

1989—Subsec. (g)(1). Pub. L. 101–189 inserted '', accept grants from, and make grants to'' after ''contracts with''.

1983—Pub. L. 98–132, §2(a)(1)(A), inserted ''The Henry M. Jackson'' before ''Foundation'' in section catchline.

Subsec. (a). Pub. L. 98–132, §2(a)(1)(B), inserted ''Henry M. Jackson''.

CHANGE OF NAME

Pub. L. 98–132, §1, Oct. 17, 1983, 97 Stat. 849, provided: ''That (a) the Foundation for the Advancement of Military Medicine established pursuant to section 178 of title 10, United States Code, shall be designated and hereafter known as the 'Henry M. Jackson Foundation for the Advancement of Military Medicine', in honor of the late Henry M. Jackson, United States Senator from the State of Washington. Any reference to the Foundation for the Advancement of Military Medicine in any law, regulation, document, record, or other paper of the United States shall be held and considered to be a reference to the 'Henry M. Jackson Foundation for the Advancement of Military Medicine'.

''(b) The Council of Directors referred to in subsection (c) of section 178 of such title shall take such action as is necessary under the Corporations and Associations Articles of the State of Maryland to amend the corporate name of the Foundation for the Advancement of Military Medicine established under such section to reflect the designation made by the first sentence of subsection (a).''

EFFECTIVE DATE OF 2019 AMENDMENT; CONSTRUCTION

Pub. L. 116–92, div. A, title VII, §733(c), Dec. 20, 2019, 133 Stat. 1461, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [Dec. 20, 2019].

''(2) CONSTRUCTION FOR CURRENT MEMBERS.—Nothing in the amendments made by this section shall be construed to terminate or otherwise alter the appointment or term of service of members of the Henry M. Jackson Foundation for the Advancement of Military Medicine who are so serving on the date of the enactment of this Act pursuant to an appointment under paragraph (1)(C) or (2) of section 178(c) of title 10, United States Code, made before that date.''

§179. Nuclear Weapons Council

(a) ESTABLISHMENT; MEMBERSHIP.—There is a Nuclear Weapons Council (hereinafter in this section referred to as the ''Council'') operated as a joint activity of the Department of Defense and the Department of Energy. The membership of the Council is comprised of the following officers of those departments:

(1) The Under Secretary of Defense for Acquisition and Sustainment.

(2) The Vice Chairman of the Joint Chiefs of Staff.

(3) The Under Secretary for Nuclear Security of the Department of Energy.

(4) The Under Secretary of Defense for Research and Engineering.

(5) The Under Secretary of Defense for Policy.

(6) The Commander of the United States Strategic Command.

(b) CHAIRMAN; MEETINGS.—(1) Except as provided in paragraph (2), the Chairman of the Council shall be the member designated under subsection (a)(1).

(2) A meeting of the Council shall be chaired by the Under Secretary for Nuclear Security of the Department of Energy whenever the matter under consideration is within the primary responsibility or concern of the Department of Energy, as determined by majority vote of the Council.

(3) The Council shall meet not less often than once every three months. To the extent possible, not later than seven days before a meeting, the Chairman shall disseminate to each member of the Council the agenda and documents for such meeting.

(c) STAFF AND ADMINISTRATIVE SERVICES; STAFF DIRECTOR.—(1) The Secretary of Defense

and the Secretary of Energy shall enter into an agreement with the Council to furnish necessary staff and administrative services to the Council.

(2) The Assistant Secretary of Defense for Nuclear, Chemical, and Biological Defense Programs shall be the Staff Director of the Council.

(3)(A) Whenever the position of Assistant Secretary of Defense for Nuclear, Chemical, and Biological Defense Programs has been vacant a period of more than 6 months, the Secretary of Energy shall designate a qualified individual to serve as acting staff director of the Council until the position of Assistant Secretary is filled.

(B) An individual designated under subparagraph (A) shall possess substantial technical and policy experience relevant to the management and oversight of nuclear weapons programs.

(d) RESPONSIBILITIES.—The Council shall be responsible for the following matters:

(1) Preparing the annual Nuclear Weapons Stockpile Memorandum.

(2) Developing nuclear weapons stockpiles options and the costs of such options and alternatives.

(3) Coordinating and approving programming and budget matters pertaining to nuclear weapons programs between the Department of Defense and the Department of Energy.

(4) Identifying various options for cost-effective schedules for nuclear weapons production.

(5) Considering safety, security, and control issues for existing weapons and for proposed new weapon program starts.

(6) Ensuring that adequate consideration is given to design, performance, and cost tradeoffs for all proposed new nuclear weapons programs.

(7) Providing specific guidance regarding priorities for research on nuclear weapons and priorities among activities, including production, surveillance, research, construction, and any other programs within the National Nuclear Security Administration.

(8) Coordinating and approving activities conducted by the Department of Energy for the study, development, production, and retirement of nuclear warheads, including concept definition studies, feasibility studies, engineering development, hardware component fabrication, warhead production, and warhead retirement.

(9) Reviewing proposed capabilities, and establishing and validating performance requirements (as defined in section 181(h) of this title), for nuclear warhead programs.

(10) Preparing comments on annual proposals for budget levels for research on nuclear weapons and transmitting those comments to the Secretary of Defense and the Secretary of Energy before the preparation of the annual budget requests by the Secretaries of those departments.

(11) Coordinating and approving the annual budget proposals of the National Nuclear Security Administration.

(12) Providing—

(A) broad guidance regarding priorities for research on improved conventional weapons, and

(B) comments on annual proposals for budget levels for research on improved conventional weapons,

and transmitting such guidance and comments to the Secretary of Defense before the preparation of the annual budget request of the Department of Defense.

(e) REPORT ON DIFFICULTIES RELATING TO SAFETY OR RELIABILITY.—The Council shall submit to Congress a report on any analysis conducted by the Council with respect to difficulties at nuclear weapons laboratories or nuclear weapons production plants that have significant bearing on confidence in the safety or reliability of nuclear weapons or nuclear weapon types.

(f) BUDGET AND FUNDING MATTERS.—(1) The Council shall submit to Congress each year, at the same time the budget of the President for the fiscal year beginning in such year is submitted to Congress pursuant to section 1105(a) of title 31, a certification whether or not the amounts requested for the National Nuclear Security Administration in such budget, and anticipated over the four fiscal years following such budget, meets nuclear stockpile and stockpile stewardship program requirements for such fiscal year and over such four fiscal years. If a member of the Council does not concur in a certification, the certification shall include the reasons for the member's non-concurrence.

(2) If a House of Congress adopts a bill authorizing or appropriating funds for the National Nuclear Security Administration for nuclear stockpile and stockpile stewardship program activities or other activities that, as determined by the Council, provides insufficient funds for such activities for the period covered by such bill, the Council shall notify the congressional defense committees of the determination.

(3)(A) With respect to the preparation of a budget for a fiscal year to be submitted by the President to Congress under section 1105(a) of title 31, the Secretary of Defense may not agree to a proposed transfer of estimated nuclear budget request authority unless the Secretary of Defense submits to the congressional defense committees a report described in subparagraph (B).

(B) A report described in this subparagraph is a report that includes the following:

(i) Except as provided by subparagraph (C), certification that, during the fiscal year prior to the fiscal year covered by the budget for which the report is submitted, the Secretary of Energy obligated or expended any amounts covered by a proposed transfer of estimated nuclear budget request authority made for such prior fiscal year in a manner consistent with a memorandum of agreement that was developed by the Nuclear Weapons Council and entered into by the Secretary of Defense and the Secretary of Energy.

(ii) A detailed assessment by the Nuclear Weapons Council regarding how the Administrator for Nuclear Security implemented any agreements and decisions of the Council made during such prior fiscal year.

(iii) An assessment from each of the Chairman of the Joint Chiefs of Staff and the Commander of the United States Strategic Command regarding any effects to the military during such prior fiscal year that were caused by the delay or failure of the Administrator to implement any agreements or decisions described in clause (ii).

(C) With respect to a report described in subparagraph (B), the Secretary may waive the requirement to include the certification described in clause (i) of such subparagraph if the Secretary—

(i) determines that such waiver is in the national security interests of the United States; and

(ii) instead of the certification described in such clause (i), includes as part of such report—

(I) a copy of the agreement that the Secretary has entered into with the Secretary of Energy regarding the manner and the purpose for which the Secretary of Energy will obligate or expend any amounts covered by a proposed transfer of estimated nuclear budget request authority for the fiscal year covered by the budget for which such report is submitted; and

(II) an explanation for why the Secretary did not include such certification in such report.

(4) The Secretary of Defense shall include with the defense budget materials for a fiscal year the memorandum of agreement described in subparagraph (B)(i) of paragraph (3), or the agreement described in subparagraph (C) of such paragraph, as the case may be, that covers such fiscal year.

(5)(A) Not later than 30 days after the President submits to Congress the budget for a fiscal year under section 1105(a) of title 31, the Commander of the United States Strategic Command shall submit to the Chairman of the Joint Chiefs of Staff an assessment of—

(i) whether such budget allows the Federal Government to meet the nuclear stockpile and stockpile stewardship program requirements during the fiscal year covered by the budget and the four subsequent fiscal years; and

(ii) if the Commander determines that such budget does not allow the Federal Government to meet such requirements, a description of the steps being taken to meet such requirements.

(B) Not later than 30 days after the date on which the Chairman of the Joint Chiefs of Staff receives the assessment of the Commander of the United States Strategic Command under subparagraph (A), the Chairman shall submit to the congressional defense committees—

(i) such assessment as it was submitted to the Chairman; and

(ii) any comments of the Chairman.

(6) If a House of Congress adopts a bill authorizing or appropriating funds for the Department of Defense that, as determined by the Council, provides funds in an amount that will result in a delay in the nuclear certification or delivery of F–35A dual-capable aircraft, the Council shall notify the congressional defense committees of the determination.

(7) In this subsection:

(A) The term ''budget'' has the meaning given that term in section 231(f) of this title.

(B) The term ''defense budget materials'' has the meaning given that term in section 231(f) of this title.

(C) The term ''proposed transfer of estimated nuclear budget request authority'' means, in preparing a budget, a request for the Secretary of Defense to transfer an estimated amount of the proposed budget authority of the Secretary to the Secretary of Energy for purposes relating to nuclear weapons.

(g) SEMIANNUAL UPDATES ON COUNCIL MEETINGS.—(1) Not later than February 1 and August 1 of each year, the Council shall provide to the congressional defense committees a semiannual update including, with respect to the six-month period preceding the update—

(A) the dates on which the Council met; and

(B) except as provided by paragraph (2), a summary of any decisions made by the Council pursuant to subsection (d) at each such meeting and the rationale for and options that informed such decisions.

(2) The Council shall not be required to include in a semiannual update under paragraph (1) the matters described in subparagraph (B) of that paragraph with respect to decisions of the Council relating to the budget of the President for a fiscal year if the budget for that fiscal year has not been submitted to Congress under section 1105 of title 31 as of the date of the semiannual update.

(3) The Council may provide a semiannual update under paragraph (1) either in the form of a briefing or a written report.

(Added Pub. L. 99–661, div. C, title I, § 3137(a)(1), Nov. 14, 1986, 100 Stat. 4065; amended Pub. L. 100–180, div. A, title XII, § 1231(2), Dec. 4, 1987, 101 Stat. 1160; Pub. L. 100–456, div. A, title XII, § 1233(h), Sept. 29, 1988, 102 Stat. 2058; Pub. L. 102–484, div. C, title XXXI, § 3133, Oct. 23, 1992, 106 Stat. 2639; Pub. L. 103–160, div. A, title IX, § 904(d)(1), Nov. 30, 1993, 107 Stat. 1728; Pub. L. 103–337, div. C, title XXXI, § 3152, Oct. 5, 1994, 108 Stat. 3090; Pub. L. 104–106, div. A, title IX, § 904(b)(1), title XV, § 1502(a)(7), Feb. 10, 1996, 110 Stat. 403, 502; Pub. L. 106–65, div. A, title X, § 1067(1), div. C, title XXXI, § 3163(a), (c), Oct. 5, 1999, 113 Stat. 774, 944; Pub. L. 106–398, § 1 [div. C, title XXXI, § 3152(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–464; Pub. L. 107–107, div. A, title X, § 1048(b)(2), Dec. 28, 2001, 115 Stat. 1225; Pub. L. 107–314, div. D, title XLII, § 4213(c), formerly Pub. L. 104–201, div. C, title XXXI, § 3159(c), Sept. 23, 1996, 110 Stat. 2842, renumbered § 4213(c) of Pub. L. 107–314 by Pub. L. 108–136, div. C, title XXXI, § 3141(e)(14), Nov. 24, 2003, 117 Stat. 1760; Pub. L. 108–375, div. A, title IX, § 902(a)–(d), Oct. 28, 2004, 118 Stat. 2025; Pub. L. 109–364, div. A, title IX, § 903, Oct. 17, 2006, 120 Stat. 2351; Pub. L. 111–383, div. A, title IX, § 901(j)(1), Jan. 7, 2011, 124 Stat. 4324; Pub. L. 112–239, div. A, title X, § 1039, Jan. 2, 2013, 126 Stat. 1927; Pub. L. 113–66, div. A, title X, §§ 1053, 1091(a)(3), Dec. 26, 2013, 127 Stat. 861, 875; Pub. L. 113–291, div. A, title XVI, § 1641, Dec. 19, 2014, 128 Stat. 3648; Pub. L. 114–92, div. A, title X, § 1076(a), Nov. 25, 2015, 129 Stat. 997; Pub. L. 115–91, div. A, title X, § 1081(a)(14), title XVI, § 1653, Dec. 12, 2017, 131 Stat. 1595, 1758; Pub. L. 115–232, div. A, title XVI, § 1661, Aug. 13, 2018, 132 Stat. 2152; Pub. L. 116–92, div. A, title XVI, § 1663, Dec. 20, 2019, 133 Stat. 1772; Pub. L. 116–283, div. A, title XVI, §§ 1631(a), 1632(a), Jan. 1, 2021, 134 Stat. 4056, 4057.)

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AMENDMENTS

2021—Subsec. (d)(9) to (12). Pub. L. 116–283, § 1632(a), added par. (9) and redesignated former pars. (9) to (11) as (10) to (12), respectively.

Subsec. (g). Pub. L. 116–283, § 1631(a), amended subsec. (g) generally. Prior to amendment, subsec. (g) related to semiannual briefings to Congress.

2019—Subsec. (g). Pub. L. 116–92 added subsec. (g).

2018—Subsec. (a)(1). Pub. L. 115–232, § 1661(1), substituted ''Acquisition and Sustainment'' for ''Acquisition, Technology, and Logistics''.

Subsec. (a)(4) to (6). Pub. L. 115–232, § 1661(2), (3), added par. (4) and redesignated former pars. (4) and (5) as (5) and (6), respectively.

2017—Subsec. (f)(3)(B)(iii). Pub. L. 115–91, § 1081(a)(14), substituted ''Joint'' for ''Joints''.

Subsec. (f)(6), (7). Pub. L. 115–91, § 1653, added par. (6) and redesignated former par. (6) as (7).

2015—Subsec. (g). Pub. L. 114–92 struck out subsec. (g) which related to annual report.

2014—Subsec. (f)(3) to (6). Pub. L. 113–291 added pars. (3) to (6).

2013—Subsec. (a)(5). Pub. L. 113–66, § 1091(a)(3), substituted ''Commander'' for ''commander''.

Subsec. (b)(3). Pub. L. 112–239, § 1039(c), inserted at end ''To the extent possible, not later than seven days before a meeting, the Chairman shall disseminate to each member of the Council the agenda and documents for such meeting.''

Subsec. (d)(2). Pub. L. 112–239, § 1039(a)(1), inserted ''and alternatives'' before period at end.

Subsec. (d)(3). Pub. L. 112–239, § 1039(a)(2), inserted ''and approving'' after ''Coordinating''.

Subsec. (d)(7). Pub. L. 112–239, § 1039(a)(3), substituted ''specific'' for ''broad'' and inserted before period at end ''and priorities among activities, including production, surveillance, research, construction, and any other programs within the National Nuclear Security Administration''.

Subsec. (d)(10). Pub. L. 113–66, § 1053(a), redesignated par. (11) as (10) and struck out former par. (10) which read as follows: ''Coordinating and providing guidance and oversight on nuclear command, control, and communications systems.''

Pub. L. 112–239, § 1039(a)(5), added par. (10). Former par. (10) redesignated (12).

Subsec. (d)(11). Pub. L. 113–66, § 1053(a)(2), redesignated par. (12) as (11).

Pub. L. 112–239, § 1039(b)(1), added par. (11).

Subsec. (d)(12). Pub. L. 113–66, § 1053(a)(2), redesignated par. (12) as (11).

Pub. L. 112–239, § 1039(a)(4), redesignated par. (10) as (12).

Subsec. (f). Pub. L. 112–239, § 1039(b)(3), added subsec. (f). Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 113–66, § 1053(c), substituted ''that includes the following'' for ''on the following'' in introductory provisions.

Pub. L. 112–239, § 1039(b)(2), redesignated subsec. (f) as (g).

Subsec. (g)(6). Pub. L. 113–66, § 1053(b), added par. (6).

2011—Subsec. (c)(2). Pub. L. 111–383, § 901(j)(1)(A), substituted ''Assistant Secretary of Defense for Nuclear, Chemical, and Biological Defense Programs'' for ''Assistant to the Secretary of Defense for Nuclear and Chemical and Biological Defense Programs''.

Subsec. (c)(3)(A). Pub. L. 111–383 substituted ''Assistant Secretary of Defense for Nuclear, Chemical, and Biological Defense Programs'' for ''Assistant to the Secretary of Defense for Nuclear and Chemical and Biological Defense Programs'' and ''Assistant Secretary'' for ''that Assistant to the Secretary''.

2006—Subsec. (a)(5). Pub. L. 109–364 added par. (5).

2004—Subsec. (a). Pub. L. 108–375, § 902(b), (d)(1), inserted heading and, in introductory provisions, struck out ''Joint'' before ''Nuclear Weapons Council'' and substituted ''operated as a joint activity of the Department of Defense and the Department of Energy. The membership of the Council is comprised of the following officers of those departments:'' for ''composed of three members as follows:''.

Subsec. (a)(4). Pub. L. 108–375, § 902(a), added par. (4).

Subsec. (b). Pub. L. 108–375, § 902(d)(2), inserted heading.

Subsec. (c). Pub. L. 108–375, § 902(d)(3), inserted heading.

Subsec. (c)(3)(B). Pub. L. 108–375, § 902(c)(1), substituted ''designated'' for ''appointed''.

Subsec. (d). Pub. L. 108–375, § 902(d)(4), inserted heading.

Subsec. (e). Pub. L. 108–375, § 902(c)(2), (d)(5), inserted heading and substituted ''The Council shall'' for ''In addition to the responsibilities set forth in subsection (d), the Council shall also'' in text.

Subsec. (f). Pub. L. 108–375, § 902(c)(3), (d)(6), inserted heading and substituted ''congressional defense committees'' for ''Committee on Armed Services and the Committee on Appropriations of the Senate and the Committee on Armed Services and the Committee on Appropriations of the House of Representatives'' in introductory provisions.

2001—Subsec. (a)(1). Pub. L. 107–107 substituted ''Under Secretary of Defense for Acquisition, Technology, and Logistics'' for ''Under Secretary of Defense for Acquisition and Technology''.

2000—Subsec. (a)(3). Pub. L. 106–398, § 1 [div. C, title XXXI, § 3152(a)(1)], added par. (3) and struck out former par. (3) which read as follows: ''One senior representative of the Department of Energy designated by the Secretary of Energy.''

Subsec. (b)(2). Pub. L. 106–398, § 1 [div. C, title XXXI, § 3152(a)(2)], substituted ''the Under Secretary for Nuclear Security of the Department of Energy'' for ''the representative designated under subsection (a)(3)''.

1999—Subsec. (b)(3). Pub. L. 106–65, § 3163(a)(1), added par. (3).

Subsec. (c)(3). Pub. L. 106–65, § 3163(a)(2), added par. (3).

Subsec. (f). Pub. L. 106–65, § 1067(1), substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security'' in introductory provisions.

Subsec. (f)(3) to (5). Pub. L. 106–65, § 3163(c), added pars. (3) to (5).

1996—Subsec. (c)(2). Pub. L. 104–106, § 904(b)(1), substituted ''Nuclear and Chemical and Biological Defense Programs'' for ''Atomic Energy''.

Subsec. (e). Pub. L. 107–314, § 4213(c)(2), formerly Pub. L. 104–201, § 3159(c)(2), as renumbered by Pub. L. 108–136, added subsec. (e). Former subsec. (e) redesignated (f).

Pub. L. 104–106, § 1502(a)(7), substituted ''to the Committee on Armed Services and the Committee on Appropriations of the Senate and the Committee on National Security and the Committee on Appropriations of the'' for ''to the Committees on Armed Services and Appropriations of the Senate and''.

Subsec. (f). Pub. L. 107–314, § 4213(c)(1), formerly Pub. L. 104–201, § 3159(c)(1), as renumbered by Pub. L. 108–136, redesignated subsec. (e) as (f).

1994—Subsecs. (a)(3), (b). Pub. L. 103–337, § 3152(c), substituted ''designated'' for ''appointed'' wherever appearing.

Subsec. (d)(8) to (10). Pub. L. 103–337, § 3152(a), added par. (8) and redesignated former pars. (8) and (9) as (9) and (10), respectively.

Subsec. (e). Pub. L. 103–337, § 3152(b), added subsec. (e).

1993—Subsec. (a)(1). Pub. L. 103–160 substituted ''Under Secretary of Defense for Acquisition and Technology'' for ''Under Secretary of Defense for Acquisition''.

1992—Subsec. (a)(1). Pub. L. 102–484 amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''The Director of Defense Research and Engineering.''

1988—Subsec. (e). Pub. L. 100–456 struck out subsec. (e) which read as follows: ''The Council shall submit to the Committees on Armed Services and on Appropriations of the Senate and House of Representatives a report on the actions that have been taken by the Department of Defense and the Department of Energy to

implement the recommendations of the President's Blue Ribbon Task Group on Nuclear Weapons Program Management. The Council shall include in such report its recommendation on the role and composition of the staff on the Council. The Council shall submit such report to the Committees not later than March 1, 1987.''

1987—Subsec. (e). Pub. L. 100–180 realigned margins of subsec. (e).

EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by Pub. L. 111–383 effective Jan. 1, 2011, see section 901(p) of Pub. L. 111–383, set out as a note under section 131 of this title.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective Dec. 31, 2021, of provisions in subsec. (f) of this section requiring submittal of annual report to Congress, see section 1061 of Pub. L. 114–328, set out as a note under section 111 of this title.

CONSIDERATION OF BUDGET MATTERS AT MEETINGS OF NUCLEAR WEAPONS COUNCIL

Pub. L. 116–92, div. A, title XVI, §1664, Dec. 20, 2019, 133 Stat. 1773, provided that:

''(a) ATTENDANCE.—

''(1) REQUIREMENT.—Except as provided by subsection (b), each official described in paragraph (2) shall attend the meetings of the Nuclear Weapons Council established by section 179 of title 10, United States Code, and the meetings of the Standing and Safety Committee of the Council, or such a successor committee. Each such official shall attend such meetings as advisors on matters within the authority and expertise of the official.

''(2) OFFICIALS DESCRIBED.—The officials described in this paragraph are each of the following officials (or the designees of the officials):

''(A) The Director of Cost Assessment and Program Evaluation of the Department of Defense.

''(B) The Director of the Office of Management and Budget of the National Nuclear Security Administration.

''(C) The Director for Cost Estimating and Program Evaluation of the National Nuclear Security Administration.

''(D) The Director of the Office of Management and Budget.

''(b) EXCEPTION.—On a case-by-case basis, the Chairman of the Nuclear Weapons Council, without delegation, may exclude the attendance of an official at a meeting pursuant to subsection (a) because of specific requirements relating to classified information or other exigent circumstances as determined by the Chairman.''

CHAIRMAN OF JCS TO SERVE ON COUNCIL IF THERE IS NO VICE CHAIRMAN OF JCS

Pub. L. 99–661, div. C, title I, §3137(b), Nov. 14, 1986, 100 Stat. 4066, provided that, if on Nov. 14, 1986, the position of Vice Chairman of the Joint Chiefs of Staff had not been established by law, the Chairman of the Joint Chiefs of Staff would be a member of the Nuclear Weapons Council established by section 179 of this title, and would remain a member of such Council until an individual had been appointed Vice Chairman of the Joint Chiefs of Staff.

§ 180. Service academy athletic programs: review board

(a) INDEPENDENT REVIEW BOARD.—The Secretary of Defense shall appoint a board to review the administration of the athletics programs of the United States Military Academy, the United States Naval Academy, and the United States Air Force Academy.

(b) COMPOSITION OF BOARD.—The Secretary shall appoint the members of the board from among distinguished administrators of institutions of higher education, members of Congress, members of the Boards of Visitors of the academies, and other experts in collegiate athletics programs. The Superintendents of the three academies shall be members of the board. The Secretary shall designate one member of the board, other than a Superintendent of an academy, as Chairman.

(c) DUTIES.—The board shall, on an annual basis—

(1) review all aspects of the athletics programs of the United States Military Academy, the United States Naval Academy, and the United States Air Force Academy, including—

(A) the policies relating to the administration of such programs;

(B) the appropriateness of the balance between the emphasis placed by each academy on athletics and the emphasis placed by such academy on academic pursuits; and

(C) the extent to which all athletes in all sports are treated equitably under the athletics program of each academy; and

(2) determine ways in which the administration of the athletics programs at the academies can serve as models for the administration of athletics programs at civilian institutions of higher education.

(d) ADMINISTRATIVE PROVISIONS.—(1) Each member of the board who is not an officer or employee of the Federal Government shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for Executive Schedule Level IV under section 5315 of title 5, for each day (including travel time) during which such member is engaged in the performance of the duties of the board. Members of the board who are officers or employees of the United States shall serve without compensation in addition to that received for their services as officers or employees of the United States.

(2) The members of the board shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, while away from their homes or regular places of business in the performance of services for the board.

(Added Pub. L. 102–190, div. A, title V, §513(a), Dec. 5, 1991, 105 Stat. 1360; amended Pub. L. 106–65, div. A, title X, §1066(a)(2), Oct. 5, 1999, 113 Stat. 770; Pub. L. 106–398, §1 [[div. A], title X, §1087(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–290.)

AMENDMENTS

2000—Subsec. (d). Pub. L. 106–398 substituted ''section 5315'' for ''section 5376''.

1999—Subsec. (d)(1). Pub. L. 106–65 substituted ''Executive Schedule Level IV under section 5376 of title 5'' for ''grade GS–18 of the General Schedule under section 5332 of title 5''.

§ 181. Joint Requirements Oversight Council

(a) IN GENERAL.—There is a Joint Requirements Oversight Council in the Department of Defense.

(b) MISSION.—In addition to other matters assigned to it by the President or Secretary of De-

fense, the Joint Requirements Oversight Council shall assist the Chairman of the Joint Chiefs of Staff in—

(1) assessing joint military capabilities, and identifying, approving, and prioritizing gaps in such capabilities, to meet applicable requirements in the national defense strategy under section 113(g) of this title;

(2) reviewing and validating whether a capability proposed by an armed force, Defense Agency, or other entity of the Department of Defense fulfills a gap in joint military capabilities;

(3) establishing and approving joint performance requirements that—

(A) ensure interoperability, where appropriate, between and among joint military capabilities; and

(B) are necessary, as designated by the Chairman of the Joint Chiefs of Staff, to fulfill capability gaps of more than one armed force, Defense Agency, or other entity of the Department;

(4) reviewing performance requirements for any existing or proposed capability that the Chairman of the Joint Chiefs of Staff determines should be reviewed by the Council;

(5) identifying new joint military capabilities based on advances in technology and concepts of operation; and

(6) identifying alternatives to any acquisition program that meets approved joint military capability requirements for the purposes of sections 2366a(b), 2366b(a)(4), and 2433(e)(2) of this title.

(c) COMPOSITION.—

(1) IN GENERAL.—The Joint Requirements Oversight Council is composed of the following:

(A) The Vice Chairman of the Joint Chiefs of Staff, who is the Chair of the Council and is the principal adviser to the Chairman of the Joint Chiefs of Staff for making recommendations about joint military capabilities or joint performance requirements.

(B) An Army officer in the grade of general.

(C) A Navy officer in the grade of admiral.

(D) An Air Force officer in the grade of general.

(E) A Marine Corps officer in the grade of general.

(F) A Space Force officer in the grade equivalent to the grade of general in the Army, Air Force, or Marine Corps, or admiral in the Navy.

(2) SELECTION OF MEMBERS.—Members of the Council under subparagraphs (B), (C), (D), and (E) of paragraph (1) shall be selected by the Chairman of the Joint Chiefs of Staff, after consultation with the Secretary of Defense, from officers in the grade of general or admiral, as the case may be, who are recommended for selection by the Secretary of the military department concerned.

(3) RECOMMENDATIONS.—In making any recommendation to the Chairman of the Joint Chiefs of Staff as described in paragraph (1)(A), the Vice Chairman of the Joint Chiefs of Staff shall provide the Chairman any dissenting view of members of the Council under paragraph (1) with respect to such recommendation.

(d) ADVISORS.—

(1) IN GENERAL.—The following officials of the Department of Defense shall serve as advisors to the Joint Requirements Oversight Council on matters within their authority and expertise:

(A) The Under Secretary of Defense for Policy.

(B) The Under Secretary of Defense for Intelligence and Security.

(C) The Under Secretary of Defense for Acquisition and Sustainment.

(D) The Under Secretary of Defense for Research and Engineering.

(E) The Under Secretary of Defense (Comptroller).

(F) The Director of Cost Assessment and Program Evaluation.

(G) The Director of Operational Test and Evaluation.

(H) The commander of a combatant command when matters related to the area of responsibility or functions of that command are under consideration by the Council.

(2) INPUT FROM COMBATANT COMMANDS.—The Council shall seek and consider input from the commanders of the combatant commands in carrying out its mission under paragraphs (1) and (2) of subsection (b).

(3) INPUT FROM CHIEFS OF STAFF.—The Council shall seek, and strongly consider, the views of the Chiefs of Staff of the armed forces, in their roles as customers of the acquisition system, on matters pertaining to a capability proposed by an armed force, Defense Agency, or other entity of the Department of Defense under subsection (b)(2) and joint performance requirements pursuant to subsection (b)(3).

(4) INPUT FROM VICE CHIEF OF THE NATIONAL GUARD BUREAU.—The Council shall seek, and strongly consider, the views of the Vice Chief of the National Guard Bureau regarding non-Federalized National Guard capabilities in support of homeland defense and civil support missions.

(e) PERFORMANCE REQUIREMENTS AS RESPONSIBILITY OF ARMED FORCES.—The Chief of Staff of an armed force is responsible for all performance requirements for that armed force and, except for performance requirements specified in subsections (b)(4) and (b)(5), such performance requirements do not need to be validated by the Joint Requirements Oversight Council.

(f) ANALYTIC SUPPORT.—The Secretary of Defense shall ensure that analytical organizations within the Department of Defense, such as the Office of Cost Assessment and Program Evaluation, provide resources and expertise in operations research, systems analysis, and cost estimation to the Joint Requirements Oversight Council to assist the Council in performing the mission in subsection (b).

(g) AVAILABILITY OF OVERSIGHT INFORMATION TO CONGRESSIONAL DEFENSE COMMITTEES.—The Secretary of Defense shall ensure that, in the case of a recommendation by the Chairman of the Joint Chiefs of Staff to the Secretary that is

approved by the Secretary, oversight information with respect to such recommendation that is produced as a result of the activities of the Joint Requirements Oversight Council is made available in a timely fashion to the congressional defense committees.

(h) DEFINITIONS.—In this section:

(1) The term ''joint military capabilities'' means the collective capabilities across the joint force, including both joint and force-specific capabilities, that are available to conduct military operations.

(2) The term ''performance requirement'' means a performance attribute of a particular system considered critical or essential to the development of an effective military capability.

(3) The term ''joint performance requirement'' means a performance requirement that is critical or essential to ensure interoperability or fulfill a capability gap of more than one armed force, Defense Agency, or other entity of the Department of Defense, or impacts the joint force in other ways such as logistics.

(4) The term ''oversight information'' means information and materials comprising analysis and justification that are prepared to support a recommendation that is made to, and approved by, the Secretary of Defense.

(Added Pub. L. 104–106, div. A, title IX, § 905(a)(1), Feb. 10, 1996, 110 Stat. 403; amended Pub. L. 104–201, div. A, title IX, § 908, Sept. 23, 1996, 110 Stat. 2621; Pub. L. 106–65, div. A, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 108–136, div. A, title X, § 1043(b)(3), Nov. 24, 2003, 117 Stat. 1610; Pub. L. 110–181, div. A, title IX, § 942(a)–(d), Jan. 28, 2008, 122 Stat. 287, 288; Pub. L. 110–417, [div. A], title VIII, § 813(d)(1), Oct. 14, 2008, 122 Stat. 4527; Pub. L. 111–23, title I, §§ 101(d)(1), 105(a), title II, § 201(b), May 22, 2009, 123 Stat. 1709, 1717, 1719; Pub. L. 111–383, div. A, title VIII, § 841, title X, § 1075(b)(8), Jan. 7, 2011, 124 Stat. 4281, 4369; Pub. L. 112–239, div. A, title IX, § 951(b), Jan. 2, 2013, 126 Stat. 1891; Pub. L. 114–92, div. A, title VIII, § 802(d)(1), Nov. 25, 2015, 129 Stat. 879; Pub. L. 114–328, div. A, title IX, § 925(a), Dec. 23, 2016, 130 Stat. 2359; Pub. L. 115–91, div. A, title X, § 1081(a)(15), Dec. 12, 2017, 131 Stat. 1595; Pub. L. 115–232, div. A, title VIII, § 831(b)(1), Aug. 13, 2018, 132 Stat. 1857; Pub. L. 116–92, div. A, title IX, § 902(7), title XVI, § 1621(e)(1)(A)(v), Dec. 20, 2019, 133 Stat. 1543, 1733; Pub. L. 116–283, div. A, title IX, §§ 906, 924(b)(9), title XVIII, §§ 1850(m), 1883(b)(2), Jan. 1, 2021, 134 Stat. 3799, 3822, 4271, 4294.)

AMENDMENT OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1883(b)(2), Jan. 1, 2021, 134 Stat. 4151, 4294, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, except as otherwise provided in title XVIII of Pub. L. 116–283, in title 10, United States Code, each reference in the text of such title to a source section that is redesignated by title XVIII of Pub. L. 116–283, is amended by striking such reference and inserting a reference to the appropriate section as so redesignated. See 2021 Amendment note below.

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1850(m), Jan. 1, 2021, 134 Stat. 4151, 4271, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, subsection (b)(6) of this section is amended by striking ''2433(e)(2)'' and inserting ''4375(b)''. See 2021 Amendment note below.

AMENDMENTS

2021—Subsec. (b)(6). Pub. L. 116–283, § 1883(b)(2), substituted ''4251(b)'' for ''2366a(b)'' and ''4252(a)(4)'' for ''2366b(a)(4)''.

Pub. L. 116–283, § 1850(m), substituted ''4375(b)'' for ''2433(e)(2)''.

Subsec. (c)(1)(F). Pub. L. 116–283, § 924(b)(9), added subpar. (F).

Subsec. (d)(1)(D). Pub. L. 116–283, § 906(b), substituted ''The'' for ''the''.

Subsec. (d)(4). Pub. L. 116–283, § 906(a), added par. (4).

2019—Subsec. (d)(1)(B). Pub. L. 116–92, § 1621(e)(1)(A)(v), substituted ''Under Secretary of Defense for Intelligence and Security'' for ''Under Secretary of Defense for Intelligence''.

Subsec. (d)(1)(C). Pub. L. 116–92, § 902(7)(A), substituted ''Under Secretary of Defense for Acquisition and Sustainment'' for ''Under Secretary of Defense for Acquisition, Technology, and Logistics''.

Subsec. (d)(1)(D) to (H). Pub. L. 116–92, § 902(7)(B), (C), added subpar. (D) and redesignated former subpars. (D) to (G) as (E) to (H), respectively.

2018—Subsec. (b)(3) to (7). Pub. L. 115–232 redesignated pars. (4) to (7) as (3) to (6), respectively, and struck out former par. (3) which related to development of recommendations for program cost and fielding targets pursuant to section 2448a of this title.

2017—Subsec. (b)(1). Pub. L. 115–91 substituted ''section 113(g)'' for ''section 118''.

2016—Pub. L. 114–328 amended section generally. Prior to amendment, section related to Joint Requirements Oversight Council and consisted of its establishment, mission, composition, advisors, organization, availability of oversight information to Congressional defense committees, and definitions.

2015—Subsec. (d)(3). Pub. L. 114–92 added par. (3).

2013—Subsec. (b)(1)(C). Pub. L. 112–239, § 951(b)(1), substituted ''in ensuring that appropriate trade-offs are made among life-cycle cost, schedule, and performance objectives, and procurement quantity objectives, in the establishment and approval of military requirements'' for ''in ensuring the consideration of trade-offs among cost, schedule, and performance objectives for joint military requirements''.

Subsec. (b)(3). Pub. L. 112–239, § 951(b)(2), substituted ''the total cost of such resources'' for ''such resource level''.

2011—Subsec. (a). Pub. L. 111–383, § 841(d), substituted ''There is'' for ''The Secretary of Defense shall establish''.

Subsec. (b)(3). Pub. L. 111–383, § 1075(b)(8), which directed substitution of ''Program Evaluation'' for ''Performance Evaluation'', could not be executed because of the amendment by Pub. L. 111–383, § 841(c)(2). See below.

Pub. L. 111–383, § 841(c)(2), substituted ''advisors to the Council under subsection (d)'' for ''Under Secretary of Defense (Comptroller), the Under Secretary of Defense for Acquisition, Technology, and Logistics, and the Director of Cost Assessment and Performance Evaluation''.

Subsec. (c)(1)(A). Pub. L. 111–383, § 841(a)(1), inserted ''Vice'' before ''Chairman of the Joint Chiefs of Staff''.

Subsec. (c)(1)(F). Pub. L. 111–383, § 841(b), added subpar. (F).

Subsec. (c)(2). Pub. L. 111–383, § 841(a)(2), substituted ''under subparagraphs (B), (C), (D), and (E) of paragraph (1)'' for '', other than the Chairman of the Joint Chiefs of Staff,''.

Subsec. (c)(3). Pub. L. 111–383, § 841(a)(3), struck out par. (3) which read as follows: ''The functions of the Chairman of the Joint Chiefs of Staff as chairman of

the Council may only be delegated to the Vice Chairman of the Joint Chiefs of Staff.''

Subsec. (d)(1). Pub. L. 111–383, § 841(c)(1), substituted ''The following officials of the Department of Defense shall serve as advisors to the Council on matters within their authority and expertise:'' for ''The Under Secretary of Defense for Acquisition, Technology, and Logistics, the Under Secretary of Defense (Comptroller), and the Director of Cost Assessment and Program Evaluation shall serve as advisors to the Council on matters within their authority and expertise.'' and added subpars. (A) to (F).

2009—Subsec. (b)(1)(C). Pub. L. 111–23, § 201(b)(1), added subpar. (C).

Subsec. (b)(3). Pub. L. 111–23, § 201(b)(2)(A), inserted '', in consultation with the Under Secretary of Defense (Comptroller), the Under Secretary of Defense for Acquisition, Technology, and Logistics, and the Director of Cost Assessment and Performance Evaluation,'' after ''assist the Chairman''.

Subsec. (b)(5). Pub. L. 111–23, § 201(b)(2)(B)–(4), added par. (5).

Subsec. (d). Pub. L. 111–23, § 105(a), designated existing provisions as par. (1) and added par. (2).

Pub. L. 111–23, § 101(d)(1), substituted ''Director of Cost Assessment and Program Evaluation'' for ''Director of the Office of Program Analysis and Evaluation''.

2008—Subsec. (b). Pub. L. 110–181, § 942(a), amended subsec. (b) generally. Prior to amendment, subsec. (b) related to mission of Joint Requirements Oversight Council.

Subsec. (b)(4). Pub. L. 110–417 substituted ''section 2366a(b), section 2366b(a)(4),'' for ''section 2366a(a)(4), section 2366b(b),''.

Subsec. (d). Pub. L. 110–181, § 942(b)(2), added subsec. (d). Former subsec. (d) redesignated (f).

Subsec. (e). Pub. L. 110–181, § 942(c), added subsec. (e).

Subsec. (f). Pub. L. 110–181, § 942(b)(1), redesignated subsec. (d) as (f).

Subsec. (g). Pub. L. 110–181, § 942(d), added subsec. (g).

2003—Subsec. (d)(2). Pub. L. 108–136 substituted ''subsection, the term 'oversight'' for ''subsection:'', struck out ''(A) The term 'oversight'' before ''information' means'', and struck out subpar. (B) which read as follows: ''The term 'congressional defense committees' means—

''(i) the Committee on Armed Services and the Committee on Appropriations of the Senate; and

''(ii) the Committee on Armed Services and the Committee on Appropriations of the House of Representatives.''

1999—Subsec. (d)(2)(B)(ii). Pub. L. 106–65 substituted ''Committee on Armed Services'' for ''Committee on National Security''.

1996—Subsec. (d). Pub. L. 104–201 added subsec. (d).

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by sections 1850(m) and 1883(b)(2) of Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE

Pub. L. 104–106, div. A, title IX, § 905(b), Feb. 10, 1996, 110 Stat. 404, provided that: ''The amendments made by this section [enacting this section] shall take effect on January 31, 1997.''

INPUT FROM COMMANDERS OF COMBATANT COMMANDS

Pub. L. 111–23, title I, § 105(b), May 22, 2009, 123 Stat. 1718, provided that: ''The Joint Requirements Oversight Council in the Department of Defense shall seek and consider input from the commanders of combatant commands, in accordance with section 181(d) of title 10, United States Code (as amended by subsection (a)). Such input may include, but is not limited to, an assessment of the following:

''(1) Any current or projected missions or threats in the theater of operations of the commander of a combatant command that would inform the assessment of a new joint military requirement.

''(2) The necessity and sufficiency of a proposed joint military requirement in terms of current and projected missions or threats.

''(3) The relative priority of a proposed joint military requirement in comparison with other joint military requirements within the theater of operations of the commander of a combatant command.

''(4) The ability of partner nations in the theater of operations of the commander of a combatant command to assist in meeting the joint military requirement or the benefit, if any, of a partner nation assisting in development or use of technologies developed to meet the joint military requirement.''

REVIEW OF JOINT MILITARY REQUIREMENTS

Pub. L. 111–23, title II, § 201(c), May 22, 2009, 123 Stat. 1720, provided that: ''The Secretary of Defense shall ensure that each new joint military requirement recommended by the Joint Requirements Oversight Council is reviewed to ensure that the Joint Requirements Oversight Council has, in making such recommendation—

''(1) taken appropriate action to seek and consider input from the commanders of the combatant commands, in accordance with the requirements of section 181(d) of title 10, United States Code (as amended by section 105(a) of this Act);

''(2) engaged in consideration of trade-offs among cost, schedule, and performance objectives in accordance with the requirements of section 181(b)(1)(C) of title 10, United States Code (as added by subsection (b)); and

''(3) engaged in consideration of issues of joint portfolio management, including alternative material and non-material solutions, as provided in Department of Defense instructions for the development of joint military requirements.''

STUDY GUIDANCE FOR ANALYSES OF ALTERNATIVES

Pub. L. 111–23, title II, § 201(d), May 22, 2009, 123 Stat. 1720, provided that: ''The Director of Cost Assessment and Program Evaluation shall take the lead in the development of study guidance for an analysis of alternatives for each joint military requirement for which the Chairman of the Joint Requirements Oversight Council is the validation authority. In developing the guidance, the Director shall solicit the advice of appropriate officials within the Department of Defense and ensure that the guidance requires, at a minimum—

''(1) full consideration of possible trade-offs among cost, schedule, and performance objectives for each alternative considered; and

''(2) an assessment of whether or not the joint military requirement can be met in a manner that is consistent with the cost and schedule objectives recommended by the Joint Requirements Oversight Council.''

DEADLINES FOR INCLUSION OF CORE MISSION REFERENCES IN DOCUMENTS

Pub. L. 110–181, div. A, title IX, § 942(f), Jan. 28, 2008, 122 Stat. 288, provided that: ''Effective June 1, 2009, all joint military requirements documents of the Joint Requirements Oversight Council produced to carry out its mission under section 181(b)(1) of title 10, United States Code, shall reference the core mission areas organized and defined under [former] section 118b of such title. Not later than October 1, 2009, all such documents produced before June 1, 2009, shall reference such structure.''

REPORTS ON JOINT REQUIREMENTS OVERSIGHT COUNCIL REFORM INITIATIVE

Pub. L. 106–398, § 1 [[div. A], title IX, § 916], Oct. 30, 2000, 114 Stat. 1654, 1654A–231, as amended by Pub. L. 107–107, div. A, title IX, § 923, Dec. 28, 2001, 115 Stat. 1199, directed the Chairman of the Joints Chiefs of Staff to

submit reports to committees of Congress not later than Mar. 1, 2001, Sept. 1, 2001, Mar. 1, 2002, and Mar. 1, 2003, on the progress made on the initiative of the Chairman to reform and refocus the Joint Requirements Oversight Council.

§ 182. Center for Excellence in Disaster Management and Humanitarian Assistance

(a) ESTABLISHMENT.—The Secretary of Defense may operate a Center for Excellence in Disaster Management and Humanitarian Assistance (in this section referred to as the ''Center'').

(b) MISSIONS.—(1) The Center shall be used to provide and facilitate education, training, and research in civil-military operations, particularly operations that require international disaster management and humanitarian assistance and operations that require coordination between the Department of Defense and other agencies.

(2) The Center shall be used to make available high-quality disaster management and humanitarian assistance in response to disasters.

(3) The Center shall be used to provide and facilitate education, training, interagency coordination, and research on the following additional matters:

(A) Management of the consequences of nuclear, biological, and chemical events.

(B) Management of the consequences of terrorism.

(C) Appropriate roles for the reserve components in the management of such consequences and in disaster management and humanitarian assistance in response to natural disasters.

(D) Meeting requirements for information in connection with regional and global disasters, including the use of advanced communications technology as a virtual library.

(E) Tropical medicine, particularly in relation to the medical readiness requirements of the Department of Defense.

(4) The Center shall develop a repository of disaster risk indicators for the Asia-Pacific region.

(5) The Center shall perform such other missions as the Secretary of Defense may specify.

(c) JOINT OPERATION WITH EDUCATIONAL INSTITUTION AUTHORIZED.—The Secretary of Defense may enter into an agreement with appropriate officials of an institution of higher education to provide for joint operation of the Center. Any such agreement shall provide for the institution to furnish necessary administrative services for the Center, including administration and allocation of funds.

(d) ACCEPTANCE OF DONATIONS.—(1) Except as provided in paragraph (2), the Secretary of Defense may accept, on behalf of the Center, donations to be used to defray the costs of the Center or to enhance the operation of the Center. Such donations may be accepted from any agency of the Federal Government, any State or local government, any foreign government, any foundation or other charitable organization (including any that is organized or operates under the laws of a foreign country), or any other private source in the United States or a foreign country.

(2) The Secretary may not accept a donation under paragraph (1) if the acceptance of the donation would compromise or appear to compromise—

(A) the ability of the Department of Defense, any employee of the Department, or members of the armed forces, to carry out any responsibility or duty of the Department in a fair and objective manner; or

(B) the integrity of any program of the Department of Defense or of any person involved in such a program.

(3) The Secretary shall prescribe written guidance setting forth the criteria to be used in determining whether or not the acceptance of a foreign donation would have a result described in paragraph (2).

(4) Funds accepted by the Secretary under paragraph (1) as a donation on behalf of the Center shall be credited to appropriations available to the Department of Defense for the Center. Funds so credited shall be merged with the appropriations to which credited and shall be available for the Center for the same purposes and the same period as the appropriations with which merged.

(Added Pub. L. 105–85, div. A, title III, § 382(a)(1), Nov. 18, 1997, 111 Stat. 1709.)

PAYMENTS FOR EDUCATION AND TRAINING OF PERSONNEL OF FOREIGN COUNTRIES

Pub. L. 107–248, title VIII, § 8093, Oct. 23, 2002, 116 Stat. 1558, provided that: ''During the current fiscal year and hereafter, under regulations prescribed by the Secretary of Defense, the Center of Excellence for Disaster Management and Humanitarian Assistance [probably should be Center for Excellence in Disaster Management and Humanitarian Assistance] may also pay, or authorize payment for, the expenses of providing or facilitating education and training for appropriate military and civilian personnel of foreign countries in disaster management, peace operations, and humanitarian assistance.''

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 107–117, div. A, title VIII, § 8109, Jan. 10, 2002, 115 Stat. 2272.

Pub. L. 106–259, title VIII, § 8109, Aug. 9, 2000, 114 Stat. 698.

Pub. L. 106–79, title VIII, § 8139, Oct. 25, 1999, 113 Stat. 1269.

§ 183. Department of Defense Board of Actuaries

(a) IN GENERAL.—There shall be in the Department of Defense a Department of Defense Board of Actuaries (hereinafter in this section referred to as the ''Board'').

(b) MEMBERS.—(1) The Board shall consist of three members who shall be appointed by the Secretary of Defense from among qualified professional actuaries who are members of the Society of Actuaries.

(2) The members of the Board shall serve for a term of 15 years, except that a member of the Board appointed to fill a vacancy occurring before the end of the term for which the member's predecessor was appointed shall only serve until the end of such term. A member may serve after the end of the member's term until the member's successor takes office.

(3) A member of the Board may be removed by the Secretary of Defense only for misconduct or failure to perform functions vested in the Board.

(4) A member of the Board who is not an employee of the United States is entitled to receive

pay at the daily equivalent of the annual rate of basic pay of the highest rate of basic pay then currently being paid under the General Schedule of subchapter III of chapter 53 of title 5 for each day the member is engaged in the performance of the duties of the Board and is entitled to travel expenses, including a per diem allowance, in accordance with section 5703 of that title in connection with such duties.

(c) DUTIES.—The Board shall have the following duties:

(1) To review valuations of the Department of Defense Military Retirement Fund in accordance with section 1465(c) of this title and submit to the President and Congress, not less often than once every four years, a report on the status of that Fund, including such recommendations for modifications to the funding or amortization of that Fund as the Board considers appropriate and necessary to maintain that Fund on a sound actuarial basis.

(2) To review valuations of the Department of Defense Education Benefits Fund in accordance with section 2006(e) of this title and make recommendations to the President and Congress on such modifications to the funding or amortization of that Fund as the Board considers appropriate to maintain that Fund on a sound actuarial basis.

(3) To review valuations of such other funds as the Secretary of Defense shall specify for purposes of this section and make recommendations to the President and Congress on such modifications to the funding or amortization of such funds as the Board considers appropriate to maintain such funds on a sound actuarial basis.

(d) RECORDS.—The Secretary of Defense shall ensure that the Board has access to such records regarding the funds referred to in subsection (c) as the Board shall require to determine the actuarial status of such funds.

(e) REPORTS.—(1) The Board shall submit to the Secretary of Defense on an annual basis a report on the actuarial status of each of the following:

(A) The Department of Defense Military Retirement Fund.

(B) The Department of Defense Education Benefits Fund.

(C) Each other fund specified by Secretary under subsection (c)(3).

(2) The Board shall also furnish its advice and opinion on matters referred to it by the Secretary.

(Added Pub. L. 110–181, div. A, title IX, §906(a)(1), Jan. 28, 2008, 122 Stat. 275.)

PRIOR PROVISIONS

A prior section 183, added Pub. L. 105–85, div. A, title IX, §904(a), Nov. 18, 1997, 111 Stat. 1854, required the Secretary of Defense to report annually on the justification or requirement and projected costs of Department of Defense advisory committees, prior to repeal by Pub. L. 107–314, div. A, title X, §1041(a)(1)(A), Dec. 2, 2002, 116 Stat. 2645.

INITIAL SERVICE AS BOARD MEMBERS

Pub. L. 110–181, div. A, title IX, §906(a)(3), Jan. 28, 2008, 122 Stat. 277, provided that: ''Each member of the Department of Defense Retirement Board of Actuaries or the Department of Defense Education Benefits Board of Actuaries as of the date of the enactment of this Act [Jan. 28, 2008] shall serve as an initial member of the Department of Defense Board of Actuaries under section 183 of title 10, United States Code (as added by paragraph (1)), from that date until the date otherwise provided for the completion of such individual's term as a member of the Department of Defense Retirement Board of Actuaries or the Department of Defense Education Benefits Board of Actuaries, as the case may be, unless earlier removed by the Secretary of Defense.''

§183a. Military Aviation and Installation Assurance Clearinghouse for review of mission obstructions

(a) ESTABLISHMENT.—(1) The Secretary of Defense shall establish a Military Aviation and Installation Assurance Siting Clearinghouse (in this section referred to as the ''Clearinghouse'').

(2) The Clearinghouse shall be—

(A) organized under the authority, direction, and control of an Assistant Secretary of Defense designated by the Secretary; and

(B) assigned such personnel and resources as the Secretary considers appropriate to carry out this section.

(b) FUNCTIONS.—(1) The Clearinghouse shall coordinate Department of Defense review of applications for energy projects filed with the Secretary of Transportation pursuant to section 44718 of title 49 and received by the Department of Defense from the Secretary of Transportation. In performing such coordination, the Clearinghouse shall provide procedures to ensure affected local military installations are consulted.

(2) The Clearinghouse shall accelerate the development of planning tools necessary to determine the acceptability to the Department of Defense of proposals included in an application for an energy project submitted pursuant to such section.

(3) The Clearinghouse shall perform such other functions as the Secretary of Defense assigns.

(c) REVIEW OF PROPOSED ACTIONS.—(1) Not later than 75 days after receiving from the Secretary of Transportation a proper application for an energy project under section 44718 of title 49 that may have an adverse impact on military operations and readiness, the Clearinghouse shall conduct a preliminary review of such application. The review shall—

(A) assess the likely scope, duration, and level of risk of any adverse impact of such energy project on military operations and readiness; and

(B) identify any feasible and affordable actions that could be taken by the Department, the developer of such energy project, or others to mitigate the adverse impact and to minimize risks to national security while allowing the energy project to proceed with development.

(2)(A) If the Clearinghouse finds under paragraph (1) that an energy project will have an adverse impact on military operations and readiness, the Clearinghouse shall issue to the applicant a notice of presumed risk that describes the concerns identified by the Department in the preliminary review and requests a discussion of possible mitigation actions.

(B) After the Clearinghouse issues a notice under subparagraph (A) with respect to an energy project, the parties should seek to identify feasible and affordable actions that can be taken by the Department, the developer of such energy project, or others to mitigate any adverse impact on military operations and readiness.

(3) At the same time that the Clearinghouse issues to the applicant a notice of presumed risk under paragraph (2), the Clearinghouse shall provide the same notice to the governor of the State in which the project is located and request that the governor provide the Clearinghouse any comments the governor believes of relevance to the application. The Secretary of Defense shall consider the comments of the governor in the Secretary's evaluation of whether the project presents an unacceptable risk to the national security of the United States and shall include the comments with the finding provided to the Secretary of Transportation pursuant to section 44718(f) of title 49.

(4) If, after issuing the notices of presumed risk required by paragraphs (2) and (3), the Secretary of Defense later concludes for any reason that the energy project will not have an adverse impact on military readiness, the Clearinghouse shall notify the applicant and the governor in writing of that conclusion.

(5) The Clearinghouse shall develop, in coordination with other departments and agencies of the Federal Government, an integrated review process to ensure timely notification and consideration of energy projects filed with the Secretary of Transportation pursuant to section 44718 of title 49 that may have an adverse impact on military operations and readiness.

(6) The Clearinghouse shall establish procedures for the Department of Defense for the coordinated consideration of and response to a request for a review received from another Federal agency, a State government, an Indian tribal government, a local government, a landowner, or the developer of an energy project, including guidance to personnel at each military installation in the United States on how to initiate such procedures and ensure a coordinated Department response.

(7) The Clearinghouse shall develop procedures for conducting early outreach to parties carrying out energy projects that could have an adverse impact on military operations and readiness and to clearly communicate to such parties actions being taken by the Department of Defense under this section. The procedures shall provide for filing by such parties of a project area and preliminary project layout at least one year before expected construction of any project proposed within a military training route or within line-of-sight of any air route surveillance radar, airport surveillance radar, or wide area surveillance over-the-horizon radar operated or used by the Department of Defense in order to provide adequate time for analysis and negotiation of mitigation options. Material marked as proprietary or competition sensitive by a party filing for this preliminary review shall be protected from public release by the Department of Defense.

(d) COMPREHENSIVE REVIEW.—(1) The Secretary of Defense shall develop a comprehensive strategy for addressing the impacts upon the military of projects filed with the Secretary of Transportation pursuant to section 44718 of title 49.

(2) In developing the strategy required by paragraph (1), the Secretary shall—

(A) assess the magnitude of interference posed by projects filed with the Secretary of Transportation pursuant to section 44718 of title 49;

(B) solely for the purpose of informing preliminary reviews under subsection (c)(1) and early outreach efforts under subsection (c)(5), identify distinct geographic areas selected as proposed locations for projects filed, or for projects that are reasonably expected to be filed in the near future, with the Secretary of Transportation pursuant to section 44718 of title 49 where the Secretary of Defense can demonstrate such projects could have an adverse impact on military operations and readiness, including military training routes, and categorize the risk of adverse impact in such areas;

(C) develop procedures for the initial identification of such geographic areas identified under subparagraph (B), to include a process to provide notice and seek public comment prior to making a final designation of the geographic areas, including maps of the area and the basis for identification;

(D) develop procedures to periodically review and modify, consistent with the notice and public comment process under subparagraph (C), geographic areas identified under subparagraph (B) and to solicit and identify additional geographic areas as appropriate;

(E) at the conclusion of the notice and public comment period conducted under subparagraph (C), make a final finding on the designation of a geographic area of concern or delegate the authority to make such finding to the Deputy Secretary of Defense, an Under Secretary of Defense, or a Deputy Under Secretary of Defense; and

(F) specifically identify feasible and affordable long-term actions that may be taken to mitigate adverse impacts of projects filed, or which may be filed in the future, with the Secretary of Transportation pursuant to section 44718 of title 49, on military operations and readiness, including—

(i) investment priorities of the Department of Defense with respect to research and development;

(ii) modifications to military operations to accommodate applications for such projects;

(iii) recommended upgrades or modifications to existing systems or procedures by the Department of Defense;

(iv) acquisition of new systems by the Department and other departments and agencies of the Federal Government and timelines for fielding such new systems; and

(v) modifications to the projects for which such applications are filed with the Secretary of Transportation pursuant to section 44718 of title 49, including changes in size, location, or technology.

(3) The governor of a State may recommend to the Secretary of Defense additional geo-

graphical areas of concern within that State. Any such recommendation shall be submitted for notice and comment pursuant to paragraph (2)(C).

(4) The Clearinghouse shall make access to data reflecting geographic areas identified under subparagraph (B) of paragraph (2) and reviewed and modified under subparagraph (C) of such paragraph available online.

(e) DEPARTMENT OF DEFENSE FINDING OF UNACCEPTABLE RISK.—(1) The Secretary of Defense may not object to an energy project filed with the Secretary of Transportation pursuant to section 44718 of title 49, except in a case in which the Secretary of Defense determines, after giving full consideration to mitigation actions identified pursuant to this section, that such project, in isolation or cumulatively with other projects, would result in an unacceptable risk to the national security of the United States. The Secretary of Defense's finding of unacceptable risk to national security shall be transmitted to the Secretary of Transportation for inclusion in the report required under section 44718(b)(2) of title 49.

(2)(A) Not later than 30 days after making a finding of unacceptable risk under paragraph (1), the Secretary of Defense shall submit to the congressional defense committees, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Transportation and Infrastructure of the House of Representatives a report on such finding and the basis for such finding. Such report shall include an explanation of the operational impact that led to the finding, a discussion of the mitigation options considered, and an explanation of why the mitigation options were not feasible or did not resolve the conflict. The report may include a classified annex. Unclassified reports shall also be provided to the project proponent. The Secretary of Defense may provide public notice through the Federal Register of the finding.

(B) The Secretary of Defense shall notify the appropriate State agency of a finding made under paragraph (1).

(3) The Secretary of Defense may only delegate the responsibility for making a finding of unacceptable risk under paragraph (1) to the Deputy Secretary of Defense, an Under Secretary of Defense, or a Deputy Under Secretary of Defense.

(4) The Clearinghouse shall develop procedures for making a finding of unacceptable risk, including with respect to how to implement cumulative effects analysis. Such procedures shall be subject to public comment prior to finalization.

(f) AUTHORITY TO ACCEPT CONTRIBUTIONS OF FUNDS.—The Secretary of Defense is authorized to request and accept a voluntary contribution of funds from an applicant for an energy project. Amounts so accepted shall remain available until expended for the purpose of offsetting the cost of measures undertaken by the Secretary of Defense to mitigate adverse impacts of such a project on military operations and readiness or to conduct studies of potential measures to mitigate such impacts.

(g) EFFECT OF DEPARTMENT OF DEFENSE HAZARD ASSESSMENT.—An action taken pursuant to this section shall not be considered to be a substitute for any assessment or determination required of the Secretary of Transportation under section 44718 of title 49.

(h) DEFINITIONS.—In this section:

(1) The term ''adverse impact on military operations and readiness'' means any adverse impact upon military operations and readiness, including flight operations, research, development, testing, and evaluation, and training, that is demonstrable and is likely to impair or degrade the ability of the armed forces to perform their warfighting missions.

(2) The term ''energy project'' means a project that provides for the generation or transmission of electrical energy.

(3) The term ''governor'', with respect to a State, means the chief executive officer of the State.

(4) The term ''landowner'' means a person that owns a fee interest in real property on which a proposed energy project is planned to be located.

(5) The term ''military installation'' has the meaning given that term in section 2801(c)(4) of this title.

(6) The term ''military readiness'' includes any training or operation that could be related to combat readiness, including testing and evaluation activities.

(7) The term ''military training route'' means a training route developed as part of the Military Training Route Program, carried out jointly by the Administrator of the Federal Aviation Administration and the Secretary of Defense, for use by the armed forces for the purpose of conducting low-altitude, high-speed military training.

(8) The term ''State'' means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the United States Virgin Islands, and American Samoa.

(9) The term ''unacceptable risk to the national security of the United States'' means the construction, alteration, establishment, or expansion, or the proposed construction, alteration, establishment, or expansion, of a structure or sanitary landfill, that the Secretary of Defense can demonstrate would—

(A) endanger safety in air commerce directly related to the activities of the Department of Defense;

(B) interfere with the efficient use of the navigable airspace directly related to the activities of the Department of Defense; or

(C) significantly impair or degrade the capability of the Department of Defense to conduct training, research, development, testing, and evaluation, and operations or to maintain military readiness.

(Added Pub. L. 115–91, div. A, title III, § 311(a), Dec. 12, 2017, 131 Stat. 1343; amended Pub. L. 116–92, div. A, title III, §§ 311, 312, 371, Dec. 20, 2019, 133 Stat. 1303, 1329; Pub. L. 116–283, div. A, title III, § 311, Jan. 1, 2021, 134 Stat. 3513.)

AMENDMENTS

2021—Subsec. (c)(2). Pub. L. 116–283, § 311(1), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (c)(4) to (6). Pub. L. 116–283, §311(2), (3), added par. (4) and redesignated former pars. (4) and (5) as (5) and (6), respectively. Former par. (6) redesignated (7).

Subsec. (c)(7). Pub. L. 116–283, §311(2), (4), redesignated par. (6) as (7) and struck out "Any setback for a project pursuant to the previous sentence shall not be more than what is determined to be necessary by a technical analysis conducted by the Lincoln Laboratory at the Massachusetts Institute of Technology or any successor entity." before "Material marked".

2019—Subsec. (c)(1). Pub. L. 116–92, §311, substituted "75 days" for "60 days" in introductory provisions.

Subsec. (c)(6). Pub. L. 116–92, §371(1), in second sentence, substituted "air route surveillance radar, airport surveillance radar, or wide area surveillance over-the-horizon radar" for "air route surveillance radar or airport surveillance radar" and inserted after second sentence "Any setback for a project pursuant to the previous sentence shall not be more than what is determined to be necessary by a technical analysis conducted by the Lincoln Laboratory at the Massachusetts Institute of Technology or any successor entity."

Subsec. (d)(2)(E). Pub. L. 116–92, §371(2)(A), substituted "the Deputy Secretary of Defense, an Under Secretary of Defense, or a Deputy Under Secretary of Defense" for "a Deputy Secretary of Defense, an Under Secretary of Defense, or a Principal Deputy Under Secretary of Defense".

Subsec. (d)(3), (4). Pub. L. 116–92, §371(2)(B), (C), added par. (3) and redesignated former par. (3) as (4).

Subsec. (e)(3). Pub. L. 116–92, §371(3), substituted "an Under Secretary of Defense, or a Deputy Under Secretary of Defense" for "an under secretary of defense, or a deputy under secretary of defense".

Subsec. (f). Pub. L. 116–92, §371(4), which directed the substitution of "from an entity requesting a review by the Clearinghouse under this section" for "from an applicant for a project filed with the Secretary of Transportation pursuant to section 44718 of title 49", could not be executed because of the intervening amendment by Pub. L. 116–92, §312. See note below.

Pub. L. 116–92, §312, substituted "for an energy project" for "for a project filed with the Secretary of Transportation pursuant to section 44718 of title 49".

Subsec. (h)(3) to (9). Pub. L. 116–92, §371(5), added par. (3), redesignated former pars. (3) to (6) as (4) to (7), respectively, in par. (7) substituted "the Administrator of the Federal Aviation Administration" for "the Federal Aviation Administration", added par. (8), and redesignated former par. (7) as (9).

APPLICABILITY OF EXISTING RULES AND REGULATIONS

Pub. L. 115–91, div. A, title III, §311(c), Dec. 12, 2017, 131 Stat. 1348, provided that: "Notwithstanding the amendments made by subsection (a) [enacting this section], any rule or regulation promulgated to carry out section 358 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 [Pub. L. 111–383] (49 U.S.C. 44718 note), that is in effect on the day before the date of the enactment of this Act [Dec. 12, 2017] shall continue in effect and apply to the extent such rule or regulation is consistent with the authority under section 183a of title 10, United States Code, as added by subsection (a), until such rule or regulation is otherwise amended or repealed."

DEADLINE FOR INITIAL IDENTIFICATION OF GEOGRAPHIC AREAS

Pub. L. 115–91, div. A, title III, §311(d), Dec. 12, 2017, 131 Stat. 1348, provided that: "The initial identification of geographic areas under section 183a(d)(2)(B) of title 10, United States Code, as added by subsection (a), shall be completed not later than 180 days after the date of the enactment of this Act [Dec. 12, 2017]."

[§184. Renumbered §342]

[§185. Repealed. Pub. L. 114–328, div. A, title IX, §904(a), Dec. 23, 2016, 130 Stat. 2345]

Section, added Pub. L. 107–107, div. A, title X, §1009(a)(1), Dec. 28, 2001, 115 Stat. 1206; amended Pub. L. 107–314, div. A, title X, §1004(h)(2), Dec. 2, 2002, 116 Stat. 2631, related to Financial Management Modernization Executive Committee.

[§186. Repealed. Pub. L. 113–291, div. A, title IX, §901(c), Dec. 19, 2014, 128 Stat. 3463]

Section, added Pub. L. 108–375, div. A, title III, §332(b)(1), Oct. 28, 2004, 118 Stat. 1854; amended Pub. L. 110–417, [div. A], title IX, §904, Oct. 14, 2008, 122 Stat. 4567; Pub. L. 111–383, div. A, title X, §1075(b)(9), Jan. 7, 2011, 124 Stat. 4369, related to Defense Business System Management Committee.

§187. Strategic Materials Protection Board

(a) ESTABLISHMENT.—(1) The Secretary of Defense shall establish a Strategic Materials Protection Board.

(2) The Board shall be composed of the following:

(A) The Deputy Assistant Secretary of Defense for Manufacturing and Industrial Base Policy, who shall be the chairman of the Board.

(B) The Administrator of the Defense Logistics Agency Strategic Materials, or any successor organization, who shall be the vice chairman of the Board.

(C) A designee of the Assistant Secretary of the Army for Acquisition, Logistics, and Technology.

(D) A designee of the Assistant Secretary of the Navy for Research, Development, and Acquisition.

(E) A designee of the Assistant Secretary of the Air Force for Acquisition.[1]

(b) DUTIES.—In addition to other matters assigned to it by the Secretary of Defense, the Board shall—

(1) determine the need to provide a long term secure supply of materials designated as critical to national security to ensure that national defense needs are met;

(2) analyze the risk associated with each material designated as critical to national security and the effect on national defense that the nonavailability of such material would have;

(3) recommend a strategy to the Secretary to ensure a secure supply of materials designated as critical to national security;

(4) recommend such other strategies to the Secretary as the Board considers appropriate to strengthen the industrial base with respect to materials critical to national security; and

(5) publish not less frequently than once every two years in the Federal Register recommendations regarding materials critical to national security, including a list of specialty metals, if any, recommended for addition to, or removal from, the definition of "specialty metal" for purposes of section 2533b of this title.

(c) MEETINGS.—The Board shall meet as determined necessary by the Deputy Assistant Secretary of Defense for Manufacturing and Industrial Base Policy but not less frequently than once every two years to make recommendations regarding materials critical to national security as described in subsection (b)(5).

[1] See Change of Name note below.

(d) REPORTS.—(1) Subject to paragraph (2), after each meeting of the Board, the Board shall prepare a report containing the results of the meeting and such recommendations as the Board determines appropriate. Each such report shall be submitted to the congressional defense committees, together with comments and recommendations from the Secretary of Defense, not later than 90 days after the meeting covered by the report.

(2) In any year in which the Board meets more than once, each report prepared by the Board as required by paragraph (1) may be combined into one annual report and submitted as provided by paragraph (1) not later than 90 days after the last meeting of the year.

(e) DEFINITIONS.—In this section:

(1) The term ''materials critical to national security'' means materials—

(A) upon which the production or sustainment of military equipment is dependent; and

(B) the supply of which could be restricted by actions or events outside the control of the Government of the United States.

(2) The term ''military equipment'' means equipment used directly by the armed forces to carry out military operations.

(3) The term ''secure supply'', with respect to a material, means the availability of a source or sources for the material, including the full supply chain for the material and components containing the material.

(Added Pub. L. 109–364, div. A, title VIII, § 843(a), Oct. 17, 2006, 120 Stat. 2338; amended Pub. L. 111–383, div. A, title VIII, § 829, Jan. 7, 2011, 124 Stat. 4272; Pub. L. 112–239, div. A, title IX, § 901(c), Jan. 2, 2013, 126 Stat. 1864; Pub. L. 114–328, div. A, title X, § 1081(a)(2), Dec. 23, 2016, 130 Stat. 2417; Pub. L. 116–92, div. A, title XVII, § 1731(a)(11), Dec. 20, 2019, 133 Stat. 1813; Pub. L. 116–283, div. A, title XVIII, § 1870(c)(6)(C), Jan. 1, 2021, 134 Stat. 4285.)

AMENDMENT OF SUBSECTION (b)(5)

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1870(c)(6)(C), Jan. 1, 2021, 134 Stat. 4151, 4285, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, subsection (b)(5) of this section is amended by striking ''section 2533b'' and inserting ''section 4863''. See 2021 Amendment note below.

AMENDMENTS

2021—Subsec. (b)(5). Pub. L. 116–283 substituted ''section 4863'' for ''section 2533b''.

2019—Subsec. (a)(2)(C). Pub. L. 116–92 substituted ''Assistant Secretary of the Army for Acquisition, Logistics, and Technology'' for ''Assistant Secretary of the Army for Acquisition, Technology, and Logistics''.

2016—Subsec. (a)(2)(C). Pub. L. 114–328 substituted ''Acquisition, Technology, and Logistics'' for ''Acquisition, Logistics, and Technology''.

2013—Subsec. (a)(2). Pub. L. 112–239, § 901(c)(1), amended par. (2) generally. Prior to amendment, par. (2) related to composition of the Strategic Materials Protection Board.

Subsec. (b)(3), (4). Pub. L. 112–239, § 901(c)(2), substituted ''Secretary'' for ''President''.

Subsec. (c). Pub. L. 112–239, § 901(c)(3), substituted ''Deputy Assistant Secretary of Defense for Manufacturing and Industrial Base Policy'' for ''Secretary of Defense''.

Subsec. (d). Pub. L. 112–239, § 901(c)(4), amended subsec. (d) generally. Prior to amendment, text read as follows: ''After each meeting of the Board, the Board shall prepare and submit to Congress a report containing the results of the meeting and such recommendations as the Board determines appropriate.''

2011—Subsec. (b). Pub. L. 111–383, § 829(b), amended subsec. (b) generally. Prior to amendment, subsec. (b) related to duties of the Strategic Materials Protection Board.

Subsec. (e). Pub. L. 111–383, § 829(a), added subsec. (e).

CHANGE OF NAME

Reference to the Assistant Secretary of the Air Force for Acquisition deemed to be a reference to the Assistant Secretary of the Air Force for Acquisition, Technology, and Logistics, see section 934(b) of Pub. L. 114–328, set out as a note under section 9016 of this title.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

FIRST MEETING OF BOARD

Pub. L. 109–364, div. A, title VIII, § 843(c), Oct. 17, 2006, 120 Stat. 2339, provided that: ''The first meeting of the Strategic Materials Protection Board, established by section 187 of title 10, United States Code (as added by subsection (a)) shall be not later than 180 days after the date of the enactment of this Act [Oct. 17, 2006].''

§ 188. Interagency Council on the Strategic Capability of the National Laboratories

(a) ESTABLISHMENT.—There is an Interagency Council on the Strategic Capability of the National Laboratories (in this section referred to as the ''Council'').

(b) MEMBERSHIP.—The membership of the Council is comprised of the following:

(1) The Secretary of Defense.

(2) The Secretary of Energy.

(3) The Secretary of Homeland Security.

(4) The Director of National Intelligence.

(5) The Administrator for Nuclear Security.

(6) Such other officials as the President considers appropriate.

(c) STRUCTURE AND PROCEDURES.—The President may determine the chair, structure, staff, and procedures of the Council.

(d) RESPONSIBILITIES.—The Council shall be responsible for the following matters:

(1) Identifying and considering the science, technology, and engineering capabilities of the national laboratories that could be leveraged by each participating agency to support national security missions.

(2) Reviewing and assessing the adequacy of the national security science, technology, and engineering capabilities of the national laboratories for supporting national security missions throughout the Federal Government.

(3) Establishing and overseeing means of ensuring that—

(A) capabilities identified by the Council under paragraph (1) are sustained to an appropriate level; and

(B) each participating agency provides the appropriate level of institutional support to sustain such capabilities.

(4) In accordance with acquisition rules regarding federally funded research and development centers, establishing criteria for when each participating agency should seek to use the services of the national laboratories, including the identification of appropriate mission areas and capabilities.

(5) Making recommendations to the President and Congress regarding regulatory or statutory changes needed to better support—

(A) the strategic capabilities of the national laboratories; and

(B) the use of such laboratories by each participating agency.

(6) Other actions the Council considers appropriate with respect to—

(A) the sustainment of the national laboratories; and

(B) the use of the strategic capabilities of such laboratories.

(e) STREAMLINED PROCESS.—With respect to the participating agency for which a member of the Council is the head of, each member of the Council shall—

(1) establish processes to streamline the consideration and approval of procuring the services of the national laboratories on appropriate matters; and

(2) ensure that such processes are used in accordance with the criteria established under subsection (d)(4).

(f) DEFINITIONS.—In this section:

(1) The term ''participating agency'' means a department or agency of the Federal Government that is represented on the Council by a member under subsection (b).

(2) The term ''national laboratories'' means—

(A) each national security laboratory (as defined in section 3281(1) of the National Nuclear Security Administration Act (50 U.S.C. 2471(1))); and

(B) each national laboratory of the Department of Energy.

(Added Pub. L. 112–239, div. A, title X, § 1040(a), Jan. 2, 2013, 126 Stat. 1928.)

CONSTRUCTION

Pub. L. 112–239, div. A, title X, § 1040(d), Jan. 2, 2013, 126 Stat. 1931, provided that: ''Nothing in section 188 of title 10, United States Code, as added by subsection (a), shall be construed to limit section 309 of the Homeland Security Act of 2002 (6 U.S.C. 189).''

REPORT

Pub. L. 112–239, div. A, title X, § 1040(c), Jan. 2, 2013, 126 Stat. 1930, provided that:

''(1) IN GENERAL.—Not later than September 30, 2013, the Interagency Council on the Strategic Capability of the National Laboratories established under section 188 of title 10, United States Code, as added by subsection (a), shall submit to the appropriate congressional committees a report describing and assessing the following:

''(A) The actions taken to implement the requirements of such section 188 and the charter titled 'Governance Charter for an Interagency Council on the Strategic Capability of DOE National Laboratories as National Security Assets' signed by the Secretary of Defense, the Secretary of Energy, the Secretary of Homeland Security, and the Director of National Intelligence in July 2010.

''(B) The effectiveness of the Council in accomplishing the purpose and objectives of such section and such Charter.

''(C) Efforts to strengthen work-for-others programs at the national laboratories.

''(D) Efforts to make work-for-others opportunities at the national laboratories more cost-effective.

''(E) Ongoing and planned measures for increasing cost-sharing and institutional support investments at the national laboratories from other agencies.

''(F) Any regulatory or statutory changes recommended to improve the ability of such other agencies to leverage expertise and capabilities at the national laboratories.

''(G) The strategic capabilities and core competencies of laboratories and engineering centers operated by the Department of Defense, including identification of mission areas and functions that should be carried out by such laboratories and engineering centers.

''(H) Consistent with the protection of sources and methods, the level of funding and general description of programs that were funded during fiscal year 2012 by—

''(i) the Department of Defense and carried out at the national laboratories; and

''(ii) the Department of Energy and the national laboratories and carried out at the laboratories and engineering centers of the Department of Defense.

''(2) FORM.—The report required by paragraph (1) shall be submitted in unclassified form, but may include a classified annex.

''(3) APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.—In this subsection, the term 'appropriate congressional committees' means the following:

''(A) The congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives].

''(B) The Committee on Energy and Commerce of the House of Representatives and the Committee on Energy and Natural Resources of the Senate.

''(C) The Committee on Homeland Security of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate.

''(D) The Committee on Science, Space, and Technology of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

''(E) The Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate.''

§ 189. Communications Security Review and Advisory Board

(a) ESTABLISHMENT.—There shall be in the Department of Defense a Communications Security Review and Advisory Board (in this section referred to as the ''Board'') to review and assess the communications security, cryptographic modernization, and related key management activities of the Department and provide advice to the Secretary with respect to such activities.

(b) MEMBERS.—(1) The Secretary shall determine the number of members of the Board.

(2) The Chief Information Officer of the Department of Defense shall serve as chairman of the Board.

(3) The Secretary shall appoint officers in the grade of general or admiral and civilian employees of the Department of Defense in the Senior Executive Service to serve as members of the Board.

(c) RESPONSIBILITIES.—The Board shall—

(1) monitor the overall communications security, cryptographic modernization, and key management efforts of the Department, including activities under major defense acquisition programs (as defined in section 2430(a) of this title), by—

(A) requiring each Chief Information Officer of each military department to report the communications security activities of the military department to the Board;

(B) tracking compliance of each military department with respect to communications security modernization efforts;

(C) validating lifecycle communications security modernization plans for major defense acquisition programs;

(2) validate the need to replace cryptographic equipment based on the expiration dates of the equipment and evaluate the risks of continuing to use cryptographic equipment after such expiration dates;

(3) convene in-depth program reviews for specific cryptographic modernization developments with respect to validating requirements and identifying programmatic risks;

(4) develop a long-term roadmap for communications security to identify potential issues and ensure synchronization with major planning documents; and

(5) advise the Secretary on the cryptographic posture of the Department, including budgetary recommendations.

(d) EXCLUSION OF CERTAIN PROGRAMS.—The Board shall not include the consideration of programs funded under the National Intelligence Program (as defined in section 3(6) of the National Security Act of 1947 (50 U.S.C. 3003(6))) in carrying out this section.

(Added Pub. L. 113–66, div. A, title II, § 261(a), Dec. 26, 2013, 127 Stat. 724; amended Pub. L. 113–291, div. A, title X, § 1071(f)(4), Dec. 19, 2014, 128 Stat. 3510; Pub. L. 116–283, div. A, title XVIII, § 1846(i)(2), Jan. 1, 2021, 134 Stat. 4252.)

AMENDMENT OF SUBSECTION (c)(1)

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1846(i)(2), Jan. 1, 2021, 134 Stat. 4151, 4252, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, subsection (c)(1) of this section is amended by striking ''section 2430(a)'' and inserting ''section 4201''. See 2021 Amendment note below.

AMENDMENTS

2021—Subsec. (c)(1). Pub. L. 116–283 substituted ''section 4201'' for ''section 2430(a)''.

2014—Subsec. (c)(1). Pub. L. 113–291 substituted ''2430(a)'' for ''139c'' in introductory provisions.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

[§ 190. Repealed. Pub. L. 116–92, div. A, title VIII, § 810(a), Dec. 20, 2019, 133 Stat. 1487]

Section, added Pub. L. 114–328, div. A, title VIII, § 820(b)(1), Dec. 23, 2016, 130 Stat. 2274; amended Pub. L. 115–91, div. A, title VIII, § 804, Dec. 12, 2017, 131 Stat. 1456, related to Defense Cost Accounting Standards Board.

CHAPTER 8—DEFENSE AGENCIES AND DEPARTMENT OF DEFENSE FIELD ACTIVITIES

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SUBCHAPTER I—COMMON SUPPLY AND SERVICE ACTIVITIES

Sec.
191. Secretary of Defense: authority to provide for common performance of supply or service activities.
192. Defense Agencies and Department of Defense Field Activities: oversight by the Secretary of Defense.
193. Combat support agencies: oversight.
194. Limitations on personnel.
195. Defense Automated Printing Service: applicability of Federal printing requirements.
196. Department of Defense Test Resource Management Center.
197. Defense Logistics Agency: fees charged for logistics information.

AMENDMENTS

2004—Pub. L. 108–375, div. A, title X, § 1010(b), Oct. 28, 2004, 118 Stat. 2038, added item 197.

2002—Pub. L. 107–314, div. A, title II, § 231(a)(2), Dec. 2, 2002, 116 Stat. 2489, added item 196.

1997—Pub. L. 105–85, div. A, title III, § 383(b), Nov. 18, 1997, 111 Stat. 1711, added item 195.

1986—Pub. L. 99–433, title III, § 301(a)(2), Oct. 1, 1986, 100 Stat. 1019, inserted ''AND DEPARTMENT OF DEFENSE FIELD ACTIVITIES'' in chapter heading, added subchapter analysis and subchapter I analysis, and struck out former chapter analysis consisting of item 191 ''Unauthorized use of Defense Intelligence Agency name, initials, or seal''.

1985—Pub. L. 99–145, title XIII, § 1302(a)(2), Nov. 8, 1985, 99 Stat. 737, redesignated item 192 ''Benefits for certain employees of the Defense Intelligence Agency'' as item 1605 and transferred it to chapter 83 of this title.

1983—Pub. L. 98–215, title V, § 501(b), Dec. 9, 1983, 97 Stat. 1479, added item 192.

1982—Pub. L. 97–269, title V, § 501(a), Sept. 27, 1982, 96 Stat. 1144, added chapter 8 heading and analysis of sections for chapter 8, consisting of a single item 191.

§ 191. Secretary of Defense: authority to provide for common performance of supply or service activities

(a) AUTHORITY.—Whenever the Secretary of Defense determines such action would be more effective, economical, or efficient, the Secretary may provide for the performance of a supply or service activity that is common to more than one military department by a single agency of the Department of Defense.

(b) DESIGNATION OF COMMON SUPPLY OR SERVICE AGENCY.—Any agency of the Department of Defense established under subsection (a) (or under the second sentence of section 125(d) of this title (as in effect before October 1, 1986)) for the performance of a supply or service activity referred to in such subsection shall be designated as a Defense Agency or a Department of Defense Field Activity.

(Added Pub. L. 99–433, title III, § 301(a)(2), Oct. 1, 1986, 100 Stat. 1019; amended Pub. L. 100–26, § 7(i)(1), Apr. 21, 1987, 101 Stat. 282.)

REFERENCES IN TEXT

Subsection (d) of section 125 of this title, referred to in subsec. (b), was repealed by section 301(b)(1) of Pub. L. 99–433.

PRIOR PROVISIONS

A prior section 191 was renumbered section 202 of this title and subsequently repealed.

AMENDMENTS

1987—Subsec. (b). Pub. L. 100–26 substituted ''October 1, 1986'' for ''the date of the enactment of the Goldwater-Nichols Department of Defense Reorganization Act of 1986''.

ACTIONS TO INCREASE THE EFFICIENCY AND TRANSPARENCY OF THE DEFENSE LOGISTICS AGENCY

Pub. L. 115–232, div. A, title IX, § 924, Aug. 13, 2018, 132 Stat. 1931, provided that:

''(a) SYSTEM AND CAPABILITY.—Not later than January 1, 2020, the Director of the Defense Logistics Agency and the Chief Management Officer of the Department of Defense shall jointly, in consultation with the customers served by the Agency, develop and implement—

''(1) a comprehensive system that enables customers of the Agency to view—

''(A) the inventory of items and materials available to customers from the Agency; and

''(B) the delivery status of items and materials that are in transit to customers; and

''(2) a predictive analytics capability designed to increase the efficiency of the system described in paragraph (1) by identifying emerging customer needs with respect to items and materials supplied by the Agency, including any emerging needs arising from the use of new weapon systems by customers.

''(b) ACTIONS TO INCREASE EFFICIENCY.—Not later than January 1, 2020, the Director and the Chief Management Officer shall jointly—

''(1) develop a plan to reduce the rates charged by the Agency to customers, in aggregate—

''(A) by not less than 10 percent; or

''(B) if the Chief Management Officer determines that a reduction of rates in aggregate of 10 percent or more will create overall inefficiencies for the Department, by such percentage less than 10 percent as the Chief Management Officer considers appropriate to avoid such inefficiencies, but only after notifying the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] of such lesser percentage in reduction of rates pursuant to this subparagraph;

''(2) eliminate the duplication of services within the Agency; and

''(3) establish specific goals and metrics to ensure that the Agency is fulfilling its mission of providing items and materials to customers with sufficient speed and in sufficient quantities to ensure the lethality and readiness of warfighters.

''(c) PLAN REQUIRED.—Not later than February 1, 2019, the Director and the Chief Management Officer shall jointly submit to the congressional defense committees a plan that describes how the Director and the Chief Management Officer will achieve compliance with the requirements of subsections (a) and (b).''

COMPTROLLER GENERAL REVIEW OF OPERATIONS OF DEFENSE LOGISTICS AGENCY

Pub. L. 106–398, § 1 [[div. A], title IX, § 917], Oct. 30, 2000, 114 Stat. 1654, 1654A–232, directed the Comptroller General to review the operations of the Defense Logistics Agency and to submit to committees of Congress one or more reports setting forth the Comptroller General's findings not later than Feb. 1, 2002.

COMPTROLLER GENERAL REVIEW OF OPERATIONS OF DEFENSE INFORMATION SYSTEMS AGENCY

Pub. L. 106–398, § 1 [[div. A], title IX, § 918], Oct. 30, 2000, 114 Stat. 1654, 1654A–232, directed the Comptroller General to review the operations of the Defense Information Systems Agency and to submit to committees of Congress one or more reports setting forth the Comptroller General's findings not later than Feb. 1, 2002.

REASSESSMENT OF DEFENSE AGENCIES AND DEPARTMENT OF DEFENSE FIELD ACTIVITIES

Pub. L. 99–433, title III, § 303, Oct. 1, 1986, 100 Stat. 1023, directed Secretary of Defense to conduct a study of functions and organizational structure of Defense Agencies and Department of Defense Field Activities to determine the most effective, economical, or efficient means of providing supply or service activities common to more than one military department, with Secretary to submit a report to Congress not later than Oct. 1, 1987. The report was to include a study of improved application of computer systems to functions of Defense Agencies and Department of Defense Field Activities, including a plan for rapid replacement, where necessary, of existing automated data processing equipment with new equipment, and plans to achieve reductions in total number of members of Armed Forces and civilian employees assigned or detailed to permanent duty in Defense Agencies and Department of Defense Field Activities (other than National Security Agency) by 5 percent, 10 percent, and 15 percent of total number of such members and employees projected to be assigned or detailed to such duty on Sept. 30, 1988, together with a discussion of implications of each such reduction and a draft of any legislation that would be required to implement each such plan.

§ 192. Defense Agencies and Department of Defense Field Activities: oversight by the Secretary of Defense

(a) OVERALL SUPERVISION.—(1) The Secretary of Defense shall assign responsibility for the overall supervision of each Defense Agency and Department of Defense Field Activity designated under section 191(b) of this title—

(A) to a civilian officer within the Office of the Secretary of Defense listed in section 131(b) of this title; or

(B) to the Chairman of the Joint Chiefs of Staff.

(2) An official assigned such a responsibility with respect to a Defense Agency or Department of Defense Field Activity shall advise the Secretary of Defense on the extent to which the program recommendations and budget proposals of such agency or activity conform with the requirements of the military departments and of the unified and specified combatant commands.

(3) This subsection does not apply to the Defense Intelligence Agency or the National Security Agency.

(b) PROGRAM AND BUDGET REVIEW.—The Secretary of Defense shall establish procedures to ensure that there is full and effective review of the program recommendations and budget proposals of each Defense Agency and Department of Defense Field Activity.

(c) PERIODIC REVIEW.—(1)(A) Not later than January 1, 2020, and periodically (but not less frequently than every four years) thereafter, the Chief Management Officer of the Department of Defense shall conduct a review of the efficiency and effectiveness of each Defense Agency and Department of Defense Field Activity. Each review shall, to the maximum extent practicable, be conducted in coordination with other ongoing efforts in connection with business enterprise reform.

(B) As part of each review under this paragraph, the Chief Management Officer shall iden-

tify each activity of an Agency or Activity that is substantially similar to, or duplicative of, an activity carried out by another organization or element of the Department of Defense, or is not being performed to an adequate level to meet Department needs.

(C) For purposes of conducting reviews under this paragraph, the Chief Management Officer shall develop internal guidance that defines requirements for such reviews and provides clear direction for conducting and recording the results of reviews.

(2)(A) Not later than 90 days after the completion of a review under paragraph (1), the Chief Management Officer shall submit to the congressional defense committees a report that sets forth the results of the review.

(B) The report on a review under this paragraph shall, based on the results of the review, include the following:

(i) A list of each Defense Agency and Department of Defense Field Activity that the Chief Management Officer has determined—

(I) operates efficiently and effectively; and

(II) does not carry out any function that is substantially similar to, or duplicative of, a function carried out by another organization or element of the Department of Defense.

(ii) With respect to each Agency or Activity not included on the list under clause (i), a plan, aimed at better meeting Department needs, for—

(I) rationalizing the functions within such Agency or Activity; or

(II) transferring some or all of the functions of such Agency or Activity to another organization or element of the Department.

(iii) Recommendations for functions, if any, currently conducted separately by the military departments that should be consolidated into an Agency or Activity.

(3) Paragraph (1) shall apply to the National Security Agency as determined appropriate by the Secretary, in consultation with the Director of National Intelligence. The Secretary shall establish procedures under which information required for review of the National Security Agency shall be obtained.

(d) SPECIAL RULE FOR DEFENSE COMMISSARY AGENCY.—Notwithstanding the results of any periodic review under subsection (c) with regard to the Defense Commissary Agency, the Secretary of Defense may not transfer to the Secretary of a military department the responsibility to manage and fund the provision of services and supplies provided by the Defense Commissary Agency unless the transfer of the management and funding responsibility is specifically authorized by a law enacted after October 17, 1998.

(e) LIMITATION ON TERMINATION.—The Secretary of Defense may not terminate a Defense Agency or Department of Defense Field Activity until 30 days after the date on which the Secretary submits to the congressional defense committees a report setting forth the following:

(1) Notice of the intent of the Secretary to terminate the Agency or Activity.

(2) Such recommendations for legislative action as the Secretary considers appropriate in connection with the termination of the Agency or Activity.

(Added Pub. L. 99–433, title III, §301(a)(2), Oct. 1, 1986, 100 Stat. 1020; amended Pub. L. 105–261, div. A, title III, §361(a), Oct. 17, 1998, 112 Stat. 1984; Pub. L. 106–65, div. A, title X, §1066(a)(3), Oct. 5, 1999, 113 Stat. 770; Pub. L. 109–163, div. A, title III, §371, Jan. 6, 2006, 119 Stat. 3209; Pub. L. 110–181, div. A, title IX, §§904(c), 931(a)(1), Jan. 28, 2008, 122 Stat. 274, 285; Pub. L. 113–291, div. A, title IX, §901(n)(1), Dec. 19, 2014, 128 Stat. 3469; Pub. L. 115–91, div. A, title X, §1081(b)(1)(D), Dec. 12, 2017, 131 Stat. 1597; Pub. L. 115–232, div. A, title IX, §923, title X, §1081(f)(1)(A)(i), Aug. 13, 2018, 132 Stat. 1930, 1986; Pub. L. 116–283, div. A, title X, §1081(a)(11), Jan. 1, 2021, 134 Stat. 3871.)

PRIOR PROVISIONS

A prior section 192, Pub. L. 98–215, title V, §501(a), Dec. 9, 1983, 97 Stat. 1478, which related to benefits for certain personnel of the Defense Intelligence Agency, was redesignated as section 1605 of this title and amended by Pub. L. 99–145, title XIII, §1302(a)(1), Nov. 8, 1985, 99 Stat. 737. Provisions of prior section 192 as related to members of the armed forces were enacted as section 431 (now 491) of Title 37, Pay and Allowances of the Uniformed Services, by section 1302(b)(1) of Pub. L. 99–145.

AMENDMENTS

2021—Subsec. (c)(1). Pub. L. 116–283 struck out par. (1) relating to periodic review of services and supplies provided by each Defense Agency and Department of Defense Field Activity.

2018—Subsec. (c)(1) to (3). Pub. L. 115–232, §923(a), added par. (1) relating to efficiency and effectiveness reviews and par. (2) and redesignated former par. (2) as (3).

Subsec. (e). Pub. L. 115–232, §923(b), (c), added subsec. (e) and struck out former subsec. (e) which related to special rule for Defense Business Transformation Agency.

Subsec. (e)(2). Pub. L. 115–232, §1081(f)(1)(A)(i), substituted ''Chief Management Officer'' for ''Deputy Chief Management Officer''.

2008—Subsec. (c)(2). Pub. L. 110–181, §931(a)(1), substituted ''Director of National Intelligence'' for ''Director of Central Intelligence''.

Subsec. (e)(2). Pub. L. 110–181, §904(c), substituted ''that the Director of the Agency shall report directly to the Deputy Chief Management Officer of the Department of Defense.'' for ''that the Agency be managed cooperatively by the Deputy Under Secretary of Defense for Business Transformation and the Deputy Under Secretary of Defense for Financial Management.''

2006—Subsec. (e). Pub. L. 109–163 added subsec. (e).

1999—Subsec. (d). Pub. L. 106–65 substituted ''October 17, 1998'' for ''the date of the enactment of this subsection''.

1998—Subsec. (d). Pub. L. 105–261 added subsec. (d).

FIRST REVIEW OF DEFENSE AGENCIES BY SECRETARY OF DEFENSE

Pub. L. 99–433, title III, §304(a), Oct. 1, 1986, 100 Stat. 1024, required the first review under subsec. (c) of this section to be completed not later than two years after the date that the report under Pub. L. 99–433, §303(e), formerly set out as a note under section 191 of this title, was required to be submitted to Congress (Oct. 1, 1987).

§193. Combat support agencies: oversight

(a) COMBAT READINESS.—(1) Periodically (and not less often than every two years), the Chairman of the Joint Chiefs of Staff shall submit to the Secretary of Defense and the congressional

defense committees a report on the combat support agencies. Each such report shall include—

(A) a determination with respect to the responsiveness and readiness of each such agency to support operating forces in the event of a war or threat to national security; and

(B) any recommendations that the Chairman considers appropriate.

(2) In preparing each such report, the Chairman shall review the plans of each such agency with respect to its support of operating forces in the event of a war or threat to national security. After consultation with the Secretaries of the military departments and the commanders of the unified and specified combatant commands, as appropriate, the Chairman may, with the approval of the Secretary of Defense, take steps to provide for any revision of those plans that the Chairman considers appropriate.

(b) PARTICIPATION IN JOINT TRAINING EXERCISES.—The Chairman shall—

(1) provide for the participation of the combat support agencies in joint training exercises to the extent necessary to ensure that those agencies are capable of performing their support missions with respect to a war or threat to national security; and

(2) assess the performance in joint training exercises of each such agency and, in accordance with guidelines established by the Secretary of Defense, take steps to provide for any change that the Chairman considers appropriate to improve that performance.

(c) READINESS REPORTING SYSTEM.—The Chairman shall develop, in consultation with the director of each combat support agency, a uniform system for reporting to the Secretary of Defense, the commanders of the unified and specified combatant commands, and the Secretaries of the military departments concerning the readiness of each such agency to perform with respect to a war or threat to national security.

(d) REVIEW OF NATIONAL SECURITY AGENCY AND NATIONAL GEOSPATIAL-INTELLIGENCE AGENCY.—(1) Subsections (a), (b), and (c) shall apply to the National Security Agency and the National Geospatial-Intelligence Agency, but only with respect to combat support functions that the agencies perform for the Department of Defense.

(2) The Secretary, after consulting with the Director of National Intelligence, shall establish policies and procedures with respect to the application of subsections (a), (b), and (c) to the National Security Agency and the National Geospatial-Intelligence Agency.

(e) COMBAT SUPPORT CAPABILITIES OF DIA, NSA, AND NGA.—The Secretary of Defense, in consultation with the Director of National Intelligence, shall develop and implement, as they may determine to be necessary, policies and programs to correct such deficiencies as the Chairman of the Joint Chiefs of Staff and other officials of the Department of Defense may identify in the capabilities of the Defense Intelligence Agency, the National Security Agency, and the National Geospatial-Intelligence Agency to accomplish assigned missions in support of military combat operations.

(f) DEFINITION OF COMBAT SUPPORT AGENCY.—In this section, the term ''combat support agency'' means any of the following Defense Agencies:

(1) The Defense Information Systems Agency.

(2) The Defense Intelligence Agency.

(3) The Defense Logistics Agency.

(4) The National Geospatial-Intelligence Agency.

(5) Any other Defense Agency designated as a combat support agency by the Secretary of Defense.

(Added Pub. L. 99–433, title III, § 301(a)(2), Oct. 1, 1986, 100 Stat. 1020; amended Pub. L. 104–201, div. A, title XI, § 1112(c), Sept. 23, 1996, 110 Stat. 2683; Pub. L. 105–85, div. A, title X, § 1073(a)(5), Nov. 18, 1997, 111 Stat. 1900; Pub. L. 108–136, div. A, title IX, § 921(d)(3), Nov. 24, 2003, 117 Stat. 1568; Pub. L. 109–364, div. A, title IX, § 907, Oct. 17, 2006, 120 Stat. 2354; Pub. L. 110–181, div. A, title IX, § 931(a)(2), (3), Jan. 28, 2008, 122 Stat. 285; Pub. L. 110–417, [div. A], title IX, § 932(a)(1), (2), Oct. 14, 2008, 122 Stat. 4576; Pub. L. 111–84, div. A, title X, § 1073(c)(10), Oct. 28, 2009, 123 Stat. 2475; Pub. L. 113–66, div. A, title X, § 1082, Dec. 26, 2013, 127 Stat. 871.)

AMENDMENTS

2013—Subsec. (a)(1). Pub. L. 113–66 inserted ''and the congressional defense committees'' after ''the Secretary of Defense'' in introductory provisions.

2009—Subsecs. (d)(2), (e). Pub. L. 111–84 repealed Pub. L. 110–417, § 932(a)(1), (2). See 2008 Amendment note below.

2008—Subsecs. (d)(2), (e). Pub. L. 110–181 and Pub. L. 110–417, § 932(a)(1), (2), made identical amendments, substituting ''Director of National Intelligence'' for ''Director of Central Intelligence''. Pub. L. 110–417, § 932(a)(1), (2), was repealed by Pub. L. 111–84.

2006—Subsec. (f)(1). Pub. L. 109–364 substituted ''Defense Information Systems Agency'' for ''Defense Communications Agency''.

2003—Subsec. (d). Pub. L. 108–136, § 921(d)(3)(B), substituted ''National Geospatial-Intelligence Agency'' for ''National Imagery and Mapping Agency'' in heading.

Subsec. (d)(1), (2). Pub. L. 108–136, § 921(d)(3)(A), substituted ''National Geospatial-Intelligence Agency'' for ''National Imagery and Mapping Agency''.

Subsec. (e). Pub. L. 108–136, § 921(d)(3)(A), (C), substituted ''NGA'' for ''NIMA'' in heading and ''National Geospatial-Intelligence Agency'' for ''National Imagery and Mapping Agency'' in text.

Subsec. (f)(4). Pub. L. 108–136, § 921(d)(3)(A), substituted ''National Geospatial-Intelligence Agency'' for ''National Imagery and Mapping Agency''.

1997—Subsec. (d)(1). Pub. L. 105–85 substituted ''agencies perform'' for ''agencies performs''.

1996—Subsec. (d). Pub. L. 104–201, § 1112(c)(1)(A), substituted ''Review of National Security Agency and National Imagery and Mapping Agency'' for ''Review of National Security Agency'' in heading.

Subsec. (d)(1). Pub. L. 104–201, § 1112(c)(1)(B), inserted ''and the National Imagery and Mapping Agency'' after ''the National Security Agency'' and substituted ''that the agencies'' for ''the Agency''.

Subsec. (d)(2). Pub. L. 104–201, § 1112(c)(1)(C), inserted ''and the National Imagery and Mapping Agency'' after ''the National Security Agency''.

Subsec. (e). Pub. L. 104–201, § 1112(c)(2), substituted ''DIA, NSA, and NIMA'' for ''DIA and NSA'' in heading and '', the National Security Agency, and the National Imagery and Mapping Agency'' for ''and the National Security Agency'' in text.

Subsec. (f)(4). Pub. L. 104–201, § 1112(c)(3), substituted ''The National Imagery and Mapping Agency'' for ''Defense Mapping Agency''.

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–84, div. A, title X, § 1073(c), Oct. 28, 2009, 123 Stat. 2474, provided that the amendment made by

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section 1073(c)(10) is effective as of Oct. 14, 2008, and as if included in Pub. L. 110–417 as enacted.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–201, div. A, title XI, §1124, Sept. 23, 1996, 110 Stat. 2688, provided that: ''This title [enacting section 424 and chapter 22 of this title and sections 3045 and 3046 of Title 50, War and National Defense, amending this section, sections 201 and 451 to 456 of this title, sections 2302, 3132, 4301, 4701, 5102, 5342, 6339, and 7323 of Title 5, Government Organization and Employees, section 105 of the Ethics in Government Act of 1978, set out in the Appendix to Title 5, section 82 of Title 14, Coast Guard, section 2006 of Title 29, Labor, section 1336 of Title 44, Public Printing and Documents, and sections 3003 and 3038 of Title 50, renumbering chapter 22 and sections 451, 452, 2792 to 2796, and 2798 of this title as chapter 23 and sections 481, 482, 451 to 455, and 456 of this title, respectively, repealing sections 424, 425, 2791, and 2797 of this title, enacting provisions set out as notes under section 441 of this title, and amending provisions set out as a note under section 501 of Title 44] and the amendments made by this title shall take effect on October 1, 1996, or the date of the enactment of this Act [Sept. 23, 1996], whichever is later.''

FRAMEWORK ON GOVERNANCE, MISSION MANAGEMENT, RESOURCING, AND EFFECTIVE OVERSIGHT OF COMBAT SUPPORT AGENCIES THAT ARE ALSO ELEMENTS OF THE INTELLIGENCE COMMUNITY

Pub. L. 115–232, div. A, title XVI, §1626, Aug. 13, 2018, 132 Stat. 2121, provided that:

''(a) FRAMEWORK REQUIRED.—

''(1) IN GENERAL.—In accordance with section 105 of the National Security Act of 1947 (50 U.S.C. 3038), section 193 of title 10, United States Code, and section 1018 of the National Security Intelligence Reform Act of 2004 (Public Law 108–458; 50 U.S.C. 3023 note), the Secretary of Defense, in coordination with the Director of National Intelligence, shall develop and establish in policy a framework and supporting processes within the Department of Defense to help ensure that the missions, roles, and functions of the combat support agencies of the Department of Defense that are also elements of the intelligence community, and other intelligence components of the Department, are appropriately balanced and resourced.

''(2) SCOPE.—The framework shall include a consistent, repeatable process for the evaluation of proposed additions, transfers, or eliminations of a mission, role, or functions and associated resource profiles of the elements described in paragraph (1) for purposes of preventing imbalances in priorities, insufficient or misaligned resources, and the unauthorized expansion of mission parameters.

''(b) ELEMENTS.—The framework required by subsection (a) shall include the following:

''(1) A lexicon of relevant terms used by the Department of Defense and the Office of the Director of National Intelligence that—

''(A) ensures consistent definitions are used in determinations about the balance described in subsection (a)(1); and

''(B) reconciles jointly used definitions.

''(2) A reevaluation of the intelligence components of the Department, including the Joint Intelligence Centers and Joint Intelligence Operations Centers within the combatant commands, in order to determine which components should be formally designated as part of the intelligence community and any components not so designated conform to relevant tradecraft standards.

''(3) A repeatable process of the Department for evaluating the addition, transfer, or elimination of defense intelligence missions, roles, and functions, currently or to be performed by elements described in subsection (a)(1) that includes—

''(A) a justification for any proposed addition, transfer, or elimination of a mission, role, or function;

''(B) the identification of the elements in the Federal Government, if any, that currently perform the mission, role, or function concerned;

''(C) for any proposed addition of a mission, role, or function, an assessment of the most appropriate element of the Department to assume it, taking into account current resource profiles, scope of existing responsibilities, primary customers, and infrastructure necessary to support the addition; and

''(D) for any proposed addition or transfer of a mission, role, or function—

''(i) a determination of the appropriate resource profile for such mission, role, or function; and

''(ii) the identification, in writing, for the Department elements concerned of the resources anticipated to be needed and source of such resources during the period covered by the future-years defense program submitted to Congress under section 221 of title 10, United States Code, as in effect at the time of the proposed addition or transfer.

''(c) BRIEFING.—Not later than 180 days after the date of the enactment of this Act [Aug. 13, 2018], the Secretary, in coordination with the Director, shall provide to the Committees on Armed Services of the House of Representatives and the Senate, and to any other appropriate congressional committee upon request, a briefing on the framework required by subsection (a).

''(d) POLICY.—Not later than 270 days after the date of the enactment of this Act, the Secretary, in coordination with the Director, shall submit to the appropriate congressional committees a report setting forth the policy establishing the framework required by subsection (a).

''(e) DEFINITIONS.—In this section:

''(1) The term 'appropriate congressional committees' means—

''(A) the Committee on Armed Services, the Committee on Appropriations, and the Select Committee on Intelligence of the Senate; and

''(B) the Committee on Armed Services, the Committee on Appropriations, and the Permanent Select Committee on Intelligence of the House of Representatives.

''(2) The term 'combat support agency' has the meaning given that term in section 193 of title 10, United States Code.

''(3) The term 'intelligence community' has the meaning given that term in section 3(4) of the National Security Act of 1947 (50 U.S.C. 3003(4)).''

FIRST REPORT AND OTHER ACTIONS BY CHAIRMAN OF JOINT CHIEFS OF STAFF

Section 304(b) of Pub. L. 99–433 required the first report under subsec. (a) of section 193 of this title to be submitted and subsecs. (b) and (c) of section 193 to be implemented not later than one year after Oct. 1, 1986, and a report on implementation to be submitted to Congress for 1988 under section 113(c) of this title.

§ 194. Limitations on personnel

(a) CAP ON HEADQUARTERS MANAGEMENT PERSONNEL.—The total number of members of the armed forces and civilian employees assigned or detailed to permanent duty in the management headquarters activities or management headquarters support activities in the Defense Agencies and Department of Defense Field Activities may not exceed the number that is the number of such members and employees assigned or detailed to such duty on September 30, 1989.

(b) CAP ON OTHER PERSONNEL.—The total number of members of the armed forces and civilian employees assigned or detailed to permanent duty in the Defense Agencies and Department of Defense Field Activities, other than members and employees assigned to management head-

quarters activities or management headquarters support activities, may not exceed the number that is the number of such members and employees assigned or detailed to such duty on September 30, 1989.

(c) PROHIBITION AGAINST CERTAIN ACTIONS TO EXCEED LIMITATIONS.—The limitations in subsections (a) and (b) may not be exceeded by recategorizing or redefining duties, functions, offices, or organizations.

(d) EXCLUSION OF NSA.—The National Security Agency shall be excluded in computing and maintaining the limitations required by this section.

(e) WAIVER.—The limitations in this section do not apply—

(1) in time of war; or

(2) during a national emergency declared by the President or Congress.

(f) DEFINITIONS.—In this section, the terms ''management headquarters activities'' and ''management headquarters support activities'' have the meanings given those terms in Department of Defense Instruction 5100.73, titled ''Major DoD Headquarters Activities''.

(Added Pub. L. 99–433, title III, §301(a)(2), Oct. 1, 1986, 100 Stat. 1021; amended Pub. L. 100–180, div. A, title XIII, §1314(b)(3), Dec. 4, 1987, 101 Stat. 1175; Pub. L. 101–189, div. A, title XVI, §1622(h)(1), Nov. 29, 1989, 103 Stat. 1605; Pub. L. 113–66, div. A, title IX, §906, Dec. 26, 2013, 127 Stat. 818.)

AMENDMENTS

2013—Subsec. (f). Pub. L. 113–66 substituted ''Instruction 5100.73, titled 'Major DoD Headquarters Activities'.'' for ''Directive 5100.73, entitled 'Department of Defense Management Headquarters and Headquarters Support Activities' and dated January 7, 1985.''

1989—Subsecs. (a), (b). Pub. L. 101–189 substituted ''The'' for ''After September 30, 1989, the''.

1987—Subsec. (e)(2). Pub. L. 100–180 inserted ''the President or'' after ''declared by''.

EXCEPTIONS AND ADJUSTMENTS TO LIMITATIONS ON PERSONNEL

Baseline personnel limitations in this section inapplicable to certain acquisition personnel and personnel hired pursuant to a shortage category designation for fiscal year 2009 and fiscal years thereafter, and Secretary of Defense or a secretary of a military department authorized to adjust such limitations for fiscal year 2009 and fiscal years thereafter, see section 1111 of Pub. L. 110–417, set out as a note under section 143 of this title.

REDUCTIONS IN DEFENSE INTELLIGENCE AGENCY PERSONNEL

Pub. L. 100–202, §101(b) [title VIII, §8122], Dec. 22, 1987, 101 Stat. 1329–43, 1329–85, provided that nothing in section 102d(1) of Public Law 100–178, 101 Stat. 1010, section 601(b)(2)(A) of Public Law 99–433, 100 Stat. 1065 [set out below], or section 601(d) of Public Law 99–433, 100 Stat. 1065 [set out below], shall be construed as requiring or suggesting that the Secretary of Defense avoid allocating personnel reductions to the Defense Intelligence Agency, prior to repeal by Pub. L. 100–456, div. A, title XII, §1213, Sept. 29, 1988, 102 Stat. 2053.

REDUCTION IN PERSONNEL ASSIGNED TO MANAGEMENT HEADQUARTERS ACTIVITIES AND CERTAIN OTHER ACTIVITIES

Pub. L. 99–433, title VI, §601, Oct. 1, 1986, 100 Stat. 1064, as amended by Pub. L. 100–180, div. A, title XIII, §1312, Dec. 4, 1987, 101 Stat. 1174; Pub. L. 101–189, div. A, title XVI, §1622(h)(2), Nov. 29, 1989, 103 Stat. 1606, provided that:

''(a) MILITARY DEPARTMENTS AND COMBATANT COMMANDS.—(1) The total number of members of the Armed Forces and civilian employees assigned or detailed to duty described in paragraph (2) may not exceed the number equal to 90 percent of the total number of such members and employees assigned or detailed to such duty on September 30, 1986.

''(2) Duty referred to in paragraph (1) is permanent duty in the military departments and in the unified and specified combatant commands to perform management headquarters activities or management headquarters support activities.

''(3) In computing and implementing the limitation in paragraph (1), the Secretary of Defense shall exclude members and employees who are assigned or detailed to permanent duty to perform management headquarters activities or management headquarters support activities in the following:

''(A) The Office of the Secretary of the Army and the Army Staff.

''(B) The Office of the Secretary of the Navy, the Office of the Chief of Naval Operations, and the Headquarters, Marine Corps.

''(C) The Office of the Secretary of the Air Force and the Air Staff.

''(D) The immediate headquarters staff of the commander of each unified or specified combatant command.

''(4) If the Secretary of Defense applies any reduction in personnel required by the limitation in paragraph (1) to a unified or specified combatant command, the commander of that command, after consulting with his directly subordinate commanders, shall determine the manner in which the reduction shall be accomplished.

''(b) DEFENSE AGENCIES AND DOD FIELD ACTIVITIES.—(1)(A) Not later than September 30, 1988, the Secretary of Defense shall reduce the total number of members of the Armed Forces and civilian employees assigned or detailed to permanent duty in the management headquarters activities and management headquarters support activities in the Defense Agencies and Department of Defense Field Activities by a number that is at least 5 percent of the total number of such members and employees assigned or detailed to such duty on September 30, 1986.

''(B) Not later than September 30, 1989, the Secretary shall carry out an additional reduction in such members and employees of not less than 10 percent of the number of such members and employees assigned or detailed to such duty on September 30, 1988.

''(C) If the number of members and employees reduced under subparagraph (A) or (B) is in excess of the reduction required to be made by that subparagraph, such excess number may be applied to the number required to be reduced under paragraph (2).

''(2)(A) Not later than September 30, 1988, the Secretary of Defense shall reduce the total number of members of the Armed Forces and civilian employees assigned or detailed to permanent duty in the Defense Agencies and Department of Defense Field Activities, other than members and employees assigned or detailed to duty in management headquarters activities or management headquarters support activities, by a number that is at least 5 percent of the total number of such members and employees assigned or detailed to such duty on September 30, 1986.

''(B) Not later than September 30, 1989, the Secretary shall carry out an additional reduction in such members and employees of not less than 5 percent of the number of such members and employees assigned or detailed to such duty on September 30, 1988.

''(3) If after the date of the enactment of this Act [Oct. 1, 1986] and before October 1, 1988, the total number of members and employees described in paragraph (1)(A) or (2)(A) is reduced by a number that is in excess of the number required to be reduced under that paragraph, the Secretary may, in meeting the additional re-

duction required by paragraph (1)(B) or (2)(B), as the case may be, offset such additional reduction by that excess number.

''(4) The National Security Agency shall be excluded in computing and making reductions under this subsection.

''(c) PROHIBITION AGAINST CERTAIN ACTIONS TO ACHIEVE REDUCTIONS.—Compliance with the limitations and reductions required by subsections (a) and (b) may not be accomplished by recategorizing or redefining duties, functions, offices, or organizations.

''(d) ALLOCATIONS TO BE MADE BY SECRETARY OF DEFENSE.—(1) The Secretary of Defense shall allocate the reductions required to comply with the limitations in subsections (a) and (b) in a manner consistent with the efficient operation of the Department of Defense. If the Secretary determines that national security requirements dictate that a reduction (or any portion of a reduction) required by subsection (b) not be made from the Defense Agencies and Department of Defense Field Activities, the Secretary may allocate such reduction (or any portion of such reduction) (A) to personnel assigned or detailed to permanent duty in management headquarters activities or management headquarters support activities, or (B) to personnel assigned or detailed to permanent duty in other than management headquarters activities or management headquarters support activities, as the case may be, of the Department of Defense other than the Defense Agencies and Department of Defense Field Activities.

''(2) Among the actions that are taken to carry out the reductions required by subsections (a) and (b), the Secretary shall consolidate and eliminate unnecessary management headquarters activities and management headquarters support activities.

''(e) TOTAL REDUCTIONS.—Reductions in personnel required to be made under this section are in addition to any reductions required to be made under other provisions of this Act or any amendment made by this Act [see Short Title of 1986 Amendment note set out under section 111 of the title].

''(f) EXCLUSION.—In computing and making reductions under this section, there shall be excluded not more than 1,600 personnel transferred during fiscal year 1988 from the General Services Administration to the Department of Defense for the purpose of having the Department of Defense assume responsibility for the management, operation, and administration of certain real property under the jurisdiction of that Department.

''(g) DEFINITIONS.—For purposes of this section, the terms 'management headquarters activities' and 'management headquarters support activities' have the meanings given those terms in Department of Defense Directive 5100.73, entitled 'Department of Defense Management Headquarters and Headquarters Support Activities' and dated January 7, 1985.''

§ 195. Defense Automated Printing Service: applicability of Federal printing requirements

The Defense Automated Printing Service shall comply fully with the requirements of section 501 of title 44 relating to the production and procurement of printing, binding, and blank-book work.

(Added Pub. L. 105–85, div. A, title III, § 383(a), Nov. 18, 1997, 111 Stat. 1711.)

AUTHORITY TO PROCURE SERVICES FROM GOVERNMENT PUBLISHING OFFICE

Pub. L. 105–85, div. A, title III, § 387(c), Nov. 18, 1997, 111 Stat. 1713, as amended by Pub. L. 113–235, div. H, title I, § 1301(b), Dec. 16, 2014, 128 Stat. 2537, provided that: ''Consistent with section 501 of title 44, United States Code, the Secretary of a military department or head of a Defense Agency may contract directly with the Government Publishing Office for printing and duplication services otherwise available through the Defense Automated Printing Service.''

§ 196. Department of Defense Test Resource Management Center

(a) ESTABLISHMENT AS DEPARTMENT OF DEFENSE FIELD ACTIVITY.—The Secretary of Defense shall establish within the Department of Defense under section 191 of this title a Department of Defense Test Resource Management Center (hereinafter in this section referred to as the ''Center''). The Secretary shall designate the Center as a Department of Defense Field Activity.

(b) DIRECTOR AND DEPUTY DIRECTOR.—(1) At the head of the Center shall be a Director, selected by the Secretary from among individuals who have substantial experience in the field of test and evaluation.

(2) There shall be a Deputy Director of the Center, selected by the Secretary from among individuals who have substantial experience in the field of test and evaluation. The Deputy Director shall act for, and exercise the powers of, the Director when the Director is disabled or the position of Director is vacant.

(c) DUTIES OF DIRECTOR.—(1) The Director shall have the following duties:

(A) To review and provide oversight of proposed Department of Defense budgets and expenditures for—

(i) the test and evaluation facilities and resources of the Major Range and Test Facility Base of the Department of Defense; and

(ii) all other test and evaluation facilities and resources within and outside of the Department of Defense, other than budgets and expenditures for activities described in section 139(j) of this title.

(B) To review proposed significant changes to the test and evaluation facilities and resources of the Major Range and Test Facility Base, including with respect to the expansion, divestment, consolidation, or curtailment of activities, before they are implemented by the Secretaries of the military departments or the heads of the Defense Agencies with test and evaluation responsibilities and advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering of the impact of such changes on the adequacy of such test and evaluation facilities and resources to meet the test and evaluation requirements of the Department.

(C) To complete and maintain the quadrennial strategic plan required by subsection (d).

(D) To review proposed budgets under subsection (e) and submit reports and certifications required by such subsection.

(E) To administer the Central Test and Evaluation Investment Program and the program of the Department of Defense for test and evaluation science and technology.

(2) The Director shall have access to such records and data of the Department of Defense (including the appropriate records and data of each military department and Defense Agency) that are necessary in order to carry out the duties of the Director under this section.

(d) QUADRENNIAL STRATEGIC PLAN FOR DEPARTMENT OF DEFENSE TEST AND EVALUATION RE-

SOURCES.—(1) Not less often than once every four fiscal years, and within one year after release of the National Defense Strategy,,[1] the Under Secretary of Defense for Research and Engineering, in coordination with the Director of the Department of Defense Test Resource Management Center, the Director of Operational Test and Evaluation, the Director of the Defense Intelligence Agency, the Secretaries of the military departments, and the heads of Defense Agencies with test and evaluation responsibilities, shall complete a quadrennial strategic plan reflecting the future needs of the Department of Defense with respect to test and evaluation facilities and resources. Each quadrennial strategic plan shall cover the period of thirty fiscal years beginning with the fiscal year in which the plan is submitted under paragraph (3). The quadrennial strategic plan shall be based on a comprehensive review of both funded and unfunded test and evaluation requirements of the Department, future threats to national security, and the adequacy of the test and evaluation facilities and resources of the Department to meet those future requirements and threats.

(2) The quadrennial strategic plan shall include the following:

(A) An assessment of the test and evaluation requirements of the Department for the period covered by the plan.

(B) An identification of performance measures associated with the successful achievement of test and evaluation objectives for the period covered by the plan.

(C) An assessment of the test and evaluation facilities and resources that will be needed to meet current and future requirements for test and evaluation of the Department of Defense major weapon systems based on current and emerging threats.

(D) An assessment of the current state of the test and evaluation facilities and resources of the Department.

(E) An assessment of plans and business case analyses supporting any significant modification of the test and evaluation facilities and resources of the Department projected, proposed, or recommended by the Secretary of a military department or the head of a Defense Agency for such period, including with respect to the expansion, divestment, consolidation, or curtailment of activities.

(F) An itemization of acquisitions, upgrades, and improvements necessary to ensure that the test and evaluation facilities and resources of the Department are adequate to meet such requirements and satisfy such performance measures.

(G) An assessment of the budgetary resources necessary to implement such acquisitions, upgrades, and improvements.

(3) Upon completing a quadrennial strategic plan under paragraph (1), the Director shall submit to the Secretary of Defense a report on that plan. The report shall include the plan and a description of the review on which the plan is based.

(4) Not later than 60 days after the date on which the report is submitted under paragraph (3), the Secretary of Defense shall transmit to the Committee on Armed Services and Committee on Appropriations of the Senate and the Committee on Armed Services and Committee on Appropriations of the House of Representatives the report, together with any comments with respect to the report that the Secretary considers appropriate.

(5)(A) In addition to the quadrennial strategic plan completed under paragraph (1), the Director of the Department of Defense Test Resource Management Center shall also complete an annual update to the quadrennial strategic plan.

(B) Each annual update completed under subparagraph (A) shall include the following:

(i) A summary of changes to the assessment provided in the most recent quadrennial strategic plan.

(ii) Comments and recommendations the Director considers appropriate.

(iii) Test and evaluation challenges raised since the completion of the most recent quadrennial strategic plan.

(iv) Actions taken or planned to address such challenges.

(e) CERTIFICATION OF BUDGETS.—(1) The Secretary of Defense, acting through the Under Secretary of Defense (Comptroller), shall require that the Secretary of each military department and the head of each Defense Agency with test and evaluation responsibilities transmit such Secretary's or Defense Agency head's proposed budget for test and evaluation activities, including modeling and simulation activities, for a fiscal year and for the period covered by the future-years defense program submitted to Congress under section 221 of this title for that fiscal year to the Director of the Center for review under paragraph (2) before submitting such proposed budget to the Under Secretary of Defense (Comptroller).

(2)(A) The Director of the Center shall review each proposed budget transmitted under paragraph (1) and shall, not later than January 31 of the year preceding the fiscal year for which such budgets are proposed, submit to the Secretary of Defense a report containing the comments of the Director with respect to all such proposed budgets, together with the certification of the Director as to whether such proposed budgets are adequate.

(B) The Director shall also submit, together with such report and such certification, an additional certification as to whether such proposed budgets provide balanced support for such quadrennial strategic plan.

(3) The Secretary of Defense shall, not later than March 31 of the year preceding the fiscal year for which such budgets are proposed, submit to Congress a report on those proposed budgets which the Director has not certified under paragraph (2)(A) to be adequate. The report shall include the following matters:

(A) A discussion of the actions that the Secretary proposes to take, together with any recommended legislation that the Secretary considers appropriate, to address the inadequacy of the proposed budgets.

(B) Any additional comments that the Secretary considers appropriate regarding the inadequacy of the proposed budgets.

[1] So in original.

(f) APPROVAL OF CERTAIN MODIFICATIONS.—(1) The Secretary of a military department or the head of a Defense Agency with test and evaluation responsibilities may not implement a projected, proposed, or recommended significant modification of the test and evaluation facilities and resources of the Department, including with respect to the expansion, divestment, consolidation, or curtailment of activities, until—

(A) the Secretary or the head, as the case may be, submits to the Director a business case analysis for such modification; and

(B) the Director reviews such analysis and approves such modification.

(2) The Director shall submit to the Secretary of Defense an annual report containing the comments of the Director with respect to each business case analysis reviewed under paragraph (1)(B) during the year covered by the report.

(g) SUPERVISION OF DIRECTOR BY UNDER SECRETARY.—The Director of the Center shall be subject to the supervision of the Under Secretary of Defense for Research and Engineering. The Director shall report directly to the Under Secretary, without the interposition of any other supervising official.

(h) ADMINISTRATIVE SUPPORT OF CENTER.—The Secretary of Defense shall provide the Director with administrative support adequate for carrying out the Director's responsibilities under this section. The Secretary shall provide the support out of the headquarters activities of the Department or any other activities that the Secretary considers appropriate.

(i) DEFINITION.—In this section, the term ''Major Range and Test Facility Base'' means the test and evaluation facilities and resources that are designated by the Secretary of Defense as facilities and resources comprising the Major Range and Test Facility Base.

(Added Pub. L. 107–314, div. A, title II, §231(a)(1), Dec. 2, 2002, 116 Stat. 2487; amended Pub. L. 108–136, div. A, title II, §212, Nov. 24, 2003, 117 Stat. 1416; Pub. L. 109–163, div. A, title II, §258(a), title IX, §902, Jan. 6, 2006, 119 Stat. 3185, 3397; Pub. L. 111–84, div. A, title II, §251, Oct. 28, 2009, 123 Stat. 2241; Pub. L. 113–291, div. A, title II, §214, Dec. 19, 2014, 128 Stat. 3326; Pub. L. 114–328, div. A, title V, §502(c), title X, §1081(a)(3), Dec. 23, 2016, 130 Stat. 2102, 2417; Pub. L. 115–91, div. A, title II, §222, Dec. 12, 2017, 131 Stat. 1333; Pub. L. 115–232, div. A, title II, §221, title IX, §904, Aug. 13, 2018, 132 Stat. 1681, 1922; Pub. L. 116–283, div. A, title II, §272, title XVIII, §1845(b), Jan. 1, 2021, 134 Stat. 3502, 4247.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§1801(d), 1845(b), Jan. 1, 2021, 134 Stat. 4151, 4247, provided in part that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 309 of this title, as amended by section 1845(a) of Pub. L. 116–283, inserted after the table of sections, and redesignated as section 4173 of this title. See Effective Date of 2021 Amendment note below.

AMENDMENTS

2021—Subsec. (c)(1)(C). Pub. L. 116–283, §272(a)(1), inserted ''quadrennial'' before ''strategic plan''.

Subsec. (d). Pub. L. 116–283, §272(a)(2), inserted ''Quadrennial'' before ''Strategic Plan'' in heading and ''quadrennial'' before ''strategic plan'' wherever appearing in text.

Subsec. (d)(1). Pub. L. 116–283, §272(b), (e), substituted ''four fiscal years, and within one year after release of the National Defense Strategy,'' for ''two fiscal years'' and ''Test Resource Management Center'' for ''Test Resources Management Center''.

Subsec. (d)(2)(C). Pub. L. 116–283, §272(c), substituted ''for test and evaluation of the Department of Defense major weapon systems based on current and emerging threats.'' for ''based on current and emerging threats and satisfy such performance measures.''

Subsec. (d)(5). Pub. L. 116–283, §272(d), added par. (5).

Subsec. (e)(2)(B). Pub. L. 116–283, §272(a)(1), inserted ''quadrennial'' before ''strategic plan''.

2018—Subsec. (c)(1)(B). Pub. L. 115–232, §904, which directed substitution of ''Under Secretary of Defense for Research and Engineering'' for ''Under Secretary of Defense for Acquisition, Technology, and Logistics'', was executed by making the substitution for ''Under Secretary of Acquisition, Technology, and Logistics'' to reflect the probable intent of Congress.

Subsec. (d)(1). Pub. L. 115–232, §221(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''Not less often than once every two fiscal years, the Director, in coordination with the Director of Operational Test and Evaluation, the Secretaries of the military departments, and the heads of Defense Agencies with test and evaluation responsibilities, shall complete a strategic plan reflecting the needs of the Department of Defense with respect to test and evaluation facilities and resources, including modeling and simulation capabilities. Each such strategic plan shall cover the period of ten fiscal years beginning with the fiscal year in which the plan is submitted under paragraph (3). The strategic plan shall be based on a comprehensive review of the test and evaluation requirements of the Department and the adequacy of the test and evaluation facilities and resources of the Department to meet those requirements.''

Subsec. (d)(2)(C). Pub. L. 115–232, §221(2), substituted ''needed to meet current and future requirements based on current and emerging threats'' for ''needed to meet such requirements''.

Subsec. (g). Pub. L. 115–232, §904, substituted ''Under Secretary of Defense for Research and Engineering'' for ''Under Secretary of Defense for Acquisition, Technology, and Logistics''.

2017—Subsec. (d)(1). Pub. L. 115–91, §222(1), inserted '', including modeling and simulation capabilities'' after ''and resources'' in the first sentence.

Subsec. (e)(1). Pub. L. 115–91, §222(2), inserted '', including modeling and simulation activities,'' after ''evaluation activities''.

2016—Subsec. (b)(1). Pub. L. 114–328, §502(c), struck out second and third sentences which read as follows: ''A commissioned officer serving as the Director, while so serving, holds the grade of lieutenant general or, in the case of an officer of the Navy, vice admiral. A civilian officer or employee serving as the Director, while so serving, has a pay level equivalent in grade to lieutenant general.''

Subsec. (c)(1)(A)(ii). Pub. L. 114–328, §1081(a)(3), substituted ''section 139(j)'' for ''section 139(i)''.

2014—Subsec. (c)(1)(B). Pub. L. 113–291, §214(a), inserted '', including with respect to the expansion, divestment, consolidation, or curtailment of activities,'' after ''Base''.

Subsec. (d)(2)(E) to (G). Pub. L. 113–291, §214(b), added subpar. (E) and redesignated former subpars. (E) and (F) as (F) and (G), respectively.

Subsec. (e)(1). Pub. L. 113–291, §214(c), inserted ''and for the period covered by the future-years defense program submitted to Congress under section 221 of this title for that fiscal year'' after ''activities for a fiscal year''.

Subsecs. (f) to (i). Pub. L. 113–291, §214(d), added subsec. (f) and redesignated former subsecs. (f) to (h) as (g) to (i), respectively.

2009—Subsec. (c). Pub. L. 111–84 inserted par. (1) designation before ''The Director'', redesignated former par. (1) as subpar. (A) and former subpars. (A) and (B) as cl. (i) and (ii), respectively, of subpar. (A), added subpar. (B), redesignated former pars. (2) to (4) as subpars. (C) to (E), respectively, and added par. (2).

2006—Subsec. (b)(1). Pub. L. 109–163, §902(a), substituted ''individuals who have substantial experience in the field of test and evaluation.'' for ''commissioned officers of the armed forces on active duty or from among senior civilian officers and employees of the Department of Defense.''

Subsec. (b)(2). Pub. L. 109–163, §902(b), substituted ''individuals'' for ''senior civilian officers and employees of the Department of Defense''.

Subsec. (h). Pub. L. 109–163, §258(a), substituted ''Secretary of Defense'' for ''Director of Operational Test and Evaluation''.

2003—Subsec. (b)(1). Pub. L. 108–136, §212(a), substituted ''on active duty or from among senior civilian officers and employees of the Department of Defense. A commissioned officer serving as the Director'' for ''on active duty. The Director'' and inserted at end ''A civilian officer or employee serving as the Director, while so serving, has a pay level equivalent in grade to lieutenant general.''

Subsec. (c)(1)(B). Pub. L. 108–136, §212(b)(1), inserted '', other than budgets and expenditures for activities described in section 139(i) of this title'' after ''Department of Defense''.

Subsec. (e)(1). Pub. L. 108–136, §212(b)(2), struck out '', the Director of Operational Test and Evaluation,'' after ''each military department'' and substituted ''or Defense Agency head's'' for '', Director's, or head's''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by section 1845(b) of Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective Dec. 31, 2021, of provisions in subsecs. (d)(1), (4) and (e)(3) of this section requiring submittal of report to Congress, see section 1061 of Pub. L. 114–328, set out as a note under section 111 of this title.

ADMINISTRATION OF PROGRAMS TO BEGIN AFTER FIRST STRATEGIC PLAN

Pub. L. 107–314, div. A, title II, §231(b), (c), Dec. 2, 2002, 116 Stat. 2489, directed that the first strategic plan required to be completed under subsec. (d)(1) of this section was to be completed not later than six months after Dec. 2, 2002, and that the duty of the Director of the Department of Defense Test Resource Management Center to administer the programs specified in subsec. (c)(4) of this section would take effect upon the beginning of the first fiscal year that began after the report on the first strategic plan was transmitted to committees of Congress.

§197. Defense Logistics Agency: fees charged for logistics information

(a) AUTHORITY.—The Secretary of Defense may charge fees for providing information in the Federal Logistics Information System through Defense Logistics Information Services to a department or agency of the executive branch outside the Department of Defense, or to a State, a political subdivision of a State, or any person.

(b) AMOUNT.—The fee or fees prescribed under subsection (a) shall be such amount or amounts as the Secretary of Defense determines appropriate for recovering the costs of providing information as described in such subsection.

(c) RETENTION OF FEES.—Fees collected under this section shall be credited to the appropriation available for Defense Logistics Information Services for the fiscal year in which collected, shall be merged with other sums in such appropriation, and shall be available for the same purposes and period as the appropriation with which merged.

(d) DEFENSE LOGISTICS INFORMATION SERVICES DEFINED.—In this section, the term ''Defense Logistics Information Services'' means the organization within the Defense Logistics Agency that is known as Defense Logistics Information Services.

(Added Pub. L. 108–375, div. A, title X, §1010(a), Oct. 28, 2004, 118 Stat. 2038.)

SUBCHAPTER II—MISCELLANEOUS DEFENSE AGENCY MATTERS

Sec.
201. Certain intelligence officials: consultation and concurrence regarding appointments; evaluation of performance.
[202, 203. Repealed.]
204. Small Business Ombudsman for defense audit agencies.
205. Missile Defense Agency.

AMENDMENTS

2017—Pub. L. 115–91, div. A, title XVI, §1676(c)(2), Dec. 12, 2017, 131 Stat. 1773, added item 205.

2016—Pub. L. 114–328, div. A, title V, §502(d)(2), Dec. 23, 2016, 130 Stat. 2102, which directed amendment of the ''table of sections at the beginning of chapter 8'' of this title by striking item 203, was executed by striking item 203 ''Director of Missile Defense Agency'' in the analysis preceding subchapter II of chapter 8 of this title to reflect the probable intent of Congress.

2013—Pub. L. 112–239, div. A, title XVI, §1612(b), Jan. 2, 2013, 126 Stat. 2065, added item 204.

2002—Pub. L. 107–314, div. A, title II, §225(b)(1)(B)(ii), Dec. 2, 2002, 116 Stat. 2486, substituted ''Missile Defense Agency'' for ''Ballistic Missile Defense Organization'' in item 203.

1997—Pub. L. 105–107, title V, §503(d)(1), Nov. 20, 1997, 111 Stat. 2262, struck out item 202 ''Unauthorized use of Defense Intelligence Agency name, initials, or seal''.

Pub. L. 105–85, div. A, title II, §235(b), Nov. 18, 1997, 111 Stat. 1665, added item 203.

1996—Pub. L. 104–201, div. A, title XI, §1103(b), Sept. 23, 1996, 110 Stat. 2677, substituted ''Certain intelligence officials: consultation and concurrence regarding appointments; evaluation of performance'' for ''Consultation regarding appointment of certain intelligence officials'' in item 201.

1991—Pub. L. 102–190, div. A, title IX, §922(b), Dec. 5, 1991, 105 Stat. 1453, added item 201 and redesignated former item 201 as 202.

1986—Pub. L. 99–433, title III, §301(a)(2), Oct. 1, 1986, 100 Stat. 1022, added subchapter heading and analysis of sections for subchapter II.

§201. Certain intelligence officials: consultation and concurrence regarding appointments; evaluation of performance

(a) CONSULTATION REGARDING APPOINTMENT.—Before submitting a recommendation to the President regarding the appointment of an individual to the position of Director of the Defense Intelligence Agency, the Secretary of Defense shall consult with the Director of National Intelligence regarding the recommendation.

(b) CONCURRENCE IN APPOINTMENT.—(1) In the event of a vacancy in a position referred to in

paragraph (2), before appointing an individual to fill the vacancy or recommending to the President an individual to be nominated to fill the vacancy, the Secretary of Defense shall obtain the concurrence of the Director of National Intelligence as provided in section 106(b) of the National Security Act of 1947 (50 U.S.C. 3041(b)).

(2) Paragraph (1) applies to the following positions:

(A) The Director of the National Security Agency.

(B) The Director of the National Reconnaissance Office.

(C) The Director of the National Geospatial-Intelligence Agency.

(c) PERFORMANCE EVALUATIONS.—(1) The Director of National Intelligence shall provide annually to the Secretary of Defense, for the Secretary's consideration, an evaluation of the performance of the individuals holding the positions referred to in paragraph (2) in fulfilling their respective responsibilities with regard to the National Intelligence Program.

(2) The positions referred to in paragraph (1) are the following:

(A) The Director of the National Security Agency.

(B) The Director of the National Reconnaissance Office.

(C) The Director of the National Geospatial-Intelligence Agency.

(Added Pub. L. 102–190, div. A, title IX, § 922(a)(2), Dec. 5, 1991, 105 Stat. 1453; amended Pub. L. 104–201, div. A, title XI, § 1103(a), Sept. 23, 1996, 110 Stat. 2676; Pub. L. 108–136, div. A, title IX, § 921(d)(4), Nov. 24, 2003, 117 Stat. 1569; Pub. L. 110–181, div. A, title IX, § 931(a)(4), (5), (c)(2), Jan. 28, 2008, 122 Stat. 285; Pub. L. 110–417, [div. A], title IX, § 932(a)(3)–(5), Oct. 14, 2008, 122 Stat. 4576; Pub. L. 111–84, div. A, title X, § 1073(c)(10), Oct. 28, 2009, 123 Stat. 2475; Pub. L. 113–291, div. A, title X, § 1071(c)(4), Dec. 19, 2014, 128 Stat. 3508.)

PRIOR PROVISIONS

A prior section 201 was renumbered section 202 of this title and subsequently repealed.

AMENDMENTS

2014—Subsec. (b)(1). Pub. L. 113–291 substituted ''(50 U.S.C. 3041(b))'' for ''(50 U.S.C. 403–6(b))''.

2009—Subsecs. (a), (b)(1), (c)(1). Pub. L. 111–84 repealed Pub. L. 110–417, § 932(a)(3)–(5). See 2008 Amendment notes below.

2008—Subsec. (a). Pub. L. 110–181, § 931(a)(4), and Pub. L. 110–417, § 932(a)(3), amended subsec. (a) identically, substituting ''Director of National Intelligence'' for ''Director of Central Intelligence''. Pub. L. 110–417, § 932(a)(3), was repealed by Pub. L. 111–84.

Subsec. (b)(1). Pub. L. 110–417, § 932(a)(4), which directed substitution of ''Director of National Intelligence'' for ''Director of Central Intelligence'', could not be executed because of the intervening amendment by Pub. L. 110–181, § 931(c)(2)(A), and was repealed by Pub. L. 111–84.

Pub. L. 110–181, § 931(c)(2)(A), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''Before submitting a recommendation to the President regarding the appointment of an individual to a position referred to in paragraph (2), the Secretary of Defense shall seek the concurrence of the Director of Central Intelligence in the recommendation. If the Director does not concur in the recommendation, the Secretary may make the recommendation to the President without the Director's concurrence, but shall include in the recommendation a statement that the Director does not concur in the recommendation.''

Subsec. (c)(1). Pub. L. 110–181, § 931(c)(2)(B), substituted ''National Intelligence Program'' for ''National Foreign Intelligence Program''.

Pub. L. 110–181, § 931(a)(5), and Pub. L. 110–417, § 932(a)(5), amended par. (1) identically, substituting ''Director of National Intelligence'' for ''Director of Central Intelligence''. Pub. L. 110–417, § 932(a)(5), was repealed by Pub. L. 111–84.

2003—Subsecs. (b)(2)(C), (c)(2)(C). Pub. L. 108–136 substituted ''National Geospatial-Intelligence Agency'' for ''National Imagery and Mapping Agency''.

1996—Pub. L. 104–201 substituted ''Certain intelligence officials: consultation and concurrence regarding appointments; evaluation of performance'' for ''Consultation regarding appointment of certain intelligence officials'' in section catchline and amended text generally. Prior to amendment, text read as follows: ''Before submitting a recommendation to the President regarding the appointment of an individual to the position of Director of the Defense Intelligence Agency or Director of the National Security Agency, the Secretary of Defense shall consult with the Director of Central Intelligence regarding the recommendation.''

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–84, div. A, title X, § 1073(c), Oct. 28, 2009, 123 Stat. 2474, provided that the amendment made by section 1073(c)(10) is effective as of Oct. 14, 2008, and as if included in Pub. L. 110–417 as enacted.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–201 effective Oct. 1, 1996, see section 1124 of Pub. L. 104–201, set out as a note under section 193 of this title.

DEFENSE INTELLIGENCE AGENCY

Pub. L. 102–190, div. A, title IX, § 921, Dec. 5, 1991, 105 Stat. 1452, as amended by Pub. L. 103–337, div. A, title X, § 1070(d)(1), Oct. 5, 1994, 108 Stat. 2858, provided that, during the period beginning on Dec. 5, 1991, and ending on Jan. 1, 1993, the Assistant Secretary of Defense referred to in section 138(b)(3) of this title could be assigned supervision of the Defense Intelligence Agency other than day-to-day operational control over the Agency, set forth the responsibilities of the Director of the Defense Intelligence Agency during the period beginning on Dec. 5, 1991, and ending on Jan. 1, 1993, and directed the Secretary of the Army and the Director of the Defense Intelligence Agency to take all required actions in order to transfer the Armed Forces Medical Intelligence Center and the Missile and Space Intelligence Center from the Department of the Army to the control of the Defense Intelligence Agency not later than Jan. 1, 1992.

JOINT INTELLIGENCE CENTER

Pub. L. 102–190, div. A, title IX, § 923, Dec. 5, 1991, 105 Stat. 1453, provided that:

''(a) REQUIREMENT FOR CENTER.—The Secretary of Defense shall direct the consolidation of existing single-service current intelligence centers that are located within the District of Columbia or its vicinity into a joint intelligence center that is responsible for preparing current intelligence assessments (including indications and warning). The joint intelligence center shall be located within the District of Columbia or its vicinity. As appropriate for the support of military operations, the joint intelligence center shall provide for and manage the collection and analysis of intelligence.

''(b) MANAGEMENT.—The center shall be managed by the Defense Intelligence Agency in its capacity as the intelligence staff activity of the Chairman of the Joint Chiefs of Staff.

''(c) RESPONSIVENESS TO COMMAND AUTHORITIES.—The Secretary shall ensure that the center is fully respon-

sive to the intelligence needs of the Secretary, the Chairman of the Joint Chiefs of Staff, and the commanders of the combatant commands.''

[§ 202. Repealed. Pub. L. 105–107, title V, § 503(c), Nov. 20, 1997, 111 Stat. 2262]

Section, added Pub. L. 97–269, title V, §501(a), Sept. 27, 1982, 96 Stat. 1145, §191; amended Pub. L. 98–525, title XIV, §1405(6), Oct. 19, 1984, 98 Stat. 2622; renumbered §201, Pub. L. 99–433, title III, §301(a)(1), Oct. 1, 1986, 100 Stat. 1019; renumbered §202, Pub. L. 102–190, div. A, title IX, §922(a)(1), Dec. 5, 1991, 105 Stat. 1453; Pub. L. 105–107, title V, §503(b), Nov. 20, 1997, 111 Stat. 2262, related to unauthorized use of Defense Intelligence Agency name, initials, or seal, after amendment by Pub. L. 105–107, which transferred subsec. (b) to end of section 425.

[§ 203. Repealed. Pub. L. 114–328, div. A, title V, § 502(d)(1), Dec. 23, 2016, 130 Stat. 2102]

Section, added Pub. L. 105–85, div. A, title II, §235(a), Nov. 18, 1997, 111 Stat. 1665; amended Pub. L. 107–314, div. A, title II, §225(b)(1)(A), (B)(i), Dec. 2, 2002, 116 Stat. 2486, related to appointment of Director of Missile Defense Agency.

§ 204. Small Business Ombudsman for defense audit agencies

(a) SMALL BUSINESS OMBUDSMAN.—The Secretary of Defense shall designate within each defense audit agency an official as the Small Business Ombudsman to have the duties described in subsection (b) and such other responsibilities as may be determined by the Secretary.

(b) DUTIES.—The Small Business Ombudsman of a defense audit agency shall—

(1) advise the Director of the defense audit agency on policy issues related to small business concerns;

(2) serve as the defense audit agency's primary point of contact and source of information for small business concerns;

(3) collect and monitor relevant data regarding the defense audit agency's conduct of audits of small business concerns, including—

(A) data regarding the timeliness of audit closeouts for small business concerns; and

(B) data regarding the responsiveness of the defense audit agency to issues or other matters raised by small business concerns; and

(4) make recommendations to the Director regarding policies, processes, and procedures related to the timeliness of audits of small business concerns and the responsiveness of the defense audit agency to issues or other matters raised by small business concerns.

(c) AUDIT INDEPENDENCE.—The Small Business Ombudsman of a defense audit agency shall be segregated from ongoing audits in the field and shall not engage in activities with regard to particular audits that could compromise the independence of the defense audit agency or undermine compliance with applicable audit standards.

(d) DEFENSE AUDIT AGENCY DEFINED.—In this section, the term ''defense audit agency'' means the Defense Contract Audit Agency and the Defense Contract Management Agency.

(Added Pub. L. 112–239, div. A, title XVI, §1612(a), Jan. 2, 2013, 126 Stat. 2064; amended Pub. L. 116–283, div. A, title XVIII, §1835(c), Jan. 1, 2021, 134 Stat. 4240.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§1801(d), 1835(c), Jan. 1, 2021, 134 Stat. 4151, 4240, provided in part that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 279 of this title, as added by section 1835(a) of Pub. L. 116–283, inserted (in designated order) after section 3841, as amended by section 1835(b) of Pub. L. 116–283, and redesignated as section 3848 of this title. See Effective Date of 2021 Amendment note below.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 205. Missile Defense Agency

The Director of the Missile Defense Agency shall be appointed for a six-year term.

(Added Pub. L. 115–91, div. A, title XVI, §1676(c)(1), Dec. 12, 2017, 131 Stat. 1773; amended Pub. L. 116–283, div. A, title XVI, §1641(a), Jan. 1, 2021, 134 Stat. 4061.)

AMENDMENTS

2021—Pub. L. 116–283 amended section generally. Prior to amendment, text read as follows:

''(a) TERM OF DIRECTOR.—The Director of the Missile Defense Agency shall be appointed for a six-year term.

''(b) REPORTING.—The Missile Defense Agency shall be under the authority, direction, and control of the Under Secretary of Defense for Research and Engineering.''

APPLICATION

Pub. L. 115–91, div. A, title XVI, §1676(c)(3), Dec. 12, 2017, 131 Stat. 1773, provided that:

''(A) TERMS.—Subsection (a) of section 205 of title 10, United States Code, as added by paragraph (1), shall apply the day following the date on which the present incumbent in the office of the Director of the Missile Defense Agency, as of the date of the enactment of this Act [Dec. 12, 2017], ceases to serve as such.

''(B) REPORTING.—[Former] Subsection (b) of such section 205 shall apply beginning on February 1, 2018. In carrying out such subsection, the Missile Defense Agency shall be under the authority, direction, and control of the Under Secretary of Defense for Research and Engineering in the same manner as the Missile Defense Agency was under the authority, direction, and control of the Under Secretary of Defense for Acquisition, Technology, and Logistics pursuant to Department of Defense Directive 5134.09. Any reference in such Instruction to the Under Secretary of Defense for Acquisition, Technology, and Logistics shall be deemed to be a reference to the Under Secretary of Defense for Research and Engineering, including with respect to the Under Secretary serving as the chairman of the Missile Defense Executive Board.''

CHAPTER 9—DEFENSE BUDGET MATTERS

Sec.

221. Future-years defense program: submission to Congress; consistency in budgeting.
222. Future-years mission budget.
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Sec.
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[230. Repealed.]
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[232. Repealed.]
233. Operation and maintenance budget presentation.
234. POW/MIA activities: display of budget information.
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236. Personal protection equipment procurement: display of budget information.
237. Embedded mental health providers of the reserve components: display of budget information.
238. Cyber mission forces: program elements.
239. National security space programs: major force program and budget assessment.
239a. Missile defense and defeat programs: major force program and budget assessment.
239b. Certain intelligence-related programs: budget justification materials.

AMENDMENT OF ANALYSIS

Pub. L. 116–283, div. A, title XVIII, §§1801(d), 1809(h)(2), Jan. 1, 2021, 134 Stat. 4151, 4162, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this analysis is amended by striking item 235. See 2021 Amendment note below.

AMENDMENTS

2021—Pub. L. 116–283, div. A, title I, §151(b), title XVIII, §1809(h)(2), Jan. 1, 2021, 134 Stat. 3440, 4162, added item 231a and struck out item 235 ''Procurement of contract services: specification of amounts requested in budget''.

2019—Pub. L. 116–92, div. A, title X, §1007(b), Dec. 20, 2019, 133 Stat. 1575, added item 226.

2018—Pub. L. 115–232, div. A, title VIII, §813(a)(1)(B), title X, §1061(b), title XVI, §§1624(b)(2), 1677(b)(2), Aug. 13, 2018, 132 Stat. 1851, 1970, 2120, 2161, added items 222b, 222c, and 239b and struck out item 231a ''Budgeting for life-cycle cost of aircraft for the Navy, Army, and Air Force: annual plan and certification''.

2017—Pub. L. 115–91, div. A, title XVI, §1676(a)(2), Dec. 12, 2017, 131 Stat. 1772, added item 239a.

2016—Pub. L. 114–328, div. A, title X, §1064(a)(2), Dec. 23, 2016, 130 Stat. 2409, added item 222a.

2015—Pub. L. 114–92, div. A, title X, §1073(a)(2), title XVI, §1601(a)(2), Nov. 25, 2015, 129 Stat. 995, 1096, struck out item 228 ''Biannual reports on allocation of funds within operation and maintenance budget subactivities'' and added item 239.

2014—Pub. L. 113–291, div. A, title XVI, §1631(a)(2), Dec. 19, 2014, 128 Stat. 3638, added item 238.

2013—Pub. L. 113–66, div. A, title I, §141(b), title VII, §721(b), title X, §1091(a)(4), Dec. 26, 2013, 127 Stat. 697, 799, 875, added items 236 and 237 and inserted a period at end of item 231.

Pub. L. 112–239, div. A, title X, §§1076(f)(6), 1081(1)(B), Jan. 2, 2013, 126 Stat. 1952, 1960, transferred item 225 to appear after item 224 and struck out item 232 ''United States Joint Forces Command: amounts for research, development, test, and evaluation to be derived only from Defense-wide amounts''.

2011—Pub. L. 112–81, div. A, title X, §§1011(b), 1061(3)(B), 1064(4)(B)(ii), 1069(c), Dec. 31, 2011, 125 Stat. 1560, 1583, 1587, 1592, struck out item 226 ''Scoring of outlays'', added item 228 and struck out former item 228 ''Quarterly reports on allocation of funds within operation and maintenance budget subactivities'', added item 231 and struck out former item 231 ''Long-range plan for construction of naval vessels'', and amended item 231a generally. Prior to amendment, item 231a read as follows: ''Budgeting for procurement of aircraft for the Navy and Air Force: annual plan and certification''.

Pub. L. 112–81, div. A, title II, §231(a)(2), Dec. 31, 2011, 125 Stat. 1339, added item 225 at the end of this analysis.

Pub. L. 111–383, div. A, title X, §1023(b), Jan. 7, 2011, 124 Stat. 4350, added item 231 and struck out former item 231 ''Budgeting for construction of naval vessels: annual plan and certification''.

2009—Pub. L. 111–84, div. A, title VIII, §803(a)(2), Oct. 28, 2009, 123 Stat. 2402, added item 235.

2008—Pub. L. 110–417, [div. A], title I, §141(b), Oct. 14, 2008, 122 Stat. 4380, added item 231a.

2006—Pub. L. 109–364, div. A, title V, §563(b), Oct. 17, 2006, 120 Stat. 2222, added item 234.

2004—Pub. L. 108–375, div. A, title II, §214(b), title X, §1003(a)(2), Oct. 28, 2004, 118 Stat. 1834, 2035, added items 232 and 233.

2003—Pub. L. 108–136, div. A, title II, §223(a)(2), title X, §1031(a)(6)(B)(ii), Nov. 24, 2003, 117 Stat. 1420, 1596, added item 223a and substituted ''Quarterly'' for ''Monthly'' in item 228.

2002—Pub. L. 107–314, div. A, title X, §§1022(b), 1041(a)(2)(B), Dec. 2, 2002, 116 Stat. 2640, 2645, struck out item 230 ''Amounts for declassification of records'' and added item 231.

2001—Pub. L. 107–107, div. A, title II, §231(b)(2), Dec. 28, 2001, 115 Stat. 1037, substituted ''research, development, test, and evaluation'' for ''procurement'' in item 224.

1999—Pub. L. 106–65, div. A, title IX, §932(b)(2), title X, §1041(a)(2), Oct. 5, 1999, 113 Stat. 728, 758, added items 229 and 230.

1998—Pub. L. 105–261, div. A, title II, §235(a)(2), Oct. 17, 1998, 112 Stat. 1953, added item 223.

1997—Pub. L. 105–85, div. A, title II, §232(a)(2), title III, §321(a)(2), Nov. 18, 1997, 111 Stat. 1663, 1673, added items 224 and 228.

1996—Pub. L. 104–106, div. A, title X, §1061(f)(2), Feb. 10, 1996, 110 Stat. 443, struck out item 227 ''Recruiting costs''.

1993—Pub. L. 103–160, div. A, title III, §374(b), Nov. 30, 1993, 107 Stat. 1637, added item 227.

1992—Pub. L. 102–484, div. A, title X, §1002(d)(2), Oct. 23, 1992, 106 Stat. 2481, added items 221 and 222 and redesignated former item 221 as 226.

1991—Pub. L. 102–190, div. A, title X, §1002(a)(1), Dec. 5, 1991, 105 Stat. 1455, substituted ''DEFENSE BUDGET MATTERS'' for ''REGULAR COMPONENTS'' in chapter heading and added item 221.

§ 221. Future-years defense program: submission to Congress; consistency in budgeting

(a) The Secretary of Defense shall submit to Congress each year, not later than five days after the date on which the President's budget is submitted to Congress that year under section 1105(a) of title 31, a future-years defense pro-

gram (including associated annexes) reflecting the estimated expenditures and proposed appropriations included in that budget. Any such future-years defense program shall cover the fiscal year with respect to which the budget is submitted and at least the four succeeding fiscal years.

(b)(1) The Secretary of Defense shall ensure that amounts described in subparagraph (A) of paragraph (2) for any fiscal year are consistent with amounts described in subparagraph (B) of paragraph (2) for that fiscal year.

(2) Amounts referred to in paragraph (1) are the following:

(A) The amounts specified in program and budget information submitted to Congress by the Secretary in support of expenditure estimates and proposed appropriations in the budget submitted to Congress by the President under section 1105(a) of title 31 for any fiscal year, as shown in the future-years defense program submitted pursuant to subsection (a).

(B) The total amounts of estimated expenditures and proposed appropriations necessary to support the programs, projects, and activities of the Department of Defense included pursuant to paragraph (5) of section 1105(a) of title 31 in the budget submitted to Congress under that section for any fiscal year.

(c) Nothing in this section shall be construed to prohibit the inclusion in the future-years defense program of amounts for management contingencies, subject to the requirements of subsection (b).

(d)(1) The Secretary of Defense shall make available to Congress, the Congressional Budget Office, the Comptroller General of the United States, and the Congressional Research Service each future-years defense program under this section as follows:

(A) By making such program available electronically in the form of an unclassified electronic database.

(B) By delivering printed copies of such program to the congressional defense committees.

(2) In the event inclusion of classified material in a future-years defense program would otherwise render the totality of the program classified for purposes of this subsection—

(A) such program shall be made available to Congress in unclassified form, with such material attached as a classified annex; and

(B) such annex shall be submitted to the congressional defense committees, the Congressional Budget Office, the Comptroller General of the United States, and the Congressional Research Service.

(e) Each future-years defense program under this subsection shall be accompanied by a certification by the Under Secretary of Defense (Comptroller), in the case of the Department of Defense, and the comptroller of each military department, in the case of such military department, that any information entered into the Standard Data Collection System of the Department of Defense, the Comptroller Information System, or any other data system, as applicable, for purposes of assembling such future-years defense program was accurate.

(Added Pub. L. 101–189, div. A, title XVI, §1602(a)(1), Nov. 29, 1989, 103 Stat. 1596, §114a; amended Pub. L. 101–510, div. A, title XIV, §1402(a)(1)–(3)(A), Nov. 5, 1990, 104 Stat. 1674; renumbered §221 and amended Pub. L. 102–484, div. A, title X, §1002(c), Oct. 23, 1992, 106 Stat. 2480; Pub. L. 115–91, div. A, title X, §1042(a)–(c), Dec. 12, 2017, 131 Stat. 1553, 1554.)

Prior Provisions

A prior section 221 was renumbered section 226 of this title.

Amendments

2017—Subsec. (a). Pub. L. 115–91, §1042(a), substituted ''not later than five days after the date on which'' for ''at or about the time that''.

Subsec. (d). Pub. L. 115–91, §1042(b), added subsec. (d).

Subsec. (e). Pub. L. 115–91, §1042(c), added subsec. (e).

1992—Pub. L. 102–484 renumbered section 114a of this title as this section, amended section catchline generally, and substituted ''future-years'' for ''multiyear'' wherever appearing in text.

1990—Pub. L. 101–510, §1402(a)(3)(A), which directed amendment of section catchline by substituting ''Multiyear'' for ''Five-year'', was executed by substituting ''Multiyear'' for ''Five-Year'' as the probable intent of Congress.

Subsec. (a). Pub. L. 101–510, §1402(a)(1), (2), substituted ''a multiyear'' for ''the current five-year'' and inserted at end ''Any such multiyear defense program shall cover the fiscal year with respect to which the budget is submitted and at least the four succeeding fiscal years.''

Subsecs. (b)(2)(A), (c). Pub. L. 101–510, §1402(a)(2)(A), substituted ''multiyear'' for ''five-year''.

Effective Date of 2017 Amendment

Pub. L. 115–91, div. A, title X, §1042(d), Dec. 12, 2017, 131 Stat. 1554, provided that: ''The amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [Dec. 12, 2017], and shall apply to future-years defense programs submitted at the time of budgets of the President for fiscal years beginning after fiscal year 2018.''

Treatment in Future Budgets of the President of Systems Added by Congress

Pub. L. 116–283, div. A, title I, §126, Jan. 1, 2021, 134 Stat. 3428, provided that: ''In the event the procurement quantity for a system authorized by Congress in a National Defense Authorization Act for a fiscal year, and for which funds for such procurement quantity are appropriated by Congress in the Shipbuilding and Conversion, Navy account for such fiscal year, exceeds the procurement quantity specified in the budget of the President, as submitted to Congress under section 1105 of title 31, United States Code, for such fiscal year, such excess procurement quantity shall not be specified as a new procurement quantity in any budget of the President, as so submitted, for any fiscal year after such fiscal year.''

Budgeting of Department of Defense Relating to Operational Energy Improvement

Pub. L. 116–283, div. A, title III, §322, Jan. 1, 2021, 134 Stat. 3522, provided that: ''The Secretary of Defense shall include in the annual budget submission of the President under section 1105(a) of title 31, United States Code, a dedicated budget line item for fielding operational energy improvements, including such improvements for which funds from the Operational Energy Capability Improvement Fund have been expended to create the operational and business case for broader employment.''

Report and Budget Details Regarding Operation Inherent Resolve

Pub. L. 116–283, div. A, title XII, §1221(d), Jan. 1, 2021, 134 Stat. 3928, provided that:

''(1) REPORT REQUIRED.—At the same time as the submission of the budget of the President (as submitted to Congress pursuant to section 1105 of title 31, United States Code) for fiscal year 2022 and each fiscal year thereafter, the Secretary of Defense shall submit a report with accompanying budgetary details regarding Operation Inherent Resolve.

''(2) ELEMENTS OF REPORT.—At a minimum, the report required by paragraph (1) shall include—

''(A)(i) for the first report, a history of the operation and its objectives; and

''(ii) for each subsequent report, a description of the operation and its objectives during the prior fiscal year;

''(B) a detailed description of the weapons and equipment purchased using the Counter-ISIS Train and Equip Fund in the prior fiscal year;

''(C) a list and description of activities and exercises carried out under the operation during the prior fiscal year;

''(D) a description of the purpose and goals of such activities and exercises and an assessment of the degree to which stated goals were achieved during the prior fiscal year;

''(E) a description of criteria used to judge the effectiveness of joint exercises and other efforts to build partner capacity under the operation during the prior fiscal year;

''(F) a description of the forces deployed under the operation, their deployment locations, and activities undertaken;

''(G) the information required under paragraph (3); and

''(H) any other matters the Secretary determines appropriate.

''(3) ELEMENTS OF BUDGETARY DETAILS.—At a minimum, the budgetary details accompanying the report required by paragraph (1)—

''(A) shall include—

''(i) a description of expenditures related to the operation for the fiscal year preceding the fiscal year of the budget covered by the report;

''(ii) with respect to the amount requested for the operation in the budget covered by the report—

''(I) any significant change in methodology used to determine the budgetary details included in the report and the categories used to organize such details; and

''(II) a narrative justification for any significant changes in the amount requested as compared to the amount requested and the amount expended for the fiscal year preceding the fiscal year of the budget covered by the report; and

''(iii) with respect to the estimated direct and indirect expenditures for the operation in the budget covered by the report—

''(I) detailed information on the estimated direct expenditures and indirect expenditures broken down by category (including with respect to operations, force protection, in-theater support, equipment reset and readiness, military construction, mobilization, incremental and total deployment costs, and exercises) and any additional accounts and categories the Secretary determines to be relevant; and

''(II) a description of the methodology and metrics used by the Secretary to define the contribution of indirect costs to the operation or an explanation of pro-rated amounts based on the level of support provided to the operation; and

''(B) may include a breakdown of expenditures and the amount requested for the operation in the budget covered by the report by line item, including with respect to procurement accounts, military personnel accounts, operation and maintenance accounts, research, development, test, and evaluation accounts, and military construction accounts.

''(4) FORM.—The report and accompanying budget details required by paragraph (1) shall be submitted in unclassified form, but may include a classified annex.

''(5) SUNSET.—The requirements of this subsection shall terminate on the date on which Operation Inherent Resolve (or a successor operation) concludes.

''(6) DEFINITIONS.—In this subsection:

''(A) The term 'direct expenditures' means, with respect to amounts expended or estimated to be expended for Operation Inherent Resolve, amounts used directly for supporting counter-ISIS activities and missions.

''(B) The term 'indirect expenditures' means, with respect to amounts expended or estimated to be expended for Operation Inherent Resolve, amounts used for programs or activities that the Secretary of Defense determines enable the Armed Forces to carry out the operation.''

REPORT AND BUDGET DETAILS REGARDING OPERATION SPARTAN SHIELD

Pub. L. 116–283, div. A, title XII, §1225, Jan. 1, 2021, 134 Stat. 3931, provided that:

''(a) REPORT REQUIRED.—At the same time as the submission of the budget of the President (as submitted to Congress pursuant to section 1105 of title 31, United States Code) for fiscal year 2022 and each fiscal year thereafter, the Secretary of Defense shall submit a report with accompanying budgetary details regarding Operation Spartan Shield.

''(b) ELEMENTS OF REPORT.—At a minimum, the report required by subsection (a) shall include—

''(1)(A) for the first report, a history of the operation and its objectives; and

''(B) for each subsequent report, a description of the operation and its objectives during the prior fiscal year;

''(2) a list and description of activities and exercises carried out under the operation during the prior fiscal year;

''(3) a description of the purpose and goals of such activities and exercises and an assessment of the degree to which stated goals were achieved during the prior fiscal year;

''(4) a description of criteria used to judge the effectiveness of joint exercises and other efforts to build partner capacity under the operation during the prior fiscal year;

''(5) a description of the forces deployed under the operation, their deployment locations, and activities undertaken;

''(6) the information required under subsection (c); and

''(7) any other matters the Secretary determines appropriate.

''(c) ELEMENTS OF BUDGETARY DETAILS.—At a minimum, the budgetary details accompanying the report required by subsection (a)—

''(1) shall include—

''(A) a description of expenditures related to the operation for the fiscal year preceding the fiscal year of the budget covered by the report;

''(B) with respect to the amount requested for the operation in the budget covered by the report—

''(i) any significant change in methodology used to determine the budgetary details included in the report and the categories used to organize such details; and

''(ii) a narrative justification for any significant changes in the amount requested as compared to the amount requested and the amount expended for the fiscal year preceding the fiscal year of the budget covered by the report; and

''(C) with respect to the estimated direct and indirect expenditures for the operation in the budget covered by the report—

''(i) detailed information on the estimated direct expenditures and indirect expenditures broken down by category (including with respect to operations, force protection, in-theater support, equipment reset and readiness, military construction, mobilization, incremental and total deployment costs, and exercises) and any additional ac-

counts and categories the Secretary determines to be relevant; and

''(ii) a description of the methodology and metrics used by the Secretary to define the contribution of indirect costs to the operation or an explanation of pro-rated amounts based on the level of support provided to the operation; and

''(2) may include a breakdown of expenditures and the amount requested for the operation in the budget covered by the report by line item, including with respect to procurement accounts, military personnel accounts, operation and maintenance accounts, research, development, test, and evaluation accounts, and military construction accounts.

''(d) FORM.—The report and accompanying budget details required by subsection (a) shall be submitted in unclassified form, but may include a classified annex.

''(e) SUNSET.—The requirements of this section shall terminate on the date on which Operation Spartan Shield (or a successor operation) concludes.

''(f) DEFINITIONS.—In this section:

''(1) The term 'direct expenditures' means, with respect to amounts expended or estimated to be expended for Operation Spartan Shield, amounts used directly for supporting deterrence activities and missions.

''(2) The term 'indirect expenditures' means, with respect to amounts expended or estimated to be expended for Operation Spartan Shield, amounts used for programs or activities that the Secretary of Defense determines enable the Armed Forces to carry out the operation.''

BUDGETING OF DEPARTMENT OF DEFENSE RELATING TO EXTREME WEATHER

Pub. L. 116–92, div. A, title III, § 328, Dec. 20, 2019, 133 Stat. 1311, provided that:

''(a) IN GENERAL.—The Secretary of Defense shall include in the annual budget submission of the President under section 1105(a) of title 31, United States Code—

''(1) a dedicated budget line item for adaptation to, and mitigation of, effects of extreme weather on military networks, systems, installations, facilities, and other assets and capabilities of the Department of Defense; and

''(2) an estimate of the anticipated adverse impacts to the readiness of the Department and the financial costs to the Department during the year covered by the budget of the loss of, or damage to, military networks, systems, installations, facilities, and other assets and capabilities of the Department, including loss of or obstructed access to training ranges, as a result [of] extreme weather events.

''(b) DISAGGREGATION OF IMPACTS AND COSTS.—The estimate under subsection (a)(2) shall set forth the adverse readiness impacts and financial costs under that subsection by military department, Defense Agency, and other component or element of the Department.

''(c) EXTREME WEATHER DEFINED.—In this section, the term 'extreme weather' means recurrent flooding, drought, desertification, wildfires, and thawing permafrost.''

INCLUSION OF PROCUREMENT TECHNICAL ASSISTANCE COOPERATIVE AGREEMENT PROGRAM IN ANNUAL BUDGET JUSTIFICATION DOCUMENTS

Pub. L. 116–92, div. A, title VIII, § 852(c), Dec. 20, 2019, 133 Stat. 1511, provided that: ''The Secretary of Defense shall submit to Congress, as a part of the defense budget materials (as defined in section 234(d) of title 10, United States Code) for fiscal year 2021 and each fiscal year thereafter, a budget justification display that includes the procurement technical assistance cooperative agreement program under chapter 142 of title 10, United States Code, as part of the budget justification for Operation and Maintenance, Defense-wide for the Office of the Secretary of Defense.''

INCLUSION OF EUROPEAN DETERRENCE INITIATIVE IN ANNUAL BUDGET DISPLAY INFORMATION

Pub. L. 116–92, div. A, title XII, § 1243(b)–(d), Dec. 20, 2019, 133 Stat. 1657, 1658, provided that:

''(b) BUDGET DISPLAY INFORMATION.—The Secretary of Defense shall include in the materials submitted to Congress by the Secretary in support of the budget of the President for fiscal year 2021 and each fiscal year thereafter (as submitted under section 1105 of title 31, United States Code), a detailed budget display for the European Deterrence Initiative that includes the following information (regardless of whether the funding line is for overseas contingency operations):

''(1) With respect to procurement accounts—

''(A) amounts displayed by account, budget activity, line number, line item, and line item title; and

''(B) a description of the requirements for each such amounts specific to the Initiative.

''(2) With respect to research, development, test, and evaluation accounts—

''(A) amounts displayed by account, budget activity, line number, program element, and program element title; and

''(B) a description of the requirements for each such amounts specific to the Initiative.

''(3) With respect to operation and maintenance accounts—

''(A) amounts displayed by account title, budget activity title, line number, and subactivity group title; and

''(B) a description of how such amounts will specifically be used.

''(4) With respect to military personnel accounts—

''(A) amounts displayed by account, budget activity, budget subactivity, and budget subactivity title; and

''(B) a description of the requirements for each such amounts specific to the Initiative.

''(5) With respect to each project under military construction accounts (including with respect to unspecified minor military construction and amounts for planning and design), the country, location, project title, and project amount by fiscal year.

''(c) END OF FISCAL YEAR REPORT.—Not later than November 30, 2020, and annually thereafter, the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report that contains—

''(1) a detailed summary of funds obligated for the European Deterrence Initiative for the preceding fiscal year; and

''(2) a detailed comparison of funds obligated for the European Deterrence Initiative for the preceding fiscal year to amounts requested for the Initiative for that fiscal year in the materials submitted to Congress by the Secretary in support of the budget of the President for that fiscal year as required by subsection (c), including with respect to each of the accounts described in paragraphs (1), (2), (3), (4), and (5) of subsection (b) and the information required under each such paragraph.

''(d) INTERIM BRIEFING.—Not later than March 30, 2021, and annually thereafter, the Secretary of Defense shall provide the congressional defense committees with an interim briefing on the status of all matters covered by the end of fiscal year report required by section (c).''

REPORTING ON FUTURE YEARS BUDGETING BY SUBACTIVITY GROUP

Pub. L. 115–232, div. A, title III, § 357, Aug. 13, 2018, 132 Stat. 1732, provided that: ''Along with the budget for each fiscal year submitted by the President pursuant to section 1105(a) of title 31, United States Code, the Secretary of Defense and the Secretaries of the military departments shall include in the OP-5 Justification Books, as detailed by Department of Defense Financial Management Regulation 7000.14–R, the amount for each individual subactivity group, as detailed in the Depart-

ment's future years defense program pursuant to section 221 of title 10, United States Code.''

INCLUSION OF AIRCRAFT CARRIER REFUELING OVERHAUL BUDGET REQUEST IN ANNUAL BUDGET JUSTIFICATION MATERIALS

Pub. L. 115–232, div. A, title X, § 1018, Aug. 13, 2018, 132 Stat. 1951, provided that: ''The Secretary of Defense shall include in the budget justification materials submitted to Congress by the Secretary in support of the budget of the President for fiscal year 2020 and each subsequent fiscal year, as part of the budget request for Shipbuilding and Conversion, Navy, a detailed aircraft carrier refueling overhaul budget request, by hull number, including all funding requested for reactor power units and reactor components.''

BUDGET DISPLAY FOR CYBER VULNERABILITY EVALUATIONS AND MITIGATION ACTIVITIES FOR MAJOR WEAPON SYSTEMS OF THE DEPARTMENT OF DEFENSE

Pub. L. 115–232, div. A, title XVI, § 1637, Aug. 13, 2018, 132 Stat. 2127, provided that:

''(a) BUDGET REQUIRED.—Beginning in fiscal year 2021 and in each fiscal year thereafter, the Secretary of Defense shall submit to Congress, as a part of the documentation that supports the President's annual budget for the Department of Defense, a consolidated Cyber Vulnerability Evaluation and Mitigation budget justification display for each major weapons system of the Department of Defense that includes the following:

''(1) CYBER VULNERABILITY EVALUATIONS.—

''(A) STATUS.—Whether, in accordance with paragraph (1) of section 1647(a) of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114–92; 129 Stat. 1118), the cyber vulnerability evaluation for each such major weapon system is pending, in progress, complete, or, pursuant to paragraph (2) of such section, waived.

''(B) FUNDING.—The funding required for the fiscal year with respect to which the budget is submitted and for at least the four succeeding fiscal years required to complete the pending or in progress cyber vulnerability evaluation of each such major weapon system.

''(C) DESCRIPTION.—A description of the activities planned in the fiscal year with respect to which the budget is submitted and at least the four succeeding fiscal years to complete the required evaluation for each such major weapon system.

''(D) RISK ANALYSIS.—A description of operational or security risks associated with cyber vulnerabilities identified as a result of such cyber vulnerability evaluations that require mitigation.

''(2) MITIGATION ACTIVITIES.—

''(A) STATUS.—Whether activities to address identified cyber vulnerabilities of such major weapon systems resulting in operational or security risks requiring mitigation are pending, in progress, or complete.

''(B) FUNDING.—The funding required for the fiscal year with respect to which the budget is submitted and for at least the four succeeding fiscal years required to complete the pending or in progress mitigation activities referred to in subparagraph (A) related to such major weapon systems.

''(C) DESCRIPTION.—A description of the activities planned in the fiscal year with respect to which the budget is submitted and at least the four succeeding fiscal years to complete any necessary mitigation.

''(b) FORM.—The display required under subsection (a) should, to the extent practicable, be submitted in an unclassified form, and shall include a classified annex as required.''

BUDGET EXHIBIT ON SUPPORT PROVIDED TO EXECUTIVE OFFICE OF THE PRESIDENT

Pub. L. 115–232, div. A, title XVI, § 1697, Aug. 13, 2018, 132 Stat. 2171, provided that:

''(a) IN GENERAL.—The Under Secretary of Defense (Comptroller) shall include in the budget justification materials submitted to Congress in support of the Department of Defense budget for each fiscal year (as submitted with the budget of the President under section 1105(a) of title 31, United States Code) a single budget exhibit containing relevant details pertaining to support provided by the Department of Defense to the Executive Office of the President related to senior leader communications and continuity of Government programs.

''(b) INCLUSIONS.—The budget exhibit required by subsection (a) shall include—

''(1) support provided by the White House Military Office, the White House Communications Agency, special mission area activities of the Defense Information Systems Agency, and other relevant programs; and

''(2) specific appropriation and line numbers where appropriate.

''(c) FORM.—The budget exhibit required by subsection (a) shall be submitted in unclassified form, but may include a classified annex.''

SUBMISSION OF FUTURE YEAR DEFENSE PROGRAM FOR CONSTRUCTION PROJECTS RELATED TO EUROPEAN REASSURANCE INITIATIVE AND EUROPEAN DETERRENCE INITIATIVE

Pub. L. 115–141, div. J, title IV, § 402, Mar. 23, 2018, 132 Stat. 831, provided that: ''Notwithstanding any other provision of law, the Secretary of Defense is directed to provide the congressional defense committees [Committees on Armed Services of the House of Representatives and the Senate, the Subcommittee on Military Construction and Veterans Affairs of the Committee on Appropriations of the Senate, and the Subcommittee on Military Construction and Veterans Affairs of the Committee on Appropriations of the House of Representatives] a future years defense program for funds appropriated to the Department of Defense for construction projects related to European Reassurance Initiative and European Deterrence Initiative beginning in fiscal year 2018 and each subsequent fiscal year that funding is requested for either initiative. Further, the Secretary of Defense is directed to submit the future years defense program with each fiscal year budget submission.''

DOD GUIDANCE

Pub. L. 115–91, div. A, title X, § 1042(e), Dec. 12, 2017, 131 Stat. 1554, provided that: ''The Secretary of Defense shall, in coordination with the Under Secretary of Defense (Comptroller), update Department of Defense Financial Management Regulation 7000.14–R, and any other appropriate instructions and guidance, to ensure that the Department of Defense takes appropriate actions to comply with the amendments made by this section [amending this section] in the submittal of future-years defense programs in calendar years after calendar year 2017.''

FUTURE YEARS PLANS FOR THE EUROPEAN DETERRENCE INITIATIVE

Pub. L. 115–91, div. A, title XII, § 1273, Dec. 12, 2017, 131 Stat. 1696, as amended by Pub. L. 116–92, div. A, title XII, § 1243(a), Dec. 20, 2019, 133 Stat. 1656, provided that:

''(a) INITIAL PLAN.—Not later than December 31, 2019, the Secretary of Defense, in consultation with the Commander of the United States European Command, shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a future years plan on activities and resources of the European Deterrence Initiative (EDI) for fiscal year 2020 and not fewer than the four succeeding fiscal years.

''(b) MATTERS TO BE INCLUDED.—The plan required under subsection (a) shall include the following:

''(1) A description of the objectives of the EDI, including a description of—

''(A) the intended force structure and posture of the assigned and allocated forces within the area of responsibility of the United States European Command for the last fiscal year of the plan; and

''(B) the manner in which such force structure and posture support the implementation of the National Defense Strategy.

''(2) An assessment of resource requirements to achieve the objectives of the EDI.

''(3) An assessment of capabilities requirements to achieve the objectives of the EDI.

''(4) An assessment of logistics requirements, including force enablers, equipment, supplies, storage, and maintenance requirements, to achieve the objectives of the EDI.

''(5) An identification and assessment of required infrastructure and military construction investments to achieve the objectives of the EDI, including potential infrastructure investments by host nations and new construction or modernization of existing sites that would be funded by the United States.

''(6) An assessment of security cooperation investments required to achieve the objectives of the EDI.

''(7) An analysis of the challenges to the ability of the United States to deploy significant forces from the continental United States to the European theater in the event of a major contingency, and a description of the plans of the Department of Defense, including military exercises, to address such challenges.

''(8) A plan to fully resource United States force posture and capabilities, including—

''(A) details regarding the strategy to balance the force structure of the United States forces to source additional permanently stationed United States forces in Europe as a part of any planned growth in end strength and force posture;

''(B) the infrastructure capacity of existing locations and their ability to accommodate additional permanently stationed United States forces in Europe;

''(C) the potential new locations for additional permanently stationed United States forces in Europe, including an assessment of infrastructure and military construction resources necessary to accommodate additional United States forces in Europe;

''(D) a detailed timeline to achieve desired permanent posture requirements;

''(E) a reevaluation of sites identified for divestiture but not yet divested under the European Infrastructure Consolidation initiative, accounting for updated military requirements;

''(F) any changes and associated costs incurred with retaining each site identified for divestiture but not yet divested under the European Infrastructure Consolidation initiative, including possible leasing agreements, sustainment, and maintenance;

''(G) a detailed assessment of the resources necessary to achieve the requirements of the plan, including specific cost estimates for each project under the EDI to support increased presence, exercises and training, enhanced prepositioning, improved infrastructure, and building partnership capacity;

''(H) a detailed timeline to achieve the force posture and capabilities, including permanent force posture requirements; and

''(I) a detailed explanation of any significant modifications to activities and resources as compared to the future years plan on activities and resources of the EDI submitted for the previous year.

''(c) SUBSEQUENT PLANS.—

''(1) IN GENERAL.—Not later than the date on which the Secretary of Defense submits to Congress the budget request for the Department of Defense for fiscal year 2021 and each fiscal year thereafter, the Secretary, in consultation with the Commander of the United States European Command, shall submit to the congressional defense committees a future years plan on activities and resources of the European Deterrence Initiative for such fiscal year and not fewer than the four succeeding fiscal years.

''(2) MATTERS TO BE INCLUDED.—The plan required under paragraph (1) shall include—

''(A) the matters described in subsection (b); and

''(B) a detailed explanation of any significant modifications in requirements or resources, as compared to the plan submitted under such subsection (b).

''(d) FORM.—The plans required under subsections (a) and (c) shall be submitted in unclassified form, but may include a classified annex.

''(e) LIMITATIONS.—In the case of a proposed divestiture of a site under the European Infrastructure Consolidation initiative, the Secretary of Defense may not take any action to divest the site unless prior to taking such action, the Secretary certifies to the congressional defense committees that no military requirement for future use of the site is foreseeable.''

REVIEW OF SUPPORT PROVIDED BY DEFENSE INTELLIGENCE ELEMENTS TO ACQUISITION ACTIVITIES OF THE DEPARTMENT

Pub. L. 115–91, div. A, title XVI, § 1626, Dec. 12, 2017, 131 Stat. 1733, provided that:

''(a) REVIEW.—The Secretary of Defense shall review the support provided by Defense intelligence elements to the acquisition activities conducted by the Secretary, with a specific focus on such support—

''(1) consisting of planning, prioritizing, and resourcing relating to developmental weapon systems; and

''(2) for existing weapon systems throughout the program lifecycle of such systems.

''(b) BUDGET STRUCTURE.—The Secretary shall develop a specific budget structure for a sustainable funding profile to ensure the support provided by Defense intelligence elements described in subsection (a). The Secretary shall implement such structure beginning with the defense budget materials for fiscal year 2020.

''(c) BRIEFING.—Not later than May 1, 2018, the Secretary of Defense shall provide to the appropriate congressional committees a briefing on the results of the review under subsection (a) and a plan to carry out subsection (b).

''(d) CONSTRUCTION.—Nothing in this section may be construed to relieve the Director of National Intelligence of the responsibility to support the acquisition activities of the Department of Defense through the National Intelligence Program.

''(e) DEFINITIONS.—In this section:

''(1) The term 'appropriate congressional committees' means—

''(A) the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives]; and

''(B) the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate.

''(2) The term 'defense budget materials' has the meaning given that term in section 231(f) of title 10, United States Code.

''(3) The term 'Defense intelligence element' means any of the agencies, offices, and elements of the Department of Defense included within the definition of 'intelligence community' under section 3(4) of the National Security Act of 1947 (50 U.S.C. 3003(4)).''

REPORTING OF BALANCES CARRIED FORWARD BY THE DEPARTMENT OF DEFENSE AT THE END OF EACH FISCAL YEAR

Pub. L. 113–291, div. A, title X, § 1003, Dec. 19, 2014, 128 Stat. 3482, provided that: ''Not later March 1 of each year, the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives], and make publicly available on the Internet website of the Department of Defense, the following information:

"(1) The total dollar amount, by account, of all balances carried forward by the Department of Defense at the end of the fiscal year preceding the fiscal year during which such information is submitted.

"(2) The total dollar amount, by account, of all unobligated balances carried forward by the Department of Defense at the end of the fiscal year preceding the fiscal year during which such information is submitted.

"(3) The total dollar amount, by account, of any balances (both obligated and unobligated) that have been carried forward by the Department of Defense for five years or more as of the end of the fiscal year preceding the fiscal year during which such information is submitted."

[For termination, effective Dec. 31, 2021, of annual reporting provisions in section 1003 of Pub. L. 113–291, set out above, see section 1061 of Pub. L. 114–328, set out as a note under section 111 of this title.]

BUDGET DOCUMENTATION REQUIREMENT

Pub. L. 113–66, div. A, title II, §213(c), Dec. 26, 2013, 127 Stat. 704, provided that: "In the budget materials submitted to the President by the Secretary of Defense in connection with the submission to Congress, pursuant to section 1105 of title 31, United States Code, of the budget for fiscal year 2015, and each subsequent fiscal year, the Secretary shall include individual project lines for each program segment of the unmanned carrier-launched surveillance and strike system, within program element 0604404N, that articulate all costs, contractual actions, and other information associated with technology development for each such program segment."

EVALUATION AND ASSESSMENT OF THE DISTRIBUTED COMMON GROUND SYSTEM

Pub. L. 113–66, div. A, title II, §219, Dec. 26, 2013, 127 Stat. 708, provided that:

"(a) PROJECT CODES FOR BUDGET SUBMISSIONS.—In the budget submitted by the President to Congress under section 1105 of title 31, United States Code, for fiscal year 2015 and each subsequent fiscal year, each capability component within the distributed common ground system program shall be set forth as a separate project code within the program element line, and each covered official shall submit supporting justification for the project code within the program element descriptive summary.

"(b) ANALYSIS.—

"(1) REQUIREMENT.—The Under Secretary of Defense for Acquisition, Technology, and Logistics shall conduct an analysis of capability components that are compliant with the intelligence community data standards and could be used to meet the requirements of the distributed common ground system program.

"(2) ELEMENTS.—The analysis required under paragraph (1) shall include the following:

"(A) Revalidation of the distributed common ground system program requirements based on current program needs, recent operational experience, and the requirement for nonproprietary solutions that adhere to open-architecture principles.

"(B) Market research of current commercially available tools to determine whether any such tools could potentially satisfy the requirements described in subparagraph (A).

"(C) Analysis of the competitive acquisition options for any tools identified in subparagraph (B).

"(3) SUBMISSION.—Not later than 180 days after the date of the enactment of this Act [Dec. 26, 2013], the Under Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] the results of the analysis conducted under paragraph (1).

"(c) COVERED OFFICIAL DEFINED.—In this section, the term 'covered official' means the following:

"(1) The Secretary of the Army, with respect to matters concerning the Army.

"(2) The Secretary of the Navy, with respect to matters concerning the Navy.

"(3) The Secretary of the Air Force, with respect to matters concerning the Air Force.

"(4) The Commandant of the Marine Corps, with respect to matters concerning the Marine Corps.

"(5) The Commander of the United States Special Operations Command, with respect to matters concerning the United States Special Operations Command."

CONSOLIDATED BUDGET JUSTIFICATION DISPLAY FOR AEROSPACE CONTROL ALERT MISSION

Pub. L. 112–239, div. A, title III, §352(a), Jan. 2, 2013, 126 Stat. 1701, provided that: "The Secretary of Defense shall establish a consolidated budget justification display that fully identifies the baseline aerospace control alert budget for each of the military services and encompasses all programs and activities of the aerospace control alert mission for each of the following functions:

"(1) Procurement.

"(2) Operation and maintenance.

"(3) Research, development, testing, and evaluation.

"(4) Military construction."

BUDGET JUSTIFICATION DOCUMENTS; BUDGET FOR FULL-SPECTRUM MILITARY CYBERSPACE OPERATIONS

Pub. L. 112–239, div. A, title X, §1079(c), Jan. 2, 2013, 126 Stat. 1959, which required Secretary of Defense to submit dedicated budget documentation materials with budget submissions for fiscal year 2015 and subsequent fiscal years, was repealed by Pub. L. 115–91, div. A, title X, §1051(r)(7), Dec. 12, 2017, 131 Stat. 1565.

SEPARATE PROCUREMENT LINE ITEM FOR CERTAIN LITTORAL COMBAT SHIP MISSION MODULES

Pub. L. 112–81, div. A, title I, §122, Dec. 31, 2011, 125 Stat. 1319, provided that:

"(a) IN GENERAL.—In the budget materials submitted to the President by the Secretary of Defense in connection with the submission to Congress, pursuant to section 1105 of title 31, United States Code, of the budget for fiscal year 2013, and each subsequent fiscal year, the Secretary shall ensure that a separate, dedicated procurement line item is designated for each covered module that includes the quantity and cost of each such module requested.

"(b) FORM.—The Secretary shall ensure that any classified components of covered modules not included in a procurement line item under subsection (a) shall be included in a classified annex.

"(c) COVERED MODULE.—In this section, the term 'covered module' means, with respect to mission modules of the Littoral Combat Ship, the following modules:

"(1) Surface warfare.

"(2) Mine countermeasures.

"(3) Anti-submarine warfare."

DISPLAY OF PROCUREMENT OF EQUIPMENT FOR THE RESERVE COMPONENTS OF THE ARMED FORCES UNDER ESTIMATED EXPENDITURES FOR PROCUREMENT IN FUTURE-YEARS DEFENSE PROGRAMS

Pub. L. 112–81, div. A, title X, §1003A, Dec. 31, 2011, 125 Stat. 1556, provided that: "Each future-years defense program submitted to Congress under section 221 of title 10, United States Code, shall, in setting forth estimated expenditures and item quantities for procurement for the Armed Forces for the fiscal years covered by such program, display separately under such estimated expenditures and item quantities the estimated expenditures for each such fiscal year for equipment for each reserve component of the Armed Forces that will receive items in any fiscal year covered by such program."

DISPLAY OF ANNUAL BUDGET REQUIREMENTS FOR ORGANIZATIONAL CLOTHING AND INDIVIDUAL EQUIPMENT

Pub. L. 112–81, div. A, title X, §1094, Dec. 31, 2011, 125 Stat. 1607, provided that:

''(a) SUBMISSION WITH ANNUAL BUDGET JUSTIFICATION DOCUMENTS.—For fiscal year 2013 and each subsequent fiscal year, the Secretary of Defense shall submit to the President, for inclusion with the budget materials submitted to Congress under section 1105(a) of title 31, United States Code, a budget justification display that covers all programs and activities associated with the procurement of organizational clothing and individual equipment.

''(b) REQUIREMENTS FOR BUDGET DISPLAY.—The budget justification display under subsection (a) for a fiscal year shall include the following:

''(1) The funding requirements in each budget activity and for each Armed Force for organizational clothing and individual equipment.

''(2) The amount in the budget for each of the Armed Forces for organizational clothing and equipment for that fiscal year.

''(c) DEFINITION.—In this section, the term 'organizational clothing and individual equipment' means an item of organizational clothing or equipment prescribed for wear or use with the uniform.''

SEPARATE PROGRAM ELEMENTS REQUIRED FOR RESEARCH AND DEVELOPMENT OF JOINT LIGHT TACTICAL VEHICLE

Pub. L. 111–383, div. A, title II, § 213, Jan. 7, 2011, 124 Stat. 4163, provided that: ''In the budget materials submitted to the President by the Secretary of Defense in connection with the submission to Congress, pursuant to section 1105 of title 31, United States Code, of the budget for fiscal year 2012, and each subsequent fiscal year, the Secretary shall ensure that within each research, development, test, and evaluation account of the Army and the Navy a separate, dedicated program element is assigned to the Joint Light Tactical Vehicle.''

SEPARATE PROCUREMENT LINE ITEM FOR BODY ARMOR

Pub. L. 111–84, div. A, title I, § 141(b), Oct. 28, 2009, 123 Stat. 2223, provided that: ''In the budget materials submitted to the President by the Secretary of Defense in connection with the submission to Congress, pursuant to section 1105 of title 31, United States Code, of the budget for fiscal year 2011, and each subsequent fiscal year, the Secretary shall ensure that within each military department procurement account, a separate, dedicated procurement line item is designated for body armor.''

SEPARATE PROGRAM ELEMENTS REQUIRED FOR RESEARCH AND DEVELOPMENT OF INDIVIDUAL BODY ARMOR AND ASSOCIATED COMPONENTS

Pub. L. 111–84, div. A, title II, § 216, Oct. 28, 2009, 123 Stat. 2227, provided that: ''In the budget materials submitted to the President by the Secretary of Defense in connection with the submission to Congress, pursuant to section 1105 of title 31, United States Code, of the budget for fiscal year 2011, and each subsequent fiscal year, the Secretary shall ensure that within each research, development, test, and evaluation account of each military department a separate, dedicated program element is assigned to the research and development of individual body armor and associated components.''

SEPARATE PROCUREMENT AND RESEARCH, DEVELOPMENT, TEST, AND EVALUATION LINE ITEMS AND PROGRAM ELEMENTS FOR THE F–35B AND F–35C JOINT STRIKE FIGHTER AIRCRAFT

Pub. L. 111–84, div. A, title II, § 217, Oct. 28, 2009, 123 Stat. 2228, provided that: ''In the budget materials submitted to the President by the Secretary of Defense in connection with the submission to Congress, pursuant to section 1105 of title 31, United States Code, of the budget for fiscal year 2011, and each subsequent fiscal year, the Secretary shall ensure that within the Navy research, development, test, and evaluation account and the Navy aircraft procurement account, a separate, dedicated line item and program element is assigned to each of the F-35B aircraft and the F-35C aircraft, to the extent that such accounts include funding for each such aircraft.''

GUIDANCE ON BUDGET JUSTIFICATION MATERIALS DESCRIBING FUNDING REQUESTED FOR OPERATION, SUSTAINMENT, MODERNIZATION, AND PERSONNEL OF MAJOR RANGES AND TEST FACILITIES

Pub. L. 111–84, div. A, title II, § 220, Oct. 28, 2009, 123 Stat. 2229, as amended by Pub. L. 116–283, div. A, title XVIII, § 1845(c)(6), Jan. 1, 2021, 134 Stat. 4247, provided that:

''(a) GUIDANCE ON BUDGET JUSTIFICATION MATERIALS.—The Secretary of Defense, acting through the Under Secretary of Defense (Comptroller) and the Director of the Department of Defense Test Resource Management Center, shall issue guidance clarifying and standardizing the information required in budget justification materials describing amounts to be requested in the budget of the President for a fiscal year (as submitted to Congress pursuant to section 1105(a) of title 31, United States Code) for funding for each facility and resource of the Major Range and Test Facility Base in connection with each of the following:

''(1) Operation.

''(2) Sustainment.

''(3) Investment and modernization.

''(4) Government personnel.

''(5) Contractor personnel.

''(b) APPLICABILITY.—The guidance issued under subsection (a) shall apply with respect to budgets of the President for fiscal years after fiscal year 2010.

''(c) MAJOR RANGE AND TEST FACILITY BASE DEFINED.—In this section, the term 'Major Range and Test Facility Base' has the meaning given that term in section 196(h) [now 196(i)] of title 10, United States Code.''

[Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1845(c)(6), Jan. 1, 2021, 134 Stat. 4151, 4247, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, section 220(c) of Pub. L. 111–84, set out above, is amended by striking ''section 196(h)'' and inserting ''sections 4173(i)''.]

MILITARY MUNITIONS RESPONSE PROGRAM AND INSTALLATION RESTORATION PROGRAM

Pub. L. 111–84, div. A, title III, § 318(b), Oct. 28, 2009, 123 Stat. 2250, provided that: ''As part of the annual budget submission of the Secretary of Defense to Congress, the Secretary shall include the funding levels requested for the Military Munitions Response Program and the Installation Restoration Program.''

SEPARATE PROCUREMENT LINE ITEMS FOR FUTURE COMBAT SYSTEMS PROGRAM

Pub. L. 110–417, [div. A], title I, § 111, Oct. 14, 2008, 122 Stat. 4373, provided that: ''Effective for the budget of the President submitted to Congress under section 1105(a) of title 31, United States Code, for fiscal year 2011 and for each fiscal year thereafter, the Secretary of Defense shall ensure that a separate, dedicated procurement line item is designated for each of the following elements of the Future Combat Systems program (in this section referred to as 'FCS'), to the extent the budget includes funding for such elements:

''(1) FCS Manned Ground Vehicles.

''(2) FCS Unmanned Ground Vehicles.

''(3) FCS Unmanned Aerial Systems.

''(4) FCS Unattended Ground Systems.

''(5) Other FCS elements.''

SEPARATE PROCUREMENT AND RESEARCH, DEVELOPMENT, TEST, AND EVALUATION LINE ITEMS AND PROGRAM ELEMENTS FOR SKY WARRIOR UNMANNED AERIAL SYSTEMS PROJECT

Pub. L. 110–417, [div. A], title II, § 214, Oct. 14, 2008, 122 Stat. 4386, provided that: ''Effective for fiscal year 2010 and for each fiscal year thereafter, the Secretary of Defense shall ensure that, in the annual budget submis-

sion of the Department of Defense to the President, within both the account for procurement and the account for research, development, test, and evaluation, a separate, dedicated line item and program element is designated for the Sky Warrior Unmanned Aerial Systems project, to the extent such accounts include funding for such project.''

DISPLAY OF ANNUAL BUDGET REQUIREMENTS FOR AIR SOVEREIGNTY ALERT MISSION

Pub. L. 110–417, [div. A], title III, § 354, Oct. 14, 2008, 122 Stat. 4426, which required the Secretary of Defense to submit to the President a display of annual budget requirements for the Air Sovereignty Alert Mission of the Air Force, was repealed by Pub. L. 113–188, title IV, § 401(a), Nov. 26, 2014, 128 Stat. 2019.

[Pub. L. 113–291, div. A, title X, § 1060(b), Dec. 19, 2014, 128 Stat. 3502, which directed repeal of section 354 of Pub. L. 110–417, formerly set out above, could not be executed because of the prior repeal by Pub. L. 113–188, title IV, § 401(a), Nov. 26, 2014, 128 Stat. 2019.]

REQUIREMENT FOR SEPARATE DISPLAY OF BUDGETS FOR AFGHANISTAN AND IRAQ

Pub. L. 110–417, [div. A], title XV, § 1502, Oct. 14, 2008, 122 Stat. 4649, provided that:

''(a) OPERATIONS IN IRAQ AND AFGHANISTAN.—In any annual or supplemental budget request for the Department of Defense that is submitted to Congress after the date of the enactment of this Act [Oct. 14, 2008], the Secretary of Defense shall set forth separately any funding requested in such budget request for—

''(1) operations of the Department of Defense in Afghanistan; and

''(2) operations of the Department of Defense in Iraq.

''(b) SPECIFICITY OF DISPLAY.—Each budget request covered by subsection (a) shall, for any funding requested for operations in Iraq or Afghanistan—

''(1) clearly display the amount of such funding at the appropriation account level and at the program, project, or activity level; and

''(2) include a detailed description of the assumptions underlying the funding for the period covered by the budget request, including the anticipated troop levels, the operations intended to be carried out, and the equipment reset requirements necessary to support such operations.''

REPORT ON FUNDING OF THE DEPARTMENT OF DEFENSE FOR HEALTH CARE

Pub. L. 110–181, div. A, title VII, § 718, Jan. 28, 2008, 122 Stat. 197, provided that:

''(a) REPORT.—If the President submits to Congress the budget for a fiscal year under section 1105 of title 31, United States Code, and the aggregate amount included in that budget for the Department of Defense for health care for such fiscal year is less than the aggregate amount provided by Congress for the Department for health care for the preceding fiscal year, and, in the case of the Department, the total allocation from the Defense Health Program to any military department is less than the total of such allocation in the preceding fiscal year, the President shall submit to Congress a report on—

''(1) the reasons for the determination that inclusion of a lesser aggregate amount or allocation to any military department is in the national interest; and

''(2) the anticipated effects of the inclusion of such lesser aggregate amount or allocation to any military department on the access to and delivery of medical and support services to members of the Armed Forces and their family members.

''(b) TERMINATION.—The section shall not be in effect after December 31, 2017.''

SPECIFICATION OF AMOUNTS REQUESTED FOR PROCUREMENT OF CONTRACT SERVICES

Pub. L. 110–181, div. A, title VIII, § 806, Jan. 28, 2008, 122 Stat. 213, which required that materials submitted to Congress in support of the Defense Department budget identify clearly and separately the amounts requested in each budget account for procurement of contract services, was repealed and restated as section 235 of this title by Pub. L. 111–84, div. A, title VIII, § 803(a)(1), (3), Oct. 28, 2009, 123 Stat. 2402.

REPORT ON MAJOR DEPARTMENT OF DEFENSE HEADQUARTERS ACTIVITIES PERSONNEL

Pub. L. 110–181, div. A, title IX, § 901(b), (c), Jan. 28, 2008, 122 Stat. 272, which required that the Secretary of Defense include a report with the defense budget materials for each fiscal year concerning the number of military personnel and civilian employees of the Department of Defense assigned to major headquarters activities for each component of the Department, any increase in personnel assigned to major headquarters activities attributable to certain reasons, and any cost savings associated with the elimination of contracts for the performance of major headquarters activities, was repealed by Pub. L. 111–84, div. A, title XI, § 1109(b)(3), Oct. 28, 2009, 123 Stat. 2493.

MAJOR FORCE PROGRAM CATEGORY FOR SPACE

Pub. L. 112–10, div. A, title VIII, § 8092, Apr. 15, 2011, 125 Stat. 77, provided that: ''The Secretary of Defense shall create a major force program category for space for each future-years defense program of the Department of Defense submitted to Congress under section 221 of title 10, United States Code, during fiscal year 2011. The Secretary of Defense shall designate an official in the Office of the Secretary of Defense to provide overall supervision of the preparation and justification of program recommendations and budget proposals to be included in such major force program category.''

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 111–118, div. A, title VIII, § 8099, Dec. 19, 2009, 123 Stat. 3450.

Pub. L. 110–329, div. C, title VIII, § 8104, Sept. 30, 2008, 122 Stat. 3644.

Pub. L. 110–116, div. A, title VIII, § 8111, Nov. 13, 2007, 121 Stat. 1339.

REQUEST FOR FUNDS FOR ONGOING MILITARY OPERATION OVERSEAS

Pub. L. 110–116, div. A, title VIII, § 8116, Nov. 13, 2007, 121 Stat. 1340, provided that: ''Any request for funds for a fiscal year after fiscal year 2008 for an ongoing military operation overseas, including operations in Afghanistan and Iraq, shall be included in the annual budget of the President for such fiscal year as submitted to Congress under section 1105(a) of title 31, United States Code.''

ANNUAL REPORT ON PERSONNEL SECURITY INVESTIGATIONS FOR INDUSTRY AND NATIONAL INDUSTRIAL SECURITY PROGRAM

Pub. L. 109–364, div. A, title III, § 347(a), (b), Oct. 17, 2006, 120 Stat. 2158, which required that the Secretary of Defense include in budget justification documents for each fiscal year a report on future requirements of the Department of Defense concerning Personnel Security Investigations for Industry and the National Industrial Security Program of the Defense Security Service, was repealed by Pub. L. 112–81, div. A, title X, § 1062(d)(1), Dec. 31, 2011, 125 Stat. 1585.

BUDGETING FOR ONGOING MILITARY OPERATIONS IN AFGHANISTAN AND IRAQ

Pub. L. 109–364, div. A, title X, § 1008, Oct. 17, 2006, 120 Stat. 2374, provided that: ''The President's budget submitted to Congress pursuant to section 1105(a) of title 31, United States Code, for each fiscal year after fiscal year 2007 shall include—

''(1) a request for the appropriation of funds for such fiscal year for ongoing military operations in Afghanistan and Iraq;

''(2) an estimate of all funds expected to be required in that fiscal year for such operations; and

''(3) a detailed justification of the funds requested.''

SEPARATE PROGRAM ELEMENTS REQUIRED FOR SIGNIFICANT SYSTEMS DEVELOPMENT AND DEMONSTRATION PROJECTS FOR ARMORED SYSTEMS MODERNIZATION PROGRAM

Pub. L. 109–163, div. A, title II, § 214, Jan. 6, 2006, 119 Stat. 3168, provided that:

''(a) PROGRAM ELEMENTS SPECIFIED.—Effective for the budget of the President submitted to Congress under section 1105(a) of title 31, United States Code, for fiscal year 2008 and each fiscal year thereafter, the Secretary of Defense shall ensure that a separate, dedicated program element is assigned to each of the following systems development and demonstration projects of the Armored Systems Modernization program:

''(1) Manned Ground Vehicles.

''(2) Systems of Systems Engineering and Program Management.

''(3) Future Combat Systems Reconnaissance Platforms and Sensors.

''(4) Future Combat Systems Unmanned Ground Vehicles.

''(5) Unattended Sensors.

''(6) Sustainment.

''(b) EARLY COMMENCEMENT OF DISPLAY IN BUDGET JUSTIFICATION MATERIALS.—As part of the budget justification materials submitted to Congress in support of the Department of Defense budget for fiscal year 2007, as submitted with the budget of the President under such section 1105(a), the Secretary of the Army shall set forth the budget justification material for the systems development and demonstration projects of the Armored Systems Modernization program identified in subsection (a) as if the projects were already separate program elements.

''(c) TECHNOLOGY INSERTION TO CURRENT FORCE.—

''(1) REPORT ON ESTABLISHMENT OF ADDITIONAL PROGRAM ELEMENT.—Not later than June 1, 2006, the Secretary of the Army shall submit a report to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] describing the manner in which the costs of integrating Future Combat Systems capabilities into current force programs could be assigned to a separate, dedicated program element and any management issues that would be raised as a result of establishing such a program element.

''(2) DISPLAY IN BUDGET JUSTIFICATION MATERIALS.—As part of the budget justification materials submitted to Congress in support of the Department of Defense budget for fiscal year 2007 and each fiscal year thereafter, as submitted with the budget of the President under such section 1105(a), the Secretary of the Army shall set forth the budget justification material for technology insertion to the current force under the Armored Systems Modernization program.''

ANNUAL SUBMISSION OF INFORMATION REGARDING INFORMATION TECHNOLOGY CAPITAL ASSETS

Pub. L. 107–314, div. A, title III, § 351, Dec. 2, 2002, 116 Stat. 2516, as amended by Pub. L. 110–417, [div. A], title X, § 1051, Oct. 14, 2008, 122 Stat. 4604; Pub. L. 113–66, div. A, title III, § 333, Dec. 26, 2013, 127 Stat. 739, which related to annual submission of information regarding information technology capital assets, was repealed by Pub. L. 114–92, div. A, title X, § 1079(h), Nov. 25, 2015, 129 Stat. 1000.

DEPARTMENT OF DEFENSE REQUESTS FOR FUNDS FOR ENVIRONMENTAL RESTORATION AT BRAC SITES IN FUTURE FISCAL YEARS

Pub. L. 107–249, § 131, Oct. 23, 2002, 116 Stat. 1586, provided that:

''(a) REQUESTS FOR FUNDS FOR ENVIRONMENTAL RESTORATION AT BRAC SITES IN FUTURE FISCAL YEARS.—In the budget justification materials submitted to Congress in support of the Department of Defense budget for any fiscal year after fiscal year 2003, the amount requested for environmental restoration, waste management, and environmental compliance activities in such fiscal year with respect to military installations approved for closure or realignment under the base closure laws shall accurately reflect the anticipated cost of such activities in such fiscal year.

''(b) BASE CLOSURE LAWS DEFINED.—In this section, the term 'base closure laws' means the following:

''(1) Section 2687 of title 10, United States Code.

''(2) The Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note).

''(3) Title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 10 U.S.C. 2687 note).''

Similar provisions were contained in the following prior appropriation act:

Pub. L. 107–64, § 131, Nov. 5, 2001, 115 Stat. 482.

BUDGET JUSTIFICATION DOCUMENTS FOR COSTS OF ARMED FORCES' PARTICIPATION IN CONTINGENCY OPERATIONS

Pub. L. 107–248, title VIII, § 8132, Oct. 23, 2002, 116 Stat. 1568, provided that: ''The budget of the President for fiscal year 2004 submitted to the Congress pursuant to section 1105 of title 31, United States Code, and each annual budget request thereafter, shall include separate budget justification documents for costs of United States Armed Forces' participation in contingency operations for the Military Personnel accounts, the Overseas Contingency Operations Transfer Fund, the Operation and Maintenance accounts, and the Procurement accounts: *Provided*, That these budget justification documents shall include a description of the funding requested for each anticipated contingency operation, for each military service, to include active duty and Guard and Reserve components, and for each appropriation account: *Provided further*, That these documents shall include estimated costs for each element of expense or object class, a reconciliation of increases and decreases for ongoing contingency operations, and programmatic data including, but not limited to troop strength for each active duty and Guard and Reserve component, and estimates of the major weapons systems deployed in support of each contingency: *Provided further*, That these documents shall include budget exhibits OP–5 and OP–32, as defined in the Department of Defense Financial Management Regulation, for the Overseas Contingency Operations Transfer Fund for fiscal years 2002 and 2003.''

Similar provisions were contained in the following appropriation acts:

Pub. L. 116–260, div. C, title VIII, § 8076, Dec. 27, 2020, 134 Stat. 1323.

Pub. L. 116–93, div. A, title VIII, § 8076, Dec. 20, 2019, 133 Stat. 2355.

Pub. L. 115–245, div. A, title VIII, § 8074, Sept. 28, 2018, 132 Stat. 3018.

Pub. L. 115–141, div. C, title VIII, § 8075, Mar. 23, 2018, 132 Stat. 482.

Pub. L. 115–31, div. C, title VIII, § 8076, May 5, 2017, 131 Stat. 265.

Pub. L. 114–113, div. C, title VIII, § 8075, Dec. 18, 2015, 129 Stat. 2370.

Pub. L. 113–235, div. C, title VIII, § 8078, Dec. 16, 2014, 128 Stat. 2272.

Pub. L. 113–76, div. C, title VIII, § 8075, Jan. 17, 2014, 128 Stat. 123.

Pub. L. 113–6, div. C, title VIII, § 8075, Mar. 26, 2013, 127 Stat. 315.

Pub. L. 112–74, div. A, title VIII, § 8077, Dec. 23, 2011, 125 Stat. 824.

Pub. L. 112–10, div. A, title VIII, § 8077, Apr. 15, 2011, 125 Stat. 74.

Pub. L. 111–118, div. A, title VIII, § 8083, Dec. 19, 2009, 123 Stat. 3447.

Pub. L. 110–329, div. C, title VIII, § 8086, Sept. 30, 2008, 122 Stat. 3641.

Pub. L. 110–116, div. A, title VIII, § 8091, Nov. 13, 2007, 121 Stat. 1335.

Pub. L. 109–289, div. A, title VIII, § 8089, Sept. 29, 2006, 120 Stat. 1294.

Pub. L. 109–148, div. A, title VIII, § 8100, Dec. 30, 2005, 119 Stat. 2721.

Pub. L. 108–287, title VIII, § 8116, Aug. 5, 2004, 118 Stat. 998.

Pub. L. 108–87, title VIII, § 8115, Sept. 30, 2003, 117 Stat. 1099.

Pub. L. 107–117, div. A, title VIII, § 8097, Jan. 10, 2002, 115 Stat. 2268.

Pub. L. 106–259, title VIII, § 8097, Aug. 9, 2000, 114 Stat. 695.

Pub. L. 106–79, title VIII, § 8110, Oct. 25, 1999, 113 Stat. 1257.

Pub. L. 105–262, title VIII, § 8095, Oct. 17, 1998, 112 Stat. 2319.

Pub. L. 105–56, title VIII, § 8116, Oct. 8, 1997, 111 Stat. 1245.

BUDGET SUBMISSIONS ON ACTIVE AND RESERVE MILITARY PERSONNEL ACCOUNTS

Pub. L. 105–262, title VIII, § 8093, Oct. 17, 1998, 112 Stat. 2319, provided that: ''At the time the President submits his budget for fiscal year 2000 and any fiscal year thereafter, the Department of Defense shall transmit to the congressional defense committees [Committee on Armed Services and Subcommittee on National Security of the Committee on Appropriations of the House of Representatives and Committee on Armed Services and Subcommittee on Defense of the Committee on Appropriations of the Senate] a budget justification document for the active and reserve Military Personnel accounts, to be known as the 'M–1', which shall identify, at the budget activity, activity group, and subactivity group level, the amounts requested by the President to be appropriated to the Department of Defense for military personnel in any budget request, or amended budget request, for that fiscal year.''

Similar provisions were contained in the following prior appropriation act:

Pub. L. 105–56, title VIII, § 8104, Oct. 8, 1997, 111 Stat. 1243.

MODIFICATION OF BUDGET DATA EXHIBITS

Pub. L. 105–85, div. A, title III, § 324(c), Nov. 18, 1997, 111 Stat. 1678, provided that: ''The Under Secretary of Defense (Comptroller) shall ensure that aircraft budget data exhibits of the Department of Defense that are submitted to Congress display total numbers of active aircraft where numbers of primary aircraft or primary authorized aircraft are displayed in those exhibits.''

INCLUSION OF AIR FORCE DEPOT MAINTENANCE AS OPERATION AND MAINTENANCE BUDGET LINE ITEMS

Pub. L. 105–85, div. A, title III, § 327, Nov. 18, 1997, 111 Stat. 1679, provided that: ''For fiscal year 1999 and each fiscal year thereafter, Air Force depot-level maintenance of materiel shall be displayed as one or more separate line items under each subactivity within the authorization request for operation and maintenance, Air Force, in the proposed budget for that fiscal year submitted to Congress pursuant to section 1105 of title 31, United States Code.''

IDENTIFICATION IN PRESIDENT'S BUDGET OF NATO COSTS

Pub. L. 106–79, title VIII, § 8091, Oct. 25, 1999, 113 Stat. 1253, provided that: ''The budget of the President for fiscal year 2001 submitted to the Congress pursuant to section 1105 of title 31, United States Code, and each annual budget request thereafter, shall include budget activity groups (known as 'subactivities') in all appropriations accounts provided in this Act [see Tables for classification], as may be necessary, to separately identify all costs incurred by the Department of Defense to support the North Atlantic Treaty Organization and all Partnership For Peace programs and initiatives. The budget justification materials submitted to the Congress in support of the budget of the Department of Defense for fiscal year 2001, and subsequent fiscal years, shall provide complete, detailed estimates for all such costs.''

Similar provisions were contained in the following prior appropriation acts:

PROGRAM ELEMENTS FOR BALLISTIC MISSILE DEFENSE ORGANIZATION

Pub. L. 104–106, div. A, title II, § 251, Feb. 10, 1996, 110 Stat. 233, which required that in budget justification materials submitted to Congress in support of Department of Defense budget, the amount requested for activities of the Ballistic Missile Defense Organization be set forth in accordance with specified program elements, was repealed and restated as section 223 of this title by Pub. L. 105–261, div. A, title II, § 235(a)(1), (b), Oct. 17, 1998, 112 Stat. 1953.

BUDGET SUBMISSIONS ON SALARIES AND EXPENSES RELATED TO ADMINISTRATIVE ACTIVITIES

Pub. L. 109–148, div. A, title VIII, § 8032, Dec. 30, 2005, 119 Stat. 2705, provided that: ''The President shall include with each budget for a fiscal year submitted to the Congress under section 1105 of title 31, United States Code, and hereafter, materials that shall identify clearly and separately the amounts requested in the budget for appropriation for that fiscal year for salaries and expenses related to administrative activities of the Department of Defense, the military departments, and the defense agencies.''

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 108–287, title VIII, § 8036, Aug. 5, 2004, 118 Stat. 978.

Pub. L. 108–87, title VIII, § 8036, Sept. 30, 2003, 117 Stat. 1080.

Pub. L. 107–248, title VIII, § 8036, Oct. 23, 2002, 116 Stat. 1544.

Pub. L. 107–117, div. A, title VIII, § 8039, Jan. 10, 2002, 115 Stat. 2256.

Pub. L. 106–259, title VIII, § 8039, Aug. 9, 2000, 114 Stat. 683.

Pub. L. 106–79, title VIII, § 8042, Oct. 25, 1999, 113 Stat. 1240.

Pub. L. 105–262, title VIII, § 8042, Oct. 17, 1998, 112 Stat. 2306.

Pub. L. 105–56, title VIII, § 8046, Oct. 8, 1997, 111 Stat. 1231.

Pub. L. 104–208, div. A, title I, § 101(b) [title VIII, § 8047], Sept. 30, 1996, 110 Stat. 3009–71, 3009–98.

Pub. L. 104–61, title VIII, § 8058, Dec. 1, 1995, 109 Stat. 663.

Pub. L. 103–335, title VIII, § 8069, Sept. 30, 1994, 108 Stat. 2635.

Pub. L. 103–139, title VIII, § 8082, Nov. 11, 1993, 107 Stat. 1458.

Pub. L. 102–396, title IX, § 9132, Oct. 6, 1992, 106 Stat. 1936.

SUBMISSION OF MULTIYEAR DEFENSE PROGRAM

Pub. L. 101–510, div. A, title XIV, § 1402(b), Nov. 5, 1990, 104 Stat. 1674, provided for limitations on obligation by Secretary of Defense of fiscal year 1991 advance procurement funds if, as of end of 90-day period beginning on date on which President's budget for fiscal year 1992 was submitted to Congress, the Secretary had not submitted to Congress fiscal year 1992 multiyear defense program.

MISSION ORIENTED PRESENTATION OF DEPARTMENT OF DEFENSE MATTERS IN BUDGET

Pub. L. 101–510, div. A, title XIV, § 1404, Nov. 5, 1990, 104 Stat. 1675, directed President to submit with budget submitted to Congress each year of programs of Department of Defense, a budget that organizes programs within major functional category 050 (National Defense) on basis of major roles and missions of Department of Defense, prior to repeal by Pub. L. 102–484, div. A, title X, § 1002(b), Oct. 23, 1992, 106 Stat. 2480. See section 222 of this title.

DEFINITION OF ''CONGRESSIONAL DEFENSE COMMITTEES''

Pub. L. 115–141, div. J, title I, §127, Mar. 23, 2018, 132 Stat. 804, provided that: ''For the purposes of this Act [div. J of Pub. L. 115–141, 132 Stat. 796, see Tables for classification], the term 'congressional defense committees' means the Committees on Armed Services of the House of Representatives and the Senate, the Subcommittee on Military Construction and Veterans Affairs of the Committee on Appropriations of the Senate, and the Subcommittee on Military Construction and Veterans Affairs of the Committee on Appropriations of the House of Representatives.''

§ 222. Future-years mission budget

(a) FUTURE-YEARS MISSION BUDGET.—The Secretary of Defense shall submit to Congress for each fiscal year a future-years mission budget for the military programs of the Department of Defense. That budget shall be submitted for any fiscal year with the future-years defense program submitted under section 221 of this title.

(b) CONSISTENCY WITH FUTURE-YEARS DEFENSE PROGRAM.—The future-years mission budget shall be consistent with the future-years defense program required under section 221 of this title. In the future-years mission budget, the military programs of the Department of Defense shall be organized on the basis of major force programs.

(c) RELATIONSHIP TO OTHER DEFENSE BUDGET FORMATS.—The requirement in subsection (a) is in addition to the requirements in any other provision of law regarding the format for the presentation regarding military programs of the Department of Defense in the budget submitted pursuant to section 1105 of title 31 for any fiscal year.

(Added Pub. L. 102–484, div. A, title X, §1002(a)(2), Oct. 23, 1992, 106 Stat. 2480; amended Pub. L. 103–337, div. A, title X, §1004, Oct. 5, 1994, 108 Stat. 2834; Pub. L. 110–181, div. A, title IX, §944(a), (b), Jan. 28, 2008, 122 Stat. 289, 290; Pub. L. 115–91, div. A, title X, §1081(a)(16), Dec. 12, 2017, 131 Stat. 1595.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in Pub. L. 101–510, div. A, title XIV, §1404, Nov. 5, 1990, 104 Stat. 1675, which was set out as a note under section 114a [now 221] of this title, prior to repeal by Pub. L. 102–484, §1002(b).

AMENDMENTS

2017—Subsec. (b). Pub. L. 115–91 substituted ''major force programs.'' for ''both major force programs and the core mission areas identified under the most recent quadrennial roles and missions review pursuant to section 118b of this title.''

2008—Subsec. (a). Pub. L. 110–181, §944(a), amended last sentence generally. Prior to amendment, last sentence read as follows: ''That budget shall be submitted for any fiscal year not later than 60 days after the date on which the President's budget for that fiscal year is submitted to Congress pursuant to section 1105 of title 31.''

Subsec. (b). Pub. L. 110–181, §944(b), substituted ''on the basis of both major force programs and the core mission areas identified under the most recent quadrennial roles and missions review pursuant to section 118b of this title.'' for ''on the basis of major roles, missions, or forces of the Department of Defense.''

1994—Subsec. (a). Pub. L. 103–337 substituted ''not later than 60 days after the date on which'' for ''at the same time that''.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–181, div. A, title IX, §944(c), Jan. 28, 2008, 122 Stat. 290, provided that: ''The amendments made by this section [amending this section] shall apply with respect to the future-years mission budget for fiscal year 2010 and each fiscal year thereafter.''

§ 222a. Unfunded priorities of the armed forces and combatant commands: annual report

(a) ANNUAL REPORT.—Not later than 10 days after the date on which the budget of the President for a fiscal year is submitted to Congress pursuant to section 1105 of title 31, each officer specified in subsection (b) shall submit to the Secretary of Defense and the Chairman of the Joint Chiefs of Staff, and to the congressional defense committees, a report on the unfunded priorities of the armed force or forces or combatant command under the jurisdiction or command of such officer.

(b) OFFICERS.—The officers specified in this subsection are the following:

(1) The Chief of Staff of the Army.

(2) The Chief of Naval Operations.

(3) The Chief of Staff of the Air Force.

(4) The Commandant of the Marine Corps.

(5) The Chief of Space Operations.

(6) The commanders of the combatant commands established under section 161 of this title.

(7) The Chief of the National Guard Bureau in the role assigned to that position in section 10502(c)(1) of this title.

(c) ELEMENTS.—

(1) IN GENERAL.—Each report under this subsection shall specify, for each unfunded priority covered by such report, the following:

(A) A summary description of such priority, including the objectives to be achieved if such priority is funded (whether in whole or in part).

(B) The additional amount of funds recommended in connection with the objectives under subparagraph (A).

(C) Account information with respect to such priority, including the following (as applicable):

(i) Line Item Number (LIN) for applicable procurement accounts.

(ii) Program Element (PE) number for applicable research, development, test, and evaluation accounts.

(iii) Sub-activity group (SAG) for applicable operation and maintenance accounts.

(2) PRIORITIZATION OF PRIORITIES.—Each report shall present the unfunded priorities covered by such report as follows:

(A) In overall order of urgency of priority.

(B) In overall order of urgency of priority among unfunded priorities (other than covered military construction projects).

(C) In overall order of urgency of priority among covered military construction projects.

(3) NATIONAL GUARD UNFUNDED PRIORITIES.—

(A) IN GENERAL.—The officer specified under subsection (b)(6) shall only include in a report submitted under subsection (a) such priorities that—

(i) relate to equipping requirements in support of non-federalized National Guard responsibilities for the homeland defense or civil support missions; and

(ii) except as provided in subparagraph (B), were not included in a report under this section submitted by an officer specified in subsection (b)(1) or (3) for any of five fiscal years preceding the fiscal year for which the report is submitted, on behalf of National Guard forces to address a warfighting requirement.

(B) EXCEPTION.—The officer specified under subsection (b)(6) may include in a report submitted under subsection (a) an unfunded priority covered by subparagraph (A)(ii) if the Secretary of Defense—

(i) determines that the inclusion such unfunded priority reasonably supports the priorities of the Department under the national defense strategy under section 113(g) of this title; and

(ii) submits to the congressional defense committees written notice of such determination.

(d) DEFINITIONS.—In this section:

(1) The term ''unfunded priority'', in the case of a fiscal year, means a program, activity, or mission requirement, including a covered military construction project, that—

(A) is not funded in the budget of the President for the fiscal year as submitted to Congress pursuant to section 1105 of title 31;

(B) is necessary to fulfill a requirement associated with an operational or contingency plan of a combatant command or other validated requirement; and

(C) would have been recommended for funding through the budget referred to in subparagraph (1) by the officer submitting the report required by subsection (a) in connection with the budget if—

(i) additional resources had been available for the budget to fund the program, activity, or mission requirement; or

(ii) the program, activity, or mission requirement has emerged since the budget was formulated.

(2) The term ''covered military construction project'', in connection with a fiscal year, means a military construction project that—

(A) is included in any fiscal year of the future-years defense program under section 221 of this title that is submitted in connection with the budget of the President for the fiscal year, and is executable in the fiscal year; or

(B) is considered by the commander of a combatant command referred to in subsection (b)(5) to be an urgent need, and is executable in the fiscal year.

(Added Pub. L. 114–328, div. A, title X, §1064(a)(1), Dec. 23, 2016, 130 Stat. 2408; amended Pub. L. 116–92, div. A, title X, §1005, title XVII, §1731(a)(12), Dec. 20, 2019, 133 Stat. 1573, 1813; Pub. L. 116–283, div. A, title IX, §924(b)(10), title X, §§1006, 1081(a)(12), Jan. 1, 2021, 134 Stat. 3823, 3838, 3871.)

AMENDMENTS

2021—Subsec. (b)(5), (6). Pub. L. 116–283, §924(b)(10), added par. (5) and redesignated former par. (5) as (6).

Subsec. (b)(7). Pub. L. 116–283, §1006(1), added par. (7).

Subsec. (c)(3). Pub. L. 116–283, §1006(2), added par. (3).

Subsec. (d)(1)(C)(i). Pub. L. 116–283, §1081(a)(12), inserted ''had'' before ''been available''.

2019—Subsec. (c)(2). Pub. L. 116–92, §1005(b), amended par. (2) generally. Prior to amendment, text read as follows: ''Each report shall present the unfunded priorities covered by such report in order of urgency of priority.''

Subsec. (d). Pub. L. 116–92, §1005(a), amended subsec. (d) generally. Prior to amendment, subsec. (d) defined the term ''unfunded priority''.

Subsec. (d)(3)(A). Pub. L. 116–92, §1731(a)(12), inserted ''had'' before ''been'' prior to the general amendment of subsec. (d). See Amendment note above and Coordination of Amendments by Pub. L. 116–92 note below.

COORDINATION OF AMENDMENTS BY PUB. L. 116–92

Amendments to this section by section 1731 of Pub. L. 116–92 to be treated as having been enacted immediately before amendments by other provisions of Pub. L. 116–92, see section 1731(f) of Pub. L. 116–92, set out as a Coordination of Certain Sections of an Act With Other Provisions of That Act note under section 101 of this title.

ANNUAL REPORT ON UNFUNDED REQUIREMENTS FOR LABORATORY MILITARY CONSTRUCTION PROJECTS

Pub. L. 115–91, div. B, title XXVIII, §2806, Dec. 12, 2017, 131 Stat. 1847, as amended by Pub. L. 116–92, div. B, title XXVIII, §2807, Dec. 20, 2019, 133 Stat. 1885, provided that: ''The Under Secretary of Defense for Research and Engineering, in coordination with the Under Secretary of Defense for Acquisition and Sustainment, shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] each year, at the time the budget of the President for the fiscal year beginning in such year is submitted to Congress under section 1105(a) of title 31, United States Code, a report listing unfunded requirements on major and minor military construction projects for Department of Defense science and technology laboratories and facilities and test and evaluation facilities, in prioritized order, with specific accounts and program elements identified, and shall include a Department of Defense Form DD1391 for each major and minor military construction project included in the report.''

§ 222b. Unfunded priorities of the Missile Defense Agency: annual report

(a) REPORTS.—Not later than 10 days after the date on which the budget of the President for a fiscal year is submitted to Congress pursuant to section 1105 of title 31, the Director of the Missile Defense Agency shall submit to the Secretary of Defense and the Chairman of the Joint Chiefs of Staff, and to the congressional defense committees, a report on the unfunded priorities of the Missile Defense Agency.

(b) ELEMENTS.—

(1) IN GENERAL.—Each report under subsection (a) shall specify, for each unfunded priority covered by such report, the following:

(A) A summary description of such priority, including the objectives to be achieved if such priority is funded (whether in whole or in part).

(B) The additional amount of funds recommended in connection with the objectives under subparagraph (A).

(C) Account information with respect to such priority, including the following (as applicable):

(i) Line Item Number (LIN) for applicable procurement accounts.

(ii) Program Element (PE) number for applicable research, development, test, and evaluation accounts.

(iii) Sub-activity group (SAG) for applicable operation and maintenance accounts.

(2) PRIORITIZATION OF PRIORITIES.—Each report under subsection (a) shall present the unfunded priorities covered by such report in order of urgency of priority.

(c) UNFUNDED PRIORITY DEFINED.—In this section, the term ''unfunded priority'', in the case of a fiscal year, means a program, activity, or mission requirement of the Missile Defense Agency that—

(1) is not funded in the budget of the President for the fiscal year as submitted to Congress pursuant to section 1105 of title 31, United States Code;

(2) is necessary to fulfill a requirement associated with an operational or contingency plan of a combatant command or other validated requirement; and

(3) would have been recommended for funding through the budget referred to in paragraph (1) by the Director of the Missile Defense Agency in connection with the budget if additional resources had been available for the budget to fund the program, activity, or mission requirement.

(Added and amended Pub. L. 115–232, div. A, title XVI, § 1677(a), (b)(1), Aug. 13, 2018, 132 Stat. 2160, 2161; Pub. L. 116–92, div. A, title XVII, § 1731(a)(13), Dec. 20, 2019, 133 Stat. 1813.)

CODIFICATION

Section, as added and amended by Pub. L. 115–232, is based on Pub. L. 114–328, div. A, title XVI, § 1696, Dec. 23, 2016, 130 Stat. 2638, which was transferred to this chapter and renumbered as this section.

AMENDMENTS

2019—Subsec. (a). Pub. L. 116–92 struck out ''United States Code,'' after ''section 1105 of title 31,''.

2018—Pub. L. 115–232, § 1677(b)(1), in section catchline, substituted ''§'' for ''SEC.'' and ''Unfunded priorities of the Missile Defense Agency: annual report'' for ''REPORTS ON UNFUNDED PRIORITIES OF THE MISSILE DEFENSE AGENCY.''

Pub. L. 115–232, § 1677(a)(1), transferred section 1696 of Pub. L. 114–328 to this chapter and renumbered it as this section. See Codification note above.

Subsec. (a). Pub. L. 115–232, § 1677(a)(2)(A), substituted ''for a fiscal year'' for ''for each of fiscal years 2018 and 2019''.

Subsec. (c)(3). Pub. L. 115–232, § 1677(a)(2)(B), substituted ''in connection with the budget if additional resources had been available for the budget to fund the program, activity, or mission requirement.'' for ''in connection with the budget if—

''(A) additional resources had been available for the budget to fund the program, activity, or mission requirement; or

''(B) the program, activity, or mission requirement has emerged since the budget was formulated.''

§ 222c. Armed forces: Out-Year Unconstrained Total Munitions Requirements; Out-Year inventory numbers

(a) ANNUAL REPORTS.—At the same time each year that the budget for the fiscal year beginning in such year is submitted to Congress pursuant to section 1105(a) of title 31, the chief of staff of each armed force (other than the Coast Guard) shall submit to the congressional defense committees a report setting forth for such armed force each of the following for such fiscal year, broken out as specified in subsection (c):

(1) The Out-Year Unconstrained Total Munitions Requirement.

(2) The Out-Year inventory numbers.

(b) PROHIBITION ON DELEGATION OF SUBMITTAL RESPONSIBILITY.—The responsibility of the chief of staff of an armed force in subsection (a) to submit a report may not be delegated outside the armed force concerned.

(c) PRESENTATION.—The Out-Year Unconstrained Total Munitions Requirement and Out-Year inventory numbers for an armed force for a fiscal year pursuant to subsection (a) shall include specific inventory objective requirements for each variant of munitions with respect to each of the following:

(1) Combat Requirement, broken out by operation plan (OPLAN).

(2) Current Operation/Forward Presence Requirement.

(3) Strategic Readiness Requirement.

(4) Homeland Defense.

(5) Training and Testing Requirement.

(6) Total Out-Year Unconstrained Total Munitions Requirement, calculated in accordance with the implementation guidance described in subsection (d).

(7) Out-year worldwide inventory.

(d) IMPLEMENTATION GUIDANCE USED.—In submitting information pursuant to subsection (a) for a fiscal year, the chief of staff of each armed force shall describe and explain the munitions requirements process implementation guidance developed by the Under Secretary of Defense for Acquisition and Sustainment and used by such armed force for the munitions requirements process for such armed force for that fiscal year.

(e) DEFINITIONS.—In this section:

(1) The term ''chief of staff'', with respect to the Marine Corps, means the Commandant of the Marine Corps.

(2) The term ''Out-Year Unconstrained Total Munitions Requirement'' has the meaning given that term in and for purposes of Department of Defense Instruction 3000.04, or any successor instruction.

(Added Pub. L. 115–232, div. A, title X, § 1061(a), Aug. 13, 2018, 132 Stat. 1969; amended Pub. L. 116–92, div. A, title X, § 1006, Dec. 20, 2019, 133 Stat. 1574.)

AMENDMENTS

2019—Subsec. (a). Pub. L. 116–92, § 1006(1), substituted ''subsection (c)'' for ''subsection (b)'' in introductory provisions.

Subsecs. (b) to (e). Pub. L. 116–92, § 1006(2)–(4), added subsec. (b), redesignated former subsec. (b) as (c) and in par. (6) substituted ''subsection (d)'' for ''subsection (c)'', and redesignated former subsecs. (c) and (d) as (d) and (e), respectively.

§ 223. Ballistic missile defense programs: program elements

(a) PROGRAM ELEMENTS SPECIFIED BY PRESIDENT.—In the budget justification materials sub-

mitted to Congress in support of the Department of Defense budget for any fiscal year (as submitted with the budget of the President under section 1105(a) of title 31), the amount requested for activities of the Missile Defense Agency shall be set forth in accordance with such program elements as the President may specify.

(b) SEPARATE PROGRAM ELEMENTS FOR PROGRAMS ENTERING ENGINEERING AND MANUFACTURING DEVELOPMENT.—(1) The Secretary of Defense shall ensure that each ballistic missile defense program that enters engineering and manufacturing development is assigned a separate, dedicated program element.

(2) In this subsection, the term ''engineering and manufacturing development'' means the period in the course of an acquisition program during which the primary objectives are to—

(A) translate the most promising design approach into a stable, interoperable, producible, supportable, and cost-effective design;

(B) validate the manufacturing or production process; and

(C) demonstrate system capabilities through testing.

(c) MANAGEMENT AND SUPPORT.—The amount requested for a fiscal year for any program element specified for that fiscal year pursuant to subsection (a) shall include requests for the amounts necessary for the management and support of the programs, projects, and activities contained in that program element.

(Added Pub. L. 105–261, div. A, title II, § 235(a)(1), Oct. 17, 1998, 112 Stat. 1953; amended Pub. L. 107–107, div. A, title II, § 232(a), (b), Dec. 28, 2001, 115 Stat. 1037; Pub. L. 107–314, div. A, title II, § 225(b)(1)(A), Dec. 2, 2002, 116 Stat. 2486; Pub. L. 108–136, div. A, title II, § 221(a), (b)(1), (c)(1), Nov. 24, 2003, 117 Stat. 1419.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in Pub. L. 104–106, div. A, title II, § 251, Feb. 10, 1996, 110 Stat. 233, which was set out as a note under section 221 of this title, prior to repeal by Pub. L. 105–261, § 235(b).

AMENDMENTS

2003—Subsec. (a). Pub. L. 108–136, § 221(a), inserted ''by President'' after ''Specified'' in heading, substituted ''such program elements as the President may specify.'' for ''program elements governing functional areas as follows:'' in introductory provisions, and struck out pars. (1) to (6), which read as follows:

''(1) Technology.

''(2) Ballistic Missile Defense System.

''(3) Terminal Defense Segment.

''(4) Midcourse Defense Segment.

''(5) Boost Defense Segment.

''(6) Sensors Segment.''

Subsec. (b)(2). Pub. L. 108–136, § 221(c)(1), substituted ''means the period in the course of an acquisition program during which the'' for ''means the development phase whose''.

Subsec. (c). Pub. L. 108–136, § 221(b)(1), substituted ''for a fiscal year for any program element specified for that fiscal year pursuant to subsection (a)'' for ''for each program element specified in subsection (a)''.

2002—Subsec. (a). Pub. L. 107–314 substituted ''Missile Defense Agency'' for ''Ballistic Missile Defense Organization''.

2001—Subsec. (a). Pub. L. 107–107, § 232(a), substituted ''in accordance with program elements governing functional areas as follows:'' for ''in accordance with the following program elements:'' in introductory provisions, added pars. (1) to (6), and struck out former pars. (1) to (12) which read as follows:

''(1) The Patriot system.

''(2) The Navy Area system.

''(3) The Theater High-Altitude Area Defense system.

''(4) The Navy Theater Wide system.

''(5) The Medium Extended Air Defense System.

''(6) Joint Theater Missile Defense.

''(7) National Missile Defense.

''(8) Support Technologies.

''(9) Family of Systems Engineering and Integration.

''(10) Ballistic Missile Defense Technical Operations.

''(11) Threat and Countermeasures.

''(12) International Cooperative Programs.''

Subsec. (b). Pub. L. 107–107, § 232(b), amended heading and text of subsec. (b) generally. Prior to amendment, text read as follows: ''Amounts requested for Theater Missile Defense and National Missile Defense major defense acquisition programs shall be specified in individual, dedicated program elements, and amounts appropriated for those programs shall be available only for Ballistic Missile Defense activities.''

ACQUISITION ACCOUNTABILITY REPORTS ON THE BALLISTIC MISSILE DEFENSE SYSTEM

Pub. L. 111–383, div. A, title II, § 225, Jan. 7, 2011, 124 Stat. 4170, related to acquisition baselines, elements of baselines, and annual reports, prior to repeal by Pub. L. 112–81, div. A, title II, § 231(b)(1), Dec. 31, 2011, 125 Stat. 1339.

BUDGET AND ACQUISITION REQUIREMENTS FOR MISSILE DEFENSE AGENCY ACTIVITIES

Pub. L. 110–181, div. A, title II, § 223, Jan. 28, 2008, 122 Stat. 39, as amended by Pub. L. 112–81, div. A, title II, § 231(b)(2), Dec. 31, 2011, 125 Stat. 1339, provided that:

''(a) REVISED BUDGET STRUCTURE.—The budget justification materials submitted to Congress in support of the Department of Defense budget for any fiscal year after fiscal year 2009 (as submitted with the budget of the President under section 1105(a) of title 31, United States Code) shall set forth separately amounts requested for the Missile Defense Agency for each of the following:

''(1) Research, development, test, and evaluation.

''(2) Procurement.

''(3) Operation and maintenance.

''(4) Military construction.

''(b) REVISED BUDGET STRUCTURE FOR FISCAL YEAR 2009.—The budget justification materials submitted to Congress in support of the Department of Defense budget for fiscal year 2009 (as submitted with the budget of the President under section 1105(a) of title 31, United States Code) shall—

''(1) identify all known and estimated operation and support costs; and

''(2) set forth separately amounts requested for the Missile Defense Agency for each of the following:

''(A) Research, development, test, and evaluation.

''(B) Procurement or advance procurement of long lead items, including for Terminal High Altitude Area Defense firing units 3 and 4, and for Standard Missile-3 Block 1A interceptors.

''(C) Military construction.

''(c) AVAILABILITY OF RDT&E FUNDS FOR FISCAL YEAR 2009.—Upon approval by the Secretary of Defense, and consistent with the plan submitted under subsection (f), funds appropriated pursuant to an authorization of appropriations or otherwise made available for fiscal year 2009 for research, development, test, and evaluation for the Missile Defense Agency—

''(1) may be used for the fielding of ballistic missile defense capabilities approved previously by Congress; and

''(2) may not be used for—

''(A) military construction activities; or

''(B) procurement or advance procurement of long lead items, including for Terminal High Altitude

Area Defense firing units 3 and 4, and for Standard Missile-3 Block 1A interceptors.

''(d) FULL FUNDING REQUIREMENT NOT APPLICABLE TO USE OF PROCUREMENT FUNDS FOR FISCAL YEARS 2009 AND 2010.—In any case in which funds appropriated pursuant to an authorization of appropriations or otherwise made available for procurement for the Missile Defense Agency for fiscal years 2009 and 2010 are used for the fielding of ballistic missile defense capabilities, the funds may be used for the fielding of those capabilities on an 'incremental' basis, notwithstanding any law or policy of the Department of Defense that would otherwise require a 'full funding' basis.

''(e) RELATIONSHIP TO OTHER LAW.—Nothing in this provision shall be construed to alter or otherwise affect in any way the applicability of the requirements and other provisions of section 234(a) through (d) of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (Public Law 108–375; 118 Stat. 1837; [former] 10 U.S.C. 2431 note).

''(f) PLAN REQUIRED.—Not later than March 1, 2008, the Director of the Missile Defense Agency shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a plan for transitioning the Missile Defense Agency from using exclusively research, development, test, and evaluation funds to using procurement, military construction, operations and maintenance, and research, development, test, and evaluation funds for the appropriate budget activities, and for transitioning from incremental funding to full funding for fiscal years after fiscal year 2010.''

REFERENCES TO NEW NAME FOR BALLISTIC MISSILE DEFENSE ORGANIZATION

Pub. L. 107–314, div. A, title II, § 225(a), Dec. 2, 2002, 116 Stat. 2486, provided that: ''Any reference to the Ballistic Missile Defense Organization in any provision of law, regulation, map, document, record, or other paper of the United States shall be considered to be a reference to the Missile Defense Agency.''

COOPERATIVE BALLISTIC MISSILE DEFENSE PROGRAM ELEMENT

Pub. L. 105–85, div. A, title II, § 233, Nov. 18, 1997, 111 Stat. 1663, as amended by Pub. L. 107–314, div. A, title II, § 225(b)(4)(A), Dec. 2, 2002, 116 Stat. 2486, directed the Secretary of Defense to establish the Cooperative Ballistic Missile Defense Program to support cooperative efforts between the United States and other nations that contributed to United States ballistic missile defense capabilities.

§ 223a. Ballistic missile defense programs: procurement

(a) BUDGET JUSTIFICATION MATERIALS.—In the budget justification materials submitted to Congress in support of the Department of Defense budget for any fiscal year (as submitted with the budget of the President under section 1105(a) of title 31), the Secretary of Defense shall specify, for each ballistic missile defense system element for which the Missile Defense Agency is engaged in planning for production and initial fielding, the following information:

(1) The production rate capabilities of the production facilities planned to be used for production of that element.

(2) The potential date of availability of that element for initial fielding.

(3) The estimated date on which the administration of the acquisition of that element is to be transferred from the Director of the Missile Defense Agency to the Secretary of a military department.

(b) FUTURE-YEARS DEFENSE PROGRAM.—The Secretary of Defense shall include in the future-years defense program submitted to Congress each year under section 221 of this title an estimate of the amount necessary for procurement for each ballistic missile defense system element, together with a discussion of the underlying factors and reasoning justifying the estimate.

(c) PERFORMANCE CRITERIA.—The Director of the Missile Defense Agency shall include in the performance criteria prescribed for planned development phases of the ballistic missile defense system and its elements a description of the intended effectiveness of each such phase against foreign adversary capabilities.

(Added Pub. L. 108–136, div. A, title II, § 223(a)(1), Nov. 24, 2003, 117 Stat. 1420; amended Pub. L. 113–291, div. A, title X, § 1060(a)(1), Dec. 19, 2014, 128 Stat. 3502.)

AMENDMENTS

2014—Subsec. (d). Pub. L. 113–291 struck out subsec. (d). Text read as follows: ''The Director of Operational Test and Evaluation shall make available for review by the congressional defense committees the developmental and operational test plans established to assess the effectiveness of the ballistic missile defense system and its elements with respect to the performance criteria described in subsection (c).''

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective Dec. 31, 2021, of provisions in subsec. (a) of this section requiring submittal of annual report to Congress, see section 1061 of Pub. L. 114–328, set out as a note under section 111 of this title.

IMPLEMENTATION OF REQUIREMENT FOR AVAILABILITY OF TEST PLANS

Pub. L. 108–136, div. A, title II, § 223(b), Nov. 24, 2003, 117 Stat. 1420, directed that subsec. (d) of this section was to be implemented not later than Mar. 1, 2004.

§ 224. Ballistic missile defense programs: display of amounts for research, development, test, and evaluation

(a) REQUIREMENT.—Any amount in the budget submitted to Congress under section 1105 of title 31 for any fiscal year for research, development, test, and evaluation for the integration of a ballistic missile defense element into the overall ballistic missile defense architecture shall be set forth under the account of the Department of Defense for Defense-wide research, development, test, and evaluation and, within that account, under the subaccount (or other budget activity level) for the Missile Defense Agency.

(b) TRANSFER CRITERIA.—(1) The Secretary of Defense shall establish criteria for the transfer of responsibility for a ballistic missile defense program from the Director of the Missile Defense Agency to the Secretary of a military department. The criteria established for such a transfer shall, at a minimum, address the following:

(A) The technical maturity of the program.

(B) The availability of facilities for production.

(C) The commitment of the Secretary of the military department concerned to procurement funding for that program, as shown by funding through the future-years defense program and other defense planning documents.

(2) The Secretary shall submit the criteria established, and any modifications to those criteria, to the congressional defense committees.

(c) NOTIFICATION OF TRANSFER.—Before responsibility for a ballistic missile defense program is transferred from the Director of the Missile Defense Agency to the Secretary of a military department, the Secretary of Defense shall submit to the congressional defense committees notice in writing of the Secretary's intent to make that transfer. The Secretary shall include with such notice a certification that the program has met the criteria established under subsection (b) for such a transfer. The transfer may then be carried out after the end of the 60-day period beginning on the date of such notice.

(d) CONFORMING BUDGET AND PLANNING TRANSFERS.—When a ballistic missile defense program is transferred from the Missile Defense Agency to the Secretary of a military department in accordance with this section, the Secretary of Defense shall ensure that all appropriate conforming changes are made to proposed or projected funding allocations in the future-years defense program under section 221 of this title and other Department of Defense program, budget, and planning documents.

(e) FOLLOW-ON RESEARCH, DEVELOPMENT, TEST, AND EVALUATION.—The Secretary of Defense shall ensure that, before a ballistic missile defense program is transferred from the Director of the Missile Defense Agency to the Secretary of a military department, roles and responsibilities for research, development, test, and evaluation related to system improvements for that program are clearly delineated.

(Added Pub. L. 105–85, div. A, title II, § 232(a)(1), Nov. 18, 1997, 111 Stat. 1662; amended Pub. L. 107–107, div. A, title II, § 231(a), (b)(1), Dec. 28, 2001, 115 Stat. 1035, 1036; Pub. L. 107–314, div. A, title II, §§ 222, 225(b)(1)(A), Dec. 2, 2002, 116 Stat. 2485, 2486; Pub. L. 108–136, div. A, title II, § 226, title X, § 1043(b)(4), Nov. 24, 2003, 117 Stat. 1421, 1611.)

AMENDMENTS

2003—Subsec. (a). Pub. L. 108–136, § 226(b), substituted "the integration of a ballistic missile defense element into the overall ballistic missile defense architecture" for "a Department of Defense missile defense program described in subsection (b)".

Subsec. (e). Pub. L. 108–136, § 226(a), substituted "before a" for "for each", inserted "is" before "transferred", and substituted "roles and responsibilities" for "responsibility" and "are clearly delineated" for "remains with the Director".

Subsec. (f). Pub. L. 108–136, § 1043(b)(4), struck out heading and text of subsec. (f). Text read as follows: "In this section, the term 'congressional defense committees' means the following:

"(1) The Committee on Armed Services and the Committee on Appropriations of the Senate.

"(2) The Committee on Armed Services and the Committee on Appropriations of the House of Representatives."

2002—Subsecs. (a), (b)(1), (c), (d). Pub. L. 107–314, § 225(b)(1)(A), substituted "Missile Defense Agency" for "Ballistic Missile Defense Organization".

Subsec. (e). Pub. L. 107–314 substituted "for each" for "before a", "transferred" for "is transferred", "Missile Defense Agency" for "Ballistic Missile Defense Organization", and "responsibility for research, development, test, and evaluation related to system improvements for that program remains with the Director" for "roles and responsibilities for research, development, test, and evaluation related to system improvements for that program are clearly defined".

2001—Pub. L. 107–107, § 231(b)(1), substituted "research, development, test, and evaluation" for "procurement" in section catchline.

Subsec. (a). Pub. L. 107–107, § 231(a)(1), substituted "research, development, test, and evaluation" for "procurement" in two places.

Subsecs. (b) to (f). Pub. L. 107–107, § 231(a)(2), added subsecs. (b) to (f) and struck out former subsecs. (b) and (c) which related to covered programs and core theater ballistic missile defense program, respectively.

§ 225. Acquisition accountability reports on the ballistic missile defense system

(a) BASELINES REQUIRED.—(1) In accordance with paragraph (2), the Director of the Missile Defense Agency shall establish and maintain an acquisition baseline for—

(A) each program element of the ballistic missile defense system, as specified in section 223 of this title; and

(B) each designated major subprogram of such program elements.

(2) The Director shall establish an acquisition baseline required by paragraph (1) before the date on which the program element or major subprogram enters—

(A) engineering and manufacturing development (or its equivalent); and

(B) production and deployment.

(3) Except as provided by subsection (d), the Director may not adjust or revise an acquisition baseline established under this section.

(b) ELEMENTS OF BASELINES.—Each acquisition baseline required by subsection (a) for a program element or major subprogram shall include the following:

(1) A comprehensive schedule, including—

(A) research and development milestones;

(B) acquisition milestones, including design reviews and key decision points;

(C) key test events, including ground and flight tests and ballistic missile defense system tests;

(D) delivery and fielding schedules;

(E) quantities of assets planned for acquisition and delivery in total and by fiscal year; and

(F) planned contract award dates.

(2) A detailed technical description of—

(A) the capability to be developed, including hardware and software;

(B) system requirements, including performance requirements;

(C) how the proposed capability satisfies a capability identified by the commanders of the combatant commands on a prioritized capabilities list;

(D) key knowledge points that must be achieved to permit continuation of the program and to inform production and deployment decisions; and

(E) how the Director plans to improve the capability over time.

(3) A cost estimate, including—

(A) a life-cycle cost estimate that separately identifies the costs regarding research and development, procurement, military

construction, operations and sustainment, and disposal;

(B) program acquisition unit costs for the program element;

(C) average procurement unit costs and program acquisition costs for the program element; and

(D) an identification of when the document regarding the program joint cost analysis requirements description is scheduled to be approved.

(4) A test baseline summarizing the comprehensive test program for the program element or major subprogram outlined in the integrated master test plan.

(c) ANNUAL REPORTS ON ACQUISITION BASELINES.—(1) Not later than February 15 of each year, the Director shall submit to the congressional defense committees a report on the acquisition baselines required by subsection (a).

(2)(A) The first report under paragraph (1) shall set forth each acquisition baseline required by subsection (a) for a program element or major subprogram.

(B) Each subsequent report under paragraph (1) shall include—

(i) any new acquisition baselines required by subsection (a) for a program element or major subprogram; and

(ii) with respect to an acquisition baseline that was previously included in a report under paragraph (1), an identification of any changes or variances made to the elements described in subsection (b) for such acquisition baseline, as compared to—

(I) the initial acquisition baseline for such program element or major subprogram; and

(II) the acquisition baseline for such program element or major subprogram that was submitted in the report during the previous year.

(3) Each report under this subsection shall be submitted in unclassified form, but may include a classified annex.

(d) EXCEPTION TO LIMITATION ON REVISION.—The Director may adjust or revise an acquisition baseline established under this section if the Director submits to the congressional defense committees notification of—

(1) a justification for such adjustment or revision;

(2) the specific adjustments or revisions made to the acquisition baseline, including to the elements described in subsection (b); and

(3) the effective date of the adjusted or revised acquisition baseline.

(e) OPERATIONS AND SUSTAINMENT COST ESTIMATES.—The Director shall ensure that each life-cycle cost estimate included in an acquisition baseline pursuant to subsection (b)(3)(A) includes—

(1) all of the operations and sustainment costs for which the Director is responsible; and

(2) a description of the operations and sustainment functions and costs for which a military department is responsible.

(Added Pub. L. 112–81, div. A, title II, § 231(a)(1), Dec. 31, 2011, 125 Stat. 1337; amended Pub. L. 113–66, div. A, title II, § 231(b), Dec. 26, 2013, 127 Stat. 711.)

AMENDMENTS

2013—Subsec. (e). Pub. L. 113–66 added subsec. (e).

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective Dec. 31, 2021, of provisions in subsec. (c) of this section requiring submittal of annual report to Congress, see section 1061 of Pub. L. 114–328, set out as a note under section 111 of this title.

IMPROVEMENT TO OPERATIONS AND SUSTAINMENT COST ESTIMATES

Pub. L. 113–66, div. A, title II, § 231(a), Dec. 26, 2013, 127 Stat. 710, provided that: ''In preparing the acquisition accountability reports on the ballistic missile defense system required by section 225 of title 10, United States Code, the Director of the Missile Defense Agency shall improve the quality of cost estimates relating to operations and sustainment that are included in such reports under subsection (b)(3)(A) of such section, including with respect to the confidence levels of such cost estimates.''

§ 226. Special operations forces: display of service-common and other support and enabling capabilities

(a) IN GENERAL.—The Secretary of Defense and the Secretary of each of the military departments shall include, in the budget materials submitted to Congress under section 1105 of title 31 for fiscal year 2022 and any subsequent fiscal year, a budget justification display for each applicable appropriation showing service-common and other support and enabling capabilities for special operations forces requested by a military service or Defense Agency. Such budget justification displays shall include each of the following:

(1) Details at the appropriation and line item level, including any amount for service-common support, acquisition support, training, operations, pay and allowances, base operations sustainment, and any other common services and support.

(2) An identification of any change in the level or type of service-common support and enabling capabilities provided by each of the military services or Defense Agencies to special operations forces for the fiscal year covered by the budget justification display when compared to the preceding fiscal year, including the rationale for any such change and any mitigating actions.

(3) An assessment of the specific effects that the budget justification display for the fiscal year covered by the display and any anticipated future manpower and force structure changes are likely to have on the ability of each of the military services to provide service-common support and enabling capabilities to special operations forces.

(4) Any other matters the Secretary of Defense or the Secretary of a military department determines are relevant.

(b) CONSOLIDATED BUDGET JUSTIFICATION DISPLAY.—The Secretary of Defense shall include, in the budget materials submitted to Congress under section 1105 of title 31, for fiscal year 2022 and any subsequent fiscal year, a consolidated budget justification display containing the same information as is required in the budget justification displays required under subsection (a). Such consolidated budget justification display

may be provided as a summary by appropriation for each military department and a summary by appropriation for all Defense Agencies.

(c) SERVICE-COMMON AND OTHER SUPPORT AND ENABLING CAPABILITIES.—In this section, the term ''service-common and other support and enabling capabilities'' means capabilities provided in support of special operations that are not reflected in Major Force Program–11 or designated as special operations forces-peculiar.

(Added Pub. L. 116–92, div. A, title X, § 1007(a), Dec. 20, 2019, 133 Stat. 1575; amended Pub. L. 116–283, div. A, title X, § 1002, Jan. 1, 2021, 134 Stat. 3836.)

PRIOR PROVISIONS

A prior section 226, added Pub. L. 102–190, div. A, title X, § 1002(a)(1), Dec. 5, 1991, 105 Stat. 1455, § 221; renumbered § 226, Pub. L. 102–484, div. A, title X, § 1002(a)(1), Oct. 23, 1992, 106 Stat. 2480; amended Pub. L. 103–160, div. A, title XI, § 1104, Nov. 30, 1993, 107 Stat. 1749; Pub. L. 108–136, div. A, title X, § 1031(a)(5), Nov. 24, 2003, 117 Stat. 1596; Pub. L. 109–364, div. A, title X, § 1007, Oct. 17, 2006, 120 Stat. 2373, related to scoring of outlays by the Director of the Office of Management and Budget and the Director of the Congressional Budget Office, prior to repeal by Pub. L. 112–81, div. A, title X, § 1061(3)(A), Dec. 31, 2011, 125 Stat. 1583.

AMENDMENTS

2021—Subsec. (a). Pub. L. 116–283, § 1002(1)(A)–(D), inserted ''of Defense and the Secretary of each of the military departments'' after ''Secretary'' and substituted ''2022'' for ''2021'', ''a budget justification display for each applicable appropriation'' for ''a consolidated budget justification display'', and ''displays shall include each of the following:'' for ''display shall include any amount for service-common or other capability development and acquisition, training, operations, pay, base operations sustainment, and other common services and support.''

Subsec. (a)(1) to (4). Pub. L. 116–283, § 1002(1)(E), added pars. (1) to (4).

Subsecs. (b), (c). Pub. L. 116–283, § 1002(2), (3), added subsec. (b) and redesignated former subsec. (b) as (c).

[§ 227. Repealed. Pub. L. 104–106, div. A, title X, § 1061(f)(1), Feb. 10, 1996, 110 Stat. 443]

Section, added Pub. L. 103–160, div. A, title III, § 374(a), Nov. 30, 1993, 107 Stat. 1636, directed Secretary of Defense to include recruiting costs in budget justification documents submitted to Congress each year in connection with submission of budget.

[§ 228. Repealed. Pub. L. 114–92, div. A, title X, § 1073(a)(1), Nov. 25, 2015, 129 Stat. 995]

Section, added Pub. L. 105–85, div. A, title III, § 321(a)(1), Nov. 18, 1997, 111 Stat. 1672; amended Pub. L. 107–314, div. A, title III, § 361, Dec. 2, 2002, 116 Stat. 2519; Pub. L. 108–136, div. A, title X, §§ 1031(a)(6)(A), (B)(i), 1043(b)(5), Nov. 24, 2003, 117 Stat. 1596, 1611; Pub. L. 112–81, div. A, title X, § 1064(4)(A), (B)(i), Dec. 31, 2011, 125 Stat. 1587, related to biannual reports on allocation of funds within operation and maintenance budget subactivities.

§ 229. Programs for combating terrorism: display of budget information

(a) SUBMISSION WITH ANNUAL BUDGET JUSTIFICATION DOCUMENTS.—The Secretary of Defense shall submit to Congress, as a part of the documentation that supports the President's annual budget for the Department of Defense, a consolidated budget justification display, in classified and unclassified form, that includes all programs and activities of the Department of Defense combating terrorism program.

(b) REQUIREMENTS FOR BUDGET DISPLAY.—The budget display under subsection (a) shall include—

(1) the amount requested, by appropriation and functional area, for each of the program elements, projects, and initiatives that support the Department of Defense combating terrorism program, with supporting narrative descriptions and rationale for the funding levels requested; and

(2) a summary, to the program element and project level of detail, of estimated expenditures for the current year, funds requested for the budget year, and budget estimates through the completion of the current future-years defense plan for the Department of Defense combating terrorism program.

(c) EXPLANATION OF INCONSISTENCIES.—As part of the budget display under subsection (a) for any fiscal year, the Secretary shall identify and explain—

(1) any inconsistencies between (A) the information submitted under subsection (b) for that fiscal year, and (B) the information provided to the Director of the Office of Management and Budget in support of the annual report of the President to Congress on funding for executive branch counterterrorism and antiterrorism programs and activities for that fiscal year in accordance with section 1051(b) of the National Defense Authorization Act for Fiscal Year 1998 (31 U.S.C. 1113 note); and

(2) any inconsistencies between (A) the execution, during the previous fiscal year and the current fiscal year, of programs and activities of the Department of Defense combating terrorism program, and (B) the funding and specification for such programs and activities for those fiscal years in the manner provided by Congress (both in statutes and in relevant legislative history).

(d) DEPARTMENT OF DEFENSE COMBATING TERRORISM PROGRAM.—In this section, the term ''Department of Defense combating terrorism program'' means the programs, projects, and activities of the Department of Defense related to combating terrorism inside and outside the United States.

(e) TERMINATION.—The requirement to submit a budget justification display under this section shall terminate on December 31, 2020.

(Added Pub. L. 106–65, div. A, title IX, § 932(b)(1), Oct. 5, 1999, 113 Stat. 727; amended Pub. L. 108–136, div. A, title X, § 1043(b)(6), Nov. 24, 2003, 117 Stat. 1611; Pub. L. 114–92, div. A, title X, § 1044, Nov. 25, 2015, 129 Stat. 977; Pub. L. 115–91, div. A, title X, § 1032, Dec. 12, 2017, 131 Stat. 1550.)

REFERENCES IN TEXT

Section 1051(b) of the National Defense Authorization Act for Fiscal Year 1998, referred to in subsec. (c)(1), is section 1051(b) of Pub. L. 105–85, which is set out as a note under section 1113 of Title 31, Money and Finance.

AMENDMENTS

2017—Subsec. (e). Pub. L. 115–91 added subsec. (e).

2015—Subsecs. (d), (e). Pub. L. 114–92 redesignated subsec. (e) as (d) and struck out former subsec. (d).

Prior to amendment, text of subsec. (d) read as follows: ''The Secretary shall submit to the congressional defense committees a semiannual report on the obligation and expenditure of funds for the Department of Defense combating terrorism program. Such reports shall be submitted not later than April 15 each year, with respect to the first half of a fiscal year, and not later than November 15 each year, with respect to the second half of a fiscal year. Each such report shall compare the amounts of those obligations and expenditures to the amounts authorized and appropriated for the Department of Defense combating terrorism program for that fiscal year, by budget activity, sub-budget activity, and program element or line item. The second report for a fiscal year shall show such information for the second half of the fiscal year and cumulatively for the whole fiscal year. The report shall be submitted in unclassified form, but may have a classified annex.''

2003—Subsec. (f). Pub. L. 108–136 struck out heading and text of subsec. (f). Text read as follows: ''In this section, the term 'congressional defense committees' means—

''(A) the Committee on Armed Services and the Committee on Appropriations of the Senate; and

''(B) the Committee on Armed Services and the Committee on Appropriations of the House of Representatives.''

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective Dec. 31, 2021, of provisions of this section requiring submittal of annual report to Congress, see section 1061 of Pub. L. 114–328, set out as a note under section 111 of this title.

PRIORITIZATION OF FUNDS FOR EQUIPMENT READINESS AND STRATEGIC CAPABILITY

Pub. L. 109–364, div. A, title III, §323, Oct. 17, 2006, 120 Stat. 2146, as amended by Pub. L. 110–181, div. A, title III, §353, Jan. 28, 2008, 122 Stat. 72; Pub. L. 111–383, div. A, title III, §332(a)–(f), Jan. 7, 2011, 124 Stat. 4185, 4187; Pub. L. 113–66, div. A, title III, §332, Dec. 26, 2013, 127 Stat. 739, provided that:

''(a) PRIORITIZATION OF FUNDS.—The Secretary of Defense shall take such steps as may be necessary through the planning, programming, budgeting, and execution systems of the Department of Defense to ensure that financial resources are provided for each fiscal year as necessary to enable—

''(1) the Secretary of each military department to meet the requirements of that military department for that fiscal year for the repair, recapitalization, and replacement of equipment used in overseas contingency operations; and

''(2) the Secretary of the Army to meet the requirements of the Army, and the Secretary of the Navy to meet the requirements of the Marine Corps, for that fiscal year, in addition to the requirements under paragraph (1), for the reconstitution of equipment and materiel in prepositioned stocks in accordance with requirements under the policy or strategy implemented under the guidelines in section 2229 of title 10, United States Code.

''(b) SUBMISSION OF BUDGET INFORMATION.—

''(1) SUBMISSION OF INFORMATION.—As part of the budget justification materials submitted to Congress in support of the President's budget for a fiscal year or a request for supplemental appropriations, the Secretary of Defense shall include the following:

''(A) The information described in paragraph (2) for the fiscal year for which the budget justification materials are submitted, the fiscal year during which the materials are submitted, and the preceding fiscal year.

''(B) The information described in paragraph (2) for each of the fiscal years covered by the future-years defense program for the fiscal year in which the report is submitted based on estimates of any amounts required to meet each of the requirements under subsection (a) that are not met for that fiscal year and are deferred to the future-years defense program.

''(C) A consolidated budget justification summary of the information submitted under subparagraphs (A) and (B).

''(2) INFORMATION DESCRIBED.—The information described in this paragraph is information that clearly and separately identifies, by appropriations account, budget activity, activity group, sub-activity group, and program element or line item, the amounts requested for the programs, projects, and activities of—

''(A) each of the military departments for the repair, recapitalization, or replacement of equipment used in overseas contingency operations; and

''(B) the Army and the Marine Corps for the reconstitution of equipment and materiel in prepositioned stocks.

''(c) CONTINGENCY OPERATION DEFINED.—In this section, the term 'contingency operation' has the meaning given that term in section 101(a)(13) of title 10, United States Code.''

QUARTERLY DETAILED ACCOUNTING FOR OPERATIONS CONDUCTED AS PART OF THE GLOBAL WAR ON TERRORISM

Pub. L. 108–375, div. A, title X, §1041, Oct. 28, 2004, 118 Stat. 2048, which required the Secretary of Defense to submit quarterly reports on Operation Iraqi Freedom, Operation Enduring Freedom, Operation Noble Eagle, and any other operation designated by the President as being an operation of the Global War on Terrorism, was repealed by Pub. L. 112–81, div. A, title X, §1062(f)(2), Dec. 31, 2011, 125 Stat. 1585.

[§ 230. Repealed. Pub. L. 107–314, div. A, title X, § 1041(a)(2)(A), Dec. 2, 2002, 116 Stat. 2645]

Section, added Pub. L. 106–65, div. A, title X, §1041(a)(1), Oct. 5, 1999, 113 Stat. 758; amended Pub. L. 106–398, §1 [[div. A], title X, §1075(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–280, related to inclusion in the budget justification materials submitted to Congress of specific identification of amounts required for declassification of records.

§ 231. Budgeting for construction of naval vessels: annual plan and certification

(a) ANNUAL NAVAL VESSEL CONSTRUCTION PLAN AND CERTIFICATION.—The Secretary of the Navy shall include with the defense budget materials for a fiscal year each of the following:

(1) A plan for the construction of naval vessels developed in accordance with this section for each of the following classes of ships:

(A) Combatant and support vessels.

(B) Auxiliary vessels.

(2) A certification by the Secretary that both the budget for that fiscal year and the future-years defense program submitted to Congress in relation to such budget under section 221 of this title provide for funding of the construction of naval vessels at a level that is sufficient for the procurement of the vessels provided for in the plan under paragraph (1) on the schedule provided in that plan.

(b) ANNUAL NAVAL VESSEL CONSTRUCTION PLAN.—(1) The annual naval vessel construction plan developed for a fiscal year for purposes of subsection (a)(1) shall be designed so that the naval vessel force provided for under that plan supports the national security strategy of the United States as set forth in the most recent national security strategy report of the President under section 108 of the National Security Act of 1947 (50 U.S.C. 3043), except that, if at the time

such plan is submitted with the defense budget materials for that fiscal year, a national security strategy report required under such section 108 has not been submitted to Congress as required by paragraph (2) or paragraph (3), if applicable, of subsection (a) of such section, then such annual plan shall be designed so that the naval vessel force provided for under that plan supports the ship force structure recommended in the report of the most recent national defense strategy.

(2) Each such naval vessel construction plan shall include the following:

(A) A detailed program for the construction of combatant and support vessels for the Navy over the next 30 fiscal years.

(B) A detailed program for the construction of auxiliary vessels for the Navy over the next 30 fiscal years.

(C) A description of the necessary naval vessel force structure and capabilities to meet the requirements of the national security strategy of the United States or the most recent national defense strategy, whichever is applicable under paragraph (1).

(D) The estimated levels of annual funding by ship class in both graphical and tabular form necessary to carry out the program, together with a discussion of the procurement strategies on which such estimated levels of annual funding are based.

(E) The estimated total cost of construction for each vessel used to determine estimated levels of annual funding under subparagraph (D).

(F) The estimated operations and sustainment costs required to support the vessels delivered under the naval vessel construction plan.

(c) ASSESSMENT WHEN ANNUAL NAVAL VESSEL CONSTRUCTION PLAN DOES NOT MEET FORCE STRUCTURE REQUIREMENTS.—If the annual naval vessel construction plan for a fiscal year under subsection (b) does not result in a force structure or capabilities that meet the requirements identified in subsection (b)(2)(B), the Secretary shall include with the defense budget materials for that fiscal year an assessment of the extent of the strategic and operational risk to national security associated with the reduced force structure of naval vessels over the period of time that the required force structure or capabilities are not achieved. Such assessment shall include an analysis of whether the risks are acceptable, and plans to mitigate such risks. Such assessment shall be coordinated in advance with the commanders of the combatant commands and the Nuclear Weapons Council under section 179 of this title.

(d) CBO EVALUATION.—Not later than 60 days after the date on which the congressional defense committees receive the plan under subsection (a)(1), the Director of the Congressional Budget Office shall submit to such committees a report assessing the sufficiency of the estimated levels of annual funding included in such plan with respect to the budget submitted during the year in which the plan is submitted and the future-years defense program submitted under section 221 of this title.

(e) LIMITATION ON AVAILABILITY OF FUNDS FOR FISCAL YEARS WITHOUT PLAN AND CERTIFICATION.—(1) If the Secretary of Defense does not include with the defense budget materials for a fiscal year the plan and certification under subsection (a), the Secretary of Defense may not use more than 25 percent of the funds described in paragraph (2) during the fiscal year in which such materials are submitted until the date on which such plan and certification are submitted to the congressional defense committees.

(2) The funds described in this paragraph are funds made available to the Secretary of Defense for operation and maintenance, Defense-wide, for emergencies and extraordinary expenses, that remain available for obligation or expenditure as of the date on which the plan and certification under subsection (a) are required to be submitted.

(f) DEFINITIONS.—In this section:

(1) The term ''budget'', with respect to a fiscal year, means the budget for that fiscal year that is submitted to Congress by the President under section 1105(a) of title 31.

(2) The term ''defense budget materials'', with respect to a fiscal year, means the materials submitted to Congress by the Secretary of Defense in support of the budget for that fiscal year.

(3) The term ''national defense strategy'' means the review of the defense programs and policies of the United States that is carried out every four years under section 113(g) of this title.

(4) The term ''combatant and support vessel'' means any commissioned ship built or armed for naval combat or any naval ship designed to provide support to combatant ships and other naval operations. Such term does not include patrol coastal ships, non-commissioned combatant craft specifically designed for combat roles, or ships that are designated for potential mobilization.

(5) The term ''auxiliary vessel'' means any ship designed to operate in the open ocean in a variety of sea states to provide general support to either combatant forces or shore based establishments.

(Added Pub. L. 107–314, div. A, title X, § 1022(a)(1), Dec. 2, 2002, 116 Stat. 2639; amended Pub. L. 111–383, div. A, title X, § 1023(a), Jan. 7, 2011, 124 Stat. 4349; Pub. L. 112–81, div. A, title X, § 1011(a), Dec. 31, 2011, 125 Stat. 1558; Pub. L. 112–239, div. A, title X, § 1014(a), Jan. 2, 2013, 126 Stat. 1908; Pub. L. 113–66, div. A, title X, § 1021, Dec. 26, 2013, 127 Stat. 844; Pub. L. 113–291, div. A, title X, §§ 1021, 1071(c)(2), Dec. 19, 2014, 128 Stat. 3486, 3508; Pub. L. 114–92, div. A, title X, § 1021, Nov. 25, 2015, 129 Stat. 965; Pub. L. 115–91, div. A, title X, § 1021(d), Dec. 12, 2017, 131 Stat. 1547; Pub. L. 115–232, div. A, title X, § 1011, Aug. 13, 2018, 132 Stat. 1947; Pub. L. 116–283, div. A, title X, §§ 1021, 1081(a)(13), Jan. 1, 2021, 134 Stat. 3839, 3871.)

AMENDMENTS

2021—Pub. L. 116–283, § 1081(a)(13)(A), substituted ''national defense strategy'' for ''quadrennial defense review'' wherever appearing.

Subsec. (a). Pub. L. 116–283, § 1021(1)(A), substituted ''Secretary of the Navy'' for ''Secretary of Defense'' in introductory provisions.

Subsec. (a)(1). Pub. L. 116–283, § 1021(1)(B), struck out ''and'' after colon at end.

Subsec. (e)(1). Pub. L. 116–283, § 1021(2)(A), substituted ''the Secretary of Defense may not use more than 25 percent of the funds'' for ''the Secretary of the Navy may not use more than 50 percent of the funds''.

Subsec. (e)(2). Pub. L. 116–283, § 1021(2)(B), substituted ''Secretary of Defense'' for ''Secretary of the Navy'' and ''operation and maintenance, Defense-wide'' for ''operation and maintenance, Navy'' and inserted '', that remain available for obligation or expenditure as of the date on which the plan and certification under subsection (a) are required to be submitted'' before period at end.

Subsec. (f)(3). Pub. L. 116–283, § 1081(a)(13)(B), substituted ''section 113(g)'' for ''section 118''.

2018—Subsec. (b)(2)(F). Pub. L. 115–232 added subpar. (F).

2017—Subsec. (a). Pub. L. 115–91, § 1021(d)(1)(A), substituted ''year each of the following:'' for ''year—'' in introductory provisions.

Subsec. (a)(1). Pub. L. 115–91, § 1021(d)(1)(B), substituted ''A plan for the construction of naval vessels developed in accordance with this section for each of the following classes of ships:'' for ''a plan for the construction of combatant and support vessels for the Navy developed in accordance with this section;'' and added subpars. (A) and (B).

Subsec. (a)(2). Pub. L. 115–91, § 1021(d)(1)(C), substituted ''A certification'' for ''a certification''.

Subsec. (b)(2)(B) to (D). Pub. L. 115–91, § 1021(d)(2)(A), (B), added subpar. (B) and redesignated former subpars. (B) to (D) as (C) to (E), respectively.

Subsec. (b)(2)(E). Pub. L. 115–91, § 1021(d)(2)(C), substituted ''subparagraph (D)'' for ''subparagraph (C)''.

Pub. L. 115–91, § 1021(d)(2)(A), redesignated subpar. (D) as (E).

Subsec. (f)(5). Pub. L. 115–91, § 1021(d)(3), added par. (5).

2015—Subsec. (b)(2)(C). Pub. L. 114–92 inserted ''by ship class in both graphical and tabular form'' after ''The estimated levels of annual funding''.

2014—Subsec. (b)(1). Pub. L. 113–291, § 1071(c)(2), substituted ''(50 U.S.C. 3043)'' for ''(50 U.S.C. 404a)''.

Subsec. (f)(4). Pub. L. 113–291, § 1021, added par. (4).

2013—Subsec. (b)(1). Pub. L. 113–66, § 1021(a)(1), substituted ''shall be designed'' for ''should be designed'' in two places and ''supports'' for ''is capable of supporting'' in two places.

Subsec. (b)(2)(B). Pub. L. 113–66, § 1021(a)(2)(A), inserted ''and capabilities'' after ''naval vessel force structure''.

Subsec. (b)(2)(D). Pub. L. 113–66, § 1021(a)(2)(B), added subpar. (D).

Subsec. (c). Pub. L. 113–66, § 1021(b), added subsec. (c) and struck out former subsec. (c). Text read as follows: ''If the budget for a fiscal year provides for funding of the construction of naval vessels at a level that is not sufficient to sustain the naval vessel force structure specified in the naval vessel construction plan for that fiscal year under subsection (a), the Secretary shall include with the defense budget materials for that fiscal year an assessment that describes and discusses the risks associated with the reduced force structure of naval vessels that will result from funding naval vessel construction at such level. Such assessment shall be coordinated in advance with the commanders of the combatant commands.''

Subsecs. (e), (f). Pub. L. 112–239 added subsec. (e) and redesignated former subsec. (e) as (f).

2011—Pub. L. 112–81 amended section generally. Prior to amendment, section related to submission of a long-range plan for construction of combatant and support naval vessels that supports the force structure recommendations of a quadrennial defense review.

Pub. L. 111–383 amended section generally. Prior to amendment, section related to submission of an annual plan for construction of naval vessels and certification that the budget for the current fiscal year and the future-years defense program is sufficient for procurement of vessels provided for in the plan.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective Dec. 31, 2021, of provisions of this section requiring submittal of annual report to Congress, see section 1061 of Pub. L. 114–328, set out as a note under section 111 of this title.

§ 231a. Budgeting for life-cycle costs of aircraft for the Army, Navy, and Air Force: annual plan and certification

(a) ANNUAL AIRCRAFT PROCUREMENT PLAN AND CERTIFICATION.—Not later than 30 days after the date on which the President submits to Congress the budget for a fiscal year, the Secretary of Defense shall submit to the congressional defense committees the following:

(1) A plan for the procurement of the aircraft specified in subsection (b) for each of the Department of the Army, the Department of the Navy, and the Department of the Air Force developed in accordance with this section.

(2) A certification by the Secretary that both the budget for such fiscal year and the future-years defense program submitted to Congress in relation to such budget under section 221 of this title provide for funding of the procurement of aircraft at a level that is sufficient for the procurement of the aircraft provided for in the plan under paragraph (1) on the schedule provided in the plan.

(b) COVERED AIRCRAFT.—The aircraft specified in this subsection are the aircraft as follows:

(1) Fighter aircraft.

(2) Attack aircraft.

(3) Bomber aircraft.

(4) Intertheater lift aircraft.

(5) Intratheater lift aircraft.

(6) Intelligence, surveillance, and reconnaissance aircraft.

(7) Tanker aircraft.

(8) Remotely piloted aircraft.

(9) Rotary-wing aircraft.

(10) Operational support and executive lift aircraft.

(11) Any other major support aircraft designated by the Secretary of Defense for purposes of this section.

(c) ANNUAL AIRCRAFT PROCUREMENT PLAN.—(1) The annual aircraft procurement plan developed for a fiscal year for purposes of subsection (a) should be designed so that the aviation force provided for under the plan is capable of supporting the national military strategy of the United States as set forth in the most recent National Defense Strategy submitted under section 113(g) of this title and the most recent National Military Strategy submitted under section 153(b) of this title.

(2) Each annual aircraft procurement plan shall include the following:

(A) A detailed program for the procurement of the aircraft specified in subsection (b) for each of the Department of the Army, the Department of the Navy, and the Department of the Air Force over the next 15 fiscal years.

(B) A description of the aviation force structure necessary to meet the requirements of the national military strategy of the United States.

(C) The estimated levels of annual investment funding necessary to carry out each air-

craft program, together with a discussion of the procurement strategies on which such estimated levels of annual investment funding are based, set forth in aggregate for the Department of Defense and in aggregate for each military department.

(D) The estimated level of annual funding necessary to operate, maintain, sustain, and support each aircraft program throughout the life-cycle of the program, set forth in aggregate for the Department of Defense and in aggregate for each military department.

(E) For each of the cost estimates required by subparagraphs (C) and (D)—

(i) a description of whether the cost estimate is derived from the cost estimate position of the military department concerned or from the cost estimate position of the Office of Cost Assessment and Program Evaluation;

(ii) if the cost estimate position of the military department and the cost estimate position of the Office of Cost Assessment and Program Evaluation differ by more than 5 percent for any aircraft program, an annotated cost estimate difference and sufficient rationale to explain the difference;

(iii) the confidence or certainty level associated with the cost estimate for each aircraft program; and

(iv) a certification that the calculations from which the cost estimate is derived are based on common cost categories used by the Under Secretary of Defense for Acquisition and Sustainment for calculating the life-cycle cost of an aircraft program.

(F) An assessment by the Secretary of Defense of the extent to which the combined aircraft forces of the Department of the Army, the Department of the Navy, and the Department of the Air Force meet the national security requirements of the United States.

(3) For any cost estimate required by subparagraph (C) or (D) of paragraph (2) for any aircraft program for which the Secretary is required to include in a report under section 2432 of this title, the source of the cost information used to prepare the annual aircraft plan shall be derived from the Selected Acquisition Report data that the Secretary plans to submit to the congressional defense committees in accordance with subsection (f) of that section for the year for which the annual aircraft procurement plan is prepared.

(4) Each annual aircraft procurement plan shall be submitted in unclassified form, and shall contain a classified annex. A summary version of the unclassified report shall be made available to the public.

(d) ASSESSMENT WHEN AIRCRAFT PROCUREMENT BUDGET IS INSUFFICIENT TO MEET APPLICABLE REQUIREMENTS.—If the budget for any fiscal year provides for funding of the procurement of aircraft for the Department of the Army, the Department of the Navy, or the Department of the Air Force at a level that is not sufficient to sustain the aviation force structure specified in the aircraft procurement plan for such Department for that fiscal year under subsection (a), the Secretary shall include with the defense budget materials for that fiscal year an assessment that describes the funding shortfall and discusses the risks associated with the reduced force structure of aircraft that will result from funding aircraft procurement at such level. The assessment shall be coordinated in advance with the commanders of the combatant commands.

(e) ANNUAL REPORT ON AIRCRAFT INVENTORY.—(1) As part of the annual plan and certification required to be submitted under this section, the Secretary shall include a report on the aircraft in the inventory of the Department of Defense.

(2) Each report under paragraph (1) shall include the following, for the year covered by such report, the following: [1]

(A) The total number of aircraft in the inventory.

(B) The total number of the aircraft in the inventory that are active, stated in the following categories (with appropriate subcategories for mission aircraft, training aircraft, dedicated test aircraft, and other aircraft):

(i) Primary aircraft.

(ii) Backup aircraft.

(iii) Attrition and reconstitution reserve aircraft.

(C) The total number of the aircraft in the inventory that are inactive, stated in the following categories:

(i) Bailment aircraft.

(ii) Drone aircraft.

(iii) Aircraft for sale or other transfer to foreign governments.

(iv) Leased or loaned aircraft.

(v) Aircraft for maintenance training.

(vi) Aircraft for reclamation.

(vii) Aircraft in storage.

(D) The aircraft inventory requirements approved by the Joint Chiefs of Staff.

(3) Each report under paragraph (1) shall set forth each item specified in paragraph (2) separately for the regular component of each armed force and for each reserve component of each armed force and, for each such component, shall set forth each type, model, and series of aircraft provided for in the future-years defense program that covers the fiscal year for which the budget accompanying the plan, certification and report is submitted.

(f) BUDGET DEFINED.—In this section, the term ''budget'' means the budget of the President for a fiscal year as submitted to Congress pursuant to section 1105 of title 31.

(Added and amended Pub. L. 116–283, div. A, title I, § 151(a), title XVIII, § 1883(b)(2), Jan. 1, 2021, 134 Stat. 3437, 4294.)

AMENDMENT OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1883(b)(2), Jan. 1, 2021, 134 Stat. 4151, 4294, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, except as otherwise provided in title XVIII of Pub. L. 116–283, in title 10, United States Code, each reference in the text of such title to a source section that is redesignated by title XVIII of Pub.

[1] So in original.

L. 116–283, is amended by striking such reference and inserting a reference to the appropriate section as so redesignated. See 2021 Amendment note below.

PRIOR PROVISIONS

A prior section 231a, added Pub. L. 110–417, [div. A], title I, § 141(a), Oct. 14, 2008, 122 Stat. 4379; amended Pub. L. 112–81, div. A, title X, § 1069(a), (b), Dec. 31, 2011, 125 Stat. 1589, 1591; Pub. L. 113–66, div. A, title X, § 1091(a)(5), Dec. 26, 2013, 127 Stat. 875; Pub. L. 113–291, div. A, title X, § 1071(c)(2), Dec. 19, 2014, 128 Stat. 3508; Pub. L. 114–328, div. A, title I, § 137, Dec. 23, 2016, 130 Stat. 2039, set forth provisions providing for the annual budgeting for life-cycle cost of specified aircraft for the Navy, Army, and Air Force, prior to repeal by Pub. L. 115–232, div. A, title VIII, § 813(a)(1)(A), Aug. 13, 2018, 132 Stat. 1851.

AMENDMENTS

2021—Subsec. (c)(3). Pub. L. 116–283, § 1883(b)(2), which directed that each reference in the text of title 10 to a section that was redesignated by title XVIII of Pub. L. 116–283, as such section was in effect before the redesignation, be amended by striking such reference and inserting a reference to the appropriate redesignated section, was not executed with respect to ''section 2432'', which was redesignated as multiple sections.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by section 1883(b)(2) of Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

[§ 232. Repealed. Pub. L. 112–239, div. A, title X, § 1081(1)(A), Jan. 2, 2013, 126 Stat. 1960]

Section, added Pub. L. 108–375, div. A, title II, § 214(a), Oct. 28, 2004, 118 Stat. 1834, provided that amounts for research, development, test, and evaluation for the United States Joint Forces Command would be derived only from Defense-wide amounts and required a separate display for such amounts in the budget.

§ 233. Operation and maintenance budget presentation

(a) IDENTIFICATION OF BASELINE AMOUNTS IN O&M JUSTIFICATION DOCUMENTS.—In any case in which the amount requested in the President's budget for a fiscal year for a Department of Defense operation and maintenance program, project, or activity is different from the amount appropriated for that program, project, or activity for the current year, the O&M justification documents supporting that budget shall identify that appropriated amount and the difference between that amount and the amount requested in the budget, stated as an amount and as a percentage.

(b) NAVY FOR SHIP DEPOT MAINTENANCE AND FOR INTERMEDIATE SHIP MAINTENANCE.—In the O&M justification documents for the Navy for any fiscal year, amounts requested for ship depot maintenance and amounts requested for intermediate ship maintenance shall be identified and distinguished.

(c) DEFINITIONS.—In this section:

(1) The term ''O&M justification documents'' means Department of Defense budget justification documents with respect to accounts for operation and maintenance submitted to the congressional defense committees in support of the Department of Defense component of the President's budget for any fiscal year.

(2) The term ''President's budget'' means the budget of the President submitted to Congress under section 1105 of title 31 for any fiscal year.

(3) The term ''current year'' means the fiscal year during which the President's budget is submitted in any year.

(Added Pub. L. 108–375, div. A, title X, § 1003(a)(1), Oct. 28, 2004, 118 Stat. 2035.)

§ 234. POW/MIA activities: display of budget information

(a) SUBMISSION WITH ANNUAL BUDGET JUSTIFICATION DOCUMENTS.—The Secretary of Defense shall submit to Congress, as a part of the defense budget materials for a fiscal year, a consolidated budget justification display, in classified and unclassified form, that covers all programs and activities of Department of Defense POW/MIA accounting and recovery organizations.

(b) REQUIREMENTS FOR BUDGET DISPLAY.—The budget display under subsection (a) for a fiscal year shall include for each such organization the following:

(1) A statement of what percentage of the requirements originally requested by the organization in the budget review process that the budget requests funds for.

(2) A summary of actual or estimated expenditures by that organization for the fiscal year during which the budget is submitted and for the fiscal year preceding that year.

(3) The amount in the budget for that organization.

(4) A detailed explanation of the shortfalls, if any, in the funding of any requirement shown pursuant to paragraph (1), when compared to the amount shown pursuant to paragraph (3).

(5) The budget estimate for that organization for the five fiscal years after the fiscal year for which the budget is submitted.

(c) DEPARTMENT OF DEFENSE POW/MIA ACCOUNTING AND RECOVERY ORGANIZATIONS.—In this section, the term ''Department of Defense POW/MIA accounting and recovery organization'' means any of the following (and any successor organization):

(1) The Defense Prisoner of War/Missing Personnel Office (DPMO).

(2) The Joint POW/MIA Accounting Command (JPAC).

(3) The Armed Forces DNA Identification Laboratory (AFDIL).

(4) The Life Sciences Equipment Laboratory (LSEL) of the Air Force.

(5) Any other element of the Department of Defense the mission of which (as designated by the Secretary of Defense) involves the accounting for and recovery of members of the armed forces who are missing in action or prisoners of war or who are unaccounted for.

(d) OTHER DEFINITIONS.—In this section:

(1) The term ''defense budget materials'', with respect to a fiscal year, means the materials submitted to Congress by the Secretary of Defense in support of the budget for that fiscal year.

(2) The term ''budget'', with respect to a fiscal year, means the budget for that fiscal year that is submitted to Congress by the President under section 1105(a) of title 31.

(Added Pub. L. 109–364, div. A, title V, § 563(a), Oct. 17, 2006, 120 Stat. 2221.)

§ 235. Procurement of contract services: specification of amounts requested in budget

(a) SUBMISSION WITH ANNUAL BUDGET JUSTIFICATION MATERIALS.—In the budget justification materials submitted to Congress in support of the Department of Defense budget for any fiscal year (as submitted with the budget of the President under section 1105(a) of title 31), the Secretary of Defense shall include the information described in subsection (b) with respect to the procurement of contract services.

(b) INFORMATION PROVIDED.—For each budget account, the materials submitted shall clearly and separately identify—

(1) the amount requested for the procurement of contract services for each Department of Defense component, installation, or activity; and

(2) the number of full-time contractor employees (or the equivalent of full-time in the case of part-time contractor employees) projected and justified for each Department of Defense component, installation, or activity based on the inventory of contracts for services required by subsection (c) of section 2330a of this title and the review required by subsection (e) of such section.

(c) CONTRACT SERVICES DEFINED.—In this section, the term ''contract services''—

(1) means services from contractors; but

(2) excludes services relating to research and development and services relating to military construction.

(Added Pub. L. 111–84, div. A, title VIII, § 803(a)(1), Oct. 28, 2009, 123 Stat. 2401.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1809(h)(1), Jan. 1, 2021, 134 Stat. 4151, 4162, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 207 of this title, as amended by section 1809(a) of Pub. L. 116–283, added after section 3136, as transferred and redesignated by section 1809(g) of Pub. L. 116–283, and renumbered as section 3137 of this title. See Effective Date of 2021 Amendment note below.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in Pub. L. 110–181, div. A, title VIII, § 806, Jan. 28, 2008, 122 Stat. 213, which was set out as a note under section 221 of this title, prior to repeal by Pub. L. 111–84, § 803(a)(3).

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 236. Personal protection equipment procurement: display of budget information

(a) BUDGET JUSTIFICATION DISPLAY.—The Secretary of Defense shall submit to Congress, as a part of the defense budget materials for each fiscal year after fiscal year 2014, a consolidated budget justification display that covers all programs and activities associated with the procurement of personal protection equipment during the period covered by the future-years defense program submitted in that fiscal year under section 221.

(b) REQUIREMENTS FOR BUDGET DISPLAY.—The consolidated budget justification display under subsection (a) for a fiscal year shall include the following:

(1) The amount for personal protection equipment included in both the base budget of the President and any overseas contingency operations budget of the President.

(2) A brief description of each category of personal protection equipment for each military department planned to be procured and developed.

(3) For each category planned to be procured using funds made available for operation and maintenance (whether under the base budget or any overseas contingency operations budget)—

(A) the relevant appropriations account, budget activity, and subactivity group for the category; and

(B) the funding profile for the fiscal year as requested, including cost and quantities, and an estimate of projected investments or procurements for each of the subsequent five fiscal years.

(4) For each category planned to be developed using funds made available for research, development, test, and evaluation (whether under the base budget or any overseas contingency operations budget)—

(A) the relevant appropriations account, program, project or activity; program element number, and line number; and

(B) the funding profile for the fiscal year as requested and an estimate of projected investments for each of the subsequent five fiscal years.

(c) DEFINITIONS.—In this section:

(1) The terms ''budget'' and ''defense budget materials'' have the meaning given those terms in section 234 of this title.

(2) The term ''category of personal protection equipment'' means the following:

(A) Body armor components.

(B) Combat helmets.

(C) Combat protective eyewear.

(D) Other items as determined appropriate by the Secretary.

(Added Pub. L. 113–66, div. A, title I, § 141(a), Dec. 26, 2013, 127 Stat. 696.)

§ 237. Embedded mental health providers of the reserve components: display of budget information

The Secretary of Defense shall submit to Congress, as a part of the documentation that supports the President's annual budget for the De-

partment of Defense, a budget justification display with respect to embedded mental health providers within each reserve component, including the amount requested for each such component.

(Added Pub. L. 113–66, div. A, title VII, § 721(a), Dec. 26, 2013, 127 Stat. 799.)

§ 238. Cyber mission forces: program elements

(a) BUDGET JUSTIFICATION DISPLAY.—The Secretary of Defense shall submit to Congress, as a part of the defense budget materials for fiscal year 2021 and each fiscal year thereafter, a budget justification display, in electronic and print formats, that includes—

(1) a major force program category for the five-year defense plan of the Department of Defense for the training, manning, and equipping of the cyber mission forces and the cyberspace operations forces; and

(2) program elements for the cyber mission forces and the cyberspace operations forces.

(b) WAIVER.—The Secretary may waive the requirement under subsection (a) for fiscal year 2021 if the Secretary—

(1) determines the Secretary is unable to comply with such requirement for fiscal year 2021; and

(2) establishes a plan to implement the requirement for fiscal year 2022.

(c) SUBMISSION.—The Secretary shall provide the displays described in subsection (a)—

(1) in electronic format not later than five days after the submission by the President under section 1105(a) of title 31 of the budget; and

(2) in print format not later than 21 days after the submission by the President under section 1105(a) of title 31 of the budget.

(Added Pub. L. 113–291, div. A, title XVI, § 1631(a)(1), Dec. 19, 2014, 128 Stat. 3637; amended Pub. L. 116–283, div. A, title XVII, § 1701(2), Jan. 1, 2021, 134 Stat. 4080.)

AMENDMENTS

2021—Subsec. (a). Pub. L. 116–283, § 1701(2)(A)(i), substituted ''2021'' for ''2017'' and inserted '', in electronic and print formats,'' after ''display'' in introductory provisions.

Subsec. (a)(1). Pub. L. 116–283, § 1701(2)(A)(ii), inserted ''and the cyberspace operations forces'' before the semicolon.

Subsec. (a)(2). Pub. L. 116–283, § 1701(2)(A)(iii), inserted ''and the cyberspace operations forces'' before period at end.

Subsec. (b). Pub. L. 116–283, § 1701(2)(B)(i), substituted ''2021'' for ''2017'' in introductory provisions.

Subsec. (b)(1). Pub. L. 116–283, § 1701(2)(B)(ii), substituted ''2021'' for ''2017''.

Subsec. (b)(2). Pub. L. 116–283, § 1701(2)(B)(iii), substituted ''2022'' for ''2018''.

Subsec. (c). Pub. L. 116–283, § 1701(2)(C), added subsec. (c).

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective Dec. 31, 2021, of provisions of this section requiring submittal of annual report to Congress, see section 1061 of Pub. L. 114–328, set out as a note under section 111 of this title.

§ 239. National security space programs: major force program and budget assessment

(a) ESTABLISHMENT OF MAJOR FORCE PROGRAM.—The Secretary of Defense shall establish a unified major force program for national security space programs pursuant to section 222(b) of this title to prioritize national security space activities in accordance with the requirements of the Department of Defense and national security.

(b) BUDGET ASSESSMENT.—(1) Not later than 30 days after the date on which the President submits to Congress the budget for each of fiscal years 2017 through 2021, the Secretary of Defense shall submit to the congressional defense committees a report on the budget for national security space programs of the Department of Defense. The Secretary may include the report in the defense budget materials if the Secretary submits such materials to Congress by such date.

(2) Each report on the budget for national security space programs of the Department of Defense under paragraph (1) shall include the following:

(A) An overview of the budget, including—

(i) a comparison between that budget, the previous budget, the most recent and prior future-years defense program submitted to Congress under section 221 of this title, and the amounts appropriated for such programs during the previous fiscal year; and

(ii) the specific identification, as a budgetary line item, for the funding under such programs.

(B) An assessment of the budget, including significant changes, priorities, challenges, and risks.

(C) Any additional matters the Secretary determines appropriate.

(3) Each report under paragraph (1) shall be submitted in unclassified form, but may include a classified annex.

(c) DEFINITIONS.—In this section:

(1) The term ''budget'', with respect to a fiscal year, means the budget for that fiscal year that is submitted to Congress by the President under section 1105(a) of title 31.

(2) The term ''defense budget materials'', with respect to a fiscal year, means the materials submitted to Congress by the Secretary of Defense in support of the budget for that fiscal year.

(Added Pub. L. 114–92, div. A, title XVI, § 1601(a)(1), Nov. 25, 2015, 129 Stat. 1095; amended Pub. L. 115–232, div. A, title XVI, § 1605, Aug. 13, 2018, 132 Stat. 2107.)

AMENDMENTS

2018—Subsec. (b)(1). Pub. L. 115–232 amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''The Secretary shall include with the defense budget materials for each of fiscal years 2017 through 2020 a report on the budget for national security space programs of the Department of Defense.''

PLAN TO CARRY OUT UNIFIED MAJOR FORCE PROGRAM DESIGNATION

Pub. L. 114–92, div. A, title XVI, § 1601(b), Nov. 25, 2015, 129 Stat. 1096, provided that: ''Not later than 180 days after the date of the enactment of this Act [Nov. 25, 2015], the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a plan to carry out the uni-

fied major force program designation required by section 239(a) of title 10, United States Code, as added by subsection (a)(1), including any recommendations for legislative action the Secretary determines appropriate.''

§ 239a. Missile defense and defeat programs: major force program and budget assessment

(a) ESTABLISHMENT OF MAJOR FORCE PROGRAM.—The Secretary of Defense shall establish a unified major force program for missile defense and defeat programs pursuant to section 222(b) of this title to prioritize missile defense and defeat programs in accordance with the requirements of the Department of Defense and national security.

(b) BUDGET ASSESSMENT.—(1) The Secretary shall include with the defense budget materials for each of fiscal years 2019 through 2023 a report on the budget for missile defense and defeat programs of the Department of Defense.

(2) Each report on the budget for missile defense and defeat programs of the Department under paragraph (1) shall include the following:

(A) An overview of the budget, including—

(i) a comparison between that budget, the previous budget, the most recent and prior future-years defense program submitted to Congress under section 221 of this title (such comparison shall exclude the responsibility for research and development of the continuing improvement of such missile defense and defeat program), and the amounts appropriated for such missile defense and defeat programs during the previous fiscal year; and

(ii) the specific identification, as a budgetary line item, for the funding under such programs.

(B) An assessment of the budget, including significant changes, priorities, challenges, and risks.

(C) Any additional matters the Secretary determines appropriate.

(3) Each report under paragraph (1) shall be submitted in unclassified form, but may include a classified annex.

(c) DEFINITIONS.—In this section:

(1) The term ''budget'', with respect to a fiscal year, means the budget for that fiscal year that is submitted to Congress by the President under section 1105(a) of title 31.

(2) The term ''defense budget materials'', with respect to a fiscal year, means the materials submitted to Congress by the Secretary of Defense in support of the budget for that fiscal year.

(3) The term ''missile defense and defeat programs'' means active and passive ballistic missile defense programs, cruise missile defense programs for the homeland, and missile defeat programs.

(Added Pub. L. 115–91, div. A, title XVI, §1676(a)(1), Dec. 12, 2017, 131 Stat. 1771.)

§ 239b. Certain intelligence-related programs: budget justification materials

(a) PROHIBITION ON USE OF PROGRAM ELEMENTS.—In the budget justification materials submitted to Congress in support of the Department of Defense budget for fiscal year 2021 and each fiscal year thereafter (as submitted with the budget of the President under section 1105(a) of title 31), the Secretary of Defense may not include in any single program element both funds made available under the Military Intelligence Program and funds made available outside of the Military Intelligence Program.

(b) DEFINITIONS.—In this section:

(1) The term ''budget'' has the meaning given that term in section 231(f) of this title.

(2) The term ''defense budget materials'' has the meaning given that term in section 231(f) of this title.

(Added Pub. L. 115–232, div. A, title XVI, §1624(b)(1), Aug. 13, 2018, 132 Stat. 2120.)

CHAPTER 9A—AUDIT

Sec.

240a. Audit of Department of Defense financial statements.

240b. Financial Improvement and Audit Remediation Plan.

240c. Audit: consolidated corrective action plan; centralized reporting system.

240d. Audits: audit of financial statements of Department of Defense components by independent external auditors.

240e. Audits: use of commercial data integration and analysis products in preparing audits.

240f. Audits: selection of service providers for audit services.

240g. Defense Business Audit Remediation Plan.

240h. Annual report on auditable financial statements.

240i. Annual report on unfunded priorities.

[251 to 254b. Renumbered.]

AMENDMENTS

2021—Pub. L. 116–283, div. A, title X, §1005(b)(2), Jan. 1, 2021, 134 Stat. 3838, added item 240i.

2019—Pub. L. 116–92, div. A, title X, §§1002(b), 1004(a)(2), Dec. 20, 2019, 133 Stat. 1571, 1573, added items 240g and 240h.

2018—Pub. L. 115–232, div. A, title X, §1002(a)(1)(B), Aug. 13, 2018, 132 Stat. 1945, renumbered items 251 to 254b as 240a to 240f, respectively.

§ 240a. Audit of Department of Defense financial statements

(a) ANNUAL AUDIT REQUIRED.—The Secretary of Defense shall ensure that a full audit is performed on the financial statements of the Department of Defense for each fiscal year as required by section 3521(e) of title 31.

(b) ANNUAL REPORT ON AUDIT.—The Secretary shall submit to Congress the results of the audit performed in accordance with subsection (a) for a fiscal year by not later than March 31 of the following fiscal year.

(Added Pub. L. 115–91, div. A, title X, §1002(b)(1), Dec. 12, 2017, 131 Stat. 1538, §251; renumbered §240a, Pub. L. 115–232, div. A, title X, §1002(a)(1)(A), Aug. 13, 2018, 132 Stat. 1945.)

AMENDMENTS

2018—Pub. L. 115–232 renumbered section 251 of this title as this section.

REVIEW AND RECOMMENDATIONS ON EFFORTS TO OBTAIN AUDIT OPINION ON FULL FINANCIAL STATEMENTS

Pub. L. 115–91, div. A, title X, §1006, Dec. 12, 2017, 131 Stat. 1544, provided that:

''(a) IN GENERAL.—The Secretary of Defense may establish within the Department of Defense a team of distinguished, private sector experts with experience conducting financial audits of large public or private sector organizations to review and make recommendations to improve the efforts of the Department to obtain an audit opinion on its full financial statements.

''(b) SCOPE OF ACTIVITIES.—A team established pursuant to subsection (a) shall—

''(1) identify impediments to the progress of the Department in obtaining an audit opinion on its full financial statements, including an identification of the organizations or elements that are lagging in their efforts toward obtaining such audit opinion;

''(2) estimate when an audit opinion on the full financial statements of the Department will be obtained; and

''(3) consider mechanisms and incentives to support efficient achievement by the Department of its audit goals, including organizational mechanisms to transfer direction and management control of audit activities from subordinate organizations to the Office of the Secretary of Defense, individual personnel incentives, workforce improvements (including in senior leadership positions), business process, technology, and systems improvements (including the use of data analytics), and metrics by which the Secretary and Congress may measure and assess progress toward achievement of the audit goals of the Department.

''(c) REPORTS.—

''(1) REPORT ON ESTABLISHMENT OF TEAM.—If the Secretary takes action pursuant to subsection (a), the Secretary shall, not later than September 30, 2019, submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the team established pursuant to that subsection, including a description of the actions taken and to be taken by the team pursuant to subsection (b).

''(2) REPORT ON DETERMINATION NOT TO ESTABLISH TEAM.—If as of June 1, 2019, the Secretary has determined not to establish a team authorized by subsection (a), the Secretary shall submit to the Committees on Armed Services of the Senate and the House of Representatives on that date a report on the determination, including an explanation and justification for the determination.''

§240b. Financial Improvement and Audit Remediation Plan

(a) FINANCIAL IMPROVEMENT AND AUDIT REMEDIATION PLAN.—

(1) IN GENERAL.—The Chief Management Officer of the Department of Defense shall, in consultation with the Under Secretary of Defense (Comptroller), maintain a plan to be known as the ''Financial Improvement and Audit Remediation Plan''.

(2) ELEMENTS.—The plan required by paragraph (1) shall—

(A) describe specific actions to be taken, including interim milestones with a detailed description of the subordinate activities required, and estimate the costs associated with—

(i) correcting the financial management deficiencies that impair the ability of the Department of Defense to prepare timely, reliable, and complete financial management information;

(ii) ensuring the financial statements of the Department of Defense go under full financial statement audit, and that the Department leadership makes every effort to reach an unmodified opinion as soon as possible;

(iii) ensuring the audit of the financial statements of the Department of Defense for each fiscal year after fiscal year 2020 occurs by not later than March 31 following such fiscal year;

(iv) achieving an unqualified audit opinion for each major element of the statement of budgetary resources of the Department of Defense; and

(v) addressing the existence and completeness of each major category of Department of Defense assets; and

(B) systematically tie the actions described under subparagraph (A) to business process and control improvements and business systems modernization efforts described in section 2222 of this title.

(b) REPORT AND BRIEFING REQUIREMENTS.—

(1) ANNUAL REPORT.—

(A) IN GENERAL.—Not later than June 30, 2019, and annually thereafter, the Under Secretary of Defense (Comptroller) shall submit to the congressional defense committees a report on the status of the implementation by the Department of Defense of the Financial Improvement and Audit Remediation Plan under subsection (a).

(B) ELEMENTS.—Each report under subparagraph (A) shall include the following:

(i) An analysis of the consolidated corrective action plan management summary prepared pursuant to section 240c of this title.

(ii) Current Department of Defense-wide information on the status of corrective actions plans related to critical capabilities and material weaknesses, including the standard data elements recommended in the implementation guide for Office of Management and Budget Circular A–123, for the armed forces, military departments, and Defense Agencies.

(iii) A current description of the work undertaken and planned to be undertaken by the Department of Defense, and the military departments, Defense Agencies, and other organizations and elements of the Department, to test and verify transaction data pertinent to obtaining an unqualified audit of their financial statements, including from feeder systems.

(iv) A current projected timeline of the Department in connection with the audit of the full financial statements of the Department, to be submitted to Congress annually not later than six months after the submittal to Congress of the budget of the President for a fiscal year under section 1105 of title 31, including the following:

(I) The date on which the Department projects the beginning of an audit of the full financial statements of the Department, and the military departments, Defense Agencies, and other organizations and elements of the Department, for a fiscal year.

(II) The date on which the Department projects the completions of audits of the full financial statements of the Department, and the military departments, De-

fense Agencies, and other organizations and elements of the Department, for a fiscal year.

(III) The dates on which the Department estimates it will obtain an unqualified audit opinion on the full financial statements of the Department, the military departments, the Defense Agencies, and other organizations and elements of the Department for a fiscal year.

(v) A current estimate of the anticipated annual costs of maintaining an unqualified audit opinion on the full financial statements of the Department, the military departments, the Defense Agencies, and other organizations and elements of the Department for a fiscal year after an unqualified audit opinion on such full financial statements for a fiscal year is first obtained.

(vi) A certification of the results of the audit of the financial statements of the Department performed for the preceding fiscal year, and a statement summarizing, based on such results, the current condition of the financial statements of the Department.

(vii) If less than 50 percent of the auditing services under contract, as described in the briefing required under paragraph (2), are being performed by professionals meeting the qualifications described in section 240d(b) of this title, a detailed description of the risks associated with the risks of the acquisition strategy of the Department with respect to conducting audits and an explanation of how the strategy complies with the policies expressed by Congress.

(viii) If less than 25 percent of the auditing services under contract, as described in the briefing required under paragraph (2), are being performed by professionals meeting the qualifications described in section 240d(b) of this title, a written certification that the staffing ratio complies with commercial best practices and presents no increased risk of delay in the Department's ability to achieve a clean audit opinion.

(ix) If less than 50 percent of the audit remediation services under contract, as described in the briefing required under paragraph (2)(B), are being performed by individual professionals meeting the qualifications described in subsection (c), a detailed description of the risks associated with the risks of the acquisition strategy of the Department with respect to conducting audit remediation activities and an explanation of how the strategy complies with the policies expressed by Congress.

(x) If less than 25 percent of the audit remediation services under contract, as described in the briefing required under paragraph (2)(B), are being performed by individual professionals meeting the qualifications described in subsection (c), a written certification that the staffing ratio complies with commercial best practices and presents no increased risk of delay in the Department's ability to achieve a clean audit opinion.

(xi) A description of audit activities and results for classified programs, including a description of the use of procedures and requirements to prevent unauthorized exposure of classified information in such activities.

(xii) An identification of the manner in which the corrective action plan or plans of each department, agency, component, or element of the Department of Defense, and the corrective action plan of the Department as a whole, support the National Defense Strategy (NDS) of the United States.

(xiii) An[1] description of the incentives available pursuant to the guidance required by section 1004(a) of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, including a detailed explanation of how such incentives were provided during the fiscal year covered by the report.

(C) ADDITIONAL REQUIREMENTS.—

(i) UNCLASSIFIED FORM.—A description submitted pursuant to clause (vii) or (ix) of subparagraph (B) or a certification submitted pursuant to clause (viii) of such subparagraph shall be submitted in unclassified form, but may contain a classified annex.

(ii) DELEGATION.—The Secretary may not delegate the submission of a certification pursuant to clause (viii) of subparagraph (B) to any official other than the Deputy Secretary of Defense, the Chief Management Officer, or the Under Secretary of Defense (Comptroller).

(2) SEMIANNUAL BRIEFINGS.—(A) Not later than January 31 and June 30 each year, the Under Secretary of Defense (Comptroller) and the comptrollers of the military departments shall provide a briefing to the congressional defense committees on the status of the corrective action plan. Such briefing shall include both the absolute number and percentage of personnel performing the amount of auditing services being performed by professionals meeting the qualifications described in section 240d(b) of this title.

(B) Not later than January 31 and June 30 each year, the Under Secretary of Defense (Comptroller) and the comptrollers of the military departments shall provide a briefing to the congressional defense committees on the status of the corrective action plan. Such briefing shall include both the absolute number and percentage of personnel performing the amount of audit remediation services being performed by professionals meeting the qualifications described in subsection (c).

(3) CRITICAL CAPABILITIES DEFINED.—In this subsection, the term "critical capabilities" means the critical capabilities described in the Department of Defense report titled "Financial Improvement and Audit Readiness (FIAR) Plan Status Report" and dated May 2016.

(c) SELECTION OF AUDIT REMEDIATION SERVICES.—The selection of audit remediation service

[1] So in original. Probably should be "A".

providers shall be based, among other appropriate criteria, on qualifications, relevant experience, and capacity to develop and implement corrective action plans to address internal control and compliance deficiencies identified during a financial statement or program audit.

(Added and amended Pub. L. 115–91, div. A, title X, § 1002(c)(1)–(3), Dec. 12, 2017, 131 Stat. 1538, § 252; renumbered § 240b and amended Pub. L. 115–232, div. A, title X, § 1002(a)(1)(A), (2)–(c), Aug. 13, 2018, 132 Stat. 1945, 1946; Pub. L. 116–92, div. A, title X, §§ 1003, 1008–1009(b), Dec. 20, 2019, 133 Stat. 1571, 1575, 1576; Pub. L. 116–283, div. A, title X, §§ 1003, 1004(b), 1081(a)(14), Jan. 1, 2021, 134 Stat. 3836, 3837, 3871.)

REFERENCES IN TEXT

Section 1004(a) of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, referred to in subsec. (b)(1)(B)(xiii), is section 1004(a) of Pub. L. 116–283, which is set out as a note below.

CODIFICATION

Subsec. (a) of this section, as added by Pub. L. 115–91, is based on text of subsec. (a) of section 1003 of Pub. L. 111–84, div. A, title X, Oct. 28, 2009, 123 Stat. 2439, which was formerly set out as a note under section 2222 of this title, prior to repeal by Pub. L. 115–91, div. A, title X, § 1002(c)(4), Dec. 12, 2017, 131 Stat. 1540.

AMENDMENTS

2021—Subsec. (a)(2)(A)(iii). Pub. L. 116–283, § 1003, substituted ''for each fiscal year after fiscal year 2020 occurs by not later than March 31 following such fiscal year;'' for ''for fiscal year 2018 occurs by not later than March 31, 2019.''

Subsec. (b)(1)(B)(ix). Pub. L. 116–283, § 1081(a)(14)(A), substituted ''subsection'' for ''suhsection''.

Subsec. (b)(1)(B)(xii). Pub. L. 116–283, § 1081(a)(14)(B), inserted ''of'' after ''identification''.

Subsec. (b)(1)(B)(xiii). Pub. L. 116–283, § 1004(b), added cl. (xiii).

2019—Subsec. (b)(1)(B)(i). Pub. L. 116–92, § 1009(b), substituted ''section 240c'' for ''section 253a''.

Subsec. (b)(1)(B)(vii). Pub. L. 116–92, § 1003(a)(1), struck out ''or if less than 50 percent of the audit remediation services'' after ''auditing services'' and ''and audit remediation activities'' after ''conducting audits''.

Subsec. (b)(1)(B)(viii). Pub. L. 116–92, § 1003(a)(2), struck out ''or if less than 25 percent of the audit remediation services'' after ''auditing services''.

Subsec. (b)(1)(B)(ix), (x). Pub. L. 116–92, § 1003(c)(1), added cls. (ix) and (x).

Subsec. (b)(1)(B)(xi). Pub. L. 116–92, § 1008(1), added cl. (xi).

Subsec. (b)(1)(B)(xii). Pub. L. 116–92, § 1009(a), added cl. (xii).

Subsec. (b)(1)(C)(i). Pub. L. 116–92, § 1008(2), inserted ''or (ix)'' after ''clause (vii)''.

Subsec. (b)(2). Pub. L. 116–92, § 1003(b), (c)(2), designated existing provisions as subpar. (A), struck out ''or audit remediation'' before ''services'', and added subpar. (B).

Subsec. (c). Pub. L. 116–92, § 1003(d), added subsec. (c).

2018—Pub. L. 115–232, § 1002(a)(1)(A), renumbered section 252 of this title as this section.

Subsec. (a)(2)(A)(iii) to (v). Pub. L. 115–232, § 1002(a)(2), which directed amendment of subsec. (a)(2) by redesignating cl. (iii), relating to unqualified audit opinion, as (iv) and cl. (iv) as (v), was executed by making the amendment in subpar. (A) of subsec. (a)(2), to reflect the probable intent of Congress.

Subsec. (b)(1)(B)(vii), (viii). Pub. L. 115–232, § 1002(c)(1), added cls. (vii) and (viii).

Subsec. (b)(1)(C). Pub. L. 115–232, § 1002(c)(2), added subpar. (C).

Subsec. (b)(2). Pub. L. 115–232, § 1002(b), inserted at end ''Such briefing shall include both the absolute number and percentage of personnel performing the amount of auditing or audit remediation services being performed by professionals meeting the qualifications described in section 240d(b) of this title.''

2017—Subsec. (a). Pub. L. 115–91, § 1002(c)(3)(A), which directed substitution of ''Financial Improvement and Audit Remediation Plan'' for ''Financial Improvement and Audit Readiness Plan'' in heading, was executed by making the substitution for ''Financial Improvement Audit Readiness Plan'' to reflect the probable intent of Congress.

Subsec. (a)(1). Pub. L. 115–91, § 1002(c)(3)(B)(i), substituted ''Financial Improvement and Audit Remediation Plan'' for ''Financial Improvement and Audit Readiness Plan''.

Pub. L. 115–91, § 1002(c)(2)(A), struck out ''develop and'' before ''maintain''.

Subsec. (a)(2)(A). Pub. L. 115–91, § 1002(c)(3)(B)(ii)(I)(aa), in introductory provisions, substituted ''describe specific actions to be taken, including interim milestones with a detailed description of the subordinate activities required, and estimate the costs associated with'' for ''describe specific actions to be taken and the costs associated with''.

Subsec. (a)(2)(A)(ii). Pub. L. 115–91, § 1002(c)(3)(B)(ii)(I)(bb), substituted ''go under full financial statement audit, and that the Department leadership makes every effort to reach an unmodified opinion as soon as possible;'' for ''are validated as ready for audit by not later than September 30, 2017, and the statement of budgetary resources of the Department of Defense is validated as ready for audit by not later than September 30, 2014; and''.

Subsec. (a)(2)(A)(iii), (iv). Pub. L. 115–91, § 1002(c)(3)(B)(ii)(I)(cc), added cl. (iii), relating to unqualified audit opinion, and cl. (iv).

Subsec. (a)(2)(B). Pub. L. 115–91, § 1002(c)(3)(B)(ii)(II), inserted ''business'' before ''process and control'', struck out ''the business enterprise architecture and transition plan required by'' before ''section 2222'' and substituted period for semicolon at end.

Pub. L. 115–91, § 1002(c)(2)(B), substituted ''of this title'' for ''of title 10, United States Code''.

Subsec. (a)(2)(C), (D). Pub. L. 115–91, § 1002(c)(3)(B)(ii)(III), struck out subpars. (C) and (D) which read as follows:

''(C) prioritize—

''(i) improving the budgetary information of the Department of Defense, in order to achieve an unqualified audit opinion on the Department's statements of budgetary resources; and

''(ii) as a secondary goal, improving the accuracy and reliability of management information on the Department's mission-critical assets (military and general equipment, real property, inventory, and operating materials and supplies) and validating its accuracy through existence and completeness audits; and

''(D) include interim goals, including—

''(i) the objective of ensuring that the financial statement of each of the Department of the Army, the Department of the Navy, the Department of the Air Force, and the Defense Logistics Agency is validated as ready for audit: and

''(ii) a schedule setting forth milestones for elements of the military departments and financial statements of the military departments to be made ready for audit as part of the progress required to meet the objectives established pursuant to clause (i) of this subparagraph and clause (ii) of subparagraph (A) of this paragraph.''

Subsec. (b). Pub. L. 115–91, § 1002(c)(3)(C), added subsec. (b).

INCENTIVES FOR THE ACHIEVEMENT BY THE COMPONENTS OF THE DEPARTMENT OF DEFENSE OF UNQUALIFIED AUDIT OPINIONS ON THE FINANCIAL STATEMENTS

Pub. L. 116–283, div. A, title X, § 1004(a), Jan. 1, 2021, 134 Stat. 3837, provided that:

"(a) INCENTIVES REQUIRED.—

"(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act [Jan. 1, 2021], the Under Secretary of Defense (Comptroller), acting through the Deputy Chief Financial Officer of the Department of Defense, shall develop and issue guidance to provide incentives for the achievement by each department, agency, and other component of the Department of Defense of unqualified audit opinions on their financial statements.

"(2) APPLICABILITY.—The guidance required under paragraph (1) shall provide incentives for individual employees in addition to departments, agencies, and components."

ANNUAL REPORTS ON FUNDING FOR CORRECTIVE ACTION PLANS

Pub. L. 116–92, div. A, title X, §1009(c), Dec. 20, 2019, 133 Stat. 1576, as amended by Pub. L. 116–283, div. A, title X, §1081(c)(5), Jan. 1, 2021, 134 Stat. 3873, provided that: "Not later than five days after the submittal to Congress under section 1105(a) of title 31, United States Code, of the budget of the President for any fiscal year after fiscal year 2020, the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report setting forth a detailed estimate of the funding required for such fiscal year to procure, obtain, or otherwise implement each process, system, and technology identified to address the current corrective action plans of the departments, agencies, components, and elements of the Department of Defense, and the corrective action plan of the Department as a whole, for purposes of chapter 9A of title 10, United States Code, during such fiscal year."

[Pub. L. 116–283, div. A, title X, §1081(c), Jan. 1, 2021, 134 Stat. 3873, provided that the amendment made by section 1081(c)(5) of Pub. L. 116–283 to section 1009(c) of Pub. L. 116–92, set out above, is effective as of Dec. 20, 2020 (probably should be Dec. 20, 2019) and as if included in Pub. L. 116–92.]

§ 240c. Audit: consolidated corrective action plan; centralized reporting system

The Under Secretary of Defense (Comptroller) shall—

(1) on a bimonthly basis, prepare a consolidated corrective action plan management summary on the status of key corrective actions plans related to critical capabilities for the armed forces and for the components of the Department of Defense that support the armed forces; and

(2) develop and maintain a centralized monitoring and reporting process that captures and maintains up-to-date information, including the standard data elements recommended in the implementation guide for Office of Management and Budget Circular A–123, for key corrective action plans and findings and recommendations Department-wide that pertain to critical capabilities.

(Added Pub. L. 115–91, div. A, title X, §1002(d), Dec. 12, 2017, 131 Stat. 1540, §253; renumbered §240c, Pub. L. 115–232, div. A, title X, §1002(a)(1)(A), Aug. 13, 2018, 132 Stat. 1945.)

AMENDMENTS

2018—Pub. L. 115–232 renumbered section 253 of this title as this section.

§ 240d. Audits: audit of financial statements of Department of Defense components by independent external auditors

(a) AUDITS REQUIRED.—For purposes of satisfying the requirement under section 3521(e) of title 31 for audits of financial statements of Department of Defense components identified by the Director of the Office of Management and Budget under section 3515(c) of such title, the Inspector General of the Department of Defense shall obtain each year audits of the financial statements of each such component by an independent external auditor.

(b) SELECTION OF AUDITORS.—The selection of independent external auditors for purposes of subsection (a) shall be based, among other appropriate criteria, on their qualifications, independence, and capacity to conduct audits described in subsection (a) in accordance with applicable generally accepted government auditing standards. The Inspector General shall participate in the selection of the independent external auditors.

(c) MONITORING AUDITS.—The Inspector General shall monitor the conduct of all audits by independent external auditors under subsection (a).

(d) REPORTS ON AUDITS.—

(1) IN GENERAL.—The Inspector General shall require the independent external auditors conducting audits under subsection (a) to submit a report on their audits each year to—

(A) the Under Secretary of Defense (Comptroller) as the Chief Financial Officer of the Department of Defense for the purposes of chapter 9 of title 31 and the Chief Management Officer of the Department of Defense;

(B) the Controller of the Office of Federal Financial Management in the Office of Management and Budget;

(C) the head of each component audited; and

(D) the appropriate committees of Congress.

(2) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this subsection, the term "appropriate committees of Congress" means—

(A) the Committee on Armed Services, the Committee on Homeland Security and Governmental Affairs, and the Committee on Appropriations of the Senate; and

(B) the Committee on Armed Services, the Committee on Oversight and Government Reform, and the Committee on Appropriations of the House of Representatives.

(e) RELATIONSHIP TO EXISTING LAW.—The requirements of this section—

(1) shall not be construed to alter the requirement under section 3521(e) of title 31 that the financial statements of the Department of Defense as a whole be audited by the Inspector General or by an independent external auditor, as determined by the Inspector General; and

(2) shall not be construed to limit or alter the authorities of the Comptroller General of the United States under section 3521(g) of title 31.

(Added and amended Pub. L. 115–91, div. A, title X, §1002(e)(1)–(3), Dec. 12, 2017, 131 Stat. 1541,

§ 254; renumbered § 240d, Pub. L. 115–232, div. A, title X, § 1002(a)(1)(A), Aug. 13, 2018, 132 Stat. 1945.)

CODIFICATION

Text of section, as added by Pub. L. 115–91, is based on text of section 1005 of Pub. L. 114–92, div. A, title X, Nov. 25, 2015, 129 Stat. 961, which was formerly set out as a note under section 2222 of this title, prior to repeal by Pub. L. 115–91, div. A, title X, § 1002(e)(4), Dec. 12, 2017, 131 Stat. 1541.

AMENDMENTS

2018—Pub. L. 115–232 renumbered section 254 of this title as this section.

2017—Subsec. (a). Pub. L. 115–91, § 1002(e)(2)(B), struck out '', United States Code,'' after ''title 31''.

Subsec. (d)(1)(A). Pub. L. 115–91, § 1002(e)(3)(A)(i), inserted ''and the Chief Management Officer of the Department of Defense'' before semicolon.

Pub. L. 115–91, § 1002(e)(2)(A), struck out '', United States Code'' after ''title 31''.

Subsec. (d)(1)(C), (D). Pub. L. 115–91, § 1002(e)(3)(A)(ii)–(iv), added subpar. (C) and redesignated former subpar. (C) as (D).

Subsec. (e)(1). Pub. L. 115–91, § 1002(e)(3)(B), redesignated par. (2) as (1) and struck out former par. (1) which read as follows: ''shall be implemented in a manner that is consistent with the requirements of section 1008 of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107–107; 10 U.S.C. 113 note);''.

Subsec. (e)(2). Pub. L. 115–91, § 1002(e)(3)(B)(ii), redesignated par. (3) as (2). Former par. (2) redesignated (1).

Pub. L. 115–91, § 1002(e)(2)(B), struck out '', United States Code,'' after ''title 31''.

Subsec. (e)(3). Pub. L. 115–91, § 1002(e)(3)(B)(ii), redesignated par. (3) as (2).

Pub. L. 115–91, § 1002(e)(2)(A), struck out '', United States Code'' after ''title 31''.

CHANGE OF NAME

Committee on Oversight and Government Reform of House of Representatives changed to Committee on Oversight and Reform of House of Representatives by House Resolution No. 6, One Hundred Sixteenth Congress, Jan. 9, 2019.

TRANSPARENCY OF ACCOUNTING FIRMS USED TO SUPPORT DEPARTMENT OF DEFENSE AUDIT

Pub. L. 115–232, div. A, title X, § 1006, Aug. 13, 2018, 132 Stat. 1947, as amended by Pub. L. 116–92, div. A, title X, § 1011, Dec. 20, 2019, 133 Stat. 1577, provided that:

''(a) IN GENERAL.—For all contract actions (including awards, renewals, and amendments) occurring more than 180 days after the date of the enactment of this Act [Aug. 13, 2018], the Secretary of Defense shall require any accounting firm providing financial statement auditing or audit remediation services to the Department of Defense in support of the audit required under section 3521 of title 31, United States Code, to provide the Department with a statement setting forth the details of any disciplinary proceedings with respect to the accounting firm or its associated persons before any entity with the authority to enforce compliance with rules or laws applying to audit services offered by accounting firms.

''(b) TREATMENT OF STATEMENT.—A statement setting forth the details of a disciplinary proceeding submitted pursuant to subsection (a), and the information contained in such a statement, shall be—

''(1) treated as confidential to the extent required by the court or agency in which the proceeding has occurred; and

''(2) treated in a manner consistent with any protections or privileges established by any other provision of Federal law.''

§ 240e. Audits: use of commercial data integration and analysis products in preparing audits

(a) DEPLOYMENT OF DATA ANALYTICS CAPABILITIES.—The Secretary of Defense shall use competitive procedures under chapter 137 of this title to procure or develop technologies or services, including those based on commercially available information technologies and services to improve data collection and analyses to support preparation of auditable financial statements for the Department of Defense.

(b) USE OF FUNDING AND RESOURCES.—The Secretary of Defense may use science and technology funding, prototypes, and test and evaluation resources as appropriate in support of deployment of technologies and services as described in subsection (a).

(Added and amended Pub. L. 115–91, div. A, title X, § 1002(f)(1), (2), Dec. 12, 2017, 131 Stat. 1541, 1542, § 254a; renumbered § 240e, Pub. L. 115–232, div. A, title X, § 1002(a)(1)(A), Aug. 13, 2018, 132 Stat. 1945.)

CODIFICATION

Text of section, as added by Pub. L. 115–91, is based on text of subsecs. (a) and (b) of section 1003 of Pub. L. 114–328, div. A, title X, Dec. 23, 2016, 130 Stat. 2380, which were formerly set out in a note under section 2222 of this title, prior to repeal by Pub. L. 115–91, div. A, title X, § 1002(f)(3), Dec. 12, 2017, 131 Stat. 1542.

AMENDMENTS

2018—Pub. L. 115–232 renumbered section 254a of this title as this section.

2017—Subsec. (a). Pub. L. 115–91, § 1002(f)(2)(A), substituted ''of this title'' for ''of title 10, United States Code,'' and struck out '', as soon as practicable,'' after ''develop''.

Subsec. (b). Pub. L. 115–91, § 1002(f)(2)(B), substituted ''deployment of technologies and services as described in subsection (a)'' for ''this deployment''.

§ 240f. Audits: selection of service providers for audit services

The Department of Defense shall select service providers for auditing services based on the best value to the Department, as determined by the resource sponsor for an auditing contract, rather than based on the lowest price technically acceptable service provider.

(Added and amended Pub. L. 115–91, div. A, title X, § 1002(g)(1), (2), Dec. 12, 2017, 131 Stat. 1542, § 254b; renumbered § 240f, Pub. L. 115–232, div. A, title X, § 1002(a)(1)(A), Aug. 13, 2018, 132 Stat. 1945.)

CODIFICATION

Text of section, as added by Pub. L. 115–91, is based on text of section 892 of Pub. L. 114–328, div. A, title VIII, Dec. 23, 2016, 130 Stat. 2324, which was formerly set out as a note under section 2331 of this title, prior to repeal by Pub. L. 115–91, div. A, title X, § 1002(g)(3), Dec. 12, 2017, 131 Stat. 1542.

AMENDMENTS

2018—Pub. L. 115–232 renumbered section 254b of this title as this section.

2017—Pub. L. 115–91, § 1002(g)(2), struck out ''and audit readiness services'' after ''auditing services''.

NOTIFICATION REQUIREMENT FOR CERTAIN CONTRACTS FOR AUDIT SERVICES

Pub. L. 115–91, div. A, title X, § 1007, Dec. 12, 2017, 131 Stat. 1545, provided that:

''(a) NOTIFICATION TO CONGRESS.—If the Under Secretary of Defense (Comptroller) makes a written finding that a delay in performance of a covered contract while a protest is pending would hinder the annual preparation of audited financial statements for the Department of Defense, and the head of the procuring activity responsible for the award of the covered contract does not authorize the award of the contract (pursuant to section 3553(c)(2) of title 31, United States Code) or the performance of the contract (pursuant to section 3553(d)(3)(C) of such title), the Secretary of Defense shall—

''(1) notify the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] within 10 days after such finding is made; and

''(2) describe any steps the Department of Defense plans to take to mitigate any hindrance identified in such finding to the annual preparation of audited financial statements for the Department.

''(b) COVERED CONTRACT DEFINED.—In this section, the term 'covered contract' means a contract for services to perform an audit to comply with the requirements of section 3515 of title 31, United States Code.''

§ 240g. Defense Business Audit Remediation Plan

(a) IN GENERAL.—The Secretary of Defense shall maintain a plan, to be known as the ''Defense Business Systems Audit Remediation Plan''. Such plan shall include a current accounting of the defense business systems of the Department of Defense that will be introduced, replaced, updated, modified, or retired in connection with the audit of the full financial statements of the Department, including a comprehensive roadmap that displays—

(1) in-service, retirement, and other pertinent dates for affected defense business systems;

(2) current cost-to-complete estimates for each affected defense business system;

(3) dependencies both between the various defense business systems and between the introduction, replacement, update, modification, and retirement of such systems; and [1]

(4) the amount spent by the Department on operating and maintaining financial management systems during the preceding five fiscal years; and

(5) the amount spent by the Department on acquiring or developing new financial management systems during such five fiscal years.

(b) REPORT AND BRIEFING REQUIREMENTS.—

(1) ANNUAL REPORT.—Not later than June 30, 2020, and annually thereafter, the Secretary of Defense shall submit to the congressional defense committees an updated report on the Defense Business Systems Audit Remediation Plan under subsection (a).

(2) SEMIANNUAL BRIEFINGS.—Not later than January 31 and June 30 each year, the Secretary shall provide to the congressional defense committees a briefing on the status of the Defense Business Systems Audit Remediation Plan. Such briefing shall include a description of any updates to the defense business systems roadmap referred to in subsection (a).

(c) DEFENSE BUSINESS SYSTEM.—In this section, the term ''defense business system'' has the meaning given such term in section 2222(i)(1)(A) of this title.

(Added Pub. L. 116–92, div. A, title X, § 1002(a), Dec. 20, 2019, 133 Stat. 1570; amended Pub. L. 116–283, div. A, title X, § 1005(a), Jan. 1, 2021, 134 Stat. 3837.)

AMENDMENTS

2021—Subsec. (a)(4), (5). Pub. L. 116–283 added pars. (4) and (5).

§ 240h. Annual report on auditable financial statements

(a) IN GENERAL.—Not later than January 30 of each year, the Secretary of Defense shall submit to the congressional defense committees a report that includes a ranking of all of the military departments and Defense Agencies in order of how advanced each such department and Agency is in achieving auditable financial statements, as required by law. In preparing the report, the Secretary shall seek to exclude information that is otherwise available in other reports to Congress.

(b) BOTTOM QUARTILE.—Not later than June 30 of each year, the head of each of the military departments and Defense Agencies that were ranked in the bottom quartile of the report submitted under subsection (a) for that year shall submit to the congressional defense committees a report that includes the following information for that military department or Defense Agency:

(1) A description of the material weaknesses of the military department or Defense Agency.

(2) The underlying causes of such weaknesses.

(3) A plan for remediating such weaknesses.

(4) The total number of open audit notices of findings and recommendations (hereinafter referred to as ''NFRs'') for the most recently concluded fiscal year and the preceding two fiscal years, where applicable.

(5) The number of repeat or reissued NFRs from the most recently concluded fiscal year.

(6) The number of NFRs that were previously forecasted to be closed during the most recently concluded fiscal year that remain open.

(7) The number of closed NFRs during the current fiscal year and prior fiscal years.

(8) The number of material weaknesses that were validated by external auditors as fully resolved or downgraded in the current fiscal year over prior fiscal years.

(9) A breakdown by fiscal years in which open NFRs are forecasted to be closed.

(10) Explanations for unfavorable trends in the information under paragraphs (1) through (9).

(Added Pub. L. 116–92, div. A, title X, § 1004(a)(1), Dec. 20, 2019, 133 Stat. 1572.)

§ 240i. Annual report on unfunded priorities

(a) IN GENERAL.—Not later than 10 days after the date on which the budget of the President for a fiscal year is submitted to Congress pursuant to section 1105 of title 31, the Under Secretary of Defense (Comptroller) shall submit to the Secretary of Defense, the Chairman of the Joint Chiefs of Staff, and the congressional defense committees a report on unfunded prior-

[1] So in original. The word ''and'' probably should not appear.

ities of the Department of Defense related to audit readiness and remediation.

(b) ELEMENTS.—(1) Each report under subsection (a) shall include, for each unfunded priority covered by such report, the following:

(A) A summary description of such priority, including the objectives to be achieved if such priority were to be funded (whether in whole or in part).

(B) The additional amount of funds recommended in connection with the objectives identified under subparagraph (A).

(C) Account information with respect to such priority, including, as applicable, the following:

(i) Line item number, in the case of applicable procurement accounts.

(ii) Program element number, in the case of applicable research, development, test, and evaluation accounts.

(iii) Sub-activity group, in the case of applicable operation and maintenance accounts.

(2) The Under Secretary shall ensure that the unfunded priorities covered by a report under subsection (a) are listed in the order of urgency of priority, as determined by the Under Secretary.

(c) UNFUNDED PRIORITY DEFINED.—In this section, the term ''unfunded priority'', with respect to a fiscal year, means an activity related to an audit readiness or remediation effort stemming from a relevant requirement under the Chief Financial Officer Act[1] (Public Law 101–576), chapter 9 of title 31, or this chapter that—

(1) is not funded in the budget of the President for that fiscal year, as submitted to Congress pursuant to section 1105 of title 31;

(2) is necessary to address a shortfall in an audit readiness or remediation activity; and

(3) would have been recommended for funding through the budget referred to in paragraph (1) if—

(A) additional resources had been available for the budget to fund the program, activity, or mission requirement; or

(B) the program, activity, or mission requirement had emerged before the budget was formulated.

(Added Pub. L. 116–283, div. A, title X, §1005(b)(1), Jan. 1, 2021, 134 Stat. 3837.)

REFERENCES IN TEXT

The Chief Financial Officer Act, referred to in subsec. (c), probably means the Chief Financial Officers Act of 1990, Pub. L. 101–576, Nov. 15, 1990, 104 Stat. 2838. For complete classification of this Act to the Code, see Short Title of 1990 Amendment note set out under section 501 of Title 31, Money and Finance, and Tables.

[§§ 251 to 254b. Renumbered §§ 240a to 240f]

CHAPTER 11—RESERVE COMPONENTS

Sec.
241. Reference to chapters 1003, 1005, and 1007.

AMENDMENTS

2018—Pub. L. 115–232, div. A, title X, §1081(a)(4), Aug. 13, 2018, 132 Stat. 1983, which directed amendment of the analysis of chapter 4 of this title by renumbering item 261 as 241, was executed by making the amendment in this analysis to reflect the probable intent of Congress.

1994—Pub. L. 103–337, div. A, title XVI, §1661(a)(2)(B), Oct. 5, 1994, 108 Stat. 2979, added item 261 and struck out former items 261 to 281.

1993—Pub. L. 103–160, div. A, title VIII, §828(c)(1), Nov. 30, 1993, 107 Stat. 1714, added item 279.

1984—Pub. L. 98–525, title XIV, §1405(7)(C), Oct. 19, 1984, 98 Stat. 2622, in item 264 substituted ''armed force'' for ''military department'' and ''Reserves'' for ''reserves'' and struck out ''; reports to Congress'' at end.

1978—Pub. L. 95–485, title IV, §406(b)(2), Oct. 20, 1978, 92 Stat. 1616, struck out item 279 ''Training reports''.

1967—Pub. L. 90–168, §2(7), Dec. 1, 1967, 81 Stat. 522, substituted ''designation of general or flag officers of each military department; personnel and logistic support for reserves; reports to Congress'' for ''responsibility for'' in item 264.

1960—Pub. L. 86–559, §1(2)(D), June 30, 1960, 74 Stat. 264, added item 281.

1958—Pub. L. 85–861, §1(6), Sept. 2, 1958, 72 Stat. 1439, added items 270, 271, 272 and 279.

§ 241. Reference to chapters 1003, 1005, and 1007

Provisions of law relating to the reserve components generally, including provisions relating to the organization and administration of the reserve components, are set forth in chapter 1003 (beginning with section 10101), chapter 1005 (beginning with section 10141), and chapter 1007 (beginning with section 10201) of this title.

(Added Pub. L. 103–337, div. A, title XVI, §1661(a)(2)(B), Oct. 5, 1994, 108 Stat. 2980, §261; renumbered §241, Pub. L. 114–328, div. A, title XII, §1241(a)(2), Dec. 23, 2016, 130 Stat. 2497.)

AMENDMENTS

2016—Pub. L. 114–328 renumbered section 261 of this title as this section.

EFFECTIVE DATE

Section effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as a note under section 10001 of this title.

CHAPTER 12—THE MILITIA

Sec.
246. Militia: composition and classes.
247. Militia duty: exemptions.

AMENDMENTS

2016—Pub. L. 114–328, div. A, title XII, §1241(a)(1), (*o*)(2), Dec. 23, 2016, 130 Stat. 2497, 2512, renumbered chapter 13 of this title ''THE MILITIA'' as chapter 12, redesignated item 311 ''Militia: composition and classes'' as item 246, and redesignated item 312 ''Militia duty: exemptions'' as item 247.

§ 246. Militia: composition and classes

(a) The militia of the United States consists of all able-bodied males at least 17 years of age and, except as provided in section 313 of title 32, under 45 years of age who are, or who have made a declaration of intention to become, citizens of the United States and of female citizens of the United States who are members of the National Guard.

(b) The classes of the militia are—

(1) the organized militia, which consists of the National Guard and the Naval Militia; and

(2) the unorganized militia, which consists of the members of the militia who are not mem-

[1] See References in Text note below.

bers of the National Guard or the Naval Militia.

(Aug. 10, 1956, ch. 1041, 70A Stat. 14, § 311; Pub. L. 85–861, § 1(7), Sept. 2, 1958, 72 Stat. 1439; Pub. L. 103–160, div. A, title V, § 524(a), Nov. 30, 1993, 107 Stat. 1656; renumbered § 246, Pub. L. 114–328, div. A, title XII, § 1241(a)(2), Dec. 23, 2016, 130 Stat. 2497.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
311(a) ...... 311(b)	32:1 (less last 19 words). 32:1 (last 19 words).	June 3, 1916, ch. 134, § 57, 39 Stat. 197; June 28, 1947, ch. 162, § 7 (as applicable to § 57 of the Act of June 3, 1916, ch. 134), 61 Stat. 192.

In subsection (a), the words ''who have made a declaration of intention'' are substituted for the words ''who have or shall have declared their intention''. The words ''at least 17 years of age and * * * under 45 years of age'' are substituted for the words ''who shall be more than seventeen years of age and * * * not more than forty-five years of age''. The words ''except as provided in section 313 of title 32'' are substituted for the words ''except as hereinafter provided'', to make explicit the exception as to maximum age.

In subsection (b), the words ''The organized militia, which consists of the National Guard and the Naval Militia'' are substituted for the words ''the National Guard, the Naval Militia'', since the National Guard and the Naval Militia constitute the organized militia.

1958 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
311(a)	32 App.:1.	July 30, 1956, ch. 789, § 1, 70 Stat. 729.

The words ''appointed as . . . under section 4 of this title'' are omitted as surplusage.

AMENDMENTS

2016—Pub. L. 114–328 renumbered section 311 of this title as this section.

1993—Subsec. (a). Pub. L. 103–160 substituted ''members'' for ''commissioned officers''.

1958—Subsec. (a). Pub. L. 85–861 included female citizens of the United States who are commissioned officers of the National Guard.

§ 247. Militia duty: exemptions

(a) The following persons are exempt from militia duty:

(1) The Vice President.

(2) The judicial and executive officers of the United States, the several States, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.

(3) Members of the armed forces, except members who are not on active duty.

(4) Customhouse clerks.

(5) Persons employed by the United States in the transmission of mail.

(6) Workmen employed in armories, arsenals, and naval shipyards of the United States.

(7) Pilots on navigable waters.

(8) Mariners in the sea service of a citizen of, or a merchant in, the United States.

(b) A person who claims exemption because of religious belief is exempt from militia duty in a combatant capacity, if the conscientious holding of that belief is established under such regulations as the President may prescribe. However, such a person is not exempt from militia duty that the President determines to be noncombatant.

(Aug. 10, 1956, ch. 1041, 70A Stat. 15, § 312; Pub. L. 100–456, div. A, title XII, § 1234(a)(3), Sept. 29, 1988, 102 Stat. 2059; Pub. L. 109–163, div. A, title X, § 1057(a)(7), Jan. 6, 2006, 119 Stat. 3441; renumbered § 247, Pub. L. 114–328, div. A, title XII, § 1241(a)(2), Dec. 23, 2016, 130 Stat. 2497.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
312(a) ...... 312(b)	32:3 (less last 67 words). 32:3 (last 67 words).	June 3, 1916, ch. 134, § 59, 39 Stat. 197.

In subsection (a), the words ''Members of the armed forces'' are substituted for the words ''persons in the military or naval service''. The words ''except members who are not on active duty'' are inserted to reflect an opinion of the Judge Advocate General of the Army (JAGA 1952/4374, 9 July 1952). The word ''artificers'' is omitted as covered by the word ''workmen''. The words ''naval shipyards'' are substituted for the words ''navy yards'' to reflect modern terminology. The words ''on navigable waters'' are inserted to preserve the original coverage of the word ''pilots''. The words ''actually'' and ''without regard to age'' are omitted as surplusage.

AMENDMENTS

2016—Pub. L. 114–328 renumbered section 312 of this title as this section.

2006—Subsec. (a)(2). Pub. L. 109–163 substituted ''States, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands'' for ''States and Territories, and Puerto Rico''.

1988—Subsec. (a)(2). Pub. L. 100–456 substituted ''and Puerto Rico'' for ''Puerto Rico, and the Canal Zone''.

CHAPTER 13—INSURRECTION

Sec.	
251.[1]	Federal aid for State governments.
252.[1]	Use of militia and armed forces to enforce Federal authority.
253.[1]	Interference with State and Federal law.
254.[1]	Proclamation to disperse.
255.	Guam and Virgin Islands included as ''State''.

PRIOR PROVISIONS

A prior chapter 13, consisting of sections 311 and 312, was renumbered chapter 12, and sections 311 and 312 were renumbered sections 246 and 247, respectively.

AMENDMENTS

2016—Pub. L. 114–328, div. A, title XII, § 1241(a)(1), (*o*)(2), Dec. 23, 2016, 130 Stat. 2497, 2512, renumbered chapter 15 of this title ''INSURRECTION'' as chapter 13, redesignated item 331 ''Federal aid for State governments'' as item 251, redesignated item 332 ''Use of militia and armed forces to enforce Federal authority'' as item 252, redesignated item 333 ''Interference with State and Federal law'' as item 253, redesignated item 334 ''Proclamation to disperse'' as item 254, and redesignated item 335 ''Guam and Virgin Islands included as 'State' '' as item 255.

2008—Pub. L. 110–181, div. A, title X, § 1068(a)(3), (4)(A), Jan. 28, 2008, 122 Stat. 325, substituted ''INSURRECTION'' for ''ENFORCEMENT OF THE LAWS TO RESTORE PUBLIC ORDER'' in chapter heading, added item 333, and struck out former item 333 ''Major public emergencies; interference with State and Federal law''.

[1] Items numbered 251 to 254 also appear in the analysis for chapter 9A of this title.

2006—Pub. L. 109–364, div. A, title X, § 1076(a)(3), (4)(B), Oct. 17, 2006, 120 Stat. 2405, substituted ''ENFORCEMENT OF THE LAWS TO RESTORE PUBLIC ORDER'' for ''INSURRECTION'' in chapter heading and ''Major public emergencies; interference with State and Federal law'' for ''Interference with State and Federal law'' in item 333.

1980—Pub. L. 96–513, title V, § 511(11)(C), Dec. 12, 1980, 94 Stat. 2921, added item 335.

§ 251. Federal aid for State governments

Whenever there is an insurrection in any State against its government, the President may, upon the request of its legislature or of its governor if the legislature cannot be convened, call into Federal service such of the militia of the other States, in the number requested by that State, and use such of the armed forces, as he considers necessary to suppress the insurrection.

(Aug. 10, 1956, ch. 1041, 70A Stat. 15, § 331; renumbered § 251, Pub. L. 114–328, div. A, title XII, § 1241(a)(2), Dec. 23, 2016, 130 Stat. 2497.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
331	50:201.	R.S. 5297.

The words ''armed forces'' are substituted for the words ''land or naval forces of the United States''. The word ''governor'' is substituted for the word ''executive''. The word ''may'' is substituted for the words ''it shall be lawful * * * to''. The words ''into Federal service'' are substituted for the word ''forth'' for uniformity and clarity.

CODIFICATION

Another section 251 was renumbered section 240a of this title.

AMENDMENTS

2016—Pub. L. 114–328 renumbered section 331 of this title as this section.

§ 252. Use of militia and armed forces to enforce Federal authority

Whenever the President considers that unlawful obstructions, combinations, or assemblages, or rebellion against the authority of the United States, make it impracticable to enforce the laws of the United States in any State by the ordinary course of judicial proceedings, he may call into Federal service such of the militia of any State, and use such of the armed forces, as he considers necessary to enforce those laws or to suppress the rebellion.

(Aug. 10, 1956, ch. 1041, 70A Stat. 15, § 332; Pub. L. 109–163, div. A, title X, § 1057(a)(2), Jan. 6, 2006, 119 Stat. 3440; renumbered § 252, Pub. L. 114–328, div. A, title XII, § 1241(a)(2), Dec. 23, 2016, 130 Stat. 2497.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
332	50:202.	R.S. 5298.

50:202 (last 22 words) is omitted as surplusage. The words ''armed forces'' are substituted for the words ''land and naval forces of the United States''. The words ''call into Federal service such of the militia'' are substituted for the words ''call forth the militia of any or all the States'' for clarity and uniformity. The word ''may'' is substituted for the words ''it shall be lawful''. The words ''faithful execution of the'' and ''in whatever State or Territory thereof the laws of the United States may be forcibly opposed'' are omitted as surplusage.

DERIVATION

Act July 29, 1861, ch. 25, § 1, 12 Stat. 281.

CODIFICATION

Another section 252 was renumbered section 240b of this title.

AMENDMENTS

2016—Pub. L. 114–328 renumbered section 332 of this title as this section.

2006—Pub. L. 109–163 struck out ''or Territory'' after ''in any State''.

EX. ORD. NO. 10730. ASSISTANCE FOR REMOVAL OF AN OBSTRUCTION OF JUSTICE WITHIN THE STATE OF ARKANSAS

Ex. Ord. No. 10730, Sept. 24, 1957, 22 F.R. 7628, authorized the Secretary of Defense to order into the active military service of the United States units of the National Guard of the United States and of the Air National Guard of the United States within the State of Arkansas for an indefinite period and until relieved by appropriate orders in order to enforce any orders of the United States District Court for the Eastern District of Arkansas for the removal of obstructions to justice in respect to enrollment and attendance at public schools in the Little Rock School District, Little Rock, Arkansas; authorized the Secretary of Defense to also use the armed forces of the United States to enforce such orders of the district court; and authorized the Secretary of Defense to delegate his authority to the Secretary of the Army or the Secretary of the Air Force.

EX. ORD. NO. 11053. ASSISTANCE FOR REMOVAL OF UNLAWFUL OBSTRUCTIONS OF JUSTICE IN THE STATE OF MISSISSIPPI

Ex. Ord. No. 11053, Sept. 30, 1962, 27 F.R. 9681, authorized the Secretary of Defense to call into the active military service of the United States units of the Army National Guard and of the Air National Guard of the State of Mississippi for an indefinite period and until relieved by appropriate orders in order to enforce all orders of the United States District Court for the Southern District of Mississippi and of the United States Court of Appeals for the Fifth Circuit for the removal of obstructions to justice in the State of Mississippi; authorized the Secretary of Defense to also use the armed forces of the United States to enforce such court orders; and authorized the Secretary of Defense to delegate his authority to the Secretary of the Army or the Secretary of the Air Force.

EX. ORD. NO. 11111. ASSISTANCE FOR REMOVAL OF OBSTRUCTIONS OF JUSTICE AND SUPPRESSION OF UNLAWFUL COMBINATIONS WITHIN THE STATE OF ALABAMA

Ex. Ord. No. 11111, June 11, 1963, 28 F.R. 5709, authorized the Secretary of Defense to call into the active military service of the United States units of the Army National Guard and of the Air National Guard of the State of Alabama for an indefinite period and until relieved by appropriate orders in order to enforce the laws of the United States within that State and the orders of the United States District Court for the Northern District of Alabama, to remove obstructions to justice, and to suppress unlawful assemblies, conspiracies, and domestic violence which oppose the laws of the United States or impede the course of justice under those laws within that State; authorized the Secretary of Defense to also use the armed forces of the United States for such purposes; and authorized the Secretary of Defense to delegate his authority to the Secretary of the Army or the Secretary of the Air Force.

EX. ORD. NO. 11118. ASSISTANCE FOR REMOVAL OF UNLAWFUL OBSTRUCTIONS OF JUSTICE IN THE STATE OF ALABAMA

Ex. Ord. No. 11118, Sept. 10, 1963, 28 F.R. 9863, authorized the Secretary of Defense to call into the active military service of the United States units of the Army National Guard and of the Air National Guard of the State of Alabama for an indefinite period and until relieved by appropriate orders in order to enforce the laws of the United States and any orders of United States Courts relating to the enrollment and attendance of students in public schools in the State of Alabama and to suppress unlawful assemblies, conspiracies, and domestic violence which oppose the law or impede the course of justice under the law within that State; authorized the Secretary of Defense to also use the armed forces of the United States for such purposes; and authorized the Secretary of Defense to delegate his authority to the Secretary of the Army or the Secretary of the Air Force.

§ 253. Interference with State and Federal law

The President, by using the militia or the armed forces, or both, or by any other means, shall take such measures as he considers necessary to suppress, in a State, any insurrection, domestic violence, unlawful combination, or conspiracy, if it—

(1) so hinders the execution of the laws of that State, and of the United States within the State, that any part or class of its people is deprived of a right, privilege, immunity, or protection named in the Constitution and secured by law, and the constituted authorities of that State are unable, fail, or refuse to protect that right, privilege, or immunity, or to give that protection; or

(2) opposes or obstructs the execution of the laws of the United States or impedes the course of justice under those laws.

In any situation covered by clause (1), the State shall be considered to have denied the equal protection of the laws secured by the Constitution.

(Aug. 10, 1956, ch. 1041, 70A Stat. 15, § 333; Pub. L. 109–364, div. A, title X, § 1076(a)(1), Oct. 17, 2006, 120 Stat. 2404; Pub. L. 110–181, div. A, title X, § 1068(a)(1), Jan. 28, 2008, 122 Stat. 325; renumbered § 253, Pub. L. 114–328, div. A, title XII, § 1241(a)(2), Dec. 23, 2016, 130 Stat. 2497.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
333	50:203.	R.S. 5299.

The words ''armed forces'' are substituted for the words ''land or naval forces of the United States''. The word ''shall'' is substituted for the words ''it shall be lawful for * * * and it shall be his duty''.

DERIVATION

Act Apr. 20, 1871, ch. 22, § 3, 17 Stat. 14.

CODIFICATION

Another section 253 was renumbered section 240c of this title.

AMENDMENTS

2016—Pub. L. 114–328 renumbered section 333 of this title as this section.

2008—Pub. L. 110–181 amended section generally, substituting provisions directing the President to suppress certain insurrections and domestic violence in a State for provisions authorizing the President to employ the armed forces during a natural disaster or terrorist attack or to suppress an insurrection in a State and requiring notice to Congress during the exercise of such authority.

2006—Pub. L. 109–364 amended section catchline and text generally, substituting provisions authorizing the President to employ the armed forces during a natural disaster or terrorist attack or to suppress an insurrection in a State and requiring notice to Congress during the exercise of such authority for provisions directing the President to suppress certain insurrections and domestic violence in a State.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–181, div. A, title X, § 1068(d), Jan. 28, 2008, 122 Stat. 326, provided that: ''The amendments made by this section [amending this section and sections 334 and 12304 of this title and repealing section 2567 of this title] shall take effect on the date of the enactment of this Act [Jan. 28, 2008].''

§ 254. Proclamation to disperse

Whenever the President considers it necessary to use the militia or the armed forces under this chapter, he shall, by proclamation, immediately order the insurgents to disperse and retire peaceably to their abodes within a limited time.

(Aug. 10, 1956, ch. 1041, 70A Stat. 16, § 334; Pub. L. 109–364, div. A, title X, § 1076(a)(2), Oct. 17, 2006, 120 Stat. 2405; Pub. L. 110–181, div. A, title X, § 1068(a)(2), Jan. 28, 2008, 122 Stat. 325; renumbered § 254, Pub. L. 114–328, div. A, title XII, § 1241(a)(2), Dec. 23, 2016, 130 Stat. 2497.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
334	50:204.	R.S. 5300.

The words ''militia or the armed forces'' are substituted for the words ''military forces'' for clarity and to conform to sections 331, 332, and 333 of this title.

DERIVATION

Act July 29, 1861, ch. 25, § 2, 12 Stat. 282.

CODIFICATION

Another section 254 was renumbered section 240d of this title.

AMENDMENTS

2016—Pub. L. 114–328 renumbered section 334 of this title as this section.

2008—Pub. L. 110–181 struck out ''or those obstructing the enforcement of the laws'' after ''insurgents''.

2006—Pub. L. 109–364 inserted ''or those obstructing the enforcement of the laws'' after ''insurgents''.

PROC. NO. 3204. OBSTRUCTION OF JUSTICE IN THE STATE OF ARKANSAS

Proc. No. 3204, Sept. 23, 1957, 22 F.R. 7628, commanded all persons in the State of Arkansas who were obstructing the enforcement of orders of the United States District Court for the Eastern District of Arkansas relating to enrollment and attendance at public schools, particularly Central High School at Little Rock, Arkansas, to cease and desist therefrom and to disperse forthwith.

PROC. NO. 3497. OBSTRUCTION OF JUSTICE IN THE STATE OF MISSISSIPPI

Proc. No. 3497, Sept. 30, 1962, 27 F.R. 9681, commanded all persons in the State of Mississippi who were obstructing the enforcement of orders entered by the

United States District Court for the Southern District of Mississippi and the United States Court of Appeals for the Fifth Circuit to cease and desist therefrom and to disperse and retire peaceably forthwith.

PROC. NO. 3542. UNLAWFUL OBSTRUCTION OF JUSTICE AND COMBINATIONS IN THE STATE OF ALABAMA

Proc. No. 3542, June 11, 1963, 28 F.R. 5707, commanded the Governor of the State of Alabama and all other persons who were obstructing the orders of the United States District Court for the Northern District of Alabama relating to the enrollment and attendance of Negro students at the University of Alabama to cease and desist therefrom.

PROC. NO. 3554. OBSTRUCTION OF JUSTICE IN THE STATE OF ALABAMA

Proc. No. 3554, Sept. 10, 1963, 28 F.R. 9861, commanded all persons obstructing the enforcement of orders entered by the United States District Courts in the State of Alabama relating to the enrollment and attendance of students in public schools in that State to cease and desist therefrom and to disperse and retire peaceably forthwith.

PROC. NO. 3645. OBSTRUCTION OF JUSTICE IN THE STATE OF ALABAMA

Proc. No. 3645, Mar. 23, 1965, 30 F.R. 3739, commanded all persons engaged or who may engage in domestic violence obstructing the enforcement of the laws and the judicial order approving the right to march along U.S. Highway 80 from Selma to Montgomery, Alabama commencing during the period from Mar. 19, 1965 to Mar. 22, 1965 and terminating within 5 days of the commencement to cease and desist therefrom and to disperse forthwith.

PROC. NO. 3795. OBSTRUCTION OF JUSTICE IN THE STATE OF MICHIGAN

Proc. No. 3795, July 26, 1967, 32 F.R. 10905, commanded all persons engaged in domestic violence and disorder in Detroit, Michigan, and obstructing the enforcement of the laws to cease and desist therefrom and to disperse forthwith.

PROC. NO. 3840. OBSTRUCTION OF JUSTICE IN THE WASHINGTON METROPOLITAN AREA

Proc. No. 3840, Apr. 9, 1968, 33 F.R. 5495, commanded all persons engaged in acts of violence threatening the Washington Metropolitan Area and obstructing the execution of the laws to cease and desist therefrom and to disperse forthwith.

PROC. NO. 3841. OBSTRUCTION OF JUSTICE IN THE STATE OF ILLINOIS

Proc. No. 3841, Apr. 9, 1968, 33 F.R. 5497, commanded all persons engaged in violence in and about the City of Chicago and obstructing the enforcement of the laws to cease and desist therefrom and to disperse forthwith.

PROC. NO. 3842. OBSTRUCTION OF JUSTICE IN THE STATE OF MARYLAND

Proc. No. 3842, Apr. 9, 1968, 33 F.R. 5499, commanded all persons engaged in acts of violence and obstructing the enforcement of the laws in and about the City of Baltimore to cease and desist therefrom and to disperse forthwith.

§ 255. Guam and Virgin Islands included as "State"

For purposes of this chapter, the term ''State'' includes Guam and the Virgin Islands.

(Added Pub. L. 90–497, § 11, Sept. 11, 1968, 82 Stat. 847, § 335; amended Pub. L. 96–513, title V, § 511(11)(A), Dec. 12, 1980, 94 Stat. 2920; Pub. L. 109–163, div. A, title X, § 1057(a)(8), Jan. 6, 2006, 119 Stat. 3441; renumbered § 255, Pub. L. 114–328, div. A, title XII, § 1241(a)(2), Dec. 23, 2016, 130 Stat. 2497.)

AMENDMENTS

2016—Pub. L. 114–328 renumbered section 335 of this title as this section.

2006—Pub. L. 109–163 struck out ''the unincorporated territories of'' before ''Guam''.

1980—Pub. L. 96–513 inserted ''and Virgin Islands'' after ''Guam'' in section catchline and inserted provision respecting applicability to the Virgin Islands.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE

Pub. L. 90–497, § 11, Sept. 11, 1968, 82 Stat. 847, provided that this section is effective on date of enactment of Pub. L. 90–497, which was approved on Sept. 11, 1968.

CHAPTER 14—ARMING OF AMERICAN VESSELS

Sec.
261. During war or threat to national security.

AMENDMENTS

2016—Pub. L. 114–328, div. A, title XII, § 1241(a)(1), (*o*)(2), Dec. 23, 2016, 130 Stat. 2497, 2512, renumbered chapter 17 of this title ''ARMING OF AMERICAN VESSELS'' as chapter 14 and redesignated item 351 ''During war or threat to national security'' as item 261.

§ 261. During war or threat to national security

(a) The President, through any agency of the Department of Defense designated by him, may arm, have armed, or allow to be armed, any watercraft or aircraft that is capable of being used as a means of transportation on, over, or under water, and is documented, registered, or licensed under the laws of the United States.

(b) This section applies during a war and at any other time when the President determines that the security of the United States is threatened by the application, or the imminent danger of application, of physical force by any foreign government or agency against the United States, its citizens, the property of its citizens, or their commercial interests.

(c) Section 16 of the Act of March 4, 1909 (22 U.S.C. 463) does not apply to vessels armed under this section.

(Aug. 10, 1956, ch. 1041, 70A Stat. 16, § 351; Pub. L. 96–513, title V, § 511(12), Dec. 12, 1980, 94 Stat. 2921; renumbered § 261, Pub. L. 114–328, div. A, title XII, § 1241(a)(2), Dec. 23, 2016, 130 Stat. 2497.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
351(a)	50:481 (1st sentence, less 1st 7 words).	June 29, 1948, ch. 715, 62 Stat. 1095.
351(b)	50:481 (1st 7 words of 1st sentence and 2d sentence).	
351(c)	50:481 (less 1st and 2d sentences).	

In subsection (a), the wording of the special definition of ''vessel'' and ''American vessel'', contained in section 16 of the Neutrality Act of 1939, 54 Stat. 12 (22 U.S.C. 456), is substituted for the words ''any American vessel as defined in the Neutrality Act of 1939''.

In subsection (b), the words ''or national emergency'' are omitted, since the words of the source statute defining that term have been substituted for it.

In subsection (c), the words ''(relating to bonds from armed vessels on clearing)'' are omitted as surplusage.

PRIOR PROVISIONS

A prior section 261 was renumbered section 241 of this title.

Another prior section 261, act Aug. 10, 1956, ch. 1041, 70A Stat. 10, which named the reserve components of the armed forces, was repealed by Pub. L. 103–337, div. A, title XVI, §§ 1661(a)(2)(A), 1691, Oct. 5, 1994, 108 Stat. 2979, 3026, effective Dec. 1, 1994. See sections 10101 and 10213 of this title.

Prior sections 262 to 265 were repealed by Pub. L. 103–337, div. A, title XVI, §§ 1661(a)(2)(A), 1691, Oct. 5, 1994, 108 Stat. 2979, 3026, effective Dec. 1, 1994.

Section 262, acts Aug. 10, 1956, ch. 1041, 70A Stat. 10; Dec. 1, 1967, Pub. L. 90–168, § 2(5), 81 Stat. 521, related to purpose of reserve components. See section 10102 of this title.

Section 263, act Aug. 10, 1956, ch. 1041, 70A Stat. 11, related to basic policy for ordering Army National Guard of the United States and Air National Guard of the United States into Federal service. See section 10103 of this title.

Section 264, acts Aug. 10, 1956, ch. 1041, 70A Stat. 11; Dec. 1, 1967, Pub. L. 90–168, § 2(6), 81 Stat. 521; Nov. 19, 1969, Pub. L. 91–121, title III, § 303, 83 Stat. 206; Oct. 20, 1978, Pub. L. 95–485, title IV, § 406(a), 92 Stat. 1616; Oct. 19, 1984, Pub. L. 98–525, title XIV, § 1405(7)(A), (B), 98 Stat. 2622, authorized Secretaries of each armed force to designate officers to be responsible for reserve affairs and assigned responsibility for providing personnel and logistic support for reserves. See sections 10203 and 18501 of this title.

Section 265, act Aug. 10, 1956, ch. 1041, 70A Stat. 11, related to participation of reserve officers in preparation and administration of policies and regulations affecting reserve components. See section 10211 of this title.

Prior section 266 was renumbered section 12643 of this title.

Prior sections 267 to 270 were repealed by Pub. L. 103–337, div. A, title XVI, §§ 1661(a)(2)(A), 1691, Oct. 5, 1994, 108 Stat. 2979, 3026, effective Dec. 1, 1994.

Section 267, act Aug. 10, 1956, ch. 1041, 70A Stat. 12, related to placement and status of members of Ready Reserve, Standby Reserve, and Retired Reserve. See section 10141(a), (b) of this title.

Section 268, acts Aug. 10, 1956, ch. 1041, 70A Stat. 12; Sept. 2, 1958, Pub. L. 85–861, § 1(3), 72 Stat. 1437; Dec. 1, 1967, Pub. L. 90–168, § 2(8), 81 Stat. 522; Oct. 12, 1982, Pub. L. 97–295, § 1(5), 96 Stat. 1289, related to composition, organization, and structure of Ready Reserve. See sections 10142 and 10143 of this title.

Section 269, acts Aug. 10, 1956, ch. 1041, 70A Stat. 12; Sept. 2, 1958, Pub. L. 85–861, § 1(4), 72 Stat. 1437; June 30, 1960, Pub. L. 86–559, § 1(2)(A), 74 Stat. 264; Dec. 1, 1967, Pub. L. 90–168, § 2(9), 81 Stat. 522; Oct. 20, 1978, Pub. L. 95–485, title IV, § 405(a)(1), 92 Stat. 1615; Sept. 24, 1983, Pub. L. 98–94, title X, § 1018, 97 Stat. 669; Sept. 29, 1988, Pub. L. 100–456, div. A, title XII, § 1234(a)(1), 102 Stat. 2059, related to placement in and transfer from Ready Reserve. See sections 10145 and 10146 of this title.

Section 270, added Pub. L. 85–861, § 1(5)(A), Sept. 2, 1958, 72 Stat. 1438; amended Pub. L. 87–378, § 2, Oct. 4, 1961, 75 Stat. 807; Pub. L. 88–110, § 4, Sept. 3, 1963, 77 Stat. 136; Pub. L. 90–168, § 2(10), Dec. 1, 1967, 81 Stat. 523; Pub. L. 92–156, title III, § 303(a), Nov. 17, 1971, 85 Stat. 425; Pub. L. 96–513, title V, § 511(7), Dec. 12, 1980, 94 Stat. 2920; Pub. L. 100–456, div. A, title XII, § 1234(a)(2), Sept. 29, 1988, 102 Stat. 2059; Pub. L. 101–189, div. A, title V, § 501(b), Nov. 29, 1989, 103 Stat. 1435, related to training requirements of Ready Reserve. See sections 10147 and 10148 of this title.

AMENDMENTS

2016—Pub. L. 114–328 renumbered section 351 of this title as this section.

1980—Subsec. (c). Pub. L. 96–513 substituted ''Section 16 of the Act of March 4, 1909 (22 U.S.C. 463)'' for ''Section 463 of title 22''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

CHAPTER 15—MILITARY SUPPORT FOR CIVILIAN LAW ENFORCEMENT AGENCIES

Sec.
271. Use of information collected during military operations.
272. Use of military equipment and facilities.
273. Training and advising civilian law enforcement officials.
274. Maintenance and operation of equipment.
275. Restriction on direct participation by military personnel.
276. Support not to affect adversely military preparedness.
277. Reimbursement.
278. Nonpreemption of other law.
279. Assignment of Coast Guard personnel to naval vessels for law enforcement purposes.
280. Enhancement of cooperation with civilian law enforcement officials.
281. Procurement of equipment by State and local governments through the Department of Defense: equipment for counter-drug, homeland security, and emergency response activities.
282. Emergency situations involving weapons of mass destruction.
283. Situations involving bombings of places of public use, Government facilities, public transportation systems, and infrastructure facilities.
284. Support for counterdrug activities and activities to counter transnational organized crime.

PRIOR PROVISIONS

A prior chapter 15, consisting of sections 331 to 335, was renumbered chapter 13, and sections 331 to 335 were renumbered sections 251 to 255, respectively.

AMENDMENTS

2016—Pub. L. 114–328, div. A, title X, § 1011(a)(2), title XII, § 1241(a)(1), (*o*)(2), Dec. 23, 2016, 130 Stat. 2385, 2497, 2512, added item 384, renumbered chapter 18 of this title ''MILITARY SUPPORT FOR CIVILIAN LAW ENFORCEMENT AGENCIES'' as chapter 15, redesignated item 371 ''Use of information collected during military operations'' as item 271, redesignated item 372 ''Use of military equipment and facilities'' as item 272, redesignated item 373 ''Training and advising civilian law enforcement officials'' as item 273, redesignated item 374 ''Maintenance and operation of equipment'' as item 274, redesignated item 375 ''Restriction on direct participation by military personnel'' as item 275, redesignated item 376 ''Support not to affect adversely military preparedness'' as item 276, redesignated item 377 ''Reimbursement'' as item 277, redesignated item 378 ''Nonpreemption of other law'' as item 278, redesignated item 379 ''Assignment of Coast Guard personnel to naval vessels for law enforcement purposes'' as item 279, redesignated item 380 ''Enhancement of cooperation with civilian law enforcement officials'' as item 280, redesignated item 381 ''Procurement of equipment by State and local governments through the Department of Defense: equipment for counter-drug, homeland security, and emergency response activities'' as item 281, redesignated item 382 ''Emergency situations involving weapons of mass destruction'' as item 282, redesignated item 383 ''Situations involving bombings of places of public use, Government facilities, public

transportation systems, and infrastructure facilities'' as item 283, and redesignated item 384 ''Support for counterdrug activities and activities to counter transnational organized crime'' as item 284.

2015—Pub. L. 114–92, div. A, title X, §1082(b), Nov. 25, 2015, 129 Stat. 1003, added item 383.

2011—Pub. L. 111–383, div. A, title X, §1075(b)(10)(C), Jan. 7, 2011, 124 Stat. 4369, added item 382 and struck out former item 382 ''Emergency situations involving chemical or biological weapons of mass destruction''.

2008—Pub. L. 110–417, [div. A], title VIII, §885(b)(2), Oct. 14, 2008, 122 Stat. 4561, added item 381 and struck out former item 381 ''Procurement by State and local governments of law enforcement equipment suitable for counter-drug activities through the Department of Defense''.

1996—Pub. L. 104–201, div. A, title XIV, §1416(a)(2), Sept. 23, 1996, 110 Stat. 2723, added item 382.

1993—Pub. L. 103–160, div. A, title XI, §1122(a)(2), Nov. 30, 1993, 107 Stat. 1755, added item 381.

1989—Pub. L. 101–189, div. A, title XII, §1216(a), Nov. 29, 1989, 103 Stat. 1569, in chapter heading substituted ''18'' for ''8''.

1988—Pub. L. 100–456, div. A, title XI, §1104(a), Sept. 29, 1988, 102 Stat. 2043, amended chapter analysis generally substituting, in chapter heading ''CHAPTER 8—MILITARY SUPPORT FOR CIVILIAN LAW ENFORCEMENT AGENCIES'' for ''CHAPTER 18—MILITARY COOPERATION WITH CIVILIAN LAW ENFORCEMENT OFFICIALS'', in item 374 ''Maintenance and operation of equipment'' for ''Assistance by Department of Defense personnel'', in item 376 ''Support not to affect adversely military preparedness'' for ''Assistance not to affect adversely military preparedness'' and in item 380 ''Enhancement of cooperation with civilian law enforcement officials'' for ''Department of Defense drug law enforcement assistance: annual plan''.

1987—Pub. L. 100–180, div. A, title XII, §1243(b), Dec. 4, 1987, 101 Stat. 1164, added item 380.

1986—Pub. L. 99–570, title III, §3053(b)(2), Oct. 27, 1986, 100 Stat. 3207–76, added item 379.

DEPARTMENT OF DEFENSE AUTHORITY TO PROVIDE ASSISTANCE TO SECURE THE SOUTHERN LAND BORDER OF THE UNITED STATES

Pub. L. 114–92, div. A, title X, §1059, Nov. 25, 2015, 129 Stat. 986, as amended by Pub. L. 116–283, div. A, title X, §1056(a), (b), Jan. 1, 2021, 134 Stat. 3855, which authorized Department of Defense to provide assistance to secure the southern land border of the United States, was transferred by Pub. L. 116–283, div. A, title X, §1056(c), Jan. 1, 2021, 134 Stat. 3856, and is set out as a note under section 284 of this title.

§ 271. Use of information collected during military operations

(a) The Secretary of Defense may, in accordance with other applicable law, provide to Federal, State, or local civilian law enforcement officials any information collected during the normal course of military training or operations that may be relevant to a violation of any Federal or State law within the jurisdiction of such officials.

(b) The needs of civilian law enforcement officials for information shall, to the maximum extent practicable, be taken into account in the planning and execution of military training or operations.

(c) The Secretary of Defense shall ensure, to the extent consistent with national security, that intelligence information held by the Department of Defense and relevant to drug interdiction or other civilian law enforcement matters is provided promptly to appropriate civilian law enforcement officials.

(Added Pub. L. 97–86, title IX, §905(a)(1), Dec. 1, 1981, 95 Stat. 1115, §371; amended Pub. L. 100–456, div. A, title XI, §1104(a), Sept. 29, 1988, 102 Stat. 2043; renumbered §271, Pub. L. 114–328, div. A, title XII, §1241(a)(2), Dec. 23, 2016, 130 Stat. 2497.)

PRIOR PROVISIONS

A prior section 271, added Pub. L. 85–861, §1(5)(A), Sept. 2, 1958, 72 Stat. 1438; amended Pub. L. 95–485, title IV, §405(b), Oct. 20, 1978, 92 Stat. 1615, related to system of continuous screening of units and members of Ready Reserve, prior to repeal by Pub. L. 103–337, div. A, title XVI, §§1661(a)(2)(A), 1691, Oct. 5, 1994, 108 Stat. 2979, 3026, effective Dec. 1, 1994. See section 10149 of this title.

AMENDMENTS

2016—Pub. L. 114–328 renumbered section 371 of this title as this section.

1988—Pub. L. 100–456 amended section generally, designating existing provisions as subsec. (a), inserting reference to military training, and adding subsecs. (b) and (c).

SHORT TITLE OF 1986 AMENDMENT

Pub. L. 99–570, title III, §3051, Oct. 27, 1986, 100 Stat. 3207–74, provided that: ''This subtitle [subtitle A (§§3051–3059) of title III of Pub. L. 99–570, enacting section 379 of this title, amending sections 374 and 911 of this title, enacting provisions set out as notes under sections 374, 525, and 9441 of this title, and repealing provisions set out as a note under section 89 of Title 14, Coast Guard] may be cited as the 'Defense Drug Interdiction Assistance Act'.''

ENHANCEMENT OF INFORMATION SHARING AND COORDINATION OF MILITARY TRAINING BETWEEN DEPARTMENT OF HOMELAND SECURITY AND DEPARTMENT OF DEFENSE

Pub. L. 114–328, div. A, title X, §1014, Dec. 23, 2016, 130 Stat. 2386, as amended by Pub. L. 116–92, div. A, title X, §1053, Dec. 20, 2019, 133 Stat. 1591, provided that:

''(a) IN GENERAL.—The Secretary of Homeland Security shall ensure that the information needs of the Department of Homeland Security relating to civilian law enforcement activities in proximity to the international borders of the United States are identified and communicated to the Secretary of Defense for the purposes of the planning and executing of military training by the Department of Defense.

''(b) FORMAL MECHANISM OF NOTIFICATION.—

''(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act [Dec. 23, 2016], the Secretary of Homeland Security, in coordination with the Secretary of Defense, shall establish a formal mechanism through which the information needs of the Department of Homeland Security relating to civilian law enforcement activities in proximity to the international borders of the United States are identified and communicated to the Secretary of Defense for the purposes of the planning and executing military training by the Department of Defense.

''(2) DISSEMINATION TO THE ARMED FORCES.—To the extent practicable, the Secretary of Defense shall ensure that such information needs are disseminated to the Armed Forces in a timely manner so the Armed Forces may take into account the information needs of civilian law enforcement when planning and executing training in accordance with section 271 of title 10, United States Code.

''(3) COORDINATION OF TRAINING.—To the maximum extent practicable, the Secretary of Defense shall ensure that the planning and execution of training described in paragraph (2) is coordinated with the Department of Homeland Security.

''(c) SHARING OF CERTAIN INFORMATION.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Homeland Security and the Secretary of Defense shall jointly formulate guidance to

ensure that the information relevant to civilian law enforcement matters that is collected by the Armed Forces during the normal course of military training or operations in proximity to the international borders of the United States is provided promptly to relevant officials in accordance with section 271 of title 10, United States Code.

''(d) ANNUAL REPORTS.—

''(1) DEPARTMENT OF DEFENSE REPORT.—

''(A) IN GENERAL.—Not later than March 31 of each year, the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives], the Committee on Homeland Security of the House of Representatives, and the Committee on Homeland Security and Governmental Affairs of the Senate a report on any assistance provided by the Department of Defense to the border security mission of the Department of Homeland Security at the international borders of the United States during the fiscal year preceding the fiscal year during which the report is submitted.

''(B) ELEMENTS.—Each report submitted under subparagraph (A) shall include each of the following:

''(i) A description of the military training and operational activities of each military component leveraged, pursuant to section 271 of title 10, United States Code, to support the border security mission of the Department of Homeland Security at the southern border of the United States.

''(ii) For each activity described in clause (i), each of the following, identified by component:

''(I) The Department of Homeland Security information need that was supported.

''(II) The military training or operational activity leveraged to provide support.

''(III) The duration of the support.

''(IV) The cost of the support.

''(iii) A description of any Department of Defense activities provided in response to a request for assistance from the Department of Homeland Security.

''(iv) For each activity described in clause (iii)—

''(I) The stated rationale of the Department of Homeland Security for requesting assistance from the Department of Defense.

''(II) The capability provided by the Department of Defense.

''(III) The duration of the assistance provided by the capability.

''(IV) The statutory authority under which the assistance was provided.

''(V) The cost of the assistance provided.

''(VI) Whether the Department of Defense was reimbursed by the Department of Homeland Security for the assistance provided.

''(VII) In the case of assistance for which the Department of Defense was not reimbursed, the justification for non-reimbursement.

''(v) A description of any Department of Defense excess property provided to U. S. Customs and Border Protection.

''(vi) The status of the implementation of this section.

''(vii) A description of any other activity the Secretary of Defense determines relevant.

''(2) DEPARTMENT OF HOMELAND SECURITY REPORT.—Not later than March 31 of each year, the Secretary of Homeland Security shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives], the Committee on Homeland Security of the House of Representatives, and the Committee on Homeland Security and Governmental Affairs of the Senate a report on—

''(A) any activities of the Department of Homeland Security to reduce, mitigate, or eliminate the demand for Department of Defense support at the international borders of the United States; and

''(B) the status of implementation of this section.

''(3) TERMINATION.—The requirement to submit a report under paragraph (1) or (2) shall terminate on December 31, 2022.''

AUTHORITY FOR JOINT TASK FORCES TO PROVIDE SUPPORT TO LAW ENFORCEMENT AGENCIES CONDUCTING COUNTER-TERRORISM ACTIVITIES

Pub. L. 108–136, div. A, title X, § 1022, Nov. 24, 2003, 117 Stat. 1594, as amended by Pub. L. 109–163, div. A, title X, § 1022, Jan. 6, 2006, 119 Stat. 3427; Pub. L. 110–181, div. A, title X, § 1021, Jan. 28, 2008, 122 Stat. 304; Pub. L. 110–417, [div. A], title X, § 1022, Oct. 14, 2008, 122 Stat. 4586; Pub. L. 111–84, div. A, title X, § 1012, Oct. 28, 2009, 123 Stat. 2441; Pub. L. 111–383, div. A, title X, § 1012(a)–(b)(2), Jan. 7, 2011, 124 Stat. 4346, 4347; Pub. L. 112–81, div. A, title X, § 1004(a), Dec. 31, 2011, 125 Stat. 1556; Pub. L. 112–239, div. A, title X, § 1011, Jan. 2, 2013, 126 Stat. 1907; Pub. L. 113–66, div. A, title X, § 1012, Dec. 26, 2013, 127 Stat. 844; Pub. L. 113–291, div. A, title X, § 1014, Dec. 19, 2014, 128 Stat. 3484; Pub. L. 115–91, div. A, title X, § 1081(i), Dec. 12, 2017, 131 Stat. 1601; Pub. L. 116–92, div. A, title X, § 1022, Dec. 20, 2019, 133 Stat. 1578, provided that:

''(a) AUTHORITY.—A joint task force of the Department of Defense that provides support to law enforcement agencies conducting counter-drug activities may also provide, subject to all applicable laws and regulations, support to law enforcement agencies conducting counter-terrorism activities or counter-transnational organized crime activities.

''(b) AVAILABILITY OF FUNDS.—During fiscal years 2006 through 2022, funds for drug interdiction and counter-drug activities that are available to a joint task force to support counter-drug activities may also be used to provide the counter-terrorism or counter-transnational organized crime support authorized by subsection (a).

''(c) ANNUAL REPORT.—Not later than December 31 of each year in which the authority in subsection (a) is in effect, the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of Senate and House of Representatives] a report setting forth, for the one-year period ending on the date of such report, the following:

''(1) An assessment of the effect on counter-drug, counter-transnational organized crime, and counter-terrorism activities and objectives of using counter-drug funds of a joint task force to provide counter-terrorism or counter-transnational organized crime support authorized by subsection (a).

''(2) A description of the type of support and any recipient of support provided under subsection (a), and a description of the objectives of such support.

''(3) A list of current joint task forces exercising the authority under subsection (a).

''(4) A certification by the Secretary of Defense that any support provided under subsection (a) during such one-year period was provided in compliance with the requirements of subsection (d).

''(d) CONDITIONS.—(1) Any support provided under subsection (a) may only be provided in the geographic area of responsibility of the joint task force.

''(2)(A) Support for counter-terrorism or counter-transnational organized crime activities provided under subsection (a) may only be provided if the Secretary of Defense determines that the objectives of using the counter-drug funds of any joint task force to provide such support relate significantly to the objectives of providing support for counter-drug activities by that joint task force or any other joint task force.

''(B) The Secretary of Defense may waive the requirements of subparagraph (A) if the Secretary determines that such a waiver is vital to the national security interests of the United States. The Secretary shall promptly submit to the congressional defense committees notice in writing of any waiver issued under this subparagraph, together with a description of the vital

national security interests associated with the support covered by such waiver.

''(e) DEFINITIONS.—(1) In this section, the term 'transnational organized crime' has the meaning given such term in section 284(i) of title 10, United States Code.

''(2) For purposes of applying the definition of transnational organized crime under paragraph (1) to this section, the term 'illegal means', as it appears in such definition, includes the trafficking of money, human trafficking, illicit financial flows, illegal trade in natural resources and wildlife, trade in illegal drugs and weapons, and other forms of illegal means determined by the Secretary of Defense.''

[Pub. L. 112–81, div. A, title X, § 1004(b), Dec. 31, 2011, 125 Stat. 1556, provided that: ''The authority in section 1022 of the National Defense Authorization Act for Fiscal Year 2004 [Pub. L. 108–136, set out above], as amended by subsection (a), may not be exercised unless the Secretary of Defense certifies to Congress, in writing, that the Department of Defense is in compliance with the provisions of paragraph (2) of subsection (d) of such section, as added by section 1012(b) of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (Public Law 111–383; 124 Stat. 4346).'']

§ 272. Use of military equipment and facilities

The Secretary of Defense may, in accordance with other applicable law, make available any equipment (including associated supplies or spare parts), base facility, or research facility of the Department of Defense to any Federal, State, or local civilian law enforcement official for law enforcement purposes.

(Added Pub. L. 97–86, title IX, § 905(a)(1), Dec. 1, 1981, 95 Stat. 1115, § 372; amended Pub. L. 100–456, div. A, title XI, § 1104(a), Sept. 29, 1988, 102 Stat. 2043; Pub. L. 104–106, div. A, title III, § 378, Feb. 10, 1996, 110 Stat. 284; Pub. L. 104–201, div. A, title XIV, § 1416(b), Sept. 23, 1996, 110 Stat. 2723; Pub. L. 112–239, div. A, title III, § 351, Jan. 2, 2013, 126 Stat. 1701; renumbered § 272, Pub. L. 114–328, div. A, title XII, § 1241(a)(2), Dec. 23, 2016, 130 Stat. 2497.)

PRIOR PROVISIONS

A prior section 272, added Pub. L. 85–861, § 1(5)(A), Sept. 2, 1958, 72 Stat. 1438; amended Pub. L. 96–513, title V, § 511(8), Dec. 12, 1980, 94 Stat. 2920, related to transfers back from Standby Reserve to Ready Reserve, prior to repeal by Pub. L. 103–337, div. A, title XVI, §§ 1661(a)(2)(A), 1691, Oct. 5, 1994, 108 Stat. 2979, 3026, effective Dec. 1, 1994. See section 10150 of this title.

AMENDMENTS

2016—Pub. L. 114–328 renumbered section 372 of this title as this section.

2013—Pub. L. 112–239 struck out ''(a) IN GENERAL.—'' before ''The Secretary'' and subsec. (b) which related to emergencies involving chemical and biological agents.

1996—Pub. L. 104–106 designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

Subsec. (b)(1). Pub. L. 104–201 inserted at end ''The requirement for a determination that an item is not reasonably available from another source does not apply to assistance provided under section 382 of this title pursuant to a request of the Attorney General for the assistance.''

1988—Pub. L. 100–456 amended section generally, inserting ''(including associated supplies or spare parts)'' and substituting ''Department of Defense'' for ''Army, Navy, Air Force, or Marine Corps''.

SUPPORT FOR NON-FEDERAL DEVELOPMENT AND TESTING OF MATERIAL FOR CHEMICAL AGENT DEFENSE

Pub. L. 110–181, div. A, title X, § 1034, Jan. 28, 2008, 122 Stat. 308, as amended by Pub. L. 114–328, div. A, title X, § 1043, Dec. 23, 2016, 130 Stat. 2393; Pub. L. 115–232, div. A, title VIII, § 813(b)(2), Aug. 13, 2018, 132 Stat. 1851, provided that:

''(a) AUTHORITY TO PROVIDE TOXIC CHEMICALS OR PRECURSORS.—

''(1) IN GENERAL.—The Secretary of Defense, in coordination with the heads of other elements of the Federal Government, may make available, to a State, a unit of local government, or a private entity incorporated in the United States, small quantities of a toxic chemical or precursor for the development or testing, in the United States, of material that is designed to be used for protective purposes.

''(2) TERMS AND CONDITIONS.—Any use of the authority under paragraph (1) shall be subject to such terms and conditions as the Secretary considers appropriate.

''(b) PAYMENT OF COSTS AND DISPOSITION OF FUNDS.—

''(1) IN GENERAL.—The Secretary shall ensure, through the advance payment required by paragraph (2) and through any other payments that may be required, that a recipient of toxic chemicals or precursors under subsection (a) pays for all actual costs, including direct and indirect costs, associated with providing the toxic chemicals or precursors.

''(2) ADVANCE PAYMENT.—In carrying out paragraph (1), the Secretary shall require each recipient to make an advance payment in an amount that the Secretary determines will equal all such actual costs.

''(3) CREDITS.—A payment received under this subsection shall be credited to the account that was used to cover the costs for which the payment was provided. Amounts so credited shall be merged with amounts in that account, and shall be available for the same purposes, and subject to the same conditions and limitations, as other amounts in that account.

''(c) CHEMICAL WEAPONS CONVENTION.—The Secretary shall ensure that toxic chemicals and precursors are made available under this section for uses and in quantities that comply with the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, signed at Paris on January 13, 1993, and entered into force with respect to the United States on April 29, 1997.

''(d) DEFINITIONS.—In this section:

''(1) The terms 'precursor', 'protective purposes', and 'toxic chemical' have the meanings given those terms in the convention referred to in subsection (c), in paragraph 2, paragraph 9(b), and paragraph 1, respectively, of article II of that convention.

''(2) The term 'biological select agent or toxin' means any agent or toxin identified under any of the following:

''(A) Section 331.3 of title 7, Code of Federal Regulations.

''(B) Section 121.3 or section 121.4 of title 9, Code of Federal Regulations.

''(C) Section 73.3 or section 73.4 of title 42, Code of Federal Regulations.''

§ 273. Training and advising civilian law enforcement officials

The Secretary of Defense may, in accordance with other applicable law, make Department of Defense personnel available—

(1) to train Federal, State, and local civilian law enforcement officials in the operation and maintenance of equipment, including equipment made available under section 372[1] of this title; and

(2) to provide such law enforcement officials with expert advice relevant to the purposes of this chapter.

[1] See References in Text note below.

(Added Pub. L. 97–86, title IX, § 905(a)(1), Dec. 1, 1981, 95 Stat. 1115, § 373; amended Pub. L. 99–145, title XIV, § 1423(a), Nov. 8, 1985, 99 Stat. 752; Pub. L. 100–456, div. A, title XI, § 1104(a), Sept. 29, 1988, 102 Stat. 2043; renumbered § 273, Pub. L. 114–328, div. A, title XII, § 1241(a)(2), Dec. 23, 2016, 130 Stat. 2497.)

REFERENCES IN TEXT

Section 372 of this title, referred to in par. (1), was renumbered section 272 of this title by Pub. L. 114–328, div. A, title XII, § 1241(a)(2), Dec. 23, 2016, 130 Stat. 2497.

PRIOR PROVISIONS

A prior section 273, act Aug. 10, 1956, ch. 1041, 70A Stat. 13, related to composition of Standby Reserve and maintenance of inactive status list in Standby Reserve, prior to repeal by Pub. L. 103–337, div. A, title XVI, §§ 1661(a)(2)(A), 1691, Oct. 5, 1994, 108 Stat. 2979, 3026, effective Dec. 1, 1994. See sections 10151 to 10153 of this title.

AMENDMENTS

2016—Pub. L. 114–328 renumbered section 373 of this title as this section.

1988—Pub. L. 100–456 amended section generally, substituting provisions authorizing Secretary of Defense, in accordance with applicable law, to make Defense Department personnel available for training, etc., for former subsecs. (a) to (c) authorizing Secretary of Defense to assign members of Army, Navy, Air Force, and Marine Corps, etc., for training, etc., briefing sessions by Attorney General, and other functions of Attorney General and Administrator of General Services.

1985—Pub. L. 99–145 designated existing provisions as subsec. (a) and added subsecs. (b) and (c).

EFFECTIVE DATE OF 1985 AMENDMENT

Pub. L. 99–145, title XIV, § 1423(b), Nov. 8, 1985, 99 Stat. 752, provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on January 1, 1986.''

§ 274. Maintenance and operation of equipment

(a) The Secretary of Defense may, in accordance with other applicable law, make Department of Defense personnel available for the maintenance of equipment for Federal, State, and local civilian law enforcement officials, including equipment made available under section 372[1] of this title.

(b)(1) Subject to paragraph (2) and in accordance with other applicable law, the Secretary of Defense may, upon request from the head of a Federal law enforcement agency, make Department of Defense personnel available to operate equipment (including equipment made available under section 372[1] of this title) with respect to—

(A) a criminal violation of a provision of law specified in paragraph (4)(A);

(B) assistance that such agency is authorized to furnish to a State, local, or foreign government which is involved in the enforcement of similar laws;

(C) a foreign or domestic counter-terrorism operation; or

(D) a rendition of a suspected terrorist from a foreign country to the United States to stand trial.

(2) Department of Defense personnel made available to a civilian law enforcement agency under this subsection may operate equipment for the following purposes:

(A) Detection, monitoring, and communication of the movement of air and sea traffic.

(B) Detection, monitoring, and communication of the movement of surface traffic outside of the geographic boundary of the United States and within the United States not to exceed 25 miles of the boundary if the initial detection occurred outside of the boundary.

(C) Aerial reconnaissance.

(D) Interception of vessels or aircraft detected outside the land area of the United States for the purposes of communicating with such vessels and aircraft to direct such vessels and aircraft to go to a location designated by appropriate civilian officials.

(E) Operation of equipment to facilitate communications in connection with law enforcement programs specified in paragraph (4)(A).

(F) Subject to joint approval by the Secretary of Defense and the Attorney General (and the Secretary of State in the case of a law enforcement operation outside of the land area of the United States)—

(i) the transportation of civilian law enforcement personnel along with any other civilian or military personnel who are supporting, or conducting, a joint operation with civilian law enforcement personnel;

(ii) the operation of a base of operations for civilian law enforcement and supporting personnel; and

(iii) the transportation of suspected terrorists from foreign countries to the United States for trial (so long as the requesting Federal law enforcement agency provides all security for such transportation and maintains custody over the suspect through the duration of the transportation).

(3) Department of Defense personnel made available to operate equipment for the purpose stated in paragraph (2)(D) may continue to operate such equipment into the land area of the United States in cases involving the pursuit of vessels or aircraft where the detection began outside such land area.

(4) In this subsection:

(A) The term ''Federal law enforcement agency'' means a Federal agency with jurisdiction to enforce any of the following:

(i) The Controlled Substances Act (21 U.S.C. 801 et seq.) or the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.).

(ii) Any of sections 274 through 278 of the Immigration and Nationality Act (8 U.S.C. 1324–1328).

(iii) A law relating to the arrival or departure of merchandise (as defined in section 401 of the Tariff Act of 1930 (19 U.S.C. 1401) into or out of the customs territory of the United States (as defined in general note 2 of the Harmonized Tariff Schedule of the United States) or any other territory or possession of the United States.

(iv) Chapter 705 of title 46.

(v) Any law, foreign or domestic, prohibiting terrorist activities.

(B) The term ''land area of the United States'' includes the land area of any terri-

[1] See References in Text note below.

tory, commonwealth, or possession of the United States.

(c) The Secretary of Defense may, in accordance with other applicable law, make Department of Defense personnel available to any Federal, State, or local civilian law enforcement agency to operate equipment for purposes other than described in subsection (b)(2) only to the extent that such support does not involve direct participation by such personnel in a civilian law enforcement operation unless such direct participation is otherwise authorized by law.

(Added Pub. L. 97–86, title IX, § 905(a)(1), Dec. 1, 1981, 95 Stat. 1115, § 374; amended Pub. L. 98–525, title XIV, § 1405(9), Oct. 19, 1984, 98 Stat. 2622; Pub. L. 99–570, title III, § 3056, Oct. 27, 1986, 100 Stat. 3207–77; Pub. L. 99–661, div. A, title XIII, § 1373(c), Nov. 14, 1986, 100 Stat. 4007; Pub. L. 100–418, title I, § 1214(a)(1), Aug. 23, 1988, 102 Stat. 1155; Pub. L. 100–456, div. A, title XI, § 1104(a), Sept. 29, 1988, 102 Stat. 2043; Pub. L. 101–189, div. A, title XII, §§ 1210, 1216(b), (c), Nov. 29, 1989, 103 Stat. 1566, 1569; Pub. L. 102–484, div. A, title X, § 1042, Oct. 23, 1992, 106 Stat. 2492; Pub. L. 105–277, div. B, title II, § 201, Oct. 21, 1998, 112 Stat. 2681–567; Pub. L. 106–65, div. A, title X, § 1066(a)(4), Oct. 5, 1999, 113 Stat. 770; Pub. L. 109–304, § 17(a)(1), Oct. 6, 2006, 120 Stat. 1706; renumbered § 274, Pub. L. 114–328, div. A, title XII, § 1241(a)(2), Dec. 23, 2016, 130 Stat. 2497.)

References in Text

Section 372 of this title, referred to in subsecs. (a) and (b)(1), was renumbered section 272 of this title by Pub. L. 114–328, div. A, title XII, § 1241(a)(2), Dec. 23, 2016, 130 Stat. 2497.

The Controlled Substances Act, referred to in subsec. (b)(4)(A)(i), is title II of Pub. L. 91–513, Oct. 27, 1970, 84 Stat. 1242, which is classified principally to subchapter I (§ 801 et seq.) of chapter 13 of Title 21, Food and Drugs. For complete classification of this Act to the Code, see Short Title note set out under section 801 of Title 21 and Tables.

The Controlled Substances Import and Export Act, referred to in subsec. (b)(4)(A)(i), is title III of Pub. L. 91–513, Oct. 27, 1970, 84 Stat. 1285, which is classified principally to subchapter II (§ 951 et seq.) of chapter 13 of Title 21. For complete classification of the Act to the Code, see Short Title note set out under section 951 of Title 21 and Tables.

The Harmonized Tariff Schedule of the United States, referred to in subsec. (b)(4)(A)(iii), is not set out in the Code. See Publication of Harmonized Tariff Schedule note set out under section 1202 of Title 19, Customs Duties.

Prior Provisions

A prior section 274, acts Aug. 10, 1956, ch. 1041, 70A Stat. 13; June 30, 1960, Pub. L. 86–559, § 1(2)(B), 74 Stat. 264; Dec. 12, 1980, Pub. L. 96–513, title V, § 511(9), 94 Stat. 2920, related to composition of Retired Reserve, prior to repeal by Pub. L. 103–337, div. A, title XVI, §§ 1661(a)(2)(A), 1691, Oct. 5, 1994, 108 Stat. 2979, 3026, effective Dec. 1, 1994. See section 10154 of this title.

Amendments

2016—Pub. L. 114–328 renumbered section 374 of this title as this section.

2006—Subsec. (b)(4)(A)(iv). Pub. L. 109–304 substituted ‘‘Chapter 705 of title 46’’ for ‘‘The Maritime Drug Law Enforcement Act (46 U.S.C. App. 1901 et seq.)’’.

1999—Subsec. (b)(1)(C), (D). Pub. L. 106–65, § 1066(a)(4)(A), realigned margins.

Subsec. (b)(2)(F)(i). Pub. L. 106–65, § 1066(a)(4)(B), struck out semicolon after ‘‘law enforcement personnel;’’.

1998—Subsec. (b)(1)(C), (D). Pub. L. 105–277, § 201(1), (2), added subpars. (C) and (D).

Subsec. (b)(2)(F)(i). Pub. L. 105–277, § 201(3), inserted ‘‘along with any other civilian or military personnel who are supporting, or conducting, a joint operation with civilian law enforcement personnel;’’ after ‘‘transportation of civilian law enforcement personnel’’ and struck out ‘‘and’’ at end.

Subsec. (b)(2)(F)(ii). Pub. L. 105–277, § 201(4)(A), inserted ‘‘and supporting’’ before ‘‘personnel’’.

Subsec. (b)(2)(F)(iii). Pub. L. 105–277, § 201(4)(B), (C), added cl. (iii).

Subsec. (b)(4)(A). Pub. L. 105–277, § 201(5), substituted ‘‘a Federal agency’’ for ‘‘an agency’’ in introductory provisions.

Subsec. (b)(4)(A)(v). Pub. L. 105–277, § 201(6), added cl. (v).

1992—Subsec. (b)(2)(B) to (F). Pub. L. 102–484, § 1042(1), added subpar. (B) and redesignated former subpars. (B) to (E) as (C) to (F), respectively.

Subsec. (b)(3). Pub. L. 102–484, § 1042(2), substituted ‘‘paragraph (2)(D)’’ for ‘‘paragraph (2)(C)’’.

1989—Subsec. (b)(2)(E). Pub. L. 101–189, § 1210, substituted ‘‘and the Attorney General (and the Secretary of State in the case of a law enforcement operation outside of the land area of the United States)’’ for ‘‘, the Attorney General, and the Secretary of State, in connection with a law enforcement operation outside the land area of the United States’’ in introductory provisions.

Subsec. (b)(4)(A)(iii). Pub. L. 101–189, § 1216(b), substituted ‘‘general note 2 of the Harmonized Tariff Schedule of the United States’’ for ‘‘general headnote 2 of the Tariff Schedules of the United States’’.

Subsec. (c). Pub. L. 101–189, § 1216(c), substituted ‘‘subsection (b)(2)’’ for ‘‘paragraph (2)’’.

1988—Pub. L. 100–456 substituted ‘‘Maintenance and operation of equipment’’ for ‘‘Assistance by Department of Defense personnel’’ in section catchline, and amended text generally, revising and restating former subsecs. (a) to (d) as subsecs. (a) to (c).

Subsec. (a)(3). Pub. L. 100–418, which directed substitution of ‘‘general note 2 of the Harmonized Tariff Schedule of the United States’’ for ‘‘general headnote 2 of the Tariff Schedules of the United States’’, could not be executed because of intervening general amendment by Pub. L. 100–456.

1986—Subsec. (a). Pub. L. 99–570, § 3056(a), inserted provision at end relating to assistance that such agency is authorized to furnish to any foreign government which is involved in the enforcement of similar laws.

Subsec. (c). Pub. L. 99–570, § 3056(b), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows:

‘‘(1) In an emergency circumstance, equipment operated by or with the assistance of personnel assigned under subsection (a) may be used outside the land area of the United States (or any territory or possession of the United States) as a base of operations by Federal law enforcement officials to facilitate the enforcement of a law listed in subsection (a) and to transport such law enforcement officials in connection with such operations, if—

‘‘(A) equipment operated by or with the assistance of personnel assigned under subsection (a) is not used to interdict or to interrupt the passage of vessels or aircraft; and

‘‘(B) the Secretary of Defense and the Attorney General jointly determine that an emergency circumstance exists.

‘‘(2) For purposes of this subsection, an emergency circumstance may be determined to exist only when—

‘‘(A) the size or scope of the suspected criminal activity in a given situation poses a serious threat to the interests of the United States; and

‘‘(B) enforcement of a law listed in subsection (a) would be seriously impaired if the assistance described in this subsection were not provided.’’

Subsec. (d). Pub. L. 99–661 added subsec. (d).

1984—Subsec. (a)(3). Pub. L. 98–525 struck out ‘‘(19 U.S.C. 1202)’’ after ‘‘Tariff Schedules of the United States’’.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–418 effective Jan. 1, 1989, and applicable with respect to articles entered on or after such date, see section 1217(b)(1) of Pub. L. 100–418, set out as an Effective Date note under section 3001 of Title 19, Customs Duties.

FUNDS FOR YOUNG MARINES PROGRAM

Pub. L. 110–116, div. A, title VIII, § 8030, Nov. 13, 2007, 121 Stat. 1321, provided that: ''Notwithstanding any other provision of law, funds available during the current fiscal year and hereafter for 'Drug Interdiction and Counter-Drug Activities, Defense' may be obligated for the Young Marines program.''

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 109–289, div. A, title VIII, § 8028, Sept. 29, 2006, 120 Stat. 1279.

Pub. L. 109–148, div. A, title VIII, § 8033, Dec. 30, 2005, 119 Stat. 2705.

Pub. L. 108–287, title VIII, § 8037, Aug. 5, 2004, 118 Stat. 978.

Pub. L. 108–87, title VIII, § 8037, Sept. 30, 2003, 117 Stat. 1080.

Pub. L. 107–248, title VIII, § 8037, Oct. 23, 2002, 116 Stat. 1544.

Pub. L. 107–117, div. A, title VIII, § 8040, Jan. 10, 2002, 115 Stat. 2256.

Pub. L. 106–259, title VIII, § 8040, Aug. 9, 2000, 114 Stat. 683.

Pub. L. 106–79, title VIII, § 8043, Oct. 25, 1999, 113 Stat. 1240.

Pub. L. 105–262, title VIII, § 8043, Oct. 17, 1998, 112 Stat. 2307.

Pub. L. 105–56, title VIII, § 8047, Oct. 8, 1997, 111 Stat. 1231.

Pub. L. 104–208, div. A, title I, § 101(b) [title VIII, § 8048], Sept. 30, 1996, 110 Stat. 3009–71, 3009–99.

COUNTER-DRUG ACTIVITIES; CONDITIONS ON TRANSFERS OF FUNDS AND DETAILING PERSONNEL; RELATIONSHIP TO OTHER LAW

Pub. L. 103–337, div. A, title X, § 1011(b)–(d), Oct. 5, 1994, 108 Stat. 2836, provided that:

''(b) CONDITION ON TRANSFER OF FUNDS.—Funds appropriated for the Department of Defense may not be transferred to a National Drug Control Program agency account except to the extent provided in a law that specifically states—

''(1) the amount authorized to be transferred;

''(2) the account from which such amount is authorized to be transferred; and

''(3) the account to which such amount is authorized to be transferred.

''(c) CONDITION ON DETAILING PERSONNEL.—Personnel of the Department of Defense may not be detailed to another department or agency in order to implement the National Drug Control Strategy unless the Secretary of Defense certifies to Congress that the detail of such personnel is in the national security interest of the United States.

''(d) RELATIONSHIP TO OTHER LAW.—A provision of law may not be construed as modifying or superseding the provisions of subsection (b) or (c) unless that provision of law—

''(1) specifically refers to this section; and

''(2) specifically states that such provision of law modifies or supersedes the provisions of subsection (b) or (c), as the case may be.''

Pub. L. 116–260, div. C, title VIII, § 8047(a), Dec. 27, 2020, 134 Stat. 1316, provided that: ''None of the funds available to the Department of Defense for any fiscal year for drug interdiction or counter-drug activities may be transferred to any other department or agency of the United States except as specifically provided in an appropriations law.''

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 116–93, div. A, title VIII, § 8047(a), Dec. 20, 2019, 133 Stat. 2348.

Pub. L. 115–245, div. A, title VIII, § 8045(a), Sept. 28, 2018, 132 Stat. 3012.

Pub. L. 115–141, div. C, title VIII, § 8045(a), Mar. 23, 2018, 132 Stat. 475.

Pub. L. 115–31, div. C, title VIII, § 8047(a), May 5, 2017, 131 Stat. 258.

Pub. L. 114–113, div. C, title VIII, § 8046(a), Dec. 18, 2015, 129 Stat. 2362.

Pub. L. 113–235, div. C, title VIII, § 8045(a), Dec. 16, 2014, 128 Stat. 2264.

Pub. L. 113–76, div. C, title VIII, § 8045(a), Jan. 17, 2014, 128 Stat. 115.

Pub. L. 113–6, div. C, title VIII, § 8045(a), Mar. 26, 2013, 127 Stat. 308.

Pub. L. 112–74, div. A, title VIII, § 8045(a), Dec. 23, 2011, 125 Stat. 817.

Pub. L. 112–10, div. A, title VIII, § 8045(a), Apr. 15, 2011, 125 Stat. 67.

Pub. L. 111–118, div. A, title VIII, § 8047(a), Dec. 19, 2009, 123 Stat. 3439.

Pub. L. 110–329, div. C, title VIII, § 8047(a), Sept. 30, 2008, 122 Stat. 3631.

Pub. L. 110–116, div. A, title VIII, § 8048(a), Nov. 13, 2007, 121 Stat. 1325.

Pub. L. 109–289, div. A, title VIII, § 8045(a), Sept. 29, 2006, 120 Stat. 1283.

Pub. L. 109–148, div. A, title VIII, § 8052(a), Dec. 30, 2005, 119 Stat. 2709.

Pub. L. 108–287, title VIII, § 8057(a), Aug. 5, 2004, 118 Stat. 983.

Pub. L. 108–87, title VIII, § 8057(a), Sept. 30, 2003, 117 Stat. 1085.

Pub. L. 107–248, title VIII, § 8058(a), Oct. 23, 2002, 116 Stat. 1549.

Pub. L. 107–117, div. A, title VIII, § 8063(a), Jan. 10, 2002, 115 Stat. 2261.

Pub. L. 106–259, title VIII, § 8062(a), Aug. 9, 2000, 114 Stat. 688.

Pub. L. 106–79, title VIII, § 8065(a), Oct. 25, 1999, 113 Stat. 1244.

Pub. L. 105–262, title VIII, § 8065(a), Oct. 17, 1998, 112 Stat. 2311.

Pub. L. 105–56, title VIII, § 8071(a), Oct. 8, 1997, 111 Stat. 1235.

Pub. L. 104–208, div. A, title I, § 101(b) [title VIII, § 8080(a)], Sept. 30, 1996, 110 Stat. 3009–71, 3009–104.

Pub. L. 104–61, title VIII, § 8096(a), Dec. 1, 1995, 109 Stat. 671.

Pub. L. 103–335, title VIII, § 8154(a), Sept. 30, 1994, 108 Stat. 2658.

ADDITIONAL SUPPORT FOR COUNTER-DRUG ACTIVITIES AND ACTIVITIES TO COUNTER TRANSNATIONAL ORGANIZED CRIME

Pub. L. 101–510, div. A, title X, § 1004, Nov. 5, 1990, 104 Stat. 1629, as amended by Pub. L. 102–190, div. A, title X, § 1088(a), Dec. 5, 1991, 105 Stat. 1484; Pub. L. 102–484, div. A, title X, § 1041(a)–(d)(1), Oct. 23, 1992, 106 Stat. 2491; Pub. L. 103–160, div. A, title XI, § 1121(a), (b), Nov. 30, 1993, 107 Stat. 1753; Pub. L. 103–337, div. A, title X, § 1011(a), Oct. 5, 1994, 108 Stat. 2836; Pub. L. 105–261, div. A, title X, § 1021, Oct. 17, 1998, 112 Stat. 2120; Pub. L. 107–107, div. A, title X, § 1021, Dec. 28, 2001, 115 Stat. 1212; Pub. L. 109–364, div. A, title X, § 1021, Oct. 17, 2006, 120 Stat. 2382; Pub. L. 111–383, div. A, title X, § 1015(a), Jan. 7, 2011, 124 Stat. 4347; Pub. L. 112–81, div. A, title X, § 1005, Dec. 31, 2011, 125 Stat. 1556; Pub. L. 113–291, div. A, title X, § 1012, Dec. 19, 2014, 128 Stat. 3483, which authorized the Secretary of Defense, during fiscal years 2012 through 2017, to provide support for the counter-drug activities or activities to counter transnational organized crime of any other department or agency of the Federal Government or of any State, local, tribal, or foreign law enforcement agency, was repealed by Pub. L. 114–328, div. A, title X, § 1011(b), Dec. 23, 2016, 130 Stat. 2385. See section 284 of this title.

COMMUNICATIONS NETWORK

Pub. L. 100–456, div. A, title XI, § 1103, Sept. 29, 1988, 102 Stat. 2042, related to integration of United States

assets dedicated to interdiction of illegal drugs into an effective communications network, prior to repeal by Pub. L. 101–189, div. A, title XII, § 1204(b), Nov. 29, 1989, 103 Stat. 1564. See section 1204(a) of Pub. L. 101–189 set out as a note under section 124 of this title.

ENHANCED DRUG INTERDICTION AND ENFORCEMENT ROLE FOR NATIONAL GUARD

Pub. L. 100–456, div. A, title XI, § 1105, Sept. 29, 1988, 102 Stat. 2047, related to funding and training of National Guard for purpose of drug interdiction and enforcement operations and for operation and maintenance of equipment and facilities for such purpose, prior to repeal by Pub. L. 101–189, div. A, title XII, § 1207(b), Nov. 29, 1989, 103 Stat. 1566. See section 112 of Title 32, National Guard.

ADDITIONAL DEPARTMENT OF DEFENSE DRUG LAW ENFORCEMENT ASSISTANCE

Pub. L. 99–570, title III, § 3057, Oct. 27, 1986, 100 Stat. 3207–77, provided that the Secretary of Defense was to submit to Congress, within 90 days after Oct. 27, 1986, a list of all forms of assistance that were to be made available by the Department of Defense to civilian drug law enforcement and drug interdiction agencies and a plan for promptly lending equipment and rendering drug interdiction-related assistance included on the list, provided for congressional approval of the list and plan, required the Secretary to convene a conference of the heads of Government agencies with jurisdiction over drug law enforcement to determine the appropriate distribution of the assets or other assistance to be made available by the Department to such agencies, and provided for monitoring of the Department's performance by the General Accounting Office.

§ 275. Restriction on direct participation by military personnel

The Secretary of Defense shall prescribe such regulations as may be necessary to ensure that any activity (including the provision of any equipment or facility or the assignment or detail of any personnel) under this chapter does not include or permit direct participation by a member of the Army, Navy, Air Force, or Marine Corps in a search, seizure, arrest, or other similar activity unless participation in such activity by such member is otherwise authorized by law.

(Added Pub. L. 97–86, title IX § 905(a)(1), Dec. 1, 1981, 95 Stat. 1116, § 375; amended Pub. L. 100–456, div. A, title XI, § 1104(a), Sept. 29, 1988, 102 Stat. 2045; Pub. L. 101–189, div. A, title XII, § 1211, Nov. 29, 1989, 103 Stat. 1567; renumbered § 275, Pub. L. 114–328, div. A, title XII, § 1241(a)(2), Dec. 23, 2016, 130 Stat. 2497.)

PRIOR PROVISIONS

A prior section 275, acts Aug. 10, 1956, ch. 1041, 70A Stat. 13; Sept. 2, 1958, Pub. L. 85–861, § 1(5)(B), 72 Stat. 1439, related to maintenance of personnel records of members of reserve components, prior to repeal by Pub. L. 103–337, div. A, title XVI, §§ 1661(a)(2)(A), 1691, Oct. 5, 1994, 108 Stat. 2979, 3026, effective Dec. 1, 1994. See section 10204 of this title.

AMENDMENTS

2016—Pub. L. 114–328 renumbered section 375 of this title as this section.

1989—Pub. L. 101–189 substituted "any activity" for "the provision of any support", struck out "to any civilian law enforcement official" after "any personnel)", and substituted "a search, seizure, arrest," for "a search and seizure, an arrest,".

1988—Pub. L. 100–456 amended section generally. Prior to amendment, section read as follows: "The Secretary of Defense shall issue such regulations as may be necessary to insure that the provision of any assistance (including the provision of any equipment or facility or the assignment of any personnel) to any civilian law enforcement official under this chapter does not include or permit direct participation by a member of the Army, Navy, Air Force, or Marine Corps in an interdiction of a vessel or aircraft, a search and seizure, arrest, or other similar activity unless participation in such activity by such member is otherwise authorized by law."

§ 276. Support not to affect adversely military preparedness

Support (including the provision of any equipment or facility or the assignment or detail of any personnel) may not be provided to any civilian law enforcement official under this chapter if the provision of such support will adversely affect the military preparedness of the United States. The Secretary of Defense shall prescribe such regulations as may be necessary to ensure that the provision of any such support does not adversely affect the military preparedness of the United States.

(Added Pub. L. 97–86, title, IX, § 905(a)(1), Dec. 1, 1981, 95 Stat. 1116, § 376; amended Pub. L. 100–456, div. A, title XI, § 1104(a), Sept. 29, 1988, 102 Stat. 2045; renumbered § 276, Pub. L. 114–328, div. A, title XII, § 1241(a)(2), Dec. 23, 2016, 130 Stat. 2497.)

PRIOR PROVISIONS

A prior section 276, acts Aug. 10, 1956, ch. 1041, 70A Stat. 13; Apr. 21, 1987, Pub. L. 100–26, § 7(k)(4), 101 Stat. 284, related to maintenance of mobilization forces, prior to repeal by Pub. L. 103–337, div. A, title XVI, §§ 1661(a)(2)(A), 1691, Oct. 5, 1994, 108 Stat. 2979, 3026, effective Dec. 1, 1994. See section 10207 of this title.

AMENDMENTS

2016—Pub. L. 114–328 renumbered section 376 of this title as this section.

1988—Pub. L. 100–456 substituted "Support" for "Assistance" in section catchline and amended text generally. Prior to amendment, text read as follows: "Assistance (including the provision of any equipment or facility or the assignment of any personnel) may not be provided to any civilian law enforcement official under this chapter if the provision of such assistance will adversely affect the military preparedness of the United States. The Secretary of Defense shall issue such regulations as may be necessary to insure that the provision of any such assistance does not adversely affect the military preparedness of the United States."

§ 277. Reimbursement

(a) Subject to subsection (c), to the extent otherwise required by section 1535 of title 31 (popularly known as the "Economy Act") or other applicable law, the Secretary of Defense shall require a civilian law enforcement agency to which support is provided under this chapter to reimburse the Department of Defense for that support.

(b)(1) Subject to subsection (c), the Secretary of Defense shall require a Federal agency to which law enforcement support or support to a national special security event is provided by National Guard personnel performing duty under section 502(f) of title 32 to reimburse the Department of Defense for the costs of that support, notwithstanding any other provision of law. No other provision of this chapter shall apply to such support.

(2) Any funds received by the Department of Defense under this subsection as reimbursement for support provided by personnel of the National Guard shall be credited, at the election of the Secretary of Defense, to the following:

(A) The appropriation, fund, or account used to fund the support.

(B) The appropriation, fund, or account currently available for reimbursement purposes.

(c) An agency to which support is provided under this chapter or section 502(f) of title 32 is not required to reimburse the Department of Defense for such support if the Secretary of Defense waives reimbursement. The Secretary may waive the reimbursement requirement under this subsection if such support—

(1) is provided in the normal course of military training or operations; or

(2) results in a benefit to the element of the Department of Defense or personnel of the National Guard providing the support that is substantially equivalent to that which would otherwise be obtained from military operations or training.

(Added Pub. L. 97–86, title IX, § 905(a)(1), Dec. 1, 1981, 95 Stat. 1116, § 377; amended Pub. L. 100–456, div. A, title XI, § 1104(a), Sept. 29, 1988, 102 Stat. 2045; Pub. L. 110–181, div. A, title X, § 1061, Jan. 28, 2008, 122 Stat. 319; renumbered § 277, Pub. L. 114–328, div. A, title XII, § 1241(a)(2), Dec. 23, 2016, 130 Stat. 2497.)

PRIOR PROVISIONS

A prior section 277, act Aug. 10, 1956, ch. 1041, 70A Stat. 14, prohibited discrimination in administering laws applicable to both Regulars and Reserves, prior to repeal by Pub. L. 103–337, div. A, title XVI, §§ 1661(a)(2)(A), 1691, Oct. 5, 1994, 108 Stat. 2979, 3026, effective Dec. 1, 1994. See section 10209 of this title.

AMENDMENTS

2016—Pub. L. 114–328 renumbered section 377 of this title as this section.

2008—Subsec. (a). Pub. L. 110–181, § 1061(1), substituted ''Subject to subsection (c), to the extent'' for ''To the extent''.

Subsecs. (b), (c). Pub. L. 110–181, § 1061(2), added subsecs. (b) and (c) and struck out former subsec. (b) which read as follows: ''An agency to which support is provided under this chapter is not required to reimburse the Department of Defense for such support if such support—

''(1) is provided in the normal course of military training or operations; or

''(2) results in a benefit to the element of the Department of Defense providing the support that is substantially equivalent to that which would otherwise be obtained from military operations or training.''

1988—Pub. L. 100–456 amended section generally. Prior to amendment, section read as follows: ''The Secretary of Defense shall issue regulations providing that reimbursement may be a condition of assistance to a civilian law enforcement official under this chapter.''

§ 278. Nonpreemption of other law

Nothing in this chapter shall be construed to limit the authority of the executive branch in the use of military personnel or equipment for civilian law enforcement purposes beyond that provided by law before December 1, 1981.

(Added Pub. L. 97–86, title IX, § 905(a)(1), Dec. 1, 1981, 95 Stat. 1116, § 378; amended Pub. L. 98–525, title XIV, § 1405(10), Oct. 19, 1984, 98 Stat. 2622; Pub. L. 100–456, div. A, title XI, § 1104(a), Sept. 29, 1988, 102 Stat. 2045; renumbered § 278, Pub. L. 114–328, div. A, title XII, § 1241(a)(2), Dec. 23, 2016, 130 Stat. 2497.)

PRIOR PROVISIONS

A prior section 278, act Aug. 10, 1956, ch. 1041, 70A Stat. 14, related to dissemination of information of interest to reserve components, prior to repeal by Pub. L. 103–337, div. A, title XVI, §§ 1661(a)(2)(A), 1691, Oct. 5, 1994, 108 Stat. 2979, 3026, effective Dec. 1, 1994. See section 10210 of this title.

AMENDMENTS

2016—Pub. L. 114–328 renumbered section 378 of this title as this section.

1988—Pub. L. 100–456 reenacted section without change.

1984—Pub. L. 98–525 substituted ''before December 1, 1981'' for ''prior to the enactment of this chapter''.

§ 279. Assignment of Coast Guard personnel to naval vessels for law enforcement purposes

(a) The Secretary of Defense and the Secretary of Homeland Security shall provide that there be assigned on board every appropriate surface naval vessel at sea in a drug-interdiction area members of the Coast Guard who are trained in law enforcement and have powers of the Coast Guard under title 14, including the power to make arrests and to carry out searches and seizures.

(b) Members of the Coast Guard assigned to duty on board naval vessels under this section shall perform such law enforcement functions (including drug-interdiction functions)—

(1) as may be agreed upon by the Secretary of Defense and the Secretary of Homeland Security; and

(2) as are otherwise within the jurisdiction of the Coast Guard.

(c) No fewer than 500 active duty personnel of the Coast Guard shall be assigned each fiscal year to duty under this section. However, if at any time the Secretary of Homeland Security, after consultation with the Secretary of Defense, determines that there are insufficient naval vessels available for purposes of this section, such personnel may be assigned other duty involving enforcement of laws listed in section 374(b)(4)(A) [1] of this title.

(d) In this section, the term ''drug-interdiction area'' means an area outside the land area of the United States (as defined in section 374(b)(4)(B) [1] of this title) in which the Secretary of Defense (in consultation with the Attorney General) determines that activities involving smuggling of drugs into the United States are ongoing.

(Added Pub. L. 99–570, title III, § 3053(b)(1), Oct. 27, 1986, 100 Stat. 3207–75, § 379; amended Pub. L. 100–456, div. A, title XI, § 1104(a), Sept. 29, 1988, 102 Stat. 2045; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; renumbered § 279, Pub. L. 114–328, div. A, title XII, § 1241(a)(2), Dec. 23, 2016, 130 Stat. 2497.)

REFERENCES IN TEXT

Section 374 of this title, referred to in subsecs. (c) and (d), was renumbered section 274 of this title by Pub. L.

[1] See References in Text note below.

114–328, div. A, title XII, §1241(a)(2), Dec. 23, 2016, 130 Stat. 2497.

PRIOR PROVISIONS

A prior section 279, added Pub. L. 103–160, div. A, title VIII, §822(d)(1), Nov. 30, 1993, 107 Stat. 1707, authorized acceptance of gratuitous services of officers of reserve components, prior to repeal by Pub. L. 103–337, div. A, title XVI, §§1661(a)(2)(A), 1691, Oct. 5, 1994, 108 Stat. 2979, 3026, effective Dec. 1, 1994. See section 10212 of this title.

Another prior section 279, added Pub. L. 85–861, §1(5)(C), Sept. 2, 1958, 72 Stat. 1439; amended Pub. L. 94–273, §11(2), Apr. 21, 1976, 90 Stat. 378, directed Secretary of Defense to report to President and Congress, in January of each year, on the status of training of each reserve component and the progress made in strengthening the reserve components during the preceding fiscal year, prior to repeal by Pub. L. 95–485, §406(b)(1).

AMENDMENTS

2016—Pub. L. 114–328 renumbered section 379 of this title as this section.

2002—Subsecs. (a), (b)(1), (c). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

1988—Pub. L. 100–456 amended section generally, substituting ''every appropriate surface naval vessel'' for ''appropriate surface naval vessels'' in subsec. (a), substituting ''section 374(b)(4)(A)'' for ''section 374(a)(1)'' in subsec. (c), and inserting ''(as defined in section 374(b)(4)(B) of this title)'' in subsec. (d).

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

§280. Enhancement of cooperation with civilian law enforcement officials

(a) The Secretary of Defense, in cooperation with the Attorney General, shall conduct an annual briefing of law enforcement personnel of each State (including law enforcement personnel of the political subdivisions of each State) regarding information, training, technical support, and equipment and facilities available to civilian law enforcement personnel from the Department of Defense.

(b) Each briefing conducted under subsection (a) shall include the following:

(1) An explanation of the procedures for civilian law enforcement officials—

(A) to obtain information, equipment, training, expert advice, and other personnel support under this chapter; and

(B) to obtain surplus military equipment.

(2) A description of the types of information, equipment and facilities, and training and advice available to civilian law enforcement officials from the Department of Defense.

(3) A current, comprehensive list of military equipment which is suitable for law enforcement officials from the Department of Defense or available as surplus property from the Administrator of General Services.

(c) The Attorney General and the Administrator of General Services shall—

(1) establish or designate an appropriate office or offices to maintain the list described in subsection (b)(3) and to furnish information to civilian law enforcement officials on the availability of surplus military equipment; and

(2) make available to civilian law enforcement personnel nationwide, tollfree telephone communication with such office or offices.

(Added Pub. L. 100–180, div. A, title XII, §1243(a), Dec. 4, 1987, 101 Stat. 1163, §380; amended Pub. L. 100–456, div. A, title XI, §1104(a), Sept. 29, 1988, 102 Stat. 2046; renumbered §280, Pub. L. 114–328, div. A, title XII, §1241(a)(2), Dec. 23, 2016, 130 Stat. 2497.)

PRIOR PROVISIONS

A prior section 280, acts Aug. 10, 1956, ch. 1041, 70A Stat. 14; Sept. 2, 1958, Pub. L. 85–861, §33(a)(2), 72 Stat. 1564; Sept. 7, 1962, Pub. L. 87–651, title I, §101, 76 Stat. 506; Sept. 11, 1967, Pub. L. 90–83, §3(1), 81 Stat. 220; Aug. 17, 1977, Pub. L. 95–105, title V, §509(d)(3), 91 Stat. 860; Dec. 12, 1980, Pub. L. 96–513, title V, §§501(5), 511(10), 94 Stat. 2907, 2920; Oct. 19, 1984, Pub. L. 98–525, title XIV, §1405(8), 98 Stat. 2622; Dec. 5, 1991, Pub. L. 102–190, div. A, title X, §1061(a)(3), 105 Stat. 1472, authorized Secretary of each military department and Secretary of Transportation to prescribe regulations, prior to repeal by Pub. L. 103–337, div. A, title XVI, §§1661(a)(2)(A), 1691, Oct. 5, 1994, 108 Stat. 2979, 3026, effective Dec. 1, 1994. See section 10202 of this title.

AMENDMENTS

2016—Pub. L. 114–328 renumbered section 380 of this title as this section.

1988—Pub. L. 100–456 amended section generally, substituting provisions relating to annual briefing of law enforcement personnel of each State by Secretary of Defense and Attorney General and establishment of offices and telephone communication with those offices regarding surplus military equipment for provisions requiring the Secretary to report to Congress on the availability of assistance, etc., to civilian law enforcement and drug interdiction agencies and to convene a conference and requiring the Comptroller General to monitor and report on the Secretary's compliance with those requirements.

§281. Procurement of equipment by State and local governments through the Department of Defense: equipment for counter-drug, homeland security, and emergency response activities

(a) PROCEDURES.—(1) The Secretary of Defense shall establish procedures in accordance with this subsection under which States and units of local government may purchase equipment suitable for counter-drug, homeland security, and emergency response activities through the Department of Defense. The procedures shall require the following:

(A) Each State desiring to participate in a procurement of equipment suitable for counter-drug, homeland security, or emergency response activities through the Department of Defense shall submit to the Department, in such form and manner and at such times as the Secretary prescribes, the following:

(i) A request for equipment.

(ii) Advance payment for such equipment, in an amount determined by the Secretary based on estimated or actual costs of the equipment and administrative costs incurred by the Department.

(B) A State may include in a request submitted under subparagraph (A) only the type

of equipment listed in the catalog produced under subsection (c).

(C) A request for equipment shall consist of an enumeration of the equipment that is desired by the State and units of local government within the State. The Governor of a State may establish such procedures as the Governor considers appropriate for administering and coordinating requests for equipment from units of local government within the State.

(D) A State requesting equipment shall be responsible for arranging and paying for shipment of the equipment to the State and localities within the State.

(2) In establishing the procedures, the Secretary of Defense shall coordinate with the General Services Administration and other Federal agencies for purposes of avoiding duplication of effort.

(b) REIMBURSEMENT OF ADMINISTRATIVE COSTS.—In the case of any purchase made by a State or unit of local government under the procedures established under subsection (a), the Secretary of Defense shall require the State or unit of local government to reimburse the Department of Defense for the administrative costs to the Department of such purchase.

(c) GSA CATALOG.—The Administrator of General Services, in coordination with the Secretary of Defense, shall produce and maintain a catalog of equipment suitable for counter-drug, homeland security, and emergency response activities for purchase by States and units of local government under the procedures established by the Secretary under this section.

(d) DEFINITIONS.—In this section:

(1) The term ''State'' includes the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and any territory or possession of the United States.

(2) The term ''unit of local government'' means any city, county, township, town, borough, parish, village, or other general purpose political subdivision of a State; an Indian tribe which performs law enforcement or emergency response functions as determined by the Secretary of the Interior; or any agency of the District of Columbia government or the United States Government performing law enforcement or emergency response functions in and for the District of Columbia or the Trust Territory of the Pacific Islands.

(3) The term ''equipment suitable for counter-drug, homeland security, and emergency response activities'' has the meaning given such term in regulations prescribed by the Secretary of Defense. In prescribing the meaning of the term, the Secretary may not include any equipment that the Department of Defense does not procure for its own purposes and, in the case of equipment for homeland security activities, may not include any equipment that is not found on the Authorized Equipment List published by the Department of Homeland Security.

(Added Pub. L. 103–160, div. A, title XI, § 1122(a)(1), Nov. 30, 1993, 107 Stat. 1754, § 381; amended Pub. L. 110–417, [div. A], title VIII, § 885(a), (b)(1), Oct. 14, 2008, 122 Stat. 4560, 4561; renumbered § 281, Pub. L. 114–328, div. A, title XII, § 1241(a)(2), Dec. 23, 2016, 130 Stat. 2497.)

PRIOR PROVISIONS

A prior section 281, added Pub. L. 86–559, § 1(2)(C), June 30, 1960, 74 Stat. 264; amended Pub. L. 100–456, div. A, title XII, § 1234(a)(1), Sept. 29, 1988, 102 Stat. 2059, provided that certain references in this title to the adjutant general or assistant adjutant general of the National Guard of a jurisdiction be applied to another officer of the National Guard performing the duties of that office, prior to repeal by Pub. L. 103–337, div. A, title XVI, §§ 1661(a)(2)(A), 1691, Oct. 5, 1994, 108 Stat. 2979, 3026, effective Dec. 1, 1994. See section 10214 of this title.

AMENDMENTS

2016—Pub. L. 114–328 renumbered section 381 of this title as this section.

2008—Pub. L. 110–417, § 885(b)(1), substituted ''Procurement of equipment by State and local governments through the Department of Defense: equipment for counter-drug, homeland security, and emergency response activities'' for ''Procurement by State and local governments of law enforcement equipment suitable for counter-drug activities through the Department of Defense'' in section catchline.

Subsec. (a)(1). Pub. L. 110–417, § 885(a)(1), in introductory provisions, struck out ''law enforcement'' before ''equipment'' and inserted '', homeland security, and emergency response'' after ''counter-drug'', in subpar. (A), inserted '', homeland security, or emergency response'' after ''counter-drug'' in introductory provisions and struck out ''law enforcement'' before ''equipment'' in cl. (i), in subpar. (C) struck out ''law enforcement'' before ''equipment'' wherever appearing, and in subpar. (D) struck out ''law enforcement'' before ''equipment shall''.

Subsec. (c). Pub. L. 110–417, § 885(a)(2), struck out ''law enforcement'' before ''equipment'' and inserted '', homeland security, and emergency response'' after ''counter-drug''.

Subsec. (d)(2), (3). Pub. L. 110–417, § 885(a)(3), in par. (2) inserted ''or emergency response'' after ''law enforcement'' in two places and in par. (3) struck out ''law enforcement'' before ''equipment suitable'' and inserted '', homeland security, and emergency response'' after ''counter-drug'' and ''and, in the case of equipment for homeland security activities, may not include any equipment that is not found on the Authorized Equipment List published by the Department of Homeland Security'' before period at end.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

DEADLINE FOR ESTABLISHING PROCEDURES

Pub. L. 103–160, div. A, title XI, § 1122(b), Nov. 30, 1993, 107 Stat. 1755, directed the Secretary of Defense to establish procedures under subsec. (a) of this section not later than six months after Nov. 30, 1993.

§ 282. Emergency situations involving weapons of mass destruction

(a) IN GENERAL.—The Secretary of Defense, upon the request of the Attorney General, may provide assistance in support of Department of Justice activities relating to the enforcement of section 175, 229, or 2332a of title 18 during an emergency situation involving a weapon of mass destruction. Department of Defense resources, including personnel of the Department of Defense, may be used to provide such assistance if—

(1) the Secretary of Defense and the Attorney General jointly determine that an emergency situation exists; and

(2) the Secretary of Defense determines that the provision of such assistance will not adversely affect the military preparedness of the United States.

(b) EMERGENCY SITUATIONS COVERED.—In this section, the term ''emergency situation involving a weapon of mass destruction'' means a circumstance involving a weapon of mass destruction—

(1) that poses a serious threat to the interests of the United States; and

(2) in which—

(A) civilian expertise and capabilities are not readily available to provide the required assistance to counter the threat immediately posed by the weapon involved;

(B) special capabilities and expertise of the Department of Defense are necessary and critical to counter the threat posed by the weapon involved; and

(C) enforcement of section 175, 229, or 2332a of title 18 would be seriously impaired if the Department of Defense assistance were not provided.

(c) FORMS OF ASSISTANCE.—The assistance referred to in subsection (a) includes the operation of equipment (including equipment made available under section 372[1] of this title) to monitor, contain, disable, or dispose of the weapon involved or elements of the weapon.

(d) REGULATIONS.—(1) The Secretary of Defense and the Attorney General shall jointly prescribe regulations concerning the types of assistance that may be provided under this section. Such regulations shall also describe the actions that Department of Defense personnel may take in circumstances incident to the provision of assistance under this section.

(2)(A) Except as provided in subparagraph (B), the regulations may not authorize the following actions:

(i) Arrest.

(ii) Any direct participation in conducting a search for or seizure of evidence related to a violation of section 175, 229, or 2332a of title 18.

(iii) Any direct participation in the collection of intelligence for law enforcement purposes.

(B) The regulations may authorize an action described in subparagraph (A) to be taken under the following conditions:

(i) The action is considered necessary for the immediate protection of human life, and civilian law enforcement officials are not capable of taking the action.

(ii) The action is otherwise authorized under subsection (c) or under otherwise applicable law.

(e) REIMBURSEMENTS.—The Secretary of Defense shall require reimbursement as a condition for providing assistance under this section to the extent required under section 377[1] of this title.

(f) DELEGATIONS OF AUTHORITY.—(1) Except to the extent otherwise provided by the Secretary of Defense, the Deputy Secretary of Defense may exercise the authority of the Secretary of Defense under this section. The Secretary of Defense may delegate the Secretary's authority under this section only to an Under Secretary of Defense or an Assistant Secretary of Defense and only if the Under Secretary or Assistant Secretary to whom delegated has been designated by the Secretary to act for, and to exercise the general powers of, the Secretary.

(2) Except to the extent otherwise provided by the Attorney General, the Deputy Attorney General may exercise the authority of the Attorney General under this section. The Attorney General may delegate that authority only to the Associate Attorney General or an Assistant Attorney General and only if the Associate Attorney General or Assistant Attorney General to whom delegated has been designated by the Attorney General to act for, and to exercise the general powers of, the Attorney General.

(g) RELATIONSHIP TO OTHER AUTHORITY.—Nothing in this section shall be construed to restrict any executive branch authority regarding use of members of the armed forces or equipment of the Department of Defense that was in effect before September 23, 1996.

(Added Pub. L. 104–201, div. A, title XIV, § 1416(a)(1), Sept. 23, 1996, 110 Stat. 2721, § 382; amended Pub. L. 105–85, div. A, title X, § 1073(a)(6), Nov. 18, 1997, 111 Stat. 1900; Pub. L. 111–383, div. A, title X, § 1075(b)(10)(A), (B), Jan. 7, 2011, 124 Stat. 4369; Pub. L. 112–81, div. A, title X, § 1089, Dec. 31, 2011, 125 Stat. 1603; renumbered § 282, Pub. L. 114–328, div. A, title XII, § 1241(a)(2), Dec. 23, 2016, 130 Stat. 2497.)

REFERENCES IN TEXT

Section 372 of this title, referred to in subsec. (c), was renumbered section 272 of this title by Pub. L. 114–328, div. A, title XII, § 1241(a)(2), Dec. 23, 2016, 130 Stat. 2497.

Section 377 of this title, referred to in subsec. (e), was renumbered section 277 of this title by Pub. L. 114–328, div. A, title XII, § 1241(a)(2), Dec. 23, 2016, 130 Stat. 2497.

AMENDMENTS

2016—Pub. L. 114–328 renumbered section 382 of this title as this section.

2011—Pub. L. 111–383, § 1075(b)(10)(B), struck out ''chemical or biological'' before ''weapons'' in section catchline.

Subsec. (a). Pub. L. 112–81 struck out ''biological or chemical'' before ''weapon of mass destruction'' in introductory provisions.

Pub. L. 111–383, § 1075(b)(10)(A), substituted ''section 175, 229, or 2332a'' for ''section 175 or 2332c''.

Subsec. (b). Pub. L. 112–81 struck out ''biological or chemical'' before ''weapon of mass destruction'' in two places in introductory provisions.

Subsecs. (b)(2)(C), (d)(2)(A)(ii). Pub. L. 111–383, § 1075(b)(10)(A), substituted ''section 175, 229, or 2332a'' for ''section 175 or 2332c''.

1997—Subsec. (g). Pub. L. 105–85 substituted ''September 23, 1996'' for ''the date of the enactment of the National Defense Authorization Act for Fiscal Year 1997''.

MILITARY ASSISTANCE TO CIVIL AUTHORITIES TO RESPOND TO ACT OR THREAT OF TERRORISM

Pub. L. 106–65, div. A, title X, § 1023, Oct. 5, 1999, 113 Stat. 747, authorized the Secretary of Defense, upon the request of the Attorney General, to provide assistance to civil authorities in responding to an act of terrorism or threat of an act of terrorism within the United

[1] See References in Text note below.

States, if the Secretary determined that certain conditions were met, subject to reimbursement and limitations on funding and personnel, and provided that this authority applied between Oct. 1, 1999, and Sept. 30, 2004.

§ 283. Situations involving bombings of places of public use, Government facilities, public transportation systems, and infrastructure facilities

(a) IN GENERAL.—Upon the request of the Attorney General, the Secretary of Defense may provide assistance in support of Department of Justice activities related to the enforcement of section 2332f of title 18 during situations involving bombings of places of public use, Government facilities, public transportation systems, and infrastructure facilities.

(b) RENDERING-SAFE SUPPORT.—Military explosive ordnance disposal units providing rendering-safe support to Department of Justice activities relating to the enforcement of section 175, 229, or 2332a of title 18 in emergency situations involving weapons of mass destruction shall provide such support in a manner consistent with the provisions of section 382[1] of this title.

(c) REGULATIONS.—(1) The Secretary of Defense and the Attorney General shall jointly prescribe regulations concerning the types of assistance that may be provided under this section. Such regulations shall also describe the actions that Department of Defense personnel may take in circumstances incident to the provision of assistance under this section.

(2)(A) Except as provided in subparagraph (B), the regulations prescribed under paragraph (1) may not authorize any of the following actions:

(i) Arrest.

(ii) Any direct participation in conducting a search for or seizure of evidence related to a violation of section 175, 229, or 2332a of title 18.

(iii) Any direct participation in the collection of intelligence for law enforcement purposes.

(B) Such regulations may authorize an action described in subparagraph (A) to be taken under the following conditions:

(i) The action is considered necessary for the immediate protection of human life, and civilian law enforcement officials are not capable of taking the action.

(ii) The action is otherwise authorized under subsection (a) or under otherwise applicable law.

(d) EXPLOSIVE ORDNANCE DEFINED.—The term ''explosive ordnance''—

(1) means—

(A) bombs and warheads;

(B) guided and ballistic missiles;

(C) artillery, mortar, rocket, and small arms ammunition;

(D) all mines, torpedoes, and depth charges;

(E) grenades demolition charges;

(F) pyrotechnics;

(G) clusters and dispensers;

(H) cartridge- and propellant- actuated devices;

(I) electroexplosives devices;

(J) clandestine and improvised explosive devices; and

(K) all similar or related items or components explosive in nature; and

(2) includes all munitions containing explosives, propellants, nuclear fission or fusion materials, and biological and chemical agents.

(Added Pub. L. 114–92, div. A, title X, § 1082(a), Nov. 25, 2015, 129 Stat. 1002, § 383; renumbered § 283, Pub. L. 114–328, div. A, title XII, § 1241(a)(2), Dec. 23, 2016, 130 Stat. 2497.)

REFERENCES IN TEXT

Section 382 of this title, referred to in subsec. (b), was renumbered section 282 of this title by Pub. L. 114–328, div. A, title XII, § 1241(a)(2), Dec. 23, 2016, 130 Stat. 2497.

AMENDMENTS

2016—Pub. L. 114–328 renumbered section 383 of this title as this section.

§ 284. Support for counterdrug activities and activities to counter transnational organized crime

(a) SUPPORT TO OTHER AGENCIES.—The Secretary of Defense may provide support for the counterdrug activities or activities to counter transnational organized crime of any other department or agency of the Federal Government or of any State, local, tribal, or foreign law enforcement agency for any of the purposes set forth in subsection (b) or (c), as applicable, if—

(1) in the case of support described in subsection (b), such support is requested—

(A) by the official who has responsibility for the counterdrug activities or activities to counter transnational organized crime of the department or agency of the Federal Government, in the case of support for other departments or agencies of the Federal Government; or

(B) by the appropriate official of a State, local, or tribal government, in the case of support for State, local, or tribal law enforcement agencies; or

(2) in the case of support described in subsection (c), such support is requested by an appropriate official of a department or agency of the Federal Government, in coordination with the Secretary of State, that has counterdrug responsibilities or responsibilities for countering transnational organized crime.

(b) TYPES OF SUPPORT FOR AGENCIES OF UNITED STATES.—The purposes for which the Secretary may provide support under subsection (a) for other departments or agencies of the Federal Government or a State, local, or tribal law enforcement agencies, are the following:

(1) The maintenance and repair of equipment that has been made available to any department or agency of the Federal Government or to any State, local, or tribal government by the Department of Defense for the purposes of—

(A) preserving the potential future utility of such equipment for the Department of Defense; and

(B) upgrading such equipment to ensure compatibility of that equipment with other equipment used by the Department.

[1] See References in Text note below.

(2) The maintenance, repair, or upgrading of equipment (including computer software), other than equipment referred to in paragraph (1) for the purpose of—

(A) ensuring that the equipment being maintained or repaired is compatible with equipment used by the Department of Defense; and

(B) upgrading such equipment to ensure the compatibility of that equipment with equipment used by the Department.

(3) The transportation of personnel of the United States and foreign countries (including per diem expenses associated with such transportation), and the transportation of supplies and equipment, for the purpose of facilitating counterdrug activities or activities to counter transnational organized crime within or outside the United States.

(4) The establishment (including an unspecified minor military construction project) and operation of bases of operations or training facilities for the purpose of facilitating counterdrug activities or activities to counter transnational organized crime of the Department of Defense or any Federal, State, local, or tribal law enforcement agency within or outside the United States.

(5) Counterdrug or counter-transnational organized crime related training of law enforcement personnel of the Federal Government, of State, local, and tribal governments, including associated support expenses for trainees and the provision of materials necessary to carry out such training.

(6) The detection, monitoring, and communication of the movement of—

(A) air and sea traffic within 25 miles of and outside the geographic boundaries of the United States; and

(B) surface traffic outside the geographic boundary of the United States and within the United States not to exceed 25 miles of the boundary if the initial detection occurred outside of the boundary.

(7) Construction of roads and fences and installation of lighting to block drug smuggling corridors across international boundaries of the United States.

(8) Establishment of command, control, communications, and computer networks for improved integration of law enforcement, active military, and National Guard activities.

(9) The provision of linguist and intelligence analysis services.

(10) Aerial and ground reconnaissance.

(c) TYPES OF SUPPORT FOR FOREIGN LAW ENFORCEMENT AGENCIES.—

(1) PURPOSES.—The purposes for which the Secretary may provide support under subsection (a) for foreign law enforcement agencies are the following:

(A) The transportation of personnel of the United States and foreign countries (including per diem expenses associated with such transportation), and the transportation of supplies and equipment, for the purpose of facilitating counterdrug activities or activities to counter transnational organized crime within or outside the United States.

(B) The establishment (including small scale construction) and operation of bases of operations or training facilities for the purpose of facilitating counterdrug activities or activities to counter transnational organized crime of a foreign law enforcement agency outside the United States.

(C) The detection, monitoring, and communication of the movement of—

(i) air and sea traffic within 25 miles of and outside the geographic boundaries of the United States; and

(ii) surface traffic outside the geographic boundaries of the United States.

(D) Establishment of command, control, communications, and computer networks for improved integration of United States Federal and foreign law enforcement entities and United States Armed Forces.

(E) The provision of linguist and intelligence analysis services.

(F) Aerial and ground reconnaissance.

(2) COORDINATION WITH SECRETARY OF STATE.—In providing support for a purpose described in this subsection, the Secretary shall coordinate with the Secretary of State.

(d) CONTRACT AUTHORITY.—In carrying out subsection (a), the Secretary may acquire services or equipment by contract for support provided under that subsection if the Department of Defense would normally acquire such services or equipment by contract for the purpose of conducting a similar activity for the Department.

(e) LIMITED WAIVER OF PROHIBITION.—Notwithstanding section 276 of this title, the Secretary may provide support pursuant to subsection (a) in any case in which the Secretary determines that the provision of such support would adversely affect the military preparedness of the United States in the short term if the Secretary determines that the importance of providing such support outweighs such short-term adverse effect.

(f) CONDUCT OF TRAINING OR OPERATION TO AID CIVILIAN AGENCIES.—In providing support pursuant to subsection (a), the Secretary may plan and execute otherwise valid military training or operations (including training exercises undertaken pursuant to section 1206(a) of the National Defense Authorization Act for Fiscal Years 1990 and 1991 (Public Law 101–189; 103 Stat. 1564)) for the purpose of aiding civilian law enforcement agencies.

(g) RELATIONSHIP TO OTHER SUPPORT AUTHORITIES.—

(1) ADDITIONAL AUTHORITY.—The authority provided in this section for the support of counterdrug activities or activities to counter transnational organized crime by the Department of Defense is in addition to, and except as provided in paragraph (2), not subject to the other requirements of this chapter.

(2) EXCEPTION.—Support under this section shall be subject to the provisions of section 275 and, except as provided in subsection (e), section 276 of this title.

(h) CONGRESSIONAL NOTIFICATION.—

(1) IN GENERAL.—Not less than 15 days before providing support for an activity under sub-

section (a), the Secretary of Defense shall submit to the appropriate committees of Congress a written and electronic notice of the following:

(A) In the case of support for a purpose described in subsection (c)—

(i) the country the capacity of which will be built or enabled through the provision of such support;

(ii) the budget, implementation timeline with milestones, anticipated delivery schedule for support, and completion date for the purpose or project for which support is provided;

(iii) the source and planned expenditure of funds provided for the project or purpose;

(iv) a description of the arrangements, if any, for the sustainment of the project or purpose and the source of funds to support sustainment of the capabilities and performance outcomes achieved using such support, if applicable;

(v) a description of the objectives for the project or purpose and evaluation framework to be used to develop capability and performance metrics associated with operational outcomes for the recipient;

(vi) information, including the amount, type, and purpose, about the support provided the country during the three fiscal years preceding the fiscal year for which the support covered by the notice is provided under this section under—

(I) this section;

(II) section 23 of the Arms Export Control Act (22 U.S.C. 2763);

(III) peacekeeping operations;

(IV) the International Narcotics Control and Law Enforcement program under section 481 of the Foreign Assistance Act of 1961 (22 U.S.C. 2291);

(V) Nonproliferation, Anti-Terrorism, Demining, and Related Programs;

(VI) counterdrug activities authorized by section 1033 of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105–85); or

(VII) any other significant program, account, or activity for the provision of security assistance that the Secretary of Defense and the Secretary of State consider appropriate;

(vii) an evaluation of the capacity of the recipient country to absorb the support provided; and

(viii) an evaluation of the manner in which the project or purpose for which the support is provided fits into the theater security cooperation strategy of the applicable geographic combatant command.

(B) In the case of support for a purpose described in subsection (b) or (c), a description of any small scale construction project for which support is provided.

(2) COORDINATION WITH SECRETARY OF STATE.—In providing notice under this subsection for a purpose described in subsection (c), the Secretary of Defense shall coordinate with the Secretary of State.

(3) QUARTERLY REPORTS.—

(A) IN GENERAL.—Not less frequently than once each quarter, the Secretary shall submit to the appropriate committees of Congress a report on Department of Defense support provided under subsection (b) during the quarter preceding the quarter during which the report is submitted. Each such report shall be submitted in written and electronic form and shall include—

(i) an identification of each recipient of such support;

(ii) a description of the support provided and anticipated duration of such support; and

(iii) a description of the sources and amounts of funds used to provide such support;

(B) APPROPRIATE COMMITTEES OF CONGRESS.—Notwithstanding subsection (i)(1), for purposes of a report under this paragraph, the appropriate committees of Congress are—

(i) the Committees on Armed Services of the Senate and House of Representatives; and

(ii) any committee with jurisdiction over the department or agency that receives support covered by the report.

(i) DEFINITIONS.—In this section:

(1) The term ''appropriate committees of Congress'' means—

(A) the Committee on Armed Services, the Committee on Appropriations, and the Committee on Foreign Affairs of the House of Representatives; and

(B) the Committee on Armed Services, the Committee on Appropriations, and the Committee on Foreign Relations of the Senate.

(2) The term ''Indian tribe'' means a Federally recognized Indian tribe.

(3) The term ''small scale construction'' means construction at a cost not to exceed $750,000 for any project.

(4) The term ''tribal government'' means the governing body of an Indian tribe, the status of whose land is ''Indian country'' as defined in section 1151 of title 18 or held in trust by the United States for the benefit of the Indian tribe.

(5) The term ''tribal law enforcement agency'' means the law enforcement agency of a tribal government.

(6) The term ''transnational organized crime'' means self-perpetuating associations of individuals who operate transnationally for the purpose of obtaining power, influence, monetary, or commercial gains, wholly or in part by illegal means, while protecting their activities through a pattern of corruption or violence or through a transnational organization structure and the exploitation of transnational commerce or communication mechanisms.

(Added § 384 and renumbered § 284, Pub. L. 114–328, div. A, title X, § 1011(a)(1), title XII, § 1241(a)(2), Dec. 23, 2016, 130 Stat. 2381, 2497; amended Pub. L. 116–92, div. A, title XVII, § 1731(a)(14), Dec. 20, 2019, 133 Stat. 1813; Pub. L.

116–283, div. A, title X, §1011, Jan. 1, 2021, 134 Stat. 3839.)

REFERENCES IN TEXT

Section 376 of this title, referred to in subsecs. (e) and (g)(2), was renumbered section 276 of this title by Pub. L. 114–328, div. A, title XII, §1241(a)(2), Dec. 23, 2016, 130 Stat. 2497.

Section 1206(a) of the National Defense Authorization Act for Fiscal Years 1990 and 1991, referred to subsec. (f), is section 1206(a) of Pub. L. 101–189, which is set out as a note under section 124 of this title.

Section 375, referred to in subsec. (g)(2), was renumbered section 275 of this title by Pub. L. 114–328, div. A, title XII, §1241(a)(2), Dec. 23, 2016, 130 Stat. 2497.

Section 1004 of the National Defense Authorization Act for Fiscal Year 1991, referred to in subsec. (h)(1)(A)(vi)(VI), is section 1004 of Pub. L. 101–510, which was set out as a note under section 374 of this title prior to being repealed by Pub. L. 114–328, div. A, title X, §1011(b), Dec. 23, 2016, 130 Stat. 2385.

Section 1033 of the National Defense Authorization Act for Fiscal Year 1998, referred to in subsec. (h)(1)(A)(vi)(VI), is section 1033 of Pub. L. 105–85, div. A, title X, Nov. 18, 1997, 111 Stat. 1881, which is not classified to the Code.

AMENDMENTS

2021—Subsec. (h)(3). Pub. L. 116–283 added par. (3).

2019—Subsec. (e). Pub. L. 116–92, §1731(a)(14)(A), substituted ''section 276'' for ''section 376''.

Subsec. (f). Pub. L. 116–92, §1731(a)(14)(B), inserted second closing parenthesis after ''103 Stat. 1564)''.

Subsec. (g)(2). Pub. L. 116–92, §1731(a)(14)(C), substituted ''section 275'' for ''section 375''.

Pub. L. 116–92, §1731(a)(14)(A), substituted ''section 276'' for ''section 376''.

Subsec. (h)(1)(A)(vi)(VI). Pub. L. 116–92, §1731(a)(14)(D), struck out ''section 1004 of the National Defense Authorization Act for Fiscal Year 1991 (10 U.S.C. 374 note) and'' after ''authorized by''.

2016—Pub. L. 114–328, §1241(a)(2), renumbered section 384 of this title as this section.

DEPARTMENT OF DEFENSE AUTHORITY TO PROVIDE ASSISTANCE TO SECURE THE SOUTHERN LAND BORDER OF THE UNITED STATES

Pub. L. 114–92, div. A, title X, §1059, Nov. 25, 2015, 129 Stat. 986, as amended by Pub. L. 116–283, div. A, title X, §1056(a), (b), Jan. 1, 2021, 134 Stat. 3855, provided that:

''(a) AUTHORITY.—

''(1) PROVISION OF ASSISTANCE.—

''(A) IN GENERAL.—The Secretary of Defense may provide assistance to United States Customs and Border Protection for purposes of increasing ongoing efforts to secure the southern land border of the United States in accordance with the requirements of this section.

''(B) REQUIREMENTS.—If the Secretary provides assistance under subparagraph (A), the Secretary shall ensure that the provision of the assistance will not negatively affect military training, operations, readiness, or other military requirements.

''(2) NOTIFICATION REQUIREMENT.—Not later than 7 days after the date on which the Secretary approves a request for assistance from the Department of Homeland Security under paragraph (1), the Secretary shall electronically transmit to the Committee on Armed Services of the Senate and the Committee on Armed Services and the Committee on Homeland Security of the House of Representatives notice of such approval.

''(b) CONCURRENCE IN ASSISTANCE.—Assistance under subsection (a) shall be provided with the concurrence of the Secretary of Homeland Security.

''(c) TYPES OF ASSISTANCE AUTHORIZED.—The assistance provided under subsection (a) may include the following:

''(1) Deployment of members and units of the regular and reserve components of the Armed Forces to the southern land border of the United States.

''(2) Deployment of manned aircraft, unmanned aerial surveillance systems, and ground-based surveillance systems to support continuous surveillance of the southern land border of the United States.

''(3) Intelligence analysis support.

''(d) MATERIEL AND LOGISTICAL SUPPORT.—The Secretary of Defense is authorized to deploy such materiel and equipment and logistics support as is necessary to ensure the effectiveness of assistance provided under subsection (a).

''(e) FUNDING.—Of the amounts authorized to be appropriated for the Department of Defense by this Act [see Tables for classification], the Secretary of Defense may use up to $75,000,000 to provide assistance under subsection (a).

''(f) REPORTS.—

''(1) REPORT REQUIRED.—At the end of each three-month period during which assistance is provided under subsection (a), the Secretary of Defense, in coordination with the Secretary of Homeland Security, shall submit to the Committee on Armed Services and the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Armed Services and the Committee on Homeland Security of the House of Representatives a report that includes, for the period covered by the report, each of the following:

''(A) A description of the assistance provided.

''(B) A description of the Armed Forces, including the reserve components, deployed as part of such assistance, including an identification of—

''(i) the members of the Armed Forces, including members of the reserve components, deployed, including specific information about unit designation, size of unit, and whether any personnel in the unit deployed under section 12302 of title 10, United States Code;

''(ii) the projected length of the deployment and any special pay and incentives for which deployed personnel may qualify during the deployment;

''(iii) any specific pre-deployment training provided for such members of the Armed Forces, including members of the reserve components;

''(iv) the specific missions and tasks, by location, that are assigned to the members of the Armed Forces, including members of the reserve components, who are so deployed; and

''(v) the locations where units so deployed are conducting their assigned mission, together with a map showing such locations.

''(C) A description of any effects of such deployment on military training, operations, readiness, or other military requirements.

''(D) The sources and amounts of funds obligated or expended—

''(i) during the period covered by the report; and

''(ii) during the total period for which such support has been provided.

''(2) FORM OF REPORT.—Each report submitted under this subsection shall be submitted in unclassified form, but may include a classified annex.''

[Pub. L. 116–283, div. A, title X, §1056(c), Jan. 1, 2021, 134 Stat. 3856, provided that: ''The Law Revision Counsel is directed to move section 1059 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114–92; 129 Stat. 986; 10 U.S.C. 271 note prec.), as amended by this section, to a note following section 284 of title 10, United States Code.'']

CHAPTER 16—SECURITY COOPERATION

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SUBCHAPTER I—GENERAL MATTERS

Sec.
301. Definitions.

§ 301. Definitions

In this chapter:

(1) The terms ''appropriate congressional committees'' and ''appropriate committees of Congress'' mean—

(A) the Committee on Armed Services, the Committee on Foreign Relations, and the Committee on Appropriations of the Senate; and

(B) the Committee on Armed Services, the Committee on Foreign Affairs, and the Committee on Appropriations of the House of Representatives.

(2) The term ''defense article'' has the meaning given that term in section 644 of the Foreign Assistance Act of 1961 (22 U.S.C. 2403).

(3) The term ''defense service'' has the meaning given that term in section 644 of the Foreign Assistance Act of 1961 (22 U.S.C. 2403).

(4) The term ''developing country'' has the meaning prescribed by the Secretary of Defense for purposes of this chapter in accordance with section 1241(n) of the National Defense Authorization Act for Fiscal Year 2017.

(5) The term ''incremental expenses'', with respect to a foreign country—

(A) means the reasonable and proper costs of rations, fuel, training ammunition, transportation, and other goods and services consumed by the country as a direct result of the country's participation in activities authorized by this chapter; and

(B) does not include—

(i) any form of lethal assistance (excluding training ammunition); or

(ii) pay, allowances, and other normal costs of the personnel of the country.

(6) The term ''national security forces'', in the case of a foreign country, means the following:

(A) National military and national-level security forces of the foreign country that have the functional responsibilities for which training is authorized in section 333(a) of this title.

(B) With respect to operations referred to in section 333(a)(2) of this title, military and civilian first responders of the foreign country at the national or local level that have such operations among their functional responsibilities.

(7) The term ''security cooperation programs and activities of the Department of Defense'' means any program, activity (including an exercise), or interaction of the Department of Defense with the security establishment of a foreign country to achieve a purpose as follows:

(A) To build and develop allied and friendly security capabilities for self-defense and multinational operations.

(B) To provide the armed forces with access to the foreign country during peacetime or a contingency operation.

(C) To build relationships that promote specific United States security interests.

(8) The term ''small-scale construction'' means construction at a cost not to exceed $1,500,000 for any project.

(9) The term ''training'' has the meaning given the term ''military education and training'' in section 644 of the Foreign Assistance Act of 1961 (22 U.S.C. 2403).

(Added Pub. L. 114–328, div. A, title XII, § 1241(a)(3), Dec. 23, 2016, 130 Stat. 2498; amended Pub. L. 115–232, div. A, title XII, § 1203(a), Aug. 13, 2018, 132 Stat. 2016.)

References in Text

Section 1241(n) of the National Defense Authorization Act for Fiscal Year 2017, referred to in par. (4), is section 1241(n) of Pub. L. 114–328, which is set out as a note below.

Amendments

2018—Par. (8). Pub. L. 115–232 substituted ''$1,500,000'' for ''$750,000''.

Savings Clause

Pub. L. 114–328, div. A, title XII, § 1253(b), Dec. 23, 2016, 130 Stat. 2532, as amended by Pub. L. 115–91, div. A, title X, § 1081(d)(14), Dec. 12, 2017, 131 Stat. 1600, provided that: ''Any determination or other action made or taken before the date of the enactment of this Act [Dec. 23, 2016] under a provision of law transferred or repealed by this subtitle [subtitle E (§§ 1241–1253) of title XII of Pub. L. 114–328, see Tables for classification] that is in effect as of the date of the enactment of this Act and is necessary for the administration of a successor authority to such provision of law under chapter 16 of title 10, United States Code, by reason of the enactment of such chapter by this subtitle shall remain in effect, in accordance with the terms of such determination or action when made or taken, for purposes of the administration of such successor authority.''

Prescription of Term ''Developing Country''

Pub. L. 114–328, div. A, title XII, § 1241(n), Dec. 23, 2016, 130 Stat. 2511, provided that:

''(1) In general.—The Secretary of Defense shall prescribe the meaning of the term 'developing country' for purposes of chapter 16 of title 10, United States Code, as added by subsection (a)(3), and may from time to time prescribe a revision to the meaning of that term for those purposes.

''(2) Initial prescription.—The Secretary shall first prescribe the meaning of the term by not later than 270 days after the date of the enactment of this Act [Dec. 23, 2016].

''(3) Notice to congress.—Whenever the Secretary prescribes the meaning of the term pursuant to paragraph (1), the Secretary shall notify the appropriate committees of Congress of the meaning of the term as so prescribed.

''(4) Appropriate committees of congress defined.—In this subsection, the term 'appropriate committees of Congress' has the meaning given that term in section 301(1) of title 10, United States Code, as so added.''

Quadrennial Review of Security Sector Assistance Programs and Authorities of the United States Government

Pub. L. 114–328, div. A, title XII, § 1252, Dec. 23, 2016, 130 Stat. 2531, provided that:

''(a) Statement of Policy.—It is the policy of the United States that the principal goals of the security sector assistance programs and authorities of the United States Government are as follows:

''(1) To assist partner nations in building sustainable capability to address common security challenges with the United States.

"(2) To promote partner nation support for United States interests.

"(3) To promote universal values, such as good governance, transparent and accountable oversight of security forces, rule of law, transparency, accountability, delivery of fair and effective justice, and respect for human rights.

"(4) To strengthen collective security and multinational defense arrangements and organizations of which the United States is a participant.

"(b) QUADRENNIAL REVIEW.—

"(1) REVIEW REQUIRED.—Not later than January 31, 2018, and every four years thereafter though 2034, the President shall complete a review of the security sector assistance programs, policies, authorities, and resources of the United States Government across the United States Government.

"(2) ELEMENTS.—Each review under this subsection shall include the following:

"(A) An examination [of] whether the current security sector assistance programs, policies, authorities, and resources of the United States Government are sufficient to achieve the goals specified in subsection (a), and an identification of any gaps or shortfalls needing mitigation.

"(B) An examination of the success of such programs and resources in achieving such goals, based on a review of relevant departmental and interagency programmatic and strategic evaluations.

"(C) An examination of the extent to which the security sector assistance of the United States Government is aligned with national security and foreign policy objectives, conducted in support of clear and coherent policy guidance, and planned and executed in accordance with identified best practices.

"(D) The development of recommendations, as appropriate, for improving the security sector assistance programs, policies, authorities, and resources of the United States Government to more effectively achieve the goals specified in subsection (a) and support other national security objectives.

"(3) SUBMITTAL TO CONGRESS.—Not later than 60 days after the completion of a review under this subsection, the President shall submit to the appropriate committees of Congress a report setting forth a summary of the review, including any recommendations developed pursuant to paragraph (2)(D).

"(4) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this subsection, the term 'appropriate committees of Congress' has the meaning given that term in section section [sic] 301(1) of title 10, United States Code, as added by section 1241(a)(3) of this Act."

[Memorandum of President of the United States, Feb. 8, 2018, 83 F.R. 8739, provided:

[Memorandum for the Secretary of State [and] the Secretary of Defense

[By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, I hereby delegate to the Secretary of State, in coordination with the Secretary of Defense, the functions and authorities vested in the President by section 1252 of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114–328) [set out above].

[The delegation in this memorandum shall apply to any provisions of any future public law that are the same or substantially the same as the provision referenced in this memorandum.

[The Secretary of State is authorized and directed to publish this memorandum in the Federal Register.

[DONALD J. TRUMP.]

SUBCHAPTER II—MILITARY-TO-MILITARY ENGAGEMENTS

Sec.
311. Exchange of defense personnel between United States and friendly foreign countries: authority.
312. Payment of personnel expenses necessary for theater security cooperation.
313. Bilateral or regional cooperation programs: awards and mementos to recognize superior noncombat achievements or performance.

§ 311. Exchange of defense personnel between United States and friendly foreign countries: authority

(a) AUTHORITY TO ENTER INTO INTERNATIONAL EXCHANGE AGREEMENTS.—(1) The Secretary of Defense may enter into international defense personnel exchange agreements. Any exchange of personnel under such an agreement is subject to paragraph (3).

(2) For purposes of this section, an international defense personnel exchange agreement is an agreement with the government of a friendly foreign country or international or regional security organization for the reciprocal or non-reciprocal exchange of—

(A) members of the armed forces and civilian personnel of the Department of Defense; and

(B) military and civilian personnel of the defense or security ministry of that foreign government or international or regional security organization.

(3) An exchange of personnel under an international defense personnel exchange agreement under this section may only be made with the concurrence of the Secretary of State to the extent the exchange is with either of the following:

(A) A non-defense security ministry of a foreign government.

(B) An international or regional security organization.

(b) ASSIGNMENT OF PERSONNEL.—(1) Pursuant to an international defense personnel exchange agreement, personnel of the defense ministry of a foreign government may be assigned to positions in the Department of Defense and personnel of the Department of Defense may be assigned to positions in the defense ministry of such foreign government. Positions to which exchanged personnel are assigned may include positions of instructors.

(2) An agreement for the exchange of personnel engaged in research and development activities may provide for assignment of Department of Defense personnel to positions in private industry that support the defense ministry of the host foreign government, subject to the concurrence of the Secretary of State.

(3) An individual may not be assigned to a position pursuant to an international defense personnel exchange agreement unless the assignment is acceptable to both governments.

(c) RECIPROCITY OF PERSONNEL QUALIFICATIONS REQUIRED.—In the case of an international defense personnel exchange agreement that provides for reciprocal exchanges, each government shall be required to provide personnel with qualifications, training, and skills that are essentially equal to those of the personnel provided by the other government.

(d) PAYMENT OF PERSONNEL COSTS.—(1) Each government shall pay the salary, per diem, cost of living, travel costs, cost of language or other training, and other costs for its own personnel

in accordance with the applicable laws and regulations of such government.

(2) Paragraph (1) does not apply to the following costs:

(A) The cost of temporary duty directed by the host government.

(B) The cost of training programs conducted to familiarize, orient, or certify exchanged personnel regarding unique aspects of the assignments of the exchanged personnel.

(C) Costs incident to the use of the facilities of the host government in the performance of assigned duties.

(e) PROHIBITED CONDITIONS.—No personnel exchanged pursuant to an agreement under this section may take or be required to take an oath of allegiance to the host country or to hold an official capacity in the government of such country.

(f) RELATIONSHIP TO OTHER AUTHORITY.—The requirements in subsections (c) and (d) shall apply in the exercise of any authority of the Secretaries of the military departments to enter into an agreement with the government of a foreign country to provide for the exchange of members of the armed forces and military personnel of the defense or security ministry of that foreign country. The Secretary of Defense may prescribe regulations for the application of such subsections in the exercise of such authority.

(Added and amended Pub. L. 114–328, div. A, title XII, § 1242(a), (b), Dec. 23, 2016, 130 Stat. 2512, 2513; Pub. L. 115–232, div. A, title XII, § 1204(c)(1)(A), Aug. 13, 2018, 132 Stat. 2017.)

CODIFICATION

Text of section, as added by Pub. L. 114–328, is based on text of Pub. L. 104–201, div. A, title X, § 1082, Sept. 23, 1996, 110 Stat. 2672, which was formerly set out as a note under section 168 of this title, prior to repeal by Pub. L. 114–328, div. A, title XII, § 1242(c)(1), Dec. 23, 2016, 130 Stat. 2513.

PRIOR PROVISIONS

A prior section 311 was renumbered section 246 of this title.

AMENDMENTS

2018—Subsec. (a)(3). Pub. L. 115–232 substituted ''Secretary of State'' for ''Secretary to State'' in introductory provisions.

2016—Subsec. (a)(1). Pub. L. 114–328, § 1242(b)(1)(A), inserted at end ''Any exchange of personnel under such an agreement is subject to paragraph (3).''

Subsec. (a)(2). Pub. L. 114–328, § 1242(b)(1)(B)(i), substituted ''a friendly foreign country or international or regional security organization for the reciprocal or non-reciprocal exchange'' for ''an ally of the United States or another friendly foreign country for the exchange'' in introductory provisions.

Subsec. (a)(2)(A). Pub. L. 114–328, § 1242(b)(1)(B)(ii), substituted ''members of the armed forces'' for ''military''.

Subsec. (a)(2)(B). Pub. L. 114–328, § 1242(b)(1)(B)(iii), inserted ''or security'' after ''defense'' and inserted ''or international or regional security organization'' before period at end.

Subsec. (a)(3). Pub. L. 114–328, § 1242(b)(1)(C), added par. (3).

Subsec. (b)(2). Pub. L. 114–328, § 1242(b)(2), inserted '', subject to the concurrence of the Secretary of State'' before period at end.

Subsec. (c). Pub. L. 114–328, § 1242(b)(3), substituted ''In the case of'' for ''Each government shall be required under'' and inserted ''that provides for reciprocal exchanges, each government shall be required'' after ''exchange agreement''.

Subsec. (f). Pub. L. 114–328, § 1242(b)(4), inserted ''defense or security ministry of that'' after ''military personnel of the''.

LIMITATION ON MILITARY-TO-MILITARY EXCHANGES AND CONTACTS WITH CHINESE PEOPLE'S LIBERATION ARMY

Pub. L. 106–65, div. A, title XII, § 1201, Oct. 5, 1999, 113 Stat. 779, as amended by Pub. L. 111–84, div. A, title XII, § 1246(d), Oct. 28, 2009, 123 Stat. 2545; Pub. L. 112–81, div. A, title X, § 1066(e)(2), Dec. 31, 2011, 125 Stat. 1589, provided that:

''(a) LIMITATION.—The Secretary of Defense may not authorize any military-to-military exchange or contact described in subsection (b) to be conducted by the armed forces with representatives of the People's Liberation Army of the People's Republic of China if that exchange or contact would create a national security risk due to an inappropriate exposure specified in subsection (b).

''(b) COVERED EXCHANGES AND CONTACTS.—Subsection (a) applies to any military-to-military exchange or contact that includes inappropriate exposure to any of the following:

''(1) Force projection operations.

''(2) Nuclear operations.

''(3) Advanced combined-arms and joint combat operations.

''(4) Advanced logistical operations.

''(5) Chemical and biological defense and other capabilities related to weapons of mass destruction.

''(6) Surveillance and reconnaissance operations.

''(7) Joint warfighting experiments and other activities related to a transformation in warfare.

''(8) Military space operations.

''(9) Other advanced capabilities of the Armed Forces.

''(10) Arms sales or military-related technology transfers.

''(11) Release of classified or restricted information.

''(12) Access to a Department of Defense laboratory.

''(c) EXCEPTIONS.—Subsection (a) does not apply to any search-and-rescue or humanitarian operation or exercise.''

§ 312. Payment of personnel expenses necessary for theater security cooperation

(a) AUTHORITY.—The Secretary of Defense may pay expenses specified in subsection (b) that the Secretary considers necessary for theater security cooperation.

(b) TYPES OF EXPENSES.—The expenses that may be paid under the authority provided in subsection (a) are the following:

(1) PERSONNEL EXPENSES.—The Secretary of Defense may pay travel, subsistence, and similar personnel expenses of, and special compensation for, the following that the Secretary considers necessary for theater security cooperation:

(A) Defense personnel of friendly foreign governments.

(B) With the concurrence of the Secretary of State, other personnel of friendly foreign governments and non-governmental personnel.

(2) ADMINISTRATIVE SERVICES AND SUPPORT FOR LIAISON OFFICERS.—The Secretary of Defense may provide administrative services and support for the performance of duties by a liaison officer of a foreign country while the liaison officer is assigned temporarily to any headquarters in the Department of Defense.

(3) TRAVEL, SUBSISTENCE, AND MEDICAL CARE FOR LIAISON OFFICERS.—The Secretary of Defense may pay the expenses of a liaison officer in connection with the assignment of that officer as described in paragraph (2) if the assignment is requested by the commander of a combatant command, the Chief of Staff of the Army, the Chief of Naval Operations, the Chief of Staff of the Air Force, the Commandant of the Marine Corps, the Chief of Space Operations, or the head of a Defense Agency as follows:

(A) Travel and subsistence expenses.

(B) Personal expenses directly necessary to carry out the duties of that officer in connection with that assignment.

(C) Expenses for medical care at a civilian medical facility if—

(i) adequate medical care is not available to the liaison officer at a local military medical treatment facility;

(ii) the Secretary determines that payment of such medical expenses is necessary and in the best interests of the United States; and

(iii) medical care is not otherwise available to the liaison officer pursuant to any treaty or other international agreement.

(D) Mission-related travel expenses if such travel meets each of the following conditions:

(i) The travel is in support of the national security interests of the United States.

(ii) The officer or official making the request directs round-trip travel from the assigned location to one or more travel locations.

(4) CONFERENCES, SEMINARS, AND SIMILAR MEETINGS.—The authority provided by paragraph (1) includes authority to pay travel and subsistence expenses for personnel described in that paragraph in connection with the attendance of such personnel at any conference, seminar, or similar meeting that is in direct support of enhancing interoperability between the United States armed forces and the national security forces of a friendly foreign country for the purposes of conducting operations, the provision of equipment or training, or the planning for, or the execution of, bilateral or multilateral training, exercises, or military operations.

(5) OTHER EXPENSES.—In addition to the personnel expenses payable under paragraph (1), the Secretary of Defense may pay such other limited expenses in connection with conferences, seminars, and similar meetings covered by paragraph (4) as the Secretary considers appropriate in the national security interests of the United States.

(c) LIMITATIONS ON EXPENSES PAYABLE.—

(1) PERSONNEL FROM DEVELOPING COUNTRIES.—The authority provided in subsection (a) may be used only for the payment of expenses of, and special compensation for, personnel from developing countries, except that the Secretary of Defense may authorize the payment of such expenses and special compensation for personnel from a country other than a developing country if the Secretary determines that such payment is necessary to respond to extraordinary circumstances and is in the national security interest of the United States.

(2) NON-DEFENSE LIAISON OFFICERS.—In the case of a non-defense liaison officer of a foreign country, the authority of the Secretary of Defense under subsection (a) to pay expenses specified in paragraph (2) or (3) of subsection (b) may be exercised only if the assignment of that liaison officer as a liaison officer with the Department of Defense was accepted by the Secretary of Defense with the coordination of the Secretary of State.

(d) REIMBURSEMENT.—The Secretary of Defense may provide the services and support specified in subsection (b)(2) with or without reimbursement from (or on behalf of) the recipients. The terms of reimbursement (if any) shall be specified in the appropriate agreements used to assign the liaison officer.

(e) MONETARY LIMITATIONS ON EXPENSES PAYABLE.—

(1) TRAVEL AND SUBSISTENCE EXPENSES GENERALLY.—Travel and subsistence expenses authorized to be paid under subsection (a) may not, in the case of any individual, exceed the amount that would be paid under chapter 7 or 8 of title 37 to a member of the armed forces (of a comparable grade) for authorized travel of a similar nature.

(2) TRAVEL AND RELATED EXPENSES OF LIAISON OFFICERS.—The amount paid for expenses specified in subsection (b)(3) for any liaison officer in any fiscal year may not exceed $150,000.

(f) REGULATIONS.—The Secretary of Defense shall prescribe regulations for the administration of this section. Such regulations shall be submitted to the Committees on Armed Services of the Senate and the House of Representatives.

(g) ADMINISTRATIVE SERVICES AND SUPPORT DEFINED.—In this section, the term ''administrative services and support'' includes base or installation support services, office space, utilities, copying services, fire and police protection, training programs conducted to familiarize, orient, or certify liaison personnel regarding unique aspects of the assignments of the liaison personnel, and computer support.

(Added Pub. L. 114–328, div. A, title XII, § 1243(a), Dec. 23, 2016, 130 Stat. 2514; amended Pub. L. 116–283, div. A, title IX, § 924(b)(11), Jan. 1, 2021, 134 Stat. 3823.)

PRIOR PROVISIONS

A prior section 312 was renumbered section 247 of this title.

AMENDMENTS

2021—Subsec. (b)(3). Pub. L. 116–283 inserted ''the Chief of Space Operations,'' after ''the Commandant of the Marine Corps,'' in introductory provisions.

§ 313. Bilateral or regional cooperation programs: awards and mementos to recognize superior noncombat achievements or performance

(a) GENERAL AUTHORITY.—The Secretary of Defense may present awards and mementos pur-

chased with funds appropriated for operation and maintenance of the armed forces to recognize superior noncombat achievements or performance by members of friendly foreign forces and other foreign nationals that significantly enhance or support the National Security Strategy of the United States.

(b) ACTIVITIES THAT MAY BE RECOGNIZED.—Activities that may be recognized under subsection (a) include superior achievement or performance that—

(1) plays a crucial role in shaping the international security environment in ways that protect and promote United States interests;

(2) supports or enhances United States overseas presence and peacetime engagement activities, including defense cooperation initiatives, security assistance training and programs, and training and exercises with the armed forces;

(3) helps to deter aggression and coercion, build coalitions, and promote regional stability; or

(4) serves as a role model for appropriate conduct by military forces in emerging democracies.

(c) LIMITATION.—Expenditures for the purchase or production of mementos for award under this section may not exceed the minimal value in effect under section 7342(a)(5) of title 5.

(Added Pub. L. 108–136, div. A, title XII, § 1222(a), Nov. 24, 2003, 117 Stat. 1652, § 1051b; renumbered § 313, Pub. L. 114–328, div. A, title XII, § 1241(b), Dec. 23, 2016, 130 Stat. 2500.)

AMENDMENTS

2016—Pub. L. 114–328 renumbered section 1051b of this title as this section.

SUBCHAPTER III—TRAINING WITH FOREIGN FORCES

Sec.
321. Training with friendly foreign countries: payment of training and exercise expenses.
322. Special operations forces: training with friendly foreign forces.

§ 321. Training with friendly foreign countries: payment of training and exercise expenses

(a) TRAINING AUTHORIZED.—

(1) TRAINING WITH FOREIGN FORCES GENERALLY.—The armed forces under the jurisdiction of the Secretary of Defense may train with the military forces or other security forces of a friendly foreign country if the Secretary determines that it is in the national security interest of the United States to do so.

(2) LIMITATION ON TRAINING OF GENERAL PURPOSE FORCES.—The general purpose forces of the United States armed forces may train only with the military forces of a friendly foreign country.

(3) TRAINING TO SUPPORT MISSION ESSENTIAL TASKS.—Any training conducted pursuant to paragraph (1) shall, to the maximum extent practicable, support the mission essential tasks for which the unit of the United States armed forces participating in such training is responsible.

(4) ELEMENTS OF TRAINING.—Any training conducted pursuant to paragraph (1) shall, to the maximum extent practicable, include elements that promote—

(A) observance of and respect for human rights and fundamental freedoms; and

(B) respect for legitimate civilian authority within the foreign country concerned.

(b) AUTHORITY TO PAY TRAINING AND EXERCISE EXPENSES.—Under regulations prescribed pursuant to subsection (e), the Secretary of a military department or the commander of a combatant command may pay, or authorize payment for, any of the following expenses:

(1) Expenses of training forces assigned or allocated to that command in conjunction with training, and training with, the military forces or other security forces of a friendly foreign country under subsection (a).

(2) Expenses of deploying such forces for that training.

(3) The incremental expenses of a friendly foreign country as the direct result of participating in such training, as specified in the regulations.

(4) The incremental expenses of a friendly foreign country as the direct result of participating in an exercise with the armed forces under the jurisdiction of the Secretary of Defense.

(5) Small-scale construction that is directly related to the effective accomplishment of the training described in paragraph (1) or an exercise described in paragraph (4).

(c) PURPOSE OF TRAINING AND EXERCISES.—

(1) IN GENERAL.—The primary purpose of the training and exercises for which payment may be made under subsection (b) shall be to train United States forces.

(2) SELECTION OF FOREIGN PARTNERS.—Training and exercises with friendly foreign countries under subsection (a) should be planned and prioritized consistent with applicable guidance relating to the security cooperation programs and activities of the Department of Defense.

(d) AVAILABILITY OF FUNDS FOR ACTIVITIES THAT CROSS FISCAL YEARS.—Amounts available for the authority to pay expenses in subsection (b) for a fiscal year may be used to pay expenses under that subsection for training and exercises that begin in such fiscal year but end in the next fiscal year.

(e) QUARTERLY NOTICE ON PLANNED TRAINING.—Not later than the end of the first calendar quarter beginning after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2017, and every calendar quarter thereafter, the Secretary of Defense shall submit to the appropriate committees of Congress a notice setting forth the schedule of planned training engagement pursuant to subsection (a) during the calendar quarter first following the calendar quarter in which such notice is submitted.

(f) REGULATIONS.—

(1) IN GENERAL.—The Secretary of Defense shall prescribe regulations for the administration of this section. The Secretary shall submit the regulations to the Committees on Armed Services of the Senate and the House of Representatives.

(2) ELEMENTS.—The regulations required under this section shall provide the following:

(A) A requirement that training and exercise activities may be carried out under this section only with the prior approval of the Secretary.

(B) Accounting procedures to ensure that the expenditures pursuant to this section are appropriate.

(C) Procedures to limit the payment of incremental expenses to friendly foreign countries only to developing countries, except in the case of exceptional circumstances as specified in the regulations.

(Added Pub. L. 99–661, div. A, title XIII, § 1321(a)(1), Nov. 14, 1986, 100 Stat. 3988, § 2010; amended Pub. L. 105–85, div. A, title X, § 1073(a)(35), Nov. 18, 1997, 111 Stat. 1902; Pub. L. 110–417, [div. A], title XII, § 1203(a), Oct. 14, 2008, 122 Stat. 4622; Pub. L. 112–81, div. A, title X, § 1061(12), Dec. 31, 2011, 125 Stat. 1583; renumbered § 321 and amended Pub. L. 114–328, div. A, title XII, § 1244(a), Dec. 23, 2016, 130 Stat. 2516; Pub. L. 115–232, div. A, title XII, § 1204(c)(1)(B), Aug. 13, 2018, 132 Stat. 2017.)

REFERENCES IN TEXT

The date of the enactment of the National Defense Authorization Act for Fiscal Year 2017, referred to in subsec. (e), is the date of enactment of Pub. L. 114–328, which was approved Dec. 23, 2016.

AMENDMENTS

2018—Subsec. (e). Pub. L. 115–232 substituted ''the first calendar quarter'' for ''the first calender quarter'' and ''every calendar quarter'' for ''every calender quarter''.

2016—Pub. L. 114–328 renumbered section 2010 of this title as this section and amended it generally. Prior to amendment, section related to payment of incremental expenses for participation of developing countries in combined exercises.

2011—Subsecs. (b) to (e). Pub. L. 112–81 redesignated subsecs. (c) to (e) as (b) to (d), respectively, and struck out former subsec. (b) which read as follows: ''The Secretary of Defense shall submit to Congress a report each year, not later than March 1, containing—

''(1) a list of the developing countries for which expenses have been paid by the United States under this section during the preceding year; and

''(2) the amounts expended on behalf of each government.''

2008—Subsecs. (d), (e). Pub. L. 110–417 added subsec. (d) and redesignated former subsec. (d) as (e).

1997—Subsec. (e). Pub. L. 105–85 struck out subsec. (e) which read as follows: ''Not more than $13,400,000 may be obligated or expended for the purposes of this section during fiscal years 1987 through 1991.''

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–417, [div. A], title XII, § 1203(b), Oct. 14, 2008, 122 Stat. 4622, provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on October 1, 2008, and shall apply with respect to bilateral and multilateral military exercises described in section 2010 [now 321] of title 10, United States Code, as so amended, that begin on or after that date.''

PROHIBITION ON PARTICIPATION OF THE PEOPLE'S REPUBLIC OF CHINA IN RIM OF THE PACIFIC (RIMPAC) NAVAL EXERCISES

Pub. L. 115–232, div. A, title XII, § 1259, Aug. 13, 2018, 132 Stat. 2058, provided that:

''(a) CONDITIONS FOR FUTURE PARTICIPATION IN RIMPAC.—

''(1) IN GENERAL.—The Secretary of Defense shall not enable or facilitate the participation of the People's Republic of China in any Rim of the Pacific (RIMPAC) naval exercise unless the Secretary certifies to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] that China has—

''(A) ceased all land reclamation activities in the South China Sea;

''(B) removed all weapons from its land reclamation sites; and

''(C) established a consistent four-year track record of taking actions toward stabilizing the region.

''(2) FORM.—The certification under paragraph (1) shall be in unclassified form but may contain a classified annex as necessary.

''(b) NATIONAL SECURITY WAIVER.—

''(1) IN GENERAL.—The Secretary of Defense may waive the certification requirement under subsection (a) if the Secretary determines the waiver is in the national security interest of the United States and submits to the congressional defense committees a detailed justification for the waiver.

''(2) FORM.—The justification required under paragraph (1) shall be in unclassified form but may contain a classified annex as necessary.''

§ 322. Special operations forces: training with friendly foreign forces

(a) AUTHORITY TO PAY TRAINING EXPENSES.—Under regulations prescribed pursuant to subsection (c), the commander of the special operations command established pursuant to section 167 of this title and the commander of any other unified or specified combatant command may pay, or authorize payment for, any of the following expenses:

(1) Expenses of training special operations forces assigned to that command in conjunction with training, and training with, armed forces and other security forces of a friendly foreign country.

(2) Expenses of deploying such special operations forces for that training.

(3) In the case of training in conjunction with a friendly developing country, the incremental expenses incurred by that country as the direct result of such training.

(b) PURPOSE OF TRAINING.—The primary purpose of the training for which payment may be made under subsection (a) shall be to train the special operations forces of the combatant command.

(c) REGULATIONS.—The Secretary of Defense shall prescribe regulations for the administration of this section. The regulations shall require that training activities may be carried out under this section only with the prior approval of the Secretary of Defense. The regulations shall establish accounting procedures to ensure that the expenditures pursuant to this section are appropriate.

(d) DEFINITIONS.—In this section:

(1) The term ''special operations forces'' includes civil affairs forces and military information support operations forces.

(2) The term ''incremental expenses'', with respect to a developing country, means the reasonable and proper cost of rations, fuel, training ammunition, transportation, and other goods and services consumed by such country, except that the term does not include pay, allowances, and other normal costs of such country's personnel.

(e) REPORTS.—Not later than April 1 of each year, the Secretary of Defense shall submit to Congress a report regarding training during the preceding fiscal year for which expenses were paid under this section. Each report shall specify the following:

(1) All countries in which that training was conducted.

(2) The type of training conducted, including whether such training was related to counter-narcotics or counter-terrorism activities, the duration of that training, the number of members of the armed forces involved, and expenses paid.

(3) The extent of participation by foreign military forces, including the number and service affiliation of foreign military personnel involved and physical and financial contribution of each host nation to the training effort.

(4) The relationship of that training to other overseas training programs conducted by the armed forces, such as military exercise programs sponsored by the Joint Chiefs of Staff, military exercise programs sponsored by a combatant command, and military training activities sponsored by a military department (including deployments for training, short duration exercises, and other similar unit training events).

(5) A summary of the expenditures under this section resulting from the training for which expenses were paid under this section.

(6) A discussion of the unique military training benefit to United States special operations forces derived from the training activities for which expenses were paid under this section.

(Added Pub. L. 102–190, div. A, title X, § 1052(a)(1), Dec. 5, 1991, 105 Stat. 1470, § 2011; amended Pub. L. 104–106, div. A, title XV, § 1503(a)(18), Feb. 10, 1996, 110 Stat. 512; Pub. L. 105–261, div. A, title X, § 1062, Oct. 17, 1998, 112 Stat. 2129; Pub. L. 112–81, div. A, title X, § 1086(2), Dec. 31, 2011, 125 Stat. 1603; renumbered § 322, Pub. L. 114–328, div. A, title XII, § 1244(b), Dec. 23, 2016, 130 Stat. 2518.)

AMENDMENTS

2016—Pub. L. 114–328 renumbered section 2011 of this title as this section.

2011—Subsec. (d)(1). Pub. L. 112–81 substituted "military information support operations" for "psychological operations".

1998—Subsec. (c). Pub. L. 105–261, § 1062(a), inserted after first sentence "The regulations shall require that training activities may be carried out under this section only with the prior approval of the Secretary of Defense."

Subsec. (e)(5), (6). Pub. L. 105–261, § 1062(b), added pars. (5) and (6).

1996—Subsec. (a). Pub. L. 104–106 substituted "TO" for "TO" in heading.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective Dec. 31, 2021, of provisions in subsec. (e) of this section requiring submittal of annual report to Congress, see section 1061 of Pub. L. 114–328, set out as a note under section 111 of this title.

TRAINING OF GENERAL PURPOSE FORCES OF THE UNITED STATES ARMED FORCES WITH MILITARY AND OTHER SECURITY FORCES OF FRIENDLY FOREIGN COUNTRIES

Pub. L. 113–66, div. A, title XII, § 1203, Dec. 26, 2013, 127 Stat. 894, related to the training of general purpose forces of the armed forces of the United States with military and other security forces of friendly foreign countries, prior to repeal by Pub. L. 114–328, div. A, title XII, § 1244(c), Dec. 23, 2016, 130 Stat. 2518.

SUBCHAPTER IV—SUPPORT FOR OPERATIONS AND CAPACITY BUILDING

Sec.
331. Friendly foreign countries: authority to provide support for conduct of operations.
332. Friendly foreign countries; international and regional organizations: defense institution capacity building.
333. Foreign security forces: authority to build capacity.

§ 331. Friendly foreign countries: authority to provide support for conduct of operations

(a) AUTHORITY.—The Secretary of Defense may provide support to friendly foreign countries in connection with the conduct of operations designated pursuant to subsection (b).

(b) DESIGNATED OPERATIONS.—

(1) IN GENERAL.—The Secretary of Defense shall designate the operations for which support may be provided under the authority in subsection (a).

(2) NOTICE TO CONGRESS.—The Secretary shall notify the appropriate committees of Congress of the designation of any operation pursuant to this subsection.

(3) ANNUAL REVIEW FOR CONTINUING DESIGNATION.—The Secretary shall undertake on an annual basis a review of the operations currently designated pursuant to this subsection in order to determine whether each such operation merits continuing designation for purposes of this section for another year. If the Secretary determines that any operation so reviewed merits continuing designation for purposes of this section for another year, the Secretary—

(A) may continue the designation of such operation under this subsection for such purposes for another year; and

(B) if the Secretary so continues the designation of such operation, shall notify the appropriate committees of Congress of the continuation of designation of such operation.

(c) TYPES OF SUPPORT AUTHORIZED.—The types of support that may be provided under the authority in subsection (a) are the following:

(1) Logistic support, supplies, and services to security forces of a friendly foreign country participating in—

(A) an operation with the armed forces under the jurisdiction of the Secretary of Defense; or

(B) a military or stability operation that benefits the national security interests of the United States.

(2) Logistic support, supplies, and services—

(A) to military forces of a friendly foreign country solely for the purpose of enhancing the interoperability of the logistical support systems of military forces participating in a combined operation with the United States in order to facilitate such operation; or

(B) to a nonmilitary logistics, security, or similar agency of a friendly foreign govern-

ment if such provision would directly benefit the armed forces under the jurisdiction of the Secretary of Defense.

(3) Procurement of equipment for the purpose of the loan of such equipment to the military forces of a friendly foreign country participating in a United States-supported coalition or combined operation and the loan of such equipment to those forces to enhance capabilities or to increase interoperability with the armed forces under the jurisdiction of the Secretary of Defense and other coalition partners.

(4) Provision of specialized training to personnel of friendly foreign countries in connection with such an operation, including training of such personnel before deployment in connection with such operation.

(5) Small-scale construction to support military forces of a friendly foreign country participating in a United States-supported coalition or combined operation when the construction is directly linked to the ability of such forces to participate in such operation effectively and is limited to the geographic area where such operation is taking place. In the case of support provided under this paragraph that results in the provision of small-scale construction above $750,000, the notification pursuant to subsection (b)(2) shall include the location, project title, and cost of each such small-scale construction project that will be carried out, a Department of Defense Form 1391 for each such project, and a masterplan of planned infrastructure investments at the location.

(d) CERTIFICATION REQUIRED.—

(1) OPERATIONS IN WHICH THE UNITED STATES IS NOT PARTICIPATING.—The Secretary of Defense may provide support under subsection (a) to a friendly foreign country with respect to an operation in which the United States is not participating only—

(A) if the Secretary of Defense and the Secretary of State jointly certify to the appropriate committees of Congress that the operation is in the national security interests of the United States; and

(B) after the expiration of the 15-day period beginning on the date of such certification.

(2) ACCOMPANYING REPORT.—Any certification under paragraph (1) shall be accompanied by a report that includes the following:

(A) A description of the operation, including the geographic area of the operation.

(B) A list of participating countries.

(C) A description of the type of support and the duration of support to be provided.

(D) A description of the national security interests of the United States supported by the operation.

(E) Such other matters as the Secretary of Defense and the Secretary of State consider significant to a consideration of such certification.

(e) SECRETARY OF STATE CONCURRENCE.—The provision of support under subsection (a) may be made only with the concurrence of the Secretary of State.

(f) SUPPORT OTHERWISE PROHIBITED BY LAW.—The Secretary of Defense may not use the authority in subsection (a) to provide any type of support described in subsection (c) that is otherwise prohibited by any provision of law.

(g) LIMITATIONS ON VALUE.—

(1) The aggregate value of all logistic support, supplies, and services provided under paragraphs (1), (4), and (5) of subsection (c) in any fiscal year may not exceed $450,000,000.

(2) The aggregate value of all logistic support, supplies, and services provided under subsection (c)(2) in any fiscal year may not exceed $5,000,000.

(h) LOGISTIC SUPPORT, SUPPLIES, AND SERVICES DEFINED.—In this section, the term ''logistic support, supplies, and services'' has the meaning given that term in section 2350(1) of this title.

(Added Pub. L. 109–364, div. A, title XII, § 1201(a), Oct. 17, 2006, 120 Stat. 2410, § 127c; renumbered § 127d, Pub. L. 110–181, div. A, title X, § 1063(a)(1)(A), Jan. 28, 2008, 122 Stat. 321; Pub. L. 111–383, div. A, title X, § 1075(b)(3), title XII, § 1202, Jan. 7, 2011, 124 Stat. 4369, 4385; renumbered § 331 and amended Pub. L. 114–328, div. A, title XII, § 1245(a), Dec. 23, 2016, 130 Stat. 2518; Pub. L. 115–232, div. A, title XII, § 1203(b), Aug. 13, 2018, 132 Stat. 2016.)

PRIOR PROVISIONS

A prior section 331 was renumbered section 251 of this title.

AMENDMENTS

2018—Subsec. (c)(5). Pub. L. 115–232 inserted at end ''In the case of support provided under this paragraph that results in the provision of small-scale construction above $750,000, the notification pursuant to subsection (b)(2) shall include the location, project title, and cost of each such small-scale construction project that will be carried out, a Department of Defense Form 1391 for each such project, and a masterplan of planned infrastructure investments at the location.''

2016—Pub. L. 114–328 renumbered section 127d of this title as this section and amended it generally. Prior to amendment, section related to authority to provide logistic support, supplies, and services to allied forces participating in combined operations.

2011—Subsec. (a). Pub. L. 111–383, § 1202(a), designated existing provisions as par. (1), inserted ''of the United States'' after ''armed forces'', struck out ''Provision of such support, supplies, and services to the forces of an allied nation may be made only with the concurrence of the Secretary of State.'' at end, and added pars. (2) and (3).

Subsec. (b). Pub. L. 111–383, § 1202(b)(1), substituted ''subsection (a)(1)'' for ''subsection (a)'' in par. (1) and in introductory provisions of par. (2).

Subsec. (c)(1). Pub. L. 111–383, § 1202(b)(2)(A), substituted ''The'' for ''Except as provided in paragraph (2), the'' and ''subsection (a)(1)'' for ''this section''.

Subsec. (c)(2). Pub. L. 111–383, § 1202(b)(2)(B), substituted ''The value of the logistic support, supplies, and services provided under subsection (a)(2) in any fiscal year may not'' for ''In addition to any logistic support, supplies, and services provided under subsection (a) that are covered by paragraph (1), the value of logistic support, supplies, and services provided under this section solely for the purposes of enhancing the interoperability of the logistical support systems of military forces participating in combined operation of the United States in order to facilitate such operations may not, in any fiscal year,''.

Subsec. (d)(1). Pub. L. 111–383, § 1075(b)(3), substituted ''Committee on Foreign Affairs'' for ''Committee on International Relations''.

2008—Pub. L. 110–181 renumbered section 127c of this title, relating to allied forces participating in combined operations, as this section.

§ 332. Friendly foreign countries; international and regional organizations: defense institution capacity building

(a) MINISTRY OF DEFENSE ADVISOR AUTHORITY.—The Secretary of Defense may, with the concurrence of the Secretary of State, carry out a program to assign civilian employees of the Department of Defense and members of the armed forces as advisors to the ministries of defense (or security agencies serving a similar defense function) of foreign countries or regional organizations with security missions in order to—

(1) provide institutional, ministerial-level advice, and other training to personnel of the ministry or regional organization to which assigned in support of stabilization or post-conflict activities; or

(2) assist such ministry or regional organization in building core institutional capacity, competencies, and capabilities to manage defense-related processes.

(b) TRAINING OF PERSONNEL OF FOREIGN MINISTRIES WITH SECURITY MISSIONS.—

(1) IN GENERAL.—The Secretary of Defense may, with the concurrence of the Secretary of State, carry out a program to provide advisors or trainers to provide training and associated training support services to personnel of foreign ministries of defense (or ministries with security force oversight) or regional organizations with security missions—

(A) for the purpose of—

(i) enhancing civilian oversight of foreign security forces;

(ii) establishing responsible defense governance and internal controls in order to help build effective, transparent, and accountable defense institutions;

(iii) assessing organizational weaknesses and establishing a roadmap for addressing shortfalls; and

(iv) enhancing ministerial, general or joint staff, or service level core management competencies; and

(B) for such other purposes as the Secretary considers appropriate, consistent with the authority in subsection (a).

(2) NOTICE TO CONGRESS.—Each fiscal year quarter, the Secretary of Defense shall submit to the appropriate committees of Congress a report on activities under the program under paragraph (1) during the preceding fiscal year quarter. Each report shall include, for the fiscal year quarter covered by such report, the following:

(A) A list of activities under the program.

(B) A list of any organization described in paragraph (1) to which the Secretary provided advisors or trainers under the program, including the number of such advisors or trainers so provided, the duration of each provision of such an advisor or trainer, a brief description of the activities of each advisor or trainer so provided, and a statement of the cost of each provision of such an advisor or trainer.

(C) A comprehensive justification of any activities conducted pursuant to paragraph (1)(B).

(c) CONGRESSIONAL NOTICE.—Not later than 15 days before assigning a civilian employee of the Department of Defense or a member of the armed forces as an advisor to a regional organization with a security mission under subsection (a), the Secretary shall submit to the appropriate committees of Congress a notification of such assignment. Such a notification shall include each of the following:

(1) A statement of the intent of the Secretary to assign the advisor or trainer to the regional organization.

(2) The name of the regional organization and the location and duration of the assignment.

(3) A description of the assignment, including a description of the training or assistance proposed to be provided to the regional organization, the justification for the assignment, a description of the unique capabilities the advisor or trainer can provide to the regional organization, and a description of how the assignment serves the national security interests of the United States.

(4) Any other information relating to the assignment that the Secretary of Defense considers appropriate.

(Added and amended Pub. L. 114–328, div. A, title XII, §1241(c)(1), (2), Dec. 23, 2016, 130 Stat. 2500; Pub. L. 115–91, div. A, title XII, §1204(a), Dec. 12, 2017, 131 Stat. 1642; Pub. L. 115–232, div. A, title XII, §1202, Aug. 13, 2018, 132 Stat. 2016.)

CODIFICATION

Text of section, as added by Pub. L. 114–328, is based on text of subsecs. (a), (b), and (d) of section 1081 of Pub. L. 112–81, div. A, title X, Dec. 31, 2011, 125 Stat. 1599, as amended, which was formerly set out as a note under section 168 of this title, prior to repeal by Pub. L. 114–328, div. A, title XII, §1241(c)(3), Dec. 23, 2016, 130 Stat. 2500.

PRIOR PROVISIONS

A prior section 332 was renumbered section 252 of this title.

AMENDMENTS

2018—Subsec. (b)(1). Pub. L. 115–232, §1202(1), substituted ''provide advisors or trainers'' for ''assign civilian employees of the Department of Defense and members of the armed forces as advisors or trainers''.

Subsec. (b)(2)(B). Pub. L. 115–232, §1202(2)(C), which directed substitution of ''each provision of such an advisor or trainer'' for ''each assignment'', was executed by making the substitution in both places it appeared, to reflect the probable intent of Congress.

Pub. L. 115–232, §1202(2)(A), (B), substituted ''Secretary provided'' for ''Secretary assigned'', ''number of such advisors or trainers so provided'' for ''number of such advisors or trainers so assigned'', and ''each advisor or trainer so provided'' for ''each assigned advisor or trainer''.

2017—Subsec. (a). Pub. L. 115–91, §1204(a)(1), inserted ''and members of the armed forces'' after ''civilian employees of the Department of Defense'' in introductory provisions.

Subsec. (b)(1). Pub. L. 115–91, §1204(a)(2)(A), inserted ''to assign civilian employees of the Department of Defense and members of the armed forces as advisors or trainers'' after ''carry out a program'' in introductory provisions.

Subsec. (b)(2)(B). Pub. L. 115–91, § 1204(a)(2)(B), substituted ''advisors or trainers'' for ''employees'' in two places and ''the activities of each assigned advisor or trainer'' for ''each assigned employee's activities''.

Subsec. (c). Pub. L. 115–91, § 1204(a)(3)(A), inserted ''or a member of the armed forces'' after ''a civilian employee of the Department of Defense'' in introductory provisions.

Subsec. (c)(1). Pub. L. 115–91, § 1204(a)(3)(B), substituted ''advisor or trainer'' for ''employee as an advisor''.

Subsec. (c)(3). Pub. L. 115–91, § 1204(a)(3)(C), substituted ''advisor or trainer'' for ''employee''.

2016—Subsecs. (c), (d). Pub. L. 114–328, § 1241(c)(2), redesignated subsec. (d) as (c).

LEGAL INSTITUTIONAL CAPACITY BUILDING INITIATIVE FOR FOREIGN DEFENSE INSTITUTIONS

Pub. L. 116–92, div. A, title XII, § 1210, Dec. 20, 2019, 133 Stat. 1625, provided that:

''(a) INITIATIVE.—The Secretary of Defense may carry out, in accordance with section 332 of title 10, United States Code, an initiative of legal institutional capacity building in collaboration with the appropriate ministry of defense (or security agency serving a similar defense function) legal institutions that support the efforts of one or more foreign countries to establish or improve legal institutional capacity.

''(b) PURPOSE.—The purpose of the initiative under subsection (a) is to enhance, through advisory services, training, or related training support services, as appropriate, the legal institutional capacity of the applicable foreign country to do the following:

''(1) Integrate legal matters into the authority, doctrine, and policies of the ministry of defense (or security agency serving a similar defense function) and forces of such country.

''(2) Provide appropriate legal support to commanders conducting defense and national security operations.

''(3) With respect to defense and national security law, institutionalize education, training, and professional development for personnel and forces, including uniformed lawyers, officers, noncommissioned officers, and civilian lawyers and leadership within such ministries of defense (and security agencies serving a similar defense function).

''(4) Establish a military justice system that is objective, transparent, and impartial.

''(5) Conduct effective and transparent command and administrative investigations.

''(6) Build the legal capacity of the forces and civilian personnel of ministries of defense (and security agencies serving a similar defense function) to provide equitable, transparent, and accountable institutions and provide for anti-corruption measures within such institutions.

''(7) Build capacity—

''(A) to provide for the protection of civilians consistent with the law of armed conflict and human rights law; and

''(B) to investigate incidents of civilian casualties.

''(8) Promote understanding and observance of—

''(A) the law of armed conflict;

''(B) human rights and fundamental freedoms;

''(C) the rule of law; and

''(D) civilian control of the military.

''(9) Establish mechanisms for effective civilian oversight of defense and national security legal institutions and legal matters.

''(c) ELEMENTS.—The initiative under subsection (a) shall include the following elements:

''(1) A measure for monitoring the implementation of the initiative and evaluating the efficiency and effectiveness of the initiative, in accordance with section 383 of title 10, United States Code.

''(2) An assessment of the organizational weaknesses for legal institutional capacity building of the applicable foreign country, including baseline information, an assessment of gaps in the capability and capacity of the appropriate institutions of such country, and any other indicator of efficacy, in accordance with section 383 of title 10, United States Code.

''(3) An engagement plan for building legal institutional capacity that addresses the weaknesses identified under paragraph (2), including objectives, milestones, and a timeline.

''(d) REPORTS.—

''(1) IN GENERAL.—Beginning in fiscal year 2020 through the fiscal year in which the initiative under subsection (a) terminates, the Secretary of Defense shall submit to the appropriate committees of Congress an annual report on the legal institutional capacity building activities carried out under this section.

''(2) INTEGRATION INTO OTHER CAPACITY BUILDING REPORTS.—The report submitted under paragraph (1) for a fiscal year shall be integrated into the report required pursuant to subsection (b)(2) of section 332 of title 10, United States Code, for the fourth fiscal year quarter of such fiscal year.

''(3) MATTERS TO BE INCLUDED.—Each report submitted under paragraph (1) shall include the following:

''(A) The same information required under subsection (b)(2) of section 332 of title 10, United States Code.

''(B) The names of the one or more countries in which the initiative was conducted.

''(C) For each such country—

''(i) the purpose of the initiative;

''(ii) the objectives, milestones, and timeline of the initiative;

''(iii) the number and type of advisors assigned and deployed to the country, as applicable; and

''(iv) an assessment of the progress of the implementation of the initiative.

''(e) SUNSET.—The initiative under subsection (a) shall terminate on December 31, 2024.

''(f) FUNDING.—Amounts for programs carried out pursuant to subsection (a) in a fiscal year, and for other purposes in connection with such programs as authorized by this section, may be derived only from amounts authorized to be appropriated for such fiscal year for the Department of Defense for operation and maintenance, Defense-wide, and available for the Defense Security Cooperation Agency for such programs and purposes.''

§ 333. Foreign security forces: authority to build capacity

(a) AUTHORITY.—The Secretary of Defense is authorized to conduct or support a program or programs to provide training and equipment to the national security forces of one or more foreign countries for the purpose of building the capacity of such forces to conduct one or more of the following:

(1) Counterterrorism operations.

(2) Counter-weapons of mass destruction operations.

(3) Counter-illicit drug trafficking operations.

(4) Counter-transnational organized crime operations.

(5) Maritime and border security operations.

(6) Military intelligence operations.

(7) Air domain awareness operations.

(8) Operations or activities that contribute to an existing international coalition operation that is determined by the Secretary to be in the national interest of the United States.

(9) Cyberspace security and defensive cyberspace operations.

(b) CONCURRENCE AND COORDINATION WITH SECRETARY OF STATE.—

(1) CONCURRENCE IN CONDUCT OF PROGRAMS.—The concurrence of the Secretary of State is required to conduct or support any program authorized by subsection (a).

(2) JOINT DEVELOPMENT AND PLANNING OF PROGRAMS.—The Secretary of Defense and the Secretary of State shall jointly develop and plan any program carried out pursuant to subsection (a). In developing and planning a program to build the capacity of the national security forces of a foreign country under subsection (a), the Secretary of Defense and Secretary of State should jointly consider political, social, economic, diplomatic, and historical factors, if any, of the foreign country that may impact the effectiveness of the program.

(3) IMPLEMENTATION OF PROGRAMS.—The Secretary of Defense and the Secretary of State shall coordinate the implementation of any program under subsection (a). The Secretary of Defense and the Secretary of State shall each designate an individual responsible for program coordination under this paragraph at the lowest appropriate level in the Department concerned.

(4) COORDINATION IN PREPARATION OF CERTAIN NOTICES.—Any notice required by this section to be submitted to the appropriate committees of Congress shall be prepared in coordination with the Secretary of State.

(c) TYPES OF CAPACITY BUILDING.—

(1) AUTHORIZED ELEMENTS.—A program under subsection (a) may include the provision and sustainment of defense articles, training, defense services, supplies (including consumables), and small-scale construction supporting security cooperation programs under this section.

(2) REQUIRED ELEMENTS.—A program under subsection (a) shall include elements that promote the following:

(A) Observance of and respect for the law of armed conflict, human rights and fundamental freedoms, the rule of law, and civilian control of the military.

(B) Institutional capacity building.

(3) OBSERVANCE OF AND RESPECT FOR THE LAW OF ARMED CONFLICT, HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, THE RULE OF LAW, AND CIVILIAN CONTROL OF THE MILITARY.—In order to meet the requirement in paragraph (2)(A) with respect to particular national security forces under a program under subsection (a), the Secretary of Defense shall certify, prior to the initiation of the program, that the Department of Defense or the Department of State is already undertaking, or will undertake as part of the security sector assistance provided to the foreign country concerned, training that includes a comprehensive curriculum on the law of armed conflict, human rights and fundamental freedoms, and the rule of law, and that enhances the capacity to exercise responsible civilian control of the military, as applicable, to such national security forces.

(4) INSTITUTIONAL CAPACITY BUILDING.—In order to meet the requirement in paragraph (2)(B) with respect to a particular foreign country under a program under subsection (a), the Secretary shall certify, prior to the initiation of the program, that the Department of Defense or another department or agency is already undertaking, or will undertake as part of the security sector assistance provided to the foreign country concerned, a program of institutional capacity building with appropriate institutions of such foreign country to enhance the capacity of such foreign country to organize, administer, employ, manage, maintain, sustain, or oversee the national security forces of such foreign country.

(d) LIMITATIONS.—

(1) ASSISTANCE OTHERWISE PROHIBITED BY LAW.—The Secretary of Defense may not use the authority in subsection (a) to provide any type of assistance described in subsection (c) that is otherwise prohibited by any provision of law.

(2) PROHIBITION ON ASSISTANCE TO UNITS THAT HAVE COMMITTED GROSS VIOLATIONS OF HUMAN RIGHTS.—The provision of assistance pursuant to a program under subsection (a) shall be subject to the provisions of section 362 of this title.

(3) DURATION OF SUSTAINMENT SUPPORT.—Sustainment support may not be provided pursuant to a program under subsection (a), or for equipment previously provided by the Department of Defense under any authority available to the Secretary during fiscal year 2015 or 2016, for a period in excess of five years unless the notice on the program pursuant to subsection (e) includes the information specified in paragraph (7) of subsection (e).

(e) NOTICE AND WAIT ON ACTIVITIES UNDER PROGRAMS.—Not later than 15 days before initiating activities under a program under subsection (a), the Secretary of Defense shall submit to the appropriate committees of Congress a written and electronic notice of the following:

(1) The foreign country, and specific unit, whose capacity to engage in activities specified in subsection (a) will be built under the program, and the amount, type, and purpose of the support to be provided.

(2) A detailed evaluation of the capacity of the foreign country and unit to absorb the training or equipment to be provided under the program.

(3) The cost, implementation timeline, and delivery schedule for assistance under the program.

(4) A description of the arrangements, if any, for the sustainment of the program and the estimated cost and source of funds to support sustainment of the capabilities and performance outcomes achieved under the program beyond its completion date, if applicable.

(5) Information, including the amount, type, and purpose, on the security assistance provided the foreign country during the three preceding fiscal years pursuant to authorities under this title, the Foreign Assistance Act of 1961, and any other train and equip authorities of the Department of Defense.

(6) A description of the elements of the theater security cooperation plan of the geographic combatant command concerned, and

of the interagency integrated country strategy, that will be advanced by the program.

(7) In the case of a program described in subsection (d)(3), each of the following:

(A) A written justification that the provision of sustainment support described in that subsection for a period in excess of five years will enhance the security interest of the United States.

(B) To the extent practicable, a plan to transition such sustainment support from funding through the Department to funding through another security sector assistance program of the United States Government or funding through partner nations.

(8) In the case of activities under a program that results in the provision of small-scale construction above $750,000, the location, project title, and cost of each small-scale construction project that will be carried out, a Department of Defense Form 1391 for each such project, and a masterplan of planned infrastructure investments at the location over the next 5 years.

(9) In the case of a program described in subsection (a), each of the following:

(A) A description of whether assistance under the program could be provided pursuant to other authorities under this title, the Foreign Assistance Act of 1961, or any other train and equip authorities of the Department of Defense.

(B) An identification of each such authority described in subparagraph (A).

(f) QUARTERLY MONITORING REPORTS.—The Director of the Defense Security Cooperation Agency shall, on a quarterly basis, submit to the appropriate committees of Congress a report setting forth, for the preceding calendar quarter, the following:

(1) Information, by recipient country, of the delivery and execution status of all defense articles, training, defense services, supplies (including consumables), and small-scale construction under programs under subsection (a).

(2) Information on the timeliness of delivery of defense articles, defense services, supplies (including consumables), and small-scale construction when compared with delivery schedules for such articles, services, supplies, and construction previously provided to Congress.

(3) Information, by recipient country, on the status of funds allocated for programs under subsection (a), including amounts of unobligated funds, unliquidated obligations, and disbursements.

(g) FUNDING.—

(1) SOLE SOURCE OF FUNDS.—Amounts for programs carried out pursuant to subsection (a) in a fiscal year, and for other purposes in connection with such programs as authorized by this section, may be derived only from amounts authorized to be appropriated for such fiscal year for the Department of Defense for operation and maintenance, Defense-wide, and available for the Defense Security Cooperation Agency for such programs and purposes.

(2) AVAILABILITY OF FUNDS FOR PROGRAMS ACROSS FISCAL YEARS.—

(A) IN GENERAL.—Amounts available in a fiscal year to carry out the authority in subsection (a) may be used for programs under that authority that begin in such fiscal year and end not later than the end of the second fiscal year thereafter.

(B) ACHIEVEMENT OF FULL OPERATIONAL CAPACITY.—If, in accordance with subparagraph (A), equipment or training is delivered under a program under the authority in subsection (a) in the fiscal year after the fiscal year in which the program begins, amounts for defense articles, training, defense services, supplies (including consumables), and small-scale construction associated with such equipment or training and necessary to ensure that the recipient unit achieves full operational capability for such equipment or training may be used in the fiscal year in which the foreign country takes receipt of such equipment and in the next two fiscal years.

(Added Pub. L. 114–328, div. A, title XII, § 1241(d)(1), Dec. 23, 2016, 130 Stat. 2500; amended Pub. L. 115–91, div. A, title XII, § 1204(b), Dec. 12, 2017, 131 Stat. 1643; Pub. L. 115–232, div. A, title XII, §§ 1201, 1203(c), Aug. 13, 2018, 132 Stat. 2016; Pub. L. 116–92, div. A, title XII, § 1201, Dec. 20, 2019, 133 Stat. 1620; Pub. L. 116–283, div. A, title XII, § 1201, Jan. 1, 2021, 134 Stat. 3908.)

REFERENCES IN TEXT

The Foreign Assistance Act of 1961, referred to in subsec. (e)(5), (9)(A), is Pub. L. 87–195, Sept. 4, 1961, 75 Stat. 424, which is classified principally to chapter 32 (§ 2151 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 2151 of Title 22 and Tables.

PRIOR PROVISIONS

A prior section 333 was renumbered section 253 of this title.

AMENDMENTS

2021—Subsec. (a)(7), (8). Pub. L. 116–283, § 1201(1), (2), added par. (7) and redesignated former par. (7) as (8).

Subsec. (a)(9). Pub. L. 116–283, § 1201(3), added par. (9).

2019—Subsec. (a)(7). Pub. L. 116–92, § 1201(a), inserted ‘‘existing’’ before ‘‘international coalition operation’’.

Subsec. (e)(9). Pub. L. 116–92, § 1201(b), added par. (9).

2018—Subsec. (b)(2). Pub. L. 115–232, § 1201, inserted at end ‘‘In developing and planning a program to build the capacity of the national security forces of a foreign country under subsection (a), the Secretary of Defense and Secretary of State should jointly consider political, social, economic, diplomatic, and historical factors, if any, of the foreign country that may impact the effectiveness of the program.’’

Subsec. (c)(1). Pub. L. 115–232, § 1203(c)(1), inserted ‘‘supporting security cooperation programs under this section’’ after ‘‘small-scale construction’’.

Subsec. (e)(8). Pub. L. 115–232, § 1203(c)(2), added par. (8).

2017—Subsec. (c)(2)(A). Pub. L. 115–91, § 1204(b)(1)(A), substituted ‘‘the rule of law, and civilian control of the military’’ for ‘‘and the rule of law’’.

Subsec. (c)(2)(B). Pub. L. 115–91, § 1204(b)(1)(B), substituted ‘‘Institutional capacity building’’ for ‘‘Respect for civilian control of the military’’.

Subsec. (c)(3). Pub. L. 115–91, § 1204(b)(2), in heading, substituted ‘‘Observance of and respect for the law of armed conflict, human rights and fundamental freedoms, the rule of law, and civilian control of the military’’ for ‘‘Human rights training’’ and in text, inserted

''or the Department of State'' after ''Department of Defense'' and substituted ''training that includes a comprehensive curriculum on the law of armed conflict, human rights and fundamental freedoms, and the rule of law, and that enhances the capacity to exercise responsible civilian control of the military'' for ''human rights training that includes a comprehensive curriculum on human rights and the law of armed conflict''.

Subsec. (c)(4). Pub. L. 115–91, §1204(b)(3), substituted ''that the Department of Defense or another department or agency is already undertaking, or will undertake as part of the security sector assistance provided to the foreign country concerned, a program of institutional capacity building with appropriate institutions of such foreign country to enhance the capacity of such foreign country to organize, administer, employ, manage, maintain, sustain, or oversee the national security forces of such foreign country.'' for ''that the Department is already undertaking, or will undertake as part of the program, a program of institutional capacity building with appropriate institutions of such foreign country that is complementary to the program with respect to such foreign country under subsection (a).'' and struck out at end ''The purpose of the program of institutional capacity building shall be to enhance the capacity of such foreign country to exercise responsible civilian control of the national security forces of such foreign country.''

PILOT PROGRAM TO IMPROVE CYBER COOPERATION WITH VIETNAM, THAILAND, AND INDONESIA

Pub. L. 116–283, div. A, title XII, §1256, Jan. 1, 2021, 134 Stat. 3956, provided that:

''(a) IN GENERAL.—The Secretary of Defense, with the concurrence of the Secretary of State, may establish, using existing authorities of the Department of Defense, a pilot program in Vietnam, Thailand, and Indonesia—

''(1) to enhance the cyber security, resilience, and readiness of the military forces of Vietnam, Thailand, and Indonesia; and

''(2) to increase regional cooperation between the United States and Vietnam, Thailand, and Indonesia on cyber issues.

''(b) ELEMENTS.—The activities of the pilot program under subsection (a) shall include the following:

''(1) Provision of training to military officers and civilian officials in the ministries of defense of Vietnam, Thailand, and Indonesia.

''(2) The facilitation of regular dialogues and trainings among the Department of Defense and the ministries of defense of Vietnam, Thailand, and Indonesia with respect to the development of infrastructure to protect against foreign cyber attacks.

''(3) To undertake, as part of cyber cooperation, training that includes curricula expressly relating to human rights, the rule of law, and internet freedom.

''(c) REPORTS.—

''(1) DESIGN OF PILOT PROGRAM.—Not later than June 1, 2021, the Secretary of Defense, with the concurrence of the Secretary of State, shall submit to the appropriate committees of Congress a report on the design of the pilot program under subsection (a).

''(2) PROGRESS REPORT.—Not later than December 31, 2021, and annually thereafter until the date on which the pilot program terminates under subsection (e), the Secretary of Defense, with the concurrence of the Secretary of State, shall submit to the appropriate committees of Congress a report on the pilot program that includes—

''(A) a description of the activities conducted and the results of such activities;

''(B) an assessment of reforms relevant to cybersecurity and technology in enhancing the cyber security, resilience, and readiness of the military forces of Vietnam, Thailand, and Indonesia;

''(C) an assessment of the effectiveness of curricula relating to human rights, the rule of law, and internet freedom; and

''(D) the content and curriculum of any program made available to participants of such program.

''(d) CERTIFICATION.—Not later than 30 days before the date on which the pilot program under subsection (a) is scheduled to commence, the Secretary of Defense, with the concurrence of the Secretary of State, shall submit to the appropriate committees of Congress a certification indicating whether such program would credibly enable, enhance, or facilitate violations of internet freedom or other human rights abuses in Vietnam, Indonesia, or Thailand.

''(e) TERMINATION.—The pilot program under subsection (a) shall terminate on December 31, 2024.

''(f) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this section, the term 'appropriate committees of Congress' means—

''(1) the Committee on Armed Services and the Committee on Foreign Relations of the Senate; and

''(2) the Committee on Armed Services and the Committee on Foreign Affairs of the House of Representatives.''

GUIDANCE

Pub. L. 114–328, div. A, title XII, §1241(d)(4), Dec. 23, 2016, 130 Stat. 2504, provided that: ''Not later than 180 days after the date of the enactment of this Act [Dec. 23, 2016], the Secretary of Defense shall prescribe, and submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives], initial policy guidance on roles, responsibilities, and processes in connection with programs and activities authorized by section 333 of title 10, United States Code, as so added. Not later than 270 days after the date of the enactment of this Act, the Secretary shall prescribe, and submit to the congressional defense committees, final policy guidance on roles, responsibilities, and processes in connection with such programs and activities.''

TRAINING FOR EASTERN EUROPEAN NATIONAL SECURITY FORCES IN THE COURSE OF MULTILATERAL EXERCISES

Pub. L. 114–92, div. A, title XII, §1251, Nov. 25, 2015, 129 Stat. 1070, as amended by Pub. L. 114–328, div. A, title XII, §1233, Dec. 23, 2016, 130 Stat. 2489; Pub. L. 115–91, div. A, title XII, §1205, Dec. 12, 2017, 131 Stat. 1643; Pub. L. 116–92, div. A, title XII, §1247(a), Dec. 20, 2019, 133 Stat. 1662; Pub. L. 116–283, div. A, title XII, §1243, Jan. 1, 2021, 134 Stat. 3947, provided that:

''(a) AUTHORITY.—The Secretary of Defense may provide the training specified in subsection (b), and pay the incremental expenses incurred by a country as the direct result of participation in such training, for the national security forces provided for under subsection (c).

''(b) TYPES OF TRAINING.—The training provided to the national security forces of a country under subsection (a) shall be limited to training that is—

''(1) provided in the course of the conduct of a multilateral exercise in which the United States Armed Forces are a participant;

''(2) comparable to or complimentary of the types of training the United States Armed Forces receive in the course of such multilateral exercise; and

''(3) for any purpose as follows:

''(A) To enhance and increase the interoperability of the security forces to be trained to increase their ability to participate in coalition efforts led by the United States or the North Atlantic Treaty Organization (NATO).

''(B) To increase the capacity of such security forces to respond to external threats.

''(C) To increase the capacity of such security forces to respond to hybrid warfare.

''(D) To increase the capacity of such security forces to respond to calls for collective action within the North Atlantic Treaty Organization.

''(c) ELIGIBLE COUNTRIES.—

''(1) IN GENERAL.—Training may be provided under subsection (a) to the national security forces of the

countries determined by the Secretary of Defense, with the concurrence of the Secretary of State, to be appropriate recipients of such training from among the countries as follows:

''(A) Countries that are a signatory to the Partnership for Peace Framework Documents, but not a member of the North Atlantic Treaty Organization.

''(B) Countries that became a member of the North Atlantic Treaty Organization after January 1, 1999.

''(2) ELIGIBLE COUNTRIES.—Before providing training under subsection (a), the Secretary of Defense shall, in coordination with the Secretary of State, submit to the Committees on Armed Services of the Senate and the House of Representatives a list of the countries determined pursuant to paragraph (1) to be eligible for the provision of training under subsection (a).

''(d) FUNDING OF INCREMENTAL EXPENSES.—

''(1) ANNUAL FUNDING.—Of the amounts specified in paragraph (2) for a fiscal year, up to a total of $28,000,000 may be used to pay incremental expenses under subsection (a) in that fiscal year.

''(2) AMOUNTS.—The amounts specified in this paragraph are as follows:

''(A) Amounts authorized to be appropriated for a fiscal year for operation and maintenance, Army, and available for the Combatant Commands Direct Support Program for that fiscal year.

''(B) Amounts authorized to be appropriated for a fiscal year for operation and maintenance, Defense-wide, and available for the Wales Initiative Fund for that fiscal year.

''(C) Amounts authorized to be appropriated for a fiscal year for overseas contingency operations for operation and maintenance, Army, and available for additional activities for the European Deterrence Initiative for that fiscal year.

''(3) AVAILABILITY OF FUNDS FOR ACTIVITIES ACROSS FISCAL YEARS.—Amounts available in a fiscal year pursuant to this subsection may be used for incremental expenses of training that begins in that fiscal year and ends in the next fiscal year.

''(4) REGULATIONS.—

''(A) IN GENERAL.—The Secretary of Defense shall prescribe regulations for payment of incremental expenses under subsection (a). Not later than 120 days after the date of the enactment of this paragraph [Dec. 12, 2017], the Secretary shall submit the regulations to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives.

''(B) PROCEDURES TO BE INCLUDED.—The regulations required under subparagraph (A) shall include procedures—

''(i) to require reimbursement of incremental expenses from non-developing countries determined pursuant to subsection (c) to be eligible for the provision of training under subsection (a); and

''(ii) to provide for a waiver of the requirement of reimbursement of incremental expenses under clause (i), on a case-by-case basis, if the Secretary of Defense determines special circumstances exist to provide for the waiver.

''(C) QUARTERLY REPORT.—The Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] and the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives, on a quarterly basis, a report that includes a description of each waiver of the requirement of reimbursement of incremental expenses under subparagraph (B)(i) that was in effect at any time during the preceding calendar quarter.

''(D) NON-DEVELOPING COUNTRY DEFINED.—In this paragraph, the term 'non-developing country' means a country that is not a developing country, as such term is defined in section 301(4) of title 10, United States Code.

''(e) BRIEFING TO CONGRESS ON USE OF AUTHORITY.—Not later than 90 days after the end of each fiscal year in which the authority in subsection (a) is used, the Secretary shall brief the Committees on Armed Services of the Senate and the House of Representatives on the use of the authority during such fiscal year, including each country with which training under the authority was conducted and the types of training provided.

''(f) CONSTRUCTION OF AUTHORITY.—The authority provided in subsection (a)—

''(1) is in addition to any other authority provided by law authorizing the provision of training for the national security forces of a foreign country, including chapter 16 of title 10, United States Code; and

''(2) shall not be construed to include authority for the training of irregular forces, groups, or individuals.

''(g) INCREMENTAL EXPENSES DEFINED.—In this section, the term 'incremental expenses' has the meaning given such term in section 301(5) of title 10, United States Code.

''(h) TERMINATION OF AUTHORITY.—The authority under this section shall terminate on December 31, 2023. Any activity under this section initiated before that date may be completed, but only using funds available for the period beginning on October 1, 2015, and ending on December 31, 2023.''

INDO-PACIFIC MARITIME SECURITY INITIATIVE

Pub. L. 114–92, div. A, title XII, §1263, Nov. 25, 2015, 129 Stat. 1073, as amended by Pub. L. 114–328, div. A, title XII, §1289, Dec. 23, 2016, 130 Stat. 2555; Pub. L. 115–232, div. A, title XII, §1252, Aug. 13, 2018, 132 Stat. 2053; Pub. L. 116–92, div. A, title XII, §§1251, 1252(a), Dec. 20, 2019, 133 Stat. 1666–1668, provided that:

''(a) ASSISTANCE AND TRAINING.—

''(1) IN GENERAL.—The Secretary of Defense is authorized, with the concurrence of the Secretary of State, for the purpose of increasing maritime security and maritime domain awareness of foreign countries along the South China Sea and the Indian Ocean—

''(A) to provide assistance to national military or other security forces of such countries that have among their functional responsibilities maritime security missions; and

''(B) to provide training to ministry, agency, and headquarters level organizations for such forces.

''(2) DESIGNATION OF ASSISTANCE AND TRAINING.—The provision of assistance and training under this section may be referred to as the 'Indo-Pacific Maritime Security Initiative'.

''(b) RECIPIENT COUNTRIES.—The foreign countries that may be provided assistance and training under subsection (a) are the following:

''(1) Indonesia.
''(2) Malaysia.
''(3) The Philippines.
''(4) Thailand.
''(5) Vietnam.
''(6) Bangladesh.
''(7) Sri Lanka.
''(8) The Federated States of Micronesia.
''(9) The Independent State of Samoa.
''(10) The Kingdom of Tonga.
''(11) Papua New Guinea.
''(12) The Republic of Fiji.
''(13) The Republic of Kiribati.
''(14) The Republic of the Marshall Islands.
''(15) The Republic of Nauru.
''(16) The Republic of Palau.
''(17) The Republic of Vanuatu.
''(18) The Solomon Islands.
''(19) Tuvalu.

''(c) TYPES OF ASSISTANCE AND TRAINING.—

''(1) AUTHORIZED ELEMENTS OF ASSISTANCE.—Assistance provided under subsection (a)(1)(A) may include the provision of equipment, supplies, training, and small-scale military construction.

''(2) REQUIRED ELEMENTS OF ASSISTANCE AND TRAINING.—Assistance and training provided under sub-

section (a) shall include elements that promote the following:

''(A) Observance of and respect for the law of armed conflict, the rule of law, and human rights and fundamental freedoms.

''(B) Respect for legitimate civilian authority within the country to which the assistance is provided.

''(d) PRIORITIES FOR ASSISTANCE AND TRAINING.—In developing programs for assistance or training to be provided under subsection (a), the Secretary of Defense shall accord a priority to assistance, training, or both that will enhance the maritime capabilities of the recipient foreign country, or a regional organization of which the recipient country is a member, to respond to emerging threats to maritime security.

''(e) INCREMENTAL EXPENSES OF PERSONNEL OF CERTAIN OTHER COUNTRIES FOR TRAINING.—

''(1) AUTHORITY FOR PAYMENT.—If the Secretary of Defense determines that the payment of incremental expenses in connection with training described in subsection (a)(1)(B) will facilitate the participation in such training of organization personnel of foreign countries specified in paragraph (2), the Secretary may use amounts available under subsection (f) for assistance and training under subsection (a) for the payment of such incremental expenses.

''(2) COVERED COUNTRIES.—The foreign countries specified in this paragraph are the following:

''(A) Brunei.

''(B) Singapore.

''(C) Taiwan.

''(D) India.

''(f) AVAILABILITY OF FUNDS.—

''(1) IN GENERAL.—Of the amounts authorized to be appropriated for fiscal year 2016 for the Department of Defense, $50,000,000 may be available for the provision of assistance and training under subsection (a).

''(2) NOTICE ON SOURCE OF FUNDS.—If the Secretary of Defense uses funds available to the Department pursuant to paragraph (1) to provide assistance and training under subsection (a) during a fiscal half-year of fiscal year 2016, not later than 30 days after the end of such fiscal half-year, the Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a notice on the account or accounts providing such funds.

''(g) NOTICE TO CONGRESS ON ASSISTANCE AND TRAINING.—

''(1) IN GENERAL.—Not later than 15 days before exercising the authority under subsection (a) or (e) with respect to a recipient foreign country, the Secretary of Defense shall submit to the appropriate committees of Congress a notification containing the following:

''(A) The recipient foreign country, the specific unit or units whose capacity to engage in activities under a program of assistance or training to be provided under subsection (a) will be built under the program, and the amount, type, and purpose of the support to be provided.

''(B) A detailed justification of the program for the provision of the assistance or training concerned, and its relationship to United States security interests.

''(C) The budget for the program, including a timetable of planned expenditures of funds to implement the program, an implementation timeline for the program with milestones (including anticipated delivery schedules for any assistance under the program), the military department or component responsible for management of the program, and the anticipated completion date for the program.

''(D) A description of the arrangements, if any, to support host nation sustainment of any capability developed pursuant to the program, and the source of funds to support sustainment efforts and performance outcomes to be achieved under the program beyond its completion date, if applicable.

''(E) A description of the program objectives and an assessment framework to be used to develop capability and performance metrics associated with operational outcomes for the recipient force.

''(F) Information, including the amount, type, and purpose, on assistance and training provided under subsection (a) during the three preceding fiscal years, if applicable.

''(G) A description of the elements of the theater campaign plan of the geographic combatant command concerned and the interagency integrated country strategy that will be advanced by the assistance and training provided under subsection (a).

''(H) A description of whether assistance and training provided under subsection (a) could be provided pursuant to—

''(i) section 333 of title 10, United States Code, or other security cooperation authorities of the Department of Defense; or

''(ii) security cooperation authorities of the Department of State.

''(I) An identification of each such authority described in subparagraph (H).

''(J) Such other matters as the Secretary considers appropriate.

''(2) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this subsection, the term 'appropriate committees of Congress' means—

''(A) the Committee on Armed Services, the Committee on Foreign Relations, and the Committee on Appropriations of the Senate; and

''(B) the Committee on Armed Services, the Committee on Foreign Affairs, and the Committee on Appropriations of the House of Representatives.

''(h) ANNUAL MONITORING REPORTS.—

''(1) IN GENERAL.—Not later than March 1, 2020, and annually thereafter, the Secretary of Defense shall submit to the appropriate committees of Congress a report setting forth, for the preceding calendar year, the following:

''(A) An assessment, by recipient foreign country, of—

''(i) the country's capabilities relating to maritime security and maritime domain awareness;

''(ii) the country's capability enhancement priorities, including how such priorities relate to the theater campaign strategy, country plan, and theater campaign plan relating to maritime security and maritime domain awareness;

''(B) A discussion, by recipient foreign country, of—

''(i) priority capabilities that the Department of Defense plans to enhance under the authority under subsection (a) and priority capabilities the Department plans to enhance under separate United States security cooperation and security assistance authorities; and

''(ii) the anticipated timeline for assistance and training for each such capability.

''(C) Information, by recipient foreign country, on the status of funds allocated for assistance and training provided under subsection (a), including funds allocated but not yet obligated or expended.

''(D) Information, by recipient foreign country, on the delivery and use of assistance and training provided under subsection (a).

''(E) Information, by recipient foreign country, on the timeliness of the provision of assistance and training under subsection (a) as compared to the timeliness of the provision of assistance and training previously provided to the foreign country under subsection (a).

''(F) A description of the reasons the Department of Defense chose to utilize the authority for assistance and training under subsection (a) in the preceding calendar year.

''(G) An explanation of any impediments to timely obligation or expenditure of funds allocated for assistance and training under subsection (a) or any significant delay in the delivery of such assistance and training.

''(2) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this subsection, the term 'appropriate committees of Congress' has the meaning given the term in subsection (g)(2).

''(i) LIMITATION.—The provision of assistance and training pursuant to a program under subsection (a) shall be subject to the provisions of section 383 of title 10, United States Code.

''(j) EXPIRATION.—Assistance and training may not be provided under this section after December 31, 2025.''

TRAINING OF SECURITY FORCES AND ASSOCIATED SECURITY MINISTRIES OF FOREIGN COUNTRIES TO PROMOTE RESPECT FOR THE RULE OF LAW AND HUMAN RIGHTS

Pub. L. 113–291, div. A, title XII, §1206, Dec. 19, 2014, 128 Stat. 3538, as amended by Pub. L. 115–232, div. A, title XII, §1205(c), Aug. 13, 2018, 132 Stat. 2018, authorized the Secretary of Defense to conduct human rights training of security forces and associated security ministries of foreign countries and terminated such authority on Sept. 30, 2020.

[§ 334. Renumbered § 254]

[§ 335. Renumbered § 255]

[§ 336. Repealed. Pub. L. 96–513, title V, § 511(11)(B), Dec. 12, 1980, 94 Stat. 2921]

Section, added Pub. L. 90–496, §12, Aug. 23, 1968, 82 Stat. 841, included Virgin Islands within ''State''. See section 255 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

SUBCHAPTER V—EDUCATIONAL AND TRAINING ACTIVITIES

Sec.
341. Department of Defense State Partnership Program.
342. Regional Centers for Security Studies.
343. Western Hemisphere Institute for Security Cooperation.
344. Participation in multinational centers of excellence.
345. Regional Defense Combating Terrorism and Irregular Warfare Fellowship Program.
346. Distribution to certain foreign personnel of education and training materials and information technology to enhance military interoperability with the armed forces.
347. International engagement authorities for service academies.
348. Aviation Leadership Program.
349. Inter-American Air Forces Academy.
350. Inter-European Air Forces Academy.
351. Inter-American Defense College.
352. Naval Small Craft Instruction and Technical Training School.

AMENDMENTS

2021—Pub. L. 116–283, div. A, title XII, §1206(b), Jan. 1, 2021, 134 Stat. 3913, added item 344 and struck out former item 344 ''Participation in multinational military centers of excellence''.

2019—Pub. L. 116–92, div. A, title XVII, §1731(a)(15), Dec. 20, 2019, 133 Stat. 1813, struck out ''Sec.'' after item 350.

2018—Pub. L. 115–232, div. A, title XII, §§1204(c)(1)(C), 1207(b), 1208(a)(2), 1209(b)(2), Aug. 13, 2018, 132 Stat. 2017, 2020, 2021, 2023, substituted ''Centers for Security Studies'' for ''centers for security studies'' in item 342, inserted ''and Irregular Warfare'' after ''Terrorism'' in item 345, and added items 351 and 352.

DEFENSE INSTITUTE OF INTERNATIONAL LEGAL STUDIES

Pub. L. 115–91, div. A, title XII, §1207, Dec. 12, 2017, 131 Stat. 1645, provided that:

''(a) IN GENERAL.—The Secretary of Defense may operate an institute to be known as the 'Defense Institute of International Legal Studies' (in this section referred to as the 'Institute') in accordance with this section to further the United States security and foreign policy objectives of—

''(1) promoting an understanding of and appreciation for the rule of law; and

''(2) encouraging the international development of internal capacities of foreign governments for civilian control of the military, military justice, the legal aspects of peacekeeping, good governance and anticorruption in defense reform, and human rights.

''(b) ACTIVITIES.—In carrying out the purposes specified in subsection (a), the Institute may conduct activities as follows:

''(1) Exchange of ideas on best practices and lessons learned in order to improve compliance with international legal norms.

''(2) Education and training involving professional legal engagement with foreign military personnel and related civilians, both within and outside the United States.

''(3) Building the legal capacity of foreign military and other security forces, including equitable, transparent, and accountable defense institutions, civilian control of the military, human rights, and democratic governance.

''(4) Institutional legal capacity building of foreign defense and security institutions.

''(c) DEPARTMENT OF DEFENSE REVIEW.—

''(1) IN GENERAL.—The Secretary shall conduct a comprehensive review of the mission, workforce, funding, and other support of the Institute.

''(2) ELEMENTS.—The review shall include, but not be limited to, the following:

''(A) An assessment of the scope of the mission of the Institute, taking into account the increasing security cooperation authorities and requirements of the Department of Defense, including core rule of law training in the United States and abroad, defense legal institution building, and statutorily required human rights and legal capacity building of foreign security forces.

''(B) An assessment of the workforce of the Institute, including whether it is appropriately sized to align with the full scope of the mission of the Institute.

''(C) A review of the funding mechanisms for the activities of the Institute, including the current mechanisms for reimbursing the Institute by the Department of State and by the Department of Defense through the budget of the Defense Security Cooperation Agency.

''(D) An evaluation of the feasibility and advisability of the provision of funds appropriated for the Department of Defense directly to the Institute, and the actions, if any, required to authorize the Institute to receive such funds directly.

''(E) A description of the challenges, if any, faced by the Institute to increase its capacity to provide residence courses to meet demands for training and assistance.

''(F) An assessment of the capacity of the Department of Defense to assess, monitor, and evaluate the effectiveness of the human rights training and other activities of the Institute.

''(3) REPORT.—Not later than 180 days after the date of the enactment of this Act [Dec. 12, 2017], the Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report summarizing the findings of the review and any recommendations for enhancing the capability of the Institute to fulfill its mission that the Secretary considers appropriate.

''(d) COMPTROLLER GENERAL OF THE UNITED STATES REPORT.—

''(1) IN GENERAL.—Not later than 270 days after the date of the enactment of this Act [Dec. 12, 2017], the

Comptroller General of the United States shall submit to the appropriate committees of Congress a report that sets forth the following:

"(A) A description of the mechanisms and authorities used by the Department of Defense and the Department of State to conduct training of foreign security forces on human rights and international humanitarian law.

"(B) A description of the funding used to support the training described in subparagraph (A).

"(C) A description and assessment of the methodology used by each of the Department of Defense and the Department of State to assess the effectiveness of such training.

"(D) Such recommendations for improvements to such training as the Comptroller General considers appropriate.

"(E) Such other matters relating to such training as the Comptroller General considers appropriate.

"(2) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this subsection, the term 'appropriate committees of Congress' means—

"(A) the Committee on Armed Services, the Committee on Foreign Relations, and the Committee on Appropriations of the Senate; and

"(B) the Committee on Armed Services, the Committee on Foreign Affairs, and the Committee on Appropriations of the House of Representatives."

§ 341. Department of Defense State Partnership Program

(a) AUTHORITY.—

(1) IN GENERAL.—The Secretary of Defense, with the concurrence of the Secretary of State, is authorized to establish a program of activities described in paragraph (2), to support the security cooperation objectives of the United States, between members of the National Guard of a State or territory and any of the following:

(A) The military forces of a foreign country.

(B) The security forces of a foreign country.

(C) Governmental organizations of a foreign country whose primary functions include disaster response or emergency response.

(2) STATE PARTNERSHIP.—Each program established under this subsection shall be known as a "State Partnership".

(b) LIMITATIONS.—

(1) IN GENERAL.—An activity with forces referred to in subsection (a)(1)(B) or organizations described in subsection (a)(1)(C) under a program established under subsection (a) may be carried out only if the Secretary of Defense, with the concurrence of the Secretary of State, determines and notifies the appropriate congressional committees not less than 15 days before initiating such activity that the activity is in the national security interests of the United States.

(2) PROHIBITION ON ACTIVITIES WITH UNITS THAT HAVE COMMITTED GROSS VIOLATIONS OF HUMAN RIGHTS.—The conduct of any assistance activities under a program established under subsection (a) shall be subject to the provisions of section 362 of this title.

(c) COORDINATION OF ACTIVITIES.—The Chief of the National Guard Bureau shall designate a director for each State and territory to be responsible for the coordination of activities under a program established under subsection (a) for such State or territory and reporting on activities under the program.

(d) REGULATIONS.—This section shall be carried out in accordance with such regulations as the Secretary of Defense shall prescribe for purposes of this section. Such regulations shall include accounting procedures to ensure that expenditures of funds to carry out this section are accounted for and appropriate.

(e) AVAILABILITY OF AUTHORIZED FUNDS FOR PROGRAM.—

(1) IN GENERAL.—Funds authorized to be appropriated to the Department of Defense, including funds authorized to be appropriated for the Army National Guard and Air National Guard, are authorized to be available—

(A) for payment of costs incurred by the National Guard of a State or territory to conduct activities under a program established under subsection (a); and

(B) for payment of incremental expenses of a foreign country to conduct activities under a program established under subsection (a).

(2) LIMITATIONS.—

(A) ACTIVE DUTY REQUIREMENT.—Funds shall not be available under paragraph (1) for the participation of a member of the National Guard of a State or territory in activities in a foreign country unless the member is on active duty in the Armed Forces at the time of such participation.

(B) INCREMENTAL EXPENSES.—The total amount of payments for incremental expenses of foreign countries as authorized under paragraph (1)(B) for activities under programs established under subsection (a) in any fiscal year may not exceed $10,000,000.

(f) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to supersede any authority under title 10 as in effect on December 26, 2013.

(Added and amended Pub. L. 114–328, div. A, title XII, § 1246(a)–(c), (d)(1), (2)(B), Dec. 23, 2016, 130 Stat. 2520, 2521; Pub. L. 115–232, div. A, title XII, § 1210, Aug. 13, 2018, 132 Stat. 2023; Pub. L. 116–92, div. A, title XVII, § 1731(a)(16), Dec. 20, 2019, 133 Stat. 1813.)

CODIFICATION

Text of section, as added by Pub. L. 114–328, is based on text of subsecs. (a) to (g) of section 1205 of Pub. L. 113–66, div. A, title XII, Dec. 26, 2013, 127 Stat. 897, as amended, which was formerly set out as a note under section 107 of Title 32, National Guard, prior to repeal by Pub. L. 114–328, div. A, title XII, § 1246(e), Dec. 23, 2016, 130 Stat. 2521.

AMENDMENTS

2019—Subsec. (e)(2)(A). Pub. L. 116–92 inserted period at end.

2018—Subsec. (b)(2). Pub. L. 115–232 inserted "assistance" after "any".

2016—Subsec. (b). Pub. L. 114–328, § 1246(b), substituted "Limitations" for "Limitation" in subsec. heading, designated existing provisions as par. (1) and inserted par. heading, and added par. (2).

Subsec. (d). Pub. L. 114–328, § 1246(c)(1), added subsec. (d) and struck out former subsec. (d) which required the Secretary of Defense to prescribe regulations to carry out this section and to notify Congress.

Subsec. (f). Pub. L. 114–328, §1246(d)(2)(B), redesignated subsec. (g) as (f) and struck out former subsec. (f) which required annual reports for fiscal years 2016, 2017, and 2018.

Pub. L. 114–328, §1246(d)(1)(A), substituted ''Annual Reports'' for ''Reports and Notifications'' in subsec. heading, added par. (1) and struck out former par. (1) which related to a review and report of programs under the State Partnership Program as in effect on Dec. 26, 2013, redesignated par. (2)(B) as par. (2), substituted ''Matters to be included'' for ''Annual report'' in par. (2) heading, and struck out former par. (2)(A) which required reports on activities under programs established under subsec. (a).

Subsec. (f)(2). Pub. L. 114–328, §1246(d)(1)(B)(i), redesignated cls. (i) to (vi) of former par. (2)(B) as subpars. (A) to (F), respectively, of par. (2) and realigned margins.

Subsec. (f)(2)(F). Pub. L. 114–328, §1246(d)(1)(B)(ii), substituted ''subparagraph (E)'' for ''clause (v)''.

Subsec. (g). Pub. L. 114–328, §1246(d)(2)(B)(ii), redesignated subsec. (g) as (f).

Pub. L. 114–328, §1246(c)(2), substituted ''under title 10 as in effect on December 26, 2013.'' for ''under title 10, United States Code, as in effect on the date of the enactment of this Act.''

EFFECTIVE DATE OF 2016 AMENDMENT

Pub. L. 114–328, div. A, title XII, §1246(d)(2), Dec. 23, 2016, 130 Stat. 2521, provided that the amendment made by section 1246(d)(2)(B) is effective as of Jan. 1, 2020.

§ 342. Regional Centers for Security Studies

(a) IN GENERAL.—The Secretary of Defense shall administer the Department of Defense Regional Centers for Security Studies in accordance with this section as international venues for bilateral and multilateral research, communication, exchange of ideas, and training involving military and civilian participants.

(b) REGIONAL CENTERS SPECIFIED.—(1) A Department of Defense Regional Center for Security Studies is a Department of Defense institution that—

(A) is operated, and designated as such, by the Secretary of Defense for the study of security issues relating to a specified geographic region of the world; and

(B) serves as a forum for bilateral and multilateral research, communication, exchange of ideas, and training involving military and civilian participants.

(2) The Department of Defense Regional Centers for Security Studies are the following:

(A) The George C. Marshall European Center for Security Studies, established in 1993 and located in Garmisch-Partenkirchen, Germany.

(B) The Daniel K. Inouye Asia-Pacific Center for Security Studies, established in 1995 and located in Honolulu, Hawaii.

(C) The William J. Perry Center for Hemispheric Defense Studies, established in 1997 and located in Washington, D.C.

(D) The Africa Center for Strategic Studies, established in 1999 and located in Washington, D.C.

(E) The Near East South Asia Center for Strategic Studies, established in 2000 and located in Washington, D.C.

(3) No institution or element of the Department of Defense may be designated as a Department of Defense Regional Center for Security Studies for purposes of this section, other than the institutions specified in paragraph (2).

(c) REGULATIONS.—The administration of the Regional Centers under this section shall be carried out under regulations prescribed by the Secretary. The regulations shall prioritize within the respective areas of focus of each Regional Center the functional areas for engagement of territorial and maritime security, transnational and asymmetric threats, and defense sector governance.

(d) PARTICIPATION.—Participants in activities of the Regional Centers may include United States and foreign military, civilian, and nongovernmental personnel.

(e) EMPLOYMENT AND COMPENSATION OF FACULTY.—At each Regional Center, the Secretary may, subject to the availability of appropriations—

(1) employ a Director, a Deputy Director, and as many civilians as professors, instructors, and lecturers as the Secretary considers necessary; and

(2) prescribe the compensation of such persons, in accordance with Federal guidelines.

(f) PAYMENT OF COSTS.—(1) Participation in activities of a Regional Center shall be on a reimbursable basis (or by payment in advance), except in a case in which reimbursement is waived in accordance with paragraph (3).

(2) For a foreign national participant, payment of costs may be made by the participant, the participant's own government, by a Department or agency of the United States other than the Department of Defense, or by a gift or donation on behalf of one or more Regional Centers accepted under section 2611 of this title on behalf of the participant's government.

(3)(A) The Secretary of Defense may waive reimbursement of the costs of activities of the Regional Centers for foreign military officers and foreign defense and security personnel from a developing country if the Secretary determines that attendance of such personnel without reimbursement is in the national security interest of the United States. Costs for which reimbursement is waived pursuant to this paragraph shall be paid from appropriations available to the Regional Centers.

(B)(i) The Secretary of Defense may, with the concurrence of the Secretary of State, waive reimbursement otherwise required under this subsection of the costs of activities of the Regional Centers for personnel of nongovernmental and international organizations who participate in activities of the Regional Centers that enhance cooperation of nongovernmental organizations and international organizations with United States forces if the Secretary of Defense determines that attendance of such personnel without reimbursement is in the national security interest of the United States.

(ii) The amount of reimbursement that may be waived under clause (i) in any fiscal year may not exceed $1,000,000.

(4) Funds accepted for the payment of costs shall be credited to the appropriation then currently available to the Department of Defense for the Regional Center that incurred the costs. Funds so credited shall be merged with the appropriation to which credited and shall be available to that Regional Center for the same purposes and same period as the appropriation with which merged.

(5) Funds available for the payment of personnel expenses under section 312 of this title are also available for the costs of the operation of the Regional Centers.

(6) Funds available to carry out this section, including funds accepted under paragraph (4) and funds available under paragraph (5), shall be available, to the extent provided in appropriations Acts, for programs and activities under this section that begin in a fiscal year and end in the following fiscal year.

(g) SUPPORT TO OTHER AGENCIES.—The Director of a Regional Center may enter into agreements with the Secretaries of the military departments, the heads of the Defense Agencies, and, with the concurrence of the Secretary of Defense, the heads of other Federal departments and agencies for the provision of services by that Regional Center under this section. Any such participating department and agency shall transfer to the Regional Center funds to pay the full costs of the services received.

(h) AUTHORITIES SPECIFIC TO MARSHALL CENTER.—(1) The Secretary of Defense may authorize participation by a European or Eurasian country in programs of the George C. Marshall Center for Security Studies (in this subsection referred to as the ''Marshall Center'') if the Secretary determines, after consultation with the Secretary of State, that such participation is in the national interest of the United States.

(2)(A) In the case of any person invited to serve without compensation on the Marshall Center Board of Visitors, the Secretary of Defense may waive any requirement for financial disclosure that would otherwise apply to that person solely by reason of service on such Board.

(B) A member of the Marshall Center Board of Visitors may not be required to register as an agent of a foreign government solely by reason of service as a member of the Board.

(C) Notwithstanding section 219 of title 18, a non-United States citizen may serve on the Marshall Center Board of Visitors even though registered as a foreign agent.

(3)(A) The Secretary of Defense may waive reimbursement of the costs of conferences, seminars, courses of instruction, or similar educational activities of the Marshall Center for military officers and civilian officials from states located in Europe or the territory of the former Soviet Union if the Secretary determines that attendance by such personnel without reimbursement is in the national security interest of the United States.

(B) Costs for which reimbursement is waived pursuant to subparagraph (A) shall be paid from appropriations available for the Center.

(i) AUTHORITIES SPECIFIC TO INOUYE CENTER.—(1) The Secretary of Defense may waive reimbursement of the cost of conferences, seminars, courses of instruction, or similar educational activities of the Daniel K. Inouye Center for Security Studies for military officers and civilian officials of foreign countries if the Secretary determines that attendance by such personnel, without reimbursement, is in the national security interest of the United States.

(2) Costs for which reimbursement is waived pursuant to paragraph (1) shall be paid from appropriations available for the Center.

(j) ANNUAL REVIEW OF PROGRAM STRUCTURE AND PROGRAMS OF CENTERS.—(1) The Secretary shall on an annual basis review the program and structure of each Regional Center in order to determine whether such Regional Center is appropriately aligned with the strategic priorities of the Department of Defense and the applicable geographic combatant commands.

(2) The Secretary may revise the program, structure, or both of a Regional Center following an annual review under paragraph (1) in order to more appropriately align the Regional Center with strategic priorities and the geographic combatant commands as described in that paragraph.

(Added Pub. L. 106–398, §1 [[div. A], title IX, §912(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–228, §184; amended Pub. L. 107–107, div. A, title X, §1048(c)(2), Dec. 28, 2001, 115 Stat. 1226; Pub. L. 108–136, div. A, title IX, §931(b)(2), Nov. 24, 2003, 117 Stat. 1581; Pub. L. 109–163, div. A, title IX, §903(b), Jan. 6, 2006, 119 Stat. 3399; Pub. L. 109–364, div. A, title IX, §904(a)(1), Oct. 17, 2006, 120 Stat. 2351; Pub. L. 110–417, [div. A], title IX, §941(a)(1), Oct. 14, 2008, 122 Stat. 4576; Pub. L. 111–84, div. A, title X, §1073(a)(3), Oct. 28, 2009, 123 Stat. 2472; Pub. L. 112–81, div. A, title X, §1061(2), Dec. 31, 2011, 125 Stat. 1583; Pub. L. 112–239, div. B, title XXVIII, §2854(b)(1), Jan. 2, 2013, 126 Stat. 2161; Pub. L. 113–291, div. B, title XXVIII, §2861(b)(1), Dec. 19, 2014, 128 Stat. 3715; renumbered §342 and amended Pub. L. 114–328, div. A, title XII, §1241(e)(1)–(4), Dec. 23, 2016, 130 Stat. 2505, 2506; Pub. L. 115–91, div. A, title X, §1081(a)(17), Dec. 12, 2017, 131 Stat. 1595.)

AMENDMENTS

2017—Subsec. (j)(2). Pub. L. 115–91 struck out second period at end.

2016—Pub. L. 114–328, §1241(e)(1), renumbered section 184 of this title as this section.

Subsec. (a). Pub. L. 114–328, §1241(e)(2)(A), substituted ''exchange of ideas, and training'' for ''and exchange of ideas''.

Subsec. (b)(1)(B). Pub. L. 114–328, §1241(e)(2)(B)(i), substituted ''exchange of ideas, and training'' for ''and exchange of ideas''.

Subsec. (b)(3). Pub. L. 114–328, §1241(e)(2)(B)(ii), struck out '', except as specifically provided by law after October 17, 2006'' before period at end.

Subsec. (c). Pub. L. 114–328, §1241(e)(2)(C), inserted at end ''The regulations shall prioritize within the respective areas of focus of each Regional Center the functional areas for engagement of territorial and maritime security, transnational and asymmetric threats, and defense sector governance.''

Subsec. (f)(3). Pub. L. 114–328, §1241(e)(2)(D)(i), designated existing provisions as subpar. (A), substituted ''security personnel'' for ''security civilian government officials'', and added subpar. (B).

Subsec. (f)(5). Pub. L. 114–328, §1241(e)(2)(D)(ii), substituted ''under section 312 of this title are also available for the costs of the operation of the Regional Centers.'' for ''under the Latin American cooperation authority set forth in section 1050 of this title are also available for the costs of the operation of the William J. Perry Center for Hemispheric Defense Studies.''

Subsecs. (h), (i). Pub. L. 114–328, §1241(e)(3), added subsecs. (h) and (i).

Subsec. (j). Pub. L. 114–328, §1241(e)(4), added subsec. (j).

2014—Subsec. (b)(2)(B). Pub. L. 113–291 substituted ''Daniel K. Inouye Asia-Pacific Center for Security Studies'' for ''Asia-Pacific Center for Security Studies''.

2013—Subsec. (b)(2)(C). Pub. L. 112–239, § 2854(b)(1)(A), substituted ''The William J. Perry Center for Hemispheric Defense Studies'' for ''The Center for Hemispheric Defense Studies''.

Subsec. (f)(5). Pub. L. 112–239, § 2854(b)(1)(B), substituted ''the William J. Perry Center for Hemispheric Defense Studies'' for ''the Center for Hemispheric Defense Studies''.

2011—Subsec. (h). Pub. L. 112–81 struck out subsec. (h) which required the Secretary of Defense to submit an annual report on the operation of the Regional Centers for security studies during the preceding fiscal year.

2009—Subsec. (b)(3). Pub. L. 111–84 substituted ''October 17, 2006'' for ''the date of the enactment of this section''.

2008—Subsec. (f)(6). Pub. L. 110–417 added par. (6).

2006—Pub. L. 109–364 amended section catchline and text generally. Prior to amendment, section consisted of subsecs. (a) to (c) relating to notification to Congress of the establishment of new regional centers, annual report on the operation of such centers, and definition of ''regional center for security studies''.

Subsec. (b)(4). Pub. L. 109–163 substituted ''under section 2611 of this title.'' for ''under any of the following provisions of law:

''(A) Section 2611 of this title.

''(B) Section 1306 of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337; 108 Stat. 2892).

''(C) Section 1065 of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104–201; 110 Stat. 2653; 10 U.S.C. 113 note).''

2003—Subsec. (b)(4). Pub. L. 108–136 struck out ''foreign'' before ''gifts''.

2001—Subsec. (a). Pub. L. 107–107 substituted ''October 30, 2000,'' for ''the date of the enactment of this section,'' in introductory provisions.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–417, [div. A], title IX, § 941(a)(2), Oct. 14, 2008, 122 Stat. 4576, provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect on October 1, 2008, and shall apply with respect to programs and activities under [former] section 184 of title 10, United States Code (as so amended) [now 10 U.S.C. 342], that begin on or after that date.''

TED STEVENS CENTER FOR ARCTIC SECURITY STUDIES

Pub. L. 116–283, div. A, title X, § 1089, Jan. 1, 2021, 134 Stat. 3878, provided that:

''(a) PLAN REQUIRED.—

''(1) IN GENERAL.—Not later than 90 days after the date of the enactment of this Act [Jan. 1, 2021], the Secretary of Defense, in coordination with the Secretary of State, shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a plan to establish a Department of Defense Regional Center for Security Studies for the Arctic.

''(2) ELEMENTS.—The plan required by paragraph (1) shall include the following:

''(A) A description of the benefits of establishing such a center, including the manner in which the establishment of such a center would benefit United States and Department of Defense interests in the Arctic region.

''(B) A description of the mission and purpose of such a center, including—

''(i) enhancing understanding of the dynamics and national security implications of an emerging Arctic region, including increased access for transit and maneuverability; and

''(ii) other specific policy guidance from the Office of the Secretary of Defense.

''(C) An analysis of suitable reporting relationships with the applicable combatant commands.

''(D) An assessment of suitable locations, which shall include an enumeration and valuation of criteria, which may include—

''(i) the proximity of a location to other academic institutions that study security implications with respect to the Arctic region;

''(ii) the proximity of a location to the designated lead for Arctic affairs of the United States Northern Command; and

''(iii) the proximity of a location to a central hub of assigned Arctic-focused Armed Forces so as to suitably advance relevant professional development of skills unique to the Arctic region.

''(E) A description of the establishment and operational costs of such a center, including for—

''(i) military construction for required facilities;

''(ii) facility renovation;

''(iii) personnel costs for faculty and staff; and

''(iv) other costs the Secretary considers appropriate.

''(F) An evaluation of the existing infrastructure, resources, and personnel available at military installations and at universities and other academic institutions that could reduce the costs described in accordance with subparagraph (E).

''(G) An examination of partnership opportunities with United States allies and partners for potential collaboration and burden sharing.

''(H) A description of potential courses and programs that such a center could carry out, including—

''(i) core, specialized, and advanced courses;

''(ii) potential planning workshops;

''(iii) seminars;

''(iv) confidence-building initiatives; and

''(v) academic research.

''(I) A description of any modification to title 10, United States Code, necessary for the effective operation of such a center.

''(3) FORM.—The plan required by paragraph (1) shall be submitted in unclassified form, but may include a classified annex.

''(b) ESTABLISHMENT.—

''(1) IN GENERAL.—Not earlier than 30 days after the submittal of the plan required by subsection (a), and subject to the availability of appropriations, the Secretary of Defense may establish and administer a Department of Defense Regional Center for Security Studies for the Arctic, to be known as the 'Ted Stevens Center for Arctic Security Studies', for the purpose described in section 342(a) of title 10, United States Code.

''(2) LOCATION.—Subject to a determination by the Secretary to establish the Ted Stevens Center for Arctic Security Studies under this section, the Center shall be established at a location determined suitable pursuant to subsection (a)(2)(D).''

FUNCTIONAL CENTER FOR SECURITY STUDIES IN IRREGULAR WARFARE

Pub. L. 116–283, div. A, title XII, § 1299L, Jan. 1, 2021, 134 Stat. 4012, provided that:

''(a) REPORT REQUIRED.—

''(1) IN GENERAL.—Not later than 90 days after the date of the enactment of this Act [Jan. 1, 2021], the Secretary of Defense, in consultation with the Secretary of State, shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report that assesses the merits and feasibility of establishing and administering a Department of Defense Functional Center for Security Studies in Irregular Warfare.

''(2) ELEMENTS.—The report required by paragraph (1) shall include the following:

''(A) A description of the benefits to the United States, and the allies and partners of the United States, of establishing such a functional center, including the manner in which the establishment of such a functional center would enhance and sustain focus on, and advance knowledge and understanding of, matters of irregular warfare, including

cybersecurity, nonstate actors, information operations, counterterrorism, stability operations, and the hybridization of such matters.

''(B) A detailed description of the mission and purpose of such a functional center, including applicable policy guidance from the Office of the Secretary of Defense.

''(C) An analysis of appropriate reporting and liaison relationships between such a functional center and—

''(i) the geographic and functional combatant commands;

''(ii) other Department of Defense stakeholders; and

''(iii) other government and nongovernment entities and organizations.

''(D) An enumeration and valuation of criteria applicable to the determination of a suitable location for such a functional center.

''(E) A description of the establishment and operational costs of such a functional center, including for—

''(i) military construction for required facilities;

''(ii) facility renovation;

''(iii) personnel costs for faculty and staff; and

''(iv) other costs the Secretary of Defense considers appropriate.

''(F) An evaluation of the existing infrastructure, resources, and personnel available at military installations, existing regional centers, interagency facilities, and universities and other academic and research institutions that could reduce the costs described in subparagraph (E).

''(G) An examination of partnership opportunities with United States allies and partners for potential collaboration and burden sharing.

''(H) A description of potential courses and programs that such a functional center could carry out, including—

''(i) core, specialized, and advanced courses;

''(ii) planning workshops and structured after-action reviews or debriefs;

''(iii) seminars;

''(iv) initiatives on executive development, relationship building, partnership outreach, and any other matter the Secretary of Defense considers appropriate; and

''(v) focused academic research and studies in support of Department priorities.

''(I) A description of any modification to title 10, United States Code, or any other provision of law, necessary for the effective establishment and administration of such a functional center.

''(3) FORM.—The report required by paragraph (1) shall be submitted in unclassified form, but may include a classified annex.

''(b) ESTABLISHMENT.—

''(1) IN GENERAL.—Not earlier than 30 days after the submittal of the report required by subsection (a), and subject to the availability of appropriated funds, the Secretary of Defense may establish and administer a Department of Defense Functional Center for Security Studies in Irregular Warfare.

''(2) TREATMENT AS A REGIONAL CENTER FOR SECURITY STUDIES.—A Department of Defense Functional Center for Security Studies in Irregular Warfare established under paragraph (1) shall be operated and administered in the same manner as the Department of Defense Regional Centers for Security Studies under section 342 of title 10, United States Code, and in accordance with such regulations as the Secretary of Defense may prescribe.

''(3) LIMITATION.—No other institution or element of the Department may be designated as a Department of Defense functional center, except by an Act of Congress.

''(4) LOCATION.—The location of a Department of Defense Functional Center for Security Studies in Irregular Warfare established under paragraph (1) shall be selected based on an objective, criteria-driven administrative or competitive award process.''

FRAMEWORK FOR OBTAINING CONCURRENCE FOR PARTICIPATION IN ACTIVITIES OF REGIONAL CENTERS FOR SECURITY STUDIES

Pub. L. 115–232, div. A, title XII, §1214, Aug. 13, 2018, 132 Stat. 2027, provided that: ''Not later than 120 days after the date of the enactment of this Act [Aug. 13, 2018], the Secretary of Defense, with the concurrence of the Secretary of State, shall establish and submit to the appropriate congressional committees, as such term is defined in section 301(1) of title 10, United States Code, a Memorandum of Agreement or other arrangement setting forth a framework for the procedures required between the Department of Defense and the Department of State to obtain the concurrence of the Secretary of State, as required by law or policy, to allow non-defense and non-governmental personnel of friendly foreign countries to participate in activities of the Department of Defense Regional Centers for Security Studies.''

REDESIGNATION OF THE ASIA-PACIFIC CENTER FOR SECURITY STUDIES AS THE DANIEL K. INOUYE ASIA-PACIFIC CENTER FOR SECURITY STUDIES

Pub. L. 113–291, div. B, title XXVIII, §2861(a), Dec. 19, 2014, 128 Stat. 3715, provided that: ''The Department of Defense regional center for security studies known as the Asia-Pacific Center for Security Studies is hereby renamed the 'Daniel K. Inouye Asia-Pacific Center for Security Studies'.''

Pub. L. 113–291, div. B, title XXVIII, §2861(c), Dec. 19, 2014, 128 Stat. 3716, provided that: ''Any reference to the Department of Defense Asia-Pacific Center for Security Studies in any law, regulation, map, document, record, or other paper of the United States shall be deemed to be a reference to the Daniel K. Inouye Asia-Pacific Center for Security Studies.''

REDESIGNATION OF THE CENTER FOR HEMISPHERIC DEFENSE STUDIES AS THE WILLIAM J. PERRY CENTER FOR HEMISPHERIC DEFENSE STUDIES

Pub. L. 112–239, div. B, title XXVIII, §2854(a), Jan. 2, 2013, 126 Stat. 2161, provided that: ''The Department of Defense regional center for security studies known as the Center for Hemispheric Defense Studies is hereby renamed the 'William J. Perry Center for Hemispheric Defense Studies' ''.

Pub. L. 112–239, div. B, title XXVIII, §2854(c), Jan. 2, 2013, 126 Stat. 2162, provided that: ''Any reference to the Department of Defense Center for Hemispheric Defense Studies in any law, regulation, map, document, record, or other paper of the United States shall be deemed to be a reference to the William J. Perry Center for Hemispheric Defense Studies.''

TEMPORARY WAIVER OF REIMBURSEMENT OF COSTS OF ACTIVITIES FOR NONGOVERNMENTAL PERSONNEL

Pub. L. 110–417, [div. A], title IX, §941(b), Oct. 14, 2008, 122 Stat. 4577, as amended by Pub. L. 111–383, div. A, title IX, §941, Jan. 7, 2011, 124 Stat. 4340; Pub. L. 112–239, div. A, title IX, §953, Jan. 2, 2013, 126 Stat. 1895; Pub. L. 113–66, div. A, title X, §1094(b), Dec. 26, 2013, 127 Stat. 878; Pub. L. 113–291, div. A, title IX, §913, Dec. 19, 2014, 128 Stat. 3474, provided a temporary waiver of reimbursement of costs of activities for nongovernmental personnel, prior to repeal by Pub. L. 114–328, div. A, title XII, §1241(e)(5)(A), Dec. 23, 2016, 130 Stat. 2507.

§ 343. Western Hemisphere Institute for Security Cooperation

(a) ESTABLISHMENT AND ADMINISTRATION.—(1) The Secretary of Defense may operate an education and training facility for the purpose set forth in subsection (b). The facility shall be known as the ''Western Hemisphere Institute for Security Cooperation''.

(2) The Secretary may designate the Secretary of a military department as the Department of Defense executive agent for carrying out the responsibilities of the Secretary of Defense under this section.

(b) PURPOSE.—The purpose of the Institute is to provide professional education and training to eligible personnel of countries of the Western Hemisphere within the context of the democratic principles set forth in the Charter of the Organization of American States (such charter being a treaty to which the United States is a party), while fostering mutual knowledge, transparency, confidence, and cooperation among the participating countries and promoting democratic values, respect for human rights, and knowledge and understanding of United States customs and traditions.

(c) ELIGIBLE PERSONNEL.—(1) Subject to paragraph (2), personnel of countries of the Western Hemisphere are eligible for education and training at the Institute as follows:

(A) Military personnel.

(B) Law enforcement personnel.

(C) Civilian personnel.

(2) The Secretary of State shall be consulted in the selection of foreign personnel for education or training at the Institute.

(d) CURRICULUM.—(1) The curriculum of the Institute shall include mandatory instruction for each student, for at least 8 hours, on human rights, the rule of law, due process, civilian control of the military, and the role of the military in a democratic society.

(2) The curriculum may include instruction and other educational and training activities on the following:

(A) Leadership development.

(B) Counterdrug operations.

(C) Peace support operations.

(D) Disaster relief.

(E) Any other matter that the Secretary determines appropriate.

(e) BOARD OF VISITORS.—(1) There shall be a Board of Visitors for the Institute. The Board shall be composed of the following:

(A) The chairman and ranking minority member of the Committee on Armed Services of the Senate, or a designee of either of them.

(B) The chairman and ranking minority member of the Committee on Armed Services of the House of Representatives, or a designee of either of them.

(C) Six persons designated by the Secretary of Defense including, to the extent practicable, persons from academia and the religious and human rights communities.

(D) One person designated by the Secretary of State.

(E) The senior military officer responsible for training and doctrine for the Army or, if the Secretary of the Navy or the Secretary of the Air Force is designated as the executive agent of the Secretary of Defense under subsection (a)(2), the senior military officer responsible for training and doctrine for the Navy or Marine Corps or for the Air Force or Space Force, respectively, or a designee of the senior military officer concerned.

(F) The commanders of the combatant commands having geographic responsibility for the Western Hemisphere, or the designees of those officers.

(2) A vacancy in a position on the Board shall be filled in the same manner as the position was originally filled.

(3) The Board shall meet at least once each year.

(4)(A) The Board shall inquire into the curriculum, instruction, physical equipment, fiscal affairs, and academic methods of the Institute, other matters relating to the Institute that the Board decides to consider, and any other matter that the Secretary of Defense determines appropriate.

(B) The Board shall review the curriculum of the Institute to determine whether—

(i) the curriculum complies with applicable United States laws and regulations;

(ii) the curriculum is consistent with United States policy goals toward Latin America and the Caribbean;

(iii) the curriculum adheres to current United States doctrine; and

(iv) the instruction under the curriculum appropriately emphasizes the matters specified in subsection (d)(1).

(5) Not later than 60 days after its annual meeting, the Board shall submit to the Secretary of Defense a written report of its activities and of its views and recommendations pertaining to the Institute.

(6) Members of the Board shall not be compensated by reason of service on the Board.

(7) With the approval of the Secretary of Defense, the Board may accept and use the services of voluntary and uncompensated advisers appropriate to the duties of the Board without regard to section 1342 of title 31.

(8) Members of the Board and advisers whose services are accepted under paragraph (7) shall be allowed travel and transportation expenses, including per diem in lieu of subsistence, while away from their homes or regular places of business in the performance of services for the Board. Allowances under this paragraph shall be computed—

(A) in the case of members of the Board who are officers or employees of the United States, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5; and

(B) in the case of other members of the Board and advisers, as authorized under section 5703 of title 5 for employees serving without pay.

(9) The Federal Advisory Committee Act (5 U.S.C. App.), other than section 14 (relating to termination after two years), shall apply to the Board.

(f) AUTHORITY TO ACCEPT FOREIGN GIFTS AND DONATIONS.—(1) The Secretary of Defense may, on behalf of the Institute, accept foreign gifts or donations in order to defray the costs of, or enhance the operation of, the Institute.

(2) Funds received by the Secretary under paragraph (1) shall be credited to appropriations available for the Department of Defense for the Institute. Funds so credited shall be merged with the appropriations to which credited and shall be available for the Institute for the same purposes and same period as the appropriations with which merged.

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(3) The Secretary of Defense shall notify Congress if the total amount of money accepted under paragraph (1) exceeds $1,000,000 in any fiscal year. Any such notice shall list each of the contributors of such money and the amount of each contribution in such fiscal year.

(4) For the purposes of this subsection, a foreign gift or donation is a gift or donation of funds, materials (including research materials), property, or services (including lecture services and faculty services) from a foreign government, a foundation or other charitable organization in a foreign country, or an individual in a foreign country.

(g) FIXED COSTS.—The fixed costs of operating and maintaining the Institute for a fiscal year may be paid from—

(1) any funds available for that fiscal year for operation and maintenance for the executive agent designated under subsection (a)(2); or

(2) if no executive agent is designated under subsection (a)(2), any funds available for that fiscal year for the Department of Defense for operation and maintenance for Defense-wide activities.

(h) TUITION.—Tuition fees charged for persons who attend the Institute may not include the fixed costs of operating and maintaining the Institute.

(i) ANNUAL REPORT.—Not later than March 15 of each year, the Secretary of Defense shall submit to Congress a detailed report on the activities of the Institute during the preceding year. The report shall include a copy of the latest report of the Board of Visitors received by the Secretary under subsection (e)(5), together with any comments of the Secretary on the Board's report. The report shall be prepared in consultation with the Secretary of State.

(Added Pub. L. 106–398, §1 [[div. A], title IX, §911(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–226, §2166; amended Pub. L. 107–107, div. A, title X, §1048(a)(16), Dec. 28, 2001, 115 Stat. 1223; Pub. L. 107–314, div. A, title IX, §932, Dec. 2, 2002, 116 Stat. 2625; Pub. L. 110–181, div. A, title IX, §956, Jan. 28, 2008, 122 Stat. 296; renumbered §343 and amended Pub. L. 114–328, div. A, title XII, §1241(f), Dec. 23, 2016, 130 Stat. 2507; Pub. L. 116–283, div. A, title IX, §924(b)(12), Jan. 1, 2021, 134 Stat. 3823.)

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (e)(9), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

AMENDMENTS

2021—Subsec. (e)(1)(E). Pub. L. 116–283 inserted ''or Space Force'' after ''for the Air Force''.

2016—Pub. L. 114–328, §1241(f)(1), renumbered section 2166 of this title as this section.

Subsecs. (b), (c). Pub. L. 114–328, §1241(f)(2), substituted ''countries'' for ''nations'' wherever appearing.

2008—Subsec. (e)(1)(F). Pub. L. 110–181 amended subpar. (F) generally. Prior to amendment, subpar. (F) read as follows: ''The commander of the unified combatant command having geographic responsibility for Latin America, or a designee of that officer.''

2002—Subsecs. (f) to (h). Pub. L. 107–314, §932(a), added subsec. (f) and redesignated former subsecs. (f) and (g) as (g) and (h), respectively.

Subsec. (i). Pub. L. 107–314, §932(a)(1), (b), redesignated subsec. (h) as (i) and inserted after first sentence ''The report shall include a copy of the latest report of the Board of Visitors received by the Secretary under subsection (e)(5), together with any comments of the Secretary on the Board's report.''

2001—Subsec. (e)(9). Pub. L. 107–107 substituted ''(5 U.S.C. App.)'' for ''(5 U.S.C. App. 2)''.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective Dec. 31, 2021, of provisions in subsec. (i) of this section requiring submittal of annual report to Congress, see section 1061 of Pub. L. 114–328, set out as a note under section 111 of this title.

§ 344. Participation in multinational centers of excellence

(a) PARTICIPATION AUTHORIZED.—The Secretary of Defense may, with the concurrence of the Secretary of State, authorize the participation of members of the armed forces and Department of Defense civilian personnel in any multinational center of excellence for purposes of—

(1) enhancing the ability of military forces and civilian personnel of the nations participating in such center to engage in joint exercises or coalition or international military operations; or

(2) improving interoperability between the armed forces and the military forces of friendly foreign nations.

(b) MEMORANDUM OF UNDERSTANDING.—(1) The participation of members of the armed forces or Department of Defense civilian personnel in a multinational center of excellence under subsection (a) shall be in accordance with the terms of one or more memoranda of understanding entered into by the Secretary of Defense, with the concurrence of the Secretary of State, or entered into by the Secretary of State, and the foreign nation or nations concerned.

(2) If Department of Defense facilities, equipment, or funds are used to support a multinational center of excellence under subsection (a), the memoranda of understanding under paragraph (1) with respect to that center shall provide details of any cost-sharing arrangement or other funding arrangement.

(c) AVAILABILITY OF APPROPRIATED FUNDS.—(1) Funds appropriated to the Department of Defense for operation and maintenance are available as follows:

(A) To pay the United States share of the operating expenses of any multinational center of excellence in which the United States participates under this section.

(B) To pay the costs of the participation of members of the armed forces and Department of Defense civilian personnel in multinational centers of excellence under this section, including the costs of expenses of such participants.

(2) No funds may be used under this section to fund the pay or salaries of members of the armed forces and Department of Defense civilian personnel who participate in multinational centers of excellence under this section.

(d) USE OF DEPARTMENT OF DEFENSE FACILITIES AND EQUIPMENT.—Facilities and equipment of the Department of Defense may be used for purposes of the support of multinational centers of

excellence under this section that are hosted by the Department.

(e) NOTIFICATION.—Not later than 30 days before the date on which the Secretary of Defense authorizes participation under subsection (a) in a new multinational center of excellence, the Secretary shall notify the congressional defense committees of such participation.

(f) MULTINATIONAL CENTER OF EXCELLENCE DEFINED.—In this section, the term ''multinational center of excellence'' means—

(1) an entity sponsored by one or more nations that is accredited and approved by the Military Committee of the North Atlantic Treaty Organization (NATO) as offering recognized expertise and experience to personnel participating in the activities of such entity for the benefit of NATO by providing such personnel opportunities to—

(A) enhance education and training;

(B) improve interoperability and capabilities;

(C) assist in the development of doctrine;

(D) validate concepts through experimentation; and

(2) the European Centre of Excellence for Countering Hybrid Threats, established in 2017 and located in Helsinki, Finland.

(Added Pub. L. 110–417, [div. A], title XII, §1232(a)(1), Oct. 14, 2008, 122 Stat. 4637, §2350m; amended Pub. L. 112–239, div. A, title X, §1076(f)(25), Jan. 2, 2013, 126 Stat. 1953; renumbered §344 and amended Pub. L. 114–328, div. A, title XII, §1241(g), Dec. 23, 2016, 130 Stat. 2507; Pub. L. 116–283, div. A, title XII, §1206(a), Jan. 1, 2021, 134 Stat. 3912.)

AMENDMENTS

2021—Pub. L. 116–283, §1206(a)(1)–(3), in section catchline, substituted ''multinational centers of excellence'' for ''multinational military centers of excellence'' and, in text, substituted ''multinational center of excellence'' for ''multinational military center of excellence'' and ''multinational centers of excellence'' for ''multinational military centers of excellence'' wherever appearing.

Subsec. (b)(1). Pub. L. 116–283, §1206(a)(4), inserted ''or entered into by the Secretary of State,'' after ''Secretary of State,''.

Subsec. (e). Pub. L. 115–283, §1206(a)(7), added subsec. (e). Former subsec. (e) redesignated (f).

Pub. L. 116–283, §1206(a)(5)(B)–(F), substituted ''means—'' for ''means'', designated remainder of existing provisions as par. (1), redesignated former pars. (1) to (4) as subpars. (A) to (D), respectively, of par. (1) and realigned margins, and added par. (2).

Pub. L. 116–283, §1206(a)(5)(A), substituted ''Multinational Center Of Excellence'' for ''Multinational Military Center of Excellence'' in heading.

Subsec. (f). Pub. L. 116–283, §1206(a)(6), redesignated subsec. (e) as (f).

2016—Pub. L. 114–328, §1241(g)(1), renumbered section 2350m of this title as this section.

Subsecs. (e), (f). Pub. L. 114–328, §1241(g)(2), redesignated subsec. (f) as (e) and struck out former subsec. (e) which required the Secretary of Defense, not later than October 31 of each year, to submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the use of the authority in this section during the preceding fiscal year.

2013—Subsec. (e)(1). Pub. L. 112–239 substituted ''Not later than October 31 each year'' for ''Not later than October 31, 2009, and annually thereafter''.

EFFECTIVE DATE

Pub. L. 110–417, [div. A], title XII, §1232(c), Oct. 14, 2008, 122 Stat. 4639, provided that: ''The amendments made by this section [enacting this section] shall take effect on October 1, 2008.''

§ 345. Regional Defense Combating Terrorism and Irregular Warfare Fellowship Program

(a) PROGRAM AUTHORIZED.—

(1) IN GENERAL.—The Secretary of Defense may carry out a program under which the Secretary may pay any costs associated with the education and training of foreign military officers, ministry of defense officials, or security officials at military or civilian educational institutions, regional centers, conferences, seminars, or other training programs conducted for purposes of regional defense in connection with either of the following:

(A) Combating terrorism.

(B) Irregular warfare.

(2) COVERED COSTS.—Costs for which payment may be made under this section include the costs of transportation and travel and subsistence costs.

(3) DESIGNATION.—The program authorized by this section shall be known as the ''Regional Defense Combating Terrorism and Irregular Warfare Fellowship Program''.

(b) REGULATIONS.—

(1) IN GENERAL.—The program authorized by subsection (a) shall be carried out under regulations prescribed by the Secretary of Defense and the Secretary of State.

(2) ELEMENTS.—The regulations shall ensure that—

(A) the Secretary of Defense and the Secretary of State—

(i) jointly develop and plan activities under the program that—

(I) advance United States security cooperation objectives; and

(II) support theater security cooperation planning of the combatant commands; and

(ii) coordinate on the implementation of activities under the program;

(B) each of the Secretary of Defense and the Secretary of State designates an individual at the lowest appropriate level of the Department of Defense or the Department of State, as applicable, who shall be responsible for program coordination; and

(C) to the extent practicable, activities under the program are appropriately coordinated with, and do not duplicate or conflict with, activities under International Military Education and Training (IMET) authorities.

(3) SUBMITTAL TO CONGRESS.—Upon any update of the regulations, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a copy of the regulations as so updated, together with a description of the update.

(c) LIMITATION.—The total amount of funds used under the authority in subsection (a) in any fiscal year may not exceed $35,000,000.

Amounts available under the authority in subsection (a) for a fiscal year may be used for programs that begin in such fiscal year but end in the next fiscal year.

(d) ANNUAL REPORT.—Not later than December 1 of each year, the Secretary of Defense shall submit to the appropriate committees of Congress a report on the administration of this section during the fiscal year ended in such year. The report shall include the following matters:

(1) A complete accounting of the expenditure of appropriated funds for purposes authorized under subsection (a), including—

(A) the countries of the foreign officers and officials for whom costs were paid; and

(B) for each such country, the total amount of the costs paid.

(2) The training courses attended by the foreign officers and officials, including a specification of which, if any, courses were conducted in foreign countries.

(3) An assessment of the effectiveness of the program referred to in subsection (a), including engagement activities for program alumni, in increasing the cooperation of the governments of foreign countries with the United States.

(4) A discussion of any actions being taken to improve the program, including a list of any unfunded or unmet training requirements and requests.

(5) A discussion and justification of how the program fits within the theater security priorities of each of the commanders of the geographic combatant commands.

(Added Pub. L. 108–136, div. A, title XII, § 1221(a)(1), Nov. 24, 2003, 117 Stat. 1651, § 2249c; amended Pub. L. 109–364, div. A, title XII, § 1204(a)–(d)(2), Oct. 17, 2006, 120 Stat. 2415; Pub. L. 110–417, [div. A], title XII, § 1209(a), Oct. 14, 2008, 122 Stat. 4627; Pub. L. 113–66, div. A, title X, § 1032(a), Dec. 26, 2013, 127 Stat. 850; renumbered § 345 and amended Pub. L. 114–328, div. A, title XII, § 1247(a)–(c), Dec. 23, 2016, 130 Stat. 2521; Pub. L. 115–232, div. A, title XII, § 1209(a), (b)(1), Aug. 13, 2018, 132 Stat. 2022, 2023.)

AMENDMENTS

2018—Pub. L. 115–232, § 1209(b)(1), inserted "and Irregular Warfare" after "Terrorism" in section catchline.

Subsec. (a). Pub. L. 115–232, § 1209(a)(2), added subsec. (a) and struck out former subsec. (a). Prior to amendment, text read as follows: "Under regulations prescribed by the Secretary of Defense, funds appropriated to the Department of Defense may be used to pay any costs associated with the education and training of foreign military officers, ministry of defense officials, or security officials at military or civilian educational institutions, regional centers, conferences, seminars, or other training programs conducted under the Regional Defense Combating Terrorism Fellowship Program. Costs for which payment may be made under this section include the costs of transportation and travel and subsistence costs."

Subsecs. (b) to (d). Pub. L. 115–232, § 1209(a)(1), (2), added subsec. (b) and redesignated former subsecs. (b) and (c) as (c) and (d), respectively.

Subsec. (d)(3). Pub. L. 115–232, § 1209(a)(3), struck out "in the global war on terrorism" after "United States".

2016—Pub. L. 114–328, § 1247(a), (c), renumbered section 2249c of this title as this section and substituted "Regional Defense Combating Terrorism Fellowship Program" for "Regional Defense Combating Terrorism Fellowship Program: authority to use appropriated funds for costs associated with education and training of foreign officials" in section catchline.

Subsec. (c). Pub. L. 114–328, § 1247(b), substituted "to the appropriate committees of Congress" for "to Congress" in introductory provisions.

2013—Subsec. (c)(3). Pub. L. 113–66, § 1032(a)(1), inserted ", including engagement activities for program alumni," after "subsection (a)".

Subsec. (c)(4). Pub. L. 113–66, § 1032(a)(2), inserted ", including a list of any unfunded or unmet training requirements and requests" after "program".

Subsec. (c)(5). Pub. L. 113–66, § 1032(a)(3), added par. (5).

2008—Subsec. (b). Pub. L. 110–417 substituted "$35,000,000" for "$25,000,000".

2006—Pub. L. 109–364, § 1204(d)(2), substituted "Regional Defense Combating Terrorism Fellowship Program: authority to use appropriated funds for costs associated with education and training of foreign officials" for "Authority to use appropriated funds for costs of attendance of foreign visitors under Regional Defense Counterterrorism Fellowship Program" in section catchline.

Subsec. (a). Pub. L. 109–364, § 1204(a), substituted "the education and training of foreign military officers, ministry of defense officials, or security officials at military or civilian educational institutions, regional centers, conferences, seminars, or other training programs conducted under the Regional Defense Combating Terrorism Fellowship Program" for "the attendance of foreign military officers, ministry of defense officials, or security officials at United States military educational institutions, regional centers, conferences, seminars, or other training programs conducted under the Regional Defense Counterterrorism Fellowship Program, including costs of transportation and travel and subsistence costs" and inserted at end "Costs for which payment may be made under this section include the costs of transportation and travel and subsistence costs."

Subsec. (b). Pub. L. 109–364, § 1204(b), (c), substituted "$25,000,000" for "$20,000,000" and inserted at end "Amounts available under the authority in subsection (a) for a fiscal year may be used for programs that begin in such fiscal year but end in the next fiscal year."

Subsec. (c)(3). Pub. L. 109–364, § 1204(d)(1), substituted "program referred to in subsection (a)" for "Regional Defense Counterterrorism Fellowship Program".

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 113–66, div. A, title X, § 1032(b), Dec. 26, 2013, 127 Stat. 850, provided that: "The amendments made by subsection (a) [amending this section] shall apply with respect to a report submitted for a fiscal year beginning after the date of the enactment of this Act [Dec. 26, 2013]."

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–417, [div. A], title XII, § 1209(b), Oct. 14, 2008, 122 Stat. 4627, provided that: "The amendment made by subsection (a) [amending this section] shall take effect on October 1, 2008, and shall apply with respect to fiscal years beginning on or after that date."

REGULATIONS

Pub. L. 108–136, div. A, title XII, § 1221(b), Nov. 24, 2003, 117 Stat. 1651, provided that: "Not later than December 1, 2003, the Secretary of Defense shall—

"(1) prescribe the final regulations for carrying out section 2249c of title 10, United States Code, as added by subsection (a); and

"(2) notify the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and House of Representatives] of the prescription of such regulations."

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective Dec. 31, 2021, of provisions in subsec. (c) of this section requiring submittal of an-

nual report to Congress, see section 1061 of Pub. L. 114–328, set out as a note under section 111 of this title.

§346. Distribution to certain foreign personnel of education and training materials and information technology to enhance military interoperability with the armed forces

(a) DISTRIBUTION AUTHORIZED.—To enhance interoperability between the armed forces and military forces of friendly foreign countries, the Secretary of Defense, with the concurrence of the Secretary of State, may—

(1) provide to personnel referred to in subsection (b) electronically-distributed learning content for the education and training of such personnel for the development or enhancement of allied and friendly military and civilian capabilities for multinational operations, including joint exercises and coalition operations; and

(2) provide information technology, including computer software developed for such purpose, but only to the extent necessary to support the use of such learning content for the education and training of such personnel.

(b) AUTHORIZED RECIPIENTS.—The personnel to whom learning content and information technology may be provided under subsection (a) are military and civilian personnel of a friendly foreign government, with the permission of that government.

(c) EDUCATION AND TRAINING.—Any education and training provided under subsection (a) shall include the following:

(1) Internet-based education and training.

(2) Advanced distributed learning and similar Internet learning tools, as well as distributed training and computer-assisted exercises.

(d) APPLICABILITY OF EXPORT CONTROL REGIMES.—The provision of learning content and information technology under this section shall be subject to the provisions of the Arms Export Control Act (22 U.S.C. 2751 et seq.) and any other export control regime under law relating to the transfer of military technology to foreign countries.

(e) GUIDANCE ON UTILIZATION OF AUTHORITY.—

(1) GUIDANCE REQUIRED.—The Secretary of Defense shall develop and issue guidance on the procedures for the use of the authority in this section.

(2) MODIFICATION.—If the Secretary modifies the guidance issued under paragraph (1), the Secretary shall submit to the appropriate committees of Congress a report setting forth the modified guidance not later than 30 days after the date of such modification.

(Added Pub. L. 110–417, [div. A], title XII, §1205(a)(1), Oct. 14, 2008, 122 Stat. 4623, §2249d; renumbered §346 and amended Pub. L. 114–328, div. A, title XII, §1241(h), Dec. 23, 2016, 130 Stat. 2507.)

REFERENCES IN TEXT

The Arms Export Control Act, referred to in subsec. (d), is Pub. L. 90–629, Oct. 22, 1968, 82 Stat. 1320, which is classified principally to chapter 39 (§2751 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 2751 of Title 22 and Tables.

AMENDMENTS

2016—Pub. L. 114–328, §1241(h)(1), renumbered section 2249d of this title as this section.

Subsecs. (a), (d). Pub. L. 114–328, §1241(h)(2)(A), substituted ''countries'' for ''nations''.

Subsecs. (f), (g). Pub. L. 114–328, §1241(h)(2)(B), struck out subsecs. (f) and (g) which, respectively, required the Secretary of Defense to submit annual reports to the appropriate committees of Congress and defined ''appropriate committees of Congress''.

EFFECTIVE DATE

Pub. L. 110–417, [div. A], title XII, §1205(d), Oct. 14, 2008, 122 Stat. 4625, provided that: ''This section [enacting this section and provisions set out as notes under this section] and the amendments made by this section shall take effect on October 1, 2008.''

GUIDANCE ON UTILIZATION OF AUTHORITY

Pub. L. 110–417, [div. A], title XII, §1205(b), Oct. 14, 2008, 122 Stat. 4624, provided that:

''(1) SUBMITTAL TO CONGRESS.—Not later than 30 days after issuing the guidance required by section 2249d(e) [now 346(e)] of title 10, United States Code, as added by subsection (a), the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report setting forth such guidance.

''(2) UTILIZATION OF SIMILAR GUIDANCE.—In developing the guidance required by section 2249d(e) [now 346(e)] of title 10, United States Code, as so added, the Secretary may utilize applicable portions of the current guidance developed by the Secretary under subsection (f) of section 1207 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109–364; 120 Stat. 2419) for purposes of the exercise of the authority in such section 1207.''

§347. International engagement authorities for service academies

(a) SELECTION OF PERSONS FROM FOREIGN COUNTRIES TO RECEIVE INSTRUCTION AT SERVICE ACADEMIES.—

(1) ATTENDANCE AUTHORIZED.—

(A) IN GENERAL.—The Secretary of each military department may permit persons from foreign countries to receive instruction at the Service Academy under the jurisdiction of the Secretary. Such persons shall be in addition to—

(i) in the case of the United States Military Academy, the authorized strength of the Corps of the Cadets of the Academy under section 7442 of this title;

(ii) in the case of the United States Naval Academy, the authorized strength of the Brigade of Midshipmen of the Academy under section 8454 of this title; and

(iii) in the case of the United States Air Force Academy, the authorized strength of the Cadet Wing of the Academy under section 9442 of this title.

(B) LIMITATION ON NUMBER.—The number of persons permitted to receive instruction at each Service Academy under this subsection may not be more than 60 at any one time.

(2) DETERMINATION OF FOREIGN COUNTRIES FROM WHICH PERSONS MAY BE SELECTED.—The Secretary of a military department, upon approval by the Secretary of Defense, shall determine—

(A) the countries from which persons may be selected for appointment under this sub-

section to the Service Academy under the jurisdiction of that Secretary; and

(B) the number of persons that may be selected from each country.

(3) QUALIFICATIONS AND SELECTION.—The Secretary of each military department—

(A) may establish entrance qualifications and methods of competition for selection among individual applicants under this subsection; and

(B) shall select those persons who will be permitted to receive instruction at the Service Academy under the jurisdiction of the Secretary under this subsection.

(4) SELECTION PRIORITY TO PERSONS WITH NATIONAL SERVICE OBLIGATION UPON GRADUATION.—In selecting persons to receive instruction under this subsection from among applicants from the countries approved under paragraph (2), the Secretary of the military department concerned shall give a priority to persons who have a national service obligation to their countries upon graduation from the Service Academy concerned.

(5) PAY, ALLOWANCES, AND EMOLUMENTS OF PERSONS ADMITTED.—A person receiving instruction under this subsection is entitled to the pay, allowances, and emoluments of a cadet or midshipman appointed from the United States, and from the same appropriations.

(6) REIMBURSEMENT OF COSTS BY FOREIGN COUNTRIES FROM WHICH PERSONS ARE ADMITTED.—

(A) REIMBURSEMENT REQUIRED.—Each foreign country from which a cadet or midshipman is permitted to receive instruction at one of the Service Academies under this subsection shall reimburse the United States for the cost of providing such instruction, including the cost of pay, allowances, and emoluments provided under paragraph (5). The Secretaries of the military departments shall prescribe the rates for reimbursement under this paragraph, except that the reimbursement rates may not be less than the cost to the United States of providing such instruction, including pay, allowances, and emoluments, to a cadet or midshipman appointed from the United States.

(B) WAIVER AUTHORITY.—The Secretary of Defense may waive, in whole or in part, the requirement for reimbursement of the cost of instruction for a cadet or midshipman under subparagraph (A). In the case of a partial waiver, the Secretary of Defense shall establish the amount waived.

(7) APPLICABILITY OF ACADEMY REGULATIONS, ETC.—

(A) IN GENERAL.—Except as the Secretary of the military department concerned determines, a person receiving instruction under this subsection at the Service Academy under the jurisdiction of that Secretary is subject to the same regulations governing admission, attendance, discipline, resignation, discharge, dismissal, and graduation as a cadet or midshipman at that Academy appointed from the United States.

(B) CLASSIFIED INFORMATION.—The Secretary of the military department concerned may prescribe regulations with respect to access to classified information by a person receiving instruction under this subsection at the Service Academy under the jurisdiction of that Secretary that differ from the regulations that apply to a cadet or midshipman at that Academy appointed from the United States.

(8) INELIGIBILITY FOR APPOINTMENT IN THE UNITED STATES ARMED FORCES.—A person receiving instruction at a Service Academy under this subsection is not entitled to an appointment in an armed force of the United States by reason of graduation from the Academy.

(9) INAPPLICABILITY OF REQUIREMENT FOR TAKING OATH OF ADMISSION.—A person receiving instruction under this subsection is not subject to section 7446(d), 8458(d), or 9446(d) of this title, as the case may be.

(b) EXCHANGE PROGRAMS WITH FOREIGN MILITARY ACADEMIES.—

(1) EXCHANGE PROGRAMS AUTHORIZED.—The Secretary of a military department may permit a student enrolled at a military academy of a foreign country to receive instruction at the Service Academy under the jurisdiction of that Secretary in exchange for a cadet or midshipman receiving instruction at that foreign military academy pursuant to an exchange agreement entered into between the Secretary and appropriate officials of the foreign country. A student receiving instruction at a Service Academy under the exchange program under this subsection shall be in addition to persons receiving instruction at the Academy under subsection (a).

(2) LIMITATIONS ON NUMBER AND DURATION OF EXCHANGES.—An exchange agreement under this subsection between the Secretary and a foreign country shall provide for the exchange of students on a one-for-one basis each fiscal year. Not more than 100 cadets or midshipmen from each Service Academy and a comparable number of students from foreign military academies participating in the exchange program may be exchanged during any fiscal year. The duration of an exchange may not exceed the equivalent of one academic semester at a Service Academy.

(3) COSTS AND EXPENSES.—

(A) NO PAY AND ALLOWANCES.—A student from a military academy of a foreign country is not entitled to the pay, allowances, and emoluments of a cadet or midshipman by reason of attendance at a Service Academy under the exchange program, and the Department of Defense may not incur any cost of international travel required for transportation of such a student to and from the sponsoring foreign country.

(B) SUBSISTENCE, TRANSPORTATION, ETC.—The Secretary of the military department concerned may provide a student from a foreign country under the exchange program, during the period of the exchange, with subsistence, transportation within the continental United States, clothing, health care, and other services to the same extent that the foreign country provides comparable

support and services to the exchanged cadet or midshipman in that foreign country.

(C) SOURCE OF FUNDS.—A Service Academy shall bear all costs of the exchange program from funds appropriated for that Academy and from such additional funds as may be available to that Academy from a source, other than appropriated funds, to support cultural immersion, regional awareness, or foreign language training activities in connection with the exchange program.

(D) LIMITATION ON EXPENDITURES.—Expenditures in support of the exchange program from funds appropriated for each Academy may not exceed $1,000,000 during any fiscal year.

(4) APPLICATION OF OTHER LAWS.—Paragraphs (7), (8), and (9) of subsection (a) shall apply with respect to a student enrolled at a military academy of a foreign country while attending a Service Academy under the exchange program.

(5) REGULATIONS.—The Secretary of the military department concerned shall prescribe regulations to implement this subsection. Such regulations may include qualification criteria and methods of selection for students of foreign military academies to participate in the exchange program.

(c) FOREIGN AND CULTURAL EXCHANGE ACTIVITIES.—

(1) ATTENDANCE AUTHORIZED.—The Secretary of a military department may authorize the Service Academy under the jurisdiction of that Secretary to permit students, officers, and other representatives of a foreign country to attend that Academy for periods of not more than four weeks if the Secretary determines that the attendance of such persons contributes significantly to the development of foreign language, cross-cultural interactions and understanding, and cultural immersion of cadets or midshipmen, as the case may be.

(2) EFFECT OF ATTENDANCE.—Persons attending a Service Academy under paragraph (1) are not considered to be students enrolled at that Academy and are in addition to persons receiving instruction at that Academy under subsection (a) or (b).

(3) FINANCIAL MATTERS.—

(A) COSTS AND EXPENSES.—The Secretary of a military department may pay the travel, subsistence, and similar personal expenses of persons incurred to attend the Service Academy under the jurisdiction of that Secretary under paragraph (1).

(B) SOURCE OF FUNDS.—Each Service Academy shall bear the costs of the attendance of persons at that Academy under paragraph (1) from funds appropriated for that Academy and from such additional funds as may be available to that Academy from a source, other than appropriated funds, to support cultural immersion, regional awareness, or foreign language training activities in connection with their attendance.

(C) LIMITATION ON EXPENDITURES.—Expenditures from appropriated funds in support of activities under this subsection for any Service Academy may not exceed $40,000 during any fiscal year.

(d) SERVICE ACADEMY DEFINED.—In this section, the term ''Service Academy'' means the following:

(1) The United States Military Academy.

(2) The United States Naval Academy.

(3) The United States Air Force Academy.

(Added Pub. L. 114–328, div. A, title XII, § 1248(a), Dec. 23, 2016, 130 Stat. 2522; amended Pub. L. 115–91, div. A, title X, § 1081(a)(18), Dec. 12, 2017, 131 Stat. 1595; Pub. L. 115–232, div. A, title VIII, § 809(a), title XII, § 1204(c)(1)(D), Aug. 13, 2018, 132 Stat. 1840, 2017.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 4344 to 4345a, 6957 to 6957b, and 9344 to 9345a, prior to repeal by Pub. L. 114–328.

AMENDMENTS

2018—Subsec. (a)(1)(A)(i). Pub. L. 115–232, § 809(a), substituted ''section 7442'' for ''section 4342''.

Subsec. (a)(1)(A)(ii). Pub. L. 115–232, § 809(a), substituted ''section 8454'' for ''section 6954''.

Subsec. (a)(1)(A)(iii). Pub. L. 115–232, § 809(a), substituted ''section 9442'' for ''section 9342''.

Subsec. (a)(7). Pub. L. 115–232, § 1204(c)(1)(D)(i), substituted ''etc.'' for ''etc..'' in heading.

Subsec. (a)(9). Pub. L. 115–232, § 809(a), substituted ''section 7446(d), 8458(d), or 9446(d)'' for ''section 4346(d), 6958(d), or 9346(d)''.

Subsec. (b)(3)(B). Pub. L. 115–232, § 1204(c)(1)(D)(ii), substituted ''etc'' for ''etc.'' in heading.

2017—Subsec. (a)(1)(A)(i), (iii). Pub. L. 115–91 inserted ''section'' after ''Academy under''.

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by section 809(a) of Pub. L. 115–232 effective Feb. 1, 2019, with provision for the coordination of amendments and special rule for certain redesignations, see section 800 of Pub. L. 115–232, set out as a note preceding section 3001 of this title.

§ 348. Aviation Leadership Program

(a) IN GENERAL.—Under regulations prescribed by the Secretary of Defense, the Secretary of the Air Force may carry out an Aviation Leadership Program to provide undergraduate pilot training and necessary related training to personnel of the air forces of friendly, developing foreign countries. Training under this section shall include language training and programs to promote better awareness and understanding of the democratic institutions and social framework of the United States.

(b) SUPPLIES AND CLOTHING.—(1) The Secretary of the Air Force may, under such conditions as the Secretary may prescribe, provide to a person receiving training under this section—

(A) transportation incident to the training;

(B) supplies and equipment to be used during the training;

(C) flight clothing and other special clothing required for the training; and

(D) billeting, food, and health services.

(2) The Secretary may authorize such expenditures from the appropriations of the Air Force as the Secretary considers necessary for the efficient and effective maintenance of the Program in accordance with this section.

(c) ALLOWANCES.—The Secretary of the Air Force may pay to a person receiving training

under this section a living allowance at a rate to be prescribed by the Secretary, taking into account the amount of living allowances authorized for a member of the armed forces under similar circumstances.

(Added Pub. L. 114–328, div. A, title XII, § 1241(i)(1), Dec. 23, 2016, 130 Stat. 2507.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in chapter 905 of this title prior to repeal by Pub. L. 114–328.

CONGRESSIONAL FINDINGS

Pub. L. 103–160, div. A, title XI, § 1178(a), Nov. 30, 1993, 107 Stat. 1768, provided that: ''The Congress finds the following:

''(1) The training in the United States of pilots from the air forces of friendly foreign nations furthers the interests of the United States, promotes closer relations with such nations, and advances the national security.

''(2) Many friendly foreign nations cannot afford to reimburse the United States for the cost of such training.

''(3) It is in the interest of the United States that the Secretary of the Air Force establish a program to train in the United States pilots from the air forces of friendly, less developed foreign nations.''

§ 349. Inter-American Air Forces Academy

(a) OPERATION.—The Secretary of the Air Force may operate the Air Force education and training facility known as the Inter-American Air Forces Academy for the purpose of providing military education and training to military personnel of Central and South American countries, Caribbean countries, and other countries eligible for assistance under chapter 5 of part II of the Foreign Assistance Act of 1961 (22 U.S.C. 2347 et seq.).

(b) LIMITATIONS.—

(1) CONCURRENCE OF SECRETARY OF STATE.—Military personnel of a foreign country may be provided education and training under this section only with the concurrence of the Secretary of State.

(2) ASSISTANCE OTHERWISE PROHIBITED BY LAW.—Education and training may not be provided under this section to the military personnel of any country that is otherwise prohibited from receiving such type of assistance under any other provision of law.

(c) COSTS.—The fixed costs of operating and maintaining the Inter-American Air Forces Academy may be paid from funds available for operation and maintenance of the Air Force.

(Added Pub. L. 101–510, div. A, title III, § 330(a), Nov. 5, 1990, 104 Stat. 1535, § 9415; renumbered § 349 and amended Pub. L. 114–328, div. A, title XII, § 1241(j), Dec. 23, 2016, 130 Stat. 2508.)

REFERENCES IN TEXT

The Foreign Assistance Act of 1961, referred to in subsec. (a), is Pub. L. 87–195, Sept. 4, 1961, 75 Stat. 424. Chapter 5 of part II of such Act is classified generally to part V of subchapter II (§ 2347 et seq.) of chapter 32 of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 2151 of Title 22 and Tables.

AMENDMENTS

2016—Pub. L. 114–328, § 1241(j)(1), renumbered section 9415 of this title as this section.

Subsecs. (b), (c). Pub. L. 114–328, § 1241(j)(2), added subsec. (b) and redesignated former subsec. (b) as (c).

§ 350. Inter-European Air Forces Academy

(a) OPERATION.—The Secretary of the Air Force may operate the Air Force education and training facility known as the Inter-European Air Forces Academy (in this section referred to as the ''Academy'').

(b) PURPOSE.—The purpose of the Academy shall be to provide military education and training to military personnel of countries that are—

(1) members of the North Atlantic Treaty Organization;

(2) signatories to the Partnership for Peace Framework Documents; or

(3)(A) within the United States Africa Command area of responsibility; and

(B) eligible for assistance under chapter 5 of part II of the Foreign Assistance Act of 1961 (22 U.S.C. 2347 et seq.).

(c) LIMITATIONS.—

(1) CONCURRENCE OF SECRETARY OF STATE.—Military personnel of a country may be provided education and training under this section only with the concurrence of the Secretary of State.

(2) ASSISTANCE OTHERWISE PROHIBITED BY LAW.—Education and training may not be provided under this section to the military personnel of any country that is otherwise prohibited from receiving such type of assistance under any other provision of law.

(d) SUPPLIES AND CLOTHING.—The Secretary of the Air Force may, under such conditions as the Secretary may prescribe, provide to a person receiving education and training under this section the following:

(1) Transportation incident to such education and training.

(2) Supplies and equipment to be used during such education and training.

(3) Billeting, food, and health services in connection with the receipt of such education and training.

(e) LIVING ALLOWANCE.—The Secretary of the Air Force may pay to a person receiving education and training under this section a living allowance at a rate to be prescribed by the Secretary, taking into account the rates of living allowances authorized for a member of the Armed Forces under similar circumstances.

(f) FUNDING.—Amounts for the operations and maintenance of the Academy, and for the provision of education and training through the Academy, may be paid from funds available for the Air Force for operation and maintenance.

(Added Pub. L. 114–328, div. A, title XII, § 1241(k)(1), Dec. 23, 2016, 130 Stat. 2508; amended Pub. L. 116–283, div. A, title XII, § 1205, Jan. 1, 2021, 134 Stat. 3912.)

REFERENCES IN TEXT

The Foreign Assistance Act of 1961, referred to in subsec. (b)(3)(B), is Pub. L. 87–195, Sept. 4, 1961, 75 Stat. 424. Chapter 5 of part II of the Act is classified generally to part V (§ 2347 et seq.) of subchapter II of chapter 32 of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 2151 of Title 22 and Tables.

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CODIFICATION

Text of section, as added by Pub. L. 114–328, is based on text of subsecs. (a) to (f) of section 1268 of Pub. L. 113–291, div. A, title XII, Dec. 19, 2014, 128 Stat. 3585, which was formerly set out as a note under section 9411 of this title, prior to repeal by Pub. L. 114–328, div. A, title XII, § 1241(k)(2), Dec. 23, 2016, 130 Stat. 2509.

AMENDMENTS

2021—Subsec. (b). Pub. L. 116–283 substituted ''that are—'' for ''that are members of the North Atlantic Treaty Organization or signatories to the Partnership for Peace Framework Documents.'' and added pars (1) to (3).

§ 351. Inter-American Defense College

(a) AUTHORITY TO SUPPORT.—The Secretary of Defense may authorize members of the armed forces and civilian personnel of the Department of Defense to participate in the operation of and the provision of support to the Inter-American Defense College and provide logistic support, supplies, and services to the Inter-American Defense College, including the use of Department of Defense facilities and equipment, as the Secretary considers necessary to—

(1) assist the Inter-American Defense College in its mission to develop and offer to military officers and civilian officials from member states of the Organization of American States advanced academic courses on matters related to military and defense issues, the inter-American system, and related disciplines; and

(2) ensure that the Inter-American Defense College provides an academic program of a level of quality, rigor, and credibility that is commensurate with the standards of Department of Defense senior service colleges and that includes the promotion of security cooperation, human rights, humanitarian assistance and disaster response, peacekeeping, and democracy in the Western Hemisphere.

(b) MEMORANDUM OF UNDERSTANDING.—(1) The Secretary of Defense, with the concurrence of the Secretary of State, shall enter into a memorandum of understanding with the Inter-American Defense Board for the participation of members of the armed forces and civilian personnel of the Department of Defense in the operation of and provision of host nation support to the Inter-American Defense College under subsection (a).

(2) If Department of Defense facilities, equipment, or funds will be used to support the Inter-American Defense College under subsection (a), a memorandum of understanding entered into under paragraph (1) shall include a description of any cost-sharing arrangement or other funding arrangement relating to the use of such facilities, equipment, or funds.

(3) A memorandum of understanding entered into under paragraph (1) shall also include a curriculum and a plan for academic program development.

(c) USE OF FUNDS.—(1) Funds appropriated to the Department of Defense for operation and maintenance may be used to pay costs that the Secretary determines are necessary for the participation of members of the armed forces and civilian personnel of the Department of Defense in the operation of and provision of host nation support to the Inter-American Defense College, including—

(A) the costs of expenses of such participants;

(B) the cost of hiring and retaining qualified professors, instructors, and lecturers;

(C) curriculum support costs, including administrative costs, academic outreach, and curriculum support personnel;

(D) the cost of translation and interpretation services;

(E) the cost of information and educational technology;

(F) the cost of utilities; and

(G) the cost of maintenance and repair of facilities.

(2) No funds may be used under this section to provide for the pay of members of the armed forces or civilian personnel of the Department of Defense who participate in the operation of and the provision of host nation support to the Inter-American Defense College under this section.

(3) Funds available to carry out this section for a fiscal year may be used for activities that begin in such fiscal year and end in the next fiscal year.

(d) WAIVER OF REIMBURSEMENT.—The Secretary of Defense may waive reimbursement for developing countries (as such term is defined in section 301 of this title) of the costs of funding and other host nation support provided to the Inter-American Defense College under this section if the Secretary determines that the provision of such funding or support without reimbursement is in the national security interest of the United States.

(e) LOGISTIC SUPPORT, SUPPLIES, AND SERVICES DEFINED.—In this section, the term ''logistic support, supplies, and services'' has the meaning given that term in section 2350 of this title.

(Added Pub. L. 115–232, div. A, title XII, § 1207(a), Aug. 13, 2018, 132 Stat. 2019.)

PRIOR PROVISIONS

A prior section 351 was renumbered section 261 of this title.

§ 352. Naval Small Craft Instruction and Technical Training School

(a) IN GENERAL.—The Secretary of Defense may operate an education and training facility known as the ''Naval Small Craft Instruction and Technical Training School'' (in this section referred to as the ''School'').

(b) DESIGNATION OF EXECUTIVE AGENT.—The Secretary of Defense shall designate the Secretary of a military department as the Department of Defense executive agent for carrying out the responsibilities of the Secretary of Defense under this section.

(c) PURPOSE.—The purpose of the School shall be to provide to the military and other security forces of one or more friendly foreign countries education and training under any other provision of law related to naval small craft instruction and training and to increase professionalism, readiness, and respect for human rights through formal courses of instruction or mobile training teams for—

(1) the operation, employment, maintenance, and logistics of specialized equipment;

(2) participation in—

(A) joint exercises; or

(B) coalition or international military operations; and

(3) improved interoperability between—

(A) the armed forces; and

(B) the military and other security forces of the one or more friendly foreign countries.

(d) LIMITATION ON PERSONNEL ELIGIBLE TO RECEIVE EDUCATION AND TRAINING.—The Secretary of Defense may not provide education or training at the School to any personnel of a country that is prohibited from receiving such education or training under any other provision of law.

(e) FIXED COSTS.—The fixed costs of operation and maintenance of the School in a fiscal year may be paid from amounts made available for such fiscal year for operation and maintenance of the Department of Defense.

(f) ANNUAL REPORT.—Not later than March 15 each year, the Secretary of Defense, with the concurrence of the Secretary of State, shall submit to the appropriate congressional committees a detailed report on the activities and operating costs of the School during the preceding fiscal year.

(Added Pub. L. 115–232, div. A, title XII, § 1208(a)(1), Aug. 13, 2018, 132 Stat. 2021.)

LIMITATION ON USE OF FUNDS

Pub. L. 115–232, div. A, title XII, § 1208(c), Aug. 13, 2018, 132 Stat. 2022, provided that:

''(1) IN GENERAL.—Nothing in section 352 of title 10, United States Code (as so added), may be construed as authorizing the use of funds appropriated for the Department of Defense for any purpose described in paragraph (2) unless specifically authorized by an Act of Congress other than that section or this Act [see Tables for classification].

''(2) PURPOSES.—The purposes described in this paragraph are the following:

''(A) The operation of a facility other than the Naval Small Craft Instruction and Technical Training School that is in operation as of the date of the enactment of this Act [Aug. 13, 2018] for the provision of education and training authorized to be provided by the School.

''(B) The construction or expansion of any facility of the School.''

SUBCHAPTER VI—LIMITATIONS ON USE OF DEPARTMENT OF DEFENSE FUNDS

Sec.
361. Prohibition on providing financial assistance to terrorist countries.
362. Prohibition on use of funds for assistance to units of foreign security forces that have committed a gross violation of human rights.

§ 361. Prohibition on providing financial assistance to terrorist countries

(a) PROHIBITION.—Funds available to the Department of Defense may not be obligated or expended to provide financial assistance to—

(1) any country with respect to which the Secretary of State has made a determination under section 6(j)(1)(A)[1] of the Export Administration Act of 1979 (50 U.S.C. 4605(j)(1)(A));

(2) any country identified in the latest report submitted to Congress under section 140 of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989 (22 U.S.C. 2656f), as providing significant support for international terrorism; or

(3) any other country that, as determined by the President—

(A) grants sanctuary from prosecution to any individual or group that has committed an act of international terrorism; or

(B) otherwise supports international terrorism.

(b) WAIVER.—(1) The President may waive the application of subsection (a) to a country if the President determines—

(A) that it is in the national security interests of the United States to do so; or

(B) that the waiver should be granted for humanitarian reasons.

(2) The President shall—

(A) notify the Committee on Armed Services and the Committee on Foreign Relations of the Senate and the Committee on Armed Services and the Committee on International Relations of the House of Representatives at least 15 days before the waiver takes effect; and

(B) publish a notice of the waiver in the Federal Register.

(c) DEFINITION.—In this section, the term ''international terrorism'' has the meaning given that term in section 140(d) of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989 (22 U.S.C. 2656f(d)).

(Added Pub. L. 104–106, div. A, title XIII, § 1341(a), Feb. 10, 1996, 110 Stat. 485, § 2249a; amended Pub. L. 105–85, div. A, title X, § 1073(a)(40), Nov. 18, 1997, 111 Stat. 1902; Pub. L. 106–65, div. A, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 774; renumbered § 361 and amended Pub. L. 114–328, div. A, title X, § 1081(b)(3)(B), title XII, § 1241(*l*)(1), Dec. 23, 2016, 130 Stat. 2418, 2509.)

REFERENCES IN TEXT

Section 6(j)(1)(A) of the Export Administration Act of 1979 (50 U.S.C. 4605(j)(1)(A)), referred to in subsec. (a)(1), was repealed by Pub. L. 115–232, div. A, title XVII, § 1766(a), Aug. 13, 2018, 132 Stat. 2232. For similar provisions, see section 4813(c)(1)(A)(i) of Title 50, War and National Defense, as enacted by Pub. L. 115–232.

AMENDMENTS

2016—Pub. L. 114–328, § 1241(*l*)(1), renumbered section 2249a of this title as this section.

Subsec. (a)(1). Pub. L. 114–328, § 1081(b)(3)(B), substituted ''(50 U.S.C. 4605(j)(1)(A))'' for ''(50 U.S.C. App. 2405(j)(1)(A))''.

1999—Subsec. (b)(2)(A). Pub. L. 106–65 substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security''.

1997—Subsec. (a)(1). Pub. L. 105–85 substituted ''50 U.S.C. App. 2405(j)(1)(A'' for ''50 App. 2405(j)''.

CHANGE OF NAME

Committee on International Relations of House of Representatives changed to Committee on Foreign Affairs of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007.

§ 362. Prohibition on use of funds for assistance to units of foreign security forces that have committed a gross violation of human rights

(a) IN GENERAL.—(1) Of the amounts made available to the Department of Defense, none

[1] See References in Text note below.

may be used for any training, equipment, or other assistance for a unit of a foreign security force if the Secretary of Defense has credible information that the unit has committed a gross violation of human rights.

(2) The Secretary of Defense shall, in consultation with the Secretary of State, ensure that prior to a decision to provide any training, equipment, or other assistance to a unit of a foreign security force full consideration is given to any credible information available to the Department of State relating to human rights violations by such unit.

(b) EXCEPTION.—The prohibition in subsection (a)(1) shall not apply if the Secretary of Defense, after consultation with the Secretary of State, determines that the government of such country has taken all necessary corrective steps, or if the equipment or other assistance is necessary to assist in disaster relief operations or other humanitarian or national security emergencies.

(c) WAIVER.—The Secretary of Defense, after consultation with the Secretary of State, may waive the prohibition in subsection (a)(1) if the Secretary determines that the waiver is required by extraordinary circumstances.

(d) PROCEDURES.—The Secretary of Defense shall establish, and periodically update, procedures to ensure that any information in the possession of the Department of Defense about gross violations of human rights by units of foreign security forces is shared on a timely basis with the Department of State.

(e) REPORT.—Not later than 15 days after the application of any exception under subsection (b) or the exercise of any waiver under subsection (c), the Secretary of Defense shall submit to the appropriate committees of Congress a report—

(1) in the case of an exception under subsection (b), providing notice of the use of the exception and stating the grounds for the exception; and

(2) in the case of a waiver under subsection (c), describing—

(A) the information relating to the gross violation of human rights;

(B) the extraordinary circumstances that necessitate the waiver;

(C) the purpose and duration of the training, equipment, or other assistance; and

(D) the United States forces and the foreign security force unit involved.

(Added Pub. L. 113–291, div. A, title XII, § 1204(a)(1), Dec. 19, 2014, 128 Stat. 3531, § 2249e; renumbered § 362 and amended Pub. L. 114–328, div. A, title XII, § 1241(*l*), Dec. 23, 2016, 130 Stat. 2509.)

AMENDMENTS

2016—Pub. L. 114–328, § 1241(*l*)(1), renumbered section 2249e of this title as this section.

Subsec. (f). Pub. L. 114–328, § 1241(*l*)(2), struck out subsec. (f) which defined ''appropriate committees of Congress'' for this section.

PLAN TO PROVIDE CONSISTENCY OF ADMINISTRATION OF AUTHORITIES RELATING TO VETTING OF UNITS OF SECURITY FORCES OF FOREIGN COUNTRIES; MODIFICATION OF ASSESSMENT, MONITORING, AND EVALUATION OF SECURITY COOPERATION PROGRAMS AND ACTIVITIES

Pub. L. 116–92, div. A, title XII, § 1206, Dec. 20, 2019, 133 Stat. 1622, provided that:

''(a) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act [Dec. 20, 2019], the Secretary of Defense and Secretary of State shall jointly develop, implement, and submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives], the Committee on Foreign Relations of the Senate, and the Committee on Foreign Affairs of the House of Representatives a plan to provide consistency in administration of section 362 of title 10, United States Code, and section 620M of the Foreign Assistance Act of 1961 (22 U.S.C. 2378d).

''(b) MATTERS TO BE INCLUDED.—The plan required by subsection (a) shall contain the following:

''(1) Common standards and procedures which shall be used by the Department of Defense and Department of State to obtain and verify information regarding the vetting of units of the security forces of foreign countries for gross violation of human rights under the authorities described in subsection (a), including—

''(A) public guidelines for external sources to report information; and

''(B) methods and criteria employed by the Department of Defense and Department of State to determine whether sources, source reporting, and allegations are credible.

''(2) Measures to ensure the Department of Defense has read-only access to the International Vetting and Security Tracking (INVEST) system, and any successor or equivalent system.

''(3) Measures to ensure the authorities described in subsection (a) are applied to any foreign forces, irregular forces, groups, and individuals that receive training, equipment, or other assistance from the United States military.

''(c) FORM.—The plan required by subsection (a) shall be submitted in unclassified form, but may include a classified annex.

''(d) INTEGRATION OF HUMAN RIGHTS AND CIVILIAN PROTECTION INTO ASSESSMENT, MONITORING, AND EVALUATION OF SECURITY COOPERATION PROGRAMS AND ACTIVITIES.—

''(1) REPORTS REQUIRED.—The Secretary of Defense shall submit to the appropriate congressional committees an interim report and a final report on the steps the Secretary will take to incorporate partner units' activities, as such activities relate to human rights and protection of civilians, into the program elements described in section 383(b)(1) of title 10, United States Code.

''(2) DEADLINES.—

''(A) INTERIM REPORT.—The interim report required under paragraph (1) shall be submitted to the appropriate congressional committees not later than 180 days after the date of the enactment of this Act [Dec. 20, 2019] and shall include a summary of the progress of the Secretary in implementing the steps described in such paragraph.

''(B) FINAL REPORT.—The final report required under paragraph (1) shall be submitted to the appropriate congressional committees not later than one year after the date of enactment of this Act and shall specifically identify the actions the Secretary took to implement the steps described in paragraph (1).

''(3) APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.—In this subsection, the term 'appropriate congressional committees' means the following:

''(A) The Committee on Armed Services and the Committee on Foreign Relations of the Senate.

''(B) The Committee on Armed Services and the Committee on Foreign Affairs of the House of Representatives.''

HUMAN RIGHTS VETTING OF AFGHAN NATIONAL DEFENSE AND SECURITY FORCES

Pub. L. 115–91, div. A, title XII, § 1216, Dec. 12, 2017, 131 Stat. 1650, provided that: ''The Secretary of Defense may establish within the Department of Defense one or

more permanent positions to oversee and support, in coordination with the Department of State, the implementation of section 362 of title 10, United States Code, with respect to the Afghan National Defense and Security Forces.''

ANNUAL REPORTS

Pub. L. 113–291, div. A, title XII, § 1204(b), Dec. 19, 2014, 128 Stat. 3533, as amended by Pub. L. 115–232, div. A, title XII, § 1204(c)(2), Aug. 13, 2018, 132 Stat. 2017, provided that:

''(1) IN GENERAL.—Not later than March 31, 2015, and every March 31 thereafter through 2024, the Secretary of Defense shall submit to the appropriate committees of Congress a report setting forth for the preceding fiscal year the following:

''(A) The total number of cases submitted for vetting for purposes of section 362 of title 10, United States Code (as added by subsection (a)), and the total number of such cases approved, or suspended or rejected for human rights reasons, non-human rights reasons, or administrative reasons.

''(B) In the case of units rejected for non-human rights reasons, a detailed description of the reasons relating to the rejection.

''(C) A description of the interagency processes that were used to evaluate compliance with requirements to conduct vetting.

''(D) An addendum that includes any comments by the commanders of the combatant commands about the impact of section 362 of title 10, United States Code (as so added), on their theater security cooperation plan.

''(E) Such other matters with respect to the administration of section 362 of title 10, United States Code (as so added), as the Secretary considers appropriate.

''(2) FORM.—Each report under this subsection shall be submitted in unclassified form, but may include a classified annex.

''(3) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this subsection, the term 'appropriate committees of Congress' has the meaning given that term in section 301(1) of title 10, United States Code.''

[For termination, effective Dec. 31, 2021, of annual reporting provisions in section 1204(b) of Pub. L. 113–291, set out above, see section 1061 of Pub. L. 114–328, set out as a note under section 111 of this title.]

[§ 371. Renumbered § 271]

[§ 372. Renumbered § 272]

[§ 373. Renumbered § 273]

[§ 374. Renumbered § 274]

[§ 375. Renumbered § 275]

[§ 376. Renumbered § 276]

[§ 377. Renumbered § 277]

[§ 378. Renumbered § 278]

[§ 379. Renumbered § 279]

[§ 380. Renumbered § 280]

SUBCHAPTER VII—ADMINISTRATIVE AND MISCELLANEOUS MATTERS

Sec.
381. Consolidated budget.
382. Execution and administration of programs and activities.
383. Assessment, monitoring, and evaluation of programs and activities.
384. Department of Defense security cooperation workforce development.
385. Department of Defense support for other departments and agencies of the United States Government that advance Department of Defense security cooperation objectives.
386. Annual report.

§ 381. Consolidated budget

(a) CONSOLIDATED BUDGET.—The budget of the President for each fiscal year, as submitted to Congress by the President pursuant to section 1105 of title 31, shall set forth by budget function and as a separate item the amounts requested for the Department of Defense for such fiscal year for all security cooperation programs and activities of the Department of Defense, including the military departments, to be conducted in such fiscal year, including the specific country or region and the applicable authority, to the extent practicable.

(b) QUARTERLY REPORT ON USE OF FUNDS.—Not later than 60 days after the end of each calendar quarter, the Secretary shall submit to the appropriate committees of Congress a report on the obligation and expenditure of funds for security cooperation programs and activities of the Department of Defense during such calendar quarter.

(Added Pub. L. 114–328, div. A, title XII, § 1249(a), Dec. 23, 2016, 130 Stat. 2526; amended Pub. L. 116–92, div. A, title XII, § 1204, Dec. 20, 2019, 133 Stat. 1622.)

PRIOR PROVISIONS

A prior section 381 was renumbered section 281 of this title.

AMENDMENTS

2019—Subsec. (b). Pub. L. 116–92 substituted ''60 days'' for ''30 days''.

EFFECTIVE DATE; APPLICABILITY

Pub. L. 114–328, div. A, title XII, § 1249(b), Dec. 23, 2016, 130 Stat. 2526, provided that: ''The amendment made by subsection (a) [enacting this section] shall take effect on the date of the enactment of this Act [Dec. 23, 2016], and shall apply as follows:

''(1) Subsection (a) of section 381 of title 10, United States Code, as added by subsection (a), shall apply to budgets submitted to Congress by the President pursuant to section 1105 of title 31, United States Code, for each fiscal year after fiscal year 2018.

''(2) Subsection (b) of such section 381, as so added, shall apply to calendar quarters beginning on or after the date of the enactment of this Act.''

§ 382. Execution and administration of programs and activities

(a) POLICY OVERSIGHT AND RESOURCE ALLOCATION.—The Secretary of Defense shall assign responsibility for the oversight of strategic policy and guidance and responsibility for overall resource allocation for security cooperation programs and activities of the Department of Defense to a single official and office in the Office of the Secretary of Defense at the level of Under Secretary of Defense or below.

(b) EXECUTION AND ADMINISTRATION OF CERTAIN PROGRAMS AND ACTIVITIES.—

(1) IN GENERAL.—The Director of the Defense Security Cooperation Agency shall be responsible for the execution and administration of

all security cooperation programs and activities of the Department of Defense involving the provision of defense articles, military training, and other defense-related services by grant, loan, cash sale, or lease.

(2) DESIGNATION OF RESPONSIBILITY.—The Director may designate an element of an armed force, combatant command, Defense Agency, Department of Defense Field Activity, or other element or organization of the Department of Defense to execute and administer security cooperation programs and activities described in paragraph (1) if the Director determines that the designation will achieve maximum effectiveness, efficiency, and economy in the activities for which designated.

(c) AVAILABILITY OF FUNDS.—

(1) IN GENERAL.—Funds available to the Defense Security Cooperation Agency, and other funds available to the Department of Defense for security cooperation programs and activities of the Department of Defense, may be used to implement security cooperation programs and activities of the Department of Defense authorized by this chapter.

(2) BUDGET JUSTIFICATION.—Funds necessary for implementing security cooperation programs and activities of the Department of Defense under this chapter for a fiscal year shall be identified, with appropriate justification, in the consolidated budget for such fiscal year required by section 381 of this title.

(Added Pub. L. 114–328, div. A, title XII, §1241(m), Dec. 23, 2016, 130 Stat. 2509.)

PRIOR PROVISIONS

A prior section 382 was renumbered section 282 of this title.

§ 383. Assessment, monitoring, and evaluation of programs and activities

(a) PROGRAM REQUIRED.—The Secretary of Defense shall maintain a program of assessment, monitoring, and evaluation in support of the security cooperation programs and activities of the Department of Defense.

(b) PROGRAM ELEMENTS AND REQUIREMENTS.—

(1) ELEMENTS.—The program under subsection (a) shall provide for the following:

(A) Initial assessments of partner capability requirements, potential programmatic risks, baseline information, and indicators of efficacy for purposes of planning, monitoring, and evaluation of security cooperation programs and activities of the Department of Defense.

(B) Monitoring of implementation of such programs and activities in order to measure progress in execution and, to the extent possible, achievement of desired outcomes.

(C) Evaluation of the efficiency and effectiveness of such programs and activities in achieving desired outcomes.

(D) Identification of lessons learned in carrying out such programs and activities, and development of recommendation for improving future security cooperation programs and activities of the Department of Defense.

(E) Incorporation of lessons learned from prior security cooperation programs and activities of the Department of Defense that were carried out any time on or after September 11, 2001.

(2) BEST PRACTICES.—The program shall be conducted in accordance with international best practices, interagency standards, and, if applicable, the Government Performance and Results Act of 1993 (Public Law 103–62), and the amendments made by that Act, and the GPRA Modernization Act of 2010 (Public Law 111–352), and the amendments made by that Act.

(c) AVAILABILITY OF FUNDS.—

(1) IN GENERAL.—Funds available to the Defense Security Cooperation Agency, and other funds available to the Department of Defense for security cooperation programs and activities of the Department of Defense, may be used to carry out the program required by subsection (a).

(2) BUDGET JUSTIFICATION.—Funds described in paragraph (1) for a fiscal year shall be identified, with appropriate justification, in the consolidated budget for such fiscal year required by section 381 of this title.

(d) REPORTS.—

(1) REPORTS TO CONGRESS.—The Secretary shall submit to the congressional defense committees each year a report on the program under subsection (a) during the previous year. Each report shall include, for the year covered by such report, the following:

(A) A description of the activities under the program.

(B) An evaluation of the lessons learned and best practices identified through activities under the program.

(2) INFORMATION FOR THE PUBLIC ON EVALUATIONS.—The Secretary shall make available to the public, on an Internet website of the Department of Defense available to the public, a summary of each evaluation conducted pursuant to subsection (b)(1)(C). In making a summary so available, the Secretary may redact or omit any information that the Secretary determines should not be disclosed to the public in order to protect the interest of the United States or the foreign country or countries covered by such evaluation.

(Added Pub. L. 114–328, div. A, title XII, §1241(m), Dec. 23, 2016, 130 Stat. 2510; amended Pub. L. 115–232, div. A, title XII, §1211(c), Aug. 13, 2018, 132 Stat. 2024.)

REFERENCES IN TEXT

The Government Performance and Results Act of 1993, referred to in subsec. (b)(2), is Pub. L. 103–62, Aug. 3, 1993, 107 Stat. 285, which enacted section 306 of Title 5, Government Organization and Employees, sections 1115 to 1119, 9703, and 9704 of Title 31, Money and Finance, and sections 2801 to 2805 of Title 39, Postal Service, amended section 1105 of Title 31, and enacted provisions set out as notes under sections 1101 and 1115 of Title 31. For complete classification of this Act to the Code, see Short Title of 1993 Amendment note set out under section 1101 of Title 31 and Tables.

The GPRA Modernization Act of 2010, referred to in subsec. (b)(2), is Pub. L. 111–352, Jan. 4, 2011, 124 Stat. 3866, which enacted sections 1115, 1116, and 1120 to 1125 of Title 31, Money and Finance, and section 306 of Title

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5, Government Organization and Employees, amended section 1105 of Title 31, repealed sections 1115 and 1116 of Title 31 and section 306 of Title 5, and enacted provisions set out as notes under section 1115 of Title 31 and section 5105 of Title 5. For complete classification of this Act to the Code, see Short Title of 2011 Amendment note set out under section 1101 of Title 31 and Tables.

PRIOR PROVISIONS

A prior section 383 was renumbered section 283 of this title.

AMENDMENTS

2018—Subsec. (b)(1)(E). Pub. L. 115–232 added subpar. (E).

§ 384. Department of Defense security cooperation workforce development

(a) PROGRAM REQUIRED.—The Secretary of Defense shall carry out a program to be known as the ''Department of Defense Security Cooperation Workforce Development Program'' (in this section referred to as the ''Program'') to oversee the development and management of a professional workforce supporting security cooperation programs and activities of the Department of Defense, including—

(1) assessment, planning, monitoring, execution, evaluation, and administration of such programs and activities under this chapter; and

(2) execution of security assistance programs and activities under the Foreign Assistance Act of 1961 and the Arms Export Control Act by the Department of Defense.

(b) PURPOSE.—The purpose of the Program is to improve the quality and professionalism of the security cooperation workforce in order to ensure that the workforce—

(1) has the capacity, in both personnel and skills, needed to properly perform its mission, provide appropriate support to the assessment, planning, monitoring, execution, evaluation, and administration of security cooperation programs and activities described in subsection (a), and ensure that the Department receives the best value for the expenditure of public resources on such programs and activities; and

(2) is assigned in a manner that ensures personnel with the appropriate level of expertise and experience are assigned in sufficient numbers to fulfill requirements for the security cooperation programs and activities of the Department of Defense and the execution of security assistance programs and activities described in subsection (a)(2).

(c) ELEMENTS.—The Program shall consist of such elements relating to the development and management of the security cooperation workforce as the Secretary considers appropriate for the purposes specified in subsection (b), including elements on training, certification, assignment, and career development of personnel of the security cooperation workforce.

(d) MANAGEMENT.—The Program shall be managed by the Director of the Defense Security Cooperation Agency.

(e) GUIDANCE.—

(1) INTERIM GUIDANCE.—Not later than 180 days after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2017, the Secretary shall issue interim guidance for the execution and administration of the Program.

(2) FINAL GUIDANCE.—Not later than one year after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2017, the Secretary shall issue final guidance for the execution and administration of the Program.

(3) SCOPE OF GUIDANCE.—The guidance shall do the following:

(A) Provide direction to the Department of Defense on the establishment of professional career paths for the personnel of the security cooperation workforce, addressing training and education standards, promotion opportunities and requirements, retention policies, and scope of workforce demands.

(B) Provide for a mechanism to identify and define training and certification requirements for security cooperation positions in the Department and a means to track workforce skills and certifications.

(C) Provide for a mechanism to establish a program of professional certification in Department of Defense security cooperation for personnel of the security cooperation workforce in different career tracks and levels of competency based on requisite training and experience.

(D) Establish requirements for training and professional development associated with each level of certification provided for under subparagraph (C).

(E) Establish and maintain a school to train, educate, and certify the security cooperation workforce according to standards developed for purposes of subparagraph (C).

(F) Provide for a mechanism for assigning appropriately certified personnel of the security cooperation workforce to assignments associated with key positions in connection with security cooperation programs and activities.

(G) Identify the appropriate composition of career and temporary personnel necessary to constitute the security cooperation workforce.

(H) Identify specific positions throughout the security cooperation workforce to be managed and assigned through the Program.

(f) SOURCE OF FUNDS.—

(1) IN GENERAL.—Funds available to the Defense Security Cooperation Agency, and other funds available to the Department of Defense for security cooperation programs and activities of the Department of Defense, may be used to carry out the Program.

(2) BUDGET JUSTIFICATION.—Funds necessary to carry out the Program as described in paragraph (1) for a fiscal year shall be identified, with appropriate justification, in the consolidated budget for such fiscal year required by section 381 of this title.

(g) USE OF FUNDS.—Amounts available for use for the Program may be transferred to any account of the military departments or the Defense Agencies for purposes of the Program.

(h) SECURITY COOPERATION WORKFORCE DEFINED.—In this section, the term ''security cooperation workforce'' means the following:

(1) Members of the armed forces and civilian employees of the Department of Defense working in the security cooperation organizations of United States missions overseas.

(2) Members of the armed forces and civilian employees of the Department of Defense in the geographic combatant commands and functional combatant commands responsible for planning, monitoring, or conducting security cooperation activities.

(3) Members of the armed forces and civilian employees of the Department of Defense in the military departments performing security cooperation activities, including activities in connection with the acquisition and development of technology release policies.

(4) Other military and civilian personnel of Defense Agencies and Field Activities who perform security cooperation activities.

(5) Personnel of the Department of Defense who perform assessments, monitoring, or evaluations of security cooperation programs and activities of the Department of Defense, including assessments under section 383 of this title.

(6) Other members of the armed forces or civilian employees of the Department of Defense who contribute significantly to the security cooperation programs and activities of the Department of Defense by virtue of their assigned duties, as determined pursuant to the guidance issued under subsection (e).

(Added Pub. L. 114–328, div. A, title XII, § 1250(a), Dec. 23, 2016, 130 Stat. 2526.)

REFERENCES IN TEXT

The Foreign Assistance Act of 1961, referred to in subsec. (a)(2), is Pub. L. 87–195, Sept. 4, 1961, 75 Stat. 424, which is classified principally to chapter 32 (§ 2151 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 2151 of Title 22 and Tables.

The Arms Export Control Act, referred to in subsec. (a)(2), is Pub. L. 90–629, Oct. 22, 1968, 82 Stat. 1320, which is classified principally to chapter 39 (§ 2751 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 2751 of Title 22 and Tables.

The date of the enactment of the National Defense Authorization Act for Fiscal Year 2017, referred to in subsec. (e)(1), (2), is the date of enactment of Pub. L. 114–328, which was approved Dec. 23, 2016.

PRIOR PROVISIONS

A prior section 384 was renumbered section 284 of this title.

§ 385. Department of Defense support for other departments and agencies of the United States Government that advance Department of Defense security cooperation objectives

(a) SUPPORT AUTHORIZED.—Subject to subsection (c), the Secretary of Defense is authorized to support other departments and agencies of the United States Government for the purpose of implementing or supporting foreign assistance programs and activities described in subsection (b) that advance security cooperation objectives of the Department of Defense.

(b) FOREIGN ASSISTANCE PROGRAMS AND ACTIVITIES.—The foreign assistance programs and activities described in this subsection are foreign assistance programs and activities that—

(1) are necessary for the effectiveness of one or more programs of the Department of Defense relating to security cooperation conducted pursuant to an authority in this chapter; and

(2) cannot be carried out by the Department.

(c) ANNUAL LIMITATION ON AMOUNT OF SUPPORT.—The amount of support provided pursuant to subsection (a) in any fiscal year may not exceed $75,000,000.

(d) NOTICE AND WAIT.—If a determination is made to transfer funds in connection with the provision of support pursuant to subsection (a) for a program or activity, the transfer may not occur until—

(1) the Secretary and the head of the department or agency to receive the funds jointly submit to the congressional defense committees a notice on the transfer, which notice shall include—

(A) a detailed description of the purpose and estimated cost of such program or activity;

(B) a detailed description of the security cooperation objectives of the Department, including the theater campaign plan of the combatant command concerned, that will be advanced;

(C) a justification why such program or activity will advance such objectives;

(D) a justification why such program or activity cannot be carried out by the Department;

(E) an identification of any funds programmed or obligated by the department or agency other than the Department on such program or activity; and

(F) a timeline for the provision of such support; and

(2) a period of 30 days elapses after the date of the submittal of the notice pursuant to paragraph (1).

(Added Pub. L. 114–328, div. A, title XII, § 1241(m), Dec. 23, 2016, 130 Stat. 2511; amended Pub. L. 115–232, div. A, title XII, § 1204(c)(1)(E), Aug. 13, 2018, 132 Stat. 2017.)

AMENDMENTS

2018—Subsec. (d)(1)(B). Pub. L. 115–232 substituted "including" for "include".

§ 386. Annual report

(a) ANNUAL REPORT REQUIRED.—Not later than January 31 of each year beginning in 2018, the Secretary of Defense shall submit to the appropriate congressional committees a report that sets forth, on a country-by-country basis, a description of each program carried out by the Department of Defense under the authorities in subsection (c) to provide training, equipment, or other assistance or reimbursement during the fiscal year ending in the year before the year in which such report is submitted.

(b) ELEMENTS OF REPORT.—Each report required under subsection (a) shall provide for each program covered by such report, and for the reporting period covered by such report, the following:

(1) A description of the purpose, duration, and type of the training, equipment, or assistance or reimbursement provided, including how the training, equipment, or assistance or reimbursement provided advances the theater security cooperation strategy of the combatant command, as appropriate.

(2) The cost and expenditures of such training, equipment, or assistance or reimbursement, including by type of support provided.

(3) A description of the metrics, if any, used for assessing the effectiveness of such training, equipment, or assistance or reimbursement provided.

(4) For each foreign country in which defense articles, defense services, supplies (including consumables), small-scale construction, or reimbursement were provided, a description of the extent of participation, if any, by the military forces and security forces or other government organizations of such foreign country.

(5) The number of members of the United States armed forces involved in providing such defense articles, defense services, supplies (including consumables), and small-scale construction, and, if applicable, a description of the military benefits for such members involved in providing such training, equipment, or assistance.

(6) A summary, by authority, of the activities carried out under each authority specified in subsection (c).

(c) SPECIFIED AUTHORITIES.—The authorities specified in this subsection are the following authorities (or any successor authorities):

(1) Sections 246, 251, 252, 253,[1] 321, 341, 344, 348, 349, and 350 of this title.

(2) Section 166a(b)(6) of this title, relating to humanitarian and civic assistance by the commanders of the combatant commands.

(3) Section 168 of this title, relating to authority—

(A) to provide assistance to nations of the former Soviet Union as part of the Warsaw Initiative Fund;

(B) to conduct the Defense Institution Reform Initiative; and

(C) to conduct a program to increase defense institutional legal capacity through the Defense Institute of International Legal Studies.

(4) Section 2249c of this title, relating to authority to use appropriated funds for costs associated with education and training of foreign officials under the Regional Defense Combating Terrorism Fellowship Program.

(5) Section 2561 of this title, relating to authority to provide humanitarian assistance.

(6) Section 1532, relating to the Afghanistan Security Forces Fund.

(7) Section 1233 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110–181; 122 Stat. 393), relating to authority to reimburse certain coalition nations for support provided to United States military operations.

(8) Section 1234 of the National Defense Authorization Act for Fiscal Year 2008 (122 Stat. 394), relating to authorization for logistical support for coalition forces supporting certain United States military operations.

(9) Section 1033 of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105–85; 111 Stat. 1881), relating to authority to provide additional support for counter-drug activities of Peru and Colombia.

(10) Section 1004 of the National Defense Authorization Act for Fiscal Year 1991 (10 U.S.C. 374 note), relating to additional support for counter-drug activities.

(11) Section 401 of this title, relating to humanitarian and civic assistance provided in conjunction with military operations.

(12) Section 1206 of the Carl Levin and Howard P. ''Buck'' McKeon National Defense Authorization Act for Fiscal Year 2015 (128 Stat. 3538; 10 U.S.C. 2282 note), relating to authority to conduct human rights training of security forces and associated security ministries of foreign countries.

(13) Any other authority on assistance or reimbursement that the Secretary of Defense considers appropriate and consistent with subsection (a).

(d) NONDUPLICATION OF EFFORT.—

(1) IN GENERAL.—Except as provided in paragraph (2), if any information required under subsection (a) has been included in another report or notification previously submitted to Congress by law, the Secretary of Defense may provide a list of such reports and notifications at the time of submitting the report required by subsection (a) in lieu of including such information in the report required by subsection (a).

(2) EXCEPTION.—Paragraph (1) does not apply with respect to information required under subsection (a) that is required to be submitted as described in paragraphs (1) and (2) of subsection (b).

(e) FORM.—Each report required under subsection (a) shall be submitted in unclassified form, but may contain a classified annex that may also include other sensitive information.

(Added and amended Pub. L. 114–328, div. A, title XII, §§ 1246(d)(2)(A), 1251(a)–(f), Dec. 23, 2016, 130 Stat. 2521, 2529–2531; Pub. L. 115–232, div. A, title XII, § 1204(b)(1)(A), Aug. 13, 2018, 132 Stat. 2017.)

REFERENCES IN TEXT

Sections 246, 251, 252, and 253 of this title, referred to in subsec. (c)(1), probably should be references to sections 311, 331, 332, and 333 of this title, respectively, as they were prior to amendment by Pub. L. 115–232. See 2018 Amendment note below. Although there were sections 311, 331, 332, and 333 of this title that had been renumbered 246, 251, 252, and 253, the references in subsec. (c)(1) should probably be to the current sections 311, 331, 332, and 333 and not to the ones that were renumbered.

Section 168 of this title, referred to in subsec. (c)(3), was repealed by Pub. L. 114–328, div. A, title XII, § 1253(a)(1)(A), Dec. 23, 2016, 130 Stat. 2532.

Section 2249c of this title, referred to in subsec. (c)(4), was renumbered section 345 of this title by Pub. L. 114–328, div. A, title XII, § 1247(a), Dec. 23, 2016, 130 Stat. 2521.

Section 1532, referred to in subsec. (c)(6), is section 1532 of Pub. L. 113–291, div. A, title XV, Dec. 19, 2014, 128 Stat. 3613. Section 1532 consists of subsecs. (a) to (d).

[1] See References in Text note below.

Subsecs. (a) to (c) of section 1532 are not classified to the Code, and subsec. (d) of section 1532 amended section 1531(d) of Pub. L. 113–66, which is set out as a note under section 2302 of this title.

Section 1233 of the National Defense Authorization Act for Fiscal Year 2008, referred to in subsec. (c)(7), is section 1233 of Pub. L. 110–181, div. A, title XII, Jan. 28, 2008, 122 Stat. 393, which is not classified to the Code.

Section 1234 of the National Defense Authorization Act for Fiscal Year 2008, referred to in subsec. (c)(8), is section 1234 of Pub. L. 110–181, div. A, title XII, Jan. 28, 2008, 122 Stat. 394, which is not classified to the Code.

Section 1033 of the National Defense Authorization Act for Fiscal Year 1998, referred to in subsec. (c)(9), is section 1033 of Pub. L. 105–85, div. A, title X, Nov. 18, 1997, 111 Stat. 1881, which is not classified to the Code.

Section 1004 of the National Defense Authorization Act for Fiscal Year 1991 (10 U.S.C. 374 note), referred to in subsec. (c)(10), is section 1004 of Pub. L. 101–510, div. A, title X, Nov. 5, 1990, 104 Stat. 1629, which was set out as a note under section 374 of this title, prior to repeal by Pub. L. 114–328, div. A, title X, § 1011(b), Dec. 23, 2016, 130 Stat. 2385. See section 284 of this title.

Section 1206 of the Carl Levin and Howard P. ''Buck'' McKeon National Defense Authorization Act for Fiscal Year 2015, referred to in subsec. (c)(12), is section 1206 of Pub. L. 113–291, which is set out as a note under section 2282 of this title.

CODIFICATION

Text of section, as added by Pub. L. 114–328, is based on text of subsecs. (a) to (e) of section 1211 of Pub. L. 113–291, div. A, title XII, Dec. 19, 2014, 128 Stat. 3544, which was not classified to the Code.

AMENDMENTS

2018—Subsec. (c)(1). Pub. L. 115–232 substituted ''Sections 246, 251, 252, 253, 321,'' for ''Sections 311, 321, 331, 332, 333,''.

2016—Subsec. (a). Pub. L. 114–328, § 1251(b)(6), which directed striking out ''under the authorities in subsection (c)'' after ''submitted'', was executed by striking out ''under the authorities specified in subsection (c)'' after ''submitted'', to reflect the probable intent of Congress.

Pub. L. 114–328, § 1251(b)(1)–(5), in heading, substituted ''Annual Report Required'' for ''Biennial Report Required'', and, in text, substituted ''Not later than January 31 of each year beginning in 2018, the Secretary of Defense'' for ''Not later than February 1 of each of 2016, 2018, and 2020, the Secretary of Defense'', ''appropriate congressional committees'' for ''congressional defense committees'', ''assistance'' for ''security assistance'', and ''the fiscal year'' for ''the two fiscal years'' and inserted ''under the authorities in subsection (c)'' after ''Department of Defense''.

Subsec. (b)(1). Pub. L. 114–328, § 1251(c)(1), inserted '', duration,'' after ''purpose''.

Subsec. (b)(2). Pub. L. 114–328, § 1251(c)(2), substituted ''The cost and expenditures'' for ''The cost''.

Subsec. (b)(4) to (6). Pub. L. 114–328, § 1251(c)(3), added pars. (4) to (6).

Subsec. (c)(1). Pub. L. 114–328, § 1246(d)(2)(A), which directed amendment of subsec. (c)(1) by inserting ''341,'' after ''333,'', was executed by making the insertion after ''321,'' to reflect the probable intent of Congress and the intervening amendment by Pub. L. 115–232. See 2018 Amendment note above.

Pub. L. 114–328, § 1251(d)(1), added par. (1) and struck out former par. (1) which read as follows: ''Section 127d of title 10, United States Code, relating to authority to provide logistic support, supplies, and services to allied forces participating in a combined operation with the Armed Forces.''

Subsec. (c)(2), (3). Pub. L. 114–328, § 1251(d)(6), substituted ''of this title'' for ''of title 10, United States Code''.

Subsec. (c)(4). Pub. L. 114–328, § 1251(d)(2), (3), (6), redesignated par. (6) as (4), substituted ''of this title'' for ''of title 10, United States Code'', and struck out former par. (4) which read as follows: ''Section 2010 of title 10, United States Code, relating to authority to reimburse foreign troops for participation in combined exercises.''

Subsec. (c)(5). Pub. L. 114–328, § 1251(d)(2), (3), (6), redesignated par. (8) as (5), substituted ''of this title'' for ''of title 10, United States Code'', and struck out former par. (5) which read as follows: ''Section 2011 of title 10, United States Code, relating to authority to reimburse foreign troops for participation in Joint Combined Exercise Training.''

Subsec. (c)(6). Pub. L. 114–328, § 1251(d)(3), redesignated par. (9) as (6). Former par. (6) redesignated (4).

Subsec. (c)(7). Pub. L. 114–328, § 1251(d)(2), (3), redesignated par. (13) as (7) and struck out former par. (7) which read as follows: ''Section 2282 of title 10, United States Code (as added by section 1205 of this Act), relating to authority to build the capacity of foreign military forces, or the predecessor authority to such section in section 1206 of the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109–163; 119 Stat. 3456).''

Subsec. (c)(8), (9). Pub. L. 114–328, § 1251(d)(3), redesignated pars. (14) and (15) as (8) and (9), respectively. Former pars. (8) and (9) redesignated (5) and (6), respectively.

Subsec. (c)(10). Pub. L. 114–328, § 1251(d)(2), (3), redesignated par. (16) as (10) and struck out former par. (10) which read as follows: ''Section 1205 of the National Defense Authorization Act for Fiscal Year 2014 (32 U.S.C. 107 note), relating to authority for National Guard State Partnership program.''

Subsec. (c)(11), (12). Pub. L. 114–328, § 1251(d)(2), (4), added pars. (11) and (12) and struck out former pars. (11) and (12) which read as follows:

''(11) Section 1081 of the National Defense Authorization Act for Fiscal Year 2012 (10 U.S.C. 168 note), relating to the Ministry of Defense Advisors program.

''(12) Section 1207 of the National Defense Authorization Act for Fiscal Year 2012 (22 U.S.C. 2151 note), relating to the Global Security Contingency Fund.''

Subsec. (c)(13). Pub. L. 114–328, § 1251(d)(5), redesignated par. (17) as (13). Former par. (13) redesignated (7).

Subsec. (c)(14) to (16). Pub. L. 114–328, § 1251(d)(3), redesignated pars. (14) to (16) as (8) to (10), respectively.

Subsec. (c)(17). Pub. L. 114–328, § 1251(d)(5), redesignated par. (17) as (13).

Subsec. (d). Pub. L. 114–328, § 1251(e), designated existing provisions as par. (1) and inserted heading, substituted ''Except as provided in paragraph (2), if any information'' for ''If any information'', and added par. (2).

Subsec. (e). Pub. L. 114–328, § 1251(f), inserted ''that may also include other sensitive information'' after ''annex''.

EFFECTIVE DATE OF 2016 AMENDMENT

Pub. L. 114–328, div. A, title XII, § 1246(d)(2), Dec. 23, 2016, 130 Stat. 2521, provided that the amendment made by section 1246(d)(2)(A) is effective as of January 1, 2020.

CHAPTER 19—CYBER AND INFORMATION OPERATIONS MATTERS

Sec.
391. Reporting on cyber incidents with respect to networks and information systems of operationally critical contractors and certain other contractors.
392. Executive agents for cyber test and training ranges.
393. Reporting on penetrations of networks and information systems of certain contractors.
394. Authorities concerning military cyber operations.
395. Notification requirements for sensitive military cyber operations.
396. Notification requirements for cyber weapons.
397. Principal Information Operations Advisor.

AMENDMENTS

2019—Pub. L. 116–92, div. A, title XVI, § 1631(a)(2)(A), Dec. 20, 2019, 133 Stat. 1742, substituted ''CYBER AND

INFORMATION OPERATIONS MATTERS'' for ''CYBER MATTERS'' in chapter heading and added item 397.

2018—Pub. L. 115–232, div. A, title XVI, § 1631(c)(2), Aug. 13, 2018, 132 Stat. 2123, added items 394 to 396.

2015—Pub. L. 114–92, div. A, title X, § 1081(a)(4), title XVI, § 1641(c)(2), Nov. 25, 2015, 129 Stat. 1001, 1116, substituted ''Reporting on cyber incidents with respect to networks and information systems of operationally critical contractors and certain other contractors'' for ''Reporting on cyber incidents with respect to networks and information systems of operationally critical contractors'' in item 391 and added item 393.

2014—Pub. L. 113–291, div. A, title XVI, § 1633(d), Dec. 19, 2014, 128 Stat. 3643, added item 392.

§ 391. Reporting on cyber incidents with respect to networks and information systems of operationally critical contractors and certain other contractors

(a) DESIGNATION OF DEPARTMENT COMPONENT TO RECEIVE REPORTS.—The Secretary of Defense shall designate a component of the Department of Defense to receive reports of cyber incidents from contractors in accordance with this section and section 393 of this title or from other governmental entities.

(b) PROCEDURES FOR REPORTING CYBER INCIDENTS.—The Secretary of Defense shall establish procedures that require an operationally critical contractor to report in a timely manner to component designated under subsection (a) each time a cyber incident occurs with respect to a network or information system of such operationally critical contractor.

(c) PROCEDURE REQUIREMENTS.—

(1) DESIGNATION AND NOTIFICATION.—The procedures established pursuant to subsection (a) shall include a process for—

(A) designating operationally critical contractors; and

(B) notifying a contractor that it has been designated as an operationally critical contractor.

(2) RAPID REPORTING.—The procedures established pursuant to subsection (a) shall require each operationally critical contractor to rapidly report to the component of the Department designated pursuant to subsection (d)(2)(A) on each cyber incident with respect to any network or information systems of such contractor. Each such report shall include the following:

(A) An assessment by the contractor of the effect of the cyber incident on the ability of the contractor to meet the contractual requirements of the Department.

(B) The technique or method used in such cyber incident.

(C) A sample of any malicious software, if discovered and isolated by the contractor, involved in such cyber incident.

(D) A summary of information compromised by such cyber incident.

(3) DEPARTMENT ASSISTANCE AND ACCESS TO EQUIPMENT AND INFORMATION BY DEPARTMENT PERSONNEL.—The procedures established pursuant to subsection (a) shall—

(A) include mechanisms for Department personnel to, if requested, assist operationally critical contractors in detecting and mitigating penetrations; and

(B) provide that an operationally critical contractor is only required to provide access to equipment or information as described in subparagraph (A) to determine whether information created by or for the Department in connection with any Department program was successfully exfiltrated from a network or information system of such contractor and, if so, what information was exfiltrated.

(4) PROTECTION OF TRADE SECRETS AND OTHER INFORMATION.—The procedures established pursuant to subsection (a) shall provide for the reasonable protection of trade secrets, commercial or financial information, and information that can be used to identify a specific person.

(5) DISSEMINATION OF INFORMATION.—The procedures established pursuant to subsection (a) shall limit the dissemination of information obtained or derived through the procedures to entities—

(A) with missions that may be affected by such information;

(B) that may be called upon to assist in the diagnosis, detection, or mitigation of cyber incidents;

(C) that conduct counterintelligence or law enforcement investigations; or

(D) for national security purposes, including cyber situational awareness and defense purposes.

(d) PROTECTION FROM LIABILITY OF OPERATIONALLY CRITICAL CONTRACTORS.—(1) No cause of action shall lie or be maintained in any court against any operationally critical contractor, and such action shall be promptly dismissed, for compliance with this section and contract requirements established pursuant to Defense Federal Acquisition Regulation Supplement clause 252.204-7012, Safeguarding Covered Defense Information and Cyber Incident Reporting, that is conducted in accordance with procedures established pursuant to subsection (b) and such contract requirements.

(2)(A) Nothing in this section shall be construed—

(i) to require dismissal of a cause of action against an operationally critical contractor that has engaged in willful misconduct in the course of complying with the procedures established pursuant to subsection (b); or

(ii) to undermine or limit the availability of otherwise applicable common law or statutory defenses.

(B) In any action claiming that paragraph (1) does not apply due to willful misconduct described in subparagraph (A), the plaintiff shall have the burden of proving by clear and convincing evidence the willful misconduct by each operationally critical contractor subject to such claim and that such willful misconduct proximately caused injury to the plaintiff.

(C) In this subsection, the term ''willful misconduct'' means an act or omission that is taken—

(i) intentionally to achieve a wrongful purpose;

(ii) knowingly without legal or factual justification; and

(iii) in disregard of a known or obvious risk that is so great as to make it highly probable that the harm will outweigh the benefit.

(e) DEFINITIONS.—In this section:

(1) CYBER INCIDENT.—The term ''cyber incident'' means actions taken through the use of computer networks that result in an actual or potentially adverse effect on an information system or the information residing therein.

(2) OPERATIONALLY CRITICAL CONTRACTOR.—The term ''operationally critical contractor'' means a contractor designated by the Secretary for purposes of this section as a critical source of supply for airlift, sealift, intermodal transportation services, or logistical support that is essential to the mobilization, deployment, or sustainment of the Armed Forces in a contingency operation.

(Added Pub. L. 113–291, div. A, title XVI, §1632(a), Dec. 19, 2014, 128 Stat. 3639; amended Pub. L. 114–92, div. A, title XVI, §1641(b), (c)(1), Nov. 25, 2015, 129 Stat. 1115, 1116; Pub. L. 116–283, div. A, title XVII, §1704, Jan. 1, 2021, 134 Stat. 4082.)

AMENDMENTS

2021—Subsec. (d)(1). Pub. L. 116–283 inserted ''and contract requirements established pursuant to Defense Federal Acquisition Regulation Supplement clause 252.204-7012, Safeguarding Covered Defense Information and Cyber Incident Reporting,'' after ''compliance with this section'' and ''and such contract requirements'' before period at end.

2015—Subsec. (a). Pub. L. 114–92, §1641(c)(1), substituted ''and section 393 of this title'' for ''and with section 941 of the National Defense Authorization Act for Fiscal Year 2013 (10 U.S.C. 2224 note)''.

Subsecs. (d), (e). Pub. L. 114–92, §1641(b), added subsec. (d) and redesignated former subsec. (d) as (e).

SENIOR MILITARY ADVISOR FOR CYBER POLICY AND DEPUTY PRINCIPAL CYBER ADVISOR

Pub. L. 116–92, div. A, title IX, §905, Dec. 20, 2019, 133 Stat. 1557, as amended by Pub. L. 116–283, div. A, title XVII, §1713(b), Jan. 1, 2021, 134 Stat. 4090, provided that:

''(a) ADVISOR.—

''(1) IN GENERAL.—The Secretary of Defense shall, acting through the Joint Staff, designate an officer within the Office of the Secretary of Defense to serve within that Office as the Senior Military Advisor for Cyber Policy, and concurrently, as the Deputy Principal Cyber Advisor.

''(2) OFFICERS ELIGIBLE FOR DESIGNATION.—The officer designated pursuant to this subsection shall be designated from among commissioned regular officers of the Armed Forces in a general or flag officer grade who are qualified for designation[.]

''(3) GRADE.—The officer designated pursuant to this subsection shall have the grade of major general or rear admiral (upper half) while serving in that position, without vacating the officer's permanent grade.

''(b) SCOPE OF POSITIONS.—

''(1) IN GENERAL.—The officer designated pursuant to subsection (a) is each of the following:

''(A) The Senior Military Advisor for Cyber Policy to the Under Secretary of Defense for Policy.

''(B) The Deputy Principal Cyber Advisor to the Secretary of Defense.

''(2) DIRECTION AND CONTROL AND REPORTING.—In carrying out duties under this section, the officer designed [sic, probably should be ''designated''] pursuant to subsection (a) shall be subject to the authority, direction, and control of, and shall report directly to, the following:

''(A) The Under Secretary with respect to Senior Military Advisor for Cyber Policy duties.

''(B) The Principal Cyber Advisor with respect to Deputy Principal Cyber Advisor duties.

''(c) DUTIES.—

''(1) DUTIES AS SENIOR MILITARY ADVISOR FOR CYBER POLICY.—The duties of the officer designated pursuant to subsection (a) as Senior Military Advisor for Cyber Policy are as follows:

''(A) To serve as the principal uniformed military advisor on military cyber forces and activities to the Under Secretary of Defense for Policy.

''(B) To assess and advise the Under Secretary on aspects of policy relating to military cyberspace operations, resources, personnel, cyber force readiness, cyber workforce development, and defense of Department of Defense networks.

''(C) To advocate, in consultation with the Joint Staff, and senior officers of the Armed Forces and the combatant commands, for consideration of military issues within the Office of the Under Secretary of Defense for Policy, including coordination and synchronization of Department cyber forces and activities.

''(D) To maintain open lines of communication between the Chief Information Officer of the Department of Defense, senior civilian leaders within the Office of the Under Secretary, and senior officers on the Joint Staff, the Armed Forces, and the combatant commands on cyber matters, and to ensure that military leaders are informed on cyber policy decisions.

''(2) DUTIES AS DEPUTY PRINCIPAL CYBER ADVISOR.—The duties of the officer designated pursuant to subsection (a) as Deputy Principal Cyber Advisor are as follows:

''(A) To synchronize, coordinate, and oversee implementation of the Cyber Strategy of the Department of Defense and other relevant policy and planning.

''(B) To advise the Secretary of Defense on cyber programs, projects, and activities of the Department, including with respect to policy, training, resources, personnel, manpower, and acquisitions and technology.

''(C) To oversee implementation of Department policy and operational directives on cyber programs, projects, and activities, including with respect to resources, personnel, manpower, and acquisitions and technology.

''(D) To assist in the overall supervision of Department cyber activities relating to offensive missions.

''(E) To assist in the overall supervision of Department defensive cyber operations, including activities of component-level cybersecurity service providers and the integration of such activities with activities of the Cyber Mission Force.

''(F) To advise senior leadership of the Department on, and advocate for, investment in capabilities to execute Department missions in and through cyberspace.

''(G) To identify shortfalls in capabilities to conduct Department missions in and through cyberspace, and make recommendations on addressing such shortfalls in the Program Budget Review process.

''(H) To coordinate and consult with stakeholders in the cyberspace domain across the Department in order to identify other issues on cyberspace for the attention of senior leadership of the Department.

''(I) On behalf of the Principal Cyber Advisor, to lead the cross-functional team established pursuant to 932(c)(3) of the National Defense Authorization Act for Fiscal Year 2014 [Pub. L. 113–66] (10 U.S.C. 2224 note) in order to synchronize and coordinate military and civilian cyber forces and activities of the Department.''

CYBER GOVERNANCE STRUCTURES AND PRINCIPAL CYBER ADVISORS ON MILITARY CYBER FORCE MATTERS

Pub. L. 116–92, div. A, title XVI, § 1657, Dec. 20, 2019, 133 Stat. 1767, provided that:

''(a) DESIGNATION.—

''(1) IN GENERAL.—Not later than 270 days after the date of the enactment of this Act [Dec. 20, 2019], each of the secretaries of the military departments, in consultation with the service chiefs, shall appoint an independent Principal Cyber Advisor for each service to act as the principal advisor to the relevant secretary on all cyber matters affecting that military service.

''(2) NATURE OF POSITION.—Each Principal Cyber Advisor position under paragraph (1) shall—

''(A) be a senior civilian leadership position, filled by a senior member of the Senior Executive Service, not lower than the equivalent of a 3-star general officer, or by exception a comparable military officer with extensive cyber experience;

''(B) exclusively occupy the Principal Cyber Advisor position and not assume any other position or responsibility in the relevant military department;

''(C) be independent of the relevant service's chief information officer; and

''(D) report directly to and advise the secretary of the relevant military department and advise the relevant service's senior uniformed officer.

''(3) NOTIFICATION.—Each of the secretaries of the military departments shall notify the Committees on Armed Services of the Senate and House of Representatives of his or her Principal Cyber Advisor appointment. In the case that the appointee is a military officer, the notification shall include a justification for the selection and an explanation of the appointee's ability to execute the responsibilities of the Principal Cyber Advisor.

''(b) RESPONSIBILITIES OF PRINCIPAL CYBER ADVISORS.—Each Principal Cyber Advisor under subsection (a) shall be responsible for advising both the secretary of the relevant military department and the senior uniformed military officer of the relevant military service and implementing the Department of Defense Cyber Strategy within the service by coordinating and overseeing the execution of the service's policies and programs relevant to the following:

''(1) The recruitment, resourcing, and training of military cyberspace operations forces, assessment of these forces against standardized readiness metrics, and maintenance of these forces at standardized readiness levels.

''(2) Acquisition of offensive, defensive, and Department of Defense Information Networks cyber capabilities for military cyberspace operations.

''(3) Cybersecurity management and operations.

''(4) Acquisition of cybersecurity tools and capabilities, including those used by cybersecurity service providers.

''(5) Evaluating, improving, and enforcing a culture of cybersecurity warfighting and accountability for cybersecurity and cyberspace operations.

''(6) Cybersecurity and related supply chain risk management of the industrial base.

''(7) Cybersecurity of Department of Defense information systems, information technology services, and weapon systems, including the incorporation of cybersecurity threat information as part of secure development processes, cybersecurity testing, and the mitigation of cybersecurity risks.

''(c) COORDINATION.—To ensure service compliance with the Department of Defense Cyber Strategy, each Principal Cyber Advisor under subsection (a) shall work in close coordination with the following:

''(1) Service chief information officers.

''(2) Service cyber component commanders.

''(3) Principal Cyber Advisor to the Secretary of Defense.

''(4) Department of Defense Chief Information Officer.

''(5) Defense Digital Service.

''(d) BUDGET CERTIFICATION AUTHORITY.—

''(1) IN GENERAL.—Each of the secretaries of the military departments shall require service components with responsibilities associated with cyberspace operations forces, offensive or defensive cyberspace operations and capabilities, and cyberspace issues relevant to the duties specified in subsection (b) to transmit the proposed budget for such responsibilities for a fiscal year and for the period covered by the future-years defense program submitted to Congress under section 221 of title 10, United States Code, for that fiscal year to the relevant service's Principal Cyber Advisor for review under subparagraph (B) before submitting the proposed budget to the department's comptroller.

''(2) REVIEW.—Each Principal Cyber Advisor under subsection (a)(1) shall review each proposed budget transmitted under paragraph (1) and submit to the secretary of the relevant military department a report containing the comments of the Principal Cyber Advisor with respect to all such proposed budgets, together with the certification of the Principal Cyber Advisor regarding whether each proposed budget is adequate.

''(3) REPORT.—Not later than March 31 of each year, each of the secretaries of the military departments shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report specifying each proposed budget for the subsequent fiscal year contained in the most-recent report submitted under paragraph (2) that the Principal Cyber Advisor did not certify to be adequate. The report of the secretary shall include a discussion of the actions that the secretary took or proposes to take, together with any additional comments that the Secretary considers appropriate regarding the adequacy or inadequacy of the proposed budgets.

''(e) PRINCIPAL CYBER ADVISORS' BRIEFING TO CONGRESS.—Not later than February 1, 2021, and biannually thereafter, each Principal Cyber Advisor under subsection (a) shall brief the Committees on Armed Services of the Senate and House of Representatives on that Advisor's activities and ability to perform the functions specified in subsection (b).

''(f) REVIEW OF CURRENT RESPONSIBILITIES.—

''(1) IN GENERAL.—Not later than January 1, 2021, each of the secretaries of the military departments shall review the relevant military department's current governance model for cybersecurity with respect to current authorities and responsibilities.

''(2) ELEMENTS.—Each review under paragraph (1) shall include the following:

''(A) An assessment of whether additional changes beyond the appointment of a Principal Cyber Advisor pursuant to subsection (a) are required.

''(B) Consideration of whether the current governance structure and assignment of authorities—

''(i) enable effective governance;

''(ii) enable effective Chief Information Officer and Chief Information Security Officer action;

''(iii) are adequately consolidated so that the authority and responsibility for cybersecurity risk management are clear and at an appropriate level of seniority;

''(iv) provide authority to a single individual to certify compliance of Department of Defense information systems and information technology services with all current cybersecurity standards; and

''(v) support efficient coordination across the military services, the Office of the Secretary of Defense, the Defense Information Systems Agency, and United States Cyber Command.

''(3) BRIEFING.—Not later than October 1, 2020, each of the secretaries of the military departments shall brief the Committees on Armed Services of the Senate and House of Representatives on the findings of

the Secretary with respect to the review conducted by the Secretary pursuant to paragraph (1).''

CONSORTIA OF UNIVERSITIES TO ADVISE SECRETARY OF DEFENSE ON CYBERSECURITY MATTERS

Pub. L. 116–92, div. A, title XVI, § 1659, Dec. 20, 2019, 133 Stat. 1770, provided that:

''(a) ESTABLISHMENT AND FUNCTION.—The Secretary of Defense shall establish one or more consortia of universities to assist the Secretary on cybersecurity matters relating to the following:

''(1) To provide the Secretary a formal mechanism to communicate with consortium or consortia members regarding the Department of Defense's cybersecurity strategic plans, cybersecurity requirements, and priorities for basic and applied cybersecurity research.

''(2) To advise the Secretary on the needs of academic institutions related to cybersecurity and research conducted on behalf of the Department and provide feedback to the Secretary from members of the consortium or consortia.

''(3) To serve as a focal point or focal points for the Secretary and the Department for the academic community on matters related to cybersecurity, cybersecurity research, conceptual and academic developments in cybersecurity, and opportunities for closer collaboration between academia and the Department.

''(4) To provide to the Secretary access to the expertise of the institutions of the consortium or consortia on matters relating to cybersecurity.

''(5) To align the efforts of such members in support of the Department.

''(b) MEMBERSHIP.—The consortium or consortia established under subsection (a) shall be open to all universities that have been designated as centers of academic excellence by the Director of the National Security Agency or the Secretary of Homeland Security.

''(c) ORGANIZATION.—

''(1) DESIGNATION OF ADMINISTRATIVE CHAIR AND TERMS.—For each consortium established under subsection (a), the Secretary of Defense, based on recommendations from the members of the consortium, shall designate one member of the consortium to function as an administrative chair of the consortium for a term with a specific duration specified by the Secretary.

''(2) SUBSEQUENT TERMS.—No member of a consortium designated under paragraph (1) may serve as the administrative chair of that consortium for two consecutive terms.

''(3) DUTIES OF ADMINISTRATIVE CHAIR.—Each administrative chair designated under paragraph (1) for a consortium shall—

''(A) act as the leader of the consortium for the term specified by the Secretary under paragraph (1);

''(B) be the liaison between the consortium and the Secretary;

''(C) distribute requests from the Secretary for advice and assistance to appropriate members of the consortium and coordinate responses back to the Secretary; and

''(D) act as a clearinghouse for Department of Defense requests relating to assistance on matters relating to cybersecurity and to provide feedback to the Secretary from members of the consortium.

''(4) EXECUTIVE COMMITTEE.—For each consortium, the Secretary, in consultation with the administrative chair, may form an executive committee comprised of university representatives to assist the chair with the management and functions of the consortia. Executive committee institutions may not serve consecutive terms before all other consortium institutions have been afforded the opportunity to hold the position.

''(d) CONSULTATION.—The Secretary, or a senior level designee, shall meet with each consortium not less frequently than twice per year, or at a periodicity agreed to between the Department and each such consortium.

''(e) PROCEDURES.—The Secretary shall establish procedures for organizations within the Department to access the work product produced by and the research, capabilities, and expertise of a consortium established under subsection (a) and the universities that constitute such consortium.''

ISSUANCE OF PROCEDURES

Pub. L. 113–291, div. A, title XVI, § 1632(b), Dec. 19, 2014, 128 Stat. 3640, provided that: ''The Secretary shall establish the procedures required by subsection (b) of section 391 of title 10, United States Code, as added by subsection (a) of this section, not later than 90 days after the date of the enactment of this Act [Dec. 19, 2014].''

ASSESSMENT OF DEPARTMENT POLICIES

Pub. L. 113–291, div. A, title XVI, § 1632(c), Dec. 19, 2014, 128 Stat. 3640, provided that:

''(1) IN GENERAL.—Not later than 90 days after the date of the enactment of the Act [Dec. 19, 2014], the Secretary of Defense shall complete an assessment of—

''(A) requirements that were in effect on the day before the date of the enactment of this Act for contractors to share information with Department components regarding cyber incidents (as defined in subsection (d) [now (e)] of such section 391 [10 U.S.C. 391(e)]) with respect to networks or information systems of contractors; and

''(B) Department policies and systems for sharing information on cyber incidents with respect to networks or information systems of Department contractors.

''(2) ACTIONS FOLLOWING ASSESSMENT.—Upon completion of the assessment required by paragraph (1), the Secretary shall—

''(A) designate a Department component under subsection (a) of such section 391; and

''(B) issue or revise guidance applicable to Department components that ensures the rapid sharing by the component designated pursuant to such section 391 or section 941 of the National Defense Authorization Act for Fiscal Year 2013 [Pub. L. 112–239] (10 U.S.C. 2224 note) of information relating to cyber incidents with respect to networks or information systems of contractors with other appropriate Department components.''

§ 392. Executive agents for cyber test and training ranges

(a) EXECUTIVE AGENT.—The Secretary of Defense, in consultation with the Principal Cyber Advisor, shall—

(1) designate a senior official from among the personnel of the Department of Defense to act as the executive agent for cyber and information technology test ranges; and

(2) designate a senior official from among the personnel of the Department of Defense to act as the executive agent for cyber and information technology training ranges.

(b) ROLES, RESPONSIBILITIES, AND AUTHORITIES.—

(1) ESTABLISHMENT.—The Secretary of Defense shall prescribe the roles, responsibilities, and authorities of the executive agents designated under subsection (a). Such roles, responsibilities, and authorities shall include the development of a biennial integrated plan for cyber and information technology test and training resources.

(2) BIENNIAL INTEGRATED PLAN.—The biennial integrated plan required under paragraph (1) shall include plans for the following:

(A) Developing and maintaining a comprehensive list of cyber and information

technology ranges, test facilities, test beds, and other means of testing, training, and developing software, personnel, and tools for accommodating the mission of the Department. Such list shall include resources from both governmental and nongovernmental entities.

(B) Organizing and managing designated cyber and information technology test ranges, including—

(i) establishing the priorities for cyber and information technology ranges to meet Department objectives;

(ii) enforcing standards to meet requirements specified by the United States Cyber Command, the training community, and the research, development, testing, and evaluation community;

(iii) identifying and offering guidance on the opportunities for integration amongst the designated cyber and information technology ranges regarding test, training, and development functions;

(iv) finding opportunities for cost reduction, integration, and coordination improvements for the appropriate cyber and information technology ranges;

(v) adding or consolidating cyber and information technology ranges in the future to better meet the evolving needs of the cyber strategy and resource requirements of the Department;

(vi) finding opportunities to continuously enhance the quality and technical expertise of the cyber and information technology test workforce through training and personnel policies; and

(vii) coordinating with interagency and industry partners on cyber and information technology range issues.

(C) Defining a cyber range architecture that—

(i) may add or consolidate cyber and information technology ranges in the future to better meet the evolving needs of the cyber strategy and resource requirements of the Department;

(ii) coordinates with interagency and industry partners on cyber and information technology range issues;

(iii) allows for integrated closed loop testing in a secure environment of cyber and electronic warfare capabilities;

(iv) supports science and technology development, experimentation, testing and training; and

(v) provides for interconnection with other existing cyber ranges and other kinetic range facilities in a distributed manner.

(D) Certifying all cyber range investments of the Department of Defense.

(E) Performing such other assessments or analyses as the Secretary considers appropriate.

(3) STANDARD FOR CYBER EVENT DATA.—The executive agents designated under subsection (a), in consultation with the Chief Information Officer of the Department of Defense, shall jointly select a standard language from open-source candidates for representing and communicating cyber event and threat data. Such language shall be machine-readable for the Joint Information Environment and associated test and training ranges.

(c) SUPPORT WITHIN DEPARTMENT OF DEFENSE.—The Secretary of Defense shall ensure that the military departments, Defense Agencies, and other components of the Department of Defense provide the executive agents designated under subsection (a) with the appropriate support and resources needed to perform the roles, responsibilities, and authorities of the executive agents.

(d) COMPLIANCE WITH EXISTING DIRECTIVE.—The Secretary shall carry out this section in compliance with Directive 5101.1.

(e) DEFINITIONS.—In this section:

(1) The term ''designated cyber and information technology range'' includes the National Cyber Range, the Joint Information Operations Range, the Defense Information Assurance Range, and the C4 Assessments Division of J6 of the Joint Staff.

(2) The term ''Directive 5101.1'' means Department of Defense Directive 5101.1, or any successor directive relating to the responsibilities of an executive agent of the Department of Defense.

(3) The term ''executive agent'' has the meaning given the term ''DoD Executive Agent'' in Directive 5101.1.

(Added Pub. L. 113–291, div. A, title XVI, § 1633(a), Dec. 19, 2014, 128 Stat. 3641.)

DESIGNATION AND ROLES AND RESPONSIBILITIES; SELECTION OF STANDARD LANGUAGE

Pub. L. 113–291, div. A, title XVI, § 1633(b), (c), Dec. 19, 2014, 128 Stat. 3642, provided that:

''(b) DESIGNATION AND ROLES AND RESPONSIBILITIES.—The Secretary of Defense shall—

''(1) not later than 120 days after the date of the enactment of this Act [Dec. 19, 2014], designate the executive agents required under subsection (a) of section 392 of title 10, United States Code, as added by subsection (a) of this section; and

''(2) not later than one year after the date of the enactment of this Act, prescribe the roles, responsibilities, and authorities required under subsection (b) of such section 392.

''(c) SELECTION OF STANDARD LANGUAGE.—Not later than June 1, 2015, the executive agents designated under subsection (a) of section 392 of title 10, United States Code, as added by subsection (a) of this section, shall select the standard language under subsection (b)(3) of such section 392.''

§ 393. Reporting on penetrations of networks and information systems of certain contractors

(a) PROCEDURES FOR REPORTING PENETRATIONS.—The Secretary of Defense shall establish procedures that require each cleared defense contractor to report to a component of the Department of Defense designated by the Secretary for purposes of such procedures when a network or information system of such contractor that meets the criteria established pursuant to subsection (b) is successfully penetrated.

(b) NETWORKS AND INFORMATION SYSTEMS SUBJECT TO REPORTING.—

(1) CRITERIA.—The Secretary of Defense shall designate a senior official to, in consultation

with the officials specified in paragraph (2), establish criteria for covered networks to be subject to the procedures for reporting system penetrations under subsection (a).

(2) OFFICIALS.—The officials specified in this subsection are the following:

(A) The Under Secretary of Defense for Policy.

(B) The Under Secretary of Defense for Acquisition and Sustainment.

(C) the Under Secretary of Defense for Research and Engineering.

(D) The Under Secretary of Defense for Intelligence and Security [1]

(E) The Chief Information Officer of the Department of Defense.

(F) The Commander of the United States Cyber Command.

(c) PROCEDURE REQUIREMENTS.—

(1) RAPID REPORTING.—The procedures established pursuant to subsection (a) shall require each cleared defense contractor to rapidly report to a component of the Department of Defense designated pursuant to subsection (a) of each successful penetration of the network or information systems of such contractor that meet the criteria established pursuant to subsection (b). Each such report shall include the following:

(A) A description of the technique or method used in such penetration.

(B) A sample of the malicious software, if discovered and isolated by the contractor, involved in such penetration.

(C) A summary of information created by or for the Department in connection with any Department program that has been potentially compromised due to such penetration.

(2) ACCESS TO EQUIPMENT AND INFORMATION BY DEPARTMENT OF DEFENSE PERSONNEL.—The procedures established pursuant to subsection (a) shall—

(A) include mechanisms for Department of Defense personnel to, upon request, obtain access to equipment or information of a cleared defense contractor necessary to conduct forensic analysis in addition to any analysis conducted by such contractor;

(B) provide that a cleared defense contractor is only required to provide access to equipment or information as described in subparagraph (A) to determine whether information created by or for the Department in connection with any Department program was successfully exfiltrated from a network or information system of such contractor and, if so, what information was exfiltrated; and

(C) provide for the reasonable protection of trade secrets, commercial or financial information, and information that can be used to identify a specific person.

(3) DISSEMINATION OF INFORMATION.—The procedures established pursuant to subsection (a) shall limit the dissemination of information obtained or derived through such procedures to entities—

(A) with missions that may be affected by such information;

(B) that may be called upon to assist in the diagnosis, detection, or mitigation of cyber incidents;

(C) that conduct counterintelligence or law enforcement investigations; or

(D) for national security purposes, including cyber situational awareness and defense purposes.

(d) PROTECTION FROM LIABILITY OF CLEARED DEFENSE CONTRACTORS.—(1) No cause of action shall lie or be maintained in any court against any cleared defense contractor, and such action shall be promptly dismissed, for compliance with this section that is conducted in accordance with the procedures established pursuant to subsection (a).

(2)(A) Nothing in this section shall be construed—

(i) to require dismissal of a cause of action against a cleared defense contractor that has engaged in willful misconduct in the course of complying with the procedures established pursuant to subsection (a); or

(ii) to undermine or limit the availability of otherwise applicable common law or statutory defenses.

(B) In any action claiming that paragraph (1) does not apply due to willful misconduct described in subparagraph (A), the plaintiff shall have the burden of proving by clear and convincing evidence the willful misconduct by each cleared defense contractor subject to such claim and that such willful misconduct proximately caused injury to the plaintiff.

(C) In this subsection, the term ''willful misconduct'' means an act or omission that is taken—

(i) intentionally to achieve a wrongful purpose;

(ii) knowingly without legal or factual justification; and

(iii) in disregard of a known or obvious risk that is so great as to make it highly probable that the harm will outweigh the benefit.

(e) DEFINITIONS.—In this section:

(1) CLEARED DEFENSE CONTRACTOR.—The term ''cleared defense contractor'' means a private entity granted clearance by the Department of Defense to access, receive, or store classified information for the purpose of bidding for a contract or conducting activities in support of any program of the Department of Defense.

(2) COVERED NETWORK.—The term ''covered network'' means a network or information system of a cleared defense contractor that contains or processes information created by or for the Department of Defense with respect to which such contractor is required to apply enhanced protection.

(Added and amended Pub. L. 114–92, div. A, title XVI, § 1641(a), Nov. 25, 2015, 129 Stat. 1114; Pub. L. 116–92, div. A, title IX, § 902(8), title XVI, § 1621(e)(1)(A)(vi), Dec. 20, 2019, 133 Stat. 1543, 1733; Pub. L. 116–283, div. A, title X, § 1081(a)(15), Jan. 1, 2021, 134 Stat. 3871.)

CODIFICATION

Section, as added and amended by Pub. L. 114–92, is based on Pub. L. 112–239, div. A, title IX, § 941, Jan. 2,

[1] So in original. Probably should be followed by a period.

2013, 126 Stat. 1889, which was formerly set out as a note under section 2224 of this title before being transferred to this chapter and renumbered as this section.

AMENDMENTS

2021—Subsec. (b)(2)(D). Pub. L. 116–283 substituted "of Defense for Intelligence and Security" for "of Defense for Intelligence."

2019—Subsec. (b)(2)(B). Pub. L. 116–92, § 902(8)(A), substituted "Under Secretary of Defense for Acquisition and Sustainment" for "Under Secretary of Defense for Acquisition, Technology, and Logistics".

Subsec. (b)(2)(C). Pub. L. 116–92, § 1621(e)(1)(A)(vi), which directed amendment of subpar. (C) by substituting "Under Secretary of Defense for Intelligence and Security" for "Under Secretary of Defense for Intelligence", could not be executed because the words "Under Secretary of Defense for Intelligence" did not appear. Similar amendment was subsequently directed to subpar. (D) by Pub. L. 116–283, see 2021 Amendment note above.

Pub. L. 116–92, § 902(8)(B), added subpar. (C). Former subpar. (C) redesignated (D).

Pub. L. 116–92, § 902(8)(C), redesignated subpar. (C) as (D). Former subpar. (D) redesignated (E).

Subsec. (b)(2)(E), (F). Pub. L. 116–92, § 902(8)(C), redesignated subpars. (D) and (E) as (E) and (F), respectively.

2015—Pub. L. 114–92, § 1641(a)(1), substituted "Reporting on penetrations of networks and information systems of certain contractors" for "Reports to Department of Defense on penetrations of networks and information systems of certain contractors" in section catchline.

Pub. L. 114–92, § 1641(a), transferred section 941 of Pub. L. 112–239 to this chapter and renumbered it as this section. See Codification note above.

Subsec. (c)(3). Pub. L. 114–92, § 1641(a)(2), added par. (3) and struck out former par. (3). Prior to amendment, text read as follows: "The procedures established pursuant to subsection (a) shall prohibit the dissemination outside the Department of Defense of information obtained or derived through such procedures that is not created by or for the Department except with the approval of the contractor providing such information."

Subsec. (d). Pub. L. 114–92, § 1641(a)(3), added subsec. (d) and struck out former subsec. (d). Prior to amendment, text read as follows:

"(1) IN GENERAL.—Not later than 90 days after the date of the enactment of this Act—

"(A) the Secretary of Defense shall establish the procedures required under subsection (a); and

"(B) the senior official designated under subsection (b)(1) shall establish the criteria required under such subsection.

"(2) APPLICABILITY DATE.—The requirements of this section shall apply on the date on which the Secretary of Defense establishes the procedures required under this section."

§ 394. Authorities concerning military cyber operations

(a) IN GENERAL.—The Secretary of Defense shall develop, prepare, and coordinate; make ready all armed forces for purposes of; and, when appropriately authorized to do so, conduct, military cyber activities or operations in cyberspace, including clandestine military activities or operations in cyberspace, to defend the United States and its allies, including in response to malicious cyber activity carried out against the United States or a United States person by a foreign power.

(b) AFFIRMATION OF AUTHORITY.—Congress affirms that the activities or operations referred to in subsection (a), when appropriately authorized, include the conduct of military activities or operations in cyberspace short of hostilities (as such term is used in the War Powers Resolution (Public Law 93–148; 50 U.S.C. 1541 et seq.)) or in areas in which hostilities are not occurring, including for the purpose of preparation of the environment, information operations, force protection, and deterrence of hostilities, or counterterrorism operations involving the Armed Forces of the United States.

(c) CLANDESTINE ACTIVITIES OR OPERATIONS.—A clandestine military activity or operation in cyberspace shall be considered a traditional military activity for the purposes of section 503(e)(2) of the National Security Act of 1947 (50 U.S.C. 3093(e)(2)).

(d) CONGRESSIONAL OVERSIGHT.—The Secretary shall brief the congressional defense committees about any military activities or operations in cyberspace, including clandestine military activities or operations in cyberspace, occurring during the previous quarter during the quarterly briefing required by section 484 of this title.

(e) RULE OF CONSTRUCTION.—Nothing in this section may be construed to limit the authority of the Secretary to conduct military activities or operations in cyberspace, including clandestine military activities or operations in cyberspace, to authorize specific military activities or operations, or to alter or otherwise affect the War Powers Resolution (50 U.S.C. 1541 et seq.), the Authorization for Use of Military Force (Public Law 107–40; 50 U.S.C. 1541 note), or reporting of sensitive military cyber activities or operations required by section 395 of this title.

(f) DEFINITIONS.—In this section:

(1) The term "clandestine military activity or operation in cyberspace" means a military activity or military operation carried out in cyberspace, or associated preparatory actions, authorized by the President or the Secretary that—

(A) is marked by, held in, or conducted with secrecy, where the intent is that the activity or operation will not be apparent or acknowledged publicly; and

(B) is to be carried out—

(i) as part of a military operation plan approved by the President or the Secretary in anticipation of hostilities or as directed by the President or the Secretary;

(ii) to deter, safeguard, or defend against attacks or malicious cyber activities against the United States or Department of Defense information, networks, systems, installations, facilities, or other assets; or

(iii) in support of information related capabilities.

(2) The term "foreign power" has the meaning given such term in section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801).

(3) The term "United States person" has the meaning given such term in such section.

(Added Pub. L. 114–92, div. A, title XVI, § 1642(a), Nov. 25, 2015, 129 Stat. 1116, § 130g; renumbered § 394 and amended Pub. L. 115–232, div. A, title XVI, §§ 1631(a), 1632, Aug. 13, 2018, 132 Stat. 2123.)

REFERENCES IN TEXT

The War Powers Resolution, referred to in subsecs. (b) and (e), is Pub. L. 93–148, Nov. 7, 1973, 87 Stat. 555,

which is classified generally to chapter 33 (§ 1541 et seq.) of Title 50, War and National Defense. For complete classification of this Resolution to the Code, see Short Title note set out under section 1541 of Title 50 and Tables.

The Authorization for Use of Military Force, referred to in subsec. (e), is Pub. L. 107–40, Sept. 18, 2001, 115 Stat. 224, which is set out as a note under section 1541 of Title 50, War and National Defense.

AMENDMENTS

2018—Pub. L. 115–232, § 1632, designated existing provisions as subsec. (a), inserted heading, substituted ''conduct, military cyber activities or operations in cyberspace, including clandestine military activities or operations in cyberspace, to defend the United States and its allies, including in response'' for ''conduct, a military cyber operation in response'', struck out ''(as such terms are defined in section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801))'' after ''foreign power'', and added subsecs. (b) to (f).

Pub. L. 115–232, § 1631(a), renumbered section 130g of this title as this section.

FRAMEWORK FOR CYBER HUNT FORWARD OPERATIONS

Pub. L. 116–283, div. A, title XVII, § 1720, Jan. 1, 2021, 134 Stat. 4107, provided that:

''(a) FRAMEWORK REQUIRED.—Not later than April 1, 2021, the Secretary of Defense shall develop a standard, comprehensive framework to enhance the consistency, execution, and effectiveness of cyber hunt forward operations.

''(b) ELEMENTS.—The framework developed pursuant to subsection (a) shall include the following:

''(1) Identification of the selection criteria for proposed cyber hunt forward operations, including specification of necessary thresholds for the justification of operations and thresholds for partner cooperation.

''(2) The roles and responsibilities of the following organizations in the support of the planning and execution of cyber hunt forward operations:

''(A) United States Cyber Command.

''(B) Service cyber components.

''(C) The Office of the Under Secretary of Defense for Policy.

''(D) Geographic combatant commands.

''(E) Cyber Operations-Integrated Planning Elements and Joint Cyber Centers.

''(F) Embassies and consulates of the United States.

''(3) Pre-deployment planning guidelines to maximize the operational success of each unique operation, including guidance that takes into account the highly variable nature of the following aspects at the tactical level:

''(A) Team composition, including necessary skillsets [sic], recommended training, and guidelines on team size and structure.

''(B) Relevant factors to determine mission duration in a country of interest.

''(C) Agreements with partner countries required pre-deployment.

''(D) Criteria for potential follow-on operations.

''(E) Equipment and infrastructure required to support the missions.

''(4) Metrics to measure the effectiveness of each operation, including means to evaluate the value of discovered malware and infrastructure, the effect on the adversary, and the potential for future engagements with the partner country.

''(5) Roles and responsibilities for United States Cyber Command and the National Security Agency in the analysis of relevant mission data.

''(6) A detailed description of counterintelligence support for cyber hunt forward operations.

''(7) A standardized force presentation model across service components and combatant commands.

''(8) Review of active and reserve component personnel policies to account for deployment and redeployment operations, including the following:

''(A) Global Force Management.

''(B) Contingency, Exercise, and Deployment orders to be considered for and applied towards deployment credit and benefits.

''(9) Such other matters as the Secretary determines relevant.

''(c) BRIEFING.—

''(1) IN GENERAL.—Not later than May 1, 2021, the Secretary of Defense shall provide to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a briefing on the framework developed pursuant to subsection (a).

''(2) CONTENTS.—The briefing required by paragraph (1) shall include the following:

''(A) An overview of the framework developed pursuant to subsection (a).

''(B) An explanation of the tradeoffs associated with the use of Department of Defense resources for cyber hunt forward missions in the context of competing priorities.

''(C) Such recommendations as the Secretary may have for legislative action to improve the effectiveness of cyber hunt forward missions.''

TAILORED CYBERSPACE OPERATIONS ORGANIZATIONS

Pub. L. 116–283, div. A, title XVII, § 1723, Jan. 1, 2021, 134 Stat. 4110, provided that:

''(a) STUDY.—

''(1) IN GENERAL.—Not later than 120 days after the date of the enactment of this Act [Jan. 1, 2021], the Secretary of the Navy and the Chief of Naval Operations, in consultation with the Commander of United States Cyber Command, shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a study of the Navy Cyber Warfare Development Group (NCWDG).

''(2) ELEMENTS.—The study required under paragraph (1) shall include the following:

''(A) An examination of NCWDG's structure, manning, authorities, funding, and operations.

''(B) A review of organizational relationships—

''(i) within the Navy; and

''(ii) to other Department of Defense organizations, as well as non-Department of Defense organizations.

''(C) Recommendations for how the NCWDG can be strengthened and improved, without growth in size.

''(D) Such other information as determined necessary or appropriate by the Secretary of the Navy.

''(3) RELEASE.—

''(A) TO CONGRESS.—Not later than 7 days after completion of the study required under paragraph (1), the Secretary of the Navy shall brief the congressional defense committees on the findings of the study.

''(B) TO SERVICE SERVICES.— The Secretary of the Navy shall transmit to the secretaries of the military services and the Assistant Secretary of Defense for Special Operations and Irregular Warfare the study required under paragraph (1).

''(b) DESIGNATION.—Notwithstanding any other provision of law, the Secretary of the Navy shall designate the NCWDG as a screened command.

''(c) AUTHORITY TO REPLICATE.—After review of the study required under subsection (a) and consulting the Commander of United States Cyber Command in accordance with procedures established by the Secretary of Defense, the secretaries of the military services may establish tailored cyberspace operations organizations of comparable size to NCWDG within the military service, respectively, of each such secretary. Such counterpart organizations shall have the same authorities as the NCWDG. On behalf of United States Special Operations Command, the Assistant Secretary of Defense for Special Operations and Irregular Warfare may authorize a tailored cyberspace operations organization within United States Special Operations Command of similar size and equivalent authorities as NCWDG.

''(d) BRIEFING TO CONGRESS.—Not later than 180 days after the date of the enactment of this Act, the secretaries of the military services and the Assistant Secretary of Defense for Special Operations and Irregular Warfare shall brief the congressional defense committees on—

''(1) the utilization of the authority provided pursuant to subsection (c); and

''(2) if appropriate based on such utilization, details on how the military service, respectively, of each such secretary intends to establish tailored cyberspace operations organizations.''

NOTIFICATION OF DELEGATION OF AUTHORITIES TO THE SECRETARY OF DEFENSE FOR MILITARY OPERATIONS IN CYBERSPACE

Pub. L. 116–92, div. A, title XVI, §1642, Dec. 20, 2019, 133 Stat. 1751, provided that:

''(a) IN GENERAL.—The Secretary of Defense shall provide written notification to the Committee on Armed Services of the House of Representatives and the Committee on Armed Services of the Senate of the following:

''(1) Authorities delegated to the Secretary by the President for military operations in cyberspace that are otherwise held by the National Command Authority, not later than 15 days after any such delegation. A notification under this paragraph shall include a description of the authorities delegated to the Secretary.

''(2) Concepts of operations approved by the Secretary pursuant to delegated authorities described in paragraph (1), not later than 15 days after any such approval. A notification under this paragraph shall include the following:

''(A) A description of authorized activities to be conducted or planned to be conducted pursuant to such authorities.

''(B) The defined military objectives relating to such authorities.

''(C) A list of countries in which such authorities may be exercised.

''(D) A description of relevant orders issued by the Secretary in accordance with such authorities.

''(b) PROCEDURES.—

''(1) IN GENERAL.—The Secretary of Defense shall establish and submit to the Committee on Armed Services of the House of Representatives and the Committee on Armed Services of the Senate procedures for complying with the requirements of subsection (a), consistent with the national security of the United States and the protection of operational integrity. The Secretary shall promptly notify such committees in writing of any changes to such procedures at least 14 days prior to the adoption of any such changes.

''(2) SUFFICIENCY.—The Committee on Armed Services of the House of Representatives and the Committee on Armed Services of the Senate shall ensure that committee procedures designed to protect from unauthorized disclosure classified information relating to national security of the United States are sufficient to protect the information that is submitted to such committees pursuant to this section.

''(3) NOTIFICATION IN EVENT OF UNAUTHORIZED DISCLOSURE.—In the event of an unauthorized disclosure of authorities covered by this section, the Secretary of Defense shall ensure, to the maximum extent practicable, that the Committee on Armed Services of the House of Representatives and the Committee on Armed Services of the Senate are notified immediately. Notification under this paragraph may be verbal or written, but in the event of a verbal notification, a written notification signed by the Secretary shall be provided by not later than 48 hours after the provision of such verbal notification.''

ANNUAL MILITARY CYBERSPACE OPERATIONS REPORT

Pub. L. 116–92, div. A, title XVI, §1644, Dec. 20, 2019, 133 Stat. 1752, provided that:

''(a) IN GENERAL.—Not later than March 1 of each year, the Secretary of Defense shall provide to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a written report summarizing all named military cyberspace operations conducted in the previous calendar year, including cyber effects, operations, cyber effects enabling operations, and cyber operations conducted as defensive operations. Each such summary should be organized by adversarial country and should include the following for each named operation:

''(1) An identification of the objective and purpose.

''(2) Descriptions of the impacted countries, organizations, or forces, and nature of the impact.

''(3) A description of methodologies used for the cyber effects operation or cyber effects enabling operation.

''(4) An identification of the Cyber Mission Force teams, or other Department of Defense entity or units, that conducted such operation, and supporting teams, entities, or units.

''(5) An identification of the infrastructures on which such operations occurred.

''(6) A description of relevant legal, operational, and funding authorities.

''(7) Additional costs beyond baseline operations and maintenance and personnel costs directly associated with the conduct of the cyber effects operation or cyber effects enabling operation.

''(8) Any other matters the Secretary determines relevant.

''(b) CLASSIFICATION.—The Secretary of Defense shall provide each report required under subsection (a) at a classification level the Secretary determines appropriate.

''(c) LIMITATION.—This section does not apply to cyber-enabled military information support operations or military deception operations.''

POLICY OF THE UNITED STATES ON CYBERSPACE, CYBERSECURITY, CYBER WARFARE, AND CYBER DETERRENCE

Pub. L. 115–232, div. A, title XVI, §1636, Aug. 13, 2018, 132 Stat. 2126, provided that:

''(a) IN GENERAL.—It shall be the policy of the United States, with respect to matters pertaining to cyberspace, cybersecurity, and cyber warfare, that the United States should employ all instruments of national power, including the use of offensive cyber capabilities, to deter if possible, and respond to when necessary, all cyber attacks or other malicious cyber activities of foreign powers that target United States interests with the intent to—

''(1) cause casualties among United States persons or persons of United States allies;

''(2) significantly disrupt the normal functioning of United States democratic society or government (including attacks against critical infrastructure that could damage systems used to provide key services to the public or government);

''(3) threaten the command and control of the Armed Forces, the freedom of maneuver of the Armed Forces, or the industrial base or other infrastructure on which the United States Armed Forces rely to defend United States interests and commitments; or

''(4) achieve an effect, whether individually or in aggregate, comparable to an armed attack or imperil a vital interest of the United States.

''(b) RESPONSE OPTIONS.—In carrying out the policy set forth in subsection (a), the United States shall plan, develop, and, when appropriate, demonstrate response options to address the full range of potential cyber attacks on United States interests that could be conducted by potential adversaries of the United States.

''(c) DENIAL OPTIONS.—In carrying out the policy set forth in subsection (a) through response options developed pursuant to subsection (b), the United States shall, to the greatest extent practicable, prioritize the defensibility and resiliency against cyber attacks and

malicious cyber activities described in subsection (a) of infrastructure critical to the political integrity, economic security, and national security of the United States.

''(d) COST-IMPOSITION OPTIONS.—In carrying out the policy set forth in subsection (a) through response options developed pursuant to subsection (b), the United States shall develop and, when appropriate, demonstrate, or otherwise make known to adversaries the existence of, cyber capabilities to impose costs on any foreign power targeting the United States or United States persons with a cyber attack or malicious cyber activity described in subsection (a).

''(e) MULTI-PRONG RESPONSE.—In carrying out the policy set forth in subsection (a) through response options developed pursuant to subsection (b), the United States shall leverage all instruments of national power.

''(f) UPDATE ON PRESIDENTIAL POLICY.—

''(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act [Aug. 13, 2018], the President shall transmit, in unclassified and classified forms, as appropriate, to the appropriate congressional committees a report containing an update to the report provided to the Congress on the policy of the United States on cyberspace, cybersecurity, and cyber warfare pursuant to section 1633 of the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115–91; 10 U.S.C. 130g note) [now 10 U.S.C. 394 note].

''(2) CONTENTS.—The report required under paragraph (1) shall include the following:

''(A) An assessment of the current posture in cyberspace, including assessments of—

''(i) whether past responses to major cyber attacks have had the desired deterrent effect; and

''(ii) how adversaries have responded to past United States responses.

''(B) Updates on the Administration's efforts in the development of—

''(i) cost imposition strategies;

''(ii) varying levels of cyber incursion and steps taken to date to prepare for the imposition of the consequences referred to in clause (i); and

''(iii) the Cyber Deterrence Initiative.

''(C) Information relating to the Administration's plans, including specific planned actions, regulations, and legislative action required, for—

''(i) advancing technologies in attribution, inherently secure technology, and artificial intelligence society-wide;

''(ii) improving cybersecurity in and cooperation with the private sector;

''(iii) improving international cybersecurity cooperation; and

''(iv) implementing the policy referred to in paragraph (1), including any realignment of government or government responsibilities required, writ large.

''(f) [probably should be ''(g)''] RULE OF CONSTRUCTION.—Nothing in this subsection may be construed to limit the authority of the President or Congress to authorize the use of military force.

''(g) [probably should be ''(h)''] DEFINITIONS.—In this section:

''(1) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term 'appropriate congressional committees' means—

''(A) the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives];

''(B) the Permanent Select Committee on Intelligence of the House of Representatives;

''(C) the Select Committee on Intelligence of the Senate;

''(D) the Committee on Foreign Affairs, the Committee on Homeland Security, and the Committee on the Judiciary of the House of Representatives; and

''(E) the Committee on Foreign Relations, the Committee on Homeland Security and Governmental Affairs, and the Committee on the Judiciary of the Senate.

''(2) FOREIGN POWER.—The term 'foreign power' has the meaning given such term in section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801).''

Pub. L. 115–91, div. A, title XVI, §1633, Dec. 12, 2017, 131 Stat. 1738, provided that:

''(a) IN GENERAL.—The President shall—

''(1) develop a national policy for the United States relating to cyberspace, cybersecurity, and cyber warfare; and

''(2) submit to the appropriate congressional committees a report on the policy.

''(b) ELEMENTS.—The national policy required under subsection (a) shall include the following elements:

''(1) Delineation of the instruments of national power available to deter or respond to cyber attacks or other malicious cyber activities by a foreign power or actor that targets United States interests.

''(2) Available or planned response options to address the full range of potential cyber attacks on United States interests that could be conducted by potential adversaries of the United States.

''(3) Available or planned denial options that prioritize the defensibility and resiliency against cyber attacks and malicious cyber activities that are carried out against infrastructure critical to the political integrity, economic security, and national security of the United States.

''(4) Available or planned cyber capabilities that may be used to impose costs on any foreign power targeting the United States or United States persons with a cyber attack or malicious cyber activity.

''(5) Development of multi-prong response options, such as—

''(A) boosting the cyber resilience of critical United States strike systems (including cyber, nuclear, and non-nuclear systems) in order to ensure the United States can credibly threaten to impose unacceptable costs in response to even the most sophisticated large-scale cyber attack;

''(B) developing offensive cyber capabilities and specific plans and strategies to put at risk targets most valued by adversaries of the United States and their key decision makers; and

''(C) enhancing attribution capabilities and developing intelligence and offensive cyber capabilities to detect, disrupt, and potentially expose malicious cyber activities.

''(c) LIMITATION ON AVAILABILITY OF FUNDS.—

''(1) IN GENERAL.—Of the funds authorized to be appropriated by this Act [see Tables for classification] or otherwise made available for fiscal year 2018 for procurement, research, development, test and evaluation, and operations and maintenance, for the covered activities of the Defense Information Systems Agency, not more than 60 percent may be obligated or expended until the date on which the President submits to the appropriate congressional committees the report under subsection (a)(2).

''(2) COVERED ACTIVITIES DESCRIBED.—The covered activities referred to in paragraph (1) are the activities of the Defense Information Systems Agency in support of—

''(A) the White House Communication Agency; and

''(B) the White House Situation Support Staff.

''(d) DEFINITIONS.—In this section:

''(1) The term 'foreign power' has the meaning given that term in section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801).

''(2) The term 'appropriate congressional committees' means—

''(A) the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives];

''(B) the Committee on Foreign Affairs, the Committee on Homeland Security, and the Committee on the Judiciary of the House of Representatives; and

''(C) the Committee on Foreign Relations, the Committee on Homeland Security and Govern-

mental Affairs, and the Committee on the Judiciary of the Senate.''

ACTIVE DEFENSE AGAINST THE RUSSIAN FEDERATION, PEOPLE'S REPUBLIC OF CHINA, DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA, AND ISLAMIC REPUBLIC OF IRAN ATTACKS IN CYBERSPACE

Pub. L. 115–232, div. A, title XVI, § 1642, Aug. 13, 2018, 132 Stat. 2132, provided that:

''(a) AUTHORITY TO DISRUPT, DEFEAT, AND DETER CYBER ATTACKS.—

''(1) IN GENERAL.—In the event that the National Command Authority determines that the Russian Federation, People's Republic of China, Democratic People's Republic of Korea, or Islamic Republic of Iran is conducting an active, systematic, and ongoing campaign of attacks against the Government or people of the United States in cyberspace, including attempting to influence American elections and democratic political processes, the National Command Authority may authorize the Secretary of Defense, acting through the Commander of the United States Cyber Command, to take appropriate and proportional action in foreign cyberspace to disrupt, defeat, and deter such attacks under the authority and policy of the Secretary of Defense to conduct cyber operations and information operations as traditional military activities.

''(2) NOTIFICATION AND REPORTING.—

''(A) NOTIFICATION OF OPERATIONS.—In exercising the authority provided in paragraph (1), the Secretary shall provide notices to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] in accordance with section 395 of title 10, United States Code (as transferred and redesignated pursuant to section 1631).

''(B) QUARTERLY REPORTS BY COMMANDER OF THE UNITED STATES CYBER COMMAND.—

''(i) IN GENERAL.—In any fiscal year in which the Commander of the United States Cyber Command carries out an action under paragraph (1), the Secretary of Defense shall, not less frequently than quarterly, submit to the congressional defense committees a report on the actions of the Commander under such paragraph in such fiscal year.

''(ii) MANNER OF REPORTING.—Reports submitted under clause (i) shall be submitted in a manner that is consistent with the recurring quarterly report required by section 484 of title 10, United States Code.

''(b) PRIVATE SECTOR COOPERATION.—The Secretary may make arrangements with private sector entities, on a voluntary basis, to share threat information related to malicious cyber actors, and any associated false online personas or compromised infrastructure, associated with a determination under subsection (a)(1), consistent with the protection of sources and methods and classification guidelines, as necessary.

''(c) ANNUAL REPORT.—Not less frequently than once each year, the Secretary shall submit to the congressional defense committees, the congressional intelligence committees (as defined in section 3 of the National Security Act of 1947 (50 U.S.C. 3003)), the Committee on Foreign Affairs of the House of Representatives, and the Committee on Foreign Relations of the Senate a report on—

''(1) the scope and intensity of the information operations and attacks through cyberspace by the countries specified in subsection (a)(1) against the government or people of the United States observed by the cyber mission forces of the United States Cyber Command and the National Security Agency; and

''(2) adjustments of the Department of Defense in the response directed or recommended by the Secretary with respect to such operations and attacks.

''(d) RULE OF CONSTRUCTION.—Nothing in this section may be construed to—

''(1) limit the authority of the Secretary to conduct military activities or operations in cyberspace, including clandestine activities or operations in cyberspace; or

''(2) affect the War Powers Resolution (Public Law 93–148; 50 U.S.C. 1541 et seq.) or the Authorization for Use of Military Force (Public Law 107–40; 50 U.S.C. 1541 note).''

PILOT PROGRAM TO MODEL CYBER ATTACKS ON CRITICAL INFRASTRUCTURE

Pub. L. 115–232, div. A, title XVI, § 1649, Aug. 13, 2018, 132 Stat. 2137, provided that:

''(a) PILOT PROGRAM REQUIRED.—

''(1) IN GENERAL.—The Assistant Secretary of Defense for Homeland Defense and Global Security shall carry out a pilot program to model cyber attacks on critical infrastructure in order to identify and develop means of improving Department of Defense responses to requests for defense support to civil authorities for such attacks.

''(2) RESEARCH EXERCISES.—The pilot program shall source data from and include consideration of the 'Jack Voltaic' research exercises conducted by the Army Cyber Institute, industry partners of the Institute, and the cities of New York, New York, and Houston, Texas.

''(b) PURPOSE.—The purpose of the pilot program shall be to accomplish the following:

''(1) The development and demonstration of risk analysis methodologies, and the application of commercial simulation and modeling capabilities, based on artificial intelligence and hyperscale cloud computing technologies, as applicable—

''(A) to assess defense critical infrastructure vulnerabilities and interdependencies to improve military resiliency;

''(B) to determine the likely effectiveness of attacks described in subsection (a)(1), and countermeasures, tactics, and tools supporting responsive military homeland defense operations;

''(C) to train personnel in incident response;

''(D) to conduct exercises and test scenarios;

''(E) to foster collaboration and learning between and among departments and agencies of the Federal Government, State and local governments, and private entities responsible for critical infrastructure; and

''(F) improve intra-agency and inter-agency coordination for consideration and approval of requests for defense support to civil authorities.

''(2) The development and demonstration of the foundations for establishing and maintaining a program of record for a shared high-fidelity, interactive, affordable, cloud-based modeling and simulation of critical infrastructure systems and incident response capabilities that can simulate complex cyber and physical attacks and disruptions on individual and multiple sectors on national, regional, State, and local scales.

''(c) REPORT.—

''(1) IN GENERAL.—At the same time the budget of the President for fiscal year 2021 is submitted to Congress pursuant to section 1105(a) of title 31, United States Code, the Assistant Secretary shall, in consultation with the Secretary of Homeland Security, submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the pilot program.

''(2) CONTENTS.—The report required by paragraph (1) shall include the following:

''(A) A description of the results of the pilot program as of the date of the report.

''(B) A description of the risk analysis methodologies and modeling and simulation capabilities developed and demonstrated pursuant to the pilot program, and an assessment of the potential for future growth of commercial technology in support of the homeland defense mission of the Department of Defense.

''(C) Such recommendations as the Secretary considers appropriate regarding the establishment of a

program of record for the Department on further development and sustainment of risk analysis methodologies and advanced, large-scale modeling and simulation on critical infrastructure and cyber warfare.

''(D) Lessons learned from the use of novel risk analysis methodologies and large-scale modeling and simulation carried out under the pilot program regarding vulnerabilities, required capabilities, and reconfigured force structure, coordination practices, and policy.

''(E) Planned steps for implementing the lessons described in subparagraph (D).

''(F) Any other matters the Secretary determines appropriate.''

IDENTIFICATION OF COUNTRIES OF CONCERN REGARDING CYBERSECURITY

Pub. L. 115–232, div. A, title XVI, § 1654, Aug. 13, 2018, 132 Stat. 2148, provided that:

''(a) IDENTIFICATION OF COUNTRIES OF CONCERN.—Not later than 180 days after the date of the enactment of this Act [Aug. 13, 2018], the Secretary of Defense shall create a list of countries that pose a risk to the cybersecurity of United States defense and national security systems and infrastructure. Such list shall reflect the level of threat posed by each country included on such list. In creating such list, the Secretary shall take in to account the following:

''(1) A foreign government's activities that pose force protection or cybersecurity risk to the personnel, financial systems, critical infrastructure, or information systems of the United States or coalition forces.

''(2) A foreign government's willingness and record of providing financing, logistics, training or intelligence to other persons, countries or entities posing a force protection or cybersecurity risk to the personnel, financial systems, critical infrastructure, or information systems of the United States or coalition forces.

''(3) A foreign government's engagement in foreign intelligence activities against the United States for the purpose of undermining United States national security.

''(4) A foreign government's knowing participation in transnational organized crime or criminal activity.

''(5) A foreign government's cyber activities and operations to affect the supply chain of the United States Government.

''(6) A foreign government's use of cyber means to unlawfully or inappropriately obtain intellectual property from the United States Government or United States persons.

''(b) UPDATES.—The Secretary shall continuously update and maintain the list under subsection (a) to preempt obsolescence.

''(c) REPORT TO CONGRESS.—Not later than one year after the date of the enactment of this Act, the Secretary shall submit to the appropriate committees of Congress the list created pursuant to subsection (a) and any accompanying analysis that contributed to the creation of the list.''

QUADRENNIAL COMPREHENSIVE CYBER POSTURE REVIEW

Pub. L. 115–91, div. A, title XVI, § 1644, Dec. 12, 2017, 131 Stat. 1748, as amended by Pub. L. 116–92, div. A, title XVI, § 1635, Dec. 20, 2019, 133 Stat. 1748; Pub. L. 116–283, div. A, title XVII, § 1706, Jan. 1, 2021, 134 Stat. 4083, provided that:

''(a) REQUIREMENT FOR COMPREHENSIVE REVIEW.—In order to clarify the near-term policy and strategy of the United States with respect to cyber deterrence, the Secretary of Defense shall, not later than December 31, 2022, and quadrennially thereafter, conduct a comprehensive review of the cyber posture of the United States over the posture review period.

''(b) CONSULTATION.—The Secretary of Defense shall conduct each review under subsection (a) in consultation with the Director of National Intelligence, the Attorney General, the Secretary of Homeland Security, and the Secretary of State, as appropriate.

''(c) ELEMENTS OF REVIEW.—Each review conducted under subsection (a) shall include, for the posture review period, the following elements:

''(1) The assessment and definition of the role of cyber forces in the national defense and military strategies of the United States.

''(2) Review of the following:

''(A) The role of cyber operations in combatant commander warfighting plans.

''(B) The ability of combatant commanders to respond to adversary cyber attacks.

''(C) The international partner cyber capacity-building programs of the Department.

''(3) A review of the law, policies, and authorities relating to, and necessary for, the United States to maintain a safe, reliable, and credible cyber posture for defending against and responding to cyber attacks and for deterrence in cyberspace, including the following:

''(A) An assessment of the need for further delegation of cyber-related authorities, including those germane to information warfare, to the Commander of United States Cyber Command.

''(B) An evaluation of the adequacy of mission authorities for all cyber-related military components, defense agencies, directorates, centers, and commands.

''(4) A review of the need for or for updates to a declaratory policy relating to the responses of the United States to cyber attacks of significant consequence.

''(5) A review of norms for the conduct of offensive cyber operations for deterrence and in crisis and conflict.

''(6) A review of a strategy to deter, degrade, or defeat malicious cyber activity targeting the United States (which may include activities, capability development, and operations other than cyber activities, cyber capability development, and cyber operations), including—

''(A) a review and assessment of various approaches to competition and deterrence in cyberspace, determined in consultation with experts from Government, academia, and industry;

''(B) a comparison of the strengths and weaknesses of the approaches identified pursuant to subparagraph (A) relative to the threat of each other; and

''(C) an assessment as to how the cyber strategy will inform country-specific campaign plans focused on key leadership of Russia, China, Iran, North Korea, and any other country the Secretary considers appropriate.

''(7) Identification of the steps that should be taken to bolster stability in cyberspace and, more broadly, stability between major powers, taking into account—

''(A) the analysis and gaming of escalation dynamics in various scenarios; and

''(B) consideration of the spiral escalatory effects of countries developing increasingly potent offensive cyber capabilities.

''(8) A comprehensive force structure assessment of the Cyber Operations Forces of the Department for the posture review period, including the following:

''(A) A determination of the appropriate size and composition of the Cyber Mission Forces to accomplish the mission requirements of the Department.

''(B) An assessment of the Cyber Mission Forces' personnel, capabilities, equipment, funding, operational concepts, and ability to execute cyber operations in a timely fashion.

''(C) An assessment of the personnel, capabilities, equipment, funding, and operational concepts of Cybersecurity Service Providers and other elements of the Cyber Operations Forces.

''(9) An assessment of whether the Cyber Mission Force has the appropriate level of interoperability,

integration, and interdependence with special operations and conventional forces.

''(10) An evaluation of the adequacy of mission authorities for the Joint Force Provider and Joint Force Trainer responsibilities of United States Cyber Command, including the adequacy of the units designated as Cyber Operations Forces to support such responsibilities.

''(11) An assessment of the missions and resourcing of the combat support agencies in support of cyber missions of the Department.

''(12) An assessment of the potential costs, benefits, and value, if any, of establishing a cyber force as a separate uniformed service.

''(13) Any recurrent problems or capability gaps that remain unaddressed since the previous posture review.

''(14) Such other matters as the Secretary considers appropriate.

''(d) REPORT.—

''(1) IN GENERAL.—The Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the results of each cyber posture review conducted under subsection (a).

''(2) FORM OF REPORT.—Each report under paragraph (1) may be submitted in unclassified form or classified form, as necessary.

''(e) POSTURE REVIEW PERIOD DEFINED.—In this section, the term 'posture review period' means the eight-year period that begins on the date of each review conducted under subsection (a).''

§ 395. Notification requirements for sensitive military cyber operations

(a) IN GENERAL.—Except as provided in subsection (d), the Secretary of Defense shall promptly submit to the congressional defense committees notice in writing of any sensitive military cyber operation conducted under this title no later than 48 hours following such operation.

(b) PROCEDURES.—(1) The Secretary of Defense shall establish and submit to the congressional defense committees procedures for complying with the requirements of subsection (a) consistent with the national security of the United States and the protection of operational integrity. The Secretary shall promptly notify the congressional defense committees in writing of any changes to such procedures at least 14 days prior to the adoption of any such changes.

(2) The congressional defense committees shall ensure that committee procedures designed to protect from unauthorized disclosure classified information relating to national security of the United States are sufficient to protect the information that is submitted to the committees pursuant to this section.

(3) In the event of an unauthorized disclosure of a sensitive military cyber operation covered by this section, the Secretary shall ensure, to the maximum extent practicable, that the congressional defense committees are notified immediately of the sensitive military cyber operation concerned. The notification under this paragraph may be verbal or written, but in the event of a verbal notification a written notification, signed by the Secretary, or the Secretary's designee, shall be provided by not later than 48 hours after the provision of the verbal notification.

(c) SENSITIVE MILITARY CYBER OPERATION DEFINED.—(1) In this section, the term ''sensitive military cyber operation'' means an action described in paragraph (2) that—

(A) is carried out by the armed forces of the United States;

(B) is intended to achieve a cyber effect against a foreign terrorist organization or a country, including its armed forces and the proxy forces of that country located elsewhere—

(i) with which the armed forces of the United States are not involved in hostilities (as that term is used in section 4 of the War Powers Resolution (50 U.S.C. 1543)); or

(ii) with respect to which the involvement of the armed forces of the United States in hostilities has not been acknowledged publicly by the United States; and

(C)(i) is determined to—

(I) have a medium or high collateral effects estimate;

(II) have a medium or high intelligence gain or loss;

(III) have a medium or high probability of political retaliation, as determined by the political military assessment contained within the associated concept of operations;

(IV) have a medium or high probability of detection when detection is not intended; or

(V) result in medium or high collateral effects; or

(ii) is a matter the Secretary determines to be appropriate.

(2) The actions described in this paragraph are the following:

(A) An offensive cyber operation.

(B) A defensive cyber operation.

(d) EXCEPTIONS.—The notification requirement under subsection (a) does not apply—

(1) to a training exercise conducted with the consent of all nations where the intended effects of the exercise will occur; or

(2) to a covert action (as that term is defined in section 503 of the National Security Act of 1947 (50 U.S.C. 3093)).

(e) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to provide any new authority or to alter or otherwise affect the War Powers Resolution (50 U.S.C. 1541 et seq.), the Authorization for Use of Military Force (Public Law 107–40; 50 U.S.C. 1541 note), or any requirement under the National Security Act of 1947 (50 U.S.C. 3001 et seq.).

(Added Pub. L. 115–91, div. A, title XVI, §1631(a), Dec. 12, 2017, 131 Stat. 1736, §130j; renumbered §395 and amended Pub. L. 115–232, div. A, title X, §1081(a)(1), title XVI, §1631(a), Aug. 13, 2018, 132 Stat. 1983, 2123; Pub. L. 116–92, div. A, title XVI, §1632, Dec. 20, 2019, 133 Stat. 1745; Pub. L. 116–283, div. A, title XVII, §1702, Jan. 1, 2021, 134 Stat. 4080.)

REFERENCES IN TEXT

The War Powers Resolution, referred to in subsec. (e), is Pub. L. 93–148, Nov. 7, 1973, 87 Stat. 555, which is classified generally to chapter 33 (§1541 et seq.) of Title 50, War and National Defense. For complete classification of this Resolution to the Code, see Short Title note set out under section 1541 of Title 50 and Tables.

The Authorization for Use of Military Force, referred to in subsec. (e), is Pub. L. 107–40, Sept. 18, 2001, 115

Stat. 224, which is set out as a note under section 1541 of Title 50, War and National Defense.

The National Security Act of 1947, referred to in subsec. (e), is act July 26, 1947, ch. 343, 61 Stat. 495, which is classified principally to chapter 44 (§ 3001 et seq.) of Title 50, War and National Defense. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

2021—Subsec. (c). Pub. L. 116–283 amended subsec. (c) generally. Prior to amendment, subsec. (c) defined "sensitive military cyber operation" as used in this section.

2019—Subsec. (b)(3). Pub. L. 116–92, § 1632(1), inserted ", signed by the Secretary, or the Secretary's designee," after "written notification".

Subsec. (c)(1)(B), (C). Pub. L. 116–92, § 1632(2)(A), added subpar. (B) and redesignated former subpar. (B) as (C).

Subsec. (c)(2)(B). Pub. L. 116–92, § 1632(2)(B), struck out "outside the Department of Defense Information Networks to defeat an ongoing or imminent threat" after "A defensive cyber operation".

2018—Pub. L. 115–232, § 1631(a), renumbered section 130j of this title as this section.

Subsec. (d)(2). Pub. L. 115–232, § 1081(a)(1), substituted "section 503 of the National Security Act of 1947 (50 U.S.C. 3093)" for "section 3093 of title 50, United States Code".

§ 396. Notification requirements for cyber weapons

(a) IN GENERAL.—Except as provided in subsection (c), the Secretary of Defense shall promptly submit to the congressional defense committees notice in writing of the following:

(1) With respect to a cyber capability that is intended for use as a weapon, on a quarterly basis, the aggregated results of all reviews of the capability for legality under international law pursuant to Department of Defense Directive 5000.01 carried out by any military department concerned.

(2) The use as a weapon of any cyber capability that has been approved for such use under international law by a military department no later than 48 hours following such use.

(b) PROCEDURES.—(1) The Secretary of Defense shall establish and submit to the congressional defense committees procedures for complying with the requirements of subsection (a) consistent with the national security of the United States and the protection of operational integrity. The Secretary shall promptly notify the congressional defense committees in writing of any changes to such procedures at least 14 days prior to the adoption of any such changes.

(2) The congressional defense committees shall ensure that committee procedures designed to protect from unauthorized disclosure classified information relating to national security of the United States are sufficient to protect the information that is submitted to the committees pursuant to this section.

(3) In the event of an unauthorized disclosure of a cyber capability covered by this section, the Secretary shall ensure, to the maximum extent practicable, that the congressional defense committees are notified immediately of the cyber capability concerned. The notification under this paragraph may be verbal or written, but in the event of a verbal notification a written notification shall be provided by not later than 48 hours after the provision of the verbal notification.

(c) EXCEPTIONS.—The notification requirement under subsection (a) does not apply—

(1) to a training exercise conducted with the consent of all nations where the intended effects of the exercise will occur; or

(2) to a covert action (as that term is defined in section 503 of the National Security Act of 1947 (50 U.S.C. 3093)).

(d) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to provide any new authority or to alter or otherwise affect the War Powers Resolution (50 U.S.C. 1541 et seq.), the Authorization for Use of Military Force (Public Law 107–40; 50 U.S.C. 1541 note), or any requirement under the National Security Act of 1947 (50 U.S.C. 3001 et seq.).

(Added Pub. L. 115–91, div. A, title XVI, § 1631(a), Dec. 12, 2017, 131 Stat. 1737, § 130k; renumbered § 396 and amended Pub. L. 115–232, div. A, title X, § 1081(a)(1), title XVI, § 1631(a), Aug. 13, 2018, 132 Stat. 1983, 2123.)

REFERENCES IN TEXT

The War Powers Resolution, referred to in subsec. (d), is Pub. L. 93–148, Nov. 7, 1973, 87 Stat. 555, which is classified generally to chapter 33 (§ 1541 et seq.) of Title 50, War and National Defense. For complete classification of this Resolution to the Code, see Short Title note set out under section 1541 of Title 50 and Tables.

The Authorization for Use of Military Force, referred to in subsec. (d), is Pub. L. 107–40, Sept. 18, 2001, 115 Stat. 224, which is set out as a note under section 1541 of Title 50, War and National Defense.

The National Security Act of 1947, referred to in subsec. (d), is act July 26, 1947, ch. 343, 61 Stat. 495, which is classified principally to chapter 44 (§ 3001 et seq.) of Title 50, War and National Defense. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

2018—Pub. L. 115–232, § 1631(a), renumbered section 130k of this title as this section.

Subsec. (c)(2). Pub. L. 115–232, § 1081(a)(1), substituted "section 503 of the National Security Act of 1947 (50 U.S.C. 3093)" for "section 3093 of title 50, United States Code".

§ 397. Principal Information Operations Advisor

(a) DESIGNATION.—Not later than 30 days after the enactment of this Act, the Secretary of Defense shall designate, from among officials appointed to a position in the Department of Defense by and with the advice and consent of the Senate, a Principal Information Operations Advisor to act as the principal advisor to the Secretary on all aspects of information operations conducted by the Department.

(b) RESPONSIBILITIES.—The Principal Information Operations Advisor shall have the following responsibilities:

(1) Oversight of policy, strategy, planning, resource management, operational considerations, personnel, and technology development across all the elements of information operations of the Department.

(2) Overall integration and supervision of the deterrence of, conduct of, and defense against information operations.

(3) Promulgation of policies to ensure adequate coordination and deconfliction with the

Department of State, the intelligence community (as such term is defined in section 3 of the National Security Act of 1947 (50 U.S.C. 3003)), and other relevant agencies and departments of the Federal Government.

(4) Coordination with the head of the Global Engagement Center to support the purpose of the Center (as set forth by section 1287(a)(2) of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114–328; 22 U.S.C. 2656 note)) and liaison with the Center and other relevant Federal Government entities to support such purpose.

(5) Establishing and supervising a rigorous risk management process to mitigate the risk of potential exposure of United States persons to information intended exclusively for foreign audiences.

(6) Promulgation of standards for the attribution or public acknowledgment, if any, of operations in the information environment.

(7) Development of guidance for, and promotion of, the capability of the Department to liaison with the private sector and academia on matters relating to the influence activities of malign actors.

(8) Such other matters relating to information operations as the Secretary shall specify for purposes of this subsection.

(Added Pub. L. 116–92, div. A, title XVI, §1631(a)(1), Dec. 20, 2019, 133 Stat. 1741; amended Pub. L. 116–283, div. A, title X, §1081(a)(16), Jan. 1, 2021, 134 Stat. 3871.)

REFERENCES IN TEXT

The enactment of this Act, referred to in subsec. (a), probably means the date of enactment of Pub. L. 116–92, which added this section and was approved Dec. 20, 2019.

AMENDMENTS

2021—Subsec. (b)(5). Pub. L. 116–283 substituted ''persons'' for ''Persons''.

CONDUCTING OF MILITARY OPERATIONS IN THE INFORMATION ENVIRONMENT

Pub. L. 116–92, div. A, title XVI, §1631(b)–(i), Dec. 20, 2019, 133 Stat. 1742–1745, as amended by Pub. L. 116–283, div. A, title X, §1081(c)(6), title XVII, §1749(b), Jan. 1, 2021, 134 Stat. 3873, 4142, provided that:

''(b) AFFIRMING THE AUTHORITY OF THE SECRETARY OF DEFENSE TO CONDUCT MILITARY OPERATIONS IN THE INFORMATION ENVIRONMENT.—(1) Congress affirms that the Secretary of Defense is authorized to conduct military operations, including clandestine operations, in the information environment to defend the United States, allies of the United States, and interests of the United States, including in response to malicious influence activities carried out against the United States or a United States person by a foreign power.

''(2) The military operations referred to in paragraph (1), when appropriately authorized include the conduct of military operations short of hostilities and in areas outside of areas of active hostilities for the purpose of preparation of the environment, influence, force protection, and deterrence of hostilities.

''(c) TREATMENT OF CLANDESTINE MILITARY OPERATIONS IN THE INFORMATION ENVIRONMENT AS TRADITIONAL MILITARY ACTIVITIES.—A clandestine military operation in the information environment shall be considered a traditional military activity for the purposes of section 503(e)(2) of the National Security Act of 1947 (50 U.S.C. 3093(e)(2)).

''(d) QUARTERLY INFORMATION OPERATIONS BRIEFINGS.—(1) Not less frequently than once each quarter, the Secretary of Defense shall provide the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a briefing on significant military operations, including all clandestine operations in the information environment, carried out by the Department of Defense during the immediately preceding quarter.

''(2) Each briefing under paragraph (1) shall include, with respect to the military operations in the information environment described in such paragraph, the following:

''(A) An update, disaggregated by geographic and functional command, that describes the operations carried out by the commands.

''(B) An overview of authorities and legal issues applicable to the operations, including any relevant legal limitations.

''(C) An outline of any interagency activities and initiatives relating to the operations.

''(D) Such other matters as the Secretary considers appropriate.

''(e) RULE OF CONSTRUCTION.—Nothing in this section may be construed to limit, expand, or otherwise alter the authority of the Secretary to conduct military operations, including clandestine operations, in the information environment, to authorize specific military operations, or to limit, expand, or otherwise alter or otherwise affect the War Powers Resolution (50 U.S.C. 1541 et seq.) or an authorization for use of military force that was in effect on the day before the date of the enactment of this Act [Dec. 20, 2019].

''(f) CROSS-FUNCTIONAL TEAM.—

''(1) ESTABLISHMENT.—The Principal Information Operations Advisor shall integrate the expertise in all elements of information operations and perspectives of appropriate organizations within the Office of the Secretary of Defense, Joint Staff, military departments, Defense Agencies, and combatant commands by establishing and maintaining a full-time cross-functional team composed of subject-matter experts selected from those organizations.

''(2) SELECTION AND ORGANIZATION.—The cross-functional team established under paragraph (1) shall be selected, organized, and managed in a manner consistent with section 911 of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114–328; 10 U.S.C. 111 note).

''(g) STRATEGY AND POSTURE REVIEW.—

''(1) STRATEGY AND POSTURE REVIEW REQUIRED.—Not later than 270 days after the date of the enactment of this Act [Dec. 20, 2019], the Secretary of Defense, acting through the Principal Information Operations Advisor under section 397 of title 10, United States Code (as added by subsection (a)) and the cross-functional team established under subsection (f)(1), shall—

''(A) develop or update, as appropriate, a strategy for operations in the information environment, including how such operations will be synchronized across the Department of Defense and the global, regional, and functional interests of the combatant commands;

''(B) conduct an information operations posture review, including an analysis of capability gaps that inhibit the Department's ability to successfully execute the strategy developed or updated pursuant to subparagraph (A);

''(C) designate Information Operations Force Providers and Information Operations Joint Force Trainers for the Department of Defense;

''(D) develop and persistently manage a joint lexicon for terms related to information operations, including 'information operations', 'information environment', 'operations in the information environment', and 'information related capabilities'[;] and [sic]

''(E) determine the collective set of combat capabilities that will be treated as part of operations in the information environment, including cyber warfare, space warfare, military information support

operations, electronic warfare, public affairs, and civil affairs; and

''(F) designate a Department of Defense entity to develop, apply, and continually refine an assessment capability for defining and measuring the impact of Department information operations, which entity shall be organizationally independent of Department components performing or otherwise engaged in operational support to Department information operations.

''(2) COORDINATION ON CERTAIN CYBER MATTERS.—For any matters in the strategy and posture review under paragraph (1) that involve or relate to Department of Defense cyber capabilities, the Principal Information Operations Advisor shall fully collaborate with the Principal Cyber Advisor to the Secretary of Defense.

''(3) ELEMENTS.—At a minimum, the strategy developed or updated pursuant to paragraph (1)(A) shall include the following:

''(A) The establishment of lines of effort, objectives, and tasks that are necessary to implement such strategy and eliminate the capability gaps identified under paragraph (1)(B).

''(B) In partnership with the Principal Cyber Advisor to the Secretary of Defense and in coordination with any other component or Department of Defense entity as selected by the Secretary of Defense, an evaluation of any organizational changes that may be required within the Office of the Secretary of Defense, including potential changes to Under Secretary or Assistant Secretary-level positions to comprehensively conduct oversight of policy development, capabilities, and other aspects of operations in the information environment as determined pursuant to the information operations posture review under paragraph (1)(B).

''(C) An assessment of various models for operationalizing information operations, including the feasibility and advisability of establishing an Army Information Warfare Command.

''(D) A review of the role of information operations in combatant commander operational planning, the ability of combatant commanders to respond to hostile acts by adversaries, and the ability of combatant commanders to engage and build capacity with allies.

''(E) A review of the law, policies, and authorities relating to, and necessary for, the United States to conduct military operations, including clandestine military operations, in the information environment.

''(4) SUBMISSION TO CONGRESS.—Upon completion, the Secretary of Defense shall present the strategy for operations in the information environment and the information operations posture review under subparagraphs (A) and (B), respectively, of paragraph (1) to the Committees on Armed Services of the House of Representatives and the Senate.

''(h) REPORT.—

''(1) IN GENERAL.—Not later than 90 days after the date of the enactment of this Act [Dec. 20, 2019], the Secretary of Defense shall provide the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report for the structuring and manning of information operations capabilities and forces across the Department of Defense. The Secretary shall provide such Committees with quarterly updates on such plan.

''(2) ELEMENTS.—The plan required under paragraph (1) shall address the following:

''(A) How the Department of Defense will organize to develop a combined information operations strategy and posture review under subsection (g).

''(B) How the Department will fulfill the roles and responsibilities of the Principal Information Operations Advisor under section 397 of title 10, United States Code (as added by subsection (a)).

''(C) How the Department will establish the information operations cross-functional team under subsection (f)(1).

''(D) How the Department will utilize boards and working groups involving senior-level Department representatives on information operations.

''(E) Such other matters as the Secretary of Defense considers appropriate.

''(i) DEFINITIONS.—In this section:

''(1) The terms 'foreign power' and 'United States person' have the meanings given such terms in section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801).

''(2) The term 'hostilities' has the same meaning as such term is used in the War Powers Resolution (50 U.S.C. 1541 et seq.).

''(3) The term 'clandestine military operation in the information environment' means an operation or activity, or associated preparatory actions, authorized by the President or the Secretary of Defense, that—

''(A) is marked by, held in, or conducted with secrecy, where the intent is that the operation or activity will not be apparent or acknowledged publicly; and

''(B) is to be carried out—

''(i) as part of a military operation plan approved by the President or the Secretary of Defense;

''(ii) to deter, safeguard, or defend against attacks or malicious influence activities against the United States, allies of the United States, and interests of the United States;

''(iii) in support of hostilities or military operations involving the United States armed forces; or

''(iv) in support of military operations short of hostilities and in areas where hostilities are not occurring for the purpose of preparation of the environment, influence, force protection, and deterrence.''

[Amendment by Pub. L. 116–283, §1749(b), to section 1631(g) of Pub. L. 116–92, set out above, was executed to reflect the probable intent of Congress, notwithstanding errors in the directory language.]

[Pub. L. 116–283, div. A, title X, §1081(c), Jan. 1, 2021, 134 Stat. 3873, provided that the amendment made by section 1081(c)(6) of Pub. L. 116–283 to section 1631(i) of Pub. L. 116–92, set out above, is effective as of Dec. 20, 2020 (probably should be Dec. 20, 2019) and as if included in Pub. L. 116–92.]

CHAPTER 20—HUMANITARIAN AND OTHER ASSISTANCE

Sec.	
401.	Humanitarian and civic assistance provided in conjunction with military operations.
402.	Transportation of humanitarian relief supplies to foreign countries.
[403.	Repealed.]
404.	Foreign disaster assistance.
405.	Use of Department of Defense funds for United States share of costs of United Nations peacekeeping activities: limitation.
[406.	Renumbered.]
407.	Humanitarian demining assistance and stockpiled conventional munitions assistance: authority; limitations.
408.	Equipment and training of foreign personnel to assist in Department of Defense accounting for missing United States Government personnel.
409.	Center for Complex Operations.
[410.	Repealed.]

PRIOR PROVISIONS

Chapter was comprised of subchapter I, sections 401 to 404, and subchapter II, section 410, prior to amendment by Pub. L. 104–106, div. A, title V, §571(c), Feb. 10, 1996, 110 Stat. 353, which struck out headings for subchapters I and II.

AMENDMENTS

2011—Pub. L. 112–81, div. A, title X, §1092(b)(2), Dec. 31, 2011, 125 Stat. 1606, added item 407 and struck out

former item 407 ''Humanitarian demining assistance: authority; limitations''.

2008—Pub. L. 110–417, [div. A], title X, § 1031(b), Oct. 14, 2008, 122 Stat. 4590, added item 409.

Pub. L. 110–181, div. A, title XII, § 1207(b), Jan. 28, 2008, 122 Stat. 367, added item 408.

2006—Pub. L. 109–364, div. A, title XII, § 1203(b)(2), Oct. 17, 2006, 120 Stat. 2415, added item 407.

1996—Pub. L. 104–106, div. A, title X, § 1061(g)(2), title XIII, § 1301(b), Feb. 10, 1996, 110 Stat. 443, 473, which directed amendment of table of sections at beginning of subchapter I of this chapter by striking out item 403 and adding item 405, were executed by striking out item 403 ''International peacekeeping activities'' and adding item 405 in analysis for this chapter to reflect the probable intent of Congress and amendments by Pub. L. 104–106, § 571(c)(1), (2). See below.

Pub. L. 104–106, div. A, title V, § 571(c)(1), (2), Feb. 10, 1996, 110 Stat. 353, struck out subchapter analysis, consisting of items for subchapter I ''Humanitarian Assistance'' and subchapter II ''Civil-Military Cooperation'' and struck out subchapter I heading ''HUMANITARIAN ASSISTANCE''.

1994—Pub. L. 103–337, div. A, title XIV, § 1412(b), Oct. 5, 1994, 108 Stat. 2913, added item 404.

1992—Pub. L. 102–484, div. A, title X, § 1081(b)(2), title XIII, § 1342(c)(2), Oct. 23, 1992, 106 Stat. 2516, 2558, added subchapter analysis, subchapter I heading, and item 403.

1987—Pub. L. 100–180, div. A, title III, § 332(b)(6), Dec. 4, 1987, 101 Stat. 1080, substituted ''HUMANITARIAN AND OTHER ASSISTANCE'' for ''HUMANITARIAN AND CIVIC ASSISTANCE PROVIDED IN CONJUNCTION WITH MILITARY OPERATIONS'' in chapter heading, ''Humanitarian and civic assistance provided in conjunction with military operations'' for ''Armed forces participation in humanitarian and civic assistance activities'' in item 401, and ''Transportation of humanitarian relief supplies to foreign countries'' for ''Approval of Secretary of State'' in item 402, and struck out items 403 ''Payment of expenses'', 404 ''Annual report to Congress'', 405 ''Definition of humanitarian and civic assistance'', and 406 ''Expenditure limitation''.

§ 401. Humanitarian and civic assistance provided in conjunction with military operations

(a)(1) Under regulations prescribed by the Secretary of Defense, the Secretary of a military department may carry out humanitarian and civic assistance activities in conjunction with authorized military operations of the armed forces in a country if the Secretary concerned determines that the activities will promote—

(A) the security interests of both the United States and the country in which the activities are to be carried out; and

(B) the specific operational readiness skills of the members of the armed forces who participate in the activities.

(2) Humanitarian and civic assistance activities carried out under this section shall complement, and may not duplicate, any other form of social or economic assistance which may be provided to the country concerned by any other department or agency of the United States. Such activities shall serve the basic economic and social needs of the people of the country concerned.

(3) Humanitarian and civic assistance may not be provided under this section (directly or indirectly) to any individual, group, or organization engaged in military or paramilitary activity.

(b) Humanitarian and civic assistance may not be provided under this section to any foreign country unless the Secretary of State specifically approves the provision of such assistance.

(c)(1) Expenses incurred as a direct result of providing humanitarian and civic assistance under this section to a foreign country shall be paid for out of funds specifically appropriated for such purpose.

[(2), (3) Repealed. Pub. L. 109–364, div. A, title XII, § 1203(a)(3), Oct. 17, 2006, 120 Stat. 2413.]

(4) Nothing in this section may be interpreted to preclude the incurring of minimal expenditures by the Department of Defense for purposes of humanitarian and civic assistance out of funds other than funds appropriated pursuant to paragraph (1), except that funds appropriated to the Department of Defense for operation and maintenance (other than funds appropriated pursuant to such paragraph) may be obligated for humanitarian and civic assistance under this section only for incidental costs of carrying out such assistance.

(d) The Secretary of Defense shall submit to the Committee on Armed Services and the Committee on Foreign Relations of the Senate and the Committee on Armed Services and the Committee on Foreign Affairs of the House of Representatives a report, not later than March 1 of each year, on activities carried out under this section during the preceding fiscal year. The Secretary shall include in each such report—

(1) a list of the countries in which humanitarian and civic assistance activities were carried out during the preceding fiscal year;

(2) the type and description of such activities carried out in each country during the preceding fiscal year; and

(3) the amount expended in carrying out each such activity in each such country during the preceding fiscal year.

(e) In this section, the term ''humanitarian and civic assistance'' means any of the following:

(1) Medical, surgical, dental, and veterinary care provided in areas of a country that are rural or are underserved by medical, surgical, dental, and veterinary professionals, respectively, including education, training, and technical assistance related to the care provided.

(2) Construction of rudimentary surface transportation systems.

(3) Well drilling and construction of basic sanitation facilities.

(4) Rudimentary construction and repair of public facilities.

(Added Pub. L. 99–661, div. A, title III, § 333(a)(1), Nov. 14, 1986, 100 Stat. 3857; amended Pub. L. 100–180, div. A, title III, § 332(b)(1)–(5), Dec. 4, 1987, 101 Stat. 1080; Pub. L. 100–456, div. A, title XII, § 1233(g)(1), Sept. 29, 1988, 102 Stat. 2058; Pub. L. 103–160, div. A, title XI, § 1182(a)(1), title XV, § 1504(b), Nov. 30, 1993, 107 Stat. 1771, 1839; Pub. L. 104–106, div. A, title XIII, § 1313(a), (b), title XV, § 1502(a)(8), Feb. 10, 1996, 110 Stat. 474, 475, 503; Pub. L. 104–201, div. A, title X, § 1074(a)(2), title XIII, § 1304, Sept. 23, 1996, 110 Stat. 2658, 2704; Pub. L. 106–65, div. A, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 106–398, § 1 [[div. A], title XII, § 1235], Oct. 30, 2000, 114 Stat. 1654, 1654A–331; Pub. L. 108–375, div. A, title XII, § 1221,

Oct. 28, 2004, 118 Stat. 2089; Pub. L. 109–163, div. A, title XII, §1201, Jan. 6, 2006, 119 Stat. 3455; Pub. L. 109–364, div. A, title XII, §1203(a), Oct. 17, 2006, 120 Stat. 2413; Pub. L. 112–239, div. A, title X, §1076(f)(7), Jan. 2, 2013, 126 Stat. 1952.)

AMENDMENTS

2013—Subsec. (d). Pub. L. 112–239 substituted ''Committee on Foreign Affairs'' for ''Committee on International Relations'' in introductory provisions.

2006—Subsec. (a)(4). Pub. L. 109–364, §1203(a)(1), struck out par. (4) which read as follows: ''The Secretary of Defense shall ensure that no member of the armed forces, while providing assistance under this section that is described in subsection (e)(5)—

''(A) engages in the physical detection, lifting, or destroying of landmines or other explosive remnants of war (unless the member does so for the concurrent purpose of supporting a United States military operation); or

''(B) provides such assistance as part of a military operation that does not involve the armed forces.''

Subsec. (b). Pub. L. 109–364, §1203(a)(2), struck out ''(1)'' before ''Humanitarian'' and struck out par. (2) which read as follows: ''Any authority provided under any other provision of law to provide assistance that is described in subsection (e)(5) to a foreign country shall be carried out in accordance with, and subject to, the limitations prescribed in this section. Any such provision may be construed as superseding a provision of this section only if, and to the extent that, such provision specifically refers to this section and specifically identifies the provision of this section that is to be considered superseded or otherwise inapplicable under such provision.''

Subsec. (c)(2). Pub. L. 109–364, §1203(a)(3), struck out par. (2) which read as follows: ''Expenses covered by paragraph (1) include the following expenses incurred in providing assistance described in subsection (e)(5):

''(A) Travel, transportation, and subsistence expenses of Department of Defense personnel providing such assistance.

''(B) The cost of any equipment, services, or supplies acquired for the purpose of carrying out or supporting the activities described in subsection (e)(5), including any nonlethal, individual, or small-team equipment or supplies for clearing landmines or other explosive remnants of war that are to be transferred or otherwise furnished to a foreign country in furtherance of the provision of assistance under this section.''

Subsec. (c)(3). Pub. L. 109–364, §1203(a)(3), struck out par. (3) which read as follows: ''The cost of equipment, services, and supplies provided in any fiscal year under paragraph (2)(B) may not exceed $10,000,000.''

Pub. L. 109–163, §1201(a), substituted ''$10,000,000'' for ''$5,000,000''.

Subsec. (e)(1). Pub. L. 109–163, §1201(b), inserted ''surgical,'' before ''dental,'' in two places and '', including education, training, and technical assistance related to the care provided'' before period at end.

Subsec. (e)(5). Pub. L. 109–364, §1203(a)(4), struck out par. (5) which read as follows: ''Detection and clearance of landmines and other explosive remnants of war, including activities relating to the furnishing of education, training, and technical assistance with respect to the detection and clearance of landmines and other explosive remnants of war.''

2004—Subsec. (a)(4)(A). Pub. L. 108–375, §1221(b)(1), inserted ''or other explosive remnants of war'' after ''landmines''.

Subsec. (c)(2)(B). Pub. L. 108–375, §1221(b)(2), substituted ''equipment or supplies for clearing landmines or other explosive remnants of war'' for ''landmine clearing equipment or supplies''.

Subsec. (e)(5). Pub. L. 108–375, §1221(a), inserted ''and other explosive remnants of war'' after ''landmines'' in two places.

2000—Subsec. (e)(1). Pub. L. 106–398 substituted ''areas of a country that are rural or are underserved by medical, dental, and veterinary professionals, respectively'' for ''rural areas of a country''.

1999—Subsec. (d). Pub. L. 106–65 substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security'' in introductory provisions.

1996—Subsec. (a)(4). Pub. L. 104–201, §1074(a)(2)(A), substituted ''armed forces'' for ''Armed Forces'' in two places.

Pub. L. 104–106, §1313(b), added par. (4).

Subsec. (b). Pub. L. 104–201, §1304(b), designated existing provisions as par. (1) and added par. (2).

Subsec. (c)(2) to (4). Pub. L. 104–201, §1304(a), added pars. (2) and (3) and redesignated former par. (2) as (4).

Subsec. (d). Pub. L. 104–106, §1502(a)(8), substituted ''Committee on Armed Services and the Committee on Foreign Relations of the Senate and the Committee on National Security and the Committee on International Relations'' for ''Committees on Armed Services and Foreign Relations of the Senate and to the Committees on Armed Services and Foreign Affairs''.

Subsec. (e). Pub. L. 104–201, §1074(a)(2)(B), inserted ''any of the following'' after ''means'' in introductory provisions.

Pub. L. 104–106, §1313(a)(1), substituted ''means:'' for ''means—'' in introductory provisions.

Subsec. (e)(1). Pub. L. 104–106, §1313(a)(2), (3), substituted ''Medical'' for ''medical'' and ''country.'' for ''country;''.

Subsec. (e)(2). Pub. L. 104–106, §1313(a)(2), (3), substituted ''Construction'' for ''construction'' and ''systems.'' for ''systems;''.

Subsec. (e)(3). Pub. L. 104–106, §1313(a)(2), (4), substituted ''Well'' for ''well'' and ''facilities.'' for ''facilities; and''.

Subsec. (e)(4). Pub. L. 104–106, §1313(a)(2), substituted ''Rudimentary'' for ''rudimentary''.

Subsec. (e)(5). Pub. L. 104–106, §1313(a)(5), added par. (5).

1993—Subsec. (c)(2). Pub. L. 103–160, §1504(b), inserted before period '', except that funds appropriated to the Department of Defense for operation and maintenance (other than funds appropriated pursuant to such paragraph) may be obligated for humanitarian and civic assistance under this section only for incidental costs of carrying out such assistance''.

Subsec. (f). Pub. L. 103–160, §1182(a)(1), struck out subsec. (f) which read as follows: ''Not more than $16,400,000 may be obligated or expended for the purposes of this section during fiscal years 1987 through 1991.''

1988—Subsec. (c)(2). Pub. L. 100–456 substituted ''paragraph (1)'' for ''subsection (a)''.

1987—Pub. L. 100–180, §332(b)(1)(A), substituted ''Humanitarian and civic assistance provided in conjunction with military operations'' for ''Armed forces participation in humanitarian and civic assistance activities'' in section catchline.

Subsec. (a). Pub. L. 100–180, §332(b)(1)(B), (C), (5), redesignated former subsec. (a) as par. (1) and former cls. (1) and (2) as cls. (A) and (B), respectively, redesignated former subsecs. (b) and (c) as pars. (2) and (3), respectively, and substituted ''section'' for ''chapter'' wherever appearing.

Subsec. (b). Pub. L. 100–180, §332(b)(2), (5), struck out section catchline of former section 402 ''Approval of Secretary of State'', designated text of former section 402 as subsec. (b) of this section, and substituted ''section'' for ''chapter''.

Subsec. (c). Pub. L. 100–180, §332(b)(3), (5), struck out section catchline of former section 403 ''Payment of expenses'', redesignated former section 403(a) and (b) as subsec. (c)(1) and (2), respectively, of this section, and substituted ''section'' for ''chapter'' wherever appearing.

Subsec. (d). Pub. L. 100–180, §332(b)(4), (5), struck out section catchline of former section 404 ''Annual report to Congress'', designated text of former section 404 as subsec. (d) of this section, and substituted ''section'' for ''chapter''.

Subsec. (e). Pub. L. 100–180, § 332(b)(4), (5), struck out section catchline of former section 405 ''Definition of humanitarian and civic assistance'', designated text of former section 405 as subsec. (e) of this section, and substituted ''section'' for ''chapter''.

Subsec. (f). Pub. L. 100–180, § 332(b)(4), (5), struck out section catchline of former section 406 ''Expenditure limitation'', designated text of former section 406 as subsec. (f) of this section, and substituted ''section'' for ''chapter''.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective Dec. 31, 2021, of provisions in subsec. (d) of this section requiring submittal of annual report to Congress, see section 1061 of Pub. L. 114–328, set out as a note under section 111 of this title.

AUTHORITY TO CONDUCT ACTIVITIES TO ENHANCE THE CAPABILITY OF FOREIGN COUNTRIES TO RESPOND TO INCIDENTS INVOLVING WEAPONS OF MASS DESTRUCTION

Pub. L. 113–66, div. A, title XII, § 1204, Dec. 26, 2013, 127 Stat. 896, as amended by Pub. L. 113–291, div. A, title XII, § 1202, Dec. 19, 2014, 128 Stat. 3530; Pub. L. 114–92, div. A, title XII, § 1273, Nov. 25, 2015, 129 Stat. 1076, provided authority to conduct activities to enhance the capability of foreign countries to respond to incidents involving weapons of mass destruction, prior to repeal by Pub. L. 114–328, div. A, title XII, § 1241(d)(5)(B)(i), Dec. 23, 2016, 130 Stat. 2504, effective as of the date that is 270 days after Dec. 23, 2016.

REQUIREMENT TO ENSURE THE EFFECTIVENESS AND EFFICIENCY OF HEALTH ENGAGEMENTS

Pub. L. 112–239, div. A, title VII, § 715, Jan. 2, 2013, 126 Stat. 1803, provided that:

''(a) IN GENERAL.—The Secretary of Defense, in coordination with the Under Secretary of Defense for Policy and the Assistant Secretary of Defense for Health Affairs, shall develop a process to ensure that health engagements conducted by the Department of Defense are effective and efficient in meeting the national security goals of the United States.

''(b) PROCESS GOALS.—The Assistant Secretary of Defense for Health Affairs shall ensure that each process developed under subsection (a)—

''(1) assesses the operational mission capabilities of the health engagement;

''(2) uses the collective expertise of the Federal Government and non-governmental organizations to ensure collaboration and partnering activities; and

''(3) assesses the stability and resiliency of the host nation of such engagement.

''(c) ASSESSMENT TOOL.—The Assistant Secretary of Defense for Health Affairs may establish a measure of effectiveness learning tool to assess the process developed under subsection (a) to ensure the applicability of the process to health engagements conducted by the Department of Defense.

''(d) HEALTH ENGAGEMENT DEFINED.—In this section, the term 'health engagement' means a health stability operation conducted by the Department of Defense outside the United States in coordination with a foreign government or international organization to establish, reconstitute, or maintain the health sector of a foreign country.''

HUMANITARIAN ASSISTANCE PROGRAM FOR CLEARING LANDMINES

Pub. L. 103–337, div. A, title XIV, § 1413, Oct. 5, 1994, 108 Stat. 2913, required Secretary of Defense to carry out program for humanitarian purposes to provide assistance to other nations in detection and clearance of landmines, specified that such assistance was to be provided through instruction, education, training, and advising of personnel of those nations in procedures determined effective for detecting and clearing landmines, specified forms of assistance, required Secretary to ensure that no member of Armed Forces engaged in physical detection, lifting, or destroying of landmines (unless done for concurrent purpose of supporting United States military operations) or gave such assistance as part of military operation not involving Armed Forces, made funds available, specified uses of funds, and required Secretary to provide notice to Congress of activities carried out under the program, prior to repeal by Pub. L. 104–106, div. A, title XIII, § 1313(c), Feb. 10, 1996, 110 Stat. 475.

HUMANITARIAN AND CIVIC ASSISTANCE

Pub. L. 103–160, div. A, title XV, § 1504, Nov. 30, 1993, 107 Stat. 1839, provided that:

''(a) REGULATIONS.—The regulations required to be prescribed under section 401 of title 10, United States Code, shall be prescribed not later than March 1, 1994. In prescribing such regulations, the Secretary of Defense shall consult with the Secretary of State.

''(b) LIMITATION ON USE OF FUNDS.—[Amended section 401(c)(2) of this title.]

''(c) NOTIFICATIONS REGARDING HUMANITARIAN RELIEF.—Any notification provided to the appropriate congressional committees with respect to assistance activities under section 2551 [now 2561] of title 10, United States Code, shall include a detailed description of any items for which transportation is provided that are excess nonlethal supplies of the Department of Defense, including the quantity, acquisition value, and value at the time of the transportation of such items.

''(d) REPORT ON HUMANITARIAN ASSISTANCE ACTIVITIES.—(1) The Secretary of Defense shall submit to the appropriate congressional committees a report on the activities planned to be carried out by the Department of Defense during fiscal year 1995 under sections 401, 402, 2547 [now 2557], and 2551 [now 2561] of title 10, United States Code. The report shall include information, developed after consultation with the Secretary of State, on the distribution of excess nonlethal supplies transferred to the Secretary of State during fiscal year 1993 pursuant to section 2547 of that title.

''(2) The report shall be submitted at the same time that the President submits the budget for fiscal year 1995 to Congress pursuant to section 1105 of title 31, United States Code.

''(e) AUTHORIZATION OF APPROPRIATIONS.—The funds authorized to be appropriated by section 301(18) [107 Stat. 1616] shall be available to carry out humanitarian and civic assistance activities under sections 401, 402, and 2551 [now 2561] of title 10, United States Code.

''(f) APPROPRIATE CONGRESSIONAL COMMITTEES.—In this section, the term 'appropriate congressional committees' means—

''(1) the Committee on Appropriations, the Committee on Armed Services [now Committee on National Security], and the Committee on Foreign Affairs of the House of Representatives; and

''(2) the Committee on Appropriations, the Committee on Armed Services, and the Committee on Foreign Relations of the Senate.''

HUMANITARIAN ASSISTANCE; EMERGENCY TRANSPORTATION OF INDIVIDUALS

Pub. L. 102–396, title II, Oct. 6, 1992, 106 Stat. 1884, provided: ''That where required and notwithstanding any other provision of law, funds made available under this heading [Humanitarian Assistance] for fiscal year 1993 or thereafter, shall be available for emergency transportation of United States or foreign nationals or the emergency transportation of humanitarian relief personnel in conjunction with humanitarian relief operations.''

APPROPRIATION OF FUNDS FOR HUMANITARIAN AND CIVIC ASSISTANCE; ANNUAL REPORT TO CONGRESS ON OBLIGATIONS; USE OF CIVIC ACTION TEAMS IN TRUST TERRITORIES OF PACIFIC ISLANDS AND FREELY ASSOCIATED STATES OF MICRONESIA

Pub. L. 109–148, div. A, title VIII, § 8009, Dec. 30, 2005, 119 Stat. 2699, which appropriated funds pursuant to

this section and authorized obligations for humanitarian and civic assistance costs under this chapter, with such obligations being reported as required by subsec. (d) of this section, and authorized the use of Civic Action Teams for the provision of assistance in the Trust Territories of the Pacific Islands and freely associated states of Micronesia and the provision of medical services at Army medical facilities in Hawaii upon a determination by the Secretary of the Army, was from the Department of Defense Appropriations Act, 2006 and was repeated in provisions of subsequent appropriations acts which are not set out in the Code. Similar provisions were contained in the following prior appropriations acts:

Pub. L. 108–287, title VIII, § 8009, Aug. 5, 2004, 118 Stat. 971.

Pub. L. 108–87, title VIII, § 8009, Sept. 30, 2003, 117 Stat. 1073.

Pub. L. 107–248, title VIII, § 8009, Oct. 23, 2002, 116 Stat. 1538.

Pub. L. 107–117, div. A, title VIII, § 8009, Jan. 10, 2002, 115 Stat. 2249, as amended by Pub. L. 108–136, div. A, title X, § 1031(j), Nov. 24, 2003, 117 Stat. 1605.

Pub. L. 106–259, title VIII, § 8009, Aug. 9, 2000, 114 Stat. 676.

Pub. L. 106–79, title VIII, § 8009, Oct. 25, 1999, 113 Stat. 1232.

Pub. L. 105–262, title VIII, § 8009, Oct. 17, 1998, 112 Stat. 2298.

Pub. L. 105–56, title VIII, § 8009, Oct. 8, 1997, 111 Stat. 1222.

Pub. L. 104–208, div. A, title I, § 101(b) [title VIII, § 8010], Sept. 30, 1996, 110 Stat. 3009–71, 3009–90.

Pub. L. 104–61, title VIII, § 8011, Dec. 1, 1995, 109 Stat. 653.

Pub. L. 103–335, title VIII, § 8011, Sept. 30, 1994, 108 Stat. 2619.

Pub. L. 103–139, title VIII, § 8012, Nov. 11, 1993, 107 Stat. 1439.

Pub. L. 102–396, title IX, § 9021, Oct. 6, 1992, 106 Stat. 1904.

Pub. L. 102–172, title VIII, § 8021, Nov. 26, 1991, 105 Stat. 1175.

Pub. L. 101–511, title VIII, § 8021, Nov. 5, 1990, 104 Stat. 1879.

Pub. L. 101–165, title IX, § 9031, Nov. 21, 1989, 103 Stat. 1135.

Pub. L. 100–463, title VIII, § 8051, Oct. 1, 1988, 102 Stat. 2270–25.

Pub. L. 100–202, § 101(b) [title VIII, § 8063], Dec. 22, 1987, 101 Stat. 1329–43, 1329–73.

§ 402. Transportation of humanitarian relief supplies to foreign countries

(a) Notwithstanding any other provision of law, and subject to subsection (b), the Secretary of Defense may transport to any country, without charge, supplies which have been furnished by a nongovernmental source and which are intended for humanitarian assistance. Such supplies may be transported only on a space available basis.

(b)(1) The Secretary may not transport supplies under subsection (a) unless the Secretary determines that—

(A) the transportation of such supplies is consistent with the foreign policy of the United States;

(B) the supplies to be transported are suitable for humanitarian purposes and are in usable condition;

(C) there is a legitimate humanitarian need for such supplies by the people or entity for whom they are intended;

(D) the supplies will in fact be used for humanitarian purposes; and

(E) adequate arrangements have been made for the distribution or use of such supplies in the destination country.

(2) The President shall establish procedures for making the determinations required under paragraph (1). Such procedures shall include inspection of supplies before acceptance for transport.

(3) It shall be the responsibility of the entity requesting the transport of supplies under this section to ensure that the supplies are suitable for transport.

(c)(1) Supplies transported under this section may be distributed by an agency of the United States Government, a foreign government, an international organization, or a private nonprofit relief organization.

(2) Supplies transported under this section may not be distributed, directly or indirectly, to any individual, group, or organization engaged in a military or paramilitary activity.

(d)(1) The Secretary of Defense may use the authority provided by subsection (a) to transport supplies intended for use to respond to, or mitigate the effects of, an event or condition, such as an oil spill, that threatens serious harm to the environment, but only if other sources to provide such transportation are not readily available.

(2) Notwithstanding subsection (a), the Secretary of Defense may require reimbursement for costs incurred by the Department of Defense to transport supplies under this subsection.

(e) Not later than July 31 each year, the Secretary of State shall submit to the Committee on Armed Services and the Committee on Foreign Relations of the Senate and the Committee on Armed Services and the Committee on International Relations of the House of Representatives a report identifying the origin, contents, destination, and disposition of all supplies transported under this section during the 12-month period ending on the preceding June 30.

(Added Pub. L. 100–180, div. A, title III, § 332(a), Dec. 4, 1987, 101 Stat. 1079; amended Pub. L. 101–510, div. A, title XIII, § 1311(2), Nov. 5, 1990, 104 Stat. 1669; Pub. L. 104–106, div. A, title XV, § 1502(a)(8), Feb. 10, 1996, 110 Stat. 503; Pub. L. 106–65, div. A, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 108–136, div. A, title III, § 312(a), (b), Nov. 24, 2003, 117 Stat. 1429.)

Prior Provisions

A prior section 402 was renumbered section 401(b) of this title.

Amendments

2003—Subsec. (b)(1)(C). Pub. L. 108–136, § 312(b)(1), inserted "or entity" after "people".

Subsec. (b)(1)(E). Pub. L. 108–136, § 312(b)(2), inserted "or use" after "distribution".

Subsec. (b)(3). Pub. L. 108–136, § 312(b)(3), substituted "entity requesting the transport of supplies under this section to ensure that the supplies" for "donor to ensure that supplies to be transported under this section".

Subsecs. (d), (e). Pub. L. 108–136, § 312(a), added subsec. (d) and redesignated former subsec. (d) as (e).

1999—Subsec. (d). Pub. L. 106–65 substituted "and the Committee on Armed Services" for "and the Committee on National Security".

1996—Subsec. (d). Pub. L. 104–106 substituted "Committee on Armed Services and the Committee on For-

eign Relations of the Senate and the Committee on National Security and the Committee on International Relations'' for ''Committees on Armed Services and Foreign Relations of the Senate and the Committees on Armed Services and Foreign Affairs''.

1990—Subsec. (d). Pub. L. 101–510 substituted ''Not later than July 31 each year'' for ''At the end of each six-month period'' and ''the 12-month period ending on the preceding June 30'' for ''such six-month period''.

CHANGE OF NAME

Committee on International Relations of House of Representatives changed to Committee on Foreign Affairs of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007.

PROCESSING OF APPLICATIONS FOR TRANSPORTATION OF HUMANITARIAN ASSISTANCE ABROAD BY DEPARTMENT OF DEFENSE

Pub. L. 106–309, title IV, § 403, Oct. 17, 2000, 114 Stat. 1097, provided that:

''(a) PRIORITY FOR DISASTER RELIEF ASSISTANCE.—In processing applications for the transportation of humanitarian assistance abroad under section 402 of title 10, United States Code, the Administrator of the United States Agency for International Development shall afford a priority to applications for the transportation of disaster relief assistance.

''(b) MODIFICATION OF APPLICATIONS.—The Administrator of the United States Agency for International Development shall take all possible actions to assist applicants for the transportation of humanitarian assistance abroad under such section 402 in modifying or completing applications submitted under such section in order to meet applicable requirements under such section. The actions shall include efforts to contact such applicants for purposes of the modification or completion of such applications.''

FIRST REPORT DEADLINE

Pub. L. 100–180, div. A, title III, § 332(d), Dec. 4, 1987, 101 Stat. 1080, directed that first report under section 402(d) of this title be submitted not more than six months after the date on which the most recent report was submitted under section 1540(e) of the Department of Defense Authorization Act, 1985 (Pub. L. 98–525; 98 Stat. 2638).

DELEGATION OF FUNCTIONS

For delegation of functions of President under this section, see Ex. Ord. No. 12163, Sept. 29, 1979, 44 F.R. 56673, as amended, set out as a note under section 2381 of Title 22, Foreign Relations and Intercourse.

[§ 403. Repealed. Pub. L. 104–106, div. A, title X, § 1061(g)(1), Feb. 10, 1996, 110 Stat. 443]

Section, added Pub. L. 102–484, div. A, title XIII, § 1342(c)(1), Oct. 23, 1992, 106 Stat. 2557; amended Pub. L. 103–160, div. A, title XV, § 1501(b), (c), Nov. 30, 1993, 107 Stat. 1836, related to international peacekeeping activities.

§ 404. Foreign disaster assistance

(a) IN GENERAL.—The President may direct the Secretary of Defense to provide disaster assistance outside the United States to respond to manmade or natural disasters when necessary to prevent loss of lives or serious harm to the environment.

(b) FORMS OF ASSISTANCE.—Assistance provided under this section may include transportation, supplies, services, and equipment.

(c) NOTIFICATION REQUIRED.—Not later than 48 hours after the commencement of disaster assistance activities to provide assistance under this section, the President shall transmit to Congress a report containing notification of the assistance provided, and proposed to be provided, under this section and a description of so much of the following as is then available:

(1) The manmade or natural disaster for which disaster assistance is necessary.

(2) The threat to human lives or the environment presented by the disaster.

(3) The United States military personnel and material resources that are involved or expected to be involved.

(4) The disaster assistance that is being provided or is expected to be provided by other nations or public or private relief organizations.

(5) The anticipated duration of the disaster assistance activities.

(d) ORGANIZING POLICIES AND PROGRAMS.—Amounts appropriated to the Department of Defense for any fiscal year for Overseas Humanitarian, Disaster, and Civic Aid (OHDACA) programs of the Department shall be available for organizing general policies and programs for disaster relief programs for disasters occurring outside the United States.

(e) LIMITATION ON TRANSPORTATION ASSISTANCE.—Transportation services authorized under subsection (b) may be provided in response to a manmade or natural disaster to prevent serious harm to the environment, when human lives are not at risk, only if other sources to provide such transportation are not readily available.

(Added Pub. L. 103–337, div. A, title XIV, § 1412(a), Oct. 5, 1994, 108 Stat. 2912; amended Pub. L. 108–136, div. A, title III, § 312(c), Nov. 24, 2003, 117 Stat. 1430.)

PRIOR PROVISIONS

A prior section 404 was renumbered section 401(d) of this title.

AMENDMENTS

2003—Subsec. (a). Pub. L. 108–136, § 312(c)(1), inserted ''or serious harm to the environment'' after ''loss of lives''.

Subsec. (c)(2). Pub. L. 108–136, § 312(c)(2), inserted ''or the environment'' after ''human lives''.

Subsec. (e). Pub. L. 108–136, § 312(c)(3), added subsec. (e).

EX. ORD. NO. 12966. FOREIGN DISASTER ASSISTANCE

Ex. Ord. No. 12966, July 14, 1995, 60 F.R. 36949, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the National Defense Authorization Act for Fiscal Year 1995, Public Law 103–337 (the ''Act'') [see Tables for classification] and section 301 of title 3, United States Code, it is hereby ordered as follows:

SECTION 1. This order governs the implementation of section 404 of title 10, United States Code, as added by amendment set forth in section 1412(a) of the Act. Pursuant to 10 U.S.C. 404(a), the Secretary of Defense is hereby directed to provide disaster assistance outside the United States to respond to manmade or natural disasters when the Secretary of Defense determines that such assistance is necessary to prevent loss of lives. The Secretary of Defense shall exercise the notification functions required of the President by 10 U.S.C. 404(c).

SEC. 2. The Secretary of Defense shall provide disaster assistance only: (a) at the direction of the President; or

(b) with the concurrence of the Secretary of State; or

(c) in emergency situations in order to save human lives, where there is not sufficient time to seek the prior initial concurrence of the Secretary of State, in which case the Secretary of Defense shall advise, and seek the concurrence of, the Secretary of State as soon as practicable thereafter.

For the purpose of section 2(b) of this order, only the Secretary of State, or the Deputy Secretary of State, or persons acting in those capacities, shall have the authority to withhold concurrence. Concurrence of the Secretary of State is not required for the execution of military operations undertaken pursuant to, and consistent with, assistance provided in accordance with parts (b) and (c) of this section, or with respect to matters relating to the internal financial processes of the Department of Defense.

SEC. 3. In providing assistance covered by this order, the Secretary of Defense shall consult with the Administrator of the Agency for International Development, in the Administrator's capacity as the President's Special Coordinator for International Disaster Assistance.

SEC. 4. This order does not affect any activity or program authorized under any other provision of law, except that referred to in section 1 of this order.

SEC. 5. This order is effective at 12:01 a.m., e.d.t. on July 15, 1995.

WILLIAM J. CLINTON.

§ 405. Use of Department of Defense funds for United States share of costs of United Nations peacekeeping activities: limitation

(a) PROHIBITION ON USE OF FUNDS.—Funds available to the Department of Defense may not be used to make a financial contribution (directly or through another department or agency of the United States) to the United Nations—

(1) for the costs of a United Nations peacekeeping activity; or

(2) for any United States arrearage to the United Nations.

(b) APPLICATION OF PROHIBITION.—The prohibition in subsection (a) applies to voluntary contributions, as well as to contributions pursuant to assessment by the United Nations for the United States share of the costs of a peacekeeping activity.

(Added Pub. L. 104–106, div. A, title XIII, § 1301(a), Feb. 10, 1996, 110 Stat. 473.)

PRIOR PROVISIONS

A prior section 405 was renumbered section 401(e) of this title.

USE OF DEPARTMENT OF DEFENSE FUNDS FOR UNITED NATIONS FORCES

Pub. L. 105–261, div. A, title XII, § 1231(b), Oct. 17, 1998, 112 Stat. 2155, provided that: ''No funds available to the Department of Defense may be used—

''(1) for a monetary contribution to the United Nations for the establishment of a standing international force under the United Nations; or

''(2) to assign or detail any member of the Armed Forces to duty with a United Nations Stand By Force.''

[§ 406. Renumbered § 401(f)]

§ 407. Humanitarian demining assistance and stockpiled conventional munitions assistance: authority; limitations

(a) AUTHORITY.—(1) Under regulations prescribed by the Secretary of Defense, the Secretary of a military department may carry out humanitarian demining assistance and stockpiled conventional munitions assistance in a country if the Secretary concerned determines that the assistance will promote either—

(A) the security interests of both the United States and the country in which the activities are to be carried out; or

(B) the specific operational readiness skills of the members of the armed forces who participate in the activities.

(2) Humanitarian demining assistance and stockpiled conventional munitions assistance under this section shall complement, and may not duplicate, any other form of social or economic assistance which may be provided to the country concerned by any other department or agency of the United States.

(3) The Secretary of Defense shall ensure that no member of the armed forces, while providing humanitarian demining assistance under this section—

(A) engages in the physical detection, lifting, or destroying of landmines, unexploded explosive ordnance, or other explosive remnants of war (unless the member does so for the concurrent purpose of supporting a United States military operation); or

(B) provides such assistance as part of a military operation that does not involve the armed forces.

(b) LIMITATIONS.—(1) Humanitarian demining assistance and stockpiled conventional munitions assistance may not be provided under this section unless the Secretary of State specifically approves the provision of such assistance.

(2) Any authority provided under any other provision of law to provide humanitarian demining assistance or stockpiled conventional munitions assistance to a foreign country shall be carried out in accordance with, and subject to, the limitations prescribed in this section.

(c) EXPENSES.—(1) Expenses incurred as a direct result of providing humanitarian demining assistance or stockpiled conventional munitions assistance under this section to a foreign country shall be paid for out of funds specifically appropriated for the purpose of the provision by the Department of Defense of overseas humanitarian assistance.

(2) Expenses covered by paragraph (1) include the following:

(A) Travel, transportation, and subsistence expenses of Department of Defense personnel providing such assistance.

(B) The cost of any equipment, services, or supplies acquired for the purpose of carrying out or supporting humanitarian demining activities or stockpiled conventional munitions activities, including any nonlethal, individual, or small-team equipment or supplies for clearing landmines or other explosive remnants of war, or stockpiled conventional munitions, as applicable, that are to be transferred or otherwise furnished to a foreign country in furtherance of the provision of assistance under this section.

(3) The cost of equipment, services, and supplies provided in any fiscal year under this section may not exceed $15,000,000.

(d) ANNUAL REPORT.—The Secretary of Defense shall include in the annual report under section

401 of this title a separate discussion of activities carried out under this section during the preceding fiscal year, including—

(1) a list of the countries in which humanitarian demining assistance or stockpiled conventional munitions assistance was carried out during the preceding fiscal year;

(2) the type and description of humanitarian demining assistance or stockpiled conventional munitions assistance carried out in each country during the preceding fiscal year, as specified in paragraph (1), and whether such assistance was primarily related to the humanitarian demining efforts or stockpiled conventional munitions assistance;

(3) a list of countries in which humanitarian demining assistance or stockpiled conventional munitions assistance could not be carried out during the preceding fiscal year due to insufficient numbers of Department of Defense personnel to carry out such activities or insufficient funding;

(4) the amount expended in carrying out such assistance in each such country during the preceding fiscal year; and

(5) a description of interagency efforts to coordinate and improve research, development, test, and evaluation for humanitarian demining technology and mechanical clearance methods, including the transfer of relevant counter-improvised explosive device technology with potential humanitarian demining applications.

(e) DEFINITIONS.—In this section:

(1) The term ''humanitarian demining assistance'', as it relates to training and support, means detection and clearance of landmines, unexploded explosive ordnance, and other explosive remnants of war, and includes activities related to the furnishing of education, training, and technical assistance with respect to explosive safety, the detection and clearance of landmines, unexploded explosive ordnance, and other explosive remnants of war.

(2) The term ''stockpiled conventional munitions assistance'', as it relates to the support of humanitarian assistance efforts, means training and support in the disposal, demilitarization, physical security, and stockpile management of potentially dangerous stockpiles of explosive ordnance, small arms, and light weapons, including man-portable air-defense systems. Such term includes activities related to the furnishing of education, training, and technical assistance with respect to explosive safety and the disposal, demilitarization, physical security, and stockpile management of potentially dangerous stockpiles of explosive ordnance, small arms, and light weapons, including man-portable air-defense systems.

(Added Pub. L. 109–364, div. A, title XII, §1203(b)(1), Oct. 17, 2006, 120 Stat. 2413; amended Pub. L. 112–81, div. A, title X, §1092(a), (b)(1), Dec. 31, 2011, 125 Stat. 1605, 1606; Pub. L. 113–66, div. A, title X, §1083, Dec. 26, 2013, 127 Stat. 871; Pub. L. 113–291, div. A, title X, §§1041, 1071(f)(5), Dec. 19, 2014, 128 Stat. 3492, 3510; Pub. L. 114–328, div. A, title X, §1082, Dec. 23, 2016, 130 Stat. 2420; Pub. L. 115–91, div. A, title X, §1043, Dec. 12, 2017, 131 Stat. 1554.)

AMENDMENTS

2017—Subsec. (a)(3). Pub. L. 115–91, §1043(a)(1), struck out ''or stockpiled conventional munitions assistance'' after ''demining assistance'' in introductory provisions.

Subsec. (a)(3)(A). Pub. L. 115–91, §1043(a)(2), inserted '', unexploded explosive ordnance,'' after ''landmines'' and struck out '', or stockpiled conventional munitions, as applicable'' after ''war''.

Subsec. (e)(1). Pub. L. 115–91, §1043(b), inserted '', unexploded explosive ordnance,'' after ''landmines'' in two places and substituted period at end for '', and the disposal, demilitarization, physical security, and stockpile management of potentially dangerous stockpiles of explosive ordnance.''

Subsec. (e)(2). Pub. L. 115–91, §1043(c), struck out '', the detection and clearance of landmines and other explosive remnants of war,'' after ''explosive safety''.

2016—Subsec. (c)(3). Pub. L. 114–328 substituted ''$15,000,000'' for ''$10,000,000''.

2014—Subsec. (a)(3)(A). Pub. L. 113–291, §1071(f)(5), struck out comma after ''as applicable''.

Subsec. (d)(3). Pub. L. 113–291, §1041(a), inserted ''or insufficient funding'' after ''such activities''.

Subsec. (e)(2). Pub. L. 113–291, §1041(b), substituted ''small arms, and light weapons, including man-portable air-defense systems. Such term includes'' for ''and includes'' and inserted before period at end '', small arms, and light weapons, including man-portable air-defense systems''.

2013—Subsec. (d)(5). Pub. L. 113–66 added par. (5).

2011—Pub. L. 112–81, §1092(b)(1), amended section catchline generally, substituting ''Humanitarian demining assistance and stockpiled conventional munitions assistance: authority; limitations'' for ''Humanitarian demining assistance: authority; limitations''.

Subsec. (a)(1). Pub. L. 112–81, §1092(a)(1)(A), inserted ''and stockpiled conventional munitions assistance'' after ''humanitarian demining assistance'' in introductory provisions.

Subsec. (a)(2). Pub. L. 112–81, §1092(a)(1)(B), inserted ''and stockpiled conventional munitions assistance'' after ''Humanitarian demining assistance''.

Subsec. (a)(3). Pub. L. 112–81, §1092(a)(1)(C)(i), inserted ''or stockpiled conventional munitions assistance'' after ''humanitarian demining assistance'' in introductory provisions.

Subsec. (a)(3)(A). Pub. L. 112–81, §1092(a)(1)(C)(ii), inserted '', or stockpiled conventional munitions, as applicable,'' after ''explosive remnants of war''.

Subsec. (b)(1). Pub. L. 112–81, §1092(a)(2)(A), which directed amendment by inserting ''and stockpiled conventional munitions assistance'' after ''humanitarian demining assistance'', was executed by making the insertion after ''Humanitarian demining assistance'' to reflect the probable intent of Congress.

Subsec. (b)(2). Pub. L. 112–81, §1092(a)(2)(B), inserted ''or stockpiled conventional munitions assistance'' after ''humanitarian demining assistance''.

Subsec. (c)(1). Pub. L. 112–81, §1092(a)(3)(A), inserted ''or stockpiled conventional munitions assistance'' after ''humanitarian demining assistance''.

Subsec. (c)(2)(B). Pub. L. 112–81, §1092(a)(3)(B), inserted ''or stockpiled conventional munitions activities'' after ''humanitarian demining activities'' and inserted '', or stockpiled conventional munitions, as applicable,'' after ''explosive remnants of war''.

Subsec. (d). Pub. L. 112–81, §1092(a)(4)(A), inserted ''or stockpiled conventional munitions assistance'' after ''humanitarian demining assistance'' wherever appearing.

Subsec. (d)(2). Pub. L. 112–81, §1092(a)(4)(B), inserted '', and whether such assistance was primarily related to the humanitarian demining efforts or stockpiled conventional munitions assistance'' after ''paragraph (1)''.

Subsec. (e). Pub. L. 112–81, §1092(a)(5), added subsec. (e) and struck out former subsec. (e). Prior to amendment, text read as follows: ''In this section, the term 'humanitarian demining assistance', as it relates to

training and support, means detection and clearance of landmines and other explosive remnants of war, including activities related to the furnishing of education, training, and technical assistance with respect to the detection and clearance of landmines and other explosive remnants of war.''

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective Dec. 31, 2021, of provisions in subsec. (d) of this section requiring submittal of annual report to Congress, see section 1061 of Pub. L. 114–328, set out as a note under section 111 of this title.

AUTHORITY TO TRANSFER SURPLUS MINE-RESISTANT AMBUSH-PROTECTED VEHICLES AND SPARE PARTS

Pub. L. 112–239, div. A, title X, § 1053, Jan. 2, 2013, 126 Stat. 1937, provided that:

''(a) AUTHORITY.—The Secretary of Defense is authorized to transfer surplus Mine-Resistant Ambush-Protected vehicles, including spare parts for such vehicles, to non-profit United States humanitarian demining organizations for purposes of demining activities and training of such organizations.

''(b) TERMS AND CONDITIONS.—Any transfer of vehicles or spare parts under subsection (a) shall be subject to the following terms and conditions:

''(1) The transfer shall be made on a loan basis.

''(2) The costs of operation and maintenance of the vehicles shall be borne by the recipient organization.

''(3) Any other terms and conditions as the Secretary of Defense determines to be appropriate.

''(c) NOTIFICATION.—The Secretary of Defense shall notify the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] in writing not less than 60 days before making any transfer of vehicles or spare parts under subsection (a). Such notification shall include the name of the organization, the number and model of the vehicle to be transferred, a listing of any spare parts to be transferred, and any other information the Secretary considers appropriate.''

§ 408. Equipment and training of foreign personnel to assist in Department of Defense accounting for missing United States Government personnel

(a) IN GENERAL.—The Secretary of Defense may provide assistance to any foreign nation to assist the Department of Defense with recovery of and accounting for missing United States Government personnel.

(b) TYPES OF ASSISTANCE.—The assistance provided under subsection (a) may include the following:

(1) Equipment.

(2) Supplies.

(3) Services.

(4) Training of personnel.

(c) APPROVAL BY SECRETARY OF STATE.—Assistance may not be provided under this section to any foreign nation unless the Secretary of State specifically approves the provision of such assistance.

(d) LIMITATION.—The amount of assistance provided under this section in any fiscal year may not exceed $1,000,000.

(e) CONSTRUCTION WITH OTHER ASSISTANCE.—The authority to provide assistance under this section is in addition to any other authority to provide assistance to foreign nations under law.

(f) CONGRESSIONAL OVERSIGHT.—Whenever the Secretary of Defense provides assistance to a foreign nation under this section, the Secretary shall submit to the congressional defense committees a report on the assistance provided. Each such report shall identify the nation to which the assistance was provided and include a description of the type and amount of the assistance provided.

(Added Pub. L. 110–181, div. A, title XII, § 1207(a), Jan. 28, 2008, 122 Stat. 367; amended Pub. L. 112–81, div. A, title X, § 1064(5), Dec. 31, 2011, 125 Stat. 1587.)

AMENDMENTS

2011—Subsec. (f). Pub. L. 112–81 amended subsec. (f) generally. Prior to amendment, text read as follows:

''(1) Not later than December 31 each year, the Secretary of Defense shall submit to the congressional defense committees a report on the assistance provided under this section during the fiscal year ending in such year.

''(2) Each report under paragraph (1) shall include, for the fiscal year covered by such report, the following:

''(A) A listing of each foreign nation provided assistance under this section.

''(B) For each nation so provided assistance, a description of the type and amount of such assistance.''

§ 409. Center for Complex Operations

(a) CENTER AUTHORIZED.—The Secretary of Defense may establish a center to be known as the ''Center for Complex Operations'' (in this section referred to as the ''Center'').

(b) PURPOSES.—The purposes of the Center established under subsection (a) shall be the following:

(1) To provide for effective coordination in the preparation of Department of Defense personnel and other United States Government personnel for complex operations.

(2) To foster unity of effort during complex operations among—

(A) the departments and agencies of the United States Government;

(B) foreign governments and militaries;

(C) international organizations and international nongovernmental organizations; and

(D) domestic nongovernmental organizations.

(3) To conduct research; collect, analyze, and distribute lessons learned; and compile best practices in matters relating to complex operations.

(4) To identify gaps in the education and training of Department of Defense personnel, and other relevant United States Government personnel, relating to complex operations, and to facilitate efforts to fill such gaps.

(c) CONCURRENCE OF THE SECRETARY OF STATE.—The Secretary of Defense shall seek the concurrence of the Secretary of State to the extent the efforts and activities of the Center involve the entities referred to in subparagraphs (B) and (C) of subsection (b)(2).

(d) SUPPORT FROM OTHER UNITED STATES GOVERNMENT DEPARTMENTS OR AGENCIES.—The head of any non-Department of Defense department or agency of the United States Government may—

(1) provide to the Secretary of Defense services, including personnel support, to support the operations of the Center; and

(2) transfer funds to the Secretary of Defense to support the operations of the Center.

(e) ACCEPTANCE OF GIFTS AND DONATIONS.—(1) Subject to paragraph (3), the Secretary of Defense may accept from any source specified in paragraph (2) any gift or donation for purposes of defraying the costs or enhancing the operations of the Center.

(2) The sources specified in this paragraph are the following:

(A) The government of a State or a political subdivision of a State.

(B) The government of a foreign country.

(C) A foundation or other charitable organization, including a foundation or charitable organization that is organized or operates under the laws of a foreign country.

(D) Any source in the private sector of the United States or a foreign country.

(3) The Secretary may not accept a gift or donation under this subsection if acceptance of the gift or donation would compromise or appear to compromise—

(A) the ability of the Department of Defense, any employee of the Department, or any member of the armed forces to carry out the responsibility or duty of the Department in a fair and objective manner; or

(B) the integrity of any program of the Department or of any person involved in such a program.

(4) The Secretary shall provide written guidance setting forth the criteria to be used in determining the applicability of paragraph (3) to any proposed gift or donation under this subsection.

(f) CREDITING OF FUNDS TRANSFERRED OR ACCEPTED.—Funds transferred to or accepted by the Secretary of Defense under this section shall be credited to appropriations available to the Department of Defense for the Center, and shall be available for the same purposes, and subject to the same conditions and limitations, as the appropriations with which merged. Any funds so transferred or accepted shall remain available until expended.

(g) DEFINITIONS.—In this section:

(1) The term ''complex operation'' means an operation as follows:

(A) A stability operation.

(B) A security operation.

(C) A transition and reconstruction operation.

(D) A counterinsurgency operation.

(E) An operation consisting of irregular warfare.

(2) The term ''gift or donation'' means any gift or donation of funds, materials (including research materials), real or personal property, or services (including lecture services and faculty services).

(Added Pub. L. 110–417, [div. A], title X, §1031(a), Oct. 14, 2008, 122 Stat. 4589.)

[§410. Repealed. Pub. L. 104–106, div. A, title V, §571(a)(1), Feb. 10, 1996, 110 Stat. 353]

Section, added Pub. L. 102–484, div. A, title X, §1081(b)(1), Oct. 23, 1992, 106 Stat. 2515, related to Civil-Military Cooperative Action Program.

PILOT OUTREACH PROGRAM TO REDUCE DEMAND FOR ILLEGAL DRUGS

Pub. L. 102–484, div. A, title X, §1045, Oct. 23, 1992, 106 Stat. 2494, required Secretary of Defense to conduct pilot outreach program to reduce demand for illegal drugs, required program to include outreach activities by active and reserve components of Armed Forces and focus primarily on youths in general and inner-city youths in particular, and related to payment of travel and living expenses, funding, duration of program, and reporting requirements, prior to repeal by Pub. L. 104–106, div. A, title V, §571(b), Feb. 10, 1996, 110 Stat. 353.

CONGRESSIONAL FINDINGS

Pub. L. 102–484, div. A, title X, §1081(a), Oct. 23, 1992, 106 Stat. 2514, related to findings of Congress as to use of military resources to assist in addressing domestic needs, prior to repeal by Pub. L. 104–106, div. A, title V, §571(a)(2), Feb. 10, 1996, 110 Stat. 353.

CHAPTER 21—DEPARTMENT OF DEFENSE INTELLIGENCE MATTERS

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AMENDMENTS

1991—Pub. L. 102–88, title V, §504(a)(1), Aug. 14, 1991, 105 Stat. 437, added items for subchapters I and II.

LIMITATION ON USE OF FUNDS

Pub. L. 115–31, div. C, title VIII, §8037, May 5, 2017, 131 Stat. 255, provided that: ''Notwithstanding any other provision of law, funds made available in this Act [div. C of Pub. L. 115–31, see Tables for classification] and hereafter for the Defense Intelligence Agency may be used for the design, development, and deployment of General Defense Intelligence Program intelligence communications and intelligence information systems for the Services, the Unified and Specified Commands, and the component commands.''

DEPARTMENT OF DEFENSE INTELLIGENCE PRIORITIES

Pub. L. 113–66, div. A, title IX, §922, Dec. 26, 2013, 127 Stat. 828, provided that: ''Not later than 180 days after the date of the enactment of this Act [Dec. 26, 2013], the Secretary of Defense shall—

''(1) establish a written policy governing the internal coordination and prioritization of intelligence priorities of the Office of the Secretary of Defense, the Joint Staff, the combatant commands, and the military departments to improve identification of the intelligence needs of the Department of Defense;

''(2) identify any significant intelligence gaps of the Office of the Secretary of Defense, the Joint Staff, the combatant commands, and the military departments; and

''(3) provide to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives], the Permanent Select Committee on Intelligence of the House of Representatives, and the Select Committee on Intelligence of the Senate a briefing on the policy established under paragraph (1) and the gaps identified under paragraph (2).''

DEFENSE CLANDESTINE SERVICE

Pub. L. 113–66, div. A, title IX, §923, Dec. 26, 2013, 127 Stat. 828, as amended by Pub. L. 115–91, div. A, title X, §1051(s)(2), Dec. 12, 2017, 131 Stat. 1566, provided that:

''(a) CERTIFICATION REQUIRED.—Not more than 50 percent of the funds authorized to be appropriated by this Act [see Tables for classification] or otherwise available to the Department of Defense for the Defense Clandestine Service for fiscal year 2014 may be obligated or expended for the Defense Clandestine Service until such time as the Secretary of Defense certifies to the covered congressional committees that—

''(1) the Defense Clandestine Service is designed primarily to—

''(A) fulfill priorities of the Department of Defense that are unique to the Department of Defense or otherwise unmet; and

"(B) provide unique capabilities to the intelligence community (as defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 3003(4))); and

"(2) the Secretary of Defense has designed metrics that will be used to ensure that the Defense Clandestine Service is employed as described in paragraph (1).

"(b) NOTIFICATION OF FUTURE CHANGES TO DESIGN.—Following the submittal of the certification referred to in subsection (a), in the event that any significant change is made to the Defense Clandestine Service, the Secretary shall promptly notify the covered congressional committees of the nature of such change.

"(c) QUARTERLY BRIEFINGS.—The Secretary of Defense shall quarterly provide to the covered congressional committees a briefing on the deployments and collection activities of personnel of the Defense Clandestine Service.

"(d) COVERED CONGRESSIONAL COMMITTEES DEFINED.—In this section, the term 'covered congressional committees' means the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives], the Permanent Select Committee on Intelligence of the House of Representatives, and the Select Committee on Intelligence of the Senate."

SUBCHAPTER I—GENERAL MATTERS

Sec.

421. Funds for foreign cryptologic support.
422. Use of funds for certain incidental purposes.
423. Authority to use proceeds from counterintelligence operations of the military departments or the Defense Intelligence Agency.
424. Disclosure of organizational and personnel information: exemption for specified intelligence agencies.
425. Prohibition of unauthorized use of name, initials, or seal: specified intelligence agencies.
426. Integration of Department of Defense intelligence, surveillance, and reconnaissance capabilities.
427. Conflict Records Research Center.
428. Defense industrial security.
429. Appropriations for Defense intelligence elements: accounts for transfers; transfer authority.
430. Tactical Exploitation of National Capabilities Executive Agent.
430a. Executive agent for management and oversight of alternative compensatory control measures.
430b. Executive agent for open-source intelligence tools.

AMENDMENTS

2015—Pub. L. 114–92, div. A, title X, §§ 1081(a)(5), 1083(a)(2), title XVI, § 1631(b), Nov. 25, 2015, 129 Stat. 1001, 1004, 1111, added items 430 to 430b.

2013—Pub. L. 113–66, div. A, title X, § 1071(b), Dec. 26, 2013, 127 Stat. 868, added item 427.

2012—Pub. L. 112–87, title IV, § 433(b), Jan. 3, 2012, 125 Stat. 1895, added item 429.

2011—Pub. L. 112–81, div. A, title X, § 1061(4)(B), Dec. 31, 2011, 125 Stat. 1583, struck out item 427 "Intelligence oversight activities of Department of Defense: annual reports".

Pub. L. 111–383, div. A, title X, § 1075(d)(10), Jan. 7, 2011, 124 Stat. 4373, made technical correction to directory language of Pub. L. 111–84, § 921(b)(2). See 2009 Amendment note below.

2009—Pub. L. 111–84, div. A, title X, § 1073(a)(5), Oct. 28, 2009, 123 Stat. 2472, redesignated item 438 as 428.

Pub. L. 111–84, div. A, title IX, § 921(b)(2), Oct. 28, 2009, 123 Stat. 2432, as amended by Pub. L. 111–383, div. A, title X, § 1075(d)(10), Jan. 7, 2011, 124 Stat. 4373, added item 423 and struck out former item 423 "Authority to use proceeds from counterintelligence operations of the military departments".

2008—Pub. L. 110–417, [div. A], title VIII, § 845(a)(2), Oct. 14, 2008, 122 Stat. 4542, added item 438.

2006—Pub. L. 109–364, div. A, title IX, § 932(b), Oct. 17, 2006, 120 Stat. 2363, added item 427.

2003—Pub. L. 108–136, div. A, title IX, §§ 921(d)(5)(B)(ii), 923(c)(2), Nov. 24, 2003, 117 Stat. 1569, 1576, substituted "Disclosure of organizational and personnel information: exemption for specified intelligence agencies" for "Disclosure of organizational and personnel information: exemption for Defense Intelligence Agency, National Reconnaissance Office, and National Imagery and Mapping Agency" in item 424 and added item 426.

2001—Pub. L. 107–108, title V, § 501(b)(3), Dec. 28, 2001, 115 Stat. 1404, substituted "Use of funds for certain incidental purposes" for "Counterintelligence official reception and representation expenses" in item 422.

1997—Pub. L. 105–107, title V, § 503(d)(2), Nov. 20, 1997, 111 Stat. 2263, added items 424 and 425 and struck out former items 424 "Disclosure of organizational and personnel information: exemption for Defense Intelligence Agency" and 425 "Disclosure of personnel information: exemption for National Reconnaissance Office".

1993—Pub. L. 103–178, title V, § 503(a)(2), Dec. 3, 1993, 107 Stat. 2039, added item 425.

1991—Pub. L. 102–88, title V, § 504(a)(1), Aug. 14, 1991, 105 Stat. 437, added subchapter heading.

1989—Pub. L. 101–189, div. A, title XVI, § 1622(c)(2), Nov. 29, 1989, 103 Stat. 1604, substituted "Funds for foreign cryptologic support" for "Funds for Foreign Cryptologic Support" in item 421.

1988—Pub. L. 100–453, title VII, §§ 701(b), 703(b), Sept. 29, 1988, 102 Stat. 1912, 1913, in item 421 substituted "Funds for Foreign Cryptologic Support" for "Funds transfers for foreign cryptologic support" and added item 424.

1987—Pub. L. 100–180, div. A, title XII, § 1231(3), Dec. 4, 1987, 101 Stat. 1160, substituted "departments" for "department" in item 423.

§ 421. Funds for foreign cryptologic support

(a) The Secretary of Defense may use appropriated funds available to the Department of Defense for intelligence and communications purposes to pay for the expenses of arrangements with foreign countries for cryptologic support.

(b) The Secretary of Defense may use funds other than appropriated funds to pay for the expenses of arrangements with foreign countries for cryptologic support without regard for the provisions of law relating to the expenditure of United States Government funds, except that—

(1) no such funds may be expended, in whole or in part, by or for the benefit of the Department of Defense for a purpose for which Congress had previously denied funds; and

(2) proceeds from the sale of cryptologic items may be used only to purchase replacement items similar to the items that are sold; and

(3) the authority provided by this subsection may not be used to acquire items or services for the principal benefit of the United States.

(c) Any funds expended under the authority of subsection (a) shall be reported to the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives pursuant to the provisions of title V of the National Security Act of 1947 (50 U.S.C. 3091 et seq.). Funds expended under the authority of subsection (b) shall be reported pursuant to procedures jointly agreed upon by such committees and the Secretary of Defense.

(Added Pub. L. 96–450, title IV, § 401(a), Oct. 14, 1980, 94 Stat. 1977, § 140a; amended Pub. L. 97–258, § 3(b)(2), Sept. 13, 1982, 96 Stat. 1063; renumbered § 128 and amended Pub. L. 99–433, title I, §§ 101(a)(3), 110(d)(5), Oct. 1, 1986, 100 Stat. 994, 1002; renumbered § 421, Pub. L. 100–26, § 9(a)(2), Apr. 21, 1987, 101 Stat. 287; Pub. L. 100–453, title VII, § 701(a), Sept. 29, 1988, 102 Stat. 1911; Pub. L. 101–189, div. A, title XVI, § 1622(c)(3), Nov. 29, 1989, 103 Stat. 1604; Pub. L. 113–291, div. A, title X, § 1071(c)(3), Dec. 19, 2014, 128 Stat. 3508.)

REFERENCES IN TEXT

The National Security Act of 1947, referred to in subsec. (c), is act July 26, 1947, ch. 343, 61 Stat. 495. Title V of the Act is classified generally to subchapter III (§ 3091 et seq.) of chapter 44 of Title 50, War and National Defense. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

2014—Subsec. (c). Pub. L. 113–291 substituted ''(50 U.S.C. 3091 et seq.)'' for ''(50 U.S.C. 413 et seq.)''.

1989—Subsec. (c). Pub. L. 101–189 substituted ''House of Representatives pursuant to the provisions of title V of the National Security Act of 1947 (50 U.S.C. 413 et seq.). Funds'' for ''House pursuant to the provisions of title V of the National Security Act of 1947, as amended, and funds''.

1988—Pub. L. 100–453 struck out ''transfers'' after ''Funds'' in section catchline and amended text generally. Prior to amendment, text read as follows: ''The Secretary of Defense may use funds available to the Department of Defense for intelligence and communications purposes to pay for the expenses of arrangements with foreign countries for cryptologic support.''

1987—Pub. L. 100–26 renumbered section 128 of this title as this section.

1986—Pub. L. 99–433 renumbered section 140a of this title as section 128 of this title and substituted ''Funds'' for ''Secretary of Defense: funds'' in section catchline.

1982—Pub. L. 97–258 struck out provision that payments under this section could be made without regard to section 3651 of the Revised Statutes of the United States (31 U.S.C. 543).

COMPREHENSIVE INDEPENDENT STUDY OF NATIONAL CRYPTOGRAPHY POLICY

Pub. L. 103–160, div. A, title II, § 267, Nov. 30, 1993, 107 Stat. 1611, directed Secretary of Defense, not later than 90 days after Nov. 30, 1993, to request National Research Council of National Academy of Sciences to conduct a comprehensive study to assess effect of cryptographic technologies on national security, law enforcement, commercial, and privacy interests, and effect of export controls on commercial interests, with cooperation of other agencies, and report findings and conclusions within 2 years after processing of security clearances to Secretary of Defense, and directed Secretary to submit a report in unclassified form to Committee on Armed Services, Committee on the Judiciary, and Select Committee on Intelligence of Senate and to Committee on Armed Services, Committee on the Judiciary, and Permanent Select Committee on Intelligence of House of Representatives, not later than 120 days after the report is submitted to the Secretary.

§ 422. Use of funds for certain incidental purposes

(a) COUNTERINTELLIGENCE OFFICIAL RECEPTION AND REPRESENTATION EXPENSES.—The Secretary of Defense may use funds available to the Department of Defense for counterintelligence programs to pay the expenses of hosting foreign officials in the United States under the auspices of the Department of Defense for consultation on counterintelligence matters.

(b) PROMOTIONAL ITEMS FOR RECRUITMENT PURPOSES.—The Secretary of Defense may use funds available for an intelligence element of the Department of Defense to purchase promotional items of nominal value for use in the recruitment of individuals for employment by that element.

(Added Pub. L. 99–569, title IV, § 401(c), Oct. 27, 1986, 100 Stat. 3195, § 140a; renumbered § 422, Pub. L. 100–26, § 9(a)(3), Apr. 21, 1987, 101 Stat. 287; amended Pub. L. 107–108, title V, § 501(a)–(b)(2), Dec. 28, 2001, 115 Stat. 1404.)

AMENDMENTS

2001—Pub. L. 107–108 substituted ''Use of funds for certain incidental purposes'' for ''Counterintelligence official reception and representation expenses'' in section catchline, designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

1987—Pub. L. 100–26 renumbered section 140a of this title as this section.

§ 423. Authority to use proceeds from counterintelligence operations of the military departments or the Defense Intelligence Agency

(a) The Secretary of Defense may authorize, without regard to the provisions of section 3302 of title 31, use of proceeds from counterintelligence operations conducted by components of the military departments or the Defense Intelligence Agency to offset necessary and reasonable expenses, not otherwise prohibited by law, incurred in such operations, and to make exceptional performance awards to personnel involved in such operations, if use of appropriated funds to meet such expenses or to make such awards would not be practicable.

(b) As soon as the net proceeds from such counterintelligence operations are no longer necessary for the conduct of those operations, such proceeds shall be deposited into the Treasury as miscellaneous receipts.

(c) The Secretary of Defense shall establish policies and procedures to govern acquisition, use, management, and disposition of proceeds from counterintelligence operations conducted by components of the military departments or the Defense Intelligence Agency, including effective internal systems of accounting and administrative controls.

(Added Pub. L. 99–569, title IV, § 403(a), Oct. 27, 1986, 100 Stat. 3196, § 140b; renumbered § 423 and amended Pub. L. 100–26, § 9(a)(3), (b)(3), Apr. 21, 1987, 101 Stat. 287; Pub. L. 111–84, div. A, title IX, § 921(a), (b)(1), Oct. 28, 2009, 123 Stat. 2432.)

AMENDMENTS

2009—Pub. L. 111–84 inserted ''or the Defense Intelligence Agency'' after ''military departments'' wherever appearing.

1987—Pub. L. 100–26 renumbered section 140b of this title as this section and struck out ''United States Code,'' after ''section 3302 of title 31,'' in subsec. (a).

§ 424. Disclosure of organizational and personnel information: exemption for specified intelligence agencies

(a) EXEMPTION FROM DISCLOSURE.—Except as required by the President or as provided in sub-

section (c), no provision of law shall be construed to require the disclosure of—

(1) the organization or any function of an organization of the Department of Defense named in subsection (b); or

(2) the number of persons employed by or assigned or detailed to any such organization or the name, official title, occupational series, grade, or salary of any such person.

(b) COVERED ORGANIZATIONS.—This section applies to the following organizations of the Department of Defense:

(1) The Defense Intelligence Agency.

(2) The National Reconnaissance Office.

(3) The National Geospatial-Intelligence Agency.

(c) PROVISION OF INFORMATION TO CONGRESS.—Subsection (a) does not apply with respect to the provision of information to Congress.

(Added Pub. L. 104–201, div. A, title XI, § 1112(d), Sept. 23, 1996, 110 Stat. 2683; amended Pub. L. 108–136, div. A, title IX, § 921(d)(5)(A), (B)(i), Nov. 24, 2003, 117 Stat. 1569.)

PRIOR PROVISIONS

A prior section 424, added Pub. L. 100–178, title VI, § 603(a), Dec. 2, 1987, 101 Stat. 1016, § 1607; renumbered § 424 and amended Pub. L. 100–453, title VII, § 703(a), Sept. 29, 1988, 102 Stat. 1912, related to disclosure of organizational and personnel information with respect to the Defense Intelligence Agency prior to repeal by Pub. L. 104–201, div. A, title XI, §§ 1112(d), 1124, Sept. 23, 1996, 110 Stat. 2683, 2688, effective Oct. 1, 1996.

AMENDMENTS

2003—Pub. L. 108–136, § 921(d)(5)(B)(i), substituted ''Disclosure of organizational and personnel information: exemption for specified intelligence agencies'' for ''Disclosure of organizational and personnel information: exemption for Defense Intelligence Agency, National Reconnaissance Office, and National Imagery and Mapping Agency'' in section catchline.

Subsec. (b)(3). Pub. L. 108–136, § 921(d)(5)(A), substituted ''National Geospatial-Intelligence Agency'' for ''National Imagery and Mapping Agency''.

EFFECTIVE DATE

Section effective Oct. 1, 1996, see section 1124 of Pub. L. 104–201, set out as an Effective Date of 1996 Amendment note under section 193 of this title.

DISCLOSURE OF GOVERNMENTAL AFFILIATION BY DEPARTMENT OF DEFENSE INTELLIGENCE PERSONNEL OUTSIDE OF UNITED STATES

Pub. L. 103–359, title V, § 503, Oct. 14, 1994, 108 Stat. 3430, provided that:

''(a) IN GENERAL.—Notwithstanding section 552a(e)(3) of title 5, United States Code, intelligence personnel of the Department of Defense who are authorized by the Secretary of Defense to collect intelligence from human sources shall not be required, when making an initial assessment contact outside the United States, to give notice of governmental affiliation to potential sources who are United States persons.

''(b) RECORDS.—Records concerning such contacts shall be maintained by the Department of Defense and made available upon request to the appropriate committees of the Congress in accordance with applicable security procedures. Such records shall include for each such contact an explanation of why notice of government affiliation could not reasonably be provided, the nature of the information obtained from the United States person as a result of the contact, and whether additional contacts resulted with the person concerned.

''(c) DEFINITIONS.—For the purposes of this section—

''(1) the term 'United States' includes the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and any territory or possession of the United States; and

''(2) the term 'United States person' means any citizen, national, or permanent resident alien of the United States.''

EXEMPTION FOR NATIONAL RECONNAISSANCE OFFICE FROM ANY REQUIREMENT FOR DISCLOSURE OF PERSONNEL INFORMATION

Pub. L. 102–496, title IV, § 406, Oct. 24, 1992, 106 Stat. 3186, which provided that, except as required by President and except with respect to provision of information to Congress, nothing in Pub. L. 102–496 or any other provision of law was to be construed to require disclosure of name, title, or salary of any person employed by, or assigned or detailed to, National Reconnaissance Office or disclosure of number of such persons, was repealed and restated in former section 425 of this title by Pub. L. 103–178, title V, § 503(a)(1), (b), Dec. 3, 1993, 107 Stat. 2038, 2039.

§ 425. Prohibition of unauthorized use of name, initials, or seal: specified intelligence agencies

(a) PROHIBITION.—Except with the written permission of both the Secretary of Defense and the Director of National Intelligence, no person may knowingly use, in connection with any merchandise, retail product, impersonation, solicitation, or commercial activity in a manner reasonably calculated to convey the impression that such use is approved, endorsed, or authorized by the Secretary and the Director, any of the following (or any colorable imitation thereof):

(1) The words ''Defense Intelligence Agency'', the initials ''DIA'', or the seal of the Defense Intelligence Agency.

(2) The words ''National Reconnaissance Office'', the initials ''NRO'', or the seal of the National Reconnaissance Office.

(3) The words ''National Imagery and Mapping Agency'', the initials ''NIMA'', or the seal of the National Imagery and Mapping Agency.

(4) The words ''Defense Mapping Agency'', the initials ''DMA'', or the seal of the Defense Mapping Agency.

(5) The words ''National Geospatial-Intelligence Agency'', the initials ''NGA,'' or the seal of the National Geospatial-Intelligence Agency.

(b) AUTHORITY TO ENJOIN VIOLATIONS.—Whenever it appears to the Attorney General that any person is engaged or is about to engage in an act or practice which constitutes or will constitute conduct prohibited by subsection (a), the Attorney General may initiate a civil proceeding in a district court of the United States to enjoin such act or practice. Such court shall proceed as soon as practicable to the hearing and determination of such action and may, at any time before final determination, enter such restraining orders or prohibitions, or take such other actions as is warranted, to prevent injury to the United States or to any person or class of persons for whose protection the action is brought.

(Added and amended Pub. L. 105–107, title V, § 503(a), (b), Nov. 20, 1997, 111 Stat. 2262; Pub. L. 108–136, div. A, title IX, § 921(d)(6), Nov. 24, 2003, 117 Stat. 1569; Pub. L. 110–181, div. A, title IX,

§ 931(a)(6), Jan. 28, 2008, 122 Stat. 285; Pub. L. 110–417, [div. A], title IX, § 932(a)(6), Oct. 14, 2008, 122 Stat. 4576; Pub. L. 111–84, div. A, title X, § 1073(c)(10), Oct. 28, 2009, 123 Stat. 2475.)

CODIFICATION

The text of section 202(b) of this title, which was transferred to this section by Pub. L. 105–107, § 503(b), was based on Pub. L. 97–269, title V, § 501(a), Sept. 27, 1982, 96 Stat. 1145, § 191; renumbered § 201, Pub. L. 99–433, title III, § 301(a)(1), Oct. 1, 1986, 100 Stat. 1019; renumbered § 202, Pub. L. 102–190, div. A, title IX, § 922(a)(1), Dec. 5, 1991, 105 Stat. 1453.

PRIOR PROVISIONS

A prior section 425, added Pub. L. 103–178, title V, § 503(a)(1), Dec. 3, 1993, 107 Stat. 2038, related to disclosure of information about personnel at National Reconnaissance Office prior to repeal by Pub. L. 104–201, div. A, title XI, §§ 1112(d), 1124, Sept. 23, 1996, 110 Stat. 2683, 2688, effective Oct. 1, 1996. See section 424 of this title.

AMENDMENTS

2009—Subsec. (a). Pub. L. 111–84 repealed Pub. L. 110–417, § 932(a)(6). See 2008 Amendment note below.

2008—Subsec. (a). Pub. L. 110–181 and Pub. L. 110–417, § 932(a)(6), amended subsec. (a) identically, substituting ''Director of National Intelligence'' for ''Director of Central Intelligence'' in introductory provisions. Pub. L. 110–417, § 932(a)(6), was repealed by Pub. L. 111–84.

2003—Subsec. (a)(5). Pub. L. 108–136 added par. (5).

1997—Subsec. (b). Pub. L. 105–107, § 503(b), renumbered section 202(b) of this title as subsec. (b) of this section and inserted heading.

CHANGE OF NAME

Reference to National Imagery and Mapping Agency considered to be reference to National Geospatial-Intelligence Agency, see section 921(a) of Pub. L. 108–136, set out as a note under section 441 of this title.

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–84, div. A, title X, § 1073(c), Oct. 28, 2009, 123 Stat. 2474, provided that the amendment made by section 1073(c)(10) is effective as of Oct. 14, 2008, and as if included in Pub. L. 110–417 as enacted.

§ 426. Integration of Department of Defense intelligence, surveillance, and reconnaissance capabilities

(a) ISR INTEGRATION COUNCIL.—(1) The Under Secretary of Defense for Intelligence and Security shall establish an Intelligence, Surveillance, and Reconnaissance Integration Council—

(A) to assist the Secretary of Defense in carrying out the responsibilities of the Secretary under section 105(a) of the National Security Act of 1947 (50 U.S.C. 3038(a));

(B) to assist the Under Secretary with respect to matters relating to—

(i) integration of intelligence and counterintelligence capabilities and activities under section 137(b) of this title of the military departments, intelligence agencies of the Department of Defense, and relevant combatant commands; and

(ii) coordination of related developmental activities of such departments, agencies, and combatant commands; and

(C) to otherwise provide a means to facilitate such integration and coordination.

(2) The Council shall be composed of—

(A) the Under Secretary, who shall chair the Council;

(B) the directors of the intelligence agencies of the Department of Defense;

(C) the senior intelligence officers of the armed forces and the regional and functional combatant commands;

(D) the Director for Intelligence of the Joint Chiefs of Staff; and

(E) the Director for Operations of the Joint Chiefs of Staff.

(3) The Under Secretary shall invite the participation of the Director of National Intelligence (or a representative of the Director) in the proceedings of the Council.

(4) The Under Secretary may designate additional participants to attend the proceedings of the Council, as the Under Secretary determines appropriate.

(b) ANNUAL BRIEFINGS ON THE INTELLIGENCE AND COUNTERINTELLIGENCE REQUIREMENTS OF THE COMBATANT COMMANDS.—(1) The Chairman of the Joint Chiefs of Staff shall provide to the congressional defense committees and the congressional intelligence committees a briefing on the following:

(A) The intelligence and counterintelligence requirements, by specific intelligence capability type, of each of the relevant combatant commands.

(B) For the year preceding the year in which the briefing is provided, the fulfillment rate for each of the relevant combatant commands of the validated intelligence and counterintelligence requirements, by specific intelligence capability type, of such combatant command.

(C) A risk analysis identifying the critical gaps and shortfalls in efforts to address operational and strategic requirements of the Department of Defense that would result from the failure to fulfill the validated intelligence and counterintelligence requirements of the relevant combatant commands.

(D) A mitigation plan to balance and offset the gaps and shortfalls identified under subparagraph (C), including with respect to spaceborne, airborne, ground, maritime, and cyber intelligence, surveillance, and reconnaissance capabilities.

(E) For the year preceding the year in which the briefing is provided—

(i) the number of intelligence and counterintelligence requests of each commander of a relevant combatant command determined by the Joint Chiefs of Staff to be a validated requirement, and the total of capacity of such requests provided to each such commander;

(ii) with respect to such validated requirements—

(I) the quantity of intelligence and counterintelligence capabilities or activities, by specific intelligence capability type, that the Joint Chiefs of Staff requested each military department to provide; and

(II) the total of capacity of such requests so provided by each such military department; and

(iii) a qualitative assessment of the alignment of intelligence and counterintelligence capabilities and activities with the program of analysis for each combat support agency and intelligence center of a military service that is part of—

(I) the Defense Intelligence Enterprise; and

(II) the intelligence community.

(2) The Under Secretary of Defense for Intelligence and Security shall provide to the congressional defense committees and the congressional intelligence committees a briefing on short-, mid-, and long-term strategies to address the validated intelligence and counterintelligence requirements of the relevant combatant commands, including with respect to spaceborne, airborne, ground, maritime, and cyber intelligence, surveillance, and reconnaissance capabilities.

(3) The briefings required by paragraphs (1) and (2) shall be provided at the same time that the President's budget is submitted pursuant to section 1105(a) of title 31 for each of fiscal years 2021 through 2025.

(4) In this subsection:

(A) The term ''congressional intelligence committees'' has the meaning given that term in section 3 of the National Security Act of 1947 (50 U.S.C. 3003).

(B) The term ''Defense Intelligence Enterprise'' means the organizations, infrastructure, and measures, including policies, processes, procedures, and products, of the intelligence, counterintelligence, and security components of each of the following:

(i) The Department of Defense.

(ii) The Joint Staff.

(iii) The combatant commands.

(iv) The military departments.

(v) Other elements of the Department of Defense that perform national intelligence, defense intelligence, intelligence-related, counterintelligence, or security functions.

(C) The term ''fulfillment rate'' means the percentage of combatant command intelligence and counterintelligence requirements satisfied by available, acquired, or realigned intelligence and counterintelligence capabilities or activities.

(D) The term ''intelligence community'' has the meaning given that term in section 3 of the National Security Act of 1947 (50 U.S.C. 3003).

(Added Pub. L. 108–136, div. A, title IX, § 923(c)(1), Nov. 24, 2003, 117 Stat. 1575; amended Pub. L. 109–364, div. A, title X, § 1071(a)(3), Oct. 17, 2006, 120 Stat. 2398; Pub. L. 110–181, div. A, title IX, § 931(a)(7), (8), Jan. 28, 2008, 122 Stat. 285; Pub. L. 111–383, div. A, title IX, § 922(b), Jan. 7, 2011, 124 Stat. 4331; Pub. L. 115–232, div. A, title XVI, § 1625(b), Aug. 13, 2018, 132 Stat. 2121; Pub. L. 116–92, div. A, title XVI, §§ 1621(e)(1)(A)(vii), 1622, Dec. 20, 2019, 133 Stat. 1733.)

CODIFICATION

Subsec. (c) of this section was based on Pub. L. 113–291, div. A, title XVI, § 1626, Dec. 19, 2014, 128 Stat. 3635; Pub. L. 115–91, div. A, title XVI, § 1624, Dec. 12, 2017, 131 Stat. 1732; Pub. L. 115–232, div. A, title XVI, § 1625(a), Aug. 13, 2018, 132 Stat. 2121, which was transferred to this chapter, redesignated as subsec. (c) of this section by Pub. L. 115–232, § 1625(b), and subsequently repealed.

AMENDMENTS

2019—Pub. L. 116–92, § 1621(e)(1)(A)(vii), substituted ''Under Secretary of Defense for Intelligence and Security'' for ''Under Secretary of Defense for Intelligence'' wherever appearing.

Subsec. (a). Pub. L. 116–92, § 1622(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) related to establishment and composition of an Intelligence, Surveillance, and Reconnaissance (ISR) Integration Council.

Subsecs. (b), (c). Pub. L. 116–92, § 1622(b), added subsec. (b) and struck out former subsecs. (b) and (c) which related to ISR Integration Roadmap and annual briefing on intelligence, surveillance, and reconnaissance requirements of the combatant commands, respectively.

2018—Subsec. (c). Pub. L. 115–232 transferred section 1626 of Pub. L. 113–291, as amended, to this section and redesignated it as subsec. (c). See Codification note above.

2011—Subsec. (a)(4). Pub. L. 111–383 added par. (4).

2008—Subsecs. (a)(3), (b)(2). Pub. L. 110–181 substituted ''Director of National Intelligence'' for ''Director of Central Intelligence''.

2006—Subsec. (a)(1)(B). Pub. L. 109–364 substituted ''coordination'' for ''coordiation''.

INTEGRATION OF DEFENSE INTELLIGENCE, SURVEILLANCE, AND RECONNAISSANCE CAPABILITIES

Pub. L. 108–136, div. A, title IX, § 923(a), (b), Nov. 24, 2003, 117 Stat. 1574, 1575, as amended by Pub. L. 111–383, div. A, title IX, § 922(a), Jan. 7, 2011, 124 Stat. 4330, provided that:

''(a) FINDINGS.—Congress makes the following findings:

''(1) As part of transformation efforts within the Department of Defense, each of the Armed Forces is developing intelligence, surveillance, and reconnaissance capabilities that best support future war fighting as envisioned by the leadership of the military department concerned.

''(2) Concurrently, intelligence agencies of the Department of Defense outside the military departments are developing transformation roadmaps to best support the future decisionmaking and war fighting needs of their principal customers, but are not always closely coordinating those efforts with the intelligence, surveillance, and reconnaissance development efforts of the military departments.

''(3) A senior official of each military department has been designated as the integrator of intelligence, surveillance, and reconnaissance for each of the Armed Forces in such military department, but there is not currently a well-defined forum through which the integrators of intelligence, surveillance, and reconnaissance capabilities for each of the Armed Forces can routinely interact with each other and with senior representatives of Department of Defense intelligence agencies, as well as with other members of the intelligence community, to ensure unity of effort and to preclude unnecessary duplication of effort.

''(4) The current funding structure of a National Intelligence Program (NIP) and a Military Intelligence Program (MIP) may not be the best approach for supporting the development of an intelligence, surveillance, and reconnaissance structure that is integrated to meet the national security requirements of the United States in the 21st century.

''(5) The position of Under Secretary of Defense for Intelligence [now Under Secretary of Defense for Intelligence and Security] was established in 2002 by Public Law 107–314 [see 10 U.S.C. 137] in order to facilitate resolution of the challenges to achieving an integrated intelligence, surveillance, and reconnaissance structure in the Department of Defense to meet such 21st century requirements.

''(b) GOAL.—It shall be a goal of the Department of Defense to fully integrate the intelligence, surveillance, and reconnaissance capabilities and coordinate the developmental activities of the military departments, intelligence agencies of the Department of Defense, and relevant combatant commands as those departments, agencies, and commands transform their in-

telligence, surveillance, and reconnaissance systems to meet current and future needs.''

§ 427. Conflict Records Research Center

(a) CENTER AUTHORIZED.—The Secretary of Defense may establish a center to be known as the ''Conflict Records Research Center'' (in this section referred to as the ''Center'').

(b) PURPOSES.—The purposes of the Center shall be the following:

(1) To establish a digital research database, including translations, and to facilitate research and analysis of records captured from countries, organizations, and individuals, now or once hostile to the United States, with rigid adherence to academic freedom and integrity.

(2) Consistent with the protection of national security information, personally identifiable information, and intelligence sources and methods, to make a significant portion of these records available to researchers as quickly and responsibly as possible while taking into account the integrity of the academic process and risks to innocents or third parties.

(3) To conduct and disseminate research and analysis to increase the understanding of factors related to international relations, counterterrorism, and conventional and unconventional warfare and, ultimately, enhance national security.

(4) To collaborate with members of academic and broad national security communities, both domestic and international, on research, conferences, seminars, and other information exchanges to identify topics of importance for the leadership of the United States Government and the scholarly community.

(c) CONCURRENCE OF THE DIRECTOR OF NATIONAL INTELLIGENCE.—The Secretary of Defense shall seek the concurrence of the Director of National Intelligence to the extent the efforts and activities of the Center involve the entities referred to in subsection (b)(4).

(d) SUPPORT FROM OTHER UNITED STATES GOVERNMENT DEPARTMENTS OR AGENCIES.—The head of any non-Department of Defense department or agency of the United States Government may—

(1) provide to the Secretary of Defense services, including personnel support, to support the operations of the Center; and

(2) transfer funds to the Secretary of Defense to support the operations of the Center.

(e) ACCEPTANCE OF GIFTS AND DONATIONS.—(1) Subject to paragraph (3), the Secretary of Defense may accept from any source specified in paragraph (2) any gift or donation for purposes of defraying the costs or enhancing the operations of the Center.

(2) The sources specified in this paragraph are the following:

(A) The government of a State or a political subdivision of a State.

(B) The government of a foreign country.

(C) A foundation or other charitable organization, including a foundation or charitable organization that is organized or operates under the laws of a foreign country.

(D) Any source in the private sector of the United States or a foreign country.

(3) The Secretary may not accept a gift or donation under this subsection if acceptance of the gift or donation would compromise or appear to compromise—

(A) the ability of the Department of Defense, any employee of the Department, or any member of the armed forces to carry out the responsibility or duty of the Department in a fair and objective manner; or

(B) the integrity of any program of the Department or of any person involved in such a program.

(4) The Secretary shall provide written guidance setting forth the criteria to be used in determining the applicability of paragraph (3) to any proposed gift or donation under this subsection.

(f) CREDITING OF FUNDS TRANSFERRED OR ACCEPTED.—Funds transferred to or accepted by the Secretary of Defense under this section shall be credited to appropriations available to the Department of Defense for the Center, and shall be available for the same purposes, and subject to the same conditions and limitations, as the appropriations with which merged. Any funds so transferred or accepted shall remain available until expended.

(g) DEFINITIONS.—In this section:

(1) The term ''captured record'' means a document, audio file, video file, or other material captured during combat operations from countries, organizations, or individuals, now or once hostile to the United States.

(2) The term ''gift or donation'' means any gift or donation of funds, materials (including research materials), real or personal property, or services (including lecture services and faculty services).

(Added Pub. L. 113–66, div. A, title X, §1071(a), Dec. 26, 2013, 127 Stat. 867.)

PRIOR PROVISIONS

A prior section 427, added Pub. L. 109–364, div. A, title IX, §932(a), Oct. 17, 2006, 120 Stat. 2362, related to submission of an annual report on intelligence oversight activities of the Department of Defense, prior to repeal by Pub. L. 112–81, div. A, title X, §1061(4)(A), Dec. 31, 2011, 125 Stat. 1583.

§ 428. Defense industrial security

(a) RESPONSIBILITY FOR DEFENSE INDUSTRIAL SECURITY.—The Secretary of Defense shall be responsible for the protection of classified information disclosed to contractors of the Department of Defense.

(b) CONSISTENCY WITH EXECUTIVE ORDERS AND DIRECTIVES.—The Secretary shall carry out the responsibility assigned under subsection (a) in a manner consistent with Executive Order 12829 (or any successor order to such executive order) and consistent with policies relating to the National Industrial Security Program (or any successor to such program).

(c) PERFORMANCE OF INDUSTRIAL SECURITY FUNCTIONS FOR OTHER AGENCIES.—The Secretary may perform industrial security functions for other agencies of the Federal government upon request or upon designation of the Department of Defense as executive agent for the National Industrial Security Program (or any successor to such program).

(d) REGULATIONS AND POLICY GUIDANCE.—The Secretary shall prescribe, and from time to time revise, such regulations and policy guidance as are necessary to ensure the protection of classified information disclosed to contractors of the Department of Defense.

(e) DEDICATION OF RESOURCES.—The Secretary shall ensure that sufficient resources are provided to staff, train, and support such personnel as are necessary to fully protect classified information disclosed to contractors of the Department of Defense.

(Added Pub. L. 110–417, [div. A], title VIII, § 845(a)(1), Oct. 14, 2008, 122 Stat. 4541, § 438; renumbered § 428, Pub. L. 111–84, div. A, title X, § 1073(a)(4), Oct. 28, 2009, 123 Stat. 2472; Pub. L. 111–383, div. A, title X, § 1075(b)(11), Jan. 7, 2011, 124 Stat. 4369; Pub. L. 115–91, div. A, title X, § 1051(a)(3), Dec. 12, 2017, 131 Stat. 1560.)

REFERENCES IN TEXT

Executive Order 12829, referred to in subsec. (b), is set out as a note under section 3161 of Title 50, War and National Defense.

AMENDMENTS

2017—Subsec. (f). Pub. L. 115–91 struck out subsec. (f) which related to biennial reports on expenditures and activities of the Department of Defense in carrying out the requirements of this section.

2011—Subsec. (f). Pub. L. 111–383 struck out '', United States Code,'' after ''title 31''.

2009—Pub. L. 111–84 renumbered section 438 of this title as this section.

PILOT PROGRAM FOR DEPARTMENT OF DEFENSE CONTROLLED UNCLASSIFIED INFORMATION IN THE HANDS OF INDUSTRY

Pub. L. 115–232, div. A, title X, § 1048, Aug. 13, 2018, 132 Stat. 1961, provided that:

''(a) IN GENERAL.—The Secretary of Defense—

''(1) shall establish and implement a pilot program for oversight of designated Department of Defense controlled unclassified information in the hands of defense contractors with foreign ownership, control, or influence concerns; and

''(2) may designate an entity within the Department to be responsible for the pilot program under paragraph (1).

''(b) PROGRAM REQUIREMENTS.—The pilot program under subsection (a) shall have the following elements:

''(1) The use of a capability to rapidly identify companies subject to foreign ownership, control, or influence that are processing designated controlled unclassified information, including unclassified controlled technical information.

''(2) The use, in consultation with the Chief of Information Officer of the Department, of a capability or means for assessing industry compliance with Department cybersecurity standards.

''(3) A means of demonstrating whether and under what conditions the risk to national security posed by access to Department controlled unclassified information, including unclassified controlled technical information, by a company under foreign ownership, control, or influence company can be mitigated and how such mitigation could be enforced.

''(c) BRIEFING REQUIRED.—By not later than 30 days after the completion of the pilot program under this section, but in no case later than December 1, 2019, the Secretary shall provide to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a briefing on the results of the pilot program and any decisions about whether to implement the pilot program on a Department-wide basis.''

REQUIREMENT FOR ENTITIES WITH FACILITY CLEARANCES THAT ARE NOT UNDER FOREIGN OWNERSHIP CONTROL OR INFLUENCE MITIGATION

Pub. L. 111–383, div. A, title VIII, § 845, Jan. 7, 2011, 124 Stat. 4285, provided that:

''(a) REQUIREMENT.—The Secretary of Defense shall develop a plan to ensure that covered entities employ and maintain policies and procedures that meet requirements under the national industrial security program. In developing the plan, the Secretary shall consider whether or not covered entities, or any category of covered entities, should be required to establish government security committees similar to those required for companies that are subject to foreign ownership control or influence mitigation measures.

''(b) COVERED ENTITY.—A covered entity under this section is an entity—

''(1) to which the Department of Defense has granted a facility clearance; and

''(2) that is not subject to foreign ownership control or influence mitigation measures.

''(c) GUIDANCE.—The Secretary of Defense shall issue guidance, including appropriate compliance mechanisms, to implement the requirement in subsection (a). To the extent determined appropriate by the Secretary, the guidance shall require covered entities, or any category of covered entities, to establish government security committees similar to those required for companies that are subject to foreign ownership control or influence mitigation measures.

''(d) REPORT.—Not later than 270 days after the date of the enactment of this Act [Jan. 7, 2011], the Secretary shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the plan developed pursuant to subsection (a) and the guidance issued pursuant to subsection (c). The report shall specifically address the rationale for the Secretary's decision on whether or not to require covered entities, or any category of covered entities, to establish government security committees similar to those required for companies that are subject to foreign ownership control or influence mitigation measures.''

SUBMISSION OF FIRST BIENNIAL REPORT

Pub. L. 110–417, [div. A], title VIII, § 845(b), Oct. 14, 2008, 122 Stat. 4542, required the first biennial report under former subsec. (f) of this section to be submitted no later than Sept. 1, 2009.

§ 429. Appropriations for Defense intelligence elements: accounts for transfers; transfer authority

(a) ACCOUNTS FOR APPROPRIATIONS FOR DEFENSE INTELLIGENCE ELEMENTS.—The Secretary of Defense may transfer appropriations of the Department of Defense which are available for the activities of Defense intelligence elements to an account or accounts established for receipt of such transfers. Each such account may also receive transfers from the Director of National Intelligence if made pursuant to section 102A of the National Security Act of 1947 (50 U.S.C. 3024) and transfers and reimbursements arising from transactions, as authorized by law, between a Defense intelligence element and another entity. Appropriation balances in each such account may be transferred back to the account or accounts from which such appropriations originated as appropriation refunds.

(b) RECORDATION OF TRANSFERS.—Transfers made pursuant to subsection (a) shall be recorded as expenditure transfers.

(c) AVAILABILITY OF FUNDS.—Funds transferred pursuant to subsection (a) shall remain avail-

able for the same time period and for the same purpose as the appropriation from which transferred, and shall remain subject to the same limitations provided in the law making the appropriation.

(d) OBLIGATION AND EXPENDITURE OF FUNDS.—Unless otherwise specifically authorized by law, funds transferred pursuant to subsection (a) shall only be obligated and expended in accordance with chapter 15 of title 31 and all other applicable provisions of law.

(e) DEFENSE INTELLIGENCE ELEMENT DEFINED.—In this section, the term ''Defense intelligence element'' means any of the Department of Defense agencies, offices, and elements included within the definition of ''intelligence community'' under section 3(4) of the National Security Act of 1947 (50 U.S.C. 3003(4)).

(Added Pub. L. 112–87, title IV, § 433(a), Jan. 3, 2012, 125 Stat. 1894; amended Pub. L. 113–291, div. A, title X, § 1071(c)(5), (f)(6), Dec. 19, 2014, 128 Stat. 3508, 3510.)

AMENDMENTS

2014—Subsec. (a). Pub. L. 113–291, § 1071(c)(5)(A), substituted ''section 102A of the National Security Act of 1947 (50 U.S.C. 3024)'' for ''Section 102A of the National Security Act of 1947 (50 U.S.C. 403–1)''.

Subsec. (c). Pub. L. 113–291, § 1071(f)(6), substituted ''law'' for ''act''.

Subsec. (e). Pub. L. 113–291, § 1071(c)(5)(B), substituted ''(50 U.S.C. 3003(4))'' for ''(50 U.S.C. 401a(4))''.

§ 430. Tactical Exploitation of National Capabilities Executive Agent

(a) DESIGNATION.—The Under Secretary of Defense for Intelligence and Security shall designate a civilian employee of the Department or a member of the armed forces to serve as the Tactical Exploitation of National Capabilities Executive Agent.

(b) DUTIES.—The Executive Agent designated under subsection (a) shall—

(1) report directly to the Under Secretary of Defense for Intelligence and Security;

(2) work with the combatant commands, military departments, and the intelligence community (as defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 3003(4)) to—

(A) develop methods to increase warfighter effectiveness through the exploitation of national capabilities; and

(B) promote cross-domain integration of such capabilities into military operations, training, intelligence, surveillance, and reconnaissance activities.

(Added Pub. L. 113–291, div. A, title XVI, § 1621(a), Dec. 19, 2014, 128 Stat. 3631; amended Pub. L. 116–92, div. A, title XVI, § 1621(e)(1)(A)(viii), Dec. 20, 2019, 133 Stat. 1733; Pub. L. 116–283, div. A, title X, § 1081(a)(17), Jan. 1, 2021, 134 Stat. 3871.)

AMENDMENTS

2021—Subsec. (b)(1). Pub. L. 116–283 inserted ''and Security'' after ''for Intelligence''.

2019—Subsec. (a). Pub. L. 116–92 substituted ''Under Secretary of Defense for Intelligence and Security'' for ''Under Secretary of Defense for Intelligence''.

§ 430a. Executive agent for management and oversight of alternative compensatory control measures

(a) EXECUTIVE AGENT.—The Secretary of Defense shall designate a senior official from among the personnel of the Department of Defense to act as the Department of Defense executive agent for the management and oversight of alternative compensatory control measures.

(b) ROLES, RESPONSIBILITIES, AND AUTHORITIES.—The Secretary shall prescribe the roles, responsibilities, and authorities of the executive agent designated under subsection (a). Such roles, responsibilities, and authorities shall include the development of an annual management and oversight plan for Department-wide accountability and reporting to the congressional defense committees.

(Added Pub. L. 114–92, div. A, title X, § 1083(a)(1), Nov. 25, 2015, 129 Stat. 1003.)

§ 430b. Executive agent for open-source intelligence tools

(a) DESIGNATION.—Not later than April 1, 2016, the Secretary of Defense shall designate a senior official of the Department of Defense to serve as the executive agent for the Department for open-source intelligence tools.

(b) ROLES, RESPONSIBILITIES, AND AUTHORITIES.— (1) Not later than July 1, 2016, in accordance with Directive 5101.1, the Secretary shall prescribe the roles, responsibilities, and authorities of the executive agent designated under subsection (a).

(2) The roles and responsibilities of the executive agent designated under subsection (a) shall include the following:

(A) Developing and maintaining a comprehensive list of open-source intelligence tools and technical standards.

(B) Establishing priorities for the development, acquisition, and integration of open-source intelligence tools into the intelligence enterprise, and other command and control systems as needed.

(C) Certifying all open-source intelligence tools with respect to compliance with the standards required by the framework and guidance for the Intelligence Community Information Technology Enterprise, the Defense Intelligence Information Enterprise, and the Joint Information Environment.

(D) Assessing and making recommendations regarding the protection of privacy in the acquisition, analysis, and dissemination of open-source information available around the world.

(E) Performing such other assessments or analyses as the Secretary considers appropriate.

(c) SUPPORT WITHIN DEPARTMENT OF DEFENSE.—In accordance with Directive 5101.1, the Secretary shall ensure that the military departments, the Defense Agencies, and other elements of the Department of Defense provide the executive agent designated under subsection (a) with the appropriate support and resources needed to perform the roles, responsibilities, and authorities of the executive agent.

(d) DEFINITIONS.—In this section:

(1) The term ''Directive 5101.1'' means Department of Defense Directive 5101.1, or any successor directive relating to the responsibilities of an executive agent of the Department of Defense.

(2) The term ''executive agent'' has the meaning given the term ''DoD Executive Agent'' in Directive 5101.1.

(3) The term ''open-source intelligence tools'' means tools for the systematic collection, processing, and analysis of publicly available information for known or anticipated intelligence requirements.

(Added Pub. L. 114–92, div. A, title XVI, § 1631(a), Nov. 25, 2015, 129 Stat. 1110.)

SUBCHAPTER II—INTELLIGENCE COMMERCIAL ACTIVITIES

Sec.
431. Authority to engage in commercial activities as security for intelligence collection activities.
432. Use, disposition, and auditing of funds.
433. Relationship with other Federal laws.
434. Reservation of defenses and immunities.
435. Limitations.
436. Regulations.
437. Congressional oversight.

AMENDMENTS

1992—Pub. L. 102–484, div. A, title X, § 1052(1), Oct. 23, 1992, 106 Stat. 2499, inserted ''Sec.'' above item ''431''.

1991—Pub. L. 102–88, title V, § 504(a)(2), Aug. 14, 1991, 105 Stat. 437, added subchapter heading and analysis of sections.

§ 431. Authority to engage in commercial activities as security for intelligence collection activities

(a) AUTHORITY.—The Secretary of Defense, subject to the provisions of this subchapter, may authorize the conduct of those commercial activities necessary to provide security for authorized intelligence collection activities abroad undertaken by the Department of Defense. No commercial activity may be initiated pursuant to this subchapter after December 31, 2023.

(b) INTERAGENCY COORDINATION AND SUPPORT.—Any such activity shall—

(1) be coordinated with, and (where appropriate) be supported by, the Director of the Central Intelligence Agency; and

(2) to the extent the activity takes place within the United States, be coordinated with, and (where appropriate) be supported by, the Director of the Federal Bureau of Investigation.

(c) DEFINITIONS.—In this subchapter:

(1) The term ''commercial activities'' means activities that are conducted in a manner consistent with prevailing commercial practices and includes—

(A) the acquisition, use, sale, storage and disposal of goods and services;

(B) entering into employment contracts and leases and other agreements for real and personal property;

(C) depositing funds into and withdrawing funds from domestic and foreign commercial business or financial institutions;

(D) acquiring licenses, registrations, permits, and insurance; and

(E) establishing corporations, partnerships, and other legal entities.

(2) The term ''intelligence collection activities'' means the collection of foreign intelligence and counterintelligence information.

(Added Pub. L. 102–88, title V, § 504(a)(2), Aug. 14, 1991, 105 Stat. 437; amended Pub. L. 104–93, title V, § 503, Jan. 6, 1996, 109 Stat. 973; Pub. L. 105–272, title V, § 501, Oct. 20, 1998, 112 Stat. 2404; Pub. L. 106–398, § 1 [[div. A], title X, § 1077], Oct. 30, 2000, 114 Stat. 1654, 1654A–282; Pub. L. 107–314, div. A, title X, § 1053, Dec. 2, 2002, 116 Stat. 2649; Pub. L. 108–375, div. A, title IX, § 921, Oct. 28, 2004, 118 Stat. 2029; Pub. L. 109–364, div. A, title IX, § 931, Oct. 17, 2006, 120 Stat. 2362; Pub. L. 110–181, div. A, title IX, § 931(b)(1), Jan. 28, 2008, 122 Stat. 285; Pub. L. 110–417, [div. A], title IX, § 932(a)(7), Oct. 14, 2008, 122 Stat. 4576; Pub. L. 111–84, div. A, title X, § 1073(c)(10), Oct. 28, 2009, 123 Stat. 2475; Pub. L. 111–383, div. A, title IX, § 921, Jan. 7, 2011, 124 Stat. 4330; Pub. L. 113–291, div. A, title XVI, § 1623, Dec. 19, 2014, 128 Stat. 3632; Pub. L. 115–91, div. A, title XVI, § 1622, Dec. 12, 2017, 131 Stat. 1732.)

AMENDMENTS

2017—Subsec. (a). Pub. L. 115–91 substituted ''December 31, 2023'' for ''December 31, 2017''.

2014—Subsec. (a). Pub. L. 113–291 substituted ''December 31, 2017'' for ''December 31, 2015''.

2011—Subsec. (a). Pub. L. 111–383 substituted ''December 31, 2015'' for ''December 31, 2010''.

2009—Subsec. (b)(1). Pub. L. 111–84 repealed Pub. L. 110–417, § 932(a)(7). See 2008 Amendment note below.

2008—Subsec. (b)(1). Pub. L. 110–417, § 932(a)(7), which directed the amendment of subsec. (b)(1) by substituting ''Director of National Intelligence'' for ''Director of Central Intelligence'', was repealed by Pub. L. 111–84.

Pub. L. 110–181 substituted ''Director of the Central Intelligence Agency'' for ''Director of Central Intelligence''.

2006—Subsec. (a). Pub. L. 109–364 substituted ''2010'' for ''2006''.

2004—Subsec. (a). Pub. L. 108–375 substituted ''2006'' for ''2004''.

2002—Subsec. (a). Pub. L. 107–314 substituted ''2004'' for ''2002''.

2000—Subsec. (a). Pub. L. 106–398 substituted ''2002'' for ''2000''.

1998—Subsec. (a). Pub. L. 105–272 substituted ''2000'' for ''1998''.

1996—Subsec. (a). Pub. L. 104–93 substituted ''1998'' for ''1995''.

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–84, div. A, title X, § 1073(c), Oct. 28, 2009, 123 Stat. 2474, provided that the amendment made by section 1073(c)(10) is effective as of Oct. 14, 2008, and as if included in Pub. L. 110–417 as enacted.

EFFECTIVE DATE

Pub. L. 102–88, title V, § 504(b), Aug. 14, 1991, 105 Stat. 440, provided that: ''The Secretary of Defense may not authorize any activity under section 431 of title 10, United States Code, as added by subsection (a), until the later of—

''(1) the end of the 90-day period beginning on the date of the enactment of this Act [Aug. 14, 1991]; or

''(2) the effective date of regulations first prescribed under section 436 of such title, as added by subsection (a).''

§432. Use, disposition, and auditing of funds

(a) USE OF FUNDS.—Funds generated by a commercial activity authorized pursuant to this subchapter may be used to offset necessary and reasonable expenses arising from that activity. Use of such funds for that purpose shall be kept to the minimum necessary to conduct the activity concerned in a secure manner. Any funds generated by the activity in excess of those required for that purpose shall be deposited, as often as may be practicable, into the Treasury as miscellaneous receipts.

(b) AUDITS.—(1) The Secretary of Defense shall assign an organization within the Department of Defense to have auditing responsibility with respect to activities authorized under this subchapter.

(2) That organization shall audit the use and disposition of funds generated by any commercial activity authorized under this subchapter not less often than annually. The results of all such audits shall be reported to the congressional defense committees and the congressional intelligence committees (as defined in section 437(c) of this title) by not later than December 31 of each year.

(Added Pub. L. 102–88, title V, §504(a)(2), Aug. 14, 1991, 105 Stat. 438; amended Pub. L. 113–66, div. A, title IX, §921(a), Dec. 26, 2013, 127 Stat. 827; Pub. L. 115–91, div. A, title XVI, §1623, Dec. 12, 2017, 131 Stat. 1732.)

AMENDMENTS

2017—Subsec. (b)(2). Pub. L. 115–91 struck out "promptly" before "reported" and inserted before period at end "by not later than December 31 of each year".

2013—Subsec. (b)(2). Pub. L. 113–66 substituted "the congressional defense committees and the congressional intelligence committees (as defined in section 437(c) of this title)." for "the intelligence committees (as defined in section 437(d) of this title)."

§433. Relationship with other Federal laws

(a) IN GENERAL.—Except as provided by subsection (b), a commercial activity conducted pursuant to this subchapter shall be carried out in accordance with applicable Federal law.

(b) AUTHORIZATION OF WAIVERS WHEN NECESSARY TO MAINTAIN SECURITY.—(1) If the Secretary of Defense determines, in connection with a commercial activity authorized pursuant to section 431 of this title, that compliance with certain Federal laws or regulations pertaining to the management and administration of Federal agencies would create an unacceptable risk of compromise of an authorized intelligence activity, the Secretary may, to the extent necessary to prevent such compromise, waive compliance with such laws or regulations.

(2) Any determination and waiver by the Secretary under paragraph (1) shall be made in writing and shall include a specification of the laws and regulations for which compliance by the commercial activity concerned is not required consistent with this section.

(3) The authority of the Secretary under paragraph (1) may be delegated only to the Deputy Secretary of Defense, an Under Secretary of Defense, an Assistant Secretary of Defense, or a Secretary of a military department.

(c) FEDERAL LAWS AND REGULATIONS.—For purposes of this section, Federal laws and regulations pertaining to the management and administration of Federal agencies are only those Federal laws and regulations pertaining to the following:

(1) The receipt and use of appropriated and nonappropriated funds.

(2) The acquisition or management of property or services.

(3) Information disclosure, retention, and management.

(4) The employment of personnel.

(5) Payments for travel and housing.

(6) The establishment of legal entities or government instrumentalities.

(7) Foreign trade or financial transaction restrictions that would reveal the commercial activity as an activity of the United States Government.

(Added Pub. L. 102–88, title V, §504(a)(2), Aug. 14, 1991, 105 Stat. 438.)

§434. Reservation of defenses and immunities

The submission to judicial proceedings in a State or other legal jurisdiction, in connection with a commercial activity undertaken pursuant to this subchapter, shall not constitute a waiver of the defenses and immunities of the United States.

(Added Pub. L. 102–88, title V, §504(a)(2), Aug. 14, 1991, 105 Stat. 439.)

§435. Limitations

(a) LAWFUL ACTIVITIES.—Nothing in this subchapter authorizes the conduct of any intelligence activity that is not otherwise authorized by law or Executive order.

(b) DOMESTIC ACTIVITIES.—Personnel conducting commercial activity authorized by this subchapter may only engage in those activities in the United States to the extent necessary to support intelligence activities abroad.

(c) PROVIDING GOODS AND SERVICES TO THE DEPARTMENT OF DEFENSE.—Commercial activity may not be undertaken within the United States for the purpose of providing goods and services to the Department of Defense, other than as may be necessary to provide security for the activities subject to this subchapter.

(d) NOTICE TO UNITED STATES PERSONS.—(1) In carrying out a commercial activity authorized under this subchapter, the Secretary of Defense may not permit an entity engaged in such activity to employ a United States person in an operational, managerial, or supervisory position, and may not assign or detail a United States person to perform operational, managerial, or supervisory duties for such an entity, unless that person is informed in advance of the intelligence security purpose of that activity.

(2) In this subsection, the term "United States person" means an individual who is a citizen of the United States or an alien lawfully admitted to the United States for permanent residence.

(Added Pub. L. 102–88, title V, §504(a)(2), Aug. 14, 1991, 105 Stat. 439.)

§436. Regulations

The Secretary of Defense shall prescribe regulations to implement the authority provided in

this subchapter. Such regulations shall be consistent with this subchapter and shall at a minimum—

(1) specify all elements of the Department of Defense who are authorized to engage in commercial activities pursuant to this subchapter;

(2) require the personal approval of the Secretary or Deputy Secretary of Defense for all sensitive activities to be authorized pursuant to this subchapter;

(3) specify all officials who are authorized to grant waivers of laws or regulations pursuant to section 433(b) of this title, or to approve the establishment or conduct of commercial activities pursuant to this subchapter;

(4) designate a single office within the Department of Defense to be responsible for the oversight of all activities authorized under this subchapter;

(5) require that each commercial activity proposed to be authorized under this subchapter be subject to appropriate legal review before the activity is authorized; and

(6) provide for appropriate internal audit controls and oversight for such activities.

(Added Pub. L. 102–88, title V, § 504(a)(2), Aug. 14, 1991, 105 Stat. 439; amended Pub. L. 113–66, div. A, title IX, § 921(b), Dec. 26, 2013, 127 Stat. 827.)

AMENDMENTS

2013—Par. (4). Pub. L. 113–66 substituted ''Department of Defense'' for ''Defense Intelligence Agency'' and ''oversight'' for ''management and supervision''.

§ 437. Congressional oversight

(a) PROPOSED REGULATIONS.—Copies of regulations proposed to be prescribed under section 436 of this title (including any proposed revision to such regulations) shall be submitted to congressional defense committees and the congressional intelligence committees not less than 30 days before they take effect.

(b) CURRENT INFORMATION.—The Secretary of Defense shall ensure that congressional defense committees and the congressional intelligence committees are kept fully and currently informed of actions taken pursuant to this subchapter, including any significant anticipated activity to be authorized pursuant to this subchapter.

(c) CONGRESSIONAL INTELLIGENCE COMMITTEES DEFINED.—In this section, the term ''congressional intelligence committees'' has the meaning given the term in section 3 of the National Security Act of 1947 (50 U.S.C. 3003).

(Added Pub. L. 102–88, title V, § 504(a)(2), Aug. 14, 1991, 105 Stat. 440; amended Pub. L. 107–306, title VIII, § 811(b)(4)(A), Nov. 27, 2002, 116 Stat. 2423; Pub. L. 108–136, div. A, title X, § 1031(a)(7), Nov. 24, 2003, 117 Stat. 1596; Pub. L. 108–375, div. A, title X, § 1084(d)(3), Oct. 28, 2004, 118 Stat. 2061; Pub. L. 112–81, div. A, title X, § 1061(5), Dec. 31, 2011, 125 Stat. 1583; Pub. L. 113–66, div. A, title IX, § 921(c), Dec. 26, 2013, 127 Stat. 827.)

AMENDMENTS

2013—Subsec. (a). Pub. L. 113–66, § 921(c)(1), substituted ''congressional defense committees and the congressional intelligence committees'' for ''the intelligence committees''.

Subsec. (b). Pub. L. 113–66, § 921(c)(2), substituted ''The Secretary'' for ''Consistent with title V of the National Security Act of 1947 (50 U.S.C. 413 et seq.), the Secretary'' and ''congressional defense committees and the congressional intelligence committees'' for ''the intelligence committees''.

Subsec. (c). Pub. L. 113–66, § 921(c)(3), added subsec. (c).

2011—Subsec. (c). Pub. L. 112–81 struck out subsec. (c) which related to submission of an annual report on certain authorized commercial activities.

2004—Subsec. (c). Pub. L. 108–375 inserted ''(50 U.S.C. 415b)'' after ''National Security Act of 1947''.

2003—Subsec. (b). Pub. L. 108–136, § 1031(a)(7)(A), struck out at end ''The Secretary shall promptly notify the appropriate committees of Congress whenever a corporation, partnership, or other legal entity is established pursuant to this subchapter.''

Subsec. (c). Pub. L. 108–136, § 1031(a)(7)(B), substituted ''report) the following:'' for ''report)—'' in introductory provisions, ''A'' for ''a'' in pars. (1) to (3), a period for the semicolon at end of par. (1) and for ''; and'' at end of par. (2), and added par. (4).

2002—Subsec. (c). Pub. L. 107–306, § 811(b)(4)(A)(i), in introductory provisions, substituted ''Not later each year than the date provided in section 507 of the National Security Act of 1947, the Secretary shall submit to the congressional intelligence committees (as defined in section 3 of that Act (50 U.S.C. 401a))'' for ''Not later than January 15 of each year, the Secretary shall submit to the appropriate committees of Congress''.

Subsec. (d). Pub. L. 107–306, § 811(b)(4)(A)(ii), struck out heading and text of subsec. (d). Text read as follows: ''In this section, the term 'intelligence committees' means the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives.''

CHAPTER 22—NATIONAL GEOSPATIAL-INTELLIGENCE AGENCY

Subchapter		Sec.
I.	Missions and Authority	441
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PRIOR PROVISIONS

A prior chapter 22 was renumbered chapter 23 of this title.

AMENDMENTS

2021—Pub. L. 116–283, div. A, title XVI, § 1621(g)(2), Jan. 1, 2021, 134 Stat. 4054, substituted ''Geomatics'' for ''Geodetic'' in item for subchapter II.

2003—Pub. L. 108–136, div. A, title IX, § 921(d)(1), Nov. 24, 2003, 117 Stat. 1568, substituted ''NATIONAL GEOSPATIAL-INTELLIGENCE AGENCY'' FOR ''NATIONAL IMAGERY AND MAPPING AGENCY'' in chapter heading.

SUBCHAPTER I—MISSIONS AND AUTHORITY

Sec.
441. Establishment.
442. Missions.
443. Imagery intelligence and geospatial information: support for foreign countries, regional organizations, and security alliances.
444. Support from Central Intelligence Agency.
[445. Repealed.]

AMENDMENTS

2013—Pub. L. 112–239, div. A, title IX, § 921(b)(2), Jan. 2, 2013, 126 Stat. 1878, added item 443 and struck out former item 443 ''Imagery intelligence and geospatial information: support for foreign countries''.

1997—Pub. L. 105–107, title V, § 503(d)(3), Nov. 20, 1997, 111 Stat. 2263, struck out item 445 ''Protection of agency identifications and organizational information''.

§ 441. Establishment

(a) ESTABLISHMENT.—The National Geospatial-Intelligence Agency is a combat support agency of the Department of Defense and has significant national missions.

(b) DIRECTOR.—(1) The Director of the National Geospatial-Intelligence Agency is the head of the agency.

(2) Upon a vacancy in the position of Director, the Secretary of Defense shall recommend to the President an individual for appointment to the position.

(3) If an officer of the armed forces on active duty is appointed to the position of Director, the position shall be treated as having been designated by the President as a position of importance and responsibility for purposes of section 601 of this title and shall carry the grade of lieutenant general, or, in the case of an officer of the Navy, vice admiral.

(c) DIRECTOR OF NATIONAL INTELLIGENCE COLLECTION TASKING AUTHORITY.—Unless otherwise directed by the President, the Director of National Intelligence shall have authority (except as otherwise agreed by the Director and the Secretary of Defense) to—

(1) approve collection requirements levied on national imagery collection assets;

(2) determine priorities for such requirements; and

(3) resolve conflicts in such priorities.

(d) AVAILABILITY AND CONTINUED IMPROVEMENT OF IMAGERY INTELLIGENCE SUPPORT TO ALL-SOURCE ANALYSIS AND PRODUCTION FUNCTION.—The Secretary of Defense, in consultation with the Director of National Intelligence, shall take all necessary steps to ensure the full availability and continued improvement of imagery intelligence support for all-source analysis and production.

(Added Pub. L. 104–201, div. A, title XI, § 1112(a)(2), Sept. 23, 1996, 110 Stat. 2678; amended Pub. L. 108–136, div. A, title IX, § 921(d)(2)(A), Nov. 24, 2003, 117 Stat. 1568; Pub. L. 110–181, div. A, title IX, § 931(a)(9), (10), (c)(1)(A), Jan. 28, 2008, 122 Stat. 285; Pub. L. 110–417, [div. A], title IX, § 932(a)(8), (9), (b)(1), Oct. 14, 2008, 122 Stat. 4576; Pub. L. 111–84, div. A, title X, § 1073(c)(10), Oct. 28, 2009, 123 Stat. 2475.)

AMENDMENTS

2009—Subsecs. (c), (d). Pub. L. 111–84 repealed Pub. L. 110–417, § 932(a)(8), (9), (b)(1). See 2008 Amendment notes below.

2008—Subsec. (c). Pub. L. 110–181, § 931(a)(9), (c)(1)(A), and Pub. L. 110–417, § 932(b)(1), amended subsec. (c) identically, substituting ''Director of National Intelligence'' for ''Director of Central Intelligence'' in heading and text. Pub. L. 110–417, § 932(b)(1), was repealed by Pub. L. 111–84.

Pub. L. 110–181, § 931(a)(9), and Pub. L. 110–417, § 932(a)(8), amended subsec. (c) identically, substituting ''Director of National Intelligence'' for ''Director of Central Intelligence''. Pub. L. 110–417, § 932(a)(8), was repealed by Pub. L. 111–84.

Subsec. (d). Pub. L. 110–181, § 931(a)(10), and Pub. L. 110–417, § 932(a)(9), amended subsec. (d) identically, substituting ''Director of National Intelligence'' for ''Director of Central Intelligence''. Pub. L. 110–417, § 932(a)(9), was repealed by Pub. L. 111–84.

2003—Subsecs. (a), (b)(1). Pub. L. 108–136 substituted ''National Geospatial-Intelligence Agency'' for ''National Imagery and Mapping Agency''.

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–84, div. A, title X, § 1073(c), Oct. 28, 2009, 123 Stat. 2474, provided that the amendment made by section 1073(c)(10) is effective as of Oct. 14, 2008, and as if included in Pub. L. 110–417 as enacted.

EFFECTIVE DATE

Section effective Oct. 1, 1996, see section 1124 of Pub. L. 104–201, set out as an Effective Date of 1996 Amendment note under section 193 of this title.

SHORT TITLE OF 1996 AMENDMENT

Pub. L. 104–201, div. A, title XI, § 1101, Sept. 23, 1996, 110 Stat. 2676, provided that: ''This title [enacting this chapter, section 424 of this title, and sections 404e and 404f of Title 50, War and National Defense, amending sections 193, 201, and 451 to 456 of this title, sections 2302, 3132, 4301, 4701, 5102, 5342, 6339, and 7323 of Title 5, Government Organization and Employees, section 105 of the Ethics in Government Act of 1978, set out in the Appendix to Title 5, section 82 of Title 14, Coast Guard, section 2006 of Title 29, Labor, section 1336 of Title 44, Public Printing and Documents, and sections 401a and 403–5 of Title 50, renumbering chapter 22 and sections 451, 452, 2792 to 2796, and 2798 of this title as chapter 23 and sections 481, 482, 451 to 455, and 456 of this title, respectively, repealing sections 424, 425, 2791, and 2797 of this title, enacting provisions set out as notes under this section and section 193 of this title, and amending provisions set out as a note under section 501 of Title 44] may be cited as the 'National Imagery and Mapping Agency Act of 1996'.''

SAVINGS PROVISIONS

Section 1116 of title XI of div. A of Pub. L. 104–201, as amended by Pub. L. 105–85, div. A, title X, § 1073(c)(8), Nov. 18, 1997, 111 Stat. 1904, provided that:

''(a) CONTINUING EFFECT ON LEGAL DOCUMENTS.—All orders, determinations, rules, regulations, permits, agreements, international agreements, grants, contracts, leases, certificates, licenses, registrations, privileges, and other administrative actions—

''(1) which have been issued, made, granted, or allowed to become effective by the President, any Federal agency or official thereof, or by a court of competent jurisdiction, in connection with any of the functions which are transferred under this title [see Short Title of 1996 Amendment note above] or any function that the National Imagery and Mapping Agency [now National Geospatial-Intelligence Agency] is authorized to perform by law, and

''(2) which are in effect at the time this title takes effect, or were final before the effective date of this title [Oct. 1, 1996] and are to become effective on or after the effective date of this title,

shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the President, the Secretary of Defense, the Director of the National Imagery and Mapping Agency [now National Geospatial-Intelligence Agency] or other authorized official, a court of competent jurisdiction, or by operation of law.

''(b) PROCEEDINGS NOT AFFECTED.—This title and the amendments made by this title shall not affect any proceedings, including notices of proposed rulemaking, or any application for any license, permit, certificate, or financial assistance pending before an element of the Department of Defense or Central Intelligence Agency at the time this title takes effect, with respect to function of that element transferred by section 1111 [set out below], but such proceedings and applications shall be continued. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this title had not been enacted, and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law. Nothing in this section shall be deemed to prohibit the

discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this title had not been enacted.''

LEVERAGING COMMERCIAL SATELLITE REMOTE SENSING

Pub. L. 116–283, div. A, title XVI, §1612, Jan. 1, 2021, 134 Stat. 4049, provided that:

''(a) IN GENERAL.—In acquiring geospatial intelligence, the Secretary of Defense and the Director of National Intelligence, in coordination with the Director of the National Reconnaissance Office and the Director of the National Geospatial-Intelligence Agency, shall leverage, to the extent practicable, the capabilities of the industry of the United States, including through the use of domestic commercial geospatial-intelligence services and acquisition of domestic commercial satellite imagery.

''(b) OBTAINING FUTURE GEOSPATIAL-INTELLIGENCE DATA.—The Director of the National Reconnaissance Office, as part of an analysis of alternatives for the future acquisition of space systems, and the Director of the National Geospatial-Intelligence Agency, as part of an analysis of alternatives for the future acquisition of analysis tools for geospatial intelligence, shall each—

''(1) consider whether there is a cost-effective domestic commercial capability or service available that can meet any or all of the geospatial-intelligence requirements of the Department of Defense, the intelligence community, or both;

''(2) if a cost-effective domestic commercial capability or service is available as described in paragraph (1)—

''(A) give preference to using such domestic commercial capability or service to meet requirements; and

''(B) determine—

''(i) whether it is in the national interest to develop a governmental space system or service for geospatial intelligence;

''(ii) whether such a governmental space system or service would be duplicative to such a domestic commercial capability or service; and

''(iii) the costs for developing such a governmental space system or service; and

''(3) include, as part of the established acquisition reporting requirements to the appropriate congressional committees, any determination made under paragraphs (1) and (2).

''(c) DEFINITIONS.—In this section:

''(1) The term 'acquisition of commercial satellite imagery' means the acquisition of satellite imagery derived from electro-optical, infrared, synthetic aperture radar, hyperspectral, and radio frequency, data.

''(2) The term 'appropriate congressional committees' means—

''(A) the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives];

''(B) the Select Committee on Intelligence of the Senate; and

''(C) the Permanent Select Committee on Intelligence of the House of Representatives.

''(3) The term 'commercial geospatial-intelligence services' means services including analytic tools, products, or data that can describe, assess, and visually depict natural or manmade features, objects, or activities that can be geographically referenced on the Earth, regardless of collection phenomenology.

''(4) The term 'intelligence community' has the meaning given such term in section 3 of the National Security Act of 1947 (50 U.S.C. 3003).''

REDESIGNATION OF NATIONAL IMAGERY AND MAPPING AGENCY AS NATIONAL GEOSPATIAL-INTELLIGENCE AGENCY

Pub. L. 108–136, div. A, title IX, §921(a), (g), Nov. 24, 2003, 117 Stat. 1568, 1570, provided that:

''(a) REDESIGNATION.—The National Imagery and Mapping Agency of the Department of Defense is hereby redesignated as the National Geospatial-Intelligence Agency.

''(g) REFERENCES.—Any reference to the National Imagery and Mapping Agency in any law, regulation, map, document, record, or other paper of the United States shall be considered to be a reference to the National Geospatial-Intelligence Agency.''

CONGRESSIONAL FINDINGS

Section 1102 of Pub. L. 104–201 provided that: ''Congress makes the following findings:

''(1) There is a need within the Department of Defense and the Intelligence Community of the United States to provide a single agency focus for the growing number and diverse types of customers for imagery and geospatial information resources within the Government, to ensure visibility and accountability for those resources, and to harness, leverage, and focus rapid technological developments to serve the imagery, imagery intelligence, and geospatial information customers.

''(2) There is a need for a single Government agency to solicit and advocate the needs of that growing and diverse pool of customers.

''(3) A single combat support agency dedicated to imagery, imagery intelligence, and geospatial information could act as a focal point for support of all imagery intelligence and geospatial information customers, including customers in the Department of Defense, the Intelligence Community, and related agencies outside of the Department of Defense.

''(4) Such an agency would best serve the needs of the imagery, imagery intelligence, and geospatial information customers if it were organized—

''(A) to carry out its mission responsibilities under the authority, direction, and control of the Secretary of Defense, with the advice of the Chairman of the Joint Chiefs of Staff; and

''(B) to carry out its responsibilities to national intelligence customers in accordance with policies and priorities established by the Director of Central Intelligence.''

ESTABLISHMENT OF NATIONAL GEOSPATIAL-INTELLIGENCE AGENCY; TRANSFER OF FUNCTIONS

Section 1111 of Pub. L. 104–201 provided that:

''(a) ESTABLISHMENT.—There is hereby established in the Department of Defense a Defense Agency to be known as the National Imagery and Mapping Agency [now National Geospatial-Intelligence Agency].

''(b) TRANSFER OF FUNCTIONS FROM DEPARTMENT OF DEFENSE ENTITIES.—The missions and functions of the following elements of the Department of Defense are transferred to the National Imagery and Mapping Agency [now National Geospatial-Intelligence Agency]:

''(1) The Defense Mapping Agency.

''(2) The Central Imagery Office.

''(3) Other elements of the Department of Defense as specified in the classified annex to this Act [see section 1002 of Pub. L. 104–201, set out as a note under section 114 of this title].

''(c) TRANSFER OF FUNCTIONS FROM CENTRAL INTELLIGENCE AGENCY.—The missions and functions of the following elements of the Central Intelligence Agency are transferred to the National Imagery and Mapping Agency [now National Geospatial-Intelligence Agency]:

''(1) The National Photographic Interpretation Center.

''(2) Other elements of the Central Intelligence Agency as specified in the classified annex to this Act.

''(d) PRESERVATION OF LEVEL AND QUALITY OF IMAGERY INTELLIGENCE SUPPORT TO ALL-SOURCE ANALYSIS AND PRODUCTION.—In managing the establishment of the National Imagery and Mapping Agency [now National Geospatial-Intelligence Agency], the Secretary of Defense, in consultation with the Director of Central Intelligence, shall ensure that imagery intelligence support provided to all-source analysis and production is in no way degraded or compromised.''

TRANSFERS OF PERSONNEL AND ASSETS

Section 1113 of Pub. L. 104–201 provided that:

"(a) PERSONNEL AND ASSETS.—Subject to subsections (b) and (c), the personnel, assets, unobligated balances of appropriations and authorizations of appropriations, and, to the extent jointly determined appropriate by the Secretary of Defense and Director of Central Intelligence, obligated balances of appropriations and authorizations of appropriations employed, used, held, arising from, or available in connection with the missions and functions transferred under section 1111(b) or section 1111(c) [set out above] are transferred to the National Imagery and Mapping Agency [now National Geospatial-Intelligence Agency]. Transfers of appropriations from the Central Intelligence Agency under this subsection shall be made in accordance with section 1531 of title 31, United States Code.

"(b) DETERMINATION OF CIA POSITIONS TO BE TRANSFERRED.—Not earlier than two years after the effective date of this subtitle [Oct. 1, 1996], the Secretary of Defense and the Director of Central Intelligence shall determine which, if any, positions and personnel of the Central Intelligence Agency are to be transferred to the National Imagery and Mapping Agency [now National Geospatial-Intelligence Agency]. The positions to be transferred, and the employees serving in such positions, shall be transferred to the National Imagery and Mapping Agency under terms and conditions prescribed by the Secretary of Defense and the Director of Central Intelligence.

"(c) RULE FOR CIA IMAGERY ACTIVITIES ONLY PARTIALLY TRANSFERRED.—If the National Photographic Interpretation Center of the Central Intelligence Agency or any imagery-related activity of the Central Intelligence Agency authorized to be performed by the National Imagery and Mapping Agency [now National Geospatial-Intelligence Agency] is not completely transferred to the National Imagery and Mapping Agency, the Secretary of Defense and the Director of Central Intelligence shall—

"(1) jointly determine which, if any, contracts, leases, property, and records employed, used, held, arising from, available to, or otherwise relating to such Center or activity is to be transferred to the National Imagery and Intelligence Agency; and

"(2) provide by written agreement for the transfer of such items."

CREDITABLE CIVILIAN SERVICE FOR CAREER CONDITIONAL EMPLOYEES OF DEFENSE MAPPING AGENCY

Section 1115 of Pub. L. 104–201 provided that: "In the case of an employee of the National Imagery and Mapping Agency [now National Geospatial-Intelligence Agency] who, on the day before the effective date of this title [Oct. 1, 1996], was an employee of the Defense Mapping Agency in a career-conditional status, the continuous service of that employee as an employee of the National Imagery and Mapping Agency on and after such date shall be considered creditable service for the purpose of any determination of the career status of the employee."

DEFINITIONS

Pub. L. 104–201, div. A, title XI, §1117, Sept. 23, 1996, 110 Stat. 2686, provided that: "In this subtitle [subtitle A (§§1111–1118) of title XI of div. A of Pub. L. 104–201, enacting this chapter, section 424 of this title, and sections 3045 and 3046 of Title 50, War and National Defense, amending sections 193 and 451 to 456 of this title, section 1336 of Title 44, Public Printing and Documents, and section 3038 of Title 50, renumbering chapter 22 and sections 2792 to 2796 and 2798 of this title as chapter 23 and sections 451 to 455 and 456 of this title, respectively, repealing sections 424 and 425 of this title, enacting provisions set out as notes under this section, and amending provisions set out as a note under section 501 of Title 44], the terms 'function', 'imagery', 'imagery intelligence', and 'geospatial information' have the meanings given those terms in section 467 of title 10, United States Code, as added by section 1112."

§ 442. Missions

(a) NATIONAL SECURITY MISSIONS.—(1) The National Geospatial-Intelligence Agency shall, in support of the national security objectives of the United States, provide geospatial intelligence consisting of the following:

(A) Imagery.

(B) Imagery intelligence.

(C) Geospatial information.

(2)(A) As directed by the Director of National Intelligence, the National Geospatial-Intelligence Agency shall develop a system to facilitate the analysis, dissemination, and incorporation of likenesses, videos, and presentations produced by ground-based platforms, including handheld or clandestine photography taken by or on behalf of human intelligence collection organizations or available as open-source information, into the National System for Geospatial Intelligence.

(B) The authority provided by this paragraph does not include authority for the National Geospatial-Intelligence Agency to manage tasking of handheld or clandestine photography taken by or on behalf of human intelligence collection organizations.

(3) Geospatial intelligence provided in carrying out paragraphs (1) and (2) shall be timely, relevant, and accurate.

(b) NAVIGATION INFORMATION.—The National Geospatial-Intelligence Agency shall improve the means for safe navigation by providing, under the authority of the Secretary of Defense, accurate geospatial information for use by the departments and agencies of the United States, the merchant marine, and navigators generally.

(c) MAPS, CHARTS, ETC.—The National Geospatial-Intelligence Agency shall acquire, prepare, and distribute maps, safe-for-navigation charts and datasets, books, and geomatics products as authorized under subchapter II of this chapter.

(d) NATIONAL MISSIONS.—The National Geospatial-Intelligence Agency also has national missions as specified in section 110(a) of the National Security Act of 1947 (50 U.S.C. 3045(a)).

(e) SYSTEMS.—The National Geospatial-Intelligence Agency may, in furtherance of a mission of the Agency, design, develop, deploy, operate, and maintain systems related to the processing and dissemination of imagery intelligence and geospatial information that may be transferred to, accepted or used by, or used on behalf of—

(1) the armed forces, including any combatant command, component of a combatant command, joint task force, or tactical unit; or

(2) any other department or agency of the United States.

(f) VALIDATION.—The National Geospatial-Intelligence Agency shall assist the Joint Chiefs of Staff, combatant commands, and the military departments in establishing, coordinating, consolidating, and validating mapping, charting, geomatics data, and safety of navigation capability requirements through a formal process governed by the Joint Staff. Consistent with validated requirements, the National Geospatial-Intelligence Agency shall provide aeronautical and nautical charts that are safe

for navigation, maps, books, datasets, models, and geomatics products.

(Added Pub. L. 104–201, div. A, title XI, § 1112(a)(2), Sept. 23, 1996, 110 Stat. 2678; amended Pub. L. 108–136, div. A, title IX, § 921(c)(1), (d)(2)(A), (f), Nov. 24, 2003, 117 Stat. 1568, 1570; Pub. L. 111–259, title IV, § 432, Oct. 7, 2010, 124 Stat. 2732; Pub. L. 113–291, div. A, title X, § 1071(c)(6), Dec. 19, 2014, 128 Stat. 3509; Pub. L. 116–283, div. A, title XVI, § 1621(a), Jan. 1, 2021, 134 Stat. 4052.)

AMENDMENTS

2021—Subsec. (b). Pub. L. 116–283, § 1621(a)(1), substituted ''the means for safe navigation'' for ''means of navigating vessels of the Navy and the merchant marine'' and ''geospatial information for use by the departments and agencies of the United States, the merchant marine, and navigators generally.'' for ''and inexpensive nautical charts, sailing directions, books on navigation, and manuals of instructions for the use of all vessels of the United States and of navigators generally.''

Subsec. (c). Pub. L. 116–283, § 1621(a)(2), substituted ''shall acquire, prepare, and'' for ''shall prepare and'', ''safe-for-navigation charts and datasets'' for ''charts'', and ''geomatics'' for ''geodetic''.

Subsec. (f). Pub. L. 116–283, § 1621(a)(3), added subsec. (f).

2014—Subsec. (d). Pub. L. 113–291 substituted ''(50 U.S.C. 3045(a))'' for ''(50 U.S.C. 404e(a))''.

2010—Subsec. (a)(2). Pub. L. 111–259, § 432(2), added par. (2). Former par. (2) redesignated (3).

Subsec. (a)(3). Pub. L. 111–259, § 432(1), (3), redesignated par. (2) as (3) and substituted ''paragraphs (1) and (2)'' for ''paragraph (1)''.

2003—Subsec. (a)(1). Pub. L. 108–136, § 921(c)(1)(A), (d)(2)(A), in introductory provisions, substituted ''National Geospatial-Intelligence Agency'' for ''National Imagery and Mapping Agency'' and inserted ''geospatial intelligence consisting of'' after ''provide''.

Subsec. (a)(2). Pub. L. 108–136, § 921(c)(1)(B), substituted ''Geospatial intelligence'' for ''Imagery, intelligence, and information''.

Subsecs. (b), (c). Pub. L. 108–136, § 921(d)(2)(A), substituted ''National Geospatial-Intelligence Agency'' for ''National Imagery and Mapping Agency''.

Subsec. (d). Pub. L. 108–136, § 921(d)(2)(A), (f), substituted ''National Geospatial-Intelligence Agency'' for ''National Imagery and Mapping Agency'' and ''section 110(a) of the National Security Act of 1947 (50 U.S.C. 404e(a))'' for ''section 120(a) of the National Security Act of 1947''.

Subsec. (e). Pub. L. 108–136, § 921(d)(2)(A), substituted ''National Geospatial-Intelligence Agency'' for ''National Imagery and Mapping Agency'' in introductory provisions.

EFFECTIVE DATE

Section effective Oct. 1, 1996, see section 1124 of Pub. L. 104–201, set out as an Effective Date of 1996 Amendment note under section 193 of this title.

§ 443. Imagery intelligence and geospatial information: support for foreign countries, regional organizations, and security alliances

(a) USE OF APPROPRIATED FUNDS.—The Director of the National Geospatial-Intelligence Agency may use appropriated funds available to the National Geospatial-Intelligence Agency to provide foreign countries, regional organizations with defense or security components, and security alliances of which the United States is a member with imagery intelligence and geospatial information support.

(b) USE OF FUNDS OTHER THAN APPROPRIATED FUNDS.—The Director may use funds other than appropriated funds to provide foreign countries with imagery intelligence and geospatial information support, notwithstanding provisions of law relating to the expenditure of funds of the United States, except that—

(1) no such funds may be expended, in whole or in part, by or for the benefit of the National Geospatial-Intelligence Agency for a purpose for which Congress had previously denied funds;

(2) proceeds from the sale of imagery intelligence or geospatial information items may be used only to purchase replacement items similar to the items that are sold; and

(3) the authority provided by this subsection may not be used to acquire items or services for the principal benefit of the United States.

(c) ACCOMMODATION PROCUREMENTS.—The authority under this section may be exercised to conduct accommodation procurements on behalf of foreign countries.

(d) COORDINATION WITH DIRECTOR OF NATIONAL INTELLIGENCE.—The Director of the Agency shall coordinate with the Director of National Intelligence any action under this section that involves imagery intelligence or intelligence products or involves providing support to an intelligence or security service of a foreign country.

(Added Pub. L. 104–201, div. A, title XI, § 1112(a)(2), Sept. 23, 1996, 110 Stat. 2679; amended Pub. L. 105–85, div. A, title X, § 1073(a)(7), Nov. 18, 1997, 111 Stat. 1900; Pub. L. 108–136, div. A, title IX, § 921(d)(2)(A), Nov. 24, 2003, 117 Stat. 1568; Pub. L. 110–181, div. A, title IX, § 931(a)(11), (c)(1)(B), Jan. 28, 2008, 122 Stat. 285; Pub. L. 110–417, [div. A], title IX, § 932(a)(10), (b)(2), Oct. 14, 2008, 122 Stat. 4576; Pub. L. 111–84, div. A, title X, § 1073(c)(10), Oct. 28, 2009, 123 Stat. 2475; Pub. L. 112–239, div. A, title IX, § 921(a), (b)(1), Jan. 2, 2013, 126 Stat. 1878.)

AMENDMENTS

2013—Pub. L. 112–239, § 921(b)(1), substituted ''foreign countries, regional organizations, and security alliances'' for ''foreign countries'' in section catchline.

Subsec. (a). Pub. L. 112–239, § 921(a), substituted ''foreign countries, regional organizations with defense or security components, and security alliances of which the United States is a member'' for ''foreign countries''.

2009—Subsec. (d). Pub. L. 111–84 repealed Pub. L. 110–417, § 932(a)(10), (b)(2). See 2008 Amendment note below.

2008—Subsec. (d). Pub. L. 110–181 and Pub. L. 110–417, § 932(a)(10), (b)(2), amended subsec. (d) identically, substituting ''Director of National Intelligence'' for ''Director of Central Intelligence'' in heading and text. Pub. L. 110–417, § 932(a)(10), (b)(2), was repealed by Pub. L. 111–84.

2003—Subsecs. (a), (b)(1). Pub. L. 108–136 substituted ''National Geospatial-Intelligence Agency'' for ''National Imagery and Mapping Agency'' wherever appearing.

1997—Subsec. (b)(1). Pub. L. 105–85 substituted semicolon for period after ''denied funds''.

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–84, div. A, title X, § 1073(c), Oct. 28, 2009, 123 Stat. 2474, provided that the amendment made by section 1073(c)(10) is effective as of Oct. 14, 2008, and as if included in Pub. L. 110–417 as enacted.

EFFECTIVE DATE

Section effective Oct. 1, 1996, see section 1124 of Pub. L. 104–201, set out as an Effective Date of 1996 Amendment note under section 193 of this title.

§ 444. Support from Central Intelligence Agency

(a) SUPPORT AUTHORIZED.—The Director of the Central Intelligence Agency may provide support in accordance with this section to the Director of the National Geospatial-Intelligence Agency. The Director of the National Geospatial-Intelligence Agency may accept support provided under this section.

(b) ADMINISTRATIVE AND CONTRACT SERVICES.—(1) In furtherance of the national intelligence effort, the Director of the Central Intelligence Agency may provide administrative and contract services to the National Geospatial-Intelligence Agency as if that agency were an organizational element of the Central Intelligence Agency.

(2) Services provided under paragraph (1) may include the services of security police. For purposes of section 15 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 3515), an installation of the National Geospatial-Intelligence Agency that is provided security police services under this section shall be considered an installation of the Central Intelligence Agency.

(3) Support provided under this subsection shall be provided under terms and conditions agreed upon by the Secretary of Defense and the Director of the Central Intelligence Agency.

(c) DETAIL OF PERSONNEL.—The Director of the Central Intelligence Agency may detail personnel of the Central Intelligence Agency indefinitely to the National Geospatial-Intelligence Agency without regard to any limitation on the duration of interagency details of Federal Government personnel.

(d) REIMBURSABLE OR NONREIMBURSABLE SUPPORT.—Support under this section may be provided and accepted on either a reimbursable basis or a nonreimbursable basis.

(e) AUTHORITY TO TRANSFER FUNDS.—(1) The Director of the National Geospatial-Intelligence Agency may transfer funds available for that agency to the Director of the Central Intelligence Agency for the Central Intelligence Agency.

(2) The Director of the Central Intelligence Agency—

(A) may accept funds transferred under paragraph (1); and

(B) shall expend such funds, in accordance with the Central Intelligence Agency Act of 1949 (50 U.S.C. 3501 et seq.), to provide administrative and contract services or detail personnel to the National Geospatial-Intelligence Agency under this section.

(Added Pub. L. 104–201, div. A, title XI, § 1112(a)(2), Sept. 23, 1996, 110 Stat. 2680; amended Pub. L. 108–136, div. A, title IX, § 921(d)(2)(A), Nov. 24, 2003, 117 Stat. 1568; Pub. L. 110–181, div. A, title IX, § 931(b)(2), Jan. 28, 2008, 122 Stat. 285; Pub. L. 110–417, [div. A], title IX, § 932(c), Oct. 14, 2008, 122 Stat. 4576; Pub. L. 111–84, div. A, title X, § 1073(c)(10), Oct. 28, 2009, 123 Stat. 2475; Pub. L. 113–291, div. A, title X, § 1071(c)(7), Dec. 19, 2014, 128 Stat. 3509.)

REFERENCES IN TEXT

The Central Intelligence Agency Act of 1949, referred to in subsec. (e)(2)(B), is act June 20, 1949, ch. 227, 63 Stat. 208, which is classified generally to chapter 46 (§ 3501 et seq.) of Title 50, War and National Defense. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

2014—Subsec. (b)(2). Pub. L. 113–291, § 1071(c)(7)(A), substituted ''(50 U.S.C. 3515)'' for ''(50 U.S.C. 403*o*)''.

Subsec. (e)(2)(B). Pub. L. 113–291, § 1071(c)(7)(B), substituted ''(50 U.S.C. 3501 et seq.)'' for ''(50 U.S.C. 403a et seq.)''.

2009—Pub. L. 111–84 repealed Pub. L. 110–417, § 932(c). See 2008 Amendment note below.

2008—Pub. L. 110–181 and Pub. L. 110–417, § 932(c), amended section identically, substituting ''Director of the Central Intelligence Agency'' for ''Director of Central Intelligence'' wherever appearing. Pub. L. 110–417, § 932(c), was repealed by Pub. L. 111–84.

2003—Subsecs. (a), (b)(1), (2), (c), (e)(1), (2)(B). Pub. L. 108–136 substituted ''National Geospatial-Intelligence Agency'' for ''National Imagery and Mapping Agency'' wherever appearing.

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–84, div. A, title X, § 1073(c), Oct. 28, 2009, 123 Stat. 2474, provided that the amendment made by section 1073(c)(10) is effective as of Oct. 14, 2008, and as if included in Pub. L. 110–417 as enacted.

EFFECTIVE DATE

Section effective Oct. 1, 1996, see section 1124 of Pub. L. 104–201, set out as an Effective Date of 1996 Amendment note under section 193 of this title.

[§ 445. Repealed. Pub. L. 105–107, title V, § 503(c), Nov. 20, 1997, 111 Stat. 2262]

Section, added Pub. L. 104–201, div. A, title XI, § 1112(a)(2), Sept. 23, 1996, 110 Stat. 2680; amended Pub. L. 105–85, div. A, title X, § 1073(a)(8), Nov. 18, 1997, 111 Stat. 1900, related to protection of agency identifications and organizational information.

SUBCHAPTER II—MAPS, CHARTS, AND GEOMATICS PRODUCTS

Sec.
451. Maps, charts, books, and datasets.
452. Pilot charts.
453. Sale of maps, charts, and navigational publications: prices; use of proceeds.
454. Exchange of mapping, charting, and geomatics data with foreign countries, international organizations, nongovernmental organizations, and academic institutions.
455. Maps, charts, and geomatics data: public availability; exceptions.
456. Civil actions barred.
457. Operational files previously maintained by or concerning activities of National Photographic Interpretation Center: authority to withhold from public disclosure.

AMENDMENTS

2021—Pub. L. 116–283, div. A, title XVI, § 1621(b)(2), (c)(2), (d)(2), (g)(1), Jan. 1, 2021, 134 Stat. 4053, 4054, substituted ''GEOMATICS'' for ''GEODETIC'' in subchapter heading, added items 451, 454, and 455, and struck out former items 451 ''Maps, charts, and books'', 454 ''Exchange of mapping, charting, and geodetic data with foreign countries, international organizations, nongovernmental organizations, and academic institutions'', and 455 ''Maps, charts, and geodetic data: public availability; exceptions''.

2011—Pub. L. 112–81, div. A, title IX, § 923(b)(2), Dec. 31, 2011, 125 Stat. 1539, added item 454 and struck out

former item 454 ''Exchange of mapping, charting, and geodetic data with foreign countries and international organizations''.

1999—Pub. L. 106–65, div. A, title X, §§ 1010(b), 1045(b), Oct. 5, 1999, 113 Stat. 739, 763, substituted ''Sale of maps, charts, and navigational publications: prices; use of proceeds'' for ''Prices of maps, charts, and navigational publications'' in item 453 and added item 457.

§ 451. Maps, charts, books, and datasets

The Secretary of Defense may—

(1) have the National Geospatial-Intelligence Agency prepare nautical and aeronautical charts, topographic and geomatics maps, books, models, and datasets required in navigation and have those materials published and furnished to navigators; and

(2) acquire (by purchase, lease, license, or barter) all necessary rights, including copyrights and other intellectual property rights, required to prepare, publish, and furnish to navigators the products described in paragraph (1).

(Added Pub. L. 97–295, § 1(50)(C), Oct. 12, 1982, 96 Stat. 1299, § 2792; renumbered § 451 and amended Pub. L. 104–201, div. A, title XI, § 1112(b), Sept. 23, 1996, 110 Stat. 2682; Pub. L. 108–136, div. A, title IX, § 921(d)(2)(A), Nov. 24, 2003, 117 Stat. 1568; Pub. L. 116–283, div. A, title XVI, § 1621(b)(1), Jan. 1, 2021, 134 Stat. 4053.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2792	10:7392.	

In the section, the words ''Secretary of Defense'' and ''Defense Mapping Agency'' are substituted for ''Secretary of the Navy'' and ''United States Naval Oceanographic Office'', respectively, for consistency with 10:2791. The words ''under such regulations as he prescribes'' are omitted as unnecessary.

PRIOR PROVISIONS

A prior section 451 was renumbered section 481 of this title.

AMENDMENTS

2021—Pub. L. 116–283, § 1621(b)(1)(A), substituted ''books, and datasets'' for ''and books'' in section catchline.

Par. (1). Pub. L. 116–283, § 1621(b)(1)(B), substituted ''nautical and aeronautical charts, topographic and geomatics maps, books, models, and datasets'' for ''maps, charts, and nautical books''.

Par. (2). Pub. L. 116–283, § 1621(b)(1)(C), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''buy the plates and copyrights of existing maps, charts, books on navigation, and sailing directions and instructions.''

2003—Par. (1). Pub. L. 108–136 substituted ''National Geospatial-Intelligence Agency'' for ''National Imagery and Mapping Agency''.

1996—Pub. L. 104–201 renumbered section 2792 of this title as this section and substituted ''National Imagery and Mapping Agency'' for ''Defense Mapping Agency'' in par. (1).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–201 effective Oct. 1, 1996, see section 1124 of Pub. L. 104–201, set out as a note under section 193 of this title.

§ 452. Pilot charts

(a) There shall be conspicuously printed on pilot charts prepared in the National Geospatial-Intelligence Agency the following: ''Prepared from data furnished by the National Geospatial-Intelligence Agency of the Department of Defense and by the Department of Commerce, and published at the National Geospatial-Intelligence Agency under the authority of the Secretary of Defense''.

(b) The Secretary of Commerce shall furnish to the National Geospatial-Intelligence Agency, as quickly as possible, all meteorological information received by the Secretary that is necessary for, and of the character used in, preparing pilot charts.

(Added Pub. L. 97–295, § 1(50)(C), Oct. 12, 1982, 96 Stat. 1299, § 2793; renumbered § 452 and amended Pub. L. 104–201, div. A, title XI, § 1112(b), Sept. 23, 1996, 110 Stat. 2682; Pub. L. 108–136, div. A, title IX, § 921(d)(2)(A), Nov. 24, 2003, 117 Stat. 1568.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2793	10:7393.	

The words ''Secretary of Defense'' and ''Defense Mapping Agency'' are substituted for ''Secretary of the Navy'' and ''United States Naval Oceanographic Office'', respectively, for consistency with 10:2791. The words ''Secretary of Commerce'' are substituted for ''Weather Bureau of the Department of Commerce'' to reflect the transfer of functions from the Weather Bureau to the Secretary of Commerce under Reorganization Plan No. 2 of 1965 (eff. July 13, 1965, 79 Stat. 1318). The word ''quickly'' is substituted for ''expeditiously'' for consistency in title 10.

PRIOR PROVISIONS

A prior section 452 was renumbered section 482 of this title.

AMENDMENTS

2003—Pub. L. 108–136 substituted ''National Geospatial-Intelligence Agency'' for ''National Imagery and Mapping Agency'' wherever appearing.

1996—Pub. L. 104–201 renumbered section 2793 of this title as this section and substituted ''National Imagery and Mapping Agency'' for ''Defense Mapping Agency'' wherever appearing.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–201 effective Oct. 1, 1996, see section 1124 of Pub. L. 104–201, set out as a note under section 193 of this title.

§ 453. Sale of maps, charts, and navigational publications: prices; use of proceeds

(a) PRICES.—All maps, charts, and other publications offered for sale by the National Geospatial-Intelligence Agency shall be sold at prices and under regulations that may be prescribed by the Secretary of Defense.

(b) USE OF PROCEEDS TO PAY FOREIGN LICENSING FEES.—(1) The Secretary of Defense may pay any NGA foreign data acquisition fee out of the proceeds of the sale of maps, charts, and other publications of the Agency, and those proceeds are hereby made available for that purpose.

(2) In this subsection, the term ''NGA foreign data acquisition fee'' means any licensing or other fee imposed by a foreign country or international organization for the acquisition or use of data or products by the National Geospatial-Intelligence Agency.

(Added Pub. L. 97–295, § 1(50)(C), Oct. 12, 1982, 96 Stat. 1299, § 2794; renumbered § 453 and amended Pub. L. 104–201, div. A, title XI, § 1112(b), Sept. 23, 1996, 110 Stat. 2682; Pub. L. 106–65, div. A, title X, § 1010(a), Oct. 5, 1999, 113 Stat. 739; Pub. L. 108–136, div. A, title IX, § 921(d)(2)(A), (B), Nov. 24, 2003, 117 Stat. 1568.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2794	10:7394.	

The words ''Secretary of Defense'' and ''Defense Mapping Agency'' are substituted for ''Secretary of the Navy'' and ''United States Naval Oceanographic Office'', respectively, for consistency with 10:2791. The word ''prescribed'' is substituted for ''determined'' for consistency in title 10. The last sentence, which provided that money from sales be covered into the Treasury, is omitted because of 31:3302.

AMENDMENTS

2003—Subsec. (a). Pub. L. 108–136, § 921(d)(2)(A), substituted ''National Geospatial-Intelligence Agency'' for ''National Imagery and Mapping Agency''.

Subsec. (b)(1). Pub. L. 108–136, § 921(d)(2)(B), substituted ''NGA'' for ''NIMA''.

Subsec. (b)(2). Pub. L. 108–136, § 921(d)(2)(A), (B), substituted ''NGA'' for ''NIMA'' and ''National Geospatial-Intelligence Agency'' for ''National Imagery and Mapping Agency''.

1999—Pub. L. 106–65 amended section catchline and text generally. Prior to amendment, text read as follows: ''All maps, charts, and other publications offered for sale by the National Imagery and Mapping Agency shall be sold at prices and under regulations that may be prescribed by the Secretary of Defense.''

1996—Pub. L. 104–201 renumbered section 2794 of this title as this section and substituted ''National Imagery and Mapping Agency'' for ''Defense Mapping Agency''.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–201 effective Oct. 1, 1996, see section 1124 of Pub. L. 104–201, set out as a note under section 193 of this title.

§ 454. Exchange of mapping, charting, and geomatics data with foreign countries, international organizations, nongovernmental organizations, and academic institutions

(a) FOREIGN COUNTRIES AND INTERNATIONAL ORGANIZATIONS.—The Secretary of Defense may authorize the National Geospatial-Intelligence Agency to exchange or furnish mapping, charting, and geomatics data, supplies and services to a foreign country or international organization pursuant to an agreement for the production or exchange of such data.

(b) NONGOVERNMENTAL ORGANIZATIONS AND ACADEMIC INSTITUTIONS.—The Secretary may authorize the National Geospatial-Intelligence Agency to exchange or furnish mapping, charting, and geomatics data, supplies, and services relating to areas outside of the United States to a nongovernmental organization or an academic institution engaged in geospatial information research or production of such areas pursuant to an agreement for the production or exchange of such data.

(Added Pub. L. 99–569, title VI, § 601(a), Oct. 27, 1986, 100 Stat. 3202, § 2795; renumbered § 454 and amended Pub. L. 104–201, div. A, title XI, § 1112(b), Sept. 23, 1996, 110 Stat. 2682; Pub. L. 108–136, div. A, title IX, § 921(d)(2)(A), Nov. 24, 2003, 117 Stat. 1568; Pub. L. 112–81, div. A, title IX, § 923(a), (b)(1), Dec. 31, 2011, 125 Stat. 1539; Pub. L. 116–283, div. A, title XVI, § 1621(c)(1), Jan. 1, 2021, 134 Stat. 4053.)

AMENDMENTS

2021—Pub. L. 116–283 substituted ''geomatics'' for ''geodetic'' in section catchline and in two places in text.

2011—Pub. L. 112–81, § 923(b)(1), amended section catchline generally, substituting ''Exchange of mapping, charting, and geodetic data with foreign countries, international organizations, nongovernmental organizations, and academic institutions'' for ''Exchange of mapping, charting, and geodetic data with foreign countries and international organizations''.

Pub. L. 112–81, § 923(a), designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

2003—Pub. L. 108–136 substituted ''National Geospatial-Intelligence Agency'' for ''National Imagery and Mapping Agency''.

1996—Pub. L. 104–201 renumbered section 2795 of this title as this section and substituted ''National Imagery and Mapping Agency'' for ''Defense Mapping Agency''.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–201 effective Oct. 1, 1996, see section 1124 of Pub. L. 104–201, set out as a note under section 193 of this title.

§ 455. Maps, charts, and geomatics data: public availability; exceptions

(a) The National Geospatial-Intelligence Agency shall offer for sale maps and charts at scales of 1:500,000 and smaller, except those withheld in accordance with subsection (b) or those specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense or foreign policy and in fact properly classified pursuant to such Executive order.

(b)(1) Notwithstanding any other provision of law, the Secretary of Defense may withhold from public disclosure any geomatics product in the possession of, or under the control of, the Department of Defense—

(A) that was obtained or produced, or that contains information that was provided, pursuant to an international agreement that restricts disclosure of such product or information to government officials of the agreeing parties or that restricts use of such product or information to government purposes only;

(B) that contains information that the Secretary of Defense has determined in writing would, if disclosed, reveal sources and methods, or capabilities, used to obtain source material for production of the geomatics product; or

(C) that contains information that the Director of the National Geospatial-Intelligence Agency has determined in writing would, if disclosed, jeopardize or interfere with ongoing military or intelligence operations, reveal military operational or contingency plans, or reveal, jeopardize, or compromise military or intelligence capabilities.

(2) In this subsection, the term ''geomatics product'' means imagery, imagery intelligence, or geospatial information.

(c)(1) Regulations to implement this section (including any amendments to such regulations)

shall be published in the Federal Register for public comment for a period of not less than 30 days before they take effect.

(2) Regulations under this section shall address the conditions under which release of geomatics products authorized under subsection (b) to be withheld from public disclosure would be appropriate—

(A) in the case of allies of the United States; and

(B) in the case of qualified United States contractors (including contractors that are small business concerns) who need such products for use in the performance of contracts with the United States.

(Added Pub. L. 102–88, title V, § 502(a)(1), Aug. 14, 1991, 105 Stat. 435, § 2796; amended Pub. L. 103–359, title V, § 502, Oct. 14, 1994, 108 Stat. 3430; renumbered § 455 and amended Pub. L. 104–201, div. A, title XI, § 1112(b), Sept. 23, 1996, 110 Stat. 2682; Pub. L. 105–85, div. A, title IX, § 933(a), (b)(1), Nov. 18, 1997, 111 Stat. 1866; Pub. L. 106–398, § 1 [[div. A], title X, § 1074], Oct. 30, 2000, 114 Stat. 1654, 1654A–280; Pub. L. 108–136, div. A, title IX, § 921(d)(2)(A), Nov. 24, 2003, 117 Stat. 1568; Pub. L. 116–283, div. A, title XVI, § 1621(d)(1), Jan. 1, 2021, 134 Stat. 4053.)

AMENDMENTS

2021—Pub. L. 116–283 substituted ''geomatics'' for ''geodetic'' in section catchline and wherever appearing in text.

2003—Subsecs. (a), (b)(1)(C). Pub. L. 108–136 substituted ''National Geospatial-Intelligence Agency'' for ''National Imagery and Mapping Agency''.

2000—Subsec. (b)(1)(C). Pub. L. 106–398 substituted '', reveal military operational or contingency plans, or reveal, jeopardize, or compromise military or intelligence capabilities'' for ''or reveal military operational or contingency plans''.

1997—Subsec. (b)(1)(B). Pub. L. 105–85, § 933(a), inserted '', or capabilities,'' after ''methods''.

Subsec. (b)(2). Pub. L. 105–85, § 933(b)(1), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''In this subsection, the term 'geodetic product' means any map, chart, geodetic data, or related product.''

1996—Pub. L. 104–201 renumbered section 2796 of this title as this section and substituted ''National Imagery and Mapping Agency'' for ''Defense Mapping Agency'' in subsecs. (a) and (b)(1)(C).

1994—Subsec. (b)(1)(C). Pub. L. 103–359 inserted ''jeopardize or interfere with ongoing military or intelligence operations or'' after ''disclosed,''.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–201 effective Oct. 1, 1996, see section 1124 of Pub. L. 104–201, set out as a note under section 193 of this title.

REGULATIONS

Pub. L. 102–88, title V, § 502(b), Aug. 14, 1991, 105 Stat. 436, directed that regulations to implement section 2796 (now 455) of this title be published in the Federal Register for public comment in accordance with subsec. (c) of that section not later than 90 days after Aug. 14, 1991.

§ 456. Civil actions barred

No civil action may be brought against the United States on the basis of the content of geospatial information prepared or disseminated by the National Geospatial-Intelligence Agency.

(Added Pub. L. 103–337, div. A, title X, § 1074(b), Oct. 5, 1994, 108 Stat. 2861, § 2798; renumbered § 456 and amended Pub. L. 104–201, div. A, title XI, § 1112(b), Sept. 23, 1996, 110 Stat. 2682; Pub. L. 108–136, div. A, title IX, § 921(d)(2)(A), Nov. 24, 2003, 117 Stat. 1568; Pub. L. 116–283, div. A, title XVI, § 1621(e), Jan. 1, 2021, 134 Stat. 4053.)

AMENDMENTS

2021—Pub. L. 116–283 added text of section and struck out former text which read as follows:

''(a) CLAIMS BARRED.—No civil action may be brought against the United States on the basis of the content of a navigational aid prepared or disseminated by the National Geospatial-Intelligence Agency.

''(b) NAVIGATIONAL AIDS COVERED.—Subsection (a) applies with respect to a navigational aid in the form of a map, a chart, or a publication and any other form or medium of product or information in which the National Geospatial-Intelligence Agency prepares or disseminates navigational aids.''

2003—Pub. L. 108–136 substituted ''National Geospatial-Intelligence Agency'' for ''National Imagery and Mapping Agency'' wherever appearing.

1996—Pub. L. 104–201 renumbered section 2798 of this title as this section and substituted ''National Imagery and Mapping Agency'' for ''Defense Mapping Agency'' wherever appearing.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–201 effective Oct. 1, 1996, see section 1124 of Pub. L. 104–201, set out as a note under section 193 of this title.

EFFECTIVE DATE

Pub. L. 103–337, div. A, title X, § 1074(d), Oct. 5, 1994, 108 Stat. 2861, provided that: ''Section 2798 [now 456] of title 10, United States Code, as added by subsection (b), shall take effect on the date of the enactment of this Act [Oct. 5, 1994] and shall apply with respect to (1) civil actions brought before such date that are pending adjudication on such date, and (2) civil actions brought on or after such date.''

§ 457. Operational files previously maintained by or concerning activities of National Photographic Interpretation Center: authority to withhold from public disclosure

(a) AUTHORITY.—The Secretary of Defense may withhold from public disclosure operational files described in subsection (b) to the same extent that operational files may be withheld under section 701 of the National Security Act of 1947 (50 U.S.C. 3141).

(b) COVERED OPERATIONAL FILES.—The authority under subsection (a) applies to operational files in the possession of the National Geospatial-Intelligence Agency that—

(1) as of September 22, 1996, were maintained by the National Photographic Interpretation Center; or

(2) concern the activities of the Agency that, as of such date, were performed by the National Photographic Interpretation Center.

(c) OPERATIONAL FILES DEFINED.—In this section, the term ''operational files'' has the meaning given that term in section 701(b) of the National Security Act of 1947 (50 U.S.C. 3141(b)).

(Added Pub. L. 106–65, div. A, title X, § 1045(a), Oct. 5, 1999, 113 Stat. 762; amended Pub. L. 108–136, div. A, title IX, § 921(d)(2)(A), Nov. 24, 2003, 117 Stat. 1568; Pub. L. 113–291, div. A, title X, § 1071(c)(8), Dec. 19, 2014, 128 Stat. 3509.)

AMENDMENTS

2014—Subsec. (a). Pub. L. 113–291, § 1071(c)(8)(A), substituted ''(50 U.S.C. 3141)'' for ''(50 U.S.C. 431)''.

Subsec. (c). Pub. L. 113–291, § 1071(c)(8)(B), substituted ''(50 U.S.C. 3141(b))'' for ''(50 U.S.C. 431(b))''.

2003—Subsec. (b). Pub. L. 108–136 substituted ''National Geospatial-Intelligence Agency'' for ''National Imagery and Mapping Agency'' in introductory provisions.

SUBCHAPTER III—PERSONNEL MANAGEMENT

Sec.
461. Management rights.
462. Financial assistance to certain employees in acquisition of critical skills.

AMENDMENTS

2001—Pub. L. 107–108, title V, § 504(b), Dec. 28, 2001, 115 Stat. 1406, added item 462.

§ 461. Management rights

(a) SCOPE.—If there is no obligation under the provisions of chapter 71 of title 5 for the head of an agency of the United States to consult or negotiate with a labor organization on a particular matter by reason of that matter being covered by a provision of law or a Governmentwide regulation, the Director of the National Geospatial-Intelligence Agency is not obligated to consult or negotiate with a labor organization on that matter even if that provision of law or regulation is inapplicable to the National Geospatial-Intelligence Agency.

(b) BARGAINING UNITS.—The Director of the National Geospatial-Intelligence Agency shall accord exclusive recognition to a labor organization under section 7111 of title 5 only for a bargaining unit that was recognized as appropriate for the Defense Mapping Agency on September 30, 1996.

(c) TERMINATION OF BARGAINING UNIT COVERAGE OF POSITION MODIFIED TO AFFECT NATIONAL SECURITY DIRECTLY.—(1) If the Director of the National Geospatial-Intelligence Agency determines that the responsibilities of a position within a collective bargaining unit should be modified to include intelligence, counterintelligence, investigative, or security duties not previously assigned to that position and that the performance of the newly assigned duties directly affects the national security of the United States, then, upon such a modification of the responsibilities of that position, the position shall cease to be covered by the collective bargaining unit and the employee in that position shall cease to be entitled to representation by a labor organization accorded exclusive recognition for that collective bargaining unit.

(2) A determination described in paragraph (1) that is made by the Director of the National Geospatial-Intelligence Agency may not be reviewed by the Federal Labor Relations Authority or any court of the United States.

(Added Pub. L. 104–201, div. A, title XI, § 1112(a)(2), Sept. 23, 1996, 110 Stat. 2681; amended Pub. L. 108–136, div. A, title IX, § 921(d)(2)(A), (C), Nov. 24, 2003, 117 Stat. 1568.)

AMENDMENTS

2003—Subsec. (a). Pub. L. 108–136, § 921(d)(2)(A), substituted ''National Geospatial-Intelligence Agency'' for ''National Imagery and Mapping Agency'' in two places.

Subsec. (b). Pub. L. 108–136, § 921(d)(2)(C), substituted ''The Director of the National Geospatial-Intelligence Agency'' for ''The National Imagery and Mapping Agency'' and ''on September 30, 1996'' for ''on the day before the date on which employees and positions of the Defense Mapping Agency in that bargaining unit became employees and positions of the National Imagery and Mapping Agency under the National Imagery and Mapping Agency Act of 1996 (title XI of the National Defense Authorization Act for Fiscal Year 1997)''.

Subsec. (c). Pub. L. 108–136, § 921(d)(2)(A), substituted ''National Geospatial-Intelligence Agency'' for ''National Imagery and Mapping Agency'' in two places.

EFFECTIVE DATE

Section effective Oct. 1, 1996, see section 1124 of Pub. L. 104–201, set out as an Effective Date of 1996 Amendment note under section 193 of this title.

§ 462. Financial assistance to certain employees in acquisition of critical skills

The Secretary of Defense may establish an undergraduate training program with respect to civilian employees of the National Geospatial-Intelligence Agency that is similar in purpose, conditions, content, and administration to the program established by the Secretary of Defense under section 16 of the National Security Agency Act of 1959 (50 U.S.C. 3614) for civilian employees of the National Security Agency.

(Added Pub. L. 107–108, title V, § 504(a), Dec. 28, 2001, 115 Stat. 1405; amended Pub. L. 108–136, div. A, title IX, § 921(d)(2)(A), Nov. 24, 2003, 117 Stat. 1568; Pub. L. 113–291, div. A, title X, § 1071(c)(9), Dec. 19, 2014, 128 Stat. 3509.)

AMENDMENTS

2014—Pub. L. 113–291 substituted ''(50 U.S.C. 3614)'' for ''(50 U.S.C. 402 note)''.

2003—Pub. L. 108–136 substituted ''National Geospatial-Intelligence Agency'' for ''National Imagery and Mapping Agency''.

SUBCHAPTER IV—DEFINITIONS

Sec.
467. Definitions.

§ 467. Definitions

In this chapter:

(1) The term ''function'' means any duty, obligation, responsibility, privilege, activity, or program.

(2)(A) The term ''imagery'' means, except as provided in subparagraph (B), a likeness or presentation of any natural or manmade feature or related object or activity and the positional data acquired at the same time the likeness or representation was acquired, including—

(i) products produced by space-based national intelligence reconnaissance systems; and

(ii) likenesses or presentations produced by satellites, airborne platforms, unmanned aerial vehicles, or other similar means.

(B) Such term does not include handheld or clandestine photography taken by or on behalf of human intelligence collection organizations.

(3) The term ''imagery intelligence'' means the technical, geographic, and intelligence information derived through the interpretation or analysis of imagery and collateral materials.

(4) The term ''geospatial information'' means information that identifies the geographic location and characteristics of natural or constructed features and boundaries on or about the earth and includes—

(A) data and information derived from, among other things, remote sensing, mapping, and surveying technologies; and

(B) mapping, charting, geomatics data, and related products and services.

(5) The term ''geospatial intelligence'' means the exploitation and analysis of imagery and geospatial information to describe, assess, and visually depict physical features and geographically referenced activities on or about the earth. Geospatial intelligence consists of imagery, imagery intelligence, and geospatial information.

(Added Pub. L. 104–201, div. A, title XI, § 1112(a)(2), Sept. 23, 1996, 110 Stat. 2682; amended Pub. L. 105–85, div. A, title IX, § 933(b)(2), Nov. 18, 1997, 111 Stat. 1866; Pub. L. 108–136, div. A, title IX, § 921(b), Nov. 24, 2003, 117 Stat. 1568; Pub. L. 116–283, div. A, title XVI, § 1621(f), Jan. 1, 2021, 134 Stat. 4054.)

AMENDMENTS

2021—Par. (4). Pub. L. 116–283, § 1621(f)(1)(A), inserted ''or about'' after ''boundaries on'' in introductory provisions.

Par. (4)(A). Pub. L. 116–283, § 1621(f)(1)(B), struck out ''statistical'' before ''data''.

Par. (4)(B). Pub. L. 116–283, § 1621(f)(1)(C), substituted ''geomatics'' for ''geodetic'' and inserted ''and services'' after ''products''.

Par. (5). Pub. L. 116–283, § 1621(f)(2), inserted ''or about'' after ''activities on''.

2003—Par. (5). Pub. L. 108–136 added par. (5).

1997—Par. (4). Pub. L. 105–85 inserted ''and'' at end of subpar. (A), substituted ''geodetic data, and related products.'' for ''and geodetic data; and'' in subpar. (B), and struck out subpar. (C) which read as follows: ''geodetic products, as defined in section 455(c) of this title.''

EFFECTIVE DATE

Section effective Oct. 1, 1996, see section 1124 of Pub. L. 104–201, set out as an Effective Date of 1996 Amendment note under section 193 of this title.

CHAPTER 23—MISCELLANEOUS STUDIES AND REPORTS

Sec.

480. Reports to Congress: submission in electronic form.

481. Racial and ethnic issues; gender issues: surveys.

481a. Workplace and gender relations issues: surveys of Department of Defense civilian employees.

482. Readiness reports.

483. Notifications related to basing decision-making process.

484. Quarterly cyber operations briefings.

485. Monthly counterterrorism operations briefings.

[486, 487. Repealed.]

488. Management and review of electromagnetic spectrum.

[489 to 491. Repealed or Renumbered.]

AMENDMENTS

2021—Pub. L. 116–283, div. B, title XXVIII, § 2871(c), Jan. 1, 2021, 134 Stat. 4366, added item 483.

2019—Pub. L. 116–92, div. A, title III, § 361(c), Dec. 20, 2019, 133 Stat. 1327, added item 482 and struck out former item 482 ''Quarterly reports: personnel and unit readiness''.

2016—Pub. L. 114–328, div. A, title X, §§ 1031(c), 1065(a)(2), Dec. 23, 2016, 130 Stat. 2389, 2410, substituted ''Monthly counterterrorism operations briefings'' for ''Quarterly counterterrorism operations briefings'' in item 485 and ''Management and review of electromagnetic spectrum'' for ''Management of electromagnetic spectrum'' in item 488.

2014—Pub. L. 113–291, div. A, title III, § 331(b), title X, § 1073(a)(2), Dec. 19, 2014, 128 Stat. 3344, 3518, added item 481a and struck out item 489 ''Annual report on Department of Defense operation and financial support for military museums''.

2013—Pub. L. 113–66, div. A, title X, §§ 1042(a)(2), 1072(b)(2), 1084(a)(1)(B), Dec. 26, 2013, 127 Stat. 857, 869, 871, added item 485, substituted ''Management of electromagnetic spectrum'' for ''Management of electromagnetic spectrum: biennial strategic plan'' in item 488, and struck out item 483 ''Reports on transfers from high-priority readiness appropriations''.

Pub. L. 112–239, div. A, title IX, § 939(c), title X, § 1031(b)(3)(A)(ii), Jan. 2, 2013, 126 Stat. 1888, 1918, added item 484 and struck out items 490a ''Biennial assessment and report on the delivery platforms for nuclear weapons and the nuclear command and control system'' and 491 ''Nuclear employment strategy of the United States: reports on modification of strategy''.

2011—Pub. L. 112–81, div. A, title X, §§ 1041(c), 1046(b)(2), 1061(6)(B), (7)(B), (8)(B), (9)(B), (10)(B), Dec. 31, 2011, 125 Stat. 1575, 1579, 1583, added items 490a and 491 and struck out items 484 ''Annual report on aircraft inventory'', 485 ''Joint and service concept development and experimentation'', 486 ''Quadrennial report on emerging operational concepts'', 487 ''Unit operations tempo and personnel tempo: annual report'', and 490 ''Space cadre management: biennial report''.

2008—Pub. L. 110–417, [div. A], title II, § 241(b), Oct. 14, 2008, 122 Stat. 4398, added item 485 and struck out former item 485 ''Joint warfighting experimentation''.

Pub. L. 110–181, div. A, title IX, § 912(b), Jan. 28, 2008, 122 Stat. 281, added item 490.

2004—Pub. L. 108–375, div. A, title X, § 1033(b), Oct. 28, 2004, 118 Stat. 2048, added item 489.

2003—Pub. L. 108–136, div. A, title X, § 1054(b), Nov. 24, 2003, 117 Stat. 1615, added item 488.

2002—Pub. L. 107–314, div. A, title V, § 561(a)(2), Dec. 2, 2002, 116 Stat. 2554, substituted ''Racial and ethnic issues; gender issues: surveys'' for ''Race relations, gender discrimination, and hate group activity: annual survey and report'' in item 481.

2001—Pub. L. 107–107, div. A, title X, § 1042(b), Dec. 28, 2001, 115 Stat. 1218, added item 480.

1999—Pub. L. 106–65, div. A, title II, § 241(a)(2), title III, § 361(d)(3), title IX, § 923(b)(2), Oct. 5, 1999, 113 Stat. 550, 575, 725, added items 486 and 487 and repealed Pub. L. 105–261, § 373(d)(2). See 1998 Amendment note below.

1998—Pub. L. 105–261, div. A, title IX, § 923(b)(2), title X, § 1069(a)(1), Oct. 17, 1998, 112 Stat. 2105, 2135, substituted ''Annual report'' for ''Report'' in item 484 and added item 485.

Pub. L. 105–261, div. A, title III, § 373(d)(2), Oct. 17, 1998, 112 Stat. 1992, which directed amendment of analysis, effective June 1, 2001, by striking out item 482, was repealed by Pub. L. 106–65, div. A, title III, § 361(d)(3), Oct. 5, 1999, 113 Stat. 575.

1997—Pub. L. 105–85, div. A, title III, §§ 322(a)(2), 323(b), 324(a)(2), Nov. 18, 1997, 111 Stat. 1675, 1677, substituted ''Quarterly reports: personnel and unit readiness'' for ''Quarterly readiness reports'' in item 482 and added items 483 and 484.

1996—Pub. L. 104–201, div. A, title V, § 571(c)(2), title XI, §§ 1112(a)(1), 1123(a)(4), Sept. 23, 1996, 110 Stat. 2532, 2677, 2688, substituted ''Race relations, gender discrimination, and hate group activity: annual survey and report'' for ''Racial and ethnic issues; biennial survey; biennial report'' in item 451, renumbered chapter 22 of this title as this chapter, and redesignated items 451 and 452 as 481 and 482, respectively.

Pub. L. 104–106, div. A, title III, § 361(a)(2), Feb. 10, 1996, 110 Stat. 273, added item 452.

QUESTIONS IN SURVEYS REGARDING EXTREMIST ACTIVITY IN THE WORKPLACE

Pub. L. 116–92, div. A, title V, § 593, Dec. 20, 2019, 133 Stat. 1415, as amended by Pub. L. 116–283, div. A, title V, § 553, Jan. 1, 2021, 134 Stat. 3633, provided that:

''(a) QUESTIONS REQUIRED.—The Secretary of Defense shall include in appropriate surveys administered by the Department of Defense questions regarding whether respondents have ever—

''(1) experienced or witnessed extremist, racist, anti-Semitic, or supremacist activity in the workplace; or

''(2) reported such activity.

''(b) BRIEFING.—Not later than March 1, 2021, the Secretary shall provide to the Committees on Armed Services of the Senate and the House of Representatives a briefing including—

''(1) the text of the questions included in surveys under subsection (a); and

''(2) which surveys include such questions.''

§ 480. Reports to Congress: submission in electronic form

(a) REQUIREMENT.—Whenever the Secretary of Defense or any other official of the Department of Defense submits to Congress (or any committee of either House of Congress) a report that the Secretary (or other official) is required by law to submit, the Secretary (or other official) shall provide to Congress (or such committee) a copy of the report in an electronic medium.

(b) EXCEPTION.—Subsection (a) does not apply to a report submitted in classified form.

(c) DEFINITION.—In this section, the term ''report'' includes any certification, notification, or other communication in writing.

(Added Pub. L. 107–107, div. A, title X, § 1042(a), Dec. 28, 2001, 115 Stat. 1218; amended Pub. L. 107–314, div. A, title X, § 1042, Dec. 2, 2002, 116 Stat. 2646.)

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–314 substituted ''shall provide to Congress (or'' for ''shall, upon request by any committee of Congress to which the report is submitted or referred, provide to Congress (or each''.

§ 481. Racial and ethnic issues; gender issues: surveys

(a) IN GENERAL.—(1) The Secretary of Defense shall carry out four surveys in accordance with this section to identify and assess racial and ethnic issues and discrimination, and to identify and assess gender issues and discrimination, among members of the armed forces. Each such survey shall be conducted so as to identify and assess the extent (if any) of activity among such members that may be seen as so-called ''hate group'' activity.

(2) The four surveys shall be as follows:

(A) To identify and assess racial and ethnic issues and discrimination among members of the armed forces serving on active duty.

(B) To identify and assess racial and ethnic issues and discrimination among members of the armed forces in the reserve components.

(C) To identify and assess gender issues and discrimination among members of the armed forces serving on active duty.

(D) To identify and assess gender issues and discrimination members of the armed forces in the reserve components.

(3) The surveys under this section relating to racial and ethnic issues and discrimination shall be known as the ''Armed Forces Workplace and Equal Opportunity Surveys''. The surveys under this section relating to gender issues and discrimination shall be known as the ''Armed Forces Workplace and Gender Relations Surveys''.

(4) Each survey under this section shall be conducted separately from any other survey conducted by the Department of Defense.

(b) ARMED FORCES WORKPLACE AND EQUAL OPPORTUNITY SURVEYS.—The Armed Forces Workplace and Equal Opportunity Surveys shall be conducted so as to solicit information on racial and ethnic issues, including issues relating to harassment and discrimination, and the climate in the armed forces for forming professional relationships among members of the armed forces of various racial and ethnic groups. Both such surveys shall be conducted so as to solicit information on the following:

(1) Indicators of positive and negative trends for professional and personal relationships among members of all racial and ethnic groups.

(2) The effectiveness of Department of Defense policies designed to improve relationships among all racial and ethnic groups.

(3) The effectiveness of current processes for complaints on and investigations into racial and ethnic discrimination.

(c) ARMED FORCES WORKPLACE AND GENDER RELATIONS SURVEYS.—The Armed Forces Workplace and Gender Relations Surveys shall be conducted so as to solicit information on gender issues, including issues relating to gender-based harassment, assault (including unwanted sexual contact), and discrimination, and the climate in the armed forces for forming professional relationships between male and female members of the armed forces. Both such surveys shall be conducted so as to solicit information on the following:

(1) Indicators of positive and negative trends for professional and personal relationships between male and female members of the armed forces.

(2) The specific types of assault (including unwanted sexual contact) that have occurred, and the number of times each respondent has been assaulted during the preceding year.

(3) The effectiveness of Department of Defense policies designed to improve professional relationships between male and female members of the armed forces.

(4) The effectiveness of current processes for complaints on and investigations into gender-based discrimination, harassment, and assault (including unwanted sexual contact).

(5) Any other issues relating to discrimination, harassment, or assault (including unwanted sexual contact) as the Secretary of Defense considers appropriate.

(d) WHEN SURVEYS REQUIRED.—(1) The Armed Forces Workplace and Gender Relations Surveys of the Active Duty and the Armed Forces Workplace and Gender Relations Survey of the Reserve Components shall each be conducted once every two years. The surveys may be conducted

within the same year or in two separate years, and shall be conducted in a manner designed to reduce the burden of the surveys on members of the armed forces.

(2) The two Armed Forces Workplace and Equal Opportunity Surveys shall be conducted at least once every four years. The surveys may be conducted within the same year or in two separate years, and shall be conducted in a manner designed to reduce the burden of the surveys on members of the armed forces.

(3)(A) The Secretary of Defense may postpone the conduct of a survey under this section if the Secretary determines that conducting such survey is not practicable due to a war or national emergency declared by the President or Congress.

(B) The Secretary shall ensure that a survey postponed under subparagraph (A) is conducted as soon as practicable after the end of the period of war or national emergency concerned, or earlier if the Secretary determines appropriate.

(C) The Secretary shall notify Congress of a determination under subparagraph (A) not later than 30 days after the date on which the Secretary makes such determination.

(e) REPORTS TO CONGRESS.—Upon the completion of a survey under this section, the Secretary shall submit to Congress a report containing the results of the survey.

(f) INAPPLICABILITY TO COAST GUARD.—This section does not apply to the Coast Guard.

(Added Pub. L. 103–337, div. A, title V, §554(a)(1), Oct. 5, 1994, 108 Stat. 2773, §451; renumbered §481 and amended Pub. L. 104–201, div. A, title V, §571(c)(1), title XI, §1121(a), Sept. 23, 1996, 110 Stat. 2532, 2687; Pub. L. 107–314, div. A, title V, §561(a)(1), Dec. 2, 2002, 116 Stat. 2553; Pub. L. 112–239, div. A, title V, §570, Jan. 2, 2013, 126 Stat. 1752; Pub. L. 116–92, div. A, title V, §591(a), Dec. 20, 2019, 133 Stat. 1414; Pub. L. 116–283, div. A, title V, §552(a), Jan. 1, 2021, 134 Stat. 3631.)

AMENDMENTS

2021—Subsec. (d). Pub. L. 116–283 amended subsec. (d) generally. Prior to amendment, subsec. (d) provided for timing and frequency of Armed Forces Workplace and Gender Relations Surveys and Armed Forces Workplace and Equal Opportunity Surveys.

2019—Subsec. (c). Pub. L. 116–92 inserted ''(including unwanted sexual contact)'' after ''assault'' wherever appearing.

2013—Subsec. (a)(1). Pub. L. 112–239, §570(b)(1), substituted ''four surveys'' for ''four quadrennial surveys (each in a separate year)''.

Subsec. (c). Pub. L. 112–239, §570(a)(1), substituted ''harassment, assault, and discrimination'' for ''harassment and discrimination'' in introductory provisions.

Subsec. (c)(2) to (4). Pub. L. 112–239, §570(a)(2)–(4), added par. (2), redesignated former pars. (2) and (3) as (3) and (4), respectively, and substituted ''discrimination, harassment, and assault'' for ''discrimination'' in par. (4).

Subsec. (c)(5). Pub. L. 112–239, §570(a)(5), added par. (5).

Subsec. (d). Pub. L. 112–239, §570(b)(2), added subsec. (d) and struck out former subsec. (d). Prior to amendment, text read as follows: ''Each of the four quadrennial surveys conducted under this section shall be conducted in a different year from any other survey conducted under this section, so that one such survey is conducted during each year.''

2002—Pub. L. 107–314 substituted ''Racial and ethnic issues; gender issues: surveys'' for ''Race relations, gender discrimination, and hate group activity: annual survey and report'' as section catchline and amended text generally, substituting provisions requiring four quadrennial surveys and report for provisions requiring an annual survey and report.

1996—Pub. L. 104–201, §1121(a), renumbered section 451 of this title as this section.

Pub. L. 104–201, §571(c)(1), substituted ''Race relations, gender discrimination, and hate group activity: annual survey and report'' for ''Racial and ethnic issues; biennial survey; biennial report'' as section catchline and amended text generally, substituting provisions requiring an annual survey and report for provisions requiring a biennial survey and report.

EFFECTIVE DATE OF 2019 AMENDMENT

Pub. L. 116–92, div. A, title V, §591(c), Dec. 20, 2019, 133 Stat. 1414, provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 481a of this title] shall take effect on the date of the enactment of this Act [Dec. 20, 2019] and shall apply with respect to surveys under sections 481 and 481a of title 10, United States Code, that are initiated after such date.''

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–314, div. A, title V, §561(b), Dec. 2, 2002, 116 Stat. 2554, provided that: ''The first survey under section 481 of title 10, United States Code, as amended by subsection (a)(1), shall be carried out during 2003.''

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

ANNUAL REPORT ON STATUS OF FEMALE MEMBERS OF THE ARMED FORCES

Pub. L. 107–314, div. A, title V, §562, Dec. 2, 2002, 116 Stat. 2554, provided that:

''(a) REQUIREMENT FOR REPORT.—The Secretary of Defense shall submit to Congress, for each of fiscal years 2002 through 2006, a report on the status of female members of the Armed Forces. Information in the annual report shall be shown for the Department of Defense as a whole and separately for each of the Army, Navy, Air Force, and Marine Corps.

''(b) MATTERS TO BE INCLUDED.—The report for a fiscal year under subsection (a) shall include the following information:

''(1) The positions, weapon systems, and fields of skills for which, by policy, female members are not eligible for assignment, as follows:

''(A) In the report for fiscal year 2002—

''(i) an identification of each position, weapon system, and field of skills for which, by policy, female members are not eligible; and

''(ii) the rationale for the applicability of the policy to each such position, weapon system, and field.

''(B) In the report for each fiscal year after fiscal year 2002, the positions, weapon systems, and fields for which policy on the eligibility of female members for assignment has changed during that fiscal year, including a discussion of how the policy has changed and the rationale for the change.

''(2) Information on joint spouse assignments, as follows:

''(A) The number of cases in which members of the Armed Forces married to each other are in assignments to which they were jointly assigned during that fiscal year, as defined in the applicable Department of Defense and military department personnel assignment policies.

"(B) The number of cases in which members of the Armed Forces married to each other are in assignments to which they were assigned during that fiscal year, but were not jointly assigned (as so defined).

"(3) Promotion selection rates for female members, for male members, and for all personnel in the reports submitted by promotion selection boards in that fiscal year for promotion to grades E–7, E–8, and E–9, and, in the case of commissioned officers, promotion to grades O–4, O–5, and O–6.

"(4) Retention rates for female members in each grade and for male members in each grade during that fiscal year.

"(5) Selection rates for female members and for male members for assignment to grade O–6 and grade O–5 command positions in reports of command selection boards that were submitted during that fiscal year.

"(6) Selection rates for female members and for male members for attendance at intermediate service schools (ISS) and, separately, for attendance at senior service schools (SSS) in reports of selection boards that were submitted during that fiscal year.

"(7) The extent of assignments of female members during that fiscal year in each field in which at least 80 percent of the Armed Forces personnel assigned in the field are men.

"(8) The incidence of sexual harassment complaints made during that fiscal year, stated as the number of cases in which complaints of sexual harassment were filed under procedures of military departments that are applicable to the submission of sexual harassment complaints, together with the number and percent of the complaints that were substantiated.

"(9) Satisfaction (based on surveys) of female active-duty members, female dependents of active-duty members, and female dependents of nonactive duty members entitled to health care provided by the Department of Defense with access to, and quality of, women's health care benefits provided by the Department of Defense.

"(c) TIME FOR REPORT.—The report for a fiscal year under this section shall be submitted not later than 120 days after the end of that fiscal year."

FIRST REPORT REQUIRED UNDER SUBSECTION (c)

Pub. L. 103–337, div. A, title V, §554(b), Oct. 5, 1994, 108 Stat. 2773, required Secretary of Defense to submit first report under former subsec. (c) of this section not later than May 1, 1995.

§481a. Workplace and gender relations issues: surveys of Department of Defense civilian employees

(a) IN GENERAL.—(1) The Secretary of Defense shall carry out every other fiscal year a survey of civilian employees of the Department of Defense to solicit information on gender issues, including issues relating to gender-based assault (including unwanted sexual contact), harassment, and discrimination, and the climate in the Department for forming professional relationships between male and female civilian employees of the Department.

(2) Each survey under this section shall be known as a "Department of Defense Civilian Employee Workplace and Gender Relations Survey".

(b) ELEMENTS.—Each survey conducted under this section shall be conducted so as to solicit information on the following:

(1) Indicators of positive and negative trends for professional and personal relationships between male and female civilian employees of the Department of Defense.

(2) The specific types of assault (including unwanted sexual contact) on civilian employees of the Department by other personnel of the Department (including contractor personnel) that have occurred, and the number of times each respondent has been so assaulted during the preceding fiscal year.

(3) The effectiveness of Department policies designed to improve professional relationships between male and female civilian employees of the Department.

(4) The effectiveness of current processes for complaints on and investigations into gender-based assault (including unwanted sexual contact), harassment, and discrimination involving civilian employees of the Department.

(5) Any other issues relating to assault (including unwanted sexual contact), harassment, or discrimination involving civilian employees of the Department that the Secretary considers appropriate.

(c) REPORT TO CONGRESS.—Upon the completion of a survey under this section, the Secretary shall submit to Congress a report containing the results of the survey.

(d) POSTPONEMENT.—(1) The Secretary of Defense may postpone the conduct of a survey under this section if the Secretary determines that conducting such survey is not practicable due to a war or national emergency declared by the President or Congress.

(2) The Secretary shall ensure that a survey postponed under paragraph (1) is conducted as soon as practicable after the end of the period of war or national emergency concerned, or earlier if the Secretary determines appropriate.

(3) The Secretary shall notify Congress of a determination under paragraph (1) not later than 30 days after the date on which the Secretary makes such determination.

(Added Pub. L. 113–291, div. A, title X, §1073(a)(1), Dec. 19, 2014, 128 Stat. 3517; amended Pub. L. 116–92, div. A, title V, §591(b), Dec. 20, 2019, 133 Stat. 1414; Pub. L. 116–283, div. A, title V, §552(c), Jan. 1, 2021, 134 Stat. 3632.)

AMENDMENTS

2021—Subsec. (d). Pub. L. 116–283 added subsec. (d).

2019—Subsecs. (a), (b). Pub. L. 116–92 inserted "(including unwanted sexual contact)" after "assault" wherever appearing.

EFFECTIVE DATE OF 2019 AMENDMENT

Amendment by Pub. L. 116–92 effective Dec. 20, 2019, and applicable with respect to surveys under this section that are initiated after such date, see section 591(c) of Pub. L. 116–92, set out as a note under section 481 of this title.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective Dec. 31, 2021, of provisions in subsec. (c) of this section requiring submittal of report to Congress, see section 1061 of Pub. L. 114–328, set out as a note under section 111 of this title.

INITIAL SURVEY

Pub. L. 113–291, div. A, title X, §1073(a)(3), Dec. 19, 2014, 128 Stat. 3518, provided that: "The Secretary of Defense shall carry out the first survey required by section 481a of title 10, United States Code (as added by this subsection), during fiscal year 2016."

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§ 482. Readiness reports

(a) REPORTS AND BRIEFINGS.—(1) Not later than 30 days after the end of the second and fourth quarter of each calendar year, the Secretary of Defense shall submit to Congress a report regarding the military readiness of the active and reserve components. The Secretary of Defense shall submit each such report in writing and shall also submit a copy of each such report to the Chairman of the Joint Chiefs of Staff.

(2) Not later than 30 days after the end of the first and third quarter of each calendar year, the Secretary of Defense shall provide to Congress a briefing regarding the military readiness of the active and reserve components.

(3) Each report under this subsection shall contain the elements required by subsection (b) for the quarter covered by the report, and each briefing shall address any changes to the elements described in subsection (b) since the submittal of the most recently submitted report.

(b) REQUIRED ELEMENTS.—The elements described in this subsection are each of the following:

(1) A description of each readiness problem or deficiency that affects the ground, sea, air, space, cyber, or special operations forces, and any other area determined appropriate by the Secretary of Defense.

(2) The key contributing factors, indicators, and other relevant information related to each identified problem or deficiency.

(3) The short-term mitigation strategy the Department will employ to address each readiness problem or deficiency until a resolution is in place, as well as the timeline, cost, and any legislative remedies required to support the resolution.

(4) A summary of combat readiness ratings for the key force elements assessed, including specific information on personnel, supply, equipment, and training problems or deficiencies that affect the combat readiness ratings for each force element.

(5) A summary of each upgrade or downgrade of the combat readiness of a unit that was issued by the commander of the unit, together with the rationale of the commander for the issuance of such upgrade or downgrade.

(6) A summary of the readiness of supporting capabilities, including infrastructure, prepositioned equipment and supplies, and mobility assets, and other supporting logistics capabilities.

(7) A summary of the readiness of the combat support and related agencies, any readiness problem or deficiency affecting any mission essential tasks of any such agency, and actions recommended to address any such problem or deficiency.

(8) A list of all Class A, Class B, and Class C mishaps that occurred in operations related to combat support and training events involving aviation, ground, or naval platforms, weapons, space, or Government vehicles, as defined by Department of Defense Instruction 6055.07, or a successor instruction.

(9) Information on the extent to which units of the armed forces have removed serviceable parts, supplies, or equipment from one vehicle, vessel, or aircraft in order to render a different vehicle, vessel, or aircraft operational.

(10) Such other information as determined necessary or appropriate by the Secretary of Defense.

(c) CONSIDERATION OF READINESS ASSESSMENTS.—The information required under subsection (b) to be included in the report for a quarter shall be based on readiness assessments that are provided during that quarter—

(1) to any council, committee, or other body of the Department of Defense—

(A) that has responsibility for readiness oversight; and

(B) whose membership includes at least one civilian officer in the Office of the Secretary of Defense at the level of Assistant Secretary of Defense or higher;

(2) by senior civilian and military officers of the military departments and the commanders of the unified and specified commands; and

(3) as part of any regularly established process of periodic readiness reviews for the Department of Defense as a whole.

(d) SEMI-ANNUAL JOINT FORCE READINESS REVIEW.—(1) Not later than 30 days after the last day of the first and third quarter of each calendar year, the Chairman of the Joint Chiefs of Staff shall submit to Congress a written report on the capability of the armed forces, the combat support and related agencies, operational contract support, and the geographic and functional combatant commands to execute their wartime missions based upon their posture and readiness as of the time the review is conducted.

(2) The Chairman shall produce the report required under this subsection using information derived from the quarterly reports required by subsection (a).

(3) Each report required by this subsection shall include an assessment by each commander of a geographic or functional combatant command of the readiness of the command to conduct operations in a multidomain battle that integrates ground, sea, air, space, cyber, and special operations forces.

(4) The Chairman shall submit to the Secretary of Defense a copy of each report under this subsection.

(e) CLASSIFICATION OF REPORTS.—A report under this section shall be submitted in unclassified form. To the extent the Secretary of Defense determines necessary, the report may also be submitted in classified form.

(Added Pub. L. 104–106, div. A, title III, § 361(a)(1), Feb. 10, 1996, 110 Stat. 272, § 452; renumbered § 482, Pub. L. 104–201, div. A, title XI, § 1121(a), Sept. 23, 1996, 110 Stat. 2687; amended Pub. L. 105–85, div. A, title III, § 322(a)(1), Nov. 18, 1997, 111 Stat. 1673; Pub. L. 106–65, div. A, title III, § 361(d)(3), (e), Oct. 5, 1999, 113 Stat. 575; Pub. L. 110–181, div. A, title III, § 351(b), Jan. 28, 2008, 122 Stat. 70; Pub. L. 113–66, div. A, title III, § 331(a), Dec. 26, 2013, 127 Stat. 737; Pub. L. 113–291, div. A, title III, § 321, Dec. 19, 2014, 128 Stat. 3342; Pub. L. 114–328, div. A, title III, § 331, Dec. 23, 2016, 130 Stat. 2078; Pub. L. 115–91, div. A, title III, § 331(a), Dec. 12, 2017, 131 Stat. 1353; Pub. L. 115–232, div. A, title III, § 332, Aug. 13, 2018, 132

Stat. 1725; Pub. L. 116–92, div. A, title III, § 361(b), Dec. 20, 2019, 133 Stat. 1325.)

AMENDMENTS

2019—Pub. L. 116–92, § 361(b)(1), substituted ''Readiness reports'' for ''Quarterly reports: personnel and unit readiness'' in section catchline.

Subsec. (a). Pub. L. 116–92, § 361(b)(2), in heading substituted ''Reports and Briefings'' for ''Quarterly Reports Required'' and in text designated existing provisions as par. (1), substituted ''the second and fourth quarter of each calendar year'' for ''each calendar-year quarter'', substituted ''The Secretary of Defense shall submit each such report in writing and shall also submit a copy of each such report to the Chairman of the Joint Chiefs of Staff.'' for ''The reports for the first and third quarters of a calendar year shall contain the information required by subsections (b), (d), (e), (f), and (g). The reports for the second and fourth quarters of a calendar year shall contain the information required by subsection (j).'', and added pars. (2) and (3).

Subsec. (b). Pub. L. 116–92, § 361(b)(3), added subsec. (b) and struck out former subsec. (b) which related to specific descriptions of readiness problems in second and fourth quarter reports.

Subsecs. (d) to (j). Pub. L. 116–92, § 361(b)(4)–(6), added subsec. (d), redesignated subsec. (i) as (e), and struck out former subsecs. (d) to (h) and (j) which related to combatant command assessments, risk assessment of dependence on contractor support, military readiness of combat support and related agencies, major exercise assessments, information collected pursuant to section 117(c)(7) of this title, and mitigation plans to address readiness shortfalls and operational deficiencies, respectively.

2018—Subsec. (b)(1). Pub. L. 115–232, § 332(1), inserted ''in the ground, sea, air, space, and cyber forces, and in such other such areas as determined by the Secretary of Defense,'' after ''deficiency''.

Subsec. (d). Pub. L. 115–232, § 332(2)(A), struck out ''Assigned Mission'' after ''Command'' in heading.

Subsec. (d)(2), (3). Pub. L. 115–232, § 332(2)(B)–(D), added par. (2), redesignated former par. (2) as (3), and struck out former par. (3) which read as follows: ''The assessment included in the report under paragraph (1) by the Commander of the United States Strategic Command shall include a separate assessment prepared by the Commander of United States Cyber Command relating to the readiness of United States Cyber Command and the readiness of the cyber force of each of the military departments.''

2017—Subsec. (a). Pub. L. 115–91, § 331(a)(1), substituted ''The reports for the first and third quarters of a calendar year'' for ''Each report'' and inserted at end ''The reports for the second and fourth quarters of a calendar year shall contain the information required by subsection (j).''.

Subsec. (b). Pub. L. 115–91, § 331(a)(2)(A), (B), in heading, struck out ''and Remedial Actions'' after ''Problems'' and in introductory provisions, substituted ''A report for the second or fourth quarter of a calendar year'' for ''Each report''.

Subsec. (b)(2), (3). Pub. L. 115–91, § 331(a)(2)(C)–(E), redesignated par. (3) as (2) and struck out former par. (2) which read as follows: ''planned remedial actions; and''.

Subsec. (d)(1). Pub. L. 115–91, § 331(a)(3), substituted ''A report for the second or fourth quarter of a calendar year'' for ''Each report''.

Subsec. (e). Pub. L. 115–91, § 331(a)(4), substituted ''A report for the second or fourth quarter of a calendar year'' for ''Each report''.

Subsec. (f)(1). Pub. L. 115–91, § 331(a)(5), substituted ''A report for the second or fourth quarter of a calendar year'' for ''Each report'' in introductory provisions.

Subsec. (g)(1). Pub. L. 115–91, § 331(a)(6), substituted ''A report for the second or fourth quarter of a calendar year'' for ''Each report'' in introductory provisions.

Subsec. (j). Pub. L. 115–91, § 331(a)(7), added subsec. (j).

2016—Subsec. (a). Pub. L. 114–328, § 331(a), (b)(1), substituted ''Not later than 30 days after the end of each calendar-year quarter'' for ''Not later than 45 days after the end of each calendar-year quarter'' and ''subsections (b), (d), (e), (f), and (g)'' for ''subsections (b), (d), (e), (f), (g), (h), and (i)''.

Subsecs. (d) to (j). Pub. L. 114–328, § 331(b)(2), (3), (c), added subsec. (h), redesignated subsecs. (f) to (j) as (d) to (g) and (i), respectively, and struck out former subsecs. (d) and (e), which related to prepositioned stocks and readiness of National Guard to perform civil support missions, respectively.

2014—Subsec. (a). Pub. L. 113–291, § 321(1), substituted ''the military readiness of the active and reserve components.'' for ''military readiness.'' and ''subsections (b), (d), (e), (f), (g), (h), and (i).'' for ''subsections (b), (d), (f), (g), (h), (i), (j), and (k), and the reports for the second and fourth quarters of a calendar year shall also contain the information required by subsection (e).''

Subsec. (d). Pub. L. 113–291, § 321(2), (3), added subsec. (d) and struck out former subsec. (d) which related to comprehensive readiness indicators for active components.

Subsec. (e). Pub. L. 113–291, § 321(2), (4), redesignated subsec. (g) as (e) and struck out former subsec. (e) which related to logistics indicators.

Subsec. (e)(1). Pub. L. 113–291, § 321(5), substituted ''National Response Framework'' for ''National Response Plan''.

Subsec. (f). Pub. L. 113–291, § 321(2), (4), redesignated subsec. (h) as (f) and struck out former subsec. (f) which related to unit readiness indicators.

Subsec. (f)(3). Pub. L. 113–291, § 321(6), added par. (3).

Subsec. (g). Pub. L. 113–291, § 321(4), redesignated subsec. (i) as (g). Former subsec. (g) redesignated (e).

Subsec. (h). Pub. L. 113–291, § 321(7), inserted ''AND RELATED'' after ''SUPPORT'' in heading and substituted ''combat support and related agencies'' for ''combat support agencies'' in introductory provisions of par. (1) and for ''combat support agency'' in introductory provisions of par. (2).

Pub. L. 113–291, § 321(4), redesignated subsec. (j) as (h). Former subsec. (h) redesignated (f).

Subsec. (i). Pub. L. 113–291, § 321(8), added subsec. (i). Former subsec. (i) redesignated (g).

Subsec. (j). Pub. L. 113–291, § 321(4), redesignated subsec. (*l*) as (j). Former subsec. (j) redesignated (h).

Subsec. (k). Pub. L. 113–291, § 321(2), struck out subsec. (k) which related to major exercise assessments.

Subsec. (*l*). Pub. L. 113–291, § 321(4), redesignated subsec. (*l*) as (j).

2013—Subsec. (a). Pub. L. 113–66, § 331(a)(1), substituted ''Each report'' for ''The report for a quarter'' and ''(f), (g), (h), (i), (j), and (k), and the reports for the second and fourth quarters of a calendar year shall also contain the information required by subsection (e)'' for ''(e), and (f)''.

Subsec. (d)(1)(A). Pub. L. 113–66, § 331(a)(2)(A)(i), substituted '', including an assessment of the manning of units (authorized versus assigned numbers of personnel) for units not scheduled for deployment and the timing of the arrival of personnel into units preparing for deployments.'' for '', including the extent to which members of the armed forces are serving in positions outside of their military occupational specialty, serving in grades other than the grades for which they are qualified, or both.''

Subsec. (d)(1)(B). Pub. L. 113–66, § 331(a)(2)(A)(ii), inserted ''unit'' before ''personnel strength''.

Subsec. (d)(2). Pub. L. 113–66, § 331(a)(2)(B), amended par. (2) generally. Prior to amendment, text read as follows:

''(A) Recruit quality.

''(B) Borrowed manpower.

''(C) Personnel stability.''

Subsec. (d)(3), (4). Pub. L. 113–66, § 331(a)(2)(C), (D), redesignated par. (4) as (3), substituted ''Mission rehearsals'' for ''Training commitments'' in subpar. (D), and struck out former par. (3). Prior to amendment, text of par. (3) read as follows:

''(A) Personnel morale.

''(B) Recruiting status.''

Subsec. (d)(5) to (7). Pub. L. 113–66, § 331(a)(5)(A), redesignated pars. (5) to (7) of subsec. (d) as pars. (1) to (3), respectively, of subsec. (e).

Subsec. (e). Pub. L. 113–66, § 331(a)(4), added subsec. (e). Former subsec. (e) redesignated (f).

Subsec. (e)(1). Pub. L. 113–66, § 331(a)(5)(A), redesignated par. (5) of subsec. (d) as par. (1) of subsec. (e).

Subsec. (e)(1)(E). Pub. L. 113–66, § 331(a)(5)(B), struck out subpar. (E) which read as follows: ''Condition of nonpacing items.''

Subsec. (e)(2). Pub. L. 113–66, § 331(a)(5)(A), redesignated par. (6) of subsec. (d) as par. (2) of subsec. (e).

Subsec. (e)(2)(A). Pub. L. 113–66, § 331(a)(5)(C)(i), substituted ''Depot maintenance'' for ''Maintenance''.

Subsec. (e)(2)(B). Pub. L. 113–66, § 331(a)(5)(C)(ii), added subpar. (B).

Subsec. (e)(3). Pub. L. 113–66, § 331(a)(5)(A), redesignated par. (7) of subsec. (d) as par. (3) of subsec. (e).

Subsecs. (f), (g). Pub. L. 113–66, § 331(a)(3), redesignated subsecs. (e) and (f) as (f) and (g), respectively. Former subsec. (g) redesignated (*l*).

Subsecs. (h) to (k). Pub. L. 113–66, § 331(a)(6), added subsecs. (h) to (k).

Subsec. (*l*). Pub. L. 113–66, § 331(a)(3), redesignated subsec. (g) as (*l*).

2008—Subsec. (a). Pub. L. 110–181, § 351(b)(1), substituted ''(e), and (f)'' for ''and (e)''.

Subsecs. (f), (g). Pub. L. 110–181, § 351(b)(2), (3), added subsec. (f) and redesignated former subsec. (f) as (g).

1999—Pub. L. 106–65, § 361(d)(3), repealed Pub. L. 105–261, § 373(d)(2). See 1998 Amendment note below.

Subsec. (a). Pub. L. 106–65, § 361(e), substituted ''45 days'' for ''30 days''.

1998—Pub. L. 105–261, § 373(d)(2), which directed the repeal of this section effective June 1, 2001, was repealed by Pub. L. 106–65, § 361(d)(3).

1997—Pub. L. 105–85 substituted ''Quarterly reports: personnel and unit readiness'' for ''Quarterly readiness reports'' in section catchline and amended text generally. Prior to amendment, text consisted of subsecs. (a) to (c) relating to requirement for submission of quarterly readiness reports, matters to be included in reports, and form of reports.

1996—Pub. L. 104–201 renumbered section 452 of this title as this section.

EFFECTIVE DATE OF PUB. L. 105–261

Pub. L. 105–261, div. A, title III, § 373(d)(2), Oct. 17, 1998, 112 Stat. 1992, which provided that the repeal of this section was to be effective June 1, 2001, was repealed by Pub. L. 106–65, div. A, title III, § 361(d)(3), Oct. 5, 1999, 113 Stat. 575.

EFFECTIVE DATE

Pub. L. 104–106, div. A, title III, § 361(b), Feb. 10, 1996, 110 Stat. 273, provided that: ''Section 452 [now 482] of title 10, United States Code, as added by subsection (a), shall take effect with the calendar-year quarter during which this Act is enacted [enacted Feb. 10, 1996].''

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective Dec. 31, 2021, of provisions in subsec. (a) of this section requiring submittal of quarterly reports to Congress, see section 1061 of Pub. L. 114–328, set out as a note under section 111 of this title.

PROHIBITION ON SUBJECTIVE UPGRADES BY COMMANDERS OF UNIT RATINGS IN MONTHLY READINESS REPORTING ON MILITARY UNITS

Pub. L. 116–92, div. A, title III, § 365, Dec. 20, 2019, 133 Stat. 1328, provided that:

''(a) IN GENERAL.—The Chairman of the Joint Chiefs of Staff shall modify Chairman of the Joint Chiefs of Staff Instruction (CJCSI) 3401.02B, on Force Readiness Reporting, to prohibit the commander of a military unit who is responsible for monthly reporting of the readiness of the unit under the instruction from making any upgrade of the overall rating of the unit (commonly referred to as the 'C-rating') for such reporting purposes based in whole or in part on subjective factors.

''(b) WAIVER.—

''(1) IN GENERAL.—The modification required by subsection (a) shall authorize an officer in a general or flag officer grade in the chain of command of a commander described in that subsection to waive the prohibition described in that subsection in connection with readiness reporting on the unit concerned if the officer considers the waiver appropriate in the circumstances.

''(2) REPORTING ON WAIVERS.—Each report on personnel and unit readiness submitted to Congress for a calendar year quarter pursuant to section 482 of title 10, United States Code, shall include information on each waiver, if any, issued pursuant to paragraph (1) during such calendar year quarter.''

QUARTERLY REPORTS ON PERSONNEL AND UNIT READINESS

Pub. L. 110–181, div. A, title III, § 351(c)(2), Jan. 28, 2008, 122 Stat. 71, provided that: ''The amendment made by subsection (b) [amending this section] shall apply with respect to the quarterly report required under section 482 of title 10, United States Code, for the second quarter of fiscal year 2009 and each subsequent report required under that section.''

QUARTERLY READINESS REPORT REQUIREMENT

Pub. L. 105–261, div. A, title III, § 373(d)(1), Oct. 17, 1998, 112 Stat. 1992, which provided that effective Jan. 15, 2000, or the date on which the first report of the Secretary of Defense is submitted under section 117(e) of this title, whichever is later, the Secretary of Defense was to cease to submit reports under this section, was repealed by Pub. L. 106–65, div. A, title III, § 361(d)(3), Oct. 5, 1999, 113 Stat. 575.

IMPLEMENTATION PLAN TO EXAMINE READINESS INDICATORS

Pub. L. 105–85, div. A, title III, § 322(b), Nov. 18, 1997, 111 Stat. 1675, directed the Secretary of Defense, not later than Jan. 15, 1998, to submit to the congressional defense committees a plan specifying the manner in which the additional reporting requirement of subsec. (d) of this section would be implemented and the criteria proposed to be used to evaluate the readiness indicators identified in subsec. (d).

TRANSITION TO COMPLETE REPORT

Pub. L. 105–85, div. A, title III, § 322(d), Nov. 18, 1997, 111 Stat. 1675, provided that until the report under this section for the third quarter of 1998 was submitted, the Secretary of Defense was authorized to omit the information required by subsec. (d) of this section if the Secretary determined that it was impracticable to comply.

§ 483. Notifications related to basing decision-making process

(a) NOTIFICATION REQUIRED.—At each point in the decision-making process specified in subsection (b), the Secretary concerned shall notify the congressional defense committees of the decision-making process to be used or the decision-making process used, whichever applies—

(1) to select a military installation to serve as the first permanent location for a new major headquarters, covered military unit, or major weapon system; or

(2) to make a permanent change in the basing of a major headquarters, covered military unit, or major weapon system by relocating the major headquarters, covered military unit, or major weapon system from its current mili-

tary installation to a different military installation.

(b) DEADLINES FOR SUBMISSION OF NOTICE.—The Secretary concerned shall provide the notice required by subsection (a) within seven days after each of the following decision points during the decision-making process:

(1) When the Secretary concerned issues any formal internal guidance to begin the decision-making process regarding the location or relocation of a major headquarters, covered military unit, or major weapon system.

(2) When the Secretary concerned selects between two and five military installations as the most likely candidate locations for a major headquarters, covered military unit, or major weapon system in order to subject those installations to additional analysis.

(3) When the Secretary concerned selects a specific military installation as the preferred location for the major headquarters, covered military unit, or major weapon system.

(c) REQUIRED ELEMENTS OF NOTIFICATION.—In a notice required by subsection (a), the Secretary concerned shall include at a minimum the following:

(1) A description of the manner in which the joint and all-domain training capabilities at each candidate location, if applicable to the type of basing decision-making process at issue, will be or was, whichever applies, comparatively analyzed among candidate military installations, separate from and in addition to the mission criteria to be used or that was used to make the basing decision.

(2) A description of the manner in which the airspace and training areas available at each candidate location, if applicable to the type of basing decision-making process at issue, will be or was, whichever applies, comparatively analyzed among candidate military installations, separate from and in addition to the mission criteria to be used or that was used to make the basing decision.

(3) A description of the manner in which community support for the basing decision-making process described in subsection (a) will be or was, whichever applies, comparatively analyzed among candidate military installations, including consultation with appropriate State officials and officials of units of local government in which each installation is located regarding matters affecting the local community, such as transportation, utility infrastructure, housing, education, and family support activities. In any case in which the Secretary concerned selects as the preferred location a military installation with less community support compared to other locations, as indicated by such a comparative analysis, an explanation of the operational considerations that formed the basis for such selection.

(4) An explanation of how each candidate location will be or was, whichever applies, scored against the factors referred to in the preceding paragraphs, including the weight assigned to each factor.

(5) A summary of any internal score cards that will be or were, whichever applies, used to make the basing decision.

(d) NOTICE AND WAIT REQUIREMENTS.—No irrevocable action may be taken to effect or implement a basing decision reached through the decision-making process described in subsection (a) until the end of the 14-day period beginning on the date on which the Secretary concerned submits, in an electronic medium pursuant to section 480 of this title, the notice referred to in subsection (b)(3) regarding a preferred location for the major headquarters, covered military unit, or major weapon system.

(e) ANNUAL REPORTING REQUIREMENT.—

(1) REPORT REQUIRED.—Not later than 10 days after the date on which the budget request for a fiscal year is submitted to Congress under section 1105 of title 31, the Secretary concerned shall submit to the Committees on Armed Services of the House of Representatives and the Senate a report providing the following:

(A) An update on the status and anticipated completion date of each decision-making process that was commenced or was underway during the previous two fiscal years regarding the location or relocation of a major headquarters, covered military unit, or major weapon system.

(B) A list and description of anticipated basing decisions to be made regarding the location or relocation of a major headquarters, covered military unit, or major weapon system over the period covered by the future-years defense plan.

(C) A timeline for a congressional engagement plan to brief the Committees on Armed Services of the House of Representatives and the Senate during the decision-making process and when decision notifications would be provided to interested Members of Congress.

(2) ELEMENTS OF REPORT.—To satisfy the requirements of paragraph (1)(B), a report under this subsection shall include at a minimum the following:

(A) An estimate of the number of members of the armed forces and civilian personnel potentially impacted by the basing decision.

(B) The locations to be considered, if already known.

(C) The expected timeline for beginning the decision-making process and reaching a final determination.

(f) DEFINITIONS.—In this section:

(1) The term ''covered military unit'' means a unit of the armed forces whose initial assignment to a military installation or relocation from a military installation to a different military installation requires the preparation of an environmental impact statement in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(2) The term ''major headquarters'' means the headquarters of a military unit or command that is the appropriate command of a general officer or flag officer.

(3) The term ''major weapon system'' means a weapon system that is treatable as a major system under section 2302(5) of title.[1]

(4) The term ''military installation'' means a base, camp, post, station, yard, center,

[1] So in original. Probably should be ''of this title''.

homeport facility for any ship, or other activity under the jurisdiction of the Department of Defense, including any leased facility, which is located within any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, or Guam. Such term does not include any facility used primarily for civil works, rivers and harbors projects, or flood control projects.

(5) The term ''Secretary concerned'' means—

(A) the Secretary of the military department concerned; and

(B) the Secretary of Defense with respect to matters concerning the Defense Agencies and the Joint Staff.

(Added and amended Pub. L. 116–283, div. A, title XVIII, §1883(b)(2), div. B, title XXVIII, §2871(b), Jan. 1, 2021, 134 Stat. 4294, 4363.)

AMENDMENT OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§1801(d), 1883(b)(2), Jan. 1, 2021, 134 Stat. 4151, 4294, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, except as otherwise provided in title XVIII of Pub. L. 116–283, in title 10, United States Code, each reference in the text of such title to a source section that is redesignated by title XVIII of Pub. L. 116–283, is amended by striking such reference and inserting a reference to the appropriate section as so redesignated. See 2021 Amendment note below.

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsec. (f)(1), is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, which is classified generally to chapter 55 (§4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

PRIOR PROVISIONS

A prior section 483, added Pub. L. 105–85, div. A, title III, §323(a), Nov. 18, 1997, 111 Stat. 1675; amended Pub. L. 106–65, div. A, title X, §1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 106–398, §1 [[div. A], title III, §372], Oct. 30, 2000, 114 Stat. 1654, 1654A–80, related to reports on transfers from high-priority readiness appropriations, prior to repeal by Pub. L. 113–66, div. A, title X, §1084(a)(1)(A), Dec. 26, 2013, 127 Stat. 871.

AMENDMENTS

2021—Subsec. (f)(3). Pub. L. 116–283, §1883(b)(2), substituted ''section 3041 of this title'' for ''section 2302(5) of title''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by section 1883(b)(2) of Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 484. Quarterly cyber operations briefings

(a) BRIEFINGS REQUIRED.—The Under Secretary of Defense for Policy, the Commander of United States Cyber Command, and the Chairman of the Joint Chiefs of Staff, or designees from each of their offices, shall provide to the congressional defense committees quarterly briefings on all offensive and significant defensive military operations in cyberspace, including clandestine cyber activities, carried out by the Department of Defense during the immediately preceding quarter.

(b) ELEMENTS.—Each briefing under subsection (a) shall include, with respect to the military operations in cyberspace described in such subsection, the following:

(1) An update, set forth separately for each applicable geographic and functional command, that describes the operations carried out in the area of operations of that command or by that command.

(2) An update, set forth for each applicable geographic and functional command, that describes defensive cyber operations executed to protect or defend forces, networks, and equipment in the area of operations of that command.

(3) An update on relevant authorities and legal issues applicable to operations, including any presidential directives and delegations of authority received since the last quarterly update.

(4) An overview of critical operational challenges posed by major adversaries or encountered in operational activities conducted since the last quarterly update.

(5) An overview of the readiness of the Cyber Mission Forces to perform assigned missions that—

(A) addresses all of the abilities of such Forces to conduct cyberspace operations based on capability and capacity of personnel, equipment, training, and equipment condition—

(i) using both quantitative and qualitative metrics; and

(ii) in a way that is common to all military departments; and

(B) is consistent with readiness reporting pursuant to section 482 of this title.

(6) Any other matters that the briefers determine to be appropriate.

(c) DOCUMENTS.—Each briefing under subsection (a) shall include a classified placemat, summarizing the elements specified in paragraphs (1), (2), (3), and (5) of subsection (b), and an unclassified memorandum, summarizing the briefing's contents.

(Added Pub. L. 112–239, div. A, title IX, §939(a), Jan. 2, 2013, 126 Stat. 1888; amended Pub. L. 115–91, div. A, title XVI, §1632(a), Dec. 12, 2017, 131 Stat. 1738; Pub. L. 116–92, div. A, title XVI, §1634(a), Dec. 20, 2019, 133 Stat. 1747; Pub. L. 116–283, div. A, title XVII, §1703, Jan. 1, 2021, 134 Stat. 4081.)

PRIOR PROVISIONS

A prior section 484, added Pub. L. 105–85, div. A, title III, §324(a)(1), Nov. 18, 1997, 111 Stat. 1677, which related to annual report on aircraft inventory, was repealed by Pub. L. 112–81, div. A, title X, §1061(6)(A), Dec. 31, 2011, 125 Stat. 1583.

AMENDMENTS

2021—Subsecs. (a) to (c). Pub. L. 116–283 added subsecs. (a) to (c) and struck out former subsecs. (a) and (b)

which related to required quarterly cyber operations briefings and their elements.

2019—Subsec. (b)(4), (5). Pub. L. 116–92 added par. (4) and redesignated former par. (4) as (5).

2017—Pub. L. 115–91 designated existing provisions as subsec. (a), inserted heading, substituted ''congressional defense committees'' for ''Committees on Armed Services of the House of Representatives and the Senate'', and added subsec. (b).

EFFECTIVE DATE OF 2019 AMENDMENT

Pub. L. 116–92, div. A, title XVI, § 1634(d), Dec. 20, 2019, 133 Stat. 1748, provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on the date that is 180 days after the date of the enactment of this Act [Dec. 20, 2019].''

EFFECTIVE DATE OF 2017 AMENDMENT

Pub. L. 115–91, div. A, title XVI, § 1632(b), Dec. 12, 2017, 131 Stat. 1738, provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Dec. 12, 2017], and shall apply with respect to briefings required [to] be provided under section 484 of title 10, United States Code, on or after that date.''

INITIAL BRIEFING

Pub. L. 112–239, div. A, title IX, § 939(b), Jan. 2, 2013, 126 Stat. 1888, provided that: ''The first briefing required under section 484 of title 10, United States Code, as added by subsection (a), shall be provided not later than March 1, 2013.''

§ 485. Monthly counterterrorism operations briefings

(a) BRIEFINGS REQUIRED.—The Secretary of Defense shall provide to the congressional defense committees monthly briefings outlining Department of Defense counterterrorism operations and related activities.

(b) ELEMENTS.—Each briefing under subsection (a) shall include each of the following:

(1) A global update on activity within each geographic combatant command and how such activity supports the respective theater campaign plan.

(2) An overview of authorities and legal issues, including limitations.

(3) An overview of interagency activities and initiatives.

(4) Any other matters the Secretary considers appropriate.

(Added Pub. L. 113–66, div. A, title X, § 1042(a)(1), Dec. 26, 2013, 127 Stat. 857; amended Pub. L. 114–328, div. A, title X, § 1031(a), (b), Dec. 23, 2016, 130 Stat. 2389.)

PRIOR PROVISIONS

A prior section 485, added Pub. L. 105–261, div. A, title IX, § 923(b)(1), Oct. 17, 1998, 112 Stat. 2105; amended Pub. L. 106–65, div. A, title IX, § 931, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 726, 774; Pub. L. 107–107, div. A, title IX, § 922, Dec. 28, 2001, 115 Stat. 1198; Pub. L. 110–417, [div. A], title II, § 241(a), Oct. 14, 2008, 122 Stat. 4395, related to biennial reports on joint and service concept development and experimentation, prior to repeal by Pub. L. 112–81, div. A, title X, § 1061(7)(A), Dec. 31, 2011, 125 Stat. 1583.

AMENDMENTS

2016—Pub. L. 114–328, § 1031(b), substituted ''Monthly'' for ''Quarterly'' in section catchline.

Subsec. (a). Pub. L. 114–328, § 1031(a), substituted ''monthly'' for ''quarterly''.

[§ 486. Repealed. Pub. L. 112–81, div. A, title X, § 1061(8)(A), Dec. 31, 2011, 125 Stat. 1583]

Section, added Pub. L. 106–65, div. A, title II, § 241(a)(1), Oct. 5, 1999, 113 Stat. 549, related to quadrennial report on emerging operational concepts.

[§ 487. Repealed. Pub. L. 112–81, div. A, title X, § 1061(9)(A), Dec. 31, 2011, 125 Stat. 1583]

Section, added Pub. L. 106–65, div. A, title IX, § 923(b)(1), Oct. 5, 1999, 113 Stat. 724; amended Pub. L. 108–136, div. A, title V, § 541(c), Nov. 24, 2003, 117 Stat. 1477; Pub. L. 108–375, div. A, title X, § 1084(d)(4), Oct. 28, 2004, 118 Stat. 2061, related to annual report on unit operations tempo and personnel tempo.

§ 488. Management and review of electromagnetic spectrum

(a) ORGANIZATION.—The Secretary of Defense shall—

(1) ensure the effective organization and management of the electromagnetic spectrum used by the Department of Defense; and

(2) establish an enduring review and evaluation process that—

(A) considers all requirements relating to such spectrum; and

(B) ensures that all users of such spectrum, regardless of the classification of such uses, are involved in the decision-making process of the Department concerning the potential sharing, reassigning, or reallocating of such spectrum, or the relocation of the uses by the Department of such spectrum.

(b) REPORTS.—(1) From time to time as the Secretary and the Chairman of the Joint Chiefs of Staff determine useful for the effective oversight of the access by the Department to electromagnetic spectrum, but not less frequently than every two years, the Secretary and the Chairman shall jointly submit to the congressional defense committees a report on national policy plans regarding implications for such access in bands identified for study for potential reallocation, or under consideration for potential reallocation, by the Policy and Plans Steering Group established by the National Telecommunications and Information Administration.

(2) Each report under paragraph (1) shall address, with respect to the electromagnetic spectrum used by the Department that is covered by the report, the implications to the missions of the Department resulting from sharing, reassigning, or reallocating the spectrum, or relocating the uses by the Department of such spectrum, if the Secretary and the Chairman jointly determine that such sharing, reassigning, reallocating, or relocation—

(A) would potentially create a loss of essential military capability to the missions of the Department, as determined under feasibility assessments to ensure comparable capability; or

(B) would not likely be possible within the 10-year period beginning on the date of the report.

(Added Pub. L. 108–136, div. A, title X, § 1054(a), Nov. 24, 2003, 117 Stat. 1615; amended Pub. L. 113–66, div. A, title X, § 1072(a), (b)(1), Dec. 26,

2013, 127 Stat. 868, 869; Pub. L. 113–291, div. A, title X, § 1071(f)(7), Dec. 19, 2014, 128 Stat. 3510; Pub. L. 114–328, div. A, title X, § 1065(a)(1), Dec. 23, 2016, 130 Stat. 2409.)

AMENDMENTS

2016—Pub. L. 114–328 amended section generally. Prior to amendment, section required Secretary of Defense, in consultation with Director of National Intelligence and Secretary of Commerce, to prepare strategic plan for the management of the electromagnetic spectrum.

2014—Subsec. (a). Pub. L. 113–291 inserted a comma after ''Every three years'' in introductory provisions.

2013—Pub. L. 113–66, § 1072(b)(1), struck out '': biennial strategic plan'' after ''spectrum'' in section catchline.

Subsec. (a). Pub. L. 113–66, § 1072(a)(1), substituted ''three years'' for ''other year, and in time for submission to Congress under subsection (b),'', inserted '', in consultation with the Director of National Intelligence and the Secretary of Commerce,'' after ''Secretary of Defense'', substituted ''the national security of the United States. Each such strategic plan shall include each of the following:'' for ''the mission of the Department of Defense.'', and added pars. (1) to (3).

Subsec. (b). Pub. L. 113–66, § 1072(a)(2), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 113–66, § 1072(a)(3), designated existing provisions as par. (1) and added par. (2).

Pub. L. 113–66, § 1072(a)(2), redesignated subsec. (b) as (c).

ISSUANCE OF INSTRUCTION OR DIRECTIVE

Pub. L. 114–328, div. A, title X, § 1065(b), Dec. 23, 2016, 130 Stat. 2410, provided that: ''The Secretary of Defense shall—

''(1) not later than 180 days after the date of the enactment of this Act [Dec. 23, 2016], issue a Department of Defense Instruction or a Department of Defense Directive to carry out section 488(a) of title 10, United States Code, as amended by subsection (a); and

''(2) upon the date of the issuance of the instruction or directive issued under paragraph (1), submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] such instruction or directive.''

[§ 489. Repealed. Pub. L. 113–291, div. A, title III, § 331(a), Dec. 19, 2014, 128 Stat. 3344]

Section, added Pub. L. 108–375, div. A, title X, § 1033(a), Oct. 28, 2004, 118 Stat. 2047, related to annual report on Department of Defense operation and financial support for military museums.

[§ 490. Repealed. Pub. L. 112–81, div. A, title X, § 1061(10)(A), Dec. 31, 2011, 125 Stat. 1583]

Section, added Pub. L. 110–181, div. A, title IX, § 912(a), Jan. 28, 2008, 122 Stat. 280; amended Pub. L. 111–84, div. A, title X, § 1073(a)(6), Oct. 28, 2009, 123 Stat. 2472, related to management of space cadre personnel and submission of a biennial report.

[§ 490a. Renumbered § 492]

CHAPTER 24—NUCLEAR POSTURE

Sec.
491. Nuclear weapons employment strategy of the United States: reports on modification of strategy.
492. Biennial assessment and report on the delivery platforms for nuclear weapons and the nuclear command and control system.
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493. Reports to Congress on the modification of the force structure for the strategic nuclear weapons delivery systems of the United States.
494. Nuclear force reductions.
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497. Notification required for reduction, consolidation, or withdrawal of nuclear forces based in Europe.
497a. Notification required for reduction or consolidation of dual-capable aircraft based in Europe.
498. Unilateral change in nuclear weapons stockpile of the United States.
499. Annual assessment of cyber resiliency of nuclear command and control system.
499a. Collection, storage, and sharing of data relating to nuclear security enterprise and nuclear forces.

AMENDMENTS

2019—Pub. L. 116–92, div. A, title XVI, § 1665(c)(2), Dec. 20, 2019, 133 Stat. 1774, added item 492a.

2017—Pub. L. 115–91, div. A, title XVI, §§ 1651(b), 1652(b), Dec. 12, 2017, 131 Stat. 1757, 1758, added items 499 and 499a.

2013—Pub. L. 113–66, div. A, title X, § 1051(b)(2), Dec. 26, 2013, 127 Stat. 859, added item 497a.

Pub. L. 112–239, div. A, title X, §§ 1031(b)(1), (3)(C)(i), 1033(b)(2)(A), 1035(b), 1036(b), 1037(b)(2), 1038(b), Jan. 2, 2013, 126 Stat. 1918, 1919, 1921, 1924, 1925, 1927, added chapter heading and items 491 to 498.

§ 491. Nuclear weapons employment strategy of the United States: reports on modification of strategy

(a) REPORTS.—By not later than 60 days before the date on which the President implements a nuclear weapons employment strategy of the United States that differs from the nuclear weapons employment strategy of the United States then in force, the President shall submit to Congress a report setting forth the following:

(1) A description of the modifications to the nuclear weapons employment strategy, plans, and options of the United States made by the strategy so issued.

(2) An assessment of effects of such modification for the nuclear posture of the United States.

(3) The implication of such changes on the flexibility and resilience of the strategic forces of the United States and the ability of such forces to support the goals of the United States with respect to nuclear deterrence, extended deterrence, assurance, and defense.

(4) The extent to which such modifications include an increased reliance on conventional or non-nuclear global strike capabilities or missile defenses of the United States.

(b) ANNUAL BRIEFINGS.—Not later than March 15 of each year, the Secretary of Defense shall provide to the congressional defense committees a briefing regarding the nuclear weapons employment strategy, plans, and options of the United States.

(c) REPORTS ON 2010 NUCLEAR POSTURE REVIEW IMPLEMENTATION STUDY DECISIONS.—During each of fiscal years 2012 through 2021, not later than 60 days before the date on which the President carries out the results of the decisions made

pursuant to the 2010 Nuclear Posture Review Implementation Study that would alter the nuclear weapons employment strategy, guidance, plans, or options of the United States, the President shall—

(1) ensure that the annual report required under section 1043(a)(1) of the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112–81; 125 Stat. 1576) is transmitted to Congress, if so required;

(2) ensure that the report required under section 494(a)(2)(A) of this title is transmitted to Congress, if so required under such section; and

(3) transmit to the congressional defense committees a report providing the high-, medium-, and low- confidence assessments of the intelligence community (as defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 3003(4))) as to whether the United States will have significant warning of a strategic surprise or breakout caused by foreign nuclear weapons developments.

(Added Pub. L. 112–81, div. A, title X, § 1046(b)(1), Dec. 31, 2011, 125 Stat. 1579; amended Pub. L. 112–239, div. A, title X, §§ 1031(a), 1032, Jan. 2, 2013, 126 Stat. 1917, 1919; Pub. L. 113–66, div. A, title X, § 1052(b), Dec. 26, 2013, 127 Stat. 861; Pub. L. 113–291, div. A, title X, § 1071(c)(10), Dec. 19, 2014, 128 Stat. 3509.)

CODIFICATION

Section was formerly part of chapter 23 of this title, prior to being transferred to this chapter by Pub. L. 112–239, § 1031(a)(1).

REFERENCES IN TEXT

Section 1043(a)(1) of the National Defense Authorization Act for Fiscal Year 2012, referred to in subsec. (c)(1), is section 1043(a)(1) of title X of Pub. L. 112–81, div. A, Dec. 31, 2011, 125 Stat. 1579, which is not classified to the Code.

AMENDMENTS

2014—Subsec. (c)(3). Pub. L. 113–291 substituted ''(50 U.S.C. 3003(4))'' for ''(50 U.S.C. 401a(4))''.

2013—Pub. L. 112–239, § 1031(a)(2)(A)–(D), inserted ''weapons'' after ''Nuclear'' in section catchline, substituted ''nuclear weapons employment strategy'' for ''nuclear employment strategy'' in two places in introductory provisions and ''to the nuclear weapons employment strategy, plans, and options of'' for ''to nuclear employment strategy of'' in par. (1), and added par. (4).

Subsec. (a). Pub. L. 112–239, § 1032(a), substituted ''By not later than 60 days before the date on which the President implements'' for ''On the date on which the President issues'' in introductory provisions.

Pub. L. 112–239, § 1031(a)(2)(E), designated existing provisions as subsec. (a) and inserted heading.

Subsec. (b). Pub. L. 112–239, § 1031(a)(2)(F), added subsec. (b).

Subsec. (c). Pub. L. 113–66, § 1052(b), redesignated subsec. (d) as (c) and struck out former subsec. (c). Prior to amendment, text of subsec. (c) read as follows:

''(1) The Secretary of Defense shall submit to the congressional defense committees written notification of an anomaly in the nuclear command, control, and communications system of the United States that is reported to the Secretary of Defense or the Nuclear Weapons Council by not later than 14 days after the date on which the Secretary or the Council learns of such anomaly, as the case may be.

''(2) In this subsection, the term 'anomaly' means any unplanned, irregular, or abnormal event, whether unexplained or caused intentionally or unintentionally by a person or a system.''

Pub. L. 112–239, § 1031(a)(2)(F), added subsec. (c).

Subsec. (d). Pub. L. 113–66, § 1052(b)(2), redesignated subsec. (d) as (c).

Pub. L. 112–239, § 1032(b), added subsec. (d).

PLAN TO TRAIN OFFICERS IN NUCLEAR COMMAND, CONTROL, AND COMMUNICATIONS

Pub. L. 115–232, div. A, title XVI, § 1668, Aug. 13, 2018, 132 Stat. 2156, provided that:

''(a) IN GENERAL.—The Secretary of Defense, in consultation with the Secretary of the Air Force, the Secretary of the Navy, the Chairman of the Joint Chiefs of Staff, and the Commander of the United States Strategic Command, shall develop a plan to train, educate, manage, and track officers of the Armed Forces in nuclear command, control, and communications.

''(b) ELEMENTS.—The plan required by subsection (a) shall address—

''(1) manpower requirements at various grades;

''(2) desired career paths and promotion timing; and

''(3) any other matters the Secretary of Defense considers relevant to develop a mature cadre of officers with nuclear command, control, and communications expertise.

''(c) SUBMISSION OF PLAN.—Not later than 180 days after the date of the enactment of this Act [Aug. 13, 2018], the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives the plan required by subsection (a).

''(d) IMPLEMENTATION.—Not later than 18 months after the date of the enactment of this Act, the Secretary of Defense shall implement the plan required by subsection (a).''

ESTABLISHMENT OF NUCLEAR COMMAND AND CONTROL INTELLIGENCE FUSION CENTER

Pub. L. 115–91, div. A, title XVI, § 1655, Dec. 12, 2017, 131 Stat. 1760, provided that:

''(a) ESTABLISHMENT.—Not later than 180 days after the date of the enactment of this Act [Dec. 12, 2017], the Secretary of Defense and the Director of National Intelligence shall jointly establish an intelligence fusion center to effectively integrate and unify the protection of nuclear command, control, and communications programs, systems, and processes and continuity of government programs, systems, and processes.

''(b) CHARTER.—In establishing the fusion center under subsection (a), the Secretary and the Director shall develop a charter for the fusion center that includes the following:

''(1) To carry out the duties of the fusion center, a description of—

''(A) the roles and responsibilities of officials and elements of the Federal Government, including a detailed description of the organizational relationships of such officials and the elements of the Federal Government that are key stakeholders;

''(B) the organization reporting chain of the fusion center;

''(C) the staffing of the fusion center;

''(D) the processes of the fusion center; and

''(E) how the fusion center integrates with other elements of the Federal Government.

''(2) The management and administration processes required to carry out the fusion center, including with respect to facilities and security authorities.

''(3) Procedures to ensure that the appropriate number of staff of the fusion center have the security clearance necessary to access information on the programs, systems, and processes that relate, either wholly or substantially, to nuclear command, control, and communications or continuity of government, including with respect to both the programs, systems, and processes that are designated as special access programs (as described in section 4.3 of Executive Order 13526 (50 U.S.C. 3161 note) or any successor Executive order) and the programs, systems, and

processes that contain sensitive compartmented information.

''(c) COORDINATION.—In establishing the fusion center under subsection (a), the Secretary and the Director shall coordinate with the elements of the Federal Government that the Secretary and Director determine appropriate.

''(d) REPORTS.—

''(1) INITIAL REPORT.—Not later than 120 days after the date of the enactment of this Act [Dec. 12, 2017], the Secretary and the Director shall jointly submit to the appropriate congressional committees a report containing—

''(A) the charter for the fusion center developed under subsection (b); and

''(B) a plan on the budget and staffing of the fusion center.

''(2) ANNUAL REPORTS.—At the same time as the President submits to Congress the annual budget request under section 1105 of title 31, United States Code, for fiscal year 2019 and each fiscal year thereafter, the Secretary and the Director shall submit to the appropriate congressional committees a report on the fusion center, including, with respect to the period covered by the report—

''(A) any updates to the plan on the budget and staffing of the fusion center;

''(B) any updates to the charter developed under subsection (b); and

''(C) a summary of the activities and accomplishments of the fusion center.

''(3) SUNSET.—No report is required under this subsection after December 31, 2021.

''(e) APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.—In this section, the term 'appropriate congressional committees' means—

''(1) the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives]; and

''(2) the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate.''

SECURITY OF NUCLEAR COMMAND, CONTROL, AND COMMUNICATIONS SYSTEM FROM COMMERCIAL DEPENDENCIES

Pub. L. 115–91, div. A, title XVI, § 1656, Dec. 12, 2017, 131 Stat. 1761, provided that:

''(a) CERTIFICATION.—Not later than 180 days after the date of the enactment of this Act [Dec. 12, 2017], the Secretary of Defense shall certify to the congressional defense committees whether the Secretary uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, to carry out—

''(1) the nuclear deterrence mission of the Department of Defense, including with respect to nuclear command, control, and communications, integrated tactical warning and attack assessment, and continuity of government; or

''(2) the homeland defense mission of the Department, including with respect to ballistic missile defense.

''(b) PROHIBITION AND MITIGATION.—

''(1) PROHIBITION.—Except as provided by paragraph (2), beginning on the date that is one year after the date of the enactment of this Act [Dec. 12, 2017], the Secretary of Defense may not procure or obtain, or extend or renew a contract to procure or obtain, any equipment, system, or service to carry out the missions described in paragraphs (1) and (2) of subsection (a) that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

''(2) WAIVER.—The Secretary may waive the prohibition in paragraph (1) on a case-by-case basis for a single one-year period if the Secretary—

''(A) determines such waiver to be in the national security interests of the United States; and

''(B) certifies to the congressional committees that—

''(i) there are sufficient mitigations in place to guarantee the ability of the Secretary to carry out the missions described in paragraphs (1) and (2) of subsection (a); and

''(ii) the Secretary is removing the use of covered telecommunications equipment or services in carrying out such missions.

''(3) DELEGATION.—The Secretary may not delegate the authority to make a waiver under paragraph (2) to any official other than the Deputy Secretary of Defense or the co-chairs of the Council on Oversight of the National Leadership Command, Control, and Communications System established by section 171a of title 10, United States Code.

''(c) DEFINITIONS.—In this section:

''(1) The term 'congressional defense committees' has the meaning given that term in section 101(a)(16) of title 10, United States Code.

''(2) The term 'covered foreign country' means any of the following:

''(A) The People's Republic of China.

''(B) The Russian Federation.

''(3) The term 'covered telecommunications equipment or services' means any of the following:

''(A) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

''(B) Telecommunications services provided by such entities or using such equipment.

''(C) Telecommunications equipment or services produced or provided by an entity that the Secretary of Defense reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.''

SECURITY CLASSIFICATION GUIDE FOR PROGRAMS RELATING TO NUCLEAR COMMAND, CONTROL, AND COMMUNICATIONS AND NUCLEAR DETERRENCE

Pub. L. 115–91, div. A, title XVI, § 1658, Dec. 12, 2017, 131 Stat. 1763, provided that:

''(a) REQUIREMENT FOR SECURITY CLASSIFICATION GUIDE.—Not later than 90 days after the date of the enactment of this Act [Dec. 12, 2017], the Secretary of Defense shall require the issuance of a security classification guide for each covered program to ensure the protection of sensitive information from public disclosure.

''(b) REQUIREMENTS.—Each security classification guide issued pursuant to subsection (a) shall be—

''(1) approved by—

''(A) the Council on Oversight of the National Leadership Command, Control, and Communications System with respect to covered programs under paragraph (1) or (2) of subsection (c) [probably should be ''subsection (e)'']; or

''(B) the Nuclear Weapons Council with respect to covered programs under paragraph (3) of such subsection; and

''(2) issued not later than March 19, 2019, with respect to a covered program in existence as of such date.

''(c) ANNUAL NOTIFICATIONS.—On an annual basis during the three-year period beginning on the date of the enactment of this Act [Dec. 12, 2017], the Deputy Secretary of Defense, without delegation, shall notify the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] of the status of implementing subsection (a), including a description of any challenges to such implementation.

''(d) EXCLUSION.—This section shall not apply with respect to restricted data covered by chapter 12 of the Atomic Energy Act of 1954 (42 U.S.C. 2161 et seq.).

''(e) COVERED PROGRAM DEFINED.—In this section, the term 'covered program' means programs of the Department of Defense in existence on or after the date of the enactment of this Act [Dec. 12, 2017] relating to any of the following:

''(1) Continuity of government.

''(2) Nuclear command, control, and communications.

''(3) Nuclear deterrence.''

EVALUATION AND ENHANCED SECURITY OF SUPPLY CHAIN FOR NUCLEAR COMMAND, CONTROL, AND COMMUNICATIONS AND CONTINUITY OF GOVERNMENT PROGRAMS

Pub. L. 115–91, div. A, title XVI, § 1659, Dec. 12, 2017, 131 Stat. 1764, provided that:

''(a) EVALUATIONS OF SUPPLY CHAIN VULNERABILITIES.—

''(1) IN GENERAL.—Not later than December 31, 2019, and in accordance with the plan under paragraph (2)(A), the Secretary of Defense shall conduct evaluations of the supply chain vulnerabilities of each covered program.

''(2) PLAN.—

''(A) DEVELOPMENT.—The Secretary shall develop a plan to carry out the evaluations under paragraph (1), including with respect to the personnel and resources required to carry out such evaluations.

''(B) SUBMISSION.—Not later than 180 days after the date of the enactment of this Act [Dec. 12, 2017], the Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] the plan under subparagraph (A).

''(3) WAIVER.—The Secretary may waive, on a case-by-case basis with respect to a weapons system, a program, or a system of systems, of a covered program, either the requirement to conduct an evaluation under paragraph (1) or the deadline specified in such paragraph if the Secretary certifies to the congressional defense committees before such date that all known supply chain vulnerabilities of such weapons system, program, or system of systems have minimal consequences for the capability of such weapons system, program, or system of systems to meet operational requirements or otherwise satisfy mission requirements.

''(4) RISK MITIGATION STRATEGIES.—In carrying out an evaluation under paragraph (1) with respect to a covered program specified in subparagraph (B) or (C) of subsection (c)(2), the Secretary shall develop strategies for mitigating the risks of supply chain vulnerabilities identified in the course of such evaluation.

''(b) PRIORITIZATION OF CERTAIN SUPPLY CHAIN RISK MANAGEMENT EFFORTS.—

''(1) INSTRUCTIONS.—Not later than 180 days after the date of the enactment of this Act [Dec. 12, 2017], the Secretary shall issue a Department of Defense Instruction, or update such an Instruction, establishing the prioritization of supply chain risk management programs, including supply chain risk management threat assessment reporting, to ensure that acquisition and sustainment programs relating to covered programs receive the highest priority of such supply chain risk management programs and reporting.

''(2) REQUIREMENTS.—

''(A) ESTABLISHMENT.—The Secretary shall establish requirements to carry out supply chain risk management threat assessment collections and analyses under acquisition and sustainment programs relating to covered programs.

''(B) SUBMISSION.—Not later than 120 days after the date of the enactment of this Act, the Secretary shall submit to the appropriate congressional committees the requirements established under subparagraph (A).

''(c) DEFINITIONS.—In this section:

''(1) The term 'appropriate congressional committees' means—

''(A) the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives]; and

''(B) the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate.

''(2) The term 'covered programs' means programs relating to any of the following:

''(A) Nuclear weapons.

''(B) Nuclear command, control, and communications.

''(C) Continuity of government.

''(D) Ballistic missile defense.''

STATEMENT OF POLICY ON THE NUCLEAR TRIAD

Pub. L. 114–92, div. A, title XVI, § 1664, Nov. 25, 2015, 129 Stat. 1128, provided that:

''(a) SENSE OF CONGRESS.—It is the sense of Congress that—

''(1) the triad of strategic nuclear delivery systems plays a critical role in ensuring the national security of the United States; and

''(2) retaining all three legs of the nuclear triad is among the highest priorities of the Department of Defense and will best maintain strategic stability at a reasonable cost, while hedging against potential technical problems and vulnerabilities.

''(b) STATEMENT OF POLICY.—It is the policy of the United States—

''(1) to operate, sustain, and modernize or replace the triad of strategic nuclear delivery systems consisting of—

''(A) heavy bombers equipped with nuclear gravity bombs and air-launched nuclear cruise missiles;

''(B) land-based intercontinental ballistic missiles equipped with nuclear warheads that are capable of carrying multiple independently targetable reentry vehicles; and

''(C) ballistic missile submarines equipped with submarine launched ballistic missiles and multiple nuclear warheads;

''(2) to operate, sustain, and modernize or replace a capability to forward-deploy nuclear weapons and dual-capable fighter-bomber aircraft;

''(3) to deter potential adversaries and assure allies and partners of the United States through strong and long-term commitment to the nuclear deterrent of the United States and the personnel, systems, and infrastructure that comprise such deterrent;

''(4) to ensure that the members of the Armed Forces who operate the nuclear deterrent of the United States have the training, resources, and national support required to execute the critical national security mission of the members; and

''(5) to achieve a modern and responsive nuclear infrastructure to support the full spectrum of deterrence requirements.''

Pub. L. 113–291, div. A, title XVI, § 1652, Dec. 19, 2014, 128 Stat. 3654, provided that: ''It is the policy of the United States—

''(1) to operate, sustain, and modernize or replace the triad of strategic nuclear delivery systems consisting of—

''(A) heavy bombers equipped with nuclear gravity bombs and air-launched nuclear cruise missiles;

''(B) land-based intercontinental ballistic missiles equipped with nuclear warheads that are capable of carrying multiple independently targetable reentry vehicles; and

''(C) ballistic missile submarines equipped with submarine launched ballistic missiles and multiple nuclear warheads;

''(2) to operate, sustain, and modernize or replace a capability to forward-deploy nuclear weapons and dual-capable fighter-bomber aircraft;

''(3) to deter potential adversaries and assure allies and partners of the United States through strong and long-term commitment to the nuclear deterrent of the United States and the personnel, systems, and infrastructure that comprise such deterrent; and

''(4) to ensure that the members of the Armed Forces who operate the nuclear deterrent of the United States have the training, resources, and national support required to execute the critical national security mission of the members.''

DELEGATION OF REPORTING FUNCTIONS SPECIFIED IN SECTION 491 OF TITLE 10, UNITED STATES CODE

Memorandum of President of the United States, June 19, 2013, 78 F.R. 37923, provided:

Memorandum for the Secretary of Defense

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3 of the United States Code, I hereby delegate to you the reporting functions conferred upon the President by section 491 of title 10, United States Code.

You are authorized and directed to publish this memorandum in the Federal Register.

BARACK OBAMA.

§ 492. Biennial assessment and report on the delivery platforms for nuclear weapons and the nuclear command and control system

(a) BIENNIAL ASSESSMENTS.—(1) For each even-numbered year, each covered official shall assess the safety, security, reliability, sustainability, performance, and military effectiveness of, and the ability to meet operational availability requirements for, the systems described in paragraph (2) for which such official has responsibility.

(2) The systems described in this paragraph are the following:

(A) Each type of delivery platform for nuclear weapons.

(B) The nuclear command and control system.

(b) BIENNIAL REPORT.—(1) Not later than December 1 of each even-numbered year, each covered official shall submit to the Secretary of Defense and the Nuclear Weapons Council established by section 179 of this title a report on the assessments conducted under subsection (a).

(2) Each report under paragraph (1) shall include the following:

(A) The results of the assessment.

(B) An identification and discussion of any capability gaps or shortfalls with respect to the systems described in subsection (a)(2) covered under the assessment.

(C) An identification and discussion of any risks with respect to meeting mission or capability requirements.

(D) In the case of an assessment by the Commander of the United States Strategic Command, if the Commander identifies any deficiency with respect to a nuclear weapons delivery platform covered under the assessment, a discussion of the relative merits of any other nuclear weapons delivery platform type or compensatory measure that would accomplish the mission of such nuclear weapons delivery platform.

(E) An identification and discussion of any matter having an adverse effect on the capability of the covered official to accurately determine the matters covered by the assessment.

(c) REPORT TO PRESIDENT AND CONGRESS.—(1) Not later than March 1 of each year following a year for which a report under subsection (b) is submitted, the Secretary of Defense shall submit to the President a report containing—

(A) each report under subsection (b) submitted during the previous year, as originally submitted to the Secretary;

(B) any comments that the Secretary considers appropriate with respect to each such report;

(C) any conclusions that the Secretary considers appropriate with respect to the safety, security, reliability, sustainability, performance, or military effectiveness of the systems described in subsection (a)(2); and

(D) any other information that the Secretary considers appropriate.

(2) Not later than March 15 of each year during which a report under paragraph (1) is submitted, the President shall transmit to the congressional defense committees the report submitted to the President under paragraph (1), including any comments the President considers appropriate.

(3) Each report under this subsection may be in classified form if the Secretary of Defense determines it necessary.

(d) COVERED OFFICIAL DEFINED.—In this section, the term ''covered official'' means—

(1) the Commander of the United States Strategic Command;

(2) the Director of the Strategic Systems Program of the Navy;

(3) the Commander of the Global Strike Command of the Air Force; and

(4) the Commander of the United States Air Forces in Europe.

(Added Pub. L. 112–81, div. A, title X, § 1041(a), Dec. 31, 2011, 125 Stat. 1573, § 490a; renumbered § 492, Pub. L. 112–239, div. A, title X, § 1031(b)(3)(A)(i), Jan. 2, 2013, 126 Stat. 1918; amended Pub. L. 113–291, div. A, title XVI, § 1642, Dec. 19, 2014, 128 Stat. 3650; Pub. L. 116–92, div. A, title XVI, § 1666, Dec. 20, 2019, 133 Stat. 1774.)

AMENDMENTS

2019—Subsec. (d)(4). Pub. L. 116–92 added par. (4).

2014—Subsec. (a)(1). Pub. L. 113–291 inserted '', and the ability to meet operational availability requirements for,'' after ''military effectiveness of''.

2013—Pub. L. 112–239 renumbered section 490a of this title as this section.

INITIAL ASSESSMENT AND REPORTS

Pub. L. 112–81, div. A, title X, § 1041(b), Dec. 31, 2011, 125 Stat. 1574, as amended by Pub. L. 112–239, div. A, title X, § 1031(b)(4), Jan. 2, 2013, 126 Stat. 1919; Pub. L. 113–66, div. A, title X, § 1091(b)(6), Dec. 26, 2013, 127 Stat. 876, provided that: ''Not later than 30 days after the date of enactment of this Act [Dec. 31, 2011], each covered official, as such term is defined in subsection (d) of section 492 of title 10, United States Code, shall conduct an initial assessment as described by subsection (a) of such section and submit an initial report as described by subsection (b) of such section. The requirements of subsection (c) of such section shall apply with respect to the report submitted under this subsection.''

[Pub. L. 113–66, div. A, title X, § 1091(b), Dec. 26, 2013, 127 Stat. 876, provided in part that the amendment made by section 1091(b)(6) is effective as of Jan. 2, 2013, and as if included in Pub. L. 112–239 as enacted.]

§ 492a. Annual report on the plan for the nuclear weapons stockpile, nuclear weapons complex, nuclear weapons delivery systems, and nuclear weapons command and control system

(a) REPORT REQUIRED.—

(1) IN GENERAL.—Not later than 30 days after the submission to Congress of the budget of

the President under section 1105(a) of title 31, United States Code, for each of fiscal years 2013 through 2024, the President, in consultation with the Secretary of Defense and the Secretary of Energy, shall transmit to the congressional defense committees, the Committee on Foreign Relations of the Senate, and the Committee on Foreign Affairs of the House of Representatives a detailed report on the plan for the nuclear weapons stockpile, nuclear weapons complex, nuclear weapons delivery systems, and nuclear weapons command and control system.

(2) ELEMENTS.—Each report required under paragraph (1) shall include the following:

(A) A detailed description of the plan to enhance the safety, security, and reliability of the nuclear weapons stockpile of the United States.

(B) A detailed description of the plan to sustain and modernize the nuclear weapons complex, including improving the safety of facilities, modernizing the infrastructure, and maintaining the key capabilities and competencies of the nuclear weapons workforce, including designers and technicians.

(C) A detailed description of the plan to maintain, modernize, and replace delivery systems for nuclear weapons.

(D) A detailed description of the plan to sustain and modernize the nuclear weapons command and control system.

(E) A detailed description of any plans to retire, dismantle, or eliminate any nuclear warheads or bombs, nuclear weapons delivery systems, or any platforms (including silos and submarines) which carry such nuclear warheads, bombs, or delivery systems.

(F) In accordance with paragraph (3), a detailed estimate of the budget requirements associated with sustaining and modernizing the nuclear deterrent of the United States and the nuclear weapons stockpile of the United States, including the costs associated with the plans outlined under subparagraphs (A) through (E), over the 10-year period following the date of the report, including the applicable and appropriate costs associated with the procurement, military construction, operation and maintenance, and research, development, test, and evaluation accounts of the Department of Defense. The Secretary may include information and data for a period beyond such 10-year period if the Secretary determines that such information and data is accurate and useful in understanding the long-term nuclear modernization plan.

(G) A detailed description of the steps taken to implement the plan submitted in the previous year, including difficulties encountered in implementing the plan in the previous year.

(3) BUDGET ESTIMATE CONTENTS AND METHODOLOGY.— Each budget estimate under paragraph (2)(F) shall include a detailed description of the costs included in such estimate and the methodology used to create such estimate.

(4) EXTENSION OF DEADLINE FOR REPORT.—

(A) IN GENERAL.—Subject to subparagraph (B), if the Secretary of Defense and the Secretary of Energy jointly determine that a report required by paragraph (1) for a fiscal year will not be able to be transmitted to the committees specified in that paragraph by the time required under that paragraph, such Secretaries shall—

(i) promptly, and before the submission to Congress of the budget of the President for that fiscal year under section 1105(a) of title 31, United States Code, notify those committees of the expected date for the transmission of the report; and

(ii) not later than 30 days after the submission of that budget to Congress, provide a briefing to those committees on the content of the report.

(B) LIMITATION.—In no case may the President transmit a report required by paragraph (1) for a fiscal year to the committees specified in that paragraph later than 60 days after the submission to Congress of the budget of the President for that fiscal year.

(b) ESTIMATE OF COSTS BY CONGRESSIONAL BUDGET OFFICE.—

(1) BUDGETS FOR ODD-NUMBERED FISCAL YEARS.—Not later than July 1 of each year in which the President transmits a covered odd-numbered fiscal year report, the Director of the Congressional Budget Office shall submit to the congressional defense committees a report that includes—

(A) an estimate of the costs during the 10-year period beginning on the date of such covered odd-numbered fiscal year report associated with fielding and maintaining the current nuclear weapons and nuclear weapon delivery systems of the United States;

(B) an estimate of the costs during such period of any life extension, modernization, or replacement of any current nuclear weapons or nuclear weapon delivery systems of the United States that is anticipated as of the date of such covered odd-numbered fiscal year report, including an estimate of the acquisition costs during such period for programs relating to such life extension, modernization, or replacement;

(C) an estimate of the relative percentage of total defense spending during such period represented by the costs estimated under subparagraphs (A) and (B); and

(D) an estimate of the relative percentage of total acquisition costs of the military departments and of the Department of Defense during such period represented by the acquisition costs estimated under subparagraph (B).

(2) BUDGETS FOR EVEN-NUMBERED FISCAL YEARS.—If the Director determines that a covered even-numbered fiscal year report contains a significant change that affects the estimates of the Director included in the report submitted under paragraph (1) in the year prior to the year in which such covered even-numbered fiscal year report is submitted, the Director shall submit to the congressional defense committees a letter describing such significant changes.

(3) DEFINITIONS.—In this subsection:

(A) The term ''covered even-numbered fiscal year report'' means a report required to

be transmitted under subsection (a)(1) not later than 30 days after the submission to Congress of the budget of the President for an even-numbered fiscal year.

(B) The term ''covered odd-numbered fiscal year report'' means a report required to be transmitted under subsection (a)(1) not later than 30 days after the submission to Congress of the budget of the President for an odd-numbered fiscal year.

(c) COMPTROLLER GENERAL REVIEW.—The Comptroller General of the United States shall—

(1) periodically review reports submitted under subsection (a) for accuracy and completeness with respect to the matters described in paragraphs (2)(F) and (3) of such subsection; and

(2) submit to the congressional defense committees a summary of each such review.

(Added and amended Pub. L. 116–92, div. A, title XVI, § 1665(c)(1), Dec. 20, 2019, 133 Stat. 1773; Pub. L. 116–283, div. A, title XVI, § 1633, Jan. 1, 2021, 134 Stat. 4059.)

CODIFICATION

Section, as added and amended by Pub. L. 116–92, is based on Pub. L. 112–81, div. A, title X, § 1043, Dec. 31, 2011, 125 Stat. 1576, as amended by Pub. L. 112–239, div. A, title X, § 1041(a), Jan. 2, 2013, 126 Stat. 1931; Pub. L. 113–66, div. A, title X, § 1054, Dec. 26, 2013, 127 Stat. 861; Pub. L. 113–291, div. A, title XVI, § 1643, Dec. 19, 2014, 128 Stat. 3650; Pub. L. 115–91, div. A, title XVI, § 1665, Dec. 12, 2017, 131 Stat. 1767; Pub. L. 115–232, div. A, title XVI, § 1670, Aug. 13, 2018, 132 Stat. 2157; Pub. L. 116–92, div. A, title XVI, § 1665(a), (b), Dec. 20, 2019, 133 Stat. 1773, which was transferred to this chapter and renumbered as this section.

AMENDMENTS

2021—Subsec. (c)(1). Pub. L. 116–283, § 1633(1), substituted ''periodically review reports submitted'' for ''review each report''.

Subsec. (c)(2). Pub. L. 116–283, § 1633(2), struck out ''not later than 180 days after the date on which such report under subsection (a) is submitted,'' before ''submit to the congressional defense committees''.

2019—Pub. L. 116–92, § 1665(c)(1)(D), conformed section designation and catchline to the style of this title.

Pub. L. 116–92, § 1665(c)(1)(A)–(C), transferred section 1043 of Pub. L. 112–81, as amended, to this chapter and renumbered it as this section. See Codification note above.

§ 493. Reports to Congress on the modification of the force structure for the strategic nuclear weapons delivery systems of the United States

Whenever after December 31, 2011, the President proposes a modification of the force structure for the strategic nuclear weapons delivery systems of the United States, the President shall submit to Congress a report on the modification. The report shall include a description of the manner in which such modification will maintain for the United States a range of strategic nuclear weapons delivery systems appropriate for the current and anticipated threats faced by the United States when compared with the current force structure of strategic nuclear weapons delivery systems.

(Added and amended Pub. L. 112–239, div. A, title X, § 1031(b)(3)(B), (C)(ii), Jan. 2, 2013, 126 Stat. 1918, 1919; Pub. L. 113–66, div. A, title X, § 1091(b)(5), Dec. 26, 2013, 127 Stat. 876.)

CODIFICATION

The text of this section is based on Pub. L. 112–81, div. A, title X, § 1077, Dec. 31, 2011, 125 Stat. 1596. Section 1077 of Pub. L. 112–81, formerly classified to section 2514 of Title 50, War and National Defense, was transferred to this section by Pub. L. 112–239, § 1031(b)(3)(B)(i)–(iii).

AMENDMENTS

2013—Pub. L. 112–239, § 1031(b)(3)(C)(ii), made technical amendments to conform section enumerator and catchline to the style of this title. See Codification note above.

Pub. L. 112–239, § 1031(b)(3)(B)(iv), as amended by Pub. L. 113–66, § 1091(b)(5), substituted ''December 31, 2011,'' for ''the date of the enactment of this Act''.

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 113–66, div. A, title X, § 1091(b), Dec. 26, 2013, 127 Stat. 876, provided in part that the amendment made by section 1091(b)(5) is effective as of Jan. 2, 2013, and as if included in Pub. L. 112–239 as enacted.

§ 494. Nuclear force reductions

(a) IMPLEMENTATION OF NEW START TREATY.—

(1) SENSE OF CONGRESS.—It is the Sense of Congress that—

(A) the United States is committed to maintaining a safe, secure, reliable, and credible nuclear deterrent;

(B) the United States should undertake and support an enduring stockpile stewardship program and maintain and modernize nuclear weapons production capabilities and capacities to ensure the safety, security, reliability, and credibility of the United States nuclear deterrent and to meet requirements for hedging against possible international developments or technical problems;

(C) the United States should maintain nuclear weapons laboratories and plants and preserve the intellectual infrastructure, including competencies and skill sets; and

(D) the United States should provide the necessary resources to achieve these goals, using as a starting point the levels set forth in the President's 10-year plan provided to Congress pursuant to section 1251 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84; 123 Stat. 2549).

(2) INSUFFICIENT FUNDING.—

(A) REPORT.—During each year in which the New START Treaty is in force, if the President determines that an appropriations Act is enacted that fails to meet the resource levels set forth in the November 2010 update to the plan referred to in section 1251 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84; 123 Stat. 2549) or if at any time determines that more resources are required to carry out such plan than were estimated, the President shall transmit to the appropriate congressional committees, within 60 days of making such a determination, a report detailing—

(i) a plan to address the resource shortfall;

(ii) if more resources are required to carry out the plan than were estimated—

(I) the proposed level of funding required; and

(II) an identification of the stockpile work, campaign, facility, site, asset, program, operation, activity, construction, or project for which additional funds are required;

(iii) any effects caused by the shortfall on the safety, security, reliability, or credibility of the nuclear forces of the United States;

(iv) whether and why, in light of the shortfall, remaining a party to the New START Treaty is still in the national interest of the United States; and

(v) a detailed explanation of why the modernization timelines established in the 2010 Nuclear Posture Review are no longer applicable.

(B) PRIOR NOTIFICATION.—If the President transmits a report under subparagraph (A), the President shall notify the appropriate congressional committees of any determination by the President to reduce the number of deployed nuclear warheads of the United States by not later than 60 days before taking any action to carry out such reduction.

(C) EXCEPTION.—The limitation in subparagraph (B) shall not apply to—

(i) reductions made to ensure the safety, security, reliability, and credibility of the nuclear weapons stockpile and strategic delivery systems, including activities related to surveillance, assessment, certification, testing, and maintenance of nuclear warheads and strategic delivery systems; or

(ii) nuclear warheads that are retired or awaiting dismantlement on the date of the report under subparagraph (A).

(D) DEFINITIONS.—In this paragraph:

(i) The term ''appropriate congressional committees'' means—

(I) the congressional defense committees; and

(II) the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives.

(ii) The term ''New START Treaty'' means the Treaty between the United States of America and the Russian Federation on Measures for the Further Reduction and Limitation of Strategic Offensive Arms, signed on April 8, 2010, and entered into force on February 5, 2011.

(b) ANNUAL REPORT ON THE NUCLEAR WEAPONS STOCKPILE OF THE UNITED STATES.—

(1) SENSE OF CONGRESS.—It is the sense of Congress that—

(A) sustained investments in the nuclear weapons stockpile and the nuclear security complex are needed to ensure a safe, secure, reliable, and credible nuclear deterrent; and

(B) such investments could enable additional future reductions in the hedge stockpile.

(2) REPORT REQUIRED.—Not later than March 1 of each year, the Secretary of Defense shall submit to the congressional defense committees a report on the nuclear weapons stockpile of the United States that includes the following:

(A) An accounting of the weapons in the stockpile as of the end of the fiscal year preceding the submission of the report that includes all weapons in the active and inactive stockpiles, both deployed and non-deployed, and all categories and readiness states of such weapons.

(B) The planned force levels for each category of nuclear weapon over the course of the future-years defense program submitted to Congress under section 221 of this title for the fiscal year following the fiscal year in which the report is submitted.

(c) NET ASSESSMENT OF NUCLEAR FORCE LEVELS REQUIRED WITH RESPECT TO CERTAIN PROPOSALS TO REDUCE THE NUCLEAR WEAPONS STOCKPILE OF THE UNITED STATES.—

(1) IN GENERAL.—If, during any year beginning after December 31, 2011, the President makes a proposal described in paragraph (2)—

(A) the Commander of United States Strategic Command shall conduct a net assessment of the current and proposed nuclear forces of the United States and of other countries that possess nuclear weapons to determine whether the nuclear forces of the United States are anticipated to be capable of meeting the objectives of the United States with respect to nuclear deterrence, extended deterrence, assurance of allies, and defense;

(B) the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives the assessment described in subparagraph (A), unchanged, together with the explanatory views of the Secretary, as the Secretary deems appropriate; and

(C) the Administrator of the National Nuclear Security Administration shall submit to the Committees on Armed Services of the Senate and House of Representatives a report describing the current capacities of the United States nuclear weapons infrastructure to respond to a strategic development or technical problem in the United States nuclear weapons stockpile.

(2) PROPOSAL DESCRIBED.—

(A) IN GENERAL.—Except as provided in subparagraph (B), a proposal described in this paragraph is a proposal to reduce the number of nuclear weapons in the active or inactive stockpiles of the United States to a level that is lower than the level on December 31, 2011.

(B) EXCEPTIONS.—A proposal described in this paragraph does not include—

(i) reductions that are a direct result of activities associated with routine stockpile stewardship, including stockpile surveillance, logistics, or maintenance; or

(ii) nuclear weapons retired or awaiting dismantlement on December 31, 2011.

(3) TERMINATION.—The requirement in paragraph (1) shall terminate on December 31, 2017.

(d) PREVENTION OF ASYMMETRY IN REDUCTIONS.—

(1) CERTIFICATION.—During any year in which the President recommends to reduce the number of nuclear weapons in the active and inactive stockpiles of the United States by a number that is greater than a de minimis reduction, the President shall certify in writing to the congressional defense committees whether such reductions will cause the number of nuclear weapons in such stockpiles to be fewer than the high-confidence assessment of the intelligence community (as defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 3003(4))) with respect to the number of nuclear weapons in the active and inactive stockpiles of the Russian Federation.

(2) NOTIFICATION.—If the President certifies under paragraph (1) that the recommended number of nuclear weapons in the active and inactive stockpiles of the United States is fewer than the high-confidence assessment of the intelligence community with respect to the number of nuclear weapons in the active and inactive stockpiles of the Russian Federation, the President shall transmit to the congressional defense committees a report by the Commander of the United States Strategic Command, without change, detailing whether the recommended reduction would create a strategic imbalance or degrade deterrence and extended deterrence between the total number of nuclear weapons of the United States and the total number of nuclear weapons of the Russian Federation. The President shall transmit such report by not later than 60 days before the date on which the President carries out any such recommended reductions.

(3) EXCEPTION.—The notification in paragraph (2) shall not apply to—

(A) reductions made to ensure the safety, security, reliability, and credibility of the nuclear weapons stockpile and strategic delivery systems, including activities related to surveillance, assessment, certification, testing, and maintenance of nuclear warheads and strategic delivery systems; or

(B) nuclear warheads that are retired or awaiting dismantlement on the date of the certification under paragraph (1).

(4) ADDITIONAL VIEWS.—On the date on which the President transmits to the congressional defense committees a report by the Commander of the United States Strategic Command under paragraph (2), the President may transmit to such committees a report by the President with respect to whether the recommended reductions covered by the report of the Commander will impact the deterrence or extended deterrence capabilities of the United States.

(Added and amended Pub. L. 112–239, div. A, title X, §§ 1033(b)(1), (2)(B), 1034, Jan. 2, 2013, 126 Stat. 1920–1922; Pub. L. 113–66, div. A, title X, § 1091(a)(7), Dec. 26, 2013, 127 Stat. 875; Pub. L. 113–291, div. A, title X, § 1071(c)(10), Dec. 19, 2014, 128 Stat. 3509; Pub. L. 115–91, div. A, title X, § 1081(a)(19), Dec. 12, 2017, 131 Stat. 1595; Pub. L. 115–232, div. A, title X, § 1081(a)(5), Aug. 13, 2018, 132 Stat. 1983.)

REFERENCES IN TEXT

Section 1251 of the National Defense Authorization Act for Fiscal Year 2010, referred to in subsec. (a)(1)(D), (2)(A), is section 1251 of Pub. L. 111–84, which is set out as a note under section 2523 of Title 50, War and National Defense.

CODIFICATION

The text of this section is based on Pub. L. 112–81, div. A, title X, § 1045, Dec. 31, 2011, 125 Stat. 1577; Pub. L. 112–239, div. A, title X, § 1076(a)(19), Jan. 2, 2013, 126 Stat. 1949. Section 1045 of Pub. L. 112–81, formerly classified to section 2523b of Title 50, War and National Defense, was transferred to this section by Pub. L. 112–239, § 1033(b)(1)(A)–(C).

AMENDMENTS

2018—Subsec. (b)(2). Pub. L. 115–232 substituted ''March 1 of each year'' for ''March 1, 2012, and annually thereafter'' in introductory provisions.

2017—Subsec. (b)(2)(B). Pub. L. 115–91 substituted ''of this title'' for ''of title 10''.

2014—Subsec. (d)(1). Pub. L. 113–291 substituted ''(50 U.S.C. 3003(4))'' for ''(50 U.S.C. 401a(4))''.

2013—Pub. L. 112–239, § 1033(b)(2)(B), made technical amendments to conform section enumerator and catchline to the style of this title. See Codification note above.

Subsec. (a)(2). Pub. L. 112–239, § 1033(b)(1)(D), amended par. (2) generally. Prior to amendment, par. (2) related to a Presidential report to Congress regarding resource shortfalls.

Subsec. (c)(1), (2)(A), (B)(ii). Pub. L. 113–66 substituted ''December 31, 2011'' for ''the date of the enactment of this Act''.

Subsec. (d). Pub. L. 112–239, § 1034, added subsec. (d).

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112–239, div. A, title X, § 1033(b)(4), Jan. 2, 2013, 126 Stat. 1922, provided that: ''The amendment made by paragraph (1)(D) [amending this section] shall take effect on October 1, 2012.''

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective Dec. 31, 2021, of provisions in subsec. (b) of this section requiring submittal of annual report to Congress, see section 1061 of Pub. L. 114–328, set out as a note under section 111 of this title.

REPORT ON IMPLEMENTATION OF THE NEW START TREATY

Pub. L. 114–92, div. A, title XII, § 1247, Nov. 25, 2015, 129 Stat. 1066, provided that:

''(a) REPORT.—

''(1) IN GENERAL.—During each year described in paragraph (2), the President shall transmit to the appropriate congressional committees a report explaining the reasons that the continued implementation of the New START Treaty is in the national security interests of the United States.

''(2) YEAR DESCRIBED.—A year described in this paragraph is a year in which the President implements the New START Treaty and determines that any of the following circumstances apply:

''(A) The Russian Federation illegally occupies Ukrainian territory.

''(B) The Russian Federation is not respecting the sovereignty of all Ukrainian territory.

''(C) The Russian Federation is not in full compliance with the INF treaty.

''(D) The Russian Federation is not in compliance with the CFE Treaty and has not lifted its suspension of Russian observance of its treaty obligations.

''(E) The Russian Federation is not reducing its deployed strategic delivery vehicles.

''(b) DEFINITIONS.—In this section:

''(1) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term 'appropriate congressional committees' means—

''(A) the Committee on Armed Services and the Committee on Foreign Relations of the Senate; and

''(B) the Committee on Armed Services and the Committee on Foreign Affairs of the House of Representatives.

''(2) CFE TREATY.—The term 'CFE Treaty' means the Treaty on Conventional Armed Forces in Europe, signed at Paris November 19, 1990, and entered into force July 17, 1992.

''(3) INF TREATY.—The term 'INF Treaty' means the Treaty Between the United States of America and the Union of Soviet Socialist Republics on the Elimination of Their Intermediate-Range and Shorter-Range Missiles, commonly referred to as the Intermediate-Range Nuclear Forces (INF) Treaty, signed at Washington December 8, 1987, and entered into force June 1, 1988.

''(4) NEW START TREATY.—The term 'New START Treaty' means the Treaty between the United States of America and the Russian Federation on Measures for the Further Reduction and Limitation of Strategic Offensive Arms, signed on April 8, 2010, and entered into force on February 5, 2011.''

[For delegation of functions vested in President by section 1247 of Pub. L. 114–92, set out above, see Memorandum of President of the United States, July 26, 2016, 81 F.R. 51773, set out below.]

RETENTION OF MISSILE SILOS

Pub. L. 113–291, div. A, title XVI, § 1644, Dec. 19, 2014, 128 Stat. 3651, provided that:

''(a) REQUIREMENT.—During the period in which the New START Treaty (as defined in section 494(a)(2)(D) of title 10, United States Code) is in effect, the Secretary of Defense shall preserve each intercontinental ballistic missile silo that contains a deployed missile as of the date of the enactment of this Act [Dec. 19, 2014] in, at minimum, a warm status that enables such silo to—

''(1) remain a fully functioning element of the interconnected and redundant command and control system of the missile field; and

''(2) be made fully operational with a deployed missile.

''(b) RULE OF CONSTRUCTION.—Nothing in subsection (b) shall be construed to prohibit the Secretary of Defense from temporarily placing an intercontinental ballistic missile silo offline to perform maintenance activities.''

IMPLEMENTATION OF NEW START TREATY

Pub. L. 113–66, div. A, title X, § 1056(a)(2), (3), (f), Dec. 26, 2013, 127 Stat. 862–864, provided that:

''(a) IMPLEMENTATION.—

''(2) CONSOLIDATED BUDGET DISPLAY.—The Secretary [of Defense] shall include with the defense budget materials for each fiscal year specified in paragraph (3) a consolidated budget justification display that individually covers each program and activity associated with the implementation of the New START Treaty for the period covered by the future-years defense program submitted under section 221 of title 10, United States Code, at or about the time as such defense budget materials are submitted.

''(3) FISCAL YEAR SPECIFIED.—A fiscal year specified in this paragraph is each fiscal year that occurs during the period beginning with fiscal year 2015 and ending on the date on which the New START Treaty is no longer in force.

''(f) DEFINITIONS.—In this section:

''(1) The term 'defense budget materials' has the meaning given that term in section 231(f) of title 10, United States Code.

''(2) The term 'New START Treaty' means the Treaty between the United States of America and the Russian Federation on Measures for the Further Reduction and Limitation of Strategic Offensive Arms, signed on April 8, 2010, and entered into force on February 5, 2011.''

''CONGRESSIONAL DEFENSE COMMITTEES'' DEFINED

Congressional defense committees has the meaning given that term in section 101(a)(16) of this title, see section 3 of Pub. L. 112–81, Dec. 31, 2011, 125 Stat. 1316. See also note under section 101 of this title.

DELEGATION OF REPORTING FUNCTIONS SPECIFIED IN SECTION 1045 OF THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2012, AND CONDITION 9 OF THE RESOLUTION OF ADVICE AND CONSENT TO RATIFICATION OF THE TREATY BETWEEN THE UNITED STATES OF AMERICA AND THE RUSSIAN FEDERATION ON THE MEASURES FOR THE FURTHER REDUCTION AND LIMITATION OF STRATEGIC OFFENSIVE ARMS (THE ''NEW START TREATY'')

Memorandum of President of the United States, Mar. 16, 2012, 77 F.R. 16649, provided:

Memorandum for the Secretary of State[,] the Secretary of Defense[, and] the Secretary of Energy

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3 of the United States Code, I hereby delegate to the Secretaries of Defense and Energy the reporting functions conferred upon the President by section 1045 of the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112–81) [see Codification note above], and by section (a)(9)(B) of the Resolution of Advice and Consent to Ratification of the New START Treaty. Subsection (a)(9)(B)(iv) of the Resolution shall be fulfilled in coordination with the Secretary of State.

The Secretary of Defense is authorized and directed to publish this memorandum in the Federal Register.

BARACK OBAMA.

DELEGATION OF AUTHORITY UNDER SECTION 1247 OF THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2016

Memorandum of President of the United States, July 26, 2016, 81 F.R. 51773, provided:

Memorandum for the Secretary of State

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, I hereby order as follows:

I hereby delegate the functions and authorities vested in the President by section 1247 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114–92) (the ''Act'') to the Secretary of State.

Any reference in this memorandum to the Act shall be deemed to be a reference to any future act that is the same or substantially the same as such provision.

You are authorized and directed to publish this memorandum in the Federal Register.

BARACK OBAMA.

§ 495. Strategic delivery systems

(a) ANNUAL CERTIFICATION.—The President shall annually certify in writing to the congressional defense committees whether plans to modernize or replace strategic delivery systems are fully funded at levels equal to or more than the levels set forth in the November 2010 update to the plan referred to in section 1251 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84; 123 Stat. 2549), including plans regarding—

(1) a heavy bomber and air-launched cruise missile;

(2) an intercontinental ballistic missile;

(3) a submarine-launched ballistic missile;

(4) a ballistic missile submarine; and

(5) maintaining the nuclear command and control system (as first reported under section 1043 of the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112–81; 125 Stat. 1576)).

(b) ADDITIONAL REPORT MATTERS FOLLOWING CERTAIN CERTIFICATIONS.—If in any year before fiscal year 2020 the President certifies under subsection (a) that plans to modernize or replace

strategic delivery systems are not fully funded, the President shall include in the next annual report transmitted to Congress under section 1043 of the National Defense Authorization Act for Fiscal Year 2012 the following:

(1) A determination of whether or not the lack of full funding will result in a loss of military capability when compared with the November 2010 update to the plan referred to in section 1251 of the National Defense Authorization Act for Fiscal Year 2010.

(2) If the determination under paragraph (1) is that the lack of full funding will result in a loss of military capability—

(A) a plan to preserve or retain the military capability that would otherwise be lost; or

(B) a report setting forth—

(i) an assessment of the impact of the lack of full funding on the strategic delivery systems specified in subsection (a); and

(ii) a description of the funding required to restore or maintain the capability.

(3) A certification by the President of whether or not the President is committed to accomplishing the modernization and replacement of strategic delivery systems and will meet the obligations concerning nuclear modernization as set forth in declaration 12 of the Resolution of Advice and Consent to Ratification of the New START Treaty.

(c) PRIOR NOTIFICATION.—Not later than 60 days before the date on which the President carries out any reduction to the number of strategic delivery systems, the President shall—

(1) make the certification under subsection (a) for the fiscal year for which the reductions are proposed to be carried out;

(2) transmit the additional report matters under subsection (b) for such fiscal year, if such additional report matters are so required; and

(3) certify to the congressional defense committees whether the Russian Federation is in compliance with its strategic arms control obligations with the United States and is not engaged in activity in violation of, or inconsistent with, such obligations.

(d) TREATMENT OF CERTAIN REDUCTIONS.—Any certification under subsection (a) shall not take into account the following:

(1) Reductions made to ensure the safety, security, reliability, and credibility of the nuclear weapons stockpile and strategic delivery systems, including activities related to surveillance, assessment, certification, testing, and maintenance of nuclear warheads and delivery systems.

(2) Strategic delivery systems that are retired or awaiting dismantlement on the date of the certification under subsection (a).

(e) DEFINITIONS.—In this section:

(1) The term ''New START Treaty'' means the Treaty between the United States of America and the Russian Federation on Measures for the Further Reduction and Limitation of Strategic Offensive Arms, signed on April 8, 2010, and entered into force on February 5, 2011.

(2) The term ''strategic delivery system'' means a delivery system for nuclear weapons.

(Added Pub. L. 112–239, div. A, title X, § 1035(a), Jan. 2, 2013, 126 Stat. 1923; amended Pub. L. 112–240, title VIII, § 801(a), Jan. 2, 2013, 126 Stat. 2369; Pub. L. 115–232, div. A, title X, § 1081(a)(6), Aug. 13, 2018, 132 Stat. 1983.)

REFERENCES IN TEXT

Section 1251 of the National Defense Authorization Act for Fiscal Year 2010, referred to in subsecs. (a) and (b)(1), is section 1251 of Pub. L. 111–84, which is set out as a note under section 2523 of Title 50, War and National Defense.

Section 1043 of the National Defense Authorization Act for Fiscal Year 2012, referred to in subsecs. (a)(5) and (b), is section 1043 of title X of div. A of Pub. L. 112–81, Dec. 31, 2011, 125 Stat. 1576, which is not classified to the Code.

AMENDMENTS

2018—Subsec. (a). Pub. L. 115–232 substituted ''The'' for ''Beginning in fiscal year 2013, the'' in introductory provisions.

2013—Subsec. (c)(3). Pub. L. 112–240 substituted ''whether the Russian Federation'' for ''that the Russian Federation'' and inserted ''strategic'' before ''arms control obligations''.

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112–240, title VIII, § 801(b), Jan. 2, 2013, 126 Stat. 2369, provided that: ''The amendments made by subsection (a) [amending this section] shall take effect as if included in the enactment of the National Defense Authorization Act for Fiscal Year 2013 [Pub. L. 112–239].''

RETENTION OF CAPABILITY TO REDEPLOY MULTIPLE INDEPENDENTLY TARGETABLE REENTRY VEHICLES

Pub. L. 113–66, div. A, title X, § 1057, Dec. 26, 2013, 127 Stat. 864, provided that:

''(a) DEPLOYMENT CAPABILITY.—The Secretary of the Air Force shall ensure that the Air Force is capable of—

''(1) deploying multiple independently targetable reentry vehicles to Minuteman III intercontinental ballistic missiles; and

''(2) commencing such deployment not later than 180 days after the date on which the President determines such deployment necessary.

''(b) WARHEAD CAPABILITY.—The Nuclear Weapons Council established by section 179 of title 10, United States Code, shall ensure that—

''(1) the nuclear weapons stockpile contains a sufficient number of nuclear warheads that are capable of being deployed as multiple independently targetable reentry vehicles with respect to Minuteman III intercontinental ballistic missiles; and

''(2) such deployment is capable of being commenced not later than 180 days after the date on which the President determines such deployment necessary.''

SENSES OF CONGRESS ON ENSURING THE MODERNIZATION OF THE NUCLEAR FORCES OF THE UNITED STATES

Pub. L. 113–66, div. A, title X, § 1062(a), Dec. 26, 2013, 127 Stat. 866, provided that: ''It is the policy of the United States to—

''(1) modernize or replace the triad of strategic nuclear delivery systems;

''(2) proceed with a robust stockpile stewardship program;

''(3) maintain and modernize the nuclear weapons production capabilities that will ensure the safety, security, reliability, and performance of the nuclear forces of the United States at the levels required by the New START Treaty; and

"(4) underpin deterrence by meeting the requirements for hedging against possible international developments or technical problems, in accordance with the policies of the United States."

DELEGATION OF AUTHORITY PURSUANT TO SECTION 1035 OF THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2013

Memorandum of President of the United States, June 29, 2015, 80 F.R. 37921, provided:

Memorandum for the Secretary of Defense

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, I hereby order as follows:

I hereby delegate to the Secretary of Defense the authority to fulfill the certification requirement specified in section 1035 of the National Defense Authorization Act for Fiscal Year 2013 (Public Law 112–239) [probably means section 495 of this title, as added by section 1035 of Pub. L. 112–239].

Any reference in this memorandum to section 1035 of the National Defense Authorization Act for Fiscal Year 2013 shall be deemed to be a reference to any future provision that is the same or substantially the same provision.

You are authorized and directed to publish this memorandum in the Federal Register.

BARACK OBAMA.

§ 496. Consideration of expansion of nuclear forces of other countries

(a) REPORT AND CERTIFICATION.—Not later than 60 days before the President recommends any reductions to the nuclear forces of the United States—

(1) the President shall transmit to the appropriate congressional committees a report detailing, for each country with nuclear weapons, the high-, medium-, and low- confidence assessment of the intelligence community (as defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 3003(4))) with respect to—

(A) the number of each type of nuclear weapons possessed by such country;

(B) the modernization plans for such weapons of such country;

(C) the production capacity of nuclear warheads and strategic delivery systems (as defined in section 495(e)(2) of this title) of such country;

(D) the nuclear doctrine of such country; and

(E) the impact of such recommended reductions on the deterrence and extended deterrence capabilities of the United States; and

(2) the Commander of the United States Strategic Command shall certify to the appropriate congressional committees whether such recommended reductions in the nuclear forces of the United States will—

(A) impair the ability of the United States to address—

(i) unplanned strategic or geopolitical events; or

(ii) technical challenge; or

(B) degrade the deterrence or assurance provided by the United States to friends and allies of the United States.

(b) FORM.—The reports required by subsection (a)(1) shall be submitted in unclassified form, but may include a classified annex.

(c) APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.—In this section, the term "appropriate congressional committees" means the following:

(1) The congressional defense committees.

(2) The Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate.

(Added Pub. L. 112–239, div. A, title X, § 1036(a), Jan. 2, 2013, 126 Stat. 1924; amended Pub. L. 113–291, div. A, title X, § 1071(c)(10), Dec. 19, 2014, 128 Stat. 3509.)

AMENDMENTS

2014—Subsec. (a)(1). Pub. L. 113–291 substituted "(50 U.S.C. 3003(4))" for "(50 U.S.C. 401a(4))" in introductory provisions.

§ 497. Notification required for reduction, consolidation, or withdrawal of nuclear forces based in Europe

(a) NOTIFICATION.—Upon any decision to reduce, consolidate, or withdraw the nuclear forces of the United States that are based in Europe, the President shall transmit to the appropriate congressional committees a notification containing—

(1) justification for such reduction, consolidation, or withdrawal; and

(2) an assessment of how member states of the North Atlantic Treaty Organization, in light of such reduction, consolidation, or withdrawal, assess the credibility of the deterrence capability of the United States in support of its commitments undertaken pursuant to article 5 of the North Atlantic Treaty, signed at Washington, District of Columbia, on April 4, 1949, and entered into force on August 24, 1949 (63 Stat. 2241; TIAS 1964).

(b) PRIOR NOTIFICATION REQUIRED.—

(1) IN GENERAL.—The President shall transmit the notification required by subsection (a) by not later than 60 days before the date on which the President commences a reduction, consolidation, or withdrawal of the nuclear forces of the United States that are based in Europe described in such notification.

(2) EXCEPTION.—The limitation in paragraph (1) shall not apply to a reduction, consolidation, or withdrawal of nuclear weapons of the United States that are based in Europe made to ensure the safety, security, reliability, and credibility of such weapons.

(c) APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.—In this section, the term "appropriate congressional committees" means—

(1) the Committees on Armed Services of the House of Representatives and the Senate; and

(2) the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate.

(Added Pub. L. 112–239, div. A, title X, § 1037(b)(1), Jan. 2, 2013, 126 Stat. 1926.)

§ 497a. Notification required for reduction or consolidation of dual-capable aircraft based in Europe

(a) NOTIFICATION.—Not less than 90 days before the date on which the Secretary of Defense reduces or consolidates the dual-capable aircraft

of the United States that are based in Europe, the Secretary shall submit to the congressional defense committees a notification of such planned reduction or consolidation, including the following:

(1) The reasons for such planned reduction or consolidation.

(2) Any effects of such planned reduction or consolidation on the extended deterrence mission of the United States.

(3) The manner in which the military requirements of the North Atlantic Treaty Organization (NATO) will continue to be met in light of such planned reduction or consolidation.

(4) A statement by the Secretary on the response of NATO to such planned reduction or consolidation.

(5) Whether there is any change in the force posture of the Russian Federation as a result of such planned reduction or consolidation, including with respect to the nonstrategic nuclear weapons of Russia that are within range of the member states of NATO.

(b) DUAL-CAPABLE AIRCRAFT DEFINED.—In this section, the term ''dual-capable aircraft'' means aircraft that can perform both conventional and nuclear missions.

(Added Pub. L. 113–66, div. A, title X, § 1051(b)(1), Dec. 26, 2013, 127 Stat. 858.)

§ 498. Unilateral change in nuclear weapons stockpile of the United States

(a) IN GENERAL.—Other than pursuant to a treaty, if the President has under consideration to unilaterally change the size of the total stockpile of nuclear weapons of the United States by more than 25 percent, prior to doing so the President shall initiate a Nuclear Posture Review.

(b) TERMS OF REFERENCE.—Prior to the initiation of a Nuclear Posture Review under this section, the President shall determine the terms of reference for the Nuclear Posture Review, which the President shall provide to the congressional defense committees.

(c) NUCLEAR POSTURE REVIEW.—Upon completion of a Nuclear Posture Review under this section, the President shall submit the Nuclear Posture Review to the congressional defense committees prior to implementing any change in the nuclear weapons stockpile by more than 25 percent.

(d) CONSTRUCTION.—This section shall not apply to changes to the nuclear weapons stockpile resulting from treaty obligations.

(e) FORM.—A Nuclear Posture Review under this section shall be submitted in unclassified form, but may include a classified annex.

(Added Pub. L. 112–239, div. A, title X, § 1038(a), Jan. 2, 2013, 126 Stat. 1927; amended Pub. L. 113–66, div. A, title X, § 1091(a)(6), Dec. 26, 2013, 127 Stat. 875.)

AMENDMENTS

2013—Pub. L. 113–66 inserted a period after the enumerator in section catchline.

§ 499. Annual assessment of cyber resiliency of nuclear command and control system

(a) IN GENERAL.—Not less frequently than annually, the Commander of the United States Strategic Command and the Commander of the United States Cyber Command (in this section referred to collectively as the ''Commanders'') shall jointly conduct an assessment of the cyber resiliency of the nuclear command and control system.

(b) ELEMENTS.—In conducting the assessment required by subsection (a), the Commanders shall—

(1) conduct an assessment of the sufficiency and resiliency of the nuclear command and control system to operate through a cyber attack from the Russian Federation, the People's Republic of China, or any other country or entity the Commanders identify as a potential threat; and

(2) develop recommendations for mitigating any concerns of the Commanders resulting from the assessment.

(c) REPORT REQUIRED.—(1) The Commanders shall jointly submit to the Chairman of the Joint Chiefs of Staff, for submission to the Council on Oversight of the National Leadership Command, Control, and Communications System established under section 171a of this title, a report on the assessment required by subsection (a) that includes the following:

(A) The recommendations developed under subsection (b)(2).

(B) A statement of the degree of confidence of each of the Commanders in the mission assurance of the nuclear deterrent against a top tier cyber threat.

(C) A detailed description of the approach used to conduct the assessment required by subsection (a) and the technical basis of conclusions reached in conducting that assessment.

(D) Any other comments of the Commanders.

(2) The Council shall submit to the Secretary of Defense the report required by paragraph (1) and any comments of the Council on the report.

(3) The Secretary of Defense shall submit to the congressional defense committees the report required by paragraph (1), any comments of the Council on the report under paragraph (2), and any comments of the Secretary on the report.

(d) QUARTERLY BRIEFINGS.—Not less than once every quarter, the Deputy Secretary of Defense and the Vice Chairman of the Joint Chiefs of Staff shall jointly provide to the Committees on Armed Services of the House of Representatives and the Senate a briefing on any known or suspected critical intelligence parameter breaches that were identified during the previous quarter, including an assessment of any known or suspected impacts of such breaches to the mission effectiveness of military capabilities as of the date of the briefing or thereafter.

(e) TERMINATION.—The requirements of this section shall terminate on December 31, 2027.

(Added Pub. L. 115–91, div. A, title XVI, § 1651(a), Dec. 12, 2017, 131 Stat. 1756.)

ENSURING CYBER RESILIENCY OF NUCLEAR COMMAND AND CONTROL SYSTEM

Pub. L. 116–283, div. A, title XVII, § 1747, Jan. 1, 2021, 134 Stat. 4140, provided that:

''(a) PLAN FOR IMPLEMENTATION OF FINDINGS AND RECOMMENDATIONS FROM FIRST ANNUAL ASSESSMENT OF CYBER RESILIENCY OF NUCLEAR COMMAND AND CONTROL SYSTEM.—Not later than October 1, 2021, the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a comprehensive plan, including a schedule and resourcing plan, for the implementation of the findings and recommendations included in the first report submitted under section 499(c)(3) of title 10, United States Code.

''(b) CONCEPT OF OPERATIONS AND OVERSIGHT MECHANISM FOR CYBER DEFENSE OF NUCLEAR COMMAND AND CONTROL SYSTEM.—Not later than October 1, 2021, the Secretary shall develop and establish—

''(1) a concept of operations for defending the nuclear command and control system against cyber attacks, including specification of the—

''(A) roles and responsibilities of relevant entities within the Office of the Secretary, the military services, combatant commands, the Defense Agencies, and the Department of Defense Field Activities; and

''(B) cybersecurity capabilities to be acquired and employed and operational tactics, techniques, and procedures, including cyber protection team and sensor deployment strategies, to be used to monitor, defend, and mitigate vulnerabilities in nuclear command and control systems; and

''(2) an oversight mechanism or governance model for overseeing the implementation of the concept of operations developed and established under paragraph (1), related development, systems engineering, and acquisition activities and programs, and the plan required by subsection (a), including specification of the—

''(A) roles and responsibilities of relevant entities within the Office of the Secretary, the military services, combatant commands, the Defense Agencies, and the Department of Defense Field Activities in overseeing the defense of the nuclear command and control system against cyber attacks;

''(B) responsibilities and authorities of the Strategic Cybersecurity Program in overseeing and, as appropriate, executing—

''(i) vulnerability assessments; and

''(ii) development, systems engineering, and acquisition activities; and

''(C) processes for coordination of activities, policies, and programs relating to the cybersecurity and defense of the nuclear command and control system.''

§ 499a. Collection, storage, and sharing of data relating to nuclear security enterprise and nuclear forces

(a) IN GENERAL.—The Secretary of Defense, acting through the Director of Cost Assessment and Program Evaluation, and the Administrator for Nuclear Security, acting through the Director for Cost Estimating and Program Evaluation, shall collect and store cost, programmatic, and technical data relating to programs and projects of the nuclear security enterprise and nuclear forces.

(b) SHARING OF DATA.—If the Director of Cost Assessment and Program Evaluation or the Director for Cost Estimating and Program Evaluation requests data relating to programs or projects from any element of the Department of Defense or from any element of the nuclear security enterprise of the National Nuclear Security Administration, that element shall provide that data in a timely manner.

(c) STORAGE OF DATA.—(1) Data collected by the Director of Cost Assessment and Program Evaluation and the Director for Cost Estimating and Program Evaluation under this section shall be—

(A) stored in the data storage system of the Defense Cost and Resource Center, or successor center, or in a data storage system of the National Nuclear Security Administration that is comparable to the data storage system of the Defense Cost and Resource Center; and

(B) made accessible to other Federal agencies as such Directors consider appropriate.

(2) The Secretary and the Administrator shall ensure that the Director of Cost Assessment and Program Evaluation and the Director for Cost Estimating and Program Evaluation have sufficient information system support, as determined by such Directors, to facilitate the timely hosting, handling, and sharing of data relating to programs and projects of the nuclear security enterprise under this section at the appropriate level of classification.

(3) The Deputy Administrator for Naval Reactors of the National Nuclear Security Administration may coordinate with the Director of Cost Assessment and Program Evaluation and the Director for Cost Estimating and Program Evaluation to ensure that, at the discretion of the Deputy Administrator, data relating to programs and projects of the Office of Naval Reactors are correctly represented in the data storage system pursuant to paragraph (1)(A).

(d) CONTRACT REQUIREMENTS.—The Secretary and the Administrator shall ensure that any relevant contract relating to a program or project of the nuclear security enterprise and nuclear forces that is entered into after December 11, 2017, appropriately includes—

(1) requirements and standards for data collection; and

(2) requirements for reporting on cost, programmatic, and technical data using procedures, standards, and formats approved by the Director of Cost Assessment and Program Evaluation and the Director for Cost Estimating and Program Evaluation.

(e) NUCLEAR SECURITY ENTERPRISE DEFINED.—In this section, the term ''nuclear security enterprise'' has the meaning given that term in section 4002 of the Atomic Energy Defense Act (50 U.S.C. 2501).

(Added Pub. L. 115–91, div. A, title XVI, § 1652(a), Dec. 12, 2017, 131 Stat. 1757; amended Pub. L. 115–232, div. A, title X, § 1081(a)(7), Aug. 13, 2018, 132 Stat. 1983.)

AMENDMENTS

2018—Subsec. (d). Pub. L. 115–232 substituted ''after December 11, 2017,'' for ''on or after the date of the enactment of this section'' in introductory provisions.

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AMENDMENTS

2011—Pub. L. 111–383, div. A, title X, §1075(b)(1), Jan. 7, 2011, 124 Stat. 4368, substituted ''1030'' for ''1031'' in item for chapter 53.

2009—Pub. L. 111–84, div. A, title X, §1073(a)(7), Oct. 28, 2009, 123 Stat. 2472, substituted ''1580'' for ''1581'' in item for chapter 81.

2006—Pub. L. 109–366, §3(a)(2), Oct. 17, 2006, 120 Stat. 2630, added item for chapter 47A.

2001—Pub. L. 107–107, div. A, title X, §1048(a)(1), Dec. 28, 2001, 115 Stat. 1222, struck out period after ''1111'' in item for chapter 56.

2000—Pub. L. 106–398, §1 [[div. A], title VII, §713(a)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–184, added item for chapter 56.

1999—Pub. L. 106–65, div. A, title V, §586(c)(1), title VII, §721(c)(2), Oct. 5, 1999, 113 Stat. 638, 694, added item for chapter 50 and substituted ''Deceased Personnel'' for ''Death Benefits'' and ''1471'' for ''1475'' in item for chapter 75.

1997—Pub. L. 105–85, div. A, title V, §591(a)(2), Nov. 18, 1997, 111 Stat. 1762, added item for chapter 80.

1996—Pub. L. 104–201, div. A, title XVI, §1633(c)(3), Sept. 23, 1996, 110 Stat. 2751, substituted ''Civilian Defense Intelligence Employees'' for ''Defense Intelligence Agency and Central Imagery Office Civilian Personnel'' in item for chapter 83.

Pub. L. 104–106, div. A, title V, §§568(a)(2), 569(b)(2), title X, §1061(a)(2), Feb. 10, 1996, 110 Stat. 335, 351, 442, added items for chapters 76 and 88 and struck out item for chapter 89 ''Volunteers Investing in Peace and Security''.

1994—Pub. L. 103–359, title V, §501(b)(2), Oct. 14, 1994, 108 Stat. 3429, substituted ''Defense Intelligence Agency and Central Imagery Office Civilian Personnel'' for ''Defense Intelligence Agency Civilian Personnel'' in item for chapter 83.

1992—Pub. L. 102–484, div. A, title XIII, §1322(a)(2), Oct. 23, 1992, 106 Stat. 2553, added item for chapter 89.

1991—Pub. L. 102–190, div. A, title X, §1061(a)(26)(C)(ii), Dec. 5, 1991, 105 Stat. 1474, effective Oct. 1, 1993, struck out item for chapter 85 ''Procurement Management Personnel''.

Pub. L. 102–190, div. A, title XI, §1112(b)(2), Dec. 5, 1991, 105 Stat. 1501, substituted ''Original Appointments of Regular Officers in Grades Above Warrant Officer Grades'' for ''Appointments in Regular Components'' in item for chapter 33 and added item for chapter 33A.

Pub. L. 102–25, title VII, §701(e)(1), Apr. 6, 1991, 105 Stat. 114, added item for chapter 85.

1990—Pub. L. 101–510, div. A, title V, §502(a)(2), title XII, §1202(b), Nov. 5, 1990, 104 Stat. 1557, 1656, added items for chapters 58 and 87 and struck out item for chapter 85 ''Procurement Management Personnel''.

1988—Pub. L. 100–370, §1(c)(3), July 19, 1988, 102 Stat. 841, added item for chapter 54.

1986—Pub. L. 99–433, title IV, §401(b), Oct. 1, 1986, 100 Stat. 1030, added item for chapter 38.

1985—Pub. L. 99–145, title IX, §924(a)(2), Nov. 8, 1985, 99 Stat. 698, added item for chapter 85.

1983—Pub. L. 98–94, title IX, §925(a)(2), title XII, §1268(15), Sept. 24, 1983, 97 Stat. 648, 707, added item for chapter 74, and substituted ''or'' for ''and'' in item for chapter 60.

1981—Pub. L. 97–89, title VII, §701(a)(2), Dec. 4, 1981, 95 Stat. 1160, added item for chapter 83.

1980—Pub. L. 96–513, title V, §§501(1), 511(29), (54)(B), Dec. 12, 1980, 94 Stat. 2907, 2922, 2925, added item for chapter 32, substituted ''531'' for ''541'' as section number in item for chapter 33, substituted ''34'' for ''35'' as chapter number of chapter relating to appointments as reserve officers, added items for chapters 35 and 36, substituted ''Reserve Components: Standards and Procedures for Retention and Promotion'' for ''Retention of Reserves'' in item for chapter 51, added item for chapter 60, substituted ''1251'' for ''1255'' as section number in item for chapter 63, substituted ''Retirement of Warrant Officers'' for ''Retirement'' in item for chapter 65, substituted ''1370'' for ''1371'' as section number in item for chapter 69, and amended item for chapter 73 to read: ''Annuities Based on Retired or Retainer Pay''.

1972—Pub. L. 92–425, §2, Sept. 21, 1972, 86 Stat. 711, amended item for chapter 73 by inserting ''; Survivor Benefit Plan'' after ''Pay'' which could not be executed as directed in view of amendment by Pub. L. 87–381. See 1961 Amendment note below.

1968—Pub. L. 90–377, §2, July 5, 1968, 82 Stat. 288, added item for chapter 48.

1967—Pub. L. 90–83, § 3(2), Sept. 11, 1967, 81 Stat. 220, struck out item for chapter 80 ''Exemplary Rehabilitation Certificates''.

1966—Pub. L. 89–690, § 2, Oct. 15, 1966, 80 Stat. 1017, added item for chapter 80.

1962—Pub. L. 87–649, § 3(2), Sept. 7, 1962, 76 Stat. 493, added item for chapter 40.

1961—Pub. L. 87–381, § 1(2), Oct. 4, 1961, 75 Stat. 810, substituted ''Retired Servicemen's Family Protection Plan'' for ''Annuities Based on Retired or Retainer Pay'' in item for chapter 73.

1958—Pub. L. 85–861, §§ 1(21), (26), (33), 33(a)(4)(B), Sept. 2, 1958, 72 Stat. 1443, 1450, 1455, 1564, substituted ''General Service Requirements'' for ''Service Requirements for Reserves'' in item for chapter 37, ''971'' for ''[No present sections]'' in item for chapter 49, ''Medical and Dental Care'' for ''Voting by Members of Armed Forces'' in item for chapter 55, and struck out ''Care of the Dead'' and substituted ''1475'' for ''1481'' in item for chapter 75.

MEASURING AND INCENTIVIZING PROGRAMMING PROFICIENCY

Pub. L. 116–283, div. A, title II, § 241(a), (b), Jan. 1, 2021, 134 Stat. 3486, 3487, provided that:

''(a) IN GENERAL.—Not later than two years after the date of the enactment of this Act [Jan. 1, 2021], the Secretary of Defense shall carry out the following activities:

''(1) Leverage existing civilian software development and software architecture certification programs to implement coding language proficiency and artificial intelligence competency tests within the Department of Defense that—

''(A) measure an individual's competency in using machine learning tools, in a manner similar to the way the Defense Language Proficiency Test measures competency in foreign language skills;

''(B) enable the identification of members of the Armed Forces and civilian employees of the Department of Defense who have varying levels of quantified coding comprehension and skills and a propensity to learn new programming paradigms, algorithms, and data analytics; and

''(C) include hands-on coding demonstrations and challenges.

''(2) Update existing recordkeeping systems to track artificial intelligence and programming certification testing results in a manner that is comparable to the system used for tracking and documenting foreign language competency, and use that recordkeeping system to ensure that workforce coding and artificial intelligence comprehension and skills are taken into consideration when making assignments.

''(3) Implement a system of rewards, including appropriate incentive pay and retention incentives, for members of the Armed Forces and civilian employees of the Department of Defense who perform successfully on specific language coding proficiency and artificial intelligence competency tests and make their skills available to the Department.

''(b) INFORMATION SHARING WITH OTHER FEDERAL AGENCIES.—The Secretary of Defense shall share information on the activities carried out under subsection (a) with the Secretary of Homeland Security, the Attorney General, the Director of National Intelligence, and the heads of such other organizations of the intelligence community as the Secretary determines appropriate, for purposes of—

''(1) making information about the coding language proficiency and artificial intelligence competency tests developed under such subsection available to other Federal national security agencies; and

''(2) encouraging the heads of such agencies to implement tracking and reward systems that are comparable to those implemented by the Department of Defense pursuant to such subsection.''

EVALUATION OF BARRIERS TO MINORITY PARTICIPATION IN CERTAIN UNITS OF THE ARMED FORCES

Pub. L. 116–283, div. A, title V, § 557, Jan. 1, 2021, 134 Stat. 3637, provided that:

''(a) STUDY REQUIRED.—

''(1) IN GENERAL.—Not later than 30 days after the date of the enactment of this Act [Jan. 1, 2021], the Under Secretary of Defense for Personnel and Readiness shall seek to enter into an agreement with a federally funded research and development center with relevant expertise to conduct an evaluation of the barriers to minority participation in covered units of the Armed Forces.

''(2) ELEMENTS.—The evaluation required under paragraph (1) shall include the following elements:

''(A) A description of the racial, ethnic, and gender composition of covered units.

''(B) A comparison of the participation rates of minority populations in covered units to participation rates of the general population as members and as officers of the Armed Forces.

''(C) A comparison of the percentage of minority officers in the grade of O–7 or higher who have served in each covered unit to such percentage for all such officers in the Armed Force of that covered unit.

''(D) An identification of barriers to minority (including English language learners) participation in the recruitment, accession, assessment, and training processes.

''(E) The status and effectiveness of the response to the recommendations contained in the report of the RAND Corporation titled 'Barriers to Minority Participation in Special Operations Forces' and any follow-up recommendations.

''(F) Recommendations to increase the numbers of minority officers in the Armed Forces.

''(G) Recommendations to increase minority participation in covered units.

''(H) Any other matters the Secretary determines appropriate.

''(3) REPORT TO CONGRESS.—The Secretary shall—

''(A) submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the results of the study by not later than January 1, 2022; and

''(B) provide interim briefings to such committees upon request.

''(b) DESIGNATION.—The study conducted under subsection (a) shall be known as the 'Study on Reducing Barriers to Minority Participation in Elite Units in the Armed Services'.

''(c) IMPLEMENTATION REQUIRED.—

''(1) IN GENERAL.—Except as provided in paragraph (2), not later than March 1, 2023, the Secretary of Defense shall commence the implementation of each recommendation included in the final report submitted under subsection (a)(3).

''(2) EXCEPTIONS.—

''(A) DELAYED IMPLEMENTATION.—The Secretary of Defense may commence implementation of a recommendation described [in] paragraph (1) later than March 1, 2023, if—

''(i) the Secretary submits to the congressional defense committees, not later than January 1, 2023, written notice of the intent of the Secretary to delay implementation of the recommendation; and

''(ii) includes, as part of such notice, a specific justification for the delay in implementing the recommendation.

''(B) NONIMPLEMENTATION.—The Secretary of Defense may elect not to implement a recommendation described in paragraph (1), if—

''(i) the Secretary submits to the congressional defense committees, not later than January 1, 2023, written notice of the intent of the Secretary not to implement the recommendation; and

''(ii) includes, as part of such notice—

''(I) the reasons for the Secretary's decision not to implement the recommendation; and

''(II) a summary of alternative actions the Secretary will carry out to address the purposes underlying the recommendation.

"(3) IMPLEMENTATION PLAN.—For each recommendation that the Secretary implements under this subsection, the Secretary shall submit to the congressional defense committees an implementation plan that includes—

"(A) a summary of actions the Secretary has carried out, or intends to carry out, to implement the recommendation; and

"(B) a schedule, with specific milestones, for completing the implementation of the recommendation.

"(d) COVERED UNITS DEFINED.—In this section, the term 'covered units' means the following:

"(1) Army Special Forces.

"(2) Army Rangers.

"(3) Navy SEALs.

"(4) Air Force Combat Control Teams.

"(5) Air Force Pararescue.

"(6) Air Force Special Reconnaissance.

"(7) Marine Raider Regiments.

"(8) Marine Corps Force Reconnaissance.

"(9) Coast Guard Maritime Security Response Team.

"(10) Any other forces designated by the Secretary of Defense as special operations forces.

"(11) Pilot and navigator military occupational specialties."

POLICY ON THE TALENT MANAGEMENT OF DIGITAL EXPERTISE AND SOFTWARE PROFESSIONALS

Pub. L. 116–92, div. A, title II, § 230, Dec. 20, 2019, 133 Stat. 1273, provided that:

"(a) POLICY.—

"(1) IN GENERAL.—It shall be a policy of the Department of Defense to promote and maintain digital expertise and software development as core competencies of civilian and military workforces of the Department, and as a capability to support the National Defense Strategy, which policy shall be achieved by—

"(A) the recruitment, development, and incentivization of retention in and to the civilian and military workforce of the Department of individuals with aptitude, experience, proficient expertise, or a combination thereof in digital expertise and software development;

"(B) at the discretion of the Secretaries of the military departments, the development and maintenance of civilian and military career tracks related to digital expertise, and related digital competencies for members of the Armed Forces, including the development and maintenance of training, education, talent management, incentives, and promotion policies in support of members at all levels of such career tracks; and

"(C) the development and application of appropriate readiness standards and metrics to measure and report on the overall capability, capacity, utilization, and readiness of digital engineering professionals to develop and deliver operational capabilities and employ modern business practices.

"(2) DIGITAL ENGINEERING DEFINED.—For purposes of this section, the term 'digital engineering' means the discipline and set of skills involved in the creation, processing, transmission, integration, and storage of digital data, including data science, machine learning, software engineering, software product management, and artificial intelligence product management.

"(b) IMPLEMENTATION PLAN.—Not later than May 1, 2020, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a plan that describes how the Department of Defense will execute the policy described in subsection (a).

"(c) RESPONSIBILITY.—

"(1) APPOINTMENT OF OFFICER.—Not later than 270 days after the date of enactment of this Act [Dec. 20, 2019], the Secretary of Defense may appoint a civilian official responsible for the development and implementation of the policy and implementation plan set forth in subsections (a) and (b), respectively. The official shall be known as the 'Chief Digital Engineering Recruitment and Management Officer of the Department of Defense'.

"(2) EXPIRATION OF APPOINTMENT.—The appointment of the Officer under paragraph (1) shall expire on September 30, 2024."

ENHANCED PROTECTIONS FOR PROSPECTIVE MEMBERS AND NEW MEMBERS OF THE ARMED FORCES DURING ENTRY-LEVEL PROCESSING AND TRAINING

Pub. L. 113–66, div. A, title XVII, § 1741, Dec. 26, 2013, 127 Stat. 977, as amended by Pub. L. 113–291, div. A, title V, § 531(e), Dec. 19, 2014, 128 Stat. 3364, provided that:

"(a) DEFINING INAPPROPRIATE AND PROHIBITED RELATIONSHIPS, COMMUNICATION, CONDUCT, AND CONTACT BETWEEN CERTAIN MEMBERS.—

"(1) POLICY REQUIRED.—The Secretary of a military department and the Secretary of the Department in which the Coast Guard is operating shall maintain a policy that defines and prescribes, for the persons described in paragraph (2), what constitutes an inappropriate and prohibited relationship, communication, conduct, or contact, including when such an action is consensual, between a member of the Armed Forces described in paragraph (2)(A) and a prospective member or member of the Armed Forces described in paragraph (2)(B).

"(2) COVERED MEMBERS.—The policy required by paragraph (1) shall apply to—

"(A) a member of the Armed Forces who exercises authority or control over, or supervises, a person described in subparagraph (B) during the entry-level processing or training of the person; and

"(B) a prospective member of the Armed Forces or a member of the Armed Forces undergoing entry-level processing or training.

"(3) INCLUSION OF CERTAIN MEMBERS REQUIRED.—The members of the Armed Forces covered by paragraph (2)(A) shall include, at a minimum, military personnel assigned or attached to duty—

"(A) for the purpose of recruiting or assessing persons for enlistment or appointment as a commissioned officer, warrant officer, or enlisted member of the Armed Forces;

"(B) at a Military Entrance Processing Station; or

"(C) at an entry-level training facility or school of an Armed Force.

"(b) EFFECT OF VIOLATIONS.—A member of the Armed Forces who violates the policy required by subsection (a) shall be subject to prosecution under the Uniform Code of Military Justice.

"(c) PROCESSING FOR ADMINISTRATIVE SEPARATION.—

"(1) IN GENERAL.—(A) The Secretary of Defense and the Secretary of the Department in which the Coast Guard is operating shall require the processing for administrative separation of any member of the Armed Forces described in subsection (a)(2)(A) in response to the first substantiated violation by the member of the policy required by subsection (a), when the member is not otherwise punitively discharged or dismissed from the Armed Forces for that violation.

"(B) The Secretary of a military department shall revise regulations applicable to the Armed Forces under the jurisdiction of that Secretary as necessary to ensure compliance with the requirement under subparagraph (A).

"(2) REQUIRED ELEMENTS.—(A) In imposing the requirement under paragraph (1), the Secretaries shall ensure that any separation decision regarding a member of the Armed Forces is based on the full facts of the case and that due process procedures are provided under existing law or regulations or additionally prescribed, as considered necessary by the Secretaries, pursuant to subsection (f).

"(B) The requirement imposed by paragraph (1) shall not be interpreted to limit or alter the author-

ity of the Secretary of a military department and the Secretary of the Department in which the Coast Guard is operating to process members of the Armed Forces for administrative separation—

''(i) for reasons other than a substantiated violation of the policy required by subsection (a); or

''(ii) under other provisions of law or regulation.

''(3) SUBSTANTIATED VIOLATION.—For purposes of paragraph (1), a violation by a member of the Armed Forces described in subsection (a)(2)(A) of the policy required by subsection (a) shall be treated as substantiated if—

''(A) there has been a court-martial conviction for violation of the policy, but the adjudged sentence does not include discharge or dismissal; or

''(B) a nonjudicial punishment authority under section 815 of title 10, United States Code (article 15 of the Uniform Code of Military Justice), has determined that a member has committed an offense in violation of the policy and imposed nonjudicial punishment upon the member.

''(d) REPORT ON NEED FOR UCMJ PUNITIVE ARTICLE.—Not later than 120 days after the date of the enactment of this Act [Dec. 26, 2013], the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report containing the recommendations of the Secretary regarding the need to amend chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), to create an additional article under subchapter X of such chapter to address violations of the policy required by subsection (a).

''(e) DEFINITIONS.—In this section:

''(1) The term 'entry-level processing or training', with respect to a member of the Armed Forces, means the period beginning on the date on which the member became a member of the Armed Forces and ending on the date on which the member physically arrives at that member's first duty assignment following completion of initial entry training (or its equivalent), as defined by the Secretary of the military department concerned or the Secretary of the Department in which the Coast Guard is operating.

''(2) The term 'prospective member of the Armed Forces' means a person who is pursuing or has recently pursued becoming a member of the Armed Forces and who has had a face-to-face meeting with a member of the Armed Forces assigned or attached to duty described in subsection (a)(3)(A) regarding becoming a member of the Armed Forces, regardless of whether the person eventually becomes a member of the Armed Forces.

''(f) REGULATIONS.—Not later than 180 days after the date of the enactment of this Act [Dec. 26, 2013], the Secretary of Defense and the Secretary of the Department in which the Coast Guard is operating shall issue such regulations as may be necessary to carry out this section. The Secretary of Defense shall ensure that, to the extent practicable, the regulations are uniform for each armed force under the jurisdiction of that Secretary.''

CHAPTER 31—ENLISTMENTS

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AMENDMENTS

2021—Pub. L. 116–283, div. A, title IV, §403(b), Jan. 1, 2021, 134 Stat. 3556, added item 517 and struck out former item 517 ''Authorized daily average: members in pay grades E–8 and E–9''.

2004—Pub. L. 108–375, div. A, title V, §551(a)(2), Oct. 28, 2004, 118 Stat. 1911, added item 511.

2003—Pub. L. 108–136, div. A, title X, §1031(a)(8)(B), Nov. 24, 2003, 117 Stat. 1597, substituted ''provision of meals and refreshments'' for ''use of funds'' in item 520c.

2002—Pub. L. 107–314, div. A, title V, §531(a)(2), Dec. 2, 2002, 116 Stat. 2544, added item 510.

2000—Pub. L. 106–398, §1 [[div. A], title X, §1076(g)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–282, struck out item 520a ''Criminal history information for military recruiting purposes''.

1996—Pub. L. 104–201, div. A, title III, §361(b), Sept. 23, 1996, 110 Stat. 2491, added item 520c.

1994—Pub. L. 103–337, div. A, title XVI, §1671(b)(3), Oct. 5, 1994, 108 Stat. 3013, as amended by Pub. L. 104–106, div. A, title XV, §1501(a)(8)(A), Feb. 10, 1996, 110 Stat. 495, struck out items 510 ''Reserve components: qualifications'', 511 ''Reserve components: terms'', and 512 ''Reserve components: transfers''.

1989—Pub. L. 101–189, div. A, title V, §501(a)(2), Nov. 29, 1989, 103 Stat. 1435, added item 513.

1985—Pub. L. 99–145, title XIII, §1303(a)(4)(B), Nov. 8, 1985, 99 Stat. 738, substituted ''enlistment'' for ''enlistments'' in item 520b.

1984—Pub. L. 98–525, title XIV, §1401(a)(2), Oct. 19, 1984, 98 Stat. 2614, added item 520b.

1982—Pub. L. 97–252, title XI, §1114(b)(3), (c)(2), Sept. 8, 1982, 96 Stat. 749, 750, inserted ''; compilation of directory information'' in item 503, and added item 520a.

1980—Pub. L. 96–342, title III, §302(b)(2), Sept. 8, 1980, 94 Stat. 1083, added item 520.

1968—Pub. L. 90–623, §2(2), Oct. 22, 1968, 82 Stat. 1314, struck out ''or national emergency'' after ''extension of enlistments during war'' in item 506.

Pub. L. 90–235, §2(a)(1)(C), Jan. 2, 1968, 81 Stat. 755, redesignated item 501 as 502, and added items 501, 503 to 509, 518 and 519.

1962—Pub. L. 87–649, §2(2), Sept. 7, 1962, 76 Stat. 492, added item 517.

1958—Pub. L. 85–861, §1(9)(B), (C), Sept. 2, 1958, 72 Stat. 1440, struck out item 513 ''Reserve components: promotions'' and added item 516.

§ 501. Definition

In this chapter ''enlistment'' means original enlistment or reenlistment.

(Added Pub. L. 90–235, §2(a)(1)(B), Jan. 2, 1968, 81 Stat. 753.)

PRIOR PROVISIONS

A prior section 501 was renumbered 502 of this title.

§ 502. Enlistment oath: who may administer

(a) ENLISTMENT OATH.—Each person enlisting in an armed force shall take the following oath:

"I, ________________, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and that I will obey the orders of the President of the United States and the orders of the officers appointed over me, according to regulations and the Uniform Code of Military Justice. So help me God."

(b) WHO MAY ADMINISTER.—The oath may be taken before the President, the Vice-President, the Secretary of Defense, any commissioned officer, or any other person designated under regulations prescribed by the Secretary of Defense.

(Aug. 10, 1956, ch. 1041, 70A Stat. 17, § 501; Pub. L. 87–751, § 1, Oct. 5, 1962, 76 Stat. 748; renumbered § 502, Pub. L. 90–235, § 2(a)(1)(A), Jan. 2, 1968, 81 Stat. 753; Pub. L. 101–189, div. A, title VI, § 653(a)(1), Nov. 29, 1989, 103 Stat. 1462; Pub. L. 109–364, div. A, title V, § 595(a), Oct. 17, 2006, 120 Stat. 2235.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
501	50:737.	May 5, 1950, ch. 169, § 8, 64 Stat. 146.

The words "or affirmation" are omitted as covered by the definition of the word "oath" in section 1 of title 1. The words "of any armed force" are inserted in the last sentence, since they are necessarily implied by their use in the source statute.

REFERENCES IN TEXT

The Uniform Code of Military Justice, referred to in the oath, is classified to chapter 47 (§ 801 et seq.) of this title.

AMENDMENTS

2006—Pub. L. 109–364 designated existing provisions as subsec. (a), inserted heading, struck out concluding provisions which read as follows: "This oath may be taken before any commissioned officer of any armed force.", and added subsec. (b).

1989—Pub. L. 101–189 struck out "or affirmation" after "This oath".

1962—Pub. L. 87–751 substituted "support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same" for "bear true faith and allegiance to the United States of America; that I will serve them honestly and faithfully against all their enemies whomsoever" and inserted "So help me God" in the oath, and "or affirmation" in text.

EFFECTIVE DATE OF 1962 AMENDMENT

Pub. L. 87–751, § 3, Oct. 5, 1962, 76 Stat. 748, provided that: "This Act [amending this section and section 304 of Title 32, National Guard] does not affect any oath taken before one year after its enactment [Oct. 5, 1962]."

§ 503. Enlistments: recruiting campaigns; compilation of directory information

(a) RECRUITING CAMPAIGNS.—(1) The Secretary concerned shall conduct intensive recruiting campaigns to obtain enlistments in the Regular Army, Regular Navy, Regular Air Force, Regular Marine Corps, and Regular Coast Guard.

(2) The Secretary of Defense shall act on a continuing basis to enhance the effectiveness of recruitment programs of the Department of Defense (including programs conducted jointly and programs conducted by the separate armed forces) through an aggressive program of advertising and market research targeted at prospective recruits for the armed forces and those who may influence prospective recruits. Subchapter I of chapter 35 of title 44 shall not apply to actions taken as part of that program.

(b) COMPILATION OF DIRECTORY INFORMATION.—(1) The Secretary of Defense may collect and compile directory information pertaining to each student who is 17 years of age or older or in the eleventh grade (or its equivalent) or higher and who is enrolled in a secondary school in the United States or its territories, possessions, or the Commonwealth of Puerto Rico.

(2) The Secretary may make directory information collected and compiled under this subsection available to the armed forces for military recruiting purposes. Such information may not be disclosed for any other purpose.

(3) Directory information pertaining to any person may not be maintained for more than 3 years after the date the information pertaining to such person is first collected and compiled under this subsection.

(4) Directory information collected and compiled under this subsection shall be confidential, and a person who has had access to such information may not disclose such information except for the purposes described in paragraph (2).

(5) The Secretary of Defense shall prescribe regulations to carry out this subsection. Regulations prescribed under this subsection shall be submitted to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives. Regulations prescribed by the Secretaries concerned to carry out this subsection shall be as uniform as practicable.

(6) Nothing in this subsection shall be construed as requiring, or authorizing the Secretary of Defense to require, that any educational institution furnish directory information to the Secretary.

(c) ACCESS TO SECONDARY SCHOOLS.—(1)(A) Each local educational agency receiving assistance under the Elementary and Secondary Education Act of 1965—

(i) shall provide to military recruiters the same access to secondary school students as is provided generally to postsecondary educational institutions or to prospective employers of those students; and

(ii) shall, upon a request made by military recruiters for military recruiting purposes, provide access to secondary school student names, addresses, electronic mail addresses (which shall be the electronic mail addresses provided by the school, if available), and telephone listings, notwithstanding subsection (a)(5) of section 444 of the General Education Provisions Act (20 U.S.C. 1232g).

(B) A local educational agency may not release a student's name, address, electronic mail

address, and telephone listing under subparagraph (A)(ii) without the prior written consent of a parent of the student if the student, or a parent of the student, has submitted a request to the local educational agency that the student's information not be released for a purpose covered by that subparagraph without prior written parental consent. Each local educational agency shall notify parents of the rights provided under the preceding sentence.

(2) If a local educational agency denies a request by the Department of Defense for recruiting access, the Secretary of Defense, in cooperation with the Secretary of the military department concerned, shall designate an officer in a grade not below the grade of colonel or, in the case of the Navy, captain, or a senior executive of that military department to meet with representatives of that local educational agency in person, at the offices of that agency, for the purpose of arranging for recruiting access. The designated officer or senior executive shall seek to have that meeting within 120 days of the date of the denial of the request for recruiting access.

(3) If, after a meeting under paragraph (2) with representatives of a local educational agency that has denied a request for recruiting access or (if the educational agency declines a request for the meeting) after the end of such 120-day period, the Secretary of Defense determines that the agency continues to deny recruiting access, the Secretary shall transmit to the chief executive of the State in which the agency is located a notification of the denial of recruiting access and a request for assistance in obtaining that access. The notification shall be transmitted within 60 days after the date of the determination. The Secretary shall provide to the Secretary of Education a copy of such notification and any other communication between the Secretary and that chief executive with respect to such access.

(4) If a local educational agency continues to deny recruiting access one year after the date of the transmittal of a notification regarding that agency under paragraph (3), the Secretary—

(A) shall determine whether the agency denies recruiting access to at least two of the armed forces (other than the Coast Guard when it is not operating as a service in the Navy); and

(B) upon making an affirmative determination under subparagraph (A), shall transmit a notification of the denial of recruiting access to—

(i) the specified congressional committees;

(ii) the Senators of the State in which the local educational agency is located; and

(iii) the member of the House of Representatives who represents the district in which the local educational agency is located.

(5) The requirements of this subsection do not apply to a private secondary school that maintains a religious objection to service in the armed forces and which objection is verifiable through the corporate or other organizational documents or materials of that school.

(6) In this subsection:

(A) The term ''local educational agency'' means—

(i) a local educational agency, within the meaning of that term in section 8101 of the Elementary and Secondary Education Act of 1965; and

(ii) a private secondary school.

(B) The term ''recruiting access'' means access requested as described in paragraph (1).

(C) The term ''senior executive'' has the meaning given that term in section 3132(a)(3) of title 5.

(D) The term ''State'' includes the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau.

(E) The term ''specified congressional committees'' means the following:

(i) The Committee on Armed Services and the Committee on Health, Education, Labor, and Pensions of the Senate.

(ii) The Committee on Armed Services and the Committee on Education and the Workforce of the House of Representatives.

(F) The term ''member of the House of Representatives'' includes a Delegate or Resident Commissioner to Congress.

(Added Pub. L. 90–235, § 2(a)(1)(B), Jan. 2, 1968, 81 Stat. 754; amended Pub. L. 97–252, title XI, § 1114(b)(1), (2), Sept. 8, 1982, 96 Stat. 749; Pub. L. 104–106, div. A, title XV, § 1502(a)(1), Feb. 10, 1996, 110 Stat. 502; Pub. L. 106–65, div. A, title V, § 571, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 622, 774; Pub. L. 106–398, § 1 [[div. A], title V, §§ 562, 563(a)–(c)], Oct. 30, 2000, 114 Stat. 1654, 1654A–131 to 1654A–133; Pub. L. 107–107, div. A, title V, § 544(a), title X, § 1048(a)(5)(A), Dec. 28, 2001, 115 Stat. 1112, 1222; Pub. L. 108–136, div. A, title V, § 543, Nov. 24, 2003, 117 Stat. 1478; Pub. L. 108–375, div. A, title X, § 1084(d)(5), Oct. 28, 2004, 118 Stat. 2061; Pub. L. 114–95, title IX, § 9215(uuu)(1), Dec. 10, 2015, 129 Stat. 2190; Pub. L. 116–283, div. A, title V, § 521(a), Jan. 1, 2021, 134 Stat. 3597.)

REFERENCES IN TEXT

The Elementary and Secondary Education Act of 1965, referred to in subsec. (c)(1)(A), (6)(A)(i), is Pub. L. 89–10, Apr. 11, 1965, 79 Stat. 27, as amended, which is classified generally to chapter 70 (§ 6301 et seq.) of Title 20, Education. Section 8101 of the Act is classified to section 7801 of Title 20. For complete classification of this Act to the Code, see Short Title note set out under section 6301 of Title 20 and Tables.

AMENDMENTS

2021—Subsec. (c)(1)(A)(ii). Pub. L. 116–283, § 521(a)(1)(A), substituted ''electronic mail addresses (which shall be the electronic mail addresses provided by the school, if available), and telephone listings, notwithstanding subsection (a)(5) of section 444 of the General Education Provisions Act (20 U.S.C. 1232g).'' for ''and telephone listings, notwithstanding section 444(a)(5)(B) of the General Education Provisions Act (20 U.S.C. 1232g(a)(5)(B)).''

Subsec. (c)(1)(B). Pub. L. 116–283, § 521(a)(1)(B), substituted ''electronic mail address, and telephone listing'' for ''and telephone listing''.

Subsec. (d). Pub. L. 116–283, § 521(a)(2), struck out subsec. (d). Text read as follows: ''In this section, the term 'directory information' has the meaning given that term in subsection (a)(5)(A) of section 444 of the General Education Provisions Act (20 U.S.C. 1232g).''

2015—Subsec. (c)(6)(A)(i). Pub. L. 114–95 substituted ''section 8101 of the Elementary and Secondary Education Act of 1965'' for ''section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801)''.

2004—Subsec. (c)(1)(B). Pub. L. 108–375 substituted ''educational'' for ''education'' after ''Each local''.

2003—Subsec. (c)(5). Pub. L. 108–136, § 543(a), substituted ''apply to a private secondary school that'' for ''apply to—

''(A) a local educational agency with respect to access to secondary school students or access to directory information concerning such students for any period during which there is in effect a policy of that agency, established by majority vote of the governing body of the agency, to deny recruiting access to those students or to that directory information, respectively; or

''(B) a private secondary school which''.

Subsec. (c)(6)(A)(i). Pub. L. 108–136, § 543(b), substituted ''9101'' and ''7801'' for ''14101'' and ''8801'', respectively.

2001—Subsec. (c). Pub. L. 107–107, § 544(a), reenacted heading without change and amended text of par. (1) generally. Prior to amendment, par. (1) read as follows: ''Each local educational agency shall (except as provided under paragraph (5)) provide to the Department of Defense, upon a request made for military recruiting purposes, the same access to secondary school students, and to directory information concerning such students, as is provided generally to post-secondary educational institutions or to prospective employers of those students.''

Subsec. (c)(6)(A)(i). Pub. L. 107–107, § 1048(a)(5)(A), substituted ''14101'' for ''14101(18)'' and ''8801'' for ''8801(18)''.

2000—Subsec. (a). Pub. L. 106–398, § 1 [[div. A], title V, §§ 562, 563(c)(1)], inserted heading, designated existing provisions as par. (1), and added par. (2).

Subsec. (b). Pub. L. 106–398, § 1 [[div. A], title V, § 563(c)(2)], inserted heading.

Subsec. (b)(7). Pub. L. 106–398, § 1 [[div. A], title V, § 563(b)(1)], struck out par. (7) which read as follows: ''In this subsection, 'directory information' means, with respect to a student, the student's name, address, telephone listing, date and place of birth, level of education, degrees received, and the most recent previous educational agency or institution attended by the student.''

Subsec. (c). Pub. L. 106–398, § 1 [[div. A], title V, § 563(a)], amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''Each local educational agency is requested to provide to the Department of Defense, upon a request made for military recruiting purposes, the same access to secondary school students, and to directory information concerning such students, as is provided generally to post-secondary educational institutions or to prospective employers of those students.''

Subsec. (d). Pub. L. 106–398, § 1 [[div. A], title V, § 563(b)(2)], added subsec. (d).

1999—Subsec. (b)(5). Pub. L. 106–65, § 1067(1), substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security''.

Subsec. (c). Pub. L. 106–65, § 571, added subsec. (c).

1996—Subsec. (b)(5). Pub. L. 104–106 substituted ''Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives'' for ''Committees on Armed Services of the Senate and House of Representatives''.

1982—Pub. L. 97–252, § 1114(b)(2), inserted ''; compilation of directory information'' in section catchline.

Subsec. (a). Pub. L. 97–252, § 1114(b)(1)(A), designated existing provisions as subsec. (a).

Subsec. (b). Pub. L. 97–252, § 1114(b)(1)(B), added subsec. (b).

CHANGE OF NAME

Committee on Education and the Workforce of House of Representatives changed to Committee on Education and Labor of House of Representatives by House Resolution No. 6, One Hundred Sixteenth Congress, Jan. 9, 2019.

EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114–95 effective Dec. 10, 2015, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 114–95, set out as a note under section 6301 of Title 20, Education.

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–107, div. A, title V, § 544(b), Dec. 28, 2001, 115 Stat. 1113, provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on July 1, 2002, immediately after the amendment to section 503(c) of title 10, United States Code, made, effective that date, by section 563(a) of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted into law by Public Law 106–398; 114 Stat. 1654A–131).''

Pub. L. 107–107, div. A, title X, § 1048(a)(5)(B), Dec. 28, 2001, 115 Stat. 1222, provided that: ''The amendment made by subparagraph (A) [amending this section] shall take effect on July 1, 2002, immediately after the amendment to such section [this section] effective that date by section 563(a) of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted into law by Public Law 106–398; 114 Stat. 1654A–131).''

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–398, § 1 [[div. A], title V, § 563(d)], Oct. 30, 2000, 114 Stat. 1654, 1654A–133, provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on July 1, 2002.''

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

ARMED SERVICES VOCATIONAL APTITUDE BATTERY TEST SPECIAL PURPOSE ADJUNCT TO ADDRESS COMPUTATIONAL THINKING

Pub. L. 116–283, div. A, title V, § 594, Jan. 1, 2021, 134 Stat. 3666, provided that: ''Not later than one year after the date of the enactment of this Act [Jan. 1, 2021], the Secretary of Defense shall establish a special purpose test adjunct to the Armed Services Vocational Aptitude Battery test to address computational thinking skills relevant to military applications, including problem decomposition, abstraction, pattern recognition, analytical ability, the identification of variables involved in data representation, and the ability to create algorithms and solution expressions.''

PROGRAMS ON DIRECT COMMISSIONS TO CYBER POSITIONS

Pub. L. 114–328, div. A, title V, § 509, Dec. 23, 2016, 130 Stat. 2109, as amended by Pub. L. 116–283, div. A, title V, § 509A, Jan. 1, 2021, 134 Stat. 3586, provided that:

''(a) PROGRAMS AUTHORIZED.—Each Secretary of a military department may carry out a program to improve the ability of an Armed Force under the jurisdiction of the Secretary to recruit cyber professionals.

''(b) ELEMENTS.—Under a program established under this section, an individual who meets educational, physical, and other requirements determined appropriate by the Secretary of the military department concerned may receive an original appointment as a commissioned officer in a cyber specialty.

''(c) CONSULTATION.—In developing a program for the Army or the Air Force under this section, the Secretary of the Army and the Secretary of the Air Force may consult with the Secretary of the Navy with respect to an existing, similar program carried out by the Secretary of the Navy.''

TEMPORARY AUTHORITY TO DEVELOP AND PROVIDE ADDITIONAL RECRUITMENT INCENTIVES

Pub. L. 114–92, div. A, title V, § 522, Nov. 25, 2015, 129 Stat. 811, provided that:

''(a) ADDITIONAL RECRUITMENT INCENTIVES AUTHORIZED.—The Secretary of a military department may develop and provide incentives, not otherwise authorized by law, to encourage individuals to accept an appointment as a commissioned officer, to accept an appointment as a warrant officer, or to enlist in an Armed Force under the jurisdiction of the Secretary.

''(b) RELATION TO OTHER PERSONNEL AUTHORITIES.—A recruitment incentive developed under subsection (a) may be provided—

''(1) without regard to the lack of specific authority for the recruitment incentive under title 10 or 37, United States Code; and

''(2) notwithstanding any provision of such titles, or any rule or regulation prescribed under such provision, relating to methods of providing incentives to individuals to accept appointments or enlistments in the Armed Forces, including the provision of group or individual bonuses, pay, or other incentives.

''(c) NOTICE AND WAIT REQUIREMENT.—The Secretary of a military department may not provide a recruitment incentive developed under subsection (a) until—

''(1) the Secretary submits to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a plan regarding provision of the recruitment incentive, which includes—

''(A) a description of the incentive, including the purpose of the incentive and the potential recruits to be addressed by the incentive;

''(B) a description of the provisions of titles 10 and 37, United States Code, from which the incentive would require a waiver and the rationale to support the waiver;

''(C) a statement of the anticipated outcomes as a result of providing the incentive; and

''(D) a description of the method to be used to evaluate the effectiveness of the incentive; and

''(2) the expiration of the 30-day period beginning on the date on which the plan was received by Congress.

''(d) LIMITATION ON NUMBER OF INCENTIVES.—The Secretary of a military department may not provide more than three recruitment incentives under the authority of this section.

''(e) LIMITATION ON NUMBER OF INDIVIDUALS RECEIVING INCENTIVES.—The number of individuals who receive one or more of the recruitment incentives provided under subsection (a) by the Secretary of a military department during a fiscal year for an Armed Force under the jurisdiction of the Secretary may not exceed 20 percent of the accession objective of that Armed Force for that fiscal year.

''(f) DURATION OF DEVELOPED INCENTIVE.—A recruitment incentive developed under subsection (a) may be provided for not longer than a three-year period beginning on the date on which the incentive is first provided, except that the Secretary of the military department concerned may extend the period if the Secretary determines that additional time is needed to fully evaluate the effectiveness of the incentive.

''(g) REPORTING REQUIREMENTS.—If the Secretary of a military department provides an recruitment incentive under subsection (a) for a fiscal year, the Secretary shall submit to the congressional defense committees a report, not later than 60 days after the end of the fiscal year, containing—

''(1) a description of each incentive provided under subsection (a) during that fiscal year; and

''(2) an assessment of the impact of the incentives on the recruitment of individuals for an Armed Force under the jurisdiction of the Secretary.

''(h) TERMINATION OF AUTHORITY TO PROVIDE INCENTIVES.—Notwithstanding subsection (f); the authority to provide recruitment incentives under this section expires on December 31, 2020.''

[For termination, effective Dec. 30, 2021, of reporting requirements in section 522(g) of Pub. L. 114–92, set out above, see section 1702(a), (b), of Pub. L. 116–92, set out as a Termination of Reporting Requirements note under section 111 of this title.]

POLICY ON MILITARY RECRUITMENT AND ENLISTMENT OF GRADUATES OF SECONDARY SCHOOLS

Pub. L. 113–66, div. A, title V, § 573, Dec. 26, 2013, 127 Stat. 772, as amended by Pub. L. 114–95, title IX, § 9215(eee), Dec. 10, 2015, 129 Stat. 2186, provided that:

''(a) CONDITIONS ON USE OF TEST, ASSESSMENT, OR SCREENING TOOLS.—In the case of any test, assessment, or screening tool utilized under the policy on recruitment and enlistment required by subsection (b) of section 532 of the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112–81; 125 Stat. 1403; 10 U.S.C. 503 note) for the purpose of identifying persons for recruitment and enlistment in the Armed Forces, the Secretary of Defense shall—

''(1) implement a means for ensuring that graduates of a secondary school (as defined in section 8101 of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 7801]), including all persons described in subsection (a)(2) of section 532 of the National Defense Authorization Act for Fiscal Year 2012, are required to meet the same standard on the test, assessment, or screening tool; and

''(2) use uniform testing requirements and grading standards.

''(b) RULE OF CONSTRUCTION.—Nothing in section 532(b) of the National Defense Authorization Act for Fiscal Year 2012 or this section shall be construed to permit the Secretary of Defense or the Secretary of a military department to create or use a different grading standard on any test, assessment, or screening tool utilized for the purpose of identifying graduates of a secondary school (as defined in section 8101 of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 7801]), including all persons described in subsection (a)(2) of section 532 of the National Defense Authorization Act for Fiscal Year 2012, for recruitment and enlistment in the Armed Forces.''

Pub. L. 112–81, div. A, title V, § 532, Dec. 31, 2011, 125 Stat. 1403, as amended by Pub. L. 114–95, title IX, § 9215(ddd), Dec. 10, 2015, 129 Stat. 2185, provided that:

''(a) EQUAL TREATMENT FOR SECONDARY SCHOOL GRADUATES.—

''(1) EQUAL TREATMENT.—For the purposes of recruitment and enlistment in the Armed Forces, the Secretary of a military department shall treat a graduate described in paragraph (2) in the same manner as a graduate of a secondary school (as defined in section 8101 of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 7801]).

''(2) COVERED GRADUATES.—Paragraph (1) applies with respect to [a] person who—

''(A) receives a diploma from a secondary school that is legally operating; or

''(B) otherwise completes a program of secondary education in compliance with the education laws of the State in which the person resides.

''(b) POLICY ON RECRUITMENT AND ENLISTMENT.—Not later than 180 days after the date of the enactment of this Act [Dec. 31, 2011], the Secretary of Defense shall prescribe a policy on recruitment and enlistment that incorporates the following:

''(1) Means for identifying persons described in subsection (a)(2) who are qualified for recruitment and enlistment in the Armed Forces, which may include the use of a non-cognitive aptitude test, adaptive personality assessment, or other operational attrition screening tool to predict performance, behaviors, and

attitudes of potential recruits that influence attrition and the ability to adapt to a regimented life in the Armed Forces.

''(2) Means for assessing how qualified persons fulfill their enlistment obligation.

''(3) Means for maintaining data, by each diploma source, which can be used to analyze attrition rates among qualified persons.

''(c) RECRUITMENT PLAN.—As part of the policy required by subsection (b), the Secretary of each of the military departments shall develop a recruitment plan that includes a marketing strategy for targeting various segments of potential recruits with all types of secondary education credentials.

''(d) COMMUNICATION PLAN.—The Secretary of each of the military departments shall develop a communication plan to ensure that the policy and recruitment plan are understood by military recruiters.''

RECRUITMENT AND ENLISTMENT OF HOME-SCHOOLED STUDENTS IN THE ARMED FORCES

Pub. L. 109–163, div. A, title V, §591, Jan. 6, 2006, 119 Stat. 3280, provided that:

''(a) POLICY ON RECRUITMENT AND ENLISTMENT.—

''(1) POLICY REQUIRED.—The Secretary of Defense shall prescribe a policy on the recruitment and enlistment of home-schooled students in the Armed Forces.

''(2) UNIFORMITY ACROSS THE ARMED FORCES.—The Secretary shall ensure that the policy prescribed under paragraph (1) applies, to the extent practicable, uniformly across the Armed Forces.

''(b) ELEMENTS.—The policy under subsection (a) shall include the following:

''(1) An identification of a graduate of home schooling for purposes of recruitment and enlistment in the Armed Forces that is in accordance with the requirements described in subsection (c).

''(2) A communication plan to ensure that the policy described in subsection (c) is understood by recruiting officials of all the Armed Forces, to include field recruiters at the lowest level of command.

''(3) An exemption of graduates of home schooling from the requirement for a secondary school diploma or an equivalent (GED) as a precondition for enlistment in the Armed Forces.

''(c) HOME SCHOOL GRADUATES.—In prescribing the policy under subsection (a), the Secretary of Defense shall prescribe a single set of criteria to be used by the Armed Forces in determining whether an individual is a graduate of home schooling. The Secretary concerned shall ensure compliance with education credential coding requirements.

''(d) SECRETARY CONCERNED DEFINED.—In this section, the term 'Secretary concerned' has the meaning given such term in section 101(a)(9) of title 10, United States Code.''

TEMPORARY ARMY AUTHORITY TO PROVIDE ADDITIONAL RECRUITMENT INCENTIVES

Pub. L. 109–163, div. A, title VI, §681, Jan. 6, 2006, 119 Stat. 3320, as amended by Pub. L. 111–84, div. A, title VI, §621, Oct. 28, 2009, 123 Stat. 2358, provided that:

''(a) AUTHORITY TO DEVELOP AND PROVIDE RECRUITMENT INCENTIVES.—The Secretary of the Army may develop and provide incentives not otherwise authorized by law to encourage individuals to accept commissions as officers or to enlist in the Army.

''(b) RELATION TO OTHER PERSONNEL AUTHORITIES.—A recruitment incentive developed under subsection (a) may be provided—

''(1) without regard to the lack of specific authority for the incentive under title 10 or 37, United States Code; and

''(2) notwithstanding any provision of such titles, or any rule or regulation prescribed under such provision, relating to methods of—

''(A) determining requirements for, and the compensation of, members of the Army who are assigned duty as military recruiters; or

''(B) providing incentives to individuals to accept commissions or enlist in the Army, including the provision of group or individual bonuses, pay, or other incentives.

''(c) WAIVER OF OTHERWISE APPLICABLE LAWS.—A provision of title 10 or 37, United States Code, may not be waived with respect to, or otherwise determined to be inapplicable to, the provision of a recruitment incentive developed under subsection (a) without the approval of the Secretary of Defense.

''(d) NOTICE AND WAIT REQUIREMENT.—A recruitment incentive developed under subsection (a) may not be provided to individuals until—

''(1) the Secretary of the Army submits to Congress, the appropriate elements of the Department of Defense, and the Comptroller General a plan that includes—

''(A) a description of the incentive, including the purpose of the incentive and the potential recruits to be addressed by the incentive;

''(B) a description of the provisions of titles 10 and 37, United States Code, from which the incentive would require a waiver and the rationale to support the waiver;

''(C) a statement of the anticipated outcomes as a result of providing the incentive; and

''(D) the method to be used to evaluate the effectiveness of the incentive; and

''(2) a 45-day period beginning on the date on which the plan was received by Congress expires.

''(e) LIMITATION ON NUMBER OF INCENTIVES.—Not more than four recruitment incentives may be provided at the same time under the authority of this section.

''(f) LIMITATION ON NUMBER OF INDIVIDUALS RECEIVING INCENTIVES.—The number of individuals who receive one or more of the recruitment incentives provided under subsection (a) during a fiscal year may not exceed the number of individuals equal to 20 percent of the accession mission of the Army for that fiscal year.

''(g) DURATION OF DEVELOPED INCENTIVE.—A recruitment incentive developed under subsection (a) may be provided for not longer than a three-year period beginning on the date on which the incentive is first provided, except that the Secretary of the Army may extend the period if the Secretary determines that additional time is needed to fully evaluate the effectiveness of the incentive.

''(h) REPORTING REQUIREMENTS.—

''(1) SECRETARY OF THE ARMY REPORT.—The Secretary of the Army shall submit to Congress an annual report on the recruitment incentives provided under subsection (a) during the preceding year, including—

''(A) a description of the incentives provided under subsection (a) during that fiscal year; and

''(B) an assessment of the impact of the incentives on the recruitment of individuals as officers or enlisted members.

''(2) COMPTROLLER GENERAL REPORT.—As soon as practicable after receipt of each plan under subsection (d), the Comptroller General shall submit to Congress a report evaluating the expected outcomes of the recruitment incentive covered by the plan in terms of cost effectiveness and mission achievement.

''(i) DURATION OF AUTHORITY.—

''(1) IN GENERAL.—The Secretary may not develop an incentive under this section, or first provide an incentive developed under this section to an individual, after December 31, 2012.

''(2) CONTINUATION OF INCENTIVES.—Nothing in paragraph (1) shall be construed to prohibit or limit the continuing provision to an individual after the date specified in that paragraph of an incentive first pro-

vided the individual under this section before that date.''

ENHANCED SCREENING METHODS AND PROCESS IMPROVEMENTS FOR RECRUITMENT OF HOME SCHOOLED AND NATIONAL GUARD CHALLENGE PROGRAM GED RECIPIENTS

Pub. L. 108–375, div. A, title V, § 593, Oct. 28, 2004, 118 Stat. 1934, as amended by Pub. L. 109–364, div. A, title X, § 1071(g)(4), Oct. 17, 2006, 120 Stat. 2402, provided that:

''(a) ENHANCED SCREENING METHODS AND PROCESS IMPROVEMENTS.—(1) The Secretary of the Army shall carry out an initiative—

''(A) to develop screening methods and process improvements for recruiting specified GED recipients so as to achieve attrition patterns, among the GED recipients so recruited, that match attrition patterns for Army recruits who are high school diploma graduates; and

''(B) subject to subsection (b), to implement such screening methods and process improvements on a test basis.

''(2) For purposes of this section, the term 'specified GED recipients' means persons who receive a General Educational Development (GED) certificate as a result of home schooling or the completion of a program under the National Guard Challenge program.

''(b) SECRETARY OF DEFENSE REVIEW.—Before the screening methods and process improvements developed under subsection (a)(1) are put into effect under subsection (a)(2), the Secretary of Defense shall review the proposed screening methods and process improvements. Based on such review, the Secretary of Defense either shall approve the use of such screening methods and process improvements for testing (with such modifications as the Secretary may direct) or shall disapprove the use of such methods and process improvements on a test basis.

''(c) SECRETARY OF DEFENSE DECISION.—If the Secretary of Defense determines under subsection (b) that the screening methods and process improvements developed under subsection (a)(1) should be implemented on a test basis, then upon completion of the test period, the Secretary of Defense shall, after reviewing the results of the test program, determine whether the new screening methods and process improvements developed by the Army should be extended throughout the Department for recruit candidates identified by the new procedures to be considered tier 1 recruits.

''(d) REPORTS.—(1) If the Secretary of Defense determines under subsection (b) that the screening methods and process improvements developed under subsection (a)(1) should not be implemented on a test basis, the Secretary of Defense shall, not later than 90 days thereafter, notify the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives of such determination, together with the reasons of the Secretary for such determination.

''(2) If the Secretary of Defense determines under subsection (b) that the screening methods and process improvements developed under subsection (a)(1) should be implemented on a test basis, the Secretary of the Army shall submit to the committees specified in paragraph (1) a report on the results of the testing. The report shall be submitted not later than March 31, 2009, except that if the Secretary of Defense directs an earlier termination of the testing initiative, the Secretary of the Army shall submit the report under this paragraph not later than 180 days after such termination. Such report shall include the determination of the Secretary of Defense under subsection (c). If that determination is that the methods and processes tested should not be extended to the other services, the report shall include the Secretary's rationale for not recommending such extension.''

DEPARTMENT OF DEFENSE JOINT ADVERTISING, MARKET RESEARCH, AND STUDIES PROGRAM

Pub. L. 108–136, div. A, title V, § 548, Nov. 24, 2003, 117 Stat. 1481, provided that:

''(a) PROGRAM AUTHORIZED.—The Secretary of Defense may carry out a joint advertising, market research, and studies program to complement the recruiting advertising programs of the military departments and improve the ability of the military departments to attract and recruit qualified individuals to serve in the Armed Forces.

''(b) FUNDING.—Of the amount authorized to be appropriated by section 301(5) [117 Stat. 1426] for operation and maintenance for Defense-wide activities, $7,500,000 may be made available to carry out the joint advertising, market research, and studies program.''

NOTIFICATION TO LOCAL EDUCATIONAL AGENCIES

Pub. L. 107–107, div. A, title V, § 544(c), Dec. 28, 2001, 115 Stat. 1113, directed the Secretary of Education to provide to local educational agencies notice of the provisions of subsec. (c) of this section, as amended by Pub. L. 107–107, not later than 120 days after Dec. 28, 2001.

ARMY RECRUITING PILOT PROGRAMS

Pub. L. 106–398, § 1 [[div. A], title V, § 561], Oct. 30, 2000, 114 Stat. 1654, 1654A–129, as amended by Pub. L. 107–107, div. A, title V, § 543, Dec. 28, 2001, 115 Stat. 1112, provided that:

''(a) REQUIREMENT FOR PROGRAMS.—The Secretary of the Army shall carry out pilot programs to test various recruiting approaches under this section for the following purposes:

''(1) To assess the effectiveness of the recruiting approaches for creating enhanced opportunities for recruiters to make direct, personal contact with potential recruits.

''(2) To improve the overall effectiveness and efficiency of Army recruiting activities.

''(b) OUTREACH THROUGH MOTOR SPORTS.—(1) One of the pilot programs shall be a pilot program of public outreach that associates the Army with motor sports competitions to achieve the objectives set forth in paragraph (2).

''(2) The events and activities undertaken under the pilot program shall be designed to provide opportunities for Army recruiters to make direct, personal contact with high school students to achieve the following objectives:

''(A) To increase enlistments by students graduating from high school.

''(B) To reduce attrition in the Delayed Entry Program of the Army by sustaining the personal commitment of students who have elected delayed entry into the Army under the program.

''(3) Under the pilot program, the Secretary of the Army shall provide for the following:

''(A) For Army recruiters or other Army personnel—

''(i) to organize Army sponsored career day events in association with national motor sports competitions; and

''(ii) to arrange for or encourage attendance at the competitions by high school students, teachers, guidance counselors, and administrators of high schools located near the competitions.

''(B) For Army recruiters and other soldiers to attend national motor sports competitions—

''(i) to display exhibits depicting the contemporary Army and career opportunities in the Army; and

''(ii) to discuss those opportunities with potential recruits.

''(C) For the Army to sponsor a motor sports racing team as part of an integrated program of recruitment and publicity for the Army.

''(D) For the Army to sponsor motor sports competitions for high school students at which recruiters meet with potential recruits.

''(E) For Army recruiters or other Army personnel to compile in an Internet accessible database the names, addresses, telephone numbers, and electronic

mail addresses of persons who are identified as potential recruits through activities under the pilot program.

''(F) Any other activities associated with motor sports competition that the Secretary determines appropriate for Army recruitment purposes.

''(c) OUTREACH AT VOCATIONAL SCHOOLS AND COMMUNITY COLLEGES.—(1) One of the pilot programs shall be a pilot program under which Army recruiters are assigned, as their primary responsibility, at postsecondary vocational institutions and community colleges for the purpose of recruiting students graduating from those institutions and colleges, recent graduates of those institutions and colleges, and students withdrawing from enrollments in those institutions and colleges.

''(2) The Secretary of the Army shall select the institutions and colleges to be invited to participate in the pilot program.

''(3) The conduct of the pilot program at an institution or college shall be subject to an agreement which the Secretary shall enter into with the governing body or authorized official of the institution or college, as the case may be.

''(4) Under the pilot program, the Secretary shall provide for the following:

''(A) For Army recruiters to be placed in postsecondary vocational institutions and community colleges to serve as a resource for guidance counselors and to recruit for the Army.

''(B) For Army recruiters to recruit from among students and graduates described in paragraph (1).

''(C) For the use of telemarketing, direct mail, interactive voice response systems, and Internet website capabilities to assist the recruiters in the postsecondary vocational institutions and community colleges.

''(D) For any other activities that the Secretary determines appropriate for recruitment activities in postsecondary vocational institutions and community colleges.

''(5) In this subsection, the term 'postsecondary vocational institution' has the meaning given the term in section 102(c) of the Higher Education Act of 1965 (20 U.S.C. 1002(c)).

''(d) CONTRACT RECRUITING INITIATIVES.—(1) One of the pilot programs shall be a program that expands in accordance with this subsection the scope of the Army's contract recruiting initiatives that are ongoing as of the date of the enactment of this Act [Oct. 30, 2000]. Under the pilot program, the Secretary of the Army shall select at least 10 recruiting companies to apply the initiatives in efforts to recruit personnel for the Army.

''(2) Under the pilot program, the Secretary shall provide for the following:

''(A) For replacement of the Regular Army and Army Reserve recruiters by contract recruiters in the 10 recruiting companies selected under paragraph (1).

''(B) For operation of the 10 companies under the same rules as the other Army recruiting companies.

''(C) For use of the offices, facilities, and equipment of the 10 companies by the contract recruiters.

''(D) For reversion to performance of the recruiting activities by Regular Army and Army Reserve soldiers in the 10 companies upon termination of the pilot program.

''(E) For any other uses of contractor personnel for Army recruiting activities that the Secretary determines appropriate.

''(e) DURATION OF PILOT PROGRAMS.—The pilot programs required by this section shall be carried out during the period beginning on October 1, 2000, and, subject to subsection (f), ending on September 30, 2007.

''(f) AUTHORITY TO EXPAND OR EXTEND PILOT PROGRAMS.—The Secretary may expand the scope of any of the pilot programs (under subsection (b)(3)(F), (c)(4)(D), (d)(2)(E), or otherwise) or extend the period for any of the pilot programs. Before doing so in the case of a pilot program, the Secretary of the Army shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a written notification of the expansion of the pilot program (together with the scope of the expansion) or the continuation of the pilot program (together with the period of the extension), as the case may be.

''(g) REPORTS.—Not later than February 1, 2008, the Secretary of the Army shall submit to the Committees on Armed Services of the Senate and the House of Representatives a separate report on each of the pilot programs carried out under this section. The report on a pilot program shall include the following:

''(1) The Secretary's assessment of the value of the actions taken in the administration of the pilot program for increasing the effectiveness and efficiency of Army recruiting.

''(2) Any recommendations for legislation or other action that the Secretary considers appropriate to increase the effectiveness and efficiency of Army recruiting.''

PILOT PROGRAM TO ENHANCE MILITARY RECRUITING BY IMPROVING MILITARY AWARENESS OF SCHOOL COUNSELORS AND EDUCATORS

Pub. L. 106–398, § 1 [[div. A], title V, § 564], Oct. 30, 2000, 114 Stat. 1654, 1654A–133, as amended by Pub. L. 109–364, div. A, title X, § 1046(d), Oct. 17, 2006, 120 Stat. 2394, directed the Secretary of Defense to conduct a three-year pilot program in a qualifying interactive Internet site beginning not later than 180 days after Oct. 30, 2000, to determine if cooperation with military recruiters by local educational agencies and by institutions of higher education could be enhanced by improving the understanding of school counselors and educators about military recruiting and military career opportunities.

MEASURES TO IMPROVE RECRUIT QUALITY AND REDUCE RECRUIT ATTRITION

Pub. L. 105–85, div. A, title V, subtitle D, Nov. 18, 1997, 111 Stat. 1738, provided that:

''SEC. 531. REFORM OF MILITARY RECRUITING SYSTEMS.

''(a) IN GENERAL.—The Secretary of Defense shall carry out reforms in the recruiting systems of the Army, Navy, Air Force, and Marine Corps in order to improve the quality of new recruits and to reduce attrition among recruits.

''(b) SPECIFIC REFORMS.—As part of the reforms in military recruiting systems to be undertaken under subsection (a), the Secretary shall take the following steps:

''(1) Improve the system of pre-enlistment waivers and separation codes used for recruits by (A) revising and updating those waivers and codes to allow more accurate and useful data collection about those separations, and (B) prescribing regulations to ensure that those waivers and codes are interpreted in a uniform manner by the military services.

''(2) Develop a reliable database for (A) analyzing (at both the Department of Defense and service-level) data on reasons for attrition of new recruits, and (B) undertaking Department of Defense or service-specific measures (or both) to control and manage such attrition.

''(3) Require that the Secretary of each military department (A) adopt or strengthen incentives for recruiters to thoroughly prescreen potential candidates for recruitment, and (B) link incentives for recruiters, in part, to the ability of a recruiter to screen out unqualified candidates before enlistment.

''(4) Require that the Secretary of each military department include as a measurement of recruiter performance the percentage of persons enlisted by a recruiter who complete initial combat training or basic training.

''(5) Assess trends in the number and use of waivers over the 1991–1997 period that were issued to permit applicants to enlist with medical or other conditions that would otherwise be disqualifying.

"(6) Require the Secretary of each military department to implement policies and procedures (A) to ensure the prompt separation of recruits who are unable to successfully complete basic training, and (B) to remove those recruits from the training environment while separation proceedings are pending.

"(c) REPORT.—Not later than March 31, 1998, the Secretary shall submit to Congress a report of the trends assessed under subsection (b)(5). The information on those trends provided in the report shall be shown by armed force and by category of waiver. The report shall include recommendations of the Secretary for changing, revising, or limiting the use of waivers referred to in that subsection.

"SEC. 532. IMPROVEMENTS IN MEDICAL PRESCREENING OF APPLICANTS FOR MILITARY SERVICE.

"(a) IN GENERAL.—The Secretary of Defense shall improve the medical prescreening of applicants for entrance into the Army, Navy, Air Force, or Marine Corps.

"(b) SPECIFIC STEPS.—As part of those improvements, the Secretary shall take the following steps:

"(1) Require that each applicant for service in the Army, Navy, Air Force, or Marine Corps (A) provide to the Secretary the name of the applicant's medical insurer and the names of past medical providers, and (B) sign a release allowing the Secretary to request and obtain medical records of the applicant.

"(2) Require that the forms and procedures for medical prescreening of applicants that are used by recruiters and by Military Entrance Processing Commands be revised so as to ensure that medical questions are specific, unambiguous, and tied directly to the types of medical separations most common for recruits during basic training and follow-on training.

"(3) Add medical screening tests to the examinations of recruits carried out by Military Entrance Processing Stations, provide more thorough medical examinations to selected groups of applicants, or both, to the extent that the Secretary determines that to do so could be cost effective in reducing attrition at basic training.

"(4) Provide for an annual quality control assessment of the effectiveness of the Military Entrance Processing Commands in identifying medical conditions in recruits that existed before enlistment in the Armed Forces, each such assessment to be performed by an agency or contractor other than the Military Entrance Processing Commands.

"SEC. 533. IMPROVEMENTS IN PHYSICAL FITNESS OF RECRUITS.

"(a) IN GENERAL.—The Secretary of Defense shall take steps to improve the physical fitness of recruits before they enter basic training.

"(b) SPECIFIC STEPS.—As part of those improvements, the Secretary shall take the following steps:

"(1) Direct the Secretary of each military department to implement programs under which new recruits who are in the Delayed Entry Program are encouraged to participate in physical fitness activities before reporting to basic training.

"(2) Develop a range of incentives for new recruits to participate in physical fitness programs, as well as for those recruits who improve their level of fitness while in the Delayed Entry Program, which may include access to Department of Defense military fitness facilities, and access to military medical facilities in the case of a recruit who is injured while participating in physical activities with recruiters or other military personnel.

"(3) Evaluate whether partnerships between recruiters and reserve components, or other innovative arrangements, could provide a pool of qualified personnel to assist in the conduct of physical training programs for new recruits in the Delayed Entry Program."

DENIAL OF FUNDS FOR PREVENTING ROTC ACCESS TO CAMPUS OR FEDERAL MILITARY RECRUITING ON CAMPUS; EXCEPTIONS

Pub. L. 104–208, div. A, title I, § 101(e) [title V, § 514], Sept. 30, 1996, 110 Stat. 3009–233, 3009–270, which provided that none of the funds made available in any Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act for any fiscal year could be provided by contract or by grant to a covered educational entity if the Secretary of Defense determined that the covered educational entity had a policy or practice that prohibited or prevented the maintaining, establishing, or operation of a unit of the Senior Reserve Officer Training Corps at the covered educational entity, or a student at the covered educational entity from enrolling in a unit of the Senior Reserve Officer Training Corps at another institution of higher education, or prohibited or prevented entry to campuses, or access to students on campuses, for purposes of Federal military recruiting or access by military recruiters for purposes of Federal military recruiting to student names, addresses, and telephone listings and, if known, student ages, levels of education, and majors, was repealed and restated in section 983 of this title by Pub. L. 106–65, div. A, title V, § 549(a)(1), (b)(2), Oct. 5, 1999, 113 Stat. 609, 611.

MILITARY RECRUITING ON CAMPUS

Pub. L. 103–337, div. A, title V, § 558, Oct. 5, 1994, 108 Stat. 2776, as amended by Pub. L. 104–324, title II, § 206(a), Oct. 19, 1996, 110 Stat. 3908, which provided that no funds available to the Department of Defense or the Department of Transportation could be provided by grant or contract to any institution of higher education that had a policy of denying or preventing the Secretary of Defense or the Secretary of Transportation from obtaining for military recruiting purposes entry to campuses or access to students on campuses or access to directory information pertaining to students, was repealed and restated in section 983 of this title by Pub. L. 106–65, div. A, title V, § 549(a)(1), (b)(1), Oct. 5, 1999, 113 Stat. 609, 611.

MILITARY RECRUITING INFORMATION

Pub. L. 97–252, title XI, § 1114(a), Sept. 8, 1982, 96 Stat. 748, provided that: "The Congress finds that in order for Congress to carry out effectively its constitutional authority to raise and support armies, it is essential—

"(1) that the Secretary of Defense obtain and compile directory information pertaining to students enrolled in secondary schools throughout the United States; and

"(2) that such directory information be used only for military recruiting purposes and be retained in the case of each person with respect to whom such information is obtained and compiled for a limited period of time."

ACCESS OF ARMED FORCES RECRUITING PERSONNEL TO SECONDARY EDUCATIONAL INSTITUTIONS; RELEASE OF DATA

Pub. L. 96–342, title III, § 302(d), Sept. 8, 1980, 94 Stat. 1083, provided that: "It is the sense of the Congress—

"(1) that secondary educational institutions in the United States, the Commonwealth of Puerto Rico, and the territories of the United States should cooperate with the Armed Forces by allowing recruiting personnel access to such institutions; and

"(2) that it is appropriate for such institutions to release to the Armed Forces information regarding students at such institutions (including such data as names, addresses, and education levels) which is relevant to recruiting individuals for service in the Armed Forces."

§ 504. Persons not qualified

(a) INSANITY, DESERTION, FELONS, ETC.—No person who is insane, intoxicated, or a deserter from an armed force, or who has been convicted of a felony, may be enlisted in any armed force. However, the Secretary concerned may authorize exceptions, in meritorious cases, for the enlistment of deserters and persons convicted of felonies.

(b) CITIZENSHIP OR RESIDENCY.—(1) A person may be enlisted in any armed force only if the person is one of the following:

(A) A national of the United States, as defined in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)).

(B) An alien who is lawfully admitted for permanent residence, as defined in section 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(20)).

(C) A person described in section 341 of one of the following compacts:

(i) The Compact of Free Association between the Federated States of Micronesia and the United States (section 201(a) of Public Law 108–188 (117 Stat. 2784; 48 U.S.C. 1921 note)).

(ii) The Compact of Free Association between the Republic of the Marshall Islands and the United States (section 201(b) of Public Law 108–188 (117 Stat. 2823; 48 U.S.C. 1921 note)).

(iii) The Compact of Free Association between Palau and the United States (section 201 of Public Law 99–658 (100 Stat. 3678; 48 U.S.C. 1931 note)).

(2) Notwithstanding paragraph (1), and subject to paragraph (3), the Secretary concerned may authorize the enlistment of a person not described in paragraph (1) if the Secretary determines that such person possesses a critical skill or expertise—

(A) that is vital to the national interest; and

(B) that the person will use in the primary daily duties of that person as a member of the armed forces.

(3)(A) No person who enlists under paragraph (2) may report to initial training until after the Secretary concerned has completed all required background investigations and security and suitability screening as determined by the Secretary of Defense regarding that person.

(B) A Secretary concerned may not authorize more than 1,000 enlistments under paragraph (2) per military department in a calendar year until after—

(i) the Secretary of Defense submits to Congress written notice of the intent of that Secretary concerned to authorize more than 1,000 such enlistments in a calendar year; and

(ii) a period of 30 days has elapsed after the date on which Congress receives the notice.

(Added Pub. L. 90–235, § 2(a)(1)(B), Jan. 2, 1968, 81 Stat. 754; amended Pub. L. 109–163, div. A, title V, § 542(a), Jan. 6, 2006, 119 Stat. 3253; Pub. L. 115–232, div. A, title V, § 521(a), Aug. 13, 2018, 132 Stat. 1755.)

AMENDMENTS

2018—Subsec. (b)(2). Pub. L. 115–232, § 521(a)(1), inserted "and subject to paragraph (3)," after "Notwithstanding paragraph (1)," substituted "person possesses a critical skill or expertise—" for "enlistment is vital to the national interest.", and added subpars. (A) and (B).

Subsec. (b)(3). Pub. L. 115–232, § 521(a)(2), added par. (3).

2006—Pub. L. 109–163 designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

PROHIBITION ON WAIVER FOR COMMISSIONING OR ENLISTMENT IN THE ARMED FORCES FOR ANY INDIVIDUAL CONVICTED OF A FELONY SEXUAL OFFENSE

Pub. L. 112–239, div. A, title V, § 523, Jan. 2, 2013, 126 Stat. 1723, which provided that an individual may not be provided a waiver for commissioning or enlistment in the Armed Forces if convicted of rape or other sexual offenses, was repealed by Pub. L. 113–66, div. A, title XVII, § 1711(b), Dec. 26, 2013, 127 Stat. 963. See section 657 of this title.

§ 505. Regular components: qualifications, term, grade

(a) The Secretary concerned may accept original enlistments in the Regular Army, Regular Navy, Regular Air Force, Regular Marine Corps, Regular Space Force, or Regular Coast Guard, as the case may be, of qualified, effective, and able-bodied persons who are not less than seventeen years of age nor more than forty-two years of age. However, no person under eighteen years of age may be originally enlisted without the written consent of his parent or guardian, if he has a parent or guardian entitled to his custody and control.

(b) A person is enlisted in the Regular Army, Regular Navy, Regular Air Force, Regular Marine Corps, Regular Space Force, or Regular Coast Guard in the grade or rating prescribed by the Secretary concerned.

(c) The Secretary concerned may accept original enlistments of persons for the duration of their minority or for a period of at least two but not more than eight years, in the Regular Army, Regular Navy, Regular Air Force, Regular Marine Corps, Regular Space Force, or Regular Coast Guard, as the case may be.

(d)(1) The Secretary concerned may accept a reenlistment in the Regular Army, Regular Navy, Regular Air Force, Regular Marine Corps, Regular Space Force, or Regular Coast Guard, as the case may be, for a period determined under this subsection.

(2) In the case of a member who has less than 10 years of service in the armed forces as of the day before the first day of the period for which reenlisted, the period for which the member reenlists shall be at least two years but not more than eight years.

(3) In the case of a member who has at least 10 years of service in the armed forces as of the day before the first day of the period for which reenlisted, the Secretary concerned may accept a reenlistment for either—

(A) a specified period of at least two years but not more than eight years; or

(B) an unspecified period.

(4) No enlisted member is entitled to be reenlisted for a period that would expire before the end of the member's current enlistment.

(Added Pub. L. 90–235, § 2(a)(1)(B), Jan. 2, 1968, 81 Stat. 754; amended Pub. L. 93–290, May 24, 1974, 88 Stat. 173; Pub. L. 95–485, title VIII, § 820(a),

Oct. 20, 1978, 92 Stat. 1627; Pub. L. 98–94, title X, § 1023, Sept. 24, 1983, 97 Stat. 671; Pub. L. 104–201, div. A, title V, § 511, Sept. 23, 1996, 110 Stat. 2514; Pub. L. 109–163, div. A, title V, §§ 543, 544, Jan. 6, 2006, 119 Stat. 3253; Pub. L. 110–417, [div. A], title V, § 531(a), Oct. 14, 2008, 122 Stat. 4449; Pub. L. 116–283, div. A, title IX, § 924(b)(5)(A), Jan. 1, 2021, 134 Stat. 3822.)

AMENDMENTS

2021—Pub. L. 116–283 substituted ''Regular Marine Corps, Regular Space Force,'' for ''Regular Marine Corps,'' wherever appearing.

2008—Subsec. (d)(2), (3)(A). Pub. L. 110–417 substituted ''eight years'' for ''six years''.

2006—Subsec. (a). Pub. L. 109–163, § 543, in first sentence, substituted ''forty-two years of age'' for ''thirty-five years of age''.

Subsec. (c). Pub. L. 109–163, § 544, substituted ''eight years'' for ''six years''.

1996—Subsec. (d). Pub. L. 104–201 amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: ''The Secretary concerned may accept reenlistments in the Regular Army, Regular Navy, Regular Air Force, Regular Marine Corps, or Regular Coast Guard, as the case may be, for period of at least two but not more than six years. No enlisted member is entitled to be reenlisted for a period that would expire before the end of his current enlistment.''

1983—Subsecs. (c), (d). Pub. L. 98–94 substituted ''at least two but not more than six years'' for ''two, three, four, five, or six years''.

1978—Subsecs. (d), (e). Pub. L. 95–485 redesignated subsec. (e) as (d). Former subsec. (d), which provided that in the Regular Army female persons may be enlisted only in the Women's Army Corps, was struck out.

1974—Subsec. (a). Pub. L. 93–290, § 1, struck out provisions which prohibited the Secretary from accepting original enlistments from female persons less than 18 years of age, and which required consent of the parent or guardian for an original enlistment of a female person under 21 years of age.

Subsec. (c). Pub. L. 93–290, § 2, substituted provisions permitting the Secretary to accept original enlistments of persons for the duration of their minority or for a period of two, three, four, five, or six years, for provisions which limited the Secretary to accept original enlistments from male persons for the duration of their minority or for a period of two, three, four, five, or six years, and from female persons for a period of two, three, four, five, or six years.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 506. Regular components: extension of enlistments during war

An enlistment in the Regular Army, Regular Navy, Regular Air Force, Regular Marine Corps, Regular Space Force, or Regular Coast Guard in effect at the beginning of a war, or entered into during a war, unless sooner terminated by the President, continues in effect until six months after the termination of that war.

(Added Pub. L. 90–235, § 2(a)(1)(B), Jan. 2, 1968, 81 Stat. 754; amended Pub. L. 116–283, div. A, title IX, § 924(b)(5)(B), Jan. 1, 2021, 134 Stat. 3822.)

AMENDMENTS

2021—Pub. L. 116–283 substituted ''Regular Marine Corps, Regular Space Force,'' for ''Regular Marine Corps,''.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 507. Extension of enlistment for members needing medical care or hospitalization

(a) An enlisted member of an armed force on active duty whose term of enlistment expires while he is suffering from disease or injury incident to service and not due to his misconduct, and who needs medical care or hospitalization, may be retained on active duty, with his consent, until he recovers to the extent that he is able to meet the physical requirements for reenlistment, or it is determined that recovery to that extent is impossible.

(b) This section does not prevent the retention in service, without his consent, of an enlisted member of an armed force under section 972 of this title.

(Added Pub. L. 90–235, § 2(a)(1)(B), Jan. 2, 1968, 81 Stat. 754.)

§ 508. Reenlistment: qualifications

(a) No person whose service during his last term of enlistment was not honest and faithful may be reenlisted in an armed force. However, the Secretary concerned may authorize the reenlistment in the armed force under his jurisdiction of such a person if his conduct after that service has been good.

(b) A person discharged from a Regular component may be reenlisted in the Regular Army, Regular Navy, Regular Air Force, Regular Marine Corps, Regular Space Force, or Regular Coast Guard, as the case may be, under such regulations as the Secretary concerned may prescribe.

(c) This section does not deprive a person of any right to be reenlisted in the Regular Army, Regular Navy, Regular Air Force, Regular Marine Corps, Regular Space Force, or Regular Coast Guard under any other provision of law.

(Added Pub. L. 90–235, § 2(a)(1)(B), Jan. 2, 1968, 81 Stat. 755; amended Pub. L. 116–283, div. A, title IX, § 924(b)(5)(C), Jan. 1, 2021, 134 Stat. 3822.)

AMENDMENTS

2021—Subsecs. (b), (c). Pub. L. 116–283 substituted ''Regular Marine Corps, Regular Space Force,'' for ''Regular Marine Corps,''.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Secu-

rity, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§509. Voluntary extension of enlistments: periods and benefits

(a) Under such regulations as the Secretary concerned may prescribe, the term of enlistment of a member of an armed force may be extended or reextended with his written consent for any period. However, the total of all such extensions of an enlistment may not exceed four years.

(b) When a member is discharged from an enlistment that has been extended under this section, he has the same rights, privileges, and benefits that he would have if discharged at the same time from an enlistment not so extended.

(Added Pub. L. 90–235, §2(a)(1)(B), Jan. 2, 1968, 81 Stat. 755.)

§510. Enlistment incentives for pursuit of skills to facilitate national service

(a) ENLISTMENT INCENTIVE PROGRAM.—The Secretary of Defense shall carry out an enlistment incentive program in accordance with this section under which a person who is a National Call to Service participant shall be entitled to one of the incentives specified in subsection (e). The program shall be carried out during the period ending on December 31, 2007, and may be carried out after that date.

(b) NATIONAL CALL TO SERVICE PARTICIPANT.—In this section, the term ''National Call to Service participant'' means a person who has not previously served in the armed forces who enters into an original enlistment pursuant to a written agreement with the Secretary of a military department (in such form and manner as may be prescribed by that Secretary) under which the person agrees to perform a period of national service as specified in subsection (c).

(c) NATIONAL SERVICE.—The total period of national service to which a National Call to Service participant is obligated under the agreement under this section shall be specified in the agreement. Under the agreement, the participant shall—

(1) upon completion of initial entry training (as prescribed by the Secretary of Defense), serve on active duty in a military occupational specialty designated by the Secretary of Defense under subsection (d) for a period of 15 months;

(2) upon completion of the period of active duty specified in paragraph (1) and without a break in service, serve either (A) an additional period of active duty as determined by the Secretary of Defense, or (B) a period of 24 months in an active status in the Selected Reserve; and

(3) upon completion of the period of service specified in paragraph (2), and without a break in service, serve the remaining period of obligated service specified in the agreement—

(A) on active duty in the armed forces;

(B) in the Selected Reserve;

(C) in the Individual Ready Reserve;

(D) in Americorps or another domestic national service program jointly designated by the Secretary of Defense and the head of such program for purposes of this section; or

(E) in any combination of service referred to in subparagraphs (A) through (D) that is approved by the Secretary of the military department concerned pursuant to regulations prescribed by the Secretary of Defense and specified in the agreement.

(d) DESIGNATED MILITARY OCCUPATIONAL SPECIALTIES.—The Secretary of Defense shall designate military occupational specialties for purposes of subsection (c)(1). Such military occupational specialties shall be military occupational specialties that, as determined by the Secretary, will facilitate pursuit of national service by National Call to Service participants and shall include military occupational specialties for enlistments for officer training and subsequent service as an officer, in cases in which the reason for the enlistment and entry into an agreement under subsection (b) is to enter an officer training program.

(e) INCENTIVES.—The incentives specified in this subsection are as follows:

(1) Payment of a bonus in the amount of $5,000.

(2) Payment in an amount not to exceed $18,000 of outstanding principal and interest on qualifying student loans of the National Call to Service participant.

(3) Entitlement to an allowance for educational assistance at the monthly rate equal to the monthly rate payable for basic educational assistance allowances under section 3015(a)(1) of title 38 for a total of 12 months.

(4) Entitlement to an allowance for educational assistance at the monthly rate equal to 50 percent of the monthly rate payable for basic educational assistance allowances under section 3015(b)(1) of title 38 for a total of 36 months.

(f) ELECTION OF INCENTIVE.—A National Call to Service participant shall elect in the agreement under subsection (b) which incentive under subsection (e) to receive. An election under this subsection is irrevocable.

(g) PAYMENT OF BONUS AMOUNTS.—(1) Payment to a National Call to Service participant of the bonus elected by the National Call to Service participant under subsection (e)(1) shall be made in such time and manner as the Secretary of Defense shall prescribe.

(2)(A) Payment of outstanding principal and interest on the qualifying student loans of a National Call to Service participant, as elected under subsection (e)(2), shall be made in such time and manner as the Secretary of Defense shall prescribe.

(B) Payment under this paragraph of the outstanding principal and interest on the qualifying student loans of a National Call to Service participant shall be made to the holder of such student loans, as identified by the National Call to Service participant to the Secretary of the military department concerned for purposes of such payment.

(3) Payment of a bonus or incentive in accordance with this subsection shall be made by the Secretary of the military department concerned.

(h) COORDINATION WITH MONTGOMERY GI BILL BENEFITS.—(1)(A) Subject to subparagraph (B), a National Call to Service participant who elects

an incentive under paragraph (3) or (4) of subsection (e) is not entitled to additional educational assistance under chapter 1606 of this title or to basic educational assistance under subchapter II of chapter 30 of title 38.

(B) If a National Call to Service participant meets all eligibility requirements specified in chapter 1606 of this title or chapter 30 of title 38 for entitlement to allowances for educational assistance under either such chapter, the participant may become eligible for allowances for educational assistance benefits under either such chapter up to the maximum allowance provided less the total amount of allowance paid under paragraph (3) or (4) of subsection (e).

(2)(A) Educational assistance under paragraphs (3) or (4) of subsection (e) shall be provided through the Department of Veterans Affairs under an agreement to be entered into by the Secretary of Defense and the Secretary of Veterans Affairs. The agreements shall include administrative procedures to ensure the prompt and timely transfer of funds from the Secretary concerned to the Secretary of Veterans Affairs for the making of payments under this section.

(B) Except as otherwise provided in this section, the provisions of sections 503, 511, 3470, 3471, 3474, 3476, 3482(g), 3483, and 3485 of title 38 and the provisions of subchapters I and II of chapter 36 of such title (with the exception of sections 3686(a), 3687, and 3692) shall be applicable to the provision of educational assistance under this chapter. The term ''eligible veteran'' and the term ''person'', as used in those provisions, shall be deemed for the purpose of the application of those provisions to this section to refer to a person eligible for educational assistance under paragraph (3) or (4) of subsection (e).

(3)(A) Except as provided in paragraph (1), nothing in this section shall prohibit a National Call to Service participant who satisfies through service under subsection (c) the eligibility requirements for educational assistance under chapter 1606 of this title or basic educational assistance under chapter 30 of title 38 from an entitlement to such educational assistance under chapter 1606 of this title or basic educational assistance under chapter 30 of title 38, as the case may be.

(B)(i) A participant who made an election not to receive educational assistance under either such chapter at the applicable time specified under law or who was denied the opportunity to make an election may revoke that election or make an initial election, as the case may be, at such time and in such manner as the Secretary concerned may specify. A revocation or initial election under the preceding sentence is irrevocable.

(ii) The participant making a revocation or initial election under clause (i) shall be eligible for educational assistance under either such chapter at such time as the participant satisfies through service the applicable eligibility requirements under either such chapter.

(i) REPAYMENT.—If a National Call to Service participant who has entered into an agreement under subsection (b) and received or benefitted from an incentive under paragraph (1) or (2) of subsection (e) fails to complete the total period of service specified in the agreement, the National Call to Service participant shall be subject to the repayment provisions of section 303a(e) or 373 of title 37.

(j) FUNDING.—(1) Amounts for the payment of incentives under paragraphs (1) and (2) of subsection (e) shall be derived from amounts available to the Secretary of the military department concerned for the payment of pay, allowances and other expenses of the members of the armed force concerned.

(2) Amounts for the payment of incentives under paragraphs (3) and (4) of subsection (e) shall be derived from the Department of Defense Education Benefits Fund under section 2006 of this title.

(k) REGULATIONS.—The Secretary of Defense and the Secretaries of the military departments shall prescribe regulations for purposes of the program under this section.

(*l*) DEFINITIONS.—In this section:

(1) The term ''Americorps'' means the Americorps program carried out under subtitle C of title I of the National and Community Service Act of 1990 (42 U.S.C. 12571 et seq.).

(2) The term ''qualifying student loan'' means a loan, the proceeds of which were used to pay any part or all of the cost of attendance (as defined in section 472 of the Higher Education Act of 1965 (20 U.S.C. 1087*ll*) at an institution of higher education (as defined in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001).

(3) The term ''Secretary of a military department'' includes, with respect to matters concerning the Coast Guard when it is not operating as a service in the Navy, the Secretary of the Department in which the Coast Guard is operating.

(Added Pub. L. 107–314, div. A, title V, § 531(a)(1), Dec. 2, 2002, 116 Stat. 2541; amended Pub. L. 108–136, div. A, title V, § 535(a), Nov. 24, 2003, 117 Stat. 1474; Pub. L. 109–163, div. A, title V, § 545, title VI, § 687(c)(1), Jan. 6, 2006, 119 Stat. 3254, 3333; Pub. L. 109–364, div. A, title X, § 1071(e)(2), Oct. 17, 2006, 120 Stat. 2401; Pub. L. 115–91, div. A, title VI, § 618(a)(1)(A), Dec. 12, 2017, 131 Stat. 1426.)

REFERENCES IN TEXT

The National and Community Service Act of 1990, referred to in subsec. (*l*)(1), is Pub. L. 101–610, Nov. 16, 1990, 104 Stat. 3127, as amended. Subtitle C of title I of the Act is classified generally to division C (§ 12571 et seq.) of subchapter I of chapter 129 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 12501 of Title 42 and Tables.

PRIOR PROVISIONS

A prior section 510 was renumbered section 12102 of this title.

AMENDMENTS

2017—Subsec. (i). Pub. L. 115–91 inserted ''or 373'' before ''of title 37''.

2006—Subsec. (c)(3)(D). Pub. L. 109–163, § 545(a), substituted ''in Americorps or another domestic national service program'' for ''in the Peace Corps, Americorps, or another national service program''.

Subsec. (d). Pub. L. 109–163, § 545(b), as amended by Pub. L. 109–364, inserted ''and shall include military occupational specialties for enlistments for officer train-

ing and subsequent service as an officer, in cases in which the reason for the enlistment and entry into an agreement under subsection (b) is to enter an officer training program'' before period at end.

Subsec. (h)(2). Pub. L. 109–163, § 545(c), amended par. (2) generally. Prior to amendment, par. (2) read as follows:

''(2)(A) The Secretary of Defense shall, to the maximum extent practicable, administer the receipt by National Call to Service participants of incentives under paragraph (3) or (4) of subsection (e) as if such National Call to Service participants were, in receiving such incentives, receiving educational assistance for members of the Selected Reserve under chapter 1606 of this title.

''(B) The Secretary of Defense shall, in consultation with the Secretary of Veterans Affairs, prescribe regulations for purposes of subparagraph (A). Such regulations shall, to the maximum extent practicable, take into account the administrative provisions of chapters 30 and 36 of title 38 that are specified in section 16136 of this title.''

Subsec. (i). Pub. L. 109–163, § 687(c)(1), amended heading and text of subsec. (i) generally. Prior to amendment, text consisted of pars. (1) to (4) which related to pro rata repayments by failed National Call to Service participants, the nature of the debt owed, waiver and discharge in bankruptcy.

2003—Subsec. (j). Pub. L. 108–136 reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''Amounts for payment of incentives under subsection (e), including payment of allowances for educational assistance under that subsection, shall be derived from amounts available to the Secretary of the military department concerned for payment of pay, allowances, and other expenses of the members of the armed force concerned.''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–364, div. A, title X, § 1071(e), Oct. 17, 2006, 120 Stat. 2401, provided that the amendment made by section 1071(e)(2) is effective as of Jan. 6, 2006, and as if included in Pub. L. 109–163 as enacted.

SAVINGS PROVISION

Pub. L. 109–163, div. A, title VI, § 687(f), Jan. 6, 2006, 119 Stat. 3336, provided that: ''In the case of any bonus, incentive pay, special pay, or similar payment, such as education assistance or a stipend, which the United States became obligated to pay before April 1, 2006, under a provision of law amended by subsection (b), (c), or (d) of this section [amending this section and sections 2005, 2007, 2105, 2123, 2130a, 2173, 2200a, 4348, 6959, 9348, 16135, 16203, 16303, and 16401 of this title, section 182 of Title 14, Coast Guard, and sections 301b, 301d, 301e, 302, 302a, 302b, 302d to 302h, 302j, 307a, 308, 308b, 308c, 308g to 308i, 309, 312, 312b, 314 to 319, and 321 to 327 of Title 37, Pay and Allowances of the Uniformed Services], such provision of law, as in effect on the day before the date of the enactment of this Act [Jan. 6, 2006], shall continue to apply to the payment, or any repayment, of the bonus, incentive pay, special pay, or similar payment under such provision of law.''

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

COMMENCEMENT OF PROGRAM

Pub. L. 107–314, div. A, title V, § 531(b), Dec. 2, 2002, 116 Stat. 2544, directed the Secretary of Defense to prescribe the date, not later than Oct. 1, 2003, on which the program provided for under this section was to commence.

IMPLEMENTATION REPORT

Pub. L. 107–314, div. A, title V, § 531(d), Dec. 2, 2002, 116 Stat. 2544, directed the Secretary of Defense to submit to committees of Congress a report on the Secretary's plans for implementation of this section not later than Mar. 31, 2003.

EFFECTIVENESS REPORTS

Pub. L. 107–314, div. A, title V, § 531(e), Dec. 2, 2002, 116 Stat. 2545, provided that: ''Not later than March 31, 2005, and March 31, 2007, the Secretary of Defense shall submit to the committees specified in subsection (d) reports on the effectiveness of the program under section 510 of title 10, United States Code, as added by subsection (a), in attracting new recruits to national service.''

§ 511. College First Program

(a) PROGRAM AUTHORITY.—The Secretary of each military department may establish a program to increase the number of, and the level of the qualifications of, persons entering the armed forces as enlisted members by encouraging recruits to pursue higher education or vocational or technical training before entry into active service.

(b) DELAYED ENTRY WITH ALLOWANCE FOR HIGHER EDUCATION.—The Secretary concerned may—

(1) exercise the authority under section 513 of this title—

(A) to accept the enlistment of a person as a Reserve for service in the Selected Reserve or Individual Ready Reserve of a reserve component, notwithstanding the scope of the authority under subsection (a) of that section, in the case of the Army National Guard of the United States or Air National Guard of the United States; and

(B) to authorize, notwithstanding the period limitation in subsection (b) of that section, a delay of the enlistment of any such person in a regular component under that subsection for the period during which the person is enrolled in, and pursuing a program of education at, an institution of higher education, or a program of vocational or technical training, on a full-time basis that is to be completed within the maximum period of delay determined for that person under subsection (c); and

(2) subject to paragraph (2) of subsection (d) and except as provided in paragraph (3) of that subsection, pay an allowance to a person accepted for enlistment under paragraph (1)(A) for each month of the period during which that person is enrolled in and pursuing a program described in paragraph (1)(B).

(c) MAXIMUM PERIOD OF DELAY.—The period of delay authorized a person under paragraph (1)(B) of subsection (b) may not exceed the 30-month period beginning on the date of the person's enlistment accepted under paragraph (1)(A) of such subsection.

(d) ALLOWANCE.—(1) The monthly allowance paid under subsection (b)(2) shall be equal to the amount of the subsistence allowance provided for certain members of the Senior Reserve Officers' Training Corps with the corresponding number of years of participation under section 209(a) of title 37. The Secretary concerned may

supplement that stipend by an amount not to exceed $225 per month.

(2) An allowance may not be paid to a person under this section for more than 24 months.

(3) A member of the Selected Reserve of a reserve component may be paid an allowance under this section only for months during which the member performs satisfactorily as a member of a unit of the reserve component that trains as prescribed in section 10147(a)(1) of this title or section 502(a) of title 32. Satisfactory performance shall be determined under regulations prescribed by the Secretary concerned.

(4) An allowance under this section is in addition to any other pay or allowance to which a member of a reserve component is entitled by reason of participation in the Ready Reserve of that component.

(e) RECOUPMENT OF ALLOWANCE.—(1) A person who, after receiving an allowance under this section, fails to complete the total period of service required of that person in connection with delayed entry authorized for the person under section 513 shall repay the United States the amount which bears the same ratio to the total amount of that allowance paid to the person as the unserved part of the total required period of service bears to the total period.

(2) An obligation to repay the United States imposed under paragraph (1) is for all purposes a debt owed to the United States.

(3) A discharge of a person in bankruptcy under title 11 that is entered less than five years after the date on which the person was, or was to be, enlisted in the regular Army pursuant to the delayed entry authority under section 513 does not discharge that person from a debt arising under paragraph (1).

(4) The Secretary concerned may waive, in whole or in part, a debt arising under paragraph (1) in any case for which the Secretary determines that recovery would be against equity and good conscience or would be contrary to the best interests of the United States.

(f) SPECIAL PAY AND BONUSES.—Upon enlisting in the regular component of the member's armed force, a person who initially enlisted as a Reserve under this section may, at the discretion of the Secretary concerned, be eligible for all regular special pays, bonuses, education benefits, and loan repayment programs.

(Added Pub. L. 108–375, div. A, title V, § 551(a)(1), Oct. 28, 2004, 118 Stat. 1909.)

PRIOR PROVISIONS

A prior section 511 was renumbered section 12103 of this title.

CONTINUATION FOR ARMY OF PRIOR ARMY COLLEGE FIRST PROGRAM

Pub. L. 108–375, div. A, title V, § 551(b), Oct. 28, 2004, 118 Stat. 1911, provided that: ''The Secretary of the Army shall treat the program under section 511 of title 10, United States Code, as added by subsection (a), as a continuation of the program under section 573 of the National Defense Authorization Act for Fiscal Year 2000 [Pub. L. 106–65] ([formerly] 10 U.S.C. 513 note), and for such purpose the Secretary may treat such section 511 as having been enacted on October 1, 2004.''

[§ 512. Renumbered § 12104]

§ 513. Enlistments: Delayed Entry Program

(a) A person with no prior military service who is qualified under section 505 of this title and applicable regulations for enlistment in a regular component of an armed force may (except as provided in subsection (c)) be enlisted as a Reserve for service in the Army Reserve, Navy Reserve, Air Force Reserve, Marine Corps Reserve, or Coast Guard Reserve for a term of not less than six years nor more than eight years.

(b)(1) Unless sooner ordered to active duty under chapter 39 of this title or another provision of law, a person enlisted under subsection (a) shall, within 365 days after such enlistment, be discharged from the reserve component in which enlisted and immediately be enlisted in the regular component of an armed force.

(2) The Secretary concerned may extend the 365-day period described in paragraph (1) for any person for up to an additional 365 days if the Secretary determines that it is in the best interests of the armed force of which that person is a member to do so.

(3)(A) The Secretary concerned may extend by up to an additional 365 days the period of extension under paragraph (2) for a person who enlisted before October 1, 2017, under section 504(b)(2) of this title if the Secretary determines that the period of extension under this paragraph is required for the performance of adequate background and security reviews of that person.

(B) A person whose period of extension under paragraph (2) is extended under this paragraph shall undergo all security and suitability screening requirements and receive a favorable military security suitability determination before entering into service in a regular or reserve component. Screening priority shall be given to those persons who were enlisted for a military occupational specialty that requires specialized language or medical skills that are vital to the national interest.

(C) The authority to make an extension under this paragraph shall expire one year after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2018. The expiration of such authority shall not effect the validity of any extension made in accordance with this paragraph on or before that date.

(4) During the period beginning on the date on which the person enlists under subsection (a) and ending on the date on which the person is enlisted in a regular component under this subsection, the person shall be in the Ready Reserve of the armed force concerned.

(c) A person who is under orders to report for induction into an armed force under the Military Selective Service Act (50 U.S.C. 3801 et seq.), except as provided in clause (ii) or (iii) of section 6(c)(2)(A) of that Act (50 U.S.C. 3806(c)(2)(A)), may not be enlisted under subsection (a).

(d) This section shall be carried out under regulations to be prescribed by the Secretary of Defense or the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy.

(Added Pub. L. 101–189, div. A, title V, § 501(a)(1), Nov. 29, 1989, 103 Stat. 1435; amended Pub. L.

101–510, div. A, title XIV, § 1484(k)(2), Nov. 5, 1990, 104 Stat. 1719; Pub. L. 104–201, div. A, title V, § 512, Sept. 23, 1996, 110 Stat. 2514; Pub. L. 106–65, div. A, title V, § 572(a), Oct. 5, 1999, 113 Stat. 623; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 109–163, div. A, title V, § 515(b)(1)(A), Jan. 6, 2006, 119 Stat. 3233; Pub. L. 114–328, div. A, title X, § 1081(b)(1)(A)(ii), Dec. 23, 2016, 130 Stat. 2417; Pub. L. 115–91, div. A, title V, § 526, Dec. 12, 2017, 131 Stat. 1382.)

REFERENCES IN TEXT

The date of the enactment of the National Defense Authorization Act for Fiscal Year 2018, referred to in subsec. (b)(3)(C), means the date of enactment of Pub. L. 115–91, which was approved Dec. 12, 2017.

The Military Selective Service Act, referred to in subsec. (c), is title I of act June 24, 1948, ch. 625, 62 Stat. 604, which is classified principally to chapter 49 (§ 3801 et seq.) of Title 50, War and National Defense. For complete classification of this Act to the Code, see References in Text note set out under section 3801 of Title 50 and Tables.

PRIOR PROVISIONS

A prior section 513, act Aug. 10, 1956, ch. 1041, 70A Stat. 18, related to promotion of enlisted members of Reserve components, prior to repeal by Pub. L. 85–861, § 36B(1), Sept. 2, 1958, 72 Stat. 1570.

AMENDMENTS

2017—Subsec. (b). Pub. L. 115–91 redesignated second sentence of par. (1) as (2) and inserted ''described in paragraph (1)'' after ''the 365-day period'', added par. (3), and redesignated former par. (2) as (4) and substituted ''this subsection'' for ''paragraph (1)''.

2016—Subsec. (c). Pub. L. 114–328 substituted ''(50 U.S.C. 3801 et seq.)'' for ''(50 U.S.C. App. 451 et seq.)'' and inserted ''(50 U.S.C. 3806(c)(2)(A))'' after ''of that Act''.

2006—Subsec. (a). Pub. L. 109–163 substituted ''Navy Reserve'' for ''Naval Reserve''.

2002—Subsec. (d). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

1999—Subsec. (b)(1). Pub. L. 106–65 substituted ''additional 365 days'' for ''additional 180 days'' in second sentence.

1996—Subsec. (b). Pub. L. 104–201 inserted ''The Secretary concerned may extend the 365-day period for any person for up to an additional 180 days if the Secretary determines that it is in the best interests of the armed force of which that person is a member to do so.'' after first sentence, ''(1)'' before ''Unless'', and ''(2)'' before ''During'' and substituted ''paragraph (1)'' for ''the preceding sentence''.

1990—Subsecs. (b), (c). Pub. L. 101–510 substituted ''subsection (a)'' for ''paragraph (1)''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–65, div. A, title V, § 572(b), Oct. 5, 1999, 113 Stat. 623, provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on October 1, 1999, and shall apply with respect to enlistments entered into, on or after that date.''

ARMY COLLEGE FIRST PILOT PROGRAM

Pub. L. 106–65, div. A, title V, § 573, Oct. 5, 1999, 113 Stat. 623, as amended by Pub. L. 107–107, div. A, title V, § 542(a)–(c), Dec. 28, 2001, 115 Stat. 1110, 1111; Pub. L. 107–314, div. A, title V, § 535, title X, § 1062(j)(1), Dec. 2, 2002, 116 Stat. 2548, 2651, directed the Secretary of the Army to establish a pilot program, known as the ''Army College First'' program, to be in effect from Oct. 1, 1999, to Sept. 30, 2004, to assess whether the Army could increase the number and qualifications of persons entering the Army as enlisted members by encouraging recruits to pursue higher education or vocational or technical training before entry into active service, and to submit to committees of Congress a report on the program not later than Feb. 1, 2004. See section 511 of this title and section 551(b) of Pub. L. 108–375, set out as a note under section 511 of this title.

§ 514. Bounties prohibited; substitutes prohibited

(a) No bounty may be paid to induce any person to enlist in an armed force. A clothing allowance or enlistment bonus authorized by law is not a bounty for the purposes of this subsection.

(b) No person liable for active duty in an armed force under this subtitle may furnish a substitute for that active duty. No person may be enlisted or appointed in an armed force as a substitute for another person.

(Aug. 10, 1956, ch. 1041, 70A Stat. 19.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
514(a)	50 App.:458 (1st sentence, less applicability to induction).	June 24, 1948, ch. 625, § 8 (less applicability to induction), 62 Stat. 614.
514(b)	50 App.:458 (last sentence, less applicability to induction).	

In subsection (b), the words ''active duty'' are substituted for the words ''training and service''. The word ''may'' is substituted for the words ''shall be permitted or allowed''. The last sentence is substituted for 50 App.:458 (words between 1st and last semicolons). 50 App.:458 (words after last semicolon) is omitted as applicable only to induction.

§ 515. Reenlistment after discharge as warrant officer

A person who has been discharged from a regular component of an armed force under section 1165 or 1166 of this title may, upon his request and in the discretion of the Secretary concerned, be enlisted in that armed force in the grade prescribed by the Secretary. However, a person discharged under section 1165 of this title may not be enlisted in a grade lower than the grade that he held immediately before appointment as a warrant officer.

(Aug. 10, 1956, ch. 1041, 70A Stat. 19.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
515	10:600d (last 36 words of last sentence). 34:135d (last 36 words of last sentence). 10:600m (last 21 words of 3d sentence). 34:430a (last 21 words of 3d sentence).	May 29, 1954, ch. 249, §§ 6 (last 36 words of last sentence), 15 (last 21 words of 3d sentence), 68 Stat. 159, 164.

The first 20 words are inserted for clarity. The word ''request'' is substituted for the word ''application''.

§ 516. Effect upon enlisted status of acceptance of appointment as cadet or midshipman

(a) The enlistment or period of obligated service of an enlisted member of the armed forces

who accepts an appointment as a cadet at the United States Military Academy, the United States Air Force Academy, or the United States Coast Guard Academy, or as a midshipman at the United States Naval Academy or in the Navy Reserve, may not be terminated because of the acceptance of that appointment. However, while serving as a cadet or midshipman at an Academy, he is entitled only to the pay, allowances, compensation, pensions, and other benefits provided by law for such a cadet or midshipman or, if he is a midshipman in the Navy Reserve, to the compensation and emoluments of a midshipman in the Navy Reserve.

(b) If a person covered by subsection (a) is separated from service as a cadet or midshipman, or from service as a midshipman in the Navy Reserve, for any reason other than his appointment as a commissioned officer of a regular or reserve component of an armed force or because of a physical disability, he resumes his enlisted status and shall complete the period of service for which he was enlisted or for which he has an obligation, unless he is sooner discharged. In computing the unexpired part of an enlistment or period of obligated service for the purposes of this subsection, all service as a cadet or midshipman is counted as service under that enlistment or period of obligated service.

(Added Pub. L. 85–861, §1(9)(A), Sept. 2, 1958, 72 Stat. 1439; amended Pub. L. 109–163, div. A, title V, §515(b)(1)(B), Jan. 6, 2006, 119 Stat. 3233.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
516(a)	50:1411.	June 25, 1956, ch. 439, §§1, 2, 70 Stat. 333.
516(b)	50:1412.	

In subsection (a), the words ''on or after June 25, 1956'' are omitted as executed. The words ''Regular, Reserve'' and ''during the continuation of the cadet or midshipman status of such member'' are omitted as surplusage. The words ''if he is a midshipman in the Naval Reserve * * * of a midshipman in the Naval Reserve'' are substituted for the words ''accruing to such reserve midshipman by virtue of his status in the Naval Reserve''.

In subsection (b), the words ''a person covered by subsection (a)'' are substituted for 50:1412 (1st 84 words of 1st sentence). The words ''his appointment as a commissioned officer of'' are substituted for the words ''the acceptance of a commission in''. The words ''and shall complete the period of service for which he was enlisted or for which he has an obligation, unless he is sooner discharged'' are substituted for 50:1412 (2d sentence). The words ''promoted or'' are omitted as unnecessary, since the only kind of promotion involved is that to officer, in which case the member is discharged from his enlisted status. The words ''as service under that enlistment'' are substituted for the words ''as time serviced under such contract''.

AMENDMENTS

2006—Pub. L. 109–163 substituted ''Navy Reserve'' for ''Naval Reserve'' wherever appearing.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§517. Authorized enlisted end strength: members in pay grades E–8 and E–9

(a) The authorized end strength for enlisted members on active duty (other than for training) in an armed force in pay grades E–8 and E–9 as of the last day of a fiscal year may not be more than 3.0 percent and 1.25 percent, respectively, of the number of enlisted members of that armed force who are on active duty (other than for training). In computing the limitations prescribed in the preceding sentence, there shall be excluded enlisted members of an armed force on active duty as authorized under section 115(a)(1)(B) or 115(b) of this title, or excluded from counting for active duty end strengths under section 115(i) of this title.

[(b) Repealed. Pub. L. 116–283, div. A, title IV, §403(a)(3), Jan. 1, 2021, 134 Stat. 3556.]

(c) Whenever under section 527 of this title the President may suspend the operation of any provision of section 523, 525, or 526 of this title, the Secretary of Defense may suspend the operation of any provision of this section. Any such suspension shall, if not sooner ended, end in the manner specified in section 527 for a suspension under that section.

(Added Pub. L. 87–649, §2(1), Sept. 7, 1962, 76 Stat. 492; amended Pub. L. 96–584, §4, Dec. 23, 1980, 94 Stat. 3377; Pub. L. 97–86, title V, §503(1), (2), Dec. 1, 1981, 95 Stat. 1107, 1108; Pub. L. 97–252, title V, §503(a), Sept. 8, 1982, 96 Stat. 727; Pub. L. 98–94, title V, §503(a), Sept. 24, 1983, 97 Stat. 631; Pub. L. 98–525, title IV, §§413(a), 414(a)(2), Oct. 19, 1984, 98 Stat. 2517, 2518; Pub. L. 99–145, title IV, §413(a), Nov. 8, 1985, 99 Stat. 619; Pub. L. 100–180, div. A, title IV, §413(a), Dec. 4, 1987, 101 Stat. 1083; Pub. L. 101–189, div. A, title IV, §413(a), Nov. 29, 1989, 103 Stat. 1433; Pub. L. 102–190, div. A, title IV, §413(a), Dec. 5, 1991, 105 Stat. 1352; Pub. L. 103–160, div. A, title IV, §413(a), Nov. 30, 1993, 107 Stat. 1642; Pub. L. 103–337, div. A, title V, §552(a), title XVI, §1662(a)(4), Oct. 5, 1994, 108 Stat. 2772, 2988; Pub. L. 105–261, div. A, title IV, §407(a), title X, §1069(a)(2), Oct. 17, 1998, 112 Stat. 1996, 2135; Pub. L. 106–398, §1 [[div. A], title IV, §421(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–95; Pub. L. 107–107, div. A, title IV, §403, Dec. 28, 2001, 115 Stat. 1069; Pub. L. 108–375, div. A, title IV, §416(f), Oct. 28, 2004, 118 Stat. 1868; Pub. L. 110–181, div. A, title IV, §406, Jan. 28, 2008, 122 Stat. 89; Pub. L. 116–283, div. A, title IV, §403(a), Jan. 1, 2021, 134 Stat. 3556.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
517	37:232(c) (last sentence).	Oct. 12, 1949, ch. 681, §201(c) (last sentence); added May 20, 1958, Pub. L. 85–422, §1(3) (last sentence), 72 Stat. 124.

AMENDMENTS

2021—Pub. L. 116–283, §403(a)(1), substituted ''enlisted end strength'' for ''daily average'' in section catchline.

Subsec. (a). Pub. L. 116–283, §403(a)(2), in first sentence, substituted ''end strength for'' for ''daily aver-

age number of'', ''as of the last day of a fiscal year'' for ''in a fiscal year'', and ''3.0 percent'' for ''2.5 percent'' and struck out before period at end ''on the first day of that fiscal year''.

Subsec. (b). Pub. L. 116–283, § 403(a)(3), struck out subsec. (b) which read as follows: ''Whenever the number of members serving in pay grade E–9 is less than the number authorized for that grade under subsection (a), the difference between the two numbers may be applied to increase the number authorized under such subsection for pay grade E–8.''

2008—Subsec. (a). Pub. L. 110–181 substituted ''1.25 percent'' for ''1 percent''.

2004—Subsec. (a). Pub. L. 108–375 substituted ''as authorized under section 115(a)(1)(B) or 115(b) of this title, or excluded from counting for active duty end strengths under section 115(i) of this title.'' for ''(other than for training) in connection with organizing, administering, recruiting, instructing, or training the reserve component of an armed force.''

2001—Subsec. (a). Pub. L. 107–107 substituted ''2.5 percent'' for ''2 percent (or, in the case of the Army, 2.5 percent)''.

2000—Subsec. (c). Pub. L. 106–398 added subsec. (c).

1998—Subsec. (a). Pub. L. 105–261, § 1069(a)(2), substituted ''The authorized'' for ''Except as provided in section 307 of title 37, the authorized''.

Pub. L. 105–261, § 407(a), substituted ''a fiscal year'' for ''a calendar year'' and ''the first day of that fiscal year'' for ''January 1 of that year''.

1994—Subsec. (a). Pub. L. 103–337, § 552(a), inserted ''(or, in the case of the Army, 2.5 percent)'' after ''may not be more than 2 percent''.

Subsec. (b). Pub. L. 103–337, § 1661(a)(4)(B), redesignated subsec. (c) as (b) and struck out ''or whenever the number of members serving in pay grade E–9 for duty described in subsection (b) is less than the number authorized for that grade under subsection (b),'' after ''under subsection (a),''.

Pub. L. 103–337, § 1662(a)(4)(A), struck out subsec. (b) which limited the number of enlisted members in pay grades E–8 and E–9 who could be on active duty (other than for training) or on full-time National Guard duty under the authority of section 502(f) of title 32 (other than for training) as of the end of any fiscal year in connection with organizing, administering, recruiting, instructing, or training the reserve components or the National Guard.

Subsec. (c). Pub. L. 103–337, § 1662(a)(4)(B), redesignated subsec. (c) as (b).

1993—Subsec. (b). Pub. L. 103–160, in table, increased fiscal year limitation on number of enlisted men in pay grades E–8 and E–9 on active duty affecting reserve components of the Air Force to 328 and 840 from 279 and 800, respectively.

1991—Subsec. (b). Pub. L. 102–190, in table, increased fiscal year limitation on number of enlisted men in pay grade E–8 on active duty affecting reserve components of the Air Force from 670 to 800, and increased limitation on number of enlisted men in pay grade E–9 on active duty affecting reserve components of the Army from 557 to 569, the Air Force from 231 to 279, and the Marine Corps from 13 to 14.

1989—Subsec. (b). Pub. L. 101–189, § 413(a)(2), in table, increased fiscal year limitation on number of enlisted men in pay grades E–8 and E–9 on active duty affecting reserve components of the armed forces: Army, to 557 and 2,585 from 542 and 2,504, respectively; Navy, to 202 and 429 from 200 and 425, respectively; Air Force, to 231 and 670 from 224 and 637, respectively. Marine Corps figures remained unchanged.

Pub. L. 101–189, § 413(a)(1), in table, increased fiscal year limitation on number of enlisted men in pay grades E–8 and E–9 on active duty affecting reserve components of the armed forces: Army, to 542 and 2,504 from 529 and 2,350, respectively; Navy, to 200 and 425 from 180 and 400, respectively; Air Force, to 224 and 637 from 150 and 425, respectively. Marine Corps figures remained unchanged.

1987—Subsec. (b). Pub. L. 100–180, § 413(a)(2), in table, increased fiscal year limitation on number of enlisted men in pay grades E–8 and E–9 on active duty affecting reserve components of the armed forces: Army, to 529 and 2,350 from 517 and 2,295, respectively; Navy, to 180 and 400 from 175 and 390, respectively; Air Force, to 150 and 425 from 125 and 425, respectively. Marine Corps figures remained unchanged.

Pub. L. 100–180, § 413(a)(1), in table, increased fiscal year limitation on number of enlisted men in pay grades E–8 and E–9 on active duty affecting reserve components of the armed forces: Navy, to 175 and 390 from 165 and 381, respectively; Air Force, to 125 and 425 from 80 and 358, respectively; Marine Corps, to 13 and 74 from 9 and 74, respectively. Army figures remained unchanged.

1985—Subsec. (b). Pub. L. 99–145 in table, changed fiscal year limitation on number of enlisted men in pay grades E–8 and E–9 on active duty affecting reserve components of the armed forces: Navy, to 165 and 381 from 156 and 381, respectively; Air Force, to 80 and 358 from 87 and 455, respectively. Army and Marine Corps figures remained unchanged.

1984—Subsec. (b). Pub. L. 98–525, § 414(a)(2), inserted ''(other than for training) or on full-time National Guard duty under the authority of section 502(f) of title 32 (other than for training)'' and substituted ''or the National Guard'' for ''of the armed forces'' and ''for that grade and armed force'' for ''prescribed for the grade and the armed force''.

Pub. L. 98–525, § 413(a), in table, increased fiscal year limitation on number of enlisted men in pay grades E–8 and E–9 on active duty affecting reserve components of the armed forces: Army, to 2,295 and 517 from 1,494 and 314; Air Force, to 455 and 87 from 617 and 143; Marine Corps, to 74 and 9 from 56 and 6. Navy figures remained unchanged.

1983—Subsec. (b). Pub. L. 98–94 increased fiscal year limitation on number of enlisted men in pay grades E–8 and E–9 on active duty affecting reserve components of the armed forces: Army, to 1,494 and 314 from 1,244 and 265; Navy, to 381 and 156 from 329 and 156; Air Force, to 617 and 143 from 441 and 132; Marine Corps figures remained unchanged.

1982—Subsec. (b). Pub. L. 97–252 increased the numbers in columns from 222, 146, 76, and 4 in the line for E–9 to 265, 156, 132, and 6, respectively, and from 908, 319, 307, and 12 in line for E–8 to 1,244, 329, 441, and 56, respectively.

1981—Subsec. (b). Pub. L. 97–86, § 503(1), inserted column for ''Marine Corps'' in table and increased numbers in existing columns headed ''Army'', ''Navy'', and ''Air Force'' from 209, 140, and 71 in line for E–9 to 222, 146, and 76, respectively, and from 823, 302, and 302 in line for E–8 to 908, 319, and 307, respectively.

Subsec. (c). Pub. L. 97–86, § 503(2), added subsec. (c).

1980—Pub. L. 96–584 designated existing provisions as subsec. (a), inserted provisions respecting computation of limitations, and added subsec. (b).

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–261, div. A, title IV, § 407(b), Oct. 17, 1998, 112 Stat. 1996, provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on October 1, 1999.''

EFFECTIVE DATE OF 1994 AMENDMENT

Pub. L. 103–337, div. A, title V, § 552(c), Oct. 5, 1994, 108 Stat. 2772, provided that: ''The amendment made by subsection (a) [amending this section] shall not apply with respect to the number of enlisted members of the Army on active duty in pay grade E–8 during 1994.''

Amendment by section 1662(a)(4) of Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–189, div. A, title IV, § 413(a)(2), Nov. 29, 1989, 103 Stat. 1433, provided that the amendment made by that section is effective Oct. 1, 1990.

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100–180, div. A, title IV, § 413(a)(2), Dec. 4, 1987, 101 Stat. 1083, provided that the amendment made by that section is effective Oct. 1, 1988.

EFFECTIVE DATE OF 1985 AMENDMENT

Pub. L. 99–145, title IV, § 413(c), Nov. 8, 1985, 99 Stat. 620, provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 524 [now 12011] of this title] shall take effect on October 1, 1985.''

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–525, title IV, § 413(c), Oct. 19, 1984, 98 Stat. 2518, provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 524 [now 12011] of this title] shall take effect on October 1, 1984.''

EFFECTIVE DATE OF 1983 AMENDMENT

Pub. L. 98–94, title V, § 503(c), Sept. 24, 1983, 97 Stat. 631, provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 524 [now 12011] of this title] shall take effect on October 1, 1983.''

EFFECTIVE DATE

Section effective Nov. 1, 1962, see section 15 of Pub. L. 87–649, set out as a note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

TEMPORARY EXEMPTION FROM AUTHORIZED DAILY AVERAGE OF MEMBERS IN PAY GRADES E–8 AND E–9

Pub. L. 116–283, div. A, title IX, § 929, Jan. 1, 2021, 134 Stat. 3832, provided that: ''Section 517 of title 10, United States Code, shall not apply to the Space Force until October 1, 2023.''

AUTHORIZED ACTIVE DUTY STRENGTHS FOR ARMY ENLISTED MEMBERS IN PAY GRADE E–8; SPECIAL RULE FOR 1995

Pub. L. 103–337, div. A, title V, § 552(b), Oct. 5, 1994, 108 Stat. 2772, provided that the percentage applicable to enlisted members of the Army in pay grade E–8 under subsec. (a) of this section during 1995 would be 2.3 percent, rather than the percentage provided by the amendment made by Pub. L. 103–337, § 552(a).

AUTHORITY TO WAIVE GRADE STRENGTH LAWS FOR FISCAL YEAR 1991; CERTIFICATION; RELATIONSHIP TO OTHER SUSPENSION AUTHORITY

Pub. L. 102–25, title II, §§ 201(b), 202, 205(b), Apr. 6, 1991, 105 Stat. 79, 80, authorized Secretary of a military department to suspend, for fiscal year 1991, the operation of any provision of this section and section 523, 524 (now 12011), 525, or 526 of this title with respect to that military department, that such Secretary may exercise such authority only after submission to the congressional defense committees of a certification in writing that such authority is necessary because of personnel actions associated with Operation Desert Storm, and that such authority is in addition to the authority provided in section 527 of this title.

§ 518. Temporary enlistments

Temporary enlistments may be made only in the Army, Navy, Air Force, Marine Corps, Space Force, or Coast Guard, as the case may be, without specification of component.

(Added Pub. L. 90–235, § 2(a)(1)(B), Jan. 2, 1968, 81 Stat. 755; amended Pub. L. 116–283, div. A, title IX, § 924(b)(2)(A)(iii), Jan. 1, 2021, 134 Stat. 3821.)

AMENDMENTS

2021—Pub. L. 116–283 substituted ''Marine Corps, Space Force,'' for ''Marine Corps,''.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 519. Temporary enlistments: during war or emergency

Except as provided in section 505 of this title and except for enlistments as Reserves of an armed force—

(1) temporary enlistments in an armed force entered into in time of war or of emergency declared by Congress shall be for the duration of the war or emergency plus six months; and

(2) only persons at least eighteen years of age and otherwise qualified under regulations to be prescribed by the Secretary concerned are eligible for such enlistments.

(Added Pub. L. 90–235, § 2(a)(1)(B), Jan. 2, 1968, 81 Stat. 755.)

§ 520. Limitation on enlistment and induction of persons whose score on the Armed Forces Qualification Test is below a prescribed level

(a) The number of persons originally enlisted or inducted to serve on active duty (other than active duty for training) in any armed force during any fiscal year whose score on the Armed Forces Qualification Test is at or above the tenth percentile and below the thirty-first percentile may not exceed 20 percent of the total number of persons originally enlisted or inducted to serve on active duty (other than active duty for training) in such armed force during such fiscal year.

(b) A person who is not a high school graduate may not be accepted for enlistment in the armed forces unless the score of that person on the Armed Forces Qualification Test is at or above the thirty-first percentile; however, a person may not be denied enlistment in the armed forces solely because of his not having a high school diploma if his enlistment is needed to meet established strength requirements.

(Added Pub. L. 96–342, title III, § 302(b)(1), Sept. 8, 1980, 94 Stat. 1082; amended Pub. L. 96–579, § 9, Dec. 23, 1980, 94 Stat. 3368; Pub. L. 97–86, title IV, § 402(b)(1), Dec. 1, 1981, 95 Stat. 1104; Pub. L. 98–94, title XII, § 1268(3), Sept. 24, 1983, 97 Stat. 705; Pub. L. 100–370, § 1(a)(1), July 19, 1988, 102 Stat. 840.)

HISTORICAL AND REVISION NOTES

1988 ACT

Amendment of subsection (b) is based on Pub. L. 93–307, title IV, § 401, June 8, 1974, 88 Stat. 234, as amended by Pub. L. 93–365, title VII, § 705, Aug. 5, 1974, 88 Stat. 406.

AMENDMENTS

1988—Subsec. (b). Pub. L. 100–370 inserted before period at end ''; however, a person may not be denied enlistment in the armed forces solely because of his not having a high school diploma if his enlistment is needed to meet established strength requirements''.

1983—Subsec. (a). Pub. L. 98–94 struck out provisions under which, for fiscal years beginning on October 1, 1980, and October 1, 1981, the total number of persons originally enlisted or inducted to serve on active duty (other than active duty for training) in the armed forces during such fiscal years whose score on the Armed Forces Qualification Test was at or above the tenth percentile and below the thirty-first percentile could not exceed 25 percent of the number of such persons enlisted or inducted into the armed forces during such fiscal years, and, in the provisions remaining applicable to fiscal years beginning after Sept. 30, 1982, substituted "20 percent of the total number of persons originally enlisted or inducted to serve on active duty (other than active duty for training) in such armed force" for "20 percent of the number of such persons enlisted or inducted into such armed force".

1981—Pub. L. 97–86 designated existing provisions as subsec. (a) and added subsec. (b).

1980—Pub. L. 96–579 struck out subsec. (a) designation and subsec. (b) authorizing the Secretary of Defense for national security reasons to waive the enlistment and induction limitation based on percentile limits conditioned upon notification of the Congress and a concurrent resolution of approval.

EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97–86, title IV, §402(b)(2), Dec. 1, 1981, 95 Stat. 1105, provided that: "The amendments made by paragraph (1) [amending this section] shall take effect at the end of the 30-day period beginning on the date of the enactment of this Act [Dec. 1, 1981]."

PILOT PROGRAM FOR TREATING GED AND HOME SCHOOL DIPLOMA RECIPIENTS AS HIGH SCHOOL GRADUATES FOR DETERMINATIONS OF ELIGIBILITY FOR ENLISTMENT IN ARMED FORCES

Pub. L. 105–261, div. A, title V, §571, Oct. 17, 1998, 112 Stat. 2033, as amended by Pub. L. 106–65, div. A, title X, §1067(3), Oct. 5, 1999, 113 Stat. 774, directed the Secretary of Defense to establish a pilot program during the period Oct. 1, 1998, to Sept. 30, 2003, to assess whether the Armed Forces could better meet recruiting requirements by treating GED recipients and home school diploma recipients as having graduated from high school with a high school diploma for the purpose of determining eligibility of those persons to enlist in the Armed Forces, and to submit to committees of Congress a report on the program not later than Feb. 1, 2004.

MAXIMUM NUMBER OF ARMY ENLISTEES AND INDUCTEES WHO ARE NOT HIGH SCHOOL GRADUATES

Pub. L. 96–342, title III, §302(a), Sept. 8, 1980, 94 Stat. 1082, as amended by Pub. L. 97–86, title IV, §402(a), Dec. 1, 1981, 95 Stat. 1104; Pub. L. 97–252, title IV, §403, Sept. 8, 1982, 96 Stat. 725; Pub. L. 98–94, title IV, §402, Sept. 24, 1983, 97 Stat. 629; Pub. L. 98–525, title IV, §402, Oct. 19, 1984, 98 Stat. 2516; Pub. L. 99–145, title IV, §402, Nov. 8, 1985, 99 Stat. 618, provided that the number of male individuals enlisted or inducted into the Army during the fiscal year beginning on Oct. 1, 1985, who were not high school graduates could not exceed, as of Sept. 30, 1986, 35 percent of all male individuals enlisted or inducted into the Army during such fiscal year.

DENIAL OF ENLISTMENT FOR LACK OF HIGH SCHOOL DIPLOMA PROHIBITED

Pub. L. 93–307, title IV, §401, June 8, 1974, 88 Stat. 234, as amended by Pub. L. 93–365, title VII, §705, Aug. 5, 1974, 88 Stat. 406, which provided that no volunteer for enlistment into the Armed Forces shall be denied enlistment solely because of his not having a high school diploma when his enlistment is needed to meet established strength requirements, was repealed and restated in sections 520(b) and 3262 of this title by Pub. L. 100–370, §1(a), July 19, 1988, 102 Stat. 840.

[§520a. Repealed. Pub. L. 106–398, §1 [[div. A], title X, §1076(g)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–282]

Section, added Pub. L. 97–252, title XI, §1114(c)(1), Sept. 8, 1982, 96 Stat. 749; amended Pub. L. 104–106, div. A, title XV, §1502(a)(1), Feb. 10, 1996, 110 Stat. 502; Pub. L. 106–65, div. A, title X, §1067(1), Oct. 5, 1999, 113 Stat. 774, related to criminal history information for military recruiting purposes.

§520b. Applicants for enlistment: authority to use funds for the issue of authorized articles

Funds appropriated to the Department of Defense may be used for the issue of authorized articles to applicants for enlistment.

(Added Pub. L. 98–525, title XIV, §1401(a)(1), Oct. 19, 1984, 98 Stat. 2614; amended Pub. L. 99–145, title XIII, §1303(a)(4)(A), Nov. 8, 1985, 99 Stat. 738.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in the following appropriation acts:

Oct. 12, 1984, Pub. L. 98–473, title I, §101(h) [title VIII, §8006], 98 Stat. 1904, 1923.

Dec. 8, 1983, Pub. L. 98–212, title VII, §709, 97 Stat. 1439.

Dec. 21, 1982, Pub. L. 97–377, title I, §101(c) [title VII, §709], 96 Stat. 1833, 1851.

Dec. 29, 1981, Pub. L. 97–114, title VII, §709, 95 Stat. 1579.

Dec. 15, 1980, Pub. L. 96–527, title VII, §709, 94 Stat. 3081.

Dec. 21, 1979, Pub. L. 96–154, title VII, §709, 93 Stat. 1153.

Oct. 13, 1978, Pub. L. 95–457, title VIII, §809, 92 Stat. 1244.

Sept. 21, 1977, Pub. L. 95–111, title VIII, §808, 91 Stat. 900.

Sept. 22, 1976, Pub. L. 94–419, title VII, §708, 90 Stat. 1292.

Feb. 9, 1976, Pub. L. 94–212, title VII, §708, 90 Stat. 169.

Oct. 8, 1974, Pub. L. 93–437, title VIII, §808, 88 Stat. 1225.

Jan. 2, 1974, Pub. L. 93–238, title VII, §708, 87 Stat. 1039.

Oct. 26, 1972, Pub. L. 92–570, title VII, §708, 86 Stat. 1197.

Dec. 18, 1971, Pub. L. 92–204, title VII, §708, 85 Stat. 728.

Jan. 11, 1971, Pub. L. 91–668, title VIII, §808, 84 Stat. 2031.

Dec. 29, 1969, Pub. L. 91–171, title VI, §608, 83 Stat. 480.

Oct. 17, 1968, Pub. L. 90–580, title V, §507, 82 Stat. 1130.

Sept. 29, 1967, Pub. L. 90–96, title VI, §607, 81 Stat. 242.

Oct. 15, 1966, Pub. L. 89–687, title VI, §607, 80 Stat. 991.

Sept. 29, 1965, Pub. L. 89–213, title VI, §607, 79 Stat. 874.

Aug. 19, 1964, Pub. L. 88–446, title V, §507, 78 Stat. 475.

Oct. 17, 1963, Pub. L. 88–149, title V, §507, 77 Stat. 264.

Aug. 9, 1962, Pub. L. 87–577, title V, §507, 76 Stat. 328.

Aug. 17, 1961, Pub. L. 87–144, title II, §201, 75 Stat. 367, 369.

July 7, 1960, Pub. L. 86–601, title II, §201, 74 Stat. 340, 342.

Aug. 18, 1959, Pub. L. 86–166, title II, §201, 73 Stat. 368, 370.

Aug. 22, 1958, Pub. L. 85–724, title III, §301, title V, §501, 72 Stat. 714, 721.

Aug. 2, 1957, Pub. L. 85–117, title III, §301, title V, §501, 71 Stat. 314, 321.

July 2, 1956, ch. 488, title III, §301, title V, §501, 70 Stat. 457, 464.

July 13, 1955, ch. 358, title III, §301, title V, §501, 69 Stat. 304, 312.

June 30, 1954, ch. 432, title IV, §401, title VI, §601, 68 Stat. 339, 347.

Aug. 1, 1953, ch. 305, title III, § 301, title V, § 501, 67 Stat. 339, 348.
July 10, 1952, ch. 630, title III, § 301, title V, § 501, 66 Stat. 520, 530.
Oct. 18, 1951, ch. 512, title III, § 301, title V, § 501, 65 Stat. 429, 443.
Sept. 6, 1950, ch. 896, Ch. X, title III, § 301, title V, § 501, 64 Stat. 735, 750.
Oct. 29, 1949, ch. 787, title III, § 301, title V, § 501, 63 Stat. 992, 1015.
June 24, 1948, ch. 632, 62 Stat. 655.
July 30, 1947, ch. 357, title I, § 1, 61 Stat. 557.
July 16, 1946, ch. 583, § 1, 60 Stat. 547, 548.
July 3, 1945, ch. 265, § 1, 59 Stat. 390.
June 28, 1944, ch. 303, § 1, 58 Stat. 580.
July 1, 1943, ch. 185, § 1, 57 Stat. 354.
July 2, 1942, ch. 477, § 1, 56 Stat. 617.
June 30, 1941, ch. 262, § 1, 55 Stat. 373.
June 13, 1940, ch. 343, § 1, 54 Stat. 358, 359.
Apr. 26, 1939, ch. 88, § 1, 53 Stat. 600.
June 11, 1938, ch. 37, § 1, 52 Stat. 649.
July 1, 1937, ch. 423, § 1, 50 Stat. 450.
May 15, 1936, ch. 404, § 1, title I, 49 Stat. 1286.
Apr. 9, 1935, ch. 54, § 1, title I, 49 Stat. 128.
Apr. 26, 1934, ch. 165, title I, 48 Stat. 621.
Mar. 4, 1933, ch. 281, title I, 47 Stat. 1577.
July 14, 1932, ch. 482, title I, 47 Stat. 670, 671.
Feb. 23, 1931, ch. 279, title I, 46 Stat. 1283, 1284.
May 28, 1930, ch. 348, title I, 46 Stat. 438.
Feb. 28, 1929, ch. 366, title I, 45 Stat. 1356.
Mar. 23, 1928, ch. 232, title I, 45 Stat. 332.
Feb. 23, 1927, ch. 167, title I, 44 Stat. 1113.
Apr. 15, 1926, ch. 146, title I, 44 Stat. 262.
Feb. 12, 1925, ch. 225, title I, 43 Stat. 900.

AMENDMENTS

1985—Pub. L. 99–145 substituted ''enlistment'' for ''enlistments''.

EFFECTIVE DATE

Pub. L. 98–525, title XIV, § 1404, Oct. 19, 1984, 98 Stat. 2621, provided that: ''The amendments made by sections 1401 [enacting this section and sections 956, 979 to 981, 1047 to 1050, 1074b [now 1074c], 1093, 1589, 2007 to 2009, 2484, 2638, and 2639 of this title, amending sections 1074, 1077, 1079, 2104, and 7204 of this title, and repealing section 7208 of this title], 1402 [enacting section 306a of Title 37, Pay and Allowances of the Uniformed Services, and amending sections 206 and 404 of Title 37], and 1403 [amending provisions set out as a note under section 138 of this title and repealing provisions set out as notes under sections 138 and 2102 of this title] take effect on October 1, 1985.''

§ 520c. Recruiting functions: provision of meals and refreshments

Under regulations prescribed by the Secretary concerned, funds appropriated to the Department of Defense for recruitment of military personnel may be expended for small meals and refreshments during recruiting functions for the following persons:

(1) Persons who have enlisted under the Delayed Entry Program authorized by section 513 of this title.

(2) Persons who are objects of armed forces recruiting efforts.

(3) Persons whose assistance in recruiting efforts of the military departments is determined to be influential by the Secretary concerned.

(4) Members of the armed forces and Federal employees when attending recruiting functions in accordance with a requirement to do so.

(5) Other persons whose presence at recruiting functions will contribute to recruiting efforts.

(Added Pub. L. 104–201, div. A, title III, § 361(a), Sept. 23, 1996, 110 Stat. 2491; amended Pub. L. 107–107, div. A, title V, § 545, Dec. 28, 2001, 115 Stat. 1113; Pub. L. 108–136, div. A, title X, § 1031(a)(8)(A), Nov. 24, 2003, 117 Stat. 1596.)

AMENDMENTS

2003—Pub. L. 108–136 substituted ''provision of meals and refreshments'' for ''use of funds'' in section catchline, struck out ''(a) PROVISION OF MEALS AND REFRESHMENTS.—'' before ''Under regulations'', and struck out heading and text of subsec. (b). Text read as follows: ''Not later than February 1 of each of the years 1998 through 2002, the Secretary of Defense shall submit to Congress a report on the extent to which the authority under subsection (a) was exercised during the fiscal year ending in the preceding year.''

2001—Subsec. (a)(4). Pub. L. 107–107, § 545(b)(1), substituted ''recruiting functions'' for ''recruiting events''.

Subsec. (a)(5). Pub. L. 107–107, § 545(b)(2), substituted ''presence at recruiting functions'' for ''presence at recruiting efforts''.

Subsec. (c). Pub. L. 107–107, § 545(a), struck out heading and text of subsec. (c). Text read as follows: ''The authority in subsection (a) may not be exercised after September 30, 2001.''

CHAPTER 32—OFFICER STRENGTH AND DISTRIBUTION IN GRADE

Sec.
521. Authority to prescribe total strengths of officers on active duty and officer strengths in various categories.
[522. Repealed.]
523. Authorized strengths: commissioned officers on active duty in grades of major, lieutenant colonel, and colonel and Navy grades of lieutenant commander, commander, and captain.
[524. Renumbered.]
525. Distribution of commissioned officers on active duty in general officer and flag officer grades.
526. Authorized strength: general and flag officers on active duty.
526a. Authorized strength after December 31, 2022: general officers and flag officers on active duty.
527. Authority to suspend sections 523, 525, and 526.
528. Officers serving in certain intelligence positions: military status; application of distribution and strength limitations; pay and allowances.

AMENDMENTS

2016—Pub. L. 114–328, div. A, title V, § 501(h)(3), Dec. 23, 2016, 130 Stat. 2102, added item 526a.

2011—Pub. L. 112–81, div. A, title V, § 502(d)(2)(B), 125 Stat. 1388, added item 528 and struck out former item 528 ''Officers serving in certain intelligence positions: military status; exclusion from distribution and strength limitations; pay and allowances.''

2006—Pub. L. 109–364, div. A, title V, § 501(b)(2), Oct. 17, 2006, 120 Stat. 2176, substituted ''Officers serving in certain intelligence positions: military status; exclusion from distribution and strength limitations; pay and allowances'' for ''Exclusion: officers serving in certain intelligence positions'' in item 528.

Pub. L. 109–163, div. A, title V, § 507(b), Jan. 6, 2006, 119 Stat. 3228, substituted ''Exclusion: officers serving in certain intelligence positions'' for ''Exclusion: Associate Director of Central Intelligence for Military Support'' in item 528.

2004—Pub. L. 108–375, div. A, title V, § 501(b)(2), Oct. 28, 2004, 118 Stat. 1873, struck out item 522 ''Authorized total strengths: regular commissioned officers on active duty''.

2003—Pub. L. 108–136, div. A, title V, § 507(b), Nov. 24, 2003, 117 Stat. 1458, added item 528.

2001—Pub. L. 107–107, div. A, title V, § 501(b), Dec. 28, 2001, 115 Stat. 1079, struck out item 528 ''Limitation on number of officers on active duty in grades of general and admiral''.

1994—Pub. L. 103–337, div. A, title IV, § 405(b)(2), title XVI, § 1671(b)(4), Oct. 5, 1994, 108 Stat. 2745, 3013, struck out item 524 ''Authorized strengths: reserve officers on active duty or on full-time National Guard duty for administration of the reserves or the National Guard in grades of major, lieutenant colonel, and colonel and Navy grades of lieutenant commander, commander, and captain'', struck out ''524,'' after ''523,'' in item 527, and added item 528.

1988—Pub. L. 100–370, § 1(b)(3), July 19, 1988, 102 Stat. 840, struck out former item 526 ''Authority to suspend sections 523, 524, and 525'', and added items 526 and 527.

1984—Pub. L. 98–525, title IV, § 414(a)(4)(B)(ii), inserted references to the National Guard and to full-time National Guard duty in item 524.

§ 521. Authority to prescribe total strengths of officers on active duty and officer strengths in various categories

(a) Whenever the needs of the services require, but at least once each fiscal year, the Secretary of Defense shall prescribe the total authorized active-duty strength as of the end of the fiscal year for officers in grades above chief warrant officer, W–5, for each of the armed forces under the jurisdiction of the Secretary of a military department.

(b) Under regulations prescribed by the Secretary of Defense, the Secretary of each military department may, for an armed force under his jurisdiction, prescribe the strength of any category of officers that may serve on active duty.

(Added Pub. L. 96–513, title I, § 103, Dec. 12, 1980, 94 Stat. 2841; amended Pub. L. 102–190, div. A, title XI, § 1131(1)(A), Dec. 5, 1991, 105 Stat. 1505.)

AMENDMENTS

1991—Subsec. (a). Pub. L. 102–190 substituted ''chief warrant officer, W–5,'' for ''warrant officer (W–4)''.

EFFECTIVE DATE OF 1991 AMENDMENT

Pub. L. 102–190, div. A, title XI, § 1132, Dec. 5, 1991, 105 Stat. 1506, provided that: ''This title [enacting sections 571 to 583 and 742 of this title, amending this section, sections 522, 597 [now 12241], 598 [now 12242], 603, 628, 644, 741, 1166, 1174, 1305, 1406, 5414, 5457, 5458, 5501 to 5503, 5596, 5600, 5665, 6389, and 6391 of this title, sections 286a and 334 of Title 14, Coast Guard, and sections 201, 301, 301c, 305a, and 406 of Title 37, Pay and Allowances of the Uniformed Services, repealing sections 555 to 565, 602, and 745 of this title, and enacting provisions set out as notes under sections 555 and 571 of this title and section 1009 of Title 37] and the amendments made by this title shall take effect on February 1, 1992.''

EFFECTIVE DATE

Section effective Sept. 15, 1981, but the authority to prescribe regulations under this chapter effective Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

TRANSITION PROVISIONS UNDER DEFENSE OFFICER PERSONNEL MANAGEMENT ACT

For provisions to prevent extinction or premature termination of rights, duties, penalties, or proceedings that existed or were begun prior to the effective date of Pub. L. 96–513 and otherwise to allow for an orderly transition to the system of officer personnel management put in place under Pub. L. 96–513, see section 601 et seq. of Pub. L. 96–513, set out as a note under section 611 of this title.

EVALUATION OF EFFECTS OF OFFICER STRENGTH REDUCTIONS ON OFFICER PERSONNEL MANAGEMENT SYSTEMS

Pub. L. 102–484, div. A, title V, § 502, Oct. 23, 1992, 106 Stat. 2402, directed the Secretary of Defense to provide for an independent, federally funded research and development center to review the officer personnel management system of each of the military departments and to determine and evaluate the effects of post-Cold War officer strength reductions on that officer personnel management system, required the center to submit to the Secretary of Defense a report on the results of the review and evaluation not later than Dec. 31, 1993, and directed the Secretary to transmit the report to committees of Congress within 60 days after receipt.

STRENGTH OF ACTIVE DUTY OFFICER CORPS

Pub. L. 100–456, div. A, title IV, § 402(c), Sept. 29, 1988, 102 Stat. 1963, provided that:

''(1) The number of officers serving on active duty (excluding officers in categories specified in paragraph (2)) as of September 30, 1990, may not exceed—

''(A) in the case of the Army, 106,427; and

''(B) in the case of the Air Force, 102,438.

''(2) Officers in the categories described in section 403(b) of the National Defense Authorization Act for Fiscal Year 1987 [Pub. L. 99–661, set out below] shall be excluded in counting officers under this subsection.''

Pub. L. 100–180, div. A, title IV, § 402, Dec. 4, 1987, 101 Stat. 1081, as amended by Pub. L. 100–456, div. A, title IV, § 402(b), Sept. 29, 1988, 102 Stat. 1963, provided that:

''(a) AUTHORITY TO INCREASE FOR FISCAL YEAR 1988.—Subject to subsection (b), the Secretary of Defense may increase by not more than 1 percentage point (to not more than 98 percent) the percentage limitation prescribed in section 403(a) of the National Defense Authorization Act for Fiscal Year 1987 (Public Law 99–661; 100 Stat. 3859) [set out below] applicable to the total number of commissioned officers of the Army, Navy, Air Force, and Marine Corps that may be serving on active duty as of September 30, 1988.

''(b) CERTIFICATION AND REPORT.—The Secretary may exercise the authority under subsection (a) only if—

''(1) the Secretary makes a determination that such increase is necessary in order to avoid severe personnel management problems in the Army, Navy, Air Force, and Marine Corps during fiscal year 1988 and certifies such determination to the Committees on Armed Services of the Senate and the House of Representatives; and

''(2) the Secretary submits to those Committees with such certification a report providing legislative recommendations for temporary changes in chapter 36 of title 10, United States Code, and other provisions of law enacted by the Defense Officer Personnel Management Act (Public Law 96–513) [see Tables for classification] that the Secretary considers necessary in order to implement the required officer reductions under such section 403 [set out below] with the least possible adverse effect on the Armed Forces.''

Pub. L. 99–661, div. A, title IV, § 403, Nov. 14, 1986, 100 Stat. 3859, as amended by Pub. L. 100–456, div. A, title IV, § 402(a), Sept. 29, 1988, 102 Stat. 1963; Pub. L. 101–189, div. A, title VI, § 653(e)(2), Nov. 29, 1989, 103 Stat. 1463; Pub. L. 103–337, div. A, title XVI, § 1677(e), Oct. 5, 1994, 108 Stat. 3020, provided that:

''(a) REDUCTION IN SIZE OF OFFICER CORPS.—On and after each of the dates set forth in column 1 of the following table, the total number of commissioned officers serving on active duty in the Army, Navy, Air Force, and Marine Corps (excluding officers in categories specified in subsection (b)) may not exceed the percentage, set forth in column 2 opposite such date, of the total number of commissioned officers serving on active duty as of September 30, 1986 (excluding officers in categories specified in subsection (b)):

Column 1	Column 2
On and after:	Percentage of total commissioned officers serving on active duty as of September 30, 1986:
September 30, 1987	99
September 30, 1988	97

"(b) EXCLUSIONS.—In computing the authorized strength of commissioned officers under subsection (a), officers in the following categories shall be excluded:

"(1) Reserve officers—

"(A) on active duty for training;

"(B) on active duty under section 10148(a), 10211, 10302 through 10305, 12301(a), or 12402 of title 10, United States Code, or under section 708 of title 32, United States Code;

"(C) on active duty under section 12301(d) of title 10, United States Code, in connection with organizing, administering, recruiting, instructing, or training the reserve components or the National Guard;

"(D) on active duty to pursue special work;

"(E) ordered to active duty under section 12304 of title 10, United States Code; or

"(F) on full-time National Guard duty.

"(2) Retired officers on active duty under a call or order to active duty for 180 days or less.

"(3) Reserve or retired officers on active duty under section 10(b)(2) of the Military Selective Service Act (50 U.S.C. App. 460(b)(2)) [now 50 U.S.C. 3809(b)(2)] for the administration of the Selective Service System.

"(c) APPORTIONMENT OF REDUCTIONS BY SECRETARY OF DEFENSE.—The Secretary of Defense shall apportion the reductions in the number of commissioned officers serving on active duty required by subsection (a) among the Army, Navy, Air Force, and Marine Corps. Not later than February 1 of each fiscal year in which reductions are required under subsection (a), the Secretary shall submit to the Committees on Armed Services of the Senate and House of Representatives a report on the manner in which the reductions have been or are to be apportioned for that fiscal year and for the next fiscal year for which such reductions are required."

[§ 522. Repealed. Pub. L. 108–375, div. A, title V, § 501(b)(1), Oct. 28, 2004, 118 Stat. 1873]

Section, added Pub. L. 96–513, title I, § 103, Dec. 12, 1980, 94 Stat. 2841; amended Pub. L. 98–525, title V, § 522, Oct. 19, 1984, 98 Stat. 2523; Pub. L. 102–190, div. A, title XI, § 1131(1)(B), Dec. 5, 1991, 105 Stat. 1505, related to authorized total strengths of regular commissioned officers on active duty.

EFFECTIVE DATE OF REPEAL

Repeal effective on the first day of the first month beginning more than 180 days after Oct. 28, 2004, see section 501(g) of Pub. L. 108–375, set out as an Effective Date of 2004 Amendment note under section 531 of this title.

§ 523. Authorized strengths: commissioned officers on active duty in grades of major, lieutenant colonel, and colonel and Navy grades of lieutenant commander, commander, and captain

(a)(1) Except as provided in subsection (c), of the total number of commissioned officers serving on active duty in the Army, Air Force, or Marine Corps at the end of any fiscal year (excluding officers in categories specified in subsection (b)), the number of officers who may be serving on active duty in each of the grades of major, lieutenant colonel, and colonel may not, as of the end of such fiscal year, exceed a number determined in accordance with the following table:

Total number of commissioned officers (excluding officers in categories specified in subsection (b)) on active duty:	Number of officers who may be serving on active duty in grade of:		
	Major	Lieutenant Colonel	Colonel
Army:			
20,000	7,768	5,253	1,613
25,000	8,689	5,642	1,796
30,000	9,611	6,030	1,980
35,000	10,532	6,419	2,163
40,000	11,454	6,807	2,347
45,000	12,375	7,196	2,530
50,000	13,297	7,584	2,713
55,000	14,218	7,973	2,897
60,000	15,140	8,361	3,080
65,000	16,061	8,750	3,264
70,000	16,983	9,138	3,447
75,000	17,903	9,527	3,631
80,000	18,825	9,915	3,814
85,000	19,746	10,304	3,997
90,000	20,668	10,692	4,181
95,000	21,589	11,081	4,364
100,000	22,511	11,469	4,548
110,000	24,354	12,246	4,915
120,000	26,197	13,023	5,281
130,000	28,040	13,800	5,648
170,000	35,412	16,908	7,116
Air Force:			
35,000	9,216	7,090	2,125
40,000	10,025	7,478	2,306
45,000	10,835	7,866	2,487
50,000	11,645	8,253	2,668
55,000	12,454	8,641	2,849
60,000	13,264	9,029	3,030
65,000	14,073	9,417	3,211
70,000	14,883	9,805	3,392
75,000	15,693	10,193	3,573
80,000	16,502	10,582	3,754
85,000	17,312	10,971	3,935
90,000	18,121	11,360	4,115
95,000	18,931	11,749	4,296
100,000	19,741	12,138	4,477
105,000	20,550	12,527	4,658
110,000	21,360	12,915	4,838
115,000	22,169	13,304	5,019
120,000	22,979	13,692	5,200
125,000	23,789	14,081	5,381
Marine Corps:			
10,000	2,802	1,615	633
12,500	3,247	1,768	658
15,000	3,691	1,922	684
17,500	4,135	2,076	710
20,000	4,579	2,230	736
22,500	5,024	2,383	762
25,000	5,468	2,537	787.

(2) Except as provided in subsection (c), of the total number of commissioned officers serving on active duty in the Navy at the end of any fiscal year (excluding officers in categories specified in subsection (b)), the number of officers who may be serving on active duty in each of the grades of lieutenant commander, commander, and captain may not, as of the end of such fiscal year, exceed a number determined in accordance with the following table:

Total number of commissioned officers (excluding officers in categories specified in subsection (b)) on active duty:	Number of officers who may be serving on active duty in grade of:		
	Lieutenant Commander	Commander	Captain
Navy:			
30,000	7,698	5,269	2,222
33,000	8,189	5,501	2,334
36,000	8,680	5,733	2,447
39,000	9,172	5,965	2,559
42,000	9,663	6,197	2,671
45,000	10,155	6,429	2,784
48,000	10,646	6,660	2,896
51,000	11,136	6,889	3,007
54,000	11,628	7,121	3,120
57,000	12,118	7,352	3,232
60,000	12,609	7,583	3,344
63,000	13,100	7,813	3,457
66,000	13,591	8,044	3,568
70,000	14,245	8,352	3,718
90,000	17,517	9,890	4,467.

(3) If the total number of commissioned officers serving on active duty in an armed force (excluding officers in categories specified in subsection (b)) is between any two consecutive figures listed in the first column of the appropriate table in paragraph (1) or (2), the corresponding authorized strengths for each of the grades shown in that table for that armed force are determined by mathematical interpolation between the respective numbers of the two strengths. If the total number of commissioned officers serving on active duty in an armed force (excluding officers in categories specified in subsection (b)) is greater or less than the figures listed in the first column of the appropriate table in paragraph (1) or (2), the Secretary concerned shall fix the corresponding strengths for the grades shown in that table in the same proportion as reflected in the nearest limit shown in the table.

(b) Officers in the following categories shall be excluded in computing and determining authorized strengths under this section:

(1) Reserve officers—

(A) on active duty as authorized under section 115(a)(1)(B) or 115(b)(1) of this title, or excluded from counting for active duty end strengths under section 115(i) of this title;

(B) on active duty under section 10211, 10302 through 10305, or 12402 of this title or under section 708 of title 32; or

(C) on full-time National Guard duty.

(2) General and flag officers.

(3) Medical officers.

(4) Dental officers.

(5) Warrant officers.

(6) Retired officers on active duty under a call or order to active duty for 180 days or less.

(7) Retired officers on active duty under section 10(b)(2) of the Military Selective Service Act (50 U.S.C. 3809(b)(2)) for the administration of the Selective Service System.

(8) Permanent professors of the United States Military Academy and the United States Air Force Academy and professors of the United States Naval Academy who are career military professors (as defined in regulations prescribed by the Secretary of the Navy), but not to exceed 50 from any such academy.

(9) Officers who are Senior Military Acquisition Advisors under section 1725 of this title, but not to exceed 15.

(c) Whenever the number of officers serving in any grade is less than the number authorized for that grade under this section, the difference between the two numbers may be applied to increase the number authorized under this section for any lower grade.

(d) An officer may not be reduced in grade, or have his pay or allowances reduced, because of a reduction in the number of commissioned officers authorized for his grade under this section.

(Added Pub. L. 96–513, title I, § 103, Dec. 12, 1980, 94 Stat. 2842; amended Pub. L. 98–525, title IV, § 414(a)(3), Oct. 19, 1984, 98 Stat. 2518; Pub. L. 99–145, title V, § 511(a), Nov. 8, 1985, 99 Stat. 623; Pub. L. 99–433, title V, § 531(a)(1), Oct. 1, 1986, 100 Stat. 1063; Pub. L. 102–190, div. A, title IV, § 431, Dec. 5, 1991, 105 Stat. 1354; Pub. L. 103–337, div. A, title XVI, § 1673(c)(3), Oct. 5, 1994, 108 Stat. 3014; Pub. L. 104–201, div. A, title IV, § 403(a), (b), Sept. 23, 1996, 110 Stat. 2504, 2505; Pub. L. 107–314, div. A, title IV, § 406, Dec. 2, 2002, 116 Stat. 2526; Pub. L. 108–375, div. A, title IV, §§ 404, 416(g), Oct. 28, 2004, 118 Stat. 1864, 1868; Pub. L. 109–364, div. A, title X, § 1071(g)(1)(B), Oct. 17, 2006, 120 Stat. 2402; Pub. L. 110–181, div. A, title IV, §§ 404, 405, Jan. 28, 2008, 122 Stat. 88; Pub. L. 112–81, div. A, title V, § 501, Dec. 31, 2011, 125 Stat. 1386; Pub. L. 114–328, div. A, title VIII, § 866(b), title X, § 1081(b)(1)(A)(iii), Dec. 23, 2016, 130 Stat. 2306, 2418.)

AMENDMENTS

2016—Subsec. (b)(7). Pub. L. 114–328, § 1081(b)(1)(A)(iii), substituted ''(50 U.S.C. 3809(b)(2))'' for ''(50 U.S.C. App. 460(b)(2))''.

Subsec. (b)(9). Pub. L. 114–328, § 866(b), added par. (9).

2011—Subsec. (a)(1). Pub. L. 112–81, in table, increased number of officers authorized to serve on active duty in the Marine Corps in each grade covered as follows: Major to 2,802, 3,247, 3,691, 4,135, 4,579, 5,024, and 5,468 from 2,525, 2,900, 3,275, 3,650, 4,025, 4,400, and 4,775, respectively; Lieutenant Colonel to 1,615, 1,768, 1,922, 2,076, 2,230, 2,383, and 2,537 from 1,480, 1,600, 1,720, 1,840, 1,960, 2,080, and 2,200, respectively; and Colonel to 633, 658, 684, 710, 736, 762, and 787 from 571, 632, 653, 673, 694, 715, and 735, respectively.

2008—Subsec. (a)(1). Pub. L. 110–181, § 404, in table, increased number of officers authorized to serve on active duty in the Army in the grade of Major to 7,768, 8,689, 9,611, 10,532, 11,454, 12,375, 13,297, 14,218, 15,140, 16,061, 16,983, 17,903, 18,825, 19,746, 20,668, 21,589, 22,511, 24,354, 26,197, 28,040, and 35,412 from 6,948, 7,539, 8,231, 8,922, 9,614, 10,305, 10,997, 11,688, 12,380, 13,071, 13,763, 14,454, 15,146, 15,837, 16,529, 17,220, 17,912, 19,295, 20,678, 22,061, and 27,593, respectively.

Subsec. (a)(2). Pub. L. 110–181, § 405, amended table generally, extensively revising the numbers in each grade covered.

2006—Subsec. (b)(1). Pub. L. 109–364 made technical correction to directory language of Pub. L. 108–375, § 416(g)(1). See 2004 Amendment note below.

2004—Subsec. (b)(1). Pub. L. 108–375, § 416(g)(1), as amended by Pub. L. 109–364, amended par. (1) generally. Prior to amendment, par. (1) read as follows:

''(1) Reserve officers—

''(A) on active duty for training;

''(B) on active duty under section 10211, 10302 through 10305, or 12402 of this title or under section 708 of title 32;

''(C) on active duty under section 12301(d) of this title in connection with organizing, administering,

recruiting, instructing, or training the reserve components;

''(D) on active duty to pursue special work;

''(E) ordered to active duty under section 12304 of this title; or

''(F) on full-time National Guard duty.''

Subsec. (b)(7). Pub. L. 108–375, § 416(g)(2), substituted ''Retired officers'' for ''Reserve or retired officers''.

Subsec. (b)(8). Pub. L. 108–375, § 404, added par. (8).

2002—Subsec. (a)(1). Pub. L. 107–314, in table, increased number of officers authorized to serve on active duty in the Marine Corps in the grade of Colonel to 571, 632, 653, 673, 694, 715, and 735 from 571, 592, 613, 633, 654, 675, and 695, respectively.

1996—Subsec. (a)(1). Pub. L. 104–201, § 403(a), amended table generally, expanding the range of numbers of commissioned officers covered and extensively revising the numbers in each grade covered.

Subsec. (a)(2). Pub. L. 104–201, § 403(b), amended table generally, expanding the range of numbers of commissioned officers covered and extensively revising the numbers in each grade covered.

1994—Subsec. (b)(1)(B). Pub. L. 103–337, § 1671(c)(3)(A), substituted ''10211, 10302 through 10305, or 12402'' for ''265, 3021, 3496, 5251, 5252, 8021, or 8496''.

Subsec. (b)(1)(C). Pub. L. 103–337, § 1671(c)(3)(B), substituted ''12301(d)'' for ''672(d)''.

Subsec. (b)(1)(E). Pub. L. 103–337, § 1671(c)(3)(C), substituted ''12304'' for ''673b''.

1991—Subsec. (a)(1). Pub. L. 102–190, in table, decreased numbers of officers authorized to serve on active duty in the Air Force in the grade of Colonel to 3,392, 3,573, 3,754, 3,935, 4,115, 4,296, 4,477, 4,658, 4,838, 5,019, 5,200, and 5,381 from 3,642, 3,823, 4,004, 4,185, 4,365, 4,546, 4,727, 4,908, 5,088, 5,269, 5,450, and 5,631, respectively.

1986—Subsec. (b)(1)(B). Pub. L. 99–433 substituted ''3021'' and ''8021'' for ''3033'' and ''8033'', respectively.

1985—Subsec. (a)(1). Pub. L. 99–145 increased fiscal year limitation on authorized number of Marine Corps majors to 2,766, 3,085, 3,404, 3,723, and 4,042 from 2,717, 2,936, 3,154, 3,373, and 3,591, respectively.

1984—Subsec. (b)(1)(C). Pub. L. 98–525, § 414(a)(3)(A), struck out ''or section 502 or 503 of title 32'' after ''section 672(d) of this title''.

Subsec. (b)(1)(F). Pub. L. 98–525, § 414(a)(3)(B)–(D), added subpar. (F).

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–364, div. A, title X, § 1071(g), Oct. 17, 2006, 120 Stat. 2402, provided that the amendment made by section 1071(g)(1)(B) is effective as of Oct. 28, 2004, and as if included in Pub. L. 108–375 as enacted.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–201, div. A, title IV, § 403(d), Sept. 23, 1996, 110 Stat. 2506, provided that: ''The amendments made by subsections (a), (b), and (c) [amending this section and repealing provisions set out as notes below] shall take effect on September 1, 1997.''

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

EFFECTIVE DATE OF 1985 AMENDMENT

Pub. L. 99–145, title V, § 511(b), Nov. 8, 1985, 99 Stat. 623, provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on October 1, 1985.''

EFFECTIVE DATE

Section effective Sept. 15, 1981, but the authority to prescribe regulations under this section effective Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

TEMPORARY VARIATION IN DOPMA AUTHORIZED END STRENGTH LIMITATIONS FOR ACTIVE DUTY AIR FORCE AND NAVY OFFICERS IN CERTAIN GRADES

Pub. L. 104–106, div. A, title IV, § 402, Feb. 10, 1996, 110 Stat. 286, provided that the numbers of officers of the Air Force authorized under subsec. (a)(1) of this section to be serving on active duty in the grades of major, lieutenant colonel, and colonel for fiscal years 1996 and 1997 and the numbers of officers in the Navy authorized under subsec. (a)(2) of this section to be serving on active duty in the grades of lieutenant commander, commander, and captain for fiscal years 1996 and 1997 were limited to numbers in tables, prior to repeal by Pub. L. 104–201, div. A, title IV, § 403(c)(3), Sept. 23, 1996, 110 Stat. 2506.

TEMPORARY VARIATION OF END STRENGTH LIMITATIONS FOR ARMY MAJORS AND LIEUTENANT COLONELS

Pub. L. 103–337, div. A, title IV, § 402, Oct. 5, 1994, 108 Stat. 2743, provided that number of officers of the Army authorized under subsec. (a)(1) of this section to be serving on active duty in grades of major and lieutenant colonel for fiscal years 1995 through 1997 was limited to numbers set forth in table prior to repeal by Pub. L. 104–201, div. A, title IV, § 403(c)(2), Sept. 23, 1996, 110 Stat. 2506.

TEMPORARY VARIATION OF END STRENGTH LIMITATIONS FOR MARINE CORPS MAJORS AND LIEUTENANT COLONELS

Pub. L. 103–160, div. A, title IV, § 402, Nov. 30, 1993, 107 Stat. 1639, as amended by Pub. L. 103–337, div. A, title IV, § 403, Oct. 5, 1994, 108 Stat. 2743, provided that number of officers of the Marine Corps authorized under subsec. (a)(1) of this section to be serving on active duty in grades of major and lieutenant colonel for fiscal years 1994 through 1997 was limited to numbers set forth in table prior to repeal by Pub. L. 104–201, div. A, title IV, § 403(c)(1), Sept. 23, 1996, 110 Stat. 2505.

TEMPORARY INCREASE IN OFFICER GRADE LIMITATIONS

Pub. L. 101–189, div. A, title IV, § 403, Nov. 29, 1989, 103 Stat. 1431, authorized the Secretary of Defense, until Sept. 30, 1991, to increase the strength-in-grade limitations specified in subsec. (a) of this section by a total of 250 positions, to be distributed among grades and services as the Secretary considers appropriate and directed the Secretary to submit to Congress a comprehensive report on the adequacy of the strength-in-grade limitations prescribed in subsec. (a) of this section.

TEMPORARY REDUCTION IN NUMBER OF AIR FORCE COLONELS

Pub. L. 101–189, div. A, title IV, § 402, Nov. 29, 1989, 103 Stat. 1431, as amended by Pub. L. 101–510, div. A, title IV, § 404, Nov. 5, 1990, 104 Stat. 1545, provided that the number of officers authorized under subsec. (a) of this section to be serving on active duty in the Air Force in the grade of colonel during fiscal year 1992 was reduced by 250.

Pub. L. 100–456, div. A, title IV, § 403, Sept. 29, 1988, 102 Stat. 1963, provided that the number of officers authorized under this section to be serving on active duty in the Air Force in the grade of colonel during fiscal year 1989 was reduced by 125, and the number of such officers authorized to be serving on active duty during fiscal year 1990 was reduced by 250.

CEILINGS ON COMMISSIONED OFFICERS ON ACTIVE DUTY

Pub. L. 95–79, title VIII, § 811(a), July 30, 1977, 91 Stat. 335, as amended by Pub. L. 96–107, title VIII, § 817, Nov. 9, 1979, 93 Stat. 818; Pub. L. 96–342, title X, § 1003, Sept. 8, 1980, 94 Stat. 1120; Pub. L. 97–86, title VI, § 602, Dec. 1, 1981, 95 Stat. 1110, which provided that after Oct. 1,

1981, the total number of commissioned officers on active duty in the Army, Air Force, and Marine Corps above the grade of colonel, and on active duty in the Navy above the grade of captain, could not exceed 1,073, and that in time of war, or of national emergency declared by Congress, the President could suspend the operation of this provision, was repealed and restated in section 526 of this title by Pub. L. 100–370, §1(b)(1)(B), (4).

TRANSITION PROVISIONS UNDER DEFENSE OFFICER PERSONNEL MANAGEMENT ACT

For provisions increasing for the fiscal year ending on Sept. 30, 1981, the maximum number of officers authorized by this section to be serving on active duty, see section 627 of Pub. L. 96–513, set out as a note under section 611 of this title.

[§ 524. Renumbered § 12011]

§ 525. Distribution of commissioned officers on active duty in general officer and flag officer grades

(a) For purposes of the applicable limitation in section 526(a) of this title on general and flag officers on active duty, no appointment of an officer on the active duty list may be made as follows:

(1) in the Army, if that appointment would result in more than—

(A) 8 officers in the grade of general;

(B) 46 officers in a grade above the grade of major general; or

(C) 90 officers in the grade of major general;

(2) in the Air Force, if that appointment would result in more than—

(A) 9 officers in the grade of general;

(B) 44 officers in a grade above the grade of major general; or

(C) 73 officers in the grade of major general;

(3) in the Navy, if that appointment would result in more than—

(A) 6 officers in the grade of admiral;

(B) 33 officers in a grade above the grade of rear admiral; or

(C) 50 officers in the grade of rear admiral;

(4) in the Marine Corps, if that appointment would result in more than—

(A) 2 officers in the grade of general;

(B) 17 officers in a grade above the grade of major general; or

(C) 22 officers in the grade of major general.

(b) The limitations of subsection (a) do not include the following:

(1) An officer released from a joint duty assignment, but only during the 60-day period beginning on the date the officer departs the joint duty assignment, except that the Secretary of Defense may authorize the Secretary of a military department to extend the 60-day period by an additional 120 days, but no more than three officers from each armed forces may be on active duty who are excluded under this paragraph.

(2) The number of officers required to serve in joint duty assignments as authorized by the Secretary of Defense under section 526(b) for each military service.

(c)(1) Subject to paragraph (3), the President—

(A) may make appointments in the Army, Air Force, and Marine Corps in the grades of lieutenant general and general in excess of the applicable numbers determined under this section if each such appointment is made in conjunction with an offsetting reduction under paragraph (2); and

(B) may make appointments in the Navy in the grades of vice admiral and admiral in excess of the applicable numbers determined under this section if each such appointment is made in conjunction with an offsetting reduction under paragraph (2).

(2) For each appointment made under the authority of paragraph (1) in the Army, Air Force, or Marine Corps in the grade of lieutenant general or general or in the Navy in the grade of vice admiral or admiral, the number of appointments that may be made in the equivalent grade in one of the other armed forces (other than the Coast Guard) shall be reduced by one. When such an appointment is made, the President shall specify the armed force in which the reduction required by this paragraph is to be made.

(3)(A) The number of officers that may be serving on active duty in the grades of lieutenant general and vice admiral by reason of appointments made under the authority of paragraph (1) may not exceed 15.

(B) The number of officers that may be serving on active duty in the grades of general and admiral by reason of appointments made under the authority of paragraph (1) may not exceed 5.

(4) Upon the termination of the appointment of an officer in the grade of lieutenant general or vice admiral or general or admiral that was made in connection with an increase under paragraph (1) in the number of officers that may be serving on active duty in that armed force in that grade, the reduction made under paragraph (2) in the number of appointments permitted in such grade in another armed force by reason of that increase shall no longer be in effect.

(d) An officer continuing to hold the grade of general or admiral under section 601(b)(5) of this title after relief from the position of Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, or Commandant of the Marine Corps shall not be counted for purposes of this section.

(e) The following officers shall not be counted for purposes of this section:

(1) An officer of that armed force in the grade of brigadier general or above or, in the case of the Navy, in the grade of rear admiral (lower half) or above, who is on leave pending the retirement, separation, or release of that officer from active duty, but only during the 60-day period beginning on the date of the commencement of such leave of such officer.

(2) At the discretion of the Secretary of Defense, an officer of that armed force who has been relieved from a position designated under section 601(a) of this title or by law to carry one of the grades specified in such section, but only during the 60-day period beginning on the date on which the assignment of the officer to the first position is terminated or until the officer is assigned to a second such position, whichever occurs first.

(f) An officer while serving as Attending Physician to the Congress is in addition to the number that would otherwise be permitted for that officer's armed force for officers serving on active duty in grades above brigadier general or rear admiral (lower half) under subsection (a).

(g)(1) The limitations of this section do not apply to a reserve component general or flag officer who is on active duty for a period in excess of 365 days, but not to exceed three years, except that the number of officers from each reserve component who are covered by this subsection and are not serving in a position that is a joint duty assignment for purposes of chapter 38 of this title may not exceed 5 per component, unless authorized by the Secretary of Defense.

(2) Not later than 30 days after authorizing a number of reserve component general or flag officers in excess of the number specified in paragraph (1), the Secretary of Defense shall notify the Committees on Armed Services of the Senate and the House of Representatives of such authorization, and shall include with such notice a statement of the reason for such authorization.

(Added Pub. L. 96–513, title I, §103, Dec. 12, 1980, 94 Stat. 2844; amended Pub. L. 97–86, title IV, §405(b)(1), Dec. 1, 1981, 95 Stat. 1105; Pub. L. 99–145, title V, §514(b)(1), Nov. 8, 1985, 99 Stat. 628; Pub. L. 99–433, title II, §202(a), Oct. 1, 1986, 100 Stat. 1010; Pub. L. 100–180, div. A, title V, §511(a), Dec. 4, 1987, 101 Stat. 1088; Pub. L. 101–510, div. A, title IV, §405, Nov. 5, 1990, 104 Stat. 1546; Pub. L. 103–337, div. A, title IV, §405(a), Oct. 5, 1994, 108 Stat. 2744; Pub. L. 104–106, div. A, title IV, §403(a), Feb. 10, 1996, 110 Stat. 286; Pub. L. 104–201, div. A, title IV, §404(b), Sept. 23, 1996, 110 Stat. 2506; Pub. L. 105–261, div. A, title IV, §§404, 406, Oct. 17, 1998, 112 Stat. 1996; Pub. L. 106–65, div. A, title V, §§509(b), (c), 532(b), Oct. 5, 1999, 113 Stat. 592, 604; Pub. L. 106–398, §1 [[div. A], title V, §507(g)], Oct. 30, 2000, 114 Stat. 1654, 1654A–105; Pub. L. 107–314, div. A, title IV, §§404(a), (b), 405(b), Dec. 2, 2002, 116 Stat. 2525, 2526; Pub. L. 108–136, div. A, title V, §504(b), Nov. 24, 2003, 117 Stat. 1456; Pub. L. 109–163, div. A, title V, §503(a), Jan. 6, 2006, 119 Stat. 3226; Pub. L. 109–364, div. A, title V, §507(b), Oct. 17, 2006, 120 Stat. 2180; Pub. L. 110–181, div. A, title V, §§501(b), 543(d), Jan. 28, 2008, 122 Stat. 94, 115; Pub. L. 110–417, [div. A], title V, §§503(d), 504(b), Oct. 14, 2008, 122 Stat. 4433, 4434; Pub. L. 111–84, div. A, title V, §502(b)–(d), Oct. 28, 2009, 123 Stat. 2273–2275; Pub. L. 111–383, div. A, title X, §1075(b)(12), (d)(2), Jan. 7, 2011, 124 Stat. 4369, 4372; Pub. L. 112–81, div. A, title V, §§502(a)(1), (b)(2), 511(a)(3), Dec. 31, 2011, 125 Stat. 1386, 1387, 1391; Pub. L. 114–328, div. A, title V, §503(a), Dec. 23, 2016, 130 Stat. 2107; Pub. L. 116–283, div. A, title V, §501(c)(1), Jan. 1, 2021, 134 Stat. 3563.)

AMENDMENTS

2021—Subsec. (a)(1)(A). Pub. L. 116–283 substituted ''8'' for ''7''.

2016—Subsec. (a)(4)(B). Pub. L. 114–328, §503(a)(1), substituted ''17'' for ''15''.

Subsec. (a)(4)(C). Pub. L. 114–328, §503(a)(2), substituted ''22'' for ''23''.

2011—Subsec. (a). Pub. L. 112–81, §502(b)(2)(A)–(C), substituted ''46'' for ''45'' in par. (1)(B), ''44'' for ''43'' in par. (2)(B), and ''33'' for ''32'' in par. (3)(B).

Subsec. (a)(4)(C). Pub. L. 112–81, §502(b)(2)(D), substituted ''23'' for ''22''.

Subsec. (b). Pub. L. 112–81, §502(a)(1), amended subsec. (b) generally. Prior to amendment, subsec. (b) related to exclusions from limitations on appointment of general officers on active duty in the Army, Air Force, and Marine Corps and flag officers on active duty in the Navy.

Subsec. (b)(1)(D). Pub. L. 112–81, §511(a)(3)(A), struck out subpar. (D) which read as follows: ''An officer while serving as Chief of the National Guard Bureau.''

Subsec. (c)(3)(B). Pub. L. 111–383, §1075(d)(2), made technical amendment to directory language of Pub. L. 111–84, §502(c)(3). See 2009 Amendment note below.

Subsec. (d). Pub. L. 111–383, §1075(b)(12)(A), substituted ''section 601(b)(5)'' for ''section 601(b)(4)''.

Subsec. (g)(1). Pub. L. 111–383, §1075(b)(12)(B), substituted ''and are not'' for ''and is not'' and inserted period at end.

Subsec. (g)(2), (3). Pub. L. 112–81, §511(a)(3)(B), redesignated par. (3) as (2) and struck out former par. (2) which read as follows: ''The exception in paragraph (1) does apply to the position of Chief of the National Guard Bureau.''

2009—Subsecs. (a), (b). Pub. L. 111–84, §502(b), added subsecs. (a) and (b) and struck out former subsecs. (a) and (b) which related to limitations on appointments in a grade above brigadier general in the Army, Air Force, or Marine Corps or in a grade above rear admiral (lower half) in the Navy and limitations on appointments in a grade above major general in the Army, Air Force, or Marine Corps or in a grade above rear admiral in the Navy, respectively.

Subsec. (c)(1)(A). Pub. L. 111–84, §502(c)(1)(A), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''may make appointments in the Army, Air Force, and Marine Corps in the grade of lieutenant general and in the Army and Air Force in the grade of general in excess of the applicable numbers determined under subsection (b)(1), and may make appointments in the Marine Corps in the grade of general in addition to the Commandant and Assistant Commandant, if each such appointment is made in conjunction with an offsetting reduction under paragraph (2); and''.

Subsec. (c)(1)(B). Pub. L. 111–84, §502(c)(1)(B), substituted ''this section'' for ''subsection (b)(2)''.

Subsec. (c)(3)(A). Pub. L. 111–84, §502(c)(2), substituted ''15'' for ''the number equal to 10 percent of the total number of officers that may be serving on active duty in those grades in the Army, Navy, Air Force, and Marine Corps under subsection (b)''.

Subsec. (c)(3)(B). Pub. L. 111–84, §502(c)(3), as amended by Pub. L. 111–383, §1075(d)(2), substituted ''5'' for ''the number equal to 15 percent of the total number of general officers and flag officers that may be serving on active duty in those grades in the Army, Navy, Air Force, and Marine Corps''.

Subsec. (e). Pub. L. 111–84, §502(d)(1), in introductory provisions, substituted ''The following officers shall not be counted for purposes of this section:'' for ''In determining the total number of general officers or flag officers of an armed force on active duty for purposes of this section, the following officers shall not be counted:''.

Subsec. (g). Pub. L. 111–84, §502(d)(2), added subsec. (g).

2008—Subsec. (a). Pub. L. 110–417, §504(b), designated existing provisions as par. (1) and added par. (2).

Pub. L. 110–417, §503(d)(1), substituted ''the Army or Air Force, or more than 51 percent of the general officers of the Marine Corps,'' for ''that armed force''.

Subsec. (b)(1), (2)(A). Pub. L. 110–417, §503(d)(2)(A), substituted ''16.4 percent'' for ''16.3 percent'' wherever appearing.

Pub. L. 110–181, §543(d), substituted ''16.3 percent'' for ''15.7 percent'' wherever appearing.

Subsec. (b)(2)(B). Pub. L. 110–417, §503(d)(2)(B), substituted ''19 percent'' for ''17.5 percent''.

Subsec. (e)(2). Pub. L. 110–181, §501(b), added par. (2) and struck out former par. (2) which read as follows: ''An officer of that armed force who has been relieved

from a position designated under section 601(a) of this title and is under orders to assume another such position, but only during the 60-day period beginning on the date on which those orders are published.''

2006—Subsec. (e). Pub. L. 109–163 added subsec. (e).

Subsec. (f). Pub. L. 109–364 added subsec. (f).

2003—Subsec. (b)(5)(C). Pub. L. 108–136 struck out subpar. (C) which read as follows: ''This paragraph shall cease to be effective at the end of December 31, 2004.''

2002—Subsec. (b)(2)(B). Pub. L. 107–314, § 404(b), substituted ''17.5 percent'' for ''16.2 percent''.

Subsec. (b)(5)(C). Pub. L. 107–314, § 405(b), substituted ''December 31, 2004'' for ''September 30, 2003''.

Subsec. (b)(8). Pub. L. 107–314, § 404(a), added par. (8).

2000—Subsec. (b)(1). Pub. L. 106–398, § 1 [[div. A], title V, § 507(g)(1)], in first sentence, substituted ''Army or Air Force'' for ''Army, Air Force, or Marine Corps'' and ''15.7 percent'' for ''15 percent'' and, in second sentence, substituted ''Of'' for ''In the case of the Army and Air Force, of'' and ''15.7 percent'' for ''15 percent'' and inserted ''of the Army or Air Force'' after ''general officers''.

Subsec. (b)(2). Pub. L. 106–398, § 1 [[div. A], title V, § 507(g)(2)], designated existing provisions as subpar. (A), substituted ''15.7 percent'' for ''15 percent'' in two places, and added subpar. (B).

1999—Subsec. (b)(5)(A). Pub. L. 106–65, § 509(c), inserted at end ''Any increase by reason of the preceding sentence in the number of officers of an armed force serving on active duty in grades above major general or rear admiral may only be realized by an increase in the number of lieutenant generals or vice admirals, as the case may be, serving on active duty, and any such increase may not be construed as authorizing an increase in the limitation on the total number of general or flag officers for that armed force under section 526(a) of this title or in the number of general and flag officers that may be designated under section 526(b) of this title.''

Subsec. (b)(5)(C). Pub. L. 106–65, § 509(b), substituted ''September 30, 2003'' for ''September 30, 2000''.

Subsec. (b)(7). Pub. L. 106–65, § 532(b), added par. (7).

1998—Subsec. (b)(4)(B). Pub. L. 105–261, § 404, substituted ''seven'' for ''six''.

Subsec. (b)(6). Pub. L. 105–261, § 406, added par. (6).

1996—Subsec. (b)(5)(C). Pub. L. 104–201 substituted ''September 30, 2000'' for ''September 30, 1997''.

Subsec. (d). Pub. L. 104–106 added subsec. (d).

1994—Subsec. (b)(5). Pub. L. 103–337 added par. (5).

1990—Subsec. (b)(3). Pub. L. 101–510, § 405(b), substituted ''that would otherwise be permitted for'' for ''authorized''.

Subsec. (b)(4). Pub. L. 101–510, § 405(a), added par. (4).

1987—Pub. L. 100–180 added subsec. (c).

1986—Subsec. (b)(3). Pub. L. 99–433 inserted ''or Vice Chairman''.

1985—Subsec. (a). Pub. L. 99–145 substituted ''rear admiral (lower half)'' for ''commodore'' in two places.

1981—Subsec. (a). Pub. L. 97–86 substituted ''commodore'' for ''commodore admiral'' in two places.

EFFECTIVE DATE OF 2011 AMENDMENT

Pub. L. 112–81, div. A, title V, § 502(a)(2), Dec. 31, 2011, 125 Stat. 1387, provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect on January 1, 2012.''

Pub. L. 112–81, div. A, title V, § 502(b)(3), Dec. 31, 2011, 125 Stat. 1387, as amended by Pub. L. 112–239, div. A, title V, § 501(c), Jan. 2, 2013, 126 Stat. 1714, provided that:

''(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by this subsection [amending this section and section 526 of this title] shall take effect on October 1, 2013.

''(B) MARINE CORPS OFFICERS.—The amendments made by paragraphs (1)(A)(iv) [amending section 526 of this title] and (2)(D) [amending this section] shall take effect on October 1, 2012.''

Pub. L. 111–383, div. A, title X, § 1075(d), Jan. 7, 2011, 124 Stat. 4372, provided that the amendment by section 1075(d)(2) is effective as of Oct. 28, 2009, and as if included in Pub. L. 111–84 as enacted.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–314, div. A, title IV, § 404(d), Dec. 2, 2002, 116 Stat. 2526, provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on the date of the receipt by Congress of the report required by subsection (c) [set out below].''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–86 effective Sept. 15, 1981, see section 405(f) of Pub. L. 97–86, set out as a note under section 101 of this title.

EFFECTIVE DATE

Section effective Sept. 15, 1981, but the authority to prescribe regulations under this section effective Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

IMPLEMENTATION OF 2000 AMENDMENTS

Pub. L. 106–398, § 1 [[div. A], title V, § 507(i)], Oct. 30, 2000, 114 Stat. 1654, 1654A–106, provided that:

''(1) An appointment or reappointment, in the case of the incumbent in a reserve component chief position, shall be made to each of the reserve component chief positions not later than 12 months after the date of the enactment of this Act [Oct. 30, 2000], in accordance with the amendments made by subsections (a) through (e) [amending sections 3038, 5143, 5144, 8038, and 10506 of this title].

''(2) An officer serving in a reserve component chief position on the date of the enactment of this Act [Oct. 30, 2000] may be reappointed to that position under the amendments made by subsection (a) through (e), if eligible and otherwise qualified in accordance with those amendments. If such an officer is so reappointed, the appointment may be made for the remainder of the officer's original term or for a full new term, as specified at the time of the appointment.

''(3) An officer serving on the date of the enactment of this Act [Oct. 30, 2000] in a reserve component chief position may continue to serve in that position in accordance with the provisions of law in effect immediately before the amendments made by this section [amending this section and sections 3038, 5143, 5144, 8038, and 10506 of this title and repealing section 12505 of this title] until a successor is appointed under paragraph (1) (or that officer is reappointed under paragraph (1)).

''(4) The amendments made by subsection (g) [amending this section] shall be implemented so that each increase authorized by those amendments in the number of officers in the grades of lieutenant general and vice admiral is implemented on a case-by-case basis with an initial appointment made after the date of the enactment of this Act [Oct. 30, 2000], as specified in paragraph (1), to a reserve component chief position.

''(5) For purposes of this subsection, the term 'reserve component chief position' means a position specified in section 3038, 5143, 5144, or 8038 [now 7038, 8083, 8084, or 9038] of title 10, United States Code, or the position of Director, Army National Guard or Director, Air National Guard under section 10506(a)(1) of such title.''

SAVINGS PROVISION

Pub. L. 100–180, div. A, title V, § 511(b), Dec. 4, 1987, 101 Stat. 1088, provided that: ''An officer of the Armed Forces on active duty holding an appointment in the grade of lieutenant general or vice admiral or general or admiral on September 30, 1987, shall not have that appointment terminated by reason of the numerical limitations determined under section 525(b) of title 10, United States Code. In the case of an officer of the Marine Corps serving in the grade of general by reason of an appointment authorized by section 511(3) of the National Defense Authorization Act for Fiscal Year 1987 (Public Law 99–661; 100 Stat. 3869) [see below], that appointment shall not be terminated except as provided in section 601 of title 10, United States Code.''

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

AVAILABILITY ON THE INTERNET OF CERTAIN INFORMATION ABOUT OFFICERS SERVING IN GENERAL OR FLAG OFFICER GRADES

Pub. L. 116–92, div. A, title V, §510A, Dec. 20, 2019, 133 Stat. 1347, provided that:

''(a) AVAILABILITY REQUIRED.—

''(1) IN GENERAL.—The Secretary of each military department shall make available on an internet website of such department available to the public information specified in paragraph (2) on each officer in a general or flag officer grade under the jurisdiction of such Secretary, including any such officer on the reserve active-status list.

''(2) INFORMATION.—The information on an officer specified by this paragraph to be made available pursuant to paragraph (1) is the information as follows:

''(A) The officer's name.

''(B) The officer's current grade, duty position, command or organization, and location of assignment.

''(C) A summary list of the officer's past duty assignments while serving in a general or flag officer grade.

''(b) ADDITIONAL PUBLIC NOTICE ON CERTAIN OFFICERS.—Whenever an officer in a grade of O–7 or above is assigned to a new billet or reassigned from a current billet, the Secretary of the military department having jurisdiction of such officer shall make available on an internet website of such department available to the public a notice of such assignment or reassignment.

''(c) LIMITATION ON WITHHOLDING OF CERTAIN INFORMATION OR NOTICE.—

''(1) LIMITATION.—The Secretary of a military department may not withhold the information or notice specified in subsections (a) and (b) from public availability pursuant to subsection (a), unless and until the Secretary notifies the Committees on Armed Services of the Senate and House of Representatives in writing of the information or notice that will be so withheld, together with justification for withholding the information or notice from public availability.

''(2) LIMITED DURATION OF WITHHOLDING.—The Secretary concerned may withhold from the public under paragraph (1) information or notice on an officer only on the basis of individual risk or national security, and may continue to withhold such information or notice only for so long as the basis for withholding remains in force.''

REDUCTION IN NUMBER OF GENERAL AND FLAG OFFICERS ON ACTIVE DUTY AND AUTHORIZED STRENGTH AFTER DECEMBER 31, 2022, OF SUCH GENERAL AND FLAG OFFICERS

Pub. L. 114–328, div. A, title V, §501(a)–(g), Dec. 23, 2016, 130 Stat. 2096–2099, provided that:

''(a) REDUCTION IN NUMBER OF GENERAL AND FLAG OFFICERS BY DECEMBER 31, 2022.—

''(1) REQUIRED REDUCTION.—Except as otherwise provided by an Act enacted after the date of the enactment of this Act [Dec. 23, 2016] that expressly modifies the requirements of this paragraph, by not later than December 31, 2022, the Secretary of Defense shall reduce the number of general and flag officers on active duty by 110 from the aggregate authorized number of general and flag officers authorized by sections 525 and 526 of title 10, United States Code, as of December 31, 2015.

''(2) DISTRIBUTION OF AUTHORIZED POSITIONS.—Effective as of December 31, 2022, and reflecting the reduction required by paragraph (1), authorized general and flag officer positions shall be distributed among the Army, Navy, Air Force, Marine Corps, and joint pool as follows:

''(A) The Army is authorized 220 positions in the general officer grades.

''(B) The Navy is authorized 151 positions in the flag officer grades.

''(C) The Air Force is authorized 187 positions in the general officer grades.

''(D) The Marine Corps is authorized 62 positions in the general officer grades.

''(E) The joint pool is authorized 232 positions in the general or flag officer grades, to be distributed as follows:

''(i) 82 positions in the general officer grades from the Army.

''(ii) 60 positions in the flag officer grades from the Navy.

''(iii) 69 positions in the general officer grades from the Air Force.

''(iv) 21 positions in the general officer grades from the Marine Corps.

''(3) TEMPORARY ADDITIONAL JOINT POOL ALLOCATION.—In addition to the positions authorized by paragraph (2), the 30 general and flag officer positions designated for overseas contingency operations are authorized as an additional maximum temporary allocation to the joint pool.

''(b) PLAN TO ACHIEVE REQUIRED REDUCTION AND DISTRIBUTION.—

''(1) PLAN REQUIRED.—Utilizing the study conducted under subsection (c), the Secretary of Defense shall develop a plan to achieve, by the date specified in subsection (a)(1)—

''(A) the reduction required by such subsection in the number of general and flag officers; and

''(B) the distribution of authorized positions required by subsection (a)(2).

''(2) SUBMISSION OF PLAN.—When the budget for the Department of Defense for fiscal year 2019 is submitted to Congress pursuant to section 1105 of title 31, United States Code, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report setting forth the plan developed under this subsection.

''(3) PROGRESS REPORTS.—The Secretary of Defense shall include with the budget for the Department of Defense for each of fiscal years 2020, 2021, and 2022 a report describing and assessing the progress of the Secretary in implementing the plan developed under this subsection.

''(c) STUDY FOR PURPOSES OF PLAN.—

''(1) STUDY REQUIRED.—For purposes of complying with subsection (a) and preparing the plan required by subsection (b), the Secretary of Defense shall conduct a comprehensive and deliberate global manpower study of requirements for general and flag officers with the goal of identifying—

''(A) the requirement justification for each general or flag officer position in terms of overall force structure, scope of responsibility, command and control requirements, and force readiness and execution;

''(B) an additional 10 percent reduction in the aggregate number of authorized general officer and flag officer positions after the reductions required by subsection (a); and

''(C) an appropriate redistribution of all general officer and flag officer positions within the reductions so identified.

''(2) SUBMISSION OF STUDY RESULTS.—Not later than April 1, 2017, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report setting forth the results of the study conducted under this subsection, including the justification for general and flag officer position to be retained and the reductions identified by general and flag officer position.

''(3) INTERIM REPORT.—If practicable before the date specified in paragraph (2), the Secretary of Defense

shall submit to the Committees on Armed Services of the Senate and the House of Representatives an interim report describing the progress made toward the completion of the study under this subsection, including—

''(A) the specific general and flag officer positions that have been evaluated;

''(B) the results of that evaluation; and

''(C) recommendations for achieving the additional 10 percent reduction in the aggregate number of authorized general officer and flag officer positions to be identified under paragraph (1)(C) and recommendations for redistribution of general and flag officer positions that have been developed to that point.

''(d) EXCLUSIONS.—

''(1) RELATED TO JOINT DUTY ASSIGNMENTS.—For purposes of complying with subsection (a), the Secretary of Defense may exclude—

''(A) a general or flag officer released from a joint duty assignment, but only during the 60-day period beginning on the date the officer departs the joint duty assignment, except that the Secretary may authorize the Secretary of a military department to extend the 60-day period by an additional 120 days, but not more than three officers on active duty from each Armed Force may be covered by the additional extension at the same time; and

''(B) the number of officers required to serve in joint duty assignments for each Armed Force as authorized by the Secretary under section 526a(b) of title 10, United States Code, as added by subsection (h) of this section.

''(2) RELATED TO RELIEF FROM CHIEF OF STAFF DUTY.—For purposes of complying with subsection (a), the Secretary of Defense may exclude an officer who continues to hold the grade of general or admiral under section 601(b)(5) of title 10, United States Code, after relief from the position of Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, or Commandant of the Marine Corps.

''(3) RELATED TO RETIREMENT, SEPARATION, RELEASE, OR RELIEF.—For purposes of complying with subsection (a), the Secretary of Defense may exclude the following officers:

''(A) An officer of an Armed Force in the grade of brigadier general or above or, in the case of the Navy, in the grade of rear admiral (lower half) or above, who is on leave pending the retirement, separation, or release of that officer from active duty, but only during the 60-day period beginning on the date of the commencement of such leave of such officer.

''(B) An officer of an Armed Force who has been relieved from a position designated under section 601(a) of title 10, United States Code, or by law to carry one of the grades specified in such section, but only during the 60-day period beginning on the date on which the assignment of the officer to the first position is terminated or until the officer is assigned to a second such position, whichever occurs first.

''(e) SECRETARIAL AUTHORITY TO GRANT EXCEPTIONS TO LIMITATIONS.—

''(1) IN GENERAL.—Subject to paragraph (2), the Secretary of Defense may alter the reduction otherwise required by subsection (a)(1) in the number of general and flag officer or the distribution of authorized positions otherwise required by subsection (a)(2) in the interest of the national security of the United States.

''(2) NOTICE TO CONGRESS OF EXCEPTIONS.—Not later than 30 days after authorizing a number of general or flag officers in excess of the number required as a result of the reduction required by subsection (a)(1) or altering the distribution of authorized positions under subsection (a)(2), the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives written notice of such exception, including a statement of the reason for such exception and the anticipated duration of the exception.

''(f) ORDERLY TRANSITION FOR OFFICERS RECENTLY ASSIGNED TO POSITIONS TO BE ELIMINATED.—

''(1) COVERED OFFICERS.—In order to provide an orderly transition for personnel in general or flag officer positions to be eliminated pursuant to the plan prepared under subsection (b), any general or flag officer who has not completed, as of December 31, 2022, at least 24 months in a position to be eliminated pursuant to the plan may remain in the position until the last day of the month that is 24 months after the month in which the officer assumed the duties of the position.

''(2) REPORT TO CONGRESS ON COVERED OFFICERS.—The Secretary of Defense shall include in the annual report required by section 526(j) of title 10, United States Code, in 2020 a description of the positions in which an officer will remain pursuant to paragraph (1), including the latest date on which the officer may remain in such position pursuant to that paragraph.

''(3) NOTICE TO CONGRESS ON DETACHMENT OF COVERED OFFICERS.—The Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a notice on the date on which each officer covered by paragraph (1) is detached from the officer's position pursuant to such paragraph.

''(g) RELATION TO SUBSEQUENT GENERAL OR FLAG NOMINATIONS.—

''(1) NOTICE TO SENATE WITH NOMINATION.—In order to help achieve the requirements of the plan required by subsection (b), effective 30 days after the commencement of the implementation of the plan, the Secretary of Defense shall include with each nomination of an officer to a grade above colonel or captain (in the case of the Navy) that is forwarded by the President to the Senate for appointment, by and with the advice and consent of the Senate, a certification to the Committee on Armed Services of the Senate that the appointment of the officer to the grade concerned will not interfere with achieving the reduction required by subsection (a)(1) in the number of general and flag officer positions or the distribution of authorized positions required by subsection (a)(2).

''(2) IMPLEMENTATION.—Not later than 120 days after the date of the submission of the plan required by subsection (b), the Secretary of Defense shall revise applicable guidance of the Department of Defense on general and flag officer authorizations in order to ensure that—

''(A) the achievement of the reductions required pursuant to subsection (a) is incorporated into the planning for the execution of promotions by the military departments and for the joint pool;

''(B) to the extent practicable, the resulting grades for general and flag officer positions are uniformly applied to positions of similar duties and responsibilities across the military departments and the joint pool; and

''(C) planning achieves a reduction in the headquarters functions and administrative and support activities and staffs of the Department of Defense and the military departments commensurate with the achievement of the reductions required pursuant to subsection (a).''

DELAYED AUTHORITY TO ALTER DISTRIBUTION REQUIREMENTS FOR COMMISSIONED OFFICERS ON ACTIVE DUTY IN GENERAL OFFICER AND FLAG OFFICER GRADES AND LIMITATIONS ON AUTHORIZED STRENGTHS OF GENERAL AND FLAG OFFICERS ON ACTIVE DUTY

Pub. L. 110–417, [div. A], title V, § 506, Oct. 14, 2008, 122 Stat. 4434, related to distribution requirements for commissioned officers on active duty in general officer and flag officer grades and limitations on authorized strengths of general and flag officers on active duty, prior to repeal by Pub. L. 111–84, div. A, title V, § 502(j), Oct. 28, 2009, 123 Stat. 2277.

REVIEW OF ACTIVE DUTY AND RESERVE GENERAL AND FLAG OFFICER AUTHORIZATIONS

Pub. L. 107–314, div. A, title IV, § 404(c), Dec. 2, 2002, 116 Stat. 2525, provided that:

''(1) The Secretary of Defense shall submit to Congress a report containing any recommendations of the Secretary (together with the rationale of the Secretary for the recommendations) concerning the following:

''(A) Revision of the limitations on general and flag officer grade authorizations and distribution in grade prescribed by sections 525, 526, and 12004 of title 10, United States Code.

''(B) Statutory designation of the positions and grades of any additional general and flag officers in the commands specified in chapter 1006 of title 10, United States Code, and the reserve component offices specified in sections 3038, 5143, 5144, and 8038 [now 7038, 8083, 8084, and 9038] of such title.

''(2) The provisions of subsection (b) through (e) of section 1213 of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104–201; 110 Stat. 2694) shall apply to the report under paragraph (1) in the same manner as they applied to the report required by subsection (a) of that section.''

REPORT ON MANAGEMENT OF SENIOR GENERAL AND FLAG OFFICER POSITIONS

Pub. L. 103–337, div. A, title IV, § 405(d), Oct. 5, 1994, 108 Stat. 2745, directed the Secretary of Defense to submit to Congress a report on the implementation of the amendments made by Pub. L. 103–337, § 405, enacting sections 528 and 604 of this title and amending this section, not later than Mar. 1, 1996.

TEMPORARY EXCLUSION OF SUPERINTENDENT OF NAVAL ACADEMY FROM COUNTING TOWARD NUMBER OF SENIOR ADMIRALS AUTHORIZED TO BE ON ACTIVE DUTY

Pub. L. 103–337, div. A, title IV, § 406, Oct. 5, 1994, 108 Stat. 2746, provided that: ''The officer serving as Superintendent of the United States Naval Academy on the date of the enactment of this Act [Oct. 5, 1994], while so serving, shall not be counted for purposes of the limitations contained in [former] section 525(b)(2) of title 10, United States Code.''

TEMPORARY INCREASE IN NUMBER OF GENERAL AND FLAG OFFICERS AUTHORIZED TO BE ON ACTIVE DUTY

Temporary increases in the number of officers authorized in particular grades under this section were contained in the following authorization acts:

Pub. L. 99–661, div. A, title V, § 511, Nov. 14, 1986, 100 Stat. 3869.

Pub. L. 99–570, title III, § 3058, Oct. 27, 1986, 100 Stat. 3207–79.

Pub. L. 99–145, title V, § 515, Nov. 8, 1985, 99 Stat. 630.

Pub. L. 98–525, title V, § 511, Oct. 19, 1984, 98 Stat. 2521.

Pub. L. 98–94, title X, § 1001, Sept. 24, 1983, 97 Stat. 654.

Pub. L. 97–252, title XI, § 1116, Sept. 8, 1982, 96 Stat. 750.

§ 526. Authorized strength: general and flag officers on active duty

(a) LIMITATIONS.—The number of general officers on active duty in the Army, Air Force, and Marine Corps, and the number of flag officers on active duty in the Navy, may not exceed the number specified for the armed force concerned as follows:

(1) For the Army, 231.

(2) For the Navy, 162.

(3) For the Air Force, 198.

(4) For the Marine Corps, 62.

(b) LIMITED EXCLUSION FOR JOINT DUTY REQUIREMENTS.—(1) The Secretary of Defense may designate up to 310 general officer and flag officer positions that are joint duty assignments for purposes of chapter 38 of this title for exclusion from the limitations in subsection (a). The Secretary of Defense shall allocate those exclusions to the armed forces based on the number of general or flag officers required from each armed force for assignment to these designated positions.

(2) Unless the Secretary of Defense determines that a lower number is in the best interest of the Department, the minimum number of officers serving in positions designated under paragraph (1) for each armed force shall be as follows:

(A) For the Army, 85.

(B) For the Navy, 61.

(C) For the Air Force, 73.

(D) For the Marine Corps, 21.

(3) The number excluded under paragraph (1) and serving in positions designated under that paragraph—

(A) in the grade of general or admiral may not exceed 19;

(B) in a grade above the grade of major general or rear admiral may not exceed 68; and

(C) in the grade of major general or rear admiral may not exceed 144.

(4) Not later than 30 days after determining to raise or lower a number specified in paragraph (2), the Secretary of Defense shall notify the Committees on Armed Services of the Senate and the House of Representatives of such determination.

(5)(A) The Chairman of the Joint Chiefs of Staff may designate up to 15 general and flag officer positions in the unified and specified combatant commands, and up to three general and flag officer positions on the Joint Staff, as positions to be held only by reserve component officers who are in a general or flag officer grade below lieutenant general or vice admiral. Each position so designated shall be considered to be a joint duty assignment position for purposes of chapter 38 of this title.

(B) A reserve component officer serving in a position designated under subparagraph (A) while on active duty under a call or order to active duty that does not specify a period of 180 days or less shall not be counted for the purposes of the limitations under subsection (a) and under section 525 of this title if the officer was selected for service in that position in accordance with the procedures specified in subparagraph (C).

(C) Whenever a vacancy occurs, or is anticipated to occur, in a position designated under subparagraph (A)—

(i) the Secretary of Defense shall require the Secretary of the Army to submit the name of at least one Army reserve component officer, the Secretary of the Navy to submit the name of at least one Navy Reserve officer and the name of at least one Marine Corps Reserve officer, and the Secretary of the Air Force to submit the name of at least one Air Force reserve component officer for consideration by the Secretary for assignment to that position; and

(ii) the Chairman of the Joint Chiefs of Staff may submit to the Secretary of Defense the name of one or more officers (in addition to

the officers whose names are submitted pursuant to clause (i)) for consideration by the Secretary for assignment to that position.

(D) Whenever the Secretaries of the military departments are required to submit the names of officers under subparagraph (C)(i), the Chairman of the Joint Chiefs of Staff shall submit to the Secretary of Defense the Chairman's evaluation of the performance of each officer whose name is submitted under that subparagraph (and of any officer whose name the Chairman submits to the Secretary under subparagraph (C)(ii) for consideration for the same vacancy).

(E) Subparagraph (B) does not apply in the case of an officer serving in a position designated under subparagraph (A) if the Secretary of Defense, when considering officers for assignment to fill the vacancy in that position which was filled by that officer, did not have a recommendation for that assignment from each Secretary of a military department who (pursuant to subparagraph (C)) was required to make such a recommendation.

(c) EXCLUSION OF CERTAIN RESERVE OFFICERS.—(1) The limitations of this section do not apply to a reserve component general or flag officer who is on active duty for training or who is on active duty under a call or order specifying a period of less than 180 days.

(2) The limitations of this section also do not apply to a number, as specified by the Secretary of the military department concerned, of reserve component general or flag officers authorized to serve on active duty for a period of not more than 365 days. The number so specified for an armed force may not exceed the number equal to 10 percent of the authorized number of general or flag officers, as the case may be, of that armed force under section 12004 of this title. In determining such number, any fraction shall be rounded down to the next whole number, except that such number shall be at least one.

(3) The limitations of this section do not apply to a reserve component general or flag officer who is on active duty for a period in excess of 365 days but not to exceed three years, except that the number of such officers from each reserve component who are covered by this paragraph and not serving in a position that is a joint duty assignment for purposes of chapter 38 of this title may not exceed 5 per component, unless authorized by the Secretary of Defense.

(d) EXCLUSION OF CERTAIN OFFICERS PENDING SEPARATION OR RETIREMENT OR BETWEEN SENIOR POSITIONS.—The limitations of this section do not apply to a general or flag officer who is covered by an exclusion under section 525(e) of this title.

(e) EXCLUSION OF ATTENDING PHYSICIAN TO THE CONGRESS.—The limitations of this section do not apply to the general or flag officer who is serving as Attending Physician to the Congress.

(f) TEMPORARY EXCLUSION FOR ASSIGNMENT TO CERTAIN TEMPORARY BILLETS.—(1) The limitations in subsection (a) and in section 525(a) of this title do not apply to a general or flag officer assigned to a temporary joint duty assignment designated by the Secretary of Defense.

(2) A general or flag officer assigned to a temporary joint duty assignment as described in paragraph (1) may not be excluded under this subsection from the limitations in subsection (a) for a period of longer than one year.

(g) EXCLUSION OF OFFICERS DEPARTING FROM JOINT DUTY ASSIGNMENTS.—The limitations in subsection (a) do not apply to an officer released from a joint duty assignment, but only during the 60-day period beginning on the date the officer departs the joint duty assignment. The Secretary of Defense may authorize the Secretary of a military department to extend the 60-day period by an additional 120 days, except that not more than three officers on active duty from each armed force may be covered by an extension under this sentence at the same time.

(h) ACTIVE-DUTY BASELINE.—

(1) NOTICE AND WAIT REQUIREMENT.—If the Secretary of a military department proposes an action that would increase above the baseline the number of general officers or flag officers of an armed force under the jurisdiction of that Secretary who would be on active duty and would count against the statutory limit applicable to that armed force under subsection (a), the action shall not take effect until after the end of the 60-calendar day period beginning on the date on which the Secretary provides notice of the proposed action, including the rationale for the action, to the Committees on Armed Services of the House of Representatives and the Senate.

(2) BASELINE DEFINED.—For purposes of paragraph (1), the term ''baseline'' for an armed force means the lower of—

(A) the statutory limit of general officers or flag officers of that armed force under subsection (a); or

(B) the actual number of general officers or flag officers of that armed force who, as of January 1, 2014, counted toward the statutory limit of general officers or flag officers of that armed force under subsection (a).

(3) LIMITATION.—If, at any time, the actual number of general officers or flag officers of an armed force who count toward the statutory limit of general officers or flag officers of that armed force under subsection (a) exceeds such statutory limit, then no increase described in paragraph (1) for that armed force may occur until the general officer or flag officer total for that armed force is reduced below such statutory limit.

(i) JOINT DUTY ASSIGNMENT BASELINE.—

(1) NOTICE AND WAIT REQUIREMENT.—If the Secretary of Defense, the Secretary of a military department, or the Chairman of the Joint Chiefs of Staff proposes an action that would increase above the baseline the number of general officers and flag officers of the armed forces in joint duty assignments who count against the statutory limit under subsection (b)(1), the action shall not take effect until after the end of the 60-calendar day period beginning on the date on which the Secretary or Chairman, as the case may be, provides notice of the proposed action, including the rationale for the action, to the Committees on Armed Services of the House of Representatives and the Senate.

(2) BASELINE DEFINED.—For purposes of paragraph (1), the term ''baseline'' means the lower of—

(A) the statutory limit on general officer and flag officer positions that are joint duty assignments under subsection (b)(1); or

(B) the actual number of general officers and flag officers who, as of January 1, 2014, were in joint duty assignments counted toward the statutory limit under subsection (b)(1).

(3) LIMITATION.—If, at any time, the actual number of general officers and flag officers in joint duty assignments counted toward the statutory limit under subsection (b)(1) exceeds such statutory limit, then no increase described in paragraph (1) may occur until the number of general officers and flag officers in joint duty assignments is reduced below such statutory limit.

(j) ANNUAL REPORT ON GENERAL OFFICER AND FLAG OFFICER NUMBERS.—Not later than March 1, 2015, and each March 1 thereafter, the Secretary of Defense shall submit to the Committees on Armed Services of the House of Representatives and the Senate a report specifying—

(1) the numbers of general officers and flag officers who, as of January 1 of the calendar year in which the report is submitted, counted toward the service-specific limits of subsection (a); and

(2) the number of general officers and flag officers in joint duty assignments who, as of such January 1, counted toward the statutory limit under subsection (b)(1).

(k) CESSATION OF APPLICABILITY.—The provisions of this section shall not apply to the number of general officers and flag officers in the armed forces after December 31, 2022. For provisions applicable to the number of such officers after that date, see section 526a of this title.

(Added Pub. L. 100–370, § 1(b)(1)(B), July 19, 1988, 102 Stat. 840; amended Pub. L. 101–510, div. A, title IV, § 403(a), Nov. 5, 1990, 104 Stat. 1545; Pub. L. 102–484, div. A, title IV, § 403, Oct. 23, 1992, 106 Stat. 2398; Pub. L. 103–337, div. A, title IV, § 404, title V, § 512, Oct. 5, 1994, 108 Stat. 2744, 2752; Pub. L. 104–106, div. A, title XV, §§ 1502(a)(1), 1503(a)(3), Feb. 10, 1996, 110 Stat. 502, 510; Pub. L. 104–201, div. A, title IV, § 405, Sept. 23, 1996, 110 Stat. 2506; Pub. L. 105–261, div. A, title IV, § 405, Oct. 17, 1998, 112 Stat. 1996; Pub. L. 106–65, div. A, title V, § 553, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 615, 774; Pub. L. 107–314, div. A, title IV, § 405(c), title X, § 1041(a)(3), Dec. 2, 2002, 116 Stat. 2526, 2645; Pub. L. 108–136, div. A, title V, § 504(c), Nov. 24, 2003, 117 Stat. 1457; Pub. L. 109–163, div. A, title V, §§ 503(b), 510, 515(b)(1)(C), Jan. 6, 2006, 119 Stat. 3226, 3231, 3233; Pub. L. 109–364, div. A, title V, § 507(c), Oct. 17, 2006, 120 Stat. 2180; Pub. L. 110–181, div. A, title V, § 502, title XVIII, § 1824(c), Jan. 28, 2008, 122 Stat. 95, 501; Pub. L. 110–417, [div. A], title V, §§ 503(a)–(c), 525, Oct. 14, 2008, 122 Stat. 4433, 4448; Pub. L. 111–84, div. A, title V, § 502(e)–(g), Oct. 28, 2009, 123 Stat. 2275, 2276; Pub. L. 112–81, div. A, title V, § 502(b)(1), (c)(1), Dec. 31, 2011, 125 Stat. 1387; Pub. L. 112–239, div. A, title V, § 501(a), Jan. 2, 2013, 126 Stat. 1714; Pub. L. 113–66, div. A, title V, § 501(a), (b)(2), Dec. 26, 2013, 127 Stat. 748, 749; Pub. L. 114–328, div. A, title V, §§ 501(h)(2), 503(b), Dec. 23, 2016, 130 Stat. 2102, 2107; Pub. L. 116–92, div. A, title XVII, § 1731(a)(17), Dec. 20, 2019, 133 Stat. 1813; Pub. L. 116–283, div. A, title V, § 501(c)(2), Jan. 1, 2021, 134 Stat. 3563.)

HISTORICAL AND REVISION NOTES

Section is based on Pub. L. 95–79, title VIII, § 811(a), July 30, 1977, 91 Stat. 335, as amended by Pub. L. 96–107, title VIII, § 817, Nov. 9, 1979, 93 Stat. 818; Pub. L. 96–342, title X, § 1003, Sept. 8, 1980, 94 Stat. 1120; Pub. L. 97–86, title VI, § 602, Dec. 1, 1981, 95 Stat. 1110.

Present law (section 811(a) of Public Law 95–79, as amended) provides that the authority to suspend the limitation on the number of general and flag officers who may be serving on active duty applies during war or national emergency. In codifying the limitation (in section 526 of title 10 as proposed to be added by section 1(b) of the bill), the committee determined that the same war and emergency waiver authority as applies to other limitations on the number of officers on active duty under the existing 10 U.S.C. 526 (redesignated as 10 U.S.C. 527 by the bill) should apply with respect to this limitation and accordingly amended the suspension authority in present law to include the codified general and flag officer limitation. This authority is slightly different from the waiver authority in the source law in that the suspension would expire 2 years after it takes effect or 1 year after the end of the war or national emergency, whichever occurs first, rather than upon termination of the war or emergency.

PRIOR PROVISIONS

A prior section 526 was renumbered section 527 of this title.

AMENDMENTS

2021—Subsec. (b)(3)(A). Pub. L. 116–283 substituted ''19'' for ''20''.

2019—Subsec. (k). Pub. L. 116–92 inserted ''the'' before ''number of general officers''.

2016—Subsec. (a)(4). Pub. L. 114–328, § 503(b), substituted ''62'' for ''61''.

Subsec. (k). Pub. L. 114–328, § 501(h)(2), added subsec. (k).

2013—Subsec. (a)(2). Pub. L. 112–239 substituted ''162'' for ''160''.

Subsecs. (c) to (g). Pub. L. 113–66, § 501(a)(1), redesignated subsecs. (d) to (h) as (c) to (g), respectively.

Subsecs. (h), (i). Pub. L. 113–66, § 501(a)(2), added subsecs. (h) and (i). Former subsec. (h) redesignated (g).

Subsec. (j). Pub. L. 113–66, § 501(b)(2), added subsec. (j).

2011—Subsec. (a)(1). Pub. L. 112–81, § 502(b)(1)(A)(i), substituted ''231'' for ''230''.

Subsec. (a)(2). Pub. L. 112—81, § 502(b)(1)(A)(ii), which directed substitution of ''161'' for ''160'', could not be executed because of the intervening amendment by Pub. L. 112—239. See 2013 Amendment note above.

Subsec. (a)(3). Pub. L. 112–81, § 502(b)(1)(A)(iii), substituted ''198'' for ''208''.

Subsec. (a)(4). Pub. L. 112–81, § 502(b)(1)(A)(iv), substituted ''61'' for ''60''.

Subsec. (b)(1). Pub. L. 112–81, § 502(c)(1), substituted ''310'' for ''324''.

Subsec. (b)(2)(C). Pub. L. 112–81, § 502(b)(1)(B), substituted ''73'' for ''76''.

2009—Subsec. (a). Pub. L. 111–84, § 502(e), substituted ''230'' for ''307'' in par. (1), ''160'' for ''216'' in par. (2), ''208'' for ''279'' in par. (3), and ''60'' for ''81'' in par. (4).

Subsec. (b)(1). Pub. L. 111–84, § 502(f)(1), substituted ''Secretary of Defense'' for ''Chairman of the Joint Chiefs of Staff'', ''324'' for ''65'', and ''The Secretary of Defense shall allocate those exclusions to the armed forces based on the number of general or flag officers required from each armed force for assignment to these designated positions.'' for ''Officers in positions so designated shall not be counted for the purposes of those limitations.''

Subsec. (b)(2) to (5). Pub. L. 111–84, § 502(f)(2), (3), added pars. (2) to (4) and redesignated former par. (2) as (5).

Subsec. (d)(3). Pub. L. 111–84, § 502(g)(1), added par. (3).

Subsecs. (g), (h). Pub. L. 111–84, § 502(g)(2), added subsecs. (g) and (h).

2008—Subsec. (a)(1). Pub. L. 110–417, § 503(a), substituted ''307'' for ''302''.

Subsec. (a)(4). Pub. L. 110–417, § 503(b), substituted ''81'' for ''80''.

Subsec. (b)(1). Pub. L. 110–417, § 503(c), substituted ''65'' for ''12''.

Subsec. (b)(2)(A). Pub. L. 110–417, § 525, substituted ''up to three general and flag officer positions'' for ''a general and flag officer position''.

Pub. L. 110–181, § 1824(c), substituted ''15 general and flag officer positions in'' for ''10 general and flag officer positions on the staffs of the commanders of''.

Subsec. (d). Pub. L. 110–181, § 502, designated existing provisions as par. (1) and added par. (2).

2006—Subsec. (b)(2)(A). Pub. L. 109–163, § 510, inserted '', and a general and flag officer position on the Joint Staff,'' after ''combatant commands''.

Subsec. (b)(2)(C)(i). Pub. L. 109–163, § 515(b)(1)(C), substituted ''Navy Reserve'' for ''Naval Reserve''.

Subsec. (d). Pub. L. 109–163, § 503(b)(2), substituted ''Certain Reserve Officers'' for ''Certain Officers'' in heading.

Subsec. (e). Pub. L. 109–163, § 503(b)(1), added subsec. (e).

Subsec. (f). Pub. L. 109–364 added subsec. (f).

2003—Subsec. (b)(3). Pub. L. 108–136 struck out par. (3) which read as follows: ''This subsection shall cease to be effective on December 31, 2004.''

2002—Subsec. (b)(3). Pub. L. 107–314, § 405(c), substituted ''December 31, 2004'' for ''October 1, 2002''.

Subsec. (c). Pub. L. 107–314, § 1041(a)(3), struck out heading and text of subsec. (c). Text read as follows:

''(1) Not later than 60 days before an action specified in paragraph (2) may become effective, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report providing notice of the intended action and an analytically based justification for the intended action.

''(2) Paragraph (1) applies in the case of the following actions:

''(A) A change in the grade authorized as of July 1, 1994, for a general officer position in the National Guard Bureau, a general or flag officer position in the Office of a Chief of a reserve component, or a general or flag officer position in the headquarters of a reserve component command.

''(B) Assignment of a reserve component officer to a general officer position in the National Guard Bureau, to a general or flag officer position in the Office of a Chief of a reserve component, or to a general or flag officer position in the headquarters of a reserve component command in a grade other than the grade authorized for that position as of July 1, 1994.

''(C) Assignment of an officer other than a general or flag officer as the military executive to the Reserve Forces Policy Board.''

1999—Subsec. (b)(2), (3). Pub. L. 106–65, § 553, added par. (2) and redesignated former par. (2) as (3).

Subsec. (c)(1). Pub. L. 106–65, § 1067(1), substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security''.

1998—Subsec. (b)(2). Pub. L. 105–261 substituted ''October 1, 2002'' for ''October 1, 1998''.

1996—Subsec. (a)(1) to (3). Pub. L. 104–106, § 1503(a)(3)(A), added pars. (1) to (3) and struck out former pars. (1) to (3) which read as follows:

''(1) For the Army, 386 before October 1, 1995, and 302 on and after that date.

''(2) For the Navy, 250 before October 1, 1995, and 216 on and after that date.

''(3) For the Air Force, 326 before October 1, 1995, and 279 on and after that date.''

Subsec. (a)(4). Pub. L. 104–201 substituted ''80'' for ''68''.

Subsec. (b). Pub. L. 104–106, § 1503(a)(3)(B)–(D), redesignated subsec. (c) as (b), struck out ''that are applicable on and after October 1, 1995'' after ''limitations in subsection (a)'', and struck out former subsec. (b) which read as follows: ''TRANSFERS BETWEEN SERVICES.—During the period before October 1, 1995, the Secretary of Defense may increase the number of general officers on active duty in the Army, Air Force, or Marine Corps, or the number of flag officers on active duty in the Navy, above the applicable number specified in subsection (a) by a total of not more than five. Whenever any such increase is made, the Secretary shall make a corresponding reduction in the number of such officers that may serve on active duty in general or flag officer grades in one of the other armed forces.''

Subsec. (c). Pub. L. 104–106, § 1503(a)(3)(C), (E), redesignated subsec. (d) as (c) and, in par. (2)(B), struck out ''the'' after ''general officer position in the'' and inserted ''to'' after ''reserve component, or'' and ''than'' after ''in a grade other''. Former subsec. (c) redesignated (b).

Subsec. (d). Pub. L. 104–106, § 1503(a)(3)(C), redesignated subsec. (e) as (d). Former subsec. (d) redesignated (c).

Subsec. (d)(1). Pub. L. 104–106, § 1502(a)(1), substituted ''Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives'' for ''Committees on Armed Services of the Senate and House of Representatives''.

Subsec. (e). Pub. L. 104–106, § 1503(a)(3)(C), redesignated subsec. (e) as (d).

1994—Subsec. (a)(4). Pub. L. 103–337, § 404, struck out ''before October 1, 1995, and 61 on and after that date'' after ''Corps, 68''.

Subsecs. (d), (e). Pub. L. 103–337, § 512, added subsecs. (d) and (e).

1992—Subsec. (b). Pub. L. 102–484, § 403(b), inserted heading.

Subsec. (c). Pub. L. 102–484, § 403(a), added subsec. (c).

1990—Pub. L. 101–510 amended section generally. Prior to amendment, text read as follows: ''The total number of general officers on active duty in the Army, Air Force, and Marine Corps and flag officers on active duty in the Navy may not exceed 1,073.''

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 113–66, div. A, title V, § 501(c), Dec. 26, 2013, 127 Stat. 749, provided that: ''The amendments made by this is [sic] section [amending this section] shall take effect on January 1, 2014.''

EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by section 502(b)(1) of Pub. L. 112–81 effective Oct. 1, 2013, except amendment by section 502(b)(1)(A)(iv) effective Oct. 1, 2012, see section 502(b)(3) of Pub. L. 112–81, as amended, set out as a note under section 525 of this title.

Pub. L. 112–81, div. A, title V, § 502(c)(2), Dec. 31, 2011, 125 Stat. 1387, provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect on January 1, 2012.''

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–510, div. A, title IV, § 403(a), Nov. 5, 1990, 104 Stat. 1545, provided that the amendment made by that section is effective Sept. 30, 1991.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective Dec. 31, 2021, of provisions in subsec. (j) of this section requiring submittal of annual report to Congress, see section 1061 of Pub. L. 114–328, set out as a note under section 111 of this title.

CONSTRUCTION OF DECREASE AS APPLYING TO GENERALS

Pub. L. 116–283, div. A, title V, § 501(c)(3), Jan. 1, 2021, 134 Stat. 3563, provided that: ''The reduction in number of positions excluded from authorized strength limitations resulting from the amendment made by paragraph (2) [amending this section] shall apply to positions in the grade of general.''

ACQUISITION AND CONTRACTING BILLETS

Pub. L. 110–417, [div. A], title V, § 503(e), Oct. 14, 2008, 122 Stat. 4434, provided that:

''(1) RESERVATION OF ARMY INCREASE.—The increase in the number of general officers on active duty in the Army, as authorized by the amendment made by subsection (a) [amending this section] is reserved for general officers in the Army who serve in an acquisition position.

''(2) RESERVATION OF PORTION OF INCREASE IN JOINT DUTY ASSIGNMENTS EXCLUDED FROM LIMITATION.—Of the increase in the number of general officer and flag officer joint duty assignments that may be designated for exclusion from the limitations on the number of general officers and flag officers on active duty, as authorized by the amendment made by subsection (c) [amending this section], five of the designated assignments are reserved for general officers or flag officers who serve in an acquisition position, including one assignment in the Defense Contract Management Agency.''

§ 526a. Authorized strength after December 31, 2022: general officers and flag officers on active duty

(a) LIMITATIONS.—The number of general officers on active duty in the Army, Air Force, and Marine Corps, and the number of flag officers on active duty in the Navy, after December 31, 2022, may not exceed the number specified for the armed force concerned as follows:

(1) For the Army, 220.

(2) For the Navy, 151.

(3) For the Air Force, 187.

(4) For the Marine Corps, 62.

(b) LIMITED EXCLUSION FOR JOINT DUTY REQUIREMENTS.—

(1) IN GENERAL.—The Secretary of Defense may designate up to 232 general officer and flag officer positions that are joint duty assignments for purposes of chapter 38 of this title for exclusion from the limitations in subsection (a).

(2) MINIMUM NUMBER.—Unless the Secretary of Defense determines that a lower number is in the best interest of the Department of Defense, the minimum number of officers serving in positions designated under paragraph (1) for each armed force shall be as follows:

(A) For the Army, 75.

(B) For the Navy, 53.

(C) For the Air Force, 68.

(D) For the Marine Corps, 17.

(c) EXCLUSION OF CERTAIN OFFICERS OF RESERVE COMPONENTS.—The limitations of this section do not apply to the following:

(1) A general or flag officer of a reserve component who is on active duty—

(A) for training; or

(B) under a call or order specifying a period of less than 180 days.

(2)(A) A general or flag officer of a reserve component who is authorized by the Secretary of the military department concerned to serve on active duty for a period of at least 180 days and not longer than 365 days.

(B) The Secretary of the military department concerned may authorize a number, determined under subparagraph (C), of officers in the reserve component of each armed force under the jurisdiction of that Secretary to serve as described in subparagraph (A).

(C) Each number described in subparagraph (B) may not exceed 10 percent of the number of general or flag officers, as the case may be, authorized to serve in the armed force concerned under section 12004 of this title. In determining a number under this subparagraph, any fraction shall be rounded down to the next whole number that is greater than zero.

(3)(A) A general or flag officer of a reserve component who is on active duty for a period longer than 365 days and not longer than three years.

(B) The number of officers described in subparagraph (A) who do not serve in a position that is a joint duty assignment for purposes of chapter 38 of this title may not exceed five per armed force, unless authorized by the Secretary of Defense.

(d) EXCLUSION OF CERTAIN OFFICERS PENDING SEPARATION OR RETIREMENT OR BETWEEN SENIOR POSITIONS.—The limitations of this section do not apply to—

(1) an officer of an armed force in the grade of brigadier general or above or, in the case of the Navy, in the grade of rear admiral (lower half) or above, who is on leave pending the retirement, separation, or release of that officer from active duty, but only during the 60-day period beginning on the date of the commencement of such leave of such officer; or

(2) an officer of an armed force who has been relieved from a position designated under section 601(a) of this title or by law to carry one of the grades specified in such section, but only during the 60-day period beginning on the date on which the assignment of the officer to the first position is terminated or until the officer is assigned to a second such position, whichever occurs first.

(e) TEMPORARY EXCLUSION FOR ASSIGNMENT TO CERTAIN TEMPORARY BILLETS.—

(1) IN GENERAL.—The limitations in subsection (a) do not apply to a general officer or flag officer assigned to a temporary joint duty assignment designated by the Secretary of Defense.

(2) DURATION OF EXCLUSION.—A general officer or flag officer assigned to a temporary joint duty assignment as described in paragraph (1) may not be excluded under this subsection from the limitations in subsection (a) for a period of longer than one year.

(f) EXCLUSION OF OFFICERS DEPARTING FROM JOINT DUTY ASSIGNMENTS.—The limitations in subsection (a) do not apply to an officer released from a joint duty assignment, but only during the 60-day period beginning on the date the officer departs the joint duty assignment. The Secretary of Defense may authorize the Secretary of a military department to extend the 60-day period by an additional 120 days, except that not more than three officers on active duty from each armed force may be covered by the additional extension at the same time.

(g) ACTIVE-DUTY BASELINE.—

(1) NOTICE AND WAIT REQUIREMENTS.—If the Secretary of a military department proposes an action that would increase above the baseline the number of general officers or flag officers of an armed force under the jurisdiction

of that Secretary who would be on active duty and would count against the statutory limit applicable to that armed force under subsection (a), the action shall not take effect until after the end of the 60-calendar day period beginning on the date on which the Secretary provides notice of the proposed action, including the rationale for the action, to the Committees on Armed Services of the Senate and the House of Representatives.

(2) BASELINE DEFINED.—In paragraph (1), the term ''baseline'' for an armed force means the lower of—

(A) the statutory limit of general officers or flag officers of that armed force under subsection (a); or

(B) the actual number of general officers or flag officers of that armed force who, as of January 1, 2023, counted toward the statutory limit of general officers or flag officers of that armed force under subsection (a).

(h) JOINT DUTY ASSIGNMENT BASELINE.—

(1) NOTICE AND WAIT REQUIREMENT.—If the Secretary of Defense, the Secretary of a military department, or the Chairman of the Joint Chiefs of Staff proposes an action that would increase above the baseline the number of general officers and flag officers of the armed forces in joint duty assignments who count against the statutory limit under subsection (b)(1), the action shall not take effect until after the end of the 60-calendar day period beginning on the date on which such Secretary or the Chairman, as the case may be, provides notice of the proposed action, including the rationale for the action, to the Committees on Armed Services of the Senate and the House of Representatives.

(2) BASELINE DEFINED.—In paragraph (1), the term ''baseline'' means the lower of—

(A) the statutory limit on general officer and flag officer positions that are joint duty assignments under subsection (b)(1); or

(B) the actual number of general officers and flag officers who, as of January 1, 2023, were in joint duty assignments counted toward the statutory limit under subsection (b)(1).

(i) ANNUAL REPORT.—Not later than March 1 each year, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report specifying the following:

(1) The numbers of general officers and flag officers who, as of January 1 of the calendar year in which the report is submitted, counted toward the service-specific limits of subsection (a).

(2) The number of general officers and flag officers in joint duty assignments who, as of such January 1, counted toward the statutory limit under subsection (b)(1).

(Added Pub. L. 114–328, div. A, title V, § 501(h)(1), Dec. 23, 2016, 130 Stat. 2100; amended Pub. L. 116–283, div. A, title V, § 501(a), Jan. 1, 2021, 134 Stat. 3562.)

AMENDMENTS

2021—Subsecs. (c) to (i). Pub. L. 116–283 added subsec. (c) and redesignated former subsecs. (c) to (h) as (d) to (i), respectively.

§ 527. Authority to suspend sections 523, 525, and 526

In time of war, or of national emergency declared by Congress or the President after November 30, 1980, the President may suspend the operation of any provision of section 523, 525, or 526 of this title. So long as such war or national emergency continues, any such suspension may be extended by the President. Any such suspension shall, if not sooner ended, end on the last day of the two-year period beginning on the date on which the suspension (or the last extension thereof) takes effect or on the last day of the one-year period beginning on the date of the termination of the war or national emergency, whichever occurs first. With respect to the end of any such suspension, the preceding sentence supersedes the provisions of title II of the National Emergencies Act (50 U.S.C. 1621–1622) which provide that powers or authorities exercised by reason of a national emergency shall cease to be exercised after the date of the termination of the emergency.

(Added Pub. L. 96–513, title I, § 103, Dec. 12, 1980, 94 Stat. 2845, § 526; renumbered § 527 and amended Pub. L. 100–370, § 1(b)(1)(A), (2), July 19, 1988, 102 Stat. 840; Pub. L. 103–337, div. A, title XVI, § 1671(c)(4), Oct. 5, 1994, 108 Stat. 3014.)

REFERENCES IN TEXT

The National Emergencies Act, referred to in text, is Pub. L. 94–412, Sept. 14, 1976, 90 Stat. 1255, as amended. Title II of the National Emergencies Act is classified generally to subchapter II (§ 1621 et seq.) of chapter 34 of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 50 and Tables.

AMENDMENTS

1994—Pub. L. 103–337 struck out ''524,'' after ''523,'' in section catchline and in text.

1988—Pub. L. 100–370 renumbered section 526 of this title as this section, substituted ''524, 525, and 526'' for ''524, and 525'' in section catchline, and ''524, 525, or 526'' for ''524, or 525'' in text.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

EFFECTIVE DATE

Section effective Sept. 15, 1981, but the authority to prescribe regulations under this section effective Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

AUTHORITY TO WAIVE GRADE STRENGTH LAWS FOR FISCAL YEAR 1991; CERTIFICATION; RELATIONSHIP TO OTHER SUSPENSION AUTHORITY

Pub. L. 102–25, title II, §§ 201(b), 202, 205(b), Apr. 6, 1991, 105 Stat. 79, 80, authorized Secretary of a military department to suspend, for fiscal year 1991, the operation of any provision of section 517, 523, 524, 525, or 526 of this title with respect to that military department, that such Secretary may exercise such authority only after submission to the congressional defense committees of a certification in writing that such authority is necessary because of personnel actions associated with Operation Desert Storm, and that such authority is in addition to the authority provided in this section.

DELEGATION OF FUNCTIONS

Functions of President under this section to suspend operation of sections 523, 524 [now 12011], and 525 of this title, relating to authorized strength of commissioned officers, delegated to Secretary of Defense to perform during a time of war or national emergency, without approval, ratification, or other action by President, and with authority for Secretary to redelegate, provided that, during a national emergency declared by President, the exercise of any such authority be specifically directed by President in accordance with section 1631 of Title 50, War and National Defense, and that Secretary ensure that actions taken pursuant to any authority so delegated be accounted for as required by section 1641 of Title 50, see Ex. Ord. No. 12396, §§ 2, 3, Dec. 9, 1982, 47 F.R. 55897, 55898, set out as a note under section 301 of Title 3, The President.

DELEGATION OF AUTHORITY

Authority of President under this section as invoked by sections 2 and 3 of Ex. Ord. No. 13223, Sept. 14, 2001, 66 F.R. 48201, as amended, delegated to Secretary of Defense by section 4 of Ex. Ord. No. 13223, set out as a note under section 12302 of this title.

§ 528. Officers serving in certain intelligence positions: military status; application of distribution and strength limitations; pay and allowances

(a) MILITARY STATUS.—An officer of the armed forces, while serving in a position covered by this section—

(1) shall not be subject to supervision or control by the Secretary of Defense or any other officer or employee of the Department of Defense, except as directed by the Secretary of Defense concerning reassignment from such position; and

(2) may not exercise, by reason of the officer's status as an officer, any supervision or control with respect to any of the military or civilian personnel of the Department of Defense except as otherwise authorized by law.

(b) DIRECTOR AND DEPUTY DIRECTOR OF CIA.—When the position of Director or Deputy Director of the Central Intelligence Agency is held by an officer of the armed forces, the position, so long as the officer serves in the position, shall be designated, pursuant to subsection (b) of section 526 of this title, as one of the general officer and flag officer positions to be excluded from the limitations in subsection (a) of such section.

(c) ASSOCIATE DIRECTOR OF MILITARY AFFAIRS, CIA.—When the position of Associate Director of Military Affairs, Central Intelligence Agency, or any successor position, is held by an officer of the armed forces, the position, so long as the officer serves in the position, shall be designated, pursuant to subsection (b) of section 526 of this title, as one of the general officer and flag officer positions to be excluded from the limitations in subsection (a) of such section.

(d) OFFICERS SERVING IN OFFICE OF DNI.—When a position in the Office of the Director of National Intelligence designated by agreement between the Secretary of Defense and the Director of National Intelligence is held by a general officer or flag officer of the armed forces, the position, so long as the officer serves in the position, shall be designated, pursuant to subsection (b) of section 526 of this title, as one of the general officer and flag officer positions to be excluded from the limitations in subsection (a) of such section. However, not more than five of such positions may be included among the excluded positions at any time.

(e) EFFECT OF APPOINTMENT.—Except as provided in subsection (a), the appointment or assignment of an officer of the armed forces to a position covered by this section shall not affect—

(1) the status, position, rank, or grade of such officer in the armed forces; or

(2) any emolument, perquisite, right, privilege, or benefit incident to or arising out of such status, position, rank, or grade.

(f) MILITARY PAY AND ALLOWANCES.—(1) An officer of the armed forces on active duty who is appointed or assigned to a position covered by this section shall, while serving in such position and while remaining on active duty, continue to receive military pay and allowances and shall not receive the pay prescribed for such position.

(2) Funds from which pay and allowances under paragraph (1) are paid to an officer while so serving shall be reimbursed as follows:

(A) For an officer serving in a position within the Central Intelligence Agency, such reimbursement shall be made from funds available to the Director of the Central Intelligence Agency.

(B) For an officer serving in a position within the Office of the Director of National Intelligence, such reimbursement shall be made from funds available to the Director of National Intelligence.

(g) COVERED POSITIONS.—The positions covered by this section are the positions specified in subsections (b) and (c) and the positions designated under subsection (d).

(Added Pub. L. 108–136, div. A, title V, § 507(a), Nov. 24, 2003, 117 Stat. 1458; amended Pub. L. 109–163, div. A, title V, § 507(a), Jan. 6, 2006, 119 Stat. 3228; Pub. L. 109–364, div. A, title V, § 501(a), (b)(1), Oct. 17, 2006, 120 Stat. 2175, 2176; Pub. L. 110–417, [div. A], title IX, § 933, Oct. 14, 2008, 122 Stat. 4576; Pub. L. 111–259, title VIII, § 803, Oct. 7, 2010, 124 Stat. 2746; Pub. L. 112–81, div. A, title V, § 502(d)(1), (2)(A), Dec. 31, 2011, 125 Stat. 1387, 1388.)

PRIOR PROVISIONS

A prior section 528, added Pub. L. 103–337, div. A, title IV, § 405(b)(1), Oct. 5, 1994, 108 Stat. 2744; amended Pub. L. 104–106, div. A, title IV, § 403(b), title XV, § 1503(a)(4), Feb. 10, 1996, 110 Stat. 287, 511; Pub. L. 104–201, div. A, title X, § 1074(a)(3), Sept. 23, 1996, 110 Stat. 2658, which related to limitation on number of officers on active duty in grades of general and admiral, was repealed by Pub. L. 107–107, div. A, title V, § 501(a), Dec. 28, 2001, 115 Stat. 1079.

AMENDMENTS

2011—Pub. L. 112–81, § 502(d)(2)(A), substituted ''Officers serving in certain intelligence positions: military status; application of distribution and strength limitations; pay and allowances'' for ''Officers serving in certain intelligence positions: military status; exclusion from distribution and strength limitations; pay and allowances'' in section catchline.

Subsecs. (b) to (d). Pub. L. 112–81, § 502(d)(1), added subsecs. (b) to (d) and struck out former subsecs. (b) to (d) which related to Director and Deputy Director of CIA, Associate Director of Military Affairs of CIA, and Officers Serving in the Office of DNI, respectively.

2010—Subsec. (c). Pub. L. 111–259 substituted ''Associate Director of Military Affairs, CIA'' for ''Associate Director of CIA for Military Affairs'' in heading and ''Associate Director of Military Affairs, Central Intelligence Agency, or any successor position'' for ''Associate Director of the Central Intelligence Agency for Military Affairs'' in text.

2008—Subsec. (c). Pub. L. 110–417 substituted ''Military Affairs'' for ''Military Support'' in heading and text.

2006—Pub. L. 109–364, §501(b)(1), amended section catchline generally, substituting ''Officers serving in certain intelligence positions: military status; exclusion from distribution and strength limitations; pay and allowances'' for ''Exclusion: officers serving in certain intelligence positions''.

Pub. L. 109–163 amended section catchline and text generally. Prior to amendment, text read as follows:

''(a) When none of the individuals serving in a position specified in subsection (b) is an officer of the armed forces, an officer of the armed forces assigned to the position of Associate Director of Central Intelligence for Military Support, while serving in that position, shall not be counted against the numbers and percentages of officers of the grade of that officer authorized for that officer's armed force.

''(b) The positions referred to in subsection (a) are the following:

''(1) Director of Central Intelligence.

''(2) Deputy Director of Central Intelligence.

''(3) Deputy Director of Central Intelligence for Community Management.''

Subsecs. (a), (b). Pub. L. 109–364, §501(a)(1), added subsecs. (a) and (b) and struck out former subsecs. (a) and (b) which read as follows:

''(a) EXCLUSION OF OFFICER SERVING IN CERTAIN CIA POSITIONS.—When either of the individuals serving in a position specified in subsection (b) is an officer of the armed forces, one of those officers, while serving in that position, shall be excluded from the limitations in sections 525 and 526 of this title.

''(b) COVERED POSITIONS.—The positions referred to in this subsection are the following:

''(1) Director of the Central Intelligence Agency.

''(2) Deputy Director of the Central Intelligence Agency.''

Subsecs. (e) to (g). Pub. L. 109–364, §501(a)(2), added subsecs. (e) to (g).

CHAPTER 33—ORIGINAL APPOINTMENTS OF REGULAR OFFICERS IN GRADES ABOVE WARRANT OFFICER GRADES

Sec.

531. Original appointments of commissioned officers.

532. Qualifications for original appointment as a commissioned officer.

533. Service credit upon original appointment as a commissioned officer.

541. Graduates of the United States Military, Naval, and Air Force Academies.

[555 to 565. Repealed.]

AMENDMENTS

1991—Pub. L. 102–190, div. A, title XI, §1112(b)(1), Dec. 5, 1991, 105 Stat. 1501, substituted ''ORIGINAL APPOINTMENTS OF REGULAR OFFICERS IN GRADES ABOVE WARRANT OFFICER GRADES'' for ''APPOINTMENTS IN REGULAR COMPONENTS'' as chapter heading, struck out analysis of subchapters listing subchapter I ''Original Appointments of Regular Officers in Grades above Warrant Officer Grades'' and subchapter II ''Appointments of Regular Warrant Officers'', and struck out subchapter I heading.

1980—Pub. L. 96–513, title I, §104(a), Dec. 12, 1980, 94 Stat. 2845, inserted an analysis of subchapters immediately following chapter heading, added subchapter I heading, and, in analysis of sections following subchapter I heading, added items 531, 532, and 533 preceding item 541, re-enacted item 541 without change, and struck out, following item 541, items 555 to 565. The items 555 to 565 formerly set out in the analysis of sections immediately following chapter heading were transferred to a position following a new heading for subchapter II preceding section 555.

§531. Original appointments of commissioned officers

(a)(1) Original appointments in the grades of second lieutenant, first lieutenant, and captain in the Regular Army, Regular Air Force, and Regular Marine Corps in the grades of ensign, lieutenant (junior grade), and lieutenant in the Regular Navy, and in the equivalent grades in the Regular Space Force shall be made by the President alone.

(2) Original appointments in the grades of major, lieutenant colonel, and colonel in the Regular Army, Regular Air Force, and Regular Marine Corps in the grades of lieutenant commander, commander, and captain in the Regular Navy, and in the equivalent grades in the Regular Space Force shall be made by the President, by and with the advice and consent of the Senate.

(b) The grade of a person receiving an appointment under this section who at the time of appointment (1) is credited with service under section 533 of this title, and (2) is not a commissioned officer of a reserve component shall be determined under regulations prescribed by the Secretary of Defense based upon the amount of service credited. The grade of a person receiving an appointment under this section who at the time of the appointment is a commissioned officer of a reserve component is determined under section 533(f) of this title.

(c) Subject to the authority, direction, and control of the President, an original appointment as a commissioned officer in the Regular Army, Regular Air Force, Regular Navy, Regular Marine Corps, or Regular Space Force may be made by the Secretary of Defense in the case of a reserve commissioned officer upon the transfer of such officer from the reserve active-status list of a reserve component of the armed forces to the active-duty list of an armed force, notwithstanding the requirements of subsection (a).

(Added Pub. L. 96–513, title I, §104(a), Dec. 12, 1980, 94 Stat. 2845; amended Pub. L. 97–22, §3(a), July 10, 1981, 95 Stat. 124; Pub. L. 108–375, div. A, title V, §501(a)(4), (c)(5), Oct. 28, 2004, 118 Stat. 1873, 1874; Pub. L. 116–92, div. A, title V, §501(a), Dec. 20, 2019, 133 Stat. 1343; Pub. L. 116–283, div. A, title IX, §924(b)(4)(A), (13), Jan. 1, 2021, 134 Stat. 3822, 3823.)

AMENDMENTS

2021—Subsec. (a)(1). Pub. L. 116–283, §924(b)(13)(A), substituted ''in the grades of ensign, lieutenant (junior grade), and lieutenant in the Regular Navy, and in the equivalent grades in the Regular Space Force'' for ''and in the grades of ensign, lieutenant (junior grade), and lieutenant in the Regular Navy''.

Subsec. (a)(2). Pub. L. 116–283, §924(b)(13)(B), substituted ''in the grades of lieutenant commander, commander, and captain in the Regular Navy, and in the equivalent grades in the Regular Space Force'' for ''and in the grades of lieutenant commander, commander, and captain in the Regular Navy''.

Subsec. (c). Pub. L. 116–283, § 924(b)(4)(A), substituted ''Regular Marine Corps, or Regular Space Force'' for ''or Regular Marine Corps''.

2019—Subsec. (c). Pub. L. 116–92 substituted ''the Secretary of Defense'' for ''the Secretary concerned''.

2004—Subsec. (a). Pub. L. 108–375, § 501(a)(4), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''Original appointments in the grades of second lieutenant through colonel in the Regular Army, Regular Air Force, and Regular Marine Corps and in the grades of ensign through captain in the Regular Navy shall be made by the President, by and with the advice and consent of the Senate.''

Subsec. (c). Pub. L. 108–375, § 501(c)(5), added subsec. (c).

1981—Pub. L. 97–22 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–375, div. A, title V, § 501(g), Oct. 28, 2004, 118 Stat. 1875, provided that:

''(1) Except as provided in paragraph (2), the amendments made by this section [enacting section 647 of this title, amending this section and sections 532, 619, 641, 1174, 2114, 12201, 12203, and 12731 of this title, and repealing section 522 of this title] shall take effect on the first day of the first month beginning more than 180 days after the date of the enactment of this Act [Oct. 28, 2004].

''(2) The amendment made by subsection (a)(1) [amending section 532 of this title] shall take effect on May 1, 2005.''

EFFECTIVE DATE

Section effective Sept. 15, 1981, but the authority to prescribe regulations under this chapter effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

TRANSITION PROVISIONS UNDER DEFENSE OFFICER PERSONNEL MANAGEMENT ACT

For provisions to prevent extinction or premature termination of rights, duties, penalties, or proceedings that existed or were begun prior to the effective date of Pub. L. 96–513 and otherwise to allow for an orderly transition to the system of officer personnel management put in place under Pub. L. 96–513, see section 601 et seq. of Pub. L. 96–513, set out as a note under section 611 of this title.

PROGRAM TO INCREASE USE OF CERTAIN NURSES BY MILITARY DEPARTMENTS

Pub. L. 101–189, div. A, title VII, § 708, Nov. 29, 1989, 103 Stat. 1475, provided that:

''(a) PROGRAM REQUIRED.—(1) Not later than September 30, 1991, the Secretary of each military department shall implement a program to appoint persons who have an associate degree or diploma in nursing (but have not received a baccalaureate degree in nursing) as officers and to assign such officers to duty as nurses.

''(2) An officer appointed pursuant to the program required by subsection (a) shall be appointed in a warrant officer grade or in a commissioned grade not higher than O–3. Such officer may not be promoted above the grade of O–3 unless the officer receives a baccalaureate degree in nursing.

''(b) REPORT ON IMPLEMENTATION.—Not later than April 1, 1990, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives a report on the actions taken by the Secretaries of the military departments to implement the program required by this section.''

EX. ORD. NO. 13384. ASSIGNMENT OF FUNCTIONS RELATING TO ORIGINAL APPOINTMENTS AS COMMISSIONED OFFICERS AND CHIEF WARRANT OFFICER APPOINTMENTS IN THE ARMED FORCES

Ex. Ord. No. 13384, July 27, 2005, 70 F.R. 43739, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, it is hereby ordered as follows:

SECTION 1. *Assignment of Functions to the Secretary of Defense*. The Secretary of Defense shall perform the functions of the President under the following provisions of title 10, United States Code:

(a) subsection 531(a)(1); and

(b) the second sentence of subsection 571(b).

SEC. 2. *Reassignment of Functions Assigned*. The Secretary of Defense may not reassign the functions assigned to him by this order.

SEC. 3. *General Provisions*. (a) Nothing in this order shall be construed to limit or otherwise affect the authority of the President as Commander in Chief of the Armed Forces of the United States, or under the Constitution and laws of the United States to nominate or to make or terminate appointments.

(b) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, entities, officers, employees or agents, or any other person.

GEORGE W. BUSH.

§ 532. Qualifications for original appointment as a commissioned officer

(a) Under regulations prescribed by the Secretary of Defense, an original appointment as a commissioned officer (other than as a commissioned warrant officer) in the Regular Army, Regular Navy, Regular Air Force, Regular Marine Corps, or Regular Space Force may be given only to a person who—

(1) is a citizen of the United States;

(2) is of good moral character;

(3) is physically qualified for active service; and

(4) has such other special qualifications as the Secretary of the military department concerned may prescribe by regulation.

(b)(1) Original appointments in the Regular Army in the Medical Corps or Dental Corps, and original appointments in the Regular Air Force with a view to designation of an officer as a medical or dental officer, may be made in the grades of first lieutenant through colonel. Original appointments in the Regular Navy in the Medical Corps or Dental Corps may be made in the grades of lieutenant (junior grade) through captain. Such appointments may be made only from persons who are qualified doctors of medicine, osteopathy, or dentistry.

(2) To be eligible for an original appointment as a medical officer, a doctor of osteopathy must—

(A) be a graduate of a college of osteopathy whose graduates are eligible to be licensed to practice medicine or surgery in a majority of the States;

(B) be licensed to practice medicine, surgery, or osteopathy in a State or in the District of Columbia;

(C) under regulations prescribed by the Secretary of Defense, have completed a number of years of osteopathic and preosteopathic education equal to the number of years of medical and premedical education prescribed for persons entering recognized schools of medicine who become doctors of medicine and who would be qualified for an original appointment in the grade for which that person is being considered for appointment; and

(D) have such other qualifications as the Secretary of the military department concerned prescribes after considering the recommendations, if any, of the Surgeon General of the armed force concerned.

(c) Original appointments in the Regular Navy or Regular Marine Corps of officers designated for limited duty shall be made under section 8139 or 8146 of this title.

[(d) Repealed. Pub. L. 115–232, div. A, title V, § 501(b), Aug. 13, 2018, 132 Stat. 1739.]

[(e) Repealed. Pub. L. 108–375, div. A, title V, § 501(a)(1), Oct. 28, 2004, 118 Stat. 1872.]

(f) The Secretary of Defense may waive the requirement of paragraph (1) of subsection (a) with respect to a person who has been lawfully admitted to the United States for permanent residence, or for a United States national otherwise eligible for appointment as a cadet or midshipman under section 2107(a) of this title or as a cadet under section 2107a of this title, when the Secretary determines that the national security so requires, but only for an original appointment in a grade below the grade of major or lieutenant commander.

(Added Pub. L. 96–513, title I, § 104(a), Dec. 12, 1980, 94 Stat. 2845; amended Pub. L. 97–22, § 3(b), July 10, 1981, 95 Stat. 124; Pub. L. 97–295, § 1(7), Oct. 12, 1982, 96 Stat. 1289; Pub. L. 102–190, div. A, title V, § 501, Dec. 5, 1991, 105 Stat. 1354; Pub. L. 103–160, div. A, title V, § 510, Nov. 30, 1993, 107 Stat. 1648; Pub. L. 108–375, div. A, title V, § 501(a)(1)–(3)(A), Oct. 28, 2004, 118 Stat. 1872; Pub. L. 109–163, div. A, title V, § 534(c), Jan. 6, 2006, 119 Stat. 3248; Pub. L. 111–383, div. A, title V, § 501(a), Jan. 7, 2011, 124 Stat. 4206; Pub. L. 115–232, div. A, title V, § 501(a), (b), title VIII, § 809(a), Aug. 13, 2018, 132 Stat. 1739, 1840; Pub. L. 116–283, div. A, title IX, § 924(b)(4)(B), Jan. 1, 2021, 134 Stat. 3822.)

AMENDMENTS

2021—Subsec. (a). Pub. L. 116–283 substituted ''Regular Marine Corps, or Regular Space Force'' for ''or Regular Marine Corps'' in introductory provisions.

2018—Subsec. (a)(2) to (5). Pub. L. 115–232, § 501(a), redesignated pars. (3) to (5) as (2) to (4), respectively, and struck out former par. (2) which read as follows: ''is able to complete 20 years of active commissioned service before his sixty-second birthday;''.

Subsec. (c). Pub. L. 115–232, § 809(a), substituted ''section 8139 or 8146'' for ''section 5589 or 5596''.

Subsec. (d). Pub. L. 115–232, § 501(b), struck out subsec. (d) which read as follows:

''(1) A person receiving an original appointment as a medical or dental officer, as a chaplain, or as an officer designated for limited duty in the Regular Navy or Regular Marine Corps is not subject to clause (2) of subsection (a).

''(2) A commissioned officer appointed in a medical skill other than as a medical officer or dental officer (as defined in regulations prescribed by the Secretary of Defense) is not subject to clause (2) of subsection (a).''

2011—Subsec. (d)(2). Pub. L. 111–383 struck out ''reserve'' before ''commissioned officer''.

2006—Subsec. (f). Pub. L. 109–163 inserted '', or for a United States national otherwise eligible for appointment as a cadet or midshipman under section 2107(a) of this title or as a cadet under section 2107a of this title,'' after ''for permanent residence''.

2004—Subsec. (a)(2). Pub. L. 108–375, § 501(a)(2), substituted ''sixty-second birthday'' for ''fifty-fifth birthday''.

Subsec. (e). Pub. L. 108–375, § 501(a)(1), struck out subsec. (e) which read as follows: ''After September 30, 1996, no person may receive an original appointment as a commissioned officer in the Regular Army, Regular Navy, Regular Air Force, or Regular Marine Corps until that person has completed one year of service on active duty as a commissioned officer (other than a warrant officer) of a reserve component.''

Subsec. (f). Pub. L. 108–375, § 501(a)(3)(A), added subsec. (f).

1993—Subsec. (d). Pub. L. 103–160 designated existing provisions as par. (1) and added par. (2).

1991—Subsec. (e). Pub. L. 102–190 added subsec. (e).

1982—Pub. L. 97–295 inserted ''a'' after ''original appointment as'' in section catchline.

1981—Subsec. (d). Pub. L. 97–22 substituted ''medical or dental officer, as a chaplain, or as an officer designated for limited duty in the Regular Navy or Regular Marine Corps'' for ''medical officer or dental officer or as a chaplain''.

EFFECTIVE DATE OF 2018 AMENDMENT

Pub. L. 115–232, div. A, title V, § 501(c), Aug. 13, 2018, 132 Stat. 1739, provided that: ''The amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [Aug. 13, 2018], and shall apply with respect to original appointments of regular commissioned officers of the Armed Forces made on or after that date.''

Amendment by section 809(a) of Pub. L. 115–232 effective Feb. 1, 2019, with provision for the coordination of amendments and special rule for certain redesignations, see section 800 of Pub. L. 115–232, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 501(a)(1) of Pub. L. 108–375 effective on May 1, 2005, and amendment by section 501(a)(2), (3)(A) of Pub. L. 108–375 effective on the first day of the first month beginning more than 180 days after Oct. 28, 2004, see section 501(g) of Pub. L. 108–375, set out as a note under section 531 of this title.

EFFECTIVE DATE

Section effective Sept. 15, 1981, but the authority to prescribe regulations under this section effective Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

APPOINTMENT OF CITIZENS OF NORTHERN MARIANA ISLANDS AS COMMISSIONED OFFICERS

Pub. L. 98–94, title X, § 1006, Sept. 24, 1983, 97 Stat. 661, provided that a citizen of the Northern Mariana Islands who indicates in writing to a commissioned officer of the Armed Forces of the United States an intent to become a citizen, and not a national, of the United States, and who is otherwise qualified for military service under applicable laws and regulations, may be appointed as an officer in the Armed Forces of the United States, may be appointed or enrolled in the Senior Reserve Officers' Training Corps program of any of the Armed Forces under chapter 103 of title 10, United States Code, and may be selected to be a participant in the Armed Forces Health Professions Scholarship program under chapter 105 of such title, and that this section shall expire upon the establishment of the Commonwealth of the Northern Mariana Islands. The Commonwealth was established as of 12:01 a.m., Nov. 4, 1986, see section 2(a), (b) of Proc. No. 5564, set out as a note under section 1801 of Title 48, Territories and Insular Possessions.

§ 533. Service credit upon original appointment as a commissioned officer

(a)(1) For the purpose of determining the grade and rank within grade of a person receiving an original appointment in a commissioned grade (other than a warrant officer grade) in the Regular Army, Regular Navy, Regular Air Force,

Regular Marine Corps, or Regular Space Force, such person shall be credited at the time of such appointment with any active commissioned service (other than service as a commissioned warrant officer) that he performed in any armed force, the National Oceanic and Atmospheric Administration, or the Public Health Service before such appointment.

(2) The Secretary of Defense shall prescribe regulations, which shall apply uniformly among the Army, Navy, Air Force, Marine Corps, and Space Force, to authorize the Secretary of the military department concerned to limit the amount of prior active commissioned service with which a person receiving an original appointment may be credited under paragraph (1), or to deny any such credit, in the case of a person who at the time of such appointment is credited with constructive service under subsection (b).

(b)(1) Under regulations prescribed by the Secretary of Defense, the Secretary of the military department concerned shall credit a person who is receiving an original appointment in a commissioned grade (other than a commissioned warrant officer grade) in the Regular Army, Regular Navy, Regular Air Force, Regular Marine Corps, or Regular Space Force and who has advanced education or training or special experience with constructive service for such education, training, or experience as follows:

(A) One year for each year of advanced education beyond the baccalaureate degree level, for persons appointed, designated, or assigned in officer categories requiring such advanced education or an advanced degree as a prerequisite for such appointment, designation, or assignment. In determining the number of years of constructive service to be credited under this clause to officers in any professional field, the Secretary concerned shall credit an officer with, but with not more than, the number of years of advanced education required by a majority of institutions that award degrees in that professional field for completion of the advanced education or award of the advanced degree.

(B)(i) Credit for any period of advanced education in a health profession (other than medicine and dentistry) beyond the baccalaureate degree level which exceeds the basic education criteria for appointment, designation, or assignment, if such advanced education will be directly used by the armed force concerned.

(ii) Credit for experience in a health profession (other than medicine or dentistry), if such experience will be directly used by the armed force concerned.

(C) Additional credit of (i) not more than one year for internship or equivalent graduate medical, dental, or other formal professional training required by the armed forces, and (ii) not more than one year for each additional year of such graduate-level training or experience creditable toward certification in a specialty required by the armed forces.

(D) Additional credit as follows:

(i) For special training or experience in a particular officer field as designated by the Secretary concerned, if such training or experience is directly related to the operational needs of the armed force concerned.

(ii) During fiscal years 2021 through 2025, for advanced education in an officer field so designated, if such education is directly related to the operational needs of the armed force concerned.

(E) Additional credit for experience as a physician or dentist, if appointed as a medical or dental officer in the Army or Navy or, in the case of the Air Force, with a view to designation as a medical or dental officer.

(2) The amount of constructive service credited an officer under this subsection may not exceed the amount required in order for the officer to be eligible for an original appointment in the grade of colonel in the Army, Air Force, or Marine Corps, captain in the Navy, or an equivalent grade in the Space Force.

(3) Constructive service credited an officer under this subsection is in addition to any service credited that officer under subsection (a) and shall be credited at the time of the original appointment of the officer.

(c) Constructive service credited an officer under subsection (b) shall be used only for determining the officer's—

(1) initial grade as a regular officer;

(2) rank in grade; and

(3) service in grade for promotion eligibility.

(d)(1) Constructive service may not be credited under subsection (b) for education, training, or experience obtained while serving as a commissioned officer (other than a warrant officer) on active duty or in an active status. However, in the case of an officer who completes advanced education or receives an advanced degree while on active duty or in an active status and in less than the number of years normally required to complete such advanced education or receive such advanced degree, constructive service may, subject to regulations prescribed under subsection (a)(2), be credited to the officer under subsection (b)(1)(A) to the extent that the number of years normally required to complete such advanced education or receive such advanced degree exceeds the actual number of years in which such advanced education or degree is obtained by the officer.

(2) A graduate of the United States Military Academy, the United States Naval Academy, or the United States Air Force Academy is not entitled to service credit under this section for service performed, or education, training, or experience obtained, before graduation from such Academy.

(e) If the Secretary of Defense determines that the number of qualified judge advocates serving on active duty in the Army, Navy, Air Force, or Marine Corps in grades below major or lieutenant commander is critically below the number needed by such armed force in such grades, he may authorize the Secretary of the military department concerned to credit any person receiving an original appointment in the Judge Advocate General's Corps of the Army or Navy, or any person receiving an original appointment in the Air Force or Marine Corps with a view to designation as a judge advocate, with a period of constructive service in such an amount (in addition to any period of service credited such person under subsection (b)(1)) as will result in the

grade of such person being that of captain or, in the case of an officer of the Navy, lieutenant and the date of rank of such person being junior to that of all other officers of the same grade serving on active duty.

(f) A reserve officer (other than a warrant officer) who receives an original appointment as an officer (other than as a warrant officer) in the Regular Army, Regular Navy, Regular Air Force, Regular Marine Corps, or Regular Space Force shall—

(1) in the case of an officer on the active-duty list immediately before that appointment as a regular officer, be appointed in the same grade and with the same date of rank as the grade and date of rank held by the officer on the active-duty list immediately before the appointment; and

(2) in the case of an officer not on the active-duty list immediately before that appointment as a regular officer, be appointed in the same grade and with the same date of rank as the grade and date of rank which the officer would have held had the officer been serving on the active-duty list on the date of the appointment as a regular officer.

(Added Pub. L. 96–513, title I, §104(a), Dec. 12, 1980, 94 Stat. 2846; amended Pub. L. 97–22, §3(c), July 10, 1981, 95 Stat. 125; Pub. L. 98–94, title X, §1007(c)(1), Sept. 24, 1983, 97 Stat. 662; Pub. L. 100–180, div. A, title VII, §714(a), Dec. 4, 1987, 101 Stat. 1112; Pub. L. 103–160, div. A, title V, §509(a), Nov. 30, 1993, 107 Stat. 1647; Pub. L. 113–66, div. A, title V, §502, Dec. 26, 2013, 127 Stat. 750; Pub. L. 115–91, div. A, title V, §512(b), Dec. 12, 2017, 131 Stat. 1377; Pub. L. 115–232, div. A, title V, §502(a), Aug. 13, 2018, 132 Stat. 1739; Pub. L. 116–283, div. A, title V, §502(a), title IX, §924(b)(1)(B), (4)(C), (14), Jan. 1, 2021, 134 Stat. 3563, 3820, 3822, 3823.)

AMENDMENTS

2021—Subsec. (a)(1). Pub. L. 116–283, §924(b)(4)(C), substituted ‘‘Regular Marine Corps, or Regular Space Force’’ for ‘‘or Regular Marine Corps’’.

Subsec. (a)(2). Pub. L. 116–283, §924(b)(1)(B), substituted ‘‘Marine Corps, and Space Force’’ for ‘‘and Marine Corps’’.

Subsec. (b)(1). Pub. L. 116–283, §924(b)(4)(C), substituted ‘‘Regular Marine Corps, or Regular Space Force’’ for ‘‘or Regular Marine Corps’’ in introductory provisions.

Subsec. (b)(1)(D). Pub. L. 116–283, §502(a), amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: ‘‘Additional credit for special training or experience in a particular officer career field as designated by the Secretary concerned, if such training or experience is directly related to the operational needs of the armed force concerned.’’

Subsec. (b)(2). Pub. L. 116–283, §924(b)(14), substituted ‘‘, captain in the Navy, or an equivalent grade in the Space Force’’ for ‘‘or captain in the Navy’’.

Subsec. (f). Pub. L. 116–283, §924(b)(4)(C), substituted ‘‘Regular Marine Corps, or Regular Space Force’’ for ‘‘or Regular Marine Corps’’ in introductory provisions.

2018—Subsec. (a)(2). Pub. L. 115–232, §502(a)(2)(A), struck out ‘‘or (g)’’ after ‘‘subsection (b)’’.

Subsec. (b)(1)(D). Pub. L. 115–232, §502(a)(1)(A), added subpar. (D) and struck out former subpar. (D) which read as follows: ‘‘Additional credit, in unusual cases, based on special experience in a particular field.’’

Subsec. (b)(2). Pub. L. 115–232, §502(a)(1)(B), substituted ‘‘The amount’’ for ‘‘Except as authorized by the Secretary concerned in individual cases and under regulations prescribed by the Secretary of Defense in the case of a medical or dental officer, the amount’’ and ‘‘in the grade of colonel in the Army, Air Force, or Marine Corps or captain in the Navy’’ for ‘‘in the grade of major in the Army, Air Force, or Marine Corps or lieutenant commander in the Navy’’.

Subsec. (c). Pub. L. 115–232, §502(a)(2)(A), struck out ‘‘or (g)’’ after ‘‘subsection (b)’’ in introductory provisions.

Subsec. (g). Pub. L. 115–232, §502(a)(2)(B), struck out subsec. (g) which related to constructive service credited to commissioned officers with cyberspace-related experience or advanced education serving on active duty.

2017—Subsec. (g)(4). Pub. L. 115–91 substituted ‘‘2023’’ for ‘‘2018’’.

2013—Subsec. (a)(2). Pub. L. 113–66, §502(1), inserted ‘‘or (g)’’ after ‘‘subsection (b)’’.

Subsec. (c). Pub. L. 113–66, §502(1), inserted ‘‘or (g)’’ after ‘‘subsection (b)’’ in introductory provisions.

Subsec. (g). Pub. L. 113–66, §502(2), added subsec. (g).

1993—Subsec. (b)(1)(A). Pub. L. 103–160, §509(a)(1), in second sentence, substituted ‘‘In determining’’ for ‘‘Except as provided in clause (E), in determining’’ and ‘‘advanced education required’’ for ‘‘postsecondary education in excess of four that are required’’.

Subsec. (b)(1)(E), (F). Pub. L. 103–160, §509(a)(2), (3), redesignated subpar. (F) as (E) and struck out former subpar. (E) which read as follows: ‘‘Additional credit of one year for advanced education in a health profession if the number of years of baccalaureate education completed by 75 percent or more of the students entering advanced training in that health profession exceeds, by one or more, the minimum number of years of preprofessional education required by a majority of institutions which award degrees in that health profession. The percentage of such persons shall be computed on an annual basis for each health profession from the data for the year in which the person being appointed, designated, or assigned was admitted to a professional school. However, a person may not receive additional credit under this clause if the amount of his baccalaureate education does not exceed, by one or more, the minimum number of years of preprofessional education required by a majority of institutions which award degrees for that health profession, determined on the basis prescribed in the preceding sentence.’’

1987—Subsec. (b)(1)(B). Pub. L. 100–180 designated existing provisions as cl. (i) and added cl. (ii).

1983—Subsec. (a)(1). Pub. L. 98–94 inserted ‘‘, the National Oceanic and Atmospheric Administration, or the Public Health Service’’.

1981—Subsec. (b)(1)(A). Pub. L. 97–22, §3(c)(1), inserted ‘‘, designated, or assigned’’ in first sentence after ‘‘persons appointed’’ and substituted ‘‘Except as provided in clause (E), in determining the number of years of constructive service to be credited under this clause to officers in any professional field, the Secretary concerned shall credit an officer with, but with not more than, the number of years of postsecondary education in excess of four that are required by a majority of institutions that award degrees in that professional field for completion of the advanced education or award of the advanced degree’’ for ‘‘(Except as provided in clause (E), in determining the years of constructive service under this clause, the Secretary concerned shall grant credit for only the number of years normally required to complete the advanced education or receive the advanced degree’’.

Subsec. (b)(1)(B). Pub. L. 97–22, §3(c)(2), substituted ‘‘appointment, designation, or assignment, if such advanced education’’ for ‘‘appointment as an officer, if such advanced education’’.

Subsec. (b)(1)(E). Pub. L. 97–22, §3(c)(3), substituted ‘‘person being appointed, designated, or assigned was admitted’’ for ‘‘person being appointed was admitted’’.

Subsec. (d)(1). Pub. L. 97–22, §3(c)(4), inserted provision that, in the case of an officer who completes advanced education or receives an advanced degree while on active duty or in an active status and in less than the number of years normally required to complete

such advanced education or receive such advanced degree, constructive service may, subject to regulations prescribed under subsection (a)(2), be credited to the officer under subsection (b)(1)(A) to the extent that the number of years normally required to complete such advanced education or receive such advanced degree exceeds the actual number of years in which such advanced education or degree is obtained by the officer.

Subsec. (f). Pub. L. 97–22, § 3(c)(5), substituted ''A reserve officer (other than a warrant officer) who receives an original appointment as an officer (other than as a warrant officer) in the Regular Army, Regular Navy, Regular Air Force, or Regular Marine Corps shall (1) in the case of an officer on the active-duty list immediately before that appointment as a regular officer, be appointed in the same grade and with the same date of rank as the grade and date of rank held by the officer on the active-duty list immediately before the appointment; and (2) in the case of an officer not on the active-duty list immediately before that appointment as a regular officer, be appointed in the same grade and with the same date of rank as the grade and date of rank which the officer would have held had the officer been serving on the active-duty list on the date of the appointment as a regular officer'' for ''An officer of a reserve component who receives an original appointment as an officer (other than a warrant officer) in the Regular Army, Regular Navy, Regular Air Force, or Regular Marine Corps shall be appointed in the grade and with the date of rank to which he would have been entitled had he been serving on active duty as an officer of a reserve component on the date of such original appointment as a regular officer''.

EFFECTIVE DATE

Section effective Sept. 15, 1981, but the authority to prescribe regulations under this section effective Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

ANNUAL REPORT

Pub. L. 116–283, div. A, title V, § 502(c), Jan. 1, 2021, 134 Stat. 3564, provided that:

''(1) IN GENERAL.—Not later than February 1, 2022, and every four years thereafter [sic], each Secretary of a military department shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the use of the authorities in subparagraph (D) of section 553(b)(1) [probably means section 533(b)(1)] of title 10, United States Code (as amended by subsection (a)), and subparagraph (D) of section 12207(b)(1) of such title (as amended by subsection (b)) (each referred to in this subsection as a 'constructive credit authority') during the preceding fiscal year for the Armed Forces under the jurisdiction of such Secretary.

''(2) ELEMENTS.—Each report under paragraph (1) shall include, for the fiscal year and Armed Forces covered by such report, the following:

''(A) The manner in which constructive service credit was calculated under each constructive credit authority.

''(B) The number of officers credited constructive service credit under each constructive credit authority.

''(C) A description and assessment of the utility of the constructive credit authorities in meeting the operational needs of the Armed Force concerned.

''(D) Such other matters in connection with the constructive credit authorities as the Secretary of the military department concerned considers appropriate.''

RATIFICATION OF SERVICE CREDIT AWARDED PRIOR TO NOVEMBER 30, 1993

Pub. L. 103–160, div. A, title V, § 509(e), Nov. 30, 1993, 107 Stat. 1648, provided that: ''To the extent that service credit awarded before the date of the enactment of this Act [Nov. 30, 1993] under section 533, 3353, 5600, or 8353 of title 10, United States Code, based on advanced education in medicine or dentistry was awarded consistent with that section as amended by this section (whether or not properly awarded under that section as in effect before such amendment), the awarding of that service credit is hereby ratified.''

TRANSITION PROVISION UNDER DEFENSE OFFICER PERSONNEL MANAGEMENT ACT

For savings provision relating to constructive service previously granted, see section 625 of Pub. L. 96–513, set out as a note under section 611 of this title.

§ 541. Graduates of the United States Military, Naval, and Air Force Academies

(a) Notwithstanding any other provision of law, each cadet at the United States Military Academy or the United States Air Force Academy, and each midshipman at the United States Naval Academy, is entitled, before graduating from that Academy, to state his preference for appointment, upon graduation, as a commissioned officer in either the Army, Navy, Air Force, Marine Corps, or Space Force.

(b) With the consent of the Secretary of the military department administering the Academy from which the cadet or midshipman is to be graduated, and of the Secretary of the military department having jurisdiction over the armed force for which that graduate stated his preference, the graduate is entitled to be accepted for appointment in that armed force. However, not more than 12½ percent of any graduating class at an Academy may be appointed in armed forces not under the jurisdiction of the military department administering that Academy.

(c) The Secretary of Defense shall, by regulation, provide for the equitable distribution of appointments in cases where more than 12½ percent of the graduating class of any Academy request appointment in armed forces not under the jurisdiction of the military department administering that Academy.

(Aug. 10, 1956, ch. 1041, 70A Stat. 19; Pub. L. 116–283, div. A, title IX, § 924(b)(3)(B), Jan. 1, 2021, 134 Stat. 3821.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
541(a)	10:1092c–1(a) (1st 59 words of 1st sentence). 10:1856(a) (1st 59 words of 1st sentence). 34:1057–1(a) (1st 59 words of 1st sentence).	Apr. 1, 1954, ch. 127, § 8, 68 Stat. 48.
541(b)	10:1092c–1(a) (1st sentence, less 1st 59 words). 10:1856(a) (1st sentence, less 1st 59 words). 34:1057–1(a) (1st sentence, less 1st 59 words).	
541(c)	10:1092c–1 (less (a)). 10:1856 (less (a)). 34:1057–1 (less (a)).	

In subsection (a), the words ''is entitled * * * to'' are substituted for the words ''shall * * * be afforded an opportunity to''.

In subsection (b), the words ''is entitled'' are substituted for the word ''shall''.

In subsection (c), the words ''and fair'' are omitted as surplusage. 10:1092c–1(c), 10:1856(c), and 34:1057–1(c) are omitted as covered by section 51(a) of the bill.

AMENDMENTS

2021—Subsec. (a). Pub. L. 116–283 substituted ''Marine Corps, or Space Force'' for ''or Marine Corps''.

EFFECTIVE DATE

Act Aug. 10, 1956, ch. 1041, § 52(a), 70A Stat. 641, provided that: ''Section 541 of title 10, United States Code, enacted by section 1 of this Act, takes effect (1) in the year in which the initial class graduates from the United States Air Force Academy, or (2) upon the rescission of the agreement under which graduates of the United States Military Academy and the United States Naval Academy may volunteer for appointment in the Air Force, whichever is earlier.''

APPOINTMENT OF UNITED STATES MILITARY ACADEMY GRADUATES IN AIR FORCE

Act Aug. 10, 1956, ch. 1041, § 44, 70A Stat. 637, provided that a cadet who had graduated from the United States Military Academy could, upon graduation and before the effective date of section 541 of this title, be appointed a second lieutenant in the Regular Air Force, and set forth provisions relating to date of appointment, service credit, rank among graduates, and increase in authorized strength.

[§§ 555 to 565. Repealed. Pub. L. 102–190, div. A, title XI, § 1112(a), Dec. 5, 1991, 105 Stat. 1492]

Section 555, acts Aug. 10, 1956, ch. 1041, 70A Stat. 20; Sept. 7, 1962, Pub. L. 87–649, §§ 6(f)(2), 14c(2), 76 Stat. 494, 501; July 30, 1977, Pub. L. 95–79, title III, § 302(a)(4), 91 Stat. 326; Nov. 8, 1985, Pub. L. 99–145, title V, § 531(a), title XIII, § 1303(a)(5), 99 Stat. 633, 739, related to warrant officer grades. See section 571(a) and (b) of this title.

Section 556, act Aug. 10, 1956, ch. 1041, 70A Stat. 20, related to credit for service of persons originally appointed in regular warrant officer grades under section 555 of this title. See section 572 of this title.

Section 557, act Aug. 10, 1956, ch. 1041, 70A Stat. 20, related to qualifications for promotion of regular warrant officers.

Section 558, act Aug. 10, 1956, ch. 1041, 70A Stat. 20, related to appointment of selection boards to consider promotions of regular warrant officers. See section 573(a), (b), (e), and (f) of this title.

Section 559, act Aug. 10, 1956, ch. 1041, 70A Stat. 21, related to eligibility of regular warrant officers for promotion.

Section 560, acts Aug. 10, 1956, ch. 1041, 70A Stat. 21; Sept. 2, 1958, Pub. L. 85–861, § 33(a)(3), 72 Stat. 1564, related to selection procedure for promotion of warrant officers. See section 576(a) to (e) of this title.

Section 561, act Aug. 10, 1956, ch. 1041, 70A Stat. 22, related to effect of failure of selection of regular warrant officers for promotion. See section 577 of this title.

Section 562, act Aug. 10, 1956, ch. 1041, 70A Stat. 22, related to disapproval of promotion of regular warrant officers by Secretary concerned, President, or Senate. See section 579 of this title.

Section 563, act Aug. 10, 1956, ch. 1041, 70A Stat. 22, related to effective date of promotion of regular warrant officer.

Section 564, acts Aug. 10, 1956, ch. 1041, 70A Stat. 22; Sept. 7, 1962, Pub. L. 87–649, § 6(f)(3), 76 Stat. 494; Nov. 2, 1966, Pub. L. 89–718, § 3, 80 Stat. 1115; Dec. 12, 1980, Pub. L. 96–513, title V, § 501(6), 94 Stat. 2907, related to effect of second failure of promotion for regular warrant officers. See section 580(a) to (d) of this title.

Section 565, act Aug. 10, 1956, ch. 1041, 70A Stat. 24, related to suspension of laws for promotion or mandatory retirement or separation of regular warrant officers during war or emergency.

EFFECTIVE DATE OF REPEAL

Repeal effective Feb. 1, 1992, see section 1132 of Pub. L. 102–190, set out as an Effective Date of 1991 Amendment note under section 521 of this title.

PRESERVATION OF EXISTING LAW FOR COAST GUARD

Pub. L. 102–190, div. A, title XI, § 1125(a), Dec. 5, 1991, 105 Stat. 1505, provided that sections 555 to 565 of this title, as in effect on the day before Feb. 1, 1992, would continue to apply to the Coast Guard on and after that date, prior to repeal by Pub. L. 103–337, div. A, title V, § 541(f)(1), Oct. 5, 1994, 108 Stat. 2766.

CHAPTER 33A—APPOINTMENT, PROMOTION, AND INVOLUNTARY SEPARATION AND RETIREMENT FOR MEMBERS ON THE WARRANT OFFICER ACTIVE-DUTY LIST

Sec.
571. Warrant officers: grades.
572. Warrant officers: original appointment; service credit.
573. Convening of selection boards.
574. Warrant officer active-duty lists; competitive categories; number to be recommended for promotion; promotion zones.
575. Recommendations for promotion by selection boards.
576. Information to be furnished to selection boards; selection procedures.
577. Promotions: effect of failure of selection for.
578. Promotions: how made; effective date.
579. Removal from a promotion list.
580. Regular warrant officers twice failing of selection for promotion: involuntary retirement or separation.
580a. Enhanced authority for selective early discharges.
581. Selective retirement.
582. Warrant officer active-duty list: exclusions.
583. Definitions.

AMENDMENTS

1993—Pub. L. 103–160, div. A, title V, § 504(b), Nov. 30, 1993, 107 Stat. 1645, added item 580a.

1992—Pub. L. 102–484, div. A, title X, § 1052(6), Oct. 23, 1992, 106 Stat. 2499, inserted ''to be'' after ''Information'' in item 576 and substituted ''Promotions:'' for ''Promotions;'' in item 578.

§ 571. Warrant officers: grades

(a) The regular warrant officer grades in the armed forces corresponding to the pay grades prescribed for warrant officers by section 201(b) of title 37 are as follows:

Warrant officer grade:
Chief warrant officer, W–5.
Chief warrant officer, W–4.
Chief warrant officer, W–3.
Chief warrant officer, W–2.
Warrant officer, W–1.

(b) Appointments in the grade of regular warrant officer, W–1, shall be made by warrant, except that with respect to an armed force under the jurisdiction of the Secretary of a military department, the Secretary concerned may provide by regulation that appointments in that grade in that armed force shall be made by commission. Appointments in regular chief warrant officer grades shall be made by commission by the President, and appointments (whether by warrant or commission) in the grade of regular warrant officer, W–1, shall be made by the President, except that appointments in that grade in the Coast Guard shall be made by the Secretary concerned.

(c) An appointment may not be made in any of the armed forces in the regular warrant officer grade of chief warrant officer, W–5, if the ap-

pointment would result in more than 5 percent of the warrant officers of that armed force on active duty being in the grade of chief warrant officer, W–5. In computing the limitation prescribed in the preceding sentence, there shall be excluded warrant officers described in section 582 of this title.

(Added Pub. L. 102–190, div. A, title XI, § 1112(a), Dec. 5, 1991, 105 Stat. 1493; amended Pub. L. 102–484, div. A, title X, § 1052(2), Oct. 23, 1992, 106 Stat. 2499; Pub. L. 103–337, div. A, title V, § 541(a)(2), Oct. 5, 1994, 108 Stat. 2764; Pub. L. 111–383, div. A, title V, § 502(a), Jan. 7, 2011, 124 Stat. 4207.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 555 of this title prior to repeal by Pub. L. 102–190, § 1112(a).

AMENDMENTS

2011—Subsec. (b). Pub. L. 111–383 substituted '', except that with respect to an armed force under the jurisdiction of the Secretary of a military department, the Secretary concerned may provide by regulation that appointments in that grade in that armed force shall be made by commission'' for ''by the Secretary concerned'' and inserted '', and appointments (whether by warrant or commission) in the grade of regular warrant officer, W–1, shall be made by the President, except that appointments in that grade in the Coast Guard shall be made by the Secretary concerned'' after ''commission by the President''.

1994—Subsec. (a). Pub. L. 103–337 substituted ''armed forces'' for ''Army, Navy, Air Force, and Marine Corps''.

1992—Subsec. (a). Pub. L. 102–484 inserted a period at end of each item in table.

EFFECTIVE DATE OF 1994 AMENDMENT

Pub. L. 103–337, div. A, title V, § 541(h), Oct. 5, 1994, 108 Stat. 2767, provided that: ''This section [enacting section 215 of Title 14, Coast Guard, amending this section, sections 573 to 576, 580, 580a, 581, and 583 of this title, and sections 41, 214, 286a, and 334 of Title 14, repealing sections 212 and 213 of Title 14, enacting provisions set out as notes under this section, and repealing a provision set out as a note under former section 555 of this title] and the amendments made by this section shall take effect on the first day of the fourth month beginning after the date of the enactment of this Act [Oct. 5, 1994].''

EFFECTIVE DATE

Section effective Feb. 1, 1992, see section 1132 of Pub. L. 102–190, set out as an Effective Date of 1991 Amendment note under section 521 of this title.

SHORT TITLE

Pub. L. 102–190, div. A, title XI, § 1101, Dec. 5, 1991, 105 Stat. 1491, provided that: ''This title [enacting this chapter and section 742 of this title, amending sections 521, 522, 597, 598 [now 12242], 603, 628, 644, 741, 1166, 1174, 1305, 1406, 5414, 5457, 5458, 5501 to 5503, 5596, 5600, 5665, 6389, and 6391 of this title, sections 286a and 334 of Title 14, Coast Guard, and sections 201, 301, 301c, 305a, and 406 of Title 37, Pay and Allowances of the Uniformed Services, repealing sections 555 to 565, 602, and 745 of this title, and enacting provisions set out as notes under this section, sections 521 and 555 of this title, and section 1009 of Title 37] may be cited as the 'Warrant Officer Management Act'.''

TRANSITION AND SAVINGS PROVISIONS

Pub. L. 103–337, div. A, title V, § 541(c), (d), Oct. 5, 1994, 108 Stat. 2765, as amended by Pub. L. 104–106, div. A, title XV, § 1504(a)(3), Feb. 10, 1996, 110 Stat. 513, provided that:

''(c) TRANSITION FOR CERTAIN REGULAR WARRANT OFFICERS SERVING IN A HIGHER TEMPORARY GRADE BELOW CHIEF WARRANT OFFICER, W–5.—(1) A regular warrant officer of the Coast Guard who on the effective date of this section [see Effective Date of 1994 Amendment note above] is on active duty and—

''(A) is serving in a temporary grade below chief warrant officer, W–5, that is higher than that warrant officer's permanent grade;

''(B) is on a list of officers recommended for promotion to a temporary grade below chief warrant officer, W–5; or

''(C) is on a list of officers recommended for promotion to a permanent grade higher than the grade in which that warrant officer is serving;

shall be considered to have been recommended by a board convened under section 573 of title 10, United States Code, as amended by subsection (b), for promotion to the permanent grade equivalent to the grade in which that warrant officer is serving or for which that warrant officer has been recommended for promotion, as the case may be.

''(2) An officer referred to in subparagraph (A) of paragraph (1) who is not promoted to the grade to which that warrant officer is considered under such subsection to have been recommended for promotion because that officer's name is removed from a list of officers who are considered under such paragraph to have been recommended for promotion shall be considered by a board convened under section 573 of title 10, United States Code, as amended by subsection (b), for promotion to the permanent grade equivalent to the temporary grade in which that warrant officer was serving on the effective date of this section as if that warrant officer were serving in the permanent grade.

''(3) The date of rank of an officer referred to in paragraph (1)(A) who is promoted to the grade in which that warrant officer is serving on the effective date of this section is the date of that officer's temporary appointment in that grade.

''(d) TRANSITION FOR CERTAIN RESERVE WARRANT OFFICERS SERVING IN A HIGHER TEMPORARY GRADE BELOW CHIEF WARRANT OFFICER, W–5.—(1)(A) Except as provided in paragraph (2), a reserve warrant officer of the Coast Guard who on the effective date of this section [see Effective Date of 1994 Amendment note above] is subject to placement on the warrant officer active-duty list and who—

''(i) is serving in a temporary grade below chief warrant officer, W–5, that is higher than that warrant officer's permanent grade; or

''(ii) is on a list of warrant officers recommended for promotion to a temporary grade below chief warrant officer, W–5, that is the same as or higher than that warrant officer's permanent grade;

shall be considered to have been recommended by a board convened under section 598 [now 12242] of title 10, United States Code, for promotion to the permanent grade equivalent to the grade in which the warrant officer is serving or for which that warrant officer has been recommended for promotion, as the case may be.

''(B) The date of rank of a warrant officer referred to in subparagraph (A)(i) who is promoted to the grade in which that warrant officer is considered under such subparagraph to have been recommended for promotion is the date of the temporary appointment of that warrant officer in that grade.

''(2) A reserve warrant officer of the Coast Guard who on the effective date of this section—

''(A) is subject to placement on the warrant officer active-duty list;

''(B) is serving on active duty in a temporary grade; and

''(C) holds a permanent grade higher than the temporary grade in which that warrant officer is serving;

shall while continuing on active duty retain such temporary grade and shall be considered for promotion to a grade equal to or lower than the permanent grade as

if such temporary grade is a permanent grade. If such warrant officer is recommended for promotion, the appointment of that warrant officer to such grade shall be a temporary appointment.''

Pub. L. 102–190, div. A, title XI, §§1121–1124, Dec. 5, 1991, 105 Stat. 1503–1505, provided that:

''SEC. 1121. TRANSITION FOR CERTAIN REGULAR WARRANT OFFICERS SERVING IN A HIGHER TEMPORARY GRADE BELOW CHIEF WARRANT OFFICER, W–5.

''(a) CERTAIN OFFICERS TO BE CONSIDERED AS RECOMMENDED FOR PROMOTION.—A regular warrant officer of the Armed Forces (other than the Coast Guard) who on the effective date of this title [Feb. 1, 1992] is on active duty and—

''(1) is serving in a temporary grade below chief warrant officer, W–5, that is higher than his permanent grade;

''(2) is on a list of officers recommended for promotion to a temporary grade below chief warrant officer, W–5; or

''(3) is on a list of officers recommended for promotion to a permanent grade higher than the grade in which he is serving;

shall be considered to have been recommended by a board convened under section 573 of title 10, United States Code, as added by this title, for promotion to the permanent grade equivalent to the grade in which he is serving or for which he has been recommended for promotion, as the case may be.

''(b) BOARD CONSIDERATION FOR OFFICERS REMOVED FROM PROMOTION LIST.—An officer referred to in paragraph (1) of subsection (a) who is not promoted to the grade to which he is considered under such subsection to have been recommended for promotion because his name is removed from a list of officers who are considered under such paragraph to have been recommended for promotion shall be considered by a board convened under section 573 of title 10, United States Code, as amended by this title, for promotion to the permanent grade equivalent to the temporary grade in which he was serving on the effective date of this title as if he were serving in his permanent grade.

''(c) DATE OF RANK.—The date of rank of an officer referred to in subsection (a)(1) who is promoted to the grade in which he is serving on the effective date of this title is the date of his temporary appointment in that grade.

''SEC. 1122. TRANSITION FOR CERTAIN RESERVE WARRANT OFFICERS SERVING IN A HIGHER TEMPORARY GRADE BELOW CHIEF WARRANT OFFICER, W–5.

''(a) CERTAIN OFFICERS TO BE CONSIDERED AS RECOMMENDED FOR PROMOTION.—(1) Except as provided in subsection (b), a reserve warrant officer of the Armed Forces (other than the Coast Guard) who on the effective date of this title [Feb. 1, 1992] is subject to placement on the warrant officer active-duty list and who—

''(A) is serving in a temporary grade below chief warrant officer, W–5, that is higher than his permanent grade; or

''(B) is on a list of warrant officers recommended for promotion to a temporary grade below chief warrant officer, W–5, that is the same as or higher than his permanent grade;

shall be considered to have been recommended by a board convened under section 598 [now 12242] of title 10, United States Code, for promotion to the permanent grade equivalent to the grade in which he is serving or for which he has been recommended for promotion, as the case may be.

''(2) The date of rank of a warrant officer referred to in paragraph (1)(A) who is promoted to the grade in which he is considered under such paragraph to have been recommended for promotion is the date of his temporary appointment in that grade.

''(b) RESERVES ON ACTIVE DUTY.—A reserve warrant officer who on the effective date of this title—

''(1) is subject to placement on the warrant officer active-duty list;

''(2) is serving on active duty in a temporary grade; and

''(3) holds a permanent grade higher than the temporary grade in which he is serving,

shall while continuing on active duty retain such temporary grade and shall be considered for promotion to a grade equal to or lower than his permanent grade as if such temporary grade is a permanent grade. If such warrant officer is recommended for promotion, his appointment to such grade shall be a temporary appointment.

''SEC. 1123. CONTINUATION OF CERTAIN TEMPORARY APPOINTMENTS OF NAVY AND MARINE CORPS WARRANT OFFICERS.

''A warrant officer of the Navy or Marine Corps who, on the effective date of this title [Feb. 1, 1992], is subject to placement on the warrant officer active-duty list and who—

''(1) was appointed as a temporary warrant officer under section 5596 [now 8146] of title 10, United States Code, and

''(2) has retained a permanent enlisted status,

shall, while continuing on active duty, retain such temporary status and grade. Such an officer shall be considered for promotion to a higher warrant officer grade under this title [see Short Title note above] as if that temporary grade is a permanent grade. If the officer is recommended for promotion, the officer's appointment to that grade shall be a temporary appointment.

''SEC. 1124. SAVINGS PROVISION FOR CERTAIN REGULAR ARMY WARRANT OFFICERS FACING MANDATORY RETIREMENT FOR LENGTH OF SERVICE.

''(a) SAVINGS PROVISION.—Subject to subsection (b), a regular warrant officer of the Army who on the effective date of this title [Feb. 1, 1992]—

''(1) is a permanent regular chief warrant officer; or

''(2) is on a list of officers recommended for promotion to a regular chief warrant officer grade,

may be retained on active duty until he completes 30 years of active service or 24 years of active warrant officer service, whichever is later, that could be credited to him under section 511 of the Career Compensation Act of 1949 (70 Stat. 114) [act Oct. 12, 1949, formerly set out as a note under section 580 of this title] (as in effect on the day before the effective date of this part [Feb. 1, 1992]), and then be retired under the appropriate provision of title 10, United States Code, on the first day of the month after the month in which he completes that service.

''(b) EXCEPTIONS.—Subsection (a) does not apply to a regular warrant officer who—

''(1) is sooner retired or separated under another provision of law;

''(2) is promoted to the regular grade of chief warrant officer, W–5; or

''(3) is continued on active duty under section 580(e) of title 10, United States Code, as added by this title.''

ESTABLISHMENT OF PERMANENT GRADE OF CHIEF WARRANT OFFICER, W–5

Pub. L. 103–337, div. A, title V, §541(a)(1), Oct. 5, 1994, 108 Stat. 2764, provided that: ''The grade of chief warrant officer, W–5, is hereby established in the Coast Guard.''

[For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.]

Pub. L. 102–190, div. A, title XI, §1111(a), Dec. 5, 1991, 105 Stat. 1491, provided that: ''The grade of chief warrant officer, W–5, is hereby established in the Army, Navy, Air Force, and Marine Corps.''

DELEGATION OF FUNCTIONS

Functions of President under second sentence of subsec. (b) of this section delegated to Secretary of Defense by section 1(b) of Ex. Ord. No. 13384, July 27, 2005, 70 F.R. 43739, set out as a note under section 531 of this title.

§ 572. Warrant officers: original appointment; service credit

For the purposes of promotion, persons originally appointed in regular or reserve warrant officer grades shall be credited with such service as the Secretary concerned may prescribe. However, such a person may not be credited with a period of service greater than the period of active service performed in the grade, or pay grade corresponding to the grade, in which so appointed, or in any higher grade or pay grade.

(Added Pub. L. 102–190, div. A, title XI, § 1112(a), Dec. 5, 1991, 105 Stat. 1493.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 556 of this title prior to repeal by Pub. L. 102–190, § 1112(a).

EFFECTIVE DATE

Section effective Feb. 1, 1992, see section 1132 of Pub. L. 102–190, set out as an Effective Date of 1991 Amendment note under section 521 of this title.

§ 573. Convening of selection boards

(a)(1) Whenever the Secretary concerned determines that the needs of the service so require, he shall convene a selection board to recommend for promotion to the next higher warrant officer grade warrant officers on the warrant officer active-duty list who are in the grade of chief warrant officer, W–2, chief warrant officer, W–3, or chief warrant officer, W–4.

(2) Warrant officers serving on the warrant officer active-duty list in the grade of warrant officer, W–1, shall be promoted to the grade of chief warrant officer, W–2, in accordance with regulations prescribed by the Secretary concerned. Such regulations shall require that an officer have served not less than 18 months on active duty in the grade of warrant officer, W–1, before promotion to the grade of warrant officer, W–2.

(b) A selection board shall consist of five or more officers who are on the active-duty list of the same armed force as the warrant officers under consideration by the board. At least five members of a selection board must be serving in a permanent grade above major or lieutenant commander. The Secretary concerned may appoint warrant officers, senior in grade to those under consideration, as additional members of the selection board. If warrant officers are appointed members of the selection board and if competitive categories have been established by the Secretary under section 574(b) of this title, at least one must be appointed from each warrant officer competitive category under consideration by the board, unless there is an insufficient number of warrant officers in the competitive category concerned who are senior in grade to those under consideration and qualified, as determined by the Secretary concerned, to be appointed as additional members of the board. The members of a selection board shall represent the diverse population of the armed force concerned to the extent practicable.

(c) The Secretary concerned may convene selection boards to recommend regular warrant officers for continuation on active duty under section 580 of this title and for retirement under section 581 of this title.

(d) When reserve warrant officers of one of the armed forces are to be considered by a selection board convened under subsection (a), the membership of the board shall, if practicable, include at least one reserve officer of that armed force, with the exact number of reserve officers to be determined by the Secretary concerned.

(e) No officer may serve on two consecutive boards under this section, if the second board considers any warrant officer who was considered by the first board.

(f) The Secretary concerned shall prescribe all other matters relating to the functions and duties of the boards, including the number of members constituting a quorum, and instructions concerning notice of convening of boards and communications with boards.

(Added Pub. L. 102–190, div. A, title XI, § 1112(a), Dec. 5, 1991, 105 Stat. 1493; amended Pub. L. 103–337, div. A, title V, § 541(b)(1), Oct. 5, 1994, 108 Stat. 2764; Pub. L. 104–106, div. A, title XV, § 1503(a)(5), Feb. 10, 1996, 110 Stat. 511; Pub. L. 116–283, div. A, title V, § 503(a)(2), Jan. 1, 2021, 134 Stat. 3564.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 558 of this title prior to repeal by Pub. L. 102–190, § 1112(a).

AMENDMENTS

2021—Subsec. (b). Pub. L. 116–283 inserted at end ''The members of a selection board shall represent the diverse population of the armed force concerned to the extent practicable.''

1996—Subsec. (a)(2). Pub. L. 104–106 substituted ''active-duty list'' for ''active duty list''.

1994—Subsec. (a)(1). Pub. L. 103–337, § 541(b)(1)(A), substituted ''Secretary concerned'' for ''Secretary of a military department''.

Subsec. (a)(2). Pub. L. 103–337, § 541(b)(1)(B), struck out ''of the military department'' after ''Secretary''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective on the first day of the fourth month beginning after Oct. 5, 1994, see section 541(h) of Pub. L. 103–337, set out as a note under section 571 of this title.

EFFECTIVE DATE

Section effective Feb. 1, 1992, see section 1132 of Pub. L. 102–190, set out as an Effective Date of 1991 Amendment note under section 521 of this title.

OTHER SELECTION BOARDS

Pub. L. 116–283, div. A, title V, § 503(c), Jan. 1, 2021, 134 Stat. 3565, provided that:

''(1) IN GENERAL.—The Secretary of Defense shall ensure that the members of each selection board described in paragraph (2) represent the diverse population of the Armed Force concerned to the extent practicable.

''(2) SELECTION BOARD DESCRIBED.—A selection board described in this paragraph (1) is any selection board used with respect to the promotion, education, or command assignments of members of the Armed Forces

that is not covered by the amendments made by this section [amending this section and sections 612 and 14102 of this title].''

§574. Warrant officer active-duty lists; competitive categories; number to be recommended for promotion; promotion zones

(a) The Secretary concerned shall maintain for each armed force under the jurisdiction of that Secretary a single list of all warrant officers (other than warrant officers described in section 582 of this title) who are on active duty.

(b) The Secretary concerned may establish competitive categories for promotion. Warrant officers in the same competitive category shall compete among themselves for promotion.

(c) Before convening a selection board under section 573 of this title, the Secretary concerned shall determine for each grade (or grade and competitive category) to be considered by the board the following:

(1) The maximum number of warrant officers to be recommended for promotion.

(2) A promotion zone for warrant officers on the warrant officer active-duty list.

(d) The position of a warrant officer on the warrant officer active-duty list shall be determined as follows:

(1) Warrant officers shall be carried in the order of seniority of the grade in which they are serving on active duty.

(2) Warrant officers serving in the same grade shall be carried in the order of their rank in that grade.

(3) A warrant officer on the warrant officer active-duty list who receives a temporary appointment or a temporary assignment in a grade other than a warrant officer grade or chief warrant officer grade shall retain his position on the warrant officer active-duty list while so serving.

(e) A chief warrant officer may not be considered for promotion to the next higher grade under this chapter until the officer has completed two years of service on active duty in the grade in which the officer is serving.

(Added Pub. L. 102–190, div. A, title XI, §1112(a), Dec. 5, 1991, 105 Stat. 1494; amended Pub. L. 102–484, div. A, title X, §1052(3), Oct. 23, 1992, 106 Stat. 2499; Pub. L. 103–337, div. A, title V, §541(b)(2), Oct. 5, 1994, 108 Stat. 2764; Pub. L. 104–201, div. A, title V, §506(a), Sept. 23, 1996, 110 Stat. 2512.)

Amendments

1996—Subsec. (e). Pub. L. 104–201 substituted ''two years of service'' for ''three years of service''.

1994—Subsecs. (a), (b). Pub. L. 103–337 substituted ''Secretary concerned'' for ''Secretary of each military department''.

1992—Subsec. (d)(3). Pub. L. 102–484 substituted ''active-duty list'' for ''active duty list'' before ''while''.

Effective Date of 1994 Amendment

Amendment by Pub. L. 103–337 effective on the first day of the fourth month beginning after Oct. 5, 1994, see section 541(h) of Pub. L. 103–337, set out as a note under section 571 of this title.

Effective Date

Section effective Feb. 1, 1992, see section 1132 of Pub. L. 102–190, set out as an Effective Date of 1991 Amendment note under section 521 of this title.

§575. Recommendations for promotion by selection boards

(a) A selection board convened under section 573(a) of this title shall recommend for promotion to the next higher grade those warrant officers considered by the board whom the board, giving due consideration to the needs of the armed force concerned for warrant officers with particular skills, considers best qualified for promotion within each grade (or grade and competitive category) considered by the board.

(b)(1) In the case of a selection board to consider warrant officers for selection for promotion to the grade of chief warrant officer, W–3, chief warrant officer, W–4, or chief warrant officer, W–5, the Secretary concerned shall establish the number of warrant officers that the selection board may recommend from among warrant officers being considered from below the promotion zone within each grade (or grade and competitive category). The number of warrant officers recommended for promotion from below the promotion zone does not increase the maximum number of warrant officers which the board is authorized under section 574 of this title to recommend for promotion.

(2) The number of officers recommended for promotion from below the promotion zone may not exceed 10 percent of the total number recommended, except that the Secretary of Defense and the Secretary of Homeland Security, when the Coast Guard is not operating as a service in the Navy, may authorize such percentage to be increased to not more than 15 percent. If the number determined under this subsection with respect to a promotion zone within a grade (or grade and competitive category) is less than one, the board may recommend one such officer for promotion from below the zone within that grade (or grade and competitive category).

(c) A selection board convened under section 573(a) of this title may not recommend a warrant officer for promotion unless—

(1) the officer receives the recommendation of a majority of the members of the board; and

(2) a majority of the members of the board find that the officer is fully qualified for promotion.

(d) Each time a selection board is convened under section 573(a) of this title to consider warrant officers in a competitive category for promotion to the next higher grade, each warrant officer in the promotion zone, and each warrant officer above the promotion zone, for the grade and competitive category under consideration (except for a warrant officer precluded from consideration under regulations prescribed by the Secretary concerned under section 577 of this title) shall be considered for promotion.

(Added Pub. L. 102–190, div. A, title XI, §1112(a), Dec. 5, 1991, 105 Stat. 1495; amended Pub. L. 103–337, div. A, title V, §§501(a), 541(b)(3), Oct. 5, 1994, 108 Stat. 2748, 2764; Pub. L. 104–201, div. A, title V, §506(b), Sept. 23, 1996, 110 Stat. 2512; Pub. L. 106–65, div. A, title V, §505, Oct. 5, 1999, 113 Stat. 591; Pub. L. 107–296, title XVII, §1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

Amendments

2002—Subsec. (b)(2). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

1999—Subsec. (b)(2). Pub. L. 106–65 inserted at end ''If the number determined under this subsection with respect to a promotion zone within a grade (or grade and competitive category) is less than one, the board may recommend one such officer for promotion from below the zone within that grade (or grade and competitive category).''

1996—Subsec. (b)(1). Pub. L. 104–201 inserted ''chief warrant officer, W–3,'' after ''promotion to the grade of'' in first sentence.

1994—Subsec. (b)(2). Pub. L. 103–337, § 541(b)(3), inserted ''and the Secretary of Transportation, when the Coast Guard is not operating as a service in the Navy,'' after ''Secretary of Defense''.

Subsec. (d). Pub. L. 103–337, § 501(a), inserted ''(except for a warrant officer precluded from consideration under regulations prescribed by the Secretary concerned under section 577 of this title)'' after ''under consideration''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 541(b)(3) of Pub. L. 103–337 effective on the first day of the fourth month beginning after Oct. 5, 1994, see section 541(h) of Pub. L. 103–337, set out as a note under section 571 of this title.

EFFECTIVE DATE

Section effective Feb. 1, 1992, see section 1132 of Pub. L. 102–190, set out as an Effective Date of 1991 Amendment note under section 521 of this title.

§ 576. Information to be furnished to selection boards; selection procedures

(a) The Secretary concerned shall furnish to each selection board convened under section 573 of this title the following:

(1) The maximum number of warrant officers that may be recommended for promotion from those serving in any grade (or grade and competitive category) to be considered, as determined in accordance with section 574 of this title.

(2) The names and pertinent records of all officers in each grade (or grade and competitive category) to be considered.

(3) Such information or guidelines relating to the needs of the armed force concerned for warrant officers having particular skills, including guidelines or information relating to the need for either a minimum number or a maximum number of officers with particular skills within a grade or competitive category, as the Secretary concerned determines to be relevant in relation to the requirements of that armed force.

(b) From each promotion zone for a grade (or grade and competitive category), the selection board shall recommend for promotion to the next higher warrant officer grade those warrant officers whom it considers best qualified for promotion, but no more than the number specified by the Secretary concerned.

(c) The names of warrant officers selected for promotion under this section shall be arranged in the board's report in order of the seniority on the warrant officer active-duty list.

(d) Under such regulations as the Secretary concerned may prescribe, the selection board shall report the names of those warrant officers considered by it whose records establish, in its opinion, their unfitness or unsatisfactory performance. A regular warrant officer whose name is so reported shall be considered, under regulations provided by the Secretary concerned, for retirement or separation under section 1166 of this title.

(e) The report of the selection board shall be submitted to the Secretary concerned. The Secretary may approve or disapprove all or part of the report.

(f)(1) Upon receipt of the report of a selection board submitted to him under subsection (e), the Secretary concerned shall review the report to determine whether the board has acted contrary to law or regulation or to guidelines furnished the board under this section.

(2) If, on the basis of a review of the report under paragraph (1), the Secretary concerned determines that the board acted contrary to law or regulation or to guidelines furnished the board under this section, the Secretary shall return the report, together with a written explanation of the basis for such determination, to the board for further proceedings. Upon receipt of a report returned by the Secretary concerned under this paragraph, the selection board (or a subsequent selection board convened under section 573 of this title for the same grade and competitive category) shall conduct such proceedings as may be necessary in order to revise the report to be consistent with law, regulation, and such guidelines and shall resubmit the report, as revised, to the Secretary in accordance with subsection (e).

(Added Pub. L. 102–190, div. A, title XI, § 1112(a), Dec. 5, 1991, 105 Stat. 1496; amended Pub. L. 103–337, div. A, title V, §§ 501(b), 541(b)(4), Oct. 5, 1994, 108 Stat. 2748, 2764.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 560 of this title prior to repeal by Pub. L. 102–190, § 1112(a).

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–337, § 541(b)(4)(A), struck out ''of the military department'' after ''The Secretary'' in introductory provisions.

Subsec. (e). Pub. L. 103–337, § 541(b)(4)(B), struck out ''of the military department'' after ''submitted to the Secretary''.

Subsec. (f)(1). Pub. L. 103–337, § 501(b), struck out after first sentence ''Following such review, unless the Secretary concerned makes a determination as described in paragraph (2), the Secretary shall submit the report as required by subsection (e).''

Subsec. (f)(2). Pub. L. 103–337, § 541(b)(4)(C), struck out ''of the military department'' after ''paragraph (1), the Secretary''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 541(b)(4) of Pub. L. 103–337 effective on the first day of the fourth month beginning after Oct. 5, 1994, see section 541(h) of Pub. L. 103–337, set out as a note under section 571 of this title.

EFFECTIVE DATE

Section effective Feb. 1, 1992, see section 1132 of Pub. L. 102–190, set out as an Effective Date of 1991 Amendment note under section 521 of this title.

§577. Promotions: effect of failure of selection for

A warrant officer who has been considered for promotion by a selection board convened under section 573 of this title, but not selected, shall be considered for promotion by each subsequent selection board that considers officers in his grade (or grade and competitive category) until he is retired or separated or he is selected for promotion. However, the Secretary concerned may, by regulation, preclude from consideration by a selection board by which he would otherwise be eligible to be considered, a warrant officer who has an established separation date that is within 90 days after the date on which the board is convened.

(Added Pub. L. 102–190, div. A, title XI, §1112(a), Dec. 5, 1991, 105 Stat. 1497.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 561 of this title prior to repeal by Pub. L. 102–190, §1112(a).

EFFECTIVE DATE

Section effective Feb. 1, 1992, see section 1132 of Pub. L. 102–190, set out as an Effective Date of 1991 Amendment note under section 521 of this title.

§578. Promotions: how made; effective date

(a) When the report of a selection board convened under this chapter is approved by the Secretary concerned, the Secretary shall place the names of the warrant officers approved for promotion on a single promotion list for each grade (or grade and competitive category), in the order of the seniority of such officers on the warrant officer active-duty list.

(b) Promotions of warrant officers on the warrant officer promotion list shall be made when, in accordance with regulations issued by the Secretary concerned, additional warrant officers in that grade (or grade and competitive category), are needed.

(c) A regular warrant officer who is promoted is appointed in the regular grade to which promoted, and a reserve warrant officer who is promoted is appointed in the reserve grade to which promoted. The date of appointment in that grade and date of rank shall be prescribed by the Secretary concerned. A warrant officer is entitled to the pay and allowances for the grade to which appointed from the date specified in the appointment order.

(d) Promotions shall be made in the order in which the names of warrant officers appear on the promotion list and after warrant officers previously selected for promotion in the applicable grade (or grade and competitive category) have been promoted.

(e) A warrant officer who is appointed to a higher grade under this section is considered to have accepted such appointment on the date on which the appointment is made unless the officer expressly declines the appointment.

(f) A warrant officer who has served continuously as an officer since subscribing to the oath of office prescribed in section 3331 of title 5 is not required to take a new oath upon appointment to a higher grade under this section.

(Added Pub. L. 102–190, div. A, title XI, §1112(a), Dec. 5, 1991, 105 Stat. 1497; amended Pub. L. 102–484, div. A, title X, §1052(4), Oct. 23, 1992, 106 Stat. 2499; Pub. L. 103–337, div. A, title V, §501(c), Oct. 5, 1994, 108 Stat. 2748.)

AMENDMENTS

1994—Subsecs. (e), (f). Pub. L. 103–337 added subsecs. (e) and (f).

1992—Pub. L. 102–484 substituted ''Promotions:'' for ''Promotions;'' in section catchline.

EFFECTIVE DATE

Section effective Feb. 1, 1992, see section 1132 of Pub. L. 102–190, set out as an Effective Date of 1991 Amendment note under section 521 of this title.

§579. Removal from a promotion list

(a) The name of a warrant officer recommended for promotion by a selection board convened under this chapter may be removed from the report of the selection board by the President.

(b) The Secretary concerned may remove the name of a warrant officer who is on a promotion list as a result of being recommended for promotion by a selection board convened under this chapter at any time before the promotion is effective.

(c) An officer whose name is removed from the list of officers recommended for promotion by a selection board continues to be eligible for consideration for promotion.

(d) If the next selection board that considers the warrant officer for promotion under this chapter selects the warrant officer for promotion and the warrant officer is promoted, the Secretary concerned may, upon his promotion, grant him the same effective date for pay and allowances and the same date of rank, and the same position on the warrant officer active-duty list as the warrant officer would have had if his name had not been so removed.

(e) If the next selection board does not select the warrant officer for promotion, or if his name is again removed under subsection (a) from the list of officers recommended for promotion by the selection board or under subsection (b) from the warrant officer promotion list, he shall be treated for all purposes as if he has twice failed of selection for promotion.

(Added Pub. L. 102–190, div. A, title XI, §1112(a), Dec. 5, 1991, 105 Stat. 1497.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 562 of this title prior to repeal by Pub. L. 102–190, §1112(a).

EFFECTIVE DATE

Section effective Feb. 1, 1992, see section 1132 of Pub. L. 102–190, set out as an Effective Date of 1991 Amendment note under section 521 of this title.

§580. Regular warrant officers twice failing of selection for promotion: involuntary retirement or separation

(a)(1) Unless retired or separated sooner under some other provision of law, a regular chief warrant officer who has twice failed of selection for promotion to the next higher regular warrant

officer grade shall be retired under paragraph (2) or (3) or separated from active duty under paragraph (4).

(2) If a warrant officer described in paragraph (1) has more than 20 years of creditable active service on (A) the date on which the Secretary concerned approves the report of the board under section 576(e) of this title, or (B) the date on which his name was removed from the recommended list under section 579 of this title, whichever applies, the warrant officer shall be retired. The date of such retirement shall be not later than the first day of the seventh calendar month beginning after the applicable date under the preceding sentence, except as provided by section 8301 of title 5. A warrant officer retired under this paragraph shall receive retired pay computed under section 1401 of this title.

(3) If a warrant officer described in paragraph (1) has at least 18 but not more than 20 years of creditable active service on (A) the date on which the Secretary concerned approves the report of the board under section 576(e) of this title, or (B) the date on which his name was removed from the recommended list under section 579 of this title, whichever applies, the warrant officer shall be retired not later than the date determined under the next sentence unless he is selected for promotion to the next higher regular warrant officer grade before that date. The date of the retirement of a warrant officer under the preceding sentence shall be on a date specified by the Secretary concerned, but not later than the first day of the seventh calendar month beginning after the date upon which he completes 20 years of active service, except as provided by section 8301 of title 5. A warrant officer retired under this paragraph shall receive retired pay computed under section 1401 of this title.

(4)(A) If a warrant officer described in paragraph (1) has less than 18 years of creditable active service on (i) the date on which the Secretary concerned approves the report of the board under section 576(e) of this title, or (ii) the date on which his name was removed from the recommended list under section 579 of this title, whichever applies, the warrant officer shall be separated (except as provided in subparagraph (C)). The date of such separation shall be not later than the first day of the seventh calendar month beginning after the applicable date under the preceding sentence.

(B) A warrant officer separated under this paragraph shall receive separation pay computed under section 1174 of this title, or severance pay computed under section 286a [1] of title 14, as appropriate, except in a case in which—

(i) upon his request and in the discretion of the Secretary concerned, he is enlisted in the grade prescribed by the Secretary; or

(ii) he is serving on active duty in a grade above chief warrant officer, W–5, and he elects, with the consent of the Secretary concerned, to remain on active duty in that status.

(C) If on the date on which a warrant officer is to be separated under subparagraph (A) the warrant officer has at least 18 years of creditable active service, the warrant officer shall be retained on active duty until retired under paragraph (3) in the same manner as if the warrant officer had had at least 18 years of service on the applicable date under subparagraph (A) or (B) of that paragraph.

(5) A warrant officer who is subject to retirement or discharge under this subsection is not eligible for further consideration for promotion.

(6) In this subsection, the term ‘‘creditable active service’’ means active service that could be credited to a warrant officer under section 511 of the Career Compensation Act of 1949, as amended (70 Stat. 114).

(b) The Secretary concerned may defer, for not more than four months, the retirement or separation under this section of a warrant officer if, because of unavoidable circumstances, evaluation of his physical condition and determination of his entitlement to retirement or separation for physical disability require hospitalization or medical observation that cannot be completed before the date on which he would otherwise be required to retire or be separated under this section.

(c) The Secretary concerned may defer, until such date as he prescribes, the retirement under subsection (a) of a warrant officer who is serving on active duty in a grade above chief warrant officer, W–5, and who elects to continue to so serve.

(d) If a warrant officer who also holds a grade above chief warrant officer, W–5, is retired or separated under subsection (a), his commission in the higher grade shall be terminated on the date on which he is so retired or separated.

(e)(1) A regular warrant officer subject to discharge or retirement under this section may, subject to the needs of the service, be continued on active duty if—

(A) in the case of a warrant officer in the grade of chief warrant officer, W–2, or chief warrant officer, W–3, the warrant officer is selected for continuation on active duty by a selection board convened under section 573(c) of this title; and

(B) in the case of a warrant officer in the grade of chief warrant officer, W–4, the warrant officer is selected for continuation on active duty by the Secretary concerned under such procedures as the Secretary may prescribe.

(2)(A) A warrant officer who is selected for continuation on active duty under this subsection but declines to continue on active duty shall be discharged, retired, or retained on active duty, as appropriate, in accordance with this section.

(B) A warrant officer in the grade of chief warrant officer, W–4, who is retained on active duty pursuant to procedures prescribed under paragraph (1)(B) is eligible for further consideration for promotion while remaining on active duty.

(3) Each warrant officer who is continued on active duty under this subsection, not subsequently promoted or continued on active duty, and not on a list of warrant officers recommended for continuation or for promotion to the next higher regular grade shall, unless sooner retired or discharged under another provision of law—

[1] See References in Text note below.

(A) be discharged upon the expiration of his period of continued service; or

(B) if he is eligible for retirement under any provision of law, be retired under that law on the first day of the first month following the month in which he completes his period of continued service.

Notwithstanding subparagraph (A), a warrant officer who would otherwise be discharged under such subparagraph and who is within two years of qualifying for retirement under section 1293 of this title shall, unless he is sooner retired or discharged under some other provision of law, be retained on active duty until he is qualified for retirement under that section and then be retired.

(4) The retirement or discharge of a warrant officer pursuant to this subsection shall be considered to be an involuntary retirement or discharge for purposes of any other provision of law.

(5) Continuation of a warrant officer on active duty under this subsection pursuant to the action of a selection board convened under section 573(c) of this title is subject to the approval of the Secretary concerned.

(6) The Secretary of Defense and the Secretary of Homeland Security, when the Coast Guard is not operating as a service in the Navy, shall prescribe regulations for the administration of this subsection.

(f) A warrant officer subject to discharge or retirement under this section, but against whom any action has been commenced with a view to trying the officer by court-martial, may be continued on active duty, without prejudice to such action, until the completion of such action.

(Added Pub. L. 102–190, div. A, title XI, § 1112(a), Dec. 5, 1991, 105 Stat. 1498; amended Pub. L. 103–160, div. A, title V, § 505(a), Nov. 30, 1993, 107 Stat. 1645; Pub. L. 103–337, div. A, title V, § 541(b)(5), Oct. 5, 1994, 108 Stat. 2765; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 109–364, div. A, title V, § 505(a), (b), Oct. 17, 2006, 120 Stat. 2179; Pub. L. 111–383, div. A, title V, § 541, Jan. 7, 2011, 124 Stat. 4218.)

REFERENCES IN TEXT

Section 286a of title 14, referred to in subsec. (a)(4)(B), was redesignated section 2147 of title 14 by Pub. L. 115–282, title I, § 112(b), Dec. 4, 2018, 132 Stat. 4216, and references to section 286a of title 14 deemed to refer to such redesignated section, see section 123(b)(1) of Pub. L. 115–282, set out as a References to Sections of Title 14 as Redesignated by Pub. L. 115–282 note preceding section 101 of Title 14, Coast Guard.

Section 511 of the Career Compensation Act of 1949, referred to in subsec. (a)(6), is section 511 of act Oct. 12, 1949, ch. 681, which was formerly set out as a note below.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 564 of this title prior to repeal by Pub. L. 102–190, § 1112(a).

AMENDMENTS

2011—Subsec. (f). Pub. L. 111–383 added subsec. (f).

2006—Subsec. (e)(1). Pub. L. 109–364, § 505(a), substituted ''continued on active duty if—'' and subpars. (A) and (B) for ''continued on active duty if he is selected for continuation on active duty by a selection board convened under section 573(c) of this title.''

Subsec. (e)(2). Pub. L. 109–364, § 505(b), designated existing provisions as subpar. (A) and added subpar. (B).

2002—Subsec. (e)(6). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

1994—Subsec. (a)(4)(B). Pub. L. 103–337, § 541(b)(5)(A), inserted '', or severance pay computed under section 286a of title 14, as appropriate,'' after ''section 1174 of this title''.

Subsec. (e)(6). Pub. L. 103–337, § 541(b)(5)(B), inserted ''and the Secretary of Transportation, when the Coast Guard is not operating as a service in the Navy,'' after ''Secretary of Defense''.

1993—Subsec. (a)(4)(A). Pub. L. 103–160, § 505(a)(1), inserted ''(except as provided in subparagraph (C))'' after ''shall be separated''.

Subsec. (a)(4)(C). Pub. L. 103–160, § 505(a)(2), added subpar. (C).

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective on the first day of the fourth month beginning after Oct. 5, 1994, see section 541(h) of Pub. L. 103–337, set out as a note under section 571 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103–160, div. A, title V, § 505(b), Nov. 30, 1993, 107 Stat. 1646, provided that: ''The amendments made by subsection (a) [amending this section] shall apply to warrant officers who have not been separated pursuant to section 580(a)(4) of title 10, United States Code, before the date of enactment of this Act [Nov. 30, 1993].''

EFFECTIVE DATE

Section effective Feb. 1, 1992, see section 1132 of Pub. L. 102–190, set out as an Effective Date of 1991 Amendment note under section 521 of this title.

RETIRED AND RETAINER PAY OF MEMBERS ON RETIRED LISTS OR RECEIVING RETAINER PAY

Act Oct. 12, 1949, ch. 681, title V, § 511, 63 Stat. 829, as amended May 19, 1952, ch. 310, § 4, 66 Stat. 80; Apr. 23, 1956, ch. 208, § 1, 70 Stat. 114, set forth methods of computing retired pay, retirement pay, retainer pay, or equivalent pay on and after Oct. 1, 1949, for members of the uniformed services who had retired for reasons other than for physical disability before Oct. 1, 1949, members who had transferred to the Fleet Reserve or the Fleet Marine Corps Reserve before such date, and certain members of the Army Nurse Corps or the Navy Nurse Corps who had retired before such date, and provided that the amount of such pay would not exceed 75 percentum of the monthly basic pay upon which the computation had been based.

§ 580a. Enhanced authority for selective early discharges

(a) The Secretary of Defense may authorize the Secretary of a military department, during the period beginning on October 1, 2015, and ending on October 1, 2019, to take the action set forth in subsection (b) with respect to regular warrant officers of an armed force under the jurisdiction of that Secretary.

(b) The Secretary of a military department may, with respect to regular warrant officers of an armed force, when authorized to do so under subsection (a), convene selection boards under section 573(c) of this title to consider for discharge regular warrant officers on the warrant officer active-duty list—

(1) who have served at least one year of active duty in the grade currently held;

(2) whose names are not on a list of warrant officers recommended for promotion; and

(3) who are not eligible to be retired under any provision of law and are not within two years of becoming so eligible.

(c)(1) In the case of an action under subsection (b), the Secretary of the military department concerned may submit to a selection board convened pursuant to that subsection—

(A) the names of all regular warrant officers described in that subsection in a particular grade and competitive category; or

(B) the names of all regular warrant officers described in that subsection in a particular grade and competitive category who also are in particular year groups or specialties, or both, within that competitive category.

(2) The Secretary concerned shall specify the total number of warrant officers to be recommended for discharge by a selection board convened pursuant to subsection (b). That number may not be more than 30 percent of the number of officers considered—

(A) in each grade in each competitive category; or

(B) in each grade, year group, or specialty (or combination thereof) in each competitive category.

(3) A warrant officer who is recommended for discharge by a selection board convened pursuant to subsection (b) and whose discharge is approved by the Secretary concerned shall be discharged on a date specified by the Secretary concerned.

(4) Selection of warrant officers for discharge under this subsection shall be based on the needs of the service.

(d) The discharge of any warrant officer pursuant to this section shall be considered involuntary for purposes of any other provision of law.

(e) This section applies to the Secretary of Homeland Security in the same manner and to the same extent as it applies to the Secretary of Defense. The Commandant of the Coast Guard shall take the action set forth in subsection (b) with respect to regular warrant officers of the Coast Guard.

(Added Pub. L. 103–160, div. A, title V, § 504(a), Nov. 30, 1993, 107 Stat. 1644; amended Pub. L. 103–337, div. A, title V, § 541(g), title X, § 1070(a)(3), Oct. 5, 1994, 108 Stat. 2767, 2855; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 114–92, div. A, title V, § 501, Nov. 25, 2015, 129 Stat. 806.)

AMENDMENTS

2015—Subsec. (a). Pub. L. 114–92, § 501(1), substituted ''October 1, 2015, and ending on October 1, 2019'' for ''November 30, 1993, and ending on October 1, 1999''.

Subsec. (c)(3) to (5). Pub. L. 114–92, § 501(2), redesignated pars. (4) and (5) as (3) and (4), respectively, and struck out former par. (3) which read as follows: ''The total number of regular warrant officers described in subsection (b) from any of the armed forces (or from any of the armed forces in a particular grade) who may be recommended during a fiscal year for discharge by a selection board convened pursuant to the authority of that subsection may not exceed 70 percent of the decrease, as compared to the preceding fiscal year, in the number of warrant officers of that armed force (or the number of warrant officers of that armed force in that grade) authorized to be serving on active duty as of the end of that fiscal year.''

2002—Subsec. (e). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

1994—Subsec. (a). Pub. L. 103–337, § 1070(a)(3), substituted ''November 30, 1993,'' for ''the date of the enactment of this section''.

Subsec. (e). Pub. L. 103–337, § 541(g), added subsec. (e).

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 541(g) of Pub. L. 103–337 effective on the first day of the fourth month beginning after Oct. 5, 1994, see section 541(h) of Pub. L. 103–337, set out as a note under section 571 of this title.

§ 581. Selective retirement

(a) A regular warrant officer who holds a warrant officer grade above warrant officer, W–1, and whose name is not on a list of warrant officers recommended for promotion and who is eligible to retire under any provision of law may be considered for retirement by a selection board convened under section 573(c) of this title. The Secretary concerned shall specify the maximum number of warrant officers that such a board may recommend for retirement.

(b) A warrant officer who is recommended for retirement under this section and whose retirement is approved by the Secretary concerned shall be retired, under any provision of law under which he is eligible to retire, on the date requested by him and approved by the Secretary concerned, which date shall be not later than the first day of the seventh calendar month beginning after the month in which the Secretary concerned approves the report of the board which recommended the officer for retirement.

(c) The retirement of a warrant officer pursuant to this section shall be considered to be an involuntary retirement for purposes of any other provision of law.

(d)(1) The Secretary concerned shall prescribe regulations for the administration of this section.

(2) Such regulations shall require that when the Secretary concerned submits a list of regular warrant officers to a selection board convened under section 573(c) of this title to consider regular warrant officers for selection for retirement under this section, the list shall include—

(A) the name of each warrant officer on the active-duty list in the same grade or same grade and competitive category whose position on the active-duty list is between that of the most junior regular warrant officer in that grade whose name is submitted to the board and that of the most senior regular warrant officer in that grade whose name is submitted to the board; or

(B) with respect to a group of warrant officers designated under subparagraph (A) who are in a particular grade and competitive category, only those warrant officers in that grade and competitive category who are also

in a particular year group or specialty, or any combination thereof determined by the Secretary concerned.

(3) Such regulations shall establish procedures to exclude from consideration by the board any warrant officer who has been approved for voluntary retirement, or who is to be mandatorily retired under any other provision of law, during the fiscal year in which the board is convened or during the following fiscal year. An officer not considered by a selection board convened under section 573(c) of this title under such regulations because the officer has been approved for voluntary retirement shall be retired on the date approved for the retirement of such officer as of the convening date of such selection board unless the Secretary concerned approves a modification of such date in order to prevent a personal hardship for the officer or for other humanitarian reasons.

(e)(1) The Secretary concerned may defer for not more than three months the retirement of an officer otherwise approved for early retirement under this section in order to prevent a personal hardship to the officer or for other humanitarian reasons. Any such deferral shall be made on a case-by-case basis considering the circumstances of the case of the particular officer concerned. The authority of the Secretary to grant such a deferral may not be delegated.

(2) An officer recommended for early retirement under this section, if approved for deferral under paragraph (1), shall be retired on the date requested by the officer, and approved by the Secretary concerned, which date shall be not later than the first day of the tenth calendar month beginning after the month in which the Secretary concerned approves the report of the board which recommended the officer for early retirement.

(Added Pub. L. 102–190, div. A, title XI, § 1112(a), Dec. 5, 1991, 105 Stat. 1500; amended Pub. L. 102–484, div. A, title X, § 1052(5), Oct. 23, 1992, 106 Stat. 2499; Pub. L. 103–337, div. A, title V, § 541(b)(6), Oct. 5, 1994, 108 Stat. 2765; Pub. L. 104–106, div. A, title V, § 504(a), Feb. 10, 1996, 110 Stat. 295; Pub. L. 113–291, div. A, title V, §§ 501, 502(a), Dec. 19, 2014, 128 Stat. 3353.)

AMENDMENTS

2014—Subsec. (d). Pub. L. 113–291, § 501, redesignated second sentence of par. (1) as (2) and former par. (2) as (3), and, in par. (2), substituted ''the list shall include—'' for ''the list shall include each'', inserted ''(A) the name of each'' before ''warrant officer on the active-duty list'', substituted ''; or'' for period at end, and added subpar. (B).

Subsec. (e). Pub. L. 113–291, § 502(a), designated existing provisions as par. (1), substituted ''three months'' for ''90 days'', and added par. (2).

1996—Subsec. (e). Pub. L. 104–106 added subsec. (e).

1994—Subsec. (a). Pub. L. 103–337 struck out ''in the Army, Navy, Air Force, or Marine Corps'' after ''A regular warrant officer''.

1992—Subsec. (d)(2). Pub. L. 102–484 substituted ''board'' for ''Board'' in two places in first sentence.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective on the first day of the fourth month beginning after Oct. 5, 1994, see section 541(h) of Pub. L. 103–337, set out as a note under section 571 of this title.

EFFECTIVE DATE

Section effective Feb. 1, 1992, see section 1132 of Pub. L. 102–190, set out as an Effective Date of 1991 Amendment note under section 521 of this title.

§ 582. Warrant officer active-duty list: exclusions

Warrant officers in the following categories are not subject to this chapter:

(1) Reserve warrant officers—

(A) on active duty as authorized under section 115(a)(1)(B) or 115(b)(1) of this title, or excluded from counting for active duty end strengths under section 115(i) of this title; or

(B) on full-time National Guard duty.

(2) Retired warrant officers on active duty (other than retired warrant officers who were recalled to active duty before February 1, 1992, and have served continuously on active duty since that date).

(3) Students enrolled in the Army Physician's Assistant Program.

(Added Pub. L. 102–190, div. A, title XI, § 1112(a), Dec. 5, 1991, 105 Stat. 1500; amended Pub. L. 103–337, div. A, title V, § 501(d), Oct. 5, 1994, 108 Stat. 2748; Pub. L. 104–106, div. A, title XV, § 1501(c)(5), Feb. 10, 1996, 110 Stat. 498; Pub. L. 108–375, div. A, title IV, § 416(i), Oct. 28, 2004, 118 Stat. 1869.)

AMENDMENTS

2004—Par. (1). Pub. L. 108–375 amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''Reserve warrant officers—

''(A) on active duty for training;

''(B) on active duty under section 12301(d) of this title in connection with organizing, administering, recruiting, instructing, or training the reserve components;

''(C) on active duty to pursue special work;

''(D) ordered to active duty under section 12304 of this title; or

''(E) on full-time National Guard duty.''

1996—Par. (1)(B). Pub. L. 104–106 substituted ''section 12301(d)'' for ''section 672(d)''.

Par. (1)(D). Pub. L. 104–106 substituted ''section 12304'' for ''section 673b''.

1994—Par. (2). Pub. L. 103–337 inserted before period at end ''(other than retired warrant officers who were recalled to active duty before February 1, 1992, and have served continuously on active duty since that date)''.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–106, div. A, title XV, § 1501(c), Feb. 10, 1996, 110 Stat. 498, provided that the amendment made by that section is effective as of Dec. 1, 1994, and as if included as an amendment made by the Reserve Officer Personnel Management Act, title XVI of Pub. L. 103–337, as originally enacted.

EFFECTIVE DATE

Section effective Feb. 1, 1992, see section 1132 of Pub. L. 102–190, set out as an Effective Date of 1991 Amendment note under section 521 of this title.

§ 583. Definitions

In this chapter:

(1) The term ''promotion zone'' means a promotion eligibility category consisting of officers on a warrant officer active-duty list in the same grade (or the same grade and competitive category) who—

(A) in the case of grades below chief warrant officer, W–5, have neither (i) failed of

selection for promotion to the next higher grade, nor (ii) been removed from a list of warrant officers recommended for promotion to that grade (other than after having been placed on that list after a selection from below the promotion zone); and

(B) are senior to the warrant officer designated by the Secretary concerned to be the junior warrant officer in the promotion zone eligible for promotion to the next higher grade.

(2) The term ''warrant officers above the promotion zone'' means a group of officers on a warrant officer active-duty list in the same grade (or the same grade and competitive category) who—

(A) are eligible for consideration for promotion to the next higher grade;

(B) are in the same grade as warrant officers in the promotion zone; and

(C) are senior to the senior warrant officer in the promotion zone.

(3) The term ''warrant officers below the promotion zone'' means a group of officers on a warrant officer active-duty list in the same grade (or the same grade and competitive category) who—

(A) are eligible for consideration for promotion to the next higher grade;

(B) are in the same grade as warrant officers in the promotion zone; and

(C) are junior to the junior warrant officer in the promotion zone.

(4) The active-duty list referred to in section 573(b) of this title includes the active-duty promotion list established by section 41a[1] of title 14.

(Added Pub. L. 102–190, div. A, title XI, § 1112(a), Dec. 5, 1991, 105 Stat. 1501; amended Pub. L. 103–337, div. A, title V, § 541(f)(7), Oct. 5, 1994, 108 Stat. 2767.)

REFERENCES IN TEXT

Section 41a of title 14, referred to in par. (4), was redesignated section 2102 of title 14 by Pub. L. 115–282, title I, § 112(b), Dec. 4, 2018, 132 Stat. 4216, and references to section 41a of title 14 deemed to refer to such redesignated section, see section 123(b)(1) of Pub. L. 115–282, set out as a References to Sections of Title 14 as Redesignated by Pub. L. 115–282 note preceding section 101 of Title 14, Coast Guard.

AMENDMENTS

1994—Par. (4). Pub. L. 103–337 added par. (4).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective on the first day of the fourth month beginning after Oct. 5, 1994, see section 541(h) of Pub. L. 103–337, set out as a note under section 571 of this title.

EFFECTIVE DATE

Section effective Feb. 1, 1992, see section 1132 of Pub. L. 102–190, set out as an Effective Date of 1991 Amendment note under section 521 of this title.

CHAPTER 34—APPOINTMENTS AS RESERVE OFFICERS

Sec.
591. Reference to chapters 1205 and 1207.

[1] See References in Text note below.

Sec.

AMENDMENTS

1994—Pub. L. 103–337, div. A, title XVI, § 1662(d)(3), Oct. 5, 1994, 108 Stat. 2991, amended analysis generally, substituting item 591 for former items 591 to 600a.

1992—Pub. L. 102–484, div. A, title V, § 515(b), Oct. 23, 1992, 106 Stat. 2407, added item 596.

1986—Pub. L. 99–661, div. A, title V, § 508(d)(1)(B), Nov. 14, 1986, 100 Stat. 3867, added item 600a.

1980—Pub. L. 96–513, title I, § 105, Dec. 12, 1980, 94 Stat. 2849, substituted ''34'' for ''35'' as chapter number.

1958—Pub. L. 85–861, § 1(11), Sept. 2, 1958, 72 Stat. 1440, added item 592 and struck out item 596 ''Officers: promotion''.

§ 591. Reference to chapters 1205 and 1207

Provisions of law relating to appointments of reserve officers other than warrant officers are set forth in chapter 1205 of this title (beginning with section 12201). Provisions of law relating to appointments and promotion of reserve warrant officers are set forth in chapter 1207 (beginning with section 12241).

(Added Pub. L. 103–337, div. A, title XVI, § 1662(d)(3), Oct. 5, 1994, 108 Stat. 2991.)

PRIOR PROVISIONS

Prior sections 591 to 594, 595, and 596 were renumbered sections 12201 to 12204, 12208, and 12205 of this title, respectively.

Another prior section 596, act Aug. 10, 1956, ch. 1041, 70A Stat. 25, related to promotion of officers in the Reserve components, prior to repeal by Pub. L. 85–861, § 36B(2), Sept. 2, 1958, 72 Stat. 1570.

Prior sections 596a, 596b, 597 to 599, 600, and 600a were renumbered sections 12206, 12207, 12241 to 12243, 12209, and 12210 of this title, respectively.

EFFECTIVE DATE

Section effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as a note under section 10001 of this title.

CHAPTER 35—TEMPORARY APPOINTMENTS IN OFFICER GRADES

Sec.
601. Positions of importance and responsibility: generals and lieutenant generals; admirals and vice admirals.
[602. Repealed.]
603. Appointments in time of war or national emergency.
604. Senior joint officer positions: recommendations to the Secretary of Defense.
605. Promotion to certain grades for officers with critical skills: colonel, lieutenant colonel, major, captain; captain, commander, lieutenant commander, lieutenant.

AMENDMENTS

2018—Pub. L. 115–232, div. A, title V, § 503(a)(2), Aug. 13, 2018, 132 Stat. 1742, added item 605.

1994—Pub. L. 103–337, div. A, title IV, § 405(c)(2), Oct. 5, 1994, 108 Stat. 2745, added item 604.

1991—Pub. L. 102–190, div. A, title XI, § 1113(d)(1)(B), Dec. 5, 1991, 105 Stat. 1502, struck out item 602 ''Warrant officers: temporary promotions'' and substituted ''Appointments in time of war or national emergency'' for ''Commissioned officer grades: time of war or national emergency'' in item 603.

§ 601. Positions of importance and responsibility: generals and lieutenant generals; admirals and vice admirals

(a) The President may designate positions of importance and responsibility to carry the grade

of general or admiral or lieutenant general or vice admiral. The President may assign to any such position an officer of the Army, Navy, Air Force, Marine Corps, or Space Force who is serving on active duty in any grade above colonel or, in the case of an officer of the Navy, any grade above captain. An officer assigned to any such position has the grade specified for that position if he is appointed to that grade by the President, by and with the advice and consent of the Senate. Except as provided in subsection (b), the appointment of an officer to a grade under this section for service in a position of importance and responsibility ends on the date of the termination of the assignment of the officer to that position.

(b) An officer who is appointed to the grade of general, admiral, lieutenant general, or vice admiral for service in a position designated under subsection (a) or by law to carry that grade shall continue to hold that grade—

(1) while serving in that position;

(2) while under orders transferring him to another position designated under subsection (a) or by law to carry one of those grades, beginning on the day his assignment to the first position is terminated and ending on the day before the day on which he assumes the second position;

(3) while hospitalized, beginning on the day of the hospitalization and ending on the day he is discharged from the hospital, but not for more than 180 days;

(4) at the discretion of the Secretary of Defense, while the officer is awaiting orders after being relieved from the position designated under subsection (a) or by law to carry one of those grades, but not for more than 60 days beginning on the day the officer is relieved from the position, unless, during such period, the officer is placed under orders to another position designated under subsection (a) or by law to carry one of those grades, in which case paragraph (2) will also apply to the officer; and

(5) while awaiting retirement, beginning on the day he is relieved from the position designated under subsection (a) or by law to carry one of those grades and ending on the day before his retirement, but not for more than 60 days.

(c)(1) An appointment of an officer under subsection (a) does not vacate the permanent grade held by the officer.

(2) An officer serving in a grade above major general or rear admiral who holds the permanent grade of brigadier general or rear admiral (lower half) shall be considered for promotion to the permanent grade of major general or rear admiral, as appropriate, as if he were serving in his permanent grade.

(d)(1) When an officer is recommended to the President for an initial appointment to the grade of lieutenant general or vice admiral, or for an initial appointment to the grade of general or admiral, the Chairman of the Joint Chiefs of Staff shall submit to the Secretary of Defense the Chairman's evaluation of the performance of that officer as a member of the Joint Staff and in other joint duty assignments. The Secretary of Defense shall submit the Chairman's evaluation to the President at the same time the recommendation for the appointment is submitted to the President.

(2) Whenever a vacancy occurs in a position within the Department of Defense that the President has designated as a position of importance and responsibility to carry the grade of general or admiral or lieutenant general or vice admiral or in an office that is designated by law to carry such a grade, the Secretary of Defense shall inform the President of the qualifications needed by an officer serving in that position or office to carry out effectively the duties and responsibilities of that position or office.

(e) Prior to making a recommendation to the Secretary of Defense for the nomination of an officer for appointment to a position of importance and responsibility under this section, which appointment would result in the initial appointment of the officer concerned in the grade of lieutenant general or general in the Army, Air Force, or Marine Corps, vice admiral or admiral in the Navy, or the commensurate grades in the Space Force, the Secretary concerned shall consider all officers determined to be among the best qualified for such position.

(Added Pub. L. 96–513, title I, § 105, Dec. 12, 1980, 94 Stat. 2849; amended Pub. L. 97–86, title IV, § 405(b)(1), Dec. 1, 1981, 95 Stat. 1105; Pub. L. 98–525, title V, § 523, Oct. 19, 1984, 98 Stat. 2523; Pub. L. 99–145, title V, § 514(b)(1), Nov. 8, 1985, 99 Stat. 628; Pub. L. 99–433, title IV, § 403, Oct. 1, 1986, 100 Stat. 1031; Pub. L. 102–190, div. A, title V, § 502(a), Dec. 5, 1991, 105 Stat. 1354; Pub. L. 104–106, div. A, title IV, § 403(c), Feb. 10, 1996, 110 Stat. 287; Pub. L. 110–181, div. A, title V, § 501(a), Jan. 28, 2008, 122 Stat. 94; Pub. L. 116–283, div. A, title V, § 551(b)(1), title IX, § 924(b)(3)(C), Jan. 1, 2021, 134 Stat. 3630, 3821.)

AMENDMENTS

2021—Subsec. (a). Pub. L. 116–283, § 924(b)(3)(C), substituted ''Marine Corps, or Space Force'' for ''or Marine Corps''.

Subsec. (e). Pub. L. 116–283, § 551(b)(1), added subsec. (e).

2008—Subsec. (b)(4), (5). Pub. L. 110–181 added par. (4) and redesignated former par. (4) as (5).

1996—Subsec. (b). Pub. L. 104–106, § 403(c)(1), in introductory provisions substituted ''designated under subsection (a) or by law'' for ''of importance and responsibility designated''.

Subsec. (b)(1). Pub. L. 104–106, § 403(c)(2), struck out ''of importance and responsibility'' after ''position''.

Subsec. (b)(2). Pub. L. 104–106, § 403(c)(3), substituted ''designated under subsection (a) or by law'' for ''designating''.

Subsec. (b)(4). Pub. L. 104–106, § 403(c)(4), inserted ''under subsection (a) or by law'' after ''designated''.

1991—Subsec. (b)(4). Pub. L. 102–190 substituted ''60 days'' for ''90 days''.

1986—Subsec. (d). Pub. L. 99–433 added subsec. (d).

1985—Subsec. (c)(2). Pub. L. 99–145 substituted ''rear admiral (lower half)'' for ''commodore''.

1984—Subsec. (b). Pub. L. 98–525 amended subsec. (b) generally, which prior to amendment had provided that if the assignment of an officer who was serving in a position designated to carry the grade of general, admiral, lieutenant general, or vice admiral was terminated (1) by the assignment of such officer to another position designated to carry one of those grades, such officers would hold, during the period beginning on the day of that termination and ending on the day before the day on which he assumed the other position, the grade that he had held on the day before the termination; (2)

by the hospitalization of such officer, such officer would hold, during the period beginning on the day of that termination and ending on the day he was discharged from the hospital, but not for more than 180 days, the grade that he had held on the day before the termination; or (3) by the retirement of such officer, such officer would hold, during the period beginning on the day of that termination and ending on the day before his retirement, but not for more than 90 days, the grade that he had held on the day before the termination.

1981—Subsec. (c)(2). Pub. L. 97–86 substituted ''commodore'' for ''commodore admiral''.

EFFECTIVE DATE OF 1991 AMENDMENT

Pub. L. 102–190, div. A, title V, § 502(b), Dec. 5, 1991, 105 Stat. 1355, provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on the first day of the first month that begins more than 90 days after the date of the enactment of this Act [Dec. 5, 1991].''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–86 effective Sept. 15, 1981, see section 405(f) of Pub. L. 97–86, set out as a note under section 101 of this title.

EFFECTIVE DATE

Section effective Sept. 15, 1981, but the authority to prescribe regulations under this chapter effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

TRANSITION PROVISIONS UNDER DEFENSE OFFICER PERSONNEL MANAGEMENT ACT

For provisions relating to temporary appointments of officers serving in grades above major general or rear admiral, see section 623 of Pub. L. 96–513, set out as a note under section 611 of this title.

[§ 602. Repealed. Pub. L. 102–190, div. A, title XI, § 1113(a), Dec. 5, 1991, 105 Stat. 1502]

Section, Pub. L. 96–513, title I, § 105, Dec. 12, 1980, 94 Stat. 2849, related to temporary promotions of warrant officers.

EFFECTIVE DATE OF REPEAL

Repeal effective Feb. 1, 1992, see section 1132 of Pub. L. 102–190, set out as an Effective Date of 1991 Amendment note under section 521 of this title.

§ 603. Appointments in time of war or national emergency

(a) In time of war, or of national emergency declared by the Congress or the President after November 30, 1980, the President may appoint any qualified person (whether or not already a member of the armed forces) to any officer grade in the Army, Navy, Air Force, Marine Corps, or Space Force, except that appointments under this section may not be made in grades above major general or rear admiral. Appointments under this section shall be made by the President alone, except that an appointment in the grade warrant officer, W–1, shall be made by warrant by the Secretary concerned.

(b) Any appointment under this section is a temporary appointment and may be vacated by the President at any time.

(c)(1) Any person receiving an original appointment under this section is entitled to service credit as authorized under section 533 of this title.

(2) An appointment under this section of a person who is not on active duty becomes effective when that person begins active duty under that appointment.

(d) An appointment under this section does not change the permanent status of a member of the armed forces so appointed. A member who is appointed under this section shall not incur any reduction in the pay and allowances to which the member was entitled, by virtue of his permanent status, at the time of his appointment under this section.

(e)(1) An officer who receives an appointment to a higher grade under this section is considered to have accepted such appointment on the date of the order announcing the appointment unless he expressly declines the appointment.

(2) An officer who has served continuously since he subscribed to the oath of office prescribed in section 3331 of title 5 is not required to take a new oath upon appointment to a higher grade under this section.

(f) Unless sooner terminated, an appointment under this section terminates on the earliest of the following:

(1) The second anniversary of the appointment.

(2) The end of the six-month period beginning on the last day of the war or national emergency during which the appointment was made.

(3) The date the person appointed is released from active duty.

(Added Pub. L. 96–513, title I, § 105, Dec. 12, 1980, 94 Stat. 2850; amended Pub. L. 101–189, div. A, title VI, § 653(a)(2), Nov. 29, 1989, 103 Stat. 1462; Pub. L. 102–190, div. A, title XI, § 1113(b), (d)(1)(A), Dec. 5, 1991, 105 Stat. 1502; Pub. L. 116–283, div. A, title IX, § 924(b)(3)(D), Jan. 1, 2021, 134 Stat. 3821.)

AMENDMENTS

2021—Subsec. (a). Pub. L. 116–283 substituted ''Marine Corps, or Space Force'' for ''or Marine Corps''.

1991—Pub. L. 102–190, § 1113(d)(1)(A), substituted ''Appointments in time of war or national emergency'' for ''Commissioned officer grades: time of war or national emergency'' in section catchline.

Subsec. (a). Pub. L. 102–190, § 1113(b), struck out ''commissioned'' before ''officer grade in the Army'' and ''in warrant officer grades or'' before ''in grades above major general'' and inserted before period at end '', except that an appointment in the grade warrant officer, W–1, shall be made by warrant by the Secretary concerned''.

1989—Subsec. (f). Pub. L. 101–189 substituted ''terminates on the earliest of the following:'' for ''terminates—'' in introductory provisions, and made numerous amendments to style and punctuation. Prior to amendment, subsec. (f) read as follows: ''Unless sooner terminated, an appointment under this section terminates—

''(1) on the second anniversary of the appointment;

''(2) at the end of the six-month period beginning on the last day of the war or national emergency during which the appointment was made; or

''(3) on the date the person appointed is released from active duty;

whichever is earliest.''

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–190 effective Feb. 1, 1992, see section 1132 of Pub. L. 102–190, set out as a note under section 521 of this title.

EFFECTIVE DATE

Section effective Sept. 15, 1981, but the authority to prescribe regulations under this section effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

DELEGATION OF FUNCTIONS

Functions of President under subsecs. (a) and (b) to make or vacate certain temporary commissioned appointments delegated to Secretary of Defense to perform during a time of war or national emergency, without approval, ratification, or other action by President, and with authority for Secretary to redelegate, provided that, during a national emergency declared by President, exercise of any such authority be specifically directed by President in accordance with section 1631 of Title 50, War and National Defense, and that Secretary ensure any authority so delegated be accounted for as required by section 1641 of Title 50, see Ex. Ord. No. 12396, §§ 2, 3, Dec. 9, 1982, 47 F.R. 55897, 55898, set out as a note under section 301 of Title 3, The President.

EX. ORD. NO. 13321. APPOINTMENTS DURING NATIONAL EMERGENCY

Ex. Ord. No. 13321, Dec. 17, 2003, 68 F.R. 74465, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the National Emergencies Act (50 U.S.C. 1601 *et seq.*), and section 301 of title 3, United States Code, and in order to further respond to the national emergency I declared in Proclamation 7463 of September 14, 2001 [50 U.S.C. 1621 note], I hereby order as follows:

SECTION 1. *Emergency Appointments Authority*. The emergency appointments authority at section 603 of title 10, United States Code, is invoked and made available to the Secretary of Defense in accordance with the terms of that statute and of Executive Order 12396 of December 9, 1982 [3 U.S.C. 301 note].

SEC. 2. *Judicial Review*. This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by a party against the United States, its departments, agencies, entities, officers, employees or agents, or any person.

SEC. 3. *Administration*. This order shall be transmitted to the Congress and published in the Federal Register.

GEORGE W. BUSH.

§ 604. Senior joint officer positions: recommendations to the Secretary of Defense

(a) JOINT 4-STAR OFFICER POSITIONS.—(1) Whenever a vacancy occurs, or is anticipated to occur, in a position specified in subsection (b)—

(A) the Secretary of Defense shall require the Secretary of the Army to submit the name of at least one Army officer, the Secretary of the Navy to submit the name of at least one Navy officer and the name of at least one Marine Corps officer, and the Secretary of the Air Force to submit the name of at least one Air Force officer and the name of at least one Space Force officer for consideration by the Secretary for recommendation to the President for appointment to that position; and

(B) the Chairman of the Joint Chiefs of Staff may submit to the Secretary of Defense the name of one or more officers (in addition to the officers whose names are submitted pursuant to subparagraph (A)) for consideration by the Secretary for recommendation to the President for appointment to that position.

(2) Whenever the Secretaries of the military departments are required to submit the names of officers under paragraph (1)(A), the Chairman of the Joint Chiefs of Staff shall submit to the Secretary of Defense the Chairman's evaluation of the performance of each officer whose name is submitted under that paragraph (and of any officer whose name the Chairman submits to the Secretary under paragraph (1)(B) for consideration for the same vacancy). The Chairman's evaluation shall primarily consider the performance of the officer as a member of the Joint Staff and in other joint duty assignments, but may include consideration of other aspects of the officer's performance as the Chairman considers appropriate.

(b) COVERED POSITIONS.—Subsection (a) applies to the following positions:

(1) Commander of a combatant command.

(2) Commander, United States Forces, Korea.

(Added Pub. L. 103–337, div. A, title IV, § 405(c)(1), Oct. 5, 1994, 108 Stat. 2745; amended Pub. L. 104–201, div. A, title IV, § 404(a), Sept. 23, 1996, 110 Stat. 2506; Pub. L. 106–65, div. A, title V, § 509(a), Oct. 5, 1999, 113 Stat. 592; Pub. L. 107–314, div. A, title IV, § 405(a), Dec. 2, 2002, 116 Stat. 2526; Pub. L. 108–136, div. A, title V, § 504(a), Nov. 24, 2003, 117 Stat. 1456; Pub. L. 114–328, div. A, title V, § 502(e), Dec. 23, 2016, 130 Stat. 2102; Pub. L. 116–283, div. A, title IX, § 924(b)(15), Jan. 1, 2021, 134 Stat. 3823.)

AMENDMENTS

2021—Subsec. (a)(1)(A). Pub. L. 116–283 inserted "and the name of at least one Space Force officer" after "Air Force officer".

2016—Subsec. (b)(3). Pub. L. 114–328 struck out par. (3) which read as follows: "Deputy commander, United States European Command, but only if the commander of that command is also the Supreme Allied Commander, Europe."

2003—Subsec. (c). Pub. L. 108–136 struck out heading and text of subsec. (c). Text read as follows: "This section shall cease to be effective at the end of December 31, 2004."

2002—Subsec. (c). Pub. L. 107–314 substituted "December 31, 2004" for "September 30, 2003".

1999—Subsec. (c). Pub. L. 106–65 substituted "September 30, 2003" for "September 30, 2000".

1996—Subsec. (c). Pub. L. 104–201 substituted "September 30, 2000" for "September 30, 1997".

§ 605. Promotion to certain grades for officers with critical skills: colonel, lieutenant colonel, major, captain; captain, commander, lieutenant commander, lieutenant

(a) IN GENERAL.—An officer in the grade of first lieutenant, captain, major, or lieutenant colonel in the Army, Air Force, or Marine Corps, or lieutenant (junior grade), lieutenant, lieutenant commander, or commander in the Navy, who is described in subsection (b) may be temporarily promoted to the grade of captain, major, lieutenant colonel, or colonel in the Army, Air Force, or Marine Corps, or lieutenant, lieutenant commander, commander, or captain in the Navy, as applicable, under regulations prescribed by the Secretary of the military department concerned. Appointments under this section shall be made by the President, by and with the advice and consent of the Senate.

(b) COVERED OFFICERS.—An officer described in this subsection is any officer in a grade specified in subsection (a) who—

(1) has a skill in which the armed force concerned has a critical shortage of personnel (as determined by the Secretary of the military department concerned); and

(2) is serving in a position (as determined by the Secretary of the military department concerned) that—

(A) is designated to be held by a captain, major, lieutenant colonel, or colonel in the Army, Air Force, or Marine Corps, or lieutenant, lieutenant commander, commander, or captain in the Navy, as applicable; and

(B) requires that an officer serving in such position have the skill possessed by such officer.

(c) PRESERVATION OF POSITION AND STATUS OF OFFICERS APPOINTED.—An appointment under this section does not change the position on the active-duty list or the permanent, probationary, or acting status of the officer so appointed, prejudice the officer in regard to other promotions or appointments, or abridge the rights or benefits of the officer.

(d) BOARD RECOMMENDATION REQUIRED.—A temporary promotion under this section may be made only upon the recommendation of a board of officers convened by the Secretary of the military department concerned for the purpose of recommending officers for such promotions.

(e) ACCEPTANCE AND EFFECTIVE DATE OF APPOINTMENT.—Each appointment under this section, unless expressly declined, is, without formal acceptance, regarded as accepted on the date such appointment is made, and a member so appointed is entitled to the pay and allowances of the grade of the temporary promotion under this section from the date the appointment is made.

(f) TERMINATION OF APPOINTMENT.—Unless sooner terminated, an appointment under this section terminates—

(1) on the date the officer who received the appointment is promoted to the permanent grade of captain, major, lieutenant colonel, or colonel in the Army, Air Force, or Marine Corps, or lieutenant, lieutenant commander, commander, or captain in the Navy; or

(2) on the date the officer is detached from a position described in subsection (b)(2), unless the officer is on a promotion list to the permanent grade of captain, major, lieutenant colonel, or colonel in the Army, Air Force, or Marine Corps, or lieutenant, lieutenant commander, commander, or captain in the Navy, in which case the appointment terminates on the date the officer is promoted to that grade.

(g) LIMITATION ON NUMBER OF ELIGIBLE POSITIONS.—An appointment under this section may only be made for service in a position designated by the Secretary of the military department concerned for the purposes of this section. The number of positions so designated may not exceed the following:

(1) In the case of the Army—

(A) as captain, 120;

(B) as major, 350;

(C) as lieutenant colonel, 200; and

(D) as colonel, 100.

(2) In the case of the Air Force—

(A) as captain, 100;

(B) as major, 325;

(C) as lieutenant colonel, 175; and

(D) as colonel, 80.

(3) In the case of the Marine Corps—

(A) as captain, 50;

(B) as major, 175;

(C) as lieutenant colonel, 100; and

(D) as colonel, 50.

(4) In the case of the Navy—

(A) as lieutenant, 100;

(B) as lieutenant commander, 325;

(C) as commander, 175; and

(D) as captain, 80.

(Added Pub. L. 115–232, div. A, title V, §503(a)(1), Aug. 13, 2018, 132 Stat. 1740.)

CHAPTER 36—PROMOTION, SEPARATION, AND INVOLUNTARY RETIREMENT OF OFFICERS ON THE ACTIVE-DUTY LIST

Subchapter		Sec.
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AMENDMENTS

2018—Pub. L. 115–232, div. A, title V, §507(a)(2), Aug. 13, 2018, 132 Stat. 1748, added item for subchapter VI.

SUBCHAPTER I—SELECTION BOARDS

Sec.	
611.	Convening of selection boards.
612.	Composition of selection boards.
613.	Oath of members of selection boards.
613a.	Nondisclosure of board proceedings.
614.	Notice of convening of selection boards.
615.	Information furnished to selection boards.
616.	Recommendations for promotion by selection boards.
617.	Reports of selection boards.
618.	Action on reports of selection boards.

AMENDMENTS

2006—Pub. L. 109–364, div. A, title V, §547(d)(1), Oct. 17, 2006, 120 Stat. 2216, added item 613a.

1991—Pub. L. 102–190, div. A, title V, §504(a)(2)(B), Dec. 5, 1991, 105 Stat. 1357, struck out ''; communications with boards'' after ''selection boards'' in item 614.

§611. Convening of selection boards

(a) Whenever the needs of the service require, the Secretary of the military department concerned shall convene selection boards to recommend for promotion to the next higher permanent grade, under subchapter II of this chapter, officers on the active-duty list in each permanent grade from first lieutenant through brigadier general in the Army, Air Force, or Marine Corps and from lieutenant (junior grade) through rear admiral (lower half) in the Navy.

The preceding sentence does not require the convening of a selection board in the case of officers in the permanent grade of first lieutenant or, in the case of the Navy, lieutenant (junior grade) when the Secretary concerned recommends for promotion to the next higher grade under section 624(a)(3) of this title all such officers whom the Secretary finds to be fully qualified for promotion.

(b) Whenever the needs of the service require, the Secretary of the military department concerned may convene selection boards to recommend officers for continuation on active duty under section 637 of this title or for early retirement under section 638 of this title.

(c) The convening of selection boards under subsections (a) and (b) shall be under regulations prescribed by the Secretary of Defense.

(Added Pub. L. 96–513, title I, §105, Dec. 12, 1980, 94 Stat. 2851; amended Pub. L. 97–86, title IV, §405(b)(1), Dec. 1, 1981, 95 Stat. 1105; Pub. L. 99–145, title V, §514(b)(1), Nov. 8, 1985, 99 Stat. 628; Pub. L. 107–107, div. A, title V, §505(a)(3), Dec. 28, 2001, 115 Stat. 1086.)

AMENDMENTS

2001—Subsec. (a). Pub. L. 107–107, §505(a)(3)(A), substituted ''Whenever the needs of the service require, the Secretary of the military department concerned'' for ''Under regulations prescribed by the Secretary of Defense, the Secretary of the military department concerned, whenever the needs of the service require,'' and inserted at end ''The preceding sentence does not require the convening of a selection board in the case of officers in the permanent grade of first lieutenant or, in the case of the Navy, lieutenant (junior grade) when the Secretary concerned recommends for promotion to the next higher grade under section 624(a)(3) of this title all such officers whom the Secretary finds to be fully qualified for promotion.''

Subsec. (b). Pub. L. 107–107, §505(a)(3)(B), substituted ''Whenever the needs of the service require, the Secretary of the military department concerned'' for ''Under regulations prescribed by the Secretary of Defense, the Secretary of the military department concerned, whenever the needs of the service require,''.

Subsec. (c). Pub. L. 107–107, §505(a)(3)(C), added subsec. (c).

1985—Subsec. (a). Pub. L. 99–145 substituted ''rear admiral (lower half)'' for ''commodore''.

1981—Subsec. (a). Pub. L. 97–86 substituted ''commodore'' for ''commodore admiral''.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–86 effective Sept. 15, 1981, see section 405(f) of Pub. L. 97–86, set out as a note under section 101 of this title.

EFFECTIVE DATE

Section effective Sept. 15, 1981, but the authority to prescribe regulations under this subchapter effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

TRANSITION FROM GRADE OF COMMODORE TO GRADE OF REAR ADMIRAL (LOWER HALF)

Pub. L. 99–145, title V, §514(e), Nov. 8, 1985, 99 Stat. 630, provided that:

''(1) An officer who on the day before the date of the enactment of this Act [Nov. 8, 1985] is serving in or has the grade of commodore shall as of the date of the enactment of this Act be serving in or have the grade of rear admiral (lower half).

''(2) An officer who on the day before the date of the enactment of this Act is on a list of officers selected for promotion to the grade of commodore shall as of the date of the enactment of this Act be considered to be on a list of officers selected for promotion to the grade of rear admiral (lower half).''

TRANSITION PROVISIONS COVERING 1980 AMENDMENTS BY DEFENSE OFFICER PERSONNEL MANAGEMENT ACT [PUB. L. 96–513]

Parts A to C of title VI of Pub. L. 96–513, Dec. 12, 1980, 94 Stat. 2940, as amended by Pub. L. 97–22, §8(a)–(n), July 10, 1981, 95 Stat. 132–135; Pub. L. 97–86, title IV, §405(d)(1), (2)(A), (e), (f), Dec. 1, 1981, 95 Stat. 1106, eff. Sept. 15, 1981; Pub. L. 98–525, title V, §§530–532, Oct. 19, 1984, 98 Stat. 2527; Pub. L. 100–456, div. A, title V, §503, Sept. 29, 1988, 102 Stat. 1967, provided that:

''PART A—TRANSITION PROVISIONS RELATING ONLY TO THE ARMY AND AIR FORCE

''REGULAR OFFICERS SERVING IN A HIGHER TEMPORARY GRADE BELOW LIEUTENANT GENERAL OR RECOMMENDED FOR PROMOTION TO A HIGHER GRADE

''SEC. 601. (a) Except as provided in sections 603 and 604, any regular officer of the Army or Air Force who on the effective date of this Act [Sept. 15, 1981, except as otherwise provided in section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title] is on active duty and—

''(1) is serving in a temporary grade below lieutenant general that is higher than his regular grade;

''(2) is on a list of officers recommended for promotion to a temporary grade below lieutenant general; or

''(3) is on a list of officers recommended for promotion to a regular grade higher than the grade in which he is serving;

shall be considered to have been recommended by a board convened under section 611(a) of title 10, United States Code, as added by this Act, for promotion to the regular grade equivalent to the grade in which he is serving or for which he has been recommended for promotion, as the case may be.

''(b) An officer referred to in clause (1) of subsection (a) who is not promoted to the grade to which he is considered under such subsection to have been recommended for promotion because his name is removed from a list of officers who are considered under such subsection to have been recommended for promotion shall be considered under chapter 36 of title 10, United States Code, as added by this Act, for promotion to the regular grade equivalent to the temporary grade in which he was serving on the effective date of this Act [Sept. 15, 1981] as if he were serving in his regular grade.

''(c) Notwithstanding section 741(d) of title 10, United States Code, as added by this Act, the date of rank of an officer referred to in subsection (a)(1) who is promoted to the temporary grade in which he is serving on the effective date of this Act [Sept. 15, 1981] is the date of his temporary appointment in that grade.

''(d)(1) Any delay of a promotion of an officer referred to in clause (2) or (3) of subsection (a) that was in effect on September 14, 1981, under the laws and regulations in effect on such date shall continue in effect on and after September 15, 1981, as if such promotion had been delayed under section 624(d) of title 10, United States Code, as added by this Act.

''(2) Any action to remove from a promotion list the name of an officer referred to in clause (2) or (3) of subsection (a) that was initiated before September 15, 1981, under the laws and regulations in effect before such date shall continue on and after such date as if such removal action had been initiated under section 629 of title 10, United States Code, as added by this Act.

''RESERVE OFFICERS SERVING IN A HIGHER TEMPORARY GRADE BELOW LIEUTENANT GENERAL OR RECOMMENDED FOR PROMOTION TO A HIGHER GRADE

''SEC. 602. (a)(1) Except as provided in subsection (b) and sections 605 and 606, any reserve officer of the

Army or Air Force who on the effective date of this Act [Sept. 15, 1981] is subject to placement on the active-duty list of his armed force and—

"(A) is serving in a temporary grade below lieutenant general that is higher than his reserve grade; or

"(B) is on a list of officers recommended for promotion to a temporary grade below lieutenant general that is the same as or higher than his reserve grade;

shall be considered to have been recommended by a board convened under section 611(a) of title 10, United States Code, as added by this Act, for promotion to the reserve grade equivalent to the grade in which he is serving or for which he has been recommended for promotion, as the case may be.

"(2) Notwithstanding section 741(d) of title 10, United States Code, as added by this Act, the date of rank of an officer referred to in paragraph (1)(A) who is promoted to the grade to which he is considered under such paragraph to have been recommended for promotion is the date of his temporary appointment in that grade.

"(b) A reserve officer of the Army or Air Force who on the effective date of this Act [Sept. 15, 1981]—

"(1) is subject to placement on the active-duty list of his armed force;

"(2) is serving on active duty in a temporary grade; and

"(3) either holds a reserve grade higher than the temporary grade in which he is serving or is on a list of officers recommended for promotion to a reserve grade higher than the temporary grade in which he is serving,

shall while continuing on active duty retain such temporary grade and shall be considered for promotion under chapter 36 of title 10, United States Code, as added by this Act, to a grade equal to or lower than his reserve grade as if such temporary grade is a permanent grade. If such officer is recommended for promotion under such chapter to such a grade, his appointment to such grade shall be a temporary appointment.

"(c)(1) Any delay of a promotion of an officer referred to in clause (B) of subsection (a)(1) that was in effect on September 14, 1981, under the laws and regulations in effect on such date shall continue in effect on and after September 15, 1981, as if such promotion has been delayed under section 624(d) of title 10, United States Code, as added by this Act.

"(2) Any action to remove from a promotion list the name of an officer referred to in clause (B) of subsection (a)(1) that was initiated before September 15, 1981, under the laws and regulations in effect before such date shall continue on and after such date as if such removal action had been initiated under section 629 of title 10, United States Code, as added by this Act.

"REGULAR OFFICERS ONCE FAILED OF SELECTION FOR PROMOTION

"SEC. 603. (a) An officer of the Army or Air Force who on the effective date of this Act [Sept. 15, 1981]—

"(1) holds the regular grade of first lieutenant, captain, or major; and

"(2) has been considered once but not recommended for promotion to the next higher regular grade by a selection board convened under the laws in effect on the day before the effective date of this Act,

shall, within one year after the effective date of this Act, be considered for promotion to the next higher regular grade by a selection board convened by the Secretary concerned under the laws in effect on the day before the effective date of this Act.

"(b)(1)(A) An officer described in subsection (a) who is recommended for promotion by the selection board which considers him pursuant to such subsection shall be considered to have been recommended for promotion to the next higher regular grade or the grade in which he is serving, whichever grade is higher, by a board convened under section 611(a) of title 10, United States Code, as added by this Act. Notwithstanding section 741(d) of title 10, United States Code, as added by this Act, the date of rank of an officer referred to in the preceding sentence who was serving in the temporary grade equivalent to the grade to which he is considered to have been recommended for promotion and who is promoted to that grade is the date of his temporary appointment in that grade.

"(2) An officer described in subsection (a) who is not recommended for promotion by such board shall, unless continued on active duty under section 637 of such title, as added by this Act, be retired, if eligible to retire, be discharged, or be continued on active duty until eligible to retire and then be retired, under the laws applicable on the day before the effective date of this Act [Sept. 15, 1981].

"REGULAR OFFICERS TWICE FAILED OF SELECTION FOR PROMOTION

"SEC. 604. An officer of the Army or Air Force who on the day before the effective date of this Act [Sept. 15, 1981]—

"(1) holds the regular grade of first lieutenant, captain, or major; and

"(2) has twice failed of selection for promotion to the next higher regular grade,

shall, unless continued on active duty under section 637 of title 10, United States Code, as added by this Act, be retired, if eligible to retire, be discharged, or be continued on active duty until eligible to retire and then be retired, under the laws in effect on the day before the effective date of this Act.

"RESERVE OFFICERS ONCE FAILED OF SELECTION FOR PROMOTION

"SEC. 605. (a) A reserve officer of the Army or Air Force who on the effective date of this Act [Sept. 15, 1981]—

"(1) is on active duty and subject to placement on the active-duty list of his armed force;

"(2) holds the reserve grade of first lieutenant, captain, or major; and

"(3) has been considered once but not selected for promotion to the next higher reserve grade under section 3366, 3367, 8366, or 8367 [see section 14301 et seq. of this title], as appropriate, of title 10, United States Code,

shall, unless sooner promoted, be considered again for promotion to that grade by a selection board convened under section 3366, 3367, 8366, or 8367, as appropriate, of such title.

"(b)(1) An officer described in subsection (a) who is serving on active duty in a temporary grade higher than his reserve grade on the effective date of this Act [Sept. 15, 1981] and who is recommended by the selection board which considers him pursuant to such subsection for promotion to the reserve grade equivalent to the temporary grade in which he is serving on such date shall be considered as having been recommended for promotion to that reserve grade in the report of a selection board convened under section 611(a) of title 10, United States Code, as added by this Act. Notwithstanding section 741(d) of title 10, United States Code, as added by this Act, the date of rank of an officer referred to in the preceding sentence who is promoted to the reserve grade equivalent to the temporary grade in which he is serving on such date is the date of his temporary appointment in that grade.

"(2) An officer described in subsection (a) who is serving on active duty in a temporary grade equivalent to or lower than his reserve grade on the effective date of this Act [Sept. 15, 1981] and who is recommended by the selection board which considers him pursuant to such subsection for promotion to a reserve grade higher than the temporary grade in which he was serving on such date shall be considered as having been recommended for promotion to that reserve grade in the report of a selection board convened under section 3366, 3367, 8366, or 8367 [see section 14301 et seq. of this title], as appropriate, of such title. If such an officer is not ordered to active duty in his reserve grade, he shall while con-

tinuing on active duty retain such temporary grade and shall be considered for promotion under chapter 36 of title 10, United States Code, as added by this Act, to a grade equal to or lower than his reserve grade as if such temporary grade is a permanent grade. If such officer is recommended for promotion under such chapter to such a grade, his appointment to such grade shall be a temporary appointment to such grade.

''(3) An officer described in subsection (a) who is not recommended for promotion by the selection board which considers him pursuant to such subsection shall be governed by section 3846 or 8846, as appropriate, of title 10, United States Code, as a deferred officer.

''RESERVE OFFICERS TWICE FAILED OF SELECTION FOR PROMOTION

''SEC. 606. An officer of the Army or Air Force who on the day before the effective date of this Act [Sept. 15, 1981]—

''(1) was on active duty and subject to placement on the active-duty list of his armed force; and

''(2) held the reserve grade of first lieutenant, captain, or major; and

''(3) was considered to have twice failed of selection for promotion to the next higher reserve grade,

shall be governed by [former] section 3846 or 8846, as appropriate, of title 10, United States Code, as a deferred officer.

''ENTITLEMENT TO SEVERANCE PAY OR SEPARATION PAY OF OFFICERS SEPARATED OR DISCHARGED PURSUANT TO THIS PART

''SEC. 607. (a) An officer who is discharged in accordance with section 603(b)(2) or 604 is entitled, at his election, to—

''(1) the severance pay to which he would have been entitled under the laws in effect before the effective date of this Act [Sept. 15, 1981]; or

''(2) separation pay, if eligible therefor, under section 1174(a) of title 10, United States Code, as added by this Act.

''(b) An officer who is separated in accordance with section 605(b)(3) or 606 is entitled, at his election, to—

''(1) readjustment pay under section 687 of title 10, United States Code, as in effect on the day before the effective date of this Act [Sept. 15, 1981]; or

''(2) separation pay, if eligible therefor, under section 1174(c) of title 10, United States Code, as added by this Act.

''SPECIAL TENURE PROVISIONS FOR OFFICERS SERVING IN TEMPORARY GRADES OF BRIGADIER GENERAL AND MAJOR GENERAL

''SEC. 608. (a) Notwithstanding section 635 or 636 of title 10, United States Code, as added by this Act, but subject to subsection (b), a regular officer of the Army or Air Force—

''(1) who on the effective date of this Act [Sept. 15, 1981] is serving in or is on a list of officers recommended for promotion to the temporary grade of brigadier general or major general;

''(2) whose regular grade on such date is below such temporary grade; and

''(3) who is promoted pursuant to section 601(a) to the regular grade equivalent to such temporary grade,

shall be subject to mandatory retirement for years of service in accordance with the laws applicable on the day before the effective date of this Act to officers in the permanent grade he held on such date. However, such an officer shall not be subject to a mandatory retirement date which is earlier than the first day of the month following the month of the thirtieth day after he completes 30 years of service as computed under section 3927(a) or 8927(a), as appropriate, of title 10, United States Code, as in effect on the day before the effective date of this Act.

''(b)(1) The Secretary of the Army or the Secretary of the Air Force, as appropriate, may convene selection boards under this section for the purpose of recommending from among officers described in subsection (a) officers to be selected to be subject to mandatory retirement for years of service in accordance with the laws applicable on the day before the effective date of this Act [Sept. 15, 1981] to officers in the permanent grade to which such officers were promoted pursuant to section 601(a) or to officers in a lower permanent grade higher than the permanent grade held by such officers on the day before the effective date of this Act.

''(2) Upon the recommendation of a selection board convened under this section, the Secretary concerned may select officers described in subsection (a) to be subject to mandatory retirement in accordance with the provisions of section 3922, 3923, 8922, or 8923, as appropriate, of title 10, United States Code, as in effect on the day before the effective date of this Act [Sept. 15, 1981], rather than in the manner described in subsection (a).

''(3) Any selection board convened under this section shall be convened in accordance with the provisions of section 3297 or 8297, as appropriate, of title 10, United States Code, as in effect on the day before the effective date of this Act [Sept. 15, 1981].

''(c) This section does not apply to an officer who—

''(1) is sooner retired or separated under another provision of law;

''(2) is promoted to the permanent grade of brigadier general pursuant to section 601(a) and is subsequently promoted to the permanent grade of major general under chapter 36 of title 10, United States Code, as added by this Act; or

''(3) is continued on active duty under section 637 of title 10, United States Code, as added by this Act.

''RIGHT OF MAJORS AND COLONELS TO COMPLETE YEARS OF SERVICE ALLOWED UNDER PRIOR LAW

''SEC. 609. (a)(1) Subject to paragraph (2), an officer of the Army or Air Force who on the effective date of this Act [Sept. 15, 1981]—

''(A) holds the regular grade of major; or

''(B) is on a list of officers recommended for promotion to the regular grade of major,

shall be retained on active duty until he completes twenty-one years of service as computed under section 3927(a) or 8927(a), as appropriate, of title 10, United States Code (as in effect on the day before the effective date of this Act), and then be retired under the provisions of section 3913 or 8913 of such title (as in effect on the day before the effective date of this Act) on the first day of the month after the month in which he completes that service.

''(2) Paragraph (1) does not apply to an officer who—

''(A) is sooner retired or separated under another provision of law;

''(B) is promoted to the regular grade of lieutenant colonel; or

''(C) is continued on active duty under section 637 of title 10, United States Code, as added by this Act.

''(b)(1) Subject to paragraph (2), an officer of the Army or Air Force who on the effective date of this Act [Sept. 15, 1981]—

''(A) holds the regular grade of colonel; or

''(B) is on a list of officers recommended for promotion to the regular grade of colonel,

shall be retired under section 3921 or 8921 [now 7321 or 9321], as appropriate, of such title (as in effect on the day before the effective date of this Act).

''(2) Paragraph (1) does not apply to an officer who—

''(A) is sooner retired or separated under another provision of law;

''(B) is promoted to the regular grade of brigadier general; or

''(C) is continued on active duty under section 637 of title 10, United States Code, as added by this Act.

''REGULAR OFFICERS WHOSE RETIREMENT HAS BEEN DEFERRED

''SEC. 610. A regular officer of the Army or Air Force serving on active duty on the effective date of this Act

[Sept. 15, 1981] whose retirement under chapter 367 or 867 [now 741 or 941] of title 10, United States Code, has been deferred before that date—

''(1) under a provision of such chapter; or

''(2) by virtue of a suspension, under any provision of law, of provisions of such chapter which would otherwise require such retirement,

may continue to serve on active duty to complete the period for which his retirement was deferred or until such suspension is removed.

''PART B—TRANSITION PROVISIONS RELATING ONLY TO THE NAVY AND MARINE CORPS

''OFFICERS SERVING IN A TEMPORARY GRADE BELOW VICE ADMIRAL OR LIEUTENANT GENERAL OR RECOMMENDED FOR PROMOTION

''SEC. 611. (a) Subject to subsection (b), any regular officer of the Navy or Marine Corps, and any reserve officer of the Navy and Marine Corps who on the effective date of this Act [Sept. 15, 1981] is subject to placement on the active-duty list, who on the effective date of this Act—

''(1) is serving on active duty in a temporary grade below vice admiral or lieutenant general that is higher than his permanent grade; or

''(2) is on a promotion list,

shall be considered to have been recommended for promotion to the permanent grade equivalent to the grade in which he is serving or for which he has been recommended for promotion, as the case may be, by a board convened under section 611(a) of title 10, United States Code, as added by this Act.

''(b) This section does not apply to an officer—

''(1) serving in a temporary grade which, by its own terms, is limited in duration;

''(2) designated for limited duty in a grade to which he was appointed under section 5596 [now 8146] of title 10, United States Code, before the effective date of this Act [Sept. 15, 1981]; or

''(3) recommended for promotion or promoted to a grade under section 5787 of such title, as in effect before the effective date of this Act.

''(c)(1) Any delay of a promotion of an officer referred to in clause (2) of subsection (a) that was in effect on September 14, 1981, under the laws and regulations in effect on such date, shall continue in effect on and after September 15, 1981, as if such promotion had been delayed under section 624(d) of title 10, United States Code, as added by this Act.

''(2) Any action to remove from a promotion list the name of an officer referred to in clause (2) of subsection (a) which was initiated before September 15, 1981, under the laws and regulations in effect before such date shall continue on and after such date as if such removal action had been initiated under section 629 of title 10, United States Code, as added by this Act.

''OFFICERS FAILED OF SELECTION FOR PROMOTION

''SEC. 612. (a) Except as provided in subsection (b), an officer of the Navy or Marine Corps who on the effective date of this Act [Sept. 15, 1981] is considered to have failed of selection for promotion one or more times to a grade below the grade of captain, in the case of an officer of the Navy, or below the grade of colonel, in the case of an officer of the Marine Corps, is subject to chapter 36 of title 10, United States Code, as added by this Act, as if such failure or failures had occurred under the provisions of such chapter.

''(b) An officer who during fiscal year 1981—

''(1) failed twice of selection for promotion to the grade of either lieutenant or lieutenant commander, in the case of an officer in the Navy, or to either captain or major, in the case of an officer in the Marine Corps; and

''(2) had not previously failed of selection for promotion to that grade,

may not, because of such failures of selection, be involuntarily separated, involuntarily discharged, or retired under chapter 36 of title 10, United States Code, as added by this Act, before June 30, 1982, unless the officer so requests.

''RIGHT OF CERTAIN OFFICERS TO RETIRE UNDER PRIOR LAW

''SEC. 613. (a)(1) Subject to paragraph (2), an officer who on September 15, 1981—

''(A) holds the grade of lieutenant commander, commander, or captain in the Regular Navy or the grade of major, lieutenant colonel, or colonel in the Regular Marine Corps; or

''(B) is on a promotion list to any such grade,

shall be retired on the date provided under the laws in effect on September 14, 1981, except that an officer for whom no means can be established under the laws in effect on September 14, 1981, for computing creditable service in determining whether the officer is subject to involuntary retirement shall be retired under chapter 573 [now 843] of title 10, United States Code, as in effect on September 14, 1981, on the basis of the years of service of such officer as determined under regulations prescribed under section 624(b).

''(2) This subsection does not apply to an officer—

''(A) removed from active duty under section 1184 of title 10, United States Code, as added by this Act;

''(B) promoted to a higher grade in the Regular Navy or Regular Marine Corps;

''(C) continued on active duty under section 637 of title 10, United States Code, as added by this Act; or

''(D) selected for early retirement under section 638 of title 10, United States Code.

''(b)(1) An officer of the Navy who on September 14, 1981—

''(A) has the grade of rear admiral in the Regular Navy; or

''(B) was on a promotion list to such grade,

shall be continued on active duty or retired in accordance with the laws in effect on September 14, 1981.

''(2) An officer of the Marine Corps who on September 14, 1981—

''(A) has the grade of brigadier general in the Regular Marine Corps; or

''(B) was on a promotion list to such grade,

shall be retired in accordance with the laws in effect on September 14, 1981.

''TRANSITION PROVISIONS TO NEW COMMODORE GRADE

''SEC. 614. (a)(1) An officer of the Navy who on the day before the effective date of this Act [Sept. 15, 1981]—

''(A) was serving on active duty in the grade of rear admiral and was receiving the basic pay of a rear admiral of the upper half; or

''(B) was serving on active duty in the grade of admiral or vice admiral and would have been entitled to receive the basic pay of a rear admiral of the upper half had he not been serving in such grade on such date,

shall after such date hold the permanent grade of rear admiral.

''(2) An officer of the Navy who on the day before the effective date of this Act [Sept. 15, 1981]—

''(A) was serving on active duty in the grade of rear admiral and was receiving the basic pay of a rear admiral of the lower half; or

''(B) was serving on active duty in the grade of admiral or vice admiral and would have been entitled to receive the basic pay of a rear admiral of the lower half had he not been serving in such grade on such date,

shall after such date hold the permanent grade of commodore, but shall retain the title of rear admiral.

''(3) An officer who on the day before the effective date of this Act [Sept. 15, 1981] was on a list of officers recommended for promotion to the grade of rear admiral shall, upon promotion, hold the grade of commodore with the title of rear admiral.

''(b) An officer who on the day before the effective date of this Act [Sept. 15, 1981]—

''(1) was serving on active duty in the grade of rear admiral and was entitled to the basic pay of a rear admiral of the lower half; or

''(2) was on a list of officers recommended for promotion to the grade of rear admiral,

shall, on and after the effective date of this Act, or in the case of an officer on such a list, upon promotion to the grade of commodore, be entitled to wear the uniform and insignia of a rear admiral.

''(c) Except as otherwise provided by law, an officer of the Navy who on the day before the effective date of this Act [Sept. 15, 1981] held the grade of rear admiral on the retired list or the temporary disability retired list retains the grade of rear admiral and is entitled after such date to wear the uniform and insignia of a rear admiral. Such an officer, when ordered to active duty—

''(1) holds the grade and has the right to wear the uniform and insignia of a rear admiral; and

''(2) ranks among commissioned officers of the armed forces as and is entitled to the basic pay of—

''(A) a commodore, if his retired pay was based on the basic pay of a rear admiral of the lower half on the day before the effective date of this Act; or

''(B) a rear admiral, if his retired pay was based on the basic pay of a rear admiral of the upper half on the day before the effective date of this Act.

''(d)(1) An officer of the Navy who—

''(A) on the effective date of this Act [Sept. 15, 1981]—

''(i) was serving on active duty in the grade of rear admiral and was entitled to the basic pay of a rear admiral of the lower half or was serving on active duty in the grade of admiral or vice admiral and would have been entitled to receive the basic pay of a rear admiral of the lower half had he not been serving in such grade on such date; or

''(ii) was on a list of officers recommended for promotion to the grade of rear admiral; and

''(B) after such date holds the permanent grade of commodore pursuant to subsection (a),

shall not be subject to the provisions of chapter 36 of title 10, United States Code, as added by this Act, relating to selection for promotion and promotion to the next higher grade.

''(2) Officers to whom this subsection applies become entitled to hold the permanent grade of rear admiral under the circumstances prescribed for entitlement to the basic pay of a rear admiral of the upper half under the provisions of subsections (a) through (d) of section 202 of title 37, United States Code, as in effect on the day before the effective date of this Act [Sept. 15, 1981]. For the purposes of this subsection, officers serving in the permanent grade of rear admiral or commodore in accordance with subsection (a) shall be considered as serving in the grade of rear admiral, as such grade was in effect on the day before the effective date of this Act.

''(e) Unless entitled to a higher grade under another provision of law, an officer of the Navy who on the day before the effective date of this Act [Sept. 15, 1981]—

''(1) was serving on active duty; and

''(2) held the grade of rear admiral;

and who retires on or after the effective date of this Act, retires in the grade of rear admiral and is entitled to wear the uniform and insignia of a rear admiral. If such an officer is ordered to active duty after his retirement, he is considered, for the purposes of determining his pay, uniform and insignia, and rank among other commissioned officers, as having held the grade of rear admiral on the retired list on the day before the effective date of this Act.

''(f) A reserve officer of the Navy who on the day before the effective date of this Act [Sept. 15, 1981] was in an active status and was serving in the grade of rear admiral or was on a list of reserve officers recommended for promotion to the grade of rear admiral is not subject to [former] subsection (f) of section 6389 [now 8373] of title 10, United States Code, as added by this Act.

''FEMALE OFFICERS

''SEC. 615. (a) Except as provided under subsection (c), each regular officer who on the effective date of this Act [Sept. 15, 1981] is serving on the active list in the line of the Navy or on the active list of the Marine Corps under an appointment made under section 5590 of title 10, United States Code, shall be reappointed in the line of the Navy or in the Marine Corps, as appropriate, in the grade and with the date of rank held by such officer immediately before such reappointment. Each such reappointment shall be made in accordance with the provisions of such title as amended by this Act but notwithstanding any limitation otherwise applicable with regard to age, grade, or physical standards.

''(b) Each officer of the Navy who on the effective date of this Act [Sept. 15, 1981] is serving in a staff corps under an appointment made under section 5590 of title 10, United States Code, shall be reappointed in that corps in the grade and with the date of rank held by such officer immediately before such reappointment. Each such reappointment shall be made in accordance with the provisions of such title as amended by this Act but notwithstanding any limitation otherwise applicable with regard to age, grade, or physical standards.

''(c) Any officer who on the effective date of this Act [Sept. 15, 1981] is serving on the active list in the line of the Navy under an appointment made under section 5590 of title 10, United States Code, and who meets the qualifications for appointment in a staff corps of the Navy may, request appointment in a staff corps and, with the approval of the Secretary of the Navy, be appointed in that staff corps. Any appointment under this subsection shall be in lieu of the reappointment of the officer under subsection (a).

''(d) Each officer reappointed in a staff corps pursuant to subsection (b) or appointed in a staff corps under subsection (c) shall be considered for all purposes as having been originally appointed in such staff corps in accordance with the provisions of title 10, United States Code, as amended by this Act.

''(e) Except as otherwise specifically provided by law, all provisions of law relating to appointment, promotion, separation, and retirement which are applicable to male officers of the Regular Navy or Regular Marine Corps, as appropriate, apply to officers reappointed pursuant to subsection (a) or (b) or appointed under subsection (c).

''(f)(1) As soon as practicable after completion of the appointments and reappointments provided for in subsections (a), (b), and (c), the name of each officer so appointed or reappointed shall be entered on the appropriate active-duty list of the Navy or the Marine Corps in a position among officers of her grade determined in accordance with regulations prescribed by the Secretary of the Navy. Such officers shall be placed on the appropriate active-duty list without change in their relative positions held on the lineal list or any list for promotion established for them while they were serving under an appointment under any provision of title 10, United States Code, repealed by this Act.

''(2) Any female officer—

''(A) who, by virtue of her date of rank and other considerations, would be placed on a list of officers eligible for consideration for promotion in a position senior to an officer who has failed of selection for promotion one or more times; and

''(B) who is considered to have failed of selection for promotion once or is considered to have never failed of selection for promotion,

shall, for purposes of determining her eligibility for consideration for promotion to the next higher grade, be considered with those officers who are considered to have failed of selection for promotion once, or who are considered never to have failed of selection for promotion, as the case may be.

''(3) A female officer who is considered to have failed of selection for promotion one or more times and whose position on the active-duty list is junior to the position of any male officer who is considered to have failed of selection for promotion a fewer number of times or not at all may not derive any advantage in the selection process by virtue of such position on the active-duty list.

''(g) Except as provided in section 638 of title 10, United States Code, as added by this Act, a regular officer of the Navy or Marine Corps appointed under section 5590 of such title who—

''(1) before the effective date of this Act [Sept. 15, 1981] had not twice failed of selection for promotion to the next higher grade; and

''(2) is not selected for promotion to a higher regular grade on or after such effective date,

may not be retired earlier than such officer would have been retired had this Act not been enacted.

''(h)(1) Any officer who—

''(A) on the effective date of this Act [Sept. 15, 1981] is a lieutenant in the Navy or a captain in the Marine Corps;

''(B) under section 6396(c) or 6401 of title 10, United States Code (as in effect on the day before the effective date of this Act), would have been discharged on June 30 of the fiscal year in which that officer (i) was not on a promotion list, and (ii) had completed 13 years of active commissioned service; and

''(C) because of the enactment of this Act, is subject to discharge under section 632 of such title because such officer has twice failed of selection for promotion,

shall, if such officer has not completed 13 years of active commissioned service at the time otherwise prescribed for the discharge of such officer under such section and such officer so requests, not be discharged until June 30 of the fiscal year in which the officer completes 13 years of active commissioned service.

''(2) Any officer who—

''(A) on the effective date of this Act [Sept. 15, 1981] is a lieutenant (junior grade) in the Navy or a first lieutenant in the Marine Corps;

''(B) under section 6396(d) or 6402 of title 10, United States Code (as in effect on the day before the effective date of this Act), would have been discharged on June 30 of the fiscal year in which that officer (i) was not on a promotion list, and (ii) had completed 7 years of active commissioned service; and

''(C) because of the enactment of this Act, is subject to discharge under section 631 of such title because such officer has twice failed of selection for promotion,

shall, if that officer has not completed 7 years of active commissioned service at the time otherwise prescribed for such discharge under such section and such officer so requests, not be discharged until June 30 of the fiscal year in which the officer completes 7 years of active commissioned service.

''LIMITED-DUTY OFFICERS

''SEC. 616. (a) An officer of the Regular Navy or Regular Marine Corps who on the effective date of this Act [Sept. 15, 1981] is an officer who was designated for limited duty before that date under section 5589 [now 8139] of title 10, United States Code, is subject to section 6383 [now 8372] of such title (as in effect on the day before the effective date of this Act), unless promoted to a higher permanent grade under chapter 36 of title 10, United States Code, as added by this Act.

''(b) Any female member of the Navy who on April 2, 1981, was appointed under section 591 [now 12201] or 5590 of title 10, United States Code, in the grade of ensign as an officer designated for limited duty may after September 14, 1981, be reappointed as an officer designated for limited duty under section 5596 [now 8146] of title 10, United States Code, as amended by this Act. A member so reappointed shall have a date of rank as an ensign of April 2, 1981, and shall have the same permanent pay grade and status as that member held on April 1, 1981.

''(c) An officer of the Navy or Marine Corps who on September 15, 1981, was an officer designated for limited duty under section 5589 [now 8139] of title 10, United States Code, and who on the date of the enactment of this subsection [Oct. 19, 1984] is serving in a temporary grade above the grade of lieutenant, in the case of an officer of the Navy, or captain, in the case of an officer of the Marine Corps, may be reappointed under section 5589 [now 8139] of title 10, United States Code (as in effect on or after September 15, 1981), in the same permanent grade and with the same date of rank held by that officer on the active-duty list immediately before such reappointment if he is otherwise eligible for appointment under that section.

''CERTAIN NAVY LIEUTENANTS HOLDING TEMPORARY APPOINTMENTS IN THE GRADE OF LIEUTENANT COMMANDER

''SEC. 617. Any officer who on the effective date of this Act [Sept. 15, 1981] holds a temporary appointment in the grade of lieutenant commander under section 5787d of title 10, United States Code, shall on and after such date be considered to be serving in such grade as if such appointment had been made under [former] section 5721 of such title, as added by this Act.

''DIRECTOR OF BUDGET AND REPORTS OF THE NAVY

''SEC. 618. (a) An officer of the Navy who on the day before the effective date of this Act [Sept. 15, 1981] was serving on active duty and entitled to rank and privileges of retirement under section 5064 of title 10, United States Code, as in effect on the day before the effective date of this Act, shall have his rank and retirement privileges determined under the laws in effect on such date.

''CONTINGENCY AUTHORITY FOR NAVY PROMOTIONS UNDER PRIOR LAW

''SEC. 619. If necessary because of unforeseen circumstances, the Secretary of the Navy, during fiscal year 1982, may convene boards to select officers for promotion under chapters 545 and 549 of title 10, United States Code, as in effect on September 14, 1981, and officers so selected may be promoted in accordance with such chapters. An officer promoted to a higher grade under the authority of this section shall be subject to sections 613 and 629 as if he held that grade on September 14, 1981, and shall have a date of rank to be determined under section 741 of title 10, United States Code, as amended by this Act.

''RETENTION ON ACTIVE DUTY OF CERTAIN RESERVE LIEUTENANT COMMANDERS

''SEC. 620. Notwithstanding section 6389 [now 8373] of title 10, United States Code, an officer who on September 14, 1981—

''(1) holds the grade of lieutenant commander in the Naval Reserve [now Navy Reserve];

''(2) is on active duty as the result of recall orders accepted subsequent to a break in active commissioned service;

''(3) is subject to placement on the active-duty list; and

''(4) is considered—

''(A) to have failed of selection for promotion to the grade of commander one or more times under chapter 545 of title 10, United States Code, as in effect on September 14, 1981; or

''(B) to have been later considered to have failed of selection for promotion to the grade of commander one or more times under chapter 36 of title 10, United States Code, as added by this Act,

may be retained on active duty by the Secretary of the Navy for such period as the Secretary considers appropriate.

''PART C—GENERAL TRANSITION PROVISIONS

''ESTABLISHMENT OF INITIAL ACTIVE-DUTY LISTS

''SEC. 621. (a)(1) Not later than 6 months after the effective date of this Act [Sept. 15, 1981], all officers of the Army, Navy, Air Force, and Marine Corps who are required to be placed on the active-duty list for their armed force under chapter 36 of title 10, United States Code, as added by this Act, shall be placed on such list with the same relative seniority which they held on the day before the effective date of this Act. An officer

placed on an active-duty list under this section shall be considered to have been placed on such list as of the effective date of this Act.

''(2) Regulations prescribed under section 620 of title 10, United States Code, as added by this Act, shall be applicable to the placement of officers on the active-duty list under paragraph (1).

''(b) Under regulations prescribed by the Secretary of Defense, which shall apply uniformly among the Army, Navy, Air Force, and Marine Corps, the Secretary of the military department concerned, in order to maintain the relative seniority among officers of the Army, Navy, Air Force, and Marine Corps as it existed on September 14, 1981, may adjust the date of rank of officers—

''(1) below the grade of brigadier general or commodore during the one-year period beginning on September 15, 1981; and

''(2) above the grade of colonel or, in the case of the Navy, captain until there are no longer any officers to whom section 614(d) is applicable.

''OFFICERS SERVING IN THE SAME TEMPORARY GRADE AND PERMANENT GRADE; DATE OF RANK

''SEC. 622. (a) Any officer of the Army, Navy, Air Force, or Marine Corps who on the effective date of this Act [Sept. 15, 1981] is serving on active duty in a temporary grade which is the same as his permanent grade shall on such date be serving in such grade subject to this title and the amendments made by this Act. The date of rank of such officer in that grade is the date of his temporary appointment to that grade.

''OFFICERS SERVING IN GRADES ABOVE MAJOR GENERAL OR REAR ADMIRAL

''SEC. 623. (a) Any officer who on the day before the effective date of this Act [Sept. 15, 1981] held a temporary appointment in the grade of lieutenant general or general under section 3066, 5232, or 8066 of title 10, United States Code, or a temporary appointment in the grade of vice admiral or admiral under section 5231 of such title, shall on and after such date be considered to be serving in such grade as if such appointment had been made under section 601 of such title, as added by this Act.

''(b)(1) Any designation of a position as a position of importance and responsibility made by the President under section 3066 or 8066 of title 10, United States Code, before the effective date of this Act [Sept. 15, 1981], shall remain in effect, unless changed by the President, as a designation of such position as a position of importance and responsibility under section 601 of such title, as added by this Act.

''(2) Any position held by an officer under section 5231 or 5232 of title 10, United States Code, on the effective date of this Act [Sept. 15, 1981] shall, unless changed by the President, be deemed to be a position of importance and responsibility designated by the President under section 601 of title 10, United States Code.

''(c) Any officer who before the effective date of this Act [Sept. 15, 1981] served in the grade of lieutenant general, general, vice admiral, or admiral but was not serving in such grade on the day before the effective date of this Act shall for the purposes of [former] section 1370(c) of title 10, United States Code, as added by this Act, be deemed to have held such position under an appointment made under section 601 of such title, as added by this Act.

''YEARS OF SERVICE FOR INVOLUNTARY RETIREMENT OR DISCHARGE

''SEC. 624. (a) In determining whether any officer of the Army, Navy, Air Force, or Marine Corps who was on active duty on the day before the effective date of this Act [Sept. 15, 1981] is subject to involuntary retirement or discharge under chapter 36 of title 10, United States Code, as added by this Act, the years of service of the officer for such purpose shall be computed by adding—

''(1) the amount of service creditable to such officer on the day before the effective date of this Act for the purpose of determining whether the officer is subject to involuntary retirement or discharge; and

''(2) all subsequent active commissioned service of such officer.

''(b) In the case of an officer subject to placement on the active-duty list on September 15, 1981, for whom no means of computing service creditable in determining whether the officer is subject to involuntary retirement or discharge existed under the law in effect on the day before the effective date of this Act [Sept. 15, 1981], the amount of creditable service of such officer for such purpose for the period before the effective date of this Act shall be determined under regulations prescribed by the Secretary of the military department concerned, except that such an officer may not be credited with an amount of service less than the amount of his active commissioned service.

''SAVINGS PROVISION FOR CONSTRUCTIVE SERVICE PREVIOUSLY GRANTED

''SEC. 625. (a) The amendments made by this Act do not affect the crediting of years of service to any person who on the day before the effective date of this Act [Sept. 15, 1981]—

''(1) had been credited with years of service upon an original appointment as an officer or after such an appointment; or

''(2) was participating in a program leading to an appointment as an officer in the Army, Navy, Air Force, or Marine Corps and the crediting of years of service.

''(b)(1) Any officer who on the effective date of this Act [Sept. 15, 1981] is an officer of the Army or Navy in the Medical or Dental Corps of his armed force, an officer of the Air Force designated as a medical or dental officer, or an officer of the Public Health Service commissioned as a medical or dental officer is entitled to include in the years of service creditable to him for the computation of basic pay and retired pay the years of service creditable to him for such purposes under clauses (7) and (8) of section 205(a) of title 37, United States Code, as in effect on the day before the effective date of this Act.

''(2) Any person who on the day before the effective date of this Act [Sept. 15, 1981] was enrolled in the Uniformed Services University of the Health Sciences under chapter 104 of this title or the Armed Forces Health Professions Scholarship Program under chapter 105 of this title and who on or after the effective date of this Act graduates from such university or completes such program, as the case may be, and is appointed in one of the categories specified in paragraph (1) is entitled to include in the years of service creditable to him for the computation of basic pay and retired pay the years of service that would have been credited to him under clauses (7) and (8) of section 205(a) of title 37, United States Code, as in effect on the day before the effective date of this Act, had such clauses not been repealed by this Act.

''MISCELLANEOUS PROVISIONS RELATING TO YEARS OF SERVICE

''SEC. 626. (a) For the purpose of computing the years of service for pay and allowances of an officer of the Army, Navy, Air Force, or Marine Corps, including retired pay, severance pay, readjustment pay, separation pay, and basic pay, the total years of service of such officer shall be computed by adding to that service so creditable on the day before the effective date of this Act [Sept. 15, 1981] all subsequent service as computed under title 10, United States Code, as amended by this Act.

''(b) An officer of the Army, Navy, Air Force, or Marine Corps who was on active duty on the effective date of this Act [Sept. 15, 1981] and who is retired under section 1251 of title 10, United States Code, as added by this Act, shall be entitled to retired pay in an amount

equal to not less than 50 percent of the basic pay upon which his retired pay is based.

''(c) The service that an officer of the Army, Navy, Air Force, or Marine Corps has in a particular grade is the sum of—

''(A) the years, months, and days of service in that grade accrued under the laws in effect before the effective date of this Act [Sept. 15, 1981]; and

''(B) the years, months, and days of service in that grade accrued under the laws in effect on and after the effective date of this Act.

''TRANSITION TO OFFICER GRADE-STRENGTH TABLES DURING FISCAL YEAR 1981

''SEC. 627. For the fiscal year ending on September 30, 1981, the maximum number of officers authorized to be serving on active duty as of the end of such fiscal year in each of the grades of major, lieutenant colonel, and colonel for the Army, Air Force, and Marine Corps, and in each of the grades of lieutenant commander, commander, and captain for the Navy, under section 523 of title 10, United States Code, as added by this Act, is increased by the number equal to one-half the difference between (1) the actual number of officers of that armed force serving on active duty in that grade on September 30, 1980 (excluding officers in categories specified in subsection (b) of such section), and (2) the number specified in the table contained in such section for such armed force and grade based upon the total number of commissioned officers of such armed force on active duty on September 30, 1981 (excluding officers in categories specified in subsection (b) of such section).

''RIGHT OF COMMISSIONED OFFICERS WITH PERMANENT ENLISTED OR WARRANT OFFICER STATUS TO RETIRE IN HIGHEST ENLISTED OR WARRANT OFFICER GRADE HELD

''SEC. 628. (a) A member of the Army, Navy, Air Force, or Marine Corps who—

''(1) on the day before the effective date of this Act [Sept. 15, 1981] had a permanent status as an enlisted member or as a warrant officer (or had a statutory right to be enlisted or to be appointed as a warrant officer) and was serving as an officer under a temporary appointment; and

''(2) on or after the effective date of this Act and before completing 10 years of commissioned service for purposes of retirement eligibility under section 3911, 6323, or 8911 [now 7311, 8323, or 9311] of title 10, United States Code, completes 20 years of total service, as determined under section 1405 of such title,

is entitled to retire or transfer to the Fleet Reserve or Fleet Marine Corps Reserve in the highest grade he held as an enlisted member or a warrant officer.

''SAVINGS PROVISION FOR RETIRED GRADE FOR OFFICERS NOT SUBSEQUENTLY PROMOTED

''SEC. 629. In applying [former] section 1370(a)(2) of title 10, United States Code, as added by this Act, to an officer of the Army, Navy, Air Force, or Marine Corps who was on active duty on the day before the effective date of this Act [Sept. 15, 1981] and who on or after the effective date of this Act is not promoted to a grade higher than the grade he held on the day before the effective date of this Act or, in the case of an officer who was on a list of officers recommended for promotion on such date, is not promoted to a grade higher than the grade to which he was recommended for promotion, 'two years' shall be substituted for 'three years'. The Secretary of the military department concerned may waive the requirements of this section and of section 1370(a)(2) of title 10, United States Code, as added by this Act, with respect to any officer described in the preceding sentence.

''EXEMPTION OF CERTAIN OFFICERS FROM SELECTIVE EARLY RETIREMENT PROVISIONS

''SEC. 630. An officer of the Army, Navy, Air Force, or Marine Corps who was recommended for continuation on the active list under the Act entitled 'An Act to provide improved opportunity for promotion for certain officers in the naval service, and for other purposes', approved August 11, 1959 (Public Law 86–155; 10 U.S.C. 5701 note), or under section 10 of the Act entitled 'An Act relating to the promotion and separation of certain officers of the regular components of the armed forces', approved July 12, 1960 (Public Law 86–616; 10 U.S.C. 3297 note), is not subject to section 638 of title 10, United States Code, as added by this Act, relating to selective early retirement.

''SAVINGS PROVISION FOR ENTITLEMENT TO READJUSTMENT PAY OR SEVERANCE PAY UNDER PRIOR PROVISIONS OF LAW

''SEC. 631. (a) A member of the Army, Navy, Air Force, or Marine Corps who—

''(1) was on active duty (other than for training) on Sept. 14, 1981; and

''(2) after such date is involuntarily discharged or released from active duty under any provision of title 10, United States Code, as in effect after such date,

is entitled to receive any readjustment payment or severance pay to which he would have been entitled under laws in effect on Sept. 14, 1981, unless (in the case of a member discharged or released on or after the date of the enactment of the Department of Defense Authorization Act, 1985 [Oct. 19, 1984]) the Secretary concerned determines that the conditions under which the member is discharged or separated do not warrant such pay.

''(b) If a member who is entitled to receive a readjustment payment or severance pay under subsection (a) is also eligible to receive separation pay under section 1174 of title 10, United States Code, as added by this Act, the member may not receive both the readjustment payment and severance pay under laws in effect on Sept. 14, 1981, and separation pay under such section, but shall elect which he will receive. If the number fails to make an election in a timely manner, he shall be paid the amount which is more favorable to him.

''OFFICERS ON ACTIVE DUTY IN GRADE ABOVE GENERAL

''SEC. 632. Section 1251 of title 10, United States Code, as added by this Act, relating to mandatory retirement for age, shall not apply to any officer who on the effective date of this Act [Sept. 15, 1981] was on active duty in a grade above general.

''DEFINITIONS

''SEC. 633. For the purposes of this title:

''(1) The term 'officer' does not include warrant officers.

''(2) The term 'active-duty list' means the active-duty list established by the Secretary of the military department concerned pursuant to section 620 of title 10, United States Code, as added by this Act.

''SAVINGS PROVISION FOR RETIRED GRADE OF CERTAIN RESERVE OFFICERS

''SEC. 634. Unless entitled to a higher grade under any other provision of law, a member of the Army or Air Force who is a reserve officer and who—

''(1) is on active duty on September 14, 1981; and

''(2) after such date retires under section 3911 or 8911 [now 7311 or 9311] of title 10, United States Code,

is entitled to retire in the reserve grade which he held or to which he had been selected for promotion on September 14, 1981.

''SAVINGS PROVISION FOR ORIGINAL APPOINTMENT IN CERTAIN GRADES UNDER EXISTING REGULATIONS

''SEC. 635. Any person who before September 15, 1981—

''(1) was selected for participation in a postbaccalaureate educational program leading to an appointment as a commissioned officer or had completed a postbaccalaureate program and was selected for appointment as a commissioned officer of the Army, Navy, Air Force, or Marine Corps;

''(2) under regulations of the Secretary of the military department concerned in effect on December 12,

1980, would have been appointed and ordered to active duty in a grade specified or determined in accordance with such regulations; and

"(3) had not been so appointed and ordered to active duty,

may be appointed and ordered to active duty in such grade with a date of rank and position on the active-duty list junior to that of all other officers of the same grade and competitive category serving on active duty.

"RETENTION IN GRADE OF CERTAIN RESERVE OFFICERS

"SEC. 636. A reserve officer of the Army, Navy, Air Force, or Marine Corps who on September 14, 1981—

"(1) is serving on active duty (A) under section 10(b)(2) of the Military Selective Service Act (50 U.S.C. App. 460(b)(2)) [now 50 U.S.C. 3809(b)(2)] for the administration of the Selective Service System, or (B) under section 708 of title 32; and

"(2) is serving in a temporary grade or is selected for promotion to a temporary grade,

may continue to serve in or may be promoted to and serve in such grade until promoted to a higher grade, separated, or retired.

"SAVINGS PROVISION REGARDING DISCHARGE OF REGULAR OFFICERS

"SEC. 637. An officer of the Regular Army, Regular Navy, Regular Air Force, or Regular Marine Corps who on September 14, 1981, was serving on active duty may not be discharged under section 630(1)(A) of title 10, United States Code, as added by this Act, on or after the day on which that officer completes three years of continuous service as a regular commissioned officer.

"REPAYMENT OF READJUSTMENT AND SEVERANCE PAY

"SEC. 638. Notwithstanding section 1174(h) of title 10, United States Code, as added by this Act, a person who received readjustment or severance pay before September 15, 1981, and who, on or after September 15, 1981, becomes entitled to retired or retainer pay under any provision of title 10 or title 14, United States Code, shall be required to repay that readjustment pay or severance pay in accordance with the laws in effect on September 14, 1981.

"SAVINGS PROVISION FOR PROMOTION CONSIDERATION OF CERTAIN RETIRED OFFICERS

"SEC. 639. Notwithstanding sections 619, 620, and 641(4) of title 10, United States Code, a retired officer serving on active duty on the date of the enactment of this section [Oct. 19, 1984] who on September 14, 1981, was on active duty as a retired officer recalled to active duty and who—

"(1) was eligible for consideration for promotion on that date; and

"(2) has served continuously on active duty since that date,

may be considered for promotion (under regulations prescribed by the Secretary of the military department concerned) by a selection board that convenes after the date of the enactment of this section as if he had been placed on the active-duty list pursuant to section 621 of this Act."

[In determining retired grade of certain commissioned officers of the Armed Forces who retire after Jan. 1, 2021, any reference to section 1370 of title 10 in such determination with respect to such officers deemed to be a reference to section 1370a of title 10, see section 508(c) of Pub. L. 116–283, set out as a note under section 1370 of this title.]

§ 612. Composition of selection boards

(a)(1) Members of selection boards shall be appointed by the Secretary of the military department concerned in accordance with this section. A selection board shall consist of five or more officers of the same armed force as the officers under consideration by the board. Each member of a selection board (except as provided in paragraphs (2), (3), and (4)) shall be an officer on the active-duty list. Each member of a selection board must be serving in a grade higher than the grade of the officers under consideration by the board, except that no member of a board may be serving in a grade below major or lieutenant commander. The members of a selection board shall represent the diverse population of the armed force concerned to the extent practicable.

(2)(A) Except as provided in subparagraph (B), a selection board shall include at least one officer from each competitive category of officers to be considered by the board.

(B) A selection board need not include an officer from a competitive category to be considered by the board when there are no officers of that competitive category on the active-duty list in a grade higher than the grade of the officers to be considered by the board and eligible to serve on the board. However, in such a case the Secretary of the military department concerned, in his discretion, may appoint as a member of the board an officer of that competitive category who is not on the active-duty list from among officers of the same armed force as the officers under consideration by the board who hold a higher grade than the grade of the officers under consideration and who are retired officers, reserve officers serving on active duty but not on the active-duty list, or members of the Ready Reserve.

(3) When reserve officers of an armed force are to be considered by a selection board, the membership of the board shall include at least one reserve officer of that armed force on active duty (whether or not on the active-duty list). The actual number of reserve officers shall be determined by the Secretary of the military department concerned, in the Secretary's discretion. Notwithstanding the first sentence of this paragraph, in the case of a board which is considering officers in the grade of colonel or brigadier general or, in the case of officers of the Navy, captain or rear admiral (lower half), no reserve officer need be included if there are no reserve officers of that armed force on active duty in the next higher grade who are eligible to serve on the board.

(4) Except as provided in paragraphs (2) and (3), if qualified officers on the active-duty list are not available in sufficient number to comprise a selection board, the Secretary of the military department concerned shall complete the membership of the board by appointing as members of the board officers who are members of the same armed force and hold a grade higher than the grade of the officers under consideration by the board and who are retired officers, reserve officers serving on active duty but not on the active-duty list, or members of the Ready Reserve.

(5) A retired general or flag officer who is on active duty for the purpose of serving on a selection board shall not, while so serving, be counted against any limitation on the number of general and flag officers who may be on active duty.

(b) No officer may be a member of two successive selection boards convened under section 611(a) of this title for the consideration of officers of the same competitive category and grade.

(c)(1) Each selection board convened under section 611(a) of this title that will consider an officer described in paragraph (2) shall include at least one officer designated by the Chairman of the Joint Chiefs of Staff who is a joint qualified officer.

(2) Paragraph (1) applies with respect to an officer who—

(A) is serving on, or has served on, the Joint Staff; or

(B) is a joint qualified officer.

(3) The Secretary of Defense may waive the requirement in paragraph (1) in the case of—

(A) any selection board of the Marine Corps; or

(B) any selection board that is considering officers in specialties identified in paragraph (2) or (3) of section 619a(b) of this title.

(Added Pub. L. 96–513, title I, § 105, Dec. 12, 1980, 94 Stat. 2851; amended Pub. L. 97–22, § 4(a), July 10, 1981, 95 Stat. 125; Pub. L. 97–86, title IV, § 405(b)(1), Dec. 1, 1981, 95 Stat. 1105; Pub. L. 99–145, title V, § 514(b)(1), Nov. 8, 1985, 99 Stat. 628; Pub. L. 99–433, title IV, § 402(a), Oct. 1, 1986, 100 Stat. 1030; Pub. L. 106–398, § 1 [[div. A], title V, § 504(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–101; Pub. L. 111–383, div. A, title V, § 522(a), Jan. 7, 2011, 124 Stat. 4214; Pub. L. 116–283, div. A, title V, § 503(a)(1), Jan. 1, 2021, 134 Stat. 3564.)

AMENDMENTS

2021—Subsec. (a)(1). Pub. L. 116–283 inserted at end ''The members of a selection board shall represent the diverse population of the armed force concerned to the extent practicable.''

2011—Subsec. (c). Pub. L. 111–383 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''Each selection board convened under section 611(a) of this title that will consider officers who are serving in, or have served in, joint duty assignments shall include at least one officer designated by the Chairman of the Joint Chiefs of Staff who is currently serving in a joint duty assignment. The Secretary of Defense may waive the preceding sentence in the case of any selection board of the Marine Corps.''

2000—Subsec. (a)(1). Pub. L. 106–398, § 1 [[div. A], title V, § 504(a)(1)], struck out ''who are on the active-duty list'' after ''five or more officers'' in second sentence and inserted after second sentence ''Each member of a selection board (except as provided in paragraphs (2), (3), and (4)) shall be an officer on the active-duty list.''

Subsec. (a)(3). Pub. L. 106–398, § 1 [[div. A], title V, § 504(a)(2)], substituted ''of that armed force on active duty (whether or not on the active-duty list). The actual number of reserve officers shall be'' for ''of that armed force, with the exact number of reserve officers to be'' and ''the Secretary's discretion. Notwithstanding the first sentence of this paragraph,'' for ''his discretion, except that''.

1986—Subsec. (c). Pub. L. 99–433 added subsec. (c).

1985—Subsec. (a)(3). Pub. L. 99–145 substituted ''rear admiral (lower half)'' for ''commodore''.

1981—Subsec. (a)(2). Pub. L. 97–22, § 4(a)(1), designated existing provisions as subpar. (A), substituted ''Except as provided in subparagraph (B), a selection board'' for ''A selection board'', and added subpar. (B).

Subsec. (a)(3). Pub. L. 97–86 substituted ''commodore'' for ''commodore admiral''.

Pub. L. 97–22, § 4(a)(2), inserted '', with the exact number of reserve officers to be determined by the Secretary of the military department concerned in his discretion'' after ''at least one reserve officer of that armed force'' and inserted ''who are eligible to serve on the board'' after ''the next higher grade''.

Subsec. (a)(4). Pub. L. 97–22, § 4(a)(3), substituted ''Except as provided in paragraphs (2) and (3)'' for ''Except as provided in paragraph (3)'' and ''officers who are members of the same armed force and hold a grade higher than the grade of the officers under consideration by the board and who are retired officers, reserve officers serving on active duty but not on the active-duty list, or members of the Ready Reserve'' for ''retired officers of the same armed force who hold a retired grade higher than the grade of the officers under consideration by the board'' and designated as par. (5) provisions that retired general or flag officers on active duty for the purpose of serving on a selection board not be counted against any limitation on the number of general and flag officers who may be on active duty.

Subsec. (a)(5). Pub. L. 97–22, § 4(a)(3), added par. (5) consisting of provisions, formerly contained in par. (4).

Subsec. (b). Pub. L. 97–22, § 4(a)(4), inserted ''convened under section 611(a) of this title'' after ''selection boards''.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–398, § 1 [[div. A], title V, § 504(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–102, provided that: ''The amendments made by subsection (a) [amending this section] shall apply to any selection board convened under section 611(a) of title 10, United States Code, on or after August 1, 1981.''

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–433, title IV, § 406(f), Oct. 1, 1986, 100 Stat. 1034, provided that: ''The amendments made by section 402 [amending this section and sections 615 and 618 of this title] shall take effect with respect to selection boards convened under section 611(a) of title 10, United States Code, after the end of the 120-day period beginning on the date of the enactment of this Act [Oct. 1, 1986].''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–86 effective Sept. 15, 1981, see section 405(f) of Pub. L. 97–86, set out as a note under section 101 of this title.

EFFECTIVE DATE

Section effective Sept. 15, 1981, but the authority to prescribe regulations under this section effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

§ 613. Oath of members of selection boards

Each member of a selection board shall swear that he will perform his duties as a member of the board without prejudice or partiality and having in view both the special fitness of officers and the efficiency of his armed force.

(Added Pub. L. 96–513, title I, § 105, Dec. 12, 1980, 94 Stat. 2851.)

EFFECTIVE DATE

Section effective Sept. 15, 1981, but the authority to prescribe regulations under this section effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

§ 613a. Nondisclosure of board proceedings

(a) PROHIBITION ON DISCLOSURE.—The proceedings of a selection board convened under section 573, 611, or 628 of this title may not be disclosed to any person not a member of the board, except as authorized or required to process the report of the board. This prohibition is a statutory exemption from disclosure, as described in section 552(b)(3) of title 5.

(b) PROHIBITED USES OF BOARD DISCUSSIONS, DELIBERATIONS, NOTES, AND RECORDS.—The dis-

cussions and deliberations of a selection board described in subsection (a) and any written or documentary record of such discussions and deliberations—

(1) are immune from legal process;

(2) may not be admitted as evidence; and

(3) may not be used for any purpose in any action, suit, or judicial or administrative proceeding without the consent of the Secretary of the military department concerned.

(c) APPLICABILITY.—This section applies to all selection boards convened under section 573, 611, or 628 of this title, regardless of the date on which the board was convened.

(Added Pub. L. 109–364, div. A, title V, § 547(a)(1), Oct. 17, 2006, 120 Stat. 2215; amended Pub. L. 111–383, div. A, title V, § 503(a), Jan. 7, 2011, 124 Stat. 4207.)

AMENDMENTS

2011—Subsec. (a). Pub. L. 111–383, § 503(a)(1), added subsec. (a) and struck out former subsec. (a). Prior to amendment, text read as follows: ''The proceedings of a selection board convened under section 611 this title may not be disclosed to any person not a member of the board.''

Subsec. (b). Pub. L. 111–383, § 503(a)(2), substituted ''Notes, and Records'' for ''and Records'' in heading.

Subsec. (c). Pub. L. 111–383, § 503(a)(3), added subsec. (c).

EFFECTIVE DATE

Pub. L. 109–364, div. A, title V, § 547(c), Oct. 17, 2006, 120 Stat. 2216, provided that: ''Section 613a of title 10, United States Code, as added by subsection (a), shall apply with respect to the proceedings of all selection boards convened under section 611 of that title, including selection boards convened before the date of the enactment of this Act [Oct. 17, 2006]. Section 14104 of such title, as amended by subsection (b), shall apply with respect to the proceedings of all selection boards convened under section 14101 of that title, including selection boards convened before the date of the enactment of this Act.''

§ 614. Notice of convening of selection boards

(a) At least 30 days before a selection board is convened under section 611(a) of this title to recommend officers in a grade for promotion to the next higher grade, the Secretary concerned (1) shall notify in writing the officers eligible for consideration for promotion of the date on which the board is to convene and the name and date of rank of the junior officer, and of the senior officer, in the promotion zone as of the date of the notification, or (2) shall issue a general written notice to the armed force concerned regarding the convening of the board which shall include the convening date of the board and the name and date of rank of the junior officer, and of the senior officer, in the promotion zone as of the date of the notification.

(b) An officer eligible for consideration by a selection board convened under section 611(a) of this title may send a written communication to the board, to arrive not later than 10 calendar days before the date the board convenes, calling attention to any matter concerning himself that the officer considers important to his case. The selection board shall give consideration to any timely communication under this subsection.

(Added Pub. L. 96–513, title I, § 105, Dec. 12, 1980, 94 Stat. 2852; amended Pub. L. 97–22, § 4(b), July 10, 1981, 95 Stat. 126; Pub. L. 102–190, div. A, title V, § 504(a)(2)(A), Dec. 5, 1991, 105 Stat. 1357; Pub. L. 109–163, div. A, title V, § 505(a), Jan. 6, 2006, 119 Stat. 3227; Pub. L. 115–91, div. A, title V, § 501(a), Dec. 12, 2017, 131 Stat. 1373.)

AMENDMENTS

2017—Subsec. (b). Pub. L. 115–91 substituted ''10 calendar days before'' for ''the day before'' in first sentence.

2006—Subsec. (b). Pub. L. 109–163 inserted ''the day before'' after ''not later than'' in first sentence.

1991—Pub. L. 102–190 struck out ''; communications with boards'' after ''selection boards'' in section catchline.

1981—Subsec. (a). Pub. L. 97–22 substituted ''which shall include the convening date of the board'' for '', the names of the officers eligible for consideration by the board as of the date of the notification, the convening date of the board,''.

EFFECTIVE DATE OF 2017 AMENDMENT

Pub. L. 115–91, div. A, title V, § 501(c), Dec. 12, 2017, 131 Stat. 1373, provided that: ''The amendments made by this section [amending this section and section 14106 of this title] shall apply with respect to promotion selection boards convened on or after the date of the enactment of this Act [Dec. 12, 2017].''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–163, div. A, title V, § 505(c), Jan. 6, 2006, 119 Stat. 3227, provided that: ''The amendments made by this section [amending this section and section 14106 of this title] shall take effect on March 1, 2006, and shall apply with respect to selection boards convened on or after that date.''

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–190 applicable to selection boards convened under section 611(a) of this title after end of 60-day period beginning Dec. 5, 1991, see section 504(e) of Pub. L. 102–190, set out as a note under section 615 of this title.

EFFECTIVE DATE

Section effective Sept. 15, 1981, but the authority to prescribe regulations under this section effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

§ 615. Information furnished to selection boards

(a)(1) The Secretary of Defense shall prescribe regulations governing information furnished to selection boards convened under section 611(a) of this title. Those regulations shall apply uniformly among the military departments. Any regulations prescribed by the Secretary of a military department to supplement those regulations may not take effect without the approval of the Secretary of Defense in writing.

(2) No information concerning a particular eligible officer may be furnished to a selection board except for the following:

(A) Information that is in the officer's official military personnel file and that is provided to the selection board in accordance with the regulations prescribed by the Secretary of Defense pursuant to paragraph (1).

(B) Other information that is determined by the Secretary of the military department concerned, after review by that Secretary in accordance with standards and procedures set out in the regulations prescribed by the Secretary of Defense pursuant to paragraph (1), to

be substantiated, relevant information that could reasonably and materially affect the deliberations of the selection board.

(C) Subject to such limitations as may be prescribed in those regulations, information communicated to the board by the officer in accordance with this section, section 614(b) of this title (including any comment on information referred to in subparagraph (A) regarding that officer), or other applicable law.

(D) A factual summary of the information described in subparagraphs (A), (B), and (C) that, in accordance with the regulations prescribed pursuant to paragraph (1), is prepared by administrative personnel for the purpose of facilitating the work of the selection board.

(3)(A) In the case of an eligible officer considered for promotion to a grade specified in subparagraph (B), any credible information of an adverse nature, including any substantiated adverse finding or conclusion from an officially documented investigation or inquiry, shall be furnished to the selection board in accordance with standards and procedures set out in the regulations prescribed by the Secretary of Defense pursuant to paragraph (1).

(B) A grade specified in this subparagraph is as follows:

(i) In the case of a regular officer, a grade above captain, in the case of the Navy, lieutenant, or in the case of the Space Force, the equivalent grade.

(ii) In the case of a reserve officer, a grade above lieutenant colonel or, in the case of the Navy, commander.

(C) The standards and procedures referred to in subparagraph (A) shall require the furnishing to the selection board, and to each individual member of the board, the information described in that subparagraph with regard to an officer in a grade specified in subparagraph (B) at each stage or phase of the selection board, concurrent with the screening, rating, assessment, evaluation, discussion, or other consideration by the board or member of the official military personnel file of the officer, or of the officer.

(D) With respect to the consideration of an officer for promotion to a grade at or below major general, in the case of the Navy, rear admiral, or, in the case of the Space Force, the equivalent grade, the requirements in subparagraphs (A) and (C) may be met through the convening and actions of a special selection review board with respect to the officer under section 628a of this title.

(4) Information provided to a selection board in accordance with paragraphs (2) and (3) shall be made available to all members of the board and shall be made a part of the record of the board. Communication of such information shall be in a written form or in the form of an audio or video recording. If a communication is in the form of an audio or video recording, a written transcription of the recording shall also be made a part of the record of the selection board.

(5) Paragraphs (2), (3), and (4) do not apply to the furnishing of appropriate administrative processing information to the selection board by administrative staff designated to assist the board, but only to the extent that oral communications are necessary to facilitate the work of the board.

(6) Information furnished to a selection board that is described in subparagraph (B), (C), or (D) of paragraph (2), or in paragraph (3), may not be furnished to a later selection board unless—

(A) the information has been properly placed in the official military personnel file of the officer concerned; or

(B) the information is provided to the later selection board in accordance with paragraph (2) or (3), as applicable.

(7)(A) Before information described in paragraph (2)(B) or (3) regarding an eligible officer is furnished to a selection board, the Secretary of the military department concerned shall ensure—

(i) that such information is made available to such officer; and

(ii) that the officer is afforded a reasonable opportunity to submit comments on that information to the selection board.

(B) If an officer cannot be given access to the information referred to in subparagraph (A) because of its classification status, the officer shall, to the maximum extent practicable, be furnished with an appropriate summary of the information.

(b) The Secretary of the military department concerned shall furnish each selection board convened under section 611(a) of this title with—

(1) the maximum number, as determined in accordance with section 622 of this title, of officers in each competitive category under consideration that the board may recommend for promotion to the next higher grade;

(2) the names of all officers in each competitive category to be considered by the board for promotion;

(3) the pertinent records (as determined by the Secretary) of each officer whose name is furnished to the board;

(4) information or guidelines relating to the needs of the armed force concerned for officers having particular skills, including guidelines or information relating to the need for either a minimum number or a maximum number of officers with particular skills within a competitive category;

(5) guidelines, based upon guidelines received by the Secretary from the Secretary of Defense under subsection (c), for the purpose of ensuring that the board gives appropriate consideration to the performance of officers who are serving on, or have served on, the Joint Staff or are joint qualified officers; and

(6) such other information and guidelines as may be necessary to enable the board to properly perform its functions.

(c) The Secretary of Defense, with the advice and assistance of the Chairman of the Joint Chiefs of Staff, shall furnish to the Secretaries of the military departments guidelines for the purpose of ensuring that each selection board convened under section 611(a) of this title gives appropriate consideration to the performance of officers who are serving on, or have served on, the Joint Staff or are joint qualified officers.

(d) Information or guidelines furnished to a selection board under subsection (b) may not be

modified, withdrawn, or supplemented after the board submits the report to the Secretary of the military department concerned pursuant to section 617(a) of this title, except that, in the case of a report returned to a board pursuant to section 618(a)(2) of this title for further proceedings because of a determination by the Secretary of the military department concerned that the board acted contrary to law, regulation, or guidelines, the Secretary may modify, withdraw, or supplement such information or guidelines as part of a written explanation to the board as provided in that section.

(e) The Secretary of each military department, under uniform regulations prescribed by the Secretary of Defense, shall include in guidelines furnished to a selection board convened under section 611(a) of this title that is considering officers in a health-professions competitive category for promotion to a grade below colonel or, in the case of the Navy, captain, a direction that the board give consideration to an officer's clinical proficiency and skill as a health professional to at least as great an extent as the board gives to the officer's administrative and management skills.

(Added Pub. L. 96–513, title I, § 105, Dec. 12, 1980, 94 Stat. 2852; amended Pub. L. 99–433, title IV, § 402(b), Oct. 1, 1986, 100 Stat. 1030; Pub. L. 100–456, div. A, title V, § 501(a), Sept. 29, 1988, 102 Stat. 1965; Pub. L. 101–189, div. A, title V, § 519, Nov. 29, 1989, 103 Stat. 1444; Pub. L. 102–190, div. A, title V, § 504(a)(1), Dec. 5, 1991, 105 Stat. 1355; Pub. L. 102–484, div. A, title X, § 1052(7), Oct. 23, 1992, 106 Stat. 2499; Pub. L. 109–163, div. A, title V, § 506(a), Jan. 6, 2006, 119 Stat. 3227; Pub. L. 111–383, div. A, title V, § 522(b), Jan. 7, 2011, 124 Stat. 4215; Pub. L. 116–92, div. A, title V, § 502(a), (b), Dec. 20, 2019, 133 Stat. 1344; Pub. L. 116–283, div. A, title V, § 505(c)(1), (2), Jan. 1, 2021, 134 Stat. 3572.)

AMENDMENTS

2021—Subsec. (a)(3)(B)(i). Pub. L. 116–283, § 505(c)(1), substituted '', in the case of the Navy, lieutenant, or in the case of the Space Force, the equivalent grade'' for ''or, in the case of the Navy, lieutenant''.

Subsec. (a)(3)(D). Pub. L. 116–283, § 505(c)(2), added subpar. (D).

2019—Subsec. (a)(3). Pub. L. 116–92 designated existing provisions as subpar. (A), substituted ''a grade specified in subparagraph (B)'' for ''a grade above colonel or, in the case of the Navy, captain'', and added subpars. (B) and (C).

2011—Subsecs. (b)(5), (c). Pub. L. 111–383 substituted ''of officers who are serving on, or have served on, the Joint Staff or are joint qualified officers'' for ''in joint duty assignments of officers who are serving, or have served, in such assignments''.

2006—Subsec. (a)(3). Pub. L. 109–163, § 506(a)(1)(B), added par. (3). Former par. (3) redesignated (4).

Subsec. (a)(4). Pub. L. 109–163, § 506(a)(2)(A), substituted ''paragraphs (2) and (3)'' for ''paragraph (2)''.

Pub. L. 109–163, § 506(a)(1)(A), redesignated par. (3) as (4). Former par. (4) redesignated (5).

Subsec. (a)(5). Pub. L. 109–163, § 506(a)(2)(B), substituted '', (3), and (4)'' for ''and (3)''.

Pub. L. 109–163, § 506(a)(1)(A), redesignated par. (4) as (5). Former par. (5) redesignated (6).

Subsec. (a)(6). Pub. L. 109–163, § 506(a)(2)(C)(i), inserted '', or in paragraph (3),'' after ''paragraph (2)'' in introductory provisions.

Pub. L. 109–163, § 506(a)(1)(A), redesignated par. (5) as (6). Former par. (6) redesignated (7).

Subsec. (a)(6)(B). Pub. L. 109–163, § 506(a)(2)(C)(ii), inserted ''or (3), as applicable'' before period at end.

Subsec. (a)(7). Pub. L. 109–163, § 506(a)(1)(A), redesignated par. (6) as (7).

Subsec. (a)(7)(A). Pub. L. 109–163, § 506(a)(2)(D), inserted ''or (3)'' after ''paragraph (2)(B)'' in introductory provisions.

1992—Subsec. (b)(5). Pub. L. 102–484, § 1052(7)(A), substituted ''subsection (c)'' for ''subsection (b)''.

Subsec. (d). Pub. L. 102–484, § 1052(7)(B), substituted ''subsection (b)'' for ''subsection (a)''.

1991—Pub. L. 102–190 added subsec. (a) and redesignated former subsecs. (a) to (d) as (b) to (e), respectively.

1989—Subsec. (d). Pub. L. 101–189 added subsec. (d).

1988—Subsec. (a)(4). Pub. L. 100–456, § 501(a)(1), added cl. (4) and struck out former cl. (4) which read as follows: ''information relating to the needs of the armed force concerned for officers having particular skills;''.

Subsec. (c). Pub. L. 100–456, § 501(a)(2), added subsec. (c).

1986—Pub. L. 99–433 designated existing provisions as subsec. (a), added par. (5), redesignated former par. (5) as (6), and added subsec. (b).

EFFECTIVE DATE OF 2019 AMENDMENT

Pub. L. 116–92, div. A, title V, § 502(c), Dec. 20, 2019, 133 Stat. 1344, as amended by Pub. L. 116–283, div. A, title V, § 505(c)(3), Jan. 1, 2021, 134 Stat. 3572, provided that:

''(1) EFFECTIVE DATE.—The amendments made by this section [amending this section] shall take effect on December 20, 2019, and shall, except as provided in paragraph (2), apply with respect to the proceedings of promotion selection boards convened under section 611(a) of title 10, United States Code, after that date.

''(2) DELAYED APPLICABILITY FOR BOARDS FOR PROMOTION TO NON-GENERAL AND FLAG OFFICER GRADES.—The amendments made this section shall apply with respect to the proceedings of promotion selection boards convened under section 611(a) of title 10, United States Code, for consideration of officers for promotion to a grade below the grade of brigadier general or, in the case of the Navy, rear admiral (lower half), only if such boards are so convened after January 1, 2021.''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–163, div. A, title V, § 506(c), Jan. 6, 2006, 119 Stat. 3228, provided that: ''The amendments made by this section [amending this section and section 14107 of this title] shall take effect on October 1, 2006, and shall apply with respect to promotion selection boards convened on or after that date.''

EFFECTIVE DATE OF 1991 AMENDMENT

Pub. L. 102–190, div. A, title V, § 504(e), Dec. 5, 1991, 105 Stat. 1358, provided that: ''The amendments made by this section [amending this section and sections 614, 616, 618, and 619 of this title] shall apply to selection boards convened under section 611(a) of title 10, United States Code, after the end of the 60-day period beginning on the date of the enactment of this Act [Dec. 5, 1991].''

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–456, div. A, title V, § 501(e), Sept. 29, 1988, 102 Stat. 1966, provided that: ''The amendments made by this section [amending this section and sections 616 to 618 of this title] shall take effect 60 days after the date of the enactment of this Act [Sept. 29, 1988] and shall apply with respect to selection boards convened under section 611(a) of title 10, United States Code, on or after that effective date.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–433 effective with respect to selection boards convened under section 611(a) of this title after end of 120-day period beginning on Oct. 1, 1986, see section 406(f) of Pub. L. 99–433, set out as a note under section 612 of this title.

EFFECTIVE DATE

Section effective Sept. 15, 1981, but the authority to prescribe regulations under this section effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

EXCLUSION OF OFFICIAL PHOTOGRAPHS OF MEMBERS FROM RECORDS FURNISHED TO PROMOTION SELECTION BOARDS

Pub. L. 116–283, div. A, title V, § 524(a)–(c), Jan. 1, 2021, 134 Stat. 3599, provided that:

''(a) ACTIVE DUTY OFFICERS.—The Secretary of Defense shall include in the regulations prescribed pursuant to section 615(a) of title 10, United States Code, a prohibition on the inclusion of an official photograph of an officer in the information furnished to a selection board pursuant to section 615(b) of such title.

''(b) RESERVE OFFICERS.—The Secretary of Defense shall include in regulations prescribed pursuant to section 14107(a)(1) of title 10, United States Code, a prohibition on the inclusion of an official photograph of an officer in the information furnished to a selection board pursuant to section 14107(a)(2) of such title.

''(c) ENLISTED MEMBERS.—Each Secretary of a military department shall prescribe regulations that prohibit the inclusion of an official photograph of an enlisted member in the information furnished to a board that considers enlisted members under the jurisdiction of such Secretary for promotion.''

§ 616. Recommendations for promotion by selection boards

(a) A selection board convened under section 611(a) of this title shall recommend for promotion to the next higher grade those officers considered by the board whom the board, giving due consideration to the needs of the armed force concerned for officers with particular skills (as noted in the guidelines or information furnished the board under section 615(b) of this title), considers best qualified for promotion within each competitive category considered by the board.

(b) The Secretary of the military department concerned shall establish the number of officers such a selection board may recommend for promotion from among officers being considered from below the promotion zone in any competitive category. Such number may not exceed the number equal to 10 percent of the maximum number of officers that the board is authorized to recommend for promotion in such competitive category, except that the Secretary of Defense may authorize a greater number, not to exceed 15 percent of the total number of officers that the board is authorized to recommend for promotion, if the Secretary of Defense determines that the needs of the service so require. If the number determined under this subsection is less than one, the board may recommend one such officer. The number of officers recommended for promotion from below the promotion zone does not increase the maximum number of officers which the board is authorized under section 615 of this title to recommend for promotion.

(c) A selection board convened under section 611(a) of this title may not recommend an officer for promotion unless—

(1) the officer receives the recommendation of a majority of the members of the board;

(2) a majority of the members of the board finds that the officer is fully qualified for promotion; and

(3) a majority of the members of the board, after consideration by all members of the board of any adverse information about the officer that is provided to the board under section 615 of this title, finds that the officer is among the officers best qualified for promotion to meet the needs of the armed force concerned consistent with the requirement of exemplary conduct set forth in section 7233, 8167, or 9233 of this title, as applicable.

(d) The number of officers recommended for promotion by a selection board convened under section 611(a) of this title may not exceed the number equal to 95 percent of the number of officers included in the promotion zone established under section 623 of this title for consideration by the board.

(e) Except as otherwise provided by law, an officer on the active-duty list may not be promoted to a higher grade under this chapter unless he is considered and recommended for promotion to that grade by a selection board convened under this chapter.

(f) The recommendations of a selection board may be disclosed only in accordance with regulations prescribed by the Secretary of Defense. Those recommendations may not be disclosed to a person not a member of the board (or a member of the administrative staff designated by the Secretary concerned to assist the board) until the written report of the recommendations of the board, required by section 617 of this title, is signed by each member of the board.

(g) The Secretary convening a selection board under section 611(a) of this title, and an officer or other official exercising authority over any member of a selection board, may not—

(1) censure, reprimand, or admonish the selection board or any member of the board with respect to the recommendations of the board or the exercise of any lawful function within the authorized discretion of the board; or

(2) attempt to coerce or, by any unauthorized means, influence any action of a selection board or any member of a selection board in the formulation of the board's recommendations.

(h)(1) In selecting the officers to be recommended for promotion, a selection board shall, when authorized by the Secretary of the military department concerned, recommend officers of particular merit, pursuant to guidelines and procedures prescribed by the Secretary, from among those officers selected for promotion, to be placed higher on the promotion list established by the Secretary under section 624(a)(1) of this title.

(2) An officer may be recommended to be placed higher on a promotion list under paragraph (1) only if the officer receives the recommendation of at least a majority of the members of the board, unless the Secretary concerned establishes an alternative requirement. Any such alternative requirement shall be furnished to the board as part of the guidelines furnished to the board under section 615 of this title.

(3) For the officers recommended to be placed higher on a promotion list under paragraph (1), the board shall recommend, pursuant to guide-

lines and procedures prescribed by the Secretary concerned, the order in which those officers should be placed on the list.

(Added Pub. L. 96–513, title I, §105, Dec. 12, 1980, 94 Stat. 2852; amended Pub. L. 100–456, div. A, title V, §501(b), Sept. 29, 1988, 102 Stat. 1966; Pub. L. 102–190, div. A, title V, §504(b), Dec. 5, 1991, 105 Stat. 1357; Pub. L. 102–484, div. A, title X, §1052(8), Oct. 23, 1992, 106 Stat. 2499; Pub. L. 109–364, div. A, title V, §512(a), Oct. 17, 2006, 120 Stat. 2184; Pub. L. 115–232, div. A, title V, §504(a), title VIII, §809(a), Aug. 13, 2018, 132 Stat. 1742, 1840; Pub. L. 116–92, div. A, title V, §503(a), Dec. 20, 2019, 133 Stat. 1344; Pub. L. 116–283, div. A, title V, §504(a), Jan. 1, 2021, 134 Stat. 3565.)

AMENDMENTS

2021—Subsec. (h)(1). Pub. L. 116–283, §504(a)(1), substituted "shall" for "may" and inserted "pursuant to guidelines and procedures prescribed by the Secretary," after "officers of particular merit,".

Subsec. (h)(3). Pub. L. 116–283, §504(a)(2), inserted ", pursuant to guidelines and procedures prescribed by the Secretary concerned," after "shall recommend".

2019—Subsecs. (d) to (h). Pub. L. 116–92 added subsec. (d) and redesignated former subsecs. (d) to (g) as (e) to (h), respectively.

2018—Subsec. (c)(3). Pub. L. 115–232, §809(a), substituted "section 7233, 8167, or 9233" for "section 3583, 5947, or 8583".

Subsec. (g). Pub. L. 115–232, §504(a), added subsec. (g).

2006—Subsec. (c)(3). Pub. L. 109–364 added par. (3).

1992—Pub. L. 102–484 substituted "section 615(b)" for "section 615(a)".

1991—Subsecs. (e), (f). Pub. L. 102–190 added subsecs. (e) and (f).

1988—Subsec. (a). Pub. L. 100–456 inserted "(as noted in the guidelines or information furnished the board under section 615(a) of this title)" after "particular skills".

EFFECTIVE DATE OF 2021 AMENDMENT

Pub. L. 116–283, div. A, title V, §504(b), Jan. 1, 2021, 134 Stat. 3565, provided that: "The amendments made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Jan. 1, 2021], and shall apply with respect to officers recommended for promotion by promotion selection boards convened on or after that date."

EFFECTIVE DATE OF 2019 AMENDMENT

Pub. L. 116–92, div. A, title V, §503(b), Dec. 20, 2019, 133 Stat. 1344, provided that: "The amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [Dec. 20, 2019], and shall apply with respect to consideration by promotion selection boards convened under section 611(a) of title 10, United States Code, of promotion zones that are established under section 623 of that title on or after that date."

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by section 809(a) of Pub. L. 115–232 effective Feb. 1, 2019, with provision for the coordination of amendments and special rule for certain redesignations, see section 800 of Pub. L. 115–232, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–364, div. A, title V, §512(c), Oct. 17, 2006, 120 Stat. 2184, provided that: "The amendments made by this section [amending this section and section 14108 of this title] shall take effect on the date of the enactment of this Act [Oct. 17, 2006] and shall apply with respect to selection boards convened on or after that date."

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–190 applicable to selection boards convened under section 611(a) of this title after end of 60-day period beginning Dec. 5, 1991, see section 504(e) of Pub. L. 102–190, set out as a note under section 615 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–456 effective 60 days after Sept. 29, 1988, and applicable with respect to selection boards convened under section 611(a) of this title on or after that effective date, see section 501(e) of Pub. L. 100–456, set out as a note under section 615 of this title.

EFFECTIVE DATE

Section effective Sept. 15, 1981, but the authority to prescribe regulations under this section effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

§617. Reports of selection boards

(a) Each selection board convened under section 611(a) of this title shall submit to the Secretary of the military department concerned a written report, signed by each member of the board, containing a list of the names of the officers it recommends for promotion and certifying (1) that the board has carefully considered the record of each officer whose name was furnished to it under section 615 of this title, and (2) that, in the opinion of a majority of the members of the board, the officers recommended for promotion by the board are best qualified for promotion to meet the needs of the armed force concerned (as noted in the guidelines or information furnished the board under section 615(b) of this title) among those officers whose names were furnished to the selection board.

(b) A selection board convened under section 611(a) of this title shall include in its report to the Secretary concerned the name of any regular or reserve officer before it for consideration for promotion whose record, in the opinion of a majority of the members of the board, indicates that the officer should be required under chapter 60 or 1411 of this title to show cause for his retention on active duty.

(c) A selection board convened under section 611(a) of this title shall include in its report to the Secretary concerned the name of any officer considered and not recommended for promotion by the board who submitted to the board a request not to be selected for promotion or who otherwise directly caused his nonselection through written communication to the Board under section 614(b) of this title.

(d) A selection board convened under section 611(a) of this title shall, when authorized under section 616(h) of this title, include in its report to the Secretary concerned the names of those officers recommended by the board to be placed higher on the promotion list and the order in which the board recommends that those officers should be placed on the list.

(Added Pub. L. 96–513, title I, §105, Dec. 12, 1980, 94 Stat. 2853; amended Pub. L. 100–456, div. A, title V, §501(c), Sept. 29, 1988, 102 Stat. 1966; Pub. L. 102–484, div. A, title X, §1052(8), Oct. 23, 1992, 106 Stat. 2499; Pub. L. 103–337, div. A, title XVI, §1623, Oct. 5, 1994, 108 Stat. 2961; Pub. L. 105–261, div. A, title V, §502(b), Oct. 17, 1998, 112 Stat.

2003; Pub. L. 106–65, div. A, title V, § 503(a), Oct. 5, 1999, 113 Stat. 590; Pub. L. 115–232, div. A, title V, § 504(b), Aug. 13, 2018, 132 Stat. 1742; Pub. L. 116–283, div. A, title X, § 1081(a)(18), Jan. 1, 2021, 134 Stat. 3871.)

AMENDMENTS

2021—Subsec. (d). Pub. L. 116–283 substituted ''section 616(h)'' for ''section 616(g)''.

2018—Subsec. (d). Pub. L. 115–232 added subsec. (d).

1999—Subsec. (c). Pub. L. 106–65 struck out ''regular'' before ''officer''.

1998—Subsec. (c). Pub. L. 105–261 added subsec. (c).

1994—Subsec. (b). Pub. L. 103–337 inserted ''or reserve'' after ''any regular'' and ''or 1411'' after ''chapter 60''.

1992—Subsec. (a). Pub. L. 102–484 substituted ''section 615(b)'' for ''section 615(a)''.

1988—Subsec. (a)(2). Pub. L. 100–456 inserted ''(as noted in the guidelines or information furnished the board under section 615(a) of this title)'' after ''concerned''.

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–65, div. A, title V, § 503(b), Oct. 5, 1999, 113 Stat. 590, provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to boards convened under section 611(a) of title 10, United States Code, on or after the date of the enactment of this Act [Oct. 5, 1999].''

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–261, div. A, title V, § 502(c), Oct. 17, 1998, 112 Stat. 2003, provided that: ''The amendments made by this section [amending this section and section 1174 of this title] shall apply with respect to selection boards convened under section 611(a) of title 10, United States Code, on or after the date of the enactment of this Act [Oct. 17, 1998].''

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective Oct. 1, 1996, see section 1691(b)(1) of Pub. L. 103–337, set out as a note under section 10001 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–456 effective 60 days after Sept. 29, 1988, and applicable with respect to selection boards convened under section 611(a) of this title on or after that effective date, see section 501(e) of Pub. L. 100–456, set out as a note under section 615 of this title.

EFFECTIVE DATE

Section effective Sept. 15, 1981, but the authority to prescribe regulations under this section effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

§ 618. Action on reports of selection boards

(a)(1) Upon receipt of the report of a selection board submitted to him under section 617(a) of this title, the Secretary of the military department concerned shall review the report to determine whether the board has acted contrary to law or regulation or to guidelines furnished the board under section 615(b) of this title. Following such review, unless the Secretary concerned makes a determination as described in paragraph (2), the Secretary shall submit the report as required by subsection (b) or (c), as appropriate.

(2) If, on the basis of a review of the report under paragraph (1), the Secretary of the military department concerned determines that the board acted contrary to law or regulation or to guidelines furnished the board under section 615(b) of this title, the Secretary shall return the report, together with a written explanation of the basis for such determination, to the board for further proceedings. Upon receipt of a report returned by the Secretary concerned under this paragraph, the selection board (or a subsequent selection board convened under section 611(a) of this title for the same grade and competitive category) shall conduct such proceedings as may be necessary in order to revise the report to be consistent with law, regulation, and such guidelines and shall resubmit the report, as revised, to the Secretary in accordance with section 617 of this title.

(b)(1) After completing the requirements of subsection (a), the Secretary concerned, in the case of the report of a selection board that considered officers who are serving on, or have served on, the Joint Staff or are joint qualified officers, shall submit the report to the Chairman of the Joint Chiefs of Staff.

(2) The Chairman, in accordance with guidelines furnished to the Chairman by the Secretary of Defense, shall review the report for the purpose of determining if—

(A) the selection board acted consistent with the guidelines of the Secretary of Defense under section 615(c) of this title to ensure that selection boards give appropriate consideration to the performance of officers who are serving on, or have served on, the Joint Staff or are joint qualified officers; and

(B) the selection board otherwise gave appropriate consideration to the performance of officers who are serving on, or have served on, the Joint Staff or are joint qualified officers.

(3) After reviewing the report, the Chairman shall return the report, with his determinations and comments, to the Secretary concerned.

(4) If the Chairman determines that the board acted contrary to the guidelines of the Secretary of Defense under section 615(c) of this title or otherwise failed to give appropriate consideration to the performance of officers who are serving on, or have served on, the Joint Staff or are joint qualified officers, the Secretary concerned may—

(A) return the report, together with the Chairman's determinations and comments, to the selection board (or a subsequent selection board convened under section 611(a) of this title for the same grade and competitive category) for further proceedings in accordance with subsection (a);

(B) convene a special selection board in the manner provided for under section 628 of this title; or

(C) take other appropriate action to satisfy the concerns of the Chairman.

(5) If, after completion of all actions taken under paragraph (4), the Secretary concerned and the Chairman remain in disagreement with respect to the report of a selection board, the Secretary concerned shall indicate such disagreement, and the reasons for such disagreement, as part of his transmittal of the report of the selection board to the Secretary of Defense under subsection (c). Such transmittal shall include any comments submitted by the Chairman.

(c)(1) After his final review of the report of a selection board, the Secretary concerned shall submit the report, with his recommendations thereon, to the Secretary of Defense for transmittal to the President for his approval or disapproval. The Secretary of Defense shall, before transmitting the report of a selection board to the President, take appropriate action to resolve any disagreement between the Secretary concerned and the Chairman transmitted to him under subsection (b)(5). If the authority of the President under this paragraph to approve or disapprove the report of a selection board is delegated to the Secretary of Defense, it may not be redelegated except to an official in the Office of the Secretary of Defense.

(2) If the report of a selection board names an officer as having a record which indicates that the officer should be required to show cause for his retention on active duty, the Secretary concerned may provide for the review of the record of that officer as provided for under regulations prescribed under section 1181 of this title.

(d)(1) Except as provided in paragraph (2), the name of an officer recommended for promotion by a selection board may be removed from the report of the selection board only by the President.

(2) In the case of an officer recommended by a selection board for promotion to a grade below brigadier general or rear admiral (lower half), the name of the officer may also be removed from the report of the selection board by the Secretary of Defense or the Deputy Secretary of Defense.

(e)(1) The names of the officers recommended for promotion in the report of a selection board shall be disseminated to the armed force concerned as follows:

(A) In the case of officers recommended for promotion to a grade below brigadier general or rear admiral (lower half), such names may be disseminated upon, or at any time after, the transmittal of the report to the President.

(B) In the case of officers recommended for promotion to a grade above colonel or, in the case of the Navy, captain, such names may be disseminated upon, or at any time after, the approval of the report by the President.

(C) In the case of officers whose names have not been sooner disseminated, such names shall be promptly disseminated upon confirmation by the Senate.

(2) A list of names of officers disseminated under paragraph (1) may not include—

(A) any name removed by the President from the report of the selection board containing that name, if dissemination is under the authority of subparagraph (B) of such paragraph; or

(B) the name of any officer whose promotion the Senate failed to confirm, if dissemination is under the authority of subparagraph (C) of such paragraph.

[(f) Repealed. Pub. L. 109–364, div. A, title V, § 547(a)(2), Oct. 17, 2006, 120 Stat. 2216.]

(g) If the Secretary of a military department or the Secretary of Defense makes a recommendation under this section that the name of an officer be removed from a report of a selection board and the recommendation is accompanied by information that was not presented to that selection board, that information shall be made available to that officer. The officer shall then be afforded a reasonable opportunity to submit comments on that information to the officials making the recommendation and the officials reviewing the recommendation. If an eligible officer cannot be given access to such information because of its classification status, the officer shall, to the maximum extent practicable, be provided with an appropriate summary of the information.

(Added Pub. L. 96–513, title I, § 105, Dec. 12, 1980, 94 Stat. 2853; amended Pub. L. 98–525, title V, § 524(a), Oct. 19, 1984, 98 Stat. 2524; Pub. L. 99–433, title IV, § 402(c), Oct. 1, 1986, 100 Stat. 1030; Pub. L. 100–456, div. A, title V, § 501(d), Sept. 29, 1988, 102 Stat. 1966; Pub. L. 102–190, div. A, title V, § 504(c), Dec. 5, 1991, 105 Stat. 1357; Pub. L. 102–484, div. A, title X, § 1052(8), (9), Oct. 23, 1992, 106 Stat. 2499; Pub. L. 106–398, § 1 [[div. A], title V, § 503(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–100; Pub. L. 109–364, div. A, title V, §§ 513(a), 547(a)(2), Oct. 17, 2006, 120 Stat. 2184, 2216; Pub. L. 111–383, div. A, title V, § 522(c), Jan. 7, 2011, 124 Stat. 4215.)

AMENDMENTS

2011—Subsec. (b)(1). Pub. L. 111–383, § 522(c)(1), substituted ''are serving on, or have served on, the Joint Staff or are joint qualified officers'' for ''are serving, or have served, in joint duty assignments''.

Subsec. (b)(2). Pub. L. 111–383, § 522(c)(2), substituted ''of officers who are serving on, or have served on, the Joint Staff or are joint qualified officers'' for ''in joint duty assignments of officers who are serving, or have served, in such assignments'' in subpars. (A) and (B).

Subsec. (b)(4). Pub. L. 111–383, § 522(c)(3), substituted ''who are serving on, or have served on, the Joint Staff or are joint qualified officers'' for ''in joint duty assignments'' in introductory provisions.

2006—Subsec. (d). Pub. L. 109–364, § 513(a), designated existing provisions as par. (1), substituted ''Except as provided in paragraph (2), the name'' for ''The name'', and added par. (2).

Subsec. (f). Pub. L. 109–364, § 547(a)(2), struck out subsec. (f) which read as follows: ''Except as authorized or required by this section, proceedings of a selection board convened under section 611(a) of this title may not be disclosed to any person not a member of the board.''

2000—Subsec. (e). Pub. L. 106–398 amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: ''Upon approval by the President of the report of a selection board, the names of the officers recommended for promotion by the selection board (other than any name removed by the President) may be disseminated to the armed force concerned. If such names have not been sooner disseminated, such names (other than the name of any officer whose promotion the Senate failed to confirm) shall be promptly disseminated to the armed force concerned upon confirmation by the Senate.''

1992—Subsec. (a)(1), (2). Pub. L. 102–484, § 1052(8), substituted ''section 615(b)'' for ''section 615(a)''.

Subsec. (b)(2)(A), (4). Pub. L. 102–484, § 1052(9), substituted ''section 615(c)'' for ''section 615(b)''.

1991—Subsec. (g). Pub. L. 102–190 added subsec. (g).

1988—Subsec. (a). Pub. L. 100–456, § 501(d)(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''If, after reviewing the report of a selection board submitted to him under section 617(a) of this title, the Secretary of the military department concerned determines that the board has acted contrary to law or regulation, the Secretary shall return

the report to the board for further proceedings. Upon receipt of a report returned by the Secretary concerned under this subsection, the selection board (or a subsequent selection board convened under section 611(a) of this title for the same grade and competitive category) shall conduct such proceedings as may be necessary in order to revise the report and shall resubmit the report, as revised, to the Secretary in accordance with section 617 of this title.''

Subsec. (c)(1). Pub. L. 100–456, § 501(d)(2), struck out '', modification,'' after ''for his approval'' and inserted at end ''If the authority of the President under this paragraph to approve or disapprove the report of a selection board is delegated to the Secretary of Defense, it may not be redelegated except to an official in the Office of the Secretary of Defense.''

1986—Subsec. (b). Pub. L. 99–433, § 402(c)(1), (2), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 99–433, § 402(c)(1), (3), redesignated subsec. (b) as (c) and in par. (1) inserted provisions directing the Secretary of Defense, before transmitting the report, to take appropriate action to resolve any disagreement between the Secretary concerned and the Chairman. Former subsec. (c) redesignated (d).

Subsecs. (d) to (f). Pub. L. 99–433, § 402(c)(1), redesignated subsecs. (c) to (e) as (d) to (f), respectively.

1984—Subsec. (b)(2). Pub. L. 98–525 substituted ''If the report of a selection board names an officer as having a record which indicates that the officer should be required to show cause for his retention on active duty, the Secretary concerned may provide for the review of the record of that officer as provided for under regulations prescribed under section 1181 of this title'' for ''The Secretary concerned may submit to a board of officers convened under section 1181 of this title the name of any officer who is named in the report of a selection board as having a record which indicates that the officer should be required to show cause for his retention on active duty''.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–364, div. A, title V, § 513(c), Oct. 17, 2006, 120 Stat. 2185, provided that: ''The amendments made by this section [amending this section and section 14111 of this title] shall apply with respect to selection boards convened on or after the date of the enactment of this Act [Oct. 17, 2006].''

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–190 applicable to selection boards convened under section 611(a) of this title after end of 60-day period beginning Dec. 5, 1991, see section 504(e) of Pub. L. 102–190, set out as a note under section 615 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–456 effective 60 days after Sept. 29, 1988, and applicable with respect to selection boards convened under section 611(a) of this title on or after that effective date, see section 501(e) of Pub. L. 100–456, set out as a note under section 615 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–433 effective with respect to selection boards convened under section 611(a) of this title after end of 120-day period beginning on Oct. 1, 1986, see section 406(f) of Pub. L. 99–433, set out as a note under section 612 of this title.

EFFECTIVE DATE

Section effective Sept. 15, 1981, but the authority to prescribe regulations under this section effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

DELEGATION OF FUNCTIONS

Functions of President under subsec. (b)(1) to approve, modify, or disapprove report of a selection board delegated to Secretary of Defense to perform, without approval, ratification, or other action by President, and with authority for Secretary to redelegate, see Ex. Ord. No. 12396, §§ 1(a), 3, Dec. 9, 1982, 47 F.R. 55897, 55898, set out as a note under section 301 of Title 3, The President.

Nothing in section 1 of Ex. Ord. No. 12396 deemed to delegate authority vested in President by subsec. (c) of this section to remove a name from a selection board report, see section 1(g) of Ex. Ord. No. 12396.

SUBCHAPTER II—PROMOTIONS

Sec.

619. Eligibility for consideration for promotion: time-in-grade and other requirements.
619a. Eligibility for consideration for promotion: designation as joint qualified officer required before promotion to general or flag grade; exceptions.
620. Active-duty lists.
621. Competitive categories for promotion.
622. Numbers to be recommended for promotion.
623. Establishment of promotion zones.
624. Promotions: how made.
625. Authority to vacate promotions to grades of brigadier general and rear admiral (lower half).
626. Acceptance of promotions; oath of office.

AMENDMENTS

2008—Pub. L. 110–417, [div. A], title V, § 521(b)(2), Oct. 14, 2008, 122 Stat. 4444, added item 619a and struck out former item 619a ''Eligibility for consideration for promotion: joint duty assignment required before promotion to general or flag grade; exceptions''.

1993—Pub. L. 103–160, div. A, title IX, § 931(c)(2), Nov. 30, 1993, 107 Stat. 1734, added items 619 and 619a and struck out former item 619 ''Eligibility for consideration for promotion''.

1985—Pub. L. 99–145, title V, § 514(b)(4)(B), Nov. 8, 1985, 99 Stat. 628, substituted ''rear admiral (lower half)'' for ''commodore'' in item 625.

1981—Pub. L. 97–86, title IV, § 405(b)(4)(B), Dec. 1, 1981, 95 Stat. 1106, substituted ''commodore'' for ''commodore admiral'' in item 625.

§ 619. Eligibility for consideration for promotion: time-in-grade and other requirements

(a) TIME-IN-GRADE REQUIREMENTS.—(1) An officer who is on the active-duty list of the Army, Air Force, Marine Corps, or Space Force and holds a permanent appointment in the grade of second lieutenant or first lieutenant or is on the active-duty list of the Navy and holds a permanent appointment in the grade of ensign or lieutenant (junior grade) may not be promoted to the next higher permanent grade until he has completed the following period of service in the grade in which he holds a permanent appointment:

(A) Eighteen months, in the case of an officer holding a permanent appointment in the grade of second lieutenant or ensign.

(B) Two years, in the case of an officer holding a permanent appointment in the grade of first lieutenant or lieutenant (junior grade), except that the minimum period of service in effect under this subparagraph before October 1, 2008, shall be eighteen months.

(2) Subject to paragraph (4), an officer who is on the active-duty list of the Army, Air Force, Marine Corps, or Space Force and holds a permanent appointment in a grade above first lieutenant or is on the active-duty list of the Navy

and holds a permanent appointment in a grade above lieutenant (junior grade) may not be considered for selection for promotion to the next higher permanent grade until he has completed the following period of service in the grade in which he holds a permanent appointment:

(A) Three years, in the case of an officer of the Army, Air Force, Marine Corps, or Space Force holding a permanent appointment in the grade of captain, major, or lieutenant colonel or of an officer of the Navy holding a permanent appointment in the grade of lieutenant, lieutenant commander, or commander.

(B) One year, in the case of an officer of the Army, Air Force, Marine Corps, or Space Force holding a permanent appointment in the grade of colonel or brigadier general or of an officer of the Navy holding a permanent appointment in the grade of captain or rear admiral (lower half).

(3) When the needs of the service require, the Secretary of the military department concerned may prescribe a longer period of service in grade for eligibility for promotion, in the case of officers to whom paragraph (1) applies, or for eligibility for consideration for promotion, in the case of officers to whom paragraph (2) applies.

(4) The Secretary of the military department concerned may waive paragraph (2) to the extent necessary to assure that officers described in subparagraph (A) of such paragraph have at least two opportunities for consideration for promotion to the next higher grade as officers below the promotion zone.

(5) In computing service in grade for purposes of this section, service in a grade held as a result of assignment to a position is counted as service in the grade in which the officer would have served except for such assignment or appointment.

(b) CONTINUED ELIGIBILITY FOR CONSIDERATION FOR PROMOTION OF OFFICERS WHO HAVE PREVIOUSLY FAILED OF SELECTION.—(1) Except as provided in paragraph (2), an officer who has failed of selection for promotion to the next higher grade remains eligible for consideration for promotion to that grade as long as he continues on active duty in other than a retired status and is not promoted.

(2) Paragraph (1) does not apply to a regular officer who is ineligible for consideration for promotion under section 631(c) of this title or to a reserve officer who has failed of selection for promotion to the grade of captain or, in the case of an officer of the Navy, lieutenant for the second time.

(c) OFFICERS TO BE CONSIDERED BY PROMOTION BOARDS.—(1) Each time a selection board is convened under section 611(a) of this title for consideration of officers in a competitive category for promotion to the next higher grade, each officer in the promotion zone (except as provided under paragraph (2)), and each officer above the promotion zone, for the grade and competitive category under consideration shall be considered for promotion.

(2) The Secretary of the military department concerned—

(A) may, in accordance with standards and procedures prescribed by the Secretary of Defense in regulations which shall apply uniformly among the military departments, limit the officers to be considered by a selection board from below the promotion zone to those officers who are determined to be exceptionally well qualified for promotion;

(B) may, by regulation, prescribe a period of time, not to exceed one year, from the time an officer is placed on the active-duty list during which the officer shall be ineligible for consideration for promotion; and

(C) may, by regulation, preclude from consideration by a selection board by which he would otherwise be eligible to be considered, an officer who has an established separation date that is within 90 days after the date the board is convened.

(3)(A) The Secretary of Defense may authorize the Secretaries of the military departments to preclude from consideration by selection boards for promotion to the grade of brigadier general or rear admiral (lower half) officers in the grade of colonel or, in the case of the Navy, captain who—

(i) have been considered and not selected for promotion to the grade of brigadier general or rear admiral (lower half) by at least two selection boards; and

(ii) are determined, in accordance with standards and procedures prescribed pursuant to subparagraph (B), as not being exceptionally well qualified for promotion.

(B) If the Secretary of Defense authorizes the Secretaries of the military departments to have the authority described in subparagraph (A), the Secretary shall prescribe by regulation the standards and procedures for the exercise of such authority. Those regulations shall apply uniformly among the military departments and shall include the following provisions:

(i) A requirement that the Secretary of a military department may exercise such authority in the case of a particular selection board only if the Secretary of Defense approves the exercise of that authority for that board.

(ii) A requirement that an officer may be precluded from consideration by a selection board under this paragraph only upon the recommendation of a preselection board of officers convened by the Secretary of the military department concerned and composed of at least three officers all of whom are serving in a grade higher than the grade of such officer.

(iii) A requirement that such a preselection board may not recommend that an officer be precluded from such consideration unless the Secretary concerned has given the officer advance written notice of the convening of such board and of the military records that will be considered by the board and has given the officer a reasonable period before the convening of the board in which to submit comments to the board.

(iv) A requirement that the Secretary convening such a preselection board shall provide general guidance to the board in accordance with standards and procedures prescribed by the Secretary of Defense in those regulations.

(v) A requirement that the preselection board may recommend that an officer be pre-

cluded from consideration by a selection board only on the basis of the general guidance provided by the Secretary of the military department concerned, information in the officer's official military personnel records that has been described in the notice provided the officer as required pursuant to clause (iii), and any communication to the board received from that officer before the board convenes.

(d) CERTAIN OFFICERS NOT TO BE CONSIDERED.—A selection board convened under section 611(a) of this title may not consider for promotion to the next higher grade any of the following officers:

(1) An officer whose name is on a promotion list for that grade as a result of his selection for promotion to that grade by an earlier selection board convened under that section.

(2) An officer who is recommended for promotion to that grade in the report of an earlier selection board convened under that section, in the case of such a report that has not yet been approved by the President.

(3) An officer of the Marine Corps who is an officer designated for limited duty and who holds a grade above major.

(4) An officer in the grade of first lieutenant or, in the case of the Navy, lieutenant (junior grade) who is on an approved all-fully-qualified-officers list under section 624(a)(3) of this title.

(5) An officer in the grade of captain or, in the case of the Navy, lieutenant who is not a citizen of the United States.

(6) An officer excluded under subsection (e).

(e) AUTHORITY TO ALLOW OFFICERS TO OPT OUT OF SELECTION BOARD CONSIDERATION.—(1) The Secretary of a military department may provide that an officer under the jurisdiction of the Secretary may, upon the officer's request and with the approval of the Secretary, be excluded from consideration by a selection board convened under section 611(a) of this title to consider officers for promotion to the next higher grade.

(2) The Secretary concerned may only approve a request under paragraph (1) if—

(A) the basis for the request is to allow an officer to complete a broadening assignment, advanced education, another assignment of significant value to the Department, or a career progression requirement delayed by the assignment or education;

(B) the Secretary determines the exclusion from consideration is in the best interest of the military department concerned; and

(C) the officer has not previously failed of selection for promotion to the grade for which the officer requests the exclusion from consideration.

(Added Pub. L. 96–513, title I, § 105, Dec. 12, 1980, 94 Stat. 2854; amended Pub. L. 97–22, § 4(c), July 10, 1981, 95 Stat. 126; Pub. L. 97–86, title IV, § 405(b)(1), Dec. 1, 1981, 95 Stat. 1105; Pub. L. 98–525, title V, §§ 525(a), (b), 529(a), Oct. 19, 1984, 98 Stat. 2524, 2525, 2526; Pub. L. 99–145, title V, § 514(b)(1), Nov. 8, 1985, 99 Stat. 628; Pub. L. 99–433, title IV, § 404, Oct. 1, 1986, 100 Stat. 1032; Pub. L. 100–180, div. A, title XIII, §§ 1305(a), 1314(b)(4), Dec. 4, 1987, 101 Stat. 1173, 1175; Pub. L. 100–456, div. A, title V, § 515(a)(1), (b), Sept. 29, 1988, 102 Stat. 1970; Pub. L. 102–190, div. A, title V, § 504(d), Dec. 5, 1991, 105 Stat. 1357; Pub. L. 103–160, div. A, title IX, § 931(b), (c)(1), Nov. 30, 1993, 107 Stat. 1734; Pub. L. 103–337, div. A, title X, § 1070(b)(7), Oct. 5, 1994, 108 Stat. 2857; Pub. L. 105–85, div. A, title V, § 503(a), Nov. 18, 1997, 111 Stat. 1724; Pub. L. 107–107, div. A, title V, §§ 504, 505(c)(1)(A), Dec. 28, 2001, 115 Stat. 1085, 1087; Pub. L. 108–375, div. A, title V, § 501(a)(3)(B), Oct. 28, 2004, 118 Stat. 1873; Pub. L. 109–364, div. A, title V, § 506, Oct. 17, 2006, 120 Stat. 2179; Pub. L. 115–232, div. A, title V, § 505(a), Aug. 13, 2018, 132 Stat. 1742; Pub. L. 116–283, div. A, title IX, § 924(b)(3)(E), Jan. 1, 2021, 134 Stat. 3821.)

AMENDMENTS

2021—Subsec. (a)(1), (2). Pub. L. 116–283 substituted ''Marine Corps, or Space Force'' for ''or Marine Corps'' wherever appearing.

2018—Subsec. (d)(6). Pub. L. 115–232, § 505(a)(1), added par. (6).

Subsec. (e). Pub. L. 115–232, § 505(a)(2), added subsec. (e).

2006—Subsec. (a)(1)(B). Pub. L. 109–364 substituted ''October 1, 2008'' for ''October 1, 2005''.

2004—Subsec. (d)(5). Pub. L. 108–375 added par. (5).

2001—Subsec. (a). Pub. L. 107–107, § 504(b)(1), inserted heading.

Subsec. (a)(1)(B). Pub. L. 107–107, § 504(a), inserted '', except that the minimum period of service in effect under this subparagraph before October 1, 2005, shall be eighteen months'' before period at end.

Subsec. (a)(4). Pub. L. 107–107, § 504(c), substituted ''subparagraph (A)'' for ''clause (A)''.

Subsec. (b). Pub. L. 107–107, § 504(b)(2), inserted heading.

Subsec. (c). Pub. L. 107–107, § 504(b)(3), inserted heading.

Subsec. (d). Pub. L. 107–107, § 504(b)(4), inserted heading.

Subsec. (d)(4). Pub. L. 107–107, § 505(c)(1)(A), added par. (4).

1997—Subsec. (d). Pub. L. 105–85, § 503(a)(1), substituted ''grade any of the following officers:'' for ''grade—'' in introductory provisions.

Subsec. (d)(1). Pub. L. 105–85, § 503(a)(2), substituted ''An officer'' for ''an officer'' and a period for ''; or''.

Subsec. (d)(2). Pub. L. 105–85, § 503(a)(4), added par. (2). Former par. (2) redesignated (3).

Subsec. (d)(3). Pub. L. 105–85, § 503(a)(3), redesignated par. (2) as (3) and substituted ''An officer'' for ''an officer''.

1994—Pub. L. 103–337 made technical correction to directory language of Pub. L. 103–160, § 931(c)(1). See 1993 Amendment note below.

1993—Pub. L. 103–160, § 931(c)(1), as amended by Pub. L. 103–337, inserted '': time-in-grade and other requirements'' in section catchline.

Subsec. (e). Pub. L. 103–160, § 931(b), struck out subsec. (e) which specified certain requirements for appointment to grade of brigadier general or rear admiral (lower half). See section 619a of this title.

1991—Subsec. (c)(2). Pub. L. 102–190, § 504(d)(1), added subpar. (A), redesignated subpars. (C) and (D) as (B) and (C) respectively, and struck out former subpars. (A) and (B) which read as follows:

''(A) may, by regulation, prescribe procedures to limit the officers to be considered by a selection board—

''(i) from below the promotion zone; or

''(ii) in the case of a selection board to recommend officers for promotion to the grade of brigadier general or rear admiral (lower half),

to those officers who are determined to be exceptionally well qualified for promotion;

''(B) may, by regulation, prescribe criteria for determining which officers below the promotion zone or in the grades of colonel and, in the case of officers of the

Navy, captain are exceptionally well qualified for promotion for the purposes of clause (A);''.

Subsec. (c)(3). Pub. L. 102–190, § 504(d)(2), added par. (3).

1988—Subsec. (e)(1). Pub. L. 100–456, § 515(a)(1)(A), substituted ''January 1, 1994'' for ''January 1, 1992'' in second sentence.

Subsec. (e)(2)(D), (E). Pub. L. 100–456, § 515(b)(1), added subpars. (D) and (E) and struck out former subpar. (D) which read as follows: ''until January 1, 1992, in the case of an officer who served before October 1, 1986, in an assignment (other than a joint duty assignment) that involved significant experience in joint matters (as determined by the Secretary).''

Subsec. (e)(3)(C). Pub. L. 100–456, § 515(b)(2), substituted ''paragraph (2) (other than under subparagraph (A) of that paragraph)'' for ''paragraph (2)(B), (2)(C), or (2)(D)''.

Subsec. (e)(5). Pub. L. 100–456, § 515(a)(1)(B), added par. (5).

1987—Subsec. (e)(1). Pub. L. 100–180, § 1305(a), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''An officer may not be selected for promotion to the grade of brigadier general or rear admiral (lower half) unless the officer has served in a joint duty assignment.''

Subsec. (e)(2)(D). Pub. L. 100–180, § 1314(b)(4), substituted ''October 1, 1986,'' for ''the date of the enactment of this subsection''.

1986—Subsec. (e). Pub. L. 99–433 added subsec. (e).

1985—Subsecs. (a)(2)(B), (c)(2)(A)(ii). Pub. L. 99–145 substituted ''rear admiral (lower half)'' for ''commodore''.

1984—Subsec. (b). Pub. L. 98–525, § 525(a), designated existing provisions as par. (1), substituted ''Except as provided in paragraph (2), an officer'' for ''An officer'', and added par. (2).

Subsec. (c)(2)(D). Pub. L. 98–525, § 525(b), added subpar. (D).

Subsec. (d)(2). Pub. L. 98–525, § 529(a), struck out ''Navy or'' before ''Marine Corps'' and struck out ''lieutenant commander or'' before ''major''.

1981—Subsec. (a)(2)(B). Pub. L. 97–86 substituted ''commodore'' for ''commodore admiral''.

Subsec. (c)(2)(A). Pub. L. 97–22, § 4(c)(1), struck out ''and'' after ''promotion;''.

Subsec. (c)(2)(A)(ii). Pub. L. 97–86 substituted ''commodore'' for ''commodore admiral''.

Subsec. (c)(2)(B). Pub. L. 97–22, § 4(c)(2), substituted ''for the purposes of clause (A); and'' for the period at end of cl. (B).

Subsec. (c)(2)(C). Pub. L. 97–22, § 4(c)(3), added cl. (C).

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–375 effective on the first day of the first month beginning more than 180 days after Oct. 28, 2004, see section 501(g) of Pub. L. 108–375, set out as a note under section 531 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–85, div. A, title V, § 503(d), Nov. 18, 1997, 111 Stat. 1725, provided that: ''The amendments made by this section [amending this section and section 14301 of this title] shall take effect on the date of the enactment of this Act [Nov. 18, 1997] and shall apply with respect to selection boards that are convened under section 611(a), 14101(a), or 14502 of title 10, United States Code, on or after that date.''

EFFECTIVE DATE OF 1994 AMENDMENT

Pub. L. 103–337, div. A, title X, § 1070(b), Oct. 5, 1994, 108 Stat. 2856, provided that the amendment made by that section is effective as of Nov. 30, 1993, and as if included in the National Defense Authorization Act for Fiscal Year 1994, Pub. L. 103–160, as enacted.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–190 applicable to selection boards convened under section 611(a) of this title after end of 60-day period beginning Dec. 5, 1991, see section 504(e) of Pub. L. 102–190, set out as a note under section 615 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–86 effective Sept. 15, 1981, see section 405(f) of Pub. L. 97–86, set out as a note under section 101 of this title.

EFFECTIVE DATE

Section effective Sept. 15, 1981, but the authority to prescribe regulations under this subchapter effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

TRANSITION PROVISIONS UNDER DEFENSE OFFICER PERSONNEL MANAGEMENT ACT

For provisions to prevent extinction or premature termination of rights, duties, penalties, or proceedings that existed or were begun prior to the effective date of Pub. L. 96–513 and otherwise to allow for an orderly transition to the system of officer personnel management put in place under Pub. L. 96–513, see section 601 et seq. of Pub. L. 96–513, set out as a note under section 611 of this title.

§ 619a. Eligibility for consideration for promotion: designation as joint qualified officer required before promotion to general or flag grade; exceptions

(a) GENERAL RULE.—An officer on the active-duty list of the Army, Navy, Air Force, Marine Corps, or Space Force may not be appointed to the grade of brigadier general or rear admiral (lower half) unless the officer has been designated as a joint qualified officer in accordance with section 661 of this title.

(b) EXCEPTIONS.—Subject to subsection (c), the Secretary of Defense may waive subsection (a) in the following circumstances:

(1) When necessary for the good of the service.

(2) In the case of an officer whose proposed selection for promotion is based primarily upon scientific and technical qualifications for which joint requirements do not exist.

(3) In the case of—

(A) a medical officer, dental officer, veterinary officer, medical service officer, nurse, or biomedical science officer;

(B) a chaplain; or

(C) a judge advocate.

(4) In the case of an officer selected by a promotion board for appointment to the grade of brigadier general or rear admiral (lower half) while serving in a joint duty assignment if the officer's total consecutive service in joint duty assignments is not less than two years and the officer has successfully completed a program of education described in subsections (b) and (c) of section 2155 of this title.

(5) In the case of an officer who served in a joint duty assignment that began before January 1, 1987, if the officer served in that assignment for a period of sufficient duration (which may not be less than 12 months) for the officer's service to have been considered a full tour of duty under the policies and regulations in effect on September 30, 1986.

(c) WAIVER TO BE INDIVIDUAL.—A waiver may be granted under subsection (b) only on a case-by-case basis in the case of an individual officer.

(d) SPECIAL RULE FOR GOOD-OF-THE-SERVICE WAIVER.—In the case of a waiver under subsection (b)(1), the Secretary shall provide that the first duty assignment as a general or flag officer of the officer for whom the waiver is granted shall be in a joint duty assignment.

(e) LIMITATION ON DELEGATION OF WAIVER AUTHORITY.—The authority of the Secretary of Defense to grant a waiver under subsection (b) (other than under paragraph (1) of that subsection) may be delegated only to the Deputy Secretary of Defense, an Under Secretary of Defense, or an Assistant Secretary of Defense.

(f) REGULATIONS.—The Secretary of Defense shall prescribe regulations to carry out this section. The regulations shall specifically identify for purposes of subsection (b)(2) those categories of officers for which selection for promotion to brigadier general or, in the case of the Navy, rear admiral (lower half) is based primarily upon scientific and technical qualifications for which joint requirements do not exist.

(g) LIMITATION FOR GENERAL AND FLAG OFFICERS PREVIOUSLY RECEIVING JOINT DUTY ASSIGNMENT WAIVER.—A general officer or flag officer who before January 1, 1999, received a waiver of subsection (a) under the authority of this subsection (as in effect before that date) may not be appointed to the grade of lieutenant general or vice admiral until the officer completes a full tour of duty in a joint duty assignment.

(Added Pub. L. 103–160, div. A, title IX, § 931(a), Nov. 30, 1993, 107 Stat. 1732; amended Pub. L. 104–106, div. A, title XV, § 1502(a)(1), Feb. 10, 1996, 110 Stat. 502; Pub. L. 106–65, div. A, title V, § 508, Oct. 5, 1999, 113 Stat. 591; Pub. L. 107–107, div. A, title V, § 525(a), (b), Dec. 28, 2001, 115 Stat. 1099; Pub. L. 108–375, div. A, title V, § 533, Oct. 28, 2004, 118 Stat. 1901; Pub. L. 110–417, [div. A], title V, § 521(a), (b)(1), Oct. 14, 2008, 122 Stat. 4444; Pub. L. 116–283, div. A, title IX, § 924(b)(3)(F), Jan. 1, 2021, 134 Stat. 3821.)

AMENDMENTS

2021—Subsec. (a). Pub. L. 116–283 substituted ''Marine Corps, or Space Force'' for ''or Marine Corps''.

2008—Pub. L. 110–417, § 521(b)(1), substituted ''Eligibility for consideration for promotion: designation as joint qualified officer required before promotion to general or flag grade; exceptions'' for ''Eligibility for consideration for promotion: joint duty assignment required before promotion to general or flag grade; exceptions'' in section catchline.

Subsec. (a). Pub. L. 110–417, § 521(a)(1), substituted ''unless the officer has been designated as a joint qualified officer'' for ''unless—

''(1) the officer has completed a full tour of duty in a joint duty assignment (as described in section 664(f) of this title); and

''(2) for appointments after September 30, 2008, the officer has been selected for the joint specialty''.

Subsec. (b). Pub. L. 110–417, § 521(a)(2)(A), substituted ''subsection (a)'' for ''paragraph (1) or paragraph (2) of subsection (a), or both paragraphs (1) and (2) of subsection (a),'' in introductory provisions.

Subsec. (b)(4). Pub. L. 110–417, § 521(a)(2)(B), substituted ''is not less than two years and the officer has successfully completed a program of education described in subsections (b) and (c) of section 2155 of this title'' for ''within that immediate organization is not less than two years''.

Subsec. (h). Pub. L. 110–417, § 521(a)(3), struck out heading and text of subsec. (h). Text read as follows: ''An officer of the Navy designated as a qualified nuclear propulsion officer who before January 1, 1997, is appointed to the grade of rear admiral (lower half) without regard to subsection (a) may not be appointed to the grade of rear admiral until the officer completes a full tour of duty in a joint duty assignment.''

2004—Subsec. (a)(2). Pub. L. 108–375, § 533(a), substituted ''September 30, 2008'' for ''September 30, 2007''.

Subsec. (b)(4). Pub. L. 108–375, § 533(b), substituted ''if the officer's'' for ''if—

''(A) at least 180 days of that joint duty assignment have been completed on the date of the convening of that selection board; and

''(B) the officer's''.

2001—Subsec. (a). Pub. L. 107–107, § 525(a), substituted ''unless—'' and pars. (1) and (2) for ''unless the officer has completed a full tour of duty in a joint duty assignment (as described in section 664(f) of this title).''

Subsec. (b). Pub. L. 107–107, § 525(b), in introductory provisions, substituted ''may waive paragraph (1) or paragraph (2) of subsection (a), or both paragraphs (1) and (2) of subsection (a), in the following circumstances:'' for ''may waive subsection (a) in the following circumstances:''.

1999—Subsec. (g). Pub. L. 106–65, § 508(a), amended heading and text of subsec. (g) generally. Prior to amendment, subsec. (g) authorized the Secretary until Jan. 1, 1999, to waive subsecs. (a) and (d) for certain officers and contained restrictions on appointments of those officers.

Subsec. (h). Pub. L. 106–65, § 508(b), substituted ''An officer of the Navy'' for ''(1) Until January 1, 1997, an officer of the Navy'' and ''who before January 1, 1997, is'' for ''may be'' and struck out ''. An officer so appointed'' before ''may not be appointed'' and par. (2) which read as follows: ''Not later than March 1 of each year from 1994 through 1997, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives a report on the implementation during the preceding calendar year of the transition plan developed by the Secretary pursuant to section 1305(b) of Public Law 100–180 (10 U.S.C. 619a note) with respect to service by qualified nuclear propulsion officers in joint duty assignments.''

1996—Subsec. (h)(2). Pub. L. 104–106 substituted ''Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives'' for ''Committees on Armed Services of the Senate and House of Representatives''.

PROPOSED LEGISLATIVE CHANGES

Pub. L. 107–107, div. A, title V, § 525(c), Dec. 28, 2001, 115 Stat. 1099, directed the Secretary of Defense to submit to Congress, not later than Dec. 1, 2002, a draft proposal for such legislative changes to this section as the Secretary considered were needed to implement the amendment made to this section by section 525(a), (b) of Pub. L. 107–107.

REPORT ON PLANS FOR COMPLIANCE

Pub. L. 103–160, div. A, title IX, § 931(d), Nov. 30, 1993, 107 Stat. 1734, directed the Secretary of Defense to certify to Congress, not later than Feb. 1, 1994, that the Army, Navy, Air Force, and Marine Corps had each developed and implemented a plan for officer personnel assignment and promotion policies so as to ensure compliance with the requirements of this section, and provided that each such plan should ensure that by Jan. 1, 1999, the service covered by the plan would have enough officers who had completed a full tour of duty in a joint duty assignment so as to permit the orderly promotion of officers to brigadier general or, in the case of the Navy, rear admiral (lower half).

PLAN FOR SERVICE BY QUALIFIED NUCLEAR PROPULSION OFFICERS IN JOINT DUTY ASSIGNMENTS BY JANUARY 1, 1997; IMPLEMENTATION; REPORT

Pub. L. 103–160, div. A, title IX, § 931(f)(2), Nov. 30, 1993, 107 Stat. 1734, as amended by Pub. L. 103–337, div.

A, title X, § 1070(b)(8)(A), Oct. 5, 1994, 108 Stat. 2857, directed the Secretary of Defense to revise the transition plan developed pursuant to Pub. L. 100–180, § 1305(b), formerly set out below, and to report on the revisions.

Pub. L. 100–456, div. A, title V, § 515(a)(3), Sept. 29, 1988, 102 Stat. 1970, directed the Secretary of Defense to revise the transition plan developed pursuant to Pub. L. 100–180, § 1305(b), formerly set out below, and to report on the revisions.

Pub. L. 100–180, div. A, title XIII, § 1305(b)–(d), Dec. 4, 1987, 101 Stat. 1173, 1174, as amended by Pub. L. 100–456, div. A, title V, § 515(a)(2), Sept. 29, 1988, 102 Stat. 1970; Pub. L. 103–160, div. A, title IX, § 931(f)(1), (3), Nov. 30, 1993, 107 Stat. 1734; Pub. L. 103–337, div. A, title X, § 1070(b)(8), Oct. 5, 1994, 108 Stat. 2857, directed the Secretary of Defense to develop and carry out a transition plan, to be implemented no later than six months after Dec. 4, 1987, for ensuring that during the period before Jan. 1, 1997, the maximum practicable number of officers of the Navy who were qualified nuclear propulsion officers had served in joint duty assignments and that by Jan. 1, 1997, the maximum practicable number of qualified nuclear propulsion officers in the grade of captain had qualified for appointment to the grade of rear admiral (lower half) by completing a full tour of duty in a joint duty assignment, and directed the Secretary to submit to committees of Congress on the date on which the plan was implemented a copy of the plan and a report explaining how the plan had fulfilled objectives.

§ 620. Active-duty lists

(a) The Secretary of the military department concerned shall maintain a single list of all officers (other than officers described in section 641 of this title) who are on active duty for each armed force under his jurisdiction (other than the Coast Guard when it is operating as a service in the Navy).

(b) Officers shall be carried on the active-duty list of the armed force of which they are members in the order of seniority of the grade in which they are serving on active duty. Officers serving in the same grade shall be carried in the order of their rank in that grade.

(c) An officer whose position on the active-duty list results from service under a temporary appointment or in a grade held by reason of assignment to a position has, when that appointment or assignment ends, the grade and position on the active-duty list that he would have held if he had not received that appointment or assignment.

(d) Under regulations prescribed by the Secretary of the military department concerned, a reserve officer who is ordered to active duty (whether voluntarily or involuntarily) during a war or national emergency and who would otherwise be placed on the active-duty list may be excluded from that list as determined by the Secretary concerned. Exclusion of an officer from the active-duty list as the result of action by the Secretary concerned under the preceding sentence shall expire not later than 24 months after the date on which the officer enters active duty under an order to active duty covered by that sentence.

(Added Pub. L. 96–513, title I, § 105, Dec. 12, 1980, 94 Stat. 2855; amended Pub. L. 103–337, div. A, title XVI, § 1624, Oct. 5, 1994, 108 Stat. 2961; Pub. L. 104–106, div. A, title XV, § 1501(a)(1), Feb. 10, 1996, 110 Stat. 495.)

AMENDMENTS

1996—Subsec. (d). Pub. L. 104–106 made technical amendment to Pub. L. 103–337, § 1624. See 1994 Amendment note below.

1994—Subsec. (d). Pub. L. 103–337, § 1624, as amended by Pub. L. 104–106, added subsec. (d).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–106 effective as if included in the Reserve Officer Personnel Management Act, title XVI of Pub. L. 103–337, as enacted on Oct. 5, 1994, see section 1501(f)(3) of Pub. L. 104–106, set out as a note under section 113 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective Oct. 1, 1996, see section 1691(b)(1) of Pub. L. 103–337, set out as a note under section 10001 of this title.

EFFECTIVE DATE

Section effective Sept. 15, 1981, but the authority to prescribe regulations under this section effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

TRANSITION PROVISIONS UNDER DEFENSE OFFICER PERSONNEL MANAGEMENT ACT

Regulations prescribed under this section applicable to establishment of initial active-duty lists, see section 621(a) of Pub. L. 96–513, set out as a note under section 611 of this title.

§ 621. Competitive categories for promotion

Under regulations prescribed by the Secretary of Defense, the Secretary of each military department shall establish competitive categories for promotion. Each officer whose name appears on an active-duty list shall be carried in a competitive category of officers. Officers in the same competitive category shall compete among themselves for promotion.

(Added Pub. L. 96–513, title I, § 105, Dec. 12, 1980, 94 Stat. 2856.)

EFFECTIVE DATE

Section effective Sept. 15, 1981, but the authority to prescribe regulations under this section effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

§ 622. Numbers to be recommended for promotion

Before convening a selection board under section 611(a) of this title for any grade and competitive category, the Secretary of the military department concerned, under regulations prescribed by the Secretary of Defense, shall determine (1) the number of positions needed to accomplish mission objectives which require officers of such competitive category in the grade to which the board will recommend officers for

promotion, (2) the estimated number of officers needed to fill vacancies in such positions during the period in which it is anticipated that officers selected for promotion will be promoted, and (3) the number of officers authorized by the Secretary of the military department concerned to serve on active duty in the grade and competitive category under consideration. Based on such determinations, the Secretary of the military department concerned shall determine the maximum number of officers in such competitive category which the selection board may recommend for promotion.

(Added Pub. L. 96–513, title I, § 105, Dec. 12, 1980, 94 Stat. 2856.)

EFFECTIVE DATE

Section effective Sept. 15, 1981, but the authority to prescribe regulations under this section effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

§ 623. Establishment of promotion zones

(a) Before convening a selection board under section 611(a) of this title to consider officers for promotion to any grade above first lieutenant or lieutenant (junior grade), the Secretary of the military department concerned shall establish a promotion zone for officers serving in each grade and competitive category to be considered by the board.

(b) The Secretary concerned shall determine the number of officers in the promotion zone for officers serving in any grade and competitive category from among officers who are eligible for promotion in that grade and competitive category. Such determination shall be made on the basis of an estimate of—

(1) the number of officers needed in that competitive category in the next higher grade in each of the next five years;

(2) the number of officers to be serving in that competitive category in the next higher grade in each of the next five years;

(3) in the case of a promotion zone for officers to be promoted to a grade to which section 523 of this title is applicable, the number of officers authorized for such grade under such section to be on active duty on the last day of each of the next five fiscal years; and

(4) the number of officers that should be placed in that promotion zone in each of the next five years to provide to officers in those years relatively similar opportunity for promotion.

(Added Pub. L. 96–513, title I, § 105, Dec. 12, 1980, 94 Stat. 2856.)

EFFECTIVE DATE

Section effective Sept. 15, 1981, but the authority to prescribe regulations under this section effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

§ 624. Promotions: how made

(a)(1) When the report of a selection board convened under section 611(a) of this title is approved by the President, the Secretary of the military department concerned shall place the names of all officers approved for promotion within a competitive category on a single list for that competitive category, to be known as a promotion list, in the order of the seniority of such officers on the active-duty list or based on particular merit, as determined by the promotion board. A promotion list is considered to be established under this section as of the date of the approval of the report of the selection board under the preceding sentence.

(2) Except as provided in subsection (d), officers on a promotion list for a competitive category shall be promoted to the next higher grade when additional officers in that grade and competitive category are needed. Promotions shall be made in the order in which the names of officers appear on the promotion list and after officers previously selected for promotion in that competitive category have been promoted. Officers to be promoted to the grade of first lieutenant or lieutenant (junior grade) shall be promoted in accordance with regulations prescribed by the Secretary concerned.

(3)(A) Except as provided in subsection (d), officers on the active-duty list in the grade of first lieutenant or, in the case of the Navy, lieutenant (junior grade) who are on an approved all-fully-qualified-officers list shall be promoted to the next higher grade in accordance with regulations prescribed by the Secretary concerned.

(B) An all-fully-qualified-officers list shall be considered to be approved for purposes of subparagraph (A) when the list is approved by the President. When so approved, such a list shall be treated in the same manner as a promotion list under this chapter.

(C) The Secretary of a military department may make a recommendation to the President for approval of an all-fully-qualified-officers list only when the Secretary determines that all officers on the list are needed in the next higher grade to accomplish mission objectives.

(D) For purposes of this paragraph, an all-fully-qualified-officers list is a list of all officers on the active-duty list in a grade who the Secretary of the military department concerned determines—

(i) are fully qualified for promotion to the next higher grade; and

(ii) would be eligible for consideration for promotion to the next higher grade by a selection board convened under section 611(a) of this title upon the convening of such a board.

(E) If the Secretary of the military department concerned determines that one or more officers or former officers were not placed on an all-fully-qualified-list under this paragraph because of administrative error, the Secretary may prepare a supplemental all-fully-qualified-officers list containing the names of any such officers for approval in accordance with this paragraph.

(b)(1) A regular officer who is promoted under this section is appointed in the regular grade to which promoted and a reserve officer who is promoted under this section is appointed in the reserve grade to which promoted.

(2) The date of rank of an officer appointed to a higher grade under this section is determined under section 741(d) of this title.

(c) Appointments under this section shall be made by the President, by and with the advice

and consent of the Senate, except that appointments under this section in the grade of first lieutenant or captain, in the case of officers of the Army, Air Force, Marine Corps, or Space Force, or lieutenant (junior grade) or lieutenant, in the case of officers of the Navy, shall be made by the President alone.

(d)(1) Under regulations prescribed by the Secretary of Defense, the appointment of an officer under this section may be delayed if—

(A) sworn charges against the officer have been received by an officer exercising general court-martial jurisdiction over the officer and such charges have not been disposed of;

(B) an investigation is being conducted to determine whether disciplinary action of any kind should be brought against the officer;

(C) a board of officers has been convened under chapter 60 of this title to review the record of the officer;

(D) a criminal proceeding in a Federal or State court is pending against the officer;

(E) substantiated adverse information about the officer that is material to the decision to appoint the officer is under review by the Secretary of Defense or the Secretary concerned; or

(F) the Secretary of the military department concerned determines that credible information of an adverse nature, including a substantiated adverse finding or conclusion described in section 615(a)(3)(A) of this title, with respect to the officer will result in the convening of a special selection review board under section 628a of this title to review the officer and recommend whether the recommendation for promotion of the officer should be sustained.

If no disciplinary action is taken against the officer, if the charges against the officer are withdrawn or dismissed, if the officer is not ordered removed from active duty by the Secretary concerned under chapter 60 of this title, if the officer is acquitted of the charges brought against him, or if, after a review of substantiated adverse information about the officer regarding the requirement for exemplary conduct set forth in section 7233, 8167, or 9233 of this title, as applicable, the officer is determined to be among the officers best qualified for promotion, as the case may be, then unless action to delay an appointment has also been taken under paragraph (2) the officer shall be retained on the promotion list (including an approved all-fully-qualified-officers list, if applicable) and shall, upon promotion to the next higher grade, have the same date of rank, the same effective date for the pay and allowances of the grade to which promoted, and the same position on the active-duty list as he would have had if no delay had intervened, unless the Secretary concerned determines that the officer was unqualified for promotion for any part of the delay. If the Secretary makes such a determination, the Secretary may adjust such date of rank, effective date of pay and allowances, and position on the active-duty list as the Secretary considers appropriate under the circumstances.

(2) Under regulations prescribed by the Secretary of Defense, the appointment of an officer under this section may also be delayed in any case in which there is cause to believe that the officer has not met the requirement for exemplary conduct set forth in section 7233, 8167, or 9233 of this title, as applicable, or is mentally, physically, morally, or professionally unqualified to perform the duties of the grade for which he was selected for promotion. If it is later determined by a civilian official of the Department of Defense (not below the level of Secretary of a military department) that the officer is qualified for promotion to such grade and, after a review of adverse information regarding the requirement for exemplary conduct set forth in section 7233, 8167, or 9233 of this title, as applicable, the officer is determined to be among the officers best qualified for promotion to such grade, the officer shall be retained on the promotion list (including an approved all-fully-qualified-officers list, if applicable) and shall, upon such promotion, have the same date of rank, the same effective date for pay and allowances in the higher grade to which appointed, and the same position on the active-duty list as he would have had if no delay had intervened, unless the Secretary concerned determines that the officer was unqualified for promotion for any part of the delay. If the Secretary makes such a determination, the Secretary may adjust such date of rank, effective date of pay and allowances, and position on the active-duty list as the Secretary considers appropriate under the circumstances.

(3) In the case of an officer whose promotion is delayed pursuant to paragraph (1)(F) and whose recommendation for promotion is sustained, authorities for the promotion of the officer are specified in section 628a(f) of this title.

(4)(A) Except as provided in subparagraph (B), the appointment of an officer may not be delayed under this subsection unless the officer has been given written notice of the grounds for the delay, unless it is impracticable to give such written notice before the effective date of the appointment, in which case such written notice shall be given as soon as practicable. An officer whose promotion has been delayed under this subsection shall be afforded an opportunity to make a written statement to the Secretary concerned in response to the action taken. Any such statement shall be given careful consideration by the Secretary.

(B) In the case of an officer whose promotion is delayed pursuant to paragraph (1)(F), requirements applicable to notice and opportunity for response to such delay are specified in section 628a(c)(3) of this title.

(5) An appointment of an officer may not be delayed under this subsection for more than six months after the date on which the officer would otherwise have been appointed unless the Secretary concerned specifies a further period of delay. An officer's appointment may not be delayed more than 90 days after final action has been taken in any criminal case against such officer in a Federal or State court, more than 90 days after final action has been taken in any court-martial case against such officer, or more than 18 months after the date on which such officer would otherwise have been appointed, whichever is later.

(Added Pub. L. 96–513, title I, § 105, Dec. 12, 1980, 94 Stat. 2857; amended Pub. L. 97–22, § 4(d), July

10, 1981, 95 Stat. 126; Pub. L. 97–295, § 1(8), Oct. 12, 1982, 96 Stat. 1289; Pub. L. 98–525, title V, § 526, Oct. 19, 1984, 98 Stat. 2525; Pub. L. 107–107, div. A, title V, § 505(a)(1), (c)(2)(A), (d)(1), Dec. 28, 2001, 115 Stat. 1085, 1087, 1088; Pub. L. 107–314, div. A, title X, § 1062(a)(2), Dec. 2, 2002, 116 Stat. 2649; Pub. L. 109–364, div. A, title V, § 511(a), (d)(1), Oct. 17, 2006, 120 Stat. 2181, 2183; Pub. L. 110–181, div. A, title X, § 1063(c)(3), Jan. 28, 2008, 122 Stat. 322; Pub. L. 114–92, div. A, title V, § 502(a), Nov. 25, 2015, 129 Stat. 806; Pub. L. 115–232, div. A, title V, § 504(c), title VIII, § 809(a), Aug. 13, 2018, 132 Stat. 1742, 1840; Pub. L. 116–283, div. A, title V, § 505(a)(3), title IX, § 924(b)(3)(G), Jan. 1, 2021, 134 Stat. 3568, 3821.)

AMENDMENTS

2021—Subsec. (c). Pub. L. 116–283, § 924(b)(3)(G), substituted ''Marine Corps, or Space Force'' for ''or Marine Corps''.

Subsec. (d)(1)(F). Pub. L. 116–283, § 505(a)(3)(A), added subpar. (F).

Subsec. (d)(3). Pub. L. 116–283, § 505(a)(3)(C), added par. (3). Former par. (3) redesignated (4).

Subsec. (d)(4). Pub. L. 116–283, § 505(a)(3)(B), (D), redesignated par. (3) as (4), designated existing provisions as subpar. (A), substituted ''Except as provided in subparagraph (B), the appointment'' for ''The appointment'', and added subpar. (B). Former par. (4) redesignated (5).

Subsec. (d)(5). Pub. L. 116–283, § 505(a)(3)(B), redesignated par. (4) as (5).

2018—Subsec. (a)(1). Pub. L. 115–232, § 504(c), inserted ''or based on particular merit, as determined by the promotion board'' after ''active-duty list''.

Subsec. (d)(1), (2). Pub. L. 115–232, § 809(a), substituted ''section 7233, 8167, or 9233'' for ''section 3583, 5947, or 8583'' in concluding provisions of par. (1) and in two places in par. (2).

2015—Subsec. (a)(3)(E). Pub. L. 114–92 added subpar. (E).

2008—Subsec. (d)(1). Pub. L. 110–181 amended directory language of Pub. L. 109–364, § 511(a)(2)(D)(i). See 2006 Amendment note below.

2006—Subsec. (a)(1). Pub. L. 109–364, § 511(d)(1), inserted at end ''A promotion list is considered to be established under this section as of the date of the approval of the report of the selection board under the preceding sentence.''

Subsec. (d)(1). Pub. L. 109–364, § 511(a)(2)(D)(ii), inserted ''or if, after a review of substantiated adverse information about the officer regarding the requirement for exemplary conduct set forth in section 3583, 5947, or 8583 of this title, as applicable, the officer is determined to be among the officers best qualified for promotion,'' after ''brought against him,'' in concluding provisions.

Pub. L. 109–364, § 511(a)(2)(D)(i), as amended by Pub. L. 110–181, struck out ''or'' after ''chapter 60 of this title,''.

Pub. L. 109–364, § 511(a)(1), substituted ''prescribed by the Secretary of Defense'' for ''prescribed by the Secretary concerned'' in introductory provisions.

Subsec. (d)(1)(E). Pub. L. 109–364, § 511(a)(2)(A)–(C), added subpar. (E).

Subsec. (d)(2). Pub. L. 109–364, § 511(a)(3), in first sentence inserted ''has not met the requirement for exemplary conduct set forth in section 3583, 5947, or 8583 of this title, as applicable, or'' before ''is mentally, physically,'' and in second sentence substituted ''If it is later determined by a civilian official of the Department of Defense (not below the level of Secretary of a military department) that the officer is qualified for promotion to such grade and, after a review of adverse information regarding the requirement for exemplary conduct set forth in section 3583, 5947, or 8583 of this title, as applicable, the officer is determined to be among the officers best qualified for promotion to such grade'' for ''If the Secretary concerned later determines that the officer is qualified for promotion to such grade''.

Pub. L. 109–364, § 511(a)(1), substituted ''prescribed by the Secretary of Defense'' for ''prescribed by the Secretary concerned''.

2002—Subsec. (d)(1). Pub. L. 107–314 substituted ''paragraph (2)'' for ''subsection (d)(2)'' in concluding provisions.

2001—Subsec. (a)(3). Pub. L. 107–107, § 505(a)(1), added par. (3).

Subsec. (c). Pub. L. 107–107, § 505(d)(1), inserted '', in the case of officers of the Army, Air Force, or Marine Corps,'' after ''captain'' and '', in the case of officers of the Navy,'' after ''(junior grade) or lieutenant''.

Subsec. (d)(1). Pub. L. 107–107, § 505(c)(2)(A)(i), inserted ''(including an approved all-fully-qualified-officers list, if applicable)'' after ''retained on the promotion list'' in concluding provisions.

Subsec. (d)(2). Pub. L. 107–107, § 505(c)(2)(A)(ii), inserted ''shall be retained on the promotion list (including an approved all-fully-qualified-officers list, if applicable) and'' after ''to such grade, the officer'' in second sentence.

1984—Subsec. (d)(1), (2). Pub. L. 98–525 inserted provision for a determination by the Secretary concerned that the officer was unqualified for promotion for any part of the delay in the officer's promotion, with the inserted provision that if the Secretary made such a determination, the Secretary could adjust such date of rank, effective date of pay and allowances, and position on the active-duty list as the Secretary considered appropriate under the circumstances.

1982—Subsec. (d)(4). Pub. L. 97–295 substituted ''this subsection'' for ''the subsection''.

1981—Subsec. (a)(1). Pub. L. 97–22, § 4(d)(1)(A), struck out ''or in the case of officers selected for promotion to the grade of first lieutenant or lieutenant (junior grade), when a list of officers selected for promotion is approved by the President,'' after ''by the President,''.

Subsec. (a)(2). Pub. L. 97–22, § 4(d)(1)(B), inserted provision that officers to be promoted to grade of first lieutenant or lieutenant (junior grade) shall be promoted in accordance with regulations prescribed by the Secretary concerned.

Subsec. (c). Pub. L. 97–22, § 4(d)(2), substituted ''under this section in the grade of first lieutenant or captain or lieutenant (junior grade) or lieutenant'' for ''in the grade of first lieutenant or lieutenant (junior grade) under this section''.

Subsec. (d)(1). Pub. L. 97–22, § 4(d)(3)(A), (B), substituted ''Under regulations prescribed by the Secretary concerned, the appointment of an officer under this section may be delayed'' for ''The Secretary concerned may delay the appointment of an officer under this section'' in provisions preceding subpar. (A) and, in provisions following subpar. (D), inserted ''then unless action to delay an appointment has also been taken under subsection (d)(2)'' after ''as the case may be,''.

Subsec. (d)(2). Pub. L. 97–22, § 4(d)(3)(C), substituted ''Under regulations prescribed by the Secretary concerned, the appointment of an officer under this section may also be delayed in any case in which'' for ''The Secretary concerned may also delay the appointment of an officer to the next higher grade under this section in any case in which the Secretary finds that''.

Subsec. (d)(3). Pub. L. 97–22, § 4(d)(3)(D), (E), inserted '', unless it is impracticable to give such written notice before the effective date of the appointment, in which case such written notice shall be given as soon as practicable'' after ''grounds for the delay'' and struck out ''by the Secretary'' after ''the action taken''.

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by section 809(a) of Pub. L. 115–232 effective Feb. 1, 2019, with provision for the coordination of amendments and special rule for certain redesignations, see section 800 of Pub. L. 115–232, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–181, div. A, title X, § 1063(c), Jan. 28, 2008, 122 Stat. 322, provided that the amendment made by

section 1063(c) is effective Oct. 17, 2006, and as if included in the John Warner National Defense Authorization Act for Fiscal Year 2007, Pub. L. 109–364, as enacted.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–364, div. A, title V, § 511(e), Oct. 17, 2006, 120 Stat. 2184, provided that: ''The amendments made by this section [amending this section and sections 14308 and 14311 of this title] shall take effect on the date of the enactment of this Act [Oct. 17, 2006] and shall apply with respect to officers on promotion lists established on or after the date of the enactment of this Act.''

EFFECTIVE DATE

Section effective Sept. 15, 1981, but the authority to prescribe regulations under this section effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

DEADLINE FOR UNIFORM REGULATIONS ON DELAY OF PROMOTIONS

Pub. L. 109–364, div. A, title V, § 511(c), Oct. 17, 2006, 120 Stat. 2183, provided that:

''(1) DEADLINE.—The Secretary of Defense shall prescribe the regulations required by section 624(d) of title 10, United States Code (as amended by subsection (a)(1) of this section), and the regulations required by section 14311 of such title (as amended by subsection (b)(1) of this section) not later than March 1, 2008.

''(2) SAVINGS CLAUSE FOR EXISTING REGULATIONS.—Until the Secretary of Defense prescribes regulations pursuant to paragraph (1), regulations prescribed by the Secretaries of the military departments under the sections referred to in paragraph (1) shall remain in effect.''

DELEGATION OF FUNCTIONS

Functions of President under subsec. (c) to appoint officers in grades of first lieutenant and captain in Army, Air Force, and Marine Corps or in grades of lieutenant (junior grade) and lieutenant in Navy delegated to Secretary of Defense to perform, without approval, ratification, or other action by President, and with authority for Secretary to redelegate, see Ex. Ord. No. 12396, §§ 1(c), 3, Dec. 9, 1982, 47 F.R. 55897, 55898, set out as a note under section 301 of Title 3, The President.

§ 625. Authority to vacate promotions to grades of brigadier general and rear admiral (lower half)

(a) The President may vacate the promotion to the grade of brigadier general or rear admiral (lower half) of an officer who has served less than 18 months in that grade after promotion to that grade under this chapter.

(b) An officer of the Army, Air Force, Marine Corps, or Space Force whose promotion is vacated under this section holds the regular grade of colonel, if he is a regular officer, or the reserve grade of colonel, if he is a reserve officer. An officer of the Navy whose promotion is vacated under this section holds the regular grade of captain, if he is a regular officer, or the reserve grade of captain, if he is a reserve officer.

(c) The position on the active-duty list of an officer whose promotion is vacated under this section is the position he would have held had he not been promoted to the grade of brigadier general or rear admiral (lower half).

(Added Pub. L. 96–513, title I, § 105, Dec. 12, 1980, 94 Stat. 2858; amended Pub. L. 97–86, title IV, § 405(b)(1), (4)(A), Dec. 1, 1981, 95 Stat. 1105; Pub. L. 99–145, title V, § 514(b)(1), (4)(A), Nov. 8, 1985, 99 Stat. 628; Pub. L. 116–283, div. A, title IX, § 924(b)(3)(H), Jan. 1, 2021, 134 Stat. 3821.)

AMENDMENTS

2021—Subsec. (b). Pub. L. 116–283 substituted ''Marine Corps, or Space Force'' for ''or Marine Corps''.

1985—Pub. L. 99–145 substituted ''rear admiral (lower half)'' for ''commodore'' in section catchline and subsecs. (a) and (c).

1981—Pub. L. 97–86 substituted ''commodore'' for ''commodore admiral'' in section catchline and subsecs. (a) and (c).

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–86 effective Sept. 15, 1981, see section 405(f) of Pub. L. 97–86, set out as a note under section 101 of this title.

EFFECTIVE DATE

Section effective Sept. 15, 1981, but the authority to prescribe regulations under this section effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

§ 626. Acceptance of promotions; oath of office

(a) An officer who is appointed to a higher grade under section 624 of this title is considered to have accepted such appointment on the date on which the appointment is made unless he expressly declines the appointment.

(b) An officer who has served continuously since he subscribed to the oath of office prescribed in section 3331 of title 5 is not required to take a new oath upon appointment to a higher grade under section 624 of this title.

(Added Pub. L. 96–513, title I, § 105, Dec. 12, 1980, 94 Stat. 2858.)

EFFECTIVE DATE

Section effective Sept. 15, 1981, but the authority to prescribe regulations under this section effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

SUBCHAPTER III—FAILURE OF SELECTION FOR PROMOTION AND RETIREMENT FOR YEARS OF SERVICE

Sec.

627. Failure of selection for promotion.
628. Special selection boards.
628a. Special selection review boards.
629. Removal from a list of officers recommended for promotion.
630. Discharge of commissioned officers with less than six years of active commissioned service or found not qualified for promotion for first lieutenant or lieutenant (junior grade).
631. Effect of failure of selection for promotion: first lieutenants and lieutenants (junior grade).
632. Effect of failure of selection for promotion: captains and majors of the Army, Air Force, and Marine Corps and lieutenants and lieutenant commanders of the Navy.
633. Retirement for years of service: regular lieutenant colonels and commanders.
634. Retirement for years of service: regular colonels and Navy captains.
635. Retirement for years of service: regular brigadier generals and rear admirals (lower half).
636. Retirement for years of service: regular officers in grades above brigadier general and rear admiral (lower half).

Sec.

AMENDMENTS

2021—Pub. L. 116–283, div. A, title V, § 505(a)(2), Jan. 1, 2021, 134 Stat. 3568, added item 628a.

2008—Pub. L. 110–181, div. A, title V, § 503(a)(3), Jan. 28, 2008, 122 Stat. 95, substituted ''six years'' for ''five years'' in item 630.

2001—Pub. L. 107–107, div. A, title V, § 505(d)(4), Dec. 28, 2001, 115 Stat. 1088, struck out ''regular'' before ''commissioned officers'' in item 630, struck out ''regular'' before ''first lieutenants'' in item 631, and struck out ''regular'' before ''captains and majors'' and before ''lieutenants and lieutenant commanders'' in item 632.

1997—Pub. L. 105–85, div. A, title V, § 506(c), Nov. 18, 1997, 111 Stat. 1726, substituted ''regular officers in grades above brigadier general and rear admiral (lower half)'' for ''regular major generals and rear admirals'' in item 636.

1985—Pub. L. 99–145, title V, § 514(b)(5)(B), Nov. 8, 1985, 99 Stat. 628, substituted ''rear admirals (lower half)'' for ''commodores'' in item 635.

1981—Pub. L. 97–86, title IV, § 405(b)(5)(B), Dec. 1, 1981, 95 Stat. 1106, substituted ''commodores'' for ''commodore admirals'' in item 635.

§ 627. Failure of selection for promotion

An officer in a grade below the grade of colonel or, in the case of an officer of the Navy, captain who is in or above the promotion zone established for his grade and competitive category under section 623 of this title and is considered but not selected for promotion by a selection board convened under section 611(a) of this title shall be considered to have failed of selection for promotion.

(Added Pub. L. 96–513, title I, § 105, Dec. 12, 1980, 94 Stat. 2859.)

EFFECTIVE DATE

Section effective Sept. 15, 1981, but the authority to prescribe regulations under this subchapter effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

TRANSITION PROVISIONS UNDER DEFENSE OFFICER PERSONNEL MANAGEMENT ACT

For provisions to prevent extinction or premature termination of rights, duties, penalties, or proceedings that existed or were begun prior to the effective date of Pub. L. 96–513 and otherwise to allow for an orderly transition to the system of officer personnel management put in place under Pub. L. 96–513, see section 601 et seq. of Pub. L. 96–513, set out as a note under section 611 of this title.

§ 628. Special selection boards

(a) PERSONS NOT CONSIDERED BY PROMOTION BOARDS DUE TO ADMINISTRATIVE ERROR.—(1) If the Secretary of the military department concerned determines that because of administrative error a person who should have been considered for selection for promotion from in or above the promotion zone by a promotion board was not so considered, the Secretary shall convene a special selection board under this subsection to determine whether that person (whether or not then on active duty) should be recommended for promotion.

(2) A special selection board convened under paragraph (1) shall consider the record of the person whose name was referred to it for consideration as that record would have appeared to the board that should have considered him. That record shall be compared with a sampling of the records of those officers of the same competitive category who were recommended for promotion, and those officers who were not recommended for promotion, by the board that should have considered him.

(3) If a special selection board convened under paragraph (1) does not recommend for promotion a person whose name was referred to it for consideration for selection for appointment to a grade other than a general officer or flag officer grade, the person shall be considered to have failed of selection for promotion.

(b) PERSONS CONSIDERED BY PROMOTION BOARDS IN UNFAIR MANNER.—(1) If the Secretary of the military department concerned determines, in the case of a person who was considered for selection for promotion by a promotion board but was not selected, that there was material unfairness with respect to that person, the Secretary may convene a special selection board under this subsection to determine whether that person (whether or not then on active duty) should be recommended for promotion. In order to determine that there was material unfairness, the Secretary must determine that—

(A) the action of the promotion board that considered the person was contrary to law in a matter material to the decision of the board or involved material error of fact or material administrative error; or

(B) the board did not have before it for its consideration material information.

(2) A special selection board convened under paragraph (1) shall consider the record of the person whose name was referred to it for consideration as that record, if corrected, would have appeared to the board that considered him. That record shall be compared with the records of a sampling of those officers of the same competitive category who were recommended for promotion, and those officers who were not recommended for promotion, by the board that considered him.

(3) If a special selection board convened under paragraph (1) does not recommend for promotion a person whose name was referred to it for consideration, the person incurs no additional failure of selection for promotion.

(c) REPORTS OF BOARDS.—(1) Each special selection board convened under this section shall submit to the Secretary of the military department concerned a written report, signed by each member of the board, containing the name of each person it recommends for promotion and certifying that the board has carefully considered the record of each person whose name was referred to it.

(2) The provisions of sections 617(b) and 618 of this title apply to the report and proceedings of a special selection board convened under this section in the same manner as they apply to the report and proceedings of a selection board convened under section 611(a) of this title. However, in the case of a board convened under this section to consider a warrant officer or former warrant officer, the provisions of sections 576(d), 576(f), and 613a of this title (rather than the provisions of sections 617(b) and 618 of this title) apply to the report and proceedings of the board in the same manner as they apply to the report

and proceedings of a selection board convened under section 573 of this title.

(d) APPOINTMENT OF PERSONS SELECTED BY BOARDS.—(1) If the report of a special selection board convened under this section, as approved by the President, recommends for promotion to the next higher grade a person whose name was referred to it for consideration, that person shall, as soon as practicable, be appointed to that grade in accordance with subsections (b), (c), and (d) of section 624 of this title. However, in the case of a board convened under this section to consider a warrant officer or former warrant officer, if the report of that board, as approved by the Secretary concerned, recommends that warrant officer or former warrant officer for promotion to the next higher grade, that person shall, as soon as practicable, be appointed to the next higher grade in accordance with provisions of section 578(c) of this title (rather than subsections (b), (c), and (d) of section 624 of this title).

(2) A person who is appointed to the next higher grade as the result of the recommendation of a special selection board convened under this section shall, upon that appointment, have the same date of rank, the same effective date for the pay and allowances of that grade, and the same position on the active-duty list as he would have had if he had been recommended for promotion to that grade by the board which should have considered, or which did consider, him. In the case of a person who is not on the active-duty list when appointed to the next higher grade, placement of that person on the active-duty list pursuant to the preceding sentence shall be only for purposes of determination of eligibility of that person for consideration for promotion by any subsequent special selection board under this section.

(e) DECEASED PERSONS.—If a person whose name is being considered for referral to a special selection board under this section dies before the completion of proceedings under this section with respect to that person, this section shall be applied to that person posthumously.

(f) CONVENING OF BOARDS.—A board convened under this section—

(1) shall be convened under regulations prescribed by the Secretary of Defense;

(2) shall be composed in accordance with section 612 of this title or, in the case of board to consider a warrant officer or former warrant officer, in accordance with section 573 of this title and regulations prescribed by the Secretary of the military department concerned; and

(3) shall be subject to the provisions of section 613 of this title.

(g) JUDICIAL REVIEW.—(1)(A) A court of the United States may review a determination by the Secretary of a military department under subsection (a)(1) or (b)(1) not to convene a special selection board in the case of any person. In any such case, the court may set aside the Secretary's determination only if the court finds the determination to be—

(i) arbitrary or capricious;

(ii) not based on substantial evidence;

(iii) a result of material error of fact or material administrative error; or

(iv) otherwise contrary to law.

(B) If a court sets aside a determination by the Secretary of a military department not to convene a special selection board under this section, it shall remand the case to the Secretary concerned, who shall provide for consideration by such a board.

(2) A court of the United States may review the action of a special selection board convened under this section or an action of the Secretary of the military department concerned on the report of such a board. In any such case, a court may set aside the action only if the court finds that the action was—

(A) arbitrary or capricious;

(B) not based on substantial evidence;

(C) a result of material error of fact or material administrative error; or

(D) otherwise contrary to law.

(3)(A) If, six months after receiving a complete application for consideration by a special selection board under this section in any case, the Secretary concerned has not convened such a board and has not denied consideration by such a board in that case, the Secretary shall be deemed for the purposes of this subsection to have denied the consideration of the case by such a board.

(B) If, six months after the convening of a special selection board under this section in any case, the Secretary concerned has not taken final action on the report of the board, the Secretary shall be deemed for the purposes of this subsection to have denied relief in such case.

(C) Under regulations prescribed under subsection (j), the Secretary of a military department may waive the applicability of subparagraph (A) or (B) in a case if the Secretary determines that a longer period for consideration of the case is warranted. Such a waiver may be for an additional period of not more than six months. The Secretary concerned may not delegate authority to make a determination under this subparagraph.

(h) LIMITATIONS OF OTHER JURISDICTION.—No official or court of the United States may, with respect to a claim based to any extent on the failure of a person to be selected for promotion by a promotion board—

(1) consider the claim unless the person has first been referred by the Secretary concerned to a special selection board convened under this section and acted upon by that board and the report of the board has been approved by the President; or

(2) except as provided in subsection (g), grant any relief on the claim unless the person has been selected for promotion by a special selection board convened under this section to consider the person for recommendation for promotion and the report of the board has been approved by the President.

(i) EXISTING JURISDICTION.—Nothing in this section limits—

(1) the jurisdiction of any court of the United States under any provision of law to determine the validity of any law, regulation, or policy relating to selection boards; or

(2) the authority of the Secretary of a military department to correct a military record under section 1552 of this title.

(j) REGULATIONS.—(1) The Secretary of each military department shall prescribe regulations to carry out this section. Regulations under this subsection may not apply to subsection (g), other than to paragraph (3)(C) of that subsection.

(2) The Secretary may prescribe in the regulations under paragraph (1) the circumstances under which consideration by a special selection board may be provided for under this section, including the following:

(A) The circumstances under which consideration of a person's case by a special selection board is contingent upon application by or for that person.

(B) Any time limits applicable to the filing of an application for such consideration.

(3) Regulations prescribed by the Secretary of a military department under this subsection may not take effect until approved by the Secretary of Defense.

(k) PROMOTION BOARD DEFINED.—In this section, the term ''promotion board'' means a selection board convened by the Secretary of a military department under section 573(a) or 611(a) of this title.

(Added Pub. L. 96–513, title I, §105, Dec. 12, 1980, 94 Stat. 2859; amended Pub. L. 98–525, title V, §527(a), Oct. 19, 1984, 98 Stat. 2525; Pub. L. 102–190, div. A, title XI, §1131(4), Dec. 5, 1991, 105 Stat. 1506; Pub. L. 102–484, div. A, title X, §1052(10), Oct. 23, 1992, 106 Stat. 2499; Pub. L. 105–261, div. A, title V, §501(a)–(e), Oct. 17, 1998, 112 Stat. 2000–2002; Pub. L. 106–398, §1 [[div. A], title X, §1087(a)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–290; Pub. L. 107–107, div. A, title V, §§503(b), 505(c)(3)(A), Dec. 28, 2001, 115 Stat. 1083, 1088; Pub. L. 109–364, div. A, title V, §514(a), Oct. 17, 2006, 120 Stat. 2185; Pub. L. 111–383, div. A, title V, §503(b), Jan. 7, 2011, 124 Stat. 4208; Pub. L. 114–92, div. A, title V, §502(c)(1), Nov. 25, 2015, 129 Stat. 807.)

AMENDMENTS

2015—Subsec. (a)(1). Pub. L. 114–92 struck out ''or the name of a person that should have been placed on an all-fully-qualified-officers list under section 624(a)(3) of this title was not so placed,'' after ''not so considered,''.

2011—Subsec. (c)(2). Pub. L. 111–383 substituted ''sections 576(d), 576(f), and 613a'' for ''sections 576(d) and 576(f)''.

2006—Subsec. (a)(1). Pub. L. 109–364, §514(a)(1), inserted ''from in or above the promotion zone'' after ''for selection for promotion''.

Subsec. (b)(1)(A). Pub. L. 109–364, §514(a)(2), inserted ''in a matter material to the decision of the board'' after ''contrary to law''.

2001—Subsec. (a)(1). Pub. L. 107–107, §505(c)(3)(A), inserted ''or the name of a person that should have been placed on an all-fully-qualified-officers list under section 624(a)(3) of this title was not so placed,'' after ''not so considered,''.

Subsecs. (g) to (k). Pub. L. 107–107, §503(b), added subsecs. (g) to (j) and redesignated former subsec. (g) as (k).

2000—Subsec. (c)(2). Pub. L. 106–398 substituted ''sections'' for ''section'' after ''rather than the provisions of''.

1998—Subsec. (a). Pub. L. 105–261, §501(a)(1), inserted subsec. heading, added par. (1), and struck out former par. (1) which read as follows: ''In the case of an officer who is eligible for promotion who the Secretary of the military department concerned determines was not considered for selection for promotion by a selection board because of administrative error, the Secretary concerned, under regulations prescribed by the Secretary of Defense, shall convene a special selection board under this subsection (composed in accordance with section 612 of this title or, in the case of a warrant officer, composed in accordance with section 573 of this title and regulations prescribed by the Secretary of the military department concerned) to determine whether such officer should be recommended for promotion.''

Subsec. (a)(2). Pub. L. 105–261, §501(a)(2), substituted ''the person whose name was referred to it for consideration as that record'' for ''the officer as his record''.

Subsec. (a)(3). Pub. L. 105–261, §501(a)(3), substituted ''a person whose name was referred to it for consideration for selection for appointment to a grade other than a general officer or flag officer grade, the person'' for ''an officer in a grade below the grade of colonel or, in the case of an officer of the Navy, captain whose name was referred to it for consideration, the officer''.

Subsec. (b). Pub. L. 105–261, §501(b)(1), inserted subsec. heading, added par. (1), and struck out former par. (1) which read as follows: ''In the case of an officer who is eligible for promotion who was considered for selection for promotion by a selection board but was not selected, the Secretary of the military department concerned, under regulations prescribed by the Secretary of Defense, may convene a special selection board under this subsection (composed in accordance with section 612 of this title or, in the case of a warrant officer, composed in accordance with section 573 of this title and regulations prescribed by the Secretary of the military department concerned) to determine whether such officer should be recommended for promotion if the Secretary concerned determines that—

''(A) the action of the board which considered the officer was contrary to law or involved material error of fact or material administrative error; or

''(B) the board did not have before it for its consideration material information.''

Subsec. (b)(2). Pub. L. 105–261, §501(b)(2), substituted ''the person whose name was referred to it for consideration as that record'' for ''the officer as his record''.

Subsec. (b)(3). Pub. L. 105–261, §501(b)(3)(A), substituted ''a person'' for ''an officer'' and ''the person'' for ''the officer''.

Subsec. (c). Pub. L. 105–261, §501(c)(1)(A), inserted heading.

Subsec. (c)(1). Pub. L. 105–261, §501(c)(1)(B), substituted ''person'' for ''officer'' in two places.

Subsec. (c)(2). Pub. L. 105–261, §501(c)(1)(C), inserted at end ''However, in the case of a board convened under this section to consider a warrant officer or former warrant officer, the provisions of sections 576(d) and 576(f) of this title (rather than the provisions of section 617(b) and 618 of this title) apply to the report and proceedings of the board in the same manner as they apply to the report and proceedings of a selection board convened under section 573 of this title.''

Subsec. (d). Pub. L. 105–261, §501(c)(2)(A), inserted heading.

Subsec. (d)(1). Pub. L. 105–261, §501(c)(2)(B)–(E), substituted ''a person'' for ''an officer'', ''that person'' for ''such officer'', and ''that grade in'' for ''the next higher grade in'' and inserted at end ''However, in the case of a board convened under this section to consider a warrant officer or former warrant officer, if the report of that board, as approved by the Secretary concerned, recommends that warrant officer or former warrant officer for promotion to the next higher grade, that person shall, as soon as practicable, be appointed to the next higher grade in accordance with provisions of section 578(c) of this title (rather than subsections (b), (c), and (d) of section 624 of this title).''

Subsec. (d)(2). Pub. L. 105–261, §501(c)(3), substituted ''A person who is appointed'' for ''An officer who is promoted'' and ''that appointment'' for ''such promotion'' and inserted at end ''In the case of a person who is not on the active-duty list when appointed to the next

higher grade, placement of that person on the active-duty list pursuant to the preceding sentence shall be only for purposes of determination of eligibility of that person for consideration for promotion by any subsequent special selection board under this section.''

Subsec. (e). Pub. L. 105–261, § 501(d), amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: ''The provisions of section 613 of this title apply to members of special selection boards convened under this section.''

Subsecs. (f), (g). Pub. L. 105–261, § 501(e), added subsecs. (f) and (g).

1992—Subsec. (b)(1). Pub. L. 102–484 substituted ''section 573'' for ''section 558''.

1991—Subsec. (a)(1). Pub. L. 102–190 substituted ''section 573'' for ''section 558''.

1984—Subsecs. (a)(1), (b)(1). Pub. L. 98–525 substituted ''(composed in accordance with section 612 of this title or, in the case of a warrant officer, composed in accordance with section 558 of this title and regulations prescribed by the Secretary of the military department concerned)'' for ''(composed in accordance with section 612 of this title)''.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–364, div. A, title V, § 514(c), Oct. 17, 2006, 120 Stat. 2185, provided that: ''The amendments made by this section [amending this section and section 14502 of this title] shall take effect on March 1, 2007, and shall apply with respect to selection boards convened on or after that date.''

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–107, div. A, title V, § 503(c), Dec. 28, 2001, 115 Stat. 1084, provided that:

''(1) Except as provided in paragraph (2), the amendments made by this section [enacting section 1558 of this title and amending this section] shall apply with respect to any proceeding pending on or after the date of the enactment of this Act [Dec. 28, 2001] without regard to whether a challenge to an action of a selection board of any of the Armed Forces being considered in the proceeding was initiated before, on, or after that date.

''(2) The amendments made by this section shall not apply with respect to any action commenced in a court of the United States before the date of the enactment of this Act.''

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–190 effective Feb. 1, 1992, see section 1132 of Pub. L. 102–190, set out as a note under section 521 of this title.

EFFECTIVE DATE

Section effective Sept. 15, 1981, but the authority to prescribe regulations under this section effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

RATIFICATION OF CODIFIED PRACTICE

Pub. L. 105–261, div. A, title V, § 501(f), Oct. 17, 1998, 112 Stat. 2002, provided that the consideration by a special selection board convened under this section before Oct. 17, 1998, of a person who, at the time of consideration, had been a retired officer or former officer of the Armed Forces (including a deceased retired or former officer) was ratified.

DELEGATION OF FUNCTIONS

Functions of President under subsec. (d)(1) to approve, modify, or disapprove report of a selection board delegated to Secretary of Defense to perform, without approval, ratification, or other action by President, and with authority for Secretary to redelegate, see Ex. Ord. No. 12396, §§ 1(a), 3, Dec. 9, 1982, 47 F.R. 55897, 55898, set out as a note under section 301 of Title 3, The President.

§ 628a. Special selection review boards

(a) IN GENERAL.—(1) If the Secretary of the military department concerned determines that a person recommended by a promotion board for promotion to a grade at or below the grade of major general, rear admiral in the Navy, or an equivalent grade in the Space Force is the subject of credible information of an adverse nature, including any substantiated adverse finding or conclusion described in section 615(a)(3)(A) of this title, that was not furnished to the promotion board during its consideration of the person for promotion as otherwise required by such section, the Secretary shall convene a special selection review board under this section to review the person and recommend whether the recommendation for promotion of the person should be sustained.

(2) If a person and the recommendation for promotion of the person is subject to review under this section by a special selection review board convened under this section, the name of the person—

(A) shall not be disseminated or publicly released on the list of officers recommended for promotion by the promotion board recommending the promotion of the person; and

(B) shall not be forwarded to the Secretary of Defense, the President, or the Senate, as applicable, or included on a promotion list under section 624(a) of this title.

(b) CONVENING.—(1) Any special selection review board convened under this section shall be convened in accordance with the provisions of section 628(f) of this title.

(2) Any special selection review board convened under this section may review such number of persons, and recommendations for promotion of such persons, as the Secretary of the military department concerned shall specify in convening such special selection review board.

(c) INFORMATION CONSIDERED.—(1) In reviewing a person and recommending whether the recommendation for promotion of the person should be sustained under this section, a special selection review board convened under this section shall be furnished and consider the following:

(A) The record and information concerning the person furnished in accordance with section 615(a)(2) of this title to the promotion board that recommended the person for promotion.

(B) Any credible information of an adverse nature on the person, including any substantiated adverse finding or conclusion from an officially documented investigation or inquiry described in section 615(a)(3)(A) of this title.

(2) The furnishing of information to a special selection review board under paragraph (1)(B) shall be governed by the standards and procedures referred to in paragraph (3)(C) of section 615(a) of this title applicable to the furnishing of information described in paragraph (3)(A) of such section to selection boards in accordance with that section.

(3)(A) Before information on a person described in paragraph (1)(B) is furnished to a special selection review board for purposes of this section, the Secretary of the military department concerned shall ensure that—

(i) such information is made available to the person; and

(ii) subject to subparagraphs (C) and (D), the person is afforded a reasonable opportunity to submit comments on such information to the special selection review board before its review of the person and the recommendation for promotion of the person under this section.

(B) If information on a person described in paragraph (1)(B) is not made available to the person as otherwise required by subparagraph (A)(i) due to the classification status of such information, the person shall, to the maximum extent practicable, be furnished a summary of such information appropriate to the person's authorization for access to classified information.

(C)(i) An opportunity to submit comments on information is not required for a person under subparagraph (A)(ii) if—

(I) such information was made available to the person in connection with the furnishing of such information under section 615(a) of this title to the promotion board that recommended the promotion of the person subject to review under this section; and

(II) the person submitted comments on such information to that promotion board.

(ii) The comments on information of a person described in clause (i)(II) shall be furnished to the special selection review board.

(D) A person may waive either or both of the following:

(i) The right to submit comments to a special selection review board under subparagraph (A)(ii).

(ii) The furnishing of comments to a special selection review board under subparagraph (C)(ii).

(d) CONSIDERATION.—(1) In considering the record and information on a person under this section, the special selection review board shall compare such record and information with an appropriate sampling of the records of those officers of the same competitive category who were recommended for promotion by the promotion board that recommended the person for promotion, and an appropriate sampling of the records of those officers who were considered by and not recommended for promotion by that promotion board.

(2) Records and information shall be presented to a special selection review board for purposes of paragraph (1) in a manner that does not indicate or disclose the person or persons for whom the special selection review board was convened.

(3) In considering whether the recommendation for promotion of a person should be sustained under this section, a special selection review board shall, to the greatest extent practicable, apply standards used by the promotion board that recommended the person for promotion.

(4) The recommendation for promotion of a person may be sustained under this section only if the special selection review board determines that the person—

(A) ranks on an order of merit created by the special selection review board as better qualified for promotion than the sample officer highest on the order of merit list who was considered by and not recommended for promotion by the promotion board concerned; and

(B) is comparable in qualification for promotion to those sample officers who were recommended for promotion by that promotion board.

(5) A recommendation for promotion of a person may be sustained under this section only by a vote of a majority of the members of the special selection review board.

(6) If a special selection review board does not sustain a recommendation for promotion of a person under this section, the person shall be considered to have failed of selection for promotion.

(e) REPORTS.—(1) Each special selection review board convened under this section shall submit to the Secretary of the military department concerned a written report, signed by each member of the board, containing the name of each person whose recommendation for promotion it recommends for sustainment and certifying that the board has carefully considered the record and information of each person whose name was referred to it.

(2) The provisions of sections 617(b) and 618 of this title apply to the report and proceedings of a special selection review board convened under this section in the same manner as they apply to the report and proceedings of a promotion board convened under section 611(a) of this title.

(f) APPOINTMENT OF PERSONS.—(1) If the report of a special selection review board convened under this section recommends the sustainment of the recommendation for promotion to the next higher grade of a person whose name was referred to it for review under this section, and the President approves the report, the person shall, as soon as practicable, be appointed to that grade in accordance with subsections (b) and (c) of section 624 of this title.

(2) A person who is appointed to the next higher grade as described in paragraph (1) shall, upon that appointment, have the same date of rank, the same effective date for the pay and allowances of that grade, and the same position on the active-duty list as the person would have had pursuant to the original recommendation for promotion of the promotion board concerned.

(g) REGULATIONS.—(1) The Secretary of Defense shall prescribe regulations to carry out this section. Such regulations shall apply uniformly across the military departments.

(2) Any regulation prescribed by the Secretary of a military department to supplement the regulations prescribed pursuant to paragraph (1) may not take effect without the approval of the Secretary of Defense, in writing.

(h) PROMOTION BOARD DEFINED.—In this section, the term ''promotion board'' means a selection board convened by the Secretary of a military department under section 611(a) of this title.

(Added Pub. L. 116–283, div. A, title V, § 505(a)(1), Jan. 1, 2021, 134 Stat. 3565.)

§ 629. Removal from a list of officers recommended for promotion

(a) REMOVAL BY PRESIDENT.—The President may remove the name of any officer from a list

of officers recommended for promotion by a selection board convened under this chapter.

(b) REMOVAL DUE TO SENATE NOT GIVING ADVICE AND CONSENT.—If, after consideration of a list of officers approved for promotion by the President to a grade for which appointment is required by section 624(c) of this title to be made by and with the advice and consent of the Senate, the Senate does not give its advice and consent to the appointment of an officer whose name is on the list, that officer's name shall be removed from the list.

(c) REMOVAL AFTER 18 MONTHS.—(1) If an officer whose name is on a list of officers approved for promotion under section 624(a) of this title to a grade for which appointment is required by section 624(c) of this title to be made by and with the advice and consent of the Senate is not appointed to that grade under such section during the officer's promotion eligibility period, the officer's name shall be removed from the list unless as of the end of such period the Senate has given its advice and consent to the appointment.

(2) Before the end of the promotion eligibility period with respect to an officer under paragraph (1), the President may extend that period for purposes of paragraph (1) by an additional 12 months.

(3) Paragraph (1) does not apply when the military department concerned is not able to obtain and provide to the Senate the information the Senate requires to give its advice and consent to the appointment concerned because that information is under the control of a department or agency of the Federal Government other than the Department of Defense.

(4) In this subsection, the term ''promotion eligibility period'' means, with respect to an officer whose name is on a list of officers approved for promotion under section 624(a) of this title to a grade for which appointment is required by section 624(c) of this title to be made by and with the advice and consent of the Senate, the period beginning on the date on which the list is so approved and ending on the first day of the eighteenth month following the month during which the list is so approved.

(d) ADMINISTRATIVE REMOVAL.—Under regulations prescribed by the Secretary concerned, if an officer on the active-duty list is discharged or dropped from the rolls or transferred to a retired status after having been recommended for promotion to a higher grade under this chapter, but before being promoted, the officer's name shall be administratively removed from the list of officers recommended for promotion by a selection board.

(e) CONTINUED ELIGIBILITY FOR PROMOTION.—(1) An officer whose name is removed from a list under subsection (a), (b), or (c) continues to be eligible for consideration for promotion. If he is recommended for promotion by the next selection board convened for his grade and competitive category and he is promoted, the Secretary of the military department concerned may, upon such promotion, grant him the same date of rank, the same effective date for the pay and allowances of the grade to which promoted, and the same position on the active-duty list as he would have had if his name had not been so removed.

(2) If such an officer who is in a grade below the grade of colonel or, in the case of the Navy, captain is not recommended for promotion by the next selection board convened for his grade and competitive category, or if his name is again removed from the list of officers recommended for promotion, or if the Senate again does not give its advice and consent to his promotion, he shall be considered for all purposes to have twice failed of selection for promotion.

(Added Pub. L. 96–513, title I, § 105, Dec. 12, 1980, 94 Stat. 2860; amended Pub. L. 109–364, div. A, title V, § 515(a), Oct. 17, 2006, 120 Stat. 2185; Pub. L. 110–181, div. A, title X, § 1063(a)(2), Jan. 28, 2008, 122 Stat. 321; Pub. L. 111–383, div. A, title V, § 504(a), Jan. 7, 2011, 124 Stat. 4208; Pub. L. 114–328, div. A, title V, § 504, Dec. 23, 2016, 130 Stat. 2107; Pub. L. 115–91, div. A, title V, § 502, Dec. 12, 2017, 131 Stat. 1373.)

AMENDMENTS

2017—Subsec. (c)(3). Pub. L. 115–91, which directed amendment of par. (3) by substituting ''the military department concerned is not able to obtain and provide to the Senate the information the Senate requires'' for ''the Senate is not able to obtain the information necessary'', was executed by making the substitution for ''the Senate is not able to obtain information necessary'', to reflect the probable intent of Congress.

2016—Subsec. (c)(3), (4). Pub. L. 114–328 added par. (3) and redesignated former par. (3) as (4).

2011—Subsecs. (d), (e). Pub. L. 111–383 added subsec. (d) and redesignated former subsec. (d) as (e).

2008—Subsec. (d)(1). Pub. L. 110–181 inserted comma after ''(a)''.

2006—Subsec. (a). Pub. L. 109–364, § 515(a)(4)(A), inserted heading.

Subsec. (b). Pub. L. 109–364, § 515(a)(1), inserted heading and inserted ''to a grade for which appointment is required by section 624(c) of this title to be made by and with the advice and consent of the Senate'' after ''the President''.

Subsec. (c). Pub. L. 109–364, § 515(a)(2)(B), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 109–364, § 515(a)(2)(A), (4)(B), redesignated subsec. (c) as (d) and inserted heading.

Subsec. (d)(1). Pub. L. 109–364, § 515(a)(3), substituted ''(b), or (c)'' for ''or (b)''.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–364, div. A, title V, § 515(c), Oct. 17, 2006, 120 Stat. 2187, provided that: ''The amendments made by this section [amending this section and section 14310 of this title] shall apply to any promotion list approved by the President after January 1, 2007.''

EFFECTIVE DATE

Section effective Sept. 15, 1981, but the authority to prescribe regulations under this section effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

DELEGATION OF FUNCTIONS

Functions of President under subsec. (a) to remove name of any officer from a promotion list to any grade below commodore or brigadier general delegated to Secretary of Defense to perform, without approval, ratification, or other action by President, and with authority for Secretary to redelegate, see Ex. Ord. No. 12396, §§ 1(b), 3, Dec. 9, 1982, 47 F.R. 55897, 55898, set out as a note under section 301 of Title 3, The President.

Functions of President under subsec. (c)(2) delegated to Secretary of Defense, with authority for Secretary to redelegate, see Ex. Ord. No. 13598, §§ 1(b), 2, Jan. 27, 2012, 77 F.R. 5371, set out as a note under section 301 of Title 3, The President.

§ 630. Discharge of commissioned officers with less than six years of active commissioned service or found not qualified for promotion for first lieutenant or lieutenant (junior grade)

The Secretary of the military department concerned, under regulations prescribed by the Secretary of Defense—

(1) may discharge any officer on the active-duty list who—

(A) has less than six years of active commissioned service; or

(B) is serving in the grade of second lieutenant or ensign and has been found not qualified for promotion to the grade of first lieutenant or lieutenant (junior grade); and

(2) shall, unless the officer has been promoted, discharge any officer described in paragraph (1)(B) at the end of the 18-month period beginning on the date on which the officer is first found not qualified for promotion.

(Added Pub. L. 96–513, title I, § 105, Dec. 12, 1980, 94 Stat. 2861; amended Pub. L. 98–525, title XIV, § 1405(11), Oct. 19, 1984, 98 Stat. 2622; Pub. L. 107–107, div. A, title V, § 505(d)(2), (4)(A), Dec. 28, 2001, 115 Stat. 1088; Pub. L. 108–136, div. A, title V, § 505(b), Nov. 24, 2003, 117 Stat. 1457; Pub. L. 110–181, div. A, title V, § 503(a)(1), (2), Jan. 28, 2008, 122 Stat. 95.)

AMENDMENTS

2008—Pub. L. 110–181, § 503(a)(2), substituted ''six years'' for ''five years'' in section catchline.

Par. (1)(A). Pub. L. 110–181, § 503(a)(1), substituted ''six years'' for ''five years''.

2003—Par. (2). Pub. L. 108–136 substituted ''paragraph'' for ''clause''.

2001—Pub. L. 107–107, § 505(d)(4)(A), struck out ''regular'' before ''commissioned officers'' in section catchline.

Par. (1). Pub. L. 107–107, § 505(d)(2), struck out ''regular'' before ''officer'' in introductory provisions and before ''grade of first lieutenant'' in subpar. (B).

1984—Par. (2). Pub. L. 98–525 substituted ''18-month'' for ''eighteen-month''.

EFFECTIVE DATE

Section effective Sept. 15, 1981, but the authority to prescribe regulations under this section effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

§ 631. Effect of failure of selection for promotion: first lieutenants and lieutenants (junior grade)

(a) Except an officer of the Navy and Marine Corps who is an officer designated for limited duty (to whom section 8146(e) or 8372 of this title applies), each officer of the Army, Air Force, Marine Corps, or Space Force on the active-duty list who holds the grade of first lieutenant and has failed of selection for promotion to the grade of captain for the second time, and each officer of the Navy on the active-duty list who holds the grade of lieutenant (junior grade) and has failed of selection for promotion to the grade of lieutenant for the second time, whose name is not on a list of officers recommended for promotion to the next higher grade shall—

(1) be discharged on the date requested by him and approved by the Secretary of the military department concerned, which date shall be not later than the first day of the seventh calendar month beginning after the month in which the President approves the report of the board which considered him for the second time;

(2) if he is eligible for retirement under any provision of law, be retired under that law on the date requested by him and approved by the Secretary concerned, which date shall be not later than the first day of the seventh calendar month beginning after the month in which the President approves the report of the board which considered him for the second time; or

(3) if on the date on which he is to be discharged under paragraph (1) he is within two years of qualifying for retirement under section 7311, 8323, or 9311 of this title, be retained on active duty until he is qualified for retirement and then be retired under that section, unless he is sooner retired or discharged under another provision of law.

(b) The retirement or discharge of an officer pursuant to this section shall be considered to be an involuntary retirement or discharge for purposes of any other provision of law.

(c) An officer who is subject to discharge under subsection (a)(1) is not eligible for further consideration for promotion.

(d) For the purposes of this chapter, an officer of the Army, Air Force, Marine Corps, or Space Force who holds the grade of first lieutenant, and an officer of the Navy who holds the grade of lieutenant (junior grade), shall be treated as having failed of selection for promotion if the Secretary of the military department concerned determines that the officer would be eligible for consideration for promotion to the next higher grade by a selection board convened under section 611(a) of this title if such a board were convened but is not fully qualified for promotion when recommending for promotion under section 624(a)(3) of this title all fully qualified officers of the officer's armed force in such grade who would be eligible for such consideration.

(Added Pub. L. 96–513, title I, § 105, Dec. 12, 1980, 94 Stat. 2861; amended Pub. L. 98–525, title V, § 525(c), Oct. 19, 1984, 98 Stat. 2525; Pub. L. 107–107, div. A, title V, § 505(a)(2), (d)(3), (4)(B), Dec. 28, 2001, 115 Stat. 1086, 1088; Pub. L. 108–136, div. A, title V, § 505(b), Nov. 24, 2003, 117 Stat. 1457; Pub. L. 115–232, div. A, title VIII, § 809(a), Aug. 13, 2018, 132 Stat. 1840; Pub. L. 116–283, div. A, title IX, § 924(b)(3)(I), Jan. 1, 2021, 134 Stat. 3821.)

AMENDMENTS

2021—Subsecs. (a), (d). Pub. L. 116–283 substituted ''Marine Corps, or Space Force'' for ''or Marine Corps'' in introductory provisions in subsec. (a) and in subsec. (d).

2018—Subsec. (a). Pub. L. 115–232 substituted ''section 8146(e) or 8372'' for ''section 5596(e) or 6383'' in introductory provisions and ''section 7311, 8323, or 9311'' for ''section 3911, 6323, or 8911'' in par. (3).

2003—Subsec. (a)(3). Pub. L. 108–136 substituted ''paragraph'' for ''clause''.

2001—Pub. L. 107–107, § 505(d)(4)(B), struck out ''regular'' before ''first lieutenants'' in section catchline.

Subsec. (a). Pub. L. 107–107, § 505(d)(3), in introductory provisions, substituted ''Army, Air Force, or Marine

Corps on the active-duty list'' for ''Regular Army, Regular Air Force, or Regular Marine Corps'' and ''Navy on the active-duty list'' for ''Regular Navy'' and struck out ''regular'' before ''grade'' wherever appearing.

Subsec. (d). Pub. L. 107–107, § 505(a)(2), added subsec. (d).

1984—Subsec. (c). Pub. L. 98–525 added subsec. (c).

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115–232 effective Feb. 1, 2019, with provision for the coordination of amendments and special rule for certain redesignations, see section 800 of Pub. L. 115–232, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE

Section effective Sept. 15, 1981, but the authority to prescribe regulations under this section effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

§ 632. Effect of failure of selection for promotion: captains and majors of the Army, Air Force, and Marine Corps and lieutenants and lieutenant commanders of the Navy

(a) Except an officer of the Navy and Marine Corps who is an officer designated for limited duty (to whom section 8146(e) or 8372 of this title applies) and except as provided under section 637(a) of this title, each officer of the Army, Air Force, Marine Corps, or Space Force on the active-duty list who holds the grade of captain or major, and each officer of the Navy on the active-duty list who holds the grade of lieutenant or lieutenant commander, who has failed of selection for promotion to the next higher grade for the second time and whose name is not on a list of officers recommended for promotion to the next higher grade shall—

(1) except as provided in paragraph (3) and in subsection (c), be discharged on the date requested by him and approved by the Secretary concerned, which date shall be not later than the first day of the seventh calendar month beginning after the month in which the President approves the report of the board which considered him for the second time;

(2) if he is eligible for retirement under any provision of law, be retired under that law on the date requested by him and approved by the Secretary concerned, which date shall be not later than the first day of the seventh calendar month beginning after the month in which the President approves the report of the board which considered him for the second time; or

(3) if on the date on which he is to be discharged under paragraph (1) he is within two years of qualifying for retirement under section 7311, 8323, or 9311 of this title, be retained on active duty until he is qualified for retirement and then retired under that section, unless he is sooner retired or discharged under another provision of law.

(b) The retirement or discharge of an officer pursuant to this section shall be considered to be an involuntary retirement or discharge for purposes of any other provision of law.

(c)(1) If a health professions officer described in paragraph (3) is subject to discharge under subsection (a)(1) and, as of the date on which the officer is to be discharged under that subsection, the officer has not completed a period of active duty service obligation that the officer incurred under section 2005, 2114, 2123, or 2603 of this title, the officer shall be retained on active duty until completion of such active duty service obligation, and then be discharged under that subsection, unless sooner retired or discharged under another provision of law.

(2) The Secretary concerned may waive the applicability of paragraph (1) to any officer if the Secretary determines that completion of the active duty service obligation of that officer is not in the best interest of the service.

(3) This subsection applies to a medical officer or dental officer or an officer appointed in a medical skill other than as a medical officer or dental officer (as defined in regulations prescribed by the Secretary of Defense).

(Added Pub. L. 96–513, title I, § 105, Dec. 12, 1980, 94 Stat. 2862; amended Pub. L. 107–107, div. A, title V, § 505(d)(3), (4)(C), Dec. 28, 2001, 115 Stat. 1088; Pub. L. 108–136, div. A, title V, § 505(a), (b), Nov. 24, 2003, 117 Stat. 1457; Pub. L. 108–375, div. A, title X, § 1084(d)(6), Oct. 28, 2004, 118 Stat. 2061; Pub. L. 115–232, div. A, title VIII, § 809(a), Aug. 13, 2018, 132 Stat. 1840; Pub. L. 116–283, div. A, title IX, § 924(b)(3)(J), Jan. 1, 2021, 134 Stat. 3821.)

AMENDMENTS

2021—Subsec. (a). Pub. L. 116–283 substituted ''Marine Corps, or Space Force'' for ''or Marine Corps'' in introductory provisions.

2018—Subsec. (a). Pub. L. 115–232 substituted ''section 8146(e) or 8372'' for ''section 5596(e) or 6383'' in introductory provisions and ''section 7311, 8323, or 9311'' for ''section 3911, 6323, or 8911'' in par. (3).

2004—Subsec. (c)(1). Pub. L. 108–375 substituted ''paragraph (3)'' for ''paragraph (2)'' and ''under that subsection'' for ''under that paragraph'' before '', the officer has not''.

2003—Subsec. (a)(1). Pub. L. 108–136, § 505(a)(1), inserted ''except as provided in paragraph (3) and in subsection (c),'' before ''be discharged''.

Subsec. (a)(3). Pub. L. 108–136, § 505(b), substituted ''paragraph'' for ''clause''.

Subsec. (c). Pub. L. 108–136, § 505(a)(2), added subsec. (c).

2001—Pub. L. 107–107, § 505(d)(4)(C), struck out ''regular'' before ''captains and majors'' and before ''lieutenants and lieutenant commanders'' in section catchline.

Subsec. (a). Pub. L. 107–107, § 505(d)(3), in introductory provisions, substituted ''Army, Air Force, or Marine Corps on the active-duty list'' for ''Regular Army, Regular Air Force, or Regular Marine Corps'' and ''Navy on the active-duty list'' for ''Regular Navy'' and struck out ''regular'' before ''grade'' wherever appearing.

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115–232 effective Feb. 1, 2019, with provision for the coordination of amendments and special rule for certain redesignations, see section 800 of Pub. L. 115–232, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–136, div. A, title V, § 505(c), Nov. 24, 2003, 117 Stat. 1457, provided that: ''The amendments made by subsection (a) [amending this section] shall not apply in the case of an officer who as of the date of the enactment of this Act [Nov. 24, 2003] is required to be discharged under section 632(a)(1) of title 10, United States Code, by reason of having failed of selection for promotion to the next higher regular grade a second time.''

EFFECTIVE DATE

Section effective Sept. 15, 1981, but the authority to prescribe regulations under this section effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

§ 633. Retirement for years of service: regular lieutenant colonels and commanders

(a) 28 YEARS OF ACTIVE COMMISSIONED SERVICE.—Except as provided in subsection (b) and as provided under section 637(b) or 637a of this title, each officer of the Regular Army, Regular Air Force, Regular Marine Corps, or Regular Space Force who holds the regular grade of lieutenant colonel, and each officer of the Regular Navy who holds the regular grade of commander, who is not on a list of officers recommended for promotion to the regular grade of colonel or captain, respectively, shall, if not earlier retired, be retired on the first day of the month after the month in which he completes 28 years of active commissioned service.

(b) EXCEPTIONS.—Subsection (a) does not apply to the following:

(1) An officer of the Navy or Marine Corps who is an officer designated for limited duty to whom section 8146(e) or 8372 of this title applies.

(2) An officer of the Navy or Marine Corps who is a permanent professor at the United States Naval Academy.

(Added Pub. L. 96–513, title I, § 105, Dec. 12, 1980, 94 Stat. 2862; amended Pub. L. 98–525, title V, § 529(b), title XIV, § 1405(12), Oct. 19, 1984, 98 Stat. 2526, 2622; Pub. L. 102–484, div. A, title V, § 504(a), Oct. 23, 1992, 106 Stat. 2403; Pub. L. 103–160, div. A, title V, § 561(e), Nov. 30, 1993, 107 Stat. 1667; Pub. L. 105–261, div. A, title V, § 504(a), Oct. 17, 1998, 112 Stat. 2004; Pub. L. 109–163, div. A, title V, § 509(a)(1), Jan. 6, 2006, 119 Stat. 3229; Pub. L. 114–328, div. A, title V, § 505(b)(1), Dec. 23, 2016, 130 Stat. 2108; Pub. L. 115–232, div. A, title VIII, § 809(a), Aug. 13, 2018, 132 Stat. 1840; Pub. L. 116–283, div. A, title IX, § 924(b)(4)(D), Jan. 1, 2021, 134 Stat. 3822.)

AMENDMENTS

2021—Subsec. (a). Pub. L. 116–283 substituted "Regular Marine Corps, or Regular Space Force" for "or Regular Marine Corps".

2018—Subsec. (b)(1). Pub. L. 115–232 substituted "section 8146(e) or 8372" for "section 5596(e) or 6383".

2016—Subsec. (a). Pub. L. 114–328 inserted "or 637a" after "637(b)".

2006—Pub. L. 109–163 designated existing provisions as subsec. (a), inserted heading, substituted "Except as provided in subsection (b) and as provided" for "Except an officer of the Navy or Marine Corps who is an officer designated for limited duty to whom section 5596(e) or 6383 of this title applies and except as provided", and added subsec. (b).

1998—Pub. L. 105–261 substituted "Except an officer of the Navy or Marine Corps who is an officer designated for limited duty to whom section 5596(e) or 6383 of this title applies" for "Except an officer of the Navy designated for limited duty to whom section 5596(e) of this title applies and an officer of the Marine Corps designated for limited duty to whom section 5596(e) or section 6383 of this title applies" and struck out at end "During the period beginning on July 1, 1993, and ending on October 1, 1999, the preceding sentence shall not apply to an officer of the Navy designated for limited duty to whom section 6383 of this title applies."

1993—Pub. L. 103–160 substituted "October 1, 1999" for "October 1, 1995".

1992—Pub. L. 102–484 inserted at end "During the period beginning on July 1, 1993, and ending on October 1, 1995, the preceding sentence shall not apply to an officer of the Navy designated for limited duty to whom section 6383 of this title applies."

1984—Pub. L. 98–525, § 1405(12), substituted "28" for "twenty-eight".

Pub. L. 98–525, § 529(b), substituted "Except an officer of the Navy designated for limited duty to whom section 5596(e) of this title applies and an officer of the Marine Corps designated for limited duty to whom section 5596(e) or section 6383 of this title applies" for "Except an officer of the Navy and Marine Corps who is an officer designated for limited duty (to whom section 5596(e) or 6383 of this title applies)".

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115–232 effective Feb. 1, 2019, with provision for the coordination of amendments and special rule for certain redesignations, see section 800 of Pub. L. 115–232, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE

Section effective Sept. 15, 1981, but the authority to prescribe regulations under this section effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

§ 634. Retirement for years of service: regular colonels and Navy captains

(a) 30 YEARS OF ACTIVE COMMISSIONED SERVICE.—Except as provided in subsection (b) and as provided under section 637(b) or 637a of this title, each officer of the Regular Army, Regular Air Force, Regular Marine Corps, or Regular Space Force who holds the regular grade of colonel, and each officer of the Regular Navy who holds the regular grade of captain, who is not on a list of officers recommended for promotion to the regular grade of brigadier general or rear admiral (lower half), respectively, shall, if not earlier retired, be retired on the first day of the month after the month in which he completes 30 years of active commissioned service.

(b) EXCEPTIONS.—Subsection (a) does not apply to the following:

(1) An officer of the Navy who is designated for limited duty to whom section 8372(a)(4) of this title applies.

(2) An officer of the Navy or Marine Corps who is a permanent professor at the United States Naval Academy.

(Added Pub. L. 96–513, title I, § 105, Dec. 12, 1980, 94 Stat. 2862; amended Pub. L. 97–86, title IV, § 405(b)(1), Dec. 1, 1981, 95 Stat. 1105; Pub. L. 98–525, title XIV, § 1405(13), Oct. 19, 1984, 98 Stat. 2622; Pub. L. 99–145, title V, § 514(b)(1), Nov. 8, 1985, 99 Stat. 628; Pub. L. 102–484, div. A, title V, § 504(b), Oct. 23, 1992, 106 Stat. 2403; Pub. L. 103–160, div. A, title V, § 561(e), Nov. 30, 1993, 107 Stat. 1667; Pub. L. 105–261, div. A, title V, § 504(b), Oct. 17, 1998, 112 Stat. 2004; Pub. L. 109–163, div. A, title V, § 509(a)(2), Jan. 6, 2006, 119 Stat. 3229; Pub. L. 114–328, div. A, title V, § 505(b)(2), Dec. 23, 2016, 130 Stat. 2108; Pub. L. 115–232, div. A, title VIII, § 809(a), Aug. 13, 2018, 132 Stat. 1840; Pub. L. 116–283, div. A, title IX, § 924(b)(4)(E), Jan. 1, 2021, 134 Stat. 3822.)

AMENDMENTS

2021—Subsec. (a). Pub. L. 116–283 substituted ''Regular Marine Corps, or Regular Space Force'' for ''or Regular Marine Corps''.

2018—Subsec. (b)(1). Pub. L. 115–232 substituted ''section 8372(a)(4)'' for ''section 6383(a)(4)''.

2016—Subsec. (a). Pub. L. 114–328 inserted ''or 637a'' after ''637(b)''.

2006—Pub. L. 109–163 designated existing provisions as subsec. (a), inserted heading, substituted ''Except as provided in subsection (b) and as provided'' for ''Except an officer of the Navy who is designated for limited duty to whom section 6383(a)(4) of this title applies and except as provided'', and added subsec. (b).

1998—Pub. L. 105–261 inserted ''an officer of the Navy who is designated for limited duty to whom section 6383(a)(4) of this title applies and except'' after ''Except'' and struck out at end ''During the period beginning on July 1, 1993, and ending on October 1, 1999, the preceding sentence shall not apply to an officer of the Regular Navy designated for limited duty to whom section 6383(a)(4) of this title applies.''

1993—Pub. L. 103–160 substituted ''October 1, 1999'' for ''October 1, 1995''.

1992—Pub. L. 102–484 inserted at end ''During the period beginning on July 1, 1993, and ending on October 1, 1995, the preceding sentence shall not apply to an officer of the Regular Navy designated for limited duty to whom section 6383(a)(4) of this title applies.''

1985—Pub. L. 99–145 substituted ''rear admiral (lower half)'' for ''commodore''.

1984—Pub. L. 98–525 substituted ''30'' for ''thirty''.

1981—Pub. L. 97–86 substituted ''commodore'' for ''commodore admiral''.

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115–232 effective Feb. 1, 2019, with provision for the coordination of amendments and special rule for certain redesignations, see section 800 of Pub. L. 115–232, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–86 effective Sept. 15, 1981, see section 405(f) of Pub. L. 97–86, set out as a note under section 101 of this title.

EFFECTIVE DATE

Section effective Sept. 15, 1981, but the authority to prescribe regulations under this section effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

§ 635. Retirement for years of service: regular brigadier generals and rear admirals (lower half)

Except as provided under section 637(b) or 637a of this title, each officer of the Regular Army, Regular Air Force, Regular Marine Corps, or Regular Space Force who holds the regular grade of brigadier general, and each officer of the Regular Navy who holds the regular grade of rear admiral (lower half), who is not on a list of officers recommended for promotion to the regular grade of major general or rear admiral, respectively, shall, if not earlier retired, be retired on the first day of the first month beginning after the date of the fifth anniversary of his appointment to that grade or on the first day of the month after the month in which he completes 30 years of active commissioned service, whichever is later.

(Added Pub. L. 96–513, title I, § 105, Dec. 12, 1980, 94 Stat. 2863; amended Pub. L. 97–86, title IV, § 405(b)(1), (5)(A), Dec. 1, 1981, 95 Stat. 1105, 1106; Pub. L. 98–525, title XIV, § 1405(13), Oct. 19, 1984, 98 Stat. 2622; Pub. L. 99–145, title V, § 514(b)(1), (5)(A), Nov. 8, 1985, 99 Stat. 628; Pub. L. 114–328, div. A, title V, § 505(b)(3), Dec. 23, 2016, 130 Stat. 2108; Pub. L. 116–283, div. A, title IX, § 924(b)(4)(F), Jan. 1, 2021, 134 Stat. 3822.)

AMENDMENTS

2021—Pub. L. 116–283 substituted ''Regular Marine Corps, or Regular Space Force'' for ''or Regular Marine Corps''.

2016—Pub. L. 114–328 inserted ''or 637a'' after ''637(b)''.

1985—Pub. L. 99–145 substituted ''rear admirals (lower half)'' for ''commodores'' in section catchline and ''rear admiral (lower half)'' for ''commodore'' in text.

1984—Pub. L. 98–525 substituted ''30'' for ''thirty''.

1981—Pub. L. 97–86 substituted ''commodores'' for ''commodore admirals'' in section catchline and ''commodore'' for ''commodore admiral'' in text.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–86 effective Sept. 15, 1981, see section 405(f) of Pub. L. 97–86, set out as a note under section 101 of this title.

EFFECTIVE DATE

Section effective Sept. 15, 1981, but the authority to prescribe regulations under this section effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

§ 636. Retirement for years of service: regular officers in grades above brigadier general and rear admiral (lower half)

(a) MAJOR GENERALS AND REAR ADMIRALS SERVING IN GRADE.—Except as provided in subsection (b) or (c) and under section 637(b) or 637a of this title, each officer of the Regular Army, Regular Air Force, Regular Marine Corps, or Regular Space Force who holds the regular grade of major general, and each officer of the Regular Navy who holds the regular grade of rear admiral, shall, if not earlier retired, be retired on the first day of the first month beginning after the date of the fifth anniversary of his appointment to that grade or on the first day of the month after the month in which he completes 35 years of active commissioned service, whichever is later.

(b) LIEUTENANT GENERALS AND VICE ADMIRALS.—In the administration of subsection (a) in the case of an officer who is serving in the grade of lieutenant general or vice admiral, the number of years of active commissioned service applicable to the officer is 38 years.

(c) GENERALS AND ADMIRALS.—In the administration of subsection (a) in the case of an officer who is serving in the grade of general or admiral, the number of years of active commissioned service applicable to the officer is 40 years.

(Added Pub. L. 96–513, title I, § 105, Dec. 12, 1980, 94 Stat. 2863; amended Pub. L. 98–525, title XIV, § 1405(14), Oct. 19, 1984, 98 Stat. 2622; Pub. L. 105–85, div. A, title V, § 506(a), (b), Nov. 18, 1997, 111 Stat. 1726; Pub. L. 114–328, div. A, title V, § 505(b)(4), Dec. 23, 2016, 130 Stat. 2108; Pub. L. 116–283, div. A, title IX, § 924(b)(4)(G), Jan. 1, 2021, 134 Stat. 3822.)

AMENDMENTS

2021—Subsec. (a). Pub. L. 116–283 substituted ''Regular Marine Corps, or Regular Space Force'' for ''or Regular Marine Corps''.

2016—Subsec. (a). Pub. L. 114–328 inserted ''or 637a'' after ''637(b)''.

1997—Pub. L. 105–85, § 506(b), substituted ''regular officers in grades above brigadier general and rear admiral (lower half)'' for ''regular major generals and rear admirals'' in section catchline.

Pub. L. 105–85, § 506(a), designated existing provisions as subsec. (a), inserted heading, substituted ''Except as provided in subsection (b) or (c) and'' for ''Except as provided'', and added subsecs. (b) and (c).

1984—Pub. L. 98–525 substituted ''35'' for ''thirty-five''.

EFFECTIVE DATE

Section effective Sept. 15, 1981, but the authority to prescribe regulations under this section effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

SUBCHAPTER IV—CONTINUATION ON ACTIVE DUTY AND SELECTIVE EARLY RETIREMENT

Sec.

637. Selection of regular officers for continuation on active duty.

637a. Continuation on active duty: officers in certain military specialties and career tracks.

638. Selective early retirement.

638a. Modification to rules for continuation on active duty; enhanced authority for selective early retirement and early discharges.

638b. Voluntary retirement incentive.

639. Continuation on active duty to complete disciplinary action.

640. Deferment of retirement or separation for medical reasons.

AMENDMENTS

2016—Pub. L. 114–328, div. A, title V, § 505(a)(2), Dec. 23, 2016, 130 Stat. 2108, added item 637a.

2011—Pub. L. 112–81, div. A, title V, § 504(a)(2), 125 Stat. 1390, added item 638b.

1990—Pub. L. 101–510, div. A, title V, § 521(a)(2), Nov. 5, 1990, 104 Stat. 1561, added item 638a.

§ 637. Selection of regular officers for continuation on active duty

(a)(1) An officer subject to discharge or retirement in accordance with section 632 of this title may, subject to the needs of the service, be continued on active duty if he is selected for continuation on active duty by a selection board convened under section 611(b) of this title.

(2) An officer who holds the regular grade of captain in the Army, Air Force, Marine Corps, or Space Force, or the regular grade of lieutenant in the Navy, and who is subject to discharge or retirement in accordance with section 632 of this title may not be continued on active duty under this subsection for a period which extends beyond the last day of the month in which he completes 20 years of active commissioned service unless he is promoted to the regular grade of major or lieutenant commander, respectively.

(3) An officer who holds the regular grade of major or lieutenant commander who is subject to discharge or retirement in accordance with section 632 of this title may not be continued on active duty under this subsection for a period which extends beyond the last day of the month in which he completes 24 years of active commissioned service unless he is promoted to the regular grade of lieutenant colonel or commander, respectively.

(4) An officer who is selected for continuation on active duty under this subsection but declines to continue on active duty shall be discharged, retired, or retained on active duty, as appropriate, in accordance with section 632 of this title.

(5) Each officer who is continued on active duty under this subsection, is not subsequently promoted or continued on active duty, and is not on a list of officers recommended for continuation or for promotion to the next higher regular grade shall, unless sooner retired or discharged under another provision of law—

(A) be discharged upon the expiration of his period of continued service; or

(B) if he is eligible for retirement under any provision of law, be retired under that law on the first day of the first month following the month in which he completes his period of continued service.

Notwithstanding the provisions of clause (A), any officer who would otherwise be discharged under such clause and is within two years of qualifying for retirement under section 7311, 8323, or 9311 of this title, shall unless he is sooner retired or discharged under some other provision of law, be retained on active duty until he is qualified for retirement under that section and then be retired.

(6) The retirement or discharge of an officer pursuant to this subsection shall be considered to be an involuntary retirement or discharge for purposes of any other provision of law.

(b)(1) An officer subject to retirement under section 633 or 634 of this title may, subject to the needs of the service, have his retirement deferred and be continued on active duty if he is selected for continuation on active duty by a selection board convened under section 611(b) of this title.

(2) An officer subject to retirement under section 635 or 636 of this title who is serving in the grade of brigadier general, rear admiral (lower half), major general, or rear admiral may, subject to the needs of the service, have his retirement deferred and be continued on active duty by the Secretary concerned. An officer subject to retirement under section 635 or 636 of this title who is serving in a grade above major general or rear admiral may have his retirement deferred and be continued on active duty by the President.

(3) Any deferral of retirement and continuation on active duty under this subsection shall be for a period not to exceed five years, except as provided under section 1251 or 1253 of this title.

(c) Continuation of an officer on active duty under this section pursuant to the action of a selection board convened under section 611(b) of this title is subject to the approval of the Secretary of the military department concerned. The period of the continuation on active duty of an officer under this section may be reduced by the Secretary concerned in the case of any officer as provided in section 638a of this title.

(d) For purposes of this section, a period of continuation on active duty under this section expires or is completed on the earlier of (1) the date originally established for the termination of such period, or (2) the date established for the

termination of such period by any shortening of such period under section 638a of this title.

(e) The Secretary of Defense shall prescribe regulations for the administration of this section.

(Added Pub. L. 96–513, title I, § 105, Dec. 12, 1980, 94 Stat. 2863; amended Pub. L. 97–22, § 4(e), July 10, 1981, 95 Stat. 127; Pub. L. 97–86, title IV, § 405(b)(1), Dec. 1, 1981, 95 Stat. 1105; Pub. L. 98–525, title XIV, § 1405(15), Oct. 19, 1984, 98 Stat. 2622; Pub. L. 99–145, title V, § 514(b)(1), Nov. 8, 1985, 99 Stat. 628; Pub. L. 101–510, div. A, title V, § 521(b)(1), Nov. 5, 1990, 104 Stat. 1561; Pub. L. 110–181, div. A, title V, § 504, Jan. 28, 2008, 122 Stat. 95; Pub. L. 115–232, div. A, title VIII, § 809(a), Aug. 13, 2018, 132 Stat. 1840; Pub. L. 116–283, div. A, title IX, § 924(b)(3)(K), Jan. 1, 2021, 134 Stat. 3821.)

AMENDMENTS

2021—Subsec. (a)(2). Pub. L. 116–283 substituted ''Marine Corps, or Space Force'' for ''or Marine Corps''.

2018—Subsec. (a)(5). Pub. L. 115–232 substituted ''section 7311, 8323, or 9311'' for ''section 3911, 6323, or 8911'' in concluding provisions.

2008—Subsec. (b)(3). Pub. L. 110–181 substituted ''except as provided under section 1251 or 1253 of this title'' for ''but such period may not (except as provided under section 1251(b) of this title) extend beyond the date of the officer's sixty-second birthday''.

1990—Subsec. (c). Pub. L. 101–510, § 521(b)(1)(A), inserted at end ''The period of the continuation on active duty of an officer under this section may be reduced by the Secretary concerned in the case of any officer as provided in section 638a of this title.''

Subsecs. (d), (e). Pub. L. 101–510, § 521(b)(1)(B), (C), added subsec. (d) and redesignated former subsec. (d) as (e).

1985—Subsec. (b)(2). Pub. L. 99–145 substituted ''rear admiral (lower half)'' for ''commodore''.

1984—Subsec. (a)(2). Pub. L. 98–525, § 1405(15)(A), substituted ''20'' for ''twenty''.

Subsec. (a)(3). Pub. L. 98–525, § 1405(15)(B), substituted ''24'' for ''twenty-four''.

1981—Subsec. (b)(1). Pub. L. 97–22, § 4(e)(1), substituted ''section 633 or 634'' for ''section 633, 634, 635, or 636''.

Subsec. (b)(2). Pub. L. 97–86 substituted ''commodore'' for ''commodore admiral''.

Pub. L. 97–22, § 4(e)(2), inserted provision that an officer subject to retirement under section 635 or 636 of this title who is serving in the grade of brigadier general, commodore admiral, major general, or rear admiral may, subject to the needs of the service, have his retirement deferred and be continued on active duty by the Secretary concerned and struck out requirement that the deferral of the retirement of an officer subject to retirement under section 635 or 636 of this title serving in a grade above major general or rear admiral was subject to the needs of the service.

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115–232 effective Feb. 1, 2019, with provision for the coordination of amendments and special rule for certain redesignations, see section 800 of Pub. L. 115–232, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–86 effective Sept. 15, 1981, see section 405(f) of Pub. L. 97–86, set out as a note under section 101 of this title.

EFFECTIVE DATE

Section effective Sept. 15, 1981, but the authority to prescribe regulations under this subchapter effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

TRANSITION PROVISIONS UNDER DEFENSE OFFICER PERSONNEL MANAGEMENT ACT

For provisions to prevent extinction or premature termination of rights, duties, penalties, or proceedings that existed or were begun prior to the effective date of Pub. L. 96–513 and otherwise to allow for an orderly transition to the system of officer personnel management put in place under Pub. L. 96–513, see section 601 et seq. of Pub. L. 96–513, set out as a note under section 611 of this title.

§ 637a. Continuation on active duty: officers in certain military specialties and career tracks

(a) IN GENERAL.—The Secretary of the military department concerned may authorize an officer in a grade above grade O–2 to remain on active duty after the date otherwise provided for the separation or retirement of the officer in section 632, 633, 634, 635, or 636 of this title, as applicable, if the officer has a military occupational specialty, rating, or specialty code in a military specialty designated pursuant to subsection (b).

(b) MILITARY SPECIALTIES.—Each Secretary of a military department shall designate the military specialties in which a military occupational specialty, rating, or specialty code, as applicable, assigned to members of the armed forces under the jurisdiction of such Secretary authorizes the members to be eligible for continuation on active duty as provided in subsection (a).

(c) DURATION OF CONTINUATION.—An officer continued on active duty pursuant to this section shall, if not earlier retired, be retired on the first day of the month after the month in which the officer completes 40 years of active service.

(d) REGULATIONS.—The Secretaries of the military departments shall carry out this section in accordance with regulations prescribed by the Secretary of Defense. The regulations shall specify the criteria to be used by the Secretaries of the military departments in designating military specialties for purposes of subsection (b).

(Added Pub. L. 114–328, div. A, title V, § 505(a)(1), Dec. 23, 2016, 130 Stat. 2107; amended Pub. L. 115–232, div. A, title V, § 506, title X, § 1081(a)(8), Aug. 13, 2018, 132 Stat. 1743, 1983; Pub. L. 116–92, div. A, title V, § 504, Dec. 20, 2019, 133 Stat. 1345.)

AMENDMENTS

2019—Subsec. (a). Pub. L. 116–92 inserted ''separation or'' after ''provided for the''.

2018—Subsec. (a). Pub. L. 115–232, § 506, substituted ''grade O–2'' for ''grade O–4'' and inserted ''632,'' before ''633,''.

Subsec. (d). Pub. L. 115–232, § 1081(a)(8), substituted ''specialties'' for ''specialities''.

§ 638. Selective early retirement

(a)(1) A regular officer on the active-duty list of the Army, Navy, Air Force, Marine Corps, or Space Force may be considered for selective early retirement by a selection board convened under section 611(b) of this title if the officer is described in any of subparagraphs (A) through (D) as follows:

(A) An officer holding the regular grade of lieutenant colonel or commander who has

failed of selection for promotion to the grade of colonel or, in the case of an officer of the Navy, captain two or more times and whose name is not on a list of officers recommended for promotion.

(B) An officer holding the regular grade of colonel or, in the case of an officer of the Navy, captain who has served at least four years of active duty in that grade and whose name is not on a list of officers recommended for promotion.

(C) An officer holding the regular grade of brigadier general or rear admiral (lower half) who has served at least three and one-half years of active duty in that grade and whose name is not on a list of officers recommended for promotion.

(D) An officer holding the regular grade of major general or rear admiral who has served at least three and one-half years of active duty in that grade.

(2) The Secretary of the military department concerned shall specify the number of officers described in paragraphs (1)(A) and (1)(B) which a selection board convened under section 611(b) of this title may recommend for early retirement. Such number may not be more than 30 percent of the number of officers considered in each grade in each competitive category.

(3) A regular officer on the active-duty list of the Army, Navy, Air Force, Marine Corps, or Space Force may also be considered for early retirement under the circumstances prescribed in section 638a of this title.

(b)(1)(A) An officer in a grade below brigadier general or rear admiral (lower half) who is recommended for early retirement under this section or section 638a of this title and whose early retirement is approved by the Secretary concerned shall be retired, under any provision of law under which he is eligible to retire, on the date requested by him and approved by the Secretary concerned, which date shall be not later than the first day of the seventh calendar month beginning after the month in which the Secretary concerned approves the report of the board which recommended the officer for early retirement.

(B) If an officer described in subparagraph (A) is not eligible for retirement under any provision of law, the officer shall be retained on active duty until the officer is qualified for retirement under section 7311, 8323, or 9311 of this title, and then be retired under that section, unless the officer is sooner retired or discharged under some other provision of law, with such retirement under that section occurring not later than the later of the following:

(i) The first day of the month beginning after the month in which the officer becomes qualified for retirement under that section.

(ii) The first day of the seventh calendar month beginning after the month in which the Secretary concerned approves the report of the board which recommended the officer for early retirement.

(2) An officer who holds the regular grade of brigadier general, major general, rear admiral (lower half), or rear admiral who is recommended for early retirement under this section and whose early retirement is approved by the Secretary concerned shall be retired, under any provision of law under which he is eligible to retire, on the date requested by him and approved by the Secretary concerned, which date shall be not later than the first day of the tenth calendar month beginning after the month in which the Secretary concerned approved the report of the board which recommended the officer for early retirement.

(3)(A) The Secretary concerned may defer for not more than three months the retirement of an officer otherwise approved for early retirement under this section or section 638a of this title in order to prevent a personal hardship to the officer or for other humanitarian reasons. Any such deferral shall be made on a case-by-case basis considering the circumstances of the case of the particular officer concerned. The authority of the Secretary to grant such a deferral may not be delegated.

(B) An officer recommended for early retirement under paragraph (1)(A) or section 638a of this title, if approved for deferral under subparagraph (A), shall be retired on the date requested by the officer, and approved by the Secretary concerned, which date shall be not later than the first day of the tenth calendar month beginning after the month in which the Secretary concerned approves the report of the board which recommended the officer for early retirement.

(C) The Secretary concerned may defer the retirement of an officer otherwise approved for early retirement under paragraph (1)(B), but in no case later than the first day of the tenth calendar month beginning after the month in which the Secretary concerned approves the report of the board which recommended the officer for early retirement.

(D) An officer recommended for early retirement under paragraph (2), if approved for deferral under subparagraph (A), shall be retired on the date requested by the officer, and approved by the Secretary concerned, which date shall be not later than the first day of the thirteenth calendar month beginning after the month in which the Secretary concerned approves the report of the board which recommended the officer for early retirement.

(c) So long as an officer in a grade below brigadier general or rear admiral (lower half) holds the same grade, he may not be considered for early retirement under this section more than once in any five-year period.

(d) The retirement of an officer pursuant to this section shall be considered to be an involuntary retirement for purposes of any other provision of law.

(e)(1) The Secretary of Defense shall prescribe regulations for the administration of this section.

(2)(A) Such regulations shall require that when the Secretary of the military department concerned submits a list of officers to a selection board convened under section 611(b) of this title to consider officers for selection for early retirement under this section, such list (except as provided in subparagraph (B)) shall include each officer on the active-duty list in the same grade and competitive category whose position

on the active-duty list is between that of the most junior officer in that grade and competitive category whose name is submitted to the board and that of the most senior officer in that grade and competitive category whose name is submitted to the board.

(B) A list under subparagraph (A) may not include an officer in that grade and competitive category (i) who has been approved for voluntary retirement under section 7311, 8323, or 9311 of this title, or (ii) who is to be involuntarily retired under any provision of law during the fiscal year in which the selection board is convened or during the following fiscal year.

(C) An officer not considered by a selection board convened under section 611(b) of this title by reason of subparagraph (B) shall be retired on the date approved for the retirement of that officer as of the convening date of such selection board unless the Secretary concerned approves a modification of such date in order to prevent a personal hardship for the officer or for other humanitarian reasons.

(Added Pub. L. 96–513, title I, § 105, Dec. 12, 1980, 94 Stat. 2864; amended Pub. L. 97–22, § 4(f), July 10, 1981, 95 Stat. 127; Pub. L. 97–86, title IV, § 405(b)(1), Dec. 1, 1981, 95 Stat. 1105; Pub. L. 99–145, title V, § 514(b)(1), Nov. 8, 1985, 99 Stat. 628; Pub. L. 100–456, div. A, title V, § 504, Sept. 29, 1988, 102 Stat. 1967; Pub. L. 101–510, div. A, title V, § 521(b)(2), Nov. 5, 1990, 104 Stat. 1561; Pub. L. 102–190, div. A, title V, § 503(a), Dec. 5, 1991, 105 Stat. 1355; Pub. L. 103–160, div. A, title V, § 506, Nov. 30, 1993, 107 Stat. 1646; Pub. L. 104–106, div. A, title V, § 504(b), Feb. 10, 1996, 110 Stat. 295; Pub. L. 113–291, div. A, title V, § 502(b), Dec. 19, 2014, 128 Stat. 3354; Pub. L. 115–232, div. A, title VIII, § 809(a), Aug. 13, 2018, 132 Stat. 1840; Pub. L. 116–283, div. A, title IX, § 924(b)(3)(L), Jan. 1, 2021, 134 Stat. 3821.)

AMENDMENTS

2021—Subsec. (a)(1), (3). Pub. L. 116–283 substituted ''Marine Corps, or Space Force'' for ''or Marine Corps'' in introductory provisions of par. (1) and in par. (3).

2018—Subsecs. (b)(1)(B), (e)(2)(B). Pub. L. 115–232 substituted ''section 7311, 8323, or 9311'' for ''section 3911, 6323, or 8911''.

2014—Subsec. (b)(1). Pub. L. 113–291, § 502(b)(1), added par. (1) and struck out former par. (1) which read as follows: ''An officer in a grade below brigadier general or rear admiral (lower half) who is recommended for early retirement under this section or section 638a of this title and whose early retirement is approved by the Secretary concerned shall—

''(A) be retired, under any provision of law under which he is eligible to retire, on the date requested by him and approved by the Secretary concerned, which date shall be not later than the first day of the seventh calendar month beginning after the month in which the Secretary concerned approves the report of the board which recommended the officer for early retirement; or

''(B) if the officer is not eligible for retirement under any provision of law, be retained on active duty until he is qualified for retirement under section 3911, 6323, or 8911 of this title, and then be retired under that section, unless he is sooner retired or discharged under some other provision of law.''

Subsec. (b)(3). Pub. L. 113–291, § 502(b)(2), designated existing provisions as subpar. (A), substituted ''three months'' for ''90 days'', and added subpars. (B) to (D).

1996—Subsec. (b)(3). Pub. L. 104–106 added par. (3).

1993—Subsec. (e)(2)(B). Pub. L. 103–160 inserted ''(i)'' after ''grade and competitive category'', inserted ''(ii)'' after ''of this title, or'', and struck out comma after ''any provision of law''.

1991—Subsec. (e). Pub. L. 102–190 designated existing provisions as pars. (1) and (2)(A), in par. (2)(A) inserted ''(except as provided in subparagraph (B))'' after ''under this section, such list'', and added subpars. (B) and (C).

1990—Subsec. (a)(3). Pub. L. 101–510, § 521(b)(2)(A), added par. (3).

Subsec. (b)(1). Pub. L. 101–510, § 521(b)(2)(B), inserted ''or section 638a of this title'' after ''under this section''.

1988—Subsec. (a). Pub. L. 100–456 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''A regular officer on the active-duty list of the Army, Navy, Air Force, or Marine Corps—

''(1) who holds the regular grade of lieutenant colonel or commander and has failed of selection for promotion to the grade of colonel or, in the case of an officer of the Navy, captain two or more times and whose name is not on a list of officers recommended for promotion;

''(2) who holds the regular grade of colonel or, in the case of an officer of the Navy, captain and has served at least four years of active duty in that grade and whose name is not on a list of officers recommended for promotion;

''(3) who holds the regular grade of brigadier general or rear admiral (lower half) and has served at least three and one-half years of active duty in that grade and whose name is not on a list of officers recommended for promotion; or

''(4) who holds the regular grade of major general or rear admiral and has served at least three and one-half years of active duty in that grade,

may be considered for early retirement by a selection board convened under section 611(b) of this title. The Secretary of the military department concerned shall specify the number of officers described in clauses (1) and (2) which such a board may recommend for early retirement, but such number may not be more than 30 percent of the number of officers considered in each grade in each competitive category.''

1985—Subsecs. (a)(3), (b), (c). Pub. L. 99–145 substituted ''rear admiral (lower half)'' for ''commodore'' wherever appearing.

1981—Subsec. (a)(3). Pub. L. 97–86 substituted ''commodore'' for ''commodore admiral''.

Subsec. (a)(3), (4). Pub. L. 97–22 substituted ''three and one-half years of active duty'' for ''four years of active duty''.

Subsecs. (b), (c). Pub. L. 97–86 substituted ''commodore'' for ''commodore admiral'' wherever appearing.

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115–232 effective Feb. 1, 2019, with provision for the coordination of amendments and special rule for certain redesignations, see section 800 of Pub. L. 115–232, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–86 effective Sept. 15, 1981, see section 405(f) of Pub. L. 97–86, set out as a note under section 101 of this title.

EFFECTIVE DATE

Section effective Sept. 15, 1981, but the authority to prescribe regulations under this section effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

§ 638a. Modification to rules for continuation on active duty; enhanced authority for selective early retirement and early discharges

(a)(1) The Secretary of Defense may authorize the Secretary of a military department to take

any of the actions set forth in subsection (b) with respect to officers of an armed force under the jurisdiction of that Secretary.

(2) Any authority provided to the Secretary of a military department under paragraph (1) shall expire on the date specified by the Secretary of Defense, but such expiration date may not be later than December 31, 2025.

(b) Actions which the Secretary of a military department may take with respect to officers of an armed force when authorized to do so under subsection (a) are the following:

(1) Shortening the period of the continuation on active duty established under section 637 of this title for a regular officer who is serving on active duty pursuant to a selection under that section for continuation on active duty.

(2) Providing that regular officers on the active-duty list may be considered for early retirement by a selection board convened under section 611(b) of this title in the case of officers described in any of subparagraphs (A) through (C) as follows:

(A) Officers in the regular grade of lieutenant colonel or commander who have failed of selection for promotion at least one time and whose names are not on a list of officers recommended for promotion.

(B) Officers in the regular grade of colonel or, in the case of the Navy, captain who have served on active duty in that grade for at least two years and whose names are not on a list of officers recommended for promotion.

(C) Officers, other than those described in subparagraphs (A) and (B), holding a regular grade below the grade of colonel, or in the case of the Navy, captain, who are eligible for retirement under section 7311, 8323, or 9311 of this title, or who after two additional years or less of active service would be eligible for retirement under one of those sections and whose names are not on a list of officers recommended for promotion.

(3) Convening selection boards under section 611(b) of this title to consider for discharge regular officers on the active-duty list in a grade below lieutenant colonel or commander—

(A) who have served at least one year of active duty in the grade currently held;

(B) whose names are not on a list of officers recommended for promotion; and

(C) who are not eligible to be retired under any provision of law (other than by reason of eligibility pursuant to section 4403 of the National Defense Authorization Act for Fiscal Year 1993) and are not within two years of becoming so eligible.

(4) Convening selection boards under section 611(b) of this title to consider for early retirement or discharge regular officers on the active-duty list in a grade below lieutenant colonel or commander—

(A) who have served at least one year of active duty in the grade currently held; and

(B) whose names are not on a list of officers recommended for promotion.

(c)(1) In the case of an action under subsection (b)(2), the total number of officers described in that subsection that a selection board convened under section 611(b) of this title pursuant to the authority of that subsection may recommend for early retirement may not be more than 30 percent of the number of officers considered in each grade in each competitive category.

(2) In the case of an action authorized under subsection (b)(2), the Secretary of Defense may also authorize the Secretary of the military department concerned when convening a selection board under section 611(b) of this title to consider regular officers on the active-duty list for early retirement to include within the officers to be considered by the board reserve officers on the active-duty list on the same basis as regular officers.

(3) In the case of an action under subsection (b)(2), the Secretary of the military department concerned may submit to a selection board convened pursuant to that subsection—

(A) the names of all eligible officers described in that subsection in a particular grade and competitive category; or

(B) the names of all eligible officers described in that subsection in a particular grade and competitive category who are also in particular year groups, specialties, or retirement categories, or any combination thereof, within that competitive category.

(4) In the case of an action under subsection (b)(2), the Secretary of Defense may also authorize the Secretary of the military department concerned to waive the five-year period specified in section 638(c) of this title if the Secretary of Defense determines that it is necessary for the Secretary of that military department to have such authority in order to meet mission needs.

(d)(1) In the case of an action under subsection (b)(3), the Secretary of the military department concerned may submit to a selection board convened pursuant to that subsection—

(A) the names of all officers described in that subsection in a particular grade and competitive category; or

(B) the names of all officers described in that subsection in a particular grade and competitive category who also are in particular year groups or specialties, or both, within that competitive category.

(2) The total number of officers to be recommended for discharge by a selection board convened pursuant to subsection (b)(3) may not be more than 30 percent of the number of officers considered.

(3) An officer who is recommended for discharge by a selection board convened pursuant to the authority of subsection (b)(3) and whose discharge is approved by the Secretary concerned shall be discharged on a date specified by the Secretary concerned.

(4) Selection of officers for discharge under this subsection shall be based on the needs of the service.

(e)(1) In the case of action under subsection (b)(4), the Secretary of the military department concerned shall specify the total number of officers described in that subsection that a selection board convened under section 611(b) of this title pursuant to the authority of that subsection may recommend for early retirement or

discharge. Officers who are eligible, or are within two years of becoming eligible, to be retired under any provision of law (other than by reason of eligibility pursuant to section 4403 of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102–484)), if selected by the board, shall be retired or retained until becoming eligible to retire under section 7311, 8323, or 9311 of this title, and those officers who are otherwise ineligible to retire under any provision of law shall, if selected by the board, be discharged.

(2) In the case of action under subsection (b)(4), the Secretary of the military department concerned may submit to a selection board convened pursuant to that subsection—

(A) the names of all eligible officers described in that subsection, whether or not they are eligible to be retired under any provision of law, in a particular grade and competitive category; or

(B) the names of all eligible officers described in that subsection in a particular grade and competitive category, whether or not they are eligible to be retired under any provision of law, who are also in particular year groups, specialties, or retirement categories, or any combination thereof, with that competitive category.

(3) The number of officers specified under paragraph (1) may not be more than 30 percent of the number of officers considered.

(4) An officer who is recommended for discharge by a selection board convened pursuant to the authority of subsection (b)(4) and whose discharge is approved by the Secretary concerned shall be discharged on a date specified by the Secretary concerned.

(5) Selection of officers for discharge under this subsection shall be based on the needs of the service.

(f) The discharge or retirement of an officer pursuant to this section shall be considered to be involuntary for purposes of any other provision of law.

(Added Pub. L. 101–510, div. A, title V, § 521(a)(1), Nov. 5, 1990, 104 Stat. 1559; amended Pub. L. 102–190, div. A, title V, § 503(b), Dec. 5, 1991, 105 Stat. 1355; Pub. L. 102–484, div. A, title V, § 503, title LXIV, § 4403(g)(2), Oct. 23, 1992, 106 Stat. 2402, 2703; Pub. L. 103–160, div. A, title V, § 561(b), Nov. 30, 1993, 107 Stat. 1667; Pub. L. 105–261, div. A, title V, § 561(c), Oct. 17, 1998, 112 Stat. 2025; Pub. L. 106–398, § 1 [[div. A], title V, § 571(c)], Oct. 30, 2000, 114 Stat. 1654, 1654A–134; Pub. L. 109–364, div. A, title VI, § 623(b), Oct. 17, 2006, 120 Stat. 2256; Pub. L. 112–239, div. A, title V, § 502, Jan. 2, 2013, 126 Stat. 1714; Pub. L. 113–66, div. A, title V, § 503(a), Dec. 26, 2013, 127 Stat. 750; Pub. L. 113–291, div. A, title V, § 503, Dec. 19, 2014, 128 Stat. 3355; Pub. L. 114–92, div. A, title V, § 503, Nov. 25, 2015, 129 Stat. 807; Pub. L. 114–328, div. A, title V, §§ 506, 508(b), Dec. 23, 2016, 130 Stat. 2108, 2109; Pub. L. 115–91, div. A, title V, § 503, Dec. 12, 2017, 131 Stat. 1373; Pub. L. 115–232, div. A, title VIII, § 809(a), Aug. 13, 2018, 132 Stat. 1840.)

References in Text

Section 4403 of the National Defense Authorization Act for Fiscal Year 1993, referred to in subsecs. (b)(3)(C) and (e)(1), is section 4403 of Pub. L. 102–484, which is set out as a note under section 1293 of this title.

Amendments

2018—Subsecs. (b)(2)(C), (e)(1). Pub. L. 115–232 substituted ‘‘section 7311, 8323, or 9311’’ for ‘‘section 3911, 6323, or 8911’’.

2017—Subsec. (c)(1). Pub. L. 115–91, § 503(1), added par. (1) and struck out former par. (1) which read as follows: ‘‘In the case of an action under subsection (b)(2), the Secretary of the military department concerned shall specify the number of officers described in that subsection which a selection board convened under section 611(b) of this title pursuant to the authority of that subsection may recommend for early retirement. Such number may not be more than 30 percent of the number of officers considered in each grade in each competitive category.’’

Subsec. (d)(2). Pub. L. 115–91, § 503(2), added par. (2) and struck out former par. (2) which read as follows: ‘‘The Secretary concerned shall specify the total number of officers to be recommended for discharge by a selection board convened pursuant to subsection (b)(3). That number may not be more than 30 percent of the number of officers considered.’’

2016—Subsec. (a)(2). Pub. L. 114–328, § 508(b), substituted ‘‘December 31, 2025’’ for ‘‘December 31, 2018’’.

Subsec. (b)(4). Pub. L. 114–328, § 506(1), added par. (4).

Subsecs. (e), (f). Pub. L. 114–328, § 506(2), (3), added subsec. (e) and redesignated former subsec. (e) as (f).

2015—Subsec. (d)(2). Pub. L. 114–92 substituted ‘‘officers considered.’’ for ‘‘officers considered—

‘‘(A) in each grade in each competitive category, except that through December 31, 2018, such number may be more than 30 percent of the officers considered in each competitive category, but may not be more than 30 percent of the number of officers considered in each grade; or

‘‘(B) in each grade, year group, or specialty (or combination thereof) in each competitive category, except that through December 31, 2018, such number may be more than 30 percent of the officers considered in each competitive category, but may not be more than 30 percent of the number of officers considered in each grade.’’

2014—Subsec. (d)(3) to (5). Pub. L. 113–291 redesignated pars. (4) and (5) as (3) and (4), respectively, and struck out former par. (3) which read as follows: ‘‘The total number of officers described in subsection (b)(3) from any of the armed forces (or from any of the armed forces in a particular grade) who may be recommended during a fiscal year for discharge by a selection board convened pursuant to the authority of that subsection may not exceed 70 percent of the decrease, as compared to the preceding fiscal year, in the number of officers of that armed force (or the number of officers of that armed force in that grade) authorized to be serving on active duty as of the end of that fiscal year.’’

2013—Subsec. (a). Pub. L. 112–239, § 502(1), designated existing provisions as par. (1), struck out ‘‘, during the period beginning on October 1, 1990, and ending on December 31, 2001, and for the purpose of subsection (b)(4) during the period beginning on October 1, 2006, and ending on December 31, 2012,’’ after ‘‘military department’’, and added par. (2).

Subsec. (b)(2)(A). Pub. L. 113–66, § 503(a)(1), substituted ‘‘have failed of selection for promotion at least one time and whose names are not on a list of officers recommended for promotion’’ for ‘‘would be subject to consideration for selection for early retirement under section 638(a)(1)(A) of this title except that they have failed of selection for promotion only one time (rather than two or more times)’’.

Subsec. (b)(2)(B). Pub. L. 113–66, § 503(a)(2), substituted ‘‘have served on active duty in that grade for at least two years and whose names are not on a list of officers recommended for promotion’’ for ‘‘would be subject to consideration for selection for early retirement under section 638(a)(1)(B) of this title except that they have served on active duty in that grade less than four years (but not less than two years)’’.

Subsec. (b)(3), (4). Pub. L. 112–239, § 502(2), redesignated par. (4) as (3) and struck out former par. (3) which read as follows: ''Suspending section 638(c) of this title.''

Subsec. (c)(4). Pub. L. 112–239, § 502(3), added par. (4).

Subsec. (d). Pub. L. 112–239, § 502(4), substituted ''subsection (b)(3)'' for ''subsection (b)(4)'' wherever appearing and ''except that through December 31, 2018,'' for ''except that during the period beginning on October 1, 2006, and ending on December 31, 2012,'' in subpars. (A) and (B) of par. (2).

2006—Subsec. (a). Pub. L. 109–364, § 623(b)(1), inserted ''and for the purpose of subsection (b)(4) during the period beginning on October 1, 2006, and ending on December 31, 2012,'' after ''December 31, 2001,''.

Subsec. (d)(2)(A). Pub. L. 109–364, § 623(b)(2)(A), inserted '', except that during the period beginning on October 1, 2006, and ending on December 31, 2012, such number may be more than 30 percent of the officers considered in each competitive category, but may not be more than 30 percent of the number of officers considered in each grade'' before ''; or'' at end.

Subsec. (d)(2)(B). Pub. L. 109–364, § 623(b)(2)(B), inserted '', except that during the period beginning on October 1, 2006, and ending on December 31, 2012, such number may be more than 30 percent of the officers considered in each competitive category, but may not be more than 30 percent of the number of officers considered in each grade'' before period at end.

2000—Subsec. (a). Pub. L. 106–398 substituted ''December 31, 2001'' for ''September 30, 2001''.

1998—Subsec. (a). Pub. L. 105–261 substituted ''during the period beginning on October 1, 1990, and ending on September 30, 2001'' for ''during the nine-year period beginning on October 1, 1990''.

1993—Subsec. (a). Pub. L. 103–160 substituted ''nine-year period'' for ''five-year period''.

1992—Subsec. (b)(4)(C). Pub. L. 102–484, § 4403(g)(2), inserted ''(other than by reason of eligibility pursuant to section 4403 of the National Defense Authorization Act for Fiscal Year 1993)'' after ''any provision of law''.

Subsec. (c)(3). Pub. L. 102–484, § 503, added par. (3).

1991—Subsec. (b)(2)(C). Pub. L. 102–190, § 503(b)(1), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''Officers holding a regular grade below the grade of colonel or, in the case of the Navy, captain who are not eligible for retirement under section 3911, 6323, or 8911 of this title but who after two additional years of active service as a commissioned officer would be eligible for retirement under one of those sections and whose names are not on a list of officers recommended for promotion.''

Subsec. (c). Pub. L. 102–190, § 503(b)(2), designated existing provisions as par. (1) and added par. (2).

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115–232 effective Feb. 1, 2019, with provision for the coordination of amendments and special rule for certain redesignations, see section 800 of Pub. L. 115–232, set out as a note preceding section 3001 of this title.

§ 638b. Voluntary retirement incentive

(a) INCENTIVE FOR VOLUNTARY RETIREMENT FOR CERTAIN OFFICERS.—The Secretary of Defense may authorize the Secretary of a military department to provide a voluntary retirement incentive payment in accordance with this section to an officer of the armed forces under that Secretary's jurisdiction who is specified in subsection (c) as being eligible for such a payment.

(b) LIMITATIONS.—(1) Any authority provided the Secretary of a military department under this section shall expire as specified by the Secretary of Defense, but not later than December 31, 2018.

(2) The total number of officers who may be provided a voluntary retirement incentive payment under this section may not exceed 675 officers.

(c) ELIGIBLE OFFICERS.—(1) Except as provided in paragraph (2), an officer of the armed forces is eligible for a voluntary retirement incentive payment under this section if the officer—

(A) has served on active duty for more than 20 years, but not more than 29 years, on the approved date of retirement;

(B) meets the minimum length of commissioned service requirement for voluntary retirement as a commissioned officer in accordance with section 7311, 8323, or 9311 of this title, as applicable to that officer;

(C) on the approved date of retirement, has 12 months or more remaining on active-duty service before reaching the maximum retirement years of active service for the member's grade as specified in section 633 or 634 of this title;

(D) on the approved date of retirement, has 12 months or more remaining on active-duty service before reaching the maximum retirement age under any other provision of law; and

(E) meets any additional requirements for such eligibility as is specified by the Secretary concerned, including any requirement relating to years of service, skill rating, military specialty or competitive category, grade, any remaining period of obligated service, or any combination thereof.

(2) The following officers are not eligible for a voluntary retirement incentive payment under this section:

(A) An officer being evaluated for disability under chapter 61 of this title.

(B) An officer projected to be retired under section 1201 or 1204 of this title.

(C) An officer projected to be discharged with disability severance pay under section 1212 of this title.

(D) A member transferred to the temporary disability retired list under section 1202 or 1205 of this title.

(E) An officer subject to pending disciplinary action or subject to administrative separation or mandatory discharge under any other provision of law or regulation.

(d) AMOUNT OF PAYMENT.—The amount of the voluntary retirement incentive payment paid an officer under this section shall be an amount determined by the Secretary concerned, but not to exceed an amount equal to 12 times the amount of the officer's monthly basic pay at the time of the officer's retirement. The amount may be paid in a lump sum at the time of retirement.

(e) REPAYMENT FOR MEMBERS WHO RETURN TO ACTIVE DUTY.—(1) Except as provided in paragraph (2), a member of the armed forces who, after having received all or part of a voluntary retirement incentive under this section, returns to active duty shall have deducted from each payment of basic pay, in such schedule of monthly installments as the Secretary concerned shall specify, until the total amount deducted from such basic pay equals the total amount of voluntary retirement incentive received.

(2) Members who are involuntarily recalled to active duty or full-time National Guard duty

under any provision of law shall not be subject to this subsection.

(3) The Secretary of Defense may waive, in whole or in part, repayment required under paragraph (1) if the Secretary determines that recovery would be against equity and good conscience or would be contrary to the best interest of the United States. The authority in this paragraph may be delegated only to the Under Secretary of Defense for Personnel and Readiness and the Principal Deputy Under Secretary of Defense of Personnel and Readiness.

(Added Pub. L. 112–81, div. A, title V, § 504(a)(1), Dec. 31, 2011, 125 Stat. 1389; amended Pub. L. 115–232, div. A, title VIII, § 809(a), Aug. 13, 2018, 132 Stat. 1840.)

AMENDMENTS

2018—Subsec. (c)(1)(B). Pub. L. 115–232 substituted ''section 7311, 8323, or 9311'' for ''section 3911, 6323, or 8911''.

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115–232 effective Feb. 1, 2019, with provision for the coordination of amendments and special rule for certain redesignations, see section 800 of Pub. L. 115–232, set out as a note preceding section 3001 of this title.

§ 639. Continuation on active duty to complete disciplinary action

When any action has been commenced against an officer with a view to trying such officer by court-martial and such officer is to be separated or retired in accordance with this chapter, the Secretary of the military department concerned may delay the separation or retirement of the officer, without prejudice to such action, until the completion of the action.

(Added Pub. L. 96–513, title I, § 105, Dec. 12, 1980, 94 Stat. 2866.)

EFFECTIVE DATE

Section effective Sept. 15, 1981, but the authority to prescribe regulations under this section effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

§ 640. Deferment of retirement or separation for medical reasons

(a) If the Secretary of the military department concerned determines that the evaluation of the physical condition of an officer and determination of the officer's entitlement to retirement or separation for physical disability require hospitalization or medical observation and that such hospitalization or medical observation cannot be completed with confidence in a manner consistent with the member's well being before the date on which the officer would otherwise be required to retire or be separated under this title, the Secretary may defer the retirement or separation of the officer under this title.

(b) A deferral of retirement or separation under subsection (a) may not extend for more than 30 days after completion of the evaluation requiring hospitalization or medical observation.

(Added Pub. L. 96–513, title I, § 105, Dec. 12, 1980, 94 Stat. 2866; amended Pub. L. 107–107, div. A, title V, § 507, Dec. 28, 2001, 115 Stat. 1090.)

AMENDMENTS

2001—Pub. L. 107–107 amended text generally. Prior to amendment, text read as follows: ''The Secretary of the military department concerned may defer the retirement or separation under this title of any officer if the evaluation of the physical condition of the officer and determination of the officer's entitlement to retirement or separation for physical disability require hospitalization or medical observation that cannot be completed before the date on which the officer would otherwise be required to retire or be separated under this title.''

EFFECTIVE DATE

Section effective Sept. 15, 1981, but the authority to prescribe regulations under this section effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

SUBCHAPTER V—ADDITIONAL PROVISIONS RELATING TO PROMOTION, SEPARATION, AND RETIREMENT

Sec.
641. Applicability of chapter.
642. Entitlement of officers discharged or retired under this chapter to separation pay or retired pay.
643. Chaplains: discharge or retirement upon loss of professional qualifications.
[644. Repealed.]
645. Definitions.
646. Consideration of performance as a member of the Joint Staff.
647. Force shaping authority.

AMENDMENTS

2004—Pub. L. 108–375, div. A, title V, § 501(c)(1)(B), Oct. 28, 2004, 118 Stat. 1874, added item 647.

1994—Pub. L. 103–337, div. A, title XVI, § 1671(b)(5), Oct. 5, 1994, 108 Stat. 3013, struck out item 644 ''Authority to suspend officer personnel laws''.

1984—Pub. L. 98–525, title XIII, § 1301(d)(2), Oct. 19, 1984, 98 Stat. 2612, added item 646.

§ 641. Applicability of chapter

Officers in the following categories are not subject to this chapter (other than section 640 and, in the case of warrant officers, section 628):

(1) Reserve officers—

(A) on active duty authorized under section 115(a)(1)(B) or 115(b)(1) of this title, or excluded from counting for active duty end strengths under section 115(i) of this title;

(B) on active duty under section 7038, 8083, 8084, 9038, 10211, 10301 through 10305, 10502, 10505, 10506(a), 10506(b), 10507, or 12402 of this title or section 708 of title 32; or

(C) on full-time National Guard duty.

(2) The director of admissions, dean, and permanent professors at the United States Military Academy, the registrar, dean, and permanent professors at the United States Air Force Academy, and permanent professors of the Navy (as defined in regulations prescribed by the Secretary of the Navy).

(3) Warrant officers.

(4) Retired officers on active duty.

(5) Students at the Uniformed Services University of the Health Sciences.

(Added Pub. L. 96–513, title I, § 105, Dec. 12, 1980, 94 Stat. 2866; amended Pub. L. 98–525, title IV, § 414(a)(5), title V, § 527(b), Oct. 19, 1984, 98 Stat.

2519, 2525; Pub. L. 99–433, title V, § 531(a)(2), Oct. 1, 1986, 100 Stat. 1063; Pub. L. 103–337, div. A, title XVI, § 1671(c)(5), Oct. 5, 1994, 108 Stat. 3014; Pub. L. 104–106, div. A, title XV, § 1501(c)(6), Feb. 10, 1996, 110 Stat. 498; Pub. L. 104–201, div. A, title XII, § 1212(e), Sept. 23, 1996, 110 Stat. 2694; Pub. L. 106–398, § 1 [[div. A], title V, § 521], Oct. 30, 2000, 114 Stat. 1654, 1654A–108; Pub. L. 107–107, div. A, title V, § 511(a), Dec. 28, 2001, 115 Stat. 1092; Pub. L. 108–375, div. A, title IV, § 416(j), title V, § 501(d), Oct. 28, 2004, 118 Stat. 1869, 1874; Pub. L. 109–364, div. A, title VI, § 621(c), Oct. 17, 2006, 120 Stat. 2255; Pub. L. 110–181, div. A, title V, § 508(b), Jan. 28, 2008, 122 Stat. 97; Pub. L. 115–91, div. A, title VI, § 618(b), Dec. 12, 2017, 131 Stat. 1426; Pub. L. 115–232, div. A, title VIII, § 809(a), Aug. 13, 2018, 132 Stat. 1840.)

CODIFICATION

Pub. L. 103–337, div. A, title XVI, §§ 1624, 1691(b)(1), Oct. 5, 1994, 108 Stat. 2961, 3026, which directed amendment of this section effective Oct. 1, 1996, by inserting ''(a)'' before ''Officers in the following'' and by adding at the end a new subsec. (b), was amended by Pub. L. 104–106, div. A, title XV, § 1501(a)(1)(A), Feb. 10, 1996, 110 Stat. 495, and, as so amended, amends section 620 of this title instead of this section.

AMENDMENTS

2018—Par. (1)(B). Pub. L. 115–232 substituted ''section 7038, 8083, 8084, 9038,'' for ''section 3038, 5143, 5144, 8038,''.

2017—Par. (6). Pub. L. 115–91 struck out par. (6) which read as follows: ''Officers appointed pursuant to an agreement under section 329 of title 37.''

2008—Par. (2). Pub. L. 110–181 substituted '', the registrar'' for ''and the registrar'' and inserted '', and permanent professors of the Navy (as defined in regulations prescribed by the Secretary of the Navy)'' before period at end.

2006—Par. (6). Pub. L. 109–364 added par. (6).

2004—Par. (1). Pub. L. 108–375, § 416(j), amended par. (1) generally. Prior to amendment, par. (1) read as follows:

''(1) Reserve officers—

''(A) on active duty for training;

''(B) on active duty under section 3038, 5143, 5144, 8038, 10211, 10301 through 10305, 10502, 10505, 10506(a), 10506(b), 10507, or 12402 of this title or section 708 of title 32;

''(C) on active duty under section 12301(d) of this title in connection with organizing, administering, recruiting, instructing, or training the reserve components;

''(D) on active duty under section 12301(d) of this title, other than as provided under subparagraph (C), if the call or order to active duty, under regulations prescribed by the Secretary concerned, specifies a period of three years or less and continued placement on the reserve active-status list;

''(E) on active duty to pursue special work;

''(F) ordered to active duty under section 12304 of this title;

''(G) on active duty under section 10(b)(2) of the Military Selective Service Act (50 U.S.C. App. 460(b)(2)) for the administration of the Selective Service System; or

''(H) on full-time National Guard duty.''

Par. (1)(F). Pub. L. 108–375, § 501(d), which directed substitution of ''sections 12302 and 12304'' for ''section 12304'' in subpar. (F), could not be executed because par. (1) did not contain a subpar. (F) subsequent to amendment by Pub. L. 108–375, § 416(j). See above.

2001—Par. (1)(D). Pub. L. 107–107 amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: ''on the reserve active-status list who are on active duty under section 12301(d) of this title, other than as provided in subparagraph (C), under a call or order to active duty specifying a period of three years or less;''.

2000—Par. (1)(D) to (H). Pub. L. 106–398 added subpar. (D) and redesignated former subpars. (D) to (G) as (E) to (H), respectively.

1996—Par. (1)(B). Pub. L. 104–201 inserted ''5143, 5144,'' after ''3038,''.

Pub. L. 104–106 substituted ''10502, 10505, 10506(a), 10506(b), 10507'' for ''10501''.

1994—Par. (1)(B). Pub. L. 103–337, § 1671(c)(5)(A), substituted ''3038, 8038, 10211, 10301 through 10305, 10501, or 12402'' for ''175, 265, 3021, 3038, 3040, 3496, 5251, 5252, 8021, 8038, or 8496''.

Par. (1)(C). Pub. L. 103–337, § 1671(c)(5)(B), substituted ''12301(d)'' for ''672(d)''.

Par. (1)(E). Pub. L. 103–337, § 1671(c)(5)(C), substituted ''12304'' for ''673b''.

1986—Par. (1)(B). Pub. L. 99–433 substituted ''3021, 3038, 3040, 3496, 5251, 5252, 8021, 8038'' for ''3015, 3019, 3033, 3496, 5251, 5252, 8019, 8033''.

1984—Pub. L. 98–525, § 527(b), substituted ''(other than section 640 and, in the case of warrant officers, section 628)'' for ''(other than section 640)'' in provisions preceding par. (1).

Par. (1)(C). Pub. L. 98–525, § 414(a)(5)(A), struck out ''or under section 502 or 503 of title 32'' after ''section 672(d) of this title''.

Par. (1)(G). Pub. L. 98–525, § 414(a)(5)(B)–(D), added subpar. (G).

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115–232 effective Feb. 1, 2019, with provision for the coordination of amendments and special rule for certain redesignations, see section 800 of Pub. L. 115–232, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 501(d) of Pub. L. 108–375 effective on the first day of the first month beginning more than 180 days after Oct. 28, 2004, see section 501(g) of Pub. L. 108–375, set out as a note under section 531 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–106, div. A, title XV, § 1501(c), Feb. 10, 1996, 110 Stat. 498, provided that the amendment made by that section is effective as of Dec. 1, 1994, and as if included as an amendment made by the Reserve Officer Personnel Management Act, title XVI of Pub. L. 103–337, as originally enacted.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as a note under section 10001 of this title.

EFFECTIVE DATE

Section effective Sept. 15, 1981, but the authority to prescribe regulations under this subchapter effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

RETROACTIVE APPLICATION

Pub. L. 107–107, div. A, title V, § 511(b), Dec. 28, 2001, 115 Stat. 1092, provided that:

''(1) The Secretary of the military department concerned may provide that an officer who was excluded from the active-duty list under section 641(1)(D) of title 10, United States Code, as amended by section 521 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted into law by Public Law 106–398; 114 Stat. 1654A–108), shall be considered to have been on the active-duty list during the period beginning on the date on which the officer was so excluded and ending on the date of the enactment of this Act [Dec. 28, 2001].

''(2) The Secretary of the military department concerned may provide that a Reserve officer who was

placed on the active-duty list on or after October 30, 1997, shall be placed on the reserve active-status list if the officer otherwise meets the conditions specified in section 641(1)(D) of title 10, United States Code, as amended by subsection (a).''

TRANSITION PROVISIONS UNDER DEFENSE OFFICER PERSONNEL MANAGEMENT ACT

For provisions to prevent extinction or premature termination of rights, duties, penalties, or proceedings that existed or were begun prior to the effective date of Pub. L. 96–513 and otherwise to allow for an orderly transition to the system of officer personnel management put in place under Pub. L. 96–513, see section 601 et seq. of Pub. L. 96–513, set out as a note under section 611 of this title.

§ 642. Entitlement of officers discharged or retired under this chapter to separation pay or retired pay

(a) An officer who is discharged under this chapter is entitled, if eligible therefor, to separation pay under section 1174 of this title.

(b) An officer who is retired under this chapter is entitled to retired pay computed under chapter 71 of this title.

(Added Pub. L. 96–513, title I, § 105, Dec. 12, 1980, 94 Stat. 2867.)

EFFECTIVE DATE

Section effective Sept. 15, 1981, but the authority to prescribe regulations under this section effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

§ 643. Chaplains: discharge or retirement upon loss of professional qualifications

Under regulations prescribed by the Secretary of Defense, a commissioned officer on the active-duty list of the Army, Navy, or Air Force who is appointed or designated as a chaplain may, if he fails to maintain the qualifications needed to perform his professional function, be discharged or, if eligible for retirement, may be retired.

(Added Pub. L. 96–513, title I, § 105, Dec. 12, 1980, 94 Stat. 2867.)

EFFECTIVE DATE

Section effective Sept. 15, 1981, but the authority to prescribe regulations under this section effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

[§ 644. Repealed. Pub. L. 103–337, div. A, title XVI, § 1622(b), Oct. 5, 1994, 108 Stat. 2961]

Section, added Pub. L. 96–513, title I, § 105, Dec. 12, 1980, 94 Stat. 2867; amended Pub. L. 102–190, div. A, title XI, § 1115, Dec. 5, 1991, 105 Stat. 1503, related to authority to suspend officer personnel laws. See section 123 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1996, see section 1691(b)(1) of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

§ 645. Definitions

In this chapter:

(1) The term ''promotion zone'' means a promotion eligibility category consisting of the officers on an active-duty list in the same grade and competitive category—

(A) who—

(i) in the case of officers in grades below colonel, for officers of the Army, Air Force, and Marine Corps, or captain, for officers of the Navy, have neither (I) failed of selection for promotion to the next higher grade, nor (II) been removed from a list of officers recommended for promotion to that grade (other than after having been placed on that list after a selection from below the promotion zone); or

(ii) in the case of officers in the grade of colonel or brigadier general, for officers of the Army, Air Force, and Marine Corps, or captain or rear admiral (lower half), for officers of the Navy, have neither (I) not been recommended for promotion to the next higher grade when considered in the promotion zone, nor (II) been removed from a list of officers recommended for promotion to that grade (other than after having been placed on that list after a selection from below the promotion zone); and

(B) are senior to the officer designated by the Secretary of the military department concerned to be the junior officer in the promotion zone eligible for consideration for promotion to the next higher grade.

(2) The term ''officers above the promotion zone'' means a group of officers on an active-duty list in the same grade and competitive category who—

(A) are eligible for consideration for promotion to the next higher grade;

(B) are in the same grade as those officers in the promotion zone for that competitive category; and

(C) are senior to the senior officer in the promotion zone for that competitive category.

(3) The term ''officers below the promotion zone'' means a group of officers on the active-duty list in the same grade and competitive category who—

(A) are eligible for consideration for promotion to the next higher grade;

(B) are in the same grade as the officers in the promotion zone for that competitive category; and

(C) are junior to the junior officer in the promotion zone for that competitive category.

(Added Pub. L. 96–513, title I, § 105, Dec. 12, 1980, 94 Stat. 2867; amended Pub. L. 97–86, title IV, § 405(b)(1), Dec. 1, 1981, 95 Stat. 1105; Pub. L. 98–525, title V, § 533(a), Oct. 19, 1984, 98 Stat. 2528; Pub. L. 99–145, title V, § 514(b)(1), Nov. 8, 1985, 99 Stat. 628; Pub. L. 102–25, title VII, § 701(i)(1), Apr. 6, 1991, 105 Stat. 115.)

AMENDMENTS

1991—Pars. (1) to (3). Pub. L. 102–25 inserted ''The term'' after par. designations and lowercased initial letter of quoted phrases.

1985—Par. (1)(A)(ii). Pub. L. 99–145 substituted ''rear admiral (lower half)'' for ''commodore''.

1984—Par. (1)(A)(i)(II), (ii)(II). Pub. L. 98–525, § 533(a)(1), inserted ''(other than after having been

placed on that list after a selection from below the promotion zone)''.

Par. (1)(B). Pub. L. 98–525, § 533(a)(2), inserted ''in the promotion zone'' after ''the junior officer'' and struck out ''in the promotion zone'' after ''higher grade''.

1981—Par. (1)(A)(ii). Pub. L. 97–86 substituted ''commodore'' for ''commodore admiral''.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–86 effective Sept. 15, 1981, see section 405(f) of Pub. L. 97–86, set out as a note under section 101 of this title.

EFFECTIVE DATE

Section effective Sept. 15, 1981, but the authority to prescribe regulations under this section effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

§ 646. Consideration of performance as a member of the Joint Staff

The Secretary of Defense, in consultation with the Chairman of the Joint Chiefs of Staff, shall ensure that officer personnel policies of the Army, Navy, Air Force, Marine Corps, and Space Force concerning promotion, retention, and assignment give appropriate consideration to the performance of an officer as a member of the Joint Staff.

(Added Pub. L. 98–525, title XIII, § 1301(d)(1), Oct. 19, 1984, 98 Stat. 2612; amended Pub. L. 116–283, div. A, title IX, § 924(b)(1)(C), Jan. 1, 2021, 134 Stat. 3820.)

AMENDMENTS

2021—Pub. L. 116–283 substituted ''Marine Corps, and Space Force'' for ''and Marine Corps''.

§ 647. Force shaping authority

(a) AUTHORITY.—The Secretary concerned may, solely for the purpose of restructuring an armed force under the jurisdiction of that Secretary—

(1) discharge an officer described in subsection (b); or

(2) transfer such an officer from the active-duty list of that armed force to the reserve active-status list of a reserve component.

(b) COVERED OFFICERS.—(1) The authority under this section may be exercised in the case of an officer who—

(A) has completed not more than six years of service as a commissioned officer in the armed forces; or

(B) has completed more than six years of service as a commissioned officer in the armed forces, but has not completed a minimum service obligation applicable to that member.

(2) In this subsection, the term ''minimum service obligation'' means the initial period of required active duty service together with any additional period of required active duty service incurred during the initial period of required active duty service.

(c) APPOINTMENT OF TRANSFERRED OFFICERS.—An officer of the Regular Army, Regular Air Force, Regular Navy, Regular Marine Corps, or Regular Space Force who is transferred to a reserve active-status list under this section shall be discharged from the regular component concerned and appointed as a reserve commissioned officer under section 12203 of this title.

(d) REGULATIONS.—The Secretary concerned shall prescribe regulations for the exercise of the Secretary's authority under this section.

(Added Pub. L. 108–375, div. A, title V, § 501(c)(1)(A), Oct. 28, 2004, 118 Stat. 1873; amended Pub. L. 110–181, div. A, title V, § 503(b), Jan. 28, 2008, 122 Stat. 95; Pub. L. 116–283, div. A, title IX, § 924(b)(4)(H), (16), Jan. 1, 2021, 134 Stat. 3822, 3823.)

AMENDMENTS

2021—Subsec. (a)(2). Pub. L. 116–283, § 924(b)(16), struck out ''of that armed force'' before period at end.

Subsec. (c). Pub. L. 116–283, § 924(b)(4)(H), substituted ''Regular Marine Corps, or Regular Space Force'' for ''or Regular Marine Corps''.

2008—Subsec. (b)(1)(A), (B). Pub. L. 110–181 substituted ''six years'' for ''5 years''.

EFFECTIVE DATE

Section effective on the first day of the first month beginning more than 180 days after Oct. 28, 2004, see section 501(g) of Pub. L. 108–375, set out as an Effective Date of 2004 Amendment note under section 531 of this title.

SUBCHAPTER VI—ALTERNATIVE PROMOTION AUTHORITY FOR OFFICERS IN DESIGNATED COMPETITIVE CATEGORIES

Sec.
649a. Officers in designated competitive categories.
649b. Selection for promotion.
649c. Eligibility for consideration for promotion.
649d. Opportunities for consideration for promotion.
649e. Promotions.
649f. Failure of selection for promotion.
649g. Retirement: retirement for years of service; selective early retirement.
649h. Continuation on active duty.
649i. Continuation on active duty: officers in certain military specialties and career tracks.
649j. Other administrative authorities.
649k. Regulations.

§ 649a. Officers in designated competitive categories

(a) AUTHORITY TO DESIGNATE COMPETITIVE CATEGORIES OF OFFICERS.—Each Secretary of a military department may designate one or more competitive categories for promotion of officers under section 621 of this title that are under the jurisdiction of such Secretary as a competitive category of officers whose promotion, retirement, and continuation on active duty shall be subject to the provisions of this subchapter.

(b) LIMITATION ON EXERCISE OF AUTHORITY.—The Secretary of a military department may not designate a competitive category of officers for purposes of this subchapter until 60 days after the date on which the Secretary submits to the Committees on Armed Services of the Senate and the House of Representatives a report on the designation of the competitive category. The report on the designation of a competitive category shall set forth the following:

(1) A detailed description of officer requirements for officers within the competitive category.

(2) An explanation of the number of opportunities for consideration for promotion to each

particular grade, and an estimate of promotion timing, within the competitive category.

(3) An estimate of the size of the promotion zone for each grade within the competitive category.

(4) A description of any other matters the Secretary considered in determining to designate the competitive category for purposes of this subchapter.

(Added Pub. L. 115–232, div. A, title V, § 507(a)(1), Aug. 13, 2018, 132 Stat. 1744.)

§ 649b. Selection for promotion

(a) IN GENERAL.—Except as provided in this section, the selection for promotion of officers in any competitive category of officers designated for purposes of this subchapter shall be governed by the provisions of subchapter I of this chapter.

(b) NO RECOMMENDATION FOR PROMOTION OF OFFICERS BELOW PROMOTION ZONE.—Section 616(b) of this title shall not apply to the selection for promotion of officers described in subsection (a).

(c) RECOMMENDATION FOR OFFICERS TO BE EXCLUDED FROM FUTURE CONSIDERATION FOR PROMOTION.—In making recommendations pursuant to section 616 of this title for purposes of the administration of this subchapter, a selection board convened under section 611(a) of this title may recommend that an officer considered by the board be excluded from future consideration for promotion under this chapter.

(Added Pub. L. 115–232, div. A, title V, § 507(a)(1), Aug. 13, 2018, 132 Stat. 1744.)

§ 649c. Eligibility for consideration for promotion

(a) IN GENERAL.—Except as provided by this section, eligibility for promotion of officers in any competitive category of officers designated for purposes of this subchapter shall be governed by the provisions of section 619 of this title.

(b) INAPPLICABILITY OF CERTAIN TIME-IN-GRADE REQUIREMENTS.—Paragraphs (2) through (4) of section 619(a) of this title shall not apply to the promotion of officers described in subsection (a).

(c) INAPPLICABILITY TO OFFICERS ABOVE AND BELOW PROMOTION ZONE.—The following provisions of section 619(c) of this title shall not apply to the promotion of officers described in subsection (a):

(1) The reference in paragraph (1) of that section to an officer above the promotion zone.

(2) Paragraph (2)(A) of that section.

(d) INAPPLICABILITY OF REQUIREMENT RELATING TO OPPORTUNITIES FOR CONSIDERATION FOR PROMOTION.—Section 645(1)(A)(i)(I) of this title shall not apply to the promotion of officers described in subsection (a) to the extent that such section is inconsistent with a number of opportunities for promotion specified pursuant to section 649d of this title.

(e) INELIGIBILITY OF CERTAIN OFFICERS.—The following officers are not eligible for promotion under this subchapter:

(1) An officer described in section 619(d) of this title.

(2) An officer not included within the promotion zone.

(3) An officer who has failed of promotion to a higher grade the maximum number of times specified for opportunities for promotion for such grade within the competitive category concerned pursuant to section 649d of this title.

(4) An officer recommended by a selection board to be removed from consideration for promotion in accordance with section 649b(c) of this title.

(Added Pub. L. 115–232, div. A, title V, § 507(a)(1), Aug. 13, 2018, 132 Stat. 1745; amended Pub. L. 116–283, div. A, title V, § 506, Jan. 1, 2021, 134 Stat. 3573.)

AMENDMENTS

2021—Subsecs. (d), (e). Pub. L. 116–283 added subsec. (d) and redesignated former subsec. (d) as (e).

§ 649d. Opportunities for consideration for promotion

(a) SPECIFICATION OF NUMBER OF OPPORTUNITIES FOR CONSIDERATION FOR PROMOTION.—In designating a competitive category of officers pursuant to section 649a of this title, the Secretary of a military department shall specify the number of opportunities for consideration for promotion to be afforded officers of the armed force concerned within the category for promotion to each grade above the grade of first lieutenant or lieutenant (junior grade), as applicable.

(b) LIMITED AUTHORITY OF SECRETARY OF MILITARY DEPARTMENT TO MODIFY NUMBER OF OPPORTUNITIES.—The Secretary of a military department may modify the number of opportunities for consideration for promotion to be afforded officers of an armed force within a competitive category for promotion to a particular grade, as previously specified by the Secretary pursuant subsection (a) or this subsection, not more frequently than once every five years.

(c) DISCRETIONARY AUTHORITY OF SECRETARY OF DEFENSE TO MODIFY NUMBER OF OPPORTUNITIES.—The Secretary of Defense may modify the number of opportunities for consideration for promotion to be afforded officers of an armed force within a competitive category for promotion to a particular grade, as previously specified or modified pursuant to any provision of this section, at the discretion of the Secretary.

(d) LIMITATION ON NUMBER OF OPPORTUNITIES SPECIFIED.—The number of opportunities for consideration for promotion to be afforded officers of an armed force within a competitive category for promotion to a particular grade, as specified or modified pursuant to any provision of this section, may not exceed five opportunities.

(e) EFFECT OF CERTAIN REDUCTION IN NUMBER OF OPPORTUNITIES SPECIFIED.—If, by reason of a reduction in the number of opportunities for consideration for promotion under this section, an officer would no longer have one or more opportunities for consideration for promotion that were available to the officer before the reduction, the officer shall be afforded one additional opportunity for consideration for promotion after the reduction.

(Added Pub. L. 115–232, div. A, title V, § 507(a)(1), Aug. 13, 2018, 132 Stat. 1745.)

§ 649e. Promotions

Sections 620 through 626 of this title shall apply in promotions of officers in competitive categories of officers designated for purposes of this subchapter.

(Added Pub. L. 115–232, div. A, title V, § 507(a)(1), Aug. 13, 2018, 132 Stat. 1746.)

§ 649f. Failure of selection for promotion

(a) IN GENERAL.—Except as provided in this section, sections 627 through 632 of this title shall apply to promotions of officers in competitive categories of officers designated for purposes of this subchapter.

(b) INAPPLICABILITY OF FAILURE OF SELECTION FOR PROMOTION TO OFFICERS ABOVE PROMOTION ZONE.—The reference in section 627 of this title to an officer above the promotion zone shall not apply in the promotion of officers described in subsection (a).

(c) SPECIAL SELECTION BOARD MATTERS.—The reference in section 628(a)(1) of this title to a person above the promotion zone shall not apply in the promotion of officers described in subsection (a).

(d) EFFECT OF FAILURE OF SELECTION.—In the administration of this subchapter pursuant to subsection (a)—

(1) an officer described in subsection (a) shall not be deemed to have failed twice of selection for promotion for purposes of section 629(e)(2) of this title until the officer has failed selection of promotion to the next higher grade the maximum number of times specified for opportunities for promotion to such grade within the competitive category concerned pursuant to section 649d of this title; and

(2) any reference in section 631(a) or 632(a) of this title to an officer who has failed of selection for promotion to the next higher grade for the second time shall be deemed to refer instead to an officer described in subsection (a) who has failed of selection for promotion to the next higher grade for the maximum number of times specified for opportunities for promotion to such grade within the competitive category concerned pursuant to such section 649d.

(Added Pub. L. 115–232, div. A, title V, § 507(a)(1), Aug. 13, 2018, 132 Stat. 1746.)

§ 649g. Retirement: retirement for years of service; selective early retirement

(a) RETIREMENT FOR YEARS OF SERVICES.—Sections 633 through 636 of this title shall apply to the retirement of officers in competitive categories of officers designated for purposes of this subchapter.

(b) SELECTIVE EARLY RETIREMENT.—Sections 638 and 638a of this title shall apply to the retirement of officers described in subsection (a).

(Added Pub. L. 115–232, div. A, title V, § 507(a)(1), Aug. 13, 2018, 132 Stat. 1747.)

§ 649h. Continuation on active duty

(a) IN GENERAL.—An officer subject to discharge or retirement pursuant to this subchapter may, subject to the needs of the service, be continued on active duty if the officer is selected for continuation on active duty in accordance with this section by a selection board convened under section 611(b) of this title.

(b) IDENTIFICATION OF POSITIONS FOR OFFICERS CONTINUED ON ACTIVE DUTY.—

(1) IN GENERAL.—Officers may be selected for continuation on active duty pursuant to this section only for assignment to positions identified by the Secretary of the military department concerned for which vacancies exist or are anticipated to exist.

(2) IDENTIFICATION.—Before convening a selection board pursuant to section 611(b) of this title for purposes of selection of officers for continuation on active duty pursuant to this section, the Secretary of the military department concerned shall specify for purposes of the board the positions identified by the Secretary to which officers selected for continuation on active duty may be assigned.

(c) RECOMMENDATION FOR CONTINUATION.—A selection board may recommend an officer for continuation on active duty pursuant to this section only if the board determines that the officer is qualified for assignment to one or more positions identified pursuant to subsection (b) on the basis of skills, knowledge, and behavior required of an officer to perform successfully in such position or positions.

(d) APPROVAL OF SECRETARY OF MILITARY DEPARTMENT.—Continuation of an officer on active duty under this section pursuant to the action of a selection board is subject to the approval of the Secretary of the military department concerned.

(e) NONACCEPTANCE OF CONTINUATION.—An officer who is selected for continuation on active duty pursuant to this section, but who declines to continue on active duty, shall be discharged or retired, as appropriate, in accordance with section 632 of this title.

(f) PERIOD OF CONTINUATION.—

(1) IN GENERAL.—An officer continued on active duty pursuant to this section shall remain on active duty, and serve in the position to which assigned (or in another position to which assigned with the approval of the Secretary of the military department concerned), for a total of not more than three years after the date of assignment to the position to which first so assigned.

(2) ADDITIONAL CONTINUATION.—An officer whose continued service pursuant to this section would otherwise expire pursuant to paragraph (1) may be continued on active duty if selected for continuation on active duty in accordance with this section before the date of expiration pursuant to that paragraph.

(g) EFFECT OF EXPIRATION OF CONTINUATION.—Each officer continued on active duty pursuant to this subsection who is not selected for continuation on active duty pursuant to subsection (f)(2) at the completion of the officer's term of continued service shall, unless sooner discharged or retired under another provision of law—

(1) be discharged upon the expiration of the term of continued service; or

(2) if eligible for retirement under another other provision of law, be retired under that

law on the first day of the first month following the month in which the officer completes the term of continued service.

(h) TREATMENT OF DISCHARGE OR RETIREMENT.—The discharge or retirement of an officer pursuant to this section shall be considered to be an involuntary discharge or retirement for purposes of any other provision of law.

(Added Pub. L. 115–232, div. A, title V, § 507(a)(1), Aug. 13, 2018, 132 Stat. 1747.)

§ 649i. Continuation on active duty: officers in certain military specialties and career tracks

In addition to continuation on active duty provided for in section 649h of this title, an officer to whom section 637a of this title applies may be continued on active duty in accordance with the provisions of such section 637a.

(Added Pub. L. 115–232, div. A, title V, § 507(a)(1), Aug. 13, 2018, 132 Stat. 1748.)

§ 649j. Other administrative authorities

The following provisions of this title shall apply to officers in competitive categories of officers designated for purposes of this subchapter:

(1) Section 638b, relating to voluntary retirement incentives.

(2) Section 639, relating to continuation on active duty to complete disciplinary action.

(3) Section 640, relating to deferment of retirement or separation for medical reasons.

(Added Pub. L. 115–232, div. A, title V, § 507(a)(1), Aug. 13, 2018, 132 Stat. 1748; amended Pub. L. 116–92, div. A, title XVII, § 1731(a)(18), Dec. 20, 2019, 133 Stat. 1813.)

AMENDMENTS

2019—Pub. L. 116–92 struck out ''(a) IN GENERAL.—'' before ''The'' in introductory provisions.

§ 649k. Regulations

The Secretary of Defense shall prescribe regulations regarding the administration of this subchapter. The elements of such regulations shall include mechanisms to clarify the manner in which provisions of other subchapters of this chapter shall be used in the administration of this subchapter in accordance with the provisions of this subchapter.

(Added Pub. L. 115–232, div. A, title V, § 507(a)(1), Aug. 13, 2018, 132 Stat. 1748.)

CHAPTER 37—GENERAL SERVICE REQUIREMENTS

Sec.
651. Members: required service.
652. Notice to Congress of proposed changes in units, assignments, etc. to which female members may be assigned.
653. Minimum service requirement for certain flight crew positions.
[654. Repealed.]
655. Designation of persons having interest in status of a missing member.
656. Diversity in military leadership: plan; mentoring and career counseling program.
657. Prohibition on service in the armed forces by individuals convicted of certain sexual offenses.

Sec.

AMENDMENTS

2021—Pub. L. 116–283, div. A, title V, § 571(a)(3)(B), Jan. 1, 2021, 134 Stat. 3643, added item 656 and struck out former item 656 ''Diversity in military leadership: plan''.

2013—Pub. L. 113–66, div. A, title XVII, § 1711(a)(2), Dec. 26, 2013, 127 Stat. 963, added item 657.

Pub. L. 112–239, div. A, title V, § 519(a)(2), Jan. 2, 2013, 126 Stat. 1721, added item 656.

2010—Pub. L. 111–321, § 2(f)(1)(B), Dec. 22, 2010, 124 Stat. 3516, struck out item 654 ''Policy concerning homosexuality in the armed forces''.

2006—Pub. L. 109–163, div. A, title V, § 541(a)(2), Jan. 6, 2006, 119 Stat. 3252, added item 652.

1996—Pub. L. 104–106, div. A, title V, § 569(d)(2), Feb. 10, 1996, 110 Stat. 352, added item 655.

1994—Pub. L. 103–337, div. A, title XVI, § 1671(b)(6), Oct. 5, 1994, 108 Stat. 3013, struck out item 652 ''Ready Reserves: requirement of notification of change of status''.

1993—Pub. L. 103–160, div. A, title V, § 571(a)(2), Nov. 30, 1993, 107 Stat. 1673, added item 654.

1989—Pub. L. 101–189, div. A, title VI, § 634(a)(2), Nov. 29, 1989, 103 Stat. 1454, added item 653.

1978—Pub. L. 95–485, title IV, § 405(d)(2), Oct. 20, 1978, 92 Stat. 1616, added item 652.

1958—Pub. L. 85–861, § 33(a)(4)(A), Sept. 2, 1958, 72 Stat. 1564, substituted ''GENERAL SERVICE REQUIREMENTS'' for ''SERVICE REQUIREMENTS FOR RESERVES'' in chapter heading.

PROHIBITION AGAINST MEMBERS OF THE ARMED FORCES PARTICIPATING IN CRIMINAL STREET GANGS

Pub. L. 110–181, div. A, title V, § 544, Jan. 28, 2008, 122 Stat. 116, provided that: ''The Secretary of Defense shall prescribe regulations to prohibit the active participation by members of the Armed Forces in a criminal street gang.''

MILITARY SERVICE BY TRANSGENDER INDIVIDUALS

Memorandum of President of the United States, Aug. 25, 2017, 82 F.R. 41319, which related to transgender military personnel, was revoked by Memorandum of President of the United States, § 1, Mar. 23, 2018, 83 F.R. 13367, set out below.

Memorandum of President of the United States, Mar. 23, 2018, 83 F.R. 13367, provided:

Memorandum for the Secretary of Defense [and] the Secretary of Homeland Security

Pursuant to my memorandum of August 25, 2017, ''Military Service by Transgender Individuals,'' [formerly set out above] the Secretary of Defense, in consultation with the Secretary of Homeland Security, submitted to me a memorandum and report concerning military service by transgender individuals.

These documents set forth the policies on this issue that the Secretary of Defense, in the exercise of his independent judgment, has concluded should be adopted by the Department of Defense. The Secretary of Homeland Security concurs with these policies with respect to the U.S. Coast Guard.

Among other things, the policies set forth by the Secretary of Defense state that transgender persons with a history or diagnosis of gender dysphoria—individuals who the policies state may require substantial medical treatment, including medications and surgery—are disqualified from military service except under certain limited circumstances.

By the authority vested in me as President by the Constitution and the laws of the United States of America, I hereby order as follows:

SECTION 1. I hereby revoke my memorandum of August 25, 2017, ''Military Service by Transgender Individuals,'' and any other directive I may have made with respect to military service by transgender individuals.

SEC. 2. The Secretary of Defense, and the Secretary of Homeland Security, with respect to the U.S. Coast Guard, may exercise their authority to implement any

appropriate policies concerning military service by transgender individuals.

SEC. 3. (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(d) The Secretary of Defense is authorized and directed to publish this memorandum in the Federal Register.

DONALD J. TRUMP.

§ 651. Members: required service

(a) Each person who becomes a member of an armed force, other than a person deferred under the next to the last sentence of section 6(d)(1) of the Military Selective Service Act (50 U.S.C. 3806(d)(1))[1] shall serve in the armed forces for a total initial period of not less than six years nor more than eight years, as provided in regulations prescribed by the Secretary of Defense for the armed forces under his jurisdiction and by the Secretary of Homeland Security for the Coast Guard when it is not operating as service in the Navy, unless such person is sooner discharged under such regulations because of personal hardship. Any part of such service that is not active duty or that is active duty for training shall be performed in a reserve component.

(b) Each person covered by subsection (a) who is not a Reserve, and who is qualified, shall, upon his release from active duty, be transferred to a reserve component to complete the service required by subsection (a).

(c)(1) For the armed forces under the jurisdiction of the Secretary of Defense, the Secretary may waive the initial period of required service otherwise established pursuant to subsection (a) in the case of the initial appointment of a commissioned officer in a critically short health professional specialty specified by the Secretary for purposes of this subsection.

(2) The minimum period of obligated service for an officer under a waiver under this subsection shall be the greater of—

(A) two years; or

(B) in the case of an officer who has accepted an accession bonus or executed a contract or agreement for the multiyear receipt of special pay for service in the armed forces, the period of obligated service specified in such contract or agreement.

(Aug. 10, 1956, ch. 1041, 70A Stat. 27; Pub. L. 85–861, §§ 1(12), 36B(3), Sept. 2, 1958, 72 Stat. 1440, 1570; Pub. L. 89–718, § 5, Nov. 2, 1966, 80 Stat. 1115; Pub. L. 95–79, title VIII, § 803(a), July 30, 1977, 91 Stat. 333; Pub. L. 96–107, title VIII, § 805(b), Nov. 9, 1979, 93 Stat. 813; Pub. L. 96–513, title V, § 511(18), Dec. 12, 1980, 94 Stat. 2921; Pub. L. 98–94, title X, § 1022(b)(1), Sept. 24, 1983, 97 Stat. 670; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 110–181, div. A, title V, § 505, Jan. 28, 2008, 122 Stat. 96; Pub. L. 114–328, div. A, title X, § 1081(b)(1)(A)(iv), Dec. 23, 2016, 130 Stat. 2418; Pub. L. 116–92, div. A, title XVII, § 1731(a)(19), Dec. 20, 2019, 133 Stat. 1813; Pub. L. 116–283, div. A, title IX, § 924(b)(17), Jan. 1, 2021, 134 Stat. 3823.)

[1] So in original. Probably should be followed by a comma.

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
651(a)	50 App.:454(d)(3) (1st sentence, and less applicability to members of National Security Training Corps).	June 24, 1948, ch. 625, § 4(d)(3) (less 4th sentence, and less applicability to members of National Security Training Corps); added June 19, 1951, ch. 144, § 1(g) (last par., less 4th sentence, and less applicability to members of National Security Training Corps), 65 Stat. 79; July 9, 1952, ch. 608, § 813, 66 Stat. 509.
651(b)	50 App.:454(d)(3) (2d sentence, and less applicability to members of National Security Training Corps).	
651(c)	50 App.:454(d)(3) (3d and last sentences).	

In subsection (a), the word ''male'' is inserted, since the source statute (Universal Military Training and Service Act (50 U.S.C. App. 451 et seq.)) applies only to male persons. The words ''subsequent to the date of enactment of this paragraph [June 19, 1951]'' are omitted as executed. The words ''becomes a member'' are substituted for the words ''is inducted, enlisted, or appointed * * * in''. The words ''in the armed forces'' are substituted for the words ''on active training and service in the Armed Forces * * * and in a reserve component''. The last sentence is substituted for the words ''or in training in the National Security Training Corps''. The words ''under any provision of law'' and ''including the reserve components thereof'' are omitted as surplusage.

In subsection (b), the words ''who is not a Reserve'' are inserted, since the eight year obligation for Reserves is covered by subsection (a). The words ''active duty'' are substituted for the words ''active training and service''. The last eight words are substituted for the words ''and shall serve therein for the remainder of the period which he is required to serve under this paragraph''. The words ''physically and mentally'' and 50 App.:454(d)(3) (last 15 words of 2d sentence) are omitted as surplusage.

In [former] subsection (c), the words ''who is released from active duty'' are inserted for clarity. The words ''shall become a member'' are substituted for the words ''it shall be the duty of such person to enlist, enroll, or accept appointment in, or accept assignment to''. The words ''there is a vacancy'' are substituted for the words ''enlistment, enrollment, or appointment in, or assignment to''. 50 App.:454(d)(3) (last sentence) is omitted as surplusage.

1958 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
651(a)	50 App.:454(d)(3) (2d sentence).	Aug. 9, 1955, ch. 665, § 3(a) (last sentence), 69 Stat. 603.

In subsection (a), the word ''male'' is inserted, since the source statute applies only to male persons. The words ''subsequent to the date of enactment of the Reserve Forces Act of 1955'' are omitted as executed. The words ''becomes a member'' are substituted for the words ''is inducted, enlisted, or appointed . . . in''. The last sentence is substituted for the words ''on active training and service . . . and in a reserve component''. The requirement of transfer to and service in a reserve

component, after active training and service is covered by subsection (b) of this section. The words ''under any provision of law'' and ''including the reserve components thereof'' are omitted as surplusage.

AMENDMENTS

2021—Subsec. (b). Pub. L. 116–283 struck out ''of his armed force'' after ''reserve component''.

2019—Subsec. (a). Pub. L. 116–92 inserted ''shall serve'' before ''in the armed forces''.

2016—Subsec. (a). Pub. L. 114–328 substituted ''(50 U.S.C. 3806(d)(1))'' for ''(50 U.S.C. App. 456(d)(1)) shall serve''.

2008—Subsec. (c). Pub. L. 110–181 added subsec. (c).

2002—Subsec. (a). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

1983—Subsec. (a). Pub. L. 98–94 amended subsec. (a) generally, substituting a reference to service in the armed forces for a total initial period of not less than six years nor more than eight years under prescribed regulations for the prior reference to service in the armed forces for a total of six years.

1980—Subsec. (a). Pub. L. 96–513, substituted ''Secretary of Transportation'' for ''Secretary of the Treasury'', and ''section 6(d)(1) of the Military Selective Service Act (50 U.S.C. App. 456(d)(1))'' for ''section 456(d)(1) of title 50, appendix''.

1979—Subsec. (a). Pub. L. 96–107 struck out ''before his twenty-sixth birthday'' after ''force''.

1977—Subsec. (a). Pub. L. 95–79 struck out ''male'' after ''Each'' and ''after August 9, 1955,'' after ''who''.

1966—Subsec. (a). Pub. L. 89–718 struck out reference to persons who enlisted under section 1013 of title 50 in the description of persons not required to serve in the armed forces for a total of six years.

1958—Subsec. (a). Pub. L. 85–861, § 1(12), restricted section to male persons who became members of the armed forces after Aug. 9, 1955, excluded persons enlisted under section 1013 of Title 50 or deferred under the next to last sentence of section 456(d)(1) of Title 50, Appendix, reduced from eight to six years the required period of service, required any part of such service that is not active duty or is active duty for training to be performed in a reserve component, and struck out provisions which permitted members of the armed forces to count service in the National Security Training Corps as if it were service in the armed forces for the purposes of this subsection.

Subsec. (c). Pub. L. 85–861, § 36B(3), repealed subsec. (c) which required members released from active duty to become members of an organized unit of a reserve component of an officers' training program.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Pub. L. 98–94, title X, § 1022(b)(2), Sept. 24, 1983, 97 Stat. 671, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply only with respect to persons who enter the Armed Forces 60 or more days after the date of the enactment of this Act [Sept. 24, 1983].''

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–107 applicable to individuals who become members of an Armed Force after Nov. 9, 1979, see section 805(c) of Pub. L. 96–107, set out as a note under section 511 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Pub. L. 95–79, title VIII, § 803(b), July 30, 1977, 91 Stat. 333, provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on the first day of the seventh calendar month beginning after the month in which this Act is enacted [July 1977] and shall apply to any female person who becomes a member of an Armed Force on or after such day.''

§ 652. Notice to Congress of proposed changes in units, assignments, etc. to which female members may be assigned

(a) RULE FOR GROUND COMBAT PERSONNEL POLICY.—(1) If the Secretary of Defense proposes to make any change described in paragraph (2)(A) or (2)(B) to the ground combat exclusion policy or proposes to make a change described in paragraph (2)(C), the Secretary shall, not less than 30 calendar days before such change is implemented, submit to Congress a report providing notice of the proposed change.

(2) A change referred to in paragraph (1) is a change that—

(A) closes to female members of the armed forces any category of unit or position that at that time is open to service by such members;

(B) opens to service by female members of the armed forces any category of unit or position that at that time is closed to service by such members; or

(C) opens or closes to the assignment of female members of the armed forces any military career designator as described in paragraph (6).

(3) The Secretary shall include in any report under paragraph (1)—

(A) a detailed description of, and justification for, the proposed change; and

(B) a detailed analysis of legal implication of the proposed change with respect to the constitutionality of the application of the Military Selective Service Act (50 App. U.S.C. 451 et seq.)[1] to males only.

(4) In this subsection, the term ''ground combat exclusion policy'' means the military personnel policies of the Department of Defense and the military departments, as in effect on October 1, 1994, by which female members of the armed forces are restricted from assignment to units and positions below brigade level whose primary mission is to engage in direct combat on the ground.

[(5) Repealed. Pub. L. 114–92, div. A, title V, § 524(a)(2), Nov. 25, 2015, 129 Stat. 813.]

(6) For purposes of this subsection, a military career designator is one that is related to military operations on the ground as of May 18, 2005, and applies—

(A) for enlisted members and warrant officers, to military occupational specialties, specialty codes, enlisted designators, enlisted classification codes, additional skill identifiers, and special qualification identifiers; and

(B) for officers (other than warrant officers), to officer areas of concentration, occupational specialties, specialty codes, designators, additional skill identifiers, and special qualification identifiers.

(b) OTHER PERSONNEL POLICY CHANGES.—(1) Except in a case covered by section 8225 of this title or by subsection (a), whenever the Sec-

[1] See References in Text note below.

retary of Defense proposes to make a change to military personnel policies described in paragraph (2), the Secretary shall, not less than 30 calendar days before such change is implemented, submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives notice, in writing, of the proposed change.

(2) Paragraph (1) applies to a proposed military personnel policy change, other than a policy change covered by subsection (a), that would make available to female members of the armed forces assignment to any of the following that, as of the date of the proposed change, is closed to such assignment:

(A) Any type of unit not covered by subsection (a).

(B) Any class of combat vessel.

(C) Any type of combat platform.

(Added Pub. L. 109–163, div. A, title V, § 541(a)(1), Jan. 6, 2006, 119 Stat. 3251; amended Pub. L. 114–92, div. A, title V, § 524, Nov. 25, 2015, 129 Stat. 813; Pub. L. 115–232, div. A, title VIII, § 809(a), Aug. 13, 2018, 132 Stat. 1840.)

REFERENCES IN TEXT

The Military Selective Service Act, referred to in subsec. (a)(3)(B), is act June 24, 1948, ch. 625, 62 Stat. 604, which was classified principally to section 451 et seq. of the former Appendix to Title 50, War and National Defense, prior to editorial reclassification and renumbering as chapter 49 (§ 3801 et seq.) of Title 50. For complete classification of this Act to the Code, see Tables.

PRIOR PROVISIONS

A prior section 652, added Pub. L. 95–485, title IV, § 405(d)(1), Oct. 20, 1978, 92 Stat. 1616, related to Ready Reserve requirement of notification of change of status, prior to repeal by Pub. L. 103–337, div. A, title XVI, §§ 1661(a)(3)(A), 1691, Oct. 5, 1994, 108 Stat. 2980, 3026, effective Dec. 1, 1994. See section 10205 of this title.

Provisions similar to those in this section were contained in Pub. L. 103–160, div. A, title V, § 542, Nov. 30, 1993, 107 Stat. 1659, which was set out as a note under section 113 of this title, prior to repeal by Pub. L. 109–163, § 541(c).

AMENDMENTS

2018—Subsec. (b). Pub. L. 115–232 substituted ''section 8225'' for ''section 6035''.

2015—Subsec. (a)(1). Pub. L. 114–92, § 524(a)(1), substituted ''not less than 30 calendar days before such change is implemented'' for ''before any such change is implemented'' and struck out at end ''Such a change may then be implemented only after the end of a period of 30 days of continuous session of Congress (excluding any day on which either House of Congress is not in session) following the date on which the report is received.''

Subsec. (a)(5). Pub. L. 114–92, § 524(a)(2), struck out par. (5) which read as follows: ''For purposes of this subsection, the continuity of a session of Congress is broken only by an adjournment of the Congress sine die.''

Subsec. (b)(1). Pub. L. 114–92, § 524(b), inserted ''calendar'' before ''days''.

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115–232 effective Feb. 1, 2019, with provision for the coordination of amendments and special rule for certain redesignations, see section 800 of Pub. L. 115–232, set out as a note preceding section 3001 of this title.

§ 653. Minimum service requirement for certain flight crew positions

(a) PILOTS.—The minimum service obligation of any member who successfully completes training in the armed forces as a pilot shall be 8 years, if the member is trained to fly fixed-wing jet aircraft, or 6 years, if the member is trained to fly any other type of aircraft.

(b) NAVIGATORS AND NAVAL FLIGHT OFFICERS.—The minimum service obligation of any member who successfully completes training in the armed forces as a navigator or naval flight officer shall be 6 years.

(c) DEFINITION.—In this section, the term ''service obligation'' means the period of active duty or, in the case of a member of a reserve component who completed flight training in an active duty for training status as a member of a reserve component, the period of service in an active status in the Selected Reserve required to be served after—

(1) completion of undergraduate pilot training, in the case of training as a pilot;

(2) completion of undergraduate navigator training, in the case of training as a navigator; or

(3) completion of undergraduate training as a naval flight officer, in the case of training as a naval flight officer.

(Added Pub. L. 101–189, div. A, title VI, § 634(a)(1), Nov. 29, 1989, 103 Stat. 1454; amended Pub. L. 101–510, div. A, title XIV, § 1484(k)(3), Nov. 5, 1990, 104 Stat. 1719; Pub. L. 102–484, div. A, title V, § 506(a), Oct. 23, 1992, 106 Stat. 2404.)

AMENDMENTS

1992—Subsecs. (a), (b). Pub. L. 102–484, § 506(a)(1), substituted ''service obligation'' for ''active duty obligation''.

Subsec. (c). Pub. L. 102–484, § 506(a)(2), substituted ''the term 'service obligation' means the period of active duty or, in the case of a member of a reserve component who completed flight training in an active duty for training status as a member of a reserve component, the period of service in an active status in the Selected Reserve'' for ''the term 'active duty obligation' means the period of active duty''.

1990—Subsec. (a). Pub. L. 101–510, § 1484(k)(3)(A), substituted ''or'' for ''and'' before ''6 years''.

Subsec. (c). Pub. L. 101–510, § 1484(k)(3)(B), inserted a comma after first reference to ''training'' in pars. (1) and (2) and after first reference to ''naval flight officer'' in par. (3).

EFFECTIVE DATE OF 1992 AMENDMENT

Pub. L. 102–484, div. A, title V, § 506(b), Oct. 23, 1992, 106 Stat. 2405, provided that: ''The amendments made by subsection (a) [amending this section] shall take effect as of November 29, 1989.''

EFFECTIVE DATE

Pub. L. 101–189, div. A, title VI, § 634(b), Nov. 29, 1989, 103 Stat. 1454, provided that:

''(1) Except as provided in paragraphs (2) and (3), section 653 of title 10, United States Code, as added by subsection (a)(1), shall apply to persons who begin undergraduate pilot training, undergraduate navigator training, or undergraduate naval flight officer training, as the case may be, after September 30, 1990.

''(2) Such section shall apply to persons who graduate from the United States Military Academy, the United States Naval Academy, the United States Air Force Academy, and the Coast Guard Academy after December 31, 1991, and to persons who satisfactorily complete

the academic and military requirements of the Senior Reserve Officers' Training Corps program (provided for in chapter 103 of title 10, United States Code) after December 31, 1991.

''(3) The minimum service requirements provided for such section shall not apply in the case of any person who entered into an agreement with the Secretary concerned before October 1, 1990, and who is obligated under the terms of such agreement to serve on active duty for a period less than the applicable period specified in section 653 of such title.

''(4) For purposes of this subsection, the term 'Secretary concerned' has the meaning given that term in section 101(8) of title 10, United States Code.''

[For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.]

[§ 654. Repealed. Pub. L. 111–321, § 2(f)(1)(A), Dec. 22, 2010, 124 Stat. 3516]

Section, added Pub. L. 103–160, div. A, title V, § 571(a)(1), Nov. 30, 1993, 107 Stat. 1670, related to policy concerning homosexuality in the armed forces.

EFFECTIVE DATE OF REPEAL

Repeal effective on the date established by section 2(b) of Pub. L. 111–321, set out below.

DON'T ASK, DON'T TELL REPEAL

Pub. L. 111–321, Dec. 22, 2010, 124 Stat. 3515, provided that:

''SECTION 1. SHORT TITLE.

''This Act may be cited as the 'Don't Ask, Don't Tell Repeal Act of 2010'.

''SEC. 2. DEPARTMENT OF DEFENSE POLICY CONCERNING HOMOSEXUALITY IN THE ARMED FORCES.

''(a) COMPREHENSIVE REVIEW ON THE IMPLEMENTATION OF A REPEAL OF 10 U.S.C. 654.—

''(1) IN GENERAL.—On March 2, 2010, the Secretary of Defense issued a memorandum directing the Comprehensive Review on the Implementation of a Repeal of 10 U.S.C. 654 (section 654 of title 10, United States Code).

''(2) OBJECTIVES AND SCOPE OF REVIEW.—The Terms of Reference accompanying the Secretary's memorandum established the following objectives and scope of the ordered review:

''(A) Determine any impacts to military readiness, military effectiveness and unit cohesion, recruiting/retention, and family readiness that may result from repeal of the law and recommend any actions that should be taken in light of such impacts.

''(B) Determine leadership, guidance, and training on standards of conduct and new policies.

''(C) Determine appropriate changes to existing policies and regulations, including but not limited to issues regarding personnel management, leadership and training, facilities, investigations, and benefits.

''(D) Recommend appropriate changes (if any) to the Uniform Code of Military Justice [10 U.S.C. 801 et seq.].

''(E) Monitor and evaluate existing legislative proposals to repeal 10 U.S.C. 654 and proposals that may be introduced in the Congress during the period of the review.

''(F) Assure appropriate ways to monitor the workforce climate and military effectiveness that support successful follow-through on implementation.

''(G) Evaluate the issues raised in ongoing litigation involving 10 U.S.C. 654.

''(b) EFFECTIVE DATE.—The amendments made by subsection (f) shall take effect 60 days after the date on which the last of the following occurs:

''(1) The Secretary of Defense has received the report required by the memorandum of the Secretary referred to in subsection (a).

''(2) The President transmits to the congressional defense committees a written certification, signed by the President, the Secretary of Defense, and the Chairman of the Joint Chiefs of Staff, stating each of the following:

''(A) That the President, the Secretary of Defense, and the Chairman of the Joint Chiefs of Staff have considered the recommendations contained in the report and the report's proposed plan of action.

''(B) That the Department of Defense has prepared the necessary policies and regulations to exercise the discretion provided by the amendments made by subsection (f).

''(C) That the implementation of necessary policies and regulations pursuant to the discretion provided by the amendments made by subsection (f) is consistent with the standards of military readiness, military effectiveness, unit cohesion, and recruiting and retention of the Armed Forces.

''(c) NO IMMEDIATE EFFECT ON CURRENT POLICY.—Section 654 of title 10, United States Code, shall remain in effect until such time that all of the requirements and certifications required by subsection (b) are met. If these requirements and certifications are not met, section 654 of title 10, United States Code, shall remain in effect.

''(d) BENEFITS.—Nothing in this section, or the amendments made by this section, shall be construed to require the furnishing of benefits in violation of section 7 of title 1, United States Code (relating to the definitions of 'marriage' and 'spouse' and referred to as the 'Defense of Marriage Act').

''(e) NO PRIVATE CAUSE OF ACTION.—Nothing in this section, or the amendments made by this section, shall be construed to create a private cause of action.

''(f) TREATMENT OF 1993 POLICY.—

''(1) TITLE 10.—Upon the effective date established by subsection (b), chapter 37 of title 10, United States Code, is amended—

''(A) by striking section 654; and

''(B) in the table of sections at the beginning of such chapter, by striking the item relating to section 654.

''(2) CONFORMING AMENDMENT.—Upon the effective date established by subsection (b), section 571 of the National Defense Authorization Act for Fiscal Year 1994 [Pub. L. 103–160] (10 U.S.C. 654 note) is amended by striking subsections (b), (c), and (d).''

[The report referred to in section 2(b)(1) of Pub. L. 111–321, set out above, was released Nov. 30, 2010. The certification referred to in section 2(b)(2) of Pub. L. 111–321 was transmitted July 22, 2011.]

IMPLEMENTATION OF SECTION; REGULATIONS; SAVINGS PROVISION; SENSE OF CONGRESS

Pub. L. 103–160, div. A, title V, § 571(b)–(d), Nov. 30, 1993, 107 Stat. 1671, 1672, which required the Secretary of Defense to issue regulations to implement this section, provided a savings provision for actions and proceedings commenced prior to the effective date of such regulations, and provided the sense of Congress regarding the policy set forth in this section, was repealed by Pub. L. 111–321, § 2(f)(2), Dec. 22, 2010, 124 Stat. 3516, effective on the date established by section 2(b) of Pub. L. 111–321, set out above.

§ 655. Designation of persons having interest in status of a missing member

(a) The Secretary concerned shall, upon the enlistment or appointment of a person in the armed forces, require that the person specify in

writing the person or persons, if any, other than that person's primary next of kin or immediate family, to whom information on the whereabouts and status of the member shall be provided if such whereabouts and status are investigated under chapter 76 of this title. The Secretary shall periodically, and whenever the member is deployed as part of a contingency operation or in other circumstances specified by the Secretary, require that such designation be reconfirmed, or modified, by the member.

(b) The Secretary concerned shall, upon the request of a member, permit the member to revise the person or persons specified by the member under subsection (a) at any time. Any such revision shall be in writing.

(Added Pub. L. 104–106, div. A, title V, § 569(d)(1), Feb. 10, 1996, 110 Stat. 352.)

§ 656. Diversity in military leadership: plan; mentoring and career counseling program

(a) PLAN.—The Secretary of Defense (and the Secretary of Homeland Security in the case of the Coast Guard when it is not operating as a service in the Department of the Navy) shall develop and implement a plan to accurately measure the efforts of the Department of Defense and the Coast Guard to achieve a dynamic, sustainable level of members of the armed forces (including reserve components) that, among both commissioned officers and senior enlisted personnel of each armed force, will reflect the diverse population of the United States eligible to serve in the armed forces, including gender specific, racial, and ethnic populations. Any metric established pursuant to this subsection may not be used in a manner that undermines the merit-based processes of the Department of Defense and the Coast Guard, including such processes for accession, retention, and promotion. Such metrics may not be combined with the identification of specific quotas based upon diversity characteristics. The Secretary concerned shall continue to account for diversified language and cultural skills among the total force of the armed forces.

(b) MENTORING AND CAREER COUNSELING PROGRAM.—

(1) PROGRAM REQUIRED AS PART OF PLAN.—With the goal of having the diversity of the population of officers serving in each branch, specialty, community, and grade of each armed force reflect the diversity of the population in such armed force as a whole, the Secretary of Defense and the Secretary of the Department in which the Coast Guard is operating shall include in the plan required by subsection (a) a mentoring and career counseling program for officers.

(2) ELEMENTS.—The program required by this subsection shall include the following:

(A) The option for any officer to participate in the program.

(B) For each officer who elects to participate in the program, the following:

(i) One or more opportunities for mentoring and career counseling before selection of the officer's branch, specialty, or community.

(ii) Ongoing opportunities for mentoring and career counseling following selection of the officer's branch, specialty, or community, and continuing through the officer's military career.

(C) Mentoring and counseling during opportunities under subparagraph (B) consisting of the following:

(i) Information on officer retention and promotion rates in each grade, branch, specialty, and community of the armed force concerned, including the rate at which officers in each branch, specialty, or community of such armed force are promoted to a grade above O–6.

(ii) Information on career and service pathways, including service in the reserve components.

(iii) Such other information as may be required to optimize the ability of an officer to make informed career decisions through the officer's military career.

(c) METRICS TO MEASURE PROGRESS IN DEVELOPING AND IMPLEMENTING PLAN AND MENTORING AND CAREER COUNSELING PROGRAM.—In developing and implementing the plan under subsection (a) and the mentoring and career counseling program under subsection (b), the Secretary of Defense and the Secretary of Homeland Security shall develop a standard set of metrics and collection procedures that are uniform across the armed forces. The metrics required by this subsection shall be designed—

(1) to accurately capture the inclusion and capability aspects of the armed forces' broader diversity plans, including race, ethnic, and gender specific groups, as potential factors of force readiness that would supplement continued accounting by the Department of Defense and the Coast Guard of diversified language and cultural skills among the total force as part of the assessment of current and future national security needs; and

(2) to be verifiable and systematically linked to strategic plans that will drive improvements.

(d) DEFINITION OF DIVERSITY.—In developing and implementing the plan under subsection (a), the Secretary of Defense and the Secretary of Homeland Security shall develop a uniform definition of diversity.

(e) CONSULTATION.—Not less than annually, the Secretary of Defense and the Secretary of Homeland Security shall meet with the Secretaries of the military departments, the Joint Chiefs of Staff, the Commandant of the Coast Guard, and senior enlisted members of the armed forces to discuss the progress being made toward developing and implementing the plan established under subsection (a).

(f) COOPERATION WITH STATES.—The Secretary of Defense shall coordinate with the National Guard Bureau and States in tracking the progress of the National Guard toward developing and implementing the plan established under subsection (a).

(Added Pub. L. 112–239, div. A, title V, § 519(a)(1), Jan. 2, 2013, 126 Stat. 1720; amended Pub. L. 116–283, div. A, title V, § 571(a)(1)–(3)(A), Jan. 1, 2021, 134 Stat. 3642, 3643.)

AMENDMENTS

2021—Pub. L. 116–283, § 571(a)(3)(A), amended section catchline generally, substituting ''Diversity in military leadership: plan; mentoring and career counseling program'' for ''Diversity in military leadership: plan''.

Subsec. (b). Pub. L. 116–283, § 571(a)(1)(B), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 116–283, § 571(a)(1)(A), (2), redesignated subsec. (b) as (c) and inserted ''and Mentoring and Career Counseling Program'' after ''Developing and Implementing Plan'' in heading and ''and the mentoring and career counseling program under subsection (b)'' after ''the plan under subsection (a)'' in text. Former subsec. (c) redesignated (d).

Subsecs. (d) to (f). Pub. L. 116–283, § 571(a)(1)(A), redesignated subsecs. (c) to (e) as (d) to (f), respectively.

STRATEGIC PLAN FOR DIVERSITY AND INCLUSION

Pub. L. 116–92, div. A, title V, § 529, Dec. 20, 2019, 133 Stat. 1358, provided that:

''(a) PLAN REQUIRED.—The Secretary of Defense shall design and implement a five-year strategic plan for diversity and inclusion in the Department of Defense.

''(b) ELEMENTS.—The strategic plan under this section—

''(1) shall incorporate existing efforts to promote diversity and inclusion within the Department; and

''(2) may not conflict with the objectives of the 2018 National Military Strategy.

''(c) DEADLINE.—The Secretary shall implement the strategic plan under this section not later than one year after the date of the enactment of this Act [Dec. 20, 2019].''

§ 657. Prohibition on service in the armed forces by individuals convicted of certain sexual offenses

(a) PROHIBITION ON COMMISSIONING OR ENLISTMENT.—A person who has been convicted of an offense specified in subsection (b) under Federal or State law may not be processed for commissioning or permitted to enlist in the armed forces.

(b) COVERED OFFENSES.—An offense specified in this subsection is any felony offense as follows:

(1) Rape or sexual assault.

(2) Forcible sodomy.

(3) Incest.

(4) An attempt to commit an offense specified in paragraph (1) through (3), as punishable under applicable Federal or State law.

(Added Pub. L. 113–66, div. A, title XVII, § 1711(a)(1), Dec. 26, 2013, 127 Stat. 962.)

CHAPTER 38—JOINT OFFICER MANAGEMENT

Sec.
661. Management policies for joint qualified officers.
662. Promotion policy objectives for joint officers.
663. Joint duty assignments after completion of joint professional military education.
664. Length of joint duty assignments.
665. Procedures for monitoring careers of joint qualified officers.
666. Reserve officers not on the active-duty list.
[667. Repealed.]
668. Definitions.

AMENDMENTS

2014—Pub. L. 113–291, div. A, title V, § 505(b), Dec. 19, 2014, 128 Stat. 3356, struck out item 667 ''Annual report to Congress''.

2008—Pub. L. 110–417, [div. A], title V, § 522(a)(3), (c)(3), Oct. 14, 2008, 122 Stat. 4445, added items 661 and 665 and struck out former items 661 ''Management policies for officers who are joint qualified'' and 665 ''Procedures for monitoring careers of joint officers''.

2006—Pub. L. 109–364, div. A, title V, § 516(e)(2), Oct. 17, 2006, 120 Stat. 2189, substituted ''officers who are joint qualified'' for ''joint specialty officers'' in item 661.

2004—Pub. L. 108–375, div. A, title V, § 532(c)(2)(B), Oct. 28, 2004, 118 Stat. 1900, substituted ''Joint duty assignments after completion of joint professional military education'' for ''Education'' in item 663.

§ 661. Management policies for joint qualified officers

(a) ESTABLISHMENT.—The Secretary of Defense shall establish policies, procedures, and practices for the effective management of officers of the Army, Navy, Air Force, Marine Corps, and Space Force on the active-duty list who are particularly trained in, and oriented toward, joint matters (as defined in section 668 of this title). Such officers shall be identified or designated (in addition to their principal military occupational specialty) as a joint qualified officer or in such other manner as the Secretary of Defense directs.

(b) LEVELS, DESIGNATION, AND NUMBERS.—(1)(A) The Secretary of Defense shall establish different levels of joint qualification, as well as the criteria for qualification at each level. Such levels of joint qualification shall be established by the Secretary with the advice of the Chairman of the Joint Chiefs of Staff. Each level shall, as a minimum, have both joint education criteria and joint experience criteria. The purpose of establishing such qualification levels is to ensure a systematic, progressive, career-long development of officers in joint matters and to ensure that officers serving as general and flag officers have the requisite experience and education to be highly proficient in joint matters.

(B) The number of officers who are joint qualified shall be determined by the Secretary of Defense, with the advice of the Chairman of the Joint Chiefs of Staff. Such number shall be large enough to meet the requirements of subsection (d).

(2) Certain officers shall be designated as joint qualified by the Secretary of Defense with the advice of the Chairman of the Joint Chiefs of Staff.

(3) An officer may be designated as joint qualified under paragraph (2) only if the officer—

(A) meets the education and experience criteria of subsection (c);

(B) meets such additional criteria as prescribed by the Secretary of Defense; and

(C) holds the grade of captain or, in the case of the Navy, lieutenant or a higher grade.

(4) The authority of the Secretary of Defense under paragraph (2) to designate officers as joint qualified may be delegated only to the Deputy Secretary of Defense or an Under Secretary of Defense.

(c) EDUCATION AND EXPERIENCE REQUIREMENTS.—(1) An officer may not be designated as joint qualified until the officer—

(A) successfully completes an appropriate program of joint professional military education, as described in subsections (b) and (c) of section 2155 of this title, at a joint professional military education school; and

(B) successfully completes—

(i) a full tour of duty in a joint assignment, as described in section 664(d) of this title; or

(ii) such other assignments and experiences in a manner that demonstrate the officer's mastery of knowledge, skills, and abilities in joint matters, as determined under such regulations and policy as the Secretary of Defense may prescribe.

(2) Subject to paragraphs (3) through (6), the Secretary of Defense may waive the requirement under paragraph (1)(A) that an officer has successfully completed a program of education, as described in subsections (b) and (c) of section 2155 of this title.

(3) In the case of an officer in a grade below brigadier general or rear admiral (lower half), a waiver under paragraph (2) may be granted only if—

(A) the officer has completed two full tours of duty in a joint duty assignment, as described in section 664(d) of this title, in such a manner as to demonstrate the officer's mastery of knowledge, skills, and abilities on joint matters; and

(B) the Secretary of Defense determines that the types of joint duty experiences completed by the officer have been of sufficient breadth to prepare the officer adequately for service as a general or flag officer in a joint duty assignment position.

(4) In the case of a general or flag officer, a waiver under paragraph (2) may be granted only—

(A) under unusual circumstances justifying the variation from the education requirement under paragraph (1)(A); and

(B) under circumstances in which the waiver is necessary to meet a critical need of the armed forces, as determined by the Chairman of the Joint Chiefs of Staff.

(5) In the case of officers in grades below brigadier general or rear admiral (lower half), the total number of waivers granted under paragraph (2) for officers in the same pay grade during a fiscal year may not exceed 10 percent of the total number of officers in that pay grade designated as joint qualified during that fiscal year.

(6) There may not be more than 32 general and flag officers on active duty at the same time who, while holding a general or flag officer position, were designated joint qualified (or were selected for the joint specialty before October 1, 2007) and for whom a waiver was granted under paragraph (2).

(d) NUMBER OF JOINT DUTY ASSIGNMENTS.—(1) The Secretary of Defense shall ensure that approximately one-half of the joint duty assignment positions in grades above major or, in the case of the Navy, lieutenant commander are filled at any time by officers who have the appropriate level of joint qualification.

(2) The Secretary of Defense, with the advice of the Chairman of the Joint Chiefs of Staff, shall designate an appropriate number of joint duty assignment positions as critical joint duty assignment positions. A position may be designated as a critical joint duty assignment position only if the duties and responsibilities of the position make it important that the occupant be particularly trained in, and oriented toward, joint matters.

(3)(A) Subject to subparagraph (B), a position designated under paragraph (2) may be held only by an officer who—

(i) was designated as joint qualified in accordance with this chapter; or

(ii) was selected for the joint specialty before October 1, 2007.

(B) The Secretary of Defense may waive the requirement in subparagraph (A) with respect to the assignment of an officer to a position designated under paragraph (2). Any such waiver shall be granted on a case-by-case basis. The authority of the Secretary to grant such a waiver may be delegated only to the Chairman of the Joint Chiefs of Staff or a designee of the Chairman who is an officer of the armed forces in grade O–9 or higher.

(4) The Secretary of Defense shall ensure that, of those joint duty assignment positions that are filled by general or flag officers, a substantial portion are among those positions that are designated under paragraph (2) as critical joint duty assignment positions.

(e) CAREER GUIDELINES.—The Secretary, with the advice of the Chairman of the Joint Chiefs of Staff, shall establish career guidelines for officers to achieve joint qualification and for officers who have been designated as joint qualified. Such guidelines shall include guidelines for—

(1) selection;

(2) military education;

(3) training;

(4) types of duty assignments; and

(5) such other matters as the Secretary considers appropriate.

(f) TREATMENT OF CERTAIN SERVICE.—Any service by an officer in the grade of captain or, in the case of the Navy, lieutenant in a joint duty assignment shall be considered to be service in a joint duty assignment for purposes of all laws (including section 619a of this title) establishing a requirement or condition with respect to an officer's service in a joint duty assignment.

(Added Pub. L. 99–433, title IV, § 401(a), Oct. 1, 1986, 100 Stat. 1025; amended Pub. L. 100–180, div. A, title XIII, § 1301–1302(b), Dec. 4, 1987, 101 Stat. 1168, 1169; Pub. L. 100–456, div. A, title V, §§ 511, 512(a), 517(a), 518, Sept. 29, 1988, 102 Stat. 1968, 1971; Pub. L. 101–189, div. A, title XI, §§ 1113, 1122, Nov. 29, 1989, 103 Stat. 1554, 1556; Pub. L. 104–106, div. A, title V, § 501(a), (d), title XV, § 1503(a)(6), Feb. 10, 1996, 110 Stat. 290, 292, 511; Pub. L. 107–107, div. A, title V, § 521(a), Dec. 28, 2001, 115 Stat. 1097; Pub. L. 107–314, div. A, title V, § 502(c), title X, § 1062(a)(3), Dec. 2, 2002, 116 Stat. 2530, 2649; Pub. L. 109–364, div. A, title V, § 516(a)–(e)(1), Oct. 17, 2006, 120 Stat. 2187–2189; Pub. L. 110–417, [div. A], title V, § 522(a)(1), (2), Oct. 14, 2008, 122 Stat. 4444, 4445; Pub. L. 115–91, div. A, title X, § 1081(a)(20), Dec. 12, 2017, 131 Stat. 1595; Pub. L. 116–92, div. A, title V, § 505, Dec. 20, 2019, 133 Stat. 1345; Pub. L. 116–283, div. A, title IX, § 924(b)(1)(D), Jan. 1, 2021, 134 Stat. 3820.)

AMENDMENTS

2021—Subsec. (a). Pub. L. 116–283 substituted ''Marine Corps, and Space Force'' for ''and Marine Corps''.

2019—Subsec. (d)(3)(B). Pub. L. 116–92 inserted ''or a designee of the Chairman who is an officer of the armed forces in grade O–9 or higher'' after ''Chairman of the Joint Chiefs of Staff''.

2017—Subsec. (c)(1)(B)(i), (3)(A). Pub. L. 115–91 substituted ''664(d)'' for ''664(f)''.

2008—Pub. L. 110–417 amended section catchline generally, substituting ''Management policies for joint qualified officers'' for ''Management policies for officers who are joint qualified'', and in subsec. (a), substituted ''as a joint qualified officer or in such other manner as the Secretary of Defense directs'' for ''in such manner as the Secretary of Defense directs''.

2006—Pub. L. 109–364, §516(e)(1), substituted ''officers who are joint qualified'' for ''joint specialty officers'' in section catchline.

Subsec. (a). Pub. L. 109–364, §516(a), struck out at end ''For purposes of this chapter, officers to be managed by such policies, procedures, and practices are referred to as having, or having been nominated for, the 'joint specialty'.''

Subsecs. (b) to (d). Pub. L. 109–364, §516(b), amended subsecs. (b) to (d) generally. Prior to amendment, subsecs. (b) to (d) related to numbers and selection of officers with the joint specialty, education and experience requirements, and number of joint duty assignments.

Subsec. (e). Pub. L. 109–364, §516(c), substituted ''officers to achieve joint qualification and for officers who have been designated as joint qualified'' for ''officers with the joint specialty'' in introductory provisions.

Subsec. (f). Pub. L. 109–364, §516(d), substituted ''619a'' for ''619(e)(1)''.

2002—Subsec. (b)(2). Pub. L. 107–314, §1062(a)(3), substituted ''December 28, 2001,'' for ''the date of the enactment of the National Defense Authorization Act for Fiscal Year 2002''.

Subsec. (c)(3)(E). Pub. L. 107–314, §502(c), substituted ''paragraph'' for ''subparagraph''.

2001—Subsec. (b)(2). Pub. L. 107–107, in introductory provisions, substituted ''Each officer on the active-duty list on the date of the enactment of the National Defense Authorization Act for Fiscal Year 2002 who has not before that date been nominated for the joint specialty by the Secretary of a military department, and each officer who is placed on the active-duty list after such date, who meets the requirements of subsection (c) shall automatically be considered to have been nominated for the joint specialty. From among those officers considered to be nominated for the joint specialty, the Secretary may select for the joint specialty only officers—'' for ''The Secretaries of the military departments shall nominate officers for selection for the joint specialty. Nominations shall be made from among officers—''.

1996—Subsec. (c)(3)(D). Pub. L. 104–106, §501(d)(1), in third sentence, substituted ''In the case of officers in grades below brigadier general and rear admiral (lower half), the total number'' for ''The total number''.

Subsec. (c)(3)(E). Pub. L. 104–106, §501(d)(2), added subpar. (E).

Subsec. (d)(2)(A). Pub. L. 104–106, §501(a), substituted ''800'' for ''1,000''.

Subsec. (d)(2)(B). Pub. L. 104–106, §1503(a)(6)(A), substituted ''Each position designated by the Secretary under subparagraph (A)'' for ''Until January 1, 1994, at least 80 percent of the positions designated by the Secretary under subparagraph (A) shall be held at all times by officers who have the joint specialty. On and after January 1, 1994, each position so designated''.

Subsec. (d)(2)(C). Pub. L. 104–106, §1503(a)(6)(B), struck out ''the second sentence of'' after ''the requirement in''.

Subsec. (d)(2)(D). Pub. L. 104–106, §1503(a)(6)(C), struck out subpar. (D) which read as follows: ''During the period beginning on October 1, 1992, and ending on January 1, 1993, the Secretary of Defense shall submit to Congress a report on the operation, to the date of the report, of the first sentence of subparagraph (B) and on the Secretary's projection for the use of the waiver authority provided under subparagraph (C), including the Secretary's estimate of the average annual number of waivers to be provided under subparagraph (C).''

1989—Subsec. (c)(1)(B), (3)(A). Pub. L. 101–189, §1113, substituted ''(as described in section 664(f) of this title (other than in paragraph (2) thereof))'' for ''(as described in section 664(f)(1) or (f)(3) of this title)''.

Subsec. (c)(4). Pub. L. 101–189, §1122, added par. (4).

1988—Subsec. (c)(3)(D). Pub. L. 100–456, §511, inserted ''for officers in the same pay grade'' after ''under this paragraph'', substituted ''10 percent'' for ''5 percent'', and inserted ''in that pay grade'' after ''numbers of officers''.

Subsec. (d)(2). Pub. L. 100–456, §512(a), designated existing provisions as subpar. (A), struck out sentence at end which directed that each position so designated by the Secretary could be held only by an officer who had the joint specialty, and added subpars. (B) to (D).

Subsec. (d)(4). Pub. L. 100–456, §517(a), substituted ''25 percent'' for ''one-third''.

Subsec. (f). Pub. L. 100–456, §518, added subsec. (f).

1987—Subsec. (b)(3). Pub. L. 100–180, §1301(a)(1), added par. (3).

Subsec. (c)(1)(B). Pub. L. 100–180, §1301(b)(1), inserted ''(as described in section 664(f)(1) or (f)(3) of this title)'' after ''joint duty assignment''.

Subsec. (c)(2)(A). Pub. L. 100–180, §1301(b)(2)(A)–(C), designated existing provisions as subpar. (A), substituted ''An officer (other than a general or flag officer) who has a military occupational specialty that is'' for ''An officer who has'' and ''full tour of duty in a joint duty assignment (as described in section 664(f)(2) of this title)'' for ''joint duty assignment of not less than two years'', and struck out provisions that an officer selected for the joint specialty complete generally applicable requirements for selection under par. (1)(B) as soon as practicable after such officer's selection.

Subsec. (c)(2)(B). Pub. L. 100–180, §1301(b)(2)(D), added subpar. (B).

Subsec. (c)(3). Pub. L. 100–180, §1301(b)(3), added par. (3).

Subsec. (d)(1). Pub. L. 100–180, §1302(a)(1), added subpars. (A) and (B) and substituted ''by officers who—'' for ''by officers who have (or have been nominated for) the joint specialty.'' in introductory provisions.

Subsec. (d)(2) to (4). Pub. L. 100–180, §1302(b), added pars. (2) to (4) and struck out former par. (2) which read as follows: ''The Secretary of Defense shall designate not fewer than 1,000 joint duty assignment positions as critical joint duty assignment positions. Each such position shall be held only by an officer with the joint specialty.''

Effective Date of 2006 Amendment

Pub. L. 109–364, div. A, title V, §516(f), Oct. 17, 2006, 120 Stat. 2189, provided that: ''The amendments made by this section [amending this section] shall take effect on October 1, 2007.''

Treatment of Current Joint Specialty Officers

Pub. L. 109–364, div. A, title V, §516(g), Oct. 17, 2006, 120 Stat. 2189, provided that: ''For the purposes of chapter 38 of title 10, United States Code, and sections 154, 164, and 619a of such title, an officer who, as of September 30, 2007, has been selected for or has the joint specialty under section 661 of such title, as in effect on that date, shall be considered after that date to be an officer designated as joint qualified by the Secretary of Defense under section 661(b)(2) of such title, as amended by this section.''

Implementation Plan

Pub. L. 109–364, div. A, title V, §516(h), Oct. 17, 2006, 120 Stat. 2189, provided that:

''(1) Plan required.—Not later than March 31, 2007, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a plan for the implementation of the joint officer management system, which will take effect on October

1, 2007, as provided in subsection (f) [set out above], as a result of the amendments made by this section [amending this section] and other provisions of this Act [see Tables for classification] to provisions of chapter 38 of title 10, United States Code.

''(2) ELEMENTS OF PLAN.—In developing the plan required by this subsection, the Secretary shall pay particular attention to matters related to the transition of officers from the joint specialty system in effect before October 1, 2007, to the joint officer management system in effect after that date. At a minimum, the plan shall include the following:

''(A) The policies and criteria to be used for designating officers as joint qualified on the basis of service performed by such officers before that date, had the amendments made by this section and other provisions of this Act to provisions of chapter 38 of title 10, United States Code, taken effect before the date of the enactment of this Act [Oct. 17, 2006].

''(B) The policies and criteria prescribed by the Secretary of Defense to be used in making determinations under section 661(c)(1)(B)(ii) of such title, as amended by this section.

''(C) The recommendations of the Secretary for any legislative changes that may be necessary to effectuate the joint officer management system.''

EXCLUSION OF CERTAIN OFFICERS FROM LIMITATION ON AUTHORITY TO GRANT A WAIVER OF REQUIRED COMPLETION OR SEQUENCING FOR JOINT PROFESSIONAL MILITARY EDUCATION

Pub. L. 107–314, div. A, title V, § 502(a), (b), Dec. 2, 2002, 116 Stat. 2530, provided for exclusion from the limitation set forth in former subsec. (c)(3)(D) of this section of any officer selected for the joint specialty who, on Dec. 28, 2001, had met the requirements for nomination for the joint specialty, but had not been nominated before that date, and who had been automatically nominated before Dec. 2, 2002, and provided that such exclusion would terminate on Oct. 1, 2006.

INDEPENDENT STUDY OF JOINT OFFICER MANAGEMENT AND JOINT PROFESSIONAL MILITARY EDUCATION REFORMS

Pub. L. 107–107, div. A, title V, § 526, Dec. 28, 2001, 115 Stat. 1099, directed the Secretary of Defense to provide for an independent study of the joint officer management system and the joint professional military education system and to require the entity conducting the study to submit a report to Congress on the study not later than one year after Dec. 28, 2001.

STUDY OF DISTRIBUTION OF GENERAL AND FLAG OFFICER POSITIONS IN JOINT DUTY ASSIGNMENTS

Pub. L. 102–484, div. A, title IV, § 404, Oct. 23, 1992, 106 Stat. 2398, directed Secretary of Defense to conduct a study of whether joint organizations of Department of Defense are fully staffed with appropriate number of general and flag officers and, not later than one year after Oct. 23, 1992, submit a report to Congress.

TRANSITION TO JOINT OFFICER PERSONNEL POLICY

Pub. L. 99–433, title IV, § 406(a)–(c), Oct. 1, 1986, 100 Stat. 1033, as amended by Pub. L. 100–456, div. A, title V, § 516, Sept. 29, 1988, 102 Stat. 1971, provided that:

''(a) JOINT DUTY ASSIGNMENTS.—(1) Section 661(d) of title 10, United States Code, shall be implemented as rapidly as possible and (except as provided under paragraph (2)) not later than October 1, 1989.

''(2) The first sentence of section 661(d)(2)(B) of such title shall apply with respect to positions designated under the first sentence of section 661(d)(2)(A) of that title as critical joint duty assignment positions which become vacant after January 1, 1989.

''(b) JOINT SPECIALTY.—

''(1) INITIAL SELECTIONS.—(A) In making the initial selections of officers for the joint specialty under section 661 of title 10, United States Code (as added by section 401 of this Act), the Secretary of Defense may waive the requirement of either subparagraph (A) or (B) (but not both) of subsection (c)(1) of such section in the case of any officer in a grade above captain or, in the case of the Navy, lieutenant.

''(B) In applying such subparagraph (B) to the initial selections of officers for the joint specialty, the Secretary may in the case of any officer—

''(i) waive the requirement that a joint duty assignment be served after the officer has completed an appropriate program at a joint professional military education school;

''(ii) waive the requirement for the length of a joint duty assignment in the case of a joint duty assignment begun by an officer before January 1, 1987, if the officer served in that assignment for a period of sufficient duration (which may not be less than 12 months) to have been considered a full tour of duty under the policies and regulations in effect on September 30, 1986; or

''(iii) consider as a joint duty assignment any tour of duty begun by an officer before October 1, 1986, that involved significant experience in joint matters (as determined by the Secretary) if the officer served in that assignment for a period of sufficient duration (which may not be less than 12 months) for his service to have been considered a full tour of duty under the policies and regulations in effect on September 30, 1986.

''(C) A waiver under subparagraph (A) of this paragraph or under any provision of subparagraph (B) of this paragraph may only be made on a case-by-case basis.

''(D) The authority of the Secretary of Defense to grant a waiver under subparagraph (A) or (B) of this paragraph may be delegated only to the Deputy Secretary of Defense.

''(2) REQUIREMENT FOR HIGH STANDARDS.—In exercising the authority provided by paragraph (1), the Secretary of Defense shall ensure that the highest standards of performance, education, and experience are established and maintained for officers selected for the joint specialty.

''(3) SUNSET.—The authority provided by paragraph (1) shall expire on October 1, 1989.

''(c) CAREER GUIDELINES.—The career guidelines required to be established by section 661(e) of such title, the procedures required to be established by section 665(a) of such title, and the personnel policies required to be established by section 666 of such title (as added by section 401) shall be established not later than the end of the eight-month period beginning on the date of the enactment of this Act [Oct. 1, 1986]. The provisions of section 665(b) of such title shall be implemented not later than the end of such period.''

§ 662. Promotion policy objectives for joint officers

The Secretary of Defense shall ensure that the qualifications of officers assigned to joint duty assignments are such that—

(1) officers who are serving on, or have served on, the Joint Staff are expected, as a group, to be promoted to the next higher grade at a rate not less than the rate for officers of the same armed force in the same grade and competitive category who are serving on, or have served on, the headquarters staff of their armed force; and

(2) officers in the grade of major (or in the case of the Navy, lieutenant commander) or above who have been designated as a joint qualified officer are expected, as a group, to be promoted to the next higher grade at a rate not less than the rate for all officers of the same armed force in the same grade and competitive category.

(Added Pub. L. 99–433, title IV, § 401(a), Oct. 1, 1986, 100 Stat. 1026; amended Pub. L. 100–456, div.

A, title V, § 513, Sept. 29, 1988, 102 Stat. 1969; Pub. L. 101–510, div. A, title XIII, § 1311(3), Nov. 5, 1990, 104 Stat. 1669; Pub. L. 104–201, div. A, title V, § 510, Sept. 23, 1996, 110 Stat. 2514; Pub. L. 107–107, div. A, title V, § 521(b), Dec. 28, 2001, 115 Stat. 1097; Pub. L. 107–314, div. A, title X, § 1062(a)(4), Dec. 2, 2002, 116 Stat. 2650; Pub. L. 108–375, div. A, title V, § 535, Oct. 28, 2004, 118 Stat. 1901; Pub. L. 109–364, div. A, title V, § 517, Oct. 17, 2006, 120 Stat. 2190; Pub. L. 110–181, div. A, title X, § 1063(a)(3), Jan. 28, 2008, 122 Stat. 321; Pub. L. 110–417, [div. A], title V, § 523, Oct. 14, 2008, 122 Stat. 4446; Pub. L. 111–84, div. A, title X, § 1073(c)(2), Oct. 28, 2009, 123 Stat. 2474; Pub. L. 113–291, div. A, title V, § 505(a)(2), Dec. 19, 2014, 128 Stat. 3356.)

AMENDMENTS

2014—Pub. L. 113–291 struck out subsec. (a) designation and heading "Qualifications.—" before "The Secretary of Defense" and struck out subsec. (b) which related to annual report.

2009—Subsec. (a)(2). Pub. L. 111–84 made technical amendment to directory language of Pub. L. 110–417, § 523(1). See 2008 Amendment note below.

2008—Subsec. (a)(2). Pub. L. 110–417, § 523(1), as amended by Pub. L. 111–84, substituted "officers in the grade of major (or in the case of the Navy, lieutenant commander) or above who have been designated as a joint qualified officer" for "officers who are serving in or have served in joint duty assignments".

Subsec. (b). Pub. L. 110–417, § 523(2), inserted "or on the Joint Staff, and officers who have been designated as a joint qualified officer in the grades of major (or in the case of the Navy, lieutenant commander) through colonel (or in the case of the Navy, captain)" after "joint duty assignments".

Pub. L. 110–181 substituted "paragraphs (1) and (2) of subsection (a)" for "paragraphs (1), (2), and (3) of subsection (a)".

2006—Subsec. (a). Pub. L. 109–364 inserted "and" at end of par. (1), added par. (2), and struck out former pars. (2) and (3) which read as follows:

"(2) officers who have the joint specialty are expected, as a group, to be promoted—

"(A) during the period beginning on December 28, 2001, and ending on December 27, 2006, at a rate not less than the rate for officers of the same armed force in the same grade and competitive category; and

"(B) after December 27, 2006, at a rate not less than the rate for officers of the same armed force in the same grade and competitive category who are serving on, or have served on, the headquarters staff of their armed force; and

"(3) officers who are serving in, or have served in, joint duty assignments (other than officers covered in paragraphs (1) and (2)) are expected, as a group, to be promoted to the next higher grade at a rate not less than the rate for all officers of the same armed force in the same grade and competitive category."

2004—Subsec. (a)(2). Pub. L. 108–375 substituted "December 27, 2006" for "December 27, 2004" in two places.

2002—Subsec. (a)(2)(A). Pub. L. 107–314, § 1062(a)(4)(A), substituted "during the period beginning on December 28, 2001, and ending on December 27, 2004," for "during the three-year period beginning on the date of the enactment of the National Defense Authorization Act for Fiscal Year 2002,".

Subsec. (a)(2)(B). Pub. L. 107–314, § 1062(a)(4)(B), substituted "after December 27, 2004" for "after the end of the period specified in subparagraph (A)".

2001—Subsec. (a)(2). Pub. L. 107–107 substituted "promoted—" for "promoted at a rate", added subpar. (A), designated "not less than the rate for officers of the same armed force in the same grade and competitive category who are serving on, or have served on, the headquarters staff of their armed force; and" as subpar. (B), and inserted "after the end of the period specified in subparagraph (A), at a rate" after subpar. (B) designation.

1996—Subsec. (b). Pub. L. 104–201, § 510(b), in first sentence, substituted "paragraphs" for "clauses" and, in second sentence, inserted "for any fiscal year" after "such objectives" and substituted "report for that fiscal year" for "periodic report required by this subsection".

Pub. L. 104–201, § 510(a), substituted "Annual Report" for "Report" in heading and "Not later than January 1 of each year, the Secretary of Defense shall submit to Congress a report on the promotion rates during the preceding fiscal year" for "The Secretary of Defense shall periodically (and not less often than every six months) report to Congress on the promotion rates" in text.

1990—Subsec. (b). Pub. L. 101–510 substituted "the Secretary shall include in the periodic report required by this subsection information on such failure and on" for "the Secretary shall immediately notify Congress of such failure and of".

1988—Subsec. (a)(1), (3). Pub. L. 100–456 inserted "to the next higher grade" after "promoted".

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–84, div. A, title X, § 1073(c), Oct. 28, 2009, 123 Stat. 2474, provided that the amendment made by section 1073(c)(2) is effective as of Oct. 14, 2008, and as if included in Pub. L. 110–417 as enacted.

§ 663. Joint duty assignments after completion of joint professional military education

(a) JOINT QUALIFIED OFFICERS.—The Secretary of Defense shall ensure that each officer designated as a joint qualified officer who graduates from a school within the National Defense University specified in subsection (c) shall be assigned to a joint duty assignment for that officer's next duty assignment after such graduation (unless the officer receives a waiver of that requirement by the Secretary in an individual case).

(b) OTHER OFFICERS.—(1) The Secretary of Defense shall ensure that a high proportion (which shall be greater than 50 percent) of the officers graduating from a school within the National Defense University specified in subsection (c) who are not designated as a joint qualified officer shall receive assignments to a joint duty assignment (or, as authorized by the Secretary in an individual case, to a joint assignment other than a joint duty assignment) as their next duty assignment after such graduation or, to the extent authorized in paragraph (2), as their second duty assignment after such graduation.

(2) The Secretary may, if the Secretary determines that it is necessary to do so for the efficient management of officer personnel, establish procedures to allow up to one-half of the officers subject to the assignment requirement in paragraph (1) to be assigned to such an assignment as their second (rather than first) assignment after such graduation from a school referred to in paragraph (1).

(c) COVERED SCHOOLS WITHIN THE NATIONAL DEFENSE UNIVERSITY.—For purposes of this section, a school within the National Defense University specified in this subsection is one of the following:

(1) The National War College.

(2) The Dwight D. Eisenhower School for National Security and Resource Strategy.

(3) The Joint Forces Staff College.

(d) EXCEPTION FOR OFFICERS GRADUATING FROM OTHER-THAN-IN-RESIDENCE PROGRAMS.—(1) Sub-

section (a) does not apply to an officer graduating from a school within the National Defense University specified in subsection (c) following pursuit of a program on an other-than-in-residence basis.

(2) Subsection (b) does not apply with respect to any group of officers graduating from a school within the National Defense University specified in subsection (c) following pursuit of a program on an other-than-in-residence basis.

(Added Pub. L. 99–433, title IV, § 401(a), Oct. 1, 1986, 100 Stat. 1027; amended Pub. L. 101–189, div. A, title XI, § 1123(c)(1), Nov. 29, 1989, 103 Stat. 1557; Pub. L. 102–190, div. A, title IX, § 912(a), Dec. 5, 1991, 105 Stat. 1452; Pub. L. 103–160, div. A, title IX, § 933(a), Nov. 30, 1993, 107 Stat. 1735; Pub. L. 107–107, div. A, title X, § 1048(a)(6), Dec. 28, 2001, 115 Stat. 1223; Pub. L. 107–314, div. A, title X, § 1062(a)(5), Dec. 2, 2002, 116 Stat. 2650; Pub. L. 108–375, div. A, title V, § 532(b)–(c)(2)(A), Oct. 28, 2004, 118 Stat. 1900; Pub. L. 109–364, div. A, title V, § 518, Oct. 17, 2006, 120 Stat. 2190; Pub. L. 110–417, [div. A], title V, § 522(b), Oct. 14, 2008, 122 Stat. 4445; Pub. L. 112–81, div. A, title V, § 503, div. B, title XXVIII, § 2861(c), Dec. 31, 2011, 125 Stat. 1388, 1701.)

AMENDMENTS

2011—Subsec. (b)(1). Pub. L. 112–81, § 503(a)(1), inserted ''(or, as authorized by the Secretary in an individual case, to a joint assignment other than a joint duty assignment)'' after ''to a joint duty assignment''.

Subsec. (b)(2). Pub. L. 112–81, § 503(a)(2), substituted ''the assignment'' for ''the joint duty assignment'' and ''such an assignment'' for ''a joint duty assignment''.

Subsec. (c)(2). Pub. L. 112–81, § 2861(c), substituted ''Dwight D. Eisenhower School for National Security and Resource Strategy'' for ''Industrial College of the Armed Forces''.

Subsec. (d). Pub. L. 112–81, § 503(b), added subsec. (d).

2008—Subsecs. (a), (b)(1). Pub. L. 110–417, in subsec. (a), substituted ''Qualified'' for ''Specialty'' in heading and ''designated as a joint qualified officer'' for ''with the joint specialty'' in text, and, in subsec. (b)(1), substituted ''are not designated as a joint qualified officer'' for ''do not have the joint specialty''.

2006—Subsecs. (a), (b)(1). Pub. L. 109–364, § 518(a)(1), (2)(A), substituted ''a school within the National Defense University specified in subsection (c)'' for ''a joint professional military education school''.

Subsec. (b)(2). Pub. L. 109–364, § 518(a)(2)(B), substituted ''a school referred to in paragraph (1)'' for ''a joint professional military education school''.

Subsec. (c). Pub. L. 109–364, § 518(b), added subsec. (c).

2004—Pub. L. 108–375, § 532(c)(2)(A), substituted ''Joint duty assignments after completion of joint professional military education'' for ''Education'' in section catchline.

Subsec. (a). Pub. L. 108–375, § 532(c)(1)(A), (B), redesignated subsec. (d)(1) as (a), inserted heading, and struck out heading and text of former subsec. (a) which related to capstone course for new general and flag officers. See section 2153 of this title.

Subsec. (b). Pub. L. 108–375, § 532(c)(1)(C)–(F), redesignated subsec. (d)(2)(A) as (b)(1) and substituted ''in paragraph (2)'' for ''in subparagraph (B)'', redesignated subsec. (d)(2)(B) as (b)(2) and substituted ''in paragraph (1)'' for ''in subparagraph (A)'', and inserted subsec. heading.

Pub. L. 108–375, § 532(b), transferred subsec. (b), relating to joint military education schools, to section 2152(b) of this title.

Subsec. (c). Pub. L. 108–375, § 532(b), transferred subsec. (c), relating to other professional military education schools, to section 2152(c) of this title.

Subsec. (d). Pub. L. 108–375, § 532(c)(1)(B), (C), (E), redesignated par. (1) as subsec. (a), redesignated subpars. (A) and (B) of par. (2) as pars. (1) and (2), respectively, of subsec. (b), and struck out heading ''Post-Education Joint Duty Assignments''.

Subsec. (e). Pub. L. 108–375, § 532(c)(1)(A), struck out heading and text of subsec. (e) which related to the duration of the principal course of instruction offered at the Joint Forces Staff College. See section 2156 of this title.

2002—Subsec. (e)(2). Pub. L. 107–314 substituted ''Joint Forces Staff College'' for ''Armed Forces Staff College''.

2001—Subsec. (e). Pub. L. 107–107 substituted ''Joint Forces Staff College'' for ''Armed Forces Staff College'' in subsec. heading and in text of par. (1).

1993—Subsec. (d). Pub. L. 103–160 amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: ''POST-EDUCATION DUTY ASSIGNMENTS.—The Secretary of Defense shall ensure that—

''(1) unless waived by the Secretary in an individual case, each officer with the joint specialty who graduates from a joint professional military education school shall be assigned to a joint duty assignment for that officer's next duty assignment; and

''(2) a high proportion (which shall be greater than 50 percent) of the other officers graduating from a joint professional military education school also receive assignments to a joint duty assignment as their next duty assignment.''

1991—Subsec. (e). Pub. L. 102–190 designated existing provisions as par. (1) and added par. (2).

1989—Subsec. (e). Pub. L. 101–189 added subsec. (e).

EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103–160, div. A, title IX, § 933(b), Nov. 30, 1993, 107 Stat. 1736, provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to officers graduating from joint professional military education schools after the date of the enactment of this Act [Nov. 30, 1993].''

EFFECTIVE DATE OF 1991 AMENDMENT

Pub. L. 102–190, div. A, title IX, § 912(b), Dec. 5, 1991, 105 Stat. 1452, as amended by Pub. L. 102–484, div. A, title IX, § 921, Oct. 23, 1992, 106 Stat. 2473, provided that the amendment made by section 912(a)(2) of Pub. L. 102–190 to this section was not to apply with respect to the Armed Forces Staff College until Jan. 1, 1994.

IMPLEMENTATION OF SUBSECTION (e)

Pub. L. 101–189, div. A, title XI, § 1123(c)(2), Nov. 29, 1989, 103 Stat. 1557, provided that: ''Subsection (e) of such section, as added by paragraph (1), shall be implemented by the Secretary of Defense not later than two years after the date of the enactment of this Act [Nov. 29, 1989].''

EDUCATION REQUIREMENTS; JOINT OFFICER MANAGEMENT PROGRAM

Pub. L. 99–433, title IV, § 406(d), Oct. 1, 1986, 100 Stat. 1033, provided that:

''(1) CAPSTONE COURSE.—Subsection (a) of section 663 of such title [10 U.S.C. 663(a)] (as added by section 401) shall apply with respect to officers selected in reports of officer selection boards submitted to the Secretary concerned after the end of the 120-day period beginning on the date of the enactment of this Act [Oct. 1, 1986].

''(2) REVIEW OF MILITARY EDUCATION SCHOOLS.—(A) The first review under subsections (b) and (c) of such section shall be completed not later than 120 days after the date of the enactment of this Act. The Secretary of Defense shall submit to Congress a report on the results of the review at each Department of Defense school not later than 60 days thereafter.

''(B) Such subsections shall be implemented so that the revised curricula take effect with respect to courses beginning after July 1987.

''(3) POST-EDUCATION DUTY ASSIGNMENTS.—Subsection (d) of such section shall take effect with respect to classes graduating from joint professional military education schools after January 1987.''

§ 664. Length of joint duty assignments

(a) GENERAL RULE.—The length of a joint duty assignment shall be not less than two years.

(b) WAIVER AUTHORITY.—The Secretary of Defense may waive subsection (a) in the case of any officer.

(c) EXCLUSIONS FROM TOUR LENGTH.—The Secretary of Defense may exclude the following service from the requirement in subsection (a):

(1) Service in a joint duty assignment in which the full tour of duty in the assignment is not completed by the officer because of—

(A) retirement;

(B) release from active duty;

(C) suspension from duty under section 155(f)(2) or 164(g) of this title; or

(D) a qualifying reassignment from a joint duty assignment as prescribed by the Secretary of Defense in regulations.

(2) Service in a joint duty assignment in a case in which the officer's tour of duty in that assignment brings the officer's accrued service for purposes of subsection (d)(2) to the requirement in subsection (a).

(d) FULL TOUR OF DUTY.—An officer shall be considered to have completed a full tour of duty in a joint duty assignment upon completion of any of the following:

(1) A joint duty assignment that meets the requirement in subsection (a).

(2) Accrued joint experience in joint duty assignments as described in subsection (e).

(3) A joint duty assignment with respect to which the Secretary of Defense has granted a waiver under subsection (b), but only in a case in which the Secretary determines that the service completed by that officer in that duty assignment shall be considered to be a full tour of duty in a joint duty assignment.

(4) A second and subsequent joint duty assignment that is less than the period required under subsection (a).

(e) ACCRUED JOINT EXPERIENCE.—For the purposes of subsection (d)(2), the Secretary of Defense may prescribe, by regulation, certain joint experience, such as temporary duty in joint assignments, joint individual training, and participation in joint exercises, that may be aggregated to equal a full tour of duty. The Secretary shall prescribe the regulations with the advice of the Chairman of the Joint Chiefs of Staff.

(f) CONSTRUCTIVE CREDIT.—The Secretary of Defense may award constructive credit in the case of an officer (other than a general or flag officer) who, for reasons of military necessity, is reassigned from a joint duty assignment within 60 days of meeting the tour length criteria prescribed in subsection (d)(1). The amount of constructive service that may be credited to such officer shall be the amount sufficient for the completion of the applicable tour of duty requirement, but in no case more than 60 days.

(Added Pub. L. 99–433, title IV, § 401(a), Oct. 1, 1986, 100 Stat. 1028; amended Pub. L. 100–180, div. A, title XIII, § 1303(a), Dec. 4, 1987, 101 Stat. 1170; Pub. L. 100–456, div. A, title V, §§ 514, 517(b), Sept. 29, 1988, 102 Stat. 1969, 1971; Pub. L. 104–106, div. A, title V, § 501(b), (e), (f), Feb. 10, 1996, 110 Stat. 290, 292; Pub. L. 106–65, div. A, title X, § 1066(a)(5), Oct. 5, 1999, 113 Stat. 770; Pub. L. 107–107, div. A, title V, § 522, Dec. 28, 2001, 115 Stat. 1097; Pub. L. 109–364, div. A, title V, § 519(d)(1), Oct. 17, 2006, 120 Stat. 2191; Pub. L. 110–417, [div. A], title V, § 524, Oct. 14, 2008, 122 Stat. 4446; Pub. L. 114–328, div. A, title V, § 510, Dec. 23, 2016, 130 Stat. 2110; Pub. L. 115–232, div. A, title X, § 1081(a)(9), Aug. 13, 2018, 132 Stat. 1983.)

AMENDMENTS

2018—Subsec. (d)(1). Pub. L. 115–232 substituted ''the requirement'' for ''the the requirement''.

2016—Subsec. (a). Pub. L. 114–328, § 510(a), substituted ''assignment shall be not less than two years.'' for ''assignment—

''(1) for general and flag officers shall be not less than two years; and

''(2) for other officers shall be not less than three years.''

Subsec. (c). Pub. L. 114–328, § 510(b), (g)(1), redesignated subsec. (d) as (c) and struck out former subsec. (c). Prior to amendment, text of subsec. (c) read as follows: ''The Secretary may for purposes of section 661(c)(1)(B) of this title authorize a joint duty assignment of less than the period prescribed by subsection (a), but not less than two years, without the requirement for a waiver under subsection (b) in the case of an officer—

''(1) who has a military occupational specialty designated under section 668(d) of this title as a critical occupational specialty; and

''(2) for whom such joint duty assignment is the initial joint duty assignment.''

Subsec. (c)(2). Pub. L. 114–328, § 510(g)(2), substituted ''subsection (d)(2)'' for ''subsection (f)(3)''.

Subsec. (d). Pub. L. 114–328, § 510(g)(1), redesignated subsec. (f) as (d). Former subsec. (d) redesignated (c).

Pub. L. 114–328, § 510(c)(1), substituted ''the requirement in subsection (a)'' for ''the standards prescribed in subsection (a)'' in introductory provisions.

Subsec. (d)(1)(D). Pub. L. 114–328, § 510(c)(2), substituted ''assignment as prescribed by the Secretary of Defense in regulations.'' for ''assignment—

''(i) for unusual personal reasons, including extreme hardship and medical conditions, beyond the control of the officer or the armed forces; or

''(ii) to another joint duty assignment immediately after—

''(I) the officer was promoted to a higher grade, if the reassignment was made because no joint duty assignment was available within the same organization that was commensurate with the officer's new grade; or

''(II) the officer's position was eliminated in a reorganization.''

Subsec. (d)(2). Pub. L. 114–328, § 510(g)(3), substituted ''subsection (e)'' for ''subsection (g)''.

Pub. L. 114–328, § 510(c)(3)–(5), redesignated par. (3) as (2), substituted ''the requirement in subsection (a)'' for ''the applicable standard prescribed in subsection (a)'', and struck out former par. (2) which read as follows: ''Service in a joint duty assignment outside the United States or in Alaska or Hawaii which is less than the applicable standard prescribed in subsection (a).''

Subsec. (d)(3). Pub. L. 114–328, § 510(c)(4), redesignated par. (3) as (2).

Subsec. (e). Pub. L. 114–328, § 510(d), (g)(1), (4), redesignated subsec. (g) as (e), substituted ''subsection (d)(2)'' for ''subsection (f)(3)'', and struck out former subsec. (e). Prior to amendment, text of subsec. (e) read as follows:

''(1) The Secretary shall ensure that the average length of joint duty assignments during any fiscal year, measured by the lengths of the joint duty assignments ending during that fiscal year, meets the standards prescribed in subsection (a).

''(2) In computing the average length of joint duty assignments for purposes of paragraph (1), the Secretary may exclude the following service:

''(A) Service described in subsection (c).
''(B) Service described in subsection (d).
''(C) Service described in subsection (f)(6).''

Subsec. (f). Pub. L. 114–328, § 510(g)(1), (5), redesignated subsec. (h) as (f) and substituted ''subsection (d)(1)'' for ''paragraphs (1), (2), and (4) of subsection (f)''. Former subsec. (f) redesignated (d).

Subsec. (f)(1). Pub. L. 114–328, § 510(e)(1), substituted ''the requirement in subsection (a)'' for ''standards prescribed in subsection (a)''.

Subsec. (f)(2) to (6). Pub. L. 114–328, § 510(e)(2)–(4), redesignated pars. (3), (5), and (6) as (2), (3), and (4), respectively, struck out '', but not less than two years'' before period at end of par. (4), and struck out former pars. (2) and (4) which read as follows:

''(2) A joint duty assignment under the circumstances described in subsection (c).''

''(4) A joint duty assignment outside the United States or in Alaska or Hawaii for which the normal accompanied-by-dependents tour of duty is prescribed by regulation to be at least two years in length, if the officer serves in the assignment for a period equivalent to the accompanied-by-dependents tour length.''

Subsec. (g). Pub. L. 114–328, § 510(g)(1), redesignated subsec. (g) as (e).

Subsec. (h). Pub. L. 114–328, § 510(g)(1), redesignated subsec. (h) as (f).

Pub. L. 114–328, § 510(f), struck out par. (1) designation before ''The Secretary of Defense may'', substituted ''award'' for ''accord'', and struck out par. (2) which read as follows: ''For the purpose of computing under subsection (e) the average length of joint duty assignments during a fiscal year, the amount of any constructive service credited under this subsection with respect to a joint duty assignment to be counted in that computation shall be excluded.''

2008—Subsec. (d)(1)(D). Pub. L. 110–417, § 524(a)(1), added subpar. (D) and struck out former subpar. (D) which read as follows: ''a qualifying reassignment (as described in subsection (g)(4)).''

Subsec. (d)(3). Pub. L. 110–417, § 524(a)(2), added par. (3) and struck out former par. (3) which read as follows: ''Service in a joint duty assignment in a case in which—

''(A) the officer's tour of duty in that assignment brings the officer's cumulative service for purposes of subsection (f)(3) to the applicable standard prescribed in subsection (a); and

''(B) the length of time served in that assignment (in any case other than an assignment which is described in subsection (g)(4)(B)) was not less than two years.''

Subsec. (e)(2). Pub. L. 110–417, § 524(b), added par. (2) and struck out former par. (2) which read as follows: ''In computing the average length of joint duty assignments for purposes of paragraph (1), the Secretary may exclude the following service:

''(A) Service described in subsection (c), except that not more than 12½ percent of all joint duty assignments shown on the list published pursuant to section 668(b)(2)(A) of this title may be so excluded in any year.

''(B) Service described in subsection (d).

''(C) Service described in subsection (f)(6), except that no more than 10 percent of all joint duty assignments shown on the list published pursuant to section 668(b)(2)(A) of this title may be so excluded in any year.''

Subsec. (f). Pub. L. 110–417, § 524(c), in par. (3) substituted ''Accrued joint experience'' for ''Cumulative service'', in par. (4) struck out ''(except that not more than 6 percent of all joint duty assignments may be considered to be under this paragraph at any time)'' before period at end, added par. (6), and struck out former par. (6) which read as follows ''A second joint duty assignment that is less than the period required under subsection (a), but not less than two years, without regard to whether a waiver was granted for such assignment under subsection (b).''.

Subsec. (g). Pub. L. 110–417, § 524(d), amended subsec. (g) generally. Prior to amendment, subsec. (g) related to cumulative service of an officer in joint duty assignments.

Subsec. (h). Pub. L. 110–417, § 524(e), substituted ''paragraphs (1), (2), and (4) of subsection (f)'' for ''subsection (f)(1), (f)(2), (f)(4), or (g)(2)'' in par. (1) and struck out par. (3) which read as follows: ''This subsection shall not apply in the case of an officer who serves less than 10 months in the joint duty assignment.''

Subsec. (i). Pub. L. 110–417, § 524(f), struck out subsec. (i) which related to joint duty credit for certain joint task force assignments.

2006—Subsec. (c). Pub. L. 109–364, in introductory provisions, substituted ''661(c)(1)(B)'' for ''661(c)(2)'', redesignated pars. (2) and (3) as (1) and (2), respectively, in par. (1), substituted ''668(d)'' for ''661(c)(2)'', and struck out former par. (1) which read as follows: ''who is nominated for the joint specialty;''.

2001—Subsec. (i)(4)(E). Pub. L. 107–107, § 522(1), substituted ''Except as provided in subparagraph (F), the joint task force'' for ''The joint task force''.

Subsec. (i)(4)(F). Pub. L. 107–107, § 522(2), added subpar. (F).

1999—Subsec. (i)(2)(A). Pub. L. 106–65 substituted ''February 10, 1996'' for ''the date of the enactment of this subsection'' in introductory provisions.

1996—Subsec. (e)(1). Pub. L. 104–106, § 501(f), struck out ''(after fiscal year 1990)'' after ''any fiscal year''.

Subsec. (e)(2)(C). Pub. L. 104–106, § 501(e)(1), added subpar. (E).

Subsec. (f). Pub. L. 104–106, § 501(e)(2)(A), substituted ''completion of any of the following:'' for ''completion of—'' in introductory provisions.

Subsec. (f)(1). Pub. L. 104–106, § 501(e)(2)(B), (D), substituted ''A joint duty'' for ''a joint duty'' and ''subsection (a).'' for ''subsection (a);''.

Subsec. (f)(2). Pub. L. 104–106, § 501(e)(2)(B), (D), substituted ''A joint duty'' for ''a joint duty'' and ''subsection (c).'' for ''subsection (c);''.

Subsec. (f)(3). Pub. L. 104–106, § 501(e)(2)(C), (D), substituted ''Cumulative'' for ''cumulative'' and ''subsection (g).'' for ''subsection (g);''.

Subsec. (f)(4). Pub. L. 104–106, § 501(e)(2)(B), (D), substituted ''A joint duty'' for ''a joint duty'' and ''any time).'' for ''any time); or''.

Subsec. (f)(5). Pub. L. 104–106, § 501(e)(2)(B), substituted ''A joint duty'' for ''a joint duty''.

Subsec. (f)(6). Pub. L. 104–106, § 501(e)(2)(E), added par. (6).

Subsec. (i). Pub. L. 104–106, § 501(b), added subsec. (i).

1988—Subsec. (a)(1). Pub. L. 100–456, § 514(1)(A), substituted ''two years'' for ''three years''.

Subsec. (a)(2). Pub. L. 100–456, § 514(1)(B), substituted ''three years'' for ''three and one-half years''.

Subsec. (c)(1). Pub. L. 100–456, § 514(2), substituted ''is'' for ''has been'' and struck out ''before such assignment begins'' after ''specialty''.

Subsec. (d)(2). Pub. L. 100–456, § 514(3), inserted ''which is less than the applicable standard prescribed in subsection (a)'' after ''Hawaii''.

Subsec. (e)(2)(A). Pub. L. 100–456, § 517(b), substituted ''12½ percent'' for ''10 percent''.

Subsec. (f)(4), (5). Pub. L. 100–456, § 514(4), added pars. (4) and (5).

Subsec. (g)(3). Pub. L. 100–456, § 514(5), substituted ''shall be excluded if the officer served less than 10 months in that assignment'' for ''shall be excluded—

''(A) if the officer served less than 10 months in that assignment; and

''(B) to the extent that the assignment was served more than eight years before the date of computation of the cumulative service.''

Subsec. (h). Pub. L. 100–456, § 514(6), added subsec. (h).

1987—Subsec. (b). Pub. L. 100–180 added subsec. (b) and struck out former subsec. (b) which read as follows: ''The Secretary of Defense may waive subsection (a) in the case of any officer, but the Secretary shall ensure that the average length of joint duty assignments meets the standards prescribed in that subsection.''

Subsec. (c). Pub. L. 100–180 added subsec. (c) and struck out former subsec. (c), ''Certain officers with

critical combat operations skills'', which read as follows: ''Joint duty assignments of less than the period prescribed by subsection (a), but not less than two years, may be authorized for the purposes of section 661(c)(2) of this title. Such an assignment may not be counted for the purposes of determining the average length of joint duty assignments under subsection (b).''

Subsec. (d). Pub. L. 100–180 added subsec. (d) and struck out former subsec. (d), ''Exception'', which read as follows:

''(1) Subsection (a) does not apply in the case of an officer who fails to complete a joint duty assignment as the result of—

''(A) retirement;

''(B) separation from active duty; or

''(C) suspension from duty under section 155(f)(2) or 164(g) of this title.

''(2) In computing the average length of joint duty assignments for purposes of this section, the Secretary of Defense shall exclude joint duty assignments not completed because of a reason specified in paragraph (1).''

Subsecs. (e) to (g). Pub. L. 100–180 added subsecs. (e) to (g).

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–364, div. A, title V, §519(e), Oct. 17, 2006, 120 Stat. 2191, provided that: ''The amendments made by this section [amending this section, former section 667, and section 668 of this title] shall take effect on October 1, 2007.''

RETROACTIVE JOINT SERVICE CREDIT FOR DUTY IN CERTAIN JOINT TASK FORCES

Pub. L. 107–107, div. A, title V, §523, Dec. 28, 2001, 115 Stat. 1097, provided that, in accordance with subsec. (i) of this section, the Secretary of Defense was authorized to award joint service credit to any officer who served on the staff of a United States joint task force headquarters in certain operations and during certain periods, and the Secretary was required to submit to Congress a report of the numbers, by service, grade, and operation, of the officers given joint service credit not later than one year after Dec. 28, 2001.

JOINT DUTY CREDIT FOR CERTAIN DUTY PERFORMED DURING OPERATIONS DESERT SHIELD AND DESERT STORM

Pub. L. 103–160, div. A, title IX, §932, Nov. 30, 1993, 107 Stat. 1735, provided extension of authority until the end of the 90-day period beginning on Nov. 30, 1993, to give certain officers joint duty credit pursuant to Pub. L. 102–484, §933, formerly set out below.

Pub. L. 102–484, div. A, title IX, §933, Oct. 23, 1992, 106 Stat. 2476, as amended by Pub. L. 103–35, title II, §202(a)(9), May 31, 1993, 107 Stat. 101; Pub. L. 103–160, div. A, title IX, §932(c)(1), Nov. 30, 1993, 107 Stat. 1735, temporarily authorized the Secretary of Defense to give an officer who had completed service during the period beginning on Aug. 2, 1990, and ending on Feb. 28, 1991, in an assignment in the Persian Gulf combat zone, credit, on a case-by-case basis, for having completed a full tour of duty in a joint duty assignment, or credit countable for determining cumulative service in joint duty assignments, for the purposes of any provision of this title, notwithstanding the length of such service or whether that service had been within the definition of ''joint duty assignment'' in section 668 of this title, and provided that such authority would expire at the end of the six-month period beginning on Oct. 23, 1992.

LENGTH OF JOINT DUTY ASSIGNMENTS

Pub. L. 99–433, title IV, §406(e), Oct. 1, 1986, 100 Stat. 1034, provided that: ''Subsection (a) of section 664 of title 10, United States Code (as added by section 401), shall apply to officers assigned to joint duty assignments after the end of the 90-day period beginning on the date of the enactment of this Act [Oct. 1, 1986]. In computing an average under subsection (b) of such section, only joint duty assignments to which such subsection applies shall be considered.''

WAIVER OF QUALIFICATIONS FOR APPOINTMENT AS SERVICE CHIEF

For waiver of the requirements of this section for the length of a joint duty assignment, see section 532(c) of Pub. L. 99–433, formerly set out as a note under section 3033 of this title.

§ 665. Procedures for monitoring careers of joint qualified officers

(a) PROCEDURES.—(1) The Secretary of Defense, with the advice of the Chairman of the Joint Chiefs of Staff, shall establish procedures for overseeing the careers of—

(A) officers designated as a joint qualified officer; and

(B) other officers who serve in joint duty assignments.

(2) Such oversight shall include monitoring of the implementation of the career guidelines established under section 661(e) of this title.

(b) FUNCTION OF JOINT STAFF.—The Secretary shall take such action as necessary to enhance the capabilities of the Joint Staff so that it can—

(1) monitor the promotions and career assignments of officers designated as a joint qualified officer and of other officers who have served in joint duty assignments; and

(2) otherwise advise the Chairman on joint personnel matters.

(Added Pub. L. 99–433, title IV, §401(a), Oct. 1, 1986, 100 Stat. 1028; amended Pub. L. 110–417, [div. A], title V, §522(c)(1), (2), Oct. 14, 2008, 122 Stat. 4445.)

AMENDMENTS

2008—Pub. L. 110–417 in section catchline substituted ''joint qualified officers'' for ''joint officers'' and in subsecs. (a)(1)(A) and (b)(1) substituted ''designated as a joint qualified officer'' for ''with the joint specialty''.

TRANSITION TO JOINT OFFICER PERSONNEL POLICY

Procedures under subsec. (a) of this section to be established not later than the end of the eight-month period beginning Oct. 1, 1986, and provisions of subsec. (b) of this section to be implemented not later than the end of such period, see section 406(c) of Pub. L. 99–433, set out as a note under section 661 of this title.

§ 666. Reserve officers not on the active-duty list

The Secretary of Defense shall establish personnel policies emphasizing education and experience in joint matters for reserve officers not on the active-duty list. Such policies shall, to the extent practicable for the reserve components, be similar to the policies provided by this chapter.

(Added Pub. L. 99–433, title IV, §401(a), Oct. 1, 1986, 100 Stat. 1028.)

TRANSITION TO JOINT OFFICER PERSONNEL POLICY

Personnel policies under this section to be established not later than the end of the eight-month period beginning Oct. 1, 1986, see section 406(c) of Pub. L. 99–433, set out as a note under section 661 of this title.

[§ 667. Repealed. Pub. L. 113–291, div. A, title V, § 505(a)(1), Dec. 19, 2014, 128 Stat. 3356]

Section, added Pub. L. 99–433, title IV, §401(a), Oct. 1, 1986, 100 Stat. 1029; amended Pub. L. 100–180, div. A, title XIII, §1304(a), Dec. 4, 1987, 101 Stat. 1172; Pub. L.

100–456, div. A, title V, § 512(b), Sept. 29, 1988, 102 Stat. 1968; Pub. L. 101–189, div. A, title XI, § 1123(d), Nov. 29, 1989, 103 Stat. 1557; Pub. L. 104–106, div. A, title V, § 501(c), Feb. 10, 1996, 110 Stat. 292; Pub. L. 107–107, div. A, title V, § 524, title X, § 1048(a)(7), Dec. 28, 2001, 115 Stat. 1098, 1223; Pub. L. 109–364, div. A, title V, § 519(d)(2), Oct. 17, 2006, 120 Stat. 2191; Pub. L. 110–417, [div. A], title V, § 522(d), Oct. 14, 2008, 122 Stat. 4445; Pub. L. 111–84, div. A, title V, § 503, Oct. 28, 2009, 123 Stat. 2277, related to annual report to Congress.

§ 668. Definitions

(a) JOINT MATTERS.—(1) In this chapter, the term ''joint matters'' means matters related to any of the following:

(A) The development or achievement of strategic objectives through the synchronization, coordination, and organization of integrated forces in operations conducted across domains, such as land, sea, or air, in space, or in the information environment, including matters relating to any of the following:

(i) National military strategy.

(ii) Strategic planning and contingency planning.

(iii) Command and control, intelligence, fires, movement and maneuver, protection or sustainment of operations under unified command.

(iv) National security planning with other departments and agencies of the United States.

(v) Combined operations with military forces of allied nations.

(B) Acquisition matters conducted by members of the armed forces and covered under chapter 87 of this title involved in developing, testing, contracting, producing, or fielding of multi-service programs or systems.

(C) Other matters designated in regulation by the Secretary of Defense in consultation with the Chairman of the Joint Chiefs of Staff.

(2) In the context of joint matters, the term ''integrated forces'' refers to military forces that are involved in achieving unified action with participants from—

(A) more than one military department; or

(B) a military department and one or more of the following:

(i) Other departments and agencies of the United States.

(ii) The military forces or agencies of other countries.

(iii) Non-governmental persons or entities.

(b) JOINT DUTY ASSIGNMENT.—(1) The Secretary of Defense shall by regulation define the term ''joint duty assignment'' for the purposes of this chapter. That definition—

(A) shall be limited to assignments in which—

(i) the preponderance of the duties of the officer involve joint matters and

(ii) the officer gains significant experience in joint matters; and

(B) shall exclude student assignments for joint training and education.

(2) The Secretary shall publish a joint duty assignment list showing—

(A) the positions that are joint duty assignment positions under such regulation and the number of such positions and, of those positions, those that are positions held by general or flag officers and the number of such positions; and

(B) of the positions listed under subparagraph (A), those that are critical joint duty assignment positions and the number of such positions and, of those positions, those that are positions held by general or flag officers and the number of such positions.

(c) CLARIFICATION OF ''TOUR OF DUTY''.—For purposes of this chapter, a tour of duty in which an officer serves in more than one joint duty assignment without a break between such assignments shall be considered to be a single tour of duty in a joint duty assignment.

(Added Pub. L. 99–433, title IV, § 401(a), Oct. 1, 1986, 100 Stat. 1029; amended Pub. L. 100–180, div. A, title XIII, §§ 1302(c)(1), 1303(b), Dec. 4, 1987, 101 Stat. 1170, 1172; Pub. L. 100–456, div. A, title V, § 519(b), Sept. 29, 1988, 102 Stat. 1972; Pub. L. 108–375, div. A, title V, § 534(a), (b), Oct. 28, 2004, 118 Stat. 1901; Pub. L. 109–364, div. A, title V, § 519(a)–(c), Oct. 17, 2006, 120 Stat. 2190, 2191; Pub. L. 111–383, div. A, title V, § 521, Jan. 7, 2011, 124 Stat. 4214; Pub. L. 112–239, div. A, title V, § 503, Jan. 2, 2013, 126 Stat. 1715; Pub. L. 114–92, div. A, title VIII, § 843, Nov. 25, 2015, 129 Stat. 915; Pub. L. 114–328, div. A, title V, § 510A, Dec. 23, 2016, 130 Stat. 2111.)

AMENDMENTS

2016—Subsec. (a)(1). Pub. L. 114–328, § 510A(a), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''In this chapter, the term 'joint matters' means matters related to the achievement of unified action by integrated military forces in operations conducted across domains such as land, sea, or air, in space, or in the information environment, including matters relating to—

''(A) national military strategy;

''(B) strategic planning and contingency planning;

''(C) command and control of operations under unified command;

''(D) national security planning with other departments and agencies of the United States;

''(E) combined operations with military forces of allied nations; or

''(F) acquisition matters addressed by military personnel and covered under chapter 87 of this title.''

Subsec. (a)(2). Pub. L. 114–328, § 510A(b), substituted ''integrated forces'' for ''integrated military forces'' and ''achieving unified action with'' for ''the planning or execution (or both) of operations involving'' in introductory provisions.

Subsec. (b)(1)(A). Pub. L. 114–328, § 510A(c), added subpar. (A) and struck out former subpar. (A) which read as follows: ''shall be limited to assignments in which the officer gains significant experience in joint matters; and''.

Subsec. (d). Pub. L. 114–328, § 510A(d), struck out subsec. (d). Text read as follows:

''(1) In this chapter, the term 'critical occupational specialty' means a military occupational specialty involving combat operations within the combat arms, in the case of the Army, or the equivalent arms, in the case of the Navy, Air Force, and Marine Corps, that the Secretary of Defense designates as critical.

''(2) At a minimum, the Secretary of Defense shall designate as a critical occupational specialty under paragraph (1) any military occupational specialty within a combat arms (or the equivalent) that is experiencing a severe shortage of trained officers in that specialty, as determined by the Secretary.''

2015—Subsec. (a)(1)(F). Pub. L. 114–92 added subpar. (F).

2013—Subsec. (b)(1)(B). Pub. L. 112–239 substituted ''student assignments for joint training and education'' for ''assignments for joint training and education, except an assignment as an instructor responsible for preparing and presenting courses in areas of the curricula designated in section 2155(c) of this title as part of a program designated by the Secretary of Defense as joint professional military education Phase II''.

2011—Subsec. (a)(1). Pub. L. 111–383, § 521(1)(A), substituted ''integrated'' for ''multiple'' in introductory provisions.

Subsec. (a)(1)(D). Pub. L. 111–383, § 521(1)(B), substituted ''or'' for ''and''.

Subsec. (a)(2). Pub. L. 111–383, § 521(2), added par. (2) and struck out former par. (2), which read as follows: ''In the context of joint matters, the term 'multiple military forces' refers to forces that involve participants from the armed forces and one or more of the following:

''(A) Other departments and agencies of the United States.

''(B) The military forces or agencies of other countries.

''(C) Non-governmental persons or entities.''

2006—Subsec. (a). Pub. L. 109–364, § 519(a), amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: ''In this chapter, the term 'joint matters' means matters relating to the integrated employment of land, sea, and air forces, including matters relating to—

''(1) national military strategy;

''(2) strategic planning and contingency planning; and

''(3) command and control of combat operations under unified command.''

Subsec. (b)(1). Pub. L. 109–364, § 519(b), substituted provisions limiting the definition of ''joint duty assignment'' to assignments in which the officer gains significant experience in joint matters and excluding assignments for joint training and education, except an assignment as an instructor responsible for courses as part of a program designated as joint professional military education Phase II, for provisions limiting the definition of ''joint duty assignment'' to assignments in which the officer gains significant experience in joint matters and excluding assignments for joint training or joint education and assignments within an officer's own military department.

Subsec. (d). Pub. L. 109–364, § 519(c), added subsec. (d).

2004—Subsec. (b)(2). Pub. L. 108–375, § 534(a), substituted ''a joint duty assignment list'' for ''a list'' in introductory provisions.

Subsec. (c). Pub. L. 108–375, § 534(b), struck out ''within the same organization'' before ''without a break''.

1988—Subsecs. (c), (f). Pub. L. 100–456 redesignated subsec. (f) as (c).

1987—Subsec. (b)(2). Pub. L. 100–180, § 1302(c)(1), inserted ''and, of those positions, those that are positions held by general or flag officers and the number of such positions'' in subpars. (A) and (B).

Subsec. (f). Pub. L. 100–180, § 1303(b), added subsec. (f).

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–364 effective Oct. 1, 2007, see section 519(e) of Pub. L. 109–364, set out as a note under section 664 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–375, div. A, title V, § 534(c), Oct. 28, 2004, 118 Stat. 1901, provided that: ''The amendment made by subsection (b) [amending this section] shall not apply in the case of a joint duty assignment completed by an officer before the date of the enactment of this Act [Oct. 28, 2004], except in the case of an officer who has continued in joint duty assignments, without a break in service in such assignments, between the end of such assignment and the date of the enactment of this Act.''

PUBLICATION OF REVISED JOINT DUTY ASSIGNMENT LIST

Pub. L. 100–180, div. A, title XIII, § 1302(c)(2), Dec. 4, 1987, 101 Stat. 1170, directed the Secretary of Defense to publish a revised list under subsec. (b)(2) of this section not later than six months after Dec. 4, 1987, which would take into account the amendments to this section and section 661 of this title made by Pub. L. 100–180, § 1302.

TRANSITION TO JOINT OFFICER PERSONNEL POLICY

The list of positions required to be published by subsec. (b)(2) of this section to be published not later than six months after Oct. 1, 1986, see section 406(a)(2) of Pub. L. 99–433, set out as a note under section 661 of this title.

CHAPTER 39—ACTIVE DUTY

Sec.
671. Members not to be assigned outside United States before completing training.
671a. Members: service extension during war.
671b. Members: service extension when Congress is not in session.
672. Reference to chapter 1209.
673. Consideration of application for permanent change of station or unit transfer for members on active duty who are the victim of a sexual assault or related offense.
674. Temporary administrative reassignment or removal of a member on active duty accused of committing a sexual assault or related offense.
[675 to 687. Renumbered.]
688. Retired members: authority to order to active duty; duties.
688a. Retired members: temporary authority to order to active duty in high-demand, low-density assignments.
689. Retired members: grade in which ordered to active duty and upon release from active duty.
690. Retired members ordered to active duty: limitation on number.
691. Permanent end strength levels to support the National Defense Strategy [1]

AMENDMENTS

2021—Pub. L. 116–283, div. A, title IV, § 402(b), Jan. 1, 2021, 134 Stat. 3556, added item 691 and struck out former item 691 ''Permanent end strength levels to support two major regional contingencies''.

2013—Pub. L. 113–66, div. A, title XVII, § 1713(b), Dec. 26, 2013, 127 Stat. 964, added item 674.

2011—Pub. L. 112–81, div. A, title V, § 582(b), Dec. 31, 2011, 125 Stat. 1432, added item 673.

2006—Pub. L. 109–364, div. A, title VI, § 621(d)(2)(B), Oct. 17, 2006, 120 Stat. 2255, substituted ''Retired members: temporary authority to order to active duty in high-demand, low-density assignments'' for ''Retired aviators: temporary authority to order to active duty'' in item 688a.

2002—Pub. L. 107–314, div. A, title V, § 503(a)(2), Dec. 2, 2002, 116 Stat. 2530, added item 688a.

1996—Pub. L. 104–201, div. A, title V, § 521(c), Sept. 23, 1996, 110 Stat. 2517, added items 688, 689, and 690 and struck out former item 688 ''Retired members''.

Pub. L. 104–106, div. A, title IV, § 401(b)(2), title XV, § 1501(c)(7), Feb. 10, 1996, 110 Stat. 286, 499, struck out items 687 ''Ready Reserve: muster duty'' and 690 ''Limitation on duty with Reserve Officer Training Corps units'' and added item 691.

1994—Pub. L. 103–337, div. A, title XVI, § 1671(b)(7), Oct. 5, 1994, 108 Stat. 3013, substituted ''Reference to chapter 1209'' for ''Reserve components generally'' in item 672 and struck out former items 673 to 686 and 689.

1991—Pub. L. 102–190, div. A, title X, § 1061(a)(4)(B), Dec. 5, 1991, 105 Stat. 1472, substituted ''Corps'' for ''Corp'' in item 690.

Pub. L. 102–25, title VII, § 701(e)(3), Apr. 6, 1991, 105 Stat. 114, transferred item 687 ''Limitation on duty

[1] So in original. Probably should be followed by a period.

with Reserve Officer Training Corp units'' to appear after item 689 and redesignated that item as 690.

1990—Pub. L. 101–510, div. A, title V, § 559(a)(2), Nov. 5, 1990, 104 Stat. 1571, added item 687 ''Limitation on duty with Reserve Officer Training Corp units''.

1989—Pub. L. 101–189, div. A, title V, § 502(a)(2), Nov. 29, 1989, 103 Stat. 1436, added item 687.

1987—Pub. L. 100–180, div. A, title XII, § 1231(4), Dec. 4, 1987, 101 Stat. 1160, amended analysis by transferring item 686 from the end to a position immediately below item 685.

1986—Pub. L. 99–661, div. A, title IV, § 412(b)(2), Nov. 14, 1986, 100 Stat. 3862, added item 686 at end of analysis.

1983—Pub. L. 98–94, title X, §§ 1017(b)(4), 1021(b), Sept. 24, 1983, 97 Stat. 669, 670, substituted ''Retired members'' for ''Regular components: retired members'' in item 688, and added item 673c.

1980—Pub. L. 96–513, title V, § 501(8), Dec 12, 1980, 94 Stat. 2907, struck out item 687 ''Non-Regulars: readjustment payment upon involuntary release from active duty'' and added items 688 and 689.

1979—Pub. L. 96–107, title III, § 303(a)(2), Nov. 9, 1979, 93 Stat. 806, struck out item 686 ''Reports to Congress''.

1976—Pub. L. 94–286, § 1, May 14, 1976, 90 Stat. 517, added item 673b.

1968—Pub. L. 90–235, § 1(a)(1)(B), Jan. 2, 1968, 81 Stat. 753, added items 671a and 671b.

1967—Pub. L. 90–40, § 6(2), June 30, 1967, 81 Stat. 106, added item 673a.

1962—Pub. L. 87–651, title I, § 102(b), Sept. 7, 1962, 76 Stat. 508, added item 687.

1958—Pub. L. 85–861, § 1(16), Sept. 2, 1958, 72 Stat. 1441, added items 684 and 685.

§ 671. Members not to be assigned outside United States before completing training

(a) A member of the armed forces may not be assigned to active duty on land outside the United States and its territories and possessions until the member has completed the basic training requirements of the armed force of which he is a member.

(b) In time of war or a national emergency declared by Congress or the President, the period of required basic training (or its equivalent) may not (except as provided in subsection (c)) be less than 12 weeks.

(c)(1) A period of basic training (or equivalent training) shorter than 12 weeks may be established by the Secretary concerned for members of the armed forces who have been credentialed in a medical profession or occupation and are serving in a health-care occupational specialty, as determined under regulations prescribed under paragraph (2). Any such period shall be established under regulations prescribed under paragraph (2) and may be established notwithstanding section 4(a) of the Military Selective Service Act (50 U.S.C. 3803(a)).

(2) The Secretary of Defense, and the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, shall prescribe regulations for the purposes of paragraph (1). The regulations prescribed by the Secretary of Defense shall apply uniformly to the military departments.

(Aug. 10, 1956, ch. 1041, 70A Stat. 27; Pub. L. 94–106, title VIII, § 802(b), Oct. 7, 1975, 89 Stat. 537; Pub. L. 99–661, div. A, title V, § 501, Nov. 14, 1986, 100 Stat. 3863; Pub. L. 103–160, div. A, title V, § 511, Nov. 30, 1993, 107 Stat. 1648; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 114–328, div. A, title X, § 1081(b)(1)(A)(v), Dec. 23, 2016, 130 Stat. 2418.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
671	50 App.:454(a) (words between semicolon and proviso of 6th par.).	June 24, 1948, ch. 625, § 4(a) (words between semicolon and proviso of 6th par.); restated June 19, 1951, ch. 144, § 1(d) (words between semicolon and proviso of 6th par.), 65 Stat. 78.

The words ''four months of basic training or its equivalent'' are substituted for the words ''the equivalent of at least four months of basic training''. The words ''who is enlisted, inducted, appointed, or ordered to active duty after the date of enactment of the 1951 Amendments to the Universal Military Training and Service Act [June 19, 1951]'' and ''at any installation located'' are omitted as surplusage.

AMENDMENTS

2016—Subsec. (c)(1). Pub. L. 114–328 substituted ''(50 U.S.C. 3803(a))'' for ''(50 U.S.C. App. 454(a))''.

2002—Subsec. (c)(2). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

1993—Subsec. (b). Pub. L. 103–160, § 511(1), inserted ''(except as provided in subsection (c))'' after ''may not''.

Subsec. (c). Pub. L. 103–160, § 511(2), added subsec. (c).

1986—Pub. L. 99–661 amended section generally. Prior to amendment, section read as follows: ''No member of an armed force may be assigned to active duty on land outside the United States and its Territories and possessions, until he has had twelve weeks of basic training or its equivalent.''

1975—Pub. L. 94–106 reduced minimum period of basic training from four months to twelve weeks.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

§ 671a. Members: service extension during war

Unless terminated at an earlier date by the Secretary concerned, the period of active service of any member of an armed force is extended for the duration of any war in which the United States may be engaged and for six months thereafter.

(Added Pub. L. 90–235, § 1(a)(1)(A), Jan. 2, 1968, 81 Stat. 753.)

§ 671b. Members: service extension when Congress is not in session

(a) Notwithstanding any other provision of law, when the President determines that the national interest so requires, he may, if Congress is not in session, having adjourned sine die, authorize the Secretary of Defense to extend for not more than six months enlistments, appointments, periods of active duty, periods of active duty for training, periods of obligated service, or other military status, in any component of the armed forces, that expire before the thirtieth day after Congress next convenes or reconvenes.

(b) An extension under this section continues until the sixtieth day after Congress next convenes or reconvenes or until the expiration of the period of extension specified by the Secretary of Defense, whichever occurs earlier, unless sooner terminated by law or Executive order.

(Added Pub. L. 90–235, §1(a)(1)(A), Jan. 2, 1968, 81 Stat. 753; amended Pub. L. 101–189, div. A, title VI, §653(a)(3), Nov. 29, 1989, 103 Stat. 1462.)

AMENDMENTS

1989—Subsec. (a). Pub. L. 101–189 substituted ''armed forces'' for ''Armed Forces of the United States''.

§672. Reference to chapter 1209

Provisions of law relating to service of members of reserve components on active duty are set forth in chapter 1209 of this title (beginning with section 12301).

(Added Pub. L. 103–337, div. A, title XVI, §1662(e)(4), Oct. 5, 1994, 108 Stat. 2992.)

PRIOR PROVISIONS

A prior section 672 was renumbered section 12301 of this title.

EFFECTIVE DATE

Section effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as a note under section 10001 of this title.

§673. Consideration of application for permanent change of station or unit transfer for members on active duty who are the victim of a sexual assault or related offense

(a) TIMELY CONSIDERATION AND ACTION.—The Secretary concerned shall provide for timely determination and action on an application for consideration of a change of station or unit transfer submitted by a member of the armed forces serving on active duty who was a victim of a sexual assault or other offense covered by section 920, 920c, or 930 of this title (article 120, 120c, or 130 of the Uniform Code of Military Justice) so as to reduce the possibility of retaliation against the member for reporting the sexual assault or other offense.

(b) REGULATIONS.—The Secretary concerned shall issue regulations to carry out this section, within guidelines provided by the Secretary of Defense. These guidelines shall provide that the application submitted by a member described in subsection (a) for a change of station or unit transfer must be approved or disapproved by the member's commanding officer within five calendar days of the submission of the application. Additionally, if the application is disapproved by the commanding officer, the member shall be given the opportunity to request review by the first general officer or flag officer in the chain of command of the member, and that decision must be made within five calendar days of submission of the request for review.

(Added Pub. L. 112–81, div. A, title V, §582(a), Dec. 31, 2011, 125 Stat. 1432; amended Pub. L. 113–66, div. A, title X, §1091(a)(8), title XVII, §1712, Dec. 26, 2013, 127 Stat. 876, 963; Pub. L. 115–91, div. A, title X, §1081(c)(2)(A), Dec. 12, 2017, 131 Stat. 1599; Pub. L. 116–283, div. A, title V, §531(a), Jan. 1, 2021, 134 Stat. 3601.)

PRIOR PROVISIONS

A prior section 673 was renumbered section 12302 of this title.

AMENDMENTS

2021—Subsec. (b). Pub. L. 116–283 substituted ''five calendar days'' for ''72 hours'' in two places.

2017—Subsec. (a). Pub. L. 115–91 substituted ''920c, or 930'' for ''920a, or 920c'' and ''120c, or 130'' for ''120a, or 120c''.

2013—Subsec. (a). Pub. L. 113–66, §1091(a)(8), inserted ''of the Uniform Code of Military Justice'' after ''120c''.

Subsec. (b). Pub. L. 113–66, §1712, substituted ''The Secretary concerned'' for ''The Secretaries of the military departments''.

EFFECTIVE DATE OF 2021 AMENDMENT

Pub. L. 116–283, div. A, title V, §531(b), Jan. 1, 2021, 134 Stat. 3601, provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Jan. 1, 2021], and shall apply to decisions on applications for permanent change of station or unit transfer made under section 673 of title 10, United States Code, on or after that date.''

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by Pub. L. 115–91 effective immediately after the amendments made by div. E (§§5001–5542) of Pub. L. 114–328 take effect as provided for in section 5542 of that Act (10 U.S.C. 801 note) [amendments effective Jan. 1, 2019], see section 1081(c)(4) of Pub. L. 115–91, set out as a note under section 801 of this title.

STANDARDIZATION OF POLICIES RELATED TO EXPEDITED TRANSFER IN CASES OF SEXUAL ASSAULT OR DOMESTIC VIOLENCE

Pub. L. 115–232, div. A, title V, §536, Aug. 13, 2018, 132 Stat. 1761, provided that:

''(a) POLICIES FOR MEMBERS.—The Secretary of Defense shall modify, in accordance with section 673 of title 10, United States Code, all policies that the Secretary determines necessary to establish a standardized expedited transfer process for a member of the Army, Navy, Air Force, or Marine Corps who is the alleged victim of—

''(1) sexual assault (regardless of whether the case is handled under the Sexual Assault Prevention and Response Program or Family Advocacy Program); or

''(2) physical domestic violence (as defined by the Secretary in regulations prescribed under this section) committed by the spouse or intimate partner of the member, regardless of whether the spouse or intimate partner is a member of the Armed Forces.

''(b) POLICY FOR DEPENDENTS OF MEMBERS.—The Secretary of Defense shall establish a policy to allow the transfer of a member of the Army, Navy, Air Force, or Marine Corps whose dependent is the victim of sexual assault perpetrated by a member of the Armed Forces who is not related to the victim.''

[§673a. Renumbered §12303]

[§673b. Renumbered §12304]

[§673c. Renumbered §12305]

§674. Temporary administrative reassignment or removal of a member on active duty accused of committing a sexual assault or related offense

(a) GUIDANCE FOR TIMELY CONSIDERATION AND ACTION.—The Secretary concerned may provide guidance, within guidelines provided by the Secretary of Defense, for commanders regarding their authority to make a timely determination, and to take action, regarding whether a member of the armed forces serving on active duty who is alleged to have committed an offense under section 920, 920b, 920c, or 930 of this title (article 120, 120b, 120c, or 130 of the Uniform Code of Military Justice) or an attempt to commit such an offense as punishable under section 880 of this title (article 80 of the Uniform Code of Military

Justice) should be temporarily reassigned or removed from a position of authority or from an assignment, not as a punitive measure, but solely for the purpose of maintaining good order and discipline within the member's unit.

(b) TIME FOR DETERMINATION.—A determination described in subsection (a) may be made at any time after receipt of notification of an unrestricted report of a sexual assault or other sex-related offense that identifies the member as an alleged perpetrator.

(Added Pub. L. 113–66, div. A, title XVII, § 1713(a), Dec. 26, 2013, 127 Stat. 963; amended Pub. L. 113–291, div. A, title X, § 1071(f)(8), Dec. 19, 2014, 128 Stat. 3510; Pub. L. 115–91, div. A, title X, § 1081(c)(2)(B), Dec. 12, 2017, 131 Stat. 1599.)

PRIOR PROVISIONS

A prior section 674 was renumbered section 12306 of this title.

AMENDMENTS

2017—Subsec. (a). Pub. L. 115–91 substituted ''920b, 920c, or 930'' for ''920a, 920b, 920c, or 925'' and ''120b, 120c, or 130'' for ''120a, 120b, 120c, or 125''.

2014—Subsec. (b). Pub. L. 113–291 substituted ''after receipt'' for ''afer receipt''.

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by Pub. L. 115–91 effective immediately after the amendments made by div. E (§§ 5001–5542) of Pub. L. 114–328 take effect as provided for in section 5542 of that Act (10 U.S.C. 801 note) [amendments effective Jan. 1, 2019], see section 1081(c)(4) of Pub. L. 115–91, set out as a note under section 801 of this title.

[§ 675. Renumbered § 12307]

[§ 676. Renumbered § 12308]

[§ 677. Renumbered § 12309]

[§ 678. Renumbered § 12310]

[§ 679. Renumbered § 12311]

[§ 680. Renumbered § 12312]

[§ 681. Renumbered § 12313]

[§ 682. Renumbered § 12314]

[§ 683. Renumbered § 12315]

[§ 684. Renumbered § 12316]

[§ 685. Renumbered § 12317]

[§ 686. Renumbered § 12318]

PRIOR PROVISIONS

A prior section 686, acts Aug. 10, 1956, ch. 1041, 70A Stat. 32; Apr. 21, 1976, Pub. L. 94–273, § 11(2), 90 Stat. 378, provided for an annual officer grade distribution report, prior to repeal by Pub. L. 96–107, title III, § 303(a)(1), Nov. 9, 1979, 93 Stat. 806.

[§ 687. Renumbered § 12319]

CODIFICATION

Another section 687 was renumbered section 12321 of this title.

PRIOR PROVISIONS

A prior section 687, added Pub. L. 87–651, title I, § 102(a), Sept. 7, 1962, 76 Stat. 506; amended Pub. L. 89–718, § 6, Nov. 2, 1966, 80 Stat. 1115, related to readjustment payment upon involuntary release of non-regulars from active duty, prior to repeal by Pub. L. 96–513, title I, § 109(a), Dec. 12, 1980, 94 Stat. 2870, effective Sept. 15, 1981.

§ 688. Retired members: authority to order to active duty; duties

(a) AUTHORITY.—Under regulations prescribed by the Secretary of Defense, a member described in subsection (b) may be ordered to active duty by the Secretary of the military department concerned at any time.

(b) COVERED MEMBERS.—Except as provided in subsection (d), subsection (a) applies to the following members of the armed forces:

(1) A retired member of the Regular Army, Regular Navy, Regular Air Force, Regular Marine Corps, or Regular Space Force.

(2) A member of the Retired Reserve who was retired under section 1293, 7311, 7314, 8323, 9311, or 9314 of this title.

(3) A member of the Fleet Reserve or Fleet Marine Corps Reserve.

(c) DUTIES OF MEMBER ORDERED TO ACTIVE DUTY.—The Secretary concerned may, to the extent consistent with other provisions of law, assign a member ordered to active duty under this section to such duties as the Secretary considers necessary in the interests of national defense.

(d) EXCLUSION OF OFFICERS RETIRED ON SELECTIVE EARLY RETIREMENT BASIS.—The following officers may not be ordered to active duty under this section:

(1) An officer who retired under section 638 of this title.

(2) An officer who—

(A) after having been notified that the officer was to be considered for early retirement under section 638 of this title by a board convened under section 611(b) of this title and before being considered by that board, requested retirement under section 7311, 8323, or 9311 of this title; and

(B) was retired pursuant to that request.

(e) LIMITATION OF PERIOD OF RECALL SERVICE.—(1) A member ordered to active duty under subsection (a) may not serve on active duty pursuant to orders under that subsection for more than 12 months within the 24 months following the first day of the active duty to which ordered under that subsection.

(2) Paragraph (1) does not apply to the following officers:

(A) A chaplain who is assigned to duty as a chaplain for the period of active duty to which ordered.

(B) A health care professional (as characterized by the Secretary concerned) who is assigned to duty as a health care professional for the period of active duty to which ordered.

(C) An officer assigned to duty with the American Battle Monuments Commission for the period of active duty to which ordered.

(D) An officer who is assigned to duty as a defense attaché or service attaché for the period of active duty to which ordered.

(f) WAIVER FOR PERIODS OF WAR OR NATIONAL EMERGENCY.—Subsections (d) and (e) do not apply in time of war or of national emergency declared by Congress or the President.

(Added Pub. L. 104–201, div. A, title V, § 521(a), Sept. 23, 1996, 110 Stat. 2515; amended Pub. L. 105–85, div. A, title V, § 502, Nov. 18, 1997, 111 Stat. 1724; Pub. L. 107–107, div. A, title V, § 509(a), Dec. 28, 2001, 115 Stat. 1091; Pub. L. 115–232, div. A, title VIII, § 809(a), Aug. 13, 2018, 132 Stat. 1840; Pub. L. 116–283, div. A, title IX, § 924(b)(4)(I), Jan. 1, 2021, 134 Stat. 3822.)

PRIOR PROVISIONS

A prior section 688, added Pub. L. 96–513, title I, § 106, Dec. 12, 1980, 94 Stat. 2868; amended Pub. L. 98–94, title X, § 1017(b)(1)–(3), Sept. 24, 1983, 97 Stat. 669; Pub. L. 99–145, title V, § 516, Nov. 8, 1985, 99 Stat. 630; Pub. L. 102–190, div. A, title V, § 506(a), Dec. 5, 1991, 105 Stat. 1359; Pub. L. 103–160, div. A, title V, § 563, Nov. 30, 1993, 107 Stat. 1669, provided that certain retired members of the armed forces could be ordered to active duty, prior to repeal by Pub. L. 104–201, div. A, title V, § 521(a), (b), Sept. 23, 1996, 110 Stat. 2515, 2517, effective Sept. 30, 1997. See sections 688 to 690 of this title.

AMENDMENTS

2021—Subsec. (b)(1). Pub. L. 116–283 substituted ''Regular Marine Corps, or Regular Space Force'' for ''or Regular Marine Corps''.

2018—Subsec. (b)(2). Pub. L. 115–232 substituted ''section 1293, 7311, 7314, 8323, 9311, or 9314'' for ''section 1293, 3911, 3914, 6323, 8911, or 8914''.

Subsec. (d)(2)(A). Pub. L. 115–232 substituted ''section 7311, 8323, or 9311'' for ''section 3911, 6323, or 8911''.

2001—Subsec. (e)(2)(D). Pub. L. 107–107 added subpar. (D).

1997—Subsec. (e). Pub. L. 105–85 designated existing provisions as par. (1) and added par. (2).

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115–232 effective Feb. 1, 2019, with provision for the coordination of amendments and special rule for certain redesignations, see section 800 of Pub. L. 115–232, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–107, div. A, title V, § 509(c), Dec. 28, 2001, 115 Stat. 1091, provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 690 of this title] shall apply with respect to officers serving on active duty as a defense attaché or service attaché on or after the date of the enactment of this Act [Dec. 28, 2001].''

EFFECTIVE DATE

Pub. L. 104–201, div. A, title V, § 521(b), Sept. 23, 1996, 110 Stat. 2517, provided that: ''The amendments made by this section [enacting this section and sections 689 and 690 of this title, amending section 6151 of this title, and repealing former section 688 of this title] shall take effect on September 30, 1997.''

§ 688a. Retired members: temporary authority to order to active duty in high-demand, low-density assignments

(a) AUTHORITY.—The Secretary of a military department may order to active duty a retired member who agrees to serve on active duty in an assignment intended to alleviate a high-demand, low-density military capability or in any other specialty designated by the Secretary as critical to meet wartime or peacetime requirements. Any such order may be made only with the consent of the member ordered to active duty and in accordance with an agreement between the Secretary and the member.

(b) DURATION.—The period of active duty of a member under an order to active duty under subsection (a) shall be specified in the agreement entered into under that subsection.

(c) LIMITATION.—No more than a total of 1,000 members may be on active duty at any time under subsection (a).

(d) RELATIONSHIP TO OTHER AUTHORITY.—The authority to order a retired member to active duty under this section is in addition to the authority under section 688 of this title or any other provision of law authorizing the Secretary concerned to order a retired member to active duty.

(e) INAPPLICABILITY OF CERTAIN PROVISIONS.—Retired members ordered to active duty under subsection (a) shall not be counted for purposes of section 688 or 690 of this title.

(f) EXPIRATION OF AUTHORITY.—A retired member may not be ordered to active duty under this section outside a period as follows:

(1) The period beginning on December 2, 2002, and ending on December 31, 2011.

(2) The period beginning on the date of the enactment of the National Defense Authorization Act for Fiscal Year 2018 and ending on December 31, 2022.

(g) EXCEPTIONS DURING PERIODS OF WAR OR NATIONAL EMERGENCY.—The limitations in subsections (c) and (f) shall not apply during a time of war or of national emergency declared by Congress or the President.

(h) HIGH-DEMAND, LOW-DENSITY MILITARY CAPABILITY DEFINED.—In this section, the term ''high-demand, low-density military capability'' means a combat, combat support or service support capability, unit, system, or occupational specialty that the Secretary of Defense determines has funding, equipment, or personnel levels that are substantially below the levels required to fully meet or sustain actual or expected operational requirements set by regional commanders.

(Added Pub. L. 107–314, div. A, title V, § 503(a)(1), Dec. 2, 2002, 116 Stat. 2530; amended Pub. L. 109–364, div. A, title VI, § 621(b), (d)(2)(A), Oct. 17, 2006, 120 Stat. 2254, 2255; Pub. L. 111–383, div. A, title V, § 531(a), Jan. 7, 2011, 124 Stat. 4215; Pub. L. 115–91, div. A, title V, § 527, Dec. 12, 2017, 131 Stat. 1383; Pub. L. 116–283, div. A, title V, § 511, Jan. 1, 2021, 134 Stat. 3587.)

REFERENCES IN TEXT

The date of the enactment of the National Defense Authorization Act for Fiscal Year 2018, referred to in subsec. (f)(2), is the date of enactment of Pub. L. 115–91, which was approved Dec. 12, 2017.

AMENDMENTS

2021—Subsecs. (g), (h). Pub. L. 116–283 added subsec. (g) and redesignated former subsec. (g) as (h).

2017—Subsec. (f). Pub. L. 115–91 substituted ''outside a period as follows:'' for ''after December 31, 2011.'' and added pars. (1) and (2).

2011—Subsec. (f). Pub. L. 111–383 substituted ''December 31, 2011'' for ''December 31, 2010''.

2006—Pub. L. 109–364, § 621(d)(2)(A), substituted ''Retired members: temporary authority to order to active duty in high-demand, low-density assignments'' for ''Retired aviators: temporary authority to order to active duty'' in section catchline.

Subsec. (a). Pub. L. 109–364, § 621(b)(1), in first sentence, substituted ''The Secretary of a military department may order to active duty a retired member who

agrees to serve on active duty in an assignment intended to alleviate a high-demand, low-density military capability or in any other specialty designated by the Secretary as critical to meet wartime or peacetime requirements'' for ''The Secretary of a military department may order to active duty a retired officer having expertise as an aviator to fill staff positions normally filled by aviators on active duty'' and, in second sentence, substituted ''member'' for ''officer'' in two places.

Subsec. (b). Pub. L. 109–364, § 621(b)(2), substituted ''a member'' for ''an officer''.

Subsec. (c). Pub. L. 109–364, § 621(b)(3), substituted ''1,000 members'' for ''500 officers''.

Subsec. (d). Pub. L. 109–364, § 621(b)(4), substituted ''member to active duty under'' for ''officer to active duty under''.

Subsec. (e). Pub. L. 109–364, § 621(b)(5), substituted ''Retired members'' for ''Officers''.

Subsec. (f). Pub. L. 109–364, § 621(b)(6), substituted ''A retired member'' for ''An officer'' and ''December 31, 2010'' for ''September 30, 2008''.

Subsec. (g). Pub. L. 109–364, § 621(b)(7), added subsec. (g).

TRANSITION PROVISION

Pub. L. 107–314, div. A, title V, § 503(c), Dec. 2, 2002, 116 Stat. 2531, provided that: ''Any officer ordered to active duty under section 501 of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106–65; 113 Stat. 589) who continues on active duty under such order to active duty after the date of the enactment of this Act [Dec. 2, 2002] shall be counted for purposes of the limitation under subsection (c) of section 688a of title 10, United States Code, as added by subsection (a).''

§ 689. Retired members: grade in which ordered to active duty and upon release from active duty

(a) GENERAL RULE FOR GRADE IN WHICH ORDERED TO ACTIVE DUTY.—Except as provided in subsections (b) and (c), a retired member ordered to active duty under section 688 or 688a of this title shall be ordered to active duty in the member's retired grade.

(b) MEMBERS RETIRED IN O–9 AND O–10 GRADES.—A retired member ordered to active duty under section 688 or 688a of this title whose retired grade is above the grade of major general or rear admiral shall be ordered to active duty in the highest permanent grade held by such member while serving on active duty.

(c) MEMBERS WHO PREVIOUSLY SERVED IN GRADE HIGHER THAN RETIRED GRADE.—(1) A retired member ordered to active duty under section 688 or 688a of this title who has previously served on active duty satisfactorily, as determined by the Secretary of the military department concerned, in a grade higher than that member's retired grade may be ordered to active duty in the highest grade in which the member had so served satisfactorily, except that such a member may not be so ordered to active duty in a grade above major general or rear admiral.

(2) A retired member ordered to active duty in a grade that is higher than the member's retired grade pursuant to subsection (a) shall be treated for purposes of section 690 of this title as if the member was promoted to that higher grade while on that tour of active duty.

(3) If, upon being released from that tour of active duty, such a retired member has served on active duty satisfactorily, as determined by the Secretary concerned, for not less than a total of 36 months in a grade that is a higher grade than the member's retired grade, the member is entitled to placement on the retired list in that grade.

(d) GRADE UPON RELEASE FROM ACTIVE DUTY.—A member ordered to active duty under section 688 or 688a of this title who, while on active duty, is promoted to a grade that is higher than that member's retired grade is entitled, upon that member's release from that tour of active duty, to placement on the retired list in the highest grade in which the member served on active duty satisfactorily, as determined by the Secretary of the military department concerned, for not less than six months.

(Added Pub. L. 104–201, div. A, title V, § 521(a), Sept. 23, 1996, 110 Stat. 2516; amended Pub. L. 107–314, div. A, title V, § 503(b)(1), Dec. 2, 2002, 116 Stat. 2531.)

PRIOR PROVISIONS

A prior section 689 was renumbered section 12320 of this title.

Provisions similar to those in this section were contained in section 688(b) and (d) of this title prior to repeal by Pub. L. 104–201, § 521(a).

AMENDMENTS

2002—Subsecs. (a), (b), (c)(1), (d). Pub. L. 107–314 inserted ''or 688a'' after ''section 688''.

EFFECTIVE DATE

Section effective Sept. 30, 1997, see section 521(b) of Pub. L. 104–201, set out as a note under section 688 of this title.

APPLICABILITY

Pub. L. 107–314, div. A, title V, § 503(b)(2), Dec. 2, 2002, 116 Stat. 2531, provided that: ''The provisions of section 689(d) of title 10, United States Code, shall apply with respect to an officer ordered to active duty under section 501 of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106–65; 113 Stat. 589) before the date of the enactment of this Act [Dec. 2, 2002] in the same manner as such provisions apply to an officer ordered to active duty under section 688 of such title.''

§ 690. Retired members ordered to active duty: limitation on number

(a) GENERAL AND FLAG OFFICERS.—Not more than 15 retired general officers of the Army, Air Force, or Marine Corps, and not more than 15 retired flag officers of the Navy, may be on active duty at any one time. For the purposes of this subsection a retired officer ordered to active duty for a period of 60 days or less is not counted.

(b) LIMITATION BY SERVICE.—(1) Not more than 25 officers of any one armed force may be serving on active duty concurrently pursuant to orders to active duty issued under section 688 of this title.

(2) In the administration of paragraph (1), the following officers shall not be counted:

(A) A chaplain who is assigned to duty as a chaplain for the period of active duty to which ordered.

(B) A health care professional (as characterized by the Secretary concerned) who is assigned to duty as a health care professional for the period of the active duty to which ordered.

(C) Any officer assigned to duty with the American Battle Monuments Commission for the period of active duty to which ordered.

(D) Any member of the Retiree Council of the Army, Navy, or Air Force for the period on active duty to attend the annual meeting of the Retiree Council.

(E) An officer who is assigned to duty as a defense attaché or service attaché for the period of active duty to which ordered.

(c) WAIVER FOR PERIODS OF WAR OR NATIONAL EMERGENCY.—Subsection (a) does not apply in time of war or of national emergency declared by Congress or the President after November 30, 1980. Subsection (b) does not apply in time of war or of national emergency declared by Congress or the President.

(Added Pub. L. 104–201, div. A, title V, § 521(a), Sept. 23, 1996, 110 Stat. 2516; amended Pub. L. 106–65, div. A, title V, § 507, Oct. 5, 1999, 113 Stat. 591; Pub. L. 107–107, div. A, title V, § 509(b), Dec. 28, 2001, 115 Stat. 1091.)

PRIOR PROVISIONS

A prior section 690 was renumbered section 12321 of this title.

Provisions similar to those in subsecs. (a) and (c) of this section were contained in section 688(c) of this title prior to repeal by Pub. L. 104–201, § 521(a).

AMENDMENTS

2001—Subsec. (b)(2)(E). Pub. L. 107–107 added subpar. (E).

1999—Subsec. (b)(2)(D). Pub. L. 106–65 added subpar. (D).

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–107 applicable with respect to officers serving on active duty as a defense attaché or service attaché on or after Dec. 28, 2001, see section 509(c) of Pub. L. 107–107, set out as a note under section 688 of this title.

EFFECTIVE DATE

Section effective Sept. 30, 1997, see section 521(b) of Pub. L. 104–201, set out as a note under section 688 of this title.

§ 691. Permanent end strength levels to support the National Defense Strategy

(a) The end strengths specified in subsection (b) are the minimum strengths necessary to enable the armed forces to fulfill the national defense strategy of the United States.

(b) Unless otherwise provided by law, the number of members of the armed forces (other than the Coast Guard) on active duty at the end of any fiscal year shall be not less than the following:

(1) For the Army, 485,900.

(2) For the Navy, 347,800.

(3) For the Marine Corps, 181,200.

(4) For the Air Force, 333,475.

(c) The budget for the Department of Defense for any fiscal year as submitted to Congress shall include amounts for funding for each of the armed forces (other than the Coast Guard) at least in the amounts necessary to maintain the active duty end strengths prescribed in subsection (b), as in effect at the time that such budget is submitted.

(d) No funds appropriated to the Department of Defense may be used to implement a reduction of the active duty end strength for any of the armed forces (other than the Coast Guard) for any fiscal year below the level specified in subsection (b) unless the reduction in end strength for that armed force for that fiscal year is specifically authorized by law.

(e) The Secretary of Defense or the Secretary concerned may vary a number specified in subsection (b) in accordance with section 115 of this title.

(f) The number of members of the armed forces on active duty shall be counted for purposes of this section in the same manner as applies under section 115(a)(1) of this title.

(Added Pub. L. 104–106, div. A, title IV, § 401(b)(1), Feb. 10, 1996, 110 Stat. 285; amended Pub. L. 104–201, div. A, title IV, § 402, Sept. 23, 1996, 110 Stat. 2503; Pub. L. 105–85, div. A, title IV, § 402, Nov. 18, 1997, 111 Stat. 1719; Pub. L. 105–261, div. A, title IV, § 402(a), (b), Oct. 17, 1998, 112 Stat. 1995, 1996; Pub. L. 106–65, div. A, title IV, § 402(a), title X, § 1066(b)(1), Oct. 5, 1999, 113 Stat. 585, 772; Pub. L. 106–398, § 1 [[div. A], title IV, §§ 402(a), 403], Oct. 30, 2000, 114 Stat. 1654, 1654A–92; Pub. L. 107–107, div. A, title IV, § 402, Dec. 28, 2001, 115 Stat. 1069; Pub. L. 107–314, div. A, title IV, § 402, Dec. 2, 2002, 116 Stat. 2524; Pub. L. 108–136, div. A, title IV, § 402, Nov. 24, 2003, 117 Stat. 1450; Pub. L. 108–375, div. A, title IV, § 402, Oct. 28, 2004, 118 Stat. 1862; Pub. L. 109–163, div. A, title IV, § 402, Jan. 6, 2006, 119 Stat. 3219; Pub. L. 109–364, div. A, title IV, § 402, Oct. 17, 2006, 120 Stat. 2169; Pub. L. 110–181, div. A, title IV, § 402, Jan. 28, 2008, 122 Stat. 86; Pub. L. 110–417, [div. A], title IV, § 402, Oct. 14, 2008, 122 Stat. 4428; Pub. L. 111–84, div. A, title IV, § 402, Oct. 28, 2009, 123 Stat. 2265; Pub. L. 111–383, div. A, title IV, § 402, Jan. 7, 2011, 124 Stat. 4202; Pub. L. 112–81, div. A, title IV, § 402, Dec. 31, 2011, 125 Stat. 1382; Pub. L. 112–239, div. A, title IV, § 402, Jan. 2, 2013, 126 Stat. 1708; Pub. L. 113–66, div. A, title IV, § 402(a), Dec. 26, 2013, 127 Stat. 744; Pub. L. 113–291, div. A, title IV, § 402, Dec. 19, 2014, 128 Stat. 3349; Pub. L. 114–92, div. A, title IV, § 402, Nov. 25, 2015, 129 Stat. 801; Pub. L. 114–328, div. A, title IV, § 402, Dec. 23, 2016, 130 Stat. 2091; Pub. L. 115–91, div. A, title IV, § 402, Dec. 12, 2017, 131 Stat. 1368; Pub. L. 115–232, div. A, title IV, § 402, Aug. 13, 2018, 132 Stat. 1735; Pub. L. 116–92, div. A, title IV, § 402, Dec. 20, 2019, 133 Stat. 1334; Pub. L. 116–283, div. A, title IV, § 402(a), Jan. 1, 2021, 134 Stat. 3555.)

AMENDMENTS

2021—Pub. L. 116–283, § 402(a)(1), substituted ''the National Defense Strategy'' for ''two major regional contingencies'' in section catchline.

Subsec. (a). Pub. L. 116–283, § 402(a)(2), substituted ''the national defense strategy of'' for ''a national defense strategy calling for'' and struck out ''to be able to successfully conduct two nearly simultaneous major regional contingencies'' before period at end.

Subsec. (b). Pub. L. 116–283, § 402(a)(3), substituted ''485,900'' for ''480,000'' in par. (1), ''347,800'' for ''340,500'' in par. (2), ''181,200'' for ''186,200'' in par. (3), and ''333,475'' for ''332,800'' in par. (4).

Subsec. (e). Pub. L. 116–283, § 402(a)(4), inserted ''or the Secretary concerned'' after ''Secretary of Defense'' and substituted ''vary a number specified in subsection (b) in accordance with section 115 of this title'' for ''reduce a number specified in subsection (b) by not more than 2 percent''.

2019—Subsec. (b). Pub. L. 116–92 substituted ''480,000'' for ''487,500'' in par. (1), ''340,500'' for ''335,400'' in par. (2), ''186,200'' for ''186,100'' in par. (3), and ''332,800'' for ''329,100'' in par. (4).

2018—Subsec. (b). Pub. L. 115–232 substituted ''487,500'' for ''483,500'' in par. (1), ''335,400'' for ''327,900'' in par. (2), ''186,100'' for ''186,000'' in par. (3), and ''329,100'' for ''325,100'' in par. (4).

2017—Subsec. (b). Pub. L. 115–91 substituted ''483,500'' for ''476,000'' in par. (1), ''327,900'' for ''323,900'' in par. (2), ''186,000'' for ''185,000'' in par. (3), and ''325,100'' for ''321,000'' in par. (4).

2016—Subsec. (b). Pub. L. 114–328 substituted ''476,000'' for ''475,000'' in par. (1), ''323,900'' for ''329,200'' in par. (2), ''185,000'' for ''184,000'' in par. (3), and ''321,000'' for ''317,000'' in par. (4).

2015—Subsec. (b). Pub. L. 114–92, § 402(1), substituted ''475,000'' for ''490,000'' in par. (1), ''329,200'' for ''323,600'' in par. (2), ''184,000'' for ''184,100'' in par. (3), and ''317,000'' for ''310,900'' in par. (4).

Subsec. (e). Pub. L. 114–92, § 402(2), substituted ''2 percent'' for ''0.5 percent''.

2014—Subsec. (b). Pub. L. 113–291 substituted ''490,000'' for ''510,000'' in par. (1), ''184,100'' for ''188,000'' in par. (3), and ''310,900'' for ''327,600'' in par. (4).

2013—Subsec. (b). Pub. L. 113–66 substituted ''510,000'' for ''542,700'' in par. (1), ''323,600'' for ''322,700'' in par. (2), ''188,000'' for ''193,500'' in par. (3), and ''327,600'' for ''329,460'' in par. (4).

Pub. L. 112–239, § 402(a), substituted ''542,700'' for ''547,400'' in par. (1), ''322,700'' for ''325,700'' in par. (2), ''193,500'' for ''202,100'' in par. (3), and ''329,460'' for ''332,800'' in par. (4).

Subsec. (e). Pub. L. 112–239, § 402(b), added subsec. (e).

2011—Subsec. (b). Pub. L. 112–81 substituted ''325,700'' for ''324,300'' in par. (2) and ''332,800'' for ''332,200'' in par. (4).

Pub. L. 111–383 substituted ''324,300'' for ''328,800'' in par. (2) and ''332,200'' for ''331,700'' in par. (4).

2009—Subsec. (b). Pub. L. 111–84 substituted ''547,400'' for ''532,400'' in par. (1), ''328,800'' for ''325,300'' in par. (2), ''202,100'' for ''194,000'' in par. (3), and ''331,700'' for ''317,050'' in par. (4).

2008—Subsec. (b). Pub. L. 110–417 substituted ''532,400'' for ''525,400'' in par. (1), ''325,300'' for ''328,400'' in par. (2), ''194,000'' for ''189,000'' in par. (3), and ''317,050'' for ''328,600'' in par. (4).

Pub. L. 110–181 substituted ''525,400'' for ''502,400'' in par. (1), ''328,400'' for ''340,700'' in par. (2), ''189,000'' for ''180,000'' in par. (3), and ''328,600'' for ''334,200'' in par. (4).

2006—Subsec. (b)(2) to (4). Pub. L. 109–364 substituted ''340,700'' for ''352,700'' in par. (2), ''180,000'' for ''179,000'' in par. (3), and ''334,200'' for ''357,400'' in par. (4).

Pub. L. 109–163 substituted ''352,700'' for ''365,900'' in par. (2), ''179,000'' for ''178,000'' in par. (3), and ''357,400'' for ''359,700'' in par. (4).

2004—Subsec. (b). Pub. L. 108–375 substituted ''502,400'' for ''482,400'' in par. (1), ''365,900'' for ''373,800'' in par. (2), ''178,000'' for ''175,000'' in par. (3), and ''359,700'' for ''359,300'' in par. (4).

2003—Subsec. (b)(1). Pub. L. 108–136, § 402(1), substituted ''482,400'' for ''480,000''.

Subsec. (b)(2). Pub. L. 108–136, § 402(2), substituted ''373,800'' for ''375,700''.

Subsec. (b)(4). Pub. L. 108–136, § 402(3), substituted ''359,300'' for ''359,000''.

2002—Subsec. (b)(2) to (4). Pub. L. 107–314, § 402(a), substituted ''375,700'' for ''376,000'' in par. (2), ''175,000'' for ''172,600'' in par. (3), and ''359,000'' for ''358,800'' in par. (4).

Subsec. (e). Pub. L. 107–314, § 402(b), struck out subsec. (e) which read as follows: ''For a fiscal year for which the active duty end strength authorized by law pursuant to section 115(a)(1)(A) of this title for any of the armed forces is identical to or greater than the number applicable to that armed force under subsection (b), the Secretary of Defense may reduce that number by not more than 0.5 percent.''

2001—Subsec. (b)(2). Pub. L. 107–107, § 402(1), substituted ''376,000'' for ''372,000''.

Subsec. (b)(4). Pub. L. 107–107, § 402(2), substituted ''358,800'' for ''357,000''.

2000—Subsec. (b)(2) to (4). Pub. L. 106–398, § 1 [[div. A], title IV, § 402(a)], substituted ''372,000'' for ''371,781'' in par. (2), ''172,600'' for ''172,148'' in par. (3), and ''357,000'' for ''360,877'' in par. (4).

Subsec. (e). Pub. L. 106–398, § 1 [[div. A], title IV, § 403], inserted ''or greater than'' after ''identical to''.

1999—Subsec. (b)(2) to (4). Pub. L. 106–65, § 402(a), substituted ''371,781'' for ''372,696'' in par. (2), ''172,148'' for ''172,200'' in par. (3), and ''360,877'' for ''370,802'' in par. (4).

Subsec. (e). Pub. L. 106–65, § 1066(b)(1), made technical amendment to directory language of Pub. L. 105–261, § 402(b). See 1998 Amendment note below.

1998—Subsec. (b). Pub. L. 105–261, § 402(a), substituted ''480,000'' for ''495,000'' in par. (1), ''372,696'' for ''390,802'' in par. (2), ''172,200'' for ''174,000'' in par. (3), and ''370,802'' for ''371,577'' in par. (4).

Subsec. (e). Pub. L. 105–261, § 402(b), as amended by Pub. L. 106–65, § 1066(b)(1), substituted ''0.5 percent.'' for ''1 percent or, in the case of the Army, by not more than 1.5 percent.''

1997—Subsec. (b)(2). Pub. L. 105–85, § 402(a)(1), substituted ''390,802'' for ''395,000''.

Subsec. (b)(4). Pub. L. 105–85, § 402(a)(2), substituted ''371,577'' for ''381,000''.

Subsec. (e). Pub. L. 105–85, § 402(b), inserted ''or, in the case of the Army, by not more than 1.5 percent'' before period at end.

1996—Subsec. (c). Pub. L. 104–201, § 402(a)(2), added subsec. (c) and struck out former subsec. (c) which read as follows: ''No funds appropriated to the Department of Defense may be used to implement a reduction of the active duty end strength for any of the armed forces for any fiscal year below the level specified in subsection (b) unless the Secretary of Defense submits to Congress notice of the proposed lower end strength levels and a justification for those levels. No action may then be taken to implement such a reduction for that fiscal year until the end of the six-month period beginning on the date of the receipt of such notice by Congress.''

Subsec. (d). Pub. L. 104–201, § 402(a)(2), added subsec. (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 104–201, § 402(a)(1), (b), redesignated subsec. (d) as (e) and substituted ''not more than 1 percent'' for ''not more than 0.5 percent''. Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 104–201, § 402(a)(1), redesignated subsec. (e) as (f).

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–398, § 1 [[div. A], title IV, § 402(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–92, provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on October 1, 2000.''

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–65, div. A, title IV, § 402(b), Oct. 5, 1999, 113 Stat. 585, provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on October 1, 1999.''

Pub. L. 106–65, div. A, title X, § 1066(b), Oct. 5, 1999, 113 Stat. 772, provided that the amendment made by section 1066(b) is effective Oct. 17, 1998, and as if included in the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999, Pub. L. 105–261, as enacted.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–261, div. A, title IV, § 402(c), Oct. 17, 1998, 112 Stat. 1996, provided that: ''The amendments made by this section [amending this section] shall take effect on October 1, 1998.''

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relat-

ing thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

CHAPTER 40—LEAVE

Sec.
701. Entitlement and accumulation.
702. Cadets and midshipmen.
703. Reenlistment leave.
704. Use of leave; regulations.
704a. Administration of leave: prohibition on authorizing, granting, or assigning leave not expressly authorized by law.
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705a. Rest and recuperation absence: certain members undergoing extended deployment to a combat zone.
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708. Educational leave of absence.
709. Emergency leave of absence.
709a. Expenses incurred in connection with leave canceled due to contingency operations: reimbursement.
710. Career flexibility to enhance retention of members.

AMENDMENTS

2018—Pub. L. 115–232, div. A, title V, § 551(b)(1), Aug. 13, 2018, 132 Stat. 1768, added item 710.

2016—Pub. L. 114–328, div. A, title V, §§ 521(b)(2), 522(b), Dec. 23, 2016, 130 Stat. 2115, 2116, added items 704a and 709a.

2011—Pub. L. 111–383, div. A, title V, § 532(b), Jan. 7, 2011, 124 Stat. 4216, added item 705a.

2003—Pub. L. 108–136, div. A, title VI, § 621(b)(2), Nov. 24, 2003, 117 Stat. 1505, struck out ''enlisted'' before ''members'' in item 705.

2002—Pub. L. 107–314, div. A, title V, §§ 506(d), 572(b), 574(b)(2)(B), Dec. 2, 2002, 116 Stat. 2536, 2558, substituted ''Rest and recuperation absence: qualified enlisted members extending duty at designated locations overseas'' for ''Rest and recuperative absence for qualified enlisted members extending duty at designated locations overseas'' in item 705, added items 706, 707a, and 709, and struck out former item 706 ''Administration of leave required to be taken pending review of certain court-martial convictions''.

1984—Pub. L. 98–525, title VII, § 707(a)(2), Oct. 19, 1984, 98 Stat. 2572, added item 708.

1981—Pub. L. 97–81, § 2(b)(2), Nov. 20, 1981, 95 Stat. 1087, added items 706 and 707.

1980—Pub. L. 96–579, § 5(b)(2), Dec. 23, 1980, 94 Stat. 3367, added item 705.

PILOT PROGRAMS ON CAREER FLEXIBILITY TO ENHANCE RETENTION OF MEMBERS OF THE ARMED FORCES

Pub. L. 110–417, [div. A], title V, § 533, Oct. 14, 2008, 122 Stat. 4449, as amended by Pub. L. 112–81, div. A, title V, § 531, title VI, § 631(f)(4)(B), Dec. 31, 2011, 125 Stat. 1403, 1465; Pub. L. 112–239, div. A, title V, § 522, title X, § 1076(a)(9), Jan. 2, 2013, 126 Stat. 1722, 1948; Pub. L. 113–291, div. A, title V, § 522, Dec. 19, 2014, 128 Stat. 3360; Pub. L. 114–92, div. A, title V, § 523, Nov. 25, 2015, 129 Stat. 812, which related to pilot programs under which active members of the Armed Forces could be inactivated from active duty in order to meet personal or professional needs and returned to active duty at the end of such period of inactivation, was repealed by Pub. L. 115–232, div. A, title V, § 551(b)(2), Aug. 13, 2018, 132 Stat. 1769. See section 710 of this title.

§ 701. Entitlement and accumulation

(a) A member of an armed force is entitled to leave at the rate of 2½ calendar days for each month of active service, excluding periods of—

(1) absence from duty without leave;

(2) absence over leave;

(3) confinement as the result of a sentence of a court-martial; and

(4) leave required to be taken under section 876a of this title.

Full-time training, or other full-time duty for a period of more than 29 days, performed under section 316, 502, 503, 504, or 505 of title 32 by a member of the Army National Guard of the United States or the Air National Guard of the United States in his status as a member of the National Guard, and for which he is entitled to pay, is active service for the purposes of this section.

(b) Except as provided in subsections (d), (f), and (g), a member may not accumulate more than 60 days' leave. However, leave taken during a fiscal year may be charged to leave accumulated during that fiscal year without regard to this limitation.

(c) A member who retired after August 9, 1946, who is continued on, or is recalled to active duty, may have his leave which accumulated during his service before retirement carried over to his period of service after retirement.

(d) Notwithstanding subsection (b), during the period beginning on October 1, 2008, through September 30, 2015, a member may accumulate up to 75 days of leave.

(e) Leave taken before discharge is considered to be active service.

(f)(1)(A) The Secretary concerned, under uniform regulations to be prescribed by the Secretary of Defense, may authorize a member described in subparagraph (B) who, except for this paragraph, would lose at the end of the fiscal year any accumulated leave in excess of the number of days of leave authorized to be accumulated under subsection (b) or (d), to retain an accumulated total of 120 days leave.

(B) This subsection applies to a member who—

(i) serves on active duty for a continuous period of at least 120 days in an area in which the member is entitled to special pay under section 310(a) of title 37;

(ii) is assigned to a deployable ship or mobile unit or to other duty designated for the purpose of this section; or

(iii) on or after August 29, 2005, performs duty designated by the Secretary of Defense as qualifying duty for purposes of this subsection.

(C) Except as provided in paragraph (2), leave in excess of the days of leave authorized to be accumulated under subsection (b) or (d) that are accumulated under this paragraph is lost unless it is used by the member before the end of the third fiscal year (or fourth fiscal year, if accumulated while subsection (d) is in effect) after the fiscal year in which the continuous period of service referred to in subparagraph (B) terminated.

(2) Under the uniform regulations referred to in paragraph (1), a member of an armed force who serves on active duty in a duty assignment in support of a contingency operation during a fiscal year and who, except for this paragraph, would lose at the end of that fiscal year any accumulated leave in excess of the number of days of leave authorized to be accumulated under subsection (b) or (d), shall be permitted to retain such leave until the end of the second fiscal year after the fiscal year in which such service on active duty is terminated.

(g) A member who is in a missing status, as defined in section 551(2) of title 37, accumulates leave without regard to the limitations in subsections (b), (d), and (f). Notwithstanding the death of a member while in a missing status, he continues to earn leave through the date—

(1) the Secretary concerned receives evidence that the member is dead; or

(2) that his death is prescribed or determined under section 555 of title 37.

Leave accumulated while in missing status shall be accounted for separately. It may not be taken, but shall be paid for under section 501(h) of title 37. However, a member whose death is prescribed or determined under section 555 or 556 of title 37 may, in addition to leave accrued before entering a missing status, accrue not more than 150 days' leave during the period he is in a missing status, unless his actual death occurs on a date when, had he lived, he would have accrued leave in excess of 150 days, in which event settlement will be made for the number of days accrued to the actual date of death. Leave so accrued in a missing status shall be accounted for separately and paid for under the provisions of section 501 of title 37.

(h) A member who has taken leave in excess of that authorized by this section and who is being discharged or released from active duty for the purpose of accepting an appointment or a warrant in an armed force, or of entering into an enlistment or an extension of an enlistment in an armed force, may elect to have excess leave of up to 30 days or the maximum number of days of leave that could be earned in the new term of service, whichever is less, carried over to that new term of service to count against leave that will accrue on the new term of service. A member shall be required, at the time of his discharge or release from active duty, to pay for excess leave not carried over under this subsection.

(i)(1)(A) Under regulations prescribed by the Secretary of Defense, a member of the armed forces described in paragraph (2) who is the primary caregiver in the case of the birth of a child is allowed up to twelve weeks of total leave, including up to six weeks of medical convalescent leave, to be used in connection with such birth.

(B) Under the regulations prescribed for purposes of this subsection, a member of the armed forces described in paragraph (2) who is the primary caregiver in the case of the adoption of a child is allowed up to six weeks of total leave to be used in connection with such adoption.

(2) Paragraph (1) applies to the following members:

(A) A member on active duty.

(B) A member of a reserve component performing active Guard and Reserve duty.

(C) A member of a reserve component subject to an active duty recall or mobilization order in excess of 12 months.

(3) The Secretary shall prescribe in the regulations referred to in paragraph (1) a definition of the term ''primary caregiver'' for purposes of this subsection.

(4) Notwithstanding paragraph (1)(A), a member may receive more than six weeks of medical convalescent leave in connection with the birth of a child, but only if the additional medical convalescent leave—

(A) is specifically recommended, in writing, by the medical provider of the member to address a diagnosed medical condition; and

(B) is approved by the commander of the member.

(5) Any leave taken by a member under this subsection, including leave under paragraphs (1) and (4), may be taken in more than one increment in connection with such birth or adoption in accordance with regulations prescribed by the Secretary concerned.

(6)(A) Any leave authorized by this subsection that is not taken within one year of such birth or adoption shall be forfeited.

(B) Any leave authorized by this subsection for a member of a reserve component on active duty that is not taken by the time the member is separated from active duty shall be forfeited at that time.

(7) The period of active duty of a member of a reserve component may not be extended in order to permit the member to take leave authorized by this subsection.

(8) Under the regulations prescribed for purposes of this subsection, a member taking leave under paragraph (1) may, as a condition for taking such leave, be required—

(A) to accept an extension of the member's current service obligation, if any, by one week for every week of leave taken under paragraph (1); or

(B) to incur a reduction in the member's leave account by one week for every week of leave taken under paragraph (1).

(9)(A) Leave authorized by this subsection is in addition to any other leave provided under other provisions of this section.

(B) Medical convalescent leave under paragraph (4) is in addition to any other leave provided under other provisions of this subsection.

(10)(A) Subject to subparagraph (B), a member taking leave under paragraph (1) during a period of obligated service shall not be eligible for terminal leave, or to sell back leave, at the end such period of obligated service.

(B) Under the regulations for purposes of this subsection, the Secretary concerned may waive, whether in whole or in part, the applicability of subparagraph (A) to a member who reenlists at the end of the member's period of obligated service described in that subparagraph if the Secretary determines that the waiver is in the interests of the armed force concerned.

(j)(1) Under regulations prescribed by the Secretary of Defense, a member of the armed forces described in subsection (i)(2) who is the sec-

ondary caregiver in the case of the birth of a child or the adoption of a child is allowed up to 21 days of leave to be used in connection with such birth or adoption.

(2) The Secretary shall prescribe in the regulations referred to in paragraph (1) a definition of the term ''secondary caregiver'' for purposes of this subsection.

(3) Any leave taken by a member under this subsection may be taken only in one increment in connection with such birth or adoption.

(4) Under the regulations prescribed for purposes of this subsection, paragraphs (6) through (10) of subsection (i) (other than paragraph (9)(B) of such subsection) shall apply to leave, and the taking of leave, authorized by this subsection.

(k) A member of a reserve component who accumulates leave during a period of active service may carry over any leave so accumulated to the member's next period of active service, subject to the accumulation limits in subsections (b), (d), and (f), without regard to separation or release from active service if the separation or release is under honorable conditions. The taking of leave carried over under this subsection shall be subject to the provisions of this section.

(*l*) A member of the armed forces who gives birth while on active duty may be deployed during the period of 12 months beginning on the date of such birth only with the approval of a health care provider employed at a military medical treatment facility and—

(1) at the election of such member; or

(2) in the interest of national security, as determined by the Secretary of Defense.

(Added Pub. L. 87–649, § 3(1), Sept. 7, 1962, 76 Stat. 492; amended Pub. L. 89–151, § 3, Aug. 28, 1965, 79 Stat. 586; Pub. L. 90–245, § 1, Jan. 2, 1968, 81 Stat. 782; Pub. L. 92–596, § 1, Oct. 27, 1972, 86 Stat. 1317; Pub. L. 96–579, § 10, Dec. 23, 1980, 94 Stat. 3368; Pub. L. 97–81, § 2(a), Nov. 20, 1981, 95 Stat. 1085; Pub. L. 98–94, title X, § 1031(a), Sept. 24, 1983, 97 Stat. 671; Pub. L. 98–525, title XIV, § 1405(18), Oct. 19, 1984, 98 Stat. 2622; Pub. L. 99–661, div. A, title V, § 506(a), Nov. 14, 1986, 100 Stat. 3864; Pub. L. 102–190, div. A, title VI, § 638, Dec. 5, 1991, 105 Stat. 1384; Pub. L. 108–136, div. A, title V, § 542(a), Nov. 24, 2003, 117 Stat. 1478; Pub. L. 109–163, div. A, title V, § 593(a), title VI, § 682, Jan. 6, 2006, 119 Stat. 3280, 3321; Pub. L. 110–181, div. A, title V, § 551(a)–(c), Jan. 28, 2008, 122 Stat. 117; Pub. L. 110–417, [div. A], title V, § 532(a), Oct. 14, 2008, 122 Stat. 4449; Pub. L. 111–84, div. A, title V, § 504, Oct. 28, 2009, 123 Stat. 2277; Pub. L. 111–383, div. A, title V, § 516(a), Jan. 7, 2011, 124 Stat. 4213; Pub. L. 112–239, div. A, title V, § 521, Jan. 2, 2013, 126 Stat. 1722; Pub. L. 114–328, div. A, title V, § 521(a), Dec. 23, 2016, 130 Stat. 2113; Pub. L. 116–92, div. A, title V, §§ 571, 572, Dec. 20, 2019, 133 Stat. 1403.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
701(a)	37:31a(a) (1st, 2d, and last sentences).	Aug. 9, 1946, ch. 931, § 3(a) (less 4th, 5th, 6th, and 7th sentences), (b) (less proviso), 60 Stat. 963; Sept. 23, 1950, ch. 998, § 1, 64 Stat. 978; Aug. 10, 1956, ch. 1041, § 23, 70A, Stat. 630.
701(b)	37:31a(b) (less proviso).	
701(c)	37:31a(a) (8th sentence).	
701(d)	37:31a(a) (3d sentence).	
701(e)	37:31a(a) (9th sentence).	

In subsection (a), the 2d sentence of section 31a(a) of existing title 37 is omitted as inconsistent with subsection (b).

In subsection (b), the words ''(other than a member on terminal leave on September 1, 1946)'' and ''at any time after August 31, 1946'' are omitted as executed. The words ''or regulation'' are omitted, since a regulation cannot override a statute. The words ''or have to his credit'' are omitted as surplusage.

In subsections (b) and (c), the word ''accrued'' is omitted as covered by the word ''accumulated''.

In subsection (e), the words ''before or after August 9, 1946'' and section 31a(a) (words after semicolon in 9th sentence) of existing title 37 are omitted as executed.

AMENDMENTS

2019—Subsec. (i)(5). Pub. L. 116–92, § 571, substituted ''in more than one increment'' for ''only in one increment'' and inserted ''in accordance with regulations prescribed by the Secretary concerned'' before period at end.

Subsec. (*l*). Pub. L. 116–92, § 572, added subsec. (*l*).

2016—Subsecs. (i), (j). Pub. L. 114–328 added subsecs. (i) and (j) and struck out former subsecs. (i) and (j) which read as follows:

''(i)(1) Under regulations prescribed by the Secretary of Defense, a member of the armed forces adopting a child in a qualifying child adoption is allowed up to 21 days of leave in a calendar year to be used in connection with the adoption.

''(2) For the purpose of this subsection, an adoption of a child by a member is a qualifying child adoption if the member is eligible for reimbursement of qualified adoption expenses for such adoption under section 1052 of this title.

''(3) In the event that two members of the armed forces who are married to each other adopt a child in a qualifying child adoption, only one such member shall be allowed leave under this subsection.

''(4) Leave under paragraph (1) is in addition to other leave provided under other provisions of this section.

''(j)(1) Under regulations prescribed by the Secretary concerned, a married member of the armed forces on active duty whose wife gives birth to a child shall receive 10 days of leave to be used in connection with the birth of the child.

''(2) Leave under paragraph (1) is in addition to other leave authorized under this section.''

2013—Subsec. (d). Pub. L. 112–239 substituted ''September 30, 2015'' for ''September 30, 2013''.

2011—Subsec. (k). Pub. L. 111–383 added subsec. (k).

2009—Subsec. (d). Pub. L. 111–84 substituted ''September 30, 2013'' for ''December 31, 2010''.

2008—Subsec. (b). Pub. L. 110–181, § 551(a)(1), substituted ''subsections (d), (f), and (g)'' for ''subsection (f) and subsection (g)''.

Subsec. (d). Pub. L. 110–181, § 551(a)(2), added subsec. (d).

Subsec. (f)(1)(A). Pub. L. 110–181, § 551(b)(1), substituted ''at the end of the fiscal year any accumulated leave in excess of the number of days of leave authorized to be accumulated under subsection (b) or (d)'' for ''any accumulated leave in excess of 60 days at the end of the fiscal year''.

Subsec. (f)(1)(C). Pub. L. 110–181, § 551(b)(2), substituted ''the days of leave authorized to be accumulated under subsection (b) or (d) that are'' for ''60 days'' and inserted ''(or fourth fiscal year, if accumulated while subsection (d) is in effect)'' after ''third fiscal year''.

Subsec. (f)(2). Pub. L. 110–181, § 551(b)(3), substituted ''except for this paragraph, would lose at the end of that fiscal year any accumulated leave in excess of the number of days of leave authorized to be accumulated under subsection (b) or (d), shall be permitted to retain such leave until the end of the second fiscal year after the fiscal year in which such service on active duty is terminated'' for ''except for this paragraph—

''(A) would lose any accumulated leave in excess of 60 days at the end of that fiscal year, shall be per-

mitted to retain such leave (not to exceed 90 days) until the end of the succeeding fiscal year; or

''(B) would lose any accumulated leave in excess of 60 days at the end of the succeeding fiscal year (other than by reason of subparagraph (A)), shall be permitted to retain such leave (not to exceed 90 days) until the end of the next succeeding fiscal year.''

Subsec. (g). Pub. L. 110–181, § 551(c), substituted ''limitations in subsections (b), (d), and (f)'' for ''60-day limitation in subsection (b) and the 90-day limitation in subsection (f)'' in introductory provisions.

Subsec. (j). Pub. L. 110–417 added subsec. (j).

2006—Subsec. (f)(1)(B). Pub. L. 109–163, § 682, amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''This subsection applies to a member who serves on active duty for a continuous period of at least 120 days—

''(i) in an area in which the member is entitled to special pay under section 310(a) of title 37; or

''(ii) while assigned to a deployable ship or mobile unit or to other duty comparable to that specified in clause (i) that is designated for the purpose of this subsection.''

Subsec. (i). Pub. L. 109–163, § 593(a), added subsec. (i).

2003—Subsec. (f)(1). Pub. L. 108–136 amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''Under uniform regulations to be prescribed by the Secretary concerned, and approved by the Secretary of Defense, a member who serves on active duty for a continuous period of at least 120 days in an area in which he is entitled to special pay under section 310(a) of title 37 or a member assigned to a deployable ship, mobile unit, or to other duty designated for the purpose of this section, may accumulate 90 days' leave. Except as provided in paragraph (2), leave in excess of 60 days accumulated under this subsection is lost unless it is used by the member before the end of the third fiscal year after the fiscal year in which the service terminated.''

1991—Subsec. (f). Pub. L. 102–190 designated existing provisions as par. (1), substituted ''Except as provided in paragraph (2), leave'' for ''Leave'' in last sentence, and added par. (2).

1986—Subsec. (h). Pub. L. 99–661 added subsec. (h).

1984—Subsec. (g). Pub. L. 98–525 substituted ''60-day'' for ''sixty-day'', ''90-day'' for ''ninety-day'', and ''150'' for ''one hundred and fifty'' in two places.

1983—Subsec. (f). Pub. L. 98–94 substituted ''the end of the third fiscal year'' for ''the end of the fiscal year''.

1981—Subsec. (a)(2). Pub. L. 97–81, § 2(a)(1), struck out ''and'' at end of par. (2).

Subsec. (a)(3). Pub. L. 97–81, § 2(a)(2), substituted ''; and'' for a period at end of par. (3).

Subsec. (a)(4). Pub. L. 97–81, § 2(a)(3), added par. (4).

1980—Subsec. (f). Pub. L. 96–579 authorized accumulation of leave for service as a member assigned to a deployable ship, mobile unit, or to other duty designated for the purpose of this section.

1972—Subsec. (b). Pub. L. 92–596, § 1(1), inserted reference to subsec. (g).

Subsec. (g). Pub. L. 92–596, § 1(2), added subsec. (g).

1968—Subsec. (b). Pub. L. 90–245, § 1(1), inserted reference to subsec. (f).

Subsec. (f). Pub. L. 90–245, § 1(2), added subsec. (f).

1965—Subsec. (d). Pub. L. 89–151 repealed subsec. (d) which provided that accumulated leave did not survive the death of a member during active service.

Effective Date of 2008 Amendment

Pub. L. 110–417, [div. A], title V, § 532(b), Oct. 14, 2008, 122 Stat. 4449, provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Oct. 14, 2008] and applies only with respect to children born on or after that date.''

Effective Date of 2006 Amendment

Pub. L. 109–163, div. A, title V, § 593(b), Jan. 6, 2006, 119 Stat. 3281, provided that: ''Subsection (i) of section 701 of title 10, United States Code (as added by subsection (a)), shall take effect on January 1, 2006, and shall apply only with respect to adoptions completed on or after that date.''

Effective Date of 2003 Amendment

Pub. L. 108–136, div. A, title V, § 542(b), Nov. 24, 2003, 117 Stat. 1478, provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on October 1, 2003, or the date of the enactment of this Act [Nov. 24, 2003], whichever is later.''

Effective Date of 1983 Amendment

Pub. L. 98–94, title X, § 1031(b)(1), (2), Sept. 24, 1983, 97 Stat. 671, provided that:

''(1) The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Sept. 24, 1983] and shall apply to leave accumulated under section 701(f) of such title [this title] after September 30, 1980.

''(2) A member of the Armed Forces who was authorized under section 701(f) of such title to accumulate 90 days' leave during fiscal year 1980, 1981, or 1982 and lost any leave at the end of fiscal year 1981, 1982, or 1983, respectively, because of the provisions of the last sentence of such section, as in effect on the day before the date of the enactment of this Act, shall be credited with the amount of the leave lost and may retain leave in excess of 60 days until (A) September 30, 1984, or (B) the end of the third fiscal year after the year in which such leave was accumulated, whichever is later, but in no case may such a member accumulate leave in excess of 90 days.''

Effective Date of 1981 Amendment

Amendment by Pub. L. 97–81 to take effect at the end of the 60-day period beginning on Nov. 20, 1981, and to apply to each member whose sentence by court-martial is approved on or after Jan. 20, 1982, under section 864 or 865 of this title by the officer exercising general court-martial jurisdiction under the provisions of such section as it existed on the day before the effective date of the Military Justice Act of 1983 (Pub. L. 98–209), or under section 860 of this title by the officer empowered to act on the sentence on or after that effective date, see section 7(a) and (b)(1) of Pub. L. 97–81, set out as an Effective Date note under section 706 of this title.

Effective Date of 1972 Amendment

Pub. L. 92–596, § 3, Oct. 27, 1972, 86 Stat. 1318, provided that: ''The first and second sections of this Act [amending this section and section 501 of Title 37, Pay and Allowances of the Uniformed Services] become effective as of February 28, 1961.''

Effective Date of 1968 Amendment

Pub. L. 90–245, § 2, Jan. 2, 1968, 81 Stat. 782, provided that: ''Section 1 of this Act [amending this section] applies only to active duty performed after January 1, 1968.''

Effective Date of 1965 Amendment

Amendment by Pub. L. 89–151 effective only in the case of members who die on or after Aug. 28, 1965, see section 4 of Pub. L. 89–151, set out as a note under section 501 of Title 37, Pay and Allowances of the Uniformed Services.

Effective Date

Section effective Nov. 1, 1962, see section 15 of Pub. L. 87–649, set out as a note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

National Oceanic and Atmospheric Administration

Authority vested by this chapter in ''military departments'', ''the Secretary concerned'', or ''the Secretary of Defense'' to be exercised, with respect to commissioned officer corps of National Oceanic and Atmospheric Administration, by Secretary of Commerce or

Secretary's designee, see section 3071 of Title 33, Navigation and Navigable Waters.

ACCUMULATION OF LEAVE AFTER SEPTEMBER 30, 1980, PURSUANT TO SUBSECTION (f)

Pub. L. 97–39, title VII, §702, Aug. 14, 1981, 95 Stat. 943, provided that: ''The amendment made by section 10 of the Military Pay and Allowances Benefits Act of 1980 (Public Law 96–579; 94 Stat. 3368) [amending this section] shall apply with respect to the accumulation of leave by members of the Armed Forces who after September 30, 1979, are assigned (1) to a deployable ship or mobile unit, or (2) to other duty designated after the date of the enactment of this Act [Aug. 14, 1981] as duty qualifying for the purpose of section 701(f) of title 10, United States Code, as amended by that amendment.''

For savings provision extending period for which certain accrued leave under subsec. (f) of this section may be retained by members of Armed Forces, see section 1115 of Pub. L. 101–510, set out as a Treatment of Accumulated Leave note under section 501 of Title 37, Pay and Allowances of the Uniformed Services.

§ 702. Cadets and midshipmen

(a) GRADUATION LEAVE.—Graduates of the United States Military Academy, the United States Naval Academy, the United States Air Force Academy, or the Coast Guard Academy who, upon graduation, are appointed in a component of an armed force, may, in the discretion of the Secretary concerned or his designated representative, be granted graduation leave of not more than 60 days. Leave granted under this subsection is in addition to any other leave and may not be deducted from or charged against other leave authorized by this chapter, and must be completed within three months of the date of graduation. Leave under this subsection may not be carried forward as credit beyond the date of reporting to the first permanent duty station or to a port of embarkation for permanent duty outside the United States or in Alaska or Hawaii.

(b) INVOLUNTARY LEAVE WITHOUT PAY FOR SUSPENDED ACADEMY CADETS AND MIDSHIPMEN.—(1) Under regulations prescribed under subsection (d), the Secretary concerned may place an academy cadet or midshipman on involuntary leave for any period during which the Superintendent of the Academy at which the cadet or midshipman is admitted has suspended the cadet or midshipman from duty at the Academy—

(A) pending separation from the Academy;

(B) pending return to the Academy to repeat an academic semester or year; or

(C) for other good cause.

(2) A cadet or midshipman placed on involuntary leave under paragraph (1) is not entitled to any pay under section 203(c) of title 37 for the period of the leave.

(3) Return of an academy cadet or midshipman to a pay status at the Academy concerned from involuntary leave status under paragraph (1) does not restore any entitlement of the cadet or midshipman to pay for the period of the involuntary leave.

(c) INAPPLICABLE LEAVE PROVISIONS.—Sections 701, 703, and 704 of this title and subsection (a) do not apply to academy cadets or midshipmen or cadets or midshipmen serving elsewhere in the armed forces.

(d) REGULATIONS.—The Secretary concerned, or his designated representative, may prescribe regulations relating to leave for cadets and midshipmen.

(e) DEFINITION.—In this section, the term ''academy cadet or midshipman'' means—

(1) a cadet of the United States Military Academy;

(2) a midshipman of the United States Naval Academy;

(3) a cadet of the United States Air Force Academy; or

(4) a cadet of the United States Coast Guard Academy.

(Added Pub. L. 87–649, §3(1), Sept. 7, 1962, 76 Stat. 492; amended Pub. L. 96–513, title V, §511(20), Dec. 12, 1980, 94 Stat. 2921; Pub. L. 103–160, div. A, title V, §532, Nov. 30, 1993, 107 Stat. 1657; Pub. L. 105–261, div. A, title V, §562, Oct. 17, 1998, 112 Stat. 2027; Pub. L. 106–398, §1 [[div. A], title X, §1087(a)(3)], Oct. 30, 2000, 114 Stat. 1654, 1654A–290.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
702(a)	37:31a(c).	Aug. 9, 1946, ch. 931, §3(c); added June 2, 1950, ch. 217, §1, 64 Stat. 194.
	37:32(f) (last 8 words).	Aug. 9, 1946, ch. 931, §2(f) (last 8 words), 60 Stat. 963.
702(b)	37:38 (less applicability to payment for leave).	Aug. 9, 1946, ch. 931, §10 (less applicability to payment for leave); added Aug. 4, 1947, ch. 475, §3 (less applicability to payment for leave), 61 Stat. 749.
	37:32(f) (last 8 words).	Aug. 9, 1946, ch. 931, §2(f) (last 8 words), 60 Stat. 963.

In subsection (a), the words ''outside the United States or in Alaska or Hawaii'' are substituted for the words ''outside the continental limits of the United States'' to conform to the interpretation of those words in other sections of title 10 and revised title 37.

In subsections (a) and (b), the words '', or his designated representative,'' are substituted for the last 8 words of section 32(f) of existing title 37.

AMENDMENTS

2000—Subsec. (b)(2). Pub. L. 106–398 substituted ''section 203(c)'' for ''section 230(c)''.

1998—Subsec. (a). Pub. L. 105–261, §562(c)(1), inserted heading.

Subsec. (b). Pub. L. 105–261, §562(a)(3), added subsec. (b). Former first and second sentences of subsec. (b) redesignated subsecs. (c) and (d), respectively.

Subsec. (c). Pub. L. 105–261, §562(a)(2), (b)(1), (c)(2), redesignated first sentence of subsec. (b) as subsec. (c), inserted heading, and substituted ''academy cadets or midshipmen'' for ''cadets at the United States Military Academy, the United States Air Force Academy, or the Coast Guard Academy, midshipmen at the United States Naval Academy,''.

Subsec. (d). Pub. L. 105–261, §562(a)(1), (c)(3), redesignated second sentence of subsec. (b) as subsec. (d) and inserted heading.

Subsec. (e). Pub. L. 105–261, §562(b)(2), added subsec. (e).

1993—Subsec. (a). Pub. L. 103–160 struck out ''regular'' before ''component'' in first sentence.

1980—Subsec. (b). Pub. L. 96–513 substituted ''Sections 701, 703, and 704 of this title and subsection (a)'' for ''Sections 701, 702(a), 703, and 704 of this chapter''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE

Section effective Nov. 1, 1962, see section 15 of Pub. L. 87–649, set out as a note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 703. Reenlistment leave

(a) Leave for not more than 90 days may be authorized, in the discretion of the Secretary concerned, or his designated representative, to a member of an armed force who reenlists. Leave authorized under this section shall be deducted from leave accrued during active service before reenlistment or charged against leave that may accrue during future active service, or both.

(b) Under regulations prescribed by the Secretary of Defense, and notwithstanding subsection (a), a member who is on active duty in an area described in section 310(a)(2) or paragraph (1) or (3) of section 351(a) of title 37 and who, by reenlistment, extension of enlistment, or other voluntary action, extends his required tour of duty in that area for at least six months may be—

(1) authorized not more than thirty days of leave, exclusive of travel time, at an authorized place selected by the member; and

(2) transported at the expense of the United States to and from that place.

Leave under this subsection may not be charged or credited to leave that accrued or that may accrue under section 701 of this title. The provisions of this subsection shall be effective only in the case of members who extend their required tours of duty on or before June 30, 1973.

(Added Pub. L. 87–649, § 3(1), Sept. 7, 1962, 76 Stat. 493; amended Pub. L. 89–735, Nov. 2, 1966, 80 Stat. 1163; Pub. L. 90–330, June 5, 1968, 82 Stat. 170; Pub. L. 91–302, July 2, 1970, 84 Stat. 368; Pub. L. 92–481, Oct. 9, 1972, 86 Stat. 795; Pub. L. 115–91, div. A, title VI, § 618(c), Dec. 12, 2017, 131 Stat. 1426.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
703	37:31a(a) (4th and 7th sentences). 37:32(f) (last 8 words)	Aug. 9, 1946, ch. 931, § 3(a) (4th and 7th sentences), 60 Stat. 963. Aug. 9, 1946, ch. 931, § 2(f) (last 8 words), 60 Stat. 963.

The 4th sentence of section 31a(a) of existing title 37 is omitted as executed. The words '', or his designated representative,'' are substituted for the last 8 words of section 32(f) of existing title 37.

AMENDMENTS

2017—Subsec. (b). Pub. L. 115–91 inserted ''or paragraph (1) or (3) of section 351(a)'' after ''section 310(a)(2)'' in introductory provisions.

1972—Subsec. (b). Pub. L. 92–481 substituted ''June 30, 1973'' for ''June 30, 1972''.

1970—Subsec. (b). Pub. L. 91–302 substituted ''June 30, 1972'' for ''June 30, 1970''.

1968—Subsec. (b). Pub. L. 90–330 substituted ''June 30, 1970'' for ''June 30, 1968''.

1966—Pub. L. 89–735 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE

Section effective Nov. 1, 1962, see section 15 of Pub. L. 87–649, set out as a note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

§ 704. Use of leave; regulations

(a) Under regulations prescribed by the Secretary concerned, or his designated representative, leave may be taken by a member on a calendar-day basis as vacation or absence from duty with pay, annually as accruing, or otherwise.

(b) Regulations prescribed under subsection (a) shall—

(1) provide equal treatment of officers and enlisted members;

(2) establish to the fullest extent practicable uniform policies for the several armed forces;

(3) provide that leave shall be taken annually as accruing to the extent consistent with military requirements and other exigencies; and

(4) provide for the determination of the number of calendar days of leave to which a member is entitled, including the number of calendar days of absence from duty or vacation to be counted or charged against leave.

(c) FACILITATING GRANTING OF LEAVE FOR ATTENDANCE AT HEARINGS.—

(1) REGULATIONS.—The Secretary concerned shall prescribe regulations to facilitate the granting of leave to a member of the armed forces under the jurisdiction of that Secretary in a case in which—

(A) the leave is needed for the member to attend a hearing described in paragraph (2);

(B) the member is not serving in or with a unit deployed in a contingency operation; and

(C) the exigencies of military service (as determined by the Secretary concerned) do not otherwise require that such leave not be granted.

(2) COVERED HEARINGS.—Paragraph (1) applies to a hearing that is conducted by a court or pursuant to an administrative process established under State law, in connection with a civil action—

(A) to determine whether a member of the armed forces is a natural parent of a child; or

(B) to determine an obligation of a member of the armed forces to provide child support.

(3) DEFINITIONS.—In this subsection:

(A) The term ''court'' has the meaning given that term in section 1408(a) of this title.

(B) The term ''child support'' has the meaning given that term in section 459(i) of the Social Security Act (42 U.S.C. 659(i)).

(Added Pub. L. 87–649, § 3(1), Sept. 7, 1962, 76 Stat. 493; amended Pub. L. 108–375, div. A, title X, § 1084(k), Oct. 28, 2004, 118 Stat. 2064.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
704(a) ...... 704(b)	37:31a(a) (5th sentence). 37:31a(a) (6th sentence). 37:33(e). 37:32(f) (last 8 words).	Aug. 9, 1946, ch. 391, §§3(a) (5th and 6th sentences), 4(e), 60 Stat. 963; Aug. 4, 1947, ch. 475, §1 (5th par.), 61 Stat. 749. Aug. 9, 1946, ch. 931, §2(f) (last 8 words), 60 Stat. 963.

In subsection (a), the 1st 18 words of the 5th sentence of section 31a(a) of existing title 37 are omitted as executed. The words '', or his designated representative,'' are substituted for the last 8 words of section 32(f) of existing title 37.

In subsection (b), 37:33(e) (less 1st sentence) is omitted as executed.

CODIFICATION

The text of section 363(b) of Pub. L. 104–193, which was set out as a note under this section and was transferred to the end of this section and redesignated as subsec. (c), was based on Pub. L. 104–193, title III, §363(b), Aug. 22, 1996, 110 Stat. 2248, as amended by Pub. L. 107–296, title XVII, §1704(e)(1)(B), Nov. 25, 2002, 116 Stat. 2315.

AMENDMENTS

2004—Subsec. (c). Pub. L. 108–375, §1084(k)(1)–(3), transferred section 363(b) of Pub. L. 104–193 to the end of this section and redesignated it as subsec. (c). See Codification note above.

Subsec. (c)(1). Pub. L. 108–375, §1084(k)(4)(A), (B)(i), in introductory provisions, substituted ''Secretary concerned'' for ''Secretary of each military department, and the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy,'' and ''armed forces'' for ''Armed Forces''.

Subsec. (c)(1)(B). Pub. L. 108–375, §1084(k)(4)(B)(ii), struck out ''(as defined in section 101 of title 10, United States Code)'' after ''contingency operation''.

Subsec. (c)(2)(A), (B). Pub. L. 108–375, §1084(k)(4)(A), substituted ''armed forces'' for ''Armed Forces''.

Subsec. (c)(3). Pub. L. 108–375, §1084(k)(4)(C)(i), substituted ''In this subsection:'' for ''For purposes of this subsection—'' in introductory provisions.

Subsec. (c)(3)(A). Pub. L. 108–375, §1084(k)(4)(C)(ii), substituted ''this title'' for ''title 10, United States Code''.

Subsec. (c)(3)(B). Pub. L. 108–375, §1084(k)(4)(C)(iii), substituted ''that term'' for ''such term''.

EFFECTIVE DATE

Section effective Nov. 1, 1962, see section 15 of Pub. L. 87–649, set out as a note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

FACILITATING GRANTING OF LEAVE FOR ATTENDANCE AT HEARINGS INVOLVING PARENTAL SUPPORT OBLIGATIONS

Pub. L. 104–193, title III, §363(b), Aug. 22, 1996, 110 Stat. 2248, as amended by Pub. L. 107–296, title XVII, §1704(e)(1)(B), Nov. 25, 2002, 116 Stat. 2315, formerly set out as a note under this section, was transferred to subsec. (c) of this section.

§ 704a. Administration of leave: prohibition on authorizing, granting, or assigning leave not expressly authorized by law

No member or category of members of the armed forces may be authorized, granted, or assigned leave, including uncharged leave, not expressly authorized by a provision of this chapter or another statute unless expressly authorized by an Act of Congress enacted after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2017.

(Added Pub. L. 114–328, div. A, title V, §521(b)(1), Dec. 23, 2016, 130 Stat. 2115.)

REFERENCES IN TEXT

The date of the enactment of the National Defense Authorization Act for Fiscal Year 2017, referred to in text, is the date of enactment of Pub. L. 114–328, which was approved Dec. 23, 2016.

§ 705. Rest and recuperation absence: qualified members extending duty at designated locations overseas

(a) Under regulations prescribed by the Secretary concerned, a member of an armed force who—

(1) is entitled to basic pay;

(2) has a specialty that is designated by the Secretary concerned for the purposes of this section;

(3) has completed a tour of duty (as defined in accordance with regulations prescribed by the Secretary concerned) at a location outside the 48 contiguous States and the District of Columbia that is designated by the Secretary concerned for the purposes of this section; and

(4) at the end of that tour of duty executes an agreement to extend that tour for a period of not less than one year;

may, in lieu of receiving special pay under section 314 or 352 of title 37 for duty performed during such extension of duty, elect to receive one of the benefits specified in subsection (b). Receipt of any such benefit is in addition to any other leave or transportation to which the member may be entitled.

(b) The benefits authorized by subsection (a) are—

(1) a period of rest and recuperation absence for not more than 30 days; or

(2) a period of rest and recuperation absence for not more than 15 days for members whose qualifying tour of duty is 12 months or less, or for not more than 20 days for members whose qualifying tour of duty is longer than 12 months, and round-trip transportation at Government expense from the location of the extended tour of duty to the nearest port in the 48 contiguous States and return, or to an alternative destination and return at a cost not to exceed the cost of round-trip transportation from the location of the extended tour of duty to such nearest port.

(c) The provisions of this section shall not be effective unless the Secretary concerned determines that the application of this section will not adversely affect combat or unit readiness.

(Added Pub. L. 96–579, §5(b)(1), Dec. 23, 1980, 94 Stat. 3366; amended Pub. L. 107–314, div. A, title V, §574(a)–(b)(2)(A), Dec. 2, 2002, 116 Stat. 2558; Pub. L. 108–136, div. A, title VI, §621(b), Nov. 24, 2003, 117 Stat. 1505; Pub. L. 110–181, div. A, title V, §552, Jan. 28, 2008, 122 Stat. 117; Pub. L. 115–91, div. A, title VI, §618(d), Dec. 12, 2017, 131 Stat. 1426.)

AMENDMENTS

2017—Subsec. (a). Pub. L. 115–91 inserted ''or 352'' after ''section 314'' in concluding provisions.

2008—Subsec. (b)(2). Pub. L. 110–181 inserted ''for members whose qualifying tour of duty is 12 months or

less, or for not more than 20 days for members whose qualifying tour of duty is longer than 12 months,'' after ''for not more than 15 days''.

2003–Pub. L. 108–136, § 621(b)(2), struck out ''enlisted'' before ''members'' in section catchline.

Subsec. (a). Pub. L. 108–136, § 621(b)(1), substituted ''a member'' for ''an enlisted member'' in introductory provisions.

2002—Pub. L. 107–314, § 574(b)(2)(A), substituted ''recuperation absence: qualified enlisted members'' for ''recuperative absence for qualified enlisted members'' in section catchline.

Subsec. (b). Pub. L. 107–314 substituted ''recuperation'' for ''recuperative'' in pars. (1) and (2) and inserted before period at end of par. (2) '', or to an alternative destination and return at a cost not to exceed the cost of round-trip transportation from the location of the extended tour of duty to such nearest port''.

EFFECTIVE DATE

Pub. L. 96–579, § 5(c)(2), Dec. 23, 1980, 94 Stat. 3367, provided: ''Section 705 of title 10, United States Code, as added by subsection (b), shall take effect upon the date of the enactment of this section [Dec. 23, 1980] and shall apply only with respect to periods of extended duty overseas beginning on or after such date of enactment.''

§ 705a. Rest and recuperation absence: certain members undergoing extended deployment to a combat zone

(a) REST AND RECUPERATION AUTHORIZED.—Under regulations prescribed by the Secretary of Defense, the Secretary concerned may provide a member of the armed forces described in subsection (b) the benefits described in subsection (c).

(b) COVERED MEMBERS.—A member of the armed forces described in this subsection is any member who—

(1) is assigned or deployed for at least 270 days in an area or location—

(A) that is designated by the President as a combat zone; and

(B) in which hardship duty pay is authorized to be paid under section 305 or 352(a) of title 37; and

(2) meets such other criteria as the Secretary of Defense may prescribe in the regulations required by subsection (a).

(c) BENEFITS.—The benefits described in this subsection are the following:

(1) A period of rest and recuperation absence for not more than 15 days.

(2) Round-trip transportation at Government expense from the area or location in which the member is serving in connection with the exercise of the period of rest and recuperation.

(d) CONSTRUCTION WITH OTHER LEAVE.—Any benefits provided a member under this section are in addition to any other leave or absence to which the member may be entitled.

(Added Pub. L. 111–383, div. A, title V, § 532(a), Jan. 7, 2011, 124 Stat. 4216; amended Pub. L. 115–91, div. A, title VI, § 618(e), Dec. 12, 2017, 131 Stat. 1426.)

AMENDMENTS

2017—Subsec. (b)(1)(B). Pub. L. 115–91 inserted ''or 352(a)'' after ''section 305''.

§ 706. Administration of leave required to be taken

(a) A period of leave required to be taken under section 876a or 1182(c)(2) of this title shall be charged against any accrued leave to the member's credit on the day before the day such leave begins unless the member elects to be paid for such accrued leave under subsection (b). If the member does not elect to be paid for such accrued leave under subsection (b), or does not have sufficient accrued leave to his credit to cover the total period of leave required to be taken, the leave not covered by accrued leave shall be charged as excess leave. If the member elects to be paid for accrued leave under subsection (b), the total period of leave required to be taken shall be charged as excess leave.

(b)(1) A member who is required to take leave under section 876a or 1182(c)(2) of this title and who has accrued leave to his credit on the day before the day such leave begins may elect to be paid for such accrued leave. Any such payment shall be based on the rate of basic pay to which the member was entitled on the day before the day such leave began. If the member does not elect to be paid for such accrued leave, the member is entitled to pay and allowances during the period of accrued leave required to be taken.

(2) Except as provided in paragraph (1) and in sections 707 and 707a of this title, a member may not accrue or receive pay or allowances during a period of leave required to be taken under section 876a or 1182(c)(2) of this title.

(c) A member required to take leave under section 876a or 1182(c)(2) of this title is not entitled to any right or benefit under chapter 43 of title 38 solely because of employment during the period of such leave.

(Added Pub. L. 97–81, § 2(b)(1), Nov. 20, 1981, 95 Stat. 1085; amended Pub. L. 102–568, title V, § 506(c)(5), Oct. 29, 1992, 106 Stat. 4341; Pub. L. 103–337, div. A, title X, § 1070(e)(1), Oct. 5, 1994, 108 Stat. 2859; Pub. L. 103–353, § 2(b)(3), Oct. 13, 1994, 108 Stat. 3169; Pub. L. 104–106, div. A, title XV, § 1503(a)(7), Feb. 10, 1996, 110 Stat. 511; Pub. L. 106–398, § 1 [[div. A], title X, § 1087(a)(4)], Oct. 30, 2000, 114 Stat. 1654, 1654A–290; Pub. L. 107–314, div. A, title V, § 506(c), Dec. 2, 2002, 116 Stat. 2535.)

AMENDMENTS

2002—Pub. L. 107–314, § 506(c)(2), struck out ''pending review of certain court-martial convictions'' at end of section catchline.

Subsec. (a). Pub. L. 107–314, § 506(c)(1)(A), inserted ''or 1182(c)(2)'' after ''section 876a''.

Subsec. (b). Pub. L. 107–314, § 506(c)(1), inserted ''or 1182(c)(2)'' after ''section 876a'' in pars. (1) and (2) and substituted ''sections 707 and 707a'' for ''section 707'' in par. (2).

Subsec. (c). Pub. L. 107–314, § 506(c)(1)(A), inserted ''or 1182(c)(2)'' after ''section 876a''.

2000—Subsec. (c). Pub. L. 106–398 struck out ''(1)'' before ''A member required'' and struck out par. (2) which read as follows: ''Section 974 of this title does not apply to a member required to take leave under section 876a of this title during the period of such leave.''

1996—Subsec. (c)(1). Pub. L. 104–106 substituted ''chapter 43 of title 38'' for ''section 4301 of title 38''.

1994—Subsec. (c)(1). Pub. L. 103–353, which directed the amendment of par. (1) by substituting ''chapter 43'' for ''section 4321'', could not be executed because inter-

vening amendment by Pub. L. 103–337 had substituted ''section 4301'' for ''section 4321''. See below.

Pub. L. 103–337 substituted ''4301'' for ''4321''.

1992—Subsec. (c)(1). Pub. L. 102–568 substituted ''section 4321'' for ''section 2021''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–353 effective with respect to reemployments initiated on or after the first day after the 60-day period beginning Oct. 13, 1994, with transition rules, see section 8 of Pub. L. 103–353, set out as an Effective Date note under section 4301 of Title 38, Veterans' Benefits.

EFFECTIVE DATE

Pub. L. 97–81, § 7, Nov. 20, 1981, 95 Stat. 1089, as amended by Pub. L. 98–209, § 12(b), Dec. 6, 1983, 97 Stat. 1407, provided that:

''(a) The amendments made by this Act [enacting this section and sections 707 and 876a of this title and amending sections 701, 813, 832, 838, 867, and 869 of this title] shall take effect at the end of the sixty-day period beginning on the date of the enactment of this Act.

''(b)(1) The amendments made by section 2 [enacting this section and sections 707 and 876a of this title and amending section 701 of this title] shall apply to each member whose sentence by court-martial is approved on or after January 20, 1982—

''(A) under section 864 or 865 (article 64 or 65) of title 10, United States Code, by the officer exercising general court-martial jurisdiction under the provisions of such section as it existed on the day before the effective date of the Military Justice Act of 1983 [see Effective Date of 1983 Amendment note set out under section 801 of this title]; or

''(B) under section 860 (article 60) of title 10, United States Code, by the officer empowered to act on the sentence on or after the effective date of the Military Justice Act of 1983.

''(2) The amendments made by section 3 [amending section 813 of this title] shall apply to each person held as the result of a court-martial sentence announced on or after the effective date of such amendments.

''(3) The amendment made by section 4(a) [amending section 832 of this title] shall apply with respect to investigations under section 832 (article 32) of title 10, United States Code, that begin on or after the effective date of such amendment.

''(4) The amendment made by section 4(b) [amending section 838 of this title] shall apply to trials by courts-martial in which all charges are referred to trial on or after the effective date of such amendment.

''(5) The amendment made by section 5 [amending section 867 of this title] shall apply to any accused with respect to a Court of Military Review [now Court of Criminal Appeals] decision that is dated on or after the effective date of such amendment.''

§ 707. Payment upon disapproval of certain court-martial sentences for excess leave required to be taken

(a) A member—

(1) who is required to take leave under section 876a of this title, any period of which is charged as excess leave under section 706(a) of this title; and

(2) whose sentence by court-martial to a dismissal or a dishonorable or bad-conduct discharge is set aside or disapproved by a Court of Criminal Appeals under section 866 of this title or by the United States Court of Appeals for the Armed Forces under section 867 of this title,

shall be paid, as provided in subsection (b), for the period of leave charged as excess leave, unless a rehearing or new trial is ordered and a dismissal or a dishonorable or bad-conduct discharge is included in the result of the rehearing or new trial and such dismissal or discharge is later executed.

(b)(1) A member entitled to be paid under this section shall be deemed, for purposes of this section, to have accrued pay and allowances for each day of leave required to be taken under section 876a of this title that is charged as excess leave (except any day of accrued leave for which the member has been paid under section 706(b)(1) of this title and which has been charged as excess leave). If the pay grade of the member was reduced to a lower grade as a result of the court-martial sentence (including any reduction in pay grade under section 858a of this title) and such reduction has not been set aside, disapproved, or otherwise vacated, pay and allowances to be paid under this section shall be deemed to have accrued in such lower grade. Otherwise, such pay and allowances shall be deemed to have accrued in the pay grade held by the member on the day before the day on which his court-martial sentence was approved by the convening authority.

(2) Such a member shall be paid the amount of pay and allowances that he is deemed to have accrued, reduced by the total amount of his income from wages, salaries, tips, other personal service income, unemployment compensation, and public assistance benefits from any Government agency during the period he is deemed to have accrued pay and allowances. Except as provided in paragraph (3), such payment shall be made as follows:

(A) Payment shall be made within 60 days from the date of the order setting aside or disapproving the sentence by court-martial to a dismissal or a dishonorable or bad-conduct discharge if no rehearing or new trial has been ordered.

(B) Payment shall be made within 180 days from the date of the order setting aside or disapproving the sentence by court-martial to a dismissal or a dishonorable or bad-conduct discharge if a rehearing or new trial has been ordered but charges have not been referred to a rehearing or new trial within 120 days from the date of that order.

(C) If a rehearing or new trial has been ordered and a dismissal or a dishonorable or bad-conduct discharge is not included in the result of such rehearing or new trial, payment shall be made within 60 days of the date of the announcement of the result of such rehearing or new trial.

(D) If a rehearing or new trial has been ordered and a dismissal or a dishonorable or bad-conduct discharge is included in the result of such rehearing or new trial, but such dismissal or discharge is not later executed, payment shall be made within 60 days of the date of the order which set aside, disapproved, or otherwise vacated such dismissal or discharge.

(3) If a member is entitled to be paid under this section but fails to provide sufficient information in a timely manner regarding his income when such information is requested under regulations prescribed under subsection (c), the periods of time prescribed in paragraph (2) shall be

extended until 30 days after the date on which the member provides the information requested.

(c) This section shall be administered under uniform regulations prescribed by the Secretaries concerned. Such regulations may provide for the method of determining a member's income during any period the member is deemed to have accrued pay and allowances, including a requirement that the member provide income tax returns and other documentation to verify the amount of his income.

(Added Pub. L. 97–81, § 2(b)(1), Nov. 20, 1981, 95 Stat. 1086; amended Pub. L. 103–337, div. A, title IX, § 924(c)(1), (2), Oct. 5, 1994, 108 Stat. 2831.)

AMENDMENTS

1994—Subsec. (a)(2). Pub. L. 103–337 substituted ''Court of Criminal Appeals'' for ''Court of Military Review'' and ''Court of Appeals for the Armed Forces'' for ''Court of Military Appeals''.

EFFECTIVE DATE

Section to take effect at end of 60-day period beginning on Nov. 20, 1981, to apply to each member whose sentence by court-martial is approved on or after Jan. 20, 1982, under section 864 or 865 of this title by officer exercising general court-martial jurisdiction under provisions of such section as it existed on day before effective date of Military Justice Act of 1983 (Pub. L. 98–209), or under section 860 of this title by officer empowered to act on sentence on or after that effective date, see section 7(a), (b)(1) of Pub. L. 97–81, set out as a note under section 706 of this title.

§ 707a. Payment upon disapproval of certain board of inquiry recommendations for excess leave required to be taken

(a) An officer—

(1) who is required to take leave under section 1182(c)(2) of this title, any period of which is charged as excess leave under section 706(a) of this title, and

(2) whose recommendation for removal from active duty in a report of a board of inquiry is not approved by the Secretary concerned under section 1184 of this title,

shall be paid, as provided in subsection (b), for the period of leave charged as excess leave.

(b)(1) An officer entitled to be paid under this section shall be deemed, for purposes of this section, to have accrued pay and allowances for each day of leave required to be taken under section 1182(c)(2) of this title that is charged as excess leave (except any day of accrued leave for which the officer has been paid under section 706(b)(1) of this title and which has been charged as excess leave).

(2) The officer shall be paid the amount of pay and allowances that is deemed to have accrued to the officer under paragraph (1), reduced by the total amount of his income from wages, salaries, tips, other personal service income, unemployment compensation, and public assistance benefits from any Government agency during the period the officer is deemed to have accrued pay and allowances. Except as provided in paragraph (3), such payment shall be made within 60 days after the date on which the Secretary concerned decides not to remove the officer from active duty.

(3) If an officer is entitled to be paid under this section, but fails to provide sufficient information in a timely manner regarding the officer's income when such information is requested under regulations prescribed under subsection (c), the period of time prescribed in paragraph (2) shall be extended until 30 days after the date on which the member provides the information requested.

(c) This section shall be administered under uniform regulations prescribed by the Secretaries concerned. The regulations may provide for the method of determining an officer's income during any period the officer is deemed to have accrued pay and allowances, including a requirement that the officer provide income tax returns and other documentation to verify the amount of the officer's income.

(Added Pub. L. 107–314, div. A, title V, § 506(b), Dec. 2, 2002, 116 Stat. 2535.)

§ 708. Educational leave of absence

(a) Under such regulations as the Secretary of Defense may prescribe after consultation with the Secretary of Homeland Security and subject to subsection (b), the Secretary concerned may grant to any eligible member (as defined in subsection (e)) a leave of absence for the purpose of permitting the member to pursue a program of education. The period of a leave of absence granted under this section may not exceed two years, except that the period may exceed two years but may not exceed three years in the case of an eligible member pursuing a program of education in a health care profession.

(b)(1) A member may not be granted a leave of absence under this section unless—

(A) in the case of an enlisted member, the member agrees in writing to extend his current enlistment after completion (or other termination) of the program of education for which the leave of absence was granted for a period of two months for each month of the period of the leave of absence; and

(B) in the case of an officer, the member agrees to serve on active duty after completion (or other termination) of the program of education for which the leave of absence was granted for a period (in addition to any other period of obligated service on active duty) of two months for each month of the period of the leave of absence.

(2) A member may not be granted a leave of absence under this section until he has completed any extension of enlistment or reenlistment, or any period of obligated service, incurred by reason of any previous leave of absence granted under this section.

(c)(1) While on a leave of absence under this section, a member shall be paid basic pay but may not receive basic allowance for housing under section 403 of title 37, basic allowance for subsistence under section 402 of such title, or any other pay and allowances to which he would otherwise be entitled for such period.

(2) A period during which a member is on a leave of absence under this section shall be counted for the purposes of computing the amount of the member's basic pay, for the purpose of determining the member's eligibility for retired pay, and for the purpose of determining the member's time in grade for promotion pur-

poses, but may not be counted for the purposes of completion of the term of enlistment of the member (in the case of an enlisted member) or for purposes of section 3021 of title 38, relating to entitlement to supplemental educational assistance.

(d)(1) In time of war, or of national emergency declared by the President or the Congress after October 19, 1984, the Secretary concerned may cancel any leave of absence granted under this section.

(2) The Secretary concerned may cancel a leave of absence granted to a member under this section if the Secretary determines that the member is not satisfactorily pursuing the program of education for which the leave was granted.

(e) In this section, the term ''eligible member'' means a member of the armed forces on active duty who is eligible for basic educational assistance under chapter 30 of title 38 and who—

(1) in the case of an enlisted member, has completed at least one term of enlistment and has reenlisted; and

(2) in the case of an officer, has completed the officer's initial period of obligated service on active duty.

(Added Pub. L. 98–525, title VII, § 707(a)(1), Oct. 19, 1984, 98 Stat. 2571; amended Pub. L. 100–26, § 7(i)(2), (k)(3), Apr. 21, 1987, 101 Stat. 282, 284; Pub. L. 103–337, div. A, title X, § 1070(e)(2), Oct. 5, 1994, 108 Stat. 2859; Pub. L. 105–85, div. A, title VI, § 603(d)(2)(A), Nov. 18, 1997, 111 Stat. 1782; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 108–375, div. A, title V, § 554, Oct. 28, 2004, 118 Stat. 1913; Pub. L. 109–364, div. A, title X, § 1071(g)(3), Oct. 17, 2006, 120 Stat. 2402.)

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–364 made technical correction to directory language of Pub. L. 108–375, § 554(1). See 2004 Amendment note below.

2004—Subsec. (a). Pub. L. 108–375, § 554(2), inserted at end ''The period of a leave of absence granted under this section may not exceed two years, except that the period may exceed two years but may not exceed three years in the case of an eligible member pursuing a program of education in a health care profession.''

Pub. L. 108–375, § 554(1), as amended by Pub. L. 109–364, struck out ''for a period of not to exceed two years'' after ''leave of absence''.

2002—Subsec. (a). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

1997—Subsec. (c)(1). Pub. L. 105–85 substituted ''basic allowance for housing under section 403 of title 37, basic allowance for subsistence under section 402 of such title,'' for ''basic allowance for quarters or basic allowance for subsistence''.

1994—Subsec. (c)(2). Pub. L. 103–337 substituted ''section 3021 of title 38'' for ''section 1421 of title 38''.

1987—Subsec. (d)(1). Pub. L. 100–26, § 7(i)(2), substituted ''October 19, 1984'' for ''the date of the enactment of this section''.

Subsec. (e). Pub. L. 100–26, § 7(k)(3), inserted ''the term'' after ''In this section,''.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–364, div. A, title X, § 1071(g), Oct. 17, 2006, 120 Stat. 2402, provided that the amendment made by section 1071(g)(3) is effective as of Oct. 28, 2004, and as if included in Pub. L. 108–375 as enacted.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–85 effective Jan. 1, 1998, see section 603(e) of Pub. L. 105–85, set out as a note under section 5561 of Title 5, Government Organization and Employees.

EFFECTIVE DATE

Pub. L. 98–525, title VII, § 707(b), Oct. 19, 1984, 98 Stat. 2572, provided that: ''Section 708 of title 10, United States Code, as added by subsection (a), shall take effect on October 1, 1985.''

§ 709. Emergency leave of absence

(a) EMERGENCY LEAVE OF ABSENCE.—The Secretary concerned may grant a member of the armed forces emergency leave of absence for a qualifying emergency.

(b) LIMITATIONS.—An emergency leave of absence under this section—

(1) may be granted only once for any member;

(2) may be granted only to prevent the member from entering unearned leave status or excess leave status; and

(3) may not extend for a period of more than 14 days.

(c) QUALIFYING EMERGENCY.—In this section, the term ''qualifying emergency'', with respect to a member of the armed forces, means a circumstance that—

(1) is due to—

(A) a medical condition of a member of the immediate family of the member; or

(B) any other hardship that the Secretary concerned determines appropriate for purposes of this section; and

(2) is verified to the Secretary's satisfaction based upon information or opinion from a source in addition to the member that the Secretary considers to be objective and reliable.

(d) MILITARY DEPARTMENT REGULATIONS.—Regulations prescribed under this section by the Secretaries of the military department shall be as uniform as practicable and shall be subject to approval by the Secretary of Defense.

(e) DEFINITIONS.—In this section:

(1) The term ''unearned leave status'' means leave approved to be used by a member of the armed forces that exceeds the amount of leave credit that has been accrued as a result of the member's active service and that has not been previously used by the member.

(2) The term ''excess leave status'' means leave approved to be used by a member of the armed forces that is unearned leave for which a member is unable to accrue leave credit during the member's current term of service before the member's separation.

(Added Pub. L. 107–314, div. A, title V, § 572(a), Dec. 2, 2002, 116 Stat. 2557.)

§ 709a. Expenses incurred in connection with leave canceled due to contingency operations: reimbursement

(a) AUTHORIZATION TO REIMBURSE.—The Secretary concerned may reimburse a member of

the armed forces under the jurisdiction of the Secretary for travel and related expenses (to the extent not otherwise reimbursable under law) incurred by the member as a result of the cancellation of previously approved leave when—

(1) the leave is canceled in connection with the member's participation in a contingency operation; and

(2) the cancellation occurs within 48 hours of the time the leave would have commenced.

(b) REGULATIONS.—The Secretary of Defense and, in the case of the Coast Guard when it is not operating as a service in the Navy, the Secretary of Homeland Security shall prescribe regulations to establish the criteria for the applicability of subsection (a).

(c) CONCLUSIVENESS OF SETTLEMENT.—The settlement of an application for reimbursement under subsection (a) is final and conclusive.

(Added Pub. L. 114–328, div. A, title V, § 522(a), Dec. 23, 2016, 130 Stat. 2115.)

§ 710. Career flexibility to enhance retention of members

(a) PROGRAMS AUTHORIZED.—Each Secretary of a military department may carry out programs under which members of the regular components and members on Active Guard and Reserve duty of the armed forces under the jurisdiction of such Secretary may be inactivated from active service in order to meet personal or professional needs and returned to active service at the end of such period of inactivation from active service.

(b) PERIOD OF INACTIVATION FROM ACTIVE SERVICE; EFFECT OF INACTIVATION.—(1) The period of inactivation from active service under a program under this section of a member participating in the program shall be such period as the Secretary of the military department concerned shall specify in the agreement of the member under subsection (c), except that such period may not exceed three years.

(2) Any service by a Reserve officer while participating in a program under this section shall be excluded from computation of the total years of service of that officer pursuant to section 14706(a) of this title.

(3) Any period of participation of a member in a program under this section shall not count toward—

(A) eligibility for retirement or transfer to the Ready Reserve under either chapter 571 or 1223 of this title; or

(B) computation of retired or retainer pay under chapter 71 or 1223 of this title.

(c) AGREEMENT.—Each member of the armed forces who participates in a program under this section shall enter into a written agreement with the Secretary of the military department concerned under which agreement that member shall agree as follows:

(1) To accept an appointment or enlist, as applicable, and serve in the Ready Reserve of an armed force during the period of the inactivation of the member from active service under the program.

(2) To undergo during the period of the inactivation of the member from active service under the program such inactive service training as the Secretary concerned shall require in order to ensure that the member retains proficiency, at a level determined by the Secretary concerned to be sufficient, in the military skills, professional qualifications, and physical readiness of the member during the inactivation of the member from active service.

(3) Following completion of the period of the inactivation of the member from active service under the program, to serve two months as a member of the armed forces on active service for each month of the period of the inactivation of the member from active service under the program.

(d) CONDITIONS OF RELEASE.—The Secretary of Defense shall prescribe regulations specifying the guidelines regarding the conditions of release that must be considered and addressed in the agreement required by subsection (c). At a minimum, the Secretary shall prescribe the procedures and standards to be used to instruct a member on the obligations to be assumed by the member under paragraph (2) of such subsection while the member is released from active service.

(e) ORDER TO ACTIVE SERVICE.—Under regulations prescribed by the Secretary of the military department concerned, a member of the armed forces participating in a program under this section may, in the discretion of such Secretary, be required to terminate participation in the program and be ordered to active service.

(f) PAY AND ALLOWANCES.—(1) During each month of participation in a program under this section, a member who participates in the program shall be paid basic pay in an amount equal to two-thirtieths of the amount of monthly basic pay to which the member would otherwise be entitled under section 204 of title 37 as a member of the uniformed services on active service in the grade and years of service of the member when the member commences participation in the program.

(2)(A) A member who participates in a program shall not, while participating in the program, be paid any special or incentive pay or bonus to which the member is otherwise entitled under an agreement under chapter 5 of title 37 that is in force when the member commences participation in the program.

(B) The inactivation from active service of a member participating in a program shall not be treated as a failure of the member to perform any period of service required of the member in connection with an agreement for a special or incentive pay or bonus under chapter 5 of title 37 that is in force when the member commences participation in the program.

(3)(A) Subject to subparagraph (B), upon the return of a member to active service after completion by the member of participation in a program—

(i) any agreement entered into by the member under chapter 5 of title 37 for the payment of a special or incentive pay or bonus that was in force when the member commenced participation in the program shall be revived, with the term of such agreement after revival being the period of the agreement remaining to run

when the member commenced participation in the program; and

(ii) any special or incentive pay or bonus shall be payable to the member in accordance with the terms of the agreement concerned for the term specified in clause (i).

(B)(i) Subparagraph (A) shall not apply to any special or incentive pay or bonus otherwise covered by that subparagraph with respect to a member if, at the time of the return of the member to active service as described in that subparagraph—

(I) such pay or bonus is no longer authorized by law; or

(II) the member does not satisfy eligibility criteria for such pay or bonus as in effect at the time of the return of the member to active service.

(ii) Subparagraph (A) shall cease to apply to any special or incentive pay or bonus otherwise covered by that subparagraph with respect to a member if, during the term of the revived agreement of the member under subparagraph (A)(i), such pay or bonus ceases being authorized by law.

(C) A member who is ineligible for payment of a special or incentive pay or bonus otherwise covered by this paragraph by reason of subparagraph (B)(i)(II) shall be subject to the requirements for repayment of such pay or bonus in accordance with the terms of the applicable agreement of the member under chapter 5 of title 37.

(D) Any service required of a member under an agreement covered by this paragraph after the member returns to active service as described in subparagraph (A) shall be in addition to any service required of the member under an agreement under subsection (c).

(4)(A) Subject to subparagraph (B), a member who participates in a program is entitled, while participating in the program, to the travel and transportation allowances authorized by section 474 of title 37 for—

(i) travel performed from the residence of the member, at the time of release from active service to participate in the program, to the location in the United States designated by the member as his residence during the period of participation in the program; and

(ii) travel performed to the residence of the member upon return to active service at the end of the participation of the member in the program.

(B) An allowance is payable under this paragraph only with respect to travel of a member to and from a single residence.

(5) A member who participates in a program is entitled to carry forward the leave balance existing as of the day on which the member begins participation and accumulated in accordance with section 701 of this title, but not to exceed 60 days.

(g) PROMOTION.—(1)(A) An officer participating in a program under this section shall not, while participating in the program, be eligible for consideration for promotion under chapter 36 or 1405 of this title.

(B) Upon the return of an officer to active service after completion by the officer of participation in a program—

(i) the Secretary of the military department concerned shall adjust the date of rank of the officer in such manner as the Secretary of Defense shall prescribe in regulations for purposes of this section; and

(ii) the officer shall be eligible for consideration for promotion when officers of the same competitive category, grade, and seniority are eligible for consideration for promotion.

(2) An enlisted member participating in a program shall not be eligible for consideration for promotion during the period that—

(A) begins on the date of the inactivation of the member from active service under the program; and

(B) ends at such time after the return of the member to active service under the program that the member is treatable as eligible for promotion by reason of time in grade and such other requirements as the Secretary of the military department concerned shall prescribe in regulations for purposes of the program.

(h) CONTINUED ENTITLEMENTS.—A member participating in a program under this section shall, while participating in the program, be treated as a member of the armed forces on active duty for a period of more than 30 days for purposes of—

(1) the entitlement of the member and of the dependents of the member to medical and dental care under the provisions of chapter 55 of this title;

(2) retirement or separation for physical disability under the provisions of chapters 55 and 61 of this title;

(3) the entitlement of the member and of the survivors of the member to all death benefits under the provisions of chapter 75 of this title;

(4) the provision of all travel and transportation allowances for the survivors of deceased members to attend burial ceremonies under section 481f of title 37; and

(5) the eligibility of the member for general benefits as provided in part II of title 38.

(Added Pub. L. 115–232, div. A, title V, § 551(a), Aug. 13, 2018, 132 Stat. 1766; amended Pub. L. 116–92, div. A, title VI, § 602, Dec. 20, 2019, 133 Stat. 1423; Pub. L. 116–283, div. A, title IX, § 924(b)(18), Jan. 1, 2021, 134 Stat. 3823.)

AMENDMENTS

2021—Subsec. (c)(1). Pub. L. 116–283 substituted ''an armed force'' for ''the armed force concerned''.

2019—Subsec. (h)(3) to (5). Pub. L. 116–92 added pars. (3) to (5).

CHAPTER 41—SPECIAL APPOINTMENTS, ASSIGNMENTS, DETAILS, AND DUTIES

Sec.

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Sec.
716. Commissioned officers: transfers among the armed forces, the National Oceanic and Atmospheric Administration, and the Public Health Service.
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AMENDMENTS

2021—Pub. L. 116–283, div. A, title X, §§1064(b), 1081(a)(19), Jan. 1, 2021, 134 Stat. 3860, 3871, moved item 714 to appear immediately after item 713, inserted period at end of item 715, and added item 723.

2018—Pub. L. 115–232, div. A, title V, §508(b), Aug. 13, 2018, 132 Stat. 1749, added item 715.

2016—Pub. L. 114–328, div. A, title IX, §952(c)(2), Dec. 23, 2016, 130 Stat. 2375, added item 714 at the end of this analysis.

Pub. L. 114–328, div. A, title V, §502(g)(2), (h)(2), Dec. 23, 2016, 130 Stat. 2103, struck out items 720 ''Chief of Staff to President: appointment'' and 722 ''Attending Physician to the Congress: grade''.

2009—Pub. L. 111–84, div. A, title V, §502(i)(2), Oct. 28, 2009, 123 Stat. 2277, struck out item 721 ''General and flag officers: limitation on appointments, assignments, details, and duties outside an officer's own service''.

2006—Pub. L. 109–364, div. A, title V, §507(a)(1)(B), Oct. 17, 2006, 120 Stat. 2180, added item 722.

2003—Pub. L. 108–136, div. A, title V, §503(b), Nov. 24, 2003, 117 Stat. 1456, struck out item 714 ''Defense attaché in France: required grade''.

1997—Pub. L. 105–85, div. A, title V, §§501(b), 597(b), Nov. 18, 1997, 111 Stat. 1724, 1766, added items 714 and 721.

1994—Pub. L. 103–337, div. A, title XVI, §1671(b)(8), Oct. 5, 1994, 108 Stat. 3013, struck out item 715 ''Reserve components: detail of members of regular and reserve components to assist''.

1986—Pub. L. 99–433, title I, §110(a)(2), Oct. 1, 1986, 100 Stat. 1001, struck out item 718 ''Secretary of Defense: detail of officers to assist''.

1983—Pub. L. 98–94, title X, §1007(a)(2), Sept. 24, 1983, 97 Stat. 662, included reference to the Public Health Service in item 716.

1980—Pub. L. 96–513, title V, §§501(9)(B), 511(23)(C), Dec. 12, 1980, 94 Stat. 2908, 2922, substituted ''assignment or detail of members of the armed forces to National Oceanic and Atmospheric Administration'' for ''assignment or detail to Environmental Science Services Administration'' in item 719 and added item 720.

Pub. L. 96–215, §2(b), Mar. 25, 1980, 94 Stat. 123, inserted ''and to and from National Oceanic and Atmospheric Administration'' after ''between armed forces'' in item 716.

1970—Pub. L. 91–392, §2, Sept. 1, 1970, 84 Stat. 834, substituted ''armed forces'' for ''Army, Navy, Air Force, and Marine Corps'' in item 716.

1968—Pub. L. 90–235, §4(a)(1)(B), Jan. 2, 1968, 81 Stat. 759, added item 711a.

1966—Pub. L. 89–683, §1(2), Oct. 15, 1966, 80 Stat. 960, added item 719.

1962—Pub. L. 87–651, title I, §103(b), title II, §205(b), Sept. 7, 1962, 76 Stat. 508, 519, redesignated item 716, relating to participation of members of the armed forces in international sports, as 717, and added item 718.

1960—Pub. L. 86–533, §1(5)(B), June 29, 1960, 74 Stat. 246, repealed item 714 ''Reports to Congress on length of tours of duty outside United States by members of Army and Air Force''.

1958—Pub. L. 85–861, §1(18), Sept. 2, 1958, 72 Stat. 1442, added item 716, relating to participation of members of the armed forces in international sports.

Pub. L. 85–599, §11(1), Aug. 6, 1958, 72 Stat. 521, added item 716, relating to transfers of commissioned officers.

PILOT PROGRAM AUTHORITY TO ENHANCE CYBERSECURITY AND RESILIENCY OF CRITICAL INFRASTRUCTURE

Pub. L. 115–232, div. A, title XVI, §1650, Aug. 13, 2018, 132 Stat. 2138, provided that:

''(a) AUTHORITY.—The Secretary of Defense, in coordination with the Secretary of Homeland Security, is authorized to provide, detail, or assign technical personnel to the Department of Homeland Security on a non-reimbursable basis to enhance cybersecurity cooperation, collaboration, and unity of Government efforts.

''(b) SCOPE OF ASSISTANCE.—The authority under subsection (a) shall be limited in any fiscal year to the provision of not more than 50 technical cybersecurity personnel from the Department of Defense to the Department of Homeland Security, including the national cybersecurity and communications integration center (NCCIC) of the Department, or other locations as agreed upon by the Secretary of Defense and the Secretary of Homeland Security.

''(c) LIMITATION.—The authority under subsection (a) may not negatively impact the primary missions of the Department of Defense or the Department of Homeland Security.

''(d) ESTABLISHMENT OF PROCEDURES.—

''(1) IN GENERAL.—The Secretary of Defense and the Secretary of Homeland Security shall establish procedures to carry out subsection (a), including procedures relating to the protection of and safeguards for maintenance of information held by the NCCIC regarding United States persons.

''(2) LIMITATION.—Nothing in this subsection may be construed as providing authority to the Secretary of Defense to establish procedures regarding the NCCIC with respect to any matter outside the scope of this section.

''(e) NO EFFECT ON OTHER AUTHORITY TO PROVIDE SUPPORT.—Nothing in this section may be construed to limit the authority of an Executive department, military department, or independent establishment to provide any appropriate support, including cybersecurity support, or to provide, detail, or assign personnel, under any other law, rule, or regulation.

''(f) DEFINITIONS.—In this section, each of the terms 'Executive department', 'military department', and 'independent establishment', has the meaning given each of such terms, respectively, in chapter 1 of title 5, United States Code.

''(g) TERMINATION OF AUTHORITY.—This section shall terminate on September 30, 2022.''

EXCHANGE PROGRAM FOR NUCLEAR WEAPONS PROGRAM EMPLOYEES

Pub. L. 115–232, div. A, title XVI, §1667, Aug. 13, 2018, 132 Stat. 2155, provided that:

''(a) PROGRAM AUTHORIZED.—The Chairman of the Nuclear Weapons Council established under section 179 of title 10, United States Code, and the Administrator for Nuclear Security, shall jointly establish an exchange program under which—

''(1) the Chairman shall arrange for the temporary assignment of civilian and military personnel working on nuclear weapons policy, production, and force structure issues in the Office of the Secretary of Defense, the Joint Staff, the Navy, or the Air Force to the Office of the Deputy Administrator for Defense Programs in the National Nuclear Security Administration; and

''(2) the Administrator shall arrange for the temporary assignment of civilian personnel working on programs related to nuclear weapons in the Office of the Deputy Administrator for Defense Programs to the elements of the Department of Defense specified in paragraph (1).

''(b) PURPOSES.—The purposes of the exchange program established under subsection (a) are—

"(1) to familiarize personnel from the Department of Defense and the National Nuclear Security Administration with the equities, priorities, processes, culture, and employees of the other agency;

"(2) for participants in the exchange program to return the expertise gained through their exchanges to their original agencies at the conclusion of their exchanges; and

"(3) to improve communication between and integration of the agencies that support the formation and oversight of nuclear weapons policy through lasting relationships across the chain of command.

"(c) PARTICIPANTS.—

"(1) NUMBER OF PARTICIPANTS.—The Chairman and the Administrator shall each select not fewer than five and not more than 10 participants per year for participation in the exchange program established under subsection (a). The Chairman and the Administrator may determine how many participants to select under this paragraph without regard to the number of participants selected from the other agency.

"(2) CRITERIA FOR SELECTION.—

"(A) IN GENERAL.—The Chairman and the Administrator shall select participants for the exchange program established under subsection (a) from among mid-career employees and based on—

"(i) the qualifications and desire to participate in the program of the employee; and

"(ii) the technical needs and capacities of the Department of Defense and the National Nuclear Security Administration, as applicable.

"(B) DEPARTMENT OF DEFENSE.—In selecting participants from the Department of Defense for the exchange program established under subsection (a), the Chairman shall ensure that there is a mix of military personnel and civilian employees of the Department.

"(d) TERMS.—Exchanges pursuant to the exchange program established under subsection (a) shall be for terms of one to two years, as determined and negotiated by the Chairman and the Administrator. Such terms may begin and end on a rolling basis.

"(e) GUIDANCE AND IMPLEMENTATION.—

"(1) GUIDANCE.—Not later than 90 days after the date of the enactment of this Act [Aug. 13, 2018], the Chairman and the Administrator shall jointly develop and submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] interim guidance on the form and contours of the exchange program established under subsection (a).

"(2) IMPLEMENTATION.—Not later than 180 days after the date of the enactment of this Act, the Chairman and the Administrator shall implement the guidance developed under paragraph (1)."

REPORTS ON MEMBERS OF THE ARMED FORCES AND CIVILIAN EMPLOYEES OF THE DEPARTMENT OF DEFENSE SERVING IN THE LEGISLATIVE BRANCH

Pub. L. 109–364, div. A, title XI, §1104, Oct. 17, 2006, 120 Stat. 2409, as amended by Pub. L. 112–81, div. A, title X, §1066(c), Dec. 31, 2011, 125 Stat. 1588, provided that:

"(a) REPORTS ON DETAILS AND FELLOWSHIPS OF LONG DURATION.—Whenever a member of the Armed Forces or a civilian employee of the Department of Defense serves continuously in the Legislative Branch for more than 12 consecutive months in one or a combination of covered legislative details or fellowships, the Secretary of Defense shall submit to the congressional defense committees, within 90 days, and quarterly thereafter for as long as the service continues, a report on the service of the member or employee.

"(b) REPORTS ON CERTAIN MILITARY DETAILS AND FELLOWSHIPS.—If a member of the Armed Forces is assigned to a covered legislative detail or fellowship as the last tour of duty of such member before retirement or separation from the Armed Forces in contravention of the regulations of the Department of Defense, the Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the assignment of such member to such covered legislative detail or fellowship. The report shall include a rationale for the waiver of the regulations of the Department in order to permit the detail or fellowship.

"(c) REPORT ELEMENTS.—Each report under subsection (a) or (b) shall set forth, for each member of the Armed Forces or civilian employee of the Department of Defense covered by such report, the following:

"(1) The name of such member or employee.

"(2) In the case of a member, the Armed Force of such member.

"(3) The committee or member of Congress to which such member or employee is detailed or assigned.

"(4) A general description of the projects or tasks undertaken or to be undertaken, as applicable, by such member or employee as a detailee, fellow, or both.

"(5) The anticipated termination date of the current detail or fellowship of such member or employee.

"(d) COVERED LEGISLATIVE DETAIL OR FELLOWSHIP DEFINED.—In this section, the term 'covered legislative detail or fellowship' means the following:

"(1) A detail under the provisions of Department of Defense Directive 1000.17.

"(2) A legislative fellowship (including a legislative fellowship under the provisions of Department of Defense Directive 1322.6)."

§711. Senior members of Military Staff Committee of United Nations: appointment

The President, by and with the advice and consent of the Senate, may appoint an officer of the Army, an officer of the Navy or the Marine Corps, and an officer of the Air Force or the Space Force, as senior members of the Military Staff Committee of the United Nations.

(Aug. 10, 1956, ch. 1041, 70A Stat. 32; Pub. L. 114–328, div. A, title V, §502(f), Dec. 23, 2016, 130 Stat. 2103; Pub. L. 116–283, div. A, title IX, §924(b)(19), Jan. 1, 2021, 134 Stat. 3823.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
711	10:506b(c) (less last 12 words).	Aug. 7, 1947, ch. 512, §504(c) (less last 12 words), 61 Stat 886.

The words "Within the limitations as to numbers in grade prescribed in this Act", so far as they relate to the Army and the Air Force, are omitted as executed by the declaration of the national emergency on December 16, 1950, in accordance with an opinion of the Judge Advocate General of the Army (JAGA 1951/6180, 17 Oct. 1951). So far as they relate to the Navy and the Marine Corps they are omitted as surplusage. The words "may appoint" are inserted to make it explicit that the revised section prescribes the appointment as well as the rank and pay that go with it. The word "grade" is substituted for the word "rank". The words "Navy or Marine Corps" are substituted for the words "Navy, including the Marine Corps". The words "Army, * * * Air Force" are substituted for the words "Army less the Air Corps * * * Air Corps". The words "pay and allowances of a vice admiral or lieutenant general" are omitted as surplusage, since this is implicit upon appointment to the grade. The words "and Naval" are omitted to conform to the name "Military Staff Committee" established by Article 47 of the United Nations Charter.

AMENDMENTS

2021—Pub. L. 116–283 inserted "or the Space Force" after "Air Force".

2016—Pub. L. 114–328 struck out second sentence which read as follows: ''An officer so appointed has the grade of lieutenant general or vice admiral, as the case may be, while serving under that appointment.''

§ 711a. American National Red Cross: detail of commissioned officers

Commissioned officers of the Army, Navy, and Air Force may be detailed for duty with the American National Red Cross, by the Secretary of the military department concerned, as follows:

(1) for duty with the Service to the Armed Forces Division—

(A) one or more officers of the Army Medical Department;

(B) one or more officers of the Medical Department of the Navy; and

(C) one or more officers selected from among medical officers, dental officers, veterinary officers, medical service officers, nurses, and medical specialists of the Air Force; and

(2) to be in charge of the first-aid department—

(A) an officer of the Medical Corps of the Army;

(B) an officer of the Medical Corps of the Navy; or

(C) a medical officer of the Air Force.

(Added Pub. L. 90–235, § 4(a)(1)(A), Jan. 2, 1968, 81 Stat. 759; amended Pub. L. 90–329, June 4, 1968, 82 Stat. 170; Pub. L. 96–513, title V, § 511(21), Dec. 12, 1980, 94 Stat. 2921.)

AMENDMENTS

1980—Pub. L. 96–513 struck out ''(a)'' before ''Commissioned''.

1968—Subsec. (a)(1)(A). Pub. L. 90–329 substituted ''Army Medical Department'' for ''Army Medical Service''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

§ 712. Foreign governments: detail to assist

(a) Upon the application of the country concerned, the President, whenever he considers it in the public interest, may detail members of the Army, Navy, Air Force, Marine Corps, and Space Force to assist in military matters—

(1) any republic in North America, Central America, or South America;

(2) the Republic of Cuba, Haiti, or Santo Domingo; and

(3) during a war or a declared national emergency, any other country that he considers it advisable to assist in the interest of national defense.

(b) Subject to the prior approval of the Secretary of the military department concerned, a member detailed under this section may accept any office from the country to which he is detailed. He is entitled to credit for all service while so detailed, as if serving with the armed forces of the United States. Arrangements may be made by the President, with countries to which such members are detailed to perform functions under this section, for reimbursement to the United States or other sharing of the cost of performing such functions.

(Aug. 10, 1956, ch. 1041, 70A Stat. 32; Pub. L. 85–477, ch. V, § 502(k), June 30, 1958, 72 Stat. 275; Pub. L. 116–283, div. A, title IX, § 924(b)(1)(E), Jan. 1, 2021, 134 Stat. 3820.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
712(a)	10:540 (less provisos). 34:441a (less provisos).	May 19, 1926, ch. 334, 44 Stat. 565; May 14, 1935, ch. 109, 49 Stat. 218; Oct. 1, 1942, ch. 571, 56 Stat. 763.
712(b)	10:540 (provisos). 34:441a (provisos).	

In subsection (a), the words ''and the Commonwealth of the Philippine Islands'', in the Act of May 19, 1926, ch. 334, added by the Act of May 14, 1935, ch. 109, 49 Stat. 218, are not contained in 10:540 or 34:441a. They are also omitted from the revised section, since Proclamation No. 2695, effective July 4, 1946, 60 Stat. 1352 (48 U.S.C. 1240 (note)), proclaimed the independence of the Philippine Islands. Similar provisions relating to the Philippines are now contained in section 5 of the Act of June 26, 1946, ch. 500, 60 Stat. 315. The word ''members'' is substituted for the words ''officers and enlisted men'', in 10:540 and 34:441a.

In subsection (b), the words ''entitled to credit for all service'' are substituted for the words ''and shall be allowed the same credit for longevity, retirement, and for all other purposes'', in 10:540 and 34:441a.

AMENDMENTS

2021—Subsec. (a). Pub. L. 116–283 substituted ''Marine Corps, and Space Force'' for ''and Marine Corps'' in introductory provisions.

1958—Subsec. (b). Pub. L. 85–477 struck out provisions which authorized members of the armed forces to accept compensation or emoluments from countries to which they are detailed, and inserted provisions permitting arrangements for reimbursement or other sharing of cost.

EFFECTIVE DATE OF 1958 AMENDMENT

Pub. L. 85–477, ch. V, § 502(k), June 30, 1958, 72 Stat. 275, provided that the amendment made by that section is effective nine months after June 30, 1958.

§ 713. State Department: assignment or detail as couriers and building inspectors

(a) Upon the request of the Secretary of State, the Secretary of a military department may assign or detail members of the armed forces under his jurisdiction for duty—

(1) as inspectors of buildings owned or occupied abroad by the United States;

(2) as inspectors or supervisors of buildings under construction or repair abroad by or for the United States; and

(3) as couriers of the Department of State.

(b) The Secretary concerned may assign or detail a member for duty under subsection (a) with or without reimbursement from the Department of State. However, a member so assigned or detailed may be paid the traveling expenses authorized for officers of the Foreign Service of the United States. These expenses shall be paid from appropriations of the Department of State.

(Aug. 10, 1956, ch. 1041, 70A Stat. 33.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
713(a) ……	22:956 (words before semicolon of 1st sentence).	Aug. 13, 1946, ch. 957, § 561, 60 Stat. 1011.
713(b) ……	22:956 (less words before semicolon of 1st sentence).	

In subsection (a), the words ''members of the armed forces under his jurisdiction'' are substituted for the words ''military and naval personnel serving under their supervision''.

In subsection (b), the words ''The Secretary concerned may'' are substituted for the words ''in the discretion of the head of the department concerned''.

§ 714. Senior leaders of the Department of Defense and other specified persons: authority to provide protection within the United States

(a) PROTECTION FOR DEPARTMENT LEADERSHIP.—The Secretary of Defense, under regulations prescribed by the Secretary and in accordance with guidelines approved by the Secretary and the Attorney General, may authorize qualified members of the armed forces and qualified civilian employees of the Department of Defense to provide physical protection and personal security within the United States to the following persons who, by nature of their positions, require continuous security and protection:

(1) Secretary of Defense.

(2) Deputy Secretary of Defense.

(3) Chairman of the Joint Chiefs of Staff.

(4) Vice Chairman of the Joint Chiefs of Staff.

(5) Secretaries of the military departments.

(6) Members of the Joint Chiefs of Staff in addition to the Chairman and Vice Chairman.

(7) Commanders of combatant commands.

(b) PROTECTION FOR ADDITIONAL PERSONNEL.—

(1) AUTHORITY TO PROVIDE.—The Secretary of Defense, under regulations prescribed by the Secretary and in accordance with guidelines approved by the Secretary and the Attorney General, may authorize qualified members of the armed forces and qualified civilian employees of the Department of Defense to provide physical protection and personal security within the United States to individuals other than individuals described in paragraphs (1) through (7) of subsection (a) if the Secretary determines that such protection and security are necessary because—

(A) there is an imminent and credible threat to the safety of the individual for whom protection is to be provided; or

(B) compelling operational considerations make such protection essential to the conduct of official Department of Defense business.

(2) PERSONNEL.—Individuals authorized to receive physical protection and personal security under this subsection include the following:

(A) Any official or employee of the Department of Defense or member of the armed forces.

(B) A former or retired official who faces serious and credible threats arising from duties performed while employed by the Department for a period of up to two years beginning on the date on which the official separates from the Department.

(C) A head of a foreign state, an official representative of a foreign government, or any other distinguished foreign visitor to the United States who is primarily conducting official business with the Department of Defense.

(D) Any member of the immediate family of a person authorized to receive physical protection and personal security under this section.

(E) An individual who has been designated by the President, and who has received the advice and consent of the Senate, to serve as Secretary of Defense, but who has not yet been appointed as Secretary of Defense.

(3) LIMITATION ON DELEGATION.—The authority of the Secretary of Defense to authorize the provision of physical protection and personal security under this subsection may be delegated only to the Deputy Secretary of Defense.

(4) REQUIREMENT FOR WRITTEN DETERMINATION.—A determination of the Secretary of Defense to provide physical protection and personal security under this subsection shall be in writing, shall be based on a threat assessment by an appropriate law enforcement, security, or intelligence organization, and shall include the name and title of the officer, employee, or other individual affected, the reason for such determination, the duration of the authorized protection and security for such officer, employee, or individual, and the nature of the arrangements for the protection and security.

(5) DURATION OF PROTECTION.—

(A) INITIAL PERIOD OF PROTECTION.—After making a written determination under paragraph (4), the Secretary of Defense may provide protection and security to an individual under this subsection for an initial period of not more than 90 calendar days.

(B) SUBSEQUENT PERIOD.—If, at the end of the period that protection and security is provided to an individual under subsection (A), the Secretary determines that a condition described in subparagraph (A) or (B) of paragraph (1) continues to exist with respect to the individual, the Secretary may extend the period that such protection and security is provided for additional 60-day periods. The Secretary shall review such a determination at the end of each 60-day period to determine whether to continue to provide such protection and security.

(C) REQUIREMENT FOR COMPLIANCE WITH REGULATIONS.—Protection and personal security provided under subparagraph (B) shall be provided in accordance with the regulations and guidelines referred to in paragraph (1).

(6) SUBMISSION TO CONGRESS.—

(A) IN GENERAL.—Except as provided in subparagraph (D), the Secretary of Defense shall submit to the congressional defense committees each determination made under paragraph (4) to provide protection and secu-

rity to an individual and of each determination under paragraph (5)(B) to extend such protection and security, together with the justification for such determination, not later than 15 days after the date on which the determination is made.

(B) FORM OF REPORT.—A report submitted under subparagraph (A) may be made in classified form.

(C) REGULATIONS AND GUIDELINES.—The Secretary of Defense shall submit to the congressional defense committees the regulations and guidelines prescribed pursuant to paragraph (1) not less than 20 days before the date on which such regulations take effect.

(D) EXCEPTIONS.—Subparagraph (A) does not apply to determinations made with respect to the following individuals:

(i) An individual described in paragraph (2)(C) who is otherwise sponsored by the Secretary of Defense, the Deputy Secretary of Defense, the Chairman of the Joint Chiefs of Staff, or the Vice Chairman of the Joint Chiefs of Staff.

(ii) An individual described in paragraph (2)(E).

(c) DEFINITIONS.—In this section, the terms ''qualified members of the armed forces'' and ''qualified civilian employees of the Department of Defense'' refer collectively to members or employees who are assigned to investigative, law enforcement, or security duties of any of the following:

(1) The Army Criminal Investigation Command.

(2) The Naval Criminal Investigative Service.

(3) The Air Force Office of Special Investigations.

(4) The Defense Criminal Investigative Service.

(5) The Pentagon Force Protection Agency.

(d) CONSTRUCTION.—

(1) NO ADDITIONAL LAW ENFORCEMENT OR ARREST AUTHORITY.—Other than the authority to provide protection and security under this section, nothing in this section may be construed to bestow any additional law enforcement or arrest authority upon the qualified members of the armed forces and qualified civilian employees of the Department of Defense.

(2) POSSE COMITATUS.—Nothing in this section shall be construed to abridge section 1385 of title 18.

(3) AUTHORITIES OF OTHER DEPARTMENTS.—Nothing in this section may be construed to preclude or limit, in any way, the express or implied powers of the Secretary of Defense or other Department of Defense officials, or the duties and authorities of the Secretary of State, the Director of the United States Secret Service, the Director of the United States Marshals Service, or any other Federal law enforcement agency.

(Added and amended Pub. L. 114–328, div. A, title IX, § 952(c)(1), (4)–(6), Dec. 23, 2016, 130 Stat. 2375, 2376.)

CODIFICATION

Text of section, as added by Pub. L. 114–328, is based on text of subsecs. (a) to (d) of section 1074 of Pub. L. 110–181, div. A, title X, Jan. 28, 2008, 122 Stat. 330, as amended, which was formerly set out as a note under section 113 of this title, prior to repeal by Pub. L. 114–328, div. A, title IX, § 952(c)(3), Dec. 23, 2016, 130 Stat. 2375.

PRIOR PROVISIONS

A prior section 714, added Pub. L. 105–85, div. A, title V, § 597(a), Nov. 18, 1997, 111 Stat. 1766, related to required grade of officer selected for assignment to position of defense attaché to United States embassy in France, prior to repeal by Pub. L. 108–136, div. A, title V, § 503(a), Nov. 24, 2003, 117 Stat. 1456.

Another prior section 714, act Aug. 10, 1956, ch. 1041, 70A Stat. 33, related to reports to Congress on length of tours of duty outside the United States by members of the Army and Air Force, prior to repeal by Pub. L. 86–533, § 1(5)(A), June 29, 1960, 74 Stat. 246.

AMENDMENTS

2016—Subsec. (a). Pub. L. 114–328, § 952(c)(4)(A), substituted ''armed forces'' for ''Armed Forces'' in introductory provisions.

Subsec. (a)(6). Pub. L. 114–328, § 952(c)(5)(A)(i), substituted ''Members of the Joint Chiefs of Staff in addition to the Chairman and Vice Chairman'' for ''Chiefs of the Services''.

Subsec. (a)(7), (8). Pub. L. 114–328, § 952(c)(5)(A)(ii), (iii), redesignated par. (8) as (7) and struck out former par. (7) which read as follows: ''Chief of the National Guard Bureau.''.

Subsec. (b)(1). Pub. L. 114–328, § 952(c)(4)(A), (5)(B), in introductory provisions, substituted ''armed forces'' for ''Armed Forces'' and ''through (7)'' for ''through (8)''.

Subsec. (b)(2)(A). Pub. L. 114–328, § 952(c)(6), struck out '', military member,'' after ''official'' and inserted ''or member of the armed forces'' after ''of the Department of Defense''.

Subsec. (c). Pub. L. 114–328, § 952(c)(4)(B), substituted ''section, the terms 'qualified members of the armed forces' and'' for ''section:

''(1) CONGRESSIONAL DEFENSE COMMITTEES.—The term 'congressional defense committees' means the Committee on Appropriations and the Committee on Armed Services of the Senate and the Committee on Appropriations and the Committee on Armed Services of the House of Representatives.

''(2) QUALIFIED MEMBERS OF THE ARMED FORCES AND QUALIFIED CIVILIAN EMPLOYEES OF THE DEPARTMENT OF DEFENSE.—The terms 'qualified members of the Armed Forces' and''; redesignated subpars. (A) to (E) of former par. (2) as pars. (1) to (5), respectively, of subsec. (c); and realigned margins.

Subsec. (d)(1). Pub. L. 114–328, § 952(c)(4)(A), substituted ''armed forces'' for ''Armed Forces''.

Subsec. (d)(2). Pub. L. 114–328, § 952(c)(4)(C), struck out '', United States Code'' after ''title 18''.

§ 715. Attending Physician to the Congress: grade

A general officer serving as Attending Physician to the Congress, while so serving, holds the grade of major general. A flag officer serving as Attending Physician to the Congress, while so serving, holds the grade of rear admiral (upper half).

(Added Pub. L. 115–232, div. A, title V, § 508(a), Aug. 13, 2018, 132 Stat. 1749.)

PRIOR PROVISIONS

A prior section 715, act Aug. 10, 1956, ch. 1041, 70A Stat. 33, related to detail of members of regular and reserve components to assist those components prior to repeal by Pub. L. 103–337, div. A, title XVI, §§ 1662(g)(2), 1691, Oct. 5, 1994, 108 Stat. 2996, 3026, effective Dec. 1, 1994. See section 12501 of this title.

§ 716. Commissioned officers: transfers among the armed forces, the National Oceanic and Atmospheric Administration, and the Public Health Service

(a) Notwithstanding any other provision of law, the President, within authorized strengths and with the consent of the officer involved, may transfer any commissioned officer of a uniformed service from his uniformed service to, and appoint him in, another uniformed service. The Secretary of Defense, the Secretary of Homeland Security, the Secretary of Commerce, and the Secretary of Health and Human Services shall jointly establish, by regulations approved by the President, policies and procedures for such transfers and appointments.

(b) An officer transferred under this section may not be assigned precedence or relative rank higher than that which he held on the day before the transfer.

(Added Pub. L. 85–599, § 11(2), Aug. 6, 1958, 72 Stat. 521; amended Pub. L. 91–392, § 1, Sept. 1, 1970, 84 Stat. 834; Pub. L. 96–215, § 2(a), Mar. 25, 1980, 94 Stat. 123; Pub. L. 97–295, § 1(10), Oct. 12, 1982, 96 Stat. 1289; Pub. L. 98–94, title X, § 1007(a)(1), Sept. 24, 1983, 97 Stat. 661; Pub. L. 99–348, title III, § 304(a)(1), July 1, 1986, 100 Stat. 703; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

CODIFICATION

Another section 716 was renumbered section 717 of this title.

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–296 substituted ‘‘of Homeland Security’’ for ‘‘of Transportation’’.

1986—Subsec. (c). Pub. L. 99–348 struck out subsec. (c) which defined ‘‘uniformed service’’ for purposes of this section. See section 101(43) of this title.

1983—Pub. L. 98–94 amended section generally, substituting ‘‘transfers among the armed forces, the National Oceanic and Atmospheric Administration, and the Public Health Service’’ for ‘‘transfers between armed forces and to and from National Oceanic and Atmospheric Administration’’ in section catchline and adding subsec. (c). Prior to amendment subsecs. (a) and (b) read as follows:

‘‘(a) Notwithstanding any other provision of law, the President may, within authorized strengths, transfer any commissioned officer with his consent from his armed force or from the National Oceanic and Atmospheric Administration to, and appoint him in, another armed force or the National Oceanic and Atmospheric Administration. The Secretary of Defense, the Secretary of the department in which the Coast Guard is operating, and the Secretary of Commerce shall jointly establish, by regulations approved by the President, policies and procedures for such transfers and appointments.

‘‘(b) An officer transferred under this section—

‘‘(1) may not be assigned precedence or relative rank higher than that which he held on the day before his transfer; and

‘‘(2) shall be credited for retirement and pay purposes with the same years of service with which he has been credited on the day before his transfer.’’

1982—Subsec. (a). Pub. L. 97–295 struck out the comma after ‘‘policies’’.

1980—Pub. L. 96–215 inserted ‘‘and to and from National Oceanic and Atmospheric Administration’’ in section catchline, divided existing unlettered provisions into subsecs. (a) and (b)(1), inserted references to National Oceanic and Atmospheric Administration and to Secretary of Commerce in subsec. (a) as so redesignated, and added subsec. (b)(2).

1970—Pub. L. 91–392 substituted ‘‘armed forces’’ for ‘‘Army, Navy, Air Force, and Marine Corps’’ in section catchline and ‘‘his armed force’’, ‘‘another armed force’’, ‘‘An officer transferred under this section may not be assigned’’, and ‘‘before his transfer’’ for ‘‘the Army, Navy, Air Force, or Marine Corps’’, ‘‘any other of those armed forces’’, ‘‘No officer transferred pursuant to this authority shall be assigned’’, and ‘‘prior to such transfer’’ in text, respectively, and authorized interservice transfers of officers of the Coast Guard.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

DELEGATION OF FUNCTIONS

Functions of President under subsec. (a) of this section delegated to Secretary of Commerce by section 1(m) of Ex. Ord. No. 11023, May 28, 1962, 27 F.R. 5131, as amended, set out as a note under section 301 of Title 3, The President.

§ 717. Members of the armed forces: participation in international sports

(a) The Secretary of Defense, or the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, may permit members of the armed forces under his jurisdiction to train for, attend, and participate in any of the following sports competitions:

(1) The Pan-American Games and the Olympic Games, and qualifying events and preparatory competition for those games.

(2) The Paralympic Games, if eligible to participate in those games, and qualifying events and preparatory competition for those games.

(3) Any other international competition in amateur sports, if the Secretary of State determines that the interests of the United States will be served by participation in that competition, and qualifying events and preparatory competition for that competition.

(b) Subject to subsections (c) and (d), the Secretary of Defense or the Secretary of Homeland Security, as the case may be, may spend such funds, and acquire and use such supplies, as he determines to be necessary to provide for—

(1) the training of members of the armed forces for the competitions covered by subsection (a);

(2) their attendance at and participation in those competitions; and

(3) the training of animals of the armed forces for, and their attendance at and participation in, those competitions.

(c)(1) Not more than $3,000,000, to be apportioned among the military departments as the Secretary of Defense prescribes, may be spent during each successive four-year period beginning on October 1, 1980, for the participation of members of the Army, Navy, Air Force, Marine Corps, and Space Force in the competitions covered by subsection (a).

(2) Not more than $100,000 may be spent during each successive four-year period beginning on October 1, 1980, for the participation of members of the Coast Guard in the competitions covered by subsection (a).

(d) Appropriations available to the Department of Defense or to the Department of Home-

land Security, as the case may be, may be used to carry out this section.

(Added Pub. L. 85–861, § 1(17), Sept. 2, 1958, 72 Stat. 1442, § 716; renumbered § 717, Pub. L. 87–651, title I, § 103(a), Sept. 7, 1962, 76 Stat. 508; amended Pub. L. 89–348, § 1(12), Nov. 8, 1965, 79 Stat. 1311; Pub. L. 89–718, § 7, Nov. 2, 1966, 80 Stat. 1117; Pub. L. 96–513, title V, § 511(22), Dec. 12, 1980, 94 Stat. 2921; Pub. L. 98–525, title XV, § 1534, Oct. 19, 1984, 98 Stat. 2632; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 109–163, div. A, title V, § 561, Jan. 6, 2006, 119 Stat. 3266; Pub. L. 116–283, div. A, title IX, § 924(b)(1)(F), Jan. 1, 2021, 134 Stat. 3820.)

HISTORICAL AND REVISION NOTES

1958 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
716 [now 717].	22:1981. 22:1982. 22:1983.	Mar. 14, 1955, ch. 11 (less last 2 pars.), 69 Stat. 11.

In subsection (a), the first 27 words are substituted for section 1 of the source statute. The reference to the Second Pan-American Games, the Seventh Olympic Winter Games, and the Games of the XVI Olympiad are omitted as covered by clause (1) of the revised subsection. The words ''subject to the limitation contained in subsection (b) herein'' are omitted as covered by revised subsection (b). The words ''any other'' are substituted for the words ''other * * * not specified in (1) above''.

In subsection (b), the word ''entry'' is substituted for the word ''commitment'' for clarity. The words ''or the Secretary of the Treasury, as the case may be'' are inserted since, under subsection (a), the Secretary of the Treasury has the prescribed authority with respect to members of the Coast Guard when it is not operating as a service in the Navy.

In subsection (c), the words ''materiel, and equipment'' are omitted as covered by the word ''supplies'' as defined in section 101(26) of this title.

1962 ACT

This section corrects a duplication in numbering occasioned by the addition of a duplicate section 716 by Pub. L. 85–861. (The first section 716 was added by Pub. L. 85–599.)

AMENDMENTS

2021—Subsec. (c)(1). Pub. L. 116–283 substituted ''Marine Corps, and Space Force'' for ''and Marine Corps''.

2006—Subsec. (a). Pub. L. 109–163 substituted ''participate in any of the following sports competitions:

''(1) The Pan-American Games and the Olympic Games, and qualifying events and preparatory competition for those games.

''(2) The Paralympic Games, if eligible to participate in those games, and qualifying events and preparatory competition for those games.

''(3) Any other''

for ''participate in—

''(1) Pan-American Games and Olympic Games and qualifying events and preparatory competition for those games; and

''(2) any other''.

2002—Subsecs. (a), (b), (d). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

1984—Subsec. (a)(1). Pub. L. 98–525, § 1534(1), included qualifying events and preparatory competition.

Subsec. (a)(2). Pub. L. 98–525, § 1534(2), included qualifying events and preparatory competition.

Subsec. (b). Pub. L. 98–525, § 1534(3), struck out reference to subsec. (e).

Subsec. (c). Pub. L. 98–525, § 1534(4), (6), designated existing provisions as par. (1), substituted ''$3,000,000'' for ''$800,000'' and ''October 1, 1980'' for ''March 14, 1955'', redesignated subsec. (d) as par. (2), and substituted ''October 1, 1980'' for ''March 14, 1955''.

Subsecs. (d), (e). Pub. L. 98–525, § 1534(7), redesignated subsec. (e) as (d). Former subsec. (d) redesignated par. (2) of subsec. (c).

1980—Subsec. (a). Pub. L. 96–513, § 511(22)(A), substituted ''Transportation'' for ''the Treasury''.

Subsec. (b). Pub. L. 96–513, § 511(22), redesignated subsec. (c) as (b) and substituted reference to subsec. (c) for reference to subsec. (f), and ''Transportation'' for ''the Treasury''.

Subsecs. (c), (d). Pub. L. 96–513, § 511(22)(C), redesignated subsecs. (d) and (e) as (c) and (d), respectively. Former subsec. (c) redesignated (b).

Subsecs. (e), (f). Pub. L. 96–513, § 511(22) (A), (C), redesignated subsec. (f) as (e) and substituted ''Transportation'' for ''the Treasury''. Former subsection (e) redesignated (d).

1966—Subsec. (b). Pub. L. 89–718 repealed subsec. (b) which required the Secretary of Defense or the Secretary of the Treasury to report to the Committees on Armed Services of the Senate and House of Representatives the details of the proposed participation by members of the Armed Forces under his jurisdiction in international amateur sports competition. See also Pub. L. 89–348, § 1(12), Nov. 8, 1965, 79 Stat. 1311, which earlier repealed the reporting requirement of subsec. (b).

1965—Subsec. (b). Pub. L. 89–348 repealed provision of subsec. (b) which required the Secretary of Defense or the Secretary of the Treasury, as the case may be, to report to the Committees on the Armed Services of the Senate and House of Representatives the details of the proposed participation by members of the Armed Forces under his jurisdiction in international amateur sports competition.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

[§ 718. Repealed. Pub. L. 99–433, title I, § 110(a)(1), Oct. 1, 1986, 100 Stat. 1001]

Section, added Pub. L. 87–651, title II, § 205(a), Sept. 7, 1962, 76 Stat. 519, provided that officers of the armed forces could be detailed for duty as assistants or personal aides to the Secretary of Defense.

§ 719. Department of Commerce: assignment or detail of members of the armed forces to National Oceanic and Atmospheric Administration

Upon the request of the Secretary of Commerce, the Secretary of a military department may assign or detail members of the armed forces under his jurisdiction for duty in the National Oceanic and Atmospheric Administration, Department of Commerce, with reimbursement from the Department of Commerce. Notwithstanding any other provision of law, a member so assigned or detailed may exercise the functions, and assume the title, of any position in that Administration without affecting his status as a member of an armed force, but he is not entitled to the compensation fixed for that position.

(Added Pub. L. 89–683, § 1(1), Oct. 15, 1966, 80 Stat. 960; amended Pub. L. 96–513, title I, § 511(23)(A), (B), Dec. 12, 1980, 94 Stat. 2921.)

AMENDMENTS

1980—Pub. L. 96–513 substituted ''of members of the armed forces to National Oceanic and Atmospheric'' for ''to Environmental Science Services'' in section catchline, and substituted ''National Oceanic and Atmospheric'' for ''Environmental Science Services'' in text.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

[§ 720. Repealed. Pub. L. 114–328, div. A, title V, § 502(g)(1), Dec. 23, 2016, 130 Stat. 2103]

Section, added Pub. L. 96–513, title V, § 501(9)(A), Dec. 12, 1980, 94 Stat. 2907, related to appointment of Chief of Staff to President.

[§ 721. Repealed. Pub. L. 111–84, div. A, title V, § 502(i)(1), Oct. 28, 2009, 123 Stat. 2276]

Section, added Pub. L. 105–85, div. A, title V, § 501(a), Nov. 18, 1997, 111 Stat. 1723; amended Pub. L. 107–314, div. A, title X, § 1041(a)(4), Dec. 2, 2002, 116 Stat. 2645, related to limitation on appointments, assignments, details, and duties outside a general or flag officer's own service.

[§ 722. Repealed. Pub. L. 114–328, div. A, title V, § 502(h)(1), Dec. 23, 2016, 130 Stat. 2103]

Section, added Pub. L. 109–364, div. A, title V, § 507(a)(1)(A), Oct. 17, 2006, 120 Stat. 2180, related to grade of Attending Physician to the Congress.

§ 723. Support of Federal authorities in response to civil disturbances: requirement for use of members of the Armed Forces and Federal law enforcement personnel

(a) REQUIREMENT.—Whenever a member of the armed forces (including the National Guard) or Federal law enforcement personnel provide support to Federal authorities to respond to a civil disturbance, each individual employed in the capacity of providing such support shall visibly display—

(1) the individual's name or other individual identifier that is unique to that individual; and

(2) the name of the armed force, Federal entity, or other organization by which such individual is employed.

(b) EXCEPTION.—The requirement under subsection (a) shall not apply to individuals referred to in such subsection who—

(1) do not wear a uniform or other distinguishing clothing or equipment in the regular performance of their official duties; or

(2) are engaged in undercover operations in the regular performance of their official duties.

(Added Pub. L. 116–283, div. A, title X, § 1064(a), Jan. 1, 2021, 134 Stat. 3860.)

CHAPTER 43—RANK AND COMMAND

Sec.
741. Rank: commissioned officers of the armed forces.
742. Rank: warrant officers.
743. Rank: Chief of Staff of the Army; Chief of Naval Operations; Chief of Staff of the Air Force; Commandant of the Marine Corps; Chief of Space Operations.
Sec.
[744, 745. Repealed.]
747. Command: when different commands of Army, Navy, Air Force, Marine Corps, Space Force, and Coast Guard join.
749. Command: commissioned officers in same grade or corresponding grades on duty at same place.
750. Command: retired officers.

AMENDMENTS

2021—Pub. L. 116–283, div. A, title IX, § 924(b)(2)(C), (20)(C), Jan. 1, 2021, 134 Stat. 3821, 3824, added items 743 and 747 and struck out former items 743 ''Rank: Chief of Staff of the Army; Chief of Naval Operations; Chief of Staff of the Air Force; Commandant of the Marine Corps'' and 747 ''Command: when different commands of Army, Navy, Air Force, Marine Corps, and Coast Guard join''.

2016—Pub. L. 114–328, div. A, title V, § 502(i)(2), Dec. 23, 2016, 130 Stat. 2103, struck out item 744 ''Physician to White House: assignment; grade''.

1991—Pub. L. 102–190, div. A, title XI, § 1114(c), Dec. 5, 1991, 105 Stat. 1502, added item 742 and struck out item 745 ''Warrant officers: rank''.

1987—Pub. L. 100–180, div. A, title XIII, § 1314(b)(5)(B), Dec. 4, 1987, 101 Stat. 1175, inserted ''; Commandant of the Marine Corps'' after ''Air Force'' in item 743.

1980—Pub. L. 96–513, title V, § 501(10)(A), Dec. 12, 1980, 94 Stat. 2908, as amended Pub. L. 97–22, § 10(a)(1), July 10, 1981, 95 Stat. 136, substituted ''armed forces'' for ''Army, Navy, Air Force, and Marine Corps'' in item 741.

Pub. L. 96–513, title V, § 501(10)(B), Dec. 12, 1980, 94 Stat. 2908, added item 750.

1968—Pub. L. 90–235, § 5(a)(1)(B), Jan. 2, 1968, 81 Stat. 761, added items 747 and 749.

1958—Pub. L. 85–861, § 1(19), Sept. 2, 1958, 72 Stat. 1442, struck out item 742 ''Rank: officers of regular and reserve components''.

§ 741. Rank: commissioned officers of the armed forces

(a) Among the grades listed below, the grades of general and admiral are equivalent and are senior to other grades and the grades of second lieutenant and ensign are equivalent and are junior to other grades. Intermediate grades rank in the order listed as follows:

Army, Air Force, and Marine Corps	*Navy and Coast Guard*
General	Admiral.
Lieutenant general	Vice admiral.
Major general	Rear admiral.
Brigadier general	Rear admiral (lower half).
Colonel	Captain.
Lieutenant colonel	Commander.
Major	Lieutenant commander.
Captain	Lieutenant.
First lieutenant	Lieutenant (junior grade).
Second lieutenant	Ensign.

(b) Rank among officers of the same grade or of equivalent grades is determined by comparing dates of rank. An officer whose date of rank is earlier than the date of rank of another officer of the same or equivalent grade is senior to that officer.

(c) Rank among officers of the Army, Navy, Air Force, Marine Corps, and Space Force of the same grade or of equivalent grades who have the same date of rank is determined by regulations prescribed by the Secretary of Defense which shall apply uniformly among the Army, Navy, Air Force, Marine Corps, and Space Force.

(d)(1) The date of rank of an officer of the Army, Navy, Air Force, Marine Corps, or Space Force who holds a grade as the result of an original appointment shall be determined by the Secretary of the military department concerned at the time of such appointment. The date of rank of an officer of the Army, Navy, Air Force, Marine Corps, or Space Force who holds a grade as the result of an original appointment and who at the time of such appointment was awarded service credit for prior commissioned service or constructive credit for advanced education or training, or special experience shall be determined so as to reflect such prior commissioned service or constructive service. Determinations by the Secretary concerned under this paragraph shall be made under regulations prescribed by the Secretary of Defense which shall apply uniformly among the Army, Navy, Air Force, Marine Corps, and Space Force.

(2) Except as otherwise provided by law, the date of rank of an officer who holds a grade as the result of a promotion is the date of his appointment to that grade.

(3) Under regulations prescribed by the Secretary of Defense, which shall apply uniformly among the Army, Navy, Air Force, Marine Corps, and Space Force, the date of rank of a reserve commissioned officer (other than a warrant officer) of the Army, Navy, Air Force, Marine Corps, or Space Force who is to be placed on the active-duty list and who has not been on continuous active duty since his original appointment as a reserve commissioned officer in a grade above chief warrant officer, W–5, or who is transferred from an inactive status to an active status and placed on the active-duty list or the reserve active-status list may, effective on the date on which he is placed on the active-duty list or reserve active-status list, be changed by the Secretary concerned to a later date to reflect such officer's qualifications and experience. The authority to change the date of rank of a reserve officer who is placed on the active-duty list to a later date does not apply in the case of an officer who (A) has served continuously in the Selected Reserve of the Ready Reserve since the officer's last promotion, or (B) is placed on the active-duty list while on a promotion list as described in section 14317(b) of this title.

(4)(A) The Secretary concerned may adjust the date of rank of an officer appointed under section 624(a) of this title to a higher grade that is not a general officer or flag officer grade if the appointment of that officer to that grade is delayed from the date on which (as determined by the Secretary) it would otherwise have been made by reason of unusual circumstances (as determined by the Secretary) that cause an unintended delay in—

(i) the processing or approval of the report of the selection board recommending the appointment of that officer to that grade; or

(ii) the processing or approval of the promotion list established on the basis of that report.

(B) The adjusted date of rank applicable to the grade of an officer under subparagraph (A) shall be consistent—

(i) with the officer's position on the promotion list for that grade and competitive category when additional officers in that grade and competitive category were needed; and

(ii) with compliance with the applicable authorized strengths for officers in that grade and competitive category.

(C) The adjusted date of rank applicable to the grade of an officer under subparagraph (A) shall be the effective date for—

(i) the officer's pay and allowances for that grade; and

(ii) the officer's position on the active-duty list.

(D) When under subparagraph (A) the Secretary concerned adjusts the date of rank of an officer in a grade to which the officer was appointed by and with the advice and consent of the Senate and the adjustment is to a date before the date of the advice and consent of the Senate to that appointment, the Secretary shall promptly transmit to the Committee on Armed Services of the Senate a notification of that adjustment. Any such notification shall include the name of the officer and a discussion of the reasons for the adjustment of date of rank.

(E) Any adjustment in date of rank under this paragraph shall be made under regulations prescribed by the Secretary of Defense, which shall apply uniformly among the Army, Navy, Air Force, Marine Corps, and Space Force.

(Aug. 10, 1956, ch. 1041, 70A Stat. 33; Pub. L. 96–513, title I, § 107, Dec. 12, 1980, 94 Stat. 2869; Pub. L. 97–22, § 4(h), July 10, 1981, 95 Stat. 127; Pub. L. 97–86, title IV, § 405(b)(8), Dec. 1, 1981, 95 Stat. 1106; Pub. L. 97–295, § 1(11), Oct. 12, 1982, 96 Stat. 1289; Pub. L. 98–557, § 25(c), Oct. 30, 1984, 98 Stat. 2873; Pub. L. 99–145, title V, § 514(b)(8), Nov. 8, 1985, 99 Stat. 629; Pub. L. 102–190, div. A, title XI, § 1131(1)(A), Dec. 5, 1991, 105 Stat. 1505; Pub. L. 103–337, div. A, title XVI, § 1626, Oct. 5, 1994, 108 Stat. 2962; Pub. L. 104–106, div. A, title XV, § 1501(a)(3), Feb. 10, 1996, 110 Stat. 495; Pub. L. 107–107, div. A, title V, § 506(a), Dec. 28, 2001, 115 Stat. 1089; Pub. L. 116–283, div. A, title IX, § 924(b)(1)(G), (3)(M), Jan. 1, 2021, 134 Stat. 3820, 3821.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
741(a)	10:517 (1st and 2d sentences, less applicability to rank within grade). 14:43. 34:651 (less applicability to establishment of commissioned grades, and less applicability to rank within grade). 34:241. 34:241a (1st and 2d sentences, less applicability to rank within grade).	Aug. 7, 1947, ch. 512, §§ 314(j), 516, 61 Stat. 865, 908. R.S. 1603 (less applicability to establishment of commissioned grades). R.S. 1466. Aug. 4, 1949, ch. 393, § 1(43), 63 Stat. 498.
741(b)	10:517 (1st and 2d sentences, as applicable to rank within grade). 34:241a (1st and 2d sentences, as applicable to rank within grade). 34:626–1(j). 34:651 (less applicability to establishment of commissioned grades, and as applicable to rank within grade).	

HISTORICAL AND REVISION NOTES—CONTINUED

Revised section	Source (U.S. Code)	Source (Statutes at Large)
741(c)	10:517 (less 1st and 2d sentences). 34:241a (less 1st and 2d sentences).	

In subsection (a), the word ''Regular'', pertaining to major generals and brigadier generals, in 10:517 and 34:241a, is omitted, since the last sentence of 10:517 and 34:241a establish the rank of nonregular officers of the Army and the Air Force, with respect to officers of the Regular Army and the Regular Air Force. The effect of establishing their rank with respect to regular officers, when read in connection with the provisions prescribing the rank of officers of the regular components with officers of the other services, under 10:517 (less last sentence), 34:241a (less last sentence), and 34:241, is therefore to establish the rank of nonregular officers with respect to officers of the other listed services. This allows a consolidation of 10:517 (less last sentence, as applicable to rank), 34:241, and 34:241a (less last sentence, as applicable to rank), together with 34:651, into a table of rank among officers of the Army, Navy, Air Force, and Marine Corps. The words ''lineal rank only being considered'', in 34:241, are covered by setting forth the grades in tabular form. The words ''whether on the active or retired list'', in 34:241, are omitted, since retired officers of the Navy continue to be officers of the Navy. The words ''Lieutenant (junior grade)'' are substituted for the word ''masters'', in R.S. 1466, to reflect the change made in the name of that grade by the Act of March 3, 1883, ch. 97 (2d par.), 22 Stat. 472.

In subsections (a) and (b), the words ''entitled to pay'' and ''entitled to the pay'', respectively, are inserted, since rear admiral is one grade with two ranks depending on the amount of pay to which the incumbent is entitled.

In subsection (b), the words ''in such grades'', in 10:517 and 34:241a, are omitted as surplusage.

In subsection (c), the words ''A commissioned officer of the Army or the Air Force'' are substituted for the words ''All officers of the Army of the United States, including all components thereof'', since rank among officers of the Regular Army and Regular Air Force is determined under sections 3573, 3574, 8573, and 8574 of this title.

AMENDMENTS

2021—Subsec. (c). Pub. L. 116–283, § 924(b)(1)(G), substituted ''Marine Corps, and Space Force'' for ''and Marine Corps'' in two places.

Subsec. (d). Pub. L. 116–283, § 924(b)(3)(M), substituted ''Marine Corps, or Space Force'' for ''or Marine Corps'' wherever appearing.

Pub. L. 116–283, § 924(b)(1)(G), substituted ''Marine Corps, and Space Force'' for ''and Marine Corps'' wherever appearing.

2001—Subsec. (d)(4). Pub. L. 107–107 added par. (4).

1996—Subsec. (d)(3). Pub. L. 104–106 made technical correction to directory language of Pub. L. 103–337, § 1626(1). See 1994 Amendment note below.

1994—Subsec. (d)(3). Pub. L. 103–337, § 1626(3), inserted at end ''The authority to change the date of rank of a reserve officer who is placed on the active-duty list to a later date does not apply in the case of an officer who (A) has served continuously in the Selected Reserve of the Ready Reserve since the officer's last promotion, or (B) is placed on the active-duty list while on a promotion list as described in section 14317(b) of this title.''

Pub. L. 103–337, § 1626(2), inserted ''or reserve active-status list'' after ''he is placed on the active-duty list''.

Pub. L. 103–337, § 1626(1), as amended by Pub. L. 104–106, inserted ''or who is transferred from an inactive status to an active status and placed on the active-duty list or the reserve active-status list may, effective on the date on which he is placed on the active-duty list'' after ''warrant officer, W–5,''.

1991—Subsec. (d)(3). Pub. L. 102–190 substituted ''chief warrant officer, W–5,'' for ''warrant officer (W–4)''.

1985—Subsec. (a). Pub. L. 99–145 substituted ''Rear admiral (lower half)'' for ''Commodore'' in table.

1984—Subsec. (a). Pub. L. 98–557 struck out ''(Navy) and Rear admiral (upper half) (Coast Guard)'' after ''Rear admiral'' and ''(Navy) and Rear admiral (lower half) (Coast Guard)'' after ''Commodore'' in table.

1982—Subsec. (c). Pub. L. 97–295 substituted ''the'' for ''the the'' after ''uniformly among''.

1981—Pub. L. 97–22, § 4(h)(4), substituted ''armed forces'' for ''Army, Navy, Air Force, and Marine Corps'' in section catchline.

Subsec. (a). Pub. L. 97–86 substituted ''Commodore'' for ''Commodore admiral'' in right column of table opposite Brigadier general.

Pub. L. 97–22, § 4(h)(1), inserted reference to the Coast Guard in column heading and inserted references to Rear admiral (upper half) (Coast Guard) and Rear admiral (lower half) (Coast Guard).

Subsec. (c). Pub. L. 97–22, § 4(h)(2), inserted ''of the Army, Navy, Air Force, and Marine Corps'' after ''Rank among officers''.

Subsec. (d)(1). Pub. L. 97–22, § 4(h)(3)(A), inserted ''of the Army, Navy, Air Force, or Marine Corps'' after ''officer'' in two places.

Subsec. (d)(3). Pub. L. 97–22, § 4(h)(3)(B), inserted ''of the Army, Navy, Air Force, or Marine Corps'' after ''(other than a warrant officer)''.

1980—Pub. L. 96–513 completely revised section to restructure and redefine various ranks of commissioned officers of the Army, Air Force, Marine Corps, and Navy and relationships of officers in those ranks among themselves.

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–107, div. A, title V, § 506(c), Dec. 28, 2001, 115 Stat. 1090, provided that:

''(1) Paragraph (4) of section 741(d) of title 10, United States Code, as added by subsection (a), and paragraph (2) of section 14308(c) of such title, as added by subsection (b), shall apply with respect to any report of a selection board recommending officers for promotion to the next higher grade that is submitted to the Secretary of the military department concerned on or after the date of the enactment of this Act [Dec. 28, 2001].

''(2) The Secretary of the military department concerned may apply the applicable paragraph referred to in paragraph (1) in the case of an appointment of an officer to a higher grade resulting from a report of a selection board submitted to the Secretary before the date of the enactment of this Act if the Secretary determines that such appointment would have been made on an earlier date that is on or after October 1, 2001, and was delayed under the circumstances specified in paragraph (4) of section 741(d) of title 10, United States Code, as added by subsection (a).''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–106 effective as if included in the Reserve Officer Personnel Management Act, title XVI of Pub. L. 103–337, as enacted on Oct. 5, 1994, see section 1501(f)(3) of Pub. L. 104–106, set out as a note under section 113 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective Oct. 1, 1996, see section 1691(b)(1) of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–190 effective Feb. 1, 1992, see section 1132 of Pub. L. 102–190, set out as a note under section 521 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–86 effective Sept. 15, 1981, see section 405(f) of Pub. L. 97–86, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Sept. 15, 1981, but the authority to prescribe regulations under the amendment by Pub. L. 96–513 effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 742. Rank: warrant officers

(a) Among warrant officer grades, warrant officer grades of a higher numerical designation are senior to warrant officer grades of a lower numerical designation.

(b) Rank among warrant officers of the same grade, and date of rank of warrant officers, is determined in the same manner as prescribed in section 741 of this title for officers in grades above warrant officer grades.

(Added Pub. L. 102–190, div. A, title XI, § 1114(a), Dec. 5, 1991, 105 Stat. 1502.)

PRIOR PROVISIONS

A prior section 742, act Aug. 10, 1956, ch. 1041, 70A Stat. 34, related to rank of regular officers and reserve officers, prior to repeal by Pub. L. 85–861, § 36B(4), Sept. 2, 1958, 72 Stat. 1570.

EFFECTIVE DATE

Section effective Feb. 1, 1992, see section 1132 of Pub. L. 102–190, set out as an Effective Date of 1991 Amendment note under section 521 of this title.

§ 743. Rank: Chief of Staff of the Army; Chief of Naval Operations; Chief of Staff of the Air Force; Commandant of the Marine Corps; Chief of Space Operations

The Chief of Staff of the Army, the Chief of Naval Operations, the Chief of Staff of the Air Force, the Commandant of the Marine Corps, and the Chief of Space Operations rank among themselves according to dates of appointment to those offices, and rank above all other officers on the active-duty list of the Army, Navy, Air Force, Marine Corps, and Space Force, except the Chairman and the Vice Chairman of the Joint Chiefs of Staff.

(Aug. 10, 1956, ch. 1041, 70A Stat. 34; Pub. L. 96–513, title I, § 501(11), Dec. 12, 1980, 94 Stat. 2908; Pub. L. 99–433, title II, § 202(b), Oct. 1, 1986, 100 Stat. 1010; Pub. L. 100–180, div. A, title XIII, § 1314(a)(2), (b)(5)(A), Dec. 4, 1987, 101 Stat. 1175; Pub. L. 116–283, div. A, title IX, § 924(b)(1)(H), (20)(A), (B), Jan. 1, 2021, 134 Stat. 3820, 3823.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
743	5:626c(b).	July 26, 1947, ch. 343, § 208(b), 61 Stat. 503; Sept. 19, 1951, ch. 407, § 402, 65 Stat. 333.

5:626c(b) (1st sentence) is omitted as superseded by sections 8031(a)(1) and 8034(a) of this title. 5:626c(b) (2d sentence) is omitted as covered by section 8034(d) of this title. 5:626c(b) (3d and 4th sentences) is omitted as executed. 5:626c(b) (5th sentence) is omitted as covered by section 8034(b) of this title. 5:626c(b) (proviso of last sentence) is omitted as executed, since the incumbents to whom it is applied no longer hold the offices mentioned. The exception as to the Chairman of the Joint Chiefs of Staff is included because of section 142(c) of this title. The words ''and the Marine Corps'' are inserted, since under section 5081 of this title the Chief of Naval Operations takes precedence over all other officers of the naval service.

AMENDMENTS

2021—Pub. L. 116–283, § 924(b)(20)(B), amended section catchline generally. Prior to amendment, section catchline read as follows: ''Rank: Chief of Staff of the Army; Chief of Naval Operations; Chief of Staff of the Air Force; Commandant of the Marine Corps''.

Pub. L. 116–283, § 924(b)(20)(A), substituted ''the Commandant of the Marine Corps, and the Chief of Space Operations'' for ''and the Commandant of the Marine Corps''.

Pub. L. 116–283, § 924(b)(1)(H), substituted ''Marine Corps, and Space Force'' for ''and Marine Corps''.

1987—Pub. L. 100–180, § 1314(b)(5)(A), inserted ''; Commandant of the Marine Corps'' after ''Air Force'' in section catchline.

Pub. L. 100–180, § 1314(a)(2), made technical correction in directory language of Pub. L. 99–433. See 1986 Amendment note below.

1986—Pub. L. 99–433, as amended by Pub. L. 100–180, § 1314(a)(2), inserted reference to the Commandant of the Marine Corp and the Vice Chairman of the Joint Chiefs of Staff.

1980—Pub. L. 96–513 substituted ''active-duty list'' for ''active list''.

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100–180, div. A, title XIII, § 1314(e)(1), Dec. 4, 1987, 101 Stat. 1176, provided that: ''The amendments made by subsection (a) [amending this section, sections 2431 to 2434 of this title, and provisions set out as notes under sections 111 and 3033 of this title] shall apply as if included in the enactment of the Goldwater-Nichols Department of Defense Reorganization Act of 1986 (Public Law 99–433).''

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

[§ 744. Repealed. Pub. L. 114–328, div. A, title V, § 502(i)(1), Dec. 23, 2016, 130 Stat. 2103]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 34, related to assignment and grade of physician to the White House.

[§ 745. Repealed. Pub. L. 102–190, div. A, title XI, § 1114(b), Dec. 5, 1991, 105 Stat. 1502]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 34, related to ranking of warrant officers. See section 742 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Feb. 1, 1992, see section 1132 of Pub. L. 102–190, set out as an Effective Date of 1991 Amendment note under section 521 of this title.

§ 747. Command: when different commands of Army, Navy, Air Force, Marine Corps, Space Force, and Coast Guard join

When different commands of the Army, Navy, Air Force, Marine Corps, Space Force, and Coast Guard join or serve together, the officer highest

in rank in the Army, Navy, Air Force, Marine Corps, Space Force, or Coast Guard on duty there, who is otherwise eligible to command, commands all those forces unless otherwise directed by the President.

(Added Pub. L. 90–235, § 5(a)(1)(A), Jan. 2, 1968, 81 Stat. 760; amended Pub. L. 116–283, div. A, title IX, § 924(b)(2)(A)(iv), (B), Jan. 1, 2021, 134 Stat. 3821.)

AMENDMENTS

2021—Pub. L. 116–283, § 924(b)(2)(B), amended section catchline generally. Prior to amendment, section catchline read as follows: ''Command: when different commands of Army, Navy, Air Force, Marine Corps, and Coast Guard join''.

Pub. L. 116–283, § 924(b)(2)(A)(iv), substituted ''Marine Corps, Space Force,'' for ''Marine Corps,'' in two places.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 749. Command: commissioned officers in same grade or corresponding grades on duty at same place

(a) When the Army, Navy, Air Force, Marine Corps, Space Force, or Coast Guard, as the case may be, has on duty in the same area, field command, or organization two or more commissioned officers of the same grade who are otherwise eligible to command, the President may assign the command without regard to rank in that grade.

(b) When officers of the Army, Navy, Air Force, Marine Corps, Space Force, or Coast Guard are on duty in the same area, field, command, or organization and two or more commissioned officers of different services, who are otherwise eligible to command, have the same grade or corresponding grades, the President may assign the command without regard to rank in that grade.

(Added Pub. L. 90–235, § 5(a)(1)(A), Jan. 2, 1968, 81 Stat. 760; amended Pub. L. 116–283, div. A, title IX, § 924(b)(2)(A)(v), Jan. 1, 2021, 134 Stat. 3821.)

AMENDMENTS

2021—Pub. L. 116–283 substituted ''Marine Corps, Space Force,'' for ''Marine Corps,'' in subsecs. (a) and (b).

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

DELEGATION OF AUTHORITY

For delegation of authority of President under this section, see section 1 of Ex. Ord. No. 12765, June 11, 1991, 56 F.R. 27401, set out as a note under section 113 of this title.

§ 750. Command: retired officers

A retired officer has no right to command except when on active duty.

(Added Pub. L. 96–513, title I, § 108, Dec. 12, 1980, 94 Stat. 2870.)

EFFECTIVE DATE

Section effective Sept. 15, 1981, but the authority to prescribe regulations under this section effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

CHAPTER 45—THE UNIFORM

Sec.
771. Unauthorized wearing prohibited.
771a. Disposition on discharge.
772. When wearing by persons not on active duty authorized.
773. When distinctive insignia required.
774. Religious apparel: wearing while in uniform.
775. Issue of uniform without charge.
776. Applicability of chapter.
777. Wearing of insignia of higher grade before promotion (frocking): authority; restrictions.
777a. Wearing of insignia of higher grade before appointment to a grade above major general or rear admiral (frocking): authority; restrictions.

AMENDMENTS

2011—Pub. L. 111–383, div. A, title V, § 505(a)(2), Jan. 7, 2011, 124 Stat. 4210, added item 777a.

1996—Pub. L. 104–106, div. A, title V, § 503(a)(2), Feb. 10, 1996, 110 Stat. 294, added item 777.

1992—Pub. L. 102–484, div. A, title III, § 377(b), Oct. 23, 1992, 106 Stat. 2387, added item 775 and redesignated former item 775 as 776.

1987—Pub. L. 100–180, div. A, title V, § 508(b), Dec. 4, 1987, 101 Stat. 1087, added item 774 and redesignated former item 774 as 775.

1968—Pub. L. 90–235, § 8(1)(B), Jan. 2, 1968, 81 Stat. 764, added item 771a.

PILOT PROGRAM FOR TEMPORARY ISSUANCE OF MATERNITY-RELATED UNIFORM ITEMS

Pub. L. 116–283, div. A, title III, § 361, Jan. 1, 2021, 134 Stat. 3546, provided that:

''(a) PILOT PROGRAM.—The Director of the Defense Logistics Agency, in coordination with the Secretaries concerned, shall carry out a pilot program for issuing maternity-related uniform items to pregnant members of the Armed Forces, on a temporary basis and at no cost to such member. In carrying out the pilot program, the Director shall take the following actions:

''(1) The Director shall maintain a stock of each type of maternity-related uniform item determined necessary by the Secretary concerned, including service uniforms items, utility uniform items, and other items relating to the command and duty assignment of the member requiring issuance.

''(2) The Director shall ensure that such items have not been treated with the chemical permethrin.

''(3) The Director, in coordination with the Secretary concerned, shall determine a standard number of maternity-related uniform items that may be issued per member.

''(4) The Secretary concerned shall ensure that any member receiving a maternity-related uniform item returns such item to the relevant office established under paragraph (1) on the date on which the Secretary concerned determines the member no longer requires such item.

''(5) The Secretary concerned shall inspect, process, repair, clean, and re-stock items returned by a member pursuant to paragraph (4) for re-issuance from such relevant office.

''(6) The Director, in coordination with the Secretaries concerned, may issue such guidance and regulations as necessary to carry out the pilot program.

''(b) TERMINATION.—No maternity-related uniform items may be issued to a member of the Armed Forces under the pilot program after September 30, 2026.

''(c) REPORT.—Not later than September 30, 2025, the Director of the Defense Logistics Agency, in coordination with the Secretaries concerned, shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the pilot program. Such report shall include each of the following:

''(1) For each year during which the pilot program was carried out, the number of members of the Armed Forces who received a maternity-related uniform item under the pilot program.

''(2) An overview of the costs associated with, and any savings realized by, the pilot program, including a comparison of the cost of maintaining a stock of maternity-related uniform items for issuance under the pilot program versus the cost of providing allowances to members for purchasing such items.

''(3) A recommendation on whether the pilot program should be extended after the date of termination under subsection (b) and whether legislation is necessary for such extension.

''(4) Any other matters that the Secretary of Defense determines appropriate.''

FUNCTIONAL BADGE OR INSIGNIA UPON COMMISSION FOR CHAPLAINS

Pub. L. 116–92, div. A, title V, § 510B, Dec. 20, 2019, 133 Stat. 1348, provided that: ''A military chaplain shall receive a functional badge or insignia upon commission.''

NOTIFICATION REQUIREMENTS RELATING TO CHANGES TO UNIFORM OF MEMBERS OF THE UNIFORMED SERVICES

Pub. L. 115–232, div. A, title III, § 356, Aug. 13, 2018, 132 Stat. 1732, as amended by Pub. L. 116–283, div. A, title III, § 348, Jan. 1, 2021, 134 Stat. 3542, provided that:

''(a) CONTRACTOR NOTIFICATION.—The Director of the Defense Logistics Agency shall notify a contractor when one of the uniformed services plans to make a change to a uniform component that is provided by that contractor. Such a notification shall be made not less than 12 months prior to any announcement of a public solicitation for the manufacture of the new uniform component.

''(b) WAIVER.—If the Secretary of a military department or the Director of the Defense Logistics Agency determines that the notification requirement under subsection (a) would adversely affect operational safety, force protection, or the national security interests of the United States, the Secretary or the Director may waive such requirement.''

REVISED POLICY ON GROUND COMBAT AND CAMOUFLAGE UTILITY UNIFORMS

Pub. L. 113–66, div. A, title III, § 352(a)–(f), Dec. 26, 2013, 127 Stat. 742, 743, provided that:

''(a) ESTABLISHMENT OF POLICY.—It is the policy of the United States that the Secretary of Defense shall eliminate the development and fielding of Armed Force-specific combat and camouflage utility uniforms and families of uniforms in order to adopt and field a common combat and camouflage utility uniform or family of uniforms for specific combat environments to be used by all members of the Armed Forces.

''(b) PROHIBITION.—Except as provided in subsection (c), after the date of the enactment of this Act [Dec. 26, 2013], the Secretary of a military department may not adopt any new camouflage pattern design or uniform fabric for any combat or camouflage utility uniform or family of uniforms for use by an Armed Force, unless—

''(1) the new design or fabric is a combat or camouflage utility uniform or family of uniforms that will be adopted by all Armed Forces;

''(2) the Secretary adopts a uniform already in use by another Armed Force; or

''(3) the Secretary of Defense grants an exception based on unique circumstances or operational requirements.

''(c) EXCEPTIONS.—Nothing in subsection (b) shall be construed as—

''(1) prohibiting the development of combat and camouflage utility uniforms and families of uniforms for use by personnel assigned to or operating in support of the unified combatant command for special operations forces described in section 167 of title 10, United States Code;

''(2) prohibiting engineering modifications to existing uniforms that improve the performance of combat and camouflage utility uniforms, including power harnessing or generating textiles, fire resistant fabrics, and anti-vector, anti-microbial, and anti-bacterial treatments;

''(3) prohibiting the Secretary of a military department from fielding ancillary uniform items, including headwear, footwear, body armor, and any other such items as determined by the Secretary;

''(4) prohibiting the Secretary of a military department from issuing vehicle crew uniforms;

''(5) prohibiting cosmetic service-specific uniform modifications to include insignia, pocket orientation, closure devices, inserts, and undergarments; or

''(6) prohibiting the continued fielding or use of pre-existing service-specific or operation-specific combat uniforms as long as the uniforms continue to meet operational requirements.

''(d) REGISTRATION REQUIRED.—The Secretary of a military department shall formally register with the Joint Clothing and Textiles Governance Board all uniforms in use by an Armed Force under the jurisdiction of the Secretary and all such uniforms planned for use by such an Armed Force.

''(e) LIMITATION ON RESTRICTION.—The Secretary of a military department may not prevent the Secretary of another military department from authorizing the use of any combat or camouflage utility uniform or family of uniforms.

''(f) GUIDANCE REQUIRED.—

''(1) IN GENERAL.—Not later than 60 days after the date of the enactment of this Act [Dec. 26, 2013], the Secretary of Defense shall issue guidance to implement this section.

''(2) CONTENT.—At a minimum, the guidance required by paragraph (1) shall require the Secretary of each of the military departments—

''(A) in cooperation with the commanders of the combatant commands, including the unified combatant command for special operations forces, to establish, by not later than 180 days after the date of the enactment of this Act, joint criteria for combat and camouflage utility uniforms and families of uniforms, which shall be included in all new requirements documents for such uniforms;

''(B) to continually work together to assess and develop new technologies that could be incorporated into future combat and camouflage utility uniforms and families of uniforms to improve war fighter survivability;

''(C) to ensure that new combat and camouflage utility uniforms and families of uniforms meet the geographic and operational requirements of the commanders of the combatant commands; and

''(D) to ensure that all new combat and camouflage utility uniforms and families of uniforms achieve interoperability with all components of individual war fighter systems, including body armor, organizational clothing and individual equipment, and other individual protective systems.''

POLICY ON GROUND COMBAT AND CAMOUFLAGE UTILITY UNIFORMS

Pub. L. 111–84, div. A, title III, § 352, Oct. 28, 2009, 123 Stat. 2262, related to policy on ground combat and cam-

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ouflage utility uniforms, prior to repeal by Pub. L. 113–66, div. A, title III, § 352(g), Dec. 26, 2013, 127 Stat. 743.

§ 771. Unauthorized wearing prohibited

Except as otherwise provided by law, no person except a member of the Army, Navy, Air Force, Marine Corps, or Space Force, as the case may be, may wear—

(1) the uniform, or a distinctive part of the uniform, of the Army, Navy, Air Force, Marine Corps, or Space Force; or

(2) a uniform any part of which is similar to a distinctive part of the uniform of the Army, Navy, Air Force, Marine Corps, or Space Force.

(Aug. 10, 1956, ch. 1041, 70A Stat. 34; Pub. L. 116–283, div. A, title IX, § 924(b)(3)(N), Jan. 1, 2021, 134 Stat. 3821.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
771	10:1393 (1st par., less provisos).	June 3, 1916, ch. 134, § 125 (1st par., less provisos), 39 Stat. 216.

The words "Except as otherwise provided by law" are inserted to give effect to exceptions in other revised sections of this title and to provisions of other laws giving such organizations as the Coast and Geodetic Survey and the Public Health Service permission to wear military uniforms under certain conditions.

AMENDMENTS

2021—Pub. L. 116–283 substituted "Marine Corps, or Space Force" for "or Marine Corps" wherever appearing.

§ 771a. Disposition on discharge

(a) Except as provided in subsections (b) and (c), when an enlisted member of an armed force is discharged, the exterior articles of uniform in his possession that were issued to him, other than those that he may wear from the place of discharge to his home under section 772(d) of this title, shall be retained for military use.

(b) When an enlisted member of an armed force is discharged for bad conduct, undesirability, unsuitability, inaptitude, or otherwise than honorably—

(1) the exterior articles of uniform in his possession shall be retained for military use;

(2) under such regulations as the Secretary concerned prescribes, a suit of civilian clothing and an overcoat when necessary, both to cost not more than $30, may be issued to him; and

(3) if he would be otherwise without funds to meet his immediate needs, he may be paid an amount, fixed by the Secretary concerned, of not more than $25.

(c) When an enlisted member of the Army National Guard or the Air National Guard who has been called into Federal service is released from that service, the exterior articles of uniform in his possession shall be accounted for as property issued to the Army National Guard or the Air National Guard, as the case may be, of the State or territory, Puerto Rico, or the District of Columbia of whose Army National Guard or Air National Guard he is a member, as prescribed in section 708 of title 32.

(Added Pub. L. 90–235, § 8(1)(A), Jan. 2, 1968, 81 Stat. 763; amended Pub. L. 100–456, div. A, title XII, § 1234(a)(1), Sept. 29, 1988, 102 Stat. 2059.)

AMENDMENTS

1988—Subsec. (c). Pub. L. 100–456 struck out "the Canal Zone," after "Puerto Rico,".

§ 772. When wearing by persons not on active duty authorized

(a) A member of the Army National Guard or the Air National Guard may wear the uniform prescribed for the Army National Guard or the Air National Guard, as the case may be.

(b) A member of the Naval Militia may wear the uniform prescribed for the Naval Militia.

(c) A retired officer of the Army, Navy, Air Force, Marine Corps, or Space Force may bear the title and wear the uniform of his retired grade.

(d) A person who is discharged honorably or under honorable conditions from the Army, Navy, Air Force, Marine Corps, or Space Force may wear his uniform while going from the place of discharge to his home, within three months after his discharge.

(e) A person not on active duty who served honorably in time of war in the Army, Navy, Air Force, Marine Corps, or Space Force may bear the title, and, when authorized by regulations prescribed by the President, wear the uniform, of the highest grade held by him during that war.

(f) While portraying a member of the Army, Navy, Air Force, Marine Corps, or Space Force, an actor in a theatrical or motion-picture production may wear the uniform of that armed force if the portrayal does not tend to discredit that armed force.

(g) An officer or resident of a veterans' home administered by the Department of Veterans Affairs may wear such uniform as the Secretary of the military department concerned may prescribe.

(h) While attending a course of military instruction conducted by the Army, Navy, Air Force, Marine Corps, or Space Force, a civilian may wear the uniform prescribed by that armed force if the wear of such uniform is specifically authorized under regulations prescribed by the Secretary of the military department concerned.

(i) Under such regulations as the Secretary of the Air Force may prescribe, a citizen of a foreign country who graduates from an Air Force school may wear the appropriate aviation badges of the Air Force.

(j) A person in any of the following categories may wear the uniform prescribed for that category:

(1) Members of the Boy Scouts of America.

(2) Members of any other organization designated by the Secretary of a military department.

(Aug. 10, 1956, ch. 1041, 70A Stat. 35; Pub. L. 99–145, title XIII, § 1301(a)(1), Nov. 8, 1985, 99 Stat. 735; Pub. L. 101–189, div. A, title XVI, § 1621(a)(1), Nov. 29, 1989, 103 Stat. 1602; Pub. L. 104–201, div. A, title V, § 551(b), Sept. 23, 1996, 110 Stat. 2525;

Pub. L. 116–283, div. A, title IX, § 924(b)(3)(O), Jan. 1, 2021, 134 Stat. 3821.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
772(a)	10:1393 (words before 1st semicolon of 1st proviso of 1st par.).	June 3, 1916, ch. 134, § 12 (words before 4th semicolon, and words after 7th semicolon, of 1st proviso of 1st par.; and last proviso of last par.), 39 Stat. 216; July 9, 1918, ch. 143, subch. XVII, § 10 (last proviso), 40 Stat. 892; June 4, 1920, ch. 228, § 8, 41 Stat. 836; June 6, 1942, ch. 382, 56 Stat. 328; May 24, 1949, ch. 139, § 15(b) (last proviso), 63 Stat. 91; July 6, 1953, ch. 180, § 1, 67 Stat. 140.
772(b)	10:1393 (15th through 18th words after 1st semicolon of 1st proviso of 1st par.).	
772(c)	10:1023 (1st sentence). 34:43g(i). 34:389 (less 1st and 3d sentences).	
772(d)	10:1393 (words between 3d and 4th semicolons of 1st proviso of 1st par.).	
772(e)	10:1028b. 10:1393 (words between 2d and 3d semicolons of 1st proviso of 1st par.). 34:399d.	R.S. 1256 (1st sentence).
772(f)	10:1393 (words between 8th and 9th semicolons of 1st proviso of 1st par.).	R.S. 1457 (less 1st and 3d sentences); May 5, 1950, ch. 169, § 14(f), 64 Stat. 147.
772(g)	10:1393 (last proviso of last par.).	Apr. 16, 1947, ch. 38, § 207(j), 61 Stat. 50; as redesignated (i); Aug. 7, 1947, ch. 512, § 434(d), 61 Stat. 882.
772(h)	10:1393 (words between 7th and 8th semicolons of 1st proviso of 1st par.).	
772(i)	10:1393 (words after 9th semicolon of 1st proviso of 1st par.).	June 21, 1930, ch. 563, § 2; restated Aug. 4, 1949, ch. 393, § 12, 63 Stat. 559; July 6, 1953, ch. 180, § 2, 67 Stat. 140.
772(j)	10:1393 (words between 1st and 2d semicolons of 1st proviso of 1st par., less 15th through 18th words).	

In subsections (a), (b), (d), (f), (g), (h), (i), and (j), the rules stated in the corresponding clauses of the first proviso of the first paragraph, and the last proviso of the last paragraph, of 10:1393, are restated to make positive the authority of the persons described in those subsections to wear the uniform prescribed for the appropriate organization or activity.

In subsection (c), the words ''bear the title'', in 34:43g(i), applicable only to retired officers of the Navy Nurse Corps, are made applicable to other retired officers, to make explicit what has heretofore been implicit, that a retired officer may continue to bear the title of his retired grade.

In subsection (e), the words between the second and third semicolons of the first proviso of the first paragraph of 10:1393 are omitted as superseded by 10:1028b and 34:399d, which authorize the wearing of the uniform by members who are discharged honorably or under honorable conditions. The words ''when authorized by regulations prescribed by'' are substituted for the words ''occasions authorized by regulations of''.

In subsection (f), the words ''while portraying a member of the Army, Navy, Air Force, or Marine Corps, an actor in a theatrical or motion-picture production'' are substituted for the words ''any person from wearing the uniform of the United States Army, Navy, or Marine Corps, in any playhouse or theater or in moving-picture films while actually engaged in representing therein a military or naval character''.

In subsection (g), the word ''resident'' is substituted for the word ''members'', since the word ''members'' related to members of the now disbanded National Home for disabled volunteer soldiers to which were admitted ''members'' of an organization called the ''Disabled Volunteer Soldiers''. The words ''veterans' home'' are substituted for the words ''national home for veterans'', since there are now no ''national homes'' administered by the Veterans' Administration.

In subsection (h), the words ''authorized and'' and ''for wear during such course of instruction'' are omitted as surplusage. The word ''naval'' is omitted as covered by the word ''military''. The words ''Army, Navy, Air Force, or Marine Corps'' are substituted for the words ''military or naval authorities''. The words ''that armed force'' are substituted for the words ''such military or naval authorities''.

In subsection (i), the words ''Air Force school'' are substituted for the words ''Air Force advanced flying schools or Air Force service schools''. The words ''in such manner'' are omitted as surplusage.

CONSTITUTIONALITY

For information regarding constitutionality of certain provisions of this section as enacted by act Aug. 10, 1956, see Congressional Research Service, The Constitution of the United States of America: Analysis and Interpretation, Appendix 1, Acts of Congress Held Unconstitutional in Whole or in Part by the Supreme Court of the United States.

AMENDMENTS

2021—Pub. L. 116–283 substituted ''Marine Corps, or Space Force'' for ''or Marine Corps'' wherever appearing.

1996—Subsec. (h). Pub. L. 104–201 inserted before period at end ''if the wear of such uniform is specifically authorized under regulations prescribed by the Secretary of the military department concerned''.

1989—Subsec. (g). Pub. L. 101–189 substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

1985—Subsec. (c). Pub. L. 99–145 struck out provisions relating to a retired officer of the Navy Nurse Corps.

EX. ORD. NO. 10554. DELEGATION OF AUTHORITY TO PRESCRIBE REGULATIONS

Ex. Ord. No. 10554, Aug. 18, 1954, 19 F.R. 5295, as amended by Ex. Ord. No. 13286, § 77, Feb. 28, 2003, 68 F.R. 10631, provided:

The authority vested in the President (1) by section 125 of the act of June 3, 1916, 39 Stat. 216, as amended by the first section of the act of July 6, 1953, 67 Stat. 140, and (2) by section 2 of the act of June 21, 1930, 46 Stat. 793, as amended by section 2 of said act of July 6, 1953, to prescribe regulations authorizing occasions upon which the uniform may be worn by persons who have served honorably in the armed forces of the United States in time of war is hereby delegated to the Secretary of Defense so far as it pertains to the uniforms of the Army, Navy, Air Force, and Marine Corps, and to the Secretary of Homeland Security so far as it pertains to the uniform of the Coast Guard.

§ 773. When distinctive insignia required

(a) A person for whom one of the following uniforms is prescribed may wear it, if it includes distinctive insignia prescribed by the Secretary of the military department concerned to distinguish it from the uniform of the Army, Navy, Air Force, Marine Corps, or Space Force, as the case may be:

(1) The uniform prescribed by the university, college, or school for an instructor or member of the organized cadet corps of—

(A) a State university or college, or a public high school, having a regular course of military instruction; or

(B) an educational institution having a regular course of military instruction, and having a member of the Army, Navy, Air Force, Marine Corps, or Space Force as instructor in military science and tactics.

(2) The uniform prescribed by a military society composed of persons discharged honorably or under honorable conditions from the Army, Navy, Air Force, Marine Corps, or Space Force to be worn by a member of that society when authorized by regulations prescribed by the President.

(b) A uniform prescribed under subsection (a) may not include insignia of grade the same as, or similar to, those prescribed for officers of the Army, Navy, Air Force, Marine Corps, or Space Force.

(c) Under such regulations as the Secretary of the military department concerned may prescribe, any person who is permitted to attend a course of instruction prescribed for members of a reserve officers' training corps, and who is not a member of that corps, may, while attending that course of instruction, wear the uniform of that corps.

(Aug. 10, 1956, ch. 1041, 70A Stat. 35; Pub. L. 85–355, Mar. 28, 1958, 72 Stat. 66; Pub. L. 116–283, div. A, title IX, § 924(b)(3)(P), Jan. 1, 2021, 134 Stat. 3821.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
773(a)	10:1393 (words between 4th and 7th semicolons of 1st proviso, and 2d proviso, of 1st par.).	June 3, 1916, ch. 134, § 125 (words between 4th and 7th semicolons of 1st proviso, and 2d and last provisos, of 1st par.), 39 Stat. 216; June 4, 1920, ch. 228, § 8, 41 Stat. 836; Sept. 15, 1951, ch. 402, 65 Stat. 323; July 6, 1953, ch. 180, § 1, 67 Stat. 140.
773(b)	10:1393 (last proviso of 1st par.).	

In subsection (a), the word ''mark'' is omitted as surplusage.

In subsection (a)(2), the words ''persons discharged honorably or under honorable conditions from'' are substituted for the words ''entirely of honorably discharged officers or enlisted men, or both, of''. The words ''Regular or Volunteer'' are omitted as surplusage. The words ''when authorized by regulations prescribed by'' are substituted for the words ''upon occasions authorized by regulations of''.

AMENDMENTS

2021—Subsecs. (a), (b). Pub. L. 116–283 substituted ''Marine Corps, or Space Force'' for ''or Marine Corps'' in subsec. (a) wherever appearing and in subsec. (b).

1958—Subsec. (c). Pub. L. 85–355 added subsec. (c).

§ 774. Religious apparel: wearing while in uniform

(a) GENERAL RULE.—Except as provided under subsection (b), a member of the armed forces may wear an item of religious apparel while wearing the uniform of the member's armed force.

(b) EXCEPTIONS.—The Secretary concerned may prohibit the wearing of an item of religious apparel—

(1) in circumstances with respect to which the Secretary determines that the wearing of the item would interfere with the performance of the member's military duties; or

(2) if the Secretary determines, under regulations under subsection (c), that the item of apparel is not neat and conservative.

(c) REGULATIONS.—The Secretary concerned shall prescribe regulations concerning the wearing of religious apparel by members of the armed forces under the Secretary's jurisdiction while the members are wearing the uniform. Such regulations shall be consistent with subsections (a) and (b).

(d) RELIGIOUS APPAREL DEFINED.—In this section, the term ''religious apparel'' means apparel the wearing of which is part of the observance of the religious faith practiced by the member.

(Added Pub. L. 100–180, div. A, title V, § 508(a)(2), Dec. 4, 1987, 101 Stat. 1086.)

PRIOR PROVISIONS

A prior section 774 was renumbered section 776 of this title.

REGULATIONS

Pub. L. 100–180, div. A, title V, § 508(c), Dec. 4, 1987, 101 Stat. 1087, directed the Secretary concerned to prescribe the regulations required by subsec. (c) of this section not later than the end of the 120-day period beginning on Dec. 4, 1987.

§ 775. Issue of uniform without charge

(a) ISSUE OF UNIFORM.—The Secretary concerned may issue a uniform, without charge, to any of the following members:

(1) A member who is being repatriated after being held as a prisoner of war.

(2) A member who is being treated at or released from a medical treatment facility as a consequence of being wounded or injured during military hostilities.

(3) A member who, as a result of the member's duties, has unique uniform requirements.

(4) Any other member, if the Secretary concerned determines, under exceptional circumstances, that the issue of the uniform to that member would significantly benefit the morale and welfare of the member and be advantageous to the armed force concerned.

(b) RETENTION OF UNIFORM AS A PERSONAL ITEM.—Notwithstanding section 771a of this title, a uniform issued to a member under this section may be retained by the member as a personal item.

(Added Pub. L. 102–484, div. A, title III, § 377(a)(2), Oct. 23, 1992, 106 Stat. 2386.)

PRIOR PROVISIONS

A prior section 775 was renumbered section 776 of this title.

§ 776. Applicability of chapter

This chapter applies in—

(1) the United States;

(2) the territories, commonwealths, and possessions of the United States; and

(3) all other places under the jurisdiction of the United States.

(Aug. 10, 1956, ch. 1041, 70A Stat. 36, § 774; Pub. L. 99–661, div. A, title XIII, § 1343(a)(1), Nov. 14, 1986, 100 Stat. 3992; Pub. L. 100–26, § 3(6), Apr. 21, 1987, 101 Stat. 273; renumbered § 775, Pub. L. 100–180, div. A, title V, § 508(a)(1), Dec. 4, 1987, 101 Stat. 1086; renumbered § 776, Pub. L. 102–484, div. A, title III, § 377(a)(1), Oct. 23, 1992, 106 Stat. 2386.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
774	10:1393 (less 1st and last pars.).	June 3, 1916, ch. 134, §125 (less 1st and last pars.), 39 Stat. 216; Apr. 15, 1948, ch. 188, 62 Stat. 172; June 25, 1948, ch. 645, §21 (as applicable to §125 of the Act of June 3, 1916, ch. 134), 62 Stat. 864; May 24, 1949, ch. 139, §§15(b) (less last par.), 142 (as applicable to the Act of Apr. 15, 1948, ch. 188), 63 Stat. 91, 110.

The words ''the Canal Zone, Guam, American Samoa, and the Virgin Islands as well as to * * * other'' are omitted as covered by the words ''possessions, and all other places under its jurisdiction''.

AMENDMENTS

1992—Pub. L. 102–484 renumbered section 775 of this title as this section.

1987—Pub. L. 100–180 renumbered section 774 of this title as this section.

Pub. L. 100–26 amended directory language of Pub. L. 99–661. See 1986 Amendment note below.

1986—Pub. L. 99–661, as amended by Pub. L. 100–26, amended section generally. Prior to amendment, section read as follows: ''This chapter applies in the United States, the Territories, Commonwealths, and possessions, and all other places under its jurisdiction.''

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100–26, §12(a), Apr. 21, 1987, 101 Stat. 289, provided that: ''The amendments made by section 3 [amending this section and sections 1032, 1408, 1450, 1588, 2007, 2364, and 5150 of this title, and section 4703 of Title 20, Education, and amending provisions set out as a note under section 1006 of Title 37, Pay and Allowances of the Uniformed Services] shall apply as if included in Public Law 99–661 when enacted on November 14, 1986.''

§ 777. Wearing of insignia of higher grade before promotion (frocking): authority; restrictions

(a) AUTHORITY.—An officer in a grade below the grade of major general or, in the case of the Navy, rear admiral, who has been selected for promotion to the next higher grade may be authorized, under regulations and policies of the Department of Defense and subject to subsection (b), to wear the insignia for that next higher grade. An officer who is so authorized to wear the insignia of the next higher grade is said to be ''frocked'' to that grade.

(b) RESTRICTIONS.—An officer may not be authorized to wear the insignia for a grade as described in subsection (a) unless—

(1) the Senate has given its advice and consent to the appointment of the officer to that grade;

(2) the officer is serving in, or has received orders to serve in, a position for which that grade is authorized; and

(3) in the case of an officer selected for promotion to a grade above colonel or, in the case of an officer of the Navy, a grade above captain—

(A) authority for that officer to wear the insignia of that grade has been approved by the Secretary of Defense (or a civilian officer within the Office of the Secretary of Defense whose appointment was made with the advice and consent of the Senate and to whom the Secretary delegates such approval authority); and

(B) the Secretary of Defense has submitted to Congress a written notification of the intent to authorize the officer to wear the insignia for that grade.

(c) BENEFITS NOT TO BE CONSTRUED AS ACCRUING.—(1) Authority provided to an officer as described in subsection (a) to wear the insignia of the next higher grade may not be construed as conferring authority for that officer to—

(A) be paid the rate of pay provided for an officer in that grade having the same number of years of service as that officer; or

(B) assume any legal authority associated with that grade.

(2) The period for which an officer wears the insignia of the next higher grade under such authority may not be taken into account for any of the following purposes:

(A) Seniority in that grade.

(B) Time of service in that grade.

(d) LIMITATION ON NUMBER OF OFFICERS FROCKED TO SPECIFIED GRADES.—(1) The total number of colonels, Navy captains, brigadier generals, and rear admirals (lower half) on the active-duty list who are authorized as described in subsection (a) to wear the insignia for the next higher grade may not exceed 85.

(2) The number of officers of an armed force on the active-duty list who are authorized as described in subsection (a) to wear the insignia for a grade to which a limitation on total number applies under section 523(a) of this title for a fiscal year may not exceed 1 percent, or, for the grades of colonel and Navy captain, 2 percent, of the total number provided for the officers in that grade in that armed force in the administration of the limitation under that section for that fiscal year.

(Added Pub. L. 104–106, div. A, title V, §503(a)(1), Feb. 10, 1996, 110 Stat. 294; amended Pub. L. 105–85, div. A, title V, §505, Nov. 18, 1997, 111 Stat. 1726; Pub. L. 106–65, div. A, title V, §502, Oct. 5, 1999, 113 Stat. 590; Pub. L. 108–136, div. A, title V, §509(a), Nov. 24, 2003, 117 Stat. 1458; Pub. L. 108–375, div. A, title V, §503, Oct. 28, 2004, 118 Stat. 1875; Pub. L. 109–163, div. A, title V, §§503(c), 504, Jan. 6, 2006, 119 Stat. 3226; Pub. L. 111–383, div. A, title V, §505(b), Jan. 7, 2011, 124 Stat. 4210.)

AMENDMENTS

2011—Subsec. (b)(3)(B). Pub. L. 111–383 struck out ''and a period of 30 days has elapsed after the date of the notification'' after ''grade''.

2006—Subsec. (a). Pub. L. 109–163, §503(c), inserted ''in a grade below the grade of major general or, in the case of the Navy, rear admiral,'' after ''An officer'' in first sentence.

Subsec. (d)(1). Pub. L. 109–163, §504(1), substituted ''colonels, Navy captains, brigadier generals, and rear admirals (lower half)'' for ''brigadier generals and Navy rear admirals (lower half)'' and ''the next higher grade may not exceed 85'' for ''the grade of major general or rear admiral, as the case may be, may not exceed 30''.

Subsec. (d)(2), (3). Pub. L. 109–163, §504(2), (3), redesignated par. (3) as (2) and struck out former par. (2) which read as follows: ''The total number of colonels and Navy captains on the active-duty list who are author-

ized as described in subsection (a) to wear the insignia for the grade of brigadier general or rear admiral (lower half), as the case may be, may not exceed 55.''

2004—Subsec. (d). Pub. L. 108–375 added par. (1) and redesignated former pars. (1) and (2) as (2) and (3), respectively.

2003—Subsec. (b)(3). Pub. L. 108–136 added par. (3).

1999—Subsec. (d)(1). Pub. L. 106–65 substituted ''55.'' for ''the following:'' and struck out subpars. (A) to (C) which read as follows:

''(A) During fiscal years 1996 and 1997, 75.

''(B) During fiscal year 1998, 55.

''(C) After fiscal year 1998, 35.''

1997—Subsec. (d)(2). Pub. L. 105–85 inserted '', or, for the grades of colonel and Navy captain, 2 percent,'' after ''1 percent''.

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–136, div. A, title V, §509(b), Nov. 24, 2003, 117 Stat. 1459, provided that: ''Paragraph (3) of subsection (b) of section 777 of title 10, United States Code, as added by subsection (a), shall not apply with respect to the wearing by an officer of insignia for a grade that was authorized under that section before the date of the enactment of this Act [Nov. 24, 2003].''

TEMPORARY VARIATION OF LIMITATIONS ON NUMBERS OF FROCKED OFFICERS

Pub. L. 104–106, div. A, title V, §503(b), Feb. 10, 1996, 110 Stat. 294, provided that in the administration of former subsec. (d)(2) of this section, the percent limitation applied under that section for fiscal year 1996 would be 2 percent, rather than 1 percent.

§ 777a. Wearing of insignia of higher grade before appointment to a grade above major general or rear admiral (frocking): authority; restrictions

(a) AUTHORITY.—An officer serving in a grade below the grade of lieutenant general or, in the case of the Navy, vice admiral, who has been selected for appointment to the grade of lieutenant general or general, or, in the case of the Navy, vice admiral or admiral, and an officer serving in the grade of lieutenant general or vice admiral who has been selected for appointment to the grade of general or admiral, may be authorized, under regulations and policies of the Department of Defense and subject to subsection (b), to wear the insignia for that higher grade for a period of up to 14 days before assuming the duties of a position for which the higher grade is authorized. An officer who is so authorized to wear the insignia of a higher grade is said to be ''frocked'' to that grade.

(b) RESTRICTIONS.—An officer may not be authorized to wear the insignia for a grade as described in subsection (a) unless—

(1) the Senate has given its advice and consent to the appointment of the officer to that grade;

(2) the officer has received orders to serve in a position outside the military department of that officer for which that grade is authorized;

(3) the Secretary of Defense (or a civilian officer within the Office of the Secretary of Defense whose appointment was made with the advice and consent of the Senate and to whom the Secretary delegates such approval authority) has given approval for the officer to wear the insignia for that grade before assuming the duties of a position for which that grade is authorized; and

(4) the Secretary of Defense has submitted to Congress a written notification of the intent to authorize the officer to wear the insignia for that grade.

(c) BENEFITS NOT TO BE CONSTRUED AS ACCRUING.—(1) Authority provided to an officer as described in subsection (a) to wear the insignia of a higher grade may not be construed as conferring authority for that officer to—

(A) be paid the rate of pay provided for an officer in that grade having the same number of years of service as that officer; or

(B) assume any legal authority associated with that grade.

(2) The period for which an officer wears the insignia of a higher grade under such authority may not be taken into account for any of the following purposes:

(A) Seniority in that grade.

(B) Time of service in that grade.

(d) LIMITATION ON NUMBER OF OFFICERS FROCKED.—The total number of officers who are authorized to wear the insignia for a higher grade under this section shall count against the limitation in section 777(d) of this title on the total number of officers authorized to wear the insignia of a higher grade.

(Added Pub. L. 111–383, div. A, title V, §505(a)(1), Jan. 7, 2011, 124 Stat. 4208.)

CHAPTER 47—UNIFORM CODE OF MILITARY JUSTICE

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AMENDMENTS

1994—Pub. L. 103–337, div. A, title IX, §924(c)(3)(B), Oct. 5, 1994, 108 Stat. 2832, substituted ''United States Court of Appeals for the Armed Forces'' for ''Court of Military Appeals'' in item for subchapter XII.

1989—Pub. L. 101–189, div. A, title XIII, §1304(a)(1), Nov. 29, 1989, 103 Stat. 1576, added item for subchapter XII.

1983—Pub. L. 98–209, §5(h)(1), Dec. 6, 1983, 97 Stat. 1400, substituted ''IX. Post-Trial Procedure and Review of Courts-Martial'' for ''IX. Review of Courts-Martial''.

1958—Pub. L. 85–861, §33(a)(6), Sept. 2, 1958, 72 Stat. 1564, substituted 801, 807, 815, 816, 822, 830, 836, 855, 859, 877 and 935 for 1901, 1913, 1929, 1931, 1943, 1959, 1971, 2009, 2017, 2053 and 2169, respectively.

SUBCHAPTER I—GENERAL PROVISIONS

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806a.	6a.	Investigation and disposition of matters pertaining to the fitness of military judges.

Sec.	Art.	
806b.	6b.	Rights of the victim of an offense under this chapter.

AMENDMENTS

2013—Pub. L. 113–66, div. A, title XVII, §1701(a)(2), Dec. 26, 2013, 127 Stat. 953, added item 806b.

1989—Pub. L. 101–189, div. A, title XIII, §1304(a)(2), Nov. 29, 1989, 103 Stat. 1576, added item 806a.

§ 801. Article 1. Definitions

In this chapter (the Uniform Code of Military Justice):

(1) The term ''Judge Advocate General'' means, severally, the Judge Advocates General of the Army, Navy, and Air Force and, except when the Coast Guard is operating as a service in the Navy, an official designated to serve as Judge Advocate General of the Coast Guard by the Secretary of Homeland Security.

(2) The Navy, the Marine Corps, and the Coast Guard when it is operating as a service in the Navy, shall be considered as one armed force.

(3) The term ''commanding officer'' includes only commissioned officers.

(4) The term ''officer in charge'' means a member of the Navy, the Marine Corps, or the Coast Guard designated as such by appropriate authority.

(5) The term ''superior commissioned officer'' means a commissioned officer superior in rank or command.

(6) The term ''cadet'' means a cadet of the United States Military Academy, the United States Air Force Academy, or the United States Coast Guard Academy.

(7) The term ''midshipman'' means a midshipman of the United States Naval Academy and any other midshipman on active duty in the naval service.

(8) The term ''military'' refers to any or all of the armed forces.

(9) The term ''accuser'' means a person who signs and swears to charges, any person who directs that charges nominally be signed and sworn to by another, and any other person who has an interest other than an official interest in the prosecution of the accused.

(10) The term ''military judge'' means a judge advocate designated under section 826(c) of this title (article 26(c)) who is detailed under section 826(a) or section 830a of this title (article 26(a) or 30a).

[(11) Repealed. Pub. L. 109–241, title II, §218(a)(1), July 11, 2006, 120 Stat. 526.]

(12) The term ''legal officer'' means any commissioned officer of the Navy, Marine Corps, or Coast Guard designated to perform legal duties for a command.

(13) The term ''judge advocate'' means—

(A) an officer of the Judge Advocate General's Corps of the Army, the Navy, or the Air Force;

(B) an officer of the Marine Corps who is designated as a judge advocate; or

(C) a commissioned officer of the Coast Guard designated for special duty (law).

(14) The term ''record'', when used in connection with the proceedings of a court-martial, means—

(A) an official written transcript, written summary, or other writing relating to the proceedings; or

(B) an official audiotape, videotape, or similar material from which sound, or sound and visual images, depicting the proceedings may be reproduced.

(15) The term ''classified information'' means (A) any information or material that has been determined by an official of the United States pursuant to law, an Executive order, or regulation to require protection against unauthorized disclosure for reasons of national security, and (B) any restricted data, as defined in section 11(y) of the Atomic Energy Act of 1954 (42 U.S.C. 2014(y)).

(16) The term ''national security'' means the national defense and foreign relations of the United States.

(Aug. 10, 1956, ch. 1041, 70A Stat. 36; Pub. L. 89–670, §10(g), Oct. 15, 1966, 80 Stat. 948; Pub. L. 90–179, §1(1), (2), Dec. 8, 1967, 81 Stat. 545; Pub. L. 90–632, §2(1), Oct. 24, 1968, 82 Stat. 1335; Pub. L. 98–209, §§2(a), 6(a), Dec. 6, 1983, 97 Stat. 1393, 1400; Pub. L. 100–180, div. A, title XII, §1231(17), Dec. 4, 1987, 101 Stat. 1161; Pub. L. 100–456, div. A, title XII, §1233(f)(1), Sept. 29, 1988, 102 Stat. 2057; Pub. L. 104–106, div. A, title XI, §1141(b), Feb. 10, 1996, 110 Stat. 467; Pub. L. 107–296, title XVII, §1704(b)(2), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 109–241, title II, §218(a), July 11, 2006, 120 Stat. 526; Pub. L. 114–328, div. E, title LI, §5101, Dec. 23, 2016, 130 Stat. 2894; Pub. L. 115–91, div. A, title X, §1081(a)(21), (c)(1)(A), Dec. 12, 2017, 131 Stat. 1595, 1597.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
801	50:551 (less (9)).	May 5, 1950, ch. 169, §1 (Art. 1 (less (9))), 64 Stat. 108.

The words ''In this chapter'' are substituted for the introductory clause.

In the introductory clause and throughout the revised chapter the word ''chapter'' is substituted for the word ''code''.

Clauses (1), (2), and (5) of 50:551 are omitted as respectively covered by the definitions in clauses (4), (6), and (14) of section 101 of this title. The words ''commissioned officer'' are substituted for the word ''officer'' for clarity throughout this chapter, since the latter term was defined in the limited sense of commissioned officer in clause (5) of 50:551, and is now covered by section 101(14) of this title.

In clauses (1), (4)–(7), and (9)–(12) of the revised section, the word ''means'' is substituted for the words ''shall be construed to refer to'' and ''shall be construed to refer * * * to''.

In clause (1), the words ''service in'' are substituted for the words ''part of'' to conform to section 1 of title 14. The words ''Department of the Treasury'' are substituted for the words ''Treasury Department''.

Clauses (3) and (4) are inserted for clarity.

In clause (6), the words ''the United States Air Force Academy'' are inserted to reflect its establishment by the Air Force Academy Act (63 Stat. 47).

In clause (8), the word ''refers'' is substituted for the words ''shall be construed to refer''.

In clause (12), the words ''Marine Corps'' are inserted to make explicit that the clause applies to the Marine Corps. The word ''commissioned'' is inserted for clarity.

AMENDMENTS

2017—Pub. L. 115–91, §1081(c)(1)(A), which directed insertion of ''(the Uniform Code of Military Justice)'' after ''chapter'' in introductory provisions, was not executed in light of the prior amendment by section 1081(a)(21) of Pub. L. 115–91, to reflect the probable intent of Congress. See Amendment note below and section 1081(c)(4) of Pub. L. 115–91, set out as an Effective Date of 2017 Amendment note below.

Pub. L. 115–91, §1081(a)(21), inserted ''(the Uniform Code of Military Justice)'' after ''chapter'' in introductory provisions.

2016—Cl. (10). Pub. L. 114–328, §5101(a), amended cl. (10) generally. Prior to amendment, cl. (10) read as follows: ''The term 'military judge' means an official of a general or special court-martial detailed in accordance with section 826 of this title (article 26).''

Cl. (13)(A). Pub. L. 114–328, §5101(b)(1), substituted ''the Army, the Navy, or the Air Force'' for ''the Army or the Navy''.

Cl. (13)(B). Pub. L. 114–328, §5101(b)(2), struck out ''the Air Force or'' after ''an officer of''.

2006—Cl. (11). Pub. L. 109–241, §218(a)(1), struck out cl. (11) which read as follows: ''The term 'law specialist' means a commissioned officer of the Coast Guard designated for special duty (law).''

Cl. (13)(C). Pub. L. 109–241, §218(a)(2), added subpar. (C) and struck out former subpar. (C) which read as follows: ''an officer of the Coast Guard who is designated as a law specialist.''

2002—Cl. (1). Pub. L. 107–296 substituted ''an official designated to serve as Judge Advocate General of the Coast Guard by the Secretary of Homeland Security'' for ''the General Counsel of the Department of Transportation''.

1996—Cls. (15), (16). Pub. L. 104–106 added cls. (15) and (16).

1988—Cl. (1). Pub. L. 100–456 substituted ''term 'Judge'' for ''term 'judge''.

1987—Cls. (1), (3) to (14). Pub. L. 100–180 inserted ''The term'' after each clause designation and revised first word in quotes in each clause to make initial letter of such word lowercase.

1983—Cl. (13). Pub. L. 98–209, §2(a), added officers of the Coast Guard who are designated as law specialists to definition of ''Judge Advocate''.

Cl. (14). Pub. L. 98–209, §6(a), added cl. (14).

1968—Cl. (10). Pub. L. 90–632 substituted ''military judge'' for ''law officer'' as term being defined and inserted reference to special court-martial in the definition thereof.

1967—Cl. (11). Pub. L. 90–179, §1(1), struck out ''Navy or'' before ''Coast Guard''.

Cl. (13). Pub. L. 90–179, §1(2), added cl. (13).

1966—Pub. L. 89–670 substituted the General Counsel of the Department of Transportation for the General Counsel of the Department of the Treasury in definition of ''Judge Advocate General'' applicable to the Coast Guard when operating as a service in the Navy.

EFFECTIVE DATE OF 2017 AMENDMENT

Pub. L. 115–91, div. A, title V, §531(p), Dec. 12, 2017, 131 Stat. 1388, provided that: ''The amendments made by this section [amending sections 806b, 830a, 838, 853a, 856, 858a, 858b, 862, 863, 866, 946, 1059, and 1408 of this title and provisions set out as a note below] shall take effect immediately after the amendments made by the Military Justice Act of 2016 (division E [§§5001–5542] of Public Law 114–328 [enacting, amending, and transferring numerous sections throughout this chapter]) take effect as provided for in section 5542 of that Act (130 Stat. 2967) [set out below].''

Pub. L. 115–91, div. A, title X, §1081(c)(4), Dec. 12, 2017, 131 Stat. 1599, provided that: ''The amendments made by this subsection [amending this section and sections 673, 674, 806b, 816, 839, 843, 848, 853, 853a, 864, 865, 866, 869, 882, 919a, 920, 928, 932, 937, 1034, and 1044e of this title and section 8312 of Title 5, Government Organization and Employees] shall take effect immediately after the amendments made by the Military Justice Act of 2016 (division E [§§5001–5542] of Public Law 114–328 [enacting, amending, and transferring numerous sections throughout this chapter]) take effect as provided for in section 5542 of that Act (130 Stat. 2967) [set out below].''

EFFECTIVE DATE OF 2016 AMENDMENT

Pub. L. 114–328, div. E, title LXIII, §5542, Dec. 23, 2016, 130 Stat. 2967, as amended by Pub. L. 115–91, div. A, title V, §531(n)(1), Dec. 12, 2017, 131 Stat. 1387, provided that:

''(a) IN GENERAL.—Except as otherwise provided in this division [div. E (§§5001–5542) of Pub. L. 114–328, see Tables for classification], the amendments made by this division [enacting, amending, and transferring numerous sections throughout this chapter] shall take effect on the date designated by the President [Jan. 1, 2019, with certain conditions and exceptions, see Ex. Ord. No. 13825, set out below], which date shall be not later than the first day of the first calendar month that begins two years after the date of the enactment of this Act [Dec. 23, 2016].

''(b) IMPLEMENTING REGULATIONS.—The President shall prescribe regulations implementing this division and the amendments made by this division by not later than one year after the date of the enactment of this Act, except as otherwise provided in this division.

''(c) APPLICABILITY.—

''(1) IN GENERAL.—Subject to the provisions of this division and the amendments made by this division, the President shall prescribe in regulations whether, and to what extent, the amendments made by this division shall apply to a case in which a specification alleges the commission, before the effective date of such amendments, of one or more offenses or to a case in which one or more actions under chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), have been taken before the effective date of such amendments.

''(2) INAPPLICABILITY TO CASES IN WHICH CHARGES ALREADY REFERRED TO TRIAL ON EFFECTIVE DATE.—Except as otherwise provided in this division or the amendments made by this division, the amendments made by this division shall not apply to any case in which charges are referred to trial by court-martial before the effective date of such amendments. Proceedings in any such case shall be held in the same manner and with the same effect as if such amendments had not been enacted.

''(3) PUNITIVE ARTICLE AMENDMENTS.—

''(A) IN GENERAL.—The amendments made by title LX [§§5401–5452 of div. E of Pub. L. 114–328, enacting, amending, and transferring numerous sections within subchapter X of this chapter, see Tables for classification] shall not apply to any offense committed before the effective date of such amendments.

''(B) CONSTRUCTION.—Nothing in subparagraph (A) shall be construed to invalidate the prosecution of any offense committed before the effective date of such amendments.

''(4) SENTENCING AMENDMENTS.—The regulations prescribing the authorized punishments for any offense committed before the effective date of the amendments made by title LVIII [§§5301–5303 of div. E of Pub. L. 114–328, amending sections 856 to 857a, 858a, 858b, and 871 of this title] shall apply to the authorized punishments for the offense, as in effect at the time the offense is committed.''

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Pub. L. 98–209, §12(a), Dec. 6, 1983, 97 Stat. 1407, provided that:

''(1) The amendments made by this Act [see Short Title of 1983 Amendment note below] shall take effect

on the first day of the eighth calendar month that begins after the date of enactment of this Act [Dec. 6, 1983], except that the amendments made by sections 9, 11 and 13 [amending sections 802, 815, 825, 867, 1552, and 1553 of this title and enacting provisions set out as a note under section 867 of this title] shall be effective on the date of the enactment of this Act. The amendments made by section 11 [amending sections 1552 and 1553 of this title] shall only apply with respect to cases filed after the date of enactment of this Act with the boards established under sections 1552 and 1553 of title 10, United States Code.

''(2) The amendments made by section 3(c) and 3(e) [amending sections 826, 827, and 838 of this title] do not affect the designation or detail of a military judge or military counsel to a court-martial before the effective date of such amendments.

''(3) The amendments made by section 4 [amending section 834 of this title] shall not apply to any case in which charges were referred to trial before the effective date of such amendments, and proceedings in any such case shall be held in the same manner and with the same effect as if such amendments had not been enacted.

''(4) The amendments made by sections 5, 6, and 7 [amending this section and sections 849, 854, 857, 860 to 867, 869, 871, and 876a of this title and enacting provisions set out as a note under section 869 of this title] shall not apply to any case in which the findings and sentence were adjudged by a court-martial before the effective date of such amendments. The proceedings in any such case shall be held in the same manner and with the same effect as if such amendments had not been enacted.

''(5) The amendments made by section 8 [enacting section 912a of this title] shall not apply to any offense committed before the effective date of such amendments. Nothing in this provision shall be construed to invalidate the prosecution of any offense committed before the effective date of such amendments.''

EFFECTIVE DATE OF 1968 AMENDMENT

Pub. L. 90–632, § 4, Oct. 24, 1968, 82 Stat. 1343, provided that:

''(a) Except for the amendments made by paragraphs (30) and (33) of section 2, this Act [see Short Title of 1968 Amendment note below] shall become effective on the first day of the tenth month following the month in which it is enacted [October 1968].

''(b) The amendment made by paragraph (30) of section 2 [amending section 869 of this title] shall become effective upon the date of enactment of this Act [Oct. 24, 1968].

''(c) The amendment made by paragraph (33) [amending section 873 of this title] shall apply in the case of all court-martial sentences approved by the convening authority on or after, or not more than two years before, the date of its enactment [Oct. 24, 1968].''

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–670 effective Apr. 1, 1967, as prescribed by the President and published in the Federal Register, see section 16(a), formerly § 15(a), of Pub. L. 89–670, and Ex. Ord. No. 11340, Mar. 30, 1967, 32 F.R. 5453.

EFFECTIVE DATE

Act Aug. 10, 1956, ch. 1041, § 51, 70A Stat. 640, provided that: ''Chapter 47 of title 10, United States Code, enacted by section 1 of this Act, takes effect January 1, 1957.''

SHORT TITLE OF 1996 AMENDMENT

Pub. L. 104–106, div. A, title XI, § 1101, Feb. 10, 1996, 110 Stat. 461, provided that: ''This title [enacting sections 857a, 858b, and 876b of this title, amending this section and sections 802, 832, 847, 857, 860, 862, 866, 895, 920, and 937 of this title, repealing section 804 of Title 37, Pay and Allowances of the Uniformed Services, enacting provisions set out as notes under sections 802, 857, 858b, and 876b of this title, and amending provisions set out as a note under section 942 of this title] may be cited as the 'Military Justice Amendments of 1995'.''

SHORT TITLE OF 1986 AMENDMENT

Pub. L. 99–661, div. A, title VIII, § 801(a), Nov. 14, 1986, 100 Stat. 3905, provided that: ''This title [enacting section 850a of this title, amending sections 802, 803, 806, 825, 843, 860, 936, and 937 of this title, and enacting provisions set out as notes under sections 802, 806, 825, 843, 850a, and 860 of this title] may be cited as the 'Military Justice Amendments of 1986'.''

SHORT TITLE OF 1983 AMENDMENT

Pub. L. 98–209, § 1(a), Dec. 6, 1983, 97 Stat. 1393, provided that: ''This Act [enacting sections 912a of this title and section 1259 of Title 28, Judiciary and Judicial Procedure, amending this section, sections 802, 806, 815, 816, 825, 826, 827, 829, 834, 838, 842, 849, 854, 857, 860 to 867, 869, 870, 871, 876a, 936, 1552, and 1553 of this title, and section 2101 of Title 28, and enacting provisions set out as notes under sections 801, 867, and 869 of this title and amending provisions set out as a note under section 706 of this title] may be cited as the 'Military Justice Act of 1983'.''

SHORT TITLE OF 1981 AMENDMENT

Pub. L. 97–81, § 1(a), Nov. 20, 1981, 95 Stat. 1085, provided that: ''This Act [enacting sections 706, 707, and 876a of this title, amending sections 701, 813, 832, 838, 867, and 869 of this title, and enacting provisions set out as a note under section 706 of this title] may be cited as the 'Military Justice Amendments of 1981'.''

SHORT TITLE OF 1968 AMENDMENT

Pub. L. 90–632, § 1, Oct. 24, 1968, 82 Stat. 1335, provided: ''That this Act [amending this section and sections 806, 816, 818, 819, 820, 825, 826, 827, 829, 835, 837, 838, 839, 840, 841, 842, 845, 849, 851, 852, 854, 857, 865, 866, 867, 868, 869, 870, 871, 873, and 936 of this title and enacting provisions set out as notes under this section and sections 826 and 866 of this title] may be cited as the 'Military Justice Act of 1968'.''

REDESIGNATION OF NAVY LAW SPECIALISTS AS JUDGE ADVOCATES

Navy law specialists redesignated judge advocates, see section 8 of Pub. L. 90–179, set out as a note under section 5148 of this title.

SAVINGS PROVISION

Rights, duties, and proceedings not affected by Pub. L. 90–179 establishing Judge Advocate General's Corps in Navy, see section 10 of Pub. L. 90–179, set out as a note under section 5148 of this title.

LEGISLATIVE CONSTRUCTION

Act Aug. 10, 1956, ch. 1041, § 49(e), 70A Stat. 640, provided that: ''In chapter 47 of title 10, United States Code [this chapter], enacted by section 1 of this Act, no inference of a legislative construction is to be drawn from the part in which any article is placed nor from the catchlines of the part or the article as set out in that chapter.''

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

ASSESSMENT OF RACIAL, ETHNIC, AND GENDER DISPARITIES IN THE MILITARY JUSTICE SYSTEM

Pub. L. 116–92, div. A, title V, § 540I, Dec. 20, 2019, 133 Stat. 1369, provided that:

''(a) IN GENERAL.—The Secretary of Defense shall provide for the carrying out of the activities described in subsections (b) and (c) in order to improve the ability of the Department of Defense to detect and address racial, ethnic, and gender disparities in the military justice system.

''(b) SECRETARY OF DEFENSE AND RELATED ACTIVITIES.—The activities described in this subsection are the following, to be commenced or carried out (as applicable) by not later than 180 days after the date of the enactment of this Act [Dec. 20, 2019]:

''(1) For each court-martial conducted by an Armed Force after the date of the enactment of this Act, the Secretary of Defense shall require the head of the Armed Force concerned—

''(A) to record the race, ethnicity, and gender of the victim and the accused, and such other demographic information about the victim and the accused as the Secretary considers appropriate;

''(B) to include data based on the information described in subparagraph (A) in the annual military justice reports of the Armed Force.

''(2) The Secretary of Defense, in consultation with the Secretaries of the military departments and the Secretary of Homeland Security, shall issue guidance that—

''(A) establishes criteria to determine when data indicating possible racial, ethnic, or gender disparities in the military justice process should be further reviewed; and

''(B) describes how such a review should be conducted.

''(3) The Secretary of Defense, in consultation with the Secretaries of the military departments and the Secretary of Homeland Security, shall—

''(A) conduct an evaluation to identify the causes of any racial, ethnic, or gender disparities identified in the military justice system;

''(B) take steps to address the causes of any such disparities, as appropriate.

''(c) DAC–IPAD ACTIVITIES.—

''(1) IN GENERAL.—The activities described in this subsection are the following, to be conducted by the independent committee DAC–IPAD:

''(A) A review and assessment, by fiscal year, of the race and ethnicity of members of the Armed Forces accused of a penetrative sexual assault offense or contact sexual assault offense in an unrestricted report made pursuant to Department of Defense Instruction 6495.02, including an unrestricted report involving a spouse or intimate partner, in all cases completed in each fiscal year assessed.

''(B) A review and assessment, by fiscal year, of the race and ethnicity of members of the Armed Forces against whom charges were preferred pursuant to Rule for Courts-Martial 307 for a penetrative sexual assault offense or contact sexual assault offense in all cases completed in each fiscal year assessed.

''(C) A review and assessment, by fiscal year, of the race and ethnicity of members of the Armed Forces who were convicted of a penetrative sexual assault offense or contact sexual assault offense in all cases completed in each fiscal year assessed.

''(2) INFORMATION FROM FEDERAL AGENCIES.—

''(A) IN GENERAL.—Upon request by the chair of the committee, a department or agency of the Federal Government shall provide information that the committee considers necessary to conduct reviews and assessments required by paragraph (1), including military criminal investigation files, charge sheets, records of trial, and personnel records.

''(B) HANDLING, STORAGE, AND RETURN.—The committee shall handle and store all records received and reviewed under this subsection in accordance with applicable privacy laws and Department of Defense policy, and shall return all records so received in a timely manner.

''(3) REPORT.—Not later than one year after the date of the enactment of this Act [Dec. 20, 2019], the committee shall submit to the Secretary of Defense, and to the Committees on Armed Services of the Senate and the House of Representatives, a report setting forth the results of the reviews and assessments required by paragraph (1). The report shall include such recommendations for legislative or administrative action as the committee considers appropriate in light of such results.

''(4) DEFINITIONS.—In this subsection:

''(A) The term 'independent committee DAC–IPAD' means the independent committee established by the Secretary of Defense under section 546 of the Carl Levin and Howard P. 'Buck' McKeon National Defense Authorization Act for Fiscal Year 2015 (Public Law 113–291; 128 Stat. 3374) [10 U.S.C. 1561 note], commonly known as the 'DAC-IPAD'.

''(B) The term 'case' means an unrestricted report of any penetrative sexual assault offense or contact sexual assault offense made against a member of the Armed Forces pursuant to Department of Defense Instruction 6495.02, including any unrestricted report involving a spouses or intimate partner for which an investigation has been opened by a criminal investigative organization.

''(C) The term 'completed', with respect to a case, means that the case was tried to verdict, dismissed without further action, or dismissed and then resolved by non-judicial or administrative proceedings.

''(D) The term 'contact sexual assault offense' means aggravated sexual contact, abusive sexual contact, wrongful sexual contact, and attempts to commit such offenses under the Uniform Code of Military Justice.

''(E) The term 'penetrative sexual assault offense' means rape, aggravated sexual assault, sexual assault, forcible sodomy, and attempts to commit such offenses under the Uniform Code of Military Justice.''

PILOT PROGRAMS ON DEFENSE INVESTIGATORS IN THE MILITARY JUSTICE SYSTEM

Pub. L. 116–92, div. A, title V, § 540J, Dec. 20, 2019, 133 Stat. 1371, provided that:

''(a) IN GENERAL.—Each Secretary of a military department shall carry out a pilot program on defense investigators within the military justice system under the jurisdiction of such Secretary in order to do the following:

''(1) Determine whether the presence of defense investigators within such military justice system will—

''(A) make such military justice system more effective in providing an effective defense for the accused; and

''(B) make such military justice system more fair and efficient.

''(2) Otherwise assess the feasibility and advisability of defense investigators as an element of such military justice system.

''(b) ELEMENTS.—

''(1) INTERVIEW OF VICTIM.—A defense investigator may question a victim under a pilot program only upon a request made through the Special Victims' Counsel or other counsel if the victim does not have such counsel.

''(2) UNIFORMITY ACROSS MILITARY JUSTICE SYSTEMS.—The Secretary of Defense shall ensure that the personnel and activities of defense investigators under the pilot programs are, to the extent practicable, uniform across the military justice systems of the military departments.

''(c) REPORT.—

''(1) IN GENERAL.—Not later than three years after the date of the enactment of this Act [Dec. 20, 2019], the Secretary of Defense shall, in consultation with the Secretaries of the military departments, submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the pilot programs under subsection (a).

''(2) ELEMENTS.—The report required by paragraph (1) shall include the following:

''(A) A description of each pilot program, including the personnel and activities of defense investigators under such pilot program.

''(B) An assessment of the feasibility and advisability of establishing and maintaining defense investigators as an element of the military justice systems of the military departments.

''(C) If the assessment under subparagraph (B) is that the establishment and maintenance of defense investigators as an element of the military justice systems of the military departments is feasible and advisable, such recommendations for legislative and administrative action as the Secretary of Defense considers appropriate to establish and maintain defense investigators as an element of the military justice systems.

''(D) Any other matters the Secretary of Defense considers appropriate.''

CHIEF MEDICAL OFFICER AT UNITED STATES NAVAL STATION, GUANTANAMO BAY, CUBA

Pub. L. 116–92, div. A, title X, § 1046, Dec. 20, 2019, 133 Stat. 1586, provided that:

''(a) CHIEF MEDICAL OFFICER.—

''(1) IN GENERAL.—There shall be at United States Naval Station, Guantanamo Bay, Cuba, a Chief Medical Officer of United States Naval Station, Guantanamo Bay (in this section referred to as the 'Chief Medical Officer').

''(2) GRADE.—The individual serving as Chief Medical Officer shall be an officer of the Armed Forces who holds a grade not below the grade of colonel, or captain in the Navy.

''(3) CHAIN OF COMMAND.—Notwithstanding sections 162 and 164 of title 10, United States Code, the Chief Medical Officer shall be assigned and report to the Assistant Secretary of Defense for Health Affairs, with duty at United States Naval Station, Guantanamo Bay, Cuba, in the performance of duties and the exercise of powers of the Chief Medical Officer under this section.

''(b) DUTIES.—

''(1) IN GENERAL.—The Chief Medical Officer shall oversee the provision of medical care to individuals detained at Guantanamo.

''(2) QUALITY OF CARE.—The Chief Medical Officer shall ensure that medical care provided as described in paragraph (1) meets applicable standards of care.

''(c) POWERS.—

''(1) IN GENERAL.—The Chief Medical Officer shall make medical determinations relating to medical care for individuals detained at Guantanamo, including—

''(A) decisions regarding assessment, diagnosis, and treatment; and

''(B) determinations concerning medical accommodations to living conditions and operating procedures for detention facilities.

''(2) RESOLUTION OF DECLINATION TO FOLLOW DETERMINATIONS.—If the commander of Joint Task Force Guantanamo or the Commander of United States Southern Command declines to follow a determination of the Chief Medical Officer under paragraph (1), the matter covered by such determination shall be resolved by the Assistant Secretary of Defense for Health Affairs, in consultation with the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict, not later than seven days after receipt by both Assistant Secretaries of written notification of the matter from the Chief Medical Officer.

''(3) SECURITY CLEARANCES.—The appropriate departments or agencies of the Federal Government shall, to the extent practicable in accordance with existing procedures and requirements, process expeditiously any application and adjudication for a security clearance required by the Chief Medical Officer to carry out the Chief Medical Officer's duties and powers under this section.

''(d) ACCESS TO INDIVIDUALS, INFORMATION, AND ASSISTANCE.—

''(1) IN GENERAL.—The Chief Medical Officer may secure directly from the Department of Defense access to any individual, information, or assistance that the Chief Medical Officer considers necessary to enable the Chief Medical Officer to carry out this section, including full access to the following:

''(A) Any individual detained at Guantanamo.

''(B) Any medical records of any individual detained at Guantanamo.

''(C) Medical professionals of the Department who are working, or have worked, at United States Naval Station, Guantanamo Bay.

''(2) ACCESS UPON REQUEST.—Upon request of the Chief Medical Officer, the Department shall make available to the Chief Medical Officer on an expeditious basis access to individuals, information, and assistance as described in paragraph (1).

''(3) LACK OF EXPEDITIOUS AVAILABILITY.—If access to individuals, information, or assistance is not made available to the Chief Medical Officer upon request on an expeditious basis as required by paragraph (2), the Chief Medical Officer shall notify the Assistant Secretary of Defense for Health Affairs and the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict, who shall take actions to resolve the matter expeditiously.

''(e) DEFINITIONS.—In this section:

''(1) INDIVIDUAL DETAINED AT GUANTANAMO DEFINED.—The term 'individual detained at Guantanamo' means an individual located at United States Naval Station, Guantanamo Bay, Cuba, as of October 1, 2009, who—

''(A) is not a national of the United States (as defined in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)) or a member of the Armed Forces of the United States; and

''(B) is—

''(i) in the custody or under the control of the Department of Defense; or

''(ii) otherwise detained at United States Naval Station, Guantanamo Bay.

''(2) MEDICAL CARE.—The term 'medical care' means physical and mental health care.

''(3) STANDARD OF CARE.—The term 'standard of care' means evaluation and treatment that is accepted by medical experts and reflected in peer-reviewed medical literature as the appropriate medical approach for a condition, symptoms, illness, or disease and that is widely used by healthcare professionals.''

SENTENCING IN CERTAIN TRANSITIONAL CASES

Pub. L. 115–91, div. A, title V, § 531(*o*), Dec. 12, 2017, 131 Stat. 1387, provided that:

''(1) IN GENERAL.—In any transition-period court-martial, the relevant sentencing sections of chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), shall be applied as follows:

''(A) Except as provided in subparagraph (B), the relevant sentencing sections shall be applied as if the amendments to such sections made by the Military Justice Act of 2016 (division E of Public Law 114–328 [enacting, amending, and transferring numerous sections throughout this chapter]) and this section [see section 531(p) of Pub. L. 115–91, set out as an Effective Date of 2017 Amendment note above] had not been enacted.

''(B) If the accused so requests, the relevant sentencing sections shall be applied as amended by the Military Justice Act of 2016 (division E of Public Law 114–328) and this section.

''(2) DEFINITIONS.—In this subsection:

''(A) TRANSITION-PERIOD COURT-MARTIAL.—The term 'transition-period court-martial' means a court-martial under chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), that consists of both of the following:

''(i) A prosecution of one or more offenses committed before the date designated by the President under section 5542(a) of the Military Justice Act of 2016 (division E of Public Law 114–328; 130 Stat. 2967) [set out above].

''(ii) A prosecution of one or more offenses committed on or after that date.

''(B) RELEVANT SENTENCING SECTIONS.—The term 'relevant sentencing sections' means section 856 of title 10, United States Code (article 56 of the Uniform Code of Military Justice), and any other sections (articles) of chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), that, by regulation prescribed by the President, are designated as relevant to sentencing for the purposes of paragraph (1).''

IMPROVED IMPLEMENTATION OF CHANGES TO UNIFORM CODE OF MILITARY JUSTICE

Pub. L. 114–92, div. A, title V, § 543, Nov. 25, 2015, 129 Stat. 820, provided that: ''The Secretary of Defense shall examine the Department of Defense process for implementing statutory changes to the Uniform Code of Military Justice for the purpose of developing options for streamlining such process. The Secretary shall adopt procedures to ensure that legal guidance is published as soon as practicable whenever statutory changes to the Uniform Code of Military Justice are implemented.''

REENACTMENT AND MODIFICATION OF CERTAIN PRIOR REQUIREMENTS FOR CERTIFICATIONS RELATING TO TRANSFER OF DETAINEES AT UNITED STATES NAVAL STATION, GUANTANAMO BAY, CUBA, TO FOREIGN COUNTRIES AND OTHER FOREIGN ENTITIES

Pub. L. 114–92, div. A, title X, § 1034(a)–(f), Nov. 25, 2015, 129 Stat. 969, 970, provided that:

''(a) CERTIFICATION REQUIRED PRIOR TO TRANSFER.—

''(1) IN GENERAL.—Except as provided in paragraph (2), the Secretary of Defense may not use any amounts authorized to be appropriated or otherwise available to the Department of Defense to transfer any individual detained at Guantanamo to the custody or control of the individual's country of origin, any other foreign country, or any other foreign entity unless the Secretary submits to the appropriate committees of Congress the certification described in subsection (b) not later than 30 days before the transfer of the individual.

''(2) EXCEPTION.—Paragraph (1) shall not apply to any action taken by the Secretary to transfer any individual detained at Guantanamo to effectuate an order affecting the disposition of the individual that is issued by a court or competent tribunal of the United States having lawful jurisdiction (which the Secretary shall notify the appropriate committees of Congress of promptly after issuance).

''(b) CERTIFICATION.—A certification described in this subsection is a written certification made by the Secretary that—

''(1) the transfer concerned is in the national security interests of the United States;

''(2) the government of the foreign country or the recognized leadership of the foreign entity to which the individual detained at Guantanamo concerned is to be transferred—

''(A) is not a designated state sponsor of terrorism or a designated foreign terrorist organization;

''(B) maintains control over each detention facility in which the individual is to be detained if the individual is to be housed in a detention facility;

''(C) has taken or agreed to take appropriate steps to substantially mitigate any risk the individual could attempt to reengage in terrorist activity or otherwise threaten the United States or its allies or interests; and

''(D) has agreed to share with the United States any information that is related to the individual;

''(3) if the country to which the individual is to be transferred is a country to which the United States transferred an individual who was detained at United States Naval Station, Guantanamo Bay, Cuba, at any time after September 11, 2001, and such transferred individual subsequently engaged in any terrorist activity, the Secretary has—

''(A) considered such circumstances; and

''(B) determined that the actions to be taken as described in paragraph (2)(C) will substantially mitigate the risk of recidivism with regard to the individual to be transferred; and

''(4) includes an intelligence assessment, in classified or unclassified form, of the capacity, willingness, and past practices (if applicable) of the foreign country or foreign entity concerned in relation to the certification of the Secretary under this subsection.

''(c) COORDINATION WITH PROHIBITION ON TRANSFER TO CERTAIN COUNTRIES.—While the prohibition in section 1033 [of Pub. L. 114–92, 129 Stat. 968] is in effect, no certification may be made under subsection (b) in connection with the transfer of an individual detained at Guantanamo to a country specified in such section.

''(d) RECORD OF COOPERATION.—In assessing the risk that an individual detained at Guantanamo will engage in terrorist activity or other actions that could affect the national security of the United States if released for the purpose of making a certification under subsection (b), the Secretary may give favorable consideration to any such individual—

''(1) who has substantially cooperated with United States intelligence and law enforcement authorities, pursuant to a pre-trial agreement, while in the custody of or under the effective control of the Department of Defense; and

''(2) for whom agreements and effective mechanisms are in place, to the extent relevant and necessary, to provide for continued cooperation with United States intelligence and law enforcement authorities.

''(e) REPORT.—Whenever the Secretary makes a certification under subsection (b) with respect to an individual detained at Guantanamo, the Secretary shall submit to the appropriate committees of Congress, together with such certification, a report that shall include, at a minimum, the following:

''(1) A detailed statement of the basis for the transfer of the individual.

''(2) An explanation why the transfer of the individual is in the national security interests of the United States.

''(3) A description of actions taken to mitigate the risks of reengagement by the individual as described in subsection (b)(2)(C), including any actions taken to address factors relevant to an applicable prior case of reengagement described in subsection (b)(3).

''(4) A copy of any Periodic Review Board findings relating to the individual.

''(5) A copy of the final recommendation by the Guantanamo Detainee Review Task Force established pursuant to Executive Order 13492 [set out below] relating to the individual and, if applicable, updated information related to any change to such recommendation.

''(6) An assessment whether, as of the date of the certification, the country to which the individual is to be transferred is facing a threat that could substantially affect its ability to exercise control over the individual.

''(7) A classified summary of—

''(A) the individual's record of cooperation, if any, while in the custody of or under the effective control of the Department of Defense; and

''(B) any agreements and mechanisms in place to provide for continuing cooperation.

''(f) DEFINITIONS.—In this section:

''(1) The term 'appropriate committees of Congress' means—

''(A) the Committee on Armed Services, the Committee on Foreign Relations, the Committee on Appropriations, and the Select Committee on Intelligence of the Senate; and

''(B) the Committee on Armed Services, the Committee on Foreign Affairs, the Committee on Appropriations, and the Permanent Select Committee on Intelligence of the House of Representatives.

''(2) The term 'individual detained at Guantanamo' means any individual located at United States Naval Station, Guantanamo Bay, Cuba, as of October 1, 2009, who—

''(A) is not a citizen of the United States or a member of the Armed Forces of the United States; and

''(B) is—

''(i) in the custody or under the control of the Department of Defense; or

''(ii) otherwise under detention at United States Naval Station, Guantanamo Bay, Cuba.

''(3) The term 'foreign terrorist organization' means any organization so designated by the Secretary of State under section 219 of the Immigration and Nationality Act (8 U.S.C. 1189).

''(4) The term 'state sponsor of terrorism' has the meaning given that term in section 301(13) of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (22 U.S.C. 8541(13)).''

TRANSFERS TO FOREIGN COUNTRIES OF INDIVIDUALS DETAINED AT UNITED STATES NAVAL STATION, GUANTANAMO BAY, CUBA

Pub. L. 113–66, div. A, title X, § 1035(a)–(e), Dec. 26, 2013, 127 Stat. 851–853, which related to authority, determinations, and notification regarding transfers to foreign countries of individuals detained at United States Naval Station, Guantanamo Bay, Cuba, was repealed by Pub. L. 114–92, div. A, title X, § 1034(g), Nov. 25, 2015, 129 Stat. 971.

NOTICE TO CONGRESS ON USE OF NAVAL VESSELS FOR DETENTION OF INDIVIDUALS

Pub. L. 112–239, div. A, title X, § 1024(a), Jan. 2, 2013, 126 Stat 1912, provided that: ''Not later than 30 days after first detaining an individual pursuant to the Authorization for Use of Military Force (Public Law 107–40; 50 U.S.C. 1541 note) on a naval vessel outside the United States, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives notice of the detention. In the case of such an individual who is transferred or released before the submittal of the notice of the individual's detention, the Secretary shall also submit to such Committees notice of the transfer or release.''

NOTICE REQUIRED PRIOR TO TRANSFER OF CERTAIN INDIVIDUALS DETAINED AT THE DETENTION FACILITY AT PARWAN, AFGHANISTAN

Pub. L. 112–239, div. A, title X, § 1025, Jan. 2, 2013, 126 Stat. 1913, provided that:

''(a) NOTICE REQUIRED.—The Secretary of Defense shall submit to the appropriate congressional committees notice in writing of the proposed transfer of any individual detained pursuant to the Authorization for Use of Military Force (Public Law 107–40; 50 U.S.C. 1541 note) who is a national of a country other than the United States or Afghanistan from detention at the Detention Facility at Parwan, Afghanistan, to the custody of the Government of Afghanistan or of any other country. Such notice shall be provided not later than 10 days before such a transfer may take place.

''(b) ASSESSMENTS REQUIRED.—Prior to any transfer referred to under subsection (a), the Secretary shall ensure that an assessment is conducted as follows:

''(1) In the case of the proposed transfer of such an individual by reason of the individual being released, an assessment of the threat posed by the individual and the security environment of the country to which the individual is to be transferred.

''(2) In the case of the proposed transfer of such an individual to a country other than Afghanistan for the purpose of the prosecution of the individual, an assessment regarding the capacity, willingness, and historical track record of the country with respect to prosecuting similar cases, including a review of the primary evidence against the individual to be transferred and any significant admissibility issues regarding such evidence that are expected to arise in connection with the prosecution of the individual.

''(3) In the case of the proposed transfer of such an individual for reintegration or rehabilitation in a country other than Afghanistan, an assessment regarding the capacity, willingness, and historical track records of the country for reintegrating or rehabilitating similar individuals.

''(4) In the case of the proposed transfer of such an individual to the custody of the Government of Afghanistan for prosecution or detention, an assessment regarding the capacity, willingness, and historical track record of Afghanistan to prosecute or detain long-term such individuals.

''(c) APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.—In this section, the term 'appropriate congressional committees' means the Committee on Armed Services and the Committee on Foreign Affairs of the House of Representatives and the Committee on Armed Services and the Committee on Foreign Relations of the Senate.''

REQUIREMENTS FOR CERTIFICATIONS RELATING TO THE TRANSFER OF DETAINEES AT UNITED STATES NAVAL STATION, GUANTANAMO BAY, CUBA, TO FOREIGN COUNTRIES AND OTHER FOREIGN ENTITIES

Pub. L. 112–239, div. A, title X, § 1028, Jan. 2, 2013, 126 Stat. 1914, related to requirements for certifications relating to the transfer of detainees at United States Naval Station, Guantanamo Bay, Cuba, to foreign countries and other foreign entities, prior to repeal by Pub. L. 113–66, div. A, title X, § 1035(f)(2), Dec. 26, 2013, 127 Stat. 853.

RIGHTS UNAFFECTED

Pub. L. 112–239, div. A, title X, § 1029, Jan. 2, 2013, 126 Stat. 1917, provided that: ''Nothing in the Authorization for Use of Military Force (Public Law 107–40; 50 U.S.C. 1541 note) or the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112–81 [see Tables for classification]) shall be construed to deny the availability of the writ of habeas corpus or to deny any Constitutional rights in a court ordained or established by or under Article III of the Constitution to any person inside the United States who would be entitled to the availability of such writ or to such rights in the absence of such laws.''

NOTIFICATION OF TRANSFER OF A DETAINEE HELD AT UNITED STATES NAVAL STATION, GUANTANAMO BAY, CUBA

Pub. L. 112–87, title III, § 308, Jan. 3, 2012, 125 Stat. 1883, provided that:

''(a) REQUIREMENT FOR NOTIFICATION.—The President shall submit to Congress, in classified form, at least 30 days prior to the transfer or release of an individual detained at Naval Station, Guantanamo Bay, Cuba, as of June 24, 2009, to the country of such individual's nationality or last habitual residence or to any other foreign country or to a freely associated State the following information:

''(1) The name of the individual to be transferred or released.

''(2) The country or the freely associated State to which such individual is to be transferred or released.

''(3) The terms of any agreement with the country or the freely associated State for the acceptance of such individual, including the amount of any financial assistance related to such agreement.

''(4) The agencies or departments of the United States responsible for ensuring that the agreement described in paragraph (3) is carried out.

''(b) DEFINITION.—In this section, the term 'freely associated States' means the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau.

''(c) CONSTRUCTION WITH OTHER REQUIREMENTS.—Nothing in this section shall be construed to supersede or otherwise affect the following provisions of law:

''(1) Section 1028 of the National Defense Authorization Act for Fiscal Year 2012 [Pub. L. 112–81, formerly set out below].

''(2) Section 8120 of the Department of Defense Appropriations Act, 2012 [div. A of Pub. L. 112–74, 125 Stat. 833].''

[Memorandum of President of the United States, Jan. 27, 2012, 77 F.R. 11371, delegated to the Secretary of State, in consultation with the Secretary of Defense, the function to provide to Congress the information specified in section 308(a) of Pub. L. 112–87, set out above.]

DETENTION AUTHORITY AND PROCEDURES, TRANSFER CERTIFICATIONS AND PROSECUTION CONSULTATION REQUIREMENT

Pub. L. 112–81, div. A, title X, §§ 1021–1025, 1028, 1029, Dec. 31, 2011, 125 Stat. 1562–1565, 1567, 1569, as amended by Pub. L. 113–66, div. A, title X, § 1035(f)(1), Dec. 26, 2013, 127 Stat. 853, provided that:

''SEC. 1021. AFFIRMATION OF AUTHORITY OF THE ARMED FORCES OF THE UNITED STATES TO DETAIN COVERED PERSONS PURSUANT TO THE AUTHORIZATION FOR USE OF MILITARY FORCE.

''(a) IN GENERAL.—Congress affirms that the authority of the President to use all necessary and appropriate force pursuant to the Authorization for Use of Military Force (Public Law 107–40; 50 U.S.C. 1541 note) includes the authority for the Armed Forces of the United States to detain covered persons (as defined in subsection (b)) pending disposition under the law of war.

''(b) COVERED PERSONS.—A covered person under this section is any person as follows:

''(1) A person who planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored those responsible for those attacks.

''(2) A person who was a part of or substantially supported al-Qaeda, the Taliban, or associated forces that are engaged in hostilities against the United States or its coalition partners, including any person who has committed a belligerent act or has directly supported such hostilities in aid of such enemy forces.

''(c) DISPOSITION UNDER LAW OF WAR.—The disposition of a person under the law of war as described in subsection (a) may include the following:

''(1) Detention under the law of war without trial until the end of the hostilities authorized by the Authorization for Use of Military Force.

''(2) Trial under chapter 47A of title 10, United States Code (as amended by the Military Commissions Act of 2009 (title XVIII of Public Law 111–84)).

''(3) Transfer for trial by an alternative court or competent tribunal having lawful jurisdiction.

''(4) Transfer to the custody or control of the person's country of origin, any other foreign country, or any other foreign entity.

''(d) CONSTRUCTION.—Nothing in this section is intended to limit or expand the authority of the President or the scope of the Authorization for Use of Military Force.

''(e) AUTHORITIES.—Nothing in this section shall be construed to affect existing law or authorities relating to the detention of United States citizens, lawful resident aliens of the United States, or any other persons who are captured or arrested in the United States.

''(f) REQUIREMENT FOR BRIEFINGS OF CONGRESS.—The Secretary of Defense shall regularly brief Congress regarding the application of the authority described in this section, including the organizations, entities, and individuals considered to be 'covered persons' for purposes of subsection (b)(2).

''SEC. 1022. MILITARY CUSTODY FOR FOREIGN AL-QAEDA TERRORISTS.

''(a) CUSTODY PENDING DISPOSITION UNDER LAW OF WAR.—

''(1) IN GENERAL.—Except as provided in paragraph (4), the Armed Forces of the United States shall hold a person described in paragraph (2) who is captured in the course of hostilities authorized by the Authorization for Use of Military Force (Public Law 107–40) in military custody pending disposition under the law of war.

''(2) COVERED PERSONS.—The requirement in paragraph (1) shall apply to any person whose detention is authorized under section 1021 who is determined—

''(A) to be a member of, or part of, al-Qaeda or an associated force that acts in coordination with or pursuant to the direction of al-Qaeda; and

''(B) to have participated in the course of planning or carrying out an attack or attempted attack against the United States or its coalition partners.

''(3) DISPOSITION UNDER LAW OF WAR.—For purposes of this subsection, the disposition of a person under the law of war has the meaning given in section 1021(c), except that no transfer otherwise described in paragraph (4) of that section shall be made unless consistent with the requirements of section 1028.

''(4) WAIVER FOR NATIONAL SECURITY.—The President may waive the requirement of paragraph (1) if the President submits to Congress a certification in writing that such a waiver is in the national security interests of the United States.

''(b) APPLICABILITY TO UNITED STATES CITIZENS AND LAWFUL RESIDENT ALIENS.—

''(1) UNITED STATES CITIZENS.—The requirement to detain a person in military custody under this section does not extend to citizens of the United States.

''(2) LAWFUL RESIDENT ALIENS.—The requirement to detain a person in military custody under this section does not extend to a lawful resident alien of the United States on the basis of conduct taking place within the United States, except to the extent permitted by the Constitution of the United States.

''(c) IMPLEMENTATION PROCEDURES.—

''(1) IN GENERAL.—Not later than 60 days after the date of the enactment of this Act [Dec. 31, 2011], the President shall issue, and submit to Congress, procedures for implementing this section.

''(2) ELEMENTS.—The procedures for implementing this section shall include, but not be limited to, procedures as follows:

''(A) Procedures designating the persons authorized to make determinations under subsection (a)(2) and the process by which such determinations are to be made.

''(B) Procedures providing that the requirement for military custody under subsection (a)(1) does not require the interruption of ongoing surveillance or intelligence gathering with regard to persons not already in the custody or control of the United States.

''(C) Procedures providing that a determination under subsection (a)(2) is not required to be implemented until after the conclusion of an interrogation which is ongoing at the time the determination is made and does not require the interruption of any such ongoing interrogation.

''(D) Procedures providing that the requirement for military custody under subsection (a)(1) does not apply when intelligence, law enforcement, or other Government officials of the United States are granted access to an individual who remains in the custody of a third country.

''(E) Procedures providing that a certification of national security interests under subsection (a)(4) may be granted for the purpose of transferring a covered person from a third country if such a transfer is in the interest of the United States and could not otherwise be accomplished.

''(d) AUTHORITIES.—Nothing in this section shall be construed to affect the existing criminal enforcement and national security authorities of the Federal Bureau of Investigation or any other domestic law enforcement agency with regard to a covered person, regardless whether such covered person is held in military custody.

"(e) EFFECTIVE DATE.—This section shall take effect on the date that is 60 days after the date of the enactment of this Act, and shall apply with respect to persons described in subsection (a)(2) who are taken into the custody or brought under the control of the United States on or after that effective date.

"SEC. 1023. PROCEDURES FOR PERIODIC DETENTION REVIEW OF INDIVIDUALS DETAINED AT UNITED STATES NAVAL STATION, GUANTANAMO BAY, CUBA.

"(a) PROCEDURES REQUIRED.—Not later than 180 days after the date of the enactment of this Act [Dec. 31, 2011], the Secretary of Defense shall submit to the appropriate committees of Congress a report setting forth procedures for implementing the periodic review process required by Executive Order No. 13567 [set out below] for individuals detained at United States Naval Station, Guantanamo Bay, Cuba, pursuant to the Authorization for Use of Military Force (Public Law 107–40; 50 U.S.C. 1541 note).

"(b) COVERED MATTERS.—The procedures submitted under subsection (a) shall, at a minimum—

"(1) clarify that the purpose of the periodic review process is not to determine the legality of any detainee's law of war detention, but to make discretionary determinations whether or not a detainee represents a continuing threat to the security of the United States;

"(2) clarify that the Secretary of Defense is responsible for any final decision to release or transfer an individual detained in military custody at United States Naval Station, Guantanamo Bay, Cuba, pursuant to the Executive Order referred to in subsection (a), and that in making such a final decision, the Secretary shall consider the recommendation of a periodic review board or review committee established pursuant to such Executive Order, but shall not be bound by any such recommendation;

"(3) clarify that the periodic review process applies to any individual who is detained as an unprivileged enemy belligerent at United States Naval Station, Guantanamo Bay, Cuba, at any time; and

"(4) ensure that appropriate consideration is given to factors addressing the need for continued detention of the detainee, including—

"(A) the likelihood the detainee will resume terrorist activity if transferred or released;

"(B) the likelihood the detainee will reestablish ties with al-Qaeda, the Taliban, or associated forces that are engaged in hostilities against the United States or its coalition partners if transferred or released;

"(C) the likelihood of family, tribal, or government rehabilitation or support for the detainee if transferred or released;

"(D) the likelihood the detainee may be subject to trial by military commission; and

"(E) any law enforcement interest in the detainee.

"(c) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this section, the term 'appropriate committees of Congress' means—

"(1) the Committee on Armed Services and the Select Committee on Intelligence of the Senate; and

"(2) the Committee on Armed Services and the Permanent Select Committee on Intelligence of the House of Representatives.

"SEC. 1024. PROCEDURES FOR STATUS DETERMINATIONS.

"(a) IN GENERAL.—Not later than 90 days after the date of the enactment of this Act [Dec. 31, 2011], the Secretary of Defense shall submit to the appropriate committees of Congress a report setting forth the procedures for determining the status of persons detained pursuant to the Authorization for Use of Military Force (Public Law 107–40; 50 U.S.C. 1541 note) for purposes of section 1021.

"(b) ELEMENTS OF PROCEDURES.—The procedures required by this section shall provide for the following in the case of any unprivileged enemy belligerent who will be held in long-term detention under the law of war pursuant to the Authorization for Use of Military Force:

"(1) A military judge shall preside at proceedings for the determination of status of an unprivileged enemy belligerent.

"(2) An unprivileged enemy belligerent may, at the election of the belligerent, be represented by military counsel at proceedings for the determination of status of the belligerent.

"(c) APPLICABILITY.—The Secretary of Defense is not required to apply the procedures required by this section in the case of a person for whom habeas corpus review is available in a Federal court.

"(d) REPORT ON MODIFICATION OF PROCEDURES.—The Secretary of Defense shall submit to the appropriate committees of Congress a report on any modification of the procedures submitted under this section. The report on any such modification shall be so submitted not later than 60 days before the date on which such modification goes into effect.

"(e) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this section, the term 'appropriate committees of Congress' means—

"(1) the Committee on Armed Services and the Select Committee on Intelligence of the Senate; and

"(2) the Committee on Armed Services and the Permanent Select Committee on Intelligence of the House of Representatives.

"SEC. 1025. REQUIREMENT FOR NATIONAL SECURITY PROTOCOLS GOVERNING DETAINEE COMMUNICATIONS.

"(a) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act [Dec. 31, 2011], the Secretary of Defense shall develop and submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a national security protocol governing communications to and from individuals detained at United States Naval Station, Guantanamo Bay, Cuba, pursuant to the Authorization for Use of Military Force (Public Law 107–40; 50 U.S.C. 1541 note), and related issues.

"(b) CONTENTS.—The protocol developed pursuant to subsection (a) shall include Department of Defense policies and procedures regarding each of the following:

"(1) Detainee access to military or civilian legal representation, or both, including any limitations on such access and the manner in which any applicable legal privileges will be balanced with national security considerations.

"(2) Detainee communications with persons other than Federal Government personnel and members of the Armed Forces, including meetings, mail, phone calls, and video teleconferences, including—

"(A) any limitations on categories of information that may be discussed or materials that may be shared; and

"(B) the process by which such communications or materials are to be monitored or reviewed.

"(3) The extent to which detainees may receive visits by persons other than military or civilian representatives.

"(4) The measures planned to be taken to implement and enforce the provisions of the protocol.

"(c) UPDATES.—The Secretary of Defense shall notify the congressional defense committees of any significant change to the policies and procedures described in the protocol submitted pursuant to subsection (a) not later than 30 days after such change is made.

"(d) FORM OF PROTOCOL.—The protocol submitted pursuant to subsection (a) may be submitted in classified form.

"[SEC. 1028. Repealed. Pub. L. 113–66, div. A, title X, §1035(f)(1), Dec. 26, 2013, 127 Stat. 853.]

"SEC. 1029. REQUIREMENT FOR CONSULTATION REGARDING PROSECUTION OF TERRORISTS.

"(a) IN GENERAL.—Before seeking an indictment of, or otherwise charging, an individual described in sub-

section (b) in a Federal court, the Attorney General shall consult with the Director of National Intelligence and the Secretary of Defense about—

''(1) whether the more appropriate forum for prosecution would be a Federal court or a military commission; and

''(2) whether the individual should be held in civilian custody or military custody pending prosecution.

''(b) APPLICABILITY.—The consultation requirement in subsection (a) applies to—

''(1) a person who is subject to the requirements of section 1022, in accordance with a determination made pursuant to subsection (a)(2) of such section; and

''(2) any other person who is held in military detention outside of the United States pursuant to the authority affirmed by section 1021.''

[Memorandum of President of the United States, Feb. 28, 2012, 77 F.R. 12435, delegated the waiver authority conferred upon the President by section 1022(a)(4) of Pub. L. 112–81, set out above, to the Attorney General, in consultation with other senior national security officials, including the Secretaries of State, Defense, and Homeland Security, Director of National Intelligence, Chairman of the Joint Chiefs of Staff, Director of the Central Intelligence Agency, and Director of the Federal Bureau of Investigation, as well as any other officials the President may designate.]

PROHIBITION ON INTERROGATION OF DETAINEES BY CONTRACTOR PERSONNEL

Pub. L. 111–84, div. A, title X, § 1038, Oct. 28, 2009, 123 Stat. 2451, provided that:

''(a) PROHIBITION.—Except as provided in subsection (b), effective one year after the date of the enactment of this Act [Oct. 28, 2009], no enemy prisoner of war, civilian internee, retained personnel, other detainee, or any other individual who is in the custody or under the effective control of the Department of Defense or otherwise under detention in a Department of Defense facility in connection with hostilities may be interrogated by contractor personnel.

''(b) AUTHORIZED FUNCTIONS OF CONTRACTOR PERSONNEL.—Contractor personnel with proper training and security clearances may be used as linguists, interpreters, report writers, information technology technicians, and other employees filling ancillary positions, including as trainers of and advisors to interrogators, in interrogations of persons as described in subsection (a) if—

''(1) such personnel are subject to the same rules, procedures, policies, and laws pertaining to detainee operations and interrogations as apply to government personnel in such positions in such interrogations; and

''(2) appropriately qualified and trained military or civilian personnel of the Department of Defense are available to oversee the contractor's performance and to ensure that contractor personnel do not perform activities that are prohibited under this section.

''(c) DISCHARGE BY GOVERNMENT PERSONNEL.—The Secretary of Defense shall take appropriate actions to ensure that, by not later than one year after the date of the enactment of this Act, the Department of Defense has the resources needed to ensure that interrogations described in subsection (a) are conducted by appropriately qualified government personnel.

''(d) WAIVER.—

''(1) WAIVERS AUTHORIZED.—The Secretary of Defense may waive the prohibition under subsection (a) for a period of 60 days if the Secretary determines such a waiver is vital to the national security interests of the United States. The Secretary may renew a waiver issued pursuant to this paragraph for an additional 30-day period, if the Secretary determines that such a renewal is vital to the national security interests of the United States.

''(2) LIMITATION ON DELEGATION.—

''(A) IN GENERAL.—The waiver authority under paragraph (1) may not be delegated to any official below the level of the Deputy Secretary of Defense, except in the case of a waiver for an individual interrogation that is based on military exigencies, in which case the delegation of the waiver authority shall be done pursuant to regulations that the Secretary of Defense shall prescribe but in no instance may the latter delegation be below the level of combatant commander of the theater in which the individual is in the custody or under the effective control of the Department of Defense or otherwise under detention in a Department of Defense facility within that theater.

''(B) DEADLINE FOR REGULATIONS.—The Secretary of Defense shall prescribe the regulations referred to in subparagraph (A) by not later than 30 days after the date of the enactment of this Act.

''(3) CONGRESSIONAL NOTIFICATION.—Not later than five days after the Secretary issues a waiver pursuant to paragraph (1), the Secretary shall submit to Congress written notification of the waiver.''

NO MIRANDA WARNINGS FOR AL QAEDA TERRORISTS

Pub. L. 111–84, div. A, title X, § 1040, Oct. 28, 2009, 123 Stat. 2454, provided that:

''(a) NO MIRANDA WARNINGS.—

''(1) IN GENERAL.—Absent a court order requiring the reading of such statements, no member of the Armed Forces and no official or employee of the Department of Defense or a component of the intelligence community (other than the Department of Justice) may read to a foreign national who is captured or detained outside the United States as an enemy belligerent and is in the custody or under the effective control of the Department of Defense or otherwise under detention in a Department of Defense facility the statement required by *Miranda* v. *Arizona* (384 U.S. 436 (1966)), or otherwise inform such an individual of any rights that the individual may or may not have to counsel or to remain silent consistent with *Miranda* v. *Arizona* (384 U.S. 436 (1966)).

''(2) NONAPPLICABILITY TO DEPARTMENT OF JUSTICE.—This subsection shall not apply to the Department of Justice.

''(3) DEFINITIONS.—In this subsection:

''(A) The term 'foreign national' means an individual who is not a citizen or national of the United States.

''(B) The term 'enemy belligerent' includes a privileged belligerent against the United States and an unprivileged enemy belligerent, as those terms are defined in section 948a of title 10, United States Code, as amended by section 1802 of this Act.

''(b) REPORT REQUIRED ON NOTIFICATION OF DETAINEES OF RIGHTS UNDER ***MIRANDA*** v. ***ARIZONA***.—Not later than 90 days after the date of the enactment of this Act [Oct. 28, 2009], the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on how the reading of rights under *Miranda* v. *Arizona* (384 U.S. 436 (1966)) to individuals detained by the United States in Afghanistan may affect—

''(1) the tactical questioning of detainees at the point of capture by United States Armed Forces deployed in support of Operation Enduring Freedom;

''(2) post-capture theater-level interrogations and intelligence-gathering activities conducted as part of Operation Enduring Freedom;

''(3) the overall counterinsurgency strategy and objectives of the United States for Operation Enduring Freedom;

''(4) United States military operations and objectives in Afghanistan; and

''(5) potential risks to members of the Armed Forces operating in Afghanistan.''

REQUIREMENT FOR VIDEOTAPING OR OTHERWISE ELECTRONICALLY RECORDING STRATEGIC INTELLIGENCE INTERROGATIONS OF PERSONS IN THE CUSTODY OF OR UNDER THE EFFECTIVE CONTROL OF THE DEPARTMENT OF DEFENSE

Pub. L. 111–84, div. A, title X, § 1080, Oct. 28, 2009, 123 Stat. 2479, as amended by Pub. L. 111–383, div. A, title X, § 1075(d)(15), Jan. 7, 2011, 124 Stat. 4373, provided that:

''(a) VIDEOTAPING OR OTHER ELECTRONIC RECORDING REQUIRED.—In accordance with the Army Field Manual on Human Intelligence Collector Operations (FM 2–22.3, September 2006), or any successor thereto, and the guidelines developed pursuant to subsection (f), the Secretary of Defense shall ensure that each strategic intelligence interrogation of any person who is in the custody or under the effective control of the Department of Defense or under detention in a Department of Defense facility is videotaped or otherwise electronically recorded.

''(b) CLASSIFICATION OF INFORMATION.—To protect United States national security, the safety of the individuals conducting or assisting in the conduct of a strategic intelligence interrogation, and the privacy of persons described in subsection (a), the Secretary of Defense shall provide for the appropriate classification of videotapes or other electronic recordings made pursuant to subsection (a). The use of such classified videotapes or other electronic recordings in proceedings conducted under the Detainee Treatment Act of 2005 (title XIV of Public Law 109–163 and title X of Public Law 109–148), chapter 47A of title 10, United States Code, as amended by section 1802 of this Act, or at any other judicial or administrative forum under any other provision of law shall be governed by applicable rules, regulations, and laws that protect classified information.

''(c) STRATEGIC INTELLIGENCE INTERROGATION DEFINED.—For purposes of this section, the term 'strategic intelligence interrogation' means an interrogation of a person described in subsection (a) conducted at a theater-level detention facility.

''(d) EXCLUSION.—Nothing in this section shall be construed as requiring—

''(1) any member of the Armed Forces engaged in direct combat operations to videotape or otherwise electronically record an interrogation of a person described in subsection (a); or

''(2) the videotaping of or otherwise electronically recording of tactical questioning, as such term is defined in the Army Field Manual on Human Intelligence Collector Operations (FM 2–22.3, September 2006), or any successor thereto.

''(e) WAIVER.—

''(1) WAIVERS AUTHORIZED.—The Secretary of Defense may, as an exceptional measure, as part of a specific interrogation plan for a specific person described in subsection (a), waive the requirement in that subsection on a case-by-case basis for a period not to exceed 30 days, if the Secretary—

''(A) makes a determination in writing that such a waiver is necessary to the national security interests of the United States; and

''(B) by not later than five days after the date on which such a determination is made, submits to the Committees on Armed Services of the Senate and House of Representatives, the House Permanent Select Committee on Intelligence, and the Senate Select Committee on Intelligence notice of that determination, including a justification for that determination.

''(2) SUSPENSIONS AUTHORIZED.—The Secretary may temporarily suspend the requirement under subsection (a) at a specific theater-level detention facility for a period not to exceed 30 days, if the Secretary—

''(A) makes a determination in writing that such a suspension is vital to the national security interests of the United States; and

''(B) by not later than five days after the date on which such a determination is made, submits to the Committees on Armed Services of the Senate and House of Representatives, the House Permanent Select Committee on Intelligence, and the Senate Select Committee on Intelligence notice of that determination, including a justification for that determination.

''(3) LIMITATION ON DELEGATION OF AUTHORITY.—This authority of the Secretary under this subsection may only be delegated as follows:

''(A) In the case of the authority under paragraph (1), such authority may not be delegated below the level of the combatant commander of the theater in which the detention facility holding the person is located.

''(B) In the case of the authority under paragraph (2), such authority may not be delegated below the level of the Deputy Secretary of Defense.

''(4) EXTENSIONS.—The Secretary may extend a waiver under paragraph (1) for one additional 30-day period, or a suspension under paragraph (2) for one additional 30-day period, if—

''(A) the Secretary—

''(i) in the case of such a waiver, makes a determination in writing that such an extension is necessary to the national security interests of the United State [sic]; or

''(ii) in the case of such a suspension, makes a determination in writing that such an extension is vital to the national security interests of the United States; and

''(B) by not later than five days after the date on which such a determination is made, the Secretary submits to the Committees on Armed Services of the Senate and House of Representatives, the House Permanent Select Committee on Intelligence, and the Senate Select Committee on Intelligence notice of that determination, including a justification for that determination.

''(f) GUIDELINES.—

''(1) DEVELOPMENT OF GUIDELINES.—The Secretary of Defense, acting through the Judge Advocates General (as defined in section 801(1) of title 10, United States Code, (Article 1 of the Uniform Code of Military Justice)), shall develop and adopt uniform guidelines for videotaping or otherwise electronically recording strategic intelligence interrogations as required under subsection (a). Such guidelines shall, at a minimum—

''(A) promote full compliance with the laws of the United States;

''(B) promote the exploitation of intelligence;

''(C) address the retention, maintenance, and disposition of videotapes or other electronic recordings, consistent with subparagraphs (A) and (B) and with the interests of justice; and

''(D) ensure the safety of all participants in the interrogations.

''(2) SUBMITTAL TO CONGRESS.—Not later than 30 days after the date of the enactment of this section [Oct. 28, 2009], the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives a report containing the guidelines developed under paragraph (1). Such report shall be in an unclassified form but may include a classified annex.''

REPORTS ON GUANTANAMO BAY PRISONER POPULATION

Pub. L. 111–32, title III, § 319, June 24, 2009, 123 Stat. 1874, as amended by Pub. L. 114–92, div. A, title X, §§ 1038(a), 1039, Nov. 25, 2015, 129 Stat. 974; Pub. L. 116–92, div. E, title LVII, § 5701(a)(2), Dec. 20, 2019, 133 Stat. 2159, provided that:

''(a) REPORTS REQUIRED.—Not later than 60 days after the date of the enactment of this Act [June 24, 2009] and annually thereafter, the President shall submit to the members and committees of Congress specified in subsection (b) a report on the prisoner population at the detention facility at Naval Station Guantanamo Bay, Cuba.

''(b) SPECIFIED MEMBERS AND COMMITTEES OF CONGRESS.—The members and committees of Congress specified in this subsection are the following:

''(1) The majority leader and minority leader of the Senate.

''(2) The Chairman and Ranking Member on the Committee on Armed Services of the Senate.

''(3) The Chairman and Vice Chairman of the Select Committee on Intelligence of the Senate.

''(4) The Chairman and Vice Chairman of the Committee on Appropriations of the Senate.

''(5) The Speaker of the House of Representatives.

''(6) The minority leader of the House of Representatives.

''(7) The Chairman and Ranking Member on the Committee on Armed Services of the House of Representatives.

''(8) The Chairman and Vice Chairman of the Permanent Select Committee on Intelligence of the House of Representatives.

''(9) The Chairman and Ranking Member of the Committee on Appropriations of the House of Representatives.

''(c) MATTERS TO BE INCLUDED.—Each report submitted under subsection (a) shall include the following:

''(1) The name and country of origin of each detainee at the detention facility at Naval Station Guantanamo Bay, Cuba, as of the date of such report.

''(2) A current summary of the evidence, intelligence, and information used to justify the detention of each detainee listed under paragraph (1) at Naval Station Guantanamo Bay.

''(3) A current accounting of all the measures taken to transfer each detainee listed under paragraph (1) to the individual's country of citizenship or another country.

''(4) A current description of the number of individuals released or transferred from detention at Naval Station Guantanamo Bay who are confirmed or suspected of returning to terrorist activities after release or transfer from Naval Station Guantanamo Bay.

''(5) An assessment of any efforts by al Qaeda to recruit detainees released from detention at Naval Station Guantanamo Bay.

''(6) A summary of all known contact between any individual formerly detained at Naval Station Guantanamo Bay and any individual known or suspected to be associated with a foreign terrorist group, which contact included information or discussion about planning for or conduct of hostilities against the United States or its allies or the organizational, logistical, or resource needs or activities of any terrorist group or activity.

''(7) For each individual described in paragraph (4), the date on which such individual was released or transferred from Naval Station Guantanamo Bay and the date on which it is confirmed that such individual is suspected or confirmed of reengaging in terrorist activities.

''(8) The average period of time described in paragraph (7) for all the individuals described in paragraph (4).

''(d) ADDITIONAL MATTERS TO BE INCLUDED IN INITIAL REPORT.—The first report submitted under subsection (a) shall also include the following:

''(1) A description of the process that was previously used for screening the detainees described by subsection (c)(4) prior to their release or transfer from detention at Naval Station Guantanamo Bay, Cuba.

''(2) An assessment of the adequacy of that screening process for reducing the risk that detainees previously released or transferred from Naval Station Guantanamo Bay would return to terrorist activities after release or transfer from Naval Station Guantanamo Bay.

''(3) An assessment of lessons learned from previous releases and transfers of individuals who returned to terrorist activities for reducing the risk that detainees released or transferred from Naval Station Guantanamo Bay will return to terrorist activities after their release or transfer.''

[Pub. L. 114–92, div. A, title X, §1038(b), Nov. 25, 2015, 129 Stat. 974, provided that: ''Nothing in the amendment made by subsection (a) [amending section 319(c) of Pub. L. 111–32, set out above, by adding par. (6)] shall be construed to terminate, alter, modify, override, or otherwise affect any reporting of information required under section 319(c) of the Supplemental Appropriations Act, 2009 [Pub. L. 111–32, set out above] before the date of the enactment of this section [Nov. 25, 2015].'']

[Memorandum of President of the United States, July 17, 2009, 74 F.R. 35765, provided that the reporting function conferred upon the President by section 319(a), (c)(1) to (3) of Pub. L. 111–32, set out above, is assigned to the Attorney General, and the reporting function specified in section 319(a), (c)(4), (5), (d) of Pub. L. 111–32 is assigned to the Director of National Intelligence, in consultation with the Secretary of Defense.]

POLICY ON ROLE OF MILITARY MEDICAL AND BEHAVIORAL SCIENCE PERSONNEL IN INTERROGATION OF DETAINEES

Pub. L. 109–163, div. A, title VII, §750, Jan. 6, 2006, 119 Stat. 3364, provided that:

''(a) POLICY REQUIRED.—The Secretary of Defense shall establish the policy of the Department of Defense on the role of military medical and behavioral science personnel in the interrogation of persons detained by the Armed Forces. The policy shall apply uniformly throughout the Armed Forces.

''(b) REPORT.—Not later than March 1, 2006, the Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the policy established under subsection (a). The report shall set forth the policy, and shall include such additional matters on the policy as the Secretary considers appropriate.''

DETAINEE INTERROGATION, STATUS REVIEW, AND TREATMENT

Pub. L. 109–163, div. A, title XIV, §§1402, 1405, 1406, Jan. 6, 2006, 119 Stat. 3475, 3476, 3479, as amended by Pub. L. 111–84, div. A, title XVIII, §1803(b)(2), as added Pub. L. 111–383, div. A, title X, §1075(d)(21), Jan. 7, 2011, 124 Stat. 4374, provided that:

''SEC. 1402. UNIFORM STANDARDS FOR THE INTERROGATION OF PERSONS UNDER THE DETENTION OF THE DEPARTMENT OF DEFENSE.

''(a) IN GENERAL.—No person in the custody or under the effective control of the Department of Defense or under detention in a Department of Defense facility shall be subject to any treatment or technique of interrogation not authorized by and listed in the United States Army Field Manual on Intelligence Interrogation.

''(b) APPLICABILITY.—Subsection (a) shall not apply with respect to any person in the custody or under the effective control of the Department of Defense pursuant to a criminal law or immigration law of the United States.

''(c) CONSTRUCTION.—Nothing in this section shall be construed to affect the rights under the United States Constitution of any person in the custody or under the physical jurisdiction of the United States.

''SEC. 1405. PROCEDURES FOR STATUS REVIEW OF DETAINEES OUTSIDE THE UNITED STATES.

''(a) SUBMITTAL OF PROCEDURES FOR STATUS REVIEW OF DETAINEES AT GUANTANAMO BAY, CUBA, AND IN AFGHANISTAN AND IRAQ.—

''(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act [Jan. 6, 2006], the Secretary of Defense shall submit to the Committee on Armed Services and the Committee on the Judiciary of the Senate and the Committee on Armed Services and the Committee on the Judiciary of the House of Representatives a report setting forth—

''(A) the procedures of the Combatant Status Review Tribunals and the Administrative Review Boards established by direction of the Secretary of Defense that are in operation at Guantanamo Bay, Cuba, for determining the status of the detainees held at Guantanamo Bay or to provide an annual review to determine the need to continue to detain an alien who is a detainee; and

''(B) the procedures in operation in Afghanistan and Iraq for a determination of the status of aliens detained in the custody or under the physical control of the Department of Defense in those countries.

''(2) DESIGNATED CIVILIAN OFFICIAL.—The procedures submitted to Congress pursuant to paragraph (1)(A) shall ensure that the official of the Department of Defense who is designated by the President or Secretary of Defense to be the final review authority within the Department of Defense with respect to decisions of any such tribunal or board (referred to as the 'Designated Civilian Official') shall be a civilian officer of the Department of Defense holding an office to which appointments are required by law to be made by the President, by and with the advice and consent of the Senate.

''(3) CONSIDERATION OF NEW EVIDENCE.—The procedures submitted under paragraph (1)(A) shall provide for periodic review of any new evidence that may become available relating to the enemy combatant status of a detainee.

''(b) CONSIDERATION OF STATEMENTS DERIVED WITH COERCION.—

''(1) ASSESSMENT.—The procedures submitted to Congress pursuant to subsection (a)(1)(A) shall ensure that a Combatant Status Review Tribunal or Administrative Review Board, or any similar or successor administrative tribunal or board, in making a determination of status or disposition of any detainee under such procedures, shall, to the extent practicable, assess—

''(A) whether any statement derived from or relating to such detainee was obtained as a result of coercion; and

''(B) the probative value, if any, of any such statement.

''(2) APPLICABILITY.—Paragraph (1) applies with respect to any proceeding beginning on or after the date of the enactment of this Act [Jan. 6, 2006].

''(c) REPORT ON MODIFICATION OF PROCEDURES.—The Secretary of Defense shall submit to the committees specified in subsection (a)(1) a report on any modification of the procedures submitted under subsection (a). Any such report shall be submitted not later than 60 days before the date on which such modification goes into effect.

''(d) ANNUAL REPORT.—

''(1) REPORT REQUIRED.—The Secretary of Defense shall submit to Congress an annual report on the annual review process for aliens in the custody of the Department of Defense outside the United States. Each such report shall be submitted in unclassified form, with a classified annex, if necessary. The report shall be submitted not later than December 31 each year.

''(2) ELEMENTS OF REPORT.—Each such report shall include the following with respect to the year covered by the report:

''(A) The number of detainees whose status was reviewed.

''(B) The procedures used at each location.

''(e) JUDICIAL REVIEW OF DETENTION OF ENEMY COMBATANTS.—

''(1) IN GENERAL.—[Amended section 2241 of Title 28, Judiciary and Judicial Procedure.]

''(2) REVIEW OF DECISIONS OF COMBATANT STATUS REVIEW TRIBUNALS OF PROPRIETY OF DETENTION.—

''(A) IN GENERAL.—Subject to subparagraphs (B), (C), and (D), the United States Court of Appeals for the District of Columbia Circuit shall have exclusive jurisdiction to determine the validity of any final decision of a Combatant Status Review Tribunal that an alien is properly detained as an enemy combatant.

''(B) LIMITATION ON CLAIMS.—The jurisdiction of the United States Court of Appeals for the District of Columbia Circuit under this paragraph shall be limited to claims brought by or on behalf of an alien—

''(i) who is, at the time a request for review by such court is filed, detained by the Department of Defense at Guantanamo Bay, Cuba; and

''(ii) for whom a Combatant Status Review Tribunal has been conducted, pursuant to applicable procedures specified by the Secretary of Defense.

''(C) SCOPE OF REVIEW.—The jurisdiction of the United States Court of Appeals for the District of Columbia Circuit on any claims with respect to an alien under this paragraph shall be limited to the consideration of—

''(i) whether the status determination of the Combatant Status Review Tribunal with regard to such alien was consistent with the standards and procedures specified by the Secretary of Defense for Combatant Status Review Tribunals (including the requirement that the conclusion of the Tribunal be supported by a preponderance of the evidence and allowing a rebuttable presumption in favor the Government's evidence); and

''(ii) to the extent the Constitution and laws of the United States are applicable, whether the use of such standards and procedures to make the determination is consistent with the Constitution and laws of the United States.

''(D) TERMINATION ON RELEASE FROM CUSTODY.—The jurisdiction of the United States Court of Appeals for the District of Columbia Circuit with respect to the claims of an alien under this paragraph shall cease upon the release of such alien from the custody of the Department of Defense.

''[(3) Repealed. Pub. L. 111–84, div. A, title XVIII, § 1803(b)(2), as added Pub. L. 111–383, div. A, title X, § 1075(d)(21), Jan. 7, 2011, 124 Stat. 4374.]

''(4) RESPONDENT.—The Secretary of Defense shall be the named respondent in any appeal to the United States Court of Appeals for the District of Columbia Circuit under this subsection.

''(f) CONSTRUCTION.—Nothing in this section shall be construed to confer any constitutional right on an alien detained as an enemy combatant outside the United States.

''(g) UNITED STATES DEFINED.—For purposes of this section, the term 'United States', when used in a geographic sense, is as defined in section 101(a)(38) of the Immigration and Nationality Act [8 U.S.C. 1101(a)(38)] and, in particular, does not include the United States Naval Station, Guantanamo Bay, Cuba.

''(h) EFFECTIVE DATE.—

''(1) IN GENERAL.—This section shall take effect on the date of the enactment of this Act [Jan. 6, 2006].

''(2) REVIEW OF COMBATANT STATUS TRIBUNAL AND MILITARY COMMISSION DECISIONS.—Paragraphs (2) and (3) of subsection (e) shall apply with respect to any claim whose review is governed by one of such paragraphs and that is pending on or after the date of the enactment of this Act.

''SEC. 1406. TRAINING OF IRAQI SECURITY FORCES REGARDING TREATMENT OF DETAINEES.

''(a) REQUIRED POLICIES.—

''(1) IN GENERAL.—The Secretary of Defense shall prescribe policies designed to ensure that all military and civilian Department of Defense personnel or contractor personnel of the Department of Defense responsible for the training of any unit of the Iraqi Security Forces provide training to such units regarding the international obligations and laws applicable to the humane treatment of detainees, including protections afforded under the Geneva Conventions and the Convention Against Torture.

''(2) ACKNOWLEDGMENT OF TRAINING.—The Secretary shall ensure that, for all personnel of the Iraqi Secu-

rity Forces who are provided training referred to in paragraph (1), there is documented acknowledgment that such training has been provided.

''(3) DEADLINE FOR POLICIES TO BE PRESCRIBED.—The policies required by paragraph (1) shall be prescribed not later than 180 days after the date of the enactment of this Act [Jan. 6, 2006].

''(b) ARMY FIELD MANUAL.—

''(1) TRANSLATION.—The Secretary of Defense shall provide for the unclassified portions of the United States Army Field Manual on Intelligence Interrogation to be translated into Arabic and any other language the Secretary determines appropriate for use by members of the Iraqi security forces.

''(2) DISTRIBUTION.—The Secretary of Defense shall provide for such manual, as translated, to be distributed to all appropriate officials of the Iraqi Government, including, but not limited to, the Iraqi Minister of Defense, the Iraqi Minister of Interior, senior Iraqi military personnel, and appropriate members of the Iraqi Security Forces with a recommendation that the principles that underlay the manual be adopted by the Iraqis as the basis for their policies on interrogation of detainees.

''(c) TRANSMITTAL TO CONGRESSIONAL COMMITTEES.—Not less than 30 days after the date on which policies are first prescribed under subsection (a), the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives copies of such regulations, policies, or orders, together with a report on steps taken to the date of the report to implement this section.

''(d) ANNUAL REPORT.—Not less than one year after the date of the enactment of this Act [Jan. 6, 2006], and annually thereafter, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the implementation of this section.''

[For termination, effective Dec. 31, 2021, of annual reporting provisions in section 1405(d) of Pub. L. 109–163, set out above, see section 1061 of Pub. L. 114–328, set out as a note under section 111 of this title.]

Pub. L. 109–148, div. A, title X, §§ 1002, 1005, 1006, Dec. 30, 2005, 119 Stat. 2739, 2740, 2744, as amended by Pub. L. 109–366, §§ 9, 10, Oct. 17, 2006, 120 Stat. 2636, 2637; Pub. L. 110–181, div. A, title X, § 1063(d)(2), Jan. 28, 2008, 122 Stat. 323; Pub. L. 111–84, div. A, title XVIII, § 1803(b)(1), formerly § 1803(b), Oct. 28, 2009, 123 Stat. 2612, as renumbered § 1803(b)(1) by Pub. L. 111–383, div. A, title X, § 1075(d)(21), Jan. 7, 2011, 124 Stat. 4374, provided that:

''SEC. 1002. UNIFORM STANDARDS FOR THE INTERROGATION OF PERSONS UNDER THE DETENTION OF THE DEPARTMENT OF DEFENSE.

''(a) IN GENERAL.—No person in the custody or under the effective control of the Department of Defense or under detention in a Department of Defense facility shall be subject to any treatment or technique of interrogation not authorized by and listed in the United States Army Field Manual on Intelligence Interrogation.

''(b) APPLICABILITY.—Subsection (a) shall not apply with respect to any person in the custody or under the effective control of the Department of Defense pursuant to a criminal law or immigration law of the United States.

''(c) CONSTRUCTION.—Nothing in this section shall be construed to affect the rights under the United States Constitution of any person in the custody or under the physical jurisdiction of the United States.

''SEC. 1005. PROCEDURES FOR STATUS REVIEW OF DETAINEES OUTSIDE THE UNITED STATES.

''(a) SUBMITTAL OF PROCEDURES FOR STATUS REVIEW OF DETAINEES AT GUANTANAMO BAY, CUBA, AND IN AFGHANISTAN AND IRAQ.—

''(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act [Dec. 30, 2005], the Secretary of Defense shall submit to the Committee on Armed Services and the Committee on the Judiciary of the Senate and the Committee on Armed Services and the Committee on the Judiciary of the House of Representatives a report setting forth—

''(A) the procedures of the Combatant Status Review Tribunals and the Administrative Review Boards established by direction of the Secretary of Defense that are in operation at Guantanamo Bay, Cuba, for determining the status of the detainees held at Guantanamo Bay or to provide an annual review to determine the need to continue to detain an alien who is a detainee; and

''(B) the procedures in operation in Afghanistan and Iraq for a determination of the status of aliens detained in the custody or under the physical control of the Department of Defense in those countries.

''(2) DESIGNATED CIVILIAN OFFICIAL.—The procedures submitted to Congress pursuant to paragraph (1)(A) shall ensure that the official of the Department of Defense who is designated by the President or Secretary of Defense to be the final review authority within the Department of Defense with respect to decisions of any such tribunal or board (referred to as the 'Designated Civilian Official') shall be a civilian officer of the Department of Defense holding an office to which appointments are required by law to be made by the President, by and with the advice and consent of the Senate.

''(3) CONSIDERATION OF NEW EVIDENCE.—The procedures submitted under paragraph (1)(A) shall provide for periodic review of any new evidence that may become available relating to the enemy combatant status of a detainee.

''(b) CONSIDERATION OF STATEMENTS DERIVED WITH COERCION.—

''(1) ASSESSMENT.—The procedures submitted to Congress pursuant to subsection (a)(1)(A) shall ensure that a Combatant Status Review Tribunal or Administrative Review Board, or any similar or successor administrative tribunal or board, in making a determination of status or disposition of any detainee under such procedures, shall, to the extent practicable, assess—

''(A) whether any statement derived from or relating to such detainee was obtained as a result of coercion; and

''(B) the probative value (if any) of any such statement.

''(2) APPLICABILITY.—Paragraph (1) applies with respect to any proceeding beginning on or after the date of the enactment of this Act [Dec. 30, 2005].

''(c) REPORT ON MODIFICATION OF PROCEDURES.—The Secretary of Defense shall submit to the committees specified in subsection (a)(1) a report on any modification of the procedures submitted under subsection (a). Any such report shall be submitted not later than 60 days before the date on which such modification goes into effect.

''(d) ANNUAL REPORT.—

''(1) REPORT REQUIRED.—The Secretary of Defense shall submit to Congress an annual report on the annual review process for aliens in the custody of the Department of Defense outside the United States. Each such report shall be submitted in unclassified form, with a classified annex, if necessary. The report shall be submitted not later than December 31 each year.

''(2) ELEMENTS OF REPORT.—Each such report shall include the following with respect to the year covered by the report:

''(A) The number of detainees whose status was reviewed.

''(B) The procedures used at each location.

''(e) JUDICIAL REVIEW OF DETENTION OF ENEMY COMBATANTS.—

''(1) IN GENERAL.—[Amended section 2241 of Title 28, Judiciary and Judicial Procedure.]

''(2) REVIEW OF DECISIONS OF COMBATANT STATUS REVIEW TRIBUNALS OF PROPRIETY OF DETENTION.—

''(A) IN GENERAL.—Subject to subparagraphs (B), (C), and (D), the United States Court of Appeals for the District of Columbia Circuit shall have exclusive jurisdiction to determine the validity of any final decision of a Combatant Status Review Tribunal that an alien is properly detained as an enemy combatant.

''(B) LIMITATION ON CLAIMS.—The jurisdiction of the United States Court of Appeals for the District of Columbia Circuit under this paragraph shall be limited to claims brought by or on behalf of an alien—

''(i) who is, at the time a request for review by such court is filed, detained by the United States; and

''(ii) for whom a Combatant Status Review Tribunal has been conducted, pursuant to applicable procedures specified by the Secretary of Defense.

''(C) SCOPE OF REVIEW.—The jurisdiction of the United States Court of Appeals for the District of Columbia Circuit on any claims with respect to an alien under this paragraph shall be limited to the consideration of—

''(i) whether the status determination of the Combatant Status Review Tribunal with regard to such alien was consistent with the standards and procedures specified by the Secretary of Defense for Combatant Status Review Tribunals (including the requirement that the conclusion of the Tribunal be supported by a preponderance of the evidence and allowing a rebuttable presumption in favor of the Government's evidence); and

''(ii) to the extent the Constitution and laws of the United States are applicable, whether the use of such standards and procedures to make the determination is consistent with the Constitution and laws of the United States.

''(D) TERMINATION ON RELEASE FROM CUSTODY.—The jurisdiction of the United States Court of Appeals for the District of Columbia Circuit with respect to the claims of an alien under this paragraph shall cease upon the release of such alien from the custody of the Department of Defense.

''[(3) Repealed. Pub. L. 111–84, div. A, title XVIII, §1803(b)(1), formerly §1803(b), Oct. 28, 2009, 123 Stat. 2612, as renumbered §1803(b)(1) by Pub. L. 111–383, div. A, title X, §1075(d)(21), Jan. 7, 2011, 124 Stat. 4374.]

''(4) RESPONDENT.—The Secretary of Defense shall be the named respondent in any appeal to the United States Court of Appeals for the District of Columbia Circuit under this subsection.

''(f) CONSTRUCTION.—Nothing in this section shall be construed to confer any constitutional right on an alien detained as an enemy combatant outside the United States.

''(g) UNITED STATES DEFINED.—For purposes of this section, the term 'United States', when used in a geographic sense, is as defined in section 101(a)(38) of the Immigration and Nationality Act [8 U.S.C. 1101(a)(38)] and, in particular, does not include the United States Naval Station, Guantanamo Bay, Cuba.

''(h) EFFECTIVE DATE.—

''(1) IN GENERAL.—This section shall take effect on the date of the enactment of this Act [Dec. 30, 2005].

''(2) REVIEW OF COMBATANT STATUS TRIBUNAL AND MILITARY COMMISSION DECISIONS.—Paragraphs (2) and (3) of subsection (e) shall apply with respect to any claim whose review is governed by one of such paragraphs and that is pending on or after the date of the enactment of this Act.

''SEC. 1006. TRAINING OF IRAQI FORCES REGARDING TREATMENT OF DETAINEES.

''(a) REQUIRED POLICIES.—

''(1) IN GENERAL.—The Secretary of Defense shall ensure that policies are prescribed regarding procedures for military and civilian personnel of the Department of Defense and contractor personnel of the Department of Defense in Iraq that are intended to ensure that members of the Armed Forces, and all persons acting on behalf of the Armed Forces or within facilities of the Armed Forces, ensure that all personnel of Iraqi military forces who are trained by Department of Defense personnel and contractor personnel of the Department of Defense receive training regarding the international obligations and laws applicable to the humane detention of detainees, including protections afforded under the Geneva Conventions and the Convention Against Torture.

''(2) ACKNOWLEDGMENT OF TRAINING.—The Secretary shall ensure that, for all personnel of the Iraqi Security Forces who are provided training referred to in paragraph (1), there is documented acknowledgment of such training having been provided.

''(3) DEADLINE FOR POLICIES TO BE PRESCRIBED.—The policies required by paragraph (1) shall be prescribed not later than 180 days after the date of the enactment of this Act [Dec. 30, 2005].

''(b) ARMY FIELD MANUAL.—

''(1) TRANSLATION.—The Secretary of Defense shall provide for the United States Army Field Manual on Intelligence Interrogation to be translated into arabic [sic] and any other language the Secretary determines appropriate for use by members of the Iraqi military forces.

''(2) DISTRIBUTION.—The Secretary of Defense shall provide for such manual, as translated, to be provided to each unit of the Iraqi military forces trained by Department of Defense personnel or contractor personnel of the Department of Defense.

''(c) TRANSMITTAL OF REGULATIONS.—Not less than 30 days after the date on which regulations, policies, and orders are first prescribed under subsection (a), the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives copies of such regulations, policies, or orders, together with a report on steps taken to the date of the report to implement this section.

''(d) ANNUAL REPORT.—Not less than one year after the date of the enactment of this Act [Dec. 30, 2005], and annually thereafter, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the implementation of this section.''

SENSE OF CONGRESS CONCERNING DETAINEES; ACTIONS TO PREVENT ABUSE

Pub. L. 108–375, div. A, title X, §§1091, 1092, Oct. 28, 2004, 118 Stat. 2068, 2069, provided that:

''SEC. 1091. SENSE OF CONGRESS AND POLICY CONCERNING PERSONS DETAINED BY THE UNITED STATES.

''(a) SENSE OF CONGRESS.—It is the sense of Congress that—

''(1) the abuses inflicted upon detainees at the Abu Ghraib prison in Baghdad, Iraq, are inconsistent with the professionalism, dedication, standards, and training required of individuals who serve in the United States Armed Forces;

''(2) the vast majority of members of the Armed Forces have upheld the highest possible standards of professionalism and morality in the face of illegal tactics and terrorist attacks and attempts on their lives;

''(3) the abuse of persons in United States custody in Iraq is appropriately condemned and deplored by the American people;

''(4) the Armed Forces are moving swiftly and decisively to identify, try, and, if found guilty, punish persons who perpetrated such abuse;

''(5) the Department of Defense and appropriate military authorities must continue to undertake corrective action, as appropriate, to address chain-of-command deficiencies and the systemic deficiencies identified in the incidents in question;

''(6) the Constitution, laws, and treaties of the United States and the applicable guidance and regu-

lations of the United States Government prohibit the torture or cruel, inhuman, or degrading treatment of foreign prisoners held in custody by the United States;

"(7) the alleged crimes of a handful of individuals should not detract from the commendable sacrifices of over 300,000 members of the Armed Forces who have served, or who are serving, in Operation Iraqi Freedom; and

"(8) no detainee shall be subject to torture or cruel, inhuman, or degrading treatment or punishment that is prohibited by the Constitution, laws, or treaties of United States.

"(b) POLICY.—It is the policy of the United States to—

"(1) ensure that no detainee shall be subject to torture or cruel, inhuman, or degrading treatment or punishment that is prohibited by the Constitution, laws, or treaties of the United States;

"(2) investigate and prosecute, as appropriate, all alleged instances of unlawful treatment of detainees in a manner consistent with the international obligations, laws, or policies of the United States;

"(3) ensure that all personnel of the United States Government understand their obligations in both wartime and peacetime to comply with the legal prohibitions against torture, cruel, inhuman, or degrading treatment of detainees in the custody of the United States;

"(4) ensure that, in a case in which there is doubt as to whether a detainee is entitled to prisoner of war status under the Geneva Conventions, such detainee receives the protections accorded to prisoners of war until the detainee's status is determined by a competent tribunal; and

"(5) expeditiously process and, if appropriate, prosecute detainees in the custody of the United States, including those in the custody of the United States Armed Forces at Guantanamo Bay, Cuba.

"(c) DETAINEES.—For purposes of this section, the term 'detainee' means a person in the custody or under the physical control of the United States as a result of armed conflict.

"SEC. 1092. ACTIONS TO PREVENT THE ABUSE OF DETAINEES.

"(a) POLICIES REQUIRED.—The Secretary of Defense shall ensure that policies are prescribed not later than 150 days after the date of the enactment of this Act [Oct. 28, 2004] regarding procedures for Department of Defense personnel and contractor personnel of the Department of Defense intended to ensure that members of the Armed Forces, and all persons acting on behalf of the Armed Forces or within facilities of the Armed Forces, treat persons detained by the United States Government in a humane manner consistent with the international obligations and laws of the United States and the policies set forth in section 1091(b).

"(b) MATTERS TO BE INCLUDED.—In order to achieve the objective stated in subsection (a), the policies under that subsection shall specify, at a minimum, procedures for the following:

"(1) Ensuring that each commander of a Department of Defense detention facility or interrogation facility—

"(A) provides all assigned personnel with training, and documented acknowledgment of receiving training, regarding the law of war, including the Geneva Conventions; and

"(B) establishes standard operating procedures for the treatment of detainees.

"(2) Ensuring that each Department of Defense contract in which contract personnel in the course of their duties interact with individuals detained by the Department of Defense on behalf of the United States Government include a requirement that such contract personnel have received training, and documented acknowledgment of receiving training, regarding the international obligations and laws of the United States applicable to the detention of personnel.

"(3) Providing all detainees with information, in their own language, of the applicable protections afforded under the Geneva Conventions.

"(4) Conducting periodic unannounced and announced inspections of detention facilities in order to provide continued oversight of interrogation and detention operations.

"(5) Ensuring that, to the maximum extent practicable, detainees and detention facility personnel of a different gender are not alone together.

"(c) SECRETARY OF DEFENSE CERTIFICATION.—The Secretary of Defense shall certify that all Federal employees and civilian contractors engaged in the handling or interrogation of individuals detained by the Department of Defense on behalf of the United States Government have fulfilled an annual training requirement on the law of war, the Geneva Conventions, and the obligations of the United States under international law."

DETENTION, TREATMENT, AND TRIAL OF CERTAIN NON-CITIZENS IN THE WAR AGAINST TERRORISM

Military Order of President of the United States, dated Nov. 13, 2001, 66 F.R. 57833, provided:

By the authority vested in me as President and as Commander in Chief of the Armed Forces of the United States by the Constitution and the laws of the United States of America, including the Authorization for Use of Military Force Joint Resolution (Public Law 107–40, 115 Stat. 224) [50 U.S.C. 1541 note] and sections 821 and 836 of title 10, United States Code, it is hereby ordered as follows:

SECTION 1. *Findings.*

(a) International terrorists, including members of al Qaida, have carried out attacks on United States diplomatic and military personnel and facilities abroad and on citizens and property within the United States on a scale that has created a state of armed conflict that requires the use of the United States Armed Forces.

(b) In light of grave acts of terrorism and threats of terrorism, including the terrorist attacks on September 11, 2001, on the headquarters of the United States Department of Defense in the national capital region, on the World Trade Center in New York, and on civilian aircraft such as in Pennsylvania, I proclaimed a national emergency on September 14, 2001 (Proc. 7463, Declaration of National Emergency by Reason of Certain Terrorist Attacks [50 U.S.C. 1621 note]).

(c) Individuals acting alone and in concert involved in international terrorism possess both the capability and the intention to undertake further terrorist attacks against the United States that, if not detected and prevented, will cause mass deaths, mass injuries, and massive destruction of property, and may place at risk the continuity of the operations of the United States Government.

(d) The ability of the United States to protect the United States and its citizens, and to help its allies and other cooperating nations protect their nations and their citizens, from such further terrorist attacks depends in significant part upon using the United States Armed Forces to identify terrorists and those who support them, to disrupt their activities, and to eliminate their ability to conduct or support such attacks.

(e) To protect the United States and its citizens, and for the effective conduct of military operations and prevention of terrorist attacks, it is necessary for individuals subject to this order pursuant to section 2 hereof to be detained, and, when tried, to be tried for violations of the laws of war and other applicable laws by military tribunals.

(f) Given the danger to the safety of the United States and the nature of international terrorism, and to the extent provided by and under this order, I find consistent with section 836 of title 10, United States Code, that it is not practicable to apply in military commissions under this order the principles of law and the rules of evidence generally recognized in the trial of criminal cases in the United States district courts.

(g) Having fully considered the magnitude of the potential deaths, injuries, and property destruction that

would result from potential acts of terrorism against the United States, and the probability that such acts will occur, I have determined that an extraordinary emergency exists for national defense purposes, that this emergency constitutes an urgent and compelling government interest, and that issuance of this order is necessary to meet the emergency.

SEC. 2. *Definition and Policy.*

(a) The term ''individual subject to this order'' shall mean any individual who is not a United States citizen with respect to whom I determine from time to time in writing that:

(1) there is reason to believe that such individual, at the relevant times,

(i) is or was a member of the organization known as al Qaida;

(ii) has engaged in, aided or abetted, or conspired to commit, acts of international terrorism, or acts in preparation therefor, that have caused, threaten to cause, or have as their aim to cause, injury to or adverse effects on the United States, its citizens, national security, foreign policy, or economy; or

(iii) has knowingly harbored one or more individuals described in subparagraphs (i) or (ii) of subsection 2(a)(1) of this order; and

(2) it is in the interest of the United States that such individual be subject to this order.

(b) It is the policy of the United States that the Secretary of Defense shall take all necessary measures to ensure that any individual subject to this order is detained in accordance with section 3, and, if the individual is to be tried, that such individual is tried only in accordance with section 4.

(c) It is further the policy of the United States that any individual subject to this order who is not already under the control of the Secretary of Defense but who is under the control of any other officer or agent of the United States or any State shall, upon delivery of a copy of such written determination to such officer or agent, forthwith be placed under the control of the Secretary of Defense.

SEC. 3. *Detention Authority of the Secretary of Defense.* Any individual subject to this order shall be—

(a) detained at an appropriate location designated by the Secretary of Defense outside or within the United States;

(b) treated humanely, without any adverse distinction based on race, color, religion, gender, birth, wealth, or any similar criteria;

(c) afforded adequate food, drinking water, shelter, clothing, and medical treatment;

(d) allowed the free exercise of religion consistent with the requirements of such detention; and

(e) detained in accordance with such other conditions as the Secretary of Defense may prescribe.

SEC. 4. *Authority of the Secretary of Defense Regarding Trials of Individuals Subject to this Order.* [Superseded by Ex. Ord. No. 13425, set out as a note under section 948b of this title.]

SEC. 5. *Obligation of Other Agencies to Assist the Secretary of Defense.*

Departments, agencies, entities, and officers of the United States shall, to the maximum extent permitted by law, provide to the Secretary of Defense such assistance as he may request to implement this order.

SEC. 6. *Additional Authorities of the Secretary of Defense.*

(a) As a military function and in light of the findings in section 1, the Secretary of Defense shall issue such orders and regulations as may be necessary to carry out any of the provisions of this order.

(b) The Secretary of Defense may perform any of his functions or duties, and may exercise any of the powers provided to him under this order (other than under section 4(c)(8) hereof) in accordance with section 113(d) of title 10, United States Code.

SEC. 7. *Relationship to Other Law and Forums.*

(a) Nothing in this order shall be construed to—

(1) authorize the disclosure of state secrets to any person not otherwise authorized to have access to them;

(2) limit the authority of the President as Commander in Chief of the Armed Forces or the power of the President to grant reprieves and pardons; or

(3) limit the lawful authority of the Secretary of Defense, any military commander, or any other officer or agent of the United States or of any State to detain or try any person who is not an individual subject to this order.

(b) With respect to any individual subject to this order—

(1) military tribunals shall have exclusive jurisdiction with respect to offenses by the individual; and

(2) the individual shall not be privileged to seek any remedy or maintain any proceeding, directly or indirectly, or to have any such remedy or proceeding sought on the individual's behalf, in (i) any court of the United States, or any State thereof, (ii) any court of any foreign nation, or (iii) any international tribunal.

(c) This order is not intended to and does not create any right, benefit, or privilege, substantive or procedural, enforceable at law or equity by any party, against the United States, its departments, agencies, or other entities, its officers or employees, or any other person.

(d) For purposes of this order, the term ''State'' includes any State, district, territory, or possession of the United States.

(e) I reserve the authority to direct the Secretary of Defense, at any time hereafter, to transfer to a governmental authority control of any individual subject to this order. Nothing in this order shall be construed to limit the authority of any such governmental authority to prosecute any individual for whom control is transferred.

SEC. 8. *Publication.*

This order shall be published in the Federal Register.

GEORGE W. BUSH.

[For supersedure of provisions of Military Order of President of the United States, dated Nov. 13, 2001, set out above, related to trial by military commission, see Ex. Ord. No. 13425, Feb. 14, 2007, 72 F.R. 7737, set out as a note under section 948b of this title.]

EX. ORD. NO. 13492. REVIEW AND DISPOSITION OF INDIVIDUALS DETAINED AT THE GUANTANAMO BAY NAVAL BASE AND CLOSURE OF DETENTION FACILITIES

Ex. Ord. No. 13492, Jan. 22, 2009, 74 F.R. 4897, as amended by Ex. Ord. No. 13823, §2(a), Jan. 30, 2018, 83 F.R. 4831, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, in order to effect the appropriate disposition of individuals currently detained by the Department of Defense at the Guantanamo Bay Naval Base (Guantanamo) and promptly to close detention facilities at Guantanamo, consistent with the national security and foreign policy interests of the United States and the interests of justice, I hereby order as follows:

SECTION 1. *Definitions.* As used in this order:

(a) ''Common Article 3'' means Article 3 of each of the Geneva Conventions.

(b) ''Geneva Conventions'' means:

(i) the Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, August 12, 1949 (6 UST 3114);

(ii) the Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, August 12, 1949 (6 UST 3217);

(iii) the Convention Relative to the Treatment of Prisoners of War, August 12, 1949 (6 UST 3316); and

(iv) the Convention Relative to the Protection of Civilian Persons in Time of War, August 12, 1949 (6 UST 3516).

(c) ''Individuals currently detained at Guantanamo'' and ''individuals covered by this order'' mean individuals currently detained by the Department of Defense in facilities at the Guantanamo Bay Naval Base whom the Department of Defense has ever determined to be, or treated as, enemy combatants.

SEC. 2. *Findings.*

(a) Over the past 7 years, approximately 800 individuals whom the Department of Defense has ever determined to be, or treated as, enemy combatants have been detained at Guantanamo. The Federal Government has moved more than 500 such detainees from Guantanamo, either by returning them to their home country or by releasing or transferring them to a third country. The Department of Defense has determined that a number of the individuals currently detained at Guantanamo are eligible for such transfer or release.

(b) Some individuals currently detained at Guantanamo have been there for more than 6 years, and most have been detained for at least 4 years. In view of the significant concerns raised by these detentions, both within the United States and internationally, prompt and appropriate disposition of the individuals currently detained at Guantanamo and closure of the facilities in which they are detained would further the national security and foreign policy interests of the United States and the interests of justice. Merely closing the facilities without promptly determining the appropriate disposition of the individuals detained would not adequately serve those interests. To the extent practicable, the prompt and appropriate disposition of the individuals detained at Guantanamo should precede the closure of the detention facilities at Guantanamo.

(c) The individuals currently detained at Guantanamo have the constitutional privilege of the writ of habeas corpus. Most of those individuals have filed petitions for a writ of habeas corpus in Federal court challenging the lawfulness of their detention.

(d) It is in the interests of the United States that the executive branch undertake a prompt and thorough review of the factual and legal bases for the continued detention of all individuals currently held at Guantanamo, and of whether their continued detention is in the national security and foreign policy interests of the United States and in the interests of justice. The unusual circumstances associated with detentions at Guantanamo require a comprehensive interagency review.

(e) New diplomatic efforts may result in an appropriate disposition of a substantial number of individuals currently detained at Guantanamo.

(f) Some individuals currently detained at Guantanamo may have committed offenses for which they should be prosecuted. It is in the interests of the United States to review whether and how any such individuals can and should be prosecuted.

(g) It is in the interests of the United States that the executive branch conduct a prompt and thorough review of the circumstances of the individuals currently detained at Guantanamo who have been charged with offenses before military commissions pursuant to the Military Commissions Act of 2006, Public Law 109–366, as well as of the military commission process more generally.

SEC. 3. [Revoked by Ex. Ord. No. 13823, §2(a), Jan. 30, 2018, 83 F.R. 4831, set out below.]

SEC. 4. *Immediate Review of All Guantanamo Detentions.*

(a) *Scope and Timing of Review.* A review of the status of each individual currently detained at Guantanamo (Review) shall commence immediately.

(b) *Review Participants.* The Review shall be conducted with the full cooperation and participation of the following officials:

(1) the Attorney General, who shall coordinate the Review;

(2) the Secretary of Defense;

(3) the Secretary of State;

(4) the Secretary of Homeland Security;

(5) the Director of National Intelligence;

(6) the Chairman of the Joint Chiefs of Staff; and

(7) other officers or full-time or permanent part-time employees of the United States, including employees with intelligence, counterterrorism, military, and legal expertise, as determined by the Attorney General, with the concurrence of the head of the department or agency concerned.

(c) *Operation of Review.* The duties of the Review participants shall include the following:

(1) *Consolidation of Detainee Information.* The Attorney General shall, to the extent reasonably practicable, and in coordination with the other Review participants, assemble all information in the possession of the Federal Government that pertains to any individual currently detained at Guantanamo and that is relevant to determining the proper disposition of any such individual. All executive branch departments and agencies shall promptly comply with any request of the Attorney General to provide information in their possession or control pertaining to any such individual. The Attorney General may seek further information relevant to the Review from any source.

(2) *Determination of Transfer.* The Review shall determine, on a rolling basis and as promptly as possible with respect to the individuals currently detained at Guantanamo, whether it is possible to transfer or release the individuals consistent with the national security and foreign policy interests of the United States and, if so, whether and how the Secretary of Defense may effect their transfer or release. The Secretary of Defense, the Secretary of State, and, as appropriate, other Review participants shall work to effect promptly the release or transfer of all individuals for whom release or transfer is possible.

(3) *Determination of Prosecution.* In accordance with United States law, the cases of individuals detained at Guantanamo not approved for release or transfer shall be evaluated to determine whether the Federal Government should seek to prosecute the detained individuals for any offenses they may have committed, including whether it is feasible to prosecute such individuals before a court established pursuant to Article III of the United States Constitution, and the Review participants shall in turn take the necessary and appropriate steps based on such determinations.

(4) *Determination of Other Disposition.* With respect to any individuals currently detained at Guantanamo whose disposition is not achieved under paragraphs (2) or (3) of this subsection, the Review shall select lawful means, consistent with the national security and foreign policy interests of the United States and the interests of justice, for the disposition of such individuals. The appropriate authorities shall promptly implement such dispositions.

(5) *Consideration of Issues Relating to Transfer to the United States.* The Review shall identify and consider legal, logistical, and security issues relating to the potential transfer of individuals currently detained at Guantanamo to facilities within the United States, and the Review participants shall work with the Congress on any legislation that may be appropriate.

SEC. 5. *Diplomatic Efforts.* The Secretary of State shall expeditiously pursue and direct such negotiations and diplomatic efforts with foreign governments as are necessary and appropriate to implement this order.

SEC. 6. *Humane Standards of Confinement.* No individual currently detained at Guantanamo shall be held in the custody or under the effective control of any officer, employee, or other agent of the United States Government, or at a facility owned, operated, or controlled by a department or agency of the United States, except in conformity with all applicable laws governing the conditions of such confinement, including Common Article 3 of the Geneva Conventions. The Secretary of Defense shall immediately undertake a review of the conditions of detention at Guantanamo to ensure full compliance with this directive. Such review shall be completed within 30 days and any necessary corrections shall be implemented immediately thereafter.

SEC. 7. *Military Commissions.* The Secretary of Defense shall immediately take steps sufficient to ensure that during the pendency of the Review described in section 4 of this order, no charges are sworn, or referred to a military commission under the Military Commissions Act of 2006 and the Rules for Military Commissions, and that all proceedings of such military commissions

to which charges have been referred but in which no judgment has been rendered, and all proceedings pending in the United States Court of Military Commission Review, are halted.

SEC. 8. *General Provisions*.

(a) Nothing in this order shall prejudice the authority of the Secretary of Defense to determine the disposition of any detainees not covered by this order.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

EX. ORD. NO. 13567. PERIODIC REVIEW OF INDIVIDUALS DETAINED AT GUANTÁNAMO BAY NAVAL STATION PURSUANT TO THE AUTHORIZATION FOR USE OF MILITARY FORCE

Ex. Ord. No. 13567, Mar. 7, 2011, 76 F.R. 13277, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Authorization for Use of Military Force of September 2001 (AUMF), Public Law 107–40, and in order to ensure that military detention of individuals now held at the U.S. Naval Station, Guantánamo Bay, Cuba (Guantánamo), who were subject to the interagency review under section 4 of Executive Order 13492 of January 22, 2009, continues to be carefully evaluated and justified, consistent with the national security and foreign policy interests of the United States and the interests of justice, I hereby order as follows:

SECTION 1. *Scope and Purpose*. (a) The periodic review described in section 3 of this order applies only to those detainees held at Guantánamo on the date of this order, whom the interagency review established by Executive Order 13492 has (i) designated for continued law of war detention; or (ii) referred for prosecution, except for those detainees against whom charges are pending or a judgment of conviction has been entered.

(b) This order is intended solely to establish, as a discretionary matter, a process to review on a periodic basis the executive branch's continued, discretionary exercise of existing detention authority in individual cases. It does not create any additional or separate source of detention authority, and it does not affect the scope of detention authority under existing law. Detainees at Guantánamo have the constitutional privilege of the writ of habeas corpus, and nothing in this order is intended to affect the jurisdiction of Federal courts to determine the legality of their detention.

(c) In the event detainees covered by this order are transferred from Guantánamo to another U.S. detention facility where they remain in law of war detention, this order shall continue to apply to them.

SEC. 2. *Standard for Continued Detention*. Continued law of war detention is warranted for a detainee subject to the periodic review in section 3 of this order if it is necessary to protect against a significant threat to the security of the United States.

SEC. 3. *Periodic Review*. The Secretary of Defense shall coordinate a process of periodic review of continued law of war detention for each detainee described in section 1(a) of this order. In consultation with the Attorney General, the Secretary of Defense shall issue implementing guidelines governing the process, consistent with the following requirements:

(a) *Initial Review*. For each detainee, an initial review shall commence as soon as possible but no later than 1 year from the date of this order. The initial review will consist of a hearing before a Periodic Review Board (PRB). The review and hearing shall follow a process that includes the following requirements:

(1) Each detainee shall be provided, in writing and in a language the detainee understands, with advance notice of the PRB review and an unclassified summary of the factors and information the PRB will consider in evaluating whether the detainee meets the standard set forth in section 2 of this order. The written summary shall be sufficiently comprehensive to provide adequate notice to the detainee of the reasons for continued detention.

(2) The detainee shall be assisted in proceedings before the PRB by a Government-provided personal representative (representative) who possesses the security clearances necessary for access to the information described in subsection (a)(4) of this section. The representative shall advocate on behalf of the detainee before the PRB and shall be responsible for challenging the Government's information and introducing information on behalf of the detainee. In addition to the representative, the detainee may be assisted in proceedings before the PRB by private counsel, at no expense to the Government.

(3) The detainee shall be permitted to (i) present to the PRB a written or oral statement; (ii) introduce relevant information, including written declarations; (iii) answer any questions posed by the PRB; and (iv) call witnesses who are reasonably available and willing to provide information that is relevant and material to the standard set forth in section 2 of this order.

(4) The Secretary of Defense, in coordination with other relevant Government agencies, shall compile and provide to the PRB all information in the detainee disposition recommendations produced by the Task Force established under Executive Order 13492 that is relevant to the determination whether the standard in section 2 of this order has been met and on which the Government seeks to rely for that determination. In addition, the Secretary of Defense, in coordination with other relevant Government agencies, shall compile any additional information relevant to that determination, and on which the Government seeks to rely for that determination, that has become available since the conclusion of the Executive Order 13492 review. All mitigating information relevant to that determination must be provided to the PRB.

(5) The information provided in subsection (a)(4) of this section shall be provided to the detainee's representative. In exceptional circumstances where it is necessary to protect national security, including intelligence sources and methods, the PRB may determine that the representative must receive a sufficient substitute or summary, rather than the underlying information. If the detainee is represented by private counsel, the information provided in subsection (a)(4) of this section shall be provided to such counsel unless the Government determines that the need to protect national security, including intelligence sources and methods, or law enforcement or privilege concerns, requires the Government to provide counsel with a sufficient substitute or summary of the information. A sufficient substitute or summary must provide a meaningful opportunity to assist the detainee during the review process.

(6) The PRB shall conduct a hearing to consider the information described in subsection (a)(4) of this section, and other relevant information provided by the detainee or the detainee's representative or counsel, to determine whether the standard in section 2 of this order is met. The PRB shall consider the reliability of any information provided to it in making its determination.

(7) The PRB shall make a prompt determination, by consensus and in writing, as to whether the detainee's continued detention is warranted under the standard in section 2 of this order. If the PRB determines that the standard is not met, the PRB shall also recommend any conditions that relate to the detainee's transfer. The PRB shall provide a written summary of any final determination in unclassified form to the detainee, in a language the detainee understands, within 30 days of the determination when practicable.

(8) The Secretary of Defense shall establish a secretariat to administer the PRB review and hearing process. The Director of National Intelligence shall assist in preparing the unclassified notice and the substitutes

or summaries described above. Other executive departments and agencies shall assist in the process of providing the PRB with information required for the review processes detailed in this order.

(b) *Subsequent Full Review*. The continued detention of each detainee shall be subject to subsequent full reviews and hearings by the PRB on a triennial basis. Each subsequent review shall employ the procedures set forth in section 3(a) of this order.

(c) *File Reviews*. The continued detention of each detainee shall also be subject to a file review every 6 months in the intervening years between full reviews. This file review will be conducted by the PRB and shall consist of a review of any relevant new information related to the detainee compiled by the Secretary of Defense, in coordination with other relevant agencies, since the last review and, as appropriate, information considered during any prior PRB review. The detainee shall be permitted to make a written submission in connection with each file review. If, during the file review, a significant question is raised as to whether the detainee's continued detention is warranted under the standard in section 2 of this order, the PRB will promptly convene a full review pursuant to the standards in section 3(a) of this order.

(d) *Review of PRB Determinations*. The Review Committee (Committee), as defined in section 9(d) of this order, shall conduct a review if (i) a member of the Committee seeks review of a PRB determination within 30 days of that determination; or (ii) consensus within the PRB cannot be reached.

SEC. 4. *Effect of Determination to Transfer*. (a) If a final determination is made that a detainee does not meet the standard in section 2 of this order, the Secretaries of State and Defense shall be responsible for ensuring that vigorous efforts are undertaken to identify a suitable transfer location for any such detainee, outside of the United States, consistent with the national security and foreign policy interests of the United States and the commitment set forth in section 2242(a) of the Foreign Affairs Reform and Restructuring Act of 1998 (Public Law 105–277).

(b) The Secretary of State, in consultation with the Secretary of Defense, shall be responsible for obtaining appropriate security and humane treatment assurances regarding any detainee to be transferred to another country, and for determining, after consultation with members of the Committee, that it is appropriate to proceed with the transfer.

(c) The Secretary of State shall evaluate humane treatment assurances in all cases, consistent with the recommendations of the Special Task Force on Interrogation and Transfer Policies established by Executive Order 13491 of January 22, 2009.

SEC. 5. *Annual Committee Review*. (a) The Committee shall conduct an annual review of sufficiency and efficacy of transfer efforts, including:

(1) the status of transfer efforts for any detainee who has been subject to the periodic review under section 3 of this order, whose continued detention has been determined not to be warranted, and who has not been transferred more than 6 months after the date of such determination;

(2) the status of transfer efforts for any detainee whose petition for a writ of habeas corpus has been granted by a U.S. Federal court with no pending appeal and who has not been transferred;

(3) the status of transfer efforts for any detainee who has been designated for transfer or conditional detention by the Executive Order 13492 review and who has not been transferred; and

(4) the security and other conditions in the countries to which detainees might be transferred, including a review of any suspension of transfers to a particular country, in order to determine whether further steps to facilitate transfers are appropriate or to provide a recommendation to the President regarding whether continuation of any such suspension is warranted.

(b) After completion of the initial reviews under section 3(a) of this order, and at least once every 4 years thereafter, the Committee shall review whether a continued law of war detention policy remains consistent with the interests of the United States, including national security interests.

SEC. 6. *Continuing Obligation of the Departments of Justice and Defense to Assess Feasibility of Prosecution*. As to each detainee whom the interagency review established by Executive Order 13492 has designated for continued law of war detention, the Attorney General and the Secretary of Defense shall continue to assess whether prosecution of the detainee is feasible and in the national security interests of the United States, and shall refer detainees for prosecution, as appropriate.

SEC. 7. *Obligation of Other Departments and Agencies to Assist the Secretary of Defense*. All departments, agencies, entities, and officers of the United States, to the maximum extent permitted by law, shall provide the Secretary of Defense such assistance as may be requested to implement this order.

SEC. 8. *Legality of Detention*. The process established under this order does not address the legality of any detainee's law of war detention. If, at any time during the periodic review process established in this order, material information calls into question the legality of detention, the matter will be referred immediately to the Secretary of Defense and the Attorney General for appropriate action.

SEC. 9. *Definitions*. (a) ''Law of War Detention'' means: detention authorized by the Congress under the AUMF, as informed by the laws of war.

(b) ''Periodic Review Board'' means: a board composed of senior officials tasked with fulfilling the functions described in section 3 of this order, one appointed by each of the following departments and offices: the Departments of State, Defense, Justice, and Homeland Security, as well as the Offices of the Director of National Intelligence and the Chairman of the Joint Chiefs of Staff.

(c) ''Conditional Detention'' means: the status of those detainees designated by the Executive Order 13492 review as eligible for transfer if one of the following conditions is satisfied: (1) the security situation improves in Yemen; (2) an appropriate rehabilitation program becomes available; or (3) an appropriate third-country resettlement option becomes available.

(d) ''Review Committee'' means: a committee composed of the Secretary of State, the Secretary of Defense, the Attorney General, the Secretary of Homeland Security, the Director of National Intelligence, and the Chairman of the Joint Chiefs of Staff.

SEC. 10. *General Provisions*. (a) Nothing in this order shall prejudice the authority of the Secretary of Defense or any other official to determine the disposition of any detainee not covered by this order.

(b) This order shall be implemented subject to the availability of necessary appropriations and consistent with applicable law including: the Convention Against Torture; Common Article 3 of the Geneva Conventions; the Detainee Treatment Act of 2005; and other laws relating to the transfer, treatment, and interrogation of individuals detained in an armed conflict.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(d) Nothing in this order, and no determination made under this order, shall be construed as grounds for release of detainees covered by this order into the United States.

BARACK OBAMA.

EX. ORD. NO. 13823. PROTECTING AMERICA THROUGH LAWFUL DETENTION OF TERRORISTS

Ex. Ord. No. 13823, Jan. 30, 2018, 83 F.R. 4831, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

SECTION 1. *Findings*. (a) Consistent with long-standing law of war principles and applicable law, the United

States may detain certain persons captured in connection with an armed conflict for the duration of the conflict.

(b) Following the terrorist attacks of September 11, 2001, the 2001 Authorization for Use of Military Force (AUMF) and other authorities authorized the United States to detain certain persons who were a part of or substantially supported al-Qa'ida, the Taliban, or associated forces engaged in hostilities against the United States or its coalition partners. Today, the United States remains engaged in an armed conflict with al-Qa'ida, the Taliban, and associated forces, including with the Islamic State of Iraq and Syria.

(c) The detention operations at the U.S. Naval Station Guantánamo Bay are legal, safe, humane, and conducted consistent with United States and international law.

(d) Those operations are continuing given that a number of the remaining individuals at the detention facility are being prosecuted in military commissions, while others must be detained to protect against continuing, significant threats to the security of the United States, as determined by periodic reviews.

(e) Given that some of the current detainee population represent the most difficult and dangerous cases from among those historically detained at the facility, there is significant reason for concern regarding their reengagement in hostilities should they have the opportunity.

SEC. 2. *Status of Detention Facilities at U.S. Naval Station Guantánamo Bay*. (a) Section 3 of Executive Order 13492 of January 22, 2009 (Review and Disposition of Individuals Detained at the Guantánamo Bay Naval Base and Closure of Detention Facilities) [formerly set out above], ordering the closure of detention facilities at U.S. Naval Station Guantánamo Bay, is hereby revoked.

(b) Detention operations at U.S. Naval Station Guantánamo Bay shall continue to be conducted consistent with all applicable United States and international law, including the Detainee Treatment Act of 2005 [see Short Title note set out under section 2000dd of Title 42, The Public Health and Welfare].

(c) In addition, the United States may transport additional detainees to U.S. Naval Station Guantánamo Bay when lawful and necessary to protect the Nation.

(d) Within 90 days of the date of this order, the Secretary of Defense shall, in consultation with the Secretary of State, the Attorney General, the Secretary of Homeland Security, the Director of National Intelligence, and the heads of any other appropriate executive departments and agencies as determined by the Secretary of Defense, recommend policies to the President regarding the disposition of individuals captured in connection with an armed conflict, including policies governing transfer of individuals to U.S. Naval Station Guantánamo Bay.

(e) Unless charged in or subject to a judgment of conviction by a military commission, any detainees transferred to U.S. Naval Station Guantánamo Bay after the date of this order shall be subject to the procedures for periodic review established in Executive Order 13567 of March 7, 2011 (Periodic Review of Individuals Detained at Guantánamo Bay Naval Station Pursuant to the Authorization for Use of Military Force) [set out above], to determine whether continued law of war detention is necessary to protect against a significant threat to the security of the United States.

SEC. 3. *Rules of Construction*. (a) Nothing in this order shall prevent the Secretary of Defense from transferring any individual away from the U.S. Naval Station Guantánamo Bay when appropriate, including to effectuate an order affecting the disposition of that individual issued by a court or competent tribunal of the United States having lawful jurisdiction.

(b) Nothing in this order shall be construed to affect existing law or authorities relating to the detention of United States citizens, lawful permanent residents of the United States, or any persons who are captured or arrested in the United States.

(c) Nothing in this order shall prevent the Attorney General from, as appropriate, investigating, detaining, and prosecuting a terrorist subject to the criminal laws and jurisdiction of the United States.

SEC. 4. *General Provisions*. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

DONALD J. TRUMP.

EX. ORD. NO. 13825. 2018 AMENDMENTS TO THE MANUAL FOR COURTS-MARTIAL, UNITED STATES

Ex. Ord. No. 13825, Mar. 1, 2018, 83 F.R. 9889, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including chapter 47 of title 10, United States Code (Uniform Code of Military Justice (UCMJ), 10 U.S.C. 801–946), and in order to prescribe amendments to the Manual for Courts-Martial, United States, prescribed by Executive Order 12473 of April 13, 1984, as amended, it is hereby ordered as follows:

SECTION 1. Part II, Part III, and Part IV of the Manual for Courts-Martial, United States, are amended as described in Annex 1, which is attached to and made a part of this order [not set out in the Code].

SEC. 2. The amendments in Annex 1 shall take effect on the date of this order, subject to the following:

(a) Nothing in Annex 1 shall be construed to make punishable any act done or omitted prior to the date of this order that was not punishable when done or omitted.

(b) Nothing in Annex 1 shall be construed to invalidate the prosecution of any offense committed before the date of this order. The maximum punishment for an offense committed before the date of this order shall not exceed the maximum punishment in effect at the time of the commission of such offense.

(c) Nothing in Annex 1 shall be construed to invalidate any nonjudicial punishment proceeding, restraint, investigation, referral of charges, trial in which arraignment occurred, or other action begun prior to the date of this order, and any such nonjudicial punishment proceeding, restraint, investigation, referral of charges, trial in which arraignment occurred, or other action shall proceed in the same manner and with the same effect as if the amendments in Annex 1 had not been prescribed.

SEC. 3. (a) Pursuant to section 5542 of the Military Justice Act of 2016 (MJA) [Pub. L. 114–328, set out as an Effective Date of 2016 Amendment note above], division E of the National Defense Authorization Act for Fiscal Year 2017, Public Law 114–328, 130 Stat. 2000, 2967 (2016), except as otherwise provided by the MJA or this order, the MJA shall take effect on January 1, 2019.

(b) Nothing in the MJA shall be construed to make punishable any act done or omitted prior to January 1, 2019, that was not punishable when done or omitted.

(c) Nothing in title LX of the MJA shall be construed to invalidate the prosecution of any offense committed before January 1, 2019. The maximum punishment for an offense committed before January 1, 2019, shall not exceed the maximum punishment in effect at the time of the commission of such offense.

(d) Nothing in the MJA shall be construed to invalidate any nonjudicial punishment proceeding, restraint, investigation, referral of charges, trial in which arraignment occurred, or other action begun prior to January 1, 2019. Except as otherwise provided in this

order, the MJA shall not apply in any case in which charges are referred to trial by court-martial before January 1, 2019. Except as otherwise provided in this order, proceedings in any such case shall be held in the same manner and with the same effect as if the MJA had not been enacted.

SEC. 4. The Manual for Courts-Martial, United States, as amended by section 1 of this order, is amended as described in Annex 2, which is attached to and made a part of this order [not set out in the Code].

SEC. 5. The amendments in Annex 2, including Appendix 12A, shall take effect on January 1, 2019, subject to the following:

(a) Nothing in Annex 2 shall be construed to make punishable any act done or omitted prior to January 1, 2019, that was not punishable when done or omitted.

(b) Nothing in section 4 of Annex 2 shall be construed to invalidate the prosecution of any offense committed before January 1, 2019. The maximum punishment for an offense committed before January 1, 2019, shall not exceed the maximum punishment in effect at the time of the commission of such offense.

(c) Nothing in Annex 2 shall be construed to invalidate any nonjudicial punishment proceeding, restraint, investigation, referral of charges, trial in which arraignment occurred, or other action begun prior to January 1, 2019. Except as otherwise provided in this order, the amendments in Annex 2 shall not apply in any case in which charges are referred to trial by court-martial before January 1, 2019. Except as otherwise provided in this order, proceedings in any such case shall be held in the same manner and with the same effect as if such amendments had not been prescribed.

SEC. 6. (a) The amendments to Articles 2, 56(d), 58a, and 63 of the UCMJ [10 U.S.C. 802, 856(d), 858a, 863] enacted by sections 5102, 5301, 5303, and 5327 of the MJA apply only to cases in which all specifications allege offenses committed on or after January 1, 2019.

(b) If the accused is found guilty of a specification alleging the commission of one or more offenses before January 1, 2019, Article 60 of the UCMJ [10 U.S.C. 860], as in effect on the date of the earliest offense of which the accused was found guilty, shall apply to the convening authority, in addition to the suspending authority in Article 60a(c) [10 U.S.C. 860a(c)] as enacted by the MJA, to the extent that Article 60:

(1) requires action by the convening authority on the sentence;

(2) permits action by the convening authority on findings;

(3) authorizes the convening authority to modify the findings and sentence of a court-martial, dismiss any charge or specification by setting aside a finding of guilty thereto, or change a finding of guilty to a charge or specification to a finding of guilty to an offense that is a lesser included offense of the offense stated in the charge or specification;

(4) authorizes the convening authority to order a proceeding in revision or a rehearing; or

(5) authorizes the convening authority to approve, disapprove, commute, or suspend a sentence in whole or in part.

SEC. 7. The amendment to Article 15 of the UCMJ [10 U.S.C. 815] enacted by section 5141 of the MJA shall apply to any nonjudicial punishment imposed on or after January 1, 2019.

SEC. 8. The amendments to Articles 32 and 34 of the UCMJ [10 U.S.C. 832, 834] enacted by sections 5203 and 5205 of the MJA apply with respect to preliminary hearings conducted and advice given on or after January 1, 2019.

SEC. 9. The amendments to Article 79 of the UCMJ [10 U.S.C. 879] enacted by section 5402 of the MJA and the amendments to Appendix 12A to the Manual for Courts-Martial, United States, made by this order apply only to offenses committed on or after January 1, 2019.

SEC. 10. Except as provided by Rule for Courts-Martial 902A, as promulgated by Annex 2, any change to sentencing procedures:

(a) made by Articles 16(c)(2), 19(b), 25(d)(2) and (3), 39(a)(4), 53, 53a, or 56(c) of the UCMJ [10 U.S.C. 816(c)(2), 819(b), 825(d)(2) and (3), 839(a)(4), 853, 853a, 856(c)], as enacted by sections 5161, 5163, 5182, 5222, 5236, 5237, and 5301 of the MJA; or

(b) included in Annex 2 in rules implementing those articles, applies only to cases in which all specifications allege offenses committed on or after January 1, 2019.

SEC. 11. The amendments to Article 146 of the UCMJ [10 U.S.C. 946] enacted by section 5521 of the MJA and the new Article 146a [10 U.S.C. 946a] enacted by section 5522 of the MJA shall take effect on the day after the report for fiscal year 2017 required by Article 146(c) of the UCMJ (as in effect before the MJA's amendments) is submitted in accordance with Article 146(c)(1), but in no event later than December 1, 2018.

SEC. 12. In accordance with Article 33 of the UCMJ [10 U.S.C. 833], as amended by section 5204 of the MJA, the Secretary of Defense, in consultation with the Secretary of Homeland Security, will issue nonbinding guidance regarding factors that commanders, convening authorities, staff judge advocates, and judge advocates should take into account when exercising their duties with respect to the disposition of charges and specifications in the interest of justice and discipline under Articles 30 and 34 of the UCMJ [10 U.S.C. 830, 834]. That guidance will take into account, with appropriate consideration of military requirements, the principles contained in official guidance of the Attorney General to attorneys for the Federal Government with respect to the disposition of Federal criminal cases in accordance with the principle of fair and evenhanded administration of Federal criminal law.

DONALD J. TRUMP.

§ 802. Art. 2. Persons subject to this chapter

(a) The following persons are subject to this chapter:

(1) Members of a regular component of the armed forces, including those awaiting discharge after expiration of their terms of enlistment; volunteers from the time of their muster or acceptance into the armed forces; inductees from the time of their actual induction into the armed forces; and other persons lawfully called or ordered into, or to duty in or for training in, the armed forces, from the dates when they are required by the terms of the call or order to obey it.

(2) Cadets, aviation cadets, and midshipmen.

(3)(A) While on inactive-duty training and during any of the periods specified in subparagraph (B)—

(i) members of a reserve component; and

(ii) members of the Army National Guard of the United States or the Air National Guard of the United States, but only when in Federal service.

(B) The periods referred to in subparagraph (A) are the following:

(i) Travel to and from the inactive-duty training site of the member, pursuant to orders or regulations.

(ii) Intervals between consecutive periods of inactive-duty training on the same day, pursuant to orders or regulations.

(iii) Intervals between inactive-duty training on consecutive days, pursuant to orders or regulations.

(4) Retired members of a regular component of the armed forces who are entitled to pay.

(5) Retired members of a reserve component who are receiving hospitalization from an armed force.

(6) Members of the Fleet Reserve and Fleet Marine Corps Reserve.

(7) Persons in custody of the armed forces serving a sentence imposed by a court-martial.

(8) Members of the National Oceanic and Atmospheric Administration, Public Health Service, and other organizations, when assigned to and serving with the armed forces.

(9) Prisoners of war in custody of the armed forces.

(10) In time of declared war or a contingency operation, persons serving with or accompanying an armed force in the field.

(11) Subject to any treaty or agreement to which the United States is or may be a party or to any accepted rule of international law, persons serving with, employed by, or accompanying the armed forces outside the United States and outside the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.

(12) Subject to any treaty or agreement to which the United States is or may be a party or to any accepted rule of international law, persons within an area leased by or otherwise reserved or acquired for the use of the United States which is under the control of the Secretary concerned and which is outside the United States and outside the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.

(13) Individuals belonging to one of the eight categories enumerated in Article 4 of the Convention Relative to the Treatment of Prisoners of War, done at Geneva August 12, 1949 (6 UST 3316), who violate the law of war.

(b) The voluntary enlistment of any person who has the capacity to understand the significance of enlisting in the armed forces shall be valid for purposes of jurisdiction under subsection (a) and a change of status from civilian to member of the armed forces shall be effective upon the taking of the oath of enlistment.

(c) Notwithstanding any other provision of law, a person serving with an armed force who—

(1) submitted voluntarily to military authority;

(2) met the mental competency and minimum age qualifications of sections 504 and 505 of this title at the time of voluntary submission to military authority;

(3) received military pay or allowances; and

(4) performed military duties;

is subject to this chapter until such person's active service has been terminated in accordance with law or regulations promulgated by the Secretary concerned.

(d)(1) A member of a reserve component who is not on active duty and who is made the subject of proceedings under section 815 (article 15) or section 830 (article 30) with respect to an offense against this chapter may be ordered to active duty involuntarily for the purpose of—

(A) a preliminary hearing under section 832 of this title (article 32);

(B) trial by court-martial; or

(C) nonjudicial punishment under section 815 of this title (article 15).

(2) A member of a reserve component may not be ordered to active duty under paragraph (1) except with respect to an offense committed while the member was—

(A) on active duty; or

(B) on inactive-duty training, but in the case of members of the Army National Guard of the United States or the Air National Guard of the United States only when in Federal service.

(3) Authority to order a member to active duty under paragraph (1) shall be exercised under regulations prescribed by the President.

(4) A member may be ordered to active duty under paragraph (1) only by a person empowered to convene general courts-martial in a regular component of the armed forces.

(5) A member ordered to active duty under paragraph (1), unless the order to active duty was approved by the Secretary concerned, may not—

(A) be sentenced to confinement; or

(B) be required to serve a punishment consisting of any restriction on liberty during a period other than a period of inactive-duty training or active duty (other than active duty ordered under paragraph (1)).

(e) The provisions of this section are subject to section 876b(d)(2) of this title (article 76b(d)(2)).

(Aug. 10, 1956, ch. 1041, 70A Stat. 37; Pub. L. 86–70, § 6(b), June 25, 1959, 73 Stat. 142; Pub. L. 86–624, § 4(b), July 12, 1960, 74 Stat. 411; Pub. L. 87–651, title I, § 104, Sept. 7, 1962, 76 Stat. 508; Pub. L. 89–718, § 8(a), Nov. 2, 1966, 80 Stat. 1117; Pub. L. 96–107, title VIII, § 801(a), Nov. 9, 1979, 93 Stat. 810; Pub. L. 96–513, title V, § 511(24), Dec. 12, 1980, 94 Stat. 2922; Pub. L. 98–209, § 13(a), Dec. 6, 1983, 97 Stat. 1408; Pub. L. 99–661, div. A, title VIII, § 804(a), Nov. 14, 1986, 100 Stat. 3906; Pub. L. 100–456, div. A, title XII, § 1234(a)(1), Sept. 29, 1988, 102 Stat. 2059; Pub. L. 104–106, div. A, title XI, § 1133(b), Feb. 10, 1996, 110 Stat. 466; Pub. L. 109–364, div. A, title V, § 552, Oct. 17, 2006, 120 Stat. 2217; Pub. L. 109–366, § 4(a)(1), Oct. 17, 2006, 120 Stat. 2631; Pub. L. 111–84, div. A, title XVIII, § 1803(a)(1), Oct. 28, 2009, 123 Stat. 2612; Pub. L. 113–66, div. A, title XVII, § 1702(c)(3)(A), Dec. 26, 2013, 127 Stat. 957; Pub. L. 114–328, div. E, title LI, § 5102, Dec. 23, 2016, 130 Stat. 2894.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
802	50:552.	May 5, 1950, ch. 169, § 1 (Art. 2), 64 Stat. 109.

In clause (1), the words "Members of" are substituted for the words "All persons belonging to". The words "all" and "the same" are omitted as surplusage. The word "when" is inserted after the word "dates".

In clauses (1) and (8), the words "of the United States" are omitted as surplusage.

In clause (3), the words "Members of a reserve component" are substituted for the words "Reserve personnel". The word "orders" in the last clause is omitted as surplusage.

In clause (4), the word "receive" is omitted as surplusage.

In clauses (4) and (5), the word "members" is substituted for the word "personnel".

In clause (8), the word "members" is substituted for the word "personnel".

In clauses (11) and (12), the word "outside" is substituted for the word "without" wherever it occurs. The words "the continental limits of" are omitted,

since section 101(1) of this title defines the United States to include the States and the District of Columbia. The words ''the provision of'', ''all'', and ''territories'' are omitted as surplusage.

In clause (12), the words ''Secretary concerned'' are substituted for the words ''Secretary of a Department''.

1962 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
802(11), (12).	50:552(11) and (12).	Aug. 1, 1956, ch. 852, § 23, 70 Stat. 911.

The Act of August 1, 1956, was enacted during the pendency of the codification bill.

CONSTITUTIONALITY

For information regarding constitutionality of certain provisions of section 1 (Art. 2) of act May 5, 1950, ch. 169, cited as the source of this section, see Congressional Research Service, The Constitution of the United States of America: Analysis and Interpretation, Appendix 1, Acts of Congress Held Unconstitutional in Whole or in Part by the Supreme Court of the United States.

AMENDMENTS

2016—Subsec. (a)(3). Pub. L. 114–328 amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''Members of a reserve component while on inactive-duty training, but in the case of members of the Army National Guard of the United States or the Air National Guard of the United States only when in Federal service.''

2013—Subsec. (d)(1)(A). Pub. L. 113–66 substituted ''a preliminary hearing under section 832'' for ''investigation under section 832''.

2009—Subsec. (a)(13). Pub. L. 111–84 amended par. (13) generally. Prior to amendment, par. (13) read as follows: ''Lawful enemy combatants (as that term is defined in section 948a(2) of this title) who violate the law of war.''

2006—Subsec. (a)(10). Pub. L. 109–364 substituted ''declared war or a contingency operation'' for ''war''.

Subsec. (a)(13). Pub. L. 109–366 added par. (13).

1996—Subsec. (e). Pub. L. 104–106 added subsec. (e).

1988—Subsec. (a)(11), (12). Pub. L. 100–456 struck out ''the Canal Zone,'' before ''the Commonwealth''.

1986—Subsec. (a)(3). Pub. L. 99–661, § 804(a)(1), substituted ''on inactive-duty training, but in the case of members of the Army National Guard of the United States or the Air National Guard of the United States only when in Federal service'' for ''they are on inactive duty training authorized by written orders which are voluntarily accepted by them and which specify that they are subject to this chapter''.

Subsec. (d). Pub. L. 99–661, § 804(a)(2), added subsec. (d).

1983—Subsec. (a)(11), (12). Pub. L. 98–209, § 13(a)(1), substituted ''outside the Canal Zone'' for ''outside the following: the Canal Zone'' and inserted ''the Commonwealth of'' before ''Puerto Rico''.

Subsec. (b). Pub. L. 98–209, § 13(a)(2), struck out ''of this section'' after ''subsection (a)''.

1980—Subsec. (a)(8). Pub. L. 96–513 substituted ''National Oceanic and Atmospheric Administration'' for ''Environmental Science Services Administration''.

1979—Pub. L. 96–107 designated existing provisions as subsec. (a) and added subsecs. (b) and (c).

1966—Pub. L. 89–718 substituted ''Environmental Science Services Administration'' for ''Coast and Geodetic Survey'' in cl. (8).

1962—Pub. L. 87–651 inserted ''Guam,'' after ''Puerto Rico,'' in cls. (11) and (12).

1960—Pub. L. 86–624 struck out ''the main group of the Hawaiian Islands,'' before ''Puerto Rico'' in cls. (11) and (12).

1959—Pub. L. 86–70 struck out ''that part of Alaska east of longitude 172 degrees west,'' before ''the Canal Zone'' in cls. (11) and (12).

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114–328 effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 113–66, div. A, title XVII, § 1702(d)(1), Dec. 26, 2013, 127 Stat. 958, as amended by Pub. L. 113–291, div. A, title V, § 531(g)(1), Dec. 19, 2014, 128 Stat. 3365, provided that: ''The amendments made by subsections (a) and (c)(3) [amending this section and sections 832, 834, 838, 847, and 948b of this title] shall take effect on the later of December 26, 2014, or the date of the enactment of the Carl Levin and Howard P. 'Buck' McKeon National Defense Authorization Act for Fiscal Year 2015 [Dec. 19, 2014] and shall apply with respect to preliminary hearings conducted on or after that effective date.''

[Pub. L. 113–291, div. A, title V, § 531(g)(1), Dec. 19, 2014, 128 Stat. 3365, provided that the amendment by section 531(g)(1) to section 1702(d)(1) of Pub. L. 113–66, set out above, is effective as of Dec. 26, 2013, and as if included in section 1702(d)(1) of Pub. L. 113–66, as enacted.]

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–661, div. A, title VIII, § 804(e), Nov. 14, 1986, 100 Stat. 3908, provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 803 of this title] shall apply only to an offense committed on or after the effective date of this title [see section 808 of Pub. L. 99–661, set out below].''

Pub. L. 99–661, div. A, title VIII, § 808, Nov. 14, 1986, 100 Stat. 3909, provided that: ''Except as provided in sections 802(b), 805(c), and 807(b) [set out as notes under sections 850a, 843, and 806, respectively, of this title], this title and the amendments made by this title [enacting section 850a of this title, amending this section and sections 803, 806, 825, 843, 860, 936, and 937 of this title, and enacting provisions set out as notes under this section and sections 801, 806, 825, 843, 850a, and 860 of this title] shall take effect on the earlier of—

''(1) the last day of the 120-day period beginning on the date of the enactment of this Act [Nov. 14, 1986]; or

''(2) the date specified in an Executive order for such amendments to take effect.''

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–209 effective Dec. 6, 1983, see section 12(a)(1) of Pub. L. 98–209, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

REPEALS

The directory language of, but not the amendment made by, Pub. L. 89–718, § 8(a), Nov. 2, 1966, 80 Stat. 1117, cited as a credit to this section, was repealed by Pub. L. 97–295, § 6(b), Oct. 12, 1982, 96 Stat. 1314.

TRANSFER OF FUNCTIONS

All functions of Public Health Service, of the Surgeon General of the Public Health Service, and of all other officers and employees of the Public Health Service, and all functions of all agencies of or in the Public Health Service transferred to Secretary of Health, Education, and Welfare by 1966 Reorg. Plan No. 3, 31 F.R. 8855, 80 Stat. 1610, effective June 25, 1966, set out in the Appendix to Title 5, Government Organization and Employees.

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508(b) of Title 20, Education.

APPLICABILITY OF UNIFORM CODE OF MILITARY JUSTICE TO MEMBERS OF THE ARMED FORCES ORDERED TO DUTY OVERSEAS IN INACTIVE DUTY FOR TRAINING STATUS

Pub. L. 109–364, div. A, title V, § 551, Oct. 17, 2006, 120 Stat. 2217, provided that: ''Not later than March 1, 2007, the Secretaries of the military departments shall prescribe regulations, or amend current regulations, in order to provide that members of the Armed Forces who are ordered to duty at locations overseas in an inactive duty for training status are subject to the jurisdiction of the Uniform Code of Military Justice, pursuant to the provisions of section 802(a)(3) of title 10, United States Code (article 2(a)(3) of the Uniform Code of Military Justice), continuously from the commencement of execution of such orders to the conclusion of such orders.''

ADVISORY COMMITTEE ON CRIMINAL LAW JURISDICTION OVER CIVILIANS ACCOMPANYING ARMED FORCES IN TIME OF ARMED CONFLICT

Pub. L. 104–106, div. A, title XI, § 1151, Feb. 10, 1996, 110 Stat. 467, directed the Secretary of Defense and the Attorney General, not later than 45 days after Feb. 10, 1996, to jointly appoint an advisory committee to review and make recommendations concerning the appropriate forum for criminal jurisdiction over civilians accompanying the Armed Forces outside the United States in time of armed conflict, directed the committee to transmit to the Secretary of Defense and the Attorney General a report setting forth its findings and recommendations not later than Dec. 15, 1996, directed the Secretary of Defense and the Attorney General to jointly transmit the report of the committee to Congress not later than Jan. 15, 1997, and provided that the committee would terminate 30 days after the date on which the report had been submitted to Congress.

EX. ORD. NO. 10631. CODE OF CONDUCT FOR MEMBERS OF THE ARMED FORCES

Ex. Ord. No. 10631, Aug. 17, 1955, 20 F.R. 6057, as amended by Ex. Ord. No. 11382, Nov. 28, 1967, 32 F.R. 16247; Ex. Ord. No. 12017, Nov. 3, 1977, 42 F.R. 57941; Ex. Ord. No. 12633, Mar. 28, 1988, 53 F.R. 10355; Ex. Ord. No. 13286, § 76, Feb. 28, 2003, 68 F.R. 106231, provided:

By virtue of the authority vested in me as President of the United States, and as Commander in Chief of the armed forces of the United States, I hereby prescribe the Code of Conduct for Members of the Armed Forces of the United States which is attached to this order and hereby made a part thereof.

All members of the Armed Forces of the United States are expected to measure up to the standards embodied in this Code of Conduct while in combat or in captivity. To ensure achievement of these standards, members of the armed forces liable to capture shall be provided with specific training and instruction designed to better equip them to counter and withstand all enemy efforts against them, and shall be fully instructed as to the behavior and obligations expected of them during combat or captivity.

The Secretary of Defense (and the Secretary of Homeland Security with respect to the Coast Guard except when it is serving as part of the Navy) shall take such action as is deemed necessary to implement this order and to disseminate and make the said Code known to all members of the armed forces of the United States.

CODE OF CONDUCT FOR MEMBERS OF THE UNITED STATES ARMED FORCES

I

I am an American, fighting in the forces which guard my country and our way of life. I am prepared to give my life in their defense.

II

I will never surrender of my own free will. If in command, I will never surrender the members of my command while they still have the means to resist.

III

If I am captured I will continue to resist by all means available. I will make every effort to escape and aid others to escape. I will accept neither parole nor special favors from the enemy.

IV

If I become a prisoner of war, I will keep faith with my fellow prisoners. I will give no information or take part in any action which might be harmful to my comrades. If I am senior, I will take command. If not, I will obey the lawful orders of those appointed over me and will back them up in every way.

V

When questioned, should I become a prisoner of war, I am required to give name, rank, service number and date of birth. I will evade answering further questions to the utmost of my ability. I will make no oral or written statements disloyal to my country and its allies or harmful to their cause.

VI

I will never forget that I am an American, fighting for freedom, responsible for my actions, and dedicated to the principles which made my country free. I will trust in my God and in the United States of America.

§ 803. Art. 3. Jurisdiction to try certain personnel

(a) Subject to section 843 of this title (article 43), a person who is in a status in which the person is subject to this chapter and who committed an offense against this chapter while formerly in a status in which the person was subject to this chapter is not relieved from amenability to the jurisdiction of this chapter for that offense by reason of a termination of that person's former status.

(b) Each person discharged from the armed forces who is later charged with having fraudulently obtained his discharge is, subject to section 843 of this title (article 43), subject to trial by court-martial on that charge and is after apprehension subject to this chapter while in the custody of the armed forces for that trial. Upon conviction of that charge he is subject to trial by court-martial for all offenses under this chapter committed before the fraudulent discharge.

(c) No person who has deserted from the armed forces may be relieved from amenability to the jurisdiction of this chapter by virtue of a separation from any later period of service.

(d) A member of a reserve component who is subject to this chapter is not, by virtue of the termination of a period of active duty or inactive-duty training, relieved from amenability to the jurisdiction of this chapter for an offense against this chapter committed during such period of active duty or inactive-duty training.

(Aug. 10, 1956, ch. 1041, 70A Stat. 38; Pub. L. 99–661, div. A, title VIII, § 804(b), Nov. 14, 1986, 100 Stat. 3907; Pub. L. 102–484, div. A, title X, § 1063, Oct. 23, 1992, 106 Stat. 2505.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
803(a)	50:553(a).	May 5, 1950, ch. 169, §1 (Art. 3), 64 Stat. 109.
803(b)	50:553(b).	
803(c)	50:553(c).	

In subsection (a), the words ''the provisions of'' are omitted as surplusage. The words ''no * * * may'' are substituted for the words ''any * * * shall not''. The word ''for'' is substituted for the word ''of'' before the words ''five years''. The words ''of a State, a Territory, or'' are substituted for the words ''any State or Territory thereof or of''. The word ''court-martial'' is substituted for the word ''courts-martial''.

In subsection (b), the words ''Each person'' are substituted for the words ''All persons''. The words ''who is later'' are substituted for the word ''subsequently''. The words ''his discharge is'' are substituted for the words ''said discharge shall * * * be''. The words ''the provisions of'' are omitted as surplusage. The word ''is'' is substituted for the words ''shall * * * be''. The words ''he is'' are substituted for the words ''they shall be''. The word ''before'' is substituted for the words ''prior to''.

In subsection (c), the words ''No * * * may'' are substituted for the words ''Any * * * shall not''. The word ''later'' is substituted for the word ''subsequent''.

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–484 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''Subject to section 843 of this title (article 43), no person charged with having committed, while in a status in which he was subject to this chapter, an offense against this chapter, punishable by confinement for five years or more and for which the person cannot be tried in the courts of the United States or of a State, a Territory, or the District of Columbia, may be relieved from amenability to trial by court-martial by reason of the termination of that status.''

1986—Subsec. (d). Pub. L. 99–661 added subsec. (d).

EFFECTIVE DATE OF 1992 AMENDMENT

Pub. L. 102–484, div. A, title X, §1067, Oct. 23, 1992, 106 Stat. 2506, provided that: ''The amendments made by sections 1063, 1064, 1065, and 1066 [amending this section and sections 857, 863, 911, 918, and 920 of this title] shall take effect on the date of the enactment of this Act [Oct. 23, 1992] and shall apply with respect to offenses committed on or after that date.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–661 applicable to offenses committed on or after the earlier of (1) the last day of the 120-day period beginning on Nov. 14, 1986; or (2) the date specified in an Executive order, see sections 804(e) and 808 of Pub. L. 99–661, set out as notes under section 802 of this title.

§ 804. Art. 4. Dismissed officer's right to trial by court-martial

(a) If any commissioned officer, dismissed by order of the President, makes a written application for trial by court-martial, setting forth, under oath, that he has been wrongfully dismissed, the President, as soon as practicable, shall convene a general court-martial to try that officer on the charges on which he was dismissed. A court-martial so convened has jurisdiction to try the dismissed officer on those charges, and he shall be considered to have waived the right to plead any statute of limitations applicable to any offense with which he is charged. The court-martial may, as part of its sentence, adjudge the affirmance of the dismissal, but if the court-martial acquits the accused or if the sentence adjudged, as finally approved or affirmed, does not include dismissal or death, the Secretary concerned shall substitute for the dismissal ordered by the President a form of discharge authorized for administrative issue.

(b) If the President fails to convene a general court-martial within six months from the presentation of an application for trial under this article, the Secretary concerned shall substitute for the dismissal ordered by the President a form of discharge authorized for administrative issue.

(c) If a discharge is substituted for a dismissal under this article, the President alone may reappoint the officer to such commissioned grade and with such rank as, in the opinion of the President, that former officer would have attained had he not been dismissed. The reappointment of such a former officer shall be without regard to the existence of a vacancy and shall affect the promotion status of other officers only insofar as the President may direct. All time between the dismissal and the reappointment shall be considered as actual service for all purposes, including the right to pay and allowances.

(d) If an officer is discharged from any armed force by administrative action or is dropped from the rolls by order of the President, he has no right to trial under this article.

(Aug. 10, 1956, ch. 1041, 70A Stat. 38.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
804(a)	50:554(a).	May 5, 1950, ch. 169, §1 (Art. 4), 64 Stat. 110.
804(b)	50:554(b).	
804(c)	50:554(c).	
804(d)	50:554(d).	

In subsection (a), the word ''If'' is substituted for the word ''When''. The word ''commissioned'' is inserted before the word ''officer''. The word ''considered'' is substituted for the word ''held''.

In subsections (a) and (b), the words ''Secretary concerned'' are substituted for the words ''Secretary of the Department''.

In subsection (c), the word ''If'' is substituted for the word ''Where''. The words ''the authority of'' are omitted as surplusage. The words ''grade and with such rank'' are substituted for the words ''rank and precedence'', since a person is appointed to a grade, not to a position of precedence, and the word ''rank'' is the accepted military word denoting the general idea of precedence. The words ''the existence of a'' are substituted for the word ''position'' for clarity. The word ''receive'' is omitted as surplusage.

In subsection (d), the word ''If'' is substituted for the word ''When''. The words ''he has no'' are substituted for the words ''there shall not be a''.

DELEGATION OF FUNCTIONS

For delegation to Secretary of Homeland Security of certain authority vested in President by this section, see section 2 of Ex. Ord. No. 10637, Sept. 16, 1955, 20 F.R. 7025, as amended, set out as a note under section 301 of Title 3, The President.

§ 805. Art. 5. Territorial applicability of this chapter

This chapter applies in all places.

(Aug. 10, 1956, ch. 1041, 70A Stat. 39.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
805	50:555.	May 5, 1950, ch. 169, §1 (Art. 5), 64 Stat. 110.

The word "applies" is substituted for the words "shall be applicable".

§ 806. Art. 6. Judge advocates and legal officers

(a) The assignment for duty of judge advocates of the Army, Navy, Air Force, and Coast Guard shall be made upon the recommendation of the Judge Advocate General of the armed force of which they are members. The assignment for duty of judge advocates of the Marine Corps shall be made by direction of the Commandant of the Marine Corps. The Judge Advocates General, and within the Marine Corps the Staff Judge Advocate to the Commandant of the Marine Corps, or senior members of their staffs, shall make frequent inspections in the field in supervision of the administration of military justice.

(b) Convening authorities shall at all times communicate directly with their staff judge advocates or legal officers in matters relating to the administration of military justice; and the staff judge advocate or legal officer of any command is entitled to communicate directly with the staff judge advocate or legal officer of a superior or subordinate command, or with the Judge Advocate General.

(c)(1) No person who, with respect to a case, serves in a capacity specified in paragraph (2) may later serve as a staff judge advocate or legal officer to any reviewing or convening authority upon the same case.

(2) The capacities referred to in paragraph (1) are, with respect to the case involved, any of the following:

(A) Preliminary hearing officer, court member, military judge, military magistrate, or appellate judge.

(B) Counsel who have acted in the same case or appeared in any proceeding before a military judge, military magistrate, preliminary hearing officer, or appellate court.

(d)(1) A judge advocate who is assigned or detailed to perform the functions of a civil office in the Government of the United States under section 973(b)(2)(B) of this title may perform such duties as may be requested by the agency concerned, including representation of the United States in civil and criminal cases.

(2) The Secretary of Defense, and the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, shall prescribe regulations providing that reimbursement may be a condition of assistance by judge advocates assigned or detailed under section 973(b)(2)(B) of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 39; Pub. L. 90–179, §1(3), Dec. 8, 1967, 81 Stat. 545; Pub. L. 90–632, §2(2), Oct. 24, 1968, 82 Stat. 1335; Pub. L. 98–209, §2(b), Dec. 6, 1983, 97 Stat. 1393; Pub. L. 99–661, div. A, title VIII, §807(a), Nov. 14, 1986, 100 Stat. 3909; Pub. L. 107–296, title XVII, §1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 112–239, div. A, title V, §531(d)(1), Jan. 2, 2013, 126 Stat. 1726; Pub. L. 114–328, div. E, title LI, §5103, Dec. 23, 2016, 130 Stat. 2895.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
806(a)	50:556(a).	May 5, 1950, ch. 169, §1 (Art. 6), 64 Stat. 110.
806(b)	50:556(b).	
806(c)	50:556(c).	

In subsection (b), the word "entitled" is substituted for the word "authorized".

In subsection (c), the words "may later" are substituted for the words "shall subsequently".

AMENDMENTS

2016—Subsec. (c). Pub. L. 114–328 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: "No person who has acted as member, military judge, trial counsel, assistant trial counsel, defense counsel, assistant defense counsel, or investigating officer in any case may later act as a staff judge advocate or legal officer to any reviewing authority upon the same case."

2013—Subsec. (a). Pub. L. 112–239 substituted "The Judge Advocates General, and within the Marine Corps the Staff Judge Advocate to the Commandant of the Marine Corps, or senior members of their staffs, shall" for "The Judge Advocate General or senior members of his staff shall".

2002—Subsec. (d)(2). Pub. L. 107–296 substituted "of Homeland Security" for "of Transportation".

1986—Subsec. (d). Pub. L. 99–661 added subsec. (d).

1983—Subsec. (a). Pub. L. 98–209 substituted "Air Force, and" for "and Air Force and law specialists of the".

1968—Subsec. (c). Pub. L. 90–632 substituted "military judge" for "law officer".

1967—Subsec. (a). Pub. L. 90–179 substituted reference to judge advocates of the Navy for reference to law specialists of the Navy and provided for the assignment of judge advocates of the Marine Corps.

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114–328 effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–661, div. A, title VIII, §807(b), Nov. 14, 1986, 100 Stat. 3909, provided that: "The amendment made by subsection (a) [amending this section]—

"(1) shall take effect on the date of the enactment of this Act [Nov. 14, 1986]; and

"(2) may not be construed to invalidate an action taken by a judge advocate, pursuant to an assignment or detail under section 973(b)(2)(B) of title 10, United States Code, before the date of the enactment of this Act."

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–209 effective first day of eighth calendar month beginning after Dec. 6, 1983, see section 12(a)(1) of Pub. L. 98–209, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective first day of tenth month following October 1968, see section 4 of

Pub. L. 90–632, set out as a note under section 801 of this title.

§ 806a. Art. 6a. Investigation and disposition of matters pertaining to the fitness of military judges

(a) The President shall prescribe procedures for the investigation and disposition of charges, allegations, or information pertaining to the fitness of a military appellate judge, military judge, or military magistrate to perform the duties of the position involved. To the extent practicable, the procedures shall be uniform for all armed forces.

(b) The President shall transmit a copy of the procedures prescribed pursuant to this section to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives.

(Added Pub. L. 101–189, div. A, title XIII, § 1303, Nov. 29, 1989, 103 Stat. 1576; amended Pub. L. 104–106, div. A, title XV, § 1502(a)(1), Feb. 10, 1996, 110 Stat. 502; Pub. L. 106–65, div. A, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 114–328, div. E, title LI, § 5104, Dec. 23, 2016, 130 Stat. 2895.)

AMENDMENTS

2016—Subsec. (a). Pub. L. 114–328 substituted ''military appellate judge, military judge, or military magistrate to perform the duties of the position involved.'' for ''military judge or military appellate judge to perform the duties of the judge's position.''

1999—Subsec. (b). Pub. L. 106–65 substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security''.

1996—Subsec. (b). Pub. L. 104–106 substituted ''Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives'' for ''Committees on Armed Services of the Senate and House of Representatives''.

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114–328 effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

§ 806b. Art. 6b. Rights of the victim of an offense under this chapter

(a) RIGHTS OF A VICTIM OF AN OFFENSE UNDER THIS CHAPTER.—A victim of an offense under this chapter has the following rights:

(1) The right to be reasonably protected from the accused.

(2) The right to reasonable, accurate, and timely notice of any of the following:

(A) A public hearing concerning the continuation of confinement prior to trial of the accused.

(B) A preliminary hearing under section 832 of this title (article 32) relating to the offense.

(C) A court-martial relating to the offense.

(D) A post-trial motion, filing, or hearing that may address the finding or sentence of a court-martial with respect to the accused, unseal privileged or private information of the victim, or result in the release of the accused.

(E) A public proceeding of the service clemency and parole board relating to the offense.

(F) The release or escape of the accused, unless such notice may endanger the safety of any person.

(3) The right not to be excluded from any public hearing or proceeding described in paragraph (2) unless the military judge or preliminary hearing officer, as applicable, after receiving clear and convincing evidence, determines that testimony by the victim of an offense under this chapter would be materially altered if the victim heard other testimony at that hearing or proceeding.

(4) The right to be reasonably heard at any of the following:

(A) A public hearing concerning the continuation of confinement prior to trial of the accused.

(B) A sentencing hearing relating to the offense.

(C) A public proceeding of the service clemency and parole board relating to the offense.

(5) The reasonable right to confer with the counsel representing the Government at any proceeding described in paragraph (2).

(6) The right to receive restitution as provided in law.

(7) The right to proceedings free from unreasonable delay.

(8) The right to be treated with fairness and with respect for the dignity and privacy of the victim of an offense under this chapter.

(b) VICTIM OF AN OFFENSE UNDER THIS CHAPTER DEFINED.—In this section, the term ''victim of an offense under this chapter'' means an individual who has suffered direct physical, emotional, or pecuniary harm as a result of the commission of an offense under this chapter.

(c) APPOINTMENT OF INDIVIDUALS TO ASSUME RIGHTS FOR CERTAIN VICTIMS.—In the case of a victim of an offense under this chapter who is under 18 years of age (but who is not a member of the armed forces), incompetent, incapacitated, or deceased, the legal guardians of the victim or the representatives of the victim's estate, family members, or any other person designated as suitable by the military judge, may assume the rights of the victim under this section. However, in no event may the individual so designated be the accused.

(d) RULE OF CONSTRUCTION.—Nothing in this section (article) shall be construed—

(1) to authorize a cause of action for damages;

(2) to create, to enlarge, or to imply any duty or obligation to any victim of an offense under this chapter or other person for the breach of which the United States or any of its officers or employees could be held liable in damages; or

(3) to impair the exercise of discretion under sections 830 and 834 of this title (articles 30 and 34).

(e) ENFORCEMENT BY COURT OF CRIMINAL APPEALS.—(1) If the victim of an offense under this chapter believes that a preliminary hearing rul-

ing under section 832 of this title (article 32) or a court-martial ruling violates the rights of the victim afforded by a section (article) or rule specified in paragraph (4), the victim may petition the Court of Criminal Appeals for a writ of mandamus to require the preliminary hearing officer or the court-martial to comply with the section (article) or rule.

(2) If the victim of an offense under this chapter is subject to an order to submit to a deposition, notwithstanding the availability of the victim to testify at the court-martial trying the accused for the offense, the victim may petition the Court of Criminal Appeals for a writ of mandamus to quash such order.

(3)(A) A petition for a writ of mandamus described in this subsection shall be forwarded directly to the Court of Criminal Appeals, by such means as may be prescribed by the President, subject to section 830a of this title (article 30a).

(B) To the extent practicable, a petition for a writ of mandamus described in this subsection shall have priority over all other proceedings before the Court of Criminal Appeals.

(C) Review of any decision of the Court of Criminal Appeals on a petition for a writ of mandamus described in this subsection shall have priority in the Court of Appeals for the Armed Forces, as determined under the rules of the Court of Appeals for the Armed Forces.

(4) Paragraph (1) applies with respect to the protections afforded by the following:

(A) This section (article).

(B) Section 832 (article 32) of this title.

(C) Military Rule of Evidence 412, relating to the admission of evidence regarding a victim's sexual background.

(D) Military Rule of Evidence 513, relating to the psychotherapist-patient privilege.

(E) Military Rule of Evidence 514, relating to the victim advocate-victim privilege.

(F) Military Rule of Evidence 615, relating to the exclusion of witnesses.

(f) COUNSEL FOR ACCUSED INTERVIEW OF VICTIM OF ALLEGED OFFENSE.—(1) Upon notice by counsel for the Government to counsel for the accused of the name of an alleged victim of an offense under this chapter who counsel for the Government intends to call as a witness at a proceeding under this chapter, counsel for the accused shall make any request to interview the victim through the Special Victims' Counsel or other counsel for the victim, if applicable.

(2) If requested by an alleged victim who is subject to a request for interview under paragraph (1), any interview of the victim by counsel for the accused shall take place only in the presence of the counsel for the Government, a counsel for the victim, or, if applicable, a victim advocate.

(Added Pub. L. 113–66, div. A, title XVII, §1701(a)(1), Dec. 26, 2013, 127 Stat. 952; amended Pub. L. 113–291, div. A, title V, §§531(f), 535, Dec. 19, 2014, 128 Stat. 3364, 3368; Pub. L. 114–92, div. A, title V, §531, Nov. 25, 2015, 129 Stat. 814; Pub. L. 114–328, div. E, title LI, §5105, title LVI, §5203(e)(1), Dec. 23, 2016, 130 Stat. 2895, 2906; Pub. L. 115–91, div. A, title V, §531(a), title X, §1081(a)(22), (c)(1)(B), Dec. 12, 2017, 131 Stat. 1384, 1595, 1597; Pub. L. 116–283, div. A, title V, §541, Jan. 1, 2021, 134 Stat. 3611.)

AMENDMENTS

2021—Subsec. (a)(2)(D) to (F). Pub. L. 116–283 added subpar. (D) and redesignated former subpars. (D) and (E) as (E) and (F), respectively.

2017—Subsec. (b). Pub. L. 115–91, §1081(c)(1)(B), which directed striking out "(the Uniform Code of Military Justice)" after "this chapter", was not executed in light of the prior amendment by section 1081(a)(22) of Pub. L. 115–91, to reflect the probable intent of Congress. See Amendment note below and Effective Date of 2017 Amendment note below.

Pub. L. 115–91, §1081(a)(22), struck out "(the Uniform Code of Military Justice)" after "this chapter".

Subsec. (e)(3). Pub. L. 115–91, §531(a), designated existing provisions as subpar. (A), substituted "prescribed by the President, subject to section 830a of this title (article 30a)" for "prescribed by the President, and, to the extent practicable, shall have priority over all other proceedings before the court", and added subpars. (B) and (C).

2016—Subsec. (a)(3). Pub. L. 114–328, §5203(e)(1), substituted "preliminary hearing officer" for "investigating officer".

Subsec. (c). Pub. L. 114–328, §5105(a), substituted "the legal guardians of the victim or the representatives of the victim's estate, family members, or any other person designated as suitable by the military judge, may assume the rights of the victim under this section." for "the military judge shall designate a representative of the estate of the victim, a family member, or another suitable individual to assume the victim's rights under this section."

Subsec. (d)(3). Pub. L. 114–328, §5105(b), added par. (3).

Subsec. (f). Pub. L. 114–328, §5105(c), added subsec. (f).

2015—Subsec. (e). Pub. L. 114–92 amended subsec. (e) generally. Prior to amendment, text read as follows:

"(1) If the victim of an offense under this chapter believes that a court-martial ruling violates the victim's rights afforded by a Military Rule of Evidence specified in paragraph (2), the victim may petition the Court of Criminal Appeals for a writ of mandamus to require the court-martial to comply with the Military Rule of Evidence.

"(2) Paragraph (1) applies with respect to the protections afforded by the following:

"(A) Military Rule of Evidence 513, relating to the psychotherapist-patient privilege.

"(B) Military Rule of Evidence 412, relating to the admission of evidence regarding a victim's sexual background."

2014—Subsec. (b). Pub. L. 113–291, §531(f)(1), substituted "an individual" for "a person".

Subsec. (c). Pub. L. 113–291, §531(f)(2), in heading, substituted "APPOINTMENT OF INDIVIDUALS TO ASSUME RIGHTS" for "LEGAL GUARDIAN" and, in text, inserted "(but who is not a member of the armed forces)" after "under 18 years of age" and substituted "designate a representative" for "designate a legal guardian from among the representatives", "another suitable individual" for "other suitable person", and "the individual" for "the person".

Subsec. (e). Pub. L. 113–291, §535, added subsec. (e).

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by section 531(a) of Pub. L. 115–91 effective immediately after the amendments made by div. E (§§5001–5542) of Pub. L. 114–328 take effect as provided for in section 5542 of that Act (10 U.S.C. 801 note), see section 531(p) of Pub. L. 115–91, set out as a note under section 801 of this title.

Amendment by section 1081(c)(1)(B) of Pub. L. 115–91 effective immediately after the amendments made by div. E (§§5001–5542) of Pub. L. 114–328 take effect as provided for in section 5542 of that Act (10 U.S.C. 801 note), see section 1081(c)(4) of Pub. L. 115–91, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114–328 effective on Jan. 1, 2019, as designated by the President, with imple-

menting regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

NOTICE TO VICTIMS OF ALLEGED SEXUAL ASSAULT OF PENDENCY OF FURTHER ADMINISTRATIVE ACTION FOLLOWING A DETERMINATION NOT TO REFER TO TRIAL BY COURT-MARTIAL

Pub. L. 116–92, div. A, title V, §549, Dec. 20, 2019, 133 Stat. 1379, provided that: ''Under regulations prescribed by the Secretary of Defense, upon a determination not to refer a case of alleged sexual assault for trial by court-martial under chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), the commander making such determination shall periodically notify the victim of the status of a final determination on further action on such case, whether nonjudicial punishment under section 815 of such title (article 15 of the Uniform Code of Military Justice), other administrative action, or no further action. Such notifications shall continue not less frequently than monthly until such final determination.''

IMPLEMENTATION

Pub. L. 113–66, div. A, title XVII, §1701(b), Dec. 26, 2013, 127 Stat. 953, provided that:

''(1) ISSUANCE.—Not later than one year after the date of the enactment of this Act [Dec. 26, 2013]—

''(A) the Secretary of Defense shall recommend to the President changes to the Manual for Courts-Martial to implement section 806b of title 10, United States Code (article 6b of the Uniform Code of Military Justice), as added by subsection (a); and

''(B) the Secretary of Defense and Secretary of Homeland Security (with respect to the Coast Guard when it is not operating as a service in the Navy) shall prescribe such regulations as each such Secretary considers appropriate to implement such section.

''(2) MECHANISMS FOR AFFORDING RIGHTS.—The recommendations and regulations required by paragraph (1) shall include the following:

''(A) Mechanisms for ensuring that victims are notified of, and accorded, the rights specified in section 806b of title 10, United States Code (article 6b of the Uniform Code of Military Justice), as added by subsection (a).

''(B) Mechanisms for ensuring that members of the Armed Forces and civilian personnel of the Department of Defense and the Coast Guard make their best efforts to ensure that victims are notified of, and accorded, the rights specified in such section.

''(C) Mechanisms for the enforcement of such rights, including mechanisms for application for such rights and for consideration and disposition of applications for such rights.

''(D) The designation of an authority within each Armed Force to receive and investigate complaints relating to the provision or violation of such rights.

''(E) Disciplinary sanctions for members of the Armed Forces and other personnel of the Department of Defense and Coast Guard who willfully or wantonly fail to comply with requirements relating to such rights.''

SUBCHAPTER II—APPREHENSION AND RESTRAINT

Sec.	Art.	
807.	7.	Apprehension.
808.	8.	Apprehension of deserters.
809.	9.	Imposition of restraint.
810.	10.	Restraint of persons charged.
811.	11.	Reports and receiving of prisoners.
812.	12.	Prohibition of confinement of members of the armed forces with enemy prisoners and certain others.
813.	13.	Punishment prohibited before trial.
814.	14.	Delivery of offenders to civil authorities.

AMENDMENTS

2017—Pub. L. 115–91, div. A, title X, §1081(d)(19)(A), Dec. 12, 2017, 131 Stat. 1601, made technical amendment to Pub. L. 114–328, §5541(1). See 2016 Amendment note below.

2016—Pub. L. 114–328, div. E, title LXIII, §5541(1), Dec. 23, 2016, 130 Stat. 2965, as amended by Pub. L. 115–91, div. A, title X, §1081(d)(19)(A), Dec. 12, 2017, 131 Stat. 1601, substituted ''Restraint of persons charged'' for ''Restraint of persons charged with offenses'' in item 810 and ''Prohibition of confinement of members of the armed forces with enemy prisoners and certain others'' for ''Confinement with enemy prisoners prohibited'' in item 812.

§807. Art. 7. Apprehension

(a) Apprehension is the taking of a person into custody.

(b) Any person authorized under regulations governing the armed forces to apprehend persons subject to this chapter or to trial thereunder may do so upon reasonable belief that an offense has been committed and that the person apprehended committed it.

(c) Commissioned officers, warrant officers, petty officers, and noncommissioned officers have authority to quell quarrels, frays, and disorders among persons subject to this chapter and to apprehend persons subject to this chapter who take part therein.

(Aug. 10, 1956, ch. 1041, 70A Stat. 39.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
807(a) ……	50:561(a).	May 5, 1950, ch. 169, §1 (Art. 7), 64 Stat. 111.
807(b) ……	50:561(b).	
807(c) ……	50:561(c).	

In subsection (a), the words ''into custody'' and ''of a person'' are transposed.

In subsection (c), the words ''All'' and ''shall'' are omitted as surplusage. The word ''Commissioned'' is inserted before the word ''officers'' for clarity. The word ''therein'' is substituted for the words ''in the same''.

§808. Art. 8. Apprehension of deserters

Any civil officer having authority to apprehend offenders under the laws of the United States or of a State, Commonwealth, possession, or the District of Columbia may summarily apprehend a deserter from the armed forces and deliver him into the custody of those forces.

(Aug. 10, 1956, ch. 1041, 70A Stat. 40; Pub. L. 109–163, div. A, title X, §1057(a)(4), Jan. 6, 2006, 119 Stat. 3440.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
808 ……….	50:562.	May 5, 1950, ch. 169, §1 (Art. 8), 64 Stat. 111.

The word ''may'' is substituted for the words ''It shall be lawful for * * * to''. The words ''a State, Territory, Commonwealth, or possession, or the District of Columbia'' are substituted for the words ''any State, District, Territory, or possession of the United States''. The words ''of the United States'', before the words ''and deliver'', are omitted as surplusage. The words

''those forces'' are substituted for the words ''the armed forces of the United States'', after the words ''custody of''.

AMENDMENTS

2006—Pub. L. 109–163 substituted ''Commonwealth, possession,'' for ''Territory, Commonwealth, or possession,''.

§ 809. Art. 9. Imposition of restraint

(a) Arrest is the restraint of a person by an order, not imposed as a punishment for an offense, directing him to remain within certain specified limits. Confinement is the physical restraint of a person.

(b) An enlisted member may be ordered into arrest or confinement by any commissioned officer by an order, oral or written, delivered in person or through other persons subject to this chapter. A commanding officer may authorize warrant officers, petty officers, or noncommissioned officers to order enlisted members of his command or subject to his authority into arrest or confinement.

(c) A commissioned officer, a warrant officer, or a civilian subject to this chapter or to trial thereunder may be ordered into arrest or confinement only by a commanding officer to whose authority he is subject, by an order, oral or written, delivered in person or by another commissioned officer. The authority to order such persons into arrest or confinement may not be delegated.

(d) No person may be ordered into arrest or confinement except for probable cause.

(e) Nothing in this article limits the authority of persons authorized to apprehend offenders to secure the custody of an alleged offender until proper authority may be notified.

(Aug. 10, 1956, ch. 1041, 70A Stat. 40.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
809(a)	50:563(a).	May 5, 1950, ch. 169, §1 (Art. 9), 64 Stat. 111.
809(b)	50:563(b).	
809(c)	50:563(c).	
809(d)	50:563(d).	
809(e)	50:563(e).	

In subsection (b), the word ''commissioned'' is inserted before the word ''officer'' for clarity. The words ''member'' and ''members'', respectively, are substituted for the words ''person'' and ''persons''.

In subsection (c), the words ''A commissioned'' are substituted for the word ''An'' for clarity. The word ''commissioned'' is inserted after the word ''another'' for clarity.

In subsection (d), the word ''may'' is substituted for the word ''shall''.

In subsection (e), the word ''limits'' is substituted for the words ''shall be construed to limit''.

§ 810. Art. 10. Restraint of persons charged

(a) IN GENERAL.—(1) Subject to paragraph (2), any person subject to this chapter who is charged with an offense under this chapter may be ordered into arrest or confinement as the circumstances require.

(2) When a person subject to this chapter is charged only with an offense that is normally tried by summary court-martial, the person ordinarily shall not be ordered into confinement.

(b) NOTIFICATION TO ACCUSED AND RELATED PROCEDURES.—(1) When a person subject to this chapter is ordered into arrest or confinement before trial, immediate steps shall be taken—

(A) to inform the person of the specific offense of which the person is accused; and

(B) to try the person or to dismiss the charges and release the person.

(2) To facilitate compliance with paragraph (1), the President shall prescribe regulations setting forth procedures relating to referral for trial, including procedures for prompt forwarding of the charges and specifications and, if applicable, the preliminary hearing report submitted under section 832 of this title (article 32).

(Aug. 10, 1956, ch. 1041, 70A Stat. 40; Pub. L. 114–328, div. E, title LII, §5121, Dec. 23, 2016, 130 Stat. 2896.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
810	50:564.	May 5, 1950, ch. 169, §1 (Art. 10), 64 Stat. 111.

The word ''he'' is substituted for the words ''such person''.

AMENDMENTS

2016—Pub. L. 114–328 amended section generally. Prior to amendment, text read as follows: ''Any person subject to this chapter charged with an offense under this chapter shall be ordered into arrest or confinement, as circumstances may require; but when charged only with an offense normally tried by a summary court-martial, he shall not ordinarily be placed in confinement. When any person subject to this chapter is placed in arrest or confinement prior to trial, immediate steps shall be taken to inform him of the specific wrong of which he is accused and to try him or to dismiss the charges and release him.''

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114–328 effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

§ 811. Art. 11. Reports and receiving of prisoners

(a) No provost marshal, commander of a guard, or master at arms may refuse to receive or keep any prisoner committed to his charge by a commissioned officer of the armed forces, when the committing officer furnishes a statement, signed by him, of the offense charged against the prisoner.

(b) Every commander of a guard or master at arms to whose charge a prisoner is committed shall, within twenty-four hours after that commitment or as soon as he is relieved from guard, report to the commanding officer the name of the prisoner, the offense charged against him, and the name of the person who ordered or authorized the commitment.

(Aug. 10, 1956, ch. 1041, 70A Stat. 40.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
811(a)	50:565(a).	May 5, 1950, ch. 169, §1 (Art. 11), 64 Stat. 112.
811(b)	50:565(b).	

In subsection (a), the word ''may'' is substituted for the word ''shall''. The words ''a commissioned'' are substituted for the word ''an'' for clarity.

§812. Art. 12. Prohibition of confinement of members of the armed forces with enemy prisoners and certain others

No member of the armed forces may be placed in confinement in immediate association with—

(1) enemy prisoners; or

(2) other individuals—

(A) who are detained under the law of war and are foreign nationals; and

(B) who are not members of the armed forces.

(Aug. 10, 1956, ch. 1041, 70A Stat. 41; Pub. L. 114–328, div. E, title LII, §5122, Dec. 23, 2016, 130 Stat. 2896.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
812	50:566.	May 5, 1950, ch. 169, §1 (Art. 12), 64 Stat. 112.

The words ''of the United States'' are omitted as surplusage. The word ''may'' is substituted for the word ''shall''.

AMENDMENTS

2016—Pub. L. 114–328 amended section generally. Prior to amendment, text read as follows: ''No member of the armed forces may be placed in confinement in immediate association with enemy prisoners or other foreign nationals not members of the armed forces.''

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114–328 effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

§813. Art. 13. Punishment prohibited before trial

No person, while being held for trial, may be subjected to punishment or penalty other than arrest or confinement upon the charges pending against him, nor shall the arrest or confinement imposed upon him be any more rigorous than the circumstances require to insure his presence, but he may be subjected to minor punishment during that period for infractions of discipline.

(Aug. 10, 1956, ch. 1041, 70A Stat. 41; Pub. L. 97–81, §3, Nov. 20, 1981, 95 Stat. 1087.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
813	50:567.	May 5, 1950, ch. 169, §1 (Art. 13), 64 Stat. 112.

The words ''the provisions of'' are omitted as surplusage. The word ''results'' is changed to the singular. The word ''may'' is substituted for the word ''shall''.

AMENDMENTS

1981—Pub. L. 97–81 substituted ''No person, while being held for trial, may be subjected'' for ''Subject to section 857 of this title (article 57), no person, while being held for trial or the result of trial, may be subjected''.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–81 to take effect at the end of the 60-day period beginning on Nov. 20, 1981, and to apply to each person held as the result of a court-martial sentence announced on or after that date, see section 7(a) and (b)(2) of Pub. L. 97–81, set out as an Effective Date note under section 706 of this title.

§814. Art. 14. Delivery of offenders to civil authorities

(a) Under such regulations as the Secretary concerned may prescribe, a member of the armed forces accused of an offense against civil authority may be delivered, upon request, to the civil authority for trial.

(b) When delivery under this article is made to any civil authority of a person undergoing sentence of a court-martial, the delivery, if followed by conviction in a civil tribunal, interrupts the execution of the sentence of the court-martial, and the offender after having answered to the civil authorities for his offense shall, upon the request of competent military authority, be returned to military custody for the completion of his sentence.

(Aug. 10, 1956, ch. 1041, 70A Stat. 41.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
814(a) ...... 814(b)	50:568(a). 50:568(b).	May 5, 1950, ch. 169, §1 (Art. 14), 64 Stat. 112.

In subsection (a), the words ''Secretary concerned'' are substituted for the words ''Secretary of the Department''.

In subsection (b), the word ''interrupts'' is substituted for the words ''shall be held to interrupt''. The word ''his'' is substituted for the words ''the said court-martial''.

REGULATIONS FOR DELIVERY OF MILITARY PERSONNEL TO CIVIL AUTHORITIES WHEN CHARGED WITH CERTAIN OFFENSES

Pub. L. 100–456, div. A, title VII, §721, Sept. 29, 1988, 102 Stat. 2001, directed the Secretary of Defense to ensure that the Secretaries of the military departments had issued uniform regulations pursuant to this section not later than 90 days after Sept. 29, 1988, and to transmit to committees of Congress a copy of such regulations and any recommendations for additional legislation not later than 120 days after Sept. 29, 1988.

SUBCHAPTER III—NON-JUDICIAL PUNISHMENT

Sec. Art.
815. 15. Commanding officer's non-judicial punishment.

§815. Art. 15. Commanding officer's non-judicial punishment

(a) Under such regulations as the President may prescribe, and under such additional regulations as may be prescribed by the Secretary concerned, limitations may be placed on the powers granted by this article with respect to the kind and amount of punishment authorized, the categories of commanding officers and warrant officers exercising command authorized to exercise those powers, the applicability of this article to an accused who demands trial by court-martial, and the kinds of courts-martial

to which the case may be referred upon such a demand. However, except in the case of a member attached to or embarked in a vessel, punishment may not be imposed upon any member of the armed forces under this article if the member has, before the imposition of such punishment, demanded trial by court-martial in lieu of such punishment. Under similar regulations, rules may be prescribed with respect to the suspension of punishments authorized hereunder. If authorized by regulations of the Secretary concerned, a commanding officer exercising general court-martial jurisdiction or an officer of general or flag rank in command may delegate his powers under this article to a principal assistant.

(b) Subject to subsection (a), any commanding officer may, in addition to or in lieu of admonition or reprimand, impose one or more of the following disciplinary punishments for minor offenses without the intervention of a court-martial—

(1) upon officers of his command—

(A) restriction to certain specified limits, with or without suspension from duty, for not more than 30 consecutive days;

(B) if imposed by an officer exercising general court-martial jurisdiction or an officer of general or flag rank in command—

(i) arrest in quarters for not more than 30 consecutive days;

(ii) forfeiture of not more than one-half of one month's pay per month for two months;

(iii) restriction to certain specified limits, with or without suspension from duty, for not more than 60 consecutive days;

(iv) detention of not more than one-half of one month's pay per month for three months;

(2) upon other personnel of his command—

(A) if imposed upon a person attached to or embarked in a vessel, confinement for not more than three consecutive days;

(B) correctional custody for not more than seven consecutive days;

(C) forfeiture of not more than seven days' pay;

(D) reduction to the next inferior pay grade, if the grade from which demoted is within the promotion authority of the officer imposing the reduction or any officer subordinate to the one who imposes the reduction;

(E) extra duties, including fatigue or other duties, for not more than 14 consecutive days;

(F) restriction to certain specified limits, with or without suspension from duty, for not more than 14 consecutive days;

(G) detention of not more than 14 days' pay;

(H) if imposed by an officer of the grade of major or lieutenant commander, or above—

(i) the punishment authorized under clause (A);

(ii) correctional custody for not more than 30 consecutive days;

(iii) forfeiture of not more than one-half of one month's pay per month for two months;

(iv) reduction to the lowest or any intermediate pay grade, if the grade from which demoted is within the promotion authority of the officer imposing the reduction or any officer subordinate to the one who imposes the reduction, but an enlisted member in a pay grade above E–4 may not be reduced more than two pay grades;

(v) extra duties, including fatigue or other duties, for not more than 45 consecutive days;

(vi) restrictions to certain specified limits, with or without suspension from duty, for not more than 60 consecutive days;

(vii) detention of not more than one-half of one month's pay per month for three months.

Detention of pay shall be for a stated period of not more than one year but if the offender's term of service expires earlier, the detention shall terminate upon that expiration. No two or more of the punishments of arrest in quarters, confinement, correctional custody, extra duties, and restriction may be combined to run consecutively in the maximum amount imposable for each. Whenever any of those punishments are combined to run consecutively, there must be an apportionment. In addition, forfeiture of pay may not be combined with detention of pay without an apportionment. For the purposes of this subsection, ''correctional custody'' is the physical restraint of a person during duty or nonduty hours and may include extra duties, fatigue duties, or hard labor. If practicable, correctional custody will not be served in immediate association with persons awaiting trial or held in confinement pursuant to trial by court-martial.

(c) An officer in charge may impose upon enlisted members assigned to the unit of which he is in charge such of the punishments authorized under subsection (b)(2)(A)–(G) as the Secretary concerned may specifically prescribe by regulation.

(d) The officer who imposes the punishment authorized in subsection (b), or his successor in command, may, at any time, suspend probationally any part or amount of the unexecuted punishment imposed and may suspend probationally a reduction in grade or a forfeiture imposed under subsection (b), whether or not executed. In addition, he may, at any time, remit or mitigate any part or amount of the unexecuted punishment imposed and may set aside in whole or in part the punishment, whether executed or unexecuted, and restore all rights, privileges, and property affected. He may also mitigate reduction in grade to forfeiture or detention of pay. When mitigating—

(1) arrest in quarters to restriction;

(2) confinement to correctional custody;

(3) correctional custody or confinement to extra duties or restriction, or both; or

(4) extra duties to restriction;

the mitigated punishment shall not be for a greater period than the punishment mitigated. When mitigating forfeiture of pay to detention of pay, the amount of the detention shall not be greater than the amount of the forfeiture. When mitigating reduction in grade to forfeiture or

detention of pay, the amount of the forfeiture or detention shall not be greater than the amount that could have been imposed initially under this article by the officer who imposed the punishment mitigated.

(e) A person punished under this article who considers his punishment unjust or disproportionate to the offense may, through the proper channel, appeal to the next superior authority. The appeal shall be promptly forwarded and decided, but the person punished may in the meantime be required to undergo the punishment adjudged. The superior authority may exercise the same powers with respect to the punishment imposed as may be exercised under subsection (d) by the officer who imposed the punishment. Before acting on an appeal from a punishment of—

(1) arrest in quarters for more than seven days;

(2) correctional custody for more than seven days;

(3) forfeiture of more than seven days' pay;

(4) reduction of one or more pay grades from the fourth or a higher pay grade;

(5) extra duties for more than 14 days;

(6) restriction for more than 14 days; or

(7) detention of more than 14 days' pay;

the authority who is to act on the appeal shall refer the case to a judge advocate or a lawyer of the Department of Homeland Security for consideration and advice, and may so refer the case upon appeal from any punishment imposed under subsection (b).

(f) The imposition and enforcement of disciplinary punishment under this article for any act or omission is not a bar to trial by court-martial for a serious crime or offense growing out of the same act or omission, and not properly punishable under this article; but the fact that a disciplinary punishment has been enforced may be shown by the accused upon trial, and when so shown shall be considered in determining the measure of punishment to be adjudged in the event of a finding of guilty.

(g) The Secretary concerned may, by regulation, prescribe the form of records to be kept of proceedings under this article and may also prescribe that certain categories of those proceedings shall be in writing.

(Aug. 10, 1956, ch. 1041, 70A Stat. 41; Pub. L. 87–648, §1, Sept. 7, 1962, 76 Stat. 447; Pub. L. 90–179, §1(4), Dec. 8, 1967, 81 Stat. 545; Pub. L. 90–623, §2(4), Oct. 22, 1968, 82 Stat. 1314; Pub. L. 98–209, §§2(c), 13(b), Dec. 6, 1983, 97 Stat. 1393, 1408; Pub. L. 107–296, title XVII, §1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 114–328, div. E, title LIII, §5141, Dec. 23, 2016, 130 Stat. 2897.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
815(a)	50:571(a).	May 5, 1950, ch. 169, §1 (Art. 15), 64 Stat. 112.
815(b)	50:571(b).	
815(c)	50:571(c).	
815(d)	50:571(d).	
815(e)	50:571(e).	

In subsection (a), the words "not more than" are substituted for the words "a period not to exceed", "not to exceed", and "a period not exceeding".

In subsection (a)(1), the words "and warrant officers" are omitted, since the word "officer", as defined in section 101(14) of this title, includes warrant officers.

In clause (1)(C), the words "one month's pay" are substituted for the words "his pay per month for a period not exceeding one month".

In subsection (b), the words "Secretary concerned" are substituted for the words "Secretary of a Department".

In subsection (c), the word "subsections" is substituted for the word "subdivisions". The words "enlisted members" are substituted for the words "enlisted persons".

In subsections (d) and (e), the words "authority of" are omitted as surplusage.

In subsection (d), the word "considers" is substituted for the word "deems". The word "may" is substituted for the words "shall have power to * * * to".

In subsection (e), the words "is not" are substituted for the words "shall not be".

AMENDMENTS

2016—Subsec. (b)(2). Pub. L. 114–328, §5141(1)(B), struck out "on bread and water or diminished rations" after "in quarters, confinement" in concluding provisions.

Subsec. (b)(2)(A). Pub. L. 114–328, §5141(1)(A), struck out "on bread and water or diminished rations" after "confinement".

Subsec. (d)(2), (3). Pub. L. 114–328, §5141(2), struck out "on bread and water or diminished rations" after "confinement".

2002—Subsec. (e). Pub. L. 107–296 substituted "of Homeland Security" for "of Transportation" in concluding provisions.

1983—Pub. L. 98–209, §13(b)(1), substituted "non-judicial" for "nonjudicial" in section catchline.

Subsec. (b). Pub. L. 98–209, §13(b)(2)(A), struck out "of this section" after "subsection (a)" in provisions preceding par. (1).

Subsec. (b)(2)(H)(i). Pub. L. 98–209, §13(b)(2)(B), substituted "clause (A)" for "subsection (b)(2)(A)".

Subsec. (e). Pub. L. 98–209, §2(c), substituted "or a lawyer of the" for "of the Army, Navy, Air Force, or Marine Corps, or a law specialist or lawyer of the Coast Guard or".

1968—Subsec. (e). Pub. L. 90–623 substituted "or a law specialist or lawyer of the Coast Guard or Department of Transportation" for "or a law specialist or lawyer of the Marine Corps, Coast Guard, or Treasury Department".

1967—Subsec. (e). Pub. L. 90–179 inserted reference to judge advocate of the Marine Corps and substituted reference to judge advocate of the Navy for reference to law specialist of the Navy.

1962—Subsec. (a). Pub. L. 87–648 redesignated former subsec. (b) as (a), inserted references to such regulations as the President may prescribe, permitted limitations to be placed on the categories of warrant officers exercising command authorized to exercise powers under this article, and on the kinds of courts-martial to which a case may be referred upon demand therefor, promulgation of regulations prescribing rules with respect to the suspension of punishment authorized by this article, and the delegation of powers to a principal assistant by a commanding officer exercising general court-martial jurisdiction or an officer of general or flag rank in command, if so authorized by the Secretary's regulations, and prohibited, except for members attached to or embarked in a vessel, imposition of punishment under this article on any member of the armed forces who, before imposition of such punishment, demands trial by court-martial. Former subsec. (a) redesignated (b).

Subsec. (b). Pub. L. 87–648 redesignated former subsec. (a) as (b), enlarged authority of commanding officers to impose punishment upon officers by increasing the number of days restriction from not more than 14 to not more than 30 days, and the number of months one-half of one month's pay may be ordered forfeited by an officer exercising general court-martial jurisdiction from one to two months, empowering officers exercising general court-martial jurisdiction and officers of

general or flag rank in command to impose arrest in quarters for not more than 30 consecutive days, restriction, with or without suspension from duty, for not more than 60 consecutive days, and detention of not more than one-half of one month's pay per month for three months, and officers of general or flag rank in command to order forfeiture of not more than one-half of one month's pay per month for two months, and the authority of commanding officers to impose punishment upon other personnel of his command to permit correctional custody for not more than seven consecutive days, forfeiture of not more than seven days' pay, and detention of not more than 14 days' pay, empowered officers of the grade of major or lieutenant commander, or above, to impose the punishments prescribed in clauses (i) to (vii) of subpar. (2) (H) upon personnel of his command other than officers, changed provisions which permitted reduction to next inferior grade, if the grade from which demoted was established by the command or an equivalent or lower command to permit reduction to the next inferior pay grade, if the grade from which demoted is within the promotion authority of the officer imposing the reduction or any officer subordinate to the one who imposes the reduction, and provisions which permitted extra duties for not more than two consecutive weeks, and not more than two hours per day, holidays included, to authorize extra duties, including fatigue or other duties, for not more than 14 consecutive days, inserted provisions limiting detention of pay for a stated period of not more than one year, prohibiting two or more of the punishments of arrest in quarters, confinement on bread and water or diminished rations, correctional custody, extra duties, and restriction to be combined to run consecutively in the maximum amount imposable for each, combining of forfeiture of pay with detention without an apportionment, and service of correctional custody, if practicable, in immediate association with persons awaiting trial or held in confinement pursuant to court-martial, requiring apportionment of punishments combined to run consecutively, and in those cases where forfeiture of pay is combined with detention of pay, defining ''correctional custody'', and struck out provisions which permitted withholding of privileges of officers and other personnel for not more than two consecutive weeks and which authorized confinement for not more than seven consecutive days if imposed upon a person attached to or embarked in a vessel. Former subsec. (b) redesignated (a).

Subsec. (c). Pub. L. 87–648 substituted ''under subsection (b)(2)(A)–(G) as the Secretary concerned may specifically prescribe by regulation'' for ''to be imposed by commanding officers as the Secretary concerned may by regulation specifically prescribe, as provided in subsections (a) and (b),'' and deleted ''for minor offenses'' after ''an officer in charge may''.

Subsecs. (d), (e). Pub. L. 87–648 added subsec. (d), redesignated former subsec. (d) as (e), inserted provisions requiring the authority who is to act on an appeal from any of the seven enumerated punishments to refer the case to a judge advocate of the Army or Air Force, a law specialist of the Navy, or a law specialist or lawyer of the Marine Corps, Coast Guard, or Treasury Department for advice, and authorizing such referral of any case on appeal from punishments under subsec. (b) of this section, and substituted ''The superior authority may exercise the same powers with respect to the punishment imposed as may be exercised under subsection (d) by the officer who imposed the punishment'' for ''The officer who imposes the punishment, his successor in command, and superior authority may suspend, set aside, or remit any part or amount of the punishment, and restore all rights, privileges, and property affected.'' Former subsec. (e) redesignated (f).

Subsecs. (f), (g). Pub. L. 87–648 redesignated former subsec. (e) as (f) and added subsec. (g).

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114–328 effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 13(b) of Pub. L. 98–209 effective Dec. 6, 1983, and amendment by section 2(c) of Pub. L. 98–209 effective first day of eighth calendar month beginning after Dec. 6, 1983, see section 12(a)(1) of Pub. L. 98–209, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–623 intended to restate without substantive change the law in effect on Oct. 22, 1968, see section 6 of Pub. L. 90–623, set out as a note under section 5334 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1962 AMENDMENT

Pub. L. 87–648, §2, Sept. 7, 1962, 76 Stat. 450, provided that: ''This Act [amending this section] becomes effective on the first day of the fifth month following the month in which it is enacted [September 1962].''

SUBCHAPTER IV—COURT-MARTIAL JURISDICTION

Sec.	Art.	
816.	16.	Courts-martial classified.
817.	17.	Jurisdiction of courts-martial in general.
818.	18.	Jurisdiction of general courts-martial.
819.	19.	Jurisdiction of special courts-martial.
820.	20.	Jurisdiction of summary courts-martial.
821.	21.	Jurisdiction of courts-martial not exclusive.

§ 816. Art 16. Courts-martial classified

(a) IN GENERAL.—The three kinds of courts-martial in each of the armed forces are the following:

(1) General courts-martial, as described in subsection (b).

(2) Special courts-martial, as described in subsection (c).

(3) Summary courts-martial, as described in subsection (d).

(b) GENERAL COURTS-MARTIAL.—General courts-martial are of the following three types:

(1) A general court-martial consisting of a military judge and eight members, subject to sections 825(e)(3) and 829 of this title (articles 25(e)(3) and 29).

(2) In a capital case, a general court-martial consisting of a military judge and the number of members determined under section 825a of this title (article 25a), subject to sections 825(e)(3) and 829 of this title (articles 25(e)(3) and 29).

(3) A general court-martial consisting of a military judge alone, if, before the court is assembled, the accused, knowing the identity of the military judge and after consultation with defense counsel, requests, orally on the record or in writing, a court composed of a military judge alone and the military judge approves the request.

(c) SPECIAL COURTS-MARTIAL.—Special courts-martial are of the following two types:

(1) A special court-martial consisting of a military judge and four members, subject to sections 825(e)(3) and 829 of this title (articles 25(e)(3) and 29).

(2) A special court-martial consisting of a military judge alone—

(A) if the case is so referred by the convening authority, subject to section 819 of this title (article 19) and such limitations as the President may prescribe by regulation; or

(B) if the case is referred under paragraph (1) and, before the court is assembled, the accused, knowing the identity of the military judge and after consultation with defense counsel, requests, orally on the record or in writing, a court composed of a military judge alone and the military judge approves the request.

(d) SUMMARY COURT-MARTIAL.—A summary court-martial consists of one commissioned officer.

(Aug. 10, 1956, ch. 1041, 70A Stat. 42; Pub. L. 90–632, §2(3), Oct. 24, 1968, 82 Stat. 1335; Pub. L. 98–209, §3(a), Dec. 6, 1983, 97 Stat. 1394; Pub. L. 107–107, div. A, title V, §582(a), Dec. 28, 2001, 115 Stat. 1124; Pub. L. 114–328, div. E, title LIV, §5161, Dec. 23, 2016, 130 Stat. 2897; Pub. L. 115–91, div. A, title X, §1081(c)(1)(C), Dec. 12, 2017, 131 Stat. 1597.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
816	50:576.	May 5, 1950, ch. 169, §1 (Art. 16), 64 Stat. 113.

The word "The" is substituted for the words "There shall be". The word "are" is substituted for the word "namely". The words "not less than five members" are substituted for the words "any number of members not less than five". The words "not less than three members" are substituted for the words "any number of members not less than three". The word "commissioned" is inserted before the word "officer" in clause (3) for clarity.

AMENDMENTS

2017—Subsecs. (b), (c). Pub. L. 115–91 substituted "sections 825(e)(3) and 829 of this title (articles 25(e)(3) and 29)" for "sections 825(d)(3) and 829 of this title (articles 25(d)(3) and 29)" wherever appearing.

2016—Pub. L. 114–328 amended section generally. Prior to amendment, section defined the three kinds of courts-martial in each of the armed forces.

2001—Par. (1)(A). Pub. L. 107–107 inserted "or, in a case in which the accused may be sentenced to a penalty of death, the number of members determined under section 825a of this title (article 25a)" after "five members".

1983—Par. (1)(B). Pub. L. 98–209 substituted "orally on the record or in writing" for "in writing".

1968—Pub. L. 90–632 provided that a general or special court-martial shall consist of only a military judge if the accused, before the court is assembled, so requests in writing and the military judge approves, with the added requirements that the accused know the identity of the military judge and have the advice of counsel, and that the election be available in the case of a special court-martial only if a military judge has been detailed to the court.

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by Pub. L. 115–91 effective immediately after the amendments made by div. E (§§5001–5542) of Pub. L. 114–328 take effect as provided for in section 5542 of that Act (10 U.S.C. 801 note), see section 1081(c)(4) of Pub. L. 115–91, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114–328 effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–107, div. A, title V, §582(d), Dec. 28, 2001, 115 Stat. 1125, provided that: "The amendments made by this section [enacting section 825a of this title and amending this section and section 829 of this title] shall apply with respect to offenses committed after December 31, 2002."

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–209 effective first day of eighth calendar month beginning after Dec. 6, 1983, see section 12(a)(1) of Pub. L. 98–209, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

§817. Art. 17. Jurisdiction of courts-martial in general

(a) Each armed force has court-martial jurisdiction over all persons subject to this chapter. The exercise of jurisdiction by one armed force over personnel of another armed force shall be in accordance with regulations prescribed by the President.

(b) In all cases, departmental review after that by the officer with authority to convene a general court-martial for the command which held the trial, where that review is required under this chapter, shall be carried out by the department that includes the armed force of which the accused is a member.

(Aug. 10, 1956, ch. 1041, 70A Stat. 43.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
817(a)	50:577(a).	May 5, 1950, ch. 169, §1
817(b)	50:577(b).	(Art. 17), 64 Stat. 114.

In subsection (a), the word "has" is substituted for the words "shall have".

In subsection (b), the word "after" is substituted for the words "subsequent to". The words "the provisions of" are omitted as surplusage. The words "department that includes the" are inserted before the words "armed force", since the review is carried out by the department and not by the armed force.

§818. Art. 18. Jurisdiction of general courts-martial

(a) Subject to section 817 of this title (article 17), general courts-martial have jurisdiction to try persons subject to this chapter for any offense made punishable by this chapter and may,

under such limitations as the President may prescribe, adjudge any punishment not forbidden by this chapter, including the penalty of death when specifically authorized by this chapter. General courts-martial also have jurisdiction to try any person who by the law of war is subject to trial by a military tribunal and may adjudge any punishment permitted by the law of war.

(b) A general court-martial of the kind specified in section 816(b)(3) of this title (article 16(b)(3)) shall not have jurisdiction to try any person for any offense for which the death penalty may be adjudged unless the case has been previously referred to trial as a noncapital case.

(c) Consistent with sections 819 and 820 of this title (articles 19 and 20), only general courts-martial have jurisdiction over the following offenses:

(1) A violation of subsection (a) or (b) of section 920 of this title (article 120).

(2) A violation of subsection (a) or (b) of section 920b of this title (article 120b).

(3) An attempt to commit an offense specified in paragraph (1) or (2) that is punishable under section 880 of this title (article 80).

(Aug. 10, 1956, ch. 1041, 70A Stat. 43; Pub. L. 90–632, § 2(4), Oct. 24, 1968, 82 Stat. 1335; Pub. L. 113–66, div. A, title XVII, § 1705(b), Dec. 26, 2013, 127 Stat. 959; Pub. L. 114–328, div. E, title LIV, § 5162, Dec. 23, 2016, 130 Stat. 2898.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
818	50:578.	May 5, 1950, ch. 169, § 1 (Art. 18), 64 Stat. 114.

The word ''shall'' is omitted as surplusage wherever it occurs.

AMENDMENTS

2016—Subsec. (b). Pub. L. 114–328, § 5162(1), substituted ''section 816(b)(3) of this title (article 16(b)(3))'' for ''section 816(1)(B) of this title (article 16(1)(B))''.

Subsec. (c). Pub. L. 114–328, § 5162(2), added subsec. (c) and struck out former subsec. (c) which read as follows: ''Consistent with sections 819, 820, and 856(b) of this title (articles 19, 20, and 56(b)), only general courts-martial have jurisdiction over an offense specified in section 856(b)(2) of this title (article 56(b)(2)).''

2013—Pub. L. 113–66 designated the first two sentences as subsec. (a), designated third sentence as subsec. (b) and substituted ''A general court-martial'' for ''However, a general court-martial'', and added subsec. (c).

1968—Pub. L. 90–632 provided that a general court-martial consisting of only a military judge has no jurisdiction in cases in which the death penalty may be adjudged unless the case has been previously referred to trial as a noncapital case.

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114–328 effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 113–66, div. A, title XVII, § 1705(c), Dec. 26, 2013, 127 Stat. 960, provided that: ''The amendments made by this section [amending this section and section 856 of this title] shall take effect 180 days after the date of the enactment of this Act [Dec. 26, 2013], and apply to offenses specified in section 856(b)(2) of title 10, United States Code (article 56(b)(2) of the Uniform Code of Military Justice), as added by subsection (a)(1), committed on or after that date.''

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

§ 819. Art. 19. Jurisdiction of special courts-martial

(a) IN GENERAL.—Subject to section 817 of this title (article 17), special courts-martial have jurisdiction to try persons subject to this chapter for any noncapital offense made punishable by this chapter and, under such regulations as the President may prescribe, for capital offenses. Special courts-martial may, under such limitations as the President may prescribe, adjudge any punishment not forbidden by this chapter except death, dishonorable discharge, dismissal, confinement for more than one year, hard labor without confinement for more than three months, forfeiture of pay exceeding two-thirds pay per month, or forfeiture of pay for more than one year.

(b) ADDITIONAL LIMITATION.—Neither a bad-conduct discharge, nor confinement for more than six months, nor forfeiture of pay for more than six months may be adjudged if charges and specifications are referred to a special court-martial consisting of a military judge alone under section 816(c)(2)(A) of this title (article 16(c)(2)(A)).

(c) MILITARY MAGISTRATE.—If charges and specifications are referred to a special court-martial consisting of a military judge alone under section 816(c)(2)(A) of this title (article 16(c)(2)(A)), the military judge, with the consent of the parties, may designate a military magistrate to preside over the special court-martial.

(Aug. 10, 1956, ch. 1041, 70A Stat. 43; Pub. L. 90–632, § 2(5), Oct. 24, 1968, 82 Stat. 1335; Pub. L. 106–65, div. A, title V, § 577(a), Oct. 5, 1999, 113 Stat. 625; Pub. L. 107–107, div. A, title X, § 1048(g)(4), Dec. 28, 2001, 115 Stat. 1228; Pub. L. 114–328, div. E, title LIV, § 5163, Dec. 23, 2016, 130 Stat. 2898.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
819	50:579.	May 5, 1950, ch. 169, § 1 (Art. 19), 64 Stat. 114.

The word ''shall'' in the first sentence is omitted as surplusage. The words ''for more than'' are substituted for the words ''in excess of''. The words ''more than'' are substituted for the words ''a period exceeding''. The word ''may'' is substituted for the word ''shall'' in the last sentence.

AMENDMENTS

2016—Pub. L. 114–328 designated existing provisions as subsec. (a) and inserted heading, struck out ''A bad-conduct discharge, confinement for more than six months, or forfeiture of pay for more than six months may not be adjudged unless a complete record of the proceedings and testimony has been made, counsel having the qualifications prescribed under section 827(b) of this title (article 27(b)) was detailed to represent the

accused, and a military judge was detailed to the trial, except in any case in which a military judge could not be detailed to the trial because of physical conditions or military exigencies. In any such case in which a military judge was not detailed to the trial, the convening authority shall make a detailed written statement, to be appended to the record, stating the reason or reasons a military judge could not be detailed.'' after ''one year.'', and added subsecs. (b) and (c).

2001—Pub. L. 107–107, §1048(g)(4), amended directory language of Pub. L. 106–65, §577(a)(2). See 1999 Amendment note below.

1999—Pub. L. 106–65, §577(a)(2), as amended by Pub. L. 107–107, §1048(g)(4), inserted '', confinement for more than six months, or forfeiture of pay for more than six months'' after ''A bad-conduct discharge'' in third sentence.

Pub. L. 106–65, §577(a)(1), substituted ''one year'' for ''six months'' in two places in second sentence.

1968—Pub. L. 90–632 provided that before a bad-conduct discharge may be adjudged by a special court-martial the accused must be detailed counsel who is legally qualified under the Code and a military judge must be detailed to the trial, with a detailed written statement appended to the record if a military judge was not detailed to the trial, because of physical conditions and military exigencies, stating the reasons that a military judge could not be so detailed.

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114–328 effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–107, div. A, title X, §1048(g), Dec. 28, 2001, 115 Stat. 1228, provided that the amendment made by section 1048(g)(4) is effective as of Oct. 5, 1999, and as if included in Pub. L. 106–65 as enacted.

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–65, div. A, title V, §577(b), Oct. 5, 1999, 113 Stat. 625, provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on the first day of the sixth month beginning after the date of the enactment of this Act [Oct. 5, 1999] and shall apply with respect to charges referred on or after that effective date to trial by special courts-martial.''

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

§820. Art. 20. Jurisdiction of summary courts-martial

(a) IN GENERAL.—Subject to section 817 of this title (article 17), summary courts-martial have jurisdiction to try persons subject to this chapter, except officers, cadets, aviation cadets, and midshipmen, for any noncapital offense made punishable by this chapter. No person with respect to whom summary courts-martial have jurisdiction may be brought to trial before a summary court-martial if he objects thereto. If objection to trial by summary court-martial is made by an accused, trial may be ordered by special or general court-martial as may be appropriate. Summary courts-martial may, under such limitations as the President may prescribe, adjudge any punishment not forbidden by this chapter except death, dismissal, dishonorable or bad-conduct discharge, confinement for more than one month, hard-labor without confinement for more than 45 days, restriction to specified limits for more than two months, or forfeiture of more than two-thirds of one month's pay.

(b) NON-CRIMINAL FORUM.—A summary court-martial is a non-criminal forum. A finding of guilty at a summary court-martial does not constitute a criminal conviction.

(Aug. 10, 1956, ch. 1041, 70A Stat. 43; Pub. L. 90–632, §2(6), Oct. 24, 1968, 82 Stat. 1336; Pub. L. 114–328, div. E, title LIV, §5164, Dec. 23, 2016, 130 Stat. 2899.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
820	50:580.	May 5, 1950, ch. 169, §1 (Art. 20), 64 Stat. 114.

The word ''shall'' in the first sentence is omitted as surplusage. The word ''may'' is substituted for the word ''shall'' in the second sentence. The words ''the provisions of'' are omitted as surplusage. The word ''If'' is substituted for the word ''Where''. The words ''for more than'' are substituted for the words ''in excess of''. The words ''more than'' are substituted for the words ''pay in excess of''.

AMENDMENTS

2016—Pub. L. 114–328 designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

1968—Pub. L. 90–632 substituted provisions prohibiting trial by summary court-martial in all cases if the person objects thereto for provisions allowing such trial over the person's objection if he has previously been offered and has refused article 15 punishment.

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114–328 effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

§821. Art. 21. Jurisdiction of courts-martial not exclusive

The provisions of this chapter conferring jurisdiction upon courts-martial do not deprive military commissions, provost courts, or other military tribunals of concurrent jurisdiction with respect to offenders or offenses that by statute or by the law of war may be tried by military commissions, provost courts, or other military tribunals. This section does not apply to a military commission established under chapter 47A of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 44; Pub. L. 109–366, §4(a)(2), Oct. 17, 2006, 120 Stat. 2631.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
821	50:581.	May 5, 1950, ch. 169, §1 (Art. 21), 64 Stat. 115.

The words ''do not deprive'' are substituted for the words ''shall not be construed as depriving''. The words ''with respect to'' are substituted for the words ''in respect of''.

AMENDMENTS

2006—Pub. L. 109–366 inserted last sentence.

SUBCHAPTER V—COMPOSITION OF COURTS-MARTIAL

Sec.	Art.	
822.	22.	Who may convene general courts-martial.
823.	23.	Who may convene special courts-martial.
824.	24.	Who may convene summary courts-martial.
825.	25.	Who may serve on courts-martial.
825a.	25a.	Number of court-martial members in capital cases.
826.	26.	Military judge of a general or special court-martial.
826a.	26a.	Military magistrates.
827.	27.	Detail of trial counsel and defense counsel.
828.	28.	Detail or employment of reporters and interpreters.
829.	29.	Assembly and impaneling of members; detail of new members and military judges.

AMENDMENTS

2017—Pub. L. 115–91, div. A, title X, § 1081(d)(19)(A), (B), Dec. 12, 2017, 131 Stat. 1601, amended Pub. L. 114–328, § 5541(2). See 2016 Amendment note below.

2016—Pub. L. 114–328, div. E, title LXIII, § 5541(2), Dec. 23, 2016, 130 Stat. 2965, as amended by Pub. L. 115–91, div. A, title X, § 1081(d)(19)(A), (B), Dec. 12, 2017, 131 Stat. 1601, added items 825a, 826a, and 829 and struck out former items 825a ''Art. 25a. Number of members in capital cases'' and 829 ''Art. 29. Absent and additional members''.

2001—Pub. L. 107–107, div. A, title V, § 582(b)(2), Dec. 28, 2001, 115 Stat. 1124, added item 825a.

1968—Pub. L. 90–632, § 2(8), Oct. 24, 1968, 82 Stat. 1336, substituted ''Military judge of a general or special court-martial'' for ''Law officer of a general court-martial'' in item 826.

§ 822. Art. 22. Who may convene general courts-martial

(a) General courts-martial may be convened by—

(1) the President of the United States;

(2) the Secretary of Defense;

(3) the commanding officer of a unified or specified combatant command;

(4) the Secretary concerned;

(5) the commanding officer of an Army Group, an Army, an Army Corps, a division, a separate brigade, or a corresponding unit of the Army or Marine Corps;

(6) the commander of a fleet; the commanding officer of a naval station or larger shore activity of the Navy beyond the United States;

(7) the commanding officer of an air command, an air force, an air division, or a separate wing of the Air Force or Marine Corps, or the commanding officer of a corresponding unit of the Space Force;

(8) any other commanding officer designated by the Secretary concerned; or

(9) any other commanding officer in any of the armed forces when empowered by the President.

(b) If any such commanding officer is an accuser, the court shall be convened by superior competent authority, and may in any case be convened by such authority if considered desirable by him.

(Aug. 10, 1956, ch. 1041, 70A Stat. 44; Pub. L. 99–433, title II, § 211(b), Oct. 1, 1986, 100 Stat. 1017; Pub. L. 109–163, div. A, title X, § 1057(a)(2), Jan. 6, 2006, 119 Stat. 3440; Pub. L. 114–328, div. E, title LV, § 5181, Dec. 23, 2016, 130 Stat. 2899; Pub. L. 116–283, div. A, title IX, § 924(b)(21)(A), Jan. 1, 2021, 134 Stat. 3824.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
822(a) ……	50:586(a).	May 5, 1950, ch. 169, § 1 (Art. 22), 64 Stat. 115.
822(b) ……	50:586(b).	

Subsection (a)(2) is substituted for the words ''the Secretary of a Department''.

In subsection (a)(4), the words ''continental limits of the'' are omitted, since section 101(1) of this title defines the United States to include the States and the District of Columbia.

In subsection (a)(6), the words ''any other commanding officer'' are substituted for the words ''such other commanding officers as may be''.

In subsection (b), the word ''If'' is substituted for the word ''When''. The words ''if considered'' are substituted for the words ''when deemed''.

AMENDMENTS

2021—Subsec. (a)(7). Pub. L. 116–283 substituted ''Marine Corps, or the commanding officer of a corresponding unit of the Space Force'' for ''Marine Corps''.

2016—Subsec. (a)(6). Pub. L. 114–328 struck out ''in chief'' after ''the commander''.

2006—Subsec. (a)(5). Pub. L. 109–163 struck out ''a Territorial Department,'' before ''an Army Group''.

1986—Subsec. (a)(2) to (9). Pub. L. 99–433 added pars. (2) and (3) and redesignated existing pars. (2) to (7) as (4) to (9), respectively.

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114–328 effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

TRAINING FOR SEXUAL ASSAULT INITIAL DISPOSITION AUTHORITIES ON EXERCISE OF DISPOSITION AUTHORITY FOR SEXUAL ASSAULT AND COLLATERAL OFFENSES

Pub. L. 116–92, div. A, title V, § 540A, Dec. 20, 2019, 133 Stat. 1365, provided that:

''(a) IN GENERAL.—The training for sexual assault initial disposition authorities on the exercise of disposition authority under chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), shall include comprehensive training on the exercise of disposition authority with respect to cases for which disposition authority is withheld to such authorities pursuant to the memorandum described in subsection (b) for the purpose of promoting confidence and trust in the military justice process with respect to such cases.

''(b) MEMORANDUM DESCRIBED.—The memorandum described in this subsection is the memorandum of the Secretary of Defense titled 'Withholding Initial Disposition Authority Under the Uniform Code of Military Justice in Certain Sexual Assault Cases' and dated April 20, 2012, or any successor memorandum.''

§ 823. Art. 23. Who may convene special courts-martial

(a) Special courts-martial may be convened by—

(1) any person who may convene a general court-martial;

(2) the commanding officer of a district, garrison, fort, camp, station, Air Force or Space Force military installation, auxiliary air field, or other place where members of the Army[1] the Air Force, or the Space Force are on duty;

(3) the commanding officer of a brigade, regiment, detached battalion, or corresponding unit of the Army;

(4) the commanding officer of a wing, group, or separate squadron of the Air Force or a corresponding unit of the Space Force;

(5) the commanding officer of any naval or Coast Guard vessel, shipyard, base, or station; the commanding officer of any Marine brigade, regiment, detached battalion, or corresponding unit; the commanding officer of any Marine barracks, wing, group, separate squadron, station, base, auxiliary air field, or other place where members of the Marine Corps are on duty;

(6) the commanding officer of any separate or detached command or group of detached units of any of the armed forces placed under a single commander for this purpose; or

(7) the commanding officer or officer in charge of any other command when empowered by the Secretary concerned.

(b) If any such officer is an accuser, the court shall be convened by superior competent authority, and may in any case be convened by such authority if considered advisable by him.

(Aug. 10, 1956, ch. 1041, 70A Stat. 44; Pub. L. 116–283, div. A, title IX, § 924(b)(21)(B), Jan. 1, 2021, 134 Stat. 3824.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
823(a) ……	50:587(a).	May 5, 1950, ch. 169, § 1
823(b) ……	50:587(b).	(Art. 23), 64 Stat. 115.

In subsection (a)(7), the words "Secretary concerned" are substituted for the words "Secretary of a Department".

In subsection (b), the word "If" is substituted for the word "When". The words "if considered" are substituted for the words "when deemed".

AMENDMENTS

2021—Subsec. (a)(2). Pub. L. 116–283, § 924(b)(21)(B)(i), substituted "Air Force or Space Force military installation" for "Air Force base" and "the Air Force, or the Space Force" for "or the Air Force".

Subsec. (a)(4). Pub. L. 116–283, § 924(b)(21)(B)(ii), inserted "or a corresponding unit of the Space Force" after "Air Force".

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

[1] So in original. A comma probably should appear.

§ 824. Art. 24. Who may convene summary courts-martial

(a) Summary courts-martial may be convened by—

(1) any person who may convene a general or special court-martial;

(2) the commanding officer of a detached company, or other detachment of the Army;

(3) the commanding officer of a detached squadron or other detachment of the Air Force or a corresponding unit of the Space Force; or

(4) the commanding officer or officer in charge of any other command when empowered by the Secretary concerned.

(b) When only one commissioned officer is present with a command or detachment he shall be the summary court-martial of that command or detachment and shall hear and determine all summary court-martial cases brought before him. Summary courts-martial may, however, be convened in any case by superior competent authority when considered desirable by him.

(Aug. 10, 1956, ch. 1041, 70A Stat. 45; Pub. L. 116–283, div. A, title IX, § 924(b)(21)(C), Jan. 1, 2021, 134 Stat. 3824.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
824(a) ……	50:588(a).	May 5, 1950, ch. 169, § 1
824(b) ……	50:588(b).	(Art. 24), 64 Stat. 116.

In subsection (a)(4), the words "Secretary concerned" are substituted for the words "Secretary of a Department".

In subsection (b), the words "only one commissioned" are substituted for the words "but one" for clarity. The word "considered" is substituted for the word "deemed".

AMENDMENTS

2021—Subsec. (a)(3). Pub. L. 116–283 inserted "or a corresponding unit of the Space Force" after "Air Force".

§ 825. Art. 25. Who may serve on courts-martial

(a) Any commissioned officer on active duty is eligible to serve on all courts-martial for the trial of any person who may lawfully be brought before such courts for trial.

(b) Any warrant officer on active duty is eligible to serve on general and special courts-martial for the trial of any person, other than a commissioned officer, who may lawfully be brought before such courts for trial.

(c)(1) Any enlisted member on active duty is eligible to serve on a general or special court-martial for the trial of any other enlisted member.

(2) Before a court-martial with a military judge and members is assembled for trial, an enlisted member who is an accused may personally request, orally on the record or in writing, that—

(A) the membership of the court-martial be comprised entirely of officers; or

(B) enlisted members comprise at least one-third of the membership of the court-martial,

regardless of whether enlisted members have been detailed to the court-martial.

(3) Except as provided in paragraph (4), after such a request, the accused may not be tried by a general or special court-martial if the membership of the court-martial is inconsistent with the request.

(4) If, because of physical conditions or military exigencies, a sufficient number of eligible officers or enlisted members, as the case may be, is not available to carry out paragraph (2), the trial may nevertheless be held. In that event, the convening authority shall make a detailed written statement of the reasons for nonavailability. The statement shall be appended to the record.

(d)(1) Except as provided in paragraph (2) for capital offenses, the accused in a court-martial with a military judge and members may, after the findings are announced and before any matter is presented in the sentencing phase, request, orally on the record or in writing, sentencing by members.

(2) In a capital case, the accused shall be sentenced by the members for all offenses for which the court-martial may sentence the accused to death in accordance with section 853(c) of this title (article 53(c)).

(3) In a capital case, if the accused is convicted of a non-capital offense, the accused shall be sentenced for such non-capital offense in accordance with section 853(b) of this title (article 53(b)), regardless of whether the accused is convicted of an offense for which the court-martial may sentence the accused to death.

(e)(1) When it can be avoided, no member of an armed force may be tried by a court-martial any member of which is junior to him in rank or grade.

(2) When convening a court-martial, the convening authority shall detail as members thereof such members of the armed forces as, in his opinion, are best qualified for the duty by reason of age, education, training, experience, length of service, and judicial temperament. No member of an armed force is eligible to serve as a member of a general or special court-martial when he is the accuser or a witness for the prosecution or has acted as preliminary hearing officer or as counsel in the same case.

(3) The convening authority shall detail not less than the number of members necessary to impanel the court-martial under section 829 of this title (article 29).

(f) Before a court-martial is assembled for the trial of a case, the convening authority may excuse a member of the court from participating in the case. Under such regulations as the Secretary concerned may prescribe, the convening authority may delegate his authority under this subsection to his staff judge advocate or legal officer or to any other principal assistant.

(Aug. 10, 1956, ch. 1041, 70A Stat. 45; Pub. L. 90–632, § 2(7), Oct. 24, 1968, 82 Stat. 1336; Pub. L. 98–209, §§ 3(b), 13(c), Dec. 6, 1983, 97 Stat. 1394, 1408; Pub. L. 99–661, div. A, title VIII, § 803(a), Nov. 14, 1986, 100 Stat. 3906; Pub. L. 114–328, div. E, title LV, § 5182, title LVI, § 5203(e)(2), Dec. 23, 2016, 130 Stat. 2899, 2906.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
825(a)	50:589(a).	May 5, 1950, ch. 169, § 1 (Art. 25), 64 Stat. 116.
825(b)	50:589(b).	
825(c)	50:589(c).	
825(d)	50:589(d).	

In subsection (a), the word ''commissioned'' is inserted before the word ''officer'' for clarity. The word ''is'' is substituted for the words ''shall be''.

In subsections (a), (b), and (c)(1), the words ''with the armed forces'' are omitted as surplusage.

In subsection (b), the word ''is'' is substituted for the words ''shall be''. The words ''a commissioned'' are substituted for the word ''an'' for clarity.

In subsection (c), the words ''member'' and ''members'', respectively are substituted for the words ''person'' and ''persons''. The words ''of an armed force'' are inserted for clarity.

In subsection (c)(1), the word ''is'' is substituted for the words ''shall be''. The word ''before'' is substituted for the words ''prior to''. The words ''the accused may not'' are substituted for the words ''no enlisted person shall'', for clarity. The word ''If'' is substituted for the word ''Where''.

In subsection (c)(2), the word ''means'' is substituted for the words ''shall mean''. The words ''Secretary concerned'' are substituted for the words ''Secretary of the Department''. The word ''may'' is substituted for the word ''shall''. The word ''than'', before the words ''a body'', is omitted as surplusage.

In subsection (d)(1), the word ''may'' is substituted for the word ''shall''. The word ''member'' is substituted for the word ''person''.

In subsection (d)(2), the word ''is'' is substituted for the words ''shall be''. The word ''detail'' is substituted for the word ''appoint'', since the filling of the position involved is not appointment to an office in the constitutional sense. The words ''member of an armed force'' and ''members of the armed forces'', respectively, are substituted for the words ''person'' and ''persons''.

AMENDMENTS

2016—Subsec. (c). Pub. L. 114–328, § 5182(a), amended subsec. (c) generally. Prior to amendment, subsec. (c) related to service on general and special courts-martial by enlisted members.

Subsec. (d). Pub. L. 114–328, § 5182(b)(2), added subsec. (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 114–328, § 5182(b)(1), redesignated subsec. (d) as (e). Former subsec. (e) redesignated (f).

Subsec. (e)(2). Pub. L. 114–328, § 5203(e)(2), which directed amendment of this section by substituting ''preliminary hearing officer'' for ''investigating officer'' in subsec. (d)(2), was executed by making the substitution in subsec. (e)(2) to reflect the probable intent of Congress and the redesignation of subsec. (d) as (e) by Pub. L. 114–328, § 5182(b)(1).

Subsec. (e)(3). Pub. L. 114–328, § 5182(c), added par. (3).

Subsec. (f). Pub. L. 114–328, § 5182(b)(1), redesignated subsec. (e) as (f).

1986—Subsec. (c)(1). Pub. L. 99–661 substituted ''has requested orally on the record or in writing'' for ''has requested in writing''.

1983—Subsec. (c)(2). Pub. L. 98–209, § 13(c), struck out ''the word'' before '''unit'''.

Subsec. (e). Pub. L. 98–209, § 3(b), added subsec. (e).

1968—Subsec. (c)(1). Pub. L. 90–632 inserted requirement that an accused's request for inclusion of enlisted members on his court-martial be made before conclusion of a pre-trial session called by the military judge under section 839(a) or before the court is assembled for his trial and substituted ''assembled'' for ''convened'' to describe the calling together of the court for the trial in provision allowing such calling together without requested enlisted members if such members cannot be obtained.

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114–328 effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–661, div. A, title VIII, § 803(b), Nov. 14, 1986, 100 Stat. 3906, provided that: ''The amendment made by subsection (a) [amending this section] shall apply only to a case in which arraignment is completed on or after the effective date of this title.''

Title VIII of Pub. L. 99–661 effective the earlier of (1) the last day of the 120-day period beginning on Nov. 14, 1986; or (2) the date specified in an Executive order for such amendment to take effect, see section 808 of Pub. L. 99–661, set out as a note under section 802 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 13(c) of Pub. L. 98–209 effective Dec. 6, 1983, and amendment by section 3(b) of Pub. L. 98–209 effective first day of eighth calendar month beginning after Dec. 6, 1983, see section 12(a)(1) of Pub. L. 98–209, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

§ 825a. Art. 25a. Number of court-martial members in capital cases

(a) IN GENERAL.—In a case in which the accused may be sentenced to death, the number of members shall be 12.

(b) CASE NO LONGER CAPITAL.—Subject to section 829 of this title (article 29)—

(1) if a case is referred for trial as a capital case and, before the members are impaneled, the accused may no longer be sentenced to death, the number of members shall be eight; and

(2) if a case is referred for trial as a capital case and, after the members are impaneled, the accused may no longer be sentenced to death, the number of members shall remain 12.

(Added Pub. L. 107–107, div. A, title V, § 582(b)(1), Dec. 28, 2001, 115 Stat. 1124; amended Pub. L. 114–328, div. E, title LV, § 5183, Dec. 23, 2016, 130 Stat. 2900.)

AMENDMENTS

2016—Pub. L. 114–328 amended section generally. Prior to amendment, text read as follows: ''In a case in which the accused may be sentenced to a penalty of death, the number of members shall be not less than 12, unless 12 members are not reasonably available because of physical conditions or military exigencies, in which case the convening authority shall specify a lesser number of members not less than five, and the court may be assembled and the trial held with not less than the number of members so specified. In such a case, the convening authority shall make a detailed written statement, to be appended to the record, stating why a greater number of members were not reasonably available.''

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114–328 effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

EFFECTIVE DATE

Section applicable with respect to offenses committed after Dec. 31, 2002, see section 582(d) of Pub. L. 107–107, set out as an Effective Date of 2001 Amendment note under section 816 of this title.

§ 826. Art. 26. Military judge of a general or special court-martial

(a) A military judge shall be detailed to each general and special court-martial. The Secretary concerned shall prescribe regulations providing for the manner in which military judges are detailed for such courts-martial and for the persons who are authorized to detail military judges for such courts-martial. The military judge shall preside over each open session of the court-martial to which he has been detailed.

(b) A military judge shall be a commissioned officer of the armed forces who is a member of the bar of a Federal court or a member of the bar of the highest court of a State and who is certified to be qualified, by reason of education, training, experience, and judicial temperament, for duty as a military judge by the Judge Advocate General of the armed force of which such military judge is a member.

(c)(1) In accordance with regulations prescribed under subsection (a), a military judge of a general or special court-martial shall be designated for detail by the Judge Advocate General of the armed force of which the military judge is a member.

(2) Neither the convening authority nor any member of the staff of the convening authority shall prepare or review any report concerning the effectiveness, fitness, or efficiency of the military judge so detailed, which relates to the military judge's performance of duty as a military judge.

(3) A commissioned officer who is certified to be qualified for duty as a military judge of a general court-martial—

(A) may perform such duties only when the officer is assigned and directly responsible to the Judge Advocate General of the armed force of which the military judge is a member; and

(B) may perform duties of a judicial or nonjudicial nature other than those relating to the officer's primary duty as a military judge of a general court-martial when such duties are assigned to the officer by or with the approval of that Judge Advocate General.

(4) In accordance with regulations prescribed by the President, assignments of military judges under this section (article) shall be for appropriate minimum periods, subject to such exceptions as may be authorized in the regulations.

(d) No person is eligible to act as military judge in a case if he is the accuser or a witness for the prosecution or has acted as preliminary hearing officer or a counsel in the same case.

(e) The military judge of a court-martial may not consult with the members of the court except in the presence of the accused, trial counsel, and defense counsel, nor may he vote with the members of the court.

(f) A military judge may be detailed under subsection (a) to a court-martial or a proceeding under section 830a of this title (article 30a) that is convened in a different armed force, when so permitted by the Judge Advocate General of the armed force of which the military judge is a member.

(g) In accordance with regulations prescribed by the President, each Judge Advocate General shall designate a chief trial judge from among the members of the applicable trial judiciary.

(Aug. 10, 1956, ch. 1041, 70A Stat. 46; Pub. L. 90–632, § 2(9), Oct. 24, 1968, 82 Stat. 1336; Pub. L. 98–209, § 3(c)(1), Dec. 6, 1983, 97 Stat. 1394; Pub. L. 114–328, div. E, title LV, § 5184, title LVI, § 5203(e)(3), Dec. 23, 2016, 130 Stat. 2901, 2906.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
826(a)	50:590(a).	May 5, 1950, ch. 169, § 1
826(b)	50:590(b).	(Art. 26), 64 Stat. 117.

In subsection (a), the words ''a commissioned'' are substituted for the word ''an'' for clarity. The words ''of the United States'' are omitted as surplusage. The word ''is'' is substituted for the words ''shall be''. The word ''if'' is substituted for the word ''when''. The word ''detail'' is substituted for the word ''appoint'', since the filling of the position involved is not appointment to an office in the constitutional sense.

In subsection (b), the word ''may'' is substituted for the word ''shall''.

AMENDMENTS

2016—Subsec. (a). Pub. L. 114–328, § 5184(a), inserted ''and special'' after ''each general'' and struck out ''Subject to regulations of the Secretary concerned, a military judge may be detailed to any special court-martial.'' before ''The military judge''.

Subsec. (b). Pub. L. 114–328, § 5184(b), substituted ''qualified, by reason of education, training, experience, and judicial temperament, for duty'' for ''qualified for duty''.

Subsec. (c). Pub. L. 114–328, § 5184(c), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''The military judge of a general court-martial shall be designated by the Judge Advocate General, or his designee, of the armed force of which the military judge is a member for detail in accordance with regulations prescribed under subsection (a). Unless the court-martial was convened by the President or the Secretary concerned, neither the convening authority nor any member of his staff shall prepare or review any report concerning the effectiveness, fitness, or efficiency of the military judge so detailed, which relates to his performance of duty as a military judge. A commissioned officer who is certified to be qualified for duty as a military judge of a general court-martial may perform such duties only when he is assigned and directly responsible to the Judge Advocate General, or his designee, of the armed force of which the military judge is a member and may perform duties of a judicial or nonjudicial nature other than those relating to his primary duty as a military judge of a general court-martial when such duties are assigned to him by or with the approval of that Judge Advocate General or his designee.''

Subsec. (d). Pub. L. 114–328, § 5203(e)(3), substituted ''preliminary hearing officer'' for ''investigating officer''.

Subsec. (f). Pub. L. 114–328, § 5184(d), added subsec. (f).

Subsec. (g). Pub. L. 114–328, § 5184(e), added subsec. (g).

1983—Subsec. (a). Pub. L. 98–209, § 3(c)(1)(A), amended subsec. (a) generally, inserting provision requiring the Secretary concerned to prescribe regulations providing for the manner in which military judges are detailed for courts-martial and for the persons who are authorized to detail military judges for such courts-martial.

Subsec. (c). Pub. L. 98–209, § 3(c)(1)(B), substituted ''in accordance with regulations prescribed under subsection (a). Unless'' for ''by the convening authority, and, unless''.

1968—Pub. L. 90–632 substituted ''military judge'' for ''law officer'' and inserted reference to special court-martial.

Subsec. (a). Pub. L. 90–632 substituted reference to military judge for references to law officer and such law officer's requisite qualifications, inserted reference to special court-martial and regulations of the Secretary concerned governing the convening of a special court-martial, inserted provisions directing the military judge to preside over the open sessions of the court-martial to which he was assigned, and struck out provisions making law officers ineligible in a case in which he was the accuser or a witness for the prosecution or acted as investigating officer or as counsel.

Subsecs. (b) to (d). Pub. L. 90–632 added subsecs. (b) to (d). Former subsec. (b) redesignated as subsec. (e) and amended.

Subsec. (e). Pub. L. 90–632 redesignated former subsec. (b) as (e) and substituted ''military judge'' for ''law officer'' and struck out provision allowing consultation with members of the court on the form of the findings as provided in section 839 of this title (article 39).

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114–328 effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–209 effective first day of eighth calendar month beginning after Dec. 6, 1983, but not to affect the designation or detail of a military judge or military counsel to a court-martial before that date, see section 12(a)(1), (2) of Pub. L. 98–209, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

STATUTORY REFERENCES TO LAW OFFICER DEEMED REFERENCES TO MILITARY JUDGE

Pub. L. 90–632, § 3(a), Oct. 24, 1968, 82 Stat. 1343, provided that: ''Whenever the term law officer is used, with reference to any officer detailed to a court-martial pursuant to section 826(a) (article 26(a)) of title 10, United States Code [subsec. (a) of this section], in any provision of Federal law (other than provisions amended by this Act [see Short Title of 1968 Amendment note set out under section 801 of this title] or in any regulation, document, or record of the United States, such term shall be deemed to mean military judge.''

§ 826a. Art. 26a. Military magistrates

(a) QUALIFICATIONS.—A military magistrate shall be a commissioned officer of the armed forces who—

(1) is a member of the bar of a Federal court or a member of the bar of the highest court of a State; and

(2) is certified to be qualified, by reason of education, training, experience, and judicial temperament, for duty as a military magistrate by the Judge Advocate General of the armed force of which the officer is a member.

(b) DUTIES.—In accordance with regulations prescribed by the Secretary concerned, in addi-

tion to duties when designated under section 819 or 830a of this title (article 19 or 30a), a military magistrate may be assigned to perform other duties of a nonjudicial nature.

(Added Pub. L. 114–328, div. E, title LV, § 5185, Dec. 23, 2016, 130 Stat. 2901.)

EFFECTIVE DATE

Section effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. 13825, set out as notes under section 801 of this title.

§ 827. Art. 27. Detail of trial counsel and defense counsel

(a)(1) Trial counsel and defense counsel shall be detailed for each general and special court-martial. Assistant trial counsel and assistant and associate defense counsel may be detailed for each general and special court-martial. The Secretary concerned shall prescribe regulations providing for the manner in which counsel are detailed for such courts-martial and for the persons who are authorized to detail counsel for such courts-martial.

(2) No person who, with respect to a case, has served as a preliminary hearing officer, court member, military judge, military magistrate, or appellate judge, may later serve as trial counsel, assistant trial counsel, or, unless expressly requested by the accused, as defense counsel or assistant or associate defense counsel in the same case. No person who has acted for the prosecution may act later in the same case for the defense, nor may any person who has acted for the defense act later in the same case for the prosecution.

(b) Trial counsel, defense counsel, or assistant defense counsel detailed for a general court-martial—

(1) must be a judge advocate who is a graduate of an accredited law school or is a member of the bar of a Federal court or of the highest court of a State; or must be a member of the bar of a Federal court or of the highest court of a State; and

(2) must be certified as competent to perform such duties by the Judge Advocate General of the armed force of which he is a member.

(c)(1) Defense counsel and assistant defense counsel detailed for a special court-martial shall have the qualifications set forth in subsection (b).

(2) Trial counsel and assistant trial counsel detailed for a special court-martial and assistant trial counsel detailed for a general court-martial must be determined to be competent to perform such duties by the Judge Advocate General, under such rules as the President may prescribe.

(d) To the greatest extent practicable, in any capital case, at least one defense counsel shall, as determined by the Judge Advocate General, be learned in the law applicable to such cases. If necessary, this counsel may be a civilian and, if so, may be compensated in accordance with regulations prescribed by the Secretary of Defense.

(Aug. 10, 1956, ch. 1041, 70A Stat. 46; Pub. L. 90–179, § 1(5), Dec. 8, 1967, 81 Stat. 546; Pub. L. 90–632, § 2(10), Oct. 24, 1968, 82 Stat. 1337; Pub. L. 98–209, §§ 2(d), 3(c)(2), Dec. 6, 1983, 97 Stat. 1393, 1394; Pub. L. 114–328, div. E, title LV, § 5186, Dec. 23, 2016, 130 Stat. 2902.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
827(a)	50:591(a).	May 5, 1950, ch. 169, § 1 (Art. 27), 64 Stat. 117.
827(b)	50:591(b).	
827(c)	50:591(c).	

The words, ''detail'' and ''detailed'' are substituted for the words ''appoint'' and ''appointed'' throughout the revised section, since the filling of the position involved is not appointment to an office in the constitutional sense.

In subsection (a), the word ''and'' is substituted for the words ''together with''. The word ''considers'' is substituted for the word ''deems''. The words ''necessary or'' are omitted as surplusage, since what is necessary is also appropriate. The word ''may'' is substituted for the word ''shall''. The word ''later'' is substituted for the word ''subsequently''.

In subsections (b) and (c), the word ''must'' is substituted for the word ''shall'', since the clauses prescribe conditions and not commands.

In subsection (b), the word ''for'' is substituted for the words ''in the case of''. The words ''person * * * a person who is'' are omitted as surplusage.

AMENDMENTS

Subsec. (a)(2). Pub. L. 114–328, § 5186(1), substituted ''No person who, with respect to a case, has served as a preliminary hearing officer, court member, military judge, military magistrate, or appellate judge, may later serve as trial counsel,'' for ''No person who has acted as investigating officer, military judge, or court member in any case may act later as trial counsel,''.

Subsec. (b). Pub. L. 114–328, § 5186(2), substituted ''Trial counsel, defense counsel, or assistant defense counsel'' for ''Trial counsel or defense counsel'' in introductory provisions.

Subsecs. (c), (d). Pub. L. 114–328, § 5186(3), added subsecs. (c) and (d) and struck out former subsec. (c) which read as follows: ''In the case of a special court-martial—

''(1) the accused shall be afforded the opportunity to be represented at the trial by counsel having the qualifications prescribed under section 827(b) of this title (article 27(b)) unless counsel having such qualifications cannot be obtained on account of physical conditions or military exigencies. If counsel having such qualifications cannot be obtained, the court may be convened and the trial held but the convening authority shall make a detailed written statement, to be appended to the record, stating why counsel with such qualifications could not be obtained;

''(2) if the trial counsel is qualified to act as counsel before a general court-martial, the defense counsel detailed by the convening authority must be a person similarly qualified; and

''(3) if the trial counsel is a judge advocate or a member of the bar of a Federal court or the highest court of a State, the defense counsel detailed by the convening authority must be one of the foregoing.''

1983—Subsec. (a)(1). Pub. L. 98–209, § 3(c)(2)(A), designated first sentence of existing provisions as par. (1), substituted provisions requiring that trial counsel and defense counsel be detailed for each general and special court-martial, and permitting the detailing of assistant trial counsel and assistant and associate defense counsel for each general and special court-martial for provisions requiring that for each general and special court-martial the authority convening the court had to detail trial counsel and defense counsel and such assistants as he considered appropriate, and inserted provision requiring the Secretary concerned to prescribe regulations providing for the manner in which counsel are de-

tailed for such courts-martial and for the persons who are authorized to detail counsel for such courts-martial.

Subsec. (a)(2). Pub. L. 98–209, § 3(c)(2)(B), designated existing provision, less first sentence, as par. (2) and substituted ''assistant or associate defense counsel'' for ''assistant defense counsel''.

Subsec. (b)(1). Pub. L. 98–209, § 2(d)(1), substituted ''judge advocate'' for ''judge advocate of the Army, Navy, Air Force, or Marine Corps or a law specialist of the Coast Guard,''.

Subsec. (c)(3). Pub. L. 98–209, § 2(d)(2), struck out '', or a law specialist,'' after ''is a judge advocate''.

1968—Subsec. (a). Pub. L. 90–632, § 2(10)(A), substituted ''military judge'' for ''law officer''.

Subsec. (c). Pub. L. 90–632, § 2(10)(B), redesignated former pars. (1) and (2) as pars. (2) and (3), respectively, and added par. (1).

1967—Subsec. (b)(1). Pub. L. 90–179 inserted reference to judge advocate of the Marine Corps and substituted reference to judge advocate of the Navy for reference to law specialist of the Navy.

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114–328 effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–209 effective first day of eighth calendar month beginning after Dec. 6, 1983, but amendment by section 3(c)(2) of Pub. L. 98–209 not to affect the designation or detail of a military judge or military counsel to a court-martial before that date, see section 12(a)(1), (2) of Pub. L. 98–209, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

EFFECTIVE PROSECUTION AND DEFENSE IN COURTS-MARTIAL AND PILOT PROGRAMS ON PROFESSIONAL MILITARY JUSTICE DEVELOPMENT FOR JUDGE ADVOCATES

Pub. L. 114–328, div. A, title V, § 542, Dec. 23, 2016, 130 Stat. 2126, as amended by Pub. L. 115–91, div. A, title V, § 532, Dec. 12, 2017, 131 Stat. 1388, provided that:

''(a) PROGRAM FOR EFFECTIVE PROSECUTION AND DEFENSE.—The Secretary concerned shall carry out a program to ensure that—

''(1) trial counsel and defense counsel detailed to prosecute or defend a court-martial have sufficient experience and knowledge to effectively prosecute or defend the case or there is adequate supervision and oversight of trial counsel and defense counsel so detailed to ensure effective prosecution and defense in the court-martial; and

''(2) a deliberate professional developmental process is in place to ensure effective prosecution and defense in all courts-martial.

''(b) MILITARY JUSTICE EXPERIENCE DESIGNATORS OR SKILL IDENTIFIERS.—The Secretary concerned shall establish and use a system of military justice experience designators or skill identifiers for purposes of identifying judge advocates with skill and experience in military justice proceedings in order to ensure that judge advocates with experience and skills identified through such experience designators or skill identifiers are assigned to develop less experienced judge advocates in the prosecution and defense in courts-martial under a program carried out pursuant to subsection (a).

''(c) USE OF CIVILIAN EMPLOYEES TO ADVISE LESS EXPERIENCED JUDGE ADVOCATES IN PROSECUTION AND DEFENSE.—The Secretary concerned may use highly qualified experts and other civilian employees who are under the jurisdiction of the Secretary concerned, are available, and are experienced in the prosecution or defense of complex criminal cases to provide assistance to, and consult with, less experienced judge advocates throughout the court-martial process.

''(d) PILOT PROGRAMS ON PROFESSIONAL DEVELOPMENTAL PROCESS FOR JUDGE ADVOCATES.—

''(1) PURPOSE.—The Secretary concerned shall carry out a pilot program to assess the feasibility and advisability of a military justice career track for judge advocates under the jurisdiction of the Secretary.

''(2) ADDITIONAL MATTERS.—A pilot program may also assess such other matters related to professional military justice development for judge advocates as the Secretary concerned considers appropriate.

''(3) DURATION.—Each pilot program shall be for a period of five years.

''(4) ELEMENTS.—Each pilot program shall include the following:

''(A) A military justice career track for judge advocates that leads to judge advocates with military justice expertise in the grade of colonel, or in the grade of captain in the case of judge advocates of the Navy.

''(B) The use of skill identifiers to identify judge advocates for participation in the pilot program from among judge advocates having appropriate skill and experience in military justice matters.

''(C) Guidance for promotion boards considering the selection for promotion of officers participating in the pilot program in order to ensure that judge advocates who are participating in the pilot program have the same opportunity for promotion as all other judge advocate officers being considered for promotion by such boards.

''(D) Such other matters as the Secretary concerned considers appropriate.

''(5) REPORT.—Not later than four years after the date of the enactment of this Act [Dec. 23, 2016], the Secretary concerned shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the pilot programs conducted under this section. The report shall include the following:

''(A) A description and assessment of each pilot program.

''(B) Such recommendations as the Secretary considers appropriate in light of the pilot programs, including whether any pilot program should be extended or made permanent.

''(e) SECRETARY CONCERNED DEFINED.—In this section, the term 'Secretary concerned' has the meaning given that term in section 101(a)(9) of title 10, United States Code.''

§ 828. Art. 28. Detail or employment of reporters and interpreters

Under such regulations as the Secretary concerned may prescribe, the convening authority of a court-martial, military commission, or court of inquiry shall detail or employ qualified court reporters, who shall record the proceedings of and testimony taken before that court or commission. Under like regulations the convening authority of a court-martial, military commission, or court of inquiry may detail or employ interpreters who shall interpret for the court or commission. This section does not apply to a military commission established under chapter 47A of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 47; Pub. L. 109–366, § 4(a)(2), Oct. 17, 2006, 120 Stat. 2631.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
828	50:592.	May 5, 1950, ch. 169, §1 (Art. 28), 64 Stat. 117.

The words ''Secretary concerned'' are substituted for the words ''Secretary of the Department''. The words, ''detail or employ'' are substituted for the word ''appoint'', since the filling of the position involved is not appointment to an office in the constitutional sense.

AMENDMENTS

2006—Pub. L. 109–366 inserted last sentence.

§ 829. Art 29. Assembly and impaneling of members; detail of new members and military judges

(a) ASSEMBLY.—The military judge shall announce the assembly of a general or special court-martial with members. After such a court-martial is assembled, no member may be absent, unless the member is excused—

(1) as a result of a challenge;

(2) under subsection (b)(1)(B); or

(3) by order of the military judge or the convening authority for disability or other good cause.

(b) IMPANELING.—(1) Under rules prescribed by the President, the military judge of a general or special court-martial with members shall—

(A) after determination of challenges, impanel the court-martial; and

(B) excuse the members who, having been assembled, are not impaneled.

(2) In a general court-martial, the military judge shall impanel—

(A) 12 members in a capital case; and

(B) eight members in a noncapital case.

(3) In a special court-martial, the military judge shall impanel four members.

(c) ALTERNATE MEMBERS.—In addition to members under subsection (b), the military judge shall impanel alternate members, if the convening authority authorizes alternate members.

(d) DETAIL OF NEW MEMBERS.—(1) If, after members are impaneled, the membership of the court-martial is reduced to—

(A) fewer than 12 members with respect to a general court-martial in a capital case;

(B) fewer than six members with respect to a general court-martial in a noncapital case; or

(C) fewer than four members with respect to a special court-martial;

the trial may not proceed unless the convening authority details new members and, from among the members so detailed, the military judge impanels new members sufficient in number to provide the membership specified in paragraph (2).

(2) The membership referred to in paragraph (1) is as follows:

(A) 12 members with respect to a general court-martial in a capital case.

(B) At least six but not more than eight members with respect to a general court-martial in a noncapital case.

(C) Four members with respect to a special court-martial.

(e) DETAIL OF NEW MILITARY JUDGE.—If the military judge is unable to proceed with the trial because of disability or otherwise, a new military judge shall be detailed to the court-martial.

(f) EVIDENCE.—(1) In the case of new members under subsection (d), the trial may proceed with the new members present after the evidence previously introduced is read or, in the case of audiotape, videotape, or similar recording, is played, in the presence of the new members, the military judge, the accused, and counsel for both sides.

(2) In the case of a new military judge under subsection (e), the trial shall proceed as if no evidence had been introduced, unless the evidence previously introduced is read or, in the case of audiotape, videotape, or similar recording, is played, in the presence of the new military judge, the accused, and counsel for both sides.

(Aug. 10, 1956, ch. 1041, 70A Stat. 47; Pub. L. 90–632, §2(11), Oct. 24, 1968, 82 Stat. 1337; Pub. L. 98–209, §3(d), Dec. 6, 1983, 97 Stat. 1394; Pub. L. 107–107, div. A, title V, §582(c), Dec. 28, 2001, 115 Stat. 1124; Pub. L. 114–328, div. E, title LV, §5187, Dec. 23, 2016, 130 Stat. 2902.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
829(a)	50:593(a).	May 5, 1950, ch. 169, §1 (Art. 29), 64 Stat. 117.
829(b)	50:593(b).	
829(c)	50:593(c).	

In subsections (a), (b), and (c), the word ''may'' is substituted for the word ''shall''.

In subsections (b) and (c), the word ''details'' is substituted for the word ''appoints'', since the filling of the position involved is not appointment to an office in the constitutional sense.

AMENDMENTS

2016—Pub. L. 114–328 amended section generally. Prior to amendment, section related to absent and additional members of a general or special court-martial.

2001—Subsec. (b). Pub. L. 107–107 designated existing provisions as par. (1), substituted ''the applicable minimum number of members'' for ''five members'' in two places, and added par. (2).

1983—Subsec. (a). Pub. L. 98–209 substituted ''unless excused as a result of a challenge, excused by the military judge for physical disability or other good cause, or excused by order of the convening authority for good cause'' for ''except for physical disability or as a result of a challenge or by order of the convening authority for good cause''.

1968—Subsec. (a). Pub. L. 90–632, §2(11)(A), substituted ''court has been assembled for the trial of the accused'' for ''accused has been arraigned''.

Subsec. (b). Pub. L. 90–632, §2(11)(B), inserted reference to court-martial composed of a military judge alone, struck out reference to oath of members, and inserted provisions requiring that only the evidence which has been introduced before members of the court be read to the court and that all evidence, not merely testimony, be included.

Subsec. (c). Pub. L. 90–632, §2(11)(C), inserted reference to court-martial composed of a military judge alone, struck out reference to oath of members, and substituted evidence previously introduced for testimony of previously examined witnesses as the body of evidence which the verbatim record must cover.

Subsec. (d) Pub. L. 90–632, §2(11)(D), added subsec. (d).

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114–328 effective on Jan. 1, 2019, as designated by the President, with imple-

menting regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–107 applicable with respect to offenses committed after Dec. 31, 2002, see section 582(d) of Pub. L. 107–107, set out as a note under section 816 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–209 effective first day of eighth calendar month beginning after Dec. 6, 1983, see section 12(a)(1) of Pub. L. 98–209, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

SUBCHAPTER VI—PRE-TRIAL PROCEDURE

Sec.	Art.	
830.	30.	Charges and specifications.
830a.	30a.	Proceedings conducted before referral.
831.	31.	Compulsory self-incrimination prohibited.
832.	32.	Preliminary hearing required before referral to general court-martial.
833.	33.	Disposition guidance.
834.	34.	Advice to convening authority before referral for trial.
835.	35.	Service of charges; commencement of trial.

AMENDMENTS

2019—Pub. L. 116–92, div. A, title V, § 531(b)(2), Dec. 20, 2019, 133 Stat. 1359, substituted "Proceedings conducted before referral" for "Certain proceedings conducted before referral" in item 830a.

2017—Pub. L. 115–91, div. A, title X, § 1081(d)(19)(A), (C), Dec. 12, 2017, 131 Stat. 1601, amended Pub. L. 114–328, § 5541(3). See 2016 Amendment note below.

2016—Pub. L. 114–328, div. E, title LXIII, § 5541(3), Dec. 23, 2016, 130 Stat. 2965, as amended by Pub. L. 115–91, div. A, title X, § 1081(d)(19)(A), (C), Dec. 12, 2017, 131 Stat. 1601, added item 830a and substituted "Preliminary hearing required before referral to general court-martial" for "Preliminary hearing" in item 832, "Disposition guidance" for "Forwarding of charges" in item 833, "Advice to convening authority before referral for trial" for "Advice of staff judge advocate and reference for trial" in item 834, and "Service of charges; commencement of trial" for "Service of charges" in item 835.

2013—Pub. L. 113–66, div. A, title XVII, § 1702(a)(2), Dec. 26, 2013, 127 Stat. 955, substituted "Preliminary hearing" for "Investigation" in item 832.

§ 830. Art 30. Charges and specifications

(a) IN GENERAL.—Charges and specifications—

(1) may be preferred only by a person subject to this chapter; and

(2) shall be preferred by presentment in writing, signed under oath before a commissioned officer of the armed forces who is authorized to administer oaths.

(b) REQUIRED CONTENT.—The writing under subsection (a) shall state that—

(1) the signer has personal knowledge of, or has investigated, the matters set forth in the charges and specifications; and

(2) the matters set forth in the charges and specifications are true, to the best of the knowledge and belief of the signer.

(c) DUTY OF PROPER AUTHORITY.—When charges and specifications are preferred under subsection (a), the proper authority shall, as soon as practicable—

(1) inform the person accused of the charges and specifications; and

(2) determine what disposition should be made of the charges and specifications in the interest of justice and discipline.

(Aug. 10, 1956, ch. 1041, 70A Stat. 47; Pub. L. 114–328, div. E, title LVI, § 5201, Dec. 23, 2016, 130 Stat. 2904.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
830(a)	50:601(a).	May 5, 1950, ch. 169, § 1
830(b)	50:601(b).	(Art. 30), 64 Stat. 118.

In subsection (a), the word "they" is substituted for the words "the same". The word "commissioned" is inserted for clarity.

AMENDMENTS

2016—Pub. L. 114–328 amended section generally. Prior to amendment, text read as follows:

"(a) Charges and specifications shall be signed by a person subject to this chapter under oath before a commissioned officer of the armed forces authorized to administer oaths and shall state—

"(1) that the signer has personal knowledge of or has investigated, the matters set forth therein; and

"(2) that they are true in fact to the best of his knowledge and belief.

"(b) Upon the preferring of charges, the proper authority shall take immediate steps to determine what disposition should be made thereof in the interest of justice and discipline, and the person accused shall be informed of the charges against him as soon as practicable."

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114–328 effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

TIMELY DISPOSITION OF NONPROSECUTABLE SEX-RELATED OFFENSES

Pub. L. 116–92, div. A, title V, § 540C, Dec. 20, 2019, 133 Stat. 1366, provided that:

"(a) POLICY REQUIRED.—Not later than 180 days after the date of the enactment of this Act [Dec. 20, 2019], the Secretary of Defense shall develop and implement a policy to ensure the timely disposition of nonprosecutable sex-related offenses.

"(b) NONPROSECUTABLE SEX-RELATED OFFENSE DEFINED.—In this section, the term 'nonprosecutable sex-related offense' means an alleged sex-related offense (as that term is defined in section 1044e(g) of title 10, United States Code) that a court-martial convening authority has declined to refer for trial by a general or special court-martial under chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), due to a determination that there is insufficient evidence to support prosecution of the sex-related offense."

§ 830a. Art 30a. Proceedings conducted before referral

(a) IN GENERAL.—(1) The President shall prescribe regulations for matters relating to proceedings conducted before referral of charges

and specifications to court-martial for trial, including the following:

(A) Pre-referral investigative subpoenas.

(B) Pre-referral warrants or orders for electronic communications.

(C) Pre-referral matters referred by an appellate court.

(D) Pre-referral matters under subsection (c) or (e) of section 806b of this title (article 6b).

(E) Pre-referral matters relating to the following:

(i) Pre-trial confinement of an accused.

(ii) The mental capacity or mental responsibility of an accused.

(iii) A request for an individual military counsel.

(2) In addition to the matters specified in paragraph (1), the regulations prescribed under that paragraph shall—

(A) set forth the matters that a military judge may rule upon in such proceedings;

(B) include procedures for the review of such rulings;

(C) include appropriate limitations to ensure that proceedings under this section extend only to matters that would be subject to consideration by a military judge in a general or special court-martial; and

(D) provide such limitations on the relief that may be ordered under this section as the President considers appropriate.

(3) If any matter in a proceeding under this section becomes a subject at issue with respect to charges that have been referred to a general or special court-martial, the matter shall be transferred to the military judge detailed to the court-martial.

(b) DETAIL OF MILITARY JUDGE.—The Secretary concerned shall prescribe regulations providing for the manner in which military judges are detailed to proceedings under subsection (a)(1).

(c) DISCRETION TO DESIGNATE MAGISTRATE TO PRESIDE.—In accordance with regulations prescribed by the Secretary concerned, a military judge detailed to a proceeding under subsection (a)(1), other than a proceeding described in subparagraph (B) of that subsection, may designate a military magistrate to preside over the proceeding.

(Added Pub. L. 114–328, div. E, title LVI, § 5202, Dec. 23, 2016, 130 Stat. 2904; amended Pub. L. 115–91, div. A, title V, § 531(b), Dec. 12, 2017, 131 Stat. 1384; Pub. L. 116–92, div. A, title V, § 531(a), (b)(1), Dec. 20, 2019, 133 Stat. 1359.)

AMENDMENTS

2019—Pub. L. 116–92, § 531(b)(1), substituted ''Proceedings conducted before referral'' for ''Certain proceedings conducted before referral'' in section catchline.

Subsec. (a)(1), (2). Pub. L. 116–92, § 531(a), added pars. (1) and (2) and struck out former pars. (1) and (2) which read as follows:

''(1) Proceedings may be conducted to review, or otherwise act on, the following matters before referral of charges and specifications to court-martial for trial in accordance with regulations prescribed by the President:

''(A) Pre-referral investigative subpoenas.

''(B) Pre-referral warrants or orders for electronic communications.

''(C) Pre-referral matters referred by an appellate court.

''(D) Pre-referral matters under subsection (c) or (e) of section 806b of this title (article 6b).

''(2) The regulations prescribed under paragraph (1) shall—

''(A) include procedures for the review of such rulings that may be ordered under this section as the President considers appropriate; and

''(B) provide such limitations on the relief that may be ordered under this section as the President considers appropriate.''

2017—Subsec. (a)(1). Pub. L. 115–91, § 531(b)(1), inserted '', or otherwise act on,'' after ''to review'' in introductory provisions.

Subsec. (a)(1)(D). Pub. L. 115–91, § 531(b)(2), added subpar. (D).

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by Pub. L. 115–91 effective immediately after this section takes effect as provided for in section 5542 of Pub. L. 114–328 (10 U.S.C. 801 note), see section 531(p) of Pub. L. 115–91, set out as a note under section 801 of this title.

EFFECTIVE DATE

Section effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. 13825, set out as notes under section 801 of this title.

§ 831. Art. 31. Compulsory self-incrimination prohibited

(a) No person subject to this chapter may compel any person to incriminate himself or to answer any question the answer to which may tend to incriminate him.

(b) No person subject to this chapter may interrogate, or request any statement from, an accused or a person suspected of an offense without first informing him of the nature of the accusation and advising him that he does not have to make any statement regarding the offense of which he is accused or suspected and that any statement made by him may be used as evidence against him in a trial by court-martial.

(c) No person subject to this chapter may compel any person to make a statement or produce evidence before any military tribunal if the statement or evidence is not material to the issue and may tend to degrade him.

(d) No statement obtained from any person in violation of this article, or through the use of coercion, unlawful influence, or unlawful inducement may be received in evidence against him in a trial by court-martial.

(Aug. 10, 1956, ch. 1041, 70A Stat. 48.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
831(a)	50:602(a).	May 5, 1950, ch. 169, § 1 (Art 31), 64 Stat. 118.
831(b)	50:602(b).	
831(c)	50:602(c).	
831(d)	50:602(d).	

The word ''may'' is substituted for the word ''shall'' throughout the revised section.

§ 832. Art. 32. Preliminary hearing required before referral to general court-martial

(a) IN GENERAL.—(1)(A) Except as provided in subparagraph (B), a preliminary hearing shall be

held before referral of charges and specifications for trial by general court-martial. The preliminary hearing shall be conducted by an impartial hearing officer, detailed by the convening authority in accordance with subsection (b).

(B) Under regulations prescribed by the President, a preliminary hearing need not be held if the accused submits a written waiver to the convening authority and the convening authority determines that a hearing is not required.

(2) The purpose of the preliminary hearing shall be limited to determining the following:

(A) Whether or not the specification alleges an offense under this chapter.

(B) Whether or not there is probable cause to believe that the accused committed the offense charged.

(C) Whether or not the convening authority has court-martial jurisdiction over the accused and over the offense.

(D) A recommendation as to the disposition that should be made of the case.

(b) HEARING OFFICER.—(1) A preliminary hearing under this section shall be conducted by an impartial hearing officer, who—

(A) whenever practicable, shall be a judge advocate who is certified under section 827(b)(2) of this title (article 27(b)(2)); or

(B) when it is not practicable to appoint a judge advocate because of exceptional circumstances, is not a judge advocate so certified.

(2) In the case of a hearing officer under paragraph (1)(B), a judge advocate who is certified under section 827(b)(2) of this title (article 27(b)(2)) shall be available to provide legal advice to the hearing officer.

(3) Whenever practicable, the hearing officer shall be equal in grade or senior in grade to military counsel who are detailed to represent the accused or the Government at the preliminary hearing.

(c) REPORT TO CONVENING AUTHORITY.—After a preliminary hearing under this section, the hearing officer shall submit to the convening authority a written report (accompanied by a recording of the preliminary hearing under subsection (e)) that includes the following:

(1) For each specification, a statement of the reasoning and conclusions of the hearing officer with respect to determinations under subsection (a)(2), including a summary of relevant witness testimony and documentary evidence presented at the hearing and any observations of the hearing officer concerning the testimony of witnesses and the availability and admissibility of evidence at trial.

(2) Recommendations for any necessary modifications to the form of the charges or specifications.

(3) An analysis of any additional information submitted after the hearing by the parties or by a victim of an offense, that, under such rules as the President may prescribe, is relevant to disposition under sections 830 and 834 of this title (articles 30 and 34).

(4) A statement of action taken on evidence adduced with respect to uncharged offenses, as described in subsection (f).

(d) RIGHTS OF ACCUSED AND VICTIM.—(1) The accused shall be advised of the charges against the accused and of the accused's right to be represented by counsel at the preliminary hearing under this section. The accused has the right to be represented at the preliminary hearing as provided in section 838 of this title (article 38) and in regulations prescribed under that section.

(2) The accused may cross-examine witnesses who testify at the preliminary hearing and present additional evidence that is relevant to the issues for determination under subsection (a)(2).

(3) A victim may not be required to testify at the preliminary hearing. A victim who declines to testify shall be deemed to be not available for purposes of the preliminary hearing. A declination under this paragraph shall not serve as the sole basis for ordering a deposition under section 849 of this title (article 49).

(4) The presentation of evidence and examination (including cross-examination) of witnesses at a preliminary hearing shall be limited to the matters relevant to determinations under subsection (a)(2).

(e) RECORDING OF PRELIMINARY HEARING.—A preliminary hearing under subsection (a) shall be recorded by a suitable recording device. The victim may request the recording and shall have access to the recording under such rules as the President may prescribe.

(f) EFFECT OF EVIDENCE OF UNCHARGED OFFENSE.—If evidence adduced in a preliminary hearing under subsection (a) indicates that the accused committed an uncharged offense, the hearing officer may consider the subject matter of that offense without the accused having first been charged with the offense if the accused—

(1) is present at the preliminary hearing;

(2) is informed of the nature of each uncharged offense considered; and

(3) is afforded the opportunities for representation, cross-examination, and presentation consistent with subsection (d).

(g) EFFECT OF VIOLATION.—The requirements of this section are binding on all persons administering this chapter, but failure to follow the requirements does not constitute jurisdictional error. A defect in a report under subsection (c) is not a basis for relief if the report is in substantial compliance with that subsection.

(h) VICTIM DEFINED.—In this section, the term ''victim'' means a person who—

(1) is alleged to have suffered a direct physical, emotional, or pecuniary harm as a result of the matters set forth in a charge or specification being considered; and

(2) is named in one of the specifications.

(Aug. 10, 1956, ch. 1041, 70A Stat. 48; Pub. L. 97–81, § 4(a), Nov. 20, 1981, 95 Stat. 1088; Pub. L. 104–106, div. A, title XI, § 1131, Feb. 10, 1996, 110 Stat. 464; Pub. L. 113–66, div. A, title XVII, § 1702(a)(1), Dec. 26, 2013, 127 Stat. 954; Pub. L. 113–291, div. A, title V, § 531(a)(4)(A), Dec. 19, 2014, 128 Stat. 3363; Pub. L. 114–328, div. E, title LVI, § 5203(a)–(d), Dec. 23, 2016, 130 Stat. 2905, 2906.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
832(a)	50:603(a).	May 5, 1950, ch. 169, § 1
832(b)	50:603(b).	(Art. 32), 64 Stat. 118.

HISTORICAL AND REVISION NOTES—CONTINUED

Revised section	Source (U.S. Code)	Source (Statutes at Large)
832(c) ……	50:603(c).	
832(d) ……	50:603(d).	

In subsection (a), the word ''may'' is substituted for the word ''shall''. The words ''consideration of the'' and ''a recommendation as to'' are inserted in the interest of accuracy and precision of statement.

In subsection (b), the word ''detailed'' is substituted for the word ''appointed'', since the filling of the position involved is not appointment to an office in the constitutional sense.

In subsection (c), the word ''before'' is substituted for the words ''prior to the time''. The words ''of this section'' are omitted as surplusage.

In subsection (d), the word ''are'' is substituted for the words ''shall be.'' The word ''does'' is substituted for the words ''in any case shall''.

AMENDMENTS

2016—Pub. L. 114–328, §5203(a), substituted ''Preliminary hearing required before referral to general court-martial'' for ''Preliminary hearing'' in section catchline.

Subsecs. (a) to (c). Pub. L. 114–328, §5203(a), added subsecs. (a) to (c) and struck out former subsecs. (a) to (c) which related to requirement of preliminary hearing, hearing officer, and report of hearing results, respectively.

Subsec. (d)(1). Pub. L. 114–328, §5203(b)(1), substituted ''this section'' for ''subsection (a)''.

Subsec. (d)(2). Pub. L. 114–328, §5203(b)(2), substituted ''that is relevant to the issues for determination under subsection (a)(2).'' for ''in defense and mitigation, relevant to the limited purposes of the hearing, as provided for in paragraph (4) and subsection (a)(2).''

Subsec. (d)(3). Pub. L. 114–328, §5203(b)(3), inserted at end ''A declination under this paragraph shall not serve as the sole basis for ordering a deposition under section 849 of this title (article 49).''

Subsec. (d)(4). Pub. L. 114–328, §5203(b)(4), substituted ''determinations under subsection (a)(2)'' for ''the limited purposes of the hearing, as provided in subsection (a)(2)''.

Subsec. (e). Pub. L. 114–328, §5203(c), substituted ''under such rules as the President may prescribe'' for ''as prescribed by the Manual for Courts-Martial''.

Subsec. (g). Pub. L. 114–328, §5203(d), inserted at end ''A defect in a report under subsection (c) is not a basis for relief if the report is in substantial compliance with that subsection.''

2014—Subsec. (a)(1). Pub. L. 113–291 inserted '', unless such hearing is waived by the accused'' after ''preliminary hearing''.

2013—Pub. L. 113–66 substituted ''Preliminary hearing'' for ''Investigation'' in section catchline and amended text generally. Prior to amendment, section provided that no charge or specification may be referred to general court-martial for trial until thorough and impartial investigation of all the matters had been made.

1996—Subsecs. (d), (e). Pub. L. 104–106 added subsec. (d) and redesignated former subsec. (d) as (e).

1981—Subsec. (b). Pub. L. 97–81 substituted ''The accused has the right to be represented at that investigation as provided in section 838 of this title (article 38) and in regulations prescribed under that section'' for ''Upon his own request he shall be represented by civilian counsel if provided by him, or military counsel of his own selection if such counsel is reasonably available, or by counsel detailed by the officer exercising general court-martial jurisdiction over the command''.

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114–328 effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

EFFECTIVE DATE OF 2013 AMENDMENT

Amendment by Pub. L. 113–66 effective on the later of Dec. 26, 2014, or the date of the enactment of the Carl Levin and Howard P. ''Buck'' McKeon National Defense Authorization Act for Fiscal Year 2015 (Dec. 19, 2014) and applicable with respect to preliminary hearings conducted on or after that effective date, see section 1702(d)(1) of Pub. L. 113–66, set out as a note under section 802 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–81 to take effect at end of 60-day period beginning on Nov. 20, 1981, and to apply with respect to investigations under this section that begin on or after that date, see section 7(a) and (b)(3) of Pub. L. 97–81, set out as an Effective Date note under section 706 of this title.

§ 833. Art 33. Disposition guidance

The President shall direct the Secretary of Defense to issue, in consultation with the Secretary of the department in which the Coast Guard is operating when it is not operating as a service in the Navy, non-binding guidance regarding factors that commanders, convening authorities, staff judge advocates, and judge advocates should take into account when exercising their duties with respect to disposition of charges and specifications in the interest of justice and discipline under sections 830 and 834 of this title (articles 30 and 34). Such guidance shall take into account, with appropriate consideration of military requirements, the principles contained in official guidance of the Attorney General to attorneys for the Government with respect to disposition of Federal criminal cases in accordance with the principle of fair and evenhanded administration of Federal criminal law.

(Aug. 10, 1956, ch. 1041, 70A Stat. 49; Pub. L. 114–328, div. E, title LVI, §5204, Dec. 23, 2016, 130 Stat. 2906.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
833 ……….	50:604.	May 5, 1950, ch. 169, §1 (Art. 33), 64 Stat. 119.

AMENDMENTS

2016—Pub. L. 114–328 amended section generally. Prior to amendment, text read as follows: ''When a person is held for trial by general court-martial the commanding officer shall, within eight days after the accused is ordered into arrest or confinement, if practicable, forward the charges, together with the investigation and allied papers, to the officer exercising general court-martial jurisdiction. If that is not practicable, he shall report in writing to that officer the reasons for delay.''

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114–328 effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

§ 834. Art. 34. Advice to convening authority before referral for trial

(a) GENERAL COURT-MARTIAL.—

(1) STAFF JUDGE ADVOCATE ADVICE REQUIRED BEFORE REFERRAL.—Before referral of charges and specifications to a general court-martial for trial, the convening authority shall submit the matter to the staff judge advocate for advice, which the staff judge advocate shall provide to the convening authority in writing. The convening authority may not refer a specification under a charge to a general court-martial unless the staff judge advocate advises the convening authority in writing that—

(A) the specification alleges an offense under this chapter;

(B) there is probable cause to believe that the accused committed the offense charged; and

(C) a court-martial would have jurisdiction over the accused and the offense.

(2) STAFF JUDGE ADVOCATE RECOMMENDATION AS TO DISPOSITION.—Together with the written advice provided under paragraph (1), the staff judge advocate shall provide a written recommendation to the convening authority as to the disposition that should be made of the specification in the interest of justice and discipline.

(3) STAFF JUDGE ADVOCATE ADVICE AND RECOMMENDATION TO ACCOMPANY REFERRAL.—When a convening authority makes a referral for trial by general court-martial, the written advice of the staff judge advocate under paragraph (1) and the written recommendation of the staff judge advocate under paragraph (2) with respect to each specification shall accompany the referral.

(b) SPECIAL COURT-MARTIAL; CONVENING AUTHORITY CONSULTATION WITH JUDGE ADVOCATE.—Before referral of charges and specifications to a special court-martial for trial, the convening authority shall consult a judge advocate on relevant legal issues.

(c) GENERAL AND SPECIAL COURTS-MARTIAL; CORRECTION OF CHARGES AND SPECIFICATIONS BEFORE REFERRAL.—Before referral for trial by general court-martial or special court-martial, changes may be made to charges and specifications—

(1) to correct errors in form; and

(2) when applicable, to conform to the substance of the evidence contained in a report under section 832(c) of this title (article 32(c)).

(d) REFERRAL DEFINED.—In this section, the term ''referral'' means the order of a convening authority that charges and specifications against an accused be tried by a specified court-martial.

(Aug. 10, 1956, ch. 1041, 70A Stat. 49; Pub. L. 98–209, § 4, Dec. 6, 1983, 97 Stat. 1395; Pub. L. 113–66, div. A, title XVII, § 1702(c)(3)(B), Dec. 26, 2013, 127 Stat. 957; Pub. L. 113–291, div. A, title V, § 531(a)(4)(B), Dec. 19, 2014, 128 Stat. 3363; Pub. L. 114–328, div. E, title LVI, § 5205, Dec. 23, 2016, 130 Stat. 2907.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
834(a) ……	50:605(a).	May 5, 1950, ch. 169, § 1
834(b) ……	50:605(b).	(Art. 34), 64 Stat. 119.

In subsection (a), the word ''may'' is substituted for the word ''shall''.

AMENDMENTS

2016—Pub. L. 114–328 amended section generally. Prior to amendment, section consisted of subsecs. (a) to (c) relating to reference of charge to staff judge advocate for consideration and advice before trial, written and signed statement of advice by the staff judge advocate, and corrections to charges and specifications, respectively.

2014—Subsec. (a)(2). Pub. L. 113–291 inserted ''(if there is such a report)'' after ''(article 32)''.

2013—Subsec. (a)(2). Pub. L. 113–66 substituted ''a preliminary hearing under section 832 of this title (article 32)'' for ''investigation under section 832 of this title (article 32) (if there is such a report)''.

1983—Subsec. (a). Pub. L. 98–209, § 4(a), substituted ''judge advocate'' for ''judge advocate or legal officer'', and provisions that the convening authority may not refer a specification under a charge to a general court-martial for trial unless he has been advised in writing by the staff judge advocate that the specification alleges an offense under this chapter, the specification is warranted by the evidence indicated in the report of investigation under section 832 of this title (article 32) (if there is such a report), and a court-martial would have jurisdiction over the accused and the offense, for provision that the convening authority could not refer a charge to a general court-martial for trial unless he found that the charge alleged an offense under this chapter and was warranted by evidence indicated in the report of investigation.

Subsecs. (b), (c). Pub. L. 98–209, § 4(b), added subsec. (b) and redesignated former subsec. (b) as (c).

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114–328 effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

EFFECTIVE DATE OF 2013 AMENDMENT

Amendment by Pub. L. 113–66 effective on the later of Dec. 26, 2014, or the date of the enactment of the Carl Levin and Howard P. ''Buck'' McKeon National Defense Authorization Act for Fiscal Year 2015 (Dec. 19, 2014) and applicable with respect to preliminary hearings conducted on or after that effective date, see section 1702(d)(1) of Pub. L. 113–66, set out as a note under section 802 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–209 effective first day of eighth calendar month beginning after Dec. 6, 1983, but not to apply to any case in which charges were referred to trial before that date, and proceedings in any such case to be held in the same manner and with the same effect as if such amendments had not been enacted, see section 12(a)(1), (3) of Pub. L. 98–209, set out as a note under section 801 of this title.

REVIEW OF DECISIONS NOT TO REFER CHARGES OF CERTAIN SEX-RELATED OFFENSES FOR TRIAL BY COURT-MARTIAL

Pub. L. 113–66, div. A, title XVII, § 1744, Dec. 26, 2013, 127 Stat. 980, as amended by Pub. L. 113–291, div. A, title V, § 541, Dec. 19, 2014, 128 Stat. 3371, provided that:

''(a) REVIEW REQUIRED.—

''(1) IN GENERAL.—The Secretary of Defense shall require the Secretaries of the military departments to provide for review of decisions not to refer charges for trial by court-martial in cases where a sex-related offense has been alleged by a victim of the alleged offense.

''(2) SPECIFIC REVIEW REQUIREMENTS.—As part of a review conducted pursuant to paragraph (1), the Secretary of a military department shall require that—

''(A) consideration be given to the victim's statement provided during the course of the criminal investigation regarding the alleged sex-related offense perpetrated against the victim; and

''(B) a determination be made whether the victim's statement and views concerning disposition of the alleged sex-related offense were considered by the convening authority in making the referral decision.

''(b) SEX-RELATED OFFENSE DEFINED.—In this section, the term 'sex-related offense' means any of the following:

''(1) Rape or sexual assault under subsection (a) or (b) of section 920 of title 10, United States Code (article 120 of the Uniform Code of Military Justice).

''(2) Forcible sodomy under section 925 of such title (article 125 of the Uniform Code of Military Justice).

''(3) An attempt to commit an offense specified in paragraph (1) or (2) as punishable under section 880 of such title (article 80 of the Uniform Code of Military Justice).

''(c) REVIEW OF CERTAIN CASES NOT REFERRED TO COURT-MARTIAL.—

''(1) CASES NOT REFERRED FOLLOWING STAFF JUDGE ADVOCATE RECOMMENDATION FOR REFERRAL FOR TRIAL.—In any case where a staff judge advocate, pursuant to section 834 of title 10, United States Code (article 34 of the Uniform Code of Military Justice), recommends that charges of a sex-related offense be referred for trial by court-martial and the convening authority decides not to refer any charges to a court-martial, the convening authority shall forward the case file to the Secretary of the military department concerned for review as a superior authorized to exercise general court-martial convening authority.

''(2) CASES NOT REFERRED BY CONVENING AUTHORITY UPON REQUEST FOR REVIEW BY CHIEF PROSECUTOR.—

''(A) IN GENERAL.—In any case where a convening authority decides not to refer a charge of a sex-related offense to trial by court-martial, the Secretary of the military department concerned shall review the decision as a superior authority authorized to exercise general court-martial convening authority if the chief prosecutor of the Armed Force concerned, in response to a request by the detailed counsel for the Government, requests review of the decision by the Secretary.

''(B) CHIEF PROSECUTOR DEFINED.—In this paragraph, the term 'chief prosecutor' means the chief prosecutor or equivalent position of an Armed Force, or, if an Armed Force does not have a chief prosecutor or equivalent position, such other trial counsel as shall be designated by the Judge Advocate General of that Armed Force, or in the case of the Marine Corps, the Staff Judge Advocate to the Commandant of the Marine Corps.

''(d) REVIEW OF CASES NOT REFERRED TO COURT-MARTIAL FOLLOWING STAFF JUDGE ADVOCATE RECOMMENDATION NOT TO REFER FOR TRIAL.—In any case where a staff judge advocate, pursuant to section 834 of title 10, United States Code (article 34 of the Uniform Code of Military Justice), recommends that charges of a sex-related offense should not be referred for trial by court-martial and the convening authority decides not to refer any charges to a court-martial, the convening authority shall forward the case file for review to the next superior commander authorized to exercise general court-martial convening authority.

''(e) ELEMENTS OF CASE FILE.—A case file forwarded to higher authority for review pursuant to subsection (c) or (d) shall include the following:

''(1) All charges and specifications preferred under section 830 of title 10, United States Code (article 30 of the Uniform Code of Military Justice).

''(2) All reports of investigations of such charges, including the military criminal investigative organization investigation report and the report prepared under section 832 of title 10, United States Code (article 32 of the Uniform Code of Military Justice), as amended by section 1702.

''(3) A certification that the victim of the alleged sex-related offense was notified of the opportunity to express views on the victim's preferred disposition of the alleged offense for consideration by the convening authority.

''(4) All statements of the victim provided to the military criminal investigative organization and to the victim's chain of command relating to the alleged sex-related offense and any statement provided by the victim to the convening authority expressing the victim's view on the victim's preferred disposition of the alleged offense.

''(5) The written advice of the staff judge advocate to the convening authority pursuant to section 834 of title 10, United States Code (article 34 of the Uniform Code of Military Justice).

''(6) A written statement explaining the reasons for the convening authority's decision not to refer any charges for trial by court-martial.

''(7) A certification that the victim of the alleged sex-related offense was informed of the convening authority's decision to forward the case as provided in subsection (c) or (d).

''(f) NOTICE ON RESULTS OR REVIEW.—The victim of the alleged sex-related offense shall be notified of the results of the review conducted under subsection (c) or (d) in the manner prescribed by the victims and witness assistance program of the Armed Force concerned.

''(g) VICTIM ALLEGATION OF SEX-RELATED OFFENSE.—The Secretary of Defense shall require the Secretaries of the military departments to develop a system to ensure that a victim of a possible sex-related offense under the Uniform Code of Military Justice is given the opportunity to state, either at the time of making an unrestricted report of the allegation or during the criminal investigation of the allegation, whether or not the victim believes that the offense alleged is a sex-related offense subject to the requirements of this section.''

§ 835. Art. 35. Service of charges; commencement of trial

(a) IN GENERAL.—Trial counsel detailed for a court-martial under section 827 of this title (article 27) shall cause to be served upon the accused a copy of the charges and specifications referred for trial.

(b) COMMENCEMENT OF TRIAL.—(1) Subject to paragraphs (2) and (3), no trial or other proceeding of a general court-martial or a special court-martial (including any session under section 839(a) of this title (article 39(a)) may be held over the objection of the accused—

(A) with respect to a general court-martial, from the time of service through the fifth day after the date of service; or

(B) with respect to a special court-martial, from the time of service through the third day after the date of service.

(2) An objection under paragraph (1) may be raised only at the first session of the trial or other proceeding and only if the first session occurs before the end of the applicable period under paragraph (1)(A) or (1)(B). If the first session occurs before the end of the applicable period, the military judge shall, at that session, inquire as to whether the defense objects under this subsection.

(3) This subsection shall not apply in time of war.

(Aug. 10, 1956, ch. 1041, 70A Stat. 49; Pub. L. 90–632, § 2(12), Oct. 24, 1968, 82 Stat. 1337; Pub. L. 114–328, div. E, title LVI, § 5206, Dec. 23, 2016, 130 Stat. 2908.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
835	50:606.	May 5, 1950, ch. 169, § 1 (Art. 35), 64 Stat. 119.

The word ''may'' is substituted for the word ''shall''. The word ''after'' is substituted for the words ''subsequent to''.

AMENDMENTS

2016—Pub. L. 114–328 amended section generally. Prior to amendment, text read as follows: ''The trial counsel to whom court-martial charges are referred for trial shall cause to be served upon the accused a copy of the charges upon which trial is to be had. In time of peace no person may, against his objection, be brought to trial, or be required to participate by himself or counsel in a session called by the military judge under section 839(a) of this title (article 39(a)), in a general court-martial case within a period of five days after the service of charges upon him, or in a special court-martial case within a period of three days after the service of charges upon him.''

1968—Pub. L. 90–632 inserted reference to a session called by the military judge under section 839(a) of this title (article 39(a)).

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114–328 effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

SUBCHAPTER VII—TRIAL PROCEDURE

Sec.	Art.	
836.	36.	President may prescribe rules.
837.	37.	Command influence.
838.	38.	Duties of trial counsel and defense counsel.
839.	39.	Sessions.
840.	40.	Continuances.
841.	41.	Challenges.
842.	42.	Oaths.
843.	43.	Statute of limitations.
844.	44.	Former jeopardy.
845.	45.	Pleas of the accused.
846.	46.	Opportunity to obtain witnesses and other evidence in trials by court-martial.
847.	47.	Refusal of person not subject to chapter to appear, testify, or produce evidence.
848.	48.	Contempt.
849.	49.	Depositions.
850.	50.	Admissibility of sworn testimony from records of courts of inquiry.
850a.	50a.	Defense of lack of mental responsibility.
851.	51.	Voting and rulings.
852.	52.	Votes required for conviction, sentencing, and other matters.
853.	53.	Findings and sentencing.
853a.	53a.	Plea agreements.
854.	54.	Record of trial.

AMENDMENTS

2021—Pub. L. 116–283, div. A, title X, § 1081(a)(20), Jan. 1, 2021, 134 Stat. 3871, added item 837 and struck out former item 837 ''837. Art. 37. Command influence''.

2019—Pub. L. 116–92, div. A, title V, § 532(b), Dec. 20, 2019, 133 Stat. 1361, in item 837 substituted ''Art. 37. Command influence'' for ''37. Unlawfully influencing action of court''.

2017—Pub. L. 115–91, div. A, title X, § 1081(d)(19)(A), Dec. 12, 2017, 131 Stat. 1601, made technical amendment to Pub. L. 114–328, § 5541(4). See 2016 Amendment note below.

2016—Pub. L. 114–328, div. E, title LXIII, § 5541(4), Dec. 23, 2016, 130 Stat. 2966, as amended by Pub. L. 115–91, div. A, title X, § 1081(d)(19)(A), Dec. 12, 2017, 131 Stat. 1601, added item 853a and substituted ''Opportunity to obtain witnesses and other evidence in trials by court-martial'' for ''Opportunity to obtain witnesses and other evidence'' in item 846, ''Refusal of person not subject to chapter to appear, testify, or produce evidence'' for ''Refusal to appear or testify'' in item 847, ''Contempt'' for ''Contempts'' in item 848, ''Admissibility of sworn testimony from records of courts of inquiry'' for ''Admissibility of records of courts of inquiry'' in item 850, ''Votes required for conviction, sentencing, and other matters'' for ''Number of votes required'' in item 852, and ''Findings and sentencing'' for ''Court to announce action'' in item 853.

1986—Pub. L. 99–661, div. A, title VIII, § 802(a)(2), Nov. 14, 1986, 100 Stat. 3906, added item 850a.

§ 836. Art. 36. President may prescribe rules

(a) Pretrial, trial, and post-trial procedures, including modes of proof, for cases arising under this chapter triable in courts-martial, military commissions and other military tribunals, and procedures for courts of inquiry, may be prescribed by the President by regulations which shall, so far as he considers practicable, apply the principles of law and the rules of evidence generally recognized in the trial of criminal cases in the United States district courts, but which may not, except as provided in chapter 47A of this title, be contrary to or inconsistent with this chapter.

(b) All rules and regulations made under this article shall be uniform insofar as practicable, except insofar as applicable to military commissions established under chapter 47A of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 50; Pub. L. 96–107, title VIII, § 801(b), Nov. 9, 1979, 93 Stat. 811; Pub. L. 101–510, div. A, title XIII, § 1301(4), Nov. 5, 1990, 104 Stat. 1668; Pub. L. 109–366, § 4(a)(3), Oct. 17, 2006, 120 Stat. 2631.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
836(a)	50:611(a).	May 5, 1950, ch. 169, § 1 (Art. 36), 64 Stat. 120.
836(b)	50:611(b).	

In subsection (a), the word ''considers'' is substituted for the word ''deems''. The word ''may'' is substituted for the word ''shall''.

In subsection (b), the word ''under'' is substituted for the words ''in pursuance of''.

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–366, § 4(a)(3)(A), inserted '', except as provided in chapter 47A of this title,'' after ''but which may not''.

Subsec. (b). Pub. L. 109–366, § 4(a)(3)(B), inserted before period at end '', except insofar as applicable to military commissions established under chapter 47A of this title''.

1990—Subsec. (b). Pub. L. 101–510 struck out ''and shall be reported to Congress'' after ''as practicable''.

1979—Subsec. (a). Pub. L. 96–107 substituted provisions authorizing pretrial, trial, and post-trial procedures for cases under this chapter triable in courts-martial, military commissions and other military tri-

bunals, for provisions authorizing procedure in cases before courts-martial, military commissions, and other military tribunals.

§ 837. Art. 37. Command influence

(a)(1) No court-martial convening authority, nor any other commanding officer, may censure, reprimand, or admonish the court or any member, military judge, or counsel thereof, with respect to the findings or sentence adjudged by the court, or with respect to any other exercise of its or his functions in the conduct of the proceeding.

(2) No court-martial convening authority, nor any other commanding officer, may deter or attempt to deter a potential witness from participating in the investigatory process or testifying at a court-martial. The denial of a request to travel at government expense or refusal to make a witness available shall not by itself constitute unlawful command influence.

(3) No person subject to this chapter may attempt to coerce or, by any unauthorized means, attempt to influence the action of a court-martial or any other military tribunal or any member thereof, in reaching the findings or sentence in any case, or the action of any convening, approving, or reviewing authority or preliminary hearing officer with respect to such acts taken pursuant to this chapter as prescribed by the President.

(4) Conduct that does not constitute a violation of paragraphs (1) through (3) may include, for example—

(A) general instructional or informational courses in military justice if such courses are designed solely for the purpose of instructing persons on the substantive and procedural aspects of courts-martial;

(B) statements regarding criminal activity or a particular criminal offense that do not advocate a particular disposition, or a particular court-martial finding or sentence, or do not relate to a particular accused; or

(C) statements and instructions given in open court by the military judge or counsel.

(5)(A) Notwithstanding paragraphs (1) through (3), but subject to subparagraph (B)—

(i) a superior convening authority or officer may generally discuss matters to consider regarding the disposition of alleged violations of this chapter with a subordinate convening authority or officer; and

(ii) a subordinate convening authority or officer may seek advice from a superior convening authority or officer regarding the disposition of an alleged offense under this chapter.

(B) No superior convening authority or officer may direct a subordinate convening authority or officer to make a particular disposition in a specific case or otherwise substitute the discretion of such authority or such officer for that of the subordinate convening authority or officer.

(b) In the preparation of an effectiveness, fitness, or efficiency report, or any other report or document used in whole or in part for the purpose of determining whether a member of the armed forces is qualified to be advanced in grade, or in determining the assignment or transfer of a member of the armed forces or in determining whether a member of the armed forces should be retained on active duty, no person subject to this chapter may, in preparing any such report (1) consider or evaluate the performance of duty of any such member as a member of a court-martial, or (2) give a less favorable rating or evaluation of any member of the armed forces because of the zeal with which such member, as counsel, represented any person in a court-martial proceeding.

(c) No finding or sentence of a court-martial may be held incorrect on the ground of a violation of this section unless the violation materially prejudices the substantial rights of the accused.

(d)(1) A superior convening authority or commanding officer may withhold the authority of a subordinate convening authority or officer to dispose of offenses in individual cases, types of cases, or generally.

(2) Except as provided in paragraph (1) or as otherwise authorized by this chapter, a superior convening authority or commanding officer may not limit the discretion of a subordinate convening authority or officer to act with respect to a case for which the subordinate convening authority or officer has authority to dispose of the offenses.

(Aug. 10, 1956, ch. 1041, 70A Stat. 50; Pub. L. 90–632, § 2(13), Oct. 24, 1968, 82 Stat. 1338; Pub. L. 116–92, div. A, title V, § 532(a), Dec. 20, 2019, 133 Stat. 1359.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
837	50:612.	May 5, 1950, ch. 169, § 1 (Art. 37), 64 Stat. 120.

The word ''may'' is substituted for the word ''shall''.

AMENDMENTS

2019—Pub. L. 116–92, § 532(a)(1), substituted ''Command influence'' for ''Unlawfully influencing action of court'' in section catchline.

Subsec. (a). Pub. L. 116–92, § 532(a)(2), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''No authority convening a general, special, or summary court-martial, nor any other commanding officer, may censure, reprimand, or admonish the court or any member, military judge, or counsel thereof, with respect to the findings or sentence adjudged by the court, or with respect to any other exercise of its or his functions in the conduct of the proceeding. No person subject to this chapter may attempt to coerce or, by any unauthorized means, influence the action of a court-martial or any other military tribunal or any member thereof, in reaching the findings or sentence in any case, or the action of any convening, approving, or reviewing authority with respect to his judicial acts. The foregoing provisions of the subsection shall not apply with respect to (1) general instructional or informational courses in military justice if such courses are designed solely for the purpose of instructing members of a command in the substantive and procedural aspects of courts-martial, or (2) to statements and instructions given in open court by the military judge, president of a special court-martial, or counsel.''

Subsec. (b). Pub. L. 116–92, § 532(a)(3), substituted ''advanced in grade'' for ''advanced, in grade'' and ''person in a court-martial proceeding'' for ''accused before a court-martial''.

Subsecs. (c), (d). Pub. L. 116–92, § 532(a)(4), added subsecs. (c) and (d).

1968—Pub. L. 90–632 designated existing provisions as subsec. (a), substituted ''military judge'' for ''law officer'', inserted provisions specifically exempting instructional or general informational lectures on military justice and statements and instructions given in open court by the military judge, president of a special court-martial, or counsel from prohibitions of subsec. (a), and added subsec. (b).

EFFECTIVE DATE OF 2019 AMENDMENT

Pub. L. 116–92, div. A, title V, § 532(c), Dec. 20, 2019, 133 Stat. 1361, provided that: ''The amendments made by subsections (a) and (b) [amending this section] shall take effect on the date of the enactment of this Act [Dec. 20, 2019] and shall apply with respect to violations of section 837 of title 10, United States Code (article 37 of the Uniform Code of Military Justice), committed on or after such date.''

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

§ 838. Art. 38. Duties of trial counsel and defense counsel

(a) The trial counsel of a general or special court-martial shall prosecute in the name of the United States, and shall, under the direction of the court, prepare the record of the proceedings.

(b)(1) The accused has the right to be represented in his defense before a general or special court-martial or at a preliminary hearing under section 832 of this title (article 32) as provided in this subsection.

(2) The accused may be represented by civilian counsel if provided by him.

(3) The accused may be represented—

(A) by military counsel detailed under section 827 of this title (article 27); or

(B) by military counsel of his own selection if that counsel is reasonably available (as determined under regulations prescribed under paragraph (7)).

(4) If the accused is represented by civilian counsel, military counsel detailed or selected under paragraph (3) shall act as associate counsel unless excused at the request of the accused.

(5) Except as provided under paragraph (6), if the accused is represented by military counsel of his own selection under paragraph (3)(B), any military counsel detailed under paragraph (3)(A) shall be excused.

(6) The accused is not entitled to be represented by more than one military counsel. However, the person authorized under regulations prescribed under section 827 of this title (article 27) to detail counsel, in his sole discretion—

(A) may detail additional military counsel as assistant defense counsel; and

(B) if the accused is represented by military counsel of his own selection under paragraph (3)(B), may approve a request from the accused that military counsel detailed under paragraph (3)(A) act as associate defense counsel.

(7) The Secretary concerned shall, by regulation, define ''reasonably available'' for the purpose of paragraph (3)(B) and establish procedures for determining whether the military counsel selected by an accused under that paragraph is reasonably available. Such regulations may not prescribe any limitation based on the reasonable availability of counsel solely on the grounds that the counsel selected by the accused is from an armed force other than the armed force of which the accused is a member. To the maximum extent practicable, such regulations shall establish uniform policies among the armed forces while recognizing the differences in the circumstances and needs of the various armed forces. The Secretary concerned shall submit copies of regulations prescribed under this paragraph to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives.

(c) In any court-martial proceeding resulting in a conviction, the defense counsel—

(1) may forward for attachment to the record of proceedings a brief of such matters as he determines should be considered in behalf of the accused on review (including any objection to the contents of the record which he considers appropriate);

(2) may assist the accused in the submission of any matter under section 860, 860a, or 860b of this title (article 60, 60a, or 60b); and

(3) may take other action authorized by this chapter.

(d) An assistant trial counsel of a general court-martial may, under the direction of the trial counsel or when he is qualified to be a trial counsel as required by section 827 of this title (article 27), perform any duty imposed by law, regulation, or the custom of the service upon the trial counsel of the court. An assistant trial counsel of a special court-martial may perform any duty of the trial counsel.

(e) An assistant defense counsel of a general or special court-martial may perform any duty imposed by law, regulation, or the custom of the service upon counsel for the accused.

(Aug. 10, 1956, ch. 1041, 70A Stat. 50; Pub. L. 90–632, § 2(14), Oct. 24, 1968, 82 Stat. 1338; Pub. L. 97–81, § 4(b), Nov. 20, 1981, 95 Stat. 1088; Pub. L. 98–209, § 3(e), Dec. 6, 1983, 97 Stat. 1394; Pub. L. 104–106, div. A, title XV, § 1502(a)(1), Feb. 10, 1996, 110 Stat. 502; Pub. L. 106–65, div. A, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 113–66, div. A, title XVII, § 1702(c)(3)(C), Dec. 26, 2013, 127 Stat. 957; Pub. L. 114–328, div. E, title LVII, § 5221, Dec. 23, 2016, 130 Stat. 2909; Pub. L. 115–91, div. A, title V, § 531(c), Dec. 12, 2017, 131 Stat. 1384.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
838(a)	50:613(a).	May 5, 1950, ch. 169, § 1 (Art. 38), 64 Stat. 120.
838(b)	50:613(b).	
838(c)	50:613(c).	
838(d)	50:613(d).	
838(e)	50:613(e).	

In subsection (b), the word ''has'' is substituted for the words ''shall have''. The word ''under'' is substituted for the words ''pursuant to''. The word ''duly'' is omitted as surplusage. The words ''detailed'' and ''who were detailed'' are substituted for the word ''appointed'', since the filling of the position involved is not appointment to an office in the constitutional sense.

In subsection (c), the word ''considers'' is substituted for the words ''may deem''.

AMENDMENTS

2017—Subsec. (c)(2). Pub. L. 115–91 substituted ''section 860, 860a, or 860b of this title (article 60, 60a, or 60b)'' for ''section 860 of this title (article 60)''.

2016—Subsec. (e). Pub. L. 114–328 struck out '', under the direction of the defense counsel or when he is qualified to be the defense counsel as required by section 827 of this title (article 27),'' after ''court-martial may''.

2013—Subsec. (b)(1). Pub. L. 113–66 substituted ''a preliminary hearing under section 832'' for ''an investigation under section 832''.

1999—Subsec. (b)(7). Pub. L. 106–65 substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security''.

1996—Subsec. (b)(7). Pub. L. 104–106 substituted ''Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives'' for ''Committees on Armed Services of the Senate and House of Representatives''.

1983—Subsec. (b)(6). Pub. L. 98–209, §3(e)(1), substituted ''the person authorized under regulations prescribed under section 827 of this title (article 27) to detail counsel'' for ''a convening authority''.

Subsec. (b)(7). Pub. L. 98–209, §3(e)(2), inserted provision that such regulations may not prescribe any limitation based on the reasonable availability of counsel solely on the grounds that the counsel selected by the accused is from an armed force other than the armed force of which the accused is a member.

Subsec. (c). Pub. L. 98–209, §3(e)(3), designated existing provisions as par. (1), made minor changes in phraseology and punctuation, and added pars. (2) and (3).

1981—Subsec. (b). Pub. L. 97–81 revised subsec. (b) by dividing its provisions into seven numbered paragraphs and inserted provisions relating to the right to counsel at an investigation under section 832 of this title (article 32), authorizing the promulgation of regulations relating to the ''reasonable availability'' of military counsel, and authorizing the detailing of additional military counsel for the accused under specified circumstances.

1968—Subsec. (b). Pub. L. 90–632 substituted ''military judge or by the president of a court-martial without a military judge'' for ''president of the court''.

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by Pub. L. 115–91 effective immediately after the amendments made by div. E (§§5001–5542) of Pub. L. 114–328 take effect as provided for in section 5542 of that Act (10 U.S.C. 801 note), see section 531(p) of Pub. L. 115–91, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114–328 effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

EFFECTIVE DATE OF 2013 AMENDMENT

Amendment by Pub. L. 113–66 effective on the later of Dec. 26, 2014, or the date of the enactment of the Carl Levin and Howard P. ''Buck'' McKeon National Defense Authorization Act for Fiscal Year 2015 (Dec. 19, 2014) and applicable with respect to preliminary hearings conducted on or after that effective date, see section 1702(d)(1) of Pub. L. 113–66, set out as a note under section 802 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–209 effective first day of eighth calendar month after Dec. 6, 1983, but not to affect the designation or detail of a military judge or military counsel to a court-martial before that date, see section 12(a)(1), (2) of Pub. L. 98–209, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–81 to take effect at end of 60-day period beginning on Nov. 20, 1981, and to apply to trials by courts-martial in which all charges are referred to trial on or after that date, see section 7(a) and (b)(4) of Pub. L. 97–81, set out as an Effective Date note under section 706 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective on first day of tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

§ 839. Art. 39. Sessions

(a) At any time after the service of charges which have been referred for trial to a court-martial composed of a military judge and members, the military judge may, subject to section 835 of this title (article 35), call the court into session without the presence of the members for the purpose of—

(1) hearing and determining motions raising defenses or objections which are capable of determination without trial of the issues raised by a plea of not guilty;

(2) hearing and ruling upon any matter which may be ruled upon by the military judge under this chapter, whether or not the matter is appropriate for later consideration or decision by the members of the court;

(3) holding the arraignment and receiving the pleas of the accused;

(4) conducting a sentencing proceeding and sentencing the accused under section 853(b)(1) of this title (article 53(b)(1)); and

(5) performing any other procedural function which may be performed by the military judge under this chapter or under rules prescribed pursuant to section 836 of this title (article 36) and which does not require the presence of the members of the court.

(b) Proceedings under subsection (a) shall be conducted in the presence of the accused, the defense counsel, and the trial counsel and shall be made a part of the record. These proceedings may be conducted notwithstanding the number of members of the court and without regard to section 829 of this title (article 29). If authorized by regulations of the Secretary concerned, and if at least one defense counsel is physically in the presence of the accused, the presence required by this subsection may otherwise be established by audiovisual technology (such as videoteleconferencing technology).

(c) When the members of a court-martial deliberate or vote, only the members may be present. All other proceedings, including any other consultation of the members of the court with counsel or the military judge, shall be made a part of the record and shall be in the presence of the accused, the defense counsel, the trial counsel, and the military judge.

(d) The findings, holdings, interpretations, and other precedents of military commissions under chapter 47A of this title—

(1) may not be introduced or considered in any hearing, trial, or other proceeding of a court-martial under this chapter; and

(2) may not form the basis of any holding, decision, or other determination of a court-martial.

(Aug. 10, 1956, ch. 1041, 70A Stat. 51; Pub. L. 90–632, § 2(15), Oct. 24, 1968, 82 Stat. 1338; Pub. L. 101–510, div. A, title V, § 541(a), Nov. 5, 1990, 104 Stat. 1565; Pub. L. 109–163, div. A, title V, § 556, Jan. 6, 2006, 119 Stat. 3266; Pub. L. 111–84, div. A, title XVIII, § 1803(a)(2), Oct. 28, 2009, 123 Stat. 2612; Pub. L. 114–328, div. E, title LVII, § 5222, Dec. 23, 2016, 130 Stat. 2909; Pub. L. 115–91, div. A, title X, § 1081(c)(1)(D), Dec. 12, 2017, 131 Stat. 1598.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
839	50:614.	May 5, 1950, ch. 169, § 1 (Art. 39), 64 Stat. 121.

The word ''When'' is substituted for the word ''Whenever''. The words ''deliberates or votes'' are substituted for the words ''is to deliberate or vote''. The word ''may'' is substituted for the word ''shall''. The word ''shall'' is inserted before the words ''be in the presence'' for clarity.

AMENDMENTS

2017—Subsec. (a)(4). Pub. L. 115–91 substituted ''under section 853(b)(1) of this title (article 53(b)(1))'' for ''in non-capital cases unless the accused requests sentencing by members under section 825 of this title (article 25)''.

2016—Subsec. (a)(3). Pub. L. 114–328, § 5222(1)(A), struck out ''if permitted by regulations of the Secretary concerned,'' before ''holding'' and ''and'' after ''accused;''.

Subsec. (a)(4), (5). Pub. L. 114–328, § 5222(1)(B), (C), added par. (4) and redesignated former par. (4) as (5).

Subsec. (c). Pub. L. 114–328, § 5222(2), struck out '', in cases in which a military judge has been detailed to the court,'' after ''the trial counsel, and''.

2009—Subsec. (d). Pub. L. 111–84 added subsec. (d).

2006—Pub. L. 109–163 redesignated concluding provisions of subsec. (a) as subsec. (b), substituted ''Proceedings under subsection (a) shall be conducted'' for ''These proceedings shall be conducted'', inserted at end ''If authorized by regulations of the Secretary concerned, and if at least one defense counsel is physically in the presence of the accused, the presence required by this subsection may otherwise be established by audiovisual technology (such as videoteleconferencing technology).'', and redesignated former subsec. (b) as (c).

1990—Subsec. (a). Pub. L. 101–510 inserted at end ''These proceedings may be conducted notwithstanding the number of members of the court and without regard to section 829 of this title (article 29).''

1968—Pub. L. 90–632 added subsec. (a), designated existing provisions as subsec. (b), substituted ''military judge'' for ''law officer'', and struck out provisions authorizing the court after voting on the findings in a general court-martial to request the law officer and the reporter to appear before the court to put the findings in proper form.

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by Pub. L. 115–91 effective immediately after the amendments made by div. E (§§ 5001–5542) of Pub. L. 114–328 take effect as provided for in section 5542 of that Act (10 U.S.C. 801 note), see section 1081(c)(4) of Pub. L. 115–91, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114–328 effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–510, div. A, title V, § 541(e), Nov. 5, 1990, 104 Stat. 1565, provided that: ''The amendments made by subsections (a) through (d) [amending this section and section 841 of this title] shall apply only to a court-martial convened on or after the date of the enactment of this Act [Nov. 5, 1990].''

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

§ 840. Art. 40. Continuances

The military judge or a summary court-martial may, for reasonable cause, grant a continuance to any party for such time, and as often, as may appear to be just.

(Aug. 10, 1956, ch. 1041, 70A Stat. 51; Pub. L. 90–632, § 2(16), Oct. 24, 1968, 82 Stat. 1339; Pub. L. 114–328, div. E, title LVII, § 5223, Dec. 23, 2016, 130 Stat. 2909.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
840	50:615.	May 5, 1950, ch. 169, § 1 (Art. 40), 64 Stat. 121.

AMENDMENTS

2016—Pub. L. 114–328 substituted ''summary court-martial'' for ''court-martial without a military judge''.

1968—Pub. L. 90–632 inserted reference to military judge.

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114–328 effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

§ 841. Art. 41. Challenges

(a)(1) The military judge and members of a general or special court-martial may be challenged by the accused or the trial counsel for cause stated to the court. The military judge shall determine the relevancy and validity of challenges for cause, and may not receive a challenge to more than one person at a time. Challenges by the trial counsel shall ordinarily be presented and decided before those by the accused are offered.

(2) If exercise of a challenge for cause reduces the court below the number of members required by section 816 of this title (article 16), all parties shall (notwithstanding section 829 of this title (article 29)) either exercise or waive any challenge for cause then apparent against the remaining members of the court before additional members are detailed to the court. However, peremptory challenges shall not be exercised at that time.

(b)(1) Each accused and the trial counsel are entitled initially to one peremptory challenge of

members of the court. The military judge may not be challenged except for cause.

(2) If exercise of a peremptory challenge reduces the court below the number of members required by section 816 of this title (article 16), the parties shall (notwithstanding section 829 of this title (article 29)) either exercise or waive any remaining peremptory challenge (not previously waived) against the remaining members of the court before additional members are detailed to the court.

(c) Whenever additional members are detailed to the court, and after any challenges for cause against such additional members are presented and decided, each accused and the trial counsel are entitled to one peremptory challenge against members not previously subject to peremptory challenge.

(Aug. 10, 1956, ch. 1041, 70A Stat. 51; Pub. L. 90–632, § 2(17), Oct. 24, 1968, 82 Stat. 1339; Pub. L. 101–510, div. A, title V, § 541(b)–(d), Nov. 5, 1990, 104 Stat. 1565; Pub. L. 111–383, div. A, title X, § 1075(b)(13), Jan. 7, 2011, 124 Stat. 4369; Pub. L. 114–328, div. E, title LVII, § 5224, Dec. 23, 2016, 130 Stat. 2909.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
841(a) ……	50:616(a).	May 5, 1950, ch. 169, § 1 (Art. 41), 64 Stat. 121.
841(b) ……	50:616(b).	

In subsection (a), the word ''may'' is substituted for the word ''shall'' before the words ''not receive''.

In subsection (b), the word ''the'' is inserted before the word ''trial''. The word ''is'' is substituted for the words ''shall be''. The word ''may'' is substituted for the word ''shall''.

AMENDMENTS

2016—Subsec. (a)(1). Pub. L. 114–328, § 5224(1), struck out '', or, if none, the court,'' before ''shall determine''.

Subsec. (a)(2). Pub. L. 114–328, § 5224(2), struck out ''minimum'' after ''below the''.

Subsec. (b)(2). Pub. L. 114–328, § 5224(3), struck out ''minimum'' after ''below the''.

2011—Subsec. (c). Pub. L. 111–383 substituted ''trial counsel'' for ''trail counsel''.

1990—Subsec. (a). Pub. L. 101–510, § 541(b), designated existing provision as par. (1) and added par. (2).

Subsec. (b). Pub. L. 101–510, § 541(c), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''Each accused and the trial counsel is entitled to one peremptory challenge, but the military judge may not be challenged except for cause.''

Subsec. (c). Pub. L. 101–510, § 541(d), added subsec. (c).

1968—Subsec. (a). Pub. L. 90–632, § 2(17)(A), (B), inserted reference to the military judge and struck out references to the law officer of a general court-martial.

Subsec. (b). Pub. L. 90–632, § 2(17)(C), substituted ''military judge'' for ''law officer''.

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114–328 effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–510 applicable only to court-martial convened on or after Nov. 5, 1990, see section 541(e) of Pub. L. 101–510, set out as a note under section 839 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

§ 842. Art. 42. Oaths

(a) Before performing their respective duties, military judges, members of general and special courts-martial, trial counsel, assistant trial counsel, defense counsel, assistant or associate defense counsel, reporters, and interpreters shall take an oath to perform their duties faithfully. The form of the oath, the time and place of the taking thereof, the manner of recording the same, and whether the oath shall be taken for all cases in which these duties are to be performed or for a particular case, shall be as prescribed in regulations of the Secretary concerned. These regulations may provide that an oath to perform faithfully duties as a military judge, trial counsel, assistant trial counsel, defense counsel, or assistant or associate defense counsel may be taken at any time by any judge advocate or other person certified to be qualified or competent for the duty, and if such an oath is taken it need not again be taken at the time the judge advocate or other person is detailed to that duty.

(b) Each witness before a court-martial shall be examined on oath.

(Aug. 10, 1956, ch. 1041, 70A Stat. 51; Pub. L. 90–632, § 2(18), Oct. 24, 1968, 82 Stat. 1339; Pub. L. 98–209, §§ 2(e), 3(f), Dec. 6, 1983, 97 Stat. 1393, 1395.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
842(a) ……	50:617(a).	May 5, 1950, ch. 169, § 1 (Art. 42), 64 Stat. 121.
842(b) ……	50:617(b).	

In subsection (a), the word ''all'' and the word ''the'' before the words ''members'', ''trial'', ''defense'', and ''reporter'' are omitted as surplusage.

In subsections (a) and (b), the words ''or affirmation'' are omitted as covered by the definition of the word ''oath'' in section 1 of Title 1.

In subsection (b), the words ''Each witness'' are substituted for the words ''All witnesses''.

AMENDMENTS

1983—Subsec. (a). Pub. L. 98–209 struck out '', law specialist,'' after ''judge advocate'' in two places, substituted ''assistant or associate defense counsel'' for ''assistant defense counsel''.

1968—Subsec. (a). Pub. L. 90–632 struck out requirement that the oath given to court-martial personnel be taken in the presence of the accused and provided that the form of the oath, the time and place of its taking, the manner of recording thereof, and whether the oath shall be taken for all cases or for a particular case shall be as prescribed by regulations of the Secretary concerned and contemplated secretarial regulations allowing the administration of an oath to certified legal personnel on a one-time basis.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–209 effective first day of eighth calendar month beginning after Dec. 6, 1983, see section 12(a)(1) of Pub. L. 98–209, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective first day of tenth month following October 1968, see section 4 of

Pub. L. 90–632, set out as a note under section 801 of this title.

§ 843. Art. 43. Statute of limitations

(a) NO LIMITATION FOR CERTAIN OFFENSES.—A person charged with absence without leave or missing movement in time of war, with murder, rape or sexual assault, or rape or sexual assault of a child, maiming of a child, kidnapping of a child, or with any other offense punishable by death, may be tried and punished at any time without limitation.

(b) FIVE-YEAR LIMITATION FOR TRIAL BY COURT-MARTIAL.—(1) Except as otherwise provided in this section (article), a person charged with an offense is not liable to be tried by court-martial if the offense was committed more than five years before the receipt of sworn charges and specifications by an officer exercising summary court-martial jurisdiction over the command.

(2)(A) A person charged with having committed a child abuse offense against a child is liable to be tried by court-martial if the sworn charges and specifications are received during the life of the child or within ten years after the date on which the offense was committed, whichever provides a longer period, by an officer exercising summary court-martial jurisdiction with respect to that person.

(B) In subparagraph (A), the term ''child abuse offense'' means an act that involves abuse of a person who has not attained the age of 16 years and constitutes any of the following offenses:

(i) Any offense in violation of section 920, 920a, 920b, 920c, or 930 of this title (article 120, 120a, 120b, 120c, or 130), unless the offense is covered by subsection (a).

(ii) Aggravated assault, assault consummated by a battery, or assault with intent to commit specified offenses in violation of section 928 of this title (article 128).

(C) In subparagraph (A), the term ''child abuse offense'' includes an act that involves abuse of a person who has not attained the age of 18 years and would constitute an offense under chapter 110 or 117 of title 18 or under section 1591 of that title.

(3) A person charged with an offense is not liable to be punished under section 815 of this title (article 15) if the offense was committed more than two years before the imposition of punishment.

(c) TOLLING FOR ABSENCE WITHOUT LEAVE OR FLIGHT FROM JUSTICE.—Periods in which the accused is absent without authority or fleeing from justice shall be excluded in computing the period of limitation prescribed in this section (article).

(d) TOLLING FOR ABSENCE FROM US OR MILITARY JURISDICTION.—Periods in which the accused was absent from territory in which the United States has the authority to apprehend him, or in the custody of civil authorities, or in the hands of the enemy, shall be excluded in computing the period of limitation prescribed in this article.

(e) EXTENSION FOR OFFENSES IN TIME OF WAR DETRIMENTAL TO PROSECUTION OF WAR.—For an offense the trial of which in time of war is certified to the President by the Secretary concerned to be detrimental to the prosecution of the war or inimical to the national security, the period of limitation prescribed in this article is extended to six months after the termination of hostilities as proclaimed by the President or by a joint resolution of Congress.

(f) EXTENSION FOR OTHER OFFENSES IN TIME OF WAR.—When the United States is at war, the running of any statute of limitations applicable to any offense under this chapter—

(1) involving fraud or attempted fraud against the United States or any agency thereof in any manner, whether by conspiracy or not;

(2) committed in connection with the acquisition, care, handling, custody, control, or disposition of any real or personal property of the United States; or

(3) committed in connection with the negotiation, procurement, award, performance, payment, interim financing, cancellation, or other termination or settlement, of any contract, subcontract, or purchase order which is connected with or related to the prosecution of the war, or with any disposition of termination inventory by any war contractor or Government agency;

is suspended until three years after the termination of hostilities as proclaimed by the President or by a joint resolution of Congress.

(g) DEFECTIVE OR INSUFFICIENT CHARGES.—(1) If charges or specifications are dismissed as defective or insufficient for any cause and the period prescribed by the applicable statute of limitations—

(A) has expired; or

(B) will expire within 180 days after the date of dismissal of the charges and specifications,

trial and punishment under new charges and specifications are not barred by the statute of limitations if the conditions specified in paragraph (2) are met.

(2) The conditions referred to in paragraph (1) are that the new charges and specifications must—

(A) be received by an officer exercising summary court-martial jurisdiction over the command within 180 days after the dismissal of the charges or specifications; and

(B) allege the same acts or omissions that were alleged in the dismissed charges or specifications (or allege acts or omissions that were included in the dismissed charges or specifications).

(h) FRAUDULENT ENLISTMENT OR APPOINTMENT.—A person charged with fraudulent enlistment or fraudulent appointment under section 904a(1) of this title (article 104a(1)) may be tried by court-martial if the sworn charges and specifications are received by an officer exercising summary court-martial jurisdiction with respect to that person, as follows:

(1) In the case of an enlisted member, during the period of the enlistment or five years, whichever provides a longer period.

(2) In the case of an officer, during the period of the appointment or five years, whichever provides a longer period.

(i) DNA EVIDENCE.—If DNA testing implicates an identified person in the commission of an of-

fense punishable by confinement for more than one year, no statute of limitations that would otherwise preclude prosecution of the offense shall preclude such prosecution until a period of time following the implication of the person by DNA testing has elapsed that is equal to the otherwise applicable limitation period.

(Aug. 10, 1956, ch. 1041, 70A Stat. 51; Pub. L. 99–661, div. A, title VIII, §805(a), (b), Nov. 14, 1986, 100 Stat. 3908; Pub. L. 108–136, div. A, title V, §551, Nov. 24, 2003, 117 Stat. 1481; Pub. L. 109–163, div. A, title V, §§552(e), 553, Jan. 6, 2006, 119 Stat. 3263, 3264; Pub. L. 109–364, div. A, title X, §1071(a)(4), Oct. 17, 2006, 120 Stat. 2398; Pub. L. 111–383, div. A, title X, §1075(b)(14), Jan. 7, 2011, 124 Stat. 4369; Pub. L. 112–81, div. A, title V, §541(d)(1), Dec. 31, 2011, 125 Stat. 1410; Pub. L. 112–239, div. A, title X, §1076(f)(8), Jan. 2, 2013, 126 Stat. 1952; Pub. L. 113–66, div. A, title XVII, §1703(a), (b), Dec. 26, 2013, 127 Stat. 958; Pub. L. 113–291, div. A, title V, §531(d)(2)(A), Dec. 19, 2014, 128 Stat. 3364; Pub. L. 114–328, div. E, title LVII, §5225(a)–(e), Dec. 23, 2016, 130 Stat. 2909, 2910; Pub. L. 115–91, div. A, title X, §1081(c)(1)(E), Dec. 12, 2017, 131 Stat. 1598; Pub. L. 116–92, div. A, title V, §533(a), Dec. 20, 2019, 133 Stat. 1361.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
843(a)	50:618(a).	May 5, 1950, ch. 169, §1 (Art. 43), 64 Stat. 121.
843(b)	50:618(b).	
843(c)	50:618(c).	
843(d)	50:618(d).	
843(e)	50:618(e).	
843(f)	50:618(f).	

In subsection (b), the word ''inclusive'' is omitted as surplusage.

In subsections (b) and (c), the words ''is not'' are substituted for the words ''shall not be''.

In subsection (e), the words ''For an'' are substituted for the words ''In the case of any''. The word ''is'' is substituted for the words ''shall be''. The words ''Secretary concerned'' are substituted for the words ''Secretary of the Department''.

In subsection (f), the word ''is'' is substituted for the words ''shall be''.

AMENDMENTS

2019—Subsec. (a). Pub. L. 116–92, §533(a)(1), inserted ''maiming of a child, kidnapping of a child,'' after ''sexual assault of a child,''.

Subsec. (b)(2)(B)(ii) to (iv). Pub. L. 116–92, §533(a)(2), redesignated cl. (iii) as (ii) and struck out former cls. (ii) and (iv) which read as follows:

''(ii) Maiming in violation of section 928a of this title (article 128a).

''(iv) Kidnapping in violation of section 925 of this title (article 125).''

2017—Subsec. (i). Pub. L. 115–91 substituted ''DNA EVIDENCE'' for ''DNA EVIDENCE'' in heading.

2016—Pub. L. 114–328, §5225(e), inserted headings in subsecs. (a) to (g).

Subsec. (b)(2)(A). Pub. L. 114–328, §5225(a), substituted ''ten years'' for ''five years''.

Subsec. (b)(2)(B)(i) to (v). Pub. L. 114–328, §5225(d), added pars. (i) to (iv) and struck out former pars. (i) to (v) which read as follows:

''(i) Any offense in violation of section 920, 920a, 920b, or 920c of this title (article 120, 120a, 120b, or 120c), unless the offense is covered by subsection (a).

''(ii) Maiming in violation of section 924 of this title (article 124).

''(iii) Forcible sodomy in violation of section 925 of this title (article 125).

''(iv) Aggravated assault or assault consummated by a battery in violation of section 928 of this title (article 128).

''(v) Kidnaping, assault with intent to commit murder, voluntary manslaughter, rape, or forcible sodomy, or indecent acts in violation of section 934 of this title (article 134).''

Subsec. (h). Pub. L. 114–328, §5225(b), added subsec. (h).

Subsec. (i). Pub. L. 114–328, §5225(c), added subsec. (i).

2014—Subsec. (b)(2)(B)(iii). Pub. L. 113–291, §531(d)(2)(A)(i), substituted ''Forcible sodomy'' for ''Sodomy''.

Subsec. (b)(2)(B)(v). Pub. L. 113–291, §531(d)(2)(A)(ii), substituted ''forcible sodomy'' for ''sodomy''.

2013—Subsec. (a). Pub. L. 113–66, §1703(a), substituted ''rape or sexual assault, or rape or sexual assault of a child'' for ''rape, or rape of a child''.

Subsec. (b)(2)(B)(i). Pub. L. 113–66, §1703(b), inserted '', unless the offense is covered by subsection (a)'' before period at end.

Subsec. (b)(2)(B)(v). Pub. L. 112–239 substituted ''Kidnaping,'' for ''Kidnaping,,''.

2011—Subsec. (b)(2)(B)(i). Pub. L. 112–81, §541(d)(1)(A), substituted ''section 920, 920a, 920b, or 920c of this title (article 120, 120a, 120b, or 120c)'' for ''section 920 of this title (article 120)''.

Subsec. (b)(2)(B)(v). Pub. L. 112–81, §541(d)(1)(B), struck out ''indecent assault'' after ''Kidnaping,'' and ''or liberties with a child'' after ''indecent acts''.

Pub. L. 111–383 substituted ''Kidnaping, indecent assault,'' for ''Kidnaping; indecent assault;''.

2006—Subsec. (a). Pub. L. 109–163, §553(a), substituted ''with murder or rape, or with any other offense punishable by death'' for ''or with any offense punishable by death''.

Pub. L. 109–163, §552(e), substituted '', rape, or rape of a child,'' for ''or rape,''.

Subsec. (b)(2)(A). Pub. L. 109–163, §553(b)(1), substituted ''during the life of the child or within five years after the date on which the offense was committed, whichever provides a longer period,'' for ''before the child attains the age of 25 years''.

Subsec. (b)(2)(B). Pub. L. 109–163, §553(b)(2)(A), struck out ''sexual or physical'' before ''abuse of a person'' in introductory provisions.

Subsec. (b)(2)(B)(i). Pub. L. 109–163, §553(b)(2)(B), substituted ''Any offense'' for ''Rape or carnal knowledge''.

Subsec. (b)(2)(B)(iii). Pub. L. 109–364, §1071(a)(4)(A), substituted ''125'' for ''126''.

Subsec. (b)(2)(B)(v). Pub. L. 109–163, §553(b)(2)(C), substituted ''Kidnaping; indecent assault;'' for ''Indecent assault,''.

Subsec. (b)(2)(C). Pub. L. 109–364, §1071(a)(4)(B), substituted ''under chapter 110 or 117 of title 18 or under section 1591 of that title'' for ''under chapter 110 or 117, or under section 1591, of title 18''.

Pub. L. 109–163, §553(b)(3), added subpar. (C).

2003—Subsec. (b)(2), (3). Pub. L. 108–136 added par. (2) and redesignated former par. (2) as (3).

1986—Subsecs. (a) to (c). Pub. L. 99–661, §805(a), amended subsecs. (a) to (c) generally. Prior to amendment, subsecs. (a) to (c) read as follows:

''(a) A person charged with desertion or absence without leave in time of war, or with aiding the enemy, mutiny, or murder, may be tried and punished at any time without limitation.

''(b) Except as otherwise provided in this article, a person charged with desertion in time of peace or any of the offenses punishable under sections 919–932 of this title (articles 119–132) is not liable to be tried by court-martial if the offense was committed more than three years before the receipt of sworn charges and specifications by an officer exercising summary court-martial jurisdiction over the command.

''(c) Except as otherwise provided in this article, a person charged with any offense is not liable to be tried by court-martial or punished under section 815 of this title (article 15) if the offense was committed more

than two years before the receipt of sworn charges and specifications by an officer exercising summary court-martial jurisdiction over the command or before the imposition of punishment under section 815 of this title (article 15).''

Subsec. (g). Pub. L. 99–661, § 805(b), added subsec. (g).

EFFECTIVE DATE OF 2019 AMENDMENT

Pub. L. 116–92, div. A, title V, § 533(b), Dec. 20, 2019, 133 Stat. 1361, provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Dec. 20, 2019] and shall apply with respect to the prosecution of offenses committed before, on, or after the date of the enactment of this Act if the applicable limitation period has not yet expired.''

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by section 1081(c)(1)(E) of Pub. L. 115–91 effective immediately after the amendments made by div. E (§§ 5001–5542) of Pub. L. 114–328 take effect as provided for in section 5542 of that Act (10 U.S.C. 801 note), see section 1081(c)(4) of Pub. L. 115–91, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 2016 AMENDMENT

Pub. L. 114–328, div. E, title LVII, § 5225(f), Dec. 23, 2016, 130 Stat. 2910, as amended by Pub. L. 115–91, div. A, title X, § 1081(d)(17), Dec. 12, 2017, 131 Stat. 1600, provided that: ''The amendments made by subsections (a), (b), (c), and (d) [amending this section] shall apply to the prosecution of any offense committed before, on, or after the date of the enactment of this section [Dec. 23, 2016] if the applicable limitation period has not yet expired.''

[Pub. L. 115–91, div. A, title X, § 1081(d), Dec. 12, 2017, 131 Stat. 1599, provided that the amendment made by section 1081(d)(17) to section 5225(f) of Pub. L. 114–328, set out above, is effective as of Dec. 23, 2016, and as if included in Pub. L. 114–328 as enacted.]

Amendment by section 5225(e) of Pub. L. 114–328 effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 113–66, div. A, title XVII, § 1703(c), Dec. 26, 2013, 127 Stat. 958, provided that: ''The amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [Dec. 26, 2013], and shall apply with respect to an offense covered by section 920(b) or 920b(b) of title 10, United States Code (article 120(b) or 120b(b) of the Uniform Code of Military Justice), that is committed on or after that date.''

EFFECTIVE DATE OF 2011 AMENDMENT

Pub. L. 112–81, div. A, title V, § 541(f), Dec. 31, 2011, 125 Stat. 1411, provided that: ''The amendments made by this section [enacting sections 920b and 920c of this title and amending this section and sections 918 and 920 of this title] shall take effect 180 days after the date of the enactment of this Act [Dec. 31, 2011] and shall apply with respect to offenses committed on or after such effective date.''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–163, div. A, title V, § 552(f), Jan. 6, 2006, 119 Stat. 3263, provided that: ''The amendments made by this section [amending this section and sections 918 and 920 of this title and enacting provisions set out as notes under section 920 of this title] shall take effect on October 1, 2007.''

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–661, div. A, title VIII, § 805(c), Nov. 14, 1986, 100 Stat. 3908, provided that: ''The amendments made by this section [amending this section] shall apply to an offense committed on or after the date of the enactment of this Act [Nov. 14, 1986].''

APPLICABILITY OF SUBSECTIONS (b)(2)(B) AND (h)

Pub. L. 115–91, div. A, title V, § 531(n)(2), (3), Dec. 12, 2017, 131 Stat. 1387, provided that:

''(2) CHILD ABUSE OFFENSES.—With respect to offenses committed before the date designated by the President under section 5542(a) of the Military Justice Act of 2016 (division E of Public Law 114–328; 130 Stat. 2967) [10 U.S.C. 801 note], subsection (b)(2)(B) of section 843 of title 10, United States Code (article 43 of the Uniform Code of Military Justice), shall be applied as in effect on December 22, 2016.

''(3) FRAUDULENT ENLISTMENT OR APPOINTMENT OFFENSES.—With respect to the period beginning on December 23, 2016, and ending on the day before the date designated by the President under section 5542(a) of the Military Justice Act of 2016 (division E of Public Law 114–328; 130 Stat. 2967), in the application of subsection (h) of section 843 of title 10, United States Code (article 43 of the Uniform Code of Military Justice), as added by section 5225(b) of that Act (130 Stat. 2909), the reference in such subsection (h) to section 904a(1) of title 10, United States Code (article 104a(1) of the Uniform Code of Military Justice), shall be deemed to be a reference to section 883(1) of title 10, United States Code (article 83(1) of the Uniform Code of Military Justice).''

§ 844. Art. 44. Former jeopardy

(a) No person may, without his consent, be tried a second time for the same offense.

(b) No proceeding in which an accused has been found guilty by a court-martial upon any charge or specification is a trial in the sense of this article until the finding of guilty has become final after review of the case has been fully completed.

(c)(1) A court-martial with a military judge alone is a trial in the sense of this section (article) if, without fault of the accused—

(A) after introduction of evidence; and

(B) before announcement of findings under section 853 of this title (article 53);

the case is dismissed or terminated by the convening authority or on motion of the prosecution for failure of available evidence or witnesses.

(2) A court-martial with a military judge and members is a trial in the sense of this section (article) if, without fault of the accused—

(A) after the members, having taken an oath as members under section 842 of this title (article 42) and after completion of challenges under section 841 of this title (article 41), are impaneled; and

(B) before announcement of findings under section 853 of this title (article 53);

the case is dismissed or terminated by the convening authority or on motion of the prosecution for failure of available evidence or witnesses.

(Aug. 10, 1956, ch. 1041, 70A Stat. 52; Pub. L. 114–328, div. E, title LVII, § 5226, Dec. 23, 2016, 130 Stat. 2910.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
844(a) ……	50:619(a).	May 5, 1950, ch. 169, § 1 (Art. 44), 64 Stat. 122.
844(b) ……	50:619(b).	
844(c) ……	50:619(c).	

In subsection (a), the word ''may'' is substituted for the word ''shall''.

In subsection (b), the word ''is'' is substituted for the words ''shall be held to be''.

In subsection (c), the word ''after'' is substituted for the words ''subsequent to''. The word ''before'' is substituted for the words ''prior to''. The word ''is'' is substituted for the words ''shall be''.

AMENDMENTS

2016—Subsec. (c). Pub. L. 114–328 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''A proceeding which, after the introduction of evidence but before a finding, is dismissed or terminated by the convening authority or on motion of the prosecution for failure of available evidence or witnesses without any fault of the accused is a trial in the sense of this article.''

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114–328 effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

§845. Art. 45. Pleas of the accused

(a) IRREGULAR AND SIMILAR PLEAS.—If an accused after arraignment makes an irregular pleading, or after a plea of guilty sets up matter inconsistent with the plea, or if it appears that he has entered the plea of guilty improvidently or through lack of understanding of its meaning and effect, or if he fails or refuses to plead, a plea of not guilty shall be entered in the record, and the court shall proceed as though he had pleaded not guilty.

(b) PLEAS OF GUILTY.—A plea of guilty by the accused may not be received to any charge or specification alleging an offense for which the death penalty is mandatory. With respect to any other charge or specification to which a plea of guilty has been made by the accused and accepted by the military judge, a finding of guilty of the charge or specification may be entered immediately without vote. This finding shall constitute the finding of the court unless the plea of guilty is withdrawn prior to announcement of the sentence, in which event the proceedings shall continue as though the accused had pleaded not guilty.

(c) HARMLESS ERROR.—A variance from the requirements of this article is harmless error if the variance does not materially prejudice the substantial rights of the accused.

(Aug. 10, 1956, ch. 1041, 70A Stat. 52; Pub. L. 90–632, §2(19), Oct. 24, 1968, 82 Stat. 1339; Pub. L. 114–328, div. E, title LVII, §5227, Dec. 23, 2016, 130 Stat. 2911.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
845(a)	50:620(a).	May 5, 1950, ch. 169, §1
845(b)	50:620(b).	(Art. 45), 64 Stat. 122.

In subsection (b), the word ''may'' is substituted for the word ''shall''.

AMENDMENTS

2016—Subsec. (a). Pub. L. 114–328, §5227(c)(1), inserted heading.

Subsec. (b). Pub. L. 114–328, §5227(c)(2), inserted heading.

Pub. L. 114–328, §5227(a), substituted ''is mandatory'' for ''may be adjudged'' and struck out ''or by a court-martial without a military judge'' after ''by the military judge'' and '', if permitted by regulations of the Secretary concerned,'' after ''charge or specification may''.

Subsec. (c). Pub. L. 114–328, §5227(b), added subsec. (c).

1968—Subsec. (a). Pub. L. 90–632, §2(19)(A), substituted ''after arraignment'' for ''arraigned before a court-martial''.

Subsec. (b). Pub. L. 90–632, §2(19)(B), inserted provisions covering the making and accepting of a guilty plea to charges or specifications other than charges and specifications alleging an offense for which the death penalty may be adjudged.

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114–328 effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

§846. Art. 46. Opportunity to obtain witnesses and other evidence in trials by court-martial

(a) OPPORTUNITY TO OBTAIN WITNESSES AND OTHER EVIDENCE.—In a case referred for trial by court-martial, the trial counsel, the defense counsel, and the court-martial shall have equal opportunity to obtain witnesses and other evidence in accordance with such regulations as the President may prescribe.

(b) SUBPOENA AND OTHER PROCESS GENERALLY.—Any subpoena or other process issued under this section (article)—

(1) shall be similar to that which courts of the United States having criminal jurisdiction may issue;

(2) shall be executed in accordance with regulations prescribed by the President; and

(3) shall run to any part of the United States and to the Commonwealths and possessions of the United States.

(c) SUBPOENA AND OTHER PROCESS FOR WITNESSES.—A subpoena or other process may be issued to compel a witness to appear and testify—

(1) before a court-martial, military commission, or court of inquiry;

(2) at a deposition under section 849 of this title (article 49); or

(3) as otherwise authorized under this chapter.

(d) SUBPOENA AND OTHER PROCESS FOR EVIDENCE.—

(1) IN GENERAL.—A subpoena or other process may be issued to compel the production of evidence—

(A) for a court-martial, military commission, or court of inquiry;

(B) for a deposition under section 849 of this title (article 49);

(C) for an investigation of an offense under this chapter; or

(D) as otherwise authorized under this chapter.

(2) INVESTIGATIVE SUBPOENA.—An investigative subpoena under paragraph (1)(C) may be issued before referral of charges to a court-martial only if a general court-martial convening authority has authorized counsel for the Government to issue such a subpoena or a military judge issues such a subpoena pursuant to section 830a of this title (article 30a).

(3) WARRANT OR ORDER FOR WIRE OR ELECTRONIC COMMUNICATIONS.—With respect to an investigation of an offense under this chapter, a military judge detailed in accordance with section 826 or 830a of this title (article 26 or 30a) may issue warrants or court orders for the contents of, and records concerning, wire or electronic communications in the same manner as such warrants and orders may be issued by a district court of the United States under chapter 121 of title 18, subject to such limitations as the President may prescribe by regulation.

(e) REQUEST FOR RELIEF FROM SUBPOENA OR OTHER PROCESS.—If a person requests relief from a subpoena or other process under this section (article) on grounds that compliance is unreasonable or oppressive or is prohibited by law, a military judge detailed in accordance with section 826 or 830a of this title (article 26 or 30a) shall review the request and shall—

(1) order that the subpoena or other process be modified or withdrawn, as appropriate; or

(2) order the person to comply with the subpoena or other process.

(Aug. 10, 1956, ch. 1041, 70A Stat. 53; Pub. L. 109–163, div. A, title X, § 1057(a)(6), Jan. 6, 2006, 119 Stat. 3441; Pub. L. 113–66, div. A, title XVII, § 1704, Dec. 26, 2013, 127 Stat. 958; Pub. L. 113–291, div. A, title V, § 531(b), Dec. 19, 2014, 128 Stat. 3363; Pub. L. 114–328, div. E, title LVII, § 5228(a), Dec. 23, 2016, 130 Stat. 2911.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
846	50:621.	May 5, 1950, ch. 169, § 1 (Art. 46), 64 Stat. 122.

The word ‘‘Commonwealths’’ is inserted to reflect the present status of Puerto Rico.

AMENDMENTS

2016—Pub. L. 114–328, § 5228(a)(5), amended section catchline generally, substituting ‘‘Opportunity to obtain witnesses and other evidence in trials by court-martial’’ for ‘‘Opportunity to obtain witnesses and other evidence’’.

Subsec. (a). Pub. L. 114–328, § 5228(a)(1), substituted ‘‘In a case referred for trial by court-martial, the trial counsel, the defense counsel,’’ for ‘‘The counsel for the Government, the counsel for the accused,’’.

Subsec. (b). Pub. L. 114–328, § 5228(a)(2), amended subsec. (b) generally. Prior to amendment, subsec. (b) related to request by counsel for accused to interview the victim of an alleged sex-related offense.

Subsec. (c). Pub. L. 114–328, § 5228(a)(3), amended subsec. (c) generally. Prior to amendment, text read as follows: ‘‘Process issued in court-martial cases to compel witnesses to appear and testify and to compel the production of other evidence shall be similar to that which courts of the United States having criminal jurisdiction may lawfully issue and shall run to any part of the United States, or the Commonwealths and possessions.’’

Subsecs. (d), (e). Pub. L. 114–328, § 5228(a)(4), added subsecs. (d) and (e).

2014—Subsec. (a). Pub. L. 113–291, § 531(b)(2), (3)(B), substituted ‘‘counsel for the Government’’ for ‘‘trial counsel’’ and ‘‘counsel for the accused’’ for ‘‘defense counsel’’.

Subsec. (b). Pub. L. 113–291, § 531(b)(3)(A), which directed substitution of ‘‘COUNSEL FOR ACCUSED’’ for ‘‘DEFENSE COUNSEL’’ in heading of section, was executed by making the substitution in the heading of subsec. (b) to reflect the probable intent of Congress.

Pub. L. 113–291, § 531(b)(2), (3)(B), substituted ‘‘counsel for the Government’’ for ‘‘trial counsel’’ and ‘‘counsel for the accused’’ for ‘‘defense counsel’’ wherever appearing.

Subsec. (b)(1). Pub. L. 113–291, § 531(b)(1), substituted ‘‘through the Special Victims’ Counsel or other counsel for the victim, if applicable’’ for ‘‘through trial counsel’’.

2013—Pub. L. 113–66 designated first sentence as subsec. (a) and second sentence as subsec. (c), inserted headings, and added subsec. (b).

2006—Pub. L. 109–163 substituted ‘‘Commonwealths and possessions’’ for ‘‘Territories, Commonwealths, and possessions’’.

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114–328 effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

§ 847. Art. 47. Refusal of person not subject to chapter to appear, testify, or produce evidence

(a) IN GENERAL.—(1) Any person described in paragraph (2) who—

(A) willfully neglects or refuses to appear; or

(B) willfully refuses to qualify as a witness or to testify or to produce any evidence which that person is required to produce;

is guilty of an offense against the United States.

(2) The persons referred to in paragraph (1) are the following:

(A) Any person not subject to this chapter who—

(i) is issued a subpoena or other process described in subsection (c) of section 846 of this title (article 46); and

(ii) is provided a means for reimbursement from the Government for fees and mileage at the rates allowed to witnesses attending the courts of the United States or, in the case of extraordinary hardship, is advanced such fees and mileage.

(B) Any person not subject to this chapter who is issued a subpoena or other process described in subsection (d) of section 846 of this title (article 46).

(b) Any person who commits an offense named in subsection (a) shall be tried on indictment or information in a United States district court or in a court of original criminal jurisdiction in any of the Commonwealths or possessions of the United States, and jurisdiction is conferred upon those courts for that purpose. Upon conviction, such a person shall be fined or imprisoned, or both, at the court’s discretion.

(c) The United States attorney or the officer prosecuting for the United States in any such court of original criminal jurisdiction shall, upon the certification of the facts to him by the military court, commission, court of inquiry, board, or convening authority, file an information against and prosecute any person violating this article.

(d) The fees and mileage of witnesses shall be advanced or paid out of the appropriations for the compensation of witnesses.

(Aug. 10, 1956, ch. 1041. 70A Stat. 53; Pub. L. 104–106, div. A, title XI, §1111, Feb. 10, 1996, 110 Stat. 461; Pub. L. 109–163, div. A, title X, §1057(a)(5), Jan. 6, 2006, 119 Stat. 3440; Pub. L. 112–81, div. A, title V, §542(a), (b), Dec. 31, 2011, 125 Stat. 1411; Pub. L. 113–66, div. A, title XVII, §1702(c)(3)(D), Dec. 26, 2013, 127 Stat. 958; Pub. L. 114–328, div. E, title LVII, §5229, Dec. 23, 2016, 130 Stat. 2913.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
847(a) ……	50:622(a).	May 5, 1950, ch. 169, §1 (Art. 47), 64 Stat. 123.
847(b) ……	50:622(b).	
847(c) ……	50:622(c).	
847(d) ……	50:622(d).	

In subsection (a), the word ''Any'' is substituted for the word ''Every''. The word ''is'' is substituted for the words ''shall be deemed''.

In subsection (b), the words ''named in subsection (a)'' are substituted for the words ''denounced by this article''. The words ''Territories, Commonwealths, or'' are substituted for the word ''Territorial''. The words ''not more than'' are substituted for the words ''a period not exceeding''.

In subsection (c), the words ''It shall be the duty of * * * to'' are omitted as surplusage. The words ''United States Attorney'' are substituted for the words ''United States district attorney'', to conform to the terminology of section 501 of title 28. The word ''shall'' is inserted after the word ''jurisdiction''.

AMENDMENTS

2016—Pub. L. 114–328, §5229(b), amended section catchline generally, substituting ''Refusal of person not subject to chapter to appear, testify, or produce evidence'' for ''Refusal to appear or testify''.

Subsec. (a). Pub. L. 114–328, §5229(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''Any person not subject to this chapter who—

''(1) has been duly subpoenaed to appear as a witness before a court-martial, military commission, court of inquiry, or any other military court or board, or before any military or civil officer designated to take a deposition to be read in evidence before such a court, commission, or board, or has been duly issued a subpoena duces tecum for a preliminary hearing pursuant to section 832 of this title (article 32);

''(2) has been provided a means for reimbursement from the Government for fees and mileage at the rates allowed to witnesses attending the courts of the United States or, in the case of extraordinary hardship, is advanced such fees and mileage; and

''(3) willfully neglects or refuses to appear, or refuses to qualify as a witness or to testify or to produce any evidence which that person may have been legally subpoenaed to produce;

is guilty of an offense against the United States.''

2013—Subsec. (a)(1). Pub. L. 113–66 substituted ''a preliminary hearing pursuant to section 832 of this title (article 32)'' for ''an investigation pursuant to section 832(b) of this title (article 32(b))''.

2011—Subsec. (a). Pub. L. 112–81, §542(b), substituted ''subpoenaed'' for ''subpenaed'' in two places.

Subsec. (a)(1). Pub. L. 112–81, §542(a)(1)(A), substituted ''board, or has been duly issued a subpoena duces tecum for an investigation pursuant to section 832(b) of this title (article 32(b));'' for ''board;''.

Subsec. (a)(2). Pub. L. 112–81, §542(a)(1)(B), substituted ''provided a means for reimbursement from the Government for fees and mileage'' for ''duly paid or tendered the fees and mileage of a witness'' and inserted ''or, in the case of extraordinary hardship, is advanced such fees and mileage'' before semicolon.

Subsec. (c). Pub. L. 112–81, §542(a)(2), substituted ''board, or convening authority'' for ''or board''.

2006—Subsec. (b). Pub. L. 109–163 substituted ''Commonwealths or possessions'' for ''Territories, Commonwealths, or possessions''.

1996—Subsec. (b). Pub. L. 104–106 inserted ''indictment or'' after ''shall be tried on'' and substituted ''shall be fined or imprisoned, or both, at the court's discretion'' for ''shall be punished by a fine of not more than $500, or imprisonment for not more than six months, or both''.

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114–328 effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

EFFECTIVE DATE OF 2013 AMENDMENT

Amendment by Pub. L. 113–66 effective on the later of Dec. 26, 2014, or the date of the enactment of the Carl Levin and Howard P. ''Buck'' McKeon National Defense Authorization Act for Fiscal Year 2015 (Dec. 19, 2014) and applicable with respect to preliminary hearings conducted on or after that effective date, see section 1702(d)(1) of Pub. L. 113–66, set out as a note under section 802 of this title.

EFFECTIVE DATE OF 2011 AMENDMENT

Pub. L. 112–81, div. A, title V, §542(c), Dec. 31, 2011, 125 Stat. 1411, provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to subpoenas issued after the date of the enactment of this Act [Dec. 31, 2011].''

§ 848. Art. 48. Contempt

(a) AUTHORITY TO PUNISH.—(1) With respect to any proceeding under this chapter, a judicial officer specified in paragraph (2) may punish for contempt any person who—

(A) uses any menacing word, sign, or gesture in the presence of the judicial officer during the proceeding;

(B) disturbs the proceeding by any riot or disorder; or

(C) willfully disobeys a lawful writ, process, order, rule, decree, or command issued with respect to the proceeding.

(2) A judicial officer referred to in paragraph (1) is any of the following:

(A) Any judge of the Court of Appeals for the Armed Forces and any judge of a Court of Criminal Appeals under section 866 of this title (article 66).

(B) Any military judge detailed to a court-martial, a provost court, a military commission, or any other proceeding under this chapter.

(C) Any military magistrate designated to preside under section 819 of this title (article 19).

(D) The president of a court of inquiry.

(b) PUNISHMENT.—The punishment for contempt under subsection (a) may not exceed confinement for 30 days, a fine of $1,000, or both.

(c) REVIEW.—A punishment under this section—

(1) if imposed by a military judge or military magistrate, may be reviewed by the Court of Criminal Appeals in accordance with the uniform rules of procedure for the Courts of Criminal Appeals under section 866(h) of this title (article 66(h));

(2) if imposed by a judge of the Court of Appeals for the Armed Forces or a judge of a Court of Criminal Appeals, shall constitute a judgment of the court, subject to review under the applicable provisions of section 867 or 867a of this title (article 67 or 67a); and

(3) if imposed by a court of inquiry, shall be subject to review by the convening authority in accordance with rules prescribed by the President.

(d) INAPPLICABILITY TO MILITARY COMMISSIONS UNDER CHAPTER 47A.—This section does not apply to a military commission established under chapter 47A of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 53; Pub. L. 109–366, § 4(a)(2), Oct. 17, 2006, 120 Stat. 2631; Pub. L. 111–383, div. A, title V, § 542(a), Jan. 7, 2011, 124 Stat. 4218; Pub. L. 114–328, div. E, title LVII, § 5230, Dec. 23, 2016, 130 Stat. 2913; Pub. L. 115–91, div. A, title X, § 1081(c)(1)(F), Dec. 12, 2017, 131 Stat. 1598.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
848	50:623.	May 5, 1950, ch. 169, § 1 (Art. 48), 64 Stat. 123.

The word ''may'' is substituted for the word ''shall''.

AMENDMENTS

2017—Subsec. (c)(1). Pub. L. 115–91 substituted ''section 866(h) of this title (article 66(h))'' for ''section 866(g) of this title (article 66(g))''.

2016—Pub. L. 114–328, § 5230(c), amended section catchline generally, substituting ''Contempt'' for ''Contempts''.

Subsec. (a). Pub. L. 114–328, § 5230(a), amended subsec. (a) generally. Prior to amendment, text read as follows: ''A judge detailed to a court-martial, a court of inquiry, the United States Court of Appeals for the Armed Forces, a military Court of Criminal Appeals, a provost court, or a military commission may punish for contempt any person who—

''(1) uses any menacing word, sign, or gesture in the presence of the judge during the proceedings of the court-martial, court, or military commission;

''(2) disturbs the proceedings of the court-martial, court, or military commission by any riot or disorder; or

''(3) willfully disobeys the lawful writ, process, order, rule, decree, or command of the court-martial, court, or military commission.''

Subsecs. (c), (d). Pub. L. 114–328, § 5230(b), added subsec. (c) and redesignated former subsec. (c) as (d).

2011—Pub. L. 111–383 amended section generally. Prior to amendment, text read as follows: ''A court-martial, provost court, or military commission may punish for contempt any person who uses any menacing word, sign, or gesture in its presence, or who disturbs its proceedings by any riot or disorder. The punishment may not exceed confinement for 30 days or a fine of $100, or both. This section does not apply to a military commission established under chapter 47A of this title.''

2006—Pub. L. 109–366 inserted last sentence.

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by Pub. L. 115–91 effective immediately after the amendments made by div. E (§§ 5001–5542) of Pub. L. 114–328 take effect as provided for in section 5542 of that Act (10 U.S.C. 801 note), see section 1081(c)(4) of Pub. L. 115–91, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114–328 effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

EFFECTIVE DATE OF 2011 AMENDMENT

Pub. L. 111–383, div. A, title V, § 542(b), Jan. 7, 2011, 124 Stat. 4218, provided that: ''Section 848 of title 10, United States Code (article 48 of the Uniform Code of Military Justice), as amended by subsection (a), shall apply with respect to acts of contempt committed after the date of the enactment of this Act [Jan. 7, 2011].''

§ 849. Art. 49. Depositions

(a) IN GENERAL.—(1) Subject to paragraph (2), a convening authority or a military judge may order depositions at the request of any party.

(2) A deposition may be ordered under paragraph (1) only if the requesting party demonstrates that, due to exceptional circumstances, it is in the interest of justice that the testimony of a prospective witness be preserved for use at a court-martial, military commission, court of inquiry, or other military court or board.

(3) A party who requests a deposition under this section shall give to every other party reasonable written notice of the time and place for the deposition.

(4) A deposition under this section shall be taken before, and authenticated by, an impartial officer, as follows:

(A) Whenever practicable, by an impartial judge advocate certified under section 827(b) of this title (article 27(b)).

(B) In exceptional circumstances, by an impartial military or civil officer authorized to administer oaths by (i) the laws of the United States or (ii) the laws of the place where the deposition is taken.

(b) REPRESENTATION BY COUNSEL.—Representation of the parties with respect to a deposition shall be by counsel detailed in the same manner as trial counsel and defense counsel are detailed under section 827 of this title (article 27). In addition, the accused shall have the right to be represented by civilian or military counsel in the same manner as such counsel are provided for in section 838(b) of this title (article 38(b)).

(c) ADMISSIBILITY AND USE AS EVIDENCE.—A deposition order under subsection (a) does not control the admissibility of the deposition in a court-martial or other proceeding under this chapter. Except as provided by subsection (d), a party may use all or part of a deposition as provided by the rules of evidence.

(d) CAPITAL CASES.—Testimony by deposition may be presented in capital cases only by the defense.

(Aug. 10, 1956, ch. 1041, 70A Stat. 53; Pub. L. 90–632, § 2(20), Oct. 24, 1968, 82 Stat. 1340; Pub. L.

98–209, §6(b), Dec. 6, 1983, 97 Stat. 1400; Pub. L. 109–163, div. A, title X, §1057(a)(3), Jan. 6, 2006, 119 Stat. 3440; Pub. L. 113–291, div. A, title V, §532, Dec. 19, 2014, 128 Stat. 3366; Pub. L. 114–328, div. E, title LVII, §5231, Dec. 23, 2016, 130 Stat. 2914.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
849(a) ……	50:624(a).	May 5, 1950, ch. 169, §1 (Art. 49), 64 Stat. 123.
849(b) ……	50:624(b).	
849(c) ……	50:624(c).	
849(d) ……	50:624(d).	
849(e) ……	50:624(e).	
849(f) …….	50:624(f).	

In subsection (a), the word ''commissioned'' is inserted for clarity.

In subsection (d), the word ''Commonwealth'' is inserted to reflect the present status of Puerto Rico. The words ''of Columbia'' are inserted after the word ''District'' for clarity. The words ''the distance of'' are omitted as surplusage.

In subsections (e) and (f), the words ''the requirements of'' and the words ''of this article'' are omitted as surplusage. The word ''presented'' is substituted for the word ''adduced'' in subsection (e).

In subsection (f), the word ''directs'' is substituted for the words ''shall have directed''. The words ''by law'' are omitted as surplusage.

AMENDMENTS

2016—Pub. L. 114–328 amended section generally. Prior to amendment, section consisted of subsecs. (a) to (f) relating to ordering depositions, notice, military and civil officers authorized to take depositions, use of depositions as evidence, testimony by deposition by the defense in capital cases, and use of deposition as evidence in cases in which the death penalty is authorized, respectively.

2014—Subsec. (a). Pub. L. 113–291 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''At any time after charges have been signed as provided in section 830 of this title (article 30), any party may take oral or written depositions unless the military judge or court-martial without a military judge hearing the case or, if the case is not being heard, an authority competent to convene a court-martial for the trial of those charges forbids it for good cause. If a deposition is to be taken before charges are referred for trial, such an authority may designate commissioned officers to represent the prosecution and the defense and may authorize those officers to take the deposition of any witness.''

2006—Subsec. (d)(1). Pub. L. 109–163 struck out ''Territory,'' after ''State,''.

1983—Subsecs. (d), (f). Pub. L. 98–209 inserted ''or, in the case of audiotape, videotape, or similar material, may be played in evidence'' after ''read in evidence''.

1968—Subsec. (a). Pub. L. 90–632 inserted reference to the taking of depositions being forbidden by the military judge or the court-martial without a military judge if the case is being heard.

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114–328 effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–209 effective on first day of eighth calendar month beginning after Dec. 6, 1983, but not to apply to any case in which the findings and sentence were adjudged by a court-martial before that date, and the proceedings in any such case to be held in the same manner and with the same effect as if such amendments had not been enacted, see section 12(a)(1), (4) of Pub. L. 98–209, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

§850. Art. 50. Admissibility of sworn testimony from records of courts of inquiry

(a) USE AS EVIDENCE BY ANY PARTY.—In any case not capital and not extending to the dismissal of a commissioned officer, the sworn testimony, contained in the duly authenticated record of proceedings of a court of inquiry, of a person whose oral testimony cannot be obtained, may, if otherwise admissible under the rules of evidence, be read in evidence by any party before a court-martial or military commission if the accused was a party before the court of inquiry and if the same issue was involved or if the accused consents to the introduction of such evidence. This section does not apply to a military commission established under chapter 47A of this title.

(b) USE AS EVIDENCE BY DEFENSE.—Such testimony may be read in evidence only by the defense in capital cases or cases extending to the dismissal of a commissioned officer.

(c) USE IN COURTS OF INQUIRY AND MILITARY BOARDS.—Such testimony may also be read in evidence before a court of inquiry or a military board.

(d) AUDIOTAPE OR VIDEOTAPE.—Sworn testimony that—

(1) is recorded by audiotape, videotape, or similar method; and

(2) is contained in the duly authenticated record of proceedings of a court of inquiry;

is admissible before a court-martial, military commission, court of inquiry, or military board, to the same extent as sworn testimony may be read in evidence before any such body under subsection (a), (b), or (c).

(Aug. 10, 1956, ch. 1041, 70A Stat. 54; Pub. L. 109–366, §4(a)(2), Oct. 17, 2006, 120 Stat. 2631; Pub. L. 114–328, div. E, title LVII, §5232, Dec. 23, 2016, 130 Stat. 2915.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
850(a) ……	50:625(a).	May 5, 1950, ch. 169, §1 (Art. 50), 64 Stat. 124.
850(b) ……	50:625(b).	
850(c) ……	50:625(c).	

In subsections (a) and (b), the word ''commissioned'' is inserted for clarity.

AMENDMENTS

2016—Pub. L. 114–328, §5232(b), amended section catchline generally, substituting ''Admissibility of sworn testimony from records of courts of inquiry'' for ''Admissibility of records of courts of inquiry''.

Subsec. (a). Pub. L. 114–328, §5232(c)(1), inserted heading.

Subsec. (b). Pub. L. 114–328, §5232(c)(2), inserted heading.

Subsec. (c). Pub. L. 114–328, §5232(c)(3), inserted heading.

Subsec. (d). Pub. L. 114–328, § 5232(a), added subsec. (d).
2006—Subsec. (a). Pub. L. 109–366 inserted last sentence.

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114–328 effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

§ 850a. Art. 50a. Defense of lack of mental responsibility

(a) It is an affirmative defense in a trial by court-martial that, at the time of the commission of the acts constituting the offense, the accused, as a result of a severe mental disease or defect, was unable to appreciate the nature and quality or the wrongfulness of the acts. Mental disease or defect does not otherwise constitute a defense.

(b) The accused has the burden of proving the defense of lack of mental responsibility by clear and convincing evidence.

(c) Whenever lack of mental responsibility of the accused with respect to an offense is properly at issue, the military judge shall instruct the members of the court as to the defense of lack of mental responsibility under this section and charge them to find the accused—

(1) guilty;

(2) not guilty; or

(3) not guilty only by reason of lack of mental responsibility.

(d) Subsection (c) does not apply to a court-martial composed of a military judge only. In the case of a court-martial composed of a military judge only, whenever lack of mental responsibility of the accused with respect to an offense is properly at issue, the military judge shall find the accused—

(1) guilty;

(2) not guilty; or

(3) not guilty only by reason of lack of mental responsibility.

(e) Notwithstanding the provisions of section 852 of this title (article 52), the accused shall be found not guilty only by reason of lack of mental responsibility if—

(1) a majority of the members of the court-martial present at the time the vote is taken determines that the defense of lack of mental responsibility has been established; or

(2) in the case of a court-martial composed of a military judge only, the military judge determines that the defense of lack of mental responsibility has been established.

(Added Pub. L. 99–661, div. A, title VIII, § 802(a)(1), Nov. 14, 1986, 100 Stat. 3905; Pub. L. 114–328, div. E, title LVII, § 5233, Dec. 23, 2016, 130 Stat. 2915.)

AMENDMENTS

2016—Subsec. (c). Pub. L. 114–328, in introductory provisions, struck out '', or the president of a court-martial without a military judge,'' after ''the military judge''.

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114–328 effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

EFFECTIVE DATE

Pub. L. 99–661, div. A, title VIII, § 802(b), Nov. 14, 1986, 100 Stat. 3906, provided that: ''Section 850a of title 10, United States Code, as added by subsection (a)(1), shall apply only to offenses committed on or after the date of the enactment of this Act [Nov. 14, 1986].''

§ 851. Art. 51. Voting and rulings

(a) Voting by members of a general or special court-martial on the findings and on the sentence shall be by secret written ballot. The junior member of the court shall count the votes. The count shall be checked by the president, who shall forthwith announce the result of the ballot to the members of the court.

(b) The military judge shall rule upon all questions of law and all interlocutory questions arising during the proceedings. Any such ruling made by the military judge upon any question of law or any interlocutory question other than the factual issue of mental responsibility of the accused is final and constitutes the ruling of the court, except that the military judge may change a ruling at any time during trial.

(c) Before a vote is taken on the findings, the military judge shall, in the presence of the accused and counsel, instruct the members of the court as to the elements of the offense and charge them—

(1) that the accused must be presumed to be innocent until his guilt is established by legal and competent evidence beyond reasonable doubt;

(2) that in the case being considered, if there is a reasonable doubt as to the guilt of the accused, the doubt must be resolved in favor of the accused and he must be acquitted;

(3) that, if there is a reasonable doubt as to the degree of guilt, the finding must be in a lower degree as to which there is no reasonable doubt; and

(4) that the burden of proof to establish the guilt of the accused beyond reasonable doubt is upon the United States.

(d) Subsections (a), (b), and (c) do not apply to a court-martial composed of a military judge only. The military judge of such a court-martial shall determine all questions of law and fact arising during the proceedings and, if the accused is convicted, adjudge an appropriate sentence. The military judge of such a court-martial shall make a general finding and shall in addition on request find the facts specially. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact appear therein.

(Aug. 10, 1956, ch. 1041, 70A Stat. 54; Pub. L. 90–632, § 2(21), Oct. 24, 1968, 82 Stat. 1340; Pub. L. 114–328, div. E, title LVII, § 5234, Dec. 23, 2016, 130 Stat. 2915.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
851(a) ……	50:626(a).	May 5, 1950, ch. 169, § 1 (Art. 51), 64 Stat. 124.
851(b) ……	50:626(b).	

HISTORICAL AND REVISION NOTES—CONTINUED

Revised section	Source (U.S. Code)	Source (Statutes at Large)
851(c)	50:626(c).	

In subsection (a), the words "in each case" are omitted as surplusage.

In subsection (b), the word "is" is substituted for the words "shall be" in the second sentence. The word "constitutes" is substituted for the words "shall constitute". The word "However," is substituted for the word "but". The word "his" is substituted for the words "any such". The words "the ruling is" are substituted for the words "such ruling be". The words "voice vote" are substituted for the words "vote * * * viva voce".

In subsection (c), the word "must" is substituted for the word "shall" in clause (2), since a condition is prescribed, not a command. The words "United States" are substituted for the word "Government".

AMENDMENTS

2016—Subsec. (a). Pub. L. 114–328, §5234(1), struck out ", and by members of a court-martial without a military judge upon questions of challenge," after "on the sentence".

Subsec. (b). Pub. L. 114–328, §5234(2), struck out "and, except for questions of challenge, the president of a court-martial without a military judge" after "The military judge" and substituted "is final and constitutes the ruling of the court, except that the military judge may change a ruling at any time during trial." for ", or by the president of a court-martial without a military judge upon any question of law other than a motion for a finding of not guilty, is final and constitutes the ruling of the court. However, the military judge or the president of a court-martial without a military judge may change his ruling at any time during trial. Unless the ruling is final, if any member objects thereto, the court shall be cleared and closed and the question decided by a voice vote as provided in section 852 of this title (article 52), beginning with the junior in rank."

Subsec. (c). Pub. L. 114–328, §5234(3), struck out "or the president of a court-martial without a military judge" after "the military judge" in introductory provisions.

1968—Subsec. (a). Pub. L. 90–632, §2(21)(A), limited the balloting on the question of challenges to courts-martial without military judges.

Subsec. (b). Pub. L. 90–632, §2(21)(B), substituted "military judge" for "law officer" and inserted reference to the military judge's ruling upon challenges for cause when a military judge is part of a court-martial and reference to questions of law.

Subsec. (c). Pub. L. 90–632, §2(21)(C), substituted "military judge" for "law officer" and made minor changes in phraseology eliminating the division between general and special court-martials.

Subsec. (d). Pub. L. 90–632, §2(21)(D), added subsec. (d).

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114–328 effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

§852. Art. 52. Votes required for conviction, sentencing, and other matters

(a) IN GENERAL.—No person may be convicted of an offense in a general or special court-martial, other than—

(1) after a plea of guilty under section 845(b) of this title (article 45(b));

(2) by a military judge in a court-martial with a military judge alone, under section 816 of this title (article 16); or

(3) in a court-martial with members under section 816 of this title (article 16), by the concurrence of at least three-fourths of the members present when the vote is taken.

(b) LEVEL OF CONCURRENCE REQUIRED.—

(1) IN GENERAL.—Except as provided in subsection (a) and in paragraph (2), all matters to be decided by members of a general or special court-martial shall be determined by a majority vote, but a reconsideration of a finding of guilty or reconsideration of a sentence, with a view toward decreasing the sentence, may be made by any lesser vote which indicates that the reconsideration is not opposed by the number of votes required for that finding or sentence.

(2) SENTENCING.—A sentence of death requires (A) a unanimous finding of guilty of an offense in this chapter expressly made punishable by death and (B) a unanimous determination by the members that the sentence for that offense shall include death. All other sentences imposed by members shall be determined by the concurrence of at least three-fourths of the members present when the vote is taken.

(Aug. 10, 1956, ch. 1041, 70A Stat. 55; Pub. L. 90–632, §2(22), Oct. 24, 1968, 82 Stat. 1340; Pub. L. 114–328, div. E, title LVII, §5235, Dec. 23, 2016, 130 Stat. 2916.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
852(a)	50:627(a).	May 5, 1950, ch. 169, §1 (Art. 52), 64 Stat. 125.
852(b)	50:627(b)	
852(c)	50:627(c).	

In subsections (a) and (b), the word "may" is substituted for the word "shall".

In subsection (b)(2), the words "for more than" are substituted for the words "in excess of".

In subsection (c), the word "disqualifies" is substituted for the words "shall disqualify". The word "is" is substituted for the words "shall be" in the last two sentences.

AMENDMENTS

2016—Pub. L. 114–328 amended section generally. Prior to amendment, section consisted of subsecs. (a) to (c) relating to number of votes required for conviction of an offense for which the death penalty is mandatory, sentences, and all other questions, respectively.

1968—Subsec. (a)(2). Pub. L. 90–632, §2(22)(A), inserted reference to the exception provided in section 845(b) of this title (article 45(b)).

Subsec. (c). Pub. L. 90–632, §2(22)(B), provided that a determination to reconsider a finding of guilty or to reconsider a sentence, with a view toward decreasing it, may be made by a vote of less than a majority vote which indicates that the reconsideration is not opposed by the number of votes required for that finding or sentence.

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114–328 effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

§ 853. Art. 53. Findings and sentencing

(a) ANNOUNCEMENT.—A court-martial shall announce its findings and sentence to the parties as soon as determined.

(b) SENTENCING GENERALLY.—

(1) GENERAL AND SPECIAL COURTS-MARTIAL.—

(A) SENTENCING BY MILITARY JUDGE.—Except as provided in subparagraph (B), and in subsection (c) for capital offenses, if the accused is convicted of an offense in a trial by general or special court-martial, the military judge shall sentence the accused.

(B) SENTENCING BY MEMBERS.—If the accused is convicted of an offense by general or special court-martial consisting of a military judge and members and the accused elects sentencing by members under section 825 of this title (article 25), the members shall sentence the accused.

(C) SENTENCE OF THE ACCUSED.—The sentence determined pursuant to this paragraph constitutes the sentence of the accused.

(2) SUMMARY COURTS-MARTIAL.—If the accused is convicted of an offense in a trial by summary court-martial, the court-martial shall sentence the accused.

(c) SENTENCING FOR CAPITAL OFFENSES.—

(1) IN GENERAL.—In a capital case, if the accused is convicted of an offense for which the court-martial may sentence the accused to death, the members shall determine whether the sentence for that offense shall be death or a lesser authorized punishment.

(2) LESSER AUTHORIZED PUNISHMENTS.—In accordance with regulations prescribed by the President, the court-martial may include in any sentence to death or life in prison without eligibility for parole other lesser punishments authorized under this chapter.

(3) OTHER NON-CAPITAL OFFENSES.—In a capital case, if the accused is convicted of a non-capital offense, the accused shall be sentenced for such non-capital offense in accordance with subsection (b), regardless of whether the accused is convicted of an offense for which the court-martial may sentence the accused to death.

(Aug. 10, 1956, ch. 1041, 70A Stat. 56; Pub. L. 114–328, div. E, title LVII, § 5236, Dec. 23, 2016, 130 Stat. 2916; Pub. L. 115–91, div. A, title X, § 1081(c)(1)(G), Dec. 12, 2017, 131 Stat. 1598.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
853	50:628.	May 5, 1950, ch. 169, § 1 (Art. 53), 64 Stat. 125.

The word ''A'' is substituted for the word ''Every''.

AMENDMENTS

2017—Subsec. (b)(1)(B). Pub. L. 115–91 struck out ''in a trial'' after ''convicted of an offense''.

2016—Pub. L. 114–328 amended section generally. Prior to amendment, text read as follows: ''A court-martial shall announce its findings and sentence to the parties as soon as determined.''

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by Pub. L. 115–91 effective immediately after the amendments made by div. E (§§ 5001–5542) of Pub. L. 114–328 take effect as provided for in section 5542 of that Act (10 U.S.C. 801 note), see section 1081(c)(4) of Pub. L. 115–91, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114–328 effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

§ 853a. Art. 53a. Plea agreements

(a) IN GENERAL.—(1) At any time before the announcement of findings under section 853 of this title (article 53), the convening authority and the accused may enter into a plea agreement with respect to such matters as—

(A) the manner in which the convening authority will dispose of one or more charges and specifications; and

(B) limitations on the sentence that may be adjudged for one or more charges and specifications.

(2) The military judge of a general or special court-martial may not participate in discussions between the parties concerning prospective terms and conditions of a plea agreement.

(b) LIMITATION ON ACCEPTANCE OF PLEA AGREEMENTS.—The military judge of a general or special court-martial shall reject a plea agreement that—

(1) contains a provision that has not been accepted by both parties;

(2) contains a provision that is not understood by the accused;

(3) except as provided in subsection (c), contains a provision for a sentence that is less than the mandatory minimum sentence applicable to an offense referred to in section 856(b)(2) of this title (article 56(b)(2));

(4) is prohibited by law; or

(5) is contrary to, or is inconsistent with, a regulation prescribed by the President with respect to terms, conditions, or other aspects of plea agreements.

(c) LIMITED CONDITIONS FOR ACCEPTANCE OF PLEA AGREEMENT FOR SENTENCE BELOW MANDATORY MINIMUM FOR CERTAIN OFFENSES.—With respect to an offense referred to in section 856(b)(2) of this title (article 56(b)(2))—

(1) the military judge may accept a plea agreement that provides for a sentence of bad conduct discharge; and

(2) upon recommendation of the trial counsel, in exchange for substantial assistance by the accused in the investigation or prosecution of another person who has committed an

offense, the military judge may accept a plea agreement that provides for a sentence that is less than the mandatory minimum sentence for the offense charged.

(d) BINDING EFFECT OF PLEA AGREEMENT.—Upon acceptance by the military judge of a general or special court-martial, a plea agreement shall bind the parties and the court-martial.

(Added Pub. L. 114–328, div. E, title LVII, § 5237, Dec. 23, 2016, 130 Stat. 2917; amended Pub. L. 115–91, div. A, title V, § 531(d), title X, § 1081(c)(1)(H), Dec. 12, 2017, 131 Stat. 1384, 1598.)

AMENDMENTS

2017—Subsec. (b)(4), (5). Pub. L. 115–91, § 531(d)(1), added pars. (4) and (5).

Subsec. (d). Pub. L. 115–91, § 1081(c)(1)(H), which directed substitution of ''court-martial'' for ''military judge'' the second place it appeared, could not be executed because of the prior amendment by Pub. L. 115–91, § 531(d)(2). See below.

Pub. L. 115–91, § 531(d)(2), substituted ''shall bind the parties and the court-martial'' for ''shall bind the parties and the military judge''.

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by section 531(d) of Pub. L. 115–91 effective immediately after the amendments made by div. E (§§ 5001–5542) of Pub. L. 114–328 take effect as provided for in section 5542 of that Act (10 U.S.C. 801 note), see section 531(p) of Pub. L. 115–91, set out as a note under section 801 of this title.

Amendment by section 1081(c)(1)(H) of Pub. L. 115–91 effective immediately after the amendments made by div. E (§§ 5001–5542) of Pub. L. 114–328 take effect as provided for in section 5542 of that Act (10 U.S.C. 801 note), see section 1081(c)(4) of Pub. L. 115–91, set out as a note under section 801 of this title.

EFFECTIVE DATE

Section effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. 13825, set out as notes under section 801 of this title.

§ 854. Art. 54. Record of trial

(a) GENERAL AND SPECIAL COURTS-MARTIAL.—Each general or special court-martial shall keep a separate record of the proceedings in each case brought before it. The record shall be certified by a court-reporter, except that in the case of death, disability, or absence of a court reporter, the record shall be certified by an official selected as the President may prescribe by regulation.

(b) SUMMARY COURTS-MARTIAL.—Each summary court-martial shall keep a separate record of the proceedings in each case, and the record shall be certified in the manner required by such regulations as the President may prescribe.

(c) CONTENTS OF RECORD.—(1) Except as provided in paragraph (2), the record shall contain such matters as the President may prescribe by regulation.

(2) In accordance with regulations prescribed by the President, a complete record of proceedings and testimony shall be prepared in any case of a sentence of death, dismissal, discharge, confinement for more than six months, or forfeiture of pay for more than six months.

(d) COPY TO ACCUSED.—A copy of the record of the proceedings of each general and special court-martial shall be given to the accused as soon as it is certified.

(e) COPY TO VICTIM.—In the case of a general or special court-martial, upon request, a copy of all prepared records of the proceedings of the court-martial shall be given to the victim of the offense if the victim testified during the proceedings. The records of the proceedings shall be provided without charge and as soon as the records are certified. The victim shall be notified of the opportunity to receive the records of the proceedings.

(Aug. 10, 1956, ch. 1041, 70A Stat. 56; Pub. L. 90–632, § 2(23), Oct. 24, 1968, 82 Stat. 1340; Pub. L. 98–209, § 6(c), Dec. 6, 1983, 97 Stat. 1400; Pub. L. 106–398, § 1 [[div. A], title V, § 555(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–127; Pub. L. 112–81, div. A, title V, § 586(e), Dec. 31, 2011, 125 Stat. 1435; Pub. L. 114–328, div. E, title LVII, § 5238, Dec. 23, 2016, 130 Stat. 2918.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
854(a)	50:629(a).	May 5, 1950, ch. 169, § 1 (Art. 54), 64 Stat. 125.
854(b)	50:629(b).	
854(c)	50:629(c).	

In subsection (a), the word ''If'' is substituted for the words ''In case''. The words ''any of those'' are substituted for the word ''such'' in the last sentence.

In subsection (b), the words ''and the'' are substituted for the word ''which'' before the word ''record''. The words ''the matter and shall be authenticated in the manner required by such regulations as'' are substituted for the words ''such matter and be authenticated in such manner as may be required by regulations which''.

In subsection (c), the words ''it is'' are inserted before the word ''authenticated''.

CODIFICATION

Another section 586(e) of Pub. L. 112–81 is set out in a note under section 1561 of this title.

AMENDMENTS

2016—Subsec. (a). Pub. L. 114–328, § 5238(1), added subsec. (a) and struck out former subsec. (a) which read as follows: ''Each general court-martial shall keep a separate record of the proceedings in each case brought before it, and the record shall be authenticated by the signature of the military judge. If the record cannot be authenticated by the military judge by reason of his death, disability, or absence, it shall be authenticated by the signature of the trial counsel or by that of a member if the trial counsel is unable to authenticate it by reason of his death, disability, or absence. In a court-martial consisting of only a military judge the record shall be authenticated by the court reporter under the same conditions which would impose such a duty on a member under this subsection.''

Subsec. (b). Pub. L. 114–328, § 5238(2), substituted ''SUMMARY COURTS-MARTIAL.—Each summary court-martial'' for ''Each special and summary court-martial'' and ''certified'' for ''authenticated''.

Subsec. (c). Pub. L. 114–328, § 5238(3), added subsec. (c) and struck out former subsec. (c) which related to preparation of complete record of proceedings.

Subsec. (d). Pub. L. 114–328, § 5238(4), inserted heading and substituted ''certified'' for ''authenticated''.

Subsec. (e). Pub. L. 114–328, § 5238(5), inserted heading and substituted '', upon request,'' for ''involving a sexual assault or other offense covered by section 920 of this title (article 120),'' and ''certified'' for ''authenticated''.

2011—Subsec. (e). Pub. L. 112–81 added subsec. (e).

2000—Subsec. (c)(1)(B). Pub. L. 106–398 inserted '', confinement for more than six months, or forfeiture of pay for more than six months'' after ''bad-conduct discharge''.

1983—Subsec. (a). Pub. L. 98–209, § 6(c)(1), struck out provision that if the proceedings had resulted in an acquittal of all charges and specifications or, if not affecting a general or flag officer, in a sentence not including discharge and not in excess of that which could otherwise be adjudged by a special court-martial, the record had to contain such matters as might be prescribed by regulations of the President.

Subsec. (b). Pub. L. 98–209, § 6(c)(2), substituted ''the record'' for ''the record shall contain the matter and''.

Subsecs. (c), (d). Pub. L. 98–209, § 6(c)(3), (4), added subsec. (c) and redesignated former subsec. (c) as (d).

1968—Subsec. (a). Pub. L. 90–632 provided for authentication of a record of trial by general court-martial by the signature of the military judge, for alternate methods of authentication if the military judge for specified reasons is unable to authenticate it, for authentication when a court-martial consists only of a military judge, and for summarized records of trial in specified cases.

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114–328 effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–398, § 1 [[div. A], title V, § 555(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–127, provided that: ''The amendment made by subsection (a) [amending this section] shall take effect as of April 1, 2000, and shall apply with respect to charges referred on or after that date to trial by special court-martial.''

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–209 effective first day of eighth calendar month beginning after Dec. 6, 1983, but not to apply to any case in which the findings and sentence were adjudged by a court-martial before that date, and the proceedings in any such case to be held in the same manner and with the same effect as if such amendments had not been enacted, see section 12(a)(1), (4) of Pub. L. 98–209, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

SUBCHAPTER VIII—SENTENCES

Sec.	Art.	
855.	55.	Cruel and unusual punishments prohibited.
856.	56.	Sentencing.
[856a.	56a.	Repealed.]
857.	57.	Effective date of sentences.
[857a.	57a.	Repealed.]
858.	58.	Execution of confinement.
858a.	58a.	Sentences: reduction in enlisted grade.
858b.	58b.	Sentences: forfeiture of pay and allowances during confinement.

AMENDMENTS

2017—Pub. L. 115–91, div. A, title X, § 1081(d)(19)(A), Dec. 12, 2017, 131 Stat. 1601, made technical amendment to Pub. L. 114–328, § 5541(5). See 2016 Amendment note below.

Pub. L. 115–91, div. A, title V, § 531(f)(3), Dec. 12, 2017, 131 Stat. 1385, added item 858a and struck out former item 858a ''Sentences: reduction in enlisted grade upon approval''.

2016—Pub. L. 114–328, div. E, title LXIII, § 5541(5), Dec. 23, 2016, 130 Stat. 2966, as amended by Pub. L. 115–91, div. A, title X, § 1081(d)(19)(A), Dec. 12, 2017, 131 Stat. 1601, substituted ''Sentencing'' for ''Maximum and minimum limits'' in item 856 and struck out items 856a ''Art. 56a. Sentence of confinement for life without eligibility for parole'' and 857a ''Art. 57a. Deferment of sentences''.

2013—Pub. L. 113–66, div. A, title XVII, § 1705(a)(2)(B), Dec. 26, 2013, 127 Stat. 959, substituted ''Maximum and minimum limits'' for ''Maximum limits'' in item 856.

1997—Pub. L. 105–85, div. A, title V, § 581(a)(2), Nov. 18, 1997, 111 Stat. 1760, added item 856a.

1996—Pub. L. 104–106, div. A, title XI, §§ 1122(a)(2), 1123(b), Feb. 10, 1996, 110 Stat. 463, 464, added items 857a and 858b.

1960—Pub. L. 86–633, § 1(2), July 12, 1960, 74 Stat. 468, added item 858a.

§ 855. Art. 55. Cruel and unusual punishments prohibited

Punishment by flogging, or by branding, marking, or tattooing on the body, or any other cruel or unusual punishment, may not be adjudged by any court-martial or inflicted upon any person subject to this chapter. The use of irons, single or double, except for the purpose of safe custody, is prohibited.

(Aug. 10, 1956, ch. 1041, 70A Stat. 56.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
855	50:636.	May 5, 1950, ch. 169, § 1 (Art. 55), 64 Stat. 126.

The word ''may'' is substituted for the word ''shall''.

§ 856. Art. 56. Sentencing

(a) SENTENCE MAXIMUMS.—The punishment which a court-martial may direct for an offense may not exceed such limits as the President may prescribe for that offense.

(b) SENTENCE MINIMUMS FOR CERTAIN OFFENSES.—(1) Except as provided in subsection (d) of section 853a of this title (article 53a), punishment for any offense specified in paragraph (2) shall include dismissal or dishonorable discharge, as applicable.

(2) The offenses referred to in paragraph (1) are as follows:

(A) Rape under subsection (a) of section 920 of this title (article 120).

(B) Sexual assault under subsection (b) of such section (article).

(C) Rape of a child under subsection (a) of section 920b of this title (article 120b).

(D) Sexual assault of a child under subsection (b) of such section (article).

(E) An attempt to commit an offense specified in subparagraph (A), (B), (C), or (D) that is punishable under section 880 of this title (article 80).

(F) Conspiracy to commit an offense specified in subparagraph (A), (B), (C), or (D) that is punishable under section 881 of this title (article 81).

(c) IMPOSITION OF SENTENCE.—

(1) IN GENERAL.—In sentencing an accused under section 853 of this title (article 53), a court-martial shall impose punishment that is sufficient, but not greater than necessary, to

promote justice and to maintain good order and discipline in the armed forces, taking into consideration—

(A) the nature and circumstances of the offense and the history and characteristics of the accused;

(B) the impact of the offense on—

(i) the financial, social, psychological, or medical well-being of any victim of the offense; and

(ii) the mission, discipline, or efficiency of the command of the accused and any victim of the offense;

(C) the need for the sentence—

(i) to reflect the seriousness of the offense;

(ii) to promote respect for the law;

(iii) to provide just punishment for the offense;

(iv) to promote adequate deterrence of misconduct;

(v) to protect others from further crimes by the accused;

(vi) to rehabilitate the accused; and

(vii) to provide, in appropriate cases, the opportunity for retraining and return to duty to meet the needs of the service; and

(D) the sentences available under this chapter.

(2) SENTENCING BY MILITARY JUDGE.—In announcing the sentence in a general or special court-martial in which the accused is sentenced by a military judge alone under section 853 of this title (article 53), the military judge shall, with respect to each offense of which the accused is found guilty, specify the term of confinement, if any, and the amount of the fine, if any. If the accused is sentenced to confinement for more than one offense, the military judge shall specify whether the terms of confinement are to run consecutively or concurrently.

(3) SENTENCING BY MEMBERS.—In a general or special court-martial in which the accused has elected sentencing by members, the court-martial shall announce a single sentence for all of the offenses of which the accused was found guilty.

(4) SENTENCE OF CONFINEMENT FOR LIFE WITHOUT ELIGIBILITY FOR PAROLE.—(A) If an offense is subject to a sentence of confinement for life, a court-martial may impose a sentence of confinement for life without eligibility for parole.

(B) An accused who is sentenced to confinement for life without eligibility for parole shall be confined for the remainder of the accused's life unless—

(i) the sentence is set aside or otherwise modified as a result of—

(I) action taken by the convening authority or the Secretary concerned; or

(II) any other action taken during post-trial procedure and review under any other provision of subchapter IX of this chapter;

(ii) the sentence is set aside or otherwise modified as a result of action taken by a Court of Criminal Appeals, the Court of Appeals for the Armed Forces, or the Supreme Court; or

(iii) the accused is pardoned.

(d) APPEAL OF SENTENCE BY THE UNITED STATES.—(1) With the approval of the Judge Advocate General concerned, and consistent with standards and procedures set forth in regulations prescribed by the President, the Government may appeal a sentence to the Court of Criminal Appeals, on the grounds that—

(A) the sentence violates the law; or

(B) the sentence is plainly unreasonable, as determined in accordance with standards and procedures prescribed by the President.

(2) An appeal under this subsection must be filed within 60 days after the date on which the judgment of a court-martial is entered into the record under section 860c of this title (article 60c).

(Aug. 10, 1956, ch. 1041, 70A Stat. 56; Pub. L. 113–66, div. A, title XVII, §1702(a)(1), (2)(A), Dec. 26, 2013, 127 Stat. 959; Pub. L. 114–328, div. E, title LVIII, §5301(a), Dec. 23, 2016, 130 Stat. 2919; Pub. L. 115–91, div. A, title V, §531(e), Dec. 12, 2017, 131 Stat. 1385.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
856	50:637.	May 5, 1950, ch. 169, §1 (Art. 56), 64 Stat. 126.

The word "may" is substituted for the word "shall".

AMENDMENTS

2017—Subsec. (d)(1). Pub. L. 115–91, §531(e)(1), inserted "and consistent with standards and procedures set forth in regulations prescribed by the President," after "concerned," in introductory provisions.

Subsec. (d)(1)(B). Pub. L. 115–91, §531(e)(2), inserted ", as determined in accordance with standards and procedures prescribed by the President" before period at end.

2016—Pub. L. 114–328 amended section generally. Prior to amendment, section related to maximum and minimum sentencing limits.

2013—Pub. L. 113–66 substituted "Maximum and minimum limits" for "Maximum limits" in section catchline, designated existing provisions as subsec. (a), and added subsec. (b).

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by Pub. L. 115–91 effective immediately after the amendments made by div. E (§§5001–5542) of Pub. L. 114–328 take effect as provided for in section 5542 of that Act (10 U.S.C. 801 note), see section 531(p) of Pub. L. 115–91, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114–328 effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

EFFECTIVE DATE OF 2013 AMENDMENT

Amendment by Pub. L. 113–66 effective 180 days after Dec. 26, 2013, and applicable to offenses specified in subsec. (b)(2) of this section committed on or after that date, see section 1705(c) of Pub. L. 113–66, set out as a note under section 818 of this title.

GUIDELINES ON SENTENCES FOR OFFENSES COMMITTED UNDER THE UNIFORM CODE OF MILITARY JUSTICE

Pub. L. 116–92, div. A, title V, §537, Dec. 20, 2019, 133 Stat. 1363, provided that:

''(a) DEVELOPMENT OF GUIDELINES.—Not later than the date specified in subsection (d), the Secretary of Defense shall develop nonbinding guidelines on sentences for offenses under chapter 47 of title 10, United States Code (the Uniform Code of Military Justice). The guidelines shall provide the sentencing authority with a suggested range of punishments, including suggested ranges of confinement, that will generally be appropriate for a violation of each offense under such chapter.

''(b) SENTENCING DATA.—In developing the guidelines for sentences under subsection (a), the Secretary of Defense shall take into account the sentencing data collected by the Military Justice Review Panel pursuant to section 946(f)(2) of title 10, United States Code (article 146(f)(2) of the Uniform Code of Military Justice).

''(c) SUBMITTAL TO CONGRESS.—Not later than the date specified in subsection (d), the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives—

''(1) the guidelines for sentences developed under subsection (a); and

''(2) an assessment of the feasibility and advisability of implementing such guidelines in panel sentencing cases.

''(d) DATE SPECIFIED.—The date specified in this subsection is the date that is not later than one year after the date on the which the first report of the Military Justice Review Panel is submitted to the Committees on Armed Services of the Senate and the House of Representatives pursuant to section 946(f)(5) of title 10, United States Code (article 146(f)(5) of the Uniform Code of Military Justice).''

[§ 856a. Repealed. Pub. L. 114–328, div. E, title LVIII, § 5301(b), Dec. 23, 2016, 130 Stat. 2920]

Section, added Pub. L. 105–85, div. A, title V, § 581(a)(1), Nov. 18, 1997, 111 Stat. 1759, related to sentence of confinement for life without eligibility for parole.

EFFECTIVE DATE OF REPEAL

Repeal effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

§ 857. Art. 57. Effective date of sentences

(a) EXECUTION OF SENTENCES.—A court-martial sentence shall be executed and take effect as follows:

(1) FORFEITURE AND REDUCTION.—A forfeiture of pay or allowances shall be applicable to pay and allowances accruing on and after the date on which the sentence takes effect. Any forfeiture of pay or allowances or reduction in grade that is included in a sentence of a court-martial takes effect on the earlier of—

(A) the date that is 14 days after the date on which the sentence is adjudged; or

(B) in the case of a summary court-martial, the date on which the sentence is approved by the convening authority.

(2) CONFINEMENT.—Any period of confinement included in a sentence of a court-martial begins to run from the date the sentence is adjudged by the court-martial, but periods during which the sentence to confinement is suspended or deferred shall be excluded in computing the service of the term of confinement.

(3) APPROVAL OF SENTENCE OF DEATH.—If the sentence of the court-martial extends to death, that part of the sentence providing for death may not be executed until approved by the President. In such a case, the President may commute, remit, or suspend the sentence, or any part thereof, as the President sees fit. That part of the sentence providing for death may not be suspended.

(4) APPROVAL OF DISMISSAL.—If in the case of a commissioned officer, cadet, or midshipman, the sentence of a court-martial extends to dismissal, that part of the sentence providing for dismissal may not be executed until approved by the Secretary concerned or such Under Secretary or Assistant Secretary as may be designated by the Secretary concerned. In such a case, the Secretary, Under Secretary, or Assistant Secretary, as the case may be, may commute, remit, or suspend the sentence, or any part of the sentence, as the Secretary sees fit. In time of war or national emergency he may commute a sentence of dismissal to reduction to any enlisted grade. A person so reduced may be required to serve for the duration of the war or emergency and six months thereafter.

(5) COMPLETION OF APPELLATE REVIEW.—If a sentence extends to death, dismissal, or a dishonorable or bad-conduct discharge, that part of the sentence extending to death, dismissal, or a dishonorable or bad-conduct discharge may be executed, in accordance with service regulations, after completion of appellate review (and, with respect to death or dismissal, approval under paragraph (3) or (4), as appropriate).

(6) OTHER SENTENCES.—Except as otherwise provided in this subsection, a general or special court-martial sentence is effective upon entry of judgment and a summary court-martial sentence is effective when the convening authority acts on the sentence.

(b) DEFERRAL OF SENTENCES.—

(1) IN GENERAL.—On application by an accused, the convening authority or, if the accused is no longer under his or her jurisdiction, the officer exercising general court-martial jurisdiction over the command to which the accused is currently assigned, may, in his or her sole discretion, defer the effective date of a sentence of confinement, reduction, or forfeiture. The deferment shall terminate upon entry of judgment or, in the case of a summary court-martial, when the convening authority acts on the sentence. The deferment may be rescinded at any time by the officer who granted it or, if the accused is no longer under his jurisdiction, by the officer exercising general court-martial jurisdiction over the command to which the accused is currently assigned.

(2) DEFERRAL OF CERTAIN PERSONS SENTENCED TO CONFINEMENT.—In any case in which a court-martial sentences a person referred to in paragraph (3) to confinement, the convening authority may defer the service of the sentence to confinement, without the consent of that person, until after the person has been permanently released to the armed forces by a State or foreign country referred to in that paragraph.

(3) COVERED PERSONS.—Paragraph (2) applies to a person subject to this chapter who—

(A) while in the custody of a State or foreign country is temporarily returned by that State or foreign country to the armed forces for trial by court-martial; and

(B) after the court-martial, is returned to that State or foreign country under the authority of a mutual agreement or treaty, as the case may be.

(4) STATE DEFINED.—In this subsection, the term ''State'' includes the District of Columbia and any Commonwealth, territory, or possession of the United States.

(5) DEFERRAL WHILE REVIEW PENDING.—In any case in which a court-martial sentences a person to confinement, but in which review of the case under section 867(a)(2) of this title (article 67(a)(2)) is pending, the Secretary concerned may defer further service of the sentence to confinement while that review is pending.

(c) APPELLATE REVIEW.—

(1) COMPLETION OF APPELLATE REVIEW.—Appellate review is complete under this section when—

(A) a review under section 865 of this title (article 65) is completed; or

(B) a review under section 866 of this title (article 66) is completed by a Court of Criminal Appeals and—

(i) the time for the accused to file a petition for review by the Court of Appeals for the Armed Forces has expired and the accused has not filed a timely petition for such review and the case is not otherwise under review by that Court;

(ii) such a petition is rejected by the Court of Appeals for the Armed Forces; or

(iii) review is completed in accordance with the judgment of the Court of Appeals for the Armed Forces and—

(I) a petition for a writ of certiorari is not filed within the time limits prescribed by the Supreme Court;

(II) such a petition is rejected by the Supreme Court; or

(III) review is otherwise completed in accordance with the judgment of the Supreme Court.

(2) COMPLETION AS FINAL JUDGMENT OF LEGALITY OF PROCEEDINGS.—The completion of appellate review shall constitute a final judgment as to the legality of the proceedings.

(Aug. 10, 1956, ch. 1041, 70A Stat. 56; Pub. L. 90–632, § 2(24), Oct. 24, 1968, 82 Stat. 1341; Pub. L. 98–209, § 5(f), Dec. 6, 1983, 97 Stat. 1400; Pub. L. 102–484, div. A, title X, § 1064, Oct. 23, 1992, 106 Stat. 2505; Pub. L. 104–106, div. A, title XI, §§ 1121(a), 1123(a)(1), (2), Feb. 10, 1996, 110 Stat. 462–464; Pub. L. 114–328, div. E, title LVIII, § 5302(a), Dec. 23, 2016, 130 Stat. 2921.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
857(a)	50:638(a).	May 5, 1950, ch. 169, § 1 (Art. 57), 64 Stat. 126.
857(b)	50:638(b).	
857(c)	50:638(c).	

In subsection (a), the word ''may'' is substituted for the word ''shall''.

In subsection (b), the word ''begins'' is substituted for the words ''shall begin''.

In subsection (c), the word ''are'' is substituted for the words ''shall become''.

AMENDMENTS

2016—Pub. L. 114–328 amended section generally. Prior to amendment, section related to effective date of sentences.

1996—Subsec. (a). Pub. L. 104–106, § 1121(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''No forfeiture may extend to any pay or allowances accrued before the date on which the sentence is approved by the person acting under section 860(c) of this title (article 60(c)).''

Subsecs. (d), (e). Pub. L. 104–106, § 1123(a)(1), (2), redesignated subsecs. (d) and (e) as section 857a(a) and (b), respectively, of this title.

1992—Subsec. (e). Pub. L. 102–484 added subsec. (e).

1983—Subsec. (a). Pub. L. 98–209 substituted provision that no forfeiture may extend to any pay or allowances accrued before the date on which the sentence is approved by the person acting under section 860(c) of this title, for provision that whenever a sentence of a court-martial as lawfully adjudged and approved included a forfeiture of pay or allowances in addition to confinement not suspended or deferred, the forfeiture could apply to pay or allowances becoming due on or after the date the sentence was approved by the convening authority, and that no forfeiture could extend to any pay or allowances accrued before that date.

1968—Subsec. (a). Pub. L. 90–632 inserted reference to deferral of sentence of confinement.

Subsec. (b). Pub. L. 90–632 inserted reference to deferral of sentence of confinement.

Subsec. (d). Pub. L. 90–632 added subsec. (d).

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114–328 effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–106, div. A, title XI, § 1121(b), Feb. 10, 1996, 110 Stat. 462, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to a case in which a sentence is adjudged by a court-martial on or after the first day of the first month that begins at least 30 days after the date of the enactment of this Act [Feb. 10, 1996].''

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–484 effective Oct. 23, 1992, and applicable with respect to offenses committed on or after that date, see section 1067 of Pub. L. 102–484, set out as a note under section 803 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–209 effective first day of eighth calendar month beginning after Dec. 6, 1983, but not to apply to any case in which the findings and sentence were adjudged by a court-martial before that date, and the proceedings in any such case to be held in the same manner and with the same effect as if such amendments had not been enacted, see section 12(a)(1), (4) of Pub. L. 98–209, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

[§ 857a. Repealed. Pub. L. 114–328, div. E, title LVIII, § 5302(b)(1), Dec. 23, 2016, 130 Stat. 2923]

Section, added Pub. L. 90–632, § 2(24), Oct. 24, 1968, 82 Stat. 1341, § 857(d); amended Pub. L. 102–484, div. A, title X, § 1064, Oct. 23, 1992, 106 Stat. 2505; renumbered § 857a and amended Pub. L. 104–106, div. A, title XI, § 1123(a), Feb. 10, 1996, 110 Stat. 463, related to deferment of sentence to confinement.

EFFECTIVE DATE OF REPEAL

Repeal effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

§ 858. Art. 58. Execution of confinement

(a) Under such instructions as the Secretary concerned may prescribe, a sentence of confinement adjudged by a court-martial or other military tribunal, whether or not the sentence includes discharge or dismissal, and whether or not the discharge or dismissal has been executed, may be carried into execution by confinement in any place of confinement under the control of any of the armed forces or in any penal or correctional institution under the control of the United States, or which the United States may be allowed to use. Persons so confined in a penal or correctional institution not under the control of one of the armed forces are subject to the same discipline and treatment as persons confined or committed by the courts of the United States or of the State, District of Columbia, or place in which the institution is situated.

(b) The omission of the words ''hard labor'' from any sentence of a court-martial adjudging confinement does not deprive the authority executing that sentence of the power to require hard labor as a part of the punishment.

(Aug. 10, 1956, ch. 1041, 70A Stat. 57; Pub. L. 109–163, div. A, title X, § 1057(a)(3), Jan. 6, 2006, 119 Stat. 3440.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
858(a) ……	50:639(a).	May 5, 1950, ch. 169, § 1
858(b) ……	50:639(b).	(Art. 58), 64 Stat. 126.

In subsection (a), the words ''Secretary concerned'' are substituted for the words ''Department concerned'', since the ''Department'' as an entity, cannot issue instructions. The word ''are'' is substituted for the words ''shall be''. The words ''of Columbia'' are inserted after ''District'' for clarity.

In subsection (b), the word ''from'' is substituted for the word ''in''. The words ''does not deprive'' are substituted for the words ''shall not be construed as depriving''.

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–163 struck out ''Territory,'' after ''State,''.

§ 858a. Art. 58a. Sentences: reduction in enlisted grade

(a) A court-martial sentence of an enlisted member in a pay grade above E–1, as set forth in the judgment of the court-martial entered into the record under section 860c of this title (article 60c), that includes—

(1) a dishonorable or bad-conduct discharge;
(2) confinement; or
(3) hard labor without confinement;

reduces that member to pay grade E–1, if such a reduction is authorized by regulation prescribed by the President. The reduction in pay grade shall take effect on the date on which the judgment is so entered.

(b) If the sentence of a member who is reduced in pay grade under subsection (a) is set aside or reduced, or, as finally affirmed, does not include any punishment named in subsection (a)(1), (2), or (3), the rights and privileges of which he was deprived because of that reduction shall be restored to him and he is entitled to the pay and allowances to which he would have been entitled, for the period the reduction was in effect, had he not been so reduced.

(Added Pub. L. 86–633, § 1(1), July 12, 1960, 74 Stat. 468; amended Pub. L. 114–328, div. E, title LVIII, § 5303, Dec. 23, 2016, 130 Stat. 2923; Pub. L. 115–91, div. A, title V, § 531(f)(1), (2), Dec. 12, 2017, 131 Stat. 1385.)

AMENDMENTS

2017—Pub. L. 115–91, § 531(f)(2), struck out ''upon approval'' after ''reduction in enlisted grade'' in section catchline.

Subsec. (a). Pub. L. 115–91, § 531(f)(1), substituted '', if such a reduction is authorized by regulation prescribed by the President. The reduction in pay grade shall take effect on the date'' for '', effective on the date'' in concluding provisions.

2016—Subsec. (a). Pub. L. 114–328, § 5303(1), in introductory provisions, substituted ''A'' for ''Unless otherwise provided in regulations to be prescribed by the Secretary concerned, a'' and ''as set forth in the judgment of the court-martial entered into the record under section 860c of this title (article 60c)'' for ''as approved by the convening authority'', and, in concluding provisions, substituted ''on which the judgment is so entered'' for ''of that approval''.

Subsec. (b). Pub. L. 114–328, § 5303(2), substituted ''reduced, or, as finally affirmed'' for ''disapproved, or, as finally approved''.

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by Pub. L. 115–91 effective immediately after the amendments made by div. E (§§ 5001–5542) of Pub. L. 114–328 take effect as provided for in section 5542 of that Act (10 U.S.C. 801 note), see section 531(p) of Pub. L. 115–91, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114–328 effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

§ 858b. Art. 58b. Sentences: forfeiture of pay and allowances during confinement

(a)(1) A court-martial sentence described in paragraph (2) shall result in the forfeiture of pay, or of pay and allowances, due that member during any period of confinement or parole. The forfeiture pursuant to this section shall take effect on the date determined under section 857 of this title (article 57) and may be deferred as provided in that section. The pay and allowances forfeited, in the case of a general court-martial,

shall be all pay and allowances due that member during such period and, in the case of a special court-martial, shall be two-thirds of all pay due that member during such period.

(2) A sentence covered by this section is any sentence that includes—

(A) confinement for more than six months or death; or

(B) confinement for six months or less and a dishonorable or bad-conduct discharge or dismissal.

(b) In a case involving an accused who has dependents, the convening authority or other person acting under section 860a or 860b of this title (article 60a or 60b) may waive any or all of the forfeitures of pay and allowances required by subsection (a) for a period not to exceed six months. Any amount of pay or allowances that, except for a waiver under this subsection, would be forfeited shall be paid, as the convening authority or other person taking action directs, to the dependents of the accused.

(c) If the sentence of a member who forfeits pay and allowances under subsection (a) is set aside or disapproved or, as finally approved, does not provide for a punishment referred to in subsection (a)(2), the member shall be paid the pay and allowances which the member would have been paid, except for the forfeiture, for the period during which the forfeiture was in effect.

(Added Pub. L. 104–106, div. A, title XI, § 1122(a)(1), Feb. 10, 1996, 110 Stat. 463; amended Pub. L. 104–201, div. A, title X, § 1068(a)(1), Sept. 23, 1996, 110 Stat. 2655; Pub. L. 105–85, div. A, title X, § 1073(a)(9), Nov. 18, 1997, 111 Stat. 1900; Pub. L. 114–328, div. E, title LVIII, § 5302(b)(3), Dec. 23, 2016, 130 Stat. 2923; Pub. L. 115–91, div. A, title V, § 531(g), Dec. 12, 2017, 131 Stat. 1385.)

AMENDMENTS

2017—Subsec. (b). Pub. L. 115–91 substituted ''section 860a or 860b of this title (article 60a or 60b)'' for ''section 860 of this title (article 60)''.

2016—Subsec. (a)(1). Pub. L. 114–328 substituted ''section 857 of this title (article 57)'' for ''section 857(a) of this title (article 57(a))''.

1997—Subsec. (a)(1). Pub. L. 105–85 substituted ''forfeiture of pay, or of pay and allowances, due that member'' for ''forfeiture of pay and (if adjudged by a general court-martial) allowances due that member'' in first sentence.

1996—Subsec. (a)(1). Pub. L. 104–201, § 1068(a)(1)(B), substituted ''two-thirds of all pay'' for ''two-thirds of all pay and allowances'' in third sentence.

Pub. L. 104–201, § 1068(a)(1)(A), which directed amendment of first sentence by inserting ''(if adjudged by a general court-martial)'' after ''all pay and'', was executed by making the insertion after ''of pay and'' in first sentence to reflect the probable intent of Congress.

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by Pub. L. 115–91 effective immediately after the amendments made by div. E (§§ 5001–5542) of Pub. L. 114–328 take effect as provided for in section 5542 of that Act (10 U.S.C. 801 note), see section 531(p) of Pub. L. 115–91, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114–328 effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–201, div. A, title X, § 1068(a)(2), Sept. 23, 1996, 110 Stat. 2655, provided that: ''The amendments made by paragraph (1) [amending this section] shall take effect as of April 1, 1996, and shall apply to any case in which a sentence is adjudged by a court-martial on or after that date.''

EFFECTIVE DATE

Pub. L. 104–106, div. A, title XI, § 1122(b), Feb. 10, 1996, 110 Stat. 463, provided that: ''The section (article) added by the amendment made by subsection (a)(1) [this section] shall apply to a case in which a sentence is adjudged by a court-martial on or after the first day of the first month that begins at least 30 days after the date of the enactment of this Act [Feb. 10, 1996].''

SUBCHAPTER IX—POST-TRIAL PROCEDURE AND REVIEW OF COURTS-MARTIAL

Sec.	Art.	
859.	59.	Error of law; lesser included offense.
860.	60.	Post-trial processing in general and special courts-martial.
860a.	60a.	Limited authority to act on sentence in specified post-trial circumstances.
860b.	60b.	Post-trial actions in summary courts-martial and certain general and special courts-martial.
860c.	60c.	Entry of judgment.
861.	61.	Waiver of right to appeal; withdrawal of appeal.
862.	62.	Appeal by the United States.
863.	63.	Rehearings.
864.	64.	Judge advocate review of finding of guilty in summary court-martial.
865.	65.	Transmittal and review of records.
866.	66.	Courts of Criminal Appeals.
867.	67.	Review by the Court of Appeals for the Armed Forces.
867a.	67a.	Review by the Supreme Court.
868.	68.	Branch offices.
869.	69.	Review by Judge Advocate General.
870.	70.	Appellate counsel.
[871.	71.	Repealed.]
872.	72.	Vacation of suspension.
873.	73.	Petition for a new trial.
874.	74.	Remission and suspension.
875.	75.	Restoration.
876.	76.	Finality of proceedings, findings, and sentences.
876a.	76a.	Leave required to be taken pending review of certain court-martial convictions.
876b.	76b.	Lack of mental capacity or mental responsibility: commitment of accused for examination and treatment.

AMENDMENTS

2017—Pub. L. 115–91, div. A, title X, § 1081(d)(19)(A), Dec. 12, 2017, 131 Stat. 1601, made technical amendment to Pub. L. 114–328, § 5541(6)(A) to (C). See 2016 Amendment notes below.

2016—Pub. L. 114–328, div. E, title LXIII, § 5541(6)(D), Dec. 23, 2016, 130 Stat. 2967, struck out item 871 ''Art. 71. Execution of sentence; suspension of sentence''.

Pub. L. 114–328, div. E, title LXIII, § 5541(6)(B), (C), Dec. 23, 2016, 130 Stat. 2967, as amended by Pub. L. 115–91, div. A, title X, § 1081(d)(19)(A), Dec. 12, 2017, 131 Stat. 1601, substituted ''Judge advocate review of finding of guilty in summary court-martial'' for ''Review by a judge advocate'' in item 864, ''Transmittal and review of records'' for ''Disposition of records'' in item 865, ''Courts of Criminal Appeals'' for ''Review by Court of Criminal Appeals'' in item 866, and ''Review by

Judge Advocate General'' for ''Review in the office of the Judge Advocate General'' in item 869.

Pub. L. 114–328, div. E, title LXIII, § 5541(6)(A), Dec. 23, 2016, 130 Stat. 2966, as amended by Pub. L. 115–91, div. A, title X, § 1081(d)(19)(A), Dec. 12, 2017, 131 Stat. 1601, added items 860a to 860c and substituted ''Post-trial processing in general and special courts-martial'' for ''Action by the convening authority'' in item 860.

Pub. L. 114–328, div. E, title LXIII, § 5541(6)(A), Dec. 23, 2016, 130 Stat. 2966, as amended by Pub. L. 115–91, div. A, title X, § 1081(d)(19)(A), Dec. 12, 2017, 131 Stat. 1601, which directed amendment of analysis by striking out item ''61'' and inserting item 861, was amended by striking out item 861 ''Waiver or withdrawal of appeal'' and adding new item 861 to reflect the probable intent of Congress.

1996—Pub. L. 104–106, div. A, title XI, § 1133(a)(2), Feb. 10, 1996, 110 Stat. 466, added item 876b.

1994—Pub. L. 103–337, div. A, title IX, § 924(c)(4)(C), Oct. 5, 1994, 108 Stat. 2832, substituted ''Court of Criminal Appeals'' for ''Court of Military Review'' in item 866 and ''Court of Appeals for the Armed Forces'' for ''Court of Military Appeals'' in item 867.

1990—Pub. L. 101–510, div. A, title XIV, § 1484(i)(1), Nov. 5, 1990, 104 Stat. 1718, added item 867a.

1983—Pub. L. 98–209, §§ 5(a)(2), (b)(2), (c)(2), (h)(2), 6(d)(2), 7(a)(2), Dec. 6, 1983, 97 Stat. 1397, 1398, 1400–1402, substituted ''Post-trial Procedure and Review of Courts-Martial'' for ''Review of Courts-Martial'' as subchapter heading, ''Action by the convening authority'' for ''Initial action on the record'' in item 860, ''Waiver or withdrawal of appeal'' for ''Same—General court-martial records'' in item 861, ''Appeal by the United States'' for ''Reconsideration and revision'' in item 862, ''Review by a judge advocate'' for ''Approval by the convening authority'' in item 864, and ''Disposition of records'' for ''Disposition of records after review by the convening authority'' in item 865.

1981—Pub. L. 97–81, § 2(c)(2), Nov. 20, 1981, 95 Stat. 1087, added item 876a.

1968—Pub. L. 90–632, § 2(25), Oct. 24, 1968, 82 Stat. 1341, substituted ''Court of Military Review'' for ''board of review'' in item 866 (article 66).

§ 859. Art. 59. Error of law; lesser included offense

(a) A finding or sentence of a court-martial may not be held incorrect on the ground of an error of law unless the error materially prejudices the substantial rights of the accused.

(b) Any reviewing authority with the power to approve or affirm a finding of guilty may approve or affirm, instead, so much of the finding as includes a lesser included offense.

(Aug. 10, 1956, ch. 1041, 70A Stat. 57.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
859(a) ……	50:646(a).	May 5, 1950, ch. 169, § 1 (Art. 59), 64 Stat. 127.
859(b) ……	50:646(b).	

The word ''may'' is substituted for the word ''shall''.

§ 860. Art 60. Post-trial processing in general and special courts-martial

(a) STATEMENT OF TRIAL RESULTS.—(1) The military judge of a general or special court-martial shall enter into the record of trial a document entitled ''Statement of Trial Results'', which shall set forth—

(A) each plea and finding;

(B) the sentence, if any; and

(C) such other information as the President may prescribe by regulation.

(2) Copies of the Statement of Trial Results shall be provided promptly to the convening authority, the accused, and any victim of the offense.

(b) POST-TRIAL MOTIONS.—In accordance with regulations prescribed by the President, the military judge in a general or special court-martial shall address all post-trial motions and other post-trial matters that—

(1) may affect a plea, a finding, the sentence, the Statement of Trial Results, the record of trial, or any post-trial action by the convening authority; and

(2) are subject to resolution by the military judge before entry of judgment.

(Aug. 10, 1956, ch. 1041, 70A Stat. 57; Pub. L. 98–209, § 5(a)(1), Dec. 6, 1983, 97 Stat. 1395; Pub. L. 99–661, div. A, title VIII, § 806(a)–(c), Nov. 14, 1986, 100 Stat. 3908, 3909; Pub. L. 104–106, div. A, title XI, § 1132, Feb. 10, 1996, 110 Stat. 464; Pub. L. 113–66, div. A, title XVII, §§ 1702(b), (c)(1), 1706, Dec. 26, 2013, 127 Stat. 955–957, 960; Pub. L. 113–291, div. A, title V, § 531(a)(1)–(3), (5), Dec. 19, 2014, 128 Stat. 3362, 3363; Pub. L. 114–328, div. E, title LIX, § 5321, Dec. 23, 2016, 130 Stat. 2924.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
860 ……….	50:647.	May 5, 1950, ch. 169, § 1 (Art. 60), 64 Stat. 127.

The word ''a'' is substituted for the word ''every''. The word ''by'' before the words ''any officer'' is omitted as surplusage. The word ''person'' is substituted for the word ''officer'' before the words ''who convened'', since, under sections 823 and 824 of this title (articles 23 and 24), noncommissioned officers who are ''officers in charge'' may convene special and summary courts-martial.

AMENDMENTS

2016—Pub. L. 114–328 amended section generally. Prior to amendment, section related to action by the convening authority.

2014—Subsec. (c)(3)(A). Pub. L. 113–291, § 531(a)(1)(A), inserted ''and may be taken only with respect to a qualifying offense'' after ''is not required''.

Subsec. (c)(3)(B)(i). Pub. L. 113–291, § 531(a)(1)(B), struck out '', other than a charge or specification for a qualifying offense,'' after ''specification'' and inserted '', but may take such action with respect to a qualifying offense'' before semicolon.

Subsec. (c)(3)(B)(ii). Pub. L. 113–291, § 531(a)(1)(C), struck out '', other than a charge or specification for a qualifying offense,'' after ''to a charge or specification'' and inserted '', but may take such action with respect to a qualifying offense'' before period.

Subsec. (c)(3)(C). Pub. L. 113–291, § 531(a)(2), struck out ''(other than a qualifying offense)'' after ''offense''.

Subsec. (c)(4)(C)(ii). Pub. L. 113–291, § 531(a)(5), inserted ''pursuant to section 856(b) of this title (article 56(b))'' after ''applies''.

Subsec. (d)(2)(A)(i). Pub. L. 113–291, § 531(a)(3)(A)(i), inserted '', if applicable'' before semicolon.

Subsec. (d)(2)(A)(ii). Pub. L. 113–291, § 531(a)(3)(A)(ii), struck out ''if applicable,'' before ''the date''.

Subsec. (d)(5). Pub. L. 113–291, § 531(a)(3)(B), substituted ''harm'' for ''loss''.

2013—Subsec. (b)(1). Pub. L. 113–66, § 1706(c), substituted ''subsection (e)'' for ''subsection (d)''.

Subsec. (b)(2). Pub. L. 113–66, § 1702(c)(1)(A), substituted ''or another person authorized to act under this section'' for ''or other person taking action under this section''.

Subsec. (b)(5). Pub. L. 113–66, § 1706(b), added par. (5).

Subsec. (c). Pub. L. 113–66, § 1702(b), amended subsec. (c) generally. Prior to amendment, text related to the command prerogative of the convening authority to modify the findings and sentence of a court-martial.

Subsec. (d). Pub. L. 113–66, § 1706(a)(2), added subsec. (d). Former subsec. (d) redesignated (e).

Pub. L. 113–66, § 1702(c)(1)(B), substituted ''or another person authorized to act under this section'' for ''or other person taking action under this section'' in first sentence.

Subsec. (e). Pub. L. 113–66, § 1706(a)(1), redesignated subsec. (d) as (e). Former subsec. (e) redesignated (f).

Subsec. (e)(1). Pub. L. 113–66, § 1702(c)(1)(C), substituted ''or another person authorized to act under this section'' for ''or other person taking action under this section, in his sole discretion,''.

Subsec. (e)(3). Pub. L. 113–66, § 1702(c)(1)(D), substituted ''or another person authorized to act under this section'' for ''or other person taking action under this section''.

Subsec. (f). Pub. L. 113–66, § 1706(a)(1), redesignated subsec. (e) as (f).

1996—Subsec. (b)(1). Pub. L. 104–106 inserted after first sentence ''Any such submission shall be in writing.''

1986—Subsec. (b)(1). Pub. L. 99–661, § 806(a)(3), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''Within 30 days after the sentence of a general court-martial or of a special court-martial which has adjudged a bad-conduct discharge has been announced, the accused may submit to the convening authority matters for consideration by the convening authority with respect to the findings and the sentence. In the case of all other special courts-martial, the accused may make such a submission to the convening authority within 20 days after the sentence is announced. In the case of all summary courts-martial the accused may make such a submission to the convening authority within seven days after the sentence is announced. If the accused shows that additional time is required for the accused to submit such matters, the convening authority or other person taking action under this section, for good cause, may extend the period—

''(A) in the case of a general court-martial or a special court-martial which has adjudged a bad-conduct discharge, for not more than an additional 20 days; and

''(B) in the case of all other courts-martial, for not more than an additional 10 days.''

Subsec. (b)(2). Pub. L. 99–661, § 806(a)(2), (3), added par. (2). Former par. (2) redesignated (3).

Subsec. (b)(3). Pub. L. 99–661, § 806(a)(1), (2), redesignated par. (2) as (3), inserted a comma after ''case'', and struck out former par. (3) which read as follows: ''In no event shall the accused in any general or special court-martial case have less than a seven-day period after the day on which a copy of the authenticated record of trial has been given to him within which to make a submission under paragraph (1). The convening authority or other person taking action on the case, for good cause, may extend this period for up to an additional 10 days.''

Subsec. (c)(2). Pub. L. 99–661, § 806(b), struck out ''and, if applicable, under subsection (d),'' after ''under subsection (b)''.

Subsec. (d). Pub. L. 99–661, § 806(c), substituted ''who may submit any matter in response under subsection (b)'' for ''who shall have five days from the date of receipt in which to submit any matter in response. The convening authority or other person taking action under this section, for good cause, may extend that period for up to an additional 20 days.''

1983—Pub. L. 98–209 amended section generally, substituting ''Action by the convening authority'' for ''Initial action on the record'' as section catchline, and, in text, substituting new provision for provision that after a trial by court-martial the record had to be forwarded to the convening authority, and action thereon could be taken by the person who convened the court, a commissioned officer commanding for the time being, a successor in command, or any officer exercising general court-martial jurisdiction.

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114–328 effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 113–66, div. A, title XVII, § 1702(d)(2), Dec. 26, 2013, 127 Stat. 958, as amended by Pub. L. 113–291, div. A, title V, § 531(g)(2)(A), Dec. 19, 2014, 128 Stat. 3365, provided that:

''(A) Except as provided in subparagraph (B), the amendments made by subsection (b) and paragraphs (1) and (2) of subsection (c) [amending this section and section 871 of this title] shall take effect 180 days after the date of the enactment of this Act [Dec. 26, 2013] and shall apply with respect to offenses committed under chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), on or after that effective date.

''(B) With respect to the findings and sentence of a court-martial that includes both a conviction for an offense committed before the effective date specified in subparagraph (A) and a conviction for an offense committed on or after that effective date, the convening authority shall have the same authority to take action on such findings and sentence as was in effect on the day before such effective date, except with respect to a mandatory minimum sentence under section 856(b) of title 10, United States Code (article 56(b) of the Uniform Code of Military Justice).''

[Pub. L. 113–291, div. A, title V, § 531(g)(2)(B), Dec. 19, 2014, 128 Stat. 3366, provided that: ''The amendments made by subparagraph (A) [amending section 1702(d)(2) of Pub. L. 113–66, set out above] shall not apply to the findings and sentence of a court-martial with respect to which the convening authority has taken action before the date that is 30 days after the date of the enactment of this Act [Dec. 19, 2014].'']

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–661, div. A, title VIII, § 806(c) [(d)], Nov. 14, 1986, 100 Stat. 3909, provided that: ''The amendments made by this section [amending this section] shall apply in cases in which the sentence is adjudged on or after the effective date of this title.''

Title VIII of Pub. L. 99–661 effective the earlier of (1) the last day of the 120-day period beginning on Nov. 14, 1986; or (2) the date specified in an Executive order for such amendment to take effect, see section 808 of Pub. L. 99–661, set out as a note under section 802 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–209 effective first day of eighth calendar month beginning after Dec. 6, 1983, but not to apply to any case in which the findings and sentence were adjudged by a court-martial before that date, and the proceedings in any such case to be held in the same manner and with the same effect as if such amendments had not been enacted, see section 12(a)(1), (4) of Pub. L. 98–209, set out as a note under section 801 of this title.

§ 860a. Art. 60a. Limited authority to act on sentence in specified post-trial circumstances

(a) IN GENERAL.—(1) The convening authority of a general or special court-martial described in paragraph (2)—

(A) may act on the sentence of the court-martial only as provided in subsection (b), (c), or (d); and

(B) may not act on the findings of the court-martial.

(2) The courts-martial referred to in paragraph (1) are the following:

(A) A general or special court-martial in which the maximum sentence of confinement established under subsection (a) of section 856 of this title (article 56) for any offense of which the accused is found guilty is more than two years.

(B) A general or special court-martial in which the total of the sentences of confinement imposed, running consecutively, is more than six months.

(C) A general or special court-martial in which the sentence imposed includes a dismissal, dishonorable discharge, or bad-conduct discharge.

(D) A general or special court-martial in which the accused is found guilty of a violation of subsection (a) or (b) of section 920 of this title (article 120), section 920b of this title (article 120b), or such other offense as the Secretary of Defense may specify by regulation.

(3) Except as provided in subsection (d), the convening authority may act under this section only before entry of judgment.

(4) Under regulations prescribed by the Secretary concerned, a commissioned officer commanding for the time being, a successor in command, or any person exercising general court-martial jurisdiction may act under this section in place of the convening authority.

(b) REDUCTION, COMMUTATION, AND SUSPENSION OF SENTENCES GENERALLY.—(1) Except as provided in subsection (c) or (d), the convening authority may not reduce, commute, or suspend any of the following sentences:

(A) A sentence of confinement, if the total period of confinement imposed for all offenses involved, running consecutively, is greater than six months.

(B) A sentence of dismissal, dishonorable discharge, or bad-conduct discharge.

(C) A sentence of death.

(2) The convening authority may reduce, commute, or suspend any sentence not specified in paragraph (1).

(c) SUSPENSION OF CERTAIN SENTENCES UPON RECOMMENDATION OF MILITARY JUDGE.—(1) Upon recommendation of the military judge, as included in the Statement of Trial Results, together with an explanation of the facts supporting the recommendation, the convening authority may suspend—

(A) a sentence of confinement, in whole or in part; or

(B) a sentence of dismissal, dishonorable discharge, or bad-conduct discharge.

(2) The convening authority may not, under paragraph (1)—

(A) suspend a mandatory minimum sentence; or

(B) suspend a sentence to an extent in excess of the suspension recommended by the military judge.

(d) REDUCTION OF SENTENCE FOR SUBSTANTIAL ASSISTANCE BY ACCUSED.—(1) Upon a recommendation by the trial counsel, if the accused, after sentencing and before entry of judgment, provides substantial assistance in the investigation or prosecution of another person, the convening authority may reduce, commute, or suspend a sentence, in whole or in part, including any mandatory minimum sentence.

(2) Upon a recommendation by a trial counsel, designated in accordance with rules prescribed by the President, if the accused, after entry of judgment, provides substantial assistance in the investigation or prosecution of another person, a convening authority, designated under such regulations, may reduce, commute, or suspend a sentence, in whole or in part, including any mandatory minimum sentence.

(3) In evaluating whether the accused has provided substantial assistance under this subsection, the convening authority may consider the presentence assistance of the accused.

(e) SUBMISSIONS BY ACCUSED AND VICTIM.—(1) In accordance with rules prescribed by the President, in determining whether to act under this section, the convening authority shall consider matters submitted in writing by the accused or any victim of an offense. Such rules shall include—

(A) procedures for notice of the opportunity to make such submissions;

(B) the deadlines for such submissions; and

(C) procedures for providing the accused and any victim of an offense with a copy of the recording of any open sessions of the court-martial and copies of, or access to, any admitted, unsealed exhibits.

(2) The convening authority shall not consider under this section any submitted matters that relate to the character of a victim unless such matters were presented as evidence at trial and not excluded at trial.

(f) DECISION OF CONVENING AUTHORITY.—(1) The decision of the convening authority under this section shall be forwarded to the military judge, with copies provided to the accused and to any victim of the offense.

(2) If, under this section, the convening authority reduces, commutes, or suspends the sentence, the decision of the convening authority shall include a written explanation of the reasons for such action.

(3) If, under subsection (d)(2), the convening authority reduces, commutes, or suspends the sentence, the decision of the convening authority shall be forwarded to the chief trial judge for appropriate modification of the entry of judgment, which shall be transmitted to the Judge Advocate General for appropriate action.

(Added Pub. L. 114–328, div. E, title LIX, § 5322, Dec. 23, 2016, 130 Stat. 2924.)

EFFECTIVE DATE

Section effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. 13825, set out as notes under section 801 of this title.

§ 860b. Art. 60b. Post-trial actions in summary courts-martial and certain general and special courts-martial

(a) IN GENERAL.—(1) In a court-martial not specified in section 860a(a)(2) of this title (article 60a(a)(2)), the convening authority may—

(A) dismiss any charge or specification by setting aside the finding of guilty;

(B) change a finding of guilty to a charge or specification to a finding of guilty to a lesser included offense;

(C) disapprove the findings and the sentence and dismiss the charges and specifications;

(D) disapprove the findings and the sentence and order a rehearing as to the findings and the sentence;

(E) disapprove, commute, or suspend the sentence, in whole or in part; or

(F) disapprove the sentence and order a rehearing as to the sentence.

(2) In a summary court-martial, the convening authority shall approve the sentence or take other action on the sentence under paragraph (1).

(3) Except as provided in paragraph (4), the convening authority may act under this section only before entry of judgment.

(4) The convening authority may act under this section after entry of judgment in a general or special court-martial in the same manner as the convening authority may act under section 860a(d)(2) of this title (article 60a(d)(2)). Such action shall be forwarded to the chief trial judge, who shall ensure appropriate modification to the entry of judgment and shall transmit the entry of judgment to the Judge Advocate General for appropriate action.

(5) Under regulations prescribed by the Secretary concerned, a commissioned officer commanding for the time being, a successor in command, or any person exercising general court-martial jurisdiction may act under this section in place of the convening authority.

(b) LIMITATIONS ON REHEARINGS.—The convening authority may not order a rehearing under this section—

(1) as to the findings, if there is insufficient evidence in the record to support the findings;

(2) to reconsider a finding of not guilty of any specification or a ruling which amounts to a finding of not guilty; or

(3) to reconsider a finding of not guilty of any charge, unless there has been a finding of guilty under a specification laid under that charge, which sufficiently alleges a violation of some article of this chapter.

(c) SUBMISSIONS BY ACCUSED AND VICTIM.—In accordance with rules prescribed by the President, in determining whether to act under this section, the convening authority shall consider matters submitted in writing by the accused or any victim of the offense. Such rules shall include the matter required by section 860a(e) of this title (article 60a(e)).

(d) DECISION OF CONVENING AUTHORITY.—(1) In a general or special court-martial, the decision of the convening authority under this section shall be forwarded to the military judge, with copies provided to the accused and to any victim of the offense.

(2) If the convening authority acts on the findings or the sentence under subsection (a)(1), the decision of the convening authority shall include a written explanation of the reasons for such action.

(Added Pub. L. 114–328, div. E, title LIX, § 5323, Dec. 23, 2016, 130 Stat. 2926.)

EFFECTIVE DATE

Section effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. 13825, set out as notes under section 801 of this title.

§ 860c. Art. 60c. Entry of judgment

(a) ENTRY OF JUDGMENT OF GENERAL OR SPECIAL COURT-MARTIAL.—(1) In accordance with rules prescribed by the President, in a general or special court-martial, the military judge shall enter into the record of trial the judgment of the court. The judgment of the court shall consist of the following:

(A) The Statement of Trial Results under section 860 of this title (article 60).

(B) Any modifications of, or supplements to, the Statement of Trial Results by reason of—

(i) any post-trial action by the convening authority; or

(ii) any ruling, order, or other determination of the military judge that affects a plea, a finding, or the sentence.

(2) Under rules prescribed by the President, the judgment under paragraph (1) shall be—

(A) provided to the accused and to any victim of the offense; and

(B) made available to the public.

(b) SUMMARY COURT-MARTIAL JUDGMENT.—The findings and sentence of a summary court-martial, as modified by any post-trial action by the convening authority under section 860b of this title (article 60b), constitutes the judgment of the court-martial and shall be recorded and distributed under rules prescribed by the President.

(Added Pub. L. 114–328, div. E, title LIX, § 5324, Dec. 23, 2016, 130 Stat. 2927.)

EFFECTIVE DATE

Section effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. 13825, set out as notes under section 801 of this title.

§ 861. Art. 61. Waiver of right to appeal; withdrawal of appeal

(a) WAIVER OF RIGHT TO APPEAL.—After entry of judgment in a general or special court-martial, under procedures prescribed by the Secretary concerned, the accused may waive the right to appellate review in each case subject to such review under section 866 of this title (article 66). Such a waiver shall be—

(1) signed by the accused and by defense counsel; and

(2) attached to the record of trial.

(b) WITHDRAWAL OF APPEAL.—In a general or special court-martial, the accused may withdraw an appeal at any time.

(c) DEATH PENALTY CASE EXCEPTION.—Notwithstanding subsections (a) and (b), an accused may not waive the right to appeal or withdraw an appeal with respect to a judgment that includes a sentence of death.

(d) WAIVER OR WITHDRAWAL AS BAR.—A waiver or withdrawal under this section bars review under section 866 of this title (article 66).

(Aug. 10, 1956, ch. 1041, 70A Stat. 58; Pub. L. 98–209, § 5(b)(1), Dec. 6, 1983, 97 Stat. 1397; Pub. L. 114–328, div. E, title LIX, § 5325, Dec. 23, 2016, 130 Stat. 2928.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
861	50:648.	May 5, 1950, ch. 169, §1 (Art. 61), 64 Stat. 127.

The word ''each'' is substituted for the word ''every''.

AMENDMENTS

2016—Pub. L. 114–328 amended section generally. Prior to amendment, section related to waiver or withdrawal of appeal.

1983—Pub. L. 98–209 amended section generally, substituting ''Waiver or withdrawal of appeal'' for ''Same—General court-martial records'' as section catchline, and, in text, substituting provisions relating to waiver or withdrawal of appeal for provisions relating to initial action by the convening authority on general court-martial records.

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114–328 effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–209 effective first day of eighth calendar month beginning after Dec. 6, 1983, but not to apply to any case in which the findings and sentence were adjudged by a court-martial before that date, and the proceedings in any such case to be held in the same manner and with the same effect as if such amendments had not been enacted, see section 12(a)(1), (4) of Pub. L. 98–209, set out as a note under section 801 of this title.

§ 862. Art. 62. Appeal by the United States

(a)(1) In a trial by general or special court-martial, or in a pretrial proceeding under section 830a of this title (article 30a), the United States may appeal the following:

(A) An order or ruling of the military judge which terminates the proceedings with respect to a charge or specification.

(B) An order or ruling which excludes evidence that is substantial proof of a fact material in the proceeding.

(C) An order or ruling which directs the disclosure of classified information.

(D) An order or ruling which imposes sanctions for nondisclosure of classified information.

(E) A refusal of the military judge to issue a protective order sought by the United States to prevent the disclosure of classified information.

(F) A refusal by the military judge to enforce an order described in subparagraph (E) that has previously been issued by appropriate authority.

(G) An order or ruling of the military judge entering a finding of not guilty with respect to a charge or specification following the return of a finding of guilty by the members.

(2)(A) An appeal of an order or ruling may not be taken unless the trial counsel provides the military judge with written notice of appeal from the order or ruling within 72 hours of the order or ruling. Such notice shall include a certification by the trial counsel that the appeal is not taken for the purpose of delay and (if the order or ruling appealed is one which excludes evidence) that the evidence excluded is substantial proof of a fact material in the proceeding.

(B) An appeal of an order or ruling may not be taken when prohibited by section 844 of this title (article 44).

(3) An appeal under this section shall be diligently prosecuted by appellate Government counsel.

(b) An appeal under this section shall be forwarded by a means prescribed under regulations of the President directly to the Court of Criminal Appeals and shall, whenever practicable, have priority over all other proceedings before that court. In ruling on an appeal under this section, the Court of Criminal Appeals may act only with respect to matters of law.

(c) Any period of delay resulting from an appeal under this section shall be excluded in deciding any issue regarding denial of a speedy trial unless an appropriate authority determines that the appeal was filed solely for the purpose of delay with the knowledge that it was totally frivolous and without merit.

(d) The United States may appeal a ruling or order of a military magistrate in the same manner as had the ruling or order been made by a military judge, except that the issue shall first be presented to the military judge who designated the military magistrate or to a military judge detailed to hear the issue.

(e) The provisions of this section shall be liberally construed to effect its purposes.

(Aug. 10, 1956, ch. 1041, 70A Stat. 58; Pub. L. 98–209, § 5(c)(1), Dec. 6, 1983, 97 Stat. 1398; Pub. L. 103–337, div. A, title IX, § 924(c)(2), Oct. 5, 1994, 108 Stat. 2831; Pub. L. 104–106, div. A, title XI, § 1141(a), Feb. 10, 1996, 110 Stat. 466; Pub. L. 114–328, div. E, title LIX, § 5326, Dec. 23, 2016, 130 Stat. 2928; Pub. L. 115–91, div. A, title V, § 531(h), Dec. 12, 2017, 131 Stat. 1385.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
862(a)	50:649(a).	May 5, 1950, ch. 169, §1 (Art. 62), 64 Stat. 127.
862(b)	50:649(b).	

AMENDMENTS

2017—Subsec. (b). Pub. L. 115–91 struck out '', notwithstanding section 866(c) of this title (article 66(c))'' after ''matters of law''.

2016—Subsec. (a)(1). Pub. L. 114–328, § 5326(1)(A), in introductory provisions, substituted ''general or special court-martial, or in a pretrial proceeding under section 830a of this title (article 30a), the United States may appeal the following:'' for ''court-martial in which a military judge presides and in which a punitive discharge may be adjudged, the United States may appeal the following (other than an order or ruling that is, or that amounts to, a finding of not guilty with respect to the charge or specification):''.

Subsec. (a)(1)(G). Pub. L. 114–328, § 5326(1)(B), added subpar. (G).

Subsec. (a)(2). Pub. L. 114–328, § 5326(2), designated existing provisions as subpar. (A) and added subpar. (B).

Subsecs. (d), (e). Pub. L. 114–328, § 5326(3), added subsecs. (d) and (e).

1996—Subsec. (a)(1). Pub. L. 104–106 amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''In a trial by court-martial in which a military judge presides and in which a punitive discharge may be adjudged, the United States may appeal an order or ruling of the military judge which terminates the proceedings with respect to a charge or specification or which excludes evidence that is substantial proof of a fact material in the proceeding. However, the United States may not appeal an order or ruling that is, or that amounts to, a finding of not guilty with respect to the charge or specification.''

1994—Subsec. (b). Pub. L. 103–337 substituted ''Court of Criminal Appeals'' for ''Court of Military Review'' in two places.

1983—Pub. L. 98–209 amended section generally, substituting ''Appeal by the United States'' for ''Reconsideration and revision'' as section catchline, and, in text, substituting provisions relating to appeals by the United States for provisions relating to the convening authority returning the record to the court for reconsideration and appropriate action.

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by Pub. L. 115–91 effective immediately after the amendments made by div. E (§§ 5001–5542) of Pub. L. 114–328 take effect as provided for in section 5542 of that Act (10 U.S.C. 801 note), see section 531(p) of Pub. L. 115–91, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114–328 effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–209 effective first day of eighth calendar month beginning after Dec. 6, 1983, but not to apply to any case in which the findings and sentence were adjudged by a court-martial before that date, and the proceedings in any such case to be held in the same manner and with the same effect as if such amendments had not been enacted, see section 12(a)(1), (4) of Pub. L. 98–209, set out as a note under section 801 of this title.

§ 863. Art. 63. Rehearings

(a) Each rehearing under this chapter shall take place before a court-martial composed of members not members of the court-martial which first heard the case. Upon a rehearing the accused may not be tried for any offense of which he was found not guilty by the first court-martial, and no sentence in excess of or more severe than the original sentence may be adjudged, unless the sentence is based upon a finding of guilty of an offense not considered upon the merits in the original proceedings, or unless the sentence prescribed for the offense is mandatory.

(b) If the sentence adjudged by the first court-martial was in accordance with a plea agreement under section 853a of this title (article 53a) and the accused at the rehearing does not comply with the agreement, or if a plea of guilty was entered for an offense at the first court-martial and a plea of not guilty was entered at the rehearing, the sentence as to those charges or specifications may include any punishment not in excess of that which could have been adjudged at the first court-martial, subject to such limitations as the President may prescribe by regulation.

(c) If, after appeal by the Government under section 856(d) of this title (article 56(d)), the sentence adjudged is set aside and a rehearing on sentence is ordered by the Court of Criminal Appeals or Court of Appeals for the Armed Forces, the court-martial may impose any sentence that is in accordance with the order or ruling setting aside the adjudged sentence, subject to such limitations as the President may prescribe by regulation.

(Aug. 10, 1956, ch. 1041, 70A Stat. 58; Pub. L. 98–209, § 5(d), Dec. 6, 1983, 97 Stat. 1398; Pub. L. 102–484, div. A, title X, § 1065, Oct. 23, 1992, 106 Stat. 2506; Pub. L. 114–328, div. E, title LIX, § 5327, Dec. 23, 2016, 130 Stat. 2929; Pub. L. 115–91, div. A, title V, § 531(i), Dec. 12, 2017, 131 Stat. 1385.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
863(a) ……	50:650(a).	May 5, 1950, ch. 169, § 1
863(b) ……	50:650(b).	(Art. 63), 64 Stat. 127.

In subsection (a), the words ''In such a'' are substituted for the words ''in which''.

In subsection (b), the word ''Each'' is substituted for the word ''Every''. The word ''may'' is substituted for the word ''shall'' in the second sentence.

AMENDMENTS

2017—Subsec. (b). Pub. L. 115–91 inserted '', subject to such limitations as the President may prescribe by regulation'' before period at end.

2016—Pub. L. 114–328 designated existing provisions as subsec. (a), substituted ''may be adjudged'' for ''may be approved'' in second sentence, struck out at end ''If the sentence approved after the first court-martial was in accordance with a pretrial agreement and the accused at the rehearing changes his plea with respect to the charges or specifications upon which the pretrial agreement was based, or otherwise does not comply with the pretrial agreement, the approved sentence as to those charges or specifications may include any punishment not in excess of that lawfully adjudged at the first court-martial.'', and added subsecs. (b) and (c).

1992—Pub. L. 102–484 substituted ''approved'' for ''imposed'' in second sentence and inserted ''approved'' before last reference to ''sentence'' in third sentence.

1983—Pub. L. 98–209 struck out subsec. (a) which provided that if the convening authority disapproved the findings and sentence of a court-martial he could, except where there was lack of sufficient evidence in the record to support the findings, order a rehearing, stating the reasons for disapproval, and that if he disapproved the findings without reordering a rehearing, he had to dismiss the charges, and redesignated former subsec. (b) as entire section, and, as so redesignated, inserted ''under this chapter'' after ''Each rehearing'', and inserted provision that if the sentence approved after the first court-martial was in accordance with a pretrial agreement and the accused at the rehearing changes his plea with respect to the charges or specifications upon which the pretrial agreement was based, or otherwise does not comply with the pretrial agreement, the sentence as to those charges or specifications may include any punishment not in excess of that lawfully adjudged at the first court-martial.

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by Pub. L. 115–91 effective immediately after the amendments made by div. E (§§ 5001–5542) of Pub. L. 114–328 take effect as provided for in section 5542 of that Act (10 U.S.C. 801 note), see section 531(p)

of Pub. L. 115–91, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114–328 effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–484 effective Oct. 23, 1992, and applicable with respect to offenses committed on or after that date, see section 1067 of Pub. L. 102–484, set out as a note under section 803 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–209 effective first day of eighth calendar month beginning after Dec. 6, 1983, but not to apply to any case in which the findings and sentence were adjudged by a court-martial before that date, and the proceedings in any such case to be held in the same manner and with the same effect as if such amendments had not been enacted, see section 12(a)(1), (4) of Pub. L. 98–209, set out as a note under section 801 of this title.

§ 864. Art. 64. Judge advocate review of finding of guilty in summary court-martial

(a) IN GENERAL.—Under regulations prescribed by the Secretary concerned, each summary court-martial in which there is a finding of guilty shall be reviewed by a judge advocate. A judge advocate may not review a case under this subsection if the judge advocate has acted in the same case as an accuser, preliminary hearing officer, member of the court, military judge, or counsel or has otherwise acted on behalf of the prosecution or defense. The judge advocate's review shall be in writing and shall contain the following:

(1) Conclusions as to whether—

(A) the court had jurisdiction over the accused and the offense;

(B) the charge and specification stated an offense; and

(C) the sentence was within the limits prescribed as a matter of law.

(2) A response to each allegation of error made in writing by the accused.

(3) If the case is sent for action under subsection (b), a recommendation as to the appropriate action to be taken and an opinion as to whether corrective action is required as a matter of law.

(b) RECORD.—The record of trial and related documents in each case reviewed under subsection (a) shall be sent for action to the person exercising general court-martial jurisdiction over the accused at the time the court was convened (or to that person's successor in command) if—

(1) the judge advocate who reviewed the case recommends corrective action; or

(2) such action is otherwise required by regulations of the Secretary concerned.

(c)(1) The person to whom the record of trial and related documents are sent under subsection (b) may—

(A) disapprove or approve the findings or sentence, in whole or in part;

(B) remit, commute, or suspend the sentence in whole or in part;

(C) except where the evidence was insufficient at the trial to support the findings, order a rehearing on the findings, on the sentence, or on both; or

(D) dismiss the charges.

(2) If a rehearing is ordered but the convening authority finds a rehearing impracticable, he shall dismiss the charges.

(3) If the opinion of the judge advocate in the judge advocate's review under subsection (a) is that corrective action is required as a matter of law and if the person required to take action under subsection (b) does not take action that is at least as favorable to the accused as that recommended by the judge advocate, the record of trial and action thereon shall be sent to the Judge Advocate General for review under section 869 of this title (article 69).

(Aug. 10, 1956, ch. 1041, 70A Stat. 58; Pub. L. 98–209, § 7(a)(1), Dec. 6, 1983, 97 Stat. 1401; Pub. L. 114–328, div. E, title LIX, § 5328, Dec. 23, 2016, 130 Stat. 2929; Pub. L. 115–91, div. A, title X, § 1081(c)(1)(I), Dec. 12, 2017, 131 Stat. 1598.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
864	50:651.	May 5, 1950, ch. 169, §1 (Art. 64), 64 Stat. 128.

The word ''may'' is substituted for the word ''shall''. The word ''is'' is substituted for the words ''shall constitute''.

AMENDMENTS

2017—Subsec. (a). Pub. L. 115–91 substituted ''(a) IN GENERAL.—'' for ''(a) (a) IN GENERAL.—''.

2016—Pub. L. 114–328, § 5328(b)(1), substituted ''Judge advocate review of finding of guilty in summary court-martial'' for ''Review by a judge advocate'' in section catchline.

Subsec. (a). Pub. L. 114–328, § 5328(a), inserted subsec. (a) designation, heading, and first two sentences, and struck out former first two sentences which read as follows: ''Each case in which there has been a finding of guilty that is not reviewed under section 866 or 869(a) of this title (article 66 or 69(a)) shall be reviewed by a judge advocate under regulations of the Secretary concerned. A judge advocate may not review a case under this subsection if he has acted in the same case as an accuser, investigating officer, member of the court, military judge, or counsel or has otherwise acted on behalf of the prosecution or defense.''

Subsec. (b). Pub. L. 114–328, § 5328(b)(2)(A), inserted heading.

Subsec. (b)(2), (3). Pub. L. 114–328, § 5328(b)(2)(B)–(D), redesignated par. (3) as (2) and struck out former par. (2) which read as follows: ''the sentence approved under section 860(c) of this title (article 60(c)) extends to dismissal, a bad-conduct or dishonorable discharge, or confinement for more than six months; or''.

Subsec. (c)(3). Pub. L. 114–328, § 5328(b)(3), substituted ''section 869 of this title (article 69).'' for ''section 869(b) of this title (article 69(b)).''

1983—Pub. L. 98–209 amended section generally, substituting ''Review by a judge advocate'' for ''Approval by the convening authority'' in section catchline, and, in text, substituting provisions relating to review by a judge advocate for provision that in acting on the findings and sentence of a court-martial, the convening authority could approve only such findings of guilty, and the sentence or such part or amount of the sentence, as he found correct in law and fact and as he in his discre-

tion determined should be approved, and that unless he indicated otherwise, approval of the sentence was approval of the findings and sentence.

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by Pub. L. 115–91 effective immediately after the amendments made by div. E (§§ 5001–5542) of Pub. L. 114–328 take effect as provided for in section 5542 of that Act (10 U.S.C. 801 note), see section 1081(c)(4) of Pub. L. 115–91, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114–328 effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–209 effective first day of eighth calendar month beginning after Dec. 6, 1983, but not to apply to any case in which the findings and sentence were adjudged by a court-martial before that date, and the proceedings in any such case to be held in the same manner and with the same effect as if such amendments had not been enacted, see section 12(a)(1), (4) of Pub. L. 98–209, set out as a note under section 801 of this title.

§ 865. Art. 65. Transmittal and review of records

(a) TRANSMITTAL OF RECORDS.—

(1) FINDING OF GUILTY IN GENERAL OR SPECIAL COURT-MARTIAL.—If the judgment of a general or special court-martial entered under section 860c of this title (article 60c) includes a finding of guilty, the record shall be transmitted to the Judge Advocate General.

(2) OTHER CASES.—In all other cases, records of trial by court-martial and related documents shall be transmitted and disposed of as the Secretary concerned may prescribe by regulation.

(b) CASES FOR DIRECT APPEAL.—

(1) AUTOMATIC REVIEW.—If the judgment includes a sentence of death, dismissal of a commissioned officer, cadet, or midshipman, dishonorable discharge or bad-conduct discharge, or confinement for 2 years or more, the Judge Advocate General shall forward the record of trial to the Court of Criminal Appeals for review under section 866(b)(3) of this title (article 66(b)(3)).

(2) CASES ELIGIBLE FOR DIRECT APPEAL REVIEW.—

(A) IN GENERAL.—If the case is eligible for direct review under section 866(b)(1) of this title (article 66(b)(1)), the Judge Advocate General shall—

(i) forward a copy of the record of trial to an appellate defense counsel who shall be detailed to review the case and, upon request of the accused, to represent the accused before the Court of Criminal Appeals; and

(ii) upon written request of the accused, forward a copy of the record of trial to civilian counsel provided by the accused.

(B) INAPPLICABILITY.—Subparagraph (A) shall not apply if the accused—

(i) waives the right to appeal under section 861 of this title (article 61); or

(ii) declines in writing the detailing of appellate defense counsel under subparagraph (A)(i).

(c) NOTICE OF RIGHT TO APPEAL.—

(1) IN GENERAL.—The Judge Advocate General shall provide notice to the accused of the right to file an appeal under section 866(b)(1) of this title (article 66(b)(1)) by means of depositing in the United States mails for delivery by first class certified mail to the accused at an address provided by the accused or, if no such address has been provided by the accused, at the latest address listed for the accused in the official service record of the accused.

(2) INAPPLICABILITY UPON WAIVER OF APPEAL.—Paragraph (1) shall not apply if the accused waives the right to appeal under section 861 of this title (article 61).

(d) REVIEW BY JUDGE ADVOCATE GENERAL.—

(1) BY WHOM.—A review conducted under this subsection may be conducted by an attorney within the Office of the Judge Advocate General or another attorney designated under regulations prescribed by the Secretary concerned.

(2) REVIEW OF CASES NOT ELIGIBLE FOR DIRECT APPEAL.—

(A) IN GENERAL.—A review under subparagraph (B) shall be completed in each general and special court-martial that is not eligible for direct appeal under paragraph (1) or (3) of section 866(b) of this title (article 66(b)).

(B) SCOPE OF REVIEW.—A review referred to in subparagraph (A) shall include a written decision providing each of the following:

(i) A conclusion as to whether the court had jurisdiction over the accused and the offense.

(ii) A conclusion as to whether the charge and specification stated an offense.

(iii) A conclusion as to whether the sentence was within the limits prescribed as a matter of law.

(iv) A response to each allegation of error made in writing by the accused.

(3) REVIEW WHEN DIRECT APPEAL IS WAIVED, WITHDRAWN, OR NOT FILED.—

(A) IN GENERAL.—A review under subparagraph (B) shall be completed in each general and special court-martial if—

(i) the accused waives the right to appeal or withdraws appeal under section 861 of this title (article 61); or

(ii) the accused does not file a timely appeal in a case eligible for direct appeal under subparagraph (A), (B), or (C) of section 866(b)(1) of this title (article 66(b)(1)).

(B) SCOPE OF REVIEW.—A review referred to in subparagraph (A) shall include a written decision limited to providing conclusions on the matters specified in clauses (i), (ii), and (iii) of paragraph (2)(B).

(e) REMEDY.—

(1) IN GENERAL.—If after a review of a record under subsection (d), the attorney conducting the review believes corrective action may be required, the record shall be forwarded to the Judge Advocate General, who may set aside the findings or sentence, in whole or in part.

(2) REHEARING.—In setting aside findings or sentence, the Judge Advocate General may order a rehearing, except that a rehearing may not be ordered in violation of section 844 of this title (article 44).

(3) REMEDY WITHOUT REHEARING.—

(A) DISMISSAL WHEN NO REHEARING ORDERED.—If the Judge Advocate General sets aside findings and sentence and does not order a rehearing, the Judge Advocate General shall dismiss the charges.

(B) DISMISSAL WHEN REHEARING IMPRACTICAL.—If the Judge Advocate General sets aside findings and orders a rehearing and the convening authority determines that a rehearing would be impractical, the convening authority shall dismiss the charges.

(Aug. 10, 1956, ch. 1041, 70A Stat. 59; Pub. L. 90–179, § 1(6), Dec. 8, 1967, 81 Stat. 546; Pub. L. 90–632, § 2(26), Oct. 24, 1968, 82 Stat. 1341; Pub. L. 96–513, title V, § 511(25), Dec. 12, 1980, 94 Stat. 2922; Pub. L. 98–209, § 6(d)(1), Dec. 6, 1983, 97 Stat. 1401; Pub. L. 114–328, div. E, title LIX, § 5329, Dec. 23, 2016, 130 Stat. 2930; Pub. L. 115–91, div. A, title X, § 1081(c)(1)(J), Dec. 12, 2017, 131 Stat. 1598.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
865(a)	50:652(a).	May 5, 1950, ch. 169, § 1 (Art. 65), 64 Stat. 128.
865(b)	50:652(b).	
865(c)	50:652(c).	

In subsection (b), the word ''If'' is substituted for the word ''Where''.

In subsections (a) and (b), the words ''send'' and ''sent'' are substituted for the words ''forward'' and ''forwarded'', respectively.

In subsection (c), the words ''Secretary concerned'' are substituted for the words ''Secretary of the Department''.

AMENDMENTS

2017—Subsec. (b)(1). Pub. L. 115–91 substituted ''section 866(b)(3) of this title (article 66(b)(3))'' for ''section 866(b)(2) of this title (article 66(b)(2))''.

2016—Pub. L. 114–328 amended section generally. Prior to amendment, section related to disposition of records.

1983—Pub. L. 98–209 amended section generally, substituting ''Disposition of records'' for ''Disposition of records after review by the convening authority'' in section catchline, and, in text, substituting provisions relating to disposition of records for prior provisions relating to disposition of records that required when the convening authority had taken final action in a general court-martial case, he had to send the entire record, including his action thereon and the opinion or opinions of the staff judge advocate or legal officer, to the appropriate Judge Advocate General, required that where sentences of special courts-martial included a bad-conduct discharge, the record had to be sent for review either to the officer exercising general court-martial jurisdiction over the command to be reviewed or directly to the appropriate Judge Advocate General to be reviewed by a Court of Military Review, and required that all other special and summary court-martial records had to be reviewed by a judge advocate of the Army, Navy, Air Force, or Marine Corps, or a law specialist or lawyer of the Coast Guard or Department of Transportation, and had to be transmitted and disposed of as the Secretary concerned might prescribe by regulation.

1980—Subsec. (c). Pub. L. 96–513 substituted ''Department of Transportation'' for ''Department of the Treasury''.

1968—Subsec. (b). Pub. L. 90–632 substituted ''Court of Military Review'' for ''board of review'' wherever appearing.

1967—Subsec. (c). Pub. L. 90–179 inserted reference to judge advocate of the Marine Corps and substituted reference to judge advocate of the Navy for reference to law specialist of the Navy.

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by Pub. L. 115–91 effective immediately after the amendments made by div. E (§§ 5001–5542) of Pub. L. 114–328 take effect as provided for in section 5542 of that Act (10 U.S.C. 801 note), see section 1081(c)(4) of Pub. L. 115–91, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114–328 effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–209 effective first day of eighth calendar month beginning after Dec. 6, 1983, but not to apply to any case in which the findings and sentence were adjudged by a court-martial before that date, and the proceedings in any such case to be held in the same manner and with the same effect as if such amendments had not been enacted, see section 12(a)(1), (4) of Pub. L. 98–209, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

§ 866. Art. 66. Courts of Criminal Appeals

(a) COURTS OF CRIMINAL APPEALS.—

(1) IN GENERAL.—Each Judge Advocate General shall establish a Court of Criminal Appeals which shall be composed of one or more panels, and each such panel shall be composed of not less than three appellate military judges. For the purpose of reviewing court-martial cases, the court may sit in panels or as a whole in accordance with rules prescribed under subsection (h). Any decision of a panel may be reconsidered by the court sitting as a whole in accordance with such rules. Appellate military judges who are assigned to a Court of Criminal Appeals may be commissioned officers or civilians, each of whom must be a member of a bar of a Federal court or of the highest court of a State and must be certified by the Judge Advocate General as qualified, by reason of education, training, experience, and judicial temperament, for duty as an appellate military judge. The Judge Advocate General shall designate as chief judge one of the appellate military judges of the Court of Criminal Appeals established by him. The chief judge shall determine on which panels of the court the appellate judges assigned to the court will serve and which military judge assigned to the court will act as the senior judge

on each panel. In accordance with regulations prescribed by the President, assignments of appellate military judges under this section (article) shall be for appropriate minimum periods, subject to such exceptions as may be authorized in the regulations.

(2) ADDITIONAL QUALIFICATIONS.—In addition to any other qualifications specified in paragraph (1), any commissioned officer or civilian assigned as an appellate military judge to a Court of Criminal Appeals shall have not fewer than 12 years of experience in the practice of law before such assignment.

(b) REVIEW.—

(1) APPEALS BY ACCUSED.—A Court of Criminal Appeals shall have jurisdiction over a timely appeal from the judgment of a court-martial, entered into the record under section 860c of this title (article 60c), as follows:

(A) On appeal by the accused in a case in which the sentence extends to confinement for more than six months and the case is not subject to automatic review under paragraph (3).

(B) On appeal by the accused in a case in which the Government previously filed an appeal under section 862 of this title (article 62).

(C) On appeal by the accused in a case that the Judge Advocate General has sent to the Court of Criminal Appeals for review of the sentence under section 856(d) of this title (article 56(d)).

(D) In a case in which the accused filed an application for review with the Court under section 869(d)(1)(B) of this title (article 69(d)(1)(B)) and the application has been granted by the Court.

(2) REVIEW OF CERTAIN SENTENCES.—A Court of Criminal Appeals shall have jurisdiction over all cases that the Judge Advocate General orders sent to the Court for review under section 856(d) of this title (article 56(d)).

(3) AUTOMATIC REVIEW.—A Court of Criminal Appeals shall have jurisdiction over a court-martial in which the judgment entered into the record under section 860c of this title (article 60c) includes a sentence of death, dismissal of a commissioned officer, cadet, or midshipman, dishonorable discharge or bad-conduct discharge, or confinement for 2 years or more.

(c) TIMELINESS.—An appeal under subsection (b)(1) is timely if it is filed as follows:

(1) In the case of an appeal by the accused under subsection (b)(1)(A) or (b)(1)(B), if filed before the later of—

(A) the end of the 90-day period beginning on the date the accused is provided notice of appellate rights under section 865(c) of this title (article 65(c)); or

(B) the date set by the Court of Criminal Appeals by rule or order.

(2) In the case of an appeal by the accused under subsection (b)(1)(C), if filed before the later of—

(A) the end of the 90-day period beginning on the date the accused is notified that the application for review has been granted by letter placed in the United States mails for delivery by first class certified mail to the accused at an address provided by the accused or, if no such address has been provided by the accused, at the latest address listed for the accused in his official service record; or

(B) the date set by the Court of Criminal Appeals by rule or order.

(d) DUTIES.—

(1) CASES APPEALED BY ACCUSED.—

(A) IN GENERAL.—In any case before the Court of Criminal Appeals under subsection (b), the Court may act only with respect to the findings and sentence as entered into the record under section 860c of this title (article 60c). The Court may affirm only such findings of guilty as the Court finds correct in law, and in fact in accordance with subparagraph (B). The Court may affirm only the sentence, or such part or amount of the sentence, as the Court finds correct in law and fact and determines, on the basis of the entire record, should be approved.

(B) FACTUAL SUFFICIENCY REVIEW.—(i) In an appeal of a finding of guilty under subsection (b), the Court may consider whether the finding is correct in fact upon request of the accused if the accused makes a specific showing of a deficiency in proof.

(ii) After an accused has made such a showing, the Court may weigh the evidence and determine controverted questions of fact subject to—

(I) appropriate deference to the fact that the trial court saw and heard the witnesses and other evidence; and

(II) appropriate deference to findings of fact entered into the record by the military judge.

(iii) If, as a result of the review conducted under clause (ii), the Court is clearly convinced that the finding of guilty was against the weight of the evidence, the Court may dismiss, set aside, or modify the finding, or affirm a lesser finding.

(2) ERROR OR EXCESSIVE DELAY.—In any case before the Court of Criminal Appeals under subsection (b), the Court may provide appropriate relief if the accused demonstrates error or excessive delay in the processing of the court-martial after the judgment was entered into the record under section 860c of this title (article 60c).

(e) CONSIDERATION OF APPEAL OF SENTENCE BY THE UNITED STATES.—

(1) IN GENERAL.—In considering a sentence on appeal or review as provided in section 856(d) of this title (article 56(d)), the Court of Criminal Appeals may consider—

(A) whether the sentence violates the law; and

(B) whether the sentence is plainly unreasonable.

(2) RECORD ON APPEAL OR REVIEW.—In an appeal or review under this subsection or section 856(d) of this title (article 56(d)), the record on appeal or review shall consist of—

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(A) any portion of the record in the case that is designated as pertinent by either of the parties;

(B) the information submitted during the sentencing proceeding; and

(C) any information required by regulation prescribed by the President or by rule or order of the Court of Criminal Appeals.

(f) LIMITS OF AUTHORITY.—

(1) SET ASIDE OF FINDINGS.—

(A) IN GENERAL.—If the Court of Criminal Appeals sets aside the findings, the Court—

(i) may affirm any lesser included offense; and

(ii) may, except when prohibited by section 844 of this title (article 44), order a rehearing.

(B) DISMISSAL WHEN NO REHEARING ORDERED.—If the Court of Criminal Appeals sets aside the findings and does not order a rehearing, the Court shall order that the charges be dismissed.

(C) DISMISSAL WHEN REHEARING IMPRACTICABLE.—If the Court of Criminal Appeals orders a rehearing on a charge and the convening authority finds a rehearing impracticable, the convening authority may dismiss the charge.

(2) SET ASIDE OF SENTENCE.—If the Court of Criminal Appeals sets aside the sentence, the Court may—

(A) modify the sentence to a lesser sentence; or

(B) order a rehearing.

(3) ADDITIONAL PROCEEDINGS.—If the Court of Criminal Appeals determines that additional proceedings are warranted, the Court may order a hearing as may be necessary to address a substantial issue, subject to such limitations as the Court may direct and under such regulations as the President may prescribe. If the Court of Appeals for the Armed Forces determines that additional proceedings are warranted, the Court of Criminal Appeals shall order a hearing or other proceeding in accordance with the direction of the Court of Appeals for the Armed Forces.

(g) ACTION IN ACCORDANCE WITH DECISIONS OF COURTS.—The Judge Advocate General shall, unless there is to be further action by the President, the Secretary concerned, the Court of Appeals for the Armed Forces, or the Supreme Court, instruct the appropriate authority to take action in accordance with the decision of the Court of Criminal Appeals.

(h) RULES OF PROCEDURE.—The Judge Advocates General shall prescribe uniform rules of procedure for Courts of Criminal Appeals and shall meet periodically to formulate policies and procedure in regard to review of court-martial cases in the offices of the Judge Advocates General and by Courts of Criminal Appeals.

(i) PROHIBITION ON EVALUATION OF OTHER MEMBERS OF COURTS.—No member of a Court of Criminal Appeals shall be required, or on his own initiative be permitted, to prepare, approve, disapprove, review, or submit, with respect to any other member of the same or another Court of Criminal Appeals, an effectiveness, fitness, or efficiency report, or any other report or document used in whole or in part for the purpose of determining whether a member of the armed forces is qualified to be advanced in grade, or in determining the assignment or transfer of a member of the armed forces, or in determining whether a member of the armed forces should be retained on active duty.

(j) INELIGIBILITY OF MEMBERS OF COURTS TO REVIEW RECORDS OF CASES INVOLVING CERTAIN PRIOR MEMBER SERVICE.—No member of a Court of Criminal Appeals shall be eligible to review the record of any trial if such member served as investigating officer in the case or served as a member of the court-martial before which such trial was conducted, or served as military judge, trial or defense counsel, or reviewing officer of such trial.

(Aug. 10, 1956, ch. 1041, 70A Stat. 59; Pub. L. 90–632, § 2(27), Oct. 24, 1968, 82 Stat. 1341; Pub. L. 98–209, §§ 7(b), (c), 10(c)(1), Dec. 6, 1983, 97 Stat. 1402, 1406; Pub. L. 103–337, div. A, title IX, § 924(b)(2), (c)(1), (4)(A), Oct. 5, 1994, 108 Stat. 2831, 2832; Pub. L. 104–106, div. A, title XI, § 1153, Feb. 10, 1996, 110 Stat. 468; Pub. L. 114–328, div. E, title LIX, § 5330, Dec. 23, 2016, 130 Stat. 2932; Pub. L. 115–91, div. A, title V, § 531(j), title X, § 1081(c)(1)(K), Dec. 12, 2017, 131 Stat. 1385, 1598; Pub. L. 116–283, div. A, title V, § 542(a), (b), Jan. 1, 2021, 134 Stat. 3611.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
866(a)	50:653(a).	May 5, 1950, ch. 169, § 1 (Art. 66), 64 Stat. 128.
866(b)	50:653(b).	
866(c)	50:653(c).	
866(d)	50:653(d).	
866(e)	50:653(e).	
866(f)	50:653(f).	

In subsection (a), the word ''Each'' is substituted for the words ''The * * * of each of the armed forces''. The word ''must'' is substituted for the word ''shall'' after the word ''whom'', since a condition is prescribed, not a command. The words ''of the United States'' are omitted as surplusage.

In subsections (a) and (b), the word ''commissioned'' is inserted before the word ''officer''.

In subsection (c), the word ''may'' is substituted for the word ''shall'' and for the words ''shall have authority to''.

In subsection (e), the words ''Secretary concerned'' are substituted for the words ''Secretary of the Department''.

In subsection (f), the words ''of the armed forces'' and ''proceedings in and before'' are omitted as surplusage.

AMENDMENTS

2021—Subsec. (a). Pub. L. 116–283, § 542(a), designated existing provisions as par. (1), inserted heading, and added par. (2).

Subsec. (d)(1). Pub. L. 116–283, § 542(b), amended par. (1) generally. Prior to amendment, text read as follows: ''In any case before the Court of Criminal Appeals under subsection (b), the Court may act only with respect to the findings and sentence as entered into the record under section 860c of this title (article 60c). The Court may affirm only such findings of guilty, and the sentence or such part or amount of the sentence, as the Court finds correct in law and fact and determines, on the basis of the entire record, should be approved. In considering the record, the Court may weigh the evidence, judge the credibility of witnesses, and determine controverted questions of fact, recognizing that the trial court saw and heard the witnesses.''

2017—Subsec. (e)(2)(C). Pub. L. 115–91, §531(j)(1), inserted ''by regulation prescribed by the President or'' after ''required''.

Subsec. (f)(3). Pub. L. 115–91, §§531(j)(2)(A) and 1081(c)(1)(K), amended par. (3) identically, substituting ''If the Court of Criminal Appeals'' for ''If the Court''.

Pub. L. 115–91, §531(j)(2)(B), inserted at end ''If the Court of Appeals for the Armed Forces determines that additional proceedings are warranted, the Court of Criminal Appeals shall order a hearing or other proceeding in accordance with the direction of the Court of Appeals for the Armed Forces.''

2016—Pub. L. 114–328, §5330(d), substituted ''Courts of Criminal Appeals'' for ''Review by Court of Criminal Appeals'' in section catchline.

Subsec. (a). Pub. L. 114–328, §5330(e)(1), inserted heading.

Pub. L. 114–328, §5330(a), substituted ''subsection (h)'' for ''subsection (f)'', inserted ''and must be certified by the Judge Advocate General as qualified, by reason of education, training, experience, and judicial temperament, for duty as an appellate military judge'' after ''highest court of a State'', and inserted at end ''In accordance with regulations prescribed by the President, assignments of appellate military judges under this section (article) shall be for appropriate minimum periods, subject to such exceptions as may be authorized in the regulations.''

Subsecs. (b) to (f). Pub. L. 114–328, §5330(b)(2), added subsecs. (b) to (f) and struck out former subsecs. (b) to (d) which related to referral of records in certain cases to a Court of Criminal Appeals, criteria by which a Court of Criminal Appeals may act in a referred case, and possible outcomes if a Court of Criminal Appeals sets aside the findings and sentence. Former subsecs. (e) and (f) redesignated (g) and (h), respectively.

Subsec. (g). Pub. L. 114–328, §5330(b)(1), (c), (e)(2), redesignated subsec. (e) as (g), inserted heading, substituted ''appropriate authority'' for ''convening authority'', and struck out last sentence which read as follows: ''If the Court of Criminal Appeals has ordered a rehearing but the convening authority finds a rehearing impracticable, he may dismiss the charges.''

Subsecs. (h) to (j). Pub. L. 114–328, §5330(b)(1), (e)(3)–(5), redesignated subsecs. (f) to (h) as (h) to (j), respectively, and inserted headings.

1996—Subsec. (f). Pub. L. 104–106 substituted ''Courts of Criminal Appeals'' for ''Courts of Military Review'' in two places.

1994—Pub. L. 103–337, §924(c)(4)(A), substituted ''Court of Criminal Appeals'' for ''Court of Military Review'' in section catchline.

Pub. L. 103–337, §924(b)(2), substituted ''Court of Criminal Appeals'' for ''Court of Military Review'' wherever appearing.

Pub. L. 103–337, §924(c)(1), substituted ''Court of Appeals for the Armed Forces'' for ''Court of Military Appeals'' in subsec. (e).

1983—Subsec. (a). Pub. L. 98–209, §7(b), inserted provision that any decision of a panel may be reconsidered by the court sitting as a whole in accordance with the rules.

Subsec. (b). Pub. L. 98–209, §7(c), amended subsec. (b) generally, designating existing provisions as par. (1), struck out provision extending applicability of provisions to sentences affecting a general or flag officer, and added par. (2).

Subsec. (e). Pub. L. 98–209, §10(c)(1), substituted ''the Court of Military Appeals, or the Supreme Court'' for ''or the Court of Military Appeals''.

1968—Subsec. (a). Pub. L. 90–632, §2(27)(A), (B), substituted ''Court of Military Review'' for ''board of review'' in section catchline and, in subsec. (a), substituted ''Court of Military Review'' for ''board of review'' as name of reviewing body established by each Judge Advocate General, and inserted provisions setting out procedures for such Courts of Military Review, their composition and functions.

Subsecs. (b) to (e). Pub. L. 90–632, §2(27)(C), substituted ''Court of Military Review'' for ''board of review'' wherever appearing.

Subsec. (f). Pub. L. 90–632, §2(27)(D), substituted ''Courts of Military Review'' for ''boards of review'' in two places.

Subsecs. (g), (h). Pub. L. 90–632, §2(27)(E), added subsecs. (g) and (h).

Change of Name

Pub. L. 103–337, div. A, title IX, §924(b)(1), Oct. 5, 1994, 108 Stat. 2831, provided that: ''Each Court of Military Review shall hereafter be known and designated as a Court of Criminal Appeals.''

Effective Date of 2021 Amendment

Pub. L. 116–283, div. A, title V, §542(e), Jan. 1, 2021, 134 Stat. 3612, provided that:

''(1) Qualifications of certain judges.—The amendments made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Jan. 1, 2021], and shall apply with respect to the assignment of appellate military judges on or after that date.

''(2) Review amendments.—The amendments made by subsections (b) and (c) [amending this section and section 867 of this title] shall take effect on the date of the enactment of this Act, and shall apply with respect to any case in which every finding of guilty entered into the record under section 860c of title 10, United States Code (article 60c of the Uniform Code of Military Justice), is for an offense that occurred on or after that date.''

Effective Date of 2017 Amendment

Amendment by section 531(j) of Pub. L. 115–91 effective immediately after the amendments made by div. E (§§5001–5542) of Pub. L. 114–328 take effect as provided for in section 5542 of that Act (10 U.S.C. 801 note), see section 531(p) of Pub. L. 115–91, set out as a note under section 801 of this title.

Amendment by section 1081(c)(1)(K) of Pub. L. 115–91 effective immediately after the amendments made by div. E (§§5001–5542) of Pub. L. 114–328 take effect as provided for in section 5542 of that Act (10 U.S.C. 801 note), see section 1081(c)(4) of Pub. L. 115–91, set out as a note under section 801 of this title.

Effective Date of 2016 Amendment

Amendment by Pub. L. 114–328 effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

Effective Date of 1983 Amendment

Amendment by Pub. L. 98–209 effective first day of eighth calendar month beginning after Dec. 6, 1983, but amendments by section 7(b), (c) of Pub. L. 98–209 not to apply to any case in which the findings and sentence were adjudged by a court-martial before that date, and the proceedings in any such case to be held in the same manner and with the same effect as if such amendments had not been enacted, see section 12(a)(1), (4) of Pub. L. 98–209, set out as a note under section 801 of this title.

Effective Date of 1968 Amendment

Amendment by Pub. L. 90–632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

Statutory References to Board of Review Deemed References to Court of Military Review

Pub. L. 90–632, §3(b), Oct. 24, 1968, 82 Stat. 1343, provided that: ''Whenever the term board of review is used, with reference to or in connection with the appellate review of courts-martial cases, in any provision of Federal law (other than provisions amended by this Act)

[see Short Title of 1968 Amendment note under section 801 of this title] or in any regulation, document, or record of the United States, such term shall be deemed to mean Court of Military Review [now Court of Criminal Appeals].''

§ 867. Art. 67. Review by the Court of Appeals for the Armed Forces

(a) The Court of Appeals for the Armed Forces shall review the record in—

(1) all cases in which the sentence, as affirmed by a Court of Criminal Appeals, extends to death;

(2) all cases reviewed by a Court of Criminal Appeals which the Judge Advocate General, after appropriate notification to the other Judge Advocates General and the Staff Judge Advocate to the Commandant of the Marine Corps, orders sent to the Court of Appeals for the Armed Forces for review; and

(3) all cases reviewed by a Court of Criminal Appeals in which, upon petition of the accused and on good cause shown, the Court of Appeals for the Armed Forces has granted a review.

(b) The accused may petition the Court of Appeals for the Armed Forces for review of a decision of a Court of Criminal Appeals within 60 days from the earlier of—

(1) the date on which the accused is notified of the decision of the Court of Criminal Appeals; or

(2) the date on which a copy of the decision of the Court of Criminal Appeals, after being served on appellate counsel of record for the accused (if any), is deposited in the United States mails for delivery by first-class certified mail to the accused at an address provided by the accused or, if no such address has been provided by the accused, at the latest address listed for the accused in his official service record.

The Court of Appeals for the Armed Forces shall act upon such a petition promptly in accordance with the rules of the court.

(c)(1) In any case reviewed by it, the Court of Appeals for the Armed Forces may act only with respect to—

(A) the findings and sentence set forth in the entry of judgment, as affirmed or set aside as incorrect in law by the Court of Criminal Appeals;

(B) a decision, judgment, or order by a military judge, as affirmed or set aside as incorrect in law by the Court of Criminal Appeals; or

(C) the findings set forth in the entry of judgment, as affirmed, dismissed, set aside, or modfied by the Court of Criminal Appeals as incorrect in fact under section 866(d)(1)(B) of this title (article 66(d)(1)(B)).

(2) In a case which the Judge Advocate General orders sent to the Court of Appeals for the Armed Forces, that action need be taken only with respect to the issues raised by him.

(3) In a case reviewed upon petition of the accused, that action need be taken only with respect to issues specified in the grant of review.

(4) The Court of Appeals for the Armed Forces shall take action only with respect to matters of law.

(d) If the Court of Appeals for the Armed Forces sets aside the findings and sentence, it may, except where the setting aside is based on lack of sufficient evidence in the record to support the findings, order a rehearing. If it sets aside the findings and sentence and does not order a rehearing, it shall order that the charges be dismissed.

(e) After it has acted on a case, the Court of Appeals for the Armed Forces may direct the Judge Advocate General to return the record to the Court of Criminal Appeals for further review in accordance with the decision of the court. Otherwise, unless there is to be further action by the President or the Secretary concerned, the Judge Advocate General shall instruct the convening authority to take action in accordance with that decision. If the court has ordered a rehearing, but the convening authority finds a rehearing impracticable, he may dismiss the charges.

(Aug. 10, 1956, ch. 1041, 70A Stat. 60; Pub. L. 88–426, title IV, § 403(j), Aug. 14, 1964, 78 Stat. 434; Pub. L. 90–340, § 1, June 15, 1968, 82 Stat. 178; Pub. L. 90–632, § 2(28), Oct. 24, 1968, 82 Stat. 1342; Pub. L. 96–579, § 12(a), Dec. 23, 1980, 94 Stat. 3369; Pub. L. 97–81, § 5, Nov. 20, 1981, 95 Stat. 1088; Pub. L. 97–295, § 1(12), Oct. 12, 1982, 96 Stat. 1289; Pub. L. 98–209, §§ 7(d), 9(a), 10(c)(2), 13(d), Dec. 6, 1983, 97 Stat. 1402, 1404, 1406, 1408; Pub. L. 100–26, § 7(a)(2), Apr. 21, 1987, 101 Stat. 275; Pub. L. 100–456, div. A, title VII, § 722(a), (c), Sept. 29, 1988, 102 Stat. 2002, 2003; Pub. L. 101–189, div. A, title XIII, § 1301(a), Nov. 29, 1989, 103 Stat. 1569; Pub. L. 103–337, div. A, title IX, § 924(c)(1), (2), (4)(B), Oct. 5, 1994, 108 Stat. 2831, 2832; Pub. L. 114–328, div. E, title LIX, § 5331, Dec. 23, 2016, 130 Stat. 2934; Pub. L. 116–283, div. A, title V, § 542(c), Jan. 1, 2021, 134 Stat. 3612.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
867(a)	50:654(a).	May 5, 1950, ch. 169, § 1 (Art. 67), 64 Stat. 129; Mar. 2, 1955, ch. 9, § 1(i), 69 Stat. 10.
867(b)	50:654(b).	
867(c)	50:654(c).	
867(d)	50:654(d).	
867(e)	50:654(e).	
867(f)	50:654(f).	
867(g)	50:654(g).	

In subsection (a)(1), the word ''is'' is substituted for the words ''is hereby established''. The words ''all'' and ''which shall be'' are omitted as surplusage. The word ''consists'' is substituted for the words ''shall consist''. The word ''civil'' is substituted for the word ''civilian''. The word ''may'' is substituted for the word ''shall'' before the words ''be appointed''. The word ''is'' is substituted for the word ''shall'' before the words ''any person''. The words ''is entitled to'' are substituted for the words ''shall receive''. The word ''is'' is substituted for the words ''shall be'' in the fourth sentence. The word ''may'' is substituted for the words ''shall have power to * * * to''. The word ''does'' is substituted for the word ''shall'' in the next to the last sentence. In the last sentence, the words ''is entitled * * * to'' are substituted for the word ''shall''. The word ''outside'' is substituted for the words ''at a place other than his official station. The official station of such judges for such purpose shall be''. The words ''also'' and ''actually'' are omitted as surplusage.

In subsection (a)(2), the words ''February 28, 1951,'' are substituted for the words ''the effective date of this subdivision''. The word ''shall'' in the first sentence,

and the word ''shall'' before the word ''expire'' in the second sentence, are omitted as surplusage. The word ''before'' is substituted for the words ''prior to''. The word ''may'' is substituted for the word ''shall'' before the words ''be appointed''.

In subsection (a)(3), the word ''for'' is substituted for the words ''upon the ground of''.

In subsection (b), the words ''the following cases'' are omitted as surplusage.

In subsections (b) and (d), the word ''sent'' is substituted for the word ''forwarded''.

In subsection (c), the word ''when'' is inserted after the word ''time''. The words ''a grant of'' are omitted as surplusage.

In subsection (d), the word ''may'' is substituted for the word ''shall'' in the first sentence.

In subsection (f), the words ''Secretary concerned'' are substituted for the words ''Secretary of the Department''.

In subsection (g), the words ''of the armed forces'' are omitted as surplusage. The words ''policies as to sentences'' are substituted for the words ''sentence policies''. The word ''considered'' is substituted for the word ''deemed''. The words ''Secretaries of the military departments, and the Secretary of the Treasury'' are substituted for the words ''Secretaries of the Departments''.

1982 ACT

In subsection (d), the words ''Court of Military Review'' are substituted for ''board of review'' because of section 3(b) of the Military Justice Act of 1968 (Pub. L. 90–632, Oct. 24, 1968, 82 Stat. 1343).

The change in subsection (g) reflects the transfer of functions from the Secretary of the Treasury to the Secretary of Transportation under 49:1655(b).

AMENDMENTS

2021—Subsec. (c)(1)(C). Pub. L. 116–283 added subpar. (C).

2016—Subsec. (a)(2). Pub. L. 114–328, §5331(a), inserted '', after appropriate notification to the other Judge Advocates General and the Staff Judge Advocate to the Commandant of the Marine Corps,'' after ''the Judge Advocate General''.

Subsec. (c). Pub. L. 114–328, §5331(b), designated first sentence as par. (1) and substituted ''only with respect to—'' and subpars. (A) and (B) for ''only with respect to the issues raised by him.'' and designated second to fourth sentences as pars. (2) to (4), respectively.

1994—Pub. L. 103–337, §924(c)(4)(B), substituted ''Court of Appeals for the Armed Forces'' for ''Court of Military Appeals'' in section catchline.

Pub. L. 103–337, §924(c)(2), substituted ''Court of Criminal Appeals'' for ''Court of Military Review'' wherever appearing in subsecs. (a) to (c) and (e).

Pub. L. 103–337, §924(c)(1), substituted ''Court of Appeals for the Armed Forces'' for ''Court of Military Appeals'' wherever appearing.

1989—Pub. L. 101–189 redesignated subsecs. (b) to (f) as (a) to (e), respectively, struck out former subsec. (a) which related to establishment of the United States Court of Military Appeals, and appointment, removal, allowances and compensation, etc., of judges of such court, struck out subsec. (g) which related to a committee required to make annual comprehensive surveys of the operation of this chapter, struck out subsec. (h) which related to review of decisions of the Court of Military Appeals by the Supreme Court, and struck out subsec. (i) which related to annuities for judges and former or retired judges, and survivors and former spouses of judges and former judges.

1988—Subsec. (a)(4). Pub. L. 100–456, §722(c), inserted ''or an annuity under subsection (i) or subchapter III of chapter 83 or chapter 84 of title 5'' after ''retired pay'' in two places.

Subsec. (i). Pub. L. 100–456, §722(a), added subsec. (i).

1987—Subsec. (g)(1). Pub. L. 100–26 substituted ''the Staff Judge Advocate to the Commandant of the Marine Corps'' for ''the Director, Judge Advocate Division, Headquarters, United States Marine Corps''.

1983—Subsec. (a)(3). Pub. L. 98–209, §13(d), inserted ''Circuit'' after ''District of Columbia''.

Subsec. (b)(1). Pub. L. 98–209, §7(d), struck out ''affects a general or flag officer or'' before ''extends to death''.

Subsec. (g). Pub. L. 98–209, §9(a), designated existing provisions as par. (1), substituted ''A committee consisting of the judges of the Court of Military Appeals, the Judge Advocates General of the Army, Navy, and Air Force, the Chief Counsel of the Coast Guard, the Director, Judge Advocate Division, Headquarters, United States Marine Corps, and two members of the public appointed by the Secretary of Defense shall meet at least annually. The committee shall make an annual comprehensive survey of the operation of this chapter. After each such survey, the committee shall report'' for ''The Court of Military Appeals and the Judge Advocates General shall meet annually to make a comprehensive survey of the operation of this chapter and report'', and added pars. (2) and (3).

Subsec. (h). Pub. L. 98–209, §10(c)(2), added subsec. (h).

1982—Subsec. (d). Pub. L. 97–295, §1(12)(A), substituted ''Court of Military Review'' for ''board of review'' after ''incorrect in law by the''.

Subsec. (g). Pub. L. 97–295, §1(12)(B), substituted ''Secretary of Transportation'' for ''Secretary of the Treasury'' after ''military departments, and the''.

1981—Subsec. (c). Pub. L. 97–81 substituted provisions authorizing the accused to petition the Court of Military Appeals for review of a decision of a Court of Military Review within 60 days from the earlier of (1) the date on which the accused is notified of the decision of the Court of Military Review, or (2) the date on which a copy of the decision of the Court of Military Review, after being served on appellate counsel of record for the accused (if any), is deposited in the United States mails for delivery by first-class certified mail to the accused at an address provided by the accused or, if no such address has been provided by the accused, at the latest address listed for the accused in his official service record, and directing the Court of Military Appeals to act upon such a petition promptly in accordance with the rules of the court for provision which had given the accused 30 days from the time when he was notified of the decision of a board of review to petition the Court of Military Appeals for review and which had directed the court to act upon such a petition within 30 days of the receipt thereof.

1980—Subsec. (a)(1). Pub. L. 96–579 struck out third sentence prescribing expiration of terms of office of all successors of judges of the Court of Military Appeals serving on June 15, 1968, fifteen years after expiration of term of their predecessors subject to requirement that any judge appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed should be appointed only for the unexpired term of the predecessor.

1968—Subsec. (a)(1). Pub. L. 90–340 changed the name of the Court of Military Appeals to the United States Court of Military Appeals, and established it under Article I of the United States Constitution, provided that the terms of office of all successors of the judges serving on June 15, 1968, shall expire 15 years after the expiration of the terms for which their predecessors were appointed but that any judge appointed to fill a vacancy occurring prior to the expiration of the term of his predecessor shall be appointed only for the unexpired term of his predecessor, substituted provisions that each judge is entitled to the same salary and travel allowances as are judges of the United States Court of Appeals for provisions that entitled each judge to a salary of $33,000 a year and a travel and maintenance allowance, for expenses incurred while attending court or transacting official business outside the District of Columbia, not to exceed $15 a day, and provided for the precedence of the chief judge, and of the other judges based on their seniority.

Subsec. (a)(2). Pub. L. 90–340 redesignated former par. (3) as (2) and changed the name of the Court of Military

Appeals to the United States Court of Military Appeals. Provisions of former par. (2) pertaining to the terms of office of judges were placed in par. (1). Provisions of former par. (2) pertaining to the terms of office of the three judges first taking office after February 28, 1951, and expiring, as designated by the President at the time of nomination, one on May 1, 1956, one on May 1, 1961, and one on May 1, 1966, were struck out.

Subsec. (a)(3). Pub. L. 90–340 redesignated former par. (4) as (3) and changed the name of the Court of Military Appeals to the United States Court of Military Appeals, and provided that a judge appointed to fill a temporary vacancy due to illness or disability may only be a judge of the Court of Appeals for the District of Columbia. Former par. (3) redesignated (2).

Subsec. (a)(4). Pub. L. 90–340 added par. (4). Former par. (4) redesignated (3).

Subsecs. (b), (f). Pub. L. 90–632 substituted ''Court of Military Review'' for ''board of review'' wherever appearing.

1964—Subsec. (a)(1). Pub. L. 88–426 increased salary of judges from $25,500 to $33,000.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective on Jan. 1, 2021, and applicable with respect to any case in which every finding of guilty entered into the record under section 860c of this title is for an offense that occurred on or after that date, see section 542(e)(2) of Pub. L. 116–283, set out in a note under section 866 of this title.

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114–328 effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–456, div. A, title VII, § 722(d), Sept. 29, 1988, 102 Stat. 2003, provided that: ''Subsection (i) of section 867 of title 10, United States Code, as added by subsection (a), shall apply with respect to judges of the United States Court of Military Appeals [now United States Court of Appeals for the Armed Forces] whose term of service on such court ends on or after the date of the enactment of this Act [Sept. 29, 1988] and to the survivors of such judges.''

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by sections 9(a) and 13(d) Pub. L. 98–209 effective Dec. 6, 1983, and amendment by sections 7(d) and 10(c)(2) of Pub. L. 98–209 effective first day of eighth calendar month beginning after Dec. 6, 1983, but amendment by section 7(d) of Pub. L. 98–209 not to apply to any case in which the findings and sentence were adjudged by a court-martial before that date, and the proceedings in any such case to be held in the same manner and with the same effect as if such amendments had not been enacted, see section 12(a)(1), (4) of Pub. L. 98–209, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–81 to take effect at end of 60-day period beginning on Nov. 20, 1981, and to apply to any accused with respect to a Court of Military Review [now Court of Criminal Appeals] decision that is dated on or after that date, see section 7(a), (b)(5) of Pub. L. 97–81, set out as an Effective Date note under section 706 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

For effective date of amendment by Pub. L. 88–426, see section 501 of Pub. L. 88–426.

COMMISSION TO STUDY AND MAKE RECOMMENDATIONS CONCERNING SENTENCING AUTHORITY, JURISDICTION, TENURE, AND RETIREMENT OF MILITARY JUDGES; ESTABLISHMENT; COMPOSITION; REPORT TO CONGRESSIONAL COMMITTEES

Pub. L. 98–209, § 9(b), Dec. 6, 1983, 97 Stat. 1404, as amended by Pub. L. 98–525, title XV, § 1521, Oct. 19, 1984, 98 Stat. 2628, directed Secretary of Defense to establish a commission to study the sentencing authority, jurisdiction, tenure, and retirement system of military judges, and to report, not later than Dec. 15, 1984, its findings and recommendations to committees of Congress and to the committee established under former section 867(g) of this title.

TERMS OF OFFICE OF JUDGES OF UNITED STATES COURT OF MILITARY APPEALS

Pub. L. 96–579, § 12(b), Dec. 23, 1980, 94 Stat. 3369, provided that the term of office of a judge of United States Court of Military Appeals serving on such court on Dec. 23, 1980, expire (1) on the date the term of such judge would have expired under the law in effect on the day before Dec. 23, 1980, or (2) ten years after the date on which such judge took office as a judge of the United States Court of Military Appeals, whichever is later.

CONTINUATION OF POWERS AND JURISDICTION OF COURT OF MILITARY APPEALS; STATUS OF JUDGES

Pub. L. 90–340, § 2, June 15, 1968, 82 Stat. 178, provided that: ''The United States Court of Military Appeals [now United States Court of Appeals for the Armed Forces] established under this Act [which amended subsec. (a) of this section] is a continuation of the Court of Military Appeals as it existed prior to the effective date of this Act [June 15, 1968], and no loss of rights or powers, interruption of jurisdiction, or prejudice to matters pending in the Court of Military Appeals before the effective date of this Act shall result. A judge of the Court of Military Appeals so serving on the day before the effective date of this Act shall, for all purposes, be a judge of the United States Court of Military Appeals under this Act.''

SALARY INCREASES

1987—Salaries of judges increased to $95,000 per annum, on recommendation of President, see note set out under section 358 of Title 2, The Congress.

1977—Salaries of judges increased to $57,500 per annum, on recommendation of President, see note set out under section 358 of Title 2.

1969—Salaries of judges increased from $33,000 to $42,500 per annum, commencing first day of pay period which begins after Feb. 14, 1969, on recommendation of President, see note set out under section 358 of Title 2.

EXECUTIVE ORDER NO. 12063

Ex. Ord. No. 12063, June 5, 1978, 43 F.R. 24659, which related to the United States Court of Military Appeals Nominating Commission, was revoked by Ex. Ord. No. 12258, Dec. 31, 1980, 46 F.R. 1251, formerly set out as a note under section 14 of the Appendix to Title 5, Government Organization and Employees.

§ 867a. Art. 67a. Review by the Supreme Court

(a) Decisions of the United States Court of Appeals for the Armed Forces are subject to review by the Supreme Court by writ of certiorari as provided in section 1259 of title 28. The Supreme Court may not review by a writ of certiorari under this section any action of the United States Court of Appeals for the Armed Forces in refusing to grant a petition for review.

(b) The accused may petition the Supreme Court for a writ of certiorari without prepayment of fees and costs or security therefor and without filing the affidavit required by section 1915(a) of title 28.

(Added Pub. L. 101–189, div. A, title XIII, § 1301(b), Nov. 29, 1989, 103 Stat. 1569; amended Pub. L. 103–337, div. A, title IX, § 924(c)(1), Oct. 5, 1994, 108 Stat. 2831; Pub. L. 114–328, div. E, title LIX, § 5332, Dec. 23, 2016, 130 Stat. 2935.)

AMENDMENTS

2016—Subsec. (a). Pub. L. 114–328 inserted ''United States'' before ''Court of Appeals'' in second sentence.

1994—Subsec. (a). Pub. L. 103–337 substituted ''Court of Appeals for the Armed Forces'' for ''Court of Military Appeals'' in two places.

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114–328 effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

§ 868. Art. 68. Branch offices

The Secretary concerned may direct the Judge Advocate General to establish a branch office with any command. The branch office shall be under an Assistant Judge Advocate General who, with the consent of the Judge Advocate General, may establish a Court of Criminal Appeals with one or more panels. That Assistant Judge Advocate General and any Court of Criminal Appeals established by him may perform for that command under the general supervision of the Judge Advocate General, the respective duties which the Judge Advocate General and a Court of Criminal Appeals established by the Judge Advocate General would otherwise be required to perform as to all cases involving sentences not requiring approval by the President.

(Aug. 10, 1956, ch. 1041, 70A Stat. 61; Pub. L. 90–632, § 2(29), Oct. 24, 1968, 82 Stat. 1342; Pub. L. 103–337, div. A, title IX, § 924(c)(2), Oct. 5, 1994, 108 Stat. 2831.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
868	50:655.	May 5, 1950, ch. 169, § 1 (Art. 68), 64 Stat. 130.

The word ''considers'' is substituted for the word ''deems''. The word ''may'' is substituted for the words ''shall be empowered to''. The word ''respective'' is inserted for clarity.

AMENDMENTS

1994—Pub. L. 103–337 substituted ''Court of Criminal Appeals'' for ''Court of Military Review'' wherever appearing.

1968—Pub. L. 90–632 substituted the Secretary concerned for the President as the individual authorized to direct the Judge Advocate General to establish a branch office under an Assistant Judge Advocate General with any command and substituted ''Court of Military Review'' for ''board of review'' as the name of the body established by the Assistant Judge Advocate General in charge of the branch office.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

§ 869. Art. 69. Review by Judge Advocate General

(a) IN GENERAL.—Upon application by the accused and subject to subsections (b), (c), and (d), the Judge Advocate General may modify or set aside, in whole or in part, the findings and sentence in a court-martial that is not reviewed under section 866 of this title (article 66).

(b) TIMING.—To qualify for consideration, an application under subsection (a) must be submitted to the Judge Advocate General not later than one year after the date of completion of review under section 864 or 865 of this title (article 64 or 65), as the case may be. The Judge Advocate General may, for good cause shown, extend the period for submission of an application, but may not consider an application submitted more than three years after such completion date.

(c) SCOPE.—(1)(A) In a case reviewed under section 864 or 865(b) of this title (article 64 or 65(b)), the Judge Advocate General may set aside the findings or sentence, in whole or in part, on the grounds of newly discovered evidence, fraud on the court, lack of jurisdiction over the accused or the offense, error prejudicial to the substantial rights of the accused, or the appropriateness of the sentence.

(B) In setting aside findings or sentence, the Judge Advocate General may order a rehearing, except that a rehearing may not be ordered in violation of section 844 of this title (article 44).

(C) If the Judge Advocate General sets aside findings and sentence and does not order a rehearing, the Judge Advocate General shall dismiss the charges.

(D) If the Judge Advocate General sets aside findings and orders a rehearing and the convening authority determines that a rehearing would be impractical, the convening authority shall dismiss the charges.

(2) In a case reviewed under section 865(b) of this title (article 65(b)), review under this section is limited to the issue of whether the waiver or withdrawal of an appeal was invalid under the law. If the Judge Advocate General determines that the waiver or withdrawal of an appeal was invalid, the Judge Advocate General shall order appropriate corrective action under rules prescribed by the President.

(d) COURT OF CRIMINAL APPEALS.—(1) A Court of Criminal Appeals may review the action taken by the Judge Advocate General under subsection (c)—

(A) in a case sent to the Court of Criminal Appeals by order of the Judge Advocate General; or

(B) in a case submitted to the Court of Criminal Appeals by the accused in an application for review.

(2) The Court of Criminal Appeals may grant an application under paragraph (1)(B) only if—

(A) the application demonstrates a substantial basis for concluding that the action on review under subsection (c) constituted prejudicial error; and

(B) the application is filed not later than the earlier of—

(i) 60 days after the date on which the accused is notified of the decision of the Judge Advocate General; or

(ii) 60 days after the date on which a copy of the decision of the Judge Advocate General is deposited in the United States mails for delivery by first-class certified mail to the accused at an address provided by the accused or, if no such address has been provided by the accused, at the latest address listed for the accused in his official service record.

(3) The submission of an application for review under this subsection does not constitute a proceeding before the Court of Criminal Appeals for purposes of section 870(c)(1) of this title (article 70(c)(1)).

(e) ACTION ONLY ON MATTERS OF LAW.—Notwithstanding section 866 of this title (article 66), in any case reviewed by a Court of Criminal Appeals under subsection (d), the Court may take action only with respect to matters of law.

(Aug. 10, 1956, ch. 1041, 70A Stat. 61; Pub. L. 90–632, § 2(30), Oct. 24, 1968, 82 Stat. 1342; Pub. L. 97–81, § 6, Nov. 20, 1981, 95 Stat. 1089; Pub. L. 98–209, § 7(e)(1), Dec. 6, 1983, 97 Stat. 1402; Pub. L. 101–189, div. A, title XIII, §§ 1302(a), 1304(b)(1), Nov. 29, 1989, 103 Stat. 1576, 1577; Pub. L. 103–337, div. A, title IX, § 924(c)(2), Oct. 5, 1994, 108 Stat. 2831; Pub. L. 114–328, div. E, title LIX, § 5333, Dec. 23, 2016, 130 Stat. 2935; Pub. L. 115–91, div. A, title X, § 1081(c)(1)(L), Dec. 12, 2017, 131 Stat. 1598.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
869	50:656.	May 5, 1950, ch. 169, § 1 (Art. 69), 64 Stat. 130.

The word ''may'' is substituted for the word ''will''. The word ''under'' is substituted for the words ''pursuant to the provisions of''.

AMENDMENTS

2017—Subsec. (c)(1)(A). Pub. L. 115–91 inserted comma after ''in whole or in part''.

2016—Pub. L. 114–328 amended section generally. Prior to amendment, section related to review in the office of the Judge Advocate General.

1994—Subsecs. (d), (e). Pub. L. 103–337 substituted ''Court of Criminal Appeals'' for ''Court of Military Review'' wherever appearing.

1989—Subsec. (a). Pub. L. 101–189, § 1304(b)(1), which directed amendment of subsec. (a) by striking ''section 867(b)(2) of this title (article 67(b)(2))'' in the third sentence and inserting in lieu thereof ''section 867(a)(2) of this title (article 67(a)(2))'', could not be executed because of the intervening amendment by Pub. L. 101–189, § 1302(a)(1), which struck out the third sentence, see below.

Pub. L. 101–189, § 1302(a)(1), struck out the third sentence, which read as follows: ''If the Judge Advocate General so directs, the record shall be reviewed by a Court of Military Review under section 866 of this title (article 66), but in that event there may be no further review by the Court of Military Appeals except under section 867(b)(2) of this title (article 67(b)(2)).''

Subsecs. (d), (e). Pub. L. 101–189, § 1302(a)(2), added subsecs. (d) and (e).

1983—Pub. L. 98–209 amended section generally. Prior to amendment section provided that every record of trial by general court-martial, in which there had been a finding of guilty and a sentence, the appellate review of which was not otherwise provided for by section 866 of this title, was to be examined in the office of the Judge Advocate General; that if any part of the findings or sentence was found unsupported in law, or if the Judge Advocate General so directed, the record was to be reviewed by a board of review in accordance with section 866 of this title, but in that event there could be no further review by the Court of Military Appeals except under section 867(b)(2) of this title, that notwithstanding section 876 of this title, the findings or sentence, or both, in a court-martial case which had been finally reviewed, but had not been reviewed by a Court of Military Review could be vacated or modified, in whole or in part, by the Judge Advocate General on the ground of newly discovered evidence, fraud on the court, lack of jurisdiction over the accused or the offense, or error prejudicial to the substantial rights of the accused; and that when such a case was considered upon application of the accused, the application had to be filed in the Office of the Judge Advocate General by the accused before: (1) October 1, 1983, or (2) the last day of the two-year period beginning on the date the sentence was approved by the convening authority or, in a special court-martial case which required action under section 865(b) of this title, the officer exercising general court-martial jurisdiction, whichever was later, unless the accused established good cause for failure to file within that time.

1981—Pub. L. 97–81 inserted provision that, when a case is considered upon application of the accused, the application must be filed in the Office of the Judge Advocate General by the accused before (1) October 1, 1983, or (2) the last day of the two-year period beginning on the date the sentence is approved by the convening authority or, in a special court-martial case which requires action under section 865(b) of this title (article 65(b)), the officer exercising general court-martial jurisdiction, whichever is later, unless the accused establishes good cause for failure to file within that time.

1968—Pub. L. 90–632 authorized the Judge Advocate General to either vacate or modify the findings or sentence, or both, in whole or in part, in any court-martial case which has been finally reviewed, but which has not been reviewed by a Court of Military Review, because of newly discovered evidence, fraud on the court, lack of jurisdiction over the accused or the offense, or error prejudicial to the substantial rights of the accused.

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by Pub. L. 115–91 effective immediately after the amendments made by div. E (§§ 5001–5542) of Pub. L. 114–328 take effect as provided for in section 5542 of that Act (10 U.S.C. 801 note), see section 1081(c)(4) of Pub. L. 115–91, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114–328 effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–189, div. A, title XIII, § 1302(b), Nov. 29, 1989, 103 Stat. 1576, provided that: ''Subsection (e) of section 869 of title 10, United States Code, as added by subsection (a), shall apply with respect to cases in which a finding of guilty is adjudged by a general court-martial after the date of the enactment of this Act [Nov. 29, 1989].''

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–209 effective first day of eighth calendar month beginning after Dec. 6, 1983, but not to apply to any case in which the findings and sentence were adjudged by a court-martial before that date, and the proceedings in any such case to be held in the same manner and with the same effect as if such amendments had not been enacted, see section 12(a)(1), (4) of Pub. L. 98–209, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–81 effective at end of 60-day period beginning on Nov. 20, 1981, see section 7(a) of Pub. L. 97–81, set out as an Effective Date note under section 706 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective Oct. 24, 1968, see section 4(b) of Pub. L. 90–632, set out as a note under section 801 of this title.

TWO-YEAR PERIOD FOR APPLICATIONS FOR MODIFICATION OR SET-ASIDE INAPPLICABLE TO APPLICATIONS FILED ON OR BEFORE OCTOBER 1, 1983

Pub. L. 98–209, §7(e)(2), Dec. 6, 1983, 97 Stat. 1403, provided that the two-year period specified under the second sentence of subsec. (b) of this section did not apply to any application filed in the office of the appropriate Judge Advocate General on or before Oct. 1, 1983, and that the application in such a case would be considered in the same manner and with the same effect as if such two-year period had not been enacted.

§870. Art. 70. Appellate counsel

(a) The Judge Advocate General shall detail in his office one or more commissioned officers as appellate Government counsel, and one or more commissioned officers as appellate defense counsel, who are qualified under section 827(b)(1) of this title (article 27(b)(1)).

(b) Appellate Government counsel shall represent the United States before the Court of Criminal Appeals or the Court of Appeals for the Armed Forces when directed to do so by the Judge Advocate General. Appellate Government counsel may represent the United States before the Supreme Court in cases arising under this chapter when requested to do so by the Attorney General.

(c) Appellate defense counsel shall represent the accused before the Court of Criminal Appeals, the Court of Appeals for the Armed Forces, or the Supreme Court—

(1) when requested by the accused;

(2) when the United States is represented by counsel; or

(3) when the Judge Advocate General has sent the case to the Court of Appeals for the Armed Forces.

(d) The accused has the right to be represented before the Court of Criminal Appeals, the Court of Appeals for the Armed Forces, or the Supreme Court by civilian counsel if provided by him.

(e) Military appellate counsel shall also perform such other functions in connection with the review of court martial cases as the Judge Advocate General directs.

(f) To the greatest extent practicable, in any capital case, at least one defense counsel under subsection (c) shall, as determined by the Judge Advocate General, be learned in the law applicable to such cases. If necessary, this counsel may be a civilian and, if so, may be compensated in accordance with regulations prescribed by the Secretary of Defense.

(Aug. 10, 1956, ch. 1041, 70A Stat. 62; Pub. L. 90–632, §2(31), Oct. 24, 1968, 82 Stat. 1342; Pub. L. 98–209, §10(c)(3), Dec. 6, 1983, 97 Stat. 1406; Pub. L. 103–337, div. A, title IX, §924(c)(1), (2), Oct. 5, 1994, 108 Stat. 2831; Pub. L. 114–328, div. E, title LIX, §5334, Dec. 23, 2016, 130 Stat. 2936.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
870(a)	50:657(a).	May 5, 1950, ch. 169, §1 (Art. 70), 64 Stat. 130.
870(b)	50:657(b).	
870(c)	50:657(c).	
870(d)	50:657(d).	
870(e)	50:657(e).	

In subsection (a), the word ''detail'' is substituted for the word ''appoint'', since the filling of the position involved is not appointment to an office in the constitutional sense. The word ''commissioned'' is inserted for clarity. The word ''are'' is substituted for the words ''shall be''. The words ''the provisions of'' are omitted as surplusage.

In subsections (b) and (c), the word ''shall'' is substituted for the words ''It shall be the duty of * * * to''.

In subsection (c)(3), the word ''sent'' is substituted for the word ''transmitted''.

In subsection (d), the word ''has'' is substituted for the words ''shall have''.

In subsection (e), the word ''directs'' is substituted for the words ''shall direct''.

AMENDMENTS

2016—Subsec. (f). Pub. L. 114–328 added subsec. (f).

1994—Subsecs. (b) to (d). Pub. L. 103–337 substituted ''Court of Criminal Appeals'' for ''Court of Military Review'' and ''Court of Appeals for the Armed Forces'' for ''Court of Military Appeals'' wherever appearing.

1983—Subsec. (b). Pub. L. 98–209, §10(c)(3)(A), inserted provision that Appellate Government counsel may represent the United States before the Supreme Court in cases arising under this chapter when requested to do so by the Attorney General.

Subsecs. (c), (d). Pub. L. 98–209, §10(c)(3)(B), amended subsecs. (c) and (d) generally, inserting references to the Supreme Court.

1968—Subsecs. (b) to (d). Pub. L. 90–632 substituted ''Court of Military Review'' for ''board of review'' wherever appearing.

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114–328 effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–209 effective first day of eighth calendar month beginning after Dec. 6, 1983, see section 12(a)(1) of Pub. L. 98–209, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

[§871. Repealed. Pub. L. 114–328, div. E, title LVIII, §5302(b)(2), Dec. 23, 2016, 130 Stat. 2923]

Section, Aug. 10, 1956, ch. 1041, 70A Stat. 62; Pub. L. 90–632, §2(32), Oct. 24, 1968, 82 Stat. 1342; Pub. L. 98–209, §5(e), Dec. 6, 1983, 97 Stat. 1399; Pub. L. 103–337, div. A, title IX, §924(c)(1), (2), Oct. 5, 1994, 108 Stat. 2831; Pub. L. 113–66, div. A, title XVII, §1702(c)(2), Dec. 26, 2013, 127 Stat. 957, related to execution and suspension of various types of sentences.

EFFECTIVE DATE OF REPEAL

Repeal effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see

section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

§ 872. Art. 72. Vacation of suspension

(a) Before the vacation of the suspension of a special court-martial sentence which as approved includes a bad-conduct discharge, or of any general court-martial sentence, the officer having special court-martial jurisdiction over the probationer shall hold a hearing on the alleged violation of probation. The special court-martial convening authority may detail a judge advocate, who is certified under section 827(b) of this title (article 27(b)), to conduct the hearing. The probationer shall be represented at the hearing by counsel if the probationer so desires.

(b) The record of the hearing and the recommendation of the officer having special court-martial jurisdiction shall be sent for action to the officer exercising general court-martial jurisdiction over the probationer. If the officer exercising general court-martial jurisdiction vacates the suspension, any unexecuted part of the sentence, except a dismissal, shall be executed, subject to applicable restrictions in section 857 of this title (article 57). The vacation of the suspension of a dismissal is not effective until approved by the Secretary concerned.

(c) The suspension of any other sentence may be vacated by any authority competent to convene, for the command in which the accused is serving or assigned, a court of the kind that imposed the sentence.

(Aug. 10, 1956, ch. 1041, 70A Stat. 63; Pub. L. 114–328, div. E, title LIX, § 5335, Dec. 23, 2016, 130 Stat. 2936.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
872(a) ……	50:659(a).	May 5, 1950, ch. 169, § 1 (Art. 72), 64 Stat. 131.
872(b) ……	50:659(b).	
872(c) ……	50:659(c).	

In subsection (a), the word "Before" is substituted for the words "Prior to".

In subsection (b), the words "be effective * * * to" are omitted as surplusage.

The second sentence is restated to make it clear that the execution of the rest of the court-martial sentence is not automatic. The word "is" is substituted for the words "shall * * * be" in the last sentence. The word "sent" is substituted for the word "forwarded". The words "Secretary concerned" are substituted for the words "Secretary of the Department".

AMENDMENTS

2016—Subsec. (a). Pub. L. 114–328, § 5335(a), (b)(1), inserted "The special court-martial convening authority may detail a judge advocate, who is certified under section 827(b) of this title (article 27(b)), to conduct the hearing." after first sentence and substituted "if the probationer so desires" for "if he so desires" in last sentence.

Subsec. (b). Pub. L. 114–328, § 5335(b)(2), substituted "If the officer exercising general court-martial jurisdiction" for "If he" and "section 857 of this title (article 57)" for "section 871(c) of this title (article 71(c))".

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114–328 effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

§ 873. Art. 73. Petition for a new trial

At any time within three years after the date of the entry of judgment under section 860c of this title (article 60c), the accused may petition the Judge Advocate General for a new trial on the grounds of newly discovered evidence or fraud on the court. If the accused's case is pending before a Court of Criminal Appeals or before the Court of Appeals for the Armed Forces, the Judge Advocate General shall refer the petition to the appropriate court for action. Otherwise the Judge Advocate General shall act upon the petition.

(Aug. 10, 1956, ch. 1041, 70A Stat. 63; Pub. L. 90–632, § 2(33), Oct. 24, 1968, 82 Stat. 1342; Pub. L. 103–337, div. A, title IX, § 924(c)(1), (2), Oct. 5, 1994, 108 Stat. 2831; Pub. L. 114–328, div. E, title LIX, § 5336, Dec. 23, 2016, 130 Stat. 2937.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
873 ………	50:660.	May 5, 1950, ch. 169, § 1 (Art. 73), 64 Stat. 132.

The words "the ground" are substituted for the word "grounds". The words "as the case may be" are substituted for the word "respectively", since the prescribed action is alternative, not distributive.

AMENDMENTS

2016—Pub. L. 114–328 substituted "three years after the date of the entry of judgment under section 860c of this title (article 60c)" for "two years after approval by the convening authority of a court-martial sentence".

1994—Pub. L. 103–337 substituted "Court of Criminal Appeals" for "Court of Military Review" and "Court of Appeals for the Armed Forces" for "Court of Military Appeals".

1968—Pub. L. 90–632 extended time during which accused may petition Judge Advocate General for a new trial from 1 to 2 years and struck out provisions which limited right to petition for a new trial to cases of death, dismissal, a punitive discharge, or a year or more in confinement.

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114–328 effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 to apply in the case of all court-martial sentences approved by the convening authority on or after, or not more than two years before Oct. 24, 1968, see section 4(c) of Pub. L. 90–632, set out as a note under section 801 of this title.

§ 874. Art. 74. Remission and suspension

(a) The Secretary concerned and, when designated by him, any Under Secretary, Assistant Secretary, Judge Advocate General, or commanding officer may remit or suspend any part or amount of the unexecuted part of any sentence, including all uncollected forfeitures other than a sentence approved by the President. However, in the case of a sentence of confinement for life without eligibility for parole that is ad-

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judged for an offense committed after October 29, 2000, after the sentence is ordered executed, the authority of the Secretary concerned under the preceding sentence (1) may not be delegated, and (2) may be exercised only after the service of a period of confinement of not less than 20 years.

(b) The Secretary concerned may, for good cause, substitute an administrative form of discharge for a discharge or dismissal executed in accordance with the sentence of a court-martial.

(Aug. 10, 1956, ch. 1041, 70A Stat. 63; Pub. L. 106–398, §1 [[div. A], title V, §553(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–125; Pub. L. 107–107, div. A, title X, §1048(a)(8), Dec. 28, 2001, 115 Stat. 1223.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
874(a)	50:661(a).	May 5, 1950, ch. 169, § 1 (Art. 74), 64 Stat. 132.
874(b)	50:661(b).	

In subsections (a) and (b), the words ''Secretary concerned'' are substituted for the words ''Secretary of the Department''.

AMENDMENTS

2001—Subsec. (a). Pub. L. 107–107 inserted ''that is adjudged for an offense committed after October 29, 2000'' after ''a sentence of confinement for life without eligibility for parole''.

2000—Subsec. (a). Pub. L. 106–398 inserted at end ''However, in the case of a sentence of confinement for life without eligibility for parole, after the sentence is ordered executed, the authority of the Secretary concerned under the preceding sentence (1) may not be delegated, and (2) may be exercised only after the service of a period of confinement of not less than 20 years.''

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–398, §1 [[div. A], title V, §553(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–125, provided that: ''The amendment made by subsection (a) [amending this section] shall not apply with respect to a sentence of confinement for life without eligibility for parole that is adjudged for an offense committed before the date of the enactment of this Act [Oct. 30, 2000].''

§875. Art. 75. Restoration

(a) Under such regulations as the President may prescribe, all rights, privileges, and property affected by an executed part of a court-martial sentence which has been set aside or disapproved, except an executed dismissal or discharge, shall be restored unless a new trial or rehearing is ordered and such executed part is included in a sentence imposed upon the new trial or rehearing.

(b) If a previously executed sentence of dishonorable or bad-conduct discharge is not imposed on a new trial, the Secretary concerned shall substitute therefor a form of discharge authorized for administrative issuance unless the accused is to serve out the remainder of his enlistment.

(c) If a previously executed sentence of dismissal is not imposed on a new trial, the Secretary concerned shall substitute therefor a form of discharge authorized for administrative issue, and the commissioned officer dismissed by that sentence may be reappointed by the President alone to such commissioned grade and with such rank as in the opinion of the President that former officer would have attained had he not been dismissed. The reappointment of such a former officer shall be without regard to the existence of a vacancy and shall affect the promotion status of other officers only insofar as the President may direct. All time between the dismissal and the reappointment shall be considered as actual service for all purposes, including the right to pay and allowances.

(d) The President shall prescribe regulations, with such limitations as the President considers appropriate, governing eligibility for pay and allowances for the period after the date on which an executed part of a court-martial sentence is set aside.

(Aug. 10, 1956, ch. 1041, 70A Stat. 63; Pub. L. 114–328, div. E, title LIX, §5337, Dec. 23, 2016, 130 Stat. 2937.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
875(a)	50:662(a).	May 5, 1950, ch. 169, §1 (Art. 75), 64 Stat. 132.
875(b)	50:662(b).	
875(c)	50:662(c).	

In subsections (b) and (c), the word ''If'' is substituted for the word ''Where''. The word ''imposed'' is substituted for the word ''sustained''. The words ''Secretary concerned'' are substituted for the words ''Secretary of the Department''.

In subsection (c), the word ''issue'' is substituted for the word ''issuance''. The word ''commissioned'' is inserted for clarity. The words ''grade and with such rank'' are substituted for the words ''rank and precedence'', since a person is appointed to a grade, not a position of precedence, and the word ''rank'' is the accepted military word denoting the general idea of precedence. The words ''the existence of a'' are substituted for the word ''position''. The word ''receive'' is omitted as surplusage.

AMENDMENTS

2016—Subsec. (d). Pub. L. 114–328 added subsec. (d).

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114–328 effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

DELEGATION OF FUNCTIONS

For delegation to Secretary of Homeland Security of certain authority vested in President by this section, see section 2(b) of Ex. Ord. No. 10637, Sept. 16, 1955, 20 F.R. 7025, as amended, set out as a note under section 301 of Title 3, The President.

§876. Art. 76. Finality of proceedings, findings, and sentences

The appellate review of records of trial provided by this chapter, the proceedings, findings, and sentences of courts-martial as approved, reviewed, or affirmed as required by this chapter, and all dismissals and discharges carried into execution under sentences by courts-martial following approval, review, or affirmation as required by this chapter, are final and conclusive. Orders publishing the proceedings of courts-martial and all action taken pursuant to those proceedings are binding upon all departments, courts, agencies, and officers of the United States, subject only to action upon a petition

for a new trial as provided in section 873 of this title (article 73) and to action by the Secretary concerned as provided in section 874 of this title (article 74) and the authority of the President.

(Aug. 10, 1956, ch. 1041, 70A Stat. 64.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
876	50:663.	May 5, 1950, ch. 169, § 1 (Art. 76), 64 Stat. 132.

The word ''under'' is substituted for the words ''pursuant to''. The word ''are'' is substituted for the words ''shall be''. The words ''Secretary concerned'' are substituted for the words ''Secretary of a Department''.

§ 876a. Art. 76a. Leave required to be taken pending review of certain court-martial convictions

Under regulations prescribed by the Secretary concerned, an accused who has been sentenced by a court-martial may be required to take leave pending completion of action under this subchapter if the sentence includes an unsuspended dismissal or an unsuspended dishonorable or bad-conduct discharge. The accused may be required to begin such leave on the date of the entry of judgment under section 860c of this title (article 60c) or at any time after such date, and such leave may be continued until the date on which action under this subchapter is completed or may be terminated at any earlier time.

(Added Pub. L. 97–81, § 2(c)(1), Nov. 20, 1981, 95 Stat. 1087; amended Pub. L. 98–209, § 5(g), Dec. 6, 1983, 97 Stat. 1400; Pub. L. 114–328, div. E, title LIX, § 5338, Dec. 23, 2016, 130 Stat. 2937.)

AMENDMENTS

2016—Pub. L. 114–328 struck out '', as approved under section 860 of this title (article 60),'' after ''if the sentence'' and substituted ''of the entry of judgment under section 860c of this title (article 60c)'' for ''on which the sentence is approved under section 860 of this title (article 60)''.

1983—Pub. L. 98–209 substituted ''under section 860 of this title (article 60)'' for ''under section 864 or 865 of this title (article 64 or 65) by the officer exercising general court-martial jurisdiction'' and ''by the officer exercising general court-martial jurisdiction'', respectively.

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114–328 effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–209 effective first day of eighth calendar month beginning after Dec. 6, 1983, but not to apply to any case in which the findings and sentence were adjudged by a court-martial before that date, and the proceedings in any such case to be held in the same manner and with the same effect as if such amendments had not been enacted, see section 12(a)(1), (4) of Pub. L. 98–209, set out as a note under section 801 of this title.

EFFECTIVE DATE

Section to take effect at end of 60-day period beginning on Nov. 20, 1981, to apply to each member whose sentence by court-martial is approved on or after Jan. 20, 1982, under section 864 or 865 of this title by the officer exercising general court-martial jurisdiction under the provisions of such section as it existed on the day before the effective date of the Military Justice Act of 1983 (Pub. L. 98–209), or under section 860 of this title by the officer empowered to act on the sentence on or after that effective date, see section 7(a), (b)(1) of Pub. L. 97–81, set out as a note under section 706 of this title.

§ 876b. Art. 76b. Lack of mental capacity or mental responsibility: commitment of accused for examination and treatment

(a) PERSONS INCOMPETENT TO STAND TRIAL.—(1) In the case of a person determined under this chapter to be presently suffering from a mental disease or defect rendering the person mentally incompetent to the extent that the person is unable to understand the nature of the proceedings against that person or to conduct or cooperate intelligently in the defense of the case, the general court-martial convening authority for that person shall commit the person to the custody of the Attorney General.

(2) The Attorney General shall take action in accordance with section 4241(d) of title 18.

(3) If at the end of the period for hospitalization provided for in section 4241(d) of title 18, it is determined that the committed person's mental condition has not so improved as to permit the trial to proceed, action shall be taken in accordance with section 4246 of such title.

(4)(A) When the director of a facility in which a person is hospitalized pursuant to paragraph (2) determines that the person has recovered to such an extent that the person is able to understand the nature of the proceedings against the person and to conduct or cooperate intelligently in the defense of the case, the director shall promptly transmit a notification of that determination to the Attorney General and to the general court-martial convening authority for the person. The director shall send a copy of the notification to the person's counsel.

(B) Upon receipt of a notification, the general court-martial convening authority shall promptly take custody of the person unless the person covered by the notification is no longer subject to this chapter. If the person is no longer subject to this chapter, the Attorney General shall take any action within the authority of the Attorney General that the Attorney General considers appropriate regarding the person.

(C) The director of the facility may retain custody of the person for not more than 30 days after transmitting the notifications required by subparagraph (A).

(5) In the application of section 4246 of title 18 to a case under this subsection, references to the court that ordered the commitment of a person, and to the clerk of such court, shall be deemed to refer to the general court-martial convening authority for that person. However, if the person is no longer subject to this chapter at a time relevant to the application of such section to the person, the United States district court for the district where the person is hospitalized or otherwise may be found shall be considered as the court that ordered the commitment of the person.

(b) PERSONS FOUND NOT GUILTY BY REASON OF LACK OF MENTAL RESPONSIBILITY.—(1) If a person

is found by a court-martial not guilty only by reason of lack of mental responsibility, the person shall be committed to a suitable facility until the person is eligible for release in accordance with this section.

(2) The court-martial shall conduct a hearing on the mental condition in accordance with subsection (c) of section 4243 of title 18. Subsections (b) and (d) of that section shall apply with respect to the hearing.

(3) A report of the results of the hearing shall be made to the general court-martial convening authority for the person.

(4) If the court-martial fails to find by the standard specified in subsection (d) of section 4243 of title 18 that the person's release would not create a substantial risk of bodily injury to another person or serious damage of property of another due to a present mental disease or defect—

(A) the general court-martial convening authority may commit the person to the custody of the Attorney General; and

(B) the Attorney General shall take action in accordance with subsection (e) of section 4243 of title 18.

(5) Subsections (f), (g), and (h) of section 4243 of title 18 shall apply in the case of a person hospitalized pursuant to paragraph (4)(B), except that the United States district court for the district where the person is hospitalized shall be considered as the court that ordered the person's commitment.

(c) GENERAL PROVISIONS.—(1) Except as otherwise provided in this subsection and subsection (d)(1), the provisions of section 4247 of title 18 apply in the administration of this section.

(2) In the application of section 4247(d) of title 18 to hearings conducted by a court-martial under this section or by (or by order of) a general court-martial convening authority under this section, the reference in that section to section 3006A of such title does not apply.

(d) APPLICABILITY.—(1) The provisions of chapter 313 of title 18 referred to in this section apply according to the provisions of this section notwithstanding section 4247(j) of title 18.

(2) If the status of a person as described in section 802 of this title (article 2) terminates while the person is, pursuant to this section, in the custody of the Attorney General, hospitalized, or on conditional release under a prescribed regimen of medical, psychiatric, or psychological care or treatment, the provisions of this section establishing requirements and procedures regarding a person no longer subject to this chapter shall continue to apply to that person notwithstanding the change of status.

(Added Pub. L. 104–106, div. A, title XI, §1133(a)(1), Feb. 10, 1996, 110 Stat. 464.)

EFFECTIVE DATE

Pub. L. 104–106, div. A, title XI, §1133(c), Feb. 10, 1996, 110 Stat. 466, provided that: ''Section 876b of title 10, United States Code (article 76b of the Uniform Code of Military Justice), as added by subsection (a), shall take effect at the end of the six-month period beginning on the date of the enactment of this Act [Feb. 10, 1996] and shall apply with respect to charges referred to courts-martial after the end of that period.''

SUBCHAPTER X—PUNITIVE ARTICLES

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908a.	108a.	Captured or abandoned property.
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910.	110.	Improper hazarding of vessel or aircraft.
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926.	126.	Arson; burning property with intent to defraud.
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931a.	131a.	Subornation of perjury.
931b.	131b.	Obstructing justice.
931c.	131c.	Misprision of serious offense.
931d.	131d.	Wrongful refusal to testify.
931e.	131e.	Prevention of authorized seizure of property.
931f.	131f.	Noncompliance with procedural rules.
931g.	131g.	Wrongful interference with adverse administrative proceeding.
932.	132.	Retaliation.
933.	133.	Conduct unbecoming an officer and a gentleman.
934.	134.	General article.

[1] See 2017 Amendment note below.

AMENDMENTS

2018—Pub. L. 115–232, div. A, title V, §532(a)(2), Aug. 13, 2018, 132 Stat. 1759, added item 928b.

2017—Pub. L. 115–91, div. A, title X, §1081(d)(18), Dec. 12, 2017, 131 Stat. 1600, amended Pub. L. 114–328, §5452. See 2016 Amendment note below.

Pub. L. 115–91, div. A, title V, §533(b), Dec. 12, 2017, 131 Stat. 1390, added item 917a. As subsequently amended generally by Pub. L. 114–328, effective Jan. 1, 2019 (see 2016 Amendment note below), analysis no longer included item 917a, but item was added back editorially, to reflect the probable intent of Congress.

2016—Pub. L. 114–328, div. E, title LX, §5452, Dec. 23, 2016, 130 Stat. 2958, as amended by Pub. L. 115–91, div. A, title X, §1081(d)(18), Dec. 12, 2017, 131 Stat. 1600, amended analysis generally, substituting items 877 to 934 for former items 877 to 934.

2013—Pub. L. 113–66, div. A, title XVII, §1707(b), Dec. 26, 2013, 127 Stat. 961, substituted ''Forcible sodomy; bestiality'' for ''Sodomy'' in item 925.

2011—Pub. L. 112–81, div. A, title V, §541(e), Dec. 31, 2011, 125 Stat. 1410, substituted ''Rape and sexual assault generally'' for ''Rape, sexual assault, and other sexual misconduct'' in item 920 and added items 920b and 920c.

2006—Pub. L. 109–163, div. A, title V, §552(a)(2), Jan. 6, 2006, 119 Stat. 3262, substituted ''Rape, sexual assault, and other sexual misconduct'' for ''Rape and carnal knowledge'' in item 920.

Pub. L. 109–163, div. A, title V, §551(a)(2), Jan. 6, 2006, 119 Stat. 3256, added item 920a.

2004—Pub. L. 108–212, §3(b), Apr. 1, 2004, 118 Stat. 570, added item 919a.

1997—Pub. L. 105–85, div. A, title X, §1073(a)(10), Nov. 18, 1997, 111 Stat. 1900, struck out ''Art.'' before ''95'' in item 895.

1996—Pub. L. 104–106, div. A, title XI, §1112(b), Feb. 10, 1996, 110 Stat. 461, inserted ''flight,'' after ''Resistance,'' in item 895.

1992—Pub. L. 102–484, div. A, title X, §1066(a)(2), Oct. 23, 1992, 106 Stat. 2506, substituted ''operation of a vehicle, aircraft, or vessel'' for ''driving'' in item 911.

1985—Pub. L. 99–145, title V, §534(b), Nov. 8, 1985, 99 Stat. 635, added item 906a.

1983—Pub. L. 98–209, §8(b), Dec. 6, 1983, 97 Stat. 1404, added item 912a.

1961—Pub. L. 87–385, §1(2), Oct. 4, 1961, 75 Stat. 814, added item 923a.

§ 877. Art. 77. Principals

Any person punishable under this chapter who—

(1) commits an offense punishable by this chapter, or aids, abets, counsels, commands, or procures its commission; or

(2) causes an act to be done which if directly performed by him would be punishable by this chapter;

is a principal.

(Aug. 10, 1956, ch. 1041, 70A Stat. 65.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
877	50:671.	May 5, 1950, ch. 169, §1 (Art. 77), 64 Stat. 134.

§ 878. Art. 78. Accessory after the fact

Any person subject to this chapter who, knowing that an offense punishable by this chapter has been committed, receives, comforts, or assists the offender in order to hinder or prevent his apprehension, trial, or punishment shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 65.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
878	50:672.	May 5, 1950, ch. 169, §1 (Art. 78), 64 Stat. 134.

§ 879. Art. 79. Conviction of offense charged, lesser included offenses, and attempts

(a) IN GENERAL.—An accused may be found guilty of any of the following:

(1) The offense charged.

(2) A lesser included offense.

(3) An attempt to commit the offense charged.

(4) An attempt to commit a lesser included offense, if the attempt is an offense in its own right.

(b) LESSER INCLUDED OFFENSE DEFINED.—In this section (article), the term ''lesser included offense'' means—

(1) an offense that is necessarily included in the offense charged; and

(2) any lesser included offense so designated by regulation prescribed by the President.

(c) REGULATORY AUTHORITY.—Any designation of a lesser included offense in a regulation referred to in subsection (b) shall be reasonably included in the greater offense.

(Aug. 10, 1956, ch. 1041, 70A Stat. 65; Pub. L. 114–328, div. E, title LX, § 5402, Dec. 23, 2016, 130 Stat. 2939.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
879	50:673.	May 5, 1950, ch. 169, § 1 (Art. 79), 64 Stat. 134.

AMENDMENTS

2016—Pub. L. 114–328 amended section generally. Prior to amendment, text read as follows: ''An accused may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or an offense necessarily included therein.''

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114–328 effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

§ 880. Art. 80. Attempts

(a) An act, done with specific intent to commit an offense under this chapter, amounting to more than mere preparation and tending, even though failing, to effect its commission, is an attempt to commit that offense.

(b) Any person subject to this chapter who attempts to commit any offense punishable by this chapter shall be punished as a court-martial may direct, unless otherwise specifically prescribed.

(c) Any person subject to this chapter may be convicted of an attempt to commit an offense although it appears on the trial that the offense was consummated.

(Aug. 10, 1956, ch. 1041, 70A Stat. 65.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
880(a)	50:674(a).	May 5, 1950, ch. 169, § 1 (Art. 80), 64 Stat. 134.
880(b)	50:674(b).	
880(c)	50:674(c).	

In subsection (a), the words ''even though'' are substituted for the word ''but'' for clarity.

§ 881. Art. 81. Conspiracy

(a) Any person subject to this chapter who conspires with any other person to commit an offense under this chapter shall, if one or more of the conspirators does an act to effect the object of the conspiracy, be punished as a court-martial may direct.

(b) Any person subject to this chapter who conspires with any other person to commit an offense under the law of war, and who knowingly does an overt act to effect the object of the conspiracy, shall be punished, if death results to one or more of the victims, by death or such other punishment as a court-martial or military commission may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a court-martial or military commission may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 66; Pub. L. 109–366, § 4(b), Oct. 17, 2006, 120 Stat. 2631.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
881	50:675.	May 5, 1950, ch. 169, § 1 (Art. 81), 64 Stat. 134.

The words ''or persons'' are omitted as surplusage, since under section 1 of title 1 words importing the singular may apply to several persons.

AMENDMENTS

2006—Pub. L. 109–366 designated existing provisions as subsec. (a) and added subsec. (b).

§ 882. Art. 82. Soliciting commission of offenses

(a) SOLICITING COMMISSION OF OFFENSES GENERALLY.—Any person subject to this chapter who solicits or advises another to commit an offense under this chapter (other than an offense specified in subsection (b)) shall be punished as a court-martial may direct.

(b) SOLICITING DESERTION, MUTINY, SEDITION, OR MISBEHAVIOR BEFORE THE ENEMY.—Any person subject to this chapter who solicits or advises another to violate section 885 of this title (article 85), section 894 of this title (article 94), or section 899 of this title (article 99)—

(1) if the offense solicited or advised is attempted or is committed, shall be punished with the punishment provided for the commission of the offense; and

(2) if the offense solicited or advised is not attempted or committed, shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 66; Pub. L. 114–328, div. E, title LX, § 5403, Dec. 23, 2016, 130 Stat. 2939; Pub. L. 115–91, div. A, title X, § 1081(c)(1)(M), Dec. 12, 2017, 131 Stat. 1598.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
882(a)	50:676(a).	May 5, 1950, ch. 169, § 1, (Art. 82), 64 Stat. 134.
882(b)	50:676(b).	

AMENDMENTS

2017—Subsec. (b). Pub. L. 115–91 substituted ''section 899'' for ''section 99'' in introductory provisions.

2016—Pub. L. 114–328 amended section generally. Prior to amendment, section related to solicitation of desertion, mutiny, misbehavior before the enemy, or sedition.

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by Pub. L. 115–91 effective immediately after the amendments made by div. E (§§ 5001–5542) of Pub. L. 114–328 take effect as provided for in section 5542 of that Act (10 U.S.C. 801 note), see section 1081(c)(4) of Pub. L. 115–91, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114–328 effective on Jan. 1, 2019, as designated by the President, with imple-

menting regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

§ 883. Art. 83. Malingering

Any person subject to this chapter who, with the intent to avoid work, duty, or service—

(1) feigns illness, physical disablement, mental lapse, or mental derangement; or

(2) intentionally inflicts self-injury;

shall be punished as a court-martial may direct.

(Added Pub. L. 114–328, div. E, title LX, § 5404, Dec. 23, 2016, 130 Stat. 2940.)

PRIOR PROVISIONS

A prior section 883 was renumbered section 904a of this title.

EFFECTIVE DATE

Section effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

§ 884. Art. 84. Breach of medical quarantine

Any person subject to this chapter—

(1) who is ordered into medical quarantine by a person authorized to issue such order; and

(2) who, with knowledge of the quarantine and the limits of the quarantine, goes beyond those limits before being released from the quarantine by proper authority;

shall be punished as a court-martial may direct.

(Added Pub. L. 114–328, div. E, title LX, § 5405, Dec. 23, 2016, 130 Stat. 2940.)

PRIOR PROVISIONS

A prior section 884 was renumbered section 904b of this title.

EFFECTIVE DATE

Section effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

§ 885. Art. 85. Desertion

(a) Any member of the armed forces who—

(1) without authority goes or remains absent from his unit, organization, or place of duty with intent to remain away therefrom permanently;

(2) quits his unit, organization, or place of duty with intent to avoid hazardous duty or to shirk important service; or

(3) without being regularly separated from one of the armed forces enlists or accepts an appointment in the same or another one of the armed forces without fully disclosing the fact that he has not been regularly separated, or enters any foreign armed service except when authorized by the United States;

is guilty of desertion.

(b) Any commissioned officer of the armed forces who, after tender of his resignation and before notice of its acceptance, quits his post or proper duties without leave and with intent to remain away therefrom permanently is guilty of desertion.

(c) Any person found guilty of desertion or attempt to desert shall be punished, if the offense is committed in time of war, by death or such other punishment as a court-martial may direct, but if the desertion or attempt to desert occurs at any other time, by such punishment, other than death, as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 67.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
885(a) ……	50:679(a).	May 5, 1950, ch. 169, §1 (Art. 85), 64 Stat. 135.
885(b) ……	50:679(b).	
885(c) ……	50:679(c).	

In subsection (a), the word ''unit'' is substituted for the words ''place of service'' to conform to clause (2) of this section and section 886(3) of this title. The word ''proper'' is omitted as surplusage.

In subsection (b), the word ''commissioned'' is inserted for clarity. The word ''before'' is substituted for the words ''prior to''. The words ''its acceptance'' are substituted for the words ''the acceptance of the same''. The words ''after tender of'' are substituted for the words ''having tendered'' for clarity. The word ''due'' is omitted as surplusage.

In subsection (c), the words ''attempt to desert'' are substituted for the words ''attempted desertion''.

§ 886. Art. 86. Absence without leave

Any member of the armed forces who, without authority—

(1) fails to go to his appointed place of duty at the time prescribed;

(2) goes from that place; or

(3) absents himself or remains absent from his unit, organization, or place of duty at which he is required to be at the time prescribed;

shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 67.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
886 ……….	50:680.	May 5, 1950, ch. 169, §1 (Art. 86), 64 Stat. 135.

The words ''proper'' and ''other'' are omitted as surplusage.

§ 887. Art. 87. Missing movement; jumping from vessel

(a) MISSING MOVEMENT.—Any person subject to this chapter who, through neglect or design, misses the movement of a ship, aircraft, or unit with which the person is required in the course of duty to move shall be punished as a court-martial may direct.

(b) JUMPING FROM VESSEL INTO THE WATER.—Any person subject to this chapter who wrongfully and intentionally jumps into the water from a vessel in use by the armed forces shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 67; Pub. L. 114–328, div. E, title LX, § 5406, Dec. 23, 2016, 130 Stat. 2940.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
887	50:681.	May 5, 1950, ch. 169, §1 (Art. 87), 64 Stat. 135.

AMENDMENTS

2016—Pub. L. 114–328 amended section generally. Prior to amendment, text read as follows: ''Any person subject to this chapter who through neglect or design misses the movement of a ship, aircraft, or unit with which he is required in the course of duty to move shall be punished as a court-martial may direct.''

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114–328 effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

§887a. Art. 87a. Resistance, flight, breach of arrest, and escape

Any person subject to this chapter who—

(1) resists apprehension;

(2) flees from apprehension;

(3) breaks arrest; or

(4) escapes from custody or confinement;

shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 69, §895; Pub. L. 104–106, div. A, title XI, §1112(a), Feb. 10, 1996, 110 Stat. 461; renumbered §887a, Pub. L. 114–328, div. E, title LX, §5401(2), Dec. 23, 2016, 130 Stat. 2938.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
895	50:689.	May 5, 1950, ch. 169, §1 (Art. 95), 64 Stat. 136.

AMENDMENTS

2016—Pub. L. 114–328 renumbered section 895 of this title as this section.

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114–328 effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

§887b. Art. 87b. Offenses against correctional custody and restriction

(a) ESCAPE FROM CORRECTIONAL CUSTODY.—Any person subject to this chapter—

(1) who is placed in correctional custody by a person authorized to do so;

(2) who, while in correctional custody, is under physical restraint; and

(3) who escapes from the physical restraint before being released from the physical restraint by proper authority;

shall be punished as a court-martial may direct.

(b) BREACH OF CORRECTIONAL CUSTODY.—Any person subject to this chapter—

(1) who is placed in correctional custody by a person authorized to do so;

(2) who, while in correctional custody, is under restraint other than physical restraint; and

(3) who goes beyond the limits of the restraint before being released from the correctional custody or relieved of the restraint by proper authority;

shall be punished as a court-martial may direct.

(c) BREACH OF RESTRICTION.—Any person subject to this chapter—

(1) who is ordered to be restricted to certain limits by a person authorized to do so; and

(2) who, with knowledge of the limits of the restriction, goes beyond those limits before being released by proper authority;

shall be punished as a court-martial may direct.

(Added Pub. L. 114–328, div. E, title LX, §5407, Dec. 23, 2016, 130 Stat. 2941.)

EFFECTIVE DATE

Section effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

§888. Art. 88. Contempt toward officials

Any commissioned officer who uses contemptuous words against the President, the Vice President, Congress, the Secretary of Defense, the Secretary of a military department, the Secretary of Homeland Security, or the Governor or legislature of any State, Commonwealth, or possession in which he is on duty or present shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 67; Pub. L. 96–513, title V, §511(25), Dec. 12, 1980, 94 Stat. 2922; Pub. L. 107–296, title XVII, §1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 109–163, div. A, title X, §1057(a)(3), Jan. 6, 2006, 119 Stat. 3440.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
888	50:682.	May 5, 1950, ch. 169, §1 (Art. 88), 64 Stat. 135.

The word ''commissioned'' is inserted for clarity. The words ''the Vice President, Congress, the Secretary of Defense, the Secretary of a military department, the Secretary of the Treasury, or the Governor or legislature of any State, Territory, Commonwealth, or possession'' are substituted for the words ''Vice President, Congress, Secretary of Defense, or a Secretary of a Department, a Governor or a legislature of any State, Territory, or other possession of the United States''.

AMENDMENTS

2006—Pub. L. 109–163 struck out ''Territory,'' after ''State,''.

2002—Pub. L. 107–296 substituted ''Secretary of Homeland Security'' for ''Secretary of Transportation''.

1980—Pub. L. 96–513 substituted ''Secretary of Transportation'' for ''Secretary of the Treasury''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

§ 889. Art. 89. Disrespect toward superior commissioned officer; assault of superior commissioned officer

(a) DISRESPECT.—Any person subject to this chapter who behaves with disrespect toward that person's superior commissioned officer shall be punished as a court-martial may direct.

(b) ASSAULT.—Any person subject to this chapter who strikes that person's superior commissioned officer or draws or lifts up any weapon or offers any violence against that officer while the officer is in the execution of the officer's office shall be punished—

(1) if the offense is committed in time of war, by death or such other punishment as a court-martial may direct; and

(2) if the offense is committed at any other time, by such punishment, other than death, as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 67; Pub. L. 114–328, div. E, title LX, § 5408, Dec. 23, 2016, 130 Stat. 2941.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
889	50:683.	May 5, 1950, ch. 169, § 1 (Art. 89), 64 Stat. 135.

The word ''commissioned'' is inserted for clarity.

PRIOR PROVISIONS

Provisions similar to those in subsec. (b) of this section were contained in section 890 of this title, prior to amendment by Pub. L. 114–328, div. E, title LX, § 5409, Dec. 23, 2016, 130 Stat. 2942.

AMENDMENTS

2016—Pub. L. 114–328 amended section generally. Prior to amendment, text read as follows: ''Any person subject to this chapter who behaves with disrespect toward his superior commissioned officer shall be punished as a court-martial may direct.''

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114–328 effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

§ 890. Art. 90. Willfully disobeying superior commissioned officer

Any person subject to this chapter who willfully disobeys a lawful command of that person's superior commissioned officer shall be punished—

(1) if the offense is committed in time of war, by death or such other punishment as a court-martial may direct; and

(2) if the offense is committed at any other time, by such punishment, other than death, as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 68; Pub. L. 114–328, div. E, title LX, § 5409, Dec. 23, 2016, 130 Stat. 2942.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
890	50:684.	May 5, 1950, ch. 169, § 1 (Art. 90), 64 Stat. 135.

The word ''commissioned'' is inserted for clarity.

AMENDMENTS

2016—Pub. L. 114–328 amended section generally. Prior to amendment, section related to the offense of assaulting or willfully disobeying a superior commissioned officer. See section 889(b) of this title.

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114–328 effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

§ 891. Art. 91. Insubordinate conduct toward warrant officer, noncommissioned officer, or petty officer

Any warrant officer or enlisted member who—

(1) strikes or assaults a warrant officer, noncommissioned officer, or petty officer, while that officer is in the execution of his office;

(2) willfully disobeys the lawful order of a warrant officer, noncommissioned officer, or petty officer; or

(3) treats with contempt or is disrespectful in language or deportment toward a warrant officer, noncommissioned officer, or petty officer, while that officer is in the execution of his office;

shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 68.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
891	50:685.	May 5, 1950, ch. 169, § 1 (Art. 91), 64 Stat. 136.

The word ''member'' is substituted for the word ''person''.

§ 892. Art. 92. Failure to obey order or regulation

Any person subject to this chapter who—

(1) violates or fails to obey any lawful general order or regulation;

(2) having knowledge of any other lawful order issued by a member of the armed forces, which it is his duty to obey, fails to obey the order; or

(3) is derelict in the performance of his duties;

shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 68.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
892	50:686.	May 5, 1950, ch. 169, § 1 (Art. 92), 64 Stat. 136.

The word ''order'' is substituted for the word ''same''.

§ 893. Art. 93. Cruelty and maltreatment

Any person subject to this chapter who is guilty of cruelty toward, or oppression or maltreatment of, any person subject to his orders shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 68.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
893	50:687.	May 5, 1950, ch. 169, §1 (Art. 93), 64 Stat. 136.

§893a. Art. 93a. Prohibited activities with military recruit or trainee by person in position of special trust

(a) ABUSE OF TRAINING LEADERSHIP POSITION.—Any person subject to this chapter—

(1) who is an officer, a noncommissioned officer, or a petty officer;

(2) who is in a training leadership position with respect to a specially protected junior member of the armed forces; and

(3) who engages in prohibited sexual activity with such specially protected junior member of the armed forces;

shall be punished as a court-martial may direct.

(b) ABUSE OF POSITION AS MILITARY RECRUITER.—Any person subject to this chapter—

(1) who is a military recruiter and engages in prohibited sexual activity with an applicant for military service; or

(2) who is a military recruiter and engages in prohibited sexual activity with a specially protected junior member of the armed forces who is enlisted under a delayed entry program;

shall be punished as a court-martial may direct.

(c) CONSENT.—Consent is not a defense for any conduct at issue in a prosecution under this section (article).

(d) DEFINITIONS.—In this section (article):

(1) SPECIALLY PROTECTED JUNIOR MEMBER OF THE ARMED FORCES.—The term ''specially protected junior member of the armed forces'' means—

(A) a member of the armed forces who is assigned to, or is awaiting assignment to, basic training or other initial active duty for training, including a member who is enlisted under a delayed entry program;

(B) a member of the armed forces who is a cadet, a midshipman, an officer candidate, or a student in any other officer qualification program; and

(C) a member of the armed forces in any program that, by regulation prescribed by the Secretary concerned, is identified as a training program for initial career qualification.

(2) TRAINING LEADERSHIP POSITION.—The term ''training leadership position'' means, with respect to a specially protected junior member of the armed forces, any of the following:

(A) Any drill instructor position or other leadership position in a basic training program, an officer candidate school, a reserve officers' training corps unit, a training program for entry into the armed forces, or any program that, by regulation prescribed by the Secretary concerned, is identified as a training program for initial career qualification.

(B) Faculty and staff of the United States Military Academy, the United States Naval Academy, the United States Air Force Academy, and the United States Coast Guard Academy.

(3) APPLICANT FOR MILITARY SERVICE.—The term ''applicant for military service'' means a person who, under regulations prescribed by the Secretary concerned, is an applicant for original enlistment or appointment in the armed forces.

(4) MILITARY RECRUITER.—The term ''military recruiter'' means a person who, under regulations prescribed by the Secretary concerned, has the primary duty to recruit persons for military service.

(5) PROHIBITED SEXUAL ACTIVITY.—The term ''prohibited sexual activity'' means, as specified in regulations prescribed by the Secretary concerned, inappropriate physical intimacy under circumstances described in such regulations.

(Added Pub. L. 114–328, div. E, title LX, §5410, Dec. 23, 2016, 130 Stat. 2942.)

EFFECTIVE DATE

Section effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

§894. Art. 94. Mutiny or sedition

(a) Any person subject to this chapter who—

(1) with intent to usurp or override lawful military authority, refuses, in concert with any other person, to obey orders or otherwise do his duty or creates any violence or disturbance is guilty of mutiny;

(2) with intent to cause the overthrow or destruction of lawful civil authority, creates, in concert with any other person, revolt, violence, or other disturbance against that authority is guilty of sedition;

(3) fails to do his utmost to prevent and suppress a mutiny or sedition being committed in his presence, or fails to take all reasonable means to inform his superior commissioned officer or commanding officer of a mutiny or sedition which he knows or has reason to believe is taking place, is guilty of a failure to suppress or report a mutiny or sedition.

(b) A person who is found guilty of attempted mutiny, mutiny, sedition, or failure to suppress or report a mutiny or sedition shall be punished by death or such other punishment as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 68.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
894(a)	50:688(a).	May 5, 1950, ch. 169, §1 (Art. 94), 64 Stat. 136.
894(b)	50:688(b).	

In subsection (a)(1) and (2), the words ''or persons'' are omitted, since, under section 1 of title 1, words importing the singular may apply to several persons.

In subsection (a)(3), the word ''a'' is substituted for the words ''an offense of''. The words ''commissioned officer'' are inserted after the word ''superior'', for clarity.

§ 895. Art. 95. Offenses by sentinel or lookout

(a) DRUNK OR SLEEPING ON POST, OR LEAVING POST BEFORE BEING RELIEVED.—Any sentinel or lookout who is drunk on post, who sleeps on post, or who leaves post before being regularly relieved, shall be punished—

(1) if the offense is committed in time of war, by death or such other punishment as a court-martial may direct; and

(2) if the offense is committed other than in time of war, by such punishment, other than death, as a court-martial may direct.

(b) LOITERING OR WRONGFULLY SITTING ON POST.—Any sentinel or lookout who loiters or wrongfully sits down on post shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 72, § 913; renumbered § 895 and amended Pub. L. 114–328, div. E, title LX, §§ 5401(8), 5411, Dec. 23, 2016, 130 Stat. 2938, 2943.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
913	50:707.	May 5, 1950, ch. 169, §1 (Art. 113), 64 Stat. 139.

PRIOR PROVISIONS

A prior section 895 was renumbered section 887a of this title.

AMENDMENTS

2016—Pub. L. 114–328, § 5411, amended section generally. Prior to amendment, text read as follows: ''Any sentinel or look-out who is found drunk or sleeping upon his post, or leaves it before he is regularly relieved, shall be punished, if the offense is committed in time of war, by death or such other punishment as a court-martial may direct, but if the offense is committed at any other time, by such punishment other than death as a court-martial may direct.''

Pub. L. 114–328, § 5401(8), renumbered section 913 of this title as this section.

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114–328 effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

§ 895a. Art. 95a. Disrespect toward sentinel or lookout

(a) DISRESPECTFUL LANGUAGE TOWARD SENTINEL OR LOOKOUT.—Any person subject to this chapter who, knowing that another person is a sentinel or lookout, uses wrongful and disrespectful language that is directed toward and within the hearing of the sentinel or lookout, who is in the execution of duties as a sentinel or lookout, shall be punished as a court-martial may direct.

(b) DISRESPECTFUL BEHAVIOR TOWARD SENTINEL OR LOOKOUT.—Any person subject to this chapter who, knowing that another person is a sentinel or lookout, behaves in a wrongful and disrespectful manner that is directed toward and within the sight of the sentinel or lookout, who is in the execution of duties as a sentinel or lookout, shall be punished as a court-martial may direct.

(Added Pub. L. 114–328, div. E, title LX, § 5412, Dec. 23, 2016, 130 Stat. 2943.)

EFFECTIVE DATE

Section effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

§ 896. Art. 96. Release of prisoner without authority; drinking with prisoner

(a) RELEASE OF PRISONER WITHOUT AUTHORITY.—Any person subject to this chapter—

(1) who, without authority to do so, releases a prisoner; or

(2) who, through neglect or design, allows a prisoner to escape;

shall be punished as a court-martial may direct, whether or not the prisoner was committed in strict compliance with the law.

(b) DRINKING WITH PRISONER.—Any person subject to this chapter who unlawfully drinks any alcoholic beverage with a prisoner shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 69; Pub. L. 114–328, div. E, title LX, § 5413, Dec. 23, 2016, 130 Stat. 2944.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
896	50:690.	May 5, 1950, ch. 169, §1 (Art. 96), 64 Stat. 136.

The words ''whether or not the prisoner was committed in strict compliance with law'' are substituted for the word ''duly'', to reflect the long standing construction expressed in the Manual for Courts-Martial, United States, 1951, par. 175a.

AMENDMENTS

2016—Pub. L. 114–328 amended section generally. Prior to amendment, text read as follows: ''Any person subject to this chapter who, without proper authority, releases any prisoner committed to his charge, or who through neglect or design suffers any such prisoner to escape, shall be punished as a court-martial may direct, whether or not the prisoner was committed in strict compliance with law.''

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114–328 effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

§ 897. Art. 97. Unlawful detention

Any person subject to this chapter who, except as provided by law, apprehends, arrests, or confines any person shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 69.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
897	50:691.	May 5, 1950, ch. 169, §1 (Art. 97), 64 Stat. 137.

§ 898. Art. 98. Misconduct as prisoner

Any person subject to this chapter who, while in the hands of the enemy in time of war—

(1) for the purpose of securing favorable treatment by his captors acts without proper authority in a manner contrary to law, custom, or regulation, to the detriment of others of whatever nationality held by the enemy as civilian or military prisoners; or

(2) while in a position of authority over such persons maltreats them without justifiable cause;

shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 71, § 905; renumbered § 898, Pub. L. 114–328, div. E, title LX, § 5401(6), Dec. 23, 2016, 130 Stat. 2938.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
905	50:699.	May 5, 1950, ch. 169, §1 (Art. 105), 64 Stat. 138.

PRIOR PROVISIONS

A prior section 898 was renumbered section 931f of this title.

AMENDMENTS

2016—Pub. L. 114–328 renumbered section 905 of this title as this section.

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114–328 effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

§ 899. Art. 99. Misbehavior before the enemy

Any member of the armed forces who before or in the presence of the enemy—

(1) runs away;

(2) shamefully abandons, surrenders, or delivers up any command, unit, place, or military property which it is his duty to defend;

(3) through disobedience, neglect, or intentional misconduct endangers the safety of any such command, unit, place, or military property;

(4) casts away his arms or ammunition;

(5) is guilty of cowardly conduct;

(6) quits his place of duty to plunder or pillage;

(7) causes false alarms in any command, unit, or place under control of the armed forces;

(8) willfully fails to do his utmost to encounter, engage, capture, or destroy any enemy troops, combatants, vessels, aircraft, or any other thing, which it is his duty so to encounter, engage, capture, or destroy; or

(9) does not afford all practicable relief and assistance to any troops, combatants, vessels, or aircraft of the armed forces belonging to the United States or their allies when engaged in battle;

shall be punished by death or such other punishment as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 69.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
899	50:693.	May 5, 1950, ch. 169, §1 (Art. 99), 64 Stat. 137.

§ 900. Art. 100. Subordinate compelling surrender

Any person subject to this chapter who compels or attempts to compel the commander of any place, vessel, aircraft, or other military property, or of any body of members of the armed forces, to give it up to an enemy or to abandon it, or who strikes the colors or flag to an enemy without proper authority, shall be punished by death or such other punishment as a court-martial may direct.

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

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
900	50:694.	May 5, 1950, ch. 169, §1 (Art. 100), 64 Stat. 137.

§ 901. Art. 101. Improper use of countersign

Any person subject to this chapter who in time of war discloses the parole or countersign to any person not entitled to receive it or who gives to another who is entitled to receive and use the parole or countersign a different parole or countersign from that which, to his knowledge, he was authorized and required to give, shall be punished by death or such other punishment as a court-martial may direct.

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

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
901	50:695.	May 5, 1950, ch. 169, §1 (Art. 101), 64 Stat. 137.

§ 902. Art. 102. Forcing a safeguard

Any person subject to this chapter who forces a safeguard shall suffer death or such other punishment as a court-martial may direct.

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

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
902	50:696.	May 5, 1950, ch. 169, §1 (Art. 102), 64 Stat. 137.

§ 903. Art. 103. Spies

Any person who in time of war is found lurking as a spy or acting as a spy in or about any place, vessel, or aircraft, within the control or jurisdiction of any of the armed forces, or in or about any shipyard, any manufacturing or industrial plant, or any other place or institution engaged in work in aid of the prosecution of the war by the United States, or elsewhere, shall be tried by a general court-martial or by a military commission and on conviction shall be punished by death or such other punishment as a court-martial or a military commission may direct.

This section does not apply to a military commission established under chapter 47A of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 71, § 906; Pub. L. 109–366, § 4(a)(2), Oct. 17, 2006, 120 Stat. 2631; renumbered § 903 and amended Pub. L. 114–328, div. E, title LX, §§ 5401(7), 5414, Dec. 23, 2016, 130 Stat. 2938, 2944.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
906	50:700.	May 5, 1950, ch. 169, § 1 (Art. 106), 64 Stat. 138.

The words "of the United States" are omitted as surplusage.

PRIOR PROVISIONS

A prior section 903 was renumbered section 908a of this title.

AMENDMENTS

2016—Pub. L. 114–328, § 5414, inserted "or such other punishment as a court-martial or a military commission may direct" after "punished by death".

Pub. L. 114–328, § 5401(7), renumbered section 906 of this title as this section.

2006—Pub. L. 109–366 inserted last sentence.

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114–328 effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

PROCLAMATION NO. 2561. ENEMIES DENIED ACCESS TO UNITED STATES COURTS

Proc. No. 2561, July 2, 1942, 7 F.R. 5101, 56 Stat. 1964, provided:

Whereas the safety of the United States demands that all enemies who have entered upon the territory of the United States as part of an invasion or predatory incursion, or who have entered in order to commit sabotage, espionage or other hostile or warlike acts, should be promptly tried in accordance with the law of war;

Now, therefore, I, Franklin D. Roosevelt, President of the United States of America and Commander in Chief of the Army and Navy of the United States, by virtue of the authority vested in me by the Constitution and the statutes of the United States, do hereby proclaim that all persons who are subjects, citizens or residents of any nation at war with the United States or who give obedience to or act under the direction of any such nation, and who during time of war enter or attempt to enter the United States or any territory or possession thereof, through coastal or boundary defenses, and are charged with committing or attempting or preparing to commit sabotage, espionage, hostile or warlike acts, or violations of the law of war, shall be subject to the law of war and to the jurisdiction of military tribunals; and that such persons shall not be privileged to seek any remedy or maintain any proceeding directly or indirectly, or to have any such remedy or proceeding sought on their behalf, in the courts of the United States, or of its States, territories, and possessions, except under such regulations as the Attorney General, with the approval of the Secretary of War, may from time to time prescribe.

§ 903a. Art. 103a. Espionage

(a)(1) Any person subject to this chapter who, with intent or reason to believe that it is to be used to the injury of the United States or to the advantage of a foreign nation, communicates, delivers, or transmits, or attempts to communicate, deliver, or transmit, to any entity described in paragraph (2), either directly or indirectly, anything described in paragraph (3) shall be punished as a court-martial may direct, except that if the accused is found guilty of an offense that directly concerns (A) nuclear weaponry, military spacecraft or satellites, early warning systems, or other means of defense or retaliation against large scale attack, (B) war plans, (C) communications intelligence or cryptographic information, or (D) any other major weapons system or major element of defense strategy, the accused shall be punished by death or such other punishment as a court-martial may direct.

(2) An entity referred to in paragraph (1) is—

(A) a foreign government;

(B) a faction or party or military or naval force within a foreign country, whether recognized or unrecognized by the United States; or

(C) a representative, officer, agent, employee, subject, or citizen of such a government, faction, party, or force.

(3) A thing referred to in paragraph (1) is a document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, note, instrument, appliance, or information relating to the national defense.

(b)(1) No person may be sentenced by court-martial to suffer death for an offense under this section (article) unless—

(A) the members of the court-martial unanimously find at least one of the aggravating factors set out in subsection (c); and

(B) the members unanimously determine that any extenuating or mitigating circumstances are substantially outweighed by any aggravating circumstances, including the aggravating factors set out in subsection (c).

(2) Findings under this subsection may be based on—

(A) evidence introduced on the issue of guilt or innocence;

(B) evidence introduced during the sentencing proceeding; or

(C) all such evidence.

(3) The accused shall be given broad latitude to present matters in extenuation and mitigation.

(c) A sentence of death may be adjudged by a court-martial for an offense under this section (article) only if the members unanimously find, beyond a reasonable doubt, one or more of the following aggravating factors:

(1) The accused has been convicted of another offense involving espionage or treason for which either a sentence of death or imprisonment for life was authorized by statute.

(2) In the commission of the offense, the accused knowingly created a grave risk of substantial damage to the national security.

(3) In the commission of the offense, the accused knowingly created a grave risk of death to another person.

(4) Any other factor that may be prescribed by the President by regulations under section 836 of this title (article 36).

(Added Pub. L. 99–145, title V, § 534(a), Nov. 8, 1985, 99 Stat. 634, § 906a; renumbered § 903a, Pub. L. 114–328, div. E, title LX, § 5401(7), Dec. 23, 2016, 130 Stat. 2938.)

AMENDMENTS

2016—Pub. L. 114–328 renumbered section 906a of this title as this section.

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114–328 effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

§ 903b. Art. 103b. Aiding the enemy

Any person who—

(1) aids, or attempts to aid, the enemy with arms, ammunition, supplies, money, or other things; or

(2) without proper authority, knowingly harbors or protects or gives intelligence to, or communicates or corresponds with or holds any intercourse with the enemy, either directly or indirectly;

shall suffer death or such other punishment as a court-martial or military commission may direct. This section does not apply to a military commission established under chapter 47A of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 70, § 904; Pub. L. 109–366, § 4(a)(2), Oct. 17, 2006, 120 Stat. 2631; renumbered § 903b, Pub. L. 114–328, div. E, title LX, § 5401(5), Dec. 23, 2016, 130 Stat. 2938.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
904	50:698.	May 5, 1950, ch. 169, §1 (Art. 104), 64 Stat. 138.

AMENDMENTS

2016—Pub. L. 114–328 renumbered section 904 of this title as this section.

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114–328 effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

§ 904. Art. 104. Public records offenses

Any person subject to this chapter who, willfully and unlawfully—

(1) alters, conceals, removes, mutilates, obliterates, or destroys a public record; or

(2) takes a public record with the intent to alter, conceal, remove, mutilate, obliterate, or destroy the public record;

shall be punished as a court-martial may direct.

(Added Pub. L. 114–328, div. E, title LX, § 5415, Dec. 23, 2016, 130 Stat. 2944.)

PRIOR PROVISIONS

A prior section 904 was renumbered section 903b of this title.

EFFECTIVE DATE

Section effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

§ 904a. Art. 104a. Fraudulent enlistment, appointment, or separation

Any person who—

(1) procures his own enlistment or appointment in the armed forces by knowingly false representation or deliberate concealment as to his qualifications for that enlistment or appointment and receives pay or allowances thereunder; or

(2) procures his own separation from the armed forces by knowingly false representation or deliberate concealment as to his eligibility for that separation;

shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 66, § 883; renumbered § 904a, Pub. L. 114–328, div. E, title LX, § 5401(1), Dec. 23, 2016, 130 Stat. 2938.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
883	50:677.	May 5, 1950, ch. 169, §1 (Art. 83), 64 Stat. 134.

In clauses (1) and (2), the words ''means of'' are omitted as surplusage.

AMENDMENTS

2016—Pub. L. 114–328 renumbered section 883 of this title as this section.

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114–328 effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

§ 904b. Art. 104b. Unlawful enlistment, appointment, or separation

Any person subject to this chapter who effects an enlistment or appointment in or a separation from the armed forces of any person who is known to him to be ineligible for that enlistment, appointment, or separation because it is prohibited by law, regulation, or order shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 66, § 884; renumbered § 904b, Pub. L. 114–328, title LX, § 5401(1), Dec. 23, 2016, 130 Stat. 2938.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
884	50:678.	May 5, 1950, ch. 169, §1 (Art. 84), 64 Stat. 135.

AMENDMENTS

2016—Pub. L. 114–328 renumbered section 884 of this title as this section.

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114–328 effective on Jan. 1, 2019, as designated by the President, with imple-

menting regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

§ 905. Art. 105. Forgery

Any person subject to this chapter who, with intent to defraud—

(1) falsely makes or alters any signature to, or any part of, any writing which would, if genuine, apparently impose a legal liability on another or change his legal right or liability to his prejudice; or

(2) utters, offers, issues, or transfers such a writing, known by him to be so made or altered;

is guilty of forgery and shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 74, § 923; renumbered § 905, Pub. L. 114–328, div. E, title LX, § 5401(12), Dec. 23, 2016, 130 Stat. 2939.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
923	50:717.	May 5, 1950, ch. 169, § 1 (Art. 123), 64 Stat. 141.

PRIOR PROVISIONS

A prior section 905 was renumbered section 898 of this title.

AMENDMENTS

2016—Pub. L. 114–328 renumbered section 923 of this title as this section.

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114–328 effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

§ 905a. Art. 105a. False or unauthorized pass offenses

(a) WRONGFUL MAKING, ALTERING, ETC.—Any person subject to this chapter who, wrongfully and falsely, makes, alters, counterfeits, or tampers with a military or official pass, permit, discharge certificate, or identification card shall be punished as a court-martial may direct.

(b) WRONGFUL SALE, ETC.—Any person subject to this chapter who wrongfully sells, gives, lends, or disposes of a false or unauthorized military or official pass, permit, discharge certificate, or identification card, knowing that the pass, permit, discharge certificate, or identification card is false or unauthorized, shall be punished as a court-martial may direct.

(c) WRONGFUL USE OR POSSESSION.—Any person subject to this chapter who wrongfully uses or possesses a false or unauthorized military or official pass, permit, discharge certificate, or identification card, knowing that the pass, permit, discharge certificate, or identification card is false or unauthorized, shall be punished as a court-martial may direct.

(Added Pub. L. 114–328, div. E, title LX, § 5416, Dec. 23, 2016, 130 Stat. 2944.)

EFFECTIVE DATE

Section effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

§ 906. Art. 106. Impersonation of officer, noncommissioned or petty officer, or agent or official

(a) IN GENERAL.—Any person subject to this chapter who, wrongfully and willfully, impersonates—

(1) an officer, a noncommissioned officer, or a petty officer;

(2) an agent of superior authority of one of the armed forces; or

(3) an official of a government;

shall be punished as a court-martial may direct.

(b) IMPERSONATION WITH INTENT TO DEFRAUD.—Any person subject to this chapter who, wrongfully, willfully, and with intent to defraud, impersonates any person referred to in paragraph (1), (2), or (3) of subsection (a) shall be punished as a court-martial may direct.

(c) IMPERSONATION OF GOVERNMENT OFFICIAL WITHOUT INTENT TO DEFRAUD.—Any person subject to this chapter who, wrongfully, willfully, and without intent to defraud, impersonates an official of a government by committing an act that exercises or asserts the authority of the office that the person claims to have shall be punished as a court-martial may direct.

(Added Pub. L. 114–328, title LX, § 5417, Dec. 23, 2016, 130 Stat. 2945.)

PRIOR PROVISIONS

A prior section 906 was renumbered section 903 of this title.

EFFECTIVE DATE

Section effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

§ 906a. Art. 106a. Wearing unauthorized insignia, decoration, badge, ribbon, device, or lapel button

Any person subject to this chapter—

(1) who is not authorized to wear an insignia, decoration, badge, ribbon, device, or lapel button; and

(2) who wrongfully wears such insignia, decoration, badge, ribbon, device, or lapel button upon the person's uniform or civilian clothing;

shall be punished as a court-martial may direct.

(Added Pub. L. 114–328, div. E, title LX, § 5418, Dec. 23, 2016, 130 Stat. 2945.)

PRIOR PROVISIONS

A prior section 906a was renumbered section 903a of this title.

EFFECTIVE DATE

Section effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

§907. Art. 107. False official statements; false swearing

(a) FALSE OFFICIAL STATEMENTS.—Any person subject to this chapter who, with intent to deceive—

(1) signs any false record, return, regulation, order, or other official document, knowing it to be false; or

(2) makes any other false official statement knowing it to be false;

shall be punished as a court-martial may direct.

(b) FALSE SWEARING.—Any person subject to this chapter—

(1) who takes an oath that—

(A) is administered in a matter in which such oath is required or authorized by law; and

(B) is administered by a person with authority to do so; and

(2) who, upon such oath, makes or subscribes to a statement;

if the statement is false and at the time of taking the oath, the person does not believe the statement to be true, shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 71; Pub. L. 114–328, div. E, title LX, §5419, Dec. 23, 2016, 130 Stat. 2946.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
907	50:701.	May 5, 1950, ch. 169, §1 (Art. 107), 64 Stat. 138.

The word ''it'' is substituted for the words ''the same''.

AMENDMENTS

2016—Pub. L. 114–328 amended section generally. Prior to amendment, text read as follows: ''Any person subject to this chapter who, with intent to deceive, signs any false record, return, regulation, order, or other official document, knowing it to be false, or makes any other false official statement knowing it to be false, shall be punished as a court-martial may direct.''

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114–328 effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

§907a. Art. 107a. Parole violation

Any person subject to this chapter—

(1) who, having been a prisoner as the result of a court-martial conviction or other criminal proceeding, is on parole with conditions; and

(2) who violates the conditions of parole;

shall be punished as a court-martial may direct.

(Added Pub. L. 114–328, div. E, title LX, §5420, Dec. 23, 2016, 130 Stat. 2946.)

EFFECTIVE DATE

Section effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

§908. Art. 108. Military property of United States—Loss, damage, destruction, or wrongful disposition

Any person subject to this chapter who, without proper authority—

(1) sells or otherwise disposes of;

(2) willfully or through neglect damages, destroys, or loses; or

(3) willfully or through neglect suffers to be lost, damaged, destroyed, sold, or wrongfully disposed of;

any military property of the United States, shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 71.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
908	50:702.	May 5, 1950, ch. 169, §1 (Art. 108), 64 Stat. 138.

§908a. Art. 108a. Captured or abandoned property

(a) All persons subject to this chapter shall secure all public property taken from the enemy for the service of the United States, and shall give notice and turn over to the proper authority without delay all captured or abandoned property in their possession, custody, or control.

(b) Any person subject to this chapter who—

(1) fails to carry out the duties prescribed in subsection (a);

(2) buys, sells, trades, or in any way deals in or disposes of captured or abandoned property, whereby he receives or expects any profit, benefit, or advantage to himself or another directly or indirectly connected with himself; or

(3) engages in looting or pillaging;

shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 70, §903; renumbered §908a, Pub. L. 114–328, div. E, title LX, §5401(4), Dec. 23, 2016, 130 Stat. 2938.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
903(a) ...... 903(b)	50:697(a). 50:697(b).	May 5, 1950, ch. 169, §1 (Art. 103), 64 Stat. 138.

In subsection (b)(1), the words ''of this section'' are omitted as surplusage.

AMENDMENTS

2016—Pub. L. 114–328 renumbered section 903 of this title as this section.

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114–328 effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

§909. Art. 109. Property other than military property of United States—Waste, spoilage, or destruction

Any person subject to this chapter who willfully or recklessly wastes, spoils, or otherwise

willfully and wrongfully destroys or damages any property other than military property of the United States shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 71.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
909	50:703.	May 5, 1950, ch. 169, §1 (Art. 109), 64 Stat. 139.

§ 909a. Art. 109a. Mail matter: wrongful taking, opening, etc.

(a) TAKING.—Any person subject to this chapter who, with the intent to obstruct the correspondence of, or to pry into the business or secrets of, any person or organization, wrongfully takes mail matter before the mail matter is delivered to or received by the addressee shall be punished as a court-martial may direct.

(b) OPENING, SECRETING, DESTROYING, STEALING.—Any person subject to this chapter who wrongfully opens, secretes, destroys, or steals mail matter before the mail matter is delivered to or received by the addressee shall be punished as a court-martial may direct.

(Added Pub. L. 114–328, div. E, title LX, § 5421, Dec. 23, 2016, 130 Stat. 2946.)

EFFECTIVE DATE

Section effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

§ 910. Art. 110. Improper hazarding of vessel or aircraft

(a) WILLFUL AND WRONGFUL HAZARDING.—Any person subject to this chapter who, willfully and wrongfully, hazards or suffers to be hazarded any vessel or aircraft of the armed forces shall be punished by death or such other punishment as a court-martial may direct.

(b) NEGLIGENT HAZARDING.—Any person subject to this chapter who negligently hazards or suffers to be hazarded any vessel or aircraft of the armed forces shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 71; Pub. L. 114–328, div. E, title LX, § 5422, Dec. 23, 2016, 130 Stat. 2947.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
910(a)	50:704(a).	May 5, 1950, ch. 169, §1 (Art. 110), 64 Stat. 139.
910(b)	50:704(b).	

AMENDMENTS

2016—Pub. L. 114–328 amended section generally. Prior to amendment, text read as follows:

''(a) Any person subject to this chapter who willfully and wrongfully hazards or suffers to be hazarded any vessel of the armed forces shall suffer death or such other punishment as a court-martial may direct.

''(b) Any person subject to this chapter who negligently hazards or suffers to be hazarded any vessel of the armed forces shall be punished as a court-martial may direct.''

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114–328 effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

§ 911. Art. 111. Leaving scene of vehicle accident

(a) DRIVER.—Any person subject to this chapter—

(1) who is the driver of a vehicle that is involved in an accident that results in personal injury or property damage; and

(2) who wrongfully leaves the scene of the accident—

(A) without providing assistance to an injured person; or

(B) without providing personal identification to others involved in the accident or to appropriate authorities;

shall be punished as a court-martial may direct.

(b) SENIOR PASSENGER.—Any person subject to this chapter—

(1) who is a passenger in a vehicle that is involved in an accident that results in personal injury or property damage;

(2) who is the superior commissioned or noncommissioned officer of the driver of the vehicle or is the commander of the vehicle; and

(3) who wrongfully and unlawfully orders, causes, or permits the driver to leave the scene of the accident—

(A) without providing assistance to an injured person; or

(B) without providing personal identification to others involved in the accident or to appropriate authorities;

shall be punished as a court-martial may direct.

(Added Pub. L. 114–328, div. E, title LX, § 5423, Dec. 23, 2016, 130 Stat. 2947.)

PRIOR PROVISIONS

A prior section 911 was renumbered section 913 of this title.

EFFECTIVE DATE

Section effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

§ 912. Art. 112. Drunkenness and other incapacitation offenses

(a) DRUNK ON DUTY.—Any person subject to this chapter who is drunk on duty shall be punished as a court-martial may direct.

(b) INCAPACITATION FOR DUTY FROM DRUNKENNESS OR DRUG USE.—Any person subject to this chapter who, as a result of indulgence in any alcoholic beverage or any drug, is incapacitated for the proper performance of duty shall be punished as a court-martial may direct.

(c) DRUNK PRISONER.—Any person subject to this chapter who is a prisoner and, while in such status, is drunk shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 72; Pub. L. 114–328, div. E, title LX, § 5424, Dec. 23, 2016, 130 Stat. 2947.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
912	50:706.	May 5, 1950, ch. 169, §1 (Art. 112), 64 Stat. 139.

AMENDMENTS

2016—Pub. L. 114–328 amended section generally. Prior to amendment, text read as follows: ''Any person subject to this chapter other than a sentinel or look-out, who is found drunk on duty, shall be punished as a court-martial may direct.''

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114–328 effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

§912a. Art. 112a. Wrongful use, possession, etc., of controlled substances

(a) Any person subject to this chapter who wrongfully uses, possesses, manufactures, distributes, imports into the customs territory of the United States, exports from the United States, or introduces into an installation, vessel, vehicle, or aircraft used by or under the control of the armed forces a substance described in subsection (b) shall be punished as a court-martial may direct.

(b) The substances referred to in subsection (a) are the following:

(1) Opium, heroin, cocaine, amphetamine, lysergic acid diethylamide, methamphetamine, phencyclidine, barbituric acid, and marijuana and any compound or derivative of any such substance.

(2) Any substance not specified in clause (1) that is listed on a schedule of controlled substances prescribed by the President for the purposes of this article.

(3) Any other substance not specified in clause (1) or contained on a list prescribed by the President under clause (2) that is listed in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812).

(Added Pub. L. 98–209, §8(a), Dec. 6, 1983, 97 Stat. 1403.)

EFFECTIVE DATE

Section effective first day of eighth calendar month beginning after Dec. 6, 1983, but not applicable to any offense committed before that date and not to be construed to invalidate the prosecution of any offense committed before that date, see section 12(a)(1), (5) of Pub. L. 98–209, set out as an Effective Date of 1983 Amendment note under section 801 of this title.

PROCEDURES FOR FORENSIC EXAMINATION OF CERTAIN PHYSIOLOGICAL EVIDENCE

Pub. L. 100–180, div. A, title XII, §1248, Dec. 4, 1987, 101 Stat. 1166, provided that:

''(a) ESTABLISHMENT OF PROCEDURES.—The Secretary of Defense shall establish procedures to ensure that whenever, in connection with a criminal investigation conducted by or for a military department, a physiological specimen is obtained from a person for the purpose of determining whether that person has used a controlled substance—

''(1) the specimen is in a condition that is suitable for forensic examination when delivered to a forensic laboratory; and

''(2) the investigative agency that submits the specimen to the laboratory receives a written statement of the results of the forensic examination from the laboratory within such period as is necessary to use such results in a court-martial or other criminal proceeding resulting from the investigation.

''(b) TRANSPORTATION OF SPECIMENS.—The procedures prescribed under subsection (a)—

''(1) shall ensure that physiological specimens are preserved and transported in accordance with valid medical and forensic practices; and

''(2) insofar as practicable, shall require transportation of the specimen to an appropriate laboratory by the most expeditious means necessary to carry out the requirement in subsection (a)(1).

''(c) TESTS FOR USE OF LSD.—Procedures established under subsection (a) shall ensure that whenever the controlled substance with respect to which a physiological specimen is to be examined is lysergic acid diethylamide (LSD), the specimen is submitted to a forensic laboratory that is capable of determining with a reasonable degree of scientific certainty, on the basis of the examination of that specimen, whether the person providing the specimen has used lysergic acid diethylamide (LSD).

''(d) RULE OF CONSTRUCTION.—Nothing in this section shall be construed as providing a basis, that is not otherwise available in law, for a defense to a charge or a motion for exclusion of evidence or other appropriate relief in any criminal or administrative proceeding.

''(e) CONTROLLED SUBSTANCES COVERED.—For purposes of this section, a controlled substance is a substance described in section 912a(b) of title 10, United States Code.

''(f) REPORT.—Not later than March 1, 1988, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives, a report describing the procedures established under this section.''

§913. Art. 113. Drunken or reckless operation of a vehicle, aircraft, or vessel

(a) Any person subject to this chapter who—

(1) operates or physically controls any vehicle, aircraft, or vessel in a reckless or wanton manner or while impaired by a substance described in section 912a(b) of this title (article 112a(b)), or

(2) operates or is in actual physical control of any vehicle, aircraft, or vessel while drunk or when the alcohol concentration in the person's blood or breath is equal to or exceeds the applicable limit under subsection (b),

shall be punished as a court-martial may direct.

(b)(1) For purposes of subsection (a), the applicable limit on the alcohol concentration in a person's blood or breath is as follows:

(A) In the case of the operation or control of a vehicle, aircraft, or vessel in the United States, such limit is the lesser of—

(i) the blood alcohol content limit under the law of the State in which the conduct occurred, except as may be provided under paragraph (2) for conduct on a military installation that is in more than one State; or

(ii) the blood alcohol content limit specified in paragraph (3).

(B) In the case of the operation or control of a vehicle, aircraft, or vessel outside the United States, the applicable blood alcohol content limit is the blood alcohol content limit specified in paragraph (3) or such lower limit as the Secretary of Defense may by regulation prescribe.

(2) In the case of a military installation that is in more than one State, if those States have different blood alcohol content limits under their respective State laws, the Secretary may select one such blood alcohol content limit to apply uniformly on that installation.

(3) For purposes of paragraph (1), the blood alcohol content limit with respect to alcohol concentration in a person's blood is 0.08 grams of alcohol per 100 milliliters of blood and with respect to alcohol concentration in a person's breath is 0.08 grams of alcohol per 210 liters of breath, as shown by chemical analysis. The Secretary may by regulation prescribe limits that are lower than the limits specified in the preceding sentence, if such lower limits are based on scientific developments, as reflected in Federal law of general applicability.

(4) In this subsection:

(A) The term ''blood alcohol content limit'' means the amount of alcohol concentration in a person's blood or breath at which operation or control of a vehicle, aircraft, or vessel is prohibited.

(B) The term ''United States'' includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa and the term ''State'' includes each of those jurisdictions.

(Aug. 10, 1956, ch. 1041, 70A Stat. 72, § 911; Pub. L. 99–570, title III, § 3055, Oct. 27, 1986, 100 Stat. 3207–76; Pub. L. 102–484, div. A, title X, § 1066(a)(1), Oct. 23, 1992, 106 Stat. 2506; Pub. L. 103–160, div. A, title V, § 576(a), Nov. 30, 1993, 107 Stat. 1677; Pub. L. 107–107, div. A, title V, § 581, Dec. 28, 2001, 115 Stat. 1123; Pub. L. 108–136, div. A, title V, § 552, Nov. 24, 2003, 117 Stat. 1481; renumbered § 913 and amended Pub. L. 114–328, div. E, title LX, §§ 5401(9), 5425, Dec. 23, 2016, 130 Stat. 2939, 2948.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
911	50:705.	May 5, 1950, ch. 169, §1 (Art. 111), 64 Stat. 139.

PRIOR PROVISIONS

A prior section 913 was renumbered section 895 of this title.

AMENDMENTS

2016—Pub. L. 114–328, § 5401(9), renumbered section 911 of this title as this section.

Subsec. (b)(3). Pub. L. 114–328, § 5425, substituted ''0.08 grams'' for ''0.10 grams'' in two places and inserted at end ''The Secretary may by regulation prescribe limits that are lower than the limits specified in the preceding sentence, if such lower limits are based on scientific developments, as reflected in Federal law of general applicability.''

2003—Subsec. (a)(2). Pub. L. 108–136, § 552(1), substituted ''is equal to or exceeds'' for ''is in excess of''.

Subsec. (b)(1)(A). Pub. L. 108–136, § 552(2)(A), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''In the case of the operation or control of a vehicle, aircraft, or vessel in the United States, such limit is the blood alcohol content limit under the law of the State in which the conduct occurred, except as may be provided under paragraph (2) for conduct on a military installation that is in more than one State and subject to the maximum blood alcohol content limit specified in paragraph (3).''

Subsec. (b)(1)(B), (3). Pub. L. 108–136, § 552(2)(B), struck out ''maximum'' before ''blood alcohol content specified'' in par. (1)(B) and before ''blood alcohol content'' in par. (3).

Subsec. (b)(4)(A). Pub. L. 108–136, § 552(2)(C), substituted ''amount of alcohol concentration in a person's blood or breath at which operation or control of a vehicle, aircraft, or vessel is prohibited.'' for ''maximum permissible alcohol concentration in a person's blood or breath for purposes of operation or control of a vehicle, aircraft, or vessel.''

2001—Pub. L. 107–107 designated existing provisions as subsec. (a), substituted ''in excess of the applicable limit under subsection (b)'' for ''0.10 grams or more of alcohol per 100 milliliters of blood or 0.10 grams or more of alcohol per 210 liters of breath, as shown by chemical analysis'' in par. (2), and added subsec. (b).

1993—Par. (2). Pub. L. 103–160 inserted ''or more'' after ''0.10 grams'' in two places.

1992—Pub. L. 102–484 substituted ''operation of a vehicle, aircraft, or vessel'' for ''driving'' in section catchline and amended text generally. Prior to amendment, text read as follows: ''Any person subject to this chapter who operates any vehicle while drunk, or in a reckless or wanton manner, or while impaired by a substance described in section 912a(b) of this title (article 112a(b)), shall be punished as a court-martial may direct.''

1986—Pub. L. 99–570 inserted ''or while impaired by a substance described in section 912a(b) of this title (article 112a(b)),''.

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114–328 effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103–160, div. A, title V, § 576(b), Nov. 30, 1993, 107 Stat. 1677, provided that: ''The amendments made by subsection (a) [amending this section] shall take effect as if included in the amendment to section 911 of title 10, United States Code, made by section 1066(a)(1) of Public Law 102–484 on October 23, 1992.''

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–484 effective Oct. 23, 1992, and applicable with respect to offenses committed on or after that date, see section 1067 of Pub. L. 102–484, set out as a note under section 803 of this title.

§ 914. Art. 114. Endangerment offenses

(a) RECKLESS ENDANGERMENT.—Any person subject to this chapter who engages in conduct that—

(1) is wrongful and reckless or is wanton; and

(2) is likely to produce death or grievous bodily harm to another person;

shall be punished as a court-martial may direct.

(b) DUELING.—Any person subject to this chapter—

(1) who fights or promotes, or is concerned in or connives at fighting, a duel; or

(2) who, having knowledge of a challenge sent or about to be sent, fails to report the facts promptly to the proper authority;

shall be punished as a court-martial may direct.

(c) FIREARM DISCHARGE, ENDANGERING HUMAN LIFE.—Any person subject to this chapter who, willfully and wrongly, discharges a firearm, under circumstances such as to endanger human life shall be punished as a court-martial may direct.

(d) CARRYING CONCEALED WEAPON.—Any person subject to this chapter who unlawfully carries a dangerous weapon concealed on or about his person shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 72; Pub. L. 114–328, div. E, title LX, § 5426, Dec. 23, 2016, 130 Stat. 2948.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
914	50:708.	May 5, 1950, ch. 169, §1 (Art. 114), 64 Stat. 139.

AMENDMENTS

2016—Pub. L. 114–328 amended section generally. Prior to amendment, text read as follows: ''Any person subject to this chapter who fights or promotes, or is concerned in or connives at fighting a duel, or who, having knowledge of a challenge sent or about to be sent, fails to report the facts promptly to the proper authority, shall be punished as a court-martial may direct.''

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114–328 effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

§ 915. Art. 115. Communicating threats

(a) COMMUNICATING THREATS GENERALLY.—Any person subject to this chapter who wrongfully communicates a threat to injure the person, property, or reputation of another shall be punished as a court-martial may direct.

(b) COMMUNICATING THREAT TO USE EXPLOSIVE, ETC.—Any person subject to this chapter who wrongfully communicates a threat to injure the person or property of another by use of (1) an explosive, (2) a weapon of mass destruction, (3) a biological or chemical agent, substance, or weapon, or (4) a hazardous material, shall be punished as a court-martial may direct.

(c) COMMUNICATING FALSE THREAT CONCERNING USE OF EXPLOSIVE, ETC.—Any person subject to this chapter who maliciously communicates a false threat concerning injury to the person or property of another by use of (1) an explosive, (2) a weapon of mass destruction, (3) a biological or chemical agent, substance, or weapon, or (4) a hazardous material, shall be punished as a court-martial may direct. As used in the preceding sentence, the term ''false threat'' means a threat that, at the time the threat is communicated, is known to be false by the person communicating the threat.

(Aug. 10, 1956, ch. 1041, 70A Stat. 72; Pub. L. 114–328, div. E, title LX, § 5427, Dec. 23, 2016, 130 Stat. 2948.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
915	50:709.	May 5, 1950, ch. 169, §1 (Art. 115), 64 Stat. 139.

AMENDMENTS

Pub. L. 114–328 amended section generally. Prior to amendment, section related to the offense of malingering. See section 883 of this title.

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114–328 effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

§ 916. Art. 116. Riot or breach of peace

Any person subject to this chapter who causes or participates in any riot or breach of the peace shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 72.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
916	50:710.	May 5, 1950, ch. 169, §1 (Art. 116), 64 Stat. 139.

§ 917. Art. 117. Provoking speeches or gestures

Any person subject to this chapter who uses provoking or reproachful words or gestures towards any other person subject to this chapter shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 72.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
917	50:711.	May 5, 1950, ch. 169, §1 (Art. 117), 64 Stat. 139.

§ 917a. Art. 117a. Wrongful broadcast or distribution of intimate visual images

(a) PROHIBITION.—Any person subject to this chapter—

(1) who knowingly and wrongfully broadcasts or distributes an intimate visual image of another person or a visual image of sexually explicit conduct involving a person who—

(A) is at least 18 years of age at the time the intimate visual image or visual image of sexually explicit conduct was created;

(B) is identifiable from the intimate visual image or visual image of sexually explicit conduct itself, or from information displayed in connection with the intimate visual image or visual image of sexually explicit conduct; and

(C) does not explicitly consent to the broadcast or distribution of the intimate visual image or visual image of sexually explicit conduct;

(2) who knows or reasonably should have known that the intimate visual image or visual image of sexually explicit conduct was made under circumstances in which the person depicted in the intimate visual image or visual image of sexually explicit conduct retained a reasonable expectation of privacy regarding any broadcast or distribution of the intimate visual image or visual image of sexually explicit conduct;

(3) who knows or reasonably should have known that the broadcast or distribution of the intimate visual image or visual image of sexually explicit conduct is likely—

(A) to cause harm, harassment, intimidation, emotional distress, or financial loss for the person depicted in the intimate visual image or visual image of sexually explicit conduct; or

(B) to harm substantially the depicted person with respect to that person's health, safety, business, calling, career, financial condition, reputation, or personal relationships; and

(4) whose conduct, under the circumstances, had a reasonably direct and palpable connection to a military mission or military environment,

is guilty of wrongful distribution of intimate visual images or visual images of sexually explicit conduct and shall be punished as a court-martial may direct.

(b) DEFINITIONS.—In this section:

(1) BROADCAST.—The term ''broadcast'' means to electronically transmit a visual image with the intent that it be viewed by a person or persons.

(2) DISTRIBUTE.—The term ''distribute'' means to deliver to the actual or constructive possession of another person, including transmission by mail or electronic means.

(3) INTIMATE VISUAL IMAGE.—The term ''intimate visual image'' means a visual image that depicts a private area of a person.

(4) PRIVATE AREA.—The term ''private area'' means the naked or underwear-clad genitalia, anus, buttocks, or female areola or nipple.

(5) REASONABLE EXPECTATION OF PRIVACY.—The term ''reasonable expectation of privacy'' means circumstances in which a reasonable person would believe that a private area of the person, or sexually explicit conduct involving the person, would not be visible to the public.

(6) SEXUALLY EXPLICIT CONDUCT.—The term ''sexually explicit conduct'' means actual or simulated genital-genital contact, oral-genital contact, anal-genital contact, or oral-anal contact, whether between persons of the same or opposite sex, bestiality, masturbation, or sadistic or masochistic abuse.

(7) VISUAL IMAGE.—The term ''visual image'' means the following:

(A) Any developed or undeveloped photograph, picture, film, or video.

(B) Any digital or computer image, picture, film, or video made by any means, including those transmitted by any means, including streaming media, even if not stored in a permanent format.

(C) Any digital or electronic data capable of conversion into a visual image.

(Added Pub. L. 115–91, div. A, title V, §533(a), Dec. 12, 2017, 131 Stat. 1389.)

§918. Art. 118. Murder

Any person subject to this chapter who, without justification or excuse, unlawfully kills a human being, when he—

(1) has a premeditated design to kill;

(2) intends to kill or inflict great bodily harm;

(3) is engaged in an act which is inherently dangerous to another and evinces a wanton disregard of human life; or

(4) is engaged in the perpetration or attempted perpetration of burglary, rape, rape of a child, sexual assault, sexual assault of a child, aggravated sexual contact, sexual abuse of a child, robbery, or aggravated arson;

is guilty of murder, and shall suffer such punishment as a court-martial may direct, except that if found guilty under clause (1) or (4), he shall suffer death or imprisonment for life as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 72; Pub. L. 102–484, div. A, title X, §1066(b), Oct. 23, 1992, 106 Stat. 2506; Pub. L. 109–163, div. A, title V, §552(d), Jan. 6, 2006, 119 Stat. 3263; Pub. L. 112–81, div. A, title V, §541(d)(2), Dec. 31, 2011, 125 Stat. 1410; Pub. L. 113–291, div. A, title V, §531(d)(2)(B), Dec. 19, 2014, 128 Stat. 3364; Pub. L. 114–328, div. E, title LX, §5428, Dec. 23, 2016, 130 Stat. 2949.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
918	50:712.	May 5, 1950, ch. 169, §1 (Art. 118), 64 Stat. 140.

The words ''of this section'' are omitted as surplusage.

AMENDMENTS

2016—Par. (4). Pub. L. 114–328 struck out ''forcible sodomy,'' after ''burglary,''.

2014—Par. (4). Pub. L. 113–291 substituted ''forcible sodomy'' for ''sodomy''.

2011—Par. (4). Pub. L. 112–81 substituted ''sexual assault, sexual assault of a child, aggravated sexual contact, sexual abuse of a child,'' for ''aggravated sexual assault, aggravated sexual assault of a child, aggravated sexual contact, aggravated sexual abuse of a child, aggravated sexual contact with a child,''.

2006—Par. (4). Pub. L. 109–163 substituted ''rape, rape of a child, aggravated sexual assault, aggravated sexual assault of a child, aggravated sexual contact, aggravated sexual abuse of a child, aggravated sexual contact with a child,'' for ''rape,''.

1992—Par. (3). Pub. L. 102–484 substituted ''another'' for ''others''.

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114–328 effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by Pub. L. 112–81 effective 180 days after Dec. 31, 2011, and applicable with respect to offenses committed on or after such effective date, see section 541(f) of Pub. L. 112–81, set out as a note under section 843 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–163 effective on Oct. 1, 2007, see section 552(f) of Pub. L. 109–163, set out as a note under section 843 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–484 effective Oct. 23, 1992, and applicable with respect to offenses committed on or after that date, see section 1067 of Pub. L. 102–484, set out as a note under section 803 of this title.

§919. Art. 119. Manslaughter

(a) Any person subject to this chapter who, with an intent to kill or inflict great bodily

harm, unlawfully kills a human being in the heat of sudden passion caused by adequate provocation is guilty of voluntary manslaughter and shall be punished as a court-martial may direct.

(b) Any person subject to this chapter who, without an intent to kill or inflict great bodily harm, unlawfully kills a human being—

(1) by culpable negligence; or

(2) while perpetrating or attempting to perpetrate an offense, other than those named in clause (4) of section 918 of this title (article 118), directly affecting the person;

is guilty of involuntary manslaughter and shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 73.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
919(a)	50:713(a).	May 5, 1950, ch. 169, §1
919(b)	50:713(b).	(Art. 119), 64 Stat. 140.

The word ''named'' is substituted for the word ''specified''.

§919a. Art. 119a. Death or injury of an unborn child

(a)(1) Any person subject to this chapter who engages in conduct that violates any of the provisions of law listed in subsection (b) and thereby causes the death of, or bodily injury (as defined in section 1365 of title 18) to, a child, who is in utero at the time the conduct takes place, is guilty of a separate offense under this section and shall, upon conviction, be punished by such punishment, other than death, as a court-martial may direct, which shall be consistent with the punishments prescribed by the President for that conduct had that injury or death occurred to the unborn child's mother.

(2) An offense under this section does not require proof that—

(i) the person engaging in the conduct had knowledge or should have had knowledge that the victim of the underlying offense was pregnant; or

(ii) the accused intended to cause the death of, or bodily injury to, the unborn child.

(3) If the person engaging in the conduct thereby intentionally kills or attempts to kill the unborn child, that person shall, instead of being punished under paragraph (1), be punished as provided under sections 880, 918, and 919(a) of this title (articles 80, 118, and 119(a)) for intentionally killing or attempting to kill a human being.

(4) Notwithstanding any other provision of law, the death penalty shall not be imposed for an offense under this section.

(b) The provisions referred to in subsection (a) are sections 918, 919(a), 919(b)(2), 920(a), 922, 926, 928, and 928a of this title (articles 118, 119(a), 119(b)(2), 120(a), 122, 126, 128, and 128a).

(c) Nothing in this section shall be construed to permit the prosecution—

(1) of any person for conduct relating to an abortion for which the consent of the pregnant woman, or a person authorized by law to act on her behalf, has been obtained or for which such consent is implied by law;

(2) of any person for any medical treatment of the pregnant woman or her unborn child; or

(3) of any woman with respect to her unborn child.

(d) In this section, the term ''unborn child'' means a child in utero, and the term ''child in utero'' or ''child, who is in utero'' means a member of the species homo sapiens, at any stage of development, who is carried in the womb.

(Added Pub. L. 108–212, §3(a), Apr. 1, 2004, 118 Stat. 569; amended Pub. L. 114–328, div. E, title LX, §5401(13)(B), Dec. 23, 2016, 130 Stat. 2939; Pub. L. 115–91, div. A, title X, §1081(c)(1)(N), Dec. 12, 2017, 131 Stat. 1598.)

AMENDMENTS

2017—Subsec. (b). Pub. L. 115–91 substituted ''926, 928, and 928a'' for ''928a, 926, and 928'' and ''126, 128, and 128a'' for ''128a 126, and 128''.

2016—Subsec. (b). Pub. L. 114–328 substituted ''928a,'' for ''924,'' and ''128a'' for ''124,''.

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by Pub. L. 115–91 effective immediately after the amendments made by div. E (§§5001–5542) of Pub. L. 114–328 take effect as provided for in section 5542 of that Act (10 U.S.C. 801 note), see section 1081(c)(4) of Pub. L. 115–91, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114–328 effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

§919b. Art. 119b. Child endangerment

Any person subject to this chapter—

(1) who has a duty for the care of a child under the age of 16 years; and

(2) who, through design or culpable negligence, endangers the child's mental or physical health, safety, or welfare;

shall be punished as a court-martial may direct.

(Added Pub. L. 114–328, div. E, title LX, §5429, Dec. 23, 2016, 130 Stat. 2949.)

EFFECTIVE DATE

Section effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

§920. Art. 120. Rape and sexual assault generally

(a) RAPE.—Any person subject to this chapter who commits a sexual act upon another person by—

(1) using unlawful force against that other person;

(2) using force causing or likely to cause death or grievous bodily harm to any person;

(3) threatening or placing that other person in fear that any person will be subjected to death, grievous bodily harm, or kidnapping;

(4) first rendering that other person unconscious; or

(5) administering to that other person by force or threat of force, or without the knowl-

edge or consent of that person, a drug, intoxicant, or other similar substance and thereby substantially impairing the ability of that other person to appraise or control conduct;

is guilty of rape and shall be punished as a court-martial may direct.

(b) SEXUAL ASSAULT.—Any person subject to this chapter who—

(1) commits a sexual act upon another person by—

(A) threatening or placing that other person in fear;

(B) making a fraudulent representation that the sexual act serves a professional purpose; or

(C) inducing a belief by any artifice, pretense, or concealment that the person is another person;

(2) commits a sexual act upon another person—

(A) without the consent of the other person; or

(B) when the person knows or reasonably should know that the other person is asleep, unconscious, or otherwise unaware that the sexual act is occurring; or

(3) commits a sexual act upon another person when the other person is incapable of consenting to the sexual act due to—

(A) impairment by any drug, intoxicant, or other similar substance, and that condition is known or reasonably should be known by the person; or

(B) a mental disease or defect, or physical disability, and that condition is known or reasonably should be known by the person;

is guilty of sexual assault and shall be punished as a court-martial may direct.

(c) AGGRAVATED SEXUAL CONTACT.—Any person subject to this chapter who commits or causes sexual contact upon or by another person, if to do so would violate subsection (a) (rape) had the sexual contact been a sexual act, is guilty of aggravated sexual contact and shall be punished as a court-martial may direct.

(d) ABUSIVE SEXUAL CONTACT.—Any person subject to this chapter who commits or causes sexual contact upon or by another person, if to do so would violate subsection (b) (sexual assault) had the sexual contact been a sexual act, is guilty of abusive sexual contact and shall be punished as a court-martial may direct.

(e) PROOF OF THREAT.—In a prosecution under this section, in proving that a person made a threat, it need not be proven that the person actually intended to carry out the threat or had the ability to carry out the threat.

(f) DEFENSES.—An accused may raise any applicable defenses available under this chapter or the Rules for Court-Martial. Marriage is not a defense for any conduct in issue in any prosecution under this section.

(g) DEFINITIONS.—In this section:

(1) SEXUAL ACT.—The term ''sexual act'' means—

(A) the penetration, however slight, of the penis into the vulva or anus or mouth;

(B) contact between the mouth and the penis, vulva, scrotum, or anus; or

(C) the penetration, however slight, of the vulva or penis or anus of another by any part of the body or any object, with an intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person.

(2) SEXUAL CONTACT.—The term ''sexual contact'' means touching, or causing another person to touch, either directly or through the clothing, the vulva, penis, scrotum, anus, groin, breast, inner thigh, or buttocks of any person, with an intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person. Touching may be accomplished by any part of the body or an object.

(3) GRIEVOUS BODILY HARM.—The term ''grievous bodily harm'' means serious bodily injury. It includes fractured or dislocated bones, deep cuts, torn members of the body, serious damage to internal organs, and other severe bodily injuries. It does not include minor injuries such as a black eye or a bloody nose.

(4) FORCE.—The term ''force'' means—

(A) the use of a weapon;

(B) the use of such physical strength or violence as is sufficient to overcome, restrain, or injure a person; or

(C) inflicting physical harm sufficient to coerce or compel submission by the victim.

(5) UNLAWFUL FORCE.—The term ''unlawful force'' means an act of force done without legal justification or excuse.

(6) THREATENING OR PLACING THAT OTHER PERSON IN FEAR.—The term ''threatening or placing that other person in fear'' means a communication or action that is of sufficient consequence to cause a reasonable fear that non-compliance will result in the victim or another person being subjected to the wrongful action contemplated by the communication or action.

(7) CONSENT.—

(A) The term ''consent'' means a freely given agreement to the conduct at issue by a competent person. An expression of lack of consent through words or conduct means there is no consent. Lack of verbal or physical resistance does not constitute consent. Submission resulting from the use of force, threat of force, or placing another person in fear also does not constitute consent. A current or previous dating or social or sexual relationship by itself or the manner of dress of the person involved with the accused in the conduct at issue does not constitute consent.

(B) A sleeping, unconscious, or incompetent person cannot consent. A person cannot consent to force causing or likely to cause death or grievous bodily harm or to being rendered unconscious. A person cannot consent while under threat or in fear or under the circumstances described in subparagraph (B) or (C) of subsection (b)(1).

(C) All the surrounding circumstances are to be considered in determining whether a person gave consent.

(8) INCAPABLE OF CONSENTING.—The term ''incapable of consenting'' means the person is—

(A) incapable of appraising the nature of the conduct at issue; or

(B) physically incapable of declining participation in, or communicating unwillingess to engage in, the sexual act at issue.

(Aug. 10, 1956, ch. 1041, 70A Stat. 73; Pub. L. 102–484, div. A, title X, §1066(c), Oct. 23, 1992, 106 Stat. 2506; Pub. L. 104–106, div. A, title XI, §1113, Feb. 10, 1996, 110 Stat. 462; Pub. L. 109–163, div. A, title V, §552(a)(1), Jan. 6, 2006, 119 Stat. 3256; Pub. L. 112–81, div. A, title V, §541(a), Dec. 31, 2011, 125 Stat. 1404; Pub. L. 112–239, div. A, title X, §1076(f)(9), Jan. 2, 2013, 126 Stat. 1952; Pub. L. 114–328, div. E, title LX, §5430(a), (b), Dec. 23, 2016, 130 Stat. 2949; Pub. L. 115–91, div. A, title X, §1081(c)(1)(O), Dec. 12, 2017, 131 Stat. 1598.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
920(a)	50:714(a).	May 5, 1950, ch. 169, §1 (Art. 120), 64 Stat. 140.
920(b)	50:714(b).	
920(c)	50:714(c).	

In subsection (c), the words ''either of'' are inserted for clarity.

AMENDMENTS

2017—Subsec. (g)(2). Pub. L. 115–91 substituted ''breast'' for ''brest''.

2016—Subsec. (b)(1)(B) to (D). Pub. L. 114–328, §5430(a)(1), redesignated subpars. (C) and (D) as (B) and (C), respectively, and struck out former subpar. (B) which read as follows: ''causing bodily harm to that other person;''.

Subsec. (b)(2). Pub. L. 114–328, §5430(a)(2), inserted dash after ''another person'', added subpar. (A), and inserted subpar. (B) designation before ''when the person''.

Subsec. (g)(1). Pub. L. 114–328, §5430(b)(1), amended par. (1) generally. Prior to amendment, par. (1) defined ''sexual act''.

Subsec. (g)(2). Pub. L. 114–328, §5430(b)(2), amended par. (2) generally. Prior to amendment, par. (2) defined ''sexual contact''.

Subsec. (g)(3) to (6). Pub. L. 114–328, §5430(b)(3), redesignated pars. (4) to (7) as (3) to (6), respectively, and struck out former par. (3) which defined ''bodily harm''.

Subsec. (g)(7). Pub. L. 114–328, §5430(b)(3)(B), redesignated par. (8) as (7). Former par. (7) redesignated (6).

Subsec. (g)(7)(A). Pub. L. 114–328, §5430(b)(4)(A)(iii), substituted ''does not'' for ''shall not'' in last sentence.

Pub. L. 114–328, §5430(b)(4)(A)(i), (ii), which directed amendment of subpar. (A) by striking out ''or submission resulting from the use of force, threat of force, or placing another in fear'' in the second sentence and by inserting ''Submission resulting from the use of force, threat of force, or placing another person in fear also does not constitute consent.'' after the second sentence, was executed by striking out ''or submission resulting from the use of force, threat of force, or placing another person in fear'' after ''physical resistance'' in the third sentence and by making the insertion after the third sentence, to reflect the probable intent of Congress.

Subsec. (g)(7)(B). Pub. L. 114–328, §5430(b)(4)(B), which directed substitution of ''subparagraph (B) or (C)'' for ''subparagraph (B) or (D)'', was executed by making the substitution for ''subparagraph (C) or (D)'', to reflect the probable intent of Congress.

Subsec. (g)(7)(C). Pub. L. 114–328, §5430(b)(4)(C), struck out ''Lack of consent may be inferred based on the circumstances of the offense.'' at beginning and '', or whether a person did not resist or ceased to resist only because of another person's actions'' before period at end.

Subsec. (g)(8). Pub. L. 114–328, §5430(b)(5), added par. (8). Former par. (8) redesignated (7).

2013—Subsec. (g)(7). Pub. L. 112–239 struck out second period at end.

2011—Pub. L. 112–81, §541(a)(11), substituted ''Art. 120. Rape and sexual assault generally'' for ''Art. 120. Rape, sexual assault, and other sexual misconduct'' in section catchline.

Subsec. (a). Pub. L. 112–81, §541(a)(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) related to rape.

Subsec. (b). Pub. L. 112–81, §541(a)(3), redesignated subsec. (c) as (b) and amended it generally. Pub. L. 112–81, §541(a)(2), struck out subsec. (b) which related to rape of a child.

Subsec. (c). Pub. L. 112–81, §541(a)(4), redesignated subsec. (e) as (c) and substituted ''commits'' for ''engages in'' and ''upon'' for ''with''. Former subsec. (c) redesignated (b).

Subsec. (d). Pub. L. 112–81, §541(a)(5), redesignated subsec. (h) as (d) and substituted ''commits'' for ''engages in'', ''upon'' for ''with'', and ''subsection (b) (sexual assault)'' for ''subsection (c) (aggravated sexual assault)''.

Pub. L. 112–81, §541(a)(2), struck out subsec. (d) which related to aggravated sexual assault of a child.

Subsec. (e). Pub. L. 112–81, §541(a)(7), redesignated subsec. (p) as (e) and substituted ''a person made'' for ''the accused made'' and ''the person actually'' for ''the accused actually'' and inserted ''or had the ability to carry out the threat'' before period at end. Former subsec. (e) redesignated (c).

Subsec. (f). Pub. L. 112–81, §541(a)(8), redesignated subsec. (q) as (f) and amended it generally.

Pub. L. 112–81, §541(a)(2), struck out subsec. (f) which related to aggravated sexual abuse of a child.

Subsec. (g). Pub. L. 112–81, §541(a)(2), (10), redesignated subsec. (t) as (g) and struck out former subsec. (g) which related to aggravated sexual contact with a child.

Subsec. (g)(1)(A). Pub. L. 112–81, §541(a)(10)(A)(i), inserted ''or anus or mouth'' after ''vulva''.

Subsec. (g)(1)(B). Pub. L. 112–81, §541(a)(10)(A)(ii), substituted ''vulva or anus or mouth,'' for ''genital opening'' and ''any part of the body'' for ''a hand or finger''.

Subsec. (g)(2). Pub. L. 112–81, §541(a)(10)(B), amended par. (2) generally. Prior to amendment, par. (2) defined ''sexual contact''.

Subsec. (g)(3). Pub. L. 112–81, §541(a)(10)(D), redesignated par. (8) as (3) and inserted '', including any nonconsensual sexual act or nonconsensual sexual contact'' before period at end. Former par. (3) redesignated (4).

Subsec. (g)(4). Pub. L. 112–81, §541(a)(10)(E), struck out at end ''It does not include minor injuries such as a black eye or a bloody nose. It is the same level of injury as in section 928 (article 128) of this chapter, and a lesser degree of injury than in section 2246(4) of title 18.''

Pub. L. 112–81, §541(a)(10)(C), redesignated par. (3) as (4) and struck out former par. (4) which defined ''dangerous weapon or object''.

Subsec. (g)(5). Pub. L. 112–81, §541(a)(10)(F), (H), added par. (5) and struck out former par. (5) which defined ''force''.

Subsec. (g)(6). Pub. L. 112–81, §541(a)(10)(H), added par. (6). Former par. (6) redesignated (7).

Subsec. (g)(7). Pub. L. 112–81, §541(a)(10)(G), (I), redesignated par. (6) as (7), struck out ''under paragraph (3) of subsection (a) (rape), or under subsection (e) (aggravated sexual contact),'' after ''person in fear' '', and substituted ''the wrongful action contemplated by the communication or action.'' for ''death, grievous bodily harm, or kidnapping''.

Pub. L. 112–81, §541(a)(10)(F), struck out par. (7) which defined ''threatening or placing that other person in fear''.

Subsec. (g)(8). Pub. L. 112–81, §541(a)(10)(K), redesignated par. (14) as (8), designated introductory provisions as subpar. (A), in first sentence, struck out

''words or overt acts indicating'' before ''a freely given'' and ''sexual'' before ''conduct'', in third sentence, struck out ''accused's'' before ''use of force'', in fourth sentence, inserted ''or social or sexual'' before ''relationship'' and struck out ''sexual'' before ''conduct'' and last sentence, including subpars. (A) and (B), which related to a person who cannot consent to sexual activity, and added subpars. (B) and (C). Former par. (8) redesignated (3).

Subsec. (g)(9) to (13). Pub. L. 112–81, §541(a)(10)(J), struck out pars. (9) to (13) which defined ''child'', ''lewd act'', ''indecent liberty'', ''indecent conduct'', and ''act of prostitution'', respectively.

Subsec. (g)(14). Pub. L. 112–81, §541(a)(10)(K), redesignated par. (14) as (8).

Subsec. (g)(15), (16). Pub. L. 112–81, §541(a)(10)(L), struck out pars. (15) and (16) which defined ''mistake of fact as to consent'' and ''affirmative defense'', respectively.

Subsec. (h). Pub. L. 112–81, §541(a)(5), redesignated subsec. (h) as (d).

Subsecs. (i), (j). Pub. L. 112–81, §541(a)(2), struck out subsecs. (i) and (j) which related to abusive sexual contact with a child and indecent liberty with a child, respectively.

Subsecs. (k) to (n). Pub. L. 112–81, §541(a)(6), struck out subsecs. (k) to (n) which related to indecent act, forcible pandering, wrongful sexual contact, and indecent exposure, respectively.

Subsec. (*o*). Pub. L. 112–81, §541(a)(2), struck out subsec. (*o*) which related to age of child.

Subsec. (p). Pub. L. 112–81, §541(a)(7), redesignated subsec. (p) as (e).

Subsec. (q). Pub. L. 112–81, §541(a)(8), redesignated subsec. (q) as (f).

Subsecs. (r), (s). Pub. L. 112–81, §541(a)(9), struck out subsecs. (r) and (s) which related to consent and mistake of fact as to consent and other affirmative defenses not precluded, respectively.

Subsec. (t). Pub. L. 112–81, §541(a)(10), redesignated subsec. (t) as (g).

2006—Pub. L. 109–163 amended section generally, substituting subsecs. (a) to (t) relating to rape, sexual assault, and other sexual misconduct for subsecs. (a) to (d) relating to rape and carnal knowledge.

1996—Subsec. (b). Pub. L. 104–106, §1113(a), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''Any person subject to this chapter who, under circumstances not amounting to rape, commits an act of sexual intercourse with a female not his wife who has not attained the age of sixteen years, is guilty of carnal knowledge and shall be punished as a court-martial may direct.''

Subsec. (d). Pub. L. 104–106, §1113(b), added subsec. (d).

1992—Subsec. (a). Pub. L. 102–484 struck out ''with a female not his wife'' after ''intercourse'' and ''her'' after ''without''.

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by Pub. L. 115–91 effective immediately after the amendments made by div. E (§§5001–5542) of Pub. L. 114–328 take effect as provided for in section 5542 of that Act (10 U.S.C. 801 note), see section 1081(c)(4) of Pub. L. 115–91, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114–328 effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by Pub. L. 112–81 effective 180 days after Dec. 31, 2011, and applicable with respect to offenses committed on or after such effective date, see section 541(f) of Pub. L. 112–81, set out as a note under section 843 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–163, div. A, title V, §552(c), Jan. 6, 2006, 119 Stat. 3263, provided that: ''Section 920 of title 10, United States Code (article 120 of the Uniform Code of Military Justice), as amended by subsection (a), shall apply with respect to offenses committed on or after the effective date specified in subsection (f) [see note below].''

Amendment by Pub. L. 109–163 effective on Oct. 1, 2007, see section 552(f) of Pub. L. 109–163, set out as a note under section 843 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–484 effective Oct. 23, 1992, and applicable with respect to offenses committed on or after that date, see section 1067 of Pub. L. 102–484, set out as a note under section 803 of this title.

INTERIM MAXIMUM PUNISHMENTS

Pub. L. 109–163, div. A, title V, §552(b), Jan. 6, 2006, 119 Stat. 3263, provided that: ''Until the President otherwise provides pursuant to section 856 of title 10, United States Code (article 56 of the Uniform Code of Military Justice), the punishment which a court-martial may direct for an offense under section 920 of such title (article 120 of the Uniform Code of Military Justice), as amended by subsection (a), may not exceed the following limits:

''(1) SUBSECTIONS (a) AND (b).—For an offense under subsection (a) (rape) or subsection (b) (rape of a child), death or such other punishment as a court-martial may direct.

''(2) SUBSECTION (c).—For an offense under subsection (c) (aggravated sexual assault), dishonorable discharge, forfeiture of all pay and allowances, and confinement for 30 years.

''(3) SUBSECTIONS (d) AND (e).—For an offense under subsection (d) (aggravated sexual assault of a child) or subsection (e) (aggravated sexual contact), dishonorable discharge, forfeiture of all pay and allowances, and confinement for 20 years.

''(4) SUBSECTIONS (f) AND (g).—For an offense under subsection (f) (aggravated sexual abuse of a child) or subsection (g) (aggravated sexual contact with a child), dishonorable discharge, forfeiture of all pay and allowances, and confinement for 15 years.

''(5) SUBSECTIONS (h) THROUGH (j).—For an offense under subsection (h) (abusive sexual contact), subsection (i) (abusive sexual contact with a child), or subsection (j) (indecent liberty with a child), dishonorable discharge, forfeiture of all pay and allowances, and confinement for 7 years.

''(6) SUBSECTIONS (k) AND (*l*).—For an offense under subsection (k) (indecent act) or subsection (*l*) (forcible pandering), dishonorable discharge, forfeiture of all pay and allowances, and confinement for 5 years.

''(7) SUBSECTIONS (m) AND (n).—For an offense under subsection (m) (wrongful sexual contact) or subsection (n) (indecent exposure), dishonorable discharge, forfeiture of all pay and allowances, and confinement for one year.''

[See 2011 Amendment notes above for extensive amendment of section 920 of title 10 by Pub. L. 112–81, effective 180 days after Dec. 31, 2011, and applicable with respect to offenses committed on or after such effective date.]

§ 920a. Art. 120a. Mails: deposit of obscene matter

Any person subject to this chapter who, wrongfully and knowingly, deposits obscene matter for mailing and delivery shall be punished as a court-martial may direct.

(Added Pub. L. 114–328, div. E, title LX, §5431, Dec. 23, 2016, 130 Stat. 2951.)

PRIOR PROVISIONS

A prior section 920a was renumbered section 930 of this title.

EFFECTIVE DATE

Section effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

§920b. Art. 120b. Rape and sexual assault of a child

(a) RAPE OF A CHILD.—Any person subject to this chapter who—

(1) commits a sexual act upon a child who has not attained the age of 12 years; or

(2) commits a sexual act upon a child who has attained the age of 12 years by—

(A) using force against any person;

(B) threatening or placing that child in fear;

(C) rendering that child unconscious; or

(D) administering to that child a drug, intoxicant, or other similar substance;

is guilty of rape of a child and shall be punished as a court-martial may direct.

(b) SEXUAL ASSAULT OF A CHILD.—Any person subject to this chapter who commits a sexual act upon a child who has attained the age of 12 years is guilty of sexual assault of a child and shall be punished as a court-martial may direct.

(c) SEXUAL ABUSE OF A CHILD.—Any person subject to this chapter who commits a lewd act upon a child is guilty of sexual abuse of a child and shall be punished as a court-martial may direct.

(d) AGE OF CHILD.—

(1) UNDER 12 YEARS.—In a prosecution under this section, it need not be proven that the accused knew the age of the other person engaging in the sexual act or lewd act. It is not a defense that the accused reasonably believed that the child had attained the age of 12 years.

(2) UNDER 16 YEARS.—In a prosecution under this section, it need not be proven that the accused knew that the other person engaging in the sexual act or lewd act had not attained the age of 16 years, but it is a defense in a prosecution under subsection (b) (sexual assault of a child) or subsection (c) (sexual abuse of a child), which the accused must prove by a preponderance of the evidence, that the accused reasonably believed that the child had attained the age of 16 years, if the child had in fact attained at least the age of 12 years.

(e) PROOF OF THREAT.—In a prosecution under this section, in proving that a person made a threat, it need not be proven that the person actually intended to carry out the threat or had the ability to carry out the threat.

(f) MARRIAGE.—In a prosecution under subsection (b) (sexual assault of a child) or subsection (c) (sexual abuse of a child), it is a defense, which the accused must prove by a preponderance of the evidence, that the persons engaging in the sexual act or lewd act were at that time married to each other, except where the accused commits a sexual act upon the person when the accused knows or reasonably should know that the other person is asleep, unconscious, or otherwise unaware that the sexual act is occurring or when the other person is incapable of consenting to the sexual act due to impairment by any drug, intoxicant, or other similar substance, and that condition was known or reasonably should have been known by the accused.

(g) CONSENT.—Lack of consent is not an element and need not be proven in any prosecution under this section. A child not legally married to the person committing the sexual act, lewd act, or use of force cannot consent to any sexual act, lewd act, or use of force.

(h) DEFINITIONS.—In this section:

(1) SEXUAL ACT AND SEXUAL CONTACT.—The terms ''sexual act'' and ''sexual contact'' have the meanings given those terms in section 920(g) of this title (article 120(g)), except that the term ''sexual act'' also includes the intentional touching, not through the clothing, of the genitalia of another person who has not attained the age of 16 years with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.

(2) FORCE.—The term ''force'' means—

(A) the use of a weapon;

(B) the use of such physical strength or violence as is sufficient to overcome, restrain, or injure a child; or

(C) inflicting physical harm.

In the case of a parent-child or similar relationship, the use or abuse of parental or similar authority is sufficient to constitute the use of force.

(3) THREATENING OR PLACING THAT CHILD IN FEAR.—The term ''threatening or placing that child in fear'' means a communication or action that is of sufficient consequence to cause the child to fear that non-compliance will result in the child or another person being subjected to the action contemplated by the communication or action.

(4) CHILD.—The term ''child'' means any person who has not attained the age of 16 years.

(5) LEWD ACT.—The term ''lewd act'' means—

(A) any sexual contact with a child;

(B) intentionally exposing one's genitalia, anus, buttocks, or female areola or nipple to a child by any means, including via any communication technology, with an intent to abuse, humiliate, or degrade any person, or to arouse or gratify the sexual desire of any person;

(C) intentionally communicating indecent language to a child by any means, including via any communication technology, with an intent to abuse, humiliate, or degrade any person, or to arouse or gratify the sexual desire of any person; or

(D) any indecent conduct, intentionally done with or in the presence of a child, including via any communication technology, that amounts to a form of immorality relating to sexual impurity which is grossly vulgar, obscene, and repugnant to common propriety, and tends to excite sexual desire or deprave morals with respect to sexual relations.

(Added Pub. L. 112–81, div. A, title V, §541(b), Dec. 31, 2011, 125 Stat. 1407; amended Pub. L. 112–239, div. A, title X, §1076(a)(3), Jan. 2, 2013, 126 Stat. 1948; Pub. L. 114–328, div. E, title LX, §5430(c), Dec. 23, 2016, 130 Stat. 2950.)

AMENDMENTS

2016—Subsec. (h)(1). Pub. L. 114–328 inserted before period at end ", except that the term 'sexual act' also includes the intentional touching, not through the clothing, of the genitalia of another person who has not attained the age of 16 years with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person".

2013—Pub. L. 112–239 made technical amendment to directory language of Pub. L. 112–81, which enacted this section.

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114–328 effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112–239, div. A, title X, § 1076(a), Jan. 2, 2013, 126 Stat. 1947, provided that the amendment made by section 1076(a)(3) is effective Dec. 31, 2011, and as if included in Pub. L. 112–81 as enacted.

EFFECTIVE DATE

Amendment by Pub. L. 112–81 effective 180 days after Dec. 31, 2011, and applicable with respect to offenses committed on or after such effective date, see section 541(f) of Pub. L. 112–81, set out as an Effective Date of 2011 Amendment note under section 843 of this title.

§ 920c. Art. 120c. Other sexual misconduct

(a) INDECENT VIEWING, VISUAL RECORDING, OR BROADCASTING.—Any person subject to this chapter who, without legal justification or lawful authorization—

(1) knowingly and wrongfully views the private area of another person, without that other person's consent and under circumstances in which that other person has a reasonable expectation of privacy;

(2) knowingly photographs, videotapes, films, or records by any means the private area of another person, without that other person's consent and under circumstances in which that other person has a reasonable expectation of privacy; or

(3) knowingly broadcasts or distributes any such recording that the person knew or reasonably should have known was made under the circumstances proscribed in paragraphs (1) and (2);

is guilty of an offense under this section and shall be punished as a court-martial may direct.

(b) FORCIBLE PANDERING.—Any person subject to this chapter who compels another person to engage in an act of prostitution with any person is guilty of forcible pandering and shall be punished as a court-martial may direct.

(c) INDECENT EXPOSURE.—Any person subject to this chapter who intentionally exposes, in an indecent manner, the genitalia, anus, buttocks, or female areola or nipple is guilty of indecent exposure and shall by punished as a court-martial may direct.

(d) DEFINITIONS.—In this section:

(1) ACT OF PROSTITUTION.—The term "act of prostitution" means a sexual act or sexual contact (as defined in section 920(g) of this title (article 120(g))) on account of which anything of value is given to, or received by, any person.

(2) PRIVATE AREA.—The term "private area" means the naked or underwear-clad genitalia, anus, buttocks, or female areola or nipple.

(3) REASONABLE EXPECTATION OF PRIVACY.—The term "under circumstances in which that other person has a reasonable expectation of privacy" means—

(A) circumstances in which a reasonable person would believe that he or she could disrobe in privacy, without being concerned that an image of a private area of the person was being captured; or

(B) circumstances in which a reasonable person would believe that a private area of the person would not be visible to the public.

(4) BROADCAST.—The term "broadcast" means to electronically transmit a visual image with the intent that it be viewed by a person or persons.

(5) DISTRIBUTE.—The term "distribute" means delivering to the actual or constructive possession of another, including transmission by electronic means.

(6) INDECENT MANNER.—The term "indecent manner" means conduct that amounts to a form of immorality relating to sexual impurity which is grossly vulgar, obscene, and repugnant to common propriety, and tends to excite sexual desire or deprave morals with respect to sexual relations.

(Added Pub. L. 112–81, div. A, title V, § 541(c), Dec. 31, 2011, 125 Stat. 1409.)

EFFECTIVE DATE

Amendment by Pub. L. 112–81 effective 180 days after Dec. 31, 2011, and applicable with respect to offenses committed on or after such effective date, see section 541(f) of Pub. L. 112–81, set out as an Effective Date of 2011 Amendment note under section 843 of this title.

§ 921. Art. 121. Larceny and wrongful appropriation

(a) Any person subject to this chapter who wrongfully takes, obtains, or withholds, by any means, from the possession of the owner or of any other person any money, personal property, or article of value of any kind—

(1) with intent permanently to deprive or defraud another person of the use and benefit of property or to appropriate it to his own use or the use of any person other than the owner, steals that property and is guilty of larceny; or

(2) with intent temporarily to deprive or defraud another person of the use and benefit of property or to appropriate it to his own use or the use of any person other than the owner, is guilty of wrongful appropriation.

(b) Any person found guilty of larceny or wrongful appropriation shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 73.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
921(a)	50:715(a).	May 5, 1950, ch. 169, § 1 (Art. 121), 64 Stat. 140.
921(b)	50:715(b).	

In subsection (a), the words "whatever" and "true" are omitted as surplusage. The word "it" is substituted for the words "the same" in clauses (1) and (2).

§ 921a. Art. 121a. Fraudulent use of credit cards, debit cards, and other access devices

(a) IN GENERAL.—Any person subject to this chapter who, knowingly and with intent to defraud, uses—

(1) a stolen credit card, debit card, or other access device;

(2) a revoked, cancelled, or otherwise invalid credit card, debit card, or other access device; or

(3) a credit card, debit card, or other access device without the authorization of a person whose authorization is required for such use;

to obtain money, property, services, or anything else of value shall be punished as a court-martial may direct.

(b) ACCESS DEVICE DEFINED.—In this section (article), the term ''access device'' has the meaning given that term in section 1029 of title 18.

(Added Pub. L. 114–328, div. E, title LX, § 5432, Dec. 23, 2016, 130 Stat. 2951.)

EFFECTIVE DATE

Section effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

§ 921b. Art. 121b. False pretenses to obtain services

Any person subject to this chapter who, with intent to defraud, knowingly uses false pretenses to obtain services shall be punished as a court-martial may direct.

(Added Pub. L. 114–328, div. E, title LX, § 5433, Dec. 23, 2016, 130 Stat. 2951.)

EFFECTIVE DATE

Section effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

§ 922. Art. 122. Robbery

Any person subject to this chapter who takes anything of value from the person or in the presence of another, against his will, by means of force or violence or fear of immediate or future injury to his person or property or to the person or property of a relative or member of his family or of anyone in his company at the time of the robbery, is guilty of robbery and shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 73; Pub. L. 114–328, div. E, title LX, § 5434, Dec. 23, 2016, 130 Stat. 2951.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
922	50:716.	May 5, 1950, ch. 169, § 1 (Art. 122), 64 Stat. 140.

AMENDMENTS

2016—Pub. L. 114–328 amended section generally. Prior to amendment, text read as follows: ''Any person subject to this chapter who with intent to steal takes anything of value from the person or in the presence of another, against his will, by means of force or violence or fear of immediate or future injury to his person or property or to the person or property of a relative or member of his family or of anyone in his company at the time of the robbery, is guilty of robbery and shall be punished as a court-martial may direct.''

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114–328 effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

§ 922a. Art. 122a. Receiving stolen property

Any person subject to this chapter who wrongfully receives, buys, or conceals stolen property, knowing the property to be stolen property, shall be punished as a court-martial may direct.

(Added Pub. L. 114–328, div. E, title LX, § 5435, Dec. 23, 2016, 130 Stat. 2952.)

EFFECTIVE DATE

Section effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

§ 923. Art. 123. Offenses concerning Government computers

(a) IN GENERAL.—Any person subject to this chapter who—

(1) knowingly accesses a Government computer, with an unauthorized purpose, and by doing so obtains classified information, with reason to believe such information could be used to the injury of the United States, or to the advantage of any foreign nation, and intentionally communicates, delivers, transmits, or causes to be communicated, delivered, or transmitted such information to any person not entitled to receive it;

(2) intentionally accesses a Government computer, with an unauthorized purpose, and thereby obtains classified or other protected information from any Government computer; or

(3) knowingly causes the transmission of a program, information, code, or command, and as a result of such conduct, intentionally causes damage without authorization to a Government computer;

shall be punished as a court-martial may direct.

(b) DEFINITIONS.—In this section:

(1) The term ''computer'' has the meaning given that term in section 1030 of title 18.

(2) The term ''Government computer'' means a computer owned or operated by or on behalf of the United States Government.

(3) The term ''damage'' has the meaning given that term in section 1030 of title 18.

(Added Pub. L. 114–328, div. E, title LX, § 5436, Dec. 23, 2016, 130 Stat. 2952.)

PRIOR PROVISIONS

A prior section 923 was renumbered section 905 of this title.

EFFECTIVE DATE

Section effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

§ 923a. Art. 123a. Making, drawing, or uttering check, draft, or order without sufficient funds

Any person subject to this chapter who—

(1) for the procurement of any article or thing of value, with intent to defraud; or

(2) for the payment of any past due obligation, or for any other purpose, with intent to deceive;

makes, draws, utters, or delivers any check, draft, or order for the payment of money upon any bank or other depository, knowing at the time that the maker or drawer has not or will not have sufficient funds in, or credit with, the bank or other depository for the payment of that check, draft, or order in full upon its presentment, shall be punished as a court-martial may direct. The making, drawing, uttering, or delivering by a maker or drawer of a check, draft, or order, payment of which is refused by the drawee because of insufficient funds of the maker or drawer in the drawee's possession or control, is prima facie evidence of his intent to defraud or deceive and of his knowledge of insufficient funds in, or credit with, that bank or other depository, unless the maker or drawer pays the holder the amount due within five days after receiving notice, orally or in writing, that the check, draft, or order was not paid on presentment. In this section, the word ''credit'' means an arrangement or understanding, express or implied, with the bank or other depository for the payment of that check, draft, or order.

(Added Pub. L. 87–385, § 1(1), Oct. 4, 1961, 75 Stat. 814.)

EFFECTIVE DATE

Pub. L. 87–385, § 2, Oct. 4, 1961, 75 Stat. 814, provided that: ''This Act [enacting this section] becomes effective on the first day of the fifth month following the month in which it is enacted [October 1961].''

§ 924. Art. 124. Frauds against the United States

Any person subject to this chapter—

(1) who, knowing it to be false or fraudulent—

(A) makes any claim against the United States or any officer thereof; or

(B) presents to any person in the civil or military service thereof, for approval or payment, any claim against the United States or any officer thereof;

(2) who, for the purpose of obtaining the approval, allowance, or payment of any claim against the United States or any officer thereof—

(A) makes or uses any writing or other paper knowing it to contain any false or fraudulent statements;

(B) makes any oath to any fact or to any writing or other paper knowing the oath to be false; or

(C) forges or counterfeits any signature upon any writing or other paper, or uses any such signature knowing it to be forged or counterfeited;

(3) who, having charge, possession, custody or control of any money, or other property of the United States, furnished or intended for the armed forces thereof, knowingly delivers to any person having authority to receive it, any amount thereof less than that for which he receives a certificate or receipt; or

(4) who, being authorized to make or deliver any paper certifying the receipt of any property of the United States furnished or intended for the armed forces thereof, makes or delivers to any person such writing without having full knowledge of the truth of the statements therein contained and with intent to defraud the United States;

shall, upon conviction, be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 75, § 932; renumbered § 924, Pub. L. 114–328, div. E, title LX, § 5401(14), Dec. 23, 2016, 130 Stat. 2939.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
932	50:726.	May 5, 1950, ch. 169, § 1 (Art. 132), 64 Stat. 142.

The word ''it'' is substituted for the words ''the same'' throughout the revised section.

PRIOR PROVISIONS

A prior section 924 was renumbered section 928a of this title.

AMENDMENTS

2016—Pub. L. 114–328 renumbered section 932 of this title as this section.

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114–328 effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

§ 924a. Art. 124a. Bribery

(a) ASKING, ACCEPTING, OR RECEIVING THING OF VALUE.—Any person subject to this chapter—

(1) who occupies an official position or who has official duties; and

(2) who wrongfully asks, accepts, or receives a thing of value with the intent to have the person's decision or action influenced with respect to an official matter in which the United States is interested;

shall be punished as a court-martial may direct.

(b) PROMISING, OFFERING, OR GIVING THING OF VALUE.—Any person subject to this chapter who wrongfully promises, offers, or gives a thing of value to another person, who occupies an official position or who has official duties, with the intent to influence the decision or action of the other person with respect to an official matter in which the United States is interested, shall be punished as a court-martial may direct.

(Added Pub. L. 114–328, div. E, title LX, § 5437, Dec. 23, 2016, 130 Stat. 2952.)

EFFECTIVE DATE

Section effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

§ 924b. Art. 124b. Graft

(a) ASKING, ACCEPTING, OR RECEIVING THING OF VALUE.—Any person subject to this chapter—

(1) who occupies an official position or who has official duties; and

(2) who wrongfully asks, accepts, or receives a thing of value as compensation for or in recognition of services rendered or to be rendered by the person with respect to an official matter in which the United States is interested;

shall be punished as a court-martial may direct.

(b) PROMISING, OFFERING, OR GIVING THING OF VALUE.—Any person subject to this chapter who wrongfully promises, offers, or gives a thing of value to another person, who occupies an official position or who has official duties, as compensation for or in recognition of services rendered or to be rendered by the other person with respect to an official matter in which the United States is interested, shall be punished as a court-martial may direct.

(Added Pub. L. 114–328, div. E, title LX, § 5438, Dec. 23, 2016, 130 Stat. 2953.)

EFFECTIVE DATE

Section effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

§ 925. Art. 125. Kidnapping

Any person subject to this chapter who wrongfully—

(1) seizes, confines, inveigles, decoys, or carries away another person; and

(2) holds the other person against that person's will;

shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 74; Pub. L. 113–66, div. A, title XVII, § 1707(a), Dec. 26, 2013, 127 Stat. 961; Pub. L. 113–291, div. A, title V, § 531(d)(1), Dec. 19, 2014, 128 Stat. 3364; Pub. L. 114–328, div. E, title LX, § 5439, Dec. 23, 2016, 130 Stat. 2953.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
925(a) ……	50:719(a).	May 5, 1950, ch. 169, §1 (Art. 125), 64 Stat. 141.
925(b) ……	50:719(b).	

AMENDMENTS

2016—Pub. L. 114–328 amended section generally. Prior to amendment, section related to the offenses of forcible sodomy and bestiality.

2014—Subsec. (a). Pub. L. 113–291 substituted "unlawful force" for "force".

2013—Pub. L. 113–66 amended section catchline and text generally. Prior to amendment, text read as follows:

"(a) Any person subject to this chapter who engages in unnatural carnal copulation with another person of the same or opposite sex or with an animal is guilty of sodomy. Penetration, however slight, is sufficient to complete the offense.

"(b) Any person found guilty of sodomy shall be punished as a court-martial may direct."

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114–328 effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

§ 926. Art. 126. Arson; burning property with intent to defraud

(a) AGGRAVATED ARSON.—Any person subject to this chapter who, willfully and maliciously, burns or sets on fire an inhabited dwelling, or any other structure, movable or immovable, wherein, to the knowledge of that person, there is at the time a human being, is guilty of aggravated arson and shall be punished as a court-martial may direct.

(b) SIMPLE ARSON.—Any person subject to this chapter who, willfully and maliciously, burns or sets fire to the property of another is guilty of simple arson and shall be punished as a court-martial may direct.

(c) BURNING PROPERTY WITH INTENT TO DEFRAUD.—Any person subject to this chapter who, willfully, maliciously, and with intent to defraud, burns or sets fire to any property shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 74; Pub. L. 114–328, div. E, title LX, § 5440, Dec. 23, 2016, 130 Stat. 2953.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
926(a) ……	50:720(a).	May 5, 1950, ch. 169, §1 (Art. 126), 64 Stat. 141.
926(b) ……	50:720(b).	

In subsection (b), the words "of this section" are omitted as surplusage.

AMENDMENTS

2016—Pub. L. 114–328 amended section generally. Prior to amendment, section related to the offenses of aggravated arson and simple arson.

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114–328 effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

§ 927. Art. 127. Extortion

Any person subject to this chapter who communicates threats to another person with the intention thereby to obtain anything of value or any acquittance, advantage, or immunity is guilty of extortion and shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 74.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
927 ……….	50:721.	May 5, 1950, ch. 169, §1 (Art. 127), 64 Stat. 141.

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The words "of any description" are omitted as surplusage.

§ 928. Art. 128. Assault

(a) ASSAULT.—Any person subject to this chapter who, unlawfully and with force or violence—

(1) attempts to do bodily harm to another person;

(2) offers to do bodily harm to another person; or

(3) does bodily harm to another person;

is guilty of assault and shall be punished as a court-martial may direct.

(b) AGGRAVATED ASSAULT.—Any person subject to this chapter—

(1) who, with the intent to do bodily harm, offers to do bodily harm with a dangerous weapon;

(2) who, in committing an assault, inflicts substantial bodily harm or grievous bodily harm on another person; or

(3) who commits an assault by strangulation or suffocation;

is guilty of aggravated assault and shall be punished as a court-martial may direct.

(c) ASSAULT WITH INTENT TO COMMIT SPECIFIED OFFENSES.—

(1) IN GENERAL.—Any person subject to this chapter who commits assault with intent to commit an offense specified in paragraph (2) shall be punished as a court-martial may direct.

(2) OFFENSES SPECIFIED.—The offenses referred to in paragraph (1) are murder, voluntary manslaughter, rape, sexual assault, rape of a child, sexual assault of a child, robbery, arson, burglary, and kidnapping.

(Aug. 10, 1956, ch. 1041, 70A Stat. 75; Pub. L. 114–328, div. E, title LX, § 5441, Dec. 23, 2016, 130 Stat. 2954; Pub. L. 115–91, div. A, title X, § 1081(c)(1)(P), Dec. 12, 2017, 131 Stat. 1599; Pub. L. 115–232, div. A, title V, § 531(a), Aug. 13, 2018, 132 Stat. 1759.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
928(a) ……	50:722(a).	May 5, 1950, ch. 169, § 1 (Art. 128), 64 Stat. 141.
928(b) ……	50:722(b).	

AMENDMENTS

2018—Subsec. (b)(3). Pub. L. 115–232 added par. (3).

2017—Subsec. (b)(2). Pub. L. 115–91 struck out comma after "substantial bodily harm".

2016—Pub. L. 114–328 amended section generally. Prior to amendment, section related to the offenses of assault and aggravated assault.

EFFECTIVE DATE OF 2018 AMENDMENT

Pub. L. 115–232, div. A, title V, § 531(b), Aug. 13, 2018, 132 Stat. 1759, provided that: "The amendments made by subsection (a) [amending this section] shall take effect on January 1, 2019, immediately after the coming into effect of the amendment made by section 5441 of the Military Justice Act of 2016 (division E of Public Law 114–328; 130 Stat. 2954) [which amended this section] as provided in section 5542 of that Act (130 Stat. 2967; 10 U.S.C. 801 note)."

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by Pub. L. 115–91 effective immediately after the amendments made by div. E (§§ 5001–5542) of Pub. L. 114–328 take effect as provided for in section 5542 of that Act (10 U.S.C. 801 note), see section 1081(c)(4) of Pub. L. 115–91, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114–328 effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

§ 928a. Art. 128a. Maiming

Any person subject to this chapter who, with intent to injure, disfigure, or disable, inflicts upon the person of another an injury which—

(1) seriously disfigures his person by any mutilation thereof;

(2) destroys or disables any member or organ of his body; or

(3) seriously diminishes his physical vigor by the injury of any member or organ;

is guilty of maiming and shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 74, § 924; renumbered § 928a, Pub. L. 114–328, div. E, title LX, § 5401(13)(A), Dec. 23, 2016, 130 Stat. 2939.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
924 ……….	50:718.	May 5, 1950, ch. 169, § 1 (Art. 124), 64 Stat. 141.

AMENDMENTS

2016—Pub. L. 114–328 renumbered section 924 of this title as this section.

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114–328 effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

§ 928b. Art. 128b. Domestic violence

Any person who—

(1) commits a violent offense against a spouse, an intimate partner, or an immediate family member of that person;

(2) with intent to threaten or intimidate a spouse, an intimate partner, or an immediate family member of that person—

(A) commits an offense under this chapter against any person; or

(B) commits an offense under this chapter against any property, including an animal;

(3) with intent to threaten or intimidate a spouse, an intimate partner, or an immediate family member of that person, violates a protection order;

(4) with intent to commit a violent offense against a spouse, an intimate partner, or an immediate family member of that person, violates a protection order; or

(5) assaults a spouse, an intimate partner, or an immediate family member of that person by strangling or suffocating;

shall be punished as a court-martial may direct.

(Added Pub. L. 115–232, div. A, title V, § 532(a)(1), Aug. 13, 2018, 132 Stat. 1759; amended Pub. L. 116–92, div. A, title XVII, § 1731(a)(20), Dec. 20, 2019, 133 Stat. 1813.)

AMENDMENTS

2019—Pub. L. 116–92 inserted section catchline. Identical section catchline had been editorially supplied.

EFFECTIVE DATE

Pub. L. 115–232, div. A, title V, § 532(b), Aug. 13, 2018, 132 Stat. 1760, provided that: ''The amendments made by this section [enacting this section] shall take effect on January 1, 2019, immediately after the coming into effect of the amendments made by the Military Justice Act of 2016 (division E of Public Law 114–328) [see Tables for classification] as provided in section 5542 of that Act (130 Stat. 2967; 10 U.S.C. 801 note).''

§ 929. Art. 129. Burglary; unlawful entry

(a) BURGLARY.—Any person subject to this chapter who, with intent to commit an offense under this chapter, breaks and enters the building or structure of another shall be punished as a court-martial may direct.

(b) UNLAWFUL ENTRY.—Any person subject to this chapter who unlawfully enters—

(1) the real property of another; or

(2) the personal property of another which amounts to a structure usually used for habitation or storage;

shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 75; Pub. L. 114–328, div. E, title LX, § 5442, Dec. 23, 2016, 130 Stat. 2954.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
929	50:723.	May 5, 1950, ch. 169, §1 (Art. 129), 64 Stat. 142.

AMENDMENTS

2016—Pub. L. 114–328 amended section generally. Prior to amendment, text read as follows: ''Any person subject to this chapter who, with intent to commit an offense punishable under sections 918–928 of this title (articles 118–128), breaks and enters, in the nighttime, the dwelling house of another, is guilty of burglary and shall be punished as a court-martial may direct.''

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114–328 effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

[§ 929a. Art. 129a. Omitted]

CODIFICATION

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 75, § 930; renumbered § 929a, Pub. L. 114–328, div. E, title LX, § 5401(10), Dec. 23, 2016, 130 Stat. 2939, which related to the offense of housebreaking, was omitted in the general amendment of sections 929 and 929a of this title by Pub. L. 114–328, div. E, title LX, § 5442, Dec. 23, 2016, 130 Stat. 2954. See section 929(b) of this title.

§ 930. Art. 130. Stalking

(a) IN GENERAL.—Any person subject to this chapter—

(1) who wrongfully engages in a course of conduct directed at a specific person that would cause a reasonable person to fear death or bodily harm, including sexual assault, to himself or herself, to a member of his or her immediate family, or to his or her intimate partner;

(2) who has knowledge, or should have knowledge, that the specific person will be placed in reasonable fear of death or bodily harm, including sexual assault, to himself or herself, to a member of his or her immediate family, or to his or her intimate partner; and

(3) whose conduct induces reasonable fear in the specific person of death or bodily harm, including sexual assault, to himself or herself, to a member of his or her immediate family, or to his or her intimate partner;

is guilty of stalking and shall be punished as a court-martial may direct.

(b) DEFINITIONS.—In this section:

(1) The term ''conduct'' means conduct of any kind, including use of surveillance, the mails, an interactive computer service, an electronic communication service, or an electronic communication system.

(2) The term ''course of conduct'' means—

(A) a repeated maintenance of visual or physical proximity to a specific person;

(B) a repeated conveyance of verbal threat, written threats, or threats implied by conduct, or a combination of such threats, directed at or toward a specific person; or

(C) a pattern of conduct composed of repeated acts evidencing a continuity of purpose.

(3) The term ''repeated'', with respect to conduct, means two or more occasions of such conduct.

(4) The term ''immediate family'', in the case of a specific person, means—

(A) that person's spouse, parent, brother or sister, child, or other person to whom he or she stands in loco parentis; or

(B) any other person living in his or her household and related to him or her by blood or marriage.

(5) The term ''intimate partner'', in the case of a specific person, means—

(A) a former spouse of the specific person, a person who shares a child in common with the specific person, or a person who cohabits with or has cohabited as a spouse with the specific person; or

(B) a person who has been in a social relationship of a romantic or intimate nature with the specific person, as determined by the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

(Added Pub. L. 109–163, div. A, title V, § 551(a)(1), Jan. 6, 2006, 119 Stat. 3256, § 920a; renumbered § 930 and amended Pub. L. 114–328, div. E, title LX, §§ 5401(11), 5443, Dec. 23, 2016, 130 Stat. 2939, 2955.)

PRIOR PROVISIONS

A prior section 930 was renumbered section 929a of this title and subsequently omitted from the Code.

AMENDMENTS

2016—Pub. L. 114–328 amended section generally. Prior to amendment, section set out elements of stalking and defined terms.

Pub. L. 114–328, § 5401(11), renumbered section 920a of this title as this section.

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114–328 effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

EFFECTIVE DATE

Pub. L. 109–163, div. A, title V, § 551(b), Jan. 6, 2006, 119 Stat. 3256, provided that: ''Section 920a of title 10, United States Code (article 120a of the Uniform Code of Military Justice), as added by subsection (a), applies to offenses committed after the date that is 180 days after the date of the enactment of this Act [Jan. 6, 2006].''

§ 931. Art. 131. Perjury

Any person subject to this chapter who in a judicial proceeding or in a course of justice willfully and corruptly—

(1) upon a lawful oath or in any form allowed by law to be substituted for an oath, gives any false testimony material to the issue or matter of inquiry; or

(2) in any declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28, subscribes any false statement material to the issue or matter of inquiry;

is guilty of perjury and shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 75; Pub. L. 94–550, § 3, Oct. 18, 1976, 90 Stat. 2535; Pub. L. 97–295, § 1(13), Oct. 12, 1982, 96 Stat. 1289.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
931	50:725.	May 5, 1950, ch. 169, § 1 (Art. 131), 64 Stat. 142.

The words ''in a'' are inserted before the words ''course of justice''.

AMENDMENTS

1982—Par. (2). Pub. L. 97–295 struck out ''United States Code,'' after ''title 28,''.

1976—Pub. L. 94–550 divided existing provisions into an introductory phrase, par. (1), and a closing phrase, and added par. (2).

§ 931a. Art. 131a. Subornation of perjury

(a) IN GENERAL.—Any person subject to this chapter who induces and procures another person—

(1) to take an oath; and

(2) to falsely testify, depose, or state upon such oath;

shall, if the conditions specified in subsection (b) are satisfied, be punished as a court-martial may direct.

(b) CONDITIONS.—The conditions referred to in subsection (a) are the following:

(1) The oath is administered with respect to a matter for which such oath is required or authorized by law.

(2) The oath is administered by a person having authority to do so.

(3) Upon the oath, the other person willfully makes or subscribes a statement.

(4) The statement is material.

(5) The statement is false.

(6) When the statement is made or subscribed, the person subject to this chapter and the other person do not believe that the statement is true.

(Added Pub. L. 114–328, div. E, title LX, § 5444, Dec. 23, 2016, 130 Stat. 2956.)

EFFECTIVE DATE

Section effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

§ 931b. Art. 131b. Obstructing justice

Any person subject to this chapter who engages in conduct in the case of a certain person against whom the accused had reason to believe there were or would be criminal or disciplinary proceedings pending, with intent to influence, impede, or otherwise obstruct the due administration of justice shall be punished as a court-martial may direct.

(Added Pub. L. 114–328, div. E, title LX, § 5445, Dec. 23, 2016, 130 Stat. 2956.)

EFFECTIVE DATE

Section effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

§ 931c. Art. 131c. Misprision of serious offense

Any person subject to this chapter—

(1) who knows that another person has committed a serious offense; and

(2) wrongfully conceals the commission of the offense and fails to make the commission of the offense known to civilian or military authorities as soon as possible;

shall be punished as a court-martial may direct.

(Added Pub. L. 114–328, div. E, title LX, § 5446, Dec. 23, 2016, 130 Stat. 2956.)

EFFECTIVE DATE

Section effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

§ 931d. Art. 131d. Wrongful refusal to testify

Any person subject to this chapter who, in the presence of a court-martial, a board of officers, a military commission, a court of inquiry, a preliminary hearing, or an officer taking a deposition, of or for the United States, wrongfully refuses to qualify as a witness or to answer a question after having been directed to do so by the person presiding shall be punished as a court-martial may direct.

(Added Pub. L. 114–328, div. E, title LX, § 5447, Dec. 23, 2016, 130 Stat. 2957.)

EFFECTIVE DATE

Section effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

§ 931e. Art. 131e. Prevention of authorized seizure of property

Any person subject to this chapter who, knowing that one or more persons authorized to make searches and seizures are seizing, are about to seize, or are endeavoring to seize property, destroys, removes, or otherwise disposes of the property with intent to prevent the seizure thereof shall be punished as a court-martial may direct.

(Added Pub. L. 114–328, div. E, title LX, § 5448, Dec. 23, 2016, 130 Stat. 2957.)

EFFECTIVE DATE

Section effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

§ 931f. Art. 131f. Noncompliance with procedural rules

Any person subject to this chapter who—

(1) is responsible for unnecessary delay in the disposition of any case of a person accused of an offense under this chapter; or

(2) knowingly and intentionally fails to enforce or comply with any provision of this chapter regulating the proceedings before, during, or after trial of an accused;

shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 69, § 898; renumbered § 931f, Pub. L. 114–328, div. E, title LX, § 5401(3), Dec. 23, 2016, 130 Stat. 2938.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
898	50:692.	May 5, 1950, ch. 169, § 1 (Art. 98), 64 Stat. 137.

AMENDMENTS

2016—Pub. L. 114–328 renumbered section 898 of this title as this section.

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114–328 effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

§ 931g. Art. 131g. Wrongful interference with adverse administrative proceeding

Any person subject to this chapter who, having reason to believe that an adverse administrative proceeding is pending against any person subject to this chapter, wrongfully acts with the intent—

(1) to influence, impede, or obstruct the conduct of the proceeding; or

(2) otherwise to obstruct the due administration of justice;

shall be punished as a court-martial may direct.

(Added Pub. L. 114–328, div. E, title LX, § 5449, Dec. 23, 2016, 130 Stat. 2957.)

EFFECTIVE DATE

Section effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

§ 932. Art. 132. Retaliation

(a) IN GENERAL.—Any person subject to this chapter who, with the intent to retaliate against any person for reporting or planning to report a criminal offense, or making or planning to make a protected communication, or with the intent to discourage any person from reporting a criminal offense or making or planning to make a protected communication—

(1) wrongfully takes or threatens to take an adverse personnel action against any person; or

(2) wrongfully withholds or threatens to withhold a favorable personnel action with respect to any person;

shall be punished as a court-martial may direct.

(b) DEFINITIONS.—In this section:

(1) The term ''protected communication'' means the following:

(A) A lawful communication to a Member of Congress or an Inspector General.

(B) A communication to a covered individual or organization in which a member of the armed forces complains of, or discloses information that the member reasonably believes constitutes evidence of, any of the following:

(i) A violation of law or regulation, including a law or regulation prohibiting sexual harassment or unlawful discrimination.

(ii) Gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

(2) The term ''Inspector General'' has the meaning given that term in section 1034(j) of this title.

(3) The term ''covered individual or organization'' means any recipient of a communication specified in clauses (i) through (v) of section 1034(b)(1)(B) of this title.

(4) The term ''unlawful discrimination'' means discrimination on the basis of race, color, religion, sex, or national origin.

(Added Pub. L. 114–328, div. E, title LX, § 5450, Dec. 23, 2016, 130 Stat. 2957; amended Pub. L. 115–91, div. A, title X, § 1081(c)(1)(Q), Dec. 12, 2017, 131 Stat. 1599.)

PRIOR PROVISIONS

A prior section 932 was renumbered section 924 of this title.

AMENDMENTS

2017—Subsec. (b)(2). Pub. L. 115–91 substituted ''section 1034(j)'' for ''section 1034(h)''.

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by Pub. L. 115–91 effective immediately after the amendments made by div. E (§§ 5001–5542) of

Pub. L. 114–328 take effect as provided for in section 5542 of that Act (10 U.S.C. 801 note), see section 1081(c)(4) of Pub. L. 115–91, set out as a note under section 801 of this title.

EFFECTIVE DATE

Section effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

§ 933. Art. 133. Conduct unbecoming an officer and a gentleman

Any commissioned officer, cadet, or midshipman who is convicted of conduct unbecoming an officer and a gentleman shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 76.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
933	50:727.	May 5, 1950, ch. 169, §1 (Art. 133), 64 Stat. 142.

The word ''commissioned'' is inserted for clarity.

§ 934. Art. 134. General article

Though not specifically mentioned in this chapter, all disorders and neglects to the prejudice of good order and discipline in the armed forces, all conduct of a nature to bring discredit upon the armed forces, and crimes and offenses not capital, of which persons subject to this chapter may be guilty, shall be taken cognizance of by a general, special, or summary court-martial, according to the nature and degree of the offense, and shall be punished at the discretion of that court. As used in the preceding sentence, the term ''crimes and offenses not capital'' includes any conduct engaged in outside the United States, as defined in section 5 of title 18, that would constitute a crime or offense not capital if the conduct had been engaged in within the special maritime and territorial jurisdiction of the United States, as defined in section 7 of title 18.

(Aug. 10, 1956, ch. 1041, 70A Stat. 76; Pub. L. 114–328, div. E, title LX, §5451, Dec. 23, 2016, 130 Stat. 2958.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
934	50:728.	May 5, 1950, ch. 169, §1 (Art. 134), 64 Stat. 142.

The words ''shall be'' are inserted before the word ''punished''.

AMENDMENTS

2016—Pub. L. 114–328 inserted at end ''As used in the preceding sentence, the term 'crimes and offenses not capital' includes any conduct engaged in outside the United States, as defined in section 5 of title 18, that would constitute a crime or offense not capital if the conduct had been engaged in within the special maritime and territorial jurisdiction of the United States, as defined in section 7 of title 18.''

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114–328 effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

SUBCHAPTER XI—MISCELLANEOUS PROVISIONS

Sec.	Art.	
935.	135.	Courts of inquiry.
936.	136.	Authority to administer oaths.
937.	137.	Articles to be explained.
938.	138.	Complaints of wrongs.
939.	139.	Redress of injuries to property.
940.	140.	Delegation by the President.
940a.	140a.	Case management; data collection and accessibility.

AMENDMENTS

2017—Pub. L. 115–91, div. A, title X, §1081(d)(19)(A), Dec. 12, 2017, 131 Stat. 1601, made technical amendment to Pub. L. 114–328, §5541(7). See 2016 Amendment note below.

2016—Pub. L. 114–328, div. E, title LXIII, §5541(7), Dec. 23, 2016, 130 Stat. 2967, as amended by Pub. L. 115–91, div. A, title X, §1081(d)(19)(A), Dec. 12, 2017, 131 Stat. 1601, added item 940a and substituted ''Authority to administer oaths'' for ''Authority to administer oaths and to act as notary'' in item 936.

§ 935. Art. 135. Courts of inquiry

(a) Courts of inquiry to investigate any matter may be convened by any person authorized to convene a general court-martial or by any other person designated by the Secretary concerned for that purpose, whether or not the persons involved have requested such an inquiry.

(b) A court of inquiry consists of three or more commissioned officers. For each court of inquiry the convening authority shall also appoint counsel for the court.

(c)(1) Any person subject to this chapter whose conduct is subject to inquiry shall be designated as a party.

(2) Any person who is (A) subject to this chapter, (B) employed by the Department of Defense, or (C) with respect to the Coast Guard, employed by the department in which the Coast Guard is operating when it is not operating as a service in the Navy, and who has a direct interest in the subject of inquiry has the right to be designated as a party upon request to the court.

(3) Any person designated as a party shall be given due notice and has the right to be present, to be represented by counsel, to cross-examine witnesses, and to introduce evidence.

(d) Members of a court of inquiry may be challenged by a party, but only for cause stated to the court.

(e) The members, counsel, the reporter, and interpreters of courts of inquiry shall take an oath to faithfully perform their duties.

(f) Witnesses may be summoned to appear and testify and be examined before courts of inquiry, as provided for courts-martial.

(g) Courts of inquiry shall make findings of fact but may not express opinions or make recommendations unless required to do so by the convening authority.

(h) Each court of inquiry shall keep a record of its proceedings, which shall be authenticated by the signatures of the president and counsel for the court and forwarded to the convening authority. If the record cannot be authenticated

by the president, it shall be signed by a member in lieu of the president. If the record cannot be authenticated by the counsel for the court, it shall be signed by a member in lieu of the counsel.

(Aug. 10, 1956, ch. 1041, 70A Stat. 76; Pub. L. 114–328, div. E, title LXI, §5501, Dec. 23, 2016, 130 Stat. 2960.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
935(a)	50:731(a).	May 5, 1950, ch. 169, §1 (Art. 135), 64 Stat. 143.
935(b)	50:731(b).	
935(c)	50:731(c).	
935(d)	50:731(d).	
935(e)	50:731(e).	
935(f)	50:731(f).	
935(g)	50:731(g).	
935(h)	50:731(h).	

In subsection (a), the words ''Secretary concerned'' are substituted for the words ''Secretary of a Department''.

In subsection (b), the word ''commissioned'' is inserted for clarity. The word ''consists'' is substituted for the words ''shall consist''.

In subsection (c), the word ''has'' is substituted for the words ''shall have''.

In subsection (e), the words ''or affirmation'' are omitted as covered by the definition of the word ''oath'' in section 1 of title 1.

In subsection (g), the word ''may'' is substituted for the word ''shall''.

In subsection (h), the word ''If'' is substituted for the words ''In case''.

AMENDMENTS

2016—Subsec. (c). Pub. L. 114–328 designated first through third sentences as pars. (1) to (3), respectively, and, in par. (2), substituted ''who is (A) subject to this chapter, (B) employed by the Department of Defense, or (C) with respect to the Coast Guard, employed by the department in which the Coast Guard is operating when it is not operating as a service in the Navy, and'' for ''subject to this chapter or employed by the Department of Defense''.

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114–328 effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

§936. Art. 136. Authority to administer oaths

(a) The following persons on active duty or performing inactive-duty training may administer oaths for the purposes of military administration, including military justice:

(1) All judge advocates.

(2) All summary courts-martial.

(3) All adjutants, assistant adjutants, acting adjutants, and personnel adjutants.

(4) All commanding officers of the Navy, Marine Corps, and Coast Guard.

(5) All staff judge advocates and legal officers, and acting or assistant staff judge advocates and legal officers.

(6) All other persons designated by regulations of the armed forces or by statute.

(b) The following persons on active duty or performing inactive-duty training may administer oaths necessary in the performance of their duties:

(1) The president, military judge, trial counsel, and assistant trial counsel for all general and special courts-martial.

(2) The president and the counsel for the court of any court of inquiry.

(3) All officers designated to take a deposition.

(4) All persons detailed to conduct an investigation.

(5) All recruiting officers.

(6) All other persons designated by regulations of the armed forces or by statute.

(c) Each judge and senior judge of the United States Court of Appeals for the Armed Forces shall have the powers relating to oaths, affirmations, and acknowledgments provided to justices and judges of the United States by section 459 of title 28.

(Aug. 10, 1956, ch. 1041, 70A Stat. 77; Pub. L. 86–589, July 5, 1960, 74 Stat. 329; Pub. L. 90–179, §1(7), Dec. 8, 1967, 81 Stat. 546; Pub. L. 90–632, §2(34), Oct. 24, 1968, 82 Stat. 1343; Pub. L. 98–209, §2(f), Dec. 6, 1983, 97 Stat. 1393; Pub. L. 99–661, div. A, title VIII, §804(c), Nov. 14, 1986, 100 Stat. 3907; Pub. L. 100–456, div. A, title XII, §1234(a)(1), Sept. 29, 1988, 102 Stat. 2059; Pub. L. 101–510, div. A, title V, §551(b), Nov. 5, 1990, 104 Stat. 1566; Pub. L. 110–181, div. A, title V, §542, Jan. 28, 2008, 122 Stat. 114; Pub. L. 114–328, div. A, title V, §541(a), div. E, title LXI, §5502, Dec. 23, 2016, 130 Stat. 2124, 2960.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
936(a)	50:732(a).	May 5, 1950, ch. 169, §1 (Art. 136), 64 Stat. 143.
936(b)	50:732(b).	
936(c)	50:732(c).	
936(d)	50:732(d).	

In subsection (a), the word ''may'' is substituted for the words ''shall have authority to''. The word ''shall'' before the words ''have the general powers'' is omitted as surplusage. The words ''the continental limits'' are omitted, since section 101(1) of this title defines the United States to include the States and the District of Columbia.

In subsections (a) and (b), the words ''in the armed forces'' are omitted as surplusage.

In subsection (b), the word ''may'' is substituted for the words ''shall have authority to''.

In subsection (c), the words ''of any character'' are omitted as surplusage. The word ''may'' is substituted for the word ''shall''.

In subsection (d), the word ''is'' is substituted for the words ''shall be''.

AMENDMENTS

2016—Pub. L. 114–328, §5502, struck out ''and to act as notary'' after ''oaths'' in section catchline.

Subsec. (c). Pub. L. 114–328, §541(a), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''The judges of the United States Court of Appeals for the Armed Forces may administer the oaths authorized by subsections (a) and (b).''

2008—Subsec. (c). Pub. L. 110–181 added subsec. (c).

1990—Subsec. (a). Pub. L. 101–510, §551(b)(1), struck out '', and have the general powers of a notary public and of a consul of the United States, in the performance of all notarial acts to be executed by members of any of the armed forces, wherever they may be, by persons serving with, employed by, or accompanying the armed forces outside the United States and outside Puerto Rico, Guam, and the Virgin Islands, and by other persons subject to this chapter outside of the

United States'' after ''including military justice'' in introductory provisions.

Subsecs. (c), (d). Pub. L. 101–510, § 551(b)(2), struck out subsecs. (c) and (d) which read as follows:

''(c) No fee may be paid to or received by any person for the performance of any notarial act herein authorized.

''(d) The signature without seal of any such person acting as notary, together with the title of his office, is prima facie evidence of his authority.''

1988—Subsec. (a). Pub. L. 100–456 struck out ''the Canal Zone,'' before ''Puerto Rico,''.

1986—Subsecs. (a), (b). Pub. L. 99–661 inserted ''or performing inactive-duty training'' after ''active duty''.

1983—Subsec. (a)(1). Pub. L. 98–209, § 2(f)(1), struck out ''of the Army, Navy, Air Force, and Marine Corps'' after ''All judge advocates''.

Subsec. (a)(2) to (7). Pub. L. 98–209, § 2(f)(2), struck out par. (2) which included law specialists among those persons authorized to administer oaths and to act as notaries under this section, and redesignated pars. (3) to (7) as (2) to (6), respectively.

1968—Subsec. (b). Pub. L. 90–632 substituted ''military judge'' for ''law officer'' in par. (1).

1967—Subsec. (a)(1). Pub. L. 90–179 inserted references to judge advocates of the Navy and the Marine Corps.

1960—Subsec. (a). Pub. L. 86–589 permitted the administration of oaths and the performance of notarial acts for persons serving, employed by, or accompanying the armed forces outside the United States and outside the Canal Zone, Puerto Rico, Guam, and the Virgin Islands.

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by section 5502 of Pub. L. 114–328 effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–661 effective the earlier of (1) the last day of the 120-day period beginning on Nov. 14, 1986; or (2) the date specified in an Executive order for such amendment to take effect, see section 808 of Pub. L. 99–661, set out as a note under section 802 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–209 effective first day of eighth calendar month beginning after Dec. 6, 1983, see section 12(a)(1) of Pub. L. 98–209, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 937. Art. 137. Articles to be explained

(a) ENLISTED MEMBERS.—(1) The sections (articles) of this chapter specified in paragraph (3) shall be carefully explained to each enlisted member at the time of (or within fourteen days after)—

(A) the member's initial entrance on active duty; or

(B) the member's initial entrance into a duty status with a reserve component.

(2) Such sections (articles) shall be explained again—

(A) after the member has completed six months of active duty or, in the case of a member of a reserve component, after the member has completed basic or recruit training; and

(B) at the time when the member reenlists.

(3) This subsection applies with respect to sections 802, 803, 807–815, 825, 827, 831, 837, 838, 855, 877–934, and 937–939 of this title (articles 2, 3, 7–15, 25, 27, 31, 37, 38, 55, 77–134, and 137–139).

(b) OFFICERS.—(1) The sections (articles) of this chapter specified in paragraph (2) shall be carefully explained to each officer at the time of (or within six months after)—

(A) the initial entrance of the officer on active duty as an officer; or

(B) the initial commissioning of the officer in a reserve component.

(2) This subsection applies with respect to the sections (articles) specified in subsection (a)(3) and such other sections (articles) as the Secretary concerned may prescribe by regulation.

(c) TRAINING FOR CERTAIN OFFICERS.—Under regulations prescribed by the Secretary concerned, officers with the authority to convene courts-martial or to impose non-judicial punishment shall receive periodic training regarding the purposes and administration of this chapter. Under regulations prescribed by the Secretary of Defense, officers assigned to duty in a joint command or a combatant command, who have such authority, shall receive additional specialized training regarding the purposes and administration of this chapter with respect to joint commands and the combatant commands.

(d) AVAILABILITY AND MAINTENANCE OF TEXT.—The text of this chapter and the text of the regulations prescribed by the President under this chapter shall be—

(1) made available to a member on active duty or to a member of a reserve component, upon request by the member, for the member's personal examination; and

(2) maintained by the Secretary of Defense in electronic formats that are updated periodically and made available on the Internet.

(Aug. 10, 1956, ch. 1041, 70A Stat. 78; Pub. L. 99–661, div. A, title VIII, § 804(d), Nov. 14, 1986, 100 Stat. 3907; Pub. L. 104–106, div. A, title XI, § 1152, Feb. 10, 1996, 110 Stat. 468; Pub. L. 114–328, div. E, title LXI, § 5503, Dec. 23, 2016, 130 Stat. 2960; Pub. L. 115–91, div. A, title X, § 1081(c)(1)(R), Dec. 12, 2017, 131 Stat. 1599.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
937	50:733.	May 5, 1950, ch. 169, § 1 (Art. 137), 64 Stat. 144.

The word ''each'' is substituted for the word ''every''. The word ''member'' is substituted for the word ''person''. The words ''in [any of] the armed forces of the United States'' are omitted as surplusage.

AMENDMENTS

2017—Subsec. (a)(1). Pub. L. 115–91, § 1081(c)(1)(R)(i), struck out "(the Uniform Code of Military Justice)" after "this chapter" in introductory provisions.

Subsec. (b). Pub. L. 115–91, § 1081(c)(1)(R)(ii), which directed amendment of subsec. (b) by striking out "(the Uniform Code of Military Justice)" after "this chapter" in the matter preceding subparagraph (A), was executed by making the amendment in introductory provisions of par. (1) of subsec. (b), to reflect the probable intent of Congress.

Subsec. (d). Pub. L. 115–91, § 1081(c)(1)(R)(iii), struck out "(the Uniform Code of Military Justice)" after "this chapter" in introductory provisions.

2016—Subsec. (a). Pub. L. 114–328, § 5503(1), inserted heading.

Subsec. (a)(1). Pub. L. 114–328, § 5503(1), substituted "The sections (articles) of this chapter (the Uniform Code of Military Justice)" for "The sections of this title (articles of the Uniform Code of Military Justice)" in introductory provisions.

Subsecs. (b) to (d). Pub. L. 114–328, § 5503(2), (3), added subsecs. (b) to (d) and struck out former subsec. (b) which read as follows: "The text of the Uniform Code of Military Justice and of the regulations prescribed by the President under such Code shall be made available to a member on active duty or to a member of a reserve component, upon request by the member, for the member's personal examination."

1996—Subsec. (a)(1). Pub. L. 104–106 substituted "within fourteen days" for "within six days".

1986—Pub. L. 99–661 amended section generally, inserting provisions relating to reserve components.

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by Pub. L. 115–91 effective immediately after the amendments made by div. E (§§ 5001–5542) of Pub. L. 114–328 take effect as provided for in section 5542 of that Act (10 U.S.C. 801 note), see section 1081(c)(4) of Pub. L. 115–91, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114–328 effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–661 effective the earlier of (1) the last day of the 120-day period beginning on Nov. 14, 1986; or (2) the date specified in an Executive order for such amendment to take effect, see section 808 of Pub. L. 99–661, set out as a note under section 802 of this title.

§ 938. Art. 138. Complaints of wrongs

Any member of the armed forces who believes himself wronged by his commanding officer, and who, upon due application to that commanding officer, is refused redress, may complain to any superior commissioned officer, who shall forward the complaint to the officer exercising general court-martial jurisdiction over the officer against whom it is made. The officer exercising general court-martial jurisdiction shall examine into the complaint and take proper measures for redressing the wrong complained of; and he shall, as soon as possible, send to the Secretary concerned a true statement of that complaint, with the proceedings had thereon.

(Aug. 10, 1956, ch. 1041, 70A Stat. 78.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
938	50:734.	May 5, 1950, ch. 169, § 1 (Art. 138), 64 Stat. 144.

The words "commanding officer" are substituted for the word "commander". The word "who" is inserted after the word "and". The word "commissioned" is inserted after the word "superior" for clarity. The words "The officer exercising general court-martial jurisdiction" are substituted for the words "That officer" for clarity. The word "send" is substituted for the word "transmit". The word "Secretary" is substituted for the word "Department" for accuracy, since the "Department", as an entity, could not act upon the complaint.

§ 939. Art. 139. Redress of injuries to property

(a) Whenever complaint is made to any commanding officer that willful damage has been done to the property of any person or that his property has been wrongfully taken by members of the armed forces, he may, under such regulations as the Secretary concerned may prescribe, convene a board to investigate the complaint. The board shall consist of from one to three commissioned officers and, for the purpose of that investigation, it has power to summon witnesses and examine them upon oath, to receive depositions or other documentary evidence, and to assess the damages sustained against the responsible parties. The assessment of damages made by the board is subject to the approval of the commanding officer, and in the amount approved by him shall be charged against the pay of the offenders. The order of the commanding officer directing charges herein authorized is conclusive on any disbursing officer for the payment by him to the injured parties of the damages so assessed and approved.

(b) If the offenders cannot be ascertained, but the organization or detachment to which they belong is known, charges totaling the amount of damages assessed and approved may be made in such proportion as may be considered just upon the individual members thereof who are shown to have been present at the scene at the time the damages complained of were inflicted, as determined by the approved findings of the board.

(Aug. 10, 1956, ch. 1041, 70A Stat. 78.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
939(a)	50:735(a).	May 5, 1950, ch. 169, § 1 (Art. 139), 64 Stat. 144.
939(b)	50:735(b).	

In subsection (a), the words "Secretary concerned" are substituted for the words "Secretary of the Department". The word "under" is substituted for the words "subject to". The words "or affirmation" are omitted as covered by the definition of the word "oath" in section 1 of title 1. The words "it has" are substituted for the words "shall have" in the second sentence. The word "is" is substituted for the words "shall be" before the words "subject" and "conclusive". The word "commissioned" is inserted for clarity.

In subsection (b), the word "If" is substituted for the word "Where". The word "considered" is substituted for the word "deemed".

§ 940. Art. 140. Delegation by the President

The President may delegate any authority vested in him under this chapter, and provide for the subdelegation of any such authority.

(Aug. 10, 1956, ch. 1041, 70A Stat. 78.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
940	50:736.	May 5, 1950, ch. 169, §1 (Art. 140), 64 Stat. 145.

The word ''may'' is substituted for the words ''is authorized to * * * to''.

§ 940a. Art. 140a. Case management; data collection and accessibility

(a) IN GENERAL.—The Secretary of Defense, in consultation with the Secretary of Homeland Security, shall prescribe uniform standards and criteria for conduct of each of the following functions at all stages of the military justice system (including with respect to the Coast Guard), including pretrial, trial, post-trial, and appellate processes, using, insofar as practicable, the best practices of Federal and State courts:

(1) Collection and analysis of data concerning substantive offenses and procedural matters in a manner that facilitates case management and decision making within the military justice system, and that enhances the quality of periodic reviews under section 946 of this title (article 146).

(2) Case processing and management.

(3) Timely, efficient, and accurate production and distribution of records of trial within the military justice system.

(4) Facilitation of public access to docket information, filings, and records, taking into consideration restrictions appropriate to judicial proceedings and military records.

(b) PROTECTION OF CERTAIN PERSONALLY IDENTIFIABLE INFORMATION.—Records of trial, docket information, filings, and other records made publicly accessible in accordance with the uniform standards and criteria for conduct established by the Secretary under subsection (a) shall restrict access to personally identifiable information of minors and victims of crime (including victims of sexual assault and domestic violence), as practicable to the extent such information is restricted in electronic filing systems of Federal and State courts.

(c) INAPPLICABILITY TO CERTAIN DOCKETS AND RECORDS.—Nothing in this section shall be construed to provide public access to docket information, filings, or records that are classified, subject to a judicial protective order, or ordered sealed.

(d) PRESERVATION OF COURT-MARTIAL RECORDS WITHOUT REGARD TO OUTCOME.—The standards and criteria prescribed by the Secretary of Defense under subsection (a) shall provide for the preservation of general and special court-martial records, without regard to the outcome of the proceeding concerned, for not fewer than 15 years.

(Added Pub. L. 114–328, div. E, title LXI, § 5504(a), Dec. 23, 2016, 130 Stat. 2961; amended Pub. L. 116–92, div. A, title V, § 534(a), Dec. 20, 2019, 133 Stat. 1361; Pub. L. 116–283, div. A, title V, § 543, Jan. 1, 2021, 134 Stat. 3613.)

AMENDMENTS

2021—Subsec. (d). Pub. L. 116–283 added subsec. (d).

2019—Pub. L. 116–92 designated existing provisions as subsec. (a), inserted heading, in introductory provisions substituted ''The Secretary of Defense, in consultation with the Secretary of Homeland Security,'' for ''The Secretary of Defense'' and inserted ''(including with respect to the Coast Guard)'' after ''military justice system'', in par. (4) inserted ''public'' before ''access to docket information'', and added subsecs. (b) and (c).

EFFECTIVE DATE

Pub. L. 114–328, div. E, title LXI, § 5504(b), Dec. 23, 2016, 130 Stat. 2961, provided that:

''(1) IN GENERAL.—Not later than 2 years after the date of the enactment of this Act [Dec. 23, 2016], the Secretary of Defense shall carry out section 940a of title 10, United States Code (article 140a of the Uniform Code of Military Justice), as added by subsection (a).

''(2) STANDARDS AND CRITERIA.—Not later than 4 years after the date of the enactment of this Act, the standards and criteria under section 940a of title 10, United States Code (article 140a of the Uniform Code of Military Justice), as added by subsection (a), shall take effect.''

Except as otherwise provided, section effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. 13825, set out as notes under section 801 of this title.

APPLICATION OF EXISTING STANDARDS AND CRITERIA TO COAST GUARD

Pub. L. 116–92, div. A, title V, § 534(b), Dec. 20, 2019, 133 Stat. 1362, provided that: ''The Secretary of Homeland Security shall apply to the Coast Guard the standards and criteria for conduct established by the Secretary of Defense under section 940a of title 10, United States Code (article 140a of the Uniform Code of Military Justice), as in effect on the day before the date of the enactment of this Act [Dec. 20, 2019], until such time as the Secretary of Defense, in consultation with the Secretary of Homeland Security, prescribes revised standards and criteria for conduct under such section that implement the amendments made by subsection (a) of this section [amending this section].''

SUBCHAPTER XII—UNITED STATES COURT OF APPEALS FOR THE ARMED FORCES

Sec.	Art.	
941.	141.	Status.
942.	142.	Judges.
943.	143.	Organization and employees.
944.	144.	Procedure.
945.	145.	Annuities for judges and survivors.
946.	146.	Military Justice Review Panel.
946a.	146a.	Annual reports.

AMENDMENTS

2017—Pub. L. 115–91, div. A, title X, § 1081(d)(19)(A), Dec. 12, 2017, 131 Stat. 1601, made technical amendment to Pub. L. 114–328, § 5541(8). See 2016 Amendment note below.

2016—Pub. L. 114–328, div. E, title LXIII, § 5541(8), Dec. 23, 2016, 130 Stat. 2967, as amended by Pub. L. 115–91, div. A, title X, § 1081(d)(19)(A), Dec. 12, 2017, 131 Stat. 1601, added item 946a and substituted ''Military Justice Review Panel'' for ''Code committee'' in item 946.

1994—Pub. L. 103–337, div. A, title IX, § 924(c)(3)(A), Oct. 5, 1994, 108 Stat. 2831, substituted ''UNITED STATES COURT OF APPEALS FOR THE ARMED FORCES'' for ''COURT OF MILITARY APPEALS'' as subchapter heading.

1990—Pub. L. 101–510, div. A, title XIV, §1484(i)(2), Nov. 5, 1990, 104 Stat. 1718, redesignated subchapter XI as XII.

§ 941. Art. 141. Status

There is a court of record known as the United States Court of Appeals for the Armed Forces. The court is established under article I of the Constitution. The court is located for administrative purposes only in the Department of Defense.

(Added Pub. L. 101–189, div. A, title XIII, §1301(c), Nov. 29, 1989, 103 Stat. 1570; amended Pub. L. 103–337, div. A, title IX, §924(a)(2), Oct. 5, 1994, 108 Stat. 2831.)

AMENDMENTS

1994—Pub. L. 103–337 substituted "Court of Appeals for the Armed Forces" for "Court of Military Appeals".

CHANGE OF NAME

Pub. L. 103–337, div. A, title IX, §924(a)(1), Oct. 5, 1994, 108 Stat. 2831, provided that: "The United States Court of Military Appeals shall hereafter be known and designated as the United States Court of Appeals for the Armed Forces."

§ 942. Art. 142. Judges

(a) NUMBER.—The United States Court of Appeals for the Armed Forces consists of five judges.

(b) APPOINTMENT; QUALIFICATION.—(1) Each judge of the court shall be appointed from civilian life by the President, by and with the advice and consent of the Senate, for a specified term determined under paragraph (2). A judge may serve as a senior judge as provided in subsection (e).

(2)(A) The term of a judge shall expire as follows:

(i) In the case of a judge who is appointed after January 31 and before July 31 of any year, the term shall expire on July 31 of the year in which the fifteenth anniversary of the appointment occurs.

(ii) In the case of a judge who is appointed after July 31 of any year and before February 1 of the following year, the term shall expire fifteen years after such July 31.

(B) If at the time of the appointment of a judge the date that is otherwise applicable under subparagraph (A) for the expiration of the term of service of the judge is the same as the date for the expiration of the term of service of a judge already on the court, then the term of the judge being appointed shall expire on the first July 31 after such date on which no term of service of a judge already on the court will expire.

(3) No person may be appointed to be a judge of the court unless the person is a member of the bar of a Federal court or the highest court of a State.

(4) A person may not be appointed as a judge of the court within seven years after retirement from active duty as a commissioned officer of a regular component of an armed force.

(c) REMOVAL.—Judges of the court may be removed from office by the President, upon notice and hearing, for—

(1) neglect of duty;

(2) misconduct; or

(3) mental or physical disability.

A judge may not be removed by the President for any other cause.

(d) PAY AND ALLOWANCES.—Each judge of the court is entitled to the same salary and travel allowances as are, and from time to time may be, provided for judges of the United States Courts of Appeals.

(e) SENIOR JUDGES.—(1)(A) A former judge of the court who is receiving retired pay or an annuity under section 945 of this title (article 145) or under subchapter III of chapter 83 or chapter 84 of title 5 shall be a senior judge. The chief judge of the court may call upon an individual who is a senior judge of the court under this subparagraph, with the consent of the senior judge, to perform judicial duties with the court—

(i) during a period a judge of the court is unable to perform his duties because of illness or other disability;

(ii) during a period in which a position of judge of the court is vacant; or

(iii) in any case in which a judge of the court recuses himself.

(B) If, at the time the term of a judge expires, no successor to that judge has been appointed, the chief judge of the court may call upon that judge (with that judge's consent) to continue to perform judicial duties with the court until the vacancy is filled. A judge who, upon the expiration of the judge's term, continues to perform judicial duties with the court without a break in service under this subparagraph shall be a senior judge while such service continues.

(2) A senior judge shall be paid for each day on which he performs judicial duties with the court an amount equal to the difference between—

(A) the daily equivalent of the annual rate of pay provided for a judge of the court; and

(B) the daily equivalent of the annuity of the judge under section 945 of this title (article 145), the applicable provisions of title 5, or any other retirement system for employees of the Federal Government under which the senior judge receives an annuity.

(3) A senior judge, while performing duties referred to in paragraph (1), shall be provided with such office space and staff assistance as the chief judge considers appropriate and shall be entitled to the per diem, travel allowances, and other allowances provided for judges of the court.

(4) A senior judge shall be considered to be an officer or employee of the United States with respect to his status as a senior judge, but only during periods the senior judge is performing duties referred to in paragraph (1). For the purposes of section 205 of title 18, a senior judge shall be considered to be a special government employee during such periods. Any provision of law that prohibits or limits the political or business activities of an employee of the United States shall apply to a senior judge only during such periods.

(5) The court shall prescribe rules for the use and conduct of senior judges of the court. The chief judge of the court shall transmit such rules, and any amendments to such rules, to the Committee on Armed Services of the Senate and

the Committee on Armed Services of the House of Representatives not later than 15 days after the issuance of such rules or amendments, as the case may be.

(6) For purposes of subchapter III of chapter 83 of title 5 (relating to the Civil Service Retirement and Disability System) and chapter 84 of such title (relating to the Federal Employees' Retirement System) and for purposes of any other Federal Government retirement system for employees of the Federal Government—

(A) a period during which a senior judge performs duties referred to in paragraph (1) shall not be considered creditable service;

(B) no amount shall be withheld from the pay of a senior judge as a retirement contribution under section 8334, 8343, 8422, or 8432 of title 5 or under any other such retirement system for any period during which the senior judge performs duties referred to in paragraph (1);

(C) no contribution shall be made by the Federal Government to any retirement system with respect to a senior judge for any period during which the senior judge performs duties referred to in paragraph (1); and

(D) a senior judge shall not be considered to be a reemployed annuitant for any period during which the senior judge performs duties referred to in paragraph (1).

(f) SERVICE OF ARTICLE III JUDGES.—(1) The Chief Justice of the United States, upon the request of the chief judge of the court, may designate a judge of a United States court of appeals or of a United States district court to perform the duties of judge of the United States Court of Appeals for the Armed Forces—

(A) during a period a judge of the court is unable to perform his duties because of illness or other disability;

(B) in any case in which a judge of the court recuses himself; or

(C) during a period when there is a vacancy on the court and in the opinion of the chief judge of the court such a designation is necessary for the proper dispatch of the business of the court.

(2) The chief judge of the court may not request that a designation be made under paragraph (1) unless the chief judge has determined that no person is available to perform judicial duties with the court as a senior judge under subsection (e).

(3) A designation under paragraph (1) may be made only with the consent of the designated judge and the concurrence of the chief judge of the court of appeals or district court concerned.

(4) Per diem, travel allowances, and other allowances paid to the designated judge in connection with the performance of duties for the court shall be paid from funds available for the payment of per diem and such allowances for judges of the court.

(g) EFFECT OF VACANCY ON COURT.—A vacancy on the court does not impair the right of the remaining judges to exercise the powers of the court.

(Added Pub. L. 101–189, div. A, title XIII, §1301(c), Nov. 29, 1989, 103 Stat. 1570; amended Pub. L. 101–510, div. A, title V, §541(f), Nov. 5, 1990, 104 Stat. 1565; Pub. L. 102–190, div. A, title X, §1061(b)(1)(A), (B), (2), Dec. 5, 1991, 105 Stat. 1474; Pub. L. 103–337, div. A, title IX, §924(c)(1), Oct. 5, 1994, 108 Stat. 2831; Pub. L. 104–106, div. A, title XV, §1502(a)(2), Feb. 10, 1996, 110 Stat. 502; Pub. L. 106–65, div. A, title X, §1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 113–66, div. A, title V, §531(a), Dec. 26, 2013, 127 Stat. 759; Pub. L. 113–291, div. A, title V, §540(a), Dec. 19, 2014, 128 Stat. 3371; Pub. L. 114–328, div. A, title V, §541(b)(2), (c), (d), Dec. 23, 2016, 130 Stat. 2125.)

AMENDMENTS

2016—Subsec. (b)(2). Pub. L. 114–328, §541(b)(2), designated existing provisions as subpar. (A), redesignated former subpars. (A) and (B) as cls. (i) and (ii), respectively, of subpar. (A), realigned margins, and added subpar. (B).

Subsec. (b)(3). Pub. L. 114–328, §541(c), substituted "No" for "Not more than three of the judges of the court may be appointed from the same political party, and no".

Subsec. (e)(2). Pub. L. 114–328, §541(d), substituted "equal to the difference between—" and subpars. (A) and (B) for "equal to the daily equivalent of the annual rate of pay provided for a judge of the court. Such pay shall be in lieu of retired pay and in lieu of an annuity under section 945 of this title (article 145), subchapter III of chapter 83 or subchapter II of chapter 84 of title 5, or any other retirement system for employees of the Federal Government."

2014—Subsec. (b)(2)(A). Pub. L. 113–291, §540(a)(1), substituted "January 31" for "March 31", "July 31 of any year" for "October 1 of any year", and "July 31 of the year" for "September 30 of the year".

Subsec. (b)(2)(B). Pub. L. 113–291, §540(a)(2), substituted "July 31" for "September 30" in two places and "February 1" for "April 1".

2013—Subsec. (b)(4). Pub. L. 113–66 amended par. (4) generally. Prior to amendment, par. (4) read as follows: "For purposes of appointment of judges to the court, a person retired from the armed forces after 20 or more years of active service (whether or not such person is on the retired list) shall not be considered to be in civilian life."

1999—Subsec. (e)(5). Pub. L. 106–65 substituted "and the Committee on Armed Services" for "and the Committee on National Security".

1996—Subsec. (e)(5). Pub. L. 104–106 substituted "Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives" for "Committees on Armed Services of the Senate and the House of Representatives".

1994—Subsecs. (a), (f)(1). Pub. L. 103–337 substituted "Court of Appeals for the Armed Forces" for "Court of Military Appeals".

1991—Subsec. (e)(1). Pub. L. 102–190, §1061(b)(1)(A)(i)–(iv), designated existing provisions as subpar. (A), struck out "(2)(A)" before "The chief judge", moved sentence beginning "The chief judge of the court" to end of par. (1)(A), substituted "an individual who is a senior judge of the court under this subparagraph" for "a senior judge of the court", and added subpar. (B).

Subsec. (e)(2). Pub. L. 102–190, §1061(b)(1)(A)(ii), (v), redesignated par. (2)(B) as (2) and incorporated former par. (2)(A) into par. (1)(A).

Subsec. (e)(3), (4), (6). Pub. L. 102–190, §1061(b)(1)(B), substituted "paragraph (1)" for "paragraph (2)" wherever appearing.

Subsec. (f)(1)(C). Pub. L. 102–190, §1061(b)(2)(A), added subpar. (C).

Subsec. (f)(2) to (4). Pub. L. 102–190, §1061(b)(2)(B), (C), added par. (2) and redesignated former pars. (2) and (3) as (3) and (4), respectively.

1990—Subsec. (b)(1). Pub. L. 101–510, §541(f)(1), substituted "civilian life" for "civil life".

Subsec. (b)(4). Pub. L. 101–510, §541(f)(2), added par. (4).

Effective Date of 2016 Amendment

Pub. L. 114–328, div. A, title V, § 541(b)(3), Dec. 23, 2016, 130 Stat. 2125, provided that: ''The amendments made by paragraph (2) [amending this section] shall apply with respect to appointments to the United States Court of Appeals for the Armed Forces that are made on or after the date of the enactment of this Act [Dec. 23, 2016].''

Effective Date of 2013 Amendment

Pub. L. 113–66, div. A, title V, § 531(b), Dec. 26, 2013, 127 Stat. 759, provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Dec. 26, 2013], and shall apply with respect to appointments to the United States Court of Appeals for the Armed Forces that occur on or after that date.''

Effective Date of 1991 Amendment

Pub. L. 102–190, div. A, title X, § 1061(b)(1)(D), Dec. 5, 1991, 105 Stat. 1474, provided that: ''The amendments made by this paragraph [amending this section and section 945 of this title] shall take effect as of November 29, 1989.''

Effective Date for Repeal of Termination of Authority for Chief Justice of United States To Designate Article III Judges for Temporary Service on Court of Appeals for the Armed Forces

Pub. L. 104–201, div. A, title X, § 1074(c)(2), Sept. 23, 1996, 110 Stat. 2660, provided that: ''The authority provided under section 942(f) of title 10, United States Code, shall be effective as if section 1142 of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104–106; 110 Stat. 467) [repealing section 1301(i) of Pub. L. 101–189, set out below] had been enacted on September 29, 1995.''

Saving Provision

Pub. L. 113–291, div. A, title V, § 540(b), Dec. 19, 2014, 128 Stat. 3371, provided that: ''No person who is serving as a judge of the court on the date of the enactment of this Act [Dec. 19, 2014], and no survivor of any such person, shall be deprived of any annuity provided by section 945 of title 10, United States Code, by the operation of the amendments made by subsection (a) [amending this section].''

Early Retirement Authorized for One Current Judge

Pub. L. 114–328, div. A, title V, § 541(b)(1), Dec. 23, 2016, 130 Stat. 2125, provided that: ''If the judge of the United States Court of Appeals for the Armed Forces who is the junior in seniority of the two judges of the court whose terms of office under section 942(b)(2) of title 10, United States Code (article 142(b)(2) of the Uniform Code of Military Justice), expire on July 31, 2021, chooses to retire one year early, that judge—

''(A) may retire from service on the court effective August 1, 2020; and

''(B) shall be treated, upon such retirement, for all purposes as having completed a term of service for which the judge was appointed as a judge of the court.''

Transitional Provisions

Pub. L. 101–189, div. A, title XIII, § 1301(d)–(i), Nov. 29, 1989, 103 Stat. 1574–1576, as amended by Pub. L. 104–106, div. A, title XI, § 1142, Feb. 10, 1996, 110 Stat. 467; Pub. L. 104–201, div. A, title X, § 1068(c), Sept. 23, 1996, 110 Stat. 2655, provided that:

''(d) Transition From Three-Judge Court to Five-Judge Court.—(1) Effective during the period before October 1, 1990—

''(A) the number of members of the United States Court of Military Appeals [now United States Court of Appeals for the Armed Forces] shall (notwithstanding subsection (a) of section 942 of title 10, United States Code, as enacted by subsection (c)) be three; and

''(B) the maximum number of members of the court who may be appointed from the same political party shall (notwithstanding subsection (b)(3) of section 942) be two.

''(2) In the application of paragraph (2) of section 942(b) of title 10, United States Code (as enacted by subsection (c)) to the judge who is first appointed to one of the two new positions of the court created as of October 1, 1990, as designated by the President at the time of appointment, the anniversary referred to in subparagraph (A) of that paragraph shall be treated as being the seventh anniversary and the number of years referred to in subparagraph (B) of that paragraph shall be treated as being seven.

''(e) Transition Rules Relating to Retirement of New Judges.—(1) Except as otherwise provided in paragraphs (2) and (3), a judge to whom subsection (d)(2) applies shall be eligible for an annuity as provided in section 945 of title 10, United States Code, as enacted by subsection (c).

''(2) The annuity of a judge referred to in paragraph (1) is computed under subsection (b) of such section 945 only if the judge—

''(A) completes the term of service for which he is first appointed;

''(B) is reappointed as a judge of the United States Court of Military Appeals [now United States Court of Appeals for the Armed Forces] at any time after the completion of such term of service;

''(C) is separated from civilian service in the Federal Government after completing a total of 15 years as a judge of such court; and

''(D) elects to receive an annuity under such section in accordance with subsection (a)(2) of such section.

''(3) In the case of a judge referred to in paragraph (1) who is separated from civilian service after completing the term of service for which he is first appointed as a judge of the United States Court of Military Appeals [now United States Court of Appeals for the Armed Forces] and before completing a total of 15 years as a judge of such court, the annuity of such judge (if elected in accordance with section 945(a)(2) of title 10, United States Code) shall be $\frac{1}{15}$ of the amount computed under subsection (b) of such section times the number of years (including any fraction thereof) of such judge's service as a judge of the court.

''(f) Applicability of Amended Retirement Provisions.—Except as otherwise provided in subsections (c) and (d), section 945 of title 10, United States Code, as enacted by subsection (c), applies with respect to judges of the United States Court of Military Appeals [now United States Court of Appeals for the Armed Forces] whose terms of service on such court end after September 28, 1988, and to the survivors of such judges.

''(g) Terms of Current Judges.—Section 942(b) of title 10, United States Code, as enacted by subsection (c), shall not apply to the term of office of a judge of the United States Court of Military Appeals [now United States Court of Appeals for the Armed Forces] serving on such court on the date of the enactment of this Act [Nov. 29, 1989]. The term of office of such a judge shall expire on the later of (A) the date the term of such judge would have expired under section 867(a)(1) of title 10, United States Code, as in effect on the day before such date of enactment, or (B) September 30 of the year in which the term of such judge would have expired under such section 867(a)(1).

''(h) Civil Service Status of Current Employees.—Section 943(c) of title 10, United States Code, as enacted by subsection (c), shall not be applied to change the civil service status of any attorney who is an employee of the United States Court of Military Appeals [now United States Court of Appeals for the Armed Forces] on the day before the date of the enactment of this Act [Nov. 29, 1989].''

§ 943. Art. 143. Organization and employees

(a) CHIEF JUDGE.—(1) The chief judge of the United States Court of Appeals for the Armed Forces shall be the judge of the court in regular active service who is senior in commission among the judges of the court who—

(A) have served for one or more years as judges of the court; and

(B) have not previously served as chief judge.

(2) In any case in which there is no judge of the court in regular active service who has served as a judge of the court for at least one year, the judge of the court in regular active service who is senior in commission and has not served previously as chief judge shall act as the chief judge.

(3) Except as provided in paragraph (4), a judge of the court shall serve as the chief judge under paragraph (1) for a term of five years. If no other judge is eligible under paragraph (1) to serve as chief judge upon the expiration of that term, the chief judge shall continue to serve as chief judge until another judge becomes eligible under that paragraph to serve as chief judge.

(4)(A) The term of a chief judge shall be terminated before the end of five years if—

(i) the chief judge leaves regular active service as a judge of the court; or

(ii) the chief judge notifies the other judges of the court in writing that such judge desires to be relieved of his duties as chief judge.

(B) The effective date of a termination of the term under subparagraph (A) shall be the date on which the chief judge leaves regular active service or the date of the notification under subparagraph (A)(ii), as the case may be.

(5) If a chief judge is temporarily unable to perform his duties as a chief judge, the duties shall be performed by the judge of the court in active service who is present, able and qualified to act, and is next in precedence.

(b) PRECEDENCE OF JUDGES.—The chief judge of the court shall have precedence and preside at any session that he attends. The other judges shall have precedence and preside according to the seniority of their original commissions. Judges whose commissions bear the same date shall have precedence according to seniority in age.

(c) STATUS OF CERTAIN POSITIONS.—(1) Attorney positions of employment under the Court of Appeals for the Armed Forces are excepted from the competitive service. A position of employment under the court that is provided primarily for the service of one judge of the court, reports directly to the judge, and is a position of a confidential character is excepted from the competitive service. Appointments to positions referred to in the preceding sentences shall be made by the court, without the concurrence of any other officer or employee of the executive branch, in the same manner as appointments are made to other executive branch positions of a confidential or policy-determining character for which it is not practicable to examine or to hold a competitive examination. Such positions shall not be counted as positions of that character for purposes of any limitation on the number of positions of that character provided in law.

(2) In making appointments to the positions described in paragraph (1), preference shall be given, among equally qualified persons, to persons who are preference eligibles (as defined in section 2108(3) of title 5).

(Added Pub. L. 101–189, div. A, title XIII, § 1301(c), Nov. 29, 1989, 103 Stat. 1572; amended Pub. L. 102–484, div. A, title X, § 1061(a)(1), Oct. 23, 1992, 106 Stat. 2503; Pub. L. 103–337, div. A, title IX, § 924(c)(1), Oct. 5, 1994, 108 Stat. 2831; Pub. L. 104–201, div. A, title X, § 1068(b), Sept. 23, 1996, 110 Stat. 2655; Pub. L. 105–85, div. A, title X, § 1073(a)(11), Nov. 18, 1997, 111 Stat. 1900.)

AMENDMENTS

1997—Subsec. (c). Pub. L. 105–85 made technical amendment to heading and substituted ''under the court'' for ''under the Court'' in second sentence and ''positions referred to in the preceding sentences'' for ''such positions'' in third sentence.

1996—Subsec. (c). Pub. L. 104–201 substituted ''Certain'' for ''Attorney'' in heading and inserted ''A position of employment under the Court that is provided primarily for the service of one judge of the court, reports directly to the judge, and is a position of a confidential character is excepted from the competitive service.'' after first sentence in par. (1).

1994—Subsecs. (a)(1), (c). Pub. L. 103–337 substituted ''Court of Appeals for the Armed Forces'' for ''Court of Military Appeals''.

1992—Subsec. (a). Pub. L. 102–484 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''CHIEF JUDGE.—The President shall designate from time to time one of the judges of the United States Court of Military Appeals to be chief judge of the court.''

TRANSITION PROVISION

Pub. L. 102–484, div. A, title X, § 1061(b), Oct. 23, 1992, 106 Stat. 2504, provided that: ''For purposes of section 943(a) (article 943(a)) of title 10, United States Code, as amended by subsection (a)—

''(1) the person serving as the chief judge of the United States Court of Military Appeals [now United States Court of Appeals for the Armed Forces] on the date of the enactment of this Act [Oct. 23, 1992] shall be deemed to have been designated as the chief judge under such section; and

''(2) the five-year term provided in paragraph (3) of such section shall be deemed to have begun on the date on which such judge was originally designated as the chief judge under section 867(a) or 943 of title 10, United States Code, as the case may be, as that provision of law was in effect on the date of the designation.''

INAPPLICABILITY OF SUBSECTION (c)

Subsec. (c) of this section not to be applied to change civil service status of any attorney who is an employee of United States Court of Military Appeals [now United States Court of Appeals for the Armed Forces] on Nov. 28, 1989, see section 1301(h) of Pub. L. 101–189, set out as a Transitional Provisions note under section 942 of this title.

§ 944. Art. 144. Procedure

The United States Court of Appeals for the Armed Forces may prescribe its rules of procedure and may determine the number of judges required to constitute a quorum.

(Added Pub. L. 101–189, div. A, title XIII, § 1301(c), Nov. 29, 1989, 103 Stat. 1572; amended Pub. L. 103–337, div. A, title IX, § 924(c)(1), Oct. 5, 1994, 108 Stat. 2831.)

AMENDMENTS

1994—Pub. L. 103–337 substituted ''Court of Appeals for the Armed Forces'' for ''Court of Military Appeals''.

§945. Art. 145. Annuities for judges and survivors

(a) RETIREMENT ANNUITIES FOR JUDGES.—(1) A person who has completed a term of service for which he was appointed as a judge of the United States Court of Appeals for the Armed Forces is eligible for an annuity under this section upon separation from civilian service in the Federal Government. A person who continues service with the court as a senior judge under section 942(e)(1)(B) of this title (article 142(e)(1)(B)) upon the expiration of the judge's term shall be considered to have been separated from civilian service in the Federal Government only upon the termination of that continuous service.

(2) A person who is eligible for an annuity under this section shall be paid that annuity if, at the time he becomes eligible to receive that annuity, he elects to receive that annuity in lieu of any other annuity for which he may be eligible at the time of such election (whether an immediate or a deferred annuity) under subchapter III of chapter 83 or subchapter II of chapter 84 of title 5 or any other retirement system for civilian employees of the Federal Government. Such an election may not be revoked.

(3)(A) The Secretary of Defense shall notify the Director of the Office of Personnel Management whenever an election under paragraph (2) is made affecting any right or interest under subchapter III of chapter 83 or subchapter II of chapter 84 of title 5 based on service as a judge of the United States Court of Appeals for the Armed Forces.

(B) Upon receiving any notification under subparagraph (A) in the case of a person making an election under paragraph (2), the Director shall determine the amount of the person's lump-sum credit under subchapter III of chapter 83 or subchapter II of chapter 84 of title 5, as applicable, and shall request the Secretary of the Treasury to transfer such amount from the Civil Service Retirement and Disability Fund to the Department of Defense Military Retirement Fund. The Secretary of the Treasury shall make any transfer so requested.

(C) In determining the amount of a lump-sum credit under section 8331(8) of title 5 for purposes of this paragraph—

(i) interest shall be computed using the rates under section 8334(e)(3) of such title; and

(ii) the completion of 5 years of civilian service (or longer) shall not be a basis for excluding interest.

(b) AMOUNT OF ANNUITY.—The annuity payable under this section to a person who makes an election under subsection (a)(2) is 80 percent of the rate of pay for a judge in active service on the United States Court of Appeals for the Armed Forces as of the date on which the person is separated from civilian service.

(c) RELATION TO THRIFT SAVINGS PLAN.—Nothing in this section affects any right of any person to participate in the thrift savings plan under section 8351 of title 5 or subchapter III of chapter 84 of such title.

(d) SURVIVOR ANNUITIES.—The Secretary of Defense shall prescribe by regulation a program to provide annuities for survivors and former spouses of persons receiving annuities under this section by reason of elections made by such persons under subsection (a)(2). That program shall, to the maximum extent practicable, provide benefits and establish terms and conditions that are similar to those provided under survivor and former spouse annuity programs under other retirement systems for civilian employees of the Federal Government. The program may include provisions for the reduction in the annuity paid the person as a condition for the survivor annuity. An election by a judge (including a senior judge) or former judge to receive an annuity under this section terminates any right or interest which any other individual may have to a survivor annuity under any other retirement system for civilian employees of the Federal Government based on the service of that judge or former judge as a civilian officer or employee of the Federal Government (except with respect to an election under subsection (f)(1)(B)).

(e) COST-OF-LIVING INCREASES.—The Secretary of Defense shall periodically increase annuities and survivor annuities paid under this section in order to take account of changes in the cost of living. The Secretary shall prescribe by regulation procedures for increases in annuities under this section. Such system shall, to the maximum extent appropriate, provide cost-of-living adjustments that are similar to those that are provided under other retirement systems for civilian employees of the Federal Government.

(f) ELECTION OF JUDICIAL RETIREMENT BENEFITS.—(1) A person who is receiving an annuity under this section by reason of service as a judge of the court and who later is appointed as a justice or judge of the United States to hold office during good behavior and who retires from that office, or from regular active service in that office, shall be paid either (A) the annuity under this section, or (B) the annuity or salary to which he is entitled by reason of his service as such a justice or judge of the United States, as determined by an election by that person at the time of his retirement from the office, or from regular active service in the office, of justice or judge of the United States. Such an election may not be revoked.

(2) An election by a person to be paid an annuity or salary pursuant to paragraph (1)(B) terminates (A) any election previously made by such person to provide a survivor annuity pursuant to subsection (d), and (B) any right of any other individual to receive a survivor annuity pursuant to subsection (d) on the basis of the service of that person.

(g) SOURCE OF PAYMENT OF ANNUITIES.—Annuities and survivor annuities paid under this section shall be paid out of the Department of Defense Military Retirement Fund.

(h) ELIGIBILITY TO ELECT BETWEEN RETIREMENT SYSTEMS.—(1) This subsection applies with respect to any person who—

(A) prior to being appointed as a judge of the United States Court of Appeals for the Armed Forces, performed civilian service of a type making such person subject to the Civil Service Retirement System; and

(B) would be eligible to make an election under section 301(a)(2) of the Federal Employ-

ees' Retirement System Act of 1986, by virtue of being appointed as such a judge, but for the fact that such person has not had a break in service of sufficient duration to be considered someone who is being reemployed by the Federal Government.

(2) Any person with respect to whom this subsection applies shall be eligible to make an election under section 301(a)(2) of the Federal Employees' Retirement System Act of 1986 to the same extent and in the same manner (including subject to the condition set forth in section 301(d) of such Act) as if such person's appointment constituted reemployment with the Federal Government.

(Added Pub. L. 101–189, div. A, title XIII, §1301(c), Nov. 29, 1989, 103 Stat. 1572; amended Pub. L. 102–190, div. A, title X, §1061(b)(1)(C), Dec. 5, 1991, 105 Stat. 1474; Pub. L. 102–484, div. A, title X, §§1052(11), 1062(a)(1), Oct. 23, 1992, 106 Stat. 2499, 2504; Pub. L. 103–337, div. A, title IX, §924(c)(1), Oct. 5, 1994, 108 Stat. 2831; Pub. L. 114–328, div. A, title V, §541(e), Dec. 23, 2016, 130 Stat. 2125.)

REFERENCES IN TEXT

Section 301(a)(2) and (d) of the Federal Employees' Retirement System Act of 1986, referred to in subsec. (h), is section 301(a)(2) and (d) of Pub. L. 99–335, which is set out in a note under section 8331 of Title 5, Government Organization and Employees.

AMENDMENTS

2016—Subsec. (d). Pub. L. 114–328, §541(e)(1), substituted ''subsection (f)(1)(B)'' for ''subsection (g)(1)(B)''.

Subsecs. (f) to (i). Pub. L. 114–328, §541(e)(2), (3), redesignated subsecs. (g) to (i) as (f) to (h), respectively, and struck out former subsec. (f). Prior to amendment, text of subsec. (f) read as follows: ''A person who is receiving an annuity under this section by reason of service as a judge of the court and who is appointed to a position in the Federal Government shall, during the period of such person's service in such position, be entitled to receive only the annuity under this section or the pay for that position, whichever is higher.''

1994—Subsecs. (a)(1), (3)(A), (b), (i)(1)(A). Pub. L. 103–337 substituted ''Court of Appeals for the Armed Forces'' for ''Court of Military Appeals''.

1992—Subsec. (a)(1). Pub. L. 102–484, §1052(11), substituted ''section 942(e)(1)(B) of this title (article 142(e)(1)(B))'' for ''section 943(e)(1)(B) of this title (art. 143(e)(1)(B))''.

Subsec. (i). Pub. L. 102–484, §1062(a)(1), added subsec. (i).

1991—Subsec. (a)(1). Pub. L. 102–190 inserted at end ''A person who continues service with the court as a senior judge under section 943(e)(1)(B) of this title (art. 143(e)(1)(B)) upon the expiration of the judge's term shall be considered to have been separated from civilian service in the Federal Government only upon the termination of that continuous service.''

EFFECTIVE DATE OF 1992 AMENDMENT

Pub. L. 102–484, div. A, title X, §1062(a)(2), Oct. 23, 1992, 106 Stat. 2505, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply with respect to any appointment which takes effect on or after the date of the enactment of this Act [Oct. 23, 1992].''

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–190 effective Nov. 29, 1989, see section 1061(b)(1)(D) of Pub. L. 102–190, set out as a note under section 942 of this title.

EFFECTIVE DATE

Except as otherwise provided, section applicable with respect to judges of United States Court of Military Appeals [now United States Court of Appeals for the Armed Forces] whose terms of service on such court end after Sept. 28, 1988, and to survivors of such judges, see section 1301(f) of Pub. L. 101–189, set out as a Transitional Provisions note under section 942 of this title.

ADDITIONAL ELECTIONS

Pub. L. 102–484, div. A, title X, §1062(b), Oct. 23, 1992, 106 Stat. 2505, provided that:

''(1) Any individual who is a judge in active service on the United States Court of Military Appeals [now United States Court of Appeals for the Armed Forces] shall be eligible to make an election under section 301(a)(2) of the Federal Employees' Retirement System Act of 1986 [Pub. L. 99–335, 5 U.S.C. 8331 note] if—

''(A) such individual is such a judge on the date of the enactment of this Act [Oct. 23, 1992]; and

''(B) as of the date of the election, such individual is—

''(i) subject to the Civil Service Retirement System; or

''(ii) covered by Social Security but not subject to the Federal Employees' Retirement System.

''(2) An election under this subsection—

''(A) shall not be effective unless it is—

''(i) made within 30 days after the date of the enactment of this Act; and

''(ii) in compliance with the condition set forth in section 301(d) of the Federal Employees' Retirement System Act of 1986 [Pub. L. 99–335, 5 U.S.C. 8331 note]; and

''(B) may not be revoked.

''(3) For the purpose of this subsection, a judge of the United States Court of Military Appeals [now United States Court of Appeals for the Armed Forces] shall be considered to be 'covered by Social Security' if such judge's service is employment for the purposes of title II of the Social Security Act [42 U.S.C. 401 et seq.] and chapter 21 of the Internal Revenue Code of 1986 [26 U.S.C. 3101 et seq.].''

§946. Art. 146. Military Justice Review Panel

(a) ESTABLISHMENT.—The Secretary of Defense shall establish a panel to conduct independent periodic reviews and assessments of the operation of this chapter. The panel shall be known as the ''Military Justice Review Panel'' (in this section referred to as the ''Panel'').

(b) MEMBERS.—

(1) NUMBER OF MEMBERS.—The Panel shall be composed of thirteen members.

(2) APPOINTMENT OF CERTAIN MEMBERS.—Each of the following shall appoint one member of the Panel:

(A) The Secretary of Defense (in consultation with the Secretary of the department in which the Coast Guard is operating when it is not operating as a service in the Navy).

(B) The Attorney General.

(C) The Judge Advocates General of the Army, Navy, Air Force, and Coast Guard, and the Staff Judge Advocate to the Commandant of the Marine Corps.

(3) APPOINTMENT OF REMAINING MEMBERS BY SECRETARY OF DEFENSE.—The Secretary of Defense shall appoint the remaining members of the Panel, taking into consideration recommendations made by each of the following:

(A) The chairman and ranking minority member of the Committee on Armed Services of the Senate and the Committee on

Armed Services of the House of Representatives.

(B) The Chief Justice of the United States.

(C) The Chief Judge of the United States Court of Appeals for the Armed Forces.

(c) QUALIFICATIONS OF MEMBERS.—The members of the Panel shall be appointed from among private United States citizens with expertise in criminal law, as well as appropriate and diverse experience in investigation, prosecution, defense, victim representation, or adjudication with respect to courts-martial, Federal civilian courts, or State courts.

(d) CHAIR.—The Secretary of Defense shall select the chair of the Panel from among the members.

(e) TERM; VACANCIES.—Each member shall be appointed for a term of eight years, and no member may serve more than one term. Any vacancy shall be filled in the same manner as the original appointment.

(f) REVIEWS AND REPORTS.—

(1) INITIAL REVIEW OF RECENT AMENDMENTS TO UCMJ.—During fiscal year 2021, the Panel shall conduct an initial review and assessment of the implementation of the amendments made to this chapter during the preceding five years. In conducting the initial review and assessment, the Panel may review such other aspects of the operation of this chapter as the Panel considers appropriate.

(2) SENTENCING DATA COLLECTION AND REPORT.—During fiscal year 2020, the Panel shall gather and analyze sentencing data collected from each of the armed forces from general and special courts-martial applying offense-based sentencing under section 856 of this title (article 56). The sentencing data shall include the number of accused who request member sentencing and the number who request sentencing by military judge alone, the offenses which the accused were convicted of, and the resulting sentence for each offense in each case. The Judge Advocates General and the Staff Judge Advocate to the Commandant of the Marine Corps shall provide the sentencing data in the format and for the duration established by the chair of the Panel. The analysis under this paragraph shall be included in the assessment required by paragraph (1).

(3) PERIODIC COMPREHENSIVE REVIEWS.—During fiscal year 2024 and every eight years thereafter, the Panel shall conduct a comprehensive review and assessment of the operation of this chapter.

(4) PERIODIC INTERIM REVIEWS.—During fiscal year 2028 and every eight years thereafter, the Panel shall conduct an interim review and assessment of such other aspects of the operation of this chapter as the Panel considers appropriate. In addition, at the request of the Secretary of Defense, the Panel may, at any time, review and assess other specific matters relating to the operation of this chapter.

(5) REPORTS.—With respect to each review and assessment under this subsection, the Panel shall submit a report to the Committees on Armed Services of the Senate and the House of Representatives. Each report—

(A) shall set forth the results of the review and assessment concerned, including the findings and recommendations of the Panel; and

(B) shall be submitted not later than December 31 of the calendar year in which the review and assessment is concluded.

(g) HEARINGS.—The Panel may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Panel considers appropriate to carry out its duties under this section.

(h) INFORMATION FROM FEDERAL AGENCIES.—Upon request of the chair of the Panel, a department or agency of the Federal Government shall provide information that the Panel considers necessary to carry out its duties under this section.

(i) ADMINISTRATIVE MATTERS.—

(1) MEMBERS TO SERVE WITHOUT PAY.—Members of the Panel shall serve without pay, but shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, while away from their homes or regular places of business in the performance of services for the Panel.

(2) STAFFING AND RESOURCES.—The Secretary of Defense shall provide staffing and resources to support the Panel.

(j) FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Panel.

(Added Pub. L. 101–189, div. A, title XIII, § 1301(c), Nov. 29, 1989, 103 Stat. 1574; amended Pub. L. 103–337, div. A, title IX, § 924(c)(1), Oct. 5, 1994, 108 Stat. 2831; Pub. L. 104–106, div. A, title XV, § 1502(a)(1), Feb. 10, 1996, 110 Stat. 502; Pub. L. 106–65, div. A, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 112–239, div. A, title V, § 532, Jan. 2, 2013, 126 Stat. 1726; Pub. L. 114–328, div. E, title LXII, § 5521, Dec. 23, 2016, 130 Stat. 2962; Pub. L. 115–91, div. A, title V, § 531(k), Dec. 12, 2017, 131 Stat. 1386.)

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (j), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

AMENDMENTS

2017—Subsec. (f)(1). Pub. L. 115–91, § 531(k)(1), substituted ''fiscal year 2021'' for ''fiscal year 2020''.

Subsec. (f)(2). Pub. L. 115–91, § 531(k)(2), substituted ''The analysis under this paragraph shall be included in the assessment required by paragraph (1).'' for ''Not later than October 31, 2020, the Panel shall submit to the Committees on Armed Services of the Senate and the House of Representatives through the Secretary of Defense a report setting forth the Panel's findings and recommendations on the need for sentencing reform.''

Subsec. (f)(5). Pub. L. 115–91, § 531(k)(3), added par. (5) and struck out former par. (5). Prior to amendment, text read as follows: ''Not later than December 31 of each year during which the Panel conducts a review and assessment under this subsection, the Panel shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report setting forth the results of such review and assessment, including the Panel's findings and recommendations.''

2016—Pub. L. 114–328 amended section generally. Prior to amendment, section related to establishment, membership, and duties of Code committee.

2013—Subsec. (c)(2)(B), (C). Pub. L. 112–239 added subpar. (B) and redesignated former subpar. (B) as (C).

2002—Subsec. (c)(1)(B). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

1999—Subsec. (c)(1)(A). Pub. L. 106–65 substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security''.

1996—Subsec. (c)(1)(A). Pub. L. 104–106 substituted ''Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives'' for ''Committees on Armed Services of the Senate and House of Representatives''.

1994—Subsec. (b)(1). Pub. L. 103–337 substituted ''Court of Appeals for the Armed Forces'' for ''Court of Military Appeals''.

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by Pub. L. 115–91 effective immediately after the amendments made by div. E (§§ 5001–5542) of Pub. L. 114–328 take effect as provided for in section 5542 of that Act (10 U.S.C. 801 note), see section 531(p) of Pub. L. 115–91, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114–328 effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective Dec. 31, 2021, of provisions in subsec. (c) of this section requiring submittal of annual report to Congress, see section 1061 of Pub. L. 114–328, set out as a note under section 111 of this title.

§ 946a. Art. 146a. Annual reports

(a) COURT OF APPEALS FOR THE ARMED FORCES.—Not later than December 31 each year, the Court of Appeals for the Armed Forces shall submit a report that, with respect to the previous fiscal year, provides information on the number and status of completed and pending cases before the Court, and such other matters as the Court considers appropriate regarding the operation of this chapter.

(b) SERVICE REPORTS.—Not later than December 31 each year, the Judge Advocates General and the Staff Judge Advocate to the Commandant of the Marine Corps shall each submit a report, with respect to the preceding fiscal year, containing the following:

(1) Data on the number and status of pending cases.

(2) Information on the appellate review process, including—

(A) information on compliance with processing time goals;

(B) descriptions of the circumstances surrounding cases in which general or special court-martial convictions were (i) reversed because of command influence or denial of the right to speedy review or (ii) otherwise remitted because of loss of records of trial or other administrative deficiencies;

(C) an analysis of each case in which a provision of this chapter was held unconstitutional; and

(D) an analysis of each case in which a Court of Criminal Appeals made a final determination that a finding of a court-martial was clearly against the weight of the evidence, including an explanation of the standard of appellate review applied in such case.

(3)(A) An explanation of measures implemented by the armed force concerned to ensure the ability of judge advocates—

(i) to participate competently as trial counsel and defense counsel in cases under this chapter;

(ii) to preside as military judges in cases under this chapter; and

(iii) to perform the duties of Special Victims' Counsel, when so designated under section 1044e of this title.

(B) The explanation under subparagraph (A) shall specifically identify the measures that focus on capital cases, national security cases, sexual assault cases, and proceedings of military commissions.

(4) The independent views of each Judge Advocate General and of the Staff Judge Advocate to the Commandant of the Marine Corps as to the sufficiency of resources available within the respective armed forces, including total workforce, funding, training, and officer and enlisted grade structure, to capably perform military justice functions.

(5) Such other matters regarding the operation of this chapter as may be appropriate.

(c) SUBMISSION.—Each report under this section shall be submitted—

(1) to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives; and

(2) to the Secretary of Defense, the Secretaries of the military departments, and the Secretary of the department in which the Coast Guard is operating when it is not operating as a service in the Navy.

(Added Pub. L. 114–328, div. E, title LXII, § 5522, Dec. 23, 2016, 130 Stat. 2964; amended Pub. L. 116–283, div. A, title V, § 542(d), Jan. 1, 2021, 134 Stat. 3612.)

AMENDMENTS

2021—Subsec. (b)(2)(D). Pub. L. 116–283 added subpar. (D).

EFFECTIVE DATE

Section effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328 and Ex. Ord. 13825, set out as notes under section 801 of this title.

CHAPTER 47A—MILITARY COMMISSIONS

Subchapter		Sec.
I.	General Provisions	948a.
II.	Composition of Military Commissions	948h.
III.	Pre-Trial Procedure	948q.
IV.	Trial Procedure	949a.
V.	Classified Information Procedures	949p–1.
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VII.	Post-Trial Procedure and Review of Military Commissions	950a.[1]
VIII.	Punitive Matters	950p.

[1] Starting section number editorially supplied.

CODIFICATION

This chapter was originally added by Pub. L. 109–366, § 3(a)(1), Oct. 17, 2006, 120 Stat. 2600, and amended by Pub. L. 110–181, Jan. 28, 2008, 122 Stat. 3. This chapter is shown here, however, as having been added by Pub. L. 111–84, div. A, title XVIII, § 1802, Oct. 28, 2009, 123 Stat. 2574, without reference to those intervening amendments because of the general amendment of this chapter by Pub. L. 111–84.

AMENDMENTS

2018—Pub. L. 115–232, div. A, title X, § 1081(a)(10), Aug. 13, 2018, 132 Stat. 1983, substituted ''VII. Post-Trial Procedure and Review of Military Commissions'' for ''VII. Post-Trial Procedures and Review of Military Commissions ... 950a.'' in item relating to subchapter VII.

SUBCHAPTER I—GENERAL PROVISIONS

Sec.
948a. Definitions.
948b. Military commissions generally.
948c. Persons subject to military commissions.
948d. Jurisdiction of military commissions.

§ 948a. Definitions

In this chapter:

(1) ALIEN.—The term ''alien'' means an individual who is not a citizen of the United States.

(2) CLASSIFIED INFORMATION.—The term ''classified information'' means the following:

(A) Any information or material that has been determined by the United States Government pursuant to statute, Executive order, or regulation to require protection against unauthorized disclosure for reasons of national security.

(B) Any restricted data, as that term is defined in section 11 y. of the Atomic Energy Act of 1954 (42 U.S.C. 2014(y)).

(3) COALITION PARTNER.—The term ''coalition partner'', with respect to hostilities engaged in by the United States, means any State or armed force directly engaged along with the United States in such hostilities or providing direct operational support to the United States in connection with such hostilities.

(4) GENEVA CONVENTION RELATIVE TO THE TREATMENT OF PRISONERS OF WAR.—The term ''Geneva Convention Relative to the Treatment of Prisoners of War'' means the Convention Relative to the Treatment of Prisoners of War, done at Geneva August 12, 1949 (6 UST 3316).

(5) GENEVA CONVENTIONS.—The term ''Geneva Conventions'' means the international conventions signed at Geneva on August 12, 1949.

(6) PRIVILEGED BELLIGERENT.—The term ''privileged belligerent'' means an individual belonging to one of the eight categories enumerated in Article 4 of the Geneva Convention Relative to the Treatment of Prisoners of War.

(7) UNPRIVILEGED ENEMY BELLIGERENT.—The term ''unprivileged enemy belligerent'' means an individual (other than a privileged belligerent) who—

(A) has engaged in hostilities against the United States or its coalition partners;

(B) has purposefully and materially supported hostilities against the United States or its coalition partners; or

(C) was a part of al Qaeda at the time of the alleged offense under this chapter.

(8) NATIONAL SECURITY.—The term ''national security'' means the national defense and foreign relations of the United States.

(9) HOSTILITIES.—The term ''hostilities'' means any conflict subject to the laws of war.

(Added Pub. L. 111–84, div. A, title XVIII, § 1802, Oct. 28, 2009, 123 Stat. 2574.)

PRIOR PROVISIONS

A prior section 948a, added Pub. L. 109–366, § 3(a)(1), Oct. 17, 2006, 120 Stat. 2601, related to definitions, prior to the general amendment of this chapter by Pub. L. 111–84.

SHORT TITLE OF 2009 AMENDMENT

Pub. L. 111–84, div. A, title XVIII, § 1801, Oct. 28, 2009, 123 Stat. 2574, provided that: ''This title [enacting this chapter, amending sections 802 and 839 of this title, enacting provisions set out as notes under this section, and amending provisions set out as a note under section 801 of this title] may be cited as the 'Military Commissions Act of 2009'.''

SHORT TITLE OF 2006 AMENDMENT

Pub. L. 109–366, § 1(a), Oct. 17, 2006, 120 Stat. 2600, provided that: ''This Act [see Tables for classification] may be cited as the 'Military Commissions Act of 2006'.''

PROHIBITION ON ENFORCEMENT OF MILITARY COMMISSION RULINGS PREVENTING MEMBERS OF THE ARMED FORCES FROM CARRYING OUT OTHERWISE LAWFUL DUTIES BASED ON MEMBER SEX

Pub. L. 114–328, div. A, title X, § 1056, Dec. 23, 2016, 130 Stat. 2400, provided that:

''(a) PROHIBITION.—No order, ruling, finding, or other determination of a military commission may be construed or implemented to prohibit or restrict a member of the Armed Forces from carrying out duties otherwise lawfully assigned to such member to the extent that the basis for such prohibition or restriction is the sex of such member.

''(b) APPLICABILITY TO PRIOR ORDERS, ETC..—The prohibition or restriction described in subsection (a) shall, upon motion, apply to any order, ruling, finding, or other determination described in that subsection that was issued before the date of the enactment of this Act [Dec. 23, 2016] in a military commission and is still effective as of the date of such motion.

''(c) MILITARY COMMISSION DEFINED.—In this section, the term 'military commission' means a military commission established under chapter 47A of title 10, United States Code, and any military commission otherwise established or convened by law.''

PROCEEDINGS UNDER PRIOR STATUTE

Pub. L. 111–84, div. A, title XVIII, § 1804, Oct. 28, 2009, 123 Stat. 2612, provided that:

''(a) PRIOR CONVICTIONS.—The amendment made by section 1802 [generally amending this chapter] shall have no effect on the validity of any conviction pursuant to chapter 47A of title 10, United States Code (as such chapter was in effect on the day before the date of the enactment of this Act [Oct. 28, 2009]).

''(b) COMPOSITION OF MILITARY COMMISSIONS.—Notwithstanding the amendment made by section 1802—

''(1) any commission convened pursuant to chapter 47A of title 10, United States Code (as such chapter was in effect on the day before the date of the enactment of this Act), shall be deemed to have been convened pursuant to chapter 47A of title 10, United States Code (as amended by section 1802);

''(2) any member of the Armed Forces detailed to serve on a commission pursuant to chapter 47A of

title 10, United States Code (as in effect on the day before the date of the enactment of this Act), shall be deemed to have been detailed pursuant to chapter 47A of title 10, United States Code (as so amended);

''(3) any military judge detailed to a commission pursuant to chapter 47A of title 10, United States Code (as in effect on the day before the date of the enactment of this Act), shall be deemed to have been detailed pursuant to chapter 47A of title 10, United States Code (as so amended);

''(4) any trial counsel or defense counsel detailed for a commission pursuant to chapter 47A of title 10, United States Code (as in effect on the day before the date of the enactment of this Act), shall be deemed to have been detailed pursuant to chapter 47A of title 10, United States Code (as so amended);

''(5) any court reporters detailed to or employed by a commission pursuant to chapter 47A of title 10, United States Code (as in effect on the day before the date of the enactment of this Act), shall be deemed to have been detailed or employed pursuant to chapter 47A of title 10, United States Code (as so amended); and

''(6) any appellate military judge or other duly appointed appellate judge on the Court of Military Commission Review pursuant to chapter 47A of title 10, United States Code (as in effect on the day before the date of the enactment of this Act), shall be deemed to have been detailed or appointed to the United States Court of Military Commission Review pursuant to chapter 47A of title 10, United States Code (as so amended).

''(c) CHARGES AND SPECIFICATIONS.—Notwithstanding the amendment made by section 1802—

''(1) any charges or specifications sworn or referred pursuant to chapter 47A of title 10, United States Code (as such chapter was in effect on the day before the date of the enactment of this Act), shall be deemed to have been sworn or referred pursuant to chapter 47A of title 10, United States Code (as amended by section 1802); and

''(2) any charges or specifications described in paragraph (1) may be amended, without prejudice, as needed to properly allege jurisdiction under chapter 47A of title 10, United States Code (as so amended), and crimes triable under such chapter.

''(d) PROCEDURES AND REQUIREMENTS.—

''(1) IN GENERAL.—Except as provided in subsections (a) through (c) and subject to paragraph (2), any commission convened pursuant to chapter 47A of title 10, United States Code (as such chapter was in effect on the day before the date of the enactment of this Act), shall be conducted after the date of the enactment of this Act in accordance with the procedures and requirements of chapter 47A of title 10, United States Code (as amended by section 1802).

''(2) TEMPORARY CONTINUATION OF PRIOR PROCEDURES AND REQUIREMENTS.—Any military commission described in paragraph (1) may be conducted in accordance with any procedures and requirements of chapter 47A of title 10, United States Code (as in effect on the day before the date of the enactment of this Act), that are not inconsistent with the provisions of chapter 47A of title 10, United States Code, (as so amended), until the earlier of—

''(A) the date of the submittal to Congress under section 1805 of the revised rules for military commissions under chapter 47A of title 10, United States Code (as so amended); or

''(B) the date that is 90 days after the date of the enactment of this Act.''

SUBMITTAL TO CONGRESS OF REVISED RULES FOR MILITARY COMMISSIONS

Pub. L. 111–84, div. A, title XVIII, § 1805, Oct. 28, 2009, 123 Stat. 2614, provided that:

''(a) DEADLINE FOR SUBMITTAL.—Not later than 90 days after the date of the enactment of this Act [Oct. 28, 2009], the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives the revised rules for military commissions prescribed by the Secretary for purposes of chapter 47A of title 10, United States Code (as amended by section 1802).

''(b) TREATMENT OF REVISED RULES UNDER REQUIREMENT FOR NOTICE AND WAIT REGARDING MODIFICATION OF RULES.—The revised rules submitted to Congress under subsection (a) shall not be treated as a modification of the rules in effect for military commissions for purposes of section 949a(d) of title 10, United States Code (as so amended).''

ANNUAL REPORTS TO CONGRESS ON TRIALS BY MILITARY COMMISSION

Pub. L. 111–84, div. A, title XVIII, § 1806, Oct. 28, 2009, 123 Stat. 2614, provided that:

''(a) ANNUAL REPORTS REQUIRED.—Not later than January 31 of each year, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on any trials conducted by military commissions under chapter 47A of title 10, United States Code (as amended by section 1802), during the preceding year.

''(b) FORM.—Each report under this section shall be submitted in unclassified form, but may include a classified annex.''

[For termination, effective Dec. 31, 2021, of annual reporting provisions in section 1806 of Pub. L. 111–84, set out above, see section 1061 of Pub. L. 114–328, set out as a note under section 111 of this title.]

CONSTRUCTION OF PRESIDENTIAL AUTHORITY TO ESTABLISH MILITARY COMMISSIONS

Pub. L. 109–366, § 2, Oct. 17, 2006, 120 Stat. 2600, provided that: ''The authority to establish military commissions under chapter 47A of title 10, United States Code, as added by section 3(a), may not be construed to alter or limit the authority of the President under the Constitution of the United States and laws of the United States to establish military commissions for areas declared to be under martial law or in occupied territories should circumstances so require.''

§ 948b. Military commissions generally

(a) PURPOSE.—This chapter establishes procedures governing the use of military commissions to try alien unprivileged enemy belligerents for violations of the law of war and other offenses triable by military commission.

(b) AUTHORITY FOR MILITARY COMMISSIONS UNDER THIS CHAPTER.—The President is authorized to establish military commissions under this chapter for offenses triable by military commission as provided in this chapter.

(c) CONSTRUCTION OF PROVISIONS.—The procedures for military commissions set forth in this chapter are based upon the procedures for trial by general courts-martial under chapter 47 of this title (the Uniform Code of Military Justice). Chapter 47 of this title does not, by its terms, apply to trial by military commission except as specifically provided therein or in this chapter, and many of the provisions of chapter 47 of this title are by their terms inapplicable to military commissions. The judicial construction and application of chapter 47 of this title, while instructive, is therefore not of its own force binding on military commissions established under this chapter.

(d) INAPPLICABILITY OF CERTAIN PROVISIONS.—(1) The following provisions of this title shall not apply to trial by military commission under this chapter:

(A) Section 810 (article 10 of the Uniform Code of Military Justice), relating to speedy

trial, including any rule of courts-martial relating to speedy trial.

(B) Sections 831(a), (b), and (d) (articles 31(a), (b), and (d) of the Uniform Code of Military Justice), relating to compulsory self-incrimination.

(C) Section 832 (article 32 of the Uniform Code of Military Justice), relating to preliminary hearing.

(2) Other provisions of chapter 47 of this title shall apply to trial by military commission under this chapter only to the extent provided by the terms of such provisions or by this chapter.

(e) GENEVA CONVENTIONS NOT ESTABLISHING PRIVATE RIGHT OF ACTION.—No alien unprivileged enemy belligerent subject to trial by military commission under this chapter may invoke the Geneva Conventions as a basis for a private right of action.

(Added Pub. L. 111–84, div. A, title XVIII, § 1802, Oct. 28, 2009, 123 Stat. 2575; amended Pub. L. 113–66, div. A, title XVII, § 1702(c)(3)(E), Dec. 26, 2013, 127 Stat. 958.)

PRIOR PROVISIONS

A prior section 948b, added Pub. L. 109–366, § 3(a)(1), Oct. 17, 2006, 120 Stat. 2602, related to military commissions generally, prior to the general amendment of this chapter by Pub. L. 111–84.

AMENDMENTS

2013—Subsec. (d)(1)(C). Pub. L. 113–66 substituted ''preliminary hearing'' for ''pretrial investigation''.

EFFECTIVE DATE OF 2013 AMENDMENT

Amendment by Pub. L. 113–66 effective on the later of Dec. 26, 2014, or the date of the enactment of the Carl Levin and Howard P. ''Buck'' McKeon National Defense Authorization Act for Fiscal Year 2015 (Dec. 19, 2014) and applicable with respect to preliminary hearings conducted on or after that effective date, see section 1702(d)(1) of Pub. L. 113–66, set out as a note under section 802 of this title.

EX. ORD. NO. 13425. TRIAL OF ALIEN UNLAWFUL ENEMY COMBATANTS BY MILITARY COMMISSION

Ex. Ord. No. 13425, Feb. 14, 2007, 72 F.R. 7737, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Military Commissions Act of 2006 (Public Law 109–366), the Authorization for Use of Military Force (Public Law 107–40), and section 948b(b) of title 10, United States Code, it is hereby ordered as follows:

SECTION 1. *Establishment of Military Commissions*. There are hereby established military commissions to try alien unlawful enemy combatants for offenses triable by military commission as provided in chapter 47A of title 10.

SEC. 2. *Definitions*. As used in this order:

(a) ''unlawful enemy combatant'' has the meaning provided for that term in section 948a(1) of title 10; and

(b) ''alien'' means a person who is not a citizen of the United States.

SEC. 3. *Supersedure*. This order supersedes any provision of the President's Military Order of November 13, 2001 (66 *Fed. Reg*. 57,833), that relates to trial by military commission, specifically including:

(a) section 4 of the Military Order; and

(b) any requirement in section 2 of the Military Order, as it relates to trial by military commission, for a determination of:

(i) reason to believe specified matters; or

(ii) the interest of the United States.

SEC. 4. *General Provisions*. (a) This order shall be implemented in accordance with applicable law and subject to the availability of appropriations.

(b) The heads of executive departments and agencies shall provide such information and assistance to the Secretary of Defense as may be necessary to implement this order and chapter 47A of title 10.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, entities, officers, employees, or agents, or any other person.

GEORGE W. BUSH.

§ 948c. Persons subject to military commissions

Any alien unprivileged enemy belligerent is subject to trial by military commission as set forth in this chapter.

(Added Pub. L. 111–84, div. A, title XVIII, § 1802, Oct. 28, 2009, 123 Stat. 2576.)

PRIOR PROVISIONS

A prior section 948c, added Pub. L. 109–366, § 3(a)(1), Oct. 17, 2006, 120 Stat. 2602, related to persons subject to military commissions, prior to the general amendment of this chapter by Pub. L. 111–84.

§ 948d. Jurisdiction of military commissions

A military commission under this chapter shall have jurisdiction to try persons subject to this chapter for any offense made punishable by this chapter, sections 904 and 906 of this title (articles 104 and 106 of the Uniform Code of Military Justice), or the law of war, whether such offense was committed before, on, or after September 11, 2001, and may, under such limitations as the President may prescribe, adjudge any punishment not forbidden by this chapter, including the penalty of death when specifically authorized under this chapter. A military commission is a competent tribunal to make a finding sufficient for jurisdiction.

(Added Pub. L. 111–84, div. A, title XVIII, § 1802, Oct. 28, 2009, 123 Stat. 2576.)

PRIOR PROVISIONS

A prior section 948d, added Pub. L. 109–366, § 3(a)(1), Oct. 17, 2006, 120 Stat. 2603, related to jurisdiction of military commissions, prior to the general amendment of this chapter by Pub. L. 111–84.

A prior section 948e, added Pub. L. 109–366, § 3(a)(1), Oct. 17, 2006, 120 Stat. 2603, which required the Secretary of Defense to submit an annual report to congressional committees, was omitted in the general amendment of this chapter by Pub. L. 111–84. See section 1806 of Pub. L. 111–84, set out as a note under section 948a of this title.

SUBCHAPTER II—COMPOSITION OF MILITARY COMMISSIONS

Sec.
948h. Who may convene military commissions.
948i. Who may serve on military commissions.
948j. Military judge of a military commission.
948k. Detail of trial counsel and defense counsel.
948*l*. Detail or employment of reporters and interpreters.
948m. Number of members; excuse of members; absent and additional members.

§ 948h. Who may convene military commissions

Military commissions under this chapter may be convened by the Secretary of Defense or by

any officer or official of the United States designated by the Secretary for that purpose.

(Added Pub. L. 111–84, div. A, title XVIII, § 1802, Oct. 28, 2009, 123 Stat. 2576.)

PRIOR PROVISIONS

A prior section 948h, added Pub. L. 109–366, § 3(a)(1), Oct. 17, 2006, 120 Stat. 2603, related to who may convene military commissions, prior to the general amendment of this chapter by Pub. L. 111–84.

§ 948i. Who may serve on military commissions

(a) IN GENERAL.—Any commissioned officer of the armed forces on active duty is eligible to serve on a military commission under this chapter, including commissioned officers of the reserve components of the armed forces on active duty, commissioned officers of the National Guard on active duty in Federal service, or retired commissioned officers recalled to active duty.

(b) DETAIL OF MEMBERS.—When convening a military commission under this chapter, the convening authority shall detail as members thereof such members of the armed forces eligible under subsection (a) who, in the opinion of the convening authority, are best qualified for the duty by reason of age, education, training, experience, length of service, and judicial temperament. No member of an armed force is eligible to serve as a member of a military commission when such member is the accuser or a witness for the prosecution or has acted as an investigator or counsel in the same case.

(c) EXCUSE OF MEMBERS.—Before a military commission under this chapter is assembled for the trial of a case, the convening authority may excuse a member from participating in the case.

(Added Pub. L. 111–84, div. A, title XVIII, § 1802, Oct. 28, 2009, 123 Stat. 2576.)

PRIOR PROVISIONS

A prior section 948i, added Pub. L. 109–366, § 3(a)(1), Oct. 17, 2006, 120 Stat. 2603, related to who may serve on military commissions, prior to the general amendment of this chapter by Pub. L. 111–84.

§ 948j. Military judge of a military commission

(a) DETAIL OF MILITARY JUDGE.—A military judge shall be detailed to each military commission under this chapter. The Secretary of Defense shall prescribe regulations providing for the manner in which military judges are so detailed to military commissions. The military judge shall preside over each military commission to which such military judge has been detailed.

(b) ELIGIBILITY.—A military judge shall be a commissioned officer of the armed forces who is a member of the bar of a Federal court, or a member of the bar of the highest court of a State, and who is certified to be qualified for duty under section 826 of this title (article 26 of the Uniform Code of Military Justice) as a military judge of general courts-martial by the Judge Advocate General of the armed force of which such military judge is a member.

(c) INELIGIBILITY OF CERTAIN INDIVIDUALS.—No person is eligible to act as military judge in a case of a military commission under this chapter if such person is the accuser or a witness or has acted as investigator or a counsel in the same case.

(d) CONSULTATION WITH MEMBERS; INELIGIBILITY TO VOTE.—A military judge detailed to a military commission under this chapter may not consult with the members except in the presence of the accused (except as otherwise provided in section 949d of this title), trial counsel, and defense counsel, nor may such military judge vote with the members.

(e) OTHER DUTIES.—A commissioned officer who is certified to be qualified for duty as a military judge of a military commission under this chapter may perform such other duties as are assigned to such officer by or with the approval of the Judge Advocate General of the armed force of which such officer is a member or the designee of such Judge Advocate General.

(f) PROHIBITION ON EVALUATION OF FITNESS BY CONVENING AUTHORITY.—The convening authority of a military commission under this chapter may not prepare or review any report concerning the effectiveness, fitness, or efficiency of a military judge detailed to the military commission which relates to such judge's performance of duty as a military judge on the military commission.

(Added Pub. L. 111–84, div. A, title XVIII, § 1802, Oct. 28, 2009, 123 Stat. 2577.)

PRIOR PROVISIONS

A prior section 948j, added Pub. L. 109–366, § 3(a)(1), Oct. 17, 2006, 120 Stat. 2604, related to military judges of military commissions, prior to the general amendment of this chapter by Pub. L. 111–84.

§ 948k. Detail of trial counsel and defense counsel

(a) DETAIL OF COUNSEL GENERALLY.—(1) Trial counsel and military defense counsel shall be detailed for each military commission under this chapter.

(2) Assistant trial counsel and assistant and associate defense counsel may be detailed for a military commission under this chapter.

(3) Military defense counsel for a military commission under this chapter shall be detailed as soon as practicable.

(4) The Secretary of Defense shall prescribe regulations providing for the manner in which trial counsel and military defense counsel are detailed for military commissions under this chapter and for the persons who are authorized to detail such counsel for such military commissions.

(b) TRIAL COUNSEL.—Subject to subsection (e), a trial counsel detailed for a military commission under this chapter shall be—

(1) a judge advocate (as that term is defined in section 801 of this title (article 1 of the Uniform Code of Military Justice)) who is—

(A) a graduate of an accredited law school or a member of the bar of a Federal court or of the highest court of a State; and

(B) certified as competent to perform duties as trial counsel before general courts-martial by the Judge Advocate General of the armed force of which such judge advocate is a member; or

(2) a civilian who is—

(A) a member of the bar of a Federal court or of the highest court of a State; and

(B) otherwise qualified to practice before the military commission pursuant to regulations prescribed by the Secretary of Defense.

(c) DEFENSE COUNSEL.—(1) Subject to subsection (e), a military defense counsel detailed for a military commission under this chapter shall be a judge advocate (as so defined) who is—

(A) a graduate of an accredited law school or a member of the bar of a Federal court or of the highest court of a State; and

(B) certified as competent to perform duties as defense counsel before general courts-martial by the Judge Advocate General of the armed force of which such judge advocate is a member.

(2) The Secretary of Defense shall prescribe regulations for the appointment and performance of defense counsel in capital cases under this chapter.

(d) CHIEF PROSECUTOR; CHIEF DEFENSE COUNSEL.—(1) The Chief Prosecutor in a military commission under this chapter shall meet the requirements set forth in subsection (b)(1).

(2) The Chief Defense Counsel in a military commission under this chapter shall meet the requirements set forth in subsection (c)(1).

(e) INELIGIBILITY OF CERTAIN INDIVIDUALS.—No person who has acted as an investigator, military judge, or member of a military commission under this chapter in any case may act later as trial counsel or military defense counsel in the same case. No person who has acted for the prosecution before a military commission under this chapter may act later in the same case for the defense, nor may any person who has acted for the defense before a military commission under this chapter act later in the same case for the prosecution.

(Added Pub. L. 111–84, div. A, title XVIII, §1802, Oct. 28, 2009, 123 Stat. 2577.)

PRIOR PROVISIONS

A prior section 948k, added Pub. L. 109–366, §3(a)(1), Oct. 17, 2006, 120 Stat. 2604, related to detail of trial counsel and defense counsel, prior to the general amendment of this chapter by Pub. L. 111–84.

GRADE OF CHIEF PROSECUTOR AND CHIEF DEFENSE COUNSEL IN MILITARY COMMISSIONS ESTABLISHED TO TRY INDIVIDUALS DETAINED AT GUANTANAMO

Pub. L. 113–66, div. A, title X, §1037, Dec. 26, 2013, 127 Stat. 854, provided that:

''(a) IN GENERAL.—For purposes of any military commission established under chapter 47A of title 10, United States Code, to try an alien unprivileged enemy belligerent (as such terms are defined in section 948a of such title) who is detained at United States Naval Station, Guantanamo Bay, Cuba, the chief defense counsel and the chief prosecutor shall have the same grade (as that term is defined in section 101(b)(7) of such title).

''(b) WAIVER.—

''(1) IN GENERAL.—The Secretary of Defense may temporarily waive the requirement specified in subsection (a), if the Secretary determines that compliance with such subsection would—

''(A) be infeasible due to a non-availability of qualified officers of the same grade to fill the billets of chief defense counsel and chief prosecutor; or

''(B) cause a significant disruption to proceedings established under chapter 47A of title 10, United States Code.

''(2) REPORTS.—Not later than 30 days after the Secretary issues a waiver under paragraph (1), the Secretary shall submit to the Committees on Armed Services of the Senate and the House of Representatives the following:

''(A) A copy of the waiver and the determination of the Secretary to issue the waiver.

''(B) A statement of the basis for the determination, including an explanation of the non-availability of qualified officers or the significant disruption concerned.

''(C) Notice of the time period during which the waiver is in effect.

''(c) GUIDANCE.—Not later than 60 days after the date of the enactment of this Act [Dec. 26, 2013], the Secretary of Defense shall issue guidance to ensure that the office of the chief defense counsel and the office of the chief prosecutor receive equitable resources, personnel support, and logistical support for conducting their respective duties in connection with any military commission established under chapter 47A of title 10, United States Code, to try an alien unprivileged enemy belligerent (as such terms are defined in section 948a of such title) who is detained at United States Naval Station, Guantanamo Bay, Cuba.''

§ 948*l*. Detail or employment of reporters and interpreters

(a) COURT REPORTERS.—Under such regulations as the Secretary of Defense may prescribe, the convening authority of a military commission under this chapter shall detail to or employ for the military commission qualified court reporters, who shall prepare a verbatim record of the proceedings of and testimony taken before the military commission.

(b) INTERPRETERS.—Under such regulations as the Secretary of Defense may prescribe, the convening authority of a military commission under this chapter may detail to or employ for the military commission interpreters who shall interpret for the military commission, and, as necessary, for trial counsel and defense counsel for the military commission, and for the accused.

(c) TRANSCRIPT; RECORD.—The transcript of a military commission under this chapter shall be under the control of the convening authority of the military commission, who shall also be responsible for preparing the record of the proceedings of the military commission.

(Added Pub. L. 111–84, div. A, title XVIII, §1802, Oct. 28, 2009, 123 Stat. 2578.)

PRIOR PROVISIONS

A prior section 948*l*, added Pub. L. 109–366, §3(a)(1), Oct. 17, 2006, 120 Stat. 2605, related to detail or employment of reporters and interpreters, prior to the general amendment of this chapter by Pub. L. 111–84.

§ 948m. Number of members; excuse of members; absent and additional members

(a) NUMBER OF MEMBERS.—(1) Except as provided in paragraph (2), a military commission under this chapter shall have at least five primary members and as many alternate members as the convening authority shall detail. Alternate members shall be designated in the order in which they will replace an excused primary member.

(2) In a case in which the accused before a military commission under this chapter may be sentenced to a penalty of death, the military

commission shall have the number of primary members prescribed by section 949m(c) of this title.

(b) PRIMARY MEMBERS.—Primary members of a military commission under this chapter are voting members.

(c) ALTERNATE MEMBERS.—(1) A military commission may include alternate members to replace primary members who are excused from service on the commission.

(2) Whenever a primary member is excused from service on the commission, an alternate member, if available, shall replace the excused primary member and the trial may proceed.

(d) EXCUSE OF MEMBERS.—No primary or alternate member of a military commission under this chapter may be absent or excused after the military commission has been assembled for the trial of a case unless excused—

(1) as a result of challenge;

(2) by the military judge for physical disability or other good cause;

(3) by order of the convening authority for good cause; or

(4) in the case of an alternate member, in order to reduce the number of alternate members required for service on the commission, as determined by the convening authority.

(e) ABSENT AND ADDITIONAL MEMBERS.—Whenever the number of primary members of a military commission under this chapter is reduced below the number of primary members required by subsection (a) and there are no remaining alternate members to replace the excused primary members, the trial may not proceed unless the convening authority details new members sufficient to provide not less than such number. The trial may proceed with the new members present after the recorded evidence previously introduced before the members has been read to the military commission in the presence of the military judge, the accused (except as provided in section 949d of this title), and counsel for both sides. An alternate member who was present for the introduction of all evidence shall not be considered to be a new or additional member.

(Added Pub. L. 111–84, div. A, title XVIII, § 1802, Oct. 28, 2009, 123 Stat. 2579; amended Pub. L. 113–66, div. A, title X, § 1031(a), Dec. 26, 2013, 127 Stat. 849.)

PRIOR PROVISIONS

A prior section 948m, added Pub. L. 109–366, § 3(a)(1), Oct. 17, 2006, 120 Stat. 2606, related to number of members, excuse of members, and absent and additional members of a military commission, prior to the general amendment of this chapter by Pub. L. 111–84.

AMENDMENTS

2013—Subsec. (a)(1). Pub. L. 113–66, § 1031(a)(1)(A), substituted ''at least five primary members and as many alternate members as the convening authority shall detail'' for ''at least five members'' and inserted at end ''Alternate members shall be designated in the order in which they will replace an excused primary member.''

Subsec. (a)(2). Pub. L. 113–66, § 1031(a)(1)(B), inserted ''primary'' before ''members''.

Subsecs. (b), (c). Pub. L. 113–66, § 1031(a)(2)(B), added subsecs. (b) and (c). Former subsecs. (b) and (c) redesignated (d) and (e), respectively.

Subsec. (d). Pub. L. 113–66, § 1031(a)(2)(A), (3), redesignated subsec. (b) as (d), inserted ''primary or alternate'' before ''member'' in introductory provisions, and added par. (4).

Subsec. (e). Pub. L. 113–66, § 1031(a)(2)(A), (4), redesignated subsec. (c) as (e), substituted ''Whenever the number of primary members of a military commission under this chapter is reduced below the number of primary members required by subsection (a) and there are no remaining alternate members to replace the excused primary members'' for ''Whenever a military commission under this chapter is reduced below the number of members required by subsection (a)'', and inserted at end ''An alternate member who was present for the introduction of all evidence shall not be considered to be a new or additional member.''

SUBCHAPTER III—PRE-TRIAL PROCEDURE

Sec.
948q. Charges and specifications.
948r. Exclusion of statements obtained by torture or cruel, inhuman, or degrading treatment; prohibition of self-incrimination; admission of other statements of the accused.
948s. Service of charges.

§ 948q. Charges and specifications

(a) CHARGES AND SPECIFICATIONS.—Charges and specifications against an accused in a military commission under this chapter shall be signed by a person subject to chapter 47 of this title under oath before a commissioned officer of the armed forces authorized to administer oaths and shall state—

(1) that the signer has personal knowledge of, or reason to believe, the matters set forth therein; and

(2) that such matters are true in fact to the best of the signer's knowledge and belief.

(b) NOTICE TO ACCUSED.—Upon the swearing of the charges and specifications in accordance with subsection (a), the accused shall be informed of the charges and specifications against the accused as soon as practicable.

(Added Pub. L. 111–84, div. A, title XVIII, § 1802, Oct. 28, 2009, 123 Stat. 2579.)

PRIOR PROVISIONS

A prior section 948q, added Pub. L. 109–366, § 3(a)(1), Oct. 17, 2006, 120 Stat. 2606, related to charges and specifications, prior to the general amendment of this chapter by Pub. L. 111–84.

§ 948r. Exclusion of statements obtained by torture or cruel, inhuman, or degrading treatment; prohibition of self-incrimination; admission of other statements of the accused

(a) EXCLUSION OF STATEMENTS OBTAIN BY TORTURE OR CRUEL, INHUMAN, OR DEGRADING TREATMENT.—No statement obtained by the use of torture or by cruel, inhuman, or degrading treatment (as defined by section 1003 of the Detainee Treatment Act of 2005 (42 U.S.C. 2000dd)), whether or not under color of law, shall be admissible in a military commission under this chapter, except against a person accused of torture or such treatment as evidence that the statement was made.

(b) SELF-INCRIMINATION PROHIBITED.—No person shall be required to testify against himself or herself at a proceeding of a military commission under this chapter.

(c) OTHER STATEMENTS OF THE ACCUSED.—A statement of the accused may be admitted in

evidence in a military commission under this chapter only if the military judge finds—

(1) that the totality of the circumstances renders the statement reliable and possessing sufficient probative value; and

(2) that—

(A) the statement was made incident to lawful conduct during military operations at the point of capture or during closely related active combat engagement, and the interests of justice would best be served by admission of the statement into evidence; or

(B) the statement was voluntarily given.

(d) DETERMINATION OF VOLUNTARINESS.—In determining for purposes of subsection (c)(2)(B) whether a statement was voluntarily given, the military judge shall consider the totality of the circumstances, including, as appropriate, the following:

(1) The details of the taking of the statement, accounting for the circumstances of the conduct of military and intelligence operations during hostilities.

(2) The characteristics of the accused, such as military training, age, and education level.

(3) The lapse of time, change of place, or change in identity of the questioners between the statement sought to be admitted and any prior questioning of the accused.

(Added by Pub. L. 111–84, div. A, title XVIII, § 1802, Oct. 28, 2009, 123 Stat. 2580.)

PRIOR PROVISIONS

A prior section 948r, added Pub. L. 109–366, § 3(a)(1), Oct. 17, 2006, 120 Stat. 2607; amended Pub. L. 110–181, div. A, title X, § 1063(a)(4), Jan. 28, 2008, 122 Stat. 321, related to prohibition of compulsory self-incrimination and treatment of statements obtained by torture and other statements, prior to the general amendment of this chapter by Pub. L. 111–84.

§ 948s. Service of charges

The trial counsel assigned to a case before a military commission under this chapter shall cause to be served upon the accused and military defense counsel a copy of the charges upon which trial is to be had in English and, if appropriate, in another language that the accused understands, sufficiently in advance of trial to prepare a defense.

(Added Pub. L. 111–84, div. A, title XVIII, § 1802, Oct. 28, 2009, 123 Stat. 2580.)

PRIOR PROVISIONS

A prior section 948s, added Pub. L. 109–366, § 3(a)(1), Oct. 17, 2006, 120 Stat. 2607, related to service of charges, prior to the general amendment of this chapter by Pub. L. 111–84.

SUBCHAPTER IV—TRIAL PROCEDURE

Sec.

949a. Rules.
949b. Unlawfully influencing action of military commission and United States Court of Military Commission Review.
949c. Duties of trial counsel and defense counsel.
949d. Sessions.
949e. Continuances.
949f. Challenges.
949g. Oaths.
949h. Former jeopardy.
949i. Pleas of the accused.
949j. Opportunity to obtain witnesses and other evidence.
949k. Defense of lack of mental responsibility.
949*l*. Voting and rulings.
949m. Number of votes required.
949n. Military commission to announce action.
949*o*. Record of trial.

§ 949a. Rules

(a) PROCEDURES AND RULES OF EVIDENCE.—Pretrial, trial, and post-trial procedures, including elements and modes of proof, for cases triable by military commission under this chapter may be prescribed by the Secretary of Defense. Such procedures may not be contrary to or inconsistent with this chapter. Except as otherwise provided in this chapter or chapter 47 of this title, the procedures and rules of evidence applicable in trials by general courts-martial of the United States shall apply in trials by military commission under this chapter.

(b) EXCEPTIONS.—(1) In trials by military commission under this chapter, the Secretary of Defense, in consultation with the Attorney General, may make such exceptions in the applicability of the procedures and rules of evidence otherwise applicable in general courts-martial as may be required by the unique circumstances of the conduct of military and intelligence operations during hostilities or by other practical need consistent with this chapter.

(2) Notwithstanding any exceptions authorized by paragraph (1), the procedures and rules of evidence in trials by military commission under this chapter shall include, at a minimum, the following rights of the accused:

(A) To present evidence in the accused's defense, to cross-examine the witnesses who testify against the accused, and to examine and respond to all evidence admitted against the accused on the issue of guilt or innocence and for sentencing, as provided for by this chapter.

(B) To be present at all sessions of the military commission (other than those for deliberations or voting), except when excluded under section 949d of this title.

(C)(i) When none of the charges sworn against the accused are capital, to be represented before a military commission by civilian counsel if provided at no expense to the Government, and by either the defense counsel detailed or the military counsel of the accused's own selection, if reasonably available.

(ii) When any of the charges sworn against the accused are capital, to be represented before a military commission in accordance with clause (i) and, to the greatest extent practicable, by at least one additional counsel who is learned in applicable law relating to capital cases and who, if necessary, may be a civilian and compensated in accordance with regulations prescribed by the Secretary of Defense.

(D) To self-representation, if the accused knowingly and competently waives the assistance of counsel, subject to the provisions of paragraph (4).

(E) To the suppression of evidence that is not reliable or probative.

(F) To the suppression of evidence the probative value of which is substantially outweighed by—

(i) the danger of unfair prejudice, confusion of the issues, or misleading the members; or

(ii) considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

(3) In making exceptions in the applicability in trials by military commission under this chapter from the procedures and rules otherwise applicable in general courts-martial, the Secretary of Defense may provide the following:

(A) Evidence seized outside the United States shall not be excluded from trial by military commission on the grounds that the evidence was not seized pursuant to a search warrant or authorization.

(B) A statement of the accused that is otherwise admissible shall not be excluded from trial by military commission on grounds of alleged coercion or compulsory self-incrimination so long as the evidence complies with the provisions of section 948r of this title.

(C) Evidence shall be admitted as authentic so long as—

(i) the military judge of the military commission determines that there is sufficient evidence that the evidence is what it is claimed to be; and

(ii) the military judge instructs the members that they may consider any issue as to authentication or identification of evidence in determining the weight, if any, to be given to the evidence.

(D) Hearsay evidence not otherwise admissible under the rules of evidence applicable in trial by general courts-martial may be admitted in a trial by military commission only if—

(i) the proponent of the evidence makes known to the adverse party, sufficiently in advance to provide the adverse party with a fair opportunity to meet the evidence, the proponent's intention to offer the evidence, and the particulars of the evidence (including information on the circumstances under which the evidence was obtained); and

(ii) the military judge, after taking into account all of the circumstances surrounding the taking of the statement, including the degree to which the statement is corroborated, the indicia of reliability within the statement itself, and whether the will of the declarant was overborne, determines that—

(I) the statement is offered as evidence of a material fact;

(II) the statement is probative on the point for which it is offered;

(III) direct testimony from the witness is not available as a practical matter, taking into consideration the physical location of the witness, the unique circumstances of military and intelligence operations during hostilities, and the adverse impacts on military or intelligence operations that would likely result from the production of the witness; and

(IV) the general purposes of the rules of evidence and the interests of justice will best be served by admission of the statement into evidence.

(4)(A) The accused in a military commission under this chapter who exercises the right to self-representation under paragraph (2)(D) shall conform the accused's deportment and the conduct of the defense to the rules of evidence, procedure, and decorum applicable to trials by military commission.

(B) Failure of the accused to conform to the rules described in subparagraph (A) may result in a partial or total revocation by the military judge of the right of self-representation under paragraph (2)(D). In such case, the military counsel of the accused or an appropriately authorized civilian counsel shall perform the functions necessary for the defense.

(c) DELEGATION OF AUTHORITY TO PRESCRIBE REGULATIONS.—The Secretary of Defense may delegate the authority of the Secretary to prescribe regulations under this chapter.

(d) NOTICE TO CONGRESS OF MODIFICATION OF RULES.—Not later than 60 days before the date on which any proposed modification of the rules in effect for military commissions under this chapter goes into effect, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report describing the proposed modification.

(Added Pub. L. 111–84, div. A, title XVIII, §1802, Oct. 28, 2009, 123 Stat. 2581; amended Pub. L. 112–81, div. A, title X, §1034(a), Dec. 31, 2011, 125 Stat. 1572.)

PRIOR PROVISIONS

A prior section 949a, added Pub. L. 109–366, §3(a)(1), Oct. 17, 2006, 120 Stat. 2608, related to rules, prior to the general amendment of this chapter by Pub. L. 111–84.

AMENDMENTS

2011—Subsec. (b)(2)(C)(i), (ii). Pub. L. 112–81 substituted ''sworn'' for ''preferred''.

§949b. Unlawfully influencing action of military commission and United States Court of Military Commission Review

(a) MILITARY COMMISSIONS.—(1) No authority convening a military commission under this chapter may censure, reprimand, or admonish the military commission, or any member, military judge, or counsel thereof, with respect to the findings or sentence adjudged by the military commission, or with respect to any other exercises of its or their functions in the conduct of the proceedings.

(2) No person may attempt to coerce or, by any unauthorized means, influence—

(A) the action of a military commission under this chapter, or any member thereof, in reaching the findings or sentence in any case;

(B) the action of any convening, approving, or reviewing authority with respect to their judicial acts; or

(C) the exercise of professional judgment by trial counsel or defense counsel.

(3) The provisions of this subsection shall not apply with respect to—

(A) general instructional or informational courses in military justice if such courses are designed solely for the purpose of instructing members of a command in the substantive and procedural aspects of military commissions; or

(B) statements and instructions given in open proceedings by a military judge or counsel.

(b) UNITED STATES COURT OF MILITARY COMMISSION REVIEW.—(1) No person may attempt to coerce or, by any unauthorized means, influence—

(A) the action of a judge on the United States Court of Military Commissions Review in reaching a decision on the findings or sentence on appeal in any case; or

(B) the exercise of professional judgment by trial counsel or defense counsel appearing before the United States Court of Military Commission Review.

(2) No person may censure, reprimand, or admonish a judge on the United States Court of Military Commission Review, or counsel thereof, with respect to any exercise of their functions in the conduct of proceedings under this chapter.

(3) The provisions of this subsection shall not apply with respect to—

(A) general instructional or informational courses in military justice if such courses are designed solely for the purpose of instructing members of a command in the substantive and procedural aspects of military commissions; or

(B) statements and instructions given in open proceedings by a judge on the United States Court of Military Commission Review, or counsel.

(4) No appellate military judge on the United States Court of Military Commission Review may be reassigned to other duties, except under circumstances as follows:

(A) The appellate military judge voluntarily requests to be reassigned to other duties and the Secretary of Defense, or the designee of the Secretary, in consultation with the Judge Advocate General of the armed force of which the appellate military judge is a member, approves such reassignment.

(B) The appellate military judge retires or otherwise separates from the armed forces.

(C) The appellate military judge is reassigned to other duties by the Secretary of Defense, or the designee of the Secretary, in consultation with the Judge Advocate General of the armed force of which the appellate military judge is a member, based on military necessity and such reassignment is consistent with service rotation regulations (to the extent such regulations are applicable).

(D) The appellate military judge is withdrawn by the Secretary of Defense, or the designee of the Secretary, in consultation with the Judge Advocate General of the armed force of which the appellate military judge is a member, for good cause consistent with applicable procedures under chapter 47 of this title (the Uniform Code of Military Justice).

(c) PROHIBITION ON CONSIDERATION OF ACTIONS ON COMMISSION IN EVALUATION OF FITNESS.—In the preparation of an effectiveness, fitness, or efficiency report or any other report or document used in whole or in part for the purpose of determining whether a commissioned officer of the armed forces is qualified to be advanced in grade, or in determining the assignment or transfer of any such officer or whether any such officer should be retained on active duty, no person may—

(1) consider or evaluate the performance of duty of any member of a military commission under this chapter; or

(2) give a less favorable rating or evaluation to any commissioned officer because of the zeal with which such officer, in acting as counsel, represented any accused before a military commission under this chapter.

(Added Pub. L. 111–84, div. A, title XVIII, § 1802, Oct. 28, 2009, 123 Stat. 2583; amended Pub. L. 112–81, div. A, title X, § 1034(b), Dec. 31, 2011, 125 Stat. 1573.)

PRIOR PROVISIONS

A prior section 949b, added Pub. L. 109–366, § 3(a)(1), Oct. 17, 2006, 120 Stat. 2609, related to unlawfully influencing action of military commission, prior to the general amendment of this chapter by Pub. L. 111–84.

AMENDMENTS

2011—Subsec. (b)(1)(A). Pub. L. 112–81, § 1034(b)(1), substituted "a judge on" for "a military appellate judge or other duly appointed judge under this chapter on".

Subsec. (b)(2). Pub. L. 112–81, § 1034(b)(2), substituted "a judge on" for "a military appellate judge on".

Subsec. (b)(3)(B). Pub. L. 112–81, § 1034(b)(3), substituted "a judge on" for "an appellate military judge or a duly appointed appellate judge on".

§ 949c. Duties of trial counsel and defense counsel

(a) TRIAL COUNSEL.—The trial counsel of a military commission under this chapter shall prosecute in the name of the United States.

(b) DEFENSE COUNSEL.—(1) The accused shall be represented in the accused's defense before a military commission under this chapter as provided in this subsection.

(2) The accused may be represented by military counsel detailed under section 948k of this title or by military counsel of the accused's own selection, if reasonably available.

(3) The accused may be represented by civilian counsel if retained by the accused, provided that such civilian counsel—

(A) is a United States citizen;

(B) is admitted to the practice of law in a State, district, or possession of the United States, or before a Federal court;

(C) has not been the subject of any sanction of disciplinary action by any court, bar, or other competent governmental authority for relevant misconduct;

(D) has been determined to be eligible for access to information classified at the level Secret or higher; and

(E) has signed a written agreement to comply with all applicable regulations or instructions for counsel, including any rules of court for conduct during the proceedings.

(4) If the accused is represented by civilian counsel, military counsel shall act as associate counsel.

(5) The accused is not entitled to be represented by more than one military counsel. However, the person authorized under regulations prescribed under section 948k of this title to detail counsel, in such person's sole discre-

tion, may detail additional military counsel to represent the accused.

(6) Defense counsel may cross-examine each witness for the prosecution who testifies before a military commission under this chapter.

(7) Civilian defense counsel shall protect any classified information received during the course of representation of the accused in accordance with all applicable law governing the protection of classified information, and may not divulge such information to any person not authorized to receive it.

(Added Pub. L. 111–84, div. A, title XVIII, § 1802, Oct. 28, 2009, 123 Stat. 2585.)

PRIOR PROVISIONS

A prior section 949c, added Pub. L. 109–366, § 3(a)(1), Oct. 17, 2006, 120 Stat. 2610, related to duties of trial counsel and defense counsel, prior to the general amendment of this chapter by Pub. L. 111–84.

§ 949d. Sessions

(a) SESSIONS WITHOUT PRESENCE OF MEMBERS.—(1) At any time after the service of charges which have been referred for trial by military commission under this chapter, the military judge may call the military commission into session without the presence of the members for the purpose of—

(A) hearing and determining motions raising defenses or objections which are capable of determination without trial of the issues raised by a plea of not guilty;

(B) hearing and ruling upon any matter which may be ruled upon by the military judge under this chapter, whether or not the matter is appropriate for later consideration or decision by the members;

(C) if permitted by regulations prescribed by the Secretary of Defense, receiving the pleas of the accused; and

(D) performing any other procedural function which may be performed by the military judge under this chapter or under rules prescribed pursuant to section 949a of this title and which does not require the presence of the members.

(2) Except as provided in subsections (b), (c), and (d), any proceedings under paragraph (1) shall be conducted in the presence of the accused, defense counsel, and trial counsel, and shall be made part of the record.

(b) DELIBERATION OR VOTE OF MEMBERS.—When the members of a military commission under this chapter deliberate or vote, only the members may be present.

(c) CLOSURE OF PROCEEDINGS.—(1) The military judge may close to the public all or part of the proceedings of a military commission under this chapter.

(2) The military judge may close to the public all or a portion of the proceedings under paragraph (1) only upon making a specific finding that such closure is necessary to—

(A) protect information the disclosure of which could reasonably be expected to cause damage to the national security, including intelligence or law enforcement sources, methods, or activities; or

(B) ensure the physical safety of individuals.

(3) A finding under paragraph (2) may be based upon a presentation, including a presentation ex parte or in camera, by either trial counsel or defense counsel.

(d) EXCLUSION OF ACCUSED FROM CERTAIN PROCEEDINGS.—The military judge may exclude the accused from any portion of a proceeding upon a determination that, after being warned by the military judge, the accused persists in conduct that justifies exclusion from the courtroom—

(1) to ensure the physical safety of individuals; or

(2) to prevent disruption of the proceedings by the accused.

(Added Pub. L. 111–84, div. A, title XVIII, § 1802, Oct. 28, 2009, 123 Stat. 2585.)

PRIOR PROVISIONS

A prior section 949d, added Pub. L. 109–366, § 3(a)(1), Oct. 17, 2006, 120 Stat. 2611, related to sessions of military commissions, prior to the general amendment of this chapter by Pub. L. 111–84.

§ 949e. Continuances

The military judge in a military commission under this chapter may, for reasonable cause, grant a continuance to any party for such time, and as often, as may appear to be just.

(Added Pub. L. 111–84, div. A, title XVIII, § 1802, Oct. 28, 2009, 123 Stat. 2586.)

PRIOR PROVISIONS

A prior section 949e, added Pub. L. 109–366, § 3(a)(1), Oct. 17, 2006, 120 Stat. 2613, related to continuances, prior to the general amendment of this chapter by Pub. L. 111–84.

§ 949f. Challenges

(a) CHALLENGES AUTHORIZED.—The military judge and primary or alternate members of a military commission under this chapter may be challenged by the accused or trial counsel for cause stated to the military commission. The military judge shall determine the relevance and validity of challenges for cause, and may not receive a challenge to more than one person at a time. Challenges by trial counsel shall ordinarily be presented and decided before those by the accused are offered.

(b) PEREMPTORY CHALLENGES.—The accused and trial counsel are each entitled to one peremptory challenge, but the military judge may not be challenged except for cause. Nothing in this section prohibits the military judge from awarding to each party such additional peremptory challenges as may be required in the interests of justice.

(c) CHALLENGES AGAINST ADDITIONAL MEMBERS.—Whenever additional members are detailed to a military commission under this chapter, and after any challenges for cause against such additional members are presented and decided, the accused and trial counsel are each entitled to one peremptory challenge against members not previously subject to peremptory challenge.

(Added Pub. L. 111–84, div. A, title XVIII, § 1802, Oct. 28, 2009, 123 Stat. 2586; amended Pub. L. 113–66, div. A, title X, § 1031(b), Dec. 26, 2013, 127 Stat. 850.)

PRIOR PROVISIONS

A prior section 949f, added Pub. L. 109–366, §3(a)(1), Oct. 17, 2006, 120 Stat. 2613, related to challenges, prior to the general amendment of this chapter by Pub. L. 111–84.

AMENDMENTS

2013—Subsec. (a). Pub. L. 113–66, §1031(b)(1), inserted ''primary or alternate'' before ''members''.

Subsec. (b). Pub. L. 113–66, §1031(b)(2), inserted at end ''Nothing in this section prohibits the military judge from awarding to each party such additional peremptory challenges as may be required in the interests of justice.''

§ 949g. Oaths

(a) IN GENERAL.—(1) Before performing their respective duties in a military commission under this chapter, military judges, members, trial counsel, defense counsel, reporters, and interpreters shall take an oath to perform their duties faithfully.

(2) The form of the oath required by paragraph (1), the time and place of the taking thereof, the manner of recording thereof, and whether the oath shall be taken for all cases in which duties are to be performed or for a particular case, shall be as provided in regulations prescribed by the Secretary of Defense. The regulations may provide that—

(A) an oath to perform faithfully duties as a military judge, trial counsel, or defense counsel may be taken at any time by any judge advocate or other person certified to be qualified or competent for the duty; and

(B) if such an oath is taken, such oath need not again be taken at the time the judge advocate or other person is detailed to that duty.

(b) WITNESSES.—Each witness before a military commission under this chapter shall be examined on oath.

(c) OATH DEFINED.—In this section, the term ''oath'' includes an affirmation.

(Added Pub. L. 111–84, div. A, title XVIII, §1802, Oct. 28, 2009, 123 Stat. 2587.)

PRIOR PROVISIONS

A prior section 949g, added Pub. L. 109–366, §3(a)(1), Oct. 17, 2006, 120 Stat. 2613, related to oaths, prior to the general amendment of this chapter by Pub. L. 111–84.

§ 949h. Former jeopardy

(a) IN GENERAL.—No person may, without the person's consent, be tried by a military commission under this chapter a second time for the same offense.

(b) SCOPE OF TRIAL.—No proceeding in which the accused has been found guilty by military commission under this chapter upon any charge or specification is a trial in the sense of this section until the finding of guilty has become final after review of the case has been fully completed.

(Added Pub. L. 111–84, div. A, title XVIII, §1802, Oct. 28, 2009, 123 Stat. 2587.)

PRIOR PROVISIONS

A prior section 949h, added Pub. L. 109–366, §3(a)(1), Oct. 17, 2006, 120 Stat. 2614, related to former jeopardy, prior to the general amendment of this chapter by Pub. L. 111–84.

§ 949i. Pleas of the accused

(a) PLEA OF NOT GUILTY.—If an accused in a military commission under this chapter after a plea of guilty sets up matter inconsistent with the plea, or if it appears that the accused has entered the plea of guilty through lack of understanding of its meaning and effect, or if the accused fails or refuses to plead, a plea of not guilty shall be entered in the record, and the military commission shall proceed as though the accused had pleaded not guilty.

(b) FINDING OF GUILT AFTER GUILTY PLEA.—With respect to any charge or specification to which a plea of guilty has been made by the accused in a military commission under this chapter and accepted by the military judge, including a charge or specification that has been referred capital, a finding of guilty of the charge or specification may be entered by the military judge immediately without a vote by the members. The finding shall constitute the finding of the military commission unless the plea of guilty is withdrawn prior to announcement of the sentence, in which event the proceedings shall continue as though the accused had pleaded not guilty.

(c) PRE-TRIAL AGREEMENTS.—(1) A plea of guilty made by the accused that is accepted by a military judge under subsection (b) and not withdrawn prior to announcement of the sentence may form the basis for an agreement reducing the maximum sentence approved by the convening authority, including the reduction of a sentence of death to a lesser punishment, or that the case will be referred to a military commission under this chapter without seeking the penalty of death. Such an agreement may provide for terms and conditions in addition to a guilty plea by the accused in order to be effective.

(2) A plea agreement under this subsection may not provide for a sentence of death imposed by a military judge alone. A sentence of death may only be imposed by the unanimous vote of all members of a military commission concurring in the sentence of death as provided in section 949m(b)(2)(D) of this title.

(Added Pub. L. 111–84, div. A, title XVIII, §1802, Oct. 28, 2009, 123 Stat. 2587; amended Pub. L. 112–81, div. A, title X, §1030(b), Dec. 31, 2011, 125 Stat. 1570; Pub. L. 113–291, div. A, title X, §1071(f)(9), Dec. 19, 2014, 128 Stat. 3510.)

PRIOR PROVISIONS

A prior section 949i, added Pub. L. 109–366, §3(a)(1), Oct. 17, 2006, 120 Stat. 2614, related to pleas of the accused, prior to the general amendment of this chapter by Pub. L. 111–84.

AMENDMENTS

2014—Subsec. (b). Pub. L. 113–291 substituted a comma for '',,'' after ''referred capital''.

2011—Subsec. (b). Pub. L. 112–81, §1030(b)(1), in the first sentence, inserted '', including a charge or specification that has been referred capital,'' after ''military judge'', ''by the military judge'' after ''may be entered'', and ''by the members'' after ''vote''.

Subsec. (c). Pub. L. 112–81, §1030(b)(2), added subsec. (c).

§ 949j. Opportunity to obtain witnesses and other evidence

(a) IN GENERAL.—(1) Defense counsel in a military commission under this chapter shall have a reasonable opportunity to obtain witnesses and other evidence as provided in regulations prescribed by the Secretary of Defense. The opportunity to obtain witnesses and evidence shall be comparable to the opportunity available to a criminal defendant in a court of the United States under article III of the Constitution.

(2) Process issued in military commissions under this chapter to compel witnesses to appear and testify and to compel the production of other evidence—

(A) shall be similar to that which courts of the United States having criminal jurisdiction may lawfully issue; and

(B) shall run to any place where the United States shall have jurisdiction thereof.

(b) DISCLOSURE OF EXCULPATORY EVIDENCE.—(1) As soon as practicable, trial counsel in a military commission under this chapter shall disclose to the defense the existence of any evidence that reasonably tends to—

(A) negate the guilt of the accused of an offense charged; or

(B) reduce the degree of guilt of the accused with respect to an offense charged.

(2) The trial counsel shall, as soon as practicable, disclose to the defense the existence of evidence that reasonably tends to impeach the credibility of a witness whom the government intends to call at trial.

(3) The trial counsel shall, as soon as practicable upon a finding of guilt, disclose to the defense the existence of evidence that is not subject to paragraph (1) or paragraph (2) but that reasonably may be viewed as mitigation evidence at sentencing.

(4) The disclosure obligations under this subsection encompass evidence that is known or reasonably should be known to any government officials who participated in the investigation and prosecution of the case against the defendant.

(Added Pub. L. 111–84, div. A, title XVIII, § 1802, Oct. 28, 2009, 123 Stat. 2587.)

PRIOR PROVISIONS

A prior section 949j, added Pub. L. 109–366, § 3(a)(1), Oct. 17, 2006, 120 Stat. 2614, related to the opportunity to obtain witnesses and other evidence, prior to the general amendment of this chapter by Pub. L. 111–84.

§ 949k. Defense of lack of mental responsibility

(a) AFFIRMATIVE DEFENSE.—It is an affirmative defense in a trial by military commission under this chapter that, at the time of the commission of the acts constituting the offense, the accused, as a result of a severe mental disease or defect, was unable to appreciate the nature and quality or the wrongfulness of the acts. Mental disease or defect does not otherwise constitute a defense.

(b) BURDEN OF PROOF.—The accused in a military commission under this chapter has the burden of proving the defense of lack of mental responsibility by clear and convincing evidence.

(c) FINDINGS FOLLOWING ASSERTION OF DEFENSE.—Whenever lack of mental responsibility of the accused with respect to an offense is properly at issue in a military commission under this chapter, the military judge shall instruct the members as to the defense of lack of mental responsibility under this section and shall charge the members to find the accused—

(1) guilty;

(2) not guilty; or

(3) subject to subsection (d), not guilty by reason of lack of mental responsibility.

(d) MAJORITY VOTE REQUIRED FOR FINDING.—The accused shall be found not guilty by reason of lack of mental responsibility under subsection (c)(3) only if a majority of the members present at the time the vote is taken determines that the defense of lack of mental responsibility has been established.

(Added Pub. L. 111–84, div. A, title XVIII, § 1802, Oct. 28, 2009, 123 Stat. 2588.)

PRIOR PROVISIONS

A prior section 949k, added Pub. L. 109–366, § 3(a)(1), Oct. 17, 2006, 120 Stat. 2615, related to the defense of lack of mental responsibility, prior to the general amendment of this chapter by Pub. L. 111–84.

§ 949*l*. Voting and rulings

(a) VOTE BY SECRET WRITTEN BALLOT.—Voting by members of a military commission under this chapter on the findings and on the sentence shall be by secret written ballot.

(b) RULINGS.—(1) The military judge in a military commission under this chapter shall rule upon all questions of law, including the admissibility of evidence and all interlocutory questions arising during the proceedings.

(2) Any ruling made by the military judge upon a question of law or an interlocutory question (other than the factual issue of mental responsibility of the accused) is conclusive and constitutes the ruling of the military commission. However, a military judge may change such a ruling at any time during the trial.

(c) INSTRUCTIONS PRIOR TO VOTE.—Before a vote is taken of the findings of a military commission under this chapter, the military judge shall, in the presence of the accused and counsel, instruct the members as to the elements of the offense and charge the members—

(1) that the accused must be presumed to be innocent until the accused's guilt is established by legal and competent evidence beyond a reasonable doubt;

(2) that in the case being considered, if there is a reasonable doubt as to the guilt of the accused, the doubt must be resolved in favor of the accused and the accused must be acquitted;

(3) that, if there is reasonable doubt as to the degree of guilt, the finding must be in a lower degree as to which there is no reasonable doubt; and

(4) that the burden of proof to establish the guilt of the accused beyond a reasonable doubt is upon the United States.

(Added Pub. L. 111–84, div. A, title XVIII, § 1802, Oct. 28, 2009, 123 Stat. 2589.)

PRIOR PROVISIONS

A prior section 949*l*, added Pub. L. 109–366, § 3(a)(1), Oct. 17, 2006, 120 Stat. 2615, related to voting and rulings, prior to the general amendment of this chapter by Pub. L. 111–84.

§ 949m. Number of votes required

(a) CONVICTION.—No person may be convicted by a military commission under this chapter of any offense, except as provided in section 949i(b) of this title or by concurrence of two-thirds of the primary members present at the time the vote is taken.

(b) SENTENCES.—(1) Except as provided in paragraphs (2) and (3), sentences shall be determined by a military commission by the concurrence of two-thirds of the primary members present at the time the vote is taken.

(2) No person may be sentenced to death by a military commission, except insofar as—

(A) the penalty of death has been expressly authorized under this chapter, chapter 47 of this title, or the law of war for an offense of which the accused has been found guilty;

(B) trial counsel expressly sought the penalty of death by filing an appropriate notice in advance of trial;

(C) the accused was convicted of the offense by the concurrence of all the primary members present at the time the vote is taken, or a guilty plea was accepted and not withdrawn prior to announcement of the sentence in accordance with section 949i(b) of this title; and

(D) all primary members present at the time the vote was taken on the sentence concurred in the sentence of death.

(3) No person may be sentenced to life imprisonment, or to confinement for more than 10 years, by a military commission under this chapter except by the concurrence of three-fourths of the primary members present at the time the vote is taken.

(4) The primary members present for a vote on a sentence need not be the same primary members who voted on the conviction if the requirements of section 948m(d) of this title are met.

(c) NUMBER OF MEMBERS REQUIRED FOR PENALTY OF DEATH.—(1) Except as provided in paragraph (2), in a case in which the penalty of death is sought, the number of primary members of the military commission under this chapter shall be not less than 12 primary members.

(2) In any case described in paragraph (1) in which 12 primary members are not reasonably available for a military commission because of physical conditions or military exigencies, the convening authority shall specify a lesser number of primary members for the military commission (but not fewer than 9 primary members), and the military commission may be assembled, and the trial held, with not less than the number of primary members so specified. In any such case, the convening authority shall make a detailed written statement, to be appended to the record, stating why a greater number of primary members were not reasonably available.

(Added Pub. L. 111–84, div. A, title XVIII, § 1802, Oct. 28, 2009, 123 Stat. 2589; amended Pub. L. 112–81, div. A, title X, § 1030(a), Dec. 31, 2011, 125 Stat. 1570; Pub. L. 113–66, div. A, title X, § 1031(c), Dec. 26, 2013, 127 Stat. 850.)

PRIOR PROVISIONS

A prior section 949m, added Pub. L. 109–366, § 3(a)(1), Oct. 17, 2006, 120 Stat. 2616, related to number of votes required for conviction and sentences and number of members required on military commission for penalty of death, prior to the general amendment of this chapter by Pub. L. 111–84.

AMENDMENTS

2013—Pub. L. 113–66, § 1031(c)(1), inserted ''primary'' before ''members'' wherever appearing.

Subsec. (b)(4). Pub. L. 113–66, § 1031(c)(2), added par. (4).

2011—Subsec. (b)(2)(C). Pub. L. 112–81, § 1030(a)(1), inserted before semicolon '', or a guilty plea was accepted and not withdrawn prior to announcement of the sentence in accordance with section 949i(b) of this title''.

Subsec. (b)(2)(D). Pub. L. 112–81, § 1030(a)(2), inserted ''on the sentence'' after ''vote was taken''.

§ 949n. Military commission to announce action

A military commission under this chapter shall announce its findings and sentence to the parties as soon as determined.

(Added Pub. L. 111–84, div. A, title XVIII, § 1802, Oct. 28, 2009, 123 Stat. 2590.)

PRIOR PROVISIONS

A prior section 949n, added Pub. L. 109–366, § 3(a)(1), Oct. 17, 2006, 120 Stat. 2617, required a military commission to announce its findings and sentence as soon as determined, prior to the general amendment of this chapter by Pub. L. 111–84.

§ 949*o*. Record of trial

(a) RECORD; AUTHENTICATION.—Each military commission under this chapter shall keep a separate, verbatim, record of the proceedings in each case brought before it, and the record shall be authenticated by the signature of the military judge. If the record cannot be authenticated by the military judge by reason of death, disability, or absence, it shall be authenticated by the signature of the trial counsel or by a member of the commission if the trial counsel is unable to authenticate it by reason of death, disability, or absence. Where appropriate, and as provided in regulations prescribed by the Secretary of Defense, the record of a military commission under this chapter may contain a classified annex.

(b) COMPLETE RECORD REQUIRED.—A complete record of the proceedings and testimony shall be prepared in every military commission under this chapter.

(c) PROVISION OF COPY TO ACCUSED.—A copy of the record of the proceedings of the military commission under this chapter shall be given the accused as soon as it is authenticated. If the record contains classified information, or a classified annex, the accused shall receive a redacted version of the record consistent with the requirements of subchapter V of this chapter. Defense counsel shall have access to the unredacted record, as provided in regulations prescribed by the Secretary of Defense.

(Added Pub. L. 111–84, div. A, title XVIII, § 1802, Oct. 28, 2009, 123 Stat. 2590.)

PRIOR PROVISIONS

A prior section 949*o*, added Pub. L. 109–366, §3(a)(1), Oct. 17, 2006, 120 Stat. 2617, related to record of trial, prior to the general amendment of this chapter by Pub. L. 111–84.

SUBCHAPTER V—CLASSIFIED INFORMATION PROCEDURES

Sec.
949p–1. Protection of classified information: applicability of subchapter.
949p–2. Pretrial conference.
949p–3. Protective orders.
949p–4. Discovery of, and access to, classified information by the accused.
949p–5. Notice by accused of intention to disclose classified information.
949p–6. Procedure for cases involving classified information.
949p–7. Introduction of classified information into evidence.

§ 949p–1. Protection of classified information: applicability of subchapter

(a) PROTECTION OF CLASSIFIED INFORMATION.—Classified information shall be protected and is privileged from disclosure if disclosure would be detrimental to the national security. Under no circumstances may a military judge order the release of classified information to any person not authorized to receive such information.

(b) ACCESS TO EVIDENCE.—Any information admitted into evidence pursuant to any rule, procedure, or order by the military judge shall be provided to the accused.

(c) DECLASSIFICATION.—Trial counsel shall work with the original classification authorities for evidence that may be used at trial to ensure that such evidence is declassified to the maximum extent possible, consistent with the requirements of national security. A decision not to declassify evidence under this section shall not be subject to review by a military commission or upon appeal.

(d) CONSTRUCTION OF PROVISIONS.—The judicial construction of the Classified Information Procedures Act (18 U.S.C. App.) shall be authoritative in the interpretation of this subchapter, except to the extent that such construction is inconsistent with the specific requirements of this chapter.

(Added Pub. L. 111–84, div. A, title XVIII, §1802, Oct. 28, 2009, 123 Stat. 2590.)

REFERENCES IN TEXT

The Classified Information Procedures Act, referred to in subsec. (d), is Pub. L. 96–456, Oct. 15, 1980, 94 Stat. 2025, which is set out in the Appendix to Title 18, Crimes and Criminal Procedure.

§ 949p–2. Pretrial conference

(a) MOTION.—At any time after service of charges, any party may move for a pretrial conference to consider matters relating to classified information that may arise in connection with the prosecution.

(b) CONFERENCE.—Following a motion under subsection (a), or sua sponte, the military judge shall promptly hold a pretrial conference. Upon request by either party, the court shall hold such conference ex parte to the extent necessary to protect classified information from disclosure, in accordance with the practice of the Federal courts under the Classified Information Procedures Act (18 U.S.C. App.).

(c) MATTERS TO BE ESTABLISHED AT PRETRIAL CONFERENCE.—

(1) TIMING OF SUBSEQUENT ACTIONS.—At the pretrial conference, the military judge shall establish the timing of—

(A) requests for discovery;

(B) the provision of notice required by section 949p–5 of this title; and

(C) the initiation of the procedure established by section 949p–6 of this title.

(2) OTHER MATTERS.—At the pretrial conference, the military judge may also consider any matter—

(A) which relates to classified information; or

(B) which may promote a fair and expeditious trial.

(d) EFFECT OF ADMISSIONS BY ACCUSED AT PRETRIAL CONFERENCE.—No admission made by the accused or by any counsel for the accused at a pretrial conference under this section may be used against the accused unless the admission is in writing and is signed by the accused and by the counsel for the accused.

(Added Pub. L. 111–84, div. A, title XVIII, §1802, Oct. 28, 2009, 123 Stat. 2591.)

REFERENCES IN TEXT

The Classified Information Procedures Act, referred to in subsec. (b), is Pub. L. 96–456, Oct. 15, 1980, 94 Stat. 2025, which is set out in the Appendix to Title 18, Crimes and Criminal Procedure.

§ 949p–3. Protective orders

Upon motion of the trial counsel, the military judge shall issue an order to protect against the disclosure of any classified information that has been disclosed by the United States to any accused in any military commission under this chapter or that has otherwise been provided to, or obtained by, any such accused in any such military commission.

(Added Pub. L. 111–84, div. A, title XVIII, §1802, Oct. 28, 2009, 123 Stat. 2591.)

§ 949p–4. Discovery of, and access to, classified information by the accused

(a) LIMITATIONS ON DISCOVERY OR ACCESS BY THE ACCUSED.—

(1) DECLARATIONS BY THE UNITED STATES OF DAMAGE TO NATIONAL SECURITY.—In any case before a military commission in which the United States seeks to delete, withhold, or otherwise obtain other relief with respect to the discovery of or access to any classified information, the trial counsel shall submit a declaration invoking the United States' classified information privilege and setting forth the damage to the national security that the discovery of or access to such information reasonably could be expected to cause. The declaration shall be signed by a knowledgeable United States official possessing authority to classify information.

(2) STANDARD FOR AUTHORIZATION OF DISCOVERY OR ACCESS.—Upon the submission of a

declaration under paragraph (1), the military judge may not authorize the discovery of or access to such classified information unless the military judge determines that such classified information would be noncumulative, relevant, and helpful to a legally cognizable defense, rebuttal of the prosecution's case, or to sentencing, in accordance with standards generally applicable to discovery of or access to classified information in Federal criminal cases. If the discovery of or access to such classified information is authorized, it shall be addressed in accordance with the requirements of subsection (b).

(b) DISCOVERY OF CLASSIFIED INFORMATION.—

(1) SUBSTITUTIONS AND OTHER RELIEF.—The military judge, in assessing the accused's discovery of or access to classified information under this section, may authorize the United States—

(A) to delete or withhold specified items of classified information;

(B) to substitute a summary for classified information; or

(C) to substitute a statement admitting relevant facts that the classified information or material would tend to prove.

(2) EX PARTE PRESENTATIONS.—The military judge shall permit the trial counsel to make a request for an authorization under paragraph (1) in the form of an ex parte presentation to the extent necessary to protect classified information, in accordance with the practice of the Federal courts under the Classified Information Procedures Act (18 U.S.C. App.). If the military judge enters an order granting relief following such an ex parte showing, the entire presentation (including the text of any written submission, verbatim transcript of the ex parte oral conference or hearing, and any exhibits received by the court as part of the ex parte presentation) shall be sealed and preserved in the records of the military commission to be made available to the appellate court in the event of an appeal.

(3) ACTION BY MILITARY JUDGE.—The military judge shall grant the request of the trial counsel to substitute a summary or to substitute a statement admitting relevant facts, or to provide other relief in accordance with paragraph (1), if the military judge finds that the summary, statement, or other relief would provide the accused with substantially the same ability to make a defense as would discovery of or access to the specific classified information.

(c) RECONSIDERATION.—An order of a military judge authorizing a request of the trial counsel to substitute, summarize, withhold, or prevent access to classified information under this section is not subject to a motion for reconsideration by the accused, if such order was entered pursuant to an ex parte showing under this section.

(Added Pub. L. 111–84, div. A, title XVIII, § 1802, Oct. 28, 2009, 123 Stat. 2592.)

REFERENCES IN TEXT

The Classified Information Procedures Act, referred to in subsec. (b)(2), is Pub. L. 96–456, Oct. 15, 1980, 94 Stat. 2025, which is set out in the Appendix to Title 18, Crimes and Criminal Procedure.

§ 949p–5. Notice by accused of intention to disclose classified information

(a) NOTICE BY ACCUSED.—

(1) NOTIFICATION OF TRIAL COUNSEL AND MILITARY JUDGE.—If an accused reasonably expects to disclose, or to cause the disclosure of, classified information in any manner in connection with any trial or pretrial proceeding involving the prosecution of such accused, the accused shall, within the time specified by the military judge or, where no time is specified, within 30 days before trial, notify the trial counsel and the military judge in writing. Such notice shall include a brief description of the classified information. Whenever the accused learns of additional classified information the accused reasonably expects to disclose, or to cause the disclosure of, at any such proceeding, the accused shall notify trial counsel and the military judge in writing as soon as possible thereafter and shall include a brief description of the classified information.

(2) LIMITATION ON DISCLOSURE BY ACCUSED.—No accused shall disclose, or cause the disclosure of, any information known or believed to be classified in connection with a trial or pretrial proceeding until—

(A) notice has been given under paragraph (1); and

(B) the United States has been afforded a reasonable opportunity to seek a determination pursuant to the procedure set forth in section 949p–6 of this title and the time for the United States to appeal such determination under section 950d of this title has expired or any appeal under that section by the United States is decided.

(b) FAILURE TO COMPLY.—If the accused fails to comply with the requirements of subsection (a), the military judge—

(1) may preclude disclosure of any classified information not made the subject of notification; and

(2) may prohibit the examination by the accused of any witness with respect to any such information.

(Added Pub. L. 111–84, div. A, title XVIII, § 1802, Oct. 28, 2009, 123 Stat. 2593.)

§ 949p–6. Procedure for cases involving classified information

(a) MOTION FOR HEARING.—

(1) REQUEST FOR HEARING.—Within the time specified by the military judge for the filing of a motion under this section, either party may request the military judge to conduct a hearing to make all determinations concerning the use, relevance, or admissibility of classified information that would otherwise be made during the trial or pretrial proceeding.

(2) CONDUCT OF HEARING.—Upon a request by either party under paragraph (1), the military judge shall conduct such a hearing and shall rule prior to conducting any further proceedings.

(3) IN CAMERA HEARING UPON DECLARATION TO COURT BY APPROPRIATE OFFICIAL OF RISK OF DIS-

CLOSURE OF CLASSIFIED INFORMATION.—Any hearing held pursuant to this subsection (or any portion of such hearing specified in the request of a knowledgeable United States official) shall be held in camera if a knowledgeable United States official possessing authority to classify information submits to the military judge a declaration that a public proceeding may result in the disclosure of classified information. Classified information is not subject to disclosure under this section unless the information is relevant and necessary to an element of the offense or a legally cognizable defense and is otherwise admissible in evidence.

(4) MILITARY JUDGE TO MAKE DETERMINATIONS IN WRITING.—As to each item of classified information, the military judge shall set forth in writing the basis for the determination.

(b) NOTICE AND USE OF CLASSIFIED INFORMATION BY THE GOVERNMENT.—

(1) NOTICE TO ACCUSED.—Before any hearing is conducted pursuant to a request by the trial counsel under subsection (a), trial counsel shall provide the accused with notice of the classified information that is at issue. Such notice shall identify the specific classified information at issue whenever that information previously has been made available to the accused by the United States. When the United States has not previously made the information available to the accused in connection with the case the information may be described by generic category, in such forms as the military judge may approve, rather than by identification of the specific information of concern to the United States.

(2) ORDER BY MILITARY JUDGE UPON REQUEST OF ACCUSED.—Whenever the trial counsel requests a hearing under subsection (a), the military judge, upon request of the accused, may order the trial counsel to provide the accused, prior to trial, such details as to the portion of the charge or specification at issue in the hearing as are needed to give the accused fair notice to prepare for the hearing.

(c) SUBSTITUTIONS.—

(1) IN CAMERA PRETRIAL HEARING.—Upon request of the trial counsel pursuant to the Military Commission Rules of Evidence, and in accordance with the security procedures established by the military judge, the military judge shall conduct a classified in camera pretrial hearing concerning the admissibility of classified information.

(2) PROTECTION OF SOURCES, METHODS, AND ACTIVITIES BY WHICH EVIDENCE ACQUIRED.—When trial counsel seeks to introduce evidence before a military commission under this chapter and the Executive branch has classified the sources, methods, or activities by which the United States acquired the evidence, the military judge shall permit trial counsel to introduce the evidence, including a substituted evidentiary foundation pursuant to the procedures described in subsection (d), while protecting from disclosure information identifying those sources, methods, or activities, if—

(A) the evidence is otherwise admissible; and

(B) the military judge finds that—

(i) the evidence is reliable; and

(ii) the redaction is consistent with affording the accused a fair trial.

(d) ALTERNATIVE PROCEDURE FOR DISCLOSURE OF CLASSIFIED INFORMATION.—

(1) MOTION BY THE UNITED STATES.—Upon any determination by the military judge authorizing the disclosure of specific classified information under the procedures established by this section, the trial counsel may move that, in lieu of the disclosure of such specific classified information, the military judge order—

(A) the substitution for such classified information of a statement admitting relevant facts that the specific classified information would tend to prove;

(B) the substitution for such classified information of a summary of the specific classified information; or

(C) any other procedure or redaction limiting the disclosure of specific classified information.

(2) ACTION ON MOTION.—The military judge shall grant such a motion of the trial counsel if the military judge finds that the statement, summary, or other procedure or redaction will provide the defendant with substantially the same ability to make his defense as would disclosure of the specific classified information.

(3) HEARING ON MOTION.—The military judge shall hold a hearing on any motion under this subsection. Any such hearing shall be held in camera at the request of a knowledgeable United States official possessing authority to classify information.

(4) SUBMISSION OF STATEMENT OF DAMAGE TO NATIONAL SECURITY IF DISCLOSURE ORDERED.—The trial counsel may, in connection with a motion under paragraph (1), submit to the military judge a declaration signed by a knowledgeable United States official possessing authority to classify information certifying that disclosure of classified information would cause identifiable damage to the national security of the United States and explaining the basis for the classification of such information. If so requested by the trial counsel, the military judge shall examine such declaration during an ex parte presentation.

(e) SEALING OF RECORDS OF IN CAMERA HEARINGS.—If at the close of an in camera hearing under this section (or any portion of a hearing under this section that is held in camera), the military judge determines that the classified information at issue may not be disclosed or elicited at the trial or pretrial proceeding, the record of such in camera hearing shall be sealed and preserved for use in the event of an appeal. The accused may seek reconsideration of the military judge's determination prior to or during trial.

(f) PROHIBITION ON DISCLOSURE OF CLASSIFIED INFORMATION BY THE ACCUSED; RELIEF FOR ACCUSED WHEN THE UNITED STATES OPPOSES DISCLOSURE.—

(1) ORDER TO PREVENT DISCLOSURE BY ACCUSED.—Whenever the military judge denies a motion by the trial counsel that the judge issue an order under subsection (a), (c), or (d)

and the trial counsel files with the military judge a declaration signed by a knowledgeable United States official possessing authority to classify information objecting to disclosure of the classified information at issue, the military judge shall order that the accused not disclose or cause the disclosure of such information.

(2) RESULT OF ORDER UNDER PARAGRAPH (1).—Whenever an accused is prevented by an order under paragraph (1) from disclosing or causing the disclosure of classified information, the military judge shall dismiss the case, except that, when the military judge determines that the interests of justice would not be served by dismissal of the case, the military judge shall order such other action, in lieu of dismissing the charge or specification, as the military judge determines is appropriate. Such action may include, but need not be limited to, the following:

(A) Dismissing specified charges or specifications.

(B) Finding against the United States on any issue as to which the excluded classified information relates.

(C) Striking or precluding all or part of the testimony of a witness.

(3) TIME FOR THE UNITED STATES TO SEEK INTERLOCUTORY APPEAL.—An order under paragraph (2) shall not take effect until the military judge has afforded the United States—

(A) an opportunity to appeal such order under section 950d of this title; and

(B) an opportunity thereafter to withdraw its objection to the disclosure of the classified information at issue.

(g) RECIPROCITY.—

(1) DISCLOSURE OF REBUTTAL INFORMATION.—Whenever the military judge determines that classified information may be disclosed in connection with a trial or pretrial proceeding, the military judge shall, unless the interests of fairness do not so require, order the United States to provide the accused with the information it expects to use to rebut the classified information. The military judge may place the United States under a continuing duty to disclose such rebuttal information.

(2) SANCTION FOR FAILURE TO COMPLY.—If the United States fails to comply with its obligation under this subsection, the military judge—

(A) may exclude any evidence not made the subject of a required disclosure; and

(B) may prohibit the examination by the United States of any witness with respect to such information.

(Added Pub. L. 111–84, div. A, title XVIII, § 1802, Oct. 28, 2009, 123 Stat. 2593.)

§ 949p–7. Introduction of classified information into evidence

(a) PRESERVATION OF CLASSIFICATION STATUS.—Writings, recordings, and photographs containing classified information may be admitted into evidence in proceedings of military commissions under this chapter without change in their classification status.

(b) PRECAUTIONS BY MILITARY JUDGES.—

(1) PRECAUTIONS IN ADMITTING CLASSIFIED INFORMATION INTO EVIDENCE.—The military judge in a trial by military commission, in order to prevent unnecessary disclosure of classified information, may order admission into evidence of only part of a writing, recording, or photograph, or may order admission into evidence of the whole writing, recording, or photograph with excision of some or all of the classified information contained therein, unless the whole ought in fairness be considered.

(2) CLASSIFIED INFORMATION KEPT UNDER SEAL.—The military judge shall allow classified information offered or accepted into evidence to remain under seal during the trial, even if such evidence is disclosed in the military commission, and may, upon motion by the United States, seal exhibits containing classified information for any period after trial as necessary to prevent a disclosure of classified information when a knowledgeable United States official possessing authority to classify information submits to the military judge a declaration setting forth the damage to the national security that the disclosure of such information reasonably could be expected to cause.

(c) TAKING OF TESTIMONY.—

(1) OBJECTION BY TRIAL COUNSEL.—During the examination of a witness, trial counsel may object to any question or line of inquiry that may require the witness to disclose classified information not previously found to be admissible.

(2) ACTION BY MILITARY JUDGE.—Following an objection under paragraph (1), the military judge shall take such suitable action to determine whether the response is admissible as will safeguard against the compromise of any classified information. Such action may include requiring trial counsel to provide the military judge with a proffer of the witness' response to the question or line of inquiry and requiring the accused to provide the military judge with a proffer of the nature of the information sought to be elicited by the accused. Upon request, the military judge may accept an ex parte proffer by trial counsel to the extent necessary to protect classified information from disclosure, in accordance with the practice of the Federal courts under the Classified Information Procedures Act (18 U.S.C. App.).

(d) DISCLOSURE AT TRIAL OF CERTAIN STATEMENTS PREVIOUSLY MADE BY A WITNESS.—

(1) MOTION FOR PRODUCTION OF STATEMENTS IN POSSESSION OF THE UNITED STATES.—After a witness called by the trial counsel has testified on direct examination, the military judge, on motion of the accused, may order production of statements of the witness in the possession of the United States which relate to the subject matter as to which the witness has testified. This paragraph does not preclude discovery or assertion of a privilege otherwise authorized.

(2) INVOCATION OF PRIVILEGE BY THE UNITED STATES.—If the United States invokes a privilege, the trial counsel may provide the prior

statements of the witness to the military judge during an ex parte presentation to the extent necessary to protect classified information from disclosure, in accordance with the practice of the Federal courts under the Classified Information Procedures Act (18 U.S.C. App.).

(3) ACTION BY MILITARY JUDGE ON MOTION.—If the military judge finds that disclosure of any portion of the statement identified by the United States as classified would be detrimental to the national security in the degree to warrant classification under the applicable Executive Order, statute, or regulation, that such portion of the statement is consistent with the testimony of the witness, and that the disclosure of such portion is not necessary to afford the accused a fair trial, the military judge shall excise that portion from the statement. If the military judge finds that such portion of the statement is inconsistent with the testimony of the witness or that its disclosure is necessary to afford the accused a fair trial, the military judge, shall, upon the request of the trial counsel, review alternatives to disclosure in accordance with section 949p–6(d) of this title.

(Added Pub. L. 111–84, div. A, title XVIII, § 1802, Oct. 28, 2009, 123 Stat. 2596.)

REFERENCES IN TEXT

The Classified Information Procedures Act, referred to in subsecs. (c)(2) and (d)(2), is Pub. L. 96–456, Oct. 15, 1980, 94 Stat. 2025, which is set out in the Appendix to Title 18, Crimes and Criminal Procedure.

SUBCHAPTER VI—SENTENCES

Sec.
949s. Cruel or unusual punishments prohibited.
949t. Maximum limits.
949u. Execution of confinement.

§ 949s. Cruel or unusual punishments prohibited

Punishment by flogging, or by branding, marking, or tattooing on the body, or any other cruel or unusual punishment, may not be adjudged by a military commission under this chapter or inflicted under this chapter upon any person subject to this chapter. The use of irons, single or double, except for the purpose of safe custody, is prohibited under this chapter.

(Added Pub. L. 111–84, div. A, title XVIII, § 1802, Oct. 28, 2009, 123 Stat. 2598.)

PRIOR PROVISIONS

A prior section 949s, added Pub. L. 109–366, § 3(a)(1), Oct. 17, 2006, 120 Stat. 2617, prohibited cruel or unusual punishments, prior to the general amendment of this chapter by Pub. L. 111–84.

§ 949t. Maximum limits

The punishment which a military commission under this chapter may direct for an offense may not exceed such limits as the President or Secretary of Defense may prescribe for that offense.

(Added Pub. L. 111–84, div. A, title XVIII, § 1802, Oct. 28, 2009, 123 Stat. 2598.)

PRIOR PROVISIONS

A prior section 949t, added Pub. L. 109–366, § 3(a)(1), Oct. 17, 2006, 120 Stat. 2617, related to maximum limits of punishment, prior to the general amendment of this chapter by Pub. L. 111–84.

§ 949u. Execution of confinement

(a) IN GENERAL.—Under such regulations as the Secretary of Defense may prescribe, a sentence of confinement adjudged by a military commission under this chapter may be carried into execution by confinement—

(1) in any place of confinement under the control of any of the armed forces; or

(2) in any penal or correctional institution under the control of the United States or its allies, or which the United States may be allowed to use.

(b) TREATMENT DURING CONFINEMENT BY OTHER THAN THE ARMED FORCES.—Persons confined under subsection (a)(2) in a penal or correctional institution not under the control of an armed force are subject to the same discipline and treatment as persons confined or committed by the courts of the United States or of the State, District of Columbia, or place in which the institution is situated.

(Added Pub. L. 111–84, div. A, title XVIII, § 1802, Oct. 28, 2009, 123 Stat. 2598.)

PRIOR PROVISIONS

A prior section 949u, added Pub. L. 109–366, § 3(a)(1), Oct. 17, 2006, 120 Stat. 2617, related to execution of a sentence of confinement, prior to the general amendment of this chapter by Pub. L. 111–84.

SUBCHAPTER VII—POST-TRIAL PROCEDURE AND REVIEW OF MILITARY COMMISSIONS

Sec.
950a. Error of law; lesser included offense.
950b. Review by the convening authority.
950c. Appellate referral; waiver or withdrawal of appeal.
950d. Interlocutory appeals by the United States.
950e. Rehearings.
950f. Review by United States Court of Military Commission Review.
950g. Review by United States Court of Appeals for the District of Columbia Circuit; writ of certiorari to Supreme Court.
950h. Appellate counsel.
950i. Execution of sentence; suspension of sentence.
950j. Finality of proceedings, findings, and sentences.

AMENDMENTS

2018—Pub. L. 115–232, div. A, title X, § 1081(a)(11), Aug. 13, 2018, 132 Stat. 1983, substituted ''United States Court of Appeals'' for ''United States Court of Court of Appeals'' in item 950g.

§ 950a. Error of law; lesser included offense

(a) ERROR OF LAW.—A finding or sentence of a military commission under this chapter may not be held incorrect on the ground of an error of law unless the error materially prejudices the substantial rights of the accused.

(b) LESSER INCLUDED OFFENSE.—Any reviewing authority with the power to approve or affirm a finding of guilty by a military commission under this chapter may approve or affirm, instead, so much of the finding as includes a lesser included offense.

(Added Pub. L. 111–84, div. A, title XVIII, § 1802, Oct. 28, 2009, 123 Stat. 2599.)

PRIOR PROVISIONS

A prior section 950a, added Pub. L. 109–366, § 3(a)(1), Oct. 17, 2006, 120 Stat. 2618, related to error of law and lesser included offense, prior to the general amendment of this chapter by Pub. L. 111–84.

§ 950b. Review by the convening authority

(a) NOTICE TO CONVENING AUTHORITY OF FINDINGS AND SENTENCE.—The findings and sentence of a military commission under this chapter shall be reported in writing promptly to the convening authority after the announcement of the sentence.

(b) SUBMITTAL OF MATTERS BY ACCUSED TO CONVENING AUTHORITY.—(1) The accused may submit to the convening authority matters for consideration by the convening authority with respect to the findings and the sentence of the military commission under this chapter.

(2)(A) Except as provided in subparagraph (B), a submittal under paragraph (1) shall be made in writing within 20 days after the accused has been given an authenticated record of trial under section 949*o*(c) of this title.

(B) If the accused shows that additional time is required for the accused to make a submittal under paragraph (1), the convening authority may, for good cause, extend the applicable period under subparagraph (A) for not more than an additional 20 days.

(3) The accused may waive the accused's right to make a submittal to the convening authority under paragraph (1). Such a waiver shall be made in writing, and may not be revoked. For the purposes of subsection (c)(2), the time within which the accused may make a submittal under this subsection shall be deemed to have expired upon the submittal of a waiver under this paragraph to the convening authority.

(c) ACTION BY CONVENING AUTHORITY.—(1) The authority under this subsection to modify the findings and sentence of a military commission under this chapter is a matter of the sole discretion and prerogative of the convening authority.

(2) The convening authority is not required to take action on the findings of a military commission under this chapter. If the convening authority takes action on the findings, the convening authority may, in the sole discretion of the convening authority, only—

(A) dismiss any charge or specification by setting aside a finding of guilty thereto; or

(B) change a finding of guilty to a charge to a finding of guilty to an offense that is a lesser included offense of the offense stated in the charge.

(3)(A) The convening authority shall take action on the sentence of a military commission under this chapter.

(B) Subject to regulations prescribed by the Secretary of Defense, action under this paragraph may be taken only after consideration of any matters submitted by the accused under subsection (b) or after the time for submitting such matters expires, whichever is earlier.

(C) In taking action under this paragraph, the convening authority may, in the sole discretion of the convening authority, approve, disapprove, commute, or suspend the sentence in whole or in part. The convening authority may not increase a sentence beyond that which is found by the military commission.

(4) The convening authority shall serve on the accused or on defense counsel notice of any action taken by the convening authority under this subsection.

(d) ORDER OF REVISION OR REHEARING.—(1) Subject to paragraphs (2) and (3), the convening authority of a military commission under this chapter may, in the sole discretion of the convening authority, order a proceeding in revision or a rehearing.

(2)(A) Except as provided in subparagraph (B), a proceeding in revision may be ordered by the convening authority if—

(i) there is an apparent error or omission in the record; or

(ii) the record shows improper or inconsistent action by the military commission with respect to the findings or sentence that can be rectified without material prejudice to the substantial rights of the accused.

(B) In no case may a proceeding in revision—

(i) reconsider a finding of not guilty of a specification or a ruling which amounts to a finding of not guilty;

(ii) reconsider a finding of not guilty of any charge, unless there has been a finding of guilty under a specification laid under that charge, which sufficiently alleges a violation; or

(iii) increase the severity of the sentence unless the sentence prescribed for the offense is mandatory.

(3) A rehearing may be ordered by the convening authority if the convening authority disapproves the findings and sentence and states the reasons for disapproval of the findings. If the convening authority disapproves the finding and sentence and does not order a rehearing, the convening authority shall dismiss the charges. A rehearing as to the findings may not be ordered by the convening authority when there is a lack of sufficient evidence in the record to support the findings. A rehearing as to the sentence may be ordered by the convening authority if the convening authority disapproves the sentence.

(Added Pub. L. 111–84, div. A, title XVIII, § 1802, Oct. 28, 2009, 123 Stat. 2599; amended Pub. L. 113–291, div. A, title X, § 1071(f)(10), Dec. 19, 2014, 128 Stat. 3510.)

PRIOR PROVISIONS

A prior section 950b, added Pub. L. 109–366, § 3(a)(1), Oct. 17, 2006, 120 Stat. 2618, related to review by the convening authority, prior to the general amendment of this chapter by Pub. L. 111–84.

AMENDMENTS

2014—Subsec. (b)(2)(A). Pub. L. 113–291 substituted "given" for "give".

§ 950c. Appellate referral; waiver or withdrawal of appeal

(a) AUTOMATIC REFERRAL FOR APPELLATE REVIEW.—Except as provided in subsection (b), in each case in which the final decision of a mili-

tary commission under this chapter (as approved by the convening authority) includes a finding of guilty, the convening authority shall refer the case to the United States Court of Military Commission Review. Any such referral shall be made in accordance with procedures prescribed under regulations of the Secretary.

(b) WAIVER OF RIGHT OF REVIEW.—(1) Except in a case in which the sentence as approved under section 950b of this title extends to death, an accused may file with the convening authority a statement expressly waiving the right of the accused to appellate review by the United States Court of Military Commission Review under section 950f of this title of the final decision of the military commission under this chapter.

(2) A waiver under paragraph (1) shall be signed by both the accused and a defense counsel.

(3) A waiver under paragraph (1) must be filed, if at all, within 10 days after notice of the action is served on the accused or on defense counsel under section 950b(c)(4) of this title. The convening authority, for good cause, may extend the period for such filing by not more than 30 days.

(c) WITHDRAWAL OF APPEAL.—Except in a case in which the sentence as approved under section 950b of this title extends to death, the accused may withdraw an appeal at any time.

(d) EFFECT OF WAIVER OR WITHDRAWAL.—A waiver of the right to appellate review or the withdrawal of an appeal under this section bars review under section 950f of this title.

(Added Pub. L. 111–84, div. A, title XVIII, § 1802, Oct. 28, 2009, 123 Stat. 2600.)

PRIOR PROVISIONS

A prior section 950c, added Pub. L. 109–366, § 3(a)(1), Oct. 17, 2006, 120 Stat. 2620, related to appellate referral and waiver or withdrawal of appeal, prior to the general amendment of this chapter by Pub. L. 111–84.

§ 950d. Interlocutory appeals by the United States

(a) INTERLOCUTORY APPEAL.—Except as provided in subsection (b), in a trial by military commission under this chapter, the United States may take an interlocutory appeal to the United States Court of Military Commission Review of any order or ruling of the military judge—

(1) that terminates proceedings of the military commission with respect to a charge or specification;

(2) that excludes evidence that is substantial proof of a fact material in the proceeding;

(3) that relates to a matter under subsection (c) or (d) of section 949d of this title; or

(4) that, with respect to classified information—

(A) authorizes the disclosure of such information;

(B) imposes sanctions for nondisclosure of such information; or

(C) refuses a protective order sought by the United States to prevent the disclosure of such information.

(b) LIMITATION.—The United States may not appeal under subsection (a) an order or ruling that is, or amounts to, a finding of not guilty by the military commission with respect to a charge or specification.

(c) SCOPE OF APPEAL RIGHT WITH RESPECT TO CLASSIFIED INFORMATION.—The United States has the right to appeal under paragraph (4) of subsection (a) whenever the military judge enters an order or ruling that would require the disclosure of classified information, without regard to whether the order or ruling appealed from was entered under this chapter, another provision of law, a rule, or otherwise. Any such appeal may embrace any preceding order, ruling, or reasoning constituting the basis of the order or ruling that would authorize such disclosure.

(d) TIMING AND ACTION ON INTERLOCUTORY APPEALS RELATING TO CLASSIFIED INFORMATION.—

(1) APPEAL TO BE EXPEDITED.—An appeal taken pursuant to paragraph (4) of subsection (a) shall be expedited by the United States Court of Military Commission Review.

(2) APPEALS BEFORE TRIAL.—If such an appeal is taken before trial, the appeal shall be taken within 10 days after the order or ruling from which the appeal is made and the trial shall not commence until the appeal is decided.

(3) APPEALS DURING TRIAL.—If such an appeal is taken during trial, the military judge shall adjourn the trial until the appeal is decided, and the court of appeals—

(A) shall hear argument on such appeal within 4 days of the adjournment of the trial (excluding weekends and holidays);

(B) may dispense with written briefs other than the supporting materials previously submitted to the military judge;

(C) shall render its decision within four days of argument on appeal (excluding weekends and holidays); and

(D) may dispense with the issuance of a written opinion in rendering its decision.

(e) NOTICE AND TIMING OF OTHER APPEALS.—The United States shall take an appeal of an order or ruling under subsection (a), other than an appeal under paragraph (4) of that subsection, by filing a notice of appeal with the military judge within 5 days after the date of the order or ruling.

(f) METHOD OF APPEAL.—An appeal under this section shall be forwarded, by means specified in regulations prescribed by the Secretary of Defense, directly to the United States Court of Military Commission Review.

(g) APPEALS COURT TO ACT ONLY WITH RESPECT TO MATTER OF LAW.—In ruling on an appeal under paragraph (1), (2), or (3) of subsection (a), the appeals court may act only with respect to matters of law.

(h) SUBSEQUENT APPEAL RIGHTS OF ACCUSED NOT AFFECTED.—An appeal under paragraph (4) of subsection (a), and a decision on such appeal, shall not affect the right of the accused, in a subsequent appeal from a judgment of conviction, to claim as error reversal by the military judge on remand of a ruling appealed from during trial.

(Added Pub. L. 111–84, div. A, title XVIII, § 1802, Oct. 28, 2009, 123 Stat. 2601.)

PRIOR PROVISIONS

A prior section 950d, added Pub. L. 109–366, § 3(a)(1), Oct. 17, 2006, 120 Stat. 2620, related to appeal by the

United States, prior to the general amendment of this chapter by Pub. L. 111–84.

§ 950e. Rehearings

(a) COMPOSITION OF MILITARY COMMISSION FOR REHEARING.—Each rehearing under this chapter shall take place before a military commission under this chapter composed of members who were not members of the military commission which first heard the case.

(b) SCOPE OF REHEARING.—(1) Upon a rehearing—

(A) the accused may not be tried for any offense of which the accused was found not guilty by the first military commission; and

(B) no sentence in excess of or more than the original sentence may be imposed unless—

(i) the sentence is based upon a finding of guilty of an offense not considered upon the merits in the original proceedings; or

(ii) the sentence prescribed for the offense is mandatory.

(2) Upon a rehearing, if the sentence approved after the first military commission was in accordance with a pretrial agreement and the accused at the rehearing changes his plea with respect to the charges or specifications upon which the pretrial agreement was based, or otherwise does not comply with pretrial agreement, the sentence as to those charges or specifications may include any punishment not in excess of that lawfully adjudged at the first military commission.

(Added Pub. L. 111–84, div. A, title XVIII, § 1802, Oct. 28, 2009, 123 Stat. 2602.)

PRIOR PROVISIONS

A prior section 950e, added Pub. L. 109–366, § 3(a)(1), Oct. 17, 2006, 120 Stat. 2621, related to rehearings, prior to the general amendment of this chapter by Pub. L. 111–84.

§ 950f. Review by United States Court of Military Commission Review

(a) ESTABLISHMENT.—There is a court of record to be known as the ''United States Court of Military Commission Review'' (in this section referred to as the ''Court''). The Court shall consist of one or more panels, each composed of not less than three judges on the Court. For the purpose of reviewing decisions of military commissions under this chapter, the Court may sit in panels or as a whole, in accordance with rules prescribed by the Secretary of Defense.

(b) JUDGES.—(1) Judges on the Court shall be assigned or appointed in a manner consistent with the provisions of this subsection.

(2) The Secretary of Defense may assign persons who are appellate military judges to be judges on the Court. Any judge so assigned shall be a commissioned officer of the armed forces, and shall meet the qualifications for military judges prescribed by section 948j(b) of this title.

(3) The President may appoint, by and with the advice and consent of the Senate, additional judges to the United States Court of Military Commission Review.

(4) No person may serve as a judge on the Court in any case in which that person acted as a military judge, counsel, or reviewing official.

(5)(A) For purposes of sections 203, 205, 207, 208, and 209 of title 18, the term ''special Government employee'' shall include a judge of the Court appointed under paragraph (3).

(B) A person appointed as a judge of the Court under paragraph (3) shall be considered to be an officer or employee of the United States with respect to such person's status as a judge, but only during periods in which such person is performing the duties of such a judge. Any provision of law that prohibits or limits the political or business activities of an employee of the United States shall only apply to such a judge during such periods.

(6) The term of an appellate military judge assigned to the Court under paragraph (2) or appointed to the Court under paragraph (3) shall expire on the earlier of the date on which—

(A) the judge leaves active duty; or

(B) the judge is reassigned to other duties in accordance with section 949b(b)(4) of this title.

(c) CASES TO BE REVIEWED.—The Court shall, in accordance with procedures prescribed under regulations of the Secretary, review the record in each case that is referred to the Court by the convening authority under section 950c of this title with respect to any matter properly raised by the accused.

(d) STANDARD AND SCOPE OF REVIEW.—In a case reviewed by the Court under this section, the Court may act only with respect to the findings and sentence as approved by the convening authority. The Court may affirm only such findings of guilty, and the sentence or such part or amount of the sentence, as the Court finds correct in law and fact and determines, on the basis of the entire record, should be approved. In considering the record, the Court may weigh the evidence, judge the credibility of witnesses, and determine controverted questions of fact, recognizing that the military commission saw and heard the witnesses.

(e) REHEARINGS.—If the Court sets aside the findings or sentence, the Court may, except where the setting aside is based on lack of sufficient evidence in the record to support the findings, order a rehearing. If the Court sets aside the findings or sentence and does not order a rehearing, the Court shall order that the charges be dismissed.

(Added Pub. L. 111–84, div. A, title XVIII, § 1802, Oct. 28, 2009, 123 Stat. 2603; amended Pub. L. 112–81, div. A, title X, § 1034(c), Dec. 31, 2011, 125 Stat. 1573; Pub. L. 115–91, div. A, title X, § 1082, Dec. 12, 2017, 131 Stat. 1602; Pub. L. 115–232, div. A, title V, § 541(a), Aug. 13, 2018, 132 Stat. 1761.)

PRIOR PROVISIONS

A prior section 950f, added Pub. L. 109–366, § 3(a)(1), Oct. 17, 2006, 120 Stat. 2621; amended Pub. L. 110–181, div. A, title X, § 1063(a)(6), Jan. 28, 2008, 122 Stat. 322, related to review by Court of Military Commission Review, prior to the general amendment of this chapter by Pub. L. 111–84.

AMENDMENTS

2018—Subsec. (b)(6). Pub. L. 115–232 added par. (6).

2017—Subsec. (b)(5). Pub. L. 115–91 added par. (5).

2011—Subsec. (a). Pub. L. 112–81 substituted ''judges on the Court'' for ''appellate military judges'' in second sentence.

EFFECTIVE DATE OF 2018 AMENDMENT

Pub. L. 115–232, div. A, title V, § 541(b), Aug. 13, 2018, 132 Stat. 1762, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to each judge of the United States Court of Military Commission Review serving on that court on the date of the enactment of this Act [Aug. 13, 2018] and each judge assigned or appointed to that court on or after such date.''

§ 950g. Review by United States Court of Appeals for the District of Columbia Circuit; writ of certiorari to Supreme Court

(a) EXCLUSIVE APPELLATE JURISDICTION.—Except as provided in subsection (b), the United States Court of Appeals for the District of Columbia Circuit shall have exclusive jurisdiction to determine the validity of a final judgment rendered by a military commission (as approved by the convening authority and, where applicable, as affirmed or set aside as incorrect in law by the United States Court of Military Commission Review) under this chapter.

(b) EXHAUSTION OF OTHER APPEALS.—The United States Court of Appeals for the District of Columbia Circuit may not review a final judgment described in subsection (a) until all other appeals under this chapter have been waived or exhausted.

(c) TIME FOR SEEKING REVIEW.—A petition for review by the United States Court of Appeals for the District of Columbia Circuit must be filed in the Court of Appeals—

(1) not later than 20 days after the date on which written notice of the final decision of the United States Court of Military Commission Review is served on the parties; or

(2) if the accused submits, in the form prescribed by section 950c of this title, a written notice waiving the right of the accused to review by the United States Court of Military Commission Review, not later than 20 days after the date on which such notice is submitted.

(d) SCOPE AND NATURE OF REVIEW.—The United States Court of Appeals for the District of Columbia Circuit may act under this section only with respect to the findings and sentence as approved by the convening authority and as affirmed or set aside as incorrect in law by the United States Court of Military Commission Review, and shall take action only with respect to matters of law, including the sufficiency of the evidence to support the verdict.

(e) REVIEW BY SUPREME COURT.—The Supreme Court may review by writ of certiorari pursuant to section 1254 of title 28 the final judgment of the United States Court of Appeals for the District of Columbia Circuit under this section.

(Added Pub. L. 111–84, div. A, title XVIII, § 1802, Oct. 28, 2009, 123 Stat. 2603; amended Pub. L. 112–81, div. A, title X, § 1034(d), Dec. 31, 2011, 125 Stat. 1573.)

PRIOR PROVISIONS

A prior section 950g, added Pub. L. 109–366, § 3(a)(1), Oct. 17, 2006, 120 Stat. 2622, related to review by the United States Court of Appeals for the District of Columbia Circuit and the Supreme Court, prior to the general amendment of this chapter by Pub. L. 111–84.

AMENDMENTS

2011—Subsec. (a). Pub. L. 112–81, § 1034(d)(1), inserted ''as affirmed or set aside as incorrect in law by'' after ''where applicable,''.

Subsec. (c). Pub. L. 112–81, § 1034(d)(2)(A), substituted ''in the Court of Appeals—'' for ''by the accused in the Court of Appeals not later than 20 days after the date on which—'' in introductory provisions.

Subsec. (c)(1). Pub. L. 112–81, § 1034(d)(2)(B), inserted ''not later than 20 days after the date on which'' before ''written notice'' and substituted ''on the parties'' for ''on the accused or on defense counsel''.

Subsec. (c)(2). Pub. L. 112–81, § 1034(d)(2)(C), inserted ''if'' before ''the accused submits'' and inserted before period at end '', not later than 20 days after the date on which such notice is submitted''.

§ 950h. Appellate counsel

(a) APPOINTMENT.—The Secretary of Defense shall, by regulation, establish procedures for the appointment of appellate counsel for the United States and for the accused in military commissions under this chapter. Appellate counsel shall meet the qualifications of counsel for appearing before military commissions under this chapter.

(b) REPRESENTATION OF UNITED STATES.—Appellate counsel appointed under subsection (a)—

(1) shall represent the United States in any appeal or review proceeding under this chapter before the United States Court of Military Commission Review; and

(2) may, when requested to do so by the Attorney General in a case arising under this chapter, represent the United States before the United States Court of Appeals for the District of Columbia Circuit or the Supreme Court.

(c) REPRESENTATION OF ACCUSED.—The accused shall be represented by appellate counsel appointed under subsection (a) before the United States Court of Military Commission Review, the United States Court of Appeals for the District of Columbia Circuit, and the Supreme Court, and by civilian counsel if retained by the accused. Any such civilian counsel shall meet the qualifications under paragraph (3) of section 949c(b) of this title for civilian counsel appearing before military commissions under this chapter and shall be subject to the requirements of paragraph (7) of that section.

(Added Pub. L. 111–84, div. A, title XVIII, § 1802, Oct. 28, 2009, 123 Stat. 2604.)

PRIOR PROVISIONS

A prior section 950h, added Pub. L. 109–366, § 3(a)(1), Oct. 17, 2006, 120 Stat. 2622, related to appellate counsel, prior to the general amendment of this chapter by Pub. L. 111–84.

§ 950i. Execution of sentence; suspension of sentence

(a) IN GENERAL.—The Secretary of Defense is authorized to carry out a sentence imposed by a military commission under this chapter in accordance with such procedures as the Secretary may prescribe.

(b) EXECUTION OF SENTENCE OF DEATH ONLY UPON APPROVAL BY THE PRESIDENT.—If the sentence of a military commission under this chapter extends to death, that part of the sentence providing for death may not be executed until

approved by the President. In such a case, the President may commute, remit, or suspend the sentence, or any part thereof, as he sees fit.

(c) EXECUTION OF SENTENCE OF DEATH ONLY UPON FINAL JUDGMENT OF LEGALITY OF PROCEEDINGS.—(1) If the sentence of a military commission under this chapter extends to death, the sentence may not be executed until there is a final judgment as to the legality of the proceedings (and with respect to death, approval under subsection (b)).

(2) A judgment as to legality of proceedings is final for purposes of paragraph (1) when review is completed in accordance with the judgment of the United States Court of Military Commission Review and—

(A) the time for the accused to file a petition for review by the United States Court of Appeals for the District of Columbia Circuit has expired, the accused has not filed a timely petition for such review, and the case is not otherwise under review by the Court of Appeals; or

(B) review is completed in accordance with the judgment of the United States Court of Appeals for the District of Columbia Circuit and—

(i) a petition for a writ of certiorari is not timely filed;

(ii) such a petition is denied by the Supreme Court; or

(iii) review is otherwise completed in accordance with the judgment of the Supreme Court.

(d) SUSPENSION OF SENTENCE.—The Secretary of the Defense, or the convening authority acting on the case (if other than the Secretary), may suspend the execution of any sentence or part thereof in the case, except a sentence of death.

(Added Pub. L. 111–84, div. A, title XVIII, § 1802, Oct. 28, 2009, 123 Stat. 2605.)

PRIOR PROVISIONS

A prior section 950i, added Pub. L. 109–366, § 3(a)(1), Oct. 17, 2006, 120 Stat. 2623, related to execution of sentence, procedures for execution of sentence of death, and suspension of sentence prior to the general amendment of this chapter by Pub. L. 111–84.

§ 950j. Finality of proceedings, findings, and sentences

The appellate review of records of trial provided by this chapter, and the proceedings, findings, and sentences of military commissions as approved, reviewed, or affirmed as required by this chapter, are final and conclusive. Orders publishing the proceedings of military commissions under this chapter are binding upon all departments, courts, agencies, and officers of the United States, subject only to action by the Secretary or the convening authority as provided in section 950i(c) of this title and the authority of the President.

(Added Pub. L. 111–84, div. A, title XVIII, § 1802, Oct. 28, 2009, 123 Stat. 2605.)

PRIOR PROVISIONS

A prior section 950j, added Pub. L. 109–366, § 3(a)(1), Oct. 17, 2006, 120 Stat. 2623; amended Pub. L. 110–181, div. A, title X, § 1063(a)(7), Jan. 28, 2008, 122 Stat. 322, related to finality of proceedings, findings, and sentences, prior to the general amendment of this chapter by Pub. L. 111–84.

SUBCHAPTER VIII—PUNITIVE MATTERS

Sec.

950p. Definitions; construction of certain offenses; common circumstances.

950q. Principals.

950r. Accessory after the fact.

950s. Conviction of lesser offenses.

950t. Crimes triable by military commission.

§ 950p. Definitions; construction of certain offenses; common circumstances

(a) DEFINITIONS.—In this subchapter:

(1) The term ''military objective'' means combatants and those objects during hostilities which, by their nature, location, purpose, or use, effectively contribute to the warfighting or war-sustaining capability of an opposing force and whose total or partial destruction, capture, or neutralization would constitute a definite military advantage to the attacker under the circumstances at the time of an attack.

(2) The term ''protected person'' means any person entitled to protection under one or more of the Geneva Conventions, including civilians not taking an active part in hostilities, military personnel placed out of combat by sickness, wounds, or detention, and military medical or religious personnel.

(3) The term ''protected property'' means any property specifically protected by the law of war, including buildings dedicated to religion, education, art, science, or charitable purposes, historic monuments, hospitals, and places where the sick and wounded are collected, but only if and to the extent such property is not being used for military purposes or is not otherwise a military objective. The term includes objects properly identified by one of the distinctive emblems of the Geneva Conventions, but does not include civilian property that is a military objective.

(b) CONSTRUCTION OF CERTAIN OFFENSES.—The intent required for offenses under paragraphs (1), (2), (3), (4), and (12) of section 950t of this title precludes the applicability of such offenses with regard to collateral damage or to death, damage, or injury incident to a lawful attack.

(c) COMMON CIRCUMSTANCES.—An offense specified in this subchapter is triable by military commission under this chapter only if the offense is committed in the context of and associated with hostilities.

(d) EFFECT.—The provisions of this subchapter codify offenses that have traditionally been triable by military commission. This chapter does not establish new crimes that did not exist before the date of the enactment of this subchapter, as amended by the National Defense Authorization Act for Fiscal Year 2010, but rather codifies those crimes for trial by military commission. Because the provisions of this subchapter codify offenses that have traditionally been triable under the law of war or otherwise triable by military commission, this subchapter does not preclude trial for offenses that occurred

before the date of the enactment of this subchapter, as so amended.

(Added Pub. L. 111–84, div. A, title XVIII, § 1802, Oct. 28, 2009, 123 Stat. 2606.)

REFERENCES IN TEXT

The date of the enactment of this subchapter, as amended by the National Defense Authorization Act for Fiscal Year 2010, referred to in subsec. (d), is the date of enactment of Pub. L. 111–84, which was approved Oct. 28, 2009.

PRIOR PROVISIONS

A prior section 950p, added Pub. L. 109–366, § 3(a)(1), Oct. 17, 2006, 120 Stat. 2624, related to statement of substantive offenses, prior to the general amendment of this chapter by Pub. L. 111–84.

§ 950q. Principals

Any person punishable under this chapter who—

(1) commits an offense punishable by this chapter, or aids, abets, counsels, commands, or procures its commission;

(2) causes an act to be done which if directly performed by him would be punishable by this chapter; or

(3) is a superior commander who, with regard to acts punishable by this chapter, knew, had reason to know, or should have known, that a subordinate was about to commit such acts or had done so and who failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof,

is a principal.

(Added Pub. L. 111–84, div. A, title XVIII, § 1802, Oct. 28, 2009, 123 Stat. 2606.)

PRIOR PROVISIONS

A prior section 950q, added Pub. L. 109–366, § 3(a)(1), Oct. 17, 2006, 120 Stat. 2624, related to principals, prior to the general amendment of this chapter by Pub. L. 111–84.

§ 950r. Accessory after the fact

Any person subject to this chapter who, knowing that an offense punishable by this chapter has been committed, receives, comforts, or assists the offender in order to hinder or prevent his apprehension, trial, or punishment shall be punished as a military commission under this chapter may direct.

(Added Pub. L. 111–84, div. A, title XVIII, § 1802, Oct. 28, 2009, 123 Stat. 2607.)

PRIOR PROVISIONS

A prior section 950r, added Pub. L. 109–366, § 3(a)(1), Oct. 17, 2006, 120 Stat. 2624, related to accessory after the fact, prior to the general amendment of this chapter by Pub. L. 111–84.

§ 950s. Conviction of lesser offenses

An accused may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or an attempt to commit either the offense charged or an offense necessarily included therein.

(Added Pub. L. 111–84, div. A, title XVIII, § 1802, Oct. 28, 2009, 123 Stat. 2607.)

PRIOR PROVISIONS

A prior section 950s, added Pub. L. 109–366, § 3(a)(1), Oct. 17, 2006, 120 Stat. 2624, related to conviction of lesser included offense, prior to the general amendment of this chapter by Pub. L. 111–84.

§ 950t. Crimes triable by military commission

The following offenses shall be triable by military commission under this chapter at any time without limitation:

(1) MURDER OF PROTECTED PERSONS.—Any person subject to this chapter who intentionally kills one or more protected persons shall be punished by death or such other punishment as a military commission under this chapter may direct.

(2) ATTACKING CIVILIANS.—Any person subject to this chapter who intentionally engages in an attack upon a civilian population as such, or individual civilians not taking active part in hostilities, shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

(3) ATTACKING CIVILIAN OBJECTS.—Any person subject to this chapter who intentionally engages in an attack upon a civilian object that is not a military objective shall be punished as a military commission under this chapter may direct.

(4) ATTACKING PROTECTED PROPERTY.—Any person subject to this chapter who intentionally engages in an attack upon protected property shall be punished as a military commission under this chapter may direct.

(5) PILLAGING.—Any person subject to this chapter who intentionally and in the absence of military necessity appropriates or seizes property for private or personal use, without the consent of a person with authority to permit such appropriation or seizure, shall be punished as a military commission under this chapter may direct.

(6) DENYING QUARTER.—Any person subject to this chapter who, with effective command or control over subordinate groups, declares, orders, or otherwise indicates to those groups that there shall be no survivors or surrender accepted, with the intent to threaten an adversary or to conduct hostilities such that there would be no survivors or surrender accepted, shall be punished as a military commission under this chapter may direct.

(7) TAKING HOSTAGES.—Any person subject to this chapter who, having knowingly seized or detained one or more persons, threatens to kill, injure, or continue to detain such person or persons with the intent of compelling any nation, person other than the hostage, or group of persons to act or refrain from acting as an explicit or implicit condition for the safety or release of such person or persons, shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punish-

ment, other than death, as a military commission under this chapter may direct.

(8) EMPLOYING POISON OR SIMILAR WEAPONS.—Any person subject to this chapter who intentionally, as a method of warfare, employs a substance or weapon that releases a substance that causes death or serious and lasting damage to health in the ordinary course of events, through its asphyxiating, bacteriological, or toxic properties, shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

(9) USING PROTECTED PERSONS AS A SHIELD.—Any person subject to this chapter who positions, or otherwise takes advantage of, a protected person with the intent to shield a military objective from attack, or to shield, favor, or impede military operations, shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

(10) USING PROTECTED PROPERTY AS A SHIELD.—Any person subject to this chapter who positions, or otherwise takes advantage of the location of, protected property with the intent to shield a military objective from attack, or to shield, favor, or impede military operations, shall be punished as a military commission under this chapter may direct.

(11) TORTURE.—

(A) OFFENSE.—Any person subject to this chapter who commits an act specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control for the purpose of obtaining information or a confession, punishment, intimidation, coercion, or any reason based on discrimination of any kind, shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

(B) SEVERE MENTAL PAIN OR SUFFERING DEFINED.—In this paragraph, the term ''severe mental pain or suffering'' has the meaning given that term in section 2340(2) of title 18.

(12) CRUEL OR INHUMAN TREATMENT.—Any person subject to this chapter who subjects another person in their custody or under their physical control, regardless of nationality or physical location, to cruel or inhuman treatment that constitutes a grave breach of common Article 3 of the Geneva Conventions shall be punished, if death results to the victim, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to the victim, by such punishment, other than death, as a military commission under this chapter may direct.

(13) INTENTIONALLY CAUSING SERIOUS BODILY INJURY.—

(A) OFFENSE.—Any person subject to this chapter who intentionally causes serious bodily injury to one or more persons, including privileged belligerents, in violation of the law of war shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

(B) SERIOUS BODILY INJURY DEFINED.—In this paragraph, the term ''serious bodily injury'' means bodily injury which involves—

(i) a substantial risk of death;

(ii) extreme physical pain;

(iii) protracted and obvious disfigurement; or

(iv) protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

(14) MUTILATING OR MAIMING.—Any person subject to this chapter who intentionally injures one or more protected persons by disfiguring the person or persons by any mutilation of the person or persons, or by permanently disabling any member, limb, or organ of the body of the person or persons, without any legitimate medical or dental purpose, shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

(15) MURDER IN VIOLATION OF THE LAW OF WAR.—Any person subject to this chapter who intentionally kills one or more persons, including privileged belligerents, in violation of the law of war shall be punished by death or such other punishment as a military commission under this chapter may direct.

(16) DESTRUCTION OF PROPERTY IN VIOLATION OF THE LAW OF WAR.—Any person subject to this chapter who intentionally destroys property belonging to another person in violation of the law of war shall be punished as a military commission under this chapter may direct.

(17) USING TREACHERY OR PERFIDY.—Any person subject to this chapter who, after inviting the confidence or belief of one or more persons that they were entitled to, or obliged to accord, protection under the law of war, intentionally makes use of that confidence or belief in killing, injuring, or capturing such person or persons shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

(18) IMPROPERLY USING A FLAG OF TRUCE.—Any person subject to this chapter who uses a

flag of truce to feign an intention to negotiate, surrender, or otherwise suspend hostilities when there is no such intention shall be punished as a military commission under this chapter may direct.

(19) IMPROPERLY USING A DISTINCTIVE EMBLEM.—Any person subject to this chapter who intentionally uses a distinctive emblem recognized by the law of war for combatant purposes in a manner prohibited by the law of war shall be punished as a military commission under this chapter may direct.

(20) INTENTIONALLY MISTREATING A DEAD BODY.—Any person subject to this chapter who intentionally mistreats the body of a dead person, without justification by legitimate military necessary, shall be punished as a military commission under this chapter may direct.

(21) RAPE.—Any person subject to this chapter who forcibly or with coercion or threat of force wrongfully invades the body of a person by penetrating, however slightly, the anal or genital opening of the victim with any part of the body of the accused, or with any foreign object, shall be punished as a military commission under this chapter may direct.

(22) SEXUAL ASSAULT OR ABUSE.—Any person subject to this chapter who forcibly or with coercion or threat of force engages in sexual contact with one or more persons, or causes one or more persons to engage in sexual contact, shall be punished as a military commission under this chapter may direct.

(23) HIJACKING OR HAZARDING A VESSEL OR AIRCRAFT.—Any person subject to this chapter who intentionally seizes, exercises unauthorized control over, or endangers the safe navigation of a vessel or aircraft that is not a legitimate military objective shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

(24) TERRORISM.—Any person subject to this chapter who intentionally kills or inflicts great bodily harm on one or more protected persons, or intentionally engages in an act that evinces a wanton disregard for human life, in a manner calculated to influence or affect the conduct of government or civilian population by intimidation or coercion, or to retaliate against government conduct, shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

(25) PROVIDING MATERIAL SUPPORT FOR TERRORISM.—

(A) OFFENSE.—Any person subject to this chapter who provides material support or resources, knowing or intending that they are to be used in preparation for, or in carrying out, an act of terrorism (as set forth in paragraph (24) of this section), or who intentionally provides material support or resources to an international terrorist organization engaged in hostilities against the United States, knowing that such organization has engaged or engages in terrorism (as so set forth), shall be punished as a military commission under this chapter may direct.

(B) MATERIAL SUPPORT OR RESOURCES DEFINED.—In this paragraph, the term ''material support or resources'' has the meaning given that term in section 2339A(b) of title 18.

(26) WRONGFULLY AIDING THE ENEMY.—Any person subject to this chapter who, in breach of an allegiance or duty to the United States, knowingly and intentionally aids an enemy of the United States, or one of the co-belligerents of the enemy, shall be punished as a military commission under this chapter may direct.

(27) SPYING.—Any person subject to this chapter who, in violation of the law of war and with intent or reason to believe that it is to be used to the injury of the United States or to the advantage of a foreign power, collects or attempts to collect information by clandestine means or while acting under false pretenses, for the purpose of conveying such information to an enemy of the United States, or one of the co-belligerents of the enemy, shall be punished by death or such other punishment as a military commission under this chapter may direct.

(28) ATTEMPTS.—

(A) IN GENERAL.—Any person subject to this chapter who attempts to commit any offense punishable by this chapter shall be punished as a military commission under this chapter may direct.

(B) SCOPE OF OFFENSE.—An act, done with specific intent to commit an offense under this chapter, amounting to more than mere preparation and tending, even though failing, to effect its commission, is an attempt to commit that offense.

(C) EFFECT OF CONSUMMATION.—Any person subject to this chapter may be convicted of an attempt to commit an offense although it appears on the trial that the offense was consummated.

(29) CONSPIRACY.—Any person subject to this chapter who conspires to commit one or more substantive offenses triable by military commission under this subchapter, and who knowingly does any overt act to effect the object of the conspiracy, shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

(30) SOLICITATION.—Any person subject to this chapter who solicits or advises another or others to commit one or more substantive offenses triable by military commission under this chapter shall, if the offense solicited or advised is attempted or committed, be punished with the punishment provided for the commission of the offense, but, if the offense

solicited or advised is not committed or attempted, shall be punished as a military commission under this chapter may direct.

(31) CONTEMPT.—A military commission under this chapter may punish for contempt any person who uses any menacing word, sign, or gesture in its presence, or who disturbs its proceedings by any riot or disorder.

(32) PERJURY AND OBSTRUCTION OF JUSTICE.—A military commission under this chapter may try offenses and impose such punishment as the military commission may direct for perjury, false testimony, or obstruction of justice related to the military commission.

(Added Pub. L. 111–84, div. A, title XVIII, § 1802, Oct. 28, 2009, 123 Stat. 2607; amended Pub. L. 115–232, div. A, title X, § 1081(a)(12), Aug. 13, 2018, 132 Stat. 1983.)

PRIOR PROVISIONS

Prior sections 950t to 950w were omitted in the general amendment of this chapter by Pub. L. 111–84.

Section 950t, added Pub. L. 109–366, § 3(a)(1), Oct. 17, 2006, 120 Stat. 2625, related to attempts to commit any offense punishable by this chapter.

Section 950u, added Pub. L. 109–366, § 3(a)(1), Oct. 17, 2006, 120 Stat. 2625, related to solicitation.

Section 950v, added Pub. L. 109–366, § 3(a)(1), Oct. 17, 2006, 120 Stat. 2625, related to definitions, construction, and crimes triable by military commissions.

Section 950w, added Pub. L. 109–366, § 3(a)(1), Oct. 17, 2006, 120 Stat. 2630, related to perjury, obstruction of justice, and contempt.

AMENDMENTS

2018—Par. (9). Pub. L. 115–232, § 1081(a)(12)(A), substituted ''attack, or'' for ''attack. or''.

Par. (16). Pub. L. 115–232, § 1081(a)(12)(B), substituted ''shall be punished'' for ''shall punished''.

Par. (22). Pub. L. 115–232, § 1081(a)(12)(C), inserted period at end.

CHAPTER 48—MILITARY CORRECTIONAL FACILITIES

Sec.
951. Establishment; organization; administration.
952. Parole.
953. Remission or suspension of sentence; restoration to duty; reenlistment.
954. Voluntary extension; probation.
955. Prisoners transferred to or from foreign countries.
956. Deserters, prisoners, members absent without leave: expenses and rewards.

AMENDMENTS

1984—Pub. L. 98–525, title XIV, § 1401(b)(2), Oct. 19, 1984, 98 Stat. 2615, added item 956.

1980—Pub. L. 96–513, title V, § 511(26), Dec. 13, 1980, 94 Stat. 2922, added item 955.

§ 951. Establishment; organization; administration

(a) The Secretaries concerned may provide for the establishment of such military correctional facilities as are necessary for the confinement of offenders against chapter 47 of this title.

(b) The Secretary concerned shall—

(1) designate an officer for each armed force under his jurisdiction to administer military correctional facilities established under this chapter;

(2) provide for the education, training, rehabilitation, and welfare of offenders confined in a military correctional facility of his department; and

(3) provide for the organization and equipping of offenders selected for training with a view to their honorable restoration to duty or possible reenlistment.

(c) There shall be an officer in command of each major military correctional facility. Under regulations to be prescribed by the Secretary concerned, the officer in command shall have custody and control of offenders confined within the facility which he commands, and shall usefully employ those offenders as he considers best for their health and reformation, with a view to their restoration to duty, enlistment for future service, or return to civilian life as useful citizens.

(d) There may be made or repaired at each military correctional facility such supplies for the armed forces or other agencies of the United States as can properly and economically be made or repaired at such facilities.

(Added Pub. L. 90–377, § 1, July 5, 1968, 82 Stat. 287; amended Pub. L. 96–513, title V, § 511(27), Dec. 12, 1980, 94 Stat. 2922.)

AMENDMENTS

1980—Subsec. (d). Pub. L. 96–513 substituted ''at such facilities'' for ''as such facilities''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

OFFENSES AGAINST MINORS

Pub. L. 105–119, title I, § 115(a)(8)(C), Nov. 26, 1997, 111 Stat. 2466, as amended by Pub. L. 109–248, title I, § 141(i), July 27, 2006, 120 Stat. 604, provided that:

''(i) The Secretary of Defense shall specify categories of conduct punishable under the Uniform Code of Military Justice which are sex offenses as that term is defined in the Sex Offender Registration and Notification Act [34 U.S.C. 20901 et seq.], and such other conduct as the Secretary deems appropriate for inclusion for purposes of this subparagraph.

''(ii) In relation to persons sentenced by a court martial for conduct in the categories specified under clause (i), the Secretary shall prescribe procedures and implement a system to—

''(I) provide notice concerning the release from confinement or sentencing of such persons;

''(II) inform such persons concerning registration obligations; and

''(III) track and ensure compliance with registration requirements by such persons during any period of parole, probation, or other conditional release or supervision related to the offense.

''(iii) The procedures and requirements established by the Secretary under this subparagraph shall, to the maximum extent practicable, be consistent with those specified for Federal offenders under the Sex Offender Registration and Notification Act.

''(iv) If a person within the scope of this subparagraph is confined in a facility under the control of the Bureau of Prisons at the time of release, the Bureau of Prisons shall provide notice of release and inform the person concerning registration obligations under the procedures specified in section 4042(c) of title 18, United States Code.''

NOTIFICATION OF VICTIMS AND WITNESSES OF STATUS OF PRISONERS IN MILITARY CORRECTIONAL FACILITIES

Pub. L. 103–160, div. A, title V, § 552, Nov. 30, 1993, 107 Stat. 1662, directed the Secretary of Defense to pre-

scribe procedures, not later than six months after Nov. 30, 1993, for notice of the status of offenders confined in military correctional facilities to be provided to victims and witnesses, to implement a centralized system for the provision of such notice not later than six months after such procedures had been prescribed, to notify Congress upon implementation of the centralized system of notice, and to submit to Congress a report after such system had been in operation for one year, and directed that the requirement to establish procedures and implement a centralized system of notice would expire 90 days after receipt of the report.

§ 952. Parole

(a) The Secretary concerned may provide a system of parole for offenders who are confined in military correctional facilities and who were at the time of commission of their offenses subject to the authority of that Secretary.

(b) In a case in which parole for an offender serving a sentence of confinement for life is denied, only the President or the Secretary concerned may grant the offender parole on appeal of that denial. The authority to grant parole on appeal in such a case may not be delegated.

(Added Pub. L. 90–377, § 1, July 5, 1968, 82 Stat. 287; amended Pub. L. 105–85, div. A, title V, § 582(a), Nov. 18, 1997, 111 Stat. 1760.)

AMENDMENTS

1997—Pub. L. 105–85 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–85, div. A, title V, § 582(b), Nov. 18, 1997, 111 Stat. 1760, provided that: ''Subsection (b) of section 952 of title 10, United States Code (as added by subsection (a)), shall apply only with respect to any decision to deny parole made after the date of the enactment of this Act [Nov. 18, 1997].''

§ 953. Remission or suspension of sentence; restoration to duty; reenlistment

For offenders who were at the time of commission of their offenses subject to his authority and who merit such action, the Secretary concerned shall establish—

(1) a system for the remission or suspension of the unexecuted part of the sentences of selected offenders;

(2) a system for the restoration to duty of such offenders who have had the unexecuted part of their sentences remitted or suspended and who have not been discharged; and

(3) a system for the enlistment of such offenders who have had the unexecuted part of their sentences remitted and who have been discharged.

(Added Pub. L. 90–377, § 1, July 5, 1968, 82 Stat. 287.)

§ 954. Voluntary extension; probation

The Secretary concerned may provide for persons who were subject to his authority at the time of commission of their offenses a system for retention of selected offenders beyond expiration of normal service obligation in order to voluntarily serve a period of probation with a view to honorable restoration to duty.

(Added Pub. L. 90–377, § 1, July 5, 1968, 82 Stat. 288; amended Pub. L. 105–85, div. A, title X, § 1073(a)(12), Nov. 18, 1997, 111 Stat. 1900.)

AMENDMENTS

1997—Pub. L. 105–85 substituted ''his authority'' for ''this authority''.

§ 955. Prisoners transferred to or from foreign countries

(a) When a treaty is in effect between the United States and a foreign country providing for the transfer of convicted offenders, the Secretary concerned may, with the concurrence of the Attorney General, transfer to such foreign country any offender against chapter 47 of this title. Such transfer shall be effected subject to the terms of such treaty and chapter 306 of title 18.

(b) Whenever the United States is party to an agreement on the status of forces under which the United States may request that it take custody of a prisoner belonging to its armed forces who is confined by order of a foreign court, the Secretary concerned may provide for the carrying out of the terms of such confinement in a military correctional facility of his department or in any penal or correctional institution under the control of the United States or which the United States may be allowed to use. Except as otherwise specified in such agreement, such person shall be treated as if he were an offender against chapter 47 of this title.

(Added Pub. L. 95–144, § 4, Oct. 28, 1977, 91 Stat. 1221; amended Pub. L. 96–513, title V, § 511(28), Dec. 12, 1980, 94 Stat. 2922.)

AMENDMENTS

1980—Subsec. (a). Pub. L. 96–513 substituted ''such'' for ''said'' in two places, ''Such'' for ''Said'', and struck out '', United States Code'' after ''18''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

§ 956. Deserters, prisoners, members absent without leave: expenses and rewards

Funds appropriated to the Department of Defense may be used for the following purposes:

(1) Expenses for the apprehension and delivery of deserters, prisoners, and members absent without leave, including the payment of rewards, in an amount not to exceed $75, for the apprehension of any such person.

(2) Expenses of prisoners confined in nonmilitary facilities.

(3) Payment of a gratuity of not to exceed $25 to each prisoner upon release from confinement in a military or contract prison facility.

(4) The issue of authorized articles to prisoners and other persons in military custody.

(5) Under such regulations as the Secretary concerned may prescribe, expenses incident to the maintenance, pay, and allowances of prisoners of war, other persons in the custody of the Army, Navy, or Air Force whose status is determined by the Secretary concerned to be similar to prisoners of war, and persons detained in the custody of the Army, Navy, or Air Force pursuant to Presidential proclamation.

(Added Pub. L. 98–525, title XIV, § 1401(b)(1), Oct. 19, 1984, 98 Stat. 2614.)

PRIOR PROVISIONS

Provisions similar to those in pars. (1) to (5) of this section were contained in the following appropriation acts, with the exception of the provisions similar to par. (2) which first appeared in the act of July 1, 1943:

Oct. 12, 1984, Pub. L. 98–473, title I, §101(h) [title VIII, §8006], 98 Stat. 1904, 1923.

Dec. 8, 1983, Pub. L. 98–212, title VII, §§706, 709, 97 Stat. 1437, 1439.

Dec. 21, 1982, Pub. L. 97–377, title I, §101(c) [title VII, §§706, 709], 96 Stat. 1833, 1850, 1851.

Dec. 29, 1981, Pub. L. 97–114, title VII, §§706, 709, 95 Stat. 1578, 1579.

Dec. 15, 1980, Pub. L. 96–527, title VII, §§706, 709, 94 Stat. 3081.

Dec. 21, 1979, Pub. L. 96–154, title VII, §§706, 709, 93 Stat. 1152, 1153.

Oct. 13, 1978, Pub. L. 95–457, title VIII, §§806, 809, 92 Stat. 1243, 1244.

Sept. 21, 1977, Pub. L. 95–111, title VIII, §§805, 808, 91 Stat. 899, 900.

Sept. 22, 1976, Pub. L. 94–419, title VII, §§705, 708, 90 Stat. 1291, 1292.

Feb. 9, 1976, Pub. L. 94–212, title VII, §§705, 708, 90 Stat. 168, 169.

Oct. 8, 1974, Pub. L. 93–437, title VIII, §§805, 808, 88 Stat. 1224, 1225.

Jan. 2, 1974, Pub. L. 93–238, title VII, §§705, 708, 87 Stat. 1038, 1039.

Oct. 26, 1972, Pub. L. 92–570, title VII, §§705, 708, 86 Stat. 1196, 1197.

Dec. 18, 1971, Pub. L. 92–204, title VII, §§705, 708, 85 Stat. 727, 728.

Jan. 11, 1971, Pub. L. 91–668, title VIII, §§805, 808, 84 Stat. 2030, 2031.

Dec. 29, 1969, Pub. L. 91–171, title VI, §§605, 608, 83 Stat. 480.

Oct. 17, 1968, Pub. L. 90–580, title V, §§504, 507, 82 Stat. 1129, 1130.

Sept. 29, 1967, Pub. L. 90–96, title VI, §§604, 607, 81 Stat. 242.

Oct. 15, 1966, Pub. L. 89–687, title VI, §§604, 607, 80 Stat. 991.

Sept. 29, 1965, Pub. L. 89–213, title VI, §§604, 607, 79 Stat. 873, 874.

Aug. 19, 1964, Pub. L. 88–446, title V, §§504, 507, 78 Stat. 474, 475.

Oct. 17, 1963, Pub. L. 88–149, title V, §§504, 507, 77 Stat. 264.

Aug. 9, 1962, Pub. L. 87–577, title I, §101, title V, §§504, 507, 76 Stat. 318, 328.

Aug. 17, 1961, Pub. L. 87–144, title I, §101, title II, §201, title VI, §§604, 607, 75 Stat. 365–369, 375, 376.

July 7, 1960, Pub. L. 86–601, title I, §101, title II, §201, title V, §§504, 507, 74 Stat. 338–340, 342, 350.

Aug. 18, 1959, Pub. L. 86–166, title I, §101, title II, §201, title V, §§604, 607, 73 Stat. 366–368, 370, 378, 379.

Aug. 22, 1958, Pub. L. 85–724, title III, §301, title V, §501, title VI, §604, 72 Stat. 713, 714, 721, 722, 723.

Aug. 2, 1957, Pub. L. 85–117, title III, §301, title V, §501, title VI, §604, 71 Stat. 313, 314, 321, 323.

July 2, 1956, ch. 488, title III, §301, title V, §501, title VI, §604, 70 Stat. 456, 457, 464, 465, 467.

July 13, 1955, ch. 358, title III, §301, title V, §501, title VI, §606, 69 Stat. 303, 304, 312, 313, 315.

June 30, 1954, ch. 432, title IV, §401, title VI, §601, title VII, §706, 68 Stat. 338, 339, 347, 348, 350.

Aug. 1, 1953, ch. 305, title III, §301, title V, §501, title VI, §610, 67 Stat. 338, 339, 348, 350.

July 10, 1952, ch. 630, title III, §301, title V, §501, title VI, §612, 66 Stat. 519, 520, 530, 532.

Oct. 18, 1951, ch. 512, title III, §301, title V, §501, title VI, §612, 65 Stat. 426, 429, 443, 446.

Sept. 6, 1950, ch. 896, Ch. X, title III, §301, title V, §501, title VI, §614, 64 Stat. 732, 735, 750, 753.

Oct. 29, 1949, ch. 787, title III, §301, title V, §501, title VI, §616, 63 Stat. 990–992, 1015, 1020.

June 24, 1948, ch. 632, §§1, 11, 62 Stat. 653, 655, 669.

July 30, 1947, ch. 357, title I, §§1, 12, 61 Stat. 555, 557, 572.

July 16, 1946, ch. 583, §§1, 13, 60 Stat. 546–548, 565.

July 3, 1945, ch. 265, §§1, 15, 59 Stat. 388–390, 406.

June 28, 1944, ch. 303, §§1, 15, 58 Stat. 578, 580, 595.

July 1, 1943, ch. 185, §§1, 15, 57 Stat. 352, 354, 369.

July 2, 1942, ch. 477, §§1, 14, 56 Stat. 615, 617, 633.

Dec. 17, 1941, ch. 591, title I, §103, 55 Stat. 813.

June 30, 1941, ch. 262, §1, 55 Stat. 371, 373.

June 13, 1940, ch. 343, §1, 54 Stat. 357–359.

Apr. 26, 1939, ch. 88, §1, 53 Stat. 598, 600.

June 11, 1938, ch. 37, §1, 52 Stat. 648, 649.

July 1, 1937, ch. 423, §1, 50 Stat. 448, 450.

May 15, 1936, ch. 404, §1, title I, 49 Stat. 1284, 1286.

Apr. 9, 1935, ch. 54, §1, title I, 49 Stat. 127, 128.

Apr. 26, 1934, ch. 165, title I, 48 Stat. 619, 621.

Mar. 4, 1933, ch. 281, title I, 47 Stat. 1575, 1577.

July 14, 1932, ch. 482, title I, 47 Stat. 668, 670, 671.

Feb. 23, 1931, ch. 279, title I, 46 Stat. 1281–1284.

May 28, 1930, ch. 348, title I, 46 Stat. 436, 438.

Feb. 28, 1929, ch. 366, title I, 45 Stat. 1354, 1356.

Mar. 23, 1928, ch. 232, title I, 45 Stat. 330, 332.

Feb. 23, 1927, ch. 167, title I, 44 Stat. 1110, 1113.

Apr. 15, 1926, ch. 146, title I, 44 Stat. 259, 262.

Feb. 12, 1925, ch. 225, title I, 43 Stat. 900.

Provisions similar to those in par. (5) of this section were contained in Pub. L. 98–212, title VII, §706, Dec. 8, 1983, 97 Stat. 1437, which was set out as a note under section 138 of this title, prior to repeal by Pub. L. 98–525, §§1403(a)(1), eff. Oct. 1, 1985.

EFFECTIVE DATE

Section effective Oct. 1, 1985, see section 1404 of Pub. L. 98–525, set out as a note under section 520b of this title.

CHAPTER 49—MISCELLANEOUS PROHIBITIONS AND PENALTIES

Sec.

971. Service credit: officers may not count service performed while serving as cadet or midshipman.

972. Members: effect of time lost.

973. Duties: officers on active duty; performance of civil functions restricted.

974. Military musical units and musicians: performance policies; restriction on performance in competition with local civilian musicians.

[975. Renumbered.]

976. Membership in military unions, organizing of military unions, and recognition of military unions prohibited.

977. Conversion of military medical and dental positions to civilian medical and dental positions: limitation.

978. Drug and alcohol abuse and dependency: testing of new entrants.

979. Prohibition on loan and grant assistance to persons convicted of certain crimes.

980. Limitation on use of humans as experimental subjects.

981. Limitation on number of enlisted aides.

982. Members: service on State and local juries.

983. Institutions of higher education that prevent ROTC access or military recruiting on campus: denial of grants and contracts from Department of Defense, Department of Education, and certain other departments and agencies.

985. Persons convicted of capital crimes; certain other persons: denial of specified burial-related benefits.

[986. Repealed.]

987. Terms of consumer credit extended to members and dependents: limitations.

988. Prohibition on ownership or trading of stocks in certain companies by certain officials of the Department of Defense.

AMENDMENTS

2019—Pub. L. 116–92, div. A, title IX, §921(b), Dec. 20, 2019, 133 Stat. 1561, added item 988.

2016—Pub. L. 114–328, div. A, title VII, § 721(a)(2), Dec. 23, 2016, 130 Stat. 2228, added item 977.

2009—Pub. L. 111–84, div. A, title V, § 591(b), Oct. 28, 2009, 123 Stat. 2337, substituted ''Military musical units and musicians: performance policies; restriction on performance in competition with local civilian musicians'' for ''Uniform performance policies for military bands and other musical units'' in item 974.

2008—Pub. L. 110–181, div. A, title V, § 590(a)(2), title X, § 1072(b)(2), Jan. 28, 2008, 122 Stat. 138, 330, added item 974 and struck out item 986 ''Security clearances: limitations''.

Pub. L. 110–181, div. A, title X, § 1063(c)(6), Jan. 28, 2008, 122 Stat. 323, amended directory language of Pub. L. 109–364, § 670(b). See 2006 Amendment note below.

2006—Pub. L. 109–364, div. A, title VI, § 670(b), Oct. 17, 2006, 120 Stat. 2269, as amended by Pub. L. 110–181, div. A, title X, § 1063(c)(6), Jan. 28, 2008, 122 Stat. 323, added item 987.

Pub. L. 109–163, div. A, title VI, § 662(c)(2), Jan. 6, 2006, 119 Stat. 3315, substituted ''Persons convicted of capital crimes; certain other persons: denial of specified burial-related benefits'' for ''Persons convicted of capital crimes: denial of certain burial-related benefits'' in item 985.

2004—Pub. L. 108–375, div. A, title VI, § 651(f)(1), Oct. 28, 2004, 118 Stat. 1972, struck out item 977 ''Operation of commissary stores: assignment of active duty members generally prohibited''.

2001—Pub. L. 107–107, div. A, title X, § 1048(g)(2), Dec. 28, 2001, 115 Stat. 1228, amended directory language of Pub. L. 106–65. See 1999 Amendment note below.

2000—Pub. L. 106–398, § 1 [[div. A], title X, § 1071(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–276, added item 986.

1999—Pub. L. 106–65, div. A, title V, § 549(a)(2), Oct. 5, 1999, 113 Stat. 611, as amended by Pub. L. 107–107, div. A, title X, § 1048(g)(2), Dec. 28, 2001, 115 Stat. 1228, substituted ''Institutions of higher education that prevent ROTC access or military recruiting on campus: denial of grants and contracts from Department of Defense, Department of Education, and certain other departments and agencies'' for ''Institutions of higher education that prohibit Senior ROTC units: denial of Department of Defense grants and contracts'' in item 983.

1998—Pub. L. 105–261, div. A, title V, § 569(b), Oct. 17, 1998, 112 Stat. 2032, struck out item 974 ''Civilian employment: enlisted members''.

1997—Pub. L. 105–85, div. A, title X, § 1077(a)(2), Nov. 18, 1997, 111 Stat. 1915, added item 985.

1996—Pub. L. 104–201, div. A, title V, § 581(c)(3), Sept. 23, 1996, 110 Stat. 2538, struck out ''enlisted'' after ''count'' in item 971.

Pub. L. 104–106, div. A, title V, §§ 541(b), 561(c)(2), Feb. 10, 1996, 110 Stat. 316, 322, substituted ''Members: effect of time lost'' for ''Enlisted members: required to make up time lost'' in item 972 and added item 983.

1993—Pub. L. 103–160, div. A, title III, § 351(b), Nov. 30, 1993, 107 Stat. 1627, added item 977.

1989—Pub. L. 101–189, div. A, title XVI, § 1622(b)(3), Nov. 29, 1989, 103 Stat. 1604, struck out item 975 ''Prohibition on the sale of certain defense articles from the stocks of the Department of Defense''.

1988—Pub. L. 100–456, div. A, title V, § 521(a)(2), Sept. 29, 1988, 102 Stat. 1973, substituted ''Drug and alcohol abuse and dependency: testing of new entrants'' for ''Mandatory testing for drug, chemical, and alcohol abuse'' in item 978.

1987—Pub. L. 100–180, div. A, title V, § 513(a)(2), Dec. 4, 1987, 101 Stat. 1091, substituted ''Mandatory testing for drug, chemical, and alcohol abuse'' for ''Denial of entrance into the armed forces of persons dependent on drugs or alcohol'' in item 978.

1986—Pub. L. 99–661, div. A, title V, § 502(b), Nov. 14, 1986, 100 Stat. 3864, added item 982.

1984—Pub. L. 98–525, title XIV, § 1401(c)(2), Oct. 19, 1984, 98 Stat. 2615, added items 979 to 981.

1982—Pub. L. 97–306, title IV, § 408(c)(2), Oct. 14, 1982, 96 Stat. 1446, struck out item 977 ''Denial of certain benefits to persons who fail to complete at least two years of an original enlistment''.

Pub. L. 97–295, § 1(14)(B), Oct. 12, 1982, 96 Stat. 1290, added item 978.

1980—Pub. L. 96–513, title V, § 501(12), Dec. 12, 1980, 94 Stat. 2908, substituted ''officers on active duty'' for ''Regular officers'' in item 973.

Pub. L. 96–342, title X, § 1002(b), Sept. 8, 1980, 94 Stat. 1119, added item 977.

1979—Pub. L. 96–107, title VIII, § 821(b), Nov. 9, 1979, 93 Stat. 820, redesignated item 975 relating to membership in military unions as 976.

1978—Pub. L. 95–610, § 2(b), Nov. 8, 1978, 92 Stat. 3088, added item 975 relating to military unions.

Pub. L. 95–485, title VIII, § 815(b), Oct. 20, 1978, 92 Stat. 1626, added item 975 relating to sale of certain defense articles.

1968—Pub. L. 90–235, §§ 4(a)(5)(B), 6(a)(6)(B), Jan. 2, 1968, 81 Stat. 759, 762, added items 973 and 974.

1958—Pub. L. 85–861, § 1(20), Sept. 2, 1958, 72 Stat. 1442, added items 971 and 972.

PROHIBITION ON LOBBYING ACTIVITIES WITH RESPECT TO THE DEPARTMENT OF DEFENSE BY CERTAIN OFFICERS OF THE ARMED FORCES AND CIVILIAN EMPLOYEES OF THE DEPARTMENT FOLLOWING SEPARATION FROM MILITARY SERVICE OR EMPLOYMENT WITH THE DEPARTMENT

Pub. L. 115–91, div. A, title X, § 1045, Dec. 12, 2017, 131 Stat. 1555, provided that:

''(a) TWO-YEAR PROHIBITION.—

''(1) PROHIBITION.—An individual described in paragraph (2) may not engage in lobbying activities with respect to the Department of Defense during the two-year period beginning on the date of retirement or separation from service in the Armed Forces or the date of retirement or separation from service with the Department, as applicable.

''(2) COVERED INDIVIDUALS.—An individual described in this paragraph is the following:

''(A) An officer of the Armed Forces in grade O–9 or higher at the time of retirement or separation from the Armed Forces.

''(B) A civilian employee of the Department of Defense who had a civilian grade equivalent to a military grade specified in subparagraph (A) at the time of the employee's retirement or separation from service with the Department.

''(b) ONE-YEAR PROHIBITION.—

''(1) PROHIBITION.—An individual described in paragraph (2) may not engage in lobbying activities with respect to the Department of Defense during the one-year period beginning on the date of retirement or separation from service in the Armed Forces or the date of retirement or separation from service with the Department, as applicable.

''(2) COVERED INDIVIDUALS.—An individual described in this paragraph is the following:

''(A) An officer of the Armed Forces in grade O–7 or O–8 at the time of retirement or separation from the Armed Forces.

''(B) A civilian employee of the Department of Defense who had a civilian grade equivalent to a military grade specified in subparagraph (A) at the time of the employee's retirement or separation from service with the Department.

''(c) DEFINITIONS.—In this section:

''(1) The term 'lobbying activities with respect to the Department of Defense' means the following:

''(A) Lobbying contacts and other lobbying activities with covered executive branch officials with respect to the Department of Defense.

''(B) Lobbying contacts with covered executive branch officials described in subparagraphs (C) through (F) of section 3(3) of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1602(3)) in the Department of Defense.

''(2) The terms 'lobbying activities' and 'lobbying contacts' have the meaning given such terms in section 3 of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1602).

''(3) The term 'covered executive branch official' has the meaning given that term in section 3(3) of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1602(3)).''

§971. Service credit: officers may not count service performed while serving as cadet or midshipman

(a) PROHIBITION ON COUNTING ENLISTED SERVICE PERFORMED WHILE AT SERVICE ACADEMY OR IN NAVY RESERVE.—The period of service under an enlistment or period of obligated service while also performing service as a cadet or midshipman or serving as a midshipman in the Navy Reserve may not be counted in computing, for any purpose, the length of service of an officer of an armed force or an officer in the Commissioned Corps of the Public Health Service.

(b) PROHIBITION ON COUNTING SERVICE AS A CADET OR MIDSHIPMAN.—In computing length of service for any purpose, service as a cadet or midshipman may not be credited to any of the following officers:

(1) An officer of the Navy or Marine Corps.

(2) A commissioned officer of the Army, Air Force, or Space Force.

(3) An officer of the Coast Guard.

(4) An officer in the Commissioned Corps of the Public Health Service.

(c) SERVICE AS A CADET OR MIDSHIPMAN DEFINED.—In this section, the term ''service as a cadet or midshipman'' means—

(1) service as a cadet at the United States Military Academy, United States Air Force Academy, or United States Coast Guard Academy; or

(2) service as a midshipman at the United States Naval Academy.

(Added Pub. L. 85–861, §1(20), Sept. 2, 1958, 72 Stat. 1442; amended Pub. L. 90–235, §6(a) (1), Jan. 2, 1968, 81 Stat. 761; Pub. L. 98–557, §17(a), Oct. 30, 1984, 98 Stat. 2867; Pub. L. 101–189, div. A, title VI, §652(a)(1)(A), (2), Nov. 29, 1989, 103 Stat. 1461; Pub. L. 104–201, div. A, title V, §581, Sept. 23, 1996, 110 Stat. 2537; Pub. L. 105–85, div. A, title X, §1073(a)(13), Nov. 18, 1997, 111 Stat. 1900; Pub. L. 109–163, div. A, title V, §515(b)(1)(D), (2), Jan. 6, 2006, 119 Stat. 3233, 3234; Pub. L. 116–283, div. A, title IX, §924(b)(22), Jan. 1, 2021, 134 Stat. 3824.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
971	50:1414.	June 25, 1956, ch. 439, §4, 70 Stat. 333.

AMENDMENTS

2021—Subsec. (b)(2). Pub. L. 116–283 substituted '', Air Force, or Space Force'' for ''or Air Force''.

2006—Subsec. (a). Pub. L. 109–163 substituted ''NAVY RESERVE'' for ''NAVAL RESERVE'' in heading and ''Navy Reserve'' for ''Naval Reserve'' in text.

1997—Subsec. (b)(4). Pub. L. 105–85 substituted ''Commissioned Corps'' for ''commissioned corps''.

1996—Pub. L. 104–201, §581(c)(3), struck out ''enlisted'' after ''count'' in section catchline.

Subsec. (a). Pub. L. 104–201, §581(a), (c)(2), inserted heading, substituted ''while also performing service as a cadet or midshipman or serving as a midshipman'' for ''while also serving as a cadet at the United States Military Academy, the United States Air Force Academy, or the United States Coast Guard Academy, or as a midshipman at the United States Naval Academy or'', and inserted before period at end ''or an officer in the Commissioned Corps of the Public Health Service''.

Subsec. (b). Pub. L. 104–201, §581(b), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''In computing length of service for any purpose—

''(1) no officer of the Navy or Marine Corps may be credited with service as a midshipman at the United States Naval Academy or as a cadet at the United States Military Academy, United States Air Force Academy, or United States Coast Guard Academy;

''(2) no commissioned officer of the Army or Air Force may be credited with service as a midshipman at the United States Naval Academy or as a cadet at the United States Military Academy, United States Air Force Academy, or United States Coast Guard Academy; and

''(3) no officer of the Coast Guard may be credited with service as a midshipman at the United States Naval Academy or as a cadet at the United States Military Academy, United States Air Force Academy, or United States Coast Guard Academy.''

Subsec. (c). Pub. L. 104–201, §581(c)(1), added subsec. (c).

1989—Subsec. (a). Pub. L. 101–189, §652(a)(1)(A), struck out '', under an appointment accepted after June 25, 1956,'' after ''Naval Reserve''.

Subsec. (b)(1). Pub. L. 101–189, §652(a)(2)(A), struck out '', if he was appointed as a midshipman or cadet after March 4, 1913'' after ''United States Coast Guard Academy''.

Subsec. (b)(2). Pub. L. 101–189, §652(a)(2)(B), struck out '', if he was appointed as a midshipman or cadet after August 24, 1912'' after ''United States Coast Guard Academy''.

1984—Subsec. (b)(3). Pub. L. 98–557 added par. (3).

1968—Pub. L. 90–235 designated existing provisions as subsec. (a) and added subsec. (b).

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

APPLICATION OF SUBSECTION (a) TO SERVICE UNDER APPOINTMENT ACCEPTED BEFORE JUNE 26, 1956

Pub. L. 101–189, div. A, title VI, §652(a)(1)(B), Nov. 29, 1989, 103 Stat. 1461, provided that the computing limitation in subsection (a) of this section did not apply to service under an appointment as a cadet or midshipman accepted before June 26, 1956.

§972. Members: effect of time lost

(a) ENLISTED MEMBERS REQUIRED TO MAKE UP TIME LOST.—An enlisted member of an armed force who—

(1) deserts;

(2) is absent from his organization, station, or duty for more than one day without proper authority, as determined by competent authority;

(3) is confined by military or civilian authorities for more than one day in connection with a trial, whether before, during, or after the trial; or

(4) is unable for more than one day, as determined by competent authority, to perform his duties because of intemperate use of drugs or alcoholic liquor, or because of disease or injury resulting from his misconduct;

is liable, after his return to full duty, to serve for a period that, when added to the period that he served before his absence from duty, amounts to the term for which he was enlisted or inducted.

(b) OFFICERS NOT ALLOWED SERVICE CREDIT FOR TIME LOST.—In the case of an officer of an armed force who after February 10, 1996—

(1) deserts;

(2) is absent from his organization, station, or duty for more than one day without proper authority, as determined by competent authority;

(3) is confined by military or civilian authorities for more than one day in connection with a trial, whether before, during, or after the trial; or

(4) is unable for more than one day, as determined by competent authority, to perform his duties because of intemperate use of drugs or alcoholic liquor, or because of disease or injury resulting from his misconduct;

the period of such desertion, absence, confinement, or inability to perform duties may not be counted in computing, for any purpose other than basic pay under section 205 of title 37, the officer's length of service.

(c) WAIVER OF RECOUPMENT OF TIME LOST FOR CONFINEMENT.—The Secretary concerned shall waive liability for a period of confinement in connection with a trial under subsection (a)(3), or exclusion of a period of confinement in connection with a trial under subsection (b)(3), in a case upon the occurrence of any of the following events:

(1) For each charge—

(A) the charge is dismissed before or during trial in a final disposition of the charge; or

(B) the trial results in an acquittal of the charge.

(2) For each charge resulting in a conviction in such trial—

(A) the conviction is set aside in a final disposition of such charge, other than in a grant of clemency; or

(B) a judgment of acquittal or a dismissal is entered upon a reversal of the conviction on appeal.

(Added Pub. L. 85–861, § 1(20), Sept. 2, 1958, 72 Stat. 1443; amended Pub. L. 104–106, div. A, title V, § 561(a)–(c)(1), Feb. 10, 1996, 110 Stat. 321, 322; Pub. L. 105–85, div. A, title X, § 1073(a)(14), Nov. 18, 1997, 111 Stat. 1900; Pub. L. 108–375, div. A, title V, § 572, Oct. 28, 2004, 118 Stat. 1921.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
972	10 App.:629a. 34 App.:183b.	July 24, 1956, ch. 692, § 1, 70 Stat. 631.

AMENDMENTS

2004—Subsec. (c). Pub. L. 108–375 added subsec. (c).

1997—Subsec. (b). Pub. L. 105–85 substituted "February 10, 1996" for "the date of the enactment of the National Defense Authorization Act for Fiscal Year 1996" in introductory provisions.

1996—Pub. L. 104–106, § 561(c)(1), substituted "Members: effect of time lost" for "Enlisted members: required to make up time lost" as section catchline.

Pub. L. 104–106, § 561(a), designated existing provisions as subsec. (a), inserted heading, added par. (3), redesignated par. (5) as (4), struck out former pars. (3) and (4), and added subsec. (b). Prior to amendment, subsec. (a)(3) and (4) read as follows:

"(3) is confined for more than one day while awaiting trial and disposition of his case, and whose conviction has become final;

"(4) is confined for more than one day under a sentence that has become final; or".

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–106, div. A, title V, § 561(e), Feb. 10, 1996, 110 Stat. 323, provided that: "The amendments made by this section [enacting section 6328 of this title and amending this section and sections 1405, 3925, 3926, 8925, and 8926 of this title] shall take effect on the date of the enactment of this Act [Feb. 10, 1996] and shall apply to any period of time covered by section 972 of title 10, United States Code, that occurs after that date."

§ 973. Duties: officers on active duty; performance of civil functions restricted

(a) No officer of an armed force on active duty may accept employment if that employment requires him to be separated from his organization, branch, or unit, or interferes with the performance of his military duties.

(b)(1) This subsection applies—

(A) to a regular officer of an armed force on the active-duty list (and a regular officer of the Coast Guard on the active duty promotion list);

(B) to a retired regular officer of an armed force serving on active duty under a call or order to active duty for a period in excess of 270 days; and

(C) to a reserve officer of an armed force serving on active duty under a call or order to active duty for a period in excess of 270 days.

(2)(A) Except as otherwise authorized by law, an officer to whom this subsection applies may not hold, or exercise the functions of, a civil office in the Government of the United States—

(i) that is an elective office;

(ii) that requires an appointment by the President by and with the advice and consent of the Senate; or

(iii) that is a position in the Executive Schedule under sections 5312 through 5317 of title 5.

(B) An officer to whom this subsection applies may hold or exercise the functions of a civil office in the Government of the United States that is not described in subparagraph (A) when assigned or detailed to that office or to perform those functions.

(3) Except as otherwise authorized by law, an officer to whom this subsection applies by reason of subparagraph (A) of paragraph (1) may not hold or exercise, by election or appointment, the functions of a civil office in the government of a State (or of any political subdivision of a State).

(4)(A) An officer to whom this subsection applies by reason of subparagraph (B) or (C) of paragraph (1) may not hold, by election or appointment, a civil office in the government of a State (or of any political subdivision of a State) if the holding of such office while this subsection so applies to the officer—

(i) is prohibited under the laws of that State; or

(ii) as determined by the Secretary of Defense or by the Secretary of Homeland Security with respect to the Coast Guard when it

is not operating as a service in the Navy, interferes with the performance of the officer's duties as an officer of the armed forces.

(B) Except as otherwise authorized by law, while an officer referred to in subparagraph (A) is serving on active duty, the officer may not exercise the functions of a civil office held by the officer as described in that subparagraph.

(5) Nothing in this subsection shall be construed to invalidate any action undertaken by an officer in furtherance of assigned official duties.

(6) In this subsection, the term ''State'' includes the District of Columbia and a territory, possession, or commonwealth of the United States.

(c) An officer to whom subsection (b) applies may seek and hold nonpartisan civil office on an independent school board that is located exclusively on a military reservation.

(d) The Secretary of Defense, and the Secretary of Homeland Security with respect to the Coast Guard when it is not operating in the Navy, shall prescribe regulations to implement this section.

(Added Pub. L. 90–235, §4(a)(5)(A), Jan. 2, 1968, 81 Stat. 759; amended Pub. L. 96–513, title I, §116, Dec. 12, 1980, 94 Stat. 2878; Pub. L. 98–94, title X, §1002(a), Sept. 24, 1983, 97 Stat. 655; Pub. L. 101–510, div. A, title V, §556, Nov. 5, 1990, 104 Stat. 1570; Pub. L. 106–65, div. A, title V, §506, Oct. 5, 1999, 113 Stat. 591; Pub. L. 107–296, title XVII, §1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 108–136, div. A, title V, §545, Nov. 24, 2003, 117 Stat. 1479.)

AMENDMENTS

2003—Subsec. (b)(3). Pub. L. 108–136, §545(2), inserted ''by reason of subparagraph (A) of paragraph (1)'' after ''applies'' and substituted ''(or of any political subdivision of a State)'' for '', the District of Columbia, or a territory, possession, or commonwealth of the United States (or of any political subdivision of any such government)''.

Subsec. (b)(4), (5). Pub. L. 108–136, §545(1), (3), added par. (4) and redesignated former par. (4) as (5).

Subsec. (b)(6). Pub. L. 108–136, §545(4), added par. (6).

2002—Subsec. (d). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

1999—Subsec. (b)(1)(B), (C). Pub. L. 106–65 substituted ''270 days'' for ''180 days''.

1990—Subsecs. (c), (d). Pub. L. 101–510 added subsec. (c) and redesignated former subsec. (c) as (d).

1983—Subsec. (b). Pub. L. 98–94 amended subsec. (b) generally. Prior to amendment subsec. (b) provided that, except as otherwise provided by law, no regular officer of an armed force on active duty could hold a civil office by election or appointment, whether under the United States, a Territory or possession, or a State, and that acceptance of such a civil office or the exercise of its functions by such an officer terminated his military appointment.

Subsec. (c). Pub. L. 98–94 added subsec. (c).

1980—Pub. L. 96–513, §116(c), substituted ''officers on active duty'' for ''regular officers'' in section catchline.

Subsec. (a). Pub. L. 96–513, §116(a), substituted ''of an armed force on active duty'' for ''on the active list of the Regular Army, Regular Navy, Regular Air Force, Regular Marine Corps, or Regular Coast Guard''.

Subsec. (b). Pub. L. 96–513, §116(b), substituted ''regular officer of an armed force on active duty'' for ''on the active list of the Regular Army, Regular Navy, Regular Air Force, Regular Marine Corps, or Regular Coast Guard''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Sept. 15, 1981, but the authority to prescribe regulations under the amendment by Pub. L. 96–513 effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

CONSTRUCTION AND APPLICABILITY OF SECTION 973(b)

Pub. L. 98–94, title X, §1002(b), (c), Sept. 24, 1983, 97 Stat. 655, 656, provided that:

''(b) Nothing in section 973(b) of title 10, United States Code, as in effect before the date of the enactment of this Act [Sept. 24, 1983], shall be construed—

''(1) to invalidate any action undertaken by an officer of an Armed Force in furtherance of assigned official duties; or

''(2) to have terminated the military appointment of an officer of an Armed Force by reason of the acceptance of a civil office, or the exercise of its functions, by that officer in furtherance of assigned official duties.

''(c) Nothing in section 973(b)(3) of title 10, United States Code, as added by subsection (a), shall preclude a Reserve office to whom such section applies from holding or exercising the functions of an office described in such section for the term to which the Reserve officer was elected or appointed if, before the date of the enactment of this Act [Sept. 24, 1983], the Reserve officer accepted appointment or election to that office in accordance with the laws and regulations in effect at the time of such appointment or election.''

§974. Military musical units and musicians: performance policies; restriction on performance in competition with local civilian musicians

(a) MILITARY MUSICIANS PERFORMING IN AN OFFICIAL CAPACITY.—(1) A military musical unit, and a member of the armed forces who is a member of such a unit performing in an official capacity, may not engage in the performance of music in competition with local civilian musicians.

(2) For purposes of paragraph (1), the following shall, except as provided in paragraph (3), be included among the performances that are considered to be a performance of music in competition with local civilian musicians:

(A) A performance that is more than incidental to an event that—

(i) is not supported, in whole or in part, by United States Government funds; and

(ii) is not free to the public.

(B) A performance of background, dinner, dance, or other social music at an event that—

(i) is not supported, in whole or in part, by United States Government funds; and

(ii) is held at a location not on a military installation.

(3) For purposes of paragraph (1), the following shall not be considered to be a performance of music in competition with local civilian musicians:

(A) A performance (including background, dinner, dance, or other social music) at an official United States Government event that is supported, in whole or in part, by United States Government funds.

(B) A performance at a concert, parade, or other event, that—

(i) is a patriotic event or a celebration of a national holiday; and

(ii) is free to the public.

(C) A performance that is incidental to an event that—

(i) is not supported, in whole or in part, by United States Government funds; or

(ii) is not free to the public.

(D) A performance (including background, dinner, dance, or other social music) at—

(i) an event that is sponsored by a military welfare society, as defined in section 2566 of this title;

(ii) an event that is a traditional military event intended to foster the morale and welfare of members of the armed forces and their families; or

(iii) an event that is specifically for the benefit or recognition of members of the armed forces, their family members, veterans, civilian employees of the Department of Defense, or former civilian employees of the Department of Defense, to the extent provided in regulations prescribed by the Secretary of Defense.

(E) A performance (including background, dinner, dance, or other social music)—

(i) to uphold the standing and prestige of the United States with dignitaries and distinguished or prominent persons or groups of the United States or another nation; or

(ii) in support of fostering and sustaining a cooperative relationship with another nation.

(b) PROHIBITION OF MILITARY MUSICIANS ACCEPTING ADDITIONAL REMUNERATION FOR OFFICIAL PERFORMANCES.—A military musical unit, and a member of the armed forces who is a member of such a unit performing in an official capacity, may not receive remuneration for an official performance, other than applicable military pay and allowances.

(c) RECORDINGS.—(1) When authorized under regulations prescribed by the Secretary of Defense for purposes of this section, a military musical unit may produce recordings for distribution to the public, at a cost not to exceed expenses of production and distribution.

(2) Amounts received in payment for a recording distributed to the public under this subsection shall be credited to the appropriation or account providing the funds for the production of the recording. Any amount so credited shall be merged with amounts in the appropriation or account to which credited, and shall be available for the same purposes, and subject to the same conditions and limitations, as amounts in such appropriation or account.

(d) PRIVATE DONATIONS.—(1) The Secretary concerned may accept contributions of money, personal property, or services on the condition that such money, property, or services be used for the benefit of a military musical unit under the jurisdiction of the Secretary.

(2) Any contribution of money under paragraph (1) shall be credited to the appropriation or account providing the funds for such military musical unit. Any amount so credited shall be merged with amounts in the appropriation or account to which credited, and shall be available for the same purposes, and subject to the same conditions and limitations, as amounts in such appropriation or account.

(e) PERFORMANCES AT FOREIGN LOCATIONS.—Subsection (a) does not apply to a performance outside the United States, its commonwealths, or its possessions.

(f) MILITARY MUSICAL UNIT DEFINED.—In this section, the term ''military musical unit'' means a band, ensemble, chorus, or similar musical unit of the armed forces.

(Added Pub. L. 110–181, div. A, title V, § 590(a)(1), Jan. 28, 2008, 122 Stat. 136; amended Pub. L. 111–84, div. A, title V, § 591(a), Oct. 28, 2009, 123 Stat. 2335; Pub. L. 113–66, div. A, title III, § 351, Dec. 26, 2013, 127 Stat. 741; Pub. L. 115–91, div. A, title X, § 1051(a)(4), Dec. 12, 2017, 131 Stat. 1560.)

PRIOR PROVISIONS

A prior section 974, added Pub. L. 90–235, § 6(a)(6)(A), Jan. 2, 1968, 81 Stat. 762; amended Pub. L. 101–510, div. A, title III, § 327(e), Nov. 5, 1990, 104 Stat. 1532, related to civilian employment by enlisted members, prior to repeal by Pub. L. 105–261, div. A, title V, § 569(a), Oct. 17, 1998, 112 Stat. 2032.

AMENDMENTS

2017—Subsec. (d)(3). Pub. L. 115–91 struck out par. (3) which read as follows: ''Not later than January 30 of each year, the Secretary concerned shall submit to Congress a report on any contributions of money, personal property, and services accepted under paragraph (1) during the fiscal year preceding the fiscal year during which the report is submitted.''

2013—Subsecs. (d) to (f). Pub. L. 113–66 added subsec. (d) and redesignated former subsecs. (d) and (e) as (e) and (f), respectively.

2009—Pub. L. 111–84 amended section generally. Prior to amendment, section related to uniform performance policies for military bands and other musical units.

[§ 975. Renumbered § 2390]

§ 976. Membership in military unions, organizing of military unions, and recognition of military unions prohibited

(a) In this section:

(1) The term ''member of the armed forces'' means (A) a member of the armed forces who is serving on active duty, (B) a member of the National Guard who is serving on full-time National Guard duty, or (C) a member of a Reserve component while performing inactive-duty training.

(2) The term ''military labor organization'' means any organization that engages in or attempts to engage in—

(A) negotiating or bargaining with any civilian officer or employee, or with any member of the armed forces, on behalf of members of the armed forces, concerning the terms or conditions of military service of such members in the armed forces;

(B) representing individual members of the armed forces before any civilian officer or employee, or any member of the armed forces, in connection with any grievance or complaint of any such member arising out of the terms or conditions of military service of such member in the armed forces; or

(C) striking, picketing, marching, demonstrating, or any other similar form of concerted action which is directed against the Government of the United States and which is intended to induce any civilian officer or employee, or any member of the armed forces, to—

(i) negotiate or bargain with any person concerning the terms or conditions of military service of any member of the armed forces,

(ii) recognize any organization as a representative of individual members of the armed forces in connection with complaints and grievances of such members arising out of the terms or conditions of military service of such members in the armed forces, or

(iii) make any change with respect to the terms or conditions of military service of individual members of the armed forces.

(3) The term ''civilian officer or employee'' means an employee, as such term is defined in section 2105 of title 5.

(b) It shall be unlawful for a member of the armed forces, knowing of the activities or objectives of a particular military labor organization—

(1) to join or maintain membership in such organization; or

(2) to attempt to enroll any other member of the armed forces as a member of such organization.

(c) It shall be unlawful for any person—

(1) to enroll in a military labor organization any member of the armed forces or to solicit or accept dues or fees for such an organization from any member of the armed forces; or

(2) to negotiate or bargain, or attempt through any coercive act to negotiate or bargain, with any civilian officer or employee, or any member of the armed forces, on behalf of members of the armed forces, concerning the terms or conditions of service of such members;

(3) to organize or attempt to organize, or participate in, any strike, picketing, march, demonstration, or other similar form of concerted action involving members of the armed forces that is directed against the Government of the United States and that is intended to induce any civilian officer or employee, or any member of the armed forces, to—

(A) negotiate or bargain with any person concerning the terms or conditions of service of any member of the armed forces,

(B) recognize any military labor organization as a representative of individual members of the armed forces in connection with any complaint or grievance of any such member arising out of the terms or conditions of service of such member in the armed forces, or

(C) make any change with respect to the terms or conditions of service in the armed forces of individual members of the armed forces; or

(4) to use any military installation, facility, reservation, vessel, or other property of the United States for any meeting, march, picketing, demonstration, or other similar activity for the purpose of engaging in any activity prohibited by this subsection or by subsection (b) or (d).

(d) It shall be unlawful for any military labor organization to represent, or attempt to represent, any member of the armed forces before any civilian officer or employee, or any member of the armed forces, in connection with any grievance or complaint of any such member arising out of the terms or conditions of service of such member in the armed forces.

(e) No member of the armed forces, and no civilian officer or employee, may—

(1) negotiate or bargain on behalf of the United States concerning the terms or conditions of military service of members of the armed forces with any person who represents or purports to represent members of the armed forces, or

(2) permit or authorize the use of any military installation, facility, reservation, vessel, or other property of the United States for any meeting, march, picketing, demonstration, or other similar activity which is for the purpose of engaging in any activity prohibited by subsection (b), (c), or (d).

Nothing in this subsection shall prevent commanders or supervisors from giving consideration to the views of any member of the armed forces presented individually or as a result of participation on command-sponsored or authorized advisory councils, committees, or organizations.

(f) Whoever violates subsection (b), (c), or (d) shall be fined under title 18 or imprisoned not more than 5 years, or both, except that, in the case of an organization (as defined in section 18 of such title), the fine shall not be less than $25,000.

(g) Nothing in this section shall limit the right of any member of the armed forces—

(1) to join or maintain membership in any organization or association not constituting a ''military labor organization'' as defined in subsection (a)(2) of this section;

(2) to present complaints or grievances concerning the terms or conditions of the service of such member in the armed forces in accordance with established military procedures;

(3) to seek or receive information or counseling from any source;

(4) to be represented by counsel in any legal or quasi-legal proceeding, in accordance with applicable laws and regulations;

(5) to petition the Congress for redress of grievances; or

(6) to take such other administrative action to seek such administrative or judicial relief, as is authorized by applicable laws and regulations.

(Added Pub. L. 95–610, §2(a), Nov. 8, 1978, 92 Stat. 3085, §975; renumbered §976, Pub. L. 96–107, title VIII, §821(a), Nov. 9, 1979, 93 Stat. 820; amended Pub. L. 98–525, title IV, §414(a)(6), Oct. 19, 1984, 98 Stat. 2519; Pub. L. 99–661, div. A, title XIII, §1343(a)(2), Nov. 14, 1986, 100 Stat. 3992; Pub. L. 100–26, §7(k)(2), Apr. 21, 1987, 101 Stat. 284; Pub. L. 105–85, div. A, title X, §1073(a)(15), Nov. 18, 1997, 111 Stat. 1900.)

AMENDMENTS

1997—Subsec. (f). Pub. L. 105–85 substituted "shall be fined under title 18 or imprisoned not more than 5 years, or both, except that, in the case of an organization (as defined in section 18 of such title), the fine shall not be less than $25,000." for "shall, in the case of an individual, be fined not more than $10,000 or imprisoned not more than five years, or both, and in the case of an organization or association, be fined not less than $25,000 and not more than $250,000."

1987—Subsec. (a)(1) to (3). Pub. L. 100–26 inserted "The term" after each par. designation and struck out uppercase letter of first word after first quotation marks in each paragraph and substituted lowercase letter.

1986—Subsec. (a)(1). Pub. L. 99–661 struck out the second of two commas before "(B)".

1984—Subsec. (a)(1). Pub. L. 98–525 added cl. (B) and redesignated existing cl. (B) as (C).

FINDINGS; PURPOSE

Pub. L. 95–610, § 1, Nov. 8, 1978, 92 Stat. 3085, provided that:

"(a) The Congress makes the following findings:

"(1) Members of the armed forces of the United States must be prepared to fight and, if necessary, to die to protect the welfare, security, and liberty of the United States and of their fellow citizens.

"(2) Discipline and prompt obedience to lawful orders of superior officers are essential and time-honored elements of the American military tradition and have been reinforced from the earliest articles of war by laws and regulations prohibiting conduct detrimental to the military chain of command and lawful military authority.

"(3) The processes of conventional collective bargaining and labor-management negotiation cannot and should not be applied to the relationships between members of the armed forces and their military and civilian superiors.

"(4) Strikes, slowdowns, picketing, and other traditional forms of job action have no place in the armed forces.

"(5) Unionization of the armed forces would be incompatible with the military chain of command, would undermine the role, authority, and position of the commander, and would impair the morale and readiness of the armed forces.

"(6) The circumstances which could constitute a threat to the ability of the armed forces to perform their mission are not comparable to the circumstances which could constitute a threat to the ability of Federal civilian agencies to perform their functions and should be viewed in light of the need for effective performance of duty by each member of the armed forces.

"(b) The purpose of this Act [enacting this section] is to promote the readiness of the armed forces to defend the United States."

§ 977. Conversion of military medical and dental positions to civilian medical and dental positions: limitation

(a) PROCESS.—The Secretary of Defense, in collaboration with the Secretaries of the military departments, shall establish a process to define the military medical and dental personnel requirements necessary to meet operational medical force readiness requirements.

(b) REQUIREMENTS RELATING TO CONVERSION.—A military medical or dental position within the Department of Defense may be converted to a civilian medical or dental position if the Secretary determines that the position is not necessary to meet operational medical force readiness requirements, as determined pursuant to subsection (a).

(c) GRADE OR LEVEL CONVERTED.—In carrying out a conversion under subsection (b), the Secretary of Defense—

(1) shall convert the applicable military position to a civilian position with a level of compensation commensurate with the skills and experience necessary to carry out the duties of such civilian position; and

(2) may not place any limitation on the grade or level to which the military position is so converted.

(d) DEFINITIONS.—In this section:

(1) The term "military medical or dental position" means a position for the performance of health care functions within the armed forces held by a member of the armed forces.

(2) The term "civilian medical or dental position" means a position for the performance of health care functions within the Department of Defense held by an employee of the Department or of a contractor of the Department.

(3) The term "conversion", with respect to a military medical or dental position, means a change of the position to a civilian medical or dental position, effective as of the date of the manning authorization document of the military department making the change (through a change in designation from military to civilian in the document, the elimination of the listing of the position as a military position in the document, or through any other means indicating the change in the document or otherwise).

(Added Pub. L. 114–328, div. A, title VII, § 721(a)(1), Dec. 23, 2016, 130 Stat. 2227.)

EFFECTIVE DATE

Pub. L. 114–328, div. A, title VII, § 721(a)(3), Dec. 23, 2016, 130 Stat. 2228, provided that: "The Secretary of Defense may not carry out section 977(b) of title 10, United States Code, as added by paragraph (1), until the date that is 180 days after the date on which the Secretary submits the report under subsection (b)."

PRIOR PROVISIONS

A prior section 977, added Pub. L. 103–160, div. A, title III, § 351(a), Nov. 30, 1993, 107 Stat. 1626; amended Pub. L. 105–85, div. A, title X, § 1073(a)(16), Nov. 18, 1997, 111 Stat. 1901; Pub. L. 106–65, div. A, title X, § 1066(a)(6), Oct. 5, 1999, 113 Stat. 770, related to prohibition of assignment of active duty members to operation of commissary stores, prior to repeal by Pub. L. 108–375, div. A, title VI, § 651(e)(1), Oct. 28, 2004, 118 Stat. 1972.

Another prior section 977, added Pub. L. 96–342, title X, § 1002(a), Sept. 8, 1980, 94 Stat. 1119; amended Pub. L. 97–22, § 11(a)(1), July 10, 1981, 95 Stat. 137, provided that no one who originally enlisted after Sept. 7, 1980, in a regular armed services component and failed to serve at least 24 months of such enlistment would be eligible for Federal benefits otherwise receivable because of active service under such enlistment, except that such exclusion was not applicable to one discharged under section 1173 of chapter 61 of this title or to one later proved to be suffering from a disability resulting from an injury or disease incurred during enlistment, prior to repeal by Pub. L. 97–306, title IV, § 408(c)(1), Oct. 14, 1982, 96 Stat. 1446. See section 5303A of Title 38, Veterans' Benefits, and provisions set out as notes under that section.

§ 978. Drug and alcohol abuse and dependency: testing of new entrants

(a)(1) The Secretary concerned shall require that, except as provided under paragraph (2),

each person applying for an original enlistment or appointment in the armed forces shall be required, before becoming a member of the armed forces, to—

(A) undergo testing (by practicable, scientifically supported means) for drug and alcohol use; and

(B) be evaluated for drug and alcohol dependency.

(2) The Secretary concerned may provide that, in lieu of undergoing the testing and evaluation described in paragraph (1) before becoming a member of the armed forces, a member of the armed forces under the Secretary's jurisdiction may be administered that testing and evaluation after the member's initial entry on active duty. In any such case, the testing and evaluation shall be carried out within 72 hours of the member's initial entry on active duty.

(3) The Secretary concerned shall require an applicant for appointment as a cadet or midshipman to undergo the testing and evaluation described in paragraph (1) within 72 hours of such appointment. The Secretary concerned shall require a person to whom a commission is offered under section 2106 of this title following completion of the program of advanced training under the Reserve Officers' Training Corps program to undergo such testing and evaluation before such an appointment is executed.

(b) A person who refuses to consent to testing and evaluation required by subsection (a) may not (unless that person subsequently consents to such testing and evaluation)—

(1) be accepted for an original enlistment in the armed forces or given an original appointment as an officer in the armed forces; or

(2) if such person is already a member of the armed forces, be retained in the armed forces.

An original appointment of any such person as an officer shall be terminated.

(c)(1) A person determined, as the result of testing conducted under subsection (a)(1), to be dependent on drugs or alcohol shall be denied entrance into the armed forces.

(2) The enlistment or appointment of a person who is determined, as a result of an evaluation conducted under subsection (a)(2), to be dependent on drugs or alcohol at the time of such enlistment or appointment shall be void.

(3) A person who is denied entrance into the armed forces under paragraph (1), or whose enlistment or appointment is voided under paragraph (2), shall be referred to a civilian treatment facility.

(4) The Secretary concerned may place on excess leave any member of the armed forces whose test results under subsection (a)(2) are positive for drug or alcohol use. The Secretary may continue such member's status on excess leave pending disposition of the member's case and processing for administrative separation.

(d) The testing and evaluation required by subsection (a) shall be carried out under regulations prescribed by the Secretary of Defense in consultation with the Secretary of Homeland Security. Those regulations shall apply uniformly throughout the armed forces.

(e) In time of war, or time of emergency declared by Congress or the President, the President may suspend the provisions of subsection (a).

(Added Pub. L. 97–295, §1(14)(A), Oct. 12, 1982, 96 Stat. 1289; amended Pub. L. 100–180, div. A, title V, §513(a)(1), Dec. 4, 1987, 101 Stat. 1091; Pub. L. 100–456, div. A, title V, §521(a)(1), Sept. 29, 1988, 102 Stat. 1972; Pub. L. 101–189, div. A, title V, §513(a)–(c), Nov. 29, 1989, 103 Stat. 1440; Pub. L. 101–510, div. A, title XIV, §1484(k)(4), Nov. 5, 1990, 104 Stat. 1719; Pub. L. 103–160, div. A, title V, §572, Nov. 30, 1993, 107 Stat. 1673; Pub. L. 107–296, title XVII, §1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
978	10:1071 (note).	Sept. 28, 1971, Pub. L. 92–129, §501(a)(2), (b), 85 Stat. 361.

The word "regulations" is added for consistency. The word "persons" is omitted as surplus. The word "person" is substituted for "individuals" for consistency. The text of subsection (b) is omitted as executed.

AMENDMENTS

2002—Subsec. (d). Pub. L. 107–296 substituted "of Homeland Security" for "of Transportation".

1993—Subsec. (a)(3). Pub. L. 103–160 substituted "within 72 hours of such appointment" for "during the physical examination given the applicant before such appointment" and "before such an appointment is executed" for "during the precommissioning physical examination given such person".

1990—Subsec. (c)(3). Pub. L. 101–510 struck out "a" before "whose enlistment".

1989—Subsec. (a)(1). Pub. L. 101–189, §513(a)(2), added par. (1) and struck out former par. (1) which read as follows: "Except as provided in paragraph (2), the Secretary concerned shall require each member of the armed forces under the Secretary's jurisdiction, within 72 hours after the member's initial entry on active duty after enlistment or appointment, to—

"(A) undergo testing (by practicable, scientifically supported means) for drug and alcohol use; and

"(B) be evaluated for drug and alcohol dependency."

Subsec. (a)(2), (3). Pub. L. 101–189, §513(a), added par. (2) and redesignated former par. (2) as (3).

Subsec. (b). Pub. L. 101–189, §513(b)(1), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: "A person who refuses to consent to testing and evaluation required by subsection (a) may not be retained in the armed forces, and any original appointment of such person as an officer shall be terminated, unless that person consents to such testing and evaluation."

Subsec. (c)(1). Pub. L. 101–189, §513(b)(2)(B), added par. (1). Former par. (1) redesignated (2).

Subsec. (c)(2). Pub. L. 101–189, §513(b)(2)(A), (C), redesignated par. (1) as (2) and substituted "subsection (a)(2)" for "subsection (a)(1)(B)". Former par. (2) redesignated (3).

Subsec. (c)(3). Pub. L. 101–189, §513(b)(2)(A), (D), redesignated par. (2) as (3), inserted "who is denied entrance into the armed forces under paragraph (1), or a" after "A person", and substituted "paragraph (2)," for "paragraph (1)".

Subsec. (c)(4). Pub. L. 101–189, §513(c), added par. (4).

1988—Pub. L. 100–456 substituted "Drug and alcohol abuse and dependency: testing of new entrants" for "Mandatory testing for drug, chemical, and alcohol abuse" in section catchline, and amended text generally. Prior to amendment, text read as follows:

"(a) Before a person becomes a member of the armed forces, such person shall be required to undergo testing for drug, chemical, and alcohol use and dependency.

''(b) A person who refuses to consent to testing required by subsection (a) may not be accepted for an original enlistment in the armed forces or given an original appointment as an officer in the armed forces unless that person consents to such testing.

''(c) A person determined, as the result of testing conducted under subsection (a), to be dependent on drugs, chemicals, or alcohol shall be—

''(1) denied entrance into the armed forces; and

''(2) referred to a civilian treatment facility.

''(d) The testing required by subsection (a) shall be carried out under regulations prescribed by the Secretary of Defense in consultation with the Secretary of Transportation. Those regulations shall apply uniformly throughout the armed forces.''

1987—Pub. L. 100–180 substituted ''Mandatory testing for drug, chemical, and alcohol abuse'' for ''Denial of entrance into the armed forces of persons dependent on drugs or alcohol'' in section catchline, and amended text generally, revising and restating as subsecs. (a) to (d) provisions formerly contained in subsecs. (a) and (b).

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–189, div. A, title V, § 513(d), Nov. 29, 1989, 103 Stat. 1441, provided that: ''The amendments made by subsections (a) and (b) [amending this section] shall take effect as of October 1, 1989.''

REGULATIONS; IMPLEMENTATION OF PROGRAM

Pub. L. 100–456, div. A, title V, § 521(b), (c), Sept. 29, 1988, 102 Stat. 1973, provided that:

''(b) REGULATIONS.—The Secretary of Defense shall prescribe regulations for the implementation of section 978 of title 10, United States Code, as amended by subsection (a), not later than 60 days after the date of the enactment of this Act [Sept. 29, 1988].

''(c) EFFECTIVE DATE.—The testing and evaluation program prescribed by that section shall be implemented not later than October 1, 1989.''

IMPLEMENTATION

Pub. L. 100–180, div. A, title V, § 513(b), Dec. 4, 1987, 101 Stat. 1091, as amended by Pub. L. 100–456, div. A, title V, § 521(d), Sept. 29, 1988, 102 Stat. 1973, provided that:

''(1) The Secretary of Defense shall prescribe regulations for the implementation of section 978 of title 10, United States Code, as amended by subsection (a), not later than 45 days after the date of the enactment of this Act [Dec. 4, 1987].

''(2) [Repealed. Pub. L. 100–456, div. A, title V, § 521(d), Sept. 29, 1988, 102 Stat. 1973].''

§ 979. Prohibition on loan and grant assistance to persons convicted of certain crimes

Funds appropriated to the Department of Defense may not be used to provide a loan, a guarantee of a loan, or a grant to any person who has been convicted by a court of general jurisdiction of any crime which involves the use of (or assisting others in the use of) force, trespass, or the seizure of property under the control of an institution of higher education to prevent officials or students of the institution from engaging in their duties or pursuing their studies.

(Added Pub. L. 98–525, title XIV, § 1401(c)(1), Oct. 19, 1984, 98 Stat. 2615.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in the following appropriation acts:

Pub. L. 98–473, title I, § 101(h) [title VIII, § 8027], Oct. 12, 1984, 98 Stat. 1904, 1928.

Pub. L. 98–212, title VII, § 732, Dec. 8, 1983, 97 Stat. 1444.

Pub. L. 97–377, title I, § 101(c) [title VII, § 735], Dec. 21, 1982, 96 Stat. 1833, 1856.

Pub. L. 97–114, title VII, § 736, Dec. 29, 1981, 95 Stat. 1585.

Pub. L. 96–527, title VII, § 737, Dec. 15, 1980, 94 Stat. 3087.

Pub. L. 96–154, title VII, § 739, Dec. 21, 1979, 93 Stat. 1159.

Pub. L. 95–457, title VIII, § 839, Oct. 13, 1978, 92 Stat. 1250.

Pub. L. 95–111, title VIII, § 838, Sept. 21, 1977, 91 Stat. 906.

Pub. L. 94–419, title VII, § 737, Sept. 22, 1976, 90 Stat. 1297.

Pub. L. 94–212, title VII, § 737, Feb. 9, 1976, 90 Stat. 175.

Pub. L. 93–437, title VIII, § 838, Oct. 8, 1974, 88 Stat. 1231.

Pub. L. 93–238, title VII, § 740, Jan. 2, 1974, 87 Stat. 1045.

Pub. L. 92–570, title VII, § 740, Oct. 26, 1972, 86 Stat. 1203.

Pub. L. 92–204, title VII, § 741, Dec. 18, 1971, 85 Stat. 734.

Pub. L. 91–668, title VIII, § 841, Jan. 11, 1971, 84 Stat. 2037.

Pub. L. 91–171, title VI, § 641, Dec. 29, 1969, 83 Stat. 486.

Pub. L. 90–580, title V, § 540, Oct. 17, 1968, 82 Stat. 1136.

EFFECTIVE DATE

Section effective Oct. 1, 1985, see section 1404 of Pub. L. 98–525, set out as a note under section 520b of this title.

§ 980. Limitation on use of humans as experimental subjects

(a) Funds appropriated to the Department of Defense may not be used for research involving a human being as an experimental subject unless—

(1) the informed consent of the subject is obtained in advance; or

(2) in the case of research intended to be beneficial to the subject, the informed consent of the subject or a legal representative of the subject is obtained in advance.

(b) The Secretary of Defense may waive the prohibition in this section with respect to a specific research project to advance the development of a medical product necessary to the armed forces if the research project may directly benefit the subject and is carried out in accordance with all other applicable laws.

(Added Pub. L. 98–525, title XIV, § 1401(c)(1), Oct. 19, 1984, 98 Stat. 2615; amended Pub. L. 107–107, div. A, title VII, § 733, Dec. 28, 2001, 115 Stat. 1170.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in the following appropriation acts:

Pub. L. 98–473, title I, § 101(h) [title VIII, § 8029], Oct. 12, 1984, 98 Stat. 1904, 1929.

Pub. L. 98–212, title VII, § 734, Dec. 8, 1983, 97 Stat. 1444.

Pub. L. 97–377, title I, § 101(c) [title VII, § 737], Dec. 21, 1982, 96 Stat. 1833, 1857.

Pub. L. 97–114, title VII, § 738, Dec. 29, 1981, 95 Stat. 1585.

Pub. L. 96–527, title VII, § 739, Dec. 15, 1980, 94 Stat. 3088.

Pub. L. 96–154, title VII, § 741, Dec. 21, 1979, 93 Stat. 1159.

Pub. L. 95–457, title VIII, § 841, Oct. 13, 1978, 92 Stat. 1251.
Pub. L. 95–111, title VIII, § 840, Sept. 21, 1977, 91 Stat. 906.
Pub. L. 94–419, title VII, § 739, Sept. 22, 1976, 90 Stat. 1297.
Pub. L. 94–212, title VII, § 740, Feb. 9, 1976, 90 Stat. 175.
Pub. L. 93–437, title VIII, § 841, Oct. 8, 1974, 88 Stat. 1231.
Pub. L. 93–238, title VII, § 743, Jan. 2, 1974, 87 Stat. 1045.
Pub. L. 92–570, title VII, § 745, Oct. 26, 1972, 86 Stat. 1203.

AMENDMENTS

2001—Pub. L. 107–107 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE

Section effective Oct. 1, 1985, see section 1404 of Pub. L. 98–525, set out as a note under section 520b of this title.

§ 981. Limitation on number of enlisted aides

(a) Subject to subsection (b), the total number of enlisted members that may be assigned or otherwise detailed to duty as enlisted aides on the personal staffs of officers of the Army, Navy, Marine Corps, Air Force, and Coast Guard (when operating as a service of the Navy) during a fiscal year is the number equal to the sum of (1) four times the number of officers serving on active duty at the end of the preceding fiscal year in the grade of general or admiral, and (2) two times the number of officers serving on active duty at the end of the preceding fiscal year in the grade of lieutenant general or vice admiral.

(b) Not more than 300 enlisted members may be assigned to duty at any time as enlisted aides for officers of the Army, Navy, Air Force, and Marine Corps.

(c) Not later than March 1 of each year, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report—

(1) specifying the number of enlisted aides authorized and allocated for general officers and flag officers of the Army, Navy, Air Force, Marine Corps, and joint pool as of September 30 of the previous year; and

(2) justifying, on a billet-by-billet basis, the authorization and assignment of each enlisted aide to each general officer and flag officer position.

(Added Pub. L. 98–525, title XIV, § 1401(c)(1), Oct. 19, 1984, 98 Stat. 2615; amended Pub. L. 113–291, div. A, title V, § 504(a), Dec. 19, 2014, 128 Stat. 3355.)

PRIOR PROVISIONS

Provisions similar to those in subsec. (a) of this section were contained in Pub. L. 94–106, title VIII, § 820(a), Oct. 7, 1975, 89 Stat. 544, prior to repeal by Pub. L. 98–525, §§ 1403(c), 1404, eff. Oct. 1, 1985.

Provisions similar to those in subsec. (b) of this section were contained in the following appropriation acts:

Pub. L. 98–473, title I, § 101(h) [title VIII, § 8034], Oct. 12, 1984, 98 Stat. 1904, 1930.
Pub. L. 98–212, title VII, § 742, Dec. 8, 1983, 97 Stat. 1446.
Pub. L. 97–377, title I, § 101(c) [title VII, § 745], Dec. 21, 1982, 96 Stat. 1833, 1858.
Pub. L. 97–114, title VII, § 746, Dec. 29, 1981, 95 Stat. 1586.
Pub. L. 96–527, title VII, § 747, Dec. 15, 1980, 94 Stat. 3089.
Pub. L. 96–154, title VII, § 748, Dec. 21, 1979, 93 Stat. 1160.
Pub. L. 95–457, title VIII, § 848, Oct. 13, 1978, 92 Stat. 1252.
Pub. L. 95–111, title VIII, § 849, Sept. 21, 1977, 91 Stat. 908.
Pub. L. 94–419, title VII, § 748, Sept. 22, 1976, 90 Stat. 1299.
Pub. L. 94–212, title VII, § 745, Feb. 9, 1976, 90 Stat. 175.
Pub. L. 93–437, title VIII, § 848, Oct. 8, 1974, 88 Stat. 1232.

AMENDMENTS

2014—Subsec. (c). Pub. L. 113–291 added subsec. (c).

EFFECTIVE DATE

Section effective Oct. 1, 1985, see section 1404 of Pub. L. 98–525, set out as a note under section 520b of this title.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective Dec. 31, 2021, of provisions in subsec. (c) of this section requiring submittal of annual report to Congress, see section 1061 of Pub. L. 114–328, set out as a note under section 111 of this title.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 982. Members: service on State and local juries

(a) A member of the armed forces on active duty may not be required to serve on a State or local jury if the Secretary concerned determines that such service—

(1) would unreasonably interfere with the performance of the member's military duties; or

(2) would adversely affect the readiness of the unit, command, or activity to which the member is assigned.

(b) A determination by the Secretary concerned under this section is conclusive.

(c) The Secretary concerned shall prescribe regulations for the administration of this section.

(d) In this section, the term ''State'' includes the District of Columbia, the Commonwealth of Puerto Rico, and each territory of the United States.

(Added Pub. L. 99–661, div. A, title V, § 502(a), Nov. 14, 1986, 100 Stat. 3863.)

§ 983. Institutions of higher education that prevent ROTC access or military recruiting on campus: denial of grants and contracts from Department of Defense, Department of Education, and certain other departments and agencies

(a) DENIAL OF FUNDS FOR PREVENTING ROTC ACCESS TO CAMPUS.—No funds described in subsection (d)(1) may be provided by contract or by grant to an institution of higher education (including any subelement of such institution) if

the Secretary of Defense determines that that institution (or any subelement of that institution) has a policy or practice (regardless of when implemented) that either prohibits, or in effect prevents—

(1) the Secretary of a military department from maintaining, establishing, or operating a unit of the Senior Reserve Officer Training Corps (in accordance with section 654[1] of this title and other applicable Federal laws) at that institution (or any subelement of that institution); or

(2) a student at that institution (or any subelement of that institution) from enrolling in a unit of the Senior Reserve Officer Training Corps at another institution of higher education.

(b) DENIAL OF FUNDS FOR PREVENTING MILITARY RECRUITING ON CAMPUS.—No funds described in subsection (d)(1) may be provided by contract or by grant to an institution of higher education (including any subelement of such institution) if the Secretary of Defense determines that that institution (or any subelement of that institution) has a policy or practice (regardless of when implemented) that either prohibits, or in effect prevents—

(1) the Secretary of a military department or the Secretary of Homeland Security from gaining access to campuses, or access to students (who are 17 years of age or older) on campuses, for purposes of military recruiting in a manner that is at least equal in quality and scope to the access to campuses and to students that is provided to any other employer; or

(2) access by military recruiters for purposes of military recruiting to the following information pertaining to students (who are 17 years of age or older) enrolled at that institution (or any subelement of that institution):

(A) Names, addresses, electronic mail addresses (which shall be the electronic mail addresses provided by the institution, if available), and telephone listings.

(B) Date and place of birth, levels of education, academic majors, degrees received, and the most recent educational institution enrolled in by the student.

(c) EXCEPTIONS.—The limitation established in subsection (a) or (b) shall not apply to an institution of higher education (or any subelement of that institution) if the Secretary of Defense determines that—

(1) the institution (and each subelement of that institution) has ceased the policy or practice described in that subsection; or

(2) the institution of higher education involved has a longstanding policy of pacifism based on historical religious affiliation.

(d) COVERED FUNDS.—(1) Except as provided in paragraph (2), the limitations established in subsections (a) and (b) apply to the following:

(A) Any funds made available for the Department of Defense.

(B) Any funds made available for any department or agency for which regular appropriations are made in a Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act.

(C) Any funds made available for the Department of Homeland Security.

(D) Any funds made available for the National Nuclear Security Administration of the Department of Energy.

(E) Any funds made available for the Department of Transportation.

(F) Any funds made available for the Central Intelligence Agency.

(2) Any Federal funding specified in paragraph (1) that is provided to an institution of higher education, or to an individual, to be available solely for student financial assistance, related administrative costs, or costs associated with attendance, may be used for the purpose for which the funding is provided.

(e) NOTICE OF DETERMINATIONS.—Whenever the Secretary of Defense makes a determination under subsection (a), (b), or (c), the Secretary—

(1) shall transmit a notice of the determination to the Secretary of Education and to the head of each other department and agency the funds of which are subject to the determination; and

(2) shall publish in the Federal Register a notice of the determination and the effect of the determination on the eligibility of the institution of higher education (and any subelement of that institution) for contracts and grants.

(Added Pub. L. 104–106, div. A, title V, § 541(a), Feb. 10, 1996, 110 Stat. 315; amended Pub. L. 106–65, div. A, title V, § 549(a)(1), Oct. 5, 1999, 113 Stat. 609; Pub. L. 107–296, title XVII, § 1704(b)(1), (3), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 108–375, div. A, title V, § 552(a)–(d), Oct. 28, 2004, 118 Stat. 1911, 1912; Pub. L. 112–81, div. A, title X, § 1061(11), Dec. 31, 2011, 125 Stat. 1583; Pub. L. 112–239, div. A, title V, § 586, title X, § 1076(f)(10), Jan. 2, 2013, 126 Stat. 1768, 1952; Pub. L. 116–283, div. A, title V, § 521(b), Jan. 1, 2021, 134 Stat. 3597.)

REFERENCES IN TEXT

Section 654 of this title, referred to in subsec. (a)(1), was repealed by Pub. L. 111–321, § 2(f)(1)(A), Dec. 22, 2010, 124 Stat. 3516.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in Pub. L. 103–337, div. A, title V, § 558, Oct. 5, 1994, 108 Stat. 2776, as amended, and Pub. L. 104–208, div. A, title I, § 101(e) [title V, § 514], Sept. 30, 1996, 110 Stat. 3009–233, 3009–270, which were set out as notes under section 503 of this title, prior to repeal by Pub. L. 106–65, § 549(b).

AMENDMENTS

2021—Subsec. (b)(2)(A). Pub. L. 116–283 substituted ''electronic mail addresses (which shall be the electronic mail addresses provided by the institution, if available), and telephone listings'' for ''and telephone listings''.

2013—Subsec. (b)(1). Pub. L. 112–239, § 1076(f)(10), substituted ''or the Secretary'' for ''or Secretary''.

Subsec. (f). Pub. L. 112–239, § 586, struck out subsec. (f). Text read as follows: ''The Secretary of Defense shall publish in the Federal Register once every six months a list of each institution of higher education that is currently ineligible for contracts and grants by reason of a determination of the Secretary under subsection (a) or (b).''

[1] See References in Text note below.

2011—Subsec. (e)(1). Pub. L. 112–81 substituted ''Secretary of Education and'' for ''Secretary of Education,'' and struck out '', and to Congress'' after ''determination''.

2004—Subsec. (a). Pub. L. 108–375, §552(d), struck out ''(including a grant of funds to be available for student aid)'' after ''by grant'' in introductory provisions.

Subsec. (b). Pub. L. 108–375, §552(b)(2)(A), (d), in introductory provisions, substituted ''subsection (d)(1)'' for ''subsection (d)(2)'' and struck out ''(including a grant of funds to be available for student aid)'' after ''by grant''.

Subsec. (b)(1). Pub. L. 108–375, §552(a), substituted ''access to campuses'' for ''entry to campuses'' and inserted before semicolon ''in a manner that is at least equal in quality and scope to the access to campuses and to students that is provided to any other employer''.

Subsec. (d)(1). Pub. L. 108–375, §552(b)(1)(A)(i), (c)(1), in introductory provisions, substituted ''Except as provided in paragraph (2), the'' for ''The'' and ''limitations established in subsections (a) and (b) apply'' for ''limitation established in subsection (a) applies''.

Subsec. (d)(1)(B). Pub. L. 108–375, §552(b)(1)(A)(ii), inserted ''for any department or agency for which regular appropriations are made'' after ''made available''.

Subsec. (d)(1)(C) to (F). Pub. L. 108–375, §552(b)(1)(A)(iii), added subpars. (C) to (F).

Subsec. (d)(2). Pub. L. 108–375, §552(b)(1)(B), (c)(2), added par. (2) and struck out former par. (2) which read as follows: ''The limitation established in subsection (b) applies to the following:

''(A) Funds described in paragraph (1).

''(B) Any funds made available for the Department of Homeland Security.''

Subsec. (e)(1). Pub. L. 108–375, §552(b)(2)(B), inserted '', to the head of each other department and agency the funds of which are subject to the determination,'' after ''Secretary of Education''.

2002—Subsec. (b)(1). Pub. L. 107–296, §1704(b)(1), substituted ''Secretary of Homeland Security'' for ''Secretary of Transportation''.

Subsec. (d)(2)(B). Pub. L. 107–296, §1704(b)(3), substituted ''Department of Homeland Security'' for ''Department of Transportation''.

1999—Pub. L. 106–65 amended section catchline and text generally. Prior to amendment, section consisted of subsecs. (a) to (d) relating to denial of Department of Defense grants and contracts to institutions of higher education that have anti-ROTC policies.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–375, div. A, title V, §552(f), Oct. 28, 2004, 118 Stat. 1912, provided that: ''The amendments made by this section [amending this section and repealing provisions set out as a note under this section] shall apply with respect to funds appropriated for fiscal year 2005 and thereafter.''

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

FUNDS AVAILABLE SOLELY FOR STUDENT FINANCIAL ASSISTANCE

Pub. L. 106–79, title VIII, §8120, Oct. 25, 1999, 113 Stat. 1260, provided that during fiscal year 2000 and thereafter, any Federal grant of funds to an institution of higher education to be available solely for student financial assistance or related administrative costs could be used for the purpose for which the grant was made without regard to any provision to the contrary in section 101(e) [title V, §514] of Pub. L. 104–208 (formerly 10 U.S.C. 503 note), or section 983 of this title, prior to repeal by Pub. L. 108–375, div. A, title V, §552(e), Oct. 28, 2004, 118 Stat. 1912.

§985. Persons convicted of capital crimes; certain other persons: denial of specified burial-related benefits

(a) PROHIBITION OF PERFORMANCE OF MILITARY HONORS.—The Secretary of a military department and the Secretary of Homeland Security, with respect to the Coast Guard when it is not operating as a service in the Navy, may not provide military honors (under section 1491 of this title or any other authority) at the funeral or burial of any of the following persons:

(1) A person described in section 2411(b) of title 38.

(2) A person who is a veteran (as defined in section 1491(h) of this title) or who died while on active duty or a member of a reserve component, when the circumstances surrounding the person's death or other circumstances as specified by the Secretary of Defense are such that to provide military honors at the funeral or burial of the person would bring discredit upon the person's service (or former service).

(b) DISQUALIFICATION FROM BURIAL IN MILITARY CEMETERIES.—Except as provided in subsection (c), a person who is ineligible for interment in a national cemetery under the control of the National Cemetery Administration by reason of section 2411(b) of title 38 is not entitled to or eligible for, and may not be provided, burial in—

(1) Arlington National Cemetery;

(2) the Soldiers' and Airmen's National Cemetery; or

(3) any other cemetery administered by the Secretary of a military department or the Secretary of Defense.

(c) UNCLAIMED REMAINS OF MILITARY PRISONERS.—Subsection (b) shall not preclude the burial at the United States Disciplinary Barracks Cemetery at Fort Leavenworth, Kansas, of a military prisoner, including a military prisoner who is a person described in section 2411(b) of title 38, who dies while in custody of a military department and whose remains are not claimed by the person authorized to direct disposition of the remains or by other persons legally authorized to dispose of the remains.

(d) DEFINITION.—In this section, the term ''burial'' includes inurnment.

(Added Pub. L. 105–85, div. A, title X, §1077(a)(1), Nov. 18, 1997, 111 Stat. 1914; amended Pub. L. 107–296, title XVII, §1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 109–163, div. A, title VI, §662(b)(1)–(3), (c)(1), Jan. 6, 2006, 119 Stat. 3315; Pub. L. 115–232, div. A, title V, §592, Aug. 13, 2018, 132 Stat. 1788.)

AMENDMENTS

2018—Subsec. (b). Pub. L. 115–232, §592(1), substituted ''Except as provided in subsection (c), a person who is ineligible'' for ''A person who is ineligible'' in introductory provisions.

Subsecs. (c), (d). Pub. L. 115–232, §592(2), (3), added subsec. (c) and redesignated former subsec. (c) as (d).

2006—Pub. L. 109–163, §662(c)(1), substituted ''Persons convicted of capital crimes; certain other persons: denial of specified burial-related benefits'' for ''Persons convicted of capital crimes: denial of certain burial-related benefits'' in section catchline.

Subsec. (a). Pub. L. 109–163, §662(b)(1)(B), substituted ''any of the following persons:'' for ''a person who has

been convicted of a capital offense under Federal or State law for which the person was sentenced to death or life imprisonment without parole.'' and added pars. (1) and (2).

Pub. L. 109–163, § 662(b)(1)(A), inserted ''(under section 1491 of this title or any other authority)'' after ''military honors''.

Subsec. (b). Pub. L. 109–163, § 662(b)(2), in introductory provisions, substituted ''who is ineligible for interment in a national cemetery under the control of the National Cemetery Administration by reason of section 2411(b) of title 38'' for ''convicted of a capital offense under Federal law''.

Subsec. (c). Pub. L. 109–163, § 662(b)(3), amended heading and text of subsec. (c) generally. Prior to amendment, text read as follows: ''In this section:

''(1) The term 'capital offense' means an offense for which the death penalty may be imposed.

''(2) The term 'burial' includes inurnment.

''(3) The term 'State' includes the District of Columbia and any commonwealth or territory of the United States.''

2002—Subsec. (a). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–163, div. A, title VI, § 662(e), Jan. 6, 2006, 119 Stat. 3316, provided that: ''The amendments made by this section [amending this section, section 1491 of this title, and section 2411 of Title 38, Veterans' Benefits and enacting provisions set out as notes under this section and section 2411 of Title 38] shall apply with respect to funerals and burials that occur on or after the date of the enactment of this Act [Jan. 6, 2006].''

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE

Pub. L. 105–85, div. A, title X, § 1077(b), Nov. 18, 1997, 111 Stat. 1915, provided that: ''Section 985 of title 10, United States Code, as added by subsection (a), applies with respect to persons dying after January 1, 1997.''

REGULATIONS

Pub. L. 109–163, div. A, title VI, § 662(d)(2), Jan. 6, 2006, 119 Stat. 3316, provided that: ''The Secretary of Defense shall prescribe regulations to ensure that a person is not interred in any military cemetery under the authority of the Secretary of a military department or provided funeral honors under section 1491 of title 10, United States Code, unless a good faith effort has been made to determine whether such person is ineligible for such interment or honors by reason of being a person described in section 2411(b) of title 38, United States Code, or is otherwise ineligible for such interment or honors under Federal law.''

[§ 986. Repealed. Pub. L. 110–181, div. A, title X, § 1072(b)(1), Jan. 28, 2008, 122 Stat. 329]

Section, added Pub. L. 106–398, § 1 [[div. A], title X, § 1071(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–275; amended Pub. L. 107–107, div. A, title X, § 1048(c)(3), Dec. 28, 2001, 115 Stat. 1226; Pub. L. 108–375, div. A, title X, § 1062, Oct. 28, 2004, 118 Stat. 2056, prohibited the Department of Defense from granting or renewing security clearances for certain persons.

EFFECTIVE DATE OF REPEAL

Pub. L. 110–181, div. A, title X, § 1072(b)(3), Jan. 28, 2008, 122 Stat. 330, provided that: ''The amendments made by this subsection [repealing this section] shall take effect on January 1, 2008.''

§ 987. Terms of consumer credit extended to members and dependents: limitations

(a) INTEREST.—A creditor who extends consumer credit to a covered member of the armed forces or a dependent of such a member shall not require the member or dependent to pay interest with respect to the extension of such credit, except as—

(1) agreed to under the terms of the credit agreement or promissory note;

(2) authorized by applicable State or Federal law; and

(3) not specifically prohibited by this section.

(b) ANNUAL PERCENTAGE RATE.—A creditor described in subsection (a) may not impose an annual percentage rate of interest greater than 36 percent with respect to the consumer credit extended to a covered member or a dependent of a covered member.

(c) MANDATORY LOAN DISCLOSURES.—

(1) INFORMATION REQUIRED.—With respect to any extension of consumer credit (including any consumer credit originated or extended through the internet) to a covered member or a dependent of a covered member, a creditor shall provide to the member or dependent the following information orally and in writing before the issuance of the credit:

(A) A statement of the annual percentage rate of interest applicable to the extension of credit.

(B) Any disclosures required under the Truth in Lending Act (15 U.S.C. 1601 et seq.).

(C) A clear description of the payment obligations of the member or dependent, as applicable.

(2) TERMS.—Such disclosures shall be presented in accordance with terms prescribed by the regulations issued by the Board of Governors of the Federal Reserve System to implement the Truth in Lending Act (15 U.S.C. 1601 et seq.).

(d) PREEMPTION.—

(1) INCONSISTENT LAWS.—Except as provided in subsection (f)(2), this section preempts any State or Federal law, rule, or regulation, including any State usury law, to the extent that such law, rule, or regulation is inconsistent with this section, except that this section shall not preempt any such law, rule, or regulation that provides protection to a covered member or a dependent of such a member in addition to the protection provided by this section.

(2) DIFFERENT TREATMENT UNDER STATE LAW OF MEMBERS AND DEPENDENTS PROHIBITED.—States shall not—

(A) authorize creditors to charge covered members and their dependents annual percentage rates of interest for any consumer credit or loans higher than the legal limit for residents of the State; or

(B) permit violation or waiver of any State consumer lending protections covering consumer credit for the benefit of residents of the State on the basis of nonresident or military status of a covered member or dependent of such a member, regardless of the

member's or dependent's domicile or permanent home of record.

(e) LIMITATIONS.—It shall be unlawful for any creditor to extend consumer credit to a covered member or a dependent of such a member with respect to which—

(1) the creditor rolls over, renews, repays, refinances, or consolidates any consumer credit extended to the borrower by the same creditor with the proceeds of other credit extended to the same covered member or a dependent;

(2) the borrower is required to waive the borrower's right to legal recourse under any otherwise applicable provision of State or Federal law, including any provision of the Servicemembers Civil Relief Act (50 U.S.C. 3901 et seq.);

(3) the creditor requires the borrower to submit to arbitration or imposes onerous legal notice provisions in the case of a dispute;

(4) the creditor demands unreasonable notice from the borrower as a condition for legal action;

(5) the creditor uses a check or other method of access to a deposit, savings, or other financial account maintained by the borrower, or the title of a vehicle as security for the obligation;

(6) the creditor requires as a condition for the extension of credit that the borrower establish an allotment to repay an obligation; or

(7) the borrower is prohibited from prepaying the loan or is charged a penalty or fee for prepaying all or part of the loan.

(f) PENALTIES AND REMEDIES.—

(1) MISDEMEANOR.—A creditor who knowingly violates this section shall be fined as provided in title 18, or imprisoned for not more than one year, or both.

(2) PRESERVATION OF OTHER REMEDIES.—The remedies and rights provided under this section are in addition to and do not preclude any remedy otherwise available under law to the person claiming relief under this section, including any award for consequential and punitive damages.

(3) CONTRACT VOID.—Any credit agreement, promissory note, or other contract prohibited under this section is void from the inception of such contract.

(4) ARBITRATION.—Notwithstanding section 2 of title 9, or any other Federal or State law, rule, or regulation, no agreement to arbitrate any dispute involving the extension of consumer credit shall be enforceable against any covered member or dependent of such a member, or any person who was a covered member or dependent of that member when the agreement was made.

(5) CIVIL LIABILITY.—

(A) IN GENERAL.—A person who violates this section with respect to any person is civilly liable to such person for—

(i) any actual damage sustained as a result, but not less than $500 for each violation;

(ii) appropriate punitive damages;

(iii) appropriate equitable or declaratory relief; and

(iv) any other relief provided by law.

(B) COSTS OF THE ACTION.—In any successful action to enforce the civil liability described in subparagraph (A), the person who violated this section is also liable for the costs of the action, together with reasonable attorney fees as determined by the court.

(C) EFFECT OF FINDING OF BAD FAITH AND HARASSMENT.—In any successful action by a defendant under this section, if the court finds the action was brought in bad faith and for the purpose of harassment, the plaintiff is liable for the attorney fees of the defendant as determined by the court to be reasonable in relation to the work expended and costs incurred.

(D) DEFENSES.—A person may not be held liable for civil liability under this paragraph if the person shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error. Examples of a bona fide error include clerical, calculation, computer malfunction and programming, and printing errors, except that an error of legal judgment with respect to a person's obligations under this section is not a bona fide error.

(E) JURISDICTION, VENUE, AND STATUTE OF LIMITATIONS.—An action for civil liability under this paragraph may be brought in any appropriate United States district court, without regard to the amount in controversy, or in any other court of competent jurisdiction, not later than the earlier of—

(i) two years after the date of discovery by the plaintiff of the violation that is the basis for such liability; or

(ii) five years after the date on which the violation that is the basis for such liability occurs.

(6) ADMINISTRATIVE ENFORCEMENT.—The provisions of this section (other than paragraph (1) of this subsection) shall be enforced by the agencies specified in section 108 of the Truth in Lending Act (15 U.S.C. 1607) in the manner set forth in that section or under any other applicable authorities available to such agencies by law.

(g) SERVICEMEMBERS CIVIL RELIEF ACT PROTECTIONS UNAFFECTED.—Nothing in this section may be construed to limit or otherwise affect the applicability of section 207 of the Servicemembers Civil Relief Act (50 U.S.C. 3937).

(h) REGULATIONS.—(1) The Secretary of Defense shall prescribe regulations to carry out this section.

(2) Such regulations shall establish the following:

(A) Disclosures required of any creditor that extends consumer credit to a covered member or dependent of such a member.

(B) The method for calculating the applicable annual percentage rate of interest on such obligations, in accordance with the limit established under this section.

(C) A maximum allowable amount of all fees, and the types of fees, associated with any such extension of credit, to be expressed and disclosed to the borrower as a total amount and

as a percentage of the principal amount of the obligation, at the time at which the transaction is entered into.

(D) Definitions of ''creditor'' under paragraph (5) and ''consumer credit'' under paragraph (6) of subsection (i), consistent with the provisions of this section.

(E) Such other criteria or limitations as the Secretary of Defense determines appropriate, consistent with the provisions of this section.

(3) In prescribing regulations under this subsection, and not less often than once every two years thereafter, the Secretary of Defense shall consult with the following:

(A) The Federal Trade Commission.

(B) The Board of Governors of the Federal Reserve System.

(C) The Office of the Comptroller of the Currency.

(D) The Federal Deposit Insurance Corporation.

(E) The Bureau of Consumer Financial Protection.

(F) The National Credit Union Administration.

(G) The Treasury Department.

(i) DEFINITIONS.—In this section:

(1) COVERED MEMBER.—The term ''covered member'' means a member of the armed forces who is—

(A) on active duty under a call or order that does not specify a period of 30 days or less; or

(B) on active Guard and Reserve Duty.

(2) DEPENDENT.—The term ''dependent'', with respect to a covered member, means a person described in subparagraph (A), (D), (E), or (I) of section 1072(2) of this title.

(3) INTEREST.—The term ''interest'' includes all cost elements associated with the extension of credit, including fees, service charges, renewal charges, credit insurance premiums, any ancillary product sold with any extension of credit to a servicemember or the servicemember's dependent, as applicable, and any other charge or premium with respect to the extension of consumer credit.

(4) ANNUAL PERCENTAGE RATE.—The term ''annual percentage rate'' has the same meaning as in section 107 of the Truth and Lending Act (15 U.S.C. 1606), as implemented by regulations of the Board of Governors of the Federal Reserve System. For purposes of this section, such term includes all fees and charges, including charges and fees for single premium credit insurance and other ancillary products sold in connection with the credit transaction, and such fees and charges shall be included in the calculation of the annual percentage rate.

(5) CREDITOR.—The term ''creditor'' means a person—

(A) who—

(i) is engaged in the business of extending consumer credit; and

(ii) meets such additional criteria as are specified for such purpose in regulations prescribed under this section; or

(B) who is an assignee of a person described in subparagraph (A) with respect to any consumer credit extended.

(6) CONSUMER CREDIT.—The term ''consumer credit'' has the meaning provided for such term in regulations prescribed under this section, except that such term does not include (A) a residential mortgage, or (B) a loan procured in the course of purchasing a car or other personal property, when that loan is offered for the express purpose of financing the purchase and is secured by the car or personal property procured.

(Added Pub. L. 109–364, div. A, title VI, § 670(a), Oct. 17, 2006, 120 Stat. 2266; amended Pub. L. 112–239, div. A, title VI, §§ 661(a), (b), 662(a), (b), 663, Jan. 2, 2013, 126 Stat. 1785, 1786; Pub. L. 114–328, div. A, title X, § 1081(b)(2)(A), Dec. 23, 2016, 130 Stat. 2418.)

REFERENCES IN TEXT

The Truth in Lending Act, referred to in subsec. (c)(1)(B), (2), is title I of Pub. L. 90–321, May 29, 1968, 82 Stat. 146, as amended, which is classified generally to subchapter I (§ 1601 et seq.) of chapter 41 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 15 and Tables.

The Servicemembers Civil Relief Act, referred to in subsec. (e)(2), is act Oct. 17, 1940, ch. 888, 54 Stat. 1178, which is classified generally to chapter 50 (§ 3901 et seq.) of Title 50, War and National Defense. For complete classification of this Act to the Code, see section 3901 of Title 50 and Tables.

AMENDMENTS

2016—Subsec. (e)(2). Pub. L. 114–328, § 1081(b)(2)(A)(i), inserted ''(50 U.S.C. 3901 et seq.)'' before semicolon at end.

Subsec. (g). Pub. L. 114–328, § 1081(b)(2)(A)(ii), substituted ''(50 U.S.C. 3937)'' for ''(50 U.S.C. App. 527)''.

2013—Subsec. (d)(2)(A). Pub. L. 112–239, § 661(a)(1), inserted ''any consumer credit or'' before ''loans''.

Subsec. (d)(2)(B). Pub. L. 112–239, § 661(a)(2), inserted ''covering consumer credit'' after ''State consumer lending protections''.

Subsec. (f)(5), (6). Pub. L. 112–239, § 662(a), (b), added pars. (5) and (6).

Subsec. (h)(3). Pub. L. 112–239, § 661(b)(1), inserted ''and not less often than once every two years thereafter,'' after ''under this subsection,'' in introductory provisions.

Subsec. (h)(3)(E). Pub. L. 112–239, § 661(b)(2), added subpar. (E) and struck out former subpar. (E) which read as follows: ''The Office of Thrift Supervision.''

Subsec. (i)(2). Pub. L. 112–239, § 663, amended par. (2) generally. Prior to amendment, par. (2) defined the term ''dependent''.

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112–239, div. A, title VI, § 661(c), Jan. 2, 2013, 126 Stat. 1785, provided that:

''(1) MODIFICATION OF REGULATIONS.—The Secretary of Defense shall modify the regulations prescribed under subsection (h) of section 987 of title 10, United States Code, to take into account the amendments made by subsection (a) [amending this section].

''(2) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on—

''(A) the date that is one year after the date of the enactment of this Act [Jan. 2, 2013]; or

''(B) such earlier date as the Secretary shall specify in the modification of regulations required by paragraph (1).

''(3) PUBLICATION OF EARLIER DATE.—If the Secretary specifies an earlier effective date for the amendments made by subsection (a) pursuant to paragraph (2)(B), the Secretary shall publish notice of such earlier effective date in the Federal Register not later than 90 days before such earlier effective date.''

Pub. L. 112–239, div. A, title VI, §662(c), Jan. 2, 2013, 126 Stat. 1786, provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to consumer credit extended on or after the date of the enactment of this Act [Jan. 2, 2013].''

EFFECTIVE DATE

Pub. L. 109–364, div. A, title VI, §670(c), Oct. 17, 2006, 120 Stat. 2269, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), section 987 of title 10, United States Code, as added by subsection (a), shall take effect on October 1, 2007, or on such earlier date as may be prescribed by the Secretary of Defense, and shall apply with respect to extensions of consumer credit on or after such effective date.

''(2) AUTHORITY TO PRESCRIBE REGULATIONS.—Subsection (h) of such section shall take effect on the date of the enactment of this Act [Oct. 17, 2006].

''(3) PUBLICATION OF EARLIER EFFECTIVE DATE.—If the Secretary of Defense prescribes an effective date for section 987 of title 10, United States Code, as added by subsection (a), earlier than October 1, 2007, the Secretary shall publish that date in the Federal Register. Such publication shall be made not less than 90 days before that earlier effective date.''

MEETINGS WITH PRIVATE SECTOR USERS OF SYSTEMS

Pub. L. 114–92, div. A, title V, §594(b)(3), Nov. 25, 2015, 129 Stat. 834, provided that: ''The Director of the Defense Manpower Data Center shall meet regularly with private sector users of Defense Manpower Data Center systems used to identify covered borrowers and covered policyholders under military consumer protection laws to learn about issues facing such users and to develop ways of addressing such issues. The first meeting pursuant to this requirement shall take place with [within] three months after the date of the enactment of this Act [Nov. 25, 2015].''

INTERIM REGULATIONS

Pub. L. 109–364, div. A, title VI, §670(d), Oct. 17, 2006, 120 Stat. 2269, provided for the prescription of interim regulations to carry out this section, with interim rules not superseded by final rules expiring no later than 270 days after the effective date of this section (see Effective Date note above).

§988. Prohibition on ownership or trading of stocks in certain companies by certain officials of the Department of Defense

(a) PROHIBITION.—Except as provided in subsection (b), a covered official of the Department of Defense may not own or purchase publicly traded stock of a company if that company is one of the 10 entities awarded the most amount of contract funds by the Department of Defense in a fiscal year during the five preceding fiscal years.

(b) EXCEPTIONS.—This section shall not apply to the purchase or ownership of a publicly traded stock of a company otherwise described in subsection (a) as follows:

(1) If the aggregate market value of the holdings of the covered official, and the spouse and minor children of the covered official, in the stock of that company, both before and after purchase (in the case of a purchase), does not exceed the de minimis threshold established in section 2640.202(a)(2) of title 5, Code of Federal Regulations.

(2) If the stock is purchased and owned as part of an Excepted Investment Fund or mutual fund.

(c) DEFINITIONS.—In this section:

(1) The term ''covered official of the Department of Defense'' means any of the following:

(A) A civilian appointed to a position in the Department of Defense by the President, by and with the advice and consent of the Senate.

(B) If serving in a key acquisition position (as designated by the Secretary of Defense or the Secretary concerned for purposes of this section), the following:

(i) A member of the armed forces in a grade above O–6.

(ii) A civilian officer or employee in a Senior Executive Service, Senior-Level, or Scientific or Professional position.

(2) The term ''Excepted Investment Fund'' means a widely-held investment fund described in section 102(f)(8) of the Ethics in Government Act of 1978 (5 U.S.C. App.).

(Added Pub. L. 116–92, div. A, title IX, §921(a), Dec. 20, 2019, 133 Stat. 1560.)

REFERENCES IN TEXT

Section 102(f)(8) of the Ethics in Government Act of 1978, referred to in subsec. (c)(2), is section 102(f)(8) of Pub. L. 95–521, which is set out in the Appendix to Title 5, Government Organization and Employees.

CHAPTER 50—MISCELLANEOUS COMMAND RESPONSIBILITIES

Sec.

991. Management of deployments of members and measurement and data collection of unit operating and personnel tempo.

992. Financial literacy training: financial services.

993. Notification of permanent reduction of sizable numbers of members of the armed forces.

994. Military working dogs: veterinary care for retired military working dogs.

AMENDMENTS

2015—Pub. L. 114–92, div. A, title VI, §661(e)(2), Nov. 25, 2015, 129 Stat. 858, substituted ''Financial literacy training: financial services'' for ''Consumer education: financial services'' in item 992.

2013—Pub. L. 112–239, div. A, title III, §371(b)(2), Jan. 2, 2013, 126 Stat. 1706, added item 994.

2011—Pub. L. 112–81, div. A, title V, §522(d)(2), div. B, title XXVIII, §2864(b), Dec. 31, 2011, 125 Stat. 1401, 1702, substituted ''Management of deployments of members and measurement and data collection of unit operating and personnel tempo'' for ''Management of deployments of members'' in item 991 and added item 993.

2006—Pub. L. 109–163, div. A, title V, §578(a)(2), Jan. 6, 2006, 119 Stat. 3276, added item 992.

§991. Management of deployments of members and measurement and data collection of unit operating and personnel tempo

(a) MANAGEMENT RESPONSIBILITIES.—(1) The deployment (or potential deployment) of a member of the armed forces shall be managed to ensure that the member is not deployed, or continued in a deployment, on any day on which the total number of days on which the member has been deployed—

(A) out of the preceding 365 days would exceed the one-year high-deployment threshold; or

(B) out of the preceding 730 days would exceed the two-year high-deployment threshold.

(2) In this subsection:

(A) The term ''one-year high-deployment threshold'' means—

(i) 220 days; or

(ii) a lower number of days prescribed by the Secretary of Defense, acting through the Under Secretary of Defense for Personnel and Readiness.

(B) The term ''two-year high-deployment threshold'' means—

(i) 400 days; or

(ii) a lower number of days prescribed by the Secretary of Defense, acting through the Under Secretary of Defense for Personnel and Readiness.

(3) A member may be deployed, or continued in a deployment, without regard to paragraph (1) if the deployment, or continued deployment, is approved by the Secretary of Defense. The authority of the Secretary under the preceding sentence may only be delegated to a civilian officer of the Department of Defense appointed by the President, by and with the advice and consent of the Senate.

(4) The Secretary of Defense shall prescribe a policy that addresses each of the following:

(A) The amount of dwell time a regular member of the armed forces or unit remains at the member's or unit's permanent duty station or home port, as the case may be, between deployments.

(B) The amount of dwell time a reserve member of the armed forces remains at the member's permanent duty station after completing a deployment of 30 days or more in length.

(b) DEPLOYMENT DEFINED.—(1) For the purposes of this section, a member of the armed forces shall be considered to be deployed or in a deployment on any day on which, pursuant to orders, the member is performing service in a training exercise or operation at a location or under circumstances that make it impossible or infeasible for the member to spend off-duty time in the housing in which the member resides when on garrison duty at the member's permanent duty station or homeport, as the case may be.

(2) In the case of a member of a reserve component who is performing active service pursuant to orders that do not establish a permanent change of station, the housing referred to in paragraph (1) is any housing (which may include the member's residence) that the member usually occupies for use during off-duty time when on garrison duty at the member's permanent duty station or homeport, as the case may be.

(3) For the purposes of this section, a member is not deployed or in a deployment when the member is—

(A) performing service as a student or trainee at a school (including any Government school);

(B) performing administrative, guard, or detail duties in garrison at the member's permanent duty station; or

(C) unavailable solely because of—

(i) a hospitalization of the member at the member's permanent duty station or homeport or in the immediate vicinity of the member's permanent residence; or

(ii) a disciplinary action taken against the member.

(4) The Secretary of Defense may prescribe a definition of deployment for the purposes of this section other than the definition specified in paragraphs (1) and (2). Any such definition may not take effect until 90 days after the date on which the Secretary notifies the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives of the revised standard definition of deployment.

(c) RECORDKEEPING.—(1) The Secretary of Defense shall—

(A) establish a system for tracking and recording the number of days that each member of the armed forces is deployed;

(B) prescribe policies and procedures for measuring operating tempo and personnel tempo; and

(C) maintain a central data collection repository to provide information for research, actuarial analysis, interagency reporting, and evaluation of Department of Defense programs and policies.

(2) The data collection repository shall be able to identify—

(A) the active and reserve component units of the armed forces that are participating at the battalion, squadron, or an equivalent level (or a higher level) in contingency operations, major training events, and other exercises and contingencies of such a scale that the exercises and contingencies receive an official designation; and

(B) the duration of their participation.

(3) For each of the armed forces, the data collection repository shall be able to indicate, for a fiscal year—

(A) the number of members who received the high-deployment allowance under section 436 of title 37 (or who would have been eligible to receive the allowance if the duty assignment was not excluded by the Secretary of Defense);

(B) the number of members who received each rate of allowance paid (estimated in the case of members described in the parenthetical phrase in subparagraph (A));

(C) the number of months each member received the allowance (or would have received it in the case of members described in the parenthetical phrase in subparagraph (A)); and

(D) the total amount expended on the allowance.

(4) For each of the armed forces, the data collection repository shall be able to indicate, for a fiscal year, the number of days that high demand, low density units (as defined by the Chairman of the Joint Chiefs of Staff) were deployed, and whether these units met the force goals for limiting deployments, as described in the personnel tempo policies applicable to that armed force.

(d) NATIONAL SECURITY WAIVER AUTHORITY.—(1) The Secretary of the military department concerned may suspend the applicability of this section to a member or any group of members under the Secretary's jurisdiction when the Secretary determines that such a waiver is nec-

essary in the national security interests of the United States.

(2)(A) Whenever a waiver is in effect under paragraph (1), the member or group of members covered by the waiver shall be subject to specific and measurable deployment thresholds established and maintained for purposes of this subsection.

(B) Thresholds under this paragraph may be applicable—

(i) uniformly, Department of Defense-wide; or

(ii) separately, with respect to each armed force or the United States Special Operations Command.

(C) If thresholds under this paragraph are applicable Department-wide, such thresholds shall be established and maintained by the Under Secretary of Defense for Personnel and Readiness. If such thresholds are applicable only to one armed force or the Under States Special Operations Command, such thresholds shall be established and maintained respectively by the Secretary of the Army, the Secretary of the Navy (other than with respect to the Marine Corps), the Secretary of the Air Force, the Commandant of the Marine Corps (with respect to the Marine Corps), and the Commander of the United States Special Operations Command, as applicable.

(D) In undertaking recordkeeping for purposes of subsection (c), the Under Secretary shall, in conjunction with the officials and officers referred to in subparagraph (C), collect complete and reliable personnel tempo data of members described in subparagraph (A) in order to ensure that the Department, the armed forces, and the United States Special Operations Command fully and completely monitor personnel tempo under any waiver authorized under paragraph (1) and the effect of such waiver on the armed forces.

(e) INAPPLICABILITY TO COAST GUARD.—This section does not apply to a member of the Coast Guard when the Coast Guard is not operating as a service in the Navy.

(f) OTHER DEFINITIONS.—In this section:

(1)(A) Subject to subparagraph (B), the term ''dwell time'' means the time a member of the armed forces or a unit spends at the permanent duty station or home port after returning from a deployment.

(B) The Secretary of Defense may modify the definition of dwell time specified in subparagraph (A). If the Secretary establishes a different definition of such term, the Secretary shall transmit the new definition to Congress.

(2) The term ''operating tempo'' means the rate at which units of the armed forces are involved in all military activities, including contingency operations, exercises, and training deployments.

(3) The term ''personnel tempo'' means the amount of time members of the armed forces are engaged in their official duties at a location or under circumstances that make it infeasible for a member to spend off-duty time in the housing in which the member resides.

(Added Pub. L. 106–65, div. A, title V, § 586(a), Oct. 5, 1999, 113 Stat. 637; amended Pub. L. 106–398, § 1 [[div. A], title V, § 574(a), (b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–136, 1654A–137; Pub. L. 107–107, div. A, title V, § 515(a), Dec. 28, 2001, 115 Stat. 1093; Pub. L. 108–136, div. A, title V, § 541(a), Nov. 24, 2003, 117 Stat. 1475; Pub. L. 112–81, div. A, title V, § 522(a)–(d)(1), Dec. 31, 2011, 125 Stat. 1399–1401; Pub. L. 116–92, div. A, title V, §§ 506, 507(a), Dec. 20, 2019, 133 Stat. 1345; Pub. L. 116–283, div. A, title X, § 1081(a)(21), Jan. 1, 2021, 134 Stat. 3871.)

AMENDMENTS

2021—Subsec. (a)(4)(A). Pub. L. 116–283 struck out period after ''The amount''.

2019—Subsec. (a)(3). Pub. L. 116–92, § 506(a), substituted ''be delegated to a civilian officer of the Department of Defense appointed by the President, by and with the advice and consent of the Senate.'' for ''be delegated to—

''(A) a civilian officer of the Department of Defense appointed by the President, by and with the advise and consent of the Senate, or a member of the Senior Executive Service; or

''(B) a general or flag officer in that member's chain of command (including an officer in the grade of colonel, or in the case of the Navy, captain, serving in a general or flag officer position who has been selected for promotion to the grade of brigadier general or rear admiral (lower half) in a report of a selection board convened under section 611(a) or 14101(a) of this title that has been approved by the President).''

Subsec. (a)(4). Pub. L. 116–92, § 506(b), substituted ''addresses each of the following:'' for ''addresses the amount'', inserted ''(A) The amount.'' before ''of dwell time'', and ''regular'' before ''member'', and added subpar. (B).

Subsec. (d). Pub. L. 116–92, § 507(a), designated existing provisions as par. (1) and added par. (2).

2011—Pub. L. 112–81, § 522(d)(1), substituted ''Management of deployments of members and measurement and data collection of unit operating and personnel tempo'' for ''Management of deployments of members'' in section catchline.

Subsec. (a)(4). Pub. L. 112–81, § 522(a), added par. (4).

Subsec. (c). Pub. L. 112–81, § 522(b), amended subsec. (c) generally. Prior to amendment, text read as follows: ''The Secretary of each military department shall establish a system for tracking and recording the number of days that each member of the armed forces under the jurisdiction of the Secretary is deployed.''

Subsec. (f). Pub. L. 112–81, § 522(c), added subsec. (f).

2003—Subsec. (a). Pub. L. 108–136 reenacted heading without change and amended text generally. Prior to amendment, text read as follows:

''(1) The deployment (or potential deployment) of a member of the armed forces shall be managed, during any period when the member is a high-deployment days member, by the officer in the chain of command of that member who is the lowest-ranking general or flag officer in that chain of command. That officer shall ensure that the member is not deployed, or continued in a deployment, on any day on which the total number of days on which the member has been deployed out of the preceding 365 days would exceed 220. However, the member may be deployed, or continued in a deployment, without regard to the preceding sentence if such deployment, or continued deployment, is approved—

''(A) in the case of a member who is assigned to a combatant command in a position under the operational control of the officer in that combatant command who is the service component commander for the members of that member's armed force in that combatant command, by that officer; and

''(B) in the case of a member not assigned as described in subparagraph (A), by the service chief of that member's armed force (or, if so designated by that service chief, by an officer of the same armed force on active duty who is in the grade of general or

admiral or who is the personnel chief for that armed force).

''(2) In this section, the term 'high-deployment days member' means a member who has been deployed 182 days or more out of the preceding 365 days.

''(3) In paragraph (1)(B), the term 'service chief' means the Chief of Staff of the Army, the Chief of Naval Operations, the Chief of Staff of the Air Force, or the Commandant of the Marine Corps.''

2001—Subsec. (b)(2). Pub. L. 107–107 amended par. (2) generally. Prior to amendment, par. (2) read as follows:

''(2) In the case of a member of a reserve component performing active service, the member shall be considered deployed or in a deployment for the purposes of paragraph (1) on any day on which, pursuant to orders that do not establish a permanent change of station, the member is performing the active service at a location that—

''(A) is not the member's permanent training site; and

''(B) is—

''(i) at least 100 miles from the member's permanent residence; or

''(ii) a lesser distance from the member's permanent residence that, under the circumstances applicable to the member's travel, is a distance that requires at least three hours of travel to traverse.''

2000—Subsec. (a)(1). Pub. L. 106–398, §1 [[div. A], title V, §574(a)(1)], substituted ''. However, the member may be deployed, or continued in a deployment, without regard to the preceding sentence if such deployment, or continued deployment, is approved—'' and subpars. (A) and (B) for ''unless an officer in the grade of general or admiral in the member's chain of command approves the deployment, or continued deployment, of the member.''

Subsec. (a)(3). Pub. L. 106–398, §1 [[div. A], title V, §574(a)(2)], added par. (3).

Subsec. (b)(1). Pub. L. 106–398, §1 [[div. A], title V, §574(b)(1)], inserted ''or homeport, as the case may be'' before period at end.

Subsec. (b)(2). Pub. L. 106–398, §1 [[div. A], title V, §574(b)(3)], added par. (2). Former par. (2) redesignated (3).

Subsec. (b)(3). Pub. L. 106–398, §1 [[div. A], title V, §574(b)(2)], redesignated par. (2) as (3). Former par. (3) redesignated (4).

Subsec. (b)(3)(C). Pub. L. 106–398, §1 [[div. A], title V, §574(b)(4)], added subpar. (C).

Subsec. (b)(4). Pub. L. 106–398, §1 [[div. A], title V, §574(b)(2)], redesignated par. (3) as (4).

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–107, div. A, title V, §515(b), Dec. 28, 2001, 115 Stat. 1094, provided that: ''The amendment made by this section [amending this section] shall apply with respect to duty performed on or after October 1, 2001.''

EFFECTIVE DATE

Pub. L. 106–65, div. A, title V, §586(d)(1), Oct. 5, 1999, 113 Stat. 639, provided that: ''Section 991 of title 10, United States Code (as added by subsection (a)), shall take effect on October 1, 2000. No day on which a member of the Armed Forces is deployed (as defined in subsection (b) of that section) before that date may be counted in determining the number of days on which a member has been deployed for purposes of that section.''

REGULATIONS

Pub. L. 106–65, div. A, title V, §586(e), Oct. 5, 1999, 113 Stat. 639, provided that: ''Not later than June 1, 2000, the Secretary of each military department shall prescribe in regulations the policies and procedures for implementing such provisions of law for that military department.''

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

DEADLINE FOR IMPLEMENTATION OF SUBSECTION (d)(2)

Pub. L. 116–92, div. A, title V, §507(b), Dec. 20, 2019, 133 Stat. 1346, provided that: ''Paragraph (2) of section 991(d) of title 10, United States Code, as added by subsection (a), shall be fully implemented by not later than March 1, 2020.''

FAMILY CARE PLANS AND DEFERMENT OF DEPLOYMENT OF SINGLE PARENT OR DUAL MILITARY COUPLES WITH MINOR DEPENDENTS

Pub. L. 110–181, div. A, title V, §586, Jan. 28, 2008, 122 Stat. 132, as amended by Pub. L. 114–328, div. A, title VI, §618(a), Dec. 23, 2016, 130 Stat. 2160, provided that: ''The Secretary of Defense shall establish appropriate procedures to ensure that an adequate family care plan is in place for a member of the Armed Forces with minor dependents who is a single parent or whose spouse is also a member of the Armed Forces when the member may be deployed in an area for which imminent danger pay is authorized under section 310 or 351 of title 37, United States Code. Such procedures should allow the member to request a deferment of deployment due to unforeseen circumstances, and the request for such a deferment should be considered and responded to promptly.''

POLICY ON CONCURRENT DEPLOYMENT TO COMBAT ZONES OF BOTH MILITARY SPOUSES OF MILITARY FAMILIES WITH MINOR CHILDREN

Pub. L. 108–136, div. A, title V, §585, Nov. 24, 2003, 117 Stat. 1492, provided that:

''(a) PUBLICATION OF POLICY.—Not later than 180 days after the date of the enactment of this Act [Nov. 24, 2003], the Secretary of Defense shall—

''(1) prescribe the policy of the Department of Defense on concurrent deployment to a combat zone of both spouses of a dual-military family with one or more minor children; and

''(2) transmit the policy to the Committees on Armed Services of the Senate and the House of Representatives.

''(b) DUAL-MILITARY FAMILY DEFINED.—In this section, the term 'dual-military family' means a family in which both spouses are members of the Armed Forces.''

REVIEW OF MANAGEMENT OF DEPLOYMENTS OF INDIVIDUAL MEMBERS

Pub. L. 106–398, §1 [[div. A], title V, §574(d)], Oct. 30, 2000, 114 Stat. 1654, 1654A–138, as amended by Pub. L. 107–107, div. A, title V, §592(b), Dec. 28, 2001, 115 Stat. 1125, directed the Secretary of Defense to submit to committees of Congress a report on the administration of this section during fiscal year 2001 not later than Mar. 31, 2002.

§ 992. Financial literacy training: financial services

(a) REQUIREMENT FOR FINANCIAL LITERACY TRAINING PROGRAM FOR MEMBERS.—(1) The Secretary concerned shall carry out a program to provide comprehensive financial literacy training to members of the armed forces under the jurisdiction of the Secretary on—

(A) financial services that are available under law to members;

(B) financial services that are routinely offered by private sector sources to members;

(C) practices relating to the marketing of private sector financial services to members;

(D) such other matters relating to financial services available to members, and the marketing of financial services to members, as the Secretary considers appropriate; and

(E) such other financial practices as the Secretary considers appropriate.

(2) Training under this subsection shall be provided to a member of the armed forces—

(A) as a component of the initial entry training of the member;

(B) upon arrival at the first duty station of the member;

(C) upon arrival at each subsequent duty station, in the case of a member in pay grade E–4 or below or in pay grade O–3 or below;

(D) on the date of promotion of the member, in the case of a member in pay grade E–5 or below or in pay grade O–4 or below;

(E) when the member vests in the Thrift Savings Plan (TSP) under section 8432(g)(2)(C) of title 5;

(F) when the member becomes entitled to receive continuation pay under section 356 of title 37, at which time the training shall include, at a minimum, information on options available to the member regarding the use of continuation pay;

(G) at each major life event during the service of the member, such as—

(i) marriage;

(ii) divorce;

(iii) birth of first child; or

(iv) disabling sickness or condition;

(H) during leadership training;

(I) during pre-deployment training and during post-deployment training;

(J) at transition points in the service of the member, such as—

(i) transition from a regular component to a reserve component;

(ii) separation from service; or

(iii) retirement; and

(K) as a component of periodically recurring required training that is provided to the member at a military installation.

(3) The training provided at a military installation under paragraph (2)(J) shall include information on any financial services marketing practices that are particularly prevalent at that military installation and in the vicinity.

(4) The Secretary concerned shall prescribe regulations setting forth any other events and circumstances (in addition to the events and circumstances described in paragraph (2)) upon which the training required by this subsection shall be provided.

(b) COUNSELING FOR MEMBERS AND SPOUSES.—(1) The Secretary concerned shall, upon request, provide counseling on financial services to each member of the armed forces, and such member's spouse, under the jurisdiction of the Secretary.

(2)(A) In the case of a military installation at which at least 2,000 members of the armed forces on active duty are assigned, the Secretary concerned—

(i) shall provide counseling on financial services under this subsection through a full-time financial services counselor at such installation; and

(ii) may provide such counseling at such installation by any means elected by the Secretary from among the following:

(I) Through members of the armed forces in pay grade E–7 or above, or civilians, who provide such counseling as part of their other duties for the armed forces or the Department of Defense.

(II) By contract, including contract for services by telephone and by the Internet.

(III) Through qualified representatives of nonprofit organizations and agencies under formal agreements with the Department of Defense to provide such counseling.

(B) In the case of any military installation not described in subparagraph (A), the Secretary concerned shall provide counseling on financial services under this subsection at such installation by any of the means set forth in subparagraph (A)(ii), as elected by the Secretary concerned.

(3) Each financial services counselor under paragraph (2)(A)(i), and any other individual providing counseling on financial services under paragraph (2), shall be an individual who, by reason of education, training, or experience, is qualified to provide helpful counseling to members of the armed forces and their spouses on financial services and marketing practices described in subsection (a)(1). Such individual may be a member of the armed forces or an employee of the Federal Government.

(4) The Secretary concerned shall take such action as is necessary to ensure that each financial services counselor under paragraph (2)(A)(i), and any other individual providing counseling on financial services under paragraphs (2), is free from conflicts of interest relevant to the performance of duty under this section and, in the performance of that duty, is dedicated to furnishing members of the armed forces and their spouses with helpful information and counseling on financial services and related marketing practices.

(c) LIFE INSURANCE.—In counseling a member of the armed forces, or spouse of a member of the armed forces, under this section regarding life insurance offered by a private sector source, a financial services counselor under subsection (b)(2)(A)(i), or another individual providing counseling on financial services under subsection (b)(2), shall furnish the member or spouse, as the case may be, with information on the availability of Servicemembers' Group Life Insurance under subchapter III of chapter 19 of title 38, including information on the amounts of coverage available and the procedures for electing coverage and the amount of coverage.

(d) FINANCIAL LITERACY AND PREPAREDNESS SURVEY.—(1) The Director of the Defense Manpower Data Center shall annually include in the status of forces survey a survey of the status of the financial literacy and preparedness of members of the armed forces.

(2) The results of the annual financial literacy and preparedness survey—

(A) shall be used by each of the Secretaries concerned as a benchmark to evaluate and update training provided under this section; and

(B) shall be submitted to the Committees on Armed Services of the Senate and the House of Representatives.

(e) FINANCIAL SERVICES DEFINED.—In this section, the term ''financial services'' includes the following:

(1) Life insurance, casualty insurance, and other insurance.

(2) Investments in securities or financial instruments.

(3) Banking, credit, loans, deferred payment plans, and mortgages.

(4) Health insurance, budget management, Thrift Savings Plan (TSP), retirement lump sum payments (including rollover options and tax consequences), and Survivor Benefit Plan (SBP).

(Added Pub. L. 109–163, div. A, title V, § 578(a)(1), Jan. 6, 2006, 119 Stat. 3274; amended Pub. L. 111–84, div. A, title X, § 1073(a)(8), Oct. 28, 2009, 123 Stat. 2472; Pub. L. 114–92, div. A, title VI, § 661(b)–(e)(1), Nov. 25, 2015, 129 Stat. 857, 858.)

AMENDMENTS

2015—Pub. L. 114–92, § 661(e)(1), substituted ''Financial literacy training: financial services'' for ''Consumer education: financial services'' in section catchline.

Subsec. (a). Pub. L. 114–92, § 661(b)(1), substituted ''Financial Literacy Training'' for ''Consumer Education'' in heading.

Subsec. (a)(1). Pub. L. 114–92, § 661(b)(2), substituted ''financial literacy training'' for ''education'' in introductory provisions.

Subsec. (a)(2). Pub. L. 114–92, § 661(b)(3), added par. (2) and struck out former par. (2) which read as follows: ''Training under this subsection shall be provided to members as—

''(A) a component of members initial entry orientation training; and

''(B) a component of periodically recurring required training that is provided for the members at military installations.''

Subsec. (a)(3). Pub. L. 114–92, § 661(b)(4), substituted ''paragraph (2)(J)'' for ''paragraph (2)(B)''.

Subsec. (a)(4). Pub. L. 114–92, § 661(b)(5), added par. (4).

Subsec. (d). Pub. L. 114–92, § 661(c)(2), added subsec. (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 114–92, § 661(c)(1), redesignated subsec. (d) as (e).

Subsec. (e)(4). Pub. L. 114–92, § 661(d), added par. (4).

2009—Subsec. (b)(4). Pub. L. 111–84 struck out period after ''under this section''.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–163, div. A, title V, § 578(b), Jan. 6, 2006, 119 Stat. 3276, provided that: ''The amendments made by this section [enacting this section] shall take effect on the first day of the first month that begins more than 120 days after the date of the enactment of this Act [Jan. 6, 2006].''

INCLUSION OF INFORMATION ON FREE CREDIT MONITORING IN ANNUAL FINANCIAL LITERACY BRIEFING

Pub. L. 116–92, div. A, title V, § 560A, Dec. 20, 2019, 133 Stat. 1393, provided that: ''The Secretary of each military department shall ensure that the annual financial literacy education briefing provided to members of the Armed Forces includes information on the availability of free credit monitoring services pursuant to section 605A(k) of the Fair Credit Reporting Act (15 U.S.C. 1681c–1(k)).''

IMPLEMENTATIONS

Pub. L. 114–92, div. A, title VI, § 661(f), Nov. 25, 2015, 129 Stat. 859, provided that: ''Not later than six months after the date of the enactment of this Act [Nov. 25, 2015], the Secretary of the military department concerned and the Secretary of the Department in which the Coast Guard is operating shall commence providing financial literacy training under section 992 of title 10, United States Code, as amended by subsections (b), (c), and (d) of this section, to members of the Armed Forces.''

COUNSELING ON MORTGAGE FORECLOSURES FOR MEMBERS OF THE ARMED FORCES RETURNING FROM SERVICE ABROAD

Pub. L. 110–289, div. B, title II, § 2202, July 30, 2008, 122 Stat. 2849, provided that:

''(a) IN GENERAL.—The Secretary of Defense shall develop and implement a program to advise members of the Armed Forces (including members of the National Guard and Reserve) who are returning from service on active duty abroad (including service in Operation Iraqi Freedom and Operation Enduring Freedom) on actions to be taken by such members to prevent or forestall mortgage foreclosures.

''(b) ELEMENTS.—The program required by subsection (a) shall include the following:

''(1) Credit counseling.

''(2) Home mortgage counseling.

''(3) Such other counseling and information as the Secretary considers appropriate for purposes of the program.

''(c) TIMING OF PROVISION OF COUNSELING.—Counseling and other information under the program required by subsection (a) shall be provided to a member of the Armed Forces covered by the program as soon as practicable after the return of the member from service as described in subsection (a).''

MILITARY PERSONNEL FINANCIAL SERVICES PROTECTION

Pub. L. 109–290, Sept. 29, 2006, 120 Stat. 1317, provided that:

''SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

''(a) SHORT TITLE.—This Act may be cited as the 'Military Personnel Financial Services Protection Act'.

''(b) TABLE OF CONTENTS.—[Omitted]

''SEC. 2. CONGRESSIONAL FINDINGS.

''Congress finds that—

''(1) members of the Armed Forces perform great sacrifices in protecting our Nation in the War on Terror;

''(2) the brave men and women in uniform deserve to be offered first-rate financial products in order to provide for their families and to save and invest for retirement;

''(3) members of the Armed Forces are being offered high-cost securities and life insurance products by some financial services companies engaging in abusive and misleading sales practices;

''(4) one securities product offered to service members, known as the 'mutual fund contractual plan', largely disappeared from the civilian market in the 1980s, due to excessive sales charges;

''(5) with respect to a mutual fund contractual plan, a 50 percent sales commission is assessed against the first year of contributions, despite an average commission on other securities products of less than 6 percent on each sale;

''(6) excessive sales charges allow abusive and misleading sales practices in connection with mutual fund contractual plan;

''(7) certain life insurance products being offered to members of the Armed Forces are improperly marketed as investment products, providing minimal death benefits in exchange for excessive premiums that are front-loaded in the first few years, making them entirely inappropriate for most military personnel; and

''(8) the need for regulation of the marketing and sale of securities and life insurance products on military bases necessitates Congressional action.

''SEC. 3. DEFINITIONS.

''For purposes of this Act, the following definitions shall apply:

''(1) LIFE INSURANCE PRODUCT.—

''(A) IN GENERAL.—The term 'life insurance product' means any product, including individual and group life insurance, funding agreements, and annuities, that provides insurance for which the probabilities of the duration of human life or the rate of mortality are an element or condition of insurance.

''(B) INCLUDED INSURANCE.—The term 'life insurance product' includes the granting of—

''(i) endowment benefits;

''(ii) additional benefits in the event of death by accident or accidental means;

''(iii) disability income benefits;

''(iv) additional disability benefits that operate to safeguard the contract from lapse or to provide a special surrender value, or special benefit in the event of total and permanent disability;

''(v) benefits that provide payment or reimbursement for long-term home health care, or long-term care in a nursing home or other related facility;

''(vi) burial insurance; and

''(vii) optional modes of settlement or proceeds of life insurance.

''(C) EXCLUSIONS.—Such term does not include workers compensation insurance, medical indemnity health insurance, or property and casualty insurance.

''(2) NAIC.—The term 'NAIC' means the National Association of Insurance Commissioners (or any successor thereto).

''SEC. 4. PROHIBITION ON FUTURE SALES OF PERIODIC PAYMENT PLANS.

''(a) AMENDMENT.—[Amended section 80a–27 of Title 15, Commerce and Trade.]

''(b) TECHNICAL AMENDMENT.—[Amended section 80a–27 of Title 15.]

''(c) REPORT ON REFUNDS, SALES PRACTICES, AND REVENUES FROM PERIODIC PAYMENT PLANS.—Not later than 6 months after the date of enactment of this Act [Sept. 29, 2006], the Securities and Exchange Commission shall submit to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate, a report describing—

''(1) any measures taken by a broker or dealer registered with the Securities and Exchange Commission pursuant to section 15(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78*o*(b)) to voluntarily refund payments made by military service members on any periodic payment plan certificate, and the amounts of such refunds;

''(2) after such consultation with the Secretary of Defense, as the Commission considers appropriate, the sales practices of such brokers or dealers on military installations over the 5 years preceding the date of submission of the report and any legislative or regulatory recommendations to improve such practices; and

''(3) the revenues generated by such brokers or dealers in the sales of periodic payment plan certificates over the 5 years preceding the date of submission of the report, and the products marketed by such brokers or dealers to replace the revenue generated from the sales of periodic payment plan certificates prohibited under subsection (a).

''SEC. 5. REQUIRED DISCLOSURES REGARDING OFFERS OR SALES OF SECURITIES ON MILITARY INSTALLATIONS.

[Amended section 78*o*–3 of Title 15.]

''SEC. 6. METHOD OF MAINTAINING BROKER AND DEALER REGISTRATION, DISCIPLINARY, AND OTHER DATA.

[Amended section 78*o*–3 of Title 15.]

''SEC. 7. FILING DEPOSITORIES FOR INVESTMENT ADVISERS.

''(a) INVESTMENT ADVISERS.—[Amended section 80b–4 of Title 15.]

''(b) CONFORMING AMENDMENTS.—

''(1) INVESTMENT ADVISERS ACT OF 1940.—[Amended section 80b–3a of Title 15.]

''(2) NATIONAL SECURITIES MARKETS IMPROVEMENT ACT OF 1996.—[Repealed provisions set out as a note under section 80b–10 of Title 15.]

''SEC. 8. STATE INSURANCE AND SECURITIES JURISDICTION ON MILITARY INSTALLATIONS.

''(a) CLARIFICATION OF JURISDICTION.—Any provision of law, regulation, or order of a State with respect to regulating the business of insurance or securities shall apply to insurance or securities activities conducted on Federal land or facilities in the United States and abroad, including military installations, except to the extent that such law, regulation, or order—

''(1) directly conflicts with any applicable Federal law, regulation, or authorized directive; or

''(2) would not apply if such activity were conducted on State land.

''(b) PRIMARY STATE JURISDICTION.—To the extent that multiple State laws would otherwise apply pursuant to subsection (a) to an insurance or securities activity of an individual or entity on Federal land or facilities, the State having the primary duty to regulate such activity and the laws of which shall apply to such activity in the case of a conflict shall be—

''(1) the State within which the Federal land or facility is located; or

''(2) if the Federal land or facility is located outside of the United States, the State in which—

''(A) in the case of an individual engaged in the business of insurance, such individual has been issued a resident license;

''(B) in the case of an entity engaged in the business of insurance, such entity is domiciled;

''(C) in the case of an individual engaged in the offer or sale (or both) of securities, such individual is registered or required to be registered to do business or the person solicited by such individual resides; or

''(D) in the case of an entity engaged in the offer or sale (or both) of securities, such entity is registered or is required to be registered to do business or the person solicited by such entity resides.

''SEC. 9. REQUIRED DEVELOPMENT OF MILITARY PERSONNEL PROTECTION STANDARDS REGARDING INSURANCE SALES; ADMINISTRATIVE COORDINATION.

''(a) STATE STANDARDS.—Congress intends that—

''(1) the States collectively work with the Secretary of Defense to ensure implementation of appropriate standards to protect members of the Armed Forces from dishonest and predatory insurance sales practices while on a military installation of the United States (including installations located outside of the United States); and

''(2) each State identify its role in promoting the standards described in paragraph (1) in a uniform manner, not later than 12 months after the date of enactment of this Act [Sept. 29, 2006].

''(b) STATE REPORT.—It is the sense of Congress that the NAIC should, after consultation with the Secretary of Defense and, not later than 12 months after the date of enactment of this Act, conduct a study to determine the extent to which the States have met the requirement of subsection (a), and report the results of such study to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate.

''(c) ADMINISTRATIVE COORDINATION; SENSE OF CONGRESS.—It is the sense of the Congress that senior representatives of the Secretary of Defense, the Securities and Exchange Commission, and the NAIC should meet not less frequently than twice a year to coordinate their activities to implement this Act and monitor the enforcement of relevant regulations relating to the sale of financial products on military installations of the United States.

''SEC. 10. REQUIRED DISCLOSURES REGARDING LIFE INSURANCE PRODUCTS.

''(a) REQUIREMENT.—Except as provided in subsection (e), no person may sell, or offer for sale, any life insurance product to any member of the Armed Forces or a dependent thereof on a military installation of the United States, unless a disclosure in accordance with this section is provided to such member or dependent at the time of the sale or offer.

''(b) DISCLOSURE.—A disclosure in accordance with this section is a written disclosure that—

''(1) states that subsidized life insurance is available to the member of the Armed Forces from the Federal Government under the Servicemembers' Group Life Insurance program (also referred to as 'SGLI'), under subchapter III of chapter 19 of title 38, United States Code;

''(2) states the amount of insurance coverage available under the SGLI program, together with the costs to the member of the Armed Forces for such coverage;

''(3) states that the life insurance product that is the subject of the disclosure is not offered or provided by the Federal Government, and that the Federal Government has in no way sanctioned, recommended, or encouraged the sale of the life insurance product being offered;

''(4) fully discloses any terms and circumstances under which amounts accumulated in a savings fund or savings feature under the life insurance product that is the subject of the disclosure may be diverted to pay, or reduced to offset, premiums due for continuation of coverage under such product;

''(5) states that no person has received any referral fee or incentive compensation in connection with the offer or sale of the life insurance product, unless such person is a licensed agent of the person engaged in the business of insurance that is issuing such product;

''(6) is made in plain and readily understandable language and in a type font at least as large as the font used for the majority of the solicitation material used with respect to or relating to the life insurance product; and

''(7) with respect to a sale or solicitation on Federal land or facilities located outside of the United States, lists the address and phone number at which consumer complaints are received by the State insurance commissioner for the State having the primary jurisdiction and duty to regulate the sale of such life insurance products pursuant to section 8.

''(c) VOIDABILITY.—The sale of a life insurance product in violation of this section shall be voidable from its inception, at the sole option of the member of the Armed Forces, or dependent thereof, as applicable, to whom the product was sold.

''(d) ENFORCEMENT.—If it is determined by a Federal or State agency, or in a final court proceeding, that any person has intentionally violated, or willfully disregarded the provisions of, this section, in addition to any other penalty under applicable Federal or State law, such person shall be prohibited from further engaging in the business of insurance with respect to employees of the Federal Government on Federal land, except—

''(1) with respect to existing policies; and

''(2) to the extent required by the Federal Government pursuant to previous commitments.

''(e) EXCEPTIONS.—This section shall not apply to any life insurance product specifically contracted by or through the Federal Government.

''SEC. 11. IMPROVING LIFE INSURANCE PRODUCT STANDARDS.

''(a) IN GENERAL.—It is the sense of Congress that the NAIC should, after consultation with the Secretary of Defense, and not later than 6 months after the date of enactment of this Act [Sept. 29, 2006], conduct a study and submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on—

''(1) ways of improving the quality of and sale of life insurance products sold on military installations of the United States, which may include—

''(A) limiting such sales authority to persons that are certified as meeting appropriate best practices procedures; and

''(B) creating standards for products specifically designed to meet the particular needs of members of the Armed Forces, regardless of the sales location; and

''(2) the extent to which life insurance products marketed to members of the Armed Forces comply with otherwise applicable provisions of State law.

''(b) CONDITIONAL GAO REPORT.—If the NAIC does not submit the report as described in subsection (a), the Comptroller General of the United States shall—

''(1) study any proposals that have been made to improve the quality of and sale of life insurance products sold on military installations of the United States; and

''(2) not later than 6 months after the expiration of the period referred to in subsection (a), submit a report on such proposals to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives.

''SEC. 12. REQUIRED REPORTING OF DISCIPLINARY ACTIONS.

''(a) REPORTING BY INSURERS.—Beginning 1 year after the date of enactment of this Act [Sept. 29, 2006], no insurer may enter into or renew a contractual relationship with any other person that sells or solicits the sale of any life insurance product on any military installation of the United States, unless the insurer has implemented a system to report to the State insurance commissioner of the State of domicile of the insurer and the State of residence of that other person—

''(1) any disciplinary action taken by any Federal or State government entity with respect to sales or solicitations of life insurance products on a military installation that the insurer knows, or in the exercise of due diligence should have known, to have been taken; and

''(2) any significant disciplinary action taken by the insurer with respect to sales or solicitations of life insurance products on a military installation of the United States.

''(b) REPORTING BY STATES.—It is the sense of Congress that, not later than 1 year after the date of enactment of this Act, the States should collectively implement a system to—

''(1) receive reports of disciplinary actions taken against persons that sell or solicit the sale of any life insurance product on any military installation of the United States by insurers or Federal or State government entities with respect to such sales or solicitations; and

''(2) disseminate such information to all other States and to the Secretary of Defense.

''(c) DEFINITION.—As used in this section, the term 'insurer' means a person engaged in the business of insurance.

''SEC. 13. REPORTING BARRED PERSONS SELLING INSURANCE OR SECURITIES.

''(a) ESTABLISHMENT.—The Secretary of Defense shall maintain a list of the name, address, and other appropriate information relating to persons engaged in the business of securities or insurance that have been barred or otherwise limited in any manner that is not generally applicable to all such type of persons, from any or all military installations of the United States, or that have engaged in any transaction that is prohibited by this Act.

''(b) NOTICE AND ACCESS.—The Secretary of Defense shall ensure that—

''(1) the appropriate Federal and State agencies responsible for securities and insurance regulation are

promptly notified upon the inclusion in or removal from the list required by subsection (a) of a person under the jurisdiction of one or more of such agencies; and

''(2) the list is kept current and easily accessible—

''(A) for use by such agencies; and

''(B) for purposes of enforcing or considering any such bar or limitation by the appropriate Federal personnel, including commanders of military installations.

''(c) REGULATIONS.—

''(1) IN GENERAL.—The Secretary of Defense shall issue regulations in accordance with this subsection to provide for the establishment and maintenance of the list required by this section, including appropriate due process considerations.

''(2) TIMING.—

''(A) PROPOSED REGULATIONS.—Not later than the expiration of the 60-day period beginning on the date of enactment of this Act [Sept. 29, 2006], the Secretary of Defense shall prepare and submit to the appropriate Committees of Congress a copy of the regulations required by this subsection that are proposed to be published for comment. The Secretary may not publish such regulations for comment in the Federal Register until the expiration of the 15-day period beginning on the date of such submission to the appropriate Committees of Congress.

''(B) FINAL REGULATIONS.—Not later than 90 days after the date of enactment of this Act, the Secretary of Defense shall submit to the appropriate Committees of Congress a copy of the regulations under this section to be published in final form.

''(C) EFFECTIVE DATE.—Final regulations under this paragraph shall become effective 30 days after the date of their submission to the appropriate Committees of Congress under subparagraph (B).

''(d) DEFINITION.—For purposes of this section, the term 'appropriate Committees of Congress' means—

''(1) the Committee on Financial Services and the Committee on Armed Services of the House of Representatives; and

''(2) the Committee on Banking, Housing, and Urban Affairs and the Committee on Armed Services of the Senate.

''SEC. 14. STUDY AND REPORTS BY INSPECTOR GENERAL OF THE DEPARTMENT OF DEFENSE.

''(a) STUDY.—The Inspector General of the Department of Defense shall conduct a study on the impact of Department of Defense Instruction 1344.07 (as in effect on the date of enactment of this Act [Sept. 29, 2006]) and the reforms included in this Act on the quality and suitability of sales of securities and insurance products marketed or otherwise offered to members of the Armed Forces.

''(b) REPORTS.—Not later than 12 months after the date of enactment of this Act, the Inspector General of the Department of Defense shall submit an initial report on the results of the study conducted under subsection (a) to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives, and shall submit followup reports to those committees on December 31, 2008 and December 31, 2010.''

REQUIREMENT FOR REGULATIONS ON POLICIES AND PROCEDURES ON PERSONAL COMMERCIAL SOLICITATIONS ON DEPARTMENT OF DEFENSE INSTALLATIONS

Pub. L. 109–163, div. A, title V, §577(a), Jan. 6, 2006, 119 Stat. 3274, provided that: ''As soon as practicable after the date of the enactment of this Act [Jan. 6, 2006], and not later than March 31, 2006, the Secretary of Defense shall prescribe regulations, or modify existing regulations, on the policies and procedures relating to personal commercial solicitations, including the sale of life insurance and securities, on Department of Defense installations.''

§993. Notification of permanent reduction of sizable numbers of members of the armed forces

(a) NOTIFICATION.—The Secretary of Defense or the Secretary of the military department concerned shall notify Congress under subsection (b) of a plan to reduce more than 1,000 members of the armed forces assigned at a military installation. In calculating the number of members to be reduced, the Secretary shall take into consideration both direct reductions and indirect reductions.

(b) NOTICE REQUIREMENTS.—No irrevocable action may be taken to effect or implement a reduction described under subsection (a) until—

(1) the Secretary of Defense or the Secretary of the military department concerned—

(A) submits to Congress a notice of the proposed reduction and the number of military and civilian personnel assignments affected, including reductions in base operations support services and personnel to occur because of the proposed reduction; and

(B) includes in the notice a justification for the reduction and an evaluation of the costs and benefits of the reduction and of the local economic, strategic, and operational consequences of the reduction; and

(2) a period of 90 days expires following the day on which the notice is submitted to Congress.

(c) EXCEPTIONS.—

(1) BASE CLOSURE PROCESS.—Subsections (a) and (b) do not apply in the case of the realignment of a military installation pursuant to a base closure law.

(2) NATIONAL SECURITY OR EMERGENCY.—Subsections (a) and (b) do not apply if the President certifies to Congress that the reduction in military personnel at a military installation must be implemented for reasons of national security or a military emergency.

(d) DEFINITIONS.—In this section:

(1) The term ''indirect reduction'' means subsequent planned reductions or relocations in base operations support services and personnel able to occur due to the direct reductions.

(2) The term ''military installation'' means a base, camp, post, station, yard, center, homeport facility for any ship, or other activity under the jurisdiction of the Department of Defense, including any leased facility, which is located within any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, or Guam. Such term does not include any facility used primarily for civil works, rivers and harbors projects, or flood control projects.

(Added Pub. L. 112–81, div. B, title XXVIII, §2864(a), Dec. 31, 2011, 125 Stat. 1702; amended Pub. L. 112–239, div. B, title XXVIII, §2851, Jan. 2, 2013, 126 Stat. 2159.)

AMENDMENTS

2013—Subsec. (a). Pub. L. 112–239, §2851(a), inserted at end ''In calculating the number of members to be re-

duced, the Secretary shall take into consideration both direct reductions and indirect reductions.''

Subsec. (b)(1) to (3). Pub. L. 112–239, § 2851(b), added pars. (1) and (2) and struck out former pars. (1) to (3), which read as follows:

''(1) the Secretary of Defense or the Secretary of the military department concerned notifies the Committees on Armed Services of the Senate and the House of Representatives of the proposed reduction and the number of personnel assignments affected;

''(2) submits a justification for the reduction and an evaluation of the local strategic and operational impact of such reduction; and

''(3) a period of 21 days has expired following submission of the notice and evaluation required under this subsection, or if sooner, a period of 14 days has expired following the date on which an electronic version of the notice and justification has been submitted to such committees.''

Subsec. (d). Pub. L. 112–239, § 2851(c), added subsec. (d).

NOTIFICATION OF NECESSARY ASSESSMENTS OR STUDIES

Pub. L. 113–66, div. A, title X, § 1074(b), Dec. 26, 2013, 127 Stat. 870, provided that: ''The Secretary of the Army, when making a congressional notification in accordance with section 993 of title 10, United States Code, shall include the Secretary's assessment of whether or not the changes covered by the notification require an Environmental Assessment or Environmental Impact Statement in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), and, if an assessment or study is required, the plan for conducting such assessment or study.''

§ 994. Military working dogs: veterinary care for retired military working dogs

(a) IN GENERAL.—The Secretary of Defense may establish and maintain a system to provide for the veterinary care of retired military working dogs. No funds may be provided by the Federal Government for this purpose.

(b) ELIGIBLE DOGS.—A retired military working dog eligible for veterinary care under this section is any military working dog adopted under section 2583 of this title.

(c) STANDARDS OF CARE.—The veterinary care provided under the system authorized by this section shall meet such standards as the Secretary shall establish and from time to time update.

(Added Pub. L. 112–239, div. A, title III, § 371(b)(1), Jan. 2, 2013, 126 Stat. 1706.)

CHAPTER 51—RESERVE COMPONENTS: STANDARDS AND PROCEDURES FOR RETENTION AND PROMOTION

Sec.
1001. Reference to chapter 1219.

AMENDMENTS

1994—Pub. L. 103–337, div. A, title XVI, § 1662(h)(5), Oct. 5, 1994, 108 Stat. 2997, added item 1001 and struck out former items 1001 to 1007.

1960—Pub. L. 86–559, § 1(3)(C), June 30, 1960, 74 Stat. 265, inserted ''or serving as United States property and fiscal officers'' in item 1007.

1958—Pub. L. 85–861, § 1(23), Sept. 2, 1958, 72 Stat. 1445, added items 1002, 1005, 1006, and 1007.

§ 1001. Reference to chapter 1219

Provisions of law relating to standards and procedures for retention and promotion of members of reserve components are set forth in chapter 1219 of this title (beginning with section 12641).

(Added Pub. L. 103–337, div. A, title XVI, § 1662(h)(5), Oct. 5, 1994, 108 Stat. 2997.)

PRIOR PROVISIONS

Prior sections 1001 and 1002 were renumbered sections 12641 and 12642 of this title, respectively.

A prior section 1003, act Aug. 10, 1956, ch. 1041, 70A Stat. 79, related to age limitations for reserve officers, prior to repeal by Pub. L. 103–337, div. A, title XVI, §§ 1662(h)(3), 1691, Oct. 5, 1994, 108 Stat. 2996, 3026, eff. Dec. 1, 1994.

Prior sections 1004 to 1007 were renumbered sections 12644 to 12647 of this title, respectively.

EFFECTIVE DATE

Section effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as a note under section 10001 of this title.

CHAPTER 53—MISCELLANEOUS RIGHTS AND BENEFITS

Sec.
1030. Bonus to encourage Department of Defense personnel to refer persons for appointment as officers to serve in health professions.
1031. Administration of oath.
1032. Disability and death compensation: dependents of members held as captives.
1033. Participation in management of specified non-Federal entities: authorized activities.
1034. Protected communications; prohibition of retaliatory personnel actions.
1035. Deposits of savings.
[1036. Repealed.]
1037. Counsel before foreign judicial tribunals and administrative agencies; court costs and bail.
1038. Service credit: certain service in Women's Army Auxiliary Corps.
1039. Crediting of minority service.
1040. Transportation of dependent patients.
1041. Replacement of certificate of discharge.
1042. Copy of certificate of service.
1043. Service credit: service in the National Oceanic and Atmospheric Administration or the Public Health Service.
1044. Legal assistance.
1044a. Authority to act as notary.
1044b. Military powers of attorney: requirement for recognition by States.
1044c. Advance medical directives of members and dependents: requirement for recognition by States.
1044d. Military testamentary instruments: requirement for recognition by States.
1044e. Special Victims' Counsel for victims of sex-related offenses.
1045. Voluntary withholding of State income tax from retired or retainer pay.
1046. Overseas temporary foster care program.
1047. Allowance for civilian clothing.
1048. Gratuity payment to persons discharged for fraudulent enlistment.
1049. Subsistence: miscellaneous persons.
[1050 to 1051c. Repealed or Renumbered.]
1052. Adoption expenses: reimbursement.
1053. Financial institution charges incurred because of Government error in direct deposit of pay: reimbursement.
[1053a. Repealed.]
1054. Defense of certain suits arising out of legal malpractice.
1055. Waiver of security deposits for members renting private housing; authority to indemnify landlord.
1056. Relocation assistance programs.
1056a. Reintegration of recovered Department of Defense personnel; post-isolation support activities for other recovered personnel.

Sec.
1057. Use of armed forces insignia on State license plates.
1058. Responsibilities of military law enforcement officials at scenes of domestic violence.
1059. Dependents of members separated for dependent abuse: transitional compensation; commissary and exchange benefits.
1060. Military service of retired members with newly democratic nations: consent of Congress.
1060a. Special supplemental food program.
1060b. Military ID cards: dependents and survivors of retirees.
1060c. Provision of veterinary services in emergencies.

AMENDMENTS

2019—Pub. L. 116–92, div. A, title VII, § 735(b), Dec. 20, 2019, 133 Stat. 1463, added item 1060c.

2016—Pub. L. 114–328, div. A, title XII, §§ 1241(*o*)(4), 1243(b)(2), 1253(a)(2)(B), Dec. 23, 2016, 130 Stat. 2512, 2516, 2532, struck out items 1050 ''Latin American cooperation: payment of personnel expenses'', 1050a ''African cooperation: payment of personnel expenses'', 1051 ''Multilateral, bilateral, or regional cooperation programs: payment of personnel expenses'', 1051a ''Liaison officers of certain foreign nations; administrative services and support; travel, subsistence, medical care, and other personal expenses'', 1051b ''Bilateral or regional cooperation programs: awards and mementos to recognize superior noncombat achievements or performance'', and 1051c ''Multilateral, bilateral, or regional cooperation programs: assignments to improve education and training in information security''.

2013—Pub. L. 113–66, div. A, title VI, § 621(a)(2)(B), (c)(2)(B), title XVII, § 1716(a)(2), Dec. 26, 2013, 127 Stat. 783, 784, 969, added item 1044e and struck out items 1036 ''Escorts for dependents of members: transportation and travel allowances'' and 1053a ''Expenses incurred in connection with leave canceled due to contingency operations: reimbursement''.

2011—Pub. L. 112–81, div. A, title V, § 588(b), title IX, § 951(a)(2), Dec. 31, 2011, 125 Stat. 1437, 1549, added items 1051c and 1056a.

Pub. L. 111–383, div. A, title XII, § 1204(b), Jan. 7, 2011, 124 Stat. 4387, added item 1050a.

2008—Pub. L. 110–417, [div. A], title XII, § 1231(c)(2), Oct. 14, 2008, 122 Stat. 4637, added item 1051 and struck out former item 1051 ''Bilateral or regional cooperation programs: payment of personnel expenses''.

Pub. L. 110–181, div. A, title VI, § 671(b)(2), title XII, § 1203(e)(2), Jan. 28, 2008, 122 Stat. 184, 365, added items 1030 and 1051a and struck out former item 1051a ''Coalition liaison officers: administrative services and support; travel, subsistence, and other personal expenses''.

2006—Pub. L. 109–364, div. A, title V, § 598(b)(2), Oct. 17, 2006, 120 Stat. 2237, struck out ''; issuance of permanent ID card after attaining 75 years of age'' after ''retirees'' in item 1060b.

2004—Pub. L. 108–375, div. A, title V, § 583(a)(2), Oct. 28, 2004, 118 Stat. 1929, added item 1060b.

2003—Pub. L. 108–136, div. A, title XII, § 1222(b), Nov. 24, 2003, 117 Stat. 1652, added item 1051b.

2002—Pub. L. 107–314, div. A, title XII, § 1201(a)(2), Dec. 2, 2002, 116 Stat. 2663, added item 1051a.

2000—Pub. L. 106–398, § 1 [[div. A], title V, §§ 551(b), 579(c)(3)], Oct. 30, 2000, 114 Stat. 1654, 1654A–125, 1654A–142, added items 1044d, 1052, 1053, and 1053a, and struck out former items 1052 ''Reimbursement for adoption expenses'' and 1053 ''Reimbursement for financial institution charges incurred because of Government error in direct deposit of pay''.

1997—Pub. L. 105–85, div. A, title V, § 593(a)(2), Nov. 18, 1997, 111 Stat. 1763, added item 1033.

1996—Pub. L. 104–106, div. A, title VII, § 749(a)(2), Feb. 10, 1996, 110 Stat. 389, added item 1044c.

Pub. L. 104–106, div. A, title XV, § 1504(a)(2), Feb. 10, 1996, 110 Stat. 513, made technical correction to Pub. L. 103–337, § 531(g)(2). See 1994 Amendment note below.

1994—Pub. L. 103–337, div. A, title V, § 531(g)(2), Oct. 5, 1994, 108 Stat. 2758, as amended by Pub. L. 104–106, div. A, title XV, § 1504(a)(2), Feb. 10, 1996, 110 Stat. 513, substituted ''Protected communications;'' for ''Communicating with a Member of Congress or Inspector General;'' in item 1034.

Pub. L. 103–337, div. A, title V, § 535(c)(2), title VI, § 653(b), title X, § 1070(a)(5)(B), (6)(B), title XVI, § 1671(b)(9), Oct. 5, 1994, 108 Stat. 2763, 2795, 2855, 3013, struck out item 1033 ''Compensation: Reserve on active duty accepting from any person'', redesignated item 1058 ''Dependents of members separated for dependent abuse: transitional compensation'' as item 1059 and amended it generally, redesignated item 1058 ''Military service of retired members with newly democratic nations: consent of Congress'' as item 1060, and added item 1060a.

Pub. L. 103–337, div. A, title X, § 1070(b)(4), Oct. 5, 1994, 108 Stat. 2856, made technical correction to Pub. L. 103–160, § 554(a)(2). See 1993 Amendment note below.

1993—Pub. L. 103–160, div. A, title V, §§ 551(a)(2), 574(b), title XIV, § 1433(b)(2), Nov. 30, 1993, 107 Stat. 1662, 1675, 1834, added item 1044b and items 1058 ''Responsibilities of military law enforcement officials at scenes of domestic violence'' and 1058 ''Military service of retired members with newly democratic nations: consent of Congress''.

Pub. L. 103–160, div. A, title V, § 554(a)(2), Nov. 30, 1993, 107 Stat. 1666, as amended by Pub. L. 103–337, div. A, title X, § 1070(b)(4), Oct. 5, 1994, 108 Stat. 2856, added item 1058 ''Dependents of members separated for dependent abuse: transitional compensation''.

1992—Pub. L. 102–484, div. A, title VI, § 651(b), title X, § 1080(b), Oct. 23, 1992, 106 Stat. 2426, 2514, added items 1046 and 1057.

1991—Pub. L. 102–190, div. A, title VI, § 651(a)(2), Dec. 5, 1991, 105 Stat. 1386, added item 1052.

Pub. L. 102–25, title VII, § 701(e)(8)(B), Apr. 6, 1991, 105 Stat. 115, struck out ''mandatory'' after ''error in'' in item 1053.

1990—Pub. L. 101–510, div. A, title V, §§ 502(b)(2), 551(a)(2), title XIV, § 1481(c)(2), Nov. 5, 1990, 104 Stat. 1557, 1566, 1705, added items 1044a and 1056 and struck out item 1046 ''Preseparation counseling requirement''.

1989—Pub. L. 101–189, div. A, title VI, § 664(a)(3)(B), Nov. 29, 1989, 103 Stat. 1466, substituted ''Reimbursement for financial institution charges incurred because of Government'' for ''Relief for expenses because of'' in item 1053.

1988—Pub. L. 100–456, div. A, title VI, § 621(a)(2), title VIII, § 846(a)(2), Sept. 29, 1988, 102 Stat. 1983, 2030, substituted ''Communicating with a Member of Congress or Inspector General; prohibition of retaliatory personnel actions'' for ''Communicating with a Member of Congress'' in item 1034 and added item 1055.

Pub. L. 100–370, § 1(c)(2)(B), July 19, 1988, 102 Stat. 841, struck out item 1052 ''Period for use of commissary stores; eligibility attributable to active duty for training''.

1987—Pub. L. 100–26, § 7(e)(1)(B), Apr. 21, 1987, 101 Stat. 281, added item 1032 and struck out second item 1051 ''Disability and death compensation: dependents of members held as captives''.

1986—Pub. L. 99–661, div. A, title VI, §§ 656(a)(2), 662(a)(2), title XIII, §§ 1322(b), 1356(a)(2), Nov. 14, 1986, 100 Stat. 3891, 3894, 3989, 3998, added item 1051 ''Bilateral or regional cooperation programs: payment of personnel expenses'' and items 1052 to 1054.

Pub. L. 99–399, title VIII, § 806(b)(2), Aug. 27, 1986, 100 Stat. 886, added item 1051 ''Disability and death compensation: dependents of members held as captives''.

1985—Pub. L. 99–145, title XIII, § 1303(a)(6), Nov. 8, 1985, 99 Stat. 739, substituted ''Atmospheric'' for ''Atomospheric'' in item 1043.

1984—Pub. L. 98–525, title VI, §§ 651(b), 654(b), title VII, § 708(a)(2), title XIV, §§ 1401(d)(2), 1405(19)(B)(ii), Oct. 19, 1984, 98 Stat. 2549, 2552, 2572, 2616, 2623, added items 1044 to 1050 and substituted ''Member'' for ''member'' in item 1034.

1983—Pub. L. 98–94, title X, § 1007(b)(2), Sept. 24, 1983, 97 Stat. 662, added item 1043.

1982—Pub. L. 97–258, §2(b)(2)(A), Sept. 13, 1982, 96 Stat. 1052, added item 1042.

1980—Pub. L. 96–513, title V, §511(33)(B), Dec. 12, 1980, 94 Stat. 2922, redesignated item 1040 as added by Pub. L. 90–285 as item 1041.

1977—Pub. L. 95–105, title V, §509(d)(2), Aug. 17, 1977, 91 Stat. 860, struck out item 1032 ''Dual capacity: Reserve accepting employment with foreign government or concern''.

1968—Pub. L. 90–235, §7(a)(2)(B), Jan. 2, 1968, 81 Stat. 763, added item 1040: ''Replacement of certificate of discharge''. Another item 1040: ''Transportation of dependent patients'', was added by Pub. L. 89–140, §1(2), Aug. 28, 1965, 79 Stat. 579.

1966—Pub. L. 89–538, §1(2), Aug. 14, 1966, 80 Stat. 347, substituted ''Deposits of savings'' for ''Enlisted members' deposits'' in item 1035.

1965—Pub. L. 89–140, §1(2), Aug. 28, 1965, 79 Stat. 579, added item 1040 ''Transportation of dependent patients''.

Pub. L. 89–132, §9(b), Aug. 21, 1965, 79 Stat. 548, added item 1040 ''Free postage from combat zone'' which was repealed by Pub. L. 89–315, §3(b), Nov. 1, 1965, 79 Stat. 1165.

1961—Pub. L. 87–165, §1(2), Aug. 25, 1961, 75 Stat. 401, added item 1039.

1959—Pub. L. 86–160, §1(2), Aug. 14, 1959, 73 Stat. 358, added item 1036.

Pub. L. 86–142, §1(2), Aug. 7, 1959, 73 Stat. 289, added item 1038.

1958—Pub. L. 85–861, §1(24)(B), Sept. 2, 1958, 72 Stat. 1445, added item 1037.

POLICY TO IMPROVE RESPONSES TO PREGNANCY AND CHILDBIRTH BY CERTAIN MEMBERS OF THE ARMED FORCES

Pub. L. 116–283, div. A, title V, §555, Jan. 1, 2021, 134 Stat. 3636, provided that:

''(a) POLICY REQUIRED.—The Secretary of Defense, in coordination with the Secretaries of the military departments, shall develop a policy to ensure that the career of a member of the Armed Forces is not unduly affected because the member is a covered member. The policy shall address the following:

''(1) Enforcement and implementation of the applicable requirements of the Pregnancy Discrimination Act (Public Law 95–555 [amending section 2000e of Title 42, The Public Health and Welfare, and enacting provisions set out as notes under section 2000e of Title 42]; 42 U.S.C. 2000e(k)).

''(2) The need for individual determinations regarding the ability of members of the Armed Forces to serve during and after pregnancy.

''(3) Responses to the effects specific to covered members who reintegrate into home life after deployment.

''(4) Education and training on pregnancy discrimination to diminish stigma, stereotypes, and negative perceptions regarding covered members, including with regards to commitment to the Armed Forces and abilities.

''(5) Opportunities to maintain readiness when positions are unfilled due to pregnancy, medical conditions arising from pregnancy or childbirth, pregnancy convalescence, or parental leave.

''(6) Reasonable accommodations for covered members in general and specific accommodations based on career field or military occupational specialty.

''(7) Consideration of deferments at military educational institutions for covered members.

''(8) Extended assignments and performance reporting periods for covered members.

''(9) A mechanism by which covered members may report harassment or discrimination, including retaliation, relating to being a covered member.

''(b) BRIEFING.—Not later than 180 days after the date of the enactment of this Act [Jan. 1, 2021], the Secretary shall submit to the Committees on Armed Services of the Senate and House of Representatives—

''(1) a briefing summarizing the policy developed under this section; and

''(2) a copy of the policy.

''(c) DEFINITIONS.—In this section:

''(1) The term 'covered member' means a member of an Armed Force under the jurisdiction of the Secretary of a military department who—

''(A) is pregnant;

''(B) gives birth to a child; or

''(C) incurs a medical condition arising from pregnancy or childbirth.

''(2) The term 'military educational institution' means a postsecondary educational institution established within the Department of Defense.''

TRAINING ON CERTAIN DEPARTMENT OF DEFENSE INSTRUCTIONS FOR MEMBERS OF THE ARMED FORCES

Pub. L. 116–283, div. A, title V, §556, Jan. 1, 2021, 134 Stat. 3637, provided that: ''In accordance with Department of Defense Instruction 1300.17, dated September 1, 2020, and applicable law, the Secretary of Defense shall implement training on relevant Federal statutes, Department of Defense Instructions, and the regulations of each military department, including the responsibility of commanders to maintain good order and discipline.''

ACCESS TO WIRELESS HIGH-SPEED INTERNET AND NETWORK CONNECTIONS FOR CERTAIN MEMBERS OF THE ARMED FORCES

Pub. L. 114–328, div. A, title III, §347, Dec. 23, 2016, 130 Stat. 2086, provided that:

''(a) IN GENERAL.—In providing members of the Armed Forces with access to high-speed wireless Internet and network connections at military installations outside the United States, the Secretary of Defense may provide such access without charge to the members and their dependents.

''(b) CONTRACT AUTHORITY.—The Secretary may enter into contracts for the purpose of carrying out subsection (a).''

PROTECTION OF RIGHTS OF CONSCIENCE OF MEMBERS OF THE ARMED FORCES AND CHAPLAINS OF SUCH MEMBERS

Pub. L. 112–239, div. A, title V, §533, Jan. 2, 2013, 126 Stat. 1727, as amended by Pub. L. 113–66, div. A, title V, §532(a), Dec. 26, 2013, 127 Stat. 759, provided that:

''(a) PROTECTION OF RIGHTS OF CONSCIENCE.—

''(1) ACCOMMODATION.—Unless it could have an adverse impact on military readiness, unit cohesion, and good order and discipline, the Armed Forces shall accommodate individual expressions of belief of a member of the armed forces reflecting the sincerely held conscience, moral principles, or religious beliefs of the member and, in so far as practicable, may not use such expression of belief as the basis of any adverse personnel action, discrimination, or denial of promotion, schooling, training, or assignment.

''(2) DISCIPLINARY OR ADMINISTRATIVE ACTION.—Nothing in paragraph (1) precludes disciplinary or administrative action for conduct that is proscribed by chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), including actions and speech that threaten good order and discipline.

''(b) PROTECTION OF CHAPLAIN DECISIONS RELATING TO CONSCIENCE, MORAL PRINCIPLES, OR RELIGIOUS BELIEFS.—No member of the Armed Forces may—

''(1) require a chaplain to perform any rite, ritual, or ceremony that is contrary to the conscience, moral principles, or religious beliefs of the chaplain; or

''(2) discriminate or take any adverse personnel action against a chaplain, including denial of promotion, schooling, training, or assignment, on the basis of the refusal by the chaplain to comply with a requirement prohibited by paragraph (1).

''(c) REGULATIONS.—The Secretary of Defense shall issue regulations implementing the protections afforded by this section.''

[Pub. L. 113–66, div. A, title V, §532(b), Dec. 26, 2013, 127 Stat. 759, provided that: ''Not later than 90 days

after the date of the enactment of this Act [Dec. 26, 2013], the Secretary of Defense shall prescribe the implementing regulations required by subsection (c) of such section [section 533 of Pub. L. 112–239, set out above]. In prescribing such regulations, the Secretary shall consult with the official military faith-group representatives who endorse military chaplains.'']

FREEDOM OF CONSCIENCE OF MILITARY CHAPLAINS WITH RESPECT TO THE PERFORMANCE OF MARRIAGES

Pub. L. 112–81, div. A, title V, §544, Dec. 31, 2011, 125 Stat. 1412, provided that: ''A military chaplain who, as a matter of conscience or moral principle, does not wish to perform a marriage may not be required to do so.''

PROHIBITION ON INFRINGING ON THE INDIVIDUAL RIGHT TO LAWFULLY ACQUIRE, POSSESS, OWN, CARRY, AND OTHERWISE USE PRIVATELY OWNED FIREARMS, AMMUNITION, AND OTHER WEAPONS

Pub. L. 111–383, div. A, title X, §1062, Jan. 7, 2011, 124 Stat. 4363, as amended by Pub. L. 112–239, div. A, title X, §1057, Jan. 2, 2013, 126 Stat. 1938, provided that:

''(a) IN GENERAL.—Except as provided in subsection (c), the Secretary of Defense shall not prohibit, issue any requirement relating to, or collect or record any information relating to the otherwise lawful acquisition, possession, ownership, carrying, or other use of a privately owned firearm, privately owned ammunition, or another privately owned weapon by a member of the Armed Forces or civilian employee of the Department of Defense on property that is not—

''(1) a military installation; or

''(2) any other property that is owned or operated by the Department of Defense.

''(b) EXISTING REGULATIONS AND RECORDS.—

''(1) REGULATIONS.—Any regulation promulgated before the date of enactment of this Act [Jan. 7, 2011] shall have no force or effect to the extent that it requires conduct prohibited by this section.

''(2) RECORDS.—Not later than 90 days after the date of enactment of this Act, the Secretary of Defense shall destroy any record containing information described in subsection (a) that was collected before the date of enactment of this Act.

''(c) RULE OF CONSTRUCTION.—Subsection (a) shall not be construed to limit the authority of the Secretary of Defense to—

''(1) create or maintain records relating to, or regulate the possession, carrying, or other use of a firearm, ammunition, or other weapon by a member of the Armed Forces or civilian employee of the Department of Defense while—

''(A) engaged in official duties on behalf of the Department of Defense; or

''(B) wearing the uniform of an Armed Force;

''(2) create or maintain records relating to an investigation, prosecution, or adjudication of an alleged violation of law (including regulations not prohibited under subsection (a)), including matters related to whether a member of the Armed Forces constitutes a threat to the member or others; or

''(3) authorize a health professional that is a member of the Armed Forces or a civilian employee of the Department of Defense or a commanding officer to inquire if a member of the Armed Forces plans to acquire, or already possesses or owns, a privately-owned firearm, ammunition, or other weapon, if such health professional or such commanding officer has reasonable grounds to believe such member is at risk for suicide or causing harm to others.

''(d) REVIEW.—Not later than 180 days after the date of enactment of this Act, the Secretary of Defense shall—

''(1) conduct a comprehensive review of the privately owned weapons policy of the Department of Defense, including legal and policy issues regarding the regulation of privately owned firearms off of a military installation, as recommended by the Department of Defense Independent Review Related to Fort Hood; and

''(2) submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report regarding the findings of and recommendations relating to the review conducted under paragraph (1), including any recommendations for adjustments to the requirements under this section.

''(e) MILITARY INSTALLATION DEFINED.—In this section, the term 'military installation' has the meaning given that term under section 2687(e)(1) [now 2687(g)(1)] of title 10, United States Code.''

DEPARTMENT OF DEFENSE TELECOMMUNICATIONS BENEFIT

Pub. L. 108–136, div. A, title III, §344, Nov. 24, 2003, 117 Stat. 1448, as amended by Pub. L. 108–375, div. A, title III, §341, Oct. 28, 2004, 118 Stat. 1857; Pub. L. 109–163, div. A, title III, §375, Jan. 6, 2006, 119 Stat. 3213; Pub. L. 109–364, div. A, title III, §355(a)–(c), Oct. 17, 2006, 120 Stat. 2162, 2163; Pub. L. 111–383, div. A, title X, §1075(g)(3), Jan. 7, 2011, 124 Stat. 4376, provided that:

''(a) PROVISION OF BENEFIT.—(1) The Secretary of Defense shall provide, wherever practicable, prepaid phone cards, packet based telephony service, or an equivalent telecommunications benefit which includes access to telephone service, to members of the Armed Forces stationed outside the United States who (as determined by the Secretary) are eligible for combat zone tax exclusion benefits due to their service in direct support of a contingency operation to enable those members to make telephone calls without cost to the member.

''(2) As soon as possible after the date of the enactment of the John Warner National Defense Authorization Act for Fiscal Year 2007 [Oct. 17, 2006], the Secretary shall provide, wherever practicable, prepaid phone cards, packet based telephony service, or an equivalent telecommunications benefit which includes access to telephone service to members of the Armed Forces who, although are no longer directly supporting a contingency operation, are hospitalized as a result of wounds or other injuries incurred while serving in direct support of a contingency operation.

''(b) MONTHLY BENEFIT.—The value of the benefit provided under subsection (a) to any member in any month, to the extent the benefit is provided from amounts available to the Department of Defense, may not exceed—

''(1) $40; or

''(2) 120 calling minutes, if the cost to the Department of Defense of providing such number of calling minutes is less than the amount specified in paragraph (1).

''(c) TERMINATION OF BENEFIT.—The authority to provide a benefit under subsection (a)(1) to a member directly supporting a contingency operation shall terminate on the date that is 60 days after the date on which the Secretary determines that the contingency operation has ended.

''(d) FUNDING.—(1)(A) In carrying out the program under this section, the Secretary shall maximize the use of existing Department of Defense telecommunications programs and capabilities, free or reduced-cost services of private sector entities, and programs to enhance morale and welfare.

''(B) The Secretary may not award a contract to a commercial firm for the purposes of subparagraph (A) other than through the use of competitive procedures.

''(2) The Secretary may accept gifts and donations in order to defray the costs of the program under this section. Such gifts and donations may be accepted from—

''(A) any foreign government;

''(B) any foundation or other charitable organization, including any that is organized or operates under the laws of a foreign country; and

''(C) any source in the private sector of the United States or a foreign country.

''(e) DEPLOYMENT OF ADDITIONAL TELEPHONE EQUIPMENT OR INTERNET ACCESS.—If the Secretary of Defense

determines that, in order to implement this section as quickly as practicable, it is necessary to provide additional telephones or Internet service in any area to facilitate telephone or packet based telephony calling for which benefits are provided under this section, the Secretary may, consistent with the availability of resources, award competitively bid contracts to one or more commercial entities for the provision and installation of telephones or Internet access in that area.

''(f) NO COMPROMISE OF MILITARY MISSION.—The Secretary of Defense should not take any action under this section that would compromise the military objectives or mission of the Department of Defense.

''(g) CONTINGENCY OPERATION DEFINED.—In this section, the term 'contingency operation' has the meaning given that term in section 101(a)(13) of title 10, United States Code. The term includes Operation Iraqi Freedom and Operation Enduring Freedom.''

§ 1030. Bonus to encourage Department of Defense personnel to refer persons for appointment as officers to serve in health professions

(a) AUTHORITY TO PAY BONUS.—

(1) AUTHORITY.—The Secretary of Defense may authorize the appropriate Secretary to pay a bonus under this section to an individual referred to in paragraph (2) who refers to a military recruiter a person who has not previously served in an armed force and, after such referral, takes an oath of enlistment that leads to appointment as a commissioned officer, or accepts an appointment as a commissioned officer, in an armed force in a health profession designated by the appropriate Secretary for purposes of this section.

(2) INDIVIDUALS ELIGIBLE FOR BONUS.—Subject to subsection (c), the following individuals are eligible for a referral bonus under this section:

(A) A member of the armed forces in a regular component of the armed forces.

(B) A member of the armed forces in a reserve component of the armed forces.

(C) A member of the armed forces in a retired status, including a member under 60 years of age who, but for age, would be eligible for retired or retainer pay.

(D) A civilian employee of a military department or the Department of Defense.

(b) REFERRAL.—For purposes of this section, a referral for which a bonus may be paid under subsection (a) occurs—

(1) when the individual concerned contacts a military recruiter on behalf of a person interested in taking an oath of enlistment that leads to appointment as a commissioned officer, or accepting an appointment as a commissioned officer, as applicable, in an armed force in a health profession; or

(2) when a person interested in taking an oath of enlistment that leads to appointment as a commissioned officer, or accepting an appointment as a commissioned officer, as applicable, in an armed force in a health profession contacts a military recruiter and informs the recruiter of the role of the individual concerned in initially recruiting the person.

(c) CERTAIN REFERRALS INELIGIBLE.—

(1) REFERRAL OF IMMEDIATE FAMILY.—A member of the armed forces or civilian employee of a military department or the Department of Defense may not be paid a bonus under subsection (a) for the referral of an immediate family member.

(2) MEMBERS IN RECRUITING ROLES.—A member of the armed forces or civilian employee of a military department or the Department of Defense serving in a recruiting or retention assignment, or assigned to other duties regarding which eligibility for a bonus under subsection (a) could (as determined by the appropriate Secretary) be perceived as creating a conflict of interest, may not be paid a bonus under subsection (a).

(3) JUNIOR RESERVE OFFICERS' TRAINING CORPS INSTRUCTORS.—A member of the armed forces detailed under subsection (c)(1) of section 2031 of this title to serve as an administrator or instructor in the Junior Reserve Officers' Training Corps program or a retired member of the armed forces employed as an administrator or instructor in the program under subsection (d) of such section may not be paid a bonus under subsection (a).

(d) AMOUNT OF BONUS.—The amount of the bonus payable for a referral under subsection (a) may not exceed $2,000. The amount shall be payable as provided in subsection (e).

(e) PAYMENT.—A bonus payable for a referral of a person under subsection (a) shall be paid as follows:

(1) Not more than $1,000 shall be paid upon the execution by the person of an agreement to serve as an officer in a health profession in an armed force for not less than three years.

(2) Not more than $1,000 shall be paid upon the completion by the person of the initial period of military training as an officer.

(f) RELATION TO PROHIBITION ON BOUNTIES.—The referral bonus authorized by this section is not a bounty for purposes of section 514(a) of this title.

(g) COORDINATION WITH RECEIPT OF RETIRED PAY.—A bonus paid under this section to a member of the armed forces in a retired status is in addition to any compensation to which the member is entitled under this title, title 37 or 38, or any other provision of law.

(h) APPROPRIATE SECRETARY DEFINED.—In this section, the term ''appropriate Secretary'' means—

(1) the Secretary of the Army, with respect to matters concerning the Army;

(2) the Secretary of the Navy, with respect to matters concerning the Navy, the Marine Corps, and the Coast Guard when it is operating as a service in the Navy;

(3) the Secretary of the Air Force, with respect to matters concerning the Air Force and the Space Force; and

(4) the Secretary of Defense, with respect to personnel of the Department of Defense.

(i) DURATION OF AUTHORITY.—A bonus may not be paid under subsection (a) with respect to any referral that occurs after December 31, 2011.

(Added Pub. L. 110–181, div. A, title VI, § 671(b)(1), Jan. 28, 2008, 122 Stat. 182; amended Pub. L. 110–417, [div. A], title VI, § 615(a), Oct. 14, 2008, 122 Stat. 4485; Pub. L. 111–84, div. A, title VI, § 616(1), Oct. 28, 2009, 123 Stat. 2354; Pub. L.

111–383, div. A, title VI, § 616(1), title X, § 1075(b)(15), Jan. 7, 2011, 124 Stat. 4238, 4369; Pub. L. 116–283, div. A, title IX, § 924(b)(23), Jan. 1, 2021, 134 Stat. 3824.)

AMENDMENTS

2021—Subsec. (h)(3). Pub. L. 116–283 inserted ''and the Space Force'' after ''concerning the Air Force''.

2011—Subsec. (e)(1). Pub. L. 111–383, § 1075(b)(15), substituted ''three years.'' for ''3 years,''.

Subsec. (i). Pub. L. 111–383, § 616(1), substituted ''December 31, 2011'' for ''December 31, 2010''.

2009—Subsec. (i). Pub. L. 111–84 substituted ''December 31, 2010'' for ''December 31, 2009''.

2008—Subsec. (i). Pub. L. 110–417 substituted ''December 31, 2009'' for ''December 31, 2008''.

§ 1031. Administration of oath

The President, the Vice-President, the Secretary of Defense, any commissioned officer, and any other person designated under regulations prescribed by the Secretary of Defense may administer any oath—

(1) required for the enlistment or appointment of any person in the armed forces; or

(2) required by law in connection with such an enlistment or appointment.

(Aug. 10, 1956, ch. 1041, 70A Stat. 80; Pub. L. 109–364, div. A, title V, § 595(b), Oct. 17, 2006, 120 Stat. 2235.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
1031	10:19. 34:217a–2.	May 22, 1950, ch. 193, § 1, 64 Stat. 187.

The words ''(including the reserve component)'' are omitted, since the words ''any component of an armed force'' include the reserve components. The words ''any oath required for the enlistment or appointment of any person'' are substituted for the words ''the oath required for the enlistment of any person, the oath required for the appointment of any person to commissioned or warrant officer grade, and any other oath required by law in connection with the enlistment or appointment of any person''.

AMENDMENTS

2006—Pub. L. 109–364 substituted ''The President, the Vice-President, the Secretary of Defense, any commissioned officer, and any other person designated under regulations prescribed by the Secretary of Defense may administer any oath'' for ''Any commissioned officer of any component of an armed force, whether or not on active duty, may administer any oath'' in introductory provisions.

§ 1032. Disability and death compensation: dependents of members held as captives

(a) The President shall prescribe regulations under which the Secretary concerned may pay compensation for the disability or death of a dependent of a member of the uniformed services if the President determines that the disability or death—

(1) was caused by hostile action; and

(2) was a result of the relationship of the dependent to the member of the uniformed services.

(b) Any compensation otherwise payable to a person under this section in connection with any disability or death shall be reduced by any amount payable to such person under any other program funded in whole or in part by the United States in connection with such disability or death, except that nothing in this subsection shall result in the reduction of any amount below zero.

(c) A determination by the President under subsection (a) is conclusive and is not subject to judicial review.

(d) In this section:

(1) The term ''dependent'' has the meaning given that term in section 551 of title 37.

(2) The term ''Secretary concerned'' has the meaning given that term in section 101 of that title.

(Added Pub. L. 99–399, title VIII, § 806(b)(1), Aug. 27, 1986, 100 Stat. 885, § 1051; amended Pub. L. 99–661, div. A, title XIII, § 1343(a)(25), Nov. 14, 1986, 100 Stat. 3994; renumbered § 1032 and amended Pub. L. 100–26, §§ 3(8), 7(e)(1)(A), Apr. 21, 1987, 101 Stat. 274, 281; Pub. L. 101–189, div. A, title XVI, § 1622(e)(2), Nov. 29, 1989, 103 Stat. 1605.)

PRIOR PROVISIONS

A prior section 1032, act Aug. 10, 1956, ch. 1041, 70A Stat. 80, provided that a Reserve may accept civil employment with a foreign government or concern, prior to repeal by Pub. L. 95–105, title V, § 509(d)(1), Aug. 17, 1977, 91 Stat. 860.

AMENDMENTS

1989—Subsec. (d)(1). Pub. L. 101–189, § 1622(e)(2)(A), substituted ''The term 'dependent' has'' for '''Dependent' has''.

Subsec. (d)(2). Pub. L. 101–189, § 1622(e)(2)(B), inserted ''The term'' after ''(2)''.

1987—Pub. L. 100–26, § 7(e)(1)(A), renumbered the second section 1051 of this title as this section.

Subsec. (d)(1), (2). Pub. L. 100–26, § 3(8), amended directory language of Pub. L. 99–661. See 1986 Amendment note below.

1986—Subsec. (d). Pub. L. 99–661, § 1343(a)(25), as amended by Pub. L. 100–26, § 3(8), substituted ''title 37'' for ''that title'' in par. (1), and ''has the meaning given that term'' for ''and 'uniformed services' have the meanings given those terms'' in par. (2).

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by section 3(8) of Pub. L. 100–26 applicable as if included in Pub. L. 99–661 when enacted on Nov. 14, 1986, see section 12(a) of Pub. L. 100–26, set out as a note under section 776 of this title.

EFFECTIVE DATE

Pub. L. 99–399, title VIII, § 806(b)(3), Aug. 27, 1986, 100 Stat. 886, provided that: ''Section 1051 [now 1032] of title 10, United States Code, as added by paragraph (1), shall apply with respect to any disability or death resulting from an injury that occurs after January 21, 1981.''

DELEGATION OF FUNCTIONS

Functions of President under this section delegated to Secretary of Defense, see section 4 of Ex. Ord. No. 12598, June 17, 1987, 52 F.R. 23421, set out as a note under section 5569 of Title 5, Government Organization and Employees.

§ 1033. Participation in management of specified non-Federal entities: authorized activities

(a) AUTHORIZATION.—The Secretary concerned may authorize a member of the armed forces under the Secretary's jurisdiction to serve without compensation as a director, officer, or trustee, or to otherwise participate, in the manage-

ment of an entity designated under subsection (b). Any such authorization shall be made on a case-by-case basis, for a particular member to participate in a specific capacity with a specific designated entity. Such authorization may be made only for the purpose of providing oversight and advice to, and coordination with, the designated entity, and participation of the member in the activities of the designated entity may not extend to participation in the day-to-day operations of the entity.

(b) DESIGNATED ENTITIES.—(1) The Secretary of Defense, and the Secretary of Homeland Security in the case of the Coast Guard when it is not operating as a service in the Navy, shall designate those entities for which authorization under subsection (a) may be provided. The list of entities so designated may not be revised more frequently than semiannually. In making such designations, the Secretary shall designate each military welfare society and may designate any other entity described in paragraph (3). No other entities may be designated.

(2) In this section, the term ''military welfare society'' means the following:

(A) Army Emergency Relief.

(B) Air Force Aid Society, Inc.

(C) Navy-Marine Corps Relief Society.

(D) Coast Guard Mutual Assistance.

(3) An entity described in this paragraph is an entity that is not operated for profit and is any of the following:

(A) An entity that regulates and supports the athletic programs of the service academies (including athletic conferences).

(B) An entity that regulates international athletic competitions.

(C) An entity that accredits service academies and other schools of the armed forces (including regional accrediting agencies).

(D) An entity that (i) regulates the performance, standards, and policies of military health care (including health care associations and professional societies), and (ii) has designated the position or capacity in that entity in which a member of the armed forces may serve if authorized under subsection (a).

(E) An entity that, operating in a foreign nation where United States military personnel are serving at United States military activities, promotes understanding and tolerance between such personnel (and their families) and the citizens of that host foreign nation through programs that foster social relations between those persons.

(c) PUBLICATION OF DESIGNATED ENTITIES AND OF AUTHORIZED PERSONS.—A designation of an entity under subsection (b), and an authorization under subsection (a) of a member of the armed forces to participate in the management of such an entity, shall be published in the Federal Register.

(d) REGULATIONS.—The Secretary of Defense, and the Secretary of Homeland Security in the case of the Coast Guard when it is not operating as a service in the Navy, shall prescribe regulations to carry out this section.

(Added Pub. L. 105–85, div. A, title V, §593(a)(1), Nov. 18, 1997, 111 Stat. 1762; amended Pub. L. 106–65, div. A, title V, §583, Oct. 5, 1999, 113 Stat. 634; Pub. L. 107–296, title XVII, §1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

PRIOR PROVISIONS

A prior section 1033, act Aug. 10, 1956, ch. 1041, 70A Stat. 80, related to Reserves continuing to accept compensation while on active duty that they were receiving prior to being ordered to active duty, prior to repeal by Pub. L. 103–337, div. A, title XVI, §§1662(g)(2), 1691, Oct. 5, 1994, 108 Stat. 2996, 3026, eff. Dec. 1, 1994.

AMENDMENTS

2002—Subsecs. (b)(1), (d). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

1999—Subsec. (b)(3)(E). Pub. L. 106–65 added subpar. (E).

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

§ 1034. Protected communications; prohibition of retaliatory personnel actions

(a) RESTRICTING COMMUNICATIONS WITH MEMBERS OF CONGRESS AND INSPECTOR GENERAL PROHIBITED.—(1) No person may restrict a member of the armed forces in communicating with a Member of Congress or an Inspector General.

(2) Paragraph (1) does not apply to a communication that is unlawful.

(b) PROHIBITION OF RETALIATORY PERSONNEL ACTIONS.—(1) No person may take (or threaten to take) an unfavorable personnel action, or withhold (or threaten to withhold) a favorable personnel action, as a reprisal against a member of the armed forces for making or preparing or being perceived as making or preparing—

(A) a communication to a Member of Congress or an Inspector General that (under subsection (a)) may not be restricted;

(B) a communication that is described in subsection (c)(2) and that is made (or prepared to be made) to—

(i) a Member of Congress;

(ii) an Inspector General (as defined in subsection (j)) or any other Inspector General appointed under the Inspector General Act of 1978;

(iii) a member of a Department of Defense audit, inspection, investigation, or law enforcement organization;

(iv) any person or organization in the chain of command;

(v) a court-martial proceeding; or

(vi) any other person or organization designated pursuant to regulations or other established administrative procedures for such communications; or

(C) testimony, or otherwise participating in or assisting in an investigation or proceeding related to a communication under subparagraph (A) or (B), or filing, causing to be filed, participating in, or otherwise assisting in an action brought under this section.

(2)(A) The actions considered for purposes of this section to be a personnel action prohibited by this subsection shall include any action prohibited by paragraph (1), including any of the following:

(i) The threat to take any unfavorable action.

(ii) The withholding, or threat to withhold, any favorable action.

(iii) The making of, or threat to make, a significant change in the duties or responsibilities of a member of the armed forces not commensurate with the member's grade.

(iv) The failure of a superior to respond to any retaliatory action or harassment (of which the superior had actual knowledge) taken by one or more subordinates against a member.

(v) The conducting of a retaliatory investigation of a member.

(B) In this paragraph, the term ''retaliatory investigation'' means an investigation requested, directed, initiated, or conducted for the primary purpose of punishing, harassing, or ostracizing a member of the armed forces for making a protected communication.

(C) Nothing in this paragraph shall be construed to limit the ability of a commander to consult with a superior in the chain of command, an inspector general, or a judge advocate general on the disposition of a complaint against a member of the armed forces for an allegation of collateral misconduct or for a matter unrelated to a protected communication. Such consultation shall provide an affirmative defense against an allegation that a member requested, directed, initiated, or conducted a retaliatory investigation under this section.

(c) INSPECTOR GENERAL INVESTIGATION OF ALLEGATIONS OF PROHIBITED PERSONNEL ACTIONS.—(1) If a member of the armed forces submits to an Inspector General an allegation that a personnel action prohibited by subsection (b) has been taken (or threatened) against the member with respect to a communication described in paragraph (2), the Inspector General shall take the action required under paragraph (4).

(2) A communication described in this paragraph is a communication in which a member of the armed forces complains of, or discloses information that the member reasonably believes constitutes evidence of, any of the following:

(A) A violation of law or regulation, including a law or regulation prohibiting rape, sexual assault, or other sexual misconduct in violation of section 920, 920b, 920c, or 930 of this title (article 120, 120b, 120c, or 130 of the Uniform Code of Military Justice), sexual harassment, or unlawful discrimination.

(B) Gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

(C) A threat by another member of the armed forces or employee of the Federal Government that indicates a determination or intent to kill or cause serious bodily injury to members of the armed forces or civilians or damage to military, Federal, or civilian property.

(3) A communication described in paragraph (2) shall not be excluded from the protections provided in this section because—

(A) the communication was made to a person who participated in an activity that the member reasonably believed to be covered by paragraph (2);

(B) the communication revealed information that had previously been disclosed;

(C) of the member's motive for making the communication;

(D) the communication was not made in writing;

(E) the communication was made while the member was off duty; and

(F) the communication was made during the normal course of duties of the member.

(4)(A) An Inspector General receiving an allegation as described in paragraph (1) shall expeditiously determine, in accordance with regulations prescribed under subsection (h), whether there is sufficient evidence to warrant an investigation of the allegation.

(B) If the Inspector General receiving such an allegation is an Inspector General within a military department, that Inspector General shall promptly notify the Inspector General of the Department of Defense of the allegation. Such notification shall be made in accordance with regulations prescribed under subsection (h).

(C) If an allegation under paragraph (1) is submitted to an Inspector General within a military department and if the determination of that Inspector General under subparagraph (A) is that there is not sufficient evidence to warrant an investigation of the allegation, that Inspector General shall forward the matter to the Inspector General of the Department of Defense for review.

(D) Upon determining that an investigation of an allegation under paragraph (1) is warranted, the Inspector General making the determination shall expeditiously investigate the allegation. In the case of a determination made by the Inspector General of the Department of Defense, that Inspector General may delegate responsibility for the investigation to an appropriate Inspector General within a military department.

(E) If the Inspector General makes a preliminary determination in an investigation under subparagraph (D) that, more likely than not, a personnel action prohibited by subsection (b) has occurred and the personnel action will result in an immediate hardship to the member alleging the personnel action, the Inspector General shall promptly notify the Secretary of the military department concerned or the Secretary of Homeland Security, as applicable, of the hardship, and such Secretary shall take such action as such Secretary considers appropriate.

(F) In the case of an investigation under subparagraph (D) within the Department of Defense, the results of the investigation shall be determined by, or approved by, the Inspector General of the Department of Defense (regardless of whether the investigation itself is conducted by the Inspector General of the Department of Defense or by an Inspector General within a military department).

(5) Neither an initial determination under paragraph (4)(A) nor an investigation under paragraph (4)(D) is required in the case of an allegation made more than one year after the date on which the member becomes aware of the personnel action that is the subject of the allegation.

(6) The Inspector General of the Department of Defense, or the Inspector General of the Depart-

ment of Homeland Security (in the case of a member of the Coast Guard when the Coast Guard is not operating as a service in the Navy), shall ensure that the Inspector General conducting the investigation of an allegation under this subsection is one or both of the following:

(A) Outside the immediate chain of command of both the member submitting the allegation and the individual or individuals alleged to have taken the retaliatory action.

(B) At least one organization higher in the chain of command than the organization of the member submitting the allegation and the individual or individuals alleged to have taken the retaliatory action.

(d) INSPECTOR GENERAL INVESTIGATION OF UNDERLYING ALLEGATIONS.—Upon receiving an allegation under subsection (c), the Inspector General receiving the allegation shall conduct a separate investigation of the information that the member making the allegation believes constitutes evidence of wrongdoing (as described in subparagraph (A), (B), or (C) of subsection (c)(2)) if there previously has not been such an investigation or if the Inspector General determines that the original investigation was biased or otherwise inadequate. In the case of an allegation received by the Inspector General of the Department of Defense, the Inspector General may delegate that responsibility to the Inspector General of the armed force concerned.

(e) REPORTS ON INVESTIGATIONS.—(1) After completion of an investigation under subsection (c) or (d) or, in the case of an investigation under subsection (c) by an Inspector General within a military department, after approval of the report of that investigation under subsection (c)(4)(F), the Inspector General conducting the investigation shall submit a report on the results of the investigation to the Secretary of Defense and the Secretary of the military department concerned (or to the Secretary of Homeland Security in the case of a member of the Coast Guard when the Coast Guard is not operating as a service in the Navy) and shall transmit a copy of the report on the results of the investigation to the member of the armed forces who made the allegation investigated. The report shall be transmitted to such Secretaries, and the copy of the report shall be transmitted to the member, not later than 30 days after the completion of the investigation or, in the case of an investigation under subsection (c) by an Inspector General within a military department, after approval of the report of that investigation under subsection (c)(4)(E).

(2) In the copy of the report transmitted to the member, the Inspector General shall ensure the maximum disclosure of information possible, with the exception of information that is not required to be disclosed under section 552 of title 5. However, the copy need not include summaries of interviews conducted, nor any document acquired, during the course of the investigation. Such items shall be transmitted to the member, if the member requests the items, with the copy of the report or after the transmittal to the member of the copy of the report, regardless of whether the request for those items is made before or after the copy of the report is transmitted to the member.

(3)(A) Not later than 180 days after the commencement of an investigation of an allegation under subsection (c)(4), and every 180 days thereafter until the transmission of the report on the investigation under paragraph (1) to the member concerned, the Inspector General conducting the investigation shall submit a notice on the investigation described in subparagraph (B) to the following:

(i) The member.

(ii) The Secretary of Defense.

(iii) The Secretary of the military department concerned, or the Secretary of Homeland Security in the case of a member of the Coast Guard when the Coast Guard is not operating as a service in the Navy.

(B) Each notice on an investigation under subparagraph (A) shall include the following:

(i) A description of the current progress of the investigation.

(ii) An estimate of the time remaining until the completion of the investigation and the transmittal of the report required by paragraph (1) to the member concerned.

(4) The report on the results of the investigation shall contain a thorough review of the facts and circumstances relevant to the allegation and the complaint or disclosure and shall include documents acquired during the course of the investigation, including summaries of interviews conducted. The report may include a recommendation as to the disposition of the complaint.

(f) ACTION IN CASE OF SUBSTANTIATED VIOLATIONS.—(1) Not later than 30 days after receiving a report from the Inspector General under subsection (e), the Secretary of Homeland Security or the Secretary of the military department concerned, as applicable, shall determine whether corrective or disciplinary action should be taken. If the Secretary concerned determines that corrective or disciplinary action should be taken, the Secretary shall take appropriate corrective or disciplinary action.

(2) If the Inspector General determines that a personnel action prohibited by subsection (b) has occurred, the Secretary concerned shall—

(A) order such action as is necessary to correct the record of a personnel action prohibited by subsection (b), including referring the report to the appropriate board for the correction of military records; and

(B) submit to the Inspector General a report on the actions taken by the Secretary pursuant to this paragraph, and provide for the inclusion of a summary of the report under this subparagraph (with any personally identifiable information redacted) in the semiannual report to Congress of the Inspector General of the Department of Defense or the Inspector General of the Department of Homeland Security, as applicable, under section 5 of the Inspector General Act of 1978 (5 U.S.C. App.).

(3) If the Secretary concerned determines under paragraph (1) that an order for corrective or disciplinary action is not appropriate, not later than 30 days after making the determination, such Secretary shall—

(A) provide to the Secretary of Defense and the member or former member a notice of the

determination and the reasons for not taking action; and

(B) when appropriate, refer the report to the appropriate board for the correction of military records for further review under subsection (g).

(g) CORRECTION OF RECORDS WHEN PROHIBITED ACTION TAKEN.—(1) A board for the correction of military records acting under section 1552 of this title, in resolving an application for the correction of records made by a member or former member of the armed forces who has alleged a personnel action prohibited by subsection (b), on the request of the member or former member or otherwise, may review the matter.

(2) In resolving an application described in paragraph (1) for which there is a report of the Inspector General under subsection (e)(1), a correction board—

(A) shall review the report of the Inspector General;

(B) may request the Inspector General to gather further evidence;

(C) may receive oral argument, examine and cross-examine witnesses, and take depositions; and

(D) shall consider a request by a member or former member in determining whether to hold an evidentiary hearing.

(3) If the board holds an administrative hearing, the member or former member who filed the application described in paragraph (1)—

(A) may be provided with representation by a judge advocate if—

(i) the Inspector General, in the report under subsection (e)(1), finds that there is probable cause to believe that a personnel action prohibited by subsection (b) has been taken (or threatened) against the member with respect to a communication described in subsection (c)(2);

(ii) the Judge Advocate General concerned determines that the member or former member would benefit from judge advocate assistance to ensure proper presentation of the legal issues in the case; and

(iii) the member is not represented by outside counsel chosen by the member; and

(B) may examine witnesses through deposition, serve interrogatories, and request the production of evidence, including evidence contained in the investigatory record of the Inspector General but not included in the report submitted under subsection (e)(1).

(4) The Secretary concerned shall issue a final decision with respect to an application described in paragraph (1) within 180 days after the application is filed. If the Secretary fails to issue such a final decision within that time, the member or former member shall be deemed to have exhausted the member's or former member's administrative remedies under section 1552 of this title.

(5) The Secretary concerned shall order such action, consistent with the limitations contained in sections 1552 and 1553 of this title, as is necessary to correct the record of a personnel action prohibited by subsection (b).

(6) If the Board determines that a personnel action prohibited by subsection (b) has occurred, the Board may recommend to the Secretary concerned that the Secretary take appropriate disciplinary action against the individual who committed such personnel action.

(h) REVIEW BY SECRETARY OF DEFENSE.—Upon the completion of all administrative review under subsection (f), the member or former member of the armed forces (except for a member or former member of the Coast Guard when the Coast Guard is not operating as a service in the Navy) who made the allegation referred to in subsection (c)(1), if not satisfied with the disposition of the matter, may submit the matter to the Secretary of Defense. The Secretary shall make a decision to reverse or uphold the decision of the Secretary of the military department concerned in the matter within 90 days after receipt of such a submittal.

(i) REGULATIONS.—The Secretary of Defense, and the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, shall prescribe regulations to carry out this section.

(j) DEFINITIONS.—In this section:

(1) The term ''Member of Congress'' includes any Delegate or Resident Commissioner to Congress.

(2) The term ''Inspector General'' means any of the following:

(A) The Inspector General of the Department of Defense.

(B) The Inspector General of the Department of Homeland Security, in the case of a member of the Coast Guard when the Coast Guard is not operating as a service in the Navy.

(C) Any officer of the armed forces or employee of the Department of Defense who is assigned or detailed to serve as an Inspector General at any level in the Department of Defense.

(3) The term ''unlawful discrimination'' means discrimination on the basis of race, color, religion, sex, or national origin.

(Aug. 10, 1956, ch. 1041, 70A Stat. 80; Pub. L. 98–525, title XIV, § 1405(19)(A), (B)(i), Oct. 19, 1984, 98 Stat. 2622; Pub. L. 100–456, div. A, title VIII, § 846(a)(1), Sept. 29, 1988, 102 Stat. 2027; Pub. L. 101–225, title II, § 202, Dec. 12, 1989, 103 Stat. 1910; Pub. L. 103–337, div. A, title V, § 531(a)–(g)(1), Oct. 5, 1994, 108 Stat. 2756–2758; Pub. L. 105–261, div. A, title IX, § 933, Oct. 17, 1998, 112 Stat. 2107; Pub. L. 106–398, § 1 [[div. A], title IX, § 903], Oct. 30, 2000, 114 Stat. 1654, 1654A–224; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 108–375, div. A, title V, § 591(a), Oct. 28, 2004, 118 Stat. 1933; Pub. L. 110–181, div. A, title X, § 1063(a)(8), Jan. 28, 2008, 122 Stat. 322; Pub. L. 112–81, div. A, title V, § 523, Dec. 31, 2011, 125 Stat. 1401; Pub. L. 113–66, div. A, title XVII, §§ 1714, 1715, Dec. 26, 2013, 127 Stat. 964–966; Pub. L. 114–328, div. A, title V, §§ 531(a)–(d), 532(a), (b), Dec. 23, 2016, 130 Stat. 2118–2120; Pub. L. 115–91, div. A, title X, § 1081(c)(2)(C), Dec. 12, 2017, 131 Stat. 1599; Pub. L. 116–92, div. A, title XVII, § 1731(a)(21), Dec. 20, 2019, 133 Stat. 1813.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
1034	50 App.:454(a) (last par.)	June 24, 1948, ch. 625, §4(a) (last par.); restated June 19, 1951, ch. 144, §1(d) (last par.), 65 Stat. 78.

The words ''prevented'', ''directly or indirectly'', ''concerning any subject'', ''or Members'', and ''and safety'' are omitted as surplusage. The word ''unlawful'' is substituted for the words ''in violation of law''.

REFERENCES IN TEXT

The Inspector General Act of 1978, referred to in subsecs. (b)(1)(B)(ii) and (f)(2)(B), is Pub. L. 95–452, Oct. 12, 1978, 92 Stat. 1101, which is set out in the Appendix to Title 5, Government Organization and Employees.

AMENDMENTS

2019—Subsec. (b)(1)(B)(ii). Pub. L. 116–92 substituted ''subsection (j)'' for ''subsection (i)''.

2017—Subsec. (c)(2)(A). Pub. L. 115–91 substituted ''section 920, 920b, 920c, or 930 of this title (article 120, 120b, 120c, or 130 of the Uniform Code of Military Justice)'' for ''sections 920 through 920c of this title (articles 120 through 120c of the Uniform Code of Military Justice)''.

2016—Subsec. (b)(2). Pub. L. 114–328, §531(a), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''Any action prohibited by paragraph (1) (including the threat to take any unfavorable action, the withholding or threat to withhold any favorable action, or making or threatening to make a significant change in the duties or responsibilities of a member of the armed forces not commensurate with the member's grade) shall be considered for the purposes of this section to be a personnel action prohibited by this subsection.''

Subsec. (c)(4)(E), (F). Pub. L. 114–328, §531(b)(1), added subpar. (E) and redesignated former subpar. (E) as (F).

Subsec. (e)(1). Pub. L. 114–328, §531(b)(2), substituted ''subsection (c)(4)(F)'' for ''subsection (c)(4)(E)''.

Subsec. (e)(3). Pub. L. 114–328, §531(c), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''If, in the course of an investigation of an allegation under this section, the Inspector General determines that it is not possible to submit the report required by paragraph (1) within 180 days after the date of receipt of the allegation being investigated, the Inspector General shall provide to the Secretary of Defense and the Secretary of the military department concerned (or to the Secretary of Homeland Security in the case of a member of the Coast Guard when the Coast Guard is not operating as a service in the Navy) and to the member making the allegation a notice—

''(A) of that determination (including the reasons why the report may not be submitted within that time); and

''(B) of the time when the report will be submitted.''

Subsec. (f). Pub. L. 114–328, §532(a)(1), substituted ''Substantiated Violations'' for ''Violations'' in heading.

Subsec. (f)(1). Pub. L. 114–328, §532(a)(2), substituted ''corrective or disciplinary action should be taken. If the Secretary concerned determines that corrective or disciplinary action should be taken, the Secretary shall take appropriate corrective or disciplinary action.'' for ''there is sufficient basis to conclude whether a personnel action prohibited by subsection (b) has occurred.''

Subsec. (f)(2). Pub. L. 114–328, §532(b)(1), substituted ''the Inspector General determines'' for ''the Secretary concerned determines under paragraph (1)'' and ''the Secretary concerned shall'' for ''the Secretary shall'' in introductory provisions.

Subsec. (f)(2)(A). Pub. L. 114–328, §532(b)(2), inserted before semicolon '', including referring the report to the appropriate board for the correction of military records''.

Subsec. (f)(2)(B). Pub. L. 114–328, §532(b)(3), added subpar. (B) and struck out former subpar. (B) which read as follows: ''take any appropriate disciplinary action against the individual who committed such prohibited personnel action.''

Subsec. (g)(2). Pub. L. 114–328, §531(d), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''In resolving an application described in paragraph (1), a correction board—

''(A) shall review the report of the Inspector General submitted under subsection (e)(1);

''(B) may request the Inspector General to gather further evidence; and

''(C) may receive oral argument, examine and cross-examine witnesses, take depositions, and, if appropriate, conduct an evidentiary hearing.''

2013—Subsec. (b)(1). Pub. L. 113–66, §1714(a)(1)(A), substituted ''preparing or being perceived as making or preparing—'' for ''preparing—'' in introductory provisions.

Subsec. (b)(1)(B)(v), (vi). Pub. L. 113–66, §1714(a)(1)(C), added cl. (v) and redesignated former cl. (v) as (vi).

Subsec. (b)(1)(C). Pub. L. 113–66, §1714(a)(1)(B), (C)(ii), (D), added subpar. (C).

Subsec. (b)(2). Pub. L. 113–66, §1714(a)(2), substituted a comma for ''and'' after ''unfavorable action'' and inserted '', or making or threatening to make a significant change in the duties or responsibilities of a member of the armed forces not commensurate with the member's grade'' after ''favorable action''.

Subsec. (c)(1). Pub. L. 113–66, §1714(b)(1), substituted ''paragraph (4)'' for ''paragraph (3)''.

Subsec. (c)(2)(A). Pub. L. 113–66, §1715, substituted ''rape, sexual assault, or other sexual misconduct in violation of sections 920 through 920c of this title (articles 120 through 120c of the Uniform Code of Military Justice), sexual harassment, or'' for ''sexual harassment or''.

Subsec. (c)(3) to (6). Pub. L. 113–66, §1714(b)(2)–(5), added par. (3), redesignated former pars. (3) to (5) as (4) to (6), respectively, in par. (5), substituted ''paragraph (4)(A)'' for ''paragraph (3)(A)'', ''paragraph (4)(D)'' for ''paragraph (3)(D)'', and ''one year'' for ''60 days'', and in par. (6), substituted ''one or both of the following:'' and subpars. (A) and (B) for ''outside the immediate chain of command of both the member submitting the allegation and the individual or individuals alleged to have taken the retaliatory action.''

Subsec. (d). Pub. L. 113–66, §1714(c), substituted ''subparagraph (A), (B), or (C) of subsection (c)(2)'' for ''subparagraph (A) or (B) of subsection (c)(2)''.

Subsec. (e)(1). Pub. L. 113–66, §1714(d)(1), substituted ''subsection (c)(4)(E)'' for ''subsection (c)(3)(E)'' in two places and ''transmitted to such Secretaries'' for ''transmitted to the Secretary'' and inserted ''and the Secretary of the military department concerned'' after ''the Secretary of Defense''.

Subsec. (e)(3). Pub. L. 113–66, §1714(d)(2), inserted ''and the Secretary of the military department concerned'' after ''the Secretary of Defense'' in introductory provisions.

Subsec. (f). Pub. L. 113–66, §1714(e)(2), added subsec. (f). Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 113–66, §1714(e)(1), (f), redesignated subsec. (f) as (g), and in par. (3), substituted ''board holds'' for ''board elects to hold'' in introductory provisions and ''the member or former member would benefit from'' for ''the case is unusually complex or otherwise requires'' in subpar. (A)(ii). Former subsec. (g) redesignated (h).

Subsecs. (h) to (j). Pub. L. 113–66, §1714(e)(1), redesignated subsecs. (g) to (i) as (h) to (j), respectively.

2011—Subsec. (c)(2)(C). Pub. L. 112–81 added subpar. (C).

2008—Subsec. (b)(2). Pub. L. 110–181 inserted ''unfavorable'' before ''action and the withholding''.

2004—Subsec. (b)(1)(B)(iv), (v). Pub. L. 108–375 added cls. (iv) and (v) and struck out former cl. (iv) which

read as follows: ''any other person or organization (including any person or organization in the chain of command) designated pursuant to regulations or other established administrative procedures for such communications.''

2002—Subsecs. (c)(5), (e)(1), (3), (h), (i)(2)(B). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

2000—Subsec. (c)(3)(A). Pub. L. 106–398, §1 [[div. A], title IX, §903(a)], inserted '', in accordance with regulations prescribed under subsection (h),'' after ''shall expeditiously determine''.

Subsec. (i)(2). Pub. L. 106–398, §1 [[div. A], title IX, §903(b)(1)], inserted ''any of'' after ''means'' in introductory provisions.

Subsec. (i)(2)(C) to (G). Pub. L. 106–398, §1 [[div. A], title IX, §903(b)(2), (3)], added subpar. (C) and struck out former subpars. (C) to (G) which read as follows:

''(C) The Inspector General of the Army, in the case of a member of the Army.

''(D) The Naval Inspector General, in the case of a member of the Navy.

''(E) The Inspector General of the Air Force, in the case of a member of the Air Force.

''(F) The Deputy Naval Inspector General for Marine Corps Matters, in the case of a member of the Marine Corps.

''(G) An officer of the armed forces assigned or detailed under regulations of the Secretary concerned to serve as an Inspector General at any command level in one of the armed forces.''

1998—Subsec. (b)(1)(B)(ii). Pub. L. 105–261, §933(f)(2), substituted ''subsection (i)) or any other Inspector General appointed under the Inspector General Act of 1978'' for ''subsection (j))''.

Subsec. (c)(1). Pub. L. 105–261, §933(a)(1)(A), added par. (1) and struck out former par. (1) which read as follows: ''If a member of the armed forces submits to the Inspector General of the Department of Defense (or the Inspector General of the Department of Transportation, in the case of a member of the Coast Guard when the Coast Guard is not operating as a service in the Navy) an allegation that a personnel action prohibited by subsection (b) has been taken (or threatened) against the member with respect to a communication described in paragraph (2), the Inspector General shall expeditiously investigate the allegation. If, in the case of an allegation submitted to the Inspector General of the Department of Defense, the Inspector General delegates the conduct of the investigation of the allegation to the inspector general of one of the armed forces, the Inspector General of the Department of Defense shall ensure that the inspector general conducting the investigation is outside the immediate chain of command of both the member submitting the allegation and the individual or individuals alleged to have taken the retaliatory action.''

Subsec. (c)(2)(B). Pub. L. 105–261, §933(b), substituted ''Gross mismanagement'' for ''Mismanagement''.

Subsec. (c)(3) to (5). Pub. L. 105–261, §933(a)(1)(B), added pars. (3) to (5) and struck out former par. (3) which read as follows: ''The Inspector General is not required to make an investigation under paragraph (1) in the case of an allegation made more than 60 days after the date on which the member becomes aware of the personnel action that is the subject of the allegation.''

Subsec. (d). Pub. L. 105–261, §933(a)(2), inserted ''receiving the allegation'' after '', the Inspector General'' and ''In the case of an allegation received by the Inspector General of the Department of Defense, the Inspector General may delegate that responsibility to the Inspector General of the armed force concerned.'' at end.

Subsec. (e)(1). Pub. L. 105–261, §933(c)(1), substituted ''After completion of an investigation under subsection (c) or (d) or, in the case of an investigation under subsection (c) by an Inspector General within a military department, after approval of the report of that investigation under subsection (c)(3)(E), the Inspector General conducting the investigation shall submit a report on'' for ''Not later than 30 days after completion of an investigation under subsection (c) or (d), the Inspector General shall submit a report on'' and inserted ''shall transmit a copy of the report on the results of the investigation to'' before ''the member of the armed forces'' and ''The report shall be transmitted to the Secretary, and the copy of the report shall be transmitted to the member, not later than 30 days after the completion of the investigation or, in the case of an investigation under subsection (c) by an Inspector General within a military department, after approval of the report of that investigation under subsection (c)(3)(E).'' at end.

Subsec. (e)(2). Pub. L. 105–261, §933(c)(2), substituted ''transmitted'' for ''submitted'' and inserted at end ''However, the copy need not include summaries of interviews conducted, nor any document acquired, during the course of the investigation. Such items shall be transmitted to the member, if the member requests the items, with the copy of the report or after the transmittal to the member of the copy of the report, regardless of whether the request for those items is made before or after the copy of the report is transmitted to the member.''

Subsec. (e)(3). Pub. L. 105–261, §933(c)(3), substituted ''180 days'' for ''90 days''.

Subsec. (h). Pub. L. 105–261, §933(f)(1), redesignated subsec. (i) as (h).

Pub. L. 105–261, §933(d), struck out heading and text of subsec. (h). Text read as follows: ''After disposition of any case under this section, the Inspector General shall, whenever possible, conduct an interview with the person making the allegation to determine the views of that person on the disposition of the matter.''

Subsec. (i). Pub. L. 105–261, §933(f)(1), redesignated subsec. (j) as (i). Former subsec. (i) redesignated (h).

Subsec. (j). Pub. L. 105–261, §933(f)(1), redesignated subsec. (j) as (i).

Subsec. (j)(2). Pub. L. 105–261, §933(e), substituted ''means the following:'' for ''means—'' in introductory provisions, added subpars. (A) to (F), redesignated former subpar. (B) as (G) and substituted ''An officer'' for ''an officer'' in that subpar., and struck out former subpar. (A) which read as follows: ''an Inspector General appointed under the Inspector General Act of 1978; and''.

1994—Pub. L. 103–337, §531(g)(1), substituted ''Protected communications'' for ''Communicating with a Member of Congress or Inspector General'' in section catchline.

Subsec. (b). Pub. L. 103–337, §531(a), inserted ''(1)'' before ''No person may take'', substituted ''or preparing—'' for ''or preparing a communication to a Member of Congress or an Inspector General that (under subsection (a)) may not be restricted.'', added subpars. (A) and (B), inserted ''(2)'' before ''Any action prohibited'', and substituted ''paragraph (1)'' for ''the preceding sentence''.

Subsec. (c). Pub. L. 103–337, §531(b)(3), substituted ''Allegations of Prohibited Personnel Actions'' for ''Certain Allegations'' in heading.

Subsec. (c)(1). Pub. L. 103–337, §531(b)(1), inserted at end ''If, in the case of an allegation submitted to the Inspector General of the Department of Defense, the Inspector General delegates the conduct of the investigation of the allegation to the inspector general of one of the armed forces, the Inspector General of the Department of Defense shall ensure that the inspector general conducting the investigation is outside the immediate chain of command of both the member submitting the allegation and the individual or individuals alleged to have taken the retaliatory action.''

Subsec. (c)(2). Pub. L. 103–337, §531(b)(2), added par. (2) and struck out former par. (2) which read as follows: ''A communication described in this paragraph is a communication to a Member of Congress or an Inspector General that (under subsection (a)) may not be restricted in which the member of the armed forces makes a complaint or discloses information that the member reasonably believes constitutes evidence of—

''(A) a violation of a law or regulation; or

''(B) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.''

Subsec. (c)(4). Pub. L. 103–337, § 531(c)(2), struck out par. (4) which read as follows: ''If the Inspector General has not already done so, the Inspector General shall commence a separate investigation of the information that the member believes evidences wrongdoing as described in subparagraph (A) or (B) of paragraph (2). The Inspector General is not required to make such an investigation if the information that the member believes evidences wrongdoing relates to actions which took place during combat.''

Subsec. (c)(5). Pub. L. 103–337, § 531(d)(1), redesignated subsec. (c)(5) as subsec. (e)(1).

Subsec. (c)(6), (7). Pub. L. 103–337, § 531(d)(4), redesignated subsec. (c)(6) and (7) as subsec. (e)(3) and (4), respectively.

Subsec. (d). Pub. L. 103–337, § 531(c)(2), added subsec. (d). Former subsec. (d) redesignated (f).

Subsec. (e). Pub. L. 103–337, § 531(d)(1), redesignated subsec. (c)(5) as subsec. (e) and inserted subsec. heading and par. (1) designation before ''Not later than 30 days''. Former subsec. (e) redesignated (g).

Subsec. (e)(1). Pub. L. 103–337, § 531(d)(2), substituted ''subsection (c) or (d)'' for ''this subsection'' and ''the member of the armed forces who made the allegation investigated'' for ''the member of the armed forces concerned'' and struck out at end ''In the copy of the report submitted to the member, the Inspector General may exclude any information that would not otherwise be available to the member under section 552 of title 5.''

Subsec. (e)(2). Pub. L. 103–337, § 531(d)(3), added par. (2).

Subsec. (e)(3). Pub. L. 103–337, § 531(d)(4), (5), redesignated subsec. (c)(6) as subsec. (e)(3) and substituted ''paragraph (1)'' for ''paragraph (5)''.

Subsec. (e)(4). Pub. L. 103–337, § 531(d)(4), redesignated subsec. (c)(7) as subsec. (e)(4).

Subsec. (f). Pub. L. 103–337, § 531(c)(1), (f)(1), redesignated subsec. (d) as (f) and substituted ''subsection (e)(1)'' for ''subsection (c)(5)'' in pars. (2)(A), (3)(A)(i) and (B). Former subsec. (f) redesignated (h).

Subsec. (g). Pub. L. 103–337, § 531(c)(1), (f)(2), redesignated subsec. (e) as (g) and substituted ''subsection (f)'' for ''subsection (d)''. Former subsec. (g) redesignated (i).

Subsecs. (h), (i). Pub. L. 103–337, § 531(c)(1), redesignated subsecs. (f) and (g) as (h) and (i), respectively. Former subsec. (h) redesignated (j).

Subsec. (j). Pub. L. 103–337, § 531(c)(1), (e), redesignated subsec. (h) as (j) and added par. (3).

1989—Subsec. (c)(1). Pub. L. 101–225, § 202(1), inserted ''when the Coast Guard is not operating as a service in the Navy'' after ''Coast Guard''.

Subsec. (c)(5). Pub. L. 101–225, § 202(2), inserted ''(or to the Secretary of Transportation in the case of a member of the Coast Guard when the Coast Guard is not operating as a service in the Navy)'' after ''Secretary of Defense''.

Subsec. (c)(6). Pub. L. 101–225, § 202(3), inserted ''(or to the Secretary of Transportation in the case of a member of the Coast Guard when the Coast Guard is not operating as a service in the Navy)'' after ''Secretary of Defense''.

Subsec. (e). Pub. L. 101–225, § 202(4), inserted ''(except for a member or former member of the Coast Guard when the Coast Guard is not operating as a service in the Navy)'' after ''armed forces''.

1988—Pub. L. 100–456 substituted ''Communicating with a Member of Congress or Inspector General; prohibition of retaliatory personnel actions'' for ''Communicating with a Member of Congress'' in section catchline, and amended text generally. Prior to amendment, text read as follows: ''No person may restrict any member of an armed force in communicating with a Member of Congress, unless the communication is unlawful or violates a regulation necessary to the security of the United States.''

1984—Pub. L. 98–525 substituted ''Member'' for ''member'' in section catchline and text.

Effective Date of 2017 Amendment

Amendment by Pub. L. 115–91 effective immediately after the amendments made by div. E (§§ 5001–5542) of Pub. L. 114–328 take effect as provided for in section 5542 of that Act (10 U.S.C. 801 note), see section 1081(c)(4) of Pub. L. 115–91, set out as a note under section 801 of this title.

Effective Date of 2016 Amendment

Pub. L. 114–328, div. A, title V, § 532(c), Dec. 23, 2016, 130 Stat. 2121, provided that: ''The amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [Dec. 23, 2016], and shall apply with respect to reports received by the Secretaries of the military departments and the Secretary of Homeland Security under section 1034(e) of title 10, United States Code, on or after that date.''

Effective Date of 2004 Amendment

Pub. L. 108–375, div. A, title V, § 591(b), Oct. 28, 2004, 118 Stat. 1933, provided that: ''The amendments made by this section [amending this section] apply with respect to any unfavorable personnel action taken or threatened, and any withholding of or threat to withhold a favorable personnel action, on or after the date of the enactment of this Act [Oct. 28, 2004].''

Effective Date of 2002 Amendment

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

Effective Date of 1988 Amendment

Pub. L. 100–456, div. A, title VIII, § 846(d), Sept. 29, 1988, 102 Stat. 2030, provided that: ''The amendment to section 1034 of title 10, United States Code, made by subsection (a)(1), shall apply with respect to any personnel action taken (or threatened to be taken) on or after the date of the enactment of this Act [Sept. 29, 1988] as a reprisal prohibited by subsection (b) of that section.''

Regulations

Pub. L. 103–337, div. A, title V, § 531(h), (i), Oct. 5, 1994, 108 Stat. 2758, provided that:

''(h) Deadline for Regulations.—The Secretary of Defense and the Secretary of Transportation shall prescribe regulations to implement the amendments made by this section [amending this section] not later than 120 days after the date of the enactment of this Act [Oct. 5, 1994].

''(i) Content of Regulations.—In prescribing regulations under section 1034 of title 10, United States Code, as amended by this section, the Secretary of Defense and the Secretary of Transportation shall provide for appropriate procedural protections for the subject of any investigation carried out under the provisions of that section, including a process for appeal and review of investigative findings.''

Pub. L. 100–456, div. A, title VIII, § 846(b), Sept. 29, 1988, 102 Stat. 2030, provided that: ''The Secretary of Defense and the Secretary of Transportation shall prescribe the regulations required by subsection (g) [now (i)] of section 1034 of title 10, United States Code, as amended by subsection (a), not later than 180 days after the date of the enactment of this Act [Sept. 29, 1988].''

Uniform Standards for Inspector General Investigations of Prohibited Personnel Actions and Other Matters

Pub. L. 114–328, div. A, title V, § 531(e), Dec. 23, 2016, 130 Stat. 2120, provided that:

''(1) In general.—Not later than one year after the date of the enactment of this Act [Dec. 23, 2016], the In-

spector General of the Department of Defense shall prescribe uniform standards for the following:

''(A) The investigation of allegations of prohibited personnel actions under section 1034 of title 10, United States Code (as amended by this section), by the Inspector General and the Inspectors General of the military departments.

''(B) The training of the staffs of the Inspectors General referred to in subparagraph (A) on the conduct of investigations described in that subparagraph.

''(2) USE.—Commencing 180 days after prescription of the standards required by paragraph (1), the Inspectors General referred to in that paragraph shall comply with such standards in the conduct of investigations described in that paragraph and in the training of the staffs of such Inspectors General in the conduct of such investigations.''

NOTICE TO CONGRESS OF CERTAIN DEPARTMENT OF DEFENSE NONDISCLOSURE AGREEMENTS

Pub. L. 112–239, div. A, title X, § 1054, Jan. 2, 2013, 126 Stat. 1937, provided that:

''(a) NOTICE REQUIRED.—The Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] notice of any request or requirement for members of the Armed Forces or civilian employees of the Department of Defense to enter into nondisclosure agreements that could restrict the ability of such members or employees to communicate with Congress. Each such notice shall include the following:

''(1) The basis in law for the agreement.

''(2) An explanation for the restriction of the ability to communicate with Congress.

''(3) A description of the category of individuals requested or required to enter into the agreement.

''(4) A copy of the language contained in the agreement.

''(b) TIMING OF NOTIFICATION.—

''(1) REQUESTS OR REQUIREMENTS BEFORE DATE OF ENACTMENT.—In the case of nondisclosure agreements described in subsection (a) that members or employees were first requested or required to enter into on or before the date of the enactment of this Act [Jan. 2, 2013], the notice required by subsection (a) shall be submitted not later than 60 days after the date of enactment.

''(2) REQUESTS OR REQUIREMENTS AFTER DATE OF ENACTMENT.—In the case of nondisclosure agreements described in subsection (a) that members or employees were first requested or required to enter into after the date of the enactment of this Act, the notice required by subsection (a) shall be submitted not later than 30 days after the date on which the Secretary first requests or requires that the members or employees enter into the agreements.''

WHISTLEBLOWER PROTECTIONS FOR MEMBERS OF ARMED FORCES

Pub. L. 102–190, div. A, title VIII, § 843, Dec. 5, 1991, 105 Stat. 1449, provided that:

''(a) REGULATIONS REQUIRED.—The Secretary of Defense shall prescribe regulations prohibiting members of the Armed Forces from taking or threatening to take any unfavorable personnel action, or withholding or threatening to withhold a favorable personnel action, as a reprisal against any member of the Armed Forces for making or preparing a lawful communication to any employee of the Department of Defense or any member of the Armed Forces who is assigned to or belongs to an organization which has as its primary responsibility audit, inspection, investigation, or enforcement of any law or regulation.

''(b) VIOLATIONS BY PERSONS SUBJECT TO THE UCMJ.—The Secretary shall provide in the regulations that a violation of the prohibition by a person subject to chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), is punishable as a violation of section 892 of such title (article 92 of the Uniform Code of Military Justice).

''(c) DEADLINE.—The regulations required by this section shall be prescribed not later than 180 days after the date of the enactment of this Act [Dec. 5, 1991].''

REPORT ON ACTIVITIES OF INSPECTOR GENERAL

Pub. L. 100–456, div. A, title VIII, § 846(c), Sept. 29, 1988, 102 Stat. 2030, directed Inspector General of Department of Defense (and Inspector General of Department of Transportation with respect to Coast Guard) to submit, not later than Feb. 1, 1990, a report to Congress on activities of Inspector General under this section, with that report to include, in the case of each case handled by Inspector General under this section, a description of (A) nature of allegation described in subsec. (c) of this section; (B) evaluation and recommendation of Inspector General with respect to allegation; (C) any action of appropriate board for correction of military records with respect to allegation; (D) if allegation was determined to be meritorious, any corrective action taken; and (E) views of member or former member of armed forces making allegation (determined on basis of interview under subsec. (f) of this section) on disposition of case.

§ 1035. Deposits of savings

(a) Under joint regulations prescribed by the Secretaries concerned, a member of the armed forces who is on a permanent duty assignment outside the United States or its possessions may deposit during that tour of duty not more than his unallotted current pay and allowances in amounts of $5 or more, with any branch, office, or officer of a uniformed service. Amounts so deposited shall be deposited in the Treasury and kept as a separate fund, and shall be accounted for in the same manner as public funds.

(b) Interest at a rate prescribed by the President, not to exceed 10 percent a year, will accrue on amounts deposited under this section. However, the maximum amount upon which interest may be paid under this subsection to any member is $10,000, except that such limitation shall not apply to deposits made on or after September 1, 1966, in the case of those members in a missing status during the Vietnam conflict, the Persian Gulf conflict, or a contingency operation. Interest under this subsection shall terminate 90 days after the member's return to the United States or its possessions.

(c) Except as provided in joint regulations prescribed by the Secretaries concerned, payments of deposits, and interest thereon, may not be made to the member while he is on duty outside the United States or its possessions.

(d) An amount deposited under this section, with interest thereon, is exempt from liability for the member's debts, including any indebtedness to the United States or any instrumentality thereof, and is not subject to forfeiture by sentence of a court-martial.

(e) The Secretary concerned, or his designee, may in the interest of a member who is in a missing status or his dependents, initiate, stop, modify, and change allotments, and authorize a withdrawal of deposits, made under this section, even though the member had an opportunity to deposit amounts under this section and elected not to do so. Interest may be computed from the day the member entered a missing status, or September 1, 1966, whichever is later.

(f) The Secretary of Defense may authorize a member of the armed forces who is on a temporary duty assignment outside of the United States or its possessions in support of a contingency operation to make deposits of unallotted current pay and allowances during that duty as provided in subsection (a). The Secretary shall prescribe regulations establishing standards and procedures for the administration of this subsection.

(g) In this section:

(1) The term ''missing status'' has the meaning given that term in section 551(2) of title 37.

(2) The term ''Vietnam conflict'' means the period beginning on February 28, 1961, and ending on May 7, 1975.

(3) The term ''Persian Gulf conflict'' means the period beginning on January 16, 1991, and ending on the date thereafter prescribed by Presidential proclamation or by law.

(Aug. 10, 1956, ch. 1041, 70A Stat. 80; Pub. L. 89–538, § 1(1), Aug. 14, 1966, 80 Stat. 347; Pub. L. 90–122, § 1, Nov. 3, 1967, 81 Stat. 361; Pub. L. 91–200, Feb. 26, 1970, 84 Stat. 16; Pub. L. 98–525, title XIV, § 1405(20), Oct. 19, 1984, 98 Stat. 2623; Pub. L. 99–661, div. A, title XIII, § 1343(a)(3), Nov. 14, 1986, 100 Stat. 3992; Pub. L. 102–25, title III, § 310, Apr. 6, 1991, 105 Stat. 84; Pub. L. 102–190, div. A, title VI, § 639, Dec. 5, 1991, 105 Stat. 1384.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1035(a)	10:908(a) (less words after last semicolon). 34:937 (less words after last semicolon).	July 15, 1954, ch. 513, §§ 1–3, 68 Stat. 485.
1035(b)	10:908b (1st 20, and last 13, words). 34:938 (1st 20, and last 13, words).	
1035(c)	10:908a (words after last semicolon). 10:908b (less 1st 20, and last 13, words). 34:937 (words after last semicolon). 34:938 (less 1st 20, and last 13, words).	
1035(d)	10:908c. 34:939.	

In subsection (a), the words ''in amounts of $5 or more'' are substituted for the words ''in sums not less than $5''. 10:908a (words before 1st semicolon of last sentence) and 34:937 (words before 1st semicolon of last sentence) are omitted as covered by subsection (c).

In subsection (b), the word ''accrues'' is substituted for the words ''shall be paid''.

In subsection (c), the words ''not less than $5'' are omitted as surplusage.

AMENDMENTS

1991—Subsec. (b). Pub. L. 102–190, § 639(a), substituted '', the Persian Gulf conflict, or a contingency operation'' for ''or during the Persian Gulf conflict'' before period at end of second sentence and struck out at end ''For purposes of this subsection, the Vietnam conflict begins on February 28, 1961, and ends on May 7, 1975, and the Persian Gulf conflict begins on January 16, 1991, and ends on the date thereafter prescribed by Presidential proclamation or by law.''

Pub. L. 102–25, § 310(a), (c)(1), struck out '', as defined in section 551(2) of title 37,'' after ''missing status'', inserted ''or during the Persian Gulf conflict'' before period at end of second sentence, and substituted ''May 7, 1975, and the Persian Gulf conflict begins on January 16, 1991, and ends on the date thereafter prescribed by Presidential proclamation or by law'' for ''the date designated by the President by Executive order as the date of the termination of combatant activities in Vietnam''.

Subsec. (e). Pub. L. 102–25, § 310(c)(2), struck out ''(as defined in section 551(2) of title 37)'' after ''in a missing status''.

Subsec. (f). Pub. L. 102–190, § 639(b), added subsec. (f) and redesignated former subsec. (f) as (g).

Pub. L. 102–25, § 310(b), added subsec. (f).

Subsec. (g). Pub. L. 102–190, § 639(b)(1), (c), redesignated subsec. (f) as (g) and amended it generally. Prior to amendment, subsec. (g) read as follows: ''In this section, the term 'missing status' has the meaning given such term in section 551(2) of title 37.''

1986—Subsec. (a). Pub. L. 99–661 substituted ''armed forces'' for ''armed force''.

1984—Subsec. (b). Pub. L. 98–525 substituted ''percent'' for ''per centum'', ''subsection'' for ''Act'' after ''paid under this'', and ''90'' for ''ninety''.

1970—Subsec. (b). Pub. L. 91–200 permitted accrual of interest on savings above $10,000 ceiling in case of soldiers involved in Vietnam conflicts who have made deposits on or after Sept. 1, 1966, and who are in missing status contemplated by section 551(2) of Title 37, and set out duration of Vietnam conflict as starting Feb. 28, 1961, and ending on the date that the President may designate by Executive order.

1967—Subsec. (e). Pub. L. 90–122 added subsec. (e).

1966—Subsec. (a). Pub. L. 89–538 permitted not only enlisted personnel but any member of the armed forces, provided he is on permanent duty outside the United States, to participate in the savings program organized under this section and changed the fund into which such savings deposits are made.

Subsec. (b). Pub. L. 89–538 changed rate of interest from 4 per centum per annum to a rate prescribed by the President, not to exceed 10 per centum per annum, did away with the necessity that amounts be on deposit for six months or more, set a maximum of $10,000 upon which interest shall be paid, and provided for termination of interest 90 days after the member's return to the United States or its possessions.

Subsec. (c). Pub. L. 89–538 substituted provisions that, unless changed by joint regulations of the Secretaries concerned, payments of deposits and interest may not be made to the individual while stationed outside of the United States, for provisions that payment of deposits and interest could be made only to the member upon discharge, or before discharge as prescribed by the Secretary concerned, or to the member's heirs or legal representatives.

Subsec. (d). Pub. L. 89–538 reenacted subsec. (d) substantially without change.

EFFECTIVE DATE OF 1967 AMENDMENT

Pub. L. 90–122, § 2, Nov. 3, 1967, 81 Stat. 361, provided that: ''This Act [amending this section] becomes effective as of September 1, 1966.''

SAVINGS PROGRAM FOR OVERSEAS PERSONNEL

Pub. L. 101–510, div. A, title XI, § 1114, Nov. 5, 1990, 104 Stat. 1636, as amended by Pub. L. 102–25, title III, § 314(1), (3), Apr. 6, 1991, 105 Stat. 86, directed the Secretary of Defense to prescribe regulations establishing standards and procedures for the administration of a program to authorize members of the Armed Forces serving outside the United States during the Persian Gulf conflict to make deposits of unallotted current pay and allowances and to earn interest under this section.

ADJUSTMENT OF DEPOSIT ACCOUNTS OF CERTAIN ENLISTED MEN

Pub. L. 89–738, Nov. 2, 1966, 80 Stat. 1165, provided: ''That the Secretary of a military department or his designee, shall adjust the deposit account of any enlisted member or former enlisted member of the Army, Navy, Air Force, or Marine Corps, as the case may be, who, after July 14, 1954, and before the effective date of

this Act [Nov. 2, 1966], upon discharge and immediate reenlistment or retirement and immediate recall to active duty, continued, without withdrawal and redeposit, his account for deposits made under section 1035 of title 10, United States Code, or prior laws authorizing enlisted members' deposits, to show that his deposits and interest accrued thereon were withdrawn and redeposited on the date of such reenlistment or recall to active duty.

''SEC. 2. The Secretary of the military department concerned, or his designee, shall pay to a former enlisted member described in section 1 of this Act any amount found due as a result of the adjustment prescribed by that section if he submits an application within two years following the date of enactment of this Act [Nov. 2, 1966]. If the member is currently serving on active duty and has an active deposit account, the amount due him will automatically be credited to such account. In the case of a deceased member, application under this section shall be made within two years following the date of enactment of this Act [Nov. 2, 1966] by the person determined to be eligible under section 2771 of Title 10, United States Code.

''SEC. 3. All payments heretofore made which would, but for the fact of such payment, be payable under this Act are validated. However, if such a payment has been repaid to the United States, the fact of payment shall not affect entitlement under this Act.''

RATES OF INTEREST ON DEPOSITS MADE BEFORE AUG. 14, 1966

Pub. L. 89–538, § 2, Aug. 14, 1966, 80 Stat. 347, provided that:

''(a) Notwithstanding the first section of this Act [amending this section], an amount on deposit under section 1035 of title 10, United States Code, on the date of enactment of this Act [Aug. 14, 1966], shall accrue interest at the rate and under the conditions in effect on the day before the date of enactment of this Act [Aug. 14, 1966], until the member's current enlistment terminates or earlier, as may be jointly prescribed by the Secretaries concerned. However, a member who is on a permanent duty assignment outside the United States or its possessions on the date of enactment of this Act [Aug. 14, 1966], or who reports for that duty on or after that date but before the termination of his current enlistment, will be entitled to interest on such deposit, on and after that date, at the rate and under the conditions prescribed pursuant to section 1 [amending this section]. Payments of deposits, and interest thereon, may be made to the member's heirs or legal representatives.

''(b) Any amounts deposited between May 4, 1966, and the date of enactment of this Act [Aug. 14, 1966] while a member was assigned to permanent duty within the United States and its possessions, and any amounts deposited between May 4, 1966, and the date of enactment of this Act [Aug. 14, 1966] by a member on permanent duty assignment outside the United States and its possessions which are in excess of his unallotted pay and allowances for that period, shall accrue interest at the rate in effect before enactment of this Act.''

EXTENSION OF COVERAGE TO PUBLIC HEALTH SERVICE AND COAST AND GEODETIC SURVEY PERSONNEL; RULES AND REGULATIONS

Pub. L. 89–538, § 3(c), Aug. 14, 1966, 80 Stat. 348, provided that: ''Regulations prescribed by the Secretary of Commerce and the Secretary of Health, Education, and Welfare [now Health and Human Services] under subsections (a) and (b) [extending savings deposits benefits to commissioned officers of the Public Health Service and the Coast and Geodetic Survey (now the National Oceanic and Atmospheric Administration), respectively] shall be prescribed jointly with regulations prescribed by the Secretaries concerned under section 1035 of title 10, United States Code.''

PUBLIC HEALTH SERVICE

Authority vested by this section in ''the Secretary concerned'' to be exercised with respect to commissioned officers of the Public Health Service, by the Secretary of Health and Human Services or his designee, see section 213a of Title 42, The Public Health and Welfare.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Authority vested by this chapter in ''the Secretary concerned'' to be exercised, with respect to commissioned officer corps of the National Oceanic and Atmospheric Administration, by Secretary of Commerce or Secretary's designee, see section 3071 of Title 33, Navigation and Navigable Waters.

EX. ORD. NO. 11298. INTEREST RATE

Ex. Ord. No. 11298, Aug. 14, 1966, 31 F.R. 10915, provided:

By virtue of the authority vested in me by Section 1035 of Title 10 of the United States Code, as amended by the Act of August 14, 1966, I hereby prescribe that amounts deposited by members of the uniformed services under that Section shall accrue interest at the rate of ten percent per annum, compounded quarterly.

This order shall be effective September 1, 1966.

LYNDON B. JOHNSON.

[§ 1036. Repealed. Pub. L. 113–66, div. A, title VI, § 621(a)(2)(A), Dec. 26, 2013, 127 Stat. 783]

Section, added Pub. L. 86–160, § 1(1), Aug. 14, 1959, 73 Stat. 358; amended Pub. L. 98–94, title IX, § 913(a), Sept. 24, 1983, 97 Stat. 640, provided for transportation and travel allowances for escorts for dependents of members.

§ 1037. Counsel before foreign judicial tribunals and administrative agencies; court costs and bail

(a) Under regulations to be prescribed by him, the Secretary concerned may employ counsel, and pay counsel fees, court costs, bail, and other expenses incident to the representation, before the judicial tribunals and administrative agencies of any foreign nation, of persons subject to the Uniform Code of Military Justice and of persons not subject to the Uniform Code of Military Justice who are employed by or accompanying the armed forces in an area outside the United States and the territories and possessions of the United States, the Northern Mariana Islands, and the Commonwealth of Puerto Rico. So far as practicable, these regulations shall be uniform for all armed forces.

(b) The person on whose behalf a payment is made under this section is not liable to reimburse the United States for that payment, unless he is responsible for forfeiture of bail provided under subsection (a).

(c) Appropriations available to the military department concerned or the Department of Homeland Security, as the case may be, for the pay of persons under its jurisdiction may be used to carry out this section.

(Added Pub. L. 85–861, § 1(24)(A), Sept. 2, 1958, 72 Stat. 1445; amended Pub. L. 96–513, title I, § 511(31), Dec. 12, 1980, 94 Stat. 2922; Pub. L. 99–145, title VI, § 681(a), Nov. 8, 1985, 99 Stat. 665; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1037(a)	50:751. 50:752.	July 24, 1956, ch. 689 (less § 3), 70 Stat. 630.

HISTORICAL AND REVISION NOTES—CONTINUED

Revised section	Source (U.S. Code)	Source (Statutes at Large)
1037(b)	50:754.	
1037(c)	50:755.	

In subsection (a), the words "Under regulations to be prescribed by him" and the last sentence are substituted for 50:752.

In subsection (b), the words "subject to the Uniform Code of Military Justice" are omitted as surplusage.

In subsection (c), the words "the terms and provisions of" are omitted as surplusage.

REFERENCES IN TEXT

The Uniform Code of Military Justice, referred to in subsec. (a), is classified to chapter 47 (§ 801 et seq.) of this title.

AMENDMENTS

2002—Subsec. (c). Pub. L. 107–296 substituted "Department of Homeland Security" for "Department of Transportation".

1985—Subsec. (a). Pub. L. 99–145 provided for payment of expenses for legal representation of civilians overseas.

1980—Subsec. (c). Pub. L. 96–513 substituted "Department of Transportation" for "Department of the Treasury".

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1985 AMENDMENT

Pub. L. 99–145, title VI, § 681(b), Nov. 8, 1985, 99 Stat. 665, provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to costs incurred after September 30, 1985."

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

§ 1038. Service credit: certain service in Women's Army Auxiliary Corps

In computing years of active service of any female member of the armed forces, there shall be credited for all purposes, except the right to promotion, in addition to any other service that may be credited, all active service performed in the Women's Army Auxiliary Corps after May 13, 1942, and before September 30, 1943, if that member performed active service in the armed forces after September 29, 1943. Service as an officer in the Women's Army Auxiliary Corps shall be credited as active service in the status of a commissioned officer, and service as an enrolled member of the Corps shall be credited as active service in the status of an enlisted member.

(Added Pub. L. 86–142, § 1(1), Aug. 7, 1959, 73 Stat. 289.)

ELECTION OF PENSION OR COMPENSATION

Pub. L. 86–142, § 2, Aug. 7, 1959, 73 Stat. 289, provided that a person entitled to a pension or compensation under any law administered by the Veterans' Administration, based on the active service described in section 1 of Pub. L. 86–142, which added section 1038 to Title 10, Armed Forces, could elect within 1 year after Aug. 7, 1959 to receive that pension or compensation in lieu of any compensation under the Federal Employees' Compensation Act; that such an election is irrevocable; and that the election does not entitle that person to the pension or compensation for any period before the date of election.

BACK PAY OR ALLOWANCES

Pub. L. 86–142, § 3, Aug. 7, 1959, 73 Stat. 289, provided that: "No person is entitled to back pay or allowances because of any service credited under section 1 of this Act [enacting this section]."

§ 1039. Crediting of minority service

For the purpose of determining eligibility for retirement or transfer to the Fleet Reserve or Fleet Marine Corps Reserve, entitlement to retired or retainer pay, and years of service in computing retired or retainer pay of a member of the armed forces, any service which would be creditable but for the fact that it was performed by him under an enlistment or induction entered into before he attained the age prescribed by law for that enlistment or induction, shall be credited.

(Added Pub. L. 87–165, § 1(1), Aug. 25, 1961, 75 Stat. 401.)

EFFECTIVE DATE

Pub. L. 87–165, § 2, Aug. 25, 1961, 75 Stat. 401, provided that: "Section 1 [enacting this section] applies to service performed, and retirements or transfers to the Fleet Reserve or the Fleet Marine Corps Reserve effected, before and after this Act takes effect [Aug. 25, 1961]."

§ 1040. Transportation of dependent patients

(a)(1) Except as provided in subsection (b), if a dependent accompanying a member of the uniformed services who is stationed outside the United States or in Alaska or Hawaii and who is on active duty for a period of more than 30 days requires medical attention which is not available in the locality, transportation of the dependents at the expense of the United States is authorized to the nearest appropriate medical facility in which adequate medical care is available. On his recovery or when it is administratively determined that the patient should be removed from the medical facility involved, the dependent may be transported at the expense of the United States to the duty station of the member or to such other place determined to be appropriate under the circumstances. If a dependent is unable to travel unattended, travel and transportation allowances may be furnished to necessary attendants. The dependents and any attendants shall be furnished such travel and transportation allowances as specified in regulations prescribed under section 464 of title 37. Travel expenses authorized by this section may include reimbursement for necessary local travel in the vicinity of the medical facility involved. The transportation and travel expenses authorized by this section may be paid in advance.

(2)(A) Except as provided by subparagraph (E), for purposes of paragraph (1), required medical attention of a dependent includes, in the case of a dependent authorized to accompany a member at a location described in that paragraph, obstetrical anesthesia services for childbirth equivalent to the obstetrical anesthesia services

for childbirth available in a military treatment facility in the United States.

(B) In the case of a dependent at a remote location outside the continental United States who elects services described in subparagraph (A) and for whom air transportation would be needed to travel under paragraph (1) to the nearest appropriate medical facility in which adequate medical care is available, the Secretary may authorize the dependent to receive transportation under that paragraph to the continental United States and be treated at the military treatment facility that can provide appropriate obstetrical services that is nearest to the closest port of entry into the continental United States from such remote location.

(C) The second through sixth sentences of paragraph (1) shall apply to a dependent provided transportation by reason of this paragraph.

(D) The total cost incurred by the United States for the provision of transportation and expenses (including per diem) with respect to a dependent by reason of this paragraph may not exceed the cost the United States would otherwise incur for the provision of transportation and expenses with respect to that dependent under paragraph (1) if the transportation and expenses were provided to that dependent without regard to this paragraph.

(E) The Secretary may not provide transportation to a dependent under this paragraph if the Secretary determines that—

(i) the dependent would otherwise receive obstetrical anesthesia services at a military treatment facility; and

(ii) such facility, in carrying out the required number of necessary obstetric cases, would not maintain competency of its obstetrical staff unless the facility provides such services to such dependent.

(b) This section does not authorize transportation and travel expenses for a dependent for elective surgery which is determined to be not medically indicated by a medical authority designated under joint regulations to be prescribed under this section.

(c) In this section, the term ''dependent'' has the meaning given that term in section 1072 of this title.

(Added Pub. L. 89–140, §1(1), Aug. 28, 1965, 79 Stat. 579; amended Pub. L. 96–513, title V, §511(32), Dec. 12, 1980, 94 Stat. 2922; Pub. L. 98–94, title IX, §913(b), Sept. 24, 1983, 97 Stat. 640; Pub. L. 98–525, title VI, §611, title XIV, §1405(21), Oct. 19, 1984, 98 Stat. 2538, 2623; Pub. L. 99–348, title III, §304(a)(2), July 1, 1986, 100 Stat. 703; Pub. L. 99–661, div. A, title VI, §616(a), Nov. 14, 1986, 100 Stat. 3880; Pub. L. 112–81, div. A, title VII, §705, Dec. 31, 2011, 125 Stat. 1473; Pub. L. 113–66, div. A, title VI, §621(b), Dec. 26, 2013, 127 Stat. 783; Pub. L. 113–291, div. A, title X, §1071(f)(11), Dec. 19, 2014, 128 Stat. 3510; Pub. L. 114–92, div. A, title VII, §721, Nov. 25, 2015, 129 Stat. 869.)

CODIFICATION

Another section 1040 was renumbered section 1041 of this title.

Another section 1040, related to free postage from combat zones, was added by Pub. L. 89–132, §9(a), Aug. 21, 1965, 79 Stat. 548, prior to repeal by Pub. L. 89–315, §3(a), Nov. 1, 1965, 79 Stat. 1164. See section 3401 et seq. of Title 39, Postal Service.

AMENDMENTS

2015—Subsec. (a)(2)(F). Pub. L. 114–92 struck out subpar. (F) which read as follows: ''The authority under this paragraph shall expire on September 30, 2016.''

2014—Subsec. (a)(1). Pub. L. 113–291 substituted ''37.'' for ''37..''.

2013—Subsec. (a)(1). Pub. L. 113–66, §621(b)(1), substituted ''travel and transportation allowances may be furnished to necessary attendants. The dependents and any attendants shall be furnished such travel and transportation allowances as specified in regulations prescribed under section 464 of title 37.'' for ''round-trip transportation and travel expenses may be furnished necessary attendants. In addition to transportation of a dependent at the expense of the United States authorized under this subsection, reasonable travel expenses incurred in connection with the transportation of the dependent may be paid at the expense of the United States''.

Subsec. (d). Pub. L. 113–66, §621(b)(2), struck out subsec. (d) which read as follows: ''Transportation and travel expenses authorized by this section shall be furnished in accordance with joint regulations to be prescribed by the Secretary of Transportation, the Secretary of Defense, the Secretary of Commerce, and the Secretary of Health and Human Services, which shall require the use of transportation facilities of the United States insofar as practicable.''

2011—Subsec. (a). Pub. L. 112–81 designated existing provisions as par. (1) and added par. (2).

1986—Subsec. (a). Pub. L. 99–661 substituted ''In addition to transportation of a dependent at the expense of the United States authorized under this subsection, reasonable travel expenses incurred in connection with the transportation of the dependent may be paid at the expense of the United States. Travel expenses authorized by this section may include reimbursement for necessary local travel in the vicinity of the medical facility involved. The transportation and travel expenses authorized by this section may be paid in advance'' for '', and such expenses may be paid in advance''.

Subsec. (c). Pub. L. 99–348 substituted ''In this section, the term 'dependent' has the meaning given that term in'' for '''Dependent' and 'uniformed services' in this section have the meanings of those terms as defined in''.

1984—Subsec. (a). Pub. L. 98–525, §1405(21), substituted ''30'' for ''thirty''.

Pub. L. 98–525, §611, made provisions of section applicable to a dependent accompanying a member of the uniformed services stationed in Alaska or Hawaii.

1983—Subsec. (a). Pub. L. 98–94 inserted '', and such expenses may be paid in advance'' after ''attendants''.

1980—Subsec. (d). Pub. L. 96–513 substituted ''Secretary of Transportation'' and ''Secretary of Health and Human Services'' for ''Secretary of the Treasury'' and ''Secretary of Health, Education, and Welfare'', respectively.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–661, div. A, title VI, §616(b), Nov. 14, 1986, 100 Stat. 3880, provided that: ''The amendment made by subsection (a) [amending this section] shall apply only to travel performed on or after the date of the enactment of this Act [Nov. 14, 1986].''

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–525, title VI, §611, Oct. 19, 1984, 98 Stat. 2538, provided that the amendment made by that section is effective Oct. 1, 1984.

EFFECTIVE DATE OF 1983 AMENDMENT

Pub. L. 98–94, title IX, §913(c), Sept. 24, 1983, 97 Stat. 640, provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 1036 of this title] shall apply to travel performed by es-

corts or attendants of dependents on or after the date of the enactment of this Act [Sept. 24, 1983].''

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

§1041. Replacement of certificate of discharge

If satisfactory proof is presented that a person who was discharged honorably or under honorable conditions has lost his certificate of discharge from an armed force or that it was destroyed without his procurement or connivance, the Secretary concerned may give that person, or his surviving spouse, a certificate of that discharge, indelibly marked to show that it is a certificate in place of the lost or destroyed certificate. A certificate given under this section may not be accepted as a voucher for the payment of a claim against the United States for pay, bounty, or other allowance, or as evidence in any other case.

(Added Pub. L. 90–235, §7(a)(2)(A), Jan. 2, 1968, 81 Stat. 762, §1040; renumbered §1041, Pub. L. 96–513, title V, §511(33)(A), Dec. 12, 1980, 94 Stat. 2922.)

§1042. Copy of certificate of service

A fee for a copy of a certificate showing service in the armed forces may not be charged to—

(1) a person discharged or released from the armed forces honorably or under honorable conditions;

(2) the next of kin of the person; or

(3) a legal representative of the person.

(Added Pub. L. 97–258, §2(b)(2)(B), Sept. 13, 1982, 96 Stat. 1052.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1042	31:483b.	June 19, 1956, ch. 409, 70 Stat. 297.

The words ''armed forces'' are substituted for ''Army, Navy, Air Force, Marine Corps, or Coast Guard'' because of 10:101(4). The words ''honorably or'' are added for consistency with 10:1040.

§1043. Service credit: service in the National Oceanic and Atmospheric Administration or the Public Health Service

Active commissioned service in the National Oceanic and Atmospheric Administration or the Public Health Service shall be credited as active commissioned service in the armed forces for purposes of determining the retirement eligibility and computing the retired pay of a member of the armed forces.

(Added Pub. L. 98–94, title X, §1007(b)(1), Sept. 24, 1983, 97 Stat. 662.)

§1044. Legal assistance

(a) Subject to the availability of legal staff resources, the Secretary concerned may provide legal assistance in connection with their personal civil legal affairs to the following persons:

(1) Members of the armed forces who are on active duty.

(2) Members and former members entitled to retired or retainer pay or equivalent pay.

(3) Officers of the commissioned corps of the Public Health Service who are on active duty or entitled to retired or equivalent pay.

(4) Members of reserve components not covered by paragraph (1) or (2) following release from active duty under a call or order to active duty for more than 30 days issued under a mobilization authority (as determined by the Secretary), for a period of time (prescribed by the Secretary) that begins on the date of the release and is not less than twice the length of the period served on active duty under that call or order to active duty.

(5) Dependents of members and former members described in paragraphs (1), (2), (3), and (4).

(6) Survivors of a deceased member or former member described in paragraphs (1), (2), (3), and (4) who were dependents of the member or former member at the time of the death of the member or former member, except that the eligibility of such survivors shall be determined pursuant to regulations prescribed by the Secretary concerned.

(7) Civilian employees of the Federal Government serving in locations where legal assistance from non-military legal assistance providers is not reasonably available, except that the eligibility of civilian employees shall be determined pursuant to regulations prescribed by the Secretary concerned.

(b) Under such regulations as may be prescribed by the Secretary concerned, the Judge Advocate General (as defined in section 801(1) of this title) under the jurisdiction of the Secretary, and within the Marine Corps the Staff Judge Advocate to the Commandant of the Marine Corps, is responsible for the establishment and supervision of legal assistance programs under this section.

(c) This section does not authorize legal counsel to be provided to represent a member or former member of the uniformed services described in subsection (a), or the dependent of such a member or former member, in a legal proceeding if the member or former member can afford legal fees for such representation without undue hardship.

(d)(1) Notwithstanding any law regarding the licensure of attorneys, a judge advocate or civilian attorney who is authorized to provide military legal assistance is authorized to provide that assistance in any jurisdiction, subject to such regulations as may be prescribed by the Secretary concerned.

(2) Military legal assistance may be provided only by a judge advocate or a civilian attorney who is a member of the bar of a Federal court or of the highest court of a State and, for purposes of service as a Special Victims' Counsel under section 1044e of this title, satisfies the additional qualifications and training requirements specified in subsection (d) of such section.

(3) In this subsection, the term ''military legal assistance'' includes—

(A) legal assistance provided under this section; and

(B) legal assistance contemplated by sections 1044a, 1044b, 1044c, 1044d, 1044e, 1565b(a)(1)(A), and 2894(b)(4) of this title.

(e) The Secretary concerned shall define ''dependent'' for the purposes of this section.

(Added Pub. L. 98–525, title VI, § 651(a), Oct. 19, 1984, 98 Stat. 2549; amended Pub. L. 104–201, div. A, title V, § 583, Sept. 23, 1996, 110 Stat. 2538; Pub. L. 106–398, § 1 [[div. A], title V, § 524(a), (b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–108; Pub. L. 109–163, div. A, title V, § 555, Jan. 6, 2006, 119 Stat. 3265; Pub. L. 110–181, div. A, title V, § 541, Jan. 28, 2008, 122 Stat. 114; Pub. L. 111–84, div. A, title V, § 513, Oct. 28, 2009, 123 Stat. 2282; Pub. L. 112–239, div. A, title V, § 531(d)(2), Jan. 2, 2013, 126 Stat. 1726; Pub. L. 113–66, div. A, title XVII, § 1716(a)(3)(A), (B), Dec. 26, 2013, 127 Stat. 969; Pub. L. 113–291, div. A, title X, § 1071(f)(12), Dec. 19, 2014, 128 Stat. 3510; Pub. L. 114–92, div. A, title V, § 535(c), Nov. 25, 2015, 129 Stat. 816; Pub. L. 116–92, div. B, title XXX, § 3022(b), Dec. 20, 2019, 133 Stat. 1934.)

AMENDMENTS

2019—Subsec. (d)(3)(B). Pub. L. 116–92 substituted ''1565b(a)(1)(A), and 2894(b)(4)'' for ''and 1565b(a)(1)(A)''.

2015—Subsec. (d)(2). Pub. L. 114–92 substituted ''satisfies the additional qualifications and training requirements specified in subsection (d)'' for ''meets the additional qualifications specified in subsection (d)(2)''.

2014—Subsec. (d)(2). Pub. L. 113–291 substituted ''such section.'' for ''such section..''.

2013—Subsec. (b). Pub. L. 112–239 inserted '', and within the Marine Corps the Staff Judge Advocate to the Commandant of the Marine Corps,'' after ''jurisdiction of the Secretary''.

Subsec. (d)(2). Pub. L. 113–66, § 1716(a)(3)(A), inserted before period at end ''and, for purposes of service as a Special Victims' Counsel under section 1044e of this title, meets the additional qualifications specified in subsection (d)(2) of such section.''

Subsec. (d)(3)(B). Pub. L. 113–66, § 1716(a)(3)(B), substituted ''1044d, 1044e, and 1565b(a)(1)(A)'' for ''and 1044d''.

2009—Subsec. (a)(4). Pub. L. 111–84 substituted ''the Secretary), for a period of time (prescribed by the Secretary)'' for ''the Secretary of Defense), for a period of time, prescribed by the Secretary of Defense,''.

2008—Subsec. (a)(6), (7). Pub. L. 110–181 added pars. (6) and (7).

2006—Subsecs. (d), (e). Pub. L. 109–163 added subsec. (d) and redesignated former subsec. (d) as (e).

2000—Subsec. (a)(4). Pub. L. 106–398, § 1 [[div. A], title V, § 524(a)(2)], added par. (4). Former par. (4) redesignated (5).

Subsec. (a)(5). Pub. L. 106–398, § 1 [[div. A], title V, § 524(b)], substituted ''(3), and (4)'' for ''and (3)''.

Pub. L. 106–398, § 1 [[div. A], title V, § 524(a)(1)], redesignated par. (4) as (5).

1996—Subsec. (a). Pub. L. 104–201, § 583(d)(1), substituted ''to the following persons:'' for ''to—'' in introductory provisions.

Subsec. (a)(1). Pub. L. 104–201, § 583(c), (d)(2), (3), substituted ''Members'' for ''members'', struck out ''under his jurisdiction'' after ''armed forces'', and substituted a period for the semicolon at end.

Subsec. (a)(2). Pub. L. 104–201, § 583(c), (d)(2), (4), substituted ''Members and'' for ''members and'', struck out ''under his jurisdiction'' after ''former members'', and substituted a period for ''; and'' at end.

Subsec. (a)(3), (4). Pub. L. 104–201, § 583(a), added pars. (3) and (4) and struck out former par. (3) which read as follows: ''dependents of members and former members described in clauses (1) and (2).''

Subsec. (c). Pub. L. 104–201, § 583(b), substituted ''uniformed services described in subsection (a)'' for ''armed forces'' and inserted ''such'' after ''dependent of''.

REGULATIONS

Pub. L. 106–398, § 1 [[div. A], title V, § 524(c)], Oct. 30, 2000, 114 Stat. 1654, 1654A–108, provided that: ''Regulations to implement the amendments made by this section [amending this section] shall be prescribed not later than 180 days after the date of the enactment of this Act [Oct. 30, 2000].''

LEGAL COUNSEL FOR VICTIMS OF ALLEGED DOMESTIC VIOLENCE OFFENSES

Pub. L. 116–92, div. A, title V, § 548, Dec. 20, 2019, 133 Stat. 1378, provided that:

''(a) IN GENERAL.—Not later than December 1, 2020, the Secretary of Defense shall carry out a program to provide legal counsel (referred to in this section as 'Counsel') to victims of alleged domestic violence offenses who are otherwise eligible for military legal assistance under section 1044 of title 10, United States Code.

''(b) FORM OF IMPLEMENTATION.—The program required under subsection (a) may be carried out as part of another program of the Department of Defense or through the establishment of a separate program.

''(c) TRAINING AND TERMS.—The Secretary of Defense shall ensure that Counsel—

''(1) receive specialized training in legal issues commonly associated with alleged domestic violence offenses; and

''(2) to the extent practicable, serve as Counsel for a period of not less than 2 years.

''(d) ATTORNEY-CLIENT RELATIONSHIP.—The relationship between a Counsel and a victim in the provision of legal advice and assistance shall be the relationship between an attorney and client.

''(e) PARALEGAL SUPPORT.—The Secretary of Defense shall ensure that sufficient trained paralegal support is provided to Counsel under the program.

''(f) REPORT REQUIRED.—

''(1) IN GENERAL.—Not later than 120 days after the date of the enactment of this Act [Dec. 20, 2019], the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the implementation of the program under subsection (a).

''(2) ELEMENTS.—The report required under paragraph (1) shall include the following:

''(A) A description and assessment of the manner in which the Department of Defense will implement the program required under subsection (a).

''(B) An explanation of whether the program will be carried out as part of another program of the Department or through the establishment of a separate program.

''(C) A comprehensive description of the additional personnel, resources, and training that will be required to implement the program, including identification of the specific number of additional billets that will be needed to staff the program.

''(D) Recommendations for any modifications to law that may be necessary to effectively and efficiently implement the program.

''(g) ALLEGED DOMESTIC VIOLENCE OFFENSE DEFINED.—In this section, the term 'alleged domestic violence offense' means any allegation of—

''(1) a violation of section 928(b), 928b(1), 928b(5), or 930 of title 10, United States Code (article 128(b), 128b(1), 128b(5), or 130 of the Uniform Code of Military Justice), when committed against a spouse, intimate partner, or immediate family member;

''(2) a violation of any other provision of subchapter X of chapter 47 of such title (the Uniform Code of Military Justice), when committed against a spouse, intimate partner, or immediate family member; or

''(3) an attempt to commit an offense specified in paragraph (1) or (2) as punishable under section 880 of such title (article 80 of the Uniform Code of Military Justice).''

§ 1044a. Authority to act as notary

(a) The persons named in subsection (b) have the general powers of a notary public and of a consul of the United States in the performance of all notarial acts to be executed by any of the following:

(1) Members of any of the uniformed services.

(2) Other persons eligible for legal assistance under the provisions of section 1044 of this title or regulations of the Department of Defense.

(3) Persons serving with, employed by, or accompanying the armed forces outside the United States and outside the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.

(4) Other persons subject to the Uniform Code of Military Justice (chapter 47 of this title) outside the United States.

(b) Persons with the powers described in subsection (a) are the following:

(1) All judge advocates, including reserve judge advocates when not in a duty status.

(2) All civilian attorneys serving as legal assistance attorneys.

(3) All adjutants, assistant adjutants, and personnel adjutants, including reserve members when not in a duty status.

(4) All other members of the uniformed services, including reserve members when not in a duty status, who are designated by regulations of the uniformed services or by statute to have those powers.

(5) For the performance of notarial acts at locations outside the United States, all employees of a military department or the Coast Guard who are designated by regulations of the Secretary concerned or by statute to have those powers for exercise outside the United States.

(6) All civilian paralegals serving at military legal assistance offices, supervised by a military legal assistance counsel (as defined in section 1044d(g) of this title).

(c) No fee may be paid to or received by any person for the performance of a notarial act authorized in this section.

(d) The signature of any such person acting as notary, together with the title of that person's offices, is prima facie evidence that the signature is genuine, that the person holds the designated title, and that the person is authorized to perform a notarial act.

(Added Pub. L. 101–510, div. A, title V, § 551(a)(1), Nov. 5, 1990, 104 Stat. 1566; amended Pub. L. 104–201, div. A, title V, § 573, Sept. 23, 1996, 110 Stat. 2534; Pub. L. 107–107, div. A, title XI, § 1103, Dec. 28, 2001, 115 Stat. 1236; Pub. L. 114–328, div. A, title V, § 523(b), Dec. 23, 2016, 130 Stat. 2116; Pub. L. 116–259, title II, § 205(b)(1), Dec. 23, 2020, 134 Stat. 1167.)

AMENDMENTS

2020—Subsec. (a)(1). Pub. L. 116–259, § 205(b)(1)(A), substituted ''uniformed services'' for ''armed forces''.

Subsec. (b)(4). Pub. L. 116–259, § 205(b)(1)(B), substituted ''uniformed services'' for ''armed forces'' in two places.

2016—Subsec. (b)(6). Pub. L. 114–328 added par. (6).

2001—Subsec. (b)(2). Pub. L. 107–107, § 1103(a), substituted ''legal assistance attorneys'' for ''legal assistance officers''.

Subsec. (b)(5). Pub. L. 107–107, § 1103(b), added par. (5).

1996—Subsec. (b)(1). Pub. L. 104–201, § 573(1), substituted '', including reserve judge advocates when not in a duty status'' for ''on active duty or performing inactive-duty training''.

Subsec. (b)(3). Pub. L. 104–201, § 573(2), substituted ''adjutants, including reserve members when not in a duty status'' for ''adjutants on active duty or performing inactive-duty training''.

Subsec. (b)(4). Pub. L. 104–201, § 573(3), substituted ''members of the armed forces, including reserve members when not in a duty status,'' for ''persons on active duty or performing inactive-duty training''.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 1044b. Military powers of attorney: requirement for recognition by States

(a) INSTRUMENTS TO BE GIVEN LEGAL EFFECT WITHOUT REGARD TO STATE LAW.—A military power of attorney—

(1) is exempt from any requirement of form, substance, formality, or recording that is provided for powers of attorney under the laws of a State; and

(2) shall be given the same legal effect as a power of attorney prepared and executed in accordance with the laws of the State concerned.

(b) MILITARY POWER OF ATTORNEY.—For purposes of this section, a military power of attorney is any general or special power of attorney that is notarized in accordance with section 1044a of this title or other applicable State or Federal law.

(c) STATEMENT TO BE INCLUDED.—(1) Under regulations prescribed by the Secretary concerned, each military power of attorney shall contain a statement that sets forth the provisions of subsection (a).

(2) Paragraph (1) shall not be construed to make inapplicable the provisions of subsection (a) to a military power of attorney that does not include a statement described in that paragraph.

(d) STATE DEFINED.—In this section, the term ''State'' includes the District of Columbia, the Commonwealth of Puerto Rico, and a possession of the United States.

(Added Pub. L. 103–160, div. A, title V, § 574(a), Nov. 30, 1993, 107 Stat. 1674.)

§ 1044c. Advance medical directives of members and dependents: requirement for recognition by States

(a) INSTRUMENTS TO BE GIVEN LEGAL EFFECT WITHOUT REGARD TO STATE LAW.—An advance medical directive executed by a person eligible for legal assistance—

(1) is exempt from any requirement of form, substance, formality, or recording that is provided for advance medical directives under the laws of a State; and

(2) shall be given the same legal effect as an advance medical directive prepared and executed in accordance with the laws of the State concerned.

(b) ADVANCE MEDICAL DIRECTIVES.—For purposes of this section, an advance medical directive is any written declaration that—

(1) sets forth directions regarding the provision, withdrawal, or withholding of life-prolonging procedures, including hydration and sustenance, for the declarant whenever the declarant has a terminal physical condition or is in a persistent vegetative state; or

(2) authorizes another person to make health care decisions for the declarant, under circumstances stated in the declaration, whenever the declarant is incapable of making informed health care decisions.

(c) STATEMENT TO BE INCLUDED.—(1) Under regulations prescribed by the Secretary concerned, an advance medical directive prepared by an attorney authorized to provide legal assistance shall contain a statement that sets forth the provisions of subsection (a).

(2) Paragraph (1) shall not be construed to make inapplicable the provisions of subsection (a) to an advance medical directive that does not include a statement described in that paragraph.

(d) STATES NOT RECOGNIZING ADVANCE MEDICAL DIRECTIVES.—Subsection (a) does not make an advance medical directive enforceable in a State that does not otherwise recognize and enforce advance medical directives under the laws of the State.

(e) DEFINITIONS.—In this section:

(1) The term ''State'' includes the District of Columbia, the Commonwealth of Puerto Rico, and a possession of the United States.

(2) The term ''person eligible for legal assistance'' means a person who is eligible for legal assistance under section 1044 of this title.

(3) The term ''legal assistance'' means legal services authorized under section 1044 of this title.

(Added Pub. L. 104–106, div. A, title VII, § 749(a)(1), Feb. 10, 1996, 110 Stat. 388.)

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–106, div. A, title VII, § 749(b), Feb. 10, 1996, 110 Stat. 389, provided that: ''Section 1044c of title 10, United States Code, shall take effect on the date of the enactment of this Act [Feb. 10, 1996] and shall apply to advance medical directives referred to in that section that are executed before, on, or after that date.''

§ 1044d. Military testamentary instruments: requirement for recognition by States

(a) TESTAMENTARY INSTRUMENTS TO BE GIVEN LEGAL EFFECT.—A military testamentary instrument—

(1) is exempt from any requirement of form, formality, or recording before probate that is provided for testamentary instruments under the laws of a State; and

(2) has the same legal effect as a testamentary instrument prepared and executed in accordance with the laws of the State in which it is presented for probate.

(b) MILITARY TESTAMENTARY INSTRUMENTS.—For purposes of this section, a military testamentary instrument is an instrument that is prepared with testamentary intent in accordance with regulations prescribed under this section and that—

(1) is executed in accordance with subsection (c) by (or on behalf of) a person, as a testator, who is eligible for military legal assistance;

(2) makes a disposition of property of the testator; and

(3) takes effect upon the death of the testator.

(c) REQUIREMENTS FOR EXECUTION OF MILITARY TESTAMENTARY INSTRUMENTS.—An instrument is valid as a military testamentary instrument only if—

(1) the instrument is executed by the testator (or, if the testator is unable to execute the instrument personally, the instrument is executed in the presence of, by the direction of, and on behalf of the testator);

(2) the execution of the instrument is notarized by—

(A) a military legal assistance counsel;

(B) a person who is authorized to act as a notary under section 1044a of this title who—

(i) is not an attorney; and

(ii) is supervised by a military legal assistance counsel; or

(C) a State-licensed notary employed by a military department or the Coast Guard who is supervised by a military legal assistance counsel;

(3) the instrument is executed in the presence of at least two disinterested witnesses (in addition to the person notarizing the instrument in accordance with paragraph (2)), each of whom attests to witnessing the testator's execution of the instrument by signing it; and

(4) the instrument is executed in accordance with such additional requirements as may be provided in regulations prescribed under this section.

(d) SELF-PROVING MILITARY TESTAMENTARY INSTRUMENTS.—(1) If the document setting forth a military testamentary instrument meets the requirements of paragraph (2), then the signature of a person on the document as the testator, an attesting witness, a notary, or the presiding attorney, together with a written representation of the person's status as such and the person's military grade (if any) or other title, is prima facie evidence of the following:

(A) That the signature is genuine.

(B) That the signatory had the represented status and title at the time of the execution of the will.

(C) That the signature was executed in compliance with the procedures required under the regulations prescribed under subsection (f).

(2) A document setting forth a military testamentary instrument meets the requirements of this paragraph if it includes (or has attached to it), in a form and content required under the regulations prescribed under subsection (f), each of the following:

(A) A certificate, executed by the testator, that includes the testator's acknowledgment of the testamentary instrument.

(B) An affidavit, executed by each witness signing the testamentary instrument, that attests to the circumstances under which the testamentary instrument was executed.

(C) A notarization, including a certificate of any administration of an oath required under the regulations, that is signed by the notary or other official administering the oath.

(e) STATEMENT TO BE INCLUDED.—(1) Under regulations prescribed under this section, each military testamentary instrument shall contain a statement that sets forth the provisions of subsection (a).

(2) Paragraph (1) shall not be construed to make inapplicable the provisions of subsection (a) to a testamentary instrument that does not include a statement described in that paragraph.

(f) REGULATIONS.—Regulations for the purposes of this section shall be prescribed jointly by the Secretary of Defense and by the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Department of the Navy.

(g) DEFINITIONS.—In this section:

(1) The term ''person eligible for military legal assistance'' means a person who is eligible for legal assistance under section 1044 of this title.

(2) The term ''military legal assistance counsel'' means—

(A) a judge advocate (as defined in section 801(13) of this title); or

(B) a civilian attorney serving as a legal assistance officer under the provisions of section 1044 of this title.

(3) The term ''State'' includes the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and each possession of the United States.

(Added Pub. L. 106–398, §1 [[div. A], title V, §551(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–123; amended Pub. L. 107–296, title XVII, §1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 114–328, div. A, title V, §523(a), Dec. 23, 2016, 130 Stat. 2116.)

AMENDMENTS

2016—Subsec. (c)(2). Pub. L. 114–328, §523(a)(1), added par. (2) and struck out former par. (2) which read as follows: ''the instrument is executed in the presence of a military legal assistance counsel acting as presiding attorney;''.

Subsec. (c)(3). Pub. L. 114–328, §523(a)(2), substituted ''person notarizing the instrument in accordance with paragraph (2)'' for ''presiding attorney''.

2002—Subsec. (f). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

§ 1044e. Special Victims' Counsel for victims of sex-related offenses

(a) DESIGNATION; PURPOSES.—(1) The Secretary concerned shall designate legal counsel (to be known as ''Special Victims' Counsel'') for the purpose of providing legal assistance to an individual described in paragraph (2) who is the victim of an alleged sex-related offense, regardless of whether the report of that offense is restricted or unrestricted.

(2) An individual described in this paragraph is any of the following:

(A) An individual eligible for military legal assistance under section 1044 of this title.

(B) An individual who is—

(i) not covered under subparagraph (A);

(ii) a member of a reserve component of the armed forces; and

(iii) a victim of an alleged sex-related offense as described in paragraph (1)—

(I) during a period in which the individual served on active duty, full-time National Guard duty, or inactive-duty training; or

(II) during any period, regardless of the duty status of the individual, if the circumstances of the alleged sex-related offense have a nexus to the military service of the victim, as determined under regulations prescribed by the Secretary of Defense.

(C) A civilian employee of the Department of Defense who is not eligible for military legal assistance under section 1044(a)(7) of this title, but who is the victim of an alleged sex-related offense, and the Secretary of Defense or the Secretary of the military department concerned waives the condition in such section for the purposes of offering Special Victims' Counsel services to the employee.

(b) TYPES OF LEGAL ASSISTANCE AUTHORIZED.—The types of legal assistance authorized by subsection (a) include the following:

(1) Legal consultation regarding potential criminal liability of the victim stemming from or in relation to the circumstances surrounding the alleged sex-related offense and the victim's right to seek military defense services.

(2) Legal consultation regarding the Victim Witness Assistance Program, including—

(A) the rights and benefits afforded the victim;

(B) the role of the Victim Witness Assistance Program liaison and what privileges do or do not exist between the victim and the liaison; and

(C) the nature of communication made to the liaison in comparison to communication made to a Special Victims' Counsel or a legal assistance attorney under section 1044 of this title.

(3) Legal consultation regarding the responsibilities and support provided to the victim by the Sexual Assault Response Coordinator, a unit or installation Sexual Assault Victim Advocate, or domestic abuse advocate, to include any privileges that may exist regarding communications between those persons and the victim.

(4) Legal consultation regarding the potential for civil litigation against other parties (other than the United States).

(5) Legal consultation regarding the military justice system, including (but not limited to)—

(A) the roles and responsibilities of the trial counsel, the defense counsel, and investigators;

(B) any proceedings of the military justice process in which the victim may observe;

(C) the Government's authority to compel cooperation and testimony; and

(D) the victim's responsibility to testify, and other duties to the court.

(6) Representing the victim at any proceedings in connection with the reporting, military investigation, and military prosecution of the alleged sex-related offense.

(7) Legal consultation regarding eligibility and requirements for services available from appropriate agencies or offices for emotional and mental health counseling and other medical services;

(8) Legal consultation and assistance—

(A) in personal civil legal matters in accordance with section 1044 of this title;

(B) in any proceedings of the military justice process in which a victim can participate as a witness or other party;

(C) in understanding the availability of, and obtaining any protections offered by, civilian and military protecting or restraining orders; and

(D) in understanding the eligibility and requirements for, and obtaining, any available military and veteran benefits, such as transitional compensation benefits found in section 1059 of this title, section 1408(h) of this title, and other State and Federal victims' compensation programs.

(9) Legal consultation and assistance in connection with—

(A) any complaint against the Government, including an allegation under review by an inspector general and a complaint regarding equal employment opportunities;

(B) any request to the Government for information, including a request under section 552a of title 5 (commonly referred to as a ''Freedom of Information Act request''); and

(C) any correspondence or other communications with Congress.

(10) Legal consultation and assistance in connection with an incident of retaliation, whether such incident occurs before, during, or after the conclusion of any criminal proceedings, including—

(A) in understanding the rights and protections afforded to victims of retaliation;

(B) in the filing of complaints; and

(C) in any resulting military justice proceedings.

(11) Such other legal assistance as the Secretary of Defense (or, in the case of the Coast Guard, the Secretary of the Department in which the Coast Guard is operating) may authorize in the regulations prescribed under subsection (i).

(c) NATURE OF RELATIONSHIP.—The relationship between a Special Victims' Counsel and a victim in the provision of legal advice and assistance shall be the relationship between an attorney and client.

(d) QUALIFICATIONS.—(1) An individual may not be designated as a Special Victims' Counsel under this section unless the individual—

(A) meets the qualifications specified in section 1044(d)(2) of this title; and

(B) is certified as competent to be designated as a Special Victims' Counsel by the Judge Advocate General of the armed force in which the judge advocate is a member or by which the civilian attorney is employed, and within the Marine Corps, by the Staff Judge Advocate to the Commandant of the Marine Corps.

(2) The Secretary of Defense shall—

(A) develop a policy to standardize the time period within which a Special Victims' Counsel receives training; and

(B) establish the baseline training requirements for a Special Victims' Counsel.

(e) ADMINISTRATIVE RESPONSIBILITY.—(1) Consistent with the regulations prescribed under subsection (i), the Judge Advocate General (as defined in section 801(1) of this title) under the jurisdiction of the Secretary concerned, and within the Marine Corps the Staff Judge Advocate to the Commandant of the Marine Corps, is responsible for the establishment and supervision of individuals designated as Special Victims' Counsel.

(2) The Secretary of Defense (and, in the case of the Coast Guard, the Secretary of the Department in which the Coast Guard is operating) shall conduct a periodic evaluation of the Special Victims' Counsel programs operated under this section.

(3) The Secretary of Defense, in collaboration with the Secretaries of the military departments and the Secretary of the Department in which the Coast Guard is operating, shall establish—

(A) guiding principles for the Special Victims' Counsel program, to include ensuring that—

(i) Special Victims' Counsel are assigned to locations that maximize the opportunity for face-to-face communication between counsel and clients; and

(ii) effective means of communication are available to permit counsel and client interactions when face-to-face communication is not feasible;

(B) performance measures and standards to measure the effectiveness of the Special Victims' Counsel program and client satisfaction with the program; and

(C) processes by which the Secretaries of the military departments and the Secretary of the Department in which the Coast Guard is operating will evaluate and monitor the Special Victims' Counsel program using such guiding principles and performance measures and standards.

(f) AVAILABILITY OF SPECIAL VICTIMS' COUNSEL.—(1) An individual described in subsection (a)(2) who is the victim of an alleged sex-related offense shall be offered the option of receiving assistance from a Special Victims' Counsel upon report of an alleged sex-related offense or at the time the victim seeks assistance from a Sexual Assault Response Coordinator, a Sexual Assault Victim Advocate, a military criminal investigator, a victim/witness liaison, a trial counsel, a healthcare provider, or any other personnel designated by the Secretary concerned for purposes of this subsection.

(2) Subject to such exceptions for exigent circumstances as the Secretary of Defense and the Secretary of the Department in which the Coast Guard is operating may prescribe, notice of the

availability of a Special Victims' Counsel shall be provided to an individual described in subsection (a)(2) before any military criminal investigator or trial counsel interviews, or requests any statement from, the individual regarding the alleged sex-related offense.

(3) The assistance of a Special Victims' Counsel under this subsection shall be available to an individual described in subsection (a)(2) regardless of whether the individual elects unrestricted or restricted reporting of the alleged sex-related offense. The individual shall also be informed that the assistance of a Special Victims' Counsel may be declined, in whole or in part, but that declining such assistance does not preclude the individual from subsequently requesting the assistance of a Special Victims' Counsel.

(4)(A) Subject to subparagraph (B), if a Special Victims' Counsel is not available at a military installation for access by a member of the armed forces who requests access to a Special Victims' Counsel, a Special Victims' Counsel shall be made available at such installation for access by such member by not later than 72 hours after such request.

(B) If the Secretary concerned determines that, due to exigent circumstances related to military activities, a Special Victims' Counsel cannot be made available to a member of the armed forces within the time period required by subparagraph (A), the Secretary concerned shall ensure that a Special Victims' Counsel is made available to such member as soon as is practical under such circumstances.

(g) STAFFING CASELOAD LEVELS.—Commencing not later than four years after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2020, each Secretary concerned shall ensure that the number of Special Victims' Counsel[1] serving in each military department (and with respect to the Coast Guard) is sufficient to ensure that the average caseload of a Special Victims' Counsel does not exceed, to the extent practicable, 25 cases any given time.

(h) ALLEGED SEX-RELATED OFFENSE DEFINED.—In this section, the term ''alleged sex-related offense'' means any allegation of—

(1) a violation of section 920, 920b, 920c, or 930 of this title (article 120, 120b, 120c, or 130 of the Uniform Code of Military Justice); or

(2) an attempt to commit an offense specified in a paragraph (1) as punishable under section 880 of this title (article 80 of the Uniform Code of Military Justice).

(i) REGULATIONS.—The Secretary of Defense and the Secretary of the Department in which the Coast Guard is operating shall prescribe regulations to carry out this section.

(Added Pub. L. 113–66, div. A, title XVII, § 1716(a)(1), Dec. 26, 2013, 127 Stat. 966; amended Pub. L. 113–291, div. A, title V, §§ 531(c), 533, 534(a), Dec. 19, 2014, 128 Stat. 3364, 3366, 3367; Pub. L. 114–92, div. A, title V, §§ 532–534(a), 535(a), (b), Nov. 25, 2015, 129 Stat. 815, 816; Pub. L. 115–91, div. A, title X, § 1081(c)(2)(D), Dec. 12, 2017, 131 Stat. 1599; Pub. L. 116–92, div. A, title V, §§ 541, 542(a), Dec. 20, 2019, 133 Stat. 1374, 1375; Pub. L. 116–283, div. A, title X, § 1081(a)(22), Jan. 1, 2021, 134 Stat. 3872.)

[1] So in original. Probably should be ''Counsels''.

REFERENCES IN TEXT

The date of the enactment of the National Defense Authorization Act for Fiscal Year 2020, referred to in subsec. (g), is the date of enactment of Pub. L. 116–92 which was approved Dec. 20, 2019.

AMENDMENTS

2021—Subsecs. (b)(11), (e). Pub. L. 116–283 substituted ''subsection (i)'' for ''subsection (h)''.

2019—Subsec. (b)(8)(D). Pub. L. 116–92, § 541(a), substituted '', section 1408(h) of this title, and other'' for ''and other''.

Subsec. (b)(10), (11). Pub. L. 116–92, § 541(b), added par. (10) and redesignated former par. (10) as (11).

Subsec. (f)(4). Pub. L. 116–92, § 542(a), added par. (4).

Subsecs. (g) to (i). Pub. L. 116–92, § 541(c), added subsec. (g) and redesignated former subsecs. (g) and (h) as (h) and (i), respectively.

2017—Subsec. (g)(1). Pub. L. 115–91 substituted ''920b, 920c, or 930'' for ''920a, 920b, 920c, or 925'' and ''120b, 120c, or 130'' for ''120a, 120b, 120c, or 125''.

2015—Subsec. (a)(2)(C). Pub. L. 114–92, § 532, added subpar. (C).

Subsec. (b)(9), (10). Pub. L. 114–92, § 533, added par. (9) and redesignated former par. (9) as (10).

Subsec. (d). Pub. L. 114–92, § 535(a), designated existing provisions as par. (1), redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, of par. (1), and added par. (2).

Subsec. (e)(3). Pub. L. 114–92, § 535(b), added par. (3).

Subsec. (f)(2), (3). Pub. L. 114–92, § 534(a), added par. (2) and redesignated former par. (2) as (3).

2014—Subsec. (a). Pub. L. 113–291, § 533(a), amended subsec. (a) generally. Prior to amendment, text read as follows: ''The Secretary concerned shall designate legal counsel (to be known as 'Special Victims' Counsel') for the purpose of providing legal assistance to an individual eligible for military legal assistance under section 1044 of this title who is the victim of an alleged sex-related offense, regardless of whether the report of that offense is restricted or unrestricted.''

Subsec. (b)(4). Pub. L. 113–291, § 531(c)(1), substituted ''the United States'' for ''the Department of Defense''.

Subsec. (b)(6). Pub. L. 113–291, § 534(a), substituted ''Representing the victim'' for ''Accompanying the victim''.

Subsec. (d)(2). Pub. L. 113–291, § 531(c)(2), inserted '', and within the Marine Corps, by the Staff Judge Advocate to the Commandant of the Marine Corps'' before period at end.

Subsec. (e)(1). Pub. L. 113–291, § 531(c)(3), inserted ''concerned'' after ''jurisdiction of the Secretary''.

Subsec. (f). Pub. L. 113–291, § 533(b), substituted ''described in subsection (a)(2)'' for ''eligible for military legal assistance under section 1044 of this title'' in pars. (1) and (2).

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by Pub. L. 115–91 effective immediately after the amendments made by div. E (§§ 5001–5542) of Pub. L. 114–328 take effect as provided for in section 5542 of that Act (10 U.S.C. 801 note), see section 1081(c)(4) of Pub. L. 115–91, set out as a note under section 801 of this title.

NOTIFICATION OF SIGNIFICANT EVENTS AND DOCUMENTATION OF PREFERENCE FOR PROSECUTION JURISDICTION FOR VICTIMS OF SEXUAL ASSAULT

Pub. L. 116–92, div. A, title V, § 538, Dec. 20, 2019, 133 Stat. 1363, provided that:

''(a) NOTIFICATION TO VICTIMS OF EVENTS IN MILITARY JUSTICE PROCESS.—

''(1) NOTIFICATION REQUIRED.—A member of the Armed Forces who is the victim of an alleged sexual

assault by another member of the Armed Forces shall receive notification of each significant event in the military justice process that relates to the investigation, prosecution, and confinement of such other member for such assault.

''(2) DOCUMENTATION.—Appropriate documentation of each notification made pursuant to paragraph (1) shall be created and maintained in an appropriate system of records of the military department concerned.

''(b) DOCUMENTATION OF VICTIM'S PREFERENCE FOR PROSECUTION JURISDICTION.—In the case of a member of the Armed Forces who is the victim of an alleged sexual assault committed by another member of the Armed Forces who is subject to prosecution for such offense both by court-martial under chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), and by a civilian court under Federal or State law, appropriate documentation of the preference, if any, of such victim for prosecution of such offense by court-martial or by a civilian court as provided for by Rule for Courts-Martial 306(e) (as set forth in the Manual for Courts-Martial, 2019 edition, or any successor rule), shall be created and maintained in an appropriate system of records of the military department concerned.

''(c) REGULATIONS.—Not later than 180 days after the date of the enactment of this Act [Dec. 20, 2019], the Secretary of Defense shall prescribe regulations implementing this section.''

TRAINING FOR SPECIAL VICTIMS' COUNSEL ON CIVILIAN CRIMINAL JUSTICE MATTERS IN THE STATES OF THE MILITARY INSTALLATIONS TO WHICH ASSIGNED

Pub. L. 116–92, div. A, title V, § 550C, Dec. 20, 2019, 133 Stat. 1382, provided that:

''(a) TRAINING.—

''(1) IN GENERAL.—Except as provided in subsection (c), upon the assignment of a Special Victims' Counsel (including a Victim Legal Counsel of the Navy) to a military installation in the United States, such Counsel shall be provided appropriate training on the law and policies of the State or States in which such military installation is located with respect to the criminal justice matters specified in paragraph (2). The purpose of the training is to assist such Counsel in providing victims of alleged sex-related offenses with information necessary to make an informed decision regarding preference as to the jurisdiction (whether court-martial or State court) in which such offenses will be prosecuted.

''(2) CRIMINAL JUSTICE MATTERS.—The criminal justice matters specified in this paragraph, with respect to a State, are the following:

''(A) Victim rights.

''(B) Prosecution of criminal offenses.

''(C) Sentencing for conviction of criminal offenses.

''(D) Protective orders.

''(b) ALLEGED SEX-RELATED OFFENSE DEFINED.—In this section, the term 'alleged sex-related offense' means any allegation of—

''(1) a violation of section 920, 920b, 920c, or 930 of title 10, United States Code (article 120, 120b, 120c, or 130 of the Uniform Code of Military Justice); or

''(2) an attempt to commit an offense specified in a paragraph (1) as punishable under section 880 of title 10, United States Code (article 80 of the Uniform Code of Military Justice).

''(c) EXCEPTION.—The requirements of this section do not apply to a Special Victims' Counsel of the Coast Guard.''

SPECIAL VICTIMS' COUNSEL TRAINING REGARDING THE UNIQUE CHALLENGES OFTEN FACED BY MALE VICTIMS OF SEXUAL ASSAULT

Pub. L. 115–91, div. A, title V, § 536, Dec. 12, 2017, 131 Stat. 1392, provided that: ''The baseline Special Victims' Counsel training established under section 1044e(d)(2) of title 10, United States Code, shall include training for Special Victims' Counsel to recognize and deal with the unique challenges often faced by male victims of sexual assault.''

ENHANCEMENT OF VICTIMS' RIGHTS IN CONNECTION WITH PROSECUTION OF CERTAIN SEX-RELATED OFFENSES

Pub. L. 113–291, div. A, title V, § 534(b)–(e), Dec. 19, 2014, 128 Stat. 3367, 3368, provided that:

''(b) CONSULTATION REGARDING VICTIM'S PREFERENCE IN PROSECUTION VENUE.—

''(1) CONSULTATION PROCESS REQUIRED.—The Secretary of Defense shall establish a process to ensure consultation with the victim of an alleged sex-related offense that occurs in the United States to solicit the victim's preference regarding whether the offense should be prosecuted by court-martial or in a civilian court with jurisdiction over the offense.

''(2) CONVENING AUTHORITY CONSIDERATION OF PREFERENCE.—The preference expressed by the victim of an alleged sex-related offense under paragraph (1) regarding the prosecution of the offense, while not binding, should be considered by the convening authority in making the determination regarding whether to refer the charge or specification for the offense to a court-martial for trial.

''(3) NOTICE TO APPROPRIATE JURISDICTION OF VICTIM'S PREFERENCE FOR CIVILIAN PROSECUTION.—If the victim of an alleged sex-related offense expresses a preference under paragraph (1) for prosecution of the offense in a civilian court, the convening authority described in paragraph (2) shall ensure that the civilian authority with jurisdiction over the offense is notified of the victim's preference for civilian prosecution.

''(4) NOTICE TO VICTIM OF STATUS OF CIVILIAN PROSECUTION WHEN VICTIM EXPRESSES PREFERENCE FOR CIVILIAN PROSECUTION.—Following notification of the civilian authority with jurisdiction over an alleged sex-related offense of the preference of the victim of the offense for prosecution of the offense in a civilian court, the convening authority shall be responsible for notifying the victim if the convening authority learns of any decision by the civilian authority to prosecute or not prosecute the offence in a civilian court.

''(c) MODIFICATION OF MANUAL FOR COURTS-MARTIAL.—Not later than 180 days after the date of the enactment of this Act [Dec. 19, 2014], Part III of the Manual for Courts-Martial shall be modified to provide that when a victim of an alleged sex-related offense has a right to be heard in connection with the prosecution of the alleged sex-related such offense, the victim may exercise that right through counsel, including through a Special Victims' Counsel under section 1044e of title 10, United States Code (as amended by subsection (a)).

''(d) NOTICE TO COUNSEL ON SCHEDULING OF PROCEEDINGS.—The Secretary concerned shall establish policies and procedures designed to ensure that any counsel of the victim of an alleged sex-related offense, including a Special Victims' Counsel under section 1044e of title 10, United States Code (as amended by subsection (a)), is provided prompt and adequate notice of the scheduling of any hearing, trial, or other proceeding in connection with the prosecution of such offense in order to permit such counsel the opportunity to prepare for such proceeding.

''(e) DEFINITIONS.—In this section:

''(1) The term 'alleged sex-related offense' has the meaning given that term in section 1044e(g) [now 1044e(h)] of title 10, United States Code.

''(2) The term 'Secretary concerned' has the meaning given that term in section 101(a)(9) of such title.''

IMPLEMENTATION

Pub. L. 113–66, div. A, title XVII, § 1716(a)(4), Dec. 26, 2013, 127 Stat. 969, provided that: ''Section 1044e of title 10, United States Code, as added by paragraph (1), shall

be implemented within 180 days after the date of the enactment of this Act [Dec. 26, 2013].''

ENHANCED TRAINING REQUIREMENT

Pub. L. 113–66, div. A, title XVII, §1716(b), Dec. 26, 2013, 127 Stat. 969, provided that: ''The Secretary of each military department, and the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Department of the Navy, shall implement, consistent with the guidelines provided under section 1044e of title 10, United States Code, as added by subsection (a), in-depth and advanced training for all military and civilian attorneys providing legal assistance under section 1044 or 1044e of such title to support victims of alleged sex-related offenses.''

§ 1045. Voluntary withholding of State income tax from retired or retainer pay

(a) The Secretary concerned shall enter into an agreement under this section with any State within 120 days of a request for agreement from the proper State official. The agreement shall provide that the Secretary concerned shall withhold State income tax from the monthly retired or retainer pay of any member or former member entitled to such pay who voluntarily requests such withholding in writing. The amounts withheld during any calendar month shall be retained by the Secretary concerned and disbursed to the States during the following calendar month.

(b) A member or former member may request that the State designated for withholding be changed and that the withholdings be remitted in accordance with such change. A member or former member also may revoke any request of such member or former member for withholding. Any request for a change in the State designated and any revocation is effective on the first day of the month after the month in which the request or revocation is processed by the Secretary concerned, but in no event later than on the first day of the second month beginning after the day on which the request or revocation is received by the Secretary concerned.

(c) A member or former member may have in effect at any time only one request for withholding under this section and may not have more than two such requests in effect during any one calendar year.

(d)(1) This section does not give the consent of the United States to the application of a statute that imposes more burdensome requirements on the United States than on employers generally or that subjects the United States or any member or former member entitled to retired or retainer pay to a penalty or liability because of this section.

(2) The Secretary concerned may not accept pay from a State for services performed in withholding State income taxes from retired or retainer pay.

(3) Any amount erroneously withheld from retired or retainer pay and paid to a State by the Secretary concerned shall be repaid by the State in accordance with regulations prescribed by the Secretary concerned.

(e) In this section:

(1) The term ''State'' means any State, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

(2) The term ''Secretary concerned'' includes the Secretary of Health and Human Services with respect to the commissioned corps of the Public Health Service and the Secretary of Commerce with respect to the commissioned corps of the National Oceanic and Atmospheric Administration.

(Added Pub. L. 98–525, title VI, §654(a), Oct. 19, 1984, 98 Stat. 2551; amended Pub. L. 100–26, §7(k)(2), Apr. 21, 1987, 101 Stat. 284; Pub. L. 109–163, div. A, title VI, §661, Jan. 6, 2006, 119 Stat. 3314.)

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–163, in third sentence, substituted ''any calendar month'' for ''any calendar quarter'' and ''during the following calendar month'' for ''during the month following that calendar quarter''.

1987—Subsec. (e)(1), (2). Pub. L. 100–26 inserted ''The term'' after each par. designation.

§ 1046. Overseas temporary foster care program

(a) PROGRAM AUTHORIZED.—The Secretary concerned may establish a program to provide temporary foster care services outside the United States for children accompanying members of the armed forces on duty at stations outside the United States. The foster care services provided under such a program shall be similar to those services provided by State and local governments in the United States.

(b) EXPENSES.—Under regulations prescribed by the Secretary concerned, the expenses related to providing foster care services under subsection (a) may be paid from appropriated funds available to the Secretary.

(Added Pub. L. 102–484, div. A, title VI, §651(a), Oct. 23, 1992, 106 Stat. 2425.)

PRIOR PROVISIONS

A prior section 1046, added Pub. L. 98–525, title VII, §708(a)(1), Oct. 19, 1984, 98 Stat. 2572, related to preseparation counseling, prior to repeal by Pub. L. 101–510, div. A, title V, §502(b)(1), Nov. 5, 1990, 104 Stat. 1557.

§ 1047. Allowance for civilian clothing

(a) MEMBERS TRAVELING IN CONNECTION WITH MEDICAL EVACUATION.—The Secretary of the military department concerned may furnish civilian clothing and luggage to a member at a cost not to exceed $250, or reimburse a member for the purchase of civilian clothing and luggage in an amount not to exceed $250, in the case of a member who—

(1) is medically evacuated for treatment in a medical facility by reason of an illness or injury incurred or aggravated while on active duty; or

(2) after being medically evacuated as described in paragraph (1), is in an authorized travel status from a medical facility to another location approved by the Secretary.

(b) CERTAIN ENLISTED MEMBERS.—The Secretary of the military department concerned may furnish civilian clothing, at a cost of not more than $40, to an enlisted member who is—

(1) discharged for misconduct or unsuitability or under conditions other than honorable;

(2) sentenced by a civil court to confinement in a prison;

(3) interned or discharged as an alien enemy; or

(4) discharged before completion of recruit training under honorable conditions for dependency, hardship, minority, or disability or for the convenience of the Government.

(Added Pub. L. 98–525, title XIV, § 1401(d)(1), Oct. 19, 1984, 98 Stat. 2615; amended Pub. L. 108–375, div. A, title V, § 584(a), Oct. 28, 2004, 118 Stat. 1929; Pub. L. 110–181, div. A, title VI, § 634, Jan. 28, 2008, 122 Stat. 155.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in the following appropriation acts:

Oct. 12, 1984, Pub. L. 98–473, title I, § 101(h) [title VIII, § 8024], 98 Stat. 1904, 1928.

Dec. 8, 1983, Pub. L. 98–212, title VII, § 727, 97 Stat. 1443.

Dec. 21, 1982, Pub. L. 97–377, title I, § 101(c) [title VII, § 730], 96 Stat. 1833, 1855.

Dec. 29, 1981, Pub. L. 97–114, title VII, § 730, 95 Stat. 1584.

Dec. 15, 1980, Pub. L. 96–527, title VII, § 731, 94 Stat. 3086.

Dec. 21, 1979, Pub. L. 96–154, title VII, § 731, 93 Stat. 1157.

Oct. 13, 1978, Pub. L. 95–457, title VIII, § 831, 92 Stat. 1249.

Sept. 21, 1977, Pub. L. 95–111, title VIII, § 830, 91 Stat. 905.

Sept. 22, 1976, Pub. L. 94–419, title VII, § 730, 90 Stat. 1296.

Feb. 9, 1976, Pub. L. 94–212, title VII, § 730, 90 Stat. 173.

Oct. 8, 1974, Pub. L. 93–437, title VIII, § 831, 88 Stat. 1230.

Jan. 2, 1974, Pub. L. 93–238, title VII, § 732, 87 Stat. 1044.

Oct. 26, 1972, Pub. L. 92–570, title VII, § 732, 86 Stat. 1201.

Dec. 18, 1971, Pub. L. 92–204, title VII, § 733, 85 Stat. 733.

Jan. 11, 1971, Pub. L. 91–668, title VIII, § 833, 84 Stat. 2036.

Dec. 29, 1969, Pub. L. 91–171, title VI, § 633, 83 Stat. 485.

Oct. 17, 1968, Pub. L. 90–580, title V, § 532, 82 Stat. 1135.

Sept. 29, 1967, Pub. L. 90–96, title VI, § 632, 81 Stat. 247.

Oct. 15, 1966, Pub. L. 89–687, title VI, § 633, 80 Stat. 996.

Sept. 29, 1965, Pub. L. 89–213, title VI, § 633, 79 Stat. 879.

Aug. 19, 1964, Pub. L. 88–446, title V, § 533, 78 Stat. 480.

Oct. 17, 1963, Pub. L. 88–149, title V, § 533, 77 Stat. 269.

Aug. 9, 1962, Pub. L. 87–577, title V, § 534, 76 Stat. 333.

Aug. 17, 1961, Pub. L. 87–144, title VI, § 634, 75 Stat. 381.

July 7, 1960, Pub. L. 86–601, title II, § 201, 74 Stat. 340–342.

Aug. 18, 1959, Pub. L. 86–166, title II, § 201, 73 Stat. 368–370.

Aug. 22, 1958, Pub. L. 85–724, title III, § 301, title IV, § 401, title V, § 501, 72 Stat. 714, 717, 721.

Aug. 2, 1957, Pub. L. 85–117, title III, § 301, title IV, § 401, title V, § 501, 71 Stat. 314, 316, 321.

July 2, 1956, ch. 488, title III, § 301, title IV, § 401, title V, § 501, 70 Stat. 457, 459, 464.

July 13, 1955, ch. 358, title III, § 301, title IV, § 401, title V, § 501, 69 Stat. 304, 306, 312.

June 30, 1954, ch. 432, title IV, § 401, title V, § 501, title VI, § 601, 68 Stat. 339, 342, 347.

Aug. 1, 1953, ch. 305, title III, § 301, title IV, § 401, title V, § 501, 67 Stat. 339, 342, 348.

July 10, 1952, ch. 630, title III, § 301, title IV, § 401, title V, § 501, 66 Stat. 520, 524, 529.

Oct. 18, 1951, ch. 512, title III, § 301, title IV, § 401, title V, § 501, 65 Stat. 429, 437, 443.

Sept. 6, 1950, ch. 896, Ch. X, title III, § 301, title IV, § 401, title V, § 501, 64 Stat. 735, 743, 749.

Oct. 29, 1949, ch. 787, title III, § 301, title IV, § 401, title V, § 501, 63 Stat. 993, 1006, 1014.

June 24, 1948, ch. 632, 62 Stat. 655.

July 30, 1947, ch. 357, title I, § 1, 61 Stat. 557.

July 16, 1946, ch. 583, § 1, 60 Stat. 548.

July 3, 1945, ch. 265, § 1, 59 Stat. 391.

June 28, 1944, ch. 303, § 1, 58 Stat. 580.

July 1, 1943, ch. 185, § 1, 57 Stat. 354.

July 2, 1942, ch. 477, § 1, 56 Stat. 617.

June 30, 1941, ch. 262, § 1, 55 Stat. 373.

June 13, 1940, ch. 343, § 1, 54 Stat. 359.

Apr. 26, 1939, ch. 88, § 1, 53 Stat. 600.

June 11, 1938, ch. 37, § 1, 52 Stat. 650.

July 1, 1937, ch. 423, § 1, 50 Stat. 450.

May 15, 1936, ch. 404, § 1, title I, 49 Stat. 1286.

Apr. 9, 1935, ch. 54, § 1, title I, 49 Stat. 129.

Apr. 26, 1934, ch. 165, title I, 48 Stat. 622.

Mar. 4, 1933, ch. 281, title I, 47 Stat. 1577.

July 14, 1932, ch. 482, title I, 47 Stat. 671.

Feb. 23, 1931, ch. 279, title I, 46 Stat. 1284.

May 28, 1930, ch. 348, title I, 46 Stat. 438.

Feb. 28, 1929, ch. 366, title I, 45 Stat. 1356.

Mar. 23, 1928, ch. 232, title I, 45 Stat. 332.

Feb. 23, 1927, ch. 167, title I, 44 Stat. 1113.

Apr. 15, 1926, ch. 146, title I, 44 Stat. 262.

AMENDMENTS

2008—Subsec. (a). Pub. L. 110–181 inserted ''and luggage'' after ''civilian clothing'' in two places in introductory provisions.

2004—Pub. L. 108–375 added subsec. (a), designated existing provisions as subsec. (b), and inserted subsec. (b) heading.

EFFECTIVE DATE OF 2004 AMENDMENT; RETROACTIVE APPLICATION

Pub. L. 108–375, div. A, title V, § 584(b), (c), Oct. 28, 2004, 118 Stat. 1930, provided that:

''(b) EFFECTIVE DATE.—Subsection (a) of section 1047 of title 10, United States Code, as added by subsection (a), shall take effect as of October 1, 2004, and (subject to subsection (c)) shall apply with respect to clothing furnished, and reimbursement for clothing purchased, on or after that date.

''(c) RETROACTIVE APPLICATION.—With respect to the period beginning on October 1, 2004, and ending on the date of the enactment of this Act [Oct. 28, 2004], the Secretary of Defense shall provide for subsection (a) of section 1047 of title 10, United States Code, as added by subsection (a), to be applied as a continuation of the authority provided in section 1319 of the Emergency Wartime Supplemental Appropriations Act, 2003 (Public Law 108–11; 117 Stat. 571), as continued in effect during fiscal year 2004 by section 1103 of the Emergency Supplemental Appropriations Act for Defense and for the Reconstruction of Iraq and Afghanistan, 2004 (Public Law 108–106; 117 Stat. 1214).''

EFFECTIVE DATE

Section effective Oct. 1, 1985, see section 1404 of Pub. L. 98–525, set out as a note under section 520b of this title.

§ 1048. Gratuity payment to persons discharged for fraudulent enlistment

The Secretary concerned may pay a gratuity of not to exceed $25 to a person discharged for fraudulent enlistment.

(Added Pub. L. 98–525, title XIV, § 1401(d)(1), Oct. 19, 1984, 98 Stat. 2616.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in the following appropriation acts:

Oct. 12, 1984, Pub. L. 98–473, title I, § 101(h) [title VIII, § 8006], 98 Stat. 1904, 1923.

Dec. 8, 1983, Pub. L. 98–212, title VII, § 709, 97 Stat. 1439.

Dec. 21, 1982, Pub. L. 97–377, title I, § 101(c) [title VII, § 709], 96 Stat. 1833, 1851.
Dec. 29, 1981, Pub. L. 97–114, title VII, § 709, 95 Stat. 1579.
Dec. 15, 1980, Pub. L. 96–527, title VII, § 709, 94 Stat. 3081.
Dec. 21, 1979, Pub. L. 96–154, title VII, § 709, 93 Stat. 1153.
Oct. 13, 1978, Pub. L. 95–457, title VIII, § 809, 92 Stat. 1244.
Sept. 21, 1977, Pub. L. 95–111, title VIII, § 808, 91 Stat. 900.
Sept. 22, 1976, Pub. L. 94–419, title VII, § 708, 90 Stat. 1292.
Feb. 9, 1976, Pub. L. 94–212, title VII, § 708, 90 Stat. 169.
Oct. 8, 1974, Pub. L. 93–437, title VIII, § 808, 88 Stat. 1225.
Jan. 2, 1974, Pub. L. 93–238, title VII, § 708, 87 Stat. 1039.
Oct. 26, 1972, Pub. L. 92–570, title VII, § 708, 86 Stat. 1197.
Dec. 18, 1971, Pub. L. 92–204, title VII, § 708, 85 Stat. 728.
Jan. 11, 1971, Pub. L. 91–668, title VIII, § 808, 84 Stat. 2031.
Dec. 29, 1969, Pub. L. 91–171, title VI, § 608, 83 Stat. 480.
Oct. 17, 1968, Pub. L. 90–580, title V, § 507, 82 Stat. 1130.
Sept. 29, 1967, Pub. L. 90–96, title VI, § 607, 81 Stat. 242.
Oct. 15, 1966, Pub. L. 89–687, title VI, § 607, 80 Stat. 991.
Sept. 29, 1965, Pub. L. 89–213, title VI, § 607, 79 Stat. 874.
Aug. 19, 1964, Pub. L. 88–446, title V, § 507, 78 Stat. 475.
Oct. 17, 1963, Pub. L. 88–149, title V, § 507, 77 Stat. 264.
Aug. 9, 1962, Pub. L. 87–577, title V, § 507, 76 Stat. 328.
Aug. 17, 1961, Pub. L. 87–144, title VI, § 607, 75 Stat. 376.
July 7, 1960, Pub. L. 86–601, title V, § 507, 74 Stat. 350.
Aug. 18, 1959, Pub. L. 86–166, title V, § 607, 73 Stat. 379.
Aug. 22, 1958, Pub. L. 85–724, title III, § 301, title V, § 501, 72 Stat. 713, 722.
Aug. 2, 1957, Pub. L. 85–117, title III, § 301, title V, § 501, 71 Stat. 313, 321.
July 2, 1956, ch. 488, title III, § 301, title V, § 501, 70 Stat. 456, 465.
July 13, 1955, ch. 358, title III, § 301, title V, § 501, 69 Stat. 303, 313.
June 30, 1954, ch. 432, title IV, § 401, title VI, § 601, 68 Stat. 339, 348.
Aug. 1, 1953, ch. 305, title III, § 301, title V, § 501, 67 Stat. 338, 348.
July 10, 1952, ch. 630, title III, § 301, title V, § 501, 66 Stat. 519, 530.
Oct. 18, 1951, ch. 512, title III, § 301, title V, § 501, 65 Stat. 426, 443.
Sept. 6, 1950, ch. 896, Ch. X, title III, § 301, title V, § 501, 64 Stat. 732, 750.
Oct. 29, 1949, ch. 787, title III, § 301, title V, § 501, 63 Stat. 991, 1015.
June 24, 1948, ch. 632, 62 Stat. 653.
July 30, 1947, ch. 357, title I, § 1, 61 Stat. 555.
July 16, 1946, ch. 583, § 1, 60 Stat. 546.
July 3, 1945, ch. 265, § 1, 59 Stat. 389.
June 28, 1944, ch. 303, § 1, 58 Stat. 578.
July 1, 1943, ch. 185, § 1, 57 Stat. 352.
July 2, 1942, ch. 477, § 1, 56 Stat. 615.

EFFECTIVE DATE

Section effective Oct. 1, 1985, see section 1404 of Pub. L. 98–525, set out as a note under section 520b of this title.

§ 1049. Subsistence: miscellaneous persons

The following persons may be provided subsistence at the expense of the United States:

(1) Enlisted members while sick in hospitals.

(2) Applicants for enlistment and selective service registrants called for induction.

(3) Prisoners.

(4) Civilian employees, as authorized by law.

(5) Supernumeraries, when necessitated by emergent military circumstances.

(Added Pub. L. 98–525, title XIV, § 1401(d)(1), Oct. 19, 1984, 98 Stat. 2616.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in the following appropriation acts:
Oct. 12, 1984, Pub. L. 98–473, title I, § 101(h) [title VIII, § 8006], 98 Stat. 1904, 1923.
Dec. 8, 1983, Pub. L. 98–212, title VII, § 709, 97 Stat. 1439.
Dec. 21, 1982, Pub. L. 97–377, title I, § 101(c) [title VII, § 709], 96 Stat. 1833, 1851.
Dec. 29, 1981, Pub. L. 97–114, title VII, § 709, 95 Stat. 1579.
Dec. 15, 1980, Pub. L. 96–527, title VII, § 709, 94 Stat. 3081.
Dec. 21, 1979, Pub. L. 96–154, title VII, § 709, 93 Stat. 1153.
Oct. 13, 1978, Pub. L. 95–457, title VIII, § 809, 92 Stat. 1244.
Sept. 21, 1977, Pub. L. 95–111, title VIII, § 808, 91 Stat. 900.
Sept. 22, 1976, Pub. L. 94–419, title VII, § 708, 90 Stat. 1292.
Feb. 9, 1976, Pub. L. 94–212, title VII, § 708, 90 Stat. 169.
Oct. 8, 1974, Pub. L. 93–437, title VIII, § 808, 88 Stat. 1225.
Jan. 2, 1974, Pub. L. 93–238, title VII, § 708, 87 Stat. 1039.
Oct. 26, 1972, Pub. L. 92–570, title VII, § 708, 86 Stat. 1197.
Dec. 18, 1971, Pub. L. 92–204, title VII, § 708, 85 Stat. 728.
Jan. 11, 1971, Pub. L. 91–668, title VIII, § 808, 84 Stat. 2031.
Dec. 29, 1969, Pub. L. 91–171, title VI, § 608, 83 Stat. 480.
Oct. 17, 1968, Pub. L. 90–580, title V, § 507, 82 Stat. 1130.
Sept. 29, 1967, Pub. L. 90–96, title VI, § 607, 81 Stat. 242.
Oct. 15, 1966, Pub. L. 89–687, title VI, § 607, 80 Stat. 991.
Sept. 29, 1965, Pub. L. 89–213, title VI, § 607, 79 Stat. 874.
Aug. 19, 1964, Pub. L. 88–446, title V, § 507, 78 Stat. 475.
Oct. 17, 1963, Pub. L. 88–149, title V, § 507, 77 Stat. 264.
Aug. 9, 1962, Pub. L. 87–577, title V, § 507, 76 Stat. 328.
Aug. 17, 1961, Pub. L. 87–144, title II, § 201, title VI, § 607, 75 Stat. 367, 376.
July 7, 1960, Pub. L. 86–601, title II, § 201, title V, § 507, 74 Stat. 340, 350.
Aug. 18, 1959, Pub. L. 86–166, title II, § 201, title V, § 607, 73 Stat. 368, 379.
Aug. 22, 1958, Pub. L. 85–724, title III, § 301, title V, § 501, 72 Stat. 713, 714, 721, 722.
Aug. 2, 1957, Pub. L. 85–117, title III, § 301, title V, § 501, 71 Stat. 313, 314, 321.
July 2, 1956, ch. 488, title III, § 301, title V, § 501, 70 Stat. 456, 457, 465.
July 13, 1955, ch. 358, title III, § 301, title V, § 501, 69 Stat. 303, 312.
June 30, 1954, ch. 432, title IV, § 401, title VI, § 601, 68 Stat. 339, 348.
Aug. 1, 1953, ch. 305, title III, § 301, title V, § 501, 67 Stat. 338, 339, 348.
July 10, 1952, ch. 630, title III, § 301, title V, § 501, 66 Stat. 519, 520, 529.
Oct. 18, 1951, ch. 512, title III, § 301, title V, § 501, 65 Stat. 428, 443.
Sept. 6, 1950, ch. 896, Ch. X, title III, § 301, title V, § 501, 64 Stat. 734, 749, 750.
Oct. 29, 1949, ch. 787, title III, § 301, title V, § 501, 63 Stat. 991, 992, 1015.
June 24, 1948, ch. 632, 62 Stat. 654.
July 30, 1947, ch. 357, title I, § 1, 61 Stat. 556.
July 16, 1946, ch. 583, § 1, 60 Stat. 546, 547.
July 3, 1945, ch. 265, § 1, 59 Stat. 389, 390.
June 28, 1944, ch. 303, § 1, 58 Stat. 579.
July 1, 1943, ch. 185, § 1, 57 Stat. 353.
July 2, 1942, ch. 477, § 1, 56 Stat. 616.

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June 30, 1941, ch. 262, § 1, 55 Stat. 372.
June 13, 1940, ch. 343, § 1, 54 Stat. 357.
Apr. 26, 1939, ch. 88, § 1, 53 Stat. 599.
June 11, 1938, ch. 37, § 1, 52 Stat. 648.
July 1, 1937, ch. 423, § 1, 50 Stat. 448.
May 15, 1936, ch. 404, § 1, title I, 49 Stat. 1285.
Apr. 9, 1935, ch. 54, § 1, title I, 49 Stat. 127.
Apr. 26, 1934, ch. 165, title I, 48 Stat. 620.
Mar. 4, 1933, ch. 281, title I, 47 Stat. 1576.
July 14, 1932, ch. 482, title I, 47 Stat. 669.
Feb. 23, 1931, ch. 279, title I, 46 Stat. 1282.
May 28, 1930, ch. 348, title I, 46 Stat. 437.
Feb. 28, 1929, ch. 366, title I, 45 Stat. 1354.
Mar. 23, 1928, ch. 232, title I, 45 Stat. 331.
Feb. 23, 1927, ch. 167, title I, 44 Stat. 1111.
Apr. 15, 1926, ch. 146, title I, 44 Stat. 260.
Feb. 12, 1925, ch. 225, title I, 43 Stat. 898.

EFFECTIVE DATE

Section effective Oct. 1, 1985, see section 1404 of Pub. L. 98–525, set out as a note under section 520b of this title.

[§ 1050. Repealed. Pub. L. 114–328, div. A, title XII, § 1243(b)(1), Dec. 23, 2016, 130 Stat. 2516]

Section, added Pub. L. 98–525, title XIV, § 1401(d)(1), Oct. 19, 1984, 98 Stat. 2616; amended Pub. L. 105–261, div. A, title IX, § 905(b), Oct. 17, 1998, 112 Stat. 2093, related to the payment of personnel expenses for Latin American cooperation.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in the following appropriation acts:

Pub. L. 98–473, title I, § 101(h) [title VIII, § 8006], Oct. 12, 1984, 98 Stat. 1904, 1923.
Pub. L. 98–212, title VII, § 709, Dec. 8, 1983, 97 Stat. 1439.
Pub. L. 97–377, title I, § 101(c) [title VII, § 709], Dec. 21, 1982, 96 Stat. 1833, 1851.
Pub. L. 97–114, title VII, § 709, Dec. 29, 1981, 95 Stat. 1579.
Pub. L. 96–527, title VII, § 709, Dec. 15, 1980, 94 Stat. 3081.
Pub. L. 96–154, title VII, § 709, Dec. 21, 1979, 93 Stat. 1153.
Pub. L. 95–457, title VIII, § 809, Oct. 13, 1978, 92 Stat. 1244.
Pub. L. 95–111, title VIII, § 808, Sept. 21, 1977, 91 Stat. 900.
Pub. L. 94–419, title VII, § 708, Sept. 22, 1976, 90 Stat. 1292.
Pub. L. 94–212, title VII, § 708, Feb. 9, 1976, 90 Stat. 169.
Pub. L. 93–437, title VIII, § 808, Oct. 8, 1974, 88 Stat. 1225.
Pub. L. 93–238, title VII, § 708, Jan. 2, 1974, 87 Stat. 1039.
Pub. L. 92–570, title VII, § 708, Oct. 26, 1972, 86 Stat. 1197.
Pub. L. 92–204, title VII, § 708, Dec. 18, 1971, 85 Stat. 728.
Pub. L. 91–668, title VIII, § 808, Jan. 11, 1971, 84 Stat. 2031.
Pub. L. 91–171, title VI, § 608, Dec. 29, 1969, 83 Stat. 480.
Pub. L. 90–580, title V, § 507, Oct. 17, 1968, 82 Stat. 1130.
Pub. L. 90–96, title VI, § 607, Sept. 29, 1967, 81 Stat. 242.
Pub. L. 89–687, title VI, § 607, Oct. 15, 1966, 80 Stat. 991.
Pub. L. 89–213, title VI, § 607, Sept. 29, 1965, 79 Stat. 874.
Pub. L. 88–446, title V, § 507, Aug. 19, 1964, 78 Stat. 475.
Pub. L. 88–149, title V, § 507, Oct. 17, 1963, 77 Stat. 264.
Pub. L. 87–577, title V, § 507, Aug. 9, 1962, 76 Stat. 328.
Pub. L. 87–144, title II, § 201, Aug. 17, 1961, 75 Stat. 367, 369.
Pub. L. 86–601, title II, § 201, July 7, 1960, 74 Stat. 341, 343.
Pub. L. 86–166, title II, § 201, Aug. 18, 1959, 73 Stat. 369, 371.
Pub. L. 85–724, title III, § 301, title V, § 501, Aug. 22, 1958, 72 Stat. 714, 721.
Pub. L. 85–117, title III, § 301, title V, § 501, Aug. 2, 1957, 71 Stat. 314, 321.
July 2, 1956, ch. 488, title III, § 301, title V, § 501, 70 Stat. 457, 465.
July 13, 1955, ch. 358, title III, § 301, title V, § 501, 69 Stat. 304, 312.
June 30, 1954, ch. 432, title IV, § 401, title VI, § 601, 68 Stat. 340, 347.
Aug. 1, 1953, ch. 305, title III, § 301, title V, § 501, 67 Stat. 339, 347.
July 10, 1952, ch. 630, title III, § 301, title V, § 501, 66 Stat. 521, 529.
Oct. 18, 1951, ch. 512, title III, § 301, title V, § 501, 65 Stat. 426, 442.
Sept. 6, 1950, ch. 896, Ch. X, title III, § 301, title V, § 501, 64 Stat. 732, 749.
Oct. 29, 1949, ch. 787, title III, § 301, title V, § 501, 63 Stat. 989, 1014.
June 24, 1948, ch. 632, 62 Stat. 650.
July 30, 1947, ch. 357, title I, § 1, 61 Stat. 568.
July 16, 1946, ch. 583, § 1, 60 Stat. 560.
July 3, 1945, ch. 265, § 1, 59 Stat. 401.
June 28, 1944, ch. 303, § 1, 58 Stat. 591.
July 1, 1943, ch. 185, § 1, 57 Stat. 365.
July 2, 1942, ch. 477, § 1, 56 Stat. 628.

SAVINGS PROVISION FOR FISCAL YEARS 2017, 2018, AND 2019

Pub. L. 114–328, div. A, title XII, § 1243(c), Dec. 23, 2016, 130 Stat. 2516, as amended by Pub. L. 115–91, div. A, title XII, § 1208, Dec. 12, 2017, 131 Stat. 1647, provided that: ''The authority under section 1050 of title 10, United States Code, as in effect on the day before the date of the enactment of this Act [Dec. 23, 2016], shall continue to apply with respect to the Inter-American Defense College during fiscal years 2017, 2018, and 2019 under regulations prescribed by the Secretary of Defense.''

[§§ 1050a to 1051a. Repealed. Pub. L. 114–328, div. A, title XII, § 1243(b)(1), Dec. 23, 2016, 130 Stat. 2516]

Section 1050a, added Pub. L. 111–383, div. A, title XII, § 1204(a), Jan. 7, 2011, 124 Stat. 4386, related to the payment of personnel expenses for African cooperation.

Section 1051, added Pub. L. 99–661, div. A, title XIII, § 1322(a), Nov. 14, 1986, 100 Stat. 3989; amended Pub. L. 101–189, div. A, title IX, § 936, Nov. 29, 1989, 103 Stat. 1538; Pub. L. 101–510, div. A, title XIII, § 1301(5), Nov. 5, 1990, 104 Stat. 1668; Pub. L. 102–484, div. A, title XIII, § 1362, Oct. 23, 1992, 106 Stat. 2560; Pub. L. 107–314, div. A, title XII, § 1202(a), Dec. 2, 2002, 116 Stat. 2663; Pub. L. 109–163, div. A, title XII, § 1203, Jan. 6, 2006, 119 Stat. 3456; Pub. L. 110–417, [div. A], title XII, § 1231(a), (b)(1), (c)(1), Oct. 14, 2008, 122 Stat. 4636, 4637, related to the payment of expenses for multilateral, bilateral, or regional cooperation programs.

Section 1051a, added Pub. L. 107–314, div. A, title XII, § 1201(a)(1), Dec. 2, 2002, 116 Stat. 2662; amended Pub. L. 109–13, div. A, title I, § 1010, May 11, 2005, 119 Stat. 244; Pub. L. 109–163, div. A, title XII, § 1205, Jan. 6, 2006, 119 Stat. 3456; Pub. L. 110–181, div. A, title XII, § 1203(a)–(e)(1), Jan. 28, 2008, 122 Stat. 364, 365; Pub. L. 111–84, div. A, title XII, § 1205(a), Oct. 28, 2009, 123 Stat. 2514; Pub. L. 113–291, div. A, title XII, § 1203, Dec. 19, 2014, 128 Stat. 3530, related to the payment of travel, subsistence, medical care, and other personal expenses and the provision of administrative services and support to liaison officers of certain foreign nations.

AIR FORCE SCHOLARSHIPS FOR PARTNERSHIP FOR PEACE NATIONS TO PARTICIPATE IN THE EURO-NATO JOINT JET PILOT TRAINING PROGRAM

Pub. L. 111–383, div. A, title XII, § 1206, Jan. 7, 2011, 124 Stat. 4387, permitted the Secretary of the Air Force to establish and maintain a demonstration scholarship program, until Sept. 30, 2012, to allow personnel of the

air forces of countries that are signatories of the Partnership for Peace Framework Document to receive undergraduate pilot training and necessary related training through the Euro-NATO Joint Jet Pilot Training (ENJJPT) program.

[§ 1051b. Renumbered § 313]

[§ 1051c. Repealed. Pub. L. 114–328, div. A, title XII, § 1253(a)(1)(B), Dec. 23, 2016, 130 Stat. 2532]

Section, added Pub. L. 112–81, div. A, title IX, § 951(a)(1), Dec. 31, 2011, 125 Stat. 1548, related to assignments to improve education and training in information security as part of multilateral, bilateral, or regional cooperation programs.

§ 1052. Adoption expenses: reimbursement

(a) AUTHORIZATION TO REIMBURSE.—The Secretary of Defense shall carry out a program under which a member of the armed forces may be reimbursed, as provided in this section, for qualifying adoption expenses incurred by the member in the adoption of a child under 18 years of age.

(b) ADOPTIONS COVERED.—An adoption for which expenses may be reimbursed under this section includes an adoption by a single person, an infant adoption, an intercountry adoption, and an adoption of a child with special needs (as defined in section 473(c) of the Social Security Act (42 U.S.C. 673(c))).

(c) BENEFITS PAID AFTER ADOPTION IS FINAL.—Benefits paid under this section in the case of an adoption may be paid only after the adoption is final.

(d) TREATMENT OF OTHER BENEFITS.—A benefit may not be paid under this section for any expense paid to or for a member of the armed forces under any other adoption benefits program administered by the Federal Government or under any such program administered by a State or local government.

(e) LIMITATIONS.—(1) Not more than $2,000 may be paid under this section to a member of the armed forces, or to two such members who are spouses of each other, for expenses incurred in the adoption of a child.

(2) Not more than $5,000 may be paid under this section to a member of the armed forces, or to two such members who are spouses of each other, for adoptions by such member (or members) in any calendar year.

(f) REGULATIONS.—The Secretary of Defense shall prescribe regulations to carry out this section.

(g) DEFINITIONS.—In this section:

(1) The term ''qualifying adoption expenses'' means reasonable and necessary expenses that are directly related to the legal adoption of a child under 18 years of age, but only if such adoption is arranged by a qualified adoption agency or other source authorized to place children for adoption under State or local law. Such term does not include any expense incurred—

(A) by an adopting parent for travel; or

(B) in connection with an adoption arranged in violation of Federal, State, or local law.

(2) The term ''reasonable and necessary expenses'' includes—

(A) public and private agency fees, including adoption fees charged by an agency in a foreign country;

(B) placement fees, including fees charged adoptive parents for counseling;

(C) legal fees (including court costs) in connection with services that are unavailable to a member of the armed forces under section 1044 or 1044a of this title; and

(D) medical expenses, including hospital expenses of the biological mother of the child to be adopted and of a newborn infant to be adopted.

(3) The term ''qualified adoption agency'' means any of the following:

(A) A State or local government agency which has responsibility under State or local law for child placement through adoption.

(B) A nonprofit, voluntary adoption agency which is authorized by State or local law to place children for adoption.

(C) Any other source authorized by a State to provide adoption placement if the adoption is supervised by a court under State or local law.

(D) A foreign government or an agency authorized by a foreign government to place children for adoption, in any case in which—

(i) the adopted child is entitled to automatic citizenship under section 320 of the Immigration and Nationality Act (8 U.S.C. 1431); or

(ii) a certificate of citizenship has been issued for such child under section 322 of that Act (8 U.S.C. 1433).

(Added Pub. L. 102–190, div. A, title VI, § 651(a)(1), Dec. 5, 1991, 105 Stat. 1385; amended Pub. L. 102–484, div. A, title X, § 1052(12), Oct. 23, 1992, 106 Stat. 2499; Pub. L. 104–201, div. A, title VI, § 652(a), Sept. 23, 1996, 110 Stat. 2582; Pub. L. 106–398, § 1 [[div. A], title V, § 579(c)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–141; Pub. L. 108–375, div. A, title VI, § 661, Oct. 28, 2004, 118 Stat. 1974; Pub. L. 109–163, div. A, title V, § 592(a), Jan. 6, 2006, 119 Stat. 3280.)

PRIOR PROVISIONS

A prior section 1052 was renumbered section 1063 of this title and subsequently repealed.

AMENDMENTS

2006—Subsec. (g)(1). Pub. L. 109–163 inserted ''or other source authorized to place children for adoption under State or local law'' after ''qualified adoption agency'' in introductory provisions.

2004—Subsec. (g)(3)(D). Pub. L. 108–375 added subpar. (D).

2000—Pub. L. 106–398 substituted ''Adoption expenses: reimbursement'' for ''Reimbursement for adoption expenses'' in section catchline.

1996—Subsec. (g)(1). Pub. L. 104–201, § 652(a)(1), substituted ''qualified adoption agency.'' for ''State or local government agency which has responsibility under State or local law for child placement through adoption or by a nonprofit, voluntary adoption agency which is authorized by State or local law to place children for adoption.''

Subsec. (g)(3). Pub. L. 104–201, § 652(a)(2), added par. (3).

1992—Subsec. (b). Pub. L. 102–484 inserted close parenthesis before period at end.

EFFECTIVE DATE

Pub. L. 102–190, div. A, title VI, § 651(c), Dec. 5, 1991, 105 Stat. 1387, provided that: ''The amendments made

by subsections (a) and (b) [enacting this section and section 514 of Title 14, Coast Guard] shall take effect on the date of the enactment of this Act [Dec. 5, 1991] and shall apply to adoptions completed on or after that date.''

REIMBURSEMENT FOR ADOPTIONS COMPLETED DURING PERIOD BETWEEN TEST AND PERMANENT PROGRAM

Pub. L. 102–484, div. A, title VI, § 652, Oct. 23, 1992, 106 Stat. 2426, provided that this section and section 514 (now 2903) of Title 14, Coast Guard, would apply with respect to the reimbursement of adoption expenses incurred for an adoption proceeding completed during the period beginning on Oct. 1, 1990, and ending on Dec. 4, 1991, to the extent that such expenses would have been covered if the proceeding had been completed after Dec. 4, 1991, but only if an application for such reimbursement had been made within one year after Oct. 23, 1992.

§ 1053. Financial institution charges incurred because of Government error in direct deposit of pay: reimbursement

(a)(1) A member of the armed forces (or a former member of the armed forces entitled to retired pay under chapter 1223 of this title) who, in accordance with law or regulation, participates in a program for the automatic deposit of pay to a financial institution may be reimbursed by the Secretary concerned for a covered late-deposit charge.

(2) A covered late-deposit charge for purposes of paragraph (1) is a charge (including an overdraft charge or a minimum balance or average balance charge) that is levied by a financial institution and that results from an administrative or mechanical error on the part of the Government that causes the pay of the person concerned to be deposited late or in an incorrect manner or amount.

(b) Reimbursements under this section shall be made from appropriations available for the pay and allowances of members of the armed force concerned.

(c) The Secretaries concerned shall prescribe regulations to carry out this section, including regulations for the manner in which reimbursement under this section is to be made.

(d) In this section:

(1) The term ''financial institution'' means a bank, savings and loan association, or similar institution or a credit union chartered by the United States or a State.

(2) The term ''pay'' includes (A) retired pay, and (B) allowances.

(Added Pub. L. 99–661, div. A, title VI, § 662(a)(1), Nov. 14, 1986, 100 Stat. 3893; amended Pub. L. 101–189, div. A, title VI, § 664(a)(1)–(3)(A), Nov. 29, 1989, 103 Stat. 1466; Pub. L. 102–25, title VII, § 701(e)(8)(A), Apr. 6, 1991, 105 Stat. 115; Pub. L. 104–106, div. A, title XV, § 1501(c)(8), Feb. 10, 1996, 110 Stat. 499; Pub. L. 105–261, div. A, title V, § 564(a), Oct. 17, 1998, 112 Stat. 2029; Pub. L. 106–398, § 1 [[div. A], title V, § 579(c)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–141.)

AMENDMENTS

2000—Pub. L. 106–398 substituted ''Financial institution charges incurred because of Government error in direct deposit of pay: reimbursement'' for ''Reimbursement for financial institution charges incurred because of Government error in direct deposit of pay'' in section catchline.

1998—Subsec. (d)(1). Pub. L. 105–261 amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''The term 'financial institution' has the meaning given the term 'financial organization' in section 3332(a) of title 31.''

1996—Subsec. (a)(1). Pub. L. 104–106 substituted ''chapter 1223'' for ''chapter 67''.

1991—Pub. L. 102–25 struck out ''mandatory'' after ''error in'' in section catchline.

1989—Pub. L. 101–189, § 664(a)(3)(A), amended section catchline generally, substituting ''Reimbursement for financial institution charges incurred because of Government'' for ''Relief for expenses because of''.

Subsec. (a). Pub. L. 101–189, § 664(a)(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''A member of the armed forces who, by law or regulation, is required to participate in a program for the automatic deposit of pay to a financial institution may be reimbursed for overdraft charges levied by the financial institution when such charges result from an administrative or mechanical error on the part of the Government that causes such member's pay to be deposited late or in an incorrect amount or manner.''

Subsec. (d). Pub. L. 101–189, § 664(a)(2), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: ''In this section, the term 'financial institution' has the meaning given that term in section 3332 of title 31.''

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–106, div. A, title XV, § 1501(c), Feb. 10, 1996, 110 Stat. 498, provided that the amendment made by that section is effective as of Dec. 1, 1994, and as if included as an amendment made by the Reserve Officer Personnel Management Act, title XVI of Pub. L. 103–337, as originally enacted.

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–189, div. A, title VI, § 664(c), Nov. 29, 1989, 103 Stat. 1467, provided that: ''The amendments made by subsection (a) [amending this section], and section 1594 of title 10, United States Code, as added by subsection (b), shall apply with respect to pay and allowances deposited (or scheduled to be deposited) on or after the first day of the first month beginning after the date of the enactment of this Act [Nov. 29, 1989].''

EFFECTIVE DATE

Pub. L. 99–661, div. A, title VI, § 662(c), Nov. 14, 1986, 100 Stat. 3894, provided that: ''Section 1053 of title 10, United States Code, as added by subsection (a), shall apply only with respect to charges levied as a result of errors occurring on or after the date of the enactment of this Act [Nov. 14, 1986].''

[§ 1053a. Repealed. Pub. L. 113–66, div. A, title VI, § 621(c)(2)(A), Dec. 26, 2013, 127 Stat. 784]

Section, added Pub. L. 106–398, § 1 [[div. A], title V, § 579(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–141, related to reimbursement for expenses incurred in connection with leave canceled due to contingency operations.

§ 1054. Defense of certain suits arising out of legal malpractice

(a) The remedy against the United States provided by sections 1346(b) and 2672 of title 28 for damages for injury or loss of property caused by the negligent or wrongful act or omission of any person who is an attorney, paralegal, or other member of a legal staff within the Department of Defense (including the National Guard while engaged in training or duty under section 316, 502, 503, 504, or 505 of title 32) or within the Coast Guard, in connection with providing legal services while acting within the scope of the person's duties or employment, is exclusive of any other civil action or proceeding by reason of the same subject matter against the person (or the

estate of the person) whose act or omission gave rise to such action or proceeding.

(b) The Attorney General shall defend any civil action or proceeding brought in any court against any person referred to in subsection (a) (or the estate of such person) for any such injury. Any person against whom such a civil action or proceeding is brought shall deliver, within such time after date of service or knowledge of service as determined by the Attorney General, all process served upon such person (or an attested true copy thereof) to such person's immediate superior or to whomever was designated by the head of the agency concerned to receive such papers. Such person shall promptly furnish copies of the pleading and process therein—

(1) to the United States attorney for the district embracing the place wherein the action or proceeding is brought;

(2) to the Attorney General; and

(3) to the head of the agency concerned.

(c) Upon a certification by the Attorney General that a person described in subsection (a) was acting in the scope of such person's duties or employment at the time of the incident out of which the suit arose, any such civil action or proceeding commenced in a State court—

(1) shall be removed without bond at any time before trial by the Attorney General to the district court of the United States of the district and division embracing the place wherein it is pending; and

(2) shall be deemed a tort action brought against the United States under the provisions of title 28 and all references thereto. Should a United States district court determine on a hearing on a motion to remand held before a trial on the merits that the case so removed is one in which a remedy by suit within the meaning of subsection (a) is not available against the United States, the case shall be remanded to the State court.

(d) The Attorney General may compromise or settle any claim asserted in such civil action or proceeding in the manner provided in section 2677 of title 28, and with the same effect.

(e) For purposes of this section, the provisions of section 2680(h) of title 28 shall not apply to a cause of action arising out of a negligent or wrongful act or omission in the provision of legal assistance.

(f) The head of the agency concerned may hold harmless or provide liability insurance for any person described in subsection (a) for damages for injury or loss of property caused by such person's negligent or wrongful act or omission in the provision of authorized legal assistance while acting within the scope of such person's duties if such person is assigned to a foreign country or detailed for service with an entity other than a Federal department, agency, or instrumentality or if the circumstances are such as are likely to preclude the remedies of third persons against the United States described in section 1346(b) of title 28, for such damage or injury.

(g) In this section, the term ''head of the agency concerned'' means the Secretary of Defense, the Secretary of a military department, or the Secretary of the department in which the Coast Guard is operating, as appropriate.

(Added Pub. L. 99–661, div. A, title XIII, §1356(a)(1), Nov. 14, 1986, 100 Stat. 3996; amended Pub. L. 100–448, §15(a), Sept. 28, 1988, 102 Stat. 1845.)

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–448, §15(a)(1), inserted ''or within the Coast Guard'' after ''of title 32)''.

Subsec. (g). Pub. L. 100–448, §15(a)(2), inserted reference to the Secretary of the department in which the Coast Guard is operating.

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–448, §15(b), Sept. 28, 1988, 102 Stat. 1845, provided that: ''The amendments made by subsection (a) [amending this section] shall apply only to claims accruing on or after the date of the enactment of this Act [Sept. 28, 1988], regardless of when the alleged negligent act or omission occurred.''

EFFECTIVE DATE

Pub. L. 99–661, div. A, title XIII, §1356(b), Nov. 14, 1986, 100 Stat. 3998, provided that: ''Section 1054 of title 10, United States Code, as added by subsection (a), shall apply only to claims accruing on or after the date of the enactment of this Act [Nov. 14, 1986], regardless of when the alleged negligent or wrongful act or omission occurred.''

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 1055. Waiver of security deposits for members renting private housing; authority to indemnify landlord

(a) The Secretary of Defense may carry out a program under which the Secretary of a military department agrees to indemnify a landlord who leases a rental unit to a member of the armed forces against a breach of the lease by the member or for damage to the rental unit caused by the member. In exchange for agreement for such indemnification by the Secretary, the landlord shall be required to waive any requirement for payment by the member of a security deposit that the landlord would otherwise require.

(b)(1) For purposes of carrying out a program authorized by subsection (a), the Secretary of a military department, to the extent funds are provided in advance in appropriation Acts, may enter into an agreement with any landlord who agrees to waive the requirement for a security deposit in connection with the lease of a rental unit to a member of the armed forces under the jurisdiction of the Secretary. An agreement under this paragraph shall provide that—

(A) the term of the agreement shall remain in effect during the term of the member's lease and during any lease renewal periods with the lessor;

(B) the member shall not pay a security deposit;

(C) the Secretary (except as provided in subparagraphs (D) and (E)) shall compensate the landlord for breach of the lease by the member and for damage to the rental unit caused by

the member or by a guest or dependent of the member;

(D) the total liability of the Secretary for a breach of the lease or for damage described in subparagraph (C) may not exceed an amount equal to the amount that the Secretary determines would have been required by the landlord as a security deposit in the absence of an agreement authorized in this paragraph;

(E) the Secretary may not compensate the landlord for any claim for breach of the lease or for damage described in subparagraph (C) until the landlord exhausts any remedies available to the landlord (including submission to binding arbitration by a panel composed of military personnel and persons from the private sector) against the member for the breach or damage; and

(F) the Secretary shall be subrogated to the rights of the landlord in any case in which the Secretary compensates the landlord for breach of the lease or for damage described in subparagraph (C).

(2) Any authority of the Secretary of a military department under this section shall be exercised under regulations prescribed by the Secretary of Defense.

(c)(1) The Secretary of a military department who compensates a landlord under subsection (b) for a breach of a lease or for damage described in subsection (b)(1)(C) may issue a special order under section 1007 of title 37 to authorize the withholding from the pay of the member of an amount equal to the amount paid by the Secretary to the landlord as compensation for the breach or damage.

(2) Before the Secretary of a military department issues a special order under section 1007 of title 37 to authorize the withholding of any amount from the pay of a member for a breach or damage referred to in paragraph (1), the Secretary concerned shall provide the member with the same notice and opportunity for hearing and record inspection as provided an individual under section 5514(a)(2) of title 5. The Secretary concerned shall prescribe regulations, subject to the approval of the President, to carry out this paragraph. Such regulations shall be as uniform for the military departments as practicable.

(d) In this section, the term ''landlord'' means a person who leases a rental unit to a member of the armed forces.

(Added Pub. L. 100–456, div. A, title VI, §621(a)(1), Sept. 29, 1988, 102 Stat. 1982.)

EFFECTIVE DATE

Pub. L. 100–456, div. A, title VI, §621(b), Sept. 29, 1988, 102 Stat. 1983, provided that: ''Section 1055 of title 10, United States Code, as added by subsection (a), shall take effect on October 1, 1988.''

§ 1056. Relocation assistance programs

(a) REQUIREMENT TO PROVIDE ASSISTANCE.—The Secretary of Defense shall carry out a program to provide relocation assistance to members of the armed forces and their families as provided in this section. In addition, the Secretary of Defense shall make every effort, consistent with readiness objectives, to stabilize and lengthen tours of duty to minimize the adverse effects of relocation.

(b) TYPES OF ASSISTANCE.—(1) The Secretary of each military department, under regulations prescribed by the Secretary of Defense, shall provide relocation assistance, through military relocation assistance programs described in subsection (c), to members of the armed forces who are ordered to make a change of permanent station which includes a move to a new location (and for dependents of such members who are authorized to move in connection with the change of permanent station).

(2) The relocation assistance provided shall include the following:

(A) Provision of destination area information and preparation (to be provided before the change of permanent station takes effect), with emphasis on information with regard to moving costs, housing costs and availability, child care, spouse employment opportunities, cultural adaptation, and community orientation.

(B) Provision of counseling about financial management, home buying and selling, renting, stress management aimed at intervention and prevention of abuse, property management, and shipment and storage of household goods (including motor vehicles and pets).

(C) Provision of settling-in services, with emphasis on available government living quarters, private housing, child care, spouse employment assistance information, cultural adaptation, and community orientation.

(D) Provision of home finding services, with emphasis on services for locating adequate, affordable temporary and permanent housing.

(c) MILITARY RELOCATION ASSISTANCE PROGRAMS.—(1) The Secretary shall provide for the establishment of military relocation assistance programs to provide the relocation assistance described in subsection (b). The Secretary shall establish such a program in each geographic area in which at least 500 members of the armed forces are assigned to or serving at a military installation. A member who is not stationed within a geographic area that contains such a program shall be given access to such a program. The Secretary shall ensure that persons on the staff of each program are trained in the techniques and delivery of professional relocation assistance.

(2) The Secretary shall ensure that information available through each military relocation assistance program shall be managed through a computerized information system that can interact with all other military relocation assistance programs of the military departments, including programs located outside the continental United States.

(3) Duties of each military relocation assistance program shall include assisting personnel offices on the military installation in using the computerized information available through the program to help provide members of the armed forces who are deciding whether to reenlist information on locations of possible future duty assignments.

(d) DIRECTOR.—The Secretary of Defense shall establish the position of Director of Military Relocation Assistance Programs in the office of the Assistant Secretary of Defense (Force Management and Personnel). The Director shall

oversee development and implementation of the military relocation assistance programs under this section.

(e) REGULATIONS.—This section shall be administered under regulations prescribed by the Secretary of Defense.

(f) INAPPLICABILITY TO COAST GUARD.—This section does not apply to the Coast Guard.

(Added Pub. L. 101–510, div. A, title XIV, § 1481(c)(1), Nov. 5, 1990, 104 Stat. 1705; amended Pub. L. 104–106, div. A, title IX, § 903(d), title X, § 1062(a), Feb. 10, 1996, 110 Stat. 402, 443; Pub. L. 104–201, div. A, title IX, § 901, Sept. 23, 1996, 110 Stat. 2617; Pub. L. 107–107, div. A, title X, § 1048(a)(9), Dec. 28, 2001, 115 Stat. 1223.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in Pub. L. 101–189, div. A, title VI, § 661(a)–(g), Nov. 29, 1989, 103 Stat. 1463, which was set out as a note under section 113 of this title, prior to repeal by Pub. L. 101–510, § 1481(c)(3).

AMENDMENTS

2001—Subsec. (c)(2). Pub. L. 107–107 struck out '', not later than September 30, 1991,'' before ''information available''.

1996—Subsec. (d). Pub. L. 104–106, § 903(a), (d), which directed repeal of subsec. (d), eff. Jan. 31, 1997, was repealed by Pub. L. 104–201.

Subsecs. (f), (g). Pub. L. 104–106, § 1062(a), redesignated subsec. (g) as (f) and struck out former subsec. (f) which read as follows: ''ANNUAL REPORT.—Not later than March 1 each year, the Secretary of Defense, acting through the Director of Military Relocation Assistance Programs, shall submit to Congress a report on the program under this section and on military family relocation matters. The report shall include the following:

''(1) An assessment of available, affordable private-sector housing for members of the armed forces and their families.

''(2) An assessment of the actual nonreimbursed costs incurred by members of the armed forces and their families who are ordered to make a change of permanent station.

''(3) Information (shown by military installation) on the types of locations at which members of the armed forces assigned to duty at military installations live, including the number of members of the armed forces who live on a military installation and the number who do not live on a military installation.

''(4) Information on the effects of the relocation assistance programs established under this section on the quality of life of members of the armed forces and their families and on retention and productivity of members of the armed forces.''

IMPLEMENTATION OF RELOCATION ASSISTANCE PROGRAMS

Pub. L. 101–510, div. A, title XIV, § 1481(c)(4), Nov. 5, 1990, 104 Stat. 1705, provided that: ''The program required to be carried out by section 1056 of title 10, United States Code, as added by paragraph (1), shall be established by the Secretary of Defense not later than October 1, 1990. The Secretary shall prescribe regulations to implement that section not later than July 1, 1990.''

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 1056a. Reintegration of recovered Department of Defense personnel; post-isolation support activities for other recovered personnel

(a) REINTEGRATION AND SUPPORT AUTHORIZED.—The Secretary of Defense may carry out the following:

(1) Reintegration activities for recovered persons who are Department of Defense personnel.

(2) Post-isolation support activities for or on behalf of other recovered persons who are officers or employees of the United States Government, military or civilian officers or employees of an allied or coalition partner of the United States, or other United States or foreign nationals.

(b) ACTIVITIES AUTHORIZED.—(1) The activities authorized by subsection (a) for or on behalf of a recovered person may include the following:

(A) The provision of food, clothing, necessary medical support, and essential sundry items for the recovered person.

(B) In accordance with regulations prescribed by the Secretary of Defense, travel and transportation allowances for not more than three family members, or other designated individuals, determined by the commander or head of a military medical treatment facility to be beneficial for the reintegration of the recovered person and whose presence may contribute to improving the physical and mental health of the recovered person.

(C) Transportation or reimbursement for transportation in connection with the attendance of the recovered person at events or functions determined by the commander or head of a military medical treatment facility to contribute to the physical and mental health of the recovered person.

(2) Medical support may be provided under paragraph (1)(A) to a recovered person who is not a member of the armed forces for not more than 20 days.

(c) DEFINITIONS.—In this section:

(1) The term ''post-isolation support'', in the case of a recovered person, means—

(A) the debriefing of the recovered person following a separation as described in paragraph (2);

(B) activities to promote or support the physical and mental health of the recovered person following such a separation; and

(C) other activities to facilitate return of the recovered person to military or civilian life as expeditiously as possible following such a separation.

(2) The term ''recovered person'' means an individual who is returned alive from separation (whether as an individual or a group) while participating in or in association with a United States-sponsored military activity or mission in which the individual was detained in isolation or held in captivity by a hostile entity.

(3) The term ''reintegration'', in the case of a recovered person, means—

(A) the debriefing of the recovered person following a separation as described in paragraph (2);

(B) activities to promote or support for the physical and mental health of the recovered person following such a separation; and

(C) other activities to facilitate return of the recovered person to military duty or employment with the Department of Defense as expeditiously as possible following such a separation.

(Added Pub. L. 112–81, div. A, title V, § 588(a), Dec. 31, 2011, 125 Stat. 1436.)

§ 1057. Use of armed forces insignia on State license plates

(a) The Secretary concerned may approve an application by a State to use or imitate the seal or other insignia of the department (under the jurisdiction of such Secretary) or of armed forces (under the jurisdiction of such Secretary) on motor vehicle license plates issued by the State to an individual who is a member or former member of the armed forces.

(b) The Secretary concerned may prescribe any regulations necessary regarding the display of the seal or other insignia of the department (under the jurisdiction of such Secretary) or of armed forces (under the jurisdiction of such Secretary) on the license plates described in subsection (a).

(c) In this section, the term ''State'' includes the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, and American Samoa.

(Added Pub. L. 102–484, div. A, title X, § 1080(a), Oct. 23, 1992, 106 Stat. 2514.)

§ 1058. Responsibilities of military law enforcement officials at scenes of domestic violence

(a) IMMEDIATE ACTIONS REQUIRED.—Under regulations prescribed pursuant to subsection (c), the Secretary concerned shall ensure, in any case of domestic violence in which a military law enforcement official at the scene determines that physical injury has been inflicted or a deadly weapon or dangerous instrument has been used, that military law enforcement officials—

(1) take immediate measures to reduce the potential for further violence at the scene; and

(2) within 24 hours of the incident, provide a report of the domestic violence to the appropriate commander and to a local military family advocacy representative exercising responsibility over the area in which the incident took place.

(b) FAMILY ADVOCACY COMMITTEE.—Under regulations prescribed pursuant to subsection (c), the Secretary concerned shall ensure that, whenever a report is provided to a commander under subsection (a)(2), a multidisciplinary family advocacy committee meets, with all due practicable speed, to review the situation and to make recommendations to the commander for appropriate action.

(c) REGULATIONS.—The Secretary of Defense, and the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, shall prescribe by regulation the definition of ''domestic violence'' for purposes of this section and such other regulations as may be necessary for purposes of this section.

(d) MILITARY LAW ENFORCEMENT OFFICIAL.—In this section, the term ''military law enforcement official'' means a person authorized under regulations governing the armed forces to apprehend persons subject to the Uniform Code of Military Justice (chapter 47 of this title) or to trial thereunder.

(Added Pub. L. 103–160, div. A, title V, § 551(a)(1), Nov. 30, 1993, 107 Stat. 1661; amended Pub. L. 103–337, div. A, title X, § 1070(a)(4), (b)(3), Oct. 5, 1994, 108 Stat. 2855, 2856; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

CODIFICATION

Other sections 1058 were renumbered sections 1059 and 1060 of this title.

AMENDMENTS

2002—Subsec. (c). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

1994—Pub. L. 103–337, § 1070(b)(3), made technical correction to directory language of Pub. L. 103–160, § 551(a)(1), which enacted this section.

Subsec. (d). Pub. L. 103–337, § 1070(a)(4), substituted ''subject to the Uniform Code of Military Justice (chapter 47 of this title)'' for ''subject to this chapter''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Pub. L. 103–337, div. A, title X, § 1070(b), Oct. 5, 1994, 108 Stat. 2856, provided that the amendment made by that section is effective as of Nov. 30, 1993, and as if included in the National Defense Authorization Act for Fiscal Year 1994, Pub. L. 103–160, as enacted.

DEADLINE FOR PRESCRIBING PROCEDURES

Pub. L. 103–160, div. A, title V, § 551(b), Nov. 30, 1993, 107 Stat. 1662, provided that: ''The Secretary of Defense shall prescribe procedures to carry out section 1058 of title 10, United States Code, as added by subsection (a), not later than six months after the date of the enactment of this Act [Nov. 30, 1993].''

§ 1059. Dependents of members separated for dependent abuse: transitional compensation; commissary and exchange benefits

(a) AUTHORITY TO PAY COMPENSATION.—The Secretary of Defense, with respect to the armed forces (other than the Coast Guard when it is not operating as a service in the Navy), and the Secretary of Homeland Security, with respect to the Coast Guard when it is not operating as a service in the Navy, may each establish a program to pay monthly transitional compensation in accordance with this section to dependents or former dependents of a member of the armed forces described in subsection (b). Upon establishment of such a program, the program shall apply in the case of each such member described in subsection (b) who is under the jurisdiction of the Secretary establishing the program.

(b) PUNITIVE AND OTHER ADVERSE ACTIONS COVERED.—This section applies in the case of a

member of the armed forces on active duty for a period of more than 30 days—

(1) who is convicted of a dependent-abuse offense (as defined in subsection (c)) and whose conviction results in the member—

(A) being separated from active duty pursuant to a sentence of a court-martial; or

(B) forfeiting all pay and allowances pursuant to a sentence of a court-martial; or

(2) who is administratively separated, voluntarily or involuntarily, from active duty in accordance with applicable regulations if the basis for the separation includes a dependent-abuse offense.

(c) DEPENDENT-ABUSE OFFENSES.—For purposes of this section, a dependent-abuse offense is conduct by an individual while a member of the armed forces on active duty for a period of more than 30 days—

(1) that involves abuse of the spouse or a dependent child of the member; and

(2) that is a criminal offense specified in regulations prescribed by the Secretary of Defense under subsection (k).

(d) RECIPIENTS OF PAYMENTS.—In the case of any individual described in subsection (b), the Secretary shall pay such compensation to dependents or former dependents of the individual as follows:

(1) If the individual was married at the time of the commission of the dependent-abuse offense resulting in the separation, such compensation shall be paid to the spouse or former spouse to whom the individual was married at that time, including an amount (determined under subsection (f)(2)) for each, if any, dependent child of the individual described in subsection (b) who resides in the same household as that spouse or former spouse.

(2) If there is a spouse or former spouse who is or, but for subsection (g), would be eligible for compensation under this section and if there is a dependent child of the individual described in subsection (b) who does not reside in the same household as that spouse or former spouse, compensation under this section shall be paid to each such dependent child of the individual described in subsection (b) who does not reside in that household.

(3) If there is no spouse or former spouse who is (or but for subsection (g) would be) eligible under paragraph (1), such compensation shall be paid to the dependent children of the individual described in subsection (b).

(4) For purposes of this subsection, an individual's status as a ''dependent child'' shall be determined as of the date on which the individual described in subsection (b) is convicted of the dependent-abuse offense or, in a case described in subsection (b)(2), as of the date on which the separation action is initiated by a commander of the individual described in subsection (b).

(e) COMMENCEMENT AND DURATION OF PAYMENT.—(1) Payment of transitional compensation under this section—

(A) in the case of a member convicted by a court-martial for a dependent-abuse offense, shall commence—

(i) as of the date the court-martial sentence is adjudged if the sentence, as adjudged, includes a dismissal, dishonorable discharge, bad conduct discharge, or forfeiture of all pay and allowances; or

(ii) if there is a pretrial agreement that provides for disapproval or suspension of the dismissal, dishonorable discharge, bad conduct discharge, or forfeiture of all pay and allowances, as of the date of entry of judgment under section 860c of this title (article 60c of the Uniform Code of Military Justice) if the sentence includes an unsuspended dismissal, dishonorable discharge, bad conduct discharge, or forfeiture of all pay and allowances; and

(B) in the case of a member being considered under applicable regulations for administrative separation from active duty in accordance with such regulations (if the basis for the separation includes a dependent-abuse offense), shall commence as of the date on which the separation action is initiated by a commander of the member pursuant to such regulations, as determined by the Secretary concerned.

(2) Transitional compensation with respect to a member shall be paid for a period of not less than 12 months and not more than 36 months, as established in policies prescribed by the Secretary concerned.

(3)(A) If a member is sentenced by a court-martial to receive punishment that includes a dismissal, dishonorable discharge, bad conduct discharge, or forfeiture of all pay and allowances as a result of a conviction for a dependent-abuse offense and the conviction is disapproved or is otherwise not part of the judgment under section 860c of this title (article 60c of the Uniform Code of Military Justice) or the punishment is disapproved or is otherwise not part of the judgment under such section (article), any payment of transitional compensation that has commenced under this section on the basis of such sentence in that case shall cease.

(B) If administrative separation of a member from active duty is proposed on a basis that includes a dependent-abuse offense and the proposed administrative separation is disapproved by competent authority under applicable regulations, payment of transitional compensation in such case shall cease.

(C) Cessation of payments under subparagraph (A) or (B) shall be effective as of the first day of the first month following the month in which the Secretary concerned notifies the recipient of such transitional compensation in writing that payment of the transitional compensation will cease. The recipient may not be required to repay amounts of transitional compensation received before that effective date (except to the extent necessary to recoup any amount that was erroneous when paid).

(f) AMOUNT OF PAYMENT.—(1) Payment to a spouse or former spouse under this section for any month shall be at the rate in effect for that month for the payment of dependency and indemnity compensation under section 1311(a)(1) of title 38.

(2) If a spouse or former spouse to whom compensation is paid under this section has custody

of a dependent child of the member who resides in the same household as that spouse or former spouse, the amount of such compensation paid for any month shall be increased for each such dependent child by the amount in effect for that month under section 1311(b) of title 38.

(3) If compensation is paid under this section to a child or children pursuant to subsection (d)(2) or (d)(3), such compensation shall be paid in equal shares, with the amount of such compensation for any month determined in accordance with the rates in effect for that month under section 1313 of title 38.

(4) Payment to a child under this section shall not cover any period before the birth of the child.

(g) SPOUSE AND FORMER SPOUSE FORFEITURE PROVISIONS.—(1) If a former spouse receiving compensation under this section remarries, the Secretary shall terminate payment of such compensation, effective as of the date of such marriage. The Secretary may not renew payment of compensation under this section to such former spouse in the event of the termination of such subsequent marriage.

(2) If after a punitive or other adverse action is executed in the case of a former member as described in subsection (b) the former member resides in the same household as the spouse or former spouse, or dependent child, to whom compensation is otherwise payable under this section, the Secretary shall terminate payment of such compensation, effective as of the time the former member begins residing in such household. Compensation paid for a period after the former member's separation, but before the former member resides in the household, shall not be recouped. If the former member subsequently ceases to reside in such household before the end of the period of eligibility for such payments, the Secretary may not resume such payments.

(3) In a case in which the victim of the dependent-abuse offense resulting in a punitive or other adverse action described in subsection (b) was a dependent child, the Secretary concerned may not pay compensation under this section to a spouse or former spouse who would otherwise be eligible to receive such compensation if the Secretary determines (under regulations prescribed under subsection (k)) that the spouse or former spouse was an active participant in the conduct constituting the dependent-abuse offense.

(h) EFFECT OF CONTINUATION OF MILITARY PAY.—In the case of payment of transitional compensation by reason of a total forfeiture of pay and allowances pursuant to a sentence of a court-martial, payment of transitional compensation shall not be made for any period for which an order—

(1) suspends, in whole or in part, that part of a sentence that includes forfeiture of the member's pay and allowance; or

(2) otherwise results in continuation, in whole or in part, of the member's pay and allowances.

(i) COORDINATION OF BENEFITS.—The Secretary concerned may not make payments to a spouse or former spouse under both this section and section 1408(h)(1) of this title. In the case of a spouse or former spouse for whom a court order provides for payments by the Secretary pursuant to section 1408(h)(1) of this title and to whom the Secretary offers payments under this section, the spouse or former spouse shall elect which to receive.

(j) COMMISSARY AND EXCHANGE BENEFITS.—(1) A dependent or former dependent entitled to payment of monthly transitional compensation under this section shall, while receiving payments in accordance with this section, be entitled to use commissary and exchange stores to the same extent and in the same manner as a dependent of a member of the armed forces on active duty for a period of more than 30 days.

(2) If a dependent or former dependent eligible or entitled to use commissary and exchange stores under paragraph (1) is eligible or entitled to use commissary and exchange stores under another provision of law, the eligibility or entitlement of that dependent or former dependent to use commissary and exchange stores shall be determined under such other provision of law rather than under paragraph (1).

(k) REGULATIONS.—(1) The Secretary of Defense shall prescribe regulations to carry out this section with respect to the armed forces (other than the Coast Guard when it is not operating as a service in the Navy). The Secretary of Homeland Security shall prescribe regulations to carry out this section with respect to the Coast Guard when it is not operating as a service in the Navy.

(2) Regulations prescribed under paragraph (1) shall include the criminal offenses, or categories of offenses, under the Uniform Code of Military Justice (chapter 47 of this title), Federal criminal law, the criminal laws of the States and other jurisdictions of the United States, and the laws of other nations that are to be considered to be dependent-abuse offenses for the purposes of this section.

(*l*) DEPENDENT CHILD DEFINED.—In this section, the term "dependent child", with respect to a member or former member of the armed forces referred to in subsection (b), means an unmarried child, including an adopted child or a stepchild, who was residing with the member or eligible spouse at the time of the dependent-abuse offense resulting in the separation of the former member or who was carried during pregnancy at the time of the dependent-abuse offense resulting in the separation of the former member and was subsequently born alive to the eligible spouse or former spouse and—

(1) who is under 18 years of age;

(2) who is 18 years of age or older and is incapable of self-support because of a mental or physical incapacity that existed before the age of 18 and who is (or, at the time a punitive or other adverse action was executed in the case of the former member as described in subsection (b), was) dependent on the former member for over one-half of the child's support; or

(3) who is 18 years of age or older but less than 23 years of age, is enrolled in a full-time course of study in an institution of higher learning approved by the Secretary of Defense and who is (or, at the time a punitive or other adverse action was executed in the case of the

former member as described in subsection (b), was) dependent on the former member for over one-half of the child's support.

(m) EXCEPTIONAL ELIGIBILITY FOR DEPENDENTS OF MEMBERS OR FORMER MEMBERS.—(1) The Secretary concerned, under regulations prescribed under subsection (k), may authorize eligibility for benefits under this section for dependents and former dependents of a member or former member of the armed forces in a case in which the dependents or former dependents are not otherwise eligible for such benefits and the Secretary concerned determines that the member or former member engaged in conduct that is a dependent-abuse offense under this section and the member or former member was separated from active duty other than as described in subsection (b).

(2) In a case in which the Secretary concerned, under the authority of paragraph (1), authorizes benefits to be provided under this section, such benefits shall be provided in the same manner as if the member or former member were an individual described in subsection (b), except that, under regulations prescribed under subsection (k), the Secretary shall make such adjustments to the commencement and duration of payment provisions of subsection (e), and may make adjustments to other provisions of this section, as the Secretary considers necessary in light of the circumstances in order to provide benefits substantially equivalent to the benefits provided in the case of an individual described in subsection (b).

(3) For purposes of the provision of benefits under this section pursuant to this subsection, a member shall be considered separated from active duty upon the earliest of—

(A) the date an administrative separation is initiated by a commander of the member;

(B) the date the court-martial sentence is adjudged if the sentence, as adjudged, includes a dismissal, dishonorable discharge, bad conduct discharge, or forfeiture of all pay and allowances; or

(C) the date the member's term of service expires.

(4) The authority of the Secretary concerned under paragraph (1) may not be delegated.

(Added Pub. L. 103–160, div. A, title V, § 554(a)(1), Nov. 30, 1993, 107 Stat. 1663, § 1058; renumbered § 1059 and amended Pub. L. 103–337, div. A, title V, § 535(a)–(c)(1), title X, § 1070(a)(5)(A), Oct. 5, 1994, 108 Stat. 2762, 2763, 2855; Pub. L. 104–106, div. A, title VI, § 636(a), (b), title XV, § 1503(a)(8), Feb. 10, 1996, 110 Stat. 367, 511; Pub. L. 105–261, div. A, title V, § 570(a), (b), Oct. 17, 1998, 112 Stat. 2032; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 108–136, div. A, title V, §§ 572(a), (b)(1), (c), 573(a), 574, Nov. 24, 2003, 117 Stat. 1484–1486; Pub. L. 112–239, div. A, title V, § 564(a), Jan. 2, 2013, 126 Stat. 1748; Pub. L. 113–291, div. A, title VI, § 621, Dec. 19, 2014, 128 Stat. 3401; Pub. L. 115–91, div. A, title V, § 531(*l*), Dec. 12, 2017, 131 Stat. 1386; Pub. L. 116–92, div. A, title VI, § 621, Dec. 20, 2019, 133 Stat. 1426.)

AMENDMENTS

2019—Subsec. (m). Pub. L. 116–92, § 621(1), (2), inserted ''Members or'' before ''Former Members'' in heading and ''member or'' before ''former member'' wherever appearing in pars. (1) and (2).

Subsec. (m)(3), (4). Pub. L. 116–92, § 621(3), (4), added par. (3) and redesignated former par. (3) as (4).

2017—Subsec. (e)(1)(A)(ii). Pub. L. 115–91, § 531(*l*)(1), substituted ''the date of entry of judgment under section 860c of this title (article 60c of the Uniform Code of Military Justice) if the sentence includes'' for ''the date of the approval of the court-martial sentence by the person acting under section 860(c) of this title (article 60(c) of the Uniform Code of Military Justice) if the sentence, as approved, includes''.

Subsec. (e)(3)(A). Pub. L. 115–91, § 531(*l*)(2), substituted ''conviction for a dependent-abuse offense and the conviction is disapproved or is otherwise not part of the judgment under section 860c of this title (article 60c of the Uniform Code of Military Justice) or the punishment is disapproved or is otherwise not part of the judgment under such section (article),'' for ''conviction by a court-martial for a dependent-abuse offense and each such conviction is disapproved by the person acting under section 860(c) of this title (article 60(c) of the Uniform Code of Military Justice) or set aside, or each such punishment applicable to the member under the sentence is disapproved by the person acting under section 860(c) of this title, remitted, set aside, suspended, or mitigated to a lesser punishment that does not include any such punishment,''.

2014—Subsec. (d)(4). Pub. L. 113–291 substituted ''as of the date on which the separation action is initiated by a commander of the individual described in subsection (b)'' for ''as of the date on which the individual described in subsection (b) is separated from active duty''.

2013—Subsec. (f)(4). Pub. L. 112–239, § 564(a)(1), added par. (4).

Subsec. (*l*). Pub. L. 112–239, § 564(a)(2), substituted ''or eligible spouse at the time of the dependent-abuse offense resulting in the separation of the former member or who was carried during pregnancy at the time of the dependent-abuse offense resulting in the separation of the former member and was subsequently born alive to the eligible spouse or former spouse'' for ''at the time of the dependent-abuse offense resulting in the separation of the former member'' in introductory provisions.

2003—Subsec. (b)(2). Pub. L. 108–136, § 574, inserted '', voluntarily or involuntarily,'' after ''administratively separated''.

Subsec. (e)(1)(A). Pub. L. 108–136, § 572(a), substituted ''shall commence—'' and cls. (i) and (ii) for ''shall commence as of the date of the approval of the court-martial sentence by the person acting under section 860(c) of this title (article 60(c) of the Uniform Code of Military Justice) if the sentence, as approved, includes a dismissal, dishonorable discharge, bad conduct discharge, or forfeiture of all pay and allowances; and''.

Subsec. (e)(2). Pub. L. 108–136, § 572(b)(1), substituted ''a period of not less than 12 months and not more than 36 months, as established in policies prescribed by the Secretary concerned'' for ''a period of 36 months, except that, if as of the date on which payment of transitional compensation commences the unserved portion of the member's period of obligated active duty service is less than 36 months, the period for which transitional compensation is paid shall be equal to the greater of—

''(A) the unserved portion of the member's period of obligated active duty service; or

''(B) 12 months''.

Subsec. (e)(3)(A). Pub. L. 108–136, § 572(c), substituted ''conviction is disapproved by the person acting under section 860(c) of this title (article 60(c) of the Uniform Code of Military Justice) or set aside, or each such punishment applicable to the member under the sentence is disapproved by the person acting under section 860(c) of this title, remitted, set aside, suspended, or mitigated'' for ''punishment applicable to the member under the sentence is remitted, set aside, or mitigated''.

Subsec. (m). Pub. L. 108–136, § 573(a), added subsec. (m).

2002—Subsecs. (a), (k)(1). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

1998—Subsec. (d)(1). Pub. L. 105–261, § 570(a)(1), struck out ''(except as otherwise provided in this subsection)'' after ''such compensation shall'' and inserted before period at end '', including an amount (determined under subsection (f)(2)) for each, if any, dependent child of the individual described in subsection (b) who resides in the same household as that spouse or former spouse''.

Subsec. (d)(2). Pub. L. 105–261, § 570(a)(2), substituted ''is or, but for subsection (g), would be eligible'' for ''(but for subsection (g)) would be eligible'' and ''compensation under this section shall'' for ''such compensation shall''.

Subsec. (d)(4). Pub. L. 105–261, § 570(a)(3), substituted ''For purposes of this subsection'' for ''For purposes of paragraphs (2) and (3)''.

Subsec. (f)(2). Pub. L. 105–261, § 570(b), substituted ''has custody of a dependent child of the member who resides in the same household as that spouse or former spouse'' for ''has custody of a dependent child or children of the member''.

1996—Subsec. (a). Pub. L. 104–106, § 636(a), inserted at end ''Upon establishment of such a program, the program shall apply in the case of each such member described in subsection (b) who is under the jurisdiction of the Secretary establishing the program.''

Subsec. (c)(2). Pub. L. 104–106, § 1503(a)(8), substituted ''subsection (k)'' for ''subsection (j)''.

Subsec. (d). Pub. L. 104–106, § 636(b)(1), in introductory provisions, substituted ''the case of any individual described in subsection (b)'' for ''any case of a separation from active duty as described in subsection (b)'' and ''dependents of the individual'' for ''dependents of the former member''.

Subsec. (d)(1). Pub. L. 104–106, § 636(b)(2), substituted ''If the individual'' for ''If the former member'' and ''to whom the individual'' for ''to whom the member''.

Subsec. (d)(2). Pub. L. 104–106, § 636(b)(3), substituted ''individual described in subsection (b)'' for ''former member'' in two places.

Subsec. (d)(3). Pub. L. 104–106, § 636(b)(4), substituted ''individual described in subsection (b)'' for ''former member''.

Subsec. (d)(4). Pub. L. 104–106, § 636(b)(5), substituted ''individual described in subsection (b)'' for ''member'' in two places.

Subsec. (g)(3). Pub. L. 104–106, § 1503(a)(8), substituted ''subsection (k))'' for ''subsection (j))''.

1994—Pub. L. 103–337, § 1070(a)(5)(A), renumbered section 1058 of this title as this section.

Pub. L. 103–337, § 535(c)(1), inserted ''; commissary and exchange benefits'' at end of section catchline.

Subsec. (e). Pub. L. 103–337, § 535(a), amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows:

''(e) COMMENCEMENT AND DURATION OF PAYMENT.—(1) Payment of transitional compensation under this section shall commence as of the date of the discontinuance of the member's pay and allowances pursuant to the separation or sentencing of the member and, except as provided in paragraph (2), shall be paid for a period of 36 months.

''(2) If as of the date on which payment of transitional compensation commences the unserved portion of the member's period of obligated active duty service is less than 36 months, the period for which transitional compensation is paid shall be equal to the greater of—

''(A) the unserved portion of the member's period of obligated active duty service; or

''(B) 12 months.''

Subsecs. (j) to (*l*). Pub. L. 103–337, § 535(b), added subsec. (j) and redesignated former subsecs. (j) and (k) as (k) and (*l*), respectively.

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by Pub. L. 115–91 effective immediately after the amendments made by div. E (§§ 5001–5542) of Pub. L. 114–328 take effect as provided for in section 5542 of that Act (10 U.S.C. 801 note), see section 531(p) of Pub. L. 115–91, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112–239, div. A, title V, § 564(b), Jan. 2, 2013, 126 Stat. 1749, provided that: ''No benefits shall accrue by reason of the amendments made by this section [amending this section] for any month that begins before the date of the enactment of this Act [Jan. 2, 2013].''

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–136, div. A, title V, § 572(d), Nov. 24, 2003, 117 Stat. 1485, provided that: ''The amendments made by this section [amending this section] shall apply only with respect to cases in which a court-martial sentence is adjudged on or after the date of the enactment of this Act [Nov. 24, 2003].''

Pub. L. 108–136, div. A, title V, § 573(b), Nov. 24, 2003, 117 Stat. 1485, provided that: ''The authority under subsection (m) of section 1059 of title 10, United States Code, as added by subsection (a), may be exercised with respect to eligibility for benefits under that section only for dependents and former dependents of individuals who are separated from active duty in the Armed Forces on or after the date of the enactment of this Act [Nov. 24, 2003].''

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–261, div. A, title V, § 570(c), Oct. 17, 1998, 112 Stat. 2032, provided that: ''No benefits shall accrue by reason of the amendments made by this section [amending this section] for any month that begins before the date of the enactment of this Act [Oct. 17, 1998].''

EFFECTIVE DATE

Pub. L. 103–160, div. A, title V, § 554(b), Nov. 30, 1993, 107 Stat. 1666, as amended by Pub. L. 103–337, div. A, title X, § 1070(b)(5), Oct. 5, 1994, 108 Stat. 2856; Pub. L. 104–106, div. A, title VI, § 636(c), Feb. 10, 1996, 110 Stat. 367, provided that:

''(1) The section of title 10, United States Code, added by subsection (a)(1) [this section] shall apply with respect to a member of the Armed Forces who, after November 29, 1993—

''(A) is separated from active duty as described in subsection (b) of such section; or

''(B) forfeits all pay and allowances as described in such subsection.

''(2) Payments of transitional compensation under that section in the case of any person eligible to receive payments under that section shall be made for each month after November 1993 for which that person may be paid transitional compensation in accordance with that section.''

DURATION OF TRANSITIONAL COMPENSATION PAYMENTS

Pub. L. 108–136, div. A, title V, § 572(b)(2), Nov. 24, 2003, 117 Stat. 1485, provided that: ''Policies under subsection (e)(2) of section 1059 of title 10, United States Code, as amended by paragraph (1), for the duration of transitional compensation payments under that section shall be prescribed under such subsection not later than six months after the date of the enactment of this Act [Nov. 24, 2003].''

§ 1060. Military service of retired members with newly democratic nations: consent of Congress

(a) CONSENT OF CONGRESS.—Subject to subsection (b), Congress consents to a retired member of the uniformed services—

(1) accepting employment by, or holding an office or position in, the military forces of a newly democratic nation; and

(2) accepting compensation associated with such employment, office, or position.

(b) APPROVAL REQUIRED.—The consent provided in subsection (a) for a retired member of the uniformed services to accept employment or hold an office or position shall apply to a retired member only if the Secretary concerned and the Secretary of State jointly approve the employment or the holding of such office or position.

(c) DETERMINATION OF NEWLY DEMOCRATIC NATIONS.—The Secretary concerned and the Secretary of State shall jointly determine whether a nation is a newly democratic nation for the purposes of this section.

[(d) Repealed. Pub. L. 108–136, div. A, title X, § 1031(a)(9), Nov. 24, 2003, 117 Stat. 1597.]

(e) CONTINUED ENTITLEMENT TO RETIRED PAY AND BENEFITS.—The eligibility of a retired member to receive retired or retainer pay and other benefits arising from the retired member's status as a retired member of the uniformed services, and the eligibility of dependents of such retired member to receive benefits on the basis of such retired member's status as a retired member of the uniformed services, may not be terminated by reason of employment or holding of an office or position consented to in subsection (a).

(f) RETIRED MEMBER DEFINED.—In this section, the term ''retired member'' means a member or former member of the uniformed services who is entitled to receive retired or retainer pay.

(g) CIVIL EMPLOYMENT BY FOREIGN GOVERNMENTS.—For a provision of law providing the consent of Congress to civil employment by foreign governments, see section 908 of title 37.

(Added Pub. L. 103–160, div. A, title XIV, § 1433(b)(1), Nov. 30, 1993, 107 Stat. 1834, § 1058; renumbered § 1060, Pub. L. 103–337, div. A, title X, § 1070(a)(6)(A), Oct. 5, 1994, 108 Stat. 2855; amended Pub. L. 104–106, div. A, title XV, § 1502(a)(13), Feb. 10, 1996, 110 Stat. 503; Pub. L. 106–65, div. A, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 108–136, div. A, title X, § 1031(a)(9), Nov. 24, 2003, 117 Stat. 1597.)

AMENDMENTS

2003—Subsec. (d). Pub. L. 108–136 struck out heading and text of subsec. (d). Text read as follows: ''The Secretary concerned and the Secretary of State shall notify the Committee on Armed Services and the Committee on Foreign Relations of the Senate and the Committee on Armed Services and the Committee on International Relations of the House of Representatives of each approval under subsection (b) and each determination under subsection (c).''

1999—Subsec. (d). Pub. L. 106–65 substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security''.

1996—Subsec. (d). Pub. L. 104–106 substituted ''Committee on National Security and the Committee on International Relations'' for ''Committee on Armed Services and the Committee on Foreign Affairs''.

1994—Pub. L. 103–337 renumbered section 1058 of this title as this section.

EFFECTIVE DATE

Pub. L. 103–160, div. A, title XIV, § 1433(d), Nov. 30, 1993, 107 Stat. 1835, provided that this section was to take effect as of Jan. 1, 1993, prior to repeal by Pub. L. 103–236, title I, § 182(b), Apr. 30, 1994, 108 Stat. 418.

RESTORATION OF WITHHELD BENEFITS

Pub. L. 103–236, title I, § 182(a), Apr. 30, 1994, 108 Stat. 418, as amended by Pub. L. 103–337, div. A, title X, § 1070(d)(7), Oct. 5, 1994, 108 Stat. 2858; Pub. L. 103–415, § 1(j), Oct. 25, 1994, 108 Stat. 4301, provided that: ''With respect to any person for which the Secretary of State and the Secretary concerned within the Department of Defense have approved the employment or the holding of a position pursuant to the provisions of section 1060 of title 10, United States Code, before April 30, 1994, the consents, approvals and determinations under that section shall be deemed to be effective as of January 1, 1993.''

CONGRESSIONAL FINDINGS

Pub. L. 103–160, div. A, title XIV, § 1433(a), Nov. 30, 1993, 107 Stat. 1833, provided that: ''The Congress makes the following findings:

''(1) It is in the national security interest of the United States to promote democracy throughout the world.

''(2) The armed forces of newly democratic nations often lack the democratic traditions that are a hallmark of the Armed Forces of the United States.

''(3) The understanding of military roles and missions in a democracy is essential for the development and preservation of democratic forms of government.

''(4) The service of retired members of the Armed Forces of the United States in the armed forces of newly democratic nations could lead to a better understanding of military roles and missions in a democracy.''

§ 1060a. Special supplemental food program

(a) PROGRAM REQUIRED.—The Secretary of Defense shall carry out a program to provide supplemental foods and nutrition education to members of the armed forces on duty at stations outside the United States (and its territories and possessions) and to eligible civilians serving with, employed by, or accompanying the armed forces outside the United States (and its territories and possessions).

(b) FUNDING MECHANISM.—The Secretary of Defense shall use funds available for the Department of Defense to carry out the program under subsection (a).

(c) PROGRAM ADMINISTRATION.—(1)(A) The Secretary of Defense shall administer the program referred to in subsection (a) and, except as provided in subparagraph (B), shall determine eligibility for program benefits under the criterion published by the Secretary of Agriculture under section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786). In determining eligibility for benefits, a person already certified for participation in the special supplemental nutrition program for women, infants, and children under such section 17 shall be considered eligible for the duration of the certification period under that special supplemental nutrition program.

(B) In determining eligibility for families of individuals participating in the program under this section, the Secretary of Defense shall, to the extent practicable, use the criterion described in subparagraph (A), including nutritional risk standards. In the application of such criterion, the Secretary shall exclude from income any basic allowance for housing as permitted under section 17(d)(2)(B) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(d)(2)(B)).

(2) The program benefits provided under the program shall be similar to benefits provided by State and local agencies in the United States, particularly with respect to nutrition education.

(3) The Secretary of Agriculture shall provide technical assistance to the Secretary of Defense, if so requested by the Secretary of Defense, for the purpose of carrying out the program under subsection (a).

(d) DEPARTURE FROM STANDARDS.—The Secretary of Defense may authorize departures from standards prescribed by the Secretary of Agriculture regarding the supplemental foods to be made available in the program when local conditions preclude strict compliance or when such compliance is highly impracticable.

(e) REBATE AGREEMENTS WITH FOOD PRODUCERS.—(1) In the administration of the program under this section, the Secretary of Defense may enter into a contract with a producer of a particular brand of food that provides for—

(A) the Secretary of Defense to procure that particular brand of food, exclusive of other brands of the same or similar food, for the purpose of providing the food in commissary stores or Navy Exchange Markets of the Department of Defense as a supplemental food under the program; and

(B) the producer to rebate to the Secretary amounts equal to agreed portions of the amounts paid by the Secretary for the procurement of that particular brand of food for the program.

(2) The Secretary of Defense shall use competitive procedures under chapter 137 of this title to enter into contracts under this subsection.

(3) The period covered by a contract entered into under this subsection, including any period of extension of the contract by modification of the contract, exercise of an option, or other cause, may not exceed three years. No such contract may be extended by a modification of the contract, by exercise of an option, or by any other means. Nothing in this paragraph prohibits a contractor under a contract entered into under this subsection for any year from submitting an offer for, and being awarded, a contract that is to be entered into under this subsection for a successive year.

(4) Amounts rebated under a contract entered into under paragraph (1) shall be credited to the appropriation available for carrying out the program under this section in the fiscal year in which rebated, shall be merged with the other sums in that appropriation, and shall be available for the program for the same period as the other sums in the appropriation.

(f) REGULATIONS.—The Secretary of Defense shall prescribe regulations to administer the program authorized by this section.

(g) DEFINITIONS.—In this section:

(1) The term ''eligible civilian'' means—

(A) a dependent of a member of the armed forces residing with the member outside the United States;

(B) an employee of a military department who is a national of the United States and is residing outside the United States in connection with such individual's employment or a dependent of such individual residing with the employee outside the United States; or

(C) an employee of a Department of Defense contractor who is a national of the United States and is residing outside the United States in connection with such individual's employment or a dependent of such individual residing with the employee outside the United States.

(2) The term ''national of the United States'' means—

(A) a citizen of the United States; or

(B) a person who, though not a citizen of the United States, owes permanent allegiance to the United States, as determined in accordance with the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).

(3) The term ''dependent'' has the meaning given such term in subparagraphs (A), (D), (E), and (I) of section 1072(2) of this title.

(4) The terms ''nutrition education'' and ''supplemental foods'' have the meanings given the terms in section 17(b) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)).

(Added Pub. L. 103–337, div. A, title VI, § 653(a), Oct. 5, 1994, 108 Stat. 2794; amended Pub. L. 104–106, div. A, title XV, § 1503(a)(9), Feb. 10, 1996, 110 Stat. 511; Pub. L. 105–85, div. A, title VI, § 655(b)(1), Nov. 18, 1997, 111 Stat. 1805; Pub. L. 106–65, div. A, title VI, § 674(a)–(d), Oct. 5, 1999, 113 Stat. 675; Pub. L. 106–398, § 1 [[div. A], title VI, § 662], Oct. 30, 2000, 114 Stat. 1654, 1654A–167; Pub. L. 107–107, div. A, title III, § 334, Dec. 28, 2001, 115 Stat. 1059; Pub. L. 107–314, div. A, title III, § 324, Dec. 2, 2002, 116 Stat. 2511.)

REFERENCES IN TEXT

The Immigration and Nationality Act, referred to in subsec. (g)(2)(B), is act June 27, 1952, ch. 477, 66 Stat. 163, as amended, which is classified principally to chapter 12 (§ 1101 et seq.) of Title 8, Aliens and Nationality. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of Title 8 and Tables.

AMENDMENTS

2002—Subsec. (e)(1)(A). Pub. L. 107–314, § 324(a), inserted ''or Navy Exchange Markets'' after ''commissary stores''.

Subsec. (e)(3). Pub. L. 107–314, § 324(b), in first sentence, substituted ''subsection, including any period of extension of the contract by modification of the contract, exercise of an option, or other cause, may not exceed three years'' for ''subsection may not exceed one year''.

2001—Subsecs. (e) to (g). Pub. L. 107–107 added subsec. (e) and redesignated former subsecs. (e) and (f) as (f) and (g), respectively.

2000—Subsec. (c)(1)(B). Pub. L. 106–398 added second sentence and struck out former second sentence which read as follows: ''The Secretary shall also consider the value of housing in kind provided to the individual when determining program eligibility.''

1999—Subsec. (a). Pub. L. 106–65, § 674(a), substituted ''Program Required'' for ''Authority'' in heading and ''The Secretary of Defense shall carry out a program to provide supplemental foods and nutrition education'' for ''The Secretary of Defense may carry out a program to provide special supplemental food benefits'' in text.

Subsec. (b). Pub. L. 106–65, § 674(b), amended heading and text of subsec. (b) generally. Prior to amendment, text read as follows: ''For the purpose of obtaining Federal payments and commodities in order to carry out the program referred to in subsection (a), the Secretary of Agriculture shall make available to the Secretary of Defense the same payments and commodities as are made for the special supplemental food program in the United States under section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786). The Secretary of Defense

may use funds available for the Department of Defense to carry out the program under subsection (a).''

Subsec. (c)(1)(A). Pub. L. 106–65, § 674(c)(1), inserted at end ''In determining eligibility for benefits, a person already certified for participation in the special supplemental nutrition program for women, infants, and children under such section 17 shall be considered eligible for the duration of the certification period under that special supplemental nutrition program.''

Subsec. (c)(1)(B). Pub. L. 106–65, § 674(c)(2), added subpar. (B) and struck out former subpar. (B) which read as follows: ''The Secretary of Defense shall prescribe regulations governing computation of income eligibility standards for families of individuals participating in the program under this section.''

Subsec. (c)(2). Pub. L. 106–65, § 674(c)(3), inserted '', particularly with respect to nutrition education'' before period at end.

Subsec. (c)(3). Pub. L. 106–65, § 674(c)(4), added par. (3).

Subsec. (f)(4). Pub. L. 106–65, § 674(d), added par. (4).

1997—Subsec. (b). Pub. L. 105–85 reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''For the purpose of obtaining Federal payments and commodities in order to carry out the program referred to in subsection (a), the Secretary of Agriculture shall make available to the Secretary of Defense from funds appropriated for such purpose, the same payments and commodities as are made for the special supplemental food program in the United States under section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786).''

1996—Subsec. (f)(2)(B). Pub. L. 104–106 substituted '', as determined in accordance with the Immigration and Nationality Act (8 U.S.C. 1101 et seq.)'' for ''(as defined in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)))''.

REPORT ON IMPLEMENTATION OF SPECIAL SUPPLEMENTAL FOOD PROGRAM

Pub. L. 105–85, div. A, title VI, § 655(b)(2), Nov. 18, 1997, 111 Stat. 1805, directed the Secretary of Defense to submit to Congress a report including plans to implement the program authorized under this section not later than 90 days after Nov. 18, 1997.

§ 1060b. Military ID cards: dependents and survivors of retirees

(a) ISSUANCE OF PERMANENT ID CARD.—(1) In issuing military ID cards to retiree dependents, the Secretary concerned shall issue a permanent ID card (not subject to renewal) to any such retiree dependent as follows:

(A) A retiree dependent who has attained 75 years of age.

(B) A retiree dependent who is permanently disabled.

(2) A permanent ID card shall be issued to a retiree dependent under paragraph (1)(A) upon the expiration, after the retiree dependent attains 75 years of age, of any earlier, renewable military card or, if earlier, upon the request of the retiree dependent after attaining age 75.

(b) DEFINITIONS.—In this section:

(1) The term ''military ID card'' means a card or other form of identification used for purposes of demonstrating eligibility for any benefit from the Department of Defense.

(2) The term ''retiree dependent'' means a person who is a dependent of a retired member of the uniformed services, or a survivor of a deceased retired member of the uniformed services, who is eligible for any benefit from the Department of Defense.

(Added Pub. L. 108–375, div. A, title V, § 583(a)(1), Oct. 28, 2004, 118 Stat. 1929; amended Pub. L. 109–364, div. A, title V, § 598(a), (b)(1), Oct. 17, 2006, 120 Stat. 2237.)

AMENDMENTS

2006—Pub. L. 109–364, § 598(b)(1), struck out ''; issuance of permanent ID card after attaining 75 years of age'' after ''retirees'' in section catchline.

Subsec. (a). Pub. L. 109–364, § 598(a), amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: ''In issuing military ID cards to retiree dependents, the Secretary concerned shall issue a permanent ID card (not subject to renewal) to any such retiree dependent who has attained 75 years of age. Such a permanent ID card shall be issued upon the expiration, after the retiree dependent attains 75 years of age, of any earlier, renewable military ID card or, if earlier, upon the request of such a retiree dependent after attaining age 75.''

EFFECTIVE DATE

Pub. L. 108–375, div. A, title V, § 583(b), Oct. 28, 2004, 118 Stat. 1929, provided that: ''Section 1060b of title 10, United States Code, as added by subsection (a), shall take effect on October 1, 2004.''

§ 1060c. Provision of veterinary services in emergencies

(a) IN GENERAL.—A veterinary professional described in subsection (b) may provide veterinary services for the purposes described in subsection (c) in any State, the District of Columbia, or a territory or possession of the United States, without regard to where such veterinary professional or the patient animal are located, if the provision of such services is within the scope of the authorized duties of such veterinary professional for the Department of Defense.

(b) VETERINARY PROFESSIONAL DESCRIBED.—A veterinary professional described in this subsection is an individual who is—

(1)(A) a member of the armed forces, a civilian employee of the Department of Defense, or otherwise credentialed and privileged at a Federal veterinary institution or location designated by the Secretary of Defense for purposes of this section; or

(B) a member of the National Guard performing training or duty under section 502(f) of title 32;

(2) certified as a veterinary professional by a certification recognized by the Secretary of Defense; and

(3) currently licensed by a State, the District of Columbia, or a territory or possession of the United States to provide veterinary services.

(c) PURPOSES DESCRIBED.—The purposes described in this subsection are veterinary services in response to any of the following:

(1) A national emergency declared by the President pursuant to the National Emergencies Act (50 U.S.C. 1601 et seq.).

(2) A major disaster or an emergency (as those terms are defined in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122)).

(3) A public health emergency declared by the Secretary of Health and Human Services under section 319 of the Public Health Service Act (42 U.S.C. 247d).

(4) An extraordinary emergency, as determined by the Secretary of Agriculture under

section 10407(b) of the Animal Health Protection Act (7 U.S.C. 8306(b)).

(Added Pub. L. 116–92, div. A, title VII, § 735(a), Dec. 20, 2019, 133 Stat. 1462.)

REFERENCES IN TEXT

The National Emergencies Act, referred to in subsec. (c)(1), is Pub. L. 94–412, Sept. 14, 1976, 90 Stat. 1255, which is classified principally to chapter 34 (§ 1601 et seq.) of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 50 and Tables.

CHAPTER 54—COMMISSARY AND EXCHANGE BENEFITS

Sec.
1061. Survivors of certain Reserve and Guard members.
1062. Certain former spouses.
1063. Use of commissary stores and MWR retail facilities: members of reserve components and reserve retirees under age 60.
1064. Use of commissary stores and MWR retail facilities: members of National Guard serving in federally declared disaster or national emergency.
1065. Use of commissary stores and MWR facilities: certain veterans and caregivers for veterans.[1]
1066. Use of commissary stores and MWR facilities: protective services civilian employees.

AMENDMENTS

2021—Pub. L. 116–283, div. A, title VI, § 631(b), title X, § 1081(a)(23), Jan. 1, 2021, 134 Stat. 3682, 3872, added items 1065 and 1066.

2018—Pub. L. 115–232, div. A, title VI, § 621(b)(2), Aug. 13, 2018, 132 Stat. 1799, added item 1065.

2003—Pub. L. 108–136, div. A, title VI, § 651(c), Nov. 24, 2003, 117 Stat. 1522, added items 1063 and 1064 and struck out former items 1063 "Use of commissary stores: members of Ready Reserve", 1063a "Use of commissary stores and MWR retail facilities: members of National Guard serving in federally declared disaster or national emergency", 1064 "Use of commissary stores: persons qualified for retired pay under chapter 1223 but under age 60", and 1065 "Morale, welfare, and recreation retail facilities: use by members of reserve components and dependents".

2002—Pub. L. 107–314, div. A, title III, § 322(b)(2), Dec. 2, 2002, 116 Stat. 2510, inserted "or national emergency" after "disaster" in item 1063a.

2001—Pub. L. 107–107, div. A, title III, § 331(d)(3), Dec. 28, 2001, 115 Stat. 1058, struck out "with at least 50 creditable points" after "Ready Reserve" in item 1063.

1998—Pub. L. 105–261, div. A, title III, § 362(e), Oct. 17, 1998, 112 Stat. 1985, added items 1063, 1063a, and 1064 and struck out former items 1063 "Period for use of commissary stores: eligibility for members of the Ready Reserve" and 1064 "Use of commissary stores by certain members and former members".

1996—Pub. L. 104–106, div. A, title III, § 342(b), Feb. 10, 1996, 110 Stat. 266, substituted "Morale, welfare, and recreation retail facilities: use by members of reserve components and dependents" for "Use of certain morale, welfare, and recreation facilities by members of reserve components and dependents" in item 1065.

1992—Pub. L. 102–484, div. A, title III, § 365(c)(2), Oct. 23, 1992, 106 Stat. 2382, substituted "eligibility for members of the Ready Reserve" for "eligibility attributable to active duty for training".

1990—Pub. L. 101–510, div. A, title III, § 321(d), Nov. 5, 1990, 104 Stat. 1528, added items 1064 and 1065.

[1] So in original. Does not conform to section catchline.

§ 1061. Survivors of certain Reserve and Guard members

(a) BENEFITS.—The Secretary of Defense shall prescribe regulations to allow dependents of members of the uniformed services described in subsection (b) to use commissary and exchange stores on the same basis as dependents of members of the uniformed services who die while on active duty for a period of more than 30 days.

(b) COVERED DEPENDENTS.—A dependent referred to in subsection (a) is a dependent of a member of a uniformed service who died—

(1) while on active duty, active duty for training, or inactive-duty training (regardless of the period of such duty); or

(2) while traveling to or from the place at which the member was to perform, or has performed, active duty, active duty for training, or inactive-duty training (regardless of the period of such duty).

(Added Pub. L. 100–370, § 1(c)(1), July 19, 1988, 102 Stat. 841.)

HISTORICAL AND REVISION NOTES

Section is based on Pub. L. 99–145, title III, § 308, Nov. 8, 1985, 99 Stat. 618.

§ 1062. Certain former spouses

The Secretary of Defense shall prescribe such regulations as may be necessary to provide that an unremarried former spouse described in subparagraph (F)(i) of section 1072(2) of this title is entitled to commissary and exchange privileges to the same extent and on the same basis as the surviving spouse of a retired member of the uniformed services.

(Added Pub. L. 100–370, § 1(c)(1), July 19, 1988, 102 Stat. 841.)

HISTORICAL AND REVISION NOTES

Section is based on Pub. L. 97–252, title X, § 1005, Sept. 8, 1982, 96 Stat. 737.

§ 1063. Use of commissary stores and MWR retail facilities: members of reserve components and reserve retirees under age 60

(a) MEMBERS OF THE SELECTED RESERVE.—A member of the Selected Reserve in good standing (as determined by the Secretary concerned) shall be permitted to use commissary stores and MWR retail facilities on the same basis as members on active duty.

(b) MEMBERS OF READY RESERVE NOT IN SELECTED RESERVE.—Subject to such regulations as the Secretary of Defense may prescribe, a member of the Ready Reserve (other than members of the Selected Reserve) may be permitted to use commissary stores and MWR retail facilities on the same basis as members serving on active duty.

(c) RESERVE RETIREES UNDER AGE 60.—A member or former member of a reserve component under 60 years of age who, but for age, would be eligible for retired pay under chapter 1223 of this title shall be permitted to use commissary stores and MWR retail facilities on the same basis as members of the armed forces entitled to retired pay under any other provision of law.

(d) DEPENDENTS.—(1) Dependents of a member who is permitted under subsection (a) or (b) to

use commissary stores and MWR retail facilities shall be permitted to use stores and such facilities on the same basis as dependents of members on active duty.

(2) Dependents of a member who is permitted under subsection (c) to use commissary stores and MWR retail facilities shall be permitted to use stores and such facilities on the same basis as dependents of members of the armed forces entitled to retired pay under any other provision of law.

(e) MWR RETAIL FACILITY DEFINED.—In this section, the term ''MWR retail facilities'' means exchange stores and other revenue-generating facilities operated by nonappropriated fund activities of the Department of Defense for the morale, welfare, and recreation of members of the armed forces.

(Added Pub. L. 101–510, div. A, title III, § 321(c), Nov. 5, 1990, 104 Stat. 1528, § 1065; amended Pub. L. 104–106, div. A, title III, § 342(a), Feb. 10, 1996, 110 Stat. 265; renumbered § 1063 and amended Pub. L. 108–136, div. A, title VI, § 651(a), (b)(4), (5), Nov. 24, 2003, 117 Stat. 1521, 1522.)

PRIOR PROVISIONS

A prior section 1063, added Pub. L. 99–661, div. A, title VI, § 656(a)(1), Nov. 14, 1986, 100 Stat. 3891, § 1052; renumbered § 1063, Pub. L. 100–370, § 1(c)(2)(A), July 19, 1988, 102 Stat. 841; amended Pub. L. 101–510, div. A, title III, § 321(a)(1), Nov. 5, 1990, 104 Stat. 1527; Pub. L. 102–484, div. A, title III, § 365(a), (c)(1), Oct. 23, 1992, 106 Stat. 2382; Pub. L. 104–106, div. A, title XV, § 1501(c)(9), Feb. 10, 1996, 110 Stat. 499; Pub. L. 105–261, div. A, title III, § 362(a), (d)(1), Oct. 17, 1998, 112 Stat. 1984, 1985; Pub. L. 107–107, div. A, title III, § 331(a)–(d)(2), Dec. 28, 2001, 115 Stat. 1057, related to use of commissary stores by members of Ready Reserve, prior to repeal by Pub. L. 108–136, div. A, title VI, § 651(b)(1), Nov. 24, 2003, 117 Stat. 1521.

AMENDMENTS

2003—Pub. L. 108–136, § 651(b)(4), (5), renumbered section 1065 of this title as this section and substituted ''Use of commissary stores and MWR retail facilities: members of reserve components and reserve retirees under age 60'' for ''Morale, welfare, and recreation retail facilities: use by members of reserve components and dependents'' in section catchline.

Subsecs. (a) to (c). Pub. L. 108–136, § 651(a)(1), inserted ''commissary stores and'' after ''use''.

Subsec. (d). Pub. L. 108–136, § 651(a)(2), inserted ''commissary stores and'' after ''permitted under subsection (a) or (b) to use'' and ''stores and'' after ''permitted to use'' in par. (1), and inserted ''commissary stores and'' after ''permitted under subsection (c) to use'' and ''stores and'' after ''permitted to use'' in par. (2).

1996—Pub. L. 104–106 substituted ''Morale, welfare, and recreation retail facilities: use by members of reserve components and dependents'' for ''Use of certain morale, welfare, and recreation facilities by members of reserve components and dependents'' in section catchline and amended text generally. Prior to amendment, text read as follows:

''(a) UNRESTRICTED USE REQUIRED.—Members of the Selected Reserve in good standing (as determined by the Secretary concerned) and members who would be eligible for retired pay under chapter 67 of this title but for the fact that the member is under 60 years of age, and the dependents of such members, shall be permitted to use the exchange stores and other revenue generating facilities operated by nonappropriated fund activities of the Department of Defense for the morale, welfare, and recreation of members of the Armed Forces. Such use shall be permitted on the same basis as members on active duty.

''(b) ELIGIBILITY TO USE AUTHORIZED.—Subject to such regulations as the Secretary of Defense may prescribe, members of the Ready Reserve (other than members of the Selected Reserve) may be permitted to use the facilities referred to in subsection (a) on the same basis as members serving on active duty.''

EFFECTIVE DATE

Pub. L. 101–510, div. A, title III, § 321(e)(1), Nov. 5, 1990, 104 Stat. 1528, provided that: ''The amendments made by subsections (b) and (c) [enacting this section and former section 1064 of this title] shall take effect 120 days after the date of the enactment of this Act [Nov. 5, 1990].''

REGULATIONS

Pub. L. 101–510, div. A, title III, § 321(e)(2), Nov. 5, 1990, 104 Stat. 1528, provided that: ''The Secretary of Defense shall prescribe such regulations as may be necessary for the proper administration of sections [former] 1064 and 1065 [now 1063] of title 10, United States Code, as added by this section, not later than 90 days after the date of the enactment of this Act [Nov. 5, 1990].''

[§ 1063a. Renumbered § 1064]

§ 1064. Use of commissary stores and MWR retail facilities: members of National Guard serving in federally declared disaster or national emergency

(a) ELIGIBILITY OF MEMBERS.—A member of the National Guard who, although not in Federal service, is called or ordered to duty in response to a federally declared disaster or national emergency shall be permitted to use commissary stores and MWR retail facilities during the period of such duty on the same basis as members of the armed forces on active duty.

(b) ELIGIBILITY OF DEPENDENTS.—A dependent of a member of the National Guard who is permitted under subsection (a) to use commissary stores and MWR retail facilities shall be permitted to use such stores and facilities, during the same period as the member, on the same basis as dependents of members of the armed forces on active duty.

(c) DEFINITIONS.—In this section:

(1) FEDERALLY DECLARED DISASTER.—The term ''federally declared disaster'' means a disaster or other situation for which a Presidential declaration of major disaster is issued under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170).

(2) MWR RETAIL FACILITIES.—The term ''MWR retail facilities'' has the meaning given that term in section 1063(e) of this title.

(3) NATIONAL EMERGENCY.—The term ''national emergency'' means a national emergency declared by the President or Congress.

(Added Pub. L. 105–261, div. A, title III, § 362(c), Oct. 17, 1998, 112 Stat. 1985, § 1063a; amended Pub. L. 107–314, div. A, title III, § 322(a), (b)(1), Dec. 2, 2002, 116 Stat. 2510; renumbered § 1064 and amended Pub. L. 108–136, div. A, title VI, § 651(b)(2), (3), Nov. 24, 2003, 117 Stat. 1521.)

PRIOR PROVISIONS

A prior section 1064, added Pub. L. 101–510, div. A, title III, § 321(b), Nov. 5, 1990, 104 Stat. 1528; amended Pub. L. 104–106, div. A, title XV, § 1501(c)(8), Feb. 10, 1996, 110 Stat. 499; Pub. L. 105–261, div. A, title III, § 362(b), (d)(2), Oct. 17, 1998, 112 Stat. 1984, 1985, related

to use of commissary stores by persons qualified for retired pay but under age 60, prior to repeal by Pub. L. 108–136, div. A, title VI, § 651(b)(1), Nov. 24, 2003, 117 Stat. 1521.

AMENDMENTS

2003—Pub. L. 108–136, § 651(b)(3), renumbered section 1063a of this title as this section.

Subsec. (c)(2). Pub. L. 108–136, § 651(b)(2), substituted ''section 1063(e)'' for ''section 1065(e)''.

2002—Pub. L. 107–314, § 322(b)(1), inserted ''or national emergency'' after ''disaster'' in section catchline.

Subsec. (a). Pub. L. 107–314, § 322(a)(1), inserted ''or national emergency'' after ''disaster''.

Subsec. (c)(3). Pub. L. 107–314, § 322(a)(2), added par. (3).

§ 1065. Use of commissary stores and MWR facilities: certain veterans, caregivers for veterans, and Foreign Service officers

(a) ELIGIBILITY OF VETERANS AWARDED THE PURPLE HEART.—A veteran who was awarded the Purple Heart shall be permitted to use commissary stores and MWR facilities on the same basis as a member of the armed forces entitled to retired or retainer pay.

(b) ELIGIBILITY OF VETERANS WHO ARE MEDAL OF HONOR RECIPIENTS.—A veteran who is a Medal of Honor recipient shall be permitted to use commissary stores and MWR facilities on the same basis as a member of the armed forces entitled to retired or retainer pay.

(c) ELIGIBILITY OF VETERANS WHO ARE FORMER PRISONERS OF WAR.—A veteran who is a former prisoner of war shall be permitted to use commissary stores and MWR facilities on the same basis as a member of the armed forces entitled to retired or retainer pay.

(d) ELIGIBILITY OF VETERANS WITH SERVICE-CONNECTED DISABILITIES.—A veteran with a service-connected disability shall be permitted to use commissary stores and MWR facilities on the same basis as a member of the armed forces entitled to retired or retainer pay.

(e) ELIGIBILITY OF CAREGIVERS FOR VETERANS.—A caregiver or family caregiver shall be permitted to use commissary stores and MWR facilities on the same basis as a member of the armed forces entitled to retired or retainer pay.

(f) ELIGIBILITY OF FOREIGN SERVICE OFFICERS ON MANDATORY HOME LEAVE.—A Foreign Service officer on mandatory home leave may be permitted to use military lodging referred to in subsection (h).

(g) USER FEE AUTHORITY.—(1) The Secretary of Defense shall prescribe regulations that impose a user fee on individuals who are eligible solely under this section to purchase merchandise at a commissary store or MWR retail facility.

(2) The Secretary shall set the user fee under this subsection at a rate that the Secretary determines will offset any increase in expenses arising from this section borne by the Department of the Treasury on behalf of commissary stores associated with the use of credit or debit cards for customer purchases, including expenses related to card network use and related transaction processing fees.

(3) The Secretary shall deposit funds collected pursuant to a user fee under this subsection in the General Fund of the Treasury.

(4) Any fee under this subsection is in addition to the uniform surcharge under section 2484(d) of this title.

(h) DEFINITIONS.—In this section:

(1) The term ''MWR facilities'' includes—

(A) MWR retail facilities, as that term is defined in section 1063(e) of this title; and

(B) military lodging operated by the Department of Defense for the morale, welfare, and recreation of members of the armed forces.

(2) The term ''Medal of Honor recipient'' has the meaning given that term in section 1074h(c) of this title.

(3) The terms ''veteran'', ''former prisoner of war'', and ''service-connected'' have the meanings given those terms in section 101 of title 38.

(4) The terms ''caregiver'' and ''family caregiver'' have the meanings given those terms in section in section 1720G(d) of title 38.

(5) The term ''Foreign Service officer'' has the meaning given that term in section 103 of the Foreign Service Act of 1980 (22 U.S.C. 3903).

(6) The term ''mandatory home leave'' means leave under section 903 of the Foreign Service Act of 1980 (22 U.S.C. 4083).

(Added Pub. L. 115–232, div. A, title VI, § 621(b)(1), Aug. 13, 2018, 132 Stat. 1798; amended Pub. L. 116–92, div. A, title VI, § 641(a), Dec. 20, 2019, 133 Stat. 1430.)

PRIOR PROVISIONS

A prior section 1065 was renumbered section 1063 of this title.

AMENDMENTS

2019—Pub. L. 116–92, § 641(a)(1), substituted ''veterans, caregivers for veterans, and Foreign Service officers'' for ''veterans and caregivers for veterans'' in section catchline.

Subsecs. (f) to (h). Pub. L. 116–92, § 641(a)(2), (3), added subsec. (f) and redesignated former subsecs. (f) and (g) as (g) and (h), respectively.

Subsec. (h)(5), (6). Pub. L. 116–92, § 641(a)(4), added pars. (5) and (6).

EFFECTIVE DATE OF 2019 AMENDMENT

Pub. L. 116–92, div. A, title VI, § 641(b), Dec. 20, 2019, 133 Stat. 1431, provided that: ''The amendments made by this section [amending this section] shall take effect on January 1, 2020, as if originally incorporated in section 621 of Public Law 115–232.''

EFFECTIVE DATE

Pub. L. 115–232, div. A, title VI, § 621(b)(3), Aug. 13, 2018, 132 Stat. 1799, provided that: ''Section 1065 of title 10, United States Code, as added by paragraph (1), shall take effect on January 1, 2020.''

§ 1066. Use of commissary stores and MWR facilities: protective services civilian employees

(a) ELIGIBILITY OF PROTECTIVE SERVICES CIVILIAN EMPLOYEES.—An individual employed as a protective services civilian employee at a military installation may be permitted to purchase food and hygiene items at a commissary store or MWR retail facility located on that military installation.

(b) USER FEE AUTHORITY.—(1) The Secretary of Defense shall prescribe regulations that impose a user fee on individuals who are eligible solely under this section to purchase merchandise at a commissary store or MWR retail facility.

(2) The Secretary shall set the user fee under this subsection at a rate that the Secretary de-

termines will offset any increase in expenses arising from this section borne by the Department of the Treasury on behalf of commissary stores associated with the use of credit or debit cards for customer purchases, including expenses related to card network use and related transaction processing fees.

(3) The Secretary shall deposit funds collected pursuant to a user fee under this subsection in the General Fund of the Treasury.

(4) Any fee under this subsection is in addition to the uniform surcharge under section 2484(d) of this title.

(c) DEFINITIONS.—In this section:

(1) The term ''MWR retail facility'' has the meaning given that term in section 1063 of this title.

(2) The term ''protective services civilian employee'' means a position in any of the following series (or successor classifications) of the General Schedule:

(A) Security Administration (GS–0080).

(B) Fire Protection and Prevention (GS–0081).

(C) Police (GS–0083).

(D) Security Guard (GS–0085).

(E) Emergency Management (GS–0089).

(Added Pub. L. 116–283, div. A, title VI, § 631(a), Jan. 1, 2021, 134 Stat. 3681.)

CHAPTER 55—MEDICAL AND DENTAL CARE

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AMENDMENTS

2021—Pub. L. 116–283, div. A, title VII, § 712(b), Jan. 1, 2021, 134 Stat. 3692, added item 1073e.

2019—Pub. L. 116–92, div. A, title VII, § 702(b)(3), Dec. 20, 2019, 133 Stat. 1436, added items 1097a and 1099 and struck out former items 1097a ''TRICARE Prime: automatic enrollments; payment options'' and 1099 ''Health care enrollment system''.

2018—Pub. L. 115–232, div. A, title X, § 1081(a)(13), Aug. 13, 2018, 132 Stat. 1984, inserted period at end of item 1077a.

2017—Pub. L. 115–91, div. A, title VII, § 703(a)(2), Dec. 12, 2017, 131 Stat. 1435, added item 1074*o*.

2016—Pub. L. 114–328, div. A, title VII, §§ 702(a)(2), 703(a)(2), 704(b), 711(b), 728(b)(2), Dec. 23, 2016, 130 Stat. 2195, 2198, 2201, 2214, 2234, added items 1073c, 1073d, 1076f, and 1077a, and substituted ''Recurring reports and publication of certain data'' for ''Recurring reports'' in item 1073b.

Pub. L. 114–328, div. A, title VII, §§ 701(a)(2), (b)(2), (j)(2), (k), Dec. 23, 2016, 130 Stat. 2184, 2185, 2192, 2193, applicable with respect to the provision of health care under the TRICARE program beginning on Jan. 1, 2018, added items 1075 and 1075a and substituted ''TRICARE Reserve Select'' for ''TRICARE Standard'' in item 1076d, ''TRICARE Retired Reserve'' for ''TRICARE Standard'' in item 1076e, ''TRICARE program'' for ''CHAMPUS'' in item 1079a, and ''and preauthorizations under TRICARE Prime'' for ''for specialty health care'' in item 1095f.

2015—Pub. L. 114–92, div. A, title VII, § 711(b), Nov. 25, 2015, 129 Stat. 864, added item 1095g.

2014—Pub. L. 113–291, div. A, title VII, §§ 701(a)(2), 704(b), 711(b), Dec. 19, 2014, 128 Stat. 3408, 3413, 3414, added items 1074n, 1079c, and 1097d.

2011—Pub. L. 112–81, div. A, title VII, §§ 702(a)(2), 704(b), 711(a)(2), Dec. 31, 2011, 125 Stat. 1471, 1473, 1476, added items 1074m, 1078b, and 1090a.

Pub. L. 111–383, div. A, title VII, § 702(a)(2), Jan. 7, 2011, 124 Stat. 4245, added item 1110b.

2009—Pub. L. 111–84, div. A, title VII, §§ 705(b), 707(b), Oct. 28, 2009, 123 Stat. 2375, 2376, added items 1076e and 1110a.

2008—Pub. L. 110–181, div. A, title XVI, § 1617(b), Jan. 28, 2008, 122 Stat. 449, as amended by Pub. L. 110–417, [div. A], title X, § 1061(b)(14), Oct. 14, 2008, 122 Stat. 4613, added item 1074*l*.

2006—Pub. L. 109–364, div. A, title VII, § 707(b), Oct. 17, 2006, 120 Stat. 2284, added item 1097c.

Pub. L. 109–364, div. A, title VII, § 706(e), Oct. 17, 2006, 120 Stat. 2282, struck out item 1076b ''TRICARE program: TRICARE Standard coverage for members of the Selected Reserve'' and substituted ''TRICARE program: TRICARE Standard coverage for members of the Selected Reserve'' for ''TRICARE program: coverage for members of reserve components who commit to continued service in the Selected Reserve after release from active duty in support of a contingency operation'' in item 1076d, effective Oct. 1, 2007.

Pub. L. 109–163, div. A, title VII, §§ 701(f)(2), 702(a)(2), Jan. 6, 2006, 119 Stat. 3340, 3342, substituted ''TRICARE program: TRICARE Standard coverage for members of the Selected Reserve'' for ''TRICARE program: coverage for members of the Ready Reserve'' in item 1076b and ''TRICARE program: coverage for members of reserve components who commit to continued service in the Selected Reserve after release from active duty in support of a contingency operation'' for ''TRICARE program: coverage for members of reserve components who commit to continued service in the Selected Reserve after release from active duty'' in item 1076d.

2004—Pub. L. 108–375, div. A, title V, § 555(a)(2), title VI, § 607(a)(2), title VII, §§ 701(a)(2), 733(a)(2), 739(a)(2), title X, § 1084(d)(7), Oct. 28, 2004, 118 Stat. 1914, 1946, 1981, 1998, 2002, 2061, added items 1073b, 1074b, 1076d, and 1092a, reenacted item 1076b without change, and struck out item 1075 ''Officers and certain enlisted members: subsistence charges''.

2003—Pub. L. 108–136, div. A, title XVI, § 1603(b)(2), Nov. 24, 2003, 117 Stat. 1690, added item 1107a.

Pub. L. 108–106, title I, § 1115(b), Nov. 6, 2003, 117 Stat. 1218, added item 1076b.

2001—Pub. L. 107–107, div. A, title VII, §§ 701(a)(2), (f)(2), 731(b), 732(a)(2), 736(c)(2), title X, § 1048(a)(10), Dec. 28, 2001, 115 Stat. 1158, 1161, 1169, 1173, 1223, struck out item 1074b ''Transitional medical and dental care: members on active duty in support of contingency operations'', transferred item 1074i to appear after item 1074h, and added items 1074j, 1074k, 1079b, and 1086b.

2000—Pub. L. 106–398, § 1 [[div. A], title VII, §§ 706(a)(2), 728(a)(2), 751(b)(2), 758(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–175, 1654A–189, 1654A–194, 1654A–200, added items 1074h, 1074i, 1095f, and 1110.

1999—Pub. L. 106–65, div. A, title VII, §§ 701(a)(2), 711(b), 713(a)(2), 714(b), 715(a)(2), 716(a)(2), 722(b), Oct. 5,

1999, 113 Stat. 680, 687, 689–691, 695, added items 1073a, 1074g, 1076a, 1095c, 1095d, 1095e, and 1097b and struck out former items 1076a ''Dependents' dental program'' and 1076b ''Selected Reserve dental insurance''.

1998—Pub. L. 105–261, div. A, title VII, §§ 711(b), 712(a)(2), 721(a)(2), 734(b)(2), 741(b)(2), Oct. 17, 1998, 112 Stat. 2058, 2059, 2065, 2073, 2074, added items 1094a, 1095b, 1097a, 1108, and 1109.

1997—Pub. L. 105–85, div. A, title VII, §§ 738(b), 764(b), 765(a)(2), 766(b), Nov. 18, 1997, 111 Stat. 1815, 1826–1828, added items 1074e, 1074f, 1106, and 1107 and struck out former item 1106 ''Submittal of claims under CHAMPUS''.

1996—Pub. L. 104–201, div. A, title VII, §§ 701(a)(2)(B), 703(a)(2), 733(a)(2), Sept. 23, 1996, 110 Stat. 2587, 2590, 2598, substituted ''Certain primary and preventive health care services'' for ''Primary and preventive health care services for women'' in item 1074d and added items 1076c and 1079a.

Pub. L. 104–106, div. A, title VII, §§ 705(a)(2), 735(d)(2), 738(b)(2), Feb. 10, 1996, 110 Stat. 373, 383, added item 1076b and substituted ''Performance of abortions: restrictions'' for ''Restriction on use of funds for abortions'' in item 1093 and ''Defense Health Program Account'' for ''Military Health Care Account'' in item 1100.

1993—Pub. L. 103–160, div. A, title VII, §§ 701(a)(2), 712(a)(2), 714(b)(2), 716(a)(2), Nov. 30, 1993, 107 Stat. 1686, 1689, 1690, 1692, added item 1074d, substituted ''Personal services contracts'' for ''Contracts for direct health care providers'' in item 1091 and ''Resource allocation methods: capitation or diagnosis-related groups'' for ''Diagnosis-related groups'' in item 1101, added item 1105, and struck out former item 1105 ''Issuance of non-availability of health care statements''.

1992—Pub. L. 102–484, div. D, title XLIV, § 4408(a)(2), Oct. 23, 1992, 106 Stat. 2712, added item 1078a.

1991—Pub. L. 102–190, div. A, title VI, § 640(b), title VII, §§ 715(b), 716(a)(2), Dec. 5, 1991, 105 Stat. 1385, 1403, 1404, added item 1074b, redesignated former item 1074b as 1074c, and added items 1105 and 1106.

1990—Pub. L. 101–510, div. A, title VII, § 713(d)(2)[(3)], Nov. 5, 1990, 104 Stat. 1584, substituted ''Health care services incurred on behalf of covered beneficiaries: collection from third-party payers'' for ''Collection from third-party payers of reasonable inpatient hospital care costs incurred on behalf of retirees and dependents'' in item 1095.

1989—Pub. L. 101–189, div. A, title VII, §§ 722(b), 731(b)(2), Nov. 29, 1989, 103 Stat. 1478, 1482, added items 1086a and 1104.

1987—Pub. L. 100–180, div. A, title VII, § 725(a)(2), Dec. 4, 1987, 101 Stat. 1116, added item 1103.

Pub. L. 100–26, § 7(e)(2), Apr. 21, 1987, 101 Stat. 281, redesignated item 1095 ''Medical care: members held as captives and their dependents'' as item 1095a.

1986—Pub. L. 99–661, div. A, title VI, § 604(a)(2), title VII, §§ 701(a)(2), 705(a)(2), Nov. 14, 1986, 100 Stat. 3875, 3897, 3904 substituted ''active duty for a period of more than 30 days'' for ''active duty; injuries, diseases, and illnesses incident to duty'' in item 1074a and added items 1096 to 1102.

Pub. L. 99–399, title VIII, § 801(c)(2), Aug. 27, 1986, 100 Stat. 886, added item 1095 ''Medical care: members held as captives and their dependents''.

Pub. L. 99–272, title II, § 2001(a)(2), Apr. 7, 1986, 100 Stat. 101, added item 1095 ''Collection from third-party payers of reasonable inpatient hospital care costs incurred on behalf of retirees and dependents''.

1985—Pub. L. 99–145, title VI, §§ 651(a)(2), 653(a)(2), Nov. 8, 1985, 99 Stat. 656, 658, added items 1076a and 1094.

1984—Pub. L. 98–525, title VI, § 631(a)(2), title XIV, § 1401(e)(2)(B), (5)(B), Oct. 19, 1984, 98 Stat. 2543, 2616, 2618, substituted in item 1074a ''Medical and dental care: members on duty other than active duty; injuries, diseases, and illnesses incident to duty'' for ''Medical and dental care for members of the uniformed services for injuries incurred or aggravated while traveling to and from inactive duty training'' and added items 1074b and 1093.

1983—Pub. L. 98–94, title IX, §§ 932(a)(2), 933(a)(2), title X, § 1012(a)(2), title XII, § 1268(5)(B), Sept. 24, 1983, 97 Stat. 650, 651, 665, 706, added items 1074a, 1091, and 1092, and struck out ''; reports'' at end of item 1081.

1982—Pub. L. 97–295, § 1(15)(B), Oct. 12, 1982, 96 Stat. 1290, added item 1090.

1980—Pub. L. 96–513, title V, § 511(34)(D), Dec. 12, 1980, 94 Stat. 2923, in items 1071 and 1073 substituted ''this chapter'' for ''sections 1071–1087 of this title'', and in item 1086 substituted ''benefits'' for ''care''.

1976—Pub. L. 94–464, § 1(b), Oct. 8, 1976, 90 Stat. 1986, added item 1089.

1970—Pub. L. 91–481, § 2(2), Oct. 21, 1970, 84 Stat. 1082, added item 1088.

1966—Pub. L. 89–614, § 2(9), Sept. 30, 1966, 80 Stat. 866, substituted ''1087'' for ''1085'' in items 1071 and 1073, ''Medical care'' and ''authorized care in facilities of uniformed services'' for ''Medical and dental care'' and ''specific inclusions and exclusions'' in item 1077, ''Contracts for health care'' for ''Contracts for medical care for spouses and children'' in item 1082, and added items 1086 and 1087.

1965—Pub. L. 89–264, § 2, Oct. 19, 1965, 79 Stat. 989, substituted ''executive department'' for ''uniformed service'' in item 1085.

1958—Pub. L. 85–861, § 1(25)(A), (C), Sept. 2, 1958, 72 Stat. 1445, 1450, substituted ''Medical and Dental Care'' for ''Voting by Members of Armed Forces'' in heading of chapter, and substituted items 1071 to 1085 for former items 1071 to 1086.

§ 1071. Purpose of this chapter

The purpose of this chapter is to create and maintain high morale in the uniformed services by providing an improved and uniform program of medical and dental care for members and certain former members of those services, and for their dependents.

(Added Pub. L. 85–861, § 1(25)(B), Sept. 2, 1958, 72 Stat. 1445; amended Pub. L. 89–614, § 2(1), Sept. 30, 1966, 80 Stat. 862; Pub. L. 96–513, title V, § 511(34)(A), (B), Dec. 12, 1980, 94 Stat. 2922.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1071	37:401.	June 7, 1956, ch. 374, § 101, 70 Stat. 250.

The words ''and certain former members'' are inserted to reflect the fact that many of the persons entitled to retired pay are former members only. The words ''and dental'' are inserted to reflect the fact that members and, in certain limited situations, dependents are entitled to dental care under sections 1071–1085 of this title.

PRIOR PROVISIONS

A prior section 1071, act Aug. 10, 1956, ch. 1041, 70A Stat. 81, which stated the purpose of former sections 1071 to 1086 of this title, and provided for their construction, was repealed by Pub. L. 85–861, § 36B(5), Sept. 2, 1958, 72 Stat. 1570, as superseded by the Federal Voting Assistance Act of 1955 which was classified to subchapter I–D (§ 1973cc et seq.) of chapter 20 of Title 42, The Public Health and Welfare, prior to repeal by Pub. L. 99–410, title II, § 203, Aug. 28, 1986, 100 Stat. 930.

AMENDMENTS

1980—Pub. L. 96–513 substituted ''Purpose of this chapter'' for ''Purpose of sections 1071–1087 of this title'' in section catchline, and substituted reference to this chapter for reference to sections 1071–1087 of this title in text.

1966—Pub. L. 89–614 substituted ''1087'' for ''1085'' in section catchline and text.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Pub. L. 89–614, §3, Sept. 30, 1966, 80 Stat. 866, provided that: ''The amendments made by this Act [see Short Title of 1966 Amendment note below] shall become effective January 1, 1967, except that those amendments relating to outpatient care in civilian facilities for spouses and children of members of the uniformed services who are on active duty for a period of more than 30 days shall become effective on October 1, 1966.''

SHORT TITLE OF 2008 AMENDMENT

Pub. L. 110–181, div. A, title XVI, §1601, Jan. 28, 2008, 122 Stat. 431, provided that: ''This title [enacting sections 1074*l*, 1216a, and 1554a of this title, amending sections 1074, 1074f, 1074i, 1145, 1201, 1203, 1212, and 1599c of this title and section 6333 of Title 5, Government Organization and Employees, and enacting provisions set out as notes under this section, sections 1074, 1074f, 1074i, 1074*l*, 1212, and 1554a of this title, and section 6333 of Title 5] may be cited as the 'Wounded Warrior Act'.''

SHORT TITLE OF 1987 AMENDMENT

Pub. L. 100–180, div. A, title VII, §701, Dec. 4, 1987, 101 Stat. 1108, provided that: ''This title [enacting sections 1103, 2128 to 2130 [now 16201 to 16203], and 6392 of this title, amending sections 533, 591, 1079, 1086, 1251, 2120, 2122, 2123, 2124, 2127, 2172 [now 16302], 3353, 3855, 5600, 8353, and 8855 of this title, section 302 of Title 37, Pay and Allowances of the Uniformed Services, and section 3809 of Title 50, War and National Defense, enacting provisions set out as notes under sections 1073, 1074, 1079, 1092, 1103, 2121, 2124, 12201, and 16201 of this title, amending provisions set out as notes under sections 1073 and 1101 of this title, and repealing provisions set out as notes under sections 2121 and 2124 of this title] may be cited as the 'Military Health Care Amendments of 1987'.''

SHORT TITLE OF 1966 AMENDMENT

Pub. L. 89–614, §1, Sept. 30, 1966, 80 Stat. 862, provided: ''That this Act [enacting sections 1086 and 1087 of this title, amending this section and sections 1072 to 1074, 1076 to 1079, 1082, and 1084 of this title, and enacting provisions set out as a note under this section] may be cited as the 'Military Medical Benefits Amendments of 1966'.''

MILITARY HEALTH SYSTEM CLINICAL QUALITY MANAGEMENT PROGRAM

Pub. L. 116–283, div. A, title VII, §744, Jan. 1, 2021, 134 Stat. 3708, provided that:

''(a) IN GENERAL.—The Secretary of Defense, acting through the Director of the Defense Health Agency, shall implement a comprehensive program to be known as the 'Military Health System Clinical Quality Management Program' (in this section referred to as the 'Program').

''(b) ELEMENTS OF PROGRAM.—The Program shall include, at a minimum, the following:

''(1) The implementation of systematic procedures to eliminate, to the extent feasible, risk of harm to patients at military medical treatment facilities, including through identification, investigation, and analysis of events indicating a risk of patient harm and corrective action plans to mitigate such risks.

''(2) With respect to a potential sentinel event (including those involving members of the Armed Forces) at a military medical treatment facility—

''(A) an analysis of such event, which shall occur and be documented as soon as possible after the event;

''(B) use of such analysis for clinical quality management; and

''(C) reporting of such event to the National Practitioner Data Bank in accordance with guidelines of the Secretary of Health and Human Services under the Health Care Quality Improvement Act of 1986 (42 U.S.C. 11101 et seq.), giving special emphasis to the results of external peer reviews of the event.

''(3) Validation of provider credentials and granting of clinical privileges by the Director of the Defense Health Agency for all health care providers at a military medical treatment facility.

''(4) Accreditation of military medical treatment facilities by a recognized external accreditation body.

''(5) Systematic measurement of indicators of health care quality, emphasizing clinical outcome measures, comparison of such indicators with benchmarks from leading health care quality improvement organizations, and transparency with the public of appropriate clinical measurements for military medical treatment facilities.

''(6) Systematic activities emphasized by leadership at all organizational levels to use all elements of the Program to eliminate unwanted variance throughout the health care system of the Department of Defense and make constant improvements in clinical quality.

''(7) A full range of procedures for productive communication between patients and health care providers regarding actual or perceived adverse clinical events at military medical treatment facilities, including procedures—

''(A) for full disclosure of such events (respecting the confidentiality of peer review information under a medical quality assurance program under section 1102 of title 10, United States Code);

''(B) providing an opportunity for the patient to be heard in relation to quality reviews; and

''(C) to resolve patient concerns by independent, neutral health care resolution specialists.

''(c) ADDITIONAL CLINICAL QUALITY MANAGEMENT ACTIVITIES.—

''(1) IN GENERAL.—In addition to the elements of the Program set forth in subsection (b), the Secretary shall establish and maintain clinical quality management activities in relation to functions of the health care system of the Department separate from delivery of health care services in military medical treatment facilities.

''(2) HEALTH CARE DELIVERY OUTSIDE MILITARY MEDICAL TREATMENT FACILITIES.—In carrying out paragraph (1), the Secretary shall maintain policies and procedures to promote clinical quality in health care delivery on ships and planes, in deployed settings, and in all other circumstances not covered by subsection (b), with the objective of implementing standards and procedures comparable, to the extent practicable, to those under such subsection.

''(3) PURCHASED CARE SYSTEM.—In carrying out paragraph (1), the Secretary shall maintain policies and procedures for health care services provided outside the Department but paid for by the Department, reflecting best practices by public and private health care reimbursement and management systems.''

WOUNDED WARRIOR SERVICE DOG PROGRAM

Pub. L. 116–283, div. A, title VII, §745, Jan. 1, 2021, 134 Stat. 3710, provided that:

''(a) PROGRAM.—The Secretary of Defense shall establish a program, to be known as the 'Wounded Warrior Service Dog Program', to provide assistance dogs to covered members and covered veterans.

''(b) DEFINITIONS.—In this section:

''(1) The term 'assistance dog' means a dog specifically trained to perform physical tasks to mitigate the effects of a covered disability, except that the term does not include a dog specifically trained for comfort or personal defense.

''(2) The term 'covered disability' means any of the following:

''(A) Blindness or visual impairment.

''(B) Loss of use of a limb, paralysis, or other significant mobility issues.

''(C) Loss of hearing.

''(D) Traumatic brain injury.

''(E) Post-traumatic stress disorder.

''(F) Any other disability that the Secretary of Defense considers appropriate.

''(3) The term 'covered member' means a member of the Armed Forces who is—

''(A) receiving medical treatment, recuperation, or therapy under chapter 55 of title 10, United States Code;

''(B) in medical hold or medical holdover status; or

''(C) covered under section 1202 or 1205 of title 10, United States Code.

''(4) The term 'covered veteran' means a veteran who is enrolled in the health care system established under section 1705(a) of title 38, United States Code.''

INCLUSION OF BLAST EXPOSURE HISTORY IN MEDICAL RECORDS OF MEMBERS OF THE ARMED FORCES

Pub. L. 116–92, div. A, title VII, §717, Dec. 20, 2019, 133 Stat. 1453, provided that:

''(a) REQUIREMENT.—If a covered incident occurs with respect to a member of the Armed Forces, the Secretary of Defense, in coordination with the Secretaries of the military departments, shall document blast exposure history in the medical record of the member to assist in determining whether a future illness or injury of the member is service-connected and inform future blast exposure risk mitigation efforts of the Department of Defense.

''(b) ELEMENTS.—A blast exposure history under subsection (a) shall include, at a minimum, the following:

''(1) The date of the exposure.

''(2) The duration of the exposure, and, if known, the measured blast pressure experienced by the individual during such exposure.

''(3) Whether the exposure occurred during combat or training.

''(c) REPORT.—Not later than one year after the date of the enactment of this Act [Dec. 20, 2019], the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the types of information included in a blast exposure history under subsection (a).

''(d) COVERED INCIDENT DEFINED.—In this section, the term 'covered incident' means a concussive event or injury that requires a military acute concussive evaluation by a skilled health care provider.''

MODIFICATION TO REFERRALS FOR MENTAL HEALTH SERVICES

Pub. L. 116–92, div. A, title VII, §722, Dec. 20, 2019, 133 Stat. 1457, provided that: ''If the Secretary of Defense is unable to provide mental health services in a military medical treatment facility to a member of the Armed Forces within 15 days of the date on which such services are first requested by the member, the Secretary may refer the member to a provider under the TRICARE program (as that term is defined in section 1072 of title 10, United States Code) to receive such services.''

MEDICAL SIMULATION TECHNOLOGY AND LIVE TISSUE TRAINING

Pub. L. 115–232, div. A, title VII, §718, Aug. 13, 2018, 132 Stat. 1816, provided that:

''(a) IN GENERAL.—

''(1) USE OF SIMULATION TECHNOLOGY.—Except as provided by paragraph (2), the Secretary of Defense shall use medical simulation technology, to the maximum extent practicable, before the use of live tissue training to train medical professionals and combat medics of the Department of Defense.

''(2) DETERMINATION.—The use of live tissue training within the Department of Defense may be used as determined necessary by the medical chain of command.

''(b) BRIEFING.—Not later than 180 days after the date of the enactment of this Act [Aug. 13, 2018], the Secretary of Defense, in consultation with the Chairman of the Joint Chiefs of Staff and the Secretaries of the military departments, shall provide a briefing to the Committees on Armed Services of the House of Representatives and the Senate on the use and benefit of medical simulation technology and live tissue training within the Department of Defense to train medical professionals, combat medics, and members of the Special Operations Forces.

''(c) ELEMENTS.—The briefing under subsection (b) shall include the following:

''(1) A discussion of the benefits and needs of both medical simulation technology and live tissue training.

''(2) Ways and means to enhance and advance the use of simulation technologies in training.

''(3) An assessment of current medical simulation technology requirements, gaps, and limitations.

''(4) An overview of Department of Defense medical training programs, as of the date of the briefing, that use live tissue training and medical simulation technologies.

''(5) Any other matters the Secretary determines appropriate.''

INCLUSION OF GAMBLING DISORDER IN HEALTH ASSESSMENTS OF MEMBERS OF THE ARMED FORCES AND RELATED RESEARCH EFFORTS

Pub. L. 115–232, div. A, title VII, §733, Aug. 13, 2018, 132 Stat. 1818, provided that:

''(a) INCLUSION IN NEXT ANNUAL PERIODIC HEALTH ASSESSMENTS.—The Secretary of Defense shall incorporate medical screening questions specific to gambling disorder into the Annual Periodic Health Assessments of members of the Armed Forces conducted by the Department of Defense during the one-year period beginning 180 days after the date of the enactment of this Act [Aug. 13, 2018].

''(b) INCLUSION IN CERTAIN SURVEYS.—The Secretary shall incorporate into ongoing research efforts of the Department questions on gambling disorder, as appropriate, including by restoring such questions to the following:

''(1) The first Health Related Behaviors Survey of Active Duty Military Personnel conducted after the date of the enactment of this Act.

''(2) The first Health Related Behaviors Survey of Reserve Component Personnel conducted after that date.

''(c) REPORTS.—Not later than one year after the date of the completion of the assessment referred to in subsection (a), and of each survey referred to in subsection (b), as modified pursuant to this section, the Secretary shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the findings of the assessment or survey in connection with the prevalence of gambling disorder among members of the Armed Forces.''

JOINT TRAUMA SYSTEM

Pub. L. 114–328, div. A, title VII, §707, Dec. 23, 2016, 130 Stat. 2208, provided that:

''(a) PLAN.—

''(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act [Dec. 23, 2016], the Secretary of Defense shall submit to the Committees on Armed Services of the House of Representatives and the Senate an implementation plan to establish a Joint Trauma System within the Defense Health Agency that promotes improved trauma care to members of the Armed Forces and other individuals who are eligible to be treated for trauma at a military medical treatment facility.

''(2) IMPLEMENTATION.—The Secretary shall implement the plan under paragraph (1) after a 90-day period has elapsed following the date on which the Comptroller General of the United States is required to submit to the Committees on Armed Services of the House of Representatives and the Senate the re-

view under subsection (c). In implementing such plan, the Secretary shall take into account any recommendation made by the Comptroller General under such review.

''(b) ELEMENTS.—The Joint Trauma System described in subsection (a)(1) shall include the following elements:

''(1) Serve as the reference body for all trauma care provided across the military health system.

''(2) Establish standards of care for trauma services provided at military medical treatment facilities.

''(3) Coordinate the translation of research from the centers of excellence of the Department of Defense into standards of clinical trauma care.

''(4) Coordinate the incorporation of lessons learned from the trauma education and training partnerships pursuant to section 708 into clinical practice.

''(c) REVIEW.—Not later than 180 days after the date on which the Secretary submits to the Committees on Armed Services of the House of Representatives and the Senate the implementation plan under subsection (a)(1), the Comptroller General of the United States shall submit to such committees a review of such plan to determine if each element under subsection (b) is included in such plan.

''(d) REVIEW OF MILITARY TRAUMA SYSTEM.—In establishing a Joint Trauma System, the Secretary of Defense may seek to enter into an agreement with a nongovernmental entity with subject matter experts to—

''(1) conduct a system-wide review of the military trauma system, including a comprehensive review of combat casualty care and wartime trauma systems during the period beginning on January 1, 2001, and ending on the date of the review, including an assessment of lessons learned to improve combat casualty care in future conflicts; and

''(2) make publicly available a report containing such review and recommendations to establish a comprehensive trauma system for the Armed Forces.''

JOINT TRAUMA EDUCATION AND TRAINING DIRECTORATE

Pub. L. 116–92, div. A, title VII, § 721, Dec. 20, 2019, 133 Stat. 1456, provided that:

''(a) PARTNERSHIPS.—

''(1) IN GENERAL.—The Secretary of Defense, through the Joint Trauma Education and Training Directorate established under section 708 of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114–328; 10 U.S.C. 1071 note), may develop partnerships with civilian academic medical centers and large metropolitan teaching hospitals to improve combat casualty care for personnel of the Armed Forces.

''(2) PARTNERSHIPS WITH LEVEL I TRAUMA CENTERS.—In carrying out partnerships under paragraph (1), trauma surgeons and physicians of the Department of Defense may partner with level I civilian trauma centers to provide training and readiness for the next generation of medical providers to treat critically injured burn patients.

''(b) SUPPORT OF PARTNERSHIPS.—The Secretary of Defense may make every effort to support partnerships under the Joint Trauma Education and Training Directorate with academic institutions that have level I civilian trauma centers, specifically those centers with a burn center, that offer burn rotations and clinical experience to provide training and readiness for the next generation of medical providers to treat critically injured burn patients.

''(c) LEVEL I CIVILIAN TRAUMA CENTER DEFINED.—In this section, the term 'level I civilian trauma center' has the meaning given that term in section 708 of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114–328; 10 U.S.C. 1071 note).''

Pub. L. 114–328, div. A, title VII, § 708, Dec. 23, 2016, 130 Stat. 2209, as amended by Pub. L. 115–232, div. A, title VII, § 719, Aug. 13, 2018, 132 Stat. 1817, provided that:

''(a) ESTABLISHMENT.—The Secretary of Defense shall establish a Joint Trauma Education and Training Directorate (in this section referred to as the 'Directorate') to ensure that the traumatologists of the Armed Forces maintain readiness and are able to be rapidly deployed for future armed conflicts. The Secretary shall carry out this section in collaboration with the Secretaries of the military departments.

''(b) DUTIES.—The duties of the Directorate are as follows:

''(1) To enter into and coordinate the partnerships under subsection (c).

''(2) To establish the goals of such partnerships necessary for trauma teams led by traumatologists to maintain professional competency in trauma care.

''(3) To establish metrics for measuring the performance of such partnerships in achieving such goals.

''(4) To develop methods of data collection and analysis for carrying out paragraph (3).

''(5) To communicate and coordinate lessons learned from such partnerships with the Joint Trauma System established under section 707 [set out as a note above].

''(6) To develop standardized combat casualty care instruction for all members of the Armed Forces, including the use of standardized trauma training platforms.

''(7) To develop a comprehensive trauma care registry to compile relevant data from point of injury through rehabilitation of members of the Armed Forces.

''(8) To develop quality of care outcome measures for combat casualty care.

''(9) To direct the conduct of research on the leading causes of morbidity and mortality of members of the Armed Forces in combat.

''(c) PARTNERSHIPS.—

''(1) IN GENERAL.—The Secretary may enter into partnerships with civilian academic medical centers and trauma centers to provide integrated combat trauma teams, including forward surgical teams, with maximum exposure to a high volume of patients with critical injuries.

''(2) TRAUMA TEAMS.—Under the partnerships entered into under paragraph (1), trauma teams of the Armed Forces led by traumatologists of the Armed Forces shall embed within trauma centers on an enduring basis.

''(3) SELECTION.—The Secretary shall select civilian academic medical centers and trauma centers to enter into partnerships under paragraph (1) based on patient volume, acuity, and other factors the Secretary determines necessary to ensure that the traumatologists of the Armed Forces and the associated clinical support teams have adequate and continuous exposure to critically injured patients.

''(4) CONSIDERATION.—In entering into partnerships under paragraph (1), the Secretary may consider the experiences and lessons learned by the military departments that have entered into memoranda of understanding with civilian medical centers for trauma care.

''(d) PERSONNEL MANAGEMENT PLAN.—

''(1) PLAN.—The Secretary shall establish a personnel management plan for the following wartime medical specialties:

''(A) Emergency medical services and prehospital care.

''(B) Trauma surgery.

''(C) Critical care.

''(D) Anesthesiology.

''(E) Emergency medicine.

''(F) Other wartime medical specialties the Secretary determines appropriate for purposes of the plan.

''(2) ELEMENTS.—The elements of the plan established under paragraph (1) shall include, at a minimum, the following:

''(A) An accession plan for the number of qualified medical personnel to maintain wartime medical specialties on an annual basis in order to maintain the required number of trauma teams as determined by the Secretary.

''(B) The number of positions required in each such medical specialty.

''(C) Crucial organizational and operational assignments for personnel in each such medical specialty.

''(D) Career pathways for personnel in each such medical specialty.

''(3) IMPLEMENTATION.—The Secretaries of the military departments shall carry out the plan established under paragraph (1).

''(e) IMPLEMENTATION PLAN.—Not later than July 1, 2017, the Secretary of Defense shall submit to the Committees on Armed Services of the House of Representatives and the Senate an implementation plan for establishing the Joint Trauma Education and Training Directorate under subsection (a), entering into partnerships under subsection (c), and establishing the plan under subsection (d).

''(f) LEVEL I CIVILIAN TRAUMA CENTER DEFINED.—In this section, the term 'level I civilian trauma center' means a comprehensive regional resource that is a tertiary care facility central to the trauma system and is capable of providing total care for every aspect of injury from prevention through rehabilitation.''

STANDARDIZED SYSTEM FOR SCHEDULING MEDICAL APPOINTMENTS AT MILITARY TREATMENT FACILITIES

Pub. L. 114–328, div. A, title VII, § 709, Dec. 23, 2016, 130 Stat. 2211, provided that:

''(a) STANDARDIZED SYSTEM.—

''(1) IN GENERAL.—Not later than January 1, 2018, the Secretary of Defense shall implement a system for scheduling medical appointments at military treatment facilities that is standardized throughout the military health system to enable timely access to care for covered beneficiaries.

''(2) LACK OF VARIANCE.—The system implemented under paragraph (1) shall ensure that the appointment scheduling processes and procedures used within the military health system do not vary among military treatment facilities.

''(b) SOLE SYSTEM.—Upon implementation of the system under subsection (a), no military treatment facility may use an appointment scheduling process other than such system.

''(c) SCHEDULING OF APPOINTMENTS.—

''(1) IN GENERAL.—Under the system implemented under subsection (a), each military treatment facility shall use a centralized appointment scheduling capability for covered beneficiaries that includes the ability to schedule appointments manually via telephone as described in paragraph (2) or automatically via a device that is connected to the Internet through an online scheduling system described in paragraph (3).

''(2) TELEPHONE APPOINTMENT PROCESS.—

''(A) IN GENERAL.—In the case of a covered beneficiary who contacts a military treatment facility via telephone to schedule an appointment under the system implemented under subsection (a), the Secretary shall implement standard processes to ensure that the needs of the covered beneficiary are met during the first such telephone call.

''(B) MATTERS INCLUDED.—The standard processes implemented under subparagraph (A) shall include the following:

''(i) The ability of a covered beneficiary, during the telephone call to schedule an appointment, to also schedule wellness visits or follow-up appointments during the 180-day period beginning on the date of the request for the visit or appointment.

''(ii) The ability of a covered beneficiary to indicate the process through which the covered beneficiary prefers to be reminded of future appointments, which may include reminder telephone calls, emails, or cellular text messages to the covered beneficiary at specified intervals prior to appointments.

''(3) ONLINE SYSTEM.—

''(A) IN GENERAL.—The Secretary shall implement an online scheduling system that is available 24 hours per day, seven days per week, for purposes of scheduling appointments under the system implemented under subsection (a).

''(B) CAPABILITIES OF ONLINE SYSTEM.—The online scheduling system implemented under subparagraph (A) shall have the following capabilities:

''(i) An ability to send automated email and text message reminders, including repeat reminders, to patients regarding upcoming appointments.

''(ii) An ability to store appointment records to ensure rapid access by medical personnel to appointment data.

''(d) STANDARDS FOR PRODUCTIVITY OF HEALTH CARE PROVIDERS.—

''(1) IN GENERAL.—The Secretary shall implement standards for the productivity of health care providers at military treatment facilities.

''(2) MATTERS CONSIDERED.—In developing standards under paragraph (1), the Secretary shall consider—

''(A) civilian benchmarks for measuring the productivity of health care providers;

''(B) the optimal number of medical appointments for each health care provider that would be required, as determined by the Secretary, to maintain access of covered beneficiaries to health care from the Department; and

''(C) the readiness requirements of the Armed Forces.

''(e) PLAN.—

''(1) IN GENERAL.—Not later than January 1, 2017, the Secretary shall submit to the Committees on Armed Services of the Senate and the House of Representatives a comprehensive plan to implement the system required under subsection (a).

''(2) ELEMENTS.—The plan required under paragraph (1) shall include the following:

''(A) A description of the manual appointment process to be used at military treatment facilities under the system required under subsection (a).

''(B) A description of the automated appointment process to be used at military treatment facilities under such system.

''(C) A timeline for the full implementation of such system throughout the military health system.

''(f) BRIEFING.—Not later than February 1, 2018, the Secretary shall brief the Committees on Armed Services of the Senate and the House of Representatives on the implementation of the system required under subsection (a) and the standards for the productivity of health care providers required under subsection (d).

''(g) REPORT ON MISSED APPOINTMENTS.—

''(1) IN GENERAL.—Not later than March 1 each year, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the total number of medical appointments at military treatment facilities for which a covered beneficiary failed to appear without prior notification during the one-year period preceding the submittal of the report.

''(2) ELEMENTS.—Each report under paragraph (1) shall include for each military treatment facility the following:

''(A) An identification of the top five reasons for a covered beneficiary missing an appointment.

''(B) A comparison of the number of missed appointments for specialty care versus primary care.

''(C) An estimate of the cost to the Department of Defense of missed appointments.

''(D) An assessment of strategies to reduce the number of missed appointments.

''(h) COVERED BENEFICIARY DEFINED.—In this section, the term 'covered beneficiary' has the meaning given that term in section 1072 of title 10, United States Code.''

[For termination, effective Dec. 30, 2021, of reporting requirements in section 709(g) of Pub. L. 114–328, set out above, see section 1702(a), (b), of Pub. L. 116–92, set out as a Termination of Reporting Requirements note under section 111 of this title.]

EVALUATION AND TREATMENT OF VETERANS AND CIVILIANS AT MILITARY TREATMENT FACILITIES

Pub. L. 114–328, div. A, title VII, § 717, Dec. 23, 2016, 130 Stat. 2223, as amended by Pub. L. 115–91, div. A, title VII, § 712, Dec. 12, 2017, 131 Stat. 1437, provided that:

''(a) IN GENERAL.—The Secretary of Defense shall authorize a veteran (in consultation with the Secretary of Veterans Affairs) or civilian to be evaluated and treated at a military treatment facility if the Secretary of Defense determines that—

''(1) the evaluation and treatment of the individual is necessary to attain the relevant mix and volume of medical casework required to maintain medical readiness skills and competencies of health care providers at the facility;

''(2) the health care providers at the facility have the competencies, skills, and abilities required to treat the individual; and

''(3) the facility has available space, equipment, and materials to treat the individual.

''(b) PRIORITY OF COVERED BENEFICIARIES.—

''(1) IN GENERAL.—Except as provided in paragraph (2), the evaluation and treatment of covered beneficiaries at military treatment facilities shall be prioritized ahead of the evaluation and treatment of veterans and civilians at such facilities under subsection (a).

''(2) WAIVER.—The Secretary may waive the requirement under paragraph (1) in order to provide timely evaluation and treatment for individuals who are—

''(A) severely wounded or injured by acts of terror that occur in the United States; or

''(B) residents of the United States who are severely wounded or injured by acts of terror outside the United States.

''(c) REIMBURSEMENT FOR TREATMENT.—

''(1) CIVILIANS.—A military treatment facility that evaluates or treats an individual (other than an individual described in paragraph (2)) under subsection (a) shall bill the individual and accept reimbursement from the individual or a third-party payer (as that term is defined in section 1095(h) of title 10, United States Code) on behalf of such individual for the costs of any health care services provided to the individual under such subsection.

''(2) VETERANS.—The Secretary of Defense shall enter into a memorandum of agreement with the Secretary of Veterans Affairs under which the Secretary of Veterans Affairs will pay a military treatment facility using a prospective payment methodology (including interagency transfers of funds or obligational authority and similar transactions) for the costs of any health care services provided at the facility under subsection (a) to individuals eligible for such health care services from the Department of Veterans Affairs.

''(3) USE OF AMOUNTS.—The Secretary of Defense shall make available to a military treatment facility any amounts collected by such facility under paragraph (1) or (2) for health care services provided to an individual under subsection (a).

''(d) COVERED BENEFICIARY DEFINED.—In this section, the term 'covered beneficiary' has the meaning given that term in section 1072 of title 10, United States Code.''

ENHANCEMENT OF USE OF TELEHEALTH SERVICES IN MILITARY HEALTH SYSTEM

Pub. L. 114–328, div. A, title VII, § 718, Dec. 23, 2016, 130 Stat. 2224, provided that:

''(a) INCORPORATION OF TELEHEALTH.—

''(1) IN GENERAL.—Not later than 18 months after the date of the enactment of this Act [Dec. 23, 2016], the Secretary of Defense shall incorporate, throughout the direct care and purchased care components of the military health system, the use of telehealth services, including mobile health applications—

''(A) to improve access to primary care, urgent care, behavioral health care, and specialty care;

''(B) to perform health assessments;

''(C) to provide diagnoses, interventions, and supervision;

''(D) to monitor individual health outcomes of covered beneficiaries with chronic diseases or conditions;

''(E) to improve communication between health care providers and patients; and

''(F) to reduce health care costs for covered beneficiaries and the Department of Defense.

''(2) TYPES OF TELEHEALTH SERVICES.—The telehealth services required to be incorporated under paragraph (1) shall include those telehealth services that—

''(A) maximize the use of secure messaging between health care providers and covered beneficiaries to improve the access of covered beneficiaries to health care and reduce the number of visits to medical facilities for health care needs;

''(B) allow covered beneficiaries to schedule appointments; and

''(C) allow health care providers, through video conference, telephone or tablet applications, or home health monitoring devices—

''(i) to assess and evaluate disease signs and symptoms;

''(ii) to diagnose diseases;

''(iii) to supervise treatments; and

''(iv) to monitor health outcomes.

''(b) COVERAGE OF ITEMS OR SERVICES.—An item or service furnished to a covered beneficiary via a telecommunications system shall be covered under the TRICARE program to the same extent as the item or service would be covered if furnished in the location of the covered beneficiary.

''(c) REIMBURSEMENT RATES FOR TELEHEALTH SERVICES.—The Secretary shall develop standardized payment methods to reimburse health care providers for telehealth services provided to covered beneficiaries in the purchased care component of the TRICARE program, including by using reimbursement rates that incentivize the provision of telehealth services.

''(d) REDUCTION OR ELIMINATION OF COPAYMENTS.—The Secretary shall reduce or eliminate, as the Secretary considers appropriate, copayments or cost shares for covered beneficiaries in connection with the receipt of telehealth services under the purchased care component of the TRICARE program.

''(e) REPORTS.—

''(1) INITIAL REPORT.—

''(A) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act [Dec. 23, 2016], the Secretary shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report describing the full range of telehealth services to be available in the direct care and purchased care components of the military health system and the copayments and cost shares, if any, associated with those services.

''(B) REIMBURSEMENT PLAN.—The report required under subparagraph (A) shall include a plan to develop standardized payment methods to reimburse health care providers for telehealth services provided to covered beneficiaries in the purchased care component of the TRICARE program, as required under subsection (c).

''(2) FINAL REPORT.—

''(A) IN GENERAL.—Not later than three years after the date on which the Secretary begins incorporating, throughout the direct care and purchased care components of the military health system, the use of telehealth services as required under subsection (a), the Secretary shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report describing the impact made by the use of telehealth services, including mobile health applications, to carry out the actions specified in subparagraphs (A) through (F) of subsection (a)(1).

''(B) ELEMENTS.—The report required under subparagraph (A) shall include an assessment of the following:

''(i) The satisfaction of covered beneficiaries with telehealth services furnished by the Department of Defense.

''(ii) The satisfaction of health care providers in providing telehealth services furnished by the Department.

''(iii) The effect of telehealth services furnished by the Department on the following:

''(I) The ability of covered beneficiaries to access health care services in the direct care and purchased care components of the military health system.

''(II) The frequency of use of telehealth services by covered beneficiaries.

''(III) The productivity of health care providers providing care furnished by the Department.

''(IV) The reduction, if any, in the use by covered beneficiaries of health care services in military treatment facilities or medical facilities in the private sector.

''(V) The number and types of appointments for the receipt of telehealth services furnished by the Department.

''(VI) The savings, if any, realized by the Department by furnishing telehealth services to covered beneficiaries.

''(f) REGULATIONS.—

''(1) INTERIM FINAL RULE.—Not later than 180 days after the date of the enactment of this Act [Dec. 23, 2016], the Secretary shall prescribe an interim final rule to implement this section.

''(2) FINAL RULE.—Not later than 180 days after prescribing the interim final rule under paragraph (1) and considering public comments with respect to such interim final rule, the Secretary shall prescribe a final rule to implement this section.

''(3) OBJECTIVES.—The regulations prescribed under paragraphs (1) and (2) shall accomplish the objectives set forth in subsection (a) and ensure quality of care, patient safety, and the integrity of the TRICARE program.

''(g) Definitions.—In this section, the terms 'covered beneficiary' and 'TRICARE program' have the meaning given those terms in section 1072 of title 10, United States Code.''

PROGRAM TO ELIMINATE VARIABILITY IN HEALTH OUTCOMES AND IMPROVE QUALITY OF HEALTH CARE SERVICES DELIVERED IN MILITARY MEDICAL TREATMENT FACILITIES

Pub. L. 114–328, div. A, title VII, § 726, Dec. 23, 2016, 130 Stat. 2231, provided that:

''(a) PROGRAM.—Beginning not later than January 1, 2018, the Secretary of Defense shall implement a program—

''(1) to establish best practices for the delivery of health care services for certain diseases or conditions at military medical treatment facilities, as selected by the Secretary;

''(2) to incorporate such best practices into the daily operations of military medical treatment facilities selected by the Secretary for purposes of the program, with priority in selection given to facilities that provide specialty care; and

''(3) to eliminate variability in health outcomes and to improve the quality of health care services delivered at military medical treatment facilities selected by the Secretary for purposes of the program.

''(b) USE OF CLINICAL PRACTICE GUIDELINES.—In carrying out the program under subsection (a), the Secretary shall develop, implement, monitor, and update clinical practice guidelines reflecting the best practices established under paragraph (1) of such subsection.

''(c) DEVELOPMENT.—In developing the clinical practice guidelines under subsection (b), the Secretary shall ensure that such development includes a baseline assessment of health care delivery and outcomes at military medical treatment facilities to evaluate and determine evidence-based best practices, within the direct care component of the military health system and the private sector, for treating the diseases or conditions selected by the Secretary under subsection (a)(1).

''(d) IMPLEMENTATION.—The Secretary shall implement the clinical practice guidelines under subsection (b) in military medical treatment facilities selected by the Secretary under subsection (a)(2) using means determined appropriate by the Secretary, including by communicating with the relevant health care providers of the evidence upon which the guidelines are based and by providing education and training on the most appropriate implementation of the guidelines.

''(e) MONITORING.—The Secretary shall monitor the implementation of the clinical practice guidelines under subsection (b) using appropriate means, including by monitoring the results in clinical outcomes based on specific metrics included as part of the guidelines.

''(f) UPDATING.—The Secretary shall periodically update the clinical practice guidelines under subsection (b) based on the results of monitoring conducted under subsection (e) and by continuously assessing evidence-based best practices within the direct care component of the military health system and the private sector.

''(g) CONTINUOUS CYCLE.—The Secretary shall establish a continuous cycle of carrying out subsections (c) through (f) with respect to the clinical practice guidelines established under subsection (a).''

ADOPTION OF CORE QUALITY PERFORMANCE METRICS

Pub. L. 114–328, div. A, title VII, § 728(a), Dec. 23, 2016, 130 Stat. 2233, provided that:

''(a) ADOPTION.—

''(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act [Dec. 23, 2016], the Secretary of Defense shall adopt, to the extent appropriate, the core quality performance metrics agreed upon by the Core Quality Measures Collaborative for use by the military health system and in contracts awarded to carry out the TRICARE program.

''(2) CORE MEASURES.—The core quality performance metrics described in paragraph (1) shall include the following sets:

''(A) Accountable care organizations, patient centered medical homes, and primary care.

''(B) Cardiology.

''(C) Gastroenterology.

''(D) HIV and hepatitis C.

''(E) Medical oncology.

''(F) Obstetrics and gynecology.

''(G) Orthopedics.

''(H) Such other sets of core quality performance metrics released by the Core Quality Measures Collaborative as the Secretary considers appropriate.''

[For definitions of terms used in section 728(a) of Pub. L. 114–328, set out above, see section 728(c) of Pub. L. 114–328, set out below.]

ACCOUNTABILITY FOR THE PERFORMANCE OF THE MILITARY HEALTH SYSTEM OF CERTAIN LEADERS WITHIN THE SYSTEM

Pub. L. 114–328, div. A, title VII, § 730, Dec. 23, 2016, 130 Stat. 2235, provided that:

''(a) IN GENERAL.—Commencing not later than 180 days after the date of the enactment of this Act [Dec. 23, 2016], the Secretary of Defense, in consultation with the Secretaries of the military departments, shall incorporate into the annual performance review of each military and civilian leader in the military health system, as determined by the Secretary of Defense, measures of accountability for the performance of the military health system described in subsection (b).

''(b) MEASURES OF ACCOUNTABILITY FOR PERFORMANCE.—The measures of accountability for the performance of the military health system incorporated into the annual performance review of an individual pursuant to this section shall include measures to assess performance and assure accountability for the following:

''(1) Quality of care.

''(2) Access of beneficiaries to care.

''(3) Improvement in health outcomes for beneficiaries.

''(4) Patient safety.

''(5) Such other matters as the Secretary of Defense, in consultation with the Secretaries of the military departments, considers appropriate.

''(c) REPORT ON IMPLEMENTATION.—

''(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the incorporation of measures of accountability for the performance of the military health system into the annual performance reviews of individuals as required by this section.

''(2) ELEMENTS.—The report required by paragraph (1) shall include the following:

''(A) A comprehensive plan for the use of measures of accountability for performance in annual performance reviews pursuant to this section as a means of assessing and assuring accountability for the performance of the military health system.

''(B) The identification of each leadership position in the military health system determined under subsection (a) and a description of the specific measures of accountability for performance to be incorporated into the annual performance reviews of each such position pursuant to this section.''

ESTABLISHMENT OF ADVISORY COMMITTEES FOR MILITARY TREATMENT FACILITIES

Pub. L. 114–328, div. A, title VII, § 731, Dec. 23, 2016, 130 Stat. 2236, provided that:

''(a) IN GENERAL.—The Secretary of Defense shall establish, under such regulations as the Secretary may prescribe, an advisory committee for each military treatment facility.

''(b) STATUS OF CERTAIN MEMBERS OF ADVISORY COMMITTEES.—A member of an advisory committee established under subsection (a) who is not a member of the Armed Forces on active duty or an employee of the Federal Government shall, with the approval of the commanding officer or director of the military treatment facility concerned, be treated as a volunteer under section 1588 of title 10, United States Code, in carrying out the duties of the member under this section.

''(c) DUTIES.—Each advisory committee established under subsection (a) for a military treatment facility shall provide to the commanding officer or director of such facility advice on the administration and activities of such facility as it relates to the experience of care for beneficiaries at such facility.''

PROVISION OF INFORMATION TO MEMBERS OF THE ARMED FORCES ON PRIVACY RIGHTS RELATING TO RECEIPT OF MENTAL HEALTH SERVICES

Pub. L. 113–291, div. A, title V, § 523, Dec. 19, 2014, 128 Stat. 3361, provided that:

''(a) PROVISION OF INFORMATION REQUIRED.—The Secretaries of the military departments shall ensure that the information described in subsection (b) is provided—

''(1) to each officer candidate during initial training;

''(2) to each recruit during basic training; and

''(3) to other members of the Armed Forces at such times as the Secretary of Defense considers appropriate.

''(b) REQUIRED INFORMATION.—The information required to be provided under subsection (a) shall include information on the applicability of the Department of Defense Instruction on Privacy of Individually Identifiable Health Information in DoD Health Care Programs and other regulations regarding privacy prescribed pursuant to the Health Insurance Portability and Accountability Act of 1996 (Public Law 104–191) to records regarding a member of the Armed Forces seeking and receiving mental health services.''

ANTIMICROBIAL STEWARDSHIP PROGRAM AT MEDICAL FACILITIES OF THE DEPARTMENT OF DEFENSE

Pub. L. 113–291, div. A, title VII, § 727, Dec. 19, 2014, 128 Stat. 3420, required the Secretary of Defense, no later than 180 days after Dec. 19, 2014, to carry out and report to Congress on an antimicrobial stewardship program at medical facilities of the Department of Defense.

COMPREHENSIVE POLICY ON IMPROVEMENTS TO CARE AND TRANSITION OF MEMBERS OF THE ARMED FORCES WITH UROTRAUMA

Pub. L. 113–66, div. A, title VII, § 703, Dec. 26, 2013, 127 Stat. 791, required development and implementation of a comprehensive policy on improvements to the care, management, and transition of recovering Armed Forces members with urotrauma no later than 180 days after Dec. 26, 2013, with a report to Congress no later than one year after the implementation of the policy.

ELECTRONIC HEALTH RECORDS OF THE DEPARTMENT OF DEFENSE AND THE DEPARTMENT OF VETERANS AFFAIRS

Pub. L. 113–66, div. A, title VII, § 713, Dec. 26, 2013, 127 Stat. 794, which required the Secretaries of Defense and Veterans Affairs to ensure that the electronic health records systems of their departments were interoperable and met certain standards and requirements and adhered to certain principles, was repealed by Pub. L. 116–92, div. A, title VII, § 715(i), Dec. 20, 2019, 133 Stat. 1453. See section 1635 of Pub. L. 110–181, set out in a note below.

RESEARCH AND MEDICAL PRACTICE ON MENTAL HEALTH CONDITIONS

Pub. L. 112–239, div. A, title VII, § 725, Jan. 2, 2013, 126 Stat. 1806, required the Secretary of Defense to create a policy on medical practices from research on the diagnosis and treatment of mental health conditions and to submit a report to Congress no later than 180 days after Jan. 2, 2013.

PLAN FOR REFORM OF THE ADMINISTRATION OF THE MILITARY HEALTH SYSTEM

Pub. L. 112–239, div. A, title VII, § 731, Jan. 2, 2013, 126 Stat. 1815, required the Secretary of Defense to develop a detailed plan to carry out reforms to the governance of the military health system and to submit a series of reports to Congress, with the final report due on Sept. 30, 2013.

PERFORMANCE METRICS AND REPORTS ON WARRIORS IN TRANSITION PROGRAMS OF THE MILITARY DEPARTMENTS

Pub. L. 112–239, div. A, title VII, § 738, Jan. 2, 2013, 126 Stat. 1820, as amended by Pub. L. 115–91, div. A, title X, § 1051(r)(3), Dec. 12, 2017, 131 Stat. 1565, provided that:

''(a) METRICS REQUIRED.—The Secretary of Defense shall establish a policy containing uniform performance outcome measurements to be used by each Secretary of a military department in tracking and monitoring members of the Armed Forces in Warriors in Transition programs.

''(b) ELEMENTS.—The policy established under subsection (a) shall identify outcome measurements with respect to the following:

''(1) Physical health and behavioral health.

''(2) Rehabilitation.

''(3) Educational and vocational preparation.

''(4) Such other matters as the Secretary considers appropriate.

''(c) MILESTONES.—In establishing the policy under subsection (a), the Secretary of Defense shall establish metrics and milestones for members in Warriors in Transition programs. Such metrics and milestones shall cover members throughout the course of care and rehabilitation in Warriors in Transitions programs by applying to the following occasions:

''(1) When the member commences participation in the program.

''(2) At least once each year the member participates in the program.

''(3) When the member ceases participation in the program or is transferred to the jurisdiction of the Secretary of Veterans Affairs.

''(d) COHORT GROUPS AND PARAMETERS.—The policy established under subsection (a)—

''(1) may differentiate among cohort groups within the population of members in Warriors in Transition programs, as appropriate; and

''(2) shall include parameters for specific outcome measurements in each element under subsection (b) and each metric and milestone under subsection (c).

''(e) WARRIORS IN TRANSITION PROGRAM DEFINED.—In this section, the term 'Warriors in Transition program' means any major support program of the Armed Forces for members of the Armed Forces with severe wounds, illnesses, or injuries that is intended to provide such members with nonmedical case management service and care coordination services, and includes the programs as follows:

''(1) Warrior Transition Units and the Wounded Warrior Program of the Army.

''(2) The Wounded Warrior Safe Harbor program of the Navy.

''(3) The Wounded Warrior Regiment of the Marine Corps.

''(4) The Recovery Care Program and the Wounded Warrior programs of the Air Force.

''(5) The Care Coalition of the United States Special Operations Command.''

SUICIDE PREVENTION POLICIES AND PROGRAMS

Pub. L. 114–92, div. A, title V, § 591, Nov. 25, 2015, 129 Stat. 832, provided that:

''(a) DEVELOPMENT OF POLICY.—The Secretary of Defense, in consultation with the Secretaries of the military departments, may develop a policy to coordinate the efforts of the Department of Defense and non-government suicide prevention organizations regarding—

''(1) the use of such non-government organizations to reduce the number of suicides among members of the Armed Forces by comprehensively addressing the needs of members of the Armed Forces who have been identified as being at risk of suicide;

''(2) the delineation of the responsibilities within the Department of Defense regarding interaction with such organizations;

''(3) the collection of data regarding the efficacy and cost of coordinating with such organizations; and

''(4) the preparation and preservation of any reporting material the Secretary determines necessary to carry out the policy.

''(b) SUICIDE PREVENTION EFFORTS.—The Secretary of Defense is authorized to take any necessary measures to prevent suicides by members of the Armed Forces, including by facilitating the access of members of the Armed Forces to successful non-governmental treatment regimen.''

Pub. L. 113–291, div. A, title V, § 567, Dec. 19, 2014, 128 Stat. 3385, provided that:

''(a) POLICY FOR STANDARD SUICIDE DATA COLLECTION, REPORTING, AND ASSESSMENT.—

''(1) POLICY REQUIRED.—The Secretary of Defense shall prescribe a policy for the development of a standard method for collecting, reporting, and assessing information regarding—

''(A) any suicide or attempted suicide involving a member of the Armed Forces, including reserve components thereof; and

''(B) any death that is reported as a suicide involving a dependent of a member of the Armed Forces.

''(2) PURPOSE OF POLICY.—The purpose of the policy required by this subsection is to improve the consistency and comprehensiveness of—

''(A) the suicide prevention policy developed pursuant to section 582 of the National Defense Authorization Act for Fiscal Year 2013 (Public Law 112–239; 10 U.S.C. 1071 note); and

''(B) the suicide prevention and resilience program for the National Guard and Reserves established pursuant to section 10219 of title 10, United States Code.

''(3) CONSULTATION.—The Secretary of Defense shall develop the policy required by this subsection in consultation with the Secretaries of the military departments and the Chief of the National Guard Bureau.

''(b) SUBMISSION AND IMPLEMENTATION OF POLICY.—

''(1) SUBMISSION.—Not later than 180 days after the date of the enactment of this Act [Dec. 19, 2014], the Secretary of Defense shall submit the policy developed under subsection (a) to the Committees on Armed Services of the Senate and the House of Representatives.

''(2) IMPLEMENTATION.—The Secretaries of the military departments shall implement the policy developed under subsection (a) not later than 180 days after the date of the submittal of the policy under paragraph (1).

''(c) DEPENDENT DEFINED.—In this section, the term 'dependent', with respect to a member of the Armed Forces, means a person described in section 1072(2) of title 10, United States Code, except that, in the case of a parent or parent-in-law of the member, the income requirements of subparagraph (E) of such section do not apply.''

Pub. L. 112–239, div. A, title V, § 580, Jan. 2, 2013, 126 Stat. 1764, provided that:

''(a) IN GENERAL.—The Secretary of Defense shall, acting through the Under Secretary of Defense for Personnel and Readiness, establish within the Office of the Secretary of Defense a position with responsibility for oversight of all suicide prevention and resilience programs of the Department of Defense (including those of the military departments and the Armed Forces).

''(b) SCOPE OF RESPONSIBILITIES.—The individual serving in the position established under subsection (a) shall have the responsibilities as follows:

''(1) To establish a uniform definition of resiliency for use in the suicide prevention and resilience programs and preventative behavioral health programs of the Department of Defense (including those of the military departments and the Armed Forces).

''(2) To oversee the implementation of the comprehensive policy on the prevention of suicide among members of the Armed Forces required by section 582.''

Pub. L. 112–239, div. A, title V, § 582, Jan. 2, 2013, 126 Stat. 1766, provided that:

''(a) COMPREHENSIVE POLICY REQUIRED.—Not later than 180 days after the date of the enactment of this Act [Jan. 2, 2013], the Secretary of Defense shall, acting through the Under Secretary of Defense for Personnel and Readiness, develop within the Department of Defense a comprehensive policy on the prevention of suicide among members of the Armed Forces. In developing the policy, the Secretary shall consider recommendations from the operational elements of the Armed Forces regarding the feasibility of the implementation and execution of particular elements of the policy.

''(b) ELEMENTS.—The policy required by subsection (a) shall cover each of the following:

''(1) Increased awareness among members of the Armed Forces about mental health conditions and the stigma associated with mental health conditions and mental health care.

''(2) The means of identifying members who are at risk for suicide (including enhanced means for early identification and treatment of such members).

''(3) The continuous access by members to suicide prevention services, including suicide crisis services.

''(4) The means to evaluate and assess the effectiveness of the suicide prevention and resilience programs and preventative behavioral health programs of the Department of Defense (including those of the military departments and the Armed Forces), including the development of metrics for that purpose.

''(5) The means to evaluate and assess the current diagnostic tools and treatment methods in the programs referred to in paragraph (4) to ensure clinical best practices are used in such programs.

''(6) The standard of care for suicide prevention to be used throughout the Department.

''(7) The training of mental health care providers on suicide prevention.

''(8) The training standards for behavioral health care providers to ensure that such providers receive training on clinical best practices and evidence-based treatments as information on such practices and treatments becomes available.

''(9) The integration of mental health screenings and suicide risk and prevention for members into the delivery of primary care for such members.

''(10) The standards for responding to attempted or completed suicides among members, including guidance and training to assist commanders in addressing incidents of attempted or completed suicide within their units.

''(11) The means to ensure the protection of the privacy of members seeking or receiving treatment relating to suicide.

''(12) Such other matters as the Secretary considers appropriate in connection with the prevention of suicide among members.''

Pub. L. 112–81, div. A, title V, § 533(a), (b), Dec. 31, 2011, 125 Stat. 1404, provided that:

''(a) PROGRAM ENHANCEMENT.—The Secretary of Defense shall take appropriate actions to enhance the suicide prevention program of the Department of Defense through the provision of suicide prevention information and resources to members of the Armed Forces from their initial enlistment or appointment through their final retirement or separation.

''(b) COOPERATIVE EFFORT.—The Secretary of Defense shall develop suicide prevention information and resources in consultation with—

''(1) the Secretary of Veterans Affairs, the National Institute of Mental Health, and the Substance Abuse and Mental Health Services Administration of the Department of Health and Human Services; and

''(2) to the extent appropriate, institutions of higher education and other public and private entities, including international entities, with expertise regarding suicide prevention.''

TREATMENT OF WOUNDED WARRIORS

Pub. L. 112–81, div. A, title VII, § 722, Dec. 31, 2011, 125 Stat. 1479, provided that: ''The Secretary of Defense may establish a program to enter into partnerships to enable coordinated, rapid clinical evaluation and the application of evidence-based treatment strategies for wounded service members, with an emphasis on the most common musculoskeletal injuries, that will address the priorities of the Armed Forces with respect to retention and readiness.''

COMPREHENSIVE PLAN ON PREVENTION, DIAGNOSIS, AND TREATMENT OF SUBSTANCE USE DISORDERS AND DISPOSITION OF SUBSTANCE ABUSE OFFENDERS IN THE ARMED FORCES

Pub. L. 111–84, div. A, title V, § 596, Oct. 28, 2009, 123 Stat. 2339, provided for a comprehensive review of programs and policies regarding substance abuse disorders in members of the Armed Forces and the development of a plan for improvement and enhancement of such programs and policies by the Secretary of Defense and for a report to Congress on modification and improvements made following an independent study of the programs that was to be completed no later than two years after Oct. 28, 2009.

COMPREHENSIVE POLICY ON PAIN MANAGEMENT BY THE MILITARY HEALTH CARE SYSTEM

Pub. L. 111–84, div. A, title VII, § 711, Oct. 28, 2009, 123 Stat. 2378, provided that:

''(a) COMPREHENSIVE POLICY REQUIRED.—Not later than March 31, 2011, the Secretary of Defense shall develop and implement a comprehensive policy on pain management by the military health care system.

''(b) SCOPE OF POLICY.—The policy required by subsection (a) shall cover each of the following:

''(1) The management of acute and chronic pain.

''(2) The standard of care for pain management to be used throughout the Department of Defense.

''(3) The consistent application of pain assessments throughout the Department of Defense.

''(4) The assurance of prompt and appropriate pain care treatment and management by the Department when medically necessary.

''(5) Programs of research related to acute and chronic pain, including pain attributable to central and peripheral nervous system damage characteristic of injuries incurred in modern warfare, brain injuries, and chronic migraine headache.

''(6) Programs of pain care education and training for health care personnel of the Department.

''(7) Programs of patient education for members suffering from acute or chronic pain and their families.

''(c) UPDATES.—The Secretary shall revise the policy required by subsection (a) on a periodic basis in accordance with experience and evolving best practice guidelines.

''(d) ANNUAL REPORT.—

''(1) IN GENERAL.—Not later than 180 days after the date of the commencement of the implementation of the policy required by subsection (a), and on October 1 each year thereafter through 2018, the Secretary shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the policy.

''(2) ELEMENTS.—Each report required by paragraph (1) shall include the following:

''(A) A description of the policy implemented under subsection (a), and any revisions to such policy under subsection (c).

''(B) A description of the performance measures used to determine the effectiveness of the policy in improving pain care for beneficiaries enrolled in the military health care system.

''(C) An assessment of the adequacy of Department pain management services based on a current survey of patients managed in Department clinics.

''(D) An assessment of the research projects of the Department relevant to the treatment of the types of acute and chronic pain suffered by members of the Armed Forces and their families.

''(E) An assessment of the training provided to Department health care personnel with respect to the diagnosis, treatment, and management of acute and chronic pain.

''(F) An assessment of the pain care education programs of the Department.

''(G) An assessment of the dissemination of information on pain management to beneficiaries enrolled in the military health care system.''

PLAN TO INCREASE THE MENTAL HEALTH CAPABILITIES OF THE DEPARTMENT OF DEFENSE

Pub. L. 111–84, div. A, title VII, § 714, Oct. 28, 2009, 123 Stat. 2381, as amended by Pub. L. 111–383, div. A, title X, § 1075(d)(8), Jan. 7, 2011, 124 Stat. 4373, directed each military department to increase by a specified amount the number of active duty mental health personnel no later than 180 days after Oct. 28, 2009, and required the Secretary of Defense to report on the appropriate number of mental health personnel required to meet the mental health care needs of members of the Armed Forces, retired members, and dependents; to develop and implement a plan to significantly increase the number of military and civilian mental health personnel by Sept. 30, 2013; and to report on an assessment of the feasibility and advisability of establishing one or more military mental health specialties for officers or enlisted members of the Armed Forces.

STUDY AND PLAN TO IMPROVE MILITARY HEALTH CARE

Pub. L. 111–84, div. A, title VII, § 721, Oct. 28, 2009, 123 Stat. 2385, provided that:

''(a) STUDY AND REPORT REQUIRED.—Not later than one year after the date of the enactment of this Act [Oct. 28, 2009], the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the health care needs of dependents (as defined in section 1072(2) of title 10, United States Code). The report shall include, at a minimum, the following:

''(1) With respect to both the direct care system and the purchased care system, an analysis of the type of health care facility in which dependents seek care.

''(2) The 10 most common medical conditions for which dependents seek care.

''(3) The availability of and access to health care providers to treat the conditions identified under paragraph (2), both in the direct care system and the purchased care system.

''(4) Any shortfalls in the ability of dependents to obtain required health care services.

''(5) Recommendations on how to improve access to care for dependents.

''(6) With respect to dependents accompanying a member stationed at a military installation outside of the United States, the need for and availability of mental health care services.

''(b) ENHANCED MILITARY HEALTH SYSTEM AND IMPROVED TRICARE.—

''(1) IN GENERAL.—The Secretary of Defense, in consultation with the other administering Secretaries, shall undertake actions to enhance the capability of the military health system and improve the TRICARE program.

''(2) ELEMENTS.—In undertaking actions to enhance the capability of the military health system and improve the TRICARE program under paragraph (1), the Secretary shall consider the following actions:

''(A) Actions to guarantee the availability of care within established access standards for eligible beneficiaries, based on the results of the study required by subsection (a).

''(B) Actions to expand and enhance sharing of health care resources among Federal health care programs, including designated providers (as that term is defined in section 721(5) of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104–201; 110 Stat. 2593; 10 U.S.C. 1073 note)).

''(C) Actions using medical technology to speed and simplify referrals for specialty care.

''(D) Actions to improve regional or national staffing capabilities in order to enhance support provided to military medical treatment facilities facing staff shortages.

''(E) Actions to improve health care access for members of the reserve components and their families, including such access with respect to mental health care and consideration of access issues for members and their families located in rural areas.

''(F) Actions to ensure consistency throughout the TRICARE program to comply with access standards, which are applicable to both commanders of military treatment facilities and managed care support contractors.

''(G) Actions to create new budgeting and resource allocation methodologies to fully support and incentivize care provided by military treatment facilities.

''(H) Actions regarding additional financing options for health care provided by civilian providers.

''(I) Actions to reduce administrative costs.

''(J) Actions to control the cost of health care and pharmaceuticals.

''(K) Actions to audit the Defense Enrollment Eligibility Reporting System to improve system checks on the eligibility of TRICARE beneficiaries.

''(L) Actions, including a comprehensive plan, for the enhanced availability of prevention and wellness care.

''(M) Actions using technology to improve direct communication with beneficiaries regarding health and preventive care.

''(N) Actions to create performance metrics by which to measure improvement in the TRICARE program.

''(O) Such other actions as the Secretary, in consultation with the other administering Secretaries, considers appropriate.

''(c) QUALITY ASSURANCE.—In undertaking actions under this section, the Secretary of Defense and the other administering Secretaries shall continue or enhance the current level of quality health care provided by the Department of Defense and the military departments with no adverse impact to cost, access, or care.

''(d) CONSULTATION.—In considering actions to be undertaken under this section, and in undertaking such actions, the Secretary shall consult with a broad range of national health care and military advocacy organizations.

''(e) REPORTS REQUIRED.—

''(1) INITIAL REPORT.—Not later than 180 days after the date of the enactment of this Act [Oct. 28, 2009], the Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] an initial report on the progress made in undertaking actions under this section and future plans for improvement of the military health system.

''(2) REPORT REQUIRED WITH FISCAL YEAR 2012 BUDGET PROPOSAL.—Together with the budget justification materials submitted to Congress in support of the Department of Defense budget for fiscal year 2012 (as submitted with the budget of the President under section 1105(a) of title 31, United States Code), the Secretary shall submit to the congressional defense committees a report setting forth the following:

''(A) Updates on the progress made in undertaking actions under this section.

''(B) Future plans for improvement of the military health system.

''(C) An explanation of how the budget submission may reflect such progress and plans.

''(3) PERIODIC REPORTS.—The Secretary shall, on a periodic basis, submit to the congressional defense committees a report on the progress being made in the improvement of the TRICARE program under this section.

''(4) ELEMENTS.—Each report under this subsection shall include the following:

''(A) A description and assessment of the progress made as of the date of such report in the improvement of the TRICARE program.

''(B) Such recommendations for administrative or legislative action as the Secretary considers appropriate to expedite and enhance the improvement of the TRICARE program.

''(f) DEFINITIONS.—In this section:

''(1) The term 'administering Secretaries' has the meaning given that term in section 1072(3) of title 10, United States Code.

''(2) The term 'TRICARE program' has the meaning given that term in section 1072(7) of title 10, United States Code.''

PROGRAM FOR HEALTH CARE DELIVERY AT MILITARY INSTALLATIONS WITH PROJECTED GROWTH

Pub. L. 110–417, [div. A], title VII, §705, Oct. 14, 2008, 122 Stat. 4499, provided that:

''(a) PROGRAM.—The Secretary of Defense is authorized to develop a plan to establish a program to build cooperative health care arrangements and agreements between military installations projected to grow and local and regional non-military health care systems.

''(b) REQUIREMENTS OF PLAN.—In developing the plan, the Secretary of Defense shall—

''(1) identify and analyze health care delivery options involving the private sector and health care services in military facilities located on military installations;

''(2) develop methods for determining the cost avoidance or savings resulting from innovative part-

nerships between the Department of Defense and the private sector;

''(3) develop requirements for Department of Defense health care providers to deliver health care in civilian community hospitals; and

''(4) collaborate with State and local authorities to create an arrangement to share and exchange, between the Department of Defense and nonmilitary health care systems, personal health information, and data of military personnel and their families.

''(c) COORDINATION WITH OTHER ENTITIES.—The plan shall include requirements for coordination with Federal, State, and local entities, TRICARE managed care support contractors, and other contracted assets around installations selected for participation in the program.

''(d) CONSULTATION REQUIREMENTS.—The Secretary of Defense shall develop the plan in consultation with the Secretaries of the military departments.

''(e) SELECTION OF MILITARY INSTALLATIONS.—Each selected military installation shall meet the following criteria:

''(1) The military installation has members of the Armed Forces on active duty and members of reserve components of the Armed Forces that use the installation as a training and operational base, with members routinely deploying in support of the global war on terrorism.

''(2) The military population of an installation will significantly increase by 2013 due to actions related to either Grow the Force initiatives or recommendations of the Defense Base Realignment and Closure Commission.

''(3) There is a military treatment facility on the installation that has—

''(A) no inpatient or trauma center care capabilities; and

''(B) no current or planned capacity that would satisfy the proposed increase in military personnel at the installation.

''(4) There is a civilian community hospital near the military installation, and the military treatment facility has—

''(A) no inpatient services or limited capability to expand inpatient care beds, intensive care, and specialty services; and

''(B) limited or no capability to provide trauma care.

''(f) REPORTS.—Not later than one year after the date of the enactment of this Act [Oct. 14, 2008], and every year thereafter, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives an annual report on any plan developed under subsection (a).''

CENTER OF EXCELLENCE IN PREVENTION, DIAGNOSIS, MITIGATION, TREATMENT, AND REHABILITATION OF HEARING LOSS AND AUDITORY SYSTEM INJURIES

Pub. L. 110–417, [div. A], title VII, § 721, Oct. 14, 2008, 122 Stat. 4506, provided that:

''(a) IN GENERAL.—The Secretary of Defense shall establish within the Department of Defense a center of excellence in the prevention, diagnosis, mitigation, treatment, and rehabilitation of hearing loss and auditory system injury to carry out the responsibilities specified in subsection (c).

''(b) PARTNERSHIPS.—The Secretary shall ensure that the center collaborates to the maximum extent practicable with the Secretary of Veterans Affairs, institutions of higher education, and other appropriate public and private entities (including international entities) to carry out the responsibilities specified in subsection (c).

''(c) RESPONSIBILITIES.—

''(1) IN GENERAL.—The center shall—

''(A) implement a comprehensive plan and strategy for the Department of Defense, as developed by the Secretary of Defense, for a registry of information for the tracking of the diagnosis, surgical intervention or other operative procedure, other treatment, and follow up for each case of hearing loss and auditory system injury incurred by a member of the Armed Forces while serving on active duty;

''(B) ensure the electronic exchange with the Secretary of Veterans Affairs of information obtained through tracking under subparagraph (A); and

''(C) enable the Secretary of Veterans Affairs to access the registry and add information pertaining to additional treatments or surgical procedures and eventual hearing outcomes for veterans who were entered into the registry and subsequently received treatment through the Veterans Health Administration.

''(2) DESIGNATION OF REGISTRY.—The registry under this subsection shall be known as the 'Hearing Loss and Auditory System Injury Registry' (hereinafter referred to as the 'Registry').

''(3) CONSULTATION IN DEVELOPMENT.—The center shall develop the Registry in consultation with audiologists, speech and language pathologists, otolaryngologists, and other specialist personnel of the Department of Defense and the audiologists, speech and language pathologists, otolaryngologists, and other specialist personnel of the Department of Veterans Affairs. The mechanisms and procedures of the Registry shall reflect applicable expert research on military and other hearing loss.

''(4) MECHANISMS.—The mechanisms of the Registry for tracking under paragraph (1)(A) shall ensure that each military medical treatment facility or other medical facility shall submit to the center for inclusion in the Registry information on the diagnosis, surgical intervention or other operative procedure, other treatment, and follow up for each case of hearing loss and auditory system injury described in that paragraph as follows (to the extent applicable):

''(A) Not later than 30 days after surgery or other operative intervention, including a surgery or other operative intervention carried out as a result of a follow-up examination.

''(B) Not later than 180 days after the hearing loss and auditory system injury is reported or recorded in the medical record.

''(5) COORDINATION OF CARE AND BENEFITS.—(A) The center shall provide notice to the National Center for Rehabilitative Auditory Research (NCRAR) of the Department of Veterans Affairs and to the auditory system impairment services of the Veterans Health Administration on each member of the Armed Forces described in subparagraph (B) for purposes of ensuring the coordination of the provision of ongoing auditory system rehabilitation benefits and services by the Department of Veterans Affairs after the separation or release of such member from the Armed Forces.

''(B) A member of the Armed Forces described in this subparagraph is a member of the Armed Forces with significant hearing loss or auditory system injury incurred while serving on active duty, including a member with auditory dysfunction related to traumatic brain injury.

''(d) UTILIZATION OF REGISTRY INFORMATION.—The Secretary of Defense and the Secretary of Veterans Affairs shall jointly ensure that information in the Registry is available to appropriate audiologists, speech and language pathologists, otolaryngologists, and other specialist personnel of the Department of Defense and the Department of Veterans Affairs for purposes of encouraging and facilitating the conduct of research, and the development of best practices and clinical education, on hearing loss or auditory system injury incurred by members of the Armed Forces.

''(e) INCLUSION OF RECORDS OF OIF/OEF VETERANS.—The Secretary of Defense shall take appropriate actions to include in the Registry such records of members of the Armed Forces who incurred a hearing loss or auditory system injury while serving on active duty on or after September 11, 2001, but before the establishment of the Registry, as the Secretary considers appropriate for purposes of the Registry.''

WOUNDED WARRIOR HEALTH CARE IMPROVEMENTS

Pub. L. 115–232, div. A, title VII, §717, Aug. 13, 2018, 132 Stat. 1815, provided that:

''(a) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act [Aug. 13, 2018], the Secretary of Defense shall review and update policies and procedures relating to the care and management of recovering service members. In conducting such review, the Secretary shall consider best practices—

''(1) in the care of recovering service members;

''(2) in the administrative management relating to such care;

''(3) to carry out applicable provisions of Federal law; and

''(4) recommended by the Comptroller General of the United States in the report titled 'Army Needs to Improve Oversight of Warrior Transition Units'.

''(b) SCOPE OF POLICY.—In carrying out subsection (a), the Secretary shall update policies of the Department of Defense with respect to each of the following:

''(1) The case management coordination of members of the Armed Forces between the military departments and the military medical treatment facilities administered by the Director of the Defense Health Agency pursuant to section 1073c of title 10, United States Code, including with respect to the coordination of—

''(A) appointments;

''(B) rehabilitative services;

''(C) recuperation in an outpatient status;

''(D) contract care provided by a private health care provider outside of a military medical treatment facility;

''(E) the disability evaluation system; and

''(F) other administrative functions relating to the military department.

''(2) The transition of a member of the Armed Forces who is retired under chapter 61 of title 10, United States Code, from receiving treatment furnished by the Secretary of Defense to treatment furnished by the Secretary of Veterans Affairs.

''(3) Facility standards related to lodging and accommodations for recovering service members and the family members and non-medical attendants of recovering service members.

''(c) REPORT.—Not later than one year after the date of the enactment of this Act [Aug. 13, 2018], the Secretary of Defense and Secretaries of the military departments shall jointly submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the review conducted under subsection (a), including a description of the policies updated pursuant to subsection (b).

''(d) DEFINITIONS.—In this section, the terms 'disability evaluation system', 'outpatient status', and 'recovering service members' have the meaning given those terms in section 1602 of the Wounded Warrior Act (title XVI of Public Law 110–181; 10 U.S.C. 1071 note).''

Pub. L. 110–181, div. A, title XVI, §§1602, 1603, 1611–1614, 1616, 1618, 1621–1623, 1631, 1635, 1644, 1648, 1651, 1662, 1671, 1672, 1676, Jan. 28, 2008, 122 Stat. 431–443, 447, 450–455, 458, 460, 467, 473, 476, 479, 481, 484, as amended by Pub. L. 110–417, [div. A], title II, §252, title VII, §§722, 724, title X, §1061(b)(13), Oct. 14, 2008, 122 Stat. 4400, 4508, 4509, 4613; Pub. L. 111–84, div. A, title VI, §632(h), Oct. 28, 2009, 123 Stat. 2362; Pub. L. 112–56, title II, §231, Nov. 21, 2011, 125 Stat. 719; Pub. L. 112–81, div. A, title VI, §631(f)(4)(B), title VII, §707, Dec. 31, 2011, 125 Stat. 1465, 1474; Pub. L. 112–239, div. A, title X, §1076(a)(9), Jan. 2, 2013, 126 Stat. 1948; Pub. L. 113–175, title I, §105, Sept. 26, 2014, 128 Stat. 1903; Pub. L. 113–291, div. A, title V, §591, title VII, §724, Dec. 19, 2014, 128 Stat. 3394, 3418; Pub. L. 114–58, title II, §204, title IV, §411, Sept. 30, 2015, 129 Stat. 533, 536; Pub. L. 114–92, div. A, title X, §1072(e), (f), Nov. 25, 2015, 129 Stat. 995; Pub. L. 114–228, title II, §204, title IV, §414, Sept. 29, 2016, 130 Stat. 938, 941; Pub. L. 115–62, title II, §203, Sept. 29, 2017, 131 Stat. 1162; Pub. L. 115–251, title I, §126, Sept. 29, 2018, 132 Stat. 3169; Pub. L. 116–92, div. A, title VII, §715(a)–(g), Dec. 20, 2019, 133 Stat. 1446–1451, provided that:

''SEC. 1602. GENERAL DEFINITIONS.

''In this title [see Short Title of 2008 Amendment note above]:

''(1) APPROPRIATE COMMITTEES OF CONGRESS.—The term 'appropriate committees of Congress' means—

''(A) the Committees on Armed Services, Veterans' Affairs, and Appropriations of the Senate; and

''(B) the Committees on Armed Services, Veterans' Affairs, and Appropriations of the House of Representatives.

''(2) BENEFITS DELIVERY AT DISCHARGE PROGRAM.—The term 'Benefits Delivery at Discharge Program' means a program administered jointly by the Secretary of Defense and the Secretary of Veterans Affairs to provide information and assistance on available benefits and other transition assistance to members of the Armed Forces who are separating from the Armed Forces, including assistance to obtain any disability benefits for which such members may be eligible.

''(3) DISABILITY EVALUATION SYSTEM.—The term 'Disability Evaluation System' means the following:

''(A) A system or process of the Department of Defense for evaluating the nature and extent of disabilities affecting members of the Armed Forces that is operated by the Secretaries of the military departments and is comprised of medical evaluation boards, physical evaluation boards, counseling of members, and mechanisms for the final disposition of disability evaluations by appropriate personnel.

''(B) A system or process of the Coast Guard for evaluating the nature and extent of disabilities affecting members of the Coast Guard that is operated by the Secretary of Homeland Security and is similar to the system or process of the Department of Defense described in subparagraph (A).

''(4) ELIGIBLE FAMILY MEMBER.—The term 'eligible family member', with respect to a recovering service member, means a family member (as defined in section 481h(b)(3)(B) of title 37, United States Code) who is on invitational travel orders or serving as a non-medical attendee while caring for the recovering service member for more than 45 days during a one-year period.

''(5) MEDICAL CARE.—The term 'medical care' includes mental health care.

''(6) OUTPATIENT STATUS.—The term 'outpatient status', with respect to a recovering service member, means the status of a recovering service member assigned to—

''(A) a military medical treatment facility as an outpatient; or

''(B) a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients.

''(7) RECOVERING SERVICE MEMBER.—The term 'recovering service member' means a member of the Armed Forces, including a member of the National Guard or a Reserve, who is undergoing medical treatment, recuperation, or therapy and is in an outpatient status while recovering from a serious injury or illness related to the member's military service.

''(8) SERIOUS INJURY OR ILLNESS.—The term 'serious injury or illness', in the case of a member of the Armed Forces, means an injury or illness incurred by the member in line of duty on active duty in the Armed Forces that may render the member medically unfit to perform the duties of the member's office, grade, rank, or rating.

''(9) TRICARE PROGRAM.—The term 'TRICARE program' has the meaning given that term in section 1072(7) of title 10, United States Code. [As amended Pub. L. 110–417, [div. A], title X, §1061(b)(13), Oct. 14, 2008, 122 Stat. 4613; Pub. L. 111–84, div. A, title VI, §632(h), Oct. 28, 2009, 123 Stat. 2362; Pub. L. 112–81, div. A, title VI, §631(f)(4)(B), Dec. 31, 2011, 125 Stat. 1465.]

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''SEC. 1603. CONSIDERATION OF GENDER-SPECIFIC NEEDS OF RECOVERING SERVICE MEMBERS AND VETERANS.

''(a) IN GENERAL.—In developing and implementing the policy required by section 1611(a), and in otherwise carrying out any other provision of this title [see Short Title of 2008 Amendment note above] or any amendment made by this title, the Secretary of Defense and the Secretary of Veterans Affairs shall take into account and fully address any unique gender-specific needs of recovering service members and veterans under such policy or other provision.

''(b) REPORTS.—In submitting any report required by this title or an amendment made by this title, the Secretary of Defense and the Secretary of Veterans Affairs shall, to the extent applicable, include a description of the manner in which the matters covered by such report address the unique gender-specific needs of recovering service members and veterans.

''SEC. 1611. COMPREHENSIVE POLICY ON IMPROVEMENTS TO CARE, MANAGEMENT, AND TRANSITION OF RECOVERING SERVICE MEMBERS.

''(a) COMPREHENSIVE POLICY REQUIRED.—

''(1) IN GENERAL.—Not later than July 1, 2008, the Secretary of Defense and the Secretary of Veterans Affairs shall, to the extent feasible, jointly develop and implement a comprehensive policy on improvements to the care, management, and transition of recovering service members.

''(2) SCOPE OF POLICY.—The policy shall cover each of the following:

''(A) The care and management of recovering service members.

''(B) The medical evaluation and disability evaluation of recovering service members.

''(C) The return of service members who have recovered to active duty when appropriate.

''(D) The transition of recovering service members from receipt of care and services through the Department of Defense to receipt of care and services through the Department of Veterans Affairs.

''(3) CONSULTATION.—The Secretary of Defense and the Secretary of Veterans Affairs shall develop the policy in consultation with the heads of other appropriate departments and agencies of the Federal Government and with appropriate non-governmental organizations having an expertise in matters relating to the policy.

''(4) UPDATE.—The Secretary of Defense and the Secretary of Veterans Affairs shall jointly update the policy on a periodic basis, but not less often than annually, in order to incorporate in the policy, as appropriate, the following:

''(A) The results of the reviews required under subsections (b) and (c).

''(B) Best practices identified through pilot programs carried out under this title.

''(C) Improvements to matters under the policy otherwise identified and agreed upon by the Secretary of Defense and the Secretary of Veterans Affairs.

''(b) REVIEW OF CURRENT POLICIES AND PROCEDURES.—

''(1) REVIEW REQUIRED.—In developing the policy required by subsection (a), the Secretary of Defense and the Secretary of Veterans Affairs shall, to the extent necessary, jointly and separately conduct a review of all policies and procedures of the Department of Defense and the Department of Veterans Affairs that apply to, or shall be covered by, the policy.

''(2) PURPOSE.—The purpose of the review shall be to identify the most effective and patient-oriented approaches to care and management of recovering service members for purposes of—

''(A) incorporating such approaches into the policy; and

''(B) extending such approaches, where applicable, to the care and management of other injured or ill members of the Armed Forces and veterans.

''(3) ELEMENTS.—In conducting the review, the Secretary of Defense and the Secretary of Veterans Affairs shall—

''(A) identify among the policies and procedures described in paragraph (1) best practices in approaches to the care and management of recovering service members;

''(B) identify among such policies and procedures existing and potential shortfalls in the care and management of recovering service members (including care and management of recovering service members on the temporary disability retired list), and determine means of addressing any shortfalls so identified;

''(C) determine potential modifications of such policies and procedures in order to ensure consistency and uniformity, where appropriate, in the application of such policies and procedures—

''(i) among the military departments;

''(ii) among the Veterans Integrated Services Networks (VISNs) of the Department of Veterans Affairs; and

''(iii) between the military departments and the Veterans Integrated Services Networks; and

''(D) develop recommendations for legislative and administrative action necessary to implement the results of the review.

''(4) DEADLINE FOR COMPLETION.—The review shall be completed not later than 90 days after the date of the enactment of this Act [Jan. 28, 2008].

''(c) CONSIDERATION OF EXISTING FINDINGS, RECOMMENDATIONS, AND PRACTICES.—In developing the policy required by subsection (a), the Secretary of Defense and the Secretary of Veterans Affairs shall take into account the following:

''(1) The findings and recommendations of applicable studies, reviews, reports, and evaluations that address matters relating to the policy, including, but not limited, to the following:

''(A) The Independent Review Group on Rehabilitative Care and Administrative Processes at Walter Reed Army Medical Center and National Naval Medical Center, appointed by the Secretary of Defense.

''(B) The Secretary of Veterans Affairs Task Force on Returning Global War on Terror Heroes, appointed by the President.

''(C) The President's Commission on Care for America's Returning Wounded Warriors.

''(D) The Veterans' Disability Benefits Commission established by title XV of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136; 117 Stat. 1676; 38 U.S.C. 1101 note).

''(E) The President's Task Force to Improve Health Care Delivery for Our Nation's Veterans, of March 2003.

''(F) The Report of the Congressional Commission on Servicemembers and Veterans Transition Assistance, of 1999, chaired by Anthony J. Principi.

''(G) The President's Commission on Veterans' Pensions, of 1956, chaired by General Omar N. Bradley.

''(2) The experience and best practices of the Department of Defense and the military departments on matters relating to the policy.

''(3) The experience and best practices of the Department of Veterans Affairs on matters relating to the policy.

''(4) Such other matters as the Secretary of Defense and the Secretary of Veterans Affairs consider appropriate.

''(d) TRAINING AND SKILLS OF HEALTH CARE PROFESSIONALS, RECOVERY CARE COORDINATORS, MEDICAL CARE CASE MANAGERS, AND NON-MEDICAL CARE MANAGERS FOR RECOVERING SERVICE MEMBERS.—

''(1) IN GENERAL.—The policy required by subsection (a) shall provide for uniform standards among the military departments for the training and skills of health care professionals, recovery care coordinators, medical care case managers, and non-medical care managers for recovering service members under subsection (e) in order to ensure that such personnel are able to—

''(A) detect early warning signs of post-traumatic stress disorder (PTSD), suicidal or homicidal thoughts or behaviors, and other behavioral health concerns among recovering service members; and

''(B) promptly notify appropriate health care professionals following detection of such signs.

''(2) TRACKING OF NOTIFICATIONS.—In providing for uniform standards under paragraph (1), the policy shall include a mechanism or system to track the number of notifications made by recovery care coordinators, medical care case managers, and non-medical care managers to health care professionals under paragraph (1)(A) regarding early warning signs of post-traumatic stress disorder and suicide in recovering service members.

''(e) SERVICES FOR RECOVERING SERVICE MEMBERS.—The policy required by subsection (a) shall provide for improvements as follows with respect to the care, management, and transition of recovering service members:

''(1) COMPREHENSIVE RECOVERY PLAN FOR RECOVERING SERVICE MEMBERS.—The policy shall provide for uniform standards and procedures for the development of a comprehensive recovery plan for each recovering service member that covers the full spectrum of care, management, transition, and rehabilitation of the service member during recovery.

''(2) RECOVERY CARE COORDINATORS FOR RECOVERING SERVICE MEMBERS.—

''(A) IN GENERAL.—The policy shall provide for a uniform program for the assignment to recovering service members of recovery care coordinators having the duties specified in subparagraph (B).

''(B) DUTIES.—The duties under the program of a recovery care coordinator for a recovering service member shall include, but not be limited to, overseeing and assisting the service member in the service member's course through the entire spectrum of care, management, transition, and rehabilitation services available from the Federal Government, including services provided by the Department of Defense, the Department of Veterans Affairs, the Department of Labor, and the Social Security Administration.

''(C) LIMITATION ON NUMBER OF SERVICE MEMBERS MANAGED BY COORDINATORS.—The maximum number of recovering service members whose cases may be assigned to a recovery care coordinator under the program at any one time shall be such number as the policy shall specify, except that the Secretary of the military department concerned may waive such limitation with respect to a given coordinator for not more than 120 days in the event of unforeseen circumstances (as specified in the policy).

''(D) TRAINING.—The policy shall specify standard training requirements and curricula for recovery care coordinators under the program, including a requirement for successful completion of the training program before a person may assume the duties of such a coordinator.

''(E) RESOURCES.—The policy shall include mechanisms to ensure that recovery care coordinators under the program have the resources necessary to expeditiously carry out the duties of such coordinators under the program.

''(F) SUPERVISION.—The policy shall specify requirements for the appropriate rank or grade, and appropriate occupation, for persons appointed to head and supervise recovery care coordinators.

''(3) MEDICAL CARE CASE MANAGERS FOR RECOVERING SERVICE MEMBERS.—

''(A) IN GENERAL.—The policy shall provide for a uniform program among the military departments for the assignment to recovering service members of medical care case managers having the duties specified in subparagraph (B).

''(B) DUTIES.—The duties under the program of a medical care case manager for a recovering service member (or the service member's immediate family or other designee if the service member is incapable of making judgments about personal medical care) shall include, at a minimum, the following:

''(i) Assisting in understanding the service member's medical status during the care, recovery, and transition of the service member.

''(ii) Assisting in the receipt by the service member of prescribed medical care during the care, recovery, and transition of the service member.

''(iii) Conducting a periodic review of the medical status of the service member, which review shall be conducted, to the extent practicable, in person with the service member, or, whenever the conduct of the review in person is not practicable, with the medical care case manager submitting to the manager's supervisor a written explanation why the review in person was not practicable (if the Secretary of the military department concerned elects to require such written explanations for purposes of the program).

''(C) LIMITATION ON NUMBER OF SERVICE MEMBERS MANAGED BY MANAGERS.—The maximum number of recovering service members whose cases may be assigned to a medical care case manager under the program at any one time shall be such number as the policy shall specify, except that the Secretary of the military department concerned may waive such limitation with respect to a given manager for not more than 120 days in the event of unforeseen circumstances (as specified in the policy).

''(D) TRAINING.—The policy shall specify standard training requirements and curricula for medical care case managers under the program, including a requirement for successful completion of the training program before a person may assume the duties of such a manager.

''(E) RESOURCES.—The policy shall include mechanisms to ensure that medical care case managers under the program have the resources necessary to expeditiously carry out the duties of such managers under the program.

''(F) SUPERVISION AT ARMED FORCES MEDICAL FACILITIES.—The policy shall specify requirements for the appropriate rank or grade, and appropriate occupation, for persons appointed to head and supervise the medical care case managers at each medical facility of the Armed Forces. Persons so appointed may be appointed from the Army Medical Corps, Army Medical Service Corps, Army Nurse Corps, Navy Medical Corps, Navy Medical Service Corps, Navy Nurse Corps, Air Force Medical Service, or other corps or civilian health care professional, as applicable, at the discretion of the Secretary of Defense.

''(4) NON-MEDICAL CARE MANAGERS FOR RECOVERING SERVICE MEMBERS.—

''(A) IN GENERAL.—The policy shall provide for a uniform program among the military departments for the assignment to recovering service members of non-medical care managers having the duties specified in subparagraph (B).

''(B) DUTIES.—The duties under the program of a non-medical care manager for a recovering service member shall include, at a minimum, the following:

''(i) Communicating with the service member and with the service member's family or other individuals designated by the service member regarding non-medical matters that arise during the care, recovery, and transition of the service member.

''(ii) Assisting with oversight of the service member's welfare and quality of life.

''(iii) Assisting the service member in resolving problems involving financial, administrative, personnel, transitional, and other matters that arise during the care, recovery, and transition of the service member.

''(C) DURATION OF DUTIES.—The policy shall provide that a non-medical care manager shall perform duties under the program for a recovering service member until the service member is returned to active duty or retired or separated from the Armed Forces.

''(D) LIMITATION ON NUMBER OF SERVICE MEMBERS MANAGED BY MANAGERS.—The maximum number of recovering service members whose cases may be assigned to a non-medical care manager under the program at any one time shall be such number as the policy shall specify, except that the Secretary of the military department concerned may waive such limitation with respect to a given manager for not more than 120 days in the event of unforeseen circumstances (as specified in the policy).

''(E) TRAINING.—The policy shall specify standard training requirements and curricula among the military departments for non-medical care managers under the program, including a requirement for successful completion of the training program before a person may assume the duties of such a manager.

''(F) RESOURCES.—The policy shall include mechanisms to ensure that non-medical care managers under the program have the resources necessary to expeditiously carry out the duties of such managers under the program.

''(G) SUPERVISION AT ARMED FORCES MEDICAL FACILITIES.—The policy shall specify requirements for the appropriate rank and occupational speciality for persons appointed to head and supervise the non-medical care managers at each medical facility of the Armed Forces.

''(5) ACCESS OF RECOVERING SERVICE MEMBERS TO NON-URGENT HEALTH CARE FROM THE DEPARTMENT OF DEFENSE OR OTHER PROVIDERS UNDER TRICARE.—

''(A) IN GENERAL.—The policy shall provide for appropriate minimum standards for access of recovering service members to non-urgent medical care and other health care services as follows:

''(i) In medical facilities of the Department of Defense.

''(ii) Through the TRICARE program.

''(B) MAXIMUM WAITING TIMES FOR CERTAIN CARE.—The standards for access under subparagraph (A) shall include such standards on maximum waiting times of recovering service members as the policy shall specify for care that includes, but is not limited to, the following:

''(i) Follow-up care.

''(ii) Specialty care.

''(iii) Diagnostic referrals and studies.

''(iv) Surgery based on a physician's determination of medical necessity.

''(C) WAIVER BY RECOVERING SERVICE MEMBERS.—The policy shall permit any recovering service member to waive a standard for access under this paragraph under such circumstances and conditions as the policy shall specify.

''(6) ASSIGNMENT OF RECOVERING SERVICE MEMBERS TO LOCATIONS OF CARE.—

''(A) IN GENERAL.—The policy shall provide for uniform guidelines among the military departments for the assignment of recovering service members to a location of care, including guidelines that provide for the assignment of recovering service members, when medically appropriate, to care and residential facilities closest to their duty station or home of record or the location of their designated care giver at the earliest possible time.

''(B) REASSIGNMENT FROM DEFICIENT FACILITIES.—The policy shall provide for uniform guidelines and procedures among the military departments for the reassignment of recovering service members from a medical or medical-related support facility determined by the Secretary of Defense to violate the standards required by section 1648 to another appropriate medical or medical-related support facility until the correction of violations of such standards at the medical or medical-related support facility from which such service members are reassigned.

''(7) TRANSPORTATION AND SUBSISTENCE FOR RECOVERING SERVICE MEMBERS.—The policy shall provide for uniform standards among the military departments on the availability of appropriate transportation and subsistence for recovering service members to facilitate their obtaining needed medical care and services.

''(8) WORK AND DUTY ASSIGNMENTS FOR RECOVERING SERVICE MEMBERS.—The policy shall provide for uniform criteria among the military departments for the assignment of recovering service members to work and duty assignments that are compatible with their medical conditions.

''(9) ACCESS OF RECOVERING SERVICE MEMBERS TO EDUCATIONAL AND VOCATIONAL TRAINING AND REHABILITATION.—The policy shall provide for uniform standards among the military departments on the provision of educational and vocational training and rehabilitation opportunities for recovering service members at the earliest possible point in their recovery.

''(10) TRACKING OF RECOVERING SERVICE MEMBERS.—The policy shall provide for uniform procedures among the military departments on tracking recovering service members to facilitate—

''(A) locating each recovering service member; and

''(B) tracking medical care appointments of recovering service members to ensure timeliness and compliance of recovering service members with appointments, and other physical and evaluation timelines, and to provide any other information needed to conduct oversight of the care, management, and transition of recovering service members.

''(11) REFERRALS OF RECOVERING SERVICE MEMBERS TO OTHER CARE AND SERVICES PROVIDERS.—The policy shall provide for uniform policies, procedures, and criteria among the military departments on the referral of recovering service members to the Department of Veterans Affairs and other private and public entities (including universities and rehabilitation hospitals, centers, and clinics) in order to secure the most appropriate care for recovering service members, which policies, procedures, and criteria shall take into account, but not be limited to, the medical needs of recovering service members and the geographic location of available necessary recovery care services.

''(f) SERVICES FOR FAMILIES OF RECOVERING SERVICE MEMBERS.—The policy required by subsection (a) shall provide for improvements as follows with respect to services for families of recovering service members:

''(1) SUPPORT FOR FAMILY MEMBERS OF RECOVERING SERVICE MEMBERS.—The policy shall provide for uniform guidelines among the military departments on the provision by the military departments of support for family members of recovering service members who are not otherwise eligible for care under section 1672 in caring for such service members during their recovery.

''(2) ADVICE AND TRAINING FOR FAMILY MEMBERS OF RECOVERING SERVICE MEMBERS.—The policy shall provide for uniform requirements and standards among the military departments on the provision by the military departments of advice and training, as appropriate, to family members of recovering service members with respect to care for such service members during their recovery.

''(3) MEASUREMENT OF SATISFACTION OF FAMILY MEMBERS OF RECOVERING SERVICE MEMBERS WITH QUALITY OF HEALTH CARE SERVICES.—The policy shall provide for uniform procedures among the military departments on the measurement of the satisfaction of family members of recovering service members with the quality of health care services provided to such service members during their recovery.

''(4) JOB PLACEMENT SERVICES FOR FAMILY MEMBERS OF RECOVERING SERVICE MEMBERS.—The policy shall provide for procedures for application by eligible family members during a one-year period for job placement services otherwise offered by the Department of Defense.

''(g) OUTREACH TO RECOVERING SERVICE MEMBERS AND THEIR FAMILIES ON COMPREHENSIVE POLICY.—The policy

required by subsection (a) shall include procedures and mechanisms to ensure that recovering service members and their families are fully informed of the policies required by this section, including policies on medical care for recovering service members, on the management and transition of recovering service members, and on the responsibilities of recovering service members and their family members throughout the continuum of care and services for recovering service members under this section.

''(h) APPLICABILITY OF COMPREHENSIVE POLICY TO RECOVERING SERVICE MEMBERS ON TEMPORARY DISABILITY RETIRED LIST.—Appropriate elements of the policy required by this section shall apply to recovering service members whose names are placed on the temporary disability retired list in such manner, and subject to such terms and conditions, as the Secretary of Defense shall prescribe in regulations for purposes of this subsection.

''SEC. 1612. MEDICAL EVALUATIONS AND PHYSICAL DISABILITY EVALUATIONS OF RECOVERING SERVICE MEMBERS.

''(a) MEDICAL EVALUATIONS OF RECOVERING SERVICE MEMBERS.—

''(1) IN GENERAL.—Not later than July 1, 2008, the Secretary of Defense shall develop a policy on improvements to the processes, procedures, and standards for the conduct by the military departments of medical evaluations of recovering service members.

''(2) ELEMENTS.—The policy on improvements to processes, procedures, and standards required under this subsection shall include and address the following:

''(A) Processes for medical evaluations of recovering service members that—

''(i) apply uniformly throughout the military departments; and

''(ii) apply uniformly with respect to recovering service members who are members of the regular components of the Armed Forces and recovering service members who are members of the National Guard and Reserve.

''(B) Standard criteria and definitions for determining the achievement for recovering service members of the maximum medical benefit from treatment and rehabilitation.

''(C) Standard timelines for each of the following:

''(i) Determinations of fitness for duty of recovering service members.

''(ii) Specialty care consultations for recovering service members.

''(iii) Preparation of medical documents for recovering service members.

''(iv) Appeals by recovering service members of medical evaluation determinations, including determinations of fitness for duty.

''(D) Procedures for ensuring that—

''(i) upon request of a recovering service member being considered by a medical evaluation board, a physician or other appropriate health care professional who is independent of the medical evaluation board is assigned to the service member; and

''(ii) the physician or other health care professional assigned to a recovering service member under clause (i)—

''(I) serves as an independent source for review of the findings and recommendations of the medical evaluation board;

''(II) provides the service member with advice and counsel regarding the findings and recommendations of the medical evaluation board; and

''(III) advises the service member on whether the findings of the medical evaluation board adequately reflect the complete spectrum of injuries and illness of the service member.

''(E) Standards for qualifications and training of medical evaluation board personnel, including physicians, case workers, and physical disability evaluation board liaison officers, in conducting medical evaluations of recovering service members.

''(F) Standards for the maximum number of medical evaluation cases of recovering service members that are pending before a medical evaluation board at any one time, and requirements for the establishment of additional medical evaluation boards in the event such number is exceeded.

''(G) Standards for information for recovering service members, and their families, on the medical evaluation board process and the rights and responsibilities of recovering service members under that process, including a standard handbook on such information (which handbook shall also be available electronically).

''(b) PHYSICAL DISABILITY EVALUATIONS OF RECOVERING SERVICE MEMBERS.—

''(1) IN GENERAL.—Not later than July 1, 2008, the Secretary of Defense and the Secretary of Veterans Affairs shall develop a policy on improvements to the processes, procedures, and standards for the conduct of physical disability evaluations of recovering service members by the military departments and by the Department of Veterans Affairs.

''(2) ELEMENTS.—The policy on improvements to processes, procedures, and standards required under this subsection shall include and address the following:

''(A) A clearly-defined process of the Department of Defense and the Department of Veterans Affairs for disability determinations of recovering service members.

''(B) To the extent feasible, procedures to eliminate unacceptable discrepancies and improve consistency among disability ratings assigned by the military departments and the Department of Veterans Affairs, particularly in the disability evaluation of recovering service members, which procedures shall be subject to the following requirements and limitations:

''(i) Such procedures shall apply uniformly with respect to recovering service members who are members of the regular components of the Armed Forces and recovering service members who are members of the National Guard and Reserve.

''(ii) Under such procedures, each Secretary of a military department shall, to the extent feasible, utilize the standard schedule for rating disabilities in use by the Department of Veterans Affairs, including any applicable interpretation of such schedule by the United States Court of Appeals for Veterans Claims, in making any determination of disability of a recovering service member, except as otherwise authorized by section 1216a of title 10, United States Code (as added by section 1642 of this Act).

''(C) Uniform timelines among the military departments for appeals of determinations of disability of recovering service members, including timelines for presentation, consideration, and disposition of appeals.

''(D) Uniform standards among the military departments for qualifications and training of physical disability evaluation board personnel, including physical evaluation board liaison personnel, in conducting physical disability evaluations of recovering service members.

''(E) Uniform standards among the military departments for the maximum number of physical disability evaluation cases of recovering service members that are pending before a physical disability evaluation board at any one time, and requirements for the establishment of additional physical disability evaluation boards in the event such number is exceeded.

''(F) Uniform standards and procedures among the military departments for the provision of legal counsel to recovering service members while undergoing evaluation by a physical disability evaluation board.

''(G) Uniform standards among the military departments on the roles and responsibilities of nonmedical care managers under section 1611(e)(4) and judge advocates assigned to recovering service members undergoing evaluation by a physical disability board, and uniform standards on the maximum number of cases involving such service members that are to be assigned to judge advocates at any one time.

''(c) ASSESSMENT OF CONSOLIDATION OF DEPARTMENT OF DEFENSE AND DEPARTMENT OF VETERANS AFFAIRS DISABILITY EVALUATION SYSTEMS.—

''(1) IN GENERAL.—The Secretary of Defense and the Secretary of Veterans Affairs shall jointly submit to the appropriate committees of Congress a report on the feasability [sic] and advisability of consolidating the disability evaluation systems of the military departments and the disability evaluation system of the Department of Veterans Affairs into a single disability evaluation system. The report shall be submitted together with the report required by section 1611(a).

''(2) ELEMENTS.—The report required by paragraph (1) shall include the following:

''(A) An assessment of the feasability [sic] and advisability of consolidating the disability evaluation systems described in paragraph (1) as specified in that paragraph.

''(B) If the consolidation of the systems is considered feasible and advisable—

''(i) recommendations for various options for consolidating the systems as specified in paragraph (1); and

''(ii) recommendations for mechanisms to evaluate and assess any progress made in consolidating the systems as specified in that paragraph.

''SEC. 1613. RETURN OF RECOVERING SERVICE MEMBERS TO ACTIVE DUTY IN THE ARMED FORCES.

''The Secretary of Defense shall establish standards for determinations by the military departments on the return of recovering service members to active duty in the Armed Forces.

''SEC. 1614. TRANSITION OF RECOVERING SERVICE MEMBERS FROM CARE AND TREATMENT THROUGH THE DEPARTMENT OF DEFENSE TO CARE, TREATMENT, AND REHABILITATION THROUGH THE DEPARTMENT OF VETERANS AFFAIRS.

''(a) IN GENERAL.—Not later than July 1, 2008, the Secretary of Defense and the Secretary of Veterans Affairs shall jointly develop and implement processes, procedures, and standards for the transition of recovering service members from care and treatment through the Department of Defense to care, treatment, and rehabilitation through the Department of Veterans Affairs.

''(b) ELEMENTS.—The processes, procedures, and standards required under this section shall include the following:

''(1) Uniform, patient-focused procedures to ensure that the transition described in subsection (a) occurs without gaps in medical care and in the quality of medical care, benefits, and services.

''(2) Procedures for the identification and tracking of recovering service members during the transition, and for the coordination of care and treatment of recovering service members during the transition, including a system of cooperative case management of recovering service members by the Department of Defense and the Department of Veterans Affairs during the transition.

''(3) Procedures for the notification of Department of Veterans Affairs liaison personnel of the commencement by recovering service members of the medical evaluation process and the physical disability evaluation process.

''(4) Procedures and timelines for the enrollment of recovering service members in applicable enrollment or application systems of the Department of Veterans Affairs with respect to health care, disability, education, vocational rehabilitation, or other benefits.

''(5) Procedures to ensure the access of recovering service members during the transition to vocational, educational, and rehabilitation benefits available through the Department of Veterans Affairs.

''(6) Standards for the optimal location of Department of Defense and Department of Veterans Affairs liaison and case management personnel at military medical treatment facilities, medical centers, and other medical facilities of the Department of Defense.

''(7) Standards and procedures for integrated medical care and management of recovering service members during the transition, including procedures for the assignment of medical personnel of the Department of Veterans Affairs to Department of Defense facilities to participate in the needs assessments of recovering service members before, during, and after their separation from military service.

''(8) Standards for the preparation of detailed plans for the transition of recovering service members from care and treatment by the Department of Defense to care, treatment, and rehabilitation by the Department of Veterans Affairs, which plans shall—

''(A) be based on standardized elements with respect to care and treatment requirements and other applicable requirements; and

''(B) take into account the comprehensive recovery plan for the recovering service member concerned as developed under section 1611(e)(1).

''(9) Procedures to ensure that each recovering service member who is being retired or separated under chapter 61 of title 10, United States Code, receives a written transition plan, prior to the time of retirement or separation, that—

''(A) specifies the recommended schedule and milestones for the transition of the service member from military service;

''(B) provides for a coordinated transition of the service member from the Department of Defense disability evaluation system to the Department of Veterans Affairs disability system; and

''(C) includes information and guidance designed to assist the service member in understanding and meeting the schedule and milestones specified under subparagraph (A) for the service member's transition.

''(10) Procedures for the transmittal from the Department of Defense to the Department of Veterans Affairs of records and any other required information on each recovering service member described in paragraph (9), which procedures shall provide for the transmission from the Department of Defense to the Department of Veterans Affairs of records and information on the service member as follows:

''(A) The address and contact information of the service member.

''(B) The DD–214 discharge form of the service member, which shall be transmitted under such procedures electronically.

''(C) A copy of the military service record of the service member, including medical records and any results of a physical evaluation board.

''(D) Information on whether the service member is entitled to transitional health care, a conversion health policy, or other health benefits through the Department of Defense under section 1145 of title 10, United States Code.

''(E) A copy of any request of the service member for assistance in enrolling in, or completed applications for enrollment in, the health care system of the Department of Veterans Affairs for health care benefits for which the service member may be eligible under laws administered by the Secretary of Veterans Affairs.

''(F) A copy of any request by the service member for assistance in applying for, or completed applications for, compensation and vocational rehabilitation benefits to which the service member may be

entitled under laws administered by the Secretary of Veterans Affairs.

''(11) A process to ensure that, before transmittal of medical records of a recovering service member to the Department of Veterans Affairs, the Secretary of Defense ensures that the service member (or an individual legally recognized to make medical decisions on behalf of the service member) authorizes the transfer of the medical records of the service member from the Department of Defense to the Department of Veterans Affairs pursuant to the Health Insurance Portability and Accountability Act of 1996 [Pub. L. 104–191, see Tables for classification].

''(12) Procedures to ensure that, with the consent of the recovering service member concerned, the address and contact information of the service member is transmitted to the department or agency for veterans affairs of the State in which the service member intends to reside after the retirement or separation of the service member from the Armed Forces.

''(13) Procedures to ensure that, before the transmittal of records and other information with respect to a recovering service member under this section, a meeting regarding the transmittal of such records and other information occurs among the service member, appropriate family members of the service member, representatives of the Secretary of the military department concerned, and representatives of the Secretary of Veterans Affairs, with at least 30 days advance notice of the meeting being given to the service member unless the service member waives the advance notice requirement in order to accelerate transmission of the service member's records and other information to the Department of Veterans Affairs.

''(14) Procedures to ensure that the Secretary of Veterans Affairs gives appropriate consideration to a written statement submitted to the Secretary by a recovering service member regarding the transition.

''(15) Procedures to provide access for the Department of Veterans Affairs to the military health records of recovering service members who are receiving care and treatment, or are anticipating receipt of care and treatment, in Department of Veterans Affairs health care facilities, which procedures shall be consistent with the procedures and requirements in paragraphs (11) and (13).

''(16) A process for the utilization of a joint separation and evaluation physical examination that meets the requirements of both the Department of Defense and the Department of Veterans Affairs in connection with the medical separation or retirement of a recovering service member from military service and for use by the Department of Veterans Affairs in disability evaluations.

''(17) Procedures for surveys and other mechanisms to measure patient and family satisfaction with the provision by the Department of Defense and the Department of Veterans Affairs of care and services for recovering service members, and to facilitate appropriate oversight by supervisory personnel of the provision of such care and services.

''(18) Procedures to ensure the participation of recovering service members who are members of the National Guard or Reserve in the Benefits Delivery at Discharge Program, including procedures to ensure that, to the maximum extent feasible, services under the Benefits Delivery at Discharge Program are provided to recovering service members at—

''(A) appropriate military installations;

''(B) appropriate armories and military family support centers of the National Guard;

''(C) appropriate military medical care facilities at which members of the Armed Forces are separated or discharged from the Armed Forces; and

''(D) in the case of a member on the temporary disability retired list under section 1202 or 1205 of title 10, United States Code, who is being retired under another provision of such title or is being discharged, at a location reasonably convenient to the member.

''SEC. 1616. ESTABLISHMENT OF A WOUNDED WARRIOR RESOURCE CENTER.

''(a) ESTABLISHMENT.—The Secretary of Defense shall establish a wounded warrior resource center (in this section referred to as the 'center') to provide wounded warriors, their families, and their primary caregivers with a single point of contact for assistance with reporting deficiencies in covered military facilities, obtaining health care services, receiving benefits information, receiving legal assistance referral information (where appropriate), receiving other appropriate referral information, and any other difficulties encountered while supporting wounded warriors. The Secretary shall widely disseminate information regarding the existence and availability of the center, including contact information, to members of the Armed Forces and their dependents. In carrying out this subsection, the Secretary may use existing infrastructure and organizations but shall ensure that the center has the ability to separately keep track of calls from wounded warriors.

''(b) ACCESS.—The center shall provide multiple methods of access, including at a minimum an Internet website and a toll-free telephone number (commonly referred to as a 'hot line') at which personnel are accessible at all times to receive reports of deficiencies or provide information about covered military facilities, health care services, or military benefits.

''(c) CONFIDENTIALITY.—

''(1) NOTIFICATION.—Individuals who seek to provide information through the center under subsection (a) shall be notified, immediately before they provide such information, of their option to elect, at their discretion, to have their identity remain confidential.

''(2) PROHIBITION ON FURTHER DISCLOSURE.—In the case of information provided through use of the toll-free telephone number by an individual who elects to maintain the confidentiality of his or her identity, any individual who, by necessity, has had access to such information for purposes of investigating or responding to the call as required under subsection (d) may not disclose the identity of the individual who provided the information.

''(d) FUNCTIONS.—The center shall perform the following functions:

''(1) CALL TRACKING.—The center shall be responsible for documenting receipt of a call, referring the call to the appropriate office within a military department for answer or investigation, and tracking the formulation and notification of the response to the call.

''(2) INVESTIGATION AND RESPONSE.—The center shall be responsible for ensuring that, not later than 96 hours after a call—

''(A) if a report of deficiencies is received in a call—

''(i) any deficiencies referred to in the call are investigated;

''(ii) if substantiated, a plan of action for remediation of the deficiencies is developed and implemented; and

''(iii) if requested, the individual who made the report is notified of the current status of the report; or

''(B) if a request for information is received in a call—

''(i) the information requested by the caller is provided by the center;

''(ii) all requests for information from the call are referred to the appropriate office or offices of a military department for response; and

''(iii) the individual who made the report is notified, at a minimum, of the current status of the query.

''(3) FINAL NOTIFICATION.—The center shall be responsible for ensuring that, if requested, the caller is notified when the deficiency has been corrected or when the request for information has been fulfilled to the maximum extent practicable, as determined by the Secretary.

''(e) DEFINITIONS.—In this section:

''(1) COVERED MILITARY FACILITY.—The term 'covered military facility' has the meaning provided in section 1648(b) of this Act.

''(2) CALL.—The term 'call' means any query or report that is received by the center by means of the toll-free telephone number or other source.

''(f) EFFECTIVE DATES.—

''(1) TOLL-FREE TELEPHONE NUMBER.—The toll-free telephone number required to be established by subsection (a), shall be fully operational not later than April 1, 2008.

''(2) INTERNET WEBSITE.—The Internet website required to be established by subsection (a), shall be fully operational not later than July 1, 2008. [As amended Pub. L. 110–417, [div. A], title VII, § 724, Oct. 14, 2008, 122 Stat. 4509.]

''SEC. 1618. COMPREHENSIVE PLAN ON PREVENTION, DIAGNOSIS, MITIGATION, TREATMENT, AND REHABILITATION OF, AND RESEARCH ON, TRAUMATIC BRAIN INJURY, POST-TRAUMATIC STRESS DISORDER, AND OTHER MENTAL HEALTH CONDITIONS IN MEMBERS OF THE ARMED FORCES.

''(a) COMPREHENSIVE STATEMENT OF POLICY.—The Secretary of Defense and the Secretary of Veterans Affairs shall direct joint planning among the Department of Defense, the military departments, and the Department of Veterans Affairs for the prevention, diagnosis, mitigation, treatment, and rehabilitation of, and research on, traumatic brain injury, post-traumatic stress disorder, and other mental health conditions in members of the Armed Forces, including planning for the seamless transition of such members from care through the Department of Defense to care through the Department of Veterans Affairs.

''(b) COMPREHENSIVE PLAN REQUIRED.—Not later than 180 days after the date of the enactment of this Act [Jan. 28, 2008], the Secretary of Defense shall, in consultation with the Secretary of Veterans Affairs, submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a comprehensive plan for programs and activities of the Department of Defense to prevent, diagnose, mitigate, treat, research, and otherwise respond to traumatic brain injury, post-traumatic stress disorder, and other mental health conditions in members of the Armed Forces, including—

''(1) an assessment of the current capabilities of the Department for the prevention, diagnosis, mitigation, treatment, and rehabilitation of, and research on, traumatic brain injury, post-traumatic stress disorder, and other mental health conditions in members of the Armed Forces;

''(2) the identification of gaps in current capabilities of the Department for the prevention, diagnosis, mitigation, treatment, and rehabilitation of, and research on, traumatic brain injury, post-traumatic stress disorder, and other mental health conditions in members of the Armed Forces; and

''(3) the identification of the resources required for the Department in fiscal years 2009 through 2013 to address the gaps in capabilities identified under paragraph (2).

''(c) PROGRAM REQUIRED.—One of the programs contained in the comprehensive plan submitted under subsection (b) shall be a Department of Defense program, developed in collaboration with the Department of Veterans Affairs, under which each member of the Armed Forces who incurs a traumatic brain injury or post-traumatic stress disorder during service in the Armed Forces—

''(1) is enrolled in the program; and

''(2) receives treatment and rehabilitation meeting a standard of care such that each individual who qualifies for care under the program shall—

''(A) be provided the highest quality, evidence-based care in facilities that most appropriately meet the specific needs of the individual; and

''(B) be rehabilitated to the fullest extent possible using up-to-date evidence-based medical technology, and physical and medical rehabilitation practices and expertise.

''(d) PROVISION OF INFORMATION REQUIRED.—The comprehensive plan submitted under subsection (b) shall require the provision of information by the Secretary of Defense to members of the Armed Forces with traumatic brain injury, post-traumatic stress disorder, or other mental health conditions and their families about their options with respect to the following:

''(1) The receipt of medical and mental health care from the Department of Defense and the Department of Veterans Affairs.

''(2) Additional options available to such members for treatment and rehabilitation of traumatic brain injury, post-traumatic stress disorder, and other mental health conditions.

''(3) The options available, including obtaining a second opinion, to such members for a referral to an authorized provider under chapter 55 of title 10, United States Code, as determined under regulations prescribed by the Secretary of Defense.

''(e) ADDITIONAL ELEMENTS OF PLAN.—The comprehensive plan submitted under subsection (b) shall include comprehensive proposals of the Department on the following:

''(1) LEAD AGENT.—The designation by the Secretary of Defense of a lead agent or executive agent for the Department to coordinate development and implementation of the plan.

''(2) DETECTION AND TREATMENT.—The improvement of methods and mechanisms for the detection and treatment of traumatic brain injury, post-traumatic stress disorder, and other mental health conditions in members of the Armed Forces in the field.

''(3) REDUCTION OF PTSD.—The development of a plan for reducing post traumatic-stress disorder, incorporating evidence-based preventive and early-intervention measures, practices, or procedures that reduce the likelihood that personnel in combat will develop post-traumatic stress disorder or other stress-related conditions (including substance abuse conditions) into—

''(A) basic and pre-deployment training for enlisted members of the Armed Forces, noncommissioned officers, and officers;

''(B) combat theater operations; and

''(C) post-deployment service.

''(4) RESEARCH.—Requirements for research on traumatic brain injury, post-traumatic stress disorder, and other mental health conditions including (in particular) research on pharmacological and other approaches to treatment for traumatic brain injury, post-traumatic stress disorder, or other mental health conditions, as applicable, and the allocation of priorities among such research.

''(5) DIAGNOSTIC CRITERIA.—The development, adoption, and deployment of joint Department of Defense-Department of Veterans Affairs evidence-based diagnostic criteria for the detection and evaluation of the range of traumatic brain injury, post-traumatic stress disorder, and other mental health conditions in members of the Armed Forces, which criteria shall be employed uniformly across the military departments in all applicable circumstances, including provision of clinical care and assessment of future deployability of members of the Armed Forces.

''(6) ASSESSMENT.—The development and deployment of evidence-based means of assessing traumatic brain injury, post-traumatic stress disorder, and other mental health conditions in members of the Armed Forces, including a system of pre-deployment and post-deployment screenings of cognitive ability in members for the detection of cognitive impairment.

''(7) MANAGING AND MONITORING.—The development and deployment of effective means of managing and monitoring members of the Armed Forces with traumatic brain injury, post-traumatic stress disorder, or

other mental health conditions in the receipt of care for traumatic brain injury, post-traumatic stress disorder, or other mental health conditions, as applicable, including the monitoring and assessment of treatment and outcomes.

''(8) EDUCATION AND AWARENESS.—The development and deployment of an education and awareness training initiative designed to reduce the negative stigma associated with traumatic brain injury, post-traumatic stress disorder, and other mental health conditions, and mental health treatment.

''(9) EDUCATION AND OUTREACH.—The provision of education and outreach to families of members of the Armed Forces with traumatic brain injury, post-traumatic stress disorder, or other mental health conditions on a range of matters relating to traumatic brain injury, post-traumatic stress disorder, or other mental health conditions, as applicable, including detection, mitigation, and treatment.

''(10) RECORDING OF BLASTS.—A requirement that exposure to a blast or blasts be recorded in the records of members of the Armed Forces.

''(11) GUIDELINES FOR BLAST INJURIES.—The development of clinical practice guidelines for the diagnosis and treatment of blast injuries in members of the Armed Forces, including, but not limited to, traumatic brain injury.

''(12) GENDER- AND ETHNIC GROUP-SPECIFIC SERVICES AND TREATMENT.—The development of requirements, as appropriate, for gender- and ethnic group-specific medical care services and treatment for members of the Armed Forces who experience mental health problems and conditions, including post-traumatic stress disorder, with specific regard to the availability of, access to, and research and development requirements of such needs.

''(f) COORDINATION IN DEVELOPMENT.—The comprehensive plan submitted under subsection (b) shall be developed in coordination with the Secretary of the Army (who was designated by the Secretary of Defense as executive agent for the prevention, mitigation, and treatment of blast injuries under section 256 of the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109–163; 119 Stat. 3181; 10 U.S.C. 1071 note)).

''SEC. 1621. CENTER OF EXCELLENCE IN THE PREVENTION, DIAGNOSIS, MITIGATION, TREATMENT, AND REHABILITATION OF TRAUMATIC BRAIN INJURY.

''(a) IN GENERAL.—The Secretary of Defense shall establish within the Department of Defense a center of excellence in the prevention, diagnosis, mitigation, treatment, and rehabilitation of traumatic brain injury, including mild, moderate, and severe traumatic brain injury, to carry out the responsibilities specified in subsection (c).

''(b) PARTNERSHIPS.—The Secretary shall ensure that the Center collaborates to the maximum extent practicable with the Department of Veterans Affairs, institutions of higher education, and other appropriate public and private entities (including international entities) to carry out the responsibilities specified in subsection (c).

''(c) RESPONSIBILITIES.—The Center shall have responsibilities as follows:

''(1) To implement the comprehensive plan and strategy for the Department of Defense, required by section 1618 of this Act, for the prevention, diagnosis, mitigation, treatment, and rehabilitation of traumatic brain injury, including research on gender and ethnic group-specific health needs related to traumatic brain injury.

''(2) To provide for the development, testing, and dissemination within the Department of best practices for the treatment of traumatic brain injury.

''(3) To provide guidance for the mental health system of the Department in determining the mental health and neurological health personnel required to provide quality mental health care for members of the Armed Forces with traumatic brain injury.

''(4) To establish, implement, and oversee a comprehensive program to train mental health and neurological health professionals of the Department in the treatment of traumatic brain injury.

''(5) To facilitate advancements in the study of the short-term and long-term psychological effects of traumatic brain injury.

''(6) To disseminate within the military medical treatment facilities of the Department best practices for training mental health professionals, including neurological health professionals, with respect to traumatic brain injury.

''(7) To conduct basic science and translational research on traumatic brain injury for the purposes of understanding the etiology of traumatic brain injury and developing preventive interventions and new treatments.

''(8) To develop programs and outreach strategies for families of members of the Armed Forces with traumatic brain injury in order to mitigate the negative impacts of traumatic brain injury on such family members and to support the recovery of such members from traumatic brain injury.

''(9) To conduct research on the mental health needs of families of members of the Armed Forces with traumatic brain injury and develop protocols to address any needs identified through such research.

''(10) To conduct longitudinal studies (using imaging technology and other proven research methods) on members of the Armed Forces with traumatic brain injury to identify early signs of Alzheimer's disease, Parkinson's disease, or other manifestations of neurodegeneration, as well as epilepsy, in such members, in coordination with the studies authorized by section 721 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109–364; 120 Stat. 2294) [10 U.S.C. 1074 note] and other studies of the Department of Defense and the Department of Veterans Affairs that address the connection between exposure to combat and the development of Alzheimer's disease, Parkinson's disease, and other neurodegenerative disorders, as well as epilepsy.

''(11) To develop and oversee a long-term plan to increase the number of mental health and neurological health professionals within the Department in order to facilitate the meeting by the Department of the needs of members of the Armed Forces with traumatic brain injury until their transition to care and treatment from the Department of Veterans Affairs.

''(12) To develop a program on comprehensive pain management, including management of acute and chronic pain, to utilize current and develop new treatments for pain, and to identify and disseminate best practices on pain management related to traumatic brain injury.

''(13) Such other responsibilities as the Secretary shall specify.

''SEC. 1622. CENTER OF EXCELLENCE IN PREVENTION, DIAGNOSIS, MITIGATION, TREATMENT, AND REHABILITATION OF POST-TRAUMATIC STRESS DISORDER AND OTHER MENTAL HEALTH CONDITIONS.

''(a) IN GENERAL.—The Secretary of Defense shall establish within the Department of Defense a center of excellence in the prevention, diagnosis, mitigation, treatment, and rehabilitation of post-traumatic stress disorder (PTSD) and other mental health conditions, including mild, moderate, and severe post-traumatic stress disorder and other mental health conditions, to carry out the responsibilities specified in subsection (c).

''(b) PARTNERSHIPS.—The Secretary shall ensure that the center collaborates to the maximum extent practicable with the National Center on Post-Traumatic Stress Disorder of the Department of Veterans Affairs, institutions of higher education, and other appropriate public and private entities (including international entities) to carry out the responsibilities specified in subsection (c).

''(c) RESPONSIBILITIES.—The center shall have responsibilities as follows:

''(1) To implement the comprehensive plan and strategy for the Department of Defense, required by section 1618 of this Act, for the prevention, diagnosis, mitigation, treatment, and rehabilitation of post-traumatic stress disorder and other mental health conditions, including research on gender- and ethnic group-specific health needs related to post-traumatic stress disorder and other mental health conditions.

''(2) To provide for the development, testing, and dissemination within the Department of best practices for the treatment of post-traumatic stress disorder.

''(3) To provide guidance for the mental health system of the Department in determining the mental health and neurological health personnel required to provide quality mental health care for members of the Armed Forces with post-traumatic stress disorder and other mental health conditions.

''(4) To establish, implement, and oversee a comprehensive program to train mental health and neurological health professionals of the Department in the treatment of post-traumatic stress disorder and other mental health conditions.

''(5) To facilitate advancements in the study of the short-term and long-term psychological effects of post-traumatic stress disorder and other mental health conditions.

''(6) To disseminate within the military medical treatment facilities of the Department best practices for training mental health professionals, including neurological health professionals, with respect to post-traumatic stress disorder and other mental health conditions.

''(7) To conduct basic science and translational research on post-traumatic stress disorder for the purposes of understanding the etiology of post-traumatic stress disorder and developing preventive interventions and new treatments.

''(8) To develop programs and outreach strategies for families of members of the Armed Forces with post-traumatic stress disorder and other mental health conditions in order to mitigate the negative impacts of post-traumatic stress disorder and other mental health conditions on such family members and to support the recovery of such members from post-traumatic stress disorder and other mental health conditions.

''(9) To conduct research on the mental health needs of families of members of the Armed Forces with post-traumatic stress disorder and other mental health conditions and develop protocols to address any needs identified through such research.

''(10) To develop and oversee a long-term plan to increase the number of mental health and neurological health professionals within the Department in order to facilitate the meeting by the Department of the needs of members of the Armed Forces with post-traumatic stress disorder and other mental health conditions until their transition to care and treatment from the Department of Veterans Affairs.

''SEC. 1623. CENTER OF EXCELLENCE IN PREVENTION, DIAGNOSIS, MITIGATION, TREATMENT, AND REHABILITATION OF MILITARY EYE INJURIES.

''(a) IN GENERAL.—The Secretary of Defense shall establish within the Department of Defense a center of excellence in the prevention, diagnosis, mitigation, treatment, and rehabilitation of military eye injuries to carry out the responsibilities specified in subsection (c).

''(b) PARTNERSHIPS.—The Secretary shall ensure that the center collaborates to the maximum extent practicable with the Secretary of Veterans Affairs, institutions of higher education, and other appropriate public and private entities (including international entities) to carry out the responsibilities specified in subsection (c).

''(c) RESPONSIBILITIES.—

''(1) IN GENERAL.—The center shall—

''(A) implement a comprehensive plan and strategy for the Department of Defense, as developed by the Secretary of Defense, for a registry of information for the tracking of the diagnosis, surgical intervention or other operative procedure, other treatment, and follow up for each case of significant eye injury incurred by a member of the Armed Forces while serving on active duty;

''(B) ensure the electronic exchange with the Secretary of Veterans Affairs of information obtained through tracking under subparagraph (A); and

''(C) enable the Secretary of Veterans Affairs to access the registry and add information pertaining to additional treatments or surgical procedures and eventual visual outcomes for veterans who were entered into the registry and subsequently received treatment through the Veterans Health Administration.

''(2) DESIGNATION OF REGISTRY.—The registry under this subsection shall be known as the 'Military Eye Injury Registry' (hereinafter referred to as the 'Registry').

''(3) CONSULTATION IN DEVELOPMENT.—The center shall develop the Registry in consultation with the ophthalmological specialist personnel and optometric specialist personnel of the Department of Defense and the ophthalmological specialist personnel and optometric specialist personnel of the Department of Veterans Affairs. The mechanisms and procedures of the Registry shall reflect applicable expert research on military and other eye injuries.

''(4) MECHANISMS.—The mechanisms of the Registry for tracking under paragraph (1)(A) shall ensure that each military medical treatment facility or other medical facility shall submit to the center for inclusion in the Registry information on the diagnosis, surgical intervention or other operative procedure, other treatment, and follow up for each case of eye injury described in that paragraph as follows (to the extent applicable):

''(A) Not later than 30 days after surgery or other operative intervention, including a surgery or other operative intervention carried out as a result of a follow-up examination.

''(B) Not later than 180 days after the significant eye injury is reported or recorded in the medical record.

''(5) COORDINATION OF CARE AND BENEFITS.—(A) The center shall provide notice to the Blind Rehabilitation Service of the Department of Veterans Affairs and to the eye care services of the Veterans Health Administration on each member of the Armed Forces described in subparagraph (B) for purposes of ensuring the coordination of the provision of ongoing eye care and visual rehabilitation benefits and services by the Department of Veterans Affairs after the separation or release of such member from the Armed Forces.

''(B) A member of the Armed Forces described in this subparagraph is a member of the Armed Forces as follows:

''(i) A member with a significant eye injury incurred while serving on active duty, including a member with visual dysfunction related to traumatic brain injury.

''(ii) A member with an eye injury incurred while serving on active duty who has a visual acuity of 20/200 or less in the injured eye.

''(iii) A member with an eye injury incurred while serving on active duty who has a loss of peripheral vision resulting in 20 degrees or less of visual field in the injured eye.

''(d) UTILIZATION OF REGISTRY INFORMATION.—The Secretary of Defense and the Secretary of Veterans Affairs shall jointly ensure that information in the Registry is available to appropriate ophthalmological and optometric personnel of the Department of Defense and the Department of Veterans Affairs for purposes of en-

couraging and facilitating the conduct of research, and the development of best practices and clinical education, on eye injuries incurred by members of the Armed Forces.

"(e) INCLUSION OF RECORDS OF OIF/OEF VETERANS.—The Secretary of Defense shall take appropriate actions to include in the Registry such records of members of the Armed Forces who incurred an eye injury while serving on active duty on or after September 11, 2001, but before the establishment of the Registry, as the Secretary considers appropriate for purposes of the Registry.

"(f) TRAUMATIC BRAIN INJURY POST TRAUMATIC VISUAL SYNDROME.—In carrying out the program at Walter Reed Army Medical Center, District of Columbia, on traumatic brain injury post traumatic visual syndrome, the Secretary of Defense and the Department of Veterans Affairs shall jointly provide for the conduct of a cooperative program for members of the Armed Forces and veterans with traumatic brain injury by military medical treatment facilities of the Department of Defense and medical centers of the Department of Veterans Affairs selected for purposes of this subsection for purposes of vision screening, diagnosis, rehabilitative management, and vision research, including research on prevention, on visual dysfunction related to traumatic brain injury. [As amended Pub. L. 110–417, [div. A], title VII, § 722, Oct. 14, 2008, 122 Stat. 4508.]

"SEC. 1631. MEDICAL CARE AND OTHER BENEFITS FOR MEMBERS AND FORMER MEMBERS OF THE ARMED FORCES WITH SEVERE INJURIES OR ILLNESSES.

"(a) MEDICAL AND DENTAL CARE FOR FORMER MEMBERS.—

"(1) IN GENERAL.—Effective as of the date of the enactment of this Act [Jan. 28, 2008] and subject to regulations prescribed by the Secretary of Defense, the Secretary may authorize that any former member of the Armed Forces with a serious injury or illness may receive the same medical and dental care as a member of the Armed Forces on active duty for medical and dental care not reasonably available to such former member in the Department of Veterans Affairs.

"(2) SUNSET.—The Secretary of Defense may not provide medical or dental care to a former member of the Armed Forces under this subsection after December 31, 2012, if the Secretary has not provided medical or dental care to the former member under this subsection before that date.

"(b) REHABILITATION AND VOCATIONAL BENEFITS.—Effective as of the date of the enactment of this Act [Jan. 28, 2008], a member of the Armed Forces with a severe injury or illness is entitled to such benefits (including rehabilitation and vocational benefits, but not including compensation) from the Secretary of Veterans Affairs to facilitate the recovery and rehabilitation of such member as the Secretary otherwise provides to veterans of the Armed Forces receiving medical care in medical facilities of the Department of Veterans Affairs facilities in order to facilitate the recovery and rehabilitation of such members.

"(c) REHABILITATIVE EQUIPMENT FOR MEMBERS OF THE ARMED FORCES.—

"(1) IN GENERAL.—Subject to the availability of appropriations for such purpose, the Secretary of Defense may provide an active duty member of the Armed Forces with a severe injury or illness with rehabilitative equipment, including recreational sports equipment that provide an adaption or accommodation for the member, regardless of whether such equipment is intentionally designed to be adaptive equipment.

"(2) CONSULTATION.—In carrying out this subsection, the Secretary of Defense shall consult with the Secretary of Veterans Affairs regarding similar programs carried out by the Secretary of Veterans Affairs. [As amended Pub. L. 112–56, title II, § 231, Nov. 21, 2011, 125 Stat. 719; Pub. L. 112–81, div. A, title VII, § 707, Dec. 31, 2011, 125 Stat. 1474; Pub. L. 112–239, div. A, title X, § 1076(a)(9), Jan. 2, 2013, 126 Stat. 1948; Pub. L. 113–291, div. A, title VII, § 724, Dec. 19, 2014, 128 Stat. 3418; Pub. L. 114–58, title II, § 204, Sept. 30, 2015, 129 Stat. 533; Pub. L. 114–228, title II, § 204, Sept. 29, 2016, 130 Stat. 938; Pub. L. 115–62, title II, § 203, Sept. 29, 2017, 131 Stat. 1162; Pub. L. 115–251, title I, § 126, Sept. 29, 2018, 132 Stat. 3169.]

"SEC. 1635. FULLY INTEROPERABLE ELECTRONIC PERSONAL HEALTH INFORMATION FOR THE DEPARTMENT OF DEFENSE AND DEPARTMENT OF VETERANS AFFAIRS.

"(a) IN GENERAL.—The Secretary of Defense and the Secretary of Veterans Affairs shall jointly—

"(1) develop and implement electronic health record systems or capabilities that allow for full interoperability of personal health care information between the Department of Defense and the Department of Veterans Affairs; and

"(2) accelerate the exchange of health care information between the Department of Defense and the Department of Veterans Affairs in order to support the delivery of health care by both Departments.

"(b) DEPARTMENT OF DEFENSE-DEPARTMENT OF VETERANS AFFAIRS INTERAGENCY PROGRAM OFFICE.—

"(1) IN GENERAL.—There is hereby established an interagency program office of the Department of Defense and the Department of Veterans Affairs (in this section referred to as the 'Office') for the purposes described in paragraph (2). The Office shall carry out decision making authority delegated to the Office by the Secretary of Defense and the Secretary of Veterans Affairs with respect to the definition, coordination, and management of functional, technical, and programmatic activities that are jointly used, carried out, and shared by the Departments.

"(2) PURPOSES.—The purposes of the Office shall be as follows:

"(A) To act as a single point of accountability for the Department of Defense and the Department of Veterans Affairs in the rapid development and implementation of electronic health record systems or capabilities that allow for full interoperability of personal health care information between the Department of Defense and the Department of Veterans Affairs.

"(B) To accelerate the exchange of health care information between the Department of Defense and the Department of Veterans Affairs in order to support the delivery of health care by both Departments.

"(C) To develop and implement a comprehensive interoperability strategy, which shall include—

"(i) the Electronic Health Record Modernization Program of the Department of Veterans Affairs; and

"(ii) the Healthcare Management System Modernization Program of the Department of Defense.

"(D) To pursue the highest level of interoperability for the delivery of health care by the Department of Defense and the Department of Veterans Affairs.

"(E) To accelerate the exchange of health care information between the Departments, and advances in the health information technology marketplace, in order to support the delivery of health care by the Departments.

"(F) To collect the operational and strategic requirements of the Departments relating to the strategy under subsection (a) and communicate such requirements and activities to the Office of the National Coordinator for Health Information Technology of the Department of Health and Human Services for the purpose of implementing title IV of the 21st Century Cures Act (division A of Public Law 114–255) [see Tables for classification], and the amendments made by that title, and other objectives of the Office of the National Coordinator for Health Information Technology.

''(G) To plan for and effectuate the broadest possible implementation of standards, specifically with respect to the Fast Healthcare Interoperability Resources standard or successor standard, the evolution of such standards, and the obsolescence of such standards.

''(H) To actively engage with national and international health standards setting organizations, including by taking membership in such organizations, to ensure that standards established by such organizations meet the needs of the Departments pursuant to the strategy under subsection (a), and oversee and approve adoption of and mapping to such standards by the Departments.

''(I) To express the content and format of health data of the Departments using a common language to improve the exchange of data between the Departments and with the private sector, and to ensure that clinicians of the Departments have access to integrated, computable, comprehensive health records of patients.

''(J) To inform the Chief Information Officer of the Department of Defense and the Chief Information Officer of the Department of Veterans Affairs of any activities of the Office affecting or relevant to cybersecurity.

''(K) To establish an environment that will enable and encourage the adoption by the Departments of innovative technologies for health care delivery.

''(L) To leverage data integration to advance health research and develop an evidence base for the health care programs of the Departments.

''(M) To prioritize the use of open systems architecture by the Departments.

''(N) To ensure ownership and control by patients of personal health information and data in a manner consistent with applicable law.

''(O) To prevent contractors of the Departments or other non-departmental entities from owning or having exclusive control over patient health data, for the purposes of protecting patient privacy and enhancing opportunities for innovation.

''(P) To implement a single lifetime longitudinal personal health record between the Department of Defense and the Department of Veterans Affairs.

''(Q) To attain interoperability capabilities—

''(i) sufficient to enable the provision of seamless health care by health care facilities and providers of the Departments, as well as private sector facilities and providers contracted by the Departments; and

''(ii) that are more adaptable and far reaching than those achievable through biodirectional information exchange between electronic health records of the exchange of read-only data alone.

''(R) To make maximum use of open-application program interfaces and the Fast Healthcare Interoperability Resources standard (or successor standard).

''(c) LEADERSHIP.—

''(1) DIRECTOR.—The Director of the Office shall be the head of the Office.

''(2) DEPUTY DIRECTOR.—The Deputy Director of the Office shall be the deputy head of the Office and shall assist the Director in carrying out the duties of the Director.

''(3) REPORTING.—The Director shall report directly to the Deputy Secretary of Defense and the Deputy Secretary of Veterans Affairs.

''(4) APPOINTMENTS.—

''(A) DIRECTOR.—The Director shall be appointed by the Secretary of Defense, with the concurrence of the Secretary of Veterans Affairs, for a fixed term of four years. For the subsequent term, the Secretary of Veterans Affairs, with the concurrence of the Secretary of Defense, shall appoint the Director for a fixed term of four years, and thereafter, the appointment of the Director for a fixed term of four years shall alternate between the Secretaries.

''(B) DEPUTY DIRECTOR.—The Deputy Director shall be appointed by the Secretary of Veterans Affairs, with the concurrence of the Secretary of Defense, for a fixed term of four years. For the subsequent term, the Secretary of Defense, with the concurrence of the Secretary of Veterans Affairs, shall appoint the Deputy Director for a fixed term of four years, and thereafter, the appointment of the Deputy Director for a fixed term of four years shall alternate between the Secretaries.

''(C) MINIMUM QUALIFICATIONS.—The Secretary of Defense and the Secretary of Veterans Affairs shall jointly develop qualification requirements for the Director and the Deputy Director. Such requirements shall ensure that, at a minimum, the Director and Deputy Director, individually or together, meet the following qualifications:

''(i) Significant experience at a senior management level fielding enterprise-wide technology in a health care setting, or business systems in the public or private sector.

''(ii) Credentials for enterprise-wide program management.

''(iii) Significant experience leading implementation of complex organizational change by integrating the input of experts from various disciplines, such as clinical, business, management, informatics, and technology.

''(5) SUCCESSION.—The Secretary of Defense and the Secretary of Veterans Affairs shall jointly develop a leadership succession process for the Office.

''(6) ADDITIONAL GUIDANCE.—The Department of Veterans Affairs-Department of Defense Joint Executive Committee may provide guidance in the discharge of the functions of the Office under this section.

''(7) INFORMATION TO CONGRESS.—Upon request by any of the appropriate committees of Congress, the Director and the Deputy Director shall testify before such committee, or provide a briefing or otherwise provide requested information to such committee, regarding the discharge of the functions of the Office under this section.

''(d) FUNCTION.—The function of the Office shall be to implement, by not later than September 30, 2009, electronic health record systems or capabilities that allow for full interoperability of personal health care information between the Department of Defense and the Department of Veterans Affairs, which health records shall comply with applicable interoperability standards, implementation specifications, and certification criteria (including for the reporting of quality measures) of the Federal Government.

''(e) IMPLEMENTATION MILESTONES.—

''(1) EVALUATION.—With respect to the electronic health record systems of the Department of Defense and the Department of Veterans Affairs, the Office shall seek to enter into an agreement with an independent entity to conduct an evaluation by not later than October 1, 2021[,] of the following:

''(A) Whether a clinician of the Department of Defense, can access, and meaningfully interact with, a complete patient health record of a veteran, from a military medical treatment facility.

''(B) Whether a clinician of the Department of Veterans Affairs can access, and meaningfully interact with, a complete patient health record of a member of the Armed Forces serving on active duty, from a medical center of the Department of Veterans Affairs.

''(C) Whether clinicians of the Departments can access, and meaningfully interact with, the data elements of the health record of a patient who is a veteran or is a member of the Armed Forces which are generated when the individual receives health care from a community care provider of the Department of Veterans Affairs or a TRICARE program provider of the Department of Defense.

''(D) Whether a community care provider of the Department of the Veterans Affairs and a TRICARE program provider of the Department of Defense on a Health Information Exchange-supported elec-

tronic health record can access patient health records of veterans and active-duty members of the Armed Forces from the system of the provider.

''(E) An assessment of interoperability between the legacy electronic health record systems and the future electronic health record systems of the Department of Veterans Affairs and the Department of Defense.

''(F) An assessment of the use of interoperable content between—

''(i) the legacy electronic health record systems and the future electronic health record systems of the Department of Veterans Affairs and the Department of Defense; and

''(ii) third-party applications.

''(2) SYSTEM CONFIGURATION MANAGEMENT.—The Office shall—

''(A) maintain the common configuration baseline for the electronic health record systems of the Department of Defense and the Department of Veterans Affairs; and

''(B) continually evaluate the state of configuration and the impacts on interoperability; and

''(C) promote the enhancement of such electronic health records systems.

''(3) CONSULTATION.—

''(A) ANNUAL MEETING REQUIRED.—Not less than once per year, the Office shall convene a meeting of clinical staff from the Department of Defense, the Department of Veterans Affairs, the Coast Guard, community providers, and other leading clinical experts, for the purpose of assessing the state of clinical use of the electronic health record systems and whether the systems are meeting clinical and patient needs.

''(B) RECOMMENDATIONS.—Clinical staff participating in a meeting under subparagraph (A) shall make recommendations to the Office on the need for any improvements or concerns with the electronic health record systems.

''(4) CLINICAL AND PATIENT SATISFACTION SURVEY.—Beginning October 1, 2021, and on at least a biannual basis thereafter until 2025 at the earliest, the Office shall undertake a clinician and patient satisfaction survey regarding clinical use and patient experience with the electronic health record systems of the Department of Defense and the Department of Veterans Affairs.

''(f) PILOT PROJECTS.—

''(1) AUTHORITY.—In order to assist the Office in the discharge of its function under this section, the Secretary of Defense and the Secretary of Veterans Affairs may, acting jointly, carry out one or more pilot projects to assess the feasibility and advisability of various technological approaches to the achievement of the electronic health record systems or capabilities described in subsection (d).

''(2) SHARING OF PROTECTED HEALTH INFORMATION.—For purposes of each pilot project carried out under this subsection, the Secretary of Defense and the Secretary of Veterans Affairs shall, for purposes of the regulations promulgated under section 264(c) of the Health Insurance Portability and Accountability Act of 1996 [Pub. L. 104–191] (42 U.S.C. 1320d–2 note), ensure the effective sharing of protected health information between the health care system of the Department of Defense and the health care system of the Department of Veterans Affairs as needed to provide all health care services and other benefits allowed by law.

''(g) STAFF AND OTHER RESOURCES.—

''(1) IN GENERAL.—The Secretary of Defense and the Secretary of Veterans Affairs shall assign to the Office such personnel and other resources of the Department of Defense and the Department of Veterans Affairs as are required for the discharge of its function under this section, including the assignment of clinical or technical personnel of the Department of Defense or the Department of Veterans Affairs to the Office.

''(2) ADDITIONAL SERVICES.—Subject to the approval of the Secretary of Defense and the Secretary of Veterans Affairs, the Director may utilize the services of private individuals and entities as consultants to the Office in the discharge of its function under this section. Amounts available to the Office shall be available for payment for such services.

''(3) COST SHARING.—The Secretary of Defense and the Secretary of Veterans Affairs shall enter into an agreement on cost sharing and providing resources for the operations and staffing of the Office.

''(4) HIRING AUTHORITY.—The Secretary of Defense and the Secretary of Veterans Affairs shall delegate to the Director the authority under title 5, United States Code, regarding appointments in the competitive service to hire personnel of the Office.

''(h) REPORTS.—

''(1) ANNUAL REPORTS.—Not later than September 30, 2020, and each year thereafter through 2024, the Director shall submit to the Secretary of Defense and the Secretary of Veterans Affairs, and to the appropriate committees of Congress, a report on the activities of the Office during the preceding calendar year. Each report shall include the following:

''(A) A detailed description of the activities of the Office during the year covered by such report, including a detailed description of the amounts expended and the purposes for which expended.

''(B) With respect to the objectives of the strategy under paragraph (2)(C) of subsection (b), and the purposes of the Office under such subsection—

''(i) a discussion, description, and assessment of the progress made by the Department of Defense and the Department of Veterans Affairs during the preceding calendar year; and

''(ii) a discussion and description of the goals of the Department of Defense and the Department of Veterans Affairs for the following calendar year, including updates to strategies and plans.

''(C) A detailed financial summary of the activities of the Office, including the funds allocated to the Office by each Department, the expenditures made, and an assessment as to whether the current funding is sufficient to carry out the activities of the Office.

''(D) A detailed description of the status of each of the implementation milestones, including the nature of the evaluation, methodology for testing, and findings with respect to each milestone under subsection (e).

''(E) A detailed description of the state of the configuration baseline, including any activities which decremented or enhanced the state of configuration under subsection (e).

''(F) With respect to the annual meeting required under subsection (e)(3)—

''(i) a detailed description of activities, assessments, and recommendations relating to such meeting; and

''(ii) the response of the Office to any such recommendations.

''(2) AVAILABILITY.—Each report under this subsection shall be made publicly available.

''(i) COMPTROLLER GENERAL ASSESSMENT OF IMPLEMENTATION.—Not later than six months after the date of the enactment of this Act [Jan. 28, 2008] and every six months thereafter until the completion of the implementation of electronic health record systems or capabilities described in subsection (d), the Comptroller General of the United States shall submit to the appropriate committees of Congress a report setting forth the assessment of the Comptroller General of the progress of the Department of Defense and the Department of Veterans Affairs in implementing electronic health record systems or capabilities described in subsection (d).

''(j) TECHNOLOGY-NEUTRAL GUIDELINES AND STANDARDS.—The Director, in consultation with industry and appropriate Federal agencies, shall develop, or shall adopt from industry, technology-neutral information

technology infrastructure guidelines and standards for use by the Department of Defense and the Department of Veterans Affairs to enable those departments to effectively select and utilize information technologies to meet the requirements of this section.

''(k) DEFINITIONS.—In this section:

''(1) The term 'appropriate congressional committees' means—

''(A) the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives]; and

''(B) the Committees on Veterans' Affairs of the House of Representatives and the Senate.

''(2) The term 'configuration baseline' means a fixed reference in the development cycle or an agreed-upon specification of a product at a point in time that serves as a documented basis for defining incremental change in all aspects of an information technology product.

''(3) The term 'Electronic Health Record Modernization Program' has the meaning given that term in section 503 of the Veterans Benefits and Transition Act of 2018 (Public Law 115–407; 132 Stat. 5376) [38 U.S.C. note prec. 5701].

''(4) The term 'interoperability' means the ability of different information systems, devices, or applications to connect, regardless of the technology platform or the location where care is provided—

''(A) in a coordinated and secure manner, within and across organizational boundaries, and across the complete spectrum of care, including all applicable care settings;

''(B) with relevant stakeholders, including the person whose information is being shared, to access, exchange, integrate, and use computable data regardless of the origin or destination of the data or the applications employed;

''(C) with the capability to reliably exchange information without error;

''(D) with the ability to interpret and to make effective use of such exchanged information;

''(E) with the ability for information that can be used to advance patient care to move between health care entities; and

''(F) without additional intervention by the end user.

''(5) The term 'meaningfully interact' means the ability to view, consume, act upon, and edit information in a clinical setting to facilitate high-quality clinical decision making.

''(6) The term 'seamless health care' means health care which is optimized through access by patients and clinicians to integrated, relevant, and complete information about the clinical experiences of the patient, social and environmental determinants of health, and health trends over time, in order to enable patients and clinicians to—

''(A) move efficiently within and across organizational boundaries;

''(B) make high-quality decisions; and

''(C) effectively carry out complete plans of care.

''(7) The term 'Secretary concerned' means—

''(A) the Secretary of Defense, with respect to matters concerning the Department of Defense;

''(B) the Secretary of Veterans Affairs, with respect to matters concerning the Department of Veterans Affairs; and

''(C) the Secretary of Homeland Security, with respect to matters concerning the Coast Guard when it is not operating as a service in the Department of the Navy.

''(8) The term 'TRICARE program' has the meaning given that term in section 1072 of title 10, United States Code. [As amended Pub. L. 110–417, [div. A], title II, § 252, Oct. 14, 2008, 122 Stat. 4400; Pub. L. 113–175, title I, § 105, Sept. 26, 2014, 128 Stat. 1903; Pub. L. 114–58, title IV, § 411, Sept. 30, 2015, 129 Stat. 536; Pub. L. 114–228, title IV, § 414, Sept. 29, 2016, 130 Stat. 941; Pub. L. 116–92, div. A, title VII, § 715(a)–(g), Dec. 20, 2019, 133 Stat. 1446–1451.]

''SEC. 1644. AUTHORIZATION OF PILOT PROGRAMS TO IMPROVE THE DISABILITY EVALUATION SYSTEM FOR MEMBERS OF THE ARMED FORCES.

''(a) PILOT PROGRAMS.—

''(1) PROGRAMS AUTHORIZED.—For the purposes set forth in subsection (c), the Secretary of Defense may establish and conduct pilot programs with respect to the system of the Department of Defense for the evaluation of the disabilities of members of the Armed Forces who are being separated or retired from the Armed Forces for disability under chapter 61 of title 10, United States Code (in this section referred to as the 'disability evaluation system').

''(2) TYPES OF PILOT PROGRAMS.—In carrying out this section, the Secretary of Defense may conduct one or more of the pilot programs described in paragraphs (1) through (3) of subsection (b) or such other pilot programs as the Secretary of Defense considers appropriate.

''(3) CONSULTATION.—In establishing and conducting any pilot program under this section, the Secretary of Defense shall consult with the Secretary of Veterans Affairs.

''(b) SCOPE OF PILOT PROGRAMS.—

''(1) DISABILITY DETERMINATIONS BY DOD UTILIZING VA ASSIGNED DISABILITY RATING.—Under one of the pilot programs authorized by subsection (a), for purposes of making a determination of disability of a member of the Armed Forces under section 1201(b) of title 10, United States Code, for the retirement, separation, or placement of the member on the temporary disability retired list under chapter 61 of such title, upon a determination by the Secretary of the military department concerned that the member is unfit to perform the duties of the member's office, grade, rank, or rating because of a physical disability as described in section 1201(a) of such title—

''(A) the Secretary of Veterans Affairs may—

''(i) conduct an evaluation of the member for physical disability; and

''(ii) assign the member a rating of disability in accordance with the schedule for rating disabilities utilized by the Secretary of Veterans Affairs based on all medical conditions (whether individually or collectively) that render the member unfit for duty; and

''(B) the Secretary of the military department concerned may make the determination of disability regarding the member utilizing the rating of disability assigned under subparagraph (A)(ii).

''(2) DISABILITY DETERMINATIONS UTILIZING JOINT DOD/VA ASSIGNED DISABILITY RATING.—Under one of the pilot programs authorized by subsection (a), in making a determination of disability of a member of the Armed Forces under section 1201(b) of title 10, United States Code, for the retirement, separation, or placement of the member on the temporary disability retired list under chapter 61 of such title, the Secretary of the military department concerned may, upon determining that the member is unfit to perform the duties of the member's office, grade, rank, or rating because of a physical disability as described in section 1201(a) of such title—

''(A) provide for the joint evaluation of the member for disability by the Secretary of the military department concerned and the Secretary of Veterans Affairs, including the assignment of a rating of disability for the member in accordance with the schedule for rating disabilities utilized by the Secretary of Veterans Affairs based on all medical conditions (whether individually or collectively) that render the member unfit for duty; and

''(B) make the determination of disability regarding the member utilizing the rating of disability assigned under subparagraph (A).

''(3) ELECTRONIC CLEARING HOUSE.—Under one of the pilot programs authorized by subsection (a), the Secretary of Defense may establish and operate a single Internet website for the disability evaluation system

of the Department of Defense that enables participating members of the Armed Forces to fully utilize such system through the Internet, with such Internet website to include the following:

''(A) The availability of any forms required for the utilization of the disability evaluation system by members of the Armed Forces under the system.

''(B) Secure mechanisms for the submission of such forms by members of the Armed Forces under the system, and for the tracking of the acceptance and review of any forms so submitted.

''(C) Secure mechanisms for advising members of the Armed Forces under the system of any additional information, forms, or other items that are required for the acceptance and review of any forms so submitted.

''(D) The continuous availability of assistance to members of the Armed Forces under the system (including assistance through the caseworkers assigned to such members of the Armed Forces) in submitting and tracking such forms, including assistance in obtaining information, forms, or other items described by subparagraph (C).

''(E) Secure mechanisms to request and receive personnel files or other personnel records of members of the Armed Forces under the system that are required for submission under the disability evaluation system, including the capability to track requests for such files or records and to determine the status of such requests and of responses to such requests.

''(4) OTHER PILOT PROGRAMS.—The pilot programs authorized by subsection (a) may also provide for the development, evaluation, and identification of such practices and procedures under the disability evaluation system as the Secretary considers appropriate for purposes set forth in subsection (c).

''(c) PURPOSES.—A pilot program established under subsection (a) may have one or more of the following purposes:

''(1) To provide for the development, evaluation, and identification of revised and improved practices and procedures under the disability evaluation system in order to—

''(A) reduce the processing time under the disability evaluation system of members of the Armed Forces who are likely to be retired or separated for disability, and who have not requested continuation on active duty, including, in particular, members who are severely wounded;

''(B) identify and implement or seek the modification of statutory or administrative policies and requirements applicable to the disability evaluation system that—

''(i) are unnecessary or contrary to applicable best practices of civilian employers and civilian healthcare systems; or

''(ii) otherwise result in hardship, arbitrary, or inconsistent outcomes for members of the Armed Forces, or unwarranted inefficiencies and delays;

''(C) eliminate material variations in policies, interpretations, and overall performance standards among the military departments under the disability evaluation system; and

''(D) determine whether it enhances the capability of the Department of Veterans Affairs to receive and determine claims from members of the Armed Forces for compensation, pension, hospitalization, or other veterans benefits.

''(2) In conjunction with the findings and recommendations of applicable Presidential and Department of Defense study groups, to provide for the eventual development of revised and improved practices and procedures for the disability evaluation system in order to achieve the objectives set forth in paragraph (1).

''(d) UTILIZATION OF RESULTS IN UPDATES OF COMPREHENSIVE POLICY ON CARE, MANAGEMENT, AND TRANSITION OF RECOVERING SERVICE MEMBERS.—The Secretary of Defense and the Secretary of Veterans Affairs, acting jointly, may incorporate responses to any findings and recommendations arising under the pilot programs conducted under subsection (a) in updating the comprehensive policy on the care and management of covered service members under section 1611(a)(4).

''(e) CONSTRUCTION WITH OTHER AUTHORITIES.—

''(1) IN GENERAL.—Subject to paragraph (2), in carrying out a pilot program under subsection (a)—

''(A) the rules and regulations of the Department of Defense and the Department of Veterans Affairs relating to methods of determining fitness or unfitness for duty and disability ratings for members of the Armed Forces shall apply to the pilot program only to the extent provided in the report on the pilot program under subsection (g)(1); and

''(B) the Secretary of Defense and the Secretary of Veterans Affairs may waive any provision of title 10, 37, or 38, United States Code, relating to methods of determining fitness or unfitness for duty and disability ratings for members of the Armed Forces if the Secretaries determine in writing that the application of such provision would be inconsistent with the purpose of the pilot program.

''(2) LIMITATION.—Nothing in paragraph (1) shall be construed to authorize the waiver of any provision of section 1216a of title 10, United States Code, as added by section 1642 of this Act.

''(f) DURATION.—Each pilot program conducted under subsection (a) shall be completed not later than one year after the date of the commencement of such pilot program under that subsection.

''(g) REPORTS.—

''(1) INITIAL REPORT.—Not later than 90 days after the date of the enactment of this Act [Jan. 28, 2008], the Secretary of Defense shall submit to the appropriate committees of Congress a report on each pilot program that has been commenced as of that date under subsection (a). The report shall include—

''(A) a description of the scope and objectives of the pilot program;

''(B) a description of the methodology to be used under the pilot program to ensure rapid identification under such pilot program of revised or improved practices under the disability evaluation system in order to achieve the objectives set forth in subsection (c)(1); and

''(C) a statement of any provision described in subsection (e)(1)(B) that will not apply to the pilot program by reason of a waiver under that subsection.

''(2) INTERIM REPORT.—Not later than 180 days after the date of the submittal of the report required by paragraph (1) with respect to a pilot program, the Secretary shall submit to the appropriate committees of Congress a report describing the current status of the pilot program.

''(3) FINAL REPORT.—Not later than 90 days after the completion of all of the pilot programs conducted under subsection (a), the Secretary shall submit to the appropriate committees of Congress a report setting forth a final evaluation and assessment of the pilot programs. The report shall include such recommendations for legislative or administrative action as the Secretary considers appropriate in light of such pilot programs.

''SEC. 1648. STANDARDS FOR MILITARY MEDICAL TREATMENT FACILITIES, SPECIALTY MEDICAL CARE FACILITIES, AND MILITARY QUARTERS HOUSING PATIENTS AND ANNUAL REPORT ON SUCH FACILITIES.

''(a) ESTABLISHMENT OF STANDARDS.—The Secretary of Defense shall establish for the military facilities of the Department of Defense and the military departments referred to in subsection (b) standards with respect to the matters set forth in subsection (c). To the maximum extent practicable, the standards shall—

''(1) be uniform and consistent for all such facilities; and

''(2) be uniform and consistent throughout the Department of Defense and the military departments.

''(b) COVERED MILITARY FACILITIES.—The military facilities covered by this section are the following:

''(1) Military medical treatment facilities.

''(2) Specialty medical care facilities.

''(3) Military quarters or leased housing for patients.

''(c) SCOPE OF STANDARDS.—The standards required by subsection (a) shall include the following:

''(1) Generally accepted standards for the accreditation of medical facilities, or for facilities used to quarter individuals that may require medical supervision, as applicable, in the United States.

''(2) To the extent not inconsistent with the standards described in paragraph (1), minimally acceptable conditions for the following:

''(A) Appearance and maintenance of facilities generally, including the structure and roofs of facilities.

''(B) Size, appearance, and maintenance of rooms housing or utilized by patients, including furniture and amenities in such rooms.

''(C) Operation and maintenance of primary and back-up facility utility systems and other systems required for patient care, including electrical systems, plumbing systems, heating, ventilation, and air conditioning systems, communications systems, fire protection systems, energy management systems, and other systems required for patient care.

''(D) Compliance of facilities, rooms, and grounds, to the maximum extent practicable, with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.).

''(E) Such other matters relating to the appearance, size, operation, and maintenance of facilities and rooms as the Secretary considers appropriate.

''(d) COMPLIANCE WITH STANDARDS.—

''(1) DEADLINE.—In establishing standards under subsection (a), the Secretary shall specify a deadline for compliance with such standards by each facility referred to in subsection (b). The deadline shall be at the earliest date practicable after the date of the enactment of this Act [Jan. 28, 2008], and shall, to the maximum extent practicable, be uniform across the facilities referred to in subsection (b).

''(2) INVESTMENT.—In carrying out this section, the Secretary shall also establish guidelines for investment to be utilized by the Department of Defense and the military departments in determining the allocation of financial resources to facilities referred to in subsection (b) in order to meet the deadline specified under paragraph (1).

''(e) REPORT ON DEVELOPMENT AND IMPLEMENTATION OF STANDARDS.—

''(1) IN GENERAL.—Not later than March 1, 2008, the Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the actions taken to carry out subsection (a).

''(2) ELEMENTS.—The report under paragraph (1) shall include the following:

''(A) The standards established under subsection (a).

''(B) An assessment of the appearance, condition, and maintenance of each facility referred to in subsection (b), including—

''(i) an assessment of the compliance of the facility with the standards established under subsection (a); and

''(ii) a description of any deficiency or noncompliance in each facility with the standards.

''(C) A description of the investment to be allocated to address each deficiency or noncompliance identified under subparagraph (B)(ii). [As amended Pub. L. 114–92, div. A, title X, §1072(e), Nov. 25, 2015, 129 Stat. 995.]

''SEC. 1651. HANDBOOK FOR MEMBERS OF THE ARMED FORCES ON COMPENSATION AND BENEFITS AVAILABLE FOR SERIOUS INJURIES AND ILLNESSES.

''(a) INFORMATION ON AVAILABLE COMPENSATION AND BENEFITS.—Not later than October 1, 2008, the Secretary of Defense shall develop and maintain, in handbook and electronic form, a comprehensive description of the compensation and other benefits to which a member of the Armed Forces, and the family of such member, would be entitled upon the separation or retirement of the member from the Armed Forces as a result of a serious injury or illness. The handbook shall set forth the range of such compensation and benefits based on grade, length of service, degree of disability at separation or retirement, and such other factors affecting such compensation and benefits as the Secretary considers appropriate.

''(b) CONSULTATION.—The Secretary of Defense shall develop and maintain the comprehensive description required by subsection (a), including the handbook and electronic form of the description, in consultation with the Secretary of Veterans Affairs, the Secretary of Health and Human Services, and the Commissioner of Social Security.

''(c) UPDATE.—The Secretary of Defense shall update the comprehensive description required by subsection (a), including the handbook and electronic form of the description, on a periodic basis, but not less often than annually.

''(d) PROVISION TO MEMBERS.—The Secretary of the military department concerned shall provide the descriptive handbook under subsection (a) to each member of the Armed Forces described in that subsection as soon as practicable following the injury or illness qualifying the member for coverage under such subsection.

''(e) PROVISION TO REPRESENTATIVES.—If a member is incapacitated or otherwise unable to receive the descriptive handbook to be provided under subsection (a), the handbook shall be provided to the next of kin or a legal representative of the member, as determined in accordance with regulations prescribed by the Secretary of the military department concerned for purposes of this section.

''SEC. 1662. ACCESS OF RECOVERING SERVICE MEMBERS TO ADEQUATE OUTPATIENT RESIDENTIAL FACILITIES.

''All quarters of the United States and housing facilities under the jurisdiction of the Armed Forces that are occupied by recovering service members shall be inspected at least once every two years by the inspectors general of the regional medical commands. [As amended Pub. L. 113–291, div. A, title V, §591, Dec. 19, 2014, 128 Stat. 3394; Pub. L. 114–92, div. A, title X, §1072(f), Nov. 25, 2015, 129 Stat. 995.]

''SEC. 1671. PROHIBITION ON TRANSFER OF RESOURCES FROM MEDICAL CARE.

''Neither the Secretary of Defense nor the Secretaries of the military departments may transfer funds or personnel from medical care functions to administrative functions within the Department of Defense in order to comply with the new administrative requirements imposed by this title [see Short Title of 2008 Amendment note above] or the amendments made by this title.

''SEC. 1672. MEDICAL CARE FOR FAMILIES OF MEMBERS OF THE ARMED FORCES RECOVERING FROM SERIOUS INJURIES OR ILLNESSES.

''(a) MEDICAL CARE AT MILITARY MEDICAL FACILITIES.—

''(1) MEDICAL CARE.—A family member of a recovering service member who is not otherwise eligible for medical care at a military medical treatment facility may be eligible for such care at such facilities, on a space-available basis, if the family member is—

''(A) on invitational orders while caring for the service member;

''(B) a non-medical attendee caring for the service member; or

''(C) receiving per diem payments from the Department of Defense while caring for the service member.

''(2) SPECIFICATION OF FAMILY MEMBERS.—The Secretary of Defense may prescribe in regulations the

family members of recovering service members who shall be considered to be a family member of a service member for purposes of this subsection.

''(3) SPECIFICATION OF CARE.—The Secretary of Defense shall prescribe in regulations the medical care that may be available to family members under this subsection at military medical treatment facilities.

''(4) RECOVERY OF COSTS.—The United States may recover the costs of the provision of medical care under this subsection as follows (as applicable):

''(A) From third-party payers, in the same manner as the United States may collect costs of the charges of health care provided to covered beneficiaries from third-party payers under section 1095 of title 10, United States Code.

''(B) As if such care was provided under the authority of section 1784 of title 38, United States Code.

''(b) MEDICAL CARE AT DEPARTMENT OF VETERANS AFFAIRS MEDICAL FACILITIES.—

''(1) MEDICAL CARE.—When a recovering service member is receiving hospital care and medical services at a medical facility of the Department of Veterans Affairs, the Secretary of Veterans Affairs may provide medical care for eligible family members under this section when that care is readily available at that Department facility and on a space-available basis.

''(2) REGULATIONS.—The Secretary of Veterans Affairs shall prescribe in regulations the medical care that may be available to family members under this subsection at medical facilities of the Department of Veterans Affairs.

''SEC. 1676. MORATORIUM ON CONVERSION TO CONTRACTOR PERFORMANCE OF DEPARTMENT OF DEFENSE FUNCTIONS AT MILITARY MEDICAL FACILITIES.

''(a) MORATORIUM.—No study or competition may be begun or announced pursuant to section 2461 of title 10, United States Code, or otherwise pursuant to Office of Management and Budget circular A-76, relating to the possible conversion to performance by a contractor of any Department of Defense function carried out at a military medical facility until the Secretary of Defense—

''(1) submits the certification required by subsection (b) to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives together with a description of the steps taken by the Secretary in accordance with the certification; and

''(2) submits the report required by subsection (c).

''(b) CERTIFICATION.—The certification referred to in paragraph (a)(1) is a certification that the Secretary has taken appropriate steps to ensure that neither the quality of military medical care nor the availability of qualified personnel to carry out Department of Defense functions related to military medical care will be adversely affected by either—

''(1) the process of considering a Department of Defense function carried out at a military medical facility for possible conversion to performance by a contractor; or

''(2) the conversion of such a function to performance by a contractor.

''(c) REPORT REQUIRED.—Not later than 180 days after the date of the enactment of this Act [Jan. 28, 2008], the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the public-private competitions being conducted for Department of Defense functions carried out at military medical facilities as of the date of the enactment of this Act by each military department and defense agency. Such report shall include—

''(1) for each such competition—

''(A) the cost of conducting the public-private competition;

''(B) the number of military personnel and civilian employees of the Department of Defense affected;

''(C) the estimated savings identified and the savings actually achieved;

''(D) an evaluation whether the anticipated and budgeted savings can be achieved through a public-private competition; and

''(E) the effect of converting the performance of the function to performance by a contractor on the quality of the performance of the function; and

''(2) an assessment of whether any method of business reform or reengineering other than a public-private competition could, if implemented in the future, achieve any anticipated or budgeted savings.''

DISEASE AND CHRONIC CARE MANAGEMENT

Pub. L. 109–364, div. A, title VII, § 734, Oct. 17, 2006, 120 Stat. 2299, required the Secretary of Defense to develop a fully integrated program on disease and chronic care management for the military health care system with uniform policies and practices throughout the system and an implementation plan for the program and to report to Congress no later than Mar. 1, 2008.

PREVENTION, MITIGATION, AND TREATMENT OF BLAST INJURIES

Pub. L. 109–163, div. A, title II, § 256, Jan. 6, 2006, 119 Stat. 3181, as amended by Pub. L. 112–239, div. A, title X, § 1076(c)(2)(C), Jan. 2, 2013, 126 Stat. 1950, provided for medical research efforts and programs of the Department of Defense relating to the prevention, mitigation, and treatment of blast injuries, including the designation of an executive agent to coordinate and manage such efforts and programs, conduct studies, and develop training protocols, and required an annual report to Congress through 2008.

ACCESS TO HEALTH CARE SERVICES FOR BENEFICIARIES ELIGIBLE FOR TRICARE AND DEPARTMENT OF VETERANS AFFAIRS HEALTH CARE

Pub. L. 107–314, div. A, title VII, § 708, Dec. 2, 2002, 116 Stat. 2585, provided that:

''(a) REQUIREMENT TO ESTABLISH PROCESS.—(1) The Secretary of Defense shall prescribe in regulations a process for resolving issues relating to patient safety and continuity of care for covered beneficiaries who are concurrently entitled to health care under the TRICARE program and eligible for health care services provided by the Department of Veterans Affairs. The Secretary shall—

''(A) ensure that the process provides for coordination of, and access to, health care from the two sources in a manner that prevents diminution of access to health care from either source; and

''(B) in consultation with the Secretary of Veterans Affairs, prescribe a clear definition of an 'episode of care' for use in the resolution of patient safety and continuity of care issues under such process.

''(2) Not later than May 1, 2003, the Secretary shall submit to the Committees on Armed Services of the Senate and of the House of Representatives a report describing the process prescribed under paragraph (1).

''(3) While prescribing the process under paragraph (1) and upon completion of the report under paragraph (2), the Secretary shall provide to the Comptroller General information that would be relevant in carrying out the study required by subsection (b).

''(b) COMPTROLLER GENERAL STUDY AND REPORT.—(1) The Comptroller General shall conduct a study of the health care issues of covered beneficiaries described in subsection (a). The study shall include the following:

''(A) An analysis of whether covered beneficiaries who seek services through the Department of Veterans Affairs are receiving needed health care services in a timely manner from the Department of Veterans Affairs, as compared to the timeliness of the care available to covered beneficiaries under TRICARE Prime (as set forth in access to care standards under TRICARE program policy that are applicable to the care being sought).

''(B) An evaluation of the quality of care for covered beneficiaries who do not receive needed services

from the Department of Veterans Affairs within a time period that is comparable to the time period provided for under such access to care standards and who then must seek alternative care under the TRICARE program.

''(C) Recommendations to improve access to, and timeliness and quality of, care for covered beneficiaries described in subsection (a).

''(D) An evaluation of the feasibility and advisability of making access to care standards applicable jointly under the TRICARE program and the Department of Veterans Affairs health care system.

''(E) A review of the process prescribed by the Secretary of Defense under subsection (a) to determine whether the process ensures the adequacy and quality of the health care services provided to covered beneficiaries under the TRICARE program and through the Department of Veterans Affairs, together with timeliness of access to such services and patient safety.

''(2) Not later than 60 days after the congressional committees specified in subsection (a)(2) receive the report required under that subsection, the Comptroller General shall submit to those committees a report on the study conducted under this subsection.

''(c) DEFINITIONS.—In this section:

''(1) The term 'covered beneficiary' has the meaning provided by section 1072(5) of title 10, United States Code.

''(2) The term 'TRICARE program' has the meaning provided by section 1072(7) of such title.

''(3) The term 'TRICARE Prime' has the meaning provided by section 1097a(f) [now 1097a(e)] of such title.''

PILOT PROGRAM PROVIDING FOR DEPARTMENT OF VETERANS AFFAIRS SUPPORT IN THE PERFORMANCE OF SEPARATION PHYSICAL EXAMINATIONS

Pub. L. 107–107, div. A, title VII, §734, Dec. 28, 2001, 115 Stat. 1170, authorized the Secretary of Defense and the Secretary of Veterans Affairs to jointly carry out a pilot program, to begin not later than July 1, 2002, and terminate on Dec. 31, 2005, under which the Secretary of Veterans Affairs, in one or more geographic areas, could perform the physical examinations required for separation of members from the uniformed services, and directed the Secretaries to jointly submit to Congress interim and final reports not later than Mar. 1, 2005.

HEALTH CARE MANAGEMENT DEMONSTRATION PROGRAM

Pub. L. 106–398, §1 [[div. A], title VII, §733], Oct. 30, 2000, 114 Stat. 1654, 1654A–191, as amended by Pub. L. 107–107, div. A, title VII, §737, Dec. 28, 2001, 115 Stat. 1173, directed the Secretary of Defense to carry out a demonstration program on health care management, to begin not later than 180 days after Oct. 30, 2000, and terminate on Dec. 31, 2003, to explore opportunities for improving the planning, programming, budgeting systems, and management of the Department of Defense health care system, and directed the Secretary to submit a report on such program to committees of Congress not later than Mar. 15, 2004.

PROCESSES FOR PATIENT SAFETY IN MILITARY AND VETERANS HEALTH CARE SYSTEMS

Pub. L. 106–398, §1 [[div. A], title VII, §742], Oct. 30, 2000, 114 Stat. 1654, 1654A–192, provided that:

''(a) ERROR TRACKING PROCESS.—The Secretary of Defense shall implement a centralized process for reporting, compilation, and analysis of errors in the provision of health care under the defense health program that endanger patients beyond the normal risks associated with the care and treatment of such patients. To the extent practicable, that process shall emulate the system established by the Secretary of Veterans Affairs for reporting, compilation, and analysis of errors in the provision of health care under the Department of Veterans Affairs health care system that endanger patients beyond such risks.

''(b) SHARING OF INFORMATION.—The Secretary of Defense and the Secretary of Veterans Affairs—

''(1) shall share information regarding the designs of systems or protocols established to reduce errors in the provision of health care described in subsection (a); and

''(2) shall develop such protocols as the Secretaries consider necessary for the establishment and administration of effective processes for the reporting, compilation, and analysis of such errors.''

COOPERATION IN DEVELOPING PHARMACEUTICAL IDENTIFICATION TECHNOLOGY

Pub. L. 106–398, §1 [[div. A], title VII, §743], Oct. 30, 2000, 114 Stat. 1654, 1654A–192, provided that: ''The Secretary of Defense and the Secretary of Veterans Affairs shall cooperate in developing systems for the use of bar codes for the identification of pharmaceuticals in the health care programs of the Department of Defense and the Department of Veterans Affairs. In any case in which a common pharmaceutical is used in such programs, the bar codes for those pharmaceuticals shall, to the maximum extent practicable, be identical.''

PATIENT CARE REPORTING AND MANAGEMENT SYSTEM

Pub. L. 106–398, §1 [[div. A], title VII, §754], Oct. 30, 2000, 114 Stat. 1654, 1654A–196, as amended by Pub. L. 109–163, div. A, title VII, §741, Jan. 6, 2006, 119 Stat. 3360, provided that:

''(a) ESTABLISHMENT.—The Secretary of Defense shall establish a patient care error reporting and management system.

''(b) PURPOSES OF SYSTEM.—The purposes of the system are as follows:

''(1) To study the occurrences of errors in the patient care provided under chapter 55 of title 10, United States Code.

''(2) To identify the systemic factors that are associated with such occurrences.

''(3) To provide for action to be taken to correct the identified systemic factors.

''(c) REQUIREMENTS FOR SYSTEM.—The patient care error reporting and management system shall include the following:

''(1) A hospital-level patient safety center, within the quality assurance department of each health care organization of the Department of Defense, to collect, assess, and report on the nature and frequency of errors related to patient care.

''(2) For each health care organization of the Department of Defense and for the entire Defense health program, patient safety standards that are necessary for the development of a full understanding of patient safety issues in each such organization and the entire program, including the nature and types of errors and the systemic causes of the errors.

''(3) Establishment of a Department of Defense Patient Safety Center, which shall have the following missions:

''(A) To analyze information on patient care errors that is submitted to the Center by each military health care organization.

''(B) To develop action plans for addressing patterns of patient care errors.

''(C) To execute those action plans to mitigate and control errors in patient care with a goal of ensuring that the health care organizations of the Department of Defense provide highly reliable patient care with virtually no error.

''(D) To provide, through the Assistant Secretary of Defense for Health Affairs, to the Agency for Healthcare Research and Quality of the Department of Health and Human Services any reports that the Assistant Secretary determines appropriate.

''(E) To review and integrate processes for reducing errors associated with patient care and for enhancing patient safety.

''(F) To contract with a qualified and objective external organization to manage the national patient safety database of the Department of Defense.

''(d) MEDICAL TEAM TRAINING PROGRAM.—The Secretary shall expand the health care team coordination program to integrate that program into all Department of Defense health care operations. In carrying out this subsection, the Secretary shall take the following actions:

''(1) Establish not less than two Centers of Excellence for the development, validation, proliferation, and sustainment of the health care team coordination program, one of which shall support all fixed military health care organizations, the other of which shall support all combat casualty care organizations.

''(2) Deploy the program to all fixed and combat casualty care organizations of each of the Armed Forces, at the rate of not less than 10 organizations in each fiscal year.

''(3) Expand the scope of the health care team coordination program from a focus on emergency department care to a coverage that includes care in all major medical specialties, at the rate of not less than one specialty in each fiscal year.

''(4) Continue research and development investments to improve communication, coordination, and team work in the provision of health care.

''(e) CONSULTATION.—The Secretary shall consult with the other administering Secretaries (as defined in section 1072(3) of title 10, United States Code) in carrying out this section.''

CONFIDENTIALITY OF COMMUNICATIONS WITH PROFESSIONALS PROVIDING THERAPEUTIC OR RELATED SERVICES REGARDING SEXUAL OR DOMESTIC ABUSE

Pub. L. 106–65, div. A, title V, § 585, Oct. 5, 1999, 113 Stat. 636, required the Secretary of Defense to prescribe in regulations policies and procedures to provide maximum protections for the confidentiality of communications between dependents of Armed Forces members and professionals providing therapeutic or related services regarding sexual or domestic abuse and to report to Congress no later than Jan. 21, 2000.

HEALTH CARE QUALITY INFORMATION AND TECHNOLOGY ENHANCEMENT

Pub. L. 106–65, div. A, title VII, § 723, Oct. 5, 1999, 113 Stat. 695, as amended by Pub. L. 106–398, § 1 [[div. A], title VII, § 753(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–195; Pub. L. 109–163, div. A, title VII, § 742, Jan. 6, 2006, 119 Stat. 3360; Pub. L. 109–364, div. A, title X, § 1046(e), Oct. 17, 2006, 120 Stat. 2394; Pub. L. 112–81, div. A, title X, § 1062(j)(1), Dec. 31, 2011, 125 Stat. 1585, provided that:

''(a) PURPOSE.—The purpose of this section is to ensure that the Department of Defense addresses issues of medical quality surveillance and implements solutions for those issues in a timely manner that is consistent with national policy and industry standards.

''(b) DEPARTMENT OF DEFENSE PROGRAM FOR MEDICAL INFORMATICS AND DATA.—The Secretary of Defense shall establish a Department of Defense program, the purposes of which shall be the following:

''(1) To develop parameters for assessing the quality of health care information.

''(2) To develop the defense digital patient record.

''(3) To develop a repository for data on quality of health care.

''(4) To develop capability for conducting research on quality of health care.

''(5) To conduct research on matters of quality of health care.

''(6) To develop decision support tools for health care providers.

''(7) To refine medical performance report cards.

''(8) To conduct educational programs on medical informatics to meet identified needs.

''(c) AUTOMATION AND CAPTURE OF CLINICAL DATA.—(1) Through the program established under subsection (b), the Secretary of Defense shall accelerate the efforts of the Department of Defense to automate, capture, and exchange controlled clinical data and present providers with clinical guidance using a personal information carrier, clinical lexicon, or digital patient record.

''(2) The program shall serve as a primary resource for the Department of Defense for matters concerning the capture, processing, and dissemination of data on health care quality.

''(d) MEDICAL INFORMATICS ADVISORY COMMITTEE.—(1) The Secretary of Defense shall establish a Medical Informatics Advisory Committee (hereinafter referred to as the 'Committee'), the members of which shall be the following:

''(A) The Assistant Secretary of Defense for Health Affairs.

''(B) The Director of the TRICARE Management Activity of the Department of Defense.

''(C) The Surgeon General of the Army.

''(D) The Surgeon General of the Navy.

''(E) The Surgeon General of the Air Force.

''(F) Representatives of the Department of Veterans Affairs, designated by the Secretary of Veterans Affairs.

''(G) Representatives of the Department of Health and Human Services, designated by the Secretary of Health and Human Services.

''(H) Any additional members appointed by the Secretary of Defense to represent health care insurers and managed care organizations, academic health institutions, health care providers (including representatives of physicians and representatives of hospitals), and accreditors of health care plans and organizations.

''(2) The primary mission of the Committee shall be to advise the Secretary on the development, deployment, and maintenance of health care informatics systems that allow for the collection, exchange, and processing of health care quality information for the Department of Defense in coordination with other Federal departments and agencies and with the private sector.

''(3) Specific areas of responsibility of the Committee shall include advising the Secretary on the following:

''(A) The ability of the medical informatics systems at the Department of Defense and Department of Veterans Affairs to monitor, evaluate, and improve the quality of care provided to beneficiaries.

''(B) The coordination of key components of medical informatics systems, including digital patient records, both within the Federal Government and between the Federal Government and the private sector.

''(C) The development of operational capabilities for executive information systems and clinical decision support systems within the Department of Defense and Department of Veterans Affairs.

''(D) Standardization of processes used to collect, evaluate, and disseminate health care quality information.

''(E) Refinement of methodologies by which the quality of health care provided within the Department of Defense and Department of Veterans Affairs is evaluated.

''(F) Protecting the confidentiality of personal health information.

''(4) The Assistant Secretary of Defense for Health Affairs shall consult with the Committee on the issues described in paragraph (3).

''(5) Members of the Committee shall not be paid by reason of their service on the Committee.

''(6) The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Committee.

[Section 1062(j)(1)(A) of Pub. L. 112–81, which directed the redesignation of pars. (6) and (7) as (5) and (6) of section 723(d) of Pub. L. 106–65, set out above, could not be executed due to the prior identical amendment by section 1046(e) of Pub. L. 109–364.]

JOINT DEPARTMENT OF DEFENSE AND DEPARTMENT OF VETERANS AFFAIRS REPORTS RELATING TO INTERDEPARTMENTAL COOPERATION IN DELIVERY OF MEDICAL CARE

Pub. L. 105–261, div. A, title VII, § 745, Oct. 17, 1998, 112 Stat. 2075, as amended by Pub. L. 106–65, div. A, title X,

§1067(3), Oct. 5, 1999, 113 Stat. 774; Pub. L. 108–136, div. A, title X, §1031(g)(1), Nov. 24, 2003, 117 Stat. 1604, (1) directed the Secretary of Defense and the Secretary of Veterans Affairs to jointly conduct a survey of their respective medical care beneficiary populations to identify the expectations of, requirements for, and behavior patterns of the beneficiaries with respect to medical care, and to submit a report on the results of the survey to committees of Congress not later than Jan. 1, 2000; (2) directed the same Secretaries to jointly conduct a review to identify impediments to cooperation between the Department of Defense and the Department of Veterans Affairs regarding the delivery of medical care and to submit a report on the results of the review to committees of Congress not later than Mar. 1, 1999; (3) directed the Secretary of Defense to review the TRICARE program to identify opportunities for increased participation by the Department of Veterans Affairs in that program; (4) directed the Department of Defense-Department of Veterans Affairs Federal Pharmacy Executive Steering Committee to examine existing pharmaceutical benefits and programs for beneficiaries and review existing methods for contracting for and distributing medical supplies and services and to submit a report on the results of the examination to committees of Congress not later than 60 days after its completion; and (5) directed the Secretary of Defense and the Secretary of Veterans Affairs to jointly submit to committees of Congress a report, not later than Mar. 1, 1999, on the status of the efforts of the Department of Defense and the Department of Veterans Affairs to standardize physical examinations administered by the two departments for the purpose of determining or rating disabilities.

EXTERNAL PEER REVIEW FOR DEFENSE HEALTH PROGRAM EXTRAMURAL MEDICAL RESEARCH INVOLVING HUMAN SUBJECTS

Pub. L. 104–201, div. A, title VII, §742, Sept. 23, 1996, 110 Stat. 2600, provided that:

''(a) ESTABLISHMENT OF EXTERNAL PEER REVIEW PROCESS.—The Secretary of Defense shall establish a peer review process that will use persons who are not officers or employees of the Government to review the research protocols of medical research projects.

''(b) PEER REVIEW REQUIREMENTS.—Funds of the Department of Defense may not be obligated or expended for any medical research project unless the research protocol for the project has been approved by the external peer review process established under subsection (a).

''(c) MEDICAL RESEARCH PROJECT DEFINED.—For purposes of this section, the term 'medical research project' means a research project that—

''(1) involves the participation of human subjects;

''(2) is conducted solely by a non-Federal entity; and

''(3) is funded through the Defense Health Program account.

''(d) EFFECTIVE DATE.—The peer review requirements of subsection (b) shall take effect on October 1, 1996, and, except as provided in subsection (e), shall apply to all medical research projects proposed funded on or after that date, including medical research projects funded pursuant to any requirement of law enacted before, on, or after that date.

''(e) EXCEPTIONS.—Only the following medical research projects shall be exempt from the peer review requirements of subsection (b):

''(1) A medical research project that the Secretary determines has been substantially completed by October 1, 1996.

''(2) A medical research project funded pursuant to any provision of law enacted on or after that date if the provision of law specifically refers to this section and specifically states that the peer review requirements do not apply.''

ANNUAL BENEFICIARY SURVEY

Pub. L. 102–484, div. A, title VII, §724, Oct. 23, 1992, 106 Stat. 2440, as amended by Pub. L. 103–337, div. A, title VII, §717, Oct. 5, 1994, 108 Stat. 2804, provided that:

''(a) SURVEY REQUIRED.—The administering Secretaries shall conduct annually a formal survey of persons receiving health care under chapter 55 of title 10, United States Code, in order to determine the following:

''(1) The availability of health care services to such persons through the health care system provided for under that chapter, the types of services received, and the facilities in which the services were provided.

''(2) The familiarity of such persons with the services available under that system and with the facilities in which such services are provided.

''(3) The health of such persons.

''(4) The level of satisfaction of such persons with that system and the quality of the health care provided through that system.

''(5) Such other matters as the administering Secretaries determine appropriate.

''(b) EXEMPTION.—An annual survey under subsection (a) shall be treated as not a collection of information for the purposes for which such term is defined in section 3502(4) of title 44, United States Code.

''(c) DEFINITION.—For purposes of this section, the term 'administering Secretaries' has the meaning given such term in section 1072(3) of title 10, United States Code.''

COMPREHENSIVE STUDY OF MILITARY MEDICAL CARE SYSTEM

Pub. L. 102–190, div. A, title VII, §733, Dec. 5, 1991, 105 Stat. 1408, as amended by Pub. L. 102–484, div. A, title VII, §723, Oct. 23, 1992, 106 Stat. 2440, directed Secretary of Defense to conduct a comprehensive study of the military medical care system, not later than Dec. 15, 1992, to submit to congressional defense committees a detailed accounting on progress of the study, including preliminary results of the study, and not later than Dec. 15, 1993, submit to congressional defense committees a final report on the study.

IDENTIFICATION AND TREATMENT OF DRUG AND ALCOHOL DEPENDENT PERSONS IN THE ARMED FORCES

Pub. L. 92–129, title V, §501, Sept. 28, 1971, 85 Stat. 361, which directed Secretary of Defense to devise ways to identify, treat, and rehabilitate drug and alcohol dependent members of the armed forces, to identify, refuse admission to, and refer to civilian treatment facilities such persons seeking entrance to the armed forces, and to report to Congress on and suggest additional legislation concerning these matters, was repealed and restated as sections 978 and 1090 of this title by Pub. L. 97–295, §§1(14)(A), (15)(A), 6(b), Oct. 12, 1982, 96 Stat. 1289, 1290, 1314.

DEFINITIONS

Pub. L. 114–328, div. A, title VII, §728(c), Dec. 23, 2016, 130 Stat. 2234, provided that: ''In this section [amending section 1073b of this title and enacting provisions set out as a note under this section]:

''(1) The term 'Core Quality Measures Collaborative' means the collaboration between the Centers for Medicare & Medicaid Services, major health insurance companies, national physician organizations, and other entities to reach consensus on core performance measures reported by health care providers.

''(2) The term 'TRICARE program' has the meaning given that term in section 1072 of title 10, United States Code.''

EX. ORD. NO. 13625. IMPROVING ACCESS TO MENTAL HEALTH SERVICES FOR VETERANS, SERVICE MEMBERS, AND MILITARY FAMILIES

Ex. Ord. No. 13625, Aug. 31, 2012, 77 F.R. 54783, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, I hereby order as follows:

SECTION 1. *Policy*. Since September 11, 2001, more than two million service members have deployed to Iraq or

Afghanistan. Long deployments and intense combat conditions require optimal support for the emotional and mental health needs of our service members and their families. The need for mental health services will only increase in the coming years as the Nation deals with the effects of more than a decade of conflict. Reiterating and expanding upon the commitment outlined in my Administration's 2011 report, entitled ''Strengthening Our Military Families,'' we have an obligation to evaluate our progress and continue to build an integrated network of support capable of providing effective mental health services for veterans, service members, and their families. Our public health approach must encompass the practices of disease prevention and the promotion of good health for all military populations throughout their lifespans, both within the health care systems of the Departments of Defense and Veterans Affairs and in local communities. Our efforts also must focus on both outreach to veterans and their families and the provision of high quality mental health treatment to those in need. Coordination between the Departments of Veterans Affairs and Defense during service members' transition to civilian life is essential to achieving these goals.

Ensuring that all veterans, service members (Active, Guard, and Reserve alike), and their families receive the support they deserve is a top priority for my Administration. As part of our ongoing efforts to improve all facets of military mental health, this order directs the Secretaries of Defense, Health and Human Services, Education, Veterans Affairs, and Homeland Security to expand suicide prevention strategies and take steps to meet the current and future demand for mental health and substance abuse treatment services for veterans, service members, and their families.

SEC. 2. *Suicide Prevention*. (a) By December 31, 2012, the Department of Veterans Affairs, in continued collaboration with the Department of Health and Human Services, shall expand the capacity of the Veterans Crisis Line by 50 percent to ensure that veterans have timely access, including by telephone, text, or online chat, to qualified, caring responders who can help address immediate crises and direct veterans to appropriate care. Further, the Department of Veterans Affairs shall ensure that any veteran identifying him or herself as being in crisis connects with a mental health professional or trained mental health worker within 24 hours. The Department of Veterans Affairs also shall expand the number of mental health professionals who are available to see veterans beyond traditional business hours.

(b) The Departments of Veterans Affairs and Defense shall jointly develop and implement a national suicide prevention campaign focused on connecting veterans and service members to mental health services. This 12-month campaign, which shall begin on September 1, 2012, will focus on the positive benefits of seeking care and encourage veterans and service members to proactively reach out to support services.

(c) To provide the best mental health and substance abuse prevention, education, and outreach support to our military and their family members, the Department of Defense shall review all of its existing mental health and substance abuse prevention, education, and outreach programs across the military services and the Defense Health Program to identify the key program areas that produce the greatest impact on quality and outcomes, and rank programs within each of these program areas using metrics that assess their effectiveness. By the end of Fiscal Year 2014, existing program resources shall be realigned to ensure that highly ranked programs are implemented across all of the military services and less effective programs are replaced.

SEC. 3. *Enhanced Partnerships Between the Department of Veterans Affairs and Community Providers*. (a) Within 180 days of the date of this order, in those service areas where the Department of Veterans Affairs has faced challenges in hiring and placing mental health service providers and continues to have unfilled vacancies or long wait times, the Departments of Veterans Affairs and Health and Human Services shall establish pilot projects whereby the Department of Veterans Affairs contracts or develops formal arrangements with community-based providers, such as community mental health clinics, community health centers, substance abuse treatment facilities, and rural health clinics, to test the effectiveness of community partnerships in helping to meet the mental health needs of veterans in a timely way. Pilot sites shall ensure that consumers of community-based services continue to be integrated into the health care systems of the Department of Veterans Affairs. No fewer than 15 pilot projects shall be established.

(b) The Department of Veterans Affairs shall develop guidance for its medical centers and service networks that supports the use of community mental health services, including telehealth services and substance abuse services, where appropriate, to meet demand and facilitate access to care. This guidance shall include recommendations that medical centers and service networks use community-based providers to help meet veterans' mental health needs where objective criteria, which the Department of Veterans Affairs shall define in the form of specific metrics, demonstrate such needs. Such objective criteria should include estimates of wait-times for needed care that exceed established targets.

(c) The Departments of Health and Human Services and Veterans Affairs shall develop a plan for a rural mental health recruitment initiative to promote opportunities for the Department of Veterans Affairs and rural communities to share mental health providers when demand is insufficient for either the Department of Veterans Affairs or the communities to independently support a full-time provider.

SEC. 4. *Expanded Department of Veterans Affairs Mental Health Services Staffing*. The Secretary of Veterans Affairs shall, by December 31, 2013, hire and train 800 peer-to-peer counselors to empower veterans to support other veterans and help meet mental health care needs. In addition, the Secretary shall continue to use all appropriate tools, including collaborative arrangements with community-based providers, pay-setting authorities, loan repayment and scholarships, and partnerships with health care workforce training programs to accomplish the Department of Veterans Affairs' goal of recruiting, hiring, and placing 1,600 mental health professionals by June 30, 2013. The Department of Veterans Affairs also shall evaluate the reporting requirements associated with providing mental health services and reduce paperwork requirements where appropriate. In addition, the Department of Veterans Affairs shall update its management performance evaluation system to link performance to meeting mental health service demand.

SEC. 5. *Improved Research and Development*. (a) The lack of full understanding of the underlying mechanisms of Post-Traumatic Stress Disorder (PTSD), other mental health conditions, and Traumatic Brain Injury (TBI) has hampered progress in prevention, diagnosis, and treatment. In order to improve the coordination of agency research into these conditions and reduce the number of affected men and women through better prevention, diagnosis, and treatment, the Departments of Defense, Veterans Affairs, Health and Human Services, and Education, in coordination with the Office of Science and Technology Policy, shall establish a National Research Action Plan within 8 months of the date of this order.

(b) The National Research Action Plan shall include strategies to establish surrogate and clinically actionable biomarkers for early diagnosis and treatment effectiveness; develop improved diagnostic criteria for TBI; enhance our understanding of the mechanisms responsible for PTSD, related injuries, and neurological disorders following TBI; foster development of new treatments for these conditions based on a better understanding of the underlying mechanisms; improve data sharing between agencies and academic and indus-

try researchers to accelerate progress and reduce redundant efforts without compromising privacy; and make better use of electronic health records to gain insight into the risk and mitigation of PTSD, TBI, and related injuries. In addition, the National Research Action Plan shall include strategies to support collaborative research to address suicide prevention.

(c) The Departments of Defense and Health and Human Services shall engage in a comprehensive longitudinal mental health study with an emphasis on PTSD, TBI, and related injuries to develop better prevention, diagnosis, and treatment options. Agencies shall continue ongoing collaborative research efforts, with an aim to enroll at least 100,000 service members by December 31, 2012, and include a plan for long-term follow-up with enrollees through a coordinated effort with the Department of Veterans Affairs.

SEC. 6. *Military and Veterans Mental Health Interagency Task Force*. There is established an Interagency Task Force on Military and Veterans Mental Health (Task Force), to be co-chaired by the Secretaries of Defense, Veterans Affairs, and Health and Human Services, or their designated representatives.

(a) *Membership*. In addition to the Co-Chairs, the Task Force shall consist of representatives from:

(i) the Department of Education;

(ii) the Office of Management and Budget;

(iii) the Domestic Policy Council;

(iv) the National Security Staff;

(v) the Office of Science and Technology Policy;

(vi) the Office of National Drug Control Policy; and

(vii) such other executive departments, agencies, or offices as the Co-Chairs may designate.

A member agency of the Task Force shall designate a full-time officer or employee of the Federal Government to perform the Task Force functions.

(b) *Mission*. Member agencies shall review relevant statutes, policies, and agency training and guidance to identify reforms and take actions that facilitate implementation of the strategies outlined in this order. Member agencies shall work collaboratively on these strategies and also create an inventory of mental health and substance abuse programs and activities to inform this work.

(c) *Functions*.

(i) Not later than 180 days after the date of this order, the Task Force shall submit recommendations to the President on strategies to improve mental health and substance abuse treatment services for veterans, service members, and their families. Every year thereafter, the Task Force shall provide to the President a review of agency actions to enhance mental health and substance abuse treatment services for veterans, service members, and their families consistent with this order, as well as provide additional recommendations for action as appropriate. The Task Force shall define specific goals and metrics that will aid in measuring progress in improving mental health strategies. The Task Force will include cost analysis in the development of all recommendations, and will ensure any new requirements are supported within existing resources.

(ii) In addition to coordinating and reviewing agency efforts to enhance veteran and military mental health services pursuant to this order, the Task Force shall evaluate:

(1) agency efforts to improve care quality and ensure that the Departments of Defense and Veterans Affairs and community-based mental health providers are trained in the most current evidence-based methodologies for treating PTSD, TBI, depression, related mental health conditions, and substance abuse;

(2) agency efforts to improve awareness and reduce stigma for those needing to seek care; and

(3) agency research efforts to improve the prevention, diagnosis, and treatment of TBI, PTSD, and related injuries, and explore the need for an external research portfolio review.

(iii) In performing its functions, the Task Force shall consult with relevant nongovernmental experts and organizations as necessary.

SEC. 7. *General Provisions*. (a) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(b) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

BARACK OBAMA.

[Reference to the National Security Staff deemed to be a reference to the National Security Council Staff, see Ex. Ord. No. 13657, set out as a note under section 3021 of Title 50, War and National Defense.]

§ 1072. Definitions

In this chapter:

(1) The term ''uniformed services'' means the armed forces and the Commissioned Corps of the National Oceanic and Atmospheric Administration and of the Public Health Service.

(2) The term ''dependent'', with respect to a member or former member of a uniformed service, means—

(A) the spouse;

(B) the unremarried widow;

(C) the unremarried widower;

(D) a child who—

(i) has not attained the age of 21;

(ii) has not attained the age of 23, is enrolled in a full-time course of study at an institution of higher learning approved by the administering Secretary and is, or was at the time of the member's or former member's death, in fact dependent on the member or former member for over one-half of the child's support; or

(iii) is incapable of self-support because of a mental or physical incapacity that occurs while a dependent of a member or former member under clause (i) or (ii) and is, or was at the time of the member's or former member's death, in fact dependent on the member or former member for over one-half of the child's support;

(E) a parent or parent-in-law who is, or was at the time of the member's or former member's death, in fact dependent on him for over one-half of his support and residing in his household;

(F) the unremarried former spouse of a member or former member who (i) on the date of the final decree of divorce, dissolution, or annulment, had been married to the member or former member for a period of at least 20 years during which period the member or former member performed at least 20 years of service which is creditable in determining that member's or former member's eligibility for retired or retainer pay, or equivalent pay, and (ii) does not have medical coverage under an employer-sponsored health plan;

(G) a person who (i) is the unremarried former spouse of a member or former member who performed at least 20 years of serv-

ice which is creditable in determining the member or former member's eligibility for retired or retainer pay, or equivalent pay, and on the date of the final decree of divorce, dissolution, or annulment before April 1, 1985, had been married to the member or former member for a period of at least 20 years, at least 15 of which, but less than 20 of which, were during the period the member or former member performed service creditable in determining the member or former member's eligibility for retired or retainer pay, and (ii) does not have medical coverage under an employer-sponsored health plan;

(H) a person who would qualify as a dependent under clause (G) but for the fact that the date of the final decree of divorce, dissolution, or annulment of the person is on or after April 1, 1985, except that the term does not include the person after the end of the one-year period beginning on the date of that final decree; and

(I) an unmarried person who—

(i) is placed in the legal custody of the member or former member as a result of an order of a court of competent jurisdiction in the United States (or possession of the United States) for a period of at least 12 consecutive months;

(ii) either—

(I) has not attained the age of 21;

(II) has not attained the age of 23 and is enrolled in a full time course of study at an institution of higher learning approved by the administering Secretary; or

(III) is incapable of self support because of a mental or physical incapacity that occurred while the person was considered a dependent of the member or former member under this subparagraph pursuant to subclause (I) or (II);

(iii) is dependent on the member or former member for over one-half of the person's support;

(iv) resides with the member or former member unless separated by the necessity of military service or to receive institutional care as a result of disability or incapacitation or under such other circumstances as the administering Secretary may by regulation prescribe; and

(v) is not a dependent of a member or a former member under any other subparagraph.

(3) The term ''administering Secretaries'' means the Secretaries of executive departments specified in section 1073 of this title as having responsibility for administering this chapter.

(4) The term ''Civilian Health and Medical Program of the Uniformed Services'' means the program authorized under sections 1079 and 1086 of this title and includes contracts entered into under section 1091 or 1097 of this title and demonstration projects under section 1092 of this title.

(5) The term ''covered beneficiary'' means a beneficiary under this chapter other than a beneficiary under section 1074(a) of this title.

(6) The term ''child'', with respect to a member or former member of a uniformed service, means the following:

(A) An unmarried legitimate child.

(B) An unmarried adopted child.

(C) An unmarried stepchild.

(D) An unmarried person—

(i) who is placed in the home of the member or former member by a placement agency (recognized by the Secretary of Defense), or by any other source authorized by State or local law to provide adoption placement, in anticipation of the legal adoption of the person by the member or former member; and

(ii) who otherwise meets the requirements specified in paragraph (2)(D).

(7) The term ''TRICARE program'' means the various programs carried out by the Secretary of Defense under this chapter and any other provision of law providing for the furnishing of medical and dental care and health benefits to members and former members of the uniformed services and their dependents, including the following health plan options:

(A) TRICARE Prime.

(B) TRICARE Select.

(C) TRICARE for Life.

(8) The term ''custodial care'' means treatment or services, regardless of who recommends such treatment or services or where such treatment or services are provided, that—

(A) can be rendered safely and reasonably by a person who is not medically skilled; or

(B) is or are designed mainly to help the patient with the activities of daily living.

(9) The term ''domiciliary care'' means care provided to a patient in an institution or homelike environment because—

(A) providing support for the activities of daily living in the home is not available or is unsuitable; or

(B) members of the patient's family are unwilling to provide the care.

(10) The term ''health care'' includes mental health care.

(11) The term ''TRICARE Extra'' means the preferred-provider option of the TRICARE program made available prior to January 1, 2018, under which TRICARE Standard beneficiaries may obtain discounts on cost sharing as a result of using TRICARE network providers.

(12) The term ''TRICARE Select'' means the self-managed, preferred-provider network option under the TRICARE program established by section 1075 of this title.

(13) The term ''TRICARE for Life'' means the Medicare wraparound coverage option of the TRICARE program made available to the beneficiary by reason of section 1086(d) of this title.

(14) The term ''TRICARE Prime'' means the managed care option of the TRICARE program.

(15) The term ''TRICARE Standard'' means the TRICARE program made available prior to January 1, 2018, covering health benefits contracted for under the authority of section

1079(a) or 1086(a) of this title and subject to the same rates and conditions as apply to persons covered under those sections.

(Added Pub. L. 85–861, § 1(25)(B), Sept. 2, 1958, 72 Stat. 1446; amended Pub. L. 89–614, § 2(1), Sept. 30, 1966, 80 Stat. 862; Pub. L. 89–718, § 8(a), Nov. 2, 1966, 80 Stat. 1117; Pub. L. 96–513, title I, § 115(b), title V, § 511(34)(A), (35), (36), Dec. 12, 1980, 94 Stat. 2877, 2922, 2923; Pub. L. 97–252, title X, § 1004(a), Sept. 8, 1982, 96 Stat. 737; Pub. L. 98–525, title VI, § 645(a), Oct. 19, 1984, 98 Stat. 2548; Pub. L. 98–557, § 19(1), Oct. 30, 1984, 98 Stat. 2869; Pub. L. 99–661, div. A, title VII, § 701(b), Nov. 14, 1986, 100 Stat. 3898; Pub. L. 101–189, div. A, title VII, § 731(a), Nov. 29, 1989, 103 Stat. 1481; Pub. L. 102–484, div. A, title VII, § 706, Oct. 23, 1992, 106 Stat. 2433; Pub. L. 103–160, div. A, title VII, § 702(a), Nov. 30, 1993, 107 Stat. 1686; Pub. L. 103–337, div. A, title VII, § 701(a), Oct. 5, 1994, 108 Stat. 2797; Pub. L. 105–85, div. A, title VII, § 711, Nov. 18, 1997, 111 Stat. 1808; Pub. L. 107–107, div. A, title VII, § 701(c), Dec. 28, 2001, 115 Stat. 1160; Pub. L. 109–163, div. A, title V, § 592(b), title X, § 1057(a)(2), Jan. 6, 2006, 119 Stat. 3280, 3440; Pub. L. 110–181, div. A, title VII, § 708(a), Jan. 28, 2008, 122 Stat. 190; Pub. L. 114–328, div. A, title VII, § 701(j)(1)(A), Dec. 23, 2016, 130 Stat. 2191; Pub. L. 115–91, div. A, title VII, § 739(a), Dec. 12, 2017, 131 Stat. 1446.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1072(1)	37:402(a)(1).	June 7, 1956, ch. 374, § 102(a)(1), (4), 70 Stat. 250.
1072(2)	37:402(a)(4).	

In clause (1), the words ''the armed forces'' are substituted for the words ''the Army, the Navy, the Air Force, the Marine Corps, the Coast Guard'' to reflect section 101(4) of this title.

In clause (2), the words ''or to a person who died while a member or retired member of a uniformed service'' and ''lawful'' are omitted as surplusage. The word ''former'' is substituted for the word ''retired'', since a retired member or a member of the Fleet Reserve or the Fleet Marine Corps Reserve is already included as a ''member'' of an armed force.

Clause (2)(E) combines 37:402(a)(4)(E) and (G).

PRIOR PROVISIONS

A prior section 1072, act Aug. 10, 1956, ch. 1041, 70A Stat. 81, defined terms used in former sections 1071 to 1086 of this title, prior to repeal by Pub. L. 85–861, § 36B(5), Sept. 2, 1958, 72 Stat. 1570, as superseded by the Federal Voting Assistance Act of 1955 which is classified to subchapter I–D (§ 1973cc et seq.) of chapter 20 of Title 42, The Public Health and Welfare.

AMENDMENTS

2017—Par. (15). Pub. L. 115–91 amended par. (15) generally. Prior to amendment, par. (15) read as follows: ''The term 'TRICARE Standard' means the TRICARE program made available prior to January 1, 2018, covering—

''(A) medical care to which a dependent described in section 1076(a)(2) of this title is entitled; and

''(B) health benefits contracted for under the authority of section 1079(a) of this title and subject to the same rates and conditions as apply to persons covered under that section.''

2016—Par. (7). Pub. L. 114–328, § 701(j)(1)(A)(i), added par. (7) and struck out former par. (7) which read as follows: ''The term 'TRICARE program' means the managed health care program that is established by the Department of Defense under the authority of this chapter, principally section 1097 of this title, and includes the competitive selection of contractors to financially underwrite the delivery of health care services under the Civilian Health and Medical Program of the Uniformed Services.''

Pars. (11) to (15). Pub. L. 114–328, § 701(j)(1)(A)(ii), added pars. (11) to (15).

2008—Par. (10). Pub. L. 110–181 added par. (10).

2006—Par. (2)(I)(i). Pub. L. 109–163, § 1057(a)(2), struck out ''or a Territory'' before ''or possession''.

Par. (6)(D)(i). Pub. L. 109–163, § 592(b), inserted '', or by any other source authorized by State or local law to provide adoption placement,'' after ''(recognized by the Secretary of Defense)''.

2001—Pars. (8), (9). Pub. L. 107–107 added pars. (8) and (9).

1997—Par. (7). Pub. L. 105–85 added par. (7).

1994—Par. (2)(D). Pub. L. 103–337, § 701(a)(1), substituted ''a child who'' for ''an unmarried legitimate child, including an adopted child or stepchild, who'' in introductory provisions.

Par. (6). Pub. L. 103–337, § 701(a)(2), added par. (6).

1993—Par. (2)(I). Pub. L. 103–160 added subpar. (I).

1992—Par. (2)(D). Pub. L. 102–484 added subpar. (D) and struck out former subpar. (D) which read as follows: ''an unmarried legitimate child, including an adopted child or a stepchild, who either—

''(i) has not passed his twenty-first birthday;

''(ii) is incapable of self-support because of a mental or physical incapacity that existed before that birthday and is, or was at the time of the member's or former member's death, in fact dependent on him for over one-half of his support; or

''(iii) has not passed his twenty-third birthday, is enrolled in a full-time course of study in an institution of higher learning approved by the administering Secretary and is, or was at the time of the member's or former member's death, in fact dependent on him for over one-half of his support;''.

1989—Par. (2)(H). Pub. L. 101–189 added subpar. (H).

1986—Par. (1). Pub. L. 99–661, § 701(b)(1), substituted ''The term 'uniformed services' means'' for '''Uniformed services' means''.

Par. (2). Pub. L. 99–661, § 701(b)(2), substituted ''The term 'dependent', with respect to'' for '''Dependent', with respect to''.

Par. (3). Pub. L. 99–661, § 701(b)(3), substituted ''The term 'administering Secretaries' means'' for '''Administering Secretaries' means''.

Pars. (4), (5). Pub. L. 99–661, § 701(b)(4), added pars. (4) and (5).

1984—Par. (2)(D)(iii). Pub. L. 98–557, § 19(1)(A), substituted reference to the administering Secretary for reference to the Secretary of Defense or the Secretary of Health and Human Services.

Par. (2)(G). Pub. L. 98–525 added subpar. (G).

Par. (3). Pub. L. 98–557, § 19(1)(B), added par. (3).

1982—Par. (2)(F). Pub. L. 97–252 added cl. (F).

1980—Pub. L. 96–513, § 511(34)(A), substituted in introductory material reference to this chapter for reference to sections 1071–1087 of this title.

Par. (1). Pub. L. 96–513, § 511(35), substituted ''National Oceanic and Atmospheric Administration'' for ''Environmental Science Services Administration''.

Par. (2). Pub. L. 96–513, §§ 115(b), 511(36), substituted ''spouse'' for ''wife'' in cl. (A), struck out cl. (C) ''the husband, if he is in fact dependent on the member or former member for over one-half of his support;'', redesignated cls. (D), (E), and (F) as (C), (D), and (E), respectively, in cl. (C) as so redesignated, struck out '', if, because of mental or physical incapacity he was in fact dependent on the member or former member at the time of her death for over one-half of his support'' after ''the unremarried widower'', and in cl. (D)(iii) as so redesignated, substituted ''Health and Human Services'' for ''Health, Education, and Welfare''.

1966—Pub. L. 89–718 substituted ''Environmental Science Services Administration'' for ''Coast and Geodetic Survey'' in clause (1).

Pub. L. 89–614 substituted ''1087'' for ''1085'' in introductory phrase.

EFFECTIVE DATE OF 2016 AMENDMENT

Pub. L. 114–328, div. A, title VII, § 701(k), Dec. 23, 2016, 130 Stat. 2193, provided that: ''The amendments made by this section [enacting sections 1075 and 1075a of this title and amending this section and sections 1076d, 1076e, 1079a, 1095f, 1099, and 1110b of this title] shall apply with respect to the provision of health care under the TRICARE program beginning on January 1, 2018.''

EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103–160, div. A, title VII, § 702(b), Nov. 30, 1993, 107 Stat. 1686, provided that: ''Section 1072(2)(I) of title 10, United States Code, as added by subsection (a), shall apply with respect to determinations of dependency made on or after July 1, 1994.''

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–189, div. A, title VII, § 731(d), Nov. 29, 1989, 103 Stat. 1482, provided that:

''(1) The amendments made by this section [enacting section 1086a of this title and amending this section and sections 1076 and 1086 of this title] apply to a person referred to in section 1072(2)(H) of title 10, United States Code (as added by subsection (a)), whose decree of divorce, dissolution, or annulment becomes final on or after the date of the enactment of this Act [Nov. 29, 1989].

''(2) The amendments made by this section shall also apply to a person referred to in such section whose decree of divorce, dissolution, or annulment became final during the period beginning on September 29, 1988, and ending on the day before the date of the enactment of this Act, as if the amendments had become effective on September 29, 1988.''

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–525, title VI, § 645(d), Oct. 19, 1984, 98 Stat. 2549, provided that: ''The amendments made by subsections (a), (b), and (c) [amending this section and provisions set out as a note under section 1408 of this title and enacting provisions set out as a note under this section] shall be effective on January 1, 1985, and shall apply with respect to health care furnished on or after that date.''

EFFECTIVE DATE OF 1982 AMENDMENT; TRANSITION PROVISIONS

Amendment by Pub. L. 97–252 effective Feb. 1, 1983, and applicable in the case of any former spouse of a member or former member of the uniformed services whether final decree of divorce, dissolution, or annulment of marriage of former spouse and such member or former member is dated before, on, or after Feb. 1, 1983, see section 1006 of Pub. L. 97–252, set out as an Effective Date; Transition Provisions note under section 1408 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by section 115(b) of Pub. L. 96–513 effective Sept. 15, 1981, but the authority to prescribe regulations under the amendment by Pub. L. 96–513 effective on Dec. 12, 1980, and amendment by section 511(34)(A), (35), (36) of Pub. L. 96–513 effective Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

For effective date of amendment by Pub. L. 89–614, see section 3 of Pub. L. 89–614, set out as a note under section 1071 of this title.

REPEALS

The directory language of, but not the amendment made by, Pub. L. 89–718, § 8(a), Nov. 2, 1966, 80 Stat. 1117, cited as a credit to this section, was repealed by Pub. L. 97–295, § 6(b), Oct. 12, 1982, 96 Stat. 1314.

CONTINUATION OF INDIVIDUAL CASE MANAGEMENT SERVICES FOR CERTAIN ELIGIBLE BENEFICIARIES

Pub. L. 107–107, div. A, title VII, § 701(d), Dec. 28, 2001, 115 Stat. 1160, provided that:

''(1) Notwithstanding the termination of the Individual Case Management Program by subsection (g) [amending section 1079 of this title and repealing provisions set out as a note under section 1077 of this title], the Secretary of Defense shall, in any case in which the Secretary makes the determination described in paragraph (2), continue to provide payment as if such program were in effect for home health care or custodial care services provided to an eligible beneficiary that would otherwise be excluded from coverage under regulations implementing chapter 55 of title 10, United States Code.

''(2) The determination referred to in paragraph (1) is a determination that discontinuation of payment for services not otherwise provided under such chapter would result in the provision of services inadequate to meet the needs of the eligible beneficiary and would be unjust to such beneficiary.

''(3) For purposes of this subsection, 'eligible beneficiary' means a covered beneficiary (as that term is defined in section 1072 of title 10, United States Code) who, before the effective date of this section [Dec. 28, 2001], was provided custodial care services under the Individual Case Management Program for which the Secretary provided payment.''

IMPROVEMENTS IN ADMINISTRATION OF THE TRICARE PROGRAM; FLEXIBILITY OF CONTRACTING

Pub. L. 107–107, div. A, title VII, § 708(a), Dec. 28, 2001, 115 Stat. 1164, provided that:

''(1) During the one-year period following the date of the enactment of this Act [Dec. 28, 2001], section 1072(7) of title 10, United States Code, shall be deemed to be amended by striking 'the competitive selection of contractors to financially underwrite'.

''(2) The terms and conditions of any contract to provide health care services under the TRICARE program entered into during the period described in paragraph (1) shall not be considered to be modified or terminated as a result of the termination of such period.''

TRANSITIONAL PROVISIONS FOR QUALIFICATION FOR CONVERSION HEALTH POLICIES; PREEXISTING CONDITIONS

Pub. L. 101–189, div. A, title VII, § 731(e), Nov. 29, 1989, 103 Stat. 1483, provided that:

''(1) In the case of a person who qualified as a dependent under section 645(c) of the Department of Defense Authorization Act, 1985 (Public Law 98–525; 98 Stat. 2549) [set out below], on September 28, 1988, the Secretary of Defense shall make a conversion health policy available for purchase by the person during the remaining period the person is considered to be a dependent under that section (or within a reasonable time after that period as prescribed by the Secretary of Defense).

''(2) Purchase of a conversion health policy under paragraph (1) by a person shall entitle the person to health care for preexisting conditions in the same manner and to the same extent as provided by section 1086a(b) of title 10, United States Code (as added by subsection (b)), until the end of the one-year period beginning on the later of—

''(A) the date the person is no longer qualified as a dependent under section 645(c) of the Department of Defense Authorization Act, 1985; and

''(B) the date of the purchase of the policy.

''(3) For purposes of this subsection, the term 'conversion health policy' has the meaning given that term in section 1086a(c) of title 10, United States Code (as added by subsection (b)).''

DEPENDENT; QUALIFICATION AS; EFFECTIVE DATE

Pub. L. 98–525, title VI, § 645(c), Oct. 19, 1984, 98 Stat. 2549, as amended by Pub. L. 99–661, div. A, title VI, § 646, Nov. 14, 1986, 100 Stat. 3887; Pub. L. 100–271, § 1, Mar. 29, 1988, 102 Stat. 45; Pub. L. 100–271, § 1, Mar. 29, 1988, 102

Stat. 45, provided that a person who would qualify as a dependent under section 1072(2)(G) of title 10 but for the fact that the person's final decree of divorce, dissolution, or annulment was dated on or after Apr. 1, 1985, would be considered to be a dependent under such section until the later of (1) Dec. 31, 1988, and (2) the last day of the two-year period beginning on the date of such final decree, prior to repeal by Pub. L. 100–456, div. A, title VI, §651(b), Sept. 29, 1988, 102 Stat. 1990, effective Sept. 29, 1988, or 30 days after the Secretary of Defense first makes available a conversion health policy (as defined in section 1076(f) of title 10), whichever is later.

§ 1073. Administration of this chapter

(a) RESPONSIBLE OFFICIALS.—(1) Except as otherwise provided in this chapter, the Secretary of Defense shall administer this chapter for the armed forces under his jurisdiction, the Secretary of Homeland Security shall administer this chapter for the Coast Guard when the Coast Guard is not operating as a service in the Navy, and the Secretary of Health and Human Services shall administer this chapter for the National Oceanic and Atmospheric Administration and the Public Health Service. This chapter shall be administered consistent with the Assisted Suicide Funding Restriction Act of 1997 (42 U.S.C. 14401 et seq.).

(2) Except as otherwise provided in this chapter, the Secretary of Defense shall have responsibility for administering the TRICARE program and making any decision affecting such program.

(b) STABILITY IN PROGRAM OF BENEFITS.—The Secretary of Defense shall, to the maximum extent practicable, provide a stable program of benefits under this chapter throughout each fiscal year. To achieve the stability in the case of managed care support contracts entered into under this chapter, the contracts shall be administered so as to implement all changes in benefits and administration on a quarterly basis. However, the Secretary of Defense may implement any such change prior to the next fiscal quarter if the Secretary determines that the change would significantly improve the provision of care to eligible beneficiaries under this chapter.

(Added Pub. L. 85–861, §1(25)(B), Sept. 2, 1958, 72 Stat. 1446; amended Pub. L. 89–614, §2(1), Sept. 30, 1966, 80 Stat. 862; Pub. L. 89–718, §8(a), Nov. 2, 1966, 80 Stat. 1117; Pub. L. 96–513, title V, §511(34)(A), (C), (35), (36), Dec. 12, 1980, 94 Stat. 2922, 2923; Pub. L. 98–557, §19(2), Oct. 30, 1984, 98 Stat. 2869; Pub. L. 105–12, §9(h), Apr. 30, 1997, 111 Stat. 27; Pub. L. 106–65, div. A, title VII, §725, title X, §1066(a)(7), Oct. 5, 1999, 113 Stat. 698, 770; Pub. L. 107–296, title XVII, §1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 111–383, div. A, title VII, §711, Jan. 7, 2011, 124 Stat. 4246.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1073 ………	37:402(b).	June 7, 1956, ch. 374, §102(b), 70 Stat. 251.

The words "armed forces under his jurisdiction" are substituted for the words "Army, Navy, Air Force, and Marine Corps and for the Coast Guard when it is operating as a service in the Navy" to reflect section 101(4) of this title.

REFERENCES IN TEXT

The Assisted Suicide Funding Restriction Act of 1997, referred to in subsec. (a)(1), is Pub. L. 105–12, Apr. 30, 1997, 111 Stat. 23, which is classified principally to chapter 138 (§14401 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 14401 of Title 42 and Tables.

PRIOR PROVISIONS

A prior section 1073, act Aug. 10, 1956, ch. 1041, 70A Stat. 82, related to right to vote in war-time presidential and congressional election, prior to repeal by Pub. L. 85–861, §36B(5), Sept. 2, 1958, 72 Stat. 1570, as superseded by the Federal Voting Assistance Act of 1955 which is classified to subchapter I–D (§1973cc et seq.) of chapter 20 of Title 42, The Public Health and Welfare.

AMENDMENTS

2011—Subsec. (a). Pub. L. 111–383 designated existing provisions as par. (1) and added par. (2).

2002—Subsec. (a). Pub. L. 107–296 substituted "of Homeland Security" for "of Transportation".

1999—Pub. L. 106–65, §725, designated existing provisions, as amended by Pub. L. 106–65, §1066(a)(7), as subsec. (a), inserted heading, and added subsec. (b).

Pub. L. 106–65, §1066(a)(7), inserted "(42 U.S.C. 14401 et seq.)" after "Act of 1997".

1997—Pub. L. 105–12 inserted at end "This chapter shall be administered consistent with the Assisted Suicide Funding Restriction Act of 1997."

1984—Pub. L. 98–557 inserted provisions which transferred authority to administer chapter for the Coast Guard when the Coast Guard is not operating as a service in the Navy from the Secretary of Health and Human Services to the Secretary of Transportation.

1980—Pub. L. 96–513 substituted in section catchline "of this chapter" for "of sections 1071–1087 of this title", and substituted in text "this chapter" for "sections 1071–1087 of this title", "those sections", and "them", "Secretary of Health and Human Services" for "Secretary of Health, Education, and Welfare", and "National Oceanic and Atmospheric Administration" for "Environmental Science Services Administration".

1966—Pub. L. 89–718 substituted "Environmental Science Services Administration" for "Coast and Geodetic Survey".

Pub. L. 89–614 substituted "1087" for "1085" in section catchline and text.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–12 effective Apr. 30, 1997, and applicable to Federal payments made pursuant to obligations incurred after Apr. 30, 1997, for items and services provided on or after such date, subject to also being applicable with respect to contracts entered into, renewed, or extended after Apr. 30, 1997, as well as contracts entered into before Apr. 30, 1997, to the extent permitted under such contracts, see section 11 of Pub. L. 105–12, set out as an Effective Date note under section 14401 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

For effective date of amendment by Pub. L. 89–614, see section 3 of Pub. L. 89–614, set out as a note under section 1071 of this title.

REPEALS

The directory language of, but not the amendment made by, Pub. L. 89–718, §8(a), Nov. 2, 1966, 80 Stat. 1117,

cited as a credit to this section, was repealed by Pub. L. 97–295, § 6(b), Oct. 12, 1982, 96 Stat. 1314.

EXTRAMEDICAL MATERNAL HEALTH PROVIDERS DEMONSTRATION PROJECT

Pub. L. 116–283, div. A, title VII, § 746, Jan. 1, 2021, 134 Stat. 3710, provided that:

''(a) DEMONSTRATION PROJECT REQUIRED.—Not later than one year after the date of the enactment of this Act [Jan. 1, 2021], the Secretary of Defense shall commence carrying out a demonstration project designed to evaluate the cost, quality of care, and impact on maternal and fetal outcomes of using extramedical maternal health providers under the TRICARE program to determine the appropriateness of making coverage of such providers under the TRICARE program permanent.

''(b) ELEMENTS OF DEMONSTRATION PROJECT.—The demonstration project under subsection (a) shall include, for participants in the demonstration project, the following:

''(1) Access to doulas.

''(2) Access to lactation consultants or lactation counselors who are not otherwise authorized to provide services under the TRICARE program.

''(c) PARTICIPANTS.—The Secretary shall establish a process under which covered beneficiaries may enroll in the demonstration project to receive the services provided under the demonstration project.

''(d) DURATION.—The Secretary shall carry out the demonstration project for a period of five years beginning on the date on which notification of the commencement of the demonstration project is published in the Federal Register.

''(e) SURVEYS.—

''(1) IN GENERAL.—Not later than one year after the date of the enactment of this Act, and annually thereafter for the duration of the demonstration project, the Secretary shall administer a survey to determine—

''(A) how many members of the Armed Forces or spouses of such members give birth while their spouse or birthing partner is unable to be present due to deployment, training, or other mission requirements;

''(B) how many single members of the Armed Forces give birth alone; and

''(C) how many members of the Armed Forces or spouses of such members use doula, lactation consultant, or lactation counselor support.

''(2) MATTERS COVERED BY SURVEYS.—The surveys administered under paragraph (1) shall include an identification of the following:

''(A) The race, ethnicity, age, sex, relationship status, Armed Force, military occupation, and rank, as applicable, of each individual surveyed.

''(B) If individuals surveyed were members of the Armed Forces or the spouses of such members, or both.

''(C) The length of advanced notice received by individuals surveyed that the member of the Armed Forces would be unable to be present during the birth, if applicable.

''(D) Any resources or support that the individuals surveyed found useful during the pregnancy and birth process, including doula, lactation consultant, or lactation counselor support.

''(f) REPORTS.—

''(1) IMPLEMENTATION PLAN.—Not later than 180 days after the date of the enactment of this Act, the Secretary shall submit to the Committees on Armed Services of the House of Representatives and the Senate a plan to implement the demonstration project.

''(2) ANNUAL REPORT.—

''(A) IN GENERAL.—Not later than one year after the date on which the demonstration project commences, and annually thereafter for the duration of the demonstration project, the Secretary shall submit to the Committees on Armed Services of the House of Representatives and the Senate a report on the cost of the demonstration project and the effectiveness of the demonstration project in improving quality of care and the maternal and fetal outcomes of covered beneficiaries enrolled in the demonstration project.

''(B) MATTERS COVERED.—Each report submitted under subparagraph (A) shall address, at a minimum, the following:

''(i) The number of covered beneficiaries who are enrolled in the demonstration project.

''(ii) The number of enrolled covered beneficiaries who have participated in the demonstration project.

''(iii) The results of the surveys under subsection (e).

''(iv) The cost of the demonstration project.

''(v) An assessment of the quality of care provided to participants in the demonstration project.

''(vi) An assessment of the impact of the demonstration project on maternal and fetal outcomes.

''(vii) An assessment of the effectiveness of the demonstration project.

''(viii) Recommendations for adjustments to the demonstration project.

''(ix) The estimated costs avoided as a result of improved maternal and fetal health outcomes due to the demonstration project.

''(x) Recommendations for extending the demonstration project or implementing permanent coverage under the TRICARE program of extramedical maternal health providers.

''(xi) An identification of legislative or administrative action necessary to make the demonstration project permanent.

''(C) FINAL REPORT.—The final report under subparagraph (A) shall be submitted not later than 90 days after the date on which the demonstration project terminates.

''(g) EXPANSION OF DEMONSTRATION PROJECT.—

''(1) REGULATIONS.—If the Secretary determines that the demonstration project is successful, the Secretary may prescribe regulations to include extramedical maternal health providers as health care providers authorized to provide care under the TRICARE program.

''(2) CREDENTIALING AND OTHER REQUIREMENTS.—The Secretary may establish credentialing and other requirements for doulas, lactation consultants, and lactation counselors through public notice and comment rulemaking for purposes of including doulas, lactation consultants, and lactation counselors as health care providers authorized to provide care under the TRICARE program pursuant to regulations prescribed under paragraph (1).

''(h) DEFINITIONS.—In this section:

''(1) The terms 'covered beneficiary' and 'TRICARE program' have the meanings given those terms in section 1072 of title 10, United States Code.

''(2) The term 'extramedical maternal health provider' means a doula, lactation consultant, or lactation counselor.''

RESIDENCY REQUIREMENTS FOR PODIATRISTS

Pub. L. 115–91, div. A, title VII, § 720, Dec. 12, 2017, 131 Stat. 1440, provided that:

''(a) REQUIREMENT.—In addition to any other qualification required by law or regulation, the Secretary of Defense shall ensure that to serve as a podiatrist in the Armed Forces, an individual must have successfully completed a three-year podiatric medicine and surgical residency.

''(b) APPLICATION.—Subsection (a) shall apply with respect to an individual who is commissioned as an officer in the Armed Forces on or after the date that is one

year after the date of the enactment of this Act [Dec. 12, 2017].''

AUTHORIZATION OF PHYSICAL THERAPIST ASSISTANTS AND OCCUPATIONAL THERAPY ASSISTANTS TO PROVIDE SERVICES UNDER THE TRICARE PROGRAM

Pub. L. 115–91, div. A, title VII, § 721, Dec. 12, 2017, 131 Stat. 1440, provided that:

''(a) ADDITION TO LIST OF AUTHORIZED PROFESSIONAL PROVIDERS OF CARE.—The Secretary of Defense shall revise section 199.6(c) of title 32, Code of Federal Regulations, as in effect on the date of the enactment of this Act [Dec. 12, 2017], to add to the list of individual professional providers of care who are authorized to provide services to beneficiaries under the TRICARE program, as defined in section 1072 of title 10, United States Code, the following types of health care practitioners:

''(1) Licensed or certified physical therapist assistants who meet the qualifications for physical therapist assistants specified in section 484.4 of title 42, Code of Federal Regulations, or any successor regulation, to furnish services under the supervision of a physical therapist.

''(2) Licensed or certified occupational therapy assistants who meet the qualifications for occupational therapy assistants specified in such section 484.4, or any successor regulation, to furnish services under the supervision of an occupational therapist.

''(b) SUPERVISION.—The Secretary of Defense shall establish in regulations requirements for the supervision of physical therapist assistants and occupational therapy assistants, respectively, by physical therapists and occupational therapists, respectively.

''(c) MANUALS AND OTHER GUIDANCE.—The Secretary of Defense shall update the CHAMPVA Policy Manual and other relevant manuals and subregulatory guidance of the Department of Defense to carry out the revisions and requirements of this section.''

TERMINATION OF TRICARE STANDARD AND TRICARE EXTRA

Pub. L. 114–328, div. A, title VII, § 701(e), Dec. 23, 2016, 130 Stat. 2187, provided that: ''Beginning on January 1, 2018, the Secretary of Defense may not carry out TRICARE Standard and TRICARE Extra under the TRICARE program. The Secretary shall ensure that any individual who is covered under TRICARE Standard or TRICARE Extra as of December 31, 2017, enrolls in TRICARE Prime or TRICARE Select, as the case may be, as of January 1, 2018, for the individual to continue coverage under the TRICARE program.''

[For definitions of terms used in section 701(e) of Pub. L. 114–328, set out above, see section 703(i) of Pub. L. 114–328, set out as a note below.]

PILOT PROGRAM ON INCORPORATION OF VALUE-BASED HEALTH CARE IN PURCHASED CARE COMPONENT OF TRICARE PROGRAM

Pub. L. 114–328, div. A, title VII, § 701(h), Dec. 23, 2016, 130 Stat. 2188, provided that:

''(1) IN GENERAL.—Not later than January 1, 2018, the Secretary of Defense shall carry out a pilot program to demonstrate and assess the feasibility of incorporating value-based health care methodology in the purchased care component of the TRICARE program by reducing copayments or cost shares for targeted populations of covered beneficiaries in the receipt of high-value medications and services and the use of high-value providers under such purchased care component, including by exempting certain services from deductible requirements.

''(2) REQUIREMENTS.—In carrying out the pilot program under paragraph (1), the Secretary shall—

''(A) identify each high-value medication and service that is covered under the purchased care component of the TRICARE program for which a reduction or elimination of the copayment or cost share for such medication or service would encourage covered beneficiaries to use the medication or service;

''(B) reduce or eliminate copayments or cost shares for covered beneficiaries to receive high-value medications and services;

''(C) reduce or eliminate copayments or cost shares for covered beneficiaries to receive health care services from high-value providers;

''(D) credit the amount of any reduction or elimination of a copayment or cost share under subparagraph (B) or (C) for a covered beneficiary towards meeting a deductible applicable to the covered beneficiary in the purchased care component of the TRICARE program to the same extent as if such reduction or elimination had not applied; and

''(E) develop a process to reimburse high-value providers at rates higher than those rates for health care providers that are not high-value providers.

''(3) REPORT ON VALUE-BASED HEALTH CARE METHODOLOGY.—Not later than 180 days after the date of the enactment of this Act [Dec. 23, 2016], the Secretary shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report that includes the following:

''(A) A list of each high-value medication and service identified under paragraph (2)(A) for which the copayment or cost share amount will be reduced or eliminated under the pilot program to encourage covered beneficiaries to use such medications and services through the purchased care component of the TRICARE program.

''(B) For each high-value medication and service identified under paragraph (2)(A), the amount of the copayment or cost share required under the purchased care component of the TRICARE program and the amount of any reduction or elimination of such copayment or cost share pursuant to the pilot program.

''(C) A description of a plan to identify and communicate to covered beneficiaries, through multiple communication media—

''(i) the list of high-value medications and services described in subparagraph (A); and

''(ii) a list of high-value providers.

''(D) A description of modifications, if any, to existing health care contracts that may be required to implement value-based health care methodology in the purchased care component of the TRICARE program under the pilot program and the estimated costs of those contract modifications.

''(4) COMPTROLLER GENERAL PRELIMINARY REVIEW AND ASSESSMENT.—

''(A) Not later than March 1, 2021, the Comptroller General of the United States shall submit to the Committees on Armed Services of the Senate and the House of Representatives a review and assessment of the preliminary results of the pilot program.

''(B) The review and assessment required under subparagraph (A) shall include the following:

''(i) An assessment of the extent of the use of value-based health care methodology in the purchased care component of the TRICARE program under the pilot program.

''(ii) An analysis demonstrating how reducing or eliminating the copayment or cost share for each high-value medication and service identified under paragraph (2)(A) resulted in—

''(I) increased adherence to medication regimens;

''(II) improvement of quality measures;

''(III) improvement of health outcomes;

''(IV) reduction of number of emergency room visits or hospitalizations; and

''(V) enhancement of experience of care for covered beneficiaries.

''(iii) Such recommendations for incentivizing the use of high-value medications and services to improve health outcomes and the experience of care for beneficiaries as the Comptroller General considers appropriate.

''(5) REVIEW AND ASSESSMENT OF PILOT PROGRAM.—

''(A) Not later than January 1, 2023, the Secretary shall submit to the Committees on Armed Services of

the Senate and the House of Representatives a review and assessment of the pilot program.

''(B) The review and assessment required under subparagraph (A) shall include the following:

''(i) An assessment of the extent of the use of value-based health care methodology in the purchased care component of the TRICARE program under the pilot program.

''(ii) An analysis demonstrating how reducing or eliminating the copayment or cost share for each high-value medication and service identified under paragraph (2)(A) resulted in—

''(I) increased adherence to medication regimens;

''(II) improvement of quality measures;

''(III) improvement of health outcomes; and

''(IV) enhancement of experience of care for covered beneficiaries.

''(iii) A cost-benefit analysis of the implementation of value-based health care methodology in the purchased care component of the TRICARE program under the pilot program.

''(iv) Such recommendations for incentivizing the use of high-value medications and services to improve health outcomes and the experience of care for covered beneficiaries as the Secretary considers appropriate.

''(6) TERMINATION.—The Secretary may not carry out the pilot program after December 31, 2022.''

[For definitions of terms used in section 701(h) of Pub. L. 114–328, set out above, see section 703(i) of Pub. L. 114–328, set out as a note below.]

IMPROVEMENT OF HEALTH OUTCOMES AND CONTROL OF COSTS OF HEALTH CARE UNDER TRICARE PROGRAM THROUGH PROGRAMS TO INVOLVE COVERED BENEFICIARIES

Pub. L. 114–328, div. A, title VII, § 729, Dec. 23, 2016, 130 Stat. 2234, provided that:

''(a) MEDICAL INTERVENTION INCENTIVE PROGRAM.—

''(1) IN GENERAL.—The Secretary of Defense shall establish a program to incentivize covered beneficiaries to participate in medical intervention programs established by the Secretary, such as comprehensive disease management programs, that may include lowering fees for enrollment in the TRICARE program by a certain percentage or lowering copayment and cost-share amounts for health care services during a particular year for covered beneficiaries with chronic diseases or conditions described in paragraph (2) who met participation milestones, as determined by the Secretary, in the previous year in such medical intervention programs.

''(2) CHRONIC DISEASES OR CONDITIONS DESCRIBED.—Chronic diseases or conditions described in this paragraph may include diabetes, chronic obstructive pulmonary disease, asthma, congestive heart failure, hypertension, history of stroke, coronary artery disease, mood disorders, obesity, and such other diseases or conditions as the Secretary determines appropriate.

''(b) LIFESTYLE INTERVENTION INCENTIVE PROGRAM.—The Secretary shall establish a program to incentivize lifestyle interventions for covered beneficiaries, such as smoking cessation and weight reduction, that may include lowering fees for enrollment in the TRICARE program by a certain percentage or lowering copayment and cost share amounts for health care services during a particular year for covered beneficiaries who met participation milestones, as determined by the Secretary, in the previous year with respect to such lifestyle interventions, such as quitting smoking or achieving a lower body mass index by a certain percentage.

''(c) HEALTHY LIFESTYLE MAINTENANCE INCENTIVE PROGRAM.—The Secretary shall establish a program to incentivize the maintenance of a healthy lifestyle among covered beneficiaries, such as exercise and weight maintenance, that may include lowering fees for enrollment in the TRICARE program by a certain percentage or lowering copayment and cost-share amounts for health care services during a particular year for covered beneficiaries who met participation milestones, as determined by the Secretary, in the previous year with respect to the maintenance of a healthy lifestyle, such as maintaining smoking cessation or maintaining a normal body mass index.

''(d) REPORT.—

''(1) IN GENERAL.—Not later than January 1, 2020, the Secretary shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the implementation of the programs established under subsections (a), (b), and (c).

''(2) ELEMENTS.—The report required by paragraph (1) shall include the following:

''(A) A detailed description of the programs implemented under subsections (a), (b), and (c).

''(B) An assessment of the impact of such programs on—

''(i) improving health outcomes for covered beneficiaries; and

''(ii) lowering per capita health care costs for the Department of Defense.

''(e) REGULATIONS.—Not later than January 1, 2018, the Secretary shall prescribe an interim final rule to carry out this section.

''(f) DEFINITIONS.—In this section, the terms 'covered beneficiary' and 'TRICARE program' have the meaning given those terms in section 1072 of title 10, United States Code.''

ACCESS TO HEALTH CARE UNDER THE TRICARE PROGRAM FOR BENEFICIARIES OF TRICARE PRIME

Pub. L. 114–92, div. A, title VII, § 704, Nov. 25, 2015, 129 Stat. 863, provided that:

''(a) ACCESS TO HEALTH CARE.—The Secretary of Defense shall ensure that beneficiaries under TRICARE Prime who are seeking an appointment for health care under TRICARE Prime shall obtain such an appointment within the health care access standards established under subsection (b), including through the use of health care providers in the preferred provider network of TRICARE Prime.

''(b) STANDARDS FOR ACCESS TO CARE.—

''(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act [Nov. 25, 2015], the Secretary shall establish health care access standards for the receipt of health care under TRICARE Prime, whether received at military medical treatment facilities or from health care providers in the preferred provider network of TRICARE Prime.

''(2) CATEGORIES OF CARE.—The health care access standards established under paragraph (1) shall include standards with respect to the following categories of health care:

''(A) Primary care, including pediatric care, maternity care, gynecological care, and other subcategories of primary care.

''(B) Specialty care, including behavioral health care and other subcategories of specialty care.

''(3) MODIFICATIONS.—The Secretary may modify the health care access standards established under paragraph (1) whenever the Secretary considers the modification of such standards appropriate.

''(4) PUBLICATION.—The Secretary shall publish the health care access standards established under paragraph (1), and any modifications to such standards, in the Federal Register and on a publicly accessible Internet website of the Department of Defense.

''(c) DEFINITIONS.—In this section:

''(1) TRICARE PRIME.—The term 'TRICARE Prime' means the managed care option of the TRICARE program.

''(2) TRICARE PROGRAM.—The term 'TRICARE program' has the meaning given that term in section 1072(7) of title 10, United States Code.''

PORTABILITY OF HEALTH PLANS UNDER THE TRICARE PROGRAM

Pub. L. 114–92, div. A, title VII, § 714, Nov. 25, 2015, 129 Stat. 865, provided that:

''(a) HEALTH PLAN PORTABILITY.—

''(1) IN GENERAL.—The Secretary of Defense shall ensure that covered beneficiaries under the TRICARE program who are covered under a health plan under such program are able to seamlessly access health care under such health plan in each TRICARE program region.

''(2) REGULATIONS.—Not later than 180 days after the date of the enactment of this Act [Nov. 25, 2015], the Secretary shall prescribe regulations to carry out paragraph (1).

''(b) MECHANISMS TO ENSURE PORTABILITY.—In carrying out subsection (a), the Secretary shall—

''(1) establish a process for electronic notification of contractors responsible for administering the TRICARE program in each TRICARE region when any covered beneficiary intends to relocate between such regions;

''(2) provide for the automatic electronic transfer between such contractors of information relating to covered beneficiaries who are relocating between such regions, including demographic, enrollment, and claims information; and

''(3) ensure each such covered beneficiary is able to obtain a new primary health care provider within ten days of—

''(A) arriving at the location to which the covered beneficiary has relocated; and

''(B) initiating a request for a new primary health care provider.

''(c) PUBLICATION.—The Secretary shall—

''(1) publish information on any modifications made pursuant to subsection (a) with respect to the ability of covered beneficiaries under the TRICARE program who are covered under a health plan under such program to access health care in each TRICARE region on the primary Internet website of the Department that is available to the public; and

''(2) ensure that such information is made available on the primary Internet website that is available to the public of each current contractor responsible for administering the TRICARE program.

''(d) DEFINITIONS.—In this section, the terms 'covered beneficiary' and 'TRICARE program' have the meaning given such terms in section 1072 of title 10, United States Code.''

LICENSURE OF MENTAL HEALTH PROFESSIONALS IN TRICARE PROGRAM

Pub. L. 114–92, div. A, title VII, § 716, Nov. 25, 2015, 129 Stat. 867, provided that:

''(a) QUALIFICATIONS FOR TRICARE CERTIFIED MENTAL HEALTH COUNSELORS DURING TRANSITION PERIOD.—During the period preceding January 1, 2021, for purposes of determining whether a mental health care professional is eligible for reimbursement under the TRICARE program as a TRICARE certified mental health counselor, an individual who holds a masters degree or doctoral degree in counseling from a program that is accredited by a covered institution shall be treated as holding such degree from a mental health counseling program or clinical mental health counseling program that is accredited by the Council for Accreditation of Counseling and Related Educational Programs.

''(b) DEFINITIONS.—In this section:

''(1) The term 'covered institution' means any of the following:

''(A) The Accrediting Commission for Community and Junior Colleges Western Association of Schools and Colleges (ACCJC-WASC).

''(B) The Higher Learning Commission (HLC).

''(C) The Middle States Commission on Higher Education (MSCHE).

''(D) The New England Association of Schools and Colleges Commission on Institutions of Higher Education (NEASC-CIHE).

''(E) The Southern Association of Colleges and Schools (SACS) Commission on Colleges.

''(F) The WASC Senior College and University Commission (WASC-SCUC).

''(G) The Accrediting Bureau of Health Education Schools (ABHES).

''(H) The Accrediting Commission of Career Schools and Colleges (ACCSC).

''(I) The Accrediting Council for Independent Colleges and Schools (ACICS).

''(J) The Distance Education Accreditation Commission (DEAC).

''(2) The term 'TRICARE program' has the meaning given that term in section 1072 of title 10, United States Code.''

DESIGNATION OF CERTAIN NON-DEPARTMENT MENTAL HEALTH CARE PROVIDERS WITH KNOWLEDGE RELATING TO TREATMENT OF MEMBERS OF THE ARMED FORCES

Pub. L. 114–92, div. A, title VII, § 717, Nov. 25, 2015, 129 Stat. 868, provided that:

''(a) MENTAL HEALTH PROVIDER READINESS DESIGNATION.—

''(1) IN GENERAL.—Not later than one year after the date of the enactment of this Act [Nov. 25, 2015], the Secretary of Defense shall develop a system by which any non-Department mental health care provider that meets eligibility criteria established by the Secretary relating to the knowledge described in paragraph (2) receives a mental health provider readiness designation from the Department of Defense.

''(2) KNOWLEDGE DESCRIBED.—The knowledge described in this paragraph is the following:

''(A) Knowledge and understanding with respect to the culture of members of the Armed Forces and family members and caregivers of members of the Armed Forces.

''(B) Knowledge with respect to evidence-based treatments that have been approved by the Department for the treatment of mental health issues among members of the Armed Forces.

''(b) AVAILABILITY OF INFORMATION ON DESIGNATION.—

''(1) REGISTRY.—The Secretary of Defense shall establish and update as necessary a publically available registry of all non-Department mental health care providers that are currently designated under subsection (a)(1).

''(2) PROVIDER LIST.—The Secretary shall update all lists maintained by the Secretary of non-Department mental health care providers that provide mental health care under the laws administered by the Secretary by indicating the providers that are currently designated under subsection (a)(1).

''(c) NON-DEPARTMENT MENTAL HEALTH CARE PROVIDER DEFINED.—In this section, the term 'non-Department mental health care provider'—

''(1) means a health care provider who—

''(A) specializes in mental health;

''(B) is not a health care provider of the Department of Defense at a facility of the Department; and

''(C) provides health care to members of the Armed Forces; and

''(2) includes psychiatrists, psychologists, psychiatric nurses, social workers, mental health counselors, marriage and family therapists, and other mental health care providers designated by the Secretary of Defense.''

PILOT PROGRAM ON URGENT CARE UNDER TRICARE PROGRAM

Pub. L. 114–92, div. A, title VII, § 725, Nov. 25, 2015, 129 Stat. 870, provided for a three-year pilot program to allow TRICARE beneficiaries access to urgent care visits without the need for preauthorization and to a nurse advice line and required submission of a final report to Congress no later than 180 days after the program was completed.

COOPERATIVE HEALTH CARE AGREEMENTS BETWEEN MILITARY INSTALLATIONS AND NON-MILITARY HEALTH CARE SYSTEMS

Pub. L. 111–84, div. A, title VII, § 713, Oct. 28, 2009, 123 Stat. 2380, provided that:

''(a) AUTHORITY.—The Secretary of Defense may establish cooperative health care agreements between military installations and local or regional health care systems.

''(b) REQUIREMENTS.—In establishing an agreement under subsection (a), the Secretary shall—

''(1) consult with—

''(A) the Secretary of the military department concerned;

''(B) representatives from the military installation selected for the agreement, including the TRICARE managed care support contractor with responsibility for such installation; and

''(C) Federal, State, and local government officials;

''(2) identify and analyze health care services available in the area in which the military installation is located, including such services available at a military medical treatment facility or in the private sector (or a combination thereof);

''(3) determine the cost avoidance or savings resulting from innovative partnerships between the Department of Defense and the private sector; and

''(4) determine the opportunities for and barriers to coordinating and leveraging the use of existing health care resources, including such resources of Federal, State, local, and private entities.

''(c) ANNUAL REPORTS.—Not later than December 31 of each year an agreement entered into under this section is in effect, the Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on each such agreement. Each report shall include, at a minimum, the following:

''(1) A description of the agreement.

''(2) Any cost avoidance, savings, or increases as a result of the agreement.

''(3) A recommendation for continuing or ending the agreement.

''(d) RULE OF CONSTRUCTION.—Nothing in this section shall be construed as authorizing the provision of health care services at military medical treatment facilities or other facilities of the Department of Defense to individuals who are not otherwise entitled or eligible for such services under chapter 55 of title 10, United States Code.''

INPATIENT MENTAL HEALTH SERVICE

Pub. L. 110–329, div. C, title VIII, § 8095, Sept. 30, 2008, 122 Stat. 3642, provided that: ''None of the funds appropriated by this Act [div. C of Pub. L. 110–329, see Tables for classification], and hereafter, available for the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) or TRICARE shall be available for the reimbursement of any health care provider for inpatient mental health service for care received when a patient is referred to a provider of inpatient mental health care or residential treatment care by a medical or health care professional having an economic interest in the facility to which the patient is referred: *Provided*, That this limitation does not apply in the case of inpatient mental health services provided under the program for persons with disabilities under subsection (d) of section 1079 of title 10, United States Code, provided as partial hospital care, or provided pursuant to a waiver authorized by the Secretary of Defense because of medical or psychological circumstances of the patient that are confirmed by a health professional who is not a Federal employee after a review, pursuant to rules prescribed by the Secretary, which takes into account the appropriate level of care for the patient, the intensity of services required by the patient, and the availability of that care.''

SURVEYS ON CONTINUED VIABILITY OF TRICARE STANDARD AND TRICARE EXTRA

Pub. L. 110–181, div. A, title VII, § 711, Jan. 28, 2008, 122 Stat. 190, as amended by Pub. L. 112–81, div. A, title VII, § 721, Dec. 31, 2011, 125 Stat. 1478; Pub. L. 113–291, div. A, title VII, § 712, Dec. 19, 2014, 128 Stat. 3414, provided that:

''(a) REQUIREMENT FOR SURVEYS.—

''(1) IN GENERAL.—The Secretary of Defense shall conduct surveys of health care providers and beneficiaries who use TRICARE in the United States to determine, utilizing a reconciliation of the responses of providers and beneficiaries to such surveys, each of the following:

''(A) How many health care providers in TRICARE Prime service areas selected under paragraph (3)(A) are accepting new patients under each of TRICARE Standard and TRICARE Extra.

''(B) How many health care providers in geographic areas in which TRICARE Prime is not offered are accepting patients under each of TRICARE Standard and TRICARE Extra.

''(C) The availability of mental health care providers in TRICARE Prime service areas selected under paragraph (3)(C) and in geographic areas in which TRICARE Prime is not offered.

''(2) BENCHMARKS.—The Secretary shall establish for purposes of the surveys required by paragraph (1) benchmarks for primary care and specialty care providers, including mental health care providers, to be utilized to determine the adequacy of the availability of health care providers to beneficiaries eligible for TRICARE.

''(3) SCOPE OF SURVEYS.—The Secretary shall carry out the surveys required by paragraph (1) as follows:

''(A) In the case of the surveys required by subparagraph (A) of that paragraph, in at least 20 TRICARE Prime service areas in the United States in each of fiscal years 2008 through 2015.

''(B) In the case of the surveys required by subparagraph (B) of that paragraph, in 20 geographic areas in which TRICARE Prime is not offered and in which significant numbers of beneficiaries who are members of the Selected Reserve reside.

''(C) In the case of the surveys required by subparagraph (C) of that paragraph, in at least 40 geographic areas.

''(4) PRIORITY FOR SURVEYS.—In prioritizing the areas which are to be surveyed under paragraph (1), the Secretary shall—

''(A) consult with representatives of TRICARE beneficiaries and health care and mental health care providers to identify locations where TRICARE Standard beneficiaries are experiencing significant levels of access-to-care problems under TRICARE Standard or TRICARE Extra;

''(B) give a high priority to surveying health care and mental health care providers in such areas; and

''(C) give a high priority to surveying beneficiaries and providers located in geographic areas with high concentrations of members of the Selected Reserve.

''(5) INFORMATION FROM PROVIDERS.—The surveys required by paragraph (1) shall include questions seeking to determine from health care and mental health care providers the following:

''(A) Whether the provider is aware of the TRICARE program.

''(B) What percentage of the provider's current patient population uses any form of TRICARE.

''(C) Whether the provider accepts patients for whom payment is made under the medicare program for health care and mental health care services.

''(D) If the provider accepts patients referred to in subparagraph (C), whether the provider would accept additional such patients who are not in the provider's current patient population.

''(6) INFORMATION FROM BENEFICIARIES.—The surveys required by paragraph (1) shall include questions seeking information to determine from TRICARE beneficiaries whether they have difficulties in finding health care and mental health care providers willing to provide services under TRICARE Standard or TRICARE Extra.

''(b) GAO REVIEW.—

''(1) ONGOING REVIEW.—The Comptroller General shall, on an ongoing basis, review—

''(A) the processes, procedures, and analysis used by the Department of Defense to determine the adequacy of the number of health care and mental health care providers—

''(i) that currently accept TRICARE Standard or TRICARE Extra beneficiaries as patients under TRICARE Standard in each TRICARE area as of the date of completion of the review; and

''(ii) that would accept TRICARE Standard or TRICARE Extra beneficiaries as new patients under TRICARE Standard or TRICARE Extra, as applicable, within a reasonable time after the date of completion of the review; and

''(B) the actions taken by the Department of Defense to ensure ready access of TRICARE Standard beneficiaries to health care and mental health care under TRICARE Standard in each TRICARE area, including any pending or resolved requests for waiver of payment limits in order to improve access to health care or mental health care in a specific geographic area.

''(2) REPORTS.—The Comptroller General shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the results of the review under paragraph (1) during 2017 and 2020. Each report shall include the following:

''(A) An analysis of the adequacy of the surveys under subsection (a).

''(B) An identification of any impediments to achieving adequacy of availability of health care and mental health care under TRICARE Standard or TRICARE Extra.

''(C) An assessment of the adequacy of Department of Defense education programs to inform health care and mental health care providers about TRICARE Standard and TRICARE Extra.

''(D) An assessment of the adequacy of Department of Defense initiatives to encourage health care and mental health care providers to accept patients under TRICARE Standard and TRICARE Extra.

''(E) An assessment of the adequacy of information available to TRICARE Standard beneficiaries to facilitate access by such beneficiaries to health care and mental health care under TRICARE Standard and TRICARE Extra.

''(F) An assessment of any need for adjustment of health care and mental health care provider payment rates to attract participation in TRICARE Standard by appropriate numbers of health care and mental health care providers.

''(G) An assessment of the adequacy of Department of Defense programs to inform members of the Selected Reserve about the TRICARE Reserve Select program.

''(H) An assessment of the ability of TRICARE Reserve Select beneficiaries to receive care in their geographic area.

''(c) EFFECTIVE DATE.—This section shall take effect on October 1, 2007.

''(d) REPEAL OF SUPERSEDED REQUIREMENTS AND AUTHORITY.—Section 723 of the National Defense Authorization Act for Fiscal Year 2004 (10 U.S.C. 1073 note) is repealed, effective as of October 1, 2007.

''(e) DEFINITIONS.—In this section:

''(1) The term 'TRICARE Extra' means the option of the TRICARE program under which TRICARE Standard beneficiaries may obtain discounts on cost-sharing as a result of using TRICARE network providers.

''(2) The term 'TRICARE Prime' means the managed care option of the TRICARE program.

''(3) The term 'TRICARE Prime service area' means a geographic area designated by the Department of Defense in which managed care support contractors develop a managed care network under TRICARE Prime.

''(4) The term 'TRICARE Standard' means the option of the TRICARE program that is also known as the Civilian Health and Medical Program of the Uniformed Services, as defined in section 1072(4) of title 10, United States Code.

''(5) The term 'TRICARE Reserve Select' means the option of the TRICARE program that allows members of the Selected Reserve to enroll in TRICARE Standard, pursuant to section 1076d of title 10, United States Code.

''(6) The term 'member of the Selected Reserve' means a member of the Selected Reserve of the Ready Reserve of a reserve component of the Armed Forces.

''(7) The term 'United States' means the United States (as defined in section 101(a) of title 10, United States Code), its possessions (as defined in such section), and the Commonwealth of Puerto Rico.''

REGULATIONS TO ESTABLISH CRITERIA FOR LICENSED OR CERTIFIED MENTAL HEALTH COUNSELORS UNDER TRICARE

Pub. L. 111–383, div. A, title VII, § 724, Jan. 7, 2011, 124 Stat. 4252, provided that: ''Not later than June 20, 2011, the Secretary of Defense shall prescribe the regulations required by section 717 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110–181; 10 U.S.C. 1073 note).''

Pub. L. 110–181, div. A, title VII, § 717(a), Jan. 28, 2008, 122 Stat. 196, provided that: ''The Secretary of Defense shall prescribe regulations to establish criteria that licensed or certified mental health counselors shall meet in order to be able to independently provide care to TRICARE beneficiaries and receive payment under the TRICARE program for such services. The criteria shall include requirements for education level, licensure, certification, and clinical experience as considered appropriate by the Secretary.''

INSPECTION OF MILITARY MEDICAL TREATMENT FACILITIES, MILITARY QUARTERS HOUSING MEDICAL HOLD PERSONNEL, AND MILITARY QUARTERS HOUSING MEDICAL HOLDOVER PERSONNEL

Pub. L. 110–28, title III, § 3307, May 25, 2007, 121 Stat. 137, as amended by Pub. L. 114–92, div. A, title X, § 1072(g), Nov. 25, 2015, 129 Stat. 995, provided that:

''(a) INSPECTION OF MILITARY MEDICAL TREATMENT FACILITIES, MILITARY QUARTERS HOUSING MEDICAL HOLD PERSONNEL, AND MILITARY QUARTERS HOUSING MEDICAL HOLDOVER PERSONNEL.—

''(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act [May 25, 2007], and annually thereafter, the Secretary of Defense shall inspect each facility of the Department of Defense as follows:

''(A) Each military medical treatment facility.

''(B) Each military quarters housing medical hold personnel.

''(C) Each military quarters housing medical holdover personnel.

''(2) PURPOSE.—The purpose of an inspection under this subsection is to ensure that the facility or quarters concerned meets acceptable standards for the maintenance and operation of medical facilities, quarters housing medical hold personnel, or quarters housing medical holdover personnel, as applicable.

''(b) ACCEPTABLE STANDARDS.—For purposes of this section, acceptable standards for the operation and maintenance of military medical treatment facilities, military quarters housing medical hold personnel, or military quarters housing medical holdover personnel are each of the following:

''(1) Generally accepted standards for the accreditation of medical facilities, or for facilities used to quarter individuals with medical conditions that may require medical supervision, as applicable, in the United States.

''(2) Where appropriate, standards under the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.).

''(c) ADDITIONAL INSPECTIONS ON IDENTIFIED DEFICIENCIES.—

''(1) IN GENERAL.—In the event a deficiency is identified pursuant to subsection (a) at a facility or quarters described in paragraph (1) of that subsection—

''(A) the commander of such facility or quarters, as applicable, shall submit to the Secretary a detailed plan to correct the deficiency; and

''(B) the Secretary shall reinspect such facility or quarters, as applicable, not less often than once every 180 days until the deficiency is corrected.

''(2) CONSTRUCTION WITH OTHER INSPECTIONS.—An inspection of a facility or quarters under this subsection is in addition to any inspection of such facility or quarters under subsection (a).

''(d) REPORT ON STANDARDS.—In the event no standards for the maintenance and operation of military medical treatment facilities, military quarters housing medical hold personnel, or military quarters housing medical holdover personnel exist as of the date of the enactment of this Act, or such standards as do exist do not meet acceptable standards for the maintenance and operation of such facilities or quarters, as the case may be, the Secretary shall, not later than 30 days after that date, submit to the congressional defense committees a report setting forth the plan of the Secretary to ensure—

''(1) the adoption by the Department of standards for the maintenance and operation of military medical facilities, military quarters housing medical hold personnel, or military quarters housing medical holdover personnel, as applicable, that meet—

''(A) acceptable standards for the maintenance and operation of such facilities or quarters, as the case may be; and

''(B) where appropriate, standards under the Americans with Disabilities Act of 1990 [42 U.S.C. 12101 et seq.]; and

''(2) the comprehensive implementation of the standards adopted under paragraph (1) at the earliest date practicable.''

REQUIREMENTS FOR SUPPORT OF MILITARY TREATMENT FACILITIES BY CIVILIAN CONTRACTORS UNDER TRICARE

Pub. L. 109–364, div. A, title VII, § 732, Oct. 17, 2006, 120 Stat. 2296, as amended by Pub. L. 112–81, div. A, title X, § 1062(d)(3), Dec. 31, 2011, 125 Stat. 1585, provided that:

''(a) ANNUAL INTEGRATED REGIONAL REQUIREMENTS ON SUPPORT.—The Regional Director of each region under the TRICARE program shall develop each year integrated, comprehensive requirements for the support of military treatment facilities in such region that is provided by contract civilian health care and administrative personnel under the TRICARE program.

''(b) PURPOSES.—The purposes of the requirements established under subsection (a) shall be as follows:

''(1) To ensure consistent standards of quality in the support of military treatment facilities by contract civilian health care personnel under the TRICARE program.

''(2) To identify targeted, actionable opportunities throughout each region of the TRICARE program for the most efficient and cost effective delivery of health care and support of military treatment facilities.

''(3) To ensure the most effective use of various available contracting methods in securing support of military treatment facilities by civilian health care personnel under the TRICARE program, including resource-sharing and clinical support agreements, direct contracting, and venture capital investments.

''(c) FACILITATION AND ENHANCEMENT OF CONTRACTOR SUPPORT.—

''(1) IN GENERAL.—The Secretary of Defense shall take appropriate actions to facilitate and enhance the support of military treatment facilities under the TRICARE program in order to assure maximum quality and productivity.

''(2) ACTIONS.—In taking actions under paragraph (1), the Secretary shall—

''(A) require consistent standards of quality for contract civilian health care personnel providing support of military treatment facilities under the TRICARE program, including—

''(i) consistent credentialing requirements among military treatment facilities;

''(ii) consistent performance standards for private sector companies providing health care staffing services to military treatment facilities and clinics, including, at a minimum, those standards established for accreditation of health care staffing firms by the Joint Commission on the Accreditation of Health Care Organizations Health Care Staffing Standards; and

''(iii) additional standards covering—

''(I) financial stability;

''(II) medical management;

''(III) continuity of operations;

''(IV) training;

''(V) employee retention;

''(VI) access to contractor data; and

''(VII) fraud prevention;

''(B) ensure the availability of adequate and sustainable funding support for projects which produce a return on investment to the military treatment facilities;

''(C) ensure that a portion of any return on investment is returned to the military treatment facility to which such savings are attributable;

''(D) remove financial disincentives for military treatment facilities and civilian contractors to initiate and sustain agreements for the support of military treatment facilities by such contractors under the TRICARE program;

''(E) provide for a consistent methodology across all regions of the TRICARE program for developing cost benefit analyses of agreements for the support of military treatment facilities by civilian contractors under the TRICARE program based on actual cost and utilization data within each region of the TRICARE program; and

''(F) provide for a system for monitoring the performance of significant projects for support of military treatment facilities by a civilian contractor under the TRICARE program.

''[(d) Repealed. Pub. L. 112–81, div. A, title X, § 1062(d)(3), Dec. 31, 2011, 125 Stat. 1585.]

''(e) EFFECTIVE DATE.—This section shall take effect on October 1, 2006.''

TRICARE STANDARD IN TRICARE REGIONAL OFFICES

Pub. L. 109–163, div. A, title VII, § 716, Jan. 6, 2006, 119 Stat. 3345, as amended by Pub. L. 112–81, div. A, title X, § 1062(e), Dec. 31, 2011, 125 Stat. 1585, provided that:

''(a) RESPONSIBILITIES OF TRICARE REGIONAL OFFICE.—The responsibilities of each TRICARE Regional Office shall include the monitoring, oversight, and improvement of the TRICARE Standard option in the TRICARE region concerned, including—

''(1) identifying health care providers who will participate in the TRICARE program and provide the TRICARE Standard option under that program;

''(2) communicating with beneficiaries who receive the TRICARE Standard option;

''(3) outreach to community health care providers to encourage their participation in the TRICARE program; and

''(4) publication of information that identifies health care providers in the TRICARE region concerned who provide the TRICARE Standard option.

''(b) DEFINITION.—In this section, the term 'TRICARE Standard' or 'TRICARE standard option' means the Civilian Health and Medical Program of the Uniformed Services option under the TRICARE program.''

QUALIFICATIONS FOR INDIVIDUALS SERVING AS TRICARE REGIONAL DIRECTORS

Pub. L. 109–163, div. A, title VII, § 717, Jan. 6, 2006, 119 Stat. 3345, provided that:

''(a) QUALIFICATIONS.—Effective as of the date of the enactment of this Act [Jan. 6, 2006], no individual may be selected to serve in the position of Regional Director under the TRICARE program unless the individual—

''(1) is—

''(A) an officer of the Armed Forces in a general or flag officer grade;

''(B) a civilian employee of the Department of Defense in the Senior Executive Service; or

''(C) a civilian employee of the Federal Government in a department or agency other than the Department of Defense, or a civilian working in the private sector, who has experience in a position comparable to an officer described in subparagraph (A) or a civilian employee described in subparagraph (B); and

''(2) has at least 10 years of experience, or equivalent expertise or training, in the military health care system, managed care, and health care policy and administration.

''(b) TRICARE PROGRAM DEFINED.—In this section, the term 'TRICARE program' has the meaning given such term in section 1072(7) of title 10, United States Code.''

PILOT PROJECTS ON PEDIATRIC EARLY LITERACY AMONG CHILDREN OF MEMBERS OF THE ARMED FORCES

Pub. L. 109–163, div. A, title VII, § 740, Jan. 6, 2006, 119 Stat. 3359, as amended by Pub. L. 109–364, div. A, title X, § 1071(e)(8), Oct. 17, 2006, 120 Stat. 2402, provided for pilot projects related to encouraging pediatric early literacy among children of members of the Armed Forces conducted at military medical treatment facilites and required a report to Congress on the projects no later than Mar. 1, 2007.

SURVEYS ON CONTINUED VIABILITY OF TRICARE STANDARD

Pub. L. 108–136, div. A, title VII, § 723, Nov. 24, 2003, 117 Stat. 1532, as amended by Pub. L. 109–163, div. A, title VII, § 711, Jan. 6, 2006, 119 Stat. 3343, required the Secretary of Defense to conduct surveys in the TRICARE market areas in the United States to determine how many health care providers were accepting new patients under TRICARE Standard in each such market area, and required the Comptroller General to review the processes, procedures, and analysis used by the Department of Defense to determine the adequacy of the number of health care providers and the actions taken by the Department of Defense to ensure ready access of TRICARE Standard beneficiaries to health care under TRICARE Standard in each TRICARE market area, prior to repeal by Pub. L. 110–181, div. A, title VII, § 711(d), Jan. 28, 2008, 122 Stat. 193, eff. Oct. 1, 2007.

MODERNIZATION OF TRICARE BUSINESS PRACTICES AND INCREASE OF USE OF MILITARY TREATMENT FACILITIES

Pub. L. 106–398, § 1 [[div. A], title VII, § 723], Oct. 30, 2000, 114 Stat. 1654, 1654A–186, provided that:

''(a) REQUIREMENT TO IMPLEMENT INTERNET-BASED SYSTEM.—Not later than October 1, 2001, the Secretary of Defense shall implement a system to simplify and make accessible through the use of the Internet, through commercially available systems and products, critical administrative processes within the military health care system and the TRICARE program. The purposes of the system shall be to enhance efficiency, improve service, and achieve commercially recognized standards of performance.

''(b) ELEMENTS OF SYSTEM.—The system required by subsection (a)—

''(1) shall comply with patient confidentiality and security requirements, and incorporate data requirements, that are currently widely used by insurers under medicare and commercial insurers;

''(2) shall be designed to achieve improvements with respect to—

''(A) the availability and scheduling of appointments;

''(B) the filing, processing, and payment of claims;

''(C) marketing and information initiatives;

''(D) the continuation of enrollments without expiration;

''(E) the portability of enrollments nationwide;

''(F) education of beneficiaries regarding the military health care system and the TRICARE program; and

''(G) education of health care providers regarding such system and program; and

''(3) may be implemented through a contractor under TRICARE Prime.

''(c) AREAS OF IMPLEMENTATION.—The Secretary shall implement the system required by subsection (a) in at least one region under the TRICARE program.

''(d) PLAN FOR IMPROVED PORTABILITY OF BENEFITS.—Not later than March 15, 2001, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a plan to provide portability and reciprocity of benefits for all enrollees under the TRICARE program throughout all TRICARE regions.

''(e) INCREASE OF USE OF MILITARY MEDICAL TREATMENT FACILITIES.—The Secretary shall initiate a program to maximize the use of military medical treatment facilities by improving the efficiency of health care operations in such facilities.

''(f) DEFINITION.—In this section the term 'TRICARE program' has the meaning given such term in section 1072 of title 10, United States Code.''

IMPROVEMENT OF ACCESS TO HEALTH CARE UNDER THE TRICARE PROGRAM

Pub. L. 107–107, div. A, title VII, § 735(e), Dec. 28, 2001, 115 Stat. 1172, directed the Secretary of Defense to submit to committees of Congress, not later than Mar. 1, 2002, a report on the Secretary's plans for implementing Pub. L. 106–398, § 1 [[div. A], title VII, § 721], as amended, set out below.

Pub. L. 106–398, § 1 [[div. A], title VII, § 721], Oct. 30, 2000, 114 Stat. 1654, 1654A–184, as amended by Pub. L. 107–107, div. A, title VII, § 735(a)–(d), Dec. 28, 2001, 115 Stat. 1171, 1172; Pub. L. 113–291, div. A, title VII, § 703(b), Dec. 19, 2014, 128 Stat. 3411, provided that:

''(a) WAIVER OF NONAVAILABILITY STATEMENT OR PREAUTHORIZATION.—In the case of a covered beneficiary under TRICARE Standard pursuant to chapter 55 of title 10, United States Code, the Secretary of Defense may not require with regard to authorized health care services under such chapter that the beneficiary—

''(1) obtain a nonavailability statement or preauthorization from a military medical treatment facility in order to receive the services from a civilian provider; or

''(2) obtain a nonavailability statement for care in specialized treatment facilities outside the 200-mile radius of a military medical treatment facility.

''(b) WAIVER AUTHORITY.—The Secretary may waive the prohibition in subsection (a) if—

''(1) the Secretary—

''(A) demonstrates that significant costs would be avoided by performing specific procedures at the affected military medical treatment facility or facilities;

''(B) determines that a specific procedure must be provided at the affected military medical treatment facility or facilities to ensure the proficiency levels of the practitioners at the facility or facilities; or

''(C) determines that the lack of nonavailability statement data would significantly interfere with TRICARE contract administration;

''(2) the Secretary provides notification of the Secretary's intent to grant a waiver under this subsection to covered beneficiaries who receive care at the military medical treatment facility or facilities that will be affected by the decision to grant a waiver under this subsection;

''(3) the Secretary notifies the Committees on Armed Services of the House of Representatives and the Senate of the Secretary's intent to grant a waiver

under this subsection, the reason for the waiver, and the date that a nonavailability statement will be required; and

''(4) 60 days have elapsed since the date of the notification described in paragraph (3).

''(c) WAIVER EXCEPTION FOR MATERNITY CARE.—Subsection (b) shall not apply with respect to maternity care.

''(d) EFFECTIVE DATE.—This section shall take effect on the earlier of the following:

''(1) The date that a new contract entered into by the Secretary to provide health care services under TRICARE Standard takes effect.

''(2) The date that is two years after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2002 [Dec. 28, 2001].''.

Pub. L. 106–65, div. A, title VII, § 712(a), (b), Oct. 5, 1999, 113 Stat. 687, required the Secretary of Defense to minimize the authorization and certification requirements to access benefits under the TRICARE program and to submit a report to Congress on actions taken no later than Mar. 31, 2000.

TRICARE MANAGED CARE SUPPORT CONTRACTS

Pub. L. 106–398, § 1 [[div. A], title VII, § 724], Oct. 30, 2000, 114 Stat. 1654, 1654A–187, provided for the four-year extension of certain TRICARE managed care support contracts in effect, or in the final stages of acquisition, on Sept. 30, 1999.

Pub. L. 106–259, title VIII, § 8090, Aug. 9, 2000, 114 Stat. 694, provided for the 2-year extension of certain TRICARE managed care support contracts in effect, or in final stages of acquisition as of Sept. 30, 2000, and authorized future replacement contracts to include a base contract period for transition and up to seven 1-year option periods.

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 106–79, title VIII, § 8095, Oct. 25, 1999, 113 Stat. 1254.

Pub. L. 105–262, title VIII, § 8107, Oct. 17, 1998, 112 Stat. 2321.

REDESIGN OF MILITARY PHARMACY SYSTEM

Pub. L. 105–261, div. A, title VII, § 703, Oct. 17, 1998, 112 Stat. 2057, provided that:

''(a) PLAN REQUIRED.—The Secretary of Defense shall submit to Congress a plan that would provide for a system-wide redesign of the military and contractor retail and mail-order pharmacy system of the Department of Defense by incorporating 'best business practices' of the private sector. The Secretary shall work with contractors of TRICARE retail pharmacy and national mail-order pharmacy programs to develop a plan for the redesign of the pharmacy system that—

''(1) may include a plan for an incentive-based formulary for military medical treatment facilities and contractors of TRICARE retail pharmacies and the national mail-order pharmacy; and

''(2) shall include a plan for each of the following:

''(A) A uniform formulary for such facilities and contractors.

''(B) A centralized database that integrates the patient databases of pharmacies of military medical treatment facilities and contractor retail and mail-order programs to implement automated prospective drug utilization review systems.

''(C) A system-wide drug benefit for covered beneficiaries under chapter 55 of title 10, United States Code, who are entitled to hospital insurance benefits under part A of title XVIII of the Social Security Act (42 U.S.C. 1395c et seq.).

''(b) SUBMISSION OF PLAN.—The Secretary shall submit the plan required under subsection (a) not later than March 1, 1999.

''(c) SUSPENSION OF IMPLEMENTATION OF PROGRAM.—The Secretary shall suspend any plan to establish a national retail pharmacy program for the Department of Defense until—

''(1) the plan required under subsection (a) is submitted; and

''(2) the Secretary implements cost-saving reforms with respect to the military and contractor retail and mail order pharmacy system.''

Pub. L. 105–261, div. A, title VII, § 723, Oct. 17, 1998, 112 Stat. 2068, as amended by Pub. L. 106–65, div. A, title X, § 1067(3), Oct. 5, 1999, 113 Stat. 774; Pub. L. 106–398, § 1 [[div. A], title VII, § 711(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–175, provided that:

''(a) IN GENERAL.—Not later than April 1, 2001, the Secretary of Defense shall implement, with respect to eligible individuals described in subsection (e), the redesign of the pharmacy system under TRICARE (including the mail-order and retail pharmacy benefit under TRICARE) to incorporate 'best business practices' of the private sector in providing pharmaceuticals, as developed under the plan described in section 703 [set out as a note above].

''(b) PROGRAM REQUIREMENTS.—The same coverage for pharmacy services and the same requirements for cost sharing and reimbursement as are applicable under section 1086 of title 10, United States Code, shall apply with respect to the program required by subsection (a).

''(c) EVALUATION.—The Secretary shall provide for an evaluation of the implementation of the redesign of the pharmacy system under TRICARE under this section by an appropriate person or entity that is independent of the Department of Defense. The evaluation shall include the following:

''(1) An analysis of the costs of the implementation of the redesign of the pharmacy system under TRICARE and to the eligible individuals who participate in the system.

''(2) An assessment of the extent to which the implementation of such system satisfies the requirements of the eligible individuals for the health care services available under TRICARE.

''(3) An assessment of the effect, if any, of the implementation of the system on military medical readiness.

''(4) A description of the rate of the participation in the system of the individuals who were eligible to participate.

''(5) An evaluation of any other matters that the Secretary considers appropriate.

''(d) REPORTS.—The Secretary shall submit two reports on the results of the evaluation under subsection (c), together with the evaluation, to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives. The first report shall be submitted not later than December 31, 2001, and the second report shall be submitted not later than December 31, 2003.

''(e) ELIGIBLE INDIVIDUALS.—(1) An individual is eligible to participate under this section if the individual is a member or former member of the uniformed services described in section 1074(b) of title 10, United States Code, a dependent of the member described in section 1076(a)(2)(B) or 1076(b) of that title, or a dependent of a member of the uniformed services who died while on active duty for a period of more than 30 days, who—

''(A) is 65 years of age or older;

''(B) is entitled to hospital insurance benefits under part A of title XVIII of the Social Security Act (42 U.S.C. 1395c et seq.); and

''(C) except as provided in paragraph (2), is enrolled in the supplemental medical insurance program under part B of such title XVIII (42 U.S.C. 1395j et seq.).

''(2) Paragraph (1)(C) shall not apply in the case of an individual who, before April 1, 2001, has attained the age of 65 and did not enroll in the program described in such paragraph.''

SYSTEM FOR TRACKING DATA AND MEASURING PERFORMANCE IN MEETING TRICARE ACCESS STANDARDS

Pub. L. 105–261, div. A, title VII, § 713, Oct. 17, 1998, 112 Stat. 2060, directed the Secretary of Defense to establish a system, no later than Apr. 1, 1999, for tracking

data and measuring performance in meeting primary care access standards under the TRICARE program.

TRICARE AS SUPPLEMENT TO MEDICARE DEMONSTRATION

Pub. L. 105–261, div. A, title VII, § 722, Oct. 17, 1998, 112 Stat. 2065, as amended by Pub. L. 106–65, div. A, title X, §§ 1066(b)(6), 1067(3), Oct. 5, 1999, 113 Stat. 773, 774, required the Secretary of Defense to carry out a demonstration project (known as the TRICARE Senior Supplement) in order to assess the feasibility and advisability of providing medical care coverage under the TRICARE program to certain members and former members of the uniformed services and their dependents and further required the Secretary to evaluate and terminate the project and submit a report on the evaluation to Congress not later than Dec. 31, 2002.

STUDY CONCERNING PROVISION OF COMPARATIVE INFORMATION

Pub. L. 105–85, div. A, title VII, § 703, Nov. 18, 1997, 111 Stat. 1807, directed the Secretary of Defense to conduct a study on the provision to TRICARE beneficiaries of comparative information on the medical assistance provided by a managed care entity and to submit a report to Congress.

DISCLOSURE OF CAUTIONARY INFORMATION ON PRESCRIPTION MEDICATIONS

Pub. L. 105–85, div. A, title VII, § 744, Nov. 18, 1997, 111 Stat. 1820, directed prescription of regulations, no later than 180 days after Nov. 18, 1997, requiring pharmacies and other pharmaceutical dispensers to provide written cautionary information about usage with the medication.

COMPETITIVE PROCUREMENT OF OPHTHALMIC SERVICES

Pub. L. 105–85, div. A, title VII, § 745, Nov. 18, 1997, 111 Stat. 1820, provided that:

''(a) COMPETITIVE PROCUREMENT REQUIRED.—Beginning not later than October 1, 1998, the Secretary of Defense shall competitively procure from private-sector sources, or other sources outside of the Department of Defense, all ophthalmic services related to the provision of single vision and multivision eyeware [sic] for members of the Armed Forces, retired members, and certain covered beneficiaries under chapter 55 of title 10, United States Code, who would otherwise receive such ophthalmic services through the Department of Defense.

''(b) EXCEPTION.—Subsection (a) shall not apply to the extent that the Secretary of Defense determines that the use of sources within the Department of Defense to provide such ophthalmic services—

''(1) is necessary to meet the readiness requirements of the Armed Forces; or

''(2) is more cost effective.

''(c) COMPLETION OF EXISTING ORDERS.—Subsection (a) shall not apply to orders for ophthalmic services received on or before September 30, 1998.''

INCLUSION OF CERTAIN DESIGNATED PROVIDERS IN UNIFORMED SERVICES HEALTH CARE DELIVERY SYSTEM

Pub. L. 104–201, div. A, title VII, subtitle C, Sept. 23, 1996, 110 Stat. 2592, as amended by Pub. L. 104–208, div. A, title I, § 101(b) [title VIII, § 8131(a)], Sept. 30, 1996, 110 Stat. 3009–71, 3009–117; Pub. L. 105–85, div. A, title VII, §§ 721–723, Nov. 18, 1997, 111 Stat. 1809, 1810; Pub. L. 106–65, div. A, title VII, § 707, Oct. 5, 1999, 113 Stat. 684; Pub. L. 107–296, title XVII, § 1704(e)(2), Nov. 25, 2002, 116 Stat. 2315; Pub. L. 108–136, div. A, title VII, § 714, Nov. 24, 2003, 117 Stat. 1531; Pub. L. 108–199, div. H, § 109, Jan. 23, 2004, 118 Stat. 438; Pub. L. 112–81, div. A, title VII, § 708, Dec. 31, 2011, 125 Stat. 1474; Pub. L. 113–291, div. A, title X, § 1071(b)(11), Dec. 19, 2014, 128 Stat. 3507, provided that:

''SEC. 721. DEFINITIONS.

''In this subtitle:

''(1) The term 'administering Secretaries' means the Secretary of Defense, the Secretary of Homeland Security, and the Secretary of Health and Human Services.

''(2) The term 'agreement' means the agreement required under section 722(b) between the Secretary of Defense and a designated provider.

''(3) The term 'capitation payment' means an actuarially sound payment for a defined set of health care services that is established on a per enrollee per month basis.

''(4) The term 'covered beneficiary' means a beneficiary under chapter 55 of title 10, United States Code, other than a beneficiary under section 1074(a) of such title.

''(5) The term 'designated provider' means a public or nonprofit private entity that was a transferee of a Public Health Service hospital or other station under section 987 of the Omnibus Budget Reconciliation Act of 1981 (Public Law 97–35; 42 U.S.C. 248b) and that, before the date of the enactment of this Act [Sept. 23, 1996], was deemed to be a facility of the uniformed services for the purposes of chapter 55 of title 10, United States Code. The term includes any legal successor in interest of the transferee.

''(6) The term 'enrollee' means a covered beneficiary who enrolls with a designated provider.

''(7) The term 'health care services' means the health care services provided under the health plan known as the 'TRICARE PRIME' option under the TRICARE program.

''(8) The term 'Secretary' means the Secretary of Defense.

''(9) The term 'TRICARE program' means the managed health care program that is established by the Secretary of Defense under the authority of chapter 55 of title 10, United States Code, principally section 1097 of such title, and includes the competitive selection of contractors to financially underwrite the delivery of health care services under the Civilian Health and Medical Program of the Uniformed Services.

''SEC. 722. INCLUSION OF DESIGNATED PROVIDERS IN UNIFORMED SERVICES HEALTH CARE DELIVERY SYSTEM.

''(a) INCLUSION IN SYSTEM.—The health care delivery system of the uniformed services shall include the designated providers.

''(b) AGREEMENTS TO PROVIDE MANAGED HEALTH CARE SERVICES.—(1) After consultation with the other administering Secretaries, the Secretary of Defense shall negotiate and enter into an agreement with each designated provider under which the designated provider will provide health care services in or through managed care plans to covered beneficiaries who enroll with the designated provider.

''(2) The agreement shall be entered into on a sole source basis. The Federal Acquisition Regulation, except for those requirements regarding competition, issued pursuant to section 1303(a) of title 41, United States Code[,] shall apply to the agreements as acquisitions of commercial items.

''(3) The implementation of an agreement is subject to availability of funds for such purpose.

''(c) EFFECTIVE DATE OF AGREEMENTS.—(1) Unless an earlier effective date is agreed upon by the Secretary and the designated provider, the agreement shall take effect upon the later of the following:

''(A) The date on which a managed care support contract under the TRICARE program is implemented in the service area of the designated provider.

''(B) October 1, 1997.

''(2) The Secretary may modify the effective date established under paragraph (1) for an agreement to permit a transition period of not more than six months between the date on which the agreement is executed by the parties and the date on which the designated provider commences the delivery of health care services under the agreement.

''(d) TEMPORARY CONTINUATION OF EXISTING PARTICIPATION AGREEMENTS.—The Secretary shall extend the participation agreement of a designated provider in effect immediately before the date of the enactment of this Act [Sept. 23, 1996] under section 718(c) of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101–510; [former] 42 U.S.C. 248c [note]) until the agreement required by this section takes effect under subsection (c), including any transitional period provided by the Secretary under paragraph (2) of such subsection.

''(e) SERVICE AREA.—The Secretary may not reduce the size of the service area of a designated provider below the size of the service area in effect as of September 30, 1996.

''(f) COMPLIANCE WITH ADMINISTRATIVE REQUIREMENTS.—(1) Unless otherwise agreed upon by the Secretary and a designated provider, the designated provider shall comply with necessary and appropriate administrative requirements established by the Secretary for other providers of health care services and requirements established by the Secretary of Health and Human Services for risk-sharing contractors under section 1876 of the Social Security Act (42 U.S.C. 1395mm). The Secretary and the designated provider shall determine and apply only such administrative requirements as are minimally necessary and appropriate. A designated provider shall not be required to comply with a law or regulation of a State government requiring licensure as a health insurer or health maintenance organization.

''(2) A designated provider may not contract out more than five percent of its primary care enrollment without the approval of the Secretary, except in the case of primary care contracts between a designated provider and a primary care contractor in force on the date of the enactment of this Act [Sept. 23, 1996].

''(g) CONTINUED ACQUISITION OF REDUCED-COST DRUGS.—A designated provider shall be treated as part of the Department of Defense for purposes of section 8126 of title 38, United States Code, in connection with the provision by the designated provider of health care services to covered beneficiaries pursuant to the participation agreement of the designated provider under section 718(c) of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101–510; [former] 42 U.S.C. 248c note) or pursuant to the agreement entered into under subsection (b).

''SEC. 723. PROVISION OF UNIFORM BENEFIT BY DESIGNATED PROVIDERS.

''(a) UNIFORM BENEFIT REQUIRED.—A designated provider shall offer to enrollees the health benefit option prescribed and implemented by the Secretary under section 731 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160; 10 U.S.C. 1073 note), including accompanying cost-sharing requirements.

''(b) TIME FOR IMPLEMENTATION OF BENEFIT.—A designated provider shall offer the health benefit option described in subsection (a) to enrollees upon the later of the following:

''(1) The date on which health care services within the health care delivery system of the uniformed services are rendered through the TRICARE program in the region in which the designated provider operates.

''(2) October 1, 1997.

''(c) ADJUSTMENTS.—The Secretary may establish a later date under subsection (b)(2) or prescribe reduced cost-sharing requirements for enrollees.

''SEC. 724. ENROLLMENT OF COVERED BENEFICIARIES.

''(a) FISCAL YEAR 1997 LIMITATION.—(1) During fiscal year 1997, the number of covered beneficiaries who are enrolled in managed care plans offered by designated providers may not exceed the number of such enrollees as of October 1, 1995.

''(2) The Secretary may waive the limitation under paragraph (1) if the Secretary determines that additional enrollment authority for a designated provider is required to accommodate covered beneficiaries who are dependents of members of the uniformed services entitled to health care under section 1074(a) of title 10, United States Code.

''(b) PERMANENT LIMITATION.—For each fiscal year beginning after September 30, 1997, the number of enrollees in managed care plans offered by designated providers may not exceed 110 percent of the number of such enrollees as of the first day of the immediately preceding fiscal year. The Secretary may waive this limitation as provided in subsection (a)(2).

''(c) RETENTION OF CURRENT ENROLLEES.—An enrollee in the managed care plan of a designated provider as of September 30, 1997, or such earlier date as the designated provider and the Secretary may agree upon, shall continue receiving services from the designated provider pursuant to the agreement entered into under section 722 unless the enrollee disenrolls from the designated provider. Except as provided in subsection (e), the administering Secretaries may not disenroll such an enrollee unless the disenrollment is agreed to by the Secretary and the designated provider.

''(d) ADDITIONAL ENROLLMENT AUTHORITY.—(1) Subject to paragraph (2), other covered beneficiaries may also receive health care services from a designated provider.

''(2)(A) The designated provider may market such services to, and enroll, covered beneficiaries who—

''(i) do not have other primary health insurance coverage (other than Medicare coverage) covering basic primary care and inpatient and outpatient services;

''(ii) subject to the limitation in subparagraph (B), have other primary health insurance coverage (other than Medicare coverage) covering basic primary care and inpatient and outpatient services; or

''(iii) are enrolled in the direct care system under the TRICARE program, regardless of whether the covered beneficiaries were users of the health care delivery system of the uniformed services in prior years.

''(B) For each fiscal year beginning after September 30, 2003, the number of covered beneficiaries newly enrolled by designated providers pursuant to clause (ii) of subparagraph (A) during such fiscal year may not exceed 10 percent of the total number of the covered beneficiaries who are newly enrolled under such subparagraph during such fiscal year.

''(3) For purposes of this subsection, a covered beneficiary who has other primary health insurance coverage includes any covered beneficiary who has primary health insurance coverage—

''(A) on the date of enrollment with a designated provider pursuant to paragraph (2)(A)(i); or

''(B) on such date of enrollment and during the period after such date while the beneficiary is enrolled with the designated provider.

''(e) SPECIAL RULE FOR MEDICARE-ELIGIBLE BENEFICIARIES.—(1) Except as provided in paragraph (2), if a covered beneficiary who desires to enroll in the managed care program of a designated provider is also entitled to hospital insurance benefits under part A of title XVIII of the Social Security Act (42 U.S.C. 1395c et seq.), the covered beneficiary shall elect whether to receive health care services as an enrollee or under part A of title XVIII of the Social Security Act. The Secretary may disenroll an enrollee who subsequently violates the election made under this subsection and receives benefits under part A of title XVIII of the Social Security Act.

''(2) After September 30, 2012, a covered beneficiary (other than a beneficiary under section 1079 of title 10, United States Code) who is also entitled to hospital insurance benefits under part A of title XVIII of the Social Security Act [42 U.S.C. 1395c et seq.] due to age may not enroll in the managed care program of a designated provider unless the beneficiary was enrolled in that program on September 30, 2012.

''(f) INFORMATION REGARDING ELIGIBLE COVERED BENEFICIARIES.—The Secretary shall provide, in a timely

manner, a designated provider with an accurate list of covered beneficiaries within the marketing area of the designated provider to whom the designated provider may offer enrollment.

"(g) OPEN ENROLLMENT DEMONSTRATION PROGRAM.—(1) The Secretary of Defense shall conduct a demonstration program under which covered beneficiaries shall be permitted to enroll at any time in a managed care plan offered by a designated provider consistent with the enrollment requirements for the TRICARE Prime option under the TRICARE program, but without regard to the limitation in subsection (b). The demonstration program under this subsection shall cover designated providers, selected by the Secretary of Defense, and the service areas of the designated providers.

"(2) The demonstration program carried out under this section shall commence on October 1, 1999, and end on September 30, 2001.

"(3) Not later than March 15, 2001, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the demonstration program carried out under this subsection. The report shall include, at a minimum, an evaluation of the benefits of the open enrollment opportunity to covered beneficiaries and a recommendation on whether to authorize open enrollments in the managed care plans of designated providers permanently.

"SEC. 725. APPLICATION OF CHAMPUS PAYMENT RULES.

"(a) APPLICATION OF PAYMENT RULES.—Subject to subsection (b), the Secretary shall require a private facility or health care provider that is a health care provider under the Civilian Health and Medical Program of the Uniformed Services to apply the payment rules described in section 1074(c) of title 10, United States Code, in imposing charges for health care that the private facility or provider provides to enrollees of a designated provider.

"(b) AUTHORIZED ADJUSTMENTS.—The payment rules imposed under subsection (a) shall be subject to such modifications as the Secretary considers appropriate. The Secretary may authorize a lower rate than the maximum rate that would otherwise apply under subsection (a) if the lower rate is agreed to by the designated provider and the private facility or health care provider.

"(c) REGULATIONS.—The Secretary shall prescribe regulations to implement this section after consultation with the other administering Secretaries.

"(d) CONFORMING AMENDMENT.—[Amended section 1074 of this title.]

"SEC. 726. PAYMENTS FOR SERVICES.

"(a) FORM OF PAYMENT.—Unless otherwise agreed to by the Secretary and a designated provider, the form of payment for health care services provided by a designated provider shall be on a full risk capitation payment basis. The capitation payments shall be negotiated and agreed upon by the Secretary and the designated provider. In addition to such other factors as the parties may agree to apply, the capitation payments shall be based on the utilization experience of enrollees and competitive market rates for equivalent health care services for a comparable population to such enrollees in the area in which the designated provider is located.

"(b) LIMITATION ON TOTAL PAYMENTS.—Total capitation payments for health care services to a designated provider shall not exceed an amount equal to the cost that would have been incurred by the Government if the enrollees had received such health care services through a military treatment facility, the TRICARE program, or the Medicare program, as the case may be. In establishing the ceiling rate for enrollees with the designated providers who are also eligible for the Civilian Health and Medical Program of the Uniformed Services, the Secretary of Defense shall take into account the health status of the enrollees.

"(c) ESTABLISHMENT OF PAYMENT RATES ON ANNUAL BASIS.—The Secretary and a designated provider shall establish capitation payments on an annual basis, subject to periodic review for actuarial soundness and to adjustment for any adverse or favorable selection reasonably anticipated to result from the design of the program under this subtitle.

"(d) ALTERNATIVE BASIS FOR CALCULATING PAYMENTS.—After September 30, 1999, the Secretary and a designated provider may mutually agree upon a new basis for calculating capitation payments.

"SEC. 727. REPEAL OF SUPERSEDED AUTHORITIES.

"(a) REPEALS.—[Repealed sections 248c and 248d of Title 42, The Public Health and Welfare, and section 718(c) of Pub. L. 101–510 and section 726 of Pub. L. 104–106, set out as notes under section 248c of Title 42.]

"(b) EFFECTIVE DATE.—The amendments made by paragraphs (1), (2), and (3) of subsection (a) shall take effect on October 1, 1997."

[Pub. L. 108–199, div. H, §109, Jan. 23, 2004, 118 Stat. 438, provided that the amendment made by section 109, amending section 724 of Pub. L. 104–201, set out above, is effective immediately after the enactment of Pub. L. 108–136.

[Pub. L. 104–208, div. A, title I, §101(b) [title VIII, §8131(b)], Sept. 30, 1996, 110 Stat. 3009–71, 3009–117, provided that: "The amendments made by subsection (a) [amending section 722 of Pub. L. 104–201, set out above] shall take effect as of the date of the enactment of the National Defense Authorization Act for Fiscal Year 1997 [Sept. 23, 1996] as if section 722 of such Act had been enacted as so amended."]

DEFINITION OF TRICARE PROGRAM

Pub. L. 104–106, div. A, title VII, §711, Feb. 10, 1996, 110 Stat. 374, provided that: "For purposes of this subtitle [subtitle B (§§711–718) of title VII of div. A of Pub. L. 104–106, amending section 1097 of this title, enacting provisions set out as notes below, and amending provisions set out as a note below], the term 'TRICARE program' means the managed health care program that is established by the Secretary of Defense under the authority of chapter 55 of title 10, United States Code, principally section 1097 of such title, and includes the competitive selection of contractors to financially underwrite the delivery of health care services under the Civilian Health and Medical Program of the Uniformed Services."

TRAINING IN HEALTH CARE MANAGEMENT AND ADMINISTRATION FOR TRICARE LEAD AGENTS

Pub. L. 104–106, div. A, title VII, §715, Feb. 10, 1996, 110 Stat. 375, as amended by Pub. L. 106–398, §1 [[div. A], title VII, §760(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–200, provided that:

"(a) PROVISION OF TRAINING.—The Secretary of Defense shall implement a professional educational program to provide appropriate training in health care management and administration—

"(1) to each commander, deputy commander, and managed care coordinator of a military medical treatment facility of the Department of Defense, and any other person, who is selected to serve as a lead agent to coordinate the delivery of health care by military and civilian providers under the TRICARE program; and

"(2) to appropriate members of the support staff of the treatment facility who will be responsible for daily operation of the TRICARE program.

"(b) LIMITATION ON ASSIGNMENT UNTIL COMPLETION OF TRAINING.—No person may be assigned as the commander, deputy commander, or managed care coordinator of a military medical treatment facility or as a TRICARE lead agent or senior member of the staff of a TRICARE lead agent office until the Secretary of the military department concerned submits a certification to the Secretary of Defense that such person has completed the training described in subsection (a)."

[Pub. L. 106–398, §1 [[div. A], title VII, §760(c)], Oct. 30, 2000, 114 Stat. 1654, 1654A–200, provided that: "The amendments made by subsection (a) to section 715 of such Act [section 715 of Pub. L. 104–106, set out above]—

[''(1) shall apply to a deputy commander, a managed care coordinator of a military medical treatment facility, or a lead agent for coordinating the delivery of health care by military and civilian providers under the TRICARE program, who is assigned to such position on or after the date that is one year after the date of the enactment of this Act [Oct. 30, 2000]; and

[''(2) may apply, in the discretion of the Secretary of Defense, to a deputy commander, a managed care coordinator of such a facility, or a lead agent for coordinating the delivery of such health care, who is assigned to such position before the date that is one year after the date of the enactment of this Act.'']

PILOT PROGRAM OF INDIVIDUALIZED RESIDENTIAL MENTAL HEALTH SERVICES

Pub. L. 104–106, div. A, title VII, § 716, Feb. 10, 1996, 110 Stat. 375, directed the Secretary of Defense to implement a pilot program to provide residential and wraparound services to certain children who are in need of mental health services and to report to Congress no later than Mar. 1, 1998.

EVALUATION AND REPORT ON TRICARE PROGRAM EFFECTIVENESS

Pub. L. 104–106, div. A, title VII, § 717, Feb. 10, 1996, 110 Stat. 376, as amended by Pub. L. 112–239, div. A, title VII, § 714, Jan. 2, 2013, 126 Stat. 1803; Pub. L. 114–92, div. A, title VII, § 713, Nov. 25, 2015, 129 Stat. 865, provided that:

''(a) EVALUATION REQUIRED.—The Secretary of Defense shall arrange for an on-going evaluation of the effectiveness of the TRICARE program in meeting the goals of increasing the access of covered beneficiaries under chapter 55 of title 10, United States Code, to health care and improving the quality of health care provided to covered beneficiaries, without increasing the costs incurred by the Government or covered beneficiaries. The evaluation shall specifically—

''(1) address the impact of the TRICARE program on members of the Armed Forces (whether in the regular or reserve components) and their dependents, military retirees and their dependents, and dependents of members on active duty with severe disabilities and chronic health care needs with regard to access, costs, and quality of health care services;

''(2) identify noncatchment areas in which the health maintenance organization option of the TRICARE program is available or is proposed to become available; and

''(3) address patient safety, quality of care, and access to care at military medical treatment facilities, including—

''(A) an identification of the number of practitioners providing health care in military medical treatment facilities that were reported to the National Practitioner Data Bank during the year preceding the evaluation; and

''(B) with respect to each military medical treatment facility, an assessment of—

''(i) the current accreditation status of such facility, including any recommendations for corrective action made by the relevant accrediting body;

''(ii) any policies or procedures implemented during such year by the Secretary of the military department concerned that were designed to improve patient safety, quality of care, and access to care at such facility;

''(iii) data on surgical and maternity care outcomes during such year;

''(iv) data on appointment wait times during such year; and

''(v) data on patient safety, quality of care, and access to care as compared to standards established by the Department of Defense with respect to patient safety, quality of care, and access to care.

''(b) ENTITY TO CONDUCT EVALUATION.—The Secretary may use a federally funded research and development center to conduct the evaluation required by subsection (a).

''(c) ANNUAL REPORT.—Not later than March 1, 1997, and each March 1 thereafter, the Secretary shall submit to Congress a report describing the results of the evaluation under subsection (a) during the preceding year.''

[For termination, effective Dec. 31, 2021, of annual reporting provisions in section 717(c) of Pub. L. 104–106, set out above, see section 1061 of Pub. L. 114–328, set out as a note under section 111 of this title.]

USE OF HEALTH MAINTENANCE ORGANIZATION MODEL AS OPTION FOR MILITARY HEALTH CARE

Pub. L. 103–160, div. A, title VII, § 731, Nov. 30, 1993, 107 Stat. 1696, as amended by Pub. L. 103–337, div. A, title VII, § 715, Oct. 5, 1994, 108 Stat. 2803; Pub. L. 104–106, div. A, title VII, § 714, Feb. 10, 1996, 110 Stat. 374, provided that:

''(a) USE OF MODEL.—The Secretary of Defense shall prescribe and implement a health benefit option (and accompanying cost-sharing requirements) for covered beneficiaries eligible for health care under chapter 55 of title 10, United States Code, that is modelled on health maintenance organization plans offered in the private sector and other similar Government health insurance programs. The Secretary shall include, to the maximum extent practicable, the health benefit option required under this subsection as one of the options available to covered beneficiaries in all managed health care initiatives undertaken by the Secretary after December 31, 1994.

''(b) ELEMENTS OF OPTION.—The Secretary shall offer covered beneficiaries who enroll in the health benefit option required under subsection (a) reduced out-of-pocket costs and a benefit structure that is as uniform as possible throughout the United States. The Secretary shall allow enrollees to seek health care outside of the option, except that the Secretary may prescribe higher out-of-pocket costs than are provided under section 1079 or 1086 of title 10, United States Code, for enrollees who obtain health care outside of the option.

''(c) GOVERNMENT COSTS.—The health benefit option required under subsection (a) shall be administered so that the costs incurred by the Secretary under the TRICARE program are no greater than the costs that would otherwise be incurred to provide health care to the members of the uniformed services and covered beneficiaries who participate in the TRICARE program.

''(d) DEFINITIONS.—For purposes of this section:

''(1) The term 'covered beneficiary' means a beneficiary under chapter 55 of title 10, United States Code, other than a beneficiary under section 1074(a) of such title.

''(2) The term 'TRICARE program' means the managed health care program that is established by the Secretary of Defense under the authority of chapter 55 of title 10, United States Code, principally section 1097 of such title, and includes the competitive selection of contractors to financially underwrite the delivery of health care services under the Civilian Health and Medical Program of the Uniformed Services.

''(e) REGULATIONS.—Not later than December 31, 1994, the Secretary shall prescribe final regulations to implement the health benefit option required by subsection (a).

''(f) MODIFICATION OF EXISTING CONTRACTS.—In the case of managed health care contracts in effect or in final stages of acquisition as of December 31, 1994, the Secretary may modify such contracts to incorporate the health benefit option required under subsection (a).''

MANAGED HEALTH CARE PROGRAM AND CONTRACTS FOR MILITARY HEALTH SERVICES SYSTEM

Pub. L. 104–61, title VI, Dec. 1, 1995, 109 Stat. 649, provided in part that the date for implementation of the

nation-wide managed care military health services system would be extended to Sept. 30, 1997.

Pub. L. 103–139, title VIII, § 8025, Nov. 11, 1993, 107 Stat. 1443, provided that: ''Notwithstanding any other provision of law, to establish region-wide, at-risk, fixed price managed care contracts possessing features similar to those of the CHAMPUS Reform Initiative, the Secretary of Defense shall submit to the Congress a plan to implement a nation-wide managed health care program for the military health services system not later than December 31, 1993: *Provided*, That the program shall include, but not be limited to: (1) a uniform, stabilized benefit structure characterized by a triple option health benefit feature; (2) a regionally-based health care management system; (3) cost minimization incentives including 'gatekeeping' and annual enrollment procedures, capitation budgeting, and at-risk managed care support contracts; and (4) full and open competition for all managed care support contracts: *Provided further*, That the implementation of the nation-wide managed care military health services system shall be completed by September 30, 1996: *Provided further*, That the Department shall competitively award contracts in fiscal year 1994 for at least four new region-wide, at-risk, fixed price managed care support contracts consistent with the nation-wide plan, that one such contract shall include the State of Florida (which may include Department of Veterans Affairs' medical facilities with the concurrence of the Secretary of Veterans Affairs), one such contract shall include the States of Washington and Oregon, and one such contract shall include the State of Texas: *Provided further*, That any law or regulation of a State or local government relating to health insurance, prepaid health plans, or other health care delivery, administration, and financing methods shall be preempted and shall not apply to any region-wide, at-risk, fixed price managed care contract entered into pursuant to chapter 55 of title 10, United States Code: *Provided further*, That the Department shall competitively award within 13 months after the date of enactment of this Act [Nov. 11, 1993] two contracts for stand-alone, at-risk managed mental health services in high utilization, high-cost areas, consistent with the management and service delivery features in operation in Department of Defense managed mental health care contracts: *Provided further*, That the Assistant Secretary of Defense for Health Affairs shall, during the current fiscal year, initiate through competitive procedures a managed health care program for eligible beneficiaries in the area of Homestead Air Force Base with benefits and services substantially identical to those established to serve beneficiary populations in areas where military medical facilities have been terminated, to include retail pharmacy networks available to Medicare-eligible beneficiaries, and shall present a plan to implement this program to the House and Senate Committees on Appropriations not later than January 15, 1994.''

ALTERNATIVE HEALTH CARE DELIVERY METHODOLOGIES

Pub. L. 102–484, div. A, title VII, § 713, Oct. 23, 1992, 106 Stat. 2435, as amended by Pub. L. 103–160, div. A, title VII, § 719, Nov. 30, 1993, 107 Stat. 1694, directed the Secretary of Defense to continue to conduct during fiscal years 1993 through 1996 a broad array of reform initiatives for furnishing health care to persons who were eligible to receive health care under chapter 55 of this title and to submit to Congress a report regarding such initiatives not later than Sept. 30, 1994, and further directed the Secretary to take certain steps to ensure the continuation of the CHAMPUS reform initiative in the States of California and Hawaii.

MILITARY HEALTH CARE FOR PERSONS RELIANT ON HEALTH CARE FACILITIES AT BASES BEING CLOSED OR REALIGNED

Pub. L. 102–484, div. A, title VII, § 722, Oct. 23, 1992, 106 Stat. 2439, as amended by Pub. L. 108–136, div. A, title VII, § 726, Nov. 24, 2003, 117 Stat. 1535; Pub. L. 110–181, div. A, title X, § 1063(i), Jan. 28, 2008, 122 Stat. 324, directed the Secretary of Defense to establish a working group on the provision of military health care to persons who rely on health care facilities at military installations selected for closure or realignment and provided that the working group would terminate on Dec. 31, 2006.

REQUIREMENTS PRIOR TO TERMINATION OF MEDICAL SERVICES AT MILITARY MEDICAL TREATMENT FACILITIES

Pub. L. 101–510, div. A, title VII, § 716, Nov. 5, 1990, 104 Stat. 1585, prohibited the Secretary of a military department, during the period beginning on Nov. 5, 1990, and ending on Sept. 30, 1995, from taking any action to close a military medical facility or reduce the level of care provided at such a facility until 90 days after the Secretary had submitted to Congress a report describing the reason for the action, projected savings, impact on costs, and alternative methods of providing care.

REQUIREMENT FOR AVAILABILITY OF ADDITIONAL INSURANCE COVERAGE; FUNDING LIMITATIONS; DEFINITION

Pub. L. 100–180, div. A, title VII, § 732(e)–(g), Dec. 4, 1987, 101 Stat. 1120, 1121, required the Secretary of Defense to enter into an agreement that would provide individuals losing health care coverage under CHAMPUS an option to purchase an insurance plan that provided similar benefits to CHAMPUS.

CHAMPUS REFORM INITIATIVE

Pub. L. 102–484, div. A, title VII, § 712, Oct. 23, 1992, 106 Stat. 2435, as amended by Pub. L. 103–160, div. A, title VII, § 720, Nov. 30, 1993, 107 Stat. 1695; Pub. L. 103–337, div. A, title VII, § 714(c), Oct. 5, 1994, 108 Stat. 2803, provided that the Secretary of Defense could not expand the CHAMPUS reform initiative beyond California and Hawaii until not less than 90 days after the date on which the Secretary certified that expansion to another location was the most efficient method of providing health care to beneficiaries, with an exception for locations adversely affected by military installation closures or realignments.

Pub. L. 102–190, div. A, title VII, § 722, Dec. 5, 1991, 105 Stat. 1406, authorized the Secretary of Defense to enter into a replacement or successor contract upon the termination of the Department of Defense contract in effect on Dec. 5, 1991, under the CHAMPUS reform initiative.

Pub. L. 102–172, title VIII, § 8032, Nov. 26, 1991, 105 Stat. 1178, extended the CHAMPUS reform initiative contract for California and Hawaii until Feb. 1, 1994, and required contracts to be competitively awarded for the geographic expansion of the reform initiative in certain other states and regions.

Pub. L. 101–510, div. A, title VII, § 715, Nov. 5, 1990, 104 Stat. 1584, required the Secretary of Defense to make certain cost-effectiveness certifications to Congress before the CHAMPUS reform initiative underway in California and Hawaii could expand.

Pub. L. 99–661, div. A, title VII, § 702, Nov. 14, 1986, 100 Stat. 3899, as amended by Pub. L. 100–180, div. A, title VII, § 732(a), (c), Dec. 4, 1987, 101 Stat. 1119, directed the Secretary of Defense to conduct a project, beginning no later than Sept. 30, 1988, to test new approaches for delivering health care to beneficiaries of the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) through the competitive selection of contractors to financially underwrite the delivery of health care services.

DEFINITIONS

Pub. L. 114–328, div. A, title VII, § 701(i), Dec. 23, 2016, 130 Stat. 2190, provided that: ''In this section [enacting sections 1075 and 1075a of this title, amending sections 1072, 1076d, 1076e, 1079a, 1095f, 1099, and 1110b of this title, and enacting provisions set out as notes under this section and sections 1072 and 1099 of this title]:

''(1) The terms 'uniformed services', 'covered beneficiary', 'TRICARE Extra', 'TRICARE for Life',

'TRICARE Prime', and 'TRICARE Standard', have the meaning given those terms in section 1072 of title 10, United States Code, as amended by subsection (j).

''(2) The term 'TRICARE Select' means the self-managed, preferred-provider network option under the TRICARE program established by section 1075 of such title, as added by subsection (a).

''(3) The term 'chronic conditions' includes diabetes, chronic obstructive pulmonary disease, asthma, congestive heart failure, hypertension, history of stroke, coronary artery disease, mood disorders, and such other diseases or conditions as the Secretary considers appropriate.

''(4) The term 'high-value medications and services' means prescription medications and clinical services for the management of chronic conditions that the Secretary determines would improve health outcomes and create health value for covered beneficiaries (such as preventive care, primary and specialty care, diagnostic tests, procedures, and durable medical equipment).

''(5) The term 'high-value provider' means an individual or institutional health care provider that provides health care under the purchased care component of the TRICARE program and that consistently improves the experience of care, meets established quality of care and effectiveness metrics, and reduces the per capita costs of health care.

''(6) The term 'value-based health care methodology' means a methodology for identifying specific prescription medications and clinical services provided under the TRICARE program for which reduction of copayments, cost shares, or both, would improve the management of specific chronic conditions because of the high value and clinical effectiveness of such medications and services for such chronic conditions.''

§ 1073a. Contracts for health care: best value contracting

(a) AUTHORITY.—Under regulations prescribed by the administering Secretaries, health care contracts shall be awarded in the administration of this chapter to the offeror or offerors that will provide the best value to the United States to the maximum extent consistent with furnishing high-quality health care in a manner that protects the fiscal and other interests of the United States.

(b) FACTORS CONSIDERED.—In the determination of best value under subsection (a)—

(1) consideration shall be given to the factors specified in the regulations; and

(2) greater weight shall be accorded to technical and performance-related factors than to cost and price-related factors.

(c) APPLICABILITY.—The authority under the regulations prescribed under subsection (a) shall apply to any contract in excess of $5,000,000.

(Added Pub. L. 106–65, div. A, title VII, § 722(a), Oct. 5, 1999, 113 Stat. 695.)

COMPTROLLER GENERAL REVIEW OF DEFENSE HEALTH AGENCY OVERSIGHT OF TRANSITION BETWEEN MANAGED CARE SUPPORT CONTRACTORS FOR THE TRICARE PROGRAM

Pub. L. 115–232, div. A, title VII, § 737, Aug. 13, 2018, 132 Stat. 1821, provided that:

''(a) BRIEFING AND REPORT ON CURRENT TRANSITION.—

''(1) IN GENERAL.—The Comptroller General of the United States shall provide to the Committees on Armed Services of the Senate and the House of Representatives a briefing and a report on a review by the Comptroller General of the oversight conducted by the Defense Health Agency with respect to the current transition between managed care support contractors for the TRICARE program. The briefing shall be provided by not later than July 1, 2019.

''(2) ELEMENTS.—The briefing and report under paragraph (1) shall each include the following:

''(A) A description and assessment of the extent to which the Defense Health Agency provided guidance and oversight to the outgoing and incoming managed care support contractors for the TRICARE program during the transition described in paragraph (1) and before the start of health care delivery by the incoming contractor.

''(B) A description and assessment of any issues with health care delivery under the TRICARE program as a result of or in connection with the transition, and, with respect to such issues—

''(i) the effect, if any, of the guidance and oversight provided by the Defense Health Agency during the transition on such issues; and

''(ii) the solutions developed by the Defense Health Agency for remediating any deficiencies in managed care support for the TRICARE program in connection with such issues.

''(C) A description and assessment of the extent to which the Defense Health Agency has reviewed any lessons learned from past transitions between managed care support contractors for the TRICARE program, and incorporated such lessons into the transition.

''(D) A review of the Department of Defense briefing provided in accordance with the provisions of the Report of the Committee on Armed Services of the House of Representatives to Accompany H.R. 5515 (115th Congress; House Report 115–676) on TRICARE Managed Care Support Contractor Reporting.

''(b) REPORT ON FUTURE TRANSITIONS.—Not later than 270 days after the completion of any future transition between managed care support contractors for the TRICARE program, the Comptroller General shall submit to the committees of Congress referred to in subsection (a)(1) a report on a review by the Comptroller General of the oversight conducted by the Defense Health Agency with respect to such transition. The report shall include each description and assessment specified in subparagraphs (A) through (C) of subsection (a)(2) with respect to such transition.

''(c) TRICARE PROGRAM DEFINED.—In this section, the term 'TRICARE program' has the meaning given that term in section 1072 of title 10, United States Code.''

VALUE-BASED PURCHASING AND ACQUISITION OF MANAGED CARE SUPPORT CONTRACTS FOR TRICARE PROGRAM

Pub. L. 114–328, div. A, title VII, § 705, Dec. 23, 2016, 130 Stat. 2201, as amended by Pub. L. 115–91, div. A, title VII, § 715, Dec. 12, 2017, 131 Stat. 1438; Pub. L. 116–92, div. A, title VII, § 716, Dec. 20, 2019, 133 Stat. 1453, provided that:

''(a) VALUE-BASED HEALTH CARE.—

''(1) IN GENERAL.—The Secretary of Defense shall develop and implement value-based incentive programs as part of any contract awarded under chapter 55 of title 10, United States Code, for the provision of health care services to covered beneficiaries to encourage health care providers under the TRICARE program (including physicians, hospitals, and other persons and facilities involved in providing such health care services) to improve the following:

''(A) The quality of health care provided to covered beneficiaries under the TRICARE program.

''(B) The experience of covered beneficiaries in receiving health care under the TRICARE program.

''(C) The health of covered beneficiaries.

''(2) VALUE-BASED INCENTIVE PROGRAMS.—

''(A) DEVELOPMENT.—In developing value-based incentive programs under paragraph (1), the Secretary shall—

''(i) link payments to health care providers under the TRICARE program to improved per-

formance with respect to quality, cost, and reducing the provision of inappropriate care;

''(ii) consider the characteristics of the population of covered beneficiaries affected by the value-based incentive program;

''(iii) consider how the value-based incentive program would affect the receipt of health care under the TRICARE program by such covered beneficiaries;

''(iv) establish or maintain an assurance that such covered beneficiaries will have timely access to health care during the operation of the value-based incentive program;

''(v) ensure that such covered beneficiaries do not incur any additional costs by reason of the value-based incentive program; and

''(vi) consider such other factors as the Secretary considers appropriate.

''(B) SCOPE AND METRICS.—With respect to a value-based incentive program developed and implemented under paragraph (1), the Secretary shall ensure that—

''(i) the size, scope, and duration of the value-based incentive program is reasonable in relation to the purpose of the value-based incentive program; and

''(ii) the value-based incentive program relies on the core quality performance metrics adopted pursuant to section 728 [amending section 1073b of this title and enacting provisions set out as notes under section 1071 of this title].

''(3) USE OF EXISTING MODELS.—In developing a value-based incentive program under paragraph (1), the Secretary may adapt a value-based incentive program conducted by a TRICARE managed care support contractor, the Centers for Medicare & Medicaid Services, or any other Federal Government, State government, or commercial health care program.

''(b) EXECUTION OF CONTRACTING RESPONSIBILITY.—With respect to any acquisition of managed care support services under the TRICARE program initiated after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2018 [Dec. 12, 2017], the Under Secretary of Defense for Acquisition and Sustainment shall be responsible for—

''(1) decisions relating to such acquisition;

''(2) approving the acquisition strategy; and

''(3) conducting pre-solicitation, pre-award, and post-award acquisition reviews.

''(c) ACQUISITION OF CONTRACTS.—

''(1) STRATEGY.—Not later than January 1, 2018, the Secretary of Defense shall develop and implement a strategy to ensure that managed care support contracts under the TRICARE program entered into with private sector entities—

''(A) improve access to health care for covered beneficiaries;

''(B) improve health outcomes for covered beneficiaries;

''(C) improve the quality of health care received by covered beneficiaries;

''(D) enhance the experience of covered beneficiaries in receiving health care; and

''(E) lower per capita costs to the Department of Defense of health care provided to covered beneficiaries.

''(2) APPLICABILITY OF STRATEGY.—

''(A) IN GENERAL.—The strategy required by paragraph (1) shall apply to all managed care support contracts under the TRICARE program entered into with private sector entities.

''(B) MODIFICATION OF CONTRACTS.—Contracts entered into prior to the implementation of the strategy required by paragraph (1) shall be modified to ensure consistency with such strategy.

''(3) LOCAL, REGIONAL, AND NATIONAL HEALTH PLANS.—In developing and implementing the strategy required by paragraph (1), the Secretary shall ensure that local, regional, and national health plans have an opportunity to participate in the competition for managed care support contracts under the TRICARE program.

''(4) CONTINUOUS INNOVATION.—The strategy required by paragraph (1) shall include incentives for the incorporation of innovative ideas and solutions into managed care support contracts under the TRICARE program through the use of teaming agreements, subcontracts, and other contracting mechanisms that can be used to develop and continuously refresh high-performing networks of health care providers at the national, regional, and local level.

''(5) ELEMENTS OF STRATEGY.—The strategy required by paragraph (1) shall provide for the following with respect to managed care support contracts under the TRICARE program:

''(A) The maximization of flexibility in the design and configuration of networks of individual and institutional health care providers, including a focus on the development of high-performing networks of health care providers.

''(B) The establishment of an integrated medical management system between military medical treatment facilities and health care providers in the private sector that, when appropriate, effectively coordinates and integrates health care across the continuum of care.

''(C) With respect to telehealth services—

''(i) the maximization of the use of such services to provide real-time interactive communications between patients and health care providers and remote patient monitoring; and

''(ii) the use of standardized payment methods to reimburse health care providers for the provision of such services.

''(D) The use of value-based reimbursement methodologies, including through the use of value-based incentive programs under subsection (a), that transfer financial risk to health care providers and managed care support contractors.

''(E) The use of financial incentives for contractors and health care providers to receive an equitable share in the cost savings to the Department resulting from improvement in health outcomes for covered beneficiaries and the experience of covered beneficiaries in receiving health care.

''(F) The use of incentives that emphasize prevention and wellness for covered beneficiaries receiving health care services from private sector entities to seek such services from high-value health care providers.

''(G) The adoption of a streamlined process for enrollment of covered beneficiaries to receive health care and timely assignment of primary care managers to covered beneficiaries.

''(H) The elimination of the requirement for a referral to be authorized prior receiving specialty care services at a facility of the Department of Defense or through the TRICARE program.

''(I) The use of incentives to encourage covered beneficiaries to participate in medical and lifestyle intervention programs.

''(6) RURAL, REMOTE, AND ISOLATED AREAS.—In developing and implementing the strategy required by paragraph (1), the Secretary shall—

''(A) assess the unique characteristics of providing health care services in Alaska, Hawaii, and the territories and possessions of the United States, and in rural, remote, or isolated locations in the contiguous 48 States;

''(B) consider the various challenges inherent in developing robust networks of health care providers in those locations;

''(C) develop a provider reimbursement rate structure in those locations that ensures—

''(i) timely access of covered beneficiaries to health care services;

''(ii) the delivery of high-quality primary and specialty care;

''(iii) improvement in health outcomes for covered beneficiaries; and

''(iv) an enhanced experience of care for covered beneficiaries; and

''(D) ensure that managed care support contracts under the TRICARE program in those locations will—

''(i) establish individual and institutional provider networks that will provide timely access to care for covered beneficiaries, including pursuant to such networks relating to an Indian tribe or tribal organization that is party to the Alaska Native Health Compact with the Indian Health Service or has entered into a contract with the Indian Health Service to provide health care in rural Alaska or other locations in the United States; and

''(ii) deliver high-quality care, better health outcomes, and a better experience of care for covered beneficiaries.

''(d) REPORT PRIOR TO CERTAIN CONTRACT MODIFICATIONS.—Not later than 60 days before the date on which the Secretary of Defense first modifies a contract awarded under chapter 55 of title 10, United States Code, to implement a value-based incentive program under subsection (a), or the managed care support contract acquisition strategy under subsection (c), the Secretary shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on any implementation plan of the Secretary with respect to such value-based incentive program or managed care support contract acquisition strategy.

''(e) COMPTROLLER GENERAL REPORT.—

''(1) IN GENERAL.—Not later than 180 days after the date on which the Secretary submits the report under subsection (d), the Comptroller General of the United States shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report that assesses the compliance of the Secretary of Defense with the requirements of subsection (a) and subsection (c).

''(2) ELEMENTS.—The report required by paragraph (1) shall include an assessment of the following:

''(A) Whether the approach of the Department of Defense for acquiring managed care support contracts under the TRICARE program—

''(i) improves access to care;

''(ii) improves health outcomes;

''(iii) improves the experience of care for covered beneficiaries; and

''(iv) lowers per capita health care costs.

''(B) Whether the Department has, in its requirements for managed care support contracts under the TRICARE program, allowed for—

''(i) maximum flexibility in network design and development;

''(ii) integrated medical management between military medical treatment facilities and network providers;

''(iii) the maximum use of the full range of telehealth services;

''(iv) the use of value-based reimbursement methods that transfer financial risk to health care providers and managed care support contractors;

''(v) the use of prevention and wellness incentives to encourage covered beneficiaries to seek health care services from high-value providers;

''(vi) a streamlined enrollment process and timely assignment of primary care managers;

''(vii) the elimination of the requirement to seek authorization for referrals for specialty care services;

''(viii) the use of incentives to encourage covered beneficiaries to engage in medical and lifestyle intervention programs; and

''(ix) the use of financial incentives for contractors and health care providers to receive an equitable share in cost savings resulting from improvements in health outcomes and the experience of care for covered beneficiaries.

''(C) Whether the Department has considered, in developing requirements for managed care support contracts under the TRICARE program, the following:

''(i) The unique characteristics of providing health care services in Alaska, Hawaii, and the territories and possessions of the United States, and in rural, remote, or isolated locations in the contiguous 48 States;

''(ii) The various challenges inherent in developing robust networks of health care providers in those locations.

''(iii) A provider reimbursement rate structure in those locations that ensures—

''(I) timely access of covered beneficiaries to health care services;

''(II) the delivery of high-quality primary and specialty care;

''(III) improvement in health outcomes for covered beneficiaries; and

''(IV) an enhanced experience of care for covered beneficiaries.

''(f) DEFINITIONS.—In this section:

''(1) The terms 'covered beneficiary' and 'TRICARE program' have the meaning given those terms in section 1072 of title 10, United States Code.

''(2) The term 'high-performing networks of health care providers' means networks of health care providers that, in addition to such other requirements as the Secretary of Defense may specify for purposes of this section, do the following:

''(A) Deliver high quality health care as measured by leading health quality measurement organizations such as the National Committee for Quality Assurance and the Agency for Healthcare Research and Quality.

''(B) Achieve greater efficiency in the delivery of health care by identifying and implementing within such network improvement opportunities that guide patients through the entire continuum of care, thereby reducing variations in the delivery of health care and preventing medical errors and duplication of medical services.

''(C) Improve population-based health outcomes by using a team approach to deliver case management, prevention, and wellness services to high-need and high-cost patients.

''(D) Focus on preventive care that emphasizes—

''(i) early detection and timely treatment of disease;

''(ii) periodic health screenings; and

''(iii) education regarding healthy lifestyle behaviors.

''(E) Coordinate and integrate health care across the continuum of care, connecting all aspects of the health care received by the patient, including the patient's health care team.

''(F) Facilitate access to health care providers, including—

''(i) after-hours care;

''(ii) urgent care; and

''(iii) through telehealth appointments, when appropriate.

''(G) Encourage patients to participate in making health care decisions.

''(H) Use evidence-based treatment protocols that improve the consistency of health care and eliminate ineffective, wasteful health care practices.''

§ 1073b. Recurring reports and publication of certain data

(a) ANNUAL REPORT ON RECORDING OF HEALTH ASSESSMENT DATA IN MILITARY HEALTH RECORDS.—The Secretary of Defense shall issue each year a report on the compliance by the military departments with applicable law and policies on the recording of health assessment data in military health records, including com-

pliance with section 1074f(c) of this title. The report shall cover the calendar year preceding the year in which the report is submitted and include a discussion of the extent to which immunization status and predeployment and postdeployment health care data are being recorded in such records.

(b) PUBLICATION OF DATA ON PATIENT SAFETY, QUALITY OF CARE, SATISFACTION, AND HEALTH OUTCOME MEASURES.—(1) The Secretary of Defense shall publish on a publically available Internet website of the Department of Defense data on all measures that the Secretary considers appropriate that are used by the Department to assess patient safety, quality of care, patient satisfaction, and health outcomes for health care provided under the TRICARE program at each military medical treatment facility. Such data shall include the core quality performance metrics adopted by the Secretary under section 728 of the National Defense Authorization Act for Fiscal Year 2017.

(2) The Secretary shall publish an update to the data published under paragraph (1) not less frequently than once each quarter during each fiscal year.

(3) The Secretary may not include data relating to risk management activities of the Department in any publication under paragraph (1) or update under paragraph (2).

(4) The Secretary shall ensure that the data published under paragraph (1) and updated under paragraph (2) is accessible to the public through the primary Internet website of the Department and the primary Internet website of the military medical treatment facility with respect to which such data applies.

(Added Pub. L. 108–375, div. A, title VII, §739(a)(1), Oct. 28, 2004, 118 Stat. 2001; amended Pub. L. 114–92, div. A, title VII, §712, Nov. 25, 2015, 129 Stat. 864; Pub. L. 114–328, div. A, title VII, §728(b)(1), Dec. 23, 2016, 130 Stat. 2234; Pub. L. 115–91, div. A, title X, §§1051(a)(5), 1081(d)(3), Dec. 12, 2017, 131 Stat. 1560, 1600.)

REFERENCES IN TEXT

Section 728 of the National Defense Authorization Act for Fiscal Year 2017, referred to in subsec. (b)(1), is section 728 of Pub. L. 114–328, which amended this section and enacted provisions set out as notes under section 1071 of this title.

AMENDMENTS

2017—Pub. L. 115–91, §1081(d)(3), amended directory language of Pub. L. 114–328, §728(b)(1). See 2016 Amendment notes below.

Subsecs. (a) to (c). Pub. L. 115–91, §1051(a)(5), redesignated subsecs. (b) and (c) as (a) and (b), respectively, and struck out former subsec. (a) which related to annual report on the Force Health Protection Quality Assurance Program.

2016—Pub. L. 114–328, §728(b)(1)(B), as amended by Pub. L. 115–91, §1081(d)(3), inserted ''and publication of certain data'' after ''reports'' in section catchline. Amendment was executed as the probable intent of Congress, notwithstanding directory language amending the section heading of section ''1073b(c)''.

Subsec. (c)(1). Pub. L. 114–328, §728(b)(1)(A), as amended by Pub. L. 115–91, §1081(d)(3), substituted ''The Secretary'' for ''Not later than 180 days after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2016, the Secretary'' and inserted at end ''Such data shall include the core quality performance metrics adopted by the Secretary under section 728 of the National Defense Authorization Act for Fiscal Year 2017.''

2015—Subsec. (c). Pub. L. 114–92 added subsec. (c).

EFFECTIVE DATE OF 2017 AMENDMENT

Pub. L. 115–91, div. A, title X, §1081(d), Dec. 12, 2017, 131 Stat. 1599, provided that the amendment made by section 1081(d)(3) is effective as of Dec. 23, 2016, and as if included in Pub. L. 114–328 as enacted.

INCLUSION OF DENTAL CARE

For purposes of amendment by Pub. L. 108–375 adding this section, references to medical readiness, health status, and health care to be considered to include dental readiness, dental status, and dental care, see section 740 of Pub. L. 108–375, set out as a note under section 1074 of this title.

INITIAL REPORTS

Pub. L. 108–375, div. A, title VII, §739(a)(3), Oct. 28, 2004, 118 Stat. 2002, directed that the first reports under this section be completed not later than 180 days after Oct. 28, 2004.

§ 1073c. Administration of Defense Health Agency and military medical treatment facilities

(a) ADMINISTRATION OF MILITARY MEDICAL TREATMENT FACILITIES.—(1) In accordance with paragraph (5), by not later than September 30, 2021, the Director of the Defense Health Agency shall be responsible for the administration of each military medical treatment facility, including with respect to—

(A) provision and delivery of health care within each such facility;

(B) management of privileging, scope of practice, and quality of health care provided within each such facility;

(C) budgetary matters;

(D) information technology;

(E) health care administration and management;

(F) supply and equipment;

(G) administrative policy and procedure;

(H) military medical construction; and

(I) any other matters the Secretary of Defense determines appropriate.

(2) In addition to the responsibilities set forth in paragraph (1), the Director of the Defense Health Agency shall, commencing when the Director begins to exercise responsibilities under that paragraph, have the authority—

(A) to direct, control, and serve as the primary rater of the performance of commanders or directors of military medical treatment facilities;

(B) to direct and control any intermediary organizations between the Defense Health Agency and military medical treatment facilities;

(C) to determine the scope of medical care provided at each military medical treatment facility to meet the military personnel readiness requirements of the senior military operational commander of the military installation;

(D) to identify the capacity of each military medical treatment facility to support clinical readiness standards of health care providers established by the Secretary of a military department or the Assistant Secretary of Defense for Health Affairs;

(E) to determine total workforce requirements at each military medical treatment facility;

(F) to determine, in coordination with each Secretary of a military department, manning, including joint manning, assigned to military medical treatment facilities and intermediary organizations;

(G) to select, after considering nominations from the Secretaries of the military departments, commanders or directors of military medical treatment facilities;

(H) to address personnel staffing shortages at military medical treatment facilities; and

(I) to select among service nominations for commanders or directors of military medical treatment facilities.

(3) The military commander or director of each military medical treatment facility shall be responsible for—

(A) on behalf of the military departments, ensuring the readiness of the members of the armed forces at such facility; and

(B) on behalf of the Defense Health Agency, furnishing the health care and medical treatment provided at such facility.

(4) If the Secretary of Defense determines it appropriate, a military director (or any other senior military officer or officers) of a military medical treatment facility may be a commanding officer for purposes of chapter 47 of this title (the Uniform Code of Military Justice) with respect to military personnel assigned to the military medical treatment facility.

(5) The Secretary of Defense shall establish a timeline to ensure that each Secretary of a military department transitions the administration of military medical treatment facilities from such Secretary to the Director of the Defense Health Agency pursuant to paragraph (1) by the date specified in such paragraph.

(6) The Secretary of Defense shall establish within the Defense Health Agency a professional staff to provide policy, oversight, and direction to carry out paragraphs (1) and (2). The Secretary shall carry out this paragraph by appointing the positions specified in subsections (b) and (c).

(b) DHA ASSISTANT DIRECTOR.—(1) There is in the Defense Health Agency an Assistant Director for Health Care Administration. The Assistant Director shall—

(A) be a career appointee within the Department; and

(B) report directly to the Director of the Defense Health Agency.

(2) The Assistant Director shall be appointed from among individuals who have the education and experience to perform the responsibilities of the position.

(3) The Assistant Director shall be responsible for the following:

(A) Establishing priorities for health care administration and management.

(B) Establishing policies, procedures, and direction for the provision of direct care at military medical treatment facilities.

(C) Establishing priorities for budgeting matters with respect to the provision of direct care at military medical treatment facilities.

(D) Establishing policies, procedures, and direction for clinic management and operations at military medical treatment facilities.

(E) Establishing priorities for information technology at and between the military medical treatment facilities.

(c) DHA DEPUTY ASSISTANT DIRECTORS.—(1)(A) There is in the Defense Health Agency a Deputy Assistant Director for Information Operations.

(B) The Deputy Assistant Director for Information Operations shall be responsible for policies, management, and execution of information technology operations at and between the military medical treatment facilities.

(2)(A) There is in the Defense Health Agency a Deputy Assistant Director for Financial Operations.

(B) The Deputy Assistant Director for Financial Operations shall be responsible for the policy, procedures, and direction of budgeting matters and financial management with respect to the provision of direct care at military medical treatment facilities.

(3)(A) There is in the Defense Health Agency a Deputy Assistant Director for Health Care Operations.

(B) The Deputy Assistant Director for Health Care Operations shall be responsible for the policy, procedures, and direction of health care administration in the military medical treatment facilities.

(4)(A) There is in the Defense Health Agency a Deputy Assistant Director for Medical Affairs.

(B) The Deputy Assistant Director for Medical Affairs shall be responsible for policy, procedures, and direction of clinical quality and process improvement, patient safety, infection control, graduate medical education, clinical integration, utilization review, risk management, patient experience, and civilian physician recruiting at military medical treatment facilities.

(5) Each Deputy Assistant Director appointed under paragraphs (1) through (4) shall report directly to the Assistant Director for Health Care Administration.

(d) CERTAIN RESPONSIBILITIES OF DHA DIRECTOR.—(1) In addition to the other duties of the Director of the Defense Health Agency, the Director shall coordinate with the Joint Staff Surgeon to ensure that the Director most effectively carries out the responsibilities of the Defense Health Agency as a combat support agency under section 193 of this title.

(2) The responsibilities of the Director shall include the following:

(A) Ensuring that the Defense Health Agency meets the operational needs of the commanders of the combatant commands.

(B) Coordinating with the military departments to ensure that the staffing at the military medical treatment facilities supports readiness requirements for members of the armed forces and health care personnel.

(C) Ensuring that the Defense Health Agency meets the military medical readiness requirements of the senior military operational commanders of the military installations.

(e) ADDITIONAL DHA ORGANIZATIONS.—Not later than September 30, 2022, the Secretary of

Defense shall, acting though the Director of the Defense Health Agency, establish within the Defense Health Agency the following:

(1) A subordinate organization, to be called the Defense Health Agency Research and Development—

(A) led, at the election of the Director, by a director or commander (to be called the Director or Commander of Defense Health Agency Research and Development);

(B) comprised of the Army Medical Research and Materiel Command and such other medical research organizations and activities of the armed forces as the Secretary considers appropriate; and

(C) responsible for coordinating funding for Defense Health Program Research, Development, Test, and Evaluation, the Congressionally Directed Medical Research Program, and related Department of Defense medical research.

(2) A subordinate organization, to be called the Defense Health Agency Public Health—

(A) led, at the election of the Director, by a director or commander (to be called the Director or Commander of Defense Health Agency Public Health); and

(B) comprised of the Army Public Health Command, the Navy–Marine Corps Public Health Command, Air Force public health programs, and any other related defense health activities that the Secretary considers appropriate, including overseas laboratories focused on preventive medicine, environmental health, and similar matters.

(f) TREATMENT OF DEPARTMENT OF DEFENSE FOR PURPOSES OF PERSONNEL ASSIGNMENT.—In implementing this section—

(1) the Department of Defense shall be considered a single agency for purposes of civilian personnel assignment under title 5; and

(2) the Secretary of Defense may reassign any employee of a component of the Department of Defense or a military department in a position in the civil service (as defined in section 2101 of title 5) to any other component of the Department of Defense or military department.

(g) DEFINITIONS.—In this section:

(1) The term ''career appointee'' has the meaning given that term in section 3132(a)(4) of title 5.

(2) The term ''Defense Health Agency'' means the Defense Agency established pursuant to Department of Defense Directive 5136.13, or such successor Defense Agency.

(3) The term ''military medical treatment facility'' means—

(A) any fixed facility of the Department of Defense that is outside of a deployed environment and used primarily for health care; and

(B) any other location used for purposes of providing health care services as designated by the Secretary of Defense.

(Added Pub. L. 114–328, div. A, title VII, § 702(a)(1), Dec. 23, 2016, 130 Stat. 2193; amended Pub. L. 115–91, div. A, title VII, § 713, title X, § 1081(a)(23), Dec. 12, 2017, 131 Stat. 1437, 1595; Pub. L. 115–232, div. A, title VII, § 711(a)(1), (2), (b)(1), Aug. 13, 2018, 132 Stat. 1806, 1807; Pub. L. 116–92, div. A, title VII, § 711, title XVII, § 1731(a)(22), Dec. 20, 2019, 133 Stat. 1441, 1813; Pub. L. 116–283, div. A, title X, § 1081(a)(24), Jan. 1, 2021, 134 Stat. 3872.)

AMENDMENTS

2021—Subsec. (a)(4), (6). Pub. L. 116–283 redesignated par. (6) relating to authorization of military director or other senior military officer to serve as a commanding officer as (4) and moved it to appear before par. (5).

2019—Subsec. (a)(1). Pub. L. 116–92, § 711(f)(1), substituted ''paragraph (5)'' for ''paragraph (4)'' in introductory provisions.

Pub. L. 116–92, § 711(a)(1), added subpars. (A), (B), and (F) and redesignated former subpars. (A), (B), (C), (D), (E), and (F) as (C), (D), (E), (G), (H), and (I), respectively.

Subsec. (a)(2)(D) to (I). Pub. L. 116–92, § 711(a)(2), added subpars. (D), (F), and (G), redesignated former subpars. (D), (E), (F), and (G) as (E), (F), (H), and (I), respectively, and struck out subpar. (F) as so redesignated. Prior to repeal, the redesignated subpar. (F) read as follows: ''to direct joint manning at military medical treatment facilities and intermediary organizations;''.

Subsec. (a)(3)(A). Pub. L. 116–92, § 711(a)(3)(A), inserted ''on behalf of the military departments,'' before ''ensuring'' and struck out ''and civilian employees'' after ''armed forces''.

Subsec. (a)(3)(B). Pub. L. 116–92, § 711(a)(3)(B), inserted ''on behalf of the Defense Health Agency,'' before ''furnishing''.

Subsec. (a)(4). Pub. L. 116–92, § 711(f)(4), which directed moving the second par. (4) so as to appear before par. (5), could not be executed because of the intervening amendment by Pub. L. 116–92, § 1731(a)(22). See below.

Pub. L. 116–92, § 711(f)(3), redesignated par. (4) relating to timeline for transition of administration of military medical treatment facilities as (5).

Pub. L. 116–92, § 1731(a)(22), redesignated par. (4) relating to authorization of military director or other senior military officer to serve as a commanding officer as (6). Amendment executed before amendment by section 711(f)(4) of Pub. L. 116–92, see above, pursuant to section 1731(f) of Pub. L. 116–92, set out as a Coordination of Certain Sections of an Act With Other Provisions of That Act note under section 101 of this title.

Subsec. (a)(5). Pub. L. 116–92, § 711(f)(3), redesignated par. (4) relating to timeline for transition of administration of military medical treatment facilities as (5). Former par. (5) redesignated (6) relating to establishment of professional staff.

Subsec. (a)(6). Pub. L. 116–92, § 711(f)(2), redesignated par. (5) as (6) relating to establishment of professional staff.

Pub. L. 116–92, § 1731(a)(22), redesignated par. (4) relating to authorization of military director or other senior military officer to serve as a commanding officer as (6).

Subsec. (b)(2). Pub. L. 116–92, § 711(b), substituted ''the education and experience to perform the responsibilities of the position.'' for ''equivalent education and experience as a chief executive officer leading a large, civilian health care system.''

Subsec. (c)(2)(B). Pub. L. 116–92, § 711(c)(1), substituted ''at military medical treatment facilities'' for ''across the military health system''.

Subsec. (c)(4)(B). Pub. L. 116–92, § 711(c)(2), inserted ''at military medical treatment facilities'' before period at end.

Subsecs. (f), (g). Pub. L. 116–92, § 711(d), added subsec. (f) and redesignated former subsec. (f) as (g).

Subsec. (g)(3). Pub. L. 116–92, § 711(e), added par. (3).

2018—Subsec. (a)(1). Pub. L. 115–232, § 711(a)(1)(A), substituted ''In accordance with paragraph (4), by not later than September 30, 2021,'' for ''Beginning October 1, 2018,'' in introductory provisions.

Subsec. (a)(2), (3). Pub. L. 115–232, § 711(a)(1)(B), (C), added par. (2) and redesignated former par. (2) as (3). Former par. (3) redesignated (5).

Subsec. (a)(4). Pub. L. 115–232, § 711(a)(1)(D), added par. (4) relating to timeline for transition of administration of military medical treatment facilities.

Subsec. (a)(5). Pub. L. 115–232, § 711(a)(1)(B), (E), redesignated par. (3) as (5) and substituted ''paragraphs (1) and (2)'' for ''subsection (a)''.

Subsec. (d)(2)(C). Pub. L. 115–232, § 711(a)(2), added subpar. (C).

Subsecs. (e), (f). Pub. L. 115–232, § 711(b)(1), added subsec. (e) and redesignated former subsec. (e) as (f).

2017—Subsec. (a)(1)(E). Pub. L. 115–91, §§ 713(1), 1081(a)(23), amended subpar. (E) identically, substituting ''military'' for ''miliary''.

Subsec. (a)(2). Pub. L. 115–91, § 713(2), substituted ''military commander or director'' for ''commander'' in introductory provisions.

Subsec. (a)(4). Pub. L. 115–91, § 713(3), added par. (4) relating to authorization of military director or other senior military officer to serve as a commanding officer.

LIMITATION ON CLOSURES AND DOWNSIZINGS IN CONNECTION WITH TRANSITION OF ADMINISTRATION

Pub. L. 115–232, div. A, title VII, § 711(a)(3), Aug. 13, 2018, 132 Stat. 1807, provided that: ''In carrying out the transition of responsibility for the administration of military medical treatment facilities pursuant to subsection (a) of section 1073c of title 10, United States Code (as amended by paragraph (1)), and in addition to any other applicable requirements under section 1073d of that title, the Secretary of Defense may not close any military medical treatment facility, or downsize any medical center, hospital, or ambulatory care center (as specified in section 1073d of that title), that addresses the medical needs of beneficiaries and the community in the vicinity of such facility, center, hospital, or care center until the Secretary submits to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report setting forth the following:

''(A) A description of the methodology and criteria to be used by the Secretary to make decisions to close any military medical treatment facility, or to downsize any medical center, hospital, or ambulatory care center, in connection with the transition, including input from the military department concerned.

''(B) A requirement that no closure of a military medical treatment facility, or downsizing of a medical center, hospital, or ambulatory care center, in connection with the transition will occur until 90 days after the date on which Secretary submits to the Committees on Armed Services of the Senate and the House of Representatives a report on the closure or downsizing.''

SUPPORT BY MILITARY HEALTHCARE SYSTEM OF MEDICAL REQUIREMENTS OF COMBATANT COMMANDS

Pub. L. 115–232, div. A, title VII, § 712, Aug. 13, 2018, 132 Stat. 1809, as amended by Pub. L. 116–92, div. A, title VII, § 712(a), (b)(1), Dec. 20, 2019, 133 Stat. 1443–1445, provided that:

''(a) ORGANIZATIONAL FRAMEWORK REQUIRED.—

''(1) IN GENERAL.—The Secretary of Defense shall, acting through the Secretaries of the military departments, the Defense Health Agency, and the Joint Staff, implement an organizational framework of the military health system that effectively and efficiently implements chapter 55 of title 10, United States Code, to maximize the readiness of the medical force, promote interoperability, and integrate medical capabilities of the Armed Forces in order to enhance joint military medical operations in support of requirements of the combatant commands.

''(2) COMPLIANCE WITH CERTAIN REQUIREMENTS.—The organizational framework, as implemented, shall comply with all requirements of section 1073c of title 10, United States Code, except for the implementation date specified in subsection (a) of such section.

''(b) ADDITIONAL DUTIES OF SURGEONS GENERAL OF THE ARMED FORCES.—The Surgeons General of the Armed Forces shall have the following duties:

''(1) To ensure the readiness for operational deployment of medical and dental personnel and deployable medical or dental teams or units of the Armed Force or Armed Forces concerned.

''(2) To meet medical readiness standards, subject to standards and metrics established by the Assistant Secretary of Defense for Health Affairs.

''(3) With respect to uniformed medical and dental personnel of the military department concerned—

''(A) to assign such personnel—

''(i) primarily to military medical treatment facilities, under the operational control of the commander or director of the facility; or

''(ii) secondarily to partnerships with civilian or other medical facilities for training activities specific to such military department; and

''(B) to maintain readiness of such personnel for operational deployment.

''(4) To provide logistical support for operational deployment of medical and dental personnel and deployable medical or dental teams or units of the Armed Force or Armed Forces concerned.

''(5) To oversee mobilization and demobilization in connection with the operational deployment of medical and dental personnel of the Armed Force or Armed Forces concerned.

''(6) To develop operational medical capabilities required to support the warfighter, and to develop policy relating to such capabilities.

''(7) To provide health professionals to serve in leadership positions across the military healthcare system.

''(8) To deliver operational clinical services under the operational control of the combatant commands—

''(A) on ships and planes; and

''(B) on installations outside of military medical treatment facilities.

''(9) To manage privileging, scope of practice, and quality of health care in the settings described in paragraph (8).

''(c) DEFENSE HEALTH AGENCY REGIONS IN CONUS.—The organizational framework required by subsection (a) shall meet the requirements as follows:

''(1) DEFENSE HEALTH AGENCY REGIONS.—There shall be not more than two Defense Health Agency regions in the continental United States.

''(2) LEADERS.—Each region under paragraph (1) shall be led by a commander or director who is a member of the Armed Forces serving in a grade not higher than major general or rear admiral, and who—

''(A) shall be selected by the Director of the Defense Health Agency from among members of the Armed Forces recommended by the Secretaries of the military departments for service in such position; and

''(B) shall be under the authority, direction, and control of the Director while serving in such position.

''(d) DEFENSE HEALTH AGENCY REGIONS OCONUS.—The organizational framework required by subsection (a) shall provide for the establishment of not more than two Defense Health Agency regions outside the continental United States in order—

''(1) to enhance joint military medical operations in support of the requirements of the combatant commands in such region or regions, with a specific focus on current and future contingency and operational plans;

''(2) to ensure the provision of high-quality healthcare services to beneficiaries; and

''(3) to improve the interoperability of healthcare delivery systems in the defense health regions (whether under this subsection, subsection (c), or both).

''(e) PLANNING AND COORDINATION.—

''(1) SUSTAINMENT OF CLINICAL COMPETENCIES AND STAFFING.—The Director of the Defense Health Agency shall—

''(A) provide in each defense health region under this section healthcare delivery venues for uniformed medical and dental personnel to obtain operational clinical competencies; and

''(B) coordinate with the military departments to ensure that staffing at military medical treatment facilities in each region supports readiness requirements for members of the Armed Forces and military medical personnel.

''(2) OVERSIGHT AND ALLOCATION OF RESOURCES.—

''(A) IN GENERAL.—The Secretaries of the military departments shall coordinate with the Chairman of the Joint Chiefs of Staff to direct resources allocated to the military departments to support requirements related to readiness and operational medicine support that are established by the combatant commands and validated by the Joint Staff.

''(B) SUPPLY AND DEMAND FOR MEDICAL SERVICES.—The Director of the Defense Health Agency, in coordination with the Assistant Secretary of Defense for Health Affairs, shall—

''(i) validate supply and demand requirements for medical and dental services at each military medical treatment facility;

''(ii) in coordination with the Surgeons General of the Armed Forces, provide currency workload for uniformed medical and dental personnel at each such facility to maintain skills proficiency; and

''(iii) if workload is insufficient to meet requirements, identify alternative training and clinical practice sites for uniformed medical and dental personnel, and establish military-civilian training partnerships, to provide such workload.

''(3) MEDICAL FORCE REQUIREMENTS OF THE COMBATANT COMMANDS.—The Surgeon General of each Armed Force shall, on behalf of the Secretary concerned, ensure that the uniformed medical and dental personnel serving in such Armed Force receive training and clinical practice opportunities necessary to ensure that such personnel are capable of meeting the operational medical force requirements of the combatant commands applicable to such personnel. Such training and practice opportunities shall be provided primarily through programs and activities of the Defense Health Agency, in coordination with the Secretaries of the military departments, and by such other mechanisms as the Secretary of Defense shall designate for purposes of this paragraph.

''(4) CONSTRUCTION OF DUTIES.—The duties of a Surgeon General of the Armed Forces under this subsection are in addition to the duties of such Surgeon General under section 3036, 5137, or 8036 of title 10, United States Code, as applicable.

''(5) MANPOWER.—

''(A) ADMINISTRATIVE CONTROL OF MILITARY PERSONNEL.—Each Secretary of a military department shall exercise administrative control of members of the Armed Forces assigned to military medical treatment facilities, including personnel assignment and issuance of military orders.

''(B) OVERSIGHT OF CERTAIN PERSONNEL BY THE DIRECTOR OF THE DEFENSE HEALTH AGENCY.—In situations in which members of the Armed Forces provide health care services at a military medical treatment facility, the Director of the Defense Health Agency shall maintain operational control over such members and oversight for the provision of care delivered by such members through policies, procedures, and privileging responsibilities of the military medical treatment facility.

''(f) REPORT.—Not later than 270 days after the date of the enactment of this Act [Aug. 13, 2018], the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report that sets forth the following:

''(1) A description of the organizational structure of the office of each Surgeon General of the Armed Forces, and of any subordinate organizations of the Armed Forces that will support the functions and responsibilities of a Surgeon General of the Armed Forces.

''(2) The manning documents for staffing in support of the organizational structures described pursuant to paragraph (1), including manning levels before and after such organizational structures are implemented.

''(3) Such recommendations for legislative or administrative action as the Secretary considers appropriate in connection with the implementation of such organizational structures and, in particular, to avoid duplication of functions and tasks between the organizations in such organizational structures and the Defense Health Agency.''

SELECTION OF MILITARY COMMANDERS AND DIRECTORS OF MILITARY MEDICAL TREATMENT FACILITIES

Pub. L. 115–91, div. A, title VII, §722, Dec. 12, 2017, 131 Stat. 1441, provided that:

''(a) IN GENERAL.—Not later than January 1, 2019, the Secretary of Defense, in consultation with the Secretaries of the military departments, shall establish the common qualifications and core competencies required for an individual to serve as a military commander or director of a military medical treatment facility.

''(b) OBJECTIVE.—The objective of the Secretary under this section shall be to ensure that each individual selected to serve as a military commander or director of a military medical treatment facility is highly qualified to serve as health system executive.

''(c) STANDARDS.—In establishing common qualifications and core competencies under subsection (a), the Secretary shall include standards with respect to the following:

''(1) Professional competence.

''(2) Moral and ethical integrity and character.

''(3) Formal education in health care executive leadership and in health care management.

''(4) Such other matters the Secretary determines to be appropriate.''

APPOINTMENTS

Pub. L. 114–328, div. A, title VII, §702(c), Dec. 23, 2016, 130 Stat. 2196, provided that: ''The Secretary of Defense shall make appointments of the positions under section 1073c of title 10, United States Code, as added by subsection (a)—

''(1) by not later than October 1, 2018; and

''(2) by not increasing the number of full-time equivalent employees of the Defense Health Agency.''

§ 1073d. Military medical treatment facilities

(a) IN GENERAL.—To support the medical readiness of the armed forces and the readiness of medical personnel, the Secretary of Defense, in consultation with the Secretaries of the military departments, shall maintain the military medical treatment facilities described in subsections (b), (c), and (d).

(b) MEDICAL CENTERS.—(1) The Secretary of Defense shall maintain medical centers in areas with a large population of members of the armed forces and covered beneficiaries.

(2) Medical centers shall serve as referral facilities for members and covered beneficiaries who require comprehensive health care services that support medical readiness.

(3) Medical centers shall consist of the following:

(A) Inpatient and outpatient tertiary care facilities that incorporate specialty and subspecialty care.

(B) Graduate medical education programs.

(C) Residency training programs.

(D) Level one or level two trauma care capabilities.

(4) The Secretary may designate a medical center as a regional center of excellence for unique and highly specialized health care services, including with respect to polytrauma, organ transplantation, and burn care.

(c) HOSPITALS.—(1) The Secretary of Defense shall maintain hospitals in areas where civilian health care facilities are unable to support the health care needs of members of the armed forces and covered beneficiaries.

(2) Hospitals shall provide—

(A) inpatient and outpatient health services to maintain medical readiness; and

(B) such other programs and functions as the Secretary determines appropriate.

(3) Hospitals shall consist of inpatient and outpatient care facilities with limited specialty care that the Secretary determines—

(A) is cost effective; or

(B) is not available at civilian health care facilities in the area of the hospital.

(d) AMBULATORY CARE CENTERS.—(1) The Secretary of Defense shall maintain ambulatory care centers in areas where civilian health care facilities are able to support the health care needs of members of the armed forces and covered beneficiaries.

(2) Ambulatory care centers shall provide the outpatient health services required to maintain medical readiness, including with respect to partnerships established pursuant to section 706 of the National Defense Authorization Act for Fiscal Year 2017.

(3) Ambulatory care centers shall consist of outpatient care facilities with limited specialty care that the Secretary determines—

(A) is cost effective; or

(B) is not available at civilian health care facilities in the area of the ambulatory care center.

(e) MAINTENANCE OF INPATIENT CAPABILITIES AT MILITARY MEDICAL TREATMENT FACILITIES LOCATED OUTSIDE THE UNITED STATES.—(1) In carrying out subsection (a), the Secretary of Defense shall ensure that each covered facility maintains, at a minimum, inpatient capabilities that the Secretary determines are similar to the inpatient capabilities of such facility on September 30, 2016.

(2) The Secretary may not eliminate the inpatient capabilities of a covered facility until the day that is 180 days after the Secretary provides a briefing to the Committees on Armed Services of the Senate and the House of Representatives regarding the proposed elimination. During any such briefing, the Secretary shall certify the following:

(A) The Secretary has entered into agreements with hospitals or medical centers in the host nation of such covered facility that—

(i) replace the inpatient capabilities the Secretary proposes to eliminate; and

(ii) ensure members of the armed forces and covered beneficiaries who receive health care from such covered facility, have, within a distance the Secretary determines is reasonable, access to quality health care, including case management and translation services.

(B) The Secretary has consulted with the commander of the geographic combatant command in which such covered facility is located to ensure that the proposed elimination would have no impact on the operational plan for such geographic combatant command.

(C) Before the Secretary eliminates the inpatient capabilities of such covered facility, the Secretary shall provide each member of the armed forces or covered beneficiary who receives health care from the covered facility with—

(i) a transition plan for continuity of health care for such member or covered beneficiary; and

(ii) a public forum to discuss the concerns of the member or covered beneficiary regarding the proposed reduction.

(3) In this subsection, the term ''covered facility'' means a military medical treatment facility located outside the United States.

(Added Pub. L. 114–328, div. A, title VII, § 703(a)(1), Dec. 23, 2016, 130 Stat. 2197; amended Pub. L. 115–91, div. A, title VII, § 711, Dec. 12, 2017, 131 Stat. 1436.)

REFERENCES IN TEXT

Section 706 of the National Defense Authorization Act for Fiscal Year 2017, referred to in subsec. (d)(2), is section 706 of Pub. L. 114–328, which is set out as a note under section 1096 of this title.

AMENDMENTS

2017—Subsec. (e). Pub. L. 115–91 added subsec. (e).

SATELLITE CENTERS

Pub. L. 114–328, div. A, title VII, § 703(a)(3), Dec. 23, 2016, 130 Stat. 2198, provided that: ''In addition to the centers of excellence designated under section 1073d(b)(4) of title 10, United States Code, as added by paragraph (1), the Secretary of Defense may establish satellite centers of excellence to provide specialty care for certain conditions, including with respect to—

''(A) post-traumatic stress;

''(B) traumatic brain injury; and

''(C) such other conditions as the Secretary considers appropriate.''

LIMITATION ON RESTRUCTURE AND REALIGNMENT OF MILITARY MEDICAL TREATMENT FACILITIES

Pub. L. 114–328, div. A, title VII, § 703(b), (e), Dec. 23, 2016, 130 Stat. 2198, 2200, provided that:

''(b) EXCEPTION.—In carrying out section 1073d of title 10, United States Code, as added by subsection (a)(1), the Secretary of Defense may not restructure or realign the infrastructure of, or modify the health care services provided by, a military medical treatment facility unless the Secretary determines that, if such a restructure, realignment, or modification will eliminate the ability of a covered beneficiary to access health care services at a military medical treatment facility, the covered beneficiary will be able to access such health care services through the purchased care component of the TRICARE program.''

''(e) DEFINITIONS.—In this section [enacting this section and provisions set out as notes under this section], the terms 'covered beneficiary' and 'TRICARE program' have the meaning given those terms in section 1072 of title 10, United States Code.''

§ 1073e. Protection of armed forces from infectious diseases

(a) PROTECTION.—The Secretary of Defense shall develop and implement a plan to ensure that the armed forces have the diagnostic equipment, testing capabilities, and personal protective equipment necessary to protect members of the armed forces from the threat of infectious diseases and to treat members who contract infectious diseases.

(b) REQUIREMENTS.—In carrying out subsection (a), the Secretary shall ensure the following:

(1) Each military medical treatment facility has the testing capabilities described in such subsection, as appropriate for the mission of the facility.

(2) Each deployed naval vessel has access to the testing capabilities described in such subsection.

(3) Members of the armed forces deployed in support of a contingency operation outside of the United States have access to the testing capabilities described in such subsection, including at field hospitals, combat support hospitals, field medical stations, and expeditionary medical facilities.

(4) The Department of Defense maintains—

(A) a 30-day supply of personal protective equipment in a quantity sufficient for each member of the armed forces, including the reserve components thereof; and

(B) the capability to rapidly resupply such equipment.

(c) RESEARCH AND DEVELOPMENT.—(1) The Secretary shall include with the defense budget materials (as defined by section 231(f) of this title) for a fiscal year a plan to research and develop vaccines, diagnostics, and therapeutics for infectious diseases.

(2) The Secretary shall ensure that the medical laboratories of the Department of Defense are equipped with the technology needed to facilitate rapid research and development of vaccines, diagnostics, and therapeutics in the case of a pandemic.

(Added Pub. L. 116–283, div. A, title VII, §712(a), Jan. 1, 2021, 134 Stat. 3691.)

§ 1074. Medical and dental care for members and certain former members

(a)(1) Under joint regulations to be prescribed by the administering Secretaries, a member of a uniformed service described in paragraph (2) is entitled to medical and dental care in any facility of any uniformed service.

(2) Members of the uniformed services referred to in paragraph (1) are as follows:

(A) A member of a uniformed service on active duty.

(B) A member of a reserve component of a uniformed service who has been commissioned as an officer if—

(i) the member has requested orders to active duty for the member's initial period of active duty following the commissioning of the member as an officer;

(ii) the request for orders has been approved;

(iii) the orders are to be issued but have not been issued or the orders have been issued but the member has not entered active duty; and

(iv) the member does not have health care insurance and is not covered by any other health benefits plan.

(b)(1) Under joint regulations to be prescribed by the administering Secretaries, a member or former member of a uniformed service who is entitled to retired or retainer pay, or equivalent pay may, upon request, be given medical and dental care in any facility of any uniformed service, subject to the availability of space and facilities and the capabilities of the medical and dental staff. The administering Secretaries may, with the agreement of the Secretary of Veterans Affairs, provide care to persons covered by this subsection in facilities operated by the Secretary of Veterans Affairs and determined by him to be available for this purpose on a reimbursable basis at rates approved by the President.

(2) Paragraph (1) does not apply to a member or former member entitled to retired pay for non-regular service under chapter 1223 of this title who is under 60 years of age.

(c)(1) Funds appropriated to a military department, the Department of Homeland Security (with respect to the Coast Guard when it is not operating as a service in the Navy), or the Department of Health and Human Services (with respect to the National Oceanic and Atmospheric Administration and the Public Health Service) may be used to provide medical and dental care to persons entitled to such care by law or regulations, including the provision of such care (other than elective private treatment) in private facilities for members of the uniformed services. If a private facility or health care provider providing care under this subsection is a health care provider under the Civilian Health and Medical Program of the Uniformed Services, the Secretary of Defense, after consultation with the other administering Secretaries, may by regulation require the private facility or health care provider to provide such care in accordance with the same payment rules (subject to any modifications considered appropriate by the Secretary) as apply under that program.

(2)(A) Subject to such exceptions as the Secretary of Defense considers necessary, coverage for medical care for members of the uniformed services under this subsection, and standards with respect to timely access to such care, shall be comparable to coverage for medical care and standards for timely access to such care under the managed care option of the TRICARE program known as TRICARE Prime.

(B) The Secretary of Defense shall enter into arrangements with contractors under the TRICARE program or with other appropriate contractors for the timely and efficient processing of claims under this subsection.

(C) The Secretary of Defense shall consult with the other administering Secretaries in the administration of this paragraph.

(3)(A) A member of the uniformed services described in subparagraph (B) may not be required to receive routine primary medical care at a military medical treatment facility.

(B) A member referred to in subparagraph (A) is a member of the uniformed services on active

duty who is entitled to medical care under this subsection and who—

(i) receives a duty assignment described in subparagraph (C); and

(ii) pursuant to the assignment of such duty, resides at a location that is more than 50 miles, or approximately one hour of driving time, from the nearest military medical treatment facility adequate to provide the needed care.

(C) A duty assignment referred to in subparagraph (B) means any of the following:

(i) Permanent duty as a recruiter.

(ii) Permanent duty at an educational institution to instruct, administer a program of instruction, or provide administrative services in support of a program of instruction for the Reserve Officers' Training Corps.

(iii) Permanent duty as a full-time adviser to a unit of a reserve component.

(iv) Any other permanent duty designated by the Secretary concerned for purposes of this paragraph.

(4)(A) Subject to such terms and conditions as the Secretary of Defense considers appropriate, coverage comparable to that provided by the Secretary under subsections (d) and (e) of section 1079 of this title shall be provided under this subsection to members of the uniformed services who incur a serious injury or illness on active duty as defined by regulations prescribed by the Secretary.

(B) The Secretary of Defense shall prescribe in regulations—

(i) the individuals who shall be treated as the primary caregivers of a member of the uniformed services for purposes of this paragraph; and

(ii) the definition of serious injury or illness for the purposes of this paragraph.

(d)(1) For the purposes of this chapter, a member of a reserve component of the armed forces who is issued a delayed-effective-date active-duty order, or is covered by such an order, shall be treated as being on active duty for a period of more than 30 days beginning on the later of the date that is—

(A) the date of the issuance of such order; or

(B) 180 days before the date on which the period of active duty is to commence under such order for that member.

(2) In this subsection, the term ''delayed-effective-date active-duty order'' means an order to active duty for a period of more than 30 days under section 12304b of this title or a provision of law referred to in section 101(a)(13)(B) of this title that provides for active-duty service to begin under such order on a date after the date of the issuance of the order.

(Added Pub. L. 85–861, § 1(25)(B), Sept. 2, 1958, 72 Stat. 1446; amended Pub. L. 89–614, § 2(2), Sept. 30, 1966, 80 Stat. 862; Pub. L. 96–513, title V, § 511(36), (37), Dec. 12, 1980, 94 Stat. 2923; Pub. L. 98–525, title XIV, § 1401(e)(1), Oct. 19, 1984, 98 Stat. 2616; Pub. L. 98–557, § 19(3), Oct. 30, 1984, 98 Stat. 2869; Pub. L. 101–189, div. A, title VII, § 729, title XVI, § 1621(a)(2), Nov. 29, 1989, 103 Stat. 1481, 1603; Pub. L. 101–510, div. A, title XIV, § 1484(j)(1), Nov. 5, 1990, 104 Stat. 1718; Pub. L. 104–106, div. A, title VII, § 723, Feb. 10, 1996, 110 Stat. 377; Pub. L. 104–201, div. A, title VII, § 725(d), Sept. 23, 1996, 110 Stat. 2596; Pub. L. 105–85, div. A, title VII, § 731(a)(1), Nov. 18, 1997, 111 Stat. 1810; Pub. L. 106–398, § 1 [[div. A], title VII, § 722(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–185; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 108–106, title I, § 1116, Nov. 6, 2003, 117 Stat. 1218; Pub. L. 108–136, div. A, title VII, §§ 703, 708, Nov. 24, 2003, 117 Stat. 1527, 1530; Pub. L. 108–375, div. A, title VII, § 703, Oct. 28, 2004, 118 Stat. 1982; Pub. L. 109–163, div. A, title VII, § 743(a), Jan. 6, 2006, 119 Stat. 3360; Pub. L. 110–181, div. A, title VI, § 647(b), title XVI, § 1633(a), Jan. 28, 2008, 122 Stat. 161, 459; Pub. L. 111–84, div. A, title VII, § 702, Oct. 28, 2009, 123 Stat. 2373; Pub. L. 115–91, div. A, title V, § 511(a), Dec. 12, 2017, 131 Stat. 1376.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1074(a) ..... 1074(b)	37:421(a). 37:402(a)(3) (as applicable to 37:421(b)). 37:421(b).	June 7, 1956, ch. 374, §§ 102(a)(3) (as applicable to § 301(b)), 301(a), (b), 70 Stat. 250, 253.

In subsection (a), words of entitlement are substituted for the correlative words of obligation.

In subsection (b), the words ''active duty (other than for training)'' are substituted for the words ''active duty as defined in section 901(b) of Title 50'' to reflect section 101(22) of this title. The words ''and dental'' are inserted before the word ''staff'' for clarity. The words ''retirement'' and ''retirement pay'' are omitted as surplusage.

PRIOR PROVISIONS

Provisions similar to those in subsec. (c) of this section were contained in Pub. L. 98–212, title VII, § 735, Dec. 8, 1983, 97 Stat. 1444, which was formerly set out as a note under section 138 [now 114] of this title, and which was amended by Pub. L. 98–525, title XIV, §§ 1403(a)(2), 1404, Oct. 19, 1984, 98 Stat. 2621, eff. Oct. 1, 1985, to strike out these provisions.

A prior section 1074, act Aug. 10, 1956, ch. 1041, 70A Stat. 82, related to enactment of legislation relating to voting in other elections, prior to repeal by Pub. L. 85–861, § 36B(5), Sept. 2, 1958, 72 Stat. 1570, as superseded by the Federal Voting Assistance Act of 1955 which is classified to subchapter I–D (§ 1973cc et seq.) of chapter 20 of Title 42, The Public Health and Welfare.

AMENDMENTS

2017—Subsec. (d)(2). Pub. L. 115–91 substituted ''under section 12304b of this title or'' for ''in support of a contingency operation under''.

2009—Subsec. (d)(1)(B). Pub. L. 111–84 substituted ''180 days'' for ''90 days''.

2008—Subsec. (b). Pub. L. 110–181, § 647(b), designated existing provisions as par. (1) and added par. (2).

Subsec. (c)(4). Pub. L. 110–181, § 1633(a), added par. (4).

2006—Subsec. (a)(2)(B)(iii). Pub. L. 109–163 inserted ''or the orders have been issued but the member has not entered active duty'' before semicolon at end.

2004—Subsec. (d)(3). Pub. L. 108–375 struck out par. (3) which read as follows: ''This subsection shall cease to be effective on December 31, 2004.''

2003—Subsec. (a). Pub. L. 108–136, § 708, inserted ''(1)'' after ''(a)'', substituted ''described in paragraph (2)'' for ''who is on active duty'', and added par. (2).

Subsec. (d). Pub. L. 108–136, § 703, amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows:

''(1) For the purposes of this chapter, a member of a reserve component of the armed forces who is issued a delayed-effective-date active-duty order, or is covered

by such an order, shall be treated as being on active duty for a period of more than 30 days beginning on the later of the date that is—

''(A) the date of the issuance of such order; or

''(B) 90 days before date on which the period of active duty is to commence under such order for that member.

''(2) In this subsection, the term 'delayed-effective-date active-duty order' means an order to active duty for a period of more than 30 days in support of a contingency operation under a provision of law referred to in section 101(a)(13)(B) of this title that provides for active-duty service to begin under such order on a date after the date of the issuance of the order.

''(3) This section shall cease to be effective on September 30, 2004.''

Pub. L. 108–106 added subsec. (d).

2002—Subsec. (c)(1). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

2000—Subsec. (c). Pub. L. 106–398, §1 [[div. A], title VII, §722(a)(1)(A)], substituted ''uniformed services'' for ''armed forces'' in pars. (1), (2)(A), and (3)(B).

Subsec. (c)(1). Pub. L. 106–398, §1 [[div. A], title VII, §722(a)(1)(B)], inserted '', the Department of Transportation (with respect to the Coast Guard when it is not operating as a service in the Navy), or the Department of Health and Human Services (with respect to the National Oceanic and Atmospheric Administration and the Public Health Service)'' after ''military department''.

Subsec. (c)(2)(C). Pub. L. 106–398, §1 [[div. A], title VII, §722(a)(1)(C)], added subpar. (C).

Subsec. (c)(3)(A). Pub. L. 106–398, §1 [[div. A], title VII, §722(a)(1)(D)], substituted ''A member of the uniformed services described in subparagraph (B) may not be required'' for ''The Secretary of Defense may not require a member of the armed forces described in subparagraph (B)''.

1997—Subsec. (c). Pub. L. 105–85 designated existing provisions as par. (1) and added pars. (2) and (3).

1996—Subsec. (d). Pub. L. 104–201 struck out subsec. (d) which read as follows:

''(d)(1) The Secretary of Defense may require, by regulation, a private CHAMPUS provider to apply the CHAMPUS payment rules (subject to any modifications considered appropriate by the Secretary) in imposing charges for health care that the private CHAMPUS provider provides to a member of the uniformed services who is enrolled in a health care plan of a facility deemed to be a facility of the uniformed services under section 911(a) of the Military Construction Authorization Act, 1982 (42 U.S.C. 248c(a)) when the health care is provided outside the catchment area of the facility.

''(2) In this subsection:

''(A) The term 'private CHAMPUS provider' means a private facility or health care provider that is a health care provider under the Civilian Health and Medical Program of the Uniformed Services.

''(B) The term 'CHAMPUS payment rules' means the payment rules referred to in subsection (c).

''(3) The Secretary of Defense shall prescribe regulations under this subsection after consultation with the other administering Secretaries.''

Pub. L. 104–106 added subsec. (d).

1990—Subsec. (b). Pub. L. 101–510 substituted ''Secretary of Veterans Affairs'' for ''Administrator'' after ''operated by the''.

1989—Subsec. (b). Pub. L. 101–189, §1621(a)(2), substituted ''Secretary of Veterans Affairs'' for ''Administrator of Veterans' Affairs''.

Subsec. (c). Pub. L. 101–189, §729, inserted at end ''If a private facility or health care provider providing care under this subsection is a health care provider under the Civilian Health and Medical Program of the Uniformed Services, the Secretary of Defense, after consultation with the other administering Secretaries, may by regulation require the private facility or health care provider to provide such care in accordance with the same payment rules (subject to any modifications considered appropriate by the Secretary) as apply under that program.''

1984—Subsecs. (a), (b). Pub. L. 98–557 substituted reference to administering Secretaries for reference to Secretary of Defense and Secretary of Health and Human Services wherever appearing.

Subsec. (c). Pub. L. 98–525 added subsec. (c).

1980—Subsec. (a). Pub. L. 96–513, §511(36), substituted ''Secretary of Health and Human Services'' for ''Secretary of Health, Education, and Welfare''.

Subsec. (b). Pub. L. 96–513, §511(36), (37), substituted ''Secretary of Health and Human Services'' and ''President'' for ''Secretary of Health, Education, and Welfare'' and ''Bureau of the Budget'', respectively.

1966—Subsec. (b). Pub. L. 89–614 struck out provision which excepted from medical and dental care a member or former member who is entitled to retired pay under chapter 67 of this title and has served less than eight years on active duty (other than for training) and authorized care to be provided to persons covered by subsec. (b) in facilities operated by the Administrator of Veterans' Affairs and available on a reimbursable basis at rates approved by the Bureau of the Budget.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–181, div. A, title XVI, §1633(b), Jan. 28, 2008, 122 Stat. 459, provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on January 1, 2008.''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–163, div. A, title VII, §743(b), Jan. 6, 2006, 119 Stat. 3360, provided that: ''The amendment made by subsection (a) [amending this section] shall take effect as of November 24, 2003, and as if included in the enactment of paragraph (2) of section 1074(a) of title 10, United States Code, by section 708 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136; 117 Stat. 1530).''

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–398, §1 [[div. A], title VII, §722(c)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–186, provided that: ''The amendments made by subsections (a)(1) and (b)(1) [amending this section and section 1079 of this title] shall take effect on October 1, 2001.''

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–85, div. A, title VII, §731(a)(2), Nov. 18, 1997, 111 Stat. 1811, provided that: ''The amendments made by paragraph (1) [amending this section] shall apply with respect to coverage of medical care for, and the provision of such care to, a member of the Armed Forces under section 1074(c) of title 10, United States Code, on and after the later of the following:

''(A) April 1, 1998.

''(B) The date on which the TRICARE program is in place in the service area of the member.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–525 effective Oct. 1, 1985, see section 1404 of Pub. L. 98–525, set out as an Effective Date note under section 520b of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

For effective date of amendment by Pub. L. 89–614, see section 3 of Pub. L. 89–614, set out as a note under section 1071 of this title.

REGISTRY OF CERTAIN TRICARE BENEFICIARIES DIAGNOSED WITH COVID–19

Pub. L. 116–283, div. A, title VII, §734, Jan. 1, 2021, 134 Stat. 3702, provided that:

''(a) ESTABLISHMENT.—Not later than June 1, 2021, and subject to subsection (b), the Secretary of Defense shall establish and maintain a registry of covered TRICARE beneficiaries who have been diagnosed with COVID–19.

''(b) RIGHT OF BENEFICIARY TO OPT OUT.—A covered TRICARE beneficiary may elect to opt out of inclusion in the registry under subsection (a).

''(c) CONTENTS.—The registry under subsection (a) shall include, with respect to each covered TRICARE beneficiary included in the registry, the following:

''(1) The demographic information of the beneficiary.

''(2) Information on the industrial or occupational history of the beneficiary, to the extent such information is available in the records regarding the COVID–19 diagnosis of the beneficiary.

''(3) Administrative information regarding the COVID–19 diagnosis of the beneficiary, including the date of the diagnosis and the location and source of the test used to make the diagnosis.

''(4) Any symptoms of COVID–19 manifested in the beneficiary.

''(5) Any treatments for COVID–19 taken by the beneficiary, or other medications taken by the beneficiary, when the beneficiary was diagnosed with COVID–19.

''(6) Any pathological data characterizing the incidence of COVID–19 and the type of treatment for COVID–19 provided to the beneficiary.

''(7) Information on any respiratory illness of the beneficiary recorded prior to the COVID–19 diagnosis of the beneficiary.

''(8) Any information regarding the beneficiary contained in the Airborne Hazards and Open Burn Pit Registry established under section 201 of the Dignified Burial and Other Veterans' Benefits Improvement Act of 2012 (Public Law 112–260; 38 U.S.C. 527 note).

''(9) Any other information determined appropriate by the Secretary.

''(d) REPORT.—Not later than 180 days after the date of the enactment of this Act [Jan. 1, 2021], the Secretary shall submit to the Committees on Armed Services of the House of Representatives and the Senate a report on establishing the registry under subsection (a), including—

''(1) a plan to implement the registry;

''(2) the cost of implementing the registry;

''(3) the location of the registry; and

''(4) any recommended legislative changes with respect to establishing the registry.

''(e) COVERED TRICARE BENEFICIARY DEFINED.—In this section, the term 'covered TRICARE beneficiary' means an individual who is enrolled in the direct care system under the TRICARE program and is treated for or diagnosed with COVID–19 at a military medical treatment facility.''

COVERAGE OF TESTING FOR COVID–19: APPLICATION WITH RESPECT TO TRICARE

Pub. L. 116–127, div. F, §6006(a), Mar. 18, 2020, 134 Stat. 207, provided that: ''The Secretary of Defense may not require any copayment or other cost sharing under chapter 55 of title 10, United States Code, for in vitro diagnostic products described in paragraph (1) of section 6001(a) [of Pub. L. 116–127, 42 U.S.C. 1320b–5 note] (or the administration of such products) or visits described in paragraph (2) of such section furnished during any portion of the emergency period defined in paragraph (1)(B) of section 1135(g) of the Social Security Act (42 U.S.C. 1320b–5(g)) beginning on or after the date of the enactment of this Act [Mar. 18, 2020].''

PROVISION OF BLOOD TESTING FOR FIREFIGHTERS OF DEPARTMENT OF DEFENSE TO DETERMINE EXPOSURE TO PERFLUOROALKYL AND POLYFLUOROALKYL SUBSTANCES

Pub. L. 116–92, div. A, title VII, §707, Dec. 20, 2019, 133 Stat. 1441, provided that:

''(a) IN GENERAL.—Beginning on October 1, 2020, the Secretary of Defense shall provide blood testing to determine and document potential exposure to perfluoroalkyl and polyfluoroalkyl substances (commonly known as 'PFAS') for each firefighter of the Department of Defense during the annual physical exam conducted by the Department for each such firefighter.

''(b) FIREFIGHTER DEFINED.—In this section, the term 'firefighter' means someone whose primary job or military occupational specialty is being a firefighter.''

COMPREHENSIVE POLICY FOR PROVISION OF MENTAL HEALTH CARE TO MEMBERS OF THE ARMED FORCES

Pub. L. 116–92, div. A, title VII, §718, Dec. 20, 2019, 133 Stat. 1453, provided that:

''(a) POLICY REQUIRED.—Not later than 180 days after the date of the enactment of this Act [Dec. 20, 2019], the Secretary of Defense, acting through the Under Secretary of Defense for Personnel and Readiness, shall develop and implement a comprehensive policy for the provision of mental health care to members of the Armed Forces.

''(b) ELEMENTS.—The policy under subsection (a) shall address each of the following:

''(1) The compliance of health professionals in the military health system engaged in the provision of health care services to members with clinical practice guidelines for—

''(A) suicide prevention;

''(B) medication-assisted therapy for alcohol use disorders; and

''(C) medication-assisted therapy for opioid use disorders.

''(2) The access and availability of mental health care services to members who are victims of sexual assault or domestic violence.

''(3) The availability of naloxone reversal capability on military installations.

''(4) The promotion of referrals of members by civilian health care providers to military medical treatment facilities when such members are—

''(A) at high risk for suicide and diagnosed with a psychiatric disorder; or

''(B) receiving treatment for opioid use disorders.

''(5) The provision of comprehensive behavioral health treatment to members of the reserve components that takes into account the unique challenges associated with the deployment pattern of such members and the difficulty such members encounter post-deployment with respect to accessing such treatment in civilian communities.

''(c) CONSIDERATION.—In developing the policy under subsection (a), the Secretary of Defense shall solicit and consider recommendations from the Secretaries of the military departments and the Chairman of the Joint Chiefs of Staff regarding the feasibility of implementation and execution of particular elements of the policy.

''(d) REPORT.—Not later than 18 months after the date of the enactment of this Act, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the implementation of the policy under subsection (a).''

DECLASSIFICATION BY DEPARTMENT OF DEFENSE OF CERTAIN INCIDENTS OF EXPOSURE OF MEMBERS OF THE ARMED FORCES TO TOXIC SUBSTANCES

Pub. L. 115–91, div. A, title VII, §737, Dec. 12, 2017, 131 Stat. 1445, provided that:

''(a) IN GENERAL.—The Secretary of Defense shall conduct a declassification review of documents related to any known incident in which not fewer than 100 members of the Armed Forces were intentionally exposed to a toxic substance that resulted in at least one case of a disability that a member of the medical profession has determined to be associated with that toxic substance.

''(b) LIMITATION.—The declassification required by subsection (a) shall be limited to information necessary for an individual who was potentially exposed to a toxic substance to determine the following:

''(1) Whether that individual was exposed to that toxic substance.

''(2) The potential severity of the exposure of that individual to that toxic substance.

''(3) Any potential health conditions that may have resulted from exposure to that toxic substance.

''(c) EXCEPTION.—The Secretary of Defense is not required to declassify documents under subsection (a) if the Secretary determines that declassification of those documents would materially and immediately threaten the security of the United States.

''(d) DEFINITIONS.—In this section:

''(1) ARMED FORCES.—The term 'Armed Forces' has the meaning given that term in section 101 of title 10, United States Code.

''(2) EXPOSED.—The term 'exposed' means, with respect to a toxic substance, that an individual came into contact with that toxic substance in a manner that could be hazardous to the health of that individual, that may include if that toxic substance was inhaled, ingested, or touched the skin or eyes.

''(3) EXPOSURE.—The term 'exposure' means, with respect to a toxic substance, an event during which an individual was exposed to that toxic substance.

''(4) TOXIC SUBSTANCE.—The term 'toxic substance' means any substance determined by the Administrator of the Environmental Protection Agency to be harmful to the environment or hazardous to the health of an individual if inhaled or ingested by or absorbed through the skin of that individual.''

ADJUSTMENT OF MEDICAL SERVICES, PERSONNEL AUTHORIZED STRENGTHS, AND INFRASTRUCTURE IN MILITARY HEALTH SYSTEM TO MAINTAIN READINESS AND CORE COMPETENCIES OF HEALTH CARE PROVIDERS

Pub. L. 114–328, div. A, title VII, § 725, Dec. 23, 2016, 130 Stat. 2230, provided that:

''(a) IN GENERAL.—Except as provided by subsection (c), not later than one year after the date of the enactment of this Act [Dec. 23, 2016], the Secretary of Defense shall implement measures to maintain the critical wartime medical readiness skills and core competencies of health care providers within the Armed Forces.

''(b) MEASURES.—The measures under subsection (a) shall include measures under which the Secretary ensures the following:

''(1) Medical services provided through the military health system at military medical treatment facilities—

''(A) maintain the critical wartime medical readiness skills and core competencies of health care providers within the Armed Forces; and

''(B) ensure the medical readiness of the Armed Forces.

''(2) The authorized strengths for military and civilian personnel throughout the military health system—

''(A) maintain the critical wartime medical readiness skills and core competencies of health care providers within the Armed Forces; and

''(B) ensure the medical readiness of the Armed Forces.

''(3) The infrastructure in the military health system, including infrastructure of military medical treatment facilities—

''(A) maintains the critical wartime medical readiness skills and core competencies of health care providers within the Armed Forces; and

''(B) ensures the medical readiness of the Armed Forces.

''(4) Any covered beneficiary who may be affected by the measures implemented under subsection (a) will be able to receive through the purchased care component of the TRICARE program any medical services that will not be available to such covered beneficiary at a military medical treatment facility by reason of such measures.

''(c) EXCEPTION.—The Secretary is not required to implement measures under subsection (a)(1) with respect to military medical treatment facilities located in a foreign country if the Secretary determines that providing medical services in addition to the medical services described in such subsection is necessary to ensure that covered beneficiaries located in that foreign country have access to a similar level of care available to covered beneficiaries located in the United States.

''(d) DEFINITIONS.—In this section:

''(1) The term 'clinical and logistical capabilities' means those capabilities relating to the provision of health care that are necessary to accomplish operational requirements, including—

''(A) combat casualty care;

''(B) medical response to and treatment of injuries sustained from chemical, biological, radiological, nuclear, or explosive incidents;

''(C) diagnosis and treatment of infectious diseases;

''(D) aerospace medicine;

''(E) undersea medicine;

''(F) diagnosis, treatment, and rehabilitation of specialized medical conditions;

''(G) diagnosis and treatment of diseases and injuries that are not related to battle; and

''(H) humanitarian assistance.

''(2) The terms 'covered beneficiary' and 'TRICARE program' have the meanings given those terms in section 1072 of title 10, United States Code.

''(3) The term 'critical wartime medical readiness skills and core competencies' means those essential medical capabilities, including clinical and logistical capabilities, that are—

''(A) necessary to be maintained by health care providers within the Armed Forces for national security purposes; and

''(B) vital to the provision of effective and timely health care during contingency operations.''

REQUIREMENT TO REVIEW AND MONITOR PRESCRIBING PRACTICES AT MILITARY TREATMENT FACILITIES OF PHARMACEUTICAL AGENTS FOR TREATMENT OF POST-TRAUMATIC STRESS

Pub. L. 114–328, div. A, title VII, § 745, Dec. 23, 2016, 130 Stat. 2240, provided that:

''(a) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act [Dec. 23, 2016], the Secretary of Defense shall—

''(1) conduct a comprehensive review of the prescribing practices at military treatment facilities of pharmaceutical agents for the treatment of post-traumatic stress;

''(2) implement a process or processes to monitor the prescribing practices at military treatment facilities of pharmaceutical agents that are discouraged from use under the VA/DOD Clinical Practice Guideline for Management of Post-Traumatic Stress; and

''(3) implement a plan to address any deviations from such guideline in prescribing practices of pharmaceutical agents for management of post-traumatic stress at such facilities.

''(b) PHARMACEUTICAL AGENT DEFINED.—In this section, the term 'pharmaceutical agent' has the meaning

given that term in section 1074g(g) [now 1074g(i)] of title 10, United States Code.''

PILOT PROGRAM ON INVESTIGATIONAL TREATMENT OF MEMBERS OF THE ARMED FORCES FOR TRAUMATIC BRAIN INJURY AND POST-TRAUMATIC STRESS DISORDER

Pub. L. 113–66, div. A, title VII, § 704, Dec. 26, 2013, 127 Stat. 792, provided that:

''(a) PILOT PROGRAM AUTHORIZED.—The Secretary of Defense shall carry out a pilot program under which the Secretary shall establish a process for randomized placebo-controlled clinical trials of investigational treatments (including diagnostic testing) of traumatic brain injury or post-traumatic stress disorder received by members of the Armed Forces in health care facilities other than military treatment facilities.

''(b) CONDITIONS FOR APPROVAL.—The approval by the Secretary for a treatment pursuant to subsection (a) shall be subject to the following conditions:

''(1) Any drug or device used in the treatment must be approved, cleared, or made subject to an investigational use exemption by the Food and Drug Administration, and the use of the drug or device must comply with rules of the Food and Drug Administration applicable to investigational new drugs or investigational devices.

''(2) The treatment must be approved by the Secretary following approval by an institutional review board operating in accordance with regulations issued by the Secretary of Health and Human Services, in addition to regulations issued by the Secretary of Defense regarding institutional review boards.

''(3) The patient receiving the treatment may not be a retired member of the Armed Forces who is entitled to benefits under part A, or eligible to enroll under part B, of title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.).

''(c) ADDITIONAL RESTRICTIONS AUTHORIZED.—The Secretary may establish additional restrictions or conditions as the Secretary determines appropriate to ensure the protection of human research subjects, appropriate fiscal management, and the validity of the research results.

''(d) DATA COLLECTION AND AVAILABILITY.—The Secretary shall develop and maintain a database containing data from each patient case involving the use of a treatment under this section. The Secretary shall ensure that the database preserves confidentiality and that any use of the database or disclosures of such data are limited to such use and disclosures permitted by law and applicable regulations.

''(e) REPORTS TO CONGRESS.—Not later than 30 days after the last day of each fiscal year, the Secretary shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the implementation of this section and any available results on investigational treatment clinical trials authorized under this section during such fiscal year.

''(f) TERMINATION.—The authority of the Secretary to carry out the pilot program authorized by subsection (a) shall terminate on December 31, 2018.''

DEPARTMENT OF DEFENSE GUIDANCE ON ENVIRONMENTAL EXPOSURES AT MILITARY INSTALLATIONS

Pub. L. 112–239, div. A, title III, § 313(a), Jan. 2, 2013, 126 Stat. 1692, provided that:

''(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act [Jan. 2, 2013], the Secretary of Defense shall issue guidance to the military departments and appropriate defense agencies regarding environmental exposures on military installations.

''(2) ELEMENTS.—The guidance issued pursuant to paragraph (1) shall address, at a minimum, the following:

''(A) The criteria for when and under what circumstances public health assessments by the Agency for Toxic Substances and Disease Registry must be requested in connection with environmental contamination at military installations, including past incidents of environmental contamination.

''(B) The procedures to be used to track and document the status and nature of responses to the findings and recommendations of the public health assessments of the Agency of Toxic Substances and Disease Registry that involve contamination at military installations.

''(C) The appropriate actions to be undertaken to assess significant long-term health risks from past environmental exposures to military personnel and civilian individuals from living or working on military installations.

''(3) SUBMISSION.—Not later than 30 days after the issuance of the guidance required by paragraph (1), the Secretary of Defense shall transmit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a copy of the guidance.''

SMOKING CESSATION PROGRAM UNDER TRICARE

Pub. L. 110–417, [div. A], title VII, § 713, Oct. 14, 2008, 122 Stat. 4503, as amended by Pub. L. 114–92, div. A, title VII, § 705, Nov. 25, 2015, 129 Stat. 863, provided that:

''(a) TRICARE SMOKING CESSATION PROGRAM.—Not later than 180 days after the date of the enactment of this Act [Oct. 14, 2008], the Secretary of Defense shall establish a smoking cessation program under the TRICARE program, to be made available to all beneficiaries under the TRICARE program, subject to subsection (b). The Secretary may prescribe such regulations as may be necessary to implement the program.

''(b) EXCLUSION FOR MEDICARE-ELIGIBLE BENEFICIARIES.—The smoking cessation program shall not be made available to medicare-eligible beneficiaries.

''(c) ELEMENTS.—The program shall include, at a minimum, the following elements:

''(1) The availability, at no cost to the beneficiary, of pharmaceuticals used for smoking cessation, with a limitation on the availability of such pharmaceuticals to the national mail-order pharmacy program under the TRICARE program if appropriate.

''(2) Counseling.

''(3) Access to a toll-free quit line that is available 24 hours a day, 7 days a week.

''(4) Access to printed and Internet web-based tobacco cessation material.

''(d) CHAIN OF COMMAND INVOLVEMENT.—In establishing the program, the Secretary of Defense shall provide for involvement by officers in the chain of command of participants in the program who are on active duty.

''(e) PLAN.—Not later than 90 days after the date of the enactment of this Act [Oct. 14, 2008], the Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a plan to implement the program.

''(f) REFUND OF COPAYMENTS.—

''(1) AUTHORITY.—Under regulations prescribed by the Secretary of Defense, the Secretary may pay a refund to a medicare-eligible beneficiary otherwise excluded by this section, subject to the availability of appropriations specifically for such refunds, consisting of an amount up to the difference between—

''(A) the amount the beneficiary pays for copayments for smoking cessation services described in subsection (c); and

''(B) the amount the beneficiary would have paid if the beneficiary had not been excluded under subsection (b) from the smoking cessation program under subsection (a).

''(2) COPAYMENTS COVERED.—The refunds under paragraph (1) are available only for copayments paid by medicare-eligible beneficiaries after September 30, 2008.

''(g) REPORT.—Not later than one year after the date of the enactment of this Act [Oct. 14, 2008], the Secretary shall submit to the congressional defense com-

mittees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report covering the following:

''(1) The status of the program.

''(2) The number of participants in the program.

''(3) The cost of the program.

''(4) The costs avoided that are attributed to the program.

''(5) The success rates of the program compared to other nationally recognized smoking cessation programs.

''(6) Findings regarding the success rate of participants in the program.

''(7) Recommendations to modify the policies and procedures of the program.

''(8) Recommendations concerning the future utility of the program.

''(h) DEFINITIONS.—In this section:

''(1) TRICARE PROGRAM.—The term 'TRICARE program' has the meaning provided by section 1072(7) of title 10, United States Code.

''(2) MEDICARE-ELIGIBLE.—The term 'medicare-eligible' has the meaning provided by section 1111(b) of title 10, United States Code.''

LONGITUDINAL STUDY ON TRAUMATIC BRAIN INJURY INCURRED BY MEMBERS OF THE ARMED FORCES IN OPERATION IRAQI FREEDOM AND OPERATION ENDURING FREEDOM

Pub. L. 109–364, div. A, title VII, §721, Oct. 17, 2006, 120 Stat. 2294, provided that:

''(a) STUDY REQUIRED.—The Secretary of Defense shall conduct a longitudinal study on the effects of traumatic brain injury incurred by members of the Armed Forces serving in Operation Iraqi Freedom or Operation Enduring Freedom on the members who incur such an injury and their families.

''(b) DURATION.—The study required by subsection (a) shall be conducted for a period of 15 years.

''(c) ELEMENTS.—The study required by subsection (a) shall specifically address the following:

''(1) The long-term physical and mental health effects of traumatic brain injuries incurred by members of the Armed Forces during service in Operation Iraqi Freedom or Operation Enduring Freedom.

''(2) The health care, mental health care, and rehabilitation needs of such members for such injuries after the completion of inpatient treatment through the Department of Defense, the Department of Veterans Affairs, or both.

''(3) The type and availability of long-term care rehabilitation programs and services within and outside the Department of Defense and the Department of Veterans Affairs for such members for such injuries, including community-based programs and services and in-home programs and services.

''(4) The effect on family members of a member incurring such an injury.

''(d) CONSULTATION.—The Secretary of Defense shall conduct the study required by subsection (a) and prepare the reports required by subsection (e) in consultation with the Secretary of Veterans Affairs.

''(e) PERIODIC AND FINAL REPORTS.—After the third, seventh, eleventh, and fifteenth years of the study required by subsection (a), the Secretary of Defense shall submit to Congress a comprehensive report on the results of the study during the preceding years. Each report shall include the following:

''(1) Current information on the cumulative outcomes of the study.

''(2) Such recommendations as the Secretary of Defense and the Secretary of Veterans Affairs jointly consider appropriate based on the outcomes of the study, including recommendations for legislative, programmatic, or administrative action to improve long-term care and rehabilitation programs and services for members of the Armed Forces with traumatic brain injuries.''

STANDARDS AND TRACKING OF ACCESS TO HEALTH CARE SERVICES FOR WOUNDED, INJURED, OR ILL SERVICEMEMBERS RETURNING TO THE UNITED STATES FROM A COMBAT ZONE

Pub. L. 109–364, div. A, title VII, §733, Oct. 17, 2006, 120 Stat. 2298, provided that:

''(a) REPORT ON UNIFORM STANDARDS FOR ACCESS.—Not later than 90 days after the date of the enactment of this Act [Oct. 17, 2006], the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on uniform standards for the access of wounded, injured, or ill members of the Armed Forces to health care services in the United States following return from a combat zone.

''(b) MATTERS COVERED.—The report required by subsection (a) shall describe in detail policies with respect to the following:

''(1) The access of wounded, injured, or ill members of the Armed Forces to emergency care.

''(2) The access of such members to surgical services.

''(3) Waiting times for referrals and consultations of such members by medical personnel, dental personnel, mental health specialists, and rehabilitative service specialists, including personnel and specialists with expertise in prosthetics and in the treatment of head, vision, and spinal cord injuries.

''(4) Waiting times of such members for acute care and for routine follow-up care.

''(c) REFERRAL TO PROVIDERS OUTSIDE MILITARY HEALTH CARE SYSTEM.—The Secretary shall require that health care services and rehabilitation needs of members described in subsection (a) be met through whatever means or mechanisms possible, including through the referral of members described in that subsection to health care providers outside the military health care system.

''(d) UNIFORM SYSTEM FOR TRACKING OF PERFORMANCE.—The Secretary shall establish a uniform system for tracking the performance of the military health care system in meeting the requirements for access of wounded, injured, or ill members of the Armed Forces to health care services described in subsection (a).

''(e) REPORTS.—

''(1) TRACKING SYSTEM.—Not later than 180 days after the date of the enactment of this Act [Oct. 17, 2006], the Secretary shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the system established under subsection (d).

''(2) ACCESS.—Not later than October 1, 2006, and each quarter thereafter during fiscal year 2007, the Secretary shall submit to such committees a report on the performance of the health care system in meeting the access standards described in the report required by subsection (a).''

TRAINING CURRICULA FOR FAMILY CAREGIVERS ON CARE AND ASSISTANCE FOR MEMBERS AND FORMER MEMBERS OF THE ARMED FORCES WITH TRAUMATIC BRAIN INJURY

Pub. L. 109–364, div. A, title VII, §744, Oct. 17, 2006, 120 Stat. 2308, provided that:

''(a) TRAUMATIC BRAIN INJURY FAMILY CAREGIVER PANEL.—

''(1) ESTABLISHMENT.—The Secretary of Defense shall establish a panel within the Department of Defense, to be known as the 'Traumatic Brain Injury Family Caregiver Panel', to develop coordinated, uniform, and consistent training curricula to be used in training family members in the provision of care and assistance to members and former members of the Armed Forces with traumatic brain injuries.

''(2) MEMBERS.—The Traumatic Brain Injury Family Caregiver Panel shall consist of 15 members ap-

pointed by the Secretary of Defense from among the following:

''(A) Physicians, nurses, rehabilitation therapists, and other individuals with an expertise in caring for and assisting individuals with traumatic brain injury, including persons who specialize in caring for and assisting individuals with traumatic brain injury incurred in combat.

''(B) Representatives of family caregivers or family caregiver associations.

''(C) Health and medical personnel of the Department of Defense and the Department of Veterans Affairs with expertise in traumatic brain injury and personnel and readiness representatives of the Department of Defense with expertise in traumatic brain injury.

''(D) Psychologists or other individuals with expertise in the mental health treatment and care of individuals with traumatic brain injury.

''(E) Experts in the development of training curricula.

''(F) Family members of members of the Armed Forces with traumatic brain injury.

''(G) Such other individuals the Secretary considers appropriate.

''(3) CONSULTATION.—In establishing the Traumatic Brain Injury Family Caregiver Panel and appointing the members of the Panel, the Secretary of Defense shall consult with the Secretary of Veterans Affairs.

''(b) DEVELOPMENT OF CURRICULA.—

''(1) DEVELOPMENT.—The Traumatic Brain Injury Family Caregiver Panel shall develop training curricula to be used by family members of members and former members of the Armed Forces on techniques, strategies, and skills for care and assistance for such members and former members with traumatic brain injury.

''(2) SCOPE OF CURRICULA.—The curricula shall—

''(A) be based on empirical research and validated techniques; and

''(B) shall provide for training that permits recipients to tailor caregiving to the unique circumstances of the member or former member of the Armed Forces receiving care.

''(3) PARTICULAR REQUIREMENTS.—In developing the curricula, the Traumatic Brain Injury Family Caregiver Panel shall—

''(A) specify appropriate training commensurate with the severity of traumatic brain injury; and

''(B) identify appropriate care and assistance to be provided for the degree of severity of traumatic brain injury for caregivers of various levels of skill and capability.

''(4) USE OF EXISTING MATERIALS.—In developing the curricula, the Traumatic Brain Injury Family Caregiver Panel shall use and enhance any existing training curricula, materials, and resources applicable to such curricula as the Panel considers appropriate.

''(5) DEADLINE FOR DEVELOPMENT.—The Traumatic Brain Injury Family Caregiver Panel shall develop the curricula not later than one year after the date of the enactment of this Act [Oct. 17, 2006].

''(c) DISSEMINATION OF CURRICULA.—

''(1) DISSEMINATION MECHANISMS.—The Secretary of Defense shall develop mechanisms for the dissemination of the curricula developed under subsection (b)—

''(A) to health care professionals who treat or otherwise work with members and former members of the Armed Forces with traumatic brain injury;

''(B) to family members affected by the traumatic brain injury of such members and former members; and

''(C) to other care or support personnel who may provide service to members or former members affected by traumatic brain injury.

''(2) USE OF EXISTING MECHANISMS.—In developing such mechanisms, the Secretary may use and enhance existing mechanisms, including the Military Severely Injured Center (authorized under section 564 of this Act [10 U.S.C. 113 note]) and the programs for service to severely injured members established by the military departments.

''(d) REPORT.—Not later than one year after the development of the curricula required by subsection (b), the Secretary of Defense and the Secretary of Veterans Affairs shall submit to the Committees on Armed Services and Veterans Affairs of the Senate and the House of Representatives a report on the following:

''(1) The actions undertaken under this section.

''(2) Recommendations for the improvement or updating of training curriculum developed and provided under this section.''

PILOT PROJECTS ON EARLY DIAGNOSIS AND TREATMENT OF POST TRAUMATIC STRESS DISORDER AND OTHER MENTAL HEALTH CONDITIONS

Pub. L. 109–364, div. A, title VII, § 741, Oct. 17, 2006, 120 Stat. 2304, required the Secretary of Defense to carry out not less than three pilot projects, to end by Sept. 30, 2008, to evaluate various approaches to improving the early diagnosis and treatment of post traumatic stress disorder and other mental health conditions and to report to Congress no later than Dec. 31, 2008.

Pub. L. 109–163, div. A, title VII, § 722, Jan. 6, 2006, 119 Stat. 3347, authorized the Secretary of Defense to carry out pilot projects on improving the early diagnosis and treatment of post traumatic stress disorder and other mental health conditions and required a progress report to be submitted to Congress no later than Sept. 1, 2006.

COOPERATIVE OUTREACH TO MEMBERS AND FORMER MEMBERS OF THE NAVAL SERVICE EXPOSED TO ENVIRONMENTAL FACTORS RELATED TO SARCOIDOSIS

Pub. L. 109–163, div. A, title VII, § 746, Jan. 6, 2006, 119 Stat. 3362, directed the Secretary of the Navy, within six months after Jan. 6, 2006, to begin an outreach program to contact as many members and former members of the naval service as possible who may have been exposed to aerosolized particles resulting from the removal of nonskid coating used on Navy ships and to report to Congress on the program results within one year after the beginning of the program.

MEDICAL READINESS PLAN AND JOINT MEDICAL READINESS OVERSIGHT COMMITTEE

Pub. L. 108–375, div. A, title VII, § 731, Oct. 28, 2004, 118 Stat. 1993, as amended by Pub. L. 109–163, div. A, title V, § 515(h), Jan. 6, 2006, 119 Stat. 3237; Pub. L. 109–364, div. A, title X, § 1071(g)(8), Oct. 17, 2006, 120 Stat. 2402; Pub. L. 112–81, div. A, title X, § 1062(f)(1), Dec. 31, 2011, 125 Stat. 1585, provided that:

''(a) REQUIREMENT FOR PLAN.—The Secretary of Defense shall develop a comprehensive plan to improve medical readiness, and Department of Defense tracking of the health status, of members of the Armed Forces throughout their service in the Armed Forces, and to strengthen medical readiness and tracking before, during, and after deployment of members of the Armed Forces overseas. The matters covered by the comprehensive plan shall include all elements that are described in this subtitle [subtitle D [§§ 731 to 740] of title VII of Pub. L. 108–375, enacting sections 1073b and 1092a of this title and enacting provisions set out as notes under this section and sections 1073b, 1074f, and 1092a of this title] and the amendments made by this subtitle and shall comply with requirements in law.

''(b) JOINT MEDICAL READINESS OVERSIGHT COMMITTEE.—

''(1) ESTABLISHMENT.—The Secretary of Defense shall establish a Joint Medical Readiness Oversight Committee.

''(2) COMPOSITION.—The members of the Committee are as follows:

''(A) The Under Secretary of Defense for Personnel and Readiness, who shall chair the Committee.

''(B) The Vice Chief of Staff of the Army, the Vice Chief of Naval Operations, the Vice Chief of Staff of

the Air Force, and the Assistant Commandant of the Marine Corp.

''(C) The Assistant Secretary of Defense for Health Affairs.

''(D) The Assistant Secretary of Defense for Reserve Affairs [now Assistant Secretary of Defense for Manpower and Reserve Affairs].

''(E) The Surgeon General of each of the Army, the Navy, and the Air Force.

''(F) The Assistant Secretary of the Army for Manpower and Reserve Affairs.

''(G) The Assistant Secretary of the Navy for Manpower and Reserve Affairs.

''(H) The Assistant Secretary of the Air Force for Manpower, Reserve Affairs, Installations, and Environment.

''(I) The Chief of the National Guard Bureau.

''(J) The Chief of Army Reserve.

''(K) The Chief of Navy Reserve.

''(L) The Chief of Air Force Reserve.

''(M) The Commander, Marine Corps Reserve.

''(N) The Director of the Defense Manpower Data Center.

''(O) A representative of the Department of Veterans Affairs designated by the Secretary of Veterans Affairs.

''(3) DUTIES.—The duties of the Committee are as follows:

''(A) To advise the Secretary of Defense on the medical readiness and health status of the members of the active and reserve components of the Armed Forces.

''(B) To advise the Secretary of Defense on the compliance of the Armed Forces with the medical readiness tracking and health surveillance policies of the Department of Defense.

''(C) To oversee the development and implementation of the comprehensive plan required by subsection (a) and the actions required by this subtitle and the amendments made by this subtitle, including with respect to matters relating to—

''(i) the health status of the members of the reserve components of the Armed Forces;

''(ii) accountability for medical readiness;

''(iii) medical tracking and health surveillance;

''(iv) declassification of information on environmental hazards;

''(v) postdeployment health care for members of the Armed Forces; and

''(vi) compliance with Department of Defense and other applicable policies on blood serum repositories.

''(D) To ensure unity and integration of efforts across functional and organizational lines within the Department of Defense with regard to medical readiness tracking and health surveillance of members of the Armed Forces.

''(E) To establish and monitor compliance with the medical readiness standards that are applicable to members and those that are applicable to units.

''(F) To improve continuity of care in coordination with the Secretary of Veterans Affairs, for members of the Armed Forces separating from active service with service-connected medical conditions.

''(4) FIRST MEETING.—The first meeting of the Committee shall be held not later than 120 days after the date of the enactment of this Act [Oct. 28, 2004].''

ACCOUNTABILITY FOR MEDICAL READINESS OF INDIVIDUALS AND UNITS OF THE RESERVE COMPONENTS

Pub. L. 108–375, div. A, title VII, § 732(b), Oct. 28, 2004, 118 Stat. 1997, provided that:

''(1) POLICY.—The Secretary of Defense shall take measures, in addition to those required by section 1074f of title 10, United States Code, to ensure that individual members and commanders of reserve component units fulfill their responsibilities and meet the requirements for medical and dental readiness of members of the units. Such measures may include—

''(A) requiring more frequent health assessments of members than is required by section 1074f(b) of title 10, United States Code, with an objective of having every member of the Selected Reserve receive a health assessment as specified in section 1074f of such title not less frequently than once every two years; and

''(B) providing additional support and information to commanders to assist them in improving the health status of members of their units.

''(2) REVIEW AND FOLLOWUP CARE.—The measures under this subsection shall provide for review of the health assessments under paragraph (1) by a medical professional and for any followup care and treatment that is otherwise authorized for medical or dental readiness.

''(3) MODIFICATION OF PREDEPLOYMENT HEALTH ASSESSMENT SURVEY.—In carrying out paragraph (1), the Secretary shall—

''(A) to the extent practicable, modify the predeployment health assessment survey to bring such survey into conformity with the detailed postdeployment health assessment survey in use as of October 1, 2004; and

''(B) ensure the use of the predeployment health assessment survey, as so modified, for predeployment health assessments after that date.''

UNIFORM POLICY ON DEFERRAL OF MEDICAL TREATMENT PENDING DEPLOYMENT TO THEATERS OF OPERATIONS

Pub. L. 108–375, div. A, title VII, § 732(c), Oct. 28, 2004, 118 Stat. 1997, provided that:

''(1) REQUIREMENT FOR POLICY.—The Secretary of Defense shall prescribe, for uniform applicability throughout the Armed Forces, a policy on deferral of medical treatment of members pending deployment.

''(2) CONTENT.—The policy prescribed under paragraph (1) may specify the following matters:

''(A) The circumstances under which treatment for medical conditions may be deferred to be provided within a theater of operations in order to prevent delay or other disruption of a deployment to that theater.

''(B) The circumstances under which medical conditions are to be treated before deployment to that theater.''

MEDICAL CARE AND TRACKING AND HEALTH SURVEILLANCE IN THE THEATER OF OPERATIONS

Pub. L. 108–375, div. A, title VII, § 734, Oct. 28, 2004, 118 Stat. 1998, provided that:

''(a) RECORDKEEPING POLICY.—The Secretary of Defense shall prescribe a policy that requires the records of all medical care provided to a member of the Armed Forces in a theater of operations to be maintained as part of a complete health record for the member.

''(b) IN-THEATER MEDICAL TRACKING AND HEALTH SURVEILLANCE.—

''(1) REQUIREMENT FOR EVALUATION.—The Secretary of Defense shall evaluate the system for the medical tracking and health surveillance of members of the Armed Forces in theaters of operations and take such actions as may be necessary to improve the medical tracking and health surveillance.

''(2) REPORT.—Not later than one year after the date of the enactment of this Act [Oct. 28, 2004], the Secretary of Defense shall submit a report on the actions taken under paragraph (1) to the Committees on Armed Services of the Senate and the House of Representatives. The report shall include the following matters:

''(A) An analysis of the strengths and weaknesses of the medical tracking system administered under section 1074f of title 10, United States Code.

''(B) An analysis of the efficacy of health surveillance systems as a means of detecting—

''(i) any health problems (including mental health conditions) of members of the Armed

Forces contemporaneous with the performance of the assessment under the system; and

''(ii) exposures of the assessed members to environmental hazards that potentially lead to future health problems.

''(C) An analysis of the strengths and weaknesses of such medical tracking and surveillance systems as a means for supporting future research on health issues.

''(D) Recommended changes to such medical tracking and health surveillance systems.

''(E) A summary of scientific literature on blood sampling procedures used for detecting and identifying exposures to environmental hazards.

''(F) An assessment of whether there is a need for changes to regulations and standards for drawing blood samples for effective tracking and health surveillance of the medical conditions of personnel before deployment, upon the end of a deployment, and for a followup period of appropriate length.

''(c) PLAN TO OBTAIN HEALTH CARE RECORDS FROM ALLIES.—The Secretary of Defense shall develop a plan for obtaining all records of medical treatment provided to members of the Armed Forces by allies of the United States in Operation Enduring Freedom and Operation Iraqi Freedom. The plan shall specify the actions that are to be taken to obtain all such records.

''(d) POLICY ON IN-THEATER PERSONNEL LOCATOR DATA.—Not later than one year after the date of the enactment of this Act [Oct. 28, 2004], the Secretary of Defense shall prescribe a Department of Defense policy on the collection and dissemination of in-theater individual personnel location data.''

DECLASSIFICATION OF INFORMATION ON EXPOSURES TO ENVIRONMENTAL HAZARDS

Pub. L. 108–375, div. A, title VII, §735, Oct. 28, 2004, 118 Stat. 1999, provided that:

''(a) REQUIREMENT FOR REVIEW.—The Secretary of Defense shall review and, as determined appropriate, revise the classification policies of the Department of Defense with a view to facilitating the declassification of data that is potentially useful for the monitoring and assessment of the health of members of the Armed Forces who have been exposed to environmental hazards during deployments overseas, including the following data:

''(1) In-theater injury rates.

''(2) Data derived from environmental surveillance.

''(3) Health tracking and surveillance data.

''(b) CONSULTATION WITH COMMANDERS OF THEATER COMBATANT COMMANDS.—The Secretary shall, to the extent that the Secretary considers appropriate, consult with the senior commanders of the in-theater forces of the combatant commands in carrying out the review and revising policies under subsection (a).''

UNIFORM POLICY FOR MEETING MOBILIZATION-RELATED MEDICAL CARE NEEDS AT MILITARY INSTALLATIONS

Pub. L. 108–375, div. A, title VII, §737, Oct. 28, 2004, 118 Stat. 2000, provided that:

''(a) HEALTH CARE AT MOBILIZATION INSTALLATIONS.—The Secretary of Defense shall take such steps as necessary, including through the uniform policy established under subsection (c), to ensure that anticipated health care needs of members of the Armed Forces at mobilization installations can be met at those installations. Such steps may, within authority otherwise available to the Secretary, include the following with respect to any such installation:

''(1) Arrangements for health care to be provided by the Secretary of Veterans Affairs.

''(2) Procurement of services from local health care providers.

''(3) Temporary employment of health care personnel to provide services at such installation.

''(b) MOBILIZATION INSTALLATIONS.—For purposes of this section, the term 'mobilization installation' means a military installation at which members of the Armed Forces, in connection with a contingency operation or during a national emergency—

''(1) are mobilized;

''(2) are deployed; or

''(3) are redeployed from a deployment location.

''(c) REQUIREMENT FOR REGULATIONS.—

''(1) POLICY ON IMPLEMENTATION.—The Secretary of Defense shall by regulation establish a policy for the implementation of subsection (a) throughout the Department of Defense.

''(2) IDENTIFICATION AND ANALYSIS OF NEEDS.—As part of the policy prescribed under paragraph (1), the Secretary shall require the Secretary of each military department, with respect to each mobilization installation under the jurisdiction of that Secretary, to identify and analyze the anticipated health care needs at that installation with respect to members of the Armed Forces who may be expected to mobilize or deploy or redeploy at that installation as described in subsection (b)(1). Such identification and analysis shall be carried out so as to be completed before the arrival of such members at the installation.

''(3) RESPONSE TO NEEDS.—The policy established by the Secretary of Defense under paragraph (1) shall require that, based on the results of the identification and analysis under paragraph (2), the Secretary of the military department concerned shall determine how to expeditiously and effectively respond to those anticipated health care needs that cannot be met within the resources otherwise available at that installation, in accordance with subsection (a).

''(4) IMPLEMENTATION OF AUTHORITY.—In implementing the policy established under paragraph (1) at any installation, the Secretary of the military department concerned shall ensure that the commander of the installation, and the officers and other personnel superior to that commander in that commander's chain of command, have appropriate authority and responsibility for such implementation.

''(d) POLICY.—The Secretary of Defense shall ensure—

''(1) that the policy prescribed under subsection (c) is carried out with respect to any mobilization installation with the involvement of all agencies of the Department of Defense that have responsibility for management of the installation and all organizations of the Department that have command authority over any activity at the installation; and

''(2) that such policy is implemented on a uniform basis throughout the Department of Defense.''

FULL IMPLEMENTATION OF MEDICAL READINESS TRACKING AND HEALTH SURVEILLANCE PROGRAM AND FORCE HEALTH PROTECTION AND READINESS PROGRAM

Pub. L. 108–375, div. A, title VII, §738, Oct. 28, 2004, 118 Stat. 2001, provided that:

''(a) IMPLEMENTATION AT ALL LEVELS.—The Secretary of Defense, in conjunction with the Secretaries of the military departments, shall take such actions as are necessary to ensure that the Army, Navy, Air Force, and Marine Corps fully implement at all levels—

''(1) the Medical Readiness Tracking and Health Surveillance Program under this title [see Tables for classification] and the amendments made by this title; and

''(2) the Force Health Protection and Readiness Program of the Department of Defense (relating to the prevention of injury and illness and the reduction of disease and noncombat injury threats).

''(b) ACTION OFFICIAL.—The Secretary of Defense may act through the Under Secretary of Defense for Personnel and Readiness in carrying out subsection (a).''

INTERNET ACCESSIBILITY OF HEALTH ASSESSMENT INFORMATION FOR MEMBERS OF THE ARMED FORCES

Pub. L. 108–375, div. A, title VII, §739(b), Oct. 28, 2004, 118 Stat. 2002, provided that: ''Not later than one year after the date of the enactment of this Act [Oct. 28, 2004], the Chief Information Officer of each military department shall ensure that the online portal website of

that military department includes the following information relating to health assessments:

"(1) Information on the policies of the Department of Defense and the military department concerned regarding predeployment and postdeployment health assessments, including policies on the following matters:

"(A) Health surveys.

"(B) Physical examinations.

"(C) Collection of blood samples and other tissue samples.

"(2) Procedural information on compliance with such policies, including the following information:

"(A) Information for determining whether a member is in compliance.

"(B) Information on how to comply.

"(3) Health assessment surveys that are either—

"(A) web-based; or

"(B) accessible (with instructions) in printer-ready form by download."

INCLUSION OF DENTAL CARE

Pub. L. 108–375, div. A, title VII, § 740, as added by Pub. L. 109–163, div. A, title VII, § 745(a), Jan. 6, 2006, 119 Stat. 3362, provided that: "For purposes of the plan, this subtitle [subtitle D (§§ 731–740) of title VII of div. A of Pub. L. 108–375, enacting sections 1073b and 1092a of this title and enacting provisions set out as notes under this section and sections 1073b, 1074f, and 1092a of this title], and the amendments made by this subtitle, references to medical readiness, health status, and health care shall be considered to include dental readiness, dental status, and dental care."

LIMITATION ON FISCAL YEAR 2004 OUTLAYS FOR TEMPORARY RESERVE HEALTH CARE PROGRAMS

Pub. L. 108–136, div. A, title VII, § 706, Nov. 24, 2003, 117 Stat. 1529, as amended by Pub. L. 110–181, div. A, title X, § 1063(g)(1), Jan. 28, 2008, 122 Stat. 323, limited fiscal year 2004 expenditures for the administration of the temporary Reserve health care programs to $400,000,000.

DISCLOSURE OF INFORMATION ON PROJECT 112 TO DEPARTMENT OF VETERANS AFFAIRS

Pub. L. 107–314, div. A, title VII, § 709, Dec. 2, 2002, 116 Stat. 2586, directed the Secretary of Defense to submit to Congress and the Secretary of Veterans Affairs a plan for the review, declassification, and submittal to the Department of Veterans Affairs of all records and information on Project 112, a chemical and biological weapons vulnerability-testing program, relevant to the provision of benefits to members of the Armed Forces who participated in that project; provided that the plan was to be completed no later than one year after Dec. 2, 2002; and required implementation reports to Congress and the Secretary of Veterans Affairs.

HEALTH CARE AT FORMER UNIFORMED SERVICES TREATMENT FACILITIES FOR ACTIVE DUTY MEMBERS STATIONED AT CERTAIN REMOTE LOCATIONS

Pub. L. 106–65, div. A, title VII, § 706, Oct. 5, 1999, 113 Stat. 684, as amended by Pub. L. 106–398, § 1 [[div. A], title VII, § 722(a)(3)], Oct. 30, 2000, 114 Stat. 1654, 1654A–185, provided that:

"(a) AUTHORITY.—Health care may be furnished by a designated provider pursuant to any contract entered into by the designated provider under section 722(b) of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104–201; 10 U.S.C. 1073 note) to eligible members who reside within the service area of the designated provider.

"(b) ELIGIBILITY.—A member of the uniformed services (as defined in section 1072(1) of title 10, United States Code) is eligible for health care under subsection (a) if the member is a member described in section 731(c) of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105–85; 111 Stat. 1811; 10 U.S.C. 1074 note).

"(c) APPLICABLE POLICIES.—In furnishing health care to an eligible member under subsection (a), a designated provider shall adhere to the Department of Defense policies applicable to the furnishing of care under the TRICARE Prime Remote program, including coordinating with uniformed services medical authorities for hospitalizations and all referrals for specialty care.

"(d) REIMBURSEMENT RATES.—The Secretary of Defense, in consultation with the designated providers, shall prescribe reimbursement rates for care furnished to eligible members under subsection (a). The rates prescribed for health care may not exceed the amounts allowable under the TRICARE Standard plan for the same care."

TEMPORARY AUTHORITY FOR MANAGED CARE EXPANSION TO MEMBERS ON ACTIVE DUTY AT CERTAIN REMOTE LOCATIONS; "TRICARE PROGRAM" AND "TRICARE PRIME PLAN" DEFINED

Pub. L. 105–85, div. A, title VII, § 731(b)–(f), Nov. 18, 1997, 111 Stat. 1811, 1812, as amended by Pub. L. 106–398, § 1 [[div. A], title VII, § 722(a)(2), (b)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–185, 1654A–186, provided that:

"(b) TEMPORARY AUTHORITY FOR MANAGED CARE EXPANSION TO MEMBERS ON ACTIVE DUTY AT CERTAIN REMOTE LOCATIONS.—(1) A member of the uniformed services described in subsection (c) is entitled to receive care under the Civilian Health and Medical Program of the Uniformed Services. In connection with such care, the Secretary of Defense shall waive the obligation of the member to pay a deductible, copayment, or annual fee that would otherwise be applicable under that program for care provided to the members under the program. A dependent of the member, as described in subparagraph (A), (D), or (I) of section 1072(2) of title 10, United States Code, who is residing with the member shall have the same entitlement to care and to waiver of charges as the member.

"(2) A member or dependent of the member, as the case may be, who is entitled under paragraph (1) to receive health care services under CHAMPUS shall receive such care from a network provider under the TRICARE program if such a provider is available in the service area of the member.

"(3) Paragraph (1) shall take effect on the date of the enactment of this Act [Nov. 18, 1997] and shall expire with respect to a member upon the later of the following:

"(A) The date that is one year after the date of the enactment of this Act.

"(B) The date on which the amendments made by subsection (a) [amending this section] apply with respect to the coverage of medical care for, and provision of such care to, the member.

"(4) The Secretary of Defense shall consult with the other administering Secretaries in the administration of this subsection.

"(c) ELIGIBLE MEMBERS.—A member referred to in subsection (b) is a member of the uniformed services on active duty who—

"(1) receives a duty assignment described in subsection (d); and

"(2) pursuant to the assignment of such duty, resides at a location that is more than 50 miles, or approximately one hour of driving time, from—

"(A) the nearest health care facility of the uniformed services adequate to provide the needed care under chapter 55 of title 10, United States Code; and

"(B) the nearest source of the needed care that is available to the member under the TRICARE Prime plan.

"(d) DUTY ASSIGNMENTS COVERED.—A duty assignment referred to in subsection (c)(1) means any of the following:

"(1) Permanent duty as a recruiter.

"(2) Permanent duty at an educational institution to instruct, administer a program of instruction, or provide administrative services in support of a program of instruction for the Reserve Officers' Training Corps.

"(3) Permanent duty as a full-time adviser to a unit of a reserve component of the uniformed services.

''(4) Any other permanent duty designated by the Secretary concerned for purposes of this subsection.

''(e) PAYMENT OF COSTS.—Deductibles, copayments, and annual fees not payable by a member by reason of a waiver granted under the regulations prescribed pursuant to subsection (b) shall be paid out of funds available to the Department of Defense for the Defense Health Program.

''(f) DEFINITIONS.—In this section [amending this section and enacting provisions set out as a note above]:

''(1) The term 'TRICARE program' has the meaning given that term in section 1072(7) of title 10, United States Code.

''(2) The term 'TRICARE Prime plan' means a plan under the TRICARE program that provides for the voluntary enrollment of persons for the receipt of health care services to be furnished in a manner similar to the manner in which health care services are furnished by health maintenance organizations.

''(3) The terms 'uniformed services' and 'administering Secretaries' have the meanings given those terms in section 1072 of title 10, United States Code.''

[Pub. L. 106–398, §1 [[div. A], title VII, §722(c)(2), (3)], Oct. 30, 2000, 114 Stat. 1654, 1654A–186, provided that:

[''(2) The amendments made by subsection (a)(2) [amending section 731(b)–(f) of Pub. L. 105–85, set out above], with respect to members of the uniformed services, and the amendments made by subsection (b)(2) [amending section 731(b)–(f) of Pub. L. 105–85, set out above], with respect to dependents of members, shall take effect on the date of the enactment of this Act [Oct. 30, 2000] and shall expire with respect to a member or the dependents of a member, respectively, on the later of the following:

[''(A) The date that is one year after the date of the enactment of this Act.

[''(B) The date on which the policies required by the amendments made by subsection (a)(1) or (b)(1) [amending this section and section 1079 of this title] are implemented with respect to the coverage of medical care for and provision of such care to the member or dependents, respectively.

[''(3) Section 731(b)(3) of Public Law 105–85 [set out above] does not apply to a member of the Coast Guard, the National Oceanic and Atmospheric Administration, or the Commissioned Corps of the Public Health Service, or to a dependent of a member of a uniformed service.'']

INDEPENDENT RESEARCH REGARDING GULF WAR SYNDROME

Pub. L. 104–201, div. A, title VII, §743, Sept. 23, 1996, 110 Stat. 2601, directed the Secretary of Defense to provide for scientific research by independent entities on possible causal relationships between Gulf War syndrome and possible exposures of military personnel to chemical warfare agents or other hazardous materials during Gulf War service and use of inoculations and investigational new drugs.

PERSIAN GULF ILLNESS

Pub. L. 105–85, div. A, title VII, §§761, 762, 770, Nov. 18, 1997, 111 Stat. 1824, 1829, provided that:

''SEC. 761. DEFINITIONS.

''For purposes of this subtitle [subtitle F (§§761–771) of title VII of Pub. L. 105–85, enacting sections 1074e, 1074f, and 1107 of this title and this note]:

''(1) The term 'Gulf War illness' means any one of the complex of illnesses and symptoms that might have been contracted by members of the Armed Forces as a result of service in the Southwest Asia theater of operations during the Persian Gulf War.

''(2) The term 'Persian Gulf War' has the meaning given that term in section 101 of title 38, United States Code.

''(3) The term 'Persian Gulf veteran' means an individual who served on active duty in the Armed Forces in the Southwest Asia theater of operations during the Persian Gulf War.

''(4) The term 'contingency operation' has the meaning given that term in section 101(a) of title 10, United States Code, and includes a humanitarian operation, peacekeeping operation, or similar operation.

''SEC. 762. PLAN FOR HEALTH CARE SERVICES FOR PERSIAN GULF VETERANS.

''(a) PLAN REQUIRED.—The Secretary of Defense and the Secretary of Veterans Affairs, acting jointly, shall prepare a plan to provide appropriate health care to Persian Gulf veterans (and dependents eligible by law) who suffer from a Gulf War illness.

''(b) CONTENTS OF PLAN.—In preparing the plan, the Secretaries shall—

''(1) use the presumptions of service connection and illness specified in paragraphs (1) and (2) of section 721(d) of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337; 10 U.S.C. 1074 note) to determine the Persian Gulf veterans (and dependents eligible by law) who should be covered by the plan;

''(2) consider the need and methods available to provide health care services to Persian Gulf veterans who are no longer on active duty in the Armed Forces, such as Persian Gulf veterans who are members of the reserve components and Persian Gulf veterans who have been separated from the Armed Forces; and

''(3) estimate the costs to the Government of providing full or partial health care services under the plan to covered Persian Gulf veterans (and covered dependents eligible by law).

''(c) FOLLOW-UP TREATMENT.—The plan required by subsection (a) shall specifically address the measures to be used to monitor the quality, appropriateness, and effectiveness of, and patient satisfaction with, health care services provided to Persian Gulf veterans after their initial medical examination as part of registration in the Persian Gulf War Veterans Health Registry or the Comprehensive Clinical Evaluation Program.

''(d) SUBMISSION OF PLAN.—Not later than March 1, 1998, the Secretaries shall submit to Congress the plan required by subsection (a).

''SEC. 770. PERSIAN GULF ILLNESS CLINICAL TRIALS PROGRAM.

''(a) FINDINGS.—Congress finds the following:

''(1) There are many ongoing studies that investigate risk factors which may be associated with the health problems experienced by Persian Gulf veterans; however, there have been no studies that examine health outcomes and the effectiveness of the treatment received by such veterans.

''(2) The medical literature and testimony presented in hearings on Gulf War illnesses indicate that there are therapies, such as cognitive behavioral therapy, that have been effective in treating patients with symptoms similar to those seen in many Persian Gulf veterans.

''(b) ESTABLISHMENT OF PROGRAM.—The Secretary of Defense and the Secretary of Veterans Affairs, acting jointly, shall establish a program of cooperative clinical trials at multiple sites to assess the effectiveness of protocols for treating Persian Gulf veterans who suffer from ill-defined or undiagnosed conditions. Such protocols shall include a multidisciplinary treatment model, of which cognitive behavioral therapy is a component.

''(c) FUNDING.—Of the funds authorized to be appropriated in section 201(1) [111 Stat. 1655] for research, development, test, and evaluation for the Army, the sum of $4,500,000 shall be available for program element 62787A (medical technology) in the budget of the Department of Defense for fiscal year 1998 to carry out the clinical trials program established pursuant to subsection (b).''

Pub. L. 103–337, div. A, title VII, §§721, 722, Oct. 5, 1994, 108 Stat. 2804, 2807, as amended by Pub. L. 104–106, div. A, title XV, §1504(a)(4), (5), Feb. 10, 1996, 110 Stat. 513; Pub. L. 108–136, div. A, title X, §1031(e), Nov. 24, 2003, 117 Stat. 1604, provided that:

''SEC. 721. PROGRAMS RELATED TO DESERT STORM MYSTERY ILLNESS.

''(a) OUTREACH PROGRAM TO PERSIAN GULF VETERANS AND FAMILIES.—The Secretary of Defense shall institute a comprehensive outreach program to inform members of the Armed Forces who served in the Southwest Asia theater of operations during the Persian Gulf Conflict, and the families of such members, of illnesses that may result from such service. The program shall be carried out through both medical and command channels, as well as any other means the Secretary considers appropriate. Under the program, the Secretary shall—

''(1) inform such individuals regarding—

''(A) common disease symptoms reported by Persian Gulf veterans that may be due to service in the Southwest Asia theater of operations;

''(B) blood donation policy;

''(C) available counseling and medical care for such members; and

''(D) possible health risks to children of Persian Gulf veterans;

''(2) inform such individuals of the procedures for registering in either the Persian Gulf Veterans Health Surveillance System of the Department of Defense or the Persian Gulf War Health Registry of the Department of Veterans Affairs; and

''(3) encourage such members to report any symptoms they may have and to register in the appropriate health surveillance registry.

''(b) INCENTIVES TO PERSIAN GULF VETERANS TO REGISTER.—In order to encourage Persian Gulf veterans to register any symptoms they may have in one of the existing health registries, the Secretary of Defense shall provide the following:

''(1) For any Persian Gulf veteran who is on active duty and who registers with the Department of Defense's Persian Gulf War Veterans Health Surveillance System, a full medical evaluation and any required medical care.

''(2) For any Persian Gulf War veteran who is, as of the date of the enactment of this Act [Oct. 5, 1994], a member of a reserve component, opportunity to register at a military medical facility in the Persian Gulf Veterans Health Care Surveillance System and, in the case of a Reserve who registers in that registry, a full medical evaluation by the Department of Defense. Depending on the results of the evaluation and on eligibility status, reserve personnel may be provided medical care by the Department of Defense.

''(3) For a Persian Gulf veteran who is not, as of the date of the enactment of this Act [Oct. 5, 1994], on active duty or a member of a reserve component, assistance and information at a military medical facility on registering with the Persian Gulf War Registry of the Department of Veterans Affairs and information related to support services provided by the Department of Veterans Affairs.

''(c) COMPATIBILITY OF DEPARTMENT OF DEFENSE AND DEPARTMENT OF VETERANS AFFAIRS REGISTRIES.—The Secretary of Defense shall take appropriate actions to ensure—

''(1) that the data collected by and the testing protocols of the Persian Gulf War Health Surveillance System maintained by the Department of Defense are compatible with the data collected by and the testing protocols of the Persian Gulf War Veterans Health Registry maintained by the Department of Veterans Affairs; and

''(2) that all information on individuals who register with the Department of Defense for purposes of the Persian Gulf War Health Surveillance System is provided to the Secretary of Veterans Affairs for incorporation into the Persian Gulf War Veterans Health Registry.

''(d) PRESUMPTIONS ON BEHALF OF SERVICE MEMBER.—(1) A member of the Armed Forces who is a Persian Gulf veteran, who has symptoms of illness, and who the Secretary concerned finds may have become ill as a result of serving on active duty in the Southwest Asia theater of operations during the Persian Gulf War shall be considered for Department of Defense purposes to have become ill as a result of serving in that theater of operations.

''(2) A member of the Armed Forces who is a Persian Gulf veteran and who reports being ill as a result of serving on active duty in the Southwest Asia theater of operations during the Persian Gulf War shall be considered for Department of Defense purposes to have become ill as a result of serving in that theater of operations until such time as the weight of medical evidence establishes other cause or causes of the member's illness.

''(3) The Secretary concerned shall ensure that, for the purposes of health care treatment by the Department of Defense, health care and personnel administration, and disability evaluation by the Department of Defense, the symptoms of any member of the Armed Forces covered by paragraph (1) or (2) are examined in light of the member's service in the Persian Gulf War and in light of the reported symptoms of other Persian Gulf veterans. The Secretary shall ensure that, in providing health care diagnosis and treatment of the member, a broad range of potential causes of the member's symptoms are considered and that the member's symptoms are considered collectively, as well as by type of symptom or medical specialty, and that treatment across medical specialties is coordinated appropriately.

''(4) The Secretary of Defense shall ensure that the presumptions of service connection and illness specified in paragraphs (1) and (2) are incorporated in appropriate service medical and personnel regulations and are widely disseminated throughout the Department of Defense.

''(e) REVISION OF THE PHYSICAL EVALUATION BOARD CRITERIA.—(1) The Secretary of Defense, in consultation with the Secretary of Veterans Affairs and the Secretary of Health and Human Services, shall ensure that case definitions of Persian Gulf related illnesses, as well as the Physical Evaluation Board criteria used to set disability ratings for members no longer medically qualified for continuation on active duty, are established as soon as possible to permit accurate disability ratings related to a diagnosis of Persian Gulf illnesses.

''(2) Until revised disability criteria can be implemented and members of the Armed Forces can be rated against those criteria, the Secretary of Defense shall ensure—

''(A) that any member of the Armed Forces on active duty who may be suffering from a Persian Gulf-related illness is afforded continued military medical care; and

''(B) that any member of the Armed Forces on active duty who is found by a Physical Evaluation Board to be unfit for continuation on active duty as a result of a Persian Gulf-related illness for which the board has no rating criteria (or inadequate rating criteria) for the illness or condition from which the member suffers is placed on the temporary disability retired list.

''(f) REVIEW OF RECORDS AND RERATING OF PREVIOUSLY DISCHARGED GULF WAR VETERANS.—(1) The Secretary of Defense, in consultation with the Secretary of Veterans Affairs, shall ensure that a review is made of the health and personnel records of each Persian Gulf veteran who before the date of the enactment of this Act [Oct. 5, 1994] was discharged from active duty, or was medically retired, as a result of a Physical Evaluation Board process.

''(2) The review under paragraph (1) shall be carried out to ensure that former Persian Gulf veterans who may have been suffering from a Persian Gulf-related illness at the time of discharge or retirement from active duty as a result of the Physical Evaluation Board process are reevaluated in accordance with the criteria established under subsection (e)(1) and, if appropriate, are rerated.

''(g) PERSIAN GULF ILLNESS MEDICAL REFERRAL CENTERS.—The Secretary of Defense shall evaluate the fea-

sibility of establishing one or more medical referral centers to provide uniform, coordinated medical care for Persian Gulf veterans on active duty who are or may be suffering from a Persian Gulf-related illness. The Secretary shall submit a report on such feasibility to the Committees on Armed Services of the Senate and House of Representatives not later than six months after the date of the enactment of this Act [Oct. 5, 1994].

''[(h) Repealed. Pub. L. 108–136, div. A, title X, § 1031(e), Nov. 24, 2003, 117 Stat. 1604.]

''(i) PERSIAN GULF VETERAN.—For purposes of this section, a Persian Gulf veteran is an individual who served on active duty in the Armed Forces in the Southwest Asia theater of operations during the Persian Gulf Conflict.

''SEC. 722. STUDIES OF HEALTH CONSEQUENCES OF MILITARY SERVICE OR EMPLOYMENT IN SOUTHWEST ASIA DURING THE PERSIAN GULF WAR.

''(a) IN GENERAL.—The Secretary of Defense, in coordination with the Secretary of Veterans Affairs and the Secretary of Health and Human Services, shall conduct studies and administer grants for studies to determine—

''(1) the nature and causes of illnesses suffered by individuals as a consequence of service or employment by the United States in the Southwest Asia theater of operations during the Persian Gulf War; and

''(2) the appropriate treatment for those illnesses.

''(b) NATURE OF THE STUDIES.—(1) Studies under subsection (a)—

''(A) shall include consideration of the range of potential exposure of individuals to environmental, battlefield, and other conditions incident to service in the theater;

''(B) shall be conducted so as to provide assessments of both short-term and long-term effects to the health of individuals as a result of those exposures; and

''(C) shall include, at a minimum, the following types of studies:

''(i) An epidemiological study or studies on the incidence, prevalence, and nature of the illness and symptoms and the risk factors associated with symptoms or illnesses.

''(ii) Studies to determine the health consequences of the use of pyridostigmine bromide as a pretreatment antidote enhancer during the Persian Gulf War, alone or in combination with exposure to pesticides, environmental toxins, and other hazardous substances.

''(iii) Clinical research and other studies on the causes, possible transmission, and treatment of Persian Gulf-related illnesses.

''(2)(A) The first project carried out under paragraph (1)(C)(ii) shall be a retrospective study of members of the Armed Forces who served in the Southwest Asia theater of operations during the Persian Gulf War.

''(B) The second project carried out under paragraph (1)(C)(ii) shall consist of animal research and non-animal research, including in vitro systems, as required, designed to determine whether the use of pyridostigmine bromide in combination with exposure to pesticides or other organophosphates, carbamates, or relevant chemicals will result in increased toxicity in animals and is likely to have a similar effect on humans.

''(c) INDIVIDUALS COVERED BY THE STUDIES.—Studies conducted pursuant to subsections [sic] (a) shall apply to the following individuals:

''(1) Individuals who served as members of the Armed Forces in the Southwest Asia theater of operations during the Persian Gulf War.

''(2) Individuals who were civilian employees of the Department of Defense in that theater during that period.

''(3) To the extent appropriate, individuals who were employees of contractors of the Department of Defense in that theater during that period.

''(4) To the extent appropriate, the spouses and children of individuals described in paragraph (1).

''(d) PLAN FOR THE STUDIES.—(1) The Secretary of Defense shall prepare a coordinated plan for the studies to be conducted pursuant to subsection (a). The plan shall include plans and requirements for research grants in support of the studies. The Secretary shall submit the plan to the National Academy of Sciences for review and comment.

''(2) The plan for studies pursuant to subsection (a) shall be updated annually. The Secretary of Defense shall request an annual review by the National Academy of Sciences of the updated plan and study progress and results achieved during the preceding year.

''(3) The plan, and annual updates to the plan, shall be prepared in coordination with the Secretary of Veterans Affairs and the Secretary of Health and Human Services.

''(e) FUNDING.—(1) From the amount authorized to be appropriated pursuant to section 201 [108 Stat. 2690] for Defense-wide activities, the Secretary of Defense shall make available such funds as the Secretary considers necessary to support the studies conducted pursuant to subsection (a).

''(2) For each year in which activities continue in support of the studies conducted pursuant to subsection (a), the Secretary of Defense shall include in the budget request for the Department of Defense a request for such funds as the Secretary determines necessary to continue the activities during that fiscal year.

''(f) REPORTS.—(1) Not later than March 31, 1995, the Secretary of Defense shall submit to Congress the coordinated plan for the studies to be conducted pursuant to subsection (a) and the results of the review of that plan by the National Academy of Sciences.

''(2) Not later than October 1 of each year through 1998, the Secretary shall submit to Congress a report on the results of the studies conducted pursuant to subsection (a), plans for continuation of the studies, and the results of the annual review of the studies by the National Academy of Sciences.

''(3) Each report under this section shall be prepared in coordination with the Secretary of Veterans Affairs and the Secretary of Health and Human Services.

''(g) DEFINITION.—In this section, the term 'Persian Gulf War' has the meaning given such term in section 101 of title 38, United States Code.''

[For provisions establishing the Persian Gulf War Veterans Health Registry, provisions requiring a study by the Office of Technology Assessment of the Persian Gulf Registry and the Persian Gulf War Veterans Health Registry, provisions relating to an agreement with the National Academy of Sciences for review of health consequences of service during the Persian Gulf War, and coordination of government activities on health-related research on the Persian Gulf War, see title VII of Pub. L. 102–585, set out as a note under section 527 of Title 38, Veterans' Benefits.]

FUNDING OF FISHER HOUSES ASSOCIATED WITH ARMY MEDICAL TREATMENT FACILITIES

Pub. L. 103–335, title VIII, § 8017, Sept. 30, 1994, 108 Stat. 2620, which provided that during fiscal year 1995 and thereafter, proceeds from investment of Fisher House Investment Trust Fund were to be used to support operation and maintenance of Fisher Houses associated with Army medical treatment facilities, was repealed and restated in section 2221(c)(1) of this title by Pub. L. 104–106, div. A, title IX, § 914(a)(1), (d)(4), Feb. 10, 1996, 110 Stat. 412, 413.

MENTAL HEALTH EVALUATIONS OF MEMBERS OF ARMED FORCES

Pub. L. 102–484, div. A, title V, § 546(a)–(h), Oct. 23, 1992, 106 Stat. 2416–2419, which directed Secretary of Defense, not later than 180 days after Oct. 23, 1992, to revise applicable regulations to incorporate certain requirements with respect to mental health evaluations

of members of Armed Forces and to submit a report describing process of preparing regulations, was repealed by Pub. L. 112–81, div. A, title VII, § 711(b), Dec. 31, 2011, 125 Stat. 1476.

STUDY ON RISK-SHARING CONTRACTS FOR HEALTH CARE

Pub. L. 102–484, div. A, title VII, § 725, Oct. 23, 1992, 106 Stat. 2440, directed Secretary of Defense, in consultation with Secretary of Health and Human Services, not later than 18 months after Oct. 23, 1992, to carry out a study of the feasibility and advisability of entering into risk-sharing contracts with eligible organizations described in 42 U.S.C. 1395mm(b) to furnish health care services to persons entitled to health care in a facility of a uniformed service under section 1074(b) or 1076(b) of this title, to develop a plan for the entry into contracts in accordance with the Secretary's determinations under the study, and to submit to Congress a report describing the results of the study and containing any plan developed.

REGISTRY OF MEMBERS OF ARMED FORCES SERVING IN OPERATION DESERT STORM

Pub. L. 102–190, div. A, title VII, § 734, Dec. 5, 1991, 105 Stat. 1411, as amended by Pub. L. 102–585, title VII, § 704, Nov. 4, 1992, 106 Stat. 4977; Pub. L. 108–136, div. A, title X, § 1031(c)(1), Nov. 24, 2003, 117 Stat. 1604, provided that:

''(a) ESTABLISHMENT OF REGISTRY.—The Secretary of Defense shall establish and maintain a special record (in this section referred to as the 'Registry') relating to the following members of the Armed Forces:

''(1) Members who, as determined by the Secretary, were exposed to the fumes of burning oil in the Operation Desert Storm theater of operations during the Persian Gulf conflict.

''(2) Any other members who served in the Operation Desert Storm theater of operations during the Persian Gulf conflict.

''(b) CONTENTS OF REGISTRY.—(1) The Registry shall include—

''(A) with respect to each class of members referred to in each of paragraphs (1) and (2) of subsection (a)—

''(i) a list containing each such member's name and other relevant identifying information with respect to the member; and

''(ii) to the extent that data are available and inclusion of the data is feasible, a description of the circumstances of the member's service during the Persian Gulf conflict, including the locations in the Operation Desert Storm theater of operations in which such service occurred and the atmospheric and other environmental circumstances in such locations at the time of such service; and

''(B) with respect to the members referred to in subsection (a)(1), a description of the circumstances of each exposure of each such member to the fumes of burning oil as described in such subsection (a)(1), including the length of time of the exposure.

''(2) The Secretary shall establish the Registry with the advice of an independent scientific organization.

''[(c) Repealed. Pub. L. 108–136, div. A, title X, § 1031(c)(1), Nov. 24, 2003, 117 Stat. 1604.]

''(d) MEDICAL EXAMINATION.—Upon the request of any member listed in the Registry pursuant to subsection (a)(1), the Secretary of the military department concerned shall, if medically appropriate, furnish a pulmonary function examination and chest x-ray to such person.

''(e) EFFECTIVE DATE.—The Secretary shall establish the Registry not later than 180 days after the date of the enactment of this Act [Dec. 5, 1991].

''(f) DEFINITIONS.—For purposes of this section:

''(1) The term 'Operation Desert Storm' has the meaning given such term in section 3(1) of the Persian Gulf Conflict Supplemental Authorization and Personnel Benefits Act of 1991 (Public Law 102–25; 105 Stat. 77; 10 U.S.C. 101 note).

''(2) The term 'Persian Gulf conflict' has the meaning given such term in section 3(3) of such Act.''

[For provisions relating to the Persian Gulf War Veterans Health Registry, see title VII of Pub. L. 102–585, set out as a note under section 527 of Title 38, Veterans' Benefits.]

ADVISORY COMMITTEE ON MENTAL HEALTH EVALUATION PROTECTIONS

Pub. L. 101–510, div. A, title V, § 554, Nov. 5, 1990, 104 Stat. 1567, as amended by Pub. L. 102–484, div. A, title V, § 546(j)[(i)], Oct. 23, 1992, 106 Stat. 2419, directed Secretary of Defense, not later than 60 days after Nov. 5, 1990, to establish an advisory committee to develop and recommend to the Secretary, not later than 6 months after Nov. 5, 1990, regulations on procedural protections that should be afforded to any member of the Armed Forces who is referred by a commanding officer for a mental health evaluation by a mental health professional and directed Secretary, not later than 30 days after receipt of the report, to submit to Congress the report of the advisory committee, along with such additional comments and recommendations by the Secretary as the Secretary considers appropriate.

PROHIBITION ON FEE FOR OUTPATIENT CARE AT MILITARY MEDICAL TREATMENT FACILITIES

Pub. L. 101–189, div. A, title VII, § 721, Nov. 29, 1989, 103 Stat. 1477, provided that during fiscal years 1990 and 1991, the Secretary of Defense could not impose a charge for the receipt of outpatient medical or dental care at a military medical treatment facility. Similar provisions were contained in the following prior authorization act:

Pub. L. 100–180, div. A, title VII, § 722, Dec. 4, 1987, 101 Stat. 1116.

RESTRICTION ON USE OF INFORMATION OBTAINED DURING CERTAIN EPIDEMIOLOGIC-ASSESSMENT INTERVIEWS

Pub. L. 99–661, div. A, title VII, § 705(c), Nov. 14, 1986, 100 Stat. 3904, provided that:

''(1) Information obtained by the Department of Defense during or as a result of an epidemiologic-assessment interview with a serum-positive member of the Armed Forces may not be used to support any adverse personnel action against the member.

''(2) For purposes of paragraph (1):

''(A) The term 'epidemiologic-assessment interview' means questioning of a serum-positive member of the Armed Forces for purposes of medical treatment or counseling or for epidemiologic or statistical purposes.

''(B) The term 'serum-positive member of the Armed Forces' means a member of the Armed Forces who has been identified as having been exposed to a virus associated with the acquired immune deficiency syndrome.

''(C) The term 'adverse personnel action' includes—

''(i) a court-martial;

''(ii) non-judicial punishment;

''(iii) involuntary separation (other than for medical reasons);

''(iv) administrative or punitive reduction in grade;

''(v) denial of promotion;

''(vi) an unfavorable entry in a personnel record;

''(vii) a bar to reenlistment; and

''(viii) any other action considered by the Secretary concerned to be an adverse personnel action.''

STUDY OF MEDICAL NEEDS OF ARMED FORCES; REPORT TO PRESIDENT AND CONGRESS

Pub. L. 92–129, title I, § 101(c), Sept. 28, 1971, 85 Stat. 354, authorized Secretary of Defense and Secretary of Health, Education, and Welfare to conduct a joint study of means of meeting medical needs of Armed Forces through means requiring less dependence on Armed Forces medical personnel, giving consideration to providing medical care for military personnel and their dependents under contracts with clinics, hos-

pitals, and individual members of the medical profession at or near military installations within and outside the United States. The study and recommendations were to be submitted to President and Congress no later than 6 months after Sept. 28, 1971.

DELEGATION OF FUNCTIONS

Authority of President under subsec. (b) to approve uniform rates of reimbursement for care provided in facilities operated by Secretary of Veterans Affairs delegated to Secretary of Veterans Affairs, see section 7(a) of Ex. Ord. No. 11609, July 22, 1971, 36 F.R. 13747, set out as a note under section 301 of Title 3, The President.

EXECUTIVE ORDER NO. 13075

Ex. Ord. No. 13075, Feb. 19, 1997, 63 F.R. 9085, which established the Special Oversight Board for Department of Defense Investigations of Gulf War Chemical and Biological Incidents, was revoked by Ex. Ord. No. 13225, §3(e), Sept. 28, 2001, 66 F.R. 50292.

§ 1074a. Medical and dental care: members on duty other than active duty for a period of more than 30 days

(a) Under joint regulations prescribed by the administering Secretaries, the following persons are entitled to the benefits described in subsection (b):

(1) Each member of a uniformed service who incurs or aggravates an injury, illness, or disease in the line of duty while performing—

(A) active duty for a period of 30 days or less;

(B) inactive-duty training; or

(C) service on funeral honors duty under section 12503 of this title or section 115 of title 32.

(2) Each member of a uniformed service who incurs or aggravates an injury, illness, or disease while traveling directly to or from the place at which that member is to perform or has performed—

(A) active duty for a period of 30 days or less;

(B) inactive-duty training; or

(C) service on funeral honors duty under section 12503 of this title or section 115 of title 32.

(3) Each member of the armed forces who incurs or aggravates an injury, illness, or disease in the line of duty while remaining overnight immediately before the commencement of inactive-duty training, or while remaining overnight, between successive periods of inactive-duty training, at or in the vicinity of the site of the inactive-duty training.

(4) Each member of the armed forces who incurs or aggravates an injury, illness, or disease in the line of duty while remaining overnight immediately before serving on funeral honors duty under section 12503 of this title or section 115 of title 32 at or in the vicinity of the place at which the member was to so serve, if the place is outside reasonable commuting distance from the member's residence.

(b) A person described in subsection (a) is entitled to—

(1) the medical and dental care appropriate for the treatment of the injury, illness, or disease of that person until the resulting disability cannot be materially improved by further hospitalization or treatment; and

(2) subsistence during hospitalization.

(c) A member is not entitled to benefits under subsection (b) if the injury, illness, or disease, or aggravation of an injury, illness, or disease described in subsection (a)(2), is the result of the gross negligence or misconduct of the member.

(d)(1) The Secretary concerned shall provide to members of the Selected Reserve who are assigned to units scheduled for deployment within 75 days after mobilization the following medical and dental services:

(A) An annual medical screening.

(B) For members who are over 40 years of age, a full physical examination not less often than once every two years.

(C) An annual dental screening.

(D) The dental care identified in an annual dental screening as required to ensure that a member meets the dental standards required for deployment in the event of mobilization.

(2) The services provided under this subsection shall be provided at no cost to the member.

(e)(1) A member of a uniformed service on active duty for health care or recuperation reasons, as described in paragraph (2), is entitled to medical and dental care on the same basis and to the same extent as members covered by section 1074(a) of this title while the member remains on active duty.

(2) Paragraph (1) applies to a member described in paragraph (1) or (2) of subsection (a) who, while being treated for (or recovering from) an injury, illness, or disease incurred or aggravated in the line of duty, is continued on active duty pursuant to a modification or extension of orders, or is ordered to active duty, so as to result in active duty for a period of more than 30 days.

(f)(1) At any time after the Secretary concerned notifies members of the Ready Reserve that the members are to be called or ordered to active duty for a period of more than 30 days, the administering Secretaries may provide to each such member any medical and dental screening and care that is necessary to ensure that the member meets the applicable medical and dental standards for deployment.

(2) The notification to members of the Ready Reserve described in paragraph (1) shall include notice that the members are eligible for screening and care under this section.

(3) A member provided medical or dental screening or care under paragraph (1) may not be charged for the screening or care.

(g)(1) The Secretary concerned may provide to any member of the Selected Reserve not described in subsection (d)(1) or (f), and to any member of the Individual Ready Reserve described in section 10144(b) of this title the medical and dental services specified in subsection (d)(1) if the Secretary determines that the receipt of such services by such member is necessary to ensure that the member meets applicable standards of medical and dental readiness.

(2) Services may not be provided to a member under this subsection for a condition that is the result of the member's own misconduct.

(3) The services provided under this subsection shall be provided at no cost to the member.

(h)(1) The Secretary of Defense may provide to any member of the reserve components per-

forming inactive-duty training during scheduled unit training assemblies access to mental health assessments with a licensed mental health professional who shall be available for referrals during duty hours on the premises of the principal duty location of the member's unit.

(2) Mental health services provided to a member under this subsection shall be at no cost to the member.

(i) Amounts available for operation and maintenance of a reserve component of the armed forces may be available for purposes of this section to ensure the medical, dental, and behavioral health readiness of members of such reserve component.

(Added Pub. L. 98–94, title X, § 1012(a)(1), Sept. 24, 1983, 97 Stat. 664; amended Pub. L. 98–525, title VI, § 631(a)(1), Oct. 19, 1984, 98 Stat. 2542; Pub. L. 98–557, § 19(4), Oct. 30, 1984, 98 Stat. 2869; Pub. L. 99–145, title XIII, § 1303(a)(7), Nov. 8, 1985, 99 Stat. 739; Pub. L. 99–661, div. A, title VI, § 604(a)(1), Nov. 14, 1986, 100 Stat. 3874; Pub. L. 104–106, div. A, title VII, §§ 702(a), 704(a), Feb. 10, 1996, 110 Stat. 371, 372; Pub. L. 105–85, div. A, title V, § 513(a), Nov. 18, 1997, 111 Stat. 1730; Pub. L. 106–65, div. A, title V, § 578(i)(1), title VII, § 705(b), Oct. 5, 1999, 113 Stat. 629, 683; Pub. L. 107–107, div. A, title V, § 513(a), Dec. 28, 2001, 115 Stat. 1093; Pub. L. 108–106, title I, § 1114, Nov. 6, 2003, 117 Stat. 1216; Pub. L. 108–136, div. A, title VII, § 701, Nov. 24, 2003, 117 Stat. 1525; Pub. L. 110–417, [div. A], title VII, § 735(a), Oct. 14, 2008, 122 Stat. 4513; Pub. L. 112–81, div. A, title VII, § 703(a), Dec. 31, 2011, 125 Stat. 1471.)

AMENDMENTS

2011—Subsec. (h). Pub. L. 112–81, § 703(a)(2), added subsec. (h). Former subsec. (h) redesignated (i).

Subsec. (i). Pub. L. 112–81, § 703(a)(1), (3), redesignated subsec. (h) as (i) and substituted "medical, dental, and behavioral health readiness" for "medical and dental readiness".

2008—Subsec. (d)(1). Pub. L. 110–417, § 735(a)(1), substituted "The Secretary concerned shall provide to members of the Selected Reserve" for "The Secretary of the Army shall provide to members of the Selected Reserve of the Army".

Subsecs. (g), (h). Pub. L. 110–417, § 735(a)(2), (3), added subsecs. (g) and (h).

2003—Subsec. (f). Pub. L. 108–136 amended subsec. (f) generally. Prior to amendment, subsec. (f) read as follows:

"(1) At any time after the Secretary concerned notifies members of the Ready Reserve that the members are to be called or ordered to active duty, the administering Secretaries may provide to each such member any medical and dental screening and care that is necessary to ensure that the member meets the applicable medical and dental standards for deployment.

"(2) The Secretary concerned shall promptly transmit to each member of the Ready Reserve eligible for screening and care under this subsection a notification of eligibility for such screening and care.

"(3) A member provided medical or dental screening or care under paragraph (1) may not be charged for the screening or care.

"(4) Screening and care may not be provided under this section after September 30, 2004."

Pub. L. 108–106 added subsec. (f).

2001—Subsec. (a)(3). Pub. L. 107–107 struck out ", if the site is outside reasonable commuting distance from the member's residence" before period at end.

1999—Subsec. (a)(1)(C). Pub. L. 106–65, § 578(i)(1)(A), added subpar. (C).

Subsec. (a)(2)(C). Pub. L. 106–65, § 578(i)(1)(A), added subpar. (C).

Subsec. (a)(4). Pub. L. 106–65, § 578(i)(1)(B), added par. (4).

Subsec. (e). Pub. L. 106–65, § 705(b), amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: "A member of a uniformed service described in paragraph (1)(A) or (2)(A) of subsection (a) whose orders are modified or extended, while the member is being treated for (or recovering from) the injury, illness, or disease incurred or aggravated in the line of duty, so as to result in active duty for a period of more than 30 days shall be entitled, while the member remains on active duty, to medical and dental care on the same basis and to the same extent as members covered by section 1074(a) of this title."

1997—Subsec. (a)(3). Pub. L. 105–85, § 513(a)(1), inserted "while remaining overnight immediately before the commencement of inactive-duty training, or" after "in the line of duty".

Subsec. (e). Pub. L. 105–85, § 513(a)(2), added subsec. (e).

1996—Subsec. (a)(3). Pub. L. 104–106, § 702(a), added par. (3).

Subsec. (c). Pub. L. 104–106, § 704(a)(1), substituted "subsection (b)" for "this section".

Subsec. (d). Pub. L. 104–106, § 704(a)(2), added subsec. (d).

1986—Pub. L. 99–661 amended section generally substituting "active duty for a period of more than 30 days" for "active duty; injuries, diseases and illnesses incident to duty" in section catchline and new text for prior text which read as follows:

"(a) Under joint regulations prescribed by the administering Secretaries, the following persons are entitled to the benefits described in subsection (b):

"(1) Each member of a uniformed service who contracts a disease or becomes ill in line of duty while on active duty for a period of 30 days or less, or while traveling to or from that duty.

"(2) Each member of the National Guard who contracts a disease or becomes ill in line of duty while on full-time National Guard duty, or while traveling to or from that duty.

"(3) Each member of a uniformed service who contracts a disease or becomes ill in line of duty while on inactive duty training under circumstances in which it is determined that the disease or illness was contracted or aggravated as an incident of that inactive duty training.

"(4) Each member of a uniformed service who incurs or aggravates an injury while traveling directly to or from the place at which he is to perform, or has performed, inactive duty training, unless the injury is incurred or aggravated as a result of the member's own gross negligence or misconduct.

"(b) A person described in subsection (a) is entitled to—

"(1) the medical and dental care appropriate for the treatment of his injury, disease, or illness until the resulting disability cannot be materially improved by further hospitalization or treatment; and

"(2) subsistence during hospitalization."

1985—Subsec. (a). Pub. L. 99–145 substituted reference to the administering Secretaries, for references to Secretaries of Defense, Transportation, and Health and Human Services.

1984—Pub. L. 98–525 substituted "Medical and dental care: members on duty other than active duty; injuries, diseases and illnesses incident to duty" for "Medical and dental care for members of the uniformed services for injuries incurred or aggravated while traveling to and from inactive duty training" in section catchline.

Subsec. (a). Pub. L. 98–557, which directed the amendment of subsec. (a) by substituting "administering Secretaries" for "Secretary of Defense and the Secretary of Health and Human Services", could not be executed in view of the prior amendment by Pub. L. 98–525.

Pub. L. 98–525 amended subsec. (a) generally, thereby authorizing the Secretary of Transportation to participate in issuance of joint regulations, adding pars. (1) to (3), and incorporating existing provisions in par. (4).

Subsec. (b). Pub. L. 98–525 amended subsec. (b) generally, thereby including treatment of diseases or illnesses.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–661, div. A, title VI, § 604(g), Nov. 14, 1986, 100 Stat. 3878, provided that: ''The amendments made by this section [amending this section, sections 1076, 1086, 1204–1206, 1475, 1476, 1481, 3723, and 8723 of this title, and sections 204 and 206 of Title 37, Pay and Allowances of the Uniformed Services and repealing sections 3687, 3721, 3722, 6148, 8687, 8721, and 8722 of this title and sections 318–321 of Title 32, National Guard] shall apply with respect to persons who, after the date of enactment of this Act [Nov. 14, 1986], incur or aggravate an injury, illness, or disease or die.''

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–525, title VI, § 631(c), Oct. 19, 1984, 98 Stat. 2543, provided that: ''The amendments made by this section [amending this section and section 6148 of this title] shall apply only with respect to injuries incurred or aggravated and diseases or illnesses contracted or aggravated after September 30, 1984.''

EFFECTIVE DATE

Pub. L. 98–94, title X, § 1012(c), Sept. 24, 1983, 97 Stat. 665, provided that: ''The amendments made by subsections (a) and (b) [enacting this section and amending section 204 of Title 37, Pay and Allowances of the Uniformed Services] shall apply only in cases of injuries incurred or aggravated on or after the date of the enactment of this Act [Sept. 24, 1983].''

§ 1074b. Medical and dental care: Academy cadets and midshipmen; members of, and designated applicants for membership in, Senior ROTC

(a) ELIGIBILITY.—Under joint regulations prescribed by the administering Secretaries, the following persons are, except as provided in subsection (c), entitled to the benefits described in subsection (b):

(1) A cadet at the United States Military Academy, the United States Air Force Academy, or the Coast Guard Academy, and a midshipman at the United States Naval Academy, who incurs or aggravates an injury, illness, or disease in the line of duty.

(2) A member of, and a designated applicant for membership in, the Senior Reserve Officers' Training Corps who incurs or aggravates an injury, illness, or disease—

(A) in the line of duty while performing duties under section 2109 of this title;

(B) while traveling directly to or from the place at which that member or applicant is to perform or has performed duties pursuant to section 2109 of this title; or

(C) in the line of duty while remaining overnight immediately before the commencement of duties performed pursuant to section 2109 of this title or, while remaining overnight, between successive periods of performing duties pursuant to section 2109 of this title, at or in the vicinity of the site of the duties performed pursuant to section 2109 of this title, if the site is outside reasonable commuting distance from the residence of the member or designated applicant.

(b) BENEFITS.—A person eligible for benefits under subsection (a) for an injury, illness, or disease is entitled to—

(1) the medical and dental care under this chapter that is appropriate for the treatment of the injury, illness, or disease until the injury, illness, disease, or any resulting disability cannot be materially improved by further hospitalization or treatment; and

(2) meals during hospitalization.

(c) EXCEPTION FOR GROSS NEGLIGENCE OR MISCONDUCT.—A person is not entitled to benefits under subsection (b) for an injury, illness, or disease, or the aggravation of an injury, illness, or disease that is a result of the gross negligence or the misconduct of that person.

(Added Pub. L. 108–375, div. A, title V, § 555(a)(1), Oct. 28, 2004, 118 Stat. 1913.)

PRIOR PROVISIONS

A prior section 1074b, added Pub. L. 102–190, div. A, title VI, § 640(a)(2), Dec. 5, 1991, 105 Stat. 1385; amended Pub. L. 104–106, div. A, title XV, § 1501(c)(10), Feb. 10, 1996, 110 Stat. 499, which related to transitional medical and dental care for members on active duty in support of contingency operations, was repealed by Pub. L. 107–107, div. A, title VII, § 736(c)(1), (d), Dec. 28, 2001, 115 Stat. 1173, with provision that the section, as in effect before Dec. 28, 2001, was to continue to apply to a member of the Armed Forces who was released from active duty in support of a contingency operation before that date.

Another prior section 1074b was renumbered section 1074c of this title.

§ 1074c. Medical care: authority to provide a wig

A person entitled to medical care under this chapter who has alopecia resulting from the treatment of a malignant disease may be furnished a wig if the person has not previously been furnished one at the expense of the United States.

(Added Pub. L. 98–525, title XIV, § 1401(e)(2)(A), Oct. 19, 1984, 98 Stat. 2616, § 1074b; renumbered § 1074c, Pub. L. 102–190, div. A, title VI, § 640(a)(1), Dec. 5, 1991, 105 Stat. 1385.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in the following appropriation acts:

Pub. L. 98–473, title I, § 101(h) [title VIII, § 8033], Oct. 12, 1984, 98 Stat. 1904, 1929.

Pub. L. 98–212, title VII, § 739, Dec. 8, 1983, 97 Stat. 1445.

Pub. L. 97–377, title I, § 101(c) [title VII, § 742], Dec. 21, 1982, 96 Stat. 1833, 1858.

Pub. L. 97–114, title VII, § 743, Dec. 29, 1981, 95 Stat. 1586.

Pub. L. 96–527, title VII, § 744, Dec. 15, 1980, 94 Stat. 3089.

AMENDMENTS

1991—Pub. L. 102–190 renumbered section 1074b of this title as this section.

EFFECTIVE DATE

Section effective Oct. 1, 1985, see section 1404 of Pub. L. 98–525, set out as a note under section 520b of this title.

§ 1074d. Certain primary and preventive health care services

(a) SERVICES AVAILABLE.—(1) Female members and former members of the uniformed services entitled to medical care under section 1074 or

1074a of this title shall also be entitled to primary and preventive health care services for women as part of such medical care. The services described in paragraphs (1) and (2) of subsection (b) shall be provided under such procedures and at such intervals as the Secretary of Defense shall prescribe.

(2) Male members and former members of the uniformed services entitled to medical care under section 1074 or 1074a of this title shall also be entitled to preventive health care screening for colon or prostate cancer at such intervals and using such screening methods as the administering Secretaries consider appropriate.

(b) DEFINITION.—In this section, the term "primary and preventive health care services for women" means health care services, including related counseling services, provided to women with respect to the following:

(1) Cervical cancer screening.

(2) Breast cancer screening, including through the use of digital breast tomosynthesis.

(3) Comprehensive obstetrical and gynecological care, including care related to pregnancy and the prevention of pregnancy.

(4) Infertility and sexually transmitted diseases, including prevention.

(5) Menopause, including hormone replacement therapy and counseling regarding the benefits and risks of hormone replacement therapy.

(6) Physical or psychological conditions arising out of acts of sexual violence.

(7) Gynecological cancers.

(8) Colon cancer screening, at the intervals and using the screening methods prescribed under subsection (a)(2).

(Added Pub. L. 103–160, div. A, title VII, §701(a)(1), Nov. 30, 1993, 107 Stat. 1685; amended Pub. L. 104–201, div. A, title VII, §701(a)(1), (2)(A), Sept. 23, 1996, 110 Stat. 2587; Pub. L. 109–364, div. A, title VII, §703(a), Oct. 17, 2006, 120 Stat. 2279; Pub. L. 116–283, div. A, title VII, §701, Jan. 1, 2021, 134 Stat. 3686.)

AMENDMENTS

2021—Subsec. (b)(2). Pub. L. 116–283 inserted ", including through the use of digital breast tomosynthesis" before period at end.

2006—Subsec. (a)(1). Pub. L. 109–364, §703(a)(1), inserted at end "The services described in paragraphs (1) and (2) of subsection (b) shall be provided under such procedures and at such intervals as the Secretary of Defense shall prescribe."

Subsec. (b)(1). Pub. L. 109–364, §703(a)(2)(A), substituted "Cervical cancer screening" for "Papanicolaou tests (pap smear)".

Subsec. (b)(2). Pub. L. 109–364, §703(a)(2)(B), substituted "Breast cancer screening" for "Breast examinations and mammography".

1996—Pub. L. 104–201, §701(a)(2)(A), amended catchline generally, substituting "Certain primary and preventive health care services" for "Primary and preventive health care services for women".

Subsec. (a). Pub. L. 104–201, §701(a)(1)(A), designated existing provisions as par. (1) and added par. (2).

Subsec. (b)(8). Pub. L. 104–201, §701(a)(1)(B), added par. (8).

EXPEDITED EVALUATION AND TREATMENT FOR PRENATAL SURGERY UNDER THE TRICARE PROGRAM

Pub. L. 115–91, div. A, title VII, §708, Dec. 12, 2017, 131 Stat. 1436, provided that:

"(a) IN GENERAL.—The Secretary of Defense shall implement processes and procedures to ensure that a covered beneficiary under the TRICARE program whose pregnancy is complicated with (or suspected of complication with) a fetal condition may elect to receive expedited evaluation, nondirective counseling, and medical treatment from a perinatal or pediatric specialist capable of providing surgical management and intervention in utero.

"(b) DEFINITIONS.—In this section, the terms 'covered beneficiary' and 'TRICARE program' have the meanings given those terms in section 1072 of title 10, United States Code."

COMPREHENSIVE STANDARDS AND ACCESS TO CONTRACEPTION COUNSELING FOR MEMBERS OF THE ARMED FORCES

Pub. L. 114–92, div. A, title VII, §718, Nov. 25, 2015, 129 Stat. 868, provided that:

"(a) CLINICAL PRACTICE GUIDELINES.—

"(1) ESTABLISHMENT.—Not later than one year after the date of the enactment of this Act [Nov. 25, 2015], the Secretary of Defense shall establish clinical practice guidelines for health care providers employed by the Department of Defense on standards of care with respect to methods of contraception and counseling on methods of contraception for members of the Armed Forces.

"(2) UPDATES.—The Secretary shall from time to time update the clinical practice guidelines established under paragraph (1) to incorporate into such guidelines new or updated standards of care with respect to methods of contraception and counseling on methods of contraception.

"(b) DISSEMINATION.—

"(1) INITIAL DISSEMINATION.—As soon as practicable, but commencing not later than one year after the date of the enactment of this Act, the Secretary shall provide for rapid dissemination of the clinical practice guidelines to health care providers described in subsection (a)(1).

"(2) DISSEMINATION OF UPDATES.—As soon as practicable after each update to the clinical practice guidelines made by the Secretary pursuant to paragraph (2) of subsection (a), the Secretary shall provide for the rapid dissemination of such updated clinical practice guidelines to health care providers described in paragraph (1) of such subsection.

"(3) PROTOCOLS.—The Secretary shall disseminate the clinical practice guidelines under paragraph (1) and any updates to such guidelines under paragraph (2) in accordance with administrative protocols developed by the Secretary for such purpose.

"(c) ACCESS TO CONTRACEPTION COUNSELING.—As soon as practicable after the date of the enactment of this Act, the Secretary shall ensure that women members of the Armed Forces have access to comprehensive counseling on the full range of methods of contraception provided by health care providers described in subsection (a)(1) during health care visits, including visits as follows:

"(1) During predeployment health care visits, including counseling that provides specific information women need regarding the interaction between anticipated deployment conditions and various methods of contraception.

"(2) During health care visits during deployment.

"(3) During annual physical examinations."

DEFENSE WOMEN'S HEALTH RESEARCH PROGRAM

Pub. L. 103–337, div. A, title II, §241, Oct. 5, 1994, 108 Stat. 2701, provided for the continuance of the Defense Women's Health Research Program established pursuant to the authority in section 251 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160; 107 Stat. 1606, formerly set out below) and appropriated funds to the program for fiscal year 1995.

Pub. L. 103–160, div. A, title II, §251, Nov. 30, 1993, 107 Stat. 1606, authorized the Secretary of Defense to es-

tablish a Defense Women's Health Research Center to serve as the coordinating agent for multidisciplinary and multi-institutional research within the Department of Defense on women's health issues related to service in the Armed Forces and required the Secretary to report to Congress on the decision to establish the Center no later than May 1, 1994.

REPORT ON PROVISION OF PRIMARY AND PREVENTATIVE HEALTH CARE SERVICES FOR WOMEN

Pub. L. 103–160, div. A, title VII, §735, Nov. 30, 1993, 107 Stat. 1698, directed the Secretary of Defense to prepare a report evaluating the provision of primary and preventive health care services through military medical treatment facilities and the Civilian Health and Medical Program of the Uniformed Services to female members of the uniformed services and female covered beneficiaries eligible for health care under this chapter, and directed the Secretary, as part of such report, to conduct a study to determine the health care needs of female members and female covered beneficiaries, and to submit such report to Congress not later than Oct. 1, 1994, and a revised report not later than Oct. 1, 1999.

§1074e. Medical care: certain Reserves who served in Southwest Asia during the Persian Gulf Conflict

(a) ENTITLEMENT TO MEDICAL CARE.—A member of the armed forces described in subsection (b) is entitled to medical care for a qualifying Persian Gulf symptom or illness to the same extent and under the same conditions (other than the requirement that the member be on active duty) as a member of a uniformed service who is entitled to such care under section 1074(a) of this title.

(b) COVERED MEMBERS.—Subsection (a) applies to a member of a reserve component who—

(1) is a Persian Gulf veteran;

(2) has a qualifying Persian Gulf symptom or illness; and

(3) is not otherwise entitled to medical care for such symptom or illness under this chapter and is not otherwise eligible for hospital care and medical services for such symptom or illness under section 1710 of title 38.

(c) DEFINITIONS.—In this section:

(1) The term ''Persian Gulf veteran'' means a member of the armed forces who served on active duty in the Southwest Asia theater of operations during the Persian Gulf Conflict.

(2) The term ''qualifying Persian Gulf symptom or illness'' means, with respect to a member described in subsection (b), a symptom or illness—

(A) that the member registered before September 1, 1997, in the Comprehensive Clinical Evaluation Program of the Department of Defense and that is presumed under section 721(d) of the National Defense Authorization Act for Fiscal Year 1995 (10 U.S.C. 1074 note) to be a result of service in the Southwest Asia theater of operations during the Persian Gulf Conflict; or

(B) that the member registered before September 1, 1997, in the Persian Gulf War Veterans Health Registry maintained by the Department of Veterans Affairs pursuant to section 702 of the Persian Gulf War Veterans' Health Status Act (38 U.S.C. 527 note).

(Added Pub. L. 105–85, div. A, title VII, §764(a), Nov. 18, 1997, 111 Stat. 1825.)

REFERENCES IN TEXT

Section 721(d) of the National Defense Authorization Act for Fiscal Year 1995, referred to in subsec. (c)(2)(A), is section 721(d) of Pub. L. 103–337, which is set out as a note under section 1074 of this title.

Section 702 of the Persian Gulf War Veterans' Health Status Act, referred to in subsec. (c)(2)(B), is section 702 of Pub. L. 102–585, which is set out as a note under section 527 of Title 38, Veterans' Benefits.

§1074f. Medical tracking system for members deployed overseas

(a) SYSTEM REQUIRED.—The Secretary of Defense shall establish a system to assess the medical condition of members of the armed forces (including members of the reserve components) who are deployed outside the United States or its territories or possessions as part of a contingency operation (including a humanitarian operation, peacekeeping operation, or similar operation) or combat operation.

(b) ELEMENTS OF SYSTEM.—(1)(A) The system described in subsection (a) shall include the use of predeployment medical examinations and postdeployment medical examinations (including the assessment of mental health and the drawing of blood samples) and postdeployment health reassessments to—

(i) accurately record the health status of members before their deployment;

(ii) accurately record any changes in their health status during the course of their deployment;

(iii) identify health concerns, including mental health concerns, that may become manifest several months following their deployment; and

(iv) accurately record any exposure to occupational and environmental health risks during the course of their deployment.

(B) The postdeployment medical examination shall be conducted when the member is redeployed or otherwise leaves an area in which the system is in operation (or as soon as possible thereafter).

(C) The postdeployment health reassessment shall be conducted at an appropriate time during the period beginning 90 days after the member is redeployed and ending 180 days after the member is redeployed.

(2) The predeployment medical examination, postdeployment medical examination, and postdeployment health reassessment of a member of the armed forces required under paragraph (1) shall include the following:

(A) An assessment of the current treatment of the member and any use of psychotropic medications by the member for a mental health condition or disorder.

(B) An assessment of traumatic brain injury.

(C) An assessment of post-traumatic stress disorder.

(D) An assessment of whether the member was—

(i) based or stationed at a location where an open burn pit, as defined in subsection (c) of section 201 of the Dignified Burial and Other Veterans' Benefits Improvement Act of 2012 (Public Law 112–260; 38 U.S.C. 527 note), was used; or

(ii) exposed to toxic airborne chemicals or other airborne contaminants, including any

information recorded as part of the registry established by the Secretary of Veterans Affairs under such section 201.

(3)(A) The Secretary shall establish for purposes of subparagraphs (B) and (C) of paragraph (2) a protocol for the predeployment assessment and documentation of the cognitive (including memory) functioning of a member who is deployed outside the United States in order to facilitate the assessment of the postdeployment cognitive (including memory) functioning of the member.

(B) The protocol under subparagraph (A) shall include appropriate mechanisms to permit the differential diagnosis of traumatic brain injury in members returning from deployment in a combat zone.

(c) RECORDKEEPING.—The results of all medical examinations and reassessments conducted under the system, records of all health care services (including immunizations and the prescription and administration of psychotropic medications) received by members described in subsection (a) in anticipation of their deployment or during the course of their deployment, and records of events occurring in the deployment area (including the results of any assessment performed by the Secretary of occupational and environmental health risks for such area) that may affect the health of such members shall be retained and maintained in a centralized location to improve future access to the records.

(d) QUALITY ASSURANCE.—(1) The Secretary of Defense shall establish a quality assurance program to evaluate the success of the system in ensuring that members described in subsection (a) receive predeployment medical examinations, postdeployment medical examinations, and postdeployment health reassessments and that the recordkeeping requirements with respect to the system are met.

(2) The quality assurance program established under paragraph (1) shall also include the following elements:

(A) The types of healthcare providers conducting postdeployment health assessments and reassessments.

(B) The training received by such providers applicable to the conduct of such assessments and reassessments, including training on assessments and referrals relating to mental health.

(C) The guidance available to such providers on how to apply the clinical practice guidelines developed under subsection (e)(1) in determining whether to make a referral for further evaluation of a member of the armed forces relating to mental health.

(D) The effectiveness of the tracking mechanisms required under this section in ensuring that members who receive referrals for further evaluations relating to mental health receive such evaluations and obtain such care and services as are warranted.

(E) Programs established for monitoring the mental health of each member who, after deployment to a combat operation or contingency operations, is known—

(i) to have a mental health condition or disorder; or

(ii) to be receiving treatment, including psychotropic medications, for a mental health condition or disorder.

(F) The diagnosis and treatment of traumatic brain injury and post-traumatic stress disorder.

(e) CRITERIA FOR REFERRAL FOR FURTHER EVALUATIONS.—The system described in subsection (a) shall include—

(1) development of clinical practice guidelines to be utilized by healthcare providers in determining whether to refer a member of the armed forces for further evaluation relating to mental health (including traumatic brain injury);

(2) mechanisms to ensure that healthcare providers are trained in the application of such clinical practice guidelines; and

(3) mechanisms for oversight to ensure that healthcare providers apply such guidelines consistently.

(f) MINIMUM STANDARDS FOR DEPLOYMENT.—(1) The Secretary of Defense shall prescribe in regulations minimum standards for mental health for the eligibility of a member of the armed forces for deployment to a combat operation or contingency operation.

(2) The standards required by paragraph (1) shall include the following:

(A) A specification of the mental health conditions, treatment for such conditions, and receipt of psychotropic medications for such conditions that preclude deployment of a member of the armed forces to a combat operation or contingency operation, or to a specified type of such operation.

(B) Guidelines for the deployability and treatment of members of the armed forces diagnosed with a severe mental illness, traumatic brain injury, or post traumatic stress disorder.

(3) The Secretary shall take appropriate actions to ensure the utilization of the standards prescribed under paragraph (1) in the making of determinations regarding the deployability of members of the armed forces to a combat operation or contingency operation.

(g) ADDITIONAL REQUIREMENTS FOR POSTDEPLOYMENT MEDICAL EXAMINATIONS AND HEALTH REASSESSMENTS.—(1) The Secretary of Defense shall standardize and make available to a provider that conducts a postdeployment medical examination or reassessment under the system described in subsection (a) questions relating to occupational and environmental health exposure.

(2) The Secretary, to the extent practicable, shall ensure that the medical record of a member includes information on the external cause relating to a diagnosis of the member, including by associating an external cause code (as issued under the International Statistical Classification of Diseases and Related Health Problems, 10th Revision (or any successor revision)).

(Added Pub. L. 105–85, div. A, title VII, § 765(a)(1), Nov. 18, 1997, 111 Stat. 1826; amended Pub. L. 109–364, div. A, title VII, § 738(a)–(d), Oct. 17, 2006, 120 Stat. 2303; Pub. L. 110–181, div. A, title XVI, § 1673(a)(1), (b), (c), Jan. 28, 2008, 122 Stat. 482, 483;

Pub. L. 111–84, div. A, title X, § 1073(a)(9), Oct. 28, 2009, 123 Stat. 2472; Pub. L. 111–383, div. A, title VII, § 712, Jan. 7, 2011, 124 Stat. 4247; Pub. L. 116–92, div. A, title VII, §§ 704(c), 705(a), (b), Dec. 20, 2019, 133 Stat. 1438–1440.)

AMENDMENTS

2019—Subsec. (b)(1)(A)(iv). Pub. L. 116–92, § 705(a)(1), added cl. (iv).

Subsec. (b)(2)(D). Pub. L. 116–92, § 704(c), added subpar. (D).

Subsec. (c). Pub. L. 116–92, § 705(a)(2), inserted ''(including the results of any assessment performed by the Secretary of occupational and environmental health risks for such area)'' after ''deployment area''.

Subsec. (g). Pub. L. 116–92, § 705(b), added subsec. (g).

2011—Subsec. (b)(1). Pub. L. 111–383, § 712(a), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''The system described in subsection (a) shall include the use of predeployment medical examinations and postdeployment medical examinations (including an assessment of mental health and the drawing of blood samples) to accurately record the medical condition of members before their deployment and any changes in their medical condition during the course of their deployment. The postdeployment examination shall be conducted when the member is redeployed or otherwise leaves an area in which the system is in operation (or as soon as possible thereafter).''

Subsec. (b)(2). Pub. L. 111–383, § 712(b), substituted ''medical examination, postdeployment medical examination, and postdeployment health reassessment'' for ''and postdeployment medical examination'' in introductory provisions.

Subsec. (c). Pub. L. 111–383, § 712(c), inserted ''and reassessments'' after ''medical examinations'' and ''and the prescription and administration of psychotropic medications'' after ''including immunizations''.

Subsec. (d)(1). Pub. L. 111–383, § 712(d)(1), substituted '', postdeployment medical examinations, and postdeployment health reassessments'' for ''and postdeployment medical examinations''.

Subsec. (d)(2)(A). Pub. L. 111–383, § 712(d)(2)(A), inserted ''and reassessments'' after ''postdeployment health assessments''.

Subsec. (d)(2)(B). Pub. L. 111–383, § 712(d)(2)(B), inserted ''and reassessments'' after ''such assessments''.

2009—Subsec. (f)(3). Pub. L. 111–84 substituted ''contingency'' for ''continency''.

2008—Subsec. (b)(2)(C). Pub. L. 110–181, § 1673(a)(1)(A), added subpar. (C).

Subsec. (b)(3). Pub. L. 110–181, § 1673(a)(1)(B), added par. (3).

Subsec. (d)(2)(F). Pub. L. 110–181, § 1673(b), added subpar. (F).

Subsec. (f). Pub. L. 110–181, § 1673(c)(1), struck out ''Mental Health'' after ''Minimum'' in heading.

Subsec. (f)(2)(B). Pub. L. 110–181, § 1673(c)(2), substituted '', traumatic brain injury, or'' for ''or''.

2006—Subsec. (b). Pub. L. 109–364, § 738(a), designated existing provisions as par. (1) and added par. (2).

Subsec. (d). Pub. L. 109–364, § 738(d), designated existing provisions as par. (1) and added par. (2).

Subsec. (e). Pub. L. 109–364, § 738(b), added subsec. (e).

Subsec. (f). Pub. L. 109–364, § 738(c), added subsec. (f).

INCLUSION OF INFORMATION ON EXPOSURE TO OPEN BURN PITS IN POSTDEPLOYMENT HEALTH REASSESSMENTS

Pub. L. 116–283, div. A, title VII, § 721, Jan. 1, 2021, 134 Stat. 3698, provided that:

''(a) IN GENERAL.—The Secretary of Defense shall include in postdeployment health reassessments conducted under section 1074f of title 10, United States Code, pursuant to a Department of Defense Form 2796, or successor form, an explicit question regarding exposure of members of the Armed Forces to open burn pits.

''(b) INCLUSION IN ASSESSMENTS BY MILITARY DEPARTMENTS.—The Secretary of Defense shall ensure that the Secretary of each military department includes a question regarding exposure of members of the Armed Forces to open burn pits in any electronic postdeployment health assessment conducted by that military department.

''(c) OPEN BURN PIT DEFINED.—In this section, the term 'open burn pit' has the meaning given that term in section 201(c) of the Dignified Burial and Other Veterans' Benefits Improvement Act of 2012 (Public Law 112–260; 38 U.S.C. 527 note).''

EXPOSURE TO OPEN BURN PITS AND TOXIC AIRBORNE CHEMICALS OR OTHER AIRBORNE CONTAMINANTS AS PART OF PERIODIC HEALTH ASSESSMENTS AND OTHER PHYSICAL EXAMINATIONS

Pub. L. 116–92, div. A, title VII, § 704, Dec. 20, 2019, 133 Stat. 1438, provided that:

''(a) PERIODIC HEALTH ASSESSMENT.—The Secretary of Defense shall ensure that any periodic health assessment provided to members of the Armed Forces includes an evaluation of whether the member has been—

''(1) based or stationed at a location where an open burn pit was used; or

''(2) exposed to toxic airborne chemicals or other airborne contaminants, including any information recorded as part of the Airborne Hazards and Open Burn Pit Registry.

''(b) SEPARATION HISTORY AND PHYSICAL EXAMINATIONS.—[Amended section 1145 of this title.]

''(c) DEPLOYMENT ASSESSMENTS.—[Amended this section.]

''(d) SHARING OF INFORMATION.—

''(1) DOD–VA.—The Secretary of Defense and the Secretary of Veterans Affairs shall jointly enter into a memorandum of understanding providing for the sharing by the Department of Defense with the Department of Veterans Affairs of the results of covered evaluations regarding the exposure by a member of the Armed Forces to toxic airborne chemicals or other airborne contaminants.

''(2) REGISTRY.—If a covered evaluation of a member of the Armed Forces establishes that the member was based or stationed at a location where an open burn pit was used or that the member was exposed to toxic airborne chemicals or other airborne contaminants, the member shall be enrolled in the Airborne Hazards and Open Burn Pit Registry unless the member elects to not so enroll.

''(e) RULE OF CONSTRUCTION.—Nothing in this section may be construed to preclude eligibility for benefits under the laws administered by the Secretary of Veterans Affairs by reason of the open burn pit exposure history of a veteran not being recorded in a covered evaluation.

''(f) DEFINITIONS.—In this section:

''(1) The term 'Airborne Hazards and Open Burn Pit Registry' means the registry established by the Secretary of Veterans Affairs under section 201 of the Dignified Burial and Other Veterans' Benefits Improvement Act of 2012 (Public Law 112–260; 38 U.S.C. 527 note).

''(2) The term 'covered evaluation' means—

''(A) a periodic health assessment conducted in accordance with subsection (a);

''(B) a separation history and physical examination conducted under section 1145(a)(5) of title 10, United States Code, as amended by this section; and

''(C) a deployment assessment conducted under section 1074f(b)(2) of such title, as amended by this section.

''(3) The term 'open burn pit' has the meaning given that term in section 201(c) of the Dignified Burial and

Other Veterans' Benefits Improvement Act of 2012 (Public Law 112–260; 38 U.S.C. 527 note).''

SHARING BETWEEN DEPARTMENT OF DEFENSE AND DEPARTMENT OF VETERANS AFFAIRS OF RECORDS AND INFORMATION RETAINED UNDER THE MEDICAL TRACKING SYSTEM FOR MEMBERS OF THE ARMED FORCES DEPLOYED OVERSEAS

Pub. L. 112–239, div. A, title VII, §723, Jan. 2, 2013, 126 Stat. 1805, provided that:

''(a) IN GENERAL.—The Secretary of Defense and the Secretary of Veterans Affairs shall jointly enter into a memorandum of understanding providing for the sharing by the Department of Defense with the Department of Veterans Affairs of the results of examinations and other records on members of the Armed Forces that are retained and maintained with respect to the medical tracking system for members deployed overseas under section 1074f(c) of title 10, United States Code.

''(b) CESSATION UPON IMPLEMENTATION OF ELECTRONIC HEALTH RECORD.—The sharing required pursuant to subsection (a) shall cease on the date on which the Secretary of Defense and the Secretary of Veterans Affairs jointly certify to Congress that the Secretaries have fully implemented an integrated electronic health record for members of the Armed Forces that is fully interoperable between the Department of Defense and the Department of Veterans Affairs.''

COMPREHENSIVE POLICY ON CONSISTENT NEUROLOGICAL COGNITIVE ASSESSMENTS OF MEMBERS OF THE ARMED FORCES BEFORE AND AFTER DEPLOYMENT

Pub. L. 111–383, div. A, title VII, §722, Jan. 7, 2011, 124 Stat. 4251, provided that:

''(a) COMPREHENSIVE POLICY REQUIRED.—Not later than January 31, 2011, the Secretary of Defense shall develop and implement a comprehensive policy on consistent neurological cognitive assessments of members of the Armed Forces before and after deployment.

''(b) UPDATES.—The Secretary shall revise the policy required by subsection (a) on a periodic basis in accordance with experience and evolving best practice guidelines.''

MENTAL HEALTH ASSESSMENTS FOR MEMBERS OF THE ARMED FORCES DEPLOYED IN CONNECTION WITH A CONTINGENCY OPERATION

Pub. L. 111–84, div. A, title VII, §708, Oct. 28, 2009, 123 Stat. 2376, which required the Secretary of Defense to issue guidance for the provision of mental health assessments for members of the Armed Forces deployed in connection with a contingency operation, was repealed by Pub. L. 112–81, div. A, title VII, §702(b), Dec. 31, 2011, 125 Stat. 1471.

ADMINISTRATION AND PRESCRIPTION OF PSYCHOTROPIC MEDICATIONS FOR MEMBERS OF THE ARMED FORCES BEFORE AND DURING DEPLOYMENT

Pub. L. 111–84, div. A, title VII, §712, Oct. 28, 2009, 123 Stat. 2379, provided that:

''(a) REPORT REQUIRED.—Not later than October 1, 2010, the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the implementation of policy guidance dated November 7, 2006, regarding deployment-limiting psychiatric conditions and medications.

''(b) POLICY REQUIRED.—Not later than October 1, 2010, the Secretary shall establish and implement a policy for the use of psychotropic medications for deployed members of the Armed Forces. The policy shall, at a minimum, address the following:

''(1) The circumstances or diagnosed conditions for which such medications may be administered or prescribed.

''(2) The medical personnel who may administer or prescribe such medications.

''(3) The method in which the administration or prescription of such medications will be documented in the medical records of members of the Armed Forces.

''(4) The exam, treatment, or other care that is required following the administration or prescription of such medications.''

PILOT PROJECTS

Pub. L. 110–181, div. A, title XVI, §1673(a)(2), Jan. 28, 2008, 122 Stat. 482, directed the Secretary of Defense to conduct three pilot projects to evaluate mechanisms for use in developing the traumatic brain injury assessment protocol required by section 1074f(b)(3) of this title and, upon the completion of the projects, required a report to Congress within 60 days and implementation of the selected mechanism within 180 days.

IMPLEMENTATION

Pub. L. 109–364, div. A, title VII, §738(f), Oct. 17, 2006, 120 Stat. 2304, provided that: ''The Secretary of Defense shall implement the requirements of the amendments made by this section [amending this section] not later than six months after the date of the enactment of this Act [Oct. 17, 2006].''

INTERIM STANDARDS FOR BLOOD SAMPLING

Pub. L. 108–375, div. A, title VII, §733(b), Oct. 28, 2004, 118 Stat. 1998, as amended by Pub. L. 109–364, div. A, title X, §1071(g)(9), Oct. 17, 2006, 120 Stat. 2402, provided that:

''(1) TIME REQUIREMENTS.—Subject to paragraph (2), the Secretary of Defense shall require that—

''(A) the blood samples necessary for the predeployment medical examination of a member of the Armed Forces required under section 1074f(b) of title 10, United States Code, be drawn not earlier than 120 days before the date of the deployment; and

''(B) the blood samples necessary for the postdeployment medical examination of a member of the Armed Forces required under such section 1074f(b) of such title be drawn not later than 30 days after the date on which the deployment ends.

''(2) CONTINGENT APPLICABILITY.—The standards under paragraph (1) shall apply unless the Joint Medical Readiness Oversight Committee established by section 731(b) [10 U.S.C. 1074 note] recommends, and the Secretary approves, different standards for blood sampling.''

§ 1074g. Pharmacy benefits program

(a) PHARMACY BENEFITS.—(1) The Secretary of Defense, after consulting with the other administering Secretaries, shall establish an effective, efficient, integrated pharmacy benefits program under this chapter (hereinafter in this section referred to as the ''pharmacy benefits program'').

(2)(A) The pharmacy benefits program shall include a uniform formulary of pharmaceutical agents, which shall assure the availability of pharmaceutical agents in the complete range of therapeutic classes. The selection for inclusion on the uniform formulary of particular pharmaceutical agents in each therapeutic class shall be based on the relative clinical and cost effectiveness of the agents in such class. With respect to members of the uniformed services, such uniform formulary shall include pharmaceutical agents on the joint uniform formulary established under section 715 of the National Defense Authorization Act for Fiscal Year 2016.

(B) In considering the relative clinical effectiveness of agents under subparagraph (A), the Secretary shall presume inclusion in a therapeutic class of a pharmaceutical agent, unless the Pharmacy and Therapeutics Committee es-

tablished under subsection (b) finds that a pharmaceutical agent does not have a significant, clinically meaningful therapeutic advantage in terms of safety, effectiveness, or clinical outcome over the other drugs included on the uniform formulary.

(C) In considering the relative cost effectiveness of agents under subparagraph (A), the Secretary shall rely on the evaluation by the Pharmacy and Therapeutics Committee of the costs of agents in a therapeutic class in relation to the safety, effectiveness, and clinical outcomes of such agents.

(D) The Secretary shall establish procedures for the selection of particular pharmaceutical agents for the uniform formulary. Such procedures shall be established so as best to accomplish, in the judgment of the Secretary, the objectives set forth in paragraph (1). Except as provided in subparagraph (F), no pharmaceutical agent may be excluded from the uniform formulary except upon the recommendation of the Pharmacy and Therapeutics Committee.

(E) Pharmaceutical agents included on the uniform formulary shall be available to eligible covered beneficiaries through—

(i) facilities of the uniformed services, consistent with the scope of health care services offered in such facilities and additional determinations by the Pharmacy and Therapeutics Committee of the relative clinical and cost effectiveness of the agents;

(ii) retail pharmacies designated or eligible under the TRICARE program or the Civilian Health and Medical Program of the Uniformed Services to provide pharmaceutical agents to covered beneficiaries; or

(iii) the national mail-order pharmacy program.

(F)(i) The Secretary may implement procedures to place selected over-the-counter drugs on the uniform formulary and to make such drugs available to eligible covered beneficiaries. An over-the-counter drug may be included on the uniform formulary only if the Pharmacy and Therapeutics Committee established under subsection (b) finds that the over-the-counter drug is cost effective and clinically effective. If the Pharmacy and Therapeutics Committee recommends an over-the-counter drug for inclusion on the uniform formulary, the drug shall be considered to be in the same therapeutic class of pharmaceutical agents, as determined by the Committee, as similar prescription drugs.

(ii) Regulations prescribed by the Secretary to carry out clause (i) shall include the following with respect to over-the-counter drugs included on the uniform formulary:

(I) A determination of the means and conditions under paragraphs (5) and (6) through which over-the-counter drugs will be available to eligible covered beneficiaries and the amount of cost sharing that such beneficiaries will be required to pay for over-the-counter drugs, if any, except that no such cost sharing may be required for a member of a uniformed service on active duty.

(II) Any terms and conditions for the dispensing of over-the-counter drugs to eligible covered beneficiaries.

(3) The pharmacy benefits program shall assure the availability of clinically appropriate pharmaceutical agents to members of the armed forces, including, where appropriate, agents not included on the uniform formulary described in paragraph (2).

(4) The pharmacy benefits program may provide that prior authorization be required for certain pharmaceutical agents to assure that the use of such agents is clinically appropriate.

(5) The pharmacy benefits program shall assure the availability to eligible covered beneficiaries of pharmaceutical agents not included on the uniform formulary. Such pharmaceutical agents shall be available through the national mail-order pharmacy program under terms and conditions that shall include cost-sharing by the eligible covered beneficiary as specified in paragraph (6).

(6)(A) In the case of any of the years 2018 through 2027, the cost-sharing amounts under this subsection for eligible covered beneficiaries shall be determined in accordance with the following table:

For:	The cost-sharing amount for a 30-day supply of a retail generic is:	The cost-sharing amount for a 30-day supply of a retail formulary is:	The cost-sharing amount for a 90-day supply of a mail order generic is:	The cost-sharing amount for a 90-day supply of a mail order formulary is:	The cost-sharing amount for a 90-day supply of a mail order non-formulary is:
2018	$11	$28	$7	$24	$53
2019	$11	$28	$7	$24	$53
2020	$13	$33	$10	$29	$60
2021	$13	$33	$10	$29	$60
2022	$14	$38	$12	$34	$68
2023	$14	$38	$12	$34	$68
2024	$16	$43	$13	$38	$76

For:	The cost-sharing amount for a 30-day supply of a retail generic is:	The cost-sharing amount for a 30-day supply of a retail formulary is:	The cost-sharing amount for a 90-day supply of a mail order generic is:	The cost-sharing amount for a 90-day supply of a mail order formulary is:	The cost-sharing amount for a 90-day supply of a mail order non-formulary is:
2025	$16	$43	$13	$38	$76
2026	$16	$48	$14	$44	$85
2027	$16	$48	$14	$44	$85

(B) For any year after 2027, the cost-sharing amounts under this subsection for eligible covered beneficiaries shall be equal to the cost-sharing amounts for the previous year adjusted by an amount, if any, determined by the Secretary to reflect changes in the costs of pharmaceutical agents and prescription dispensing, rounded to the nearest dollar.

(C) Notwithstanding subparagraphs (A) and (B), the cost-sharing amounts under this subsection for a dependent of a member of the uniformed services who dies while on active duty, a member retired under chapter 61 of this title, or a dependent of a member retired under such chapter shall be equal to the cost-sharing amounts, if any, for 2017.

(7) The Secretary shall establish procedures for eligible covered beneficiaries to receive pharmaceutical agents that are not included on the uniform formulary but that are considered to be clinically necessary. Such procedures shall include peer review procedures under which the Secretary may determine that there is a clinical justification for the use of a pharmaceutical agent that is not on the uniform formulary, in which case the pharmaceutical agent shall be provided under the same terms and conditions as an agent on the uniform formulary. Such procedures shall also include an expeditious appeals process for an eligible covered beneficiary, or a network or uniformed provider on behalf of the beneficiary, to establish clinical justification for the use of a pharmaceutical agent that is not on the uniform formulary.

(8) In carrying out this subsection, the Secretary shall ensure that an eligible covered beneficiary may continue to receive coverage for any maintenance pharmaceutical that is not on the uniform formulary and that was prescribed for the beneficiary before October 5, 1999, and stabilized the medical condition of the beneficiary.

(9)(A) Beginning on October 1, 2015, the pharmacy benefits program shall require eligible covered beneficiaries generally to refill non-generic prescription maintenance medications through military treatment facility pharmacies or the national mail-order pharmacy program.

(B) The Secretary shall determine the maintenance medications subject to the requirement under subparagraph (A). The Secretary shall ensure that—

(i) such medications are generally available to eligible covered beneficiaries through retail pharmacies only for an initial filling of a 30-day or less supply; and

(ii) any refills of such medications are obtained through a military treatment facility pharmacy or the national mail-order pharmacy program.

(C) The Secretary may exempt the following prescription maintenance medications from the requirement of subparagraph (A):

(i) Medications that are for acute care needs.

(ii) Such other medications as the Secretary determines appropriate.

(10) Notwithstanding paragraphs (2), (5), and (6), in order to encourage the use by covered beneficiaries of pharmaceutical agents that provide the best clinical effectiveness to covered beneficiaries and the Department of Defense (as determined by the Secretary, including considerations of better care, healthier people, and smarter spending), the Secretary may, upon the recommendation of the Pharmacy and Therapeutics Committee established under subsection (b) and review by the Uniform Formulary Beneficiary Advisory Panel established under subsection (c)—

(A) exclude from the pharmacy benefits program any pharmaceutical agent that the Secretary determines provides very little or no clinical effectiveness to covered beneficiaries and the Department under the program; and

(B) give preferential status to any non-generic pharmaceutical agent on the uniform formulary by treating it, for purposes of cost-sharing under paragraph (6), as a generic product under the TRICARE retail pharmacy program and mail order pharmacy program.

(b) Establishment of Committee.—(1) The Secretary of Defense shall, in consultation with the Secretaries of the military departments, establish a Pharmacy and Therapeutics Committee for the purpose of developing the uniform formulary of pharmaceutical agents required by subsection (a), reviewing such formulary on a periodic basis, and making additional recommendations regarding the formulary as the committee determines necessary and appropriate. The committee shall include representatives of pharmacies of the uniformed services facilities and representatives of providers in facilities of the uniformed services. Committee members shall have expertise in treating the medical needs of the populations served through such entities and in the range of pharmaceutical and biological medicines available for treating such populations. The committee shall function under procedures established by the Secretary under the regulations prescribed under subsection (j).

(2) The committee shall meet at least quarterly and shall, during meetings, consider for in-

clusion on the uniform formulary under the standards established in subsection (a) any drugs newly approved by the Food and Drug Administration.

(c) ADVISORY PANEL.—(1) Concurrent with the establishment of the Pharmacy and Therapeutics Committee under subsection (b), the Secretary shall establish a Uniform Formulary Beneficiary Advisory Panel to review and comment on the development of the uniform formulary. The Secretary shall consider the comments of the panel before implementing the uniform formulary or implementing changes to the uniform formulary.

(2) The Secretary shall determine the size and membership of the panel established under paragraph (1), which shall include members that represent—

(A) nongovernmental organizations and associations that represent the views and interests of a large number of eligible covered beneficiaries;

(B) contractors responsible for the TRICARE retail pharmacy program;

(C) contractors responsible for the national mail-order pharmacy program; and

(D) TRICARE network providers.

(d) PROCEDURES.—(1) In the operation of the pharmacy benefits program under subsection (a), the Secretary of Defense shall assure through management and new contractual arrangements that financial resources are aligned such that the cost of prescriptions is borne by the organization that is financially responsible for the health care of the eligible covered beneficiary.

(2) The Secretary shall use a modification to the bid price adjustment methodology in the managed care support contracts current as of October 5, 1999, to ensure equitable and timely reimbursement to the TRICARE managed care support contractors for pharmaceutical products delivered in the nonmilitary environments. The methodology shall take into account the ''at-risk'' nature of the contracts as well as managed care support contractor pharmacy costs attributable to changes to pharmacy service or formulary management at military medical treatment facilities, and other military activities and policies that affect costs of pharmacy benefits provided through the Civilian Health and Medical Program of the Uniformed Services. The methodology shall also account for military treatment facility costs attributable to the delivery of pharmaceutical products in the military facility environment which were prescribed by a network provider.

(3) With respect to the TRICARE retail pharmacy program described in subsection (a)(2)(E)(ii), the Secretary shall ensure that a contract entered into with a TRICARE pharmacy program contractor includes requirements described in section 1860D–12(b)(6) of the Social Security Act (42 U.S.C. 1395w–112(b)(6)) to ensure the provision of information regarding the pricing standard for prescription drugs.

(e) PHARMACY DATA TRANSACTION SERVICE.—The Secretary of Defense shall implement the use of the Pharmacy Data Transaction Service in all fixed facilities of the uniformed services under the jurisdiction of the Secretary, in the TRICARE retail pharmacy program, and in the national mail-order pharmacy program.

(f) PROCUREMENT OF PHARMACEUTICALS BY TRICARE RETAIL PHARMACY PROGRAM.—With respect to any prescription filled after January 28, 2008, the TRICARE retail pharmacy program shall be treated as an element of the Department of Defense for purposes of the procurement of drugs by Federal agencies under section 8126 of title 38 to the extent necessary to ensure that pharmaceuticals paid for by the Department of Defense that are provided by pharmacies under the program to eligible covered beneficiaries under this section are subject to the pricing standards in such section 8126.

(g) SHARING OF INFORMATION WITH STATE PRESCRIPTION DRUG MONITORING PROGRAMS.—(1) The Secretary of Defense shall establish and maintain a program (to be known as the ''Military Health System Prescription Drug Monitoring Program'') in accordance with this subsection. The program shall include a special emphasis on drugs provided through facilities of the uniformed services.

(2) The program shall be—

(A) comparable to prescription drug monitoring programs operated by States, including such programs approved by the Secretary of Health and Human Services under section 399O of the Public Health Service Act (42 U.S.C. 280g–3); and

(B) applicable to designated controlled substance prescriptions under the pharmacy benefits program.

(3)(A) The Secretary shall establish appropriate procedures for the bi-directional sharing of patient-specific information regarding prescriptions for designated controlled substances between the program and State prescription drug monitoring programs.

(B) The purpose of sharing of information under this paragraph shall be to prevent misuse and diversion of opioid medications and other designated controlled substances.

(C) Any disclosure of patient-specific information by the Secretary under this paragraph is an authorized disclosure for purposes of the health information privacy regulations promulgated under the Health Insurance Portability and Accountability Act of 1996 (Public Law 104–191).

(4)(A) Any procedures developed pursuant to paragraph (3)(A) shall include appropriate safeguards, as determined by the Secretary, concerning cyber security of Department of Defense systems and operational security of Department personnel.

(B) To the extent the Secretary considers appropriate, the program may be treated as comparable to a State program for purposes of bi-directional sharing of controlled substance prescription information.

(5) For purposes of this subsection, any reference to a program operated by a State includes any program operated by a county, municipality, or other subdivision within that State.

(h) LABELING.—The Secretary of Defense shall ensure that drugs made available through the facilities of the armed forces under the jurisdiction of the Secretary include labels and other labeling that are in compliance with the require-

ments of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.).

(i) DEFINITIONS.—In this section:

(1) The term ''eligible covered beneficiary'' means a covered beneficiary for whom eligibility to receive pharmacy benefits through the means described in subsection (a)(2)(E) is established under this chapter or another provision of law.

(2) The term ''pharmaceutical agent'' means drugs, biological products, and medical devices under the regulatory authority of the Food and Drug Administration.

(3) The term ''over-the-counter drug'' means a drug that is not subject to section 503(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 353(b)).

(4) The term ''prescription drug'' means a drug that is subject to section 503(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 353(b)).

(j) REGULATIONS.—The Secretary of Defense shall, after consultation with the other administering Secretaries, prescribe regulations to carry out this section.

(Added Pub. L. 106–65, div. A, title VII, § 701(a)(1), Oct. 5, 1999, 113 Stat. 677; amended Pub. L. 106–398, § 1 [[div. A], title X, § 1087(a)(5)], Oct. 30, 2000, 114 Stat. 1654, 1654A–290; Pub. L. 107–107, div. A, title X, § 1048(c)(4), Dec. 28, 2001, 115 Stat. 1226; Pub. L. 108–136, div. A, title VII, § 725, Nov. 24, 2003, 117 Stat. 1535; Pub. L. 108–375, div. A, title VII, § 714, Oct. 28, 2004, 118 Stat. 1985; Pub. L. 110–181, div. A, title VII, § 703(a), Jan. 28, 2008, 122 Stat. 188; Pub. L. 111–84, div. A, title X, § 1073(a)(10), Oct. 28, 2009, 123 Stat. 2473; Pub. L. 112–239, div. A, title VII, §§ 702, 712(a), Jan. 2, 2013, 126 Stat. 1798, 1802; Pub. L. 113–291, div. A, title VII, § 702(a)–(c)(1), Dec. 19, 2014, 128 Stat. 3410; Pub. L. 114–92, div. A, title VII, §§ 702, 715(f), Nov. 25, 2015, 129 Stat. 860, 867; Pub. L. 115–91, div. A, title VII, §§ 702(a), (b)(1), 714, title X, § 1081(a)(24), Dec. 12, 2017, 131 Stat. 1433, 1434, 1438, 1595; Pub. L. 115–232, div. A, title VII, § 715(a), Aug. 13, 2018, 132 Stat. 1813; Pub. L. 116–92, div. A, title VII, § 713(a), (b), Dec. 20, 2019, 133 Stat. 1446.)

REFERENCES IN TEXT

Section 715 of the National Defense Authorization Act for Fiscal Year 2016, referred to in subsec. (a)(2)(A), is section 715 of Pub. L. 114–92, which is set out as a note under this section.

The Health Insurance Portability and Accountability Act of 1996, referred to in subsec. (g)(3)(C), is Pub. L. 104–191, Aug. 21, 1996, 110 Stat. 1936. For complete classification of this Act to the Code, see Short Title of 1996 Amendments note set out under section 201 of Title 42, The Public Health and Welfare, and Tables.

The Federal Food, Drug, and Cosmetic Act, referred to in subsec. (h), is act June 25, 1938, ch. 675, 52 Stat. 1040, which is classified generally to chapter 9 (§ 301 et seq.) of Title 21, Food and Drugs. For complete classification of this Act to the Code, see section 301 of Title 21 and Tables.

AMENDMENTS

2019—Subsec. (b)(1). Pub. L. 116–92, § 713(b), substituted ''under subsection (j)'' for ''under subsection (h)''.

Subsecs. (h) to (j). Pub. L. 116–92, § 713(a), added subsec. (h) and redesignated former subsecs. (h) and (i) as (i) and (j), respectively.

2018—Subsecs. (g) to (i). Pub. L. 115–232 added subsec. (g) and redesignated former subsecs. (g) and (h) as (h) and (i), respectively.

2017—Subsec. (a)(6). Pub. L. 115–91, § 702(a), amended par. (6) generally, substituting provisions relating to cost-sharing amounts for the years 2018 through 2027 and for any year after 2027 for provisions relating to cost-sharing amounts, limitation on requirements for medicare-eligible beneficiaries, and increases beginning on Oct. 1, 2016.

Subsec. (a)(9)(B), (C). Pub. L. 115–91, § 1081(a)(24), realigned margins.

Subsec. (a)(10). Pub. L. 115–91, § 702(b)(1), added par. (10).

Subsec. (d)(3). Pub. L. 115–91, § 714, added par. (3).

2015—Subsec. (a)(2)(A). Pub. L. 114–92, § 715(f), inserted at end ''With respect to members of the uniformed services, such uniform formulary shall include pharmaceutical agents on the joint uniform formulary established under section 715 of the National Defense Authorization Act for Fiscal Year 2016.''

Subsec. (a)(6)(A)(i)(I). Pub. L. 114–92, § 702(a)(1)(A), substituted ''$10'' for ''$8''.

Subsec. (a)(6)(A)(i)(II). Pub. L. 114–92, § 702(a)(1)(B), substituted ''$24'' for ''$20''.

Subsec. (a)(6)(A)(ii)(II). Pub. L. 114–92, § 702(a)(2)(A), substituted ''$20'' for ''$16''.

Subsec. (a)(6)(A)(ii)(III). Pub. L. 114–92, § 702(a)(2)(B), substituted ''$49'' for ''$46''.

Subsec. (a)(6)(C)(i). Pub. L. 114–92, § 702(b)(1), substituted ''Beginning October 1, 2016,'' for ''Beginning October 1, 2013,''.

Subsec. (a)(6)(C)(ii). Pub. L. 114–92, § 702(b)(2), added cl. (ii) and struck out former cl. (ii) which read as follows: ''If the amount of the increase otherwise provided for a year by clause (i) is less than $1, the increase shall not be made for such year, but shall be carried over to, and accumulated with, the amount of the increase for the subsequent year or years and made when the aggregate amount of increases carried over under this clause for a year is $1 or more.''

2014—Subsec. (a)(5). Pub. L. 113–291, § 702(a), substituted ''the national mail-order pharmacy program'' for ''at least one of the means described in paragraph (2)(E)'' and ''shall include cost-sharing by the eligible covered beneficiary as specified in paragraph (6).'' for ''may include cost sharing by the eligible covered beneficiary in addition to any such cost sharing applicable to agents on the uniform formulary.''

Subsec. (a)(6)(A)(i)(I). Pub. L. 113–291, § 702(b)(1)(A), substituted ''$8'' for ''$5''.

Subsec. (a)(6)(A)(i)(II). Pub. L. 113–291, § 702(b)(1)(B), substituted ''$20.'' for ''$17; and''.

Subsec. (a)(6)(A)(i)(III). Pub. L. 113–291, § 702(b)(1)(C), struck out subcl. (III) which read as follows: ''in the case of nonformulary agents, $44.''

Subsec. (a)(6)(A)(ii)(II). Pub. L. 113–291, § 702(b)(2)(A), substituted ''$16'' for ''$13''.

Subsec. (a)(6)(A)(ii)(III). Pub. L. 113–291, § 702(b)(2)(B), substituted ''$46'' for ''$43''.

Subsec. (a)(9). Pub. L. 113–291, § 702(c)(1), which directed amendment of such section by adding par. (9) at the end, was executed by adding par. (9) at the end of subsec. (a), to reflect the probable intent of Congress.

2013—Subsec. (a)(2)(D). Pub. L. 112–239, § 702(a)(1), (c)(2)(A), substituted ''Except as provided in subparagraph (F), no pharmaceutical agent may be excluded'' for ''No pharmaceutical agent may be excluded'' and struck out at end ''The Secretary shall begin to implement the uniform formulary not later than October 1, 2000.''.

Subsec. (a)(2)(F). Pub. L. 112–239, § 702(a)(2), added subpar. (F).

Subsec. (a)(6)(A). Pub. L. 112–239, § 712(a)(1), added subpar. (A) and struck out former subpar. (A) which read as follows: ''The Secretary, in the regulations prescribed under subsection (g), may establish cost sharing requirements (which may be established as a percentage or fixed dollar amount) under the pharmacy benefits program for generic, formulary, and nonformulary

agents. For nonformulary agents, cost sharing shall be consistent with common industry practice and not in excess of amounts generally comparable to 20 percent for beneficiaries covered by section 1079 of this title or 25 percent for beneficiaries covered by section 1086 of this title.''

Subsec. (a)(6)(C). Pub. L. 112–239, § 712(a)(2), added subpar. (C).

Subsec. (b)(1). Pub. L. 112–239, § 702(c)(1), substituted ''subsection (h)'' for ''subsection (g)''.

Subsec. (b)(2). Pub. L. 112–239, § 702(c)(2)(B), substituted ''The committee'' for ''Not later than 90 days after the establishment of the Pharmacy and Therapeutics Committee by the Secretary, the committee shall convene to design a proposed uniform formulary for submission to the Secretary. After such 90-day period, the committee''.

Subsec. (d)(2). Pub. L. 112–239, § 702(c)(2)(C), substituted ''The Secretary'' for ''Effective not later than April 5, 2000, the Secretary'' and ''the managed care support contracts current as of October 5, 1999,'' for ''the current managed care support contracts''.

Subsec. (g)(3), (4). Pub. L. 112–239, § 702(b), added pars. (3) and (4).

2009—Subsec. (f). Pub. L. 111–84 substituted ''after January 28, 2008'' for ''on or after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2008''.

2008—Subsecs. (f) to (h). Pub. L. 110–181 added subsec. (f) and redesignated former subsecs. (f) and (g) as (g) and (h), respectively.

2004—Subsec. (a)(2)(E)(i). Pub. L. 108–375, § 714(b), inserted before semicolon at end ''and additional determinations by the Pharmacy and Therapeutics Committee of the relative clinical and cost effectiveness of the agents''.

Subsec. (a)(6). Pub. L. 108–375, § 714(a), designated existing provisions as subpar. (A) and added subpar. (B).

2003—Subsec. (b)(1). Pub. L. 108–136, § 725(1), substituted ''facilities and representatives of providers in facilities of the uniformed services'' for ''facilities, contractors responsible for the TRICARE retail pharmacy program, contractors responsible for the national mail-order pharmacy program, providers in facilities of the uniformed services, and TRICARE network providers'' in second sentence.

Subsec. (c)(2). Pub. L. 108–136, § 725(2), substituted ''represent—'' for ''represent nongovernmental'', inserted ''(A) nongovernmental'' before ''organizations'', substituted ''beneficiaries;'' for ''beneficiaries.'', and added subpars. (B) to (D).

2001—Subsec. (a)(8). Pub. L. 107–107 substituted ''October 5, 1999,'' for ''the date of the enactment of this section''.

2000—Subsec. (a)(6). Pub. L. 106–398, § 1 [[div. A], title X, § 1087(a)(5)(A)], substituted ''in the regulations prescribed'' for ''as part of the regulations established''.

Subsec. (a)(7). Pub. L. 106–398, § 1 [[div. A], title X, § 1087(a)(5)(B)], substituted ''that are not included on the uniform formulary but that are'' for ''not included on the uniform formulary, but,''.

Subsec. (b)(1). Pub. L. 106–398, § 1 [[div. A], title X, § 1087(a)(5)(C)], substituted ''prescribed under'' for ''required by'' in last sentence.

Subsec. (d)(2). Pub. L. 106–398, § 1 [[div. A], title X, § 1087(a)(5)(D)], substituted ''Effective not later than April 5, 2000, the Secretary shall use'' for ''Not later than 6 months after the date of the enactment of this section, the Secretary shall utilize''.

Subsec. (e). Pub. L. 106–398, § 1 [[div. A], title X, § 1087(a)(5)(E)], substituted ''The'' for ''Not later than April 1, 2000, the'' and inserted ''in'' before ''the TRICARE'' and before ''the national''.

Subsec. (f). Pub. L. 106–398, § 1 [[div. A], title X, § 1087(a)(5)(F)], substituted ''In this section:'' for ''As used in this section—'' in introductory provisions, ''The term'' for ''the term'' in pars. (1) and (2), and a period for ''; and'' at end of par. (1).

Subsec. (g). Pub. L. 106–398, § 1 [[div. A], title X, § 1087(a)(5)(G)], substituted ''prescribe'' for ''promulgate''.

Effective Date of 2013 Amendment

Pub. L. 112–239, div. A, title VII, § 712(b), Jan. 2, 2013, 126 Stat. 1802, provided that:

''(1) In general.—The cost-sharing requirements under subparagraph (A) of section 1074g(a)(6) of title 10, United States Code, as amended by subsection (a)(1), shall apply with respect to prescriptions obtained under the TRICARE pharmacy benefits program on or after such date as the Secretary of Defense shall specify, but not later than the date that is 45 days after the date of the enactment of this Act [Jan. 2, 2013].

''(2) Federal register.—The Secretary shall publish notice of the effective date of the cost-sharing requirements specified under paragraph (1) in the Federal Register.''

Regulations

Pub. L. 115–91, div. A, title VII, § 702(b)(3), Dec. 12, 2017, 131 Stat. 1434, provided that: ''In order to implement expeditiously the reforms authorized by the amendments made by paragraphs (1) and (2) [amending this section and section 1079 of this title], the Secretary of Defense may prescribe such changes to the regulations implementing the TRICARE program (as defined in section 1072 of title 10, United States Code) as the Secretary considers appropriate—

''(A) by prescribing an interim final rule; and

''(B) not later than one year after prescribing such interim final rule and considering public comments with respect to such interim final rule, by prescribing a final rule.''

Pub. L. 110–181, div. A, title VII, § 703(b), Jan. 28, 2008, 122 Stat. 188, as amended by Pub. L. 110–417, [div. A], title X, § 1061(b)(3), Oct. 14, 2008, 122 Stat. 4613; Pub. L. 111–84, div. A, title X, § 1073(c)(12), Oct. 28, 2009, 123 Stat. 2475, provided that: ''The Secretary of Defense shall, after consultation with the other administering Secretaries under chapter 55 of title 10, United States Code, modify the regulations under subsection (h) [now subsection (j)] of section 1074g of title 10, United States Code (as redesignated by subsection (a)(1) of this section), to implement the requirements of subsection (f) of section 1074g of title 10, United States Code (as inserted by subsection (a)(2) of this section). The Secretary shall so modify such regulations not later than December 31, 2007.''

[Pub. L. 111–84, div. A, title X, § 1073(c), Oct. 28, 2009, 123 Stat. 2474, provided that the amendment made by section 1073(c)(12) to section 1061(b)(3) of Pub. L. 110–417, included in the credit set out above, is effective as of Oct. 14, 2008, and as if included in Pub. L. 110–417 as enacted.]

Termination of Advisory Panels

Advisory panels established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a panel established by the President or an officer of the Federal Government, such panel is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a panel established by Congress, its duration is otherwise provided for by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

Pilot Program on Receipt of Non-Generic Prescription Maintenance Medications Under TRICARE Pharmacy Benefits Program

Pub. L. 116–283, div. A, title VII, § 706, Jan. 1, 2021, 134 Stat. 3689, provided that:

''(a) Pilot Program.—

''(1) Authority.—Subject to paragraph (2), the Secretary of Defense may carry out a pilot program under which eligible covered beneficiaries may elect to receive non-generic prescription maintenance medications selected by the Secretary under subsection (c) through military medical treatment facility pharmacies, retail pharmacies, or the national

mail-order pharmacy program, notwithstanding section 1074g(a)(9) of title 10, United States Code.

''(2) REQUIREMENT.—The Secretary may carry out the pilot program under paragraph (1) only if the Secretary determines that the total costs to the Department of Defense for eligible covered beneficiaries to receive non-generic prescription maintenance medications under the pilot program will not exceed the total costs to the Department for such beneficiaries to receive such medications under the national mail-order pharmacy program pursuant to section 1074g(a)(9) of title 10, United States Code. In making such determination, the Secretary shall consider all manufacturer discounts, refunds and rebates, pharmacy transaction fees, and all other costs.

''(b) DURATION.—If the Secretary carries out the pilot program under subsection (a)(1), the Secretary shall carry out the pilot program for a three-year period beginning not later than March 1, 2021.

''(c) SELECTION OF MEDICATION.—If the Secretary carries out the pilot program under subsection (a)(1), the Secretary shall select non-generic prescription maintenance medications described in section 1074g(a)(9)(C)(ii) of title 10, United States Code, to be covered by the pilot program.

''(d) NOTIFICATION.—If the Secretary carries out the pilot program under subsection (a)(1), in providing each eligible covered beneficiary with an explanation of benefits, the Secretary shall notify the beneficiary of whether the medication that the beneficiary is prescribed is covered by the pilot program.

''(e) BRIEFING AND REPORTS.—

''(1) BRIEFING.—If the Secretary determines to carry out the pilot program under subsection (a)(1), not later than 90 days after the date of the enactment of this Act [Jan. 1, 2021], the Secretary shall provide to the Committees on Armed Services of the House of Representatives and the Senate a briefing on the implementation of the pilot program.

''(2) INTERIM REPORT.—If the Secretary carries out the pilot program under subsection (a)(1), not later than 18 months after the commencement of the pilot program, the Secretary shall submit to the Committees on Armed Services of the House of Representatives and the Senate a report on the pilot program.

''(3) COMPTROLLER GENERAL REPORT.—

''(A) IN GENERAL.—If the Secretary carries out the pilot program under subsection (a)(1), not later than March 1, 2024, the Comptroller General of the United States shall submit to the Committees on Armed Services of the House of Representatives and the Senate a report on the pilot program.

''(B) ELEMENTS.—The report under subparagraph (A) shall include the following:

''(i) The number of eligible covered beneficiaries who participated in the pilot program and an assessment of the satisfaction of such beneficiaries with the pilot program.

''(ii) The rate by which eligible covered beneficiaries elected to receive non-generic prescription maintenance medications at a retail pharmacy pursuant to the pilot program, and how such rate affected military medical treatment facility pharmacies and the national mail-order pharmacy program.

''(iii) The amount of cost savings realized by the pilot program, including with respect to—

''(I) dispensing fees incurred at retail pharmacies compared to the national mail-order pharmacy program for brand name prescription drugs;

''(II) administrative fees;

''(III) any costs paid by the United States for the drugs in addition to the procurement costs;

''(IV) the use of military medical treatment facilities; and

''(V) copayments paid by eligible covered beneficiaries.

''(iv) A comparison of supplemental rebates between retail pharmacies and other points of sale.

''(f) RULE OF CONSTRUCTION.—Nothing in this section may be construed to affect—

''(1) the ability of the Secretary to carry out section 1074g(a)(9)(C) of title 10, United States Code, after the date on which the pilot program is completed; or

''(2) the prices established for medications under section 8126 of title 38, United States Code.

''(g) DEFINITIONS.—In this section:

''(1) The term 'eligible covered beneficiary' has the meaning given that term in section 1074g(i) of title 10, United States Code.

''(2) The terms 'military medical treatment facility pharmacies', 'retail pharmacies', and 'the national mail-order pharmacy program' mean the methods for receiving prescription drugs as described in clauses (i), (ii), and (iii), respectively, of section 1074g(a)(2)(E) of title 10, United States Code.''

POLICY TO ADDRESS PRESCRIPTION OPIOID SAFETY

Pub. L. 116–283, div. A, title VII, § 719, Jan. 1, 2021, 134 Stat. 3696, provided that:

''(a) REQUIREMENT.—The Secretary of Defense shall develop a policy and tracking mechanism to monitor and provide oversight of opioid prescribing to ensure that the provider practices of medication-prescribing health professionals across the military health system conform with—

''(1) the clinical practice guidelines of the Department of Defense and the Department of Veterans Affairs; and

''(2) the prescribing guidelines published by the Centers for Disease Control and Prevention and the Food and Drug Administration.

''(b) ELEMENTS.—The requirements under subsection (a) shall include the following:

''(1) Providing oversight and accountability of opioid prescribing practices that are outside of the recommended parameters for dosage, supply, and duration as identified in the guideline published by the Centers for Disease Control and Prevention titled 'CDC Guideline for Prescribing Opioids for Chronic Pain—United States, 2016', or such successor guideline, and the guideline published by the Department of Defense and Department of Veterans Affairs titled 'DoD/VA Management of Opioid Therapy (OT) for Chronic Pain Clinical Practice Guideline, 2017' or such successor guideline.

''(2) Implementing oversight and accountability responsibilities for opioid prescribing safety as specified in paragraph (1).

''(3) Implementing systems to ensure that the prescriptions in the military health system data repository are appropriately documented and that the processing date and the metric quantity field for opioid prescriptions in liquid form are consistent within the electronic health record system known as 'MHS GENESIS'.

''(4) Implementing opioid prescribing controls within the electronic health record system known as 'MHS GENESIS' and document if an overdose reversal drug was co-prescribed.

''(5) Developing metrics that can be used by the Defense Health Agency and each military medical treatment facility to actively monitor and limit the overprescribing of opioids and to monitor the co-prescribing of overdose reversal drugs as accessible interventions.

''(6) Developing a report that tracks progression toward reduced levels of opioid use and includes an identification of prevention best practices established by the Department.

''(7) Developing and implementing a plan to improve communication and value-based initiatives between pharmacists and medication-prescribing health professionals across the military health system.''

IMPLEMENTATION

Pub. L. 116–92, div. A, title VII, § 713(c), Dec. 20, 2019, 133 Stat. 1446, provided that: ''Beginning not later than

90 days after the date of the enactment of this Act [Dec. 20, 2019], the Secretary of Defense shall implement subsection (h) of section 1074g of title 10, United States Code, as added by subsection (a).''

REIMBURSEMENT BY DEPARTMENT OF DEFENSE TO ENTITIES CARRYING OUT STATE VACCINATION PROGRAMS FOR COSTS OF VACCINES PROVIDED TO COVERED BENEFICIARIES

Pub. L. 114–328, div. A, title VII, § 719, Dec. 23, 2016, 130 Stat. 2226, as amended by Pub. L. 115–91, div. A, title VII, § 718, Dec. 12, 2017, 131 Stat. 1440, provided that:

''(a) REIMBURSEMENT.—

''(1) IN GENERAL.—The Secretary of Defense shall reimburse an amount determined under paragraph (2) to an entity carrying out a State vaccination program for the cost of vaccines provided to covered beneficiaries through such program.

''(2) AMOUNT OF REIMBURSEMENT.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the amount determined under this paragraph with respect to a State vaccination program shall be the amount assessed by the entity carrying out such program to purchase vaccines provided to covered beneficiaries through such program.

''(B) LIMITATION.—The amount determined under this paragraph to provide vaccines to covered beneficiaries through a State vaccination program may not exceed the amount that the Department would reimburse an entity under the TRICARE program for providing vaccines to the number of covered beneficiaries who were involved in the applicable State vaccination program.

''(b) DEFINITIONS.—In this section:

''(1) COVERED BENEFICIARY; TRICARE PROGRAM.—The terms 'covered beneficiary' and 'TRICARE program' have the meanings given those terms in section 1072 of title 10, United States Code.

''(2) STATE VACCINATION PROGRAM.—The term 'State vaccination program' means a vaccination program that provides vaccinations to individuals in a State and is carried out by an entity (including an agency of the State) within the State.''

PILOT PROGRAM FOR PRESCRIPTION DRUG ACQUISITION COST PARITY IN THE TRICARE PHARMACY BENEFITS PROGRAM

Pub. L. 114–328, div. A, title VII, § 743, Dec. 23, 2016, 130 Stat. 2238, provided that:

''(a) AUTHORITY TO ESTABLISH PILOT PROGRAM.—The Secretary of Defense may conduct a pilot program to evaluate whether, in carrying out the TRICARE pharmacy benefits program under section 1074g of title 10, United States Code, extending additional discounts for prescription drugs filled at retail pharmacies will maintain or reduce prescription drug costs for the Department of Defense.

''(b) ELEMENTS OF PILOT PROGRAM.—In carrying out the pilot program under subsection (a), the Secretary shall require that for prescription medications, including non-generic maintenance medications, that are dispensed to TRICARE beneficiaries that are not Medicare eligible, through any TRICARE participating retail pharmacy, including small business pharmacies, manufacturers shall pay rebates such that those medications are available to the Department at the lowest rate available. In addition to utilizing the authority under section 1074g(f) of title 10, United States Code, the Secretary shall have the authority to enter into a blanket purchase agreement with prescription drug manufacturers for supplemental discounts for prescription drugs dispensed in the pilot to be paid in the form of manufacturer's rebates.

''(c) CONSULTATION.—The Secretary shall develop the pilot program in consultation with—

''(1) the Secretaries of the military departments;

''(2) the Chief of the Pharmacy Operations Division of the Defense Health Agency; and

''(3) stakeholders, including TRICARE beneficiaries and retail pharmacies.

''(d) DURATION OF PILOT PROGRAM.—If the Secretary carries out the pilot program under subsection (a), the Secretary shall commence such pilot program no later than October 1, 2017, and shall terminate such program no later than September 30, 2018.

''(e) REPORTS.—If the Secretary carries out the pilot program under subsection (a), the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives reports on the pilot program as follows:

''(1) Not later than 90 days after the date of the enactment of this Act [Dec. 23, 2016], a report containing an implementation plan for the pilot program.

''(2) Not later than 180 days after the date on which the pilot program commences, an interim report on the pilot program.

''(3) Not later than 90 days after the date on which the pilot program terminates, a final report describing the results of the pilot program, including—

''(A) any recommendations of the Secretary to expand such program;

''(B) an analysis of the changes in prescription drug costs for the Department of Defense relating to the pilot program;

''(C) an analysis of the impact on beneficiary access to prescription drugs;

''(D) a survey of beneficiary satisfaction with the pilot program; and

''(E) a summary of any fraud and abuse activities related to the pilot and actions taken in response by the Department.''

JOINT UNIFORM FORMULARY FOR TRANSITION OF CARE

Pub. L. 114–92, div. A, title VII, § 715, Nov. 25, 2015, 129 Stat. 866, provided that:

''(a) JOINT FORMULARY.—Not later than June 1, 2016, the Secretary of Defense and the Secretary of Veterans Affairs shall jointly establish a joint uniform formulary for the Department of Veterans Affairs and the Department of Defense with respect to pharmaceutical agents that are critical for the transition of an individual from receiving treatment furnished by the Secretary of Defense to treatment furnished by the Secretary of Veterans Affairs.

''(b) SELECTION.—The Secretaries shall select for inclusion on the joint uniform formulary established under subsection (a) pharmaceutical agents relating to—

''(1) the control of pain, sleep disorders, and psychiatric conditions, including post-traumatic stress disorder; and

''(2) any other conditions determined appropriate by the Secretaries.

''(c) REPORT.—Not later than July 1, 2016, the Secretaries shall jointly submit to the appropriate congressional committees a report on the joint uniform formulary established under subsection (a), including a list of the pharmaceutical agents selected for inclusion on the formulary.

''(d) CONSTRUCTION.—Nothing in this section shall be construed to prohibit the Secretary of Defense and the Secretary of Veterans Affairs from each maintaining the respective uniform formularies of the Department of the Secretary.

''(e) DEFINITIONS.—In this section:

''(1) The term 'appropriate congressional committees' means—

''(A) the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives]; and

''(B) the Committees on Veterans' Affairs of the House of Representatives and the Senate.

''(2) The term 'pharmaceutical agent' has the meaning given that term in section 1074g(g) [now 1074g(i)] of title 10, United States Code.

''(f) CONFORMING AMENDMENT.—[Amended this section.]''

PILOT PROGRAM ON MEDICATION THERAPY MANAGEMENT UNDER TRICARE PROGRAM

Pub. L. 113–291, div. A, title VII, § 726, Dec. 19, 2014, 128 Stat. 3419, provided that:

''(a) ESTABLISHMENT.—In accordance with section 1092 of title 10, United States Code, the Secretary of Defense shall carry out a pilot program to evaluate the feasibility and desirability of including medication therapy management as part of the TRICARE program.

''(b) ELEMENTS OF PILOT PROGRAM.—In carrying out the pilot program under subsection (a), the Secretary shall ensure the following:

''(1) Patients who participate in the pilot program are patients who—

''(A) have more than one chronic condition; and

''(B) are prescribed more than one medication.

''(2) Medication therapy management services provided under the pilot program are focused on improving patient use and outcomes of prescription medications.

''(3) The design of the pilot program considers best commercial practices in providing medication therapy management services, including practices under the prescription drug program under part D of title XVIII of the Social Security Act (42 U.S.C. 1395w–101 et seq.).

''(4) The pilot program includes methods to measure the effect of medication therapy management services on—

''(A) patient use and outcomes of prescription medications; and

''(B) the costs of health care.

''(c) LOCATIONS.—

''(1) SELECTION.—The Secretary shall carry out the pilot program under subsection (a) in not less than three locations.

''(2) FIRST LOCATION CRITERIA.—Not less than one location selected under paragraph (1) shall meet the following criteria:

''(A) The location is a pharmacy at a military medical treatment facility.

''(B) The patients participating in the pilot program at such location generally receive primary care services from health care providers at such facility.

''(3) SECOND LOCATION CRITERIA.—Not less than one location selected under paragraph (1) shall meet the following criteria:

''(A) The location is a pharmacy at a military medical treatment facility.

''(B) The patients participating in the pilot program at such location generally do not receive primary care services from health care providers at such facility.

''(4) THIRD LOCATION CRITERION.—Not less than one location selected under paragraph (1) shall be a pharmacy located at a location other than a military medical treatment facility.

''(d) DURATION.—The Secretary shall carry out the pilot program under subsection (a) for a period determined appropriate by the Secretary that is not less than two years.

''(e) REPORT.—Not later than 30 months after the date on which the Secretary commences the pilot program under subsection (a), the Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the pilot program that includes—

''(1) information on the effect of medication therapy management services on—

''(A) patient use and outcomes of prescription medications; and

''(B) the costs of health care;

''(2) the recommendations of the Secretary with respect to incorporating medication therapy management into the TRICARE program; and

''(3) such other information as the Secretary determines appropriate.

''(f) DEFINITIONS.—In this section:

''(1) The term 'medication therapy management' means professional services provided by qualified pharmacists to patients to improve the effective use and outcomes of prescription medications provided to the patients.

''(2) The term 'TRICARE program' has the meaning given that term in section 1072 of title 10, United States Code.''

PILOT PROGRAM FOR REFILLS OF MAINTENANCE MEDICATIONS FOR TRICARE FOR LIFE BENEFICIARIES THROUGH THE TRICARE MAIL-ORDER PHARMACY PROGRAM

Pub. L. 112–239, div. A, title VII, § 716, Jan. 2, 2013, 126 Stat. 1804, as amended by Pub. L. 113–291, div. A, title VII, § 702(c)(2), Dec. 19, 2014, 128 Stat. 3411; Pub. L. 115–91, div. A, title X, § 1051(r)(2), Dec. 12, 2017, 131 Stat. 1565, provided that:

''(a) IN GENERAL.—The Secretary of Defense shall conduct a pilot program to refill prescription maintenance medications for each TRICARE for Life beneficiary through the national mail-order pharmacy program under section 1074g(a)(2)(E)(iii) of title 10, United States Code.

''(b) MEDICATIONS COVERED.—

''(1) DETERMINATION.—The Secretary shall determine the prescription maintenance medications included in the pilot program under subsection (a).

''(2) SUPPLY.—In carrying out the pilot program under subsection (a), the Secretary shall ensure that the medications included in the program are generally available to a TRICARE for Life beneficiary—

''(A) for an initial filling of a 30-day or less supply through—

''(i) retail pharmacies under clause (ii) of section 1074g(a)(2)(E) of title 10, United States Code; and

''(ii) facilities of the uniformed services under clause (i) of such section; and

''(B) for a refill of such medications through—

''(i) the national mail-order pharmacy program; and

''(ii) such facilities of the uniformed services.

''(3) EXEMPTION.—The Secretary may exempt the following prescription maintenance medications from the requirements in paragraph (2):

''(A) Such medications that are for acute care needs.

''(B) Such other medications as the Secretary determines appropriate.

''(c) NONPARTICIPATION.—

''(1) OPT OUT.—The Secretary shall give TRICARE for Life beneficiaries who have been covered by the pilot program under subsection (a) for a period of one year an opportunity to opt out of continuing to participate in the program.

''(2) WAIVER.—The Secretary may waive the requirement of a TRICARE for Life beneficiary to participate in the pilot program under subsection (a) if the Secretary determines, on an individual basis, that such waiver is appropriate.

''(d) REGULATIONS.—The Secretary shall prescribe regulations to carry out the pilot program under subsection (a), including regulations with respect to—

''(1) the prescription maintenance medications included in the pilot program pursuant to subsection (b)(1); and

''(2) addressing instances where a TRICARE for Life beneficiary covered by the pilot program attempts to refill such medications at a retail pharmacy rather than through the national mail-order pharmacy program or a facility of the uniformed services.

''(e) SUNSET.—The Secretary may not carry out the pilot program under subsection (a) after September 30, 2015.

''(f) TRICARE FOR LIFE BENEFICIARY DEFINED.—In this section, the term 'TRICARE for Life beneficiary' means a TRICARE beneficiary enrolled in the Medicare wraparound coverage option of the TRICARE program

made available to the beneficiary by reason of section 1086(d) of title 10, United States Code.''

EDUCATION AND TRAINING ON USE OF PHARMACEUTICALS IN REHABILITATION PROGRAMS FOR WOUNDED WARRIORS

Pub. L. 111–383, div. A, title VII, § 716, Jan. 7, 2011, 124 Stat. 4250, provided that:

''(a) EDUCATION AND TRAINING REQUIRED.—The Secretary of Defense shall develop and implement training, available through the Internet or other means, on the use of pharmaceuticals in rehabilitation programs for seriously ill or injured members of the Armed Forces.

''(b) RECIPIENTS OF TRAINING.—The training developed and implemented under subsection (a) shall be training for each category of individuals as follows:

''(1) Patients in or transitioning to a wounded warrior unit, with special accommodation in such training for such patients with cognitive disabilities.

''(2) Nonmedical case managers.

''(3) Military leaders.

''(4) Family members.

''(c) ELEMENTS OF TRAINING.—The training developed and implemented under subsection (a) shall include the following:

''(1) An overview of the fundamentals of safe prescription drug use.

''(2) Familiarization with the benefits and risks of using pharmaceuticals in rehabilitation therapies.

''(3) Examples of the use of pharmaceuticals for individuals with multiple, complex injuries, including traumatic brain injury and post-traumatic stress disorder.

''(4) Familiarization with means of finding additional resources for information on pharmaceuticals.

''(5) Familiarization with basic elements of pain and pharmaceutical management.

''(6) Familiarization with complementary and alternative therapies.

''(d) TAILORING OF TRAINING.—The training developed and implemented under subsection (a) shall appropriately tailor the elements specified in subsection (c) for and among each category of individuals set forth in subsection (b).

''(e) REVIEW OF PHARMACY.—

''(1) REVIEW.—The Secretary shall review all policies and procedures of the Department of Defense regarding the use of pharmaceuticals in rehabilitation programs for seriously ill or injured members of the Armed Forces.

''(2) RECOMMENDATIONS.—Not later than September 20, 2011, the Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] any recommendations for administrative or legislative action with respect to the review under paragraph (1) as the Secretary considers appropriate.''

DEMONSTRATION PROJECT ON COVERAGE OF SELECTED OVER-THE-COUNTER DRUGS UNDER THE PHARMACY BENEFITS PROGRAM

Pub. L. 109–364, div. A, title VII, § 705, Oct. 17, 2006, 120 Stat. 2280, as amended by Pub. L. 111–383, div. A, title X, § 1075(g)(5), Jan. 7, 2011, 124 Stat. 4377, provided that:

''(a) REQUIREMENT TO CONDUCT DEMONSTRATION.—The Secretary of Defense shall conduct a demonstration project under section 1092 of title 10, United States Code, to allow particular over-the-counter drugs to be included on the uniform formulary under section 1074g of such title.

''(b) ELEMENTS OF DEMONSTRATION PROJECT.—

''(1) INCLUSION OF CERTAIN OVER-THE-COUNTER DRUGS.—(A) As part of the demonstration project, the Secretary shall modify uniform formulary specifications under section 1074g(a) of such title to include an over-the-counter drug (referred to in this section as an 'OTC drug') on the uniform formulary if the Pharmacy and Therapeutics Committee finds that the OTC drug is cost-effective and therapeutically equivalent to a prescription drug. If the Pharmacy and Therapeutics Committee makes such a finding, the OTC drug shall be considered to be in the same therapeutic class of pharmaceutical agents as the prescription drug.

''(B) An OTC drug shall be made available to a beneficiary through the demonstration project, but only if—

''(i) the beneficiary has a prescription for a drug requiring a prescription; and

''(ii) pursuant to subparagraph (A), the OTC drug—

''(I) is on the uniform formulary; and

''(II) has been determined to be therapeutically equivalent to the prescription drug.

''(2) CONDUCT THROUGH MILITARY FACILITIES, RETAIL PHARMACIES, OR MAIL ORDER PROGRAM.—The Secretary shall conduct the demonstration project through at least two of the means described in subparagraph (E) of section 1074g(a)(2) of such title through which OTC drugs are provided and may conduct the demonstration project throughout the entire pharmacy benefits program or at a limited number of sites. If the project is conducted at a limited number of sites, the number of sites shall be not less than five in each TRICARE region for each of the two means described in such subparagraph.

''(3) PERIOD OF DEMONSTRATION.—The Secretary shall provide for conducting the demonstration project for a period of time necessary to evaluate the feasibility and cost effectiveness of the demonstration. Such period shall be at least as long as the period covered by pharmacy contracts in existence on the date of the enactment of this Act [Oct. 17, 2006] (including any extensions of the contracts), or five years, whichever is shorter.

''(4) IMPLEMENTATION DEADLINE.—Implementation of the demonstration project shall begin not later than May 1, 2007.

''(c) EVALUATION OF DEMONSTRATION PROJECT.—The Secretary shall evaluate the demonstration project for the following:

''(1) The costs and benefits of providing OTC drugs under the pharmacy benefits program in each of the means chosen by the Secretary to conduct the demonstration project.

''(2) The clinical effectiveness of providing OTC drugs under the pharmacy benefits program.

''(3) Customer satisfaction with the demonstration project.

''(d) REPORT.—Not later than two years after implementation of the demonstration project begins, the Secretary shall submit to the Committees on Armed Services of the Senate and House of Representatives a report on the demonstration project. The report shall contain—

''(1) the evaluation required by subsection (c);

''(2) recommendations for improving the provision of OTC drugs under the pharmacy benefits program; and

''(3) recommendations on whether permanent authority should be provided to cover OTC drugs under the pharmacy benefits program.

''(e) CONTINUATION OF DEMONSTRATION PROJECT.—If the Secretary recommends in the report under subsection (d) that permanent authority should be provided, the Secretary may continue the demonstration project for up to one year after submitting the report.

''(f) DEFINITIONS.—In this section:

''(1) The term 'drug' means a drug, including a biological product, within the meaning of section 1074g(f)(2) [now 1074g(i)(2)] of title 10, United States Code.

''(2) The term 'OTC drug' has the meaning indicated for such term in subsection (b)(1)(A).

''(3) The term 'over-the-counter drug' means a drug that is not subject to section 503(b) of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 353(b)].

"(4) The term 'prescription drug' means a drug that is subject to section 503(b) of the Federal Food, Drug, and Cosmetic Act."

INTEROPERABILITY OF DEPARTMENT OF VETERANS AFFAIRS AND DEPARTMENT OF DEFENSE PHARMACY DATA SYSTEMS

Pub. L. 107–314, div. A, title VII, § 724, Dec. 2, 2002, 116 Stat. 2598, provided that:

"(a) INTEROPERABILITY.—The Secretary of Veterans Affairs and the Secretary of Defense shall seek to ensure that on or before October 1, 2004, the Department of Veterans Affairs pharmacy data system and the Department of Defense pharmacy data system (known as the 'Pharmacy Data Transaction System') are interoperable for both Department of Defense beneficiaries and Department of Veterans Affairs beneficiaries by achieving real-time interface, data exchange, and checking of prescription drug data of outpatients, and using national standards for the exchange of outpatient medication information.

"(b) ALTERNATIVE REQUIREMENT.—If the interoperability specified in subsection (a) is not achieved by October 1, 2004, as determined jointly by the Secretary of Defense and the Secretary of Veterans Affairs, the Secretary of Veterans Affairs shall adopt the Department of Defense Pharmacy Data Transaction System for use by the Department of Veterans Affairs health care system. Such system shall be fully operational not later than October 1, 2005.

"(c) IMPLEMENTATION FUNDING FOR ALTERNATIVE REQUIREMENT.—The Secretary of Defense shall transfer to the Secretary of Veterans Affairs, or shall otherwise bear the cost of, an amount sufficient to cover three-fourths of the cost to the Department of Veterans Affairs for computer programming activities and relevant staff training expenses related to implementation of subsection (b). Such amount shall be determined in such manner as agreed to by the two Secretaries."

DEADLINE FOR ESTABLISHMENT OF COMMITTEE

Pub. L. 106–65, div. A, title VII, § 701(b), Oct. 5, 1999, 113 Stat. 680, directed the Secretary of Defense to establish the Pharmacy and Therapeutics Committee required by subsec. (b) of this section not later than 30 days after Oct. 5, 1999.

REPORTS REQUIRED

Pub. L. 106–65, div. A, title VII, § 701(c), Oct. 5, 1999, 113 Stat. 680, directed the Secretary of Defense to submit reports to Congress, not later than Apr. 1 and Oct. 1 of fiscal years 2000 and 2001, on the implementation of the uniform formulary required under subsec. (a) of this section, the results of a survey conducted by the Secretary of prescribers for military medical treatment facilities and TRICARE contractors, the operation of the Pharmacy Data Transaction Service required by subsec. (e) of this section, and any other actions taken by the Secretary to improve management of the pharmacy benefits program under this section.

STUDY FOR DESIGN OF PHARMACY BENEFIT FOR CERTAIN COVERED BENEFICIARIES

Pub. L. 106–65, div. A, title VII, § 701(d), Oct. 5, 1999, 113 Stat. 680, required the Secretary of Defense to prepare and submit to Congress, by Apr. 15, 2001, a study on a design for a comprehensive pharmacy benefit for covered beneficiaries under chapter 55 of title 10, who are entitled to benefits under part A, and enrolled under part B, of title XVIII of the Social Security Act, and to provide an estimate of the costs of implementing and operating such design, prior to repeal by Pub. L. 107–107, div. A, title VII, § 723, Dec. 28, 2001, 115 Stat. 1168.

§ 1074h. Medical and dental care: medal of honor recipients; dependents

(a) MEDAL OF HONOR RECIPIENTS.—A former member of the armed forces who is a Medal of Honor recipient and who is not otherwise entitled to medical and dental benefits under this chapter may, upon request, be given medical and dental care provided by the administering Secretaries in the same manner as if entitled to retired pay.

(b) IMMEDIATE DEPENDENTS.—A person who is an immediate dependent of a Medal of Honor recipient and who is not otherwise entitled to medical and dental benefits under this chapter may, upon request, be given medical and dental care provided by the administering Secretaries in the same manner as if the Medal of Honor recipient were, or (if deceased) was at the time of death, entitled to retired pay.

(c) DEFINITIONS.—In this section:

(1) The term "Medal of Honor recipient" means a person who has been awarded a medal of honor under section 7271, 8291, or 9271 of this title or section 491 [1] of title 14.

(2) The term "immediate dependent" means a dependent described in subparagraph (A), (B), (C), or (D) of section 1072(2) of this title.

(Added Pub. L. 106–398, § 1 [[div. A], title VII, § 706(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–175; amended Pub. L. 115–232, div. A, title VIII, § 809(a), Aug. 13, 2018, 132 Stat. 1840.)

REFERENCES IN TEXT

Section 491 of title 14, referred to in subsec. (c)(1), was redesignated section 2732 of title 14 by Pub. L. 115–282, title I, § 116(b), Dec. 4, 2018, 132 Stat. 4226, and references to section 491 of title 14 deemed to refer to such redesignated section, see section 123(b)(1) of Pub. L. 115–282, set out as a References to Sections of Title 14 as Redesignated by Pub. L. 115–282 note preceding section 101 of Title 14, Coast Guard.

AMENDMENTS

2018—Subsec. (c)(1). Pub. L. 115–232 substituted "section 7271, 8291, or 9271" for "section 3741, 6241, or 8741".

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115–232 effective Feb. 1, 2019, with provision for the coordination of amendments and special rule for certain redesignations, see section 800 of Pub. L. 115–232, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE

Pub. L. 106–398, § 1 [[div. A], title VII, § 706(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–175, provided that: "Section 1074h of title 10, United States Code, shall apply with respect to medical and dental care provided on or after the date of the enactment of this Act [Oct. 30, 2000]."

§ 1074i. Reimbursement for certain travel expenses

(a) IN GENERAL.—In any case in which a covered beneficiary is referred by a primary care physician to a specialty care provider who provides services more than 100 miles from the location in which the primary care provider provides services to the covered beneficiary, the Secretary of Defense shall provide travel and transportation allowances as specified in regulations prescribed under section 464 of title 37 for the covered beneficiary and, when accompaniment by an adult is necessary, for a parent or guardian of the covered beneficiary or another mem-

[1] See References in Text note below.

ber of the covered beneficiary's family who is at least 21 years of age.

(b) ALLOWABLE TRAVEL AND TRANSPORTATION UNDER EXCEPTIONAL CIRCUMSTANCES.—The Secretary of Defense may provide travel and transportation allowances as specified in the regulations referred to in subsection (a) for travel of members of the armed forces on active duty and their dependents, and accompaniment, to a specialty care provider not otherwise authorized by subsection (a) under such exceptional circumstances as the Secretary considers appropriate for purposes of this section.

(c) OUTREACH PROGRAM AND TRAVEL REIMBURSEMENT FOR FOLLOW-ON SPECIALTY CARE AND RELATED SERVICES.—The Secretary concerned shall ensure that an outreach program is implemented for each member of the uniformed services who incurred a combat-related disability and is entitled to retired or retainer pay, or equivalent pay, so that—

(1) the progress of the member is closely monitored; and

(2) the member receives the travel reimbursement authorized by subsection (a) whenever the member requires follow-on specialty care, services, or supplies.

(d) DEFINITIONS.—In this section:

(1) The term ''specialty care provider'' includes a dental specialist.

(2) The term ''dental specialist'' means an oral surgeon, orthodontist, prosthodontist, periodontist, endodontist, or pediatric dentist, and includes such other providers of dental care and services as determined appropriate by the Secretary of Defense.

(3) The term ''combat-related disability'' has the meaning given that term in section 1413a of this title.

(Added Pub. L. 106–398, §1 [[div. A], title VII, §758(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–199; amended Pub. L. 107–107, div. A, title VII, §706, Dec. 28, 2001, 115 Stat. 1163; Pub. L. 108–136, div. A, title VII, §712, Nov. 24, 2003, 117 Stat. 1530; Pub. L. 110–181, div. A, title XVI, §1632(a), (b), Jan. 28, 2008, 122 Stat. 458, 459; Pub. L. 111–84, div. A, title VI, §634, Oct. 28, 2009, 123 Stat. 2363; Pub. L. 113–66, div. A, title VI, §621(d), Dec. 26, 2013, 127 Stat. 784.)

AMENDMENTS

2013—Subsec. (a). Pub. L. 113–66, §621(d)(1), substituted ''travel and transportation allowances as specified in regulations prescribed under section 464 of title 37'' for ''reimbursement for reasonable travel expenses''.

Subsec. (b). Pub. L. 113–66, §621(d)(2), substituted ''ALLOWABLE TRAVEL AND TRANSPORTATION UNDER EXCEPTIONAL CIRCUMSTANCES.—The Secretary of Defense may provide travel and transportation allowances as specified in the regulations referred to in subsection (a) for'' for ''REIMBURSEMENT FOR TRAVEL UNDER EXCEPTIONAL CIRCUMSTANCES.—The Secretary of Defense may provide reimbursement for reasonable travel expenses of''.

2009—Subsec. (a). Pub. L. 111–84, §634(b), inserted ''of Defense'' after ''the Secretary''.

Subsecs. (b) to (d). Pub. L. 111–84, §634(a), added subsec. (b) and redesignated former subsecs. (b) and (c) as (c) and (d), respectively.

2008—Subsecs. (b), (c). Pub. L. 110–181, §1632(a), added subsec. (b) and redesignated former subsec. (b) as (c).

Subsec. (c)(3). Pub. L. 110–181, §1632(b), added par. (3).

2003—Pub. L. 108–136 inserted ''(a) IN GENERAL.—'' before ''In any case'' and added subsec. (b).

2001—Pub. L. 107–107 inserted before period at end ''and, when accompaniment by an adult is necessary, for a parent or guardian of the covered beneficiary or another member of the covered beneficiary's family who is at least 21 years of age''.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–181, div. A, title XVI, §1632(c), Jan. 28, 2008, 122 Stat. 459, provided that: ''Subsection (b) of section 1074i of title 10, United States Code, as added by subsection (a)(2), shall apply with respect to travel described in subsection (a) of such section that occurs on or after January 1, 2008, for follow-on specialty care, services, or supplies.''

§ 1074j. Sub-acute care program

(a) ESTABLISHMENT.—The Secretary of Defense shall establish an effective, efficient, and integrated sub-acute care benefits program under this chapter (hereinafter referred to in this section as the ''program''). Except as otherwise provided in this section, the types of health care authorized under the program shall be the same as those provided under section 1079 of this title. The Secretary, after consultation with the other administering Secretaries, shall promulgate regulations to carry out this section.

(b) BENEFITS.—(1) The program shall include a uniform skilled nursing facility benefit that shall be provided in the manner and under the conditions described in section 1861 (h) and (i) of the Social Security Act (42 U.S.C. 1395x (h) and (i)), except that the limitation on the number of days of coverage under section 1812 (a) and (b) of such Act (42 U.S.C. 1395d (a) and (b)) shall not be applicable under the program. Skilled nursing facility care for each spell of illness shall continue to be provided for as long as medically necessary and appropriate.

(2) In this subsection:

(A) The term ''skilled nursing facility'' has the meaning given such term in section 1819(a) of the Social Security Act (42 U.S.C. 1395i–3(a)).

(B) The term ''spell of illness'' has the meaning given such term in section 1861(a) of such Act (42 U.S.C. 1395x(a)).

(3) The program shall include a comprehensive, part-time or intermittent home health care benefit that shall be provided in the manner and under the conditions described in section 1861(m) of the Social Security Act (42 U.S.C. 1395x(m)).

(4) The Secretary of Defense may take such actions as are necessary to ensure that there is an effective transition in the furnishing of part-time or intermittent home health care benefits for covered beneficiaries who were receiving such benefits before the establishment of the program under this section. The actions taken under this paragraph may include the continuation of such benefits on an extended basis for such time as the Secretary determines appropriate.

(Added Pub. L. 107–107, div. A, title VII, §701(a)(1), Dec. 28, 2001, 115 Stat. 1158; amended Pub. L. 108–375, div. A, title VII, §713, Oct. 28, 2004, 118 Stat. 1985.)

AMENDMENTS

2004—Subsec. (b)(4). Pub. L. 108–375 added par. (4).

§ 1074k. Long-term care insurance

Provisions regarding long-term care insurance for members and certain former members of the uniformed services and their families are set forth in chapter 90 of title 5.

(Added Pub. L. 107–107, div. A, title VII, § 701(f)(1), Dec. 28, 2001, 115 Stat. 1161.)

§ 1074*l*. Notification to Congress of hospitalization of combat wounded members

(a) NOTIFICATION REQUIRED.—The Secretary concerned shall provide notification of the hospitalization of any member of the armed forces evacuated from a theater of combat and admitted to any military medical treatment facility to the appropriate Members of Congress.

(b) APPROPRIATE MEMBERS.—In this section, the term ''appropriate Members of Congress'', with respect to the member of the armed forces about whom notification is being made, means the Senators representing the State, and the Member, Delegate, or Resident Commissioner of the House of Representatives representing the district, that includes the member's home of record or a different location as provided by the member.

(c) CONSENT OF MEMBER REQUIRED.—The notification under subsection (a) may be provided only with the consent of the member of the armed forces about whom notification is to be made. In the case of a member who is unable to provide consent, information and consent may be provided by next of kin.

(Added Pub. L. 110–181, div. A, title XVI, § 1617(a)(1), Jan. 28, 2008, 122 Stat. 449; amended Pub. L. 115–232, div. A, title VII, § 720, Aug. 13, 2018, 132 Stat. 1817.)

AMENDMENTS

2018—Subsec. (a). Pub. L. 115–232 substituted ''admitted to any military medical treatment facility'' for ''admitted to a military treatment facility within the United States''.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–181, div. A, title XVI, § 1617(a)(2), Jan. 28, 2008, 122 Stat. 449, provided that: ''The notification requirement under section 1074l(a) of title 10, United States Code, as added by paragraph (1), shall apply beginning 60 days after the date of the enactment of this Act [Jan. 28, 2008].''

§ 1074m. Mental health assessments for members of the armed forces deployed in support of a contingency operation

(a) MENTAL HEALTH ASSESSMENTS.—(1) The Secretary of Defense shall provide a person-to-person mental health assessment for each member of the armed forces who is deployed in support of a contingency operation as follows:

(A) Once during the period beginning 120 days before the date of the deployment.

(B) Once during each 180-day period during which a member is deployed.

(C) Subject to paragraph (3) and subsection (d), once during the period beginning on the date of redeployment from the contingency operation and ending on the date that is 21 days after the date on which the post-deployment leave of the member terminates.

(D) Subject to subsection (d), not less than once annually—

(i) beginning 21 days after the date on which the post-deployment leave of the member terminates; or

(ii) if the assessment required by subparagraph (C) is performed during the period specified in paragraph (3), beginning 180 days after the date of redeployment from the contingency operation.

(2) A mental health assessment is not required for a member of the armed forces under subparagraphs (C) and (D) of paragraph (1) (including an assessment performed pursuant to paragraph (3)) if the Secretary determines that providing such assessment to the member during the time periods under such subparagraphs would remove the member from forward deployment or put members or operational objectives at risk.

(3) A mental health assessment required under subparagraph (C) of paragraph (1) may be provided during the period beginning 90 days after the date of redeployment from the contingency operation and ending 180 days after such redeployment date if the Secretary determines that—

(A) an insufficient number of personnel are available to perform the assessment during the time period under such subparagraph; or

(B) an administrative processing issue exists upon the return of the member to the home unit or duty station that would prohibit the effective performance of the assessment during such time period.

(b) PURPOSE.—The purpose of the mental health assessments provided pursuant to this section shall be to identify post-traumatic stress disorder, suicidal tendencies, and other behavioral health conditions identified among members described in subsection (a) in order to determine which such members are in need of additional care and treatment for such health conditions.

(c) ELEMENTS.—(1) The mental health assessments provided pursuant to this section shall—

(A) be performed by personnel trained and certified to perform such assessments and may be performed—

(i) by licensed mental health professionals if such professionals are available and the use of such professionals for the assessments would not impair the capacity of such professionals to perform higher priority tasks;

(ii) by personnel in deployed units whose responsibilities include providing unit health care services if such personnel are available and the use of such personnel for the assessments would not impair the capacity of such personnel to perform higher priority tasks; and

(iii) by personnel at private facilities in accordance with section 1074(c) of this title;

(B) include a person-to-person dialogue between members described in subsection (a) and the professionals or personnel described by subparagraph (A), as applicable, on such matters as the Secretary shall specify in order that the assessments achieve the purpose specified in subsection (b) for such assessments;

(C) be conducted in a private setting to foster trust and openness in discussing sensitive health concerns;

(D) be provided in a consistent manner across the military departments; and

(E) include a review of the health records of the member that are related to each previous deployment of the member or other relevant activities of the member while serving in the armed forces, as determined by the Secretary.

(2) The Secretary may treat periodic health assessments and other person-to-person assessments that are provided to members of the armed forces, including examinations under section 1074f of this title, as meeting the requirements for mental health assessments required under this section if the Secretary determines that such assessments and person-to-person assessments meet the requirements for mental health assessments established by this section.

(d) CESSATION OF ASSESSMENTS.—No mental health assessment is required to be provided to an individual under subparagraph (C) or (D) of subsection (a)(1) after the individual's discharge or release from the armed forces.

(e) SHARING OF INFORMATION.—(1) The Secretary of Defense shall share with the Secretary of Veterans Affairs such information on members of the armed forces that is derived from confidential mental health assessments, including mental health assessments provided pursuant to this section and section 1074n of this title and health assessments and other person-to-person assessments provided before the date of the enactment of this section, as the Secretary of Defense and the Secretary of Veterans Affairs jointly consider appropriate to ensure continuity of mental health care and treatment of members of the armed forces during the transition from health care and treatment provided by the Department of Defense to health care and treatment provided by the Department of Veterans Affairs.

(2) Any sharing of information under paragraph (1) shall occur pursuant to a protocol jointly established by the Secretary of Defense and the Secretary of Veterans Affairs for purposes of this subsection. Any such protocol shall be consistent with the following:

(A) Applicable provisions of the Wounded Warrior Act (title XVI of Public Law 110–181; 10 U.S.C. 1071 note), including section 1614 of such Act (122 Stat. 443; 10 U.S.C. 1071 note).

(B) Section 1720F of title 38.

(3) Before each mental health assessment is conducted under subsection (a), the Secretary of Defense shall ensure that the member is notified of the sharing of information with the Secretary of Veterans Affairs under this subsection.

(f) REGULATIONS.—(1) The Secretary of Defense, in consultation with the other administering Secretaries, shall prescribe regulations for the administration of this section.

(2) Not later than 270 days after the date of the issuance of the regulations prescribed under paragraph (1), the Secretary shall notify the congressional defense committees of the implementation of the regulations by the military departments.

(Added Pub. L. 112–81, div. A, title VII, §702(a)(1), Dec. 31, 2011, 125 Stat. 1469; amended Pub. L. 112–239, div. A, title VII, §703, Jan. 2, 2013, 126 Stat. 1800; Pub. L. 113–291, div. A, title VII, §701(a)(5), (b), title X, §1071(f)(13), Dec. 19, 2014, 128 Stat. 3409, 3510; Pub. L. 115–232, div. A, title VII, §701, Aug. 13, 2018, 132 Stat. 1804; Pub. L. 116–92, div. A, title VII, §706(a)–(c), Dec. 20, 2019, 133 Stat. 1440, 1441.)

REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsec. (e)(1), is the date of enactment of Pub. L. 112–81, which was approved Dec. 31, 2011.

AMENDMENTS

2019—Subsec. (a)(1)(B). Pub. L. 116–92, §706(c), substituted "Once" for "Until January 1, 2019, once".

Subsec. (a)(1)(C), (D). Pub. L. 116–92, §706(a), added subpars. (C) and (D) and struck out former subpars. (C) and (D) which read as follows:

"(C) Subject to subsection (d), once during the period beginning 90 days after the date of redeployment from the contingency operation and ending 180 days after such redeployment date.

"(D) Subject to subsection (d), not later than once during each of—

"(i) the period beginning 180 days after the date of redeployment from the contingency operation and ending 18 months after such redeployment date; and

"(ii) the period beginning 18 months after such redeployment date and ending 30 months after such redeployment date."

Subsec. (a)(2), (3). Pub. L. 116–92, §706(b), added pars. (2) and (3) and struck out former par. (2) which read as follows: "A mental health assessment is not required for a member of the armed forces under subparagraphs (C) and (D) of paragraph (1) if the Secretary determines that—

"(A) the member was not subjected or exposed to operational risk factors during deployment in the contingency operation concerned; or

"(B) providing such assessment to the member during the time periods under such subparagraphs would remove the member from forward deployment or put members or operational objectives at risk."

2018—Subsec. (a)(1)(C). Pub. L. 115–232, §701(1), substituted "Subject to subsection (d), once" for "Once".

Subsec. (d). Pub. L. 115–232, §701(2), which directed substitution of "subparagraph (C) or (D) of subsection (a)(1)" for "subsection (a)(1)(D)", was executed by making the substitution for "subsection (a)(1)(C)" to reflect the probable intent of Congress.

2014—Subsec. (a)(1)(B) to (D). Pub. L. 113–291, §701(b)(1)(A), added subpar. (B) and redesignated former subpars. (B) and (C) as (C) and (D), respectively.

Subsec. (a)(2). Pub. L. 113–291, §1071(f)(13), which directed substitution of "subparagraphs" for "subparagraph" in introductory provisions, could not be executed because of the prior amendment by Pub. L. 113–291, §701(b)(2). See below.

Pub. L. 113–291, §701(b)(2), substituted "subparagraphs (C) and (D)" for "subparagraph (B) and (C)" in introductory provisions.

Subsec. (c)(1)(A)(ii), (iii). Pub. L. 113–291, §701(b)(1)(B), added cl. (ii) and redesignated former cl. (ii) as (iii).

Subsec. (e)(1). Pub. L. 113–291, §701(a)(5), inserted "and section 1074n of this title" after "pursuant to this section".

2013—Subsec. (a)(1)(C)(i). Pub. L. 112–239 substituted "18 months" for "one year".

EFFECTIVE DATE OF 2019 AMENDMENT

Pub. L. 116–92, div. A, title VII, §706(d), Dec. 20, 2019, 133 Stat. 1441, provided that: "The amendments made by subsections (a) and (b) [amending this section] shall apply with respect to a date of redeployment that is on or after January 1, 2020."

REGULATIONS

Pub. L. 112–81, div. A, title VII, §702(a)(3), Dec. 31, 2011, 125 Stat. 1471, provided that: "The Secretary of

Defense shall prescribe an interim final rule with respect to the amendment made by paragraph (1) [enacting this section], effective not later than 90 days after the date of the enactment of this Act [Dec. 31, 2011].''

§ 1074n. Annual mental health assessments for members of the armed forces

(a) MENTAL HEALTH ASSESSMENTS.—Subject to subsection (c), not less frequently than once each calendar year (and before separation from active duty pursuant to section 1145(a)(5)(A) of this title), the Secretary of Defense shall provide a person-to-person mental health assessment for—

(1) each member of a regular component of the armed forces; and

(2) each member of the Selected Reserve of an armed force.

(b) ELEMENTS.—The mental health assessments provided pursuant to this section shall—

(1) be conducted in accordance with the requirements of subsection (c)(1) of section 1074m of this title with respect to a mental health assessment provided pursuant to such section; and

(2) include a review of the health records of the member that are related to each previous health assessment or other relevant activities of the member while serving in the armed forces, as determined by the Secretary.

(c) SUFFICIENCY OF OTHER MENTAL HEALTH ASSESSMENTS.—(1) The Secretary is not required to provide a mental health assessment pursuant to this section to an individual in a calendar year in which the individual has received a mental health assessment pursuant to section 1074m of this title.

(2) The Secretary may treat periodic health assessments and other person-to-person assessments that are provided to members of the armed forces, including examinations under section 1074f of this title, as meeting the requirements for mental health assessments required under this section if the Secretary determines that such assessments and person-to-person assessments meet the requirements for mental health assessments established by this section.

(d) PRIVACY MATTERS.—Any medical or other personal information obtained under this section shall be protected from disclosure or misuse in accordance with the laws on privacy applicable to such information.

(e) REGULATIONS.—The Secretary of Defense shall, in consultation with the other administering Secretaries, prescribe regulations for the administration of this section.

(Added Pub. L. 113–291, div. A, title VII, § 701(a)(1), Dec. 19, 2014, 128 Stat. 3408; amended Pub. L. 115–91, div. A, title VII, § 706(b), Dec. 12, 2017, 131 Stat. 1436.)

AMENDMENTS

2017—Subsec. (a). Pub. L. 115–91 inserted ''(and before separation from active duty pursuant to section 1145(a)(5)(A) of this title)'' after ''each calendar year'' in introductory provisions.

IMPLEMENTATION OF REGULATIONS

Pub. L. 113–291, div. A, title VII, § 701(a)(3), Dec. 19, 2014, 128 Stat. 3409, provided that: ''Not later than 180 days after the date of the issuance of the regulations prescribed under section 1074n(e) of title 10, United States Code, as added by paragraph (1), the Secretary of Defense shall implement such regulations.''

§ 1074*o*. Provision of hyperbaric oxygen therapy for certain members

(a) IN GENERAL.—The Secretary may furnish hyperbaric oxygen therapy available at a military medical treatment facility to a covered member if such therapy is prescribed by a physician to treat post-traumatic stress disorder or traumatic brain injury.

(b) COVERED MEMBER DEFINED.—In this section, the term ''covered member'' means a member of the armed forces who is—

(1) serving on active duty; and

(2) diagnosed with post-traumatic stress disorder or traumatic brain injury.

(Added Pub. L. 115–91, div. A, title VII, § 703(a)(1), Dec. 12, 2017, 131 Stat. 1435.)

EFFECTIVE DATE

Pub. L. 115–91, div. A, title VII, § 703(b), Dec. 12, 2017, 131 Stat. 1435, provided that: ''The amendments made by subsection (a) [enacting this section] shall take effect 90 days after the date of the enactment of this Act [Dec. 12, 2017].''

§ 1075. TRICARE Select

(a) ESTABLISHMENT.—(1) Not later than January 1, 2018, the Secretary of Defense shall establish a self-managed, preferred-provider network option under the TRICARE program. Such option shall be known as ''TRICARE Select''.

(2) The Secretary shall establish TRICARE Select in all areas. Under TRICARE Select, eligible beneficiaries will not have restrictions on the freedom of choice of the beneficiary with respect to health care providers.

(b) ENROLLMENT ELIGIBILITY.—(1) The beneficiary categories for purposes of eligibility to enroll in TRICARE Select and cost-sharing requirements applicable to such category are as follows:

(A) An ''active-duty family member'' category that consists of beneficiaries who are covered by section 1079 of this title (as dependents of active duty members).

(B) A ''retired'' category that consists of beneficiaries covered by subsection (c) of section 1086 of this title, other than Medicare-eligible beneficiaries described in subsection (d)(2) of such section.

(C) A ''reserve and young adult'' category that consists of beneficiaries who are covered by—

(i) section 1076d of this title;

(ii) section 1076e; or

(iii) section 1110b.

(2) A covered beneficiary who elects to participate in TRICARE Select shall enroll in such option under section 1099 of this title.

(c) COST-SHARING REQUIREMENTS.—The cost-sharing requirements under TRICARE Select are as follows:

(1) With respect to beneficiaries in the active-duty family member category or the retired category by reason of being a member or former member of the uniformed services who

originally enlists or is appointed in the uniformed services on or after January 1, 2018, or by reason of being a dependent of such a member, the cost-sharing requirements shall be calculated pursuant to subsection (d)(1).

(2)(A) Except as provided by subsection (e), with respect to beneficiaries described in subparagraph (B) in the active-duty family member category or the retired category, the cost-sharing requirements shall be calculated as if the beneficiary were enrolled in TRICARE Extra or TRICARE Standard as if TRICARE Extra or TRICARE Standard, as the case may be, were still being carried out by the Secretary.

(B) Beneficiaries described in this subparagraph are beneficiaries who are eligible to enroll in the TRICARE program by reason of being a member or former member of the uniformed services who originally enlists or is appointed in the uniformed services before January 1, 2018, or by reason of being a dependent of such a member.

(3) With respect to beneficiaries in the reserve and young adult category, the cost-sharing requirements shall be calculated pursuant to subsection (d)(1) as if the beneficiary were in the active-duty family member category or the retired category, as applicable, except that the premiums calculated pursuant to section 1076d, 1076e, or 1110b of this title, as the case may be, shall apply instead of any enrollment fee required under this section.

(d) COST-SHARING AMOUNTS FOR CERTAIN BENEFICIARIES.—(1) Beneficiaries described in subsection (c)(1) enrolled in TRICARE Select shall be subject to cost-sharing requirements in accordance with the amounts and percentages under the following table during calendar year 2018 and as such amounts are adjusted under paragraph (2) for subsequent years:

TRICARE Select	**Active-Duty Family Member (Individual/Family)**	**Retired (Individual/Family)**
Annual Enrollment	$0	$450 / $900
Annual deductible	E4 & below: $50 / $100 E5 & above: $150 / $300	$150 / $300 Network $300 / $600 out of network
Annual catastrophic cap	$1,000	$3,500
Outpatient visit civilian network	$15 primary care $25 specialty care Out of network: 20%	$25 primary care $40 specialty care 25% out of network
ER visit civilian network	$40 network 20% out of network	$80 network 25% out of network
Urgent care civilian network	$20 network 20% out of network	$40 network 25% out of network
Ambulatory surgery civilian network	$25 network 20% out of network	$95 network 25% out of network
Ground ambulance civilian network	$15	$60
Durable medical equipment civilian network	10% of negotiated fee	20% network
Inpatient visit civilian network	$60 per network admission 20% out of network	$175 per admission network 25% out of network
Inpatient skilled nursing/rehab civilian	$25 per day network $50 per day out of network	$50 per day network Lesser of $300 per day or 20% of billed charges out of network

(2) Each dollar amount expressed as a fixed dollar amount in the table set forth in paragraph (1), and the amounts specified under paragraphs (1) and (2) of subsection (e), shall be annually indexed to the amount by which retired pay is increased under section 1401a of this title, rounded to the next lower multiple of $1. The remaining amount above such multiple of $1 shall be carried over to, and accumulated with, the amount of the increase for the subsequent year or years and made when the aggregate amount of increases carried over under this clause for a year is $1 or more.

(3) Enrollment fees, deductible amounts, and catastrophic caps under this section are on a calendar-year basis.

(4) The cost-sharing requirements applicable to services not specifically addressed in the

table set forth in paragraph (1) shall be established by the Secretary.

(e) EXCEPTIONS TO CERTAIN COST-SHARING AMOUNTS FOR CERTAIN BENEFICIARIES ELIGIBLE PRIOR TO 2018.—(1) Subject to paragraph (4), and in accordance with subsection (d)(2), the Secretary shall establish an annual enrollment fee for beneficiaries described in subsection (c)(2)(B) in the retired category who enroll in TRICARE Select (other than such beneficiaries covered by paragraph (3)). Such enrollment fee shall be $150 for an individual and $300 for a family.

(2) For the calendar year for which the Secretary first establishes the annual enrollment fee under paragraph (1), the Secretary shall adjust the catastrophic cap amount to be $3,500 for beneficiaries described in subsection (c)(2)(B) in the retired category who are enrolled in TRICARE Select (other than such beneficiaries covered by paragraph (3)).

(3) The enrollment fee established pursuant to paragraph (1) and the catastrophic cap adjusted under paragraph (2) for beneficiaries described in subsection (c)(2)(B) in the retired category shall not apply with respect to the following beneficiaries:

(A) Retired members and the family members of such members covered by paragraph (1) of section 1086(c) of this title by reason of being retired under chapter 61 of this title or being a dependent of such a member.

(B) Survivors covered by paragraph (2) of such section 1086(c).

(4) The Secretary may not establish an annual enrollment fee under paragraph (1) until 90 days has elapsed following the date on which the Comptroller General of the United States is required to submit the review under paragraph (5).

(5) Not later than February 1, 2020, the Comptroller General of the United States shall submit to the Committees on Armed Services of the House of Representatives and the Senate a review of the following:

(A) Whether health care coverage for covered beneficiaries has changed since the enactment of this section.

(B) Whether covered beneficiaries are able to obtain appointments for health care according to the access standards established by the Secretary of Defense.

(C) The percent of network providers that accept new patients under the TRICARE program.

(D) The satisfaction of beneficiaries under TRICARE Select.

(f) EXCEPTION TO COST-SHARING REQUIREMENTS FOR TRICARE FOR LIFE BENEFICIARIES.—A beneficiary enrolled in TRICARE for Life is subject to cost-sharing requirements pursuant to section 1086(d)(3) of this title and calculated as if the beneficiary were enrolled in TRICARE Standard as if TRICARE Standard were still being carried out by the Secretary.

(g) CONSTRUCTION.—Nothing in this section may be construed as affecting the availability of TRICARE Prime and TRICARE for Life or the cost-sharing requirements for TRICARE for Life under section 1086(d)(3) of this title.

(h) DEFINITIONS.—In this section:

(1) The terms ''active-duty family member category'', ''retired category'', and ''reserve and young adult category'' mean the respective categories of TRICARE Select enrollment described in subsection (b).

(2) The term ''network'' means—

(A) with respect to health care services, such services provided to beneficiaries by TRICARE-authorized civilian health care providers who have entered into a contract under this chapter with a contractor under the TRICARE program; and

(B) with respect to providers, civilian health care providers who have agreed to accept a pre-negotiated rate as the total charge for services provided by the provider and to file claims for beneficiaries.

(3) The term ''out-of-network'' means, with respect to health care services, such services provided by TRICARE-authorized civilian providers who have not entered into a contract under this chapter with a contractor under the TRICARE program.

(Added Pub. L. 114–328, div. A, title VII, § 701(a)(1), Dec. 23, 2016, 130 Stat. 2180; amended Pub. L. 115–91, div. A, title VII, § 739(b)(1), Dec. 12, 2017, 131 Stat. 1446; Pub. L. 116–92, div. A, title XVII, § 1731(a)(23), Dec. 20, 2019, 133 Stat. 1813.)

PRIOR PROVISIONS

A prior section 1075, added Pub. L. 85–861, § 1(25)(B), Sept. 2, 1958, 72 Stat. 1447; amended Pub. L. 97–22, § 10(b)(2), July 10, 1981, 95 Stat. 137; Pub. L. 108–87, title VIII, § 8146(a), Sept. 30, 2003, 117 Stat. 1109; Pub. L. 108–106, title I, § 1112(a), Nov. 6, 2003, 117 Stat. 1215, related to subsistence charges for officers and certain enlisted members, prior to repeal by Pub. L. 108–375, div. A, title VI, § 607(a)(1), Oct. 28, 2004, 118 Stat. 1946.

Another prior section 1075, act Aug. 10, 1956, ch. 1041, 70A Stat. 82, related to post card requests for absentee ballots, and for printing and transmission thereof, prior to repeal by Pub. L. 85–861, § 36B(5), Sept. 2, 1958, 72 Stat. 1570, as superseded by the Federal Voting Assistance Act of 1955 which is classified to subchapter I–D (§ 1973cc et seq.) of chapter 20 of Title 42, The Public Health and Welfare.

AMENDMENTS

2019—Subsec. (d)(1). Pub. L. 116–92 substituted ''25% out of network'' for ''25% of out of network'' in third column of table row relating to Outpatient visit civilian network.

2017—Subsec. (d)(1). Pub. L. 115–91, § 739(b)(1)(B), substituted ''Ground ambulance civilian network'' for ''Ambulance civilian network'' in first column of table.

Subsec. (d)(4). Pub. L. 115–91, § 739(b)(1)(A), added par. (4).

EFFECTIVE DATE

Section applicable with respect to the provision of health care under the TRICARE program beginning on Jan. 1, 2018, see section 701(k) of Pub. L. 114–328, set out as an Effective Date of 2016 Amendment note under section 1072 of this title.

PILOT PROGRAM ON HEALTH CARE ASSISTANCE SYSTEM

Pub. L. 115–91, div. A, title VII, § 731, Dec. 12, 2017, 131 Stat. 1441, provided that:

''(a) PILOT PROGRAM.—The Secretary of Defense shall carry out a pilot program to provide a health care assistance service to certain covered beneficiaries enrolled in TRICARE Select using purchased care to improve the health outcomes and patient experience for covered beneficiaries with complex medical conditions.

''(b) ELEMENTS.—The pilot program under subsection (a) may include the following elements:

''(1) Assisting beneficiaries with complex medical conditions to understand and use the health benefits under the TRICARE program.

"(2) Supporting such beneficiaries in accessing and navigating the purchased care health care delivery system.

"(3) Providing such beneficiaries with information to allow the beneficiaries to make informed decisions regarding the quality, safety, and cost of available health care services.

"(4) Improving the health outcomes for such beneficiaries.

"(c) DURATION.—The Secretary shall carry out the pilot program for an amount of time determined appropriate by the Secretary during the five-year period beginning 180 days after the date of the enactment of this Act [Dec. 12, 2017].

"(d) REPORT.—Not later than January 1, 2021, the Secretary shall submit to the Committees on Armed Services of the House of Representatives and the Senate a report containing an evaluation of the success of the pilot program under subsection (a), including—

"(1) an analysis of the implementation of the elements under subsection (b); and

"(2) the feasibility of incorporating such elements into TRICARE support contracts.

"(e) DEFINITIONS.—In this section, the terms 'covered beneficiary', 'TRICARE program', and 'TRICARE Select' have the meaning given those terms in section 1072 of title 10, United States Code."

§1075a. TRICARE Prime: cost sharing

(a) COST-SHARING REQUIREMENTS.—The cost-sharing requirements under TRICARE Prime are as follows:

(1) There are no cost-sharing requirements for beneficiaries who are covered by section 1074(a) of this title.

(2) With respect to beneficiaries in the active-duty family member category or the retired category (as described in section 1075(b)(1) of this title) by reason of being a member or former member of the uniformed services who originally enlists or is appointed in the uniformed services on or after January 1, 2018, or by reason of being a dependent of such a member, the cost-sharing requirements shall be calculated pursuant to subsection (b)(1).

(3)(A) With respect to beneficiaries described in subparagraph (B) in the active-duty family member category or the retired category (as described in section 1075(b)(1) of this title), the cost-sharing requirements shall be calculated in accordance with the other provisions of this chapter without regard to subsection (b).

(B) Beneficiaries described in this subparagraph are beneficiaries who are eligible to enroll in the TRICARE program by reason of being a member or former member of the uniformed services who originally enlists or is appointed in the uniformed services before January 1, 2018, or by reason of being a dependent of such a member.

(b) COST-SHARING AMOUNTS.—(1) Beneficiaries described in subsection (a)(2) enrolled in TRICARE Prime shall be subject to cost-sharing requirements in accordance with the amounts and percentages under the following table during calendar year 2018 and as such amounts are adjusted under paragraph (2) for subsequent years:

TRICARE Prime	Active-Duty Family Member (Individual/Family)	Retired (Individual/Family)
Annual Enrollment	$0	$350 / $700
Annual deductible	No	No
Annual catastrophic cap	$1,000	$3,500
Outpatient visit civilian network	$0	$20 primary care
		$30 specialty care
ER visit civilian network	$0	$60 network
Urgent care civilian network	$0	$30 network
Ambulatory surgery civilian network	$0	$60 network
Ground ambulance civilian network	$0	$40
Durable medical equipment civilian network	$0	20% of negotiated fee, network
Inpatient visit civilian network	$0	$150 per admission
Inpatient skilled nursing/rehab civilian	$0	$30 per day network

(2) Each dollar amount expressed as a fixed dollar amount in the table set forth in paragraph (1) shall be annually indexed to the amount by which retired pay is increased under section 1401a of this title, rounded to the next lower multiple of $1. The remaining amount above such multiple of $1 shall be carried over to, and accumulated with, the amount of the increase for the subsequent year or years and made when the aggregate amount of increases carried over under this clause for a year is $1 or more.

(3) Enrollment fees, deductible amounts, and catastrophic caps under this section are on a calendar-year basis.

(4) The cost-sharing requirements applicable to services not specifically addressed in the table set forth in paragraph (1) shall be established by the Secretary.

(c) SPECIAL RULE FOR AMOUNTS WITHOUT REFERRALS.—Notwithstanding subsection (b)(1), the cost-sharing amount for a beneficiary enrolled in TRICARE Prime who does not obtain a referral for care under paragraph (1) of section 1095f(a) of this title (or a waiver pursuant to paragraph (2) of such section for such care) shall be an amount equal to 50 percent of the allowed point-of-service charge for such care.

(Added Pub. L. 114–328, div. A, title VII, § 701(b)(1), Dec. 23, 2016, 130 Stat. 2184; amended Pub. L. 115–91, div. A, title VII, § 739(b)(2), (e)(2), Dec. 12, 2017, 131 Stat. 1447.)

AMENDMENTS

2017—Subsec. (b)(1). Pub. L. 115–91, § 739(b)(2)(B), which directed amendment of ''Paragraph (1) of such section'' by substituting ''Ground ambulance civilian network'' for ''Ambulance civilian network'' in first column of table, was executed by making the substitution in par. (1) of subsec. (b) of this section, to reflect the probable intent of Congress.

Subsec. (b)(4). Pub. L. 115–91, § 739(b)(2)(A), added par. (4).

Subsec. (c). Pub. L. 115–91, § 739(e)(2), substituted ''section 1095f(a)'' for ''section 1075f(a)''.

EFFECTIVE DATE

Section applicable with respect to the provision of health care under the TRICARE program beginning on Jan. 1, 2018, see section 701(k) of Pub. L. 114–328, set out as an Effective Date of 2016 Amendment note under section 1072 of this title.

§ 1076. Medical and dental care for dependents: general rule

(a)(1) A dependent described in paragraph (2) is entitled, upon request, to the medical and dental care prescribed by section 1077 of this title in facilities of the uniformed services, subject to the availability of space and facilities and the capabilities of the medical and dental staff.

(2) A dependent referred to in paragraph (1) is a dependent of a member of a uniformed service described in one of the following subparagraphs:

(A) A member who is on active duty for a period of more than 30 days or died while on that duty.

(B) A member who died from an injury, illness, or disease incurred or aggravated—

(i) while the member was on active duty under a call or order to active duty of 30 days or less, on active duty for training, or on inactive-duty training; or

(ii) while the member was traveling to or from the place at which the member was to perform, or had performed, such active duty, active duty for training, or inactive-duty training.

(C) A member who died from an injury, illness, or disease incurred or aggravated in the line of duty while the member remained overnight immediately before the commencement of inactive-duty training, or while the member remained overnight between successive periods of inactive-duty training, at or in the vicinity of the site of the inactive-duty training.

(D) A member on active duty who is entitled to benefits under subsection (e) of section 1074a of this title by reason of paragraph (1), (2), or (3) of subsection (a) of such section.

(E) A member who died from an injury, illness, or disease incurred or aggravated while the member—

(i) was serving on funeral honors duty under section 12503 of this title or section 115 of title 32;

(ii) was traveling to or from the place at which the member was to so serve; or

(iii) remained overnight at or in the vicinity of that place immediately before so serving, if the place is outside reasonable commuting distance from the member's residence.

(b) Under regulations to be prescribed jointly by the administering Secretaries, a dependent of a member or former member—

(1) who is, or (if deceased) was at the time of his death, entitled to retired or retainer pay or equivalent pay; or

(2) who died before attaining age 60 and at the time of his death would have been eligible for retired pay under chapter 1223 of this title (or under chapter 67 of this title as in effect before December 1, 1994) but for the fact that he was under 60 years of age;

may, upon request, be given the medical and dental care prescribed by section 1077 of this title in facilities of the uniformed services, subject to the availability of space and facilities and the capabilities of the medical and dental staff, except that a dependent of a member or former member described in paragraph (2) may not be given such medical or dental care until the date on which such member or former member would have attained age 60.

(c) A determination by the medical or dental officer in charge, or the contract surgeon in charge, or his designee, as to the availability of space and facilities and to the capabilities of the medical and dental staff is conclusive. Care under this section may not be permitted to interfere with the primary mission of those facilities.

(d) To utilize more effectively the medical and dental facilities of the uniformed services, the administering Secretaries shall prescribe joint regulations to assure that dependents entitled to medical or dental care under this section will not be denied equal opportunity for that care because the facility concerned is that of a uniformed service other than that of the member.

(e)(1) Subject to paragraph (3), the administering Secretary shall furnish an abused dependent of a former member of a uniformed service described in paragraph (4), during that period that the abused dependent is in receipt of transitional compensation under section 1059 of this title, with medical and dental care, including mental health services, in facilities of the uniformed services in accordance with the same eligibility and benefits as were applicable for that abused dependent during the period of active service of the former member.

(2) Subject to paragraph (3), upon request of any dependent of a former member of a uniformed service punished for an abuse described in paragraph (4), the administering Secretary for such uniformed service may furnish medical

care in facilities of the uniformed services to the dependent for the treatment of any adverse health condition resulting from such dependent's knowledge of (A) the abuse, or (B) any injury or illness suffered by the abused person as a result of such abuse.

(3) Medical and dental care furnished to a dependent of a former member of the uniformed services in facilities of the uniformed services under paragraph (1) or (2)—

(A) shall be limited to the health care prescribed by section 1077 of this title; and

(B) shall be subject to the availability of space and facilities and the capabilities of the medical and dental staff.

(4)(A) A former member of a uniformed service referred to in paragraph (1) is a member who—

(i) received a dishonorable or bad-conduct discharge or was dismissed from a uniformed service as a result of a court-martial conviction for an offense, under either military or civil law, involving abuse of a dependent of the member; or

(ii) was administratively discharged from a uniformed service as a result of such an offense.

(B) A determination of whether an offense involved abuse of a dependent of the member shall be made in accordance with regulations prescribed by the administering Secretary for such uniformed service.

(f)(1) The administering Secretaries shall furnish an eligible dependent a physical examination that is required by a school in connection with the enrollment of the dependent as a student in that school.

(2) A dependent is eligible for a physical examination under paragraph (1) if the dependent—

(A) is entitled to receive medical care under subsection (a) or is authorized to receive medical care under subsection (b); and

(B) is at least 5 years of age and less than 12 years of age.

(3) Nothing in paragraph (2) may be construed to prohibit the furnishing of a school-required physical examination to any dependent who, except for not satisfying the age requirement under that paragraph, would otherwise be eligible for a physical examination required to be furnished under this subsection.

(Added Pub. L. 85–861, § 1(25)(B), Sept. 2, 1958, 72 Stat. 1447; amended Pub. L. 89–614, § 2(3), Sept. 30, 1966, 80 Stat. 862; Pub. L. 95–397, title III, § 301, Sept. 30, 1978, 92 Stat. 849; Pub. L. 96–513, title V, § 511(36), Dec. 12, 1980, 94 Stat. 2923; Pub. L. 97–252, title X, § 1004(b), Sept. 8, 1982, 96 Stat. 737; Pub. L. 98–557, § 19(5), Oct. 30, 1984, 98 Stat. 2869; Pub. L. 99–145, title VI, § 652(a), Nov. 8, 1985, 99 Stat. 656; Pub. L. 99–661, div. A, title VI, §§ 604(f)(1)(C), 652(c), Nov. 14, 1986, 100 Stat. 3877, 3889; Pub. L. 100–456, div. A, title VI, § 651(a), Sept. 29, 1988, 102 Stat. 1990; Pub. L. 101–189, div. A, title VI, § 653(a)(4), title VII, § 731(c)(1), Nov. 29, 1989, 103 Stat. 1462, 1482; Pub. L. 103–337, div. A, title VII, §§ 704(a), (b), title XVI, § 1671(c)(7)(A), Oct. 5, 1994, 108 Stat. 2798, 2799, 3014; Pub. L. 104–106, div. A, title VII, § 703, title XV, § 1501(c)(11), Feb. 10, 1996, 110 Stat. 372, 499; Pub. L. 105–85, div. A, title V, § 513(b), title X, § 1073(d)(1)(D), Nov. 18, 1997, 111 Stat. 1730, 1905; Pub. L. 105–261, div. A, title VII, § 732, Oct. 17, 1998, 112 Stat. 2071; Pub. L. 106–65, div. A, title V, § 578(i)(2), title VII, § 705(c), Oct. 5, 1999, 113 Stat. 629, 684; Pub. L. 106–398, § 1 [[div. A], title VII, § 703], Oct. 30, 2000, 114 Stat. 1654, 1654A–174; Pub. L. 107–107, div. A, title V, § 513(a), Dec. 28, 2001, 115 Stat. 1093.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1076(a)	37:402(a)(2) (as applicable to 37:403(a)). 37:403(a) (1st sentence).	June 7, 1956, ch. 374, §§ 102(a)(2) (as applicable to § 103(a)), (3) (as applicable to § 301(c)), 103(a), (b), 301(c), 70 Stat. 250, 251, 253.
1076(b)	37:402(a)(3) (as applicable to 37:421(c)). 37:421(c) (less last 28 words).	
1076(c)	37:403(a) (less 1st sentence). 37:421(c) (last 28 words).	
1076(d)	37:403(b).	

Appropriate references are made to dental care throughout the section to reflect the fact that in certain limited situations dependents are entitled to dental care under 37:403(h)(4), restated as section 1077 of this title.

In subsection (a), the words "appointed, enlisted, inducted or called, ordered or conscripted in a uniformed service" are omitted as surplusage, since it does not matter how a member became a member. The words "active duty for a period of more than 30 days" are substituted for the words "active duty or active duty for training pursuant to a call or order that does not specify a period of thirty days or less" to reflect section 101(22) and (23) of this title.

In subsection (b), the words "active duty (other than for training)" are substituted for the words "active duty as defined in section 901(b) of title 50" to reflect section 101(22) of this title. The words "retirement" and "retirement pay" are omitted as surplusage.

In subsection (c), 37:421(c) (last 28 words) is omitted as unnecessary since this subsection and section 1077 of this title are written so as to apply to subsection (b) as well as subsection (a).

In subsection (d), the words "because the facility concerned is that of a uniformed service other than that of the member" is substituted for the words "because of the service affiliation of the service member".

REFERENCES IN TEXT

Chapter 67 of this title as in effect before December 1, 1994, referred to in subsec. (b)(2), means chapter 67 (§ 1331 et seq.) of this title prior to its transfer to part II of subtitle E of this title, its renumbering as chapter 1223, and its general revision by section 1662(j)(1) of Pub. L. 103–337. A new chapter 67 (§ 1331) of this title was added by section 1662(j)(7) of Pub. L. 103–337.

PRIOR PROVISIONS

A prior section 1076, act Aug. 10, 1956, ch. 1041, 70A Stat. 84, related to use of post cards, waiver of registration, and voting by discharged persons, prior to repeal by Pub. L. 85–861, § 36B(5), Sept. 2, 1958, 72 Stat. 1570, as superseded by the Federal Voting Assistance Act of 1955 which is classified to subchapter I–D (§ 1973cc et seq.) of chapter 20 of Title 42, The Public Health and Welfare.

AMENDMENTS

2001—Subsec. (a)(2)(C). Pub. L. 107–107 struck out ", if the site was outside reasonable commuting distance from the member's residence" before period at end.

2000—Subsec. (f). Pub. L. 106–398 added subsec. (f).

1999—Subsec. (a)(2)(D). Pub. L. 106–65, § 705(c), amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: "A member who incurred or aggravated an injury, illness, or disease in the line of duty while serving on active duty for a period of 30 days or

less (or while traveling to or from the place of such duty) and the member's orders are modified or extended, while the member is being treated for (or recovering from) the injury, illness, or disease, so as to result in active duty for a period of more than 30 days. However, this subparagraph entitles the dependent to medical and dental care only while the member remains on active duty.''

Subsec. (a)(2)(E). Pub. L. 106–65, § 578(i)(2), added subpar. (E).

1998—Subsec. (e)(1). Pub. L. 105–261, § 732(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''Subject to paragraph (3), if an abused dependent of a former member of a uniformed service described in paragraph (4) needs medical or dental care for an injury or illness resulting from abuse by the member, the administering Secretary may, upon request of the abused dependent, furnish medical or dental care to the dependent for the treatment of such injury or illness in facilities of the uniformed services.''

Subsec. (e)(3). Pub. L. 105–261, § 732(2), inserted ''and'' at end of subpar. (A), substituted a period for ''; and'' at end of subpar. (B), and struck out subpar. (C) which read as follows: ''shall terminate one year after the date on which the former member was discharged or dismissed from a uniformed service as described in paragraph (4).''

1997—Subsec. (a)(2). Pub. L. 105–85, § 513(b), added par. (2) and struck out former par. (2) which read as follows: ''A dependent referred to in paragraph (1) is a dependent of a member of a uniformed service—

''(A) who is on active duty for a period of more than 30 days or who died while on that duty; or

''(B) who died from an injury, illness, or disease incurred or aggravated—

''(i) while on active duty under a call or order to active duty of 30 days or less, on active duty for training, or on inactive duty training; or

''(ii) while traveling to or from the place at which the member is to perform, or has performed, such active duty, active duty for training, or inactive duty training.''

Subsec. (b). Pub. L. 105–85, § 1073(d)(1)(D), made technical correction to directory language of Pub. L. 104–106, § 703(b). See 1996 Amendment note below.

1996—Subsec. (b). Pub. L. 104–106, § 703(b), as amended by Pub. L. 105–85, § 1073(d)(1)(D), in concluding provisions, substituted ''paragraph (2) may'' for ''clause (2) may'' and struck out ''A dependent described in section 1072(2)(F) of this title may be provided medical and dental care pursuant to clause (2) without regard to subclause (B) of such clause.'' after ''age 60.''

Subsec. (b)(2). Pub. L. 104–106, § 703(a), substituted ''death would'' for ''death (A) would'' and struck out '', and (B) had elected to participate in the Survivor Benefit Plan established under subchapter II of chapter 73 of this title'' after ''60 years of age''.

Pub. L. 104–106, § 1501(c)(11), substituted ''before December 1, 1994'' for ''before the effective date of the Reserve Officer Personnel Management Act'' in subpar. (A).

1994—Subsec. (b)(2)(A). Pub. L. 103–337, § 1671(c)(7)(A), substituted ''under chapter 1223 of this title (or under chapter 67 of this title as in effect before the effective date of the Reserve Officer Personnel Management Act)'' for ''under chapter 67 of this title''.

Subsec. (e)(1). Pub. L. 103–337, § 704(a)(1), added par. (1) and struck out former par. (1) which read as follows: ''Subject to paragraph (3), if—

''(A) a member of a uniformed service receives a dishonorable or bad-conduct discharge or is dismissed from a uniformed service as a result of a court-martial conviction for an offense involving abuse of a dependent of the member, as determined in accordance with regulations prescribed by the administering Secretary for such uniformed service; and

''(B) the abused dependent needs medical or dental care for an injury or illness resulting from the abuse, the administering Secretary may, upon request of the abused dependent, furnish medical or dental care to the dependent for the treatment of such injury or illness in facilities of the uniformed services.''

Subsec. (e)(2). Pub. L. 103–337, § 704(b)(1), (2), inserted ''former'' before ''member'' and substituted ''paragraph (4)'' for ''paragraph (1)(A)''.

Subsec. (e)(3). Pub. L. 103–337, § 704(b)(1), (3), inserted ''former'' before ''member'' in introductory provisions and in subpar. (C) and substituted ''was'' for ''is'' and ''paragraph (4)'' for ''paragraph (1)(A)'' in subpar. (C).

Subsec. (e)(4). Pub. L. 103–337, § 704(a)(2), added par. (4).

1989—Subsec. (e)(3)(C). Pub. L. 101–189, § 653(a)(4), substituted ''one year'' for ''1 year''.

Subsec. (f). Pub. L. 101–189, § 731(c)(1), struck out subsec. (f) which read as follows:

''(1) A person described in paragraph (2) shall be considered a dependent for purposes of this section for a period of one year after the date of the person's final decree of divorce, dissolution, or annulment. In addition, if such a person purchases a conversion health policy within the one-year period referred to in the preceding sentence, such person shall be entitled, upon request, to medical and dental care prescribed by section 1077 of this title for a period of one year after the purchase of the policy for any condition of the person that existed on the date on which coverage under the policy begins and for which care is not provided under that policy.

''(2) A person referred to in paragraph (1) is a person who would qualify as a dependent under section 1072(2)(G) but for the fact that the person's final decree of divorce, dissolution, or annulment is dated on or after April 1, 1985.

''(3) In this subsection, the term 'conversion health policy' means a health insurance plan with a private insurer, developed through negotiations between the Secretary of Defense and a private insurer, that is available for purchase by or for the use of persons described in paragraph (2).''

1988—Subsec. (f). Pub. L. 100–456 added subsec. (f).

1986—Subsec. (a)(2)(B). Pub. L. 99–661, § 604(f)(1)(C), inserted reference to disease.

Subsec. (e). Pub. L. 99–661, § 652(c), added subsec. (e).

1985—Subsec. (a). Pub. L. 99–145 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''A dependent of a member of a uniformed service who is on active duty for a period of more than 30 days, or of such a member who died while on that duty, is entitled, upon request, to the medical and dental care prescribed by section 1077 of this title in facilities of the uniformed services, subject to the availability of space and facilities and the capabilities of the medical and dental staff.''

1984—Subsecs. (b), (d). Pub. L. 98–557 substituted reference to administering Secretaries for reference to Secretary of Defense and Secretary of Health and Human Services.

1982—Subsec. (b). Pub. L. 97–252 provided for medical and dental care, for a dependent described in section 1072(2)(F) of this title, pursuant to clause (2) without regard to subclause (B) of such clause.

1980—Subsecs. (b), (d). Pub. L. 96–513 substituted ''Secretary of Health and Human Services'' for ''Secretary of Health, Education, and Welfare''.

1978—Subsec. (b). Pub. L. 95–397 substituted ''Under regulations to be prescribed jointly by the Secretary of Defense and the Secretary of Health, Education, and Welfare, a dependent of a member or former member-'' for ''Under joint regulations to be prescribed by the Secretary of Defense and the Secretary of Health, Education, and Welfare, a dependent of a member or former member who is, or was at the time of his death, entitled to retired or retainer pay, or equivalent pay, may, upon request, be given the medical and dental care prescribed by section 1077 of this title in facilities of the uniformed services, subject to the availability of space and facilities and the capabilities of the medical and dental staff'', added pars. (1), (2), and provisions following par. (2) relating to medical and dental care on request in facilities of the uniformed services subject

to the availability of space, facilities and capabilities of staff, and excepting from such care provision a dependent of a member or former member until such member or former member would have attained age 60.

1966—Subsec. (b). Pub. L. 89–614 struck out provision which excepted from medical and dental care a member or former member who is, or was at the time of his death, entitled to retired pay under chapter 67 of this title and has served less than eight years on active duty (other than for training).

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–85, div. A, title X, § 1073(d)(1), Nov. 18, 1997, 111 Stat. 1904, provided that the amendment made by that section is effective Feb. 10, 1996, and as if included in the National Defense Authorization Act for Fiscal Year 1996, Pub. L. 104–106, as enacted.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–106, div. A, title XV, § 1501(c), Feb. 10, 1996, 110 Stat. 498, provided that the amendment made by that section is effective as of Dec. 1, 1994, and as if included as an amendment made by the Reserve Officer Personnel Management Act, title XVI of Pub. L. 103–337, as originally enacted.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 1671(c)(7)(A) of Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 731(c)(1) of Pub. L. 101–189 applicable to a person referred to in 10 U.S.C. 1072(2)(H) whose decree of divorce, dissolution, or annulment becomes final on or after Nov. 29, 1989, and to a person so referred to whose decree became final during the period from Sept. 29, 1988 to Nov. 28, 1989, as if the amendment had become effective on Sept. 29, 1988, see section 731(d) of Pub. L. 101–189, set out as a note under section 1072 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–456, div. A, title VI, § 651(d), Sept. 29, 1988, 102 Stat. 1990, provided that: ''Section 1076(f) of title 10, United States Code, as added by subsection (a), shall take effect on the date of enactment of this Act [Sept. 29, 1988] or 30 days after the Secretary of Defense first makes available a conversion health policy (as defined in such section), whichever is later. Such section shall apply to persons whose decree of divorce, dissolution, or annulment becomes final after the date of the enactment of this Act.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 604 of Pub. L. 99–661 applicable with respect to persons who, after Nov. 14, 1986, incur or aggravate an injury, illness, or disease or die, see section 604(g) of Pub. L. 99–661, set out as a note under section 1074a of this title.

Pub. L. 99–661, div. A, title VI, § 652(e)(3), Nov. 14, 1986, 100 Stat. 3890, provided that: ''The amendment made by subsection (c) [amending this section] shall apply only with respect to dependents who request medical or dental care on or after the date of the enactment of this Act [Nov. 14, 1986].''

EFFECTIVE DATE OF 1985 AMENDMENT

Pub. L. 99–145, title VI, § 652(c), Nov. 8, 1985, 99 Stat. 657, provided that: ''The amendments made by this section [amending this section and section 1086 of this title] shall apply only with respect to dependents of members of the uniformed services whose deaths occur after September 30, 1985.''

EFFECTIVE DATE OF 1982 AMENDMENT; TRANSITION PROVISIONS

Amendment by Pub. L. 97–252 effective Feb. 1, 1983, and applicable in the case of any former spouse of a member or former member of the uniformed services whether final decree of divorce, dissolution, or annulment of marriage of former spouse and such member or former member is dated before, on, or after Feb. 1, 1983, see section 1006 of Pub. L. 97–252, set out as an Effective Date; Transition Provisions note under section 1408 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–397, title III, § 302, Sept. 30, 1978, 92 Stat. 849, provided that: ''The amendment made by section 301 [amending this section] shall become effective on October 1, 1978, or on the date of the enactment of this Act [Sept. 30, 1978], whichever is later.''

EFFECTIVE DATE OF 1966 AMENDMENT

For effective date of amendment by Pub. L. 89–614, see section 3 of Pub. L. 89–614, set out as a note under section 1071 of this title.

STIPEND FOR MEMBERS OF RESERVE COMPONENTS FOR HEALTH CARE FOR CERTAIN DEPENDENTS

Pub. L. 110–181, div. A, title VII, § 704, Jan. 28, 2008, 122 Stat. 188, provided that: ''The Secretary of Defense may, pursuant to regulations prescribed by the Secretary, pay a stipend to a member of a reserve component of the Armed Forces who is called or ordered to active duty for a period of more than 30 days for purposes of maintaining civilian health care coverage for a dependant whom the Secretary determines to possess a special health care need that would be best met by remaining in the member's civilian health plan. In making such determination, the Secretary shall consider whether—

''(1) the dependent of the member was receiving treatment for the special health care need before the call or order to active duty of the member; and

''(2) the call or order to active duty would result in an interruption in treatment or a change in health care provider for such treatment.''

TRANSITIONAL HEALTH CARE FOR MEMBERS, OR DEPENDENTS OF MEMBERS, UPON RELEASE OF MEMBER FROM ACTIVE DUTY IN CONNECTION WITH OPERATION DESERT STORM

Pub. L. 102–25, title III, § 313, Apr. 6, 1991, 105 Stat. 85, provided that:

''(a) HEALTH CARE PROVIDED.—A member of the Armed Forces described in subsection (b), and the dependents of the member, shall be entitled to receive health care described in subsection (c) upon the release of the member from active duty in connection with Operation Desert Storm until the earlier of—

''(1) 30 days after the date of the release of the member from active duty; or

''(2) the date on which the member and the dependents of the member are covered by a health plan sponsored by an employer.

''(b) ELIGIBLE MEMBER DESCRIBED.—A member of the Armed Forces referred to in subsection (a) is a member who—

''(1) is a member of a reserve component of the Armed Forces and is called or ordered to active duty under chapter 39 of title 10, United States Code, in connection with Operation Desert Storm;

''(2) is involuntarily retained on active duty under section 673c [now 12305] of title 10, United States Code, in connection with Operation Desert Storm; or

''(3) voluntarily agrees to remain on active duty for a period of less than one year in connection with Operation Desert Storm.

''(c) HEALTH CARE DESCRIBED.—The health care referred to in subsection (a) is—

''(1) medical and dental care under section 1076 of title 10, United States Code, in the same manner as

a dependent described in subsection (a)(2) of that section; and

''(2) health benefits contracted under the authority of section 1079(a) of that title and subject to the same rates and conditions as apply to persons covered under that section.

''(d) DEPENDENT DEFINED.—For purposes of this section, the term 'dependent' has the meaning given that term in section 1072(2) of title 10, United States Code.''

DEPENDENT; QUALIFICATION AS; TRANSITION

Pub. L. 100–456, div. A, title VI, §651(c), Sept. 29, 1988, 102 Stat. 1990, provided that: ''Any person who qualified as a dependent under section 645(c) of the Department of Defense Authorization Act, 1985 [Pub. L. 98–525, formerly set out as a note under section 1072 of this title], as in effect before its repeal by subsection (b), shall remain qualified as a dependent as specified in that section and shall become eligible for benefits in accordance with section 1076(f) of title 10, United States Code (as added by subsection (a)), when no longer qualified as a dependent pursuant to such section 645(c).''

§ 1076a. TRICARE dental program

(a) ESTABLISHMENT OF DENTAL PLANS.—The Secretary of Defense may establish, and in the case of the dental plan described in paragraph (1) shall establish, the following voluntary enrollment dental plans:

(1) PLAN FOR SELECTED RESERVE AND INDIVIDUAL READY RESERVE.—A dental insurance plan for members of the Selected Reserve of the Ready Reserve and for members of the Individual Ready Reserve described in subsection 10144(b) of this title.

(2) PLAN FOR OTHER RESERVES.—A dental insurance plan for members of the Individual Ready Reserve not eligible to enroll in the plan established under paragraph (1).

(3) PLAN FOR ACTIVE DUTY DEPENDENTS.—Dental benefits plans for eligible dependents of members of the uniformed services who are on active duty for a period of more than 30 days.

(4) PLAN FOR READY RESERVE DEPENDENTS.—A dental benefits plan for eligible dependents of members of the Ready Reserve of the reserve components who are not on active duty for more than 30 days.

(b) ADMINISTRATION OF PLANS.—The plans established under this section shall be administered under regulations prescribed by the Secretary of Defense in consultation with the other administering Secretaries.

(c) CARE AVAILABLE UNDER PLANS.—Dental plans established under subsection (a) may provide for the following dental care:

(1) Diagnostic, oral examination, and preventive services and palliative emergency care.

(2) Basic restorative services of amalgam and composite restorations, stainless steel crowns for primary teeth, and dental appliance repairs.

(3) Orthodontic services, crowns, gold fillings, bridges, complete or partial dentures, and such other services as the Secretary of Defense considers to be appropriate.

(d) PREMIUMS.—

(1) PREMIUM SHARING PLANS.—(A) The dental insurance plan established under subsection (a)(1) and the dental benefits plans established under subsection (a)(3) are premium sharing plans.

(B) Members enrolled in a premium sharing plan for themselves or for their dependents shall be required to pay a share of the premium charged for the benefits provided under the plan. The member's share of the premium charge may not exceed $20 per month for the enrollment.

(C) Effective as of January 1 of each year, the amount of the premium required under subparagraph (A) shall be increased by the percent equal to the lesser of—

(i) the percent by which the rates of basic pay of members of the uniformed services are increased on such date; or

(ii) the sum of one-half percent and the percent computed under section 5303(a) of title 5 for the increase in rates of basic pay for statutory pay systems for pay periods beginning on or after such date.

(D) The Secretary of Defense may reduce the monthly premium required to be paid under paragraph (1) in the case of enlisted members in pay grade E–1, E–2, E–3, or E–4 if the Secretary determines that such a reduction is appropriate to assist such members to participate in a dental plan referred to in subparagraph (A).

(2) FULL PREMIUM PLANS.—(A) The dental insurance plan established under subsection (a)(2) and the dental benefits plan established under subsection (a)(4) are full premium plans.

(B) Members enrolled in a full premium plan for themselves or for their dependents shall be required to pay the entire premium charged for the benefits provided under the plan.

(3) PAYMENT PROCEDURES.—A member's share of the premium for a plan established under subsection (a) may be paid by deductions from the basic pay of the member and from compensation paid under section 206 of title 37, as the case may be. The regulations prescribed under subsection (b) shall specify the procedures for payment of the premiums by enrollees who do not receive such pay.

(e) COPAYMENTS UNDER PREMIUM SHARING PLANS.—(1) Except as provided pursuant to paragraph (2), a member or dependent who receives dental care under a premium sharing plan referred to in subsection (d)(1) shall—

(A) in the case of care described in subsection (c)(1), pay no charge for the care;

(B) in the case of care described in subsection (c)(2), pay 20 percent of the charges for the care; and

(C) in the case of care described in subsection (c)(3), pay a percentage of the charges for the care that is determined appropriate by the Secretary of Defense, after consultation with the other administering Secretaries.

(2)(A) During a national emergency declared by the President or Congress and subject to regulations prescribed by the Secretary of Defense, the Secretary may waive, in whole or in part, the charges otherwise payable by a member of the Selected Reserve of the Ready Reserve or a member of the Individual Ready Reserve under paragraph (1) for the coverage of the member alone under the dental insurance plan established under subsection (a)(1) if the Secretary determines that such waiver of the charges

would facilitate or ensure the readiness of a unit or individual for deployment.

(B) The waiver under subparagraph (A) may apply only with respect to charges for coverage of dental care required for readiness.

(f) TRANSFER OF MEMBERS.—If a member whose dependents are enrolled in the plan established under subsection (a)(3) is transferred to a duty station where dental care is provided to the member's eligible dependents under a program other than that plan, the member may discontinue participation under the plan. If the member is later transferred to a duty station where dental care is not provided to such member's eligible dependents except under the plan established under subsection (a)(3), the member may re-enroll the dependents in that plan.

(g) CARE OUTSIDE THE UNITED STATES.—The Secretary of Defense may exercise the authority provided under subsection (a) to establish dental insurance plans and dental benefits plans for dental benefits provided outside the United States for the eligible members and dependents of members of the uniformed services. In the case of such an overseas dental plan, the Secretary may waive or reduce any copayments required by subsection (e) to the extent the Secretary determines appropriate for the effective and efficient operation of the plan.

(h) WAIVER OF REQUIREMENTS FOR SURVIVING DEPENDENTS.—The Secretary of Defense may waive (in whole or in part) any requirements of a dental plan established under this section as the Secretary determines necessary for the effective administration of the plan for a dependent who is an eligible dependent described in subsection (k)(2).

(i) AUTHORITY SUBJECT TO APPROPRIATIONS.—The authority of the Secretary of Defense to enter into a contract under this section for any fiscal year is subject to the availability of appropriations for that purpose.

(j) LIMITATION ON REDUCTION OF BENEFITS.—The Secretary of Defense may not reduce benefits provided under a plan established under this section until—

(1) the Secretary provides notice of the Secretary's intent to reduce such benefits to the Committees on Armed Services of the Senate and the House of Representatives; and

(2) one year has elapsed following the date of such notice.

(k) ELIGIBLE DEPENDENT DEFINED.—(1) In this section, the term ''eligible dependent'' means a dependent described in subparagraph (A), (D), or (I) of section 1072(2) of this title.

(2) Such term includes any such dependent of a member who dies—

(A) while on active duty for a period of more than 30 days; or

(B) while such member is a member of the Ready Reserve.

(3) Such term does not include a dependent by reason of paragraph (2) after the end of the three-year period beginning on the date of the member's death, except that, in the case of a dependent of the deceased who is described by subparagraph (D) or (I) of section 1072(2) of this title, the period of continued eligibility shall be the longer of the following periods beginning on such date:

(A) Three years.

(B) The period ending on the date on which such dependent attains 21 years of age.

(C) In the case of such dependent who, at 21 years of age, is enrolled in a full-time course of study in a secondary school or in a full-time course of study in an institution of higher education approved by the administering Secretary and was, at the time of the member's death, in fact dependent on the member for over one-half of such dependent's support, the period ending on the earlier of the following dates:

(i) The date on which such dependent ceases to pursue such a course of study, as determined by the administering Secretary.

(ii) The date on which such dependent attains 23 years of age.

(Added Pub. L. 106–65, div. A, title VII, § 711(a), Oct. 5, 1999, 113 Stat. 685; amended Pub. L. 106–398, § 1 [[div. A], title VII, § 704(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–174; Pub. L. 107–314, div. A, title VII, § 703, Dec. 2, 2002, 116 Stat. 2584; Pub. L. 108–375, div. A, title VII, § 711, Oct. 28, 2004, 118 Stat. 1984; Pub. L. 109–163, div. A, title VII, § 713, Jan. 6, 2006, 119 Stat. 3343; Pub. L. 110–417, [div. A], title VII, § 735(b), Oct. 14, 2008, 122 Stat. 4514; Pub. L. 111–84, div. A, title VII, § 704, Oct. 28, 2009, 123 Stat. 2373; Pub. L. 111–383, div. A, title VII, § 703, Jan. 7, 2011, 124 Stat. 4245; Pub. L. 112–239, div. A, title VII, § 701(b), Jan. 2, 2013, 126 Stat. 1798; Pub. L. 115–232, div. A, title VII, § 713(b), Aug. 13, 2018, 132 Stat. 1811; Pub. L. 116–283, div. A, title VII, § 711(b)—(d), Jan. 1, 2021, 134 Stat. 3691.)

PRIOR PROVISIONS

A prior section 1076a, added Pub. L. 99–145, title VI, § 651(a)(1), Nov. 8, 1985, 99 Stat. 655; amended Pub. L. 99–661, div. A, title VII, § 707(a), (b), Nov. 14, 1986, 100 Stat. 3905; Pub. L. 102–190, div. A, title VII, § 701, Dec. 5, 1991, 105 Stat. 1399; Pub. L. 102–484, div. A, title VII, § 701(a)–(e), Oct. 23, 1992, 106 Stat. 2430; Pub. L. 103–337, div. A, title VII, §§ 702(b), 703(a), 707(b), Oct. 5, 1994, 108 Stat. 2797, 2798, 2800; Pub. L. 105–85, div. A, title VII, § 732, Nov. 18, 1997, 111 Stat. 1812; Pub. L. 105–261, div. A, title VII, § 701(a)(1), (b), Oct. 17, 1998, 112 Stat. 2056; Pub. L. 106–65, div. A, title X, § 1066(a)(8), Oct. 5, 1999, 113 Stat. 770; Pub. L. 106–398, § 1 [[div. A], title X, § 1087(d)(4)], Oct. 30, 2000, 114 Stat. 1654, 1654A–293, related to dependents' dental program, prior to repeal by Pub. L. 106–65, div. A, title VII, § 711(a), Oct. 5, 1999, 113 Stat. 685.

AMENDMENTS

2021—Subsec. (a)(1). Pub. L. 116–283, § 711(d), struck out at end ''During the period beginning on the date of the enactment of this sentence and ending December 31, 2018, such plan shall provide that coverage for a member of the Selected Reserve who is involuntarily separated from the Selected Reserve under other than adverse conditions, as characterized by the Secretary concerned, shall not terminate earlier than 180 days after the date on which the member is separated.''

Subsec. (b). Pub. L. 116–283, § 711(c), repealed Pub. L. 115–232, § 713(b). See 2018 Amendment note below.

Pub. L. 116–283, § 711(b), amended subsec. (b) generally. Prior to amendment, text read as follows: ''The plans established under this section shall be administered by the Secretary of Defense through an agreement with the Director of the Office of Personnel Management to allow persons described in subsection (a) to enroll in an insurance plan under chapter 89A of title 5, in accordance with terms prescribed by the Sec-

retary, including terms, to the extent practical, as defined by the Director through regulation, consistent with subsection (d) and, to the extent practicable in relation to such chapter 89A, other provisions of this section.''

2018—Subsec. (b). Pub. L. 115–232, §713(b), which amended subsec. (b) generally, applicable with respect to the first contract year for chapter 89A of Title 5, Government Organization and Employees, that was to begin on or after Jan. 1, 2022, was repealed by Pub. L. 116–283, §711(c).

2013—Subsec. (a)(1). Pub. L. 112–239 inserted at end ''During the period beginning on the date of the enactment of this sentence and ending December 31, 2018, such plan shall provide that coverage for a member of the Selected Reserve who is involuntarily separated from the Selected Reserve under other than adverse conditions, as characterized by the Secretary concerned, shall not terminate earlier than 180 days after the date on which the member is separated.''

2011—Subsec. (k)(2). Pub. L. 111–383 amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''Such term includes any such dependent of a member who dies while on active duty for a period of more than 30 days or a member of the Ready Reserve if, on the date of the death of the member, the dependent—

''(A) is enrolled in a dental benefits plan established under subsection (a); or

''(B) if not enrolled in such a plan on such date—

''(i) is not enrolled by reason of a discontinuance of a former enrollment under subsection (f); or

''(ii) is not qualified for such enrollment because—

''(I) the dependent is a child under the minimum age for such enrollment; or

''(II) the dependent is a spouse who is a member of the armed forces on active duty for a period of more than 30 days.''

2009—Subsec. (k)(3). Pub. L. 111–84 amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''Such term does not include a dependent by reason of paragraph (2) after the end of the three-year period beginning on the date of the member's death.''

2008—Subsec. (e). Pub. L. 110–417 designated existing provisions as par. (1), substituted ''Except as provided pursuant to paragraph (2), a member or dependent'' for ''A member or dependent'', redesignated former pars. (1) to (3) as subpars. (A) to (C), respectively, of par. (1) and added par. (2).

2006—Subsec. (k). Pub. L. 109–163 reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''In this section, the term 'eligible dependent'—

''(1) means a dependent described in subparagraph (A), (D), or (I) of section 1072(2) of this title; and

''(2) includes any such dependent of a member who dies while on active duty for a period of more than 30 days or a member of the Ready Reserve if, on the date of the death of the member, the dependent is enrolled in a dental benefits plan established under subsection (a), is not enrolled in such a plan by reason of a discontinuance of a former enrollment under subsection (f), or is not enrolled because the dependent is a child under the minimum age for enrollment, except that the term does not include the dependent after the end of the three-year period beginning on the date of the member's death.''

2004—Subsec. (k)(2). Pub. L. 108–375 substituted ''under subsection (a),'' for ''under subsection (a) or'' and inserted ''or is not enrolled because the dependent is a child under the minimum age for enrollment,'' after ''under subsection (f),''.

2002—Subsec. (k)(2). Pub. L. 107–314 substituted ''if, on the date of the death of the member, the dependent is enrolled in a dental benefits plan established under subsection (a) or is not enrolled in such a plan by reason of a discontinuance of a former enrollment under subsection (f)'' for ''if the dependent is enrolled on the date of the death of the member in a dental benefits plan established under subsection (a)''.

2000—Subsec. (k)(2). Pub. L. 106–398 substituted ''three-year period'' for ''one-year period''.

TRANSITION OF ADMINISTRATION OF TRICARE DENTAL PLANS

Pub. L. 115–232, div. A, title VII, §713(d), Aug. 13, 2018, 132 Stat. 1812, which related to transition of administration of TRICARE dental plans, was repealed by Pub. L. 116–283, div. A, title VII, §711(c), Jan. 1, 2021, 134 Stat. 3691.

AUTHORIZATION TO EXPAND ENROLLMENT IN DEPENDENTS' DENTAL PROGRAM TO CERTAIN MEMBERS RETURNING FROM OVERSEAS ASSIGNMENTS

Pub. L. 103–160, div. A, title VII, §703, Nov. 30, 1993, 107 Stat. 1687, provided that:

''(a) AUTHORITY TO EXPAND PROGRAM.—After March 31, 1994, the Secretary of Defense may expand the dependents' dental program established under section 1076a of title 10, United States Code, to permit a member of the uniformed services described in subsection (b) to enroll dependents described in subsection (a) of such section in a dental benefits plan under the program without regard to the length of the uncompleted portion of the member's period of obligated service.

''(b) COVERED MEMBERS.—A member referred to in subsection (a) is a member of the uniformed services who is—

''(1) on active duty for a period of more than 30 days (as defined in section 101(d)(2) of title 10, United States Code); and

''(2) reassigned from a permanent duty station where a dental benefits plan under the dependents' dental program is not available to a permanent duty station where such a plan is available.

''(c) REPORT ON ADVISABILITY OF EXPANSION.—Not later than February 28, 1994, the Secretary shall submit to Congress a report evaluating the advisability of expanding the enrollment eligibility of members of the uniformed services in the dependents' dental program in the manner authorized in subsection (a). The report shall include an analysis of the cost implications for such an expansion to the Federal Government, beneficiaries under the dependents' dental program, and contractors under the program.

''(d) NOTIFICATION OF EXERCISE OF AUTHORITY.—The Secretary shall notify Congress of any decision to expand the enrollment eligibility of dependents in the dependents' dental program as provided in subsection (a) not later than 30 days before such expansion takes effect.''

[§ 1076b. Repealed. Pub. L. 109–364, div. A, title VII, § 706(d), Oct. 17, 2006, 120 Stat. 2282]

Section, added Pub. L. 108–106, title I, §1115(a), Nov. 6, 2003, 117 Stat. 1216; amended Pub. L. 108–136, div. A, title VII, §702, Nov. 24, 2003, 117 Stat. 1525; Pub. L. 109–163, div. A, title VII, §702(a)(1), Jan. 6, 2006, 119 Stat. 3340; Pub. L. 109–364, div. A, title VII, §704(d), Oct. 17, 2006, 120 Stat. 2280, related to TRICARE Standard coverage for members of the Selected Reserve.

A prior section 1076b, added Pub. L. 104–106, div. A, title VII, §705(a)(1), Feb. 10, 1996, 110 Stat. 372; amended Pub. L. 104–201, div. A, title VII, §702(a), (b), Sept. 23, 1996, 110 Stat. 2588; Pub. L. 105–85, div. A, title VII, §733(a), Nov. 18, 1997, 111 Stat. 1812, related to Selected Reserve dental insurance, prior to repeal by Pub. L. 106–65, div. A, title VII, §711(a), Oct. 5, 1999, 113 Stat. 685.

EFFECTIVE DATE OF REPEAL

Pub. L. 109–364, div. A, title VII, §706(d), Oct. 17, 2006, 120 Stat. 2282, provided that the repeal made by section 706(d) is effective Oct. 1, 2007.

§ 1076c. Dental insurance plan: certain retirees and their surviving spouses and other dependents

(a) REQUIREMENT FOR PLAN.—(1) The Secretary of Defense shall establish a dental insurance

plan for retirees of the uniformed services, certain unremarried surviving spouses, and dependents in accordance with this section.

(2) The Secretary may satisfy the requirement under paragraph (1) by entering into an agreement with the Director of the Office of Personnel Management to allow persons described in subsection (b) to enroll in an insurance plan under chapter 89A of title 5 that provides benefits similar to those benefits required to be provided under subsection (d).

(b) PERSONS ELIGIBLE FOR PLAN.—The following persons are eligible to enroll in the dental insurance plan established under subsection (a):

(1) Members of the uniformed services who are entitled to retired pay.

(2) Members of the Retired Reserve who would be entitled to retired pay under chapter 1223 of this title but for being under 60 years of age.

(3) Eligible dependents of a member described in paragraph (1) or (2) who are covered by the enrollment of the member in the plan.

(4) Eligible dependents of a member described in paragraph (1) or (2) who is not enrolled in the plan and who—

(A) is enrolled under section 1705 of title 38 to receive dental care from the Secretary of Veterans Affairs;

(B) is enrolled in a dental plan that—

(i) is available to the member as a result of employment by the member that is separate from the military service of the member; and

(ii) is not available to dependents of the member as a result of such separate employment by the member; or

(C) is prevented by a medical or dental condition from being able to obtain benefits under the plan.

(5) The unremarried surviving spouse and eligible child dependents of a deceased member—

(A) who died while in a status described in paragraph (1) or (2);

(B) who is described in section 1448(d)(1) of this title; or

(C) who died while on active duty for a period of more than 30 days and whose eligible dependents are not eligible, or no longer eligible, for dental benefits under section 1076a of this title.

(c) PREMIUMS.—(1) A member enrolled in the dental insurance plan established under subsection (a) shall pay the premiums charged for the insurance coverage.

(2) The Secretary of Defense shall establish procedures for the collection of the premiums charged for coverage by the dental insurance plan. To the maximum extent practicable, the premiums payable by a member entitled to retired pay shall be deducted and withheld from the retired pay of the member (if pay is available to the member).

(d) BENEFITS AVAILABLE UNDER THE PLAN.—The dental insurance plan established under subsection (a) shall provide benefits for dental care and treatment which may be comparable to the benefits authorized under section 1076a of this title for plans established under that section and shall include diagnostic services, preventative services, endodontics and other basic restorative services, surgical services, and emergency services.

(e) COVERAGE.—(1) The Secretary shall prescribe a minimum required period for enrollment by a member or surviving spouse in the dental insurance plan established under subsection (a).

(2) The dental insurance plan shall provide for voluntary enrollment of participants and shall authorize a member or eligible unremarried surviving spouse to enroll for self only or for self and eligible dependents.

(f) REQUIRED TERMINATIONS OF ENROLLMENT.—The Secretary shall terminate the enrollment of any enrollee, and any eligible dependents of the enrollee covered by the enrollment, in the dental insurance plan established under subsection (a) upon the occurrence of the following:

(1) In the case of an enrollment under subsection (b)(1), termination of the member's entitlement to retired pay.

(2) In the case of an enrollment under subsection (b)(2), termination of the member's status as a member of the Retired Reserve.

(3) In the case of an enrollment under subsection (b)(5), remarriage of the surviving spouse.

(g) CONTINUATION OF DEPENDENTS' ENROLLMENT UPON DEATH OF ENROLLEE.—Coverage of a dependent in the dental insurance plan established under subsection (a) under an enrollment of a member or a surviving spouse who dies during the period of enrollment shall continue until the end of that period and may be renewed by (or for) the dependent, so long as the premium paid is sufficient to cover continuation of the dependent's enrollment. The Secretary may terminate coverage of the dependent when the premiums paid are no longer sufficient to cover continuation of the enrollment. The Secretary shall prescribe in regulations under subsection (h) the parties responsible for paying the remaining premiums due on the enrollment and the manner for collection of the premiums.

(h) REGULATIONS.—The dental insurance plan established under subsection (a) shall be administered under regulations prescribed by the Secretary of Defense, in consultation with the other administering Secretaries.

(i) VOLUNTARY DISENROLLMENT.—(1) With respect to enrollment in the dental insurance plan established under subsection (a), the Secretary of Defense—

(A) shall allow for a period of up to 30 days at the beginning of the prescribed minimum enrollment period during which an enrollee may disenroll; and

(B) shall provide for limited circumstances under which disenrollment shall be permitted during the prescribed enrollment period, without jeopardizing the fiscal integrity of the dental program.

(2) The circumstances described in paragraph (1)(B) shall include—

(A) a case in which a retired member, surviving spouse, or dependent of a retired member who is also a Federal employee is assigned

to a location outside the jurisdiction of the dental insurance plan established under subsection (a) that prevents utilization of dental benefits under the plan;

(B) a case in which a retired member, surviving spouse, or dependent of a retired member is prevented by a serious medical condition from being able to obtain benefits under the plan;

(C) a case in which severe financial hardship would result; and

(D) any other circumstances which the Secretary considers appropriate.

(3) The Secretary shall establish procedures for timely decisions on requests for disenrollment under this section and for appeal to the TRICARE Management Activity of adverse decisions.

(j) DEFINITIONS.—In this section:

(1) The term ''eligible dependent'' means a dependent described in subparagraph (A), (D), or (I) of section 1072(2) of this title.

(2) The term ''eligible child dependent'' means a dependent described in subparagraph (D) or (I) of section 1072(2) of this title.

(3) The term ''retired pay'' includes retainer pay.

(Added Pub. L. 104–201, div. A, title VII, §703(a)(1), Sept. 23, 1996, 110 Stat. 2588; amended Pub. L. 105–85, div. A, title VII, §§701, 733(b), 734, Nov. 18, 1997, 111 Stat. 1807, 1812, 1813; Pub. L. 105–261, div. A, title VII, §702, Oct. 17, 1998, 112 Stat. 2056; Pub. L. 106–65, div. A, title VII, §704, Oct. 5, 1999, 113 Stat. 683; Pub. L. 106–398, §1 [[div. A], title VII, §726, title X, §1087(a)(6)], Oct. 30, 2000, 114 Stat. 1654, 1654A–187, 1654A–290; Pub. L. 114–328, div. A, title VII, §715(b)(3), Dec. 23, 2016, 130 Stat. 2222.)

AMENDMENTS

2016—Subsec. (a). Pub. L. 114–328 amended subsec. (a) generally. Prior to amendment, text read as follows: ''The Secretary of Defense, in consultation with the other administering Secretaries, shall establish a dental insurance plan for retirees of the uniformed services, certain unremarried surviving spouses, and dependents in accordance with this section.''

2000—Subsec. (b)(5)(C). Pub. L. 106–398, §1 [[div. A], title X, §1087(a)(6)], struck out ''pursuant to subsection (i)(2) of such section'' after ''section 1076a of this title''.

Subsec. (f). Pub. L. 106–398, §1 [[div. A], title VII, §726(b)], substituted ''Required Terminations'' for ''Termination'' in heading.

Subsecs. (i), (j). Pub. L. 106–398, §1 [[div. A], title VII, §726(a)], added subsec. (i) and redesignated former subsec. (i) as (j).

1999—Subsec. (d). Pub. L. 106–65 amended heading and text of subsec. (d) generally. Text read as follows: ''The dental insurance plan established under subsection (a) shall provide benefits for basic dental care and treatment, including diagnostic services, preventative services, basic restorative services (including endodontics), surgical services, and emergency services.''

1998—Subsec. (b)(4), (5). Pub. L. 105–261, §702(a), added par. (4) and redesignated former par. (4) as (5).

Subsec. (f)(3). Pub. L. 105–261, §702(b), substituted ''(b)(5)'' for ''(b)(4)''.

1997—Subsec. (a). Pub. L. 105–85, §734(a)(1), (b)(1), substituted ''The Secretary of Defense, in consultation with the other administering Secretaries, shall establish a dental insurance plan for retirees of the uniformed services'' for ''The Secretary of Defense shall establish a dental insurance plan for military retirees''.

Subsec. (b)(1). Pub. L. 105–85, §734(a)(2), substituted ''uniformed services'' for ''Armed Forces''.

Subsec. (b)(4)(A). Pub. L. 105–85, §701(1)(A), substituted ''died'' for ''dies''.

Subsec. (b)(4)(C). Pub. L. 105–85, §701(1)(B), (2), (3), added subpar. (C).

Subsec. (c)(2). Pub. L. 105–85, §733(b), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''The amount of the premiums payable by a member entitled to retired pay shall be deducted and withheld from the retired pay and shall be disbursed to pay the premiums. The regulations prescribed under subsection (h) shall specify the procedures for payment of the premiums by other enrolled members and by enrolled surviving spouses.''

Subsec. (h). Pub. L. 105–85, §734(b)(2), substituted ''other administering Secretaries'' for ''Secretary of Transportation''.

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114–328 applicable with respect to the first contract year for chapter 89A or 89B of Title 5, Government Organization and Employees, as applicable, that begins on or after Jan. 1, 2018, see section 715(c) of Pub. L. 114–328, set out as a note under section 8951 of Title 5.

LIMITATION ON IMPLEMENTATION OF ALTERNATIVE COLLECTION PROCEDURES

Pub. L. 105–85, div. A, title VII, §733(d), Nov. 18, 1997, 111 Stat. 1813, provided that: ''The Secretary of Defense may not implement procedures for collecting premiums under [former] section 1076b(b)(3) of title 10, United States Code, or section 1076c(c)(2) of such title other than by deductions and withholding from pay until 120 days after the date that the Secretary submits a report to Congress describing the justifications for implementing such alternative procedures.''

IMPLEMENTATION OF DENTAL PLAN

Pub. L. 104–201, div. A, title VII, §703(b), Sept. 23, 1996, 110 Stat. 2590, as amended by Pub. L. 105–85, div. A, title VII, §733(e), Nov. 18, 1997, 111 Stat. 1813, provided that: ''Beginning not later than April 1, 1998, the Secretary of Defense shall—

''(1) offer members of the Armed Forces and other persons described in subsection (b) of section 1076c of title 10, United States Code (as added by subsection (a)(1) of this section), the opportunity to enroll in the dental insurance plan required under that section; and

''(2) begin to provide benefits under the plan.''

§1076d. TRICARE program: TRICARE Reserve Select coverage for members of the Selected Reserve

(a) ELIGIBILITY.—(1) Except as provided in paragraph (2), a member of the Selected Reserve of the Ready Reserve of a reserve component of the armed forces is eligible for health benefits under TRICARE Reserve Select as provided in this section.

(2) During the period preceding January 1, 2030, paragraph (1) does not apply to a member who is enrolled, or is eligible to enroll, in a health benefits plan under chapter 89 of title 5.

(b) TERMINATION OF ELIGIBILITY UPON TERMINATION OF SERVICE.—(1) Except as provided in paragraph (2), eligibility for TRICARE Reserve Select coverage of a member under this section shall terminate upon the termination of the member's service in the Selected Reserve.

(2) During the period beginning on the date of the enactment of this paragraph and ending December 31, 2018, eligibility for a member under this section who is involuntarily separated from the Selected Reserve under other than adverse conditions, as characterized by the Secretary

concerned, shall terminate 180 days after the date on which the member is separated.

(c) FAMILY MEMBERS.—While a member of a reserve component is covered by TRICARE Reserve Select under the section, the members of the immediate family of such member are eligible for TRICARE Reserve Select coverage as dependents of the member. If a member of a reserve component dies while in a period of coverage under this section, the eligibility of the members of the immediate family of such member for TRICARE Reserve Select coverage shall continue for six months beyond the date of death of the member.

(d) PREMIUMS.—(1) A member of a reserve component covered by TRICARE Reserve Select under this section shall pay a premium for that coverage. Such premium shall apply instead of any enrollment fees required under section 1075 of this title.

(2) The Secretary of Defense shall prescribe for the purposes of this section one premium for TRICARE Reserve Select coverage of members without dependents and one premium for TRICARE Reserve Select coverage of members with dependents referred to in subsection (f)(1). The premium prescribed for a coverage shall apply uniformly to all covered members of the reserve components.

(3)(A) The monthly amount of the premium in effect for a month for TRICARE Reserve Select coverage under this section shall be the amount equal to 28 percent of the total monthly amount determined on an appropriate actuarial basis as being reasonable for that coverage.

(B) The appropriate actuarial basis for purposes of subparagraph (A) shall be determined, for each calendar year after calendar year 2009, by utilizing the actual cost of providing benefits under this section to members and their dependents during the calendar years preceding such calendar year.

(4) The premiums payable by a member of a reserve component under this subsection may be deducted and withheld from basic pay payable to the member under section 204 of title 37 or from compensation payable to the member under section 206 of such title. The Secretary shall prescribe the requirements and procedures applicable to the payment of premiums.

(5) Amounts collected as premiums under this subsection shall be credited to the appropriation available for the Defense Health Program Account under section 1100 of this title, shall be merged with sums in such Account that are available for the fiscal year in which collected, and shall be available under subsection (b) of such section for such fiscal year.

(e) REGULATIONS.—The Secretary of Defense, in consultation with the other administering Secretaries, shall prescribe regulations for the administration of this section.

(f) DEFINITIONS.—In this section:

(1) The term ''immediate family'', with respect to a member of a reserve component, means all of the member's dependents described in subparagraphs (A), (D), and (I) of section 1072(2) of this title.

(2) The term ''TRICARE Reserve Select'' means—

(A) medical care at facilities of the uniformed services to which a dependent described in section 1076(a)(2) of this title is entitled; and

(B) health benefits under the TRICARE Select self-managed, preferred provider network option under section 1075 of this title made available to beneficiaries by reason of this section and subject to the cost-sharing requirements set forth in such section 1075.

(Added Pub. L. 108–375, div. A, title VII, § 701(a)(1), Oct. 28, 2004, 118 Stat. 1980; amended Pub. L. 109–163, div. A, title VII, § 701(a)–(f)(1), Jan. 6, 2006, 119 Stat. 3339, 3340; Pub. L. 109–364, div. A, title VII, §§ 704(c), 706(a)–(c), Oct. 17, 2006, 120 Stat. 2280, 2282; Pub. L. 110–181, div. A, title VII, § 701(c), Jan. 28, 2008, 122 Stat. 188; Pub. L. 110–417, [div. A], title VII, § 704(a), Oct. 14, 2008, 122 Stat. 4498; Pub. L. 111–84, div. A, title X, § 1073(a)(11), Oct. 28, 2009, 123 Stat. 2473; Pub. L. 112–239, div. A, title VII, § 701(a), Jan. 2, 2013, 126 Stat. 1798; Pub. L. 114–328, div. A, title VII, § 701(j)(1)(B), Dec. 23, 2016, 130 Stat. 2192; Pub. L. 115–91, div. A, title VII, § 701(a), Dec. 12, 2017, 131 Stat. 1432; Pub. L. 116–92, div. A, title VII, § 701, title XVII, § 1731(a)(24), Dec. 20, 2019, 133 Stat. 1436, 1813.)

REFERENCES IN TEXT

The date of the enactment of this paragraph, referred to in subsec. (b)(2), probably means the date of enactment of Pub. L. 112–239, which was approved Jan. 2, 2013.

AMENDMENTS

2019—Subsec. (a)(2). Pub. L. 116–92, § 701, substituted ''During the period preceding January 1, 2030, paragraph (1) does not apply'' for ''Paragraph (1) does not apply''.

Subsec. (d)(1). Pub. L. 116–92, § 1731(a)(24), substituted ''section 1075 of this title'' for ''section 1075 of this section''.

2017—Subsec. (f)(2). Pub. L. 115–91 amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''The term 'TRICARE Reserve Select' means the TRICARE Select self-managed, preferred-provider network option under section 1075 made available to beneficiaries by reason of this section and in accordance with subsection (d)(1).''

2016—Pub. L. 114–328, § 701(j)(1)(B)(iii), substituted ''TRICARE Reserve Select'' for ''TRICARE Standard'' in section catchline and wherever appearing in text.

Subsec. (d)(1). Pub. L. 114–328, § 701(j)(1)(B)(i), inserted at end ''Such premium shall apply instead of any enrollment fees required under section 1075 of this section.''

Subsec. (f)(2). Pub. L. 114–328, § 701(j)(1)(B)(ii), added par. (2) and struck out former par. (2) which defined the term ''TRICARE Standard''.

2013—Subsec. (b). Pub. L. 112–239 designated existing provisions as par. (1), substituted ''Except as provided in paragraph (2), eligibility'' for ''Eligibility'', and added par. (2).

2009—Pub. L. 111–84 substituted ''Standard'' for ''standard'' in section catchline.

2008—Subsec. (d)(3). Pub. L. 110–417 designated existing provisions as subpar. (A), substituted ''determined'' for ''that the Secretary determines'', struck out at end ''During the period beginning on April 1, 2006, and ending on September 30, 2008, the monthly amount of the premium may not be increased above the amount in effect for the month of March 2006.'', and added subpar. (B).

Pub. L. 110–181 substituted ''September 30, 2008'' for ''September 30, 2007''.

2006—Pub. L. 109–364, § 706(c)(2), substituted ''TRICARE standard coverage for members of the Selected Reserve'' for ''coverage for members of reserve

components who commit to continued service in the Selected Reserve after release from active duty in support of a contingency operation'' in section catchline.

Pub. L. 109–163, § 701(f)(1), substituted ''active duty in support of a contingency operation'' for ''active duty'' in section catchline.

Subsec. (a). Pub. L. 109–364, § 706(a), designated introductory provisions as par. (1), substituted ''Except as provided in paragraph (2), a member'' for ''A member'', substituted period at end for ''after the member completes service on active duty to which the member was called or ordered for a period of more than 30 days on or after September 11, 2001, under a provision of law referred to in section 101(a)(13)(B), if the member—'', added par. (2), and struck out former pars. (1) and (2) which read as follows:

''(1) served continuously on active duty for 90 or more days pursuant to such call or order; and

''(2) not later than 90 days after release from such active-duty service, entered into an agreement with the Secretary concerned to serve continuously in the Selected Reserve for a period of one or more whole years following such date.''

Subsec. (a)(2). Pub. L. 109–163, § 701(d), substituted ''not later than 90 days after release'' for ''on or before the date of the release''.

Subsec. (b). Pub. L. 109–364, § 706(b), substituted ''Termination of Eligibility Upon Termination of Service'' for ''Period of Coverage'' in heading, struck out ''(4)'' before ''Eligibility'', and struck out pars. (1) to (3) and (5), which related to beginning of period of coverage, length of coverage period, period of coverage in the case of a member recalled to active duty, and coverage for a member of the Individual Ready Reserve.

Subsec. (b)(2). Pub. L. 109–163, § 701(a)(2), substituted ''Subject to paragraph (3) and unless earlier terminated under paragraph (4)'' for ''Unless earlier terminated under paragraph (3)''.

Subsec. (b)(3), (4). Pub. L. 109–163, § 701(a)(1), added par. (3) and redesignated former par. (3) as (4).

Subsec. (b)(5). Pub. L. 109–163, § 701(b), added par. (5).

Subsec. (c). Pub. L. 109–163, § 701(c), inserted at end ''If a member of a reserve component dies while in a period of coverage under this section, the eligibility of the members of the immediate family of such member for TRICARE Standard coverage shall continue for six months beyond the date of death of the member.''

Subsec. (d)(3). Pub. L. 109–364, § 704(c), inserted at end ''During the period beginning on April 1, 2006, and ending on September 30, 2007, the monthly amount of the premium may not be increased above the amount in effect for the month of March 2006.''

Subsec. (e). Pub. L. 109–364, § 706(c)(1)(A), (B), redesignated subsec. (g) as (e) and struck out heading and text of former subsec. (e). Text read as follows: ''The service agreement required of a member of a reserve component under subsection (a)(2) is separate from any other form of commitment of the member to a period of obligated service in that reserve component and may cover any part or all of the same period that is covered by another commitment of the member to a period of obligated service in that reserve component.''.

Subsec. (f)(2). Pub. L. 109–163, § 701(e), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''The term 'TRICARE Standard' means the Civilian Health and Medical Program of the Uniformed Services option under the TRICARE program.''

Subsec. (f)(3). Pub. L. 109–364, § 706(c)(1)(C), struck out par. (3) which read as follows: ''The term 'member recalled to active duty' means, with respect to a member who is eligible for coverage under this section based on a period of active duty service, a member who is called or ordered to active duty for an additional period of active duty subsequent to the period of active duty on which that eligibility is based.''

Pub. L. 109–163, § 701(a)(3), added par. (3).

Subsec. (g). Pub. L. 109–364, § 706(c)(1)(B), redesignated subsec. (g) as (e).

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114–328 applicable with respect to the provision of health care under the TRICARE program beginning on Jan. 1, 2018, see section 701(k) of Pub. L. 114–328, set out as a note under section 1072 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–417, [div. A], title VII, § 704(c), Oct. 14, 2008, 122 Stat. 4499, provided that: ''The amendments made by this section [amending this section] shall take effect as of October 1, 2008.''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–364, div. A, title VII, § 706(g), Oct. 17, 2006, 120 Stat. 2282, provided that: ''The Secretary of Defense shall ensure that health care under TRICARE Standard is provided under section 1076d of title 10, United States Code, as amended by this section, beginning not later than October 1, 2007.''

SAVINGS PROVISION

Pub. L. 109–364, div. A, title VII, § 706(f), Oct. 17, 2006, 120 Stat. 2282, as amended by Pub. L. 110–181, div. A, title VII, § 706(a), Jan. 28, 2008, 122 Stat. 189, provided that:

''(1) Except as provided in paragraph (2), enrollments in TRICARE Standard that are in effect on the day before the date of the enactment of this Act [Oct. 17, 2006] under section 1076d of title 10, United States Code, as in effect on such day, shall be continued until terminated after such day under such section 1076d as amended by this section.

''(2) The enrollment of a member in TRICARE Standard that is in effect on the day before health care under TRICARE Standard is provided pursuant to the effective date in subsection (g) [set out as an Effective Date of 2006 Amendment note above] shall not be terminated by operation of the exclusion of eligibility under subsection (a)(2) of such section 1076d, as so amended, for the duration of the eligibility of the member under TRICARE Standard as in effect on October 16, 2006.''

[Pub. L. 110–181, div. A, title VII, § 706(b), Jan. 28, 2008, 122 Stat. 189, provided that: ''The amendments made by subsection (a) [amending section 706(f) of Pub. L. 109–364, set out above] shall take effect on October 1, 2007.'']

COMMERCIAL HEALTH INSURANCE COVERAGE PILOT PROGRAM FOR ELIGIBLE RESERVE COMPONENT MEMBERS

Pub. L. 114–328, div. A, title VII, § 712(b), (c), Dec. 23, 2016, 130 Stat. 2215, 2219, provided that:

''(b) PILOT PROGRAM.—

''(1) AUTHORIZATION.—The Secretary of Defense and the Director may jointly carry out a pilot program, at the election of the Secretary, under which the Director provides commercial health insurance coverage to eligible reserve component members who enroll in a health benefits plan under paragraph (4) as an individual, for self plus one coverage, or for self and family coverage.

''(2) ELEMENTS.—The pilot program shall—

''(A) provide for enrollment by eligible reserve component members, at the election of the member, in a health benefits plan under paragraph (4) during an open enrollment period established by the Director for purposes of this subsection;

''(B) include a variety of national and regional health benefits plans that—

''(i) meet the requirements of this subsection;

''(ii) are broadly representative of the health benefits plans available in the commercial market; and

''(iii) do not contain unnecessary restrictions, as determined by the Director; and

''(C) offer a sufficient number of health benefits plans in order to provide eligible reserve component beneficiaries with an ample choice of health benefits plans, as determined by the Director.

''(3) DURATION.—If the Secretary elects to carry out the pilot program, the Secretary and the Director shall carry out the pilot program for not less than five years.

''(4) HEALTH BENEFITS PLANS.—

''(A) IN GENERAL.—In providing health insurance coverage under the pilot program, the Director shall contract with qualified carriers for a variety of health benefits plans.

''(B) DESCRIPTION OF PLANS.—Health benefits plans contracted for under this subsection—

''(i) may vary by type of plan design, covered benefits, geography, and price;

''(ii) shall include maximum limitations on out-of-pocket expenses paid by an eligible reserve component beneficiary for the health care provided; and

''(iii) may not exclude an eligible reserve component member who chooses to enroll.

''(C) QUALITY OF PLANS.—The Director shall ensure that each health benefits plan offered under this subsection offers a high degree of quality, as determined by criteria that include—

''(i) access to an ample number of medical providers, as determined by the Director;

''(ii) adherence to industry-accepted quality measurements, as determined by the Director;

''(iii) access to benefits described in paragraph (5), including ease of referral for health care services; and

''(iv) inclusion in the services covered by the plan of advancements in medical treatments and technology as soon as practicable in accordance with generally accepted standards of medicine.

''(5) BENEFITS.—A health benefits plan offered by the Director under this subsection shall include, at a minimum, the following benefits:

''(A) The health care benefits provided under chapter 55 of title 10, United States Code, excluding pharmaceutical, dental, and extended health care option benefits.

''(B) Such other benefits as the Director determines appropriate.

''(6) CARE AT FACILITIES OF UNIFORMED SERVICES.—

''(A) IN GENERAL.—If an eligible reserve component beneficiary receives benefits described in paragraph (5) at a facility of the uniformed services, the health benefits plan under which the beneficiary is covered shall be treated as a third-party payer under section 1095 of title 10, United States Code, and shall pay charges for such benefits as determined by the Secretary.

''(B) MILITARY MEDICAL TREATMENT FACILITIES.—The Secretary, in consultation with the Director—

''(i) may contract with qualified carriers with which the Director has contracted under paragraph (4) to provide health insurance coverage for health care services provided at military treatment facilities under this subsection; and

''(ii) may receive payments under section 1095 of title 10, United States Code, from qualified carriers for health care services provided at military medical treatment facilities under this subsection.

''(7) SPECIAL RULE RELATING TO ACTIVE DUTY PERIOD.—

''(A) IN GENERAL.—An eligible reserve component member may not receive benefits under a health benefits plan under this subsection during any period in which the member is serving on active duty for more than 30 days.

''(B) TREATMENT OF DEPENDENTS.—Subparagraph (A) does not affect the coverage under a health benefits plan of any dependent of an eligible reserve component member.

''(8) ELIGIBILITY FOR FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM.—An individual is not eligible to enroll in or be covered under a health benefits plan under this subsection if the individual is eligible to enroll in a health benefits plan under the Federal Employees Health Benefits Program.

''(9) COST SHARING.—

''(A) RESPONSIBILITY FOR PAYMENT.—

''(i) IN GENERAL.—Except as provided in clause (ii), an eligible reserve component member shall pay an annual premium amount calculated under subparagraph (B) for coverage under a health benefits plan under this subsection and additional amounts described in subparagraph (C) for health care services in connection with such coverage.

''(ii) ACTIVE DUTY PERIOD.—

''(I) IN GENERAL.—During any period in which an eligible reserve component member is serving on active duty for more than 30 days, the eligible reserve component member is not responsible for paying any premium amount under subparagraph (B) or additional amounts under subparagraph (C).

''(II) COVERAGE OF DEPENDENTS.—With respect to a dependent of an eligible reserve component member that is covered under a health benefits plan under this subsection, during any period described in subclause (I) with respect to the member, the Secretary shall, on behalf of the dependent, pay 100 percent of the total annual amount of a premium for coverage of the dependent under the plan and such cost-sharing amounts as may be applicable under the plan.

''(B) PREMIUM AMOUNT.—

''(i) IN GENERAL.—The annual premium calculated under this subparagraph is an amount equal to 28 percent of the total annual amount of a premium under the health benefits plan selected.

''(ii) TYPES OF COVERAGE.—The premium amounts calculated under this subparagraph shall include separate calculations for—

''(I) coverage as an individual;

''(II) self plus one coverage; and

''(III) self and family coverage.

''(C) ADDITIONAL AMOUNTS.—The additional amounts described in this subparagraph with respect to an eligible reserve component member are such cost-sharing amounts as may be applicable under the health benefits plan under which the member is covered.

''(10) CONTRACTING.—

''(A) IN GENERAL.—In contracting for health benefits plans under paragraph (4), the Director may contract with qualified carriers in a manner similar to the manner in which the Director contracts with carriers under section 8902 of title 5, United States Code, including that—

''(i) a contract under this subsection shall be for a uniform term of not less than one year, but may be made automatically renewable from term to term in the absence of notice of termination by either party;

''(ii) a contract under this subsection shall contain a detailed statement of benefits offered and shall include such maximums, limitations, exclusions, and other definitions of benefits determined by the Director in accordance with paragraph (5);

''(iii) a contract under this subsection shall ensure that an eligible reserve component member who is eligible to enroll in a health benefits plan pursuant to such contract is able to enroll in such plan; and

''(iv) the terms of a contract under this subsection relating to the nature, provision, or extent of coverage or benefits (including payments with respect to benefits) shall supersede and preempt any conflicting State or local law.

''(B) EVALUATION OF FINANCIAL SOLVENCY.—The Director shall perform a thorough evaluation of the financial solvency of an insurance carrier before entering into a contract with the insurance carrier under subparagraph (A).

''(11) RECOMMENDATIONS AND DATA.—

''(A) IN GENERAL.—The Secretary of Defense, in consultation with the Secretary of Homeland Security, shall provide recommendations and data to the Director with respect to—

''(i) matters involving military medical treatment facilities;

''(ii) matters unique to eligible reserve component members and dependents of such members; and

''(iii) such other strategic guidance necessary for the Director to administer this subsection as the Secretary of Defense, in consultation with the Secretary of Homeland Security, considers appropriate.

''(B) LIMITATION ON IMPLEMENTATION.—The Director shall not implement any recommendation provided by the Secretary of Defense under subparagraph (A) if the Director determines that the implementation of the recommendation would result in eligible reserve components beneficiaries receiving less generous health benefits under this subsection than the health benefits commonly available to individuals under the Federal Employees Health Benefits Program during the same period.

''(12) TRANSMISSION OF INFORMATION.—On an annual basis during each year in which the pilot program is carried out, the Director shall provide the Secretary with information on the use of health care benefits under the pilot program, including—

''(A) the number of eligible reserve component beneficiaries participating in the pilot program, listed by the health benefits plan under which the beneficiary is covered;

''(B) the number of health benefits plans offered under the pilot program and a description of each such plan; and

''(C) the costs of the health care provided under the plans.

''(13) FUNDING.—

''(A) IN GENERAL.—The Secretary of Defense and the Director shall jointly establish an appropriate mechanism to fund the pilot program.

''(B) AVAILABILITY OF AMOUNTS.—Amounts shall be made available to the Director pursuant to the mechanism established under subparagraph (A), without fiscal year limitation—

''(i) for payments to health benefits plans under this subsection; and

''(ii) to pay the costs of administering this subsection.

''(14) REPORTS.—

''(A) INITIAL REPORTS.—Not later than one year after the date on which the Secretary establishes the pilot program, and annually thereafter for the following three years, the Secretary shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the pilot program.

''(B) MATTERS INCLUDED.—The report under subparagraph (A) shall include, with respect to the year covered by the report, the following:

''(i) The number of eligible reserve component beneficiaries participating in the pilot program, listed by the health benefits plan under which the beneficiary is covered.

''(ii) The number of health benefits plans offered under the pilot program.

''(iii) The cost of the pilot program to the Department of Defense.

''(iv) The estimated cost savings, if any, to the Department of Defense.

''(v) The average cost to the eligible reserve component beneficiary.

''(vi) The effect of the pilot program on the medical readiness of the members of the reserve components.

''(vii) The effect of the pilot program on access to health care for members of the reserve components.

''(C) FINAL REPORT.—Not later than 180 days before the date on which the pilot program will terminate pursuant to paragraph (3), the Secretary shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the pilot program that includes—

''(i) the matters specified under subparagraph (B); and

''(ii) the recommendation of the Secretary regarding whether to make the pilot program permanent or to terminate the pilot program.

''(c) DEFINITIONS.—In this section:

''(1) The term 'Director' means the Director of the Office of Personnel Management.

''(2) The term 'eligible reserve component beneficiary' means an eligible reserve component member enrolled in, or a dependent of such a member described in subparagraph (A), (D), or (I) of section 1072(2) of title 10, United States Code, covered under, a health benefits plan under subsection (b).

''(3) The term 'eligible reserve component member' means a member of the Selected Reserve of the Ready Reserve of an Armed Force.

''(4) The term 'extended health care option' means the program of extended benefits under subsections (d) and (e) of section 1079 of title 10, United States Code.

''(5) The term 'Federal Employees Health Benefits Program' means the health insurance program under chapter 89 of title 5, United States Code.

''(6) The term 'qualified carrier' means an insurance carrier that is licensed to issue group health insurance in any State, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, and any territory or possession of the United States.''

CALCULATION OF MONTHLY PREMIUMS FOR 2009

Pub. L. 110–417, [div. A], title VII, §704(b), Oct. 14, 2008, 122 Stat. 4499, provided that: ''For purposes of section 1076d(d)(3) of title 10, United States Code, the appropriate actuarial basis for purposes of subparagraph (A) of that section shall be determined for calendar year 2009 by utilizing the reported cost of providing benefits under that section to members and their dependents during calendar years 2006 and 2007, except that the monthly amount of the premium determined pursuant to this subsection may not exceed the amount in effect for the month of March 2007.''

IMPLEMENTATION

Pub. L. 108–375, div. A, title VII, §701(b), Oct. 28, 2004, 118 Stat. 1981, provided that:

''(1) The Secretary of Defense shall implement section 1076d of title 10, United States Code, not later than 180 days after the date of the enactment of this Act [Oct. 28, 2004].

''(2)(A) A member of a reserve component of the Armed Forces who performed active-duty service described in subsection (a) of section 1076d of title 10, United States Code, for a period beginning on or after September 11, 2001, and was released from that active-duty service before the date of the enactment of this Act, or is released from that active-duty service on or within 180 days after the date of the enactment of this Act, may, for the purpose of paragraph (2) of such subsection, enter into an agreement described in such paragraph not later than one year after the date of the enactment of this Act. TRICARE Standard coverage (under such section 1076d) of a member who enters into such an agreement under this paragraph shall begin on the later of—

''(i) the date applicable to the member under subsection (b) of such section; or

''(ii) the date of the agreement.

''(B) The Secretary of Defense shall take such action as is necessary to ensure, to the maximum extent practicable, that members of the reserve components eligible to enter into an agreement as provided in subparagraph (A) actually receive information on the opportunity and procedures for entering into such an agreement together with a clear explanation of the benefits that the members are eligible to receive as a result of entering into such an agreement under section 1076d of title 10, United States Code.''

§ 1076e. TRICARE program: TRICARE Retired Reserve coverage for certain members of the Retired Reserve who are qualified for a non-regular retirement but are not yet age 60

(a) ELIGIBILITY.—(1) Except as provided in paragraph (2), a member of the Retired Reserve of a reserve component of the armed forces who is qualified for a non-regular retirement at age 60 under chapter 1223 of this title, but is not age 60, is eligible for health benefits under TRICARE Retired Reserve as provided in this section.

(2) Paragraph (1) does not apply to a member who is enrolled, or is eligible to enroll, in a health benefits plan under chapter 89 of title 5.

(b) TERMINATION OF ELIGIBILITY UPON OBTAINING OTHER TRICARE COVERAGE.—Eligibility for TRICARE Retired Reserve coverage of a member under this section shall terminate upon the member becoming eligible for TRICARE coverage at age 60 under section 1086 of this title.

(c) FAMILY MEMBERS.—While a member of a reserve component is covered by TRICARE Retired Reserve under this section, the members of the immediate family of such member are eligible for TRICARE Retired Reserve coverage as dependents of the member. If a member of a reserve component dies while in a period of coverage under this section, the eligibility of the members of the immediate family of such member for TRICARE Retired Reserve coverage under this section shall continue for the same period of time that would be provided under section 1086 of this title if the member had been eligible at the time of death for TRICARE coverage under such section (instead of under this section).

(d) PREMIUMS.—(1) A member of a reserve component covered by TRICARE Retired Reserve under this section shall pay a premium for that coverage. Such premium shall apply instead of any enrollment fees required under section 1075 of this title.

(2) The Secretary of Defense shall prescribe for the purposes of this section one premium for TRICARE Retired Reserve coverage of members without dependents and one premium for TRICARE Retired Reserve coverage of members with dependents referred to in subsection (f)(1). The premium prescribed for a coverage shall apply uniformly to all members of the reserve components covered under this section.

(3) The monthly amount of the premium in effect for a month for TRICARE Retired Reserve coverage under this section shall be the amount equal to the cost of coverage that the Secretary determines on an appropriate actuarial basis.

(4) The Secretary shall prescribe the requirements and procedures applicable to the payment of premiums under this subsection.

(5) Amounts collected as premiums under this subsection shall be credited to the appropriation available for the Defense Health Program Account under section 1100 of this title, shall be merged with sums in such Account that are available for the fiscal year in which collected, and shall be available under subsection (b) of such section for such fiscal year.

(e) REGULATIONS.—The Secretary of Defense, in consultation with the other administering Secretaries, shall prescribe regulations for the administration of this section.

(f) DEFINITIONS.—In this section:

(1) The term ''immediate family'', with respect to a member of a reserve component, means all of the member's dependents described in subparagraphs (A), (D), and (I) of section 1072(2) of this title.

(2) The term ''TRICARE Retired Reserve'' means—

(A) medical care at facilities of the uniformed services to which a dependent described in section 1076(a)(2) of this title is entitled; and

(B) health benefits under the TRICARE Select self-managed, preferred provider network option under section 1075 of this title made available to beneficiaries by reason of this section and subject to the cost-sharing requirements set forth in such section 1075.

(Added Pub. L. 111–84, div. A, title VII, § 705(a), Oct. 28, 2009, 123 Stat. 2374; Pub. L. 114–328, div. A, title VII, § 701(j)(1)(C), Dec. 23, 2016, 130 Stat. 2192; Pub. L. 115–91, div. A, title VII, § 701(b), Dec. 12, 2017, 131 Stat. 1432; Pub. L. 116–92, div. A, title XVII, § 1731(a)(25), Dec. 20, 2019, 133 Stat. 1813.)

AMENDMENTS

2019—Subsec. (d)(1). Pub. L. 116–92 substituted ''section 1075 of this title'' for ''section 1075 of this section''.

2017—Subsec. (b). Pub. L. 115–91, § 701(b)(1), struck out ''Retired Reserve'' after ''TRICARE'' in heading. See first 2016 Amendment note for subsec. (b) below.

Subsec. (c). Pub. L. 115–91, § 701(b)(2), struck out ''Retired Reserve'' before ''coverage under such section'' in last sentence.

Subsec. (f)(2). Pub. L. 115–91, § 701(b)(3), added par. (2) and struck out former par. (2) which read as follows: ''The term 'TRICARE Retired Reserve' means the TRICARE Select self-managed, preferred-provider network option under section 1075 made available to beneficiaries by reason of this section and in accordance with subsection (d)(1).''

2016—Pub. L. 114–328, § 701(j)(1)(C)(iv), substituted ''TRICARE Retired Reserve'' for ''TRICARE Standard'' in section catchline and wherever appearing in text.

Subsec. (b). Pub. L. 114–328, § 701(j)(1)(C)(iv), which directed substitution of ''TRICARE Retired Reserve'' for ''TRICARE Standard'' wherever appearing in text, was also executed to heading of subsec. (b) to reflect the probable intent of Congress and the subsequent amendment by Pub. L. 115–91, § 701(b)(1), which could be executed only if the substitution had taken place.

Pub. L. 114–328, § 701(j)(1)(C)(iii), substituted ''TRICARE coverage at'' for ''TRICARE Standard coverage at''.

Subsec. (d)(1). Pub. L. 114–328, § 701(j)(1)(C)(i), inserted at end ''Such premium shall apply instead of any enrollment fees required under section 1075 of this section.''

Subsec. (f)(2). Pub. L. 114–328, § 701(j)(1)(C)(ii), added par. (2) and struck out former par. (2) which defined the term ''TRICARE Standard''.

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114–328 applicable with respect to the provision of health care under the TRICARE program beginning on Jan. 1, 2018, see section 701(k) of Pub. L. 114–328, set out as a note under section 1072 of this title.

EFFECTIVE DATE

Pub. L. 111–84, div. A, title VII, § 705(c), Oct. 28, 2009, 123 Stat. 2375, provided that: ''Section 1076e of title 10, United States Code, as inserted by subsection (a), shall apply to coverage for months beginning on or after October 1, 2009, or such earlier date as the Secretary of Defense may specify.''

§ 1076f. TRICARE program: extension of coverage for certain members of the National Guard and dependents during certain disaster response duty

(a) EXTENDED COVERAGE.—During a period in which a member of the National Guard is performing disaster response duty, the member may be treated as being on active duty for a period of more than 30 days for purposes of the eligibility of the member and dependents of the member for health care benefits under the TRICARE program if such period immediately follows a period in which the member served on full-time National Guard duty under section 502(f) of title 32, including pursuant to chapter 9 of such title, unless the Governor of the State (or, with respect to the District of Columbia, the mayor of the District of Columbia) determines that such extended eligibility is not in the best interest of the member or the State.

(b) CONTRIBUTION BY STATE.—(1) The Secretary shall charge a State for the costs of providing coverage under the TRICARE program to members of the National Guard of the State and the dependents of the members pursuant to subsection (a). Such charges shall be paid from the funds of the State or from any other non-Federal funds.

(2) Any amounts received by the Secretary under paragraph (1) shall be credited to the appropriation available for the Defense Health Program Account under section 1100 of this title, shall be merged with sums in such Account that are available for the fiscal year in which collected, and shall be available under subsection (b) of such section, including to carry out subsection (a) of this section.

(c) DEFINITIONS.—In this section:

(1) The term ''disaster response duty'' means duty performed by a member of the National Guard in State status pursuant to an emergency declaration by the Governor of the State (or, with respect to the District of Columbia, the mayor of the District of Columbia) in response to a disaster or in preparation for an imminent disaster.

(2) The term ''State'' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

(Added Pub. L. 114–328, div. A, title VII, §711(a), Dec. 23, 2016, 130 Stat. 2213.)

§ 1077. Medical care for dependents: authorized care in facilities of uniformed services

(a) Only the following types of health care may be provided under section 1076 of this title:

(1) Hospitalization.

(2) Outpatient care.

(3) Drugs, including, in accordance with subsection (h), medically necessary vitamins.

(4) Treatment of medical and surgical conditions.

(5) Treatment of nervous, mental, and chronic conditions.

(6) Treatment of contagious diseases.

(7) Physical examinations, including eye examinations, and immunizations.

(8) Maternity and infant care, including well-baby care that includes one screening of an infant for the level of lead in the blood of the infant.

(9) Diagnostic tests and services, including laboratory and X-ray examinations.

(10) Dental care.

(11) Ambulance service and home calls when medically necessary.

(12) Durable equipment, which may be provided on a loan basis.

(13) Primary and preventive health care services for women (as defined in section 1074d(b) of this title).

(14) Preventive health care screening for colon or prostate cancer, at the intervals and using the screening methods prescribed under section 1074d(a)(2) of this title.

(15) Prosthetic devices, as determined by the Secretary of Defense to be necessary because of significant conditions resulting from trauma, congenital anomalies, or disease.

(16) Except as provided by subsection (g), a hearing aid, but only for a dependent of a member of the uniformed services on active duty and only if the dependent has a profound hearing loss, as determined under standards prescribed in regulations by the Secretary of Defense in consultation with the administering Secretaries.

(17) Any rehabilitative therapy to improve, restore, or maintain function, or to minimize or prevent deterioration of function, of a patient when prescribed by a physician.

(18) In accordance with subsection (h), medically necessary food and the medical equipment and supplies necessary to administer such food (other than durable medical equipment and supplies).

(b) The following types of health care may not be provided under section 1076 of this title:

(1) Domiciliary or custodial care.

(2) Orthopedic footwear and spectacles, except that, outside of the United States and at stations inside the United States where adequate civilian facilities are unavailable, such items may be sold to dependents at cost to the United States.

(3) The elective correction of minor dermatological blemishes and marks or minor anatomical anomalies.

(c)(1) Except as specified in paragraph (2), a dependent participating under a dental plan established under section 1076a of this title may not be provided dental care under section 1076(a) of this title except for emergency dental care, dental care provided outside the United States, and dental care that is not covered by such plan.

(2)(A) Dependents who are 12 years of age or younger and are covered by a dental plan established under section 1076a of this title may be treated by postgraduate dental residents in a dental treatment facility of the uniformed services under a graduate dental education program accredited by the American Dental Association if—

(i) treatment of pediatric dental patients is necessary in order to satisfy an accreditation standard of the American Dental Association that is applicable to such program, or training in pediatric dental care is necessary for the residents to be professionally qualified to pro-

vide dental care for dependent children accompanying members of the uniformed services outside the United States; and

(ii) the number of pediatric patients at such facility is insufficient to support satisfaction of the accreditation or professional requirements in pediatric dental care that apply to such program or students.

(B) The total number of dependents treated in all facilities of the uniformed services under subparagraph (A) in a fiscal year may not exceed 2,000.

(d)(1) Notwithstanding subsection (b)(1), hospice care may be provided under section 1076 of this title in facilities of the uniformed services to a terminally ill patient who chooses (pursuant to regulations prescribed by the Secretary of Defense in consultation with the other administering Secretaries) to receive hospice care rather than continuing hospitalization or other health care services for treatment of the patient's terminal illness.

(2) In this section, the term ''hospice care'' means the items and services described in section 1861(dd) of the Social Security Act (42 U.S.C. 1395x(dd)).

(e)(1) Authority to provide a prosthetic device under subsection (a)(15) includes authority to provide the following:

(A) Any accessory or item of supply that is used in conjunction with the device for the purpose of achieving therapeutic benefit and proper functioning.

(B) Services necessary to train the recipient of the device in the use of the device.

(C) Repair of the device for normal wear and tear or damage.

(D) Replacement of the device if the device is lost or irreparably damaged or the cost of repair would exceed 60 percent of the cost of replacement.

(2) An augmentative communication device may be provided as a voice prosthesis under subsection (a)(15).

(3) A prosthetic device customized for a patient may be provided under this section only by a prosthetic practitioner who is qualified to customize the device, as determined under regulations prescribed by the Secretary of Defense in consultation with the administering Secretaries.

(f)(1) Items that may be provided to a patient under subsection (a)(12) include the following:

(A) Any durable medical equipment that can improve, restore, or maintain the function of a malformed, diseased, or injured body part, or can otherwise minimize or prevent the deterioration of the patient's function or condition.

(B) Any durable medical equipment that can maximize the patient's function consistent with the patient's physiological or medical needs.

(C) Wheelchairs.

(D) Iron lungs.

(E) Hospital beds.

(2) In addition to the authority to provide durable medical equipment under subsection (a)(12), any customization of equipment owned by the patient that is durable medical equipment authorized to be provided to the patient under this section or section 1079(a)(5) of this title, and any accessory or item of supply for any such equipment, may be provided to the patient if the customization, accessory, or item of supply is essential for—

(A) achieving therapeutic benefit for the patient;

(B) making the equipment serviceable; or

(C) otherwise assuring the proper functioning of the equipment.

(g)(1) In addition to the authority to provide a hearing aid under subsection (a)(16), hearing aids may be sold under this section to dependents eligible for care under this section at cost to the United States.

(2) For purposes of selling hearing aids at cost to the United States under paragraph (1), a dependent of a member of the reserve components who is enrolled in the TRICARE program under section 1076d of this title shall be deemed to be a dependent eligible for care under this section.

(h)(1) Vitamins that may be provided under subsection (a)(3) are vitamins used for the management of a covered disease or condition pursuant to the prescription, order, or recommendation (as applicable) of a physician or other health care professional qualified to make such prescription, order, or recommendation.

(2) Medically necessary food that may be provided under subsection (a)(18)—

(A) is food, including a low protein modified food product or an amino acid preparation product, that is—

(i) furnished pursuant to the prescription, order, or recommendation (as applicable) of a physician or other health care professional qualified to make such prescription, order, or recommendation, for the dietary management of a covered disease or condition;

(ii) a specially formulated and processed product (as opposed to a naturally occurring foodstuff used in its natural state) for the partial or exclusive feeding of an individual by means of oral intake or enteral feeding by tube;

(iii) intended for the dietary management of an individual who, because of therapeutic or chronic medical needs, has limited or impaired capacity to ingest, digest, absorb, or metabolize ordinary foodstuffs or certain nutrients, or who has other special medically determined nutrient requirements, the dietary management of which cannot be achieved by the modification of the normal diet alone;

(iv) intended to be used under medical supervision, which may include in a home setting; and

(v) intended only for an individual receiving active and ongoing medical supervision under which the individual requires medical care on a recurring basis for, among other things, instructions on the use of the food; and

(B) may not include—

(i) food taken as part of an overall diet designed to reduce the risk of a disease or medical condition or as weight-loss products, even if the food is recommended by a physician or other health care professional;

(ii) food marketed as gluten-free for the management of celiac disease or non-celiac gluten sensitivity;

(iii) food marketed for the management of diabetes; or

(iv) such other products as the Secretary determines appropriate.

(3) In this subsection, the term ''covered disease or condition'' means—

(A) inborn errors of metabolism;

(B) medical conditions of malabsorption;

(C) pathologies of the alimentary tract or the gastrointestinal tract;

(D) a neurological or physiological condition; and

(E) such other diseases or conditions the Secretary determines appropriate.

(Added Pub. L. 85–861, § 1(25)(B), Sept. 2, 1958, 72 Stat. 1447; amended Pub. L. 89–614, § 2(4), Sept. 30, 1966, 80 Stat. 863; Pub. L. 98–525, title VI, § 633(a), title XIV, §§ 1401(e)(3), 1405(22), Oct. 19, 1984, 98 Stat. 2544, 2617, 2623; Pub. L. 99–145, title VI, § 651(b), Nov. 8, 1985, 99 Stat. 656; Pub. L. 102–190, div. A, title VII, §§ 702(a), 703, Dec. 5, 1991, 105 Stat. 1400, 1401; Pub. L. 103–160, div. A, title VII, § 701(b), Nov. 30, 1993, 107 Stat. 1686; Pub. L. 103–337, div. A, title VII, §§ 703(b), 705, Oct. 5, 1994, 108 Stat. 2798, 2799; Pub. L. 104–201, div. A, title VII, § 701(b)(1), Sept. 23, 1996, 110 Stat. 2587; Pub. L. 105–85, div. A, title VII, § 702, Nov. 18, 1997, 111 Stat. 1807; Pub. L. 107–107, div. A, title VII, §§ 702, 703(a), 704, Dec. 28, 2001, 115 Stat. 1161, 1162; Pub. L. 108–375, div. A, title VII, § 715, Oct. 28, 2004, 118 Stat. 1985; Pub. L. 114–328, div. A, title VII, §§ 713, 714(a), Dec. 23, 2016, 130 Stat. 2220; Pub. L. 115–91, div. A, title VII, § 739(c), Dec. 12, 2017, 131 Stat. 1447; Pub. L. 116–283, div. A, title VII, § 705, Jan. 1, 2021, 134 Stat. 3689.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1077(a)	37:403(f).	June 7, 1956, ch. 374, § 103(f), (g), (h), 70 Stat. 251, 252.
1077(b)	37:403(g).	
1077(c)	37:403(h) (less clause (4)).	
1077(d)	37:403(h) (clause (4)).	

In subsection (a), clause (6) is inserted to reflect subsection (b).

PRIOR PROVISIONS

Provisions similar to those in subsec. (b)(3) of this section were contained in the following appropriation acts:

Pub. L. 98–473, title I, § 101(h) [title VIII, § 8045], Oct. 12, 1984, 98 Stat. 1904, 1931.

Pub. L. 98–212, title VII, § 752, Dec. 8, 1983, 97 Stat. 1447.

Pub. L. 97–377, title I, § 101(c) [title VII, § 756], Dec. 21, 1982, 96 Stat. 1833, 1860.

Pub. L. 97–114, title VII, § 759, Dec. 29, 1981, 95 Stat. 1588.

Pub. L. 96–527, title VII, § 763, Dec. 15, 1980, 94 Stat. 3092.

Pub. L. 96–154, title VII, § 769, Dec. 21, 1979, 93 Stat. 1163.

A prior section 1077, act Aug. 10, 1956, ch. 1041, 70A Stat. 84, related to distribution of ballots, envelopes, and voting instructions, prior to repeal by Pub. L. 85–861, § 36B(5), Sept. 2, 1958, 72 Stat. 1570, as superseded by the Federal Voting Assistance Act of 1955 which is classified to subchapter I–D (§ 1973cc et seq.) of chapter 20 of Title 42, The Public Health and Welfare.

AMENDMENTS

2021—Subsec. (g). Pub. L. 116–283 designated existing provisions as par. (1) and added par. (2).

2017—Subsec. (a)(3), (18). Pub. L. 115–91, § 739(c)(1), substituted ''subsection (h)'' for ''subsection (g)''.

Subsec. (g). Pub. L. 115–91, § 739(c)(2), substituted ''dependents eligible for care under this section'' for ''dependents of former members of the uniformed services''.

2016—Subsec. (a)(3). Pub. L. 114–328, § 714(a)(1)(A), inserted before period at end '', including, in accordance with subsection (g), medically necessary vitamins''.

Subsec. (a)(16). Pub. L. 114–328, § 713(1), substituted ''Except as provided by subsection (g), a hearing aid'' for ''A hearing aid''.

Subsec. (a)(18). Pub. L. 114–328, § 714(a)(1)(B), added par. (18).

Subsec. (g). Pub. L. 114–328, § 713(2), added subsec. (g).

Subsec. (h). Pub. L. 114–328, § 714(a)(2), added subsec. (h).

2004—Subsec. (c). Pub. L. 108–375 designated existing provisions as par. (1), substituted ''Except as specified in paragraph (2), a'' for ''A'', and added par. (2).

2001—Subsec. (a)(12). Pub. L. 107–107, § 703(a)(1), substituted ''which'' for ''such as wheelchairs, iron lungs, and hospital beds''.

Subsec. (a)(16). Pub. L. 107–107, § 702(1), added par. (16).

Subsec. (a)(17). Pub. L. 107–107, § 704, added par. (17).

Subsec. (b)(2). Pub. L. 107–107, § 702(2), substituted ''Orthopedic footwear'' for ''Hearing aids, orthopedic footwear,''.

Subsec. (e). Pub. L. 107–107, § 702(3), added subsec. (e).

Subsec. (f). Pub. L. 107–107, § 703(a)(2), added subsec. (f).

1997—Subsec. (a)(15). Pub. L. 105–85, § 702(a), added cl. (15).

Subsec. (b)(2). Pub. L. 105–85, § 702(b), added par. (2) and struck out former par. (2) which read as follows: ''Prosthetic devices, hearing aids, orthopedic footwear, and spectacles except that—

''(A) outside the United States and at stations inside the United States where adequate civilian facilities are unavailable, such items may be sold to dependents at cost to the United States, and

''(B) artificial limbs, voice prostheses, and artificial eyes may be provided.''

1996—Subsec. (a)(14). Pub. L. 104–201 added cl. (14).

1994—Subsec. (b)(2)(B). Pub. L. 103–337, § 705, inserted '', voice prostheses,'' after ''artificial limbs''.

Subsec. (c). Pub. L. 103–337, § 703(b), substituted '', dental care provided outside the United States, and dental care'' for ''and care''.

1993—Subsec. (a)(13). Pub. L. 103–160 added cl. (13).

1991—Subsec. (a)(8). Pub. L. 102–190, § 703, inserted before period at end '', including well-baby care that includes one screening of an infant for the level of lead in the blood of the infant''.

Subsec. (d). Pub. L. 102–190, § 702(a), added subsec. (d).

1985—Subsec. (c). Pub. L. 99–145 added subsec. (c).

1984—Pub. L. 98–525, § 1405(22), substituted a colon for the semicolon in section catchline.

Subsec. (a)(10). Pub. L. 98–525, § 633(a)(1), added cl. (10). Former cl. (10) ''Emergency dental care worldwide.'' was struck out.

Subsec. (a)(11). Pub. L. 98–525, § 633(a)(1), redesignated cl. (13) as (11). Former cl. (11) ''Routine dental care outside the United States and at stations in the United States where adequate civilian facilities are unavailable.'' was struck out.

Subsec. (a)(12). Pub. L. 98–525, § 633(a)(1), redesignated cl. (14) as (12). Former cl. (12) ''Dental care worldwide as a necessary adjunct of medical, surgical, or preventive treatment.'' was struck out.

Subsec. (a)(13), (14). Pub. L. 98–525, § 633(a)(2), redesignated cls. (13) and (14) as cls. (11) and (12), respectively.

Subsec. (b)(3). Pub. L. 98–525, § 1401(e)(3), added par. (3).

1966—Pub. L. 89–614 authorized an improved health benefits program for dependents of active duty mem-

bers of the uniformed services in facilities of such services, expanding health care to be provided to include: hospitalization, outpatient care, and drugs in clauses (1) to (3) of subsec. (a) (hospitalization being limited by former subsec. (b) to treatment of nervous or mental disturbances or chronic diseases or for elective medical and surgical treatment to one year period in special cases); treatment of mental and surgical conditions in clause (4) minus acute condition restriction of former subsec. (a)(2); treatment of nervous, mental, and chronic conditions in clause (5) formerly restricted as stated above; clause (6) reenactment of former subsec. (a)(3); physical, including eye, examinations in clause (7) reenacting former subsec. (a)(4) immunization provisions; clause (8) reenactment of former subsec. (a)(5); diagnostic tests and services, including laboratory and X-ray examinations (diagnosis being covered in former subsec. (a)(1)); dental care provisions in clauses (10) to (12) (provided in former subsec. (d)) as (1) emergency care to relieve pain and suffering, but not including permanent restorative work or dental prosthesis, (2) care as a necessary adjunct to medical or surgical treatment, and care outside the United States, and in remote areas inside the United States, where adequate civilian facilities are unavailable; ambulance service and home calls in clause 13 (covering former subsec. (c)(2), (3)); durable equipment on loan basis in clause (14); and to exclude in subsec. (b)(1) (incorporating last sentence of former subsec. (b)) custodial care; subsec. (b)(2)(A) reenactment of former subsec. (e)(1); and permitted in subsec. (b)(2)(B) artificial limbs and eyes to be provided.

EFFECTIVE DATE OF 2016 AMENDMENT

Pub. L. 114–328, div. A, title VII, §714(b), Dec. 23, 2016, 130 Stat. 2221, provided that: ''The amendments made by subsection (a) [amending this section] shall apply to health care provided under chapter 55 of such title [meaning title 10, United States Code] on or after the date that is one year after the date of the enactment of this Act [Dec. 23, 2016].''

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–525, title VI, §633(b), Oct. 19, 1984, 98 Stat. 2544, provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on July 1, 1985.''

Amendment by section 1401(e)(3) of Pub. L. 98–525 effective Oct. 1, 1985, see section 1404 of Pub. L. 98–525, set out as an Effective Date note under section 520b of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

For effective date of amendment by Pub. L. 89–614, see section 3 of Pub. L. 89–614, set out as a note under section 1071 of this title.

LEAD LEVEL SCREENING AND TESTING FOR CHILDREN

Pub. L. 116–92, div. A, title VII, §703, Dec. 20, 2019, 133 Stat. 1437, provided that:

''(a) COMPREHENSIVE SCREENING, TESTING, AND REPORTING GUIDELINES.—

''(1) IN GENERAL.—The Secretary of Defense shall establish clinical practice guidelines for health care providers employed by the Department of Defense on screening, testing, and reporting of blood lead levels in children.

''(2) USE OF CDC RECOMMENDATIONS.—Guidelines established under paragraph (1) shall reflect recommendations made by the Centers for Disease Control and Prevention with respect to the screening, testing, and reporting of blood lead levels in children.

''(3) DISSEMINATION OF GUIDELINES.—Not later than one year after the date of the enactment of this Act [Dec. 20, 2019], the Secretary shall disseminate the clinical practice guidelines established under paragraph (1) to health care providers of the Department of Defense.

''(b) CARE PROVIDED IN ACCORDANCE WITH CDC GUIDANCE.—The Secretary shall ensure that any care provided by the Department of Defense to a child for an elevated blood lead level shall be carried out in accordance with applicable guidance issued by the Centers for Disease Control and Prevention.

''(c) SHARING OF RESULTS OF TESTING.—

''(1) IN GENERAL.—With respect to a child who receives from the Department of Defense a test for an elevated blood lead level—

''(A) the Secretary shall provide the results of the test to the parent or guardian of the child; and

''(B) notwithstanding any requirements for the confidentiality of health information under the Health Insurance Portability and Accountability Act of 1996 (Public Law 104–191) [see Tables for classification], if the results of the test show an abnormal blood lead level or elevated blood lead level, the Secretary shall provide those results and the address at which the child resides to—

''(i) the relevant health department of the State in which the child resides if the child resides in the United States; or

''(ii) if the child resides outside the United States—

''(I) the Centers for Disease Control and Prevention;

''(II) the appropriate authority of the country in which the child resides; and

''(III) the primary provider of health care for the child for follow-up.

''(2) STATE DEFINED.—In this subsection, the term 'State' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

''(d) REPORT.—Not later than January 1, 2021, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report detailing, with respect to the period beginning on the date of the enactment of this Act and ending on the date of the report, the following:

''(1) The number of children who were tested by the Department of Defense for the level of lead in the blood of the child, and of such number, the number who were found to have an elevated blood lead level.

''(2) The number of children who were screened by the Department of Defense for an elevated risk of lead exposure.

''(e) COMPTROLLER GENERAL REPORT.—Not later than January 1, 2022, the Comptroller General of the United States shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the effectiveness of screening and testing for lead exposure and elevated blood lead levels under chapter 55 of title 10, United States Code.

''(f) DEFINITIONS.—In this section, the terms 'abnormal blood lead level' and 'elevated blood lead level' have the meanings given those terms by the Centers for Disease Control and Prevention.''

STUDY, PLAN, AND PILOT FOR THE MENTAL HEALTH CARE NEEDS OF DEPENDENT CHILDREN OF MEMBERS OF THE ARMED FORCES

Pub. L. 111–84, div. A, title VII, §722, Oct. 28, 2009, 123 Stat. 2387, provided that:

''(a) REPORT AND PLAN ON THE MENTAL HEALTH CARE AND COUNSELING SERVICES AVAILABLE TO MILITARY CHILDREN.—

''(1) IN GENERAL.—The Secretary of Defense shall conduct a comprehensive review of the mental health care and counseling services available to dependent children of members of the Armed Forces through the Department of Defense.

''(2) ELEMENTS.—The review under paragraph (1) shall include an assessment of the following:

''(A) The availability, quality, and effectiveness of Department of Defense programs intended to meet the mental health care needs of military children.

''(B) The availability, quality, and effectiveness of Department of Defense programs intended to promote resiliency in military children in coping with

deployment cycles, injury, or death of military parents.

"(C) The extent of access to, adequacy, and availability of mental health care and counseling services for military children in military medical treatment facilities, in family assistance centers, through Military OneSource, under the TRICARE program, and in Department of Defense Education Activity schools.

"(D) Whether the status of a member of the Armed Forces on active duty, or in reserve active status, affects the access of a military child to mental health care and counseling services.

"(E) Whether, and to what extent, waiting lists, geographic distance, and other factors may obstruct the receipt by military children of mental health care and counseling services.

"(F) The extent of access to, availability, and viability of specialized mental health care for military children (including adolescents).

"(G) The extent of any gaps in the current capabilities of the Department of Defense to provide preventive mental health services for military children.

"(H) Such other matters as the Secretary considers appropriate.

"(3) REPORT.—Not later than one year after the date of the enactment of this Act [Oct. 28, 2009], the Secretary shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the review conducted under paragraph (1), including the findings and recommendations of the Secretary as a result of the review.

"(b) COMPREHENSIVE PLAN FOR IMPROVEMENTS IN ACCESS TO CARE AND COUNSELING.—The Secretary shall develop and implement a comprehensive plan for improvements in access to quality mental health care and counseling services for military children in order to develop and promote psychological health and resilience in children of deploying and deployed members of the Armed Forces. The information in the report required by subsection (a) shall provide the basis for the development of the plan.

"(c) PILOT PROGRAM.—

"(1) ELEMENTS.—The Secretary of the Army shall carry out a pilot program on the mental health care needs of military children and adolescents. In carrying out the pilot program, the Secretary shall establish a center to—

"(A) develop teams to train primary care managers in mental health evaluations and treatment of common psychiatric disorders affecting children and adolescents;

"(B) develop strategies to reduce barriers to accessing behavioral health services and encourage better use of the programs and services by children and adolescents; and

"(C) expand the evaluation of mental health care using common indicators, including—

"(i) psychiatric hospitalization rates;

"(ii) non-psychiatric hospitalization rates; and

"(iii) mental health relative value units.

"(2) REPORTS.—

"(A) Not later than 90 days after establishing the pilot program, the Secretary of the Army shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report describing the—

"(i) structure and mission of the program; and

"(ii) the resources allocated to the program.

"(B) Not later than September 30, 2012, the Secretary of the Army shall submit to the congressional defense committees a report that addresses the elements described under paragraph (1)."

PROGRAM FOR MENTAL HEALTH AWARENESS FOR DEPENDENTS AND PILOT PROJECT ON POST TRAUMATIC STRESS DISORDER

Pub. L. 109–163, div. A, title VII, §721, Jan. 6, 2006, 119 Stat. 3346, directed the Secretary of Defense, no later than one year after Jan. 6, 2006, to develop a program to increase awareness of mental health services for, and warning signs about mental health problems in, dependents of service members who have served or will serve in combat theaters and directed the Secretary to carry out a pilot project to evaluate internet-based early diagnosis and treatment of post traumatic stress disorder and other mental health conditions and report to Congress no later than June 1, 2006.

PROVISION OF DOMICILIARY AND CUSTODIAL CARE FOR CERTAIN CHAMPUS BENEFICIARIES

Pub. L. 106–65, div. A, title VII, §703, Oct. 5, 1999, 113 Stat. 682, as amended by Pub. L. 106–398, §1 [[div. A], title VII, § 701(a), (b), (c)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–172, related to the continued provision of domiciliary and custodial care for certain CHAMPUS beneficiaries, prohibited the establishment of a limited transition period for such program, required a survey and report of case management and custodial care policies, and provided for cost limitations for each fiscal year, prior to repeal by Pub. L. 107–107, div. A, title VII, §701(g)(1)(A), Dec. 28, 2001, 115 Stat. 1161.

OBSTETRICAL CARE FACILITIES

Pub. L. 89–188, title VI, §610, Sept. 16, 1965, 79 Stat. 818, required that military hospitals in the United States and its possessions be constructed so as to include facilities for obstetrical care, prior to repeal by Pub. L. 97–214, §7(7), July 12, 1982, 96 Stat. 173, eff. Oct. 1, 1982.

§ 1077a. Access to military medical treatment facilities and other facilities

(a) URGENT CARE.—(1) The Secretary of Defense shall ensure that military medical treatment facilities, at locations the Secretary determines appropriate, provide urgent care services for members of the armed forces and covered beneficiaries until 11:00 p.m. each day.

(2) With respect to areas in which a military medical treatment facility covered by paragraph (1) is not located, the Secretary shall ensure that members of the armed forces and covered beneficiaries may access urgent care clinics through the health care provider network under the TRICARE program.

(3) A covered beneficiary may access urgent care services without the need for preauthorization for such services.

(4) The Secretary shall—

(A) publish information about changes in access to urgent care under the TRICARE program—

(i) on the primary publicly available Internet website of the Department; and

(ii) on the primary publicly available Internet website of each military medical treatment facility; and

(B) ensure that such information is made available on the publicly available Internet website of each current managed care support contractor that has established a health care provider network under the TRICARE program.

(b) NURSE ADVICE LINE.—The Secretary shall ensure that the nurse advice line of the Department directs covered beneficiaries seeking access to care to the source of the most appropriate level of health care required to treat the medical conditions of the beneficiaries, including urgent care services described in subsection (a).

(c) PRIMARY CARE CLINICS.—(1) The Secretary shall ensure that primary care clinics at military medical treatment facilities are available for members of the armed forces and covered beneficiaries between the hours determined appropriate under paragraph (2), including with respect to expanded hours described in subparagraph (B) of such paragraph.

(2)(A) The Secretary shall determine the hours that each primary care clinic at a military medical treatment facility is available for members of the armed forces and covered beneficiaries based on—

(i) the needs of the military medical treatment facility to meet the access standards under the TRICARE Prime program; and

(ii) the primary care utilization patterns of members and covered beneficiaries at such military medical treatment facility.

(B) The primary care clinic hours at a military medical treatment facility determined under subparagraph (A) shall include expanded hours beyond regular business hours during weekdays and the weekend if the Secretary determines under such subparagraph that sufficient demand exists at the military medical treatment facility for such expanded primary care clinic hours.

(Added Pub. L. 114–328, div. A, title VII, § 704(a), Dec. 23, 2016, 130 Stat. 2200.)

IMPLEMENTATION

Pub. L. 114–328, div. A, title VII, § 704(c), Dec. 23, 2016, 130 Stat. 2201, provided that: ''The Secretary of Defense shall implement—

''(1) subsection (a) of section 1077a of title 10, United States Code, as added by subsection (a) of this section, by not later than one year after the date of the enactment of this Act [Dec. 23, 2016]; and

''(2) subsection (c) of such section by not later than 180 days after the date of the enactment of this Act.''

§ 1078. Medical and dental care for dependents: charges

(a) The Secretary of Defense, after consulting the other administering Secretaries, shall prescribe fair charges for inpatient medical and dental care given to dependents under section 1076 of this title. The charge or charges prescribed shall be applied equally to all classes of dependents.

(b) As a restraint on excessive demands for medical and dental care under section 1076 of this title, uniform minimal charges may be imposed for outpatient care. Charges may not be more than such amounts, if any, as the Secretary of Defense may prescribe after consulting the other administering Secretaries, and after a finding that such charges are necessary.

(c) Amounts received for subsistence and medical and dental care given under section 1076 of this title shall be deposited to the credit of the appropriation supporting the maintenance and operation of the facility furnishing the care.

(Added Pub. L. 85–861, § 1(25)(B), Sept. 2, 1958, 72 Stat. 1448; amended Pub. L. 89–614, § 2(5), Sept. 30, 1966, 80 Stat. 863; Pub. L. 96–513, title V, § 511(36), Dec. 12, 1980, 94 Stat. 2923; Pub. L. 98–557, § 19(6), Oct. 30, 1984, 98 Stat. 2869.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1078(a)	37:403(c).	June 7, 1956, ch. 374, § 103(c)(d), (e), 70 Stat. 251.
1078(b)	37:403(d).	
1078(c)	37:403(e).	

Appropriate references are made to dental care throughout the section to reflect the fact that in certain limited situations, dependents are entitled to dental care under 37:403(h)(4), restated as section 1077(d) of this title.

In subsection (b), the word ''special'' is omitted as surplusage.

PRIOR PROVISIONS

A prior section 1078, act Aug. 10, 1956, ch. 1041, 70A Stat. 84, prescribed instructions for marking ballots, prior to repeal by Pub. L. 85–861, § 36B(5), Sept. 2, 1958, 72 Stat. 1570, as superseded by the Federal Voting Assistance Act of 1955 which is classified to subchapter I–D (§ 1973cc et seq.) of chapter 20 of Title 42, The Public Health and Welfare.

AMENDMENTS

1984—Subsecs. (a), (b). Pub. L. 98–557 substituted reference to other administering Secretaries for reference to Secretary of Health and Human Services.

1980—Subsecs. (a), (b). Pub. L. 96–513 substituted ''Secretary of Health and Human Services'' for ''Secretary of Health, Education, and Welfare''.

1966—Subsec. (a). Pub. L. 89–614 substituted ''The charge or charges prescribed shall be applied equally to all classes of dependents'' for ''Charges shall be the same for all dependents''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

For effective date of amendment by Pub. L. 89–614, see section 3 of Pub. L. 89–614, set out as a note under section 1071 of this title.

§ 1078a. Continued health benefits coverage

(a) PROVISION OF CONTINUED HEALTH COVERAGE.—The Secretary of Defense shall implement and carry out a program of continued health benefits coverage in accordance with this section to provide persons described in subsection (b) with temporary health benefits comparable to the health benefits provided for former civilian employees of the Federal Government and other persons under section 8905a of title 5.

(b) ELIGIBLE PERSONS.—The persons referred to in subsection (a) are the following:

(1) A member of the uniformed services who—

(A) is discharged or released from active duty (or full-time National Guard duty), whether voluntarily or involuntarily, under other than adverse conditions, as characterized by the Secretary concerned;

(B) immediately preceding that discharge or release, is entitled to medical and dental care under section 1074(a) of this title (except in the case of a member discharged or released from full-time National Guard duty); and

(C) after that discharge or release and any period of transitional health care provided

under section 1145(a) of this title, would not otherwise be eligible for any benefits under this chapter.

(2) A member of the Selected Reserve of the Ready Reserve of a reserve component of the armed forces who—

(A) is discharged or released from service in the Selected Reserve, whether voluntarily or involuntarily, under other than adverse conditions, as characterized by the Secretary concerned;

(B) immediately preceding that discharge or release, is enrolled in TRICARE Reserve Select; and

(C) after that discharge or release, would not otherwise be eligible for any benefits under this chapter.

(3) A person who—

(A) ceases to meet the requirements for being considered an unmarried dependent child of a member or former member of the uniformed services under section 1072(2)(D) of this title or ceases to meet the requirements for being considered an unmarried dependent under section 1072(2)(I) of this title;

(B) on the day before ceasing to meet those requirements, was covered under a health benefits plan under this chapter or transitional health care under section 1145(a) of this title as a dependent of the member or former member; and

(C) would not otherwise be eligible for any benefits under this chapter.

(4) A person who—

(A) is an unremarried former spouse of a member or former member of the uniformed services; and

(B) on the day before the date of the final decree of divorce, dissolution, or annulment was covered under a health benefits plan under this chapter or transitional health care under section 1145(a) of this title as a dependent of the member or former member; and

(C) is not a dependent of the member or former member under subparagraph (F) or (G) of section 1072(2) of this title or ends a one-year period of dependency under subparagraph (H) of such section.

(5) Any other person specified in regulations prescribed by the Secretary of Defense for purposes of this paragraph who loses entitlement to health care services under this chapter or section 1145 of this title, subject to such terms and conditions as the Secretary shall prescribe in the regulations.

(c) NOTIFICATION OF ELIGIBILITY.—(1) The Secretary of Defense shall prescribe regulations to provide for persons described in subsection (b) to be notified of eligibility to receive health benefits under this section.

(2) In the case of a member who becomes (or will become) eligible for continued coverage under subsection (b)(1) or subsection (b)(2), the regulations shall provide for the Secretary concerned to notify the member of the member's rights under this section as part of preseparation counseling conducted under section 1142 of this title or any other provision of other law.

(3) In the case of a dependent of a member or former member who becomes eligible for continued coverage under subsection (b)(3), the regulations shall provide that—

(A) the member or former member may submit to the Secretary concerned a written notice of the dependent's change in status (including the dependent's name, address, and such other information as the Secretary of Defense may require); and

(B) the Secretary concerned shall, within 14 days after receiving that notice, inform the dependent of the dependent's rights under this section.

(4) In the case of a former spouse of a member or former member who becomes eligible for continued coverage under subsection (b)(4), the regulations shall provide appropriate notification provisions and a 60-day election period under subsection (d)(3).[1]

(d) ELECTION OF COVERAGE.—In order to obtain continued coverage under this section, an appropriate written election (submitted in such manner as the Secretary of Defense may prescribe) shall be made as follows:

(1) In the case of a member described in subsection (b)(1), the written election shall be submitted to the Secretary concerned before the end of the 60-day period beginning on the later of—

(A) the date of the discharge or release of the member from active duty or full-time National Guard duty;

(B) the date on which the period of transitional health care applicable to the member under section 1145(a) of this title ends; or

(C) the date the member receives the notification required pursuant to subsection (c).

(2) In the case of a member described in subsection (b)(2), the written election shall be submitted to the Secretary concerned before the end of the 60-day period beginning on the later of—

(A) the date of the discharge or release of the member from service in the Selected Reserve; and

(B) the date the member receives the notification required pursuant to subsection (c).

(3)(A) In the case of a dependent of a member or former member who becomes eligible for continued coverage under subsection (b)(3), the written election shall be submitted to the Secretary concerned before the end of the 60-day period beginning on the later of—

(i) the date on which the dependent first ceases to meet the requirements for being considered a dependent under subparagraph (D) or (I) of section 1072(2) of this title; or

(ii) the date the dependent receives the notification pursuant to subsection (c).

(B) Notwithstanding subparagraph (A), if the Secretary concerned determines that the dependent's parent has failed to provide the notice referred to in subsection (c)(3)(A) with respect to the dependent in a timely fashion, the 60-day period under this paragraph shall be based only on the date under subparagraph (A)(i).

[1] See References in Text note below.

(4) In the case of a former spouse of a member or a former member who becomes eligible for continued coverage under subsection (b)(4), the written election shall be submitted to the Secretary concerned before the end of the 60-day period beginning on the later of—

(A) the date as of which the former spouse first ceases to meet the requirements for being considered a dependent under section 1072(2) of this title; or

(B) such other date as the Secretary of Defense may prescribe.

(5) In the case of a person described in subsection (b)(5), by such date as the Secretary shall prescribe in the regulations required for purposes of that subsection.

(e) COVERAGE OF DEPENDENTS.—A person eligible under subsection (b)(1) or subsection (b)(2) to elect to receive coverage may elect coverage either as an individual or, if appropriate, for self and dependents. A person eligible under subsection (b)(3) or subsection (b)(4) may elect only individual coverage.

(f) CHARGES.—(1) Under arrangements satisfactory to the Secretary of Defense, a person receiving continued coverage under this section shall be required to pay into the Military Health Care Account or other appropriate account an amount equal to the sum of—

(A) the employee and agency contributions which would be required in the case of a similarly situated employee enrolled in a comparable health benefits plan under section 8905a(d)(1)(A)(i) of title 5; and

(B) an amount, not to exceed 10 percent of the amount determined under subparagraph (A), determined under regulations prescribed by the Secretary of Defense to be necessary for administrative expenses; and

(2) If a person elects to continue coverage under this section before the end of the applicable period under subsection (d), but after the person's coverage under this chapter (and any transitional extension of coverage under section 1145(a) of this title) expires, coverage shall be restored retroactively, with appropriate contributions (determined in accordance with paragraph (1)) and claims (if any), to the same extent and effect as though no break in coverage had occurred.

(g) PERIOD OF CONTINUED COVERAGE.—(1) Continued coverage under this section may not extend beyond—

(A) in the case of a member described in subsection (b)(1), the date which is 18 months after the date the member ceases to be entitled to care under section 1074(a) of this title and any transitional care under section 1145 of this title, as the case may be;

(B) in the case of a member described in subsection (b)(2), the date which is 18 months after the date the member ceases to be eligible to enroll in TRICARE Reserve Select;

(C) in the case of a person described in subsection (b)(3), the date which is 36 months after the date on which the person first ceases to meet the requirements for being considered a dependent under subparagraph (D) or (I) of section 1072(2) of this title;

(D) in the case of a person described in subsection (b)(4), except as provided in paragraph (4), the date which is 36 months after the later of—

(i) the date on which the final decree of divorce, dissolution, or annulment occurs; and

(ii) if applicable, the date the one-year extension of dependency under section 1072(2)(H) of this title expires; and

(E) in the case of a person described in subsection (b)(5), the date that is 36 months after the date on which the person loses entitlement to health care services as described in that subsection.

(2) Notwithstanding paragraph (1)(C), if a dependent of a member becomes eligible for continued coverage under subsection (b)(3) during a period of continued coverage of the member for self and dependents under this section, extended coverage of the dependent under this section may not extend beyond the date which is 36 months after the date the member became ineligible for medical and dental care under section 1074(a) of this title and any transitional health care under section 1145(a) of this title.

(3) Notwithstanding paragraph (1)(D), if a person becomes eligible for continued coverage under subsection (b)(4) as the former spouse of a member during a period of continued coverage of the member for self and dependents under this section, extended coverage of the former spouse under this section may not extend beyond the date which is 36 months after the date the member became ineligible for medical and dental care under section 1074(a) of this title and any transitional health care under section 1145(a) of this title.

(4)(A) Notwithstanding paragraph (1), in the case of a former spouse described in subparagraph (B), continued coverage under this section shall continue for such period as the former spouse may request.

(B) A former spouse referred to in subparagraph (A) is a former spouse of a member or former member (other than a former spouse whose marriage was dissolved after the separation of the member from the service unless such separation was by retirement)—

(i) who has not remarried before age 55 after the marriage to the employee, former employee, or annuitant was dissolved;

(ii) who was enrolled in an approved health benefits plan under this chapter as a family member at any time during the 18-month period before the date of the divorce, dissolution, or annulment; and

(iii)(I) who is receiving any portion of the retired or retainer pay of the member or former member or an annuity based on the retired or retainer pay of the member; or

(II) for whom a court order (as defined in section 1408(a)(2) of this title) has been issued for payment of any portion of the retired or retainer pay or for whom a court order (as defined in section 1447(13) of this title) or a written agreement (whether voluntary or pursuant to a court order) provides for an election by the member or former member to provide an annuity to the former spouse.

(h) TRICARE RESERVE SELECT DEFINED.—In this section, the term ''TRICARE Reserve Select'' means TRICARE Standard coverage provided under section 1076d of this title.

(Added Pub. L. 102–484, div. D, title XLIV, § 4408(a)(1), Oct. 23, 1992, 106 Stat. 2708; amended Pub. L. 103–35, title II, § 201(g)(1), May 31, 1993, 107 Stat. 99; Pub. L. 103–337, div. A, title VII, § 702(c), Oct. 5, 1994, 108 Stat. 2798; Pub. L. 104–201, div. A, title X, § 1074(a)(4), Sept. 23, 1996, 110 Stat. 2658; Pub. L. 105–85, div. A, title X, § 1073(a)(17), Nov. 18, 1997, 111 Stat. 1901; Pub. L. 108–136, div. A, title VII, § 713(a), Nov. 24, 2003, 117 Stat. 1530; Pub. L. 110–181, div. A, title VII, § 705, Jan. 28, 2008, 122 Stat. 189; Pub. L. 114–92, div. A, title VII, § 703, Nov. 25, 2015, 129 Stat. 861.)

REFERENCES IN TEXT

Subsection (d)(3), referred to in subsec. (c)(4), was redesignated subsec. (d)(4) by Pub. L. 114–92, div. A, title VII, § 703(c)(1), Nov. 25, 2015, 129 Stat. 861.

AMENDMENTS

2015—Subsec. (b)(2) to (5). Pub. L. 114–92, § 703(a), added par. (2) and redesignated former pars. (2) to (4) as (3) to (5), respectively.

Subsec. (c)(2). Pub. L. 114–92, § 703(b), inserted ''or subsection (b)(2)'' after ''subsection (b)(1)''.

Subsec. (c)(3). Pub. L. 114–92, § 703(g)(1)(A), substituted ''subsection (b)(3)'' for ''subsection (b)(2)'' in introductory provisions.

Subsec. (c)(4). Pub. L. 114–92, § 703(g)(1)(B), substituted ''subsection (b)(4)'' for ''subsection (b)(3)''.

Subsec. (d)(2). Pub. L. 114–92, § 703(c)(2), added par. (2). Former par. (2) redesignated (3).

Subsec. (d)(3). Pub. L. 114–92, § 703(c)(1), redesignated par. (2) as (3). Former par. (3) redesignated (4).

Subsec. (d)(3)(A). Pub. L. 114–92, § 703(g)(2)(A), substituted ''subsection (b)(3)'' for ''subsection (b)(2)'' in introductory provisions.

Subsec. (d)(4). Pub. L. 114–92, § 703(c)(1), (g)(2)(B), redesignated par. (3) as (4) and substituted ''subsection (b)(4)'' for ''subsection (b)(3)'' in introductory provisions. Former par. (4) redesignated (5).

Subsec. (d)(5). Pub. L. 114–92, § 703(c)(1), (g)(2)(C), redesignated par. (4) as (5) and substituted ''subsection (b)(5)'' for ''subsection (b)(4)''.

Subsec. (e). Pub. L. 114–92, § 703(d), (g)(3), inserted ''or subsection (b)(2)'' after ''subsection (b)(1)'' and substituted ''subsection (b)(3) or subsection (b)(4)'' for ''subsection (b)(2) or subsection (b)(3)''.

Subsec. (g)(1)(B). Pub. L. 114–92, § 703(e)(2), added subpar. (B). Former subpar. (B) redesignated (C).

Subsec. (g)(1)(C). Pub. L. 114–92, § 703(e)(1), (g)(4)(A)(i), redesignated subpar. (B) as (C) and substituted ''subsection (b)(3)'' for ''subsection (b)(2)''. Former subpar. (C) redesignated (D).

Subsec. (g)(1)(D). Pub. L. 114–92, § 703(e)(1), (g)(4)(A)(ii), redesignated subpar. (C) as (D) and substituted ''subsection (b)(4)'' for ''subsection (b)(3)'' in introductory provisions. Former subpar. (D) redesignated (E).

Subsec. (g)(1)(E). Pub. L. 114–92, § 703(e)(1), (g)(4)(A)(iii), redesignated subpar. (D) as (E) and substituted ''subsection (b)(5)'' for ''subsection (b)(4)''.

Subsec. (g)(2). Pub. L. 114–92, § 703(g)(4)(B), substituted ''paragraph (1)(C)'' for ''paragraph (1)(B)'' and ''subsection (b)(3)'' for ''subsection (b)(2)''.

Subsec. (g)(3). Pub. L. 114–92, § 703(g)(4)(C), substituted ''paragraph (1)(D)'' for ''paragraph (1)(C)'' and ''subsection (b)(4)'' for ''subsection (b)(3)''.

Subsec. (h). Pub. L. 114–92, § 703(f), added subsec. (h).

2008—Subsec. (b)(4). Pub. L. 110–181, § 705(a), added par. (4).

Subsec. (d)(4). Pub. L. 110–181, § 705(b), added par. (4).

Subsec. (g)(1)(D). Pub. L. 110–181, § 705(c), added subpar. (D).

2003—Subsec. (b)(1), (2)(A), (3)(A). Pub. L. 108–136 substituted ''uniformed services'' for ''armed forces''.

1997—Subsec. (g)(4)(B)(iii)(II). Pub. L. 105–85 substituted ''section 1447(13)'' for ''section 1447(8)''.

1996—Subsec. (a). Pub. L. 104–201 substituted ''The Secretary'' for ''Beginning on October 1, 1994, the Secretary''.

1994—Subsec. (b)(2)(A). Pub. L. 103–337, § 702(c)(1), inserted before semicolon ''or ceases to meet the requirements for being considered an unmarried dependent under section 1072(2)(I) of this title''.

Subsec. (c)(3). Pub. L. 103–337, § 702(c)(2), substituted ''dependent'' for ''child'' in two places and ''dependent's'' for ''child's'' wherever appearing.

Subsec. (d)(2)(A). Pub. L. 103–337, § 702(c)(3), substituted ''a dependent'' for ''a child'' in introductory provisions, ''the dependent'' for ''the child'' in cls. (i) and (ii), and ''a dependent under subparagraph (D) or (I) of section 1072(2) of this title;'' for ''an unmarried dependent child under section 1072(2)(D) of this title,'' in cl. (i).

Subsec. (d)(2)(B). Pub. L. 103–337, § 702(c)(4), substituted ''dependent's'' for ''child's'' and ''dependent'' for ''child''.

Subsec. (g)(1)(B). Pub. L. 103–337, § 702(c)(5), substituted ''a dependent under subparagraph (D) or (I) of section 1072(2) of this title'' for ''an unmarried dependent child under section 1072(2)(D) of this title''.

Subsec. (g)(2). Pub. L. 103–337, § 702(c)(6), substituted ''dependent'' for ''child'' in two places.

1993—Subsec. (b)(3)(C). Pub. L. 103–35, § 201(g)(1)(A), substituted ''subparagraph'' for ''subparagraphs'' after ''member under''.

Subsec. (d)(2)(A). Pub. L. 103–35, § 201(g)(1)(B), inserted ''under'' after ''coverage''.

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–136, div. A, title VII, § 713(b), Nov. 24, 2003, 117 Stat. 1531, provided that: ''The amendments made by subsection (a) [amending this section] shall apply to members of the uniformed services who are not otherwise covered by section 1078a of title 10, United States Code, before the date of the enactment of this Act [Nov. 24, 2003] and who, on or after such date, first meet the eligibility criteria specified in subsection (b) of that section.''

§ 1078b. Provision of food to certain members and dependents not receiving inpatient care in military medical treatment facilities

(a) IN GENERAL.—(1) Under regulations prescribed by the Secretary of Defense, the Secretary may provide food and beverages to an individual described in paragraph (2) at no cost to the individual.

(2) An individual described in this paragraph is the following:

(A) A member or former member of the uniformed services or dependent—

(i) who is receiving outpatient medical care at a military medical treatment facility; and

(ii) whom the Secretary determines is unable to purchase food and beverages while at such facility by virtue of receiving such care.

(B) A member or former member of the uniformed services or dependent—

(i) who is a family member of an infant receiving inpatient medical care at a military medical treatment facility;

(ii) who provides care to the infant while the infant receives such inpatient medical care; and

(iii) whom the Secretary determines is unable to purchase food and beverages while at such facility by virtue of providing such care to the infant.

(C) A member or former member of the uniformed services or dependent whom the Secretary determines is under similar cir-

cumstances as a member, former member, or dependent described in subparagraph (A) or (B).

(b) REGULATIONS.—The Secretary shall ensure that regulations prescribed under this section are consistent with generally accepted practices in private medical treatment facilities.

(Added Pub. L. 112–81, div. A, title VII, §704(a), Dec. 31, 2011, 125 Stat. 1472; amended Pub. L. 113–291, div. A, title VII, §705, Dec. 19, 2014, 128 Stat. 3413.)

AMENDMENTS

2014—Subsec. (a)(2). Pub. L. 113–291, §705(1), substituted ''A member or former member'' for ''A member'' wherever appearing.

Subsec. (a)(2)(C). Pub. L. 113–291, §705(2), substituted ''member, former member, or dependent'' for ''member or dependent''.

EFFECTIVE DATE

Pub. L. 112–81, div. A, title VII, §704(c), Dec. 31, 2011, 125 Stat. 1473, provided that: ''The amendments made by this section [enacting this section] shall take effect on the date that is 90 days after the date of the enactment of this Act [Dec. 31, 2011].''

§ 1079. Contracts for medical care for spouses and children: plans

(a) To assure that medical care is available for dependents, as described in subparagraphs (A), (D), and (I) of section 1072(2) of this title, of members of the uniformed services who are on active duty for a period of more than 30 days, the Secretary of Defense, after consulting with the other administering Secretaries, shall contract, under the authority of this section, for medical care for those persons under such insurance, medical service, or health plans as he considers appropriate. The types of health care authorized under this section shall be the same as those provided under section 1076 of this title, except as follows:

(1) With respect to dental care—

(A) except as provided in subparagraph (B), only that care required as a necessary adjunct to medical or surgical treatment may be provided; and

(B) in connection with dental treatment for patients with developmental, mental, or physical disabilities or for pediatric patients age 5 or under, only institutional and anesthesia services may be provided.

(2) Consistent with such regulations as the Secretary of Defense may prescribe regarding the content of health promotion and disease prevention visits, the schedule and method of cervical cancer screenings and breast cancer screenings, the schedule and method of colon and prostate cancer screenings, and the types and schedule of immunizations—

(A) for dependents under six years of age, both health promotion and disease prevention visits and immunizations may be provided; and

(B) for dependents six years of age or older, health promotion and disease prevention visits may be provided in connection with immunizations or with diagnostic or preventive cervical and breast cancer screenings or colon and prostate cancer screenings.

(3) Not more than one eye examination may be provided to a patient in any calendar year.

(4) Under joint regulations to be prescribed by the administering Secretaries, the services of Christian Science practitioners and nurses and services obtained in Christian Science sanatoriums may be provided.

(5) Durable equipment provided under this section may be provided on a rental basis.

(6) Services in connection with nonemergency inpatient hospital care may not be provided if such services are available at a facility of the uniformed services located within a 40-mile radius of the residence of the patient, except that those services may be provided in any case in which another insurance plan or program provides primary coverage for those services.

(7) Services of pastoral counselors, family and child counselors, or marital counselors (other than certified marriage and family therapists) may not be provided unless the patient has been referred to the counselor by a medical doctor for treatment of a specific problem with the results of that treatment to be communicated back to the medical doctor who made the referral and services of certified marriage and family therapists may be provided consistent with such rules as may be prescribed by the Secretary of Defense, including credentialing criteria and a requirement that the therapists accept payment under this section as full payment for all services provided.

(8) Special education may not be provided, except when provided as secondary to the active psychiatric treatment on an institutional inpatient basis.

(9) Therapy or counseling for sexual dysfunctions or sexual inadequacies may not be provided.

(10) Treatment of obesity may not be provided if obesity is the sole or major condition treated.

(11) Surgery which improves physical appearance but is not expected to significantly restore functions (including mammary augmentation, face lifts, and sex gender changes) may not be provided, except that—

(A) breast reconstructive surgery following a mastectomy may be provided;

(B) reconstructive surgery to correct serious deformities caused by congenital anomalies or accidental injuries may be provided; and

(C) neoplastic surgery may be provided.

(12) Any service or supply which is not medically or psychologically necessary to prevent, diagnose, or treat a mental or physical illness, injury, or bodily malfunction as assessed or diagnosed by a physician, dentist, clinical psychologist, certified marriage and family therapist, optometrist, podiatrist, certified nurse-midwife, certified nurse practitioner, certified clinical social worker, or other class of provider as designated by the Secretary of Defense, as appropriate, may not be provided, except as authorized in paragraph (4). Pursuant to an agreement with the Secretary of Health and Human Services and under such regulations as the Secretary of Defense may pre-

scribe, the Secretary of Defense may waive the operation of this paragraph in connection with clinical trials sponsored or approved by the National Institutes of Health if the Secretary of Defense determines that such a waiver will promote access by covered beneficiaries to promising new treatments and contribute to the development of such treatments.

(13) The prohibition contained in section 1077(b)(3) of this title shall not apply in the case of a member or former member of the uniformed services.

(14) Electronic cardio-respiratory home monitoring equipment (apnea monitors) for home use may be provided if a physician prescribes and supervises the use of the monitor for an infant—

(A) who has had an apparent life-threatening event,

(B) who is a subsequent sibling of a victim of sudden infant death syndrome,

(C) whose birth weight was 1,500 grams or less, or

(D) who is a pre-term infant with pathologic apnea,

in which case the coverage may include the cost of the equipment, hard copy analysis of physiological alarms, professional visits, diagnostic testing, family training on how to respond to apparent life threatening events, and assistance necessary for proper use of the equipment.

(15) Hospice care may be provided only in the manner and under the conditions provided in section 1861(dd) of the Social Security Act (42 U.S.C. 1395x(dd)), except that hospice care may be provided to an individual under the age of 21 concurrently with health care services or hospitalization for the same condition.

(16) Forensic examinations following a sexual assault or domestic violence may be provided.

(17) Breastfeeding support, supplies (including breast pumps and associated equipment), and counseling shall be provided as appropriate during pregnancy and the postpartum period.

(b) Plans covered by subsection (a) shall include provisions for payment by the patient of the following amounts:

(1) $25 for each admission to a hospital, or the amount the patient would have been charged under section 1078(a) of this title had the care being paid for been obtained in a hospital of the uniformed services, whichever amount is the greater. The Secretary of Defense may exempt a patient from paying such amount if the hospital to which the patient is admitted does not impose a legal obligation on any of its patients to pay for inpatient care.

(2) Except as provided in clause (3), the first $150 each calendar year of the charges for all types of care authorized by subsection (a) and received while in an outpatient status and 20 percent of all subsequent charges for such care during a calendar year. Notwithstanding the preceding sentence, in the case of a dependent of an enlisted member in a pay grade below E–5, the initial deductible each calendar year under this paragraph shall be limited to $50.

(3) A family group of two or more persons covered by this section shall not be required to pay collectively more than the first $300 (or in the case of the family group of an enlisted member in a pay grade below E–5, the first $100) each calendar year of the charges for all types of care authorized by subsection (a) and received while in an outpatient status and 20 percent of the additional charges for such care during a calendar year.

(4) $25 for surgical care that is authorized by subsection (a) and received while in an outpatient status and that has been designated (under joint regulations to be prescribed by the administering Secretaries) as care to be treated as inpatient care for purposes of this subsection. Any care for which payment is made under this clause shall not be considered to be care received while in an outpatient status for purposes of clauses (2) and (3).

(5) An individual or family group of two or more persons covered by this section may not be required by reason of this subsection to pay a total of more than $1,000 for health care received during any calendar year under a plan under subsection (a).

(c) The methods for making payment under subsection (b) shall be prescribed under joint regulations issued by the administering Secretaries.

(d)(1) The Secretary of Defense shall establish a program to provide extended benefits for eligible dependents, which may include the provision of comprehensive health care services, including case management services, to assist in the reduction of the disabling effects of a qualifying condition of an eligible dependent. Registration shall be required to receive the extended benefits.

(2) The Secretary of Defense, after consultation with the other administering Secretaries, shall promulgate regulations to carry out this subsection.

(3) In this subsection:

(A) The term ''eligible dependent'' means a dependent of a member of the uniformed services on active duty for a period of more than 30 days, as described in subparagraph (A), (D), or (I) of section 1072(2) of this title, who has a qualifying condition.

(B) The term ''qualifying condition'' means the condition of a dependent who is moderately or severely mentally retarded, has a serious physical disability, or has an extraordinary physical or psychological condition.

(e)(1) Extended benefits for eligible dependents under subsection (d) may include comprehensive health care services (including services necessary to maintain, or minimize or prevent deterioration of, function of the patient) and case management services with respect to the qualifying condition of such a dependent, and include, to the extent such benefits are not provided under provisions of this chapter other than under this section, the following:

(A) Diagnosis and screening.

(B) Inpatient, outpatient, and comprehensive home health care supplies and services which may include cost-effective and medically appropriate services other than part-

time or intermittent services (within the meaning of such terms as used in the second sentence of section 1861(m) of the Social Security Act (42 U.S.C. 1395x)).

(C) Rehabilitation services and devices.

(D) In accordance with paragraph (2), respite care for the primary caregiver of the eligible dependent.

(E) In accordance with paragraph (3), service and modification of durable equipment and assistive technology devices.

(F) Special education.

(G) Vocational training, which may be furnished to an eligible dependent in the residence of the eligible dependent or at a facility in which such training is provided.

(H) Such other services and supplies as determined appropriate by the Secretary, notwithstanding the limitations in subsection (a)(12).

(2) Respite care under paragraph (1)(D) shall be provided subject to the following conditions:

(A) Pursuant to regulations prescribed by the Secretary for purposes of this paragraph, such respite care shall be limited to 32 hours per month for a primary caregiver.

(B) Unused hours of such respite care may not be carried over to another month.

(C) Such respite care may be provided to an eligible beneficiary regardless of whether the eligible beneficiary is receiving another benefit under this subsection.

(3)(A) Service and modification of durable equipment and assistive technology devices under paragraph (1)(E) may be provided only upon determination by the Secretary that the service or modification is necessary for the use of such equipment or device by the eligible dependent.

(B) Service and modification of durable equipment and assistive technology devices under such paragraph may not be provided—

(i) in the case of misuse, loss, or theft of the equipment or device; or

(ii) for a deluxe, luxury, or immaterial feature of the equipment or device, as determined by the Secretary.

(C) Service and modification of durable equipment and assistive technology devices under such paragraph may include training of the eligible dependent and immediate family members of the eligible dependent on the use of the equipment or device.

(f)(1) Members shall be required to share in the cost of any benefits provided to their dependents under subsection (d) as follows:

(A) Members in the lowest enlisted pay grade shall be required to pay the first $25 incurred each month, and members in the highest commissioned pay grade shall be required to pay the first $250 incurred each month. The amounts to be paid by members in all other pay grades shall be determined under regulations to be prescribed by the Secretary of Defense in consultation with the administering Secretaries.

(B) A member who has more than one dependent incurring expenses in a given month under a plan covered by subsection (d) shall not be required to pay an amount greater than would be required if the member had only one such dependent.

(2) In the case of extended benefits provided under subparagraph (C), (E), (F), or (G) of subsection (e)(1) to a dependent of a member of the uniformed services—

(A) the Government's share of the total cost of providing such benefits in any year shall not exceed $36,000, prorated as determined by the Secretary of Defense, except for costs that a member is exempt from paying under paragraph (3); and

(B) the member shall pay (in addition to any amount payable under paragraph (1)) the amount, if any, by which the amount of such total cost for the year exceeds the Government's maximum share under subparagraph (A).

(3) A member of the uniformed services who incurs expenses under paragraph (2) for a month for more than one dependent shall not be required to pay for the month under subparagraph (B) of that paragraph an amount greater than the amount the member would otherwise be required to pay under that subparagraph for the month if the member were incurring expenses under that subparagraph for only one dependent.

(4) To qualify for extended benefits under subparagraph (C), (E), (F), or (G) of subsection (e)(1), a dependent of a member of the uniformed services shall be required to use public facilities to the extent such facilities are available and adequate, as determined under joint regulations of the administering Secretaries.

(5) The Secretary of Defense, in consultation with the other administering Secretaries, shall prescribe regulations to carry out this subsection.

(g)(1) When a member dies while he is eligible for receipt of hostile fire pay under section 310 or 351 of title 37 or from a disease or injury incurred while eligible for such pay, his dependents who are receiving benefits under a plan covered by subsection (d) shall continue to be eligible for such benefits until they pass their twenty-first birthday.

(2) In addition to any continuation of eligibility for benefits under paragraph (1), when a member dies while on active duty for a period of more than 30 days, the member's dependents who are receiving benefits under a plan covered by subsection (a) shall continue to be eligible for benefits under TRICARE Prime during the three-year period beginning on the date of the member's death, except that, in the case of such a dependent of the deceased who is described by subparagraph (D) or (I) of section 1072(2) of this title, the period of continued eligibility shall be the longer of the following periods beginning on such date:

(A) Three years.

(B) The period ending on the date on which such dependent attains 21 years of age.

(C) In the case of such a dependent who, at 21 years of age, is enrolled in a full-time course of study in a secondary school or in a full-time course of study in an institution of higher education approved by the administering Secretary and was, at the time of the member's death, in fact dependent on the

member for over one-half of such dependent's support, the period ending on the earlier of the following dates:

(i) The date on which such dependent ceases to pursue such a course of study, as determined by the administering Secretary.

(ii) The date on which such dependent attains 23 years of age.

(3) For the purposes of paragraph (2)(C), a dependent shall be treated as being enrolled in a full-time course of study in an institution of higher education during any reasonable period of transition between the dependent's completion of a full-time course of study in a secondary school and the commencement of an enrollment in a full-time course of study in an institution of higher education, as determined by the administering Secretary.

(4) The terms and conditions under which health benefits are provided under this chapter to a dependent of a deceased member under paragraph (2) shall be the same as those that would apply to the dependent under this chapter if the member were living and serving on active duty for a period of more than 30 days.

(5) In this subsection, the term ''TRICARE Prime'' means the managed care option of the TRICARE program.

(h)(1) Except as provided in paragraphs (2) and (3), payment for a charge for services by an individual health care professional (or other noninstitutional health care provider) for which a claim is submitted under a plan contracted for under subsection (a) shall be equal to an amount determined to be appropriate, to the extent practicable, in accordance with the same reimbursement rules as apply to payments for similar services under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.). The Secretary of Defense shall determine the appropriate payment amount under this paragraph in consultation with the other administering Secretaries.

(2) The Secretary of Defense, in consultation with the other administering Secretaries, shall prescribe regulations to provide for such exceptions to the payment limitations under paragraph (1) as the Secretary determines to be necessary to assure that covered beneficiaries retain adequate access to health care services. Such exceptions may include the payment of amounts higher than the amount allowed under paragraph (1) when enrollees in managed care programs obtain covered services from nonparticipating providers. To provide a suitable transition from the payment methodologies in effect before February 10, 1996, to the methodology required by paragraph (1), the amount allowable for any service may not be reduced by more than 15 percent below the amount allowed for the same service during the immediately preceding 12-month period (or other period as established by the Secretary of Defense).

(3) In addition to the authority provided under paragraph (2), the Secretary of Defense may authorize the commander of a facility of the uniformed services, the lead agent (if other than the commander), and the health care contractor to modify the payment limitations under paragraph (1) for certain health care providers when necessary to ensure both the availability of certain services for covered beneficiaries and lower costs than would otherwise be incurred to provide the services. With the consent of the health care provider, the Secretary is also authorized to reduce the authorized payment for certain health care services below the amount otherwise required by the payment limitations under paragraph (1).

(4)(A) The Secretary of Defense, in consultation with the other administering Secretaries, shall prescribe regulations to establish limitations (similar to the limitations established under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.)) on beneficiary liability for charges of an individual health care professional (or other noninstitutional health care provider).

(B) The regulations shall include a restriction that prohibits an individual health care professional (or other noninstitutional health care provider) from billing a beneficiary for services for more than the amount that is equal to—

(i) the excess of the limiting charge (as defined in section 1848(g)(2) of the Social Security Act (42 U.S.C. 1395w–4(g)(2))) that would be applicable if the services had been provided by the professional (or other provider) as an individual health care professional (or other noninstitutional health care provider) on a nonassignment-related basis under part B of title XVIII of such Act over the amount that is payable by the United States for those services under this subsection, plus

(ii) any unpaid amounts of deductibles or copayments that are payable directly to the professional (or other provider) by the beneficiary.

(C)(i) In the case of a dependent described in clause (ii), the regulations shall provide that, in addition to amounts otherwise payable by the United States, the Secretary may pay the amount referred to in subparagraph (B)(i).

(ii) This subparagraph applies to a dependent referred to in subsection (a) of a member of a reserve component serving on active duty pursuant to a call or order to active duty for a period of more than 30 days.

(5) To assure access to care for all covered beneficiaries, the Secretary of Defense, in consultation with the other administering Secretaries, shall designate specific rates for reimbursement for services in certain localities if the Secretary determines that without payment of such rates access to health care services would be severely impaired. Such a determination shall be based on consideration of the number of providers in a locality who provide the services, the number of such providers who are CHAMPUS participating providers, the number of covered beneficiaries under CHAMPUS in the locality, the availability of military providers in the location or a nearby location, and any other factors determined to be relevant by the Secretary.

(i)(1) A benefit may not be paid under a plan covered by this section in the case of a person enrolled in, or covered by, any other insurance, medical service, or health plan, including any plan offered by a third-party payer (as defined in section 1095(h)(1) of this title), to the extent that the benefit is also a benefit under the other plan, except in the case of a plan administered under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.).

(2) The amount to be paid to a provider of services for services provided under a plan covered by this section shall be determined under joint regulations to be prescribed by the administering Secretaries which provide that the amount of such payments shall be determined to the extent practicable in accordance with the same reimbursement rules as apply to payments to providers of services of the same type under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.).

(3) A contract for a plan covered by this section shall include a clause that prohibits each provider of services under the plan from billing any person covered by the plan for any balance of charges for services in excess of the amount paid for those services under the joint regulations referred to in paragraph (2), except for any unpaid amounts of deductibles or copayments that are payable directly to the provider by the person.

(4) In this subsection, the term ''provider of services'' means a hospital, skilled nursing facility, comprehensive outpatient rehabilitation facility, home health agency, hospice program (as defined in section 1861(dd)(2) of the Social Security Act (42 U.S.C. 1395x(dd)(2))), or other institutional facility providing services for which payment may be made under a plan covered by this section.

(j) A plan covered by this section may include provision of liver transplants (including the cost of acquisition and transportation of the donated liver) in accordance with this subsection. Such a liver transplant may be provided if—

(1) the transplant is for a dependent considered appropriate for that procedure by the Secretary of Defense in consultation with the other administering Secretaries and such other entities as the Secretary considers appropriate; and

(2) the transplant is to be carried out at a health-care facility that has been approved for that purpose by the Secretary of Defense after consultation with the other administering Secretaries and such other entities as the Secretary considers appropriate.

(k)(1) Contracts entered into under subsection (a) shall also provide for medical care for dependents of former members of the uniformed services who are authorized to receive medical and dental care under section 1076(e) of this title in facilities of the uniformed services.

(2) Except as provided in paragraph (3), medical care in the case of a dependent described in section 1076(e) shall be furnished under the same conditions and subject to the same limitations as medical care furnished under this section to spouses and children of members of the uniformed services described in the first sentence of subsection (a).

(3) Medical care may be furnished to a dependent pursuant to paragraph (1) only for an injury, illness, or other condition described in section 1076(e) of this title.

(*l*)(1) Subject to paragraph (2), the Secretary of Defense may, upon request, make payments under this section for a charge for services for which a claim is submitted under a plan contracted for under subsection (a) to a hospital that does not impose a legal obligation on any of its patients to pay for such services.

(2) A payment under paragraph (1) may not exceed the average amount paid for comparable services in the geographic area in which the hospital is located or, if no comparable services are available in that area, in an area similar to the area in which the hospital is located.

(3) The Secretary of Defense shall periodically review the billing practices of each hospital the Secretary approves for payment under this subsection to ensure that the hospital's practices of not billing patients for payment are not resulting in increased costs to the Government.

(4) The Secretary of Defense may require each hospital the Secretary approves for payment under this subsection to provide evidence that it has sources of revenue to cover unbilled costs.

(m) The Secretary of Defense may enter into contracts (or amend existing contracts) with fiscal intermediaries under which the intermediaries agree to organize and operate, directly or through subcontractors, managed health care networks for the provision of health care under this chapter. The managed health care networks shall include cost containment methods, such as utilization review and contracting for care on a discounted basis.

(n)(1) Health care services provided pursuant to this section or section 1086 of this title (or pursuant to any other contract or project under the Civilian Health and Medical Program of the Uniformed Services) may not include services determined under the CHAMPUS Peer Review Organization program to be not medically or psychologically necessary.

(2) The Secretary of Defense, after consulting with the other administering Secretaries, may adopt or adapt for use under the CHAMPUS Peer Review Organization program, as the Secretary considers appropriate, any of the quality and utilization review requirements and procedures that are used by the Peer Review Organization program under part B of title XI of the Social Security Act (42 U.S.C. 1320c et seq.).

(*o*)(1) Subject to such exceptions as the Secretary of Defense considers necessary, coverage for medical care under this section for the dependents described in paragraph (3), and standards with respect to timely access to such care, shall be comparable to coverage for medical care and standards for timely access to such care under the managed care option of the TRICARE program known as TRICARE Prime.

(2) The Secretary of Defense shall enter into arrangements with contractors under the TRICARE program or with other appropriate contractors for the timely and efficient processing of claims under this subsection.

(3) This subsection applies with respect to a dependent referred to in subsection (a) who—

(A) is a dependent of a member of the uniformed services referred to in section 1074(c)(3) of this title and is residing with the member;

(B) is a dependent of a member who, after having served in a duty assignment described in section 1074(c)(3) of this title, has relocated without the dependent pursuant to orders for a permanent change of duty station from a remote location described in subparagraph (B)(ii) of such section where the member and the dependent resided together while the member served in such assignment, if the or-

ders do not authorize dependents to accompany the member to the new duty station at the expense of the United States and the dependent continues to reside at the same remote location, or

(C) is a dependent of a reserve component member ordered to active duty for a period of more than 30 days and is residing with the member, and the residence is located more than 50 miles, or approximately one hour of driving time, from the nearest military medical treatment facility adequate to provide the needed care.

(4) The Secretary of Defense may provide for coverage of a dependent referred to in subsection (a) who is not described in paragraph (3) if the Secretary determines that exceptional circumstances warrant such coverage.

(5) The Secretary of Defense shall consult with the other administering Secretaries in the administration of this subsection.

(p) Subject to subsection (a), a physician or other health care practitioner who is eligible to receive reimbursement for services provided under medicare (as defined in section 1086(d)(3)(C) of this title) shall be considered approved to provide medical care authorized under this section and section 1086 of this title unless the administering Secretaries have information indicating medicare, TRICARE, or other Federal health care program integrity violations by the physician or other health care practitioner.

(q) In the case of any pharmaceutical agent (as defined in section 1074g(i) of this title) provided under a contract entered into under this section by a physician, in an outpatient department of a hospital, or otherwise as part of any medical services provided under such a contract, the Secretary of Defense may, under regulations prescribed by the Secretary, adopt special reimbursement methods, amounts, and procedures to encourage the use of high-value products and discourage the use of low-value products, as determined by the Secretary.

(Added Pub. L. 85–861, § 1(25)(B), Sept. 2, 1958, 72 Stat. 1448; amended Pub. L. 89–614, § 2(6), Sept. 30, 1966, 80 Stat. 863; Pub. L. 92–58, § 1, July 29, 1971, 85 Stat. 157; Pub. L. 95–485, title VIII, § 806(a)(1), Oct. 20, 1978, 92 Stat. 1622; Pub. L. 96–342, title VIII, § 810(a), (b), Sept. 8, 1980, 94 Stat. 1097; Pub. L. 96–513, title V, §§ 501(13), 511(36), (38), Dec. 12, 1980, 94 Stat. 2908, 2923; Pub. L. 96–552, Dec. 19, 1980, 94 Stat. 3254; Pub. L. 97–22, § 11(a)(2), July 10, 1981, 95 Stat. 137; Pub. L. 97–86, title IX, § 906(a)(1), Dec. 1, 1981, 95 Stat. 1117; Pub. L. 98–94, title IX, § 931(a), title XII, § 1268(4), Sept. 24, 1983, 97 Stat. 648, 705; Pub. L. 98–525, title VI, § 632(a)(1), title XIV, §§ 1401(e)(4), 1405(23), Oct. 19, 1984, 98 Stat. 2543, 2617, 2623; Pub. L. 98–557, § 19(7), Oct. 30, 1984, 98 Stat. 2869; Pub. L. 99–661, div. A, title VI, § 652(d), title VII, § 703, Nov. 14, 1986, 100 Stat. 3889, 3900; Pub. L. 100–180, div. A, title VII, §§ 721(a), 726(a), Dec. 4, 1987, 101 Stat. 1115, 1117; Pub. L. 100–456, div. A, title VI, § 646(a), Sept. 29, 1988, 102 Stat. 1989; Pub. L. 101–189, div. A, title VII, § 730(a), Nov. 29, 1989, 103 Stat. 1481; Pub. L. 101–510, div. A, title VII, §§ 701(a), 702(a), 703(a), (b), 712(a), title XIV, § 1484(g)(1), Nov. 5, 1990, 104 Stat. 1580, 1581, 1583, 1717; Pub. L. 102–25, title III, § 316(b), Apr. 6, 1991, 105 Stat. 87; Pub. L. 102–190, div. A, title VII, §§ 702(b), 711, 712(a), 713, Dec. 5, 1991, 105 Stat. 1400, 1402, 1403; Pub. L. 102–484, div. A, title VII, § 704, title X, §§ 1052(13), 1053(3), Oct. 23, 1992, 106 Stat. 2432, 2499, 2501; Pub. L. 103–35, title II, § 202(a)(5), May 31, 1993, 107 Stat. 101; Pub. L. 103–160, div. A, title VII, §§ 711, 716(c), Nov. 30, 1993, 107 Stat. 1688, 1693; Pub. L. 103–337, div. A, title VII, §§ 702(a), 707(a), Oct. 5, 1994, 108 Stat. 2797, 2800; Pub. L. 104–106, div. A, title VII, §§ 701, 731(a)–(d), Feb. 10, 1996, 110 Stat. 370, 380, 381; Pub. L. 104–201, div. A, title VII, §§ 701(b)(2), 711, 731, 732, 735(c), Sept. 23, 1996, 110 Stat. 2587, 2590, 2597, 2599; Pub. L. 105–85, div. A, title VII, § 735, Nov. 18, 1997, 111 Stat. 1813; Pub. L. 106–398, § 1 [[div. A], title VII, §§ 701(c)(1), 704(b), 722(b)(1), 757(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–172, 1654A–175, 1654A–185, 1654A–198; Pub. L. 107–107, div. A, title VII, §§ 701(b), (g)(2), 703(b), 707(a), (b), title X, § 1048(c)(5), Dec. 28, 2001, 115 Stat. 1158, 1161–1163, 1226; Pub. L. 107–314, div. A, title VII, §§ 701(a), § 702, § 705(a), Dec. 2, 2002, 116 Stat. 2583, 2584; Pub. L. 108–375, div. A, title VII, § 705, Oct. 28, 2004, 118 Stat. 1983; Pub. L. 109–163, div. A, title VII, §§ 714, 715(a), Jan. 6, 2006, 119 Stat. 3344; Pub. L. 109–364, div. A, title VII, §§ 701, 702, 703(b), Oct. 17, 2006, 120 Stat. 2279; Pub. L. 110–417, [div. A], title VII, § 732, Oct. 14, 2008, 122 Stat. 4511; Pub. L. 111–84, div. A, title X, § 1073(a)(12), Oct. 28, 2009, 123 Stat. 2473; Pub. L. 113–291, div. A, title VII, §§ 703(a), (c)(1), 706, Dec. 19, 2014, 128 Stat. 3411–3413; Pub. L. 114–328, div. A, title VI, § 618(b), title VII, § 748(b), Dec. 23, 2016, 130 Stat. 2160, 2242; Pub. L. 115–91, div. A, title VII, §§ 702(b)(2), 704, 739(d)(1), Dec. 12, 2017, 131 Stat. 1434, 1435, 1447; Pub. L. 115–232, div. A, title VII, § 715(b), Aug. 13, 2018, 132 Stat. 1814; Pub. L. 116–283, div. A, title VII, §§ 703–704(b), title X, § 1081(a)(25), Jan. 1, 2021, 134 Stat. 3687, 3688, 3872.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
1079(a)	37:402(a)(2) (as applicable to 37:411(a)). 37:411(a).	June 7, 1956, ch. 374, §§ 102(a)(2) (as applicable to § 201(a)), 201(a), (b), 204, 70 Stat. 250, 252, 253.
1079(b)	37:411(b). 37:414.	

In subsection (a), the words ''appointed, enlisted, inducted or called, ordered or conscripted in a uniformed service'', in 37:402(a)(2) are omitted as surplusage, since it does not matter how a member became a member. The words ''active duty for a period of more than 30 days'' are substituted for the words ''active duty or active duty for training pursuant to a call or order that does not specify a period of thirty days or less'', in 37:402(a)(2), to reflect section 101(22) and (23) of this title. The words '', under the authority of this section,'' are substituted for the words ''pursuant to the provisions of this title'' to make clear that the section provides independent procurement authority. The words ''all'', ''by the hospital'', and ''a period of'', in 37:411(a), are omitted as surplusage.

In subsection (a)(1), the word ''rooms'', in 37:411(a), is substituted for the word ''accommodations''.

In subsection (a)(5), the word ''services'' is substituted for the word ''procedures'' and the word ''performed'' is substituted for the word ''accomplished'', in 37: 411(a). The words ''or surgeon'' are inserted for clarity.

In subsection (b), the word ''variances'' is substituted for the words ''limitations, additions, exclusions''. The words ''or care other than that provided for in sections 1076–1078 of this title'' are substituted for 37:414. The

words ''definitions, and related provisions'', in 37:411(b), are omitted as surplusage, since the Secretary of an executive department has inherent authority to interpret laws and issue regulations.

REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (h)(1), (4)(A), (B)(i), (i)(1), (2), and (n)(2), is act Aug. 13, 1935, ch. 531, 49 Stat. 620. Part B of title XI of the Act is classified generally to part B (§1320c et seq.) of subchapter XI of chapter 7 of Title 42, The Public Health and Welfare. Titles XVIII and XIX of the Act are classified generally to subchapters XVIII (§1395 et seq.) and XIX (§1396 et seq.), respectively, of chapter 7 of Title 42. Part B of title XVIII of the Act is classified generally to part B (§1395j et seq.) of subchapter XVIII of chapter 7 of Title 42. Section 1861(m) of the Act is classified to section 1395x(m) of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

PRIOR PROVISIONS

Provisions similar to those in subsec. (a)(7) to (14) of this section were contained in the following appropriation acts, with the exception of the provisions similar to par. (14) which first appeared in Pub. L. 96–154:

Pub. L. 98–473, title I, §101(h) [title VIII, §§8031, 8032, 8045], Oct. 12, 1984, 98 Stat. 1904, 1929, 1931.

Pub. L. 98–212, title VII, §§737, 738, 752, Dec. 8, 1983, 97 Stat. 1445, 1447.

Pub. L. 97–377, title I, §101(c) [title VII, §§740, 741, 756], Dec. 21, 1982, 96 Stat. 1833, 1857, 1860.

Pub. L. 97–114, title VII, §§741, 742, 759, Dec. 29, 1981, 95 Stat. 1585, 1588.

Pub. L. 96–527, title VII, §§742, 743, 763, Dec. 15, 1980, 94 Stat. 3088, 3092.

Pub. L. 96–154, title VII, §§744, 745, 769, Dec. 21, 1979, 93 Stat. 1159, 1163.

Pub. L. 95–457, title VIII, §§844, 845, Oct. 13, 1978, 92 Stat. 1251.

Pub. L. 95–111, title VIII, §§843, 844, Sept. 21, 1977, 91 Stat. 907.

Pub. L. 94–419, title VII, §§742, 743, Sept. 22, 1976, 90 Stat. 1298.

Pub. L. 94–212, title VII, §§750, 751, Feb. 9, 1976, 90 Stat. 176.

Provisions similar to those added to subsec. (h)(2) of this section by section 1401(e)(4)(B) of Pub. L. 98–525 were contained in the following prior appropriation acts:

Pub. L. 98–473, title I, §101(h) [title VIII, §8077], Oct. 12, 1984, 98 Stat. 1904, 1938.

Pub. L. 98–212, title VII, §785, Dec. 8, 1983, 97 Stat. 1453.

A prior section 1079, act Aug. 10, 1956, ch. 1041, 70A Stat. 84, related to establishment of right to vote, prior to repeal by Pub. L. 85–861, §36B(5), Sept. 2, 1958, 72 Stat. 1570, as superseded by the Federal Voting Assistance Act of 1955 which is classified to subchapter I–D (§1973cc et seq.) of chapter 20 of Title 42, The Public Health and Welfare.

AMENDMENTS

2021—Subsec. (a)(12). Pub. L. 116–283, §703, substituted ''certified clinical social worker, or other class of provider as designated by the Secretary of Defense,'' for ''or certified clinical social worker,''.

Subsec. (e). Pub. L. 116–283, §704(a), amended subsec. (e) generally. Prior to amendment, subsec. (e) related to extended benefits for eligible dependents.

Subsec. (f)(2), (4). Pub. L. 116–283, §704(b), substituted ''subparagraph (C), (E), (F), or (G) of subsection (e)(1)'' for ''paragraph (3) or (4) of subsection (e)''.

Subsec. (q). Pub. L. 116–283, §1081(a)(25), substituted ''section 1074g(i)'' for ''section 1074g(h)''.

2018—Subsec. (q). Pub. L. 115–232 substituted ''section 1074g(h)'' for ''section 1074g(g)''.

2017—Subsec. (a)(15). Pub. L. 115–91, §704, inserted '', except that hospice care may be provided to an individual under the age of 21 concurrently with health care services or hospitalization for the same condition'' before period at end.

Subsec. (b). Pub. L. 115–91, §739(d)(1), substituted ''calendar year'' for ''fiscal year'' wherever appearing.

Subsec. (q). Pub. L. 115–91, §702(b)(2), added subsec. (q).

2016—Subsec. (g)(1). Pub. L. 114–328, §618(b), inserted ''or 351'' after ''section 310''.

Subsec. (h)(4)(C)(ii). Pub. L. 114–328, §748(b), struck out ''in support of a contingency operation under a provision of law referred to in section 101(a)(13)(B) of this title'' after ''30 days''.

2014—Subsec. (a)(6) to (16). Pub. L. 113–291, §703(a)(1), redesignated pars. (7) to (17) as (6) to (16), respectively, and struck out former par. (6) which read as follows: ''Inpatient mental health services may not (except as provided in subsection (i)) be provided to a patient in excess of—

''(A) 30 days in any year, in the case of a patient 19 years of age or older;

''(B) 45 days in any year, in the case of a patient under 19 years of age; or

''(C) 150 days in any year, in the case of inpatient mental health services provided as residential treatment care.''

Subsec. (a)(17). Pub. L. 113–291, §706, added par. (17). Former par. (17) redesignated (16).

Subsec. (e)(7). Pub. L. 113–291, §703(c)(1), substituted ''subsection (a)(12)'' for ''subsection (a)(13)''.

Subsecs. (i) to (q). Pub. L. 113–291, §703(a)(2), (3), redesignated subsecs. (j) to (q) as (i) to (p), respectively, and struck out former subsec. (i) which related to limitation in former subsec. (a)(6) of this section as being inapplicable to inpatient mental health services in certain instances.

2009—Subsec. (f)(2)(B). Pub. L. 111–84 struck out period after ''year''.

2008—Subsec. (f)(2). Pub. L. 110–417 substituted ''year shall not exceed $36,000, prorated as determined by the Secretary of Defense,'' for ''month shall not exceed $2,500,'' in subpar. (A) and ''year.'' for ''month'' in subpar. (B).

2006—Subsec. (a)(1). Pub. L. 109–364, §702, amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''With respect to dental care, only that care required as a necessary adjunct to medical or surgical treatment may be provided.''

Subsec. (a)(2). Pub. L. 109–364, §703(b)(1), substituted ''the schedule and method of cervical cancer screenings and breast cancer screenings'' for ''the schedule of pap smears and mammograms'' in introductory provisions.

Subsec. (a)(2)(B). Pub. L. 109–364, §703(b)(2), substituted ''cervical and breast cancer screenings'' for ''pap smears and mammograms''.

Subsec. (a)(17). Pub. L. 109–364, §701, added par. (17).

Subsec. (g). Pub. L. 109–163, §715(a), designated existing provisions as par. (1), struck out last sentence which read ''In addition, when a member dies while on active duty for a period of more than 30 days, the member's dependents who are receiving benefits under a plan covered by subsection (a) shall continue to be eligible for such benefits during the three-year period beginning on the date of the death of the member.'', and added pars. (2) to (5).

Subsec. (p)(4), (5). Pub. L. 109–163, §714, added par. (4) and redesignated former par. (4) as (5).

2004—Subsec. (h)(4)(C). Pub. L. 108–375 added subpar. (C).

2002—Subsec. (i)(3). Pub. L. 107–314, §701(a), designated existing provisions as subpar. (A), substituted ''Except as provided in subparagraph (B),'' for ''Except in the case of an emergency,'', and added subpars. (B) and (C).

Subsec. (p)(1). Pub. L. 107–314, §702(1), substituted ''dependents described in paragraph (3)'' for ''dependents referred to in subsection (a) of a member of the uniformed services referred to in section 1074(c)(3) of this title who are residing with the member''.

Subsec. (p)(3), (4). Pub. L. 107–314, §702(2), (3), added par. (3) and redesignated former par. (3) as (4).

Subsec. (q). Pub. L. 107–314, §705(a), added subsec. (q).

2001—Subsec. (a)(5). Pub. L. 107–107, §703(b), amended par. (5) generally. Prior to amendment, par. (5) read as follows: ''Durable equipment, such as wheelchairs, iron lungs and hospital beds may be provided on a rental basis.''

Subsec. (a)(17). Pub. L. 107–107, §701(g)(2), struck out par. (17) which read as follows:

''(17)(A) The Secretary of Defense may establish a program for the individual case management of a person covered by this section or section 1086 of this title who has extraordinary medical or psychological disorders and, under such a program, may waive benefit limitations contained in paragraphs (5) and (13) of this subsection or section 1077(b)(1) of this title and authorize the payment for comprehensive home health care services, supplies, and equipment if the Secretary determines that such a waiver is cost-effective and appropriate.

''(B) The total amount expended under subparagraph (A) for a fiscal year may not exceed $100,000,000.''

Subsec. (d) to (f). Pub. L. 107–107, §701(b), added subsecs. (d) to (f) and struck out former subsecs. (d) to (f) which related to medical care provided for retarded or handicapped dependents, the requirement of members sharing in cost of benefits provided, and the requirement that members use public facilities to the extent available and adequate, respectively.

Subsec. (h)(2). Pub. L. 107–107, §1048(c)(5), substituted ''February 10, 1996,'' for ''the date of the enactment of this paragraph''.

Subsec. (h)(4). Pub. L. 107–107, §707(b), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (j)(2) to (4). Pub. L. 107–107, §707(a), designated existing provisions of subpar. (A) of par. (2) as par. (2) and substituted ''shall be determined under joint regulations'' for ''may be determined under joint regulations'', redesignated subpar. (B) of par. (2) as par. (4) and substituted therein ''this subsection,'' for ''subparagraph (A),'', and added par. (3).

2000—Subsec. (a)(17). Pub. L. 106–398, §1 [[div. A], title VII, §701(c)(1)], designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (g). Pub. L. 106–398, §1 [[div. A], title VII, §704(b)], substituted ''three-year period'' for ''one-year period''.

Subsec. (h)(5). Pub. L. 106–398, §1 [[div. A], title VII, §757(a)], added par. (5).

Subsec. (p). Pub. L. 106–398, §1 [[div. A], title VII, §722(b)(1)], added subsec. (p).

1997—Subsec. (h)(1). Pub. L. 105–85, §735(a), added par. (1) and struck out former par. (1) which read as follows: ''Payment for a charge for services by an individual health care professional (or other noninstitutional health care provider) for which a claim is submitted under a plan contracted for under subsection (a) may not exceed the lesser of—

''(A) the amount equivalent to the 80th percentile of billed charges made for similar services in the same locality during the base period; or

''(B) an amount determined to be appropriate, to the extent practicable, in accordance with the same reimbursement rules as apply to payments for similar services under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.).''

Subsec. (h)(2). Pub. L. 105–85, §735(c)(2), redesignated par. (4) as (2).

Pub. L. 105–85, §735(a), struck out par. (2) which read as follows: ''For the purposes of paragraph (1)(A), the 80th percentile of charges shall be determined by the Secretary of Defense, in consultation with the other administering Secretaries, and the base period shall be a period of twelve calendar months. The Secretary of Defense shall adjust the base period as frequently as he considers appropriate.''

Subsec. (h)(3). Pub. L. 105–85, §735(c)(2), redesignated par. (5) as (3).

Pub. L. 105–85, §735(a), struck out par. (3) which read as follows: ''For the purposes of paragraph (1)(B), the appropriate payment amount shall be determined by the Secretary of Defense, in consultation with the other administering Secretaries.''

Subsec. (h)(4). Pub. L. 105–85, §735(c)(2), redesignated par. (4) as (2).

Subsec. (h)(5). Pub. L. 105–85, §735(c)(2), redesignated par. (5) as (3).

Pub. L. 105–85, §735(b), (c)(1), substituted ''paragraph (2), the Secretary of Defense'' for ''paragraph (4), the Secretary'' and inserted at end ''With the consent of the health care provider, the Secretary is also authorized to reduce the authorized payment for certain health care services below the amount otherwise required by the payment limitations under paragraph (1).''

Subsec. (h)(6). Pub. L. 105–85, §735(c)(2), redesignated par. (6) as (4).

1996—Subsec. (a). Pub. L. 104–201, §731(b)(1), substituted ''except as follows:'' for ''except that—'' in introductory provisions.

Subsec. (a)(1). Pub. L. 104–201, §731(b)(2), (3), capitalized first letter of first word and substituted a period for the semicolon at end.

Subsec. (a)(2). Pub. L. 104–201, §731(b)(2), (3), capitalized first letter of first word and substituted a period for the semicolon at end.

Pub. L. 104–201, §701(b)(2), inserted ''the schedule and method of colon and prostate cancer screenings,'' after ''pap smears and mammograms,'' in introductory provisions and ''or colon and prostate cancer screenings'' after ''pap smears and mammograms'' in subpar. (B).

Pub. L. 104–106, §701, added par. (2) and struck out former par. (2) which read as follows: ''routine physical examinations and immunizations of dependents over two years of age may only be provided when required in the case of dependents who are traveling outside the United States as a result of a member's duty assignment and such travel is being performed under orders issued by a uniformed service, except that pap smears and mammograms may be provided on a diagnostic or preventive basis;''.

Subsec. (a)(3) to (12). Pub. L. 104–201, §731(b)(2), (3), capitalized first letter of first word and substituted a period for the semicolon at end.

Subsec. (a)(13). Pub. L. 104–201, §731(a), (b)(2), substituted ''Any service'' for ''any service'' and ''paragraph (4).'' for ''paragraph (4);'' and inserted at end ''Pursuant to an agreement with the Secretary of Health and Human Services and under such regulations as the Secretary of Defense may prescribe, the Secretary of Defense may waive the operation of this paragraph in connection with clinical trials sponsored or approved by the National Institutes of Health if the Secretary of Defense determines that such a waiver will promote access by covered beneficiaries to promising new treatments and contribute to the development of such treatments.''

Subsec. (a)(14), (15). Pub. L. 104–201, §731(b)(2), (3), capitalized first letter of first word and substituted a period for the semicolon at end.

Subsec. (a)(16). Pub. L. 104–201, §731(b)(2), (4), capitalized first letter of first word and substituted a period for ''; and'' at end.

Subsec. (a)(17). Pub. L. 104–201, §731(b)(2), capitalized first letter of first word.

Subsec. (h)(1). Pub. L. 104–106, §731(a), added par. (1) and struck out former par. (1) which read as follows: ''Payment for a charge for services by an individual health-care professional (or other noninstitutional health-care provider) for which a claim is submitted under a plan contracted for under subsection (a) may be denied only to the extent that the charge exceeds the amount equivalent to the 80th percentile of billed charges made for similar services in the same locality during the base period.''

Subsec. (h)(2). Pub. L. 104–106, §731(d), substituted ''paragraph (1)(A)'' for ''paragraph (1)''.

Subsec. (h)(3). Pub. L. 104–106, §731(b), added par. (3).

Subsec. (h)(4). Pub. L. 104–201, §711, struck out ''emergency'' before ''services from nonparticipating providers.''

Pub. L. 104–106, § 731(c), added par. (4).

Subsec. (h)(5). Pub. L. 104–201, § 732(2), added par. (5). Former par. (5) redesignated (6).

Pub. L. 104–106, § 731(c), added par. (5).

Subsec. (h)(6). Pub. L. 104–201, § 732(1), redesignated par. (5) as (6).

Subsec. (j)(1). Pub. L. 104–201, § 735(c), inserted '', including any plan offered by a third-party payer (as defined in section 1095(h)(1) of this title),'' after ''or health plan''.

1994—Subsec. (a). Pub. L. 103–337, § 702(a)(1), substituted ''dependents, as described in subparagraphs (A), (D), and (I) of section 1072(2) of this title,'' for ''spouses and children''.

Subsec. (d). Pub. L. 103–337, § 702(a)(2), substituted ''as described in subparagraph (A), (D), or (I) of section 1072(2)'' for ''as defined in section 1072(2)(A) or (D)''.

Subsec. (g). Pub. L. 103–337, § 707(a), inserted at end ''In addition, when a member dies while on active duty for a period of more than 30 days, the member's dependents who are receiving benefits under a plan covered by subsection (a) shall continue to be eligible for such benefits during the one-year period beginning on the date of the death of the member.''

1993—Subsec. (a)(7). Pub. L. 103–160, § 716(c), substituted ''except that those services may be provided in any case in which another insurance plan or program provides primary coverage for those services;'' for ''except that—

''(A) those services may be provided in any case in which another insurance plan or program provides primary coverage for those services; and

''(B) the Secretary of Defense may waive the 40-mile radius restriction with regard to the provision of a particular service before October 1, 1993, if the Secretary determines that the use of a different geographical area restriction will result in a more cost-effective provision of the service;''.

Subsec. (a)(15). Pub. L. 103–35 made technical amendment to directory language of Pub. L. 102–484, § 704(1). See 1992 Amendment note below.

Subsec. (*o*). Pub. L. 103–160, § 711, added subsec. (*o*).

1992—Subsec. (a)(15). Pub. L. 102–484, § 1053(3), made technical amendment to directory language of Pub. L. 102–190, § 702(b)(1)(C). See 1991 Amendment note below.

Pub. L. 102–484, § 704(1), as amended by Pub. L. 103–35, struck out ''and'' at end of par. (15).

Subsec. (a)(16). Pub. L. 102–484, § 704(2), substituted ''; and'' for period at end.

Subsec. (a)(17). Pub. L. 102–484, § 704(3), added par. (17).

Subsec. (j)(2)(B). Pub. L. 102–484, § 1052(13), inserted a close parenthesis after ''1395x(dd)(2)''.

1991—Subsec. (a)(6). Pub. L. 102–25, § 316(b), revived par. (6) as in effect on Feb. 14, 1991, thus negating amendment to par. (6) by Pub. L. 101–510, § 703(a), from its original effective date (Feb. 15, 1991) to the effective date as amended (Oct. 1, 1991). See 1990 Amendment note and Effective Date of 1990 Amendment note below.

Subsec. (a)(7). Pub. L. 102–190, § 711, substituted ''except that—'' and subpars. (A) and (B), for ''except that such services may be provided in any case in which another insurance plan or program provides primary coverage for the services;''.

Subsec. (a)(13). Pub. L. 102–190, § 702(b)(1)(A), substituted ''paragraph (4)'' for ''clause (4)''.

Subsec. (a)(14). Pub. L. 102–190, § 702(b)(1)(B), struck out ''and'' at end.

Subsec. (a)(15). Pub. L. 102–190, § 702(b)(1)(C), as amended by Pub. L. 102–484, § 1053(3), substituted ''; and'' for period at end.

Subsec. (a)(16). Pub. L. 102–190, § 702(b)(1)(D), added par. (16).

Subsec. (i). Pub. L. 102–25, § 316(b), revived subsec. (i) as in effect on Feb. 14, 1991, thus negating amendment to subsec. (i) by Pub. L. 101–510, § 703(b), from its original effective date (Feb. 15, 1991) to the effective date as amended (Oct. 1, 1991). See 1990 Amendment note and Effective Date of 1990 Amendment note below.

Subsec. (j)(1). Pub. L. 102–190, § 713, inserted '', or covered by,'' after ''person enrolled in''.

Subsec. (j)(2)(B). Pub. L. 102–190, § 702(b)(2), inserted ''hospice program (as defined in section 1861(dd)(2) of the Social Security Act (42 U.S.C. 1395x(dd)(2)),''.

Subsec. (n). Pub. L. 102–190, § 712(a), added subsec. (n).

1990—Subsec. (a)(2). Pub. L. 101–510, § 701(a), inserted before the semicolon '', except that pap smears and mammograms may be provided on a diagnostic or preventive basis''.

Subsec. (a)(6). Pub. L. 101–510, § 703(a), substituted ''in excess of—'' for ''in excess of 60 days in any year;'' and added subpars. (A) to (C).

Subsec. (a)(8). Pub. L. 101–510, § 702(a)(1), inserted ''(other than certified marriage and family therapists)'' after ''marital counselors'' and inserted before semicolon ''and services of certified marriage and family therapists may be provided consistent with such rules as may be prescribed by the Secretary of Defense, including credentialing criteria and a requirement that the therapists accept payment under this section as full payment for all services provided''.

Subsec. (a)(13). Pub. L. 101–510, § 702(a)(2), inserted ''certified marriage and family therapist,'' after ''psychologist,''.

Subsec. (b)(2). Pub. L. 101–510, § 712(a)(1), substituted ''$150'' for ''$50'' and inserted at end ''Notwithstanding the preceding sentence, in the case of a dependent of an enlisted member in a pay grade below E–5, the initial deductible each fiscal year under this paragraph shall be limited to $50.''

Subsec. (b)(3). Pub. L. 101–510, § 712(a)(2), substituted ''$300 (or in the case of the family group of an enlisted member in a pay grade below E–5, the first $100)'' for ''$100''.

Subsec. (i). Pub. L. 101–510, § 703(b), amended subsec. (i) generally. Prior to amendment, subsec. (i) read as follows: ''The limitation in subsection (a)(6) does not apply in the case of inpatient mental health services—

''(1) provided under the program for the handicapped under subsection (d);

''(2) provided as residential treatment care;

''(3) provided as partial hospital care; or

''(4) provided pursuant to a waiver authorized by the Secretary of Defense because of extraordinary medical or psychological circumstances that are confirmed by review by a non-Federal health professional pursuant to regulations prescribed by the Secretary of Defense.''

Subsec. (j)(2)(B). Pub. L. 101–510, § 1484(g)(1), inserted ''the term'' after ''In subparagraph (A),''.

1989—Subsec. (h)(1), (2). Pub. L. 101–189 substituted ''80th percentile'' for ''90th percentile''.

1988—Subsec. (b)(1). Pub. L. 100–456, § 646(a)(1), inserted provisions authorizing Secretary of Defense to exempt a patient from paying such amount if the hospital to which the patient is admitted does not impose a legal obligation on any of its patients to pay for inpatient care.

Subsec. (m). Pub. L. 100–456, § 646(a)(2), added subsec. (m).

1987—Subsec. (a)(15). Pub. L. 100–180, § 726(a), added par. (15).

Subsec. (b)(5). Pub. L. 100–180, § 721(a), added par. (5).

1986—Subsec. (a)(7). Pub. L. 99–661, § 703, substituted ''provides primary coverage for the services'' for ''pays for at least 75 percent of the services''.

Subsec. (*l*). Pub. L. 99–661, § 652(d), added subsec. (*l*).

1984—Subsec. (a). Pub. L. 98–557, § 19(7)(B), substituted reference to other administering Secretaries for reference to Secretary of Health and Human Services in provisions preceding cl. (1).

Subsec. (a)(3). Pub. L. 98–525, § 632(a)(1), substituted ''not more than one eye examination may be provided to a patient in any calendar year'' for ''eye examinations may not be provided''.

Subsec. (a)(4). Pub. L. 98–557, § 19(7)(A), substituted reference to the administering Secretaries for reference to the Secretary of Defense and the Secretary of Health and Human Services.

Subsec. (a)(7) to (14). Pub. L. 98–525, § 1401(e)(4)(A), added cls. (7) to (14).

Subsecs. (b)(4), (c), (d). Pub. L. 98–557, §19(7)(A), substituted reference to the administering Secretaries for reference to the Secretary of Defense and the Secretary of Health and Human Services.

Subsec. (e). Pub. L. 98–525, §1405(23), substituted ''under subsection (d) as follows:'' for ''under subsection (d).'' in provisions preceding cl. (1).

Subsecs. (e)(1), (f). Pub. L. 98–557, §19(7)(A), substituted reference to the administering Secretaries for reference to the Secretary of Defense and the Secretary of Health and Human Services.

Subsec. (h)(2). Pub. L. 98–557, §19(7)(B), substituted reference to other administering Secretaries for reference to Secretary of Health and Human Services.

Pub. L. 98–525, §1401(e)(4)(B), substituted ''The Secretary of Defense shall adjust the base period as frequently as he considers appropriate'' for ''The base period shall be adjusted at least once a year''.

Subsec. (j)(2)(A). Pub. L. 98–557, §19(7)(A), substituted reference to the administering Secretaries for reference to the Secretary of Defense and the Secretary of Health and Human Services.

Subsec. (k)(1), (2). Pub. L. 98–557, §19(7)(B), substituted reference to other administering Secretaries for reference to Secretary of Health and Human Services.

1983—Subsec. (a). Pub. L. 98–94, §1268(4)(A), substituted ''30'' for ''thirty'' in provisions preceding par. (1).

Subsec. (a)(6). Pub. L. 98–94, §931(a)(1), added par. (6).

Subsec. (d). Pub. L. 98–94, §1268(4)(A), substituted ''30'' for ''thirty''.

Subsec. (g). Pub. L. 98–94, §1268(4)(B), struck out ''of this section'' after ''subsection (d)''.

Subsecs. (i) to (k). Pub. L. 98–94, §931(a)(2), added subsecs. (i) to (k).

1981—Subsec. (b)(4). Pub. L. 97–22 substituted ''Secretary of Health and Human Services'' for ''Secretary of Health, Education, and Welfare''.

Subsec. (h). Pub. L. 97–86 substituted reference to services of individual health-care professionals for former reference to physician services, struck out provisions that had used the concept of a predetermined charge level based upon customary charges, and inserted provisions requiring a readjustment of the base period at least once a year.

1980—Subsec. (a). Pub. L. 96–513, §511(36), (38)(A), substituted ''Secretary of Health and Human Services'' for ''Secretary of Health, Education, and Welfare'' wherever appearing, and ''that—'' for ''that:''.

Subsec. (a)(2). Pub. L. 96–342, §810(a)(1), inserted ''of dependents over two years of age'' after ''immunizations''.

Subsec. (a)(3). Pub. L. 96–342, §810(a)(2), struck out ''routine care of the newborn, well-baby care, and'' after ''(3)''.

Subsec. (b)(4). Pub. L. 96–552 added par. (4).

Pub. L. 96–513, §511(38)(B), substituted ''percent'' for ''per centum'' wherever appearing.

Subsec. (c). Pub. L. 96–513, §511(36), substituted ''Secretary of Health and Human Services'' for ''Secretary of Health, Education, and Welfare''.

Subsec. (d). Pub. L. 96–513, §§501(13), 511(36), substituted ''section 1072(2)(A) or (D) of this title'' for ''section 1072(2)(A), (C), or (E) of this title'', and ''Secretary of Health and Human Services'' for ''Secretary of Health, Education, and Welfare''.

Subsec. (e). Pub. L. 96–513, §511(36), (38)(C), substituted ''Secretary of Health and Human Services'' for ''Secretary of Health, Education, and Welfare'', and ''(d) as follows:'' for ''(d).''.

Subsec. (e)(2). Pub. L. 96–342, §810(b), substituted ''$1,000'' for ''$350''.

Subsec. (f). Pub. L. 96–513, §511(36), substituted ''Secretary of Health and Human Services'' for ''Secretary of Health, Education, and Welfare''.

Subsec. (g). Pub. L. 96–513, §511(38)(D), struck out '', United States Code,'' after ''37''.

Subsec. (h). Pub. L. 96–513, §511(36), substituted ''Secretary of Health and Human Services'' for ''Secretary of Health, Education, and Welfare''.

1978—Subsec. (h). Pub. L. 95–485 added subsec. (h).

1971—Subsec. (g). Pub. L. 92–58 added subsec. (g).

1966—Subsec. (a). Pub. L. 89–614 struck out ''dependent'' before ''spouses and children'' and substituted sentence providing that ''The types of health care authorized under this section, shall be the same as those provided under section 1076 of this title'', enumerating exceptions in pars. (1) to (5) for former provisions which required the insurance, medical service, or health plans to include (1) hospitalization in semiprivate rooms for not more than 365 days for each admission, (2) medical and surgical care incident to hospitalization, (3) obstetrical and maternity service, including prenatal and postnatal care, (4) services of physician or surgeon before or after hospitalization for bodily injury or surgical operation, (5) diagnostic tests and services incident to hospitalization, and (6) payments by patient of hospital expenses, now incorporated in subsec. (b)(1).

Subsec. (b). Pub. L. 89–614 incorporated existing provisions of subsec. (a)(6) in par. (1) and added pars. (2) and (3). Former subsec. (b) authorized the Secretary of Defense to make variances from subsec. (a) requirements as appropriate other than outpatient care or care other than provided for in sections 1076 to 1078 of this title.

Subsecs. (c) to (f). Pub. L. 89–614 added subsecs. (c) to (f).

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–163, div. A, title VII, §715(b), Jan. 6, 2006, 119 Stat. 3345, provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on October 7, 2001, and shall apply with respect to deaths occurring on or after that date.''

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–314, div. A, title VII, §701(b), Dec. 2, 2002, 116 Stat. 2583, provided that: ''The amendments made by subsection (a) [amending this section] shall take effect October 1, 2003.''

Pub. L. 107–314, div. A, title VII, §705(b), Dec. 2, 2002, 116 Stat. 2585, provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to any contract under the TRICARE program entered into on or after the date of the enactment of this Act [Dec. 2, 2002].''

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–107, div. A, title VII, §707(c), Dec. 28, 2001, 115 Stat. 1164, provided that: ''The amendments made by this section [amending this section] shall take effect on the date that is 90 days after the date of the enactment of this Act [Dec. 28, 2001].''

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–398, §1 [[div. A], title VII, §701(c)(3)], Oct. 30, 2000, 114 Stat. 1654, 1654A–172, provided that: ''The amendments made by paragraphs (1) and (2) [amending this section and provisions set out as a note under section 1077 of this title] shall apply to fiscal years after fiscal year 1999.''

Amendment by section 1 [[div. A], title VII, §722(b)(1)] of Pub. L. 106–398 effective Oct. 1, 2001, see section 1 [[div. A], title VII, §722(c)(1)] of Pub. L. 106–398, set out as a note under section 1074 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Pub. L. 103–337, div. A, title VII, §707(c), Oct. 5, 1994, 108 Stat. 2801, provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 1076a of this title] shall apply with respect to the dependents described in such amendments of a member of a uniformed service who dies on or after October 1, 1993, while on active duty for a period of more than 30 days.''

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–35 applicable as if included in the enactment of Pub. L. 102–484, see section

202(b) of Pub. L. 103–35, set out as a note under section 155 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Pub. L. 102–484, div. A, title X, §1053, Oct. 23, 1992, 106 Stat. 2501, provided that the amendment made by that section is effective Dec. 5, 1991.

EFFECTIVE DATE OF 1991 AMENDMENT

Pub. L. 102–25, title III, §316(b), Apr. 6, 1991, 105 Stat. 87, provided that the amendment made by that section is effective Feb. 15, 1991.

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–510, div. A, title VII, §701(b), Nov. 5, 1990, 104 Stat. 1580, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to the provision of pap smears and mammograms under section 1079 or 1086 of title 10, United States Code, on or after the date of the enactment of this Act [Nov. 5, 1990].''

Pub. L. 101–510, div. A, title VII, §702(b), Nov. 5, 1990, 104 Stat. 1581, provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to the services of certified marriage and family therapists provided under section 1079 or 1086 of title 10, United States Code, on or after the date of the enactment of this Act [Nov. 5, 1990].''

Pub. L. 101–510, div. A, title VII, §703(d), Nov. 5, 1990, 104 Stat. 1582, as amended by Pub. L. 102–25, title III, §316(a)(1), Apr. 6, 1991, 105 Stat. 87, provided that: ''This section and the amendments made by this section [amending this section] shall take effect on October 1, 1991, and shall apply with respect to mental health services provided under section 1079 or 1086 of title 10, United States Code, on or after that date.''

Pub. L. 101–510, div. A, title VII, §712(c), Nov. 5, 1990, 104 Stat. 1583, provided that: ''The amendments made by this section [amending this section and section 1086 of this title] shall apply with respect to health care provided under sections 1079 and 1086 of title 10, United States Code, on or after April 1, 1991.''

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–189, div. A, title VII, §730(b), Nov. 29, 1989, 103 Stat. 1481, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to services provided on or after October 1, 1989.''

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–456, div. A, title VI, §646(c), Sept. 29, 1988, 102 Stat. 1990, provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 1086 of this title] shall apply with respect to medical care received after September 30, 1988.''

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100–180, div. A, title VII, §721(c), Dec. 4, 1987, 101 Stat. 1115, provided that: ''Paragraph (5) of section 1079(b) of title 10, United States Code, as added by subsection (a), and paragraph (4) of section 1086(b) of such title, as added by subsection (b), shall apply with respect to fiscal years beginning after September 30, 1987.''

Pub. L. 100–180, div. A, title VII, §726(b), Dec. 4, 1987, 101 Stat. 1117, provided that: ''Paragraph (15) of section 1079(a) of such title, as added by subsection (a), shall apply with respect to costs incurred for home monitoring equipment after the date of the enactment of this Act [Dec. 4, 1987].''

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–661, div. A, title VI, §652(e)(4), Nov. 14, 1986, 100 Stat. 3890, provided that: ''The amendment made by subsection (d) [amending this section] shall apply only with respect to care furnished under section 1079 of title 10, United States Code, on or after the date of the enactment of this Act [Nov. 14, 1986].''

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–525, title VI, §632(a)(3), Oct. 19, 1984, 98 Stat. 2543, provided that: ''The amendments made by this subsection [amending this section and section 1086 of this title] shall apply only to health care furnished after September 30, 1984.''

Amendment by section 1401(e)(4) of Pub. L. 98–525 effective Oct. 1, 1985, see section 1404 of Pub. L. 98–525, set out as an Effective Date note under section 520b of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Pub. L. 98–94, title IX, §931(c), Sept. 24, 1983, 97 Stat. 649, provided that: ''The amendments made by this section [amending this section and section 1086 of this title] shall take effect on October 1, 1983, except that—

''(1) clause (6) of section 1079(a) of title 10, United States Code, as added by subsection (a)(1), shall not apply in the case of inpatient mental health services provided to a patient admitted before January 1, 1983, for so long as that patient remains continuously in inpatient status for medically or psychologically necessary reasons; and

''(2) subsection (k) of section 1079 of such title, as added by subsection (a)(1), shall apply with respect to liver transplant operations performed on or after July 1, 1983.''

EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97–86, title IX, §906(b), Dec. 1, 1981, 95 Stat. 1117, provided that: ''The amendments made by subsection (a) [amending this section and section 1086 of this title] shall apply with respect to claims submitted for payment for services provided after the end of the 30-day period beginning on the date of the enactment of this Act [Dec. 1, 1981].''

EFFECTIVE DATE OF 1980 AMENDMENTS

Amendment by section 501(13) of Pub. L. 96–513 effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

Amendment by section 511 of Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513.

Pub. L. 96–342, title VIII, §810(c), Sept. 8, 1980, 94 Stat. 1097, provided that: ''The amendments made by this section [amending this section] shall apply to medical care provided after September 30, 1980.''

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–485, title VIII, §806(b), Oct. 20, 1978, 92 Stat. 1622, provided that: ''the amendments made by subsection (a) [amending this section and section 1086 of this title] shall apply with respect to claims submitted for payment for services provided on or after the first day of the first calendar year beginning after the date of enactment of this Act [Oct. 20, 1978].''

EFFECTIVE DATE OF 1971 AMENDMENT

Pub. L. 92–58, §2, July 29, 1971, 85 Stat. 157, provided that: ''This Act [amending this section] becomes effective as of January 1, 1967. However, no person is entitled to any benefits because of this Act for any period before the date of enactment [July 29, 1971].''

EFFECTIVE DATE OF 1966 AMENDMENT

For effective date of amendment by Pub. L. 89–614, see section 3 of Pub. L. 89–614, set out as a note under section 1071 of this title.

WAIVER OF COPAYMENTS FOR PREVENTIVE SERVICES FOR CERTAIN TRICARE BENEFICIARIES

Pub. L. 110–417, [div. A], title VII, §711, Oct. 14, 2008, 122 Stat. 4500, as amended by Pub. L. 111–383, div. A, title X, §1075(e)(11), Jan. 7, 2011, 124 Stat. 4375, provided that:

''(a) WAIVER OF CERTAIN COPAYMENTS.—Subject to subsection (b) and under regulations prescribed by the Secretary of Defense, the Secretary shall—

''(1) waive all copayments under sections 1079(b) and 1086(b) of title 10, United States Code, for preventive services for all beneficiaries who would otherwise pay copayments; and

''(2) ensure that a beneficiary pays nothing for preventive services during a year even if the beneficiary has not paid the amount necessary to cover the beneficiary's deductible for the year.

''(b) EXCLUSION FOR MEDICARE-ELIGIBLE BENEFICIARIES.—Subsection (a) shall not apply to a medicare-eligible beneficiary.

''(c) REFUND OF COPAYMENTS.—

''(1) AUTHORITY.—Under regulations prescribed by the Secretary of Defense, the Secretary may pay a refund to a medicare-eligible beneficiary excluded by subsection (b), subject to the availability of appropriations specifically for such refunds, consisting of an amount up to the difference between—

''(A) the amount the beneficiary pays for copayments for preventive services during fiscal year 2009; and

''(B) the amount the beneficiary would have paid during such fiscal year if the copayments for preventive services had been waived pursuant to subsection (a) during that year.

''(2) COPAYMENTS COVERED.—The refunds under paragraph (1) are available only for copayments paid by medicare-eligible beneficiaries during fiscal year 2009.

''(d) DEFINITIONS.—In this section:

''(1) PREVENTIVE SERVICES.—The term 'preventive services' includes, taking into consideration the age and gender of the beneficiary:

''(A) Colorectal screening.

''(B) Breast screening.

''(C) Cervical screening.

''(D) Prostate screening.

''(E) Annual physical exam.

''(F) Vaccinations.

''(G) Other services as determined by the Secretary of Defense.

''(2) MEDICARE-ELIGIBLE.—The term 'medicare-eligible' has the meaning provided by section 1111(b)(3) of title 10, United States Code.''

PLAN FOR PROVIDING HEALTH COVERAGE INFORMATION TO MEMBERS, FORMER MEMBERS, AND DEPENDENTS ELIGIBLE FOR CERTAIN HEALTH BENEFITS

Pub. L. 108–136, div. A, title VII, § 724, Nov. 24, 2003, 117 Stat. 1534, provided that:

''(a) HEALTH INFORMATION PLAN REQUIRED.—The Secretary of Defense shall develop a plan to—

''(1) ensure that each household that includes one or more eligible persons is provided information concerning—

''(A) the extent of health coverage provided by sections 1079 or 1086 of title 10, United States Code, for each such person;

''(B) the costs, including the limits on such costs, that each such person is required to pay for such health coverage;

''(C) sources of information for locating TRICARE-authorized providers in the household's locality; and

''(D) methods to obtain assistance in resolving difficulties encountered with billing, payments, eligibility, locating TRICARE-authorized providers, collection actions, and such other issues as the Secretary considers appropriate;

''(2) provide mechanisms to ensure that each eligible person has access to information identifying TRICARE-authorized providers in the person's locality who have agreed to accept new patients under section 1079 or 1086 of title 10, United States Code, and to ensure that such information is periodically updated;

''(3) provide mechanisms to ensure that each eligible person who requests assistance in locating a TRICARE-authorized provider is provided such assistance;

''(4) provide information and recruitment materials and programs aimed at attracting participation of health care providers as necessary to meet health care access requirements for all eligible persons; and

''(5) provide mechanisms to allow for the periodic identification by the Department of Defense of the number and locality of eligible persons who may intend to rely on TRICARE-authorized providers for health care services.

''(b) IMPLEMENTATION OF PLAN.—The Secretary of Defense shall implement the plan required by subsection (a) with respect to any contract entered into by the Department of Defense after May 31, 2003, for managed health care.

''(c) DEFINITIONS.—In this section:

''(1) The term 'eligible person' means a person eligible for health benefits under section 1079 or 1086 of title 10, United States Code.

''(2) The term 'TRICARE-authorized provider' means a facility, doctor, or other provider of health care services—

''(A) that meets the licensing and credentialing certification requirements in the State where the services are rendered;

''(B) that meets requirements under regulations relating to TRICARE for the type of health care services rendered; and

''(C) that has accepted reimbursement by the Secretary of Defense as payment for services rendered during the 12-month period preceding the date of the most recently updated provider information provided to households under the plan required by subsection (a).

''(d) SUBMISSION OF PLAN.—Not later than March 31, 2004, the Secretary shall submit to the Committees on Armed Services of the Senate and House of Representatives the plan required by subsection (a), together with a schedule for implementation of the plan.''

REPORT ON ACTIONS TO ESTABLISH SPECIAL REIMBURSEMENT RATES

Pub. L. 106–398, § 1 [[div. A], title VII, § 757(b)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–199, directed the Secretary of Defense, not later than Mar. 31, 2001, to submit to the Committees on Armed Services of the Senate and the House of Representatives and the General Accounting Office a report on actions taken to carry out sections 1079(h)(5) and 1097b of this title.

PROGRAMS RELATING TO SALE OF PHARMACEUTICALS

Pub. L. 102–484, div. A, title VII, § 702, Oct. 23, 1992, 106 Stat. 2431, as amended by Pub. L. 103–160, div. A, title VII, § 721, Nov. 30, 1993, 107 Stat. 1695; Pub. L. 103–337, div. A, title VII, § 706, Oct. 5, 1994, 108 Stat. 2800; Pub. L. 106–398, § 1 [[div. A], title VII, § 711(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–176, directed the Secretary of Defense to conduct a demonstration project that would permit eligible persons to obtain prescription pharmaceuticals by mail, directed the Secretary to include in each managed health care program awarded or renewed after Jan. 1, 1993, a program to supply prescription pharmaceuticals through a managed care network of retail pharmacies, directed the Secretary to submit to Congress a report regarding the demonstration project not later than two years after its establishment and an additional report regarding the programs not later than Jan. 1, 1994, and provided for termination of section 702 of Pub. L. 102–484 no later than one year after Oct. 30, 2000.

CORRECTION OF OMISSION IN DELAY OF INCREASE OF CHAMPUS DEDUCTIBLES RELATED TO OPERATION DESERT STORM

Pub. L. 102–484, div. A, title VII, § 721, Oct. 23, 1992, 106 Stat. 2438, provided that during the period beginning on Apr. 1, 1991, and ending on Sept. 30, 1991, the annual deductibles specified in this section or section 1086 of this title applicable to CHAMPUS beneficiaries who had served on active duty in the Persian Gulf theater

of operations in connection with Operation Desert Storm would not exceed the annual deductibles in effect on Nov. 4, 1990, and provided for the credit or reimbursement of excess amounts paid.

TEMPORARY CHAMPUS PROVISIONS FOR DEPENDENTS OF OPERATION DESERT SHIELD/DESERT STORM ACTIVE DUTY PERSONNEL

Pub. L. 102–172, title VIII, §8085, Nov. 26, 1991, 105 Stat. 1192, provided that any CHAMPUS health care provider could voluntarily waive the patient copayment for medical services provided from Aug. 2, 1990, until the termination of Operation Desert Shield/Desert Storm for dependents of active duty personnel, provided that the Government's share of medical services was not increased during such time period.

Similar provisions were contained in Pub. L. 102–28, §105, Apr. 10, 1991, 105 Stat. 165.

Pub. L. 102–25, title III, §312, Apr. 6, 1991, 105 Stat. 85, provided that the annual deductibles specified in subsec. (b) of this section, as in effect on Nov. 4, 1990, would apply until Oct. 1, 1991, in the case of health care provided under that section to the dependents of a member of the uniformed services who had served on active duty in the Persian Gulf theater of operations in connection with Operation Desert Storm, and that patient copayment requirements could be waived upon the provider's certification to the Secretary of Defense that the amount charged the Federal Government for such health care had not been increased above the amount that the provider would have charged the Federal Government for such health care had the payment not been waived.

TRANSITIONAL HEALTH CARE FOR MEMBERS, OR DEPENDENTS OF MEMBERS, UPON RELEASE OF MEMBER FROM ACTIVE DUTY IN CONNECTION WITH OPERATION DESERT STORM

For provision authorizing transitional health care, including health benefits contracted for under subsec. (a) of this section, for members, or dependents of members, upon release of member from active duty in connection with Operation Desert Storm, see section 313 of Pub. L. 102–25, set out as a note under section 1076 of this title.

§1079a. TRICARE program: treatment of refunds and other amounts collected

All refunds and other amounts collected in the administration of the TRICARE program shall be credited to the appropriation available for that program for the fiscal year in which the refund or amount is collected.

(Added Pub. L. 104–201, div. A, title VII, §733(a)(1), Sept. 23, 1996, 110 Stat. 2597; amended Pub. L. 114–328, div. A, title VII, §701(j)(1)(D), Dec. 23, 2016, 130 Stat. 2192.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in the following appropriations acts:

Pub. L. 104–61, title VIII, §8094, Dec. 1, 1995, 109 Stat. 671.

Pub. L. 103–335, title VIII, §8144, Sept. 30, 1994, 108 Stat. 2656.

AMENDMENTS

2016—Pub. L. 114–328 substituted "TRICARE program" for "CHAMPUS" in section catchline and "the TRICARE program" for "the Civilian Health and Medical Program of the Uniformed Services" in text.

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114–328 applicable with respect to the provision of health care under the TRICARE program beginning on Jan. 1, 2018, see section 701(k) of Pub. L. 114–328, set out as a note under section 1072 of this title.

§1079b. Procedures for charging fees for care provided to civilians; retention and use of fees collected

(a) REQUIREMENT TO IMPLEMENT PROCEDURES.—The Secretary of Defense shall implement procedures under which a military medical treatment facility may charge civilians who are not covered beneficiaries (or their insurers) fees representing the costs, as determined by the Secretary, of trauma and other medical care provided to such civilians.

(b) WAIVER OF FEES.—The Secretary may waive a fee that would otherwise be charged under the procedures implemented under subsection (a) to a civilian who is not a covered beneficiary if—

(1) the civilian is unable to pay for the costs of the trauma or other medical care provided to the civilian (including any such costs remaining after the Secretary receives payment from an insurer for such care, as applicable); and

(2) the provision of such care enhances the knowledge, skills, and abilities of health care providers, as determined by the Secretary.

(c) USE OF FEES COLLECTED.—A military medical treatment facility may retain and use the amounts collected under subsection (a) for—

(1) trauma consortium activities;

(2) administrative, operating, and equipment costs; and

(3) readiness training.

(Added Pub. L. 107–107, div. A, title VII, §732(a)(1), Dec. 28, 2001, 115 Stat. 1169; amended Pub. L. 116–283, div. A, title VII, §702, Jan. 1, 2021, 134 Stat. 3686.)

AMENDMENTS

2021—Subsecs. (b), (c). Pub. L. 116–283 added subsec. (b) and redesignated former subsec. (b) as (c).

DEADLINE FOR IMPLEMENTATION

Pub. L. 107–107, div. A, title VII, §732(b), Dec. 28, 2001, 115 Stat. 1170, directed the Secretary of Defense to begin to implement the procedures required by subsec. (a) of this section not later than one year after Dec. 28, 2001.

§1079c. Provisional coverage for emerging services and supplies

(a) PROVISIONAL COVERAGE.—In carrying out the TRICARE program, including pursuant to section 1079(a)(12) of this title, the Secretary of Defense, acting through the Assistant Secretary of Defense for Health Affairs, may provide provisional coverage for the provision of a service or supply if the Secretary determines that such service or supply is widely recognized in the United States as being safe and effective.

(b) CONSIDERATION OF EVIDENCE.—In making a determination under subsection (a), the Secretary may consider—

(1) clinical trials published in refereed medical literature;

(2) formal technology assessments;

(3) the positions of national medical policy organizations;

(4) national professional associations;

(5) national expert opinion organizations; and

(6) such other validated evidence as the Secretary considers appropriate.

(c) INDEPENDENT EVALUATION.—In making a determination under subsection (a), the Secretary may arrange for an evaluation from the Institute of Medicine of the National Academies or such other independent entity as the Secretary selects.

(d) DURATION AND TERMS OF COVERAGE.—(1) Provisional coverage under subsection (a) for a service or supply may be in effect for not longer than a total of five years.

(2) Prior to the expiration of provisional coverage of a service or supply, the Secretary shall determine the coverage, if any, that will follow such provisional coverage and take appropriate action to implement such determination. If the Secretary determines that the implementation of such determination regarding coverage requires legislative action, the Secretary shall make a timely recommendation to Congress regarding such legislative action.

(3) The Secretary, at any time, may—

(A) terminate the provisional coverage under subsection (a) of a service or supply, regardless of whether such termination is before the end of the period described in paragraph (1);

(B) establish or disestablish terms and conditions for such coverage; or

(C) take any other action with respect to such coverage.

(e) PUBLIC NOTICE.—The Secretary shall promptly publish on a publicly accessible Internet website of the TRICARE program a notice for each service or supply that receives provisional coverage under subsection (a), including any terms and conditions for such coverage.

(f) FINALITY OF DETERMINATIONS.—Any determination to approve or disapprove a service or supply under subsection (a) and any action made under subsection (d)(3) shall be final.

(Added Pub. L. 113–291, div. A, title VII, § 704(a), Dec. 19, 2014, 128 Stat. 3412.)

§ 1080. Contracts for medical care for spouses and children: election of facilities

(a) ELECTION.—A dependent covered by section 1079 of this title may elect to receive inpatient medical care either in (1) the facilities of the uniformed services, under the conditions prescribed by sections 1076–1078 of this title, or (2) the facilities provided under a plan contracted for under section 1079 of this title. However, under such regulations as the Secretary of Defense, after consulting the other administering Secretaries, may prescribe, the right to make this election may be limited for dependents residing in the area where the member concerned is assigned, if adequate medical facilities of the uniformed services are available in that area for those dependents.

(b) ISSUANCE OF NONAVAILABILITY-OF-HEALTH-CARE STATEMENTS.—In determining whether to issue a nonavailability-of-health-care statement for a dependent described in subsection (a), the commanding officer of a facility of the uniformed services may consider the availability of health care services for the dependent pursuant to any contract or agreement entered into under this chapter for the provision of health care services. Notwithstanding any other provision of law, with respect to obstetrics and gynecological care for beneficiaries not enrolled in a managed care plan offered pursuant to any contract or agreement under this chapter, a nonavailability-of-health-care statement shall be required for receipt of health care services related to outpatient prenatal, outpatient or inpatient delivery, and outpatient post-partum care subsequent to the visit which confirms the pregnancy.

(c) WAIVERS AND EXCEPTIONS TO REQUIREMENTS.—(1) A covered beneficiary enrolled in a managed care plan offered pursuant to any contract or agreement under this chapter for the provision of health care services shall not be required to obtain a nonavailability-of-health-care statement as a condition for the receipt of health care.

(2) The Secretary of Defense may waive the requirement to obtain nonavailability-of-health-care statements following an evaluation of the effectiveness of such statements in optimizing the use of facilities of the uniformed services.

(Added Pub. L. 85–861, § 1(25)(B), Sept. 2, 1958, 72 Stat. 1449; amended Pub. L. 96–513, title V, § 511(36), Dec. 12, 1980, 94 Stat. 2923; Pub. L. 98–557, § 19(8), Oct. 30, 1984, 98 Stat. 2870; Pub. L. 103–160, div. A, title VII, § 716(b)(1), Nov. 30, 1993, 107 Stat. 1692; Pub. L. 104–201, div. A, title VII, § 734(a)(1), (b)(1), (c), Sept. 23, 1996, 110 Stat. 2598; Pub. L. 106–65, div. A, title VII, § 712(c), Oct. 5, 1999, 113 Stat. 687.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1080	37:411(c).	June 7, 1956, ch. 374, § 201(c), 70 Stat. 252.

The words ''a plan contracted for under section 1079 of this title'' are substituted for the words ''such insurance, medical service, or health plan or plans as may be provided by the authority contained in this section''. The words ''under the terms of this chapter'' are omitted as surplusage.

PRIOR PROVISIONS

A prior section 1080, act Aug. 10, 1956, ch. 1041, 70A Stat. 85, related to style and marking of envelopes, inserts, return envelopes, and to weight of ballots, prior to repeal by Pub. L. 85–861, § 36B(5), Sept. 2, 1958, 72 Stat. 1570, as superseded by the Federal Voting Assistance Act of 1955 which is classified to subchapter I–D (§ 1973cc et seq.) of chapter 20 of Title 42, The Public Health and Welfare.

AMENDMENTS

1999—Subsec. (b). Pub. L. 106–65 inserted at end ''Notwithstanding any other provision of law, with respect to obstetrics and gynecological care for beneficiaries not enrolled in a managed care plan offered pursuant to any contract or agreement under this chapter, a nonavailability-of-health-care statement shall be required for receipt of health care services related to outpatient prenatal, outpatient or inpatient delivery, and outpatient post-partum care subsequent to the visit which confirms the pregnancy.''

1996—Subsec. (a). Pub. L. 104–201, § 734(a)(1), inserted ''inpatient'' before ''medical care'' in first sentence.

Subsec. (b). Pub. L. 104–201, § 734(c), substituted ''Nonavailability-of-Health-Care Statements'' for ''Nonavailability of Health Care Statements'' in heading and ''nonavailability-of-health-care statement'' for ''nonavailability of health care statement'' in text.

Subsec. (c). Pub. L. 104–201, § 734(b)(1), added subsec. (c).

1993—Pub. L. 103–160 designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

1984—Pub. L. 98–557 substituted reference to administering Secretaries for reference to Secretary of Health and Human Services.

1980—Pub. L. 96–513 substituted ''Secretary of Health and Human Services'' for ''Secretary of Health, Education, and Welfare''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

§ 1081. Contracts for medical care for spouses and children: review and adjustment of payments

Each plan under section 1079 of this title shall provide for a review, and if necessary an adjustment of payments, by the appropriate administering Secretary, not later than 120 days after the close of each year the plan is in effect.

(Added Pub. L. 85–861, § 1(25)(B), Sept. 2, 1958, 72 Stat. 1449; amended Pub. L. 96–513, title V, § 511(36), Dec. 12, 1980, 94 Stat. 2923; Pub. L. 97–375, title I, § 104(a), Dec. 21, 1982, 96 Stat. 1819; Pub. L. 98–94, title XII, § 1268(5)(A), Sept. 24, 1983, 97 Stat. 706; Pub. L. 98–557, § 19(9), Oct. 30, 1984, 98 Stat. 2870.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1081	37:412.	June 7, 1956, ch. 374, § 202, 70 Stat. 253.

The words ''Each plan under section 1079 of this title'' are substituted for the words ''Any insurance, medical service, or health plan or plans which may be entered into by the Secretary of Defense with respect to medical care under the provisions of this chapter''. The words ''after the close of each year the plan is in effect'' are substituted for the words ''after the first year the plan or plans have been in effect and each year thereafter''. The words ''Not later than'' are substituted for the word ''within''.

PRIOR PROVISIONS

A prior section 1081, act Aug. 10, 1956, ch. 1041, 70A Stat. 86, related to notification of elections, prior to repeal by Pub. L. 85–861, § 36B(5), Sept. 2, 1958, 72 Stat. 1570, as superseded by the Federal Voting Assistance Act of 1955 which is classified to subchapter I–D (§ 1973cc et seq.) of chapter 20 of Title 42, The Public Health and Welfare.

AMENDMENTS

1984—Pub. L. 98–557 substituted reference to appropriate administering Secretary for reference to Secretary of Defense and Secretary of Health and Human Services.

1983—Pub. L. 98–94 struck out ''; reports'' after ''adjustment of payments'' in section catchline.

1982—Pub. L. 97–375 struck out requirement that the Secretary of Defense report to the Committees on Armed Services of the Congress amounts paid and adjustments made during the year covered by the review not later than 90 days after such review.

1980—Pub. L. 96–513 substituted ''Secretary of Health and Human Services'' for ''Secretary of Health, Education, and Welfare''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

§ 1082. Contracts for health care: advisory committees

To carry out sections 1079–1081 and 1086 of this title, the Secretary of Defense may establish advisory committees on insurance, medical service, and health plans, to advise and make recommendations to him. He shall prescribe regulations defining their scope, activities, and procedures. Each committee shall consist of the Secretary, or his designee, as chairman, and such other persons as the Secretary may select. So far as possible, the members shall be representative of the organizations in the field of insurance, medical service, and health plans. They shall serve without compensation but may be allowed transportation and a per diem payment in place of subsistence and other expenses.

(Added Pub. L. 85–861, § 1(25)(B), Sept. 2, 1958, 72 Stat. 1449; amended Pub. L. 89–614, § 2(8), Sept. 30, 1966, 80 Stat. 866.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1082	37:413.	June 7, 1956, ch. 374, § 203, 70 Stat. 253.

The word ''organizations'' is inserted for clarity. The words ''consult'' and ''or plans'' are omitted as surplusage.

PRIOR PROVISIONS

A prior section 1082, act Aug. 10, 1956, ch. 1041, 70A Stat. 87, related to extension of time limit for making ballots available, prior to repeal by Pub. L. 85–861, § 36B(5), Sept. 2, 1958, 72 Stat. 1570, as superseded by the Federal Voting Assistance Act of 1955 which is classified to subchapter I–D (§ 1973cc et seq.) of chapter 20 of Title 42, The Public Health and Welfare.

AMENDMENTS

1966—Pub. L. 89–614 substituted ''Contracts for health care'' for ''Contracts for medical care for spouses and children'' in section catchline and included reference to section 1086 in text.

EFFECTIVE DATE OF 1966 AMENDMENT

For effective date of amendment by Pub. L. 89–614, see section 3 of Pub. L. 89–614, set out as a note under section 1071 of this title.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees in existence on Jan. 5, 1973, to terminate not later than the expiration of the 2-year period following Jan. 5, 1973, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided for by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

§ 1083. Contracts for medical care for spouses and children: additional hospitalization

If a dependent covered by a plan under section 1079 of this title needs hospitalization beyond

the time limits in that plan, and if the hospitalization is authorized in medical facilities of the uniformed services, he may be transferred to such a facility for additional hospitalization. If transfer is not feasible, the expenses of additional hospitalization in the civilian facility may be paid under such regulations as the Secretary of Defense may prescribe after consulting the other administering Secretaries.

(Added Pub. L. 85–861, §1(25)(B), Sept. 2, 1958, 72 Stat. 1449; amended Pub. L. 96–513, title V, §511(36), Dec. 12, 1980, 94 Stat. 2923; Pub. L. 98–557, §19(10), Oct. 30, 1984, 98 Stat. 2870.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1083	37:423.	June 7, 1956, ch. 374, §303, 70 Stat. 254.

The words ''dependent covered by a plan under section 1079 of this title'' are substituted for the words ''person who is covered under an insurance, medical service, or health plan or plans, as provided in this chapter''. The words ''period of'', ''or plans'', and ''required by such person in a civilian facility'' are omitted as surplusage.

PRIOR PROVISIONS

A prior section 1083, act Aug. 10, 1956, ch. 1041, 70A Stat. 87, related to transmission, delivery, and return of post cards, ballots, etc., prior to repeal by Pub. L. 85–861, §36B(5), Sept. 2, 1958, 72 Stat. 1570, as superseded by the Federal Voting Assistance Act of 1955 which is classified to subchapter I–D (§1973cc et seq.) of chapter 20 of Title 42, The Public Health and Welfare.

AMENDMENTS

1984—Pub. L. 98–557 substituted reference to other administering Secretaries for reference to Secretary of Health and Human Services.

1980—Pub. L. 96–513 substituted ''Secretary of Health and Human Services'' for ''Secretary of Health, Education, and Welfare''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

§ 1084. Determinations of dependency

A determination of dependency by an administering Secretary under this chapter is conclusive. However, the administering Secretary may change a determination because of new evidence or for other good cause. The Secretary's determination may not be reviewed in any court or by the Comptroller General, unless there has been fraud or gross negligence.

(Added Pub. L. 85–861, §1(25)(B), Sept. 2, 1958, 72 Stat. 1450; amended Pub. L. 89–614, §2(1), Sept. 30, 1966, 80 Stat. 862; Pub. L. 96–513, title V, §511(34)(A), (36), Dec. 12, 1980, 94 Stat. 2922, 2923; Pub. L. 98–557, §19(11), Oct. 30, 1984, 98 Stat. 2870; Pub. L. 108–375, div. A, title X, §1084(c)(1), Oct. 28, 2004, 118 Stat. 2061.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1084	37:404.	June 7, 1956, ch. 374, §304, 70 Stat. 254.

The words ''the General Accounting Office'' are substituted for the words ''any accounting officer of the Government'' for clarity. The words ''All'' and ''for all purposes'' are omitted as surplusage.

PRIOR PROVISIONS

A prior section 1084, act Aug. 10, 1956, ch. 1041, 70A Stat. 87, related to administration of former sections 1071 to 1086 of this title, prior to repeal by Pub. L. 85–861, §36B(5), Sept. 2, 1958, 72 Stat. 1570, as superseded by the Federal Voting Assistance Act of 1955 which is classified to subchapter I–D (§1973cc et seq.) of chapter 20 of Title 42, The Public Health and Welfare.

AMENDMENTS

2004—Pub. L. 108–375 substituted ''Comptroller General'' for ''General Accounting Office''.

1984—Pub. L. 98–557 substituted reference to administering Secretary for reference to Secretary of Defense and Secretary of Health and Human Services and reference to administering Secretary for reference to he.

1980—Pub. L. 96–513 substituted ''Secretary of Health and Human Services'' for ''Secretary of Health, Education, and Welfare'', and ''this chapter'' for ''sections 1071–1087 of this title''.

1966—Pub. L. 89–614 substituted ''1087'' for ''1085''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

For effective date of amendment by Pub. L. 89–614, see section 3 of Pub. L. 89–614, set out as a note under section 1071 of this title.

§ 1085. Medical and dental care from another executive department: reimbursement

If a member or former member of a uniformed service under the jurisdiction of one executive department (or a dependent of such a member or former member) receives inpatient medical or dental care in a facility under the jurisdiction of another executive department, the appropriation for maintaining and operating the facility furnishing the care shall be reimbursed at rates established by the President to reflect the average cost of providing the care.

(Added Pub. L. 85–861, §1(25)(B), Sept. 2, 1958, 72 Stat. 1450; amended Pub. L. 89–264, §1, Oct. 19, 1965, 79 Stat. 989; Pub. L. 96–513, title V, §511(36), (37), Dec. 12, 1980, 94 Stat. 2923; Pub. L. 98–94, title XII, §1268(6), Sept. 24, 1983, 97 Stat. 706; Pub. L. 98–557, §19(12), Oct. 30, 1984, 98 Stat. 2870; Pub. L. 99–145, title XIII, §1303(a)(8), Nov. 8, 1985, 99 Stat. 739.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1085	37:421(d).	June 7, 1956, ch. 374, §301(d), 70 Stat. 253.

The words ''other than that of the member or former member concerned'' are substituted for the words ''that is not the service of which he is a member or retired member, or that is not the service of the member or retired member upon whom he is dependent''. The word ''medical'' before the word ''facility'' is omitted to make clear that the provision also relates to dental care. The words ''pursuant to the provisions of this chapter'' are omitted as surplusage.

PRIOR PROVISIONS

A prior section 1085, act Aug. 10, 1956, ch. 1041, 70A Stat. 87, related to prevention of fraud, coercion, and

undue influence, to free discussion, and to acts done in good faith, prior to repeal by Pub. L. 85–861, §36B(5), Sept. 2, 1958, 72 Stat. 1570, as superseded by the Federal Voting Assistance Act of 1955 which is classified to subchapter I–D (§1973cc et seq.) of chapter 20 of Title 42, The Public Health and Welfare.

AMENDMENTS

1985—Pub. L. 99–145 indented first line of text.

1984—Pub. L. 98–557 substituted ''If a member or former member of a uniformed service under the jurisdiction of one executive department (or a dependent of such a member or former member) receives inpatient medical or dental care in a facility under the jurisdiction of another executive department, the appropriation for maintaining and operating the facility furnishing the care shall be reimbursed at rates established by the President to reflect the average cost of providing the care'' for ''If a member or former member of an armed force under the jurisdiction of a military department, or his dependent, receives inpatient medical or dental care in a facility under the jurisdiction of the Secretary of Health and Human Services, or if a member or former member of a uniformed service not under the jurisdiction of a military department, or his dependent, receives inpatient medical or dental care in a facility of an armed force under the jurisdiction of a military department, the appropriation for maintaining and operating the facility furnishing that care shall be reimbursed at rates established by the President to reflect the average cost of providing such care''.

1983—Pub. L. 98–94 inserted a comma after ''If a member or former member of an armed force under the jurisdiction of a military department, or his dependent''.

1980—Pub. L. 96–513 substituted ''Secretary of Health and Human Services'' for ''Secretary of Health, Education, and Welfare'', and ''President'' for ''Bureau of the Budget''.

1965—Pub. L. 89–264 substituted ''executive department'' for ''uniformed service'' in section catchline, and provisions requiring reimbursement if a member or former member of an armed force under the jurisdiction of a military department, or his dependent receives care in a facility under the jurisdiction of Secretary of Health, Education, and Welfare, or if a member or former member of a uniformed service not under the jurisdiction of a military department, or his dependent, receives care in a facility of an armed force under the jurisdiction of a military department, for provisions which required reimbursement if a person received care in a facility of a uniformed service other than that of the member or former member concerned.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

TRANSFER OF FUNDS NECESSARY TO PROVIDE MEDICAL CARE

Pub. L. 114–120, title II, §217, Feb. 8, 2016, 130 Stat. 46, related to transfer of funds from the Secretary of Homeland Security to the Secretary of Defense in lieu of reimbursement required under section 1085 of title 10, prior to repeal by Pub. L. 114–328, div. A, title VII, §722(c), Dec. 23, 2016, 130 Stat. 2229.

DELEGATION OF FUNCTIONS

Authority of President under this section to establish uniform rates of reimbursement for inpatient medical or dental care delegated to Secretary of Health and Human Services in respect of such care in a facility under his jurisdiction and to Secretary of Defense in respect of such care in a facility of an armed force under jurisdiction of a military department, see section 6 of Ex. Ord. No. 11609, July 22, 1971, 36 F.R. 13747, set out as a note under section 301 of Title 3, The President.

§ 1086. Contracts for health benefits for certain members, former members, and their dependents

(a) To assure that health benefits are available for the persons covered by subsection (c), the Secretary of Defense, after consulting with the other administering Secretaries, shall contract under the authority of this section for health benefits for those persons under the same insurance, medical service, or health plans he contracts for under section 1079(a) of this title. However, eye examinations may not be provided under such plans for persons covered by subsection (c).

(b) For persons covered by this section the plans contracted for under section 1079(a) of this title shall contain the following provisions for payment by the patient:

(1) Except as provided in paragraph (2), the first $150 each calendar year of the charges for all types of care authorized by this section and received while in an outpatient status and 25 percent of all subsequent charges for such care during a calendar year.

(2) A family group of two or more persons covered by this section shall not be required to pay collectively more than the first $300 each calendar year of the charges for all types of care authorized by this section and received while in an outpatient status and 25 percent of the additional charges for such care during a calendar year.

(3) 25 percent of the charges for inpatient care, except that in no case may the charges for inpatient care for a patient exceed $535 per day during the period beginning on April 1, 2006, and ending on September 30, 2011. The Secretary of Defense may exempt a patient from paying such charges if the hospital to which the patient is admitted does not impose a legal obligation on any of its patients to pay for inpatient care.

(4) A member or former member of a uniformed service covered by this section by reason of section 1074(b) of this title, or an individual or family group of two or more persons covered by this section, may not be required to pay a total of more than $3,000 for health care received during any calendar year under a plan contracted for under section 1079(a) of this title.

(c) Except as provided in subsection (d), the following persons are eligible for health benefits under this section:

(1) Those covered by sections 1074(b) and 1076(b) of this title, except those covered by section 1072(2)(E) of this title.

(2) A dependent (other than a dependent covered by section 1072(2)(E) of this title) of a member of a uniformed service—

(A) who died while on active duty for a period of more than 30 days; or

(B) who died from an injury, illness, or disease incurred or aggravated—

(i) while on active duty under a call or order to active duty of 30 days or less, on active duty for training, or on inactive duty training; or

(ii) while traveling to or from the place at which the member is to perform, or has

performed, such active duty, active duty for training, or inactive duty training.

(3) A dependent covered by clause (F), (G), or (H) of section 1072(2) of this title who is not eligible under paragraph (1).

(d)(1) A person who is entitled to hospital insurance benefits under part A of title XVIII of the Social Security Act (42 U.S.C. 1395c et seq.) is not eligible for health benefits under this section.

(2) The prohibition contained in paragraph (1) shall not apply to a person referred to in subsection (c) who—

(A) is enrolled in the supplementary medical insurance program under part B of such title (42 U.S.C. 1395j et seq.); and

(B) in the case of a person under 65 years of age, is entitled to hospital insurance benefits under part A of title XVIII of the Social Security Act pursuant to subparagraph (A) or (C) of section 226(b)(2) of such Act (42 U.S.C. 426(b)(2)) or section 226A(a) of such Act (42 U.S.C. 426–1(a)).

(3)(A) Subject to subparagraph (B), if a person described in paragraph (2) receives medical or dental care for which payment may be made under medicare and a plan contracted for under subsection (a), the amount payable for that care under the plan shall be the amount of the actual out-of-pocket costs incurred by the person for that care over the sum of—

(i) the amount paid for that care under medicare; and

(ii) the total of all amounts paid or payable by third party payers other than medicare.

(B) The amount payable for care under a plan pursuant to subparagraph (A) may not exceed the total amount that would be paid under the plan if payment for that care were made solely under the plan.

(C) In this paragraph:

(i) The term ''medicare'' means title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.).

(ii) The term ''third party payer'' has the meaning given such term in section 1095(h)(1) of this title.

(4)(A) If a person referred to in subsection (c) and described by paragraph (2)(B) is subject to a retroactive determination by the Social Security Administration of entitlement to hospital insurance benefits described in paragraph (1), the person shall, during the period described in subparagraph (B), be deemed for purposes of health benefits under this section—

(i) not to have been covered by paragraph (1); and

(ii) not to have been subject to the requirements of section 1079(i)(1) of this title, whether through the operation of such section or subsection (g) of this section.

(B) The period described in this subparagraph with respect to a person covered by subparagraph (A) is the period that—

(i) begins on the date that eligibility of the person for hospital insurance benefits referred to in paragraph (1) is effective under the retroactive determination of eligibility with respect to the person as described in subparagraph (A); and

(ii) ends on the date of the issuance of such retroactive determination of eligibility by the Social Security Administration.

(5) The administering Secretaries shall develop a mechanism by which persons described in subparagraph (B) of paragraph (2) who do not satisfy the condition specified in subparagraph (A) of such paragraph are promptly notified of their ineligibility for health benefits under this section. In developing the notification mechanism, the administering Secretaries shall consult with the Administrator of the Centers for Medicare & Medicaid Services.

(e) A person covered by this section may elect to receive inpatient medical care either in (1) Government facilities, under the conditions prescribed in sections 1074 and 1076–1078 of this title, or (2) the facilities provided under a plan contracted for under this section. However, under joint regulations issued by the administering Secretaries, the right to make this election may be limited for those persons residing in an area where adequate facilities of the uniformed service are available. In addition, subsections (b) and (c) of section 1080 of this title shall apply in making the determination whether to issue a nonavailability of health care statement for a person covered by this section.

(f) The provisions of section 1079(h) of this title shall apply to payments for services by an individual health-care professional (or other noninstitutional health-care provider) under a plan contracted for under subsection (a).

(g) Section 1079(i) of this title shall apply to a plan contracted for under this section, except that no person eligible for health benefits under this section may be denied benefits under this section with respect to care or treatment for any service-connected disability which is compensable under chapter 11 of title 38 solely on the basis that such person is entitled to care or treatment for such disability in facilities of the Department of Veterans Affairs.

(h)(1) Subject to paragraph (2), the Secretary of Defense may, upon request, make payments under this section for a charge for services for which a claim is submitted under a plan contracted for under subsection (a) to a hospital that does not impose a legal obligation on any of its patients to pay for such services.

(2) A payment under paragraph (1) may not exceed the average amount paid for comparable services in the geographic area in which the hospital is located or, if no comparable services are available in that area, in an area similar to the area in which the hospital is located.

(3) The Secretary of Defense shall periodically review the billing practices of each hospital the Secretary approves for payment under this subsection to ensure that the hospital's practices of not billing patients for payment are not resulting in increased costs to the Government.

(4) The Secretary of Defense may require each hospital the Secretary approves for payment under this subsection to provide evidence that it has sources of revenue to cover unbilled costs.

(Added Pub. L. 89–614, §2(7), Sept. 30, 1966, 80 Stat. 865; amended Pub. L. 95–485, title VIII,

§ 806(a)(2), Oct. 20, 1978, 92 Stat. 1622; Pub. L. 96–173, § 1, Dec. 29, 1979, 93 Stat. 1287; Pub. L. 96–513, title V, §§ 501(14), 511(36), (39), Dec. 12, 1980, 94 Stat. 2908, 2923; Pub. L. 97–86, title IX, § 906(a)(2), Dec. 1, 1981, 95 Stat. 1117; Pub. L. 97–252, title X, § 1004(c), Sept. 8, 1982, 96 Stat. 737; Pub. L. 98–94, title IX, § 931(b), Sept. 24, 1983, 97 Stat. 649; Pub. L. 98–525, title VI, § 632(a)(2), Oct. 19, 1984, 98 Stat. 2543; Pub. L. 98–557, § 19(13), Oct. 30, 1984, 98 Stat. 2870; Pub. L. 99–145, title VI, § 652(b), Nov. 8, 1985, 99 Stat. 657; Pub. L. 99–661, div. A, title VI, § 604(f)(1)(C), Nov. 14, 1986, 100 Stat. 3877; Pub. L. 100–180, div. A, title VII, § 721(b), Dec. 4, 1987, 101 Stat. 1115; Pub. L. 100–456, div. A, title VI, § 646(b), Sept. 29, 1988, 102 Stat. 1989; Pub. L. 101–189, div. A, title VII, § 731(c)(2), title XVI, § 1621(a)(3), Nov. 29, 1989, 103 Stat. 1482, 1603; Pub. L. 101–510, div. A, title VII, § 712(b), Nov. 5, 1990, 104 Stat. 1583; Pub. L. 102–190, div. A, title VII, § 704(a), (b)(1), Dec. 5, 1991, 105 Stat. 1401; Pub. L. 102–484, div. A, title VII, §§ 703(a), 705(a), Oct. 23, 1992, 106 Stat. 2432; Pub. L. 103–35, title II, § 203(b)(2), May 31, 1993, 107 Stat. 102; Pub. L. 103–160, div. A, title VII, § 716(b)(2), Nov. 30, 1993, 107 Stat. 1693; Pub. L. 103–337, div. A, title VII, § 711, Oct. 5, 1994, 108 Stat. 2801; Pub. L. 104–106, div. A, title VII, § 732, Feb. 10, 1996, 110 Stat. 381; Pub. L. 104–201, div. A, title VII, § 734(a)(2), (b)(2), Sept. 23, 1996, 110 Stat. 2598; Pub. L. 106–398, § 1 [[div. A], title VII, §§ 712(a)(1), 759], Oct. 30, 2000, 114 Stat. 1654, 1654A–176, 1654A–200; Pub. L. 108–173, title IX, § 900(e)(4)(A), Dec. 8, 2003, 117 Stat. 2373; Pub. L. 109–364, div. A, title VII, § 704(b), Oct. 17, 2006, 120 Stat. 2280; Pub. L. 110–181, div. A, title VII, § 701(b), Jan. 28, 2008, 122 Stat. 187; Pub. L. 110–417, [div. A], title VII, § 701(b), Oct. 14, 2008, 122 Stat. 4498; Pub. L. 111–84, div. A, title VII, §§ 706, 709, Oct. 28, 2009, 123 Stat. 2375, 2378; Pub. L. 111–383, div. A, title VII, § 701(b), Jan. 7, 2011, 124 Stat. 4244; Pub. L. 112–239, div. A, title X, § 1076(f)(11), Jan. 2, 2013, 126 Stat. 1952; Pub. L. 113–291, div. A, title VII, § 703(c)(2), Dec. 19, 2014, 128 Stat. 3412; Pub. L. 115–91, div. A, title VII, § 739(d)(2), Dec. 12, 2017, 131 Stat. 1447.)

References in Text

The Social Security Act, referred to in subsec. (d), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XVIII of the Act is classified generally to subchapter XVIII (§ 1395 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. Parts A and B of title XVIII of the Act are classified generally to parts A (§ 1395c et seq.) and B (§ 1395j et seq.), respectively, of subchapter XVIII of chapter 7 of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

Prior Provisions

A prior section 1086, act Aug. 10, 1956, ch. 1041, 70A Stat. 88, authorized the mailing of official post cards, ballots, voting instructions, and envelopes, free of postage, prior to repeal by Pub. L. 85–861, § 36(B)(5), Sept. 2, 1958, 72 Stat. 1570, as superseded by the Federal Voting Assistance Act of 1955 which is classified to subchapter I–D (§ 1973cc et seq.) of chapter 20 of Title 42, The Public Health and Welfare.

Amendments

2017—Subsec. (b). Pub. L. 115–91 substituted ''calendar year'' for ''fiscal year'' wherever appearing.

2014—Subsec. (d)(4)(A)(ii). Pub. L. 113–291, § 703(c)(2)(A), substituted ''section 1079(i)(1)'' for ''section 1079(j)(1)''.

Subsec. (g). Pub. L. 113–291, § 703(c)(2)(B), substituted ''Section 1079(i)'' for ''Section 1079(j)''.

2013—Subsec. (b)(1). Pub. L. 112–239 substituted ''paragraph (2)'' for ''clause (2)''.

2011—Subsec. (b)(3). Pub. L. 111–383 substituted ''September 30, 2011'' for ''September 30, 2010''.

2009—Subsec. (b)(3). Pub. L. 111–84, § 709, substituted ''September 30, 2010'' for ''September 30, 2009''.

Subsec. (d)(4), (5). Pub. L. 111–84, § 706, added par. (4) and redesignated former par. (4) as (5).

2008—Subsec. (b)(3). Pub. L. 110–417 substituted ''September 30, 2009'' for ''September 30, 2008''.

Pub. L. 110–181 substituted ''September 30, 2008'' for ''September 30, 2007.''

2006—Subsec. (b)(3). Pub. L. 109–364 inserted '', except that in no case may the charges for inpatient care for a patient exceed $535 per day during the period beginning on April 1, 2006, and ending on September 30, 2007.'' after ''charges for inpatient care''.

2003—Subsec. (d)(4). Pub. L. 108–173 substituted ''Administrator of the Centers for Medicare & Medicaid Services'' for ''administrator of the Health Care Financing Administration'' in last sentence.

2000—Subsec. (b)(4). Pub. L. 106–398, § 1 [[div. A], title VII, § 759], substituted ''$3,000'' for ''$7,500''.

Subsec. (d)(2). Pub. L. 106–398, § 1 [[div. A], title VII, § 712(a)(1)(A)], added par. (2) and struck out former par. (2) which read as follows: ''The prohibition contained in paragraph (1) shall not apply in the case of a person referred to in subsection (c) who—

''(A) is entitled to hospital insurance benefits under part A of title XVIII of the Social Security Act pursuant to subparagraph (A) or (C) of section 226(b)(2) of such Act (42 U.S.C. 426(b)(2)) or section 226A(a) of such Act (42 U.S.C. 426–1(a));

''(B) is under 65 years of age; and

''(C) is enrolled in the supplementary medical insurance program under part B of such title (42 U.S.C. 1395j et seq.).''

Subsec. (d)(4). Pub. L. 106–398, § 1 [[div. A], title VII, § 712(a)(1)(B)], substituted ''subparagraph (B) of paragraph (2) who do not satisfy the condition specified in subparagraph (A) of such paragraph'' for ''paragraph (1) who satisfy only the criteria specified in subparagraphs (A) and (B) of paragraph (2), but not subparagraph (C) of such paragraph,''.

1996—Subsec. (d)(4). Pub. L. 104–106 added par. (4).

Subsec. (e). Pub. L. 104–201 substituted ''inpatient medical care'' for ''benefits'' in first sentence and ''subsections (b) and (c) of section 1080'' for ''section 1080(b)'' in last sentence.

1994—Subsec. (d)(3). Pub. L. 103–337 added par. (3) and struck out former par. (3) which read as follows: ''If a person described in paragraph (2) receives medical or dental care for which payment may be made under both title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) and a plan contracted for under subsection (a), the amount payable for that care under the plan may not exceed the difference between—

''(A) the sum of any deductibles, coinsurance, and balance billing charges that would be imposed on the person if payment for that care were made solely under that title; and

''(B) the sum of any deductibles, coinsurance, and balance billing charges that would be imposed on the person if payment for that care were made solely under the plan.''

1993—Subsec. (d). Pub. L. 103–35 made technical amendment to directory language of Pub. L. 102–190, § 704(a). See 1991 Amendment note below.

Subsec. (e). Pub. L. 103–160 inserted at end ''In addition, section 1080(b) of this title shall apply in making the determination whether to issue a nonavailability of health care statement for a person covered by this section.''

1992—Subsec. (b)(4). Pub. L. 102–484, § 703(a), substituted ''$7,500'' for ''$10,000''.

Subsec. (d)(2)(A). Pub. L. 102–484, § 705(a), inserted before semicolon ''or section 226A(a) of such Act (42 U.S.C. 426–1(a))''.

1991—Subsec. (c). Pub. L. 102–190, §704(b)(1)(A), substituted ''Except as provided in subsection (d), the following'' for ''The following'' in introductory provisions and struck out at end ''However, a person who is entitled to hospital insurance benefits under part A of title XVIII of the Social Security Act (42 U.S.C. 1395c et seq.) is not eligible for health benefits under this section.''

Subsec. (d). Pub. L. 102–190, §704(a), as amended by Pub. L. 103–35, added subsec. (d) and struck out former subsec. (d) which read as follows: ''The provisions of section 1079(j) of this title shall apply to a plan covered by this section.''

Subsec. (g). Pub. L. 102–190, §704(b)(1)(B), substituted ''Section 1079(j) of this title shall apply to a plan contracted for under this section, except that'' for ''Notwithstanding subsection (d) or any other provision of this chapter,''.

1990—Subsec. (b)(1), (2). Pub. L. 101–510 substituted ''$150'' for ''$50'' in par. (1) and ''$300'' for ''$100'' in par. (2).

1989—Subsec. (c)(3). Pub. L. 101–189, §731(c)(2), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''A dependent covered by section 1072(2)(F) of this title.''

Subsec. (g). Pub. L. 101–189, §1621(a)(3), substituted ''facilities of the Department of Veterans Affairs'' for ''Veterans' Administration facilities''.

1988—Subsec. (b)(3). Pub. L. 100–456, §646(b)(1), inserted provision authorizing Secretary of Defense to exempt a patient from paying such charges if the hospital to which the patient is admitted does not impose a legal obligation on any of its patients to pay for inpatient care.

Subsec. (h). Pub. L. 100–456, §646(b)(2), added subsec. (h).

1987—Subsec. (b)(4). Pub. L. 100–180 added par. (4).

1986—Subsec. (c)(2)(B). Pub. L. 99–661 inserted reference to disease.

1985—Subsec. (c)(2). Pub. L. 99–145 amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''A dependent of a member of a uniformed service who died while on active duty for a period of more than thirty days, except a dependent covered by section 1072(2)(E) of this title.''

1984—Subsec. (a). Pub. L. 98–557, §19(13)(A), substituted reference to other administering Secretaries for reference to Secretary of Health and Human Services.

Pub. L. 98–525 inserted ''However, eye examinations may not be provided under such plans for persons covered by subsection (c).''

Subsec. (e). Pub. L. 98–557, §19(13)(B), substituted reference to the administering Secretaries for reference to the Secretary of Defense and the Secretary of Health and Human Services.

1983—Subsec. (d). Pub. L. 98–94 substituted ''The provisions of section 1079(j) of this title shall apply to a plan covered by this section'' for ''No benefits shall be payable under any plan covered by this section in the case of a person enrolled in any other insurance, medical service, or health plan provided by law or through employment unless that person certifies that the particular benefit he is claiming is not payable under the other plan''.

1982—Subsec. (c)(3). Pub. L. 97–252 added par. (3).

1981—Subsec. (f). Pub. L. 97–86 substituted ''services by an individual health-care professional (or other noninstitutional health-care provider)'' for ''physician services''.

1980—Subsec. (a). Pub. L. 96–513, §511(36), substituted ''Secretary of Health and Human Services'' for ''Secretary of Health, Education, and Welfare''.

Subsec. (b). Pub. L. 96–513, §511(39)(A), substituted ''percent'' for ''per centum'' wherever appearing.

Subsec. (c). Pub. L. 96–513, §§501(14), 511(39)(B), substituted ''section 1072(2)(E)'' for ''section 1072(2)(F)'' in pars. (1) and (2) and, in provisions following par. (2), substituted ''part A of title XVIII of the Social Security Act (42 U.S.C. 1395c et seq.)'' for ''title I of the Social Security Amendments of 1965 (79 Stat. 286)''.

1979—Subsec. (g). Pub. L. 96–173 added subsec. (g).

1978—Subsec. (f). Pub. L. 95–485 added subsec. (f).

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–398, §1 [[div. A], title VII, §712(a)(3)], Oct. 30, 2000, 114 Stat. 1654, 1654A–177, provided that: ''The amendments made by paragraphs (1) and (2) [amending this section and section 1395ggg of Title 42, The Public Health and Welfare] shall take effect on October 1, 2001.''

EFFECTIVE DATE OF 1992 AMENDMENT

Pub. L. 102–484, div. A, title VII, §703(b), Oct. 23, 1992, 106 Stat. 2432, provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to fiscal years beginning after September 30, 1992.''

EFFECTIVE DATE OF 1991 AMENDMENT

Pub. L. 102–190, div. A, title VII, §704(c), Dec. 5, 1991, 105 Stat. 1402, which provided that subsection (d) of this section was to apply with respect to health care benefits or services received by a person described in such subsection on or after Dec. 5, 1991, was repealed by Pub. L. 102–484, div. A, title VII, §705(c)(1), Oct. 23, 1992, 106 Stat. 2433.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–510 applicable with respect to health care provided under this section and section 1079 of this title on or after Apr. 1, 1991, see section 712(c) of Pub. L. 101–510, set out as a note under section 1079 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 731(c)(2) of Pub. L. 101–189 applicable to a person referred to in 10 U.S.C. 1072(2)(H) whose decree of divorce, dissolution, or annulment becomes final on or after Nov. 29, 1989, and to a person so referred to whose decree became final during the period from Sept. 29, 1988 to Nov. 28, 1989, as if the amendment had become effective on Sept. 29, 1988, see section 731(d) of Pub. L. 101–189, set out as a note under section 1072 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–456 applicable with respect to medical care received after September 30, 1988, see section 646(c) of Pub. L. 100–456, set out as a note under section 1079 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–180 applicable with respect to fiscal years beginning after September 30, 1987, see section 721(c) of Pub. L. 100–180, set out as a note under section 1079 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–661 applicable with respect to persons who, after Nov. 14, 1986, incur or aggravate an injury, illness, or disease or die, see section 604(g) of Pub. L. 99–661, set out as a note under section 1074a of this title.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–145 applicable only with respect to dependents of members of the uniformed services whose deaths occur after Sept. 30, 1985, see section 652(c) of Pub. L. 99–145, set out as a note under section 1076 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–525 applicable only to health care furnished after Sept. 30, 1984, see section 632(a)(3) of Pub. L. 98–525, set out as a note under section 1079 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–94 effective Oct. 1, 1983, see section 931(c) of Pub. L. 98–94, set out as a note under section 1079 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT; TRANSITION PROVISIONS

Amendment by Pub. L. 97–252 effective Feb. 1, 1983, and applicable in the case of any former spouse of a member or former member of the uniformed services whether final decree of divorce, dissolution, or annulment of marriage of former spouse and such member or former member is dated before, on, or after Feb. 1, 1983, see section 1006 of Pub. L. 97–252, set out as an Effective Date; Transition Provisions note under section 1408 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–86 to apply with respect to claims submitted for payment for services provided after the end of the 30-day period beginning on Dec. 1, 1981, see section 906(b) of Pub. L. 97–86, set out as a note under section 1079 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by section 501(14) of Pub. L. 96–513 effective Sept. 15, 1981, and amendment by section 511(36), (39) of Pub. L. 96–513 effective Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1979 AMENDMENT

Pub. L. 96–173, § 2, Dec. 29, 1979, 93 Stat. 1287, provided that: ''The amendment made by the first section of this Act [amending this section] shall take effect on October 1, 1979.''

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–485 applicable with respect to claims submitted for payment for services provided on or after the first day of the first calendar year beginning after Oct. 20, 1978, see section 806(b) of Pub. L. 95–485, set out as a note under section 1079 of this title.

EFFECTIVE DATE

For effective date of section, see section 3 of Pub. L. 89–614, set out as a note under section 1071 of this title.

TEMPORARY AUTHORITY FOR WAIVER OF COLLECTION OF PAYMENTS DUE FOR CHAMPUS BENEFITS RECEIVED BY CERTAIN PERSONS UNAWARE OF LOSS OF CHAMPUS ELIGIBILITY

Pub. L. 108–375, div. A, title VII, § 716, Oct. 28, 2004, 118 Stat. 1986, authorized the Secretary of Defense to waive the collection of payments otherwise due for health benefits from certain persons described in subsec. (d) of this section who were unaware of the loss of eligibility to receive health benefits under such subsection and authorized a continuation of benefits for such persons during the period beginning on July 1, 1999, and ending on Dec. 31, 2004.

Similar provisions were contained in the following prior authorization acts:

Pub. L. 105–261, div. A, title VII, § 704, Oct. 17, 1998, 112 Stat. 2057.

Pub. L. 104–106, div. A, title VII, § 743, Feb. 10, 1996, 110 Stat. 385.

MINIMUM AMOUNT PAYABLE FOR SERVICES PROVIDED UNDER THIS SECTION

Pub. L. 103–335, title VIII, § 8052, Sept. 30, 1994, 108 Stat. 2629, provided that: ''Notwithstanding any other provision of law, of the funds appropriated for the Defense Health Program during this fiscal year and hereafter, the amount payable for services provided under this section shall not be less than the amount calculated under the coordination of benefits reimbursement formula utilized when CHAMPUS is a secondary payor to medical insurance programs other than Medicare, and such appropriations as necessary shall be available (notwithstanding the last sentence of section 1086(c) of title 10, United States Code) to continue Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) benefits, until age 65, under such section for a former member of a uniformed service who is entitled to retired or retainer pay or equivalent pay, or a dependent of such a member, or any other beneficiary described by section 1086(c) of title 10, United States Code, who becomes eligible for hospital insurance benefits under part A of title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) [42 U.S.C. 1395c et seq.] solely on the grounds of physical disability, or end stage renal disease: *Provided*, That expenses under this section shall only be covered to the extent that such expenses are not covered under parts A and B of title XVIII of the Social Security Act [42 U.S.C. 1395c et seq., 1395j et seq.] and are otherwise covered under CHAMPUS: *Provided further*, That no reimbursement shall be made for services provided prior to October 1, 1991.''

AUTHORIZATION TO APPLY SECTION 1079 PAYMENT RULES FOR SPOUSE AND CHILDREN OF MEMBER WHO DIES WHILE ON ACTIVE DUTY

Pub. L. 103–160, div. A, title VII, § 704, Nov. 30, 1993, 107 Stat. 1687, provided that in the case of an eligible dependent of a member of a uniformed service who died while on active duty for a period of more than 30 days, the administering Secretary could apply the payment provisions set forth in section 1079(b) of this title (in lieu of the payment provisions set forth in section 1086(b) of this title), with respect to health benefits received by the dependent under such section 1086 in connection with an illness or medical condition for which the dependent was receiving treatment under chapter 55 of this title at time of death of the member, prior to repeal by Pub. L. 103–337, div. A, title VII, § 707(d), Oct. 5, 1994, 108 Stat. 2801.

[Pub. L. 103–337, div. A, title VII, § 707(d), Oct. 5, 1994, 108 Stat. 2801, provided in part that: ''The repeal of such section [section 704 of Pub. L. 103–160, formerly set out above] shall not terminate the special payment rules provided in such section with respect to any person eligible for such payment rules on the date of the enactment of this Act [Oct. 5, 1994].'']

COVERAGE OF CARE PROVIDED SINCE SEPTEMBER 30, 1991

Pub. L. 102–484, div. A, title VII, § 705(b), Oct. 23, 1992, 106 Stat. 2433, provided that: ''Subsection (d) of section 1086 of title 10, United States Code, as added by section 704(a) of the National Defense Authorization Act for Fiscal Years 1992 and 1993 (Public Law 102–190; 105 Stat. 1401) and amended by subsection (a) of this section, shall apply with respect to health care benefits or services received after September 30, 1991, by a person described in subsection (d)(2) of such section 1086 if such benefits or services would have been covered under a plan contracted for under such section 1086.''

§ 1086a. Certain former spouses: extension of period of eligibility for health benefits

(a) AVAILABILITY OF CONVERSION HEALTH POLICIES.—The Secretary of Defense shall inform each person who has been a dependent for a period of one year or more under section 1072(2)(H) of this title of the availability of a conversion health policy for purchase by the person. A conversion health policy offered under this subsection shall provide coverage for not less than a 24-month period.

(b) EFFECT OF PURCHASE.—(1) Subject to paragraph (2), if a person who is a dependent for a one-year period under section 1072(2)(H) of this title purchases a conversion health policy within that period (or within a reasonable time after that period as prescribed by the Secretary of Defense), the person shall continue to be eligible for medical and dental care in the manner de-

scribed in section 1076 of this title and health benefits under section 1086 of this title until the end of the 24-month period beginning on the later of—

(A) the date the person is no longer a dependent under section 1072(2)(H) of this title; and

(B) the date of the purchase of the policy.

(2) The extended period of eligibility provided under paragraph (1) shall apply only with regard to a condition of the person that—

(A) exists on the date on which coverage under the conversion health policy begins; and

(B) for which care is not provided under the policy solely on the grounds that the condition is a preexisting condition.

(c) EFFECT OF UNAVAILABILITY OF POLICIES.—(1) If the Secretary of Defense is unable, within a reasonable time, to enter into a contract with a private insurer to offer conversion health policies under subsection (a) at a rate not to exceed the payment required under section 8905a(d)(1)(A) of title 5 for comparable coverage, the Secretary shall provide the coverage required under such a policy through the Civilian Health and Medical Program of the Uniformed Services. Subject to paragraph (2), a person receiving coverage under this subsection shall be required to pay into the Military Health Care Account or other appropriate account an amount equal to the sum of—

(A) the individual and Government contributions which would be required in the case of a person enrolled in a health benefits plan contracted for under section 1079 of this title; and

(B) an amount necessary for administrative expenses, but not to exceed two percent of the amount under subparagraph (A).

(2) The amount paid by a person who purchases a conversion health policy from the Secretary of Defense under paragraph (1) may not exceed the payment required under section 8905a(d)(1)(A) of title 5 for comparable coverage.

(3) In order to reduce premiums required under paragraph (1), the Secretary of Defense may offer a program of coverage that, with respect to mental health services, offers reduced coverage and increased cost-sharing by the purchaser.

(d) CONVERSION HEALTH POLICY DEFINED.—In this section, the term ''conversion health policy'' means a health insurance policy with a private insurer, developed through negotiations between the Secretary of Defense and the private insurer, that is available for purchase by or for the use of a person who is a dependent for a one-year period under section 1072(2)(H) of this title.

(Added Pub. L. 101–189, div. A, title VII, §731(b)(1), Nov. 29, 1989, 103 Stat. 1482; amended Pub. L. 102–484, div. D, title XLIV, §4407(b), Oct. 23, 1992, 106 Stat. 2707; Pub. L. 103–35, title II, §202(a)(16), May 31, 1993, 107 Stat. 102.)

AMENDMENTS

1993—Subsec. (b)(1). Pub. L. 103–35 made technical amendment to directory language of Pub. L. 102–484, §4407(b)(2). See 1992 Amendment note below.

1992—Subsec. (a). Pub. L. 102–484, §4407(b)(1), inserted at end ''A conversion health policy offered under this subsection shall provide coverage for not less than a 24-month period.''

Subsec. (b)(1). Pub. L. 102–484, §4407(b)(2), as amended by Pub. L. 103–35, substituted ''24-month period'' for ''one-year period'' the second place appearing in the introductory provisions of par. (1).

Subsecs. (c), (d). Pub. L. 102–484, §4407(b)(3), (4), added subsec. (c) and redesignated former subsec. (c) as (d).

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–35 applicable as if included in the enactment of Pub. L. 102–484, see section 202(b) of Pub. L. 103–35, set out as a note under section 155 of this title.

EFFECTIVE DATE

Section applicable to a person referred to in 10 U.S.C. 1072(2)(H) whose decree of divorce, dissolution, or annulment becomes final on or after Nov. 29, 1989, and to a person so referred to whose decree became final during the period from Sept. 29, 1988 to Nov. 28, 1989, as if section had become effective on Sept. 29, 1988, see section 731(d) of Pub. L. 101–189, set out as an Effective Date of 1989 Amendment note under section 1072 of this title.

APPLICATION OF AMENDMENTS BY PUB. L. 102–484 TO EXISTING CONTRACTS

Pub. L. 102–484, div. D, title XLIV, §4407(c), Oct. 23, 1992, 106 Stat. 2708, provided that: ''In the case of conversion health policies provided under section 1145(b) or 1086a(a) of title 10, United States Code, and in effect on the date of the enactment of this Act [Oct. 23, 1992], the Secretary of Defense shall—

''(1) arrange with the private insurer providing these policies to extend the term of the policies (and coverage of preexisting conditions) as provided by the amendments made by this section [amending this section and section 1145 of this title]; or

''(2) make other arrangements to implement the amendments made by this section with respect to these policies.''

TERMINATION OF APPLICABILITY OF OTHER CONVERSION HEALTH POLICIES

Pub. L. 102–484, div. D, title XLIV, §4408(c), Oct. 23, 1992, 106 Stat. 2712, provided that:

''(1) No person may purchase a conversion health policy under section 1145(b) or 1086a of title 10, United States Code, on or after October 1, 1994. A person covered by such a conversion health policy on that date may cancel that policy and enroll in a health benefits plan under section 1078a of such title.

''(2) No person may be covered concurrently by a conversion health policy under section 1145(b) or 1086a of such title and a health benefits plan under section 1078a of such title.''

§ 1086b. Prohibition against requiring retired members to receive health care solely through the Department of Defense

The Secretary of Defense may not take any action that would require, or have the effect of requiring, a member or former member of the armed forces who is entitled to retired or retainer pay to enroll to receive health care from the Federal Government only through the Department of Defense.

(Added Pub. L. 107–107, div. A, title VII, §731(a), Dec. 28, 2001, 115 Stat. 1169.)

§ 1087. Programing facilities for certain members, former members, and their dependents in construction projects of the uniformed services

(a) Space for inpatient and outpatient care may be programed in facilities of the uniformed

services for persons covered by sections 1074(b) and 1076(b) of this title. The maximum amount of space that may be so programed for a facility is the greater of—

(1) the amount of space that would be so programed for the facility in order to meet the requirements to be placed on the facility for support of the teaching and training of health-care professionals; and

(2) the amount of space that would be so programed for the facility based upon the most cost-effective provision of inpatient and outpatient care to persons covered by sections 1074(b) and 1076(b) of this title.

(b)(1) In making determinations for the purposes of clauses (1) and (2) of subsection (a), the Secretary concerned shall take into consideration—

(A) the amount of space that would be so programed for the facility based upon projected inpatient and outpatient workloads at the facility for persons covered by sections 1074(b) and 1076(b) of this title; and

(B) the anticipated capability of the medical and dental staff of the facility, determined in accordance with regulations prescribed by the Secretary of Defense and based upon realistic projections of the number of physicians and other health-care providers that it can reasonably be expected will be assigned to or will otherwise be available to the facility.

(2) In addition, a determination made for the purpose of clause (2) of subsection (a) shall be made in accordance with an economic analysis (including a life-cycle cost analysis) of the facility and consideration of all reasonable and available medical care treatment alternatives (including treatment provided under a contract under section 1086 of this title or under part A of title XVIII of the Social Security Act (42 U.S.C. 1395c et seq.)).

(Added Pub. L. 89–614, §2(7), Sept. 30, 1966, 80 Stat. 866; amended Pub. L. 97–337, §1, Oct. 15, 1982, 96 Stat. 1631; Pub. L. 98–525, title XIV, §1405(24), Oct. 19, 1984, 98 Stat. 2623; Pub. L. 99–661, div. A, title XIII, §1343(a)(4), Nov. 14, 1986, 100 Stat. 3992.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (b)(2), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§301 et seq.) of Title 42, The Public Health and Welfare. Part A of title XVIII of the Social Security Act, is classified generally to Part A (§1395c et seq.) of subchapter XVIII of chapter 7 of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

1986—Subsec. (b)(2). Pub. L. 99–661 substituted ''Act (42 U.S.C. 1395c et seq.))'' for ''Act. (42 U.S.C. 1395c et seq.)''.

1984—Subsec. (b)(2). Pub. L. 98–525 which directed that ''(42 U.S.C. 1395c et seq.)'' be inserted after ''the Social Security Act.'', was executed by inserting parenthetical after ''the Social Security Act'' to reflect the probable intent of Congress. See 1986 Amendment note above.

1982—Subsec. (a). Pub. L. 97–337, §1(1), designated existing provisions as subsec. (a).

Pub. L. 97–337, §1(2), substituted provisions limiting the maximum amount of space to be programed as the greater of the amounts of space described in par. (1) or (2) for provisions limiting the amount of space to be programed to that amount needed to support teaching and training requirements, except that space may be programed in areas having large concentrations of retired members where there is a critical shortage of facilities.

Subsec. (b). Pub. L. 97–337, §1(2), added subsec. (b).

EFFECTIVE DATE OF 1982 AMENDMENT

Pub. L. 97–337, §2, Oct. 15, 1982, 96 Stat. 1632, provided that: ''The amendment made by paragraph (2) of the first section of this Act [amending this section] shall apply only with respect to a facility for which funds for construction (or a major alteration) are first appropriated for a fiscal year after fiscal year 1983.''

EFFECTIVE DATE

For effective date of section, see section 3 of Pub. L. 89–614, set out as a note under section 1071 of this title.

§ 1088. Air evacuation patients: furnished subsistence

Notwithstanding any other provision of law, and under regulations to be prescribed by the Secretary concerned, a person entitled to medical and dental care under this chapter may be furnished subsistence without charge while being evacuated as a patient by military aircraft of the United States.

(Added Pub. L. 91–481, §2(1), Oct. 21, 1970, 84 Stat. 1081.)

§ 1089. Defense of certain suits arising out of medical malpractice

(a) The remedy against the United States provided by sections 1346(b) and 2672 of title 28 for damages for personal injury, including death, caused by the negligent or wrongful act or omission of any physician, dentist, nurse, pharmacist, or paramedical or other supporting personnel (including medical and dental technicians, nursing assistants, and therapists) of the armed forces, the National Guard while engaged in training or duty under section 316, 502, 503, 504, or 505 of title 32, the Department of Defense, the Armed Forces Retirement Home, or the Central Intelligence Agency in the performance of medical, dental, or related health care functions (including clinical studies and investigations) while acting within the scope of his duties or employment therein or therefor shall hereafter be exclusive of any other civil action or proceeding by reason of the same subject matter against such physician, dentist, nurse, pharmacist, or paramedical or other supporting personnel (or the estate of such person) whose act or omission gave rise to such action or proceeding. This subsection shall also apply to such a physician, dentist, nurse, pharmacist, or paramedical or other supporting personnel (or the estate of such person) serving under a personal services contract entered into under section 1091 of this title or a subcontract at any tier under such a contract that is authorized in accordance with the requirements of such section 1091.

(b) The Attorney General shall defend any civil action or proceeding brought in any court against any person referred to in subsection (a) of this section (or the estate of such person) for any such injury. Any such person against whom such civil action or proceeding is brought shall

deliver within such time after date of service or knowledge of service as determined by the Attorney General, all process served upon such person or an attested true copy thereof to such person's immediate superior or to whomever was designated by the head of the agency concerned to receive such papers and such person shall promptly furnish copies of the pleading and process therein to the United States attorney for the district embracing the place wherein the action or proceeding is brought, to the Attorney General and to the head of the agency concerned.

(c) Upon a certification by the Attorney General that any person described in subsection (a) was acting in the scope of such person's duties or employment at the time of the incident out of which the suit arose, any such civil action or proceeding commenced in a State court shall be removed without bond at any time before trial by the Attorney General to the district court of the United States of the district and division embracing the place wherein it is pending and the proceeding deemed a tort action brought against the United States under the provisions of title 28 and all references thereto. Should a United States district court determine on a hearing on a motion to remand held before a trial on the merits that the case so removed is one in which a remedy by suit within the meaning of subsection (a) of this section is not available against the United States, the case shall be remanded to the State court.

(d) The Attorney General may compromise or settle any claim asserted in such civil action or proceeding in the manner provided in section 2677 of title 28, and with the same effect.

(e) For purposes of this section, the provisions of section 2680(h) of title 28 shall not apply to any cause of action arising out of a negligent or wrongful act or omission in the performance of medical, dental, or related health care functions (including clinical studies and investigations).

(f)(1) The head of the agency concerned may, to the extent that the head of the agency concerned considers appropriate, hold harmless or provide liability insurance for any person described in subsection (a) for damages for personal injury, including death, caused by such person's negligent or wrongful act or omission in the performance of medical, dental, or related health care functions (including clinical studies and investigations) while acting within the scope of such person's duties if such person is assigned to a foreign country or detailed for service with other than a Federal department, agency, or instrumentality or if the circumstances are such as are likely to preclude the remedies of third persons against the United States described in section 1346(b) of title 28, for such damage or injury.

(2) With respect to the Secretary of Defense and the Armed Forces Retirement Home Board, the authority provided by paragraph (1) also includes the authority to provide for reasonable attorney's fees for persons described in subsection (a), as determined necessary pursuant to regulations prescribed by the head of the agency concerned.

(g) In this section, the term ''head of the agency concerned'' means—

(1) the Director of the Central Intelligence Agency, in the case of an employee of the Central Intelligence Agency;

(2) the Secretary of Homeland Security, in the case of a member or employee of the Coast Guard when it is not operating as a service in the Navy;

(3) the Chief Operating Officer of the Armed Forces Retirement Home, in the case of an employee of the Armed Forces Retirement Home; and

(4) the Secretary of Defense, in all other cases.

(Added Pub. L. 94–464, § 1(a), Oct. 8, 1976, 90 Stat. 1985; amended Pub. L. 97–124, § 2, Dec. 29, 1981, 95 Stat. 1666; Pub. L. 98–94, title IX, § 934(a)–(c), Sept. 24, 1983, 97 Stat. 651, 652; Pub. L. 100–180, div. A, title XII, § 1231(18)(A), Dec. 4, 1987, 101 Stat. 1161; Pub. L. 101–510, div. A, title XV, § 1533(a)(1), Nov. 5, 1990, 104 Stat. 1733; Pub. L. 105–85, div. A, title VII, § 736(b), Nov. 18, 1997, 111 Stat. 1814; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 110–181, div. A, title IX, § 931(b)(3), Jan. 28, 2008, 122 Stat. 285; Pub. L. 112–81, div. A, title V, § 567(b)(2)(A), Dec. 31, 2011, 125 Stat. 1425; Pub. L. 112–239, div. A, title VII, § 713(a), Jan. 2, 2013, 126 Stat. 1803.)

AMENDMENTS

2013—Subsec. (a). Pub. L. 112–239 substituted ''to such a physician, dentist, nurse, pharmacist, or paramedical'' for ''if the physician, dentist, nurse, pharmacist, or paramedical'', struck out ''involved is'' before ''serving under'', and inserted ''or a subcontract at any tier under such a contract that is authorized in accordance with the requirements of such section 1091'' after ''section 1091 of this title''.

2011—Subsec. (g)(3). Pub. L. 112–81 substituted ''Chief Operating Officer of the Armed Forces Retirement Home'' for ''Armed Forces Retirement Home Board''.

2008—Subsec. (g)(1). Pub. L. 110–181 substituted ''Director of the Central Intelligence Agency'' for ''Director of Central Intelligence''.

2002—Subsec. (g)(2). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

1997—Subsec. (a). Pub. L. 105–85, § 736(b)(1), inserted at end ''This subsection shall also apply if the physician, dentist, nurse, pharmacist, or paramedical or other supporting personnel (or the estate of such person) involved is serving under a personal services contract entered into under section 1091 of this title.''

Subsec. (f). Pub. L. 105–85, § 736(b)(2), designated existing provisions as par. (1) and added par. (2).

1990—Subsec. (a). Pub. L. 101–510, § 1533(a)(1)(A), substituted ''Armed Forces Retirement Home'' for ''United States Soldiers' and Airmen's Home''.

Subsec. (g)(3). Pub. L. 101–510, § 1533(a)(1)(B), added par. (3) and struck out former par. (3) which read as follows: ''the Board of Commissioners of the United States Soldiers' and Airmen's home, in the case of an employee of the United States Soldiers' and Airmen's Home; and''.

1987—Subsec. (g). Pub. L. 100–180 inserted ''the term'' after ''In this section,''.

1983—Subsec. (a). Pub. L. 98–94, § 934(a), inserted ''the United States Soldiers' and Airmen's Home,''.

Subsec. (f). Pub. L. 98–94, § 934(b), substituted ''may, to the extent that the head of the agency concerned considers'' for ''or his designee may, to the extent that he or his designee deems''.

Subsec. (g)(3), (4). Pub. L. 98–94, § 934(c)(3), added par. (3) and redesignated former par. (3) as (4).

1981—Subsec. (a). Pub. L. 97–124 inserted ''the National Guard while engaged in training or duty under section 316, 502, 503, 504, or 505 of title 32,'' after ''armed forces,''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–510 effective one year after Nov. 5, 1990, see section 1541 of Pub. L. 101–510, formerly set out as an Effective Date note under section 401 of Title 24, Hospitals and Asylums.

EFFECTIVE DATE OF 1983 AMENDMENT

Pub. L. 98–94, title IX, §934(d), Sept. 24, 1983, 97 Stat. 652, provided that: ''The amendments made by this section [amending this section] shall apply only to claims accruing on or after the date of the enactment of this Act [Sept. 24, 1983].''

EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97–124, §4, Dec. 29, 1981, 95 Stat. 1666, provided that: ''The amendments made by this Act [amending this section and section 2671 of Title 28, Judiciary and Judicial Procedure] and the repeal made by section 3 of this Act [repealing section 334 of Title 32, National Guard] shall apply only with respect to claims arising on or after the date of enactment of this Act [Dec. 29, 1981].''

EFFECTIVE DATE

Pub. L. 94–464, §4, Oct. 8, 1976, 90 Stat. 1989, provided that: ''This Act [enacting this section, section 334 of Title 32, National Guard, section 2458a of Title 42, The Public Health and Welfare, and provisions set out as notes under this section and section 334 of Title 32] shall become effective on the date of its enactment [Oct. 8, 1976] and shall apply only to those claims accruing on or after such date of enactment.''

CONGRESSIONAL FINDINGS

Pub. L. 94–464, §2(a), Oct. 8, 1976, 90 Stat. 1986, provided that: ''The Congress finds—

''(1) that the Army National Guard and the Air National Guard are critical components of the defense posture of the United States;

''(2) that a medical capability is essential to the performance of the mission of the National Guard when in Federal service;

''(3) that the current medical malpractice crisis poses a serious threat to the availability of sufficient medical personnel for the National Guard; and

''(4) that in order to insure that such medical personnel will continue to be available to the National Guard, it is necessary for the Federal Government to assume responsibility for the payment of malpractice claims made against such personnel arising out of actions or omissions on the part of such personnel while they are performing certain training exercises.''

§ 1090. Identifying and treating drug and alcohol dependence

The Secretary of Defense, and the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, shall prescribe regulations, implement procedures using each practical and available method, and provide necessary facilities to identify, treat, and rehabilitate members of the armed forces who are dependent on drugs or alcohol.

(Added Pub. L. 97–295, §1(15)(A), Oct. 12, 1982, 96 Stat. 1290; amended Pub. L. 98–94, title XII, §1268(7), Sept. 24, 1983, 97 Stat. 706; Pub. L. 101–510, div. A, title V, §553, Nov. 5, 1990, 104 Stat. 1567; Pub. L. 107–296, title XVII, §1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1090	10:1071 (note).	Sept. 28, 1971, Pub. L. 92–129, §501(a)(1), 85 Stat. 361.

The word ''regulations'' is added for consistency. The word ''persons'' is omitted as surplus.

AMENDMENTS

2002—Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

1990—Pub. L. 101–510 inserted '', and the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy,'' after ''Secretary of Defense''.

1983—Pub. L. 98–94 struck out ''(a)'' before ''The Secretary of Defense''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

PILOT PROGRAM ON OPIOID MANAGEMENT IN THE MILITARY HEALTH SYSTEM

Pub. L. 115–232, div. A, title VII, §716, Aug. 13, 2018, 132 Stat. 1814, provided that:

''(a) PILOT PROGRAM.—

''(1) IN GENERAL.—Beginning not later than 180 days after the date of the enactment of this Act [Aug. 13, 2018], the Director of the Defense Health Agency shall implement a comprehensive pilot program to assess the feasability and advisability of mechanisms to minimize early exposure of beneficiaries under the TRICARE program to opioids and to prevent the progression of beneficiaries to misuse or abuse of opioid medications.

''(2) OPIOID SAFETY ACROSS CONTINUUM OF CARE.—The pilot program shall include elements to maximize opioid safety across the entire continuum of care consisting of patient, physician or dentist, and pharmacist.

''(b) ELEMENTS OF PILOT PROGRAM.—The pilot program shall include the following:

''(1) Identification of potential misuse or abuse of opioid medications in pharmacies of military treatment facilities, retail network pharmacies, and the home delivery pharmacy, and the transmission of alerts regarding such potential misuse or abuse of opioids to prescribing physicians and dentists.

''(2) Direct engagement with, education for, and management of beneficiaries under the TRICARE program to help such beneficiaries avoid misuse or abuse of opioid medications.

''(3) Proactive outreach by specialist pharmacists to beneficiaries under the TRICARE program when identifying potential misuse or abuse of opioid medications.

''(4) Monitoring of beneficiaries under the TRICARE program through the use of predictive analytics to identify the potential for opioid abuse and addiction before beneficiaries begin an opioid prescription.

''(5) Detection of fraud, waste, and abuse in connection with opioids.

''(c) DURATION.—

''(1) IN GENERAL.—Except as provided in paragraph (2), the Director shall carry out the pilot program for a period of not more than three years.

''(2) EXPANSION.—The Director may carry out the pilot program on a permanent basis if the Director determines that the mechanisms under the pilot program successfully reduce early opioid exposure in beneficiaries under the TRICARE program and prevent the progression of beneficiaries to misuse or abuse of opioid medications.

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''(d) REPORT.—

''(1) IN GENERAL.—Not later than 180 days before completion of the pilot program, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the pilot program.

''(2) ELEMENTS.—The report required by paragraph (1) shall include the following:

''(A) A description of the pilot program, including outcome measures developed to determine the overall effectiveness of the mechanisms under the pilot program.

''(B) A description of the ability of the mechanisms under the pilot program to identify misuse and abuse of opioid medications among beneficiaries under the TRICARE program in each pharmacy venue of the pharmacy program of the military health system.

''(C) A description of the impact of the use of predictive analytics to monitor beneficiaries under the TRICARE program in order to identify the potential for opioid abuse and addiction before beneficiaries begin an opioid prescription.

''(D) A description of any reduction in the misuse or abuse of opioid medications among beneficiaries under the TRICARE program as a result of the pilot program.

''(e) TRICARE PROGRAM DEFINED.—In this section, the term 'TRICARE program' has the meaning given that term in section 1072 of title 10, United States Code.''

§ 1090a. Commanding officer and supervisor referrals of members for mental health evaluations

(a) REGULATIONS.—The Secretary of Defense shall prescribe and maintain regulations relating to commanding officer and supervisor referrals of members of the armed forces for mental health evaluations. The regulations shall incorporate the requirements set forth in subsections (b), (c), and (d) and such other matters as the Secretary considers appropriate.

(b) REDUCTION OF PERCEIVED STIGMA.—The regulations required by subsection (a) shall, to the greatest extent possible—

(1) seek to eliminate perceived stigma associated with seeking and receiving mental health services, promoting the use of mental health services on a basis comparable to the use of other medical and health services; and

(2) clarify the appropriate action to be taken by commanders or supervisory personnel who, in good faith, believe that a subordinate may require a mental health evaluation.

(c) PROCEDURES FOR INPATIENT EVALUATIONS.—The regulations required by subsection (a) shall provide that, when a commander or supervisor determines that it is necessary to refer a member of the armed forces for a mental health evaluation—

(1) the health evaluation shall only be conducted in the most appropriate clinical setting, in accordance with the least restrictive alternative principle; and

(2) only a psychiatrist, or, in cases in which a psychiatrist is not available, another mental health professional or a physician, may admit the member pursuant to the referral for a mental health evaluation to be conducted on an inpatient basis.

(d) PROHIBITION ON USE OF REFERRALS FOR MENTAL HEALTH EVALUATIONS TO RETALIATE AGAINST WHISTLEBLOWERS.—The regulations required by subsection (a) shall provide that no person may refer a member of the armed forces for a mental health evaluation as a reprisal for making or preparing a lawful communication of the type described in section 1034(c)(2) of this title, and applicable regulations. For purposes of this subsection, such communication shall also include a communication to any appropriate authority in the chain of command of the member.

(e) DEFINITIONS.—In this section:

(1) The term ''mental health professional'' means a psychiatrist or clinical psychologist, a person with a doctorate in clinical social work, or a psychiatric clinical nurse specialist.

(2) The term ''mental health evaluation'' means a psychiatric examination or evaluation, a psychological examination or evaluation, an examination for psychiatric or psychological fitness for duty, or any other means of assessing the state of mental health of a member of the armed forces.

(3) The term ''least restrictive alternative principle'' means a principle under which a member of the armed forces committed for hospitalization and treatment shall be placed in the most appropriate and therapeutic available setting—

(A) that is no more restrictive than is conducive to the most effective form of treatment; and

(B) in which treatment is available and the risks of physical injury or property damage posed by such placement are warranted by the proposed plan of treatment.

(Added Pub. L. 112–81, div. A, title VII, § 711(a)(1), Dec. 31, 2011, 125 Stat. 1475.)

§ 1091. Personal services contracts

(a) AUTHORITY.—(1) The Secretary of Defense, with respect to medical treatment facilities of the Department of Defense, and the Secretary of Homeland Security, with respect to medical treatment facilities of the Coast Guard when the Coast Guard is not operating as a service in the Navy, may enter into personal services contracts to carry out health care responsibilities in such facilities, as determined to be necessary by the Secretary. The authority provided in this subsection is in addition to any other contract authorities of the Secretary, including authorities relating to the management of such facilities and the administration of this chapter.

(2) The Secretary of Defense, and the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, may also enter into personal services contracts to carry out other health care responsibilities of the Secretary (such as the provision of medical screening examinations at Military Entrance Processing Stations) at locations outside medical treatment facilities, as determined necessary pursuant to regulations prescribed by the Secretary.

(b) LIMITATION ON AMOUNT OF COMPENSATION.—In no case may the total amount of compensation paid to an individual in any year under a personal services contract entered into under subsection (a) exceed the amount of annual com-

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pensation (excluding the allowances for expenses) specified in section 102 of title 3.

(c) PROCEDURES.—(1) The Secretary shall establish by regulation procedures for entering into personal services contracts with individuals under subsection (a). At a minimum, such procedures shall assure—

(A) the provision of adequate notice of contract opportunities to individuals residing in the area of the medical treatment facility involved; and

(B) consideration of interested individuals solely on the basis of the qualifications established for the contract and the proposed contract price.

(2) Upon the establishment of the procedures under paragraph (1), the Secretary may exempt contracts covered by this section from the competitive contracting requirements specified in section 2304 of this title or any other similar requirements of law.

(3) The procedures established under paragraph (1) may provide for a contracting officer to authorize a contractor to enter into a subcontract for personal services on behalf of the agency upon a determination that the subcontract is—

(A) consistent with the requirements of this section and the procedures established under paragraph (1); and

(B) in the best interests of the agency.

(d) EXCEPTIONS.—The procedures and exemptions provided under subsection (c) shall not apply to personal services contracts entered into under subsection (a) with entities other than individuals or to any contract that is not an authorized personal services contract under subsection (a).

(Added Pub. L. 98–94, title IX, § 932(a)(1), Sept. 24, 1983, 97 Stat. 649; amended Pub. L. 101–510, div. A, title VII, § 714, Nov. 5, 1990, 104 Stat. 1584; Pub. L. 103–160, div. A, title VII, § 712(a)(1), Nov. 30, 1993, 107 Stat. 1688; Pub. L. 104–106, div. A, title VII, § 733(a), Feb. 10, 1996, 110 Stat. 381; Pub. L. 105–85, div. A, title VII, § 736(a), Nov. 18, 1997, 111 Stat. 1814; Pub. L. 105–261, div. A, title VII, § 733(a), Oct. 17, 1998, 112 Stat. 2072; Pub. L. 106–398, § 1 [[div. A], title VII, § 705], Oct. 30, 2000, 114 Stat. 1654, 1654A–175; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 107–314, div. A, title VII, § 707, Dec. 2, 2002, 116 Stat. 2585; Pub. L. 108–136, div. A, title VII, § 721, Nov. 24, 2003, 117 Stat. 1531; Pub. L. 112–239, div. A, title VII, § 713(b), Jan. 2, 2013, 126 Stat. 1803; Pub. L. 116–283, div. A, title XVIII, § 1883(b)(2), Jan. 1, 2021, 134 Stat. 4294.)

AMENDMENT OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1883(b)(2), Jan. 1, 2021, 134 Stat. 4151, 4294, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, except as otherwise provided in title XVIII of Pub. L. 116–283, in title 10, United States Code, each reference in the text of such title to a source section that is redesignated by title XVIII of Pub. L. 116–283, is amended by striking such reference and inserting a reference to the appropriate section as so redesignated. See 2021 Amendment note below.

AMENDMENTS

2021—Subsec. (c)(2). Pub. L. 116–283, which directed that each reference in the text of title 10 to a section that was redesignated by title XVIII of Pub. L. 116–283, as such section was in effect before the redesignation, be amended by striking such reference and inserting a reference to the appropriate redesignated section, was not executed with respect to ''section 2304'', which was redesignated as multiple sections.

2013—Subsec. (c)(3). Pub. L. 112–239 added par. (3).

2003—Subsec. (a)(2). Pub. L. 108–136 struck out at end ''The Secretary may not enter into a contract under this paragraph after December 31, 2003.''

2002—Subsec. (a). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation'' in two places.

Subsec. (a)(2). Pub. L. 107–314 substituted ''December 31, 2003'' for ''December 31, 2002''.

2000—Subsec. (a)(2). Pub. L. 106–398 substituted ''December 31, 2002'' for ''December 31, 2000''.

1998—Subsec. (a)(2). Pub. L. 105–261 substituted ''December 31, 2000'' for ''the end of the one-year period beginning on the date of the enactment of this paragraph''.

1997—Subsec. (a). Pub. L. 105–85 designated existing provisions as par. (1) and added par. (2).

1996—Subsec. (a). Pub. L. 104–106 inserted '', with respect to medical treatment facilities of the Department of Defense, and the Secretary of Transportation, with respect to medical treatment facilities of the Coast Guard when the Coast Guard is not operating as a service in the Navy,'' after ''Secretary of Defense'' and substituted ''such facilities'' for ''medical treatment facilities of the Department of Defense''.

1993—Pub. L. 103–160 substituted ''Personal services contracts'' for ''Contracts for direct health care providers'' in section catchline and amended text generally. Prior to amendment, text read as follows:

''(a) The Secretary concerned may contract with persons for services (including personal services) for the provision of direct health care services determined by the Secretary concerned to be required for the purposes of this chapter.

''(b) A person with whom the Secretary contracts under this section for the provision of direct health care services under this chapter may be compensated at a rate prescribed by the Secretary concerned, but at a rate not greater than the rate of basic pay, special and incentive pays and bonuses, and allowances authorized by chapters 3, 5, and 7 of title 37 for a commissioned officer with comparable professional qualifications in pay grade O–6 with 26 or more years of service computed under section 205 of such title.''

1990—Subsec. (b). Pub. L. 101–510 substituted ''basic pay, special and incentive pays and bonuses, and allowances authorized by chapters 3, 5, and 7 of title 37 for a commissioned officer with comparable professional qualifications'' for ''basic pay and allowances authorized by chapters 3 and 7 of title 37 for a commissioned officer''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by section 1883(b)(2) of Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–106, div. A, title VII, § 733(c), Feb. 10, 1996, 110 Stat. 381, provided that: ''The amendments made by subsection (a) [amending this section] shall take effect as of October 1, 1995.''

EFFECTIVE DATE

Pub. L. 98–94, title IX, § 932(f), Sept. 24, 1983, 97 Stat. 650, provided that: ''The amendments made by this section [enacting this section, amending section 201 of Title 37, Pay and Allowances of the Uniformed Services, and repealing sections 4022 and 9022 of this title and section 421 of Title 37] shall take effect on October 1, 1983. Any contract of employment entered into under the authority of section 4022 or 9022 of title 10, United States Code, before the effective date of this section and which is in effect on such date shall remain in effect in accordance with the terms of such contract.''

ACQUISITION STRATEGY FOR HEALTH CARE PROFESSIONAL STAFFING SERVICES

Pub. L. 114–328, div. A, title VII, § 727(a)–(c), Dec. 23, 2016, 130 Stat. 2232, 2233, provided that:

''(a) ACQUISITION STRATEGY.—

''(1) IN GENERAL.—The Secretary of Defense shall develop and carry out a performance-based, strategic sourcing acquisition strategy with respect to entering into contracts for the services of health care professional staff at military medical treatment facilities located in a State.

''(2) ELEMENTS.—The acquisition strategy under paragraph (1) shall include the following:

''(A) Except as provided by subparagraph (B), a requirement that all the military medical treatment facilities that provide direct care use contracts described under paragraph (1).

''(B) A process for a military medical treatment facility to obtain a waiver of the requirement under subparagraph (A) in order to use an acquisition strategy not described in paragraph (1).

''(C) Identification of the responsibilities of the military departments and the elements of the Department of Defense in carrying out such strategy.

''(D) Projection of the demand by covered beneficiaries for health care services, including with respect to primary care and expanded-hours urgent care services.

''(E) Estimation of the workload gaps at military medical treatment facilities for health care services, including with respect to primary care and expanded-hours urgent care services.

''(F) Methods to analyze, using reliable and detailed data covering the entire direct care component of the military health system, the amount of funds expended on contracts for the services of health care professional staff.

''(G) Methods to identify opportunities to consolidate requirements for such services and reduce cost.

''(H) Methods to measure cost savings that are realized by using such contracts instead of purchased care.

''(I) Metrics to determine the effectiveness of such strategy.

''(J) Metrics to evaluate the success of the strategy in achieving its objectives, including metrics to assess the effects of the strategy on the timeliness of beneficiary access to professional health care services in military medical treatment facilities.

''(K) Such other matters as the Secretary considers appropriate.

''(b) REPORT.—Not later than July 1, 2017, the Secretary shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the status of implementing the acquisition strategy under paragraph (1) of subsection (a), including how each element under subparagraphs (A) through (K) of paragraph (2) of such subsection is being carried out.

''(c) DEFINITIONS.—In this section:

''(1) The term 'covered beneficiary' has the meaning given that term in section 1072 of title 10, United States Code.

''(2) The term 'State' means the several States and the District of Columbia.''

ACQUISITION STRATEGY FOR HEALTH CARE PROFESSIONAL STAFFING SERVICES

Pub. L. 113–291, div. A, title VII, § 725, Dec. 19, 2014, 128 Stat. 3418, required the Secretary of Defense to develop and carry out an acquisition strategy with respect to entering into contracts for the services of health care professional staff at military medical treatment facilities, prior to repeal by Pub. L. 114–328, div. A, title VII, § 727(d), Dec. 23, 2016, 130 Stat. 2233.

TEST OF ALTERNATIVE PROCESS FOR CONDUCTING MEDICAL SCREENINGS FOR ENLISTMENT QUALIFICATION

Pub. L. 105–261, div. A, title VII, § 733(b), Oct. 17, 1998, 112 Stat. 2072, as amended by Pub. L. 106–65, div. A, title X, § 1067(3), Oct. 5, 1999, 113 Stat. 774, directed the Secretary of Defense to conduct a test to determine whether an alternative to the system used by the Department of Defense of employing fee-basis physicians for determining the medical qualifications for enlistment of applicants for military service would reduce the number of disqualifying medical conditions detected during the initial entry training of such applicants, and whether an alternative system would meet or exceed the cost, responsiveness, and timeliness standards of the system in use or achieve any savings or cost avoidance, and to submit to committees of Congress a report on the results and findings of the test not later than Mar. 1, 2000.

RATIFICATION OF EXISTING CONTRACTS

Pub. L. 104–106, div. A, title VII, § 733(b), Feb. 10, 1996, 110 Stat. 381, provided that: ''Any exercise of authority under section 1091 of title 10, United States Code, to enter into a personal services contract on behalf of the Coast Guard before the effective date of the amendments made by subsection (a) [Oct. 1, 1995] is hereby ratified.''

PERSONAL SERVICE CONTRACTS TO PROVIDE CARE

Pub. L. 103–337, div. A, title VII, § 704(c), Oct. 5, 1994, 108 Stat. 2799, as amended by Pub. L. 108–375, div. A, title VII, § 717(a), Oct. 28, 2004, 118 Stat. 1986, provided that:

''(1) The Secretary of Defense may enter into personal service contracts under the authority of section 1091 of title 10, United States Code, with persons described in paragraph (2) to provide the services of clinical counselors, family advocacy program staff, and victim's services representatives to members of the Armed Forces and covered beneficiaries who require such services. Notwithstanding subsection (a) of such section, such services may be provided in medical treatment facilities of the Department of Defense or elsewhere as determined appropriate by the Secretary.

''(2) The persons with whom the Secretary may enter into a personal services contract under this subsection shall include clinical social workers, psychologists, marriage and family therapists certified as such by a certification recognized by the Secretary of Defense, psychiatrists, and other comparable professionals who have advanced degrees in counseling or related academic disciplines and who meet all requirements for State licensure and board certification requirements, if any, within their fields of specialization.''

REPORT ON COMPENSATION BY MEDICAL SPECIALTY

Pub. L. 103–160, div. A, title VII, § 712(b), Nov. 30, 1993, 107 Stat. 1689, directed the Secretary of Defense to submit to Congress a report, not later than 30 days after the end of the 180-day period beginning on the date on which the Secretary had first used the authority provided under this section, as amended by Pub. L. 103–160, specifying the compensation provided to medical specialists who had agreed to enter into personal services contracts under such section during that period, the extent to which amounts of compensation exceeded amounts previously provided, the total number and medical specialties of specialists serving during that period pursuant to such contracts, and the number of

specialists who had received compensation in an amount in excess of the maximum which had been authorized under this section, as in effect on Nov. 29, 1993.

§ 1092. Studies and demonstration projects relating to delivery of health and medical care

(a)(1) The Secretary of Defense, in consultation with the other administering Secretaries, shall conduct studies and demonstration projects on the health care delivery system of the uniformed services with a view to improving the quality, efficiency, convenience, and cost effectiveness of providing health care services (including dental care services) under this title to members and former members and their dependents. Such studies and demonstration projects may include the following:

(A) Alternative methods of payment for health and medical care services.

(B) Cost-sharing by eligible beneficiaries.

(C) Methods of encouraging efficient and economical delivery of health and medical care services.

(D) Innovative approaches to delivery and financing of health and medical care services.

(E) Alternative approaches to reimbursement for the administrative charges of health care plans.

(F) Prepayment for medical care services provided to maintain the health of a defined population.

(2) The Secretary of Defense shall include in the studies conducted under paragraph (1) alternative programs for the provision of dental care to the spouses and dependents of members of the uniformed services who are on active duty, including a program under which dental care would be provided the spouses and dependents of such members under insurance or dental plan contracts. A demonstration project may not be conducted under this section that provides for the furnishing of dental care under an insurance or dental plan contract.

(3) The Secretary of Defense may include in the studies and demonstration projects conducted under paragraph (1) studies and demonstration projects to provide awards and incentives to members of the armed forces and covered beneficiaries who obtain health promotion and disease prevention health care services under the TRICARE program in accordance with terms and schedules prescribed by the Secretary. Such awards and incentives may include cash awards and, in the case of members of the armed forces, personnel incentives.

(4)(A) The Secretary of Defense may, in consultation with the other administering Secretaries, include in the studies and demonstration projects conducted under paragraph (1) studies and demonstration projects to provide awards or incentives to individual health care professionals under the authority of such Secretaries, including members of the uniformed services, Federal civilian employees, and contractor personnel, to encourage and reward effective implementation of innovative health care programs designed to improve quality, cost-effectiveness, health promotion, medical readiness, and other priority objectives. Such awards and incentives may include cash awards and, in the case of members of the armed forces and Federal civilian employees, personnel incentives.

(B) Amounts available for the pay of members of the uniformed services shall be available for awards and incentives under this paragraph with respect to members of the uniformed services.

(5) The Secretary of Defense may include in the studies and demonstration projects conducted under paragraph (1) studies and demonstration projects to improve the medical and dental readiness of members of reserve components of the armed forces, including the provision of health care services to such members for which they are not otherwise entitled or eligible under this chapter.

(6) The Secretary of Defense may include in the studies and demonstration projects conducted under paragraph (1) studies and demonstration projects to improve the continuity of health care services for family members of mobilized members of the reserve components of the armed forces who are eligible for such services under this chapter, including payment of a stipend for continuation of employer-provided health coverage during extended periods of active duty.

(b) Subject to the availability of appropriations for that purpose, the Secretary of Defense may enter into contracts with public or private agencies, institutions, and organizations to conduct studies and demonstration projects under subsection (a).

(c) The Secretary of Defense may obtain the advice and recommendations of such advisory committees as the Secretary considers appropriate. Each such committee consulted by the Secretary under this subsection shall evaluate the proposed study or demonstration project as to the soundness of the objectives of such study or demonstration project, the likelihood of obtaining productive results based on such study or demonstration project, the resources which were required to conduct such study or demonstration project, and the relationship of such study or demonstration project to other ongoing or completed studies and demonstration projects.

(Added Pub. L. 98–94, title IX, § 933(a)(1), Sept. 24, 1983, 97 Stat. 650; amended Pub. L. 98–557, § 19(14), Oct. 30, 1984, 98 Stat. 2870; Pub. L. 105–261, div. A, title X, § 1031(a), Oct. 17, 1998, 112 Stat. 2123; Pub. L. 110–417, [div. A], title VII, § 715, Oct. 14, 2008, 122 Stat. 4505.)

AMENDMENTS

2008—Subsec. (a)(3) to (6). Pub. L. 110–417 added pars. (3) to (6).

1998—Subsec. (a)(3). Pub. L. 105–261 struck out par. (3) which read as follows: ''The Secretary of Defense shall submit to Congress from time to time written reports on the results of the studies and demonstration projects conducted under this subsection and shall include in such reports such recommendations for improving the health-care delivery systems of the uniformed services as the Secretary considers appropriate.''

1984—Subsec. (a)(1). Pub. L. 98–557 substituted reference to other administering Secretaries for reference to Secretary of Health and Human Services.

EFFECTIVE DATE

Pub. L. 98–94, title IX, § 933(b), Sept. 24, 1983, 97 Stat. 651, provided that: ''Section 1092 of title 10, United

States Code, as added by subsection (a), shall take effect on October 1, 1983.''

PILOT PROGRAM ON TREATMENT OF MEMBERS OF THE ARMED FORCES FOR POST-TRAUMATIC STRESS DISORDER RELATED TO MILITARY SEXUAL TRAUMA

Pub. L. 115–232, div. A, title VII, § 702, Aug. 13, 2018, 132 Stat. 1804, provided that:

''(a) IN GENERAL.—The Secretary of Defense may carry out a pilot program to assess the feasibility and advisability of using intensive outpatient programs to treat members of the Armed Forces suffering from post-traumatic stress disorder resulting from military sexual trauma, including treatment for substance abuse, depression, and other issues related to such conditions.

''(b) DISCHARGE THROUGH PARTNERSHIPS.—The pilot program authorized by subsection (a) shall be carried out through partnerships with public, private, and nonprofit health care organizations, universities, and institutions that—

''(1) provide health care to members of the Armed Forces;

''(2) provide evidence-based treatment for psychological and neurological conditions that are common among members of the Armed Forces, including post-traumatic stress disorder, traumatic brain injury, substance abuse, and depression;

''(3) provide health care, support, and other benefits to family members of members of the Armed Forces; and

''(4) provide health care under the TRICARE program (as that term is defined in section 1072 of title 10, United States Code).

''(c) PROGRAM ACTIVITIES.—Each organization or institution that participates in a partnership under the pilot program authorized by subsection (a) shall—

''(1) carry out intensive outpatient programs of short duration to treat members of the Armed Forces suffering from post-traumatic stress disorder resulting from military sexual trauma, including treatment for substance abuse, depression, and other issues related to such conditions;

''(2) use evidence-based and evidence-informed treatment strategies in carrying out such programs;

''(3) share clinical and outreach best practices with other organizations and institutions participating in the pilot program; and

''(4) annually assess outcomes for members of the Armed Forces individually and among the organizations and institutions participating in the pilot program with respect to the treatment of conditions described in paragraph (1).

''(d) EVALUATION METRICS.—Before commencement of the pilot program, the Secretary shall establish metrics to be used to evaluate the effectiveness of the pilot program and the activities under the pilot program.

''(e) REPORTS.—

''(1) INITIAL REPORT.—Not later than 180 days after the date of the enactment of this Act [Aug. 13, 2018], the Secretary shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the pilot program authorized by subsection (a). The report shall include a description of the pilot program and such other matters on the pilot program as the Secretary considers appropriate.

''(2) FINAL REPORT.—Not later than 180 days after the cessation of the pilot program under subsection (f), the Secretary shall submit to the committees of Congress referred to in paragraph (1) a report on the pilot program. The report shall include the following:

''(A) A description of the pilot program, including the partnerships under the pilot program as described in subsection (b).

''(B) An assessment of the effectiveness of the pilot program and the activities under the pilot program.

''(C) Such recommendations for legislative or administrative action as the Secretary considers appropriate in light of the pilot program, including recommendations for extension or making permanent the authority for the pilot program.

''(f) TERMINATION.—The Secretary may not carry out the pilot program authorized by subsection (a) after the date that is three years after the date of the enactment of this Act [Aug. 13, 2018].''

PILOT PROGRAM ON EXPANSION OF USE OF PHYSICIAN ASSISTANTS TO PROVIDE MENTAL HEALTH CARE TO MEMBERS OF THE ARMED FORCES

Pub. L. 114–328, div. A, title VII, § 742, Dec. 23, 2016, 130 Stat. 2237, provided that:

''(a) IN GENERAL.—The Secretary of Defense may conduct a pilot program to assess the feasibility and advisability of expanding the use by the Department of Defense of physician assistants specializing in psychiatric medicine at medical facilities of the Department of Defense in order to meet the increasing demand for mental health care providers at such facilities through the use of a psychiatry fellowship program for physician assistants.

''(b) REPORT ON PILOT PROGRAM.—

''(1) IN GENERAL.—If the Secretary conducts the pilot program under this section, not later than 90 days after the date on which the Secretary completes the conduct of the pilot program, the Secretary shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the pilot program.

''(2) ELEMENTS.—The report submitted under paragraph (1) shall include the following:

''(A) A description of the implementation of the pilot program, including a detailed description of the education and training provided under the pilot program.

''(B) An assessment of potential cost savings, if any, to the Department of Defense resulting from the pilot program.

''(C) A description of improvements, if any, to the access of members of the Armed Forces to mental health care resulting from the pilot program.

''(D) A recommendation as to the feasibility and advisability of extending or expanding the pilot program.''

PILOT PROGRAM ON DISPLAY OF WAIT TIMES AT URGENT CARE CLINICS AND PHARMACIES OF MILITARY MEDICAL TREATMENT FACILITIES

Pub. L. 114–328, div. A, title VII, § 744, Dec. 23, 2016, 130 Stat. 2239, as amended by Pub. L. 115–91, div. A, title VII, § 717, Dec. 12, 2017, 131 Stat. 1439, provided that:

''(a) PILOT PROGRAM AUTHORIZED.—Beginning not later than one year after the date of the enactment of this Act [Dec. 23, 2016], the Secretary of Defense shall carry out a pilot program for the display of wait times in urgent care clinics and pharmacies of military medical treatment facilities selected under subsection (b).

''(b) SELECTION OF FACILITIES.—

''(1) CATEGORIES.—The Secretary shall select not fewer than four military medical treatment facilities from each of the following categories to participate in the pilot program:

''(A) Medical centers.

''(B) Hospitals.

''(C) Ambulatory care centers.

''(2) OCONUS LOCATIONS.—Of the military medical treatment facilities selected under each category described in subparagraphs (A) through (C) of paragraph (1), not fewer than one shall be located outside of the continental United States.

''(3) CONTRACTOR-OPERATED FACILITIES.—The Secretary may select Government-owned, contractor-operated facilities among those military medical treatment facilities selected under paragraph (1).

''(c) URGENT CARE CLINICS.—

''(1) PLACEMENT.—With respect to each military medical treatment facility participating in the pilot program with an urgent care clinic, the Secretary

shall place in a conspicuous location at the urgent care clinic an electronic sign that displays the current average wait time determined under paragraph (2) for a patient to be seen by a qualified medical professional.

''(2) DETERMINATION.—In carrying out paragraph (1), the Secretary shall determine the average wait time to display under such paragraph by using a formula derived from best practices in the health care industry.

''(d) PHARMACIES.—

''(1) PLACEMENT.—With respect to each military medical treatment facility participating in the pilot program with a pharmacy, the Secretary shall place in a conspicuous location at the pharmacy an electronic sign that displays the current average wait time to receive a filled prescription for a pharmaceutical agent.

''(2) DETERMINATION.—In carrying out paragraph (1), the Secretary shall determine the average wait time to display under such paragraph by using a formula derived from best practices in the health care industry.

''(e) DURATION.—The Secretary shall carry out the pilot program for a period that is not more than two years.

''(f) REPORT.—

''(1) SUBMISSION.—Not later than 90 days after the completion of the pilot program, the Secretary shall submit to the Committees on Armed Services of the House of Representatives and the Senate a report on the pilot program.

''(2) ELEMENTS.—The report under paragraph (1) shall include—

''(A) the costs for displaying the wait times under subsections (c) and (d);

''(B) any changes in patient satisfaction;

''(C) any changes in patient behavior with respect to using urgent care and pharmacy services;

''(D) any changes in pharmacy operations and productivity;

''(E) a cost-benefit analysis of posting such wait times; and

''(F) the feasibility of expanding the posting of wait times in emergency departments in military medical treatment facilities.

''(g) QUALIFIED MEDICAL PROFESSIONAL DEFINED.—In this section, the term 'qualified medical professional' means a doctor of medicine, a doctor of osteopathy, a physician assistant, or an advanced registered nurse practitioner.''

PILOT PROGRAM ON INCENTIVE PROGRAMS TO IMPROVE HEALTH CARE PROVIDED UNDER THE TRICARE PROGRAM

Pub. L. 114–92, div. A, title VII, §726, Nov. 25, 2015, 129 Stat. 871, provided that:

''(a) PILOT PROGRAM.—Not later than 180 days after the date of the enactment of this Act [Nov. 25, 2015], the Secretary of Defense shall commence the conduct of a pilot program under section 1092 of title 10, United States Code, to assess whether a reduction in the rate of increase in health care spending by the Department of Defense and an enhancement of the operation of the military health system may be achieved by developing and implementing value-based incentive programs to encourage health care providers under the TRICARE program (including physicians, hospitals, and others involved in providing health care to patients) to improve the following:

''(1) The quality of health care provided to covered beneficiaries under the TRICARE program.

''(2) The experience of covered beneficiaries in receiving health care under the TRICARE program.

''(3) The health of covered beneficiaries.

''(b) INCENTIVE PROGRAMS.—

''(1) DEVELOPMENT.—In developing an incentive program under this section, the Secretary shall—

''(A) consider the characteristics of the population of covered beneficiaries affected by the incentive program;

''(B) consider how the incentive program would impact the receipt of health care under the TRICARE program by such covered beneficiaries;

''(C) establish or maintain an assurance that such covered beneficiaries will have timely access to health care during operation of the incentive program;

''(D) ensure that there are no additional financial costs to such covered beneficiaries of implementing the incentive program; and

''(E) consider such other factors as the Secretary considers appropriate.

''(2) ELEMENTS.—With respect to an incentive program developed and implemented under this section, the Secretary shall ensure that—

''(A) the size, scope, and duration of the incentive program is reasonable in relation to the purpose of the incentive program; and

''(B) appropriate criteria and data collection are used to ensure adequate evaluation of the feasibility and advisability of implementing the incentive program throughout the TRICARE program.

''(3) USE OF EXISTING MODELS.—In developing an incentive program under this section, the Secretary may adapt a value-based incentive program conducted by the Centers for Medicare & Medicaid Services or any other governmental or commercial health care program.

''(c) TERMINATION.—The authority of the Secretary to carry out the pilot program under this section shall terminate on December 31, 2019.

''(d) REPORTS.—

''(1) INTERIM REPORT.—Not later than one year after the date of the enactment of this Act, and not less frequently than once each year thereafter until the termination of the pilot program, the Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the pilot program.

''(2) FINAL REPORT.—Not later than September 30, 2019, the Secretary shall submit to the congressional defense committees a final report on the pilot program.

''(3) ELEMENTS.—Each report submitted under paragraph (1) or paragraph (2) shall include the following:

''(A) An assessment of each incentive program developed and implemented under this section, including whether such incentive program—

''(i) improves the quality of health care provided to covered beneficiaries, the experience of covered beneficiaries in receiving health care under the TRICARE program, or the health of covered beneficiaries;

''(ii) reduces the rate of increase in health care spending by the Department of Defense; or

''(iii) enhances the operation of the military health system.

''(B) Such recommendations for administrative or legislative action as the Secretary considers appropriate in light of the pilot program, including to implement any such incentive program or programs throughout the TRICARE program.

''(e) DEFINITIONS.—In this section, the terms 'covered beneficiary' and 'TRICARE program' have the meanings given those terms in section 1072 of title 10, United States Code.''

PILOT PROGRAM ON CERTAIN TREATMENTS OF AUTISM UNDER THE TRICARE PROGRAM

Pub. L. 112–239, div. A, title VII, §705, Jan. 2, 2013, 126 Stat. 1800, provided that:

''(a) PILOT PROGRAM.—

''(1) IN GENERAL.—The Secretary of Defense shall conduct a pilot program to provide for the treatment of autism spectrum disorders, including applied behavior analysis.

''(2) COMMENCEMENT.—The Secretary shall commence the pilot program under paragraph (1) by not later than 90 days after the date of the enactment of this Act [Jan. 2, 2013].

''(b) DURATION.—The Secretary may not carry out the pilot program under subsection (a)(1) for longer than a one-year period.

''(c) REPORT.—Not later than 270 days after the date on which the pilot program under subsection (a)(1) commences, the Secretary shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the pilot program. The report shall include the following:

''(1) An assessment of the feasibility and advisability of establishing a beneficiary cost share for the treatment of autism spectrum disorders.

''(2) A comparison of providing such treatment under—

''(A) the ECHO Program; and

''(B) the TRICARE program other than under the ECHO Program.

''(3) Any recommendations for changes in legislation.

''(4) Any additional information the Secretary considers appropriate.

''(d) DEFINITIONS.—In this section:

''(1) The term 'ECHO Program' means the Extended Care Health Option under subsections (d) through (f) of section 1079 of title 10, United States Code.

''(2) The term 'TRICARE program' has the meaning given that term in section 1072(7) of title 10, United States Code.''

MILITARY HEALTH RISK MANAGEMENT DEMONSTRATION PROJECT

Pub. L. 110–417, [div. A], title VII, § 712, Oct. 14, 2008, 122 Stat. 4501, provided that:

''(a) DEMONSTRATION PROJECT REQUIRED.—The Secretary of Defense shall conduct a demonstration project designed to evaluate the efficacy of providing incentives to encourage healthy behaviors on the part of eligible military health system beneficiaries.

''(b) ELEMENTS OF DEMONSTRATION PROJECT.—

''(1) WELLNESS ASSESSMENT.—The Secretary shall develop a wellness assessment to be offered to beneficiaries enrolled in the demonstration project. The wellness assessment shall incorporate nationally recognized standards for health and healthy behaviors and shall be offered to determine a baseline and at appropriate intervals determined by the Secretary. The wellness assessment shall include the following:

''(A) A self-reported health risk assessment.

''(B) Physiological and biometric measures, including at least—

''(i) blood pressure;

''(ii) glucose level;

''(iii) lipids;

''(iv) nicotine use; and

''(v) weight.

''(2) POPULATION ENROLLED.—Non-medicare eligible retired beneficiaries of the military health system and their dependents who are enrolled in TRICARE Prime and who reside in the demonstration project service area shall be offered the opportunity to enroll in the demonstration project.

''(3) GEOGRAPHIC COVERAGE OF DEMONSTRATION PROJECT.—The demonstration project shall be conducted in at least three geographic areas within the United States where TRICARE Prime is offered, as determined by the Secretary. The area covered by the project shall be referred to as the demonstration project service area.

''(4) PROGRAMS.—The Secretary shall develop programs to assist enrollees to improve healthy behaviors, as identified by the wellness assessment.

''(5) INCLUSION OF INCENTIVES REQUIRED.—For the purpose of conducting the demonstration project, the Secretary may offer monetary and non-monetary incentives to enrollees to encourage participation in the demonstration project.

''(c) EVALUATION OF DEMONSTRATION PROJECT.—The Secretary shall annually evaluate the demonstration project for the following:

''(1) The extent to which the health risk assessment and the physiological and biometric measures of beneficiaries are improved from the baseline (as determined in the wellness assessment).

''(2) In the case of baseline health risk assessments and physiological and biometric measures that reflect healthy behaviors, the extent to which the measures are maintained.

''(d) IMPLEMENTATION PLAN.—The Secretary of Defense shall submit a plan to implement the health risk management demonstration project required by this section not later than 90 days after the date of the enactment of this Act [Oct. 14, 2008].

''(e) DURATION OF PROJECT.—The health risk management demonstration project shall be implemented for a period of three years, beginning not later than March 1, 2009, and ending three years after that date.

''(f) REPORT.—

''(1) IN GENERAL.—The Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives an annual report on the effectiveness of the health risk management demonstration project in improving the health risk measures of military health system beneficiaries enrolled in the demonstration project. The first report shall be submitted not later than one year after the date of the enactment of this Act [Oct. 14, 2008], and subsequent reports shall be submitted for each year of the demonstration project with the final report being submitted not later than 90 days after the termination of the demonstration project.

''(2) MATTERS COVERED.—Each report shall address, at a minimum, the following:

''(A) The number of beneficiaries who were enrolled in the project.

''(B) The number of enrolled beneficiaries who participate in the project.

''(C) The incentives to encourage healthy behaviors that were provided to the beneficiaries in each beneficiary category, and the extent to which the incentives encouraged healthy behaviors.

''(D) An assessment of the effectiveness of the demonstration project.

''(E) Recommendations for adjustments to the demonstration project.

''(F) The estimated costs avoided as a result of decreased health risk conditions on the part of each of the beneficiary categories.

''(G) Recommendations for extending the demonstration project or implementing a permanent wellness assessment program.

''(H) Identification of legislative authorities required to implement a permanent program.''

AVAILABILITY OF CHIROPRACTIC HEALTH CARE SERVICES

Pub. L. 109–163, div. A, title VII, § 712, Jan. 6, 2006, 119 Stat. 3343, provided that:

''(a) AVAILABILITY OF CHIROPRACTIC HEALTH CARE SERVICES.—The Secretary of the Air Force shall ensure that chiropractic health care services are available at all medical treatment facilities listed in table 5 of the report to Congress dated August 16, 2001, titled 'Chiropractic Health Care Implementation Plan'. If the Secretary determines that it is not necessary or feasible to provide chiropractic health care services at any such facility, the Secretary shall provide such services at an alternative site for each such facility.

''(b) IMPLEMENTATION AND REPORT.—Not later than September 30, 2006, the Secretary of the Air Force shall—

''(1) implement subsection (a); and

''(2) submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the availability of chiropractic health care services as required under subsection (a), including information on alternative sites at which such services have been made available.''

PILOT PROGRAM FOR HEALTH CARE DELIVERY

Pub. L. 108–375, div. A, title VII, § 721, Oct. 28, 2004, 118 Stat. 1988, as amended by Pub. L. 110–181, div. A, title

VII, § 707, Jan. 28, 2008, 122 Stat. 189; Pub. L. 110–417, [div. A], title X, § 1061(e), Oct. 14, 2008, 122 Stat. 4613, provided that:

''(a) PILOT PROGRAM.—The Secretary of Defense may conduct a pilot program at two or more military installations for purposes of testing initiatives that build cooperative health care arrangements and agreements between military installations and local and regional non-military health care systems.

''(b) REQUIREMENTS OF PILOT PROGRAM.—In conducting the pilot program, the Secretary of Defense shall—

''(1) identify and analyze health care delivery options involving the private sector and health care services in military facilities located on the installation;

''(2) determine the cost avoidance or savings resulting from innovative partnerships between the Department of Defense and the private sector;

''(3) study the potential, viability, cost efficiency, and health care effectiveness of Department of Defense health care providers delivering health care in civilian community hospitals;

''(4) determine the opportunities for and barriers to coordinating and leveraging the use of existing health care resources, including Federal, State, local, and contractor assets; and

''(5) collaborate with State and local authorities to create an arrangement to share and exchange, between the Department of Defense and non-military health care systems, personal health information and data of military personnel and their families.

''(c) CONSULTATION REQUIREMENTS.—The Secretary of Defense shall develop the pilot program in consultation with the Secretaries of the military departments, representatives from the military installation selected for the pilot program, Federal, State, and local entities, and the TRICARE managed care support contractor with responsibility for that installation.

''(d) SELECTION OF MILITARY INSTALLATION.—The pilot program may be implemented at two or more military installations selected by the Secretary of Defense. At least one of the selected military installations shall meet the following criteria:

''(1) The military installation has members of the Armed Forces on active duty and members of reserve components of the Armed Forces that use the installation as a training and operational base, with members routinely deploying in support of the global war on terrorism.

''(2) The number of members of the Armed Forces on active duty permanently assigned to the military installation is [sic] has increased over the five years preceding 2008.

''(3) One or more cooperative arrangements exist at the military installation with civilian health care entities in the form of specialty care services in the military medical treatment facility on the installation.

''(4) There is a military treatment facility on the installation that does not have inpatient or trauma center care capabilities.

''(5) There is a civilian community hospital near the military installation with—

''(A) limited capability to expand inpatient care beds, intensive care, and specialty services; and

''(B) limited or no capability to provide trauma care.

''(e) DURATION OF PILOT PROGRAM.—Implementation of the pilot program developed under this section shall begin not later than May 1, 2005, and shall be conducted during fiscal years 2005 through 2010.

''(f) REPORTS.—With respect to any pilot program conducted under this section, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and of the House of Representatives—

''(1) an interim report on the program, not later than 60 days after commencement of the program; and

''(2) a final report describing the results of the program with recommendations for a model health care delivery system for other military installations, not later than July 1, 2010.''

DEMONSTRATION PROJECT FOR EXPANDED ACCESS TO MENTAL HEALTH COUNSELORS

Pub. L. 106–398, § 1 [[div. A], title VII, § 731], Oct. 30, 2000, 114 Stat. 1654, 1654A–189, directed the Secretary of Defense, not later than Mar. 31, 2001, to submit to committees of Congress a plan to carry out a demonstration project under which licensed and certified professional mental health counselors who had met eligibility requirements for participation as providers under CHAMPUS or the TRICARE program could provide services to covered beneficiaries under this chapter without referral by physicians or adherence to supervision requirements, and directed the Secretary to conduct such project during the 2-year period beginning Oct. 1, 2001, and to submit to Congress a report on such project not later than Feb. 1, 2003.

TELERADIOLOGY DEMONSTRATION PROJECT

Pub. L. 106–398, § 1 [[div. A], title VII, § 732], Oct. 30, 2000, 114 Stat. 1654, 1654A–191, authorized the Secretary of Defense to conduct a demonstration project during the 2-year period beginning on Oct. 30, 2000, under which a military medical treatment facility and each clinic supported by such facility would be linked by a digital radiology network through which digital radiology X-rays could be sent electronically from clinics to the military medical treatment facility.

JOINT TELEMEDICINE AND TELEPHARMACY DEMONSTRATION PROJECTS BY THE DEPARTMENT OF DEFENSE AND DEPARTMENT OF VETERANS AFFAIRS

Pub. L. 106–65, div. A, title VII, § 724, Oct. 5, 1999, 113 Stat. 697, as amended by Pub. L. 108–136, div. A, title X, § 1031(h)(2), Nov. 24, 2003, 117 Stat. 1605, authorized the Secretary of Defense and the Secretary of Veterans Affairs, during the three-year period beginning on Oct. 1, 1999, to carry out joint demonstration projects for purposes of evaluating the feasibility and practicability of using telecommunications to provide radiologic and imaging services, diagnostic services, referral services, pharmacy services, and any other health care services designated by the Secretaries.

DEMONSTRATION PROGRAM TO TRAIN MILITARY MEDICAL PERSONNEL IN CIVILIAN SHOCK TRAUMA UNITS

Pub. L. 104–106, div. A, title VII, § 744, Feb. 10, 1996, 110 Stat. 386, directed the Secretary of Defense to implement, not later than Apr. 1, 1996, a demonstration program to evaluate the feasibility of providing shock trauma training for military medical personnel through an agreement with one or more public or nonprofit hospitals, and to submit to Congress a report describing the scope and activities of the program not later than Mar. 1 of each year in which it was conducted, provided for the termination of the program on Mar. 31, 1998, and required the Comptroller General of the United States to submit to Congress a report evaluating its effectiveness not later than May 1, 1998.

DEMONSTRATION PROJECT ON MANAGEMENT OF HEALTH CARE IN CATCHMENT AREAS AND OTHER DEMONSTRATION PROJECTS

Pub. L. 100–180, div. A, title VII, § 731, Dec. 4, 1987, 101 Stat. 1117, directed Secretary of Defense to conduct, beginning in fiscal year 1988 for at least two years, projects designed to demonstrate the alternative health care delivery system under which the commander of a medical facility of the uniformed services is responsible for all funding and all medical care of the covered beneficiaries in the catchment area of the facility and to conduct specific projects for the purpose of demonstrating alternatives to providing health care under the military health care system, directed Secretary not later than 60 days after Dec. 4, 1987, to submit to Congress a report that provides an outline and discussion of the manner in which the Secretary in-

tends to structure and conduct each demonstration project and to develop and submit to Congress a methodology to be used in evaluating the results of the demonstration projects, and submit to Congress an interim report on each demonstration project after such project has been in effect for at least 12 months and a final report on each such project when each project is completed.

CHIROPRACTIC HEALTH CARE

Pub. L. 108–375, div. A, title VII, § 718, Oct. 28, 2004, 118 Stat. 1987, provided that:

''(a) ESTABLISHMENT.—Not later than 120 days after the date of the enactment of this Act [Oct. 28, 2004], the Secretary of Defense shall establish an oversight advisory committee to provide the Secretary with advice and recommendations regarding the continued development and implementation of an effective program of chiropractic health care benefits for members of the uniformed services on active duty.

''(b) MEMBERSHIP.—The advisory committee shall be composed of members selected from among persons who, by reason of education, training, and experience, are experts in chiropractic health care, as follows:

''(1) Members appointed by the Secretary of Defense in such number as the Secretary determines appropriate for carrying out the duties of the advisory committee effectively, including not fewer than three practicing representatives of the chiropractic health care profession.

''(2) A representative of each of the uniformed services, as designated by the administering Secretary concerned.

''(c) CHAIRMAN.—The Secretary of Defense shall designate one member of the advisory committee to serve as the Chairman of the advisory committee.

''(d) MEETINGS.—The advisory committee shall meet at the call of the Chairman, but not fewer than three times each fiscal year, beginning in fiscal year 2005.

''(e) DUTIES.—The advisory committee shall have the following duties:

''(1) Review and evaluate the program of chiropractic health care benefits provided to members of the uniformed services on active duty under chapter 55 of title 10, United States Code.

''(2) Provide the Secretary of Defense with advice and recommendations as described in subsection (a).

''(3) Upon the Secretary's determination that the program of chiropractic health care benefits referred to in paragraph (1) has been fully implemented, prepare and submit to the Secretary a report containing the advisory committee's evaluation of the implementation of such program.

''(f) REPORT.—The Secretary of Defense, following receipt of the report by the advisory committee under subsection (e)(3), shall submit to the Committees on Armed Services of the Senate and of the House of Representatives a report containing the following:

''(1) A copy of the advisory committee report, together with the Secretary's comments on the report.

''(2) An explanation of the criteria and rationale that the Secretary used to determine that the program of chiropractic health care benefits was fully implemented.

''(3) The Secretary's views with regard to the future implementation of the program of chiropractic health care benefits.

''(g) APPLICABILITY OF TEMPORARY ORGANIZATIONS LAW.—(1) Section 3161 of title 5, United States Code, shall apply to the advisory committee under this section.

''(2) The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the oversight advisory committee under this section.

''(h) TERMINATION.—The advisory committee shall terminate 90 days after the date on which the Secretary submits the report under subsection (f).''

Pub. L. 108–136, div. A, title VII, § 711, Nov. 24, 2003, 117 Stat. 1530, provided that: ''The Secretary of Defense shall accelerate the implementation of the plan required by section 702 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (Public Law 106–398; 114 Stat. 1654A–173) [set out below] (relating to chiropractic health care services and benefits), with a goal of completing implementation of the plan by October 1, 2005.''

Pub. L. 106–398, § 1 [[div. A], title VII, § 702], Oct. 30, 2000, 114 Stat. 1654, 1654A–173, provided that:

''(a) PLAN REQUIRED.—(1) Not later than March 31, 2001, the Secretary of Defense shall complete development of a plan to provide chiropractic health care services and benefits, as a permanent part of the Defense Health Program (including the TRICARE program), for all members of the uniformed services who are entitled to care under section 1074(a) of title 10, United States Code.

''(2) The plan shall provide for the following:

''(A) Access, at designated military medical treatment facilities, to the scope of chiropractic services as determined by the Secretary, which includes, at a minimum, care for neuro-musculoskeletal conditions typical among military personnel on active duty.

''(B) A detailed analysis of the projected costs of fully integrating chiropractic health care services into the military health care system.

''(C) An examination of the proposed military medical treatment facilities at which such services would be provided.

''(D) An examination of the military readiness requirements for chiropractors who would provide such services.

''(E) An examination of any other relevant factors that the Secretary considers appropriate.

''(F) Phased-in implementation of the plan over a 5-year period, beginning on October 1, 2001.

''(b) CONSULTATION REQUIREMENTS.—The Secretary of Defense shall consult with the other administering Secretaries described in section 1073 of title 10, United States Code, and the oversight advisory committee established under section 731 of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337; 10 U.S.C. 1092 note) regarding the following:

''(1) The development and implementation of the plan required under subsection (a).

''(2) Each report that the Secretary is required to submit to Congress regarding the plan.

''(3) The selection of the military medical treatment facilities at which the chiropractic services described in subsection (a)(2)(A) are to be provided.

''(c) CONTINUATION OF CURRENT SERVICES.—Until the plan required under subsection (a) is implemented, the Secretary shall continue to furnish the same level of chiropractic health care services and benefits under the Defense Health Program that is provided during fiscal year 2000 at military medical treatment facilities that provide such services and benefits.

''(d) REPORT REQUIRED.—Not later than January 31, 2001, the Secretary of Defense shall submit a report on the plan required under subsection (a), together with appropriate appendices and attachments, to the Committees on Armed Services of the Senate and the House of Representatives.

''(e) GAO REPORTS.—The Comptroller General shall monitor the development and implementation of the plan required under subsection (a), including the administration of services and benefits under the plan, and periodically submit to the committees referred to in subsection (d) written reports on such development and implementation.''

Pub. L. 103–337, div. A, title VII, § 731, Oct. 5, 1994, 108 Stat. 2809, as amended by Pub. L. 105–85, div. A, title VII, § 739, Nov. 18, 1997, 111 Stat. 1815; Pub. L. 106–65, div. A, title VII, § 702(a), Oct. 5, 1999, 113 Stat. 680, directed the Secretary of Defense to develop and carry out a demonstration program for fiscal years 1995 to 1999 to evaluate the feasibility and advisability of furnishing chiropractic care through the medical care facilities of the Armed Forces, to continue to furnish the same chiropractic care in fiscal year 2000, to submit reports to Congress in 1995 and 1998 with a final report due Jan.

31, 2000, to establish an oversight advisory committee to assist and advise the Secretary with regard to the development and conduct of the demonstration program, and, not later than Mar. 31, 2000, to submit to Congress an implementation plan for the full integration of chiropractic health care services into the military health care system of the Department of Defense, including the TRICARE program, if the provision of such care was the Secretary's recommendation.

Pub. L. 98–525, title VI, §632(b), Oct. 19, 1984, 98 Stat. 2543, provided that: ''The Secretary of Defense, in consultation with the Secretary of Health and Human Services, shall conduct demonstration projects under section 1092 of title 10, United States Code, for the purpose of evaluating the cost-effectiveness of chiropractic care. In the conduct of such demonstration projects, chiropractic care (including manual manipulation of the spine and other routine chiropractic procedures authorized under joint regulations prescribed by the Secretary of Defense and the Secretary of Health and Human Services and not otherwise prohibited by law) may be provided as appropriate under chapter 55 of title 10, United States Code.''

§ 1092a. Persons entering the armed forces: baseline health data

(a) PROGRAM REQUIRED.—The Secretary of Defense shall carry out a program—

(1) to collect baseline health data from each person entering the armed forces, at the time of entry into the armed forces; and

(2) to provide for computerized compilation and maintenance of the baseline health data.

(b) PURPOSES.—The program under this section shall be designed to achieve the following purposes:

(1) To facilitate understanding of how subsequent exposures related to service in the armed forces affect health.

(2) To facilitate development of early intervention and prevention programs to protect health and readiness.

(Added Pub. L. 108–375, div. A, title VII, §733(a)(1), Oct. 28, 2004, 118 Stat. 1997.)

TIME FOR IMPLEMENTATION

Pub. L. 108–375, div. A, title VII, §733(a)(3), Oct. 28, 2004, 118 Stat. 1998, provided that: ''The Secretary of Defense shall implement the program required under section 1092a of title 10, United States Code (as added by paragraph (1)), not later than two years after the date of the enactment of this Act [Oct. 28, 2004].''

§ 1093. Performance of abortions: restrictions

(a) RESTRICTION ON USE OF FUNDS.—Funds available to the Department of Defense may not be used to perform abortions except where the life of the mother would be endangered if the fetus were carried to term or in a case in which the pregnancy is the result of an act of rape or incest.

(b) RESTRICTION ON USE OF FACILITIES.—No medical treatment facility or other facility of the Department of Defense may be used to perform an abortion except where the life of the mother would be endangered if the fetus were carried to term or in a case in which the pregnancy is the result of an act of rape or incest.

(Added Pub. L. 98–525, title XIV, §1401(e)(5)(A), Oct. 19, 1984, 98 Stat. 2617; amended Pub. L. 104–106, div. A, title VII, §738(a), (b)(1), Feb. 10, 1996, 110 Stat. 383; Pub. L. 112–239, div. A, title VII, §704, Jan. 2, 2013, 126 Stat. 1800.)

PRIOR PROVISIONS

Provisions similar to those in subsec. (a) of this section were contained in the following appropriation acts:

Pub. L. 98–473, title I, §101(h) [title VIII, §8044], Oct. 12, 1984, 98 Stat. 1904, 1931.

Pub. L. 98–212, title VII, §751, Dec. 8, 1983, 97 Stat. 1447.

Pub. L. 97–377, title I, §101(c) [title VII, §755], Dec. 21, 1982, 96 Stat. 1833, 1860.

Pub. L. 97–114, title VII, §757, Dec. 29, 1981, 95 Stat. 1588.

Pub. L. 96–527, title VII, §760, Dec. 15, 1980, 94 Stat. 3091.

Pub. L. 96–154, title VII, §762, Dec. 21, 1979, 93 Stat. 1162.

Pub. L. 95–457, title VIII, §863, Oct. 13, 1978, 92 Stat. 1254.

AMENDMENTS

2013—Subsec. (a). Pub. L. 112–239 inserted ''or in a case in which the pregnancy is the result of an act of rape or incest'' before period at end.

1996—Pub. L. 104–106, §738(b)(1), amended section catchline generally, substituting ''Performance of abortions: restrictions'' for ''Restrictions on use of funds for abortions''.

Pub. L. 104–106, §738(a), designated existing provisions as subsec. (a), inserted subsec. heading, and added subsec. (b).

EFFECTIVE DATE

Section effective Oct. 1, 1985, see section 1404 of Pub. L. 98–525, set out as a note under section 520b of this title.

PRIVATELY FUNDED ABORTIONS AT MILITARY HOSPITALS

Memorandum of the President of the United States, Jan. 22, 1993, 58 F.R. 6439, provided:

Memorandum for the Secretary of Defense

Section 1093 of title 10 of the United States Code prohibits the use of Department of Defense (''DOD'') funds to perform abortions except where the life of a woman would be endangered if the fetus were carried to term. By memoranda of December 21, 1987, and June 21, 1988, DOD has gone beyond what I am informed are the requirements of the statute and has banned all abortions at U.S. military facilities, even where the procedure is privately funded. This ban is unwarranted. Accordingly, I hereby direct that you reverse the ban immediately and permit abortion services to be provided, if paid for entirely with non-DOD funds and in accordance with other relevant DOD policies and procedures.

You are hereby authorized and directed to publish this memorandum in the Federal Register.

WILLIAM J. CLINTON.

§ 1094. Licensure requirement for health-care professionals

(a)(1) A person under the jurisdiction of the Secretary of a military department may not provide health care independently as a health-care professional under this chapter unless the person has a current license to provide such care. In the case of a physician, the physician may not provide health care as a physician under this chapter unless the current license is an unrestricted license that is not subject to limitation on the scope of practice ordinarily granted to other physicians for a similar specialty by the jurisdiction that granted the license.

(2) The Secretary of Defense may waive paragraph (1) with respect to any person in unusual circumstances. The Secretary shall prescribe by regulation the circumstances under which such a waiver may be granted.

(b) The commanding officer of each health care facility of the Department of Defense shall ensure that each person who provides health care independently as a health-care professional at the facility meets the requirement of subsection (a).

(c)(1) A person (other than a person subject to chapter 47 of this title) who provides health care in violation of subsection (a) is subject to a civil money penalty of not more than $5,000.

(2) The provisions of subsections (c) and (e) through (h) of section 1128A of the Social Security Act (42 U.S.C. 1320a–7a) shall apply to the imposition of a civil money penalty under paragraph (1) in the same manner as they apply to the imposition of a civil money penalty under that section, except that for purposes of this subsection—

(A) a reference to the Secretary in that section is deemed a reference to the Secretary of Defense; and

(B) a reference to a claimant in subsection (e) of that section is deemed a reference to the person described in paragraph (1).

(d)(1) Notwithstanding any law regarding the licensure of health care providers, a health-care professional described in paragraph (2) or (3) may practice the health profession or professions of the health-care professional at any location in any State, the District of Columbia, or a Commonwealth, territory, or possession of the United States, regardless of where such health-care professional or the patient are located, so long as the practice is within the scope of the authorized Federal duties.

(2) A health-care professional referred to in paragraph (1) as being described in this paragraph is a member of the armed forces, civilian employee of the Department of Defense, personal services contractor under section 1091 of this title, or other health-care professional credentialed and privileged at a Federal health care institution or location specially designated by the Secretary for this purpose who—

(A) has a current license to practice medicine, osteopathic medicine, dentistry, or another health profession; and

(B) is performing authorized duties for the Department of Defense.

(3) A health-care professional referred to in paragraph (1) as being described in this paragraph is a member of the National Guard who—

(A) has a current license to practice medicine, osteopathic medicine, dentistry, or another health profession; and

(B) is performing training or duty under section 502(f) of title 32 in response to an actual or potential disaster.

(e) In this section:

(1) The term ''license''—

(A) means a grant of permission by an official agency of a State, the District of Columbia, or a Commonwealth, territory, or possession of the United States to provide health care independently as a health-care professional; and

(B) includes, in the case of such care furnished in a foreign country by any person who is not a national of the United States, a grant of permission by an official agency of that foreign country for that person to provide health care independently as a health-care professional.

(2) The term ''health-care professional'' means a physician, dentist, clinical psychologist, marriage and family therapist certified as such by a certification recognized by the Secretary of Defense, or nurse and any other person providing direct patient care as may be designated by the Secretary of Defense in regulations.

(Added Pub. L. 99–145, title VI, § 653(a)(1), Nov. 8, 1985, 99 Stat. 657; amended Pub. L. 99–661, div. A, title XIII, § 1343(a)(5), Nov. 14, 1986, 100 Stat. 3992; Pub. L. 101–189, div. A, title VI, § 653(e)(1), title XVI, § 1622(e)(3), Nov. 29, 1989, 103 Stat. 1463, 1605; Pub. L. 105–85, div. A, title VII, § 737, Nov. 18, 1997, 111 Stat. 1814; Pub. L. 105–261, div. A, title VII, § 734(a), Oct. 17, 1998, 112 Stat. 2072; Pub. L. 108–375, div. A, title VII, § 717(b), Oct. 28, 2004, 118 Stat. 1986; Pub. L. 111–383, div. A, title VII, § 713, Jan. 7, 2011, 124 Stat. 4247; Pub. L. 112–81, div. A, title VII, § 713(a), Dec. 31, 2011, 125 Stat. 1476.)

AMENDMENTS

2011—Subsec. (d)(1). Pub. L. 112–81, § 713(a)(1), inserted ''at any location'' before ''in any State'' and substituted ''regardless of where such health-care professional or the patient are located, so long as the practice is within the scope of the authorized Federal duties.'' for ''regardless of whether the practice occurs in a health care facility of the Department of Defense, a civilian facility affiliated with the Department of Defense, or any other location authorized by the Secretary of Defense.''

Pub. L. 111–383, § 713(1), inserted ''or (3)'' after ''paragraph (2)''.

Subsec. (d)(2). Pub. L. 112–81, § 713(a)(2), substituted ''member of the armed forces, civilian employee of the Department of Defense, personal services contractor under section 1091 of this title, or other health-care professional credentialed and privileged at a Federal health care institution or location specially designated by the Secretary for this purpose'' for ''member of the armed forces''.

Pub. L. 111–383, § 713(2), inserted ''as being described in this paragraph'' after ''paragraph (1)'' in introductory provisions.

Subsec. (d)(3). Pub. L. 111–383, § 713(3), added par. (3).

2004—Subsec. (e)(2). Pub. L. 108–375 inserted ''marriage and family therapist certified as such by a certification recognized by the Secretary of Defense,'' after ''psychologist,''.

1998—Subsec. (a)(1). Pub. L. 105–261 inserted at end ''In the case of a physician, the physician may not provide health care as a physician under this chapter unless the current license is an unrestricted license that is not subject to limitation on the scope of practice ordinarily granted to other physicians for a similar specialty by the jurisdiction that granted the license.''

1997—Subsecs. (d), (e). Pub. L. 105–85 added subsec. (d) and redesignated former subsec. (d) as (e).

1989—Subsec. (c)(2). Pub. L. 101–189, § 653(e)(1), substituted ''subsections (c) and (e) through (h)'' for ''subsections (b) and (d) through (g)''.

Subsec. (d)(1). Pub. L. 101–189, § 1622(e)(3)(A), substituted ''The term 'license'' for '' 'License'' in introductory provisions.

Subsec. (d)(2). Pub. L. 101–189, § 1622(e)(3)(B), substituted ''The term 'health-care'' for '' 'Health-care''.

1986—Subsec. (d)(2). Pub. L. 99–661 realigned margin of par. (2) to conform to margin of par. (1).

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–261, div. A, title VII, § 734(c)(1), Oct. 17, 1998, 112 Stat. 2073, provided that: ''The amendment

made by subsection (a) [amending this section] shall take effect on October 1, 1999.''

EFFECTIVE DATE

Pub. L. 99–145, title VI, § 653(b), Nov. 8, 1985, 99 Stat. 658, provided that: ''Section 1094 of title 10, United States Code, as added by subsection (a), does not apply during the three-year period beginning on the date of the enactment of this Act [Nov. 8, 1985] with respect to the provision of health care by any person who on the date of the enactment of this Act is a member of the Armed Forces.''

REGULATIONS

Pub. L. 112–81, div. A, title VII, § 713(b), Dec. 31, 2011, 125 Stat. 1476, provided that: ''The Secretary of Defense shall prescribe regulations to carry out the amendments made by this section [amending this section].''

§ 1094a. Continuing medical education requirements: system for monitoring physician compliance

The Secretary of Defense shall establish a mechanism for ensuring that each person under the jurisdiction of the Secretary of a military department who provides health care under this chapter as a physician satisfies the continuing medical education requirements applicable to the physician.

(Added Pub. L. 105–261, div. A, title VII, § 734(b)(1), Oct. 17, 1998, 112 Stat. 2073.)

IMPLEMENTATION

Pub. L. 105–261, div. A, title VII, § 734(c)(2), Oct. 17, 1998, 112 Stat. 2073, provided that: ''The system required by section 1094a of title 10, United States Code (as added by subsection (b)), shall take effect on the date that is three years after the date of the enactment of this Act [Oct. 17, 1998].''

OVERSIGHT OF GRADUATE MEDICAL EDUCATION PROGRAMS OF MILITARY DEPARTMENTS

Pub. L. 114–328, div. A, title VII, § 749, Dec. 23, 2016, 130 Stat. 2242, provided that:

''(a) PROCESS.—Not later than one year after the date of the enactment of this Act [Dec. 23, 2016], the Secretary of Defense shall establish and implement a process to provide oversight of the graduate medical education programs of the military departments to ensure that such programs fully support the operational medical force readiness requirements for health care providers of the Armed Forces and the medical readiness of the Armed Forces. The process shall include the following:

''(1) A process to review such programs to ensure, to the extent practicable, that such programs are—

''(A) conducted jointly among the military departments; and

''(B) focused on, and related to, operational medical force readiness requirements.

''(2) A process to minimize duplicative programs relating to such programs among the military departments.

''(3) A process to ensure that—

''(A) assignments of faculty, support staff, and students within such programs are coordinated among the military departments; and

''(B) the Secretary optimizes resources by using military medical treatment facilities as training platforms when and where most appropriate.

''(4) A process to review and, if necessary, restructure or realign, such programs to sustain and improve operational medical force readiness.

''(b) REPORT.—Not later than 30 days after the date on which the Secretary establishes the process under subsection (a), the Secretary shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report that describes such process. The report shall include a description of each graduate medical education program of the military departments, categorized by the following:

''(1) Programs that provide direct support to operational medical force readiness.

''(2) Programs that provide indirect support to operational medical force readiness.

''(3) Academic programs that provide other medical support.

''(c) COMPTROLLER GENERAL REVIEW AND REPORT.—

''(1) REVIEW.—The Comptroller General of the United States shall conduct a review of the process established under subsection (a), including with respect to each process described in paragraphs (1) through (4) of such subsection.

''(2) REPORT.—Not later than 180 days after the date on which the Secretary submits the report under subsection (b), the Comptroller General shall submit to the Committees on Armed Services of the Senate and the House of Representatives the review conducted under paragraph (1), including an assessment of the elements of the process established under subsection (a).''

JOINT PILOT PROGRAM FOR PROVIDING GRADUATE MEDICAL EDUCATION AND TRAINING FOR PHYSICIANS

Pub. L. 107–314, div. A, title VII, § 725(a)–(d), Dec. 2, 2002, 116 Stat. 2599, provided that:

''(a) IN GENERAL.—The Secretary of Defense and the Secretary of Veterans Affairs shall jointly carry out a pilot program under which graduate medical education and training is provided to military physicians and physician employees of the Department of Defense and the Department of Veterans Affairs through one or more programs carried out in military medical treatment facilities of the Department of Defense and medical centers of the Department of Veterans Affairs. The pilot program shall begin not later than January 1, 2003.

''(b) COST-SHARING AGREEMENT.—The Secretaries shall enter into an agreement for carrying out the pilot program. The agreement shall establish means for each Secretary to assist in paying the costs, with respect to individuals under the jurisdiction of that Secretary, incurred by the other Secretary in providing medical education and training under the pilot program.

''(c) USE OF EXISTING AUTHORITIES.—To carry out the pilot program, the Secretary of Defense and the Secretary of Veterans Affairs may use authorities provided to them under this subtitle [subtitle C (§§ 721–726) of title VII of div. A of Pub. L. 107–314, amending section 1104 of this title and sections 8110 and 8111 of Title 38, Veterans' Benefits, enacting provisions set out as notes under section 1074g of this title and sections 8110 and 8111 of Title 38, and repealing provisions set out as a note under this section], section 8111 of title 38, United States Code (as amended by section 721(a)), and other laws relating to the furnishing or support of medical education and the cooperative use of facilities.

''(d) TERMINATION OF PROGRAM.—The pilot program under this section shall terminate on July 31, 2008.''

JOINT DOD–VA PILOT PROGRAM FOR PROVIDING GRADUATE MEDICAL EDUCATION AND TRAINING FOR PHYSICIANS

Pub. L. 107–107, div. A, title VII, § 738, Dec. 28, 2001, 115 Stat. 1173, authorized a pilot program providing graduate medical education and training for physicians to be carried out jointly by the Secretary of Defense and the Secretary of Veterans Affairs, prior to repeal by Pub. L. 107–314, div. A, title VII, § 725(e), Dec. 2, 2002, 116 Stat. 2599.

§ 1095. Health care services incurred on behalf of covered beneficiaries: collection from third-party payers

(a)(1) In the case of a person who is a covered beneficiary, the United States shall have the

right to collect from a third-party payer reasonable charges for health care services incurred by the United States on behalf of such person through a facility of the uniformed services to the extent that the person would be eligible to receive reimbursement or indemnification from the third-party payer if the person were to incur such charges on the person's own behalf. If the insurance, medical service, or health plan of that payer includes a requirement for a deductible or copayment by the beneficiary of the plan, then the amount that the United States may collect from the third-party payer is a reasonable charge for the care provided less the appropriate deductible or copayment amount.

(2) A covered beneficiary may not be required to pay an additional amount to the United States for health care services by reason of this section.

(b) No provision of any insurance, medical service, or health plan contract or agreement having the effect of excluding from coverage or limiting payment of charges for certain care shall operate to prevent collection by the United States under subsection (a) if that care is provided—

(1) through a facility of the uniformed services;

(2) directly or indirectly by a governmental entity;

(3) to an individual who has no obligation to pay for that care or for whom no other person has a legal obligation to pay; or

(4) by a provider with which the third party payer has no participation agreement.

(c) Under regulations prescribed under subsection (f), records of the facility of the uniformed services that provided health care services to a beneficiary of an insurance, medical service, or health plan of a third-party payer shall be made available for inspection and review by representatives of the payer from which collection by the United States is sought.

(d) Notwithstanding subsections (a) and (b), and except as provided in subsection (j), collection may not be made under this section in the case of a plan administered under title XVIII or XIX of the Social Security Act (42 U.S.C. 1395 et seq.).

(e)(1) The United States may institute and prosecute legal proceedings against a third-party payer to enforce a right of the United States under this section.

(2) The administering Secretary may compromise, settle, or waive a claim of the United States under this section.

(f) The Secretary of Defense, in consultation with the other administering Secretaries, shall prescribe regulations for the administration of this section. Such regulations shall provide for computation of the reasonable cost of health care services. Computation of such reasonable cost may be based on—

(1) per diem rates;

(2) all-inclusive per visit rates;

(3) diagnosis-related groups; or

(4) such other method as may be appropriate.

(g) Amounts collected under this section from a third-party payer or under any other provision of law from any other payer for health care services provided at or through a facility of the uniformed services shall be credited to the appropriation supporting the maintenance and operation of the facility and shall not be taken into consideration in establishing the operating budget of the facility.

(h) In this section:

(1) The term ''third-party payer'' means an entity that provides an insurance, medical service, or health plan by contract or agreement, including an automobile liability insurance or no fault insurance carrier, and any other plan or program that is designed to provide compensation or coverage for expenses incurred by a beneficiary for health care services or products. Such term also includes entities described in subsection (j) under the terms and to the extent provided in such subsection.

(2) The term ''insurance, medical service, or health plan'' includes a preferred provider organization, an insurance plan described as Medicare supplemental insurance, and a personal injury protection plan or medical payments benefit plan for personal injuries resulting from the operation of a motor vehicle.

(3) The term ''health care services'' includes products provided or purchased through a facility of the uniformed services.

(i)(1) In the case of a third-party payer that is an automobile liability insurance or no fault insurance carrier, the right of the United States to collect under this section shall extend to health care services provided to a person entitled to health care under section 1074(a) of this title.

(2) In cases in which a tort liability is created upon some third person, collection from a third-party payer that is an automobile liability insurance carrier shall be governed by the provisions of Public Law 87–693 (42 U.S.C. 2651 et seq.).

(j) The Secretary of Defense may enter into an agreement with any health maintenance organization, competitive medical plan, health care prepayment plan, or other similar plan (pursuant to regulations issued by the Secretary) providing for collection under this section from such organization or plan for services provided to a covered beneficiary who is an enrollee in such organization or plan.

(k)(1) To improve the administration of this section and sections 1079(j)(1)[1] and 1086(d) of this title, the Secretary of Defense, in consultation with the other administering Secretaries, may prescribe regulations providing for the collection of information regarding insurance, medical service, or health plans of third-party payers held by covered beneficiaries.

(2) The collection of information under regulations prescribed under paragraph (1) shall be conducted in the same manner as is provided in section 1862(b)(5) of the Social Security Act (42 U.S.C. 1395y(b)(5)). The Secretary may provide for obtaining from the Commissioner of Social Security employment information comparable to the information provided to the Administrator of the Centers for Medicare & Medicaid Services pursuant to such section. Such regulations may require the mandatory disclosure of

[1] See References in Text note below.

Social Security account numbers for all covered beneficiaries.

(3) The Secretary may disclose relevant employment information collected under this subsection to fiscal intermediaries or other designated contractors.

(4) The Secretary may provide for contacting employers of covered beneficiaries to obtain group health plan information comparable to the information authorized to be obtained under section 1862(b)(5)(C) of the Social Security Act (42 U.S.C. 1395y(b)(5)(C)). Notwithstanding clause (iii) of such section, clause (ii) of such section regarding the imposition of civil money penalties shall apply to the collection of information under this paragraph.

(5) Information obtained under this subsection may not be disclosed for any purpose other than to carry out the purpose of this section and sections 1079(j)(1) [1] and 1086(d) of this title.

(Added Pub. L. 99–272, title II, § 2001(a)(1), Apr. 7, 1986, 100 Stat. 100; amended Pub. L. 101–189, div. A, title VII, § 727(a), title XVI, § 1622(e)(5), Nov. 29, 1989, 103 Stat. 1480, 1605; Pub. L. 101–510, div. A, title VII, § 713(a)–(d)(2), Nov. 5, 1990, 104 Stat. 1583, 1584; Pub. L. 102–25, title VII, § 701(j)(8), Apr. 6, 1991, 105 Stat. 116; Pub. L. 102–190, div. A, title VII, § 714, Dec. 5, 1991, 105 Stat. 1403; Pub. L. 103–160, div. A, title VII, § 713, Nov. 30, 1993, 107 Stat. 1689; Pub. L. 103–337, div. A, title VII, § 714(b), title X, § 1070(b)(6), Oct. 5, 1994, 108 Stat. 2802, 2857; Pub. L. 104–106, div. A, title VII, § 734, Feb. 10, 1996, 110 Stat. 381; Pub. L. 104–201, div. A, title VII, § 735(a), (b), Sept. 23, 1996, 110 Stat. 2598; Pub. L. 106–65, div. A, title VII, § 716(c)(1), Oct. 5, 1999, 113 Stat. 691; Pub. L. 107–314, div. A, title X, § 1041(a)(5), Dec. 2, 2002, 116 Stat. 2645; Pub. L. 108–173, title IX, § 900(e)(4)(B), Dec. 8, 2003, 117 Stat. 2373.)

References in Text

The Social Security Act, referred to in subsec. (d), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles XVIII and XIX of the Social Security Act are classified generally to subchapters XVIII (§ 1395 et seq.) and XIX (§ 1396 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

Public Law 87–693, referred to in subsec. (i)(2), is Pub. L. 87–693, Sept. 25, 1962, 76 Stat. 593, which is classified generally to chapter 32 (§ 2651 et seq.) of Title 42. For complete classification of this Act to the Code, see Tables.

Section 1079(j) of this title, referred to in subsec. (k)(1), (5), was redesignated section 1079(i) of this title by Pub. L. 113–291, div. A, title VII, § 703(a)(3), Dec. 19, 2014, 128 Stat. 3411.

Codification

Another section 1095 was renumbered section 1095a of this title.

Amendments

2003—Subsec. (k)(2). Pub. L. 108–173 substituted ''Centers for Medicare & Medicaid Services'' for ''Health Care Financing Administration'' in second sentence.

2002—Subsec. (g). Pub. L. 107–314 struck out par. (1) designation and par. (2) which read as follows: ''Not later than February 15 of each year, the Secretary of Defense shall submit to Congress a report specifying for each facility of the uniformed services the amount credited to the facility under this subsection during the preceding fiscal year.''

1999—Subsec. (a)(1). Pub. L. 106–65, § 716(c)(1)(A), substituted ''reasonable charges for'' for ''the reasonable costs of'', ''such charges'' for ''such costs'', and ''a reasonable charge for'' for ''the reasonable cost of''.

Subsec. (g)(1). Pub. L. 106–65, § 716(c)(1)(B), struck out ''the costs of'' after ''any other payer for''.

Subsec. (h)(1). Pub. L. 106–65, § 716(c)(1)(C), substituted ''The term 'third-party payer' means an entity that provides an insurance, medical service, or health plan by contract or agreement, including an automobile liability insurance or no fault insurance carrier, and any other plan or program that is designed to provide compensation or coverage for expenses incurred by a beneficiary for health care services or products.'' for ''The term 'third-party payer' means an entity that provides an insurance, medical service, or health plan by contract or agreement, including an automobile liability insurance or no fault insurance carrier and a workers' compensation program or plan.''

1996—Subsec. (g)(1). Pub. L. 104–201, § 735(a), inserted ''or through'' after ''provided at''.

Subsec. (h)(1). Pub. L. 104–201, § 735(b)(1), inserted ''and a workers' compensation program or plan'' after ''insurance carrier''.

Subsec. (h)(2). Pub. L. 104–201, § 735(b)(2), substituted ''organization,'' for ''organization and'' and inserted before period at end '', and a personal injury protection plan or medical payments benefit plan for personal injuries resulting from the operation of a motor vehicle''.

Subsec. (k). Pub. L. 104–106 added subsec. (k).

1994—Subsec. (b). Pub. L. 103–337, § 714(b)(1), substituted ''shall operate to prevent collection by the United States under subsection (a) if that care is provided—'' and pars. (1) to (4) for ''if that care is provided through a facility of the uniformed services shall operate to prevent collection by the United States under subsection (a).''

Subsec. (d). Pub. L. 103–337, § 714(b)(2), inserted ''and except as provided in subsection (j),'' after ''(b),''.

Subsec. (g). Pub. L. 103–337, § 1070(b)(6), made technical correction to directory language of Pub. L. 103–160, § 713(a)(1). See 1993 Amendment note below.

Subsec. (h)(1). Pub. L. 103–337, § 714(b)(3), inserted at end ''Such term also includes entities described in subsection (j) under the terms and to the extent provided in such subsection.''

Subsec. (j). Pub. L. 103–337, § 714(b)(4), added subsec. (j).

1993—Subsec. (g). Pub. L. 103–160, § 713(c), designated existing provisions as par. (1) and added par. (2).

Pub. L. 103–160, § 713(a)(2), inserted before period ''and shall not be taken into consideration in establishing the operating budget of the facility''.

Pub. L. 103–160, § 713(a)(1), as amended by Pub. L. 103–337, § 1070(b)(6), inserted ''or under any other provision of law from any other payer'' after ''third-party payer''.

Subsec. (h). Pub. L. 103–160, § 713(b), inserted ''a preferred provider organization and'' after ''includes'' in par. (2) and added par. (3).

1991—Subsec. (a)(1). Pub. L. 102–25 inserted ''a'' before ''covered beneficiary''.

Subsec. (i)(2). Pub. L. 102–190 struck out ''or no fault insurance'' before ''carrier''.

1990—Pub. L. 101–510, § 713(d)(2), substituted ''Health care services incurred on behalf of covered beneficiaries: collection from third-party payers'' for ''Collection from third-party payers of reasonable inpatient hospital care costs incurred on behalf of retirees and dependents'' in section catchline.

Subsec. (a)(1). Pub. L. 101–510, § 713(d)(1)(A), substituted ''covered beneficiary'' for ''covered by section 1074(b), 1076(a), or 1076(b) of this title''.

Pub. L. 101–510, § 713(a)(1), substituted ''health care services'' for ''inpatient hospital care''.

Subsec. (a)(2). Pub. L. 101–510, § 713(d)(1)(B), substituted ''covered beneficiary'' for ''person covered by section 1074(b), 1076(a), or 1076(b) of this title''.

Pub. L. 101–510, § 713(a)(1), substituted ''health care services'' for ''inpatient hospital care''.

Subsec. (c). Pub. L. 101–510, § 713(a)(1), substituted ''health care services'' for ''inpatient hospital care''.

Subsec. (f). Pub. L. 101–510, § 713(a)(1), substituted ''health care services'' for ''inpatient hospital care'' in introductory provisions.

Subsec. (f)(2) to (4). Pub. L. 101–510, § 713(b), added pars. (2) and (3) and redesignated former par. (2) as (4).

Subsec. (g). Pub. L. 101–510, § 713(a)(1), substituted ''health care services'' for ''inpatient hospital care''.

Subsecs. (h), (i). Pub. L. 101–510, § 713(c), added subsecs. (h) and (i) and struck out former subsec. (h) which read as follows: ''In this section, the term 'third-party payer' means an entity that provides an insurance, medical service, or health plan by contract or agreement.''

1989—Subsec. (g). Pub. L. 101–189, § 727(a)(2), added subsec. (g). Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 101–189, § 1622(e)(5), which directed amendment of subsec. (g) by insertion of ''the term'' after ''In this section,'' was executed by making the insertion in subsec. (h) to reflect the probable intent of Congress and the intervening redesignation of subsec. (g) as (h) by Pub. L. 101–189, § 727(a)(1), see below.

Pub. L. 101–189, § 727(a)(1), redesignated subsec. (g) as (h).

EFFECTIVE DATE OF 1994 AMENDMENT

Pub. L. 103–337, div. A, title X, § 1070(b), Oct. 5, 1994, 108 Stat. 2856, provided that the amendment made by that section is effective as of Nov. 30, 1993, and as if included in the National Defense Authorization Act for Fiscal Year 1994, Pub. L. 103–160, as enacted.

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–510, div. A, title VII, § 713(e), Nov. 5, 1990, 104 Stat. 1584, provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to health care services provided in a medical facility of the uniformed services after the date of the enactment of this Act [Nov. 5, 1990], but not with respect to collection under any insurance, medical service, or health plan agreement entered into before the date of the enactment of this Act that the Secretary of Defense determines clearly excludes payment for such services. Such an exception shall apply until the amendment or renewal of such agreement after that date.''

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–189, div. A, title VII, § 727(b), Nov. 29, 1989, 103 Stat. 1480, provided that: ''The amendment made by this section [amending this section] shall take effect on October 1, 1989, and shall apply to amounts collected under section 1095 of title 10, United States Code, on or after that date.''

EFFECTIVE DATE

Pub. L. 99–272, title II, § 2001(b), Apr. 7, 1986, 100 Stat. 101, provided that: ''Section 1095 of title 10, United States Code, as added by subsection (a), shall apply with respect to inpatient hospital care provided after September 30, 1986, but only with respect to an insurance, medical service, or health plan agreement entered into, amended, or renewed on or after the date of the enactment of this Act [Apr. 7, 1986].''

PILOT PROGRAM ON INCREASED THIRD-PARTY COLLECTION REIMBURSEMENTS IN MILITARY MEDICAL TREATMENT FACILITIES

Pub. L. 113–66, div. A, title VII, § 712, Dec. 26, 2013, 127 Stat. 793, required the Secretary of Defense, in coordination with the Secretaries of the military departments, to conduct a three-year pilot program to demonstrate and assess the feasibility of implementing commercially available enhanced recovery practices to increase reimbursement from third-party payers in military medical treatment facilities and report the results to Congress not later than 180 days after the program's completion.

§ 1095a. Medical care: members held as captives and their dependents

(a) Under regulations prescribed by the President, the Secretary concerned shall pay (by advancement or reimbursement) any person who is a former captive, and any dependent of that person or of a person who is in a captive status, for health care and other expenses related to such care, to the extent that such care—

(1) is incident to the captive status; and

(2) is not covered—

(A) by any other Government medical or health program; or

(B) by insurance.

(b) In the case of any person who is eligible for medical care under section 1074 or 1076 of this title, such regulations shall require that, whenever practicable, such care be provided in a facility of the uniformed services.

(c) In this section:

(1) The terms ''captive status'' and ''former captive'' have the meanings given those terms in section 559 of title 37.

(2) The term ''dependent'' has the meaning given that term in section 551 of that title.

(Added Pub. L. 99–399, title VIII, § 806(c)(1), Aug. 27, 1986, 100 Stat. 886, § 1095; renumbered § 1095a, Pub. L. 100–26, § 7(e)(2), Apr. 21, 1987, 101 Stat. 281; amended Pub. L. 100–526, title I, § 106(b)(1), Oct. 24, 1988, 102 Stat. 2625.)

AMENDMENTS

1988—Subsec. (c). Pub. L. 100–526 substituted ''The terms 'captive status' '' for '' 'Captive status' '' in par. (1), and ''The term 'dependent' '' for '' 'Dependent' '' in par. (2).

EFFECTIVE DATE; REGULATIONS

Pub. L. 99–399, title VIII, § 806(c)(3), Aug. 27, 1986, 100 Stat. 886, provided that:

''(A) Section 1095 [now 1095a] of title 10, United States Code, as added by paragraph (1), shall apply with respect to any person whose captive status begins after January 21, 1981.

''(B) The President shall prescribe specific regulations regarding the carrying out of such section with respect to persons whose captive status begins during the period beginning on January 21, 1981, and ending on the effective date of that section [Aug. 27, 1986].''

DELEGATION OF FUNCTIONS

Functions of President under this section delegated to Secretary of Defense, see section 3 of Ex. Ord. No. 12598, June 17, 1987, 52 F.R. 23421, set out as a note under section 5569 of Title 5, Government Organization and Employees.

§ 1095b. TRICARE program: contractor payment of certain claims

(a) PAYMENT OF CLAIMS.—(1) The Secretary of Defense may authorize a contractor under the TRICARE program to pay a claim described in paragraph (2) before seeking to recover from a third-party payer the costs incurred by the contractor to provide health care services that are the basis of the claim to a beneficiary under such program.

(2) A claim under this paragraph is a claim—

(A) that is submitted to the contractor by a provider under the TRICARE program for payment for services for health care provided to a covered beneficiary; and

(B) that is identified by the contractor as a claim for which a third-party payer may be liable.

(b) RECOVERY FROM THIRD-PARTY PAYERS.—The United States shall have the same right to collect charges related to claims described in subsection (a) as charges for claims under section 1095 of this title.

(c) DEFINITION OF THIRD-PARTY PAYER.—In this section, the term ''third-party payer'' has the meaning given that term in section 1095(h) of this title, except that such term excludes primary medical insurers.

(Added Pub. L. 105–261, div. A, title VII, § 711(a)(1), Oct. 17, 1998, 112 Stat. 2058; amended Pub. L. 106–65, div. A, title VII, § 716(c)(2), Oct. 5, 1999, 113 Stat. 692.)

AMENDMENTS

1999—Subsec. (b). Pub. L. 106–65 substituted ''The United States shall have the same right to collect charges related to claims described in subsection (a) as charges for claims under section 1095 of this title.'' for ''A contractor for the provision of health care services under the TRICARE program that pays a claim described in subsection (a)(2) shall have the right to collect from the third-party payer the costs incurred by such contractor on behalf of the covered beneficiary. The contractor shall have the same right to collect such costs under this subsection as the right of the United States to collect costs under section 1095 of this title.''

§ 1095c. TRICARE program: facilitation of processing of claims

(a) REDUCTION OF PROCESSING TIME.—(1) With respect to claims for payment for medical care provided under the TRICARE program, the Secretary of Defense shall implement a system for processing of claims under which—

(A) 95 percent of all clean claims must be processed not later than 30 days after the date that such claims are submitted to the claims processor; and

(B) 100 percent of all clean claims must be processed not later than 100 days after the date that such claims are submitted to the claims processor.

(2) The Secretary may, under the system required by paragraph (1) and consistent with the provisions in chapter 39 of title 31 (commonly referred to as the ''Prompt Payment Act''), require that interest be paid on clean claims that are not processed within 30 days.

(3) For purposes of this subsection, the term ''clean claim'' means a claim that has no defect, impropriety (including a lack of any required substantiating documentation), or particular circumstance requiring special treatment that prevents timely payment on the claim under this section.

(b) REQUIREMENT TO PROVIDE START-UP TIME FOR CERTAIN CONTRACTORS.—(1) Except as provided in paragraph (3), the Secretary of Defense shall not require that a contractor described in paragraph (2) begin to provide managed care support pursuant to a contract to provide such support under the TRICARE program until at least nine months after the date of the award of the contract, but in no case later than one year after the date of such award.

(2) A contractor under this paragraph is a contractor who is awarded a contract to provide managed care support under the TRICARE program—

(A) who has not previously been awarded such a contract by the Department of Defense; or

(B) who has previously been awarded such a contract by the Department of Defense but for whom the subcontractors have not previously been awarded the subcontracts for such a contract.

(3) The Secretary may reduce the nine-month start-up period required under paragraph (1) if—

(A) the Secretary—

(i) determines that a shorter period is sufficient to ensure effective implementation of all contract requirements; and

(ii) submits notification to the Committees on Armed Services of the House of Representatives and the Senate of the Secretary's intent to reduce the nine-month start-up period; and

(B) 60 days have elapsed since the date of such notification.

(c) INCENTIVES FOR ELECTRONIC PROCESSING.—The Secretary of Defense shall require that new contracts for managed care support under the TRICARE program provide that the contractor be permitted to provide financial incentives to health care providers who file claims for payment electronically.

(d) CORRESPONDENCE TO MEDICARE CLAIMS INFORMATION REQUIREMENTS.—The Secretary of Defense, in consultation with the other administering Secretaries, shall limit the information required in support of claims for payment for health care items and services provided under the TRICARE program to that information that is identical to the information that would be required for claims for reimbursement for those items and services under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) except for that information, if any, that is uniquely required by the TRICARE program. The Secretary of Defense shall report to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives any information that is excepted under this provision, and the justification for that exception.

(Added Pub. L. 106–65, div. A, title VII, § 713(a)(1), Oct. 5, 1999, 113 Stat. 688; amended Pub. L. 107–107, div. A, title VII, § 708(b), Dec. 28, 2001, 115 Stat. 1164; Pub. L. 107–314, div. A, title VII, § 711(a), Dec. 2, 2002, 116 Stat. 2588.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (d), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XVIII of the Act is classified generally to subchapter XVIII (§ 1395 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

2002—Subsec. (d). Pub. L. 107–314 added subsec. (d).

2001—Subsec. (b)(1). Pub. L. 107–107, § 708(b)(1), substituted ''Except as provided in paragraph (3), the Secretary'' for ''The Secretary'' and struck out ''contract.

In such case the contractor may begin to provide managed care support pursuant to the contract as soon as practicable after the award of the'' before ''contract, but in no case''.

Subsec. (b)(3). Pub. L. 107–107, § 708(b)(2), added par. (3).

EFFECTIVE DATE

Pub. L. 106–65, div. A, title VII, § 713(d), Oct. 5, 1999, 113 Stat. 689, provided that: ''Section 1095c(b) of title 10, United States Code (as added by subsection (a)), shall apply with respect to any contract to provide managed care support under the TRICARE program negotiated after the date of the enactment of this Act [Oct. 5, 1999].''

APPLICABILITY

Pub. L. 107–314, div. A, title VII, § 711(b), Dec. 2, 2002, 116 Stat. 2588, provided that: ''The Secretary of Defense, in consultation with the other administering Secretaries referred to in section 1072(3) of title 10, United States Code, shall apply the limitations required under subsection (d) of section 1095c of such title (as added by subsection (a)) with respect to contracts entered into under the TRICARE program on or after October 1, 2002.''

STANDARDIZATION OF CLAIMS PROCESSING UNDER TRICARE PROGRAM AND MEDICARE PROGRAM

Pub. L. 109–364, div. A, title VII, § 731, Oct. 17, 2006, 120 Stat. 2295, as amended by Pub. L. 112–81, div. A, title X, § 1062(d)(2), Dec. 31, 2011, 125 Stat. 1585, provided that:

''(a) IN GENERAL.—Effective beginning with the next contract option period for managed care support contracts under the TRICARE program, the claims processing requirements under the TRICARE program on the matters described in subsection (b) shall be identical to the claims processing requirements under the Medicare program on such matters.

''(b) COVERED MATTERS.—The matters described in this subsection are as follows:

''(1) The utilization of single or multiple provider identification numbers for purposes of the payment of health care claims by Department of Defense contractors.

''(2) The documentation required to substantiate medical necessity for items and services that are covered under both the TRICARE program and the Medicare program.

''(c) REPORT ON COLLECTION OF AMOUNTS OWED.—Not later than March 1, 2007, the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report setting forth a detailed description of the following:

''(1) All TRICARE policies and directives concerning collection of amounts owed to the United States pursuant to section 1095 of title 10, United States Code, from third party payers, including—

''(A) collection by military treatment facilities from third-party payers; and

''(B) collection by contractors providing managed care support under the TRICARE program from other insurers in cases of private insurance liability for health care costs of a TRICARE beneficiary.

''(2) An estimate of the outstanding amounts owed from third party payers in each of fiscal years 2002, 2003, and 2004.

''(3) The amounts collected from third party payers in each of fiscal years 2002, 2003, and 2004.

''(4) A plan of action to streamline the business practices that underlie the policies and directives described in paragraph (1).

''(5) A plan of action to accelerate and increase the collections or recoupments of amounts owed from third party payers.

''(d) DEFINITIONS.—In this section:

''(1) The term 'Medicare program' means the program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.).

''(2) The term 'TRICARE program' has the meaning given that term in section 1072(7) of title 10, United States Code.''

CLAIMS PROCESSING IMPROVEMENTS

Pub. L. 106–398, § 1 [[div. A], title VII, § 727], Oct. 30, 2000, 114 Stat. 1654, 1654A–188, provided that: ''Beginning on the date of the enactment of this Act [Oct. 30, 2000], the Secretary of Defense shall, to the maximum extent practicable, take all necessary actions to implement the following improvements with respect to processing of claims under the TRICARE program:

''(1) Use of the TRICARE encounter data information system rather than the health care service record in maintaining information on covered beneficiaries under chapter 55 of title 10, United States Code.

''(2) Elimination of all delays in payment of claims to health care providers that may result from the development of the health care service record or TRICARE encounter data information.

''(3) Requiring all health care providers under the TRICARE program that the Secretary determines are high-volume providers to submit claims electronically.

''(4) Processing 50 percent of all claims by health care providers and institutions under the TRICARE program by electronic means.

''(5) Authorizing managed care support contractors under the TRICARE program to require providers to access information on the status of claims through the use of telephone automated voice response units.''

DEADLINE FOR IMPLEMENTATION

Pub. L. 106–65, div. A, title VII, § 713(c), Oct. 5, 1999, 113 Stat. 689, provided that the system for processing claims required under subsec. (a) of this section was to be implemented not later than 6 months after Oct. 5, 1999.

§ 1095d. TRICARE program: waiver of certain deductibles

(a) WAIVER AUTHORIZED.—The Secretary of Defense may waive the deductible payable for medical care provided under the TRICARE program to an eligible dependent of—

(1) a member of a reserve component on active duty pursuant to a call or order to active duty for a period of more than 30 days; or

(2) a member of the National Guard on full-time National Guard duty pursuant to a call or order to full-time National Guard duty for a period of more than 30 days.

(b) ELIGIBLE DEPENDENT.—As used in this section, the term ''eligible dependent'' means a dependent described in subparagraph (A), (D), or (I) of section 1072(2) of this title.

(Added Pub. L. 106–65, div. A, title VII, § 714(a), Oct. 5, 1999, 113 Stat. 689; amended Pub. L. 106–398, § 1 [[div. A], title X, § 1087(a)(7)], Oct. 30, 2000, 114 Stat. 1654, 1654A–290; Pub. L. 108–375, div. A, title VII, § 704, Oct. 28, 2004, 118 Stat. 1983.)

AMENDMENTS

2004—Subsec. (a). Pub. L. 108–375 substituted ''more than 30 days'' for ''less than one year'' in pars. (1) and (2).

2000—Subsec. (b). Pub. L. 106–398 substituted ''subparagraph'' for ''subparagraphs''.

§ 1095e. TRICARE program: beneficiary counseling and assistance coordinators

(a) ESTABLISHMENT OF POSITIONS.—The Secretary of Defense shall require in regulations that—

(1) each lead agent under the TRICARE program—

(A) designate a person to serve full-time as a beneficiary counseling and assistance coordinator for beneficiaries under the TRICARE program;

(B) designate for each of the TRICARE program regions at least one person (other than a person designated under subparagraph (A)) to serve full-time as a beneficiary counseling and assistance coordinator solely for members of the reserve components and their dependents who are beneficiaries under the TRICARE program; and

(C) provide for toll-free telephone communication between such beneficiaries and the beneficiary counseling and assistance coordinator; and

(2) the commander of each military medical treatment facility under this chapter designate a person to serve, as a primary or collateral duty, as beneficiary counseling and assistance coordinator for beneficiaries under the TRICARE program served at that facility.

(b) DUTIES.—The Secretary shall prescribe the duties of the position of beneficiary counseling and assistance coordinator in the regulations required by subsection (a).

(Added Pub. L. 106–65, div. A, title VII, § 715(a)(1), Oct. 5, 1999, 113 Stat. 690; amended Pub. L. 108–136, div. A, title VII, § 707, Nov. 24, 2003, 117 Stat. 1529.)

AMENDMENTS

2003—Subsec. (a)(1). Pub. L. 108–136 added subpar. (B) and redesignated former subpar. (B) as (C).

DEADLINE FOR INITIAL DESIGNATIONS

Pub. L. 106–65, div. A, title VII, § 715(b), Oct. 5, 1999, 113 Stat. 690, directed that each beneficiary counseling and assistance coordinator required under the regulations described in subsec. (a) of this section be designated not later than Jan. 15, 2000.

§ 1095f. TRICARE program: referrals and preauthorizations under TRICARE Prime

(a) REFERRALS.—(1) Except as provided by paragraph (2), a beneficiary enrolled in TRICARE Prime shall be required to obtain a referral for care through a designated primary care manager (or other care coordinator) prior to obtaining care under the TRICARE program.

(2) The Secretary may waive the referral requirement in paragraph (1) in such circumstances as the Secretary may establish for purposes of this subsection.

(3) The cost-sharing amounts for a beneficiary enrolled in TRICARE Prime who does not obtain a referral for care under paragraph (1) (or a waiver pursuant to paragraph (2) for such care) shall be determined under section 1075a(c) of this title.

(b) PREAUTHORIZATION.—A beneficiary enrolled in TRICARE Prime shall be required to obtain preauthorization only with respect to a referral for the following:

(1) Inpatient hospitalization.

(2) Inpatient care at a skilled nursing facility.

(3) Inpatient care at a rehabilitation facility.

(4) Inpatient care at a residential treatment center.

(c) PROHIBITION REGARDING PRIOR AUTHORIZATION FOR CERTAIN REFERRALS.—The Secretary of Defense shall ensure that no contract for managed care support under the TRICARE program includes any requirement that a managed care support contractor require a primary care or specialty care provider to obtain prior authorization before referring a patient to a specialty care provider that is part of the network of health care providers or institutions of the contractor.

(Added Pub. L. 106–398, § 1 [[div. A], title VII, § 728(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–189; amended Pub. L. 114–328, div. A, title VII, § 701(c), Dec. 23, 2016, 130 Stat. 2186; Pub. L. 115–91, div. A, title VII, § 739(e)(1), Dec. 12, 2017, 131 Stat. 1447.)

AMENDMENTS

2017—Subsec. (b)(4). Pub. L. 115–91 added par. (4).

2016—Pub. L. 114–328 amended section generally. Prior to amendment, text read as follows: ''The Secretary of Defense shall ensure that no contract for managed care support under the TRICARE program includes any requirement that a managed care support contractor require a primary care or specialty care provider to obtain prior authorization before referring a patient to a specialty care provider that is part of the network of health care providers or institutions of the contractor.''

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114–328 applicable with respect to the provision of health care under the TRICARE program beginning on Jan. 1, 2018, see section 701(k) of Pub. L. 114–328, set out as a note under section 1072 of this title.

EFFECTIVE DATE

Pub. L. 106–398, § 1 [[div. A], title VII, § 728(c)], Oct. 30, 2000, 114 Stat. 1654, 1654A–189, provided that: ''Section 1095f of title 10, United States Code, as added by subsection (a), shall apply with respect to a TRICARE managed care support contract entered into by the Department of Defense after the date of the enactment of this Act [Oct. 30, 2000].''

STREAMLINING OF TRICARE PRIME BENEFICIARY REFERRAL PROCESS

Pub. L. 115–232, div. A, title VII, § 714, Aug. 13, 2018, 132 Stat. 1812, provided that:

''(a) IN GENERAL.—The Secretary of Defense shall streamline the process under section 1095f of title 10, United States Code, by which beneficiaries enrolled in TRICARE Prime are referred to the civilian provider network for inpatient or outpatient care under the TRICARE program.

''(b) OBJECTIVES.—In carrying out the requirement in subsection (a), the Secretary shall meet the following objectives:

''(1) The referral process shall model best industry practices for referrals from primary care managers to specialty care providers.

''(2) The process shall limit administrative requirements for enrolled beneficiaries.

''(3) Beneficiary preferences for communications relating to appointment referrals using state-of-the-art information technology shall be used to expedite the process.

"(4) There shall be effective and efficient processes to determine the availability of appointments at military medical treatment facilities and, when unavailable, to make prompt referrals to network providers under the TRICARE program.

"(c) DEADLINE FOR IMPLEMENTATION.—The requirement in subsection (a) shall be implemented for referrals under TRICARE Prime in calendar year 2019.

"(d) EVALUATION AND IMPROVEMENT.—After 2019, the Secretary shall—

"(1) evaluate the referral process described in subsection (a) not less often than annually; and

"(2) make appropriate improvements to the process in light of such evaluations.

"(e) DEFINITIONS.—In this section, the terms 'TRICARE program' and 'TRICARE Prime' have the meaning given such terms in section 1072 of title 10, United States Code."

§ 1095g. TRICARE program: waiver of recoupment of erroneous payments caused by administrative error

(a) WAIVER OF RECOUPMENT.—The Secretary of Defense may waive recoupment from an individual who has benefitted from an erroneous TRICARE payment in a case in which each of the following applies:

(1) The payment was made because of an administrative error by an employee of the Department of Defense or a contractor under the TRICARE program.

(2) The individual (or in the case of a minor, the parent or guardian of the individual) had a good faith, reasonable belief that the individual was entitled to the benefit of such payment under this chapter.

(3) The individual relied on the expectation of such entitlement.

(4) The Secretary determines that a waiver of recoupment of such payment is necessary to prevent an injustice.

(b) RESPONSIBILITY OF CONTRACTOR.—In any case in which the Secretary waives recoupment under subsection (a) and the administrative error was on the part of a contractor under the TRICARE program, the Secretary shall, consistent with the requirements and procedures of the applicable contract, impose financial responsibility on the contractor for the erroneous payment.

(c) FINALITY OF DETERMINATIONS.—Any determination by the Secretary under this section to waive or decline to waive recoupment under subsection (a) is a final determination and shall not be subject to appeal or judicial review.

(Added Pub. L. 114–92, div. A, title VII, § 711(a), Nov. 25, 2015, 129 Stat. 864.)

§ 1096. Military-civilian health services partnership program

(a) RESOURCES SHARING AGREEMENTS.—The Secretary of Defense may enter into an agreement providing for the sharing of resources between facilities of the uniformed services and facilities of a civilian health care provider or providers that the Secretary contracts with under section 1079, 1086, or 1097 of this title if the Secretary determines that such an agreement would result in the delivery of health care to which covered beneficiaries are entitled under this chapter in a more effective, efficient, or economical manner.

(b) ELIGIBLE RESOURCES.—An agreement entered into under subsection (a) may provide for the sharing of—

(1) personnel (including support personnel);

(2) equipment;

(3) supplies; and

(4) any other items or facilities necessary for the provision of health care services.

(c) COMPUTATION OF CHARGES.—A covered beneficiary who is a dependent, with respect to care provided to such beneficiary in facilities of the uniformed services under a sharing agreement entered into under subsection (a), shall pay the charges prescribed by section 1078 of this title.

(d) REIMBURSEMENT FOR LICENSE FEES.—In any case in which it is necessary for a member of the uniformed services to pay a professional license fee imposed by a government in order to provide health care services at a facility of a civilian health care provider pursuant to an agreement entered into under subsection (a), the Secretary of Defense may reimburse the member for up to $500 of the amount of the license fee paid by the member.

(Added Pub. L. 99–661, div. A, title VII, § 701(a)(1), Nov. 14, 1986, 100 Stat. 3894; amended Pub. L. 103–337, div. A, title VII, § 712, Oct. 5, 1994, 108 Stat. 2801; Pub. L. 108–375, div. A, title VI, § 607(b), Oct. 28, 2004, 118 Stat. 1946.)

AMENDMENTS

2004—Subsec. (c). Pub. L. 108–375 inserted "who is a dependent" after "covered beneficiary" and substituted "shall pay the charges prescribed by section 1078 of this title." for "shall pay—

"(1) in the case of a dependent, the charges prescribed by section 1078 of this title; and

"(2) in the case of a member or former member entitled to retired or retainer pay, the charges prescribed by section 1075 of this title."

1994—Subsec. (d). Pub. L. 103–337 added subsec. (d).

PILOT PROGRAM ON CIVILIAN AND MILITARY PARTNERSHIPS TO ENHANCE INTEROPERABILITY AND MEDICAL SURGE CAPABILITY AND CAPACITY OF NATIONAL DISASTER MEDICAL SYSTEM

Pub. L. 116–92, div. A, title VII, § 740, Dec. 20, 2019, 133 Stat. 1465, as amended by Pub. L. 116–283, div. A, title VII, § 741, Jan. 1, 2021, 134 Stat. 3705, provided that:

"(a) IN GENERAL.—Beginning not later than September 30, 2021, the Secretary of Defense shall carry out a pilot program to establish partnerships with public, private, and nonprofit health care organizations, health care institutions, health care entities, academic medical centers of institutions of higher education, and hospitals in collaboration with the Secretary of Veterans Affairs, the Secretary of Health and Human Services, the Secretary of Homeland Security, and the Secretary of Transportation to enhance the interoperability and medical surge capability and capacity of the National Disaster Medical System under section 2812 of the Public Health Service Act (42 U.S.C. 300hh–11).

"(b) DURATION.—The Secretary of Defense shall carry out the pilot program under subsection (a) for a period of not more than five years.

"(c) LEAD OFFICIAL FOR DESIGN AND IMPLEMENTATION OF PILOT PROGRAM.—

"(1) IN GENERAL.—The Assistant Secretary of Defense for Health Affairs shall be the lead official for the design and implementation of the pilot program under subsection (a).

"(2) RESOURCES.—The Assistant Secretary of Defense for Health Affairs shall leverage the resources of the Defense Health Agency for execution of the

pilot program under subsection (a) and shall coordinate with the Chairman of the Joint Chiefs of Staff for the duration of the pilot program, including for the duration of any period of design or planning for the pilot program.

''(d) LOCATIONS.—

''(1) IN GENERAL.—The Secretary of Defense shall carry out the pilot program under subsection (a) at not fewer than five locations in the United States that are located at or near an organization, institution, entity, center, or hospital specified in subsection (a) with established expertise in disaster health preparedness and response and trauma care that augment and enhance the effectiveness of the pilot program.

''(2) PHASED SELECTION OF LOCATIONS.—

''(A) INITIAL SELECTION.—Not later than March 31, 2021, the Assistant Secretary of Defense for Health Affairs, in consultation with the Secretary of Veterans Affairs, the Secretary of Health and Human Services, the Secretary of Homeland Security, and the Secretary of Transportation, shall select not fewer than two locations at which to carry out the pilot program.

''(B) SUBSEQUENT SELECTION.—Not later than the end of the one-year period following selection of the locations under subparagraph (A), the Assistant Secretary of Defense for Health Affairs, in consultation with the Secretaries specified in subparagraph (A), shall select not fewer than two additional locations at which to carry out the pilot program until not fewer than five locations are selected in total under this paragraph.

''(3) CONSIDERATION FOR LOCATIONS.—In selecting locations for the pilot program under subsection (a), the Secretary shall consider—

''(A) the proximity of the location to civilian or military transportation hubs, including airports, railways, interstate highways, or ports;

''(B) the proximity of the location to an organization, institution, entity, center, or hospital specified in subsection (a) with the ability to accept a redistribution of casualties during times of war;

''(C) the proximity of the location to an organization, institution, entity, center, or hospital specified in subsection (a) with the ability to provide trauma care training opportunities for medical personnel of the Department of Defense; and

''(D) the proximity of the location to existing academic medical centers of institutions of higher education, facilities of the Department, or other institutions that have established expertise in the areas of—

''(i) highly infectious disease;

''(ii) biocontainment;

''(iii) quarantine;

''(iv) trauma care;

''(v) combat casualty care;

''(vi) the National Disaster Medical System under section 2812 of the Public Health Service Act (42 U.S.C. 300hh–11);

''(vii) disaster health preparedness and response;

''(viii) medical and public health management of biological, chemical, radiological, or nuclear hazards; or

''(ix) such other areas of expertise as the Secretary considers appropriate.

''(4) PRIORITY FOR LOCATIONS.—In selecting locations for the pilot program under subsection (a), the Secretary shall give priority to locations that would facilitate public-private partnerships with academic medical centers of institutions of higher education, hospitals, and other entities with facilities that have an established history of providing clinical care, treatment, training, and research in the areas described in paragraph (3)(D) or other specializations determined important by the Secretary for purposes of the pilot program.

''(e) REQUIREMENTS.—In establishing partnerships under the pilot program under subsection (a), the Secretary, in collaboration with the Secretary of Veterans Affairs, the Secretary of Health and Human Services, the Secretary of Homeland Security, and the Secretary of Transportation, shall establish requirements under such partnerships for staffing, specialized training, medical logistics, telemedicine, patient regulating, movement, situational status reporting, tracking, and surveillance.

''(f) EVALUATION METRICS.—The Secretary of Defense shall establish metrics to evaluate the effectiveness of the pilot program under subsection (a).

''(g) REPORTS.—

''(1) INITIAL REPORT.—

''(A) IN GENERAL.—Not later than 180 days after the commencement of the pilot program under subsection (a), the Secretary shall submit to the appropriate congressional committees a report on the pilot program.

''(B) ELEMENTS.—The report under subparagraph (A) shall include the following:

''(i) A description of the pilot program.

''(ii) The requirements established under subsection (e).

''(iii) The evaluation metrics established under subsection (f).

''(iv) Such other matters relating to the pilot program as the Secretary considers appropriate.

''(2) FINAL REPORT.—Not later than 180 days after the completion of the pilot program under subsection (a), the Secretary shall submit to the appropriate congressional committees a report on the pilot program.

''(h) DEFINITIONS.—In this section:

''(1) The term 'appropriate congressional committees' means—

''(A) The Committee on Armed Services, the Committee on Transportation and Infrastructure, the Committee on Veterans' Affairs, the Committee on Homeland Security, and the Committee on Energy and Commerce of the House of Representatives.

''(B) The Committee on Armed Services, the Committee on Commerce, Science, and Transportation, the Committee on Veterans' Affairs, the Committee on Homeland Security and Governmental Affairs, and the Committee on Health, Education, Labor, and Pensions of the Senate.

''(2) The term 'institution of higher education' means a four-year institution of higher education, as defined in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)).''

ESTABLISHMENT OF HIGH PERFORMANCE MILITARY-CIVILIAN INTEGRATED HEALTH DELIVERY SYSTEMS

Pub. L. 114–328, div. A, title VII, §706, Dec. 23, 2016, 130 Stat. 2206, provided that:

''(a) IN GENERAL.—Not later than January 1, 2018, the Secretary of Defense shall establish military-civilian integrated health delivery systems through partnerships with other health systems, including local or regional health systems in the private sector—

''(1) to improve access to health care for covered beneficiaries;

''(2) to enhance the experience of covered beneficiaries in receiving health care;

''(3) to improve health outcomes for covered beneficiaries;

''(4) to share resources between the Department of Defense and the private sector, including such staff, equipment, and training assets as may be required to carry out such integrated health delivery systems;

''(5) to maintain services within military treatment facilities that are essential for the maintenance of operational medical force readiness skills of health care providers of the Department; and

''(6) to provide members of the Armed Forces with additional training opportunities to maintain such readiness skills.

''(b) ELEMENTS OF SYSTEMS.—Each military-civilian integrated health delivery system established under subsection (a) shall—

''(1) deliver high quality health care as measured by leading national health quality measurement organizations;

''(2) achieve greater efficiency in the delivery of health care by identifying and implementing within each such system improvement opportunities that guide patients through the entire continuum of care, thereby reducing variations in the delivery of health care and preventing medical errors and duplication of medical services;

''(3) improve population-based health outcomes by using a team approach to deliver case management, prevention, and wellness services to high-need and high-cost patients;

''(4) focus on preventive care that emphasizes—

''(A) early detection and timely treatment of disease;

''(B) periodic health screenings; and

''(C) education regarding healthy lifestyle behaviors;

''(5) coordinate and integrate health care across the continuum of care, connecting all aspects of the health care received by the patient, including the patient's health care team;

''(6) facilitate access to health care providers, including—

''(A) after-hours care;

''(B) urgent care; and

''(C) through telehealth appointments, when appropriate;

''(7) encourage patients to participate in making health care decisions;

''(8) use evidence-based treatment protocols that improve the consistency of health care and eliminate ineffective, wasteful health care practices; and

''(9) improve coordination of behavioral health services with primary health care.

''(c) AGREEMENTS.—

''(1) IN GENERAL.—In establishing military-civilian integrated health delivery systems through partnerships under subsection (a), the Secretary shall seek to enter into memoranda of understanding or contracts between military treatment facilities and health maintenance organizations, health care centers of excellence, public or private academic medical institutions, regional health organizations, integrated health systems, accountable care organizations, and such other health systems as the Secretary considers appropriate.

''(2) PRIVATE SECTOR CARE.—Memoranda of understanding and contracts entered into under paragraph (1) shall ensure that covered beneficiaries are eligible to enroll in and receive medical services under the private sector components of military-civilian integrated health delivery systems established under subsection (a).

''(3) VALUE-BASED REIMBURSEMENT METHODOLOGIES.—The Secretary shall incorporate value-based reimbursement methodologies, such as capitated payments, bundled payments, or pay for performance, into memoranda of understanding and contracts entered into under paragraph (1) to reimburse entities for medical services provided to covered beneficiaries under such memoranda of understanding and contracts.

''(4) QUALITY OF CARE.—Each memorandum of understanding or contract entered into under paragraph (1) shall ensure that the quality of services received by covered beneficiaries through a military-civilian integrated health delivery system under such memorandum of understanding or contract is at least comparable to the quality of services received by covered beneficiaries from a military treatment facility.

''(d) COVERED BENEFICIARY DEFINED.—In this section, the term 'covered beneficiary' has the meaning given that term in section 1072 of title 10, United States Code.''

§ 1097. Contracts for medical care for retirees, dependents, and survivors: alternative delivery of health care

(a) IN GENERAL.—The Secretary of Defense, after consulting with the other administering Secretaries, may contract for the delivery of health care to which covered beneficiaries are entitled under this chapter. The Secretary may enter into a contract under this section with any of the following:

(1) Health maintenance organizations.

(2) Preferred provider organizations.

(3) Individual providers, individual medical facilities, or insurers.

(4) Consortiums of such providers, facilities, or insurers.

(b) SCOPE OF COVERAGE UNDER HEALTH CARE PLANS.—A contract entered into under this section may provide for the delivery of—

(1) selected health care services;

(2) total health care services for selected covered beneficiaries; or

(3) total health care services for all covered beneficiaries who reside in a geographical area designated by the Secretary.

(c) COORDINATION WITH FACILITIES OF THE UNIFORMED SERVICES.—The Secretary of Defense may provide for the coordination of health care services provided pursuant to any contract or agreement under this section with those services provided in medical treatment facilities of the uniformed services. Subject to the availability of space and facilities and the capabilities of the medical or dental staff, the Secretary may not deny access to facilities of the uniformed services to a covered beneficiary on the basis of whether the beneficiary enrolled or declined enrollment in any program established under, or operating in connection with, any contract under this section. Notwithstanding the preferences established by sections 1074(b) and 1076 of this title, the Secretary shall, as an incentive for enrollment, establish reasonable preferences for services in facilities of the uniformed services for covered beneficiaries enrolled in any program established under, or operating in connection with, any contract under this section.

(d) COORDINATION WITH OTHER HEALTH CARE PROGRAMS.—In the case of a covered beneficiary who is enrolled in a managed health care program not operated under the authority of this chapter, the Secretary may contract under this section with such other managed health care program for the purpose of coordinating the beneficiary's dual entitlements under such program and this chapter. A managed health care program with which arrangements may be made under this subsection includes any health maintenance organization, competitive medical plan, health care prepayment plan, or other managed care program recognized pursuant to regulations issued by the Secretary.

(e) CHARGES FOR HEALTH CARE.—(1) The Secretary of Defense may prescribe by regulation a premium, deductible, copayment, or other charge for health care provided under this section. In the case of contracts for health care services under this section or health care plans offered under section 1099 of this title for which

the Secretary permits covered beneficiaries who are covered by section 1086 of this title and who participate in such contracts or plans to pay an enrollment fee in lieu of meeting the applicable deductible amount specified in section 1086(b) of this title, the Secretary may establish the same (or a lower) enrollment fee for covered beneficiaries described in section 1086(d)(1) of this title who also participate in such contracts or plans. Without imposing additional costs on covered beneficiaries who participate in contracts for health care services under this section or health care plans offered under section 1099 of this title, the Secretary shall permit such covered beneficiaries to pay, on a quarterly basis, any enrollment fee required for such participation. Except as provided by paragraph (2), a premium, deductible, copayment, or other charge prescribed by the Secretary under this subsection may not be increased during the period beginning on April 1, 2006, and ending on September 30, 2011.

(2) Beginning October 1, 2012, the Secretary of Defense may only increase in any year the annual enrollment fees described in paragraph (1) by an amount equal to the percentage by which retired pay is increased under section 1401a of this title.

(Added Pub. L. 99–661, div. A, title VII, § 701(a)(1), Nov. 14, 1986, 100 Stat. 3895; amended Pub. L. 103–337, div. A, title VII, §§ 713, 714(a), Oct. 5, 1994, 108 Stat. 2802; Pub. L. 104–106, div. A, title VII, §§ 712, 713, Feb. 10, 1996, 110 Stat. 374; Pub. L. 109–364, div. A, title VII, § 704(a), Oct. 17, 2006, 120 Stat. 2280; Pub. L. 110–181, div. A, title VII, § 701(a), Jan. 28, 2008, 122 Stat. 187; Pub. L. 110–417, [div. A], title VII, § 701(a), Oct. 14, 2008, 122 Stat. 4498; Pub. L. 111–383, div. A, title VII, § 701(a), Jan. 7, 2011, 124 Stat. 4244; Pub. L. 112–81, div. A, title VII, § 701(a), Dec. 31, 2011, 125 Stat. 1469.)

AMENDMENTS

2011—Subsec. (e). Pub. L. 112–81 designated existing provisions as par. (1), substituted "Except as provided by paragraph (2), a premium," for "A premium,", and added par. (2).

Subsec. (e). Pub. L. 111–383 substituted "September 30, 2011" for "September 30, 2009".

2008—Subsec. (e). Pub. L. 110–417 substituted "September 30, 2009" for "September 30, 2008".

Pub. L. 110–181 substituted "September 30, 2008" for "September 30, 2007".

2006—Subsec. (e). Pub. L. 109–364 inserted at end "A premium, deductible, copayment, or other charge prescribed by the Secretary under this subsection may not be increased during the period beginning on April 1, 2006, and ending on September 30, 2007."

1996—Subsec. (c). Pub. L. 104–106, § 712, substituted "Notwithstanding the preferences established by sections 1074(b) and 1076 of this title, the Secretary shall" for "However, the Secretary may".

Subsec. (e). Pub. L. 104–106, § 713, inserted at end "Without imposing additional costs on covered beneficiaries who participate in contracts for health care services under this section or health care plans offered under section 1099 of this title, the Secretary shall permit such covered beneficiaries to pay, on a quarterly basis, any enrollment fee required for such participation."

1994—Subsec. (c). Pub. L. 103–337, § 714(a)(2), added subsec. (c). Former subsec. (c) redesignated (e).

Pub. L. 103–337, § 713, inserted at end "In the case of contracts for health care services under this section or health care plans offered under section 1099 of this title for which the Secretary permits covered beneficiaries who are covered by section 1086 of this title and who participate in such contracts or plans to pay an enrollment fee in lieu of meeting the applicable deductible amount specified in section 1086(b) of this title, the Secretary may establish the same (or a lower) enrollment fee for covered beneficiaries described in section 1086(d)(1) of this title who also participate in such contracts or plans."

Subsecs. (d), (e). Pub. L. 103–337, § 714(a), added subsec. (d) and redesignated former subsec. (c) as (e).

CLARIFICATION OF APPLICATION FOR FISCAL YEAR 2013

Pub. L. 112–81, div. A, title VII, § 701(b), Dec. 31, 2011, 125 Stat. 1469, provided that: "The Secretary of Defense shall determine the maximum enrollment fees for TRICARE Prime under section 1097(e)(2) of title 10, United States Code, as added by subsection (a), for fiscal year 2013 and thereafter as if the enrollment fee for each enrollee during fiscal year 2012 was the amount charged to an enrollee who enrolled for the first time during such fiscal year."

§ 1097a. TRICARE Prime: automatic enrollments

(a) AUTOMATIC ENROLLMENT OF CERTAIN DEPENDENTS.—(1) In the case of a dependent of a member of the uniformed services who is entitled to medical and dental care under section 1076(a)(2)(A) of this title and resides in a catchment area in which TRICARE Prime is offered, the Secretary—

(A) shall automatically enroll the dependent in TRICARE Prime if the member is in pay grade E–4 or below; and

(B) may automatically enroll the dependent in TRICARE Prime if the member is in pay grade E–5 or higher.

(2) Whenever a dependent of a member is enrolled in TRICARE Prime under paragraph (1), the Secretary concerned shall provide written notice of the enrollment to the member.

(3) The enrollment of a dependent of the member may be terminated by the member or the dependent at any time.

(b) AUTOMATIC RENEWAL OF ENROLLMENTS OF COVERED BENEFICIARIES.—An enrollment of a covered beneficiary in TRICARE Prime shall be automatically renewed upon the expiration of the enrollment unless the renewal is declined.

(c) REGULATIONS AND EXCEPTIONS.—The Secretary of Defense shall prescribe regulations, including procedures, to carry out this section. Regulations prescribed to carry out the automatic enrollment requirements under this section may include such exceptions to the automatic enrollment procedures as the Secretary determines appropriate for the effective operation of TRICARE Prime.

(d) NO COPAYMENT FOR IMMEDIATE FAMILY.—No copayment shall be charged a member for care provided under TRICARE Prime to a dependent of a member of the uniformed services described in subparagraph (A), (D), or (I) of section 1072(2) of this title.

(e) DEFINITIONS.—In this section:

(1) The term "TRICARE Prime" means the managed care option of the TRICARE program.

(2) The term "catchment area", with respect to a facility of a uniformed service, means the service area of the facility, as designated under regulations prescribed by the administering Secretaries.

(Added Pub. L. 105–261, div. A, title VII, § 712(a)(1), Oct. 17, 1998, 112 Stat. 2058; amended Pub. L. 106–398, § 1 [[div. A], title VII, § 752(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–195; Pub. L. 107–107, div. A, title X, § 1048(a)(11), Dec. 28, 2001, 115 Stat. 1223; Pub. L. 112–239, div. A, title VII, § 711, Jan. 2, 2013, 126 Stat. 1801; Pub. L. 114–328, div. A, title VII, § 723, Dec. 23, 2016, 130 Stat. 2229; Pub. L. 116–92, div. A, title VII, § 702(b)(1), (2)(A), Dec. 20, 2019, 133 Stat. 1436.)

AMENDMENTS

2019—Pub. L. 116–92, § 702(b)(2)(A), struck out ''; payment options'' after ''enrollments'' in section catchline.

Subsecs. (c) to (f). Pub. L. 116–92, § 702(b)(1), redesignated subsecs. (d), (e), and (f) as (c), (d), and (e), respectively, and struck out former subsec. (c) which read as follows: ''PAYMENT OPTIONS FOR RETIREES.—A member or former member of the uniformed services eligible for medical care and dental care under section 1074(b) of this title may elect to have any fee payable by the member or former member for an enrollment in TRICARE Prime withheld from the member's retired pay, retainer pay, or equivalent pay, as the case may be, or to be paid from a financial institution through electronic transfers of funds. The fee shall be paid in accordance with the election. A member may elect under this section to pay the fee in full at the beginning of the enrollment period or to make payments on a monthly or quarterly basis.''

2016—Subsec. (b). Pub. L. 114–328 struck out par. (1) designation before ''An enrollment'' and struck out par. (2) which read as follows: ''Not later than 15 days before the expiration date for an enrollment of a covered beneficiary in TRICARE Prime, the Secretary concerned shall—

''(A) transmit a written notification of the pending expiration and renewal of enrollment to the covered beneficiary or, in the case of a dependent of a member of the uniformed services, to the member; and

''(B) afford the beneficiary or member, as the case may be, an opportunity to decline the renewal of enrollment.''

2013—Subsec. (a). Pub. L. 112–239 amended subsec. (a) generally. Prior to amendment, text read as follows: ''Each dependent of a member of the uniformed services in grade E4 or below who is entitled to medical and dental care under section 1076(a)(2)(A) of this title and resides in the catchment area of a facility of a uniformed service offering TRICARE Prime shall be automatically enrolled in TRICARE Prime at the facility. The Secretary concerned shall provide written notice of the enrollment to the member. The enrollment of a dependent of the member may be terminated by the member or the dependent at any time.''

2001—Subsec. (e). Pub. L. 107–107 substituted ''section 1072(2)'' for ''section 1072''.

2000—Subsecs. (e), (f). Pub. L. 106–398 added subsec. (e) and redesignated former subsec. (e) as (f).

EFFECTIVE DATE OF 2019 AMENDMENT

Pub. L. 116–92, div. A, title VII, § 702(c), Dec. 20, 2019, 133 Stat. 1437, provided that: ''The amendments made by this section [amending this section and section 1099 of this title] shall apply to health care coverage beginning on or after January 1, 2021.''

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–398, § 1 [[div. A], title VII, § 752(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–195, provided that: ''The amendments made by subsection (a) [amending this section] shall take effect 180 days after the date of the enactment of this Act [Oct. 30, 2000], and shall apply with respect to care provided on or after that date.''

EFFECTIVE DATE

Pub. L. 105–261, div. A, title VII, § 712(b), Oct. 17, 1998, 112 Stat. 2059, provided that: ''The regulations required under subsection (d) [now (c)] of section 1097a of title 10, United States Code (as added by subsection (a)), shall be prescribed to take effect not later than September 30, 1999. The section shall be applied under TRICARE Prime on and after the date on which the regulations take effect.''

FUTURE AVAILABILITY OF TRICARE PRIME THROUGHOUT THE UNITED STATES

Pub. L. 112–239, div. A, title VII, § 732, Jan. 2, 2013, 126 Stat. 1816, as amended by Pub. L. 113–66, div. A, title VII, § 701, Dec. 26, 2013, 127 Stat. 789; Pub. L. 113–291, div. A, title VII, § 723, Dec. 19, 2014, 128 Stat. 3417; Pub. L. 114–92, div. A, title VII, § 701, Nov. 25, 2015, 129 Stat. 860, provided that:

''(a) REPORT REQUIRED.—

''(1) IN GENERAL.—Not later than 90 days after the date of the enactment of this Act [Jan. 2, 2013], the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report setting forth the policy of the Department of Defense on the future availability of TRICARE Prime under the TRICARE program for eligible beneficiaries in all TRICARE regions throughout the United States.

''(2) ELEMENTS.—The report required by paragraph (1) shall include the following:

''(A) A description, by region, of the difference in availability of TRICARE Prime for eligible beneficiaries (other than eligible beneficiaries on active duty in the Armed Forces) under newly awarded TRICARE managed care contracts, including, in particular, an identification of the regions or areas in which TRICARE Prime will no longer be available for such beneficiaries under such contracts.

''(B) An estimate of the increased costs to be incurred by an affected eligible beneficiary for health care under the TRICARE program.

''(C) An estimate of the savings to be achieved by the Department as a result of the contracts described in subparagraph (A).

''(D) A description of the plans of the Department to continue to assess the impact on access to health care for affected eligible beneficiaries.

''(E) A description of the plan of the Department to provide assistance to affected eligible beneficiaries who are transitioning from TRICARE Prime to TRICARE Standard, including assistance with respect to identifying health care providers.

''(F) Any other matter the Secretary considers appropriate.

''(b) ADDITIONAL REPORT.—

''(1) REPORT REQUIRED.—Not later than 180 days after the date of the enactment of the Carl Levin and Howard P. 'Buck' McKeon National Defense Authorization Act for Fiscal Year 2015 [Dec. 19, 2014], the Secretary shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the status of reducing the availability of TRICARE Prime in regions described in subsection (d)(1)(B).

''(2) MATTERS INCLUDED.—The report under paragraph (1) shall include the following:

''(A) A description of the implementation of the transition for affected eligible beneficiaries under the TRICARE program who no longer have access to TRICARE Prime under TRICARE managed care contracts as of the date of the report, including—

''(i) the number of eligible beneficiaries who have transitioned from TRICARE Prime to the TRICARE Standard option of the TRICARE program since October 1, 2013;

''(ii) the number of eligible beneficiaries who transferred their TRICARE Prime enrollment to a more distant available Prime service area to remain in TRICARE Prime, by State;

''(iii) the number of eligible beneficiaries who were eligible to transfer to a more distant available Prime service area, but chose to use TRICARE Standard;

''(iv) the number of eligible beneficiaries who elected to return to TRICARE Prime pursuant to subsection (c)(1); and

''(v) the number of affected eligible beneficiaries who, as of the date of the report, changed residences to remain eligible for TRICARE Prime in a new region.

''(B) An estimate of the increased annual costs per affected eligible beneficiary incurred by such beneficiary for health care under the TRICARE program.

''(C) A description of the efforts of the Department to assess the impact on access to health care and beneficiary satisfaction for affected eligible beneficiaries.

''(D) A description of the estimated cost savings realized by reducing the availability of TRICARE Prime in regions described in subsection (d)(1)(B).

''(c) ACCESS TO TRICARE PRIME.—

''(1) ONE-TIME ELECTION.—Subject to paragraph (3), the Secretary shall ensure that each affected eligible beneficiary who is enrolled in TRICARE Prime as of September 30, 2013, may make a one-time election to continue such enrollment in TRICARE Prime, notwithstanding that a contract described in subsection (a)(2)(A) does not allow for such enrollment based on the location in which such beneficiary resides. The beneficiary may continue such enrollment in TRICARE Prime so long as the beneficiary resides in the same ZIP code as the ZIP code in which the beneficiary resided at the time of such election.

''(2) ENROLLMENT IN TRICARE STANDARD.—If an affected eligible beneficiary makes the one-time election under paragraph (1), the beneficiary may thereafter elect to enroll in TRICARE Standard at any time in accordance with a contract described in subsection (a)(2)(A).

''(3) RESIDENCE AT TIME OF ELECTION.—

''(A) Except as provided by subparagraph (B), an affected eligible beneficiary may not make the one-time election under paragraph (1) if, at the time of such election, the beneficiary does not reside—

''(i) in a ZIP code that is in a region described in subsection (d)(1)(B); and

''(ii) within 100 miles of a military medical treatment facility.

''(B) Subparagraph (A)(ii) shall not apply with respect to an affected eligible beneficiary who—

''(i) as of December 25, 2013, resides farther than 100 miles from a military medical treatment facility; and

''(ii) is such an eligible beneficiary by reason of service in the Army, Navy, Air Force, or Marine Corps.

''(4) NETWORK.—In continuing enrollment in TRICARE Prime pursuant to paragraph (1), the Secretary may determine whether to maintain a TRICARE network of providers in an area that is between 40 and 100 miles of a military medical treatment facility.

''(d) DEFINITIONS.—In this section:

''(1) The term 'affected eligible beneficiary' means an eligible beneficiary under the TRICARE Program (other than eligible beneficiaries on active duty in the Armed Forces) who, as of the date of the enactment of this Act [Jan. 2, 2013]—

''(A) is enrolled in TRICARE Prime; and

''(B) resides in a region of the United States in which TRICARE Prime enrollment will no longer be available for such beneficiary under a contract described in subsection (a)(2)(A) that does not allow for such enrollment because of the location in which such beneficiary resides.

''(2) The term 'TRICARE Prime' means the managed care option of the TRICARE program.

''(3) The term 'TRICARE program' has the meaning given that term in section 1072(7) of title 10, United States Code.

''(4) The term 'TRICARE Standard' means the fee-for-service option of the TRICARE Program.''

[Pub. L. 113–291, div. A, title VII, §723(b), Dec. 19, 2014, 128 Stat. 3418, which directed amendment of subsec. (b)(3)(A) of section 732 of Pub. L. 112–239, set out above, by substituting ''subsection (d)(1)(B)'' for ''subsection (c)(1)(B)'', was executed by making the substitution in subsec. (c)(3)(A) of section 732 of Pub. L. 112–239, to reflect the probable intent of Congress and the prior amendment by section 723(a)(1) of Pub. L. 113–291, which redesignated subsec. (b) as (c).]

§ 1097b. TRICARE program: financial management

(a) REIMBURSEMENT OF PROVIDERS.—(1) Subject to paragraph (2), the Secretary of Defense may reimburse health care providers under the TRICARE program at rates higher than the reimbursement rates otherwise authorized for the providers under that program if the Secretary determines that application of the higher rates is necessary in order to ensure the availability of an adequate number of qualified health care providers under that program.

(2) The amount of reimbursement provided under paragraph (1) with respect to a health care service may not exceed the lesser of the following:

(A) The amount equal to the local fee for service charge for the service in the service area in which the service is provided as determined by the Secretary based on one or more of the following payment rates:

(i) Usual, customary, and reasonable.

(ii) The Health Care Finance Administration's Resource Based Relative Value Scale.

(iii) Negotiated fee schedules.

(iv) Global fees.

(v) Sliding scale individual fee allowances.

(B) The amount equal to 115 percent of the CHAMPUS maximum allowable charge for the service.

(3) In establishing rates and procedures for reimbursement of providers and other administrative requirements, including those contained in provider network agreements, the Secretary shall, to the extent practicable, maintain adequate networks of providers, including institutional, professional, and pharmacy. For the purpose of determining whether network providers under such provider network agreements are subcontractors for purposes of the Federal Acquisition Regulation or any other law, a TRICARE managed care support contract that includes the requirement to establish, manage, or maintain a network of providers may not be considered to be a contract for the performance of health care services or supplies on the basis of such requirement.

(b) THIRD-PARTY COLLECTIONS.—(1) A medical treatment facility of the uniformed services under the TRICARE program has the same right as the United States under section 1095 of this title to collect from a third-party payer the reasonable charges for health care services described in paragraph (2) that are incurred by the facility on behalf of a covered beneficiary under that program.

(2) The Secretary of Defense shall prescribe regulations for the administration of this subsection. The regulations shall set forth the method to be used for the computation of the reasonable charges for inpatient, outpatient,

and other health care services. The method of computation may be—

(A) a method that is based on—

(i) per diem rates;

(ii) all-inclusive rates for each visit;

(iii) diagnosis-related groups; or

(iv) rates prescribed under the regulations implementing sections 1079 and 1086 of this title; or

(B) any other method considered appropriate.

(c) CONSULTATION REQUIREMENT.—The Secretary of Defense shall carry out the responsibilities under this section after consultation with the other administering Secretaries.

(Added Pub. L. 106–65, div. A, title VII, § 716(a)(1), Oct. 5, 1999, 113 Stat. 690; amended Pub. L. 112–81, div. A, title VII, § 715, Dec. 31, 2011, 125 Stat. 1477.)

AMENDMENTS

2011—Subsec. (a)(3). Pub. L. 112–81 added par. (3).

EFFECTIVE DATE

Pub. L. 106–65, div. A, title VII, § 716(d), Oct. 5, 1999, 113 Stat. 692, provided that: ''The amendments made by subsection (a) [enacting this section] shall take effect one year after the date of the enactment of this Act [Oct. 5, 1999].''

REPORT ON IMPLEMENTATION

Pub. L. 106–65, div. A, title VII, § 716(b), Oct. 5, 1999, 113 Stat. 691, directed the Secretary of Defense to submit to Congress a report assessing the effects of the implementation of the requirements and authorities set forth in this section not later than 6 months after Oct. 5, 1999.

§ 1097c. TRICARE program: relationship with employer-sponsored group health plans

(a) PROHIBITION ON FINANCIAL INCENTIVES NOT TO ENROLL IN A GROUP HEALTH PLAN.—(1) Except as provided in this subsection, the provisions of section 1862(b)(3)(C) of the Social Security Act shall apply with respect to financial or other incentives for a TRICARE-eligible employee not to enroll (or to terminate enrollment) under a health plan which would (in the case of such enrollment) be a primary plan under sections 1079(j)(1)[1] and 1086(g) of this title in the same manner as such section 1862(b)(3)(C) applies to financial or other incentives for an individual entitled to benefits under title XVIII of the Social Security Act not to enroll (or to terminate enrollment) under a group health plan or a large group health plan which would (in the case of enrollment) be a primary plan (as defined in section 1862(b)(2)(A) of such Act).

(2)(A) The Secretary of Defense may by regulation adopt such additional exceptions to the prohibition referenced and applied under paragraph (1) as the Secretary deems appropriate and such paragraph (1) shall be implemented taking into account the adoption of such exceptions.

(B) The Secretary of Defense and the Secretary of Health and Human Services are authorized to enter into agreements for carrying out this subsection. Any such agreement shall provide that any expenses incurred by the Secretary of Health and Human Services pertaining to carrying out this subsection shall be reimbursed by the Secretary of Defense.

(C) Authorities of the Inspector General of the Department of Defense shall be available for oversight and investigations of responsibilities of employers and other entities under this subsection.

(D) Information obtained under section 1095(k) of this title may be used in carrying out this subsection in the same manner as information obtained under section 1862(b)(5) of the Social Security Act may be used in carrying out section 1862(b) of such Act.

(E) Any amounts collected in carrying out paragraph (1) shall be handled in accordance with section 1079a of this title.

(b) ELECTION OF TRICARE-ELIGIBLE EMPLOYEES TO PARTICIPATE IN GROUP HEALTH PLAN.—A TRICARE-eligible employee shall have the opportunity to elect to participate in the group health plan offered by the employer of the employee and receive primary coverage for health care services under the plan in the same manner and to the same extent as similarly situated employees of such employer who are not TRICARE-eligible employees.

(c) INAPPLICABILITY TO CERTAIN EMPLOYERS.—The provisions of this section do not apply to any employer who has fewer than 20 employees.

(d) RETENTION OF ELIGIBILITY FOR COVERAGE UNDER TRICARE.—Nothing in this section, including an election made by a TRICARE-eligible employee under subsection (b), shall be construed to affect, modify, or terminate the eligibility of a TRICARE-eligible employee or spouse of such employee for health care or dental services under this chapter in accordance with the other provisions of this chapter.

(e) OUTREACH.—The Secretary of Defense shall, in coordination with the other administering Secretaries, conduct outreach to inform covered beneficiaries who are entitled to health care benefits under the TRICARE program of the rights and responsibilities of such beneficiaries and employers under this section.

(f) DEFINITIONS.—In this section:

(1) The term ''employer'' includes a State or unit of local government.

(2) The term ''group health plan'' means a group health plan (as that term is defined in section 5000(b)(1) of the Internal Revenue Code of 1986 without regard to section 5000(d) of the Internal Revenue Code of 1986).

(3) The term ''TRICARE-eligible employee'' means a covered beneficiary under section 1086 of this title entitled to health care benefits under the TRICARE program.

(g) EFFECTIVE DATE.—This section shall take effect on January 1, 2008.

(Added Pub. L. 109–364, div. A, title VII, § 707(a), Oct. 17, 2006, 120 Stat. 2283.)

REFERENCES IN TEXT

Section 1079(j) of this title, referred to in subsec. (a)(1), was redesignated section 1079(i) of this title by Pub. L. 113–291, div. A, title VII, § 703(a)(3), Dec. 19, 2014, 128 Stat. 3411.

The Social Security Act, referred to in subsec. (a)(1), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XVIII of the Act is classified generally to sub-

[1] See References in Text note below.

chapter XVIII (§ 1395 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. Section 1862 of the Act is classified to section 1395y of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

Section 5000 of the Internal Revenue Code of 1986, referred to in subsec. (f)(2), is classified to section 5000 of Title 26, Internal Revenue Code.

§ 1097d. TRICARE program: notice of change to benefits

(a) PROVISION OF NOTICE.—(1) If the Secretary makes a significant change to any benefits provided by the TRICARE program to covered beneficiaries, the Secretary shall provide individuals described in paragraph (2) with notice explaining such changes.

(2) The individuals described by this paragraph are covered beneficiaries participating in the TRICARE program who may be affected by a significant change covered by a notification under paragraph (1).

(3) The Secretary shall provide notice under paragraph (1) through electronic means.

(b) TIMING OF NOTICE.—The Secretary shall provide notice under paragraph (1) of subsection (a) by the earlier of the following dates:

(1) The date that the Secretary determines would afford individuals described in paragraph (2) of such subsection adequate time to understand the change covered by the notification.

(2) The date that is 90 days before the date on which the change covered by the notification becomes effective.

(3) The effective date of a significant change that is required by law.

(c) SIGNIFICANT CHANGE DEFINED.—In this section, the term ''significant change'' means a systemwide change—

(1) in the structure of the TRICARE program or the benefits provided under the TRICARE program (not including the addition of new services or benefits); or

(2) in beneficiary cost-share rates of more than 20 percent.

(Added Pub. L. 113–291, div. A, title VII, § 711(a), Dec. 19, 2014, 128 Stat. 3413.)

§ 1098. Incentives for participation in cost-effective health care plans

(a) WAIVER OF LIMITATIONS AND COPAYMENTS.—Subject to subsection (b), the Secretary of Defense, with respect to any plan contracted for under the authority of section 1079 or 1086 of this title, may waive, in whole or in part—

(1) any limitation set out in the second sentence of section 1079(a) of this title; or

(2) any requirement for payment by the patient under section 1079(b) or 1086(b) of this title.

(b) DETERMINATION AND REPORT.—(1) Subject to paragraph (3), the Secretary may waive a limitation or requirement as authorized by subsection (a) if the Secretary determines that during the period of the waiver such a plan will—

(A) be less costly to the Government than a plan subject to such limitations or payment requirements; or

(B) provide better services than those provided by a plan subject to such limitations or payment requirements at no additional cost to the Government.

(2) The Secretary shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report with respect to a waiver under paragraph (1), including a comparison of costs of and benefits available under—

(A) a plan with respect to which the limitations and payment requirements are waived; and

(B) a plan with respect to which there is no such waiver.

(3) A waiver under paragraph (1) may not take effect until the end of the 180-day period beginning on the date on which the Secretary submits the report required by paragraph (2) with respect to such waiver.

(Added Pub. L. 99–661, div. A, title VII, § 701(a)(1), Nov. 14, 1986, 100 Stat. 3895; amended Pub. L. 101–510, div. A, title XIV, § 1484(h)(1), Nov. 5, 1990, 104 Stat. 1717; Pub. L. 104–106, div. A, title XV, § 1502(a)(1), Feb. 10, 1996, 110 Stat. 502; Pub. L. 106–65, div. A, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 774.)

AMENDMENTS

1999—Subsec. (b)(2). Pub. L. 106–65 substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security''.

1996—Subsec. (b)(2). Pub. L. 104–106 substituted ''Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives'' for ''Committees on Armed Services of the Senate and House of Representatives''.

1990—Subsec. (a). Pub. L. 101–510 substituted ''subsection (b)'' for ''subsections (b) and (c)'' in introductory provisions.

§ 1099. Health care enrollment system and payment options

(a) ESTABLISHMENT OF SYSTEM.—The Secretary of Defense, after consultation with the other administering Secretaries, shall establish a system of health care enrollment for covered beneficiaries who reside in the United States.

(b) DESCRIPTION OF SYSTEM.—Such system shall—

(1) allow covered beneficiaries to elect to enroll in a health care plan, or modify a previous election, from eligible health care plans designated by the Secretary of Defense during—

(A) an annual open enrollment period; and

(B) any period based on a qualifying event experienced by the beneficiary, as determined appropriate by the Secretary; or

(2) if necessary in order to ensure full use of facilities of the uniformed services in a geographical area, assign covered beneficiaries who reside in such area to such facilities.

(c) HEALTH CARE PLANS AVAILABLE UNDER SYSTEM.—A health care plan designated by the Secretary of Defense under the system described in subsection (a) shall provide all health care to which a covered beneficiary is entitled under this chapter. Such a plan may consist of any of the following:

(1) Use of facilities of the uniformed services.

(2) A plan under the TRICARE program.

(3) Any other health care plan contracted for by the Secretary of Defense.

(4) Any combination of the plans described in paragraphs (1), (2), and (3).

(d) PAYMENT OPTIONS.—(1) A member or former member of the uniformed services, or a dependent thereof, eligible for medical care and dental care under section 1074(b) or 1076 of this title shall pay a premium for coverage under this chapter.

(2) To the maximum extent practicable, a premium owed by a member, former member, or dependent under paragraph (1) shall be withheld from the retired, retainer, or equivalent pay of the member, former member, or dependent. In all other cases, a premium shall be paid in a frequency and method determined by the Secretary.

(e) REGULATIONS.—The Secretary of Defense, after consultation with the other administering Secretaries, shall prescribe regulations to carry out this section.

(Added Pub. L. 99–661, div. A, title VII, § 701(a)(1), Nov. 14, 1986, 100 Stat. 3896; amended Pub. L. 114–328, div. A, title VII, § 701(d)(1), (j)(1)(E), Dec. 23, 2016, 130 Stat. 2186, 2192; Pub. L. 116–92, div. A, title VII, § 702(a), (b)(2)(B), Dec. 20, 2019, 133 Stat. 1436.)

AMENDMENTS

2019—Pub. L. 116–92, § 702(b)(2)(B), inserted ''and payment options'' after ''system'' in section catchline.

Subsecs. (d), (e). Pub. L. 116–92, § 702(a), added subsec. (d) and redesignated former subsec. (d) as (e).

2016—Subsec. (b)(1). Pub. L. 114–328, § 701(d)(1), amended par. (1) generally. Prior to amendment, text read as follows: ''allow covered beneficiaries to elect a health care plan from eligible health care plans designated by the Secretary of Defense; or''.

Subsec. (c)(2). Pub. L. 114–328, § 701(j)(1)(E), added par. (2) and struck out former par. (2) which read as follows: ''The Civilian Health and Medical Program of the Uniformed Services.''

EFFECTIVE DATE OF 2019 AMENDMENT

Amendment by Pub. L. 116–92 applicable to health care coverage beginning on or after Jan. 1, 2021, see section 702(c) of Pub. L. 116–92, set out as a note under section 1097a of this title.

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114–328 applicable with respect to the provision of health care under the TRICARE program beginning on Jan. 1, 2018, see section 701(k) of Pub. L. 114–328, set out as a note under section 1072 of this title.

REGULATIONS

Pub. L. 99–661, div. A, title VII, § 701(d)(1), (2), Nov. 14, 1986, 100 Stat. 3898, provided that:

''(1) Except as provided in paragraph (2), the Secretary of Defense shall prescribe regulations as required by section 1099(d) [now 1099(e)] of title 10, United States Code (as added by subsection (a)(1)) to implement the system of health care enrollment for covered beneficiaries—

''(A) on October 1, 1987, with respect to—

''(i) covered beneficiaries included in the demonstration project required under section 702 [10 U.S.C. 1073 note]; and

''(ii) facilities of the uniformed services located in the geographical area covered by the demonstration project; and

''(B) not later than September 30, 1990, for all other covered beneficiaries and facilities of the uniformed services.

''(2) The Secretary may not assign covered beneficiaries to facilities of the uniformed services, as authorized by section 1099(b)(2) of such title (as added by subsection (a)(1)), before October 1, 1990.''

INITIAL ANNUAL OPEN ENROLLMENT PERIOD

Pub. L. 114–328, div. A, title VII, § 701(d)(2), (3), Dec. 23, 2016, 130 Stat. 2186, provided that:

''(2) APPLICATION.—The Secretary of Defense shall implement the initial annual open enrollment period pursuant to section 1099(b)(1) of title 10, United States Code, as amended by paragraph (1), during 2018.

''(3) GRACE PERIOD DURING FIRST YEAR.—

''(A) At any time during the one-year period beginning on the date on which the initial annual open enrollment period begins pursuant to section 1099(b)(1) of title 10, United States Code, as amended by paragraph (1), a covered beneficiary may make an election, or modify such an election, described in such section.

''(B) If during such one-year period an individual who is eligible to enroll in the TRICARE program, but does not elect to enroll in such program, receives health care services for an episode of care that would be covered under the TRICARE program if such individual were enrolled in the TRICARE program, the Secretary—

''(i) shall pay the out-of-network fees only for the first episode of care and inform the individual of the opportunity to enroll in the TRICARE program; and

''(ii) may not pay any costs relating to any subsequent episode of care if such individual is not enrolled in the TRICARE program.''

REPORTS TO CONGRESS

Pub. L. 99–661, div. A, title VII, § 701(c)(1), Nov. 14, 1986, 100 Stat. 3898, required Secretary of Defense, not later than July 1, 1987, to submit to Congress a report detailing any plans to establish or implement a system of health care enrollment (other than as required under section 702(a)(2)(C)) under section 1099(a) of this title and the plan of the Secretary for completing implementation of such system.

§ 1100. Defense Health Program Account

(a) ESTABLISHMENT OF ACCOUNT.—(1) There is hereby established in the Department of Defense an account to be known as the ''Defense Health Program Account''. All sums appropriated to carry out the functions of the Secretary of Defense with respect to medical and health care programs of the Department of Defense shall be appropriated to the account.

(2) Of the total amount appropriated for a fiscal year for programs and activities carried out under this chapter, the amount equal to three percent of such total amount shall remain available for obligation until the end of the following fiscal year.

(b) OBLIGATION OF AMOUNTS FROM ACCOUNT BY SECRETARY OF DEFENSE.—The Secretary of Defense may obligate or expend funds from the account for purposes of conducting programs and activities under this chapter, including contracts entered into under section 1079, 1086, 1092, or 1097 of this title, to the extent amounts are available in the account.

(c) REGULATIONS.—The Secretary of Defense shall prescribe regulations to carry out this section.

(Added Pub. L. 99–661, div. A, title VII, § 701(a)(1), Nov. 14, 1986, 100 Stat. 3896; amended Pub. L. 104–106, div. A, title VII, § 735(a)–(d)(1), Feb. 10, 1996, 110 Stat. 382.)

AMENDMENTS

1996—Pub. L. 104–106, § 735(d)(1), amended section catchline generally, substituting ''Defense Health Program Account'' for ''Military Health Care Account''.

Subsec. (a)(1). Pub. L. 104–106, § 735(a)(1), substituted ''Defense Health Program Account'' for ''Military Health Care Account'' and ''medical and health care programs of the Department of Defense'' for ''the Civilian Health and Medical Program of the Uniformed Services''.

Subsec. (a)(2). Pub. L. 104–106, § 735(b), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''Amounts appropriated to the account shall remain available until obligated or expended under subsection (b) or (c).''

Subsec. (b). Pub. L. 104–106, § 735(a)(2), substituted ''conducting programs and activities under this chapter, including contracts entered into'' for ''entering into a contract'' and inserted comma after ''title''.

Subsec. (c). Pub. L. 104–106, § 735(c), redesignated subsec. (e) as (c) and struck out former subsec. (c) which read as follows: ''ALLOCATION OF AMOUNTS IN ACCOUNT FOR PROVISION OF MEDICAL CARE BY SERVICE SECRETARIES.—(1) The Secretary of a military department shall, before the beginning of a fiscal year quarter, provide to the Secretary of Defense an estimate of the amounts necessary to pay for charges for benefits under the program for covered beneficiaries under the jurisdiction of the Secretary for that quarter.

''(2) The Secretary of Defense shall, subject to amounts provided in advance in appropriation Acts, make available to each Secretary of a military department the amount from the account that the Secretary of Defense determines is necessary to pay for charges for benefits under the program for covered beneficiaries under the jurisdiction of such Secretary for that quarter.''

Subsec. (d). Pub. L. 104–106, § 735(c)(1), struck out subsec. (d) which read as follows: ''EXPENDITURE OF AMOUNTS FROM ACCOUNT BY SERVICE SECRETARIES.—The Secretary of a military department shall provide medical and dental care to covered beneficiaries under the jurisdiction of the Secretary for a fiscal year quarter from amounts appropriated to the Secretary and from amounts from the account made available for that quarter to the Secretary by the Secretary of Defense. If the Secretary of a military department exhausts the amounts from the account made available to the Secretary for a fiscal year quarter, the Secretary shall transfer to the account from amounts appropriated to the Secretary an amount sufficient to provide medical and dental care to covered beneficiaries under the jurisdiction of the Secretary for the remainder of the fiscal year quarter.''

Subsec. (e). Pub. L. 104–106, § 735(c)(2), redesignated subsec. (e) as (c).

Subsec. (f). Pub. L. 104–106, § 735(c)(1), struck out subsec. (f) which read as follows: ''DEFINITIONS.—In this section:

''(1) The term 'account' means the Military Health Care Account established in subsection (a).

''(2) The term 'program' means the Civilian Health and Medical Program of the Uniformed Services.''

EFFECTIVE DATE

Pub. L. 99–661, div. A, title VII, § 701(d)(3), Nov. 14, 1986, 100 Stat. 3898, provided that: ''Section 1100 of such title (as added by subsection (a)(1)) shall take effect on October 1, 1987.''

REPORTS TO CONGRESS

Pub. L. 99–661, div. A, title VII, § 701(c)(2), Nov. 14, 1986, 100 Stat. 3898, required Secretary to submit to Congress not later than May 1, 1987, a report on plans of Secretary for establishing diagnosis-related groups for inpatient services under section 1100(a) of this title, and not later than May 1, 1988, a report on plans of Secretary for establishing diagnosis-related groups for outpatient services under such section.

§ 1101. Resource allocation methods: capitation or diagnosis-related groups

(a) ESTABLISHMENT OF CAPITATION OR DRG METHOD.—The Secretary of Defense, after consultation with the other administering Secretaries, shall establish by regulation the use of capitation or diagnosis-related groups as the primary criteria for allocation of resources to facilities of the uniformed services.

(b) EXCEPTION FOR MOBILIZATION MISSIONS.—Capitation or diagnosis-related groups shall not be used to allocate resources to the facilities of the uniformed services to the extent that such resources are required by such facilities for mobilization missions.

(c) CONTENT OF REGULATIONS.—Such regulations may establish a system of diagnosis-related groups similar to the system established under section 1886(d)(4) of the Social Security Act (42 U.S.C. 1395ww(d)(4)). Such regulations may include the following:

(1) A classification of inpatient treatments by diagnosis-related groups and a similar classification of outpatient treatment.

(2) A methodology for classifying specific treatments within such groups.

(3) An appropriate weighting factor for each such diagnosis-related group which reflects the relative resources used by a facility of a uniformed service with respect to treatments classified within that group compared to treatments classified within other groups.

(4) An appropriate method for calculating or estimating the annual per capita costs of providing comprehensive health care services to members of the uniformed services on active duty and covered beneficiaries.

(Added Pub. L. 99–661, div. A, title VII, § 701(a)(1), Nov. 14, 1986, 100 Stat. 3897; amended Pub. L. 100–456, div. A, title XII, § 1233(e)(1), Sept. 29, 1988, 102 Stat. 2057; Pub. L. 103–160, div. A, title VII, § 714(a), (b)(1), Nov. 30, 1993, 107 Stat. 1690.)

AMENDMENTS

1993—Pub. L. 103–160, § 714(b)(1), substituted ''Resource allocation methods: capitation or diagnosis-related groups'' for ''Diagnosis-related groups'' as section catchline.

Subsec. (a). Pub. L. 103–160, § 714(a)(1), substituted ''Capitation or DRG Method'' for ''DRGs'' in heading and inserted ''capitation or'' before ''diagnosis-related groups'' in text.

Subsec. (b). Pub. L. 103–160, § 714(a)(2), substituted ''Capitation or diagnosis-related groups'' for ''Diagnosis-related groups''.

Subsec. (c). Pub. L. 103–160, § 714(a)(3), substituted ''may'' for ''shall'' in two places in introductory provisions and added par. (4).

1988—Subsec. (c). Pub. L. 100–456 struck out ''(1)'' before ''Such regulations'' in introductory provisions.

REGULATIONS

Pub. L. 101–189, div. A, title VII, § 724, Nov. 29, 1989, 103 Stat. 1478, as amended by Pub. L. 102–190, div. A, title VII, § 719, Dec. 5, 1991, 105 Stat. 1404, provided that: ''The regulations required by section 1101(a) of title 10, United States Code, to establish the use of diagnosis-related groups as the primary criteria for the allocation of resources to health care facilities of the uniformed services shall be prescribed to take effect not later than October 1, 1993, in the case of outpatient treatments.''

Pub. L. 99–661, div. A, title VII, § 701(d)(4), Nov. 14, 1986, 100 Stat. 3898, as amended by Pub. L. 100–180, div.

A, title VII, § 724, Dec. 4, 1987, 101 Stat. 1116, provided that: ''The Secretary of Defense shall prescribe regulations as required by section 1101(a) of such title (as added by subsection (a)(1)) to take effect—

''(A) in the case of inpatient treatments, not later than October 1, 1988; and

''(B) in the case of outpatient treatments, not later than October 1, 1989.''

§ 1102. Confidentiality of medical quality assurance records: qualified immunity for participants

(a) CONFIDENTIALITY OF RECORDS.—Medical quality assurance records created by or for the Department of Defense as part of a medical quality assurance program are confidential and privileged. Such records may not be disclosed to any person or entity, except as provided in subsection (c).

(b) PROHIBITION ON DISCLOSURE AND TESTIMONY.—(1) No part of any medical quality assurance record described in subsection (a) may be subject to discovery or admitted into evidence in any judicial or administrative proceeding, except as provided in subsection (c).

(2) A person who reviews or creates medical quality assurance records for the Department of Defense or who participates in any proceeding that reviews or creates such records may not be permitted or required to testify in any judicial or administrative proceeding with respect to such records or with respect to any finding, recommendation, evaluation, opinion, or action taken by such person or body in connection with such records except as provided in this section.

(c) AUTHORIZED DISCLOSURE AND TESTIMONY.—(1) Subject to paragraph (2), a medical quality assurance record described in subsection (a) may be disclosed, and a person referred to in subsection (b) may give testimony in connection with such a record, only as follows:

(A) To a Federal executive agency or private organization, if such medical quality assurance record or testimony is needed by such agency or organization to perform licensing or accreditation functions related to Department of Defense health care facilities or to perform monitoring, required by law, of Department of Defense health care facilities.

(B) To an administrative or judicial proceeding commenced by a present or former Department of Defense health care provider concerning the termination, suspension, or limitation of clinical privileges of such health care provider.

(C) To a governmental board or agency or to a professional health care society or organization, if such medical quality assurance record or testimony is needed by such board, agency, society, or organization to perform licensing, credentialing, or the monitoring of professional standards with respect to any health care provider who is or was a member or an employee of the Department of Defense.

(D) To a hospital, medical center, or other institution that provides health care services, if such medical quality assurance record or testimony is needed by such institution to assess the professional qualifications of any health care provider who is or was a member or employee of the Department of Defense and who has applied for or been granted authority or employment to provide health care services in or on behalf of such institution.

(E) To an officer, employee, or contractor of the Department of Defense who has a need for such record or testimony to perform official duties.

(F) To a criminal or civil law enforcement agency or instrumentality charged under applicable law with the protection of the public health or safety, if a qualified representative of such agency or instrumentality makes a written request that such record or testimony be provided for a purpose authorized by law.

(G) In an administrative or judicial proceeding commenced by a criminal or civil law enforcement agency or instrumentality referred to in subparagraph (F), but only with respect to the subject of such proceeding.

(2) With the exception of the subject of a quality assurance action, the identity of any person receiving health care services from the Department of Defense or the identity of any other person associated with such department for purposes of a medical quality assurance program that is disclosed in a medical quality assurance record described in subsection (a) shall be deleted from that record or document before any disclosure of such record is made outside the Department of Defense. Such requirement does not apply to the release of information pursuant to section 552a of title 5.

(d) DISCLOSURE FOR CERTAIN PURPOSES.—(1) Nothing in this section shall be construed as authorizing or requiring the withholding from any person or entity aggregate statistical information regarding the results of Department of Defense medical quality assurance programs.

(2) Nothing in this section shall be construed as authority to withhold any medical quality assurance record from a committee of either House of Congress, any joint committee of Congress, or the Comptroller General if such record pertains to any matter within their respective jurisdictions.

(e) PROHIBITION ON DISCLOSURE OF RECORD OR TESTIMONY.—A person or entity having possession of or access to a record or testimony described by this section may not disclose the contents of such record or testimony in any manner or for any purpose except as provided in this section.

(f) EXEMPTION FROM FREEDOM OF INFORMATION ACT.—Medical quality assurance records described in subsection (a) may not be made available to any person under section 552 of title 5.

(g) LIMITATION ON CIVIL LIABILITY.—A person who participates in or provides information to a person or body that reviews or creates medical quality assurance records described in subsection (a) shall not be civilly liable for such participation or for providing such information if the participation or provision of information was in good faith based on prevailing professional standards at the time the medical quality assurance program activity took place.

(h) APPLICATION TO INFORMATION IN CERTAIN OTHER RECORDS.—Nothing in this section shall be construed as limiting access to the information in a record created and maintained outside a medical quality assurance program, including a patient's medical records, on the grounds that

the information was presented during meetings of a review body that are part of a medical quality assurance program.

(i) REGULATIONS.—The Secretary of Defense shall prescribe regulations to implement this section.

(j) DEFINITIONS.—In this section:

(1) The term ''medical quality assurance program'' means any peer review activity carried out before, on, or after November 14, 1986 by or for the Department of Defense to assess the quality of medical care, including activities conducted by individuals, military medical or dental treatment facility committees, or other review bodies responsible for quality assurance, credentials, infection control, patient care assessment (including treatment procedures, blood, drugs, and therapeutics), medical records, health resources management review and identification and prevention of medical or dental incidents and risks.

(2) The term ''medical quality assurance record'' means the proceedings, records, minutes, and reports that emanate from quality assurance program activities described in paragraph (1) and are produced or compiled by the Department of Defense as part of a medical quality assurance program.

(3) The term ''health care provider'' means any military or civilian health care professional who, under regulations of a military department, is granted clinical practice privileges to provide health care services in a military medical or dental treatment facility or who is licensed or certified to perform health care services by a governmental board or agency or professional health care society or organization.

(4) The term ''peer review'' means any assessment of the quality of medical care carried out by a health care professional, including any such assessment of professional performance, any patient safety program root cause analysis or report, or any similar activity described in regulations prescribed by the Secretary under subsection (i).

(k) PENALTY.—Any person who willfully discloses a medical quality assurance record other than as provided in this section, knowing that such record is a medical quality assurance record, shall be fined not more than $3,000 in the case of a first offense and not more than $20,000 in the case of a subsequent offense.

(Added Pub. L. 99–661, div. A, title VII, § 705(a)[(1)], Nov. 14, 1986, 100 Stat. 3902; amended Pub. L. 100–180, div. A, title XII, § 1231(5), Dec. 4, 1987, 101 Stat. 1160; Pub. L. 101–189, div. A, title VI, § 653(f), Nov. 29, 1989, 103 Stat. 1463; Pub. L. 108–375, div. A, title X, § 1084(c)(2), Oct. 28, 2004, 118 Stat. 2061; Pub. L. 112–81, div. A, title VII, § 714(a), Dec. 31, 2011, 125 Stat. 1476.)

AMENDMENTS

2011—Subsec. (j)(1). Pub. L. 112–81, § 714(a)(1), substituted ''any peer review activity carried out'' for ''any activity carried out''.

Subsec. (j)(4). Pub. L. 112–81, § 714(a)(2), added par. (4).

2004—Subsec. (d)(2). Pub. L. 108–375 substituted ''Comptroller General'' for ''General Accounting Office''.

1989—Subsec. (j)(1). Pub. L. 101–189 substituted ''November 14, 1986'' for ''the date of the enactment of this section''.

1987—Subsec. (c)(2). Pub. L. 100–180 struck out '', United States Code'' after ''title 5'' in second sentence.

EFFECTIVE DATE OF 2011 AMENDMENT

Pub. L. 112–81, div. A, title VII, § 714(b), Dec. 31, 2011, 125 Stat. 1477, provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on January 1, 2012.''

EFFECTIVE DATE

Pub. L. 99–661, div. A, title VII, § 705(b), Nov. 14, 1986, 100 Stat. 3904, provided that: ''Section 1102 of title 10, United States Code, as added by subsection (a), shall apply to all records created before, on, or after the date of the enactment of this Act [Nov. 14, 1986] by or for the Department of Defense as part of a medical quality assurance program.''

§ 1103. Contracts for medical and dental care: State and local preemption

(a) OCCURRENCE OF PREEMPTION.—A law or regulation of a State or local government relating to health insurance, prepaid health plans, or other health care delivery or financing methods shall not apply to any contract entered into pursuant to this chapter by the Secretary of Defense or the administering Secretaries to the extent that the Secretary of Defense or the administering Secretaries determine that—

(1) the State or local law or regulation is inconsistent with a specific provision of the contract or a regulation promulgated by the Secretary of Defense or the administering Secretaries pursuant to this chapter; or

(2) the preemption of the State or local law or regulation is necessary to implement or administer the provisions of the contract or to achieve any other important Federal interest.

(b) EFFECT OF PREEMPTION.—In the case of the preemption under subsection (a) of a State or local law or regulation regarding financial solvency, the Secretary of Defense or the administering Secretaries shall require an independent audit of the prime contractor of each contract that is entered into pursuant to this chapter and covered by the preemption. The audit shall be performed by the Defense Contract Audit Agency.

(c) STATE DEFINED.—In this section, the term ''State'' includes the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and each possession of the United States.

(Added Pub. L. 100–180, div. A, title VII, § 725(a)(1), Dec. 4, 1987, 101 Stat. 1116; amended Pub. L. 103–160, div. A, title VII, § 715(a), Nov. 30, 1993, 107 Stat. 1690; Pub. L. 109–163, div. A, title X, § 1057(a)(2), Jan. 6, 2006, 119 Stat. 3440.)

AMENDMENTS

2006—Subsec. (c). Pub. L. 109–163 struck out ''Territory and'' before ''possession''.

1993—Pub. L. 103–160 amended section generally. Prior to amendment, section read as follows:

''(a) The provisions of any contract under this chapter which relate to the nature and extent of coverage of benefits (including payments with respect to benefits) shall preempt any law of a State or local government, or any regulation issued under such a law, which relates to health insurance or plans to the extent that such law or regulation is inconsistent with such contractual provisions.

"(b) In this section, the term 'State' includes the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and each territory and possession of the United States."

EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103–160, div. A, title VII, § 715(b), Nov. 30, 1993, 107 Stat. 1691, provided that: "Section 1103 of title 10, United States Code, as amended by subsection (a), shall apply with respect to any contract entered into under chapter 55 of such title before, on, or after the date of the enactment of this Act [Nov. 30, 1993]."

EFFECTIVE DATE

Pub. L. 100–180, div. A, title VII, § 725(b), Dec. 4, 1987, 101 Stat. 1117, provided that: "Section 1103 of such title, as added by subsection (a), shall apply with respect to any contract entered into after October 1, 1987."

APPLICABILITY OF PREEMPTION PROVISIONS TO CERTAIN CONTRACTS

Pub. L. 102–396, title IX, § 9032, Oct. 6, 1992, 106 Stat. 1908, as amended by Pub. L. 103–50, ch. III, § 301, July 2, 1993, 107 Stat. 250, provided in part "That the preemption provisions of section 1103(a) of title 10, United States Code, shall not be limited to contractual provisions relating to coverage of benefits, but shall apply to all contracts entered into pursuant to this general provision, the California and Hawaii recompetition contract, and Solicitation Number MDA 906–92–R–0004 and shall preempt any and all State and local laws and regulations which relate to health insurance or health care plans".

APPLICABILITY TO CONTRACTS ENTERED INTO PURSUANT TO SOLICITATION NUMBER MDA–903–87–R–0047

Pub. L. 100–463, title VIII, § 8078(b), Oct. 1, 1988, 102 Stat. 2270–30, provided that preemption provisions of 10 U.S.C. 1103 shall apply to contracts entered into pursuant to Solicitation Number MDA–903–87–R–0047 and shall preempt State and local laws or regulations which relate to health insurance or prepaid health care plans. Similar provisions were contained in the following prior appropriation act:

Pub. L. 100–202, § 101(b) [title VIII, § 8104(b)], Dec. 22, 1987, 101 Stat. 1329–43, 1329–81.

§ 1104. Sharing of health-care resources with the Department of Veterans Affairs

(a) SHARING OF HEALTH-CARE RESOURCES.—Health-care resources of the Department of Defense shall be shared with health-care resources of the Department of Veterans Affairs in accordance with section 8111 of title 38 or under section 1535 of title 31.

(b) REIMBURSEMENT FROM CHAMPUS FUNDS.—Pursuant to an agreement entered into under section 8111 of title 38 or section 1535 of title 31, the Secretary of a military department may reimburse the Secretary of Veterans Affairs from funds available for that military department for the payment of medical care provided under section 1079 or 1086 of this title.

(c) CHARGES.—The Secretary of Defense may prescribe by regulation a premium, deductible, copayment, or other charge for health care provided to covered beneficiaries under this chapter pursuant to an agreement entered into by the Secretary of a military department under section 8111 of title 38 or section 1535 of title 31.

(d) PROVISION OF SERVICES DURING WAR OR NATIONAL EMERGENCY.—Members of the armed forces on active duty during and immediately following a period of war, or during and immediately following a national emergency involving the use of the armed forces in armed conflict, may be provided health-care services by the Department of Veterans Affairs in accordance with section 8111A of title 38.

(Added Pub. L. 101–189, div. A, title VII, § 722(a), Nov. 29, 1989, 103 Stat. 1477; amended Pub. L. 102–484, div. A, title X, § 1052(14), Oct. 23, 1992, 106 Stat. 2499; Pub. L. 103–35, title II, § 201(c)(1), May 31, 1993, 107 Stat. 98; Pub. L. 107–314, div. A, title VII, § 721(b), Dec. 2, 2002, 116 Stat. 2595.)

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–314 substituted "shall" for "may".

1993—Subsecs. (a) to (c). Pub. L. 103–35, § 201(c)(1)(A), substituted "section 8111 of title 38" for "section 8011 of title 38".

Subsec. (d). Pub. L. 103–35, § 201(c)(1)(B), substituted "section 8111A of title 38" for "section 8011A of title 38".

1992—Subsecs. (a) to (c). Pub. L. 102–484, § 1052(14)(A), substituted "section 8011 of title 38" for "section 5011 of title 38".

Subsec. (d). Pub. L. 102–484, § 1052(14)(B), substituted "section 8011A of title 38" for "section 5011A of title 38".

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–314 effective Oct. 1, 2003, see section 721(c) of Pub. L. 107–314, set out as a note under section 8111 of Title 38, Veterans' Benefits.

§ 1105. Specialized treatment facility program

(a) PROGRAM AUTHORIZED.—The Secretary of Defense may conduct a specialized treatment facility program pursuant to regulations prescribed by the Secretary of Defense. The Secretary shall consult with the other administering Secretaries in prescribing regulations for the program and in conducting the program.

(b) FACILITIES AUTHORIZED TO BE USED.—Under the specialized treatment facility program, the Secretary may designate health care facilities of the uniformed services and civilian health care facilities as specialized treatment facilities.

(c) WAIVER OF NONEMERGENCY HEALTH CARE RESTRICTION.—Under the specialized treatment facility program, the Secretary may waive, with regard to the provision of a particular service, the 40-mile radius restriction set forth in section 1079(a)(6) of this title if the Secretary determines that the use of a different geographical area restriction will result in a more cost-effective provision of the service.

(d) CIVILIAN FACILITY SERVICE AREA.—For purposes of the specialized treatment facility program, the service area of a civilian health care facility designated pursuant to subsection (b) shall be comparable in size to the service areas of facilities of the uniformed services.

(e) ISSUANCE OF NONAVAILABILITY OF HEALTH CARE STATEMENTS.—A covered beneficiary who resides within the service area of a specialized treatment facility designated under the specialized treatment facility program may be required to obtain a nonavailability of health care statement in the case of a specialized service offered by the facility in order for the covered beneficiary to receive the service outside of the program.

(f) PAYMENT OF COSTS RELATED TO CARE IN SPECIALIZED TREATMENT FACILITIES.—(1) Subject to paragraph (2), in connection with the treatment of a covered beneficiary under the specialized treatment facility program, the Secretary may provide the following benefits:

(A) Full or partial reimbursement of a member of the uniformed services for the reasonable expenses incurred by the member in transporting a covered beneficiary to or from a health care facility of the uniformed services or a civilian health care facility at which specialized health care services are provided pursuant to this chapter.

(B) Full or partial reimbursement of a person (including a member of the uniformed services) for the reasonable expenses of transportation, temporary lodging, and meals (not to exceed a per diem rate determined in accordance with implementing regulations) incurred by such person in accompanying a covered beneficiary as a nonmedical attendant to a health care facility referred to in subparagraph (A).

(C) In-kind transportation, lodging, or meals instead of reimbursements under subparagraph (A) or (B) for transportation, lodging, or meals, respectively.

(2) The Secretary may make reimbursements for or provide transportation, lodging, and meals under paragraph (1) in the case of a covered beneficiary only if the total cost to the Department of Defense of doing so and of providing the health care in such case is less than the cost to the Department of providing the health care to the covered beneficiary by other means authorized under this chapter.

(g) COVERED BENEFICIARY DEFINED.—In this section, the term ''covered beneficiary'' means a person covered under section 1079 or 1086 of this title.

(Added Pub. L. 102–190, div. A, title VII, §715(a), Dec. 5, 1991, 105 Stat. 1403; amended Pub. L. 103–160, div. A, title VII, §716(a)(1), Nov. 30, 1993, 107 Stat. 1691; Pub. L. 104–106, div. A, title VII, §706, Feb. 10, 1996, 110 Stat. 373; Pub. L. 113–291, div. A, title VII, §703(c)(3), Dec. 19, 2014, 128 Stat. 3412.)

AMENDMENTS

2014—Subsec. (c). Pub. L. 113–291 substituted ''section 1079(a)(6)'' for ''section 1079(a)(7)''.

1996—Subsec. (h). Pub. L. 104–106 struck out subsec. (h) which read as follows: ''EXPIRATION OF PROGRAM.—The Secretary may not carry out the specialized treatment facility program authorized by this section after September 30, 1995.''

1993—Pub. L. 103–160 substituted ''Specialized treatment facility program'' for ''Issuance of nonavailability of health care statements'' as section catchline and amended text generally. Prior to amendment, text read as follows: ''In determining whether to issue a nonavailability of health care statement for any person entitled to health care in facilities of the uniformed services under this chapter, the commanding officer of such a facility may consider the availability of health care services for such person pursuant to any contract or agreement entered into under this chapter for the provision of health care services within the area served by that facility.''

§ 1106. Submittal of claims: standard form; time limits

(a) STANDARD FORM.—The Secretary of Defense, after consultation with the other administering Secretaries, shall prescribe by regulation a standard form for the submission of claims for the payment of health care services provided under this chapter.

(b) TIME FOR SUBMISSION.—A claim for payment for services provided under this chapter shall be submitted as provided in such regulations as follows:

(1) In the case of services provided outside the United States, the Commonwealth of Puerto Rico, or the possessions of the United States, by not later than three years after the services are provided.

(2) In the case of any other services, by not later than one year after the services are provided.

(Added Pub. L. 102–190, div. A, title VII, §716(a)(1), Dec. 5, 1991, 105 Stat. 1403; amended Pub. L. 105–85, div. A, title VII, §738(a), Nov. 18, 1997, 111 Stat. 1815; Pub. L. 112–81, div. A, title VII, §712, Dec. 31, 2011, 125 Stat. 1476.)

AMENDMENTS

2011—Subsec. (b). Pub. L. 112–81 substituted ''as follows:'' for ''not later than one year after the services are provided.'' and added pars. (1) and (2).

1997—Pub. L. 105–85 substituted '': standard form; time limits'' for ''under CHAMPUS'' in section catchline and amended text generally. Prior to amendment, text read as follows:

''(a) SUBMITTAL TO CLAIMS PROCESSING OFFICE.—Each provider of services under the Civilian Health and Medical Program of the Uniformed Services shall submit claims for payment for such services directly to the claims processing office designated pursuant to regulations prescribed under subsection (b). A claim for payment for services shall be submitted in a standard form (as prescribed in the regulations) not later than one year after the services are provided.

''(b) REGULATIONS.—The regulations required by subsection (a) shall be prescribed by the Secretary of Defense after consultation with the other administering Secretaries.

''(c) WAIVER.—The Secretary of Defense may waive the requirements of subsection (a) if the Secretary determines that the waiver is necessary in order to ensure adequate access for covered beneficiaries to health care services under this chapter.''

REGULATIONS

Pub. L. 102–190, div. A, title VII, §716(b), Dec. 5, 1991, 105 Stat. 1404, provided that: ''The regulations required by section 1106 of title 10, United States Code (as added by subsection (a)), shall be prescribed to take effect not later than 180 days after the date of the enactment of this Act [Dec. 5, 1991].''

ESTABLISHMENT OF APPEALS PROCESS FOR CLAIMCHECK DENIALS

Pub. L. 105–261, div. A, title VII, §714, Oct. 17, 1998, 112 Stat. 2060, provided that:

''(a) ESTABLISHMENT OF APPEALS PROCESS.—Not later than January 1, 1999, the Secretary of Defense shall establish an appeals process in cases of denials through the ClaimCheck computer software system (or any other claims processing system that may be used by the Secretary) of claims by civilian providers for payment for health care services provided under the TRICARE program.

''(b) REPORT.—Not later than March 1, 1999, the Secretary shall submit to Congress a report on the implementation of this section.''

NATIONAL CLAIMS PROCESSING SYSTEM FOR CHAMPUS

Pub. L. 102–484, div. A, title VII, § 711, Oct. 23, 1992, 106 Stat. 2433, provided that:

''(a) CLAIMS PROCESSING SYSTEM REQUIRED.—(1) The Secretary of Defense, in consultation with the other administering Secretaries, shall provide by contract for the operation of a claims processing system to be known as the 'National Claims Processing System for CHAMPUS'. The Secretary may procure the system in installments, including the use of incremental modules. The system, including completion and integration of all modules, shall be in full operation not later than seven years after the date of the enactment of this Act [Oct. 23, 1992].

''(2) The Secretary shall use competitive procedures for entering into any contract or contracts under paragraph (1).

''(b) SYSTEM FUNCTIONS.—The claims processing system shall include at least the following functions:

''(1) The maintenance in electronic or written form, or both, of appropriate information on health care services provided to covered beneficiaries by or through third parties under CHAMPUS or any alternative CHAMPUS program or demonstration project. Such information shall include—

''(A) the services to which such beneficiaries are entitled or eligible under an insurance plan, medical service plan, or health plan under CHAMPUS;

''(B) the insurers, medical services, or health plans that provide such services; and

''(C) the services available to beneficiaries under each insurance plan, medical service plan, or health plan, and the payment required of the beneficiaries and the insurer, medical service, or health plan for such services under the plan.

''(2) The ability to receive in electronic or written form claims submitted by insurers, medical services, and health plans for services provided to covered beneficiaries.

''(3) The ability to process, adjudicate, and pay (by electronic or other means) such claims.

''(4) The provision of the information described in paragraphs (1) and (2) and information on the matters referred to in paragraph (3) by telephone, electronic, or other means to covered beneficiaries, insurers, medical services, and health plans.

''(c) CONSISTENCY WITH MEDICARE CLAIMS REQUIREMENTS.—The Secretary of Defense shall ensure, to the maximum extent practicable, that claims submitted to the claims processing system conform to the requirements applicable to claims submitted to the Secretary of Health and Human Services with respect to medical care provided under part A of title XVIII of the Social Security Act (42 U.S.C. 1395c et seq.).

''(d) IDENTIFICATION CARD.—The Secretary of Defense shall take appropriate actions to determine whether the use by covered beneficiaries of a standard identification card containing electronically readable information will enhance the capability of the claims processing center to carry out the activities set forth in subsection (b).

''(e) TRANSITION TO SYSTEM.—After January 1, 1996, any modification or acquisition related to claims processing systems operations in the Office of the Civilian Health and Medical Program of the Uniformed Services shall contain provisions to transfer such operations to the claims processing system required by subsection (a). After January 1, 1999, any renewal or acquisition for fiscal intermediary services (including coordinated care implementations in military hospitals and clinics) shall contain provisions to transfer claims processing systems operations related to such fiscal intermediary services to the claims processing system required by subsection (a).

''(f) DEFINITIONS.—For purposes of this section:

''(1) The term 'administering Secretaries' has the meaning given that term in paragraph (3) of section 1072 of title 10, United States Code.

''(2) The term 'CHAMPUS' means the Civilian Health and Medical Program of the Uniformed Services, as defined in paragraph (4) of such section.

''(3) The term 'covered beneficiary' has the meaning given that term in paragraph (5) of such section.''

§ 1107. Notice of use of an investigational new drug or a drug unapproved for its applied use

(a) NOTICE REQUIRED.—(1) Whenever the Secretary of Defense requests or requires a member of the armed forces to receive an investigational new drug or a drug unapproved for its applied use, the Secretary shall provide the member with notice containing the information specified in subsection (d).

(2) The Secretary shall also ensure that health care providers who administer an investigational new drug or a drug unapproved for its applied use, or who are likely to treat members who receive such a drug, receive the information required to be provided under paragraphs (3) and (4) of subsection (d).

(b) TIME OF NOTICE.—The notice required to be provided to a member under subsection (a)(1) shall be provided before the investigational new drug or drug unapproved for its applied use is first administered to the member.

(c) FORM OF NOTICE.—The notice required under subsection (a)(1) shall be provided in writing.

(d) CONTENT OF NOTICE.—The notice required under subsection (a)(1) shall include the following:

(1) Clear notice that the drug being administered is an investigational new drug or a drug unapproved for its applied use.

(2) The reasons why the investigational new drug or drug unapproved for its applied use is being administered.

(3) Information regarding the possible side effects of the investigational new drug or drug unapproved for its applied use, including any known side effects possible as a result of the interaction of such drug with other drugs or treatments being administered to the members receiving such drug.

(4) Such other information that, as a condition of authorizing the use of the investigational new drug or drug unapproved for its applied use, the Secretary of Health and Human Services may require to be disclosed.

(e) RECORDS OF USE.—The Secretary of Defense shall ensure that the medical records of members accurately document—

(1) the receipt by members of any investigational new drug or drug unapproved for its applied use; and

(2) the notice required by subsection (a)(1).

(f) LIMITATION AND WAIVER.—(1) In the case of the administration of an investigational new drug or a drug unapproved for its applied use to a member of the armed forces in connection with the member's participation in a particular military operation, the requirement that the member provide prior consent to receive the drug in accordance with the prior consent requirement imposed under section 505(i)(4) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)(4)) may be waived only by the President. The President may grant such a waiver only if the President determines, in writing, that obtaining consent is not in the interests of national security.

(2) The waiver authority provided in paragraph (1) shall not be construed to apply to any case other than a case in which prior consent for administration of a particular drug is required by reason of a determination by the Secretary of Health and Human Services that such drug is subject to the investigational new drug requirements of section 505(i) of the Federal Food, Drug, and Cosmetic Act.

(3) The Secretary of Defense may request the President to waive the prior consent requirement with respect to the administration of an investigational new drug or a drug unapproved for its applied use to a member of the armed forces in connection with the member's participation in a particular military operation. With respect to any such administration—

(A) the Secretary may not delegate to any other official the authority to request the President to waive the prior consent requirement for the Department of Defense; and

(B) if the President grants the requested waiver, the Secretary shall submit to the chairman and ranking minority member of each congressional defense committee a notification of the waiver, together with the written determination of the President under paragraph (1) and the Secretary's justification for the request or requirement under subsection (a) for the member to receive the drug covered by the waiver.

(4) In this subsection:

(A) The term ''relevant FDA regulations'' means the regulations promulgated under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)).

(B) The term ''prior consent requirement'' means the requirement included in the relevant FDA regulations pursuant to section 505(i)(4) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)(4)).

(g) DEFINITIONS.—In this section:

(1) The term ''investigational new drug'' means a drug covered by section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)).

(2) The term ''drug unapproved for its applied use'' means a drug administered for a use not described in the approved labeling of the drug under section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355).

(Added Pub. L. 105–85, div. A, title VII, § 766(a), Nov. 18, 1997, 111 Stat. 1827; amended Pub. L. 105–261, div. A, title VII, § 731(a)(1), (b), Oct. 17, 1998, 112 Stat. 2070, 2071; Pub. L. 106–65, div. A, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 108–136, div. A, title X, § 1043(b)(7), Nov. 24, 2003, 117 Stat. 1611; Pub. L. 108–375, div. A, title VII, § 726(a), Oct. 28, 2004, 118 Stat. 1992.)

AMENDMENTS

2004—Subsec. (f)(1). Pub. L. 108–375, § 726(a)(1), substituted ''obtaining consent is'' for ''obtaining consent—

''(A) is not feasible;

''(B) is contrary to the best interests of the member; or

''(C) is''.

Subsec. (f)(2). Pub. L. 108–375, § 726(a)(2), added par. (2) and struck out former par. (2) which read as follows: ''In making a determination to waive the prior consent requirement on a ground described in subparagraph (A) or (B) of paragraph (1), the President shall apply the standards and criteria that are set forth in the relevant FDA regulations for a waiver of the prior consent requirement on that ground.''

2003—Subsec. (f)(4)(C). Pub. L. 108–136 struck out subpar. (C) which read as follows: ''The term 'congressional defense committee' means each of the following:

''(i) The Committee on Armed Services and the Committee on Appropriations of the Senate.

''(ii) The Committee on Armed Services and the Committee on Appropriations of the House of Representatives.''

1999—Subsec. (f)(4)(C)(ii). Pub. L. 106–65 substituted ''Committee on Armed Services'' for ''Committee on National Security''.

1998—Subsec. (b). Pub. L. 105–261, § 731(b)(1), struck out '', if practicable, but in no case later than 30 days after the drug is first administered to the member'' after ''administered to the member''.

Subsec. (c). Pub. L. 105–261, § 731(b)(2), struck out ''unless the Secretary of Defense determines that the use of written notice is impractical because of the number of members receiving the investigational new drug or drug unapproved for its applied use, time constraints, or similar reasons. If the Secretary provides notice under subsection (a)(1) in a form other than in writing, the Secretary shall submit to Congress a report describing the notification method used and the reasons for the use of the alternative method'' after ''provided in writing''.

Subsecs. (f), (g). Pub. L. 105–261, § 731(a)(1), added subsec. (f) and redesignated former subsec. (f) as (g).

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–261, div. A, title VII, § 731(a)(2), Oct. 17, 1998, 112 Stat. 2071, provided that: ''Subsection (f) of section 1107 of title 10, United States Code (as added by paragraph (1)), shall apply to the administration of an investigational new drug or a drug unapproved for its applied use to a member of the Armed Forces in connection with the member's participation in a particular military operation on or after the date of the enactment of this Act [Oct. 17, 1998].''

WAIVERS OF REQUIREMENT FOR PRIOR CONSENT GRANTED BEFORE OCTOBER 17, 1998

Pub. L. 105–261, div. A, title VII, § 731(a)(3), Oct. 17, 1998, 112 Stat. 2071, provided that: ''A waiver of the requirement for prior consent imposed under the regulations required under paragraph (4) of section 505(i) of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 355(i)(4)] (or under any antecedent provision of law or regulations) that has been granted under that section (or antecedent provision of law or regulations) before the date of the enactment of this Act [Oct. 17, 1998] for the administration of a drug to a member of the Armed Forces in connection with the member's participation in a particular military operation may be applied in that case after that date only if—

''(A) the Secretary of Defense personally determines that the waiver is justifiable on each ground on which the waiver was granted;

''(B) the President concurs in that determination in writing; and

''(C) the Secretary submits to the chairman and ranking minority member of each congressional committee referred to in section 1107(f)(4)(C) of title 10, United States Code (as added by paragraph (1))—

''(i) a notification of the waiver;

''(ii) the President's written concurrence; and

''(iii) the Secretary's justification for the request or for the requirement under subsection 1107(a) of such title for the member to receive the drug covered by the waiver.''

EX. ORD. NO. 13139. IMPROVING HEALTH PROTECTION OF MILITARY PERSONNEL PARTICIPATING IN PARTICULAR MILITARY OPERATIONS

Ex. Ord. No. 13139, Sept. 30, 1999, 64 F.R. 54175, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 1107 of title 10, United States Code, and in order to provide the best health protection to military personnel participating in particular military operations, it is hereby ordered as follows:

SECTION 1. *Policy*. Military personnel deployed in particular military operations could potentially be exposed to a range of chemical, biological, and radiological weapons as well as diseases endemic to an area of operations. It is the policy of the United States Government to provide our military personnel with safe and effective vaccines, antidotes, and treatments that will negate or minimize the effects of these health threats.

SEC. 2. *Administration of Investigational New Drugs to Members of the Armed Forces*.

(a) The Secretary of Defense (Secretary) shall collect intelligence on potential health threats that might be encountered in an area of operations. The Secretary shall work together with the Secretary of Health and Human Services to ensure appropriate countermeasures are developed. When the Secretary considers an investigational new drug or a drug unapproved for its intended use (investigational drug) to represent the most appropriate countermeasure, it shall be studied through scientifically based research and development protocols to determine whether it is safe and effective for its intended use.

(b) It is the expectation that the United States Government will administer products approved for their intended use by the Food and Drug Administration (FDA). However, in the event that the Secretary considers a product to represent the most appropriate countermeasure for diseases endemic to the area of operations or to protect against possible chemical, biological, or radiological weapons, but the product has not yet been approved by the FDA for its intended use, the product may, under certain circumstances and strict controls, be administered to provide potential protection for the health and well-being of deployed military personnel in order to ensure the success of the military operation. The provisions of 21 CFR Part 312 contain the FDA requirements for investigational new drugs.

SEC. 3. *Informed Consent Requirements and Waiver Provisions*.

(a) Before administering an investigational drug to members of the Armed Forces, the Department of Defense (DoD) must obtain informed consent from each individual unless the Secretary can justify to the President a need for a waiver of informed consent in accordance with 10 U.S.C. 1107(f). Waivers of informed consent will be granted only when absolutely necessary.

(b) In accordance with 10 U.S.C. 1107(f), the President may waive the informed consent requirement for the administration of an investigational drug to a member of the Armed Forces in connection with the member's participation in a particular military operation, upon a written determination by the President that obtaining consent:

(1) is not feasible;

(2) is contrary to the best interests of the member; or

(3) is not in the interests of national security.

(c) In making a determination to waive the informed consent requirement on a ground described in subsection (b)(1) or (b)(2) of this section, the President is required by law to apply the standards and criteria set forth in the relevant FDA regulations, 21 CFR 50.23(d). In determining a waiver based on subsection (b)(3) of this section, the President will also consider the standards and criteria of the relevant FDA regulations.

(d) The Secretary may request that the President waive the informed consent requirement with respect to the administration of an investigational drug. The Secretary may not delegate the authority to make this waiver request. At a minimum, the waiver request shall contain:

(1) A full description of the threat, including the potential for exposure. If the threat is a chemical, biological, or radiological weapon, the waiver request shall contain an analysis of the probability the weapon will be used, the method or methods of delivery, and the likely magnitude of its affect on an exposed individual.

(2) Documentation that the Secretary has complied with 21 CFR 50.23(d). This documentation shall include:

(A) A statement that certifies and a written justification that documents that each of the criteria and standards set forth in 21 CFR 50.23(d) has been met; or

(B) If the Secretary finds it highly impracticable to certify that the criteria and standards set forth in 21 CFR 50.23(d) have been fully met because doing so would significantly impair the Secretary's ability to carry out the particular military mission, a written justification that documents which criteria and standards have or have not been met, explains the reasons for failing to meet any of the criteria and standards, and provides additional justification why a waiver should be granted solely in the interests of national security.

(3) Any additional information pertinent to the Secretary's determination, including the minutes of the Institutional Review Board's (IRB) deliberations and the IRB members' voting record.

(e) The Secretary shall develop the waiver request in consultation with the FDA.

(f) The Secretary shall submit the waiver request to the President and provide a copy to the Commissioner of the FDA (Commissioner).

(g) The Commissioner shall expeditiously review the waiver request and certify to the Assistant to the President for National Security Affairs (APNSA) and the Assistant to the President for Science and Technology (APST) whether the standards and criteria of the relevant FDA regulations have been adequately addressed and whether the investigational new drug protocol may proceed subject to a decision by the President on the informed consent waiver request. FDA shall base its decision on, and the certification shall include an analysis describing, the extent and strength of the evidence on the safety and effectiveness of the investigational new drug in relation to the medical risk that could be encountered during the military operation.

(h) The APNSA and APST will prepare a joint advisory opinion as to whether the waiver of informed consent should be granted and will forward it, along with the waiver request and the FDA certification to the President.

(i) The President will approve or deny the waiver request and will provide written notification of the decision to the Secretary and the Commissioner.

SEC. 4. *Required Action After Waiver is Issued*. (a) Following a Presidential waiver under 10 U.S.C. 1107(f), the DoD offices responsible for implementing the waiver, DoD's Office of the Inspector General, and the FDA, consistent with its regulatory role, will conduct an ongoing review and monitoring to assess adherence to the standards and criteria under 21 CFR 50.23(d) and this order. The responsible DoD offices shall also adhere to any periodic reporting requirements specified by the President at the time of the waiver approval. The Secretary shall submit the findings to the President and provide a copy to the Commissioner.

(b) The Secretary shall, as soon as practicable, make the congressional notifications required by 10 U.S.C. 1107(f)(2)(B).

(c) The Secretary shall, as soon as practicable and consistent with classification requirements, issue a public notice in the Federal Register describing each waiver of informed consent determination and a summary of the most updated scientific information on the products used, as well as other information the President determines is appropriate.

(d) The waiver will expire at the end of 1 year (or an alternative time period not to exceed 1 year, specified

by the President at the time of approval), or when the Secretary informs the President that the particular military operation creating the need for the use of the investigational drug has ended, whichever is earlier. The President may revoke the waiver based on changed circumstances or for any other reason. If the Secretary seeks to renew a waiver prior to its expiration, the Secretary must submit to the President an updated request, specifically identifying any new information available relevant to the standards and criteria under 21 CFR 50.23(d). To request to renew a waiver, the Secretary must satisfy the criteria for a waiver as described in section 3 of this order.

(e) The Secretary shall notify the President and the Commissioner if the threat countered by the investigational drug changes significantly or if significant new information on the investigational drug is received.

SEC. 5. *Training for Military Personnel.* (a) The DoD shall provide ongoing training and health risk communication on the requirements of using an investigational drug in support of a military operation to all military personnel, including those in leadership positions, during chemical and biological warfare defense training and other training, as appropriate. This ongoing training and health risk communication shall include general information about 10 U.S.C. 1107 and 21 CFR 50.23(d).

(b) If the President grants a waiver under 10 U.S.C. 1107(f), the DoD shall provide training to all military personnel conducting the waiver protocol and health risk communication to all military personnel receiving the specific investigational drug to be administered prior to its use.

(c) The Secretary shall submit the training and health risk communication plans as part of the investigational new drug protocol submission to the FDA and the reviewing IRB. Training and health risk communication shall include at a minimum:

(1) The basis for any determination by the President that informed consent is not or may not be feasible;

(2) The means for tracking use and adverse effects of the investigational drug;

(3) The benefits and risks of using the investigational drug; and

(4) A statement that the investigational drug is not approved (or not approved for the intended use).

(d) The DoD shall keep operational commanders informed of the overall requirements of successful protocol execution and their role, with the support of medical personnel, in ensuring successful execution of the protocol.

SEC. 6. *Scope.* (a) This order applies to the consideration and Presidential approval of a waiver of informed consent under 10 U.S.C. 1107 and does not apply to other FDA regulations.

(b) This order is intended only to improve the internal management of the Federal Government. Nothing contained in this order shall create any right or benefit, substantive or procedural, enforceable by any party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

WILLIAM J. CLINTON.

§ 1107a. Emergency use products

(a) WAIVER BY THE PRESIDENT.—(1) In the case of the administration of a product authorized for emergency use under section 564 of the Federal Food, Drug, and Cosmetic Act to members of the armed forces, the condition described in section 564(e)(1)(A)(ii)(III) of such Act and required under paragraph (1)(A) or (2)(A) of such section 564(e), designed to ensure that individuals are informed of an option to accept or refuse administration of a product, may be waived only by the President only if the President determines, in writing, that complying with such requirement is not in the interests of national security.

(2) The waiver authority provided in paragraph (1) shall not be construed to apply to any case other than a case in which an individual is required to be informed of an option to accept or refuse administration of a particular product by reason of a determination by the Secretary of Health and Human Services that emergency use of such product is authorized under section 564 of the Federal Food, Drug, and Cosmetic Act.

(b) PROVISION OF INFORMATION.—If the President, under subsection (a), waives the condition described in section 564(e)(1)(A)(ii)(III) of the Federal Food, Drug, and Cosmetic Act, and if the Secretary of Defense, in consultation with the Secretary of Health and Human Services, makes a determination that it is not feasible based on time limitations for the information described in section 564(e)(1)(A)(ii)(I) or (II) of such Act and required under paragraph (1)(A) or (2)(A) of such section 564(e), to be provided to a member of the armed forces prior to the administration of the product, such information shall be provided to such member of the armed forces (or next-of-kin in the case of the death of a member) to whom the product was administered as soon as possible, but not later than 30 days, after such administration. The authority provided for in this subsection may not be delegated. Information concerning the administration of the product shall be recorded in the medical record of the member.

(c) APPLICABILITY OF OTHER PROVISIONS.—In the case of an authorization by the Secretary of Health and Human Services under section 564(a)(1) of the Federal Food, Drug, and Cosmetic Act based on a determination by the Secretary of Defense under section 564(b)(1)(B) of such Act, subsections (a) through (f) of section 1107 shall not apply to the use of a product that is the subject of such authorization, within the scope of such authorization and while such authorization is effective.

(Added Pub. L. 108–136, div. A, title XVI, § 1603(b)(1), Nov. 24, 2003, 117 Stat. 1689; amended Pub. L. 108–375, div. A, title VII, § 726(b), Oct. 28, 2004, 118 Stat. 1992; Pub. L. 109–364, div. A, title X, § 1071(a)(5), (g)(7), Oct. 17, 2006, 120 Stat. 2398, 2402; Pub. L. 115–91, div. A, title VII, § 716, Dec. 12, 2017, 131 Stat. 1438; Pub. L. 115–92, § 1(c), Dec. 12, 2017, 131 Stat. 2025.)

REFERENCES IN TEXT

Section 564 of the Federal Food, Drug, and Cosmetic Act, referred to in text, is classified to section 360bbb–3 of Title 21, Food and Drugs.

AMENDMENTS

2017—Subsec. (d). Pub. L. 115–92 struck out subsec. (d) which related to additional authority to reduce deaths and severity of injuries caused by agents of war.

Pub. L. 115–91 added subsec. (d).

2006—Subsec. (a). Pub. L. 109–364, § 1071(g)(7), made technical correction to directory language of Pub. L. 108–375, § 726(b)(1). See 2004 Amendment note below.

Pub. L. 109–364, § 1071(a)(5), redesignated subpars. (A) and (B) as pars. (1) and (2), respectively, and, in par. (2), substituted ''paragraph (1)'' for ''subparagraph (A)''.

2004—Subsec. (a). Pub. L. 108–375, § 726(b)(1), as amended by Pub. L. 109–364, § 1071(g)(7), inserted ''(A)'' after ''PRESIDENT.—''.

Subsec. (a)(A). Pub. L. 108–375, §726(b)(2), struck out "is not feasible, is contrary to the best interests of the members affected, or" after "such requirement".

Subsec. (a)(B). Pub. L. 108–375, §726(b)(3), added subpar. (B).

EFFECTIVE DATE OF 2017 AMENDMENT

Pub. L. 115–92, §1(c), Dec. 12, 2017, 131 Stat. 2025, provided that the amendment made by section 1(c) is effective as of the enactment of the National Defense Authorization Act for Fiscal Year 2018 [Pub. L. 115–91].

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–364, div. A, title X, §1071(g), Oct. 17, 2006, 120 Stat. 2402, provided that the amendment made by section 1071(g)(7) is effective as of Oct. 28, 2004, and as if included in Pub. L. 108–375 as enacted.

TERMINATION DATE

Pub. L. 108–136, div. A, title XVI, §1603(d), Nov. 24, 2003, 117 Stat. 1690, which provided that section 1603 of Pub. L. 108–136 (enacting this section and section 360bbb–3 of Title 21, Food and Drugs, and amending section 331 of Title 21) would not be in effect (and the law was to read as if that section had never been enacted) as of the date on which, following enactment of the Project Bioshield Act of 2003, the President submits to Congress a notification that the Project Bioshield Act of 2003 provides an effective emergency use authority with respect to members of the Armed Forces, was repealed by Pub. L. 108–276, §4(b), July 21, 2004, 118 Stat. 859. [The Project Bioshield Act of 2003 was not enacted.]

§ 1108. Health care coverage through Federal Employees Health Benefits program: demonstration project

(a) FEHBP OPTION DEMONSTRATION.—The Secretary of Defense, after consulting with the other administering Secretaries, shall enter into an agreement with the Office of Personnel Management to conduct a demonstration project (in this section referred to as the "demonstration project") under which eligible beneficiaries described in subsection (b) and residing within one of the areas covered by the demonstration project may enroll in health benefits plans offered through the Federal Employees Health Benefits program under chapter 89 of title 5. The number of eligible beneficiaries and family members of such beneficiaries under subsection (b)(2) who may be enrolled in health benefits plans during the enrollment period under subsection (d)(2) may not exceed 66,000.

(b) ELIGIBLE BENEFICIARIES; COVERAGE.—(1) An eligible beneficiary under this subsection is—

(A) a member or former member of the uniformed services described in section 1074(b) of this title who is entitled to hospital insurance benefits under part A of title XVIII of the Social Security Act (42 U.S.C. 1395c et seq.);

(B) an individual who is an unremarried former spouse of a member or former member described in section 1072(2)(F) or 1072(2)(G));

(C) an individual who is—

(i) a dependent of a deceased member or former member described in section 1076(b) or 1076(a)(2)(B) of this title or of a member who died while on active duty for a period of more than 30 days; and

(ii) a member of family as defined in section 8901(5) of title 5; or

(D) an individual who is—

(i) a dependent of a living member or former member described in section 1076(b)(1) of this title who is entitled to hospital insurance benefits under part A of title XVIII of the Social Security Act, regardless of the member's or former member's eligibility for such hospital insurance benefits; and

(ii) a member of family as defined in section 8901(5) of title 5.

(2) Eligible beneficiaries may enroll in a Federal Employees Health Benefit plan under chapter 89 of title 5 under this section for self-only coverage or for self and family coverage which includes any dependent of the member or former member who is a family member for purposes of such chapter.

(3) A person eligible for coverage under this subsection shall not be required to satisfy any eligibility criteria specified in chapter 89 of title 5 (except as provided in paragraph (1)(C) or (1)(D)) as a condition for enrollment in health benefits plans offered through the Federal Employees Health Benefits program under the demonstration project.

(4) For purposes of determining whether an individual is a member of family under paragraph (5) of section 8901 of title 5 for purposes of paragraph (1)(C) or (1)(D), a member or former member described in section 1076(b) or 1076(a)(2)(B) of this title shall be deemed to be an employee under such section.

(5) An eligible beneficiary who is eligible to enroll in the Federal Employees Health Benefits program as an employee under chapter 89 of title 5 is not eligible to enroll in a Federal Employees Health Benefits plan under this section.

(c) AREA OF DEMONSTRATION PROJECT.—The Secretary of Defense and the Director of the Office of Personnel Management shall jointly identify and select the geographic areas in which the demonstration project will be conducted. The Secretary and the Director shall establish at least six, but not more than ten, such demonstration areas. In establishing the areas, the Secretary and Director shall include—

(1) an area that includes the catchment area of one or more military medical treatment facilities;

(2) an area that is not located in the catchment area of a military medical treatment facility;

(3) an area in which there is a Medicare Subvention Demonstration project area under section 1896[1] of title XVIII of the Social Security Act (42 U.S.C. 1395ggg); and

(4) not more than one area for each TRICARE region.

(d) DURATION OF DEMONSTRATION PROJECT.—(1) The Secretary of Defense shall conduct the demonstration project during three contract years under the Federal Employees Health Benefits program.

(2) Eligible beneficiaries shall, as provided under the agreement pursuant to subsection (a), be permitted to enroll in the demonstration project during an open enrollment period for the year 2000 (conducted in the fall of 1999). The demonstration project shall terminate on December 31, 2002.

[1] See References in Text note below.

(e) PROHIBITION AGAINST USE OF MTFS AND ENROLLMENT UNDER TRICARE.—Covered beneficiaries under this chapter who are provided coverage under the demonstration project shall not be eligible to receive care at a military medical treatment facility or to enroll in a health care plan under the TRICARE program.

(f) TERM OF ENROLLMENT IN PROJECT.—(1) Subject to paragraphs (2) and (3), the period of enrollment of an eligible beneficiary who enrolls in the demonstration project during the open enrollment period for the year 2000 shall be three years unless the beneficiary disenrolls before the termination of the project.

(2) A beneficiary who elects to enroll in the project, and who subsequently discontinues enrollment in the project before the end of the period described in paragraph (1), shall not be eligible to reenroll in the project.

(3) An eligible beneficiary enrolled in a Federal Employees Health Benefits plan under this section may change health benefits plans and coverage in the same manner as any other Federal Employees Health Benefits program beneficiary may change such plans.

(g) EFFECT OF CANCELLATION.—The cancellation by an eligible beneficiary of coverage under the Federal Employee Health Benefits program shall be irrevocable during the term of the demonstration project.

(h) SEPARATE RISK POOLS; CHARGES.—(1) The Director of the Office of Personnel Management shall require health benefits plans under chapter 89 of title 5 that participate in the demonstration project to maintain a separate risk pool for purposes of establishing premium rates for eligible beneficiaries who enroll in such a plan in accordance with this section.

(2) The Director shall determine total subscription charges for self only or for family coverage for eligible beneficiaries who enroll in a health benefits plan under chapter 89 of title 5 in accordance with this section. The subscription charges shall include premium charges paid to the plan and amounts described in section 8906(c) of title 5 for administrative expenses and contingency reserves.

(i) GOVERNMENT CONTRIBUTIONS.—The Secretary of Defense shall be responsible for the Government contribution for an eligible beneficiary who enrolls in a health benefits plan under chapter 89 of title 5 in accordance with this section, except that the amount of the contribution may not exceed the amount of the Government contribution which would be payable if the electing beneficiary were an employee (as defined for purposes of such chapter) enrolled in the same health benefits plan and level of benefits.

(j) APPLICATION OF MEDIGAP PROTECTIONS TO DEMONSTRATION PROJECT ENROLLEES.—(1) Subject to paragraph (2), the provisions of section 1882(s)(3) (other than clauses (i) through (iv) of subparagraph (B)) and 1882(s)(4) of the Social Security Act shall apply to enrollment (and termination of enrollment) in the demonstration project under this section, in the same manner as they apply to enrollment (and termination of enrollment) with a Medicare+Choice [2] organization in a Medicare+Choice [2] plan.

[2] See Change of Name note below.

(2) In applying paragraph (1)—

(A) any reference in clause (v) or (vi) of section 1882(s)(3)(B) of such Act to 12 months is deemed a reference to 36 months; and

(B) the notification required under section 1882(s)(3)(D) of such Act shall be provided in a manner specified by the Secretary of Defense in consultation with the Director of the Office of Personnel Management.

(Added Pub. L. 105–261, div. A, title VII, § 721(a)(1), Oct. 17, 1998, 112 Stat. 2061; amended Pub. L. 108–375, div. A, title X, § 1084(d)(8), Oct. 28, 2004, 118 Stat. 2061; Pub. L. 112–239, div. A, title X, § 1076(g)(1), Jan. 2, 2013, 126 Stat. 1955.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (b)(1)(A), (D)(i), and (j)(1), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Part A of title XVIII of the Act is classified generally to Part A (§ 1395c et seq.) of subchapter XVIII of chapter 7 of Title 42, The Public Health and Welfare. Section 1882 of the Act is classified to section 1395ss of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

Section 1896 of the Social Security Act, referred to in subsec. (c)(3), was classified to section 1395ggg of Title 42, The Public Health and Welfare, and was omitted from the Code.

AMENDMENTS

2013—Subsecs. (j) to (*l*). Pub. L. 112–239 redesignated subsec. (*l*) as (j) and struck out former subsecs. (j) and (k) which required reports regarding the demonstration project by the Secretary of Defense and the Director of the Office of Personnel Management and by the Comptroller General.

2004—Subsec. (e). Pub. L. 108–375 substituted ''health'' for ''heath''.

CHANGE OF NAME

References to Medicare+Choice deemed to refer to Medicare Advantage or MA, subject to an appropriate transition provided by the Secretary of Health and Human Services in the use of those terms, see section 201(b) of Pub. L. 108–173, set out as a note under section 1395w–21 of Title 42, The Public Health and Welfare.

COMPREHENSIVE EVALUATION OF IMPLEMENTATION OF DEMONSTRATION PROJECTS AND TRICARE PHARMACY REDESIGN

Pub. L. 105–261, div. A, title VII, § 724, Oct. 17, 1998, 112 Stat. 2069, as amended by Pub. L. 106–65, div. A, title X, § 1067(3), Oct. 5, 1999, 113 Stat. 774, required the Comptroller General, not later than Mar. 31, 2003, to submit to committees of Congress a report containing a comprehensive comparative analysis of the FEHBP demonstration project conducted under this section, the TRICARE Senior Supplement under Pub. L. 105–261, § 722, formerly set out as a note under section 1073 of this title, and the redesign of the TRICARE pharmacy system under section Pub. L. 105–261, § 723, set out as a note under section 1073 of this title.

§ 1109. Organ and tissue donor program

(a) RESPONSIBILITIES OF THE SECRETARY OF DEFENSE.—The Secretary of Defense shall ensure that the advanced systems developed for recording armed forces members' personal data and information (such as the SMARTCARD, MEDITAG, and Personal Information Carrier) include the capability to record organ and tissue donation elections.

(b) RESPONSIBILITIES OF THE SECRETARIES OF THE MILITARY DEPARTMENTS.—The Secretaries of the military departments shall ensure that—

(1) appropriate information about organ and tissue donation is provided—

(A) to each officer candidate during initial training; and

(B) to each recruit—

(i) after completion by the recruit of basic training; and

(ii) before arrival of the recruit at the first duty assignment of the recruit;

(2) members of the armed forces are given recurring, specific opportunities to elect to be organ or tissue donors during service in the armed forces and upon retirement; and

(3) members of the armed forces electing to be organ or tissue donors are encouraged to advise their next of kin concerning the donation decision and any subsequent change of that decision.

(c) RESPONSIBILITIES OF THE SURGEONS GENERAL OF THE MILITARY DEPARTMENTS.—The Surgeons General of the military departments shall ensure that—

(1) appropriate training is provided to enlisted and officer medical personnel to facilitate the effective operation of organ and tissue donation activities under garrison conditions and, to the extent possible, under operational conditions; and

(2) medical logistical activities can, to the extent possible without jeopardizing operational requirements, support an effective organ and tissue donation program.

(Added Pub. L. 105–261, div. A, title VII, §741(b)(1), Oct. 17, 1998, 112 Stat. 2073; amended Pub. L. 106–398, §1 [[div. A], title X, §1087(a)(8)], Oct. 30, 2000, 114 Stat. 1654, 1654A–290.)

AMENDMENTS

2000—Subsec. (b). Pub. L. 106–398 struck out ''(1)'' before ''The Secretaries'' in introductory provisions.

FINDINGS

Pub. L. 105–261, div. A, title VII, §741(a), Oct. 17, 1998, 112 Stat. 2073, provided that: ''Congress makes the following findings:

''(1) Organ and tissue transplantation is one of the most remarkable medical success stories in the history of medicine.

''(2) Each year, the number of people waiting for organ or tissue transplantation increases. It is estimated that there are approximately 39,000 patients, ranging in age from babies to those in retirement, awaiting transplants of kidneys, hearts, livers, and other solid organs.

''(3) The Department of Defense has made significant progress in increasing the awareness of the importance of organ and tissue donations among members of the Armed Forces.

''(4) The inclusion of organ and tissue donor elections in the Defense Enrollment Eligibility Reporting System (DEERS) central database represents a major step in ensuring that organ and tissue donor elections are a matter of record and are accessible in a timely manner.''

REPORT ON IMPLEMENTATION

Pub. L. 105–261, div. A, title VII, §741(c), Oct. 17, 1998, 112 Stat. 2074, as amended by Pub. L. 106–65, div. A, title X, §1067(3), Oct. 5, 1999, 113 Stat. 774, directed the Secretary of Defense to submit to committees of Congress a report on the implementation of this section not later than Sept. 1, 1999.

§ 1110. Anthrax vaccine immunization program; procedures for exemptions and monitoring reactions

(a) PROCEDURES FOR MEDICAL AND ADMINISTRATIVE EXEMPTIONS.—(1) The Secretary of Defense shall establish uniform procedures under which members of the armed forces may be exempted from participating in the anthrax vaccine immunization program for either administrative or medical reasons.

(2) The Secretaries of the military departments shall provide for notification of all members of the armed forces of the procedures established pursuant to paragraph (1).

(b) SYSTEM FOR MONITORING ADVERSE REACTIONS.—(1) The Secretary shall establish a system for monitoring adverse reactions of members of the armed forces to the anthrax vaccine. That system shall include the following:

(A) Independent review of Vaccine Adverse Event Reporting System reports.

(B) Periodic surveys of personnel to whom the vaccine is administered.

(C) A continuing longitudinal study of a preidentified group of members of the armed forces (including men and women and members from all services).

(D) Active surveillance of a sample of members to whom the anthrax vaccine has been administered that is sufficient to identify, at the earliest opportunity, any patterns of adverse reactions, the discovery of which might be delayed by reliance solely on the Vaccine Adverse Event Reporting System.

(2) The Secretary may extend or expand any ongoing or planned study or analysis of trends in adverse reactions of members of the armed forces to the anthrax vaccine in order to meet any of the requirements in paragraph (1).

(3) The Secretary shall establish guidelines under which members of the armed forces who are determined by an independent expert panel to be experiencing unexplained adverse reactions may obtain access to a Department of Defense Center of Excellence treatment facility for expedited treatment and follow up.

(Added Pub. L. 106–398, §1 [[div. A], title VII, §751(b)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–193.)

DEADLINES FOR ESTABLISHMENT AND IMPLEMENTATION

Pub. L. 106–398, §1 [[div. A], title VII, §751(e)], Oct. 30, 2000, 114 Stat. 1654, 1654A–195, provided that: ''The Secretary of Defense shall—

''(1) not later than April 1, 2001, establish the uniform procedures for exemption from participation in the anthrax vaccine immunization program of the Department of Defense required under subsection (a) of section 1110 of title 10, United States Code (as added by subsection (b));

''(2) not later than July 1, 2001, establish the system for monitoring adverse reactions of members of the Armed Forces to the anthrax vaccine required under subsection (b)(1) of such section;

''(3) not later than April 1, 2001, establish the guidelines under which members of the Armed Forces may obtain access to a Department of Defense Center of Excellence treatment facility for expedited treatment and follow up required under subsection (b)(3) of such section; and

''(4) not later than July 1, 2001, prescribe the regulations regarding emergency essential employees of the Department of Defense required under subsection (a)

of section 1580a of such title (as added by subsection(c)).''

§1110a. Notification of certain individuals regarding options for enrollment under Medicare part B

(a) IN GENERAL.—(1) As soon as practicable, the Secretary of Defense shall notify each individual described in subsection (b)—

(A) that the individual is no longer eligible for health care benefits under the TRICARE program under this chapter; and

(B) of options available for enrollment of the individual in the supplementary medical insurance program under part B of title XVIII of the Social Security Act (42 U.S.C. 1395j et seq.).

(2) In carrying out this subsection, the Secretary of Defense shall—

(A) establish procedures for identifying individuals described in subsection (b); and

(B) consult with the Secretary of Health and Human Services to accurately identify and notify such individuals.

(b) INDIVIDUALS DESCRIBED.—An individual described in this subsection is an individual who is—

(1) a covered beneficiary;

(2) entitled to benefits under part A of title XVIII of the Social Security Act (42 U.S.C. 1395c) under section 226(b) or section 226A of such Act (42 U.S.C. 426(b) and 426–1); and

(3) eligible to enroll in the supplementary medical insurance program under part B of such title (42 U.S.C. 1395j et seq.).

(Added Pub. L. 111–84, div. A, title VII, §707(a), Oct. 28, 2009, 123 Stat. 2376.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (a)(1)(B) and (b)(2), (3), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Parts A and B of title XVIII of the Act are classified generally to parts A (§1395c et seq.) and B (§1395j et seq.), respectively, of subchapter XVIII of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

§1110b. TRICARE program: extension of dependent coverage

(a) IN GENERAL.—In accordance with subsection (c), an individual described in subsection (b) shall be deemed to be a dependent (as described in section 1072(2)(D) of this title) for purposes of coverage under the TRICARE program.

(b) INDIVIDUAL DESCRIBED.—An individual described in this subsection is an individual who—

(1) would be a dependent under section 1072(2) of this title but for exceeding an age limit under such section;

(2) has not attained the age of 26;

(3) is not eligible to enroll in an eligible employer-sponsored plan (as defined in section 5000A(f)(2) of the Internal Revenue Code of 1986);

(4) is not otherwise a dependent of a member or a former member under any subparagraph of section 1072(2) of this title; and

(5) meets other criteria specified in regulations prescribed by the Secretary, similar to regulations prescribed by the Secretary of Health and Human Services under section 2714(b) of the Public Health Service Act.

(c) PREMIUM.—(1) The Secretary shall prescribe by regulation a premium (or premiums) for coverage under the TRICARE program provided pursuant to this section to an individual described in subsection (b). Such premium shall apply instead of any enrollment fees required under section 1075 or 1075a of this title, as appropriate.

(2) The monthly amount of the premium in effect for a month for coverage under the TRICARE program pursuant to this section shall be the amount equal to the cost of such coverage that the Secretary determines on an appropriate actuarial basis.

(3) The Secretary shall prescribe the requirements and procedures applicable to the payment of premiums under this subsection.

(4) Amounts collected as premiums under this subsection shall be credited to the appropriation available for the Defense Health Program Account under section 1100 of this title, shall be merged with sums in such Account that are available for the fiscal year in which collected, and shall be available under subsection (b) of such section for such fiscal year.

(Added Pub. L. 111–383, div. A, title VII, §702(a)(1), Jan. 7, 2011, 124 Stat. 4244; Pub. L. 114–328, div. A, title VII, §701(j)(1)(F), Dec. 23, 2016, 130 Stat. 2192; Pub. L. 115–91, div. A, title VII, §739(f), Dec. 12, 2017, 131 Stat. 1447.)

REFERENCES IN TEXT

Section 5000A of the Internal Revenue Code of 1986, referred to in subsec. (b)(3), is classified to section 5000A of Title 26, Internal Revenue Code.

Section 2714 of the Public Health Service Act, referred to in subsec. (b)(5), is classified to section 300gg–14 of Title 42, The Public Health and Welfare.

AMENDMENTS

2017—Subsec. (c)(1). Pub. L. 115–91 substituted ''section 1075 or 1075a of this title, as appropriate'' for ''section 1075 of this section''.

2016—Subsec. (c)(1). Pub. L. 114–328 inserted at end ''Such premium shall apply instead of any enrollment fees required under section 1075 of this section.''

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114–328 applicable with respect to the provision of health care under the TRICARE program beginning on Jan. 1, 2018, see section 701(k) of Pub. L. 114–328, set out as a note under section 1072 of this title.

EFFECTIVE DATE AND REGULATIONS

Pub. L. 111–383, div. A, title VII, §702(b), Jan. 7, 2011, 124 Stat. 4245, provided that: ''The amendments made by this section [enacting this section] shall take effect on January 1, 2011. The Secretary of Defense shall prescribe an interim final rule with respect to such amendments, effective not later than January 1, 2011.''

CHAPTER 56—DEPARTMENT OF DEFENSE MEDICARE-ELIGIBLE RETIREE HEALTH CARE FUND

Sec.
1111. Establishment and purpose of Fund; definitions; authority to enter into agreements.
1112. Assets of Fund.
1113. Payments from the Fund.

Sec.
1114. Board of Actuaries.
1115. Determination of contributions to the Fund.
1116. Payments into the Fund.
1117. Investment of assets of Fund.

AMENDMENTS

2001—Pub. L. 107–107, div. A, title VII, §711(e)(3), Dec. 28, 2001, 115 Stat. 1167, inserted ''; authority to enter into agreements'' after ''definitions'' in item 1111.

§1111. Establishment and purpose of Fund; definitions; authority to enter into agreements

(a) There is established on the books of the Treasury a fund to be known as the Department of Defense Medicare-Eligible Retiree Health Care Fund (hereinafter in this chapter referred to as the ''Fund''), which shall be administered by the Secretary of the Treasury. The Fund shall be used for the accumulation of funds in order to finance on an actuarially sound basis liabilities of the uniformed services under uniformed services retiree health care programs for medicare-eligible beneficiaries.

(b) In this chapter:

(1) The term ''uniformed services retiree health care programs'' means the provisions of this title or any other provision of law creating an entitlement to or eligibility for health care for a member or former member of a participating uniformed service who is entitled to retired or retainer pay, and an eligible dependent under such program.

(2) The term ''eligible dependent'' means a dependent described in section 1076(a)(2) (other than a dependent of a member on active duty), 1076(b), 1086(c)(2), or 1086(c)(3) of this title.

(3) The term ''medicare-eligible'', with respect to any person, means entitled to benefits under part A of title XVIII of the Social Security Act (42 U.S.C. 1395c et seq.).

(4) The term ''participating uniformed service'' means the Army, Navy, Air Force, Marine Corps, and Space Force, and any other uniformed service that is covered by an agreement entered into under subsection (c).

(5) The term ''members of the uniformed services on active duty'' does not include a cadet at the United States Military Academy, the United States Air Force Academy, or the Coast Guard Academy or a midshipman at the United States Naval Academy.

(c) The Secretary of Defense shall enter into an agreement with each other administering Secretary (as defined in section 1072(3) of this title) for participation in the Fund by a uniformed service under the jurisdiction of that Secretary. The agreement shall require that Secretary to determine contributions to the Fund on behalf of the members of the uniformed service under the jurisdiction of that Secretary in a manner comparable to the determination with respect to contributions to the Fund made by the Secretary of Defense under section 1115(b) of this title, and such contributions shall be paid into the Fund as provided in section 1116(a).

(Added Pub. L. 106–398, §1 [[div. A], title VII, §713(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–179; amended Pub. L. 107–107, div. A, title VII, §711(a), (b)(1), (e)(1), (2), title X, §1048(a)(12), Dec. 28, 2001, 115 Stat. 1164–1166, 1223; Pub. L. 107–314, div. A, title VII, §704(b), Dec. 2, 2002, 116 Stat. 2584; Pub. L. 108–375, div. A, title VII, §725(c)(1), Oct. 28, 2004, 118 Stat. 1992; Pub. L. 109–364, div. A, title V, §592(a), Oct. 17, 2006, 120 Stat. 2233; Pub. L. 116–283, div. A, title IX, §924(b)(1)(I), Jan. 1, 2021, 134 Stat. 3820.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (b)(3), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Part A of title XVIII of the Act is classified generally to part A (§1395c et seq.) of subchapter XVIII of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

2021—Subsec. (b)(4). Pub. L. 116–283 substituted ''Marine Corps, and Space Force'' for ''and Marine Corps''.

2006—Subsec. (a). Pub. L. 109–364, §592(a)(1), substituted ''of the uniformed services'' for ''of the Department of Defense''.

Subsec. (b)(5). Pub. L. 109–364, §592(a)(2), added par. (5).

2004—Subsec. (c). Pub. L. 108–375 substituted ''1115(b) of this title, and such contributions shall be paid into the Fund as provided in section 1116(a)'' for ''1116 of this title, and such administering Secretary may make such contributions''.

2002—Subsec. (c). Pub. L. 107–314 substituted ''shall enter into an agreement with each other administering Secretary'' for ''may enter into an agreement with any other administering Secretary'' in first sentence and ''The'' for ''Any such'' in second sentence.

2001—Pub. L. 107–107, §711(e)(2), inserted ''; authority to enter into agreements'' after ''definitions'' in section catchline.

Subsec. (a). Pub. L. 107–107, §1048(a)(12), substituted ''hereinafter'' for ''hereafter''.

Pub. L. 107–107, §711(e)(1), substituted ''uniformed services retiree health care programs'' for ''Department of Defense retiree health care programs''.

Subsec. (b). Pub. L. 107–107, §711(a), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''In this chapter:

''(1) The term 'Department of Defense retiree health care programs for medicare-eligible beneficiaries' means the provisions of this title or any other provision of law creating entitlement to health care for a medicare-eligible member or former member of the uniformed services entitled to retired or retainer pay, or a medicare-eligible dependent of a member or former member of the uniformed services entitled to retired or retainer pay.

''(2) The term 'medicare-eligible' means entitled to benefits under part A of title XVIII of the Social Security Act (42 U.S.C. 1395c et seq.).

''(3) The term 'dependent' means a dependent (as such term is defined in section 1072 of this title) described in section 1076(b)(1) of this title.''

Subsec. (c). Pub. L. 107–107, §711(b)(1), added subsec. (c).

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–364, div. A, title V, §592(c), Oct. 17, 2006, 120 Stat. 2234, provided that: ''The amendments made by this section [amending this section and section 1115 of this title] shall take effect with respect to payments under chapter 56 of title 10, United States Code, beginning with fiscal year 2008.''

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–375, div. A, title VII, §725(d), Oct. 28, 2004, 118 Stat. 1992, provided that: ''The amendments made by this section [amending this section and sections 1115 and 1116 of this title] shall take effect on October 1, 2005.''

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–107, div. A, title VII, §711(f), Dec. 28, 2001, 115 Stat. 1167, provided that: ''The amendments made

by this section [amending this section and sections 1112, 1113, 1115, and 1116 of this title] shall take effect as if included in the enactment of chapter 56 of title 10, United States Code, by section 713(a)(1) of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted into law by Public Law 106–398; 114 Stat. 1654A–179).''

PAYMENT OF CONTRIBUTIONS FOR THE UNIFORMED SERVICE OF THE PUBLIC HEALTH SERVICE

Pub. L. 108–7, div. F, title II, Feb. 20, 2003, 117 Stat. 261, provided in part: ''That notwithstanding any other provision of law, contributions authorized by 10 U.S.C. 1111 for the Uniformed Service of the Public Health Service shall be paid in fiscal year 2003 and thereafter from the Department of Health and Human Services' Retirement Pay and Medical Benefits for Commissioned Officers account without charges billed to the Indian Health Service''.

§1112. Assets of Fund

There shall be deposited into the Fund the following, which shall constitute the assets of the Fund:

(1) Amounts paid into the Fund under section 1116 of this title.

(2) Any amount appropriated to the Fund.

(3) Any return on investment of the assets of the Fund.

(4) Amounts paid into the Fund pursuant to section 1111(c) of this title.

(Added Pub. L. 106–398, §1 [[div. A], title VII, §713(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–180; amended Pub. L. 107–107, div. A, title VII, §711(b)(2), Dec. 28, 2001, 115 Stat. 1165.)

AMENDMENTS

2001—Par. (4). Pub. L. 107–107 added par. (4).

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–107 effective as if included in the enactment of this chapter by Pub. L. 106–398, see section 711(f) of Pub. L. 107–107, set out as a note under section 1111 of this title.

§1113. Payments from the Fund

(a) There shall be paid from the Fund amounts payable for the costs of all uniformed service retiree health care programs for the benefit of members or former members of a participating uniformed service who are entitled to retired or retainer pay and are medicare eligible, and eligible dependents who are medicare eligible.

(b) The assets of the Fund are hereby made available for payments under subsection (a).

(c)(1) In carrying out subsection (a), the Secretary of Defense may transfer periodically from the Fund to applicable appropriations of the Department of Defense, or to applicable appropriations of other departments or agencies, such amounts as the Secretary determines necessary to cover the costs chargeable to those appropriations for uniformed service retiree health care programs for beneficiaries under those programs who are medicare-eligible. Such transfers may include amounts necessary for the administration of such programs. Amounts so transferred shall be merged with and be available for the same purposes and for the same time period as the appropriation to which transferred. Upon a determination that all or part of the funds transferred from the Fund are not necessary for the purposes for which transferred, such amounts may be transferred back to the Fund. This transfer authority is in addition to any other transfer authority that may be available to the Secretary.

(2) A transfer from the Fund under paragraph (1) may not be made to an appropriation after the end of the second fiscal year after the fiscal year that the appropriation is available for obligation. A transfer back to the Fund under paragraph (1) may not be made after the end of the second fiscal year after the fiscal year for which the appropriation to which the funds were originally transferred is available for obligation.

(d) The Secretary of Defense shall by regulation establish the method or methods for calculating amounts to be transferred under subsection (c). Such method or methods may be based (in whole or in part) on a proportionate share of the volume (measured as the Secretary determines appropriate) of health care services provided or paid for under uniformed service retiree health care programs for beneficiaries under those programs who are medicare-eligible in relation to the total volume of health care services provided or paid for under Department of Defense health care programs.

(e) The regulations prescribed by the Secretary under subsection (d) shall be provided to the Comptroller General not less than 60 days before such regulations become effective. The Comptroller General shall, not later than 30 days after receiving such regulations, report to the Secretary of Defense and Congress on the adequacy and appropriateness of the regulations.

(f) If the Secretary of Defense enters into an agreement with another administering Secretary pursuant to section 1111(c), the Secretary of Defense may take the actions described in subsections (c), (d), and (e) on behalf of the beneficiaries and programs of the other participating uniformed service.

(Added Pub. L. 106–398, §1 [[div. A], title VII, §713(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–180; amended Pub. L. 107–107, div. A, title VII, §711(c), Dec. 28, 2001, 115 Stat. 1165.)

AMENDMENTS

2001—Subsec. (a). Pub. L. 107–107, §711(c)(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''There shall be paid from the Fund amounts payable for Department of Defense retiree health care programs for medicare-eligible beneficiaries.''

Subsecs. (c) to (f). Pub. L. 107–107, §711(c)(2), added subsecs. (c) to (f).

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–107 effective as if included in the enactment of this chapter by Pub. L. 106–398, see section 711(f) of Pub. L. 107–107, set out as a note under section 1111 of this title.

EFFECTIVE DATE

Pub. L. 106–398, §1 [[div. A], title VII, §713(b)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–184, provided that: ''Sections 1113 and 1116 of title 10, United States Code (as added by subsection (a)), shall take effect on October 1, 2002.''

§1114. Board of Actuaries

(a)(1) There is established in the Department of Defense a Department of Defense Medicare-

Eligible Retiree Health Care Board of Actuaries (hereinafter in this chapter referred to as the ''Board''). The Board shall consist of three members who shall be appointed by the Secretary of Defense from among qualified professional actuaries who are members of the Society of Actuaries.

(2)(A) Except as provided in subparagraph (B), the members of the Board shall serve for a term of 15 years, except that a member of the Board appointed to fill a vacancy occurring before the end of the term for which his predecessor was appointed shall only serve until the end of such term. A member may serve after the end of his term until his successor has taken office. A member of the Board may be removed by the Secretary of Defense for misconduct or failure to perform functions vested in the Board, and for no other reason.

(B) Of the members of the Board who are first appointed under this paragraph, one each shall be appointed for terms ending five, ten, and 15 years, respectively, after the date of appointment, as designated by the Secretary of Defense at the time of appointment.

(3) A member of the Board who is not otherwise an employee of the United States is entitled to receive pay at the daily equivalent of the annual rate of basic pay of the highest rate of basic pay under the General Schedule of subchapter III of chapter 53 of title 5, for each day the member is engaged in the performance of duties vested in the Board, and is entitled to travel expenses, including a per diem allowance, in accordance with section 5703 of title 5.

(b) The Board shall report to the Secretary of Defense annually on the actuarial status of the Fund and shall furnish its advice and opinion on matters referred to it by the Secretary.

(c) The Board shall review valuations of the Fund under section 1115(c) of this title and shall report periodically, not less than once every four years, to the President and Congress on the status of the Fund. The Board shall include in such reports recommendations for such changes as in the Board's judgment are necessary to protect the public interest and maintain the Fund on a sound actuarial basis.

(Added Pub. L. 106–398, §1 [[div. A], title VII, §713(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–180; amended Pub. L. 107–107, div. A, title X, §1048(a)(12), Dec. 28, 2001, 115 Stat. 1223.)

AMENDMENTS

2001—Subsec. (a)(1). Pub. L. 107–107 substituted ''hereinafter'' for ''hereafter''.

§ 1115. Determination of contributions to the Fund

(a) The Board shall determine the amount that is the present value (as of October 1, 2002) of future benefits payable from the Fund that are attributable to service in the participating uniformed services performed before October 1, 2002. That amount is the original unfunded liability of the Fund. The Board shall determine the period of time over which the original unfunded liability should be liquidated and shall determine an amortization schedule for the liquidation of such liability over that period. Contributions to the Fund for the liquidation of the original unfunded liability in accordance with such schedule shall be made as provided in section 1116 of this title.

(b) The Secretary of Defense shall determine, before the beginning of each fiscal year after September 30, 2005, the total amount of the Department of Defense contribution to be made to the Fund for that fiscal year for purposes of section 1116(b)(2). That amount shall be the sum of the following:

(1) The product of—

(A) the current estimate of the value of the single level dollar amount to be determined under subsection (c)(1)(A) at the time of the next actuarial valuation under subsection (c); and

(B) the expected average force strength during that fiscal year for members of the uniformed services under the jurisdiction of the Secretary of Defense on active duty and full-time National Guard duty, but excluding any member who would be excluded for active-duty end strength purposes by section 115(i) of this title.

(2) The product of—

(A) the current estimate of the value of the single level dollar amount to be determined under subsection (c)(1)(B) at the time of the next actuarial valuation under subsection (c); and

(B) the expected average force strength during that fiscal year for members of the Selected Reserve of the uniformed services under the jurisdiction of the Secretary of Defense who are not otherwise described in paragraph (1)(B).

(c)(1) Not less often than every four years, the Secretary of Defense shall carry out an actuarial valuation of the Fund. Each such actuarial valuation shall include—

(A) a determination (using the aggregate entry-age normal cost method) of a single level dollar amount for members of the participating uniformed services on active duty and full-time National Guard duty, but excluding any member who would be excluded for active-duty end strength purposes by section 115(i) of this title; and

(B) a determination (using the aggregate entry-age normal cost method) of a single level dollar amount for members of the Selected Reserve of the participating uniformed services who are not otherwise described by subparagraph (A).

Such single level dollar amounts shall be used for the purposes of subsection (b). The Secretary of Defense may determine a separate single level dollar amount under subparagraph (A) or (B) for any participating uniformed service, if, in the judgment of the Secretary, such a determination would produce a more accurate and appropriate actuarial valuation for that uniformed service.

(2) If at the time of any such valuation there has been a change in benefits under the uniformed services retiree health care programs for medicare-eligible beneficiaries that has been made since the last such valuation and such change in benefits increases or decreases the

present value of amounts payable from the Fund, the Secretary of Defense shall determine an amortization methodology and schedule for the amortization of the cumulative unfunded liability (or actuarial gain to the Fund) created by such change and any previous such changes so that the present value of the sum of the amortization payments (or reductions in payments that would otherwise be made) equals the cumulative increase (or decrease) in the present value of such amounts.

(3) If at the time of any such valuation the Secretary of Defense determines that, based upon changes in actuarial assumptions since the last valuation, there has been an actuarial gain or loss to the Fund, the Secretary shall determine an amortization methodology and schedule for the amortization of the cumulative gain or loss to the Fund created by such change in assumptions and any previous such changes in assumptions through an increase or decrease in the payments that would otherwise be made to the Fund.

(4) If at the time of any such valuation the Secretary of Defense determines that, based upon the Fund's actuarial experience (other than resulting from changes in benefits or actuarial assumptions) since the last valuation, there has been an actuarial gain or loss to the Fund, the Secretary shall determine an amortization methodology and schedule for the amortization of the cumulative gain or loss to the Fund created by such actuarial experience and any previous actuarial experience through an increase or decrease in the payments that would otherwise be made to the Fund.

(5) Contributions to the Fund in accordance with amortization schedules under paragraphs (2), (3), and (4) shall be made as provided in section 1116 of this title.

(d) All determinations under this section shall be made using methods and assumptions approved by the Board of Actuaries (including assumptions of interest rates and medical inflation) and in accordance with generally accepted actuarial principles and practices.

(e) The Secretary of Defense shall provide for the keeping of such records as are necessary for determining the actuarial status of the Fund.

(Added Pub. L. 106–398, § 1 [[div. A], title VII, § 713(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–181; amended Pub. L. 107–107, div. A, title VII, § 711(b)(3), (e)(1), Dec. 28, 2001, 115 Stat. 1165, 1166; Pub. L. 108–136, div. A, title VII, § 722(a), (c), title X, § 1045(a)(3), Nov. 24, 2003, 117 Stat. 1532, 1612; Pub. L. 108–375, div. A, title VII, § 725(c)(2)–(5), Oct. 28, 2004, 118 Stat. 1992; Pub. L. 109–364, div. A, title V, § 592(b), Oct. 17, 2006, 120 Stat. 2233.)

AMENDMENTS

2006—Subsec. (b)(1)(B). Pub. L. 109–364, § 592(b)(1)(A), substituted ''on active duty and full-time National Guard duty, but excluding any member who would be excluded for active-duty end strength purposes by section 115(i) of this title'' for ''on active duty (other than active duty for training) and full-time National Guard duty (other than full-time National Guard duty for training only)''.

Subsec. (b)(2)(B). Pub. L. 109–364, § 592(b)(1)(B), substituted ''Selected Reserve'' for ''Ready Reserve'' and struck out ''(other than members on full-time National Guard duty other than for training)'' after ''Secretary of Defense''.

Subsec. (c)(1)(A). Pub. L. 109–364, § 592(b)(2)(A), substituted ''on active duty and full-time National Guard duty, but excluding any member who would be excluded for active-duty end strength purposes by section 115(i) of this title'' for ''on active duty (other than active duty for training) or full-time National Guard duty (other than full-time National Guard duty for training only)''.

Subsec. (c)(1)(B). Pub. L. 109–364, § 592(b)(2)(B), substituted ''Selected Reserve'' for ''Ready Reserve'' and struck out ''(other than members on full-time National Guard duty other than for training)'' after ''uniformed services''.

2004—Subsec. (a). Pub. L. 108–375, § 725(c)(2), substituted ''1116'' for ''1116(c)''.

Subsec. (b). Pub. L. 108–375, § 725(c)(3), substituted ''The Secretary of Defense shall determine, before the beginning of each fiscal year after September 30, 2005, the total amount of the Department of Defense contribution to be made to the Fund for that fiscal year for purposes of section 1116(b)(2).'' for ''(1) The Secretary of Defense shall determine each year, in sufficient time for inclusion in budget requests for the following fiscal year, the total amount of Department of Defense contributions to be made to the Fund during that fiscal year under section 1116(a) of this title.'', redesignated subpar. (A) as par. (1) and cls. (i) and (ii) as subpars. (A) and (B), respectively, of par. (1), redesignated subpar. (B) as par. (2) and cls. (i) and (ii) as subpars. (A) and (B), respectively, of par. (2), substituted ''paragraph (1)(B)'' for ''subparagraph (A)(ii)'' in par. (2)(B), and struck out former par. (2) which read as follows: ''The amount determined under paragraph (1) for any fiscal year is the amount needed to be appropriated to the Department of Defense (or to the other executive department having jurisdiction over the participating uniformed service) for that fiscal year for payments to be made to the Fund during that year under section 1116(a) of this title. The President shall include not less than the full amount so determined in the budget transmitted to Congress for that fiscal year under section 1105 of title 31. The President may comment and make recommendations concerning any such amount.''

Subsec. (c)(1). Pub. L. 108–375, § 725(c)(4), struck out ''and section 1116(a) of this title'' after ''subsection (b)'' in concluding provisions.

Subsec. (c)(5). Pub. L. 108–375, § 725(c)(5), substituted ''1116'' for ''1116(c)''.

2003—Subsec. (a). Pub. L. 108–136, § 722(c), substituted ''section 1116(c) of this title'' for ''section 1116(b) of this title''.

Subsec. (c)(1). Pub. L. 108–136, § 722(a), inserted at end of concluding provisions ''The Secretary of Defense may determine a separate single level dollar amount under subparagraph (A) or (B) for any participating uniformed service, if, in the judgment of the Secretary, such a determination would produce a more accurate and appropriate actuarial valuation for that uniformed service.''

Subsec. (c)(1)(B). Pub. L. 108–136, § 1045(a)(3), substituted ''(other than members'' for ''and other than members''.

Subsec. (c)(5). Pub. L. 108–136, § 722(c), substituted ''section 1116(c) of this title'' for ''section 1116(b) of this title''.

2001—Subsec. (a). Pub. L. 107–107, § 711(b)(3)(A), inserted ''participating'' before ''uniformed services''.

Subsec. (b)(1)(A)(ii), (B)(ii). Pub. L. 107–107, § 711(b)(3)(B), inserted ''under the jurisdiction of the Secretary of Defense'' after ''uniformed services''.

Subsec. (b)(2). Pub. L. 107–107, § 711(b)(3)(C), inserted ''(or to the other executive department having jurisdiction over the participating uniformed service)'' after ''Department of Defense''.

Subsec. (c)(1)(A), (B). Pub. L. 107–107, § 711(b)(3)(D), inserted ''participating'' before ''uniformed services''.

Subsec. (c)(2). Pub. L. 107–107, § 711(e)(1), substituted ''uniformed services retiree health care programs'' for ''Department of Defense retiree health care programs''.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–364 effective with respect to payments under this chapter beginning with fiscal year 2008, see section 592(c) of Pub. L. 109–364, set out as a note under section 1111 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–375 effective Oct. 1, 2005, see section 725(d) of Pub. L. 108–375, set out as a note under section 1111 of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–107 effective as if included in the enactment of this chapter by Pub. L. 106–398, see section 711(f) of Pub. L. 107–107, set out as a note under section 1111 of this title.

EFFECTIVE DATE

Pub. L. 106–398, §1 [[div. A], title VII, §713(b)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–184, provided that: ''Section 1115 of such title (as added by such subsection) shall take effect on October 1, 2001.''

§ 1116. Payments into the Fund

(a) At the beginning of each fiscal year after September 30, 2005, the Secretary of the Treasury shall promptly pay into the Fund from the General Fund of the Treasury—

(1) the amount certified to the Secretary by the Secretary of Defense under subsection (c), which shall be the contribution to the Fund for that fiscal year required by section 1115; and

(2) the amount determined by each administering Secretary under section 1111(c) as the contribution to the Fund on behalf of the members of the uniformed services under the jurisdiction of that Secretary.

(b) At the beginning of each fiscal year, the Secretary of Defense shall determine the sum of the following:

(1) The amount of the payment for that year under the amortization schedule determined by the Board of Actuaries under section 1115(a) of this title for the amortization of the original unfunded liability of the Fund.

(2) The amount (including any negative amount) of the Department of Defense contribution for that year as determined by the Secretary of Defense under section 1115(b) of this title.

(3) The amount (including any negative amount) for that year under the most recent amortization schedule determined by the Secretary of Defense under section 1115(c)(2) of this title for the amortization of any cumulative unfunded liability (or any gain) to the Fund resulting from changes in benefits.

(4) The amount (including any negative amount) for that year under the most recent amortization schedule determined by the Secretary of Defense under section 1115(c)(3) of this title for the amortization of any cumulative actuarial gain or loss to the Fund resulting from actuarial assumption changes.

(5) The amount (including any negative amount) for that year under the most recent amortization schedule determined by the Secretary of Defense under section 1115(c)(4) of this title for the amortization of any cumulative actuarial gain or loss to the Fund resulting from actuarial experience.

(c) The Secretary of Defense shall promptly certify the amount determined under subsection (b) each year to the Secretary of the Treasury.

(d) At the same time as the Secretary of Defense makes the certification under subsection (c), the Secretary shall submit to the Committees on Armed Services of the Senate and the House of Representatives the information provided to the Secretary of the Treasury under that subsection.

(Added Pub. L. 106–398, §1 [[div. A], title VII, §713(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–182; amended Pub. L. 107–107, div. A, title VII, §711(b)(4), (d), (e)(1), title X, §1048(a)(13), Dec. 28, 2001, 115 Stat. 1165, 1166, 1223; Pub. L. 107–314, div. A, title VII, §704(a), Dec. 2, 2002, 116 Stat. 2584; Pub. L. 108–136, div. A, title VII, §722(b), Nov. 24, 2003, 117 Stat. 1532; Pub. L. 108–375, div. A, title VII, §725(a), Oct. 28, 2004, 118 Stat. 1991.)

AMENDMENTS

2004—Pub. L. 108–375 reenacted section catchline without change and amended text generally. Prior to amendment, section related to, in subsec. (a), calculation of the Department of Defense monthly contribution to the Fund, in subsec. (b), separate calculation by a participating uniformed service, in subsec. (c), payments to the Fund at the beginning of each fiscal year by the Secretary of the Treasury, and, in subsec. (d), amounts paid into the Fund under subsec. (a) from the pay of members of the participating uniformed services.

2003—Subsec. (a). Pub. L. 108–136, §722(b)(1), substituted ''the amount that, subject to subsection (b),'' for ''the amount that'' in introductory provisions.

Subsecs. (b) to (d). Pub. L. 108–136, §722(b)(2), (3), added subsec. (b) and redesignated former subsecs. (b) and (c) as (c) and (d), respectively.

2002—Subsec. (c). Pub. L. 107–314 substituted ''pay of members'' for ''health care programs''.

2001—Subsec. (a)(1)(A). Pub. L. 107–107, §711(e)(1), substituted ''uniformed services retiree health care programs'' for ''Department of Defense retiree health care programs''.

Subsec. (a)(1)(B). Pub. L. 107–107, §711(b)(4), inserted ''under the jurisdiction of the Secretary of Defense'' after ''uniformed services''.

Subsec. (a)(2)(A). Pub. L. 107–107, §711(e)(1), substituted ''uniformed services retiree health care programs'' for ''Department of Defense retiree health care programs''.

Subsec. (a)(2)(B). Pub. L. 107–107, §1048(a)(13)(A), inserted an opening parenthesis before ''other than for training''.

Pub. L. 107–107, §711(b)(4), (d)(1), inserted ''under the jurisdiction of the Secretary of Defense'' after ''uniformed services'' and struck out at end ''Amounts paid into the Fund under this subsection shall be paid from funds available for the Defense Health Program.''.

Subsec. (b)(2)(D). Pub. L. 107–107, §1048(a)(13)(B), substituted ''section 1115(c)(4)'' for ''section 111(c)(4)''.

Subsec. (c). Pub. L. 107–107, §711(d)(2), added subsec. (c).

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–375 effective Oct. 1, 2005, see section 725(d) of Pub. L. 108–375, set out as a note under section 1111 of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by section 711 of Pub. L. 107–107 effective as if included in the enactment of this chapter by Pub. L. 106–398, see section 711(f) of Pub. L. 107–107, set out as a note under section 1111 of this title.

EFFECTIVE DATE

Section effective Oct. 1, 2002, see section 1 [[div. A], title VII, §713(b)(1)] of Pub. L. 106–398, set out as a note under section 1113 of this title.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective Dec. 31, 2021, of provisions in subsec. (d) of this section requiring submittal of annual report to Congress, see section 1061 of Pub. L. 114–328, set out as a note under section 111 of this title.

INAPPLICABILITY TO INDIAN HEALTH SERVICE

Pub. L. 108–7, div. F, title II, Feb. 20, 2003, 117 Stat. 261, provided in part: ''That heretofore and hereafter the provisions of 10 U.S.C. 1116 shall not apply to the Indian Health Service''.

FIRST YEAR CONTRIBUTIONS

Pub. L. 107–107, div. A, title VII, § 711(g), Dec. 28, 2001, 115 Stat. 1167, provided that: ''With respect to contributions under section 1116(a) of title 10, United States Code, for the first year that the Department of Defense Medicare-Eligible Retiree Health Care Fund is established under chapter 56 of such title, if the Board of Actuaries is unable to execute its responsibilities with respect to such section, the Secretary of Defense may make contributions under such section using methods and assumptions developed by the Secretary.''

§ 1117. Investment of assets of Fund

The Secretary of the Treasury shall invest such portion of the Fund as is not in the judgment of the Secretary of Defense required to meet current withdrawals. Such investments shall be in public debt securities with maturities suitable to the needs of the Fund, as determined by the Secretary of Defense, and bearing interest at rates determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities. The income on such investments shall be credited to and form a part of the Fund.

(Added Pub. L. 106–398, § 1 [[div. A], title VII, § 713(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–184.)

CHAPTER 57—DECORATIONS AND AWARDS

Sec.
1121. Legion of Merit: award.
1122. Medal for Merit: award.
1123. Right to wear badges of military societies.
1124. Cash awards for disclosures, suggestions, inventions, and scientific achievements.
1125. Recognition for accomplishments: award of trophies.
1126. Gold star lapel button: eligibility and distribution.
1127. Precedence of the award of the Purple Heart.
1128. Prisoner-of-war medal: issue.
1129. Purple Heart: members killed or wounded in action by friendly fire.
1129a. Purple Heart: members killed or wounded in attacks by foreign terrorist organizations.
1130. Consideration of proposals for decorations not previously submitted in timely fashion: procedures for review.
1131. Purple Heart: limitation to members of the armed forces.
1132. Presentation of decorations: prohibition on entering correctional facilities for presentation to prisoners convicted of serious violent felonies.
1133. Bronze Star: limitation on persons eligible to receive.
1134. Medal of honor: award to individual interred in Tomb of the Unknowns as representative of casualties of a war.
1134a. Medal of honor: Army, Navy, Air Force, and Coast Guard Medal of Honor Roll.
1135. Replacement of military decorations.
Sec.
1136. Honorable service requirement for award of military decorations.

AMENDMENTS

2019—Pub. L. 116–92, div. A, title V, § 582(a)(2), Dec. 20, 2019, 133 Stat. 1412, added item 1136.

2014—Pub. L. 113–291, div. A, title V, § 571(a)(1)(B), Dec. 19, 2014, 128 Stat. 3387, added item 1129a.

2013—Pub. L. 113–66, div. A, title V, § 563(a)(2), Dec. 26, 2013, 127 Stat. 767, added item 1134a.

2011—Pub. L. 111–383, div. A, title V, § 571(b), Jan. 7, 2011, 124 Stat. 4223, added item 1133 and struck out former item 1133 ''Bronze star: limitation to members receiving imminent danger pay''.

2008—Pub. L. 110–417, [div. A], title V, § 571(b), Oct. 14, 2008, 122 Stat. 4472, added item 1135.

2004—Pub. L. 108–375, div. A, title V, § 561(b), Oct. 28, 2004, 118 Stat. 1918, added item 1134.

2003—Pub. L. 108–136, div. A, title X, § 1031(a)(10)(B), Nov. 24, 2003, 117 Stat. 1597, struck out ''and recommendation'' after ''review'' in item 1130.

2000—Pub. L. 106–398, § 1 [[div. A], title V, § 541(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–114, added item 1133.

1998—Pub. L. 105–261, div. A, title V, § 537(b), Oct. 17, 1998, 112 Stat. 2019, added item 1132.

1997—Pub. L. 105–85, div. A, title V, § 571(a)(2), Nov. 18, 1997, 111 Stat. 1756, added item 1131.

1996—Pub. L. 104–106, div. A, title V, § 526(b), Feb. 10, 1996, 110 Stat. 314, added item 1130.

1993—Pub. L. 103–160, div. A, title XI, § 1141(b), Nov. 30, 1993, 107 Stat. 1757, added item 1129.

1985—Pub. L. 99–145, title V, § 532(a)(2), title XII, § 1225(a)(2)(B), Nov. 8, 1985, 99 Stat. 634, 730, inserted ''disclosures,'' and substituted ''and'' for ''or'' in item 1124, and added item 1128.

1984—Pub. L. 98–525, title V, § 553(b), Oct. 19, 1984, 98 Stat. 2532, added item 1127.

1966—Pub. L. 89–718, § 9, Nov. 2, 1966, 80 Stat. 1117, redesignated item 1124, added by Pub. L. 89–534, § 1(2), Aug. 11, 1966, 80 Stat. 345, as 1126.

Pub. L. 89–534, § 1(2), Aug. 11, 1966, 80 Stat. 345, added item 1124, relating to eligibility for and distribution of gold star lapel button.

Pub. L. 89–529, § 1(2), Aug. 11, 1966, 80 Stat. 339, added item 1125.

1965—Pub. L. 89–198, § 1(2), Sept. 22, 1965, 79 Stat. 831, added item 1124, relating to payment of cash awards for members of armed forces for suggestions, inventions, or scientific achievements.

DEVELOPMENT OF GUIDELINES FOR USE OF UNOFFICIAL SOURCES OF INFORMATION TO DETERMINE ELIGIBILITY OF MEMBERS AND FORMER MEMBERS OF THE ARMED FORCES FOR DECORATIONS WHEN THE SERVICE RECORDS ARE INCOMPLETE BECAUSE OF DAMAGE TO THE OFFICIAL RECORD

Pub. L. 116–92, div. A, title V, § 528, Dec. 20, 2019, 133 Stat. 1357, provided that:

''(a) GUIDELINES REQUIRED.—The Secretary of Defense shall develop guidelines regarding the use by the Secretaries of the military departments of unofficial sources of information, including eyewitness statements, to determine the eligibility of a member or former member of the Armed Forces for decorations when the service records of the member are incomplete because of damage to the records as a result of the 1973 fire at the National Personnel Records Center in St. Louis, Missouri, or any subsequent incident while the records were in the possession of the Department of Defense.

''(b) TIME FOR COMPLETION.—The Secretary of Defense shall complete development of the guidelines not later than one year after the date of the enactment of this Act [Dec. 20, 2019].''

ATOMIC VETERANS SERVICE CERTIFICATE

Pub. L. 115–232, div. A, title V, § 581, Aug. 13, 2018, 132 Stat. 1787, provided that:

''(a) SERVICE CERTIFICATE REQUIRED.—The Secretary of Defense shall design and produce a military service

certificate, to be known as the 'Atomic Veterans Service Certificate', to honor retired and former members of the Armed Forces who are radiation-exposed veterans (as such term is defined in section 1112(c)(3) of title 38, United States Code).

''(b) DISTRIBUTION OF CERTIFICATE.—

''(1) ISSUANCE TO RETIRED AND FORMER MEMBERS.—At the request of a radiation-exposed veteran, the Secretary of Defense shall issue the Atomic Veterans Service Certificate to the veteran.

''(2) ISSUANCE TO NEXT-OF-KIN.—In the case of a radiation-exposed veteran who is deceased, the Secretary may provide for issuance of the Atomic Veterans Service Certificate to the next-of-kin of the person.''

AWARD OF MEDALS OR OTHER COMMENDATIONS TO HANDLERS OF MILITARY WORKING DOGS

Pub. L. 115–232, div. A, title V, §582, Aug. 13, 2018, 132 Stat. 1787, provided that:

''(a) PROGRAM OF AWARD REQUIRED.—Each Secretary of a military department shall carry out a program to provide for the award of one or more medals or other commendations to handlers of military working dogs under the jurisdiction of such Secretary to recognize valor or meritorious achievement by such handlers and dogs.

''(b) MEDALS AND COMMENDATIONS.—Any medal or commendation awarded pursuant to a program under subsection (a) shall be of such design, and include such elements, as the Secretary of the military department concerned shall specify. The Secretary concerned may use an existing award to carry out such program.

''(c) PRESENTATION AND ACCEPTANCE.—Any medal or commendation awarded pursuant to a program under subsection (a) may be presented to and accepted by the handler concerned on behalf of the handler and the military working dog concerned.

''(d) REGULATIONS.—Medals and commendations shall be awarded under programs under subsection (a) in accordance with regulations prescribed by the Secretary of Defense for purposes of this section.''

PROMOTIONAL MATERIALS AND RECOGNITION ITEMS FOR PARTICIPANTS IN OPERATION ENDURING FREEDOM OR OPERATION IRAQI FREEDOM

Pub. L. 110–116, div. A, title VIII, §8099, Nov. 13, 2007, 121 Stat. 1337, provided that: ''Hereafter, the Secretary of Defense may present promotional materials, including a United States flag, to any member of an Active or Reserve component under the Secretary's jurisdiction who, as determined by the Secretary, participates in Operation Enduring Freedom or Operation Iraqi Freedom, along with other recognition items in conjunction with any week-long national observation and day of national celebration, if established by Presidential proclamation, for any such members returning from such operations.''

REPORT ON DEPARTMENT OF DEFENSE PROCESS FOR AWARDING DECORATIONS

Pub. L. 109–364, div. A, title V, §557, Oct. 17, 2006, 120 Stat. 2219, provided that:

''(a) REVIEW.—The Secretary of Defense shall conduct a review of the policy, procedures, and processes of the military departments for awarding decorations to members of the Armed Forces.

''(b) TIME PERIODS.—As part of the review under subsection (a), the Secretary shall compare the time frames of the awards process between active duty and reserve components—

''(1) from the time a recommendation for the award of a decoration is submitted until the time the award of the decoration is approved; and

''(2) from the time the award of a decoration is approved until the time when the decoration is presented to the recipient.

''(c) RESERVE COMPONENTS.—If the Secretary, in conducting the review under subsection (a), finds that the timeliness of the awards process for members of the reserve components is not the same as, or similar to, that for members of the active components, the Secretary shall take appropriate steps to address the discrepancy.

''(d) REPORT.—Not later than August 1, 2007, the Secretary shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report containing the Secretary's findings as a result of the review under subsection (a), together with a plan for implementing whatever changes are determined to be appropriate to the process for awarding decorations in order to ensure that decorations are awarded in a timely manner, to the extent practicable.''

SEPARATE MILITARY CAMPAIGN MEDALS TO RECOGNIZE SERVICE IN OPERATION ENDURING FREEDOM AND SERVICE IN OPERATION IRAQI FREEDOM

Pub. L. 109–163, div. A, title V, §576, Jan. 6, 2006, 119 Stat. 3274, provided that: ''For purposes of eligibility for the campaign medal for Operation Enduring Freedom established pursuant to Public Law 108–234 (10 U.S.C. 1121 note), the beginning date of Operation Enduring Freedom is September 11, 2001.''

Pub. L. 108–234, §1, May 28, 2004, 118 Stat. 655, provided that:

''(a) REQUIREMENT.—The President shall establish a campaign medal specifically to recognize service by members of the uniformed services in Operation Enduring Freedom and a separate campaign medal specifically to recognize service by members of the uniformed services in Operation Iraqi Freedom.

''(b) ELIGIBILITY.—Subject to such limitations as may be prescribed by the President, eligibility for a campaign medal established pursuant to subsection (a) shall be set forth in regulations to be prescribed by the Secretary concerned (as defined in section 101 of title 10, United States Code). In the case of regulations prescribed by the Secretaries of the military departments, the regulations shall be subject to approval by the Secretary of Defense and shall be uniform throughout the Department of Defense.''

COMMENDATION OF MEMBERS OF ARMED FORCES AND GOVERNMENT CIVILIAN PERSONNEL WHO SERVED DURING COLD WAR

Pub. L. 105–85, div. A, title X, §1084, Nov. 18, 1997, 111 Stat. 1919, provided that:

''(a) FINDINGS.—The Congress finds the following:

''(1) During the period of the Cold War, from the end of World War II until the collapse of the Soviet Union in 1991, the United States and the Soviet Union engaged in a global military rivalry.

''(2) This rivalry, potentially the most dangerous military confrontation in the history of mankind, has come to a close without a direct superpower military conflict.

''(3) Military and civilian personnel of the Department of Defense, personnel in the intelligence community, members of the foreign service, and other officers and employees of the United States faithfully performed their duties during the Cold War.

''(4) Many such personnel performed their duties while isolated from family and friends and served overseas under frequently arduous conditions in order to protect the United States and achieve a lasting peace.

''(5) The discipline and dedication of those personnel were fundamental to the prevention of a superpower military conflict.

''(b) CONGRESSIONAL COMMENDATION.—The Congress hereby commends the members of the Armed Forces and civilian personnel of the Government who contributed to the historic victory in the Cold War and expresses its gratitude and appreciation for their service and sacrifices.

''(c) CERTIFICATES OF RECOGNITION.—The Secretary of Defense shall prepare a certificate recognizing the Cold War service of qualifying members of the Armed Forces and civilian personnel of the Department of Defense

and other Government agencies contributing to national security, as determined by the Secretary, and shall provide the certificate to such members and civilian personnel upon request.''

EX. ORD. NO. 11448. MERITORIOUS SERVICE MEDAL

Ex. Ord. No. 11448, Jan. 16, 1969, 34 F.R. 915, as amended by Ex. Ord. No. 12312, July 2, 1981, 46 F.R. 35251; Ex. Ord. No. 13286, § 61, Feb. 28, 2003, 68 F.R. 10629, provided:

By virtue of the authority vested in me as President of the United States and as Commander in Chief of the Armed Forces of the United States, it is ordered as follows:

SECTION 1. There is hereby established a Meritorious Service Medal, with accompanying ribbons and appurtenances, for award by the Secretary of a Military Department or the Secretary of Homeland Security with regard to the Coast Guard when not operating as a service in the Navy, or by such military commanders or other appropriate officers as the Secretary concerned may designate, to any member of the armed forces of the United States, or to any member of the armed forces of a friendly foreign nation, who has distinguished himself by outstanding meritorious achievement or service.

SEC. 2. The Meritorious Service Medal and appurtenances thereto shall be of appropriate design approved by the Secretary of Defense, and shall be awarded under such regulations as the Secretary concerned may prescribe. Such regulations shall, so far as practicable, be uniform, and those of the military departments shall be subject to the approval of the Secretary of Defense.

SEC. 3. No more than one Meritorious Service Medal shall be awarded to any one person, but for each succeeding outstanding meritorious achievement or service justifying such an award a suitable device may be awarded to be worn with the medal as prescribed by appropriate regulations.

SEC. 4. The Meritorious Service Medal or device may be awarded posthumously and, when so awarded, may be presented to such representative of the deceased as may be deemed appropriate by the Secretary of the department concerned.

EXECUTIVE ORDER NO. 11544

Ex. Ord. No. 11544, July 8, 1970, 35 F.R. 11115, which established a Vice Presidential Service Certificate and a Vice Presidential Service Badge, was superseded by Ex. Ord. No. 11926, July 19, 1976, 41 F.R. 29805, set out below.

EX. ORD. NO. 11904. DEFENSE SUPERIOR SERVICE MEDAL

Ex. Ord. No. 11904, Feb. 6, 1976, 41 F.R. 5625, provided:

By virtue of the authority vested in me as President of the United States of America, and as Commander in Chief of the Armed Forces, it is hereby ordered as follows:

SECTION 1. There is hereby established a Defense Superior Service Medal with accompanying ribbons and appurtenances for award by the Secretary of Defense to any member of the Armed Forces of the United States who has rendered superior meritorious service in a position of significant responsibility with the Office of the Secretary of Defense, the Organization of the Joint Chiefs of Staff, a specified or unified command, a Defense agency, or such other joint activity as may be designated by the Secretary of Defense.

SEC. 2. The Defense Superior Service Medal and appurtenances thereto shall be of appropriate design approved by the Secretary of Defense and shall be awarded under such regulations as he shall prescribe. These regulations shall place the Defense Superior Service Medal in an order of precedence after the Medal of Honor, the Distinguished Service Cross, the Defense Distinguished Service Medal, the Distinguished Service Medal and the Silver Star Medal, but before the Legion of Merit.

SEC. 3. No more than one Defense Superior Service Medal shall be awarded to any one person, but for each succeeding period of superior meritorious service justifying such an award, a suitable device may be awarded to be worn with that Medal as prescribed by appropriate regulations of the Department of Defense.

SEC. 4. The Defense Superior Service Medal or device may be awarded posthumously, and when so awarded, may be presented to such representative of the deceased as may be deemed appropriate by the Secretary of Defense.

GERALD R. FORD.

EX. ORD. NO. 11926. VICE PRESIDENTIAL SERVICE BADGE

Ex. Ord. No. 11926, July 19, 1976, 41 F.R. 29805, as amended by Ex. Ord. No. 13286, § 56, Feb. 28, 2003, 68 F.R. 10629; Ex. Ord. No. 13373, § 1, Mar. 10, 2005, 70 F.R. 12579, provided:

By virtue of the authority vested in me as President of the United States of America, and as Commander in Chief of the Armed Forces of the United States, it is hereby ordered as follows:

SECTION 1. There is established a Vice Presidential Service Badge to be awarded in the name of the Vice President of the United States of America to members of the Army, Navy, Marine Corps, Air Force, Coast Guard, commissioned corps of the National Oceanic and Atmospheric Administration, and commissioned corps of the Public Health Service who have been assigned to duty in the Office of the Vice President for a period of at least one year subsequent to December 19, 1974, or who have been assigned to perform duties predominantly for the Vice President for a period of at least one year subsequent to January 20, 2001, in the implementation of Public Law 93–346, as amended [3 U.S.C. 111 note], or in military units and support facilities to which section 1 of Executive Order 12793 of March 20, 1992, as amended [set out below], refers.

SEC. 2. The Vice Presidential Service Badge may be awarded, upon recommendation of the Vice President's designee (with the concurrence of the Director of the White House Military Office in the case of personnel in military units or support facilities to which section 1 of Executive Order 12793, as amended, refers), by the Secretary of the Army, the Secretary of the Navy, the Secretary of the Air Force, or, when the Coast Guard is not operating as a service in the Navy, the Secretary of Homeland Security, to military personnel of their respective services who have been assigned to duty in the Office of the Vice President and, in the case of members of the commissioned corps of the National Oceanic and Atmospheric Administration or the commissioned corps of the Public Health Service so assigned, by the Secretary of Commerce or the Secretary of Health and Human Services, respectively.

SEC. 3. The Vice Presidential Service Badge shall be accompanied by a certificate, the design of which is attached hereto and is made a part of this Order. The Vice Presidential Service Badge shall consist of a white enameled disc surrounded by 27 gold rays radiating from the center, 1 15/16 inches in diameter overall. Superimposed on the white disc shall be a gold color device taken from the seal of the Vice President of the United States. The overall design of the badge shall be as shown at the top of the certificate which accompanies the Badge and which is attached to this Order.

SEC. 4. Upon award, the Vice Presidential Service Badge may be worn as a part of the uniform of an individual both during and after his assignment to duty in the Office of the Vice President.

SEC. 5. Only one Vice Presidential Service Badge shall be awarded to an individual. It may be awarded posthumously. No award shall be made to an individual under this Order based on a period of service with respect to which, in whole or in part, the individual was awarded the Presidential Service Badge.

SEC. 6. Notwithstanding the provisions of Sections 1 and 2 of this Order, any member of the Army, Navy, Air Force, Marine Corps, Coast Guard, commissioned corps of the National Oceanic and Atmospheric Administration, and commissioned corps of the Public Health

Service, who has been assigned to duty in the Office of the Vice President, or who has been assigned to perform duties predominantly for the Vice President, in the implementation of Public Law 93–346, as amended, or in military units and support facilities to which section 1 of Executive Order 12793, as amended, refers,,[sic] is authorized, unless otherwise directed by the Director of the White House Military Office in the case of personnel in military units or support facilities to which section 1 of Executive Order 12793, as amended, refers, to wear the Vice Presidential Service Badge on his or her uniform commencing on the first day of such duty and thereafter while assigned to such duty.

SEC. 7. Executive Order No. 11544 of July 8, 1970, is hereby superseded; however, individuals previously awarded a Vice Presidential Service Badge under that Order are authorized to continue to wear such badge as part of their uniform.

EX. ORD. NO. 11965. HUMANITARIAN SERVICE MEDAL

Ex. Ord. No. 11965, Jan. 19, 1977, 42 F.R. 4329, as amended by Ex. Ord. No. 13286, § 55, Feb. 28, 2003, 68 F.R. 10629, provided:

By virtue of the authority vested in me as President of the United States of America, and as Commander in Chief of the Armed Forces, it is hereby ordered as follows:

SECTION 1. There is hereby established a Humanitarian Service Medal with accompanying ribbons and appurtenances for award by the Secretary of Defense or the Secretary of Homeland Security with regard to the Coast Guard when not operating as a Service in the Navy. Individuals eligible for the medal are members of the Armed Forces of the United States (including Reserve Components) who, subsequent to April 1, 1975, distinguished themselves by meritorious participation in a military act or operation of a humanitarian nature. The Secretary of Defense and the Secretary of Homeland Security for the Coast Guard will determine types of acts or operations that warrant award of the medal.

SEC. 2. The Humanitarian Service Medal and ribbons and appurtenances thereto shall be of appropriate design approved by the Secretary of Defense and shall be awarded by the Secretary of Defense and the Secretary of Homeland Security for the Coast Guard under uniform regulations, as prescribed by the Secretary of Defense. The regulations shall place the Humanitarian Service Medal in an order of precedence immediately after the Vietnam Service Medal.

SEC. 3. No more than one Humanitarian Service Medal shall be awarded to any one person, but for each subsequent participation in a humanitarian act or operation justifying such an award, a suitable device may be awarded to be worn with that medal as prescribed by appropriate regulations of the Military Departments.

SEC. 4. The Humanitarian Service Medal or device may be awarded posthumously, and when so awarded, may be presented to such representative of the deceased as may be deemed appropriate by the Secretary of Defense or the Secretary of Homeland Security.

EX. ORD. NO. 12019. DEFENSE MERITORIOUS SERVICE MEDAL

Ex. Ord. No. 12019, Nov. 3, 1977, 42 F.R. 57945, as amended by Ex. Ord. No. 13666, Apr. 18, 2014, 79 F.R. 22591, provided:

By virtue of the authority vested in me as President of the United States of America, and as Commander in Chief of the Armed Forces, it is hereby ordered as follows:

SECTION 1. There is hereby established a Defense Meritorious Service Medal, with accompanying ribbons and appurtenances, for award by the Secretary of Defense to any member of the Armed Forces of the United States, or to any member of the armed forces of a friendly foreign nation, who has rendered outstanding non-combat meritorious achievement or service while assigned to the Office of the Secretary of Defense, the Organization of the Joint Chiefs of Staff, a specified or unified command, a Defense agency, or other such joint activity as may be designated by the Secretary of Defense.

SEC. 2. The Defense Meritorious Service Medal, with accompanying ribbons and appurtenances, shall be of appropriate design approved by the Secretary of Defense and shall be awarded under such regulations as the Secretary of Defense may prescribe. These regulations shall place the Defense Meritorious Service Medal in an order of precedence after the Medal of Honor, the Distinguished Service Cross, the Defense Distinguished Service Medal, the Distinguished Service Medal, the Silver Star Medal, the Defense Superior Service Medal, the Legion of Merit Medal, and the Bronze Star Medal, but before the Meritorious Service Medal.

SEC. 3. No more than one Defense Meritorious Service Medal shall be awarded to any one person, but for each succeeding outstanding meritorious achievement or service justifying such an award a suitable device to be worn with that medal may be awarded under such regulations as the Secretary of Defense may prescribe.

SEC. 4. The Defense Meritorious Service Medal or device may be awarded posthumously and, when so awarded, may be presented to such representative of the deceased as may be deemed appropriate by the Secretary of Defense.

EX. ORD. NO. 12793. PRESIDENTIAL SERVICE CERTIFICATE AND PRESIDENTIAL SERVICE BADGE

Ex. Ord. No. 12793, Mar. 20, 1992, 57 F.R. 10281, as amended by Ex. Ord. No. 13286, § 31, Feb. 28, 2003, 68 F.R. 10625, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and as Commander in Chief of the Armed Forces of the United States, it is ordered of follows:

SECTION 1. *Presidential Service Certificate*. The Presidential Service Certificate (''Certificate'') is hereby continued, the design of which accompanies and is hereby made a part of this order. The Certificate shall be awarded in the name of the President of the United States by the Secretary of the Army, the Secretary of the Navy, the Secretary of the Air Force, or, when the Coast Guard is not operating as a service in the Navy, the Secretary of Homeland Security. It shall be awarded by the appropriate Secretary to members of the Army, Navy, Marine Corps, Air Force, and Coast Guard, respectively, who have been assigned to the White House Office; to military units and support facilities under the administration of the White House Military Office; or to other direct support positions within the Executive Office of the President (''EOP''). The Certificate shall not be issued to any member who is issued a Vice Presidential Certificate, or similar EOP Certificate, for the same period of service. Such assignment must be for a period of at least one year, subsequent to January 21, 1989.

SEC. 2. *Presidential Service Badge*. The Presidential Service Badge (''Badge'') is hereby continued, the design of which accompanies and is hereby made a part of this order. The Badge shall be awarded to those members of the Armed Forces who have been granted the Certificate and shall be awarded in the same manner in which the Certificate has been given. The Badge shall be worn as a part of the uniform of those individuals under such regulations as their respective Secretaries may severally prescribe.

SEC. 3. Only one Certificate may be awarded to an individual.

SEC. 4. The Certificate and the Badge may be granted posthumously.

SEC. 5. This order shall supersede Executive Order No. 10879 of June 1, 1960, as amended.

EX. ORD. NO. 12830. MILITARY OUTSTANDING VOLUNTEER SERVICE MEDAL

Ex. Ord. No. 12830, Jan. 9, 1993, 58 F.R. 4061, as amended by Ex. Ord. No. 13286, § 28, Feb. 28, 2003, 68 F.R. 10625, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and as Commander in Chief of the Armed Forces, it is hereby ordered as follows:

SECTION 1. There is hereby established a Military Outstanding Volunteer Service Medal, with accompanying ribbons and appurtenances, for award by the Secretary of Defense or, with respect to the Coast Guard when it is not operating as a service in the Navy, the Secretary of Homeland Security. Members of the Armed Forces of the United States (including Reserve components) who perform outstanding volunteer service to the civilian community of a sustained, direct, and consequential nature are eligible for the medal.

SEC. 2. The Military Outstanding Volunteer Service Medal and ribbons and appurtenances thereto shall be of appropriate design approved by the Secretary of Defense. The Secretary of Defense shall prescribe regulations to govern the award and wear of the Military Outstanding Volunteer Service Medal. The regulations shall place the Military Outstanding Volunteer Service Medal in order of precedence immediately after the Humanitarian Service Medal.

SEC. 3. No more than one award of the Military Outstanding Volunteer Service Medal may be made to any one person, but for each subsequent act justifying such an award, a suitable device may be awarded to be worn with that medal as prescribed by appropriate regulations issued by the Secretary of Defense.

SEC. 4. The Military Outstanding Volunteer Service Medal may be awarded posthumously, and when so awarded, may be presented to such representatives of the deceased as may be deemed appropriate by the Secretary of Defense or, in the case of a member of the Coast Guard when it is not operating as a service in the Navy, the Secretary of Homeland Security.

EX. ORD. NO. 12985. ESTABLISHING ARMED FORCES SERVICE MEDAL

Ex. Ord. No. 12985, Jan. 11, 1996, 61 F.R. 1209, as amended by Ex. Ord. No. 13286, § 20, Feb. 28, 2003, 68 F.R. 10624, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including my authority as Commander in Chief of the Armed Forces of the United States, it is hereby ordered as follows:

SECTION 1. *Establishment*. There is hereby established the Armed Forces Service Medal with accompanying ribbons and appurtenances, for award to members of the Armed Forces of the United States who, on or after June 1, 1992, in the opinion of the Joint Chiefs of Staff:

(a) Participate, or have participated, as members of United States military units in a United States military operation in which personnel of any Armed Force participate that is deemed to be significant activity; and

(b) Encounter no foreign armed opposition or imminent hostile action.

SEC. 2. *Approval and Award*. The medal, with ribbons and appurtenances, shall be of an appropriate design approved by the Secretary of Defense and shall be awarded by the Secretary of Defense and the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, under uniform regulations, as prescribed by the Secretary of Defense. The regulations shall place the Armed Forces Service Medal in an order of precedence immediately before the Humanitarian Service Medal.

SEC. 3. *Criteria*. The medal shall be awarded only for operations for which no other United States service medal is approved. For operations in which personnel of only one Military Department or the Coast Guard participate, the medal shall be awarded only if there is no other suitable award available to the department or the Coast Guard. No more than one medal shall be awarded to any one person, but for each succeeding operation justifying such award a suitable device may be awarded to be worn on the medal or ribbon as prescribed by appropriate regulations.

SEC. 4. *Posthumous Provision*. The medal may be awarded posthumously and, when so awarded, may be presented to such representative of the deceased as may be deemed appropriate by the Secretary of Defense or the Secretary of Transportation [sic].

EX. ORD. NO. 13306. ESTABLISHING THE BOB HOPE AMERICAN PATRIOT AWARD

Ex. Ord. No. 13306, May 28, 2003, 68 F.R. 33337, provided:

By the authority vested in me as President and as Commander in Chief by the Constitution and the laws of the United States of America, it is ordered as follows:

SECTION 1. *Establishment of the Award*. In order to encourage love of country, service to the people of the United States, and support for our Armed Forces, and in order to recognize the unique and lifelong service of Bob Hope to the United States Armed Forces and to the Nation through his unwavering patriotism and dedication to maintaining the morale of the troops he entertained for nearly six decades, and on the occasion of his 100th birthday, there is hereby established the Bob Hope American Patriot Award (Award).

SEC. 2. *Granting and Presentation of the Award*.

(a) The Award may be granted by the President, in his sole discretion, to any civilian individual who has demonstrated extraordinary love of country and devotion to the personnel of the United States Armed Forces, in the form of true patriotism. The Award may also be granted by the President to an organization that meets the same criteria.

(b) Other than in exceptional circumstances, no more than one Award may be granted in any given year.

(c) The presentation of the Award may take place at any time during the year.

(d) Subject to the provisions of this order, the Award may be conferred posthumously.

GEORGE W. BUSH.

EX. ORD. NO. 13830. DELEGATION OF AUTHORITY TO APPROVE CERTAIN MILITARY DECORATIONS

Ex. Ord. No. 13830, Apr. 20, 2018, 83 F.R. 18191, provided:

For the purpose of carrying into effect the provisions of sections 1121, 3742, 3743, 3746, 3749, 3750, 6242, 6243, 6244, 6245, 6246, 8742, 8743, 8746, 8749, and 8750 of title 10, and sections 491a, 492, 492a, 492b, and 493 [now 2735, 2736, 2737, 2738, and 2739] of title 14, United States Code, the following rules and regulations pertaining to the award of the Distinguished Service Cross, Navy Cross, Air Force Cross, Coast Guard Cross, Distinguished Service Medal, Silver Star Medal, Legion of Merit, Distinguished Flying Cross, Soldier's Medal, Navy and Marine Corps Medal, Airman's Medal, and Coast Guard Medal are promulgated:

SECTION 1. *Distinguished Service Cross, Navy Cross, Air Force Cross, and Coast Guard Cross*. The Secretary of the military department concerned, or the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, may award the Distinguished Service Cross, Navy Cross, Air Force Cross, and Coast Guard Cross in the name of the President to any person who, while serving in any capacity with the Army, Navy, Marine Corps, Air Force, or Coast Guard, as the case may be, distinguishes himself or herself by extraordinary heroism not justifying award of the Medal of Honor:

(a) while engaged in an action against an enemy of the United States;

(b) while engaged in military operations involving conflict with an opposing foreign force or, with respect to the Coast Guard, an international terrorist organization; or

(c) while serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party.

SEC. 2. *Distinguished Service Medal*. The Secretary of the military department concerned, or the Secretary of

Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, may award the Distinguished Service Medal of each of the respective Armed Forces of the United States in the name of the President to any person who, while serving in any capacity with the Army, Navy, Marine Corps, Air Force, or Coast Guard, as the case may be, distinguishes himself or herself by exceptionally meritorious service to the United States in a duty of great responsibility.

SEC. 3. *Silver Star Medal*. The Secretary of the military department concerned, or the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, may award the Silver Star Medal in the name of the President to any person who, while serving in any capacity with the Army, Navy, Marine Corps, Air Force, or Coast Guard, as the case may be, is cited for gallantry in action that does not warrant award of the Medal of Honor, Distinguished Service Cross, Navy Cross, Air Force Cross, or Coast Guard Cross:

(a) while engaged in an action against an enemy of the United States;

(b) while engaged in military operations involving conflict with an opposing foreign force or, with respect to the Coast Guard, an international terrorist organization; or

(c) while serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party.

SEC. 4. *Legion of Merit*.

(a) The Secretary of the military department concerned, or the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, may award the Legion of Merit, without degree, in the name of the President to any member of the Armed Forces of the United States, who, after September 8, 1939, has distinguished himself or herself by exceptionally meritorious conduct in performing outstanding services.

(b) The Secretary of Defense, after concurrence by the Secretary of State, may award the Legion of Merit, in the degrees of Commander, Officer, and Legionnaire, to a member of the armed forces of friendly foreign nations.

(c) The Secretary of Defense, after concurrence by the Secretary of State, shall submit to the President for his approval, recommendations for award of the Legion of Merit, in the degree of Chief Commander, to a member of the armed forces of friendly foreign nations.

SEC. 5. *Distinguished Flying Cross*.

(a) The Secretary of the military department concerned, or the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, may award the Distinguished Flying Cross in the name of the President to any eligible person identified in subsection (b) who, while serving in any capacity with the Army, Navy, Marine Corps, Air Force, or Coast Guard, distinguishes himself or herself by heroism or extraordinary achievement while participating in an aerial flight aboard an aircraft or spacecraft.

(b)(i) Any member of the Armed Forces of the United States, including a member not on active duty, who, while participating in an aerial flight aboard an aircraft or spacecraft, performs official duties incident to such membership is eligible for the award of the Distinguished Flying Cross.

(ii) Any member of the armed forces of a friendly foreign nation who, while serving with the Armed Forces of the United States, participates in an aerial flight aboard an aircraft or spacecraft and performs official duties incident to such membership is eligible for the award of the Distinguished Flying Cross.

(iii) Civilians are not eligible for the award of the Distinguished Flying Cross.

(c) No Distinguished Flying Cross may be awarded or presented to any person, or to that person's representative, if the person's service after the qualifying act or achievement has not been honorable.

(d) With regard to the award of the Distinguished Flying Cross for a qualifying act or achievement performed:

(i) on or before July 2, 1926, no award shall be made after July 2, 1929, unless the award recommendation was made on or before July 2, 1928, in which case the award may be made;

(ii) between December 7, 1941, and September 2, 1945, no award shall be made after May 2, 1952, unless the award recommendation was made on or before May 2, 1951, in which case the award may be made;

(iii) between September 3, 1945, and twelve o'clock noon on December 31, 1946 (the date and time World War II hostilities were terminated pursuant to Proclamation 2714 of December 31, 1946 [50 U.S.C. note prec. 1]), no award shall be made unless the award recommendation was made on or before June 30, 1947;

(iv) between July 2, 1926, and September 10, 2001, with the exception of a qualifying act or achievement authorized pursuant to paragraphs (ii) or (iii) of this subsection, no award shall be made more than 3 years after the date of the qualifying act or achievement unless the award recommendation was made within 2 years of the qualifying act or achievement; or

(v) on or after September 11, 2001, no award shall be made except in accordance with any time limitations established in regulations by the Secretary of the military department concerned or by the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy.

(e) The Distinguished Flying Cross may be awarded posthumously. When so awarded, it may be presented to such representative of the deceased as may be deemed appropriate by the Secretary of the military department concerned, or the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy.

(f) Not more than one Distinguished Flying Cross may be awarded to any one person. For each succeeding act of heroism or extraordinary achievement justifying such an award, a suitable bar or other device may be awarded to be worn with the medal.

SEC. 6. *Soldier's Medal, Navy and Marine Corps Medal, Airman's Medal, and Coast Guard Medal*.

(a) The Secretary of the military department concerned, or the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, may award the Soldier's Medal, Navy and Marine Corps Medal, Airman's Medal, and Coast Guard Medal in the name of the President to any person who, while serving in any capacity with the Army, Navy, Marine Corps, Air Force, or Coast Guard, as the case may be, distinguishes himself or herself by heroism not involving actual conflict with an enemy.

(b) The Secretary of the Navy may award the Navy and Marine Corps Medal to any person to whom the Secretary of the Navy, before August 7, 1942, awarded a letter of commendation for heroism, and who applies for that medal, regardless of the date of the act of heroism.

(c) Not more than one Soldier's Medal, Navy and Marine Corps Medal, Airman's Medal, or Coast Guard Medal may be awarded to any one person. For each succeeding act of heroism justifying such an award, a suitable bar or other device may be awarded to be worn with the medal.

SEC. 7. *Regulations*. The Secretary of the military department concerned, and the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, may prescribe such regulations as they may deem appropriate to carry out this order. The regulations of the Secretaries of the military departments concerned with respect to the award of the Silver Star Medal, Distinguished Flying Cross, and Legion of Merit shall, so far as practicable, be uniform and shall be subject to the approval of the Secretary of Defense.

SEC. 8. *General Provisions*. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order supersedes Executive Order 4601 of March 1, 1927, as amended, and Executive Order 9260 of October 29, 1942, as amended. However, existing regulations prescribed pursuant to those orders, shall, so far as they are not inconsistent with this order, remain in effect until modified or revoked by regulations prescribed by the Secretary of the military department concerned, or the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, under this order.

(d) This order is not intended to, and does not, invalidate any award of military decorations covered by this order made prior to the effective date of this order.

(e) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

DONALD J. TRUMP.

§1121. Legion of Merit: award

The President, under regulations to be prescribed by him, may award a decoration called the ''Legion of Merit'', having suitable appurtenances and devices and not more than four degrees, to any member of the armed forces of the United States or of any friendly foreign nation who, after September 8, 1939, has distinguished himself by exceptionally meritorious conduct in performing outstanding services.

(Aug. 10, 1956, ch. 1041, 70A Stat. 88.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1121	10:1408b(1).	July 20, 1942, ch. 508, §2(1), 56 Stat. 662.

The words ''Government of the Philippines'' are omitted as covered by the words ''any friendly foreign nation''. The words ''There is created'', ''rules and'', and ''the proclamation of an emergency by the President on'' are omitted as surplusage.

§1122. Medal for Merit: award

The President, under regulations to be prescribed by him, may award a decoration called the ''Medal for Merit'', having distinctive appurtenances and devices and only one degree, to any civilian of any nation prosecuting the war in existence on July 20, 1942, under the joint declaration of the United Nations, as then constituted, or of any other friendly foreign nation, who, after September 8, 1939, has distinguished himself by exceptionally meritorious conduct in performing outstanding services. The Medal for Merit may be awarded to a civilian of a foreign nation but only for performing an exceptionally meritorious or courageous act in the furtherance of the war efforts of the United Nations as then constituted.

(Aug. 10, 1956, ch. 1041, 70A Stat. 88.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1122	10:1408b (less (1)).	July 20, 1942, ch. 508, §2 (less (1)), 56 Stat. 663.

The words ''in existence on July 20, 1942'' are inserted for clarity and refer to the war in existence on the date of enactment of the source statute. The words ''as then constituted'' are inserted for clarity, since the United Nations organization in existence on July 20, 1942, was not the present United Nations organization. The words ''There is created'', ''rules and'', and ''the proclamation of an emergency by the President on'' are omitted as surplusage.

EX. ORD. NO. 9637. MEDAL FOR MERIT

Ex. Ord. No. 9637, Oct. 3, 1945, 10 F.R. 12543, as amended by Ex. Ord. No. 9857A, May 27, 1947, 12 F.R. 3583, provided:

1. The decoration of the Medal for Merit shall be awarded only by the President of the United States or at his direction. Awards of the Medal for Merit may be made to such civilians of the nations prosecuting the war under the joint declaration of the United Nations and of other friendly foreign nations as have distinguished themselves by exceptionally meritorious conduct in the performance of outstanding services since the proclamation of an emergency by the President on September 8, 1939. Awards of the Medal for Merit made to civilians of foreign nations shall be for the performance of an exceptionally meritorious or courageous act or acts in furtherance of the war efforts of the United Nations.

2. There is hereby established the Medal for Merit Board, which shall be composed of three members appointed by the President, one of whom shall be designated by the President to act as Chairman of the Board.

3. The Medal for Merit Board shall receive and consider proposals for the award of the decoration of the Medal for Merit and submit to the President the recommendations of the Board with respect thereto. In the case of proposed awards to civilians of foreign nations, such recommendations shall include the recommendations of the Secretary of State.

4. The Medal for Merit Board is authorized to prescribe, with the approval of the President, such rules and regulations not inconsistent with the provisions of this order as may be necessary to accomplish its purposes.

5. Executive Order 9331 of April 19, 1943 and the Medal for Merit Board created thereby, are superseded by this order.

6. The Medal for Merit shall not be awarded for any services relating to the prosecution of World War II performed subsequent to the cessation of hostilities, as proclaimed by Proclamation No. 2714 of December 31, 1946, and no proposal for an award for such services submitted after June 30, 1947, shall be considered by the Medal for Merit Board.

§1123. Right to wear badges of military societies

(a) A member of the Army, Navy, Air Force, Marine Corps, or Space Force who is a member of a military society originally composed of men who served in an armed force of the United States during the Revolutionary War, the War of 1812, the Mexican War, the Civil War, the Spanish-American War, the Philippine Insurrection, or the Chinese Relief Expedition of 1900 may wear, on occasions of ceremony, the distinctive badges adopted by that society.

(b) A member of the Army, Navy, Air Force, Marine Corps, or Space Force who is a member of the Army and Navy Union of the United States may wear, on public occasions of ceremony, the distinctive badges adopted by that society.

(Aug. 10, 1956, ch. 1041, 70A Stat. 88; Pub. L. 116–283, div. A, title IX, §924(b)(3)(Q), Jan. 1, 2021, 134 Stat. 3821.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
1123(a)	10:1427 (1st sentence). 34:371 (1st sentence).	Sept. 25, 1890, J. Res. 50, 26 Stat. 681.
1123(b)	10:1427 (less 1st sentence). 34:371 (less 1st sentence).	May 11, 1894, J. Res. 26, 28 Stat. 583. Feb. 2, 1901, ch. 192, §41, 31 Stat. 758. Jan. 12, 1903, J. Res. 2, 32 Stat. 1229. Mar. 2, 1907, J. Res. 18, 34 Stat. 1423.

In subsection (a), the words "an armed force" are substituted for the words "armies and navies". The words "Revolutionary War", "Civil War", and "Philippine Insurrection" are substituted for the words "War of the Revolution", "War of the Rebellion", and "incident insurrection in the Philippines", respectively, to reflect present terminology. The words "originally composed" are substituted for the words "in their own right", to reflect an opinion of the Attorney General (see 23 Op. Atty. Gen. 454).

In subsections (a) and (b), the word "member" is substituted for the words "officers and enlisted men". The words "Navy * * * or Marine Corps" are substituted for the word "Navy", since the word "Navy" in the source statute has, by long-standing administrative interpretation, been construed to include the Marine Corps.

In subsection (b), the words "in their own right" are omitted as surplusage.

AMENDMENTS

2021—Pub. L. 116–283 substituted "Marine Corps, or Space Force" for "or Marine Corps" in subsecs. (a) and (b).

§ 1124. Cash awards for disclosures, suggestions, inventions, and scientific achievements

(a) The Secretary of Defense, or the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, may authorize the payment of a cash award to, and incur necessary expense for the honorary recognition of, a member of the armed forces under his jurisdiction who by his disclosure, suggestion, invention, or scientific achievement contributes to the efficiency, economy, or other improvement of operations or programs relating to the armed forces.

(b) Whenever the President considers it desirable, the Secretary of Defense, and the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, are authorized to pay a cash award to, and incur necessary expense for the honorary recognition of, a member of the armed forces who by his disclosure, suggestion, invention, or scientific achievement contributes to the efficiency, economy, or other improvement of operations of the Government of the United States. Such award is in addition to any other award made to that member under subsection (a).

(c) An award under this section may be paid notwithstanding the member's death, separation, or retirement from the armed force concerned. However, the disclosure, suggestion, invention, or scientific achievement forming the basis for the award must have been made while the member was on active duty or in an active reserve status and not otherwise eligible for an award under chapter 45 of title 5.

(d) A cash award under this section is in addition to the pay and allowances of the recipient. The acceptance of such an award shall constitute—

(1) an agreement by the member that the use by the United States of any idea, method, or device for which the award is made may not be the basis of a claim against the United States by the member, his heirs, or assigns, or by any person whose claim is alleged to be derived through the member; and

(2) a warranty by the member that he has not at the time of acceptance transferred, assigned, or otherwise divested himself of legal or equitable title in any property right residing in the idea, method, or device for which the award is made.

(e) Awards to, and expenses for the honorary recognition of, members of the armed forces under this section may be paid from (1) the funds or appropriations available to the activity primarily benefiting; or (2) the several funds or appropriations of the various activities benefiting, as may be determined by the President for awards under subsection (b), and by the Secretary concerned for awards under subsection (a).

(f) The total amount of the award, or awards, made under this section for a disclosure, suggestion, invention, or scientific achievement may not exceed $25,000, regardless of the number of persons who may be entitled to share therein.

(g) Awards under this section shall be made under regulations to be prescribed by the Secretary of Defense, or by the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy.

(h) For the purposes of this section, a member of the Commissioned Corps of the National Oceanic and Atmospheric Administration or of the Public Health Service who is serving with an armed force shall be treated as if he were a member of that armed force.

(Added Pub. L. 89–198, §1(1), Sept. 22, 1965, 79 Stat. 830; amended Pub. L. 89–718, §10, Nov. 2, 1966, 80 Stat. 1117; Pub. L. 90–623, §2(1), Oct. 22, 1968, 82 Stat. 1314; Pub. L. 96–470, title I, §112(c), Oct. 19, 1980, 94 Stat. 2240; Pub. L. 96–513, title V, §511(40), Dec. 12, 1980, 94 Stat. 2923; Pub. L. 96–527, title VII, §772, Dec. 15, 1980, 94 Stat. 3093; Pub. L. 99–145, title XII, §1225(a)(1), (2)(A), Nov. 8, 1985, 99 Stat. 730; Pub. L. 107–296, title XVII, §1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

CODIFICATION

Another section 1124 was renumbered 1126 of this title.

AMENDMENTS

2002—Subsecs. (a), (b), (g). Pub. L. 107–296 substituted "Secretary of Homeland Security" for "Secretary of Transportation".

1985—Pub. L. 99–145 inserted "disclosures," and substituted "and" for "or" in section catchline, and inserted "disclosure," before "suggestion" in subsecs. (a), (b), (c), and (f).

1980—Subsec. (c). Pub. L. 96–527 authorized payment of awards to retired members of the armed forces, required the basis for awards to have been made when in an active reserve status, and required the member to be ineligible for incentive award under chapter 45 of title 5.

Subsec. (g). Pub. L. 96–470 struck out provision requiring the Secretary of Defense and the Secretary of

Transportation to annually report to the President, for transmittal to Congress, on progress of the awards program.

Subsec. (h). Pub. L. 96–513 substituted ''National Oceanic and Atmospheric Administration'' for ''Environmental Science Services Administration''.

1968—Subsecs. (a), (b), (g). Pub. L. 90–623 substituted ''Secretary of Transportation'' for ''Secretary of the Treasury''.

1966—Subsec. (g). Pub. L. 89–718 substituted ''progress report'' for ''program report''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1985 AMENDMENT

Pub. L. 99–145, title XII, § 1225(a)(3), Nov. 8, 1985, 99 Stat. 730, provided that: ''The amendments made by this subsection [amending this section] shall take effect on October 1, 1985.''

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–623 intended to restate without substantive change the law in effect on Oct. 22, 1968, see section 6 of Pub. L. 90–623, set out as a note under section 5334 of Title 5, Government Organization and Employees.

TRANSFER OF FUNCTIONS

For transfer of functions of Public Health Service, see note set out under section 802 of this title.

EX. ORD. NO. 11438. PROCEDURES GOVERNING INTERDEPARTMENTAL CASH AWARDS

Ex. Ord. No. 11438, Dec. 3, 1968, 33 F.R. 18085, as amended by Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055; Ex. Ord. No. 13286, § 63, Feb. 28, 2003, 68 F.R. 10629, provided:

By virtue of the authority vested in me by section 1124(b) and (e) of title 10, United States Code, and section 301 of title 3, United States Code, and as President of the United States, it is ordered as follows:

SECTION 1. Any suggestion, invention, or scientific achievement by a member of the armed forces that contributes to the efficiency, economy, or other improvement of operations of the Government of the United States through its adoption or use by an executive department or agency other than the executive department having jurisdiction over the armed force of the member concerned may be the basis for honorary recognition or a cash award by the Secretary of Homeland Security in the case of a member of the Coast Guard when it is not operating as a service in the Navy or by the Secretary of Defense in the case of any other member of the armed forces.

SEC. 2. An executive department or agency that adopts or uses the suggestion, invention, or scientific achievement of a member of the armed forces who is not under its jurisdiction may recommend to the Department of Defense or to the Department of Homeland Security, as appropriate, a cash award or honorary recognition of the member and shall justify its recommendation with appropriate documentation and explanation of how the suggestion, invention, or scientific achievement contributes to the efficiency, economy, or other improvement of the operations of the Government of the United States. Awards shall be made under regulations to be prescribed by the Secretary of Defense or the Secretary of Homeland Security, as appropriate. The regulations of the Department of Defense and Department of Homeland Security may include designations of officials to whom authority for receiving, evaluating, and making awards may be assigned.

SEC. 3. No cash awards hereunder for a single suggestion, invention, or scientific achievement may exceed $25,000 regardless of the number of agencies or departments which may adopt or use the suggestion, invention, or scientific achievement.

SEC. 4. Funds to cover the costs of cash awards to members of the armed forces shall be transferred from the account of any executive department or agency which recommends the award to the appropriate account of the Department of Homeland Security or the Department of Defense, as the case may be. When several executive departments or agencies benefit from the adoption or use of the suggestion, invention, or scientific achievement, the amount transferred from each such benefiting department or agency to the Department of Homeland Security or the Department of Defense to cover the proportionate share of the cost of the cash award shall be determined under procedures prescribed by the Office of Personnel Management in accordance with the same guidelines and standards applying to awards to civilian employees.

§ 1125. Recognition for accomplishments: award of trophies

The Secretary of Defense may—

(1) award medals, trophies, badges, and similar devices to members, units, or agencies of an armed force under his jurisdiction for excellence in accomplishments or competitions related to that armed force; and

(2) provide badges or buttons in recognition of special service, good conduct, and discharge under conditions other than dishonorable.

(Added Pub. L. 89–529, § 1(1), Aug. 11, 1966, 80 Stat. 339.)

EX. ORD. NO. 11545. DEFENSE DISTINGUISHED SERVICE MEDAL

Ex. Ord. 11545, July 9, 1970, 35 F.R. 11161, provided:

By virtue of the authority vested in me as President of the United States and as Commander in Chief of the Armed Forces of the United States, it is ordered as follows:

SECTION 1. There is hereby established a Defense Distinguished Service Medal, with accompanying ribbons and appurtenances, for award by the Secretary of Defense to a military officer who performed exceptionally meritorious service in a duty of great responsibility with the Office of the Secretary of Defense, the Organization of the Joint Chiefs of Staff, a specified or unified command, a Defense agency, or such other joint activity as may be designated by the Secretary of Defense.

SEC. 2. The Defense Distinguished Service Medal and appurtenances thereto shall be of appropriate design approved by the Secretary of Defense and shall be awarded under such regulations as he shall prescribe. These regulations shall place the Defense Distinguished Service Medal in an order of precedence after the Medals of Honor and the Distinguished Service Crosses of the Armed Forces and before the Distinguished Service Medals of the Armed Forces.

SEC. 3. No more than one Defense Distinguished Service Medal shall be awarded to any one person, but for each succeeding exceptionally meritorious period of service justifying such an award, a suitable device may be awarded to be worn with that Medal as prescribed by appropriate regulations of the Department of Defense.

SEC. 4. The Defense Distinguished Service Medal or device may be awarded posthumously and, when so awarded, may be presented to such representative of the deceased as may be deemed appropriate by the Secretary of Defense.

RICHARD NIXON.

§ 1126. Gold star lapel button: eligibility and distribution

(a) A lapel button, to be known as the gold star lapel button, shall be designed, as approved by the Secretary of Defense, to identify next of kin of members of the armed forces—

(1) who lost their lives during World War I, World War II, or during any subsequent period of armed hostilities in which the United States was engaged before July 1, 1958;

(2) who lost or lose their lives after June 30, 1958—

(A) while engaged in an action against an enemy of the United States;

(B) while engaged in military operations involving conflict with an opposing foreign force; or

(C) while serving with friendly foreign forces engaged in an armed conflict in which the United States is not a belligerent party against an opposing armed force; or

(3) who lost or lose their lives after March 28, 1973, as a result of—

(A) an international terrorist attack against the United States or a foreign nation friendly to the United States, recognized as such an attack by the Secretary of Defense; or

(B) military operations while serving outside the United States (including the commonwealths, territories, and possessions of the United States) as part of a peacekeeping force.

(b) Under regulations to be prescribed by the Secretary of Defense, the Secretary concerned, upon application to him, shall furnish one gold star lapel button without cost to each next of kin of a member who lost or loses his or her life under any circumstances prescribed in subsection (a).

(c) Not more than one gold star lapel button may be furnished to any one individual except that, when a gold star lapel button furnished under this section has been lost, destroyed, or rendered unfit for use without fault or neglect on the part of the person to whom it was furnished, the button may be replaced upon application and without cost.

(d) In this section:

(1) The term ''next of kin'' means individuals standing in such relationship to members of the armed forces described in subsection (a) as the Secretaries concerned shall jointly specify in regulations for purposes of this section.

(2) The term ''World War I'' includes the period from April 6, 1917, to March 3, 1921.

(3) The term ''World War II'' includes the period from September 8, 1939, to July 25, 1947, at 12 o'clock noon.

(4) The term ''military operations'' includes those operations involving members of the armed forces assisting in United States Government sponsored training of military personnel of a foreign nation.

(5) The term ''peacekeeping force'' includes those personnel assigned to a force engaged in a peacekeeping operation authorized by the United Nations Security Council.

(Added Pub. L. 89–534, § 1(1), Aug. 11, 1966, 80 Stat. 345, § 1124; renumbered § 1126, Pub. L. 89–718, § 9, Nov. 2, 1966, 80 Stat. 1117; amended Pub. L. 98–94, title XII, § 1268(8), Sept. 24, 1983, 97 Stat. 706; Pub. L. 100–26, § 7(k)(5), Apr. 21, 1987, 101 Stat. 284; Pub. L. 103–160, div. A, title XI, § 1143, Nov. 30, 1993, 107 Stat. 1757; Pub. L. 116–92, div. A, title V, § 581, Dec. 20, 2019, 133 Stat. 1411.)

Prior Provisions

Provisions similar to those in this section were contained in sections 1 to 3 of act Aug. 1, 1947, ch. 426, 61 Stat. 710, which were classified to sections 182a to 182c of former Title 36, Patriotic Societies and Observances, prior to repeal by Pub. L. 89–534, § 2, Aug. 11, 1966, 80 Stat. 345.

Amendments

2019—Subsec. (a). Pub. L. 116–92, § 581(a)(1), struck out ''widows, parents, and'' after ''identify'' in introductory provisions.

Subsec. (b). Pub. L. 116–92, § 581(a)(2), substituted ''each'' for ''the widow and to each parent and''.

Subsec. (c). Pub. L. 116–92, § 581(b), substituted ''and without cost.'' for ''and payment of an amount sufficient to cover the cost of manufacture and distribution.''

Subsec. (d). Pub. L. 116–92, § 581(a)(3), added par. (1), redesignated pars. (5) to (8) as (2) to (5), respectively, and struck out former pars. (1), (2), (3), and (4) which defined ''widow'', ''parents'', ''next of kin'', and ''children'', respectively.

1993—Subsec. (a). Pub. L. 103–160, § 1143(a), struck out ''of the United States'' after ''armed forces'' in introductory provisions, redesignated cls. (i) to (iii) of par. (2) as subpars. (A) to (C), respectively, and added par. (3).

Subsec. (d)(7), (8). Pub. L. 103–160, § 1143(b), added pars. (7) and (8).

1987—Subsec. (d). Pub. L. 100–26 substituted colon for dash at end of introductory provisions, inserted ''The term'' in each par., and substituted periods for semicolons in pars. (1) to (4) and period for ''; and'' in par. (5).

1983—Subsec. (a)(1). Pub. L. 98–94 substituted ''who'' for ''Who''.

§ 1127. Precedence of the award of the Purple Heart

In prescribing regulations establishing the order of precedence of awards and decorations authorized to be displayed on the uniforms of members of the armed forces, the Secretary of the military department concerned shall accord the Purple Heart a position of precedence, in relation to other awards and decorations authorized to be displayed, not lower than that immediately following the bronze star.

(Added Pub. L. 98–525, title V, § 553(a), Oct. 19, 1984, 98 Stat. 2532; amended Pub. L. 99–145, title V, § 533, Nov. 8, 1985, 99 Stat. 634.)

Amendments

1985—Pub. L. 99–145 substituted ''the bronze star'' for ''the lowest position accorded any award or decoration for valor''.

§ 1128. Prisoner-of-war medal: issue

(a) The Secretary concerned shall issue a prisoner-of-war medal to any person who, while serving in any capacity with the armed forces, was taken prisoner and held captive—

(1) while engaged in an action against an enemy of the United States;

(2) while engaged in military operations involving conflict with an opposing foreign force; or

(3) while serving with friendly forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party.

(b) Under uniform regulations prescribed by the Secretary of Defense, the Secretary concerned may issue a prisoner-of-war medal to any person who, while serving in any capacity with the armed forces, was held captive under circumstances not covered by paragraph (1), (2), or (3) of subsection (a), but which the Secretary concerned finds were comparable to those circumstances under which persons have generally been held captive by enemy armed forces during periods of armed conflict.

(c) The prisoner-of-war medal shall be of appropriate design, with ribbons and appurtenances.

(d) In prescribing regulations establishing the order of precedence of awards and decorations authorized to be displayed on the uniforms of members of the armed forces, the Secretary concerned shall accord the prisoner-of-war medal a position of precedence, in relation to other awards and decorations authorized to be displayed—

(1) immediately following decorations awarded for individual heroism, meritorious achievement, or meritorious service, and

(2) before any other service medal, campaign medal, or service ribbon authorized to be displayed.

(e) Not more than one prisoner-of-war medal may be issued to a person. However, for each succeeding service that would otherwise justify the issuance of such a medal, the Secretary concerned may issue a suitable device to be worn as the Secretary determines.

(f) For a person to be eligible for issuance of a prisoner-of-war medal, the person's conduct must have been honorable for the period of captivity which serves as the basis for the issuance.

(g) If a person dies before the issuance of a prisoner-of-war medal to which he is entitled, the medal may be issued to the person's representative, as designated by the Secretary concerned.

(h) Under regulations to be prescribed by the Secretary concerned, a prisoner-of-war medal that is lost, destroyed, or rendered unfit for use without fault or neglect on the part of the person to whom it was issued may be replaced without charge.

(i) The Secretary of Defense shall ensure that regulations prescribed by the Secretaries of the military departments under this section are uniform so far as practicable.

(Added Pub. L. 99–145, title V, § 532(a)(1), Nov. 8, 1985, 99 Stat. 633; amended Pub. L. 101–189, div. A, title V, § 516(a), Nov. 29, 1989, 103 Stat. 1441; Pub. L. 112–239, div. A, title V, § 584, Jan. 2, 2013, 126 Stat. 1767.)

AMENDMENTS

2013—Subsec. (a)(2) to (4). Pub. L. 112–239, § 584(1), inserted ''or'' at end of par. (2), substituted period at end for ''; or'' in par. (3), and struck out par. (4) which read as follows: ''by foreign armed forces that are hostile to the United States, under circumstances which the Secretary concerned finds to have been comparable to those under which persons have generally been held captive by enemy armed forces during periods of armed conflict.''

Subsecs. (b) to (i). Pub. L. 112–239, § 584(2), (3), added subsec. (b) and redesignated former subsecs. (b) to (h) as (c) to (i), respectively.

1989—Subsec. (a)(4). Pub. L. 101–189 added par. (4).

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–189, div. A, title V, § 516(b), Nov. 29, 1989, 103 Stat. 1442, provided that: ''Paragraph (4) of section 1128(a) of title 10, United States Code, as added by subsection (a), applies with respect to periods of captivity after April 5, 1917.''

EFFECTIVE DATE

Pub. L. 99–145, title V, § 532(b), Nov. 8, 1985, 99 Stat. 634, provided that: ''Section 1128 of title 10, United States Code, as added by subsection (a), applies with respect to any person taken prisoner and held captive after April 5, 1917.''

§ 1129. Purple Heart: members killed or wounded in action by friendly fire

(a) For purposes of the award of the Purple Heart, the Secretary concerned shall treat a member of the armed forces described in subsection (b) in the same manner as a member who is killed or wounded in action as the result of an act of an enemy of the United States.

(b) A member described in this subsection is a member who is killed or wounded in action by weapon fire while directly engaged in armed conflict, other than as the result of an act of an enemy of the United States, unless (in the case of a wound) the wound is the result of willful misconduct of the member.

(c) This section applies to members of the armed forces who are killed or wounded on or after December 7, 1941. In the case of a member killed or wounded as described in subsection (b) on or after December 7, 1941, and before November 30, 1993, the Secretary concerned shall award the Purple Heart under subsection (a) in each case which is known to the Secretary before such date or for which an application is made to the Secretary in such manner as the Secretary requires.

(Added Pub. L. 103–160, div. A, title XI, § 1141(a), Nov. 30, 1993, 107 Stat. 1756; amended Pub. L. 105–85, div. A, title X, § 1073(a)(18), Nov. 18, 1997, 111 Stat. 1901.)

AMENDMENTS

1997—Subsec. (c). Pub. L. 105–85 substituted ''November 30, 1993,'' for ''the date of the enactment of this section,'' and ''before such date or'' for ''before the date of the enactment of this section or''.

AWARD OF PURPLE HEART TO PERSONS WOUNDED WHILE HELD AS PRISONERS OF WAR BEFORE APRIL 25, 1962

Pub. L. 104–106, div. A, title V, § 521, Feb. 10, 1996, 110 Stat. 309, as amended by Pub. L. 108–136, div. A, title V, § 544, Nov. 24, 2003, 117 Stat. 1478, provided that:

''(a) AWARD OF PURPLE HEART.—For purposes of the award of the Purple Heart, the Secretary concerned (as defined in section 101 of title 10, United States Code) shall treat a former prisoner of war who was wounded before April 25, 1962, while held as a prisoner of war (or while being taken captive) in the same manner as a former prisoner of war who is wounded on or after that date while held as a prisoner of war (or while being taken captive).

''(b) STANDARDS FOR AWARD.—An award of the Purple Heart under subsection (a) shall be made in accordance with the standards in effect on the date of the enactment of this Act [Feb. 10, 1996] for the award of the Purple Heart to persons wounded on or after April 25, 1962.

''(c) ELIGIBLE FORMER PRISONERS OF WAR.—A person shall be considered to be a former prisoner of war for purposes of this section if the person is eligible for the prisoner-of-war medal under section 1128 of title 10, United States Code.

''(d) PROCEDURES FOR AWARD.—In determining whether a former prisoner of war who submits an application for the award of the Purple Heart under subsection (a) is eligible for that award, the Secretary concerned shall apply the following procedures:

''(1) Failure of the applicant to provide any documentation as required by the Secretary shall not in itself disqualify the application from being considered.

''(2) In evaluating the application, the Secretary shall consider (A) historical information as to the prison camp or other circumstances in which the applicant was held captive, and (B) the length of time that the applicant was held captive.

''(3) To the extent that information is readily available, the Secretary shall assist the applicant in obtaining information or identifying the sources of information referred to in paragraph (2).

''(4) The Secretary shall review a completed application under this section based upon the totality of the information presented, taking into account the length of time between the period during which the applicant was held as a prisoner of war and the date of the application.''

EX. ORD. NO. 11016. AUTHORIZING AWARD OF THE PURPLE HEART

Ex. Ord. No. 11016, Apr. 25, 1962, 27 F.R. 4139, as amended by Ex. Ord. No. 11382, §13(4), Nov. 28, 1967, 32 F.R. 16247; Ex. Ord. No. 12464, Feb. 23, 1984, 49 F.R. 7099; Ex. Ord. No. 13286, §71, Feb. 28, 2003, 68 F.R. 10630; Ex. Ord. No. 13758, Jan. 12, 2017, 82 F.R. 5321, provided:

WHEREAS General George Washington, at Newburgon-the-Hudson, on August 7, 1782, during the War of the Revolution, issued an Order establishing the Honorary Badge of Distinction, otherwise known as the Badge of Military Merit or Decoration of the Purple Heart; and

WHEREAS the award of that decoration ceased with the closing of the War of the Revolution and was revived on February 22, 1932, out of respect to the memory and military achievements of General George Washington, by War Department General Orders No. 3:

NOW, THEREFORE, by virtue of the authority vested in me as President of the United States and as Commander in Chief of the armed forces of the United States, it is ordered as follows:

1. The Secretary of a military department, or the Secretary of Homeland Security with regard to the Coast Guard when not operating as a service in the Navy, shall, in the name of the President of the United States, award the Purple Heart, with suitable ribbons and appurtenances, to any member or former member of the armed forces under the jurisdiction of that department who, while serving as a member of the armed forces, has been, or may hereafter be, wounded:

(a) in any action against an enemy of the United States;

(b) in any action with an opposing armed force of a foreign country in which the armed forces of the United States are or have been engaged;

(c) while serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party;

(d) as the result of an act of any such enemy or opposing armed force;

(e) as the result of an act of any hostile foreign force;

(f) while being taken captive or while being held as a prisoner of war, and for purposes of this paragraph a person is considered a prisoner of war if the person is eligible for the Prisoner of War Medal pursuant to section 1128 of title 10, United States Code;

(g) after March 28, 1973, as a result of an international terrorist attack against the United States or a foreign nation friendly to the United States, recognized as such an attack for the purposes of this order by the Secretary of the department concerned, or jointly by the Secretaries of the departments concerned if persons from more than one department are wounded in the attack;

(h) after March 28, 1973, as a result of military operations, while serving outside the territory of the United States as part of a peacekeeping force;

(i) after September 10, 2001, in an attack that was motivated or inspired by a foreign terrorist organization, which the Secretary of the department concerned shall treat in the same manner as an international terrorist attack, provided the attack specifically targeted the member due to his or her military service as provided in section 1129a of title 10, United States Code; or

(j) after December 6, 1941, by friendly weapon fire while directly engaged in armed conflict, other than as the result of an act of an enemy of the United States, an opposing armed force, or hostile foreign force.

2. The Secretary of a military department, or the Secretary of Homeland Security with regard to the Coast Guard when not operating as a service in the Navy, shall, in the name of the President of the United States, award the Purple Heart, with suitable ribbons and appurtenances, posthumously, to any member of the armed forces under the jurisdiction of that department covered by, and under the circumstances described in:

(a) paragraphs 1(a)–(f) who, after April 5, 1917;

(b) paragraphs 1(g)–(h) who, after March 28, 1973;

(c) paragraph 1(i) who, after September 10, 2001; or

(d) paragraph 1(j) who, after December 6, 1941, has been, or may hereafter be, killed, or who has died or may hereafter die after being wounded.

3. A wound for which the award is made must have been of such severity that it required treatment by a medical officer.

4. The Purple Heart is not authorized for a wound or death that results from the willful misconduct of the member.

5. The Purple Heart shall be forwarded to the next of kin of any person entitled to the posthumous award, without respect to whether a previous award has been made to such person, except that if the award results from service before December 7, 1941, the Purple Heart shall be forwarded to such next of kin upon his application therefore to the Secretary of the department concerned.

6. Except as authorized in paragraph 5, not more than one Purple Heart shall be awarded to any person, but for each subsequent award a Gold Star, or other suitable device, shall be awarded to be worn with the Purple Heart as prescribed by appropriate regulations to be issued by the Secretary of the department concerned.

7. When authorized by the Secretary of the department concerned, the award of the Purple Heart may be made by subordinate military commanders, or such other appropriate officers as the Secretary concerned may designate.

8. The Secretary of the department concerned may prescribe such regulations as he considers appropriate to carry out this order. The regulations of the Secretaries of the departments with respect to the award of the Purple Heart shall, so far as practicable, be uniform, and those of the military departments shall be subject to the approval of the Secretary of Defense.

9. This order supersedes Executive Order No. 10409 of November 12, 1952, entitled ''Award of the Purple Heart to Persons Serving with the Navy, Marine Corps, or Coast Guard of the United States''. However, existing regulations prescribed pursuant to that order, together with regulations prescribed under the authority of General Orders No. 3, War Department, February 22, 1932, shall, so far as they are not inconsistent with this order, remain in effect until modified or revoked by regulations prescribed by the Secretary of the department concerned under this order.

§1129a. Purple Heart: members killed or wounded in attacks by foreign terrorist organizations

(a) IN GENERAL.—For purposes of the award of the Purple Heart, the Secretary concerned shall treat a member of the armed forces described in subsection (b) in the same manner as a member who is killed or wounded as a result of an international terrorist attack against the United States.

(b) COVERED MEMBERS.—(1) A member described in this subsection is a member on active duty who was killed or wounded in an attack by a foreign terrorist organization in circumstances where the death or wound is the result of an attack targeted on the member due to such member's status as a member of the armed forces, unless the death or wound is the result of willful misconduct of the member.

(2) For purposes of this section, an attack by an individual or entity shall be considered to be an attack by a foreign terrorist organization if—

(A) the individual or entity was in communication with the foreign terrorist organization before the attack; and

(B) the attack was inspired or motivated by the foreign terrorist organization.

(c) FOREIGN TERRORIST ORGANIZATION DEFINED.—In this section, the term ''foreign terrorist organization'' means an entity designated as a foreign terrorist organization by the Secretary of State pursuant to section 219 of the Immigration and Nationality Act (8 U.S.C. 1189).

(Added Pub. L. 113–291, div. A, title V, §571(a)(1)(A), Dec. 19, 2014, 128 Stat. 3387.)

RETROACTIVE EFFECTIVE DATE AND APPLICATION

Pub. L. 113–291, div. A, title V, §571(a)(2), Dec. 19, 2014, 128 Stat. 3387, provided that:

''(A) EFFECTIVE DATE.—The amendments made by paragraph (1) [enacting this section] shall take effect as of September 11, 2001.

''(B) REVIEW OF CERTAIN PREVIOUS INCIDENTS.—The Secretary concerned shall undertake a review of each death or wounding of a member of the Armed Forces that occurred between September 11, 2001, and the date of the enactment of this Act [Dec. 19, 2014] under circumstances that could qualify as being the result of an attack described in section 1129a of title 10, United States Code (as added by paragraph (1)), to determine whether the death or wounding qualifies as a death or wounding resulting from an attack by a foreign terrorist organization for purposes of the award of the Purple Heart pursuant to such section (as so added).

''(C) ACTIONS FOLLOWING REVIEW.—If the death or wounding of a member of the Armed Forces reviewed under subparagraph (B) is determined to qualify as a death or wounding resulting from an attack by a foreign terrorist organization as described in section 1129a of title 10, United States Code (as so added), the Secretary concerned shall take appropriate action under such section to award the Purple Heart to the member.

''(D) SECRETARY CONCERNED DEFINED.—In this paragraph, the term 'Secretary concerned' has the meaning given that term in section 101(a)(9) of title 10, United States Code.''

§1130. Consideration of proposals for decorations not previously submitted in timely fashion: procedures for review

(a) Upon request of a Member of Congress, the Secretary concerned shall review a proposal for the award or presentation of a decoration (or the upgrading of a decoration), either for an individual or a unit, that is not otherwise authorized to be presented or awarded due to limitations established by law or policy for timely submission of a recommendation for such award or presentation. Based upon such review, the Secretary shall make a determination as to the merits of approving the award or presentation of the decoration.

(b) Upon making a determination under subsection (a) as to the merits of approving the award or presentation of the decoration, the Secretary concerned shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives and to the requesting Member of Congress a detailed discussion of the rationale supporting the determination. If the determination includes a favorable recommendation for the award of the Medal of Honor, the Secretary of Defense, instead of the Secretary concerned, shall make the submission under this subsection.

(c) Determinations under this section regarding the award or presentation of a decoration shall be made in accordance with the same procedures that apply to the approval or disapproval of the award or presentation of a decoration when a recommendation for such award or presentation is submitted in a timely manner as prescribed by law or regulation.

(d) In this section:

(1) The term ''Member of Congress'' means—

(A) a Senator; or

(B) a Representative in, or a Delegate or Resident Commissioner to, Congress.

(2) The term ''decoration'' means any decoration or award that may be presented or awarded to a member or unit of the armed forces.

(Added Pub. L. 104–106, div. A, title V, §526(a), Feb. 10, 1996, 110 Stat. 313; amended Pub. L. 106–65, div. A, title X, §1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 108–136, div. A, title X, §1031(a)(10), Nov. 24, 2003, 117 Stat. 1597; Pub. L. 112–81, div. A, title V, §524, Dec. 31, 2011, 125 Stat. 1401.)

AMENDMENTS

2011—Subsec. (b). Pub. L. 112–81 inserted at end ''If the determination includes a favorable recommendation for the award of the Medal of Honor, the Secretary of Defense, instead of the Secretary concerned, shall make the submission under this subsection.''

2003—Pub. L. 108–136, §1031(a)(10)(B), struck out ''and recommendation'' after ''review'' in section catchline.

Subsec. (a). Pub. L. 108–136, §1031(a)(10)(A)(i), struck out ''and the other determinations necessary to comply with subsection (b)'' after ''of the decoration''.

Subsec. (b). Pub. L. 108–136, §1031(a)(10)(A)(ii), substituted ''to the requesting Member of Congress a detailed discussion of the rationale supporting the determination.'' for ''to the requesting member of Congress notice in writing of one of the following:

''(1) The award or presentation of the decoration does not warrant approval on the merits.

''(2) The award or presentation of the decoration warrants approval and a waiver by law of time restrictions prescribed by law is recommended.

''(3) The award or presentation of the decoration warrants approval on the merits and has been approved as an exception to policy.

''(4) The award or presentation of the decoration warrants approval on the merits, but a waiver of the time restrictions prescribed by law or policy is not recommended.

A notice under paragraph (1) or (4) shall be accompanied by a statement of the reasons for the decision of the Secretary.''

1999—Subsec. (b). Pub. L. 106–65 substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security'' in introductory provisions.

ELIGIBILITY FOR ARMED FORCES EXPEDITIONARY MEDAL FOR PARTICIPATION IN OPERATION JOINT ENDEAVOR OR OPERATION JOINT GUARD

Pub. L. 105–85, div. A, title V, § 572, Nov. 18, 1997, 111 Stat. 1756, provided that:

''(a) INCLUSION OF OPERATIONS.—For the purpose of determining the eligibility of members and former members of the Armed Forces for the Armed Forces Expeditionary Medal, the Secretary of Defense shall designate participation in Operation Joint Endeavor or Operation Joint Guard in the Republic of Bosnia and Herzegovina, and in such other areas in the region as the Secretary considers appropriate, as service in an area that meets the general requirements for the award of that medal.

''(b) INDIVIDUAL DETERMINATION.—The Secretary of the military department concerned shall determine whether individual members or former members of the Armed Forces who participated in Operation Joint Endeavor or Operation Joint Guard meet the individual service requirements for award of the Armed Forces Expeditionary Medal as established in applicable regulations. A member or former member shall be considered to have participated in Operation Joint Endeavor or Operation Joint Guard if the member—

''(1) was deployed in the Republic of Bosnia and Herzegovina, or in such other area in the region as the Secretary of Defense considers appropriate, in direct support of one or both of the operations;

''(2) served on board a United States naval vessel operating in the Adriatic Sea in direct support of one or both of the operations; or

''(3) operated in airspace above the Republic of Bosnia and Herzegovina, or in such other area in the region as the Secretary of Defense considers appropriate, while the operations were in effect.

''(c) OPERATIONS DEFINED.—For purposes of this section:

''(1) The term 'Operation Joint Endeavor' means operations of the United States Armed Forces conducted in the Republic of Bosnia and Herzegovina during the period beginning on November 20, 1995, and ending on December 20, 1996, to assist in implementing the General Framework Agreement and Associated Annexes, initialed on November 21, 1995, in Dayton, Ohio.

''(2) The term 'Operation Joint Guard' means operations of the United States Armed Forces conducted in the Republic of Bosnia and Herzegovina as a successor to Operation Joint Endeavor during the period beginning on December 20, 1996, and ending on such date as the Secretary of Defense may designate.''

ELIGIBILITY OF CERTAIN WORLD WAR II MILITARY ORGANIZATIONS FOR AWARD OF UNIT DECORATIONS

Pub. L. 105–85, div. A, title V, § 576, Nov. 18, 1997, 111 Stat. 1758, authorized award of a unit decoration for any unit or other organization of the Armed Forces that had supported the planning or execution of combat operations during World War II primarily through unit personnel who had been attached to other units of the Armed Forces or of other allied armed forces, and that had not been otherwise eligible for award of the decoration by reason of not usually having been deployed as a unit in support of such operations, and required that any recommendation for such an award be submitted to the Secretary concerned not later than two years after Nov. 18, 1997.

AUTHORITY TO AWARD DECORATIONS RECOGNIZING ACTS OF VALOR PERFORMED IN COMBAT DURING THE VIETNAM CONFLICT

Pub. L. 104–106, div. A, title V, § 522, Feb. 10, 1996, 110 Stat. 310, provided that:

''(a) FINDINGS.—Congress makes the following findings:

''(1) The Ia Drang Valley (Pleiku) campaign, carried out by the Armed Forces in the Ia Drang Valley of Vietnam from October 23, 1965, to November 26, 1965, is illustrative of the many battles during the Vietnam conflict which pitted forces of the United States against North Vietnamese Army regulars and Viet Cong in vicious fighting.

''(2) Accounts of those battles that have been published since the end of that conflict authoritatively document numerous and repeated acts of extraordinary heroism, sacrifice, and bravery on the part of members of the Armed Forces, many of which have never been officially recognized.

''(3) In some of those battles, United States military units suffered substantial losses, with some units sustaining casualties in excess of 50 percent.

''(4) The incidence of heavy casualties throughout the Vietnam conflict inhibited the timely collection of comprehensive and detailed information to support recommendations for awards recognizing acts of heroism, sacrifice, and bravery.

''(5) Subsequent requests to the Secretaries of the military departments for review of award recommendations for such acts have been denied because of restrictions in law and regulations that require timely filing of such recommendations and documented justification.

''(6) Acts of heroism, sacrifice, and bravery performed in combat by members of the Armed Forces deserve appropriate and timely recognition by the people of the United States.

''(7) It is appropriate to recognize acts of heroism, sacrifice, or bravery that are belatedly, but properly, documented by persons who witnessed those acts.

''(b) WAIVER OF TIME LIMITATIONS FOR RECOMMENDATIONS FOR AWARDS.—(1) Any decoration covered by paragraph (2) may be awarded, without regard to any time limit imposed by law or regulation for a recommendation for such award to any person for actions by that person in the Southeast Asia theater of operations while serving on active duty during the Vietnam era. The waiver of time limitations under this paragraph applies only in the case of awards for acts of valor for which a request for consideration is submitted under subsection (c).

''(2) Paragraph (1) applies to any decoration (including any device in lieu of a decoration) that, during or after the Vietnam era and before the date of the enactment of this Act [Feb. 10, 1996], was authorized by law or under regulations of the Department of Defense or the military department concerned to be awarded to members of the Armed Forces for acts of valor.

''(c) REVIEW OF REQUESTS FOR CONSIDERATION OF AWARDS.—(1) The Secretary of each military department shall review each request for consideration of award of a decoration described in subsection (b) that are received by the Secretary during the one-year period beginning on the date of enactment of this Act [Feb. 10, 1996].

''(2) The Secretaries shall begin the review within 30 days after the date of the enactment of this Act and shall complete the review of each request for consideration not later than one year after the date on which the request is received.

''(3) The Secretary may use the same process for carrying out the review as the Secretary uses for reviewing other recommendations for award of decorations to members of the Armed Forces under the Secretary's jurisdiction for valorous acts.

''(d) REPORT.—(1) Upon completing the review of each such request under subsection (c), the Secretary shall

submit a report on the review to the Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives [now Committee on Armed Services of the House of Representatives].

''(2) The report shall include, with respect to each request for consideration received, the following information:

''(A) A summary of the request for consideration.

''(B) The findings resulting from the review.

''(C) The final action taken on the request for consideration.

''(e) DEFINITION.—For purposes of this section:

''(1) The term 'Vietnam era' has the meaning given that term in section 101 of title 38, United States Code.

''(2) The term 'active duty' has the meaning given that term in section 101 of title 10, United States Code.''

MILITARY INTELLIGENCE PERSONNEL PREVENTED BY SECRECY FROM BEING CONSIDERED FOR DECORATIONS AND AWARDS

Pub. L. 104–106, div. A, title V, § 523, Feb. 10, 1996, 110 Stat. 311, as amended by Pub. L. 105–85, div. A, title V, § 575, Nov. 18, 1997, 111 Stat. 1758, provided that:

''(a) WAIVER ON RESTRICTIONS OF AWARDS.—(1) Any decoration covered by paragraph (2) may be awarded, without regard to any time limit imposed by law or regulation for a recommendation for such award, to any person for an act, achievement, or service that the person performed in carrying out military intelligence duties during the period beginning on January 1, 1940, and ending on December 31, 1990.

''(2) Paragraph (1) applies to any decoration (including any device in lieu of a decoration) that, during or after the period described in paragraph (1) and before the date of the enactment of this Act [Feb. 10, 1996], was authorized by law or under the regulations of the Department of Defense or the military department concerned to be awarded to a person for an act, achievement, or service performed by that person while serving on active duty.

''(b) REVIEW OF REQUESTS FOR CONSIDERATION OF AWARDS.—(1) The Secretary of each military department shall review each request for consideration of award of a decoration described in subsection (a) that is received by the Secretary during the period beginning on February 10, 1996, and ending on February 9, 1998.

''(2) The Secretaries shall begin the review within 30 days after the date of the enactment of this Act and shall complete the review of each request for consideration not later than one year after the date on which the request is received.

''(3) The Secretary may use the same process for carrying out the review as the Secretary uses for reviewing other recommendations for awarding decorations to members of the Armed Forces under the Secretary's jurisdiction for acts, achievements, or service.

''(c) REPORT.—(1) Upon completing the review of each such request under subsection (b), the Secretary shall submit a report on the review to the Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives [now Committee on Armed Services of the House of Representatives].

''(2) The report shall include, with respect to each request for consideration reviewed, the following information:

''(A) A summary of the request for consideration.

''(B) The findings resulting from the review.

''(C) The final action taken on the request for consideration.

''(D) Administrative or legislative recommendations to improve award procedures with respect to military intelligence personnel.

''(d) DEFINITION.—For purposes of this section, the term 'active duty' has the meaning given such term in section 101 of title 10, United States Code.''

ELIGIBILITY FOR ARMED FORCES EXPEDITIONARY MEDAL BASED UPON SERVICE IN EL SALVADOR

Section 525 of Pub. L. 104–106 provided that:

''(a) IN GENERAL.—For the purpose of determining eligibility of members and former members of the Armed Forces for the Armed Forces Expeditionary Medal, the country of El Salvador during the period beginning on January 1, 1981 and ending on February 1, 1992, shall be treated as having been designated as an area and a period of time in which members of the Armed Forces participated in operations in significant numbers and otherwise met the general requirements for the award of that medal.

''(b) INDIVIDUAL DETERMINATION.—The Secretary of the military department concerned shall determine whether individual members or former members of the Armed Forces who served in El Salvador during the period beginning on January 1, 1981 and ending on February 1, 1992 meet the individual service requirements for award of the Armed Forces Expeditionary Medal as established in applicable regulations. Such determinations shall be made as expeditiously as possible after the date of the enactment of this Act [Feb. 10, 1996].''

§ 1131. Purple Heart: limitation to members of the armed forces

The decoration known as the Purple Heart (authorized to be awarded pursuant to Executive Order 11016) may only be awarded to a person who is a member of the armed forces at the time the person is killed or wounded under circumstances otherwise qualifying that person for award of the Purple Heart.

(Added Pub. L. 105–85, div. A, title V, § 571(a)(1), Nov. 18, 1997, 111 Stat. 1756.)

REFERENCES IN TEXT

Executive Order 11016, referred to in text, is Ex. Ord. No. 11016, Apr. 25, 1962, 27 F.R. 4139, which is set out as a note under section 1129 of this title.

EFFECTIVE DATE

Pub. L. 105–85, div. A, title V, § 571(b), Nov. 18, 1997, 111 Stat. 1756, provided that: ''Section 1131 of title 10, United States Code, as added by subsection (a), shall apply with respect to persons who are killed or wounded after the end of the 180-day period beginning on the date of the enactment of this Act [Nov. 18, 1997].''

§ 1132. Presentation of decorations: prohibition on entering correctional facilities for presentation to prisoners convicted of serious violent felonies

(a) PROHIBITION.—A member of the armed forces may not enter a Federal, State, local, or foreign correctional facility to present a decoration to a person who is incarcerated due to conviction of a serious violent felony.

(b) DEFINITIONS.—In this section:

(1) The term ''decoration'' means any decoration or award that may be presented or awarded to a member of the armed forces.

(2) The term ''serious violent felony'' has the meaning given that term in section 3559(c)(2)(F) of title 18.

(Added Pub. L. 105–261, div. A, title V, § 537(a), Oct. 17, 1998, 112 Stat. 2019.)

§ 1133. Bronze Star: limitation on persons eligible to receive

The decoration known as the ''Bronze Star'' may only be awarded to a member of a military force who—

(1) at the time of the events for which the decoration is to be awarded, was serving in a geographic area in which special pay is authorized under section 310 or paragraph (1) or (3) of section 351(a) of title 37; or

(2) receives special pay under section 310 or paragraph (1) or (3) of section 351(a) of title 37 as a result of those events.

(Added Pub. L. 106–398, § 1 [[div. A], title V, § 541(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–114; amended Pub. L. 111–383, div. A, title V, § 571(a), Jan. 7, 2011, 124 Stat. 4222.)

AMENDMENTS

2011—Pub. L. 111–383 amended section generally. Prior to amendment, text read as follows: ''The decoration known as the 'Bronze Star' may only be awarded to a member of the armed forces who is in receipt of special pay under section 310 of title 37 at the time of the events for which the decoration is to be awarded or who receives such pay as a result of those events.''

EFFECTIVE DATE OF 2011 AMENDMENT

Pub. L. 111–383, div. A, title V, § 571(c), Jan. 7, 2011, 124 Stat. 4223, provided that: ''The amendment made by subsection (a) [amending this section] applies to the award of the Bronze Star after October 30, 2000.''

§ 1134. Medal of honor: award to individual interred in Tomb of the Unknowns as representative of casualties of a war

The medal of honor awarded posthumously to a deceased member of the armed forces who, as an unidentified casualty of a particular war or other armed conflict, is interred in the Tomb of the Unknowns at Arlington National Cemetery, Virginia, is awarded to the member as the representative of the members of the armed forces who died in such war or other armed conflict and whose remains have not been identified, and not to the individual personally.

(Added Pub. L. 108–375, div. A, title V, § 561(a), Oct. 28, 2004, 118 Stat. 1917.)

§ 1134a. Medal of honor: Army, Navy, Air Force, and Coast Guard Medal of Honor Roll

(a) ESTABLISHMENT.—There shall be in the Department of the Army, the Department of the Navy, the Department of the Air Force, and the Department in which the Coast Guard is operating a roll designated as the ''Army, Navy, Air Force, and Coast Guard Medal of Honor Roll''.

(b) ENROLLMENT.—The Secretary concerned shall enter and record on the Army, Navy, Air Force, and Coast Guard Medal of Honor Roll the name of each person who has served on active duty in the armed forces and who has been awarded a medal of honor pursuant to section 7271, 8291, or 9271 of this title or section 491[1] of title 14.

(c) ISSUANCE OF ENROLLMENT CERTIFICATE.—Each living person whose name is entered on the Army, Navy, Air Force, and Coast Guard Medal of Honor Roll shall be issued a certificate of enrollment on the roll.

(d) ENTITLEMENT TO SPECIAL PENSION; NOTICE TO SECRETARY OF VETERANS AFFAIRS.—The Secretary concerned shall deliver to the Secretary of Veterans Affairs a certified copy of each certificate of enrollment issued under subsection (c). The copy of the certificate shall authorize the Secretary of Veterans Affairs to pay the special pension provided by section 1562 of title 38 to the person named in the certificate.

(Added Pub. L. 113–66, div. A, title V, § 563(a)(1), Dec. 26, 2013, 127 Stat. 767; amended Pub. L. 115–232, div. A, title VIII, § 809(a), Aug. 13, 2018, 132 Stat. 1840.)

REFERENCES IN TEXT

Section 491 of title 14, referred to in subsec. (b), was redesignated section 2732 of title 14 by Pub. L. 115–282, title I, § 116(b), Dec. 4, 2018, 132 Stat. 4226, and references to section 491 of title 14 deemed to refer to such redesignated section, see section 123(b)(1) of Pub. L. 115–282, set out as a References to Sections of Title 14 as Redesignated by Pub. L. 115–282 note preceding section 101 of Title 14, Coast Guard.

AMENDMENTS

2018—Subsec. (b). Pub. L. 115–232 substituted ''section 7271, 8291, or 9271'' for ''section 3741, 6241, or 8741''.

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115–232 effective Feb. 1, 2019, with provision for the coordination of amendments and special rule for certain redesignations, see section 800 of Pub. L. 115–232, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE

Pub. L. 113–66, div. A, title V, § 563(d), Dec. 26, 2013, 127 Stat. 768, provided that: ''The amendments made by this section [enacting this section, amending section 1562 of Title 38, Veterans' Benefits, and repealing sections 1560 and 1561 of Title 38] shall apply with respect to Medals of Honor awarded on or after the date of the enactment of this Act [Dec. 26, 2013].''

§ 1135. Replacement of military decorations

(a) REPLACEMENT.—In addition to other authorities available to the Secretary concerned to replace a military decoration, the Secretary concerned shall replace, on a one-time basis and without charge, a military decoration upon the request of the recipient of the military decoration or the immediate next of kin of a deceased recipient.

(b) PROMPT REPLACEMENT REQUIRED.—When a request for the replacement of a military decoration is received under this section or section 7277, 7281, 8303, 9277, or 9281 of this title, the Secretary concerned shall ensure that—

(1) all actions to be taken with respect to the request, including verification of the service record of the recipient of the military decoration, are completed within one year; and

(2) the replacement military decoration is mailed to the person requesting the replacement military decoration within 90 days after verification of the service record.

(c) MILITARY DECORATION DEFINED.—In this section, the term ''decoration'' means any decoration or award (other than the medal of honor) that may be presented or awarded by the President or the Secretary concerned to a member of the armed forces.

(Added Pub. L. 110–417, [div. A], title V, § 571(a), Oct. 14, 2008, 122 Stat. 4471; amended Pub. L. 113–66, div. A, title V, § 564, Dec. 26, 2013, 127 Stat.

[1] See References in Text note below.

768; Pub. L. 115–232, div. A, title VIII, § 809(a), Aug. 13, 2018, 132 Stat. 1840.)

AMENDMENTS

2018—Subsec. (b). Pub. L. 115–232 substituted ''section 7277, 7281, 8303, 9277, or 9281'' for ''section 3747, 3751, 6253, 8747, or 8751'' in introductory provisions.

2013—Subsecs. (b), (c). Pub. L. 113–66 added subsec. (b) and redesignated former subsec. (b) as (c).

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115–232 effective Feb. 1, 2019, with provision for the coordination of amendments and special rule for certain redesignations, see section 800 of Pub. L. 115–232, set out as a note preceding section 3001 of this title.

§ 1136. Honorable service requirement for award of military decorations

No military decoration, including a medal, cross, or bar, or an associated emblem or insignia, may be awarded or presented to any person, or to a representative of the person, if the service of the person after the person distinguished himself or herself has not been honorable.

(Added Pub. L. 116–92, div. A, title V, § 582(a)(1), Dec. 20, 2019, 133 Stat. 1411.)

CHAPTER 58—BENEFITS AND SERVICES FOR MEMBERS BEING SEPARATED OR RECENTLY SEPARATED

Sec.
1141. Involuntary separation defined.
1142. Preseparation counseling; transmittal of certain records to Department of Veterans Affairs.
1143. Employment assistance.
[1143a. Repealed.]
1144. Employment assistance, job training assistance, and other transitional services: Department of Labor.
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1149. Excess leave and permissive temporary duty.
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1152. Assistance to eligible members and former members to obtain employment with law enforcement agencies.
1153. Assistance to separated members to obtain employment with health care providers.
1154. Assistance to eligible members and former members to obtain employment as teachers: Troops-to-Teachers Program.
1155. Statement of benefits.

AMENDMENTS

2021—Pub. L. 116–283, div. A, title X, § 1081(a)(26), Jan. 1, 2021, 134 Stat. 3872, added item 1142 and struck out former item 1142 ''Preseparation counseling; transmittal of medical records to Department of Veterans Affairs''.

2018—Pub. L. 115–232, div. A, title V, §§ 522(b), 553(a)(2), Aug. 13, 2018, 132 Stat. 1756, 1772, added item 1155 and struck out item 1143a ''Employment assistance''.

2013—Pub. L. 112–239, div. A, title V, § 541(b)(2), Jan. 2, 2013, 126 Stat. 1735, added item 1154.

2006—Pub. L. 109–364, div. A, title V, § 561(b), Oct. 17, 2006, 120 Stat. 2220, added item 1151.

1999—Pub. L. 106–65, div. A, title XVII, § 1707(a)(2), Oct. 5, 1999, 113 Stat. 823, struck out item 1151 ''Assistance to separated members to obtain certification and employment as teachers or employment as teachers' aides''.

1994—Pub. L. 103–337, div. A, title V, § 542(a)(10), title XI, § 1132(a)(2), Oct. 5, 1994, 108 Stat. 2768, 2873, struck out '': Department of Defense'' after ''assistance'' in item 1143 and after ''service'' in item 1143a and substituted ''eligible members and former members'' for ''separated members'' in item 1152.

1993—Pub. L. 103–160, div. A, title XIII, § 1332(e), Nov. 30, 1993, 107 Stat. 1797, added items 1152 and 1153.

1992—Pub. L. 102–484, div. D, title XLIV, §§ 4441(a)(2), 4462(a)(2), Oct. 23, 1992, 106 Stat. 2730, 2740, added items 1143a and 1151.

§ 1141. Involuntary separation defined

A member of the armed forces shall be considered to be involuntarily separated for purposes of this chapter if the member was on active duty or full-time National Guard duty on September 30, 1990, or after November 29, 1993, or, with respect to a member of the Coast Guard, if the member was on active duty in the Coast Guard after September 30, 1994, and—

(1) in the case of a regular officer (other than a retired officer), the officer is involuntarily discharged under other than adverse conditions, as characterized by the Secretary concerned;

(2) in the case of a reserve officer who is on the active-duty list or, if not on the active-duty list, is on full-time active duty (or in the case of a member of the National Guard, full-time National Guard duty) for the purpose of organizing, administering, recruiting, instructing, or training the reserve components, the officer is involuntarily discharged or released from active duty or full-time National Guard (other than a release from active duty or full-time National Guard duty incident to a transfer to retired status) under other than adverse conditions, as characterized by the Secretary concerned;

(3) in the case of a regular enlisted member serving on active duty, the member is (A) denied reenlistment, or (B) involuntarily discharged under other than adverse conditions, as characterized by the Secretary concerned; and

(4) in the case of a reserve enlisted member who is on full-time active duty (or in the case of a member of the National Guard, full-time National Guard duty) for the purpose of organizing, administering, recruiting, instructing, or training the reserve components, the member (A) is denied reenlistment, or (B) is involuntarily discharged or released from active duty (or full-time National Guard) under other than adverse conditions, as characterized by the Secretary concerned.

(Added Pub. L. 101–510, div. A, title V, § 502(a)(1), Nov. 5, 1990, 104 Stat. 1551; amended Pub. L. 103–160, div. A, title V, § 503, Nov. 30, 1993, 107 Stat. 1644; Pub. L. 103–337, div. A, title V, § 542(a)(1), Oct. 5, 1994, 108 Stat. 2767.)

AMENDMENTS

1994—Pub. L. 103–337, in introductory provisions, substituted ''armed forces'' for ''Army, Navy, Air Force, or Marine Corps'' and ''or after November 29, 1993, or, with respect to a member of the Coast Guard, if the member was on active duty in the Coast Guard after September 30, 1994,'' for ''or on or after the date of the enactment

of the National Defense Authorization Act for Fiscal Year 1994''.

1993—Pub. L. 103–160 inserted ''or on or after the date of the enactment of the National Defense Authorization Act for Fiscal Year 1994'' after ''September 30, 1990,''.

EFFECTIVE DATE OF 1994 AMENDMENT

Pub. L. 103–337, div. A, title V, §542(e), Oct. 5, 1994, 108 Stat. 2769, provided that: ''This section [amending this section and sections 1143, 1143a, 1145 to 1150, 1174a, and 1175 of this title and enacting provisions set out as a note under section 1293 of this title] and the amendments made by this section shall apply only to members of the Coast Guard who are separated after September 30, 1994.''

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 1142. Preseparation counseling; transmittal of certain records to Department of Veterans Affairs

(a) REQUIREMENT.—(1) Within the time periods specified in paragraph (3), the Secretary concerned shall (except as provided in paragraph (4)) provide for individual preseparation counseling of each member of the armed forces whose discharge (regardless of character of discharge) or release from active duty is anticipated as of a specific date. A notation of the provision of such counseling with respect to each matter specified in subsection (b), signed by the member, shall be placed in the service record of each member receiving such counseling.

(2) In carrying out this section, the Secretary concerned shall use the services available under section 1144 of this title.

(3)(A) In the case of an anticipated retirement, preseparation counseling shall commence as soon as possible during the 24-month period preceding the anticipated retirement date. In the case of a separation other than a retirement, preseparation counseling shall commence not later than 365 days before the anticipated date. Except as provided in subparagraph (B), in no event shall preseparation counseling commence later than 365 days before the date of retirement or other separation.

(B) In the event that a retirement or other separation is unanticipated until there are 365 or fewer days before the anticipated retirement or separation date, or in the event a member of a reserve component is being demobilized under circumstances in which (as determined by the Secretary concerned) operational requirements make the 365-day requirement under subparagraph (A) unfeasible, preseparation counseling shall begin as soon as possible within the remaining period of service.

(4)(A) Subject to subparagraph (B), the Secretary concerned shall not provide preseparation counseling to a member who is being discharged or released before the completion of the first 180 continuous days of active duty of the member.

(B) Subparagraph (A) shall not apply in the case of a member who is being retired or separated for disability.

(C) For purposes of calculating the days of active duty of a member under subparagraph (A), the Secretary concerned shall exclude any day on which—

(i) the member performed full-time training duty or annual training duty; and

(ii) the member attended, while in the active military service, a school designated as a service school by law or by the Secretary concerned.

(b) MATTERS TO BE COVERED BY COUNSELING.—Counseling under this section shall include the following:

(1) A discussion of the educational assistance benefits to which the member is entitled under the Montgomery GI Bill and other educational assistance programs because of the member's service in the armed forces.

(2) A description (to be developed with the assistance of the Secretary of Veterans Affairs) of the compensation and vocational rehabilitation benefits to which the member may be entitled under laws administered by the Secretary of Veterans Affairs, if the member is being medically separated or is being retired under chapter 61 of this title.

(3) An explanation of the procedures for and advantages of affiliating with the Selected Reserve.

(4) Provision of information on civilian occupations and related assistance programs, including information concerning—

(A) certification and licensure requirements that are applicable to civilian occupations, including State-submitted and approved lists of military training and skills that satisfy occupational certifications and licenses;

(B) civilian occupations that correspond to military occupational specialties; and

(C) Government and private-sector programs for job search and job placement assistance, including information regarding the placement programs established under sections 1152 and 1153 of this title and the Troops-to-Teachers Program.

(5) If the member has a spouse, inclusion of the spouse, at the discretion of the member and the spouse, when counseling regarding the matters covered by paragraphs (9), (10), and (16) is provided, job placement counseling for the spouse, and the provision of information on survivor benefits available under the laws administered by the Secretary of Defense or the Secretary of Veterans Affairs.

(6) Information concerning the availability of relocation assistance services and other benefits and services available to persons leaving military service, as provided under section 1144 of this title.

(7) Information concerning the availability of medical and dental coverage following separation from active duty, including the opportunity to elect into the conversion health policy provided under section 1145 of this title.

(8) Counseling (for the member and dependents) on the effect of career change on individ-

uals and their families and the availability to the member and dependents of suicide prevention resources following separation from the armed forces.

(9) Financial planning assistance, including information on budgeting, saving, credit, loans, and taxes.

(10) The creation of a transition plan for the member to attempt to achieve the educational, training, employment, and financial objectives of the member and, if the member has a spouse, the spouse of the member.

(11) Information concerning the availability of mental health services and the treatment of post-traumatic stress disorder, anxiety disorders, depression, suicidal ideations, or other mental health conditions associated with service in the armed forces and information concerning the availability of treatment options and resources to address substance abuse, including alcohol, prescription drug, and opioid abuse.

(12) Information concerning the priority of service for veterans in the receipt of employment, training, and placement services provided under qualified job training programs of the Department of Labor.

(13) Information concerning veterans small business ownership and entrepreneurship programs of the Small Business Administration.

(14) Information concerning employment and reemployment rights and obligations under chapter 43 of title 38.

(15) Information concerning veterans preference in Federal employment and Federal procurement opportunities.

(16) Information on home loan services and housing assistance benefits available under the laws administered by the Secretary of Veterans Affairs and counseling on responsible borrowing practices.

(17) A description, developed in consultation with the Secretary of Veterans Affairs, of health care and other benefits to which the member may be entitled under the laws administered by the Secretary of Veterans Affairs, and information regarding the means by which the member can receive additional counseling regarding the member's actual entitlement to such benefits and apply for such benefits.

(18) A description, developed in consultation with the Secretary of Veterans Affairs, of the assistance and support services for family caregivers of eligible veterans under the program conducted by the Secretary of Veterans Affairs pursuant to section 1720G of title 38, including the veterans covered by the program, the caregivers eligible for assistance and support through the program, and the assistance and support available through the program.

(19) Information regarding how to file claims for benefits available to the member under laws administered by the Secretaries of Defense and Veterans Affairs.

(c) COUNSELING PATHWAYS.—(1) Each Secretary concerned, in consultation with the Secretaries of Labor and Veterans Affairs, shall establish at least three pathways for members of the military department concerned receiving individualized counseling under this section. The Secretaries shall design the pathways to address the needs of members, based on the following factors:

(A) Rank.

(B) Term of service.

(C) Gender.

(D) Whether the member was a member of a regular or reserve component of an armed force.

(E) Disability.

(F) Character of discharge (including expedited discharge and discharge under conditions other than honorable).

(G) Health (including mental health).

(H) Military occupational specialty.

(I) Whether the member intends, after separation, retirement, or discharge, to—

(i) seek employment;

(ii) enroll in a program of higher education;

(iii) enroll in a program of vocational training; or

(iv) become an entrepreneur.

(J) The educational history of the member.

(K) The employment history of the member.

(L) Whether the member has secured—

(i) employment;

(ii) enrollment in a program of education; or

(iii) enrollment in a program of vocational training.

(M) Other factors the Secretary of Defense and the Secretary of Homeland Security, in consultation with the Secretaries of Labor and Veterans Affairs, determine appropriate.

(2) Each member described in subsection (a) shall meet in person or by video conference with a counselor before beginning counseling under this section to—

(A) take a self-assessment designed by the Secretary concerned (in consultation with the Secretaries of Labor and Veterans Affairs) to ensure that the Secretary concerned places the member in the appropriate pathway under this subsection;

(B) receive information from the counselor regarding reenlistment in the armed forces; and

(C) receive information from the counselor regarding resources (including resources regarding military sexual trauma)—

(i) for members of the armed forces separated, retired, or discharged;

(ii) located in the community in which the member will reside after separation, retirement, or discharge.

(3) At the meeting under paragraph (2), the member may elect to have the Secretary concerned (in consultation with the Secretaries of Labor and Veterans Affairs) provide the contact information of the member to the resources described in paragraph (2)(C).

(d) TRANSMITTAL OF MEDICAL INFORMATION TO DEPARTMENT OF VETERANS AFFAIRS.—In the case of a member being medically separated or being retired under chapter 61 of this title, the Secretary concerned shall ensure (subject to the consent of the member) that a copy of the mem-

ber's service medical record (including any results of a Physical Evaluation Board) is transmitted to the Secretary of Veterans Affairs within 60 days of the separation or retirement.

(e) JOINT SERVICE TRANSCRIPT.—The Secretary concerned shall provide a copy of the joint service transcript of a member described in subsection (a) to—

(1) that member—

(A) at the meeting with a counselor under subsection (c)(2); and

(B) on the day the member separates, retires, or is discharged; and

(2) the Secretary of Veterans Affairs on the day the member separates, retires, or is discharged.

(Added Pub. L. 101–510, div. A, title V, § 502(a)(1), Nov. 5, 1990, 104 Stat. 1552; amended Pub. L. 102–190, div. A, title X, § 1061(a)(5), Dec. 5, 1991, 105 Stat. 1472; Pub. L. 102–484, div. D, title XLIV, §§ 4401, 4441(b), 4462(b), Oct. 23, 1992, 106 Stat. 2701, 2730, 2740; Pub. L. 103–35, title II, § 201(i)(1), May 31, 1993, 107 Stat. 100; Pub. L. 103–160, div. A, title XIII, § 1332(c), Nov. 30, 1993, 107 Stat. 1797; Pub. L. 106–398, § 1 [[div. A], title X, § 1087(a)(9)], Oct. 30, 2000, 114 Stat. 1654, 1654A–290; Pub. L. 107–103, title III, § 302(a), Dec. 27, 2001, 115 Stat. 991; Pub. L. 109–163, div. A, title V, § 594, Jan. 6, 2006, 119 Stat. 3281; Pub. L. 111–84, div. A, title X, § 1073(a)(13), Oct. 28, 2009, 123 Stat. 2473; Pub. L. 112–56, title II, § 221(b), Nov. 21, 2011, 125 Stat. 716; Pub. L. 112–81, div. A, title V, §§ 513, 529, 533(c), Dec. 31, 2011, 125 Stat. 1393, 1402, 1404; Pub. L. 112–239, div. A, title V, § 541(c), title X, § 1076(f)(12), title XVI, § 1699(c)(1), Jan. 2, 2013, 126 Stat. 1735, 1952, 2092; Pub. L. 114–92, div. A, title V, § 552, Nov. 25, 2015, 129 Stat. 823; Pub. L. 114–328, div. A, title V, § 562, Dec. 23, 2016, 130 Stat. 2138; Pub. L. 115–91, div. A, title V, §§ 541(a), 542(d), Dec. 12, 2017, 131 Stat. 1393, 1395; Pub. L. 115–232, div. A, title V, §§ 552(a)(1), 553(b)(2), Aug. 13, 2018, 132 Stat. 1769, 1772; Pub. L. 116–92, div. A, title V, § 561, title XVII, § 1731(a)(26), Dec. 20, 2019, 133 Stat. 1394, 1813.)

AMENDMENTS

2019—Subsec. (b)(19). Pub. L. 116–92, § 561, added par. (19).

Subsec. (c)(3). Pub. L. 116–92, § 1731(a)(26), substituted ''paragraph (2)(C)'' for ''paragraph (2)(B)''.

2018—Pub. L. 115–232, § 552(a)(1)(A), substituted ''certain'' for ''medical'' in section catchline.

Subsec. (a)(1). Pub. L. 115–232, § 552(a)(1)(B)(i), inserted ''(regardless of character of discharge)'' after ''discharge''.

Subsec. (a)(3)(A). Pub. L. 115–232, § 552(a)(1)(B)(ii), substituted ''not later than 365 days before'' for ''as soon as possible during the 12-month period preceding'', ''365 days'' for ''90 days'', and ''retirement or other separation'' for ''discharge or release''.

Subsec. (a)(3)(B). Pub. L. 115–232, § 552(a)(1)(B)(iii), substituted ''365'' for ''90'' and ''365-day'' for ''90-day''.

Subsec. (b)(4)(C). Pub. L. 115–232, § 553(b)(2), struck out ''the public and community service jobs program carried out under section 1143a of this title, and'' after ''including''.

Subsecs. (c), (d). Pub. L. 115–232, § 552(a)(1)(C), (D), added subsec. (c) and redesignated former subsec. (c) as (d).

Subsec. (e). Pub. L. 115–232, § 552(a)(1)(E), added subsec. (e).

2017—Subsec. (b)(4)(A). Pub. L. 115–91, § 542(d), inserted '', including State-submitted and approved lists of military training and skills that satisfy occupational certifications and licenses'' before semicolon at end.

Subsec. (b)(18). Pub. L. 115–91, § 541(a), added par. (18).

2016—Subsec. (b)(11). Pub. L. 114–328 inserted before period at end ''and information concerning the availability of treatment options and resources to address substance abuse, including alcohol, prescription drug, and opioid abuse''.

2015—Subsec. (a)(4)(A). Pub. L. 114–92, § 552(1), substituted ''the first 180 continuous days of active duty of the member'' for ''that member's first 180 days of active duty''.

Subsec. (a)(4)(C). Pub. L. 114–92, § 552(2), added subpar. (C).

2013—Subsec. (b)(4)(C). Pub. L. 112–239, § 541(c), struck out ''under section 2302 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6672)'' before period at end.

Subsec. (b)(10). Pub. L. 112–239, § 1076(f)(12), substituted ''training,'' for ''training,,''.

Subsec. (b)(13). Pub. L. 112–239, § 1699(c)(1), struck out ''and the National Veterans Business Development Corporation'' before period at end.

2011—Subsec. (a)(2). Pub. L. 112–56 substituted ''shall'' for ''may''.

Subsec. (a)(3)(B). Pub. L. 112–81, § 513, inserted ''or in the event a member of a reserve component is being demobilized under circumstances in which (as determined by the Secretary concerned) operational requirements make the 90-day requirement under subparagraph (A) unfeasible,'' after ''or separation date,''.

Subsec. (b)(5). Pub. L. 112–81, § 529(1), substituted ''inclusion of the spouse, at the discretion of the member and the spouse, when counseling regarding the matters covered by paragraphs (9), (10), and (16) is provided, job placement counseling for the spouse, and the provision of information on survivor benefits available under the laws administered by the Secretary of Defense or the Secretary of Veterans Affairs'' for ''job placement counseling for the spouse''.

Subsec. (b)(8). Pub. L. 112–81, § 533(c), inserted before period at end ''and the availability to the member and dependents of suicide prevention resources following separation from the armed forces''.

Subsec. (b)(9). Pub. L. 112–81, § 529(2), inserted before period at end '', including information on budgeting, saving, credit, loans, and taxes''.

Subsec. (b)(10). Pub. L. 112–81, § 529(3), substituted '', employment, and financial'' for ''and employment''.

Subsec. (b)(16). Pub. L. 112–81, § 529(4), added par. (16) and struck out former par. (16) which read as follows: ''Contact information for housing counseling assistance.''

Subsec. (b)(17). Pub. L. 112–81, § 529(5), inserted before period at end '', and information regarding the means by which the member can receive additional counseling regarding the member's actual entitlement to such benefits and apply for such benefits''.

2009—Subsec. (b)(4)(C). Pub. L. 111–84, § 1073(a)(13)(A), substituted ''the Troops-to-Teachers Program under section 2302 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6672)'' for ''the Troops-to-Teachers Program Act of 1999 (20 U.S.C. 9301 et seq.)''.

Subsec. (b)(15). Pub. L. 111–84, § 1073(a)(13)(B), substituted ''Federal'' for ''federal'' in two places.

2006—Subsec. (b)(4). Pub. L. 109–163, § 594(1), substituted ''Provision of information on civilian occupations and related assistance programs, including information concerning—

''(A) certification and licensure requirements that are applicable to civilian occupations;

''(B) civilian occupations that correspond to military occupational specialties; and

''(C)''

for ''Information concerning''.

Subsec. (b)(11) to (17). Pub. L. 109–163, § 594(2), added pars. (11) to (17).

2001—Subsec. (a)(1). Pub. L. 107–103, § 302(a)(1), amended first sentence generally. Prior to amendment, first

sentence read as follows: ''As soon as possible before, but in no event later than 90 days before, the date of the discharge or release from active duty of a member of the armed forces, the Secretary concerned shall provide for individual preseparation counseling of the member.''

Subsec. (a)(3), (4). Pub. L. 107–103, § 302(a)(2), added pars. (3) and (4).

2000—Subsec. (b)(4). Pub. L. 106–398 substituted ''sections 1152 and 1153 of this title and the Troops-to-Teachers Program Act of 1999 (20 U.S.C. 9301 et seq.)'' for ''sections 1151, 1152, and 1153 of this title''.

1993—Subsec. (b)(4). Pub. L. 103–160 substituted ''programs established under sections 1151, 1152, and 1153 of this title'' for ''program established under section 1151 of this title to assist members to obtain employment as elementary or secondary school teachers or teachers' aides''.

Pub. L. 103–35 substituted ''job placement assistance, including the public and community service jobs program carried out under section 1143a of this title, and information regarding the placement program established under section 1151 of this title to assist members to obtain employment as elementary or secondary school teachers or teachers' aides'' for ''job placement assistance and information regarding the placement program established under section 1151 of this title to assist members obtain employment as elementary or secondary school teachers or teachers' aides., including the public and community service jobs program carried out under section 1143a of this title''.

1992—Subsec. (a)(1). Pub. L. 102–484, § 4401(a), substituted ''As soon as possible before, but in no event later than 90 days before, the date of the discharge'' for ''Upon the discharge''.

Subsec. (b)(4). Pub. L. 102–484, § 4462(b), inserted before period at end '', including the public and community service jobs program carried out under section 1143a of this title''.

Pub. L. 102–484, § 4441(b), inserted before period at end ''and information regarding the placement program established under section 1151 of this title to assist members obtain employment as elementary or secondary school teachers or teachers' aides.''

Subsec. (b)(10). Pub. L. 102–484, § 4401(b), added par. (10).

1991—Subsec. (b)(5). Pub. L. 102–190 substituted period for semicolon at end.

Effective Date of 2011 Amendment

Pub. L. 112–56, title II, § 221(c), Nov. 21, 2011, 125 Stat. 716, provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 1144 of this title] shall take effect on the date that is 1 year after the date of the enactment of this Act [Nov. 21, 2011].''

Inclusion of Question Regarding Immigration Status on Preseparation Counseling Checklist (DD Form 2648)

Pub. L. 116–92, div. A, title V, § 570C, Dec. 20, 2019, 133 Stat. 1399, provided that: ''Not later than September 30, 2020, the Secretary of Defense shall modify the preseparation counseling checklist for active component, active guard reserve, active reserve, full time support, and reserve program administrator service members (DD Form 2648) to include a specific block wherein a member of the Armed Forces may indicate that the member would like to receive information regarding the immigration status of that member and expedited naturalization.''

Connections of Members Retiring or Separating From the Armed Forces With Community-Based Organizations and Related Entities

Pub. L. 116–92, div. A, title V, § 570F, Dec. 20, 2019, 133 Stat. 1401, provided that:

''(a) In General.—The Secretary of Defense and the Secretary of Veterans Affairs shall jointly seek to enter into memoranda of understanding or other agreements with State veterans agencies under which information from Department of Defense Form DD–2648 on individuals undergoing retirement, discharge, or release from the Armed Forces is transmitted to one or more State veterans agencies, as elected by such individuals, to provide or connect veterans to benefits or services as follows:

''(1) Assistance in preparation of resumes.

''(2) Training for employment interviews.

''(3) Employment recruitment training.

''(4) Other services leading directly to a successful transition from military life to civilian life.

''(5) Healthcare, including care for mental health.

''(6) Transportation or transportation-related services.

''(7) Housing.

''(8) Such other benefits or services as the Secretaries jointly consider appropriate for purposes of this section.

''(b) Information Transmitted.—The information transmitted on individuals as described in subsection (a) shall be such information on Form DD–2648 as the Secretaries jointly consider appropriate to facilitate community-based organizations and related entities in providing or connecting such individuals to benefits and services as described in subsection (a).

''(c) Modification of Form DD–2648.—The Secretary of Defense shall make such modifications to Form DD–2648 as the Secretary considers appropriate to allow an individual filling out the form to indicate an email address at which the individual may be contacted to receive or be connected to benefits or services described in subsection (a).

''(d) Voluntary Participation.—Information on an individual may be transmitted to and through a State veterans agency as described in subsection (a) only with the consent of the individual. In giving such consent, an individual shall specify the following:

''(1) The State veterans agency or agencies elected by the individual to transmit such information as described in subsection (a).

''(2) The benefits and services for which contact information shall be so transmitted.

''(3) Such other information on the individual as the individual considers appropriate in connection with the transmittal.''

Deadline for Counseling Pathways

Pub. L. 115–232, div. A, title V, § 552(a)(2), Aug. 13, 2018, 132 Stat. 1770, provided that: ''Each Secretary concerned shall carry out subsection (c) of such section [10 U.S.C. 1142(c)], as amended by paragraph (1), not later than 1 year after the date of the enactment of this Act [Aug. 13, 2018].''

Notification of Members of the Armed Forces Undergoing Certain Administrative Separations of Potential Eligibility for Veterans Benefits

Pub. L. 115–91, div. A, title V, § 528, Dec. 12, 2017, 131 Stat. 1383, provided that:

''(a) Notification Required.—A member of the Armed Forces who receives an administrative separation or mandatory discharge under conditions other than honorable shall be provided written notification that the member may petition the Veterans Benefits Administration of the Department of Veterans Affairs to receive, despite the characterization of the member's service, certain benefits under the laws administered by the Secretary of Veterans Affairs.

''(b) Deadline for Notification.—Notification under subsection (a) shall be provided to a member described in such subsection in conjunction with the member's notification of the administrative separation or mandatory discharge or as soon thereafter as practicable.''

Participation of Potential Caregivers in Appropriate Preseparation Counseling

Pub. L. 115–91, div. A, title V, § 541(b), Dec. 12, 2017, 131 Stat. 1393, provided that:

"(1) IN GENERAL.—In accordance with procedures established by the Secretary of Defense, each Secretary of a military department shall take appropriate actions to achieve the following:

"(A) To determine whether each member of the Armed Forces under the jurisdiction of such Secretary who is undergoing preseparation counseling pursuant to section 1142 of title 10, United States Code (as amended by subsection (a)), and who may require caregiver services after separation from the Armed Forces has identified an individual to provide such services after the member's separation.

"(B) In the case of a member described in subparagraph (A) who has identified an individual to provide caregiver services after the member's separation, at the election of the member, to permit such individual to participate in appropriate sessions of the member's preseparation counseling in order to inform such individual of—

"(i) the assistance and support services available to caregivers of members after separation from the Armed Forces; and

"(ii) the manner in which the member's transition to civilian life after separation may likely affect such individual as a caregiver.

"(2) CAREGIVERS.—For purposes of this subsection, individuals who provide caregiver services refers to individuals (including a spouse, partner, parent, sibling, adult child, other relative, or friend) who provide physical or emotional assistance to former members of the Armed Forces during and after their transition from military life to civilian life following separation from the Armed Forces.

"(3) DEADLINE FOR COMMENCEMENT.—Each Secretary of a miliary [sic] department shall commence the actions required pursuant to this subsection by not later than 180 days after the date of the enactment of this Act [Dec. 12, 2017]."

APPLICATION OF PRESEPARATION COUNSELING REQUIREMENTS TO COAST GUARD

Pub. L. 103–337, div. A, title V, §543(a), Oct. 5, 1994, 108 Stat. 2769, provided that: "As soon as possible after the date of the enactment of this Act [Oct. 5, 1994], the Secretary of Transportation shall implement the requirements of section 1142 of title 10, United States Code, for the Coast Guard."

LIMITATION ON FUNDING TO CARRY OUT SECTION 543 OF PUB. L. 103–337

Pub. L. 103–337, div. A, title V, §543(h), Oct. 5, 1994, 108 Stat. 2772, provided that: "Funds appropriated or otherwise made available to the Department of Defense, the Department of Education, the Department of Labor, or the Department of Veterans Affairs may not be used to carry out subsection (a) [set out above] or the amendments made by this section [amending sections 1144 and 1151 to 1153 of this title and provisions set out as notes under section 1143 of this title]."

§ 1143. Employment assistance

(a) EMPLOYMENT SKILLS VERIFICATION.—(1) The Secretary of Defense and the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy shall provide to members of the armed forces who are discharged or released from active duty a certification or verification of any job skills and experience acquired while on active duty that may have application to employment in the civilian sector. The preceding sentence shall be carried out in conjunction with the Secretary of Labor.

(2) In order to improve the accuracy and completeness of a certification or verification of job skills and experience required by paragraph (1), the Secretary of Defense shall—

(A) establish a database to record all training performed by members of the Army, Navy, Air Force, Marine Corps, and Space Force that may have application to employment in the civilian sector; and

(B) make unclassified information regarding such information available to States and other potential employers referred to in subsection (c) so that State and other entities may allow military training to satisfy licensing or certification requirements to engage in a civilian profession.

(3) The Secretary of Defense shall ensure that a certification or verification of job skills and experience required by paragraph (1) is rendered in such a way that States and other potential employers can confirm the accuracy and authenticity of the certification or verification.

(b) EMPLOYMENT ASSISTANCE CENTERS.—The Secretary of Defense shall establish permanent employment assistance centers at appropriate military installations. The Secretary of Homeland Security shall establish permanent employment assistance centers at appropriate Coast Guard installations.

(c) INFORMATION TO CIVILIAN ENTITIES.—(1) For the purpose of assisting members covered by subsection (a) and their spouses in locating civilian employment and training opportunities, the Secretary of Defense and the Secretary of Homeland Security shall establish and implement procedures to release to civilian employers, organizations, State employment agencies, and other appropriate entities the names (and other pertinent information) of such members and their spouses. Such names may be released for such purpose only with the consent of such members and spouses.

(2)(A) A State may—

(i) use a certification or verification of job skills and experience provided to a member of the armed forces under subsection (a); and

(ii) in the case of members of the Army, Navy, Air Force, Marine Corps, and Space Force, request the Department of Defense to confirm the accuracy and authenticity of the certification or verification.

(B) A response confirming or denying the information shall be provided within five business days.

(d) EMPLOYMENT PREFERENCE BY NONAPPROPRIATED FUND INSTRUMENTALITIES.—The Secretary of Defense shall take such steps as necessary to provide that members of Army, Navy, Air Force, Marine Corps, or Space Force who are involuntarily separated, and the dependents of such members, shall be provided a preference in hiring by nonappropriated fund instrumentalities of the Department. Such preference shall be administered in the same manner as the preference for military spouses provided under section 1784(a)(2) of this title, except that a preference under that section shall have priority over a preference under this subsection. A person may receive a preference in hiring under this subsection only once. The Secretary of Homeland Security shall provide the same preference in hiring to involuntarily separated members of the Coast Guard, and the dependents of such members, in Coast Guard nonappropriated fund instrumentalities.

(e) EMPLOYMENT SKILLS TRAINING.—(1) The Secretary concerned may carry out one or more programs to provide eligible members of the armed forces under the jurisdiction of the Secretary with job training and employment skills training, including apprenticeship programs, to help prepare such members for employment in the civilian sector.

(2) A member of the armed forces is an eligible member for purposes of a program under this subsection if the member—

(A) has completed at least 180 days on active duty in the armed forces; and

(B) is expected to be discharged or released from active duty in the armed forces within 180 days of the date of commencement of participation in such a program.

(3) Any program under this subsection may be carried out at, through, or in consultation with such other departments or agencies of the Federal Government as the Secretary concerned considers appropriate.

(4) Any program under this subsection shall be carried out in accordance with regulations prescribed by the Secretary concerned.

(Added Pub. L. 101–510, div. A, title V, §502(a)(1), Nov. 5, 1990, 104 Stat. 1553; amended Pub. L. 103–337, div. A, title V, §542(a)(2), Oct. 5, 1994, 108 Stat. 2767; Pub. L. 105–85, div. A, title X, §1073(a)(21), Nov. 18, 1997, 111 Stat. 1901; Pub. L. 107–296, title XVII, §1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 112–81, div. A, title V, §551, Dec. 31, 2011, 125 Stat. 1412; Pub. L. 112–239, div. A, title X, §1076(f)(13), Jan. 2, 2013, 126 Stat. 1952; Pub. L. 115–91, div. A, title V, §542(a)–(c), Dec. 12, 2017, 131 Stat. 1394, 1395; Pub. L. 116–92, div. A, title V, §562, Dec. 20, 2019, 133 Stat. 1395; Pub. L. 116–283, div. A, title V, §572, title IX, §924(b)(1)(J), (3)(R), Jan. 1, 2021, 134 Stat. 3643, 3820, 3821.)

AMENDMENTS

2021—Subsecs. (a)(2)(A), (c)(2)(A)(ii). Pub. L. 116–283, §924(b)(1)(J), substituted ''Marine Corps, and Space Force'' for ''and Marine Corps''.

Subsec. (d). Pub. L. 116–283, §924(b)(3)(R), substituted ''Marine Corps, or Space Force'' for ''or Marine Corps''.

Subsec. (e)(1). Pub. L. 116–283, §572(1), substituted ''concerned'' for ''of a military department''.

Subsec. (e)(3). Pub. L. 116–283, §572(2), struck out ''of the military department'' after ''Secretary''.

Subsec. (e)(4). Pub. L. 116–283, §572(3), substituted ''Secretary concerned'' for ''Secretary of Defense''.

2019—Subsec. (e)(3), (4). Pub. L. 116–92 added par. (3) and redesignated former par. (3) as (4).

2017—Subsec. (a). Pub. L. 115–91, §542(a), (b), designated existing provisions as par. (1) and added pars. (2) and (3).

Subsec. (c). Pub. L. 115–91, §542(c), designated existing provisions as par. (1) and added par. (2).

2013—Subsec. (a). Pub. L. 112–239 inserted ''when it is not operating as a service in the Navy'' after ''Coast Guard''.

2011—Subsec. (e). Pub. L. 112–81 added subsec. (e).

2002—Subsecs. (a) to (d). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

1997—Subsec. (d). Pub. L. 105–85 substituted ''section 1784(a)(2) of this title'' for ''section 806(a)(2) of the Military Family Act of 1985''.

1994—Pub. L. 103–337, §542(a)(2)(A), struck out '': Department of Defense'' after ''assistance'' in section catchline.

Subsec. (a). Pub. L. 103–337, §542(a)(2)(B), inserted ''and the Secretary of Transportation with respect to the Coast Guard'' after ''Secretary of Defense'' and struck out ''under the jurisdiction of the Secretary'' after ''armed forces''.

Subsec. (b). Pub. L. 103–337, §542(a)(2)(C), inserted at end ''The Secretary of Transportation shall establish permanent employment assistance centers at appropriate Coast Guard installations.''

Subsec. (c). Pub. L. 103–337, §542(a)(2)(D), inserted ''and the Secretary of Transportation'' after ''Secretary of Defense''.

Subsec. (d). Pub. L. 103–337, §542(a)(2)(E), inserted at end ''The Secretary of Transportation shall provide the same preference in hiring to involuntarily separated members of the Coast Guard, and the dependents of such members, in Coast Guard nonappropriated fund instrumentalities.''

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 applicable only to members of the Coast Guard who are separated after Sept. 30, 1994, see section 542(e) of Pub. L. 103–337, set out as a note under section 1141 of this title.

AUTHORITY TO EXPAND ELIGIBILITY FOR THE UNITED STATES MILITARY APPRENTICESHIP PROGRAM

Pub. L. 115–91, div. A, title V, §546, Dec. 12, 2017, 131 Stat. 1397, provided that:

''(a) EXPANSION AUTHORIZED.—The Secretary of Defense may expand eligibility for the United Services Military Apprenticeship Program to include any member of the uniformed services.

''(b) DEFINITION.—In this section, the term 'uniformed services' has the meaning given such term in section 101(a)(5) of title 10, United States Code.''

PILOT PROGRAM TO ASSIST MEMBERS OF THE ARMED FORCES IN OBTAINING POST-SERVICE EMPLOYMENT

Pub. L. 113–291, div. A, title V, §555, Dec. 19, 2014, 128 Stat. 3379, provided that:

''(a) PROGRAM AUTHORIZED.—The Secretary of Defense may conduct the program described in subsection (c) to enhance the efforts of the Department of Defense to provide job placement assistance and related employment services to eligible members of the Armed Forces described in subsection (b) for the purposes of—

''(1) assisting such members in obtaining post-service employment; and

''(2) reducing the amount of 'Unemployment Compensation for Ex-Servicemembers' that the Secretary of Defense and the Secretary of the Department in which the Coast Guard is operating pays into the Unemployment Trust Fund.

''(b) ELIGIBLE MEMBERS.—Employment services provided under the program are limited to members of the Armed Forces, including members of the reserve components, who are being separated from the Armed Forces or released from active duty.

''(c) EVALUATION OF USE OF CIVILIAN EMPLOYMENT STAFFING AGENCIES.—

''(1) PROGRAM DESCRIBED.—The Secretary of Defense may execute a program to evaluate the feasibility and cost-effectiveness of utilizing the services of civilian employment staffing agencies to assist eligible members of the Armed Forces in obtaining post-service employment.

''(2) PROGRAM MANAGEMENT.—To manage the program authorized by this subsection, the Secretary of Defense may select a civilian organization (in this section referred to as the 'program manager') whose principal members have experience—

''(A) administering pay-for-performance programs; and

''(B) within the employment staffing industry.

"(3) EXCLUSION.—The program manager may not be a staffing agency.

"(d) ELIGIBLE CIVILIAN EMPLOYMENT STAFFING AGENCIES.—In consultation with the program manager if utilized under subsection (c)(2), the Secretary of Defense shall establish the eligibility requirements to be used for the selection of civilian employment staffing agencies to participate in the program. In establishing the eligibility requirements for the selection of the civilian employment staffing agencies, the Secretary of Defense shall also take into account civilian employment staffing agencies that are willing to work and consult with State and county Veterans Affairs offices and State National Guard offices, when appropriate.

"(e) PAYMENT OF STAFFING AGENCY FEES.—To encourage employers to employ an eligible member of the Armed Forces under the program if executed under this section, the Secretary of Defense shall pay a participating civilian employment staffing agency a portion of its agency fee (not to exceed 50 percent above the member's hourly wage). Payment of the agency fee will only be made after the member has been employed and paid by the private sector and the hours worked have been verified by the Secretary. The staffing agency shall be paid on a weekly basis only for hours the member worked, but not to exceed a total of 800 hours.

"(f) OVERSIGHT REQUIREMENTS.—In conducting the program, the Secretary of Defense shall establish—

"(1) program monitoring standards; and

"(2) reporting requirements, including the hourly wage for each eligible member of the Armed Forces obtaining employment under the program, the numbers of hours worked during the month, and the number of members who remained employed with the same employer after completing the first 800 hours of employment.

"(g) SOURCE AND LIMITATION ON PROGRAM OBLIGATIONS.—Of the amounts authorized to be appropriated to the Secretary of Defense for operation and maintenance for each fiscal year during which the program under this section is authorized, not more than $35,000,000 may be used to carry out the program.

"(h) REPORTING REQUIREMENTS.—

"(1) REPORT REQUIRED.—If the Secretary of Defense executes the program under this section, the Secretary shall submit to the appropriate congressional committees a report describing the results of the program, particularly whether the program achieved the purposes specified in subsection (a). The report shall be submitted not later than January 15, 2019.

"(2) COMPARISON WITH OTHER PROGRAMS.—The report shall include a comparison of the results of the program conducted under this section and the results of other employment assistant programs utilized by the Department of Defense. The comparison shall include the number of members of the Armed Forces obtaining employment through each program and the cost to the Department per member.

"(3) APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.—In this section, the term 'appropriate congressional committees' means the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives], the Committee on Transportation and Infrastructure of the House of Representatives, and the Committee on Commerce, Science, and Transportation of the Senate.

"(i) DURATION OF AUTHORITY.—The authority of the Secretary of Defense to carry out programs under this section expires on September 30, 2018."

DEPARTMENT OF DEFENSE PILOT PROGRAM ON WORK EXPERIENCE FOR MEMBERS OF THE ARMED FORCES ON TERMINAL LEAVE

Pub. L. 112–56, title II, § 236, Nov. 21, 2011, 125 Stat. 724, provided that:

"(a) IN GENERAL.—The Secretary of Defense may establish a pilot program to assess the feasibility and advisability of providing to members of the Armed Forces on terminal leave work experience with civilian employees and contractors of the Department of Defense to facilitate the transition of the individuals from service in the Armed Forces to employment in the civilian labor market.

"(b) DURATION.—The pilot program shall be carried out during the two-year period beginning on the date of the commencement of the pilot program.

"(c) REPORT.—Not later than 540 days after the date of the commencement of the pilot program, the Secretary shall submit to the Committee on Armed Services and the Committee on Veterans' Affairs of the Senate and the Committee on Armed Services and the Committee on Veterans' Affairs of the House of Representatives an interim report on the pilot program that includes the findings of the Secretary with respect to the feasibility and advisability of providing covered individuals with work experience as described in subsection (a)."

DEMONSTRATION PROGRAM FOR TRAINING RECENTLY DISCHARGED VETERANS FOR EMPLOYMENT IN CONSTRUCTION AND HAZARDOUS WASTE REMEDIATION

Pub. L. 103–160, div. A, title XIII, § 1337, Nov. 30, 1993, 107 Stat. 1805, authorized the Secretary of Defense to establish a demonstration program to promote training and employment of veterans in construction and hazardous waste remediation industries and to make grants under the program to organizations that had met certain eligibility criteria, and directed the Secretary to obligate the funds to carry out the program not later than Oct. 1, 1994, and to submit to Congress interim and final reports not later than Dec. 31, 1995.

IMPROVED COORDINATION OF JOB TRAINING AND PLACEMENT PROGRAMS FOR MEMBERS OF ARMED FORCES

Pub. L. 102–484, div. D, title XLIV, § 4461, Oct. 23, 1992, 106 Stat. 2738, as amended by Pub. L. 105–277, div. A, § 101(f) [title VIII, § 405(d)(7)(B), (f)(6)(B)], Oct. 21, 1998, 112 Stat. 2681–337, 2681–419, 2681–430; Pub. L. 105–332, § 3(b), Oct. 31, 1998, 112 Stat. 3125; Pub. L. 106–398, § 1 [[div. A], title X, § 1087(g)(7)], Oct. 30, 2000, 114 Stat. 1654, 1654A–294; Pub. L. 107–107, div. A, title X, § 1048(h)(3), Dec. 28, 2001, 115 Stat. 1229, provided that: "The Secretary of Defense shall consult with the Secretary of Labor, the Secretary of Education, the Secretary of Veterans Affairs, and the Economic Adjustment Committee to improve the coordination of, and eliminate duplication between, the following job training and placement programs available to members of the Armed Forces who are discharged or released from active duty:

"(1) Title I of the Workforce Investment Act of 1998 [former 29 U.S.C. 2801 et seq.].

"(2) Sections 1143 and 1144 of title 10, United States Code.

"(3) Chapter 41 of title 38, United States Code.

"(4) The Act of August 16, 1937 (Chapter 663; 50 Stat 664; 29 U.S.C. 50 et seq.), commonly known as the National Apprenticeship Act.

"(5) The Wagner-Peyser Act (29 U.S.C. 49 et seq.)."

PARTICIPATION OF DISCHARGED MILITARY PERSONNEL IN UPWARD BOUND PROJECTS TO PREPARE FOR COLLEGE

Pub. L. 102–484, div. D, title XLIV, § 4466, Oct. 23, 1992, 106 Stat. 2748, as amended by Pub. L. 103–337, div. A, title V, § 543(f), Oct. 5, 1994, 108 Stat. 2771; Pub. L. 107–296, title XVII, § 1704(e)(4), Nov. 25, 2002, 116 Stat. 2315, provided that:

"(a) PROGRAM.—The Secretary of Defense may carry out a program to assist a member of the Armed Forces described in subsection (b) who is accepted to participate in an upward bound project assisted under section 402C of the Higher Education Act of 1965 (20 U.S.C. 1070a–13) to cover the cost of providing services through the project to the member to assist the member to prepare for and pursue a program of higher education upon separation from active duty. Assistance provided under the program may include a stipend provided under subsection (d) of such section.

''(b) ELIGIBLE MEMBERS.—A member of the Armed Forces shall be eligible for assistance under subsection (a) if the member—

''(1) was on active duty or full-time National Guard duty on September 30, 1990;

''(2) during the five-year period beginning on that date, was or is discharged or released from such duty (under other than adverse circumstances); and

''(3) submits an application to the Secretary of Defense within such time, in such form, and containing such information as the Secretary of Defense may require.

''(c) NOTIFICATION OF MEMBERS PREVIOUSLY SEPARATED.—To the extent feasible, the Secretary of Defense shall notify members of the Armed Forces who, between September 30, 1990, and the date of the enactment of this Act [Oct. 23, 1992], were discharged or released from active duty or full-time National Guard duty regarding the availability of the program under subsection (a). The Secretary may establish a time limit within which such members may apply to participate in the program.

''(d) PROVISION OF ASSISTANCE.—

''(1) DETERMINATION OF AMOUNT.—The amount of assistance provided under subsection (a) to a member of the Armed Forces shall be equal to the anticipated cost of providing services to the member through an upward bound project, subject to the limitation that such amount may not exceed the monthly basic pay to which the member is entitled at the time of the separation of the member. The Secretary of Defense may provide assistance in excess of that limitation if the Secretary determines, on a case by case basis, that such assistance is warranted by the special training needs of the member.

''(2) CONSULTATION.—The Secretary of Education may assist the Secretary of Defense in determining the amount to be provided under paragraph (1).

''(e) USE OF ASSISTANCE.—A member of the Armed Forces who is selected to participate in the program may receive services through any upward bound project assisted under section 402C of the Higher Education Act of 1965 (20 U.S.C. 1070a–13) to the same extent as other individuals eligible to receive such services. A member may not participate after the end of the two-year period beginning on the date on which the member is discharged or released from active duty, except that, in the case of a member described in subsection (b) who was discharged or released from active duty before the date of the enactment of this Act [Oct. 23, 1993], the period for participation in the program shall be two years from the date of the enactment of this Act.

''(f) REIMBURSEMENT.—Upon submission to the Secretary of Defense of a request for reimbursement of the costs to provide services to a participant, the Secretary shall reimburse the upward bound project submitting the request for the actual cost of providing services (including a stipend) to the member, not to exceed the amount provided under subsection (d)(1). Funds provided under this subsection shall be in addition to the funds otherwise provided to the project under the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.). Not more than 10 percent of the funds provided under this subsection may be used for administrative costs.

''(g) FUNDING FOR FISCAL YEAR 1993.—Of the amount authorized to be appropriated in section 301 [106 Stat. 2360] for Defense Agencies, $5,000,000 shall be available to provide assistance under this section.

''(h) APPLICATION TO COAST GUARD.—The Secretary of Homeland Security may implement the provisions of this section for the Coast Guard in the same manner and to the same extent as such section applies to the Department of Defense.''

SERVICE MEMBERS OCCUPATIONAL CONVERSION AND TRAINING

Pub. L. 103–337, div. A, title V, § 543(g)(2), Oct. 5, 1994, 108 Stat. 2772, provided that: ''As soon as possible after the date of the enactment of this Act [Oct. 5, 1994], the Secretary of Transportation shall implement the requirements of the Service Members Occupational Conversion and Training Act of 1992 (subtitle G of title XLIV of Public Law 102–484; 10 U.S.C. 1143 note) for the Coast Guard.''

Pub. L. 102–484, div. D, title XLIV, subtitle G, Oct. 23, 1992, 106 Stat. 2757, as amended by Pub. L. 103–160, div. A, title XIII, § 1338, Nov. 30, 1993, 107 Stat. 1807; Pub. L. 103–337, div. A, title V, § 543(g)(1), Oct. 5, 1994, 108 Stat. 2772; Pub. L. 103–446, title VI, § 610(a)(1), (2)(A), (b), (c), Nov. 2, 1994, 108 Stat. 4673; Pub. L. 105–277, div. A, § 101(f) [title VIII, § 405(d)(7)(D), (f)(6)(D)], Oct. 21, 1998, 112 Stat. 2681–337, 2681–420, 2681–430, provided that:

''SEC. 4481. SHORT TITLE.

''This subtitle [subtitle G (§§ 4481–4497) of title XLIV of Pub. L. 102–484] may be cited as the 'Service Members Occupational Conversion and Training Act of 1992'.

''SEC. 4482. FINDINGS AND PURPOSES.

''(a) FINDINGS.—The Congress finds that—

''(1) the men and women serving in our Nation's Armed Forces are of the highest caliber—intelligent, dedicated, and disciplined—and hundreds of thousands of these service members will be separating from the Armed Forces due to the drawdown in military personnel;

''(2) these men and women will be entering the civilian workforce during a time of economic instability and uncertainty;

''(3) many of these service personnel specialized in critical skills such as combat arms which will not transfer to the civilian workforce;

''(4) as part of the Nation's obligation to these service members, the Secretary of Defense has a unique responsibility and obligation to provide them with the tools they need to be reassimilated into the civilian community and continue to be outstanding, productive citizens;

''(5) the rapid placement of separated military personnel in civilian employment and training opportunities will significantly reduce the Department of Defense's costs relative to unemployment compensation for ex-service members;

''(6) military personnel are a national resource whose skills and abilities must be absorbed by and integrated into the civilian workforce; and

''(7) providing such training will reduce the total cost of the drawdown and is important to the national defense function of the Department of Defense.

''(b) PURPOSE.—The purpose of this subtitle is to provide additional means by which the Secretary of Defense can manage the drawdown of the Armed Forces and to provide additional forms of assistance to members of the Armed Forces who are forced or induced to leave military service by reason of the drawdown of the Armed Forces, thereby facilitating the Secretary's ability to achieve end strength reductions caused by the drawdown.

''SEC. 4483. DEFINITIONS.

''For the purposes of this subtitle:

''(1) The term 'Secretary' means the Secretary of Defense with respect to the Department of Defense and the Secretary of Transportation with respect to the Coast Guard.

''(2) The terms 'veteran', 'compensation', 'service-connected', 'State', and 'active military, naval, or air service' have the meanings given such terms in paragraphs (2), (13), (16), (20), and (24), respectively, of section 101 of title 38, United States Code.

''SEC. 4484. ESTABLISHMENT OF PROGRAM.

''(a) ESTABLISHMENT.—Not later than 60 days after the date of enactment of this Act [Oct. 23, 1992], the Secretary shall carry out a program in accordance with this subtitle to assist eligible persons in obtaining employment through participation in programs of significant training for employment in stable and permanent positions. The Secretary may enter into an agreement with the Secretary of Veterans Affairs, the Secretary of Labor, or both, for the implementation of the pro-

gram. The program shall be carried out through payments to employers who employ and train eligible persons in such positions. Such payments shall be made to assist such employers in defraying the costs of necessary training.

''(b) STATE AGENCIES.—(1) The implementing official may enter into contracts or agreements with State approving agencies, as designated pursuant to section 3671(a) of title 38, United States Code, or other State agencies to carry out any duty of the implementing official under this subtitle. Payment may be made to such agencies pursuant to any such contract or agreement for reasonable and necessary expenses of salary and travel incurred by employees of such agencies in carrying out such duties. Each such payment may be made only from funds available to the implementing official pursuant to section 4495(a)(3).

''(2) Each State approving agency or other State agency with which a contract or agreement is entered into under this section shall submit to the implementing official on a monthly or quarterly basis, as determined by the agency, a report containing a certification of such expenses for the period covered by the report. The report shall be submitted in the form and manner required by such official.

''(c) EXPEDITIOUS IMPLEMENTATION.—A requirement in this subtitle to issue regulations shall not be the basis for a delay in carrying out this program within the time limit established by subsection (a).

''SEC. 4485. ELIGIBILITY FOR PROGRAM; PERIOD OF TRAINING.

''(a) IN GENERAL.—(1) To be eligible for participation in a program of job training under this subtitle, an eligible person must be an eligible person described in paragraph (2) who—

''(A)(i) is unemployed at the time of applying for participation in a program under this subtitle; and

''(ii) has been unemployed for at least 8 of the 15 weeks immediately preceding the date of such eligible person's application for participation in a program under this subtitle;

''(B) separates from the active military, naval, or air service and whose primary or secondary occupational specialty in the Armed Forces is (as determined under regulations prescribed by the Secretary and in effect before the date of such separation) not readily transferable to the civilian workforce; or

''(C) served in the active military, naval, or air service and is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) under the laws administered by the Secretary of Veterans Affairs for a disability rated at 30 percent or more.

''(2) For purposes of paragraph (1), an eligible person referred to in paragraph (1) is a veteran who—

''(A) was discharged on or after August 2, 1990; and

''(B)(i) served in the active military, naval, or air service for a period of more than 90 days; or

''(ii) was discharged or released from active duty because of a service-connected disability.

''(3) For purposes of paragraph (1), an eligible person shall be considered to be unemployed during any period such person is without a job and wants and is available for work. In determining whether a person is unemployed for purposes of paragraph (1), the implementing official shall not take into consideration part-time or temporary employment, as defined by such official.

''(b) APPLICATION PROCESS.—(1) An eligible person who desires to participate in a program of job training under this subtitle shall submit to the implementing official an application for participation in such a program. Such an application—

''(A) shall include a certification by the eligible person that the eligible person meets the criteria for eligibility prescribed by subparagraph (A), (B), or (C) of subsection (a)(1);

''(B) shall include an opportunity for the eligible person to request counseling under section 4493(a); and

''(C) shall be in such form and contain such additional information as such official may prescribe.

''(2)(A) Subject to subparagraph (B), an application by an eligible person for participation in a program of job training under this subtitle shall be approved unless the implementing official finds that the eligible person is not eligible to participate in a program of job training under this subtitle.

''(B) Approval of an application of an eligible person under this subtitle may be withheld if the implementing official determines that, because of limited funds available for the purpose of making payments to employers under this subtitle, it is necessary to limit the number of participants in the program carried out under this subtitle.

''(3)(A) Subject to section 4491(c), the implementing official shall certify as eligible for participation under this subtitle an eligible person whose application is approved under this subsection and shall furnish the eligible person with a certificate of that eligible person's eligibility for presentation to an employer offering a program of job training under this subtitle. Any such certificate shall expire 180 days after it is furnished to the eligible person. The date on which a certificate is furnished to an eligible person under this paragraph shall be stated on the certificate.

''(B) A certificate furnished under this paragraph may, upon the eligible person's application, be renewed in accordance with the terms and conditions of subparagraph (A).

''(c) APPEAL OF DENIAL OF CERTIFICATE.—The implementing official shall permit each eligible person who is not issued a certificate of eligibility under subsection (b) (other than an eligible person who is not issued such a certificate by reason of subsection (b)(2)(B)) to challenge in a hearing before the implementing official the decision of the implementing official not to issue the certificate. The implementing official shall prescribe procedures with respect to the initiation and conduct of hearings under this subsection.

''(d) PERIOD OF TRAINING.—An employer shall provide a period of training under a program of job training under this subtitle of not less than 6 months in a field of employment providing a reasonable probability of stable, long-term employment.

''SEC. 4486. APPROVAL OF EMPLOYER PROGRAMS.

''(a) IN GENERAL.—(1) An employer may be paid assistance under section 4487(a) on behalf of an eligible person employed by such employer and participating in a program of job training offered by that employer only if the program is approved under this section.

''(2) Except as provided in subsection (b), a proposed program of job training of an employer shall be approved unless the implementing official determines that the application does not contain a certification and other information meeting the requirements established under this subtitle or that withholding of approval is warranted under subsection (g).

''(b) INELIGIBLE PROGRAMS.—A program of job training—

''(1) for employment which consists of seasonal, intermittent, or temporary jobs;

''(2) for employment under which commissions are the primary source of income;

''(3) for employment which involves political or religious activities;

''(4) for employment with any department, agency, instrumentality, or branch of the Federal Government (including the United States Postal Service and the Postal Rate Commission); or

''(5) for employment outside of a State,

may not be approved under this subtitle.

''(c) APPLICATION.—An employer offering a program of job training that the employer desires to have approved for the purposes of this subtitle shall submit to the implementing official a written application for such approval. Such application shall be in such form as such official shall prescribe.

''(d) CERTIFICATION.—An application under subsection (c) shall include a certification by the employer of the following:

''(1) That the employer is planning that, upon an eligible person's completion of the program of job training, the employer will employ the eligible person in a position for which the eligible person has been trained and that the employer expects that such a position will be available on a stable and permanent basis to the eligible person at the end of the training period.

''(2) That the wages and benefits to be paid to an eligible person participating in the employer's program of job training will be not less than the wages and benefits normally paid to other employees participating in the same or a comparable program of job training in the community for the entire period of training of the eligible person.

''(3) That the employment of an eligible person under the program—

''(A) will not result in the displacement of currently employed workers (including partial displacement such as a reduction in the hours of non-overtime work, wages, or employment benefits); and

''(B) will not be in a job (i) while any other individual is on layoff from the same or any substantially equivalent job, or (ii) the opening for which was created as a result of the employer having terminated the employment of any regular employee or otherwise having reduced its work force with the intention of hiring an eligible person in such job under this subtitle.

''(4) That the employer will not employ in the program of job training an eligible person who is already qualified by training and experience for the job for which training is to be provided.

''(5) That the job which is the objective of the training program is one that involves significant training.

''(6) That the training content of the program is adequate, in light of the nature of the occupation for which training is to be provided and of comparable training opportunities in such occupation, to accomplish the training objective certified under paragraph (2) of subsection (e).

''(7) That each participating eligible person will be employed full time in the program of job training.

''(8) That the training period under the proposed program is not longer than the training periods that employers in the community customarily require new employees to complete in order to become competent in the occupation or job for which training is to be provided.

''(9) That there are in the training establishment or place of employment such space, equipment, instructional material, and instructor personnel as are needed to accomplish the training objective certified under subsection (e)(2).

''(10) That the employer will keep records adequate to show the progress made by each eligible person participating in the program and otherwise to demonstrate compliance with the requirements established under this subtitle.

''(11) That the employer will furnish each participating eligible person, before the eligible person's entry into training, with a copy of the employer's certification under this subsection and will obtain and retain the eligible person's signed acknowledgment of having received such certification.

''(12) That, as applicable, the employer will provide each participating eligible person with the full opportunity to participate in a personal interview pursuant to section 4493(b)(1)(B) during the eligible person's normal workday.

''(13) That the program meets such other criteria as the Secretary, in consultation with the Secretary of Veterans Affairs and the Secretary of Labor, may determine are essential for the effective implementation of the program established by this subtitle.

''(e) HOURS AND TRAINING CONTENT.—A certification under subsection (d) shall include—

''(1) a statement indicating (A) the total number of hours of participation in the program of job training to be offered an eligible person, (B) the length of the program of job training, and (C) the starting rate of wages to be paid to a participant in the program; and

''(2) a description of the training content of the program (including any agreement the employer has entered into with an educational institution under section 4489) and of the objective of the training.

''(f) STATUS OF CERTIFIED MATTERS.—(1) Except as specified in paragraph (2), each matter required to be certified to in paragraphs (1) through (11) of subsection (d) shall be considered to be a requirement established under this subtitle.

''(2)(A) For the purposes of section 4487(c), only matters required to be certified in paragraphs (1) through (10) of subsection (d) shall be so considered.

''(B) For the purposes of section 4490, a matter required to be certified under paragraph (12) of subsection (d) shall also be so considered.

''(g) WITHHOLDING APPROVAL; DISAPPROVAL.—In accordance with regulations which the Secretary shall prescribe, the implementing official may withhold approval of an employer's proposed program of job training pending the outcome of an investigation under section 4491 and, based on the outcome of such an investigation, may disapprove such program.

''(h) ON-JOB TRAINING.—For the purposes of this section, approval of a program of apprenticeship or other on-job training for the purposes of section 3687 of title 38, United States Code, shall be considered to meet all requirements established under the provisions of this subtitle (other than subsection (b) and (d)(3)) for approval of a program of job training.

''SEC. 4487. PAYMENTS TO EMPLOYERS; OVERPAYMENT.

''(a) PAYMENTS.—(1)(A) Except as provided in subsections (b) and (c) and subject to section 4485(d), the implementing official shall make payments to employers in accordance with this section. The amount payable to such an employer on behalf of an eligible person with respect to an approved program of job training under this subtitle shall be determined by such official at the beginning of such program. Except as provided in subparagraphs (B) and (C), that amount shall be equal to 50 percent of the product of (i) the starting hourly rate of wages paid to the eligible person by the employer (without regard to overtime or premium pay), and (ii) the number of hours to be worked by the eligible person during the entire program period but in no event to exceed hours equivalent to 18 months of training.

''(B) In no case may the amount determined under subparagraph (A) exceed—

''(i) $12,000 for an eligible person with a service-connected disability rated at 30 percent or more; or

''(ii) $10,000 for an eligible person not described in clause (i).

''(C) Assistance may be paid under this subtitle on behalf of an eligible person to that person's employer for training under two or more programs of job training under this subtitle if such employer has not received (or is not due) on that person's behalf assistance in an amount aggregating the applicable amount set forth in subparagraph (B).

''(b) PAYMENT PERIOD.—(1) Except as provided in paragraphs (2) and (3), the implementing official shall pay training assistance to employers under this section on a quarterly basis.

''(2) The implementing official may pay training assistance to an employer on a monthly basis if the implementing official determines (pursuant to regulations prescribed by the implementing official) that the number of employees of the employer is such that the payment of assistance on a quarterly basis would be burdensome to the employer.

''(3) The implementing official shall withhold 25 percent of each payment due under this subsection with respect to an eligible person. The total amount withheld with respect to an eligible person under this paragraph shall be paid to the employer at the end of the

four month period of employment of such person under this subtitle beginning on the date of completion of training, or upon the completion of the 18th month of training under the last training program approved for the person's pursuit with that employer under this subtitle, whichever is earlier.

''(c) TOOLS AND OTHER WORK-RELATED MATERIALS.—In addition to payments under subsection (a), the implementing official shall reimburse the employer for the cost of tools and other work-related materials necessary for the eligible person's participation in the program of job training in an amount up to $500 if the employer presents to the implementing official a certification signed by the employer and eligible person that—

''(1) tools and other work-related materials are necessary for the eligible person's participation in the job training program,

''(2) the eligible person bought the tools and other work-related materials, and

''(3) the employer paid the eligible person for the cost of the tools and other work-related materials.

''(d) OVERPAYMENTS.—(1)(A) Whenever the implementing official finds that an overpayment under this subtitle has been made to an employer on behalf of an eligible person as a result of a certification, or information contained in an application, submitted by an employer which was false in any material respect, the amount of such overpayment shall constitute a liability of the employer to the United States.

''(B) Whenever such official finds that an employer has failed in any substantial respect to comply for a period of time with a requirement established under this subtitle (unless the employer's failure is the result of false or incomplete information provided by the eligible person), each amount paid to the employer on behalf of an eligible person for that period shall be considered to be an overpayment under this subtitle, and the amount of such overpayment shall constitute a liability of the employer to the United States.

''(2) Whenever such official finds that an overpayment under this subtitle has been made to an employer on behalf of an eligible person as a result of a certification by the eligible person, or as a result of information provided to an employer or contained in an application submitted by the eligible person, which was willfully or negligently false in any material respect, the amount of such overpayment shall constitute a liability of the eligible person to the United States.

''(3) Any overpayment referred to in paragraph (1) or (2) may be recovered in the same manner as any other debt due the United States. Any overpayment recovered shall be credited to funds available to make payments under this subtitle. If there are no such funds, any overpayment recovered shall be deposited into the Treasury.

''(4) Any overpayment referred to in paragraph (1) or (2) may be waived, in whole or in part, in accordance with the terms and conditions set forth in section 5302 of title 38, United States Code.

''(e) LIMITATIONS.—(1) Payment may not be made to an employer for a period of training under this subtitle on behalf of an eligible person until the implementing official has received—

''(A) from the eligible person, a certification that the eligible person was employed full time by the employer in a program of job training during such period; and

''(B) from the employer, a certification—

''(i) that the eligible person was employed by the employer during that period and that the eligible person's performance and progress during such period were satisfactory; and

''(ii) of the number of hours worked by the eligible person during that period.

With respect to the first such certification by an employer with respect to an eligible person, the certification shall indicate the date on which the employment of the eligible person began and the starting hourly rate of wages paid to the eligible person (without regard to overtime or premium pay).

''(2) Payment may not be made to an employer for a period of training under this subtitle on behalf of an eligible person for which a request for payment is made after two years after the date on which that period of training ends.

''SEC. 4488. ENTRY INTO PROGRAM OF JOB TRAINING.

''(a) IN GENERAL.—Notwithstanding any other provision of this subtitle, the implementing official shall withhold or deny approval of an eligible person's entry into an approved program of job training if such official determines that funds are not available to make payments under this subtitle on behalf of the eligible person to the employer offering that program. Before the entry of an eligible person into an approved program of job training of an employer for purposes of assistance under this subtitle, the employer shall notify such official of the employer's intention to employ that eligible person. The eligible person may begin such program of job training with the employer on the day that notice is transmitted to such official by means prescribed by such official. However, assistance under this subtitle may not be provided to the employer if such official, within two weeks after the date on which such notice is transmitted, disapproves the eligible person's entry into that program of job training in accordance with this section.

''(b) PERIOD FOR COMMENCEMENT OF PARTICIPATION UNDER CERTIFICATE.—An eligible person who is issued a certificate of eligibility for participation in a program of job training under this subtitle shall commence participation in such a program not more than 180 days after the date of the issuance of the certificate. The date on which a certificate is furnished to an eligible person shall be stated on the certificate.

''SEC. 4489. PROVISION OF TRAINING THROUGH EDUCATIONAL INSTITUTIONS.

''An employer may enter into an agreement with an educational institution that has been approved for the purposes of chapter 106 of title 10, United States Code, or any other institution offering a program of job training, as approved by the Secretary of Veterans Affairs, in order that such institution may provide a program of job training (or a portion of such a program) under this subtitle. When such an agreement has been entered into, the application of the employer under section 4486 shall so state and shall include a description of the training to be provided under the agreement.

''SEC. 4490. DISCONTINUANCE OF APPROVAL OF PARTICIPATION IN CERTAIN EMPLOYER PROGRAMS.

''(a) FAILURE TO MEET REQUIREMENTS.—If the implementing official finds at any time that a program of job training previously approved for the purposes of this subtitle thereafter fails to meet any of the requirements established under this subtitle, such official may immediately disapprove further participation by eligible persons in that program. Such official shall provide to the employer concerned, and to each eligible person participating in the employer's program, a statement of the reasons for, and an opportunity for a hearing with respect to, such disapproval. The employer and each such eligible person shall be notified of such disapproval, the reasons for such disapproval, and the opportunity for a hearing. Notification shall be by a certified or registered letter, and a return receipt shall be secured.

''(b) RATE OF COMPLETION.—(1) If the implementing official determines that the rate of eligible persons' successful completion of an employer's programs of job training previously approved for the purposes of this subtitle is disproportionately low because of deficiencies in the quality of such programs, such official shall disapprove participation in such programs on the part of eligible persons who had not begun such participation on the date that the employer is notified of the disapproval. In determining whether any such rate is disproportionately low because of such deficiencies,

such official shall take into account appropriate data, including—

''(A) the quarterly data provided by the Secretary of Labor with respect to the number of eligible persons who receive counseling in connection with training under this subtitle, are referred to employers under this subtitle, participate in job training under this subtitle, and complete such training or do not complete such training, and the reasons for non-completion; and

''(B) data compiled through the particular employer's compliance surveys.

''(2) With respect to a disapproval under paragraph (1), the implementing official shall provide to the employer concerned the kind of statement, opportunity for hearing, and notice described in subsection (a).

''(3) A disapproval under paragraph (1) shall remain in effect until such time as the implementing official determines that adequate remedial action has been taken.

''SEC. 4491. INSPECTION OF RECORDS; INVESTIGATIONS.

''(a) RECORDS.—The records and accounts of employers pertaining to eligible persons on behalf of whom assistance has been paid under this subtitle, as well as other records that the implementing official determines to be necessary to ascertain compliance with the requirements established under this subtitle, shall be available at reasonable times for examination by authorized representatives of the Federal Government.

''(b) COMPLIANCE MONITORING.—Such official may monitor employers and eligible persons participating in programs of job training under this subtitle to determine compliance with the requirements established under this subtitle.

''(c) INVESTIGATIONS.—Such official may investigate any matter such official considers necessary to determine compliance with the requirements established under this subtitle. The investigations authorized by this subsection may include examining records (including making certified copies of records), questioning employees, and entering into any premises or onto any site where any part of a program of job training is conducted under this subtitle, or where any of the records of the employer offering or providing such program are kept.

''(d) DEPARTMENT OF LABOR.—Functions may be administered under subsections (b) and (c) in accordance with an agreement between the Secretary and the Secretary of Labor providing for the administration of such subsections (or any portion of such subsections) by the Department of Labor. Under such an agreement, any entity of the Department of Labor specified in the agreement may administer such subsections.

''SEC. 4492. COORDINATION WITH OTHER PROGRAMS.

''(a) VETERANS EDUCATION PROGRAMS.—(1) Assistance may not be paid under this subtitle to an employer on behalf of an eligible person for any period of time described in paragraph (2) and to such eligible person under chapter 30, 31, 32, 35, or 36 of title 38, United States Code, or chapter 106 of title 10, United States Code, for the same period of time.

''(2) A period of time referred to in paragraph (1) is the period of time beginning on the date on which the eligible person enters into an approved program of job training of an employer for purposes of assistance under this subtitle and ending on the last date for which such assistance is payable.

''(b) OTHER TRAINING AND EMPLOYMENT.—Assistance may not be paid under this subtitle to an employer on behalf of an eligible person for any period if the employer receives for that period any other form of assistance on account of the training or employment of the eligible person, including assistance under title I of the Workforce Investment Act of 1998 [29 U.S.C. 2801 et seq.] or a credit under section 51 of the Internal Revenue Code of 1986 [26 U.S.C. 51] (relating to credit for employment of certain new employees).

''(c) PREVIOUS COMPLETION OF PROGRAM.—Assistance may not be paid under this subtitle on behalf of an eligible person who has completed a program of job training under this subtitle.

''(d) PROMOTION.—(1) In carrying out section 3116(b) of title 38, United States Code, the Secretary of Veterans Affairs shall take all feasible steps to establish and encourage, for eligible persons who are eligible to have payments made on their behalf under such section, the development of training opportunities through programs of job training under this subtitle.

''(2) The Secretary of Veterans Affairs, in cooperation with the implementing official (unless the Secretary of Veterans Affairs is the implementing official), shall take all feasible steps to ensure that, in the cases of eligible persons who are eligible to have payments made on their behalf under both this subtitle and section 3116(b) of title 38, United States Code, the authority under such section is utilized, to the maximum extent feasible and consistent with the eligible person's best interests, to make payments to employers on behalf of such eligible persons.

''SEC. 4493. COUNSELING.

''(a) IN GENERAL.—The implementing official shall, upon request, provide, by contract or otherwise, employment counseling services to any eligible person eligible to participate under this subtitle in order to assist such eligible person in selecting a suitable program of job training under this subtitle.

''(b) CASE MANAGER.—(1) The implementing official shall provide for a program under which—

''(A) except as provided in paragraph (2), a disabled veteran's outreach program specialist appointed under section 4103A(a) of title 38, United States Code, is assigned as a case manager for each eligible person participating in a program of job training under this subtitle;

''(B) the eligible person has an in-person interview with the case manager not later than 60 days after entering into a program of training under this subtitle; and

''(C) periodic (not less frequent than monthly) contact is maintained with each such eligible person for the purpose of (i) avoiding unnecessary termination of employment, (ii) referring the eligible person to appropriate counseling, if necessary, (iii) facilitating the eligible person's successful completion of such program, and (iv) following up with the employer and the eligible person in order to determine the eligible person's progress in the program and the outcome regarding the eligible person's participation in and successful completion of the program.

''(2) No case manager shall be assigned pursuant to paragraph (1)(A)—

''(A) for an eligible person if, on the basis of a recommendation made by a disabled veterans' outreach program specialist, the implementing official determines that there is no need for a case manager for such eligible person; or

''(B) in the case of the employees of an employer, if the implementing official determines that—

''(i) the employer has an appropriate and effective employee assistance program that is available to all eligible persons participating in the employer's programs of job training under this subtitle; or

''(ii) the rate of eligible persons' successful completion of the employer's programs of job training under this subtitle, either cumulatively or during the previous program year, is 60 percent or higher.

''(3) The implementing official shall provide, to the extent feasible, a program of counseling or other services designed to resolve difficulties that may be encountered by eligible persons during their training under this subtitle. Such counseling or other services shall be similar to the counseling and other services provided under sections 1712A, 3697A, 4103A, 4104, [former] 7723, and [former] 7724 of title 38, United States Code, and section 1144 of title 10, United States Code.

''(c) CASE MANAGER REQUIRED.—Before an eligible person who voluntarily terminates from a program of job training under this subtitle or is involuntarily terminated from such program by the employer may be eligible to be provided with a further certificate, or renewal of certification, of eligibility for participation under this subtitle, such eligible person must be provided by the Secretary of Labor, after consultation with the implementing official, with a case manager.

''SEC. 4494. INFORMATION AND OUTREACH; USE OF AGENCY RESOURCES.

''(a) IN GENERAL.—(1) The Secretary, the Secretary of Veterans Affairs, and the Secretary of Labor shall jointly provide for an outreach and public information program—

''(A) to inform eligible persons about the employment and job training opportunities available under this subtitle and under other provisions of law; and

''(B) to inform private industry and business concerns (including small business concerns), public agencies and organizations, educational institutions, trade associations, and labor unions about the job training opportunities available under, and the advantages of participating in, the program established by this subtitle.

''(2) The Secretary, in consultation with the Secretary of Labor and the Secretary of Veterans Affairs, shall promote the development of employment and job training opportunities for eligible persons by encouraging potential employers to make programs of job training under this subtitle available for eligible persons, by advising other appropriate Federal departments and agencies of the program established by this subtitle, and by advising employers of applicable responsibilities under chapters 41 and 42 of title 38, United States Code, with respect to eligible persons.

''(b) COORDINATION.—The Secretary, the Secretary of Veterans Affairs, and the Secretary of Labor shall coordinate the outreach and public information program under subsection (a)(1), and job development activities under subsection (a)(2), with job counseling, placement, job development, and other services provided for under chapters 41 and 42 of title 38, United States Code, and with other similar services offered by other public agencies and organizations.

''(c) AGENCY RESOURCES.—(1) The Secretary, the Secretary of Veterans Affairs, and the Secretary of Labor shall make available such personnel as are necessary to facilitate the effective implementation of this subtitle.

''(2) In carrying out the responsibilities of the Secretary of Labor under this subtitle, the Secretary of Labor shall make maximum use of the services of Directors and Assistant Directors for Veterans' Employment and Training, disabled veterans' outreach program specialists, and employees of local offices, appointed pursuant to sections 4103, 4103A, and 4104 of title 38, United States Code. To the extent that the implementing official withholds approval of eligible persons' applications under this subtitle pursuant to section 4485(b)(2)(B), the Secretary of Labor shall take steps to assist such eligible persons in taking advantage of opportunities that may be available to them under any other program carried out with funds provided by the Secretary of Labor.

''(d) SMALL BUSINESS.—The implementing official shall request and obtain from the Administrator of the Small Business Administration a list of small business concerns and shall, on a regular basis, update such list. Such list shall be used to identify and promote possible training and employment opportunities for eligible persons.

''(e) ASSISTANCE TO PARTICIPATE.—The Secretary, the Secretary of Veterans Affairs, and the Secretary of Labor shall assist eligible persons and employers desiring to participate under this subtitle in making application and completing necessary certifications.

''(f) COLLECTION OF CERTAIN INFORMATION.—The Secretary of Labor shall, on a not less frequent than quarterly basis, collect and compile from the heads of State employment services and Directors for Veterans' Employment and Training for each State information available to such heads and Directors, and derived from programs carried out in their respective States, with respect to the numbers of eligible persons who receive counseling services pursuant to section 4493, who are referred to employers participating under this subtitle, who participate in programs of job training under this subtitle (including a description of the nature of the training and salaries that are part of such programs), and who complete such programs, and the reasons for eligible persons' noncompletion.

''SEC. 4495. AUTHORIZATION OF APPROPRIATIONS.

''(a) IN GENERAL.—(1) Of the amounts authorized to be appropriated in section 301 [106 Stat. 2360] for Defense Agencies, $75,000,000 shall be made available for the purpose of making payments to employers under this subtitle. Of the amounts made available pursuant to section 1302(a) of the National Defense Authorization Act for Fiscal Year 1994 [Pub. L. 103–160, 107 Stat. 1783], $25,000,000 shall be made available for the purpose of making payments to employers under this subtitle. The Secretary of Veterans Affairs and the Secretary of Labor shall submit an estimate to the Secretary of the amount needed to carry out any agreement entered into under section 4484(a), including administrative costs referred to in paragraph (3). Such agreements shall include administrative procedures to ensure the prompt and timely payments to employers by the implementing official.

''(2) Amounts made available pursuant to this section for a fiscal year shall remain available until the end of the second fiscal year following the fiscal year in which such amounts were appropriated.

''(3) Of the amounts made available pursuant to this section for a fiscal year, six percent of such amounts may be used for the purpose of administering this subtitle, including reimbursing expenses incurred.

''(b) AVAILABILITY OF DEOBLIGATED FUNDS.—Notwithstanding any other provision of law, any funds made available pursuant to this section for a fiscal year which are obligated for the purpose of making payments under section 4487 on behalf of an eligible person (including funds so obligated which previously had been obligated for such purpose on behalf of another eligible person and were thereafter deobligated) and are later deobligated shall immediately upon deobligation become available to the implementing official for obligation for such purpose. The further obligation of such funds by such official for such purpose shall not be delayed, directly or indirectly, in any manner by any officer or employee in the executive branch.

''SEC. 4496. TIME PERIODS FOR APPLICATION AND INITIATION OF TRAINING.

''Assistance may not be paid to an employer under this subtitle—

''(1) on behalf of an eligible person who initially applies for a program of job training under this subtitle after September 30, 1996; or

''(2) for any such program which begins after March 31, 1997.

''SEC. 4497. TREATMENT OF CERTAIN PROVISIONS OF LAW UPON TRANSFER OF AMOUNTS PROVIDED UNDER THIS ACT.

''(a) CONTINGENT AMENDMENT.—If a transfer is made in accordance with section 4501(c) of the full amount of the amount provided under section 4495(a) for the program established under section 4484(a), then, effective as of the date of the enactment of this Act [Oct. 23, 1992], the first sentence of section 4484(a) is amended by striking 'the Secretary shall carry out' and inserting 'the Secretary may carry out'.

''(b) PUBLICATION IN THE FEDERAL REGISTER.—If the transfer described in subsection (a) is made, then the Secretary of Defense shall promptly publish in the Federal Register a notice of such transfer. Such notice shall specify the date on which such transfer occurred.''

[Pub. L. 103–446, title VI, § 610(a)(2)(B), Nov. 2, 1994, 108 Stat. 4673, provided that: ''The amendment made by

subparagraph (A) [amending section 4486(d)(2) of Pub. L. 102–484, set out above] shall apply with respect to programs of training under the Service Members Occupational Conversion and Training Act of 1992 [subtitle G of title XLIV of Pub. L. 102–484, set out above] beginning after the date of the enactment of this Act [Nov. 2, 1994].'']

[For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.]

[§ 1143a. Repealed. Pub. L. 115–232, div. A, title V, § 553(a)(1), Aug. 13, 2018, 132 Stat. 1772]

Section, added Pub. L. 102–484, div. D, title XLIV, § 4462(a)(1), Oct. 23, 1992, 106 Stat. 2738; amended Pub. L. 103–337, div. A, title V, § 542(a)(3), Oct. 5, 1994, 108 Stat. 2768; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 112–239, div. A, title X, § 1076(f)(14), Jan. 2, 2013, 126 Stat. 1952, related to encouraging members and former members of the armed forces to enter into public and community service jobs after discharge or release from active duty.

INCREASED EARLY RETIREMENT RETIRED PAY FOR PUBLIC OR COMMUNITY SERVICE

Pub. L. 102–484, div. D, title XLIV, § 4464, Oct. 23, 1992, 106 Stat. 2741, which related to increased early retirement retired pay for public or community service, was repealed by Pub. L. 115–232, div. A, title V, § 553(c), Aug. 13, 2018, 132 Stat. 1772, applicable with respect to an individual who retires from the Armed Forces on or after Aug. 13, 2018.

§ 1144. Employment assistance, job training assistance, and other transitional services: Department of Labor

(a) IN GENERAL.—(1) The Secretary of Labor, in conjunction with the Secretary of Defense, the Secretary of Homeland Security, and the Secretary of Veterans Affairs, shall establish and maintain a program to furnish counseling, assistance in identifying employment and training opportunities, help in obtaining such employment and training, and other related information and services to members of the armed forces under the jurisdiction of the Secretary concerned who are being separated from active duty and the spouses of such members. Subject to subsection (f)(2), such services shall be provided to a member within the time periods provided under paragraph (3) of section 1142(a) of this title, except that the Secretary concerned shall not provide preseparation counseling to a member described in paragraph (4)(A) of such section.

(2) The Secretary of Defense, the Secretary of Homeland Security, and the Secretary of Veterans Affairs shall cooperate with the Secretary of Labor in establishing and maintaining the program under this section.

(3) The Secretaries referred to in paragraph (1) shall enter into a detailed agreement to carry out this section.

(b) ELEMENTS OF PROGRAM.—In establishing and carrying out a program under this section, the Secretary of Labor shall do the following:

(1) Provide information concerning employment and training assistance, including (A) labor market information, (B) civilian work place requirements and employment opportunities, (C) instruction in resumé preparation, and (D) job analysis techniques, job search techniques, and job interview techniques.

(2) In providing information under paragraph (1), use experience obtained from implementation of the pilot program established under section 408 of Public Law 101–237.

(3) Provide information concerning Federal, State, and local programs, and programs of military and veterans' service organizations, that may be of assistance to such members after separation from the armed forces, including, as appropriate, the information and services to be provided under section 1142 of this title.

(4) Inform such members that the Department of Defense and the Department of Homeland Security are required under section 1143(a) of this title to provide proper certification or verification of job skills and experience acquired while on active duty that may have application to employment in the civilian sector for use in seeking civilian employment and in obtaining job search skills.

(5) Provide information and other assistance to such members in their efforts to obtain loans and grants from the Small Business Administration and other Federal, State, and local agencies.

(6) Provide information about the geographic areas in which such members will relocate after separation from the armed forces, including, to the degree possible, information about employment opportunities, the labor market, and the cost of living in those areas (including, to the extent practicable, the cost and availability of housing, child care, education, and medical and dental care).

(7) Work with military and veterans' service organizations and other appropriate organizations in promoting and publicizing job fairs for such members.

(8) Provide information about disability-related employment and education protections.

(9) Provide information regarding the required deduction, pursuant to subsection (h) of section 1175a of this title, from disability compensation paid by the Secretary of Veterans Affairs of amounts equal to any voluntary separation pay received by the member under such section.

(10) Acting through the Secretary of the department in which the Coast Guard is operating, provide information on career and employment opportunities available to members with transportation security cards issued under section 70105 of title 46.

(c) PARTICIPATION.—(1) Except as provided in paragraph (2), the Secretary of Defense and the Secretary of Homeland Security shall require the participation in the program carried out under this section of the members eligible for assistance under the program.

(2) The Secretary of Defense and the Secretary of Homeland Security may, under regulations such Secretaries shall prescribe, waive the participation requirement of paragraph (1) with respect to—

(A) such groups or classifications of members as the Secretaries determine, after con-

sultation with the Secretary of Labor and the Secretary of Veterans Affairs, for whom participation is not and would not be of assistance to such members based on the Secretaries' articulable justification that there is extraordinarily high reason to believe the exempted members are unlikely to face major readjustment, health care, employment, or other challenges associated with transition to civilian life; and

(B) individual members possessing specialized skills who, due to unavoidable circumstances, are needed to support a unit's imminent deployment.

(d) USE OF PERSONNEL AND ORGANIZATIONS.—In carrying out the program established under this section, the Secretaries may—

(1) provide, as the case may be, for the use of disabled veterans outreach program specialists, local veterans' employment representatives, and other employment service personnel funded by the Department of Labor to the extent that the Secretary of Labor determines that such use will not significantly interfere with the provision of services or other benefits to eligible veterans and other eligible recipients of such services or benefits;

(2) use military and civilian personnel of the Department of Defense and the Department of Homeland Security;

(3) use personnel of the Veterans Benefits Administration of the Department of Veterans Affairs and other appropriate personnel of that Department;

(4) use representatives of military and veterans' service organizations;

(5) enter into contracts with public entities;

(6) enter into contracts with private entities, particularly with qualified private entities that have experience with instructing members of the armed forces eligible for assistance under the program carried out under this section on—

(A) private sector culture, resume writing, career networking, and training on job search technologies;

(B) academic readiness and educational opportunities; or

(C) other relevant topics; and

(7) take other necessary action to develop and furnish the information and services to be provided under this section.

(e) PARTICIPATION IN APPRENTICESHIP PROGRAMS.—As part of the program carried out under this section, the Secretary of Defense and the Secretary of Homeland Security may permit a member of the armed forces eligible for assistance under the program to participate in an apprenticeship program registered under the Act of August 16, 1937 (commonly known as the ''National Apprenticeship Act''; 50 Stat. 664, chapter 663; 29 U.S.C. 50 et seq.), or a pre-apprenticeship program that provides credit toward a program registered under such Act, that provides members of the armed forces with the education, training, and services necessary to transition to meaningful employment that leads to economic self-sufficiency.

(f) PROGRAM CONTENTS.—(1) The program carried out under this section shall consist of instruction as follows:

(A) One day of preseparation training specific to the armed force concerned, as determined by the Secretary concerned.

(B) One day of instruction regarding—

(i) benefits under laws administered by the Secretary of Veterans Affairs; and

(ii) other subjects determined by the Secretary concerned.

(C) One day of instruction regarding preparation for employment.

(D) Two days of instruction regarding a topic selected by the member from the following subjects:

(i) Preparation for employment.

(ii) Preparation for education.

(iii) Preparation for vocational training.

(iv) Preparation for entrepreneurship.

(v) Other options determined by the Secretary concerned.

(2) The Secretary concerned may permit a member to attend training and instruction under the program established under this section—

(A) before the time periods established under section 1142(a)(3) of this title;

(B) in addition to such training and instruction required during such time periods.

(Added Pub. L. 101–510, div. A, title V, § 502(a)(1), Nov. 5, 1990, 104 Stat. 1553; amended Pub. L. 102–190, div. A, title X, § 1061(a)(6), Dec. 5, 1991, 105 Stat. 1472; Pub. L. 102–484, div. D, title XLIV, §§ 4462(c), 4469, Oct. 23, 1992, 106 Stat. 2740, 2752; Pub. L. 103–337, div. A, title V, § 543(b), Oct. 5, 1994, 108 Stat. 2769; Pub. L. 107–103, title III, § 302(b), Dec. 27, 2001, 115 Stat. 992; Pub. L. 107–107, div. A, title X, § 1048(e)(1), Dec. 28, 2001, 115 Stat. 1227; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 112–56, title II, §§ 221(a), 224, 225, Nov. 21, 2011, 125 Stat. 715, 718; Pub. L. 113–66, div. A, title V, § 521(a), Dec. 26, 2013, 127 Stat. 755; Pub. L. 114–92, div. A, title V, § 553, Nov. 25, 2015, 129 Stat. 823; Pub. L. 114–328, div. A, title V, §§ 563, 564(a), Dec. 23, 2016, 130 Stat. 2138; Pub. L. 115–232, div. A, title V, §§ 552(b)(1), 553(b)(1), Aug. 13, 2018, 132 Stat. 1770, 1772.)

REFERENCES IN TEXT

Section 408 of Public Law 101–237, referred to in subsec. (b)(2), is set out as a note under section 4100 of Title 38, Veterans' Benefits.

The National Apprenticeship Act, referred to in subsec. (e), is act Aug. 16, 1937, ch. 663, 50 Stat. 664, which is classified generally to chapter 4C (§ 50 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 50 of Title 29 and Tables.

AMENDMENTS

2018—Subsec. (a)(1). Pub. L. 115–232, § 552(b)(1)(A), substituted ''Subject to subsection (f)(2), such services'' for ''Such services''.

Subsec. (b)(8) to (11). Pub. L. 115–232, § 553(b)(1), redesignated pars. (9) to (11) as (8) to (10), respectively, and struck out former par. (8) which read as follows: ''Provide information regarding the public and community service jobs program carried out under section 1143a of this title.''

Subsec. (f). Pub. L. 115–232, § 552(b)(1)(B), amended subsec. (f) generally. Prior to amendment, subsec. (f) related to additional training opportunities.

2016—Subsec. (b)(10). Pub. L. 114–328, § 563, added par. (10).

Subsec. (b)(11). Pub. L. 114–328, § 564(a), added par. (11).

2015—Subsec. (f). Pub. L. 114–92 added subsec. (f).

2013—Subsec. (b)(9). Pub. L. 113–66 added par. (9).

2011—Subsec. (c). Pub. L. 112–56, § 221(a), amended subsec. (c) generally. Prior to amendment, text read as follows: ''The Secretary of Defense and the Secretary of Homeland Security shall encourage and otherwise promote maximum participation by members of the armed forces eligible for assistance under the program carried out under this section.''

Subsec. (d)(5). Pub. L. 112–56, § 224(1), substituted ''public entities;'' for ''public or private entities; and''.

Subsec. (d)(6), (7). Pub. L. 112–56, § 224(2), (3), added par. (6) and redesignated former par. (6) as (7).

Subsec. (e). Pub. L. 112–56, § 225, added subsec. (e).

2002—Subsecs. (a)(1), (2), (b)(4), (c), (d)(2). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

2001—Subsec. (a)(1). Pub. L. 107–103, in second sentence, substituted ''within the time periods provided under paragraph (3) of section 1142(a) of this title, except that the Secretary concerned shall not provide preseparation counseling to a member described in paragraph (4)(A) of such section'' for ''during the 180-day period before the member is separated from active duty''.

Subsec. (a)(3). Pub. L. 107–107, § 1048(e)(1)(A), struck out at end ''The agreement shall be entered into no later than 60 days after the date of the enactment of this section.''

Subsec. (e). Pub. L. 107–107, § 1048(e)(1)(B), struck out heading and text of subsec. (e). Text read as follows:

''(1) There is authorized to be appropriated to the Department of Labor to carry out this section $11,000,000 for fiscal year 1993 and $8,000,000 for each of fiscal years 1994 and 1995.

''(2) There is authorized to be appropriated to the Department of Veterans Affairs to carry out this section $6,500,000 for each of fiscal years 1993, 1994, and 1995.''

1994—Subsec. (a)(1). Pub. L. 103–337, § 543(b)(1), inserted '', the Secretary of Transportation,'' after ''Secretary of Defense'' and substituted ''concerned'' for ''of a military department''.

Subsec. (a)(2). Pub. L. 103–337, § 543(b)(2), inserted '', the Secretary of Transportation,'' after ''Secretary of Defense''.

Subsec. (b)(4). Pub. L. 103–337, § 543(b)(3), substituted ''Department of Defense and the Department of Transportation are'' for ''Department of Defense is''.

Subsec. (c). Pub. L. 103–337, § 543(b)(4), inserted ''and the Secretary of Transportation'' after ''Secretary of Defense''.

Subsec. (d)(2). Pub. L. 103–337, § 543(b)(5), inserted ''and the Department of Transportation'' after ''Department of Defense''.

1992—Subsec. (b)(8). Pub. L. 102–484, § 4462(c), added par. (8).

Subsec. (e)(1). Pub. L. 102–484, § 4469(1), substituted ''$11,000,000 for fiscal year 1993 and $8,000,000 for each of fiscal years 1994 and 1995'' for ''$4,000,000 for fiscal year 1991 and $9,000,000 for each of fiscal years 1992 and 1993''.

Subsec. (e)(2). Pub. L. 102–484, § 4469(2), substituted ''$6,500,000 for each of fiscal years 1993, 1994, and 1995'' for ''$1,000,000 for fiscal year 1991 and $4,000,000 for each of fiscal years 1992 and 1993''.

1991—Subsec. (b)(1). Pub. L. 102–190, § 1061(a)(6)(A), substituted ''resumé'' for ''resume'' in cl. (C).

Subsec. (b)(3). Pub. L. 102–190, § 1061(a)(6)(B), substituted ''veterans' service organizations'' for ''veterans service organization'' and ''armed forces'' for ''Armed Forces''.

Subsec. (b)(6). Pub. L. 102–190, § 1061(a)(6)(C), substituted ''those areas'' for ''such area''.

Effective Date of 2011 Amendment

Amendment by section 221(a) of Pub. L. 112–56 effective on the date that is 1 year after Nov. 21, 2011, see section 221(c) of Pub. L. 112–56, set out as a note under section 1142 of this title.

Effective Date of 2002 Amendment

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

Command Matters in Connection With Transition Assistance Programs

Pub. L. 116–92, div. A, title V, § 568, Dec. 20, 2019, 133 Stat. 1397, provided that: ''The training provided a commander of a military installation in connection with the commencement of assignment to the installation shall include a module on the covered transition assistance programs available for members of the Armed Forces assigned to the installation.''

Pilot Program Regarding Online Application for the Transition Assistance Program

Pub. L. 116–92, div. A, title V, § 570G, Dec. 20, 2019, 133 Stat. 1402, provided that:

''(a) Establishment.—The Secretary of Defense, the Secretary of Veterans Affairs, and the Secretary of Labor may jointly carry out a pilot program that creates a one-stop source for online applications for the purposes of assisting members of the Armed Forces and Veterans participating in the Transition Assistance Program (in this section referred to as 'TAP').

''(b) Data Sources.—If the Secretaries carry out the pilot program, any online application developed under such program shall, in part, aggregate existing data from government resources and the private sector under one uniform resource locator for the purpose of assisting members of the Armed Forces and veterans participating in TAP.

''(c) Availability; Accessibility.—Any online application developed under a pilot program shall, to the extent feasible be—

''(1) widely available as a mobile application; and

''(2) easily accessible by veterans, members of the Armed Forces, and employers.

''(d) Assessments.—

''(1) Interim assessments.—Not later than the dates that are one and two years after the date of the commencement of any pilot program under this section, the Secretaries shall jointly assess the pilot program.

''(2) Final assessment.—Not later than the date that is three years after the date of the commencement of any pilot program under this section, the Secretaries shall jointly carry out a final assessment of the pilot program.

''(3) Purpose.—The general objective of each assessment under this subsection shall be to determine if the online application under the pilot program helps participants in TAP to accomplish the goals of TAP, accounting for the individual profiles of participants, including military experience and geographic location.

''(e) Briefing.—If the Secretaries carry out the pilot program, the Secretary of Defense shall provide to the Committees on Armed Services of the Senate and House of Representatives a briefing on findings regarding the pilot program, including any recommendations for legislation.

''(f) Definitions.—In this section:

''(1) The term 'mobile application' means a software program that runs on the operating system of a mobile device.

''(2) The term 'mobile device' means a smartphone, tablet computer, or similar portable computing device that transmits data over a wireless connection.''

Deadline for Transition Assistance Program

Pub. L. 115–232, div. A, title V, § 552(b)(2), Aug. 13, 2018, 132 Stat. 1771, provided that: ''The Transition Assistance Program shall comply with the requirements of section 1144(f) of title 10, United States Code, as amended by paragraph (1), not later than 1 year after the date of the enactment of this Act [Aug. 13, 2018].''

Deadline for Implementation

Pub. L. 114–328, div. A, title V, § 564(b), Dec. 23, 2016, 130 Stat. 2138, provided that: ''The program carried out

under section 1144 of title 10, United States Code, shall satisfy the requirements of subsection (b)(11) of such section (as added by subsection (a) of this section) by not later than 180 days after the date of the enactment of this Act [Dec. 23, 2016].''

ENHANCEMENT OF INFORMATION PROVIDED TO MEMBERS OF THE ARMED FORCES AND VETERANS REGARDING USE OF POST-9/11 EDUCATIONAL ASSISTANCE AND FEDERAL FINANCIAL AID THROUGH TRANSITION ASSISTANCE PROGRAM

Pub. L. 113–291, div. A, title V, § 557, Dec. 19, 2014, 128 Stat. 3381, provided that:

''(a) ADDITIONAL INFORMATION REQUIRED.—

''(1) IN GENERAL.—Not later than one year after the date of the enactment of this Act [Dec. 19, 2014], the Secretary of Defense shall enhance the higher education component of the Transition Assistance Program (TAP) of the Department of Defense by providing additional information that is more complete and accurate than the information provided as of the day before the date of the enactment of this Act to individuals who apply for educational assistance under chapter 30 or 33 of title 38, United States Code, to pursue a program of education at an institution of higher learning.

''(2) ELEMENTS.—The additional information required by paragraph (1) shall include the following:

''(A) Information provided by the Secretary of Education that is publically available and addresses—

''(i) to the extent practicable, differences between types of institutions of higher learning in such matters as tuition and fees, admission requirements, accreditation, transferability of credits, credit for qualifying military training, time required to complete a degree, and retention and job placement rates; and

''(ii) how Federal educational assistance provided under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.) may be used in conjunction with educational assistance provided under chapters 30 and 33 of title 38, United States Code.

''(B) Information about the Postsecondary Education Complaint System of the Department of Defense, the Department of Veterans Affairs, the Department of Education, and the Consumer Financial Protection Bureau.

''(C) Information about the GI Bill Comparison Tool of the Department of Veterans Affairs.

''(D) Information about each of the Principles of Excellence established by the Secretary of Defense, the Secretary of Veterans Affairs, and the Secretary of Education pursuant to Executive Order 13607 of April 27, 2012 (77 Fed. Reg. 25861), including how to recognize whether an institution of higher learning may be violating any of such principles.

''(E) Information to enable individuals described in paragraph (1) to develop a post-secondary education plan appropriate and compatible with their educational goals.

''(F) Such other information as the Secretary of Education considers appropriate.

''(3) CONSULTATION.—In carrying out this subsection, the Secretary of Defense shall consult with the Secretary of Veterans Affairs, the Secretary of Education, and the Director of the Consumer Financial Protection Bureau.

''(b) AVAILABILITY OF HIGHER EDUCATION COMPONENT ONLINE.—Not later than one year after the date of the enactment of this Act, the Secretary of Defense shall ensure that the higher education component of the Transition Assistance Program is available to members of the Armed Forces on an Internet website of the Department of Defense so that members have an option to complete such component electronically and remotely.

''(c) DEFINITIONS.—In this section:

''(1) The term 'institution of higher learning' has the meaning given such term in section 3452 of title 38, United States Code.

''(2) The term 'types of institutions of higher learning' means the following:

''(A) An educational institution described in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)).

''(B) An educational institution described in subsection (b) or (c) of section 102 of such Act (20 U.S.C. 1002).''

PROCEDURES FOR PROVISION OF CERTAIN INFORMATION TO STATE VETERANS AGENCIES TO FACILITATE THE TRANSITION OF MEMBERS OF THE ARMED FORCES FROM MILITARY SERVICE TO CIVILIAN LIFE

Pub. L. 113–291, div. A, title V, § 558, Dec. 19, 2014, 128 Stat. 3382, provided that:

''(a) PROCEDURES REQUIRED.—The Secretary of Defense shall develop procedures to share the information described in subsection (b) regarding members of the Armed Forces who are being separated from the Armed Forces with State veterans agencies in electronic data format as a means of facilitating the transition of such members from military service to civilian life.

''(b) COVERED INFORMATION.—The information to be shared with State veterans agencies regarding a member shall include the following:

''(1) Military service and separation data.

''(2) A personal email address.

''(3) A personal telephone number.

''(4) A mailing address.

''(c) CONSENT.—The procedures developed pursuant to subsection (a) shall require the consent of a member of the Armed Forces before any information described in subsection (b) regarding the member is shared with a State veterans agency.

''(d) USE OF INFORMATION.—The Secretary of Defense shall ensure that the information shared with State veterans agencies in accordance with the procedures developed pursuant to subsection (a) is only shared by such agencies with county government veterans service offices for such purposes as the Secretary shall specify for the administration and delivery of benefits.

''(e) REPORT.—

''(1) IN GENERAL.—Not later than one year after the date of the enactment of this Act [Dec. 19, 2014], the Secretary of Defense shall submit to the Committees on Armed Services and Veterans' Affairs of the Senate and the House of Representatives a report on the progress made by the Secretary—

''(A) in developing the procedures required by subsection (a); and

''(B) in sharing information with State veterans agencies as described in such subsection.

''(2) CONTENTS.—The report required by paragraph (1) shall include the following:

''(A) A description of the procedures developed to share information with State veterans agencies.

''(B) A description of the sharing activities carried out by the Secretary in accordance with such procedures.

''(C) The number of members of the Armed Force who gave their consent for the sharing of information with State veterans agencies.

''(D) Such recommendations as the Secretary may have for legislative or administrative action to improve the sharing of information as described in subsection (a).''

DEADLINE FOR IMPLEMENTATION

Pub. L. 113–66, div. A, title V, § 521(b), Dec. 26, 2013, 127 Stat. 755, provided that: ''The program carried out under section 1144 of title 10, United States Code, shall comply with the requirements of subsection (b)(9) of such section, as added by subsection (a), by not later than April 1, 2015.''

OFF-BASE TRANSITION TRAINING FOR VETERANS AND THEIR SPOUSES

Pub. L. 112–260, title III, § 301, Jan. 10, 2013, 126 Stat. 2424, as amended by Pub. L. 116–315, title IV, § 4303, Jan. 5, 2021, 134 Stat. 5017, provided that:

''(a) PROVISION OF OFF-BASE TRANSITION TRAINING.—During the five-year period beginning on the date of the enactment of the Navy SEAL Bill Mulder Act of 2020 [Jan. 5, 2021], the Secretary of Labor shall provide the Transition Assistance Program under section 1144 of title 10, United States Code, to eligible individuals at locations other than military installations.

''(b) ELIGIBLE INDIVIDUALS.—For purposes of this section, an eligible individual is a veteran or the spouse of a veteran.

''(c) LOCATIONS.—

''(1) NUMBER OF LOCATIONS.—The Secretary shall carry out the training under subsection (a) in not fewer than 50 locations in States (as defined in section 101 of title 38, United States Code) selected by the Secretary for purposes of this section.

''(2) SELECTION OF STATES WITH HIGH UNEMPLOYMENT.—Of the States selected by the Secretary under paragraph (1), at least 20 shall be States with high rates of unemployment among veterans.

''(3) NUMBER OF LOCATIONS IN EACH STATE.—The Secretary shall provide training under subsection (a) to eligible individuals at a sufficient number of locations within each State selected under this subsection to meet the needs of eligible individuals in such State.

''(4) SELECTION OF LOCATIONS.—The Secretary shall select locations for the provision of training under subsection (a) to facilitate access by participants and may not select any location on a military installation other than a National Guard or reserve facility that is not located on an active duty military installation.

''(5) PREFERENCES.—In selecting States for participation in the pilot program, the Secretary shall provide a preference for any State with—

''(A) a high rate of usage of unemployment benefits for recently separated members of the Armed Forces; or

''(B) a labor force or economy that has been significantly impacted by a covered public health emergency.

''(6) COVERED PUBLIC HEALTH EMERGENCY DEFINED.—In this subsection, the term 'covered public health emergency' means—

''(A) the public health emergency declared by the Secretary of Health and Human Services under section 319 of the Public Health Service Act (42 U.S.C. 247d) on January 31, 2020, with respect to Coronavirus Disease 2019 (COVID–19); or

''(B) a domestic emergency declared, based on an outbreak of Coronavirus Disease 2019 (COVID–19), by the President, the Secretary of Homeland Security, or a State or local authority.

''(d) INCLUSION OF INFORMATION ABOUT VETERANS BENEFITS.—The Secretary shall ensure that the training provided under subsection (a) generally follows the content of the Transition Assistance Program under section 1144 of title 10, United States Code.

''(e) ANNUAL REPORT.—Not later than March 1 of any year during which the Secretary provides training under subsection (a), the Secretary shall submit to Congress a report on the provision of such training. Each such report shall include information about the employment outcomes of the eligible individuals who received such training during the year covered by the report.''

INDIVIDUALIZED ASSESSMENT FOR MEMBERS OF THE ARMED FORCES UNDER TRANSITION ASSISTANCE ON EQUIVALENCE BETWEEN SKILLS DEVELOPED IN MILITARY OCCUPATIONAL SPECIALTIES AND QUALIFICATIONS REQUIRED FOR CIVILIAN EMPLOYMENT WITH THE PRIVATE SECTOR

Pub. L. 112–56, title II, §222, Nov. 21, 2011, 125 Stat. 716, provided that:

''(a) STUDY ON EQUIVALENCE REQUIRED.—

''(1) IN GENERAL.—The Secretary of Labor shall, in consultation with the Secretary of Defense and the Secretary of Veterans Affairs, enter into a contract with a qualified organization to conduct a study to identify any equivalences between the skills developed by members of the Armed Forces through various military occupational specialties (MOS), successful completion of resident training courses, attaining various military ranks or rates, or other military experiences and the qualifications required for various positions of civilian employment in the private sector.

''(2) COOPERATION OF FEDERAL AGENCIES.—The departments and agencies of the Federal Government, including the Office of Personnel Management, the General Services Administration, the Government Accountability Office, the Department of Education, and other appropriate departments and agencies, shall cooperate with the contractor under paragraph (1) to conduct the study required under that paragraph.

''(3) REPORT.—Upon completion of the study conducted under paragraph (1), the contractor under that paragraph shall submit to the Secretary of Defense, the Secretary of Veterans Affairs, and the Secretary of Labor a report setting forth the results of the study. The report shall include such information as the Secretaries shall specify in the contract under paragraph (1) for purposes of this section.

''(4) TRANSMITTAL TO CONGRESS.—The Secretary of Labor shall transmit to the appropriate committees of Congress the report submitted under paragraph (3), together with such comments on the report as the Secretary considers appropriate.

''(5) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this subsection, the term 'appropriate committees of Congress' means—

''(A) the Committee on Veterans' Affairs, the Committee on Armed Services, and the Committee on Health, Education, Labor, and Pension of the Senate; and

''(B) the Committee on Veterans' Affairs, the Committee on Armed Services, and the Committee on Education and the Workforce of the House of Representatives.

''(b) PUBLICATION.—The secretaries described in subsection (a)(1) shall ensure that the equivalences identified under subsection (a)(1) are—

''(1) made publicly available on an Internet website; and

''(2) regularly updated to reflect the most recent findings of the secretaries with respect to such equivalences.

''(c) INDIVIDUALIZED ASSESSMENT OF CIVILIAN POSITIONS AVAILABLE THROUGH MILITARY EXPERIENCES.—The Secretary of Defense shall ensure that each member of the Armed Forces who is participating in the Transition Assistance Program (TAP) of the Department of Defense receives, as part of such member's participation in that program, an individualized assessment of the various positions of civilian employment in the private sector for which such member may be qualified as a result of the skills developed by such member through various military occupational specialties (MOS), successful completion of resident training courses, attaining various military ranks or rates, or other military experiences. The assessment shall be performed using the results of the study conducted under subsection (a) and such other information as the Secretary of Defense, in consultation with the Secretary of Veterans Affairs and the Secretary of Labor, considers appropriate for that purpose.

''(d) FURTHER USE IN EMPLOYMENT-RELATED TRANSITION ASSISTANCE.—

''(1) TRANSMITTAL OF ASSESSMENT.—The Secretary of Defense shall make the individualized assessment provided a member under subsection (a) available electronically to the Secretary of Veterans Affairs and the Secretary of Labor.

''(2) USE IN ASSISTANCE.—The Secretary of Veterans Affairs and the Secretary of Labor may use an individualized assessment with respect to an individual under paragraph (1) for employment-related assist-

ance in the transition from military service to civilian life provided the individual by such Secretary and to otherwise facilitate and enhance the transition of the individual from military service to civilian life.

"(e) EFFECTIVE DATE.—This section shall take effect on the date that is one year after the date of the enactment of this Act [Nov. 21, 2011]."

IMPLEMENTATION REPORTS

Pub. L. 101–510, div. A, title V, §502(c), Nov. 5, 1990, 104 Stat. 1557, directed the Secretary of Labor to submit to Congress a report, not later than 90 days after Nov. 5, 1990, setting forth the agreement entered into to carry out this section, and a report, not later than one year after Nov. 5, 1990, containing an evaluation of the program carried out under this section.

§ 1145. Health benefits

(a) TRANSITIONAL HEALTH CARE.—(1) For the time period described in paragraph (4), a member of the armed forces who is separated from active duty as described in paragraph (2) (and the dependents of the member) shall be entitled to receive—

(A) except as provided in paragraph (3), medical and dental care under section 1076 of this title in the same manner as a dependent described in subsection (a)(2) of such section; and

(B) health benefits contracted under the authority of section 1079(a) of this title and subject to the same rates and conditions as apply to persons covered under that section.

(2) This subsection applies to the following members of the armed forces:

(A) A member who is involuntarily separated from active duty.

(B) A member of a reserve component who is separated from active duty to which called or ordered under section 12304b of this title or a provision of law referred to in section 101(a)(13)(B) of this title if the active duty is active duty for a period of more than 30 days.

(C) A member who is separated from active duty for which the member is involuntarily retained under section 12305 of this title in support of a contingency operation.

(D) A member who is separated from active duty served pursuant to a voluntary agreement of the member to remain on active duty for a period of less than one year in support of a contingency operation.

(E) A member who receives a sole survivorship discharge (as defined in section 1174(i) of this title).

(F) A member who is separated from active duty who agrees to become a member of the Selected Reserve of the Ready Reserve of a reserve component.

(3) In the case of a member described in paragraph (2)(B), the dental care to which the member is entitled under this subsection shall be the dental care to which a member of the uniformed services on active duty for more than 30 days is entitled under section 1074 of this title.

(4) Except as provided in paragraph (7), transitional health care for a member under subsection (a) shall be available for 180 days beginning on the date on which the member is separated from active duty. For purposes of the preceding sentence, in the case of a member on active duty as described in subparagraph (B), (C), or (D) of paragraph (2) who, without a break in service, is extended on active duty for any reason, the 180-day period shall begin on the date on which the member is separated from such extended active duty.

(5)(A) The Secretary concerned shall require a member of the armed forces scheduled to be separated from active duty as described in paragraph (2) to undergo a physical examination and a mental health assessment conducted pursuant to section 1074n of this title immediately before that separation. The physical examination shall be conducted in accordance with regulations prescribed by the Secretary of Defense.

(B) Notwithstanding subparagraph (A), if a member of the armed forces scheduled to be separated from active duty as described in paragraph (2) has otherwise undergone a physical examination within 12 months before the scheduled date of separation from active duty, the requirement for a physical examination under subparagraph (A) may be waived in accordance with regulations prescribed under this paragraph. Such regulations shall require that such a waiver may be granted only with the consent of the member and with the concurrence of the member's unit commander.

(C) The Secretary concerned shall ensure that each physical examination of a member under subparagraph (A) includes an assessment of whether the member was—

(i) based or stationed at a location where an open burn pit, as defined in subsection (c) of section 201 of the Dignified Burial and Other Veterans' Benefits Improvement Act of 2012 (Public Law 112–260; 38 U.S.C. 527 note), was used; or

(ii) exposed to toxic airborne chemicals or other airborne contaminants, including any information recorded as part of the registry established by the Secretary of Veterans Affairs under such section 201.

(6)(A) The Secretary of Defense shall, in consultation with the Secretary of Veterans Affairs, ensure that appropriate actions are taken to assist a member of the armed forces who, as a result of a medical examination under paragraph (5), receives an indication for a referral for follow up treatment from the health care provider who performs the examination.

(B) Assistance provided to a member under paragraph (1) shall include the following:

(i) Information regarding, and any appropriate referral for, the care, treatment, and other services that the Secretary of Veterans Affairs may provide to such member under any other provision of law, including—

(I) clinical services, including counseling and treatment for post-traumatic stress disorder and other mental health conditions; and

(II) any other care, treatment, and services.

(ii) Information on the private sector sources of treatment that are available to the member in the member's community.

(iii) Assistance to enroll in the health care system of the Department of Veterans Affairs for health care benefits for which the member is eligible under laws administered by the Secretary of Veterans Affairs.

(7)(A) A member who has a medical condition relating to service on active duty that warrants further medical care that has been identified during the member's 180-day transition period, which condition can be resolved within 180 days as determined by a Department of Defense physician, shall be entitled to receive medical and dental care for that medical condition, and that medical condition only, as if the member were a member of the armed forces on active duty for 180 days following the diagnosis of the condition.

(B) The Secretary concerned shall ensure that the Defense Enrollment and Eligibility Reporting System (DEERS) is continually updated in order to reflect the continuing entitlement of members covered by subparagraph (A) to the medical and dental care referred to in that subparagraph.

(b) CONVERSION HEALTH POLICIES.—(1) The Secretary of Defense shall inform each member referred to in subsection (a) before the date of the member's discharge or release from active duty of the availability for purchase by the member of a conversion health policy for the member and the dependents of that member. A conversion health policy offered under this paragraph shall provide coverage for not less than an 18-month period.

(2) If a member referred to in subsection (a) purchases a conversion health policy during the period applicable to the member (or within a reasonable time after that period as prescribed by the Secretary of Defense), the Secretary shall provide health care, or pay the costs of health care provided, to the member and the dependents of the member—

(A) during the 18-month period beginning on the date on which coverage under the conversion health policy begins; and

(B) for a condition (including pregnancy) that exists on such date and for which care is not provided under the policy solely on the grounds that the condition is a preexisting condition.

(3) The Secretary of Defense may arrange for the provision of health care described in paragraph (2) through a contract with the insurer offering the conversion health policy.

(4) If the Secretary of Defense is unable, within a reasonable time, to enter into a contract with a private insurer to provide the conversion health policy required under paragraph (1) at a rate not to exceed the payment required under section 8905a(d)(1)(A) of title 5 for comparable coverage, the Secretary shall offer such a policy under the Civilian Health and Medical Program of the Uniformed Services. Subject to paragraph (5), a member purchasing a policy from the Secretary shall be required to pay into the Military Health Care Account or other appropriate account an amount equal to the sum of—

(A) the individual and Government contributions which would be required in the case of a person enrolled in a health benefits plan contracted for under section 1079 of this title; and

(B) an amount necessary for administrative expenses, but not to exceed two percent of the amount under subparagraph (A).

(5) The amount paid by a member who purchases a conversion health policy from the Secretary of Defense under paragraph (4) may not exceed the payment required under section 8905a(d)(1)(A) of title 5 for comparable coverage.

(6) In order to reduce premiums required under paragraph (4), the Secretary of Defense may offer a conversion health policy that, with respect to mental health services, offers reduced coverage and increased cost-sharing by the purchaser.

(c) HEALTH CARE FOR CERTAIN SEPARATED MEMBERS NOT OTHERWISE ELIGIBLE.—(1) Consistent with the authority of the Secretary concerned to designate certain classes of persons as eligible to receive health care at a military medical facility, the Secretary concerned should consider authorizing, on an individual basis in cases of hardship, the provision of that care for a member who is separated from the armed forces, and is ineligible for transitional health care under subsection (a) or does not obtain a conversion health policy (or a dependent of the member).

(2) The Secretary concerned shall give special consideration to requests for such care in cases in which the condition for which treatment is required was incurred or aggravated by the member or the dependent before the date of the separation of the member, particularly if the condition is a result of the particular circumstances of the service of the member.

(d) PHYSICAL EXAMINATIONS FOR CERTAIN MEMBERS OF A RESERVE COMPONENT.—(1) The Secretary concerned shall provide a physical examination pursuant to subsection (a)(5) to each member of a reserve component who—

(A) during the two-year period before the date on which the member is scheduled to be separated from the armed forces served on active duty in support of a contingency operation for a period of more than 30 days;

(B) will not otherwise receive such an examination under such subsection; and

(C) elects to receive such a physical examination.

(2) The Secretary concerned shall—

(A) provide the physical examination under paragraph (1) to a member during the 90-day period before the date on which the member is scheduled to be separated from the armed forces; and

(B) issue orders to such a member to receive such physical examination.

(3) A member may not be entitled to health care benefits pursuant to subsection (a), (b), or (c) solely by reason of being provided a physical examination under paragraph (1).

(4) In providing to a member a physical examination under paragraph (1), the Secretary concerned shall provide to the member a record of the physical examination.

(e) DEFINITION.—In this section, the term ''conversion health policy'' means a health insurance policy with a private insurer, developed through negotiations between the Secretary of Defense and a private insurer, that is available for purchase by or for the use of a person who is no longer a member of the armed forces or a covered beneficiary.

(f) COAST GUARD.—The Secretary of Homeland Security shall implement this section for the

members of the Coast Guard and their dependents when the Coast Guard is not operating as a service in the Navy.

(Added Pub. L. 101–510, div. A, title V, § 502(a)(1), Nov. 5, 1990, 104 Stat. 1555; amended Pub. L. 102–484, div. D, title XLIV, § 4407(a), Oct. 23, 1992, 106 Stat. 2707; Pub. L. 103–160, div. A, title V, § 561(i), Nov. 30, 1993, 107 Stat. 1668; Pub. L. 103–337, div. A, title V, § 542(a)(4), Oct. 5, 1994, 108 Stat. 2768; Pub. L. 105–261, div. A, title V, § 561(h), Oct. 17, 1998, 112 Stat. 2026; Pub. L. 106–398, § 1 [[div. A], title V, § 571(h)], Oct. 30, 2000, 114 Stat. 1654, 1654A–134; Pub. L. 107–107, div. A, title VII, § 736(a), (b), Dec. 28, 2001, 115 Stat. 1172; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 107–314, div. A, title VII, § 706(a), (b), Dec. 2, 2002, 116 Stat. 2585; Pub. L. 108–375, div. A, title VII, § 706(a)(1), (3), (b), Oct. 28, 2004, 118 Stat. 1983; Pub. L. 109–163, div. A, title VII, § 749, Jan. 6, 2006, 119 Stat. 3364; Pub. L. 110–181, div. A, title XVI, § 1637, Jan. 28, 2008, 122 Stat. 464; Pub. L. 110–317, § 4, Aug. 29, 2008, 122 Stat. 3528; Pub. L. 110–417, [div. A], title VII, § 734(a), Oct. 14, 2008, 122 Stat. 4513; Pub. L. 111–84, div. A, title VII, § 703, Oct. 28, 2009, 123 Stat. 2373; Pub. L. 112–81, div. A, title VII, § 706, Dec. 31, 2011, 125 Stat. 1474; Pub. L. 112–239, div. A, title X, § 1076(f)(15), Jan. 2, 2013, 126 Stat. 1952; Pub. L. 115–91, div. A, title V, § 511(b), title VII, §§ 705, 706(a), Dec. 12, 2017, 131 Stat. 1376, 1435, 1436; Pub. L. 116–92, div. A, title VII, § 704(b), Dec. 20, 2019, 133 Stat. 1438.)

AMENDMENTS

2019—Subsec. (a)(5)(C). Pub. L. 116–92 added subpar. (C).

2017—Subsec. (a)(2)(B). Pub. L. 115–91, § 511(b), substituted "under section 12304b of this title or a provision of law referred to in section 101(a)(13)(B) of this title" for "in support of a contingency operation".

Subsec. (a)(5)(A). Pub. L. 115–91, § 706(a), inserted "and a mental health assessment conducted pursuant to section 1074n of this title" after "a physical examination".

Subsecs. (d) to (f). Pub. L. 115–91, § 705, added subsec. (d) and redesignated former subsecs. (d) and (e) as (e) and (f), respectively.

2013—Subsec. (e). Pub. L. 112–239 inserted "when the Coast Guard is not operating as a service in the Navy" before period at end.

2011—Subsec. (a)(4). Pub. L. 112–81 inserted at end "For purposes of the preceding sentence, in the case of a member on active duty as described in subparagraph (B), (C), or (D) of paragraph (2) who, without a break in service, is extended on active duty for any reason, the 180-day period shall begin on the date on which the member is separated from such extended active duty."

2009—Subsec. (a)(1). Pub. L. 111–84, § 703(1)(A), substituted "paragraph (4)" for "paragraph (3)" in introductory provisions.

Subsec. (a)(1)(A). Pub. L. 111–84, § 703(1)(B), inserted "except as provided in paragraph (3)," before "medical and dental care".

Subsec. (a)(3) to (7). Pub. L. 111–84, § 703(2)–(5), added par. (3), redesignated former pars. (3) to (6) as (4) to (7), respectively, in par. (4) substituted "paragraph (7)" for "paragraph (6)", and in par. (6)(A) substituted "paragraph (5)" for "paragraph (4)".

2008—Subsec. (a)(2)(E). Pub. L. 110–317 added subpar. (E).

Subsec. (a)(2)(F). Pub. L. 110–417 added subpar. (F).

Subsec. (a)(3). Pub. L. 110–181, § 1637(1), substituted "Except as provided in paragraph (6), transitional health care" for "Transitional health care".

Subsec. (a)(6). Pub. L. 110–181, § 1637(2), added par. (6).

2006—Subsec. (a)(5). Pub. L. 109–163 added par. (5).

2004—Subsec. (a)(1). Pub. L. 108–375, § 706(a)(3), struck out "applicable" before "time period" in introductory provisions.

Subsec. (a)(3). Pub. L. 108–375, § 706(a)(1), amended par. (3) generally. Prior to amendment, par. (3) read as follows: "Transitional health care shall be available under subsection (a) for a specified time period beginning on the date on which the member is separated as follows:

"(A) For members separated with less than six years of active service, 60 days.

"(B) For members separated with six or more years of active service, 120 days."

Subsec. (a)(4). Pub. L. 108–375, § 706(b), added par. (4).

2002—Subsec. (a)(1). Pub. L. 107–314, § 706(a), amended Pub. L. 107–107, § 736(a)(1). See 2001 Amendment note below.

Subsec. (e). Pub. L. 107–314, § 706(b), amended Pub. L. 107–107, § 736(b)(2). See 2001 Amendment note below.

Pub. L. 107–296 substituted "of Homeland Security" for "of Transportation".

2001—Subsec. (a)(1). Pub. L. 107–107, § 736(a)(1), as amended by Pub. L. 107–314, § 706(a), in introductory provisions, substituted "paragraph (3), a member of the armed forces who is separated from active duty as described in paragraph (2) (and the dependents of the member)" for "paragraph (2), a member of the armed forces who is involuntarily separated from active duty during the period beginning on October 1, 1990, and ending on December 31, 2001 (and the dependents of the member),".

Subsec. (a)(2). Pub. L. 107–107, § 736(a)(3), added par. (2). Former par. (2) redesignated (3).

Subsec. (a)(3). Pub. L. 107–107, § 736(a)(2), (4), redesignated par. (2) as (3) and struck out "involuntarily" before "separated" wherever appearing.

Subsec. (c)(1). Pub. L. 107–107, § 736(b)(1), struck out "during the period beginning on October 1, 1990, and ending on December 31, 2001" after "armed forces".

Subsec. (e). Pub. L. 107–107, § 736(b)(2), as amended by Pub. L. 107–314, § 706(b), substituted "the members of the Coast Guard and their dependents" for "the Coast Guard" in second sentence and struck out first sentence which read as follows: "The provisions of this section shall apply to members of the Coast Guard (and their dependents) involuntarily separated from active duty during the period beginning on October 1, 1994, and ending on December 31, 2001."

2000—Subsecs. (a)(1), (c)(1), (e). Pub. L. 106–398 substituted "December 31, 2001" for "September 30, 2001".

1998—Subsecs. (a)(1), (c)(1). Pub. L. 105–261, § 561(h)(1), substituted "during the period beginning on October 1, 1990, and ending on September 30, 2001" for "during the nine-year period beginning on October 1, 1990".

Subsec. (e). Pub. L. 105–261, § 561(h)(2), substituted "during the period beginning on October 1, 1994, and ending on September 30, 2001" for "during the five-year period beginning on October 1, 1994".

1994—Subsec. (e). Pub. L. 103–337 added subsec. (e).

1993—Subsecs. (a)(1), (c)(1). Pub. L. 103–160 substituted "nine-year period" for "five-year period".

1992—Subsec. (b)(1). Pub. L. 102–484, § 4407(a)(1), inserted at end "A conversion health policy offered under this paragraph shall provide coverage for not less than an 18-month period."

Subsec. (b)(2)(A). Pub. L. 102–484, § 4407(a)(2), substituted "18-month period" for "one-year period".

Subsec. (b)(4) to (6). Pub. L. 102–484, § 4407(a)(3), added pars. (4) to (6).

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–417, [div. A], title VII, § 734(b), Oct. 14, 2008, 122 Stat. 4513, provided that: "Subparagraph (F) of section 1145(a)(2) of title 10, United States Code, as added by subsection (a), shall apply with respect to members of the Armed Forces separated from active duty after the date of the enactment of this Act [Oct. 14, 2008]."

Amendment by Pub. L. 110–317 applicable with respect to any sole survivorship discharge granted after Aug. 29, 2008, see section 10 of Pub. L. 110–317, set out

as a note under section 2108 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–314, div. A, title VII, §706(c), Dec. 2, 2002, 116 Stat. 2585, provided that: ''The amendments made by this section [amending this section] shall take effect as of December 28, 2001, and as if included in the National Defense Authorization Act for Fiscal Year 2002 [Pub. L. 107–107] as enacted.''

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 applicable only to members of the Coast Guard who are separated after Sept. 30, 1994, see section 542(e) of Pub. L. 103–337, set out as a note under section 1141 of this title.

TRANSITIONAL HEALTH BENEFITS FOR CERTAIN MEMBERS OF THE NATIONAL GUARD SERVING UNDER ORDERS IN RESPONSE TO THE CORONAVIRUS (COVID–19)

Pub. L. 116–283, div. A, title VII, §733, Jan. 1, 2021, 134 Stat. 3702, provided that:

''(a) IN GENERAL.—The Secretary of Defense shall provide to a member of the National Guard separating from active service after serving on full-time National Guard duty pursuant to section 502(f) of title 32, United States Code, the health benefits authorized under section 1145 of title 10, United States Code, for a member of a reserve component separating from active duty, as referred to in subsection (a)(2)(B) of such section 1145, if the active service from which the member of the National Guard is separating was in support of the whole of government response to the coronavirus (COVID–19).

''(b) DEFINITIONS.—In this section, the terms 'active duty', 'active service', and 'full-time National Guard duty' have the meanings given those terms in section 101(d) of title 10, United States Code.''

MENTAL HEALTH CARE TREATMENT THROUGH TELEMEDICINE

Pub. L. 113–66, div. A, title VII, §702, Dec. 26, 2013, 127 Stat. 790, provided that:

''(a) PROVISION OF MENTAL HEALTH CARE VIA TELEMEDICINE.—

''(1) IN GENERAL.—In carrying out the Transitional Assistance Management Program, the Secretary of Defense may extend the coverage of such program for covered individuals for an additional 180 days for mental health care provided through telemedicine.

''(2) REPORT.—If the Secretary extends coverage under paragraph (1), by not later than one year after the date of carrying out such extension, the Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report that includes the following:

''(A) The rate at which individuals are using the extended coverage provided pursuant to paragraph (1).

''(B) A description of the mental health care provided pursuant to such subsection.

''(C) An analysis of how the Secretary and the Secretary of Veterans Affairs coordinate the continuation of care with respect to veterans who are no longer eligible for the Transitional Assistance Management Program.

''(D) Any other factors the Secretary of Defense determines necessary with respect to extending coverage of the Transitional Assistance Management Program.

''(3) TERMINATION.—The authority of the Secretary to carry out subsection (a) shall terminate on December 31, 2018.

''(b) REPORT ON USE OF TELEMEDICINE.—

''(1) IN GENERAL.—Not later than 270 days after the date of the enactment of this Act [Dec. 26, 2013], the Secretary shall submit to the congressional defense committees a report on the use of telemedicine to improve the diagnosis and treatment of post-traumatic stress disorder, traumatic brain injuries, and mental health conditions.

''(2) ELEMENTS.—The report under paragraph (1) shall address the following:

''(A) The current status, as of the date of the report, of telemedicine initiatives within the Department of Defense to diagnose and treat post-traumatic stress disorder, traumatic brain injuries, and mental health conditions.

''(B) Plans for integrating telemedicine into the military health care system, including in health care delivery, records management, medical education, public health, and private sector partnerships.

''(C) The status of the integration of the telemedicine initiatives of the Department with the telemedicine initiatives of the Department of Veterans Affairs.

''(D) A description and assessment of challenges to the use of telemedicine as a means of in-home treatment, outreach in rural areas, and in settings that provide group treatment or therapy in connection with treatment of post-traumatic stress disorder, traumatic brain injuries, and mental health conditions, and a description and assessment of efforts to address such challenges.

''(E) A description of privacy issues related to the use of telemedicine for the treatment of post-traumatic stress disorder, traumatic brain injuries, and mental health conditions, and recommendations for mechanisms to remedy any privacy concerns relating to such use of telemedicine.

''(F) A description of professional licensing issues with respect to licensed medical providers who provide treatment using telemedicine.

''(c) DEFINITIONS.—In this section:

''(1) The term 'covered individual' means an individual who—

''(A) during the initial 180-day period of being enrolled in the Transitional Assistance Management Program, received any mental health care; or

''(B) during the one-year period preceding separation or discharge from the Armed Forces, received any mental health care.

''(2) The term 'telemedicine' means the use by a health care provider of telecommunications to assist in the diagnosis or treatment of a patient's medical condition.''

TEMPORARY EXTENSION OF TRANSITIONAL HEALTH CARE BENEFITS

Pub. L. 108–136, div. A, title VII, §704, Nov. 24, 2003, 117 Stat. 1527, which provided during the period beginning on Nov. 24, 2003, and ending on Dec. 31, 2004, for the extension of transitional health care benefits to 180 days for members separated from active duty, was repealed by Pub. L. 108–375, div. A, title VII, §706(a)(2)(A), Oct. 28, 2004, 118 Stat. 1983.

Pub. L. 108–106, title I, §1117, Nov. 6, 2003, 117 Stat. 1218, which provided during the period beginning on Nov. 6, 2003, and ending on Sept. 30, 2004, for the extension of transitional health care benefits to 180 days for members separated from active duty, was repealed by Pub. L. 108–375, div. A, title VII, §706(a)(2)(B), Oct. 28, 2004, 118 Stat. 1983.

APPLICATION OF AMENDMENTS BY PUB. L. 102–484 TO EXISTING CONTRACTS

For provisions relating to the application of the amendments by section 4407 of Pub. L. 102–484 to conversion health policies provided under subsec. (b) of this section and in effect on Oct. 23, 1992, see section 4407(c) of Pub. L. 102–484, set out as a note under section 1086a of this title.

TRANSITIONAL PROVISION

Pub. L. 102–484, div. D, title XLIV, §4408(b), Oct. 23, 1992, 106 Stat. 2712, provided that: ''The Secretary of

Defense shall provide a period for the enrollment for health benefits coverage under this section [enacting section 1078a of this title and provisions set out as notes under this section and section 1086a of this title] by members and former members of the Armed Services for whom the availability of transitional health care under section 1145(a) of title 10, United States Code, expires before the October 1, 1994, implementation date of section 1078a of such title, as added by subsection (a).''

TERMINATION OF APPLICABILITY OF OTHER CONVERSION HEALTH POLICIES

For provisions prohibiting purchase of, and allowing cancellation of, conversion health policies under subsec. (b) of this section on or after Oct. 1, 1994, see section 4408(c) of Pub. L. 102–484, set out as a note under section 1086a of this title.

§ 1146. Commissary and exchange benefits

(a) MEMBERS INVOLUNTARILY SEPARATED FROM ACTIVE DUTY.—The Secretary of Defense shall prescribe regulations to allow a member of the armed forces who is involuntarily separated from active duty during the period beginning on October 1, 2007, and ending on December 31, 2018, to continue to use commissary and exchange stores during the two-year period beginning on the date of the involuntary separation of the member in the same manner as a member on active duty. The Secretary concerned shall implement this provision for Coast Guard members involuntarily separated during the same period.

(b) MEMBERS INVOLUNTARILY SEPARATED FROM SELECTED RESERVE.—The Secretary of Defense shall prescribe regulations to allow a member of the Selected Reserve of the Ready Reserve who is involuntarily separated from the Selected Reserve as a result of the exercise of the force shaping authority of the Secretary concerned under section 647 of this title or other force shaping authority during the period beginning on October 1, 2007, and ending on December 31, 2018, to continue to use commissary and exchange stores during the two-year period beginning on the date of the involuntary separation of the member in the same manner as a member on active duty. The Secretary concerned shall implement this provision for Coast Guard members involuntarily separated during the same period when the Coast Guard is not operating as a service in the Navy.

(c) MEMBERS RECEIVING SOLE SURVIVORSHIP DISCHARGE.—A member of the armed forces who receives a sole survivorship discharge (as defined in section 1174(i) of this title) is entitled to continue to use commissary and exchange stores and morale, welfare, and recreational facilities in the same manner as a member on active duty during the two-year period beginning on the later of the following dates:

(1) The date of the separation of the member.

(2) The date on which the member is first notified of the member's entitlement to benefits under this section.

(d) EMERGENCY RESPONSE PROVIDERS DURING A DECLARED MAJOR DISASTER OR EMERGENCY.—The Secretary of Defense may prescribe regulations to allow an emergency response provider (as that term is defined in section 2 of the Homeland Security Act of 2002 (Public Law 107–296; 6 U.S.C. 101)) to use a mobile commissary or exchange store deployed to an area covered by a declaration of a major disaster or emergency under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170).

(Added Pub. L. 101–510, div. A, title V, § 502(a)(1), Nov. 5, 1990, 104 Stat. 1556; amended Pub. L. 103–160, div. A, title V, § 561(i), Nov. 30, 1993, 107 Stat. 1668; Pub. L. 103–337, div. A, title V, § 542(a)(5), Oct. 5, 1994, 108 Stat. 2768; Pub. L. 105–261, div. A, title V, § 561(i), Oct. 17, 1998, 112 Stat. 2026; Pub. L. 106–398, § 1 [[div. A], title V, § 571(i)], Oct. 30, 2000, 114 Stat. 1654, 1654A–135; Pub. L. 110–181, div. A, title VI, § 651, Jan. 28, 2008, 122 Stat. 162; Pub. L. 110–317, § 5, Aug. 29, 2008, 122 Stat. 3528; Pub. L. 111–383, div. A, title X, § 1075(b)(16), Jan. 7, 2011, 124 Stat. 4369; Pub. L. 112–239, div. A, title VI, § 631, title X, § 1076(f)(16), Jan. 2, 2013, 126 Stat. 1781, 1952; Pub. L. 116–283, div. A, title VI, § 632, Jan. 1, 2021, 134 Stat. 3682.)

AMENDMENTS

2021—Subsec. (d). Pub. L. 116–283 added subsec. (d).

2013—Subsec. (a). Pub. L. 112–239, § 631(a)(1), (b)(1), substituted ''2018'' for ''2012'' and ''The Secretary concerned'' for ''The Secretary of Transportation''.

Subsec. (b). Pub. L. 112–239, § 1076(f)(16), inserted ''when the Coast Guard is not operating as a service in the Navy'' before period at end.

Pub. L. 112–239, § 631(a)(2), (b)(2), substituted ''2018'' for ''2012'' and ''The Secretary concerned'' for ''The Secretary of Homeland Security''.

2011—Subsec. (a). Pub. L. 111–383, § 1075(b)(16)(A), struck out ''(a) BENEFITS FOR MEMBERS INVOLUNTARILY SEPARATED.—'' before ''The Secretary''.

Subsec. (b). Pub. L. 111–383, § 1075(b)(16)(B), redesignated subsec. (b) relating to benefits for members receiving sole survivorship discharge as (c).

Subsec. (c). Pub. L. 111–383, § 1075(b)(16)(B), (C), redesignated subsec. (b) relating to benefits for members receiving sole survivorship discharge as (c), struck out ''Benefits for'' before ''Members'' in heading, and substituted ''armed forces'' for ''Armed Forces'' in introductory provisions and ''the member's entitlement'' for ''the members entitlement'' in par. (2).

2008—Pub. L. 110–317 substituted ''(a) BENEFITS FOR MEMBERS INVOLUNTARILY SEPARATED.—The Secretary of Defense'' for ''The Secretary of Defense'' and added subsec. (b) relating to benefits for members receiving sole survivorship discharge.

Pub. L. 110–181 inserted ''(a) MEMBERS INVOLUNTARILY SEPARATED FROM ACTIVE DUTY.—'' before ''The Secretary of Defense'', substituted ''October 1, 2007, and ending on December 31, 2012'' for ''October 1, 1990, and ending on December 31, 2001'' in first sentence and ''the same period'' for ''the period beginning on October 1, 1994, and ending on December 31, 2001'' in second sentence, and added subsec. (b) relating to members involuntarily separated from the Selected Reserve.

2000—Pub. L. 106–398 substituted ''December 31, 2001'' for ''September 30, 2001'' in two places.

1998—Pub. L. 105–261 substituted ''during the period beginning on October 1, 1990, and ending on September 30, 2001'' for ''during the nine-year period beginning on October 1, 1990'' and ''during the period beginning on October 1, 1994, and ending on September 30, 2001'' for ''during the five-year period beginning on October 1, 1994''.

1994—Pub. L. 103–337 inserted at end ''The Secretary of Transportation shall implement this provision for Coast Guard members involuntarily separated during the five-year period beginning October 1, 1994.''

1993—Pub. L. 103–160 substituted ''nine-year period'' for ''five-year period''.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–317 applicable with respect to any sole survivorship discharge granted after

Sept. 11, 2001, see section 10 of Pub. L. 110–317, set out as a note under section 2108 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 applicable only to members of the Coast Guard who are separated after Sept. 30, 1994, see section 542(e) of Pub. L. 103–337, set out as a note under section 1141 of this title.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 1147. Use of military family housing

(a) TRANSITION FOR INVOLUNTARILY SEPARATED MEMBERS.—(1) The Secretary of a military department may, pursuant to regulations prescribed by the Secretary of Defense, permit individuals who are involuntarily separated during the period beginning on October 1, 2012, and ending on December 31, 2018, to continue for not more than 180 days after the date of such separation to reside (along with other members of the individual's household) in military family housing provided or leased by the Department of Defense to such individual as a member of the armed forces.

(2) The Secretary concerned may prescribe regulations to permit members of the Coast Guard who are involuntarily separated during the period beginning on October 1, 2012, and ending on December 31, 2018, to continue for not more than 180 days after the date of such separation to reside (along with others of the member's household) in military family housing provided or leased by the Coast Guard to the individual as a member of the armed forces.

(b) RENTAL CHARGES.—The Secretary concerned, pursuant to such regulations, shall require a reasonable rental charge for the continued use of military family housing under subsection (a), except that such Secretary may waive all or any portion of such charge in any case of hardship.

(c) NO TRANSITIONAL BASIC ALLOWANCE FOR HOUSING.—Nothing in this section shall be construed to authorize the Secretary concerned to continue to provide for any period of time to an individual who is involuntarily separated all or any portion of a basic allowance for housing to which the individual was entitled under section 403 of title 37 immediately before being involuntarily separated, even in cases in which the individual or members of the individual's household continue to reside after the separation in a housing unit acquired or constructed under the alternative authority of subchapter IV of chapter 169 of this title that is not owned or leased by the United States.

(Added Pub. L. 101–510, div. A, title V, § 502(a)(1), Nov. 5, 1990, 104 Stat. 1556; amended Pub. L. 103–160, div. A, title V, § 561(i), Nov. 30, 1993, 107 Stat. 1668; Pub. L. 103–337, div. A, title V, § 542(a)(6), Oct. 5, 1994, 108 Stat. 2768; Pub. L. 105–261, div. A, title V, § 561(j), Oct. 17, 1998, 112 Stat. 2026; Pub. L. 106–398, § 1 [[div. A], title V, § 571(j)], Oct. 30, 2000, 114 Stat. 1654, 1654A–135; Pub. L. 112–239, div. A, title VI, § 632, Jan. 2, 2013, 126 Stat. 1782.)

AMENDMENTS

2013—Subsec. (a)(1). Pub. L. 112–239, § 632(a)(1), substituted ''October 1, 2012, and ending on December 31, 2018'' for ''October 1, 1990, and ending on December 31, 2001''.

Subsec. (a)(2). Pub. L. 112–239, § 632(a)(2), (c), substituted ''The Secretary concerned'' for ''The Secretary of Transportation'' and ''October 1, 2012, and ending on December 31, 2018'' for ''October 1, 1994, and ending on December 31, 2001''.

Subsec. (c). Pub. L. 112–239, § 632(b), added subsec. (c).

2000—Subsec. (a). Pub. L. 106–398 substituted ''December 31, 2001'' for ''September 30, 2001'' in pars. (1) and (2).

1998—Subsec. (a)(1). Pub. L. 105–261, § 561(j)(1), substituted ''during the period beginning on October 1, 1990, and ending on September 30, 2001'' for ''during the nine-year period beginning on October 1, 1990''.

Subsec. (a)(2). Pub. L. 105–261, § 561(j)(2), substituted ''during the period beginning on October 1, 1994, and ending on September 30, 2001'' for ''during the five-year period beginning on October 1, 1994''.

1994—Subsec. (a). Pub. L. 103–337 designated existing provisions as par. (1) and added par. (2).

1993—Subsec. (a). Pub. L. 103–160 substituted ''nine-year period'' for ''five-year period''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 applicable only to members of the Coast Guard who are separated after Sept. 30, 1994, see section 542(e) of Pub. L. 103–337, set out as a note under section 1141 of this title.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 1148. Relocation assistance for personnel overseas

The Secretary of Defense and the Secretary of Homeland Security shall develop a program specifically to assist members of the armed forces stationed overseas who are preparing for discharge or release from active duty, and the dependents of such members, in readjusting to civilian life. The program shall focus on the special needs and requirements of such members and dependents due to their overseas locations and shall include, to the maximum extent possible, computerized job relocation assistance and job search information.

(Added Pub. L. 101–510, div. A, title V, § 502(a)(1), Nov. 5, 1990, 104 Stat. 1556; amended Pub. L. 103–337, div. A, title V, § 542(a)(7), Oct. 5, 1994, 108 Stat. 2768; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

AMENDMENTS

2002—Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

1994—Pub. L. 103–337 inserted ''and the Secretary of Transportation'' after ''Secretary of Defense''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of

Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 applicable only to members of the Coast Guard who are separated after Sept. 30, 1994, see section 542(e) of Pub. L. 103–337, set out as a note under section 1141 of this title.

PILOT PROGRAM

Pub. L. 101–510, div. A, title V, § 502(d), Nov. 5, 1990, 104 Stat. 1558, required the Secretary of Defense to carry out the program required by this section during fiscal year 1991 at not less than 10 military installations located outside the United States.

§ 1149. Excess leave and permissive temporary duty

Under regulations prescribed by the Secretary of Defense or the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, the Secretary concerned shall grant a member of the armed forces who is to be involuntarily separated such excess leave (for a period not in excess of 30 days), or such permissive temporary duty (for a period not in excess of 10 days), as the member requires in order to facilitate the member's carrying out necessary relocation activities (such as job search and residence search activities), unless to do so would interfere with military missions.

(Added Pub. L. 101–510, div. A, title V, § 502(a)(1), Nov. 5, 1990, 104 Stat. 1557; amended Pub. L. 103–337, div. A, title V, § 542(a)(8), Oct. 5, 1994, 108 Stat. 2768; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 112–239, div. A, title X, § 1076(f)(17), Jan. 2, 2013, 126 Stat. 1952.)

AMENDMENTS

2013—Pub. L. 112–239 inserted ''when it is not operating as a service in the Navy'' after ''Coast Guard''.

2002—Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

1994—Pub. L. 103–337 inserted ''or the Secretary of Transportation with respect to the Coast Guard'' after ''Secretary of Defense'' and struck out ''of the military department'' before ''concerned''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 applicable only to members of the Coast Guard who are separated after Sept. 30, 1994, see section 542(e) of Pub. L. 103–337, set out as a note under section 1141 of this title.

§ 1150. Affiliation with Guard and Reserve units: waiver of certain limitations

(a) PREFERENCE FOR CERTAIN PERSONS.—A person who is separated from the armed forces during the period beginning on October 1, 1990, and ending on December 31, 2001, and who applies to become a member of a National Guard or Reserve unit within one year after the date of such separation shall be given preference over other equally qualified applicants for existing or projected vacancies within the unit to which the member applies.

(b) LIMITED WAIVER OF STRENGTH LIMITATIONS.—Under regulations prescribed by the Secretary of Defense, a person covered by subsection (a) who enters a National Guard or Reserve unit pursuant to an application described in such subsection may be retained in that unit for up to three years without regard to reserve-component strength limitations so long as the individual maintains good standing in that unit.

(c) COAST GUARD.—This section shall apply to the Coast Guard in the same manner and to the same extent as it applies to the Department of Defense. The Secretary of Homeland Security shall prescribe regulations to implement this section for the Coast Guard when it is not operating as a service in the Navy.

(Added Pub. L. 101–510, div. A, title V, § 502(a)(1), Nov. 5, 1990, 104 Stat. 1557; amended Pub. L. 102–484, div. A, title V, § 514, Oct. 23, 1992, 106 Stat. 2406; Pub. L. 103–160, div. A, title V, § 561(j), Nov. 30, 1993, 107 Stat. 1668; Pub. L. 103–337, div. A, title V, § 542(a)(9), Oct. 5, 1994, 108 Stat. 2768; Pub. L. 105–261, div. A, title V, § 561(p), Oct. 17, 1998, 112 Stat. 2027; Pub. L. 106–398, § 1 [[div. A], title V, § 571(*o*)], Oct. 30, 2000, 114 Stat. 1654, 1654A–135; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 112–239, div. A, title X, § 1076(f)(18), Jan. 2, 2013, 126 Stat. 1952.)

AMENDMENTS

2013—Subsec. (c). Pub. L. 112–239 inserted ''when it is not operating as a service in the Navy'' after ''for the Coast Guard''.

2002—Subsec. (c). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

2000—Subsec. (a). Pub. L. 106–398 substituted ''December 31, 2001'' for ''September 30, 2001''.

1998—Subsec. (a). Pub. L. 105–261 substituted ''during the period beginning on October 1, 1990, and ending on September 30, 2001'' for ''during the nine-year period beginning on October 1, 1990''.

1994—Subsec. (c). Pub. L. 103–337 added subsec. (c).

1993—Subsec. (a). Pub. L. 103–160 substituted ''nine-year period'' for ''five-year period''.

1992—Subsec. (a). Pub. L. 102–484 struck out ''involuntarily'' after ''who is''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 applicable only to members of the Coast Guard who are separated after Sept. 30, 1994, see section 542(e) of Pub. L. 103–337, set out as a note under section 1141 of this title.

§ 1151. Retention of assistive technology and services provided before separation

(a) AUTHORITY.—A member of the armed forces who is provided an assistive technology or assistive technology device for a severe or debilitating illness or injury incurred or aggravated by such member while on active duty may, under regulations prescribed by the Secretary of Defense, be authorized to retain such assistive technology or assistive technology device upon the separation of the member from active service.

(b) DEFINITIONS.—In this section, the terms ''assistive technology'' and ''assistive tech-

nology device'' have the meaning given those terms in section 3 of the Assistive Technology Act of 1998 (29 U.S.C. 3002).

(Added Pub. L. 109–364, div. A, title V, § 561(a), Oct. 17, 2006, 120 Stat. 2219.)

PRIOR PROVISIONS

A prior section 1151, added Pub. L. 102–484, div. D, title XLIV, § 4441(a)(1), Oct. 23, 1992, 106 Stat. 2725; amended Pub. L. 103–35, title II, § 201(f)(1), May 31, 1993, 107 Stat. 99; Pub. L. 103–160, div. A, title V, § 561(k), title XIII, § 1331(a)–(c)(1), (d)–(g), Nov. 30, 1993, 107 Stat. 1668, 1791–1793; Pub. L. 103–337, div. A, title V, § 543(c), title X, § 1070(a)(7), title XI, § 1131(a), (b), Oct. 5, 1994, 108 Stat. 2769, 2855, 2871; Pub. L. 103–382, title III, § 391(b)(1), (2), Oct. 20, 1994, 108 Stat. 4021; Pub. L. 104–106, div. A, title XV, § 1503(a)(10), Feb. 10, 1996, 110 Stat. 511; Pub. L. 104–201, div. A, title V, § 576(a), Sept. 23, 1996, 110 Stat. 2535; Pub. L. 105–85, div. A, title X, § 1073(a)(19), Nov. 18, 1997, 111 Stat. 1901, related to assistance to separated members to obtain certification and employment as teachers or employment as teachers' aides, prior to repeal by Pub. L. 106–65, div. A, title XVII, § 1707(a)(1), Oct. 5, 1999, 113 Stat. 823.

§ 1152. Assistance to eligible members and former members to obtain employment with law enforcement agencies

(a) PLACEMENT PROGRAM.—The Secretary of Defense, and the Secretary of Homeland Security with respect to the Coast Guard, may enter into an agreement with the Attorney General to establish or participate in a program to assist eligible members and former members of the armed forces to obtain employment as law enforcement officers with eligible law enforcement agencies following the discharge or release of such members or former members from active duty. Eligible law enforcement agencies shall consist of State law enforcement agencies, local law enforcement agencies, and Indian tribes that perform law enforcement functions (as determined by the Secretary of the Interior).

(b) ELIGIBLE MEMBERS.—Any individual who, during the 6-year period beginning on October 1, 1993, is a member of the armed forces and is separated with an honorable discharge or is released from service on active duty characterized as honorable by the Secretary concerned shall be eligible to participate in a program covered by an agreement referred to in subsection (a).

(c) SELECTION.—In the selection of applicants for participation in a program covered by an agreement referred to in subsection (a), preference shall be given to a member or former member who—

(1) is selected for involuntary separation, is approved for separation under section 1174a or 1175 of this title, or retires pursuant to the authority provided in section 4403 of the Defense Conversion, Reinvestment, and Transition Assistance Act of 1992 (division D of Public Law 102–484; 10 U.S.C. 1293 note); and

(2) has a military occupational specialty, training, or experience related to law enforcement (such as service as a member of the military police) or satisfies such other criteria for selection as the Secretary, the Attorney General, or a participating eligible law enforcement agency prescribed in accordance with the agreement.

(d) GRANTS TO FACILITATE EMPLOYMENT.—(1) The Secretary of Defense, and the Secretary of Homeland Security with respect to the Coast Guard, may provide funds to the Attorney General for grants under this section to reimburse participating eligible law enforcement agencies for costs, including salary and fringe benefits, of employing members or former members pursuant to a program referred to in subsection (a).

(2) No grant with respect to an eligible member or former member may exceed a total of $50,000.

(3) Any grant with respect to an eligible member or former member shall be disbursed within 5 years after the date of the placement of a member or former member with a participating eligible law enforcement agency.

(4) Preference in awarding grants through existing law enforcement hiring programs shall be given to State or local law enforcement agencies or Indian tribes that agree to hire eligible members and former members.

(e) ADMINISTRATIVE EXPENSES.—Ten percent of the amount, if any, appropriated for a fiscal year to carry out the program established pursuant to subsection (a) may be used to administer the program.

(f) REQUIREMENT FOR APPROPRIATION.—No person may be selected to participate in the program established pursuant to subsection (a) unless a sufficient amount of appropriated funds is available at the time of the selection to satisfy the obligations to be incurred by the United States under an agreement referred to in subsection (a) that applies with respect to the person.

(g) AUTHORITY TO EXPAND PLACEMENT TO INCLUDE FIREFIGHTERS.—(1) The Secretary may expand the placement activities authorized by subsection (a) to include the placement of eligible members and former members and eligible civilian employees of the Department of Defense as firefighters or members of rescue squads or ambulance crews with public fire departments.

(2) The expansion authorized by this subsection may be made through a program covered by an agreement referred to in subsection (a), if feasible, or in such other manner as the Secretary considers appropriate.

(3) A civilian employee of the Department of Defense shall be eligible to participate in the expanded placement activities authorized under this subsection if the employee, during the six-year period beginning October 1, 1993, is terminated from such employment as a result of reductions in defense spending or the closure or realignment of a military installation, as determined by the Secretary of Defense.

(Added Pub. L. 103–160, div. A, title XIII, § 1332(a), Nov. 30, 1993, 107 Stat. 1793; amended Pub. L. 103–337, div. A, title V, § 543(d), title XI, § 1132(a)(1), Oct. 5, 1994, 108 Stat. 2771, 2872; Pub. L. 104–106, div. A, title XV, § 1503(a)(11), Feb. 10, 1996, 110 Stat. 511; Pub. L. 104–201, div. A, title V, § 575, Sept. 23, 1996, 110 Stat. 2535; Pub. L. 105–85, div. A, title X, § 1073(a)(20), Nov. 18, 1997, 111 Stat. 1901; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

AMENDMENTS

2002—Subsecs. (a), (d)(1). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

1997—Subsec. (g). Pub. L. 105–85 inserted ''(1)'' before ''The Secretary may''.

1996—Subsec. (g). Pub. L. 104–201, in heading, substituted ''Authority To Expand Placement To Include Firefighters'' for ''Conditional Expansion of Placement to Include Firefighters'', in par. (1), substituted ''The Secretary may'' for ''(1) Subject to paragraph (2), the Secretary may'', and in par. (2), struck out ''The Secretary may implement the expansion authorized by this subsection only if the Secretary certifies to Congress not later than April 3, 1994, that such expansion will facilitate personnel transition programs of the Department of Defense.'' after ''(2)'' and inserted ''authorized by this subsection'' after ''The expansion''.

Subsec. (g)(2). Pub. L. 104–106 substituted ''not later than April 3, 1994,'' for ''not later than 180 days after the date of the enactment of the National Defense Authorization Act for Fiscal Year 1995''.

1994—Pub. L. 103–337, §543(d), inserted '', and the Secretary of Transportation with respect to the Coast Guard,'' after ''Secretary of Defense'' in subsecs. (a) and (d).

Pub. L. 103–337, §1132(a)(1), substituted ''eligible members and former members'' for ''separated members'' in section catchline and amended text generally, substituting subsecs. (a) to (g) for former subsecs. (a) to (f).

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

§ 1153. Assistance to separated members to obtain employment with health care providers

(a) PLACEMENT PROGRAM.—The Secretary of Defense, and the Secretary of Homeland Security with respect to the Coast Guard, may establish a program to assist eligible members of the armed forces to obtain employment with health care providers upon their discharge or release from active duty.

(b) ELIGIBLE MEMBERS.—(1) Except as provided in paragraph (2), a member shall be eligible for selection to participate in the program established under subsection (a) if the member—

(A) is selected for involuntary separation, is approved for separation under section 1174a or 1175 of this title, or retires pursuant to the authority provided in section 4403 of the Defense Conversion, Reinvestment, and Transition Assistance Act of 1992 (division D of Public Law 102–484; 10 U.S.C. 1293 note) during the six-year period beginning on October 1, 1993;

(B) has received an associate degree, baccalaureate, or advanced degree from an accredited institution of higher education or a junior or community college; and

(C) has a military occupational specialty, training, or experience related to health care, is likely to be able to obtain such training in a short period of time (as determined by the Secretary concerned), or satisfies such other criteria for selection as the Secretary concerned may prescribe.

(2) For purposes of this section, a former member of the armed forces who did not meet the minimum educational qualification criterion set forth in paragraph (1)(B) for placement assistance before discharge or release from active duty shall be considered to be a member satisfying such educational qualification criterion upon satisfying that criterion within five years after discharge or release from active duty.

(3) A member who is discharged or released from service under other than honorable conditions shall not be eligible to participate in the program.

(c) SELECTION OF PARTICIPANTS.—(1) The Secretary of Defense, and the Secretary of Homeland Security with respect to the Coast Guard, shall select members to participate in the program established under subsection (a) on the basis of applications submitted to the Secretary concerned not later than one year after the date of the discharge or release of the members from active duty or, in the case of an applicant becoming educationally qualified for teacher placement assistance in accordance with subsection (b)(2), not later than one year after the date on which the applicant becomes educationally qualified. An application shall be in such form and contain such information as the Secretaries may require.

(2) The Secretary of Defense, and the Secretary of Homeland Security with respect to the Coast Guard, may not select a member to participate in the program unless the Secretary concerned has sufficient appropriations for the placement program available at the time of the selection to satisfy the obligations to be incurred by the United States under subsection (d) with respect to that member.

(3)(A) The Secretaries shall provide under the program for identifying, during each fiscal year in the period referred to in subsection (b)(1)(A), noncommissioned officers who, on or before the end of such fiscal year, will have completed 10 or more years of continuous active duty, who have the potential to perform competently in employment positions with health care providers, but who do not satisfy the minimum educational qualification criterion under subsection (b)(1)(B) for placement assistance.

(B) The Secretaries shall inform noncommissioned officers identified under subparagraph (A) of the opportunity to qualify in accordance with subsection (b)(2) for placement assistance under the program.

(d) GRANTS TO FACILITATE EMPLOYMENT.—(1) The Secretary of Defense and the Secretary of Homeland Security may enter into an agreement with a health care provider to assist eligible members selected under subsection (c) to obtain suitable employment with the health care provider. Under such an agreement, a health care provider shall agree to employ a participant in the program on a full-time basis for at least five years.

(2) Under an agreement referred to in paragraph (1), the Secretary concerned shall agree to pay to the health care provider involved an amount based upon the basic salary paid by the health care provider to the participant. The rate of payment by the Secretary concerned shall be as follows:

(A) For the first year of employment, 50 percent of the basic salary, except that the payment may not exceed $25,000.

(B) For the second year of employment, 40 percent of the basic salary, except that the payment may not exceed $10,000.

(C) For the third year of employment, 30 percent of the basic salary, except that the payment may not exceed $7,500.

(D) For the fourth year of employment, 20 percent of the basic salary, except that the payment may not exceed $5,000.

(E) For the fifth year of employment, 10 percent of the basic salary, except that the payment may not exceed $2,500.

(3) Payments required under paragraph (2) may be made by the Secretary concerned in such installments as the Secretary concerned may determine.

(4) If a participant who is placed under this program leaves the employment of the health care provider before the end of the five years of required employment service, the provider shall reimburse the Secretary concerned in an amount that bears the same ratio to the total amount already paid under the agreement as the unserved portion bears to the five years of required service.

(5) The Secretary concerned may not make a grant under this subsection to a health care provider if the Secretary concerned determines that the provider terminated the employment of another employee in order to fill the vacancy so created with a participant in this program.

(e) AGREEMENTS WITH STATES.—(1) In addition to the agreements referred to in subsection (d)(1), the Secretary of Defense, and the Secretary of Homeland Security with respect to the Coast Guard, may enter into an agreement directly with a State to allow the State to arrange the placement of participants in the program with health care providers. Paragraphs (2) through (5) of subsection (d) shall apply with respect to any placement made through such an agreement.

(2) The Secretary concerned may reserve up to 10 percent of the funds made available to carry out the program for a fiscal year for the placement of participants through agreements entered into under paragraph (1).

(f) DEFINITIONS.—In this section, the term ''State'' includes the District of Columbia, American Samoa, the Federated States of Micronesia, Guam, the Republic of the Marshall Islands, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, Palau, and the Virgin Islands.

(Added Pub. L. 103–160, div. A, title XIII, §1332(b), Nov. 30, 1993, 107 Stat. 1795; amended Pub. L. 103–337, div. A, title V, §543(e), Oct. 5, 1994, 108 Stat. 2771; Pub. L. 107–296, title XVII, §1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

AMENDMENTS

2002—Subsecs. (a), (c)(1), (2), (d)(1), (e)(1). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

1994—Subsec. (a). Pub. L. 103–337, §543(e)(1), inserted '', and the Secretary of Transportation with respect to the Coast Guard,'' after ''Secretary of Defense''.

Subsec. (b)(1). Pub. L. 103–337, §543(e)(2), struck out ''by the Secretary of Defense'' after ''selection'' in introductory provisions and inserted ''concerned'' after ''Secretary'' in two places in subpar. (C).

Subsec. (c)(1). Pub. L. 103–337, §543(e)(3), inserted '', and the Secretary of Transportation with respect to the Coast Guard,'' after ''Secretary of Defense'' and ''concerned'' after ''to the Secretary'' and substituted ''Secretaries may'' for ''Secretary may''.

Subsec. (c)(2). Pub. L. 103–337, §543(e)(4), inserted ''of Defense, and the Secretary of Transportation with respect to the Coast Guard,'' after ''The Secretary'' and ''concerned'' after ''unless the Secretary''.

Subsec. (c)(3). Pub. L. 103–337, §543(e)(5), substituted ''Secretaries'' for ''Secretary'' in subpars. (A) and (B).

Subsec. (d)(1). Pub. L. 103–337, §543(e)(6)(A), inserted ''and the Secretary of Transportation'' after ''Secretary of Defense''.

Subsec. (d)(2) to (5). Pub. L. 103–337, §543(e)(6)(B), inserted ''concerned'' after ''Secretary'' wherever appearing.

Subsec. (e)(1). Pub. L. 103–337, §543(e)(7)(A), inserted '', and the Secretary of Transportation with respect to the Coast Guard,'' after ''the Secretary of Defense''.

Subsec. (e)(2). Pub. L. 103–337, §543(e)(7)(B), inserted ''concerned'' after ''The Secretary''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

§ 1154. Assistance to eligible members and former members to obtain employment as teachers: Troops-to-Teachers Program

(a) DEFINITIONS.—In this section:

(1) CHARTER SCHOOL.—The term ''charter school'' has the meaning given that term in section 4310 of the Elementary and Secondary Education Act of 1965.

(2) ELIGIBLE SCHOOL.—The term ''eligible school'' means—

(A) a public school, including a charter school, at which—

(i) at least 30 percent of the students enrolled in the school are from families with incomes below 185 percent of poverty level (as defined by the Office of Management and Budget and revised at least annually in accordance with section 9(b)(1) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(b)(1)) applicable to a family of the size involved; or

(ii) at least 13 percent of the students enrolled in the school qualify for assistance under part B of the Individuals with Disabilities Education Act (20 U.S.C. 1411 et seq.); or

(B) a Bureau-funded school as defined in section 1141(3) of the Education Amendments of 1978 (25 U.S.C. 2021(3)).

(3) HIGH-NEED SCHOOL.—The term ''high-need school'' means—

(A) an elementary or middle school in which at least 50 percent of the enrolled students are children from low-income families, based on the number of children eligible for free and reduced priced lunches under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.), the number of children in families receiving assistance under the State program funded under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.), the number of children eligible to receive medical assistance under the Medicaid program, or a composite of these indicators;

(B) a high school in which at least 40 percent of enrolled students are children from low-income families, which may be calculated using comparable data from feeder schools; or

(C) a school that is in a local educational agency that is eligible under section 5211(b) of the Elementary and Secondary Education Act of 1965.

(4) MEMBER OF THE ARMED FORCES.—The term ''member of the armed forces'' includes a retired or former member of the armed forces.

(5) PARTICIPANT.—The term ''participant'' means an eligible member of the armed forces selected to participate in the Program.

(6) PROGRAM.—The term ''Program'' means the Troops-to-Teachers Program authorized by this section.

(7) SECRETARY.—The term ''Secretary'' means the Secretary of Defense.

(8) ADDITIONAL TERMS.—The terms ''elementary school'', ''local educational agency'', ''secondary school'', and ''State'' have the meanings given those terms in section 8101 of the Elementary and Secondary Education Act of 1965.

(b) PROGRAM AUTHORIZATION.—The Secretary of Defense may carry out a Troops-to-Teachers Program—

(1) to assist eligible members of the armed forces described in subsection (d) to meet the requirements necessary to become a teacher in a school described in paragraph (2); and

(2) to facilitate the employment of such members—

(A) by local educational agencies or charter schools that the Secretary of Education identifies as—

(i) receiving grants under part A of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.) as a result of having within their jurisdictions concentrations of children from low-income families; or

(ii) experiencing a shortage of teachers, in particular a shortage of science, mathematics, special education, foreign language, or career or technical teachers; and

(B) in elementary schools or secondary schools, or as career or technical teachers.

(c) COUNSELING AND REFERRAL SERVICES.—The Secretary may provide counseling and referral services to members of the armed forces who do not meet the eligibility criteria described in subsection (d), including the education qualification requirements under paragraph (3)(B) of such subsection.

(d) ELIGIBILITY AND APPLICATION PROCESS.—

(1) ELIGIBLE MEMBERS.—The following members of the armed forces are eligible for selection to participate in the Program:

(A) Any member who—

(i) on or after October 1, 1999, becomes entitled to retired or retainer pay under this title or title 14;

(ii) has an approved date of retirement that is within one year after the date on which the member submits an application to participate in the Program; or

(iii) has been transferred to the Retired Reserve.

(B) Any member who, on or after January 8, 2002—

(i)(I) is separated or released from active duty after four or more years of continuous active duty immediately before the separation or release; or

(II) has completed a total of at least six years of active duty service, six years of service computed under section 12732 of this title, or six years of any combination of such service; and

(ii) executes a reserve commitment agreement for a period of not less than three years under paragraph (5)(B).

(C) Any member who, on or after January 8, 2002, is retired or separated for physical disability under chapter 61 of this title.

(2) SUBMISSION OF APPLICATIONS.—(A) Selection of eligible members of the armed forces to participate in the Program shall be made on the basis of applications submitted to the Secretary within the time periods specified in subparagraph (B). An application shall be in such form and contain such information as the Secretary may require.

(B) In the case of an eligible member of the armed forces described in subparagraph (A)(i), (A)(iii), (B), or (C) of paragraph (1), an application shall be considered to be submitted on a timely basis if the application is submitted not later than three years after the date on which the member is retired, transferred to the Retired Reserve, or separated or released from active duty, whichever applies to the member.

(3) SELECTION CRITERIA; EDUCATIONAL BACKGROUND REQUIREMENTS; HONORABLE SERVICE REQUIREMENT.—(A) The Secretary shall prescribe the criteria to be used to select eligible members of the armed forces to participate in the Program.

(B) If a member of the armed forces is applying for the Program to receive assistance for placement as an elementary school or secondary school teacher, the Secretary shall require the member to have received a baccalaureate or advanced degree from an accredited institution of higher education.

(C) If a member of the armed forces is applying for the Program to receive assistance for placement as a career or technical teacher, the Secretary shall require the member—

(i) to have received the equivalent of one year of college from an accredited institution of higher education or the equivalent in military education and training as certified by the Department of Defense; or

(ii) to otherwise meet the certification or licensing requirements for a career or technical teacher in the State in which the member seeks assistance for placement under the Program.

(D) A member of the armed forces is eligible to participate in the Program only if the member's last period of service in the armed forces was honorable, as characterized by the Secretary concerned. A member selected to participate in the Program before the retirement of the member, the transfer of the member to the Retired Reserve, or the separation or release of the member from active duty may continue to participate in the Program after the retirement, transfer, separation, or release only if the member's last period of service is characterized as honorable by the Secretary concerned.

(4) SELECTION PRIORITIES.—In selecting eligible members of the armed forces to receive assistance under the Program, the Secretary—

(A) shall give priority to members who—

(i) have educational or military experience in science, mathematics, special education, foreign language, or career or technical subjects; and

(ii) agree to seek employment as science, mathematics, foreign language, or special education teachers in elementary schools or secondary schools or in other schools under the jurisdiction of a local educational agency; and

(B) may give priority to members who agree to seek employment in a high-need school.

(5) OTHER CONDITIONS ON SELECTION.—(A) Subject to subsection (i), the Secretary may not select an eligible member of the armed forces to participate in the Program and receive financial assistance unless the Secretary has sufficient appropriations for the Program available at the time of the selection to satisfy the obligations to be incurred by the United States under subsection (e) with respect to the member.

(B) The Secretary may not select an eligible member of the armed forces described in paragraph (1)(B)(i) to participate in the Program and receive financial assistance under subsection (e) unless the member executes a written agreement to serve as a member of the Selected Reserve of a reserve component of the armed forces for a period of not less than three years.

(e) PARTICIPATION AGREEMENT AND FINANCIAL ASSISTANCE.—

(1) PARTICIPATION AGREEMENT.—(A) An eligible member of the armed forces selected to participate in the Program under subsection (b) and to receive financial assistance under this subsection shall be required to enter into an agreement with the Secretary in which the member agrees—

(i) within such time as the Secretary may require, to meet the requirements necessary to become a teacher in a school described in subsection (b)(2); and

(ii) to accept an offer of full-time employment as an elementary school teacher, secondary school teacher, or career or technical teacher for not less than three school years in an eligible school to begin the school year after obtaining that certification or licensing.

(B) The Secretary may waive the three-year commitment described in subparagraph (A)(ii) for a participant if the Secretary determines such waiver to be appropriate. If the Secretary provides the waiver, the participant shall not be considered to be in violation of the agreement and shall not be required to provide reimbursement under subsection (f), for failure to meet the three-year commitment.

(2) VIOLATION OF PARTICIPATION AGREEMENT; EXCEPTIONS.—A participant shall not be considered to be in violation of the participation agreement entered into under paragraph (1) during any period in which the participant—

(A) is pursuing a full-time course of study related to the field of teaching at an institution of higher education;

(B) is serving on active duty as a member of the armed forces;

(C) is temporarily totally disabled for a period of time not to exceed three years as established by sworn affidavit of a qualified physician;

(D) is unable to secure employment for a period not to exceed 12 months by reason of the care required by a spouse who is disabled;

(E) is unable to find full-time employment as a teacher in an eligible elementary school or secondary school or as a career or technical teacher for a single period not to exceed 27 months; or

(F) satisfies the provisions of additional reimbursement exceptions that may be prescribed by the Secretary.

(3) STIPEND AND BONUS FOR PARTICIPANTS.—(A) Subject to subparagraph (C), the Secretary may pay to a participant a stipend to cover expenses incurred by the participant to obtain the required educational level, certification, or licensing. Such stipend may not exceed $5,000 and may vary by participant.

(B)(i) Subject to subparagraph (C), the Secretary may pay a bonus to a participant who agrees in the participation agreement under paragraph (1) to accept full-time employment as an elementary school teacher, secondary school teacher, or career or technical teacher for not less than three school years in an eligible school.

(ii) The amount of the bonus may not exceed $5,000, unless the eligible school is a high-need school, in which case the amount of the bonus may not exceed $10,000. Within such limits, the bonus may vary by participant and may take into account the priority placements as determined by the Secretary.

(C)(i) The total number of stipends that may be paid under subparagraph (A) in any fiscal year may not exceed 5,000.

(ii) The total number of bonuses that may be paid under subparagraph (B) in any fiscal year may not exceed 3,000.

(iii) A participant may not receive a stipend under subparagraph (A) if the participant is eligible for benefits under chapter 33 of title 38.

(iv) The combination of a stipend under subparagraph (A) and a bonus under subparagraph (B) for any one participant may not exceed $10,000.

(4) TREATMENT OF STIPEND AND BONUS.—A stipend or bonus paid under this subsection to a participant shall be taken into account in determining the eligibility of the participant for Federal student financial assistance provided under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.).

(f) REIMBURSEMENT UNDER CERTAIN CIRCUMSTANCES.—

(1) REIMBURSEMENT REQUIRED.—A participant who is paid a stipend or bonus under this subsection shall be subject to the repayment provisions of section 373 of title 37 under the following circumstances:

(A) The participant fails to meet the requirements necessary to become a teacher in a school described in subsection (b)(2) or to

obtain employment as an elementary school teacher, secondary school teacher, or career or technical teacher as required by the participation agreement under subsection (e)(1).

(B) The participant voluntarily leaves, or is terminated for cause from, employment as an elementary school teacher, secondary school teacher, or career or technical teacher during the three years of required service in violation of the participation agreement.

(C) The participant executed a written agreement with the Secretary concerned under subsection (d)(5)(B) to serve as a member of a reserve component of the armed forces for a period of three years and fails to complete the required term of service.

(2) AMOUNT OF REIMBURSEMENT.—A participant required to reimburse the Secretary for a stipend or bonus paid to the participant under subsection (e) shall pay an amount that bears the same ratio to the amount of the stipend or bonus as the unserved portion of required service bears to the three years of required service.

(3) INTEREST.—Any amount owed by a participant under this subsection shall bear interest at the rate equal to the highest rate being paid by the United States on the day on which the reimbursement is determined to be due for securities having maturities of 90 days or less and shall accrue from the day on which the participant is first notified of the amount due.

(4) Exceptions to reimbursement requirement.—A participant shall be excused from reimbursement under this subsection if the participant becomes permanently totally disabled as established by sworn affidavit of a qualified physician. The Secretary may also waive the reimbursement in cases of extreme hardship to the participant, as determined by the Secretary.

(g) RELATIONSHIP TO EDUCATIONAL ASSISTANCE UNDER MONTGOMERY GI BILL.—Except as provided in subsection (e)(3)(C)(iii), the receipt by a participant of a stipend or bonus under subsection (e) shall not reduce or otherwise affect the entitlement of the participant to any benefits under chapter 30 or 33 of title 38 or chapter 1606 of this title.

(h) PARTICIPATION BY STATES.—

(1) DISCHARGE OF STATE ACTIVITIES THROUGH CONSORTIA OF STATES.—The Secretary may permit States participating in the Program to carry out activities authorized for such States under the Program through one or more consortia of such States.

(2) ASSISTANCE TO STATES.—(A) Subject to subparagraph (B), the Secretary may make grants to States participating in the Program, or to consortia of such States, in order to permit such States or consortia of States to operate offices for purposes of recruiting eligible members of the armed forces for participation in the Program and facilitating the employment of participants as elementary school teachers, secondary school teachers, and career or technical teachers.

(B) The total amount of grants made under subparagraph (A) in any fiscal year may not exceed $5,000,000.

(i) LIMITATION ON TOTAL FISCAL-YEAR OBLIGATIONS.—The total amount obligated by the Secretary under the Program for any fiscal year may not exceed $15,000,000.

(Added Pub. L. 112–239, div. A, title V, § 541(b)(1), Jan. 2, 2013, 126 Stat. 1729; amended Pub. L. 113–291, div. A, title X, § 1071(f)(14), Dec. 19, 2014, 128 Stat. 3510; Pub. L. 114–95, title IX, § 9215(uuu)(2), Dec. 10, 2015, 129 Stat. 2190; Pub. L. 115–232, div. A, title V, § 554, Aug. 13, 2018, 132 Stat. 1773.)

REFERENCES IN TEXT

The Elementary and Secondary Education Act of 1965, referred to in subsecs. (a)(1), (3)(C), (8) and (b)(2)(A)(i), is Pub. L. 89–10, Apr. 11, 1965, 79 Stat. 27. Sections 4310, 5211(b), and 8101 of the Act are classified to sections 7221i, 7345(b), and 7801, respectively, of Title 20, Education. Part A of title I of the Act is classified generally to part A (§ 6311 et seq.) of subchapter I of chapter 70 of Title 20. For complete classification of this Act to the Code, see Short Title note set out under section 6301 of Title 20 and Tables.

The Individuals with Disabilities Education Act, referred to in subsec. (a)(2)(A)(ii), is title VI of Pub. L. 91–230, Apr. 13, 1970, 84 Stat. 175. Part B of the Act is classified generally to subchapter II (§ 1411 et seq.) of chapter 33 of Title 20, Education. For complete classification of this Act to the Code, see section 1400 of Title 20 and Tables.

The Richard B. Russell National School Lunch Act, referred to in subsec. (a)(3)(A), is act June 4, 1946, ch. 281, 60 Stat. 230, which is classified generally to chapter 13 (§ 1751 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1751 of Title 42 and Tables.

The Social Security Act, referred to in subsec. (a)(3)(A), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Part A of title IV of the Act is classified generally to part A (§ 601 et seq.) of subchapter IV of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

The Higher Education Act of 1965, referred to in subsec. (e)(4), is Pub. L. 89–329, Nov. 8, 1965, 79 Stat. 1219. Title IV of the Act is classified generally to subchapter IV (§ 1070 et seq.) of chapter 28 of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20 and Tables.

AMENDMENTS

2018—Subsec. (d)(2)(B). Pub. L. 115–232, § 554(a), inserted "(A)(iii)," after "(A)(i)," and "transferred to the Retired Reserve, or" after "member is retired," and substituted "separated or released" for "separated, or released".

Subsec. (d)(3)(D). Pub. L. 115–232, § 554(b), inserted ", the transfer of the member to the Retired Reserve," after "retirement of the member" and "transfer," after "after the retirement,".

2015—Subsec. (a)(1). Pub. L. 114–95, § 9215(uuu)(2)(A), substituted "section 4310 of the Elementary and Secondary Education Act of 1965" for "section 5210(1) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7221i(1))".

Subsec. (a)(3)(C). Pub. L. 114–95, § 9215(uuu)(2)(B), substituted "section 5211(b) of the Elementary and Secondary Education Act of 1965" for "section 6211(b) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7345(b))".

Subsec. (a)(8). Pub. L. 114–95, § 9215(uuu)(2)(C), substituted "section 8101 of the Elementary and Secondary Education Act of 1965" for "section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801)".

2014—Subsec. (a)(2)(A)(ii). Pub. L. 113–291 substituted ''20 U.S.C. 1411'' for ''20 U.S.C.1411''.

EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114–95 effective Dec. 10, 2015, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 114–95, set out as a note under section 6301 of Title 20, Education.

TRANSFER OF FUNCTIONS FOR TROOPS-TO-TEACHERS PROGRAM; EXISTING AGREEMENTS

Pub. L. 112–239, div. A, title V, § 541(a), Jan. 2, 2013, 126 Stat. 1728, provided that:

''(1) TRANSFER.—The responsibility and authority for operation and administration of the Troops-to-Teachers Program in chapter A of subpart 1 of part C of title II of the Elementary and Secondary Education Act of 1965 ([former] 20 U.S.C. 6671 et seq.) is transferred from the Secretary of Education to the Secretary of Defense.

''(2) MEMORANDUM OF AGREEMENT.—In connection with the transfer of responsibility and authority for operation and administration of the Troops-to-Teachers Program from the Secretary of Education to the Secretary of Defense under paragraph (1), the Secretaries shall enter into a memorandum of agreement pursuant to which the Secretary of Education will undertake the following:

''(A) Disseminate information about the Troops-to-Teachers Program to eligible schools (as defined in subsection (a) of section 1154 of title 10, United States Code, as added by subsection (b)).

''(B) Advise the Department of Defense on how to prepare eligible members of the Armed Forces described in subsection (d) of such section 1154 to become participants in the Program, to meet the requirements necessary to become a teacher in a school described in subsection (b)(2) of such section 1154, and to find post-service employment in an eligible school.

''(C) Advise the Department of Defense on how to identify teacher preparation programs for participants in the Program.

''(D) Inform the Department of Defense of academic subject areas with critical teacher shortages.

''(E) Identify geographic areas with critical teacher shortages, especially in high-need schools (as defined in subsection (a) of such section 1154).

''(3) EFFECTIVE DATE.—The transfer of responsibility and authority for operation and administration of the Troops-to-Teachers Program under paragraph (1) shall take effect—

''(A) on the first day of the first month beginning more than 90 days after the date of the enactment of this Act [Jan. 2, 2013]; or

''(B) on such earlier date as the Secretary of Education and the Secretary of Defense may jointly provide.''

Pub. L. 112–239, div. A, title V, § 541(d)(3), Jan. 2, 2013, 126 Stat. 1735, provided that: ''The repeal of chapter A of subpart 1 of part C of title II of the Elementary and Secondary Education Act of 1965 ([former] 20 U.S.C. 6671 et seq.) by paragraph (1) shall not affect—

''(A) the validity or terms of any agreement entered into under such chapter, as in effect immediately before such repeal, before the effective date of the transfer of the Troops-to-Teachers Program under subsection (a) [set out as a note above]; or

''(B) the authority to pay assistance, make grants, or obtain reimbursement in connection with such an agreement as in effect before the effective date of the transfer of the Troops-to-Teachers Program under subsection (a).''

§ 1155. Statement of benefits

(a) BEFORE SEPARATION.—Not later than 30 days before a member retires, is released, is discharged, or otherwise separates from the armed forces (or as soon as is practicable in the case of an unanticipated separation), the Secretary concerned shall provide that member with a current assessment of all benefits to which that member may be entitled under laws administered by—

(1) the Secretary of Defense; and

(2) the Secretary of Veterans Affairs.

(b) STATEMENT FOR RESERVES.—The Secretary concerned shall provide a member of a reserve component with a current assessment of benefits described in subsection (a) upon release of that member from active duty.

(Added Pub. L. 115–232, div. A, title V, § 522(a), Aug. 13, 2018, 132 Stat. 1756.)

CHAPTER 59—SEPARATION

Sec.
1161. Commissioned officers: limitations on dismissal.
[1162, 1163. Repealed.]
1164. Warrant officers: separation for age.
1165. Regular warrant officers: separation during three-year probationary period.
1166. Regular warrant officers: elimination for unfitness or unsatisfactory performance.
1167. Members under confinement by sentence of court-martial: separation after six months confinement.
1168. Discharge or release from active duty: limitations.
1169. Regular enlisted members: limitations on discharge.
1170. Regular enlisted members: minority discharge.
1171. Regular enlisted members: early discharge.
1172. Enlisted members: during war or emergency; discharge.
1173. Enlisted members: discharge for hardship.
1174. Separation pay upon involuntary discharge or release from active duty.
1174a. Special separation benefits programs.
1175. Voluntary separation incentive.
1175a. Voluntary separation pay and benefits.
1176. Enlisted members: retention after completion of 18 or more, but less than 20, years of service.
1177. Members diagnosed with or reasonably asserting post-traumatic stress disorder or traumatic brain injury: medical examination required before administrative separation.
1178. System and procedures for tracking separations resulting from refusal to participate in anthrax vaccine immunization program.

AMENDMENTS

2009—Pub. L. 111–84, div. A, title V, § 512(a)(2), Oct. 28, 2009, 123 Stat. 2281, added item 1177.

2006—Pub. L. 109–163, div. A, title VI, § 643(a)(2), Jan. 6, 2006, 119 Stat. 3309, added item 1175a.

2000—Pub. L. 106–398, § 1 [[div. A], title VII, § 751(a)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–193, added item 1178.

1996—Pub. L. 104–134, title II, § 2707(a)(2), Apr. 26, 1996, 110 Stat. 1321–330, struck out item 1177 ''Members infected with HIV–1 virus: mandatory discharge or retirement''.

Pub. L. 104–106, div. A, title V, §§ 563(a)(1)(B), 567(a)(2), Feb. 10, 1996, 110 Stat. 325, 329, added item 1167 and substituted ''Members infected with HIV–1 virus: mandatory discharge or retirement'' for ''Members who are permanently nonworldwide assignable: mandatory discharge or retirement; counseling'' in item 1177.

1994—Pub. L. 103–337, div. A, title V, § 560(a)(2), title XVI, § 1671(b)(10), Oct. 5, 1994, 108 Stat. 2778, 3013, struck out items 1162 ''Reserves: discharge'' and 1163 ''Reserve components: members; limitations on separation'' and added item 1177.

1992—Pub. L. 102–484, div. A, title V, § 541(b), Oct. 23, 1992, 106 Stat. 2413, added item 1176.

1991—Pub. L. 102–190, div. A, title VI, §§ 661(a)(2), 662(a)(2), Dec. 5, 1991, 105 Stat. 1395, 1398, added items 1174a and 1175.

1980—Pub. L. 96–513, title V, § 501(15), Dec. 12, 1980, 94 Stat. 2908, struck out item 1167 ''Regular warrant officers: severance pay'' and added item 1174.

1973—Pub. L. 93–64, title I, § 102, July 9, 1973, 87 Stat. 147, added item 1173.

1968—Pub. L. 90–235, § 3(a)(1)(B), Jan. 2, 1968, 81 Stat. 757, added items 1169 to 1172.

1962—Pub. L. 87–651, title I, § 106(c), Sept. 7, 1962, 76 Stat. 508, added item 1168.

LIMITATIONS AND REQUIREMENTS IN CONNECTION WITH SEPARATIONS FOR MEMBERS OF THE ARMED FORCES WHO SUFFER FROM MENTAL HEALTH CONDITIONS IN CONNECTION WITH A SEX-RELATED, INTIMATE PARTNER VIOLENCE-RELATED, OR SPOUSAL-ABUSE OFFENSE

Pub. L. 116–92, div. A, title V, § 570A, Dec. 20, 2019, 133 Stat. 1398, provided that:

''(a) CONFIRMATION OF DIAGNOSIS OF CONDITION REQUIRED BEFORE SEPARATION.—Before a member of the Armed Forces who was the victim of a sex-related offense, an intimate partner violence-related offense, or a spousal-abuse offense during service in the Armed Forces (whether or not such offense was committed by another member of the Armed Forces), and who has a mental health condition not amounting to a physical disability, is separated, discharged, or released from the Armed Forces based solely on such condition, the diagnosis of such condition must be—

''(1) corroborated by a competent mental health care professional at the peer level or a higher level of the health care professional making the diagnosis; and

''(2) endorsed by the Surgeon General of the military department concerned.

''(b) NARRATIVE REASON FOR SEPARATION IF MENTAL HEALTH CONDITION PRESENT.—If the narrative reason for separation, discharge, or release from the Armed Forces of a member of the Armed Forces is a mental health condition that is not a disability, the appropriate narrative reason for the separation, discharge, or release shall be a condition, not a disability, or Secretarial authority.

''(c) DEFINITIONS.—In this section:

''(1) The term 'intimate partner violence-related offense' means the following:

''(A) An offense under section 928 or 930 of title 10, United States Code (article 128 or 130 of the Uniform Code of Military Justice).

''(B) An offense under State law for conduct identical or substantially similar to an offense described in subparagraph (A).

''(2) The term 'sex-related offense' means the following:

''(A) An offense under section 920 or 920b of title 10, United States Code (article 120 or 120b of the Uniform Code of Military Justice).

''(B) An offense under State law for conduct identical or substantially similar to an offense described in subparagraph (A).

''(3) The term 'spousal-abuse offense' means the following:

''(A) An offense under section 928 of title 10, United States Code (article 128 of the Uniform Code of Military Justice).

''(B) An offense under State law for conduct identical or substantially similar to an offense described in subparagraph (A).

''(d) EFFECTIVE DATE.—This section shall take effect 180 days after the date of the enactment of this Act [Dec. 20, 2019], and shall apply with respect to separations, discharges, and releases from the Armed Forces that occur on or after that effective date.''

PROHIBITION ON INVOLUNTARY SEPARATION OF CERTAIN MEMBERS OF THE ARMED FORCES

Pub. L. 116–92, div. A, title V, § 570B(a), Dec. 20, 2019, 133 Stat. 1398, provided that:

''(1) IN GENERAL.—No member of the Armed Forces may be involuntarily separated from the Armed Forces solely because that member is a covered member.

''(2) COVERED MEMBER DEFINED.—In this subsection, the term 'covered member' means a member of the Armed Forces who—

''(A) possesses a current and valid employment authorization document that was issued pursuant to the memorandum of the Secretary of Homeland Security dated June 15, 2012, and entitled 'Exercising Prosecutorial Discretion with Respect to Individuals who Came to the United States as Children'; or

''(B) is currently in a temporary protected status under section 244 of the Immigration and Nationality Act (8 U.S.C. 1254a).''

§ 1161. Commissioned officers: limitations on dismissal

(a) No commissioned officer may be dismissed from any armed force except—

(1) by sentence of a general court-martial;

(2) in commutation of a sentence of a general court-martial; or

(3) in time of war, by order of the President.

(b) The President or the Secretary of Defense, or in the case of a commissioned officer of the Coast Guard, the Secretary of the department in which the Coast Guard is operating when it is not operating in the Navy, may drop from the rolls of any armed force any commissioned officer (1) who has been absent without authority for at least three months, (2) who may be separated under section 1167 of this title by reason of a sentence to confinement adjudged by a court-martial, or (3) who is sentenced to confinement in a Federal or State penitentiary or correctional institution after having been found guilty of an offense by a court other than a court-martial or other military court, and whose sentence has become final.

(Aug. 10, 1956, ch. 1041, 70A Stat. 89; Pub. L. 104–106, div. A, title V, § 563(b)(1), Feb. 10, 1996, 110 Stat. 325; Pub. L. 104–201, div. A, title X, § 1074(a)(5), Sept. 23, 1996, 110 Stat. 2658; Pub. L. 114–328, div. A, title V, § 507, Dec. 23, 2016, 130 Stat. 2109.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1161(a)	50:739 (words before semicolon, less applicability to Navy and Marine Corps warrant officers).	May 5, 1950, ch. 169, § 10 (less applicability to Navy and Marine Corps warrant officers), 64 Stat. 146.
1161(b)	50:739 (less words before semicolon, less applicability to Navy and Marine Corps warrant officers).	

In subsections (a) and (b), the word ''commissioned'' is inserted since, for the Army and the Air Force, the term ''officer'' is intended to have the same meaning in 50:739 as it has in the Uniform Code of Military Justice (article 4). For Navy warrant officers see section 6408 of this title.

In subsection (b), the words ''from his place of duty'' are omitted as surplusage. The words ''at least'' are substituted for the words ''or more''. The words ''by a court other than a court-martial or other military court'' are substituted for the words ''by the civil authorities''.

AMENDMENTS

2016—Subsec. (b). Pub. L. 114–328 inserted ''or the Secretary of Defense, or in the case of a commissioned offi-

cer of the Coast Guard, the Secretary of the department in which the Coast Guard is operating when it is not operating in the Navy,'' after ''President''.

1996—Subsec. (b). Pub. L. 104–201 substituted ''section 1167'' for ''section 1178'' in par. (2).

Pub. L. 104–106 struck out ''or'' after ''three months,'', added par. (2), and redesignated former par. (2) as (3).

RESTORATION OF RETIRED PAY TO OFFICERS DROPPED FROM ROLLS AFTER DECEMBER 31, 1954 AND BEFORE AUGUST 25, 1958

Pub. L. 85–754, Aug. 25, 1958, 72 Stat. 847, provided: ''That notwithstanding any other provisions of law, a former retired officer dropped from the rolls under section 10 of the Act of May 5, 1950, ch. 169 (64 Stat. 146), or section 1161 of title 10, United States Code, after December 31, 1954, and before the date of enactment of this Act [Aug. 25, 1958] shall, for the purposes of entitlement to retired or retirement pay after the date of enactment of this Act, be treated as if he had not been dropped from the rolls. Such an officer is also entitled to retroactive retired or retirement pay for the period beginning on the date he was dropped from the rolls and ending on the date of enactment of this Act, as if he had not been dropped from the rolls.

''SEC. 2. A former retired officer covered by this Act is subject to the penal, prohibitory, and restrictive provisions of law applicable to the pay and civil employment of retired officers of the Armed Forces and is not entitled to any other benefit provided by law or regulation for retired officers of the Armed Forces. After the date of enactment of this Act [Aug. 25, 1958], such a former retired officer may, in the discretion of the President, have his entitlement to retired or retirement pay under this Act terminated for any reason for which any retired officer may be dismissed from, or dropped from the rolls of, any Armed Force.

''SEC. 3. Appropriations available for the payment of retired pay to members of the Armed Forces are available for payments under this Act.''

[§§ 1162, 1163. Repealed. Pub. L. 103–337, div. A, title XVI, § 1662(i)(2), Oct. 5, 1994, 108 Stat. 2998]

Section 1162, acts Aug. 10, 1956, ch. 1041, 70A Stat. 89; Sept. 2, 1958, Pub. L. 85–861, § 1(27), 72 Stat. 1450, related to discharge of Reserves. See sections 12681 and 12682 of this title.

Section 1163, acts Aug. 10, 1956, ch. 1041, 70A Stat. 89; Sept. 7, 1962, Pub. L. 87–651, title I, § 106(a), 76 Stat. 508; Dec. 30, 1987, Pub. L. 100–224, § 4, 101 Stat. 1538, related to limitations on separation of Reserve members from their reserve components. See sections 12683 to 12686 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

§ 1164. Warrant officers: separation for age

(a) Unless retired or separated on or before the expiration of that period, each warrant officer shall be retired or separated from his armed force not later than 60 days after the date when he becomes 62 years of age, except as provided by section 8301 of title 5.

(b) The Secretary concerned may defer, for not more than four months, the separation under subsection (a) of any warrant officer if, because of unavoidable circumstances, evaluation of his physical condition and determination of his entitlement to retirement or separation for physical disability require hospitalization or medical observation that cannot be completed before the date when he would otherwise be required to be retired or separated under this section.

(Aug. 10, 1956, ch. 1041, 70A Stat. 90; Pub. L. 89–718, § 3, Nov. 2, 1966, 80 Stat. 1115; Pub. L. 90–130, § 1(5), Nov. 8, 1967, 81 Stat. 374; Pub. L. 96–513, title V, § 511(41), Dec. 12, 1980, 94 Stat. 2923; Pub. L. 97–295, § 1(16), Oct. 12, 1982, 96 Stat. 1290.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1164(a)	10:600*l*(c) (as applicable to men). 10:600r(c) (as applicable to 10:600*l*(c)). 34:430(c) (as applicable to men). 34:430c (as applicable to 34:430(c)).	May 29, 1954, ch. 249, §§ 14(c), (e) (as applicable to (c)), 21(c) (as applicable to § 14(c)), 68 Stat. 163, 168.
1164(b)	10:600*l*(c) (less applicability to men). 34:430(c) (less applicability to men).	
1164(c)	10:600*l*(e) (as applicable to 10:600*l*(c)). 34:430(e) (as applicable to 34:430(c)).	

In subsections (a) and (b), the words ''Except as provided in clause (3) of subsection (b) of this section and in subsection (g) of this section'' are omitted as covered by section 46 of the bill and section 14(g) of the source statute. The words ''Unless retired or separated on or before the expiration of that period'' are inserted for clarity. The words ''becomes 62[55] years of age'' are substituted for the words ''attains the age of sixty-two * * * or the age of fifty-five''.

In subsection (c), the words ''The Secretary concerned may defer'' are substituted for the words ''may, in the discretion of the Secretary, be deferred''. The words ''not more than'' are substituted for the words ''a period not to exceed''. The words ''determination of his'' are inserted for clarity. The words ''he would otherwise be required to be separated under this section'' are substituted for the words ''separation would otherwise be required''. The words ''proper'', ''which is required'', ''possible'', and ''a period of'' are omitted as surplusage.

AMENDMENTS

1982—Pub. L. 97–295, § 1(16), substituted a colon for a semicolon after ''officers'' in section catchline.

1980—Subsec. (b). Pub. L. 96–513 redesignated former subsec. (c) as (b).

Subsec. (c). Pub. L. 96–513 redesignated former subsec. (c) as (b).

1967—Subsec. (a). Pub. L. 90–130 struck out ''male'' before ''warrant officer''.

Subsec. (b). Pub. L. 90–130 struck out subsec. (b) which made special provisions for female warrant officers.

Subsec. (c). Pub. L. 90–130 struck out reference to subsec. (b) of this section.

1966—Pub. L. 89–718 substituted ''8301'' for ''47a'' wherever appearing.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

DEFERMENT OF SEPARATION WITH COMPLETION OF 20 YEARS OF SERVICE OR AT AGE 60

Act Aug. 10, 1956, ch. 1041, § 46, 70A Stat. 638, provided that:

''(a) The separation of any person who, on November 1, 1954, was a male permanent warrant officer of a regular component of an armed force, and who upon attaining the age of 62 has completed less than 20 years of active service that could be credited to him under

section 511 of the Career Compensation Act of 1949 (37 U.S.C. 311) [act Oct. 12, 1949, ch. 681, title V, § 511, 63 Stat. 829, formerly set out as a note under section 580 of this title] may be deferred by the Secretary concerned until he completes 20 years of that service, but not later than that date which is 60 days after the date on which he attains the age of 64.

''(b) The separation of any person who, on November 1, 1954, was a female permanent warrant officer of a regular component of an armed force, and who upon attaining the age of 55 has completed less than 20 years of active service that could be credited to her under section 511 of the Career Compensation Act of 1949 (37 U.S.C. 311) [act Oct. 12, 1949, ch. 681, title V, § 511, 63 Stat. 829, formerly set out as a note under section 580 of this title] may be deferred by the Secretary concerned until she completes 20 years of that service, but not later than that date which is 60 days after the date on which she attains the age of 60.''

§ 1165. Regular warrant officers: separation during three-year probationary period

The Secretary concerned may terminate the regular appointment of any permanent regular warrant officer at any time within three years after the date when the officer accepted his original permanent appointment as a warrant officer in that component. A warrant officer who is separated under this section is entitled, if eligible therefor, to separation pay under section 1174 or he may be enlisted under section 515 of this title. If such a warrant officer is enlisted under section 515 of this title, he is not entitled to separation pay.

(Aug. 10, 1956, ch. 1041, 70A Stat. 90; Pub. L. 96–513, title I, § 109(b)(1), Dec. 12, 1980, 94 Stat. 2870.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
1165	10:600d (less last 36 words of last sentence). 34:135d (less last 36 words of last sentence).	May 29, 1954, ch. 249, § 6 (less last 36 words of last sentence), 68 Stat. 159.

The words ''in his discretion'' are omitted as surplusage. The last 10 words of the last sentence are inserted for clarity.

AMENDMENTS

1980—Pub. L. 96–513 authorized entitlement, if the regular warrant officer is eligible therefor, to separation pay under section 1174.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Sept. 15, 1981, but the authority to prescribe regulations under the amendment by Pub. L. 96–513 effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

§ 1166. Regular warrant officers: elimination for unfitness or unsatisfactory performance

(a) Under such regulations as the Secretary concerned may prescribe, and subject to the recommendations of a board of officers or a selection board under section 576 of this title, a permanent regular warrant officer who is eligible for retirement under any provision of law shall be retired under that law if his records and reports establish his unfitness or unsatisfactory performance of duty. If he is not eligible for retirement under any provision of law, but since the date when he accepted his original permanent appointment as a regular warrant officer he has at least three years of active service that could be credited to him under section 511 of the Career Compensation Act of 1949, as amended (70 Stat. 114), he shall, if eligible therefor, be separated with separation pay under section 1174 of this title or severance pay under section 286a[1] of title 14, as appropriate. However, instead of being paid separation pay or severance pay he may be enlisted under section 515 of this title. If he does not have three years of such service, he shall be separated under section 1165 of this title.

(b) The Secretary concerned may defer, for not more than four months, the retirement or separation under subsection (a) of any warrant officer if, because of unavoidable circumstances, evaluation of his physical condition and determination of his entitlement to retirement or separation for physical disability require hospitalization or medical observation that cannot be completed before the date when he would otherwise be required to be retired or separated under this section.

(Aug. 10, 1956, ch. 1041, 70A Stat. 90; Pub. L. 87–649, § 6(f)(3), Sept. 7, 1962, 76 Stat. 494; Pub. L. 96–513, title I, § 109(b)(2), Dec. 12, 1980, 94 Stat. 2870; Pub. L. 102–190, div. A, title XI, § 1131(5), Dec. 5, 1991, 105 Stat. 1506.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
1166(a)	10:600m (less last 21 words of 3d sentence). 10:600(d) (as applicable to 10:600m). 34:430a (less last 21 words of 3d sentence). 34:135(d) (as applicable to 34:430a).	May 29, 1954, ch. 249, §§ 2(d) (as applicable to § 15), 14(e) (as applicable to § 15), 15 (less last 21 words of 3d sentence), 68 Stat. 157, 163, 164.
1166(b)	10:600*l*(e) (as applicable to 10:600m). 34:430(e) (as applicable to 34:430a).	

In subsection (a), the words ''he shall be separated'' are substituted for the words ''his appointment as a permanent warrant officer of the Regular service and any other appointment which he may hold in any warrant officer or commissioned officer grade shall be terminated'' and ''his appointment shall be terminated''. The words ''at least three'' are substituted for the words ''more than three'' for clarity.

In subsection (b), the words ''The Secretary concerned may defer'' are substituted for the words ''may, in the discretion of the Secretary, be deferred''. The words ''not more than'' are substituted for the words ''a period not to exceed''. The words ''he would otherwise be required to be retired or separated under this section'' are substituted for the words ''retirement * * * would otherwise be required''. The words ''determination of his'' are inserted for clarity. The words ''which is required'', ''possible'', ''proper'', and ''a period of'' are omitted as surplusage.

REFERENCES IN TEXT

Section 511 of the Career Compensation Act of 1949, referred to in subsec. (a), is section 511 of act Oct. 12, 1949, ch. 681, which was formerly set out as a note under section 580 of this title.

Section 286a of title 14, referred to in subsec. (a), was redesignated section 2147 of title 14 by Pub. L. 115–282, title I, § 112(b), Dec. 4, 2018, 132 Stat. 4216, and references

[1] See References in Text note below.

to section 286a of title 14 deemed to refer to such redesignated section, see section 123(b)(1) of Pub. L. 115–282, set out as a References to Sections of Title 14 as Redesignated by Pub. L. 115–282 note preceding section 101 of Title 14, Coast Guard.

AMENDMENTS

1991—Subsec. (a). Pub. L. 102–190 substituted ''section 576'' for ''section 560''.

1980—Subsec. (a). Pub. L. 96–513 provided that officers discharged under this section are entitled, if eligible therefor, to separation pay under section 1174 or severance pay under section 286a of title 14.

1962—Subsec. (a). Pub. L. 87–649 substituted ''section 511 of the Career Compensation Act of 1949, as amended (70 Stat. 114)'' for ''section 311 of title 37.''

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–190 effective Feb. 1, 1992, see section 1132 of Pub. L. 102–190, set out as a note under section 521 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Sept. 15, 1981, but the authority to prescribe regulations under the amendment by Pub. L. 96–513 effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–649 effective Nov. 1, 1962, see section 15 of Pub. L. 87–649, set out as a note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

§1167. Members under confinement by sentence of court-martial: separation after six months confinement

Except as otherwise provided in regulations prescribed by the Secretary of Defense, a member sentenced by a court-martial to a period of confinement for more than six months may be separated from the member's armed force at any time after the sentence to confinement has become final under chapter 47 of this title and the member has served in confinement for a period of six months.

(Added Pub. L. 104–106, div. A, title V, §563(a)(1)(A), Feb. 10, 1996, 110 Stat. 325; amended Pub. L. 104–201, div. A, title X, §1074(a)(6), Sept. 23, 1996, 110 Stat. 2659.)

PRIOR PROVISIONS

A prior section 1167, acts Aug. 10, 1956, ch. 1041, 70A Stat. 91; June 28, 1962, Pub. L. 87–509, §4(a), 76 Stat. 121; Sept. 7, 1962, Pub. L. 87–649, §6(f)(3), 76 Stat. 494, related to severance pay of regular warrant officers, prior to repeal by Pub. L. 96–513, title I, §109(b)(3), title VII, §701, Dec. 12, 1980, 94 Stat. 2870, 2955, effective Sept. 15, 1981.

AMENDMENTS

1996—Pub. L. 104–201 substituted ''member has served'' for ''person has served''.

§1168. Discharge or release from active duty: limitations

(a) A member of an armed force may not be discharged or released from active duty until his discharge certificate or certificate of release from active duty, respectively, and his final pay or a substantial part of that pay, are ready for delivery to him or his next of kin or legal representative.

(b) This section does not prevent the immediate transfer of a member to a facility of the Department of Veterans Affairs for necessary hospital care.

(Added Pub. L. 87–651, title I, §106(b), Sept. 7, 1962, 76 Stat. 508; amended Pub. L. 101–189, div. A, title XVI, §1621(a)(4), Nov. 29, 1989, 103 Stat. 1603.)

HISTORICAL AND REVISION NOTES

The new section 1168 of title 10 is transferred from section 1218(a) and (c) of title 10 as being more appropriate in the chapter on separation.

AMENDMENTS

1989—Subsec. (b). Pub. L. 101–189 substituted ''facility of the Department of Veterans Affairs'' for ''Veterans' Administration facility''.

MACHINE READABILITY AND ELECTRONIC TRANSFERABILITY OF CERTIFICATE OF RELEASE OR DISCHARGE FROM ACTIVE DUTY (DD FORM 214)

Pub. L. 116–92, div. A, title V, §569, Dec. 20, 2019, 133 Stat. 1397, provided that:

''(a) MODIFICATION REQUIRED.—The Secretary of Defense shall modify the Certificate of Release or Discharge from Active Duty (DD Form 214) to—

''(1) be machine readable and electronically transferable; and

''(2) include a specific block explicitly identified as the location in which a member of the Armed Forces may provide one or more email addresses by which the member may be contacted after discharge or release from active duty.

''(b) DEADLINE FOR MODIFICATION.—The Secretary of Defense shall release a revised Certificate of Release or Discharge from Active Duty (DD Form 214), modified pursuant to subsection (a), not later than four years after the date of the enactment of this Act [Dec. 20, 2019].

''(c) REPORT.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall submit a report to Congress regarding the following:

''(1) What systems of the Department of Defense require an individual to manually enter information from DD Form 214.

''(2) What activities of the Department of Defense require a veteran or former member of the Armed Forces to provide a physical copy of DD Form 214.

''(3) The order of priority for modernizing items identified under paragraphs (1) and (2) as determined by the Secretary.

''(4) The estimated cost, as determined by the Secretary, to automate items identified under paragraphs (1) and (2).''

MODIFICATION OF CERTIFICATE OF RELEASE OR DISCHARGE FROM ACTIVE DUTY (DD FORM 214)

Pub. L. 110–181, div. A, title V, §596, Jan. 28, 2008, 122 Stat. 139, provided that: ''The Secretary of Defense, in consultation with the Secretary of Veterans Affairs, shall modify the Certificate of Release or Discharge from Active Duty (DD Form 214) in order to permit a member of the Armed Forces, upon discharge or release from active duty in the Armed Forces, to elect that the DD–214 issued with regard to the member be forwarded to the following:

''(1) The Central Office of the Department of Veterans Affairs in the District of Columbia.

''(2) The appropriate office of the Department of Veterans Affairs for the State or other locality in which the member will first reside after such discharge or release.''

§ 1169. Regular enlisted members: limitations on discharge

No regular enlisted member of an armed force may be discharged before his term of service expires, except—

(1) as prescribed by the Secretary concerned;

(2) by sentence of a general or special court martial; or

(3) as otherwise provided by law.

(Added Pub. L. 90–235, § 3(a)(1)(A), Jan. 2, 1968, 81 Stat. 757.)

§ 1170. Regular enlisted members: minority discharge

Upon application by the parents or guardian of a regular enlisted member of an armed force to the Secretary concerned within 90 days after the member's enlistment, the member shall be discharged for his own convenience, with the pay and form of discharge certificate to which his service entitles him, if—

(1) there is evidence satisfactory to the Secretary concerned that the member is under eighteen years of age; and

(2) the member enlisted without the written consent of his parent or guardian.

(Added Pub. L. 90–235, § 3(a)(1)(A), Jan. 2, 1968, 81 Stat. 757.)

§ 1171. Regular enlisted members: early discharge

Under regulations prescribed by the Secretary concerned and approved by the President, any regular enlisted member of an armed force may be discharged within one year before the expiration of the term of his enlistment or extended enlistment. A discharge under this section does not affect any right, privilege, or benefit that a member would have had if he completed his enlistment or extended enlistment, except that the member is not entitled to pay and allowances for the period not served.

(Added Pub. L. 90–235, § 3(a)(1)(A), Jan. 2, 1968, 81 Stat. 757; amended Pub. L. 112–81, div. A, title V, § 525, Dec. 31, 2011, 125 Stat. 1401.)

AMENDMENTS

2011—Pub. L. 112–81 substituted ''within one year'' for ''within three months''.

EX. ORD. NO. 11498. DELEGATION OF AUTHORITY TO SECRETARY OF DEFENSE

Ex. Ord. No. 11498, Dec. 1, 1969, 34 F.R. 19125, provided:

By virtue of the authority vested in me by section 301 of title 3 of the United States Code, and as President of the United States, it is ordered that the Secretary of Defense is hereby designated and empowered to approve regulations issued by the Secretaries concerned under section 1171 of title 10, United States Code, effective January 2, 1968, which relate to the early discharge of regular enlisted members of the armed forces.

RICHARD NIXON.

§ 1172. Enlisted members: during war or emergency; discharge

A person enlisted under section 518 of this title may be discharged at any time by the President, or otherwise according to law.

(Added Pub. L. 90–235, § 3(a)(1)(A), Jan. 2, 1968, 81 Stat. 757.)

§ 1173. Enlisted members: discharge for hardship

Under regulations prescribed by the Secretary concerned, a regular enlisted member of an armed force who has dependents may be discharged for hardship.

(Added Pub. L. 93–64, title I, § 102, July 9, 1973, 87 Stat. 147.)

EFFECTIVE DATE

Section effective July 1, 1973, see section 206 of Pub. L. 93–64, set out as a note under section 401 of Title 37, Pay and Allowances of the Uniformed Services.

§ 1174. Separation pay upon involuntary discharge or release from active duty

(a) REGULAR OFFICERS.—(1) A regular officer who is discharged under chapter 36 of this title (except under section 630(1)(A) or 643 of such chapter) or under section 580 or 8372 of this title and who has completed six or more, but less than twenty, years of active service immediately before that discharge is entitled to separation pay computed under subsection (d)(1).

(2) A regular commissioned officer of the Army, Navy, Air Force, Marine Corps, or Space Force who is discharged under section 630(1)(A), 643, or 1186 of this title, and a regular warrant officer of the Army, Navy, Air Force, Marine Corps, or Space Force who is separated under section 1165 or 1166 of this title, who has completed six or more, but less than twenty, years of active service immediately before that discharge or separation is entitled to separation pay computed under subsection (d)(1) or (d)(2), as determined by the Secretary of the military department concerned, unless the Secretary concerned determines that the conditions under which the officer is discharged or separated do not warrant payment of such pay.

(3) Notwithstanding paragraphs (1) and (2), an officer discharged under any provision of chapter 36 of this title for twice failing of selection for promotion to the next higher grade is not entitled to separation pay under this section if either (or both) of those failures of selection for promotion was by the action of a selection board to which the officer submitted a request in writing not to be selected for promotion or who otherwise directly caused his nonselection through written communication to the Board under section 614(b) of this title.

(4) Notwithstanding paragraphs (1) and (2), an officer who is subject to discharge under any provision of chapter 36 of this title or under section 580 or 8372 of this title by reason of having twice failed of selection for promotion to the next higher grade is not entitled to separation pay under this section if that officer, after such second failure of selection for promotion, is selected for, and declines, continuation on active duty for a period that is equal to or more than the amount of service required to qualify the officer for retirement.

(b) REGULAR ENLISTED MEMBERS.—(1) A regular enlisted member of an armed force who is discharged involuntarily or as the result of the denial of the reenlistment of the member and who has completed six or more, but less than 20, years of active service immediately before that discharge is entitled to separation pay computed

under subsection (d) unless the Secretary concerned determines that the conditions under which the member is discharged do not warrant payment of such pay.

(2) Separation pay of an enlisted member shall be computed under paragraph (1) of subsection (d), except that such pay shall be computed under paragraph (2) of such subsection in the case of a member who is discharged under criteria prescribed by the Secretary of Defense.

(c) OTHER MEMBERS.—(1) Except as provided in paragraphs (2) and (3), a member of an armed force other than a regular member who is discharged or released from active duty and who has completed six or more, but fewer than 20, years of active service immediately before that discharge or release is entitled to separation pay computed under subsection (d)(1) or (d)(2), as determined by the Secretary concerned, if—

(A) the member's discharge or release from active duty is involuntary; or

(B) the member was not accepted for an additional tour of active duty for which he volunteered.

(2) If the Secretary concerned determines that the conditions under which a member described in paragraph (1) is discharged or separated do not warrant separation pay under this section, that member is not entitled to that pay.

(3) A member described in paragraph (1) who was not on the active-duty list when discharged or separated is not entitled to separation pay under this section unless such member had completed at least six years of continuous active duty immediately before such discharge or release. For purposes of this paragraph, a period of active duty is continuous if it is not interrupted by a break in service of more than 30 days.

(4) In the case of an officer who is subject to discharge or release from active duty under a law or regulation requiring that an officer who has failed of selection for promotion to the next higher grade for the second time be discharged or released from active duty and who, after such second failure of selection for promotion, is selected for, and declines, continuation on active duty—

(A) if the period of time for which the officer was selected for continuation on active duty is less than the amount of service that would be required to qualify the officer for retirement, the officer's discharge or release from active duty shall be considered to be involuntary for purposes of paragraph (1)(A); and

(B) if the period of time for which the officer was selected for continuation on active duty is equal to or more than the amount of service that would be required to qualify the officer for retirement, the officer's discharge or release from active duty shall not be considered to be involuntary for the purposes of paragraph (1)(A).

(d) AMOUNT OF SEPARATION PAY.—The amount of separation pay which may be paid to a member under this section is—

(1) 10 percent of the product of (A) his years of active service, and (B) 12 times the monthly basic pay to which he was entitled at the time of his discharge or release from active duty; or

(2) one-half of the amount computed under clause (1).

(e) REQUIREMENT FOR SERVICE IN READY RESERVE; EXCEPTIONS TO ELIGIBILITY.—(1)(A) As a condition of receiving separation pay under this section, a person otherwise eligible for that pay shall be required to enter into a written agreement with the Secretary concerned to serve in the Ready Reserve of a reserve component for a period of not less than three years following the person's discharge or release from active duty. If the person has a service obligation under section 651 of this title or under any other provision of law that is not completed at the time the person is discharged or released from active duty, the three-year obligation under this subsection shall begin on the day after the date on which the person completes the person's obligation under such section or other provision of law.

(B) Each person who enters into an agreement referred to in subparagraph (A) who is not already a Reserve of an armed force and who is qualified shall, upon such person's discharge or release from active duty, be enlisted or appointed, as appropriate, as a Reserve and be transferred to a reserve component.

(2) A member who is discharged or released from active duty is not eligible for separation pay under this section if the member—

(A) is discharged or released from active duty at his request;

(B) is discharged or released from active duty during an initial term of enlistment or an initial period of obligated service, unless the member is an officer discharged or released under the authority of section 647 of this title;

(C) is released from active duty for training; or

(D) upon discharge or release from active duty, is immediately eligible for retired or retainer pay based on his military service.

(f) COUNTING FRACTIONAL YEARS OF SERVICE.—In determining a member's years of active service for the purpose of computing separation pay under this section, each full month of service that is in addition to the number of full years of service creditable to the member is counted as one-twelfth of a year and any remaining fractional part of a month is disregarded.

(g) COORDINATION WITH OTHER SEPARATION OR SEVERANCE PAY BENEFITS.—A period for which a member has previously received separation pay under this section or severance pay or readjustment pay under any other provision of law based on service in the armed forces may not be included in determining the years of service that may be counted in computing the separation pay of the member under this section.

(h) COORDINATION WITH RETIRED OR RETAINER PAY AND DISABILITY COMPENSATION.—(1) A member who has received separation pay under this section, or separation pay, severance pay, or readjustment pay under any other provision of law, based on service in the armed forces, and who later qualifies for retired or retainer pay under this title or title 14 shall have deducted from each payment of such retired or retainer pay an amount, in such schedule of monthly installments as the Secretary of Defense shall specify, taking into account the financial ability of the member to pay and avoiding the imposition of undue financial hardship on the mem-

ber and member's dependents, until the total amount deducted is equal to the total amount of separation pay, severance pay, and readjustment pay so paid.

(2) A member who has received separation pay under this section, or severance pay or readjustment pay under any other provision of law, based on service in the armed forces shall not be deprived, by reason of his receipt of such separation pay, severance pay, or readjustment pay, of any disability compensation to which he is entitled under the laws administered by the Department of Veterans Affairs, but there shall be deducted from that disability compensation an amount equal to the total amount of separation pay, severance pay, and readjustment pay received, less the amount of Federal income tax withheld from such pay (such withholding being at the flat withholding rate for Federal income tax withholding, as in effect pursuant to regulations prescribed under chapter 24 of the Internal Revenue Code of 1986). Notwithstanding the preceding sentence, no deduction may be made from disability compensation for the amount of any separation pay, severance pay, or readjustment pay received because of an earlier discharge or release from a period of active duty if the disability which is the basis for that disability compensation was incurred or aggravated during a later period of active duty.

(i) SPECIAL RULE FOR MEMBERS RECEIVING SOLE SURVIVORSHIP DISCHARGE.—(1) A member of the armed forces who receives a sole survivorship discharge shall be entitled to separation pay under this section even though the member has completed less than six years of active service immediately before that discharge. Subsection (e) shall not apply to a member who receives a sole survivorship discharge.

(2) The amount of the separation pay to be paid to a member pursuant to this subsection shall be based on the years of active service actually completed by the member before the member's sole survivorship discharge.

(3) In this subsection, the term ''sole survivorship discharge'' means the separation of a member from the armed forces, at the request of the member, pursuant to the Department of Defense policy permitting the early separation of a member who is the only surviving child in a family in which—

(A) the father or mother or one or more siblings—

(i) served in the armed forces; and

(ii) was killed, died as a result of wounds, accident, or disease, is in a captured or missing in action status, or is permanently 100 percent disabled or hospitalized on a continuing basis (and is not employed gainfully because of the disability or hospitalization); and

(B) the death, status, or disability did not result from the intentional misconduct or willful neglect of the parent or sibling and was not incurred during a period of unauthorized absence.

(j) REGULATIONS; CREDITING OF OTHER COMMISSIONED SERVICE.—(1) The Secretary of Defense shall prescribe regulations, which shall be uniform for the Army, Navy, Air Force, Marine Corps, and Space Force, for the administration of this section.

(2) Active commissioned service in the National Oceanic and Atmospheric Administration or the Public Health Service shall be credited as active service in the armed forces for the purposes of this section.

(Added Pub. L. 96–513, title I, § 109(c), Dec. 12, 1980, 94 Stat. 2870; amended Pub. L. 97–22, § 10(b)(10)(A), July 10, 1981, 95 Stat. 137; Pub. L. 98–94, title IX, §§ 911(a), (b), 923(b), title X, § 1007(c)(2), Sept. 24, 1983, 97 Stat. 639, 640, 643, 662; Pub. L. 98–498, title III, § 320(a)(2), Oct. 19, 1984, 98 Stat. 2308; Pub. L. 101–189, div. A, title XVI, § 1621(a)(1), Nov. 29, 1989, 103 Stat. 1602; Pub. L. 101–510, div. A, title V, § 501(a)–(d), (g), (h), Nov. 5, 1990, 104 Stat. 1549–1551; Pub. L. 102–190, div. A, title XI, § 1131(6), Dec. 5, 1991, 105 Stat. 1506; Pub. L. 103–160, div. A, title V, § 501(a), Nov. 30, 1993, 107 Stat. 1644; Pub. L. 103–337, div. A, title V, § 560(c), Oct. 5, 1994, 108 Stat. 2778; Pub. L. 104–201, div. A, title VI, § 653(a), Sept. 23, 1996, 110 Stat. 2583; Pub. L. 105–85, div. A, title X, § 1073(a)(22), Nov. 18, 1997, 111 Stat. 1901; Pub. L. 105–261, div. A, title V, § 502(a), Oct. 17, 1998, 112 Stat. 2003; Pub. L. 106–398, § 1 [[div. A], title V, § 508(a), (b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–107; Pub. L. 108–375, div. A, title V, § 501(c)(2), Oct. 28, 2004, 118 Stat. 1874; Pub. L. 110–317, § 3, Aug. 29, 2008, 122 Stat. 3527; Pub. L. 111–32, title III, § 318(a), June 24, 2009, 123 Stat. 1873; Pub. L. 111–383, div. A, title X, § 1075(b)(17), Jan. 7, 2011, 124 Stat. 4370; Pub. L. 115–232, div. A, title VIII, § 809(a), Aug. 13, 2018, 132 Stat. 1840; Pub. L. 116–283, div. A, title IX, § 924(b)(1)(K), (3)(S), Jan. 1, 2021, 134 Stat. 3820, 3821.)

REFERENCES IN TEXT

Chapter 24 of the Internal Revenue Code of 1986, referred to in subsec. (h)(2), is classified generally to chapter 24 (§ 3401 et seq.) of Title 26, Internal Revenue Code.

AMENDMENTS

2021—Subsec. (a)(2). Pub. L. 116–283, § 924(b)(3)(S), substituted ''Marine Corps, or Space Force'' for ''or Marine Corps'' in two places.

Subsec. (j)(1). Pub. L. 116–283, § 924(b)(1)(K), substituted ''Marine Corps, and Space Force'' for ''and Marine Corps''.

2018—Subsec. (a)(1), (4). Pub. L. 115–232 substituted ''section 580 or 8372'' for ''section 580 or 6383''.

2011—Subsec. (i). Pub. L. 111–383 substituted ''armed forces'' for ''Armed Forces'' wherever appearing.

2009—Subsec. (h)(1). Pub. L. 111–32 amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''A member who has received separation pay under this section, or separation pay, severance pay, or readjustment pay under any other provision of law, based on service in the armed forces, and who later qualifies for retired or retainer pay under this title or title 14 shall have deducted from each payment of such retired or retainer pay so much of such pay as is based on the service for which he received separation pay under this section or separation pay, severance pay, or readjustment pay under any other provision of law until the total amount deducted is equal to the total amount of separation pay, severance pay, and readjustment pay received.''

2008—Subsecs. (i), (j). Pub. L. 110–317 added subsec. (i) and redesignated former subsec. (i) as (j).

2004—Subsec. (e)(2)(B). Pub. L. 108–375 inserted '', unless the member is an officer discharged or released under the authority of section 647 of this title'' after ''obligated service''.

2000—Subsec. (a)(4). Pub. L. 106–398, §1 [[div. A], title V, §508(a)], added par. (4).

Subsec. (c)(4). Pub. L. 106–398, §1 [[div. A], title V, §508(b)], added par. (4).

1998—Subsec. (a)(3). Pub. L. 105–261 added par. (3).

1997—Subsec. (a)(1). Pub. L. 105–85 struck out ", 1177," before "or 6383 of this title".

1996—Subsec. (h)(2). Pub. L. 104–201 inserted ", less the amount of Federal income tax withheld from such pay (such withholding being at the flat withholding rate for Federal income tax withholding, as in effect pursuant to regulations prescribed under chapter 24 of the Internal Revenue Code of 1986)" before period at end of first sentence.

1994—Subsec. (a)(1). Pub. L. 103–337 inserted ", 1177," after "section 580".

1993—Subsec. (a)(1). Pub. L. 103–160 substituted "six" for "five".

1991—Subsec. (a)(1). Pub. L. 102–190 substituted "section 580" for "section 564".

1990—Subsec. (a). Pub. L. 101–510, §501(a)(1), inserted heading.

Subsec. (a)(1). Pub. L. 101–510, §501(g)(1), substituted "or under section 564 or 6383 of this title" for ", under section 564 or 6383 of this title, or under section 603 or 604 of the Defense Officer Personnel Management Act" and struck out "or release" after "that discharge".

Subsec. (a)(2). Pub. L. 101–510, §501(b)(1), substituted "six or more" for "five or more".

Pub. L. 101–510, §501(a)(2), redesignated subsec. (b) as subsec. (a)(2).

Subsec. (b). Pub. L. 101–510, §501(a)(3), added subsec. (b). Former subsec. (b) redesignated (a)(2).

Subsec. (c). Pub. L. 101–510, §501(h)(1), inserted heading.

Subsec. (c)(1). Pub. L. 101–510, §501(g)(2), struck out "after September 14, 1981," after "member who" in introductory provisions.

Pub. L. 101–510, §501(b)(1), substituted "six or more" for "five or more" in introductory provisions.

Subsec. (c)(3). Pub. L. 101–510, §501(b)(2), substituted "at least six years" for "at least five years".

Subsec. (d). Pub. L. 101–510, §501(h)(2), inserted heading.

Subsec. (d)(1). Pub. L. 101–510, §501(c)(1)(A), struck out "or $30,000, whichever is less" after "active duty".

Subsec. (d)(2). Pub. L. 101–510, §501(c)(1)(B), struck out ", but in no event more than $15,000" after "under clause (1)".

Subsec. (e). Pub. L. 101–510, §501(d), amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: "A member who—

"(1) is discharged or released from active duty at his request;

"(2) is released from active duty for training; or

"(3) upon discharge or release from active duty, is immediately eligible for retired or retainer pay based on his military service;

is not eligible for separation pay under this section."

Subsec. (f). Pub. L. 101–510, §501(h)(3), inserted heading.

Subsec. (g). Pub. L. 101–510, §501(h)(4), inserted heading.

Pub. L. 101–510, §501(c)(2), struck out "(1)" after "(g)" and struck out par. (2) which read as follows: "The total amount that a member may receive in separation pay under this section and severance pay and readjustment pay under any other provision of law, other than section 1212 of this title, based on service in the armed forces may not exceed $30,000."

Subsec. (h). Pub. L. 101–510, §501(h)(5), inserted heading.

Subsec. (i). Pub. L. 101–510, §501(h)(6), inserted heading.

1989—Subsec. (h)(2). Pub. L. 101–189 substituted "Department of Veterans Affairs" for "Veterans' Administration".

1984—Subsec. (h)(1). Pub. L. 98–498 substituted "separation pay, severance pay," for "severance pay" before "or readjustment pay" in two places.

1983—Subsec. (c). Pub. L. 98–94, §911(a), amended subsec. (c) generally, designating existing provisions as par. (1) and existing pars. (1) and (2) as subpars. (A) and (B), respectively, and in provisions preceding subpar. (A) substituted "Except as provided in paragraphs (2) and (3), a member" for "A member" and "fewer than 20, years of active service immediately before that discharge or release is entitled to separation pay" for "less than twenty, years of active service immediately before that discharge or release is entitled, unless the Secretary concerned determines that the conditions under which the member is discharged or separated do not warrant such pay, to separation pay", and added pars. (2) and (3).

Subsec. (f). Pub. L. 98–94, §923(b), amended subsec. (f) generally, substituting "each full month of service that is in addition to the number of full years of service creditable to the member is counted as one-twelfth of a year and any remaining fractional part of a month is disregarded" for "a part of a year that is six months or more is counted as a whole year and a part of a year that is less than six months is disregarded".

Subsec. (g)(2). Pub. L. 98–94, §911(b), inserted ", other than section 1212 of this title," after "any other provision of law".

Subsec. (i). Pub. L. 98–94, §1007(c)(2), designated existing provisions as par. (1) and added par. (2).

1981—Subsec. (c). Pub. L. 97–22 substituted "after September 14, 1981," for "on or after the effective date of the Defense Officer Personnel Management Act".

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115–232 effective Feb. 1, 2019, with provision for the coordination of amendments and special rule for certain redesignations, see section 800 of Pub. L. 115–232, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–32, title III, §318(c), June 24, 2009, 123 Stat. 1874, provided that: "The amendments made by this section [amending this section and section 1175 of this title] shall apply to any repayments of separation pay, severance pay, readjustment pay, special separation benefit, or voluntary separation incentive, that occur on or after the date of enactment [June 24, 2009], including any ongoing repayment actions that were initiated prior to this amendment."

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–317 applicable with respect to any sole survivorship discharge granted after Sept. 11, 2001, see section 10 of Pub. L. 110–317, set out as a note under section 2108 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–375 effective on the first day of the first month beginning more than 180 days after Oct. 28, 2004, see section 501(g) of Pub. L. 108–375, set out as a note under section 531 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–398, §1 [[div. A], title V, §508(c)], Oct. 30, 2000, 114 Stat. 1654, 1654A–107, provided that: "Paragraph (4) of section 1174(a) of title 10, United States Code, as added by subsection (a), and paragraph (4) of section 1174(c) of such title, as added by subsection (b), shall apply with respect to any offer of selective continuation on active duty that is declined on or after the date of the enactment of this Act [Oct. 30, 2000]."

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–261 applicable with respect to selection boards convened under section 611(a) of this title on or after Oct. 17, 1998, see section 502(c) of Pub. L. 105–261, set out as a note under section 617 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 105–178, title VIII, § 8208, June 9, 1998, 112 Stat. 495, provided that: ''The amendment made by section 653 of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104–201; 110 Stat. 2583) to subsection (h)(2) of section 1174 of title 10, United States Code, shall apply to any payment of separation pay under the special separation benefits program under section 1174a of that title that was made during the period beginning on December 5, 1991, and ending on September 30, 1996.''

Pub. L. 104–201, div. A, title VI, § 653(b), Sept. 23, 1996, 110 Stat. 2583, provided that: ''The amendments made by this section [amending this section] shall take effect on October 1, 1996, and shall apply to payments of separation pay, severance pay, or readjustment pay that are made after September 30, 1996.''

EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103–160, div. A, title V, § 501(b), Nov. 30, 1993, 107 Stat. 1644, provided that:

''(1) Except as provided in paragraph (2), the amendment made by subsection (a) [amending this section] shall apply with respect to any regular officer who is discharged after the date of the enactment of this Act [Nov. 30, 1993].

''(2) The amendment made by subsection (a) shall not apply with respect to an officer who on the date of the enactment of this Act has five or more, but less than six, years of active service in the Armed Forces.''

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–190 effective Feb. 1, 1992, see section 1132 of Pub. L. 102–190, set out as a note under section 521 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–510, div. A, title V, § 501(e), Nov. 5, 1990, 104 Stat. 1550, provided that:

''(1) Except as provided in paragraph (2), subsection (b) of section 1174 of title 10, United States Code, as added by subsection (a), and the amendments made by subsections (b), (c), and (d) [amending this section] shall apply with respect to a member of the Armed Forces who is discharged, or released from active duty, after the date of the enactment of this Act [Nov. 5, 1990].

''(2) The amendments made by subsection (b) [amending this section] shall not apply in the case of a member (other than a regular enlisted member) of the Armed Forces who (A) is serving on active duty on the date of the enactment of this Act, (B) is discharged, or released from active duty, after that date; and (C) on that date has five or more, but less than six, years of active service in the Armed Forces.''

EFFECTIVE DATE OF 1983 AMENDMENT

Pub. L. 98–94, title IX, § 911(c), Sept. 24, 1983, 97 Stat. 640, provided that: ''The amendments made by this section [amending this section] shall take effect on October 1, 1983.''

Pub. L. 98–94, title IX, § 923(g), Sept. 24, 1983, 97 Stat. 644, provided that: ''The amendments made by this section [amending this section and sections 1401, 1402, 1402a, 3991, 3992, 6151, 6328, 6330, 6404, 8991, and 8992 of this title, section 423 of Title 14, Coast Guard, section 853*o* of Title 33, Navigation and Navigable Waters, and section 212 of Title 42, The Public Health and Welfare] shall apply with respect to (1) the computation of retired or retainer pay of any individual who becomes entitled to that pay after September 30, 1983, and (2) the recomputation of retired pay under section 1402, 1402a, 3992 [now 7362], or 8992 [now 9362] of title 10, United States Code, of any individual who after September 30, 1983, becomes entitled to recompute retired pay under any such section.''

EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97–22, § 10(b), July 10, 1981, 95 Stat. 137, provided that the amendment made by that section is effective Sept. 15, 1981.

EFFECTIVE DATE

Section effective Sept. 15, 1981, but the authority to prescribe regulations under this section effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

TRANSITION PROVISIONS UNDER DEFENSE OFFICER PERSONNEL MANAGEMENT ACT

For provisions to prevent extinction or premature termination of rights, duties, penalties, or proceedings that existed or were begun prior to the effective date of Pub. L. 96–513 and otherwise to allow for an orderly transition to the system of officer personnel management put in place under Pub. L. 96–513, see section 601 et seq. of Pub. L. 96–513, set out as a note under section 611 of this title.

§ 1174a. Special separation benefits programs

(a) REQUIREMENT FOR PROGRAMS.—The Secretary concerned shall carry out a special separation benefits program under this section. An eligible member of the armed forces may request separation under the program. The request shall be subject to the approval of the Secretary.

(b) BENEFITS.—Upon the approval of the request of an eligible member, the member shall—

(1) be released from active duty or full-time National Guard duty or discharged, as the case may be; and

(2) be entitled to—

(A) separation pay equal to 15 percent of the product of (i) the member's years of active service, and (ii) 12 times the monthly basic pay to which the member is entitled at the time of his discharge or release from active duty; and

(B) the same benefits and services as are provided under chapter 58 of this title, sections 474 and 476 of title 37, and section 503(c) of the National Defense Authorization Act for Fiscal Year 1991 (104 Stat. 1558; 37 U.S.C. 476 note) for members of the armed forces who are involuntarily separated within the meaning of section 1141 of this title.

(c) ELIGIBILITY.—Subject to subsections (d) and (e), a member of an armed force is eligible for voluntary separation under a program established for that armed force pursuant to this section if the member—

(1) has not been approved for payment of a voluntary separation incentive under section 1175 of this title;

(2) has served on active duty or full-time National Guard duty or any combination of active duty and full-time National Guard duty for more than 6 years;

(3) has served on active duty or full-time National Guard duty or any combination of active duty and full-time National Guard duty for not more than 20 years;

(4) has served at least 5 years of continuous active duty or full-time National Guard duty or any combination of active duty and full-time National Guard duty immediately preceding the date of the member's separation from active duty; and

(5) meets such other requirements as the Secretary may prescribe, which may include requirements relating to—

(A) years of service;

(B) skill or rating;

(C) grade or rank; and

(D) remaining period of obligated service.

(d) PROGRAM APPLICABILITY.—The Secretary concerned may provide for the program under this section to apply to any of the following members:

(1) A regular officer or warrant officer of an armed force.

(2) A regular enlisted member of an armed force.

(3) A member of an armed force other than a regular member.

(e) APPLICABILITY SUBJECT TO NEEDS OF THE SERVICE.—(1) Subject to paragraphs (2) and (3), the Secretary concerned may limit the applicability of a program under this section to any category of personnel defined by the Secretary in order to meet a need of the armed force under the Secretary's jurisdiction to reduce the number of members in certain grades, the number of members who have completed a certain number of years of active service, or the number of members who possess certain military skills or are serving in designated competitive categories.

(2) Any category prescribed by the Secretary concerned for regular officers, regular enlisted members, or other members pursuant to paragraph (1) shall be consistent with the categories applicable to regular officers, regular enlisted members, or other members, respectively, under the voluntary separation incentive program under section 1175 of this title or any other program established by law or by that Secretary for the involuntary separation of such members in the administration of a reduction in force.

(3) A member of the armed forces offered a voluntary separation incentive under section 1175 of this title shall also be offered the opportunity to request separation under a program established pursuant to this section. If the Secretary concerned approves a request for separation under either such section, the member shall be separated under the authority of the section selected by such member.

(f) APPLICATION REQUIREMENTS.—(1) In order to be separated under a program established pursuant to this section—

(A) a regular enlisted member eligible for separation under that program shall—

(i) submit a request for separation under the program before the expiration of the member's term of enlistment; or

(ii) upon discharge at the end of such term, enter into a written agreement (pursuant to regulations prescribed by the Secretary concerned) not to request reenlistment in a regular component; and

(B) a member referred to in subsection (d)(3) eligible for separation under that program shall submit a request for separation to the Secretary concerned before the expiration of the member's established term of active service.

(2) For purposes of this section, the entry of a member into an agreement referred to in paragraph (1)(A)(ii) under a program established pursuant to this section shall be considered a request for separation under the program.

(g) OTHER CONDITIONS, REQUIREMENTS, AND ADMINISTRATIVE PROVISIONS.—Subsections (e) through (h), other than subsection (e)(2)(A), of section 1174 of this title shall apply in the administration of programs established under this section.

(h) TERMINATION OF PROGRAM.—(1) Except as provided in paragraph (2), the Secretary concerned may not conduct a program pursuant to this section after December 31, 2001.

(2) No member of the armed forces may be separated under a program established pursuant to this section after the date of the termination of that program.

(Added Pub. L. 102–190, div. A, title VI, § 661(a)(1), Dec. 5, 1991, 105 Stat. 1394; amended Pub. L. 102–484, div. A, title X, § 1052(15), div. D, title XLIV, §§ 4405(a), 4422(a), Oct. 23, 1992, 106 Stat. 2499, 2706, 2718; Pub. L. 103–35, title II, § 202(a)(17), May 31, 1993, 107 Stat. 102; Pub. L. 103–160, div. A, title V, §§ 502, 561(g), Nov. 30, 1993, 107 Stat. 1644, 1668; Pub. L. 103–337, div. A, title V, § 542(b), Oct. 5, 1994, 108 Stat. 2768; Pub. L. 105–261, div. A, title V, § 561(b), Oct. 17, 1998, 112 Stat. 2025; Pub. L. 106–398, § 1 [[div. A], title V, § 571(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–134; Pub. L. 112–81, div. A, title VI, § 631(f)(4)(A), Dec. 31, 2011, 125 Stat. 1465; Pub. L. 112–239, div. A, title X, § 1076(a)(9), Jan. 2, 2013, 126 Stat. 1948.)

AMENDMENTS

2013—Subsec. (b)(2)(B). Pub. L. 112–239, § 1076(a)(9), made technical amendment to directory language of Pub. L. 112–81, § 631(f)(4)(A). See 2011 Amendment note below.

2011—Subsec. (b)(2)(B). Pub. L. 112–81, § 631(f)(4)(A), as amended by Pub. L. 112–239, § 1076(a)(9), substituted ''474'' for ''404'' and substituted ''476'' for ''406'' in two places.

2000—Subsec. (h)(1). Pub. L. 106–398 substituted ''December 31, 2001'' for ''September 30, 2001''.

1998—Subsec. (h)(1). Pub. L. 105–261 substituted ''September 30, 2001'' for ''September 30, 1999''.

1994—Subsec. (a). Pub. L. 103–337, § 542(b)(1), substituted ''concerned'' for ''of each military department''.

Subsec. (d). Pub. L. 103–337, § 542(b)(2), substituted ''concerned'' for ''of a military department''.

Subsec. (e)(3). Pub. L. 103–337, § 542(b)(3), struck out ''of the military department'' after ''Secretary''.

Subsec. (h). Pub. L. 103–337, § 542(b)(4), substituted ''concerned'' for ''of a military department''.

1993—Subsec. (c)(2). Pub. L. 103–160, § 502, struck out ''before December 5, 1991'' after ''6 years''.

Subsec. (c)(3). Pub. L. 103–35, § 202(a)(17)(A), made technical amendment to directory language of Pub. L. 102–484, § 4422(a)(3). See 1992 Amendment note below.

Subsec. (c)(4). Pub. L. 103–35, § 202(a)(17)(B), made technical amendment to directory language of Pub. L. 102–484, § 4422(a)(4). See 1992 Amendment note below.

Subsec. (h)(1). Pub. L. 103–160, § 561(g), substituted ''September 30, 1999'' for ''September 30, 1995''.

1992—Subsec. (b)(1). Pub. L. 102–484, § 4422(a)(1), inserted ''or full-time National Guard duty'' after ''active duty''.

Subsec. (b)(2)(B). Pub. L. 102–484, § 4405(a), inserted '', sections 404 and 406 of title 37, and section 503(c) of the National Defense Authorization Act for Fiscal Year 1991 (104 Stat. 1558; 37 U.S.C. 406 note)'' after ''chapter 58 of this title''.

Subsec. (c)(2). Pub. L. 102–484, §§ 1052(15), 4422(a)(2), substituted ''December 5, 1991'' for ''the date of the enactment of this section'' and inserted ''or full-time Na-

tional Guard duty or any combination of active duty and full-time National Guard duty'' after ''active duty''.

Subsec. (c)(3). Pub. L. 102–484, § 4422(a)(3), as amended by Pub. L. 103–35, § 202(a)(17)(A), inserted ''or full-time National Guard duty or any combination of active duty and full-time National Guard duty'' after ''active duty''.

Subsec. (c)(4). Pub. L. 102–484, § 4422(a)(4), as amended by Pub. L. 103–35, § 202(a)(17)(B), inserted ''and'' after semicolon at end and ''or full-time National Guard duty or any combination of active duty and full-time National Guard duty'' after ''active duty'' the first place it appeared.

Subsec. (c)(5), (6). Pub. L. 102–484, § 4424(a)(5), redesignated par. (6) as (5) and struck out former par. (5) which read as follows: ''if a Reserve, is on an active duty list; and''.

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112–239, div. A, title X, § 1076(a), Jan. 2, 2013, 126 Stat. 1947, provided that the amendment made by section 1076(a)(9) is effective Dec. 31, 2011, and as if included in Pub. L. 112–81 as enacted.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 applicable only to members of the Coast Guard who are separated after Sept. 30, 1994, see section 542(e) of Pub. L. 103–337, set out as a note under section 1141 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–35 applicable as if included in the enactment of Pub. L. 102–484, see section 202(b) of Pub. L. 103–35, set out as a note under section 155 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Pub. L. 102–484, div. A, title XLIV, § 4405(c), Oct. 23, 1992, 106 Stat. 2706, provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 1175 of this title] shall apply as if included in sections 1174a and 1175 of title 10, United States Code, as enacted on December 5, 1991, but any benefits or services payable by reason of the applicability of the provisions of those amendments during the period beginning on December 5, 1991, and ending on the date of the enactment of this Act [Oct. 23, 1992] shall be subject to the availability of appropriations.''

REMEDY FOR INEFFECTIVE COUNSELING OF OFFICERS DISCHARGED FOLLOWING SELECTION BY EARLY DISCHARGE BOARDS

Pub. L. 103–160, div. A, title V, § 507, Nov. 30, 1993, 107 Stat. 1646, as amended by Pub. L. 103–337, div. A, title X, § 1070(b)(1), Oct. 5, 1994, 108 Stat. 2856, provided that:

''(a) PROCEDURE FOR REVIEW.—(1) The Secretary of each military department shall establish a procedure for the review of the individual circumstances of an officer described in paragraph (2) who is discharged, or who the Secretary concerned approves for discharge, following the report of a selection board convened by the Secretary to select officers for separation. The procedure established by the Secretary of a military department under this section shall provide that each review under that procedure be carried out by the Board for the Correction of Military Records of that military department.

''(2) This section applies in the case of any officer (including a warrant officer) who, having been offered the opportunity to be discharged or otherwise separated from active duty through the programs provided under section 1174a and 1175 of title 10, United States Code—

''(A) elected not to accept such discharge or separation; and

''(B) submits an application under subsection (b) during the two-year period beginning on the later of the date of the enactment of this Act [Nov. 30, 1993] and the date of such discharge or separation.

''(b) APPLICATION.—A review under this section shall be conducted in any case submitted to the Secretary concerned by application from the officer or former officer under regulations prescribed by the Secretary.

''(c) PURPOSE OF REVIEW.—(1) The review under this section shall be designed to evaluate the effectiveness of the counseling of the officer before the convening of the board to ensure that the officer was properly informed that selection for discharge or other separation from active duty was a potential result of being within the group of officers to be considered by the board and that the officer was not improperly informed that such selection in that officer's personal case was unlikely.

''(2) The Board for the Correction of Military Records of a military department shall render a decision in each case under this section not later than 60 days after receipt by the Secretary concerned of an application under subsection (b).

''(d) REMEDY.—Upon a finding of ineffective counseling under subsection (c), the Secretary shall provide the officer the opportunity to participate, at the officer's option, in any one of the following programs for which the officer meets all eligibility criteria:

''(1) The Special Separation Benefits program under section 1174a of title 10, United States Code.

''(2) The Voluntary Separation Incentive program under section 1175 of such title.

''(3) Retirement under the authority provided by section 4403 of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102–484; 106 Stat. 2702; 10 U.S.C. 1293 note).

''(e) EFFECTIVE DATE.—This section shall apply with respect to officers separated after September 30, 1990.''

SEPARATION PAYMENTS; REDUCTIONS AND PROHIBITIONS

Pub. L. 103–335, title VIII, § 8106A, Sept. 30, 1994, 108 Stat. 2645, as amended by Pub. L. 104–6, title I, § 105(a), Apr. 10, 1995, 109 Stat. 79, which provided that members who separated after Sept. 30, 1994, from active duty or full-time National Guard duty in a military department pursuant to a Special Separation Benefits program under section 1174a of this title or a Voluntary Separation Incentive program under section 1175 of this title would have their separation payments reduced by the amount of certain bonus payments and eliminated if they are rehired within 180 days by the Department of Defense in a civilian position and that civilian Department of Defense employees would not receive voluntary separation payments if rehired by a Federal agency within 180 days of separating from the Department of Defense, was from the Department of Defense Appropriations Act, 1995, and was not repeated in subsequent appropriation acts. Similar provisions were contained in the following prior appropriation act:

Pub. L. 103–139, title VIII, § 8127, Nov. 11, 1993, 107 Stat. 1469.

COMMENCEMENT OF PROGRAM

Pub. L. 102–190, div. A, title VI, § 661(b), Dec. 5, 1991, 105 Stat. 1395, provided that: ''The Secretary of each military department shall commence the program required by section 1174a of title 10, United States Code (as added by subsection (a)), not later than 60 days after the date of the enactment of this Act [Dec. 5, 1991].''

REPORT ON PROGRAMS

Pub. L. 102–190, div. A, title VI, § 663, Dec. 5, 1991, 105 Stat. 1399, directed Secretary, not later than 180 days after Dec. 5, 1991, to submit to Congress a report containing the Secretary's assessment of effectiveness of programs established under sections 1174a and 1175 of this title.

§ 1175. Voluntary separation incentive

(a)(1) Consistent with this section and the availability of appropriations for this purpose, the Secretary of Defense and the Secretary of

Homeland Security may provide a financial incentive to members of the armed forces described in subsection (b) for voluntary appointment, enlistment, or transfer to a reserve component, requested and approved under subsection (c).

(2)(A) Except as provided in subparagraph (B), a financial incentive provided a member under this section shall be paid for the period equal to twice the number of years of service of the member, computed as provided in subsection (e)(5).

(B) If, before the expiration of the period otherwise applicable under subparagraph (A) to a member receiving a financial incentive under this section, the member is separated from a reserve component or is transferred to the Retired Reserve, the period for payment of a financial incentive to the member under this section shall terminate on the date of the separation or transfer unless—

(i) the separation or transfer is required by reason of the age or number of years of service of the member;

(ii) the separation or transfer is required by reason of the failure of selection for promotion or the medical disqualification of the member, except in a case in which the Secretary of Defense or the Secretary of Homeland Security determines that the basis for the separation or transfer is a result of a deliberate action taken by the member with the intent to avoid retention in the Ready Reserve or Standby Reserve; or

(iii) in the case of a separation, the member is separated from the reserve component for appointment or enlistment in or transfer to another reserve component of an armed force for service in the Ready Reserve or Standby Reserve of that armed force.

(b) The Secretary of Defense and the Secretary of Homeland Security may provide the incentive to a member of the armed forces if the member—

(1) has served on active duty or full-time National Guard duty or any combination of active duty and full-time National Guard duty for more than 6 but less than 20 years;

(2) has served at least 5 years of continuous active duty or full-time National Guard duty or any combination of active duty and full-time National Guard duty immediately preceding the date of separation;

(3) meets such other requirements as the Secretary may prescribe from time to time, which may include requirements relating to—

(A) years of service;

(B) skill or rating;

(C) grade or rank; and

(D) remaining period of obligated service.

(c) A member of the armed forces offered a voluntary separation incentive under this section shall be offered the opportunity to request separation under a program established pursuant to section 1174a of this title. If the Secretary concerned approves a request for separation under either such section, the member shall be separated under the authority of the section selected by such member.

(d)(1) A member of the armed forces described in subsection (b) may request voluntary appointment, enlistment, or transfer to a reserve component accompanied by this incentive, provided the member has completed 6 years of active service.

(2) The Secretary, in his discretion, may approve or disapprove a request according to the needs of the armed forces.

(3) After December 31, 2001, the Secretary may not approve a request.

(e)(1) The annual payment of the incentive shall equal 2.5 percent of the monthly basic pay the member receives on the date appointed, enlisted, or transferred to the reserve component, multiplied by twelve and multiplied again by the member's years of service.

(2) A member entitled to voluntary separation incentive payments who is also entitled to basic pay for active or reserve service, or compensation for inactive duty training, may elect to have a reduction in the voluntary separation incentive payable for the same period in an amount not to exceed the amount of the basic pay or compensation received for that period.

(3)(A) A member who has received the voluntary separation incentive and who later qualifies for retired or retainer pay under this title shall have deducted from each payment of such retired or retainer pay an amount, in such schedule of monthly installments as the Secretary of Defense shall specify, taking into account the financial ability of the member to pay and avoiding the imposition of undue financial hardship on the member and member's dependents, until the total amount deducted is equal to the total amount of voluntary separation incentive so paid. If the member elected to have a reduction in voluntary separation incentive for any period pursuant to paragraph (2), the deduction required under the preceding sentence shall be reduced as the Secretary of Defense shall specify.

(B) If a member is receiving simultaneous voluntary separation incentive payments and retired or retainer pay, the member may elect to terminate the receipt of voluntary separation incentive payments. Any such election is permanent and irrevocable. The rate of monthly recoupment from retired or retainer pay of voluntary separation incentive payments received after such an election shall be reduced by a percentage that is equal to a fraction with a denominator equal to the number of months that the voluntary separation incentive payments were scheduled to be paid and a numerator equal to the number of months that would not be paid as a result of the member's decision to terminate the voluntary separation incentive.

(4) A member who is receiving voluntary separation incentive payments shall not be deprived of this incentive by reason of entitlement to disability compensation under the laws administered by the Department of Veterans Affairs, but there shall be deducted from voluntary separation incentive payments an amount equal to the amount of any such disability compensation concurrently received. Notwithstanding the preceding sentence, no deduction may be made from voluntary separation incentive payments for any disability compensation received because of an earlier period of active duty if the voluntary separation incentive is received be-

cause of discharge or release from a later period of active duty.

(5) The years of service of a member for purposes of this section shall be computed in accordance with section 1405 of this title.

(f) The member's right to incentive payments shall not be transferable, except that the member may designate beneficiaries to receive the payments in the event of the member's death.

(g) Subject to subsection (h), payments under this provision shall be paid from appropriations available to the Department of Defense and the Department of Homeland Security for the Coast Guard.

(h)(1) There is established on the books of the Treasury a fund to be known as the ''Voluntary Separation Incentive Fund'' (hereinafter in this subsection referred to as the ''Fund''). The Fund shall be administered by the Secretary of the Treasury. The Fund shall be used for the accumulation of funds in order to finance on an actuarially sound basis the liabilities of the Department of Defense under this section.

(2) There shall be deposited in the Fund the following, which shall constitute the assets of the Fund:

(A) Amounts paid into the Fund under paragraphs (5), (6), and (7).

(B) Any amount appropriated to the Fund.

(C) Any return on investment of the assets of the Fund.

(3) All voluntary separation incentive payments made by the Secretary of Defense after December 31, 1992, under this section shall be paid out of the Fund. To the extent provided in appropriation Acts, the assets of the Fund shall be available to the Secretary to pay voluntary separation incentives under this section.

(4) The Department of Defense Board of Actuaries (hereinafter in this subsection referred to as the ''Board'') shall perform the same functions regarding the Fund, as provided in this subsection, as such Board performs regarding the Department of Defense Military Retirement Fund.

(5) Not later than January 1, 1993, the Board shall determine the amount that is the present value, as of that date, of the future benefits payable under this section in the case of persons who are separated pursuant to this section before that date. The amount so determined is the original unfunded liability of the Fund. The Board shall determine an appropriate amortization period and schedule for liquidation of the original unfunded liability. The Secretary shall make deposits to the Fund in accordance with that amortization schedule.

(6) For persons separated under this section on or after January 1, 1993, the Secretary shall deposit in the Fund during the period beginning on that date and ending on September 30, 1999—

(A) such sums as are necessary to pay the current liabilities under this section during such period; and

(B) the amount equal to the present value, as of September 30, 1999, of the future benefits payable under this section, as determined by the Board.

(7)(A) For each fiscal year after fiscal year 1999, the Board shall—

(i) carry out an actuarial valuation of the Fund and determine any unfunded liability of the Fund which deposits under paragraphs (5) and (6) do not liquidate, taking into consideration any cumulative actuarial gain or loss to the Fund;

(ii) determine the period over which that unfunded liability should be liquidated; and

(iii) determine for the following fiscal year, the total amount, and the monthly amount, of the Department of Defense contributions that must be made to the Fund during that fiscal year in order to fund the unfunded liabilities of the Fund over the applicable amortization periods.

(B) The Board shall carry out its responsibilities for each fiscal year in sufficient time for the amounts referred to in subparagraph (A)(iii) to be included in budget requests for that fiscal year.

(C) The Secretary of Defense shall pay into the Fund at the end of each month as the Department of Defense contribution to the Fund the amount necessary to liquidate unfunded liabilities of the Fund in accordance with the amortization schedules determined by the Board.

(8) Amounts paid into the Fund under this subsection shall be paid from funds available for the pay of members of the armed forces under the jurisdiction of the Secretary of each military department.

(9) The investment provisions of section 1467 of this title shall apply to the Voluntary Separation Incentive Fund.

(i) The Secretary of Defense and the Secretary of Homeland Security may issue such regulations as may be necessary to carry out this section.

(j) A member of the armed forces who is provided a voluntary separation incentive under this section shall be eligible for the same benefits and services as are provided under chapter 58 of this title, sections 474 and 476 of title 37, and section 503(c) of the National Defense Authorization Act for Fiscal Year 1991 (104 Stat. 1558; 37 U.S.C. 476 note) for members of the armed forces who are involuntarily separated within the meaning of section 1141 of this title.

(Added Pub. L. 102–190, div. A, title VI, § 662(a)(1), Dec. 5, 1991, 105 Stat. 1396; amended Pub. L. 102–484, div. A, title X, § 1052(16), div. D, title XLIV, §§ 4405(b), 4406(a), (b), 4422(b), Oct. 23, 1992, 106 Stat. 2499, 2706, 2707, 2719; Pub. L. 103–160, div. A, title V, §§ 502, 561(h), Nov. 30, 1993, 107 Stat. 1644, 1668; Pub. L. 103–337, div. A, title V, § 542(c), Oct. 5, 1994, 108 Stat. 2769; Pub. L. 105–261, div. A, title V, §§ 561(b), 563(a), (b), Oct. 17, 1998, 112 Stat. 2025, 2028; Pub. L. 106–398, § 1 [[div. A], title V, §§ 571(b), 572(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–134, 1654A–135; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 110–181, div. A, title IX, § 906(c)(1), Jan. 28, 2008, 122 Stat. 277; Pub. L. 111–32, title III, § 318(b), June 24, 2009, 123 Stat. 1874; Pub. L. 112–81, div. A, title VI, § 631(f)(4)(A), Dec. 31, 2011, 125 Stat. 1465; Pub. L. 112–239, div. A, title X, § 1076(a)(9), Jan. 2, 2013, 126 Stat. 1948.)

AMENDMENTS

2013—Subsec. (j). Pub. L. 112–239, § 1076(a)(9), made technical amendment to directory language of Pub. L. 112–81, § 631(f)(4)(A). See 2011 Amendment note below.

2011—Subsec. (j). Pub. L. 112–81, § 631(f)(4)(A), as amended by Pub. L. 112–239, § 1076(a)(9), substituted ''474'' for ''404'' and substituted ''476'' for ''406'' in two places.

2009—Subsec. (e)(3)(A). Pub. L. 111–32 amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''A member who has received the voluntary separation incentive and who qualifies for retired or retainer pay under this title shall have deducted from each payment of such retired or retainer pay so much of such pay as is based on the service for which he received the voluntary separation incentive until the total amount deducted equals the total amount of voluntary separation incentive received. If the member elected to have a reduction in voluntary separation incentive for any period pursuant to paragraph (2), the deduction required under the preceding sentence shall be reduced accordingly.''

2008—Subsec. (h)(4). Pub. L. 110–181 struck out ''Retirement'' before ''Board of Actuaries''.

2002—Subsecs. (a)(1), (2)(B)(ii), (b), (g), (i). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

2000—Subsec. (d)(3). Pub. L. 106–398, § 1 [[div. A], title V, § 571(b)], substituted ''December 31, 2001'' for ''September 30, 2001''.

Subsec. (e)(3). Pub. L. 106–398, § 1 [[div. A], title V, § 572(a)], designated existing provisions as subpar. (A) and added subpar. (B).

1998—Subsec. (a). Pub. L. 105–261, § 563(a), designated existing provisions as par. (1), struck out '', for the period of time the member serves in a reserve component'' after ''under subsection (c)'', and added par. (2).

Subsec. (d)(3). Pub. L. 105–261, § 561(b), substituted ''September 30, 2001'' for ''September 30, 1999''.

Subsec. (e)(1). Pub. L. 105–261, § 563(b), struck out at end ''The annual payment will be made for a period equal to the number of years that is equal to twice the number of years of service of the member.''

1994—Subsecs. (a), (b). Pub. L. 103–337, § 542(c)(1), inserted ''and the Secretary of Transportation'' after ''Secretary of Defense''.

Subsec. (c). Pub. L. 103–337, § 542(c)(2), struck out ''of the military department'' after ''Secretary''.

Subsec. (g). Pub. L. 103–337, § 542(c)(3), inserted ''and the Department of Transportation for the Coast Guard'' before period at end.

Subsec. (h)(3). Pub. L. 103–337, § 542(c)(4), inserted ''by the Secretary of Defense'' after ''incentive payments made'' and ''to the Secretary'' after ''shall be available''.

Subsec. (i). Pub. L. 103–337, § 542(c)(5), inserted ''and the Secretary of Transportation'' after ''Secretary of Defense''.

1993—Subsec. (d)(1). Pub. L. 103–160, § 502, struck out ''before December 5, 1991'' after ''active service''.

Subsecs. (d)(3), (h)(6). Pub. L. 103–160, § 561(h)(1), substituted ''September 30, 1999'' for ''September 30, 1995'' wherever appearing.

Subsec. (h)(7)(A). Pub. L. 103–160, § 561(h)(2), substituted ''fiscal year 1999'' for ''fiscal year 1996''.

1992—Subsec. (a). Pub. L. 102–484, § 1052(16)(A), substituted ''reserve component'' for ''Reserve component'' after ''transfer to a''.

Subsec. (b)(1), (2). Pub. L. 102–484, § 4422(b)(1), (2), inserted ''or full-time National Guard duty or any combination of active duty and full-time National Guard duty'' after ''active duty''.

Subsec. (b)(3), (4). Pub. L. 102–484, § 4424(b)(3), redesignated par. (4) as (3) and struck out former par. (3) which read as follows: ''if a Reserve, is on the active duty list; and''.

Subsec. (d)(1). Pub. L. 102–484, § 1052(16)(B), substituted ''before December 5, 1991'' for ''prior to the time this provision is enacted''.

Subsec. (e)(2). Pub. L. 102–484, § 4406(a)(1), substituted ''may elect to have a reduction in the voluntary separation incentive payable for the same period in an amount not to exceed the amount of the basic pay or compensation received for that period.'' for ''shall forfeit an amount of voluntary separation incentive payable for the same period that is equal to the total amount of basic pay, or compensation, received.''

Subsec. (e)(3). Pub. L. 102–484, § 4406(a)(2), inserted at end ''If the member elected to have a reduction in voluntary separation incentive for any period pursuant to paragraph (2), the deduction required under the preceding sentence shall be reduced accordingly.''

Subsec. (e)(6). Pub. L. 102–484, § 4406(b), struck out par. (6) which read as follows: ''Years of service that form the basis of the payment under paragraph (5) may not be counted in computing eligibility for, or the amount of, annuities under title 5 or any other law providing annuities to Federal civilian employees.''

Subsec. (j). Pub. L. 102–484, § 4405(b), added subsec. (j).

Effective Date of 2013 Amendment

Pub. L. 112–239, div. A, title X, § 1076(a), Jan. 2, 2013, 126 Stat. 1947, provided that the amendment made by section 1076(a)(9) is effective Dec. 31, 2011, and as if included in Pub. L. 112–81 as enacted.

Effective Date of 2009 Amendment

Amendment by Pub. L. 111–32 applicable to any repayments of separation pay, severance pay, readjustment pay, special separation benefit, or voluntary separation incentive, that occur on or after June 24, 2009, including any ongoing repayment actions that were initiated prior to such amendment, see section 318(c) of Pub. L. 111–32, set out as a note under section 1174 of this title.

Effective Date of 2002 Amendment

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

Effective Date of 2000 Amendment

Pub. L. 106–398, § 1 [[div. A], title V, § 572(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–136, provided that: ''Subparagraph (B) of section 1175(e)(3) of title 10, United States Code, as added by subsection (a), shall apply with respect to decisions by members to terminate voluntary separation incentive payments under section 1175 of title 10, United States Code, to be effective after September 30, 2000.''

Effective Date of 1998 Amendment

Pub. L. 105–261, div. A, title V, § 563(c), Oct. 17, 1998, 112 Stat. 2028, provided that: ''The amendments made by this section [amending this section] apply with respect to any person provided a voluntary separation incentive under section 1175 of title 10, United States Code (whether before, on, or after the date of the enactment of this Act) [Oct. 17, 1998].''

Effective Date of 1994 Amendment

Amendment by Pub. L. 103–337 applicable only to members of the Coast Guard who are separated after Sept. 30, 1994, see section 542(e) of Pub. L. 103–337, set out as a note under section 1141 of this title.

Effective Date of 1992 Amendment

Amendment by section 4405(b) of Pub. L. 102–484 applicable as if included in this section as enacted Dec. 5, 1991, with any benefits or services payable by reason of applicability of that amendment during the period beginning Dec. 5, 1991, and ending Oct. 23, 1992, to be subject to availability of appropriations, see section 4405(c) of Pub. L. 102–484, set out as a note under section 1174a of this title.

Pub. L. 102–484, div. D, title XLIV, § 4406(c), Oct. 23, 1992, 106 Stat. 2707, provided that: ''The amendments to section 1175 of title 10, United States Code, made by subsections (a) and (b) shall apply as if included in section 1175 of title 10, United States Code, as enacted on December 5, 1991.''

PAYMENT OF INCENTIVES FROM VOLUNTARY SEPARATION INCENTIVE FUND

Pub. L. 104–208, div. A, title I, § 101(b) [title VIII, § 8044], Sept. 30, 1996, 110 Stat. 3009–71, 3009–98, provided that: ''During the current fiscal year and hereafter, voluntary separation incentives payable under 10 U.S.C. 1175 may be paid in such amounts as are necessary from the assets of the Voluntary Separation Incentive Fund established by section 1175(h)(1).''

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 104–61, title VIII, § 8054, Dec. 1, 1995, 109 Stat. 662.

Pub. L. 103–335, title VIII, § 8062, Sept. 30, 1994, 108 Stat. 2633.

Pub. L. 103–139, title VIII, § 8073, Nov. 11, 1993, 107 Stat. 1457.

Pub. L. 102–396, title IX, § 9106, Oct. 6, 1992, 106 Stat. 1927.

SEPARATION PAYMENTS; REDUCTIONS AND PROHIBITIONS

For provisions reducing, with certain exceptions, amounts received under this section by amounts received as bonus payments under chapter 5 of title 37 in case of members who separate from active duty or full-time National Guard duty in a military department and prohibiting such members from receiving Voluntary Separation Incentive program payments if rehired in DOD civilian position within 180 days of separation, see note set out under section 1174a of this title.

TAX TREATMENT OF INCENTIVE PAYMENT

Pub. L. 102–190, div. A, title VI, § 662(b), Dec. 5, 1991, 105 Stat. 1398, provided that: ''Notwithstanding the Internal Revenue Code of 1986 [26 U.S.C. 1 et seq.] and any other provision of law, any voluntary separation incentive paid to a member of the Armed Forces under section 1175 of title 10, United States Code (as added by subsection (a)), shall be includable in gross income for federal tax purposes only for the taxable year in which such incentive is paid to the participant or beneficiary of the member.''

§ 1175a. Voluntary separation pay and benefits

(a) IN GENERAL.—Under regulations approved by the Secretary of Defense, the Secretary concerned may provide voluntary separation pay and benefits in accordance with this section to eligible members of the armed forces who are voluntarily separated from active duty in the armed forces.

(b) ELIGIBLE MEMBERS.—(1) Except as provided in paragraph (2), a member of the armed forces is eligible for voluntary separation pay and benefits under this section if the member—

(A) has served on active duty for more than 6 years but not more than 20 years;

(B) has served at least 5 years of continuous active duty immediately preceding the date of the member's separation from active duty;

(C) has not been approved for payment of a voluntary separation incentive under section 1175 of this title;

(D) meets such other requirements as the Secretary concerned may prescribe, which may include requirements relating to—

(i) years of service, skill, rating, military specialty, or competitive category;

(ii) grade or rank;

(iii) remaining period of obligated service; or

(iv) any combination of these factors; and

(E) requests separation from active duty.

(2) The following members are not eligible for voluntary separation pay and benefits under this section:

(A) Members discharged with disability severance pay under section 1212 of this title.

(B) Members transferred to the temporary disability retired list under section 1202 or 1205 of this title.

(C) Members being evaluated for disability retirement under chapter 61 of this title.

(D) Members who have been previously discharged with voluntary separation pay.

(E) Members who are subject to pending disciplinary action or who are subject to administrative separation or mandatory discharge under any other provision of law or regulations.

(3) The Secretary concerned shall determine each year the number of members to be separated, and provided separation pay and benefits, under this section during the fiscal year beginning in such year.

(c) SEPARATION.—Each eligible member of the armed forces whose request for separation from active duty under subsection (b)(1)(E) is approved shall be separated from active duty.

(d) ADDITIONAL SERVICE IN READY RESERVE.—Of the number of members of the armed forces to be separated from active duty in a fiscal year, as determined under subsection (b)(3), the Secretary concerned shall determine a number of such members, in such skill and grade combinations as the Secretary concerned shall designate, who shall serve in the Ready Reserve, after separation from active duty, for a period of not less than three years, as a condition of the receipt of voluntary separation pay and benefits under this section.

(e) SEPARATION PAY AND BENEFITS.—(1) A member of the armed forces who is separated from active duty under subsection (c) shall be paid voluntary separation pay in accordance with subsection (g) in an amount determined by the Secretary concerned pursuant to subsection (f).

(2) A member who is not entitled to retired or retainer pay upon separation shall be entitled to the benefits and services provided under—

(A) chapter 58 of this title during the 180-day period beginning on the date the member is separated (notwithstanding any termination date for such benefits and services otherwise applicable under the provisions of such chapter); and

(B) sections 474 and 476 of title 37.

(f) COMPUTATION OF VOLUNTARY SEPARATION PAY.—The Secretary concerned shall specify the amount of voluntary separation pay that an individual or defined group of members of the armed forces may be paid under subsection (e)(1). No member may receive as voluntary separation pay an amount greater than four times the full amount of separation pay for a member of the same pay grade and years of service who is involuntarily separated under section 1174 of this title.

(g) PAYMENT OF VOLUNTARY SEPARATION PAY.—(1) Voluntary separation pay under this section may be paid in a single lump sum.

(2) In the case of a member of the armed forces who, at the time of separation under subsection (c), has completed at least 15 years, but less than 20 years, of active service, voluntary sepa-

ration pay may be paid, at the election of the Secretary concerned, in—

(A) a single lump sum;

(B) installments over a period not to exceed 10 years; or

(C) a combination of lump sum and such installments.

(h) COORDINATION WITH RETIRED OR RETAINER PAY AND DISABILITY COMPENSATION.—(1) A member who is paid voluntary separation pay under this section and who later qualifies for retired or retainer pay under this title or title 14 shall have deducted from each payment of such retired or retainer pay an amount, in such schedule of monthly installments as the Secretary concerned shall specify, until the total amount deducted from such retired or retainer pay is equal to the total amount of voluntary separation pay so paid.

(2)(A) Except as provided in subparagraphs (B) and (C), a member who is paid voluntary separation pay under this section shall not be deprived, by reason of the member's receipt of such pay, of any disability compensation to which the member is entitled under the laws administered by the Secretary of Veterans Affairs, but there shall be deducted from such disability compensation an amount, in such schedule of monthly installments as the Secretary concerned shall specify, until the total amount deducted from such disability compensation is equal to the total amount of voluntary separation pay so paid, less the amount of Federal income tax withheld from such pay (such withholding being at the flat withholding rate for Federal income tax withholding, as in effect pursuant to regulations prescribed under chapter 24 of the Internal Revenue Code of 1986).

(B) No deduction shall be made from the disability compensation paid to an eligible disabled uniformed services retiree under section 1413, or to an eligible combat-related disabled uniformed services retiree under section 1413a of this title, who is paid voluntary separation pay under this section.

(C) No deduction may be made from the disability compensation paid to a member for the amount of voluntary separation pay received by the member because of an earlier discharge or release from a period of active duty if the disability which is the basis for that disability compensation was incurred or aggravated during a later period of active duty.

(3) The requirement under this subsection to repay voluntary separation pay following retirement from the armed forces does not apply to a member who was eligible to retire at the time the member applied and was accepted for voluntary separation pay and benefits under this section.

(4) The Secretary concerned may waive the requirement to repay voluntary separation pay under paragraphs (1) and (2) if the Secretary determines that recovery would be against equity and good conscience or would be contrary to the best interests of the United States.

(i) RETIREMENT DEFINED.—In this section, the term ''retirement'' includes a transfer to the Fleet Reserve or Fleet Marine Corps Reserve.

(j) REPAYMENT FOR MEMBERS WHO RETURN TO ACTIVE DUTY.—(1) Except as provided in paragraphs (2), (3), and (4), a member of the armed forces who, after having received all or part of voluntary separation pay under this section, returns to active duty shall have deducted from each payment of basic pay, in such schedule of monthly installments as the Secretary concerned shall specify, until the total amount deducted from such basic pay equals the total amount of voluntary separation pay received.

(2) Members who are involuntarily recalled to active duty or full-time National Guard duty in accordance with section 12301(a), 12301(b), 12301(g), 12302, 12303, 12304, 12304a, or 12304b of this title or section 502(f)(1)(A) of title 32 shall not be subject to this subsection.

(3) Members who are recalled or perform active duty or full-time National Guard duty in accordance with section 101(d)(1), 101(d)(2), 101(d)(5), 12301(d) (insofar as the period served is less than 180 consecutive days with the consent of the member), 12319, or 12503 of this title, or section 114, 115, or 502(f)(1)(B) of title 32 (insofar as the period served is less than 180 consecutive days with consent of the member), shall not be subject to this subsection.

(4) This subsection shall not apply to a member who—

(A) is involuntarily recalled to active duty or full-time National Guard duty; and

(B) in the course of such duty, incurs a service-connected disability rated as total under section 1155 of title 38.

(5) The Secretary of Defense may waive, in whole or in part, repayment required under paragraph (1) if the Secretary determines that recovery would be against equity and good conscience or would be contrary to the best interests of the United States. The authority in this paragraph may be delegated only to the Undersecretary of Defense for Personnel and Readiness and the Principal Deputy Undersecretary of Defense for Personnel and Readiness.

(k) TERMINATION OF AUTHORITY.—(1) The authority to separate a member of the armed forces from active duty under subsection (c) shall terminate on December 31, 2025.

(2) A member who separates by the date specified in paragraph (1) may continue to be provided voluntary separation pay and benefits under this section until the member has received the entire amount of pay and benefits to which the member is entitled under this section.

(Added Pub. L. 109–163, div. A, title VI, § 643(a)(1), Jan. 6, 2006, 119 Stat. 3306; amended Pub. L. 109–364, div. A, title VI, § 623(a)(1), (2), Oct. 17, 2006, 120 Stat. 2256; Pub. L. 111–84, div. A, title X, § 1073(a)(14), Oct. 28, 2009, 123 Stat. 2473; Pub. L. 111–383, div. A, title X, § 1075(b)(18), Jan. 7, 2011, 124 Stat. 4370; Pub. L. 112–81, div. A, title V, § 526, title VI, § 631(f)(4)(A), Dec. 31, 2011, 125 Stat. 1401, 1465; Pub. L. 112–239, div. A, title X, § 1076(a)(9), Jan. 2, 2013, 126 Stat. 1948; Pub. L. 114–328, div. A, title V, §§ 508(c), 526, Dec. 23, 2016, 130 Stat. 2109, 2117; Pub. L. 116–92, div. A, title VI, § 603, Dec. 20, 2019, 133 Stat. 1423.)

REFERENCES IN TEXT

Chapter 24 of the Internal Revenue Code of 1986, referred to in subsec. (h)(2)(A), is classified generally to chapter 24 (§ 3401 et seq.) of Title 26, Internal Revenue Code.

AMENDMENTS

2019—Subsec. (j)(1). Pub. L. 116–92, § 603(1), substituted ''paragraphs (2), (3), and (4)'' for ''paragraphs (2) and (3)''.

Subsec. (j)(4), (5). Pub. L. 116–92, § 603(2), (3), added par. (4) and redesignated former par. (4) as (5).

2016—Subsec. (j)(2). Pub. L. 114–328, § 526(1), substituted ''12304, 12304a, or 12304b'' for ''or 12304'' and ''502(f)(1)(A)'' for ''502(f)(1)''.

Subsec. (j)(3). Pub. L. 114–328, § 526(2), substituted ''502(f)(1)(B)'' for ''502(f)(2)''.

Subsec. (k)(1). Pub. L. 114–328, § 508(c), substituted ''December 31, 2025'' for ''December 31, 2018''.

2013—Subsec. (e)(2)(B). Pub. L. 112–239, § 1076(a)(9), made technical amendment to directory language of Pub. L. 112–81, § 631(f)(4)(A). See 2011 Amendment note below.

2011—Subsec. (e)(2)(B). Pub. L. 112–81, § 631(f)(4)(A), as amended by Pub. L. 112–239, § 1076(a)(9), substituted ''474'' for ''404'' and ''476'' for ''406''.

Subsec. (j)(3). Pub. L. 111–383 substituted ''this title'' for ''title 10''.

Subsec. (k)(1). Pub. L. 112–81, § 526, substituted ''December 31, 2018'' for ''December 31, 2012''.

2009—Subsec. (h)(1). Pub. L. 111–84 substituted ''qualifies'' for ''qualities''.

2006—Subsec. (f). Pub. L. 109–364, § 623(a)(1), substituted ''four'' for ''two''.

Subsec. (k)(1). Pub. L. 109–364, § 623(a)(2), substituted ''2012'' for ''2008''.

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112–239, div. A, title X, § 1076(a), Jan. 2, 2013, 126 Stat. 1947, provided that the amendment made by section 1076(a)(9) is effective Dec. 31, 2011, and as if included in Pub. L. 112–81 as enacted.

LIMITATION ON APPLICABILITY

Pub. L. 109–163, div. A, title VI, § 643(b), Jan. 6, 2006, 119 Stat. 3310, which provided that, during the period beginning on Jan. 6, 2006, and ending on Dec. 31, 2008, members eligible for separation and for voluntary separation pay and benefits under this section would be limited to officers who had met the eligibility requirements of this section, but had not completed more than 12 years of active service as of the date of separation, was repealed by Pub. L. 109–364, div. A, title VI, § 623(a)(3), Oct. 17, 2006, 120 Stat. 2256.

§ 1176. Enlisted members: retention after completion of 18 or more, but less than 20, years of service

(a) REGULAR MEMBERS.—A regular enlisted member who is selected to be involuntarily separated, or whose term of enlistment expires and who is denied reenlistment, and who on the date on which the member is to be discharged is within two years of qualifying for retirement under section 7314 or 9314 of this title, or of qualifying for transfer to the Fleet Reserve or Fleet Marine Corps Reserve under section 8330 of this title, shall be retained on active duty until the member is qualified for retirement or transfer to the Fleet Reserve or Fleet Marine Corps Reserve, as the case may be, unless the member is sooner retired or discharged under any other provision of law.

(b) RESERVE MEMBERS IN ACTIVE STATUS.—A reserve enlisted member serving in an active status who is selected to be involuntarily separated (other than for physical disability or for cause), or whose term of enlistment expires and who is denied reenlistment (other than for physical disability or for cause), and who on the date on which the member is to be discharged or transferred from an active status is entitled to be credited with at least 18 but less than 20 years of service computed under section 12732 of this title, may not be discharged, denied reenlistment, or transferred from an active status without the member's consent before the earlier of the following:

(1) If as of the date on which the member is to be discharged or transferred from an active status the member has at least 18, but less than 19, years of service computed under section 12732 of this title—

(A) the date on which the member is entitled to be credited with 20 years of service computed under section 12732 of this title; or

(B) the third anniversary of the date on which the member would otherwise be discharged or transferred from an active status.

(2) If as of the date on which the member is to be discharged or transferred from an active status the member has at least 19, but less than 20, years of service computed under section 12732 of this title—

(A) the date on which the member is entitled to be credited with 20 years of service computed under section 12732 of this title; or

(B) the second anniversary of the date on which the member would otherwise be discharged or transferred from an active status.

(Added Pub. L. 102–484, div. A, title V, § 541(a), Oct. 23, 1992, 106 Stat. 2412; amended Pub. L. 103–160, div. A, title V, § 562(a), Nov. 30, 1993, 107 Stat. 1669; Pub. L. 104–106, div. A, title XV, § 1501(c)(12), Feb. 10, 1996, 110 Stat. 499; Pub. L. 115–232, div. A, title VIII, § 809(a), Aug. 13, 2018, 132 Stat. 1840.)

AMENDMENTS

2018—Subsec. (a). Pub. L. 115–232 substituted ''section 7314 or 9314'' for ''section 3914 or 8914'' and ''section 8330'' for ''section 6330''.

1996—Subsec. (b). Pub. L. 104–106 substituted ''section 12732'' for ''section 1332'' wherever appearing.

1993—Subsec. (b). Pub. L. 103–160 added subsec. (b) and struck out heading and text of former subsec. (b) which provided that a reserve enlisted member serving on active duty who was selected to be involuntarily separated, or whose term of enlistment expired and who was denied reenlistment, and who on the date on which the member was to be discharged or released from active duty was entitled to be credited with at least 18 but less than 20 years of service computed under section 1332 of this title, could not be discharged or released from active duty without the member's consent before the earlier of certain dates.

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115–232 effective Feb. 1, 2019, with provision for the coordination of amendments and special rule for certain redesignations, see section 800 of Pub. L. 115–232, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–106, div. A, title XV, § 1501(c), Feb. 10, 1996, 110 Stat. 498, provided that the amendment made by that section is effective as of Dec. 1, 1994, and as if included as an amendment made by the Reserve Officer Personnel Management Act, title XVI of Pub. L. 103–337, as originally enacted.

EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103–160, div. A, title V, § 562(b), Nov. 30, 1993, 107 Stat. 1669, provided that: ''Subsection (b) of section

1176 of title 10, United States Code, as added by subsection (a), shall take effect as of October 23, 1992.''

§ 1177. Members diagnosed with or reasonably asserting post-traumatic stress disorder or traumatic brain injury: medical examination required before administrative separation

(a) MEDICAL EXAMINATION REQUIRED.—(1) Under regulations prescribed by the Secretary of Defense, the Secretary of a military department shall ensure that a member of the armed forces under the jurisdiction of the Secretary who has been deployed overseas in support of a contingency operation, or sexually assaulted, during the previous 24 months, and who is diagnosed by a physician, clinical psychologist, psychiatrist, licensed clinical social worker, or psychiatric advanced practice registered nurse as experiencing post-traumatic stress disorder or traumatic brain injury or who otherwise reasonably alleges, based on the service of the member while deployed, or based on such sexual assault, the influence of such a condition, receives a medical examination to evaluate a diagnosis of post-traumatic stress disorder or traumatic brain injury.

(2) A member covered by paragraph (1) shall not be administratively separated under conditions other than honorable, including an administrative separation in lieu of court-martial, until the results of the medical examination have been reviewed by appropriate authorities responsible for evaluating, reviewing, and approving the separation case, as determined by the Secretary concerned.

(3) In a case involving post-traumatic stress disorder, the medical examination shall be performed by a clinical psychologist, psychiatrist, licensed clinical social worker, or psychiatric advanced practice registered nurse. In cases involving traumatic brain injury, the medical examination may be performed by a physician, clinical psychologist, psychiatrist, or other health care professional, as appropriate.

(b) PURPOSE OF MEDICAL EXAMINATION.—The medical examination required by subsection (a) shall assess whether the effects of post-traumatic stress disorder or traumatic brain injury constitute matters in extenuation that relate to the basis for administrative separation under conditions other than honorable or the overall characterization of service of the member as other than honorable.

(c) INAPPLICABILITY TO PROCEEDINGS UNDER UNIFORM CODE OF MILITARY JUSTICE.—The medical examination and procedures required by this section do not apply to courts-martial or other proceedings conducted pursuant to the Uniform Code of Military Justice.

(Added Pub. L. 111–84, div. A, title V, § 512(a)(1), Oct. 28, 2009, 123 Stat. 2280; amended Pub. L. 112–239, div. A, title V, § 518, Jan. 2, 2013, 126 Stat. 1720; Pub. L. 113–66, div. A, title V, § 522, Dec. 26, 2013, 127 Stat. 755; Pub. L. 114–328, div. A, title V, § 524, Dec. 23, 2016, 130 Stat. 2116.)

REFERENCES IN TEXT

The Uniform Code of Military Justice, referred to in subsec. (c), is classified to chapter 47 (§ 801 et seq.) of this title.

PRIOR PROVISIONS

A prior section 1177, added Pub. L. 103–337, div. A, title V, § 560(a)(1), Oct. 5, 1994, 108 Stat. 2777; amended Pub. L. 104–106, div. A, title V, § 567(a)(1), title XV, § 1503(a)(12), Feb. 10, 1996, 110 Stat. 328, 511, related to mandatory discharge or retirement of members infected with HIV–1 virus, prior to repeal by Pub. L. 104–134, title II, § 2707(a)(1), Apr. 26, 1996, 110 Stat. 1321–330.

AMENDMENTS

2016—Subsec. (a)(1). Pub. L. 114–328 inserted '', or sexually assaulted,'' after ''deployed overseas in support of a contingency operation'' and ''or based on such sexual assault,'' after ''while deployed,''.

2013—Subsec. (a)(1). Pub. L. 112–239, § 518(1), substituted ''psychiatrist, licensed clinical social worker, or psychiatric advanced practice registered nurse'' for ''or psychiatrist''.

Subsec. (a)(2). Pub. L. 113–66 inserted '', including an administrative separation in lieu of court-martial,'' after ''honorable''.

Subsec. (a)(3). Pub. L. 112–239, § 518(2), substituted '', psychiatrist, licensed clinical social worker, or psychiatric advanced practice registered nurse'' for ''or psychiatrist''.

§ 1178. System and procedures for tracking separations resulting from refusal to participate in anthrax vaccine immunization program

The Secretary of each military department shall establish a system for tracking, recording, and reporting separations of members of the armed forces under the Secretary's jurisdiction that result from procedures initiated as a result of a refusal to participate in the anthrax vaccine immunization program.

(Added Pub. L. 106–398, § 1 [[div. A], title VII, § 751(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–193; amended Pub. L. 111–383, div. A, title VII, § 721, Jan. 7, 2011, 124 Stat. 4251.)

AMENDMENTS

2011—Pub. L. 111–383 struck out subsec. (a) designation and heading before ''The Secretary'' and struck out subsec. (b). Text of subsec. (b) read as follows: ''The Secretary of Defense shall consolidate the information recorded under the system described in subsection (a) and shall submit to the Committees on Armed Services of the Senate and the House of Representatives not later than April 1 of each year a report on such information. Each such report shall include a description of—

''(1) the number of members separated, categorized by military department, grade, and active-duty or reserve status; and

''(2) any other information determined appropriate by the Secretary.''

COMPTROLLER GENERAL REPORT

Pub. L. 106–398, § 1 [[div. A], title VII, § 751(d)], Oct. 30, 2000, 114 Stat. 1654, 1654A–194, directed the Comptroller General, not later than Apr. 1, 2002, to submit to committees of Congress a report on the effect of the Department of Defense anthrax vaccine immunization program on the recruitment and retention of active duty and reserve military personnel and civilian personnel of the Department of Defense.

CHAPTER 60—SEPARATION OF REGULAR OFFICERS FOR SUBSTANDARD PERFORMANCE OF DUTY OR FOR CERTAIN OTHER REASONS

Sec.
1181. Authority to establish procedures to consider the separation of officers for substandard performance of duty and for certain other reasons.
1182. Boards of inquiry.
[1183. Repealed.]
1184. Removal of officer: action by Secretary upon recommendation of board of inquiry.
1185. Rights and procedures.
1186. Officer considered for removal: voluntary retirement or discharge.
1187. Officers eligible to serve on boards.

AMENDMENTS

1998—Pub. L. 105–261, div. A, title V, § 503(c)(2), Oct. 17, 1998, 112 Stat. 2004, struck out item 1183 ''Boards of review'' and substituted ''inquiry'' for ''review'' in item 1184.

1984—Pub. L. 98–525, title V, § 524(b)(2), Oct. 19, 1984, 98 Stat. 2524, substituted ''Authority to establish procedures to consider the separation of officers for substandard performance of duty and for certain other reasons'' for ''Authority to convene boards of officers to consider separation of officers for substandard performance of duty or for certain other reasons'' in item 1181.

§ 1181. Authority to establish procedures to consider the separation of officers for substandard performance of duty and for certain other reasons

(a) Subject to such limitations as the Secretary of Defense may prescribe, the Secretary of the military department concerned shall prescribe, by regulation, procedures for the review at any time of the record of any commissioned officer (other than a commissioned warrant officer or a retired officer) of the Regular Army, Regular Navy, Regular Air Force, Regular Marine Corps, or Regular Space Force to determine whether such officer shall be required, because his performance of duty has fallen below standards prescribed by the Secretary of Defense, to show cause for his retention on active duty.

(b) Subject to such limitations as the Secretary of Defense may prescribe, the Secretary of the military department concerned shall prescribe, by regulation, procedures for the review at any time of the record of any commissioned officer (other than a commissioned warrant officer or a retired officer) of the Regular Army, Regular Navy, Regular Air Force, Regular Marine Corps, or Regular Space Force to determine whether such officer should be required, because of misconduct, because of moral or professional dereliction, or because his retention is not clearly consistent with the interests of national security, to show cause for his retention on active duty.

(Added Pub. L. 96–513, title I, § 110, Dec. 12, 1980, 94 Stat. 2872; amended Pub. L. 98–525, title V, § 524(b)(1), Oct. 19, 1984, 98 Stat. 2524; Pub. L. 116–283, div. A, title IX, § 924(b)(4)(J), Jan. 1, 2021, 134 Stat. 3822.)

AMENDMENTS

2021—Pub. L. 116–283 substituted ''Regular Marine Corps, or Regular Space Force'' for ''or Regular Marine Corps'' in subsecs. (a) and (b).

1984—Pub. L. 98–525 substituted ''Authority to establish procedures to consider the separation of officers for substandard performance of duty and for certain other reasons'' for ''Authority to convene boards of officers to consider separation of officers for substandard performance of duty or for certain other reasons'' in section catchline.

Subsecs. (a), (b). Pub. L. 98–525 amended subsecs. (a) and (b) generally, substituting ''Subject to such limitations as the Secretary of Defense may prescribe, the Secretary of the military department concerned shall prescribe, by regulation, procedures for the review at any time of the record'' for ''Under regulations prescribed by the Secretary of Defense, the Secretary of the military department concerned may at any time convene a board of officers to review the record''.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–525, title V, § 524(b)(3), Oct. 19, 1984, 98 Stat. 2524, provided that: ''The amendments made by paragraphs (1) and (2) [amending this section and the analysis to this chapter] shall take effect on the first day of the first month that begins more than 60 days after the date of the enactment of this Act [Oct. 19, 1984], but shall not apply to any case in which, before that date, a board of officers has been ordered to convene under the provisions of section 1181 of title 10, United States Code, as in effect before that date.''

EFFECTIVE DATE

Section effective Sept. 15, 1981, but the authority to prescribe regulations under this chapter effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

TRANSITION PROVISIONS UNDER DEFENSE OFFICER PERSONNEL MANAGEMENT ACT

For provisions to prevent extinction or premature termination of rights, duties, penalties, or proceedings that existed or were begun prior to the effective date of Pub. L. 96–513 and otherwise to allow for an orderly transition to the system of officer personnel management put in place under Pub. L. 96–513, see section 601 et seq. of Pub. L. 96–513, set out as a note under section 611 of this title.

§ 1182. Boards of inquiry

(a) The Secretary of the military department concerned shall convene boards of inquiry at such times and places as the Secretary may prescribe to receive evidence and make findings and recommendations as to whether an officer who is required under section 1181 of this title to show cause for retention on active duty should be retained on active duty. Each board of inquiry shall be composed of not less than three officers having the qualifications prescribed by section 1187 of this title.

(b) A board of inquiry shall give a fair and impartial hearing to each officer required under section 1181 of this title to show cause for retention on active duty.

(c)(1) If a board of inquiry determines that the officer has failed to establish that he should be retained on active duty, it shall recommend to the Secretary concerned that the officer not be retained on active duty.

(2) Under regulations prescribed by the Secretary concerned, an officer as to whom a board of inquiry makes a recommendation under paragraph (1) that the officer not be retained on active duty may be required to take leave pending the completion of the officer's case under this chapter. The officer may be required to begin

such leave at any time following the officer's receipt of the report of the board of inquiry, including the board's recommendation for removal from active duty, and the expiration of any period allowed for submission by the officer of a rebuttal to that report. The leave may be continued until the date on which action by the Secretary concerned on the officer's case is completed or may be terminated at any earlier time.

(d)(1) If a board of inquiry determines that the officer has established that he should be retained on active duty, the officer's case is closed.

(2) An officer who is required to show cause for retention on active duty under subsection (a) of section 1181 of this title and who is determined under paragraph (1) to have established that he should be retained on active duty may not again be required to show cause for retention on active duty under such subsection within the one-year period beginning on the date of that determination.

(3)(A) Subject to subparagraph (B), an officer who is required to show cause for retention on active duty under subsection (b) of section 1181 of this title and who is determined under paragraph (1) to have established that he should be retained on active duty may again be required to show cause for retention at any time.

(B) An officer who has been required to show cause for retention on active duty under subsection (b) of section 1181 of this title and who is thereafter retained on active duty may not again be required to show cause for retention on active duty under such subsection solely because of conduct which was the subject of the previous proceedings, unless the findings or recommendations of the board of inquiry that considered his case are determined to have been obtained by fraud or collusion.

(Added Pub. L. 96–513, title I, §110, Dec. 12, 1980, 94 Stat. 2872; amended Pub. L. 105–261, div. A, title V, §503(b)(1), Oct. 17, 1998, 112 Stat. 2003; Pub. L. 106–398, §1 [[div. A], title X, §1087(d)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–292; Pub. L. 107–314, div. A, title V, §506(a), Dec. 2, 2002, 116 Stat. 2534.)

AMENDMENTS

2002—Subsec. (c). Pub. L. 107–314 designated existing provisions as par. (1) and added par. (2).

2000—Subsec. (c). Pub. L. 106–398 made technical correction to directory language of Pub. L. 105–261, §503(b)(1). See 1998 Amendment note below.

1998—Subsec. (c). Pub. L. 105–261, §503(b)(1), as amended by Pub. L. 106–398, substituted ''recommend to the Secretary concerned that the officer not be retained on active duty'' for ''send the record of its proceedings to a board of review convened under section 1183 of this title''.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–398, §1 [[div. A], title X, §1087(d)], Oct. 30, 2000, 114 Stat. 1654, 1654A–292, provided that the amendment made by section 1 [[div. A], title X, §1087(d)(2)] is effective Oct. 17, 1998, and as if included in the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999, Pub. L. 105–261, as enacted.

EFFECTIVE DATE

Section effective Sept. 15, 1981, but the authority to prescribe regulations under this section effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

[§1183. Repealed. Pub. L. 105–261, div. A, title V, §503(a), Oct. 17, 1998, 112 Stat. 2003]

Section, added Pub. L. 96–513, title I, §110, Dec. 12, 1980, 94 Stat. 2873, related to convening and determinations of boards of review.

§1184. Removal of officer: action by Secretary upon recommendation of board of inquiry

The Secretary of the military department concerned may remove an officer from active duty if the removal of such officer from active duty is recommended by a board of inquiry convened under section 1182 of this title.

(Added Pub. L. 96–513, title I, §110, Dec. 12, 1980, 94 Stat. 2874; amended Pub. L. 105–261, div. A, title V, §503(b)(2), (c)(1), Oct. 17, 1998, 112 Stat. 2003.)

AMENDMENTS

1998—Pub. L. 105–261 substituted ''inquiry'' for ''review'' in section catchline and ''board of inquiry convened under section 1182 of this title'' for ''board of review convened under section 1183 of this title'' in text.

EFFECTIVE DATE

Section effective Sept. 15, 1981, but the authority to prescribe regulations under this section effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

§1185. Rights and procedures

(a) Under regulations prescribed by the Secretary of Defense, each officer required under section 1181 of this title to show cause for retention on active duty—

(1) shall be notified in writing, at least 30 days before the hearing of his case by a board of inquiry, of the reasons for which he is being required to show cause for retention on active duty;

(2) shall be allowed a reasonable time, as determined by the board of inquiry, to prepare his showing of cause for his retention on active duty;

(3) shall be allowed to appear in person and to be represented by counsel at proceedings before the board of inquiry; and

(4) shall be allowed full access to, and shall be furnished copies of, records relevant to his case, except that the board of inquiry shall withhold any record that the Secretary concerned determines should be withheld in the interest of national security.

(b) When a record is withheld under subsection (a)(4), the officer whose case is under consideration shall, to the extent that the interest of national security permits, be furnished a summary of the record so withheld.

(Added Pub. L. 96–513, title I, §110, Dec. 12, 1980, 94 Stat. 2874.)

EFFECTIVE DATE

Section effective Sept. 15, 1981, but the authority to prescribe regulations under this section effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

§ 1186. Officer considered for removal: voluntary retirement or discharge

(a) At any time during proceedings under this chapter with respect to the removal of an officer from active duty, the Secretary of the military department concerned may grant a request by the officer—

(1) for voluntary retirement, if the officer is qualified for retirement; or

(2) for discharge in accordance with subsection (b)(2).

(b) An officer removed from active duty under section 1184 of this title shall—

(1) if eligible for voluntary retirement under any provision of law on the date of such removal, be retired in the grade and with the retired pay for which he would be eligible if retired under such provision; and

(2) if ineligible for voluntary retirement under any provision of law on the date of such removal—

(A) be honorably discharged in the grade then held, in the case of an officer whose case was brought under subsection (a) of section 1181 of this title; or

(B) be discharged in the grade then held, in the case of an officer whose case was brought under subsection (b) of section 1181 of this title.

(c) An officer who is discharged under subsection (b)(2) is entitled, if eligible therefor, to separation pay under section 1174(a)(2) of this title.

(Added Pub. L. 96–513, title I, § 110, Dec. 12, 1980, 94 Stat. 2874; amended Pub. L. 101–510, div. A, title V, § 501(f)(1), Nov. 5, 1990, 104 Stat. 1550.)

AMENDMENTS

1990—Subsec. (c). Pub. L. 101–510 substituted ''section 1174(a)(2)'' for ''section 1174(b)''.

EFFECTIVE DATE

Section effective Sept. 15, 1981, but the authority to prescribe regulations under this section effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

§ 1187. Officers eligible to serve on boards

(a) IN GENERAL.—Except as provided in subsection (b), each board convened under this chapter shall consist of officers appointed as follows:

(1) Each member of the board shall be an officer of the same armed force as the officer being required to show cause for retention on active duty.

(2) Each member of the board shall be in a grade above major or lieutenant commander, except that at least one member of the board shall be in a grade above lieutenant colonel or commander.

(3) Each member of the board shall be senior in grade to any officer to be considered by the board.

(b) RETIRED OFFICERS.—If qualified officers are not available in sufficient numbers to comprise a board convened under this chapter, the Secretary of the military department concerned shall complete the membership of the board by appointing to the board retired officers of the same armed force. A retired officer may be appointed to such a board only if the retired grade of that officer—

(1) is above major or lieutenant commander or, in the case of an officer to be the senior officer of the board, above lieutenant colonel or commander; and

(2) is senior to the grade of any officer to be considered by the board.

(c) INELIGIBILITY BY REASON OF PREVIOUS CONSIDERATION OF SAME OFFICER.—No person may be a member of more than one board convened under this chapter to consider the same officer.

(d) EXCLUSION FROM STRENGTH LIMITATION.—A retired general or flag officer who is on active duty for the purpose of serving on a board convened under this chapter shall not, while so serving, be counted against any limitation on the number of general and flag officers who may be on active duty.

(Added Pub. L. 96–513, title I, § 110, Dec. 12, 1980, 94 Stat. 2875; amended Pub. L. 106–65, div. A, title V, § 504(a), Oct. 5, 1999, 113 Stat. 590; Pub. L. 110–417, [div. A], title V, § 505, Oct. 14, 2008, 122 Stat. 4434.)

AMENDMENTS

2008—Subsec. (a). Pub. L. 110–417, § 505(a)(1), (b), substituted ''In General'' for ''Active Duty Officers'' in heading, redesignated pars. (3) and (4) as (2) and (3), respectively, and struck out former par. (2) which read as follows: ''Each member of the board shall be on the active-duty list.''

Subsec. (b). Pub. L. 110–417, § 505(a)(2), struck out ''on active duty'' after ''qualified officers'' in introductory provisions.

1999—Pub. L. 106–65 amended text generally. Prior to amendment, text consisted of subsecs. (a) and (b) relating to officers eligible to serve on boards.

EFFECTIVE DATE

Section effective Sept. 15, 1981, but the authority to prescribe regulations under this section effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

CHAPTER 61—RETIREMENT OR SEPARATION FOR PHYSICAL DISABILITY

Sec.

1201. Regulars and members on active duty for more than 30 days: retirement.
1202. Regulars and members on active duty for more than 30 days: temporary disability retired list.
1203. Regulars and members on active duty for more than 30 days: separation.
1204. Members on active duty for 30 days or less or on inactive-duty training: retirement.
1205. Members on active duty for 30 days or less: temporary disability retired list.
1206. Members on active duty for 30 days or less or on inactive-duty training: separation.
1206a. Reserve component members unable to perform duties when ordered to active duty: disability system processing.
1207. Disability from intentional misconduct or willful neglect: separation.
1207a. Members with over eight years of active service: eligibility for disability retirement for pre-existing conditions.
1208. Computation of service.

Sec.
1209. Transfer to inactive status list instead of separation.
1210. Members on temporary disability retired list: periodic physical examination; final determination of status.
1211. Members on temporary disability retired list: return to active duty; promotion.
1212. Disability severance pay.
1213. Effect of separation on benefits and claims.
1214. Right to full and fair hearing.
1214a. Members determined fit for duty in Physical Evaluation Board: prohibition on involuntary administrative separation or denial of reenlistment due to unsuitability based on medical conditions considered in evaluation.
1215. Members other than Regulars: applicability of laws.
1216. Secretaries: powers, functions, and duties.
1216a. Determinations of disability: requirements and limitations on determinations.
1217. Academy cadets and midshipmen: applicability of chapter.
1218. Discharge or release from active duty: claims for compensation, pension, or hospitalization.
1218a. Discharge or release from active duty: transition assistance for reserve component members injured while on active duty.
1219. Statement of origin of disease or injury: limitations.
[1220. Repealed.]
1221. Effective date of retirement or placement of name on temporary disability retired list.
1222. Physical evaluation boards.

AMENDMENTS

2011—Pub. L. 112–81, div. A, title V, § 527(c)(2), Dec. 31, 2011, 125 Stat. 1402, substituted ''Members determined fit for duty in Physical Evaluation Board: prohibition on involuntary administrative separation or denial of reenlistment due to unsuitability based on medical conditions considered in evaluation'' for ''Members determined fit for duty in Physical Evaluation Board evaluation: prohibition on involuntary administrative separation due to unsuitability based on medical conditions considered in evaluation'' in item 1214a.

Pub. L. 111–383, div. A, title V, § 534(a)(2), Jan. 7, 2011, 124 Stat. 4217, added item 1214a.

2009—Pub. L. 111–84, div. A, title VI, § 641(b), Oct. 28, 2009, 123 Stat. 2365, added item 1218a.

2008—Pub. L. 110–181, div. A, title XVI, § 1642(b), Jan. 28, 2008, 122 Stat. 465, added item 1216a.

2006—Pub. L. 109–364, div. A, title V, § 597(a)(2), Oct. 17, 2006, 120 Stat. 2237, added item 1222.

2004—Pub. L. 108–375, div. A, title V, §§ 521(b), 555(b)(2), Oct. 28, 2004, 118 Stat. 1888, 1914, added item 1206a and substituted ''Academy cadets and midshipmen: applicability of chapter'' for ''Cadets, midshipmen, and aviation cadets: chapter does not apply to'' in item 1217.

1999—Pub. L. 106–65, div. A, title VI, § 653(a)(2), Oct. 5, 1999, 113 Stat. 666, added item 1207a.

1997—Pub. L. 105–85, div. A, title V, § 513(d)(3), Nov. 18, 1997, 111 Stat. 1731, inserted ''or on inactive-duty training'' after ''Members on active duty for 30 days or less'' in items 1204 and 1206.

1986—Pub. L. 99–661, div. A, title VI, § 604(d)(4), Nov. 14, 1986, 100 Stat. 3876, struck out ''; disability from injury'' after ''30 days or less'' in items 1204, 1205, 1206.

1962—Pub. L. 87–651, title I, § 107(e), Sept. 7, 1962, 76 Stat. 509, substituted ''Discharge or release from active duty: claims for compensation, pension, or hospitalization'' for ''Explanation of rights before discharge'' in item 1218, and ''Statement of origin of disease or injury: limitations'' for ''Statement against interest void'' in item 1219, and struck out item 1220 ''Location of accredited representatives at military installations''.

1958—Pub. L. 85–861, § 1(28)(C), Sept. 2, 1958, 72 Stat. 1451, added item 1221.

1957—Pub. L. 85–56, title XXII, § 2201(31)(B), June 17, 1957, 71 Stat. 161, eff. Jan. 1, 1958, added items 1218 to 1220.

§ 1201. Regulars and members on active duty for more than 30 days: retirement

(a) RETIREMENT.—Upon a determination by the Secretary concerned that a member described in subsection (c) is unfit to perform the duties of the member's office, grade, rank, or rating because of physical disability incurred while entitled to basic pay or while absent as described in subsection (c)(3), the Secretary may retire the member, with retired pay computed under section 1401 of this title, if the Secretary also makes the determinations with respect to the member and that disability specified in subsection (b).

(b) REQUIRED DETERMINATIONS OF DISABILITY.—Determinations referred to in subsection (a) are determinations by the Secretary that—

(1) based upon accepted medical principles, the disability is of a permanent nature and stable;

(2) the disability is not the result of the member's intentional misconduct or willful neglect, and was not incurred during a period of unauthorized absence; and

(3) either—

(A) the member has at least 20 years of service computed under section 1208 of this title; or

(B) the disability is at least 30 percent under the standard schedule of rating disabilities in use by the Department of Veterans Affairs at the time of the determination; and either—

(i) the disability was not noted at the time of the member's entrance on active duty (unless clear and unmistakable evidence demonstrates that the disability existed before the member's entrance on active duty and was not aggravated by active military service);

(ii) the disability is the proximate result of performing active duty;

(iii) the disability was incurred in line of duty in time of war or national emergency; or

(iv) the disability was incurred in line of duty after September 14, 1978.

(c) ELIGIBLE MEMBERS.—This section and sections 1202 and 1203 of this title apply to the following members:

(1) A member of a regular component of the armed forces entitled to basic pay.

(2) Any other member of the armed forces entitled to basic pay who has been called or ordered to active duty (other than for training under section 10148(a) of this title) for a period of more than 30 days.

(3) Any other member of the armed forces who is on active duty but is not entitled to basic pay by reason of section 502(b) of title 37 due to authorized absence (A) to participate in an educational program, or (B) for an emergency purpose, as determined by the Secretary concerned.

(Aug. 10, 1956, ch. 1041, 70A Stat. 91; Pub. L. 85–861, § 1(28)(A), Sept. 2, 1958, 72 Stat. 1451; Pub.

L. 87–651, title I, § 107(a), Sept. 7, 1962, 76 Stat. 508; Pub. L. 95–377, § 3(1), Sept. 19, 1978, 92 Stat. 719; Pub. L. 96–343, § 10(c)(1), Sept. 8, 1980, 94 Stat. 1129; Pub. L. 96–513, title I, § 117, Dec. 12, 1980, 94 Stat. 2878; Pub. L. 99–145, title V, § 513(a)(1)(A), Nov. 8, 1985, 99 Stat. 627; Pub. L. 101–189, div. A, title XVI, § 1621(a)(1), Nov. 29, 1989, 103 Stat. 1602; Pub. L. 103–337, div. A, title XVI, § 1671(c)(6), Oct. 5, 1994, 108 Stat. 3014; Pub. L. 104–201, div. A, title V, § 572(a), Sept. 23, 1996, 110 Stat. 2533; Pub. L. 110–181, div. A, title XVI, § 1641(a), Jan. 28, 2008, 122 Stat. 464; Pub. L. 110–417, [div. A], title VII, § 727(a), Oct. 14, 2008, 122 Stat. 4510.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	Source (U.S. Code)	Source (Statutes at Large)
1201	37:272(a) (less clause (5), and less 2d proviso). 37:272(b) (less clause (5), and less 2d and last provisos). 37:272(f) (less applicability to 37:272(c) and (e)).	Oct. 12, 1949, ch. 681, § 402(a) (less clause (5), and less 2d proviso), (b) (less clause (5), and less 2d and last provisos), (f) (less applicability to § 402(c) and (e)), 63 Stat. 816, 817, 820.

The words ‘‘any other member’’ are substituted for the words ‘‘a member of a Reserve component’’, in 37:272(a) and (b), since the words ‘‘Reserve component’’ are defined by section 102(k) of the Career Compensation Act of 1949, 63 Stat. 805 (37 U.S.C. 231(k)), to include members appointed, enlisted, or inducted without component. The words ‘‘active duty (other than for training)’’ are substituted for the words ‘‘extended active duty’’ for clarity and to reflect the opinion of the Comptroller General in 31 Comp. Gen. 95, 99. The words ‘‘if the Secretary also determines that’’ are substituted for the words ‘‘That if condition (5) above is met by a finding that’’, in 37:272(a) and (b). The words ‘‘of such member’’, ‘‘upon retirement’’, and ‘‘to receive’’, in 37:272(a), are omitted as surplusage.

In clause (1), the words ‘‘based upon accepted medical principles’’ are inserted as a necessary implication of the rule stated in 37:272(a)(5) and (b)(5).

Clause (3)(A) is substituted for 37:272(f) (less applicability to 37:272(c) and (e)). 37:272(f) is omitted as surplusage.

In clause (3)(B), the words ‘‘at the time of the determination’’ are substituted for the word ‘‘current’’, in 37:272(a) and (b).

Clause (3)(B)(iii) is substituted for 37:272(a) (last proviso).

1958 ACT

Revised section	Source (U.S. Code)	Source (Statutes at Large)
1201	[No source].	[No source].

The amendment reflects the Act of April 23, 1956, ch. 209 (70 Stat 115). (See opinion of Comp. Gen., B–130269, March 18, 1957.)

1962 ACT

The changes correct typographical errors.

AMENDMENTS

2008—Subsec. (b)(3)(B)(i). Pub. L. 110–417 struck out ‘‘the member has six months or more of active military service and’’ before ‘‘the disability was not noted’’ and substituted ‘‘(unless clear and unmistakable evidence demonstrates that the disability existed before the member’s entrance on active duty and was not aggravated by active military service)’’ for ‘‘(unless compelling evidence or medical judgment is such to warrant a finding that the disability existed before the member’s entrance on active duty)’’.

Pub. L. 110–181 amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: ‘‘the member has at least eight years of service computed under section 1208 of this title;’’.

1996—Pub. L. 104–201 added subsecs. (a) and (c), designated existing provisions as subsec. (b), and substituted introductory provisions of subsec. (b) for ‘‘Upon a determination by the Secretary concerned that a member of a regular component of the armed forces entitled to basic pay, or any other member of the armed forces entitled to basic pay who has been called or ordered to active duty (other than for training under section 10148(a) of this title) for a period of more than 30 days, is unfit to perform the duties of his office, grade, rank, or rating because of physical disability incurred while entitled to basic pay, the Secretary may retire the member, with retired pay computed under section 1401 of this title, if the Secretary also determines that—’’.

1994—Pub. L. 103–337 substituted ‘‘10148(a)’’ for ‘‘270(b)’’ in introductory provisions.

1989—Par. (3)(B). Pub. L. 101–189 substituted ‘‘Department of Veterans Affairs’’ for ‘‘Veterans’ Administration’’.

1985—Par. (1). Pub. L. 99–145 inserted ‘‘and stable’’ after ‘‘permanent nature’’.

1980—Par. (3)(B)(iv). Pub. L. 96–513 substituted ‘‘after September 14, 1978’’ for ‘‘during the period beginning on September 15, 1978, and ending on September 30, 1982, except that the condition provided for in this item shall not be effective during such period unless the President determines that such condition should be effective during such period and issues an Executive order to that effect’’.

Pub. L. 96–343 added cl. (iv).

1978—Par. (3)(B)(iv). Pub. L. 95–377 added cl. (iv) which provided additional condition, effective on Presidential determination, that the disability was incurred in the line of duty during Sept. 15, 1978, through Sept. 30, 1979, and which terminated on Sept. 30, 1979. See Effective and Termination Dates of 1978 Amendment note set out under this section.

1962—Pub. L. 87–651 substituted ‘‘training under section 270(b) of this title)’’ for ‘‘training) under section 270(b) of this title’’.

1958—Pub. L. 85–861 inserted ‘‘under section 270(b) of this title’’ after ‘‘(other than for training)’’.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–201, div. A, title V, § 572(d), Sept. 23, 1996, 110 Stat. 2533, provided that: ‘‘The amendments made by this section [amending this section and sections 1202 and 1203 of this title] shall take effect on the date of the enactment of this Act [Sept. 23, 1996] and shall apply with respect to physical disabilities incurred on or after such date.’’

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Sept. 15, 1981, but the authority to prescribe regulations under the amendment by Pub. L. 96–513 effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE AND TERMINATION DATES OF 1978 AMENDMENT

Pub. L. 95–377, § 3, Sept. 19, 1978, 92 Stat. 719, provided that the amendment made by that section is effective only for the period beginning Sept. 15, 1978, and ending Sept. 30, 1979.

PUBLIC HEALTH SERVICE

Authority vested by this chapter in ‘‘military departments’’, ‘‘the Secretary concerned’’, or ‘‘the Secretary

of Defense'' to be exercised, with respect to commissioned officers of Public Health Service, by Secretary of Health and Human Services or his designee, see section 213a(b) of Title 42, The Public Health and Welfare.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Authority vested by this chapter in ''military departments'', ''the Secretary concerned'', or ''the Secretary of Defense'' to be exercised, with respect to commissioned officer corps of National Oceanic and Atmospheric Administration, by Secretary of Commerce or Secretary's designee, see section 3071 of Title 33, Navigation and Navigable Waters.

EXECUTIVE ORDER NO. 12239

Ex. Ord. No. 12239, Sept. 21, 1980, 45 F.R. 62967, which related to suspension of certain promotion and disability separation limitations, was revoked by Ex. Ord. No. 12396, Dec. 9, 1982, 47 F.R. 55897, set out as a note under section 301 of Title 3, The President.

§ 1202. Regulars and members on active duty for more than 30 days: temporary disability retired list

Upon a determination by the Secretary concerned that a member described in section 1201(c) of this title would be qualified for retirement under section 1201 of this title but for the fact that his disability is not determined to be of a permanent nature and stable, the Secretary shall, if he also determines that accepted medical principles indicate that the disability may be of a permanent nature, place the member's name on the temporary disability retired list, with retired pay computed under section 1401 of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 92; Pub. L. 85–861, § 1(28)(A), Sept. 2, 1958, 72 Stat. 1451; Pub. L. 87–651, title I, § 107(a), Sept. 7, 1962, 76 Stat. 508; Pub. L. 99–145, title V, § 513(a)(1)(B), Nov. 8, 1985, 99 Stat. 627; Pub. L. 103–337, div. A, title XVI, § 1671(c)(6), Oct. 5, 1994, 108 Stat. 3014; Pub. L. 104–201, div. A, title V, § 572(b), Sept. 23, 1996, 110 Stat. 2533.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1202	37:272(a) (clause (5)). 37:272(b) (clause (5)).	Oct. 12, 1949, ch. 681, § 402(a) (clause (5)), (b) (clause (5)), 63 Stat. 816, 817.

The first 82 words are inserted for clarity and are based on the rule stated in section 1201 of this title, which restates that part of 37:272(a), (b), and (f) relating to retirement for physical disability. The revised section incorporates by reference those provisions which are identical for retirement and for placement on the temporary disability retired list. This is possible, since 37:272(f) applies to placement on the temporary disability retired list as well as to retirement (see opinion of the Judge Advocate General of the Army (JAGA 1953/1900, 9 Mar. 1953)).

1958 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1202	[No source].	[No source].

The amendment reflects the Act of April 23, 1956, ch. 209 (70 Stat 115). (See opinion of Comp. Gen., B–130269, March 18, 1957.)

1962 ACT

The changes correct typographical errors.

AMENDMENTS

1996—Pub. L. 104–201 substituted ''a member described in section 1201(c) of this title'' for ''a member of a regular component of the armed forces entitled to basic pay, or any other member of the armed forces entitled to basic pay who has been called or ordered to active duty (other than for training under section 10148(a) of this title) for a period of more than 30 days,''.

1994—Pub. L. 103–337 substituted ''10148(a)'' for ''270(b)''.

1985—Pub. L. 99–145 inserted ''and stable'' after ''determined to be of a permanent nature''.

1962—Pub. L. 87–651 substituted ''training under section 270(b) of this title)'' for ''training) under section 270(b) of this title''.

1958—Pub. L. 85–861 inserted ''under section 270(b) of this title'' after ''(other than for training)''.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–201 effective Sept. 23, 1996, and applicable with respect to physical disabilities incurred on or after such date, see section 572(d) of Pub. L. 104–201, set out as a note under section 1201 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

§ 1203. Regulars and members on active duty for more than 30 days: separation

(a) SEPARATION.—Upon a determination by the Secretary concerned that a member described in section 1201(c) of this title is unfit to perform the duties of the member's office, grade, rank, or rating because of physical disability incurred while entitled to basic pay or while absent as described in section 1201(c)(3) of this title, the member may be separated from the member's armed force, with severance pay computed under section 1212 of this title, if the Secretary also makes the determinations with respect to the member and that disability specified in subsection (b).

(b) REQUIRED DETERMINATIONS OF DISABILITY.—Determinations referred to in subsection (a) are determinations by the Secretary that—

(1) the member has less than 20 years of service computed under section 1208 of this title;

(2) the disability is not the result of the member's intentional misconduct or willful neglect, and was not incurred during a period of unauthorized absence;

(3) based upon accepted medical principles, the disability is or may be of a permanent nature; and

(4) either—

(A) the disability is less than 30 percent under the standard schedule of rating disabilities in use by the Department of Veterans Affairs at the time of the determination, and the disability was (i) the proximate result of performing active duty, (ii) incurred in line of duty in time of war or national emergency, or (iii) incurred in line of duty after September 14, 1978;

(B) the disability is less than 30 percent under the standard schedule of rating dis-

abilities in use by the Department of Veterans Affairs at the time of the determination, the disability was not noted at the time of the member's entrance on active duty (unless clear and unmistakable evidence demonstrates that the disability existed before the member's entrance on active duty and was not aggravated by active military service), or

(C) the disability is at least 30 percent under the standard schedule of rating disabilities in use by the Department of Veterans Affairs at the time of the determination, the disability was neither (i) the proximate result of performing active duty, (ii) incurred in line of duty in time of war or national emergency, nor (iii) incurred in line of duty after September 14, 1978, and the member has less than eight years of service computed under section 1208 of this title on the date when he would otherwise be retired under section 1201 of this title or placed on the temporary disability retired list under section 1202 of this title.

However, if the member is eligible for transfer to the inactive status list under section 1209 of this title, and so elects, he shall be transferred to that list instead of being separated.

(Aug. 10, 1956, ch. 1041, 70A Stat. 92; Pub. L. 85–861, § 1(28)(A), Sept. 2, 1958, 72 Stat. 1451; Pub. L. 87–651, title I, § 107(a), Sept. 7, 1962, 76 Stat. 508; Pub. L. 95–377, § 3(2), (3), Sept. 19, 1978, 92 Stat. 719, 720; Pub. L. 96–343, § 10(c)(2), (3), Sept. 8, 1980, 94 Stat. 1129; Pub. L. 96–513, title I, § 117, Dec. 12, 1980, 94 Stat. 2878; Pub. L. 101–189, div. A, title XVI, § 1621(a)(1), Nov. 29, 1989, 103 Stat. 1602; Pub. L. 103–337, div. A, title XVI, § 1671(c)(6), Oct. 5, 1994, 108 Stat. 3014; Pub. L. 104–201, div. A, title V, § 572(c), Sept. 23, 1996, 110 Stat. 2533; Pub. L. 110–181, div. A, title XVI, § 1641(b), Jan. 28, 2008, 122 Stat. 465; Pub. L. 110–417, [div. A], title VII, § 727(b), Oct. 14, 2008, 122 Stat. 4510; Pub. L. 111–383, div. A, title X, § 1075(b)(19), (e)(12), Jan. 7, 2011, 124 Stat. 4370, 4375.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1203 ………	37:272(a) (2d proviso). 37:272(b) (2d and last provisos).	Oct. 12, 1949, ch. 681, § 402(a) (2d proviso), (b) (2d and last provisos), 63 Stat. 816, 817.

To state fully in the revised section the rule contained in 37:272(a) (2d proviso) and 272(b) (2d and last provisos), the provisions of 37:272(a) (less clause (5), and less 1st proviso), 272(b) (less clause (5), and less 1st proviso) and 272(f) (less applicability to 37:272(c) and (e)), also contained in section 1201 of this title, are repeated. The words "the member may be separated" are substituted for the words "the member concerned shall not be eligible for any disability retirement provided in this section, but may be separated for physical disability," in 37:272(a) (2d proviso) and 37:272(b) (2d proviso).

Clause (1) is inserted for clarity, since a member who had over 20 years of service would qualify under section 1201 or 1202 of this title.

Clause (4)(A) is substituted for 37:272(a) (1st 20 words of 2d proviso).

Clause (4)(B) is substituted for 37:272(b) (1st 20 words of 2d proviso).

Clause (4)(C) is substituted for 37:272(b) (last proviso).

The last sentence of the revised section, relating to transfer to the inactive status list, is inserted for clarity because of section 1209 of this title.

1958 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1203 ………	[No source].	[No source].

The amendment reflects the Act of April 23, 1956, ch. 209 (70 Stat 115). (See opinion of Comp. Gen., B–130269, March 18, 1957.)

1962 ACT

The changes correct typographical errors.

AMENDMENTS

2011—Subsec. (b)(4)(B). Pub. L. 111–383, § 1075(e)(12), made technical amendment to directory language of Pub. L. 110–417, § 727(b)(2). See 2008 Amendment note below.

Pub. L. 111–383, § 1075(b)(19), substituted "determination," for "determination,,".

2008—Subsec. (b)(4)(B). Pub. L. 110–417, § 727(b)(2), as amended by Pub. L. 111–383, § 1075(e)(12), substituted "(unless clear and unmistakable evidence demonstrates that the disability existed before the member's entrance on active duty and was not aggravated by active military service)" for "(unless evidence or medical judgment is such to warrant a finding that the disability existed before the member's entrance on active duty)".

Pub. L. 110–417, § 727(b)(1), struck out "the member has six months or more of active military service, and" before "the disability was not noted".

Pub. L. 110–181 substituted ", the member has six months or more of active military service, and the disability was not noted at the time of the member's entrance on active duty (unless evidence or medical judgment is such to warrant a finding that the disability existed before the member's entrance on active duty)" for "and the member has at least eight years of service computed under section 1208 of this title".

1996—Pub. L. 104–201 added subsec. (a), designated existing provisions as subsec. (b), and substituted introductory provisions of subsec. (b) for "Upon a determination by the Secretary concerned that a member of a regular component of the armed forces entitled to basic pay, or any other member of the armed forces entitled to basic pay who has been called or ordered to active duty (other than for training under section 10148(a) of this title) for a period of more than 30 days, is unfit to perform the duties of his office, grade, rank, or rating because of physical disability incurred while entitled to basic pay, the member may be separated from his armed force, with severance pay computed under section 1212 of this title, if the Secretary also determines that—".

1994—Pub. L. 103–337 substituted "10148(a)" for "270(b)" in introductory provisions.

1989—Par. (4)(A) to (C). Pub. L. 101–189 substituted "Department of Veterans Affairs" for "Veterans' Administration" wherever appearing.

1980—Par. (4)(A)(iii). Pub. L. 96–513 substituted "after September 14, 1978" for "during the period beginning on September 15, 1978, and ending on September 30, 1982, except that the condition provided for in this item shall not be effective during such period unless the President determines that such condition should be effective during such period and issues an Executive order to that effect".

Pub. L. 96–343, § 10(c)(2), added cl. (iii).

Par. (4)(C). Pub. L. 96–513 substituted "after September 14, 1978" for "during the period beginning on September 15, 1978, and ending on September 30, 1982, except that the condition provided for in this item shall not be effective during such period unless the President determines that such condition should be ef-

fective during such period and issues an Executive order to that effect'' in cl. (iii).

Pub. L. 96–343, §10(c)(3), substituted ''(i) the proximate result of performing active duty, (ii) incurred in line of duty in time of war or national emergency, nor (iii) incurred in line of duty during the period beginning on September 15, 1978, and ending on September 30, 1982, except that the condition provided for in this item shall not be effective during such period unless the President determines that such condition should be effective during such period and issues an Executive order to that effect'' for ''the proximate result of performing active duty nor incurred in line of duty in time of war or national emergency''.

1978—Par. (4)(A)(iii). Pub. L. 95–377, §3(2), added cl. (iii) which provided additional conditions, effective on Presidential determination, that the disability was incurred in the line of duty during Sept. 15, 1978, through Sept. 30, 1979, and which terminated on Sept. 30, 1979. See Effective and Termination Dates of 1978 Amendment note set out under this section.

Par. (4)(C). Pub. L. 95–377, §3(3), designated existing conditions of performing active duty and incurred in line of duty in time of war or national emergency as cls. (i) and (ii) and added cl. (iii) providing additional condition, effective on Presidential determination, that the disability was incurred in line of duty during Sept. 15, 1978, through Sept. 30, 1979, and terminated on Sept. 30, 1979. See Effective and Termination Dates of 1978 Amendment note set out under this section.

1962—Pub. L. 87–651 substituted ''training under section 270(b) of this title)'' for ''training) under section 270(b) of this title.''

1958—Pub. L. 85–861 inserted ''under section 270(b) of this title'' after ''(other than for training)''.

EFFECTIVE DATE OF 2011 AMENDMENT

Pub. L. 111–383, div. A, title X, §1075(e)(12), Jan. 7, 2011, 124 Stat. 4375, provided that the amendment by section 1075(e)(12) is effective as of Oct. 14, 2008, and as if included in Pub. L. 110–417 as enacted.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–201 effective Sept. 23, 1996, and applicable with respect to physical disabilities incurred on or after such date, see section 572(d) of Pub. L. 104–201, set out as a note under section 1201 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Sept. 15, 1981, but the authority to prescribe regulations under the amendment by Pub. L. 96–513 effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE AND TERMINATION DATES OF 1978 AMENDMENT

Pub. L. 95–377, §3, Sept. 19, 1978, 92 Stat. 719, provided that the amendment made by that section is effective only for the period beginning Sept. 15, 1978, and ending Sept. 30, 1979.

SUSPENSION OF CERTAIN PROMOTION AND DISABILITY SEPARATION LIMITATIONS

For provisions relating to the suspension of certain promotion and disability separation limitations, see Ex. Ord. No. 12239, Sept. 21, 1980, 45 F.R. 62967, set out as a note under section 1201 of this title.

§ 1204. Members on active duty for 30 days or less or on inactive-duty training: retirement

Upon a determination by the Secretary concerned that a member of the armed forces not covered by section 1201, 1202, or 1203 of this title is unfit to perform the duties of his office, grade, rank, or rating because of physical disability, the Secretary may retire the member with retired pay computed under section 1401 of this title, if the Secretary also determines that—

(1) based upon accepted medical principles, the disability is of a permanent nature and stable;

(2) the disability—

(A) was incurred before September 24, 1996, as the proximate result of—

(i) performing active duty or inactive-duty training;

(ii) traveling directly to or from the place at which such duty is performed; or

(iii) an injury, illness, or disease incurred or aggravated while remaining overnight, immediately before the commencement of inactive-duty training, or while remaining overnight between successive periods of inactive-duty training, at or in the vicinity of the site of the inactive-duty training, if the site of the inactive-duty training is outside reasonable commuting distance of the member's residence;

(B) is a result of an injury, illness, or disease incurred or aggravated in line of duty after September 23, 1996—

(i) while performing active duty or inactive-duty training;

(ii) while traveling directly to or from the place at which such duty is performed; or

(iii) while remaining overnight, immediately before the commencement of inactive-duty training, or while remaining overnight between successive periods of inactive-duty training, at or in the vicinity of the site of the inactive-duty training; or

(C) is a result of an injury, illness, or disease incurred or aggravated in line of duty—

(i) while the member was serving on funeral honors duty under section 12503 of this title or section 115 of title 32;

(ii) while the member was traveling to or from the place at which the member was to so serve; or

(iii) while the member remained overnight at or in the vicinity of that place immediately before so serving, if the place is outside reasonable commuting distance from the member's residence;

(3) the disability is not the result of the member's intentional misconduct or willful neglect, and was not incurred during a period of unauthorized absence; and

(4) either—

(A) the member has at least 20 years of service computed under section 1208 of this title; or

(B) the disability is at least 30 percent under the standard schedule of rating disabilities in use by the Department of Veterans Affairs at the time of the determination.

(Aug. 10, 1956, ch. 1041, 70A Stat. 93; Pub. L. 99–145, title V, §513(a)(1)(A), Nov. 8, 1985, 99 Stat.

627; Pub. L. 99–661, div. A, title VI, § 604(d)(1), (2)(A), Nov. 14, 1986, 100 Stat. 3876; Pub. L. 101–189, div. A, title XVI, § 1621(a)(1), Nov. 29, 1989, 103 Stat. 1602; Pub. L. 102–484, div. A, title V, § 516(a), Oct. 23, 1992, 106 Stat. 2407; Pub. L. 104–201, div. A, title V, § 534, Sept. 23, 1996, 110 Stat. 2521; Pub. L. 105–85, div. A, title V, § 513(c)(1), (d)(1), Nov. 18, 1997, 111 Stat. 1730, 1731; Pub. L. 106–65, div. A, title V, § 578(i)(3), Oct. 5, 1999, 113 Stat. 629; Pub. L. 107–107, div. A, title V, § 513(b), Dec. 28, 2001, 115 Stat. 1093.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1204 ………	37:271(a). 37:272(c) (less clause (5), and less last proviso). 37:272(f) (as applicable to 37:272(c)).	Oct. 12, 1949, ch. 681, §§ 401(a), 402(c) (less clause (5), and less last proviso), 402(f) (as applicable to § 402(c)), 63 Stat. 816, 817, 820.

37:271(a) is omitted as surplusage. As it relates to retirement it is only a statement of the general coverage of the retirement sections of this chapter. As it relates to separation it is only a statement of the general coverage of the separation sections of this chapter. The words ''a member * * * not covered by section 1201, 1202, or 1203 of this title'' are substituted for the words ''a member * * * other than those members covered in subsections (a) and (b) of this section''. The words ''if the Secretary also determines that'' are substituted for the words ''That if condition (5) above is met by a finding that'', in 37:272(c). The words ''of such member'', ''upon retirement'', and ''to receive'', in 37:272(c), are omitted as surplusage.

In clause (1), the words ''based upon accepted medical principles'' are inserted as a necessary implication of the rule stated in 37:272(c)(5).

In clause (2), the word ''disability'' is substituted for the word ''injury'' to make clear, in view of 37:278, that members on active duty for 30 days or less are on the same footing as those on active duty for a longer period, with respect to the effect of misconduct or neglect.

In clause (3), the words ''and was not incurred during a period of unauthorized absence'' are inserted to conform to other revised sections of this chapter and because of section 1207 of this title. The words ''full-time training duty, other full-time duty'' are omitted as covered by the words ''active duty''.

Clause (4)(A) is substituted for 37:272(f) (as applicable to 37:272(c)). 37:272(f) (proviso) is omitted as surplusage.

In clause (4)(B), the words ''at the time of the determination'' are substituted for the word ''current'', in 37:272(c).

AMENDMENTS

2001—Par. (2)(B)(iii). Pub. L. 107–107, struck out '', if the site of the inactive-duty training is outside reasonable commuting distance of the member's residence'' before semicolon.

1999—Par. (2)(C). Pub. L. 106–65 added subpar. (C).

1997—Pub. L. 105–85, § 513(d)(1), amended section catchline generally, inserting ''or on inactive-duty training'' after ''30 days or less''.

Par. (2). Pub. L. 105–85, § 513(c)(1), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''the disability is the proximate result of, or was incurred in line of duty after the date of the enactment of this Act as a result of—

''(A) performing active duty or inactive-duty training;

''(B) traveling directly to or from the place at which such duty is performed; or

''(C) an injury, illness, or disease incurred or aggravated while remaining overnight, between successive periods of inactive-duty training, at or in the vicinity of the site of the inactive duty training, if the site is outside reasonable commuting distance of the member's residence;''.

1996—Par. (2). Pub. L. 104–201 amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''the disability is the proximate result of performing active duty or inactive-duty training or of traveling directly to or from the place at which such duty is performed;''.

1992—Par. (2). Pub. L. 102–484 inserted before semicolon at end ''or of traveling directly to or from the place at which such duty is performed''.

1989—Par. (4)(B). Pub. L. 101–189 substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

1986—Pub. L. 99–661 struck out ''; disability from injury'' after ''30 days or less'' in section catchline and ''resulting from an injury'' after ''because of physical disability'' in provisions preceding par. (1).

1985—Par. (1). Pub. L. 99–145 inserted ''and stable'' after ''permanent nature''.

EFFECTIVE DATE OF 1992 AMENDMENT

Pub. L. 102–484, div. A, title V, § 516(b), Oct. 23, 1992, 106 Stat. 2407, provided that: ''The amendments made by subsection (a) [amending this section and section 1206 of this title] shall take effect with respect to disabilities incurred on or after November 14, 1986, but any benefits or services payable by reason of the applicability of those amendments during the period beginning on November 14, 1986, and ending on the date of the enactment of this Act [Oct. 23, 1992] shall be subject to the availability of appropriations.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–661 applicable with respect to persons who, after Nov. 14, 1986, incur or aggravate an injury, illness, or disease or die, see section 604(g) of Pub. L. 99–661, set out as a note under section 1074a of this title.

§ 1205. Members on active duty for 30 days or less: temporary disability retired list

Upon a determination by the Secretary concerned that a member of the armed forces not covered by section 1201, 1202, or 1203 of this title would be qualified for retirement under section 1204 of this title but for the fact that his disability is not determined to be of a permanent nature and stable, the Secretary shall, if he also determines that accepted medical principles indicate that the disability may be of a permanent nature, place the member's name on the temporary disability retired list, with retired pay computed under section 1401 of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 94; Pub. L. 99–145, title V, § 513(a)(1)(B), Nov. 8, 1985, 99 Stat. 627; Pub. L. 99–661, div. A, title VI, § 604(d)(2)[(B)], Nov. 14, 1986, 100 Stat. 3876.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1205 ………	37:272(c) (clause (5)).	Oct. 12, 1949, ch. 681, § 402(c) (clause (5)), 63 Stat. 818.

The first 52 words are inserted for clarity and are based on the rule stated in section 1204 of this title, which restates that part of 37:272(c) relating to retirement for physical disability. The revised section incorporates by reference those provisions which are identical for retirement and for placement on the temporary disability retired list. This is possible, since 37:272(f) applies to placement on the temporary disability retired list as well as to retirement (see opinion of the Judge Advocate General of the Army (JAGA 1953/1900, 9 Mar. 1953)).

AMENDMENTS

1986—Pub. L. 99–661 struck out ''; disability from injury'' after ''30 days or less'' in section catchline.

1985—Pub. L. 99–145 inserted ''and stable'' after ''determined to be of a permanent nature''.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–661 applicable with respect to persons who, after Nov. 14, 1986, incur or aggravate an injury, illness, or disease or die, see section 604(g) of Pub. L. 99–661, set out as a note under section 1074a of this title.

§ 1206. Members on active duty for 30 days or less or on inactive-duty training: separation

Upon a determination by the Secretary concerned that a member of the armed forces not covered by section 1201, 1202, or 1203 of this title is unfit to perform the duties of his office, grade, rank, or rating because of physical disability, the member may be separated from his armed force, with severance pay computed under section 1212 of this title, if the Secretary also determines that—

(1) the member has less than 20 years of service computed under section 1208 of this title;

(2) the disability is a result of an injury, illness, or disease incurred or aggravated in line of duty—

(A) while—

(i) performing active duty or inactive-duty training;

(ii) traveling directly to or from the place at which such duty is performed; or

(iii) remaining overnight immediately before the commencement of inactive-duty training, or while remaining overnight between successive periods of inactive-duty training, at or in the vicinity of the site of the inactive-duty training, if the site is outside reasonable commuting distance of the member's residence; or

(B) while the member—

(i) was serving on funeral honors duty under section 12503 of this title or section 115 of title 32;

(ii) was traveling to or from the place at which the member was to so serve; or

(iii) remained overnight at or in the vicinity of that place immediately before so serving;

(3) the disability is not the result of the member's intentional misconduct or willful neglect, and was not incurred during a period of unauthorized absence;

(4) based upon accepted medical principles, the disability is or may be of a permanent nature; and

(5) the disability is less than 30 percent under the standard schedule of rating disabilities in use by the Department of Veterans Affairs at the time of the determination, and, in the case of a disability incurred before October 5, 1999, was the proximate result of performing active duty or inactive-duty training or of traveling directly to or from the place at which such duty is performed.

However, if the member is eligible for transfer to the inactive status list under section 1209 of this title, and so elects, he shall be transferred to that list instead of being separated.

(Aug. 10, 1956, ch. 1041, 70A Stat. 94; Pub. L. 99–661, div. A, title VI, § 604(d)(1), (3), Nov. 14, 1986, 100 Stat. 3876; Pub. L. 101–189, div. A, title XVI, § 1621(a)(1), Nov. 29, 1989, 103 Stat. 1602; Pub. L. 102–484, div. A, title V, § 516(a), Oct. 23, 1992, 106 Stat. 2407; Pub. L. 105–85, div. A, title V, § 513(c)(2), (d)(2), Nov. 18, 1997, 111 Stat. 1731; Pub. L. 106–65, div. A, title V, § 578(i)(4), title VI, § 653(c), Oct. 5, 1999, 113 Stat. 629, 667; Pub. L. 107–107, div. A, title V, § 513(b), title X, § 1048(c)(6), Dec. 28, 2001, 115 Stat. 1093, 1226.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
1206	37:272(c) (last proviso).	Oct. 12, 1949, ch. 681, § 402(c) (last proviso), 63 Stat. 818.

To state fully in the revised section the rule contained in 37:272(c) (last proviso), the provisions of 37:272(c) (less clause (5), and less 1st proviso), and 272(f) (as applicable to 272(c)), also contained in section 1204 of this title, are repeated. The words ''the member may be separated'' are substituted for the words ''the member concerned shall not be eligible for any disability retirement provided in this section, but may be separated for physical disability''.

Clause (1) is inserted for clarity, since a member who had over 20 years of service would qualify under section 1204 or 1205 of this title.

The last sentence of the revised section, relating to transfer to the inactive status list, is inserted for clarity because of section 1209 of this title.

AMENDMENTS

2001—Par. (2)(B)(iii). Pub. L. 107–107, § 513(b), struck out '', if the place is outside reasonable commuting distance from the member's residence'' before semicolon at end.

Par. (5). Pub. L. 107–107, § 1048(c)(6), substituted ''October 5, 1999,'' for ''the date of the enactment of the National Defense Authorization Act for Fiscal Year 2000,''.

1999—Par. (2). Pub. L. 106–65, § 578(i)(4), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''the disability is a result of an injury, illness, or disease incurred or aggravated in line of duty while—

''(A) performing active duty or inactive-duty training;

''(B) traveling directly to or from the place at which such duty is performed; or

''(C) while remaining overnight immediately before the commencement of inactive-duty training, or while remaining overnight between successive periods of inactive-duty training, at or in the vicinity of the site of the inactive-duty training, if the site is outside reasonable commuting distance of the member's residence;''.

Par. (5). Pub. L. 106–65, § 653(c), inserted '', in the case of a disability incurred before the date of the enactment of the National Defense Authorization Act for Fiscal Year 2000,'' after ''determination, and''.

1997—Pub. L. 105–85, § 513(d)(2), amended section catchline generally, inserting ''or on inactive-duty training'' after ''30 days or less''.

Pars. (2) to (5). Pub. L. 105–85, § 513(c)(2), added par. (2) and redesignated former pars. (2) to (4) as (3) to (5), respectively.

1992—Par. (4). Pub. L. 102–484 inserted before period at end ''or of traveling directly to or from the place at which such duty is performed''.

1989—Par. (4). Pub. L. 101–189 substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

1986—Pub. L. 99–661 struck out ''; disability from injury'' after ''30 days or less'' in section catchline and ''resulting from an injury'' after ''because of physical disability'' in provisions preceding par. (1).

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–484 effective with respect to disabilities incurred on or after Nov. 14, 1986, with any benefits or services payable by reason of applicability of that amendment during period beginning Nov. 14, 1986, and ending Oct. 23, 1992, subject to availability of appropriations, see section 516(b) of Pub. L. 102–484, set out as a note under section 1204 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–661 applicable with respect to persons who, after Nov. 14, 1986, incur or aggravate an injury, illness, or disease or die, see section 604(g) of Pub. L. 99–661, set out as a note under section 1074a of this title.

§ 1206a. Reserve component members unable to perform duties when ordered to active duty: disability system processing

(a) MEMBERS RELEASED FROM ACTIVE DUTY WITHIN 30 DAYS.—A member of a reserve component who is ordered to active duty for a period of more than 30 days and is released from active duty within 30 days of commencing such period of active duty for a reason stated in subsection (b) shall be considered for all purposes under this chapter to have been serving under an order to active duty for a period of 30 days or less.

(b) APPLICABLE REASONS FOR RELEASE.—Subsection (a) applies in the case of a member released from active duty because of a failure to meet—

(1) physical standards for retention due to a preexisting condition not aggravated during the period of active duty; or

(2) medical or dental standards for deployment due to a preexisting condition not aggravated during the period of active duty.

(c) SAVINGS PROVISION FOR MEDICAL CARE PROVIDED WHILE ON ACTIVE DUTY.—Notwithstanding subsection (a), any benefit under chapter 55 of this title received by a member described in subsection (a) or a dependent of such member before or during the period of active duty shall not be subject to recoupment or otherwise affected.

(Added Pub. L. 108–375, div. A, title V, § 521(a), Oct. 28, 2004, 118 Stat. 1887.)

§ 1207. Disability from intentional misconduct or willful neglect: separation

Each member of the armed forces who incurs a physical disability that, in the determination of the Secretary concerned, makes him unfit to perform the duties of his office, grade, rank, or rating, and that resulted from his intentional misconduct or willful neglect or was incurred during a period of unauthorized absence, shall be separated from his armed force without entitlement to any benefits under this chapter.

(Aug. 10, 1956, ch. 1041, 70A Stat. 94.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1207	37:278.	Oct. 12, 1949, ch. 681, § 408, 63 Stat. 823.

The words "Each member * * * who" are substituted for the words "When a member * * * such member". The words "is determined to have" are omitted as surplusage.

§ 1207a. Members with over eight years of active service: eligibility for disability retirement for pre-existing conditions

(a) In the case of a member described in subsection (b) who would be covered by section 1201, 1202, or 1203 of this title but for the fact that the member's disability is determined to have been incurred before the member became entitled to basic pay in the member's current period of active duty, the disability shall be deemed to have been incurred while the member was entitled to basic pay and shall be so considered for purposes of determining whether the disability was incurred in the line of duty.

(b) A member described in subsection (a) is a member with at least eight years of active service.

(Added Pub. L. 106–65, div. A, title VI, § 653(a)(1), Oct. 5, 1999, 113 Stat. 666.)

§ 1208. Computation of service

(a) For the purposes of this chapter, a member of a regular component shall be credited with the service described in paragraph (1) or that described in paragraph (2), whichever is greater:

(1) The service that he is considered to have for the purpose of separation, discharge, or retirement for length of service.

(2) The sum of—

(A) his active service as a member of the armed forces, a nurse, a reserve nurse, a contract surgeon, a contract dental surgeon, or an acting dental surgeon;

(B) his active service as a member of the National Oceanic and Atmospheric Administration or the Public Health Service; and

(C) his service while participating in exercises or performing duties under sections 502, 503, 504, and 505 of title 32.

For the purpose of paragraph (2), active service as a member of the National Oceanic and Atmospheric Administration includes active service as a member of the Environmental Science Services Administration and of the Coast and Geodetic Survey.

(b) A member of the armed forces who is not a member of a regular component shall be credited, for the purposes of this chapter, with the number of years of service that he would count if he were computing his years of service under section 12733 of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 94; Pub. L. 89–718, § 8, Nov. 2, 1966, 80 Stat. 1117; Pub. L. 96–513, title V, §§ 501(16), 511(42), Dec. 12, 1980, 94 Stat. 2908, 2923; Pub. L. 99–661, div. A, title XIII, § 1343(a)(6), Nov. 14, 1986, 100 Stat. 3992; Pub. L. 100–26, § 7(j)(3), Apr. 21, 1987, 101 Stat. 283; Pub. L. 104–106, div. A, title XV, § 1501(c)(13), Feb. 10, 1996, 110 Stat. 499.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1208(a)	37:282 (less clauses (2) and (3), less applicability to persons referred to in 37:281, and less applicability to service as a cadet before August 24, 1912, as a midshipman before March 4, 1913, as an Army field clerk, or as a field clerk, Army Quartermaster Corps).	Oct. 12, 1949, ch. 681, §412 (less clause (3), less applicability to persons referred to in §411, and less applicability to service as a cadet before August 24, 1912, as a midshipman before March 4, 1913, as an Army field clerk, or as a field clerk, Army Quartermaster Corps), 63 Stat. 824.
1208(b)	37:282 (clause (2), less applicability to persons referred to in 37:281, and less applicability to service as a cadet before August 24, 1912, as a midshipman before March 4, 1913, as an Army field clerk, or as a field clerk, Army Quartermaster Corps).	

In subsection (a), the words ''shall be credited with the service described in clause (1) or that described in clause (2), whichever is greater'' are substituted for the words ''shall be interpreted to mean''.

In subsection (a)(1), the words ''he is considered to have'' are substituted for the words ''such member, former member, or person has or is deemed to have pursuant to law''.

In subsection (a)(2)(A), the words ''his active service'' are substituted for the words ''while on the active list or on active duty or while participating in full-time training or other full-time duty provided for or authorized in the National Defense Act, as amended, the Naval Reserve Act of 1938, as amended, or in—other provisions of law'' because of the definitions of ''active service'' and ''active duty'' in sections 101(24) and 101(22) of this title.

In subsection (a)(2)(C), the references to 10:22–23, 24–26, and 30–36 are omitted as repealed by section 401 of the Army Organization Act of 1950, 64 Stat. 271. The reference to 32:70 is omitted as repealed by section 16 of the act of June 15, 1933, ch. 87, 48 Stat. 159. The reference to 10:23a is omitted as executed. The references to 10:38 and 32:66 and 172–175 are omitted as covered by the words ''active service''. The references to 32:144–147, 171, and 176 are omitted, since they deal with pay and do not authorize duty or training. The reference to section 502 of title 32, not contained in 37:282, is inserted, since section 92 of the National Defense Act, as amended (32:62) is referred to in section 412 of the Career Compensation Act of 1949 (37:282).

In subsection (b), the words ''any other member'' are substituted for the words ''members of the reserve components'', since the words ''reserve components'' are defined by section 102(k) of the Career Compensation Act of 1949, 63 Stat. 805 (37 U.S.C. 231(k)) to include members appointed, enlisted, or inducted without component.

AMENDMENTS

1996—Subsec. (b). Pub. L. 104–106 substituted ''section 12733'' for ''section 1333''.

1987—Subsec. (a). Pub. L. 100–26 substituted ''paragraph (1)'' and ''paragraph (2)'' for ''clause (1)'' and ''clause (2)'', respectively, in introductory provisions, and ''paragraph (2)'' for ''clause 2(B) of this subsection'' in second sentence.

1986—Subsec. (a)(2)(A). Pub. L. 99–661 struck out ''after February 2, 1901'' after ''a reserve nurse''.

1980—Subsec. (a). Pub. L. 96–513 substituted ''separation, discharge, or retirement for length of service'' for ''separation or mandatory elimination from the active list'' in par. (1), substituted ''National Oceanic and Atmospheric Administration'' for ''Environmental Science Services Administration'' in par. (2)(B), and, in provisions following par. (2)(C), substituted ''as a member of the National Oceanic and Atmospheric Administration includes active service as a member of the Environmental Science Services Administration and'' for ''as a member of the Environmental Science Services Administration includes service as a member''.

1966—Subsec. (a). Pub. L. 89–718 substituted ''Environmental Science Services Administration'' for ''Coast and Geodetic Survey'' in clause (2)(B) and inserted provision that, for purposes of clause (2)(B) of subsec. (a), active service as a member of the Environmental Science Services Administration includes active service as a member of the Coast and Geodetic Survey.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–106, div. A, title XV, §1501(c), Feb. 10, 1996, 110 Stat. 498, provided that the amendment made by that section is effective as of Dec. 1, 1994, and as if included as an amendment made by the Reserve Officer Personnel Management Act, title XVI of Pub. L. 103–337, as originally enacted.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by section 501(16) of Pub. L. 96–513 effective Sept. 15, 1981, and amendment by section 511(42) of Pub. L. 96–513 effective Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

REPEALS

The directory language of, but not the amendment made by, Pub. L. 89–718, §8(a), Nov. 2, 1966, 80 Stat. 1117, cited as a credit to this section, was repealed by Pub. L. 97–295, §6(b), Oct. 12, 1982, 96 Stat. 1314.

TRANSFER OF FUNCTIONS

For transfer of functions of Public Health Service, see note set out under section 802 of this title.

ADDITIONAL SERVICE CREDITABLE TO CERTAIN REGULARS

Act Aug. 10, 1956, ch. 1041, §39, 70A Stat. 635, provided that: ''In addition to service with which he may be credited under section 1208(a)(2) of title 10, United States Code [subsec. (a)(2) of this section], a member of a regular component of the armed forces shall be credited, for the purposes of chapter 61 of title 10, United States Code [this chapter], with all service as—

''(1) a cadet at the United States Military Academy, if appointed before August 24, 1912;

''(2) a midshipman at the United States Naval Academy, if appointed before March 4, 1913;

''(3) an Army field clerk; and

''(4) a field clerk, Army Quartermaster Corps.''

OFFICERS OF THE PUBLIC HEALTH SERVICE

Applicability of subsec. (a)(2) of this section to officers of the Reserve Corps and to officers of the Regular Corps of the Public Health Service, see section 212 of Title 42, The Public Health and Welfare.

§ 1209. Transfer to inactive status list instead of separation

Any member of the armed forces who has at least 20 years of service computed under section 12732 of this title, and who would be qualified for retirement under this chapter but for the fact that his disability is less than 30 percent under the standard schedule of rating disabilities in use by the Department of Veterans Affairs at the time of the determination, may elect, instead of being separated under this chapter, to be transferred to the inactive status list under section 12735 of this title and, if otherwise eligible, to receive retired pay under section 12739 of this title upon becoming 60 years of age.

(Aug. 10, 1956, ch. 1041, 70A Stat. 95; Pub. L. 101–189, div. A, title XVI, §1621(a)(1), Nov. 29,

1989, 103 Stat. 1602; Pub. L. 104–106, div. A, title XV, § 1501(c)(14), Feb. 10, 1996, 110 Stat. 499.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
1209	37:272(g).	Oct. 12, 1949, ch. 681, § 402(g), 63 Stat. 820.

The words ''Notwithstanding the foregoing provisions of this section'', ''satisfactory Federal'', and ''and receiving disability severance pay'' are omitted as surplusage. The words ''at the time of the determination'' are substituted for the word ''current''. The word ''otherwise'' is substituted for the words ''in all other respects''.

AMENDMENTS

1996—Pub. L. 104–106 substituted ''section 12732'' for ''section 1332'', ''section 12735'' for ''section 1335'', and ''section 12739'' for ''chapter 71''.

1989—Pub. L. 101–189 substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–106, div. A, title XV, § 1501(c), Feb. 10, 1996, 110 Stat. 498, provided that the amendment made by that section is effective as of Dec. 1, 1994, and as if included as an amendment made by the Reserve Officer Personnel Management Act, title XVI of Pub. L. 103–337, as originally enacted.

§ 1210. Members on temporary disability retired list: periodic physical examination; final determination of status

(a) A physical examination shall be given at least once every 18 months to each member of the armed forces whose name is on the temporary disability retired list to determine whether there has been a change in the disability for which he was temporarily retired. He may be required to submit to those examinations while his name is carried on that list. If a member fails to report for an examination under this subsection, after receipt of proper notification, his disability retired pay may be terminated. However, payments to him shall be resumed if there was just cause for his failure to report. If payments are so resumed, they may be made retroactive for not more than one year.

(b) The Secretary concerned shall make a final determination of the case of each member whose name is on the temporary disability retired list upon the expiration of three years after the date when the member's name was placed on that list. If, at the time of that determination, the physical disability for which the member's name was carried on the temporary disability retired list still exists, it shall be considered to be of a permanent nature and stable.

(c) If, as a result of a periodic examination under subsection (a), or upon a final determination under subsection (b), it is determined that the member's physical disability is of a permanent nature and stable and is at least 30 percent under the standard schedule of rating disabilities in use by the Department of Veterans Affairs at the time of the determination, his name shall be removed from the temporary disability retired list and he shall be retired under section 1201 or 1204 of this title, whichever applies.

(d) If, as a result of a periodic examination under subsection (a), or upon a final determination under subsection (b), it is determined that the member's physical disability is of a permanent nature and stable and is less than 30 percent under the standard schedule of rating disabilities in use by the Department of Veterans Affairs at the time of the determination, and if he has at least 20 years of service computed under section 1208 of this title, his name shall be removed from the temporary disability retired list and he shall be retired under section 1201 or 1204 of this title, whichever applies, with retired pay computed under section 1401 of this title.

(e) If, as a result of a periodic examination under subsection (a), or upon a final determination under subsection (b), it is determined that the member's physical disability is less than 30 percent under the standard schedule of rating disabilities in use by the Department of Veterans Affairs at the time of the determination, and if he has less than 20 years of service computed under section 1208 of this title, his name shall be removed from the temporary disability retired list and he may be separated under section 1203 or 1206 of this title, whichever applies.

(f)(1) If, as a result of a periodic examination under subsection (a), or upon a final determination under subsection (b), it is determined that the member is physically fit to perform the duties of his office, grade, rank, or rating, the Secretary shall—

(A) treat the member as provided in section 1211 of this title; or

(B) discharge the member, retire the member, or transfer the member to the Fleet Reserve, Fleet Marine Corps Reserve, or inactive Reserve under any other law if, under that law, the member—

(i) applies for and qualifies for that retirement or transfer; or

(ii) is required to be discharged, retired, or eliminated from an active status.

(2)(A) For the purpose of paragraph (1)(B), a member shall be considered qualified for retirement or transfer to the Fleet Reserve or Fleet Marine Corps Reserve or is required to be discharged, retired, or eliminated from an active status if, were the member reappointed or reenlisted under section 1211 of this title, the member would in all other respects be qualified for or would be required to be retired, transferred to the Fleet Reserve or Fleet Marine Corps Reserve, discharged, or eliminated from an active status under any other provision of law.

(B) The grade of a member retired, transferred, discharged, or eliminated from an active status pursuant to paragraph (1)(B) shall be determined under the provisions of law under which the member is retired, transferred, discharged, or eliminated. The member's retired, retainer, severance, readjustment, or separation pay shall be computed as if the member had been reappointed or reenlisted upon removal from the temporary disability retired list and before the retirement, transfer, discharge, or elimination. Notwithstanding section 8301 of title 5, a member who is retired shall be entitled to retired pay effective on the day after the last day on which the member is entitled to disability retired pay.

(g) Any member of the armed forces whose name is on the temporary disability retired list,

and who is required to travel to submit to a physical examination under subsection (a), is entitled to the travel and transportation allowances authorized for members in his retired grade traveling in connection with temporary duty while on active duty.

(h) If his name is not sooner removed, the disability retired pay of a member whose name is on the temporary disability retired list terminates upon the expiration of three years after the date when his name was placed on that list.

(Aug. 10, 1956, ch. 1041, 70A Stat. 95; Pub. L. 99–145, title V, § 513(a)(2), Nov. 8, 1985, 99 Stat. 627; Pub. L. 101–189, div. A, title XVI, § 1621(a)(1), Nov. 29, 1989, 103 Stat. 1602; Pub. L. 114–328, div. A, title V, § 525(a), Dec. 23, 2016, 130 Stat. 2117.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
1210(a)	37:272(e) (less last sentence). 37:274(a). 37:274(b) (less 1st sentence).	Oct. 12, 1949, ch. 681, §§ 402(d) (30th through 55th words), (e) (less 1st proviso of last sentence), (f) (as applicable to § 402(e)), 404, 63 Stat. 818–821.
1210(b)	37:272(e) (1st 37 words of last proviso of last sentence).	
1210(c)	37:272(e) (last sentence, less provisos and less clause (2)). 37:272(e) (38th through 45th words of last proviso of last sentence).	
1210(d)	37:272(f) (as applicable to 37:272(e)).	
1210(e)	37:272(e) (clause (2) of last sentence). 37:272(e) (46th word of last proviso of last sentence).	
1210(f)	37:272(e) (47th through 56th words of last proviso of last sentence).	
1210(g)	37:274(b) (1st sentence).	
1210(h)	37:272(d) (30th through 55th words).	

In subsection (a), the second sentence is substituted for 37:274(a). The word ''resumed'' is substituted for the words ''reinstated at a later date'', in 37:274(b).

In subsection (b), the last sentence is inserted for clarity to conform to an opinion of the Judge Advocate General of the Army (JAGA 1953/8438, 30 Dec. 1953) and an opinion of the Judge Advocate General of the Navy (JAG: III: 7: WBM: bg. 7 Jan. 1954).

In subsection (c), the words ''or upon a final determination under subsection (b)'' are substituted for the words ''or upon the determination of a period of five years from the date of temporary disability retirement'', in 37:272(e). The words ''at the time of the determination'' are substituted for the word ''current'', in 37:272(e). The words ''and he shall be entitled to receive disability retirement pay as prescribed in subsection (d) of this section'' are omitted as covered by sections 1201 and 1204 of this title. Reference to specific sections on permanent retirement are substituted for the word ''permanently'', before the word ''retired'', in 37:272(e).

In subsection (d), 37:272(f) (proviso) is omitted as surplusage.

In subsection (e), the words ''and if he has less than 20 years of service computed under section 1208 of this title'' are inserted to distinguish the separation requirement under this section from retirement requirements under subsection (d). 37:272(e) (last 19 words of clause (2) of last sentence) is omitted as covered by sections 1203 and 1206 of this title. The words ''at the time of determination'' are substituted for the word ''current''.

In subsection (f), the first 39 words are inserted for clarity.

In subsection (g), the words ''members in his retired grade traveling in connection with temporary duty'' are substituted for the words ''the rank, grade, or rating in which retired for temporary duty travel performed''. The words ''for travel performed'' are omitted as surplusage.

AMENDMENTS

2016—Subsecs. (b), (h). Pub. L. 114–328 substituted ''three years'' for ''five years''.

1989—Subsecs. (c) to (e). Pub. L. 101–189 substituted ''Department of Veterans Affairs'' for ''Veterans' Administration'' wherever appearing.

1985—Subsecs. (b) to (d). Pub. L. 99–145, § 513(a)(2)(A), inserted ''and stable'' after ''permanent nature''.

Subsec. (f). Pub. L. 99–145, § 513(a)(2)(B), designated existing provisions as par. (1), substituted ''or rating, the Secretary shall—'' for ''and rating, the Secretary shall treat him as provided in section 1211 of this title'', added subpars. (A) and (B), and added par. (2).

EFFECTIVE DATE OF 2016 AMENDMENT

Pub. L. 114–328, div. A, title V, § 525(b), Dec. 23, 2016, 130 Stat. 2117, provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on January 1, 2017, and shall apply to members of the Armed Forces whose names are placed on the temporary disability retired list on or after that date.''

§ 1211. Members on temporary disability retired list: return to active duty; promotion

(a) With his consent, any member of the Army, the Air Force, or the Space Force whose name is on the temporary disability retired list, and who is found to be physically fit to perform the duties of his office, grade, or rank under section 1210(f) of this title, shall—

(1) if a commissioned officer of a regular component, be recalled to active duty and, as soon as practicable, may be reappointed by the President, by and with the advice and consent of the Senate, to the active-duty list in the regular grade held by him when his name was placed on the temporary disability retired list, or in the next higher regular grade;

(2) if a warrant officer of a regular component, be recalled to active duty and, as soon as practicable, be reappointed by the Secretary concerned in the regular grade held by him when his name was placed on the temporary disability retired list, or in the next higher regular warrant grade;

(3) if an enlisted member of a regular component, be reenlisted in the regular grade held by him when his name was placed on the temporary disability retired list or in the next higher regular enlisted grade;

(4) if a commissioned, warrant, or enlisted Reserve, be reappointed or reenlisted as a Reserve for service in his reserve component in the reserve grade held by him when his name was placed on the temporary disability retired list, or appointed or enlisted in the next higher reserve commissioned, warrant, or enlisted grade, as the case may be;

(5) if a commissioned, warrant, or enlisted member of the Army National Guard of the United States or the Air National Guard of the United States when the disability was incurred, and if he cannot be reappointed or reenlisted as a Reserve for service therein, be appointed or enlisted as a Reserve for service in the Army Reserve or the Air Force Reserve, as the case may be, in a grade corresponding to the reserve grade held by him when his

name was placed on the temporary disability retired list, or in the next higher reserve commissioned, warrant, or enlisted grade, as the case may be; and

(6) if a member of the Army, the Air Force, or the Space Force who has no regular or reserve grade, be reappointed or reenlisted in the Army, the Air Force, or the Space Force, as the case may be, in the temporary grade held by him when his name was placed on the temporary disability retired list, or appointed or enlisted in the next higher temporary grade.

(b) With his consent, any member of the naval service or of the Coast Guard whose name is on the temporary disability retired list, and who is found to be physically fit to perform the duties of his office, grade, rank, or rating under section 1210(f) of this title, shall—

(1) if he held an appointment in a commissioned grade in a regular component when his name was placed on the temporary disability retired list, be recalled to active duty and, as soon as practicable, may be reappointed by the President, by and with the advice and consent of the Senate, to his regular component in the grade permanently held by him when his name was placed on the temporary disability retired list, or in the next higher grade;

(2) if he held an appointment in the grade of warrant officer, W–1, in a regular component when his name was placed on the temporary disability retired list, be recalled to active duty and, as soon as practicable, be reappointed by the Secretary concerned in his regular component in the grade permanently held by him when his name was placed on the temporary disability retired list, or may be appointed by the President, by and with the advice and consent of the Senate, to the grade of chief warrant officer, W–2;

(3) if he held a permanent enlisted grade in a regular component when his name was placed on the temporary disability retired list, be reenlisted in his regular component in the grade permanently held by him when his name was placed on the temporary disability retired list, or in the next higher enlisted grade;

(4) if he was a member of the Fleet Reserve or the Fleet Marine Corps Reserve when his name was placed on the temporary disability retired list, resume his status in the Fleet Reserve or the Fleet Marine Corps Reserve in the grade held by him when his name was placed on the temporary disability retired list, or in the next higher enlisted grade; and

(5) if a member of a reserve component be reappointed or reenlisted in his reserve component in the grade permanently held by him when his name was placed on the temporary disability retired list or, if that permanent grade is not chief petty officer or master sergeant, in the next higher grade in that reserve component.

(c) If a member is appointed, reappointed, enlisted, or reenlisted, or resumes his status in the Fleet Reserve or the Fleet Marine Corps Reserve, under subsection (a) or (b), his status on the temporary disability retired list terminates on the date of his appointment, reappointment, enlistment, reenlistment, or resumption, as the case may be. However, if such a member does not consent to the action proposed under subsection (a) or (b), and if the member is not discharged, retired, or transferred to the Fleet Reserve or Fleet Marine Corps Reserve or inactive Reserve under section 1210 of this title, his status on the temporary disability retired list and his disability retired pay shall be terminated as soon as practicable and the member shall be discharged.

(d) Disability retired pay of a member covered by this section terminates—

(1) on the date when he is recalled to active duty under subsection (a)(1) or (2) or subsection (b)(1) or (2), for an officer of a regular component;

(2) on the date when he resumes his status in the Fleet Reserve or the Fleet Marine Corps Reserve under subsection (b)(4), for a member of the Fleet Reserve or the Fleet Marine Corps Reserve; and

(3) on the date when he is appointed, reappointed, enlisted, or reenlisted, for any other member of the armed forces.

(e) Whenever seniority in grade or years of service is a factor in determining the qualifications of a member of the armed forces for promotion, each member who has been appointed, reappointed, enlisted, or reenlisted, under subsection (a) or (b), shall, when his name is placed on a lineal list, a promotion list, an approved all-fully-qualified-officers list, or any similar list, have the seniority in grade and be credited with the years of service authorized by the Secretary concerned. The authorized strength in any regular grade is automatically increased to the minimum extent necessary to give effect to each appointment made in that grade under this section. An authorized strength so increased is increased for no other purpose, and while he holds that grade the officer whose appointment caused the increase is counted for the purpose of determining when other appointments, not under this section, may be made in that grade.

(f) Action under this section shall be taken on a fair and equitable basis, with regard being given to the probable opportunities for advancement and promotion that the member might reasonably have had if his name had not been placed on the temporary disability retired list.

(Aug. 10, 1956, ch. 1041, 70A Stat. 96; Pub. L. 87–651, title I, § 107(b), Sept. 7, 1962, 76 Stat. 508; Pub. L. 96–513, title V, § 501(17), Dec. 12, 1980, 94 Stat. 2908; Pub. L. 99–145, title V, § 513(a)(3), Nov. 8, 1985, 99 Stat. 627; Pub. L. 107–107, div. A, title V, § 505(c)(4), Dec. 28, 2001, 115 Stat. 1088; Pub. L. 116–283, div. A, title IX, § 924(b)(24), Jan. 1, 2021, 134 Stat. 3824.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1211(a)	37:275(a). 37:275(b). 37:275(c) (1st sentence). 37:276(a) (less clauses (1)–(3)). 37:276(a)(1) (1st 7 words). 37:276(a)(2) (1st 10 words). 37:276(a)(3) (1st 8 words).	Oct. 12, 1949, ch. 681, §§ 405, 406, 407, 63 Stat. 821.

HISTORICAL AND REVISION NOTES—CONTINUED

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
	37:277(a).	
1211(b)	37:275(a).	
	37:275(b).	
	37:275(c) (1st sentence).	
	37:276(a) (less clauses (1)–(3)).	
	37:276(a)(1) (1st 7 words).	
	37:276(a)(2) (1st 10 words).	
	37:276(a)(3) (1st 8 words).	
	37:277(a).	
1211(c)	37:276(a)(1) (less 1st 22 words).	
	37:276(a)(2) (11th through 18th words).	
	37:276(a)(3) (9th and 10th words).	
	37:276(b).	
1211(d)	37:276(a)(1) (8th through 22d words).	
	37:276(a)(2) (less 1st 18 words).	
	37:276(a)(3) (less 1st 10 words).	
1211(e)	37:275(c) (2d sentence).	
	37:277 (less (a)).	
1211(f)	37:275(c) (last sentence).	

In subsections (a) and (b), the words ''under section 1210(f) of this title'' are substituted for the words ''If, as a result of a periodic physical examination'', in 37:275(a) and (b), and 276(a), and the words ''and who are subsequently found to be physically fit'', in 37:277(a). The words ''subject to the provisions of section 277 of this title'', in 37:275(a), are omitted as surplusage.

In subsections (a)(2)–(6) and (b)(2)–(6), the appointment or enlistment is restricted to those already in an enlisted, warrant, or commissioned status, as the case may be, held by the member before placement of his name on the temporary disability retired list, since 37:277 (last sentence) indicates that appointment in the next higher grade for regular warrant officer is restricted to those warrant grades to which the President alone may appoint him. Similarly 37:275 (last 10 words) indicates that an enlisted member may only be reenlisted.

In subsection (a)(2) reference to the President, in 37:277(a), is omitted as inapplicable to the appointment of warrant officers of the Army and the Air Force.

Subsection (a)(5) is substituted for 37:275(b) (proviso) (as applicable to Army and Air Force).

Subsection (a)(6) is inserted, since the words ''reserve component'' are defined by section 102(k) of the source statute to include members of the Army and the Air Force who have no component status.

In subsection (b)(2), the words ''by and with the advice and consent of the Senate'' are added to make it clear that all appointments to the grade of commissioned warrant officer in the Navy, Marine Corps, and Coast Guard require Senate confirmation. Although these words do not appear in section 405 of the Career Compensation Act of 1949, there is no indication that an exception to the basic law relating to appointments in commissioned grades was intended.

Subsection (d)(3) is made applicable to members without component status, since the words ''reserve component'' are defined in section 102(k) of the source statute to include members of the Army and the Air Force who have no component status.

In subsection (e), the words ''rank'' and ''rating'' are omitted as surplusage.

1962 ACT

The changes correct typographical errors.

AMENDMENTS

2021—Subsec. (a). Pub. L. 116–283, §924(b)(24)(A), substituted '', the Air Force, or the Space Force'' for ''or the Air Force'' in introductory provisions.

Subsec. (a)(6). Pub. L. 116–283, §924(b)(24)(B), substituted ''the Air Force, or the Space Force who'' for ''or the Air Force, who'' and ''the Air Force, or the Space Force, as'' for ''or the Air Force, as''.

2001—Subsec. (e). Pub. L. 107–107 inserted ''an approved all-fully-qualified-officers list,'' after ''a promotion list,''.

1985—Subsec. (c). Pub. L. 99–145 inserted ''and if the member is not discharged, retired, or transferred to the Fleet Reserve or Fleet Marine Corps Reserve or inactive Reserve under section 1210 of this title,'' after ''proposed under subsection (a) or (b),'' and inserted ''and the member shall be discharged'' after ''as soon as practicable''.

1980—Subsec. (a)(1). Pub. L. 96–513 substituted ''active-duty list'' for ''active list of his regular component''.

1962—Subsec. (d). Pub. L. 87–651 substituted ''subsection (b)(1) or (2)'' for ''subsection (b)(1), (2), or (3)'' in cl. (1), and ''subsection (b)(4)'' for ''subsection (b)(5)'' in cl. (2).

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 1212. Disability severance pay

(a) Upon separation from his armed force under section 1203 or 1206 of this title, a member is entitled to disability severance pay computed by multiplying (1) the member's years of service computed under section 1208 of this title (subject to the minimum and maximum years of service provided for in subsection (c)), by (2) the highest of the following amounts:

(A) Twice the amount of monthly basic pay to which he would be entitled if serving (i) on active duty on the date when he is separated and (ii) in the grade and rank in which he was serving on the date when his name was placed on the temporary disability retired list, or if his name was not carried on that list, on the date when he is separated.

(B) Twice the amount of monthly basic pay to which he would be entitled if serving (i) on active duty on the date when his name was placed on the temporary disability retired list or, if his name was not carried on that list, on the date when he is separated, and (ii) in any temporary grade or rank higher than that described in clause (A), in which he served satisfactorily as determined by the Secretary of the military department or the Secretary of Homeland Security, as the case may be, having jurisdiction over the armed force from which he is separated.

(C) Twice the amount of monthly basic pay to which he would be entitled if serving (i) on active duty on the date when his name was placed on the temporary disability retired list or, if his name was not carried on that list, on the date when he is separated, and (ii) in the permanent regular or reserve grade to which he would have been promoted had it not been

for the physical disability for which he is separated and which was found to exist as a result of a physical examination.

(D) Twice the amount of monthly basic pay to which he would be entitled if serving (i) on active duty on the date when his name was placed on the temporary disability retired list or, if his name was not carried on that list, on the date when he is separated, and (ii) in the temporary grade or rank to which he would have been promoted had it not been for the physical disability for which he is separated and which was found to exist as a result of a physical examination, if his eligibility for promotion was required to be based on cumulative years of service or years in grade.

(b) For the purposes of subsection (a), a part of a year of active service that is six months or more is counted as a whole year, and a part of a year that is less than six months is disregarded.

(c)(1) The minimum years of service of a member for purposes of subsection (a)(1) shall be as follows:

(A) Six years in the case of a member separated from the armed forces for a disability incurred in line of duty in a combat zone (as designated by the Secretary of Defense for purposes of this subsection) or incurred during the performance of duty in combat-related operations as designated by the Secretary of Defense.

(B) Three years in the case of any other member.

(2) The maximum years of service of a member for purposes of subsection (a)(1) shall be 19 years.

(d)(1) The amount of disability severance pay received under this section shall be deducted from any compensation for the same disability to which the former member of the armed forces or his dependents become entitled under any law administered by the Department of Veterans Affairs.

(2) No deduction may be made under paragraph (1) in the case of disability severance pay received by a member for a disability incurred in line of duty in a combat zone or incurred during performance of duty in combat-related operations as designated by the Secretary of Defense.

(3) No deduction may be made under paragraph (1) from any death compensation to which a member's dependents become entitled after the member's death.

(Aug. 10, 1956, ch. 1041, 70A Stat. 98; Pub. L. 96–513, title V, § 511(43), Dec. 12, 1980, 94 Stat. 2924; Pub. L. 101–189, div. A, title XVI, § 1621(a)(1), Nov. 29, 1989, 103 Stat. 1602; Pub. L. 107–107, div. A, title V, § 593(a), Dec. 28, 2001, 115 Stat. 1126; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 110–181, div. A, title XVI, § 1646(a), (b), Jan. 28, 2008, 122 Stat. 472.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
1212(a)	37:273 (less 1st and last provisos).	Oct. 12, 1949, ch. 681, § 403, 63 Stat. 820.
1212(b)	37:273 (1st proviso).	
1212(c)	37:273 (last proviso).	

In subsection (a), the words "Upon separation" are inserted for clarity. The words "his years of service * * * computed under section 1208 of this title" are substituted for the words "a number of years equal to the number of years of active service to which such member is entitled under the provisions of section 282 of this title". The words "but not more than 12" are substituted for the words "but not to exceed a total of two years' basic pay", to simplify the necessary calculation. The substituted words produce the same result. The word "rating" is omitted as covered by the words "grade" and "rank".

In clause (2)(A)–(D), the words "Twice the amount of monthly" are substituted for the words "An amount equal to two months'". The words "if his name was not carried on that list" are substituted for the words "whichever is earlier", since the member might be separated without ever being carried on the list. The word "rating" is omitted as surplusage.

In clause (2)(B), the words "the Secretary of the military department, or the Secretary of the Treasury, as the case may be, having jurisdiction over the armed force from which he is separated" are substituted for the words "the Secretary concerned" for clarity.

In clause (2)(C), the words "regular or reserve" are inserted, since they are the only "permanent" grades.

Clause (2)(D) is based on that part of the third proviso of 37:273 relating to promotions other than regular or reserve.

In subsection (b), the words "and a part of a year that is less than six months is disregarded" are inserted to reflect the legislative history of the rule (see Senate Hearings on H.R. 5007, 81st Cong., page 313). The words "for himself or his dependents" are omitted as surplusage.

AMENDMENTS

2008—Subsec. (a)(1). Pub. L. 110–181, § 1646(a)(1), substituted "the member's years of service computed under section 1208 of this title (subject to the minimum and maximum years of service provided for in subsection (c))" for "his years of service, but not more than 12, computed under section 1208 of this title".

Subsec. (c). Pub. L. 110–181, § 1646(a)(3), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 110–181, § 1646(b), designated existing provisions as par. (1), struck out "However, no deduction may be made from any death compensation to which his dependents become entitled after his death." at end, and added pars. (2) and (3).

Pub. L. 110–181, § 1646(a)(2), redesignated subsec. (c) as (d).

2002—Subsec. (a)(2)(B). Pub. L. 107–296 substituted "Secretary of Homeland Security" for "Secretary of Transportation".

2001—Subsec. (a)(2)(C), (D). Pub. L. 107–107 struck out "for promotion" after "physical examination".

1989—Subsec. (c). Pub. L. 101–189 substituted "Department of Veterans Affairs" for "Veterans' Administration".

1980—Subsec. (a). Pub. L. 96–513 substituted "Secretary of Transportation" for "Secretary of the Treasury".

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–181, div. A, title XVI, § 1646(d), formerly § 1646(c), Jan. 28, 2008, 122 Stat. 472, renumbered § 1646(d) by Pub. L. 110–389, title I, § 103(a)(1), Oct. 10, 2008, 122 Stat. 4148, provided that: "The amendments made by this section [amending this section and section 1161 of Title 38, Veterans' Benefits] shall take effect on the date of the enactment of this Act [Jan. 28, 2008], and shall apply with respect to members of the Armed

Forces separated from the Armed Forces under chapter 61 of title 10, United States Code, on or after that date.''

[Amendment by Pub. L. 110–389, § 103(a)(1), redesignating section 1646(c) as 1646(d) of Pub. L. 110–181, set out above, effective Jan. 28, 2008, as if included in the Wounded Warrior Act, title XVI of Pub. L. 110–181, to which such amendment relates, see section 103(b) of Pub. L. 110–389, set out as an Effective Date of 2008 Amendment note under section 1161 of Title 38, Veterans' Benefits.]

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–107, div. A, title V, § 593(b), Dec. 28, 2001, 115 Stat. 1126, provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to members separated under section 1203 or 1206 of title 10, United States Code, on or after date of the enactment of this Act [Dec. 28, 2001].''

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

COMBAT-INJURED VETERANS TAX FAIRNESS

Pub. L. 114–292, Dec. 16, 2016, 130 Stat. 1500, provided that:

''SECTION 1. SHORT TITLE.

''This Act may be cited as the 'Combat-Injured Veterans Tax Fairness Act of 2016'.

''SEC. 2. FINDINGS.

''Congress makes the following findings:

''(1) Approximately 10,000 to 11,000 individuals are retired from service in the Armed Forces for medical reasons each year.

''(2) Some of such individuals are separated from service in the Armed Forces for combat-related injuries (as defined in section 104(b)(3) of the Internal Revenue Code of 1986 [26 U.S.C. 104(b)(3)]).

''(3) Congress has recognized the tremendous personal sacrifice of veterans with combat-related injuries by, among other things, specifically excluding from taxable income severance pay received for combat-related injuries.

''(4) Since 1991, the Secretary of Defense has improperly withheld taxes from severance pay for wounded veterans, thus denying them their due compensation and a significant benefit intended by Congress.

''(5) Many veterans owed redress are beyond the statutory period to file an amended tax return because they were not or are not aware that taxes were improperly withheld.

''SEC. 3. RESTORATION OF AMOUNTS IMPROPERLY WITHHELD FOR TAX PURPOSES FROM SEVERANCE PAYMENTS TO VETERANS WITH COMBAT-RELATED INJURIES.

''(a) IN GENERAL.—Not later than 1 year after the date of the enactment of this Act [Dec. 16, 2016], the Secretary of Defense shall—

''(1) identify—

''(A) the severance payments—

''(i) that the Secretary paid after January 17, 1991;

''(ii) that the Secretary computed under section 1212 of title 10, United States Code;

''(iii) that were not considered gross income pursuant to section 104(a)(4) of the Internal Revenue Code of 1986 [26 U.S.C. 104(a)(4)]; and

''(iv) from which the Secretary withheld amounts for tax purposes; and

''(B) the individuals to whom such severance payments were made; and

''(2) with respect to each person identified under paragraph (1)(B), provide—

''(A) notice of—

''(i) the amount of severance payments in paragraph (1)(A) which were improperly withheld for tax purposes; and

''(ii) such other information determined to be necessary by the Secretary of the Treasury to carry out the purposes of this section; and

''(B) instructions for filing amended tax returns to recover the amounts improperly withheld for tax purposes.

''(b) EXTENSION OF LIMITATION ON TIME FOR CREDIT OR REFUND.—

''(1) PERIOD FOR FILING CLAIM.—If a claim for credit or refund under section 6511(a) of the Internal Revenue Code of 1986 [26 U.S.C. 6511(a)] relates to a specified overpayment, the 3-year period of limitation prescribed by such subsection shall not expire before the date which is 1 year after the date the information return described in subsection (a)(2) is provided. The allowable amount of credit or refund of a specified overpayment shall be determined without regard to the amount of tax paid within the period provided in section 6511(b)(2) [26 U.S.C. 6511(b)(2)].

''(2) SPECIFIED OVERPAYMENT.—For purposes of paragraph (1), the term 'specified overpayment' means an overpayment attributable to a severance payment described in subsection (a)(1).

''SEC. 4. REQUIREMENT THAT SECRETARY OF DEFENSE ENSURE AMOUNTS ARE NOT WITHHELD FOR TAX PURPOSES FROM SEVERANCE PAYMENTS NOT CONSIDERED GROSS INCOME.

''The Secretary of Defense shall take such actions as may be necessary to ensure that amounts are not withheld for tax purposes from severance payments made by the Secretary to individuals when such payments are not considered gross income pursuant to section 104(a)(4) of the Internal Revenue Code of 1986 [26 U.S.C. 104(a)(4)].

''SEC. 5. REPORT TO CONGRESS.

''(a) IN GENERAL.—After completing the identification required by section 3(a) and not later than 1 year after the date of the enactment of this Act [Dec. 16, 2016], the Secretary of Defense shall submit to the appropriate committees of Congress a report on the actions taken by the Secretary to carry out this Act.

''(b) CONTENTS.—The report submitted under subsection (a) shall include the following:

''(1) The number of individuals identified under section 3(a)(1)(B).

''(2) Of all the severance payments described in section 3(a)(1)(A), the aggregate amount that the Secretary withheld for tax purposes from such payments.

''(3) A description of the actions the Secretary plans to take to carry out section 4.

''(c) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this section, the term 'appropriate committees of Congress' means—

''(1) the Committee on Armed Services, the Committee on Veterans' Affairs, and the Committee on Finance of the Senate; and

''(2) the Committee on Armed Services, the Committee on Veterans' Affairs, and the Committee on Ways and Means of the House of Representatives.''

§ 1213. Effect of separation on benefits and claims

Unless a person who has received disability severance pay again becomes a member of an armed force, the National Oceanic and Atmospheric Administration, or the Public Health Service, he is not entitled to any payment from the armed force from which he was separated for, or arising out of, his service before separa-

tion, under any law administered by one of those services or for it by another of those services. However, this section does not prohibit the payment of money to a person who has received disability severance pay, if the money was due him on the date of his separation or if a claim by him is allowed under any law.

(Aug. 10, 1956, ch. 1041, 70A Stat. 99; Pub. L. 89–718, § 8(a), Nov. 2, 1966, 80 Stat. 1117; Pub. L. 96–513, title V, § 511(44), Dec. 12, 1980, 94 Stat. 2924.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1213	37:280.	Oct. 12, 1949, ch. 681, § 410, 63 Stat. 823.

The words "a person who has received disability severance pay" are substituted for the words "Any former member who has been separated for physical disability from any of the uniformed services and paid disability severance pay". The words "any payment * * * for" are substituted for the words "for any monetary obligation provided under any provision * * * on account of". The words "this section does not prohibit" are substituted for the words "shall not operate to bar". The words "the payment of money to * * * if the money was due him" are substituted for the words "from receiving or the service concerned from paying any moneys due and payable". The words "valid", "processed", and "pursuant to any provisions of law" are omitted as surplusage.

AMENDMENTS

1980—Pub. L. 96–513 substituted "National Oceanic and Atmospheric Administration" for "Environmental Science Services Administration".

1966—Pub. L. 89–718 substituted "Environmental Science Services Administration" for "Coast and Geodetic Survey".

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

REPEALS

The directory language of, but not the amendment made by, Pub. L. 89–718, § 8(a), Nov. 2, 1966, 80 Stat. 1117, cited as a credit to this section, was repealed by Pub. L. 97–295, § 6(b), Oct. 12, 1982, 96 Stat. 1314.

TRANSFER OF FUNCTIONS

For transfer of functions of Public Health Service, see note set out under section 802 of this title.

§ 1214. Right to full and fair hearing

No member of the armed forces may be retired or separated for physical disability without a full and fair hearing if he demands it.

(Aug. 10, 1956, ch. 1041, 70A Stat. 100.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1214	37:283 (less 1st 17 words).	Oct. 12, 1949, ch. 681, § 413 (less 1st 17 words), 63 Stat. 825.

The words "including regulations" are omitted as covered by section 1216(a) of this title.

§ 1214a. Members determined fit for duty in Physical Evaluation Board: prohibition on involuntary administrative separation or denial of reenlistment due to unsuitability based on medical conditions considered in evaluation

(a) DISPOSITION.—Except as provided in subsection (c), the Secretary of the military department concerned may not authorize the involuntary administrative separation of a member described in subsection (b), or deny reenlistment of the member, based on a determination that the member is unsuitable for deployment or worldwide assignment based on the same medical condition of the member considered by a Physical Evaluation Board during the evaluation of the member.

(b) COVERED MEMBERS.—A member covered by subsection (a) is any member of the armed forces who has been determined by a Physical Evaluation Board pursuant to a physical evaluation by the board to be fit for duty.

(c) REEVALUATION.—(1) The Secretary of the military department concerned may direct the Physical Evaluation Board to reevaluate any member described in subsection (b) if the Secretary has reason to believe that a medical condition of the member considered by the Physical Evaluation Board during the evaluation of the member described in that subsection renders the member unsuitable for continued military service based on the medical condition.

(2) A member determined pursuant to reevaluation under paragraph (1) to be unfit to perform the duties of the member's office, grade, rank, or rating may be retired or separated for physical disability under this chapter.

(3) The Secretary of Defense shall be the final approval authority for any case determined by the Secretary of a military department to warrant administrative separation or denial of reenlistment based on a determination that the member is unsuitable for continued service due to the same medical condition of the member considered by a Physical Evaluation Board that found the member fit for duty.

(Added Pub. L. 111–383, div. A, title V, § 534(a)(1), Jan. 7, 2011, 124 Stat. 4216; amended Pub. L. 112–81, div. A, title V, § 527(a)–(c)(1), Dec. 31, 2011, 125 Stat. 1401, 1402.)

AMENDMENTS

2011—Pub. L. 112–81, § 527(c)(1), substituted "Members determined fit for duty in Physical Evaluation Board: prohibition on involuntary administrative separation or denial of reenlistment due to unsuitability based on medical conditions considered in evaluation" for "Members determined fit for duty in Physical Evaluation Board evaluation: prohibition on involuntary administrative separation due to unsuitability based on medical conditions considered in evaluation" in section catchline.

Subsec. (a). Pub. L. 112–81, § 527(a), inserted ", or deny reenlistment of the member," after "a member described in subsection (b)".

Subsec. (c)(3). Pub. L. 112–81, § 527(b), inserted "or denial of reenlistment" after "to warrant administrative separation".

EFFECTIVE DATE

Pub. L. 111–383, div. A, title V, § 534(b), Jan. 7, 2011, 124 Stat. 4217, provided that: "The amendments made by

subsection (a) [enacting this section] shall take effect on the date of the enactment of this Act [Jan. 7, 2011], and shall apply with respect to members evaluated for fitness for duty by Physical Evaluation Boards on or after that date.''

§ 1215. Members other than Regulars: applicability of laws

The laws and regulations that entitle any retired member of a regular component of the armed forces to pay, rights, benefits, or privileges extend the same pay, rights, benefits, or privileges to any other member of the armed forces who is not a member of a regular component and who is retired, or to whom retired pay is granted, because of physical disability.

(Aug. 10, 1956, ch. 1041, 70A Stat. 100.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1215 ………	37:272(i).	Oct. 12, 1949, ch. 681, § 402(i), 63 Stat. 820.

The words ''is retired, or to whom retired pay is granted'' are substituted for the words ''heretofore or hereafter retired or granted retirement pay''. The words ''any other member of the armed forces'' are substituted for the words ''all members of the reserve components'', since the words ''reserve components'' are defined by section 102(k) of the Career Compensation Act of 1949, 63 Stat. 805 (37 U.S.C. 231(k)), to include members appointed, enlisted, or inducted without component.

§ 1216. Secretaries: powers, functions, and duties

(a) The Secretary concerned shall prescribe regulations to carry out this chapter within his department.

(b) Except as provided in subsection (d), the Secretary concerned has all powers, functions, and duties incident to the determination under this chapter of—

(1) the fitness for active duty of any member of an armed force under his jurisdiction;

(2) the percentage of disability of any such member at the time of his separation from active duty;

(3) the suitability of any member for reappointment, reenlistment, or reentry upon active duty in an armed force under his jurisdiction; and

(4) the entitlement to, and payment of, disability severance pay to any member of an armed force under his jurisdiction.

(c) The Secretary concerned or the Secretary of Veterans Affairs, as prescribed by the President, has the powers, functions, and duties under this chapter incident to hospitalization, reexaminations, and the payment of disability retired pay within his department or agency.

(d) The Secretary concerned may not, with respect to any member who is a general officer or flag officer or is a medical officer being processed for retirement under any provisions of this title by reason of age or length of service—

(1) retire such member under section 1201 of this title;

(2) place such member on the temporary disability retired list pursuant to section 1202 of this title; or

(3) separate such member from an armed force pursuant to section 1203 of this title

by reason of unfitness to perform the duties of his office, grade, rank, or rating unless the determination of the Secretary concerned with respect to unfitness is first approved by the Secretary of Defense on the recommendation of the Assistant Secretary of Defense for Health Affairs.

(Aug. 10, 1956, ch. 1041, 70A Stat. 100; Pub. L. 94–225, § 2(a), Mar. 4, 1976, 90 Stat. 202; Pub. L. 96–513, title V, § 511(45), Dec. 12, 1980, 94 Stat. 2924; Pub. L. 98–525, title XIV, § 1405(25), Oct. 19, 1984, 98 Stat. 2623; Pub. L. 99–661, div. A, title XIII, § 1343(a)(7), Nov. 14, 1986, 100 Stat. 3992; Pub. L. 101–189, div. A, title XVI, § 1621(a)(2), Nov. 29, 1989, 103 Stat. 1603; Pub. L. 104–106, div. A, title IX, § 903(f)(2), Feb. 10, 1996, 110 Stat. 402; Pub. L. 104–201, div. A, title IX, § 901, Sept. 23, 1996, 110 Stat. 2617.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1216(a) …..	37:283 (1st 17 words).	Oct. 12, 1949, ch. 681,
1216(b) …..	37:284(a).	§§ 413 (1st 17 words), 414,
1216(c) …..	37:284 (less (a)).	63 Stat. 824, 825.

In subsection (b), the words ''of any member for reappointment, reenlistment'' are inserted for clarity, since they are implied in the words ''reentry into active service''.

In subsections (b) and (c), the words ''under this chapter'' are inserted for clarity.

In subsection (c), the words ''as prescribed by the President'' are substituted for the words ''under regulations promulgated by the President''.

AMENDMENTS

1996—Subsec. (d). Pub. L. 104–106, § 903(a), (f)(2), which directed amendment of subsec. (d), eff. Jan. 31, 1997, by substituting ''official in the Department of Defense with principal responsibility for health affairs'' for ''Assistant Secretary of Defense for Health Affairs'', was repealed by Pub. L. 104–201.

1989—Subsec. (c). Pub. L. 101–189 substituted ''Secretary of Veterans Affairs'' for ''Administrator of Veterans' Affairs''.

1986—Subsec. (d). Pub. L. 99–661 substituted ''who is a general officer or flag officer or is a medical officer'' for ''who is in pay grade O–7 or higher or is a Medical Corps officer or medical officer of the Air Force'' in provisions preceding par. (1).

1984—Subsec. (b). Pub. L. 98–525 struck out ''of this section'' after ''subsection (d)'' in provisions preceding par. (1).

1980—Subsec. (d). Pub. L. 96–513 substituted ''Affairs'' for ''and Environment''.

1976—Subsec. (b). Pub. L. 94–225, § 2(a)(1), substituted ''Except as provided in subsection (d) of this section, the Secretary'' for ''The Secretary''.

Subsec. (d). Pub. L. 94–225, § 2(a)(2), added subsec. (d).

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–225, § 2(b), Mar. 4, 1976, 90 Stat. 202, provided that: ''The amendments made by subsection (a) of this section [amending this section] shall apply with respect to unfitness determinations made on or after the date of the enactment of this Act [Mar. 4, 1976] by the Secretaries of the military departments concerned

for purposes of sections 1201, 1202, and 1203 of title 10, United States Code.''

APPLICABILITY OF SUBSECTION (d)

Subsec. (d) of this section inapplicable with respect to flag officers of the Coast Guard during any period in which the Coast Guard is not operating as a service in the Navy, see section 2157 of Title 14, Coast Guard.

EX. ORD. NO. 10122. REGULATIONS GOVERNING DISABILITY PAY, HOSPITALIZATION AND REEXAMINATION

Ex. Ord. No. 10122, Apr. 14, 1950, 15 F.R. 2173, as amended by Ex. Ord. 10400, Sept. 27, 1952, 17 F.R. 8648; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Ex. Ord. No. 11733, July 30, 1973, 38 F.R. 20431 provided:

By virtue of and pursuant to the authority vested in me by section 414(b) of the Career Compensation Act of 1949, approved October 12, 1949 (Public Law 351, 81st Congress [former section 284(b) of Title 37, now covered by subsecs. (b) and (c) of this section], and as President of the United States and Commander in Chief of the armed forces of the United States, I hereby prescribe the following regulations governing payment of disability retirement pay, hospitalization, and re-examination of members and former members of the uniformed services:

SECTION 1. The terms ''uniformed services'' and ''Secretary'' as used in these regulations shall have the meaning prescribed therefor by subsections (a) and (f), respectively, of section 102 of the Career Compensation Act of 1949 [section 101(3) and (5) of Title 37, Pay and Allowances of the Uniformed Services].

SEC. 2. (a) Effective as of October 1, 1949, all duties, powers, and functions incident to the payment of disability retirement pay of members or former members of the uniformed services retired for physical disability or receiving disability retirement pay shall, except as provided in subsection (b) of this section, be vested in the Secretary concerned.

(b) Effective July 1, 1950, all duties, powers, and functions exercised by the Veterans' Administration pursuant to Executive Order No. 8099 of April 28, 1939, as amended by Executive Order No. 8461 of June 28, 1940, relative to the administration of the retirement-pay provisions of section 1 of the act of August 30, 1935, as amended by section 5 of the act of April 3, 1939, 53 Stat. 557 [former section 369a of this title], and amendments thereof, shall, as to cases within their respective jurisdictions, be vested in the Secretary of the Army and the Secretary of the Air Force, and thereafter the Veterans' Administration shall not be charged in any case with any further responsibility in the administration of the said retirement-pay provisions. The said Executive Order No. 8099 as amended by the said Executive Order No. 8461 is hereby amended accordingly.

SEC. 3. All duties, powers, and functions incident to the hospitalization, except as provided in section 5 of this order, and re-examination of members of the uniformed services placed on the temporary disability retired list under the provisions of the Career Compensation Act of 1949 shall be vested in the Secretary concerned.

SEC. 4. Effective May 1, 1950, all duties, powers, and functions incident to the hospitalization of members or former members of the uniformed services permanently retired for physical disability or receiving disability retirement pay shall, except as provided in section 5 of this order, be vested in the Secretary concerned: *Provided*, that all the duties, powers, and functions incident to hospitalization which such members or former members are entitled to and elect to receive in facilities of the Veterans' Administration, other than hospitals under the jurisdiction of the uniformed services, shall be vested in the Administrator of Veterans' Affairs.

SEC. 5. All duties, powers, and functions incident to the hospitalization of members or former members of the uniformed services placed on the temporary disability retired list or permanently retired for physical disability or receiving disability retirement pay who require hospitalization for chronic diseases shall be vested in the Administrator of Veterans' Affairs: *Provided*, that all the duties, powers, and functions incident to hospitalization for such members or former members who elect to receive hospitalization in uniformed services facilities shall, subject to the availability of space and facilities and the capabilities of the medical and dental staff, be vested in the Secretary concerned: *And provided further*, that for the purpose of this order, the term ''chronic disease'' shall be construed to include arthritis, malignancy, psychiatric or neuropsychiatric disorder, neurological disabilities, poliomyelitis with disability residuals and degenerative diseases of the nervous system, severe injuries to the nervous system including quadriplegics, hemiplegics, and paraplegics, tuberculosis, blindness and deafness requiring definitive rehabilitation, major amputees, and such other diseases as may be so defined jointly by the Secretary of Defense, the Administrator of Veterans' Affairs, and the Federal Security Administrator and so described in appropriate regulations of the respective departments and agencies concerned. Executive Order No. 9703 of March 12, 1946, prescribing regulations relating to the medical care of certain personnel of the Coast Guard, National Oceanic and Atmospheric Administration (formerly Coast and Geodetic Survey), Public Health Service, and the former Lighthouse Service, is hereby amended to the extent necessary to conform to the provisions of this section.

SEC. 6. Except as provided in section 5 hereof with respect to hospitalization for chronic diseases, nothing in this order shall be construed to affect the duties, powers, and functions of the Public Health Service with respect to hospitalization and medical examination of members and former members of the Coast Guard and the National Oceanic and Atmospheric Administration (formerly Coast and Geodetic Survey) under the Public Health Service Act, approved July 1, 1944 (58 Stat. 682), as amended [section 201 et seq. of Title 42, The Public Health and Welfare], and the regulations prescribed by the said Executive Order No. 9703 of March 12, 1946.

SEC. 7. Nothing in this order shall be construed to affect the duties, powers, and functions vested in the Administrator of Veterans' Affairs pursuant to the provisions of the act of May 24, 1928, entitled ''An Act making eligible for retirement, under certain conditions, officers and former officers of the Army, Navy, and Marine Corps of the United States, other than officers of the Regular Army, Navy, or Marine Corps, who incurred physical disability in line of duty while in the service of the United States during the World War'' (45 Stat. 735, as amended) [section 581 of former Title 38], or by or pursuant to the act of September 26, 1941, entitled ''An Act to provide retirement pay and hospital benefits to certain Reserve officers, Army of the United States, disabled while on active duty'' (55 Stat. 733) [former section 456a of this title].

§ 1216a. Determinations of disability: requirements and limitations on determinations

(a) UTILIZATION OF VA SCHEDULE FOR RATING DISABILITIES IN DETERMINATIONS OF DISABILITY.—(1) In making a determination of disability of a member of the armed forces for purposes of this chapter, the Secretary concerned—

(A) shall, to the extent feasible, utilize the schedule for rating disabilities in use by the Department of Veterans Affairs, including any applicable interpretation of the schedule by the United States Court of Appeals for Veterans Claims; and

(B) except as provided in paragraph (2), may not deviate from the schedule or any such interpretation of the schedule.

(2) In making a determination described in paragraph (1), the Secretary concerned may uti-

lize in lieu of the schedule described in that paragraph such criteria as the Secretary of Defense and the Secretary of Veterans Affairs may jointly prescribe for purposes of this subsection if the utilization of such criteria will result in a determination of a greater percentage of disability than would be otherwise determined through the utilization of the schedule.

(b) CONSIDERATION OF ALL MEDICAL CONDITIONS.—In making a determination of the rating of disability of a member of the armed forces for purposes of this chapter, the Secretary concerned shall take into account all medical conditions, whether individually or collectively, that render the member unfit to perform the duties of the member's office, grade, rank, or rating.

(Added Pub. L. 110–181, div. A, title XVI, § 1642(a), Jan. 28, 2008, 122 Stat. 465.)

§ 1217. Academy cadets and midshipmen: applicability of chapter

(a) This chapter applies to cadets at the United States Military Academy, the United States Air Force Academy, and the United States Coast Guard Academy and midshipmen of the United States Naval Academy, but only with respect to physical disabilities incurred after October 28, 2004.

(b) Monthly cadet pay and monthly midshipman pay under section 203(c) of title 37 shall be considered to be basic pay for purposes of this chapter and the computation of retired pay and severance and separation pay to which entitlement is established under this chapter.

(Aug. 10, 1956, ch. 1041, 70A Stat. 100; Pub. L. 85–861, § 33(a)(7), Sept. 2, 1958, 72 Stat. 1564; Pub. L. 108–375, div. A, title V, § 555(b)(1), Oct. 28, 2004, 118 Stat. 1914; Pub. L. 109–364, div. A, title X, § 1071(a)(6), Oct. 17, 2006, 120 Stat. 2398.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1217	[No source].	[No source].

The revised section is inserted to reflect the limited definition of the word ''member'' in section 102(b) of the Career Compensation Act of 1949 (37 U.S.C. 231(b)).

1958 ACT

Aviation cadets were omitted from chapter 61 because Title IV of the Career Compensation Act of 1949 (formerly 37 U.S.C. 271 et seq.), which was the source law for this chapter, covered only members entitled to basic pay and it was believed that aviation cadets were not so entitled. However, the Comptroller General has ruled that aviation cadets are entitled to basic pay (30 Comp. Gen. 431). Accordingly, aviation cadets were covered by Title IV and should not be excepted from chapter 61.

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–364 substituted ''October 28, 2004'' for ''the date of the enactment of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005''.

2004—Pub. L. 108–375 amended section catchline and text generally. Prior to amendment, text read as follows: ''This chapter does not apply to cadets at the United States Military Academy, the United States Air Force Academy, or the Coast Guard Academy, or to midshipmen of the Navy.''

1958—Pub. L. 85–861 struck out provisions which made chapter inapplicable to aviation cadets.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–861 effective Aug. 10, 1956, see section 33(g) of Pub. L. 85–861, set out as a note under section 101 of this title.

§ 1218. Discharge or release from active duty: claims for compensation, pension, or hospitalization

(a) A member of an armed force may not be discharged or released from active duty because of physical disability until he—

(1) has made a claim for compensation, pension, or hospitalization, to be filed with the Department of Veterans Affairs, or has refused to make such a claim; or

(2) has signed a statement that his right to make such a claim has been explained to him, or has refused to sign such a statement.

(b) A right that a member may assert after failing or refusing to sign a claim, as provided in subsection (a), is not affected by that failure or refusal.

(c) This section does not prevent the immediate transfer of a member to a facility of the Department of Veterans Affairs for necessary hospital care.

(d)(1) The Secretary of a military department shall ensure that each member of a reserve component under the jurisdiction of the Secretary who is determined, after a mobilization and deployment to an area in which imminent danger pay is authorized under section 310 or 351 of title 37, to require evaluation for a physical or mental disability which could result in separation or retirement for disability under this chapter or placement on the temporary disability retired list or inactive status list under this chapter is retained on active duty during the disability evaluation process until such time as such member is—

(A) cleared by appropriate authorities for continuation on active duty; or

(B) separated, retired, or placed on the temporary disability retired list or inactive status list.

(2)(A) A member described in paragraph (1) may request termination of active duty under such paragraph at any time during the demobilization or disability evaluation process of such member.

(B) Upon a request under subparagraph (A), a member described in paragraph (1) shall only be released from active duty after the member receives counseling about the consequences of termination of active duty.

(C) Each release from active duty under subparagraph (B) shall be thoroughly documented.

(3) The requirements in paragraph (1) shall expire on October 28, 2014.

(Added Pub. L. 85–56, title XXII, § 2201(31)(A), June 17, 1957, 71 Stat. 160; amended Pub. L. 87–651, title I, § 107(c), Sept. 7, 1962, 76 Stat. 508; Pub. L. 101–189, div. A, title XVI, § 1621(a)(1), (4), Nov. 29, 1989, 103 Stat. 1602, 1603; Pub. L. 111–84, div. A, title V, § 511, Oct. 28, 2009, 123 Stat. 2280;

Pub. L. 113–291, div. A, title X, § 1071(e)(1), Dec. 19, 2014, 128 Stat. 3509; Pub. L. 114–328, div. A, title VI, § 618(c), Dec. 23, 2016, 130 Stat. 2160.)

HISTORICAL AND REVISION NOTES

1962 ACT

Sections 1218 and 1219 are restated, without substantive change, to conform to the style adopted for title 10.

AMENDMENTS

2016—Subsec. (d)(1). Pub. L. 114–328 inserted ''or 351'' after ''section 310'' in introductory provisions.

2014—Subsec. (d)(3). Pub. L. 113–291 substituted ''on October 28, 2014'' for ''on the date that is five years after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2010''.

2009—Subsec. (d). Pub. L. 111–84 added subsec. (d).

1989—Subsec. (a)(1). Pub. L. 101–189, § 1621(a)(1), substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

Subsec. (c). Pub. L. 101–189, § 1621(a)(4), substituted ''facility of the Department of Veterans Affairs'' for ''Veterans' Administration facility''.

1962—Pub. L. 87–651 amended section generally, and among other changes, substituted ''Discharge or release from active duty: claims for compensation, pension, or hospitalization'' for ''Explanation of rights before discharge'' in section catchline, and struck out provisions which prohibited a person from being discharged or released from active duty until his certificate of discharge or release from active duty and his final pay (or a substantial portion of his final pay) are ready for delivery to him or to his next of kin or legal representative.

EFFECTIVE DATE

Section effective Jan. 1, 1958, see section 2301 of Pub. L. 85–56, 71 Stat. 172.

§ 1218a. Discharge or release from active duty: transition assistance for reserve component members injured while on active duty

(a) PROVISION OF CERTAIN INFORMATION.—Before a member of a reserve component described in subsection (b) is demobilized or separated from the armed forces, the Secretary of the military department concerned shall provide to the member the following information:

(1) Information on the availability of care and administrative processing through community based warrior transition units.

(2) Information on the location of the community based warrior transition unit located nearest to the permanent place of residence of the member.

(b) COVERED MEMBERS.—Subsection (a) applies to members of a reserve component who are injured while on active duty in the armed forces.

(Added Pub. L. 111–84, div. A, title VI, § 641(a), Oct. 28, 2009, 123 Stat. 2364.)

§ 1219. Statement of origin of disease or injury: limitations

A member of an armed force may not be required to sign a statement relating to the origin, incurrence, or aggravation of a disease or injury that he has. Any such statement against his interests, signed by a member, is invalid.

(Added Pub. L. 85–56, title XXII, § 2201(31)(A), June 17, 1957, 71 Stat. 160; amended Pub. L. 87–651, title I, § 107(c), Sept. 7, 1962, 76 Stat. 509.)

HISTORICAL AND REVISION NOTES

1962 ACT

Sections 1218 and 1219 are restated, without substantive change, to conform to the style adopted for title 10.

AMENDMENTS

1962—Pub. L. 87–651 substituted ''Statement of origin of disease or injury: limitation'' for ''Statement against interest void'' in section catchline, and ''A member of an armed force may not be required to sign a statement relating to the origin, incurrence, or aggravation of a disease or injury that he has. Any such statement against his interests, signed by a member, is invalid'' for ''No person in the Armed Forces may be required to sign a statement of any nature relating to the origin, incurrence, or aggravation of any disease or injury he may have. Any such statement against his own interest, whenever signed, is of no force and effect.''

EFFECTIVE DATE

Section effective Jan. 1, 1958, see section 2301 of Pub. L. 85–56, 71 Stat. 172.

[§ 1220. Repealed. Pub. L. 87–651, title I, § 107(d), Sept. 7, 1962, 76 Stat. 509]

Section, added Pub. L. 85–56, title XXII, § 2201(31)(A), June 17, 1957, 71 Stat. 161, related to location of accredited representatives at military installations.

§ 1221. Effective date of retirement or placement of name on temporary disability retired list

Notwithstanding section 8301 of title 5, the Secretary concerned may specify an effective date for the retirement of any member of the armed forces under this chapter, or for the placement of his name on the temporary disability retired list, that is earlier than the date provided for in that section.

(Added Pub. L. 85–861, § 1(28)(B), Sept. 2, 1958, 72 Stat. 1451; amended Pub. L. 89–718, § 3, Nov. 2, 1966, 80 Stat. 1115.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1221 ………	5:47a(b).	Aug. 2, 1956, ch. 876, 70 Stat. 933.

Clause (2)(A) is omitted as unnecessary since the revised section applies to the armed forces, and the revised section is made applicable to the other uniformed services by sections 3 and 4 of the act enacting this revised section. Clause (2)(B) is omitted as covered by section 101(8) of this title and sections 3 and 4 of the act enacting this revised section.

AMENDMENTS

1966—Pub. L. 89–718 substituted ''8301'' for ''47a''.

§ 1222. Physical evaluation boards

(a) RESPONSE TO APPLICATIONS AND APPEALS.—The Secretary of each military department shall ensure, in the case of any member of the armed forces appearing before a physical evaluation board under that Secretary's supervision, that documents announcing a decision of the board in the case convey the findings and conclusions of the board in an orderly and itemized fashion with specific attention to each issue presented by the member in regard to that member's case. The requirement under the preceding sentence

applies to a case both during initial consideration and upon subsequent consideration due to appeal by the member or other circumstance.

(b) LIAISON OFFICER (PEBLO) REQUIREMENTS AND TRAINING.—(1) The Secretary of Defense shall prescribe regulations establishing—

(A) a requirement for the Secretary of each military department to make available to members of the armed forces appearing before physical evaluation boards operated by that Secretary employees, designated as physical evaluation board liaison officers, to provide advice, counsel, and general information to such members on the operation of physical evaluation boards operated by that Secretary; and

(B) standards and guidelines concerning the training of such physical evaluation board liaison officers.

(2) The Secretary shall ensure compliance by the Secretary of each military department with physical evaluation board liaison officer requirements and training standards and guidelines at least once every three years.

(c) STANDARDIZED STAFF TRAINING AND OPERATIONS.—(1) The Secretary of Defense shall prescribe regulations on standards and guidelines concerning the physical evaluation board operated by each of the Secretaries of the military departments with regard to—

(A) assignment and training of staff;

(B) operating procedures; and

(C) timeliness of board decisions.

(2) The Secretary shall ensure compliance with standards and guidelines prescribed under paragraph (1) by each physical evaluation board at least once every three years.

(Added Pub. L. 109–364, div. A, title V, §597(a)(1), Oct. 17, 2006, 120 Stat. 2236.)

EFFECTIVE DATE

Pub. L. 109–364, div. A, title V, §597(b), Oct. 17, 2006, 120 Stat. 2237, provided that: ''Section 1222 of title 10, United States Code, as added by subsection (a), shall apply with respect to decisions rendered on cases commenced more than 120 days after the date of the enactment of this Act [Oct. 17, 2006].''

QUALITY REVIEW OF MEDICAL EVALUATION BOARDS, PHYSICAL EVALUATION BOARDS, AND PHYSICAL EVALUATION BOARD LIAISON OFFICERS

Pub. L. 112–239, div. A, title V, §524, Jan. 2, 2013, 126 Stat. 1723, as amended by Pub. L. 115–232, div. A, title VIII, §813(f), Aug. 13, 2018, 132 Stat. 1851, provided that:

''(a) IN GENERAL.—The Secretary of Defense shall standardize, assess, and monitor the quality assurance programs of the military departments to evaluate the following in the performance of their duties (including duties under chapter 61 of title 10, United States Code):

''(1) Medical Evaluation Boards.

''(2) Physical Evaluation Boards.

''(3) Physical Evaluation Board Liaison Officers.

''(b) OBJECTIVES.—The objectives of the quality assurance program shall be as follows:

''(1) To ensure accuracy and consistency in the determinations and decisions of Medical Evaluation Boards and Physical Evaluation Boards.

''(2) To otherwise monitor and sustain proper performance of the duties of Medical Evaluation Boards and Physical Evaluation Boards, and of Physical Evaluation Board Liaison Officers.

''(3) Such other objectives as the Secretary shall specify for purposes of the quality assurance program.''

[(c) Repealed. Pub. L. 115–232, div. A, title VIII, §813(f), Aug. 13, 2018, 132 Stat. 1851.]

CHAPTER 63—RETIREMENT FOR AGE

Sec.
1251. Age 62: regular commissioned officers in grades below general and flag officer grades; exceptions.
1252. Age 64: permanent professors at academies.
1253. Age 64: regular commissioned officers in general and flag officer grades; exceptions.
[1255. Repealed.]
1263. Age 62: warrant officers.
1275. Computation of retired pay: law applicable.

AMENDMENTS

2015—Pub. L. 114–92, div. A, title V, §504(b)(2), Nov. 25, 2015, 129 Stat. 807, substituted ''Age 64: regular commissioned officers in general and flag officer grades; exceptions'' for ''Age 64: regular commissioned officers in general and flag officer grades; exception'' in item 1253.

2006—Pub. L. 109–364, div. A, title V, §502(c), Oct. 17, 2006, 120 Stat. 2177, inserted ''in grades below general and flag officer grades'' after ''officers'' in item 1251 and added item 1253.

Pub. L. 109–163, div. A, title V, §509(c)(2), Jan. 6, 2006, 119 Stat. 3231, added item 1252.

1980—Pub. L. 96–513, title V, §501(18), Dec. 12, 1980, 94 Stat. 2908, added item 1251.

1967—Pub. L. 90–130, §1(6), Nov. 8, 1967, 81 Stat. 374, struck out item 1255 ''Age 55: female regular warrant officers''.

§ 1251. Age 62: regular commissioned officers in grades below general and flag officer grades; exceptions

(a) GENERAL RULE.—Unless retired or separated earlier, each regular commissioned officer of the Army, Navy, Air Force, Marine Corps, or Space Force (other than an officer covered by section 1252 of this title or a commissioned warrant officer) serving in a grade below brigadier general or rear admiral (lower half), in the case of an officer in the Navy, shall be retired or separated, as specified in subsection (e), on the first day of the month following the month in which the officer becomes 62 years of age.

(b) DEFERRED RETIREMENT OR SEPARATION OF HEALTH PROFESSIONS OFFICERS.—(1) The Secretary of the military department concerned may, subject to subsection (d), defer the retirement or separation under subsection (a) of a health professions officer if during the period of the deferment the officer—

(A) will be performing duties consisting primarily of providing patient care or performing other clinical duties; or

(B) is in a category of officers designated under subparagraph (D) of paragraph (2) whose duties will consist primarily of the duties described in clause (i), (ii), or (iii) of such subparagraph.

(2) For purposes of this subsection, a health professions officer is—

(A) a medical officer;

(B) a dental officer;

(C) an officer in the Army Nurse Corps, an officer in the Navy Nurse Corps, or an officer in the Air Force designated as a nurse; or

(D) an officer in a category of officers designated by the Secretary of the military department concerned for the purposes of this paragraph as consisting of officers whose duties consist primarily of—

(i) providing health care;

(ii) performing other clinical care; or

(iii) performing health care-related administrative duties.

(c) DEFERRED RETIREMENT OR SEPARATION OF OTHER OFFICERS.—The Secretary of the military department concerned may, subject to subsection (d), defer the retirement or separation under subsection (a) of any officer other than a health professions officer described in subsection (b)(2) if the Secretary determines that such deferral is in the best interest of the military department concerned.

(d) LIMITATION ON DEFERMENT OF RETIREMENTS.—(1) Except as provided in paragraph (2), a deferment under subsection (b) or (c) may not extend beyond the first day of the month following the month in which the officer becomes 68 years of age.

(2) The Secretary of the military department concerned may extend a deferment under subsection (b) or (c) beyond the day referred to in paragraph (1) if the Secretary determines that extension of the deferment is necessary for the needs of the military department concerned. Such an extension shall be made on a case-by-case basis and shall be for such period as the Secretary considers appropriate.

(e) RETIREMENT OR SEPARATION BASED ON YEARS OF CREDITABLE SERVICE.—(1) The following rules shall apply to a regular commissioned officer who is to be retired or separated under subsection (a):

(A) If the officer has at least 6 but fewer than 20 years of creditable service, the officer shall be separated, with separation pay computed under section 1174(d)(1) of this title.

(B) If the officer has fewer than 6 years of creditable service, the officer shall be separated under subsection (a).

(2) Notwithstanding paragraph (1), in the case of a regular commissioned officer who was added to the retired list before the date of the enactment of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, the officer shall be retired, with retired pay computed under section 1401 of this title.

(Added Pub. L. 96–513, title I, §111, Dec. 12, 1980, 94 Stat. 2875; amended Pub. L. 100–180, div. A, title VII, §719, Dec. 4, 1987, 101 Stat. 1115; Pub. L. 101–189, div. A, title VII, §709, Nov. 29, 1989, 103 Stat. 1476; Pub. L. 105–85, div. A, title V, §504(a), (b), Nov. 18, 1997, 111 Stat. 1725; Pub. L. 109–163, div. A, title V, §509(c)(3), Jan. 6, 2006, 119 Stat. 3231; Pub. L. 109–364, div. A, title V, §502(b), Oct. 17, 2006, 120 Stat. 2176; Pub. L. 111–383, div. A, title V, §501(b), Jan. 7, 2011, 124 Stat. 4206; Pub. L. 116–283, div. A, title V, §507, title IX, §924(b)(3)(T), Jan. 1, 2021, 134 Stat. 3573, 3821.)

REFERENCES IN TEXT

The date of the enactment of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, referred to in subsec. (e)(2), is the date of enactment of Pub. L. 116–283, which was approved Jan. 1, 2021.

AMENDMENTS

2021—Subsec. (a). Pub. L. 116–283, §924(b)(3)(T), substituted ‘‘Marine Corps, or Space Force’’ for ‘‘or Marine Corps’’.

Pub. L. 116–283, §507(a)(2), inserted ‘‘or separated, as specified in subsection (e),’’ after ‘‘shall be retired’’.

Pub. L. 116–283, §507(a)(1), which directed substitution of ‘‘Marine Corps, or Space Force’’ for ‘‘or Marine Corps,’’, could not be executed because ‘‘or Marine Corps,’’ did not appear in text. Similar amendment was made by Pub. L. 116–283, §924(b)(3)(T), see above.

Subsec. (b). Pub. L. 116–283, §507(b)(1), inserted ‘‘or Separation’’ after ‘‘Retirement’’ in heading.

Subsec. (b)(1). Pub. L. 116–283, §507(b)(2), inserted ‘‘or separation’’ after ‘‘retirement’’ in introductory provisions.

Subsec. (c). Pub. L. 116–283, §507(c), in heading, substituted ‘‘or Separation of Other Officers’’ for ‘‘of Chaplains’’ and, in text, inserted ‘‘or separation’’ after ‘‘retirement’’ and substituted ‘‘any officer other than a health professions officer described in subsection (b)(2)’’ for ‘‘an officer who is appointed or designated as a chaplain’’.

Subsec. (e). Pub. L. 116–283, §507(d), added subsec. (e).

2011—Subsec. (b)(1). Pub. L. 111–383, §501(b)(2), substituted ‘‘the officer—’’ for ‘‘the officer will be performing duties consisting primarily of providing patient care or performing other clinical duties.’’ and added subpars. (A) and (B).

Subsec. (b)(2)(D). Pub. L. 111–383, §501(b)(1), added subpar. (D).

2006—Pub. L. 109–364 amended section catchline and text generally, substituting provisions relating to retirement at age 62 of regular commissioned officers in grades below general and flag officer grades for provisions relating to retirement at age 62 of all regular commissioned officers.

Subsec. (a). Pub. L. 109–163 inserted ‘‘, a permanent professor at the United States Naval Academy,’’ after ‘‘Air Force Academy’’ in first sentence and struck out last sentence which read as follows: ‘‘An officer who is a permanent professor at the United States Military Academy or United States Air Force Academy, the director of admissions at the United States Military Academy, or the registrar of the United States Air Force Academy shall be retired on the first day of the month following the month in which he becomes 64 years of age.’’

1997—Subsec. (c)(2) to (4). Pub. L. 105–85, §504(a), added par. (2) and redesignated former pars. (2) and (3) as (3) and (4), respectively.

Subsec. (d). Pub. L. 105–85, §504(b), added subsec. (d).

1989—Subsec. (c)(2). Pub. L. 101–189 designated existing provisions as subpar. (A), substituted ‘‘Except as provided in subparagraph (B), a deferment’’ for ‘‘A deferment’’ and ‘‘68 years of age’’ for ‘‘67 years of age’’, and added subpar. (B).

1987—Subsec. (c). Pub. L. 100–180 added subsec. (c).

EFFECTIVE DATE

Section effective Sept. 15, 1981, but the authority to prescribe regulations under this section effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

DEFERRAL OF RETIREMENT DATE FOR CHAIRMAN OF THE JOINT CHIEFS OF STAFF

Pub. L. 100–456, div. A, title VII, §704, Sept. 29, 1988, 102 Stat. 1996, provided that the President could defer until Oct. 1, 1989, the retirement of the officer serving as Chairman of the Joint Chiefs of Staff for the term which began on October 1, 1987, notwithstanding the limitation contained in former section 1251(b) of this title.

TRANSITION PROVISIONS UNDER DEFENSE OFFICER PERSONNEL MANAGEMENT ACT

For provision that this section not apply to any officer who on the effective date of this Act [Sept. 15, 1981] was on active duty in a grade above general, see section 632 of Pub. L. 96–513, set out as a note under section 611 of this title.

§ 1252. Age 64: permanent professors at academies

(a) MANDATORY RETIREMENT FOR AGE.—Unless retired or separated earlier, each regular commissioned officer of the Army, Navy, Air Force, Marine Corps, or Space Force covered by subsection (b) shall be retired on the first day of the month following the month in which the officer becomes 64 years of age.

(b) COVERED OFFICERS.—This section applies to the following officers:

(1) An officer who is a permanent professor or the director of admissions of the United States Military Academy.

(2) An officer who is a permanent professor at the United States Naval Academy.

(3) An officer who is a permanent professor or the registrar of the United States Air Force Academy.

(Added Pub. L. 109–163, div. A, title V, § 509(c)(1), Jan. 6, 2006, 119 Stat. 3230; amended Pub. L. 116–283, div. A, title IX, § 924(b)(3)(U), Jan. 1, 2021, 134 Stat. 3821.)

AMENDMENTS

2021—Subsec. (a). Pub. L. 116–283 substituted ''Marine Corps, or Space Force'' for ''or Marine Corps''.

§ 1253. Age 64: regular commissioned officers in general and flag officer grades; exceptions

(a) GENERAL RULE.—Unless retired or separated earlier, each regular commissioned officer of the Army, Navy, Air Force, Marine Corps, or Space Force serving in a general or flag officer grade shall be retired on the first day of the month following the month in which the officer becomes 64 years of age.

(b) EXCEPTION FOR OFFICERS SERVING IN O–9 AND O–10 POSITIONS.—In the case of an officer serving in a position that carries a grade above major general or rear admiral, the retirement under subsection (a) of that officer may be deferred—

(1) by the President, but such a deferment may not extend beyond the first day of the month following the month in which the officer becomes 68 years of age; or

(2) by the Secretary of Defense, but such a deferment may not extend beyond the first day of the month following the month in which the officer becomes 66 years of age.

(c) DEFERRED RETIREMENT OF CHAPLAINS.—(1) The Secretary of the military department concerned may defer the retirement under subsection (a) of an officer serving in a general or flag officer grade who is the Chief of Chaplains or Deputy Chief of Chaplains of that officer's armed force.

(2) A deferment of the retirement of an officer referred to in paragraph (1) may not extend beyond the first day of the month following the month in which the officer becomes 68 years of age.

(Added Pub. L. 109–364, div. A, title V, § 502(a), Oct. 17, 2006, 120 Stat. 2176; amended Pub. L. 114–92, div. A, title V, § 504(a), (b)(1), Nov. 25, 2015, 129 Stat. 807; Pub. L. 116–92, div. A, title V, § 508, Dec. 20, 2019, 133 Stat. 1346; Pub. L. 116–283, div. A, title IX, § 924(b)(3)(V), Jan. 1, 2021, 134 Stat. 3821.)

AMENDMENTS

2021—Subsec. (a). Pub. L. 116–283 substituted ''Marine Corps, or Space Force'' for ''or Marine Corps''.

2019—Subsec. (c)(3). Pub. L. 116–92 struck out par. (3) which read as follows: ''The authority to defer the retirement of an officer referred to in paragraph (1) expires December 31, 2020. Subject to paragraph (2), a deferment granted before that date may continue on and after that date.''

2015—Pub. L. 114–92, § 504(b)(1), substituted ''Age 64: regular commissioned officers in general and flag officer grades; exceptions'' for ''Age 64: regular commissioned officers in general and flag officer grades; exception'' in section catchline.

Subsec. (c). Pub. L. 114–92, § 504(a), added subsec. (c).

[§ 1255. Repealed. Pub. L. 90–130, § 1(6), Nov. 8, 1967, 81 Stat. 374]

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 100; Nov. 2, 1966, Pub. L. 89–718, § 3, 80 Stat. 1115, covered the retirement of female permanent regular warrant officers with 20 years of active service upon attaining age 55.

§ 1263. Age 62: warrant officers

(a) Unless retired under section 1305 of this title, a permanent regular warrant officer who has at least 20 years of active service that could be credited to him under section 511 of the Career Compensation Act of 1949, as amended (70 Stat. 114; 10 U.S.C. 580 note), and who is at least 62 years of age, shall be retired 60 days after he becomes that age, except as provided by section 8301 of title 5.

(b) The Secretary concerned may defer, for not more than four months, the retirement under subsection (a) of any warrant officer if, because of unavoidable circumstances, evaluation of his physical condition and determination of his entitlement to retirement or separation for physical disability require hospitalization or medical observation that cannot be completed before the date when he would otherwise be required to retire under this section.

(Aug. 10, 1956 ch. 1041, 70A Stat. 101; Pub. L. 89–718, § 3, Nov. 2, 1966, 80 Stat. 1115; Pub. L. 90–130, § 1(6), Nov. 8, 1967, 81 Stat. 374; Pub. L. 96–513, title V, § 511(46), Dec. 12, 1980, 94 Stat. 2924; Pub. L. 102–484, div. A, title X, § 1052(17), Oct. 23, 1992, 106 Stat. 2500.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1263(a)	10:600(d) (as applicable to 10:600*l*(b) (less (1)–(3))). 10:600*l*(b) (less (1)–(3)). 10:600r(c) (as applicable to 10:600*l*(b) (less (1)–(3))). 34:135(d) (as applicable to 34:430(b) (less (1)–(3))). 34:430(b) (less (1)–(3)). 34:430c (as applicable to 34:430(b) (less (1)–(3))).	May 29, 1954, ch. 249, §§ 2(d) (as applicable to § 14(b) (less (1)–(3))), 14(b) (less (1)–(3)), 14(e) (as applicable to (b) (less (1)–(3))), 21(c) (as applicable to 14(b) (less (1)–(3))), 68 Stat. 157, 162, 163, 168.
1263(b)	10:600*l*(e) (as applicable to 10:600*l*(b) (less (1)–(3))). 34:430(e) (as applicable to 34:430(b) (less (1)–(3))).	

In subsection (a), the words ''has at least'' are substituted for the words ''has attained''. The words ''has at least'' are substituted for the words ''having completed not less than''. The words ''on that date which'' are omitted as surplusage. 10:600*l*(b) (15 words before (1)) and 34:430(b) (15 words before (1)) are omitted as covered by section 1275 of this title.

In subsection (b), the words ''The Secretary concerned may defer'' are substituted for the words ''may, in the discretion of the Secretary, be deferred''. The words ''determination of his'' are inserted for clarity. The words ''not more than'' are substituted for the words ''a period not to exceed''. The words ''he would otherwise be required to retire under this section'' are substituted for the words ''retirement * * * would otherwise be required''. The words ''which is required'', ''possible'', ''proper'', and ''a period of'' are omitted as surplusage.

REFERENCES IN TEXT

Section 511 of the Career Compensation Act of 1949, referred to in subsec. (a), is section 511 of act Oct. 12, 1949, ch. 681, which was formerly set out as a note under section 580 of this title.

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–484 substituted ''580 note'' for ''564 note''.

1980—Subsec. (a). Pub. L. 96–513 substituted ''511 of the Career Compensation Act of 1949, as amended (70 Stat. 114; 10 U.S.C. 564 note)'' for ''311 of title 37''.

1967—Subsec. (a). Pub. L. 90–130 struck out reference to section 1255 of this title.

1966—Subsec. (a). Pub. L. 89–718 substituted ''8301'' for ''47a''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

§ 1275. Computation of retired pay: law applicable

A member of the armed forces retired under this chapter is entitled to retired pay computed under chapter 71 of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 101.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
1275	[No source].	[No source].

The revised section is based on the various retirement provisions in this chapter and is inserted to make explicit the entitlement to retired pay upon retirement.

CHAPTER 65—RETIREMENT OF WARRANT OFFICERS FOR LENGTH OF SERVICE

Sec.
1293. Twenty years or more: warrant officers.
1305. Thirty years or more: regular warrant officers.
1315. Computation of retired pay: law applicable.

AMENDMENTS

1980—Pub. L. 96–513, title V, § 501(19), Dec. 12, 1980, 94 Stat. 2908, substituted ''RETIREMENT OF WARRANT OFFICERS FOR LENGTH OF SERVICE'' for ''RETIREMENT FOR LENGTH OF SERVICE'' as chapter heading.

§ 1293. Twenty years or more: warrant officers

The Secretary concerned may, upon the warrant officer's request, retire a warrant officer of any armed force under his jurisdiction who has at least 20 years of active service that could be credited to him under section 511 of the Career Compensation Act of 1949, as amended (70 Stat. 114).

(Aug. 10, 1956, ch. 1041, 70A Stat. 101; Pub. L. 87–649, § 6(f)(3), Sept. 7, 1962, 76 Stat. 494.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
1293	10:600(d) (as applicable to 10:600*l*(a)). 10:600*l*(a). 34:135(d) (as applicable to 34:430(a)). 34:430(a).	May 29, 1954, ch. 249, §§ 2(d) (as applicable to § 14(a)), 14(a), 68 Stat. 157, 162.

The words, ''The Secretary concerned may * * * retire'' are substituted for the words ''may * * * and in the discretion of the Secretary, be retired''. 10:600*l*(a) (last 14 words) and 34:430(a) (last 14 words) are omitted as covered by section 1315 of this title.

REFERENCES IN TEXT

Section 511 of the Career Compensation Act of 1949, referred to in text, is section 511 of act Oct. 12, 1949, ch. 681, which was formerly set out as a note under section 580 of this title.

AMENDMENTS

1962—Pub. L. 87–649 substituted ''section 511 of the Career Compensation Act of 1949, as amended (70 Stat. 114)'' for ''section 311 of title 37.''

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–649 effective Nov. 1, 1962, see section 15 of Pub. L. 87–649, set out as a note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

RENEWAL OF TEMPORARY EARLY RETIREMENT AUTHORITY

Pub. L. 112–213, title II, § 219, Dec. 20, 2012, 126 Stat. 1558, as amended by Pub. L. 116–283, div. G, title LVXXXII [LXXXII], § 8213, Jan. 1, 2021, 134 Stat. 4650, provided that: ''For fiscal years 2019 through 2025—

''(1) notwithstanding subsection (c)(1) of section 4403 of the National Defense Authorization Act for Fiscal Year 1993 [Pub. L. 102–484] (10 U.S.C. 1293 note), such section shall apply to the Coast Guard in the same manner and to the same extent it applies to the Department of Defense, except that—

''(A) the Secretary of Homeland Security shall implement such section with respect to the Coast Guard and, for purposes of that implementation, shall apply the applicable provisions of title 14, United States Code, relating to retirement of Coast Guard personnel; and

''(B) the total number of commissioned officers who retire pursuant to this section may not exceed 200, and the total number of enlisted members who retire pursuant to this section may not exceed 300; and

''(2) only appropriations available for necessary expenses for the operation and maintenance of the Coast Guard shall be expended for the retired pay of personnel who retire pursuant to this section.''

TEMPORARY EARLY RETIREMENT AUTHORITY

Pub. L. 104–208, div. A, title I, § 101(b) [title VIII, § 8053], Sept. 30, 1996, 110 Stat. 3009–71, 3009–99, provided that: ''During the current fiscal year and hereafter, appropriations available for the pay and allowances of active duty members of the Armed Forces shall be available to pay the retired pay which is payable pursuant to section 4403 of Public Law 102–484 (10 U.S.C. 1293 note) under the terms and conditions provided in section 4403.''

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 104–61, title VIII, § 8066, Dec. 1, 1995, 109 Stat. 664.

Pub. L. 103–335, title VIII, § 8077, Sept. 30, 1994, 108 Stat. 2636.

Pub. L. 103–139, title VIII, § 8095, Nov. 11, 1993, 107 Stat. 1461.

Pub. L. 104–106, div. A, title V, § 566(c), Feb. 10, 1996, 110 Stat. 328, as amended by Pub. L. 107–372, title II, § 272(b), Dec. 19, 2002, 116 Stat. 3094, provided that: ''Section 4403 (other than subsection (f)) of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102–484; 106 Stat. 2702; 10 U.S.C. 1293 note) shall apply to the commissioned officer corps of the National Oceanic and Atmospheric Administration in the same manner and to the same extent as that section applies to the Department of Defense. The Secretary of Commerce shall implement the provisions of that section with respect to such commissioned officer corps and shall apply the provisions of that section to the provisions of the National Oceanic and Atmospheric Administration Commissioned Officer Corps Act of 2002 [33 U.S.C. 3001 et seq.] relating to the retirement of members of such commissioned officer corps.''

[Pub. L. 104–106, div. A, title V, § 566(d), Feb. 10, 1996, 110 Stat. 328, provided that: ''This section [amending former section 857a of Title 33, Navigation and Navigable Waters, and enacting provisions set out as a note above] shall apply only to members of the commissioned officer corps of the National Oceanic and Atmospheric Administration who are separated after September 30, 1995.'']

Pub. L. 103–337, div. A, title V, § 542(d), Oct. 5, 1994, 108 Stat. 2769, as amended by Pub. L. 107–296, title XVII, § 1704(e)(5), Nov. 25, 2002, 116 Stat. 2315, provided that: ''Section 4403 of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102–484; 106 Stat. 2702; 10 U.S.C. 1293 note) shall apply to the Coast Guard in the same manner and to the same extent as that provision applies to the Department of Defense. The Secretary of Homeland Security shall implement the provisions of that section with respect to the Coast Guard and apply the applicable provisions of title 14, United States Code, relating to retirement of Coast Guard personnel.''

Pub. L. 102–484, div. D, title XLIV, § 4403, Oct. 23, 1992, 106 Stat. 2702, as amended by Pub. L. 103–160, div. A, title V, § 561(a), Nov. 30, 1993, 107 Stat. 1667; Pub. L. 104–106, div. A, title XV, § 1504(c)(3), Feb. 10, 1996, 110 Stat. 514; Pub. L. 105–261, div. A, title V, § 561(a), Oct. 17, 1998, 112 Stat. 2025; Pub. L. 106–398, § 1 [[div. A], title V, § 571(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–134; Pub. L. 107–314, div. A, title V, § 554, Dec. 2, 2002, 116 Stat. 2553; Pub. L. 112–81, title V, § 504(b), Dec. 31, 2011, 125 Stat. 1390; Pub. L. 112–239, div. A, title X, § 1076(k), Jan. 2, 2013, 126 Stat. 1955; Pub. L. 114–328, div. A, title V, § 508(a), Dec. 23, 2016, 130 Stat. 2109; Pub. L. 115–232, div. A, title V, § 553(b)(5), title VIII, § 809(b)(2), Aug. 13, 2018, 132 Stat. 1772, 1840, provided that:

''(a) PURPOSE.—The purpose of this section is to provide the Secretary of Defense a temporary additional force management tool with which to effect the drawdown of military forces during the active force drawdown period.

''(b) RETIREMENT FOR 15 TO 20 YEARS OF SERVICE.—(1) During the active force drawdown period, the Secretary of the Army may—

''(A) apply the provisions of section 7311 of title 10, United States Code, to a regular or reserve commissioned officer with at least 15 but less than 20 years of service by substituting 'at least 15 years' for 'at least 20 years' in subsection (a) of that section;

''(B) apply the provisions of section 7314 of such title to an enlisted member with at least 15 but less than 20 years of service by substituting 'at least 15' for 'at least 20'; and

''(C) apply the provisions of section 1293 of such title to a warrant officer with at least 15 but less than 20 years of service by substituting 'at least 15 years' for 'at least 20 years'.

''(2) During the active force drawdown period, the Secretary of the Navy may—

''(A) apply the provisions of section 8323 of title 10, United States Code, to an officer with at least 15 but less than 20 years of service by substituting 'at least 15 years' for 'at least 20 years' in subsection (a) of that section;

''(B) apply the provisions of section 8330 of such title to an enlisted member of the Navy or Marine Corps with at least 15 but less than 20 years of service by substituting '15 or more years' for '20 or more years' in the first sentence of subsection (a)[(b)], in the case of an enlisted member of the Navy, and in the second sentence of subsection (b), in the case of an enlisted member of the Marine Corps; and

''(C) apply the provisions of section 1293 of such title to a warrant officer with at least 15 but less than 20 years of service by substituting 'at least 15 years' for 'at least 20 years'.

''(3) During the active force drawdown period, the Secretary of the Air Force may—

''(A) apply the provisions of section 9311 of title 10, United States Code, to a regular or reserve commissioned officer with at least 15 but less than 20 years of service by substituting 'at least 15 years' for 'at least 20 years' in subsection (a) of that section; and

''(B) apply the provisions of section 9314 of such title to an enlisted member with at least 15 but less than 20 years of service by substituting 'at least 15' for 'at least 20'.

''(c) INAPPLICABILITY OF CERTAIN PROVISIONS.—During the period specified in subsection (i)(2), this section does not apply as follows:

''(1) To members of the Coast Guard, notwithstanding section 542(d) of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337; 10 U.S.C. 1293 note).

''(2) To members of the commissioned corps of the National Oceanic and Atmospheric Administration, notwithstanding section 566(c) of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104–106; 10 U.S.C. 1293 note).

''(d) REGULATIONS.—The Secretary of each military department may prescribe regulations and policies regarding the criteria for eligibility for early retirement by reason of eligibility pursuant to this section and for the approval of applications for such retirement. Such criteria may include factors such as grade, years of service, and skill.

''(e) COMPUTATION OF RETIRED PAY.—Retired or retainer pay of a member retired (or transferred to the Fleet Reserve or Fleet Marine Corps Reserve) under a provision of title 10, United States Code, by reason of eligibility pursuant to subsection (b) shall be reduced by 1⁄12th of 1 percent for each full month by which the number of months of active service of the member are less than 240 as of the date of the member's retirement (or transfer to the Fleet Reserve or Fleet Marine Corps Reserve).

''(f) FUNDING.—(1) Notwithstanding section 1463 of title 10, United States Code, and subject to the availability of appropriations for this purpose, the Secretary of each military department shall provide in accordance with this section for the payment of retired pay payable during the fiscal years covered by the other provisions of this subsection to members of the Armed Forces under the jurisdiction of that Secretary who are being retired under the authority of this section.

''(2) In each fiscal year in which the Secretary of a military department retires a member of the Armed Forces under the authority of this section, the Secretary shall credit to a subaccount (which the Secretary shall establish) within the appropriation account for that fiscal year for pay and allowances of active duty members of the Armed Forces under the jurisdiction of that Secretary such amount as is necessary to pay the retired pay payable to such member for the entire initial period (determined under paragraph (3)) of the entitlement of that member to receive retired pay.

''(3) The initial period applicable under paragraph (2) in the case of a retired member referred to in that paragraph is the number of years (and any fraction of a year) that is equal to the difference between 20 years

and the number of years (and any fraction of a year) of service that were completed by the member (as computed under the provision of law used for determining the member's years of service for eligibility to retirement) before being retired under the authority of this section.

''(4) The Secretary shall pay the member's retired pay for such initial period out of amounts credited to the subaccount under paragraph (2). The amounts so credited with respect to that member shall remain available for payment for that period.

''(5) For purposes of this subsection—

''(A) the transfer of an enlisted member of the Navy or Marine Corps to the Fleet Reserve or Fleet Marine Corps Reserve shall be treated as a retirement; and

''(B) the term 'retired pay' shall be treated as including retainer pay.

''(g) COORDINATION WITH OTHER SEPARATION PROVISIONS.—(1) A member of the Armed Forces retired under the authority of this section is not entitled to benefits under section 1174 or 1175a of title 10, United States Code.

''(2) [Amended section 638a(b)(4)(C) [now 638a(b)(3)(C)] of this title.]

''(h) MEMBERS RECEIVING SSB, VSI, OR VSP.—The Secretary of a military department may retire (or transfer to the Fleet Reserve or Fleet Marine Corps Reserve) pursuant to the authority provided by this section a member of a reserve component who before the date of the enactment of this Act [Oct. 23, 1992] was separated from active duty pursuant to an agreement entered into under section 1174a or 1175 of title 10, United States Code or who before December 31, 2011, was separated from active duty pursuant to an agreement entered into under section 1175a of such title. The retired or retainer pay of any such member so retired (or transferred) by reason of the authority provided in this section shall be reduced by the amount of any payment to such member before the date of such retirement under the provisions of such agreement.

''(i) ACTIVE FORCE DRAWDOWN PERIOD.—For purposes of this section, the active force drawdown period is (1) the period beginning on the date of the enactment of this Act and ending on September 1, 2002, and (2) the period beginning on December 31, 2011, and ending on December 31, 2025.''

[Pub. L. 107–314, div. A, title V, § 554, Dec. 2, 2002, 116 Stat. 2553, provided that the amendment made by that section to section 4403 of Pub. L. 102–484, set out above, is effective Jan. 1, 2002.]

§ 1305. Thirty years or more: regular warrant officers

(a)(1) Subject to paragraphs (2) and (3), a regular warrant officer who has at least 30 years of active service that could be credited to the officer under section 511 of the Career Compensation Act of 1949, as amended (70 Stat. 114) shall be retired 60 days after the date on which the officer completes that service, except as provided by section 8301 of title 5.

(2) In the case of a regular Army warrant officer, the calculation of years of active service under paragraph (1) shall include only years of active service as a warrant officer.

(3) In the case of a regular Navy warrant officer in the grade of chief warrant officer, W–5, the officer shall be retired 60 days after the date on which the officer completes 33 years of total active service.

(b) The Secretary concerned may defer, for not more than four months, the retirement under subsection (a) of any warrant officer if, because of unavoidable circumstances, evaluation of his physical condition and determination of his entitlement to retirement or separation for physical disability require hospitalization or medical observation that cannot be completed before the date when he would otherwise be required to retire under this section.

(c) Under such regulations as he may prescribe, the Secretary concerned may defer the retirement under subsection (a) of any warrant officer upon the recommendation of a board of officers and with the consent of the warrant officer, but not later than 60 days after he becomes 62 years of age.

(Aug. 10, 1956, ch. 1041, 70A Stat. 101; Pub. L. 87–649, § 6(f)(3), Sept. 7, 1962, 76 Stat. 494; Pub. L. 89–718, § 3, Nov. 2, 1966, 80 Stat. 1115; Pub. L. 102–190, div. A, title XI, § 1116, Dec. 5, 1991, 105 Stat. 1503; Pub. L. 109–364, div. A, title V, § 505(c), Oct. 17, 2006, 120 Stat. 2179; Pub. L. 110–417, [div. A], title V, § 501, Oct. 14, 2008, 122 Stat. 4432; Pub. L. 112–239, div. A, title V, § 504, Jan. 2, 2013, 126 Stat. 1715.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1305(a)	10:600(d) (as applicable to 10:600*l*(b)(2)). 10:600*l*(b)(2) (last sentence). 10:600r(c) (as applicable to 10:600*l*(b)(2)). 34:135(d) (as applicable to 34:430(b)(2)). 34:430(b)(2) (last sentence). 34:430c (as applicable to 34:430(b)(2)).	May 29, 1954, ch. 249, §§ 2(d) (as applicable to § 14(b)(2)), 14(b)(2), (e) (as applicable to (b)(2)), 21(c) (as applicable to § 14(b)(2)), 68 Stat. 157, 163, 168.
1305(b)	10:600*l*(e) (as applicable to 10:600*l*(b)(2)). 34:430(e) (as applicable to 34:430(b)(2)).	
1305(c)	10:600*l*(b)(2) (less last sentence). 34:430(b)(2) (less last sentence).	

In subsection (a), the words ''has at least'' are substituted for the words ''has completed''. The words ''and is not so continued on active service'' and ''on that date which'' are omitted as surplusage. 10:600*l*(b)(2) (last 16 words of last sentence) and 34:430(b)(2) (last 16 words of last sentence) are omitted as covered by section 1315 of this title.

In subsection (b), the words ''The Secretary concerned may defer'' are substituted for the words ''may, in the discretion of the Secretary, be deferred''. The words ''determination of his'' are inserted for clarity. The words ''not more than'' are substituted for the words ''a period not to exceed''. The words ''he would otherwise be required to retire under this section'' are substituted for the words ''retirement * * * would otherwise be required''. The words ''which is required'', ''possible'', ''proper'', and ''a period of'' are omitted as surplusage.

In subsection (c), the words ''the Secretary concerned may defer the retirement'' are substituted for the words ''in the discretion of the Secretary * * * be continued on active service''. The words ''but not later than'' are substituted for the words ''but not beyond that date which is''.

REFERENCES IN TEXT

Section 511 of the Career Compensation Act of 1949, referred to in subsec. (a)(1), is section 511 of act Oct. 12, 1949, ch. 681, which was formerly set out as a note under section 580 of this title.

AMENDMENTS

2013—Subsec. (a)(1). Pub. L. 112–239, § 504(1), substituted ''Subject to paragraphs (2) and (3), a regular warrant officer'' for ''A regular warrant officer (other

than a regular Army warrant officer)'' and ''date on which the officer'' for ''date on which he''.

Subsec. (a)(3). Pub. L. 112–239, § 504(2), added par. (3).

2008—Subsec. (a). Pub. L. 110–417 designated existing provisions as par. (1), substituted ''A regular warrant officer (other than a regular Army warrant officer) who has at least 30 years of active service that could be credited to the officer'' for ''A regular warrant officer who has at least 30 years of active service as a warrant officer that could be credited to him'', and added par. (2).

2006—Subsec. (a). Pub. L. 109–364 substituted ''A regular warrant officer'' for ''(1) Except as provided in paragraph (2), a regular warrant officer (other than a regular Army warrant officer in the grade of chief warrant officer, W–5)'', inserted ''as a warrant officer'' after ''years of active service'' and ''the date on which'' after ''60 days after'', and struck out par. (2) which read as follows:

''(2)(A) A regular Army warrant officer in the grade of chief warrant officer, W–5, who has at least 30 years of active service as a warrant officer that could be credited to him under section 511 of the Career Compensation Act of 1949, as amended (70 Stat. 114), shall be retired 60 days after the date on which he completes that service, except as provided by section 8301 of title 5.

''(B) A regular Army warrant officer in a warrant officer grade below the grade of chief warrant officer, W–5, who completes 24 years of active service as a warrant officer before he is required to be retired under paragraph (1) shall be retired 60 days after the date on which he completes 24 years of active service as a warrant officer, except as provided by section 8301 of title 5.''

1991—Subsec. (a). Pub. L. 102–190 designated existing provisions as par. (1), substituted ''Except as provided in paragraph (2), a regular warrant officer (other than a regular Army warrant officer in the grade of chief warrant officer, W–5)'' for ''A permanent regular warrant officer'', and added par. (2).

1966—Subsec. (a). Pub. L. 89–718 substituted ''8301'' for ''47a''.

1962—Subsec. (a). Pub. L. 87–649 substituted ''section 511 of the Career Compensation Act of 1949, as amended (70 Stat. 114)'' for ''section 311 of title 37.''

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–190 effective Feb. 1, 1992, see section 1132 of Pub. L. 102–190, set out as a note under section 521 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–649 effective Nov. 1, 1962, see section 15 of Pub. L. 87–649, set out as a note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

§ 1315. Computation of retired pay: law applicable

A member of the armed forces retired under this chapter is entitled to retired pay computed under chapter 71 of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 101.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1315	[No source].	[No source].

The revised section is based on the various retirement provisions in this chapter and is inserted to make explicit the entitlement to retired pay upon retirement.

CHAPTER 67—RETIRED PAY FOR NON-REGULAR SERVICE

Sec.
1331. Reference to chapter 1223.

PRIOR PROVISIONS

A prior chapter 67 was transferred to part II of subtitle E of this title and renumbered chapter 1223.

AMENDMENTS

1996—Pub. L. 104–106, div. A, title XV, § 1503(a)(13), Feb. 10, 1996, 110 Stat. 511, substituted ''NON-REGULAR'' for ''NONREGULAR'' in chapter heading.

§ 1331. Reference to chapter 1223

Provisions of law relating to retired pay for nonregular service are set forth in chapter 1223 of this title (beginning with section 12731).

(Added Pub. L. 103–337, div. A, title XVI, § 1662(j)(7), Oct. 5, 1994, 108 Stat. 3005.)

PRIOR PROVISIONS

Prior sections 1331 to 1338 were renumbered sections 12731 to 12738 of this title, respectively.

CHAPTER 69—RETIRED GRADE

Sec.
1370. Regular commissioned officers.
1370a. Officers entitled to retired pay for non-regular service.
1371. Warrant officers: general rule.
1372. Grade on retirement for physical disability: members of armed forces.
1373. Higher grade for later physical disability: retired officers recalled to active duty.
[1374. Repealed.]
1375. Entitlement to commission: commissioned officers advanced on retired list.
1376. Temporary disability retired lists.

AMENDMENTS

2021—Pub. L. 116–283, div. A, title V, § 508(a)(2), Jan. 1, 2021, 134 Stat. 3584, added items 1370 and 1370a and struck out former item 1370 ''Commissioned officers: general rule; exceptions''.

1994—Pub. L. 103–337, div. A, title XVI, § 1671(b)(11), Oct. 5, 1994, 108 Stat. 3013, struck out item 1374 ''Reserve commissioned officers: grade on retirement or transfer to Retired Reserve'' and substituted ''Temporary disability retired lists'' for ''Retired lists'' in item 1376.

1980—Pub. L. 96–513, title V, § 501(20), Dec. 12, 1980, 94 Stat. 2908, added item 1370.

1958—Pub. L. 85–861, § 1(30), Sept. 2, 1958, 72 Stat. 1451, added item 1374.

§ 1370. Regular commissioned officers

(a) RETIREMENT IN HIGHEST GRADE IN WHICH SERVED SATISFACTORILY.—

(1) IN GENERAL.—Unless entitled to a different retired grade under some other provision of law, a commissioned officer (other than a commissioned warrant officer) of the Army, Navy, Air Force, Marine Corps, or Space Force who retires under any provision of law other than chapter 61 or 1223 of this title shall be retired in the highest permanent grade in which such officer is determined to have served on active duty satisfactorily.

(2) DETERMINATION OF SATISFACTORY SERVICE.—The determination of satisfactory service of an officer in a grade under paragraph (1) shall be made as follows:

(A) By the Secretary of the military department concerned, if the officer is serving in a grade at or below the grade of major general, rear admiral in the Navy, or the equivalent grade in the Space Force.

(B) By the Secretary of Defense, if the officer is serving or has served in a grade above the grade of major general, rear admiral in the Navy, or the equivalent grade in the Space Force.

(3) EFFECT OF MISCONDUCT IN LOWER GRADE IN DETERMINATION.—If the Secretary of a military department or the Secretary of Defense, as applicable, determines that an officer committed misconduct in a lower grade than the retirement grade otherwise provided for the officer by this section—

(A) such Secretary may deem the officer to have not served satisfactorily in any grade equal to or higher than such lower grade for purposes of determining the retirement grade of the officer under this section; and

(B) the grade next lower to such lower grade shall be the retired grade of the officer under this section.

(4) NATURE OF RETIREMENT OF CERTAIN RESERVE OFFICERS AND OFFICERS IN TEMPORARY GRADES.—A reserve officer, or an officer appointed to a position under section 601 of this title, who is notified that the officer will be released from active duty without the officer's consent and thereafter requests retirement under section 7311, 8323, or 9311 of this title and is retired pursuant to that request is considered for purposes of this section to have been retired involuntarily.

(5) NATURE OF RETIREMENT OF CERTAIN REMOVED OFFICERS.—An officer retired pursuant to section 1186(b)(1) of this title is considered for purposes of this section to have been retired voluntarily.

(b) RETIREMENT OF OFFICERS RETIRING VOLUNTARILY.—

(1) SERVICE-IN-GRADE REQUIREMENT.—In order to be eligible for voluntary retirement under any provision of this title in a grade above the grade of captain in the Army, Air Force, or Marine Corps, lieutenant in the Navy, or the equivalent grade in the Space Force, a commissioned officer of the Army, Navy, Air Force, Marine Corps, or Space Force must have served on active duty in that grade for a period of not less than three years, except that—

(A) subject to subsection (c), the Secretary of Defense may reduce such period to a period of not less than two years for any officer; and

(B) in the case of an officer to be retired in a grade at or below the grade of major general in the Army, Air Force, or Marine Corps, rear admiral in the Navy, or an equivalent grade in the Space Force, the Secretary of Defense may authorize the Secretary of the military department concerned to reduce such period to a period of not less than two years.

(2) LIMITATION ON DELEGATION.—The authority of the Secretary of Defense in subparagraph (A) of paragraph (1) may not be delegated. The authority of the Secretary of a military department in subparagraph (B) of paragraph (1), as delegated to such Secretary pursuant to such subparagraph, may not be further delegated.

(3) WAIVER OF REQUIREMENT.—Subject to subsection (c), the President may waive the application of the service-in-grade requirement in paragraph (1) to officers covered by that paragraph in individual cases involving extreme hardship or exceptional or unusual circumstances. The authority of the President under this paragraph may not be delegated.

(4) LIMITATION ON REDUCTION OR WAIVER OF REQUIREMENT FOR OFFICERS UNDER INVESTIGATION OR PENDING MISCONDUCT.—In the case of an officer to be retired in a grade above the grade of colonel in the Army, Air Force, or Marine Corps, captain in the Navy, or the equivalent grade in the Space Force, the service-in-grade requirement in paragraph (1) may not be reduced pursuant to that paragraph, or waived pursuant to paragraph (3), while the officer is under investigation for alleged misconduct or while there is pending the disposition of an adverse personnel action against the officer.

(5) GRADE AND FISCAL YEAR LIMITATIONS ON REDUCTION OR WAIVER OF REQUIREMENTS.—The aggregate number of members of an armed force in a grade for whom reductions are made under paragraph (1), and waivers are made under paragraph (3), in a fiscal year may not exceed—

(A) in the case of officers to be retired in a grade at or below the grade of major in the Army, Air Force, or Marine Corps, lieutenant commander in the Navy, or the equivalent grade in the Space Force, the number equal to two percent of the authorized active-duty strength for that fiscal year for officers of that armed force in that grade;

(B) in the case of officers to be retired in the grade of lieutenant colonel or colonel in the Army, Air Force, or Marine Corps, commander or captain in the Navy, or an equivalent grade in the Space Force, the number equal to four percent of the authorized active-duty strength for that fiscal year for officers of that armed force in the applicable grade; or

(C) in the case of officers to be retired in the grade of brigadier general or major general in the Army, Air Force, or Marine Corps, rear admiral (lower half) or rear admiral in the Navy, or an equivalent grade in the Space Force, the number equal to 10 percent of the authorized active-duty strength for that fiscal year for officers of that armed force in the applicable grade.

(6) NOTICE TO CONGRESS ON REDUCTION OR WAIVER OF REQUIREMENTS FOR GENERAL, FLAG, AND EQUIVALENT OFFICER GRADES.—In the case of an officer to be retired in a grade that is a general or flag officer grade, or an equivalent grade in the Space Force, who is eligible to retire in that grade only by reason of an exercise of the authority in paragraph (1) to reduce the service-in-grade requirement in that paragraph, or the authority in paragraph (3) to waive that requirement, the Secretary of Defense or the President, as applicable, shall, not later than 60 days prior to the date on which the officer will be retired in that grade, notify the Committees on Armed Services of the Senate and the House of Representatives of the

exercise of the applicable authority with respect to that officer.

(7) RETIREMENT IN NEXT LOWEST GRADE FOR OFFICERS NOT MEETING REQUIREMENT.—An officer described in paragraph (1) whose length of service in the highest grade held by the officer while on active duty does not meet the period of the service-in-grade requirement applicable to the officer under this subsection shall, subject to subsection (c), be retired in the next lower grade in which the officer served on active duty satisfactorily, as determined by the Secretary of the military department concerned or the Secretary of Defense, as applicable.

(c) OFFICERS IN O–9 AND O–10 GRADES.—

(1) IN GENERAL.—An officer of the Army, Navy, Air Force, Marine Corps, or Space Force who is serving or has served in a position of importance and responsibility designated by the President to carry the grade of lieutenant general or general in the Army, Air Force, or Marine Corps, vice admiral or admiral in the Navy, or an equivalent grade in the Space Force under section 601 of this title may be retired in such grade under subsection (a) only after the Secretary of Defense certifies in writing to the President and the Committees on Armed Services of the Senate and the House of Representatives that the officer served on active duty satisfactorily in such grade.

(2) PROHIBITION ON DELEGATION.—The authority of the Secretary of Defense to make a certification with respect to an officer under paragraph (1) may not be delegated.

(3) REQUIREMENTS IN CONNECTION WITH CERTIFICATION.—A certification with respect to an officer under paragraph (1) shall—

(A) be submitted by the Secretary of Defense such that it is received by the President and the Committees on Armed Services of the Senate and the House of Representatives not later than 60 days prior to the date on which the officer will be retired in the grade concerned;

(B) include an up-to-date copy of the military biography of the officer; and

(C) include the statement of the Secretary as to whether or not potentially adverse, adverse, or reportable information regarding the officer was considered by the Secretary in making the certification.

(4) CONSTRUCTION WITH OTHER NOTICE.—In the case of an officer under paragraph (1) to whom a reduction in the service-in-grade requirement under subsection (b)(1) or waiver under subsection (b)(3) applies, the requirement for notification under subsection (b)(6) is satisfied if the notification is included in the certification submitted by the Secretary of Defense under paragraph (1).

(d) CONDITIONAL RETIREMENT GRADE AND RETIREMENT FOR OFFICERS PENDING INVESTIGATION OR ADVERSE ACTION.—

(1) IN GENERAL.—When an officer serving in a grade at or below the grade of major general in the Army, Air Force, or Marine Corps, rear admiral in the Navy, or an equivalent grade in the Space Force is under investigation for alleged misconduct or pending the disposition of an adverse personnel action at the time of retirement, the Secretary of the military department concerned may—

(A) conditionally determine the highest permanent grade of satisfactory service on active duty of the officer pending completion of the investigation or resolution of the personnel action, as applicable; and

(B) retire the officer in that conditional grade, subject to subsection (e).

(2) OFFICERS IN O–9 AND O–10 GRADES.—When an officer described by subsection (c)(1) is under investigation for alleged misconduct or pending the disposition of an adverse personnel action at the time of retirement, the Secretary of Defense may—

(A) conditionally determine the highest permanent grade of satisfactory service on active duty of the officer, pending completion of the investigation or personnel action, as applicable; and

(B) retire the officer in that conditional grade, subject to subsection (e).

(3) REDUCTION OR WAIVER OF SERVICE-IN-GRADE REQUIREMENT PROHIBITED FOR GENERAL, FLAG, AND EQUIVALENT OFFICER GRADES.—In conditionally determining the retirement grade of an officer under paragraph (1)(A) or (2)(A) of this subsection to be a grade above the grade of colonel in the Army, Air Force, or Marine Corps, captain in the Navy, or the equivalent grade in the Space Force, the service-in-grade requirement in subsection (b)(1) may not be reduced pursuant to subsection (b)(1) or waived pursuant to subsection (b)(3).

(4) PROHIBITION ON DELEGATION.—The authority of the Secretary of a military department under paragraph (1) may not be delegated. The authority of the Secretary of Defense under paragraph (2) may not be delegated.

(e) FINAL RETIREMENT GRADE FOLLOWING RESOLUTION OF PENDING INVESTIGATION OR ADVERSE ACTION.—

(1) NO CHANGE FROM CONDITIONAL RETIREMENT GRADE.—If the resolution of an investigation or personnel action with respect to an officer who has been retired in a conditional retirement grade pursuant to subsection (d) results in a determination that the conditional retirement grade in which the officer was retired will not be changed, the conditional retirement grade of the officer shall, subject to paragraph (3), be the final retired grade of the officer.

(2) CHANGE FROM CONDITIONAL RETIREMENT GRADE.—If the resolution of an investigation or personnel action with respect to an officer who has been retired in a conditional retirement grade pursuant to subsection (d) results in a determination that the conditional retirement grade in which the officer was retired should be changed, the changed retirement grade shall be the final retired grade of the officer under this section, except that if the final retirement grade provided for an officer pursuant to this paragraph is the grade of lieutenant general or general in the Army, Air Force, or Marine Corps, vice admiral or admiral in the Navy, or an equivalent grade in the

Space Force, the requirements in subsection (c) shall apply in connection with the retirement of the officer in such final retirement grade.

(3) RECALCULATION OF RETIRED PAY.—

(A) IN GENERAL.—If the final retired grade of an officer is as a result of a change under paragraph (2), the retired pay of the officer under chapter 71 of this title shall be recalculated accordingly, with any modification of the retired pay of the officer to go into effect as of the date of the retirement of the officer.

(B) PAYMENT OF HIGHER AMOUNT FOR PERIOD OF CONDITIONAL RETIREMENT GRADE.—If the recalculation of the retired pay of an officer results in an increase in retired pay, the officer shall be paid the amount by which such increased retired pay exceeded the amount of retired pay paid the officer for retirement in the officer's conditional grade during the period beginning on the date of the retirement of the officer in such conditional grade and ending on the effective date of the change of the officer's retired grade. For an officer whose retired grade is determined pursuant to subsection (c), the effective date of the change of the officer's retired grade for purposes of this subparagraph shall be the date that is 60 days after the date on which the Secretary of Defense submits to the Committees on Armed Services of the Senate and the House of Representatives the certification required by subsection (c) in connection with the retired grade of the officer.

(C) RECOUPMENT OF OVERAGE DURING PERIOD OF CONDITIONAL RETIREMENT GRADE.—If the recalculation of the retired pay of an officer results in a decrease in retired pay, there shall be recouped from the officer the amount by which the amount of retired pay paid the officer for retirement in the officer's conditional grade exceeded such decreased retired pay during the period beginning on the date of the retirement of the officer in such conditional grade and ending on the effective date of the change of the officer's retired grade.

(f) FINALITY OF RETIRED GRADE DETERMINATIONS.—

(1) IN GENERAL.—Except for a conditional determination authorized by subsection (d), a determination of the retired grade of an officer pursuant to this section is administratively final on the day the officer is retired, and may not be reopened, except as provided in paragraph (2).

(2) REOPENING.—A final determination of the retired grade of an officer may be reopened as follows:

(A) If the retirement or retired grade of the officer was procured by fraud.

(B) If substantial evidence comes to light after the retirement that could have led to determination of a different retired grade under this section if known by competent authority at the time of retirement.

(C) If a mistake of law or calculation was made in the determination of the retired grade.

(D) If the applicable Secretary determines, pursuant to regulations prescribed by the Secretary of Defense, that good cause exists to reopen the determination of retired grade.

(3) APPLICABLE SECRETARY.—For purposes of this subsection, the applicable Secretary for purposes of a determination or action specified in this subsection is—

(A) the Secretary of the military department concerned, in the case of an officer retired in a grade at or below the grade of major general in the Army, Air Force, or Marine Corps, rear admiral in the Navy, or the equivalent grade in the Space Force; or

(B) the Secretary of Defense, in the case of an officer retired in a grade of lieutenant general or general in the Army, Air Force, or Marine Corps, vice admiral or admiral in the Navy, or an equivalent grade in the Space Force.

(4) NOTICE AND LIMITATION.—If a final determination of the retired grade of an officer is reopened in accordance with paragraph (2), the applicable Secretary—

(A) shall notify the officer of the reopening; and

(B) may not make an adverse determination on the retired grade of the officer until the officer has had a reasonable opportunity to respond regarding the basis for the reopening of the officer's retired grade.

(5) ADDITIONAL NOTICE ON REOPENING FOR OFFICERS RETIRED IN O–9 AND O–10 GRADES.—If the determination of the retired grade of an officer whose retired grade was provided for pursuant to subsection (c) is reopened, the Secretary of Defense shall also notify the President and the Committees on Armed Services of the Senate and the House of Representatives.

(6) MANNER OF MAKING OF CHANGE.—If the retired grade of an officer is proposed to be changed through the reopening of the final determination of an officer's retired grade under this subsection, the change in grade shall be made—

(A) in the case of an officer whose retired grade is to be changed to a grade at or below the grade of major general in the Army, Air Force or Marine Corps, rear admiral in the Navy, or the equivalent grade in the Space Force, in accordance with subsections (a) and (b)—

(i) by the Secretary of Defense (who may delegate such authority only as authorized by clause (ii)); or

(ii) if authorized by the Secretary of Defense, by the Secretary of the military department concerned (who may not further delegate such authority);

(B) in the case of an officer whose retired grade is to be changed to the grade of lieutenant general or general in the Army, Air Force, or Marine Corps, vice admiral or admiral in the Navy, or an equivalent grade in the Space Force, by the President, by and with the advice and consent of the Senate.

(7) RECALCULATION OF RETIRED PAY.—If the final retired grade of an officer is changed

through the reopening of the officer's retired grade under this subsection, the retired pay of the officer under chapter 71 of this title shall be recalculated. Any modification of the retired pay of the officer as a result of the change shall go into effect on the effective date of the change of the officer's retired grade, and the officer shall not be entitled or subject to any changed amount of retired pay for any period before such effective date. An officer whose retired grade is changed as provided in paragraph (6)(B) shall not be entitled or subject to a change in retired pay for any period before the date on which the Senate provides advice and consent for the retirement of the officer in such grade.

(g) HIGHEST PERMANENT GRADE DEFINED.—In this section, the term ''highest permanent grade'' means a grade at or below the grade of major general in the Army, Air Force, or Marine Corps, rear admiral in the Navy, or an equivalent grade in the Space Force.

(Added Pub. L. 116–283, div. A, title V, §508(a)(1), Jan. 1, 2021, 134 Stat. 3574.)

PRIOR PROVISIONS

A prior section 1370, Added Pub. L. 96–513, title I, §112, Dec. 12, 1980, 94 Stat. 2876; amended Pub. L. 101–510, div. A, title V, §522, Nov. 5, 1990, 104 Stat. 1561; Pub. L. 103–160, div. A, title V, §561(d), Nov. 30, 1993, 107 Stat. 1667; Pub. L. 103–337, div. A, title XVI, §§1641, 1671(c)(7)(B), Oct. 5, 1994, 108 Stat. 2968, 3014; Pub. L. 104–106, div. A, title V, §502(a), (b), (f), (g), Feb. 10, 1996, 110 Stat. 292, 293; Pub. L. 104–201, div. A, title V, §544(a), Sept. 23, 1996, 110 Stat. 2522; Pub. L. 105–261, div. A, title V, §§512(a), 513(a), 561(d), (*o*), Oct. 17, 1998, 112 Stat. 2007, 2025, 2026; Pub. L. 106–65, div. A, title X, §1066(a)(9), (b)(3), Oct. 5, 1999, 113 Stat. 770, 772; Pub. L. 106–398, §1 [[div. A], title V, §571(d)], Oct. 30, 2000, 114 Stat. 1654, 1654A–134; Pub. L. 107–107, div. A, title V, §§502, 514, Dec. 28, 2001, 115 Stat. 1080, 1093; Pub. L. 107–314, div. A, title V, §505, Dec. 2, 2002, 116 Stat. 2533; Pub. L. 108–136, div. A, title V, §506, Nov. 24, 2003, 117 Stat. 1457; Pub. L. 109–163, div. A, title V, §501, Jan. 6, 2006, 119 Stat. 3225; Pub. L. 112–239, div. A, title V, §§506, 507, Jan. 2, 2013, 126 Stat. 1716; Pub. L. 114–328, div. A, title V, §508(d), Dec. 23, 2016, 130 Stat. 2109; Pub. L. 115–91, div. A, title V, §504, Dec. 12, 2017, 131 Stat. 1374; Pub. L. 115–232, div. A, title V, §509, title VIII, §809(a), Aug. 13, 2018, 132 Stat. 1749, 1840; (As amended Pub. L. 116–92, div. A, title V, §509(a), (b), Dec. 20, 2019, 133 Stat. 1346, related to commissioned officers: general rule for retirement with exceptions, prior to repeal by Pub. L. 116–283, div. A, title V, §508(a)(1), Jan. 1, 2021, 134 Stat. 3574.

OTHER REFERENCES

Pub. L. 116–283, div. A, title V, §508(c), Jan. 1, 2021, 134 Stat. 3585, provided that: ''In the determination of the retired grade of a commissioned officer of the Armed Forces entitled to retired pay under chapter 1223 of title 10, United States Code, who retires after the date of the enactment of this Act [Jan. 1, 2021], any reference in a provision of law or regulation to section 1370 of title 10, United States Code, in such determination with respect to such officer shall be deemed to be a reference to section 1370a of title 10, United States Code (as amended by subsection (a)).''

TRANSITION PROVISIONS UNDER DEFENSE OFFICER PERSONNEL MANAGEMENT ACT

For provisions relating to the time-in-grade requirement for voluntary retirement of officers not subsequently promoted, see section 629 of Pub. L. 96–513, set out as a note under section 611 of this title.

§1370a. Officers entitled to retired pay for non-regular service

(a) RETIREMENT IN HIGHEST GRADE HELD SATISFACTORILY.—Unless entitled to a different grade, or to credit for satisfactory service in a different grade under some other provision of law, a person who is entitled to retired pay under chapter 1223 of this title shall, upon application under section 12731 of this title, be credited with satisfactory service in the highest permanent grade in which that person served satisfactorily at any time in the armed forces, as determined by the Secretary of the military department concerned in accordance with this section.

(b) SERVICE-IN-GRADE REQUIREMENT FOR OFFICERS IN GRADES BELOW O–5.—In order to be credited with satisfactory service in an officer grade (other than a warrant officer grade) below the grade of lieutenant colonel or commander (in the case of the Navy), a person covered by subsection (a) must have served satisfactorily in that grade (as determined by the Secretary of the military department concerned) as a reserve commissioned officer in an active status, or in a retired status on active duty, for not less than six months.

(c) SERVICE-IN-GRADE REQUIREMENT FOR OFFICES IN GRADES ABOVE O–4.—

(1) IN GENERAL.—In order to be credited with satisfactory service in an officer grade above major or lieutenant commander (in the case of the Navy), a person covered by subsection (a) must have served satisfactorily in that grade (as determined by the Secretary of the military department concerned) as a reserve commissioned officer in an active status, or in a retired status on active duty, for not less than three years.

(2) SATISFACTION OF REQUIREMENT BY CERTAIN OFFICERS NOT COMPLETING THREE YEARS.—A person covered by paragraph (1) who has completed at least six months of satisfactory service in grade may be credited with satisfactory service in the grade in which serving at the time of transfer or discharge, notwithstanding failure of the person to complete three years of service in that grade, if the person is transferred from an active status or discharged as a reserve commissioned officer—

(A) solely due to the requirements of a nondiscretionary provision of law requiring that transfer or discharge due to the person's age or years of service; or

(B) because the person no longer meets the qualifications for membership in the Ready Reserve solely because of a physical disability, as determined in accordance with chapter 61 of this title, and at the time of such transfer or discharge the person (pursuant to section 12731b of this title or otherwise) meets the service requirements established by section 12731(a) of this title for eligibility for retired pay under chapter 1223 of this title, unless the disability is described in section 12731b of this title.

(3) REDUCTION IN SERVICE-IN-GRADE REQUIREMENTS.—

(A) OFFICERS IN GRADES BELOW GENERAL AND FLAG OFFICER GRADES.—In the case of a person to be retired in a grade below briga-

dier general or rear admiral (lower half) in the Navy, the Secretary of Defense may authorize the Secretary of a military department to reduce, subject to subparagraph (B), the three-year period of service-in-grade required by paragraph (1) to a period not less than two years. The authority of the Secretary of a military department under this subparagraph may not be delegated.

(B) LIMITATION.—The number of reserve commissioned officers of an armed force in the same grade for whom a reduction is made under subparagraph (A) during any fiscal year in the period of service-in-grade otherwise required by paragraph (1) may not exceed the number equal to 2 percent of the strength authorized for that fiscal year for reserve commissioned officers of that armed force in an active status in that grade.

(C) OFFICERS IN GENERAL AND FLAG OFFICERS GRADES.—The Secretary of Defense may reduce the three-year period of service-in-grade required by paragraph (1) to a period not less than two years for any person, including a person who, upon transfer to the Retired Reserve or discharge, is to be credited with satisfactory service in a general or flag officer grade under that paragraph. The authority of the Secretary of Defense under this subparagraph may not be delegated.

(D) NOTICE TO CONGRESS ON REDUCTION IN SERVICE-IN-GRADE REQUIREMENTS FOR GENERAL AND FLAG OFFICER GRADES.—In the case of a person to be credited under this section with satisfactory service in a grade that is a general or flag officer grade who is eligible to be credited with such service in that grade only by reason of an exercise of authority in subparagraph (C) to reduce the three-year service-in-grade requirement otherwise applicable under paragraph (1), the Secretary of Defense shall, not later than 60 days prior to the date on which the person will be credited with such satisfactory service in that grade, notify the Committees on Armed Services of the Senate and the House of Representatives of the exercise of authority in subparagraph (C) with respect to that person.

(4) OFFICERS SERVING IN GRADES ABOVE O–6 INVOLUNTARILY TRANSFERRED FROM ACTIVE STATUS.—A person covered by paragraph (1) who has completed at least six months of satisfactory service in a grade above colonel or (in the case of the Navy) captain and, while serving in an active status in such grade, is involuntarily transferred (other than for cause) from active status may be credited with satisfactory service in the grade in which serving at the time of such transfer, notwithstanding failure of the person to complete three years of service in that grade.

(5) ADJUTANTS AND ASSISTANT ADJUTANTS GENERAL.—If a person covered by paragraph (1) has completed at least six months of satisfactory service in grade, the person was serving in that grade while serving in a position of adjutant general required under section 314 of title 32 or while serving in a position of assistant adjutant general subordinate to such a position of adjutant general, and the person has failed to complete three years of service in that grade solely because the person's appointment to such position has been terminated or vacated as described in section 324(b) of such title, the person may be credited with satisfactory service in that grade, notwithstanding the failure of the person to complete three years of service in that grade.

(6) OFFICERS RECOMMENDED FOR PROMOTION SERVING IN CERTAIN GRADE BEFORE PROMOTION.—To the extent authorized by the Secretary of the military department concerned, a person who, after having been recommended for promotion in a report of a promotion board but before being promoted to the recommended grade, served in a position for which that grade is the minimum authorized grade may be credited for purposes of paragraph (1) as having served in that grade for the period for which the person served in that position while in the next lower grade. The period credited may not include any period before the date on which the Senate provides advice and consent for the appointment of that person in the recommended grade.

(7) OFFICERS QUALIFIED FOR FEDERAL RECOGNITION SERVING IN CERTAIN GRADE BEFORE APPOINTMENT.—To the extent authorized by the Secretary of the military department concerned, a person who, after having been found qualified for Federal recognition in a higher grade by a board under section 307 of title 32, serves in a position for which that grade is the minimum authorized grade and is appointed as a reserve officer in that grade may be credited for the purposes of paragraph (1) as having served in that grade. The period of the service for which credit is afforded under the preceding sentence may be only the period for which the person served in the position after the Senate provides advice and consent for the appointment.

(8) RETIREMENT IN NEXT LOWEST GRADE FOR OFFICERS NOT MEETING SERVICE-IN-GRADE REQUIREMENTS.—A person whose length of service in the highest grade held does not meet the service-in-grade requirements specified in this subsection shall be credited with satisfactory service in the next lower grade in which that person served satisfactorily (as determined by the Secretary of the military department concerned) for not less than six months.

(d) OFFICERS IN O–9 AND O–10 GRADES.—

(1) IN GENERAL.—A person covered by this section in the Army, Navy, Air Force, or Marine Corps who is serving or has served in a position of importance and responsibility designated by the President to carry the grade of lieutenant general or general in the Army, Air Force, or Marine Corps, or vice admiral or admiral in the Navy under section 601 of this title may be retired in such grade under subsection (a) only after the Secretary of Defense certifies in writing to the President and the Committees on Armed Services of the Senate and the House of Representatives that the officer served satisfactorily in such grade.

(2) PROHIBITION ON DELEGATION.—The authority of the Secretary of Defense to make a certification with respect to an officer under paragraph (1) may not be delegated.

(3) REQUIREMENTS IN CONNECTION WITH CERTIFICATION.—A certification with respect to an officer under paragraph (1) shall—

(A) be submitted by the Secretary of Defense such that it is received by the President and the Committees on Armed Services of the Senate and the House of Representatives not later than 60 days prior to the date on which the officer will be retired in the grade concerned;

(B) include an up-to-date copy of the military biography of the officer; and

(C) include the statement of the Secretary as to whether or not potentially adverse, adverse, or reportable information regarding the officer was considered by the Secretary in making the certification.

(4) CONSTRUCTION WITH OTHER NOTICE.—In the case of an officer under paragraph (1) who is eligible to be credited with service in a grade only by reason of the exercise of the authority in subsection (c)(3)(C) to reduce the three-year service-in-grade requirement under subsection (c)(1), the requirement for notification under subsection (c)(3)(D) is satisfied if the notification is included in the certification submitted by the Secretary of Defense under paragraph (1).

(e) CONDITIONAL RETIREMENT GRADE AND RETIREMENT FOR OFFICERS UNDER INVESTIGATION FOR MISCONDUCT OR PENDING ADVERSE PERSONNEL ACTION.—The retirement grade, and retirement, of a person covered by this section who is under investigation for alleged misconduct or pending the disposition of an adverse personnel action at the time of retirement is as provided for by section 1370(d) of this title. In the application of such section 1370(d) for purposes of this subsection, any reference[1] ''active duty'' shall be deemed not to apply, and any reference to a provision of section 1370 of this title shall be deemed to be a reference to the analogous provision of this section.

(f) FINAL RETIREMENT GRADE FOLLOWING RESOLUTION OF PENDING INVESTIGATION OR ADVERSE ACTION.—The final retirement grade under this section of a person described in subsection (e) following resolution of the investigation or personnel action concerned is the final retirement grade provided for by section 1370(e) of this title. In the application of such section 1370(e) for purposes of this subsection, any reference to a provision of section 1370 of this title shall be deemed to be a reference to the analogous provision of this section. In the application of paragraph (3) of such section 1370e(e)[2] for purposes of this subsection, the reference to ''chapter 71'' of this title[3] shall be deemed to be a reference to ''chapter 1223 of this title''.

(g) FINALITY OF RETIRED GRADE DETERMINATIONS.—

(1) IN GENERAL.—Except for a conditional determination authorized by subsection (e), a determination of the retired grade of a person pursuant to this section is administratively final on the day the person is retired, and may not be reopened.

(2) REOPENING.—A determination of the retired grade of a person may be reopened in accordance with applicable provisions of section 1370(f) of this title. In the application of such section 1370(f) for purposes of this subsection, any reference to a provision of section 1370 of this title shall be deemed to be a reference to the analogous provision of this section. In the application of paragraph (7) of such section 1370(f) for purposes of this paragraph, the reference to ''chapter 71 of this title'' shall be deemed to be a reference to ''chapter 1223 of this title''.

(h) HIGHEST PERMANENT GRADE DEFINED.—In this section, the term ''highest permanent grade'' means a grade at or below the grade of major general in the Army, Air Force, or Marine Corps or rear admiral in the Navy.

(Added Pub. L. 116–283, div. A, title V, § 508(a)(1), Jan. 1, 2021, 134 Stat. 3580.)

[1] So in original. Probably should be followed by ''to''.

[2] So in original. Probably should be ''1370(e)''.

[3] So in original. The closing quotation marks following ''71'' probably should follow ''title''.

§ 1371. Warrant officers: general rule

Unless entitled to a higher retired grade under some other provision of law, a warrant officer shall be retired in the highest regular or reserve warrant officer grade in which the warrant officer served satisfactorily, as determined by the Secretary concerned.

(Aug. 10, 1956, ch. 1041, 70A Stat. 104; Pub. L. 114–92, div. A, title V, § 505, Nov. 25, 2015, 129 Stat. 808.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1371	10:600*l*(d) (1st sentence). 10:600*l*(f) (1st sentence, as applicable to retired grade). 34:430(d) (1st sentence). 34:430(f) (1st sentence, as applicable to retired grade).	May 29, 1954, ch. 249, § 14(d) (1st sentence), (f) (1st sentence, as applicable to retired grade), 68 Stat. 163, 164.

The first 13 words are substituted for 10:600*l*(f) (1st sentence, as applicable to retired grade) and 34:430 (1st sentence, as applicable to retired grade). The words ''for a period of more than 30 days'' are substituted for the words ''under * * * orders specifying that the period of such duty shall be for a period in excess of thirty days or for an indefinite period'', to conform to the definition of those words in section 101(23) of this title. The words ''any full time duty'' are omitted, since the duty specified would necessarily be full time duty. The words ''under this section'' and ''competent'' are omitted as surplusage.

AMENDMENTS

2015—Pub. L. 114–92 amended section generally. Prior to amendment, text read as follows: ''Unless entitled to a higher retired grade under some other provision of law, a warrant officer retires, as determined by the Secretary concerned, in the permanent regular or reserve warrant officer grade, if any, that he held on the day before the date of his retirement, or in any higher warrant officer grade in which he served on active duty satisfactorily, as determined by the Secretary, for a period of more than 30 days.''

PUBLIC HEALTH SERVICE

Authority vested by this chapter in ''military departments'', ''the Secretary concerned'', or ''the Secretary

of Defense'' to be exercised, with respect to commissioned officers of Public Health Service, by Secretary of Health and Human Services or his designee, see section 213a of Title 42, The Public Health and Welfare.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Authority vested by this chapter in ''military departments'', ''the Secretary concerned'', or ''the Secretary of Defense'' to be exercised, with respect to commissioned officer corps of National Oceanic and Atmospheric Administration, by Secretary of Commerce or Secretary's designee, see section 3071 of Title 33, Navigation and Navigable Waters.

§ 1372. Grade on retirement for physical disability: members of armed forces

Unless entitled to a higher retired grade under some other provision of law, any member of an armed force who is retired for physical disability under section 1201 or 1204 of this title, or whose name is placed on the temporary disability retired list under section 1202 or 1205 of this title, is entitled to the grade equivalent to the highest of the following:

(1) The grade or rank in which he is serving on the date when his name is placed on the temporary disability retired list or, if his name was not carried on that list, on the date when he is retired.

(2) The highest temporary grade or rank in which he served satisfactorily, as determined by the Secretary of the armed force from which he is retired.

(3) The permanent regular or reserve grade to which he would have been promoted had it not been for the physical disability for which he is retired and which was found to exist as a result of a physical examination.

(4) The temporary grade to which he would have been promoted had it not been for the physical disability for which he is retired, if eligibility for that promotion was required to be based on cumulative years of service or years of service in grade and the disability was discovered as a result of a physical examination.

(Aug. 10, 1956, ch. 1041, 70A Stat. 105; Pub. L. 104–201, div. A, title V, § 577, Sept. 23, 1996, 110 Stat. 2536.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
1372	37:272(d) (104th through 128th words, as applicable to retired grade; and 2d and 5th provisos). 37:279 (less applicability to 37:272(d) (last proviso)).	Oct. 12, 1949, ch. 681, §§ 402(d) (104th through 128th words, as applicable to retired grade; and 2d and 5th provisos), 409 (less applicability to § 402(d) (last proviso)), 63 Stat. 818, 823.

Clause (1) is substituted for 37:272(d) (104th through 128th words, as applicable to retired grade). The words ''if his name was not carried on that list'' are substituted for the words ''whichever is earlier''.

AMENDMENTS

1996—Pars. (3), (4). Pub. L. 104–201 substituted ''a physical examination'' for ''his physical examination for promotion''.

§ 1373. Higher grade for later physical disability: retired officers recalled to active duty

Unless entitled to a higher retired grade under some other provision of law, a member of an armed force whose retired pay is computed under section 1402(d) or 1402a(d) of this title is entitled, upon his release from active duty, to the grade equivalent to the grade or rank upon which his retired pay is based under that section.

(Aug. 10, 1956, ch. 1041, 70A Stat. 105; Pub. L. 96–342, title VIII, § 813(b)(3)(C), Sept. 8, 1980, 94 Stat. 1104.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
1373	37:272(d) (last proviso, as applicable to retired grade). 37:279 (as applicable to 37:272(d) (last proviso)).	Oct. 12, 1949, ch. 681, §§ 402(d) (last proviso, as applicable to retired grade), 409 (as applicable to § 402(d) (last proviso)), 63 Stat. 819, 823.

The applicability of the rule stated in 37:279 to all members whose retired pay is computed under 37:272(d) (last proviso) is based on an opinion of the Judge Advocate General of the Army (JAGA 1953/3305, 24 Apr. 1953).

AMENDMENTS

1980—Pub. L. 96–342 inserted reference to section 1402a(d) of this title.

[§ 1374. Repealed. Pub. L. 103–337, div. A, title XVI, § 1662(k)(2), Oct. 5, 1994, 108 Stat. 3006]

Section, added Pub. L. 85–861, § 1(29), Sept. 2, 1958, 72 Stat. 1451; amended Pub. L. 86–559, § 1(4), June 30, 1960, 74 Stat. 265; Pub. L. 99–661, div. A, title V, § 508(d)(2), Nov. 14, 1986, 100 Stat. 3867, related to reserve commissioned officers' grade on retirement or transfer to Retired Reserve. See sections 12771 to 12773 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

§ 1375. Entitlement to commission: commissioned officers advanced on retired list

A commissioned officer of the Army, Navy, Air Force, Marine Corps, or Space Force who is advanced on a retired list is entitled to a commission in the grade to which he is advanced.

(Aug. 10, 1956, ch. 1041, 70A Stat. 105; Pub. L. 116–283, div. A, title IX, § 924(b)(3)(W), Jan. 1, 2021, 134 Stat. 3821.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
1375	10:1014. 34:394.	Mar. 4, 1911, ch. 266, 36 Stat. 1354.

The words ''has been or shall hereafter'', ''by operation of or in accordance with law'', and ''and shall receive'' are omitted as surplusage. The words ''in the grade to which he is advanced'' are substituted for the words ''in accordance with such advanced rank''.

AMENDMENTS

2021—Pub. L. 116–283 substituted ''Marine Corps, or Space Force'' for ''or Marine Corps''.

§ 1376. Temporary disability retired lists

The Secretary concerned shall maintain a temporary disability retired list containing the names of members of the armed forces under his jurisdiction placed thereon under sections 1202 and 1205 of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 105; Pub. L. 85–861, § 1(31), Sept. 2, 1958, 72 Stat. 1451; Pub. L. 103–337, div. A, title XVI, § 1662(k)(3), Oct. 5, 1994, 108 Stat. 3006.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1376(a)	50:927(a) (less 1st 11 words). 50:927(b) (less last 7 words of 1st sentence).	Oct. 12, 1949, ch. 681, § 401 (less (a)), 63 Stat. 816. July 9, 1952, ch. 608, § 207(a) (less 1st 11 words), (b) (less last 7 words of 1st sentence), 66 Stat. 483.
1376(b)	37:271 (less (a)).	

In subsection (a), the word "maintained" is substituted for the word "established", and in subsection (b), the word "maintain" is substituted for the word "established", since the lists have been established and are published annually.

In subsection (a), the words "who are in the Retired Reserve" are substituted for 50:927(a) (last 11 words), since section 271 of this title prescribes the conditions for being placed in the Retired Reserve. 50:927(b) (last sentence) is omitted, since the revised section provides that both lists be maintained.

In subsection (b), the words "containing the names placed thereon under section 1202 or 1205 of this title" are substituted for the words "upon which shall be placed the names of all members of his service entitled to such placement pursuant to the provisions of this subchapter".

1958 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1376	[Uncodified].	July 24, 1956, ch. 677, § 2 (less clauses (a)–(i), as applicable to 10:1376), 70 Stat. 623.

AMENDMENTS

1994—Pub. L. 103–337 substituted "Temporary disability retired lists" for "Retired lists" as section catchline, struck out "(b)" before "The Secretary concerned", and struck out subsec. (a) which read as follows: "Under regulations prescribed by the Secretary concerned, there shall be maintained retired lists containing the names of the Reserves of the armed forces under his jurisdiction who are in the Retired Reserve." See section 12774 of this title.

1958—Subsec. (b). Pub. L. 85–861 struck out provisions requiring publication of the temporary disability retired list annually in the official register or other official publication of the armed force concerned.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

CHAPTER 71—COMPUTATION OF RETIRED PAY

Sec.
1401. Computation of retired pay.
1401a. Adjustment of retired pay and retainer pay to reflect changes in Consumer Price Index.
1402. Recomputation of retired or retainer pay to reflect later active duty of members who first became members before September 8, 1980.
1402a. Recomputation of retired or retainer pay to reflect later active duty of members who first became members after September 7, 1980.
1403. Disability retired pay: treatment under Internal Revenue Code of 1986.
1404. Applicability of section 8301 of title 5.
1405. Years of service.
1406. Retired pay base for members who first became members before September 8, 1980: final basic pay.
1407. Retired pay base for members who first became members after September 7, 1980: high-36 month average.
1407a. Retired pay base: officers retired in general or flag officer grades.
1408. Payment of retired or retainer pay in compliance with court orders.
1409. Retired pay multiplier.
1410. Restoral of full retirement amount at age 62 for certain members entering on or after August 1, 1986.
1411. Rules of construction.
1412. Administrative provisions.
[1413. Repealed.]
1413a. Combat-related special compensation.
1414. Members eligible for retired pay who are also eligible for veterans' disability compensation for disabilities rated 50 percent or higher: concurrent payment of retired pay and veterans' disability compensation.
1415. Lump sum payment of certain retired pay.

AMENDMENTS

2015—Pub. L. 114–92, div. A, title VI, § 633(a)(2), Nov. 25, 2015, 129 Stat. 850, added item 1415.

2011—Pub. L. 111–383, div. A, title VI, § 632(b)(2), Jan. 7, 2011, 124 Stat. 4240, added item 1412 and struck out former item 1412 "Rounding to next lower dollar".

2006—Pub. L. 109–364, div. A, title VI, § 641(b), Oct. 17, 2006, 120 Stat. 2259, added item 1407a.

2003—Pub. L. 108–136, div. A, title VI, § 641(d), (e)(2), Nov. 24, 2003, 117 Stat. 1516, 1517, struck out item 1413 "Special compensation for certain severely disabled uniformed services retirees", and substituted "Combat-related special compensation" for "Special compensation for certain combat-related disabled uniformed services retirees" in item 1413a and "Members eligible for retired pay who are also eligible for veterans' disability compensation for disabilities rated 50 percent or higher: concurrent payment of retired pay and veterans' disability compensation" for "Members eligible for retired pay who have service-connected disabilities: payment of retired pay and veterans' disability compensation; contingent authority" in item 1414.

2002—Pub. L. 107–314, div. A, title VI, § 636(a)(3), Dec. 2, 2002, 116 Stat. 2576, added item 1413a.

2001—Pub. L. 107–107, div. A, title VI, § 641(c), Dec. 28, 2001, 115 Stat. 1150, added item 1414.

1999—Pub. L. 106–65, div. A, title VI, §§ 643(b)(3)(B), 658(a)(2), Oct. 5, 1999, 113 Stat. 664, 669, inserted "certain" before "members" in item 1410 and added item 1413.

1987—Pub. L. 100–26, § 7(h)(2)(B), Apr. 21, 1987, 101 Stat. 282, substituted colon for semicolon and "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954" in item 1403.

1986—Pub. L. 99–348, title III, § 304(b)(2), July 1, 1986, 100 Stat. 703, inserted "of members who first became members before September 8, 1980" in item 1402, substituted "Retired pay base for members who first became members before September 8, 1980: final basic pay" for "Limitations on revocation of retired pay" in item 1406 and "Retired pay base for members who first became members after September 7, 1980: high-36

month average'' for ''Retired pay base'' in item 1407, and added items 1409 to 1412.

1982—Pub. L. 97–252, title X, §1002(b), Sept. 8, 1982, 96 Stat. 735, added item 1408.

1980—Pub. L. 96–513, title V, §511(51)(C), (52)(C), Dec. 12, 1980, 94 Stat. 2924, 2925, substituted ''of members who first became members after September 7, 1980'' for ''in case of members who first became members after the enactment of the Department of Defense Authorization Act, 1981'' in item 1402a, and substituted ''Internal Revenue Code of 1954'' for ''title 26'' in item 1403.

Pub. L. 96–342, title VIII, §813(a)(2), (b)(3)(B), 94 Stat. 1101, 1104, added items 1402a and 1407.

1966—Pub. L. 89–718, §3, Nov. 2, 1966, 80 Stat. 1115, substituted ''8301'' for ''47a'' in item 1404.

Pub. L. 89–652, §2(2), Oct. 14, 1966, 80 Stat. 902, added item 1406.

1963—Pub. L. 88–132, §5(g)(2), Oct. 2, 1963, 77 Stat. 214, added item 1401a.

1958—Pub. L. 85–422, §11(a)(1)(B), May 20, 1958, 72 Stat. 131, added item 1405.

§ 1401. Computation of retired pay

(a) DISABILITY, NON-REGULAR SERVICE, WARRANT OFFICER, AND DOPMA RETIREMENT.—The monthly retired pay of a person entitled thereto under this subtitle is computed according to the following table. For each case covered by a section of this title named in the column headed ''For sections'', retired pay is computed by taking, in order, the steps prescribed opposite it in columns 1, 2, and 3, as modified by the applicable footnotes.

Formula No.	For sections	Column 1 Take	Column 2 Multiply by	Column 3 Add
1	1201 1204	Retired pay base as computed under section 1406(b) or 1407.	As member elects— (1) the retired pay multiplier determined for the member under section 1409 of this title;[1] or (2) the percentage of disability, not to exceed 75%, on date when retired.	
2	1202 1205	Retired pay base as computed under section 1406(b) or 1407.	As member elects— (1) the retired pay multiplier determined for the member under section 1409 of this title;[1] or (2) the percentage of disability, not to exceed 75%, on date when his name was placed on temporary disability retired list.	Amount necessary to increase product of columns 1 and 2 to 50% of retired pay base upon which computation is based.
4	580 1263 1293 1305	Retired pay base as computed under section 1406(b) or 1407.	The retired pay multiplier prescribed in section 1409 for the years of service credited to him under section 1405.	
5	633 634 635 636 1251 1252 1253	Retired pay base as computed under section 1406(b) or 1407.	The retired pay multiplier prescribed in section 1409 for the years of service credited to him under section 1405.	

[1] Before applying percentage factor, credit each full month of service that is in addition to the number of full years of service creditable to the member as one-twelfth of a year and disregard any remaining fractional part of a month.

(b) USE OF MOST FAVORABLE FORMULA.—If a person would otherwise be entitled to retired pay computed under more than one formula of the table in subsection (a) or of any other provision of law, the person is entitled to be paid under the applicable formula that is most favorable to him.

(Aug. 10, 1956, ch. 1041, 70A Stat. 106; Pub. L. 85–422, §§6(7), 11(a)(2), May 20, 1958, 72 Stat. 129, 131; Pub. L. 88–132, §5(h)(1), Oct. 2, 1963, 77 Stat. 214; Pub. L. 89–132, §6, Aug. 21, 1965, 79 Stat. 547; Pub. L. 90–207, §3(1), Dec. 16, 1967, 81 Stat. 653; Pub. L. 92–455, §1, Oct. 2, 1972, 86 Stat. 761; Pub. L. 96–342, title VIII, §813(b)(1), Sept. 8, 1980, 94 Stat. 1102; Pub. L. 96–513, title I, §113(a), title V, §511(49), Dec. 12, 1980, 94 Stat. 2876, 2924; Pub. L. 98–94, title IX, §§922(a)(1), 923(a)(1), (2)(A), Sept. 24, 1983, 97 Stat. 641, 642; Pub. L. 98–557, §35(b), Oct. 30, 1984, 98 Stat. 2877; Pub. L. 99–348, title II, §201(a), July 1, 1986, 100 Stat. 691; Pub. L. 102–484, div. A, title X, §1052(18), Oct. 23, 1992, 106 Stat. 2500; Pub. L. 103–337, div. A, title XVI, §1662(j)(2), Oct. 5, 1994, 108 Stat. 3004; Pub. L. 109–163, div. A, title V, §509(d)(1)(A), Jan. 6, 2006, 119 Stat. 3231; Pub. L. 109–364, div. A, title V, §502(d)(1), Oct. 17, 2006, 120 Stat. 2177; Pub. L. 111–383, div. A, title VI, §631(a), Jan. 7, 2011, 124 Stat. 4239; Pub. L. 112–239, div. A, title X, §1076(f)(19), Jan. 2, 2013, 126 Stat. 1952; Pub. L. 114–92, div. A, title VI, §631(c)(1)(A), Nov. 25, 2015, 129 Stat. 843.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1401 Introductory clause.	10:600*l*(f) (1st sentence, less applicability to retired grade). 34:430(f) (1st sentence, less applicability to retired grade). 37:272(d) (less 1st 55	June 29, 1948, ch. 708, §303 (1st 91 words and 1st proviso), 62 Stat. 1088. Oct. 12, 1949, ch. 681, §§402(d) (less 30th through 55th words; less 104th through 128th words, as applicable to retired grade; and less 2d, 5th, and last provisos), 402(e) (1st proviso of last sentence), 63 Stat. 818, 819.
1401(1)	words; less 104th through 128th words, as applicable to retired grade; and less 1st, 2d, 4th, 5th, and last provisos). 37:272(e) (1st proviso of last sentence).	
1401(2)	37:272(d) (1st 29, and 51st through 55th, words, and 4th proviso).	May 29, 1954, ch. 249, §14(d) (less 1st sentence), (f) (1st sentence, less applicability to retired grade; and last sentence), 68 Stat. 163, 164.
1401(3)	10:1036b (1st 91 words and 1st proviso). 34:440j (1st 91 words and 1st proviso).	
1401(4)	10:600*l*(d) (2d sentence). 10:600*l*(f) (last sentence). 34:430(d) (2d sentence). 34:430(f) (last sentence).	
1401, footnote 1.	[No source].	
1401, footnote 2.	[No source].	
1401, footnote 3.	37:272(d) (1st proviso); 10:600*l*(d) (less 1st and 2d sentences).	

HISTORICAL AND REVISION NOTES—CONTINUED

Revised section	Source (U.S. Code)	Source (Statutes at Large)
	34:430(d) (less 1st and 2d sentences).	

In the introductory paragraph, the applicability of the rule stated in the third sentence to situations not expressly covered by the laws named in the source statutes above is a practical construction that the rule must be reciprocally applied in all cases.

In formula No. 1, the words ''whichever is earlier'', in 37:272(d) (clause (2)), are omitted, since they are contrary to the rule stated in 37:272(e) (1st proviso of last sentence).

In formula No. 3, the computation is based on monthly pay instead of annual pay to conform to the other formulas of the revised section. The words ''basic pay'' are substituted for the words ''base and longevity pay'' to conform to the terminology of the Career Compensation Act of 1949 (37 U.S.C. 231 et seq.). The words ''which he would receive if serving, at the time granted such pay, on active duty'' are omitted as surplusage and to conform to the other formulas of the revised section, since the effect of these words is covered by footnote 1. The words ''at any time'' are substituted for the words ''during his entire period of service''.

Footnotes 1 and 2 reflect the long-standing construction of those provisions dealing with computation of retired pay which do not specifically provide that the member is entitled to compute his retired pay on the basis of the monthly basic pay to which he would be entitled if he were on active duty in his retired grade. The pertinent basic computation provisions for such retirement either provide for computation of retired pay on the same basis as the provisions dealing with higher retired grade, or the basic retirement provisions were enacted after the provisions authorizing higher retired grade. The words ''at rates applicable on date of retirement * * * and adjust to reflect later changes in permanent rates'', in footnote 1; and all of footnote 2; are based on the source statutes incorporated in the formulas to which footnotes 1 and 2 apply, as interpreted in an opinion of the Judge Advocate General of the Army (1953/4120, 14 May 1953).

In footnote 3, the words ''and disregard a part of a year that is less than six months'' are made applicable to formulas Nos. 1 and 2. The legislative history of the Career Compensation Act of 1949 (Hearings before the Committee on Armed Services of the Senate on H.R. 5007, 81st Congress, First Session, page 313, July 6, 1949) indicates that the provisions, upon which formulas Nos. 1 and 2 are based, should be construed to require that a fraction of less than one-half of a year be disregarded. It also indicates that other retirement laws that are also silent on this point should be similarly construed.

AMENDMENTS

2015—Subsec. (a). Pub. L. 114–92, in column 2 of table, substituted ''the retired pay multiplier determined for the member under section 1409 of this title'' for ''2½% of years of service credited to him under section 1208'' in formula numbers 1 and 2 and ''section 1409'' for ''section 1409(a)'' in formula numbers 4 and 5.

2013—Subsec. (a). Pub. L. 112–239 substituted ''columns 1, 2, and 3,'' for ''columns 1, 2, 3, and 4,'' in introductory provisions.

2011—Subsec. (a). Pub. L. 111–383 in column 2 of table inserted '', not to exceed 75%,'' after ''percentage of disability'' in two places and struck out column 4 of table which directed subtraction of excess over 75 percent of retired pay base upon which computation is based in formulas 1 and 2.

2006—Subsec. (a). Pub. L. 109–364 in table inserted ''1253'' after ''1252'' in column under heading ''For sections''.

Pub. L. 109–163 in table inserted ''1252'' after ''1251'' in column under heading ''For sections''.

1994—Subsec. (a). Pub. L. 103–337 in table struck out formula number 3 which provided formula for computing retired pay under former section 1331 of this title.

1992—Subsec. (a). Pub. L. 102–484 substituted ''580'' for ''564'' in column in table under heading ''For sections''.

1986—Subsec. (a). Pub. L. 99–348, §201(a)(1), (2), designated existing provision as subsec. (a), added heading, and struck out third, fourth, and fifth sentences which read as follows: ''The amount computed, if not a multiple of $1, shall be rounded to the next lower multiple of $1. However, if a person would otherwise be entitled to retired pay computed under more than one pay formula of this table or of any other provision of law, he is entitled to be paid under the applicable formula that is most favorable to him. Section references below are to sections of this title.''

Pub. L. 99–348, §201(a)(3), amended column 1 of table generally by substituting provisions that retired pay be computed by taking the retired pay base as computed under section 1406(b) or 1407 of this title for provisions that retired pay be computed for a person who first became a member of a uniformed service, as defined in section 1407(a)(2) of this title, after Sept. 7, 1980, by taking the monthly retired pay base as computed under section 1407(b) of this title, and for all others, by taking the monthly basic pay to which the member was entitled under various circumstances.

Pub. L. 99–348, §201(a)(4), substituted in column 2 of table a multiplier of the retired pay multiplier prescribed in section 1409(a) for the years of service credited to him under section 1405 for a multiplier of 2½% of years of service credited under section 1405 for formulas 4 and 5 and struck out ''Excess over 75% of pay upon which computation is based.'' in column 4 of table for formulas 4 and 5.

Pub. L. 99–348, §201(a)(5), in columns 3 and 4 substituted ''retired pay base'' for ''pay'' wherever appearing.

Pub. L. 99–348, §201(a)(6), redesignated footnote 3 as 1, and struck out former footnote 1 which provided computation at rates applicable on date of retirement or date when the member's name was placed on temporary disability retired list, as the case may be, footnote 2 which provided computation at rates applicable on the date when retired pay is granted, footnote 4 which provided computation at the highest rates of basic pay applicable to an officer who served as Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, chief of Staff of the Air Force, Commandant of the Marine Corps, or Commandant of the Coast Guard, while so serving in that office and computation at the highest rate of basic pay applicable to an enlisted person who has served as sergeant major of the Army, master chief petty officer of the Navy, chief master sergeant of the Air Force, sergeant major of the Marine Corps, or master chief petty officer of the Coast Guard, while he served if that rate is higher than the rate authorized by the table, and footnote 5 which provided for purposes of this section that an officer's retired grade be determined as if sections 3962(b) and 8962(b) did not apply.

Pub. L. 99–348, §201(a)(7), in column 2 of table substituted footnote 1 designation for footnote 3 designation wherever appearing.

Subsec. (b). Pub. L. 99–348, §201(a)(8), added subsec. (b).

1984—Pub. L. 98–557 inserted reference to Commandant of the Coast Guard in footnote 4 of table.

1983—Pub. L. 98–94, §922(a)(1), inserted ''The amount computed, if not a multiple of $1, shall be rounded to the next lower multiple of $1.''

Pub. L. 98–94, §923(a)(1), (2)(A), in footnote 3 of table, substituted ''Before applying percentage factor, credit each full month of service that is in addition to the number of full years of service creditable to the member as one-twelfth of a year and disregard any remaining fractional part of a month'' for ''Before applying percentage factor, credit a part of a year that is six months or more as a whole year, and disregard a part of a year that is less than six months''.

1980—Pub. L. 96–513, §113(a), inserted formula 5 in table of formulae set out in the section and added footnote 5.

Pub. L. 96–513, § 511(49), in formula 4 table of sections struck out reference to section 1255, in heading for Column 1 substituted reference to Sept. 7, 1980, for reference to date of enactment of Department of Defense Authorization Act, 1981, and in footnote 4 substituted reference to master chief petty officer of the Navy, for reference to senior enlisted advisor of the Navy.

Pub. L. 96–342 in heading for column 1 of table inserted provisions respecting applicability to persons becoming members after the date of the enactment of the Department of Defense Authorization Act, 1981.

1972—Pub. L. 92–455 substituted in second sentence of footnote 4 of table ''chief master sergeant of the Air Force, sergeant major of the Marine Corps, or master chief petty officer of the Coast Guard,'' for ''chief master sergeant of the Air Force, or sergeant major of the Marine Corps,''.

1967—Pub. L. 90–207 inserted sentence to footnote 4 of table requiring the computation of retired pay for an enlisted person who has served as senior noncommissioned officer of his service at the highest rate of basic pay applicable to him while he so served, if that rate is higher than the rate authorized by the table.

1965—Pub. L. 89–132 struck out ''increased, for members credited with two or less years of service for basic pay purposes, by 6%'' from column 1 of formula 1 and column 1 of formula 2.

1963—Pub. L. 88–132 struck out from footnote 1 of table '', and adjust to reflect later changes in applicable permanent rates'' after ''as the case may be.''

1958—Pub. L. 85–422, § 6(7)(A), inserted provisions in Column 1 of formulas 1 and 2 permitting the taking of the monthly basic pay to which a member was entitled on the day before retirement or placement on temporary disability retired list, increased, for members credited with two or less years of service for basic pay purposes, by 6 percent.

Pub. L. 85–422, § 11(a)(2), substituted ''under section 1405 of this title'' for ''in computing basic pay'' in column 2 of formula 4.

Pub. L. 85–422, § 6(7)(B), added footnote 4.

EFFECTIVE DATE OF 2015 AMENDMENT; IMPLEMENTATION

Amendment by Pub. L. 114–92 effective Jan. 1, 2018, with certain implementation requirements, see section 635 of Pub. L. 114–92, set out as a note under section 8432 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 2011 AMENDMENT

Pub. L. 111–383, div. A, title VI, § 631(d), Jan. 7, 2011, 124 Stat. 4240, provided that: ''The tables in sections 1401(a), 1402(d), and 1402a(d) of title 10, United States Code, as in effect on the day before the date of the enactment of this Act [Jan. 7, 2011], shall continue to apply to the computation or recomputation of retired or retainer pay for persons who first became entitled to retired or retainer pay under subtitle A of such title on or before the date of the enactment of this Act. The amendments made by this section [amending this section and sections 1402 and 1402a of this title] shall apply only with respect to persons who first become entitled to retired or retainer pay under such subtitle after that date.''

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–557, § 35(c), Oct. 30, 1984, 98 Stat. 2877, provided that: ''The amendments made by this section [amending this section and provisions set out as a note under section 1009 of Title 37, Pay and Allowances of the Uniformed Services] shall become effective on October 1, 1984''.

EFFECTIVE DATE OF 1983 AMENDMENT

Pub. L. 98–94, title IX, § 922(e), Sept. 24, 1983, 97 Stat. 642, provided that: ''The amendments made by this section [enacting section 6333 of this title and amending this section, sections 1401a, 1402, 1402a, 1437, 1451, 3991, 3992, 6151, 6383, 8991, and 8992 of this title, section 423 of Title 14, Coast Guard, section 853*o* of Title 33, Navigation and Navigable Waters, section 212 of Title 42, The Public Health and Welfare] shall take effect on October 1, 1983.''

Amendment by section 923 of Pub. L. 98–94 applicable with respect to the computation of retired or retainer pay of any individual who becomes entitled to that pay after Sept. 30, 1983, see section 923(g) of Pub. L. 98–94, set out as a note under section 1174 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by section 113(a) of Pub. L. 96–513 effective Sept. 15, 1981, but the authority to prescribe regulations under the amendment by Pub. L. 96–513 effective on Dec. 12, 1980, and amendment by section 511(49) of Pub. L. 96–513 effective Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90–207 effective Oct. 1, 1967, see section 7 of Pub. L. 90–207, set out as a note under section 203 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89–132 effective Sept. 1, 1965, see section 10 of Pub. L. 89–132, set out as a note under section 203 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF 1963 AMENDMENT

Amendment by Pub. L. 88–132 effective Oct. 1, 1963, see section 14 of Pub. L. 88–132, set out as a note under section 201 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by section 6(7) of Pub. L. 85–422 inapplicable to retired persons or to persons to whom retired pay is granted before May 31, 1958, see section 6 of Pub. L. 85–422, set out in part under section 3991 of this title.

Amendment by Pub. L. 85–422 effective June 1, 1958, see section 9 of Pub. L. 85–422.

SHORT TITLE OF 1986 AMENDMENT

Pub. L. 99–348, § 1(a), July 1, 1986, 100 Stat. 682, provided that: ''This Act [enacting sections 134a, 1406, 1407, and 1409 to 1412 of this title, redesignating former section 1406 of this title as section 1338 [now 12738] of this title, amending this section, sections 101, 135, 136a, 716, 1040, 1338 [now 12738], 1401a, 1402, 1402a, 1405, 1447, 1451, 1452, 2830, 3925, 3991, 3992, 5083, 5201, 6151, 6322, 6323, 6325, 6326, 6330, 6333, 6383, 8925, 8991, and 8992 of this title, sections 5313 and 5314 of Title 5, Government Organization and Employees, sections 46, 47, 51, 288, 291 to 293, 327, 334, 353 to 355, 357, 362, and 421 to 424 of Title 14, Coast Guard, section 853*o* of Title 33, Navigation and Navigable Waters, and sections 211 and 212 of Title 42, The Public Health and Welfare, repealing former section 1407 and section 6328 of this title, enacting provisions set out as notes under this section and sections 135 and 12731 of this title, and repealing provisions set out as notes under this section and section 6330 of this title] may be cited as the 'Military Retirement Reform Act of 1986'.''

SHORT TITLE OF 1982 AMENDMENT

Pub. L. 97–252, title X, § 1001, Sept. 8, 1982, 96 Stat. 730, provided that: ''This title [enacting section 1408 of this title, amending sections 1072, 1076, 1086, 1447, 1448, and 1450 of this title, and enacting provisions set out as notes under sections 1408 and 2208 of this title] may be

cited as the 'Uniformed Services Former Spouses' Protection Act'.''

TREATMENT AS ACTIVE SERVICE FOR RETIRED PAY PURPOSES OF SERVICE AS MEMBER OF ALASKA TERRITORIAL GUARD DURING WORLD WAR II

Pub. L. 111–84, div. A, title VI, § 645, Oct. 28, 2009, 123 Stat. 2368, provided that:

''(a) IN GENERAL.—Service as a member of the Alaska Territorial Guard during World War II of any individual who was honorably discharged therefrom under section 8147 of the Department of Defense Appropriations Act, 2001 (Public Law 106–259; 114 Stat. 705) [amending section 106 of Title 38, Veterans' Benefits, and enacting provisions set out as a note under section 106 of Title 38] shall be treated as active service for purposes of the computation under chapter 61, 71, 371 [now 745], 571 [now 841], 871 [now 945], or 1223 of title 10, United States Code, as applicable, of the retired pay to which such individual may be entitled under title 10, United States Code.

''(b) APPLICABILITY.—Subsection (a) shall apply with respect to amounts of retired pay payable under title 10, United States Code, for months beginning on or after the date of the enactment of this Act [Oct. 28, 2009]. No retired pay shall be paid to any individual by reason of subsection (a) for any period before that date.

''(c) WORLD WAR II DEFINED.—In this section, the term 'World War II' has the meaning given that term in section 101(8) of title 38, United States Code.''

Similar provisions were contained in the following appropriation act:

Pub. L. 111–118, div. A, title VIII, § 8055, Dec. 19, 2009, 123 Stat. 3441.

RECOMPUTATION OF RETIRED PAY FOR CERTAIN RECENTLY RETIRED OFFICERS

Pub. L. 106–65, div. A, title VI, § 601(e), Oct. 5, 1999, 113 Stat. 648, provided that: ''In the case of a commissioned officer of the uniformed services who retired during the period beginning on April 30, 1999, through December 31, 1999, and who, at the time of retirement, was in pay grade O–7, O–8, O–9, or O–10, the retired pay of that officer shall be recomputed, effective as of January 1, 2000, using the rate of basic pay that would have been applicable to the computation of that officer's retired pay if the provisions of paragraph (2) of section 203(a) of title 37, United States Code, as added by subsection (d), had taken effect on April 30, 1999.''

SIX-MONTH ROUNDING RULE

Pub. L. 99–348, title III, § 305(b), July 1, 1986, 100 Stat. 704, provided that:

''(1) GENERAL RULE.—Retired pay or retainer pay may not be paid to a covered member of the Armed Forces (as defined in paragraph (3)) for any month in an amount that is greater than the amount otherwise determined to be payable after such reductions as may be necessary to reflect adjusting the computation of retired pay or retainer pay that includes credit for a part of a year of service to permit credit for a part of a year of service only for such month or months actually served.

''(2) EXCEPTIONS.—The limitation in paragraph (1) does not apply to a member who before January 1, 1982—

''(A) applied for retirement or transfer to the Fleet Reserve or Fleet Marine Corps Reserve;

''(B) was being processed for retirement under the provisions of chapter 61 of title 10, United States Code, or who was on the temporary disability retired list and thereafter retired under the provisions of section 1210(c) or 1210(d) of such title; or

''(C) was retired or in an inactive status and would have been eligible for retired pay under the provisions of chapter 67 [now 1223] of such title, but for the fact that the person was under 60 years of age.

''(3) DEFINITION OF COVERED MEMBER.—For the purposes of this subsection, the term 'covered member of the Armed Forces' means a member of the Armed Forces who became entitled to retired or retainer pay during the period beginning on January 1, 1982, and ending on September 30, 1983.

''(4) REPEAL OF SOURCE LAW.—Section 8054 of the Department of Defense Appropriations Act, 1985 (as contained in section 101(h) of Public Law 98–473) [formerly set out as a note below], is repealed.

''(5) CROSS REFERENCE.—For the effective date of October 1, 1983, for provisions making permanent programmatic changes in law to accomplish the policy provided in such section 8054 (and prior provisions of law), see section 923(h) of the Department of Defense Authorization Act, 1984 (Public Law 98–94) [probably means section 923(g) of Pub. L. 98–94, set out as an Effective Date of 1983 Amendment note under section 1174 of this title].''

LIMITATION ON PAYMENT OF RETIRED OR RETAINER PAY TO REFLECT FRACTIONAL YEAR ADJUSTMENTS

Pub. L. 98–473, title I, § 101(h)[title VIII, § 8054], Oct. 12, 1984, 98 Stat. 1904, 1933, prohibited, with certain exceptions, payment of retired pay or retainer pay of a member of the Armed Forces for any month who, on or after January 1, 1982, became entitled to retired or retainer pay, in an amount greater than the amount otherwise determined payable after reductions necessary to reflect adjusting the computation of retired pay or retainer pay that includes credit for part of a year of service to permit credit for a part of a year of service only for such month or months actually served, prior to repeal by Pub. L. 99–348, title III, § 305(b)(4), July 1, 1986, 100 Stat. 705.

INCREASE IN PAY AND ALLOWANCES OF CERTAIN PERSONS WHO SERVED AS GENERALS OF THE ARMY, FLEET ADMIRALS OF THE NAVY, GENERAL OF THE MARINE CORPS, OR ADMIRAL IN THE COAST GUARD

Pub. L. 90–207, § 5, Dec. 16, 1967, 81 Stat. 654, provided that: ''Notwithstanding any other provision of law, a member of an armed force who is entitled to pay and allowances under any of the following provisions of law on September 30, 1967, shall continue to receive the pay and allowances to which he was entitled on that day plus an increase of 4.5 per centum in the total of his pay and allowances:

''(1) The Act of March 23, 1946, chapter 112 (60 Stat. 59).

''(2) The Act of June 26, 1948, chapter 677 (62 Stat. 1052).

''(3) The Act of September 18, 1950, chapter 952 (64 Stat. A224).''

INCREASE IN RETIRED OR RETAINER PAY OF MEMBERS ENTITLED THERETO ON OR AFTER OCTOBER 1, 1967

Pub. L. 90–207, § 6, Dec. 16, 1967, 81 Stat. 654, provided that: ''Notwithstanding any other provision of law, a member or former member of a uniformed service who initially becomes entitled to retired pay or retainer pay on or after October 1, 1967, shall be entitled to have that pay computed using the rates of basic pay prescribed by the first section of this Act [amending section 203(a) of Title 37].''

INCREASES IN RETIRED OR RETAINER PAY

Pub. L. 89–501, title III, § 303, July 13, 1966, 80 Stat. 278, provided that: ''Notwithstanding any other provision of law, a member or former member of a uniformed service who initially becomes entitled to retired pay or retainer pay on the effective date of this title shall be entitled to have that pay computed using the rates of basic pay prescribed by the first section of this title [amending section 203(a) of Title 37].''

Effective date of section 303 of Pub. L. 89–501 as the first day of the first pay period which begins on or after July 1, 1966, see section 304 of Pub. L. 89–501, set out as Effective Date of 1966 Amendments note under section 203 of Title 37, Pay and Allowances of the Uniformed Services.

Pub. L. 89–132, § 5(a), Aug. 21, 1965, 79 Stat. 547, provided that: ''The retired pay or retainer pay of a member or former member of a uniformed service who is entitled to that pay computed under rates of basic pay in effect before the effective date of this Act [Sept. 1, 1965] shall be increased, effective that date, by the per centum (adjusted to the nearest one-tenth of 1 per centum) that the Consumer Price Index (all items—United States city average), published by the Bureau of Labor Statistics, for the calendar month immediately preceding the effective date of this Act has increased over the average monthly index for calendar year 1962.''

CONTINUATION OF PAY AND ALLOWANCES OF CERTAIN PERSONS WHO SERVED AS GENERALS OF THE ARMY, FLEET ADMIRALS OF THE NAVY, GENERAL OF THE MARINE CORPS, OR ADMIRAL IN THE COAST GUARD

Pub. L. 89–132, § 7, Aug. 21, 1965, 79 Stat. 547, provided that: ''Notwithstanding any other provision of law, a member of an armed force who was entitled to pay and allowances under any of the following provisions of law on the day before the effective date of this Act [Sept. 1, 1965] shall continue to receive the pay and allowances to which he was entitled on that day:

''(1) The Act of March 23, 1946, chapter 112 (60 Stat. 59).

''(2) The Act of June 26, 1948, chapter 677 (62 Stat. 1052).

''(3) The Act of September 18, 1950, chapter 952 (64 Stat. A224).''

INCREASE IN RETIRED PAY TO PERSONS RETIRED BEFORE JUNE 1, 1958

Pub. L. 85–422, § 4, May 20, 1958, 72 Stat. 128, as amended by Pub. L. 85–855, § 1(a), Aug. 28, 1958, 72 Stat. 1104, provided that:

''(a) Except for members covered by section 7 of this Act, members and former members of the uniformed services who are entitled to retired pay, retirement pay, retainer pay, or equivalent pay, on the day before the effective date of this Act [June 1, 1958], shall be entitled to an increase of 6 per centum of that pay to which they were entitled on that date.

''(b) Notwithstanding any other provision of law, a member of a uniformed service retired under any provision of law, or transferred to the Fleet Reserve or Fleet Marine Corps Reserve, on the effective date of this Act [June 1, 1958] shall have his retired pay or retainer pay computed on the basis of the rates of basic pay set forth in the Career Compensation Act of 1949, as amended by this Act, or on the rates of basic pay set forth in the Career Compensation Act of 1949 on the day before the effective date of this Act, plus 6 per centum of that pay, whichever is greater.

''(c) Section 5 of the Career Incentive Act of 1955 (69 Stat. 22) does not apply to any person who is retired, or to whom retired pay, retirement pay, retainer pay, or equivalent pay (including temporary disability retired pay) is granted, on or after the effective date of this Act [June 1, 1958]''.

Pub. L. 85–855, § 1(b), Aug. 28, 1958, 72 Stat. 1104, provided that the amendment of section 4(a) of Pub. L. 85–422, which eliminated the words ''and persons with two or less years of service for basic pay purposes who were retired for physical disability or placed on the temporary disability retired list'' preceding ''members and former members'' should be effective June 1, 1958.

PUBLIC HEALTH SERVICE

Authority vested by this chapter in ''military departments'', ''the Secretary concerned'', or ''the Secretary of Defense'' to be exercised, with respect to commissioned officers of Public Health Service, by Secretary of Health and Human Services or his designee, see section 213a of Title 42, The Public Health and Welfare.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Authority vested by this chapter in ''military departments'', ''the Secretary concerned'', or ''the Secretary of Defense'' to be exercised, with respect to commissioned officer corps of National Oceanic and Atmospheric Administration, by Secretary of Commerce or Secretary's designee, see section 3071 of Title 33, Navigation and Navigable Waters.

§ 1401a. Adjustment of retired pay and retainer pay to reflect changes in Consumer Price Index

(a) PROHIBITION ON RECOMPUTATION TO REFLECT INCREASES IN BASIC PAY.—Unless otherwise specifically provided by law, the retired pay of a member or former member of an armed force may not be recomputed to reflect any increase in the rates of basic pay for members of the armed forces.

(b) COST-OF-LIVING ADJUSTMENTS BASED ON CPI INCREASES.—

(1) INCREASE REQUIRED.—Effective on December 1 of each year, the Secretary of Defense shall increase the retired pay of members and former members entitled to that pay in accordance with paragraphs (2) and (3).

(2) PERCENTAGE INCREASE.—Except as otherwise provided in this subsection, the Secretary shall increase the retired pay of each member and former member by the percent (adjusted to the nearest one-tenth of 1 percent) by which—

(A) the price index for the base quarter of that year, exceeds

(B) the base index.

(3) REDUCED PERCENTAGE FOR CERTAIN POST-AUGUST 1, 1986 MEMBERS.—If the percent determined under paragraph (2) is greater than 1 percent, the Secretary shall increase the retired pay of each member and former member who first became a member on or after August 1, 1986, and has elected to receive a bonus under section 322 (as in effect before the enactment of the National Defense Authorization Act for Fiscal Year 2008) or section 354 of title 37, by the difference between—

(A) the percent determined under paragraph (2); and

(B) 1 percent.

(4) SPECIAL RULE FOR PARAGRAPH (3).—If in any case in which an increase in retired pay that would otherwise be made under paragraph (3) is not made by reason of law (other than any provision of this section), then (unless otherwise provided by law) when the next increase in retired pay is made under this subsection, the increase under paragraph (3) shall be carried out so as to achieve the same net increase in retired pay under that paragraph that would have been the case if that law had not been enacted.

(5) ADJUSTMENTS FOR PARTICIPANTS IN MODERNIZED RETIREMENT SYSTEM.—Notwithstanding paragraph (3), if a member or former member participates in the modernized retirement system by reason of section 1409(b)(4) of this title (including pursuant to an election under subparagraph (B) of that section), the Secretary shall increase the retired pay of such member in accordance with paragraph (2).

(6) REGULATIONS.—Any increase in retired pay under this subsection shall be made in ac-

cordance with regulations prescribed by the Secretary of Defense.

(c) FIRST COLA ADJUSTMENT FOR MEMBERS WITH RETIRED PAY COMPUTED USING FINAL BASIC PAY.—

(1) FIRST ADJUSTMENT WITH INTERVENING INCREASE IN BASIC PAY.—Notwithstanding subsection (b) but subject to subsection (f)(3), if a person described in paragraph (3) becomes entitled to retired pay based on rates of monthly basic pay that became effective after the last day of the calendar quarter of the base index, the retired pay of the member or former member shall be increased on the effective date of the next adjustment of retired pay under subsection (b) only by the percent (adjusted to the nearest one-tenth of 1 percent) by which—

(A) the price index for the base quarter of that year, exceeds

(B) the price index for the calendar quarter immediately before the calendar quarter in which the rates of monthly basic pay on which the retired pay is based became effective.

(2) FIRST ADJUSTMENT WITH NO INTERVENING INCREASE IN BASIC PAY.—If a person described in paragraph (3) becomes entitled to retired pay on or after the effective date of an adjustment in retired pay under subsection (b) but before the effective date of the next increase in the rates of monthly basic pay, the retired pay of the member or former member shall be increased (subject to subsection (f)(3) as applied to other members whose retired pay is computed on the current rates of basic pay in the most recent adjustment under this section), effective on the date the member becomes entitled to that pay, by the percent (adjusted to the nearest one-tenth of 1 percent) by which—

(A) the base index, exceeds

(B) the price index for the calendar quarter immediately before the calendar quarter in which the rates of monthly basic pay on which the retired pay is based became effective.

(3) MEMBERS COVERED.—Paragraphs (1) and (2) apply to a member or former member of an armed force who first became a member of a uniformed service before August 1, 1986, and whose retired pay base is determined under section 1406 of this title.

(d) FIRST COLA ADJUSTMENT FOR MEMBERS WITH RETIRED PAY COMPUTED USING HIGH-THREE.—Notwithstanding subsection (b) but subject to subsection (f)(3), the retired pay of a member or former member of an armed force who first became a member of a uniformed service before August 1, 1986, or on or after August 1, 1986, if the member or former member did not elect to receive a bonus under section 322 (as in effect before January 28, 2008) or section 354 of title 37 and whose retired pay base is determined under section 1407 of this title shall be increased on the effective date of the first adjustment of retired pay under subsection (b) after the member or former member becomes entitled to retired pay by the percent (adjusted to the nearest one-tenth of 1 percent) equal to the difference between the percent by which—

(1) the price index for the base quarter of that year, exceeds

(2) the price index for the calendar quarter immediately before the calendar quarter during which the member became entitled to retired pay.

(e) PRO RATING OF INITIAL ADJUSTMENT.—Notwithstanding subsection (b) but subject to subsection (f)(3), the retired pay of a member or former member of an armed force who first became a member of a uniformed service on or after August 1, 1986, and elected to receive a bonus under section 322 (as in effect before January 28, 2008) or section 354 of title 37 shall be increased on the effective date of the first adjustment of retired pay under subsection (b) after the member or former member becomes entitled to retired pay by the percent (adjusted to the nearest one-tenth of 1 percent) equal to the difference between—

(1) the percent by which—

(A) the price index for the base quarter of that year, exceeds

(B) the price index for the calendar quarter immediately before the calendar quarter during which the member became entitled to retired pay; and

(2) one-fourth of 1 percent for each calendar quarter from the quarter described in paragraph (1)(B) to the quarter described in paragraph (1)(A).

If in any case the percent described in paragraph (2) exceeds the percent determined under paragraph (1), such an increase shall not be made.

(f) PREVENTION OF PAY INVERSIONS.—

(1) PREVENTION OF RETIRED PAY INVERSIONS FOR MEMBERS WITH RETIRED PAY COMPUTED USING FINAL BASIC PAY.—The monthly retired pay of a member or a former member of an armed force who first became a member of a uniformed service before September 8, 1980, and who initially became entitled to that pay on or after January 1, 1971, may not be less than the monthly retired pay to which he would be entitled if he had become entitled to retired pay at an earlier date based on the grade in which the member is retired, adjusted to reflect any applicable increases in such pay under this section. In computing the amount of retired pay to which such a member or former member would have been entitled on that earlier date, the computation shall be based on his grade, length of service, and the rate of basic pay applicable to him at that time, except that such computation may not be based on a rate of basic pay for a grade higher than the grade in which the member is retired. This subsection does not authorize any increase in the monthly retired pay to which a member was entitled for any period before October 7, 1975.

(2) PREVENTION OF RETIRED PAY INVERSIONS FOR MEMBERS WITH RETIRED PAY COMPUTED USING HIGH-THREE.—Subject to subsections (d) and (e), the monthly retired pay of a member or former member of an armed force who first became a member of a uniformed service on or after September 8, 1980, may not be less, on the date on which the member or former member initially becomes entitled to such pay,

than the monthly retired pay to which the member or former member would be entitled on that date if the member or former member had become entitled to retired pay on an earlier date, adjusted to reflect any applicable increases in such pay under this section. However, in the case of a member or former member whose retired pay is computed subject to section 1407(f) of this title, paragraph (1) (rather than the preceding sentence) shall apply in the same manner as if the member or former member first became a member of a uniformed service before September 8, 1980, but only with respect to a calculation as of the date on which the member or former member first became entitled to retired pay.

(3) PREVENTION OF COLA INVERSIONS.—The percentage of the first adjustment under this section in the retired pay of any person, as determined under subsection (c)(1), (c)(2), (d), or (e), may not exceed the percentage increase in retired pay determined under subsection (b)(2) that is effective on the same date as the effective date of such first adjustment.

(g) DEFINITIONS.—In this section:

(1) The term ''price index'' means the Consumer Price Index (all items, United States city average) published by the Bureau of Labor Statistics.

(2) The term ''base quarter'' means the calendar quarter ending on September 30 of each year.

(3) The term ''base index'' means the price index for the base quarter for the most recent adjustment under subsection (b).

(4) The term ''retired pay'' includes retainer pay.

(h) PRICE INDEX FOR A QUARTER.—For purposes of this section, the price index for a calendar quarter is the arithmetical mean of the price index for the three months comprising that quarter.

(Added Pub. L. 88–132, § 5(g)(1), Oct. 2, 1963, 77 Stat. 213; amended Pub. L. 89–132, § 5(b), Aug. 21, 1965, 79 Stat. 547; Pub. L. 90–207, § 2(a)(1), Dec. 16, 1967, 81 Stat. 652; Pub. L. 91–179, § 1, Dec. 30, 1969, 83 Stat. 837; Pub. L. 94–106, title VIII, § 806, Oct. 7, 1975, 89 Stat. 538; Pub. L. 94–361, title VIII, § 801(a), July 14, 1976, 90 Stat. 929; Pub. L. 94–440, title XIII, § 1306(d)(1), Oct. 1, 1976, 90 Stat. 1462; Pub. L. 96–342, title VIII, § 812(b)(1), Sept. 8, 1980, 94 Stat. 1098; Pub. L. 98–94, title IX, §§ 921(a)(1), (b), 922(a)(2), Sept. 24, 1983, 97 Stat. 640, 641; Pub. L. 98–525, title XIV, § 1405(26), Oct. 19, 1984, 98 Stat. 2623; Pub. L. 99–348, title I, § 102, July 1, 1986, 100 Stat. 683; Pub. L. 100–180, div. A, title XII, § 1231(21), Dec. 4, 1987, 101 Stat. 1161; Pub. L. 100–224, § 1, Dec. 30, 1987, 101 Stat. 1536; Pub. L. 100–456, div. A, title VI, § 622(a), Sept. 29, 1988, 102 Stat. 1983; Pub. L. 101–189, div. A, title VI, § 651(b)(1), Nov. 29, 1989, 103 Stat. 1460; Pub. L. 103–66, title II, § 2001, Aug. 10, 1993, 107 Stat. 335; Pub. L. 103–160, div. A, title XI, § 1182(e), Nov. 30, 1993, 107 Stat. 1773; Pub. L. 103–335, title VIII, § 8114A(b)(1), Sept. 30, 1994, 108 Stat. 2648; Pub. L. 103–337, div. A, title VI, § 633(a), Oct. 5, 1994, 108 Stat. 2787; Pub. L. 104–106, div. A, title VI, § 631(a), (c), Feb. 10, 1996, 110 Stat. 364, 365; Pub. L. 104–201, div. A, title VI, §§ 631(a), 632(a), Sept. 23, 1996, 110 Stat. 2549; Pub. L. 106–65, div. A, title VI, §§ 641(b), 643(b)(1), title X, § 1066(a)(10), Oct. 5, 1999, 113 Stat. 662, 663, 771; Pub. L. 107–314, div. A, title VI, § 633, Dec. 2, 2002, 116 Stat. 2572; Pub. L. 110–181, div. A, title VI, § 661(b)(3), Jan. 28, 2008, 122 Stat. 178; Pub. L. 113–66, div. A, title VI, § 631(a), (b), title X, § 1091(a)(9), Dec. 26, 2013, 127 Stat. 785, 876; Pub. L. 113–67, div. A, title IV, § 403(a), Dec. 26, 2013, 127 Stat. 1186; Pub. L. 113–76, div. C, title X, § 10001(a), (b)(3), Jan. 17, 2014, 128 Stat. 151; Pub. L. 113–82, § 2(a), Feb. 15, 2014, 128 Stat. 1009; Pub. L. 113–291, div. A, title VI, § 623, Dec. 19, 2014, 128 Stat. 3403; Pub. L. 114–92, div. A, title VI, § 631(c)(1)(B), (d), Nov. 25, 2015, 129 Stat. 844, 845.)

REFERENCES IN TEXT

Section 322 of title 37 (as in effect before the enactment of the National Defense Authorization Act for Fiscal Year 2008), referred to in subsec. (b)(3), and section 322 of title 37 (as in effect before January 28, 2008), referred to in subsecs. (d) and (e), mean section 322 of title 37 as in effect before enactment of Pub. L. 110–181 on January 28, 2008. Section 322 of title 37 was renumbered as section 354 of title 37 and amended by Pub. L. 110–181, div. A, title VI, § 661(b)(1), (2), Jan. 28, 2008, 122 Stat. 178.

AMENDMENTS

2015—Pub. L. 114–92, § 631(d), which was approved Nov. 25, 2015, provided that the amendments made by Pub. L. 113–67, § 403(a)—as amended by Pub. L. 113–76, § 10001(a), Pub. L. 113–82, § 2(a), and Pub. L. 113–291, § 623—and the amendments made by Pub. L. 113–76, § 10001(b)(3), which were effective Dec. 1, 2015, would not take effect. See 2013 and 2014 Amendment and Repeal of Reduced Cost-of-living Adjustments for Members Under the Age of 62 notes below.

Subsec. (b)(5), (6). Pub. L. 114–92, § 631(c)(1)(B), added par. (5) and redesignated former par. (5) as (6).

2014—Subsec. (b)(4)(A). Pub. L. 113–76, § 10001(a)(1), which directed insertion of ''(other than a member or former member retired under chapter 61 of this title)'' after ''age'', did not take effect pursuant to Pub. L. 114–92, § 631(d). See 2015 Amendment note above.

Subsec. (b)(4)(F). Pub. L. 113–76, § 10001(a)(2), which directed addition of subpar. (F) related to inapplicability to amount of retired pay used in computation of SBP annuity for survivors, did not take effect pursuant to Pub. L. 114–92, § 631(d). See 2015 Amendment note above.

Subsec. (b)(4)(G). Pub. L. 113–291, § 623, which directed substitution of ''January 1, 2016'' for ''January 1, 2014'', did not take effect pursuant to Pub. L. 114–92, § 631(d). See 2015 Amendment note above.

Pub. L. 113–82, § 2(a), which directed addition of subpar. (G) related to applicability of subsec. (b)(4) to certain members and former members, did not take effect pursuant to Pub. L. 114–92, § 631(d). See 2015 Amendment note above.

Subsec. (f)(3). Pub. L. 113–76, § 10001(b)(3), which directed insertion of ''or subsection (b)(4)'' after ''subsection (b)(2)'' in par. (2) (probably intending par. (3)), did not take effect pursuant to Pub. L. 114–92, § 631(d). See 2015 Amendment note above.

2013—Subsec. (b)(1). Pub. L. 113–67, § 403(a)(1), which directed substitution of ''paragraph (2), (3), or (4)'' for ''paragraphs (2) and (3)'', did not take effect pursuant to Pub. L. 114–92, § 631(d). See 2015 Amendment note above.

Subsec. (b)(4) to (6). Pub. L. 113–67, § 403(a)(2), (3), which directed addition of par. (4) related to a reduced percentage for retired members under age 62 and redesignation of pars. (4) and (5) as (5) and (6), respectively, did not take effect pursuant to Pub. L. 114–92, § 631(d). See 2015 Amendment note above.

Subsec. (c)(1), (2). Pub. L. 113–66, § 631(b), substituted ''subsection (f)(3)'' for ''subsection (f)(2)'' in introductory provisions.

Subsecs. (d), (e). Pub. L. 113–66, § 1091(a)(9), substituted ''before January 28, 2008'' for ''before the en-

actment of the National Defense Authorization Act for Fiscal Year 2008'' in introductory provisions.

Pub. L. 113–66, § 631(b), substituted ''subsection (f)(3)'' for ''subsection (f)(2)'' in introductory provisions.

Subsec. (f)(1). Pub. L. 113–66, § 631(a)(1), substituted ''PREVENTION OF RETIRED PAY INVERSIONS FOR MEMBERS WITH RETIRED PAY COMPUTED USING FINAL BASIC PAY.—The'' for ''PREVENTION OF RETIRED PAY INVERSIONS.—Notwithstanding any other provision of law, the'' and inserted ''who first became a member of a uniformed service before September 8, 1980, and'' after ''of an armed force''.

Subsec. (f)(2), (3). Pub. L. 113–66, § 631(a)(2), (3), added par. (2) and redesignated former par. (2) as (3).

2008—Subsecs. (b)(3), (d), (e). Pub. L. 110–181, in introductory provisions, substituted ''section 322 (as in effect before the enactment of the National Defense Authorization Act for Fiscal Year 2008) or section 354'' for ''section 322''.

2002—Subsec. (c)(1). Pub. L. 107–314, § 633(a)(1), inserted ''but subject to subsection (f)(2)'' after ''Notwithstanding subsection (b)'' in introductory provisions.

Subsec. (c)(2). Pub. L. 107–314, § 633(a)(2), inserted ''(subject to subsection (f)(2) as applied to other members whose retired pay is computed on the current rates of basic pay in the most recent adjustment under this section)'' after ''shall be increased'' in introductory provisions.

Subsec. (d). Pub. L. 107–314, § 633(a)(1), (b)(1), in introductory provisions, inserted ''but subject to subsection (f)(2)'' after ''Notwithstanding subsection (b)'' and ''or on or after August 1, 1986, if the member or former member did not elect to receive a bonus under section 322 of title 37'' after ''August 1, 1986,''.

Subsec. (e). Pub. L. 107–314, § 633(a)(1), (b)(2), in introductory provisions, inserted ''but subject to subsection (f)(2)'' after ''Notwithstanding subsection (b)'' and ''and elected to receive a bonus under section 322 of title 37'' after ''August 1, 1986,''.

Subsec. (f). Pub. L. 107–314, § 633(a)(3), designated existing provisions as par. (1), inserted par. heading, realigned margins, and added par. (2).

1999—Subsec. (b)(1). Pub. L. 106–65, § 643(b)(1)(A), substituted ''INCREASE REQUIRED'' for ''IN GENERAL'' in heading.

Subsec. (b)(2). Pub. L. 106–65, § 1066(a)(10), struck out subpar. (A) designation and heading ''GENERAL RULE'', redesignated cls. (i) and (ii) as subpars. (A) and (B), respectively, and realigned their margins, and struck out former subpars. (B) and (C) which read as follows:

''(B) SPECIAL RULE FOR FISCAL YEAR 1996.—In the case of the increase in retired pay that, pursuant to paragraph (1), becomes effective on December 1, 1995, the initial month for which such increase is payable as part of such retired pay shall (notwithstanding such December 1 effective date) be March 1996.

''(C) INAPPLICABILITY TO DISABILITY RETIREES.—Subparagraph (B) does not apply with respect to the retired pay of a member retired under chapter 61 of this title.''

Pub. L. 106–65, § 643(b)(1)(B), substituted ''PERCENTAGE INCREASE'' for ''PRE-AUGUST 1, 1986 MEMBERS'' in heading.

Pub. L. 106–65, § 641(b)(1), substituted ''Except as otherwise provided in this subsection, the Secretary shall increase the retired pay of each member and former member'' for ''The Secretary shall increase the retired pay of each member and former member who first became a member of a uniformed service before August 1, 1986,''.

Subsec. (b)(3). Pub. L. 106–65, § 643(b)(1)(C), substituted ''REDUCED PERCENTAGE FOR CERTAIN POST-AUGUST 1, 1986 MEMBERS'' for ''POST-AUGUST 1, 1986 MEMBERS'' in heading.

Pub. L. 106–65, § 641(b)(2), inserted ''and has elected to receive a bonus under section 322 of title 37,'' after ''August 1, 1986,''.

1996—Subsec. (b)(2)(B). Pub. L. 104–201, § 631(a), substituted ''SPECIAL RULE FOR FISCAL YEAR 1996'' for ''SPECIAL RULES FOR FISCAL YEARS 1996 AND 1998'' as subpar. heading, struck out cl. (i) designation and heading ''FISCAL YEAR 1996'' before ''In the case of'', and struck out cl. (ii) which read as follows: ''FISCAL YEAR 1998.—In the case of the increase in retired pay that, pursuant to paragraph (1), becomes effective on December 1, 1997, the initial month for which such increase is payable as part of such retired pay shall (notwithstanding such December 1 effective date) be September 1998.''

Pub. L. 104–106, § 631(c), repealed Pub. L. 103–335, § 8114A(b)(1). See 1994 Amendment note below.

Pub. L. 104–106, § 631(a), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''SPECIAL RULES FOR FISCAL YEARS 1994 THROUGH 1998.—

''(i) FISCAL YEAR 1994.—In the case of an increase in retired pay that, pursuant to paragraph (1), becomes effective on December 1, 1993, the initial month for which such increase is payable as part of such retired pay shall (notwithstanding such December 1 effective date) be March 1994.

''(ii) FISCAL YEARS 1995 THROUGH 1998.—In the case of an increase in retired pay that, pursuant to paragraph (1), becomes effective on December 1 of 1994, 1995, 1996, or 1997, the initial month for which such increase is payable as part of such retired pay shall (notwithstanding such December 1 effective date) be September of the following year.''

Subsec. (c). Pub. L. 104–201, § 632(a), added subsec. (c) and struck out former subsec. (c) which read as follows: ''RULE FOR FIRST ADJUSTMENT AFTER RETIREMENT WITH INTERVENING INCREASE IN BASIC PAY.—Notwithstanding subsection (b), if a member or former member of an armed force who first became a member of a uniformed service before August 1, 1986, becomes entitled to retired pay based on rates of monthly basic pay that became effective after the last day of the calendar quarter of the base index, the retired pay of the member or former member shall be increased on the effective date of the next adjustment of retired pay under subsection (b) only by the percent (adjusted to the nearest one-tenth of 1 percent) by which—

''(1) the price index for the base quarter of that year, exceeds

''(2) the price index for the calendar quarter immediately before the calendar quarter in which the rates of monthly basic pay on which the retired pay is based became effective.''

Subsec. (d). Pub. L. 104–201, § 632(a), added subsec. (d) and struck out former subsec. (d) which read as follows: ''RULE FOR FIRST ADJUSTMENT AFTER RETIREMENT WITH NO INTERVENING INCREASE IN BASIC PAY.—If a member or former member of an armed force who first became a member of a uniformed service before August 1, 1986, becomes entitled to retired pay on or after the effective date of an adjustment in retired pay under subsection (b) but before the effective date of the next increase in the rates of monthly basic pay, the retired pay of the member or former member shall be increased, effective on the date the member becomes entitled to that pay, by the percent (adjusted to the nearest one-tenth of 1 percent) by which—

''(1) the base index, exceeds

''(2) the price index for the calendar quarter immediately before the calendar quarter in which the rates of monthly basic pay on which the retired pay is based became effective.''

1994—Subsec. (b)(2)(B). Pub. L. 103–335, § 8114A(b)(1), which directed substituting, in heading, ''through 1996'' for ''through 1998'' and substituting, in cl. (ii), ''and 1996'' for ''through 1998'', ''of 1994 or 1995'' for ''of 1994, 1995, 1996, or 1997'', and ''March'' for ''September'', was repealed by Pub. L. 104–106, § 631(c).

Subsec. (f). Pub. L. 103–337 inserted ''based on the grade in which the member is retired'' after ''at an earlier date'' in first sentence and '', except that such computation may not be based on a rate of basic pay for a grade higher than the grade in which the member is retired'' before period at end of second sentence and struck out after second sentence ''However, in the case of a member who, after initially becoming eligible for retired pay, is reduced in grade pursuant to a sentence of a court-martial, such computation may not be based

on a grade higher than the grade in which the member is retired.''

1993—Subsec. (b)(2). Pub. L. 103–160, § 1182(e)(1), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''Except as provided in paragraph (6), the Secretary shall increase the retired pay of each member and former member who first became a member of a uniformed service before August 1, 1986, by the percent (adjusted to the nearest one-tenth of 1 percent) by which—

''(A) the price index for the base quarter of that year, exceeds

''(B) the base index.''

Pub. L. 103–66, § 2001(1), substituted ''Except as provided in paragraph (6), the Secretary'' for ''The Secretary''.

Subsec. (b)(6). Pub. L. 103–160, § 1182(e)(2), struck out par. (6) which read as follows: ''SPECIAL RULES FOR PARAGRAPH (2) FOR FISCAL YEARS 1994 THROUGH 1998.—

''(A) FISCAL YEAR 1994.—In the case of an increase in the retired pay of a member or former member referred to in paragraph (2) that, pursuant to paragraph (1), becomes effective on December 1, 1993, the initial month for which such increase is payable as part of such retired pay shall (notwithstanding such December 1 effective date) be March 1994.

''(B) FISCAL YEARS 1995 THROUGH 1998.—In the case of an increase in retired pay of a member or former member referred to in paragraph (2) that, pursuant to paragraph (1), becomes effective on December 1 of 1994, 1995, 1996, or 1997, the initial month for which such increase is payable as part of such retired pay shall (notwithstanding such December 1 effective date) be September of the following year.

''(C) INAPPLICABILITY TO DISABILITY RETIREES.—Subparagraphs (A) and (B) do not apply with respect to the retired pay of a member retired under chapter 61 of this title.''

Pub. L. 103–66, § 2001(2), added par. (6).

1989—Subsec. (b)(3). Pub. L. 101–189, § 651(b)(1)(A), inserted ''and former member'' after first reference to ''member''.

Subsec. (e). Pub. L. 101–189, § 651(b)(1)(B), inserted ''or former member'' after first and third reference to ''member''.

Subsec. (f). Pub. L. 101–189, § 651(b)(1)(C), inserted ''or former member'' after ''member'' in second sentence.

1988—Subsec. (f). Pub. L. 100–456 inserted after second sentence ''However, in the case of a member who, after initially becoming eligible for retired pay, is reduced in grade pursuant to a sentence of a court-martial, such computation may not be based on a grade higher than the grade in which the member is retired.''

1987—Subsec. (a). Pub. L. 100–180 struck out ''pay'' after ''the retired pay''.

Subsec. (b)(4), (5). Pub. L. 100–224, § 1(a), added par. (4) and redesignated former par. (4) as (5).

Subsec. (e). Pub. L. 100–224, § 1(b), substituted ''by the percent (adjusted to the nearest one-tenth of 1 percent) equal to the difference between—

''(1) the percent by which—

''(A) the price index for the base quarter of that year, exceeds

''(B) the price index for the calendar quarter immediately before the calendar quarter during which the member became entitled to retired pay; and

''(2) one-fourth of 1 percent for each calendar quarter from the quarter described in paragraph (1)(B) to the quarter described in paragraph (1)(A).

If in any case the percent described in paragraph (2) exceeds the percent determined under paragraph (1), such an increase shall not be made.'' for ''only by the percent (adjusted to the nearest one-tenth of 1 percent) by which—

''(1) the price index for the base quarter of that year, exceeds

''(2) the price index for the calendar quarter immediately before the calendar quarter in which the member became entitled to retired pay.''

1986—Subsec. (a). Pub. L. 99–348, § 102(b)(1), (c)(1), inserted heading, struck out ''or retainer'' after ''retired pay'', and struck out sentence defining ''Index'' in this section as meaning the Consumer Price Index (all items, United States city average) published by the Bureau of Labor Statistics.

Subsecs. (b) to (d). Pub. L. 99–348, § 102(a), added subsecs. (b) to (d) and struck out former subsecs. (b) to (d) which read as follows:

''(b) Each time that an increase is made under section 8340(b) of title 5 in annuities paid under subchapter III of chapter 83 of such title, the Secretary of Defense shall at the same time increase the retired and retainer pay of members and former members of the armed forces by the same percent as the percentage by which annuities are increased under such section.

''(c) Notwithstanding subsection (b), if a member or former member of an armed force becomes entitled to retired pay or retainer pay based on rates of monthly basic pay prescribed by section 203 of title 37 that became effective after the last day of the month of the base index, his retired pay or retainer pay shall be increased on the effective date of the next adjustment of retired pay and retainer pay under subsection (b) only by the percent (adjusted to the nearest one-tenth of 1 percent) that the new base index exceeds the index for the calendar month immediately before that in which the rates of monthly basic pay on which his retired pay or retainer pay is based became effective.

''(d) If a member or former member of an armed force becomes entitled to retired pay or retainer pay on or after the effective date of an adjustment of retired pay and retainer pay under subsection (b) but before the effective date of the next increase in the rates of monthly basic pay prescribed by section 203 of title 37, his retired pay or retainer pay shall be increased, effective on the date he becomes entitled to that pay, by the percent (adjusted to the nearest one-tenth of 1 percent) that the base index exceeds the index for the calendar month immediately before that in which the rates of monthly basic pay on which his retired pay or retainer pay is based became effective.''

Subsec. (e). Pub. L. 99–348, § 102(a), added subsec. (e).

Subsec. (f). Pub. L. 99–348, § 102(c)(2), inserted heading and struck out ''or retainer'' after ''retired'' wherever appearing.

Subsecs. (g), (h). Pub. L. 99–348, § 102(b)(2), added subsecs. (g) and (h) and struck out former subsec. (g) which provided that the retired or retainer pay of a member or former member of an armed force as adjusted under this section, if not a multiple of $1, would be rounded to the next lower multiple of $1.

1984—Subsec. (f). Pub. L. 98–525 substituted ''before October 7, 1975'' for ''prior to the effective date of this subsection''.

1983—Subsec. (e). Pub. L. 98–94, § 921(a)(1), struck out subsec. (e) which provided that: ''Notwithstanding subsections (c) and (d), the adjusted retired pay or retainer pay of a member or former member of an armed force retired on or after October 1, 1967, may not be less than it would have been had he become entitled to retired pay or retainer pay based on the same pay grade, years of service for pay, years of service for retired or retainer pay purposes, and percent of disability, if any, on the day before the effective date of the rates of monthly basic pay on which his retired pay or retainer pay is based.''

Subsec. (f). Pub. L. 98–94, § 921(b), struck out '', subject to subsection (e) of this section,'' after ''the computation shall''.

Subsec. (g). Pub. L. 98–94, § 922(a)(2), added subsec. (g).

1980—Subsec. (b). Pub. L. 96–342 substituted provisions directing the Secretary of Defense to increase the retired and retainer pay of members and former members of the armed forces each time that an increase is made under section 8340(b) of title 5 in annuities paid under subchapter III of chapter 83 of title 5, with such increase to be by the same percent as the percentage by which the annuities are increased for provisions under which the Secretary of Defense had been authorized and directed to increase the retired pay and retainer pay of members and former members of the armed

forces on March 1 and September 1 depending upon determinations which the Secretary was directed to make on January 1 and July 1 of each year with regards to the percentage change in the index published for June or December of the previous year.

1976—Subsec. (b). Pub. L. 94–440 substituted provisions that Secretary of Defense shall determine the percent change in the index on Jan. 1 and July 1 of each year and effective Mar. 1 and Sept. 1, retired and retainer pay shall be increased by the computed percent change adjusted to the nearest 1/10 of 1 percent, for provisions that the Secretary of Defense shall determine on a monthly basis the percent by which the index has increased over that used as a basis for the most recent adjustment of retired and retainer pay and if Secretary determines for 3 consecutive months that the amount of increase is at least 3 percent over the base index, retired and retainer pay shall be increased by adding 1 percent and the highest percent increase in the index during those months adjusted to the nearest 1/10 of 1 percent.

Pub. L. 94–361 struck out ''the per centum obtained by adding 1 per centum and'' before ''the highest per centum of increase in the index''.

1975—Subsec. (f). Pub. L. 94–106 added subsec. (f).

1969—Subsec. (b). Pub. L. 91–179 provided for a 1 percent addition in computing increases in retired and retainer pay of present and former members of the armed forces, whenever the Secretary made such adjustments to effect increases in the consumer index over the base index.

1967—Subsec. (a). Pub. L. 90–207 substituted ''may not be recomputed'' for ''shall not be recomputed'', struck out ''if that increase becomes effective after the effective date of this section'' after ''armed forces'' and inserted sentence defining ''Index''.

Subsec. (b). Pub. L. 90–207 revised subsec. (b) generally and, among other changes, substituted provisions requiring the Secretary of Defense to determine monthly the percent by which the index has increased over that used as the basis for the most recent adjustment of retired and retainer pay under this subsection for provisions which required the Secretary of Defense to determine the per centum that the index for each calendar month after the calendar month immediately preceding the effective date of Pub. L. 89–132 has increased over the base index (that for the calendar month immediately preceding the effective date of Pub. L. 89–132 or, if later, that used as the basis for the most recent adjustment of retired and retainer pay under this subsection).

Subsecs. (c) to (e). Pub. L. 90–207 added subsecs. (c) to (e).

1965—Subsec. (b). Pub. L. 89–132 substituted provisions requiring the Secretary of Defense to determine the per centum for each calendar month that the Consumer Price Index has increased over the base Consumer Price Index, and if the index has shown an increase of at least 3 per centum over the base index for three consecutive calendar months to increase the retired or retainer pay by the highest per centum of increase in the index, for provisions which required a determination of the increase over the preceding calendar year and permitted an increase in the retired or retainer pay if the index advanced 3 per centum or more for a full calendar year.

Effective Date of 2015 Amendment; Implementation

Amendment by section 631(c)(1)(B) of Pub. L. 114–92 effective Jan. 1, 2018, with certain implementation requirements, see section 635 of Pub. L. 114–92, set out as a note under section 8432 of Title 5, Government Organization and Employees.

Effective Date of 2014 Amendment

Pub. L. 113–82, §2(b), Feb. 15, 2014, 128 Stat. 1009, provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on December 1, 2015, immediately after the coming into effect of section 403 of the Bipartisan Budget Act of 2013 [section 403 of Pub. L. 113–67, amending this section and section 1410 of this title and enacting provisions set out as a note under this section] and the amendments made by that section.''

[Amendment made by Pub. L. 113–82, §2(a), did not take effect pursuant to Pub. L. 114–92, §631(d), set out below.]

Pub. L. 113–76, div. C, title X, §10001(c), Jan. 17, 2014, 128 Stat. 151, provided that: ''The amendments made by subsections (a) and (b) [amending this section and sections 1413a and 1414 of this title] shall take effect on December 1, 2015, immediately after the coming into effect of section 403 of the Bipartisan Budget Act of 2013 [section 403 of Pub. L. 113–67, amending this section and section 1410 of this title and enacting provisions set out as a note under this section] and the amendments made by that section.''

[Amendments made by Pub. L. 113–76, §10001(a), (b), did not take effect pursuant to Pub. L. 114–92, §631(d), set out below.]

Effective Date of 2013 Amendment

Pub. L. 113–67, div. A, title IV, §403(c), Dec. 26, 2013, 127 Stat. 1186, provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 1410 of this title] shall take effect on December 1, 2015.''

[Amendments made by Pub. L. 113–67, §403(a), (b), did not take effect pursuant to Pub. L. 114–92, §631(d), set out below.]

Pub. L. 113–66, div. A, title VI, §631(c), Dec. 26, 2013, 127 Stat. 785, provided that: ''Paragraph (2) of section 1401a(f) of title 10, United States Code, as added by the amendment made by subsection (a)(3), applies to the computation of retired pay or retainer pay of any person who first became a member of a uniformed service on or after September 8, 1980, regardless of when the member first becomes entitled to retired or retainer pay.''

Effective Date of 1999 Amendment

Pub. L. 106–65, div. A, title VI, §644, Oct. 5, 1999, 113 Stat. 664, provided that: ''The amendments made by sections 641, 642, and 643 [enacting section 322 of Title 37, Pay and Allowances of the Uniformed Services, and amending this section and sections 1409, 1410, 1451, and 1452 of this title] shall take effect on October 1, 1999.''

Effective Date of 1996 Amendment

Pub. L. 104–201, div. A, title VI, §632(b), Sept. 23, 1996, 110 Stat. 2550, provided that: ''The amendment made by subsection (a) [amending this section] shall apply only to adjustments of retired and retainer pay effective after the date of the enactment of this Act [Sept. 23, 1996].''

Effective Date of 1994 Amendment

Pub. L. 103–337, div. A, title VI, §633(b), Oct. 5, 1994, 108 Stat. 2787, provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to the computation of the retired pay of a member of the Armed Forces who retires on or after the date of the enactment of this Act [Oct. 5, 1994].''

Effective Date of 1988 Amendment

Pub. L. 100–456, div. A, title VI, §622(b), Sept. 29, 1988, 102 Stat. 1983, provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on the first day of the first month that begins after the date of the enactment of this Act [Sept. 29, 1988] and shall apply to the computation of the retired or retainer pay of members who initially become entitled to such pay on or after such effective date.''

Effective Date of 1983 Amendment

Pub. L. 98–94, title IX, §921(a)(2), Sept. 24, 1983, 97 Stat. 640, provided that:

''(A) Notwithstanding the repeal of such subsection [subsec. (e) of this section], the provisions of such subsection shall apply in the case of any member or former member of the Armed Forces eligible to retire on the date of the enactment of this Act [Sept. 24, 1983] for a period of three years after such date in the same manner such provisions would have applied had they not been repealed.

''(B) The amount of retired or retainer pay of any member or former member of the Armed Forces who was eligible to retire on the date of the enactment of this Act [Sept. 24, 1983] and who becomes entitled to such pay at any time after the end of the three-year period beginning on the date of the enactment of this Act may not be less than it would have been had he become entitled to retired or retainer pay on the day before the end of such three-year period.''

Amendment by section 922 of Pub. L. 98–94 effective Oct. 1, 1983, see section 922(e) of Pub. L. 98–94, set out as a note under section 1401 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Pub. L. 96–342, title VIII, § 812(b)(1), Sept. 8, 1980, 94 Stat. 1098, set out below, provided that the amendment made by that section is effective Aug. 31, 1981, but subject to certain conditions.

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–440, title XIII, § 1306(d)(2), Oct. 1, 1976, 90 Stat. 1463, provided that: ''The amendment made by subsection (1) [amending this section] shall apply to any increase in retired pay or retainer pay after the date of enactment of this Act [Oct. 1, 1976], except that with respect to the first date after the date of enactment of this Act on which the Secretary of Defense is to determine a percent change, such percent change shall be determined by computing the change in the index published for the month immediately preceding such first date over the index for the last month preceding the date of enactment of this Act used as the basis for the most recent adjustment of retired pay and retainer pay under section 1401a(b) of title 10, United States Code [subsec. (b) of this section], as in effect immediately prior to the date of enactment of this Act [Oct. 1, 1976].''

EFFECTIVE DATE OF 1969 AMENDMENT

Pub. L. 91–179, § 2, Dec. 30, 1969, 83 Stat. 837, provided that: ''The provisions of this Act [amending this section] become effective on October 31, 1969.''

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90–207 effective Oct. 1, 1967, see section 7 of Pub. L. 90–207, set out as a note under section 203 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89–132 effective Sept. 1, 1965, see section 10 of Pub. L. 89–132, set out as a note under section 203 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE

Section effective Oct. 1, 1963, see section 14 of Pub. L. 88–132, set out as an Effective Date of 1963 Amendment note under section 201 of Title 37, Pay and Allowances of the Uniformed Services.

REPEAL OF REDUCED COST-OF-LIVING ADJUSTMENTS FOR MEMBERS UNDER THE AGE OF 62

Pub. L. 114–92, div. A, title VI, § 631(d), Nov. 25, 2015, 129 Stat. 845, provided that: ''The following amendments shall not take effect:

''(1) The amendments to be made by section 403 of the Bipartisan Budget Act of 2013 (Public Law 113–67; 127 Stat. 1186) [amending this section and section 1410 of this title], as amended by section 10001(a) of the Department of Defense Appropriations Act, 2014 (division C of Public Law 113–76; 128 Stat. 151), section 2 of Public Law 113–82 (128 Stat. 1009), and section 623 of the Carl Levin and Howard P. ''Buck'' McKeon National Defense Authorization Act for Fiscal Year 2015 (Public Law 113–291; 128 Stat. 3403).

''(2) The amendments to be made by section 10001(b) of the Department of Defense Appropriations Act, 2014 [div. C of Pub. L. 113–76, amending this section and sections 1413a and 1414 of this title].''

CONTINGENT ALTERNATIVE DATE FOR FISCAL YEAR 1998

Pub. L. 104–106, div. A, title VI, § 631(b), Feb. 10, 1996, 110 Stat. 364, provided that if a civil service retiree COLA that becomes effective during fiscal year 1998 becomes effective on a date other than the date on which a military retiree COLA during that fiscal year is specified to become effective under subsec. (b)(2)(B) of this section, then the increase in military retired and retainer pay would become payable as part of such retired and retainer pay effective on the same date on which such civil service retiree COLA was to become effective, prior to repeal by Pub. L. 104–201, div. A, title VI, § 631(b), Sept. 23, 1996, 110 Stat. 2549.

ELIMINATION OF DISPARITY BETWEEN EFFECTIVE DATES FOR MILITARY AND CIVILIAN RETIREE COST-OF-LIVING ADJUSTMENTS FOR FISCAL YEAR 1995

Pub. L. 103–337, div. A, title VI, § 631, Oct. 5, 1994, 108 Stat. 2785, provided that:

''(a) IN GENERAL.—The fiscal year 1995 increase in military retired pay shall (notwithstanding subparagraph (B) of section 1401a(b)(2) of title 10, United States Code) first be payable as part of such retired pay for the month of March 1995.

''(b) DEFINITIONS.—For the purposes of subsection (a):

''(1) The term 'fiscal year 1995 increase in military retired pay' means the increase in retired pay that, pursuant to paragraph (1) of section 1401a(b) of title 10, United States Code, becomes effective on December 1, 1994.

''(2) The term 'retired pay' includes retainer pay.

''(c) LIMITATION.—Subsection (a) shall be effective only if there is appropriated to the Department of Defense Military Retirement Fund (in an Act making appropriations for the Department of Defense for fiscal year 1995 that is enacted before March 1, 1995) such amount as is necessary to offset increased outlays to be made from that fund during fiscal year 1995 by reason of the provisions of subsection (a).

''(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated for fiscal year 1995 to the Department of Defense Military Retirement Fund the sum of $376,000,000 to offset increased outlays to be made from that fund during fiscal year 1995 by reason of the provisions of subsection (a).''

SENSE OF CONGRESS ON EQUAL TREATMENT OF EFFECTIVE DATES FOR FUTURE COST-OF-LIVING ADJUSTMENTS FOR MILITARY AND CIVILIAN RETIREES

Pub. L. 103–337, div. A, title VI, § 632, Oct. 5, 1994, 108 Stat. 2786, provided that:

''(a) FINDINGS.—Congress makes the following findings:

''(1) Congress, in the Omnibus Budget Reconciliation Act of 1993 [Pub. L. 103–66, see Tables for classification], changed the effective dates for future cost-of-living adjustments for military retired pay and for Federal civilian retirement annuities, which (before that Act) were provided by law to be made effective on December 1 each year.

''(2) The timing, and the percentage of increase, of military and Federal civilian retirees' cost-of-living adjustments have been linked for decades.

''(3) The effect of the enactment of the Omnibus Budget Reconciliation Act of 1993 was to abandon the longstanding congressional practice of treating military and Federal civilian retirees identically in matters related to cost-of-living adjustments.

''(b) SENSE OF CONGRESS.—In light of the findings in subsection (a), it is the sense of Congress that—

''(1) as a matter of simple equity and fairness, it is imperative that cost-of-living adjustments in retirement benefits for military and Federal civilian retirees be returned to an identical schedule as soon as possible, but not later than January 1, 1999;

''(2) if after October 1, 1998, there is, by law, a difference between the date on which a cost-of-living adjustment for Federal civilian retirees takes effect and the date on which a cost-of-living adjustment for military retirees takes effect, then the difference in those effective dates should be eliminated by requiring that cost-of-living adjustments for both classes of retirees become effective on the earlier of the two dates; and

''(3) if after October 1, 1998, there is, by law, a difference between the first month for which a cost-of-living adjustment for civilian retirees is payable and the first month for which a cost-of-living adjustment for military retirees is payable, then the difference in the months for which those adjustments are first payable should be eliminated by requiring that the cost-of-living adjustments for both classes of retirees first become payable for the earlier of the two months.''

WAIVER OF ADMINISTRATIVE TIME-IN-GRADE REQUIREMENTS TO PREVENT PAY INVERSIONS IN RETIRED PAY OF CERTAIN MILITARY RETIREES

Pub. L. 103–337, div. A, title VI, §634, Oct. 5, 1994, 108 Stat. 2787, provided that:

''(a) AUTHORITY.—The Secretary concerned may, for purposes of the computation under section 1401a(f) of title 10, United States Code, of the retired pay of military retirees described in subsection (b), waive any administrative time-in-grade regulation (as described in subsection (d)) that would otherwise apply to such computation. Any such waiver may be made retroactive, in the case of any such retiree, to the date on which that retiree initially became entitled to retired pay.

''(b) COVERED RETIREES.—This section applies to any military retiree—

''(1) who initially became entitled to retired pay on or after January 1, 1971, and before the date of the enactment of this Act [Oct. 5, 1994];

''(2) whose retired pay, by reason of the provisions of section 1401a(f) of title 10, United States Code (the so-called 'Tower amendment'), was initially computed as an amount greater than would have been the case but for that section; and

''(3) who, as of the earlier computation date applicable to that retiree—

''(A) in the case of an individual retired in an enlisted grade, had served in the grade in which the retiree retired for a period that was less than the period prescribed by the applicable administrative time-in-grade requirement described in subsection (d); and

''(B) in the case of an individual retired in an officer grade—

''(i) was subject to an administrative time-in-grade requirement described in subsection (d) that established a time-in-grade requirement that was longer than the statutory time-in-grade requirement applicable to that member; and

''(ii) had served in the grade in which the retiree retired for a period that was less than the period prescribed by such administrative time-in-grade requirement but not less than the statutory time-in-grade requirement applicable to that member.

''(c) EARLIER COMPUTATION DATE.—For purposes of subsection (b)(3), the earlier computation date applicable to a military retiree is the date that (under such section 1401a(f) as in effect on the date of the member's retirement) was the 'earlier date' that was used as the basis for the computation of the retiree's retired pay.

''(d) REGULATIONS SUBJECT TO WAIVER.—A regulation that may be waived under subsection (a) is any regulation (not required by law) that establishes a minimum period of time that a member of the Armed Forces must have served in a grade on active duty in order to be eligible to retire in that grade.

''(e) SCOPE OF WAIVER AUTHORITY.—The Secretary concerned may exercise the authority provided in subsection (a) in the case of an individual military retiree or for any group of military retirees.

''(f) MILITARY RETIREE DEFINED.—For purposes of this section, the term 'military retiree' means a member or former member of the Armed Forces who is entitled to retired pay.

''(g) SECRETARY CONCERNED.—For purposes of this section, the term 'Secretary concerned' has the meaning given such term in section 101 of title 10, United States Code.''

FISCAL YEAR 1995 COST-OF-LIVING ADJUSTMENTS FOR MILITARY RETIREES

Pub. L. 103–335, title VIII, §8114A, Sept. 30, 1994, 108 Stat. 2648, as amended by Pub. L. 104–106, div. A, title VI, §631(c), Feb. 10, 1996, 110 Stat. 365, provided that:

''(a) FISCAL YEAR 1995 COST-OF-LIVING ADJUSTMENT FOR MILITARY RETIREES.—(1) The fiscal year 1995 increase in military retired pay shall (notwithstanding subparagraph (B) of section 1401a(b)(2) of title 10, United States Code) first be payable as part of such retired pay for the month of March 1995.

''(2) For the purposes of subsection (a):

''(A) The term 'fiscal year 1995 increase in military retired pay' means the increase in retired pay that, pursuant to paragraph (1) of section 1401a(b) of title 10, United States Code, becomes effective on December 1, 1994.

''(B) The term 'retired pay' includes retainer pay.

''(b) [Repealed. Pub. L. 104–106, div. A, title VI, §631(c), Feb. 10, 1996, 110 Stat. 365.]''

CONTINGENT ONCE-A-YEAR ADJUSTMENT OF RETIRED AND RETAINER PAY

Pub. L. 96–342, title VIII, §812, Sept. 8, 1980, 94 Stat. 1098, as amended by Pub. L. 97–35, title II, §211(b), Aug. 13, 1981, 95 Stat. 383, provided that:

''(a)(1) The increase in the retired and retainer pay of members and former members of the uniformed services which but for this section would be made effective September 1, 1980, under the provisions of paragraph (2)(B) of section 1401a(b) of title 10, United States Code, shall not be made.

''(2)(A) In making the determination required by the provisions of paragraph (1)(A) of section 1401a(b) of title 10, United States Code, to be made on January 1, 1981, or within a reasonable time thereafter, the Secretary of Defense shall determine the percent change in the index (as such term is defined in section 1401a(a) of title 10, United States Code) published for December 1980 over the index published for December 1979 (rather than over the index published for June 1980).

''(B) The increase in the retired and retainer pay of members and former members of the uniformed services to be made effective March 1, 1981, under the provisions of paragraph (2)(A) of such section shall, in lieu of the increase prescribed by such paragraph, be the percent change computed under subparagraph (A), adjusted to the nearest 1⁄10 of one percent.

''(3) The President shall by Executive order provide for only one cost-of-living adjustment in the annuities paid under the Central Intelligence Agency [Retirement] Act of 1964 for Certain Employees ([former] 50 U.S.C. 403 note) during the period beginning on September 1, 1980, and ending on August 31, 1981. Such adjustment shall be effective March 1, 1981, and shall be made in the same manner and percentage as the adjustment provided for in paragraphs (1) and (2) for the retired and retainer pay of members and former members of the uniformed services.

''(4) Paragraphs (1), (2), and (3) shall not take effect unless similar legislation is enacted which provides for only one cost-of-living increase in annuities paid under

subchapter III of chapter 83 of title 5, United States Code, during the period beginning on September 1, 1980, and ending on August 31, 1981.

''(b)(1) Effective August 31, 1981, but subject to paragraph (2), section 1401a(b), of title 10, United States Code, relating to adjustment of retired pay and retainer pay to reflect changes in the Consumer Price Index, is amended to read as follows:

'' '(b) Each time that an increase is made under section 8340(b) of title 5 in annuities paid under subchapter III of chapter 83 of such title, the Secretary of Defense shall at the same time increase the retired and retainer pay of members and former members of the armed forces by the same percent as the percentage by which annuities are increased under such section.'.

''(2) The amendment made by paragraph (1) shall not take effect unless legislation is enacted which provides for the adjustment of annuities paid under subchapter III of chapter 83 of title 5, United States Code, on a once-a-year basis. In the event such legislation is enacted, such amendment shall become effective with respect to adjustments in the retired pay and retainer pay of members and former members of the uniformed services at the same time that the legislation providing for such a once-a-year adjustment of annuities paid under subchapter III of chapter 83 of title 5, United States Code, becomes effective.

''(3) If legislation described in paragraph (2) is enacted to provide for the adjustment of annuities paid under subchapter III of chapter 83 of title 5, United States Code, on a once-a-year basis, the President shall exercise the authority vested in him under section 292 of the Central Intelligence Agency [Retirement] Act of 1964 for Certain Employees ([former] 50 U.S.C. 403 note) to provide for cost-of-living adjustments in the annuities paid under such Act on an identical basis.

''(4) If at the time the first adjustment in retired and retainer pay is made under section 1401a(b) of title 10, United States Code, as amended by paragraph (1) of this subsection, the period upon which the most recent adjustment in such retired and retainer pay was computed is not identical to the period upon which the most recent adjustment in annuities under subchapter III of chapter 83 of title 5, United States Code, was computed, then the percentage increase to be made under such section 1401a(b) at the time of the first such adjustment shall be computed in the same manner as the percentage increase made at the same time in annuities under subchapter III of chapter 83 of title 5, United States Code, is computed, but shall be based on the period beginning on the last day of the period upon which the most recent adjustment in such retired and retainer pay was computed and ending on the last day of the period upon which the adjustment being made at the same time in annuities under such subchapter III is computed. The President shall by Executive order provide for a similar computation of the adjustment in annuities paid under the Central Intelligence Agency [Retirement] Act of 1964 for Certain Employees ([former] 50 U.S.C. 403 note) which is made at the same time as the increase in retired and retainer pay to which the preceeding [preceding] sentence is applicable.

''(c) For the purposes of this section, the term 'uniformed services' means—

''(1) the Armed Forces; and

''(2) the commissioned corps of the National Oceanic and Atmospheric Administration and of the Public Health Service.''

COMPUTATION OF RETIRED PAY OF SERGEANT MAJORS OF MARINE CORPS WHO COMPLETED SERVICE PRIOR TO DECEMBER 16, 1967

Pub. L. 95–581, Nov. 2, 1978, 92 Stat. 2478, provided: ''That (a) the retired pay of any individual who served as sergeant major of the Marine Corps and who completed such service before December 16, 1967, shall be computed based upon a rate of basic pay of the sum of (1) the highest rate of basic pay to which such individual was entitled while so serving, and (2) $150.

''(b) For the purpose of computing any adjustment under section 1401a of title 10, United States Code, in the retired pay of any individual whose retired pay is affected by subsection (a), the rate of basic pay provided under such subsection for the purpose of computing the retired pay of such individual shall be considered to have been the rate of basic pay applicable to such individual at the time of his retirement, and any adjustment under such section 1401a in the retired pay of such individual before September 30, 1978, shall be readjusted to reflect such rate of basic pay.

''SEC. 2. (a) Any change in the retired pay of any individual by reason of the enactment of this Act shall be effective for months beginning after September 30, 1978.

''(b) The enactment of this Act shall not reduce the retired pay of any individual.''

[The Central Intelligence Agency Retirement Act of 1964 for Certain Employees, referred to in Pub. L. 96–342, set out above, is Pub. L. 88–643, Oct. 13, 1964, 78 Stat. 1043, which was revised generally by Pub. L. 102–496, title VIII, § 802, Oct. 24, 1992, 106 Stat. 3196, is known as the Central Intelligence Agency Retirement Act and is classified generally to chapter 38 (§ 2001 et seq.) of Title 50, War and National Defense.]

COST-OF-LIVING ADJUSTMENT OF RETIRED PAY OR RETAINER PAY OF MEMBERS AND FORMER MEMBERS OF ARMED FORCES AND COMMISSIONED OFFICERS OF NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION AND PUBLIC HEALTH SERVICE; EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–361, title VIII, § 801(c), July 14, 1976, 90 Stat. 929, provided that:

''(1) The amendments made by subsections (a) [to subsec. (b) of this section] and (b) [to provisions formerly set out as a note under section 403 of title 50] shall not become effective unless legislation is enacted repealing the so-called 1 per centum add-on provision applicable to the cost-of-living adjustment of annuities paid under chapter 83 of title 5, United States Code. In the event such legislation is enacted, such amendments shall become effective with respect to the cost-of-living adjustment of the retired pay and retainer pay of members and former members of the Armed Forces and the cost-of-living adjustment of annuities paid under the Central Intelligence Agency [Retirement] Act of 1964 for Certain Employees at the same time the repeal of such 1 per centum add-on provision becomes effective with respect to such cost-of-living adjustment of annuities paid under such chapter 83.

''(2) If any change other than the repeal of the so-called 1 per centum add-on provision referred to in paragraph (1) is made in the method of computing the cost-of-living adjustment of annuities paid under chapter 83 of title 5, United States Code, the President shall make the same change in the cost-of-living adjustment of retired pay and retainer pay of members and former members of the Armed Forces and the cost-of-living adjustment of annuities paid under the Central Intelligence Agency [Retirement] Act of 1964 for Certain Employees. Any change made under this paragraph shall have the same effective date as the effective date applicable to such change made in annuities under chapter 83 of title 5, United States Code.

''(3) The provisions of paragraphs (1) and (2) relating to any change in the method of computing the cost-of-living adjustment of the retired pay or retainer pay of members and former members of the Armed Forces shall be applicable to the computation of cost-of-living adjustments of the retired pay of commissioned officers of the National Oceanic and Atmospheric Administration and the retired pay of commissioned officers of the Public Health Service.''

[The Central Intelligence Agency Retirement Act of 1964 for Certain Employees, referred to in Pub. L. 94–361, set out above, is Pub. L. 88–643, Oct. 13, 1964, 78 Stat. 1043, which was revised generally by Pub. L. 102–496, title VIII, § 802, Oct. 24, 1992, 106 Stat. 3196, is known as the Central Intelligence Agency Retirement

Act and is classified generally to chapter 38 (§ 2001 et seq.) of Title 50, War and National Defense.]

INCREASE IN CERTAIN ARMED FORCE MEMBERS' PAY AND ALLOWANCES NOT OTHERWISE TIED TO CONSUMER PRICE INDEX

Pub. L. 93–210, § 2, Dec. 28, 1973, 87 Stat. 908, provided that:

''(a) Notwithstanding any other provision of law, effective on the date of enactment of this Act [Dec. 28, 1973], the pay and allowances of members of the Armed Forces to whom this Act applies shall be increased to amounts equal to the amounts such pay and allowances would have been increased if the pay and allowances of such members had been increased, under section 1401a(b) of title 10, United States Code, by the same percentage rates, consecutively compounded, that the retired pay or retainer pay of members and former members of the Armed Forces entitled to retired pay or retainer pay since October 1, 1967, has been increased, and such member shall, on and after the date of enactment of this Act [Dec. 28, 1973], have his pay and allowances increased effective the same day and by the same percentage rate that the retired pay or retainer pay of members and former members of the Armed Forces is increased under such section 1401a(b).

''(b) This section applies to members of the Armed Forces entitled to pay and allowances under either of the following provisions of law:

''(1) The Act of June 26, 1948, chapter 677 (62 Stat. 1052) [which authorized the appointment of one officer in the Regular Army in the permanent grade of general, one officer in the Regular Air Force in the permanent grade of general, and one officer in the Regular Navy in the permanent grade of admiral].

''(2) The Act of September 18, 1950, chapter 952 (64 Stat. A224) [which authorized the appointment of Omar N. Bradley to the permanent grade of General of the Army].

''(c) No amounts shall be paid, as the result of the enactment of this section, for any period prior to the date of enactment of this section [Dec. 28, 1973].''

RETROACTIVE ADJUSTMENT OF RETIRED OR RETAINER PAY OF PERSONS ENTITLED THERETO AFTER NOVEMBER 30, 1966, BUT PRIOR TO EFFECTIVE DATE OF NEXT INCREASE AFTER JULY 1, 1966

Pub. L. 90–207, § 2(b), Dec. 16, 1967, 81 Stat. 653, provided that: ''Notwithstanding section 1401a(d) of title 10, United States Code, a person who is a member or former member of an armed force on the date of enactment of this Act [Dec. 16, 1967] and who initially became, or hereafter initially becomes, entitled to retired pay or retainer pay after November 30, 1966, but before the effective date of the next increase after July 1, 1966, in the rates of monthly basic pay prescribed by section 203 of title 37, United States Code, is entitled to have his retired pay or retainer pay increased by 3.7 percent, effective as of the date of his entitlement to that pay.''

§ 1402. Recomputation of retired or retainer pay to reflect later active duty of members who first became members before September 8, 1980

(a) A member of an armed force who first became a member of a uniformed service before September 8, 1980, and who has become entitled to retired pay or retainer pay, and who thereafter serves on active duty (other than for training), is entitled to recompute his retired pay or retainer pay upon his release from that duty according to the following table.

Column 1 Take	Column 2 Multiply by
Monthly basic pay[1] of the grade in which he would be eligible— (1) to retire if he were retiring upon that release from active duty; or (2) to transfer to the Fleet Reserve or Fleet Marine Corps Reserve if he were transferring to either upon that release from active duty.	2½ percent of the sum of— (1) the years of service that may be credited to him in computing retired pay or retainer pay; and (2) his years of active service after becoming entitled to retired pay or retainer pay.[2]

[1] For a member who has been entitled, for continuous period of at least two years, to basic pay under the rates of basic pay in effect upon that release from active duty, compute under those rates. For a member who has been entitled to basic pay for a continuous period of at least two years upon that release from active duty, but who is not covered by the preceding sentence, compute under the rates of basic pay replaced by those in effect upon that release from active duty. For any other member, compute under the rates of basic pay under which the member's retired pay or retainer pay was computed when he entered on that active duty.

[2] Before applying percentage factor, credit each full month of service that is in addition to the number of full years of service creditable to the member as one-twelfth of a year and disregard any remaining fractional part of a month.

However, an officer who was ordered to active duty (other than for training) in the grade that he holds on the retired list under former section 6150 of this title, or under any other law that authorized advancement on the retired list based upon a special commendation for the performance of duty in actual combat, may have his retired pay recomputed under this subsection on the basis of the rate of basic pay applicable to that grade upon his release from that active duty only if he has been entitled, for a continuous period of at least three years, to basic pay at that rate. If, upon his release from that active duty, he has been entitled to the basic pay of that grade for a continuous period of at least three years, but he does not qualify under the preceding sentence, he may have his retired pay recomputed under this subsection on the basis of the rate of basic pay prescribed for that grade by the rates of basic pay replaced by those in effect upon his release from that duty.

(b) A member of an armed force who first became a member of a uniformed service before September 8, 1980, and who has been retired other than for physical disability, and who while on active duty incurs a physical disability of at least 30 percent for which he would otherwise be eligible for retired pay under chapter 61 of this title, is entitled, upon his release from active duty, to retired pay under subsection (d).

(c) A member of an armed force who first became a member of a uniformed service before September 8, 1980, and who—

(1) was retired for physical disability under section 1201 or 1204 of this title or any other law or whose name is on the temporary disability retired list;

(2) incurs, while on active duty after retirement or after his name was placed on that list, a physical disability that is in addition to or that aggravates the physical disability for which he was retired or for which his name was placed on the temporary disability retired list; and

(3) is qualified under section 1201, 1202, 1204, or 1205 of this title;

is entitled, upon his release from active duty, to retired pay under subsection (d).

(d) A member of an armed force covered by subsection (b) or (c) may elect to receive either (1) the retired pay to which he became entitled when he retired, increased by any applicable adjustments in that pay under section 1401a of this title after he initially became entitled to that pay, or (2) retired pay computed according to the following table.

Column 1	Column 2	Column 3
Take	Multiply by	Add
Highest monthly basic pay that member received while on active duty after retirement or after date when his name was placed on temporary disability retired list, as the case may be.	As member elects— (1) 2½% of years of service credited under section 1208 of this title;[1] or (2) the highest percentage of disability, not to exceed 75%, attained while on active duty after retirement or after the date when his name was placed on temporary disability retired list, as the case may be.[1]	Add amount necessary to increase product of columns 1 and 2 to 50% of pay upon which computation is based, if member is on temporary disability retired list.

[1] Before applying percentage factor, credit each full month of service that is in addition to the number of full years of service creditable to the member as one-twelfth of a year and disregard any remaining fractional part of a month.

If, while on active duty after retirement or after his name was placed on the temporary disability retired list, a member covered by this subsection was promoted to a higher grade in which he served satisfactorily, as determined by the Secretary concerned, he is entitled to retired pay based on the monthly basic pay to which he would be entitled if he were on active duty in that higher grade.

(e) Notwithstanding subsection (a), a member covered by that subsection may elect, upon his release from active duty, to have his retired pay or retainer pay—

(1) computed according to the formula set forth in subsection (a) but using the rate of basic pay under which his retired pay or retainer pay was computed when he entered on active duty; and

(2) increased by any applicable adjustments in that pay under section 1401a of this title after he initially became entitled to that pay.

(f)(1) In the case of a member who is entitled to recompute retired pay under this section upon release from active duty served after retiring under section 7314 or 9314 of this title, the member's retired pay as recomputed under another provision of this section shall be increased by 10 percent of the amount so recomputed if the member has been credited by the Secretary concerned with extraordinary heroism in the line of duty during any period of active duty service in the armed forces.

(2) The amount of the retired pay as recomputed under another provision of this section and as increased under paragraph (1) may not exceed the amount equal to 75 percent of the monthly rate of basic pay upon which the recomputation of such retired pay is based.

(3) The determination of the Secretary concerned as to extraordinary heroism is conclusive for all purposes.

(Aug. 10, 1956, ch. 1041, 70A Stat. 107; Pub. L. 86–559, § 1(5), June 30, 1960, 74 Stat. 265; Pub. L. 88–132, § 5(*l*)(1), Oct. 2, 1963, 77 Stat. 214; Pub. L. 90–207, § 2(a)(2), Dec. 16, 1967, 81 Stat. 653; Pub. L. 96–342, title VIII, § 813(b)(2), Sept. 8, 1980, 94 Stat. 1102; Pub. L. 96–513, title V, § 511(50), Dec. 12, 1980, 94 Stat. 2924; Pub. L. 98–94, title IX, §§ 922(a)(3), (4), 923(a)(1), (2)(B), (C), Sept. 24, 1983, 97 Stat. 641, 642; Pub. L. 99–348, title II, § 201(b)(3), title III, § 304(a)(3), (b)(3), July 1, 1986, 100 Stat. 694, 703; Pub. L. 102–484, div. A, title VI, § 642(a), Oct. 23, 1992, 106 Stat. 2424; Pub. L. 110–181, div. A, title VI, § 646(b), Jan. 28, 2008, 122 Stat. 160; Pub. L. 111–383, div. A, title VI, § 631(b), Jan. 7, 2011, 124 Stat. 4239; Pub. L. 115–232, div. A, title VIII, § 809(a), Aug. 13, 2018, 132 Stat. 1840.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1402(a)	37:316.	Oct. 12, 1949, ch. 681, §§ 402(d) (last proviso, less applicability to retired grade), 516, 63 Stat. 819, 832.
1402(b), (c).	37:272(d) (1st 128 words of last proviso, less applicability to retired grade).	
1402(d)	37:272(d) (last proviso, less 1st 128 words, and less applicability to retired grade).	

In subsection (a), columns 1 and 2 of the table are based on 37:316 (1st proviso). Column 4 is based on 37:316 (last proviso). Footnote 1 is based on 37:316 (2d proviso). 37:316 (3d proviso) is omitted as operationally obsolete.

In subsections (a) and (d), the words ''and disregard a part of a year that is less than six months'' are added to footnote 1 to conform to footnote 3 of section 1401 of this title.

In subsection (b), the words ''for which he would otherwise be eligible for retired pay under chapter 61 of this title'' are substituted for the words ''in accordance with the standard schedule of rating disabilities in current use by the Veterans' Administration'' and ''if qualified''.

In subsection (c), the requirement that the physical disability incurred be 30 percent or more is omitted as surplusage, since it is also required that the member be qualified for physical disability retirement under section 1201 or 1204 of this title.

In subsection (d), the rules stated in 37:316 (2d and last provisos) are repeated in column 4 of the table and the footnote to the table, since they apply to all cases of increased pay for active duty performed after retirement.

CODIFICATION

Another section 304(b)(3) of Pub. L. 99–348 amended the table of sections at the beginning of chapter 571 of this title.

AMENDMENTS

2018—Subsec. (f)(1). Pub. L. 115–232 substituted ''section 7314 or 9314'' for ''section 3914 or 8914''.

2011—Subsec. (d). Pub. L. 111–383, in column 2 of table, inserted '', not to exceed 75%,'' after ''percentage of disability'' and struck out column 4 of table which related to subtraction of excess over 75 percent of pay upon which computation is based.

2008—Subsec. (a). Pub. L. 110–181 struck out column 3 of the table, which related to subtraction of excess over 75 percent of pay upon which computation is based.

1992—Subsec. (f). Pub. L. 102–484 added subsec. (f).

1986—Pub. L. 99–348, § 304(b)(3), inserted ''of members who first became members before September 8, 1980'' in section catchline.

Subsec. (a). Pub. L. 99–348, §§ 201(b)(3), 304(a)(3), struck out "(as defined in section 1407(a)(2) of this title)" after "uniformed service" and struck out provision that if the amount recomputed is not a multiple of $1, it be rounded to the next lower multiple of $1. See section 1412 of this title.

Subsecs. (b), (c). Pub. L. 99–348, § 304(a)(3), struck out "(as defined in section 1407(a)(2) of this title)" after "uniformed service".

Subsec. (d). Pub. L. 99–348, § 201(b)(3), struck out provision that if the amount recomputed is not a multiple of $1, it be rounded to the next lower multiple of $1. See section 1412 of this title.

1983—Subsec. (a). Pub. L. 98–94, § 922(a)(3), substituted "according to the following table. The amount recomputed, if not a multiple of $1, shall be rounded to the next lower multiple of $1." for "as follows:".

Pub. L. 98–94, § 923(a)(1), (2)(B), in footnote 2 of table, substituted "Before applying percentage factor, credit each full month of service that is in addition to the number of full years of service creditable to the member as one-twelfth of a year and disregard any remaining fractional part of a month" for "Before applying percentage factor, credit a part of a year that is six months or more as a whole year, and disregard a part of a year that is less than six months".

Subsec. (d). Pub. L. 98–94, § 922(a)(4), substituted "according to the following table. The amount computed, if not a multiple of $1, shall be rounded to the next lower multiple of $1." for "as follows:".

Pub. L. 98–94, § 923(a)(1), (2)(C), in footnote 1 of table, substituted "Before applying percentage factor, credit each full month of service that is in addition to the number of full years of service creditable to the member as one-twelfth of a year and disregard any remaining fractional part of a month" for "Before applying percentage factor, credit a part of a year that is six months or more as a whole year, and disregard a part of a year that is less than six months".

1980—Subsecs. (a) to (c). Pub. L. 96–513 substituted "a uniformed service (as defined in section 1407(a)(2) of this title) before September 8, 1980" for "the armed forces before the date of the enactment of the Department of Defense Appropriation Act, 1981" wherever appearing.

Pub. L. 96–342 inserted "who first became a member of the armed forces before the date of the enactment of the Department of Defense Authorization Act, 1981, and" after "of an armed force" wherever appearing.

1967—Subsec. (d). Pub. L. 90–207, § 2(a)(2)(A), inserted "increased by any applicable adjustments in that pay under section 1401a of this title after he initially became entitled to that pay" after "retired,".

Subsec. (e). Pub. L. 90–207, § 2(a)(2)(B), added subsec. (e).

1963—Subsec. (a). Pub. L. 88–132 substituted in introductory clause "who has become entitled to retired pay or retainer pay" for "who has been retired or has become entitled to retainer pay" and "to recompute his retired pay or retainer pay upon his release from that duty" for ", upon release from that duty, to recompute his retired or retainer pay" and inserted in such clause "(other than for training)" after "active duty"; substituted in column 1 of table "Monthly basic pay" for "Monthly basic pay or base and longevity pay, as the case may be,", designated existing provisions as (1) and added (2); substituted in (1) of column 2 of the table "retired pay or retainer pay" for "retired or retainer pay" and in (2) of such column 2 "after becoming entitled to retired pay or retainer pay" for "after retirement or becoming entitled to retainer pay", struck out column 3 relating to addition and redesignated column 4 as 3; added footnote 1 to the table and redesignated former footnote 1 as 2; and inserted provisions for recomputation of retired pay upon release from active duty of officers ordered to active duty in a higher grade based upon special commendation for performance of duty in actual combat.

1960—Subsec. (a). Pub. L. 86–559 prohibited recomputation of retired pay under subsec. (a) on the basis of any period of active duty that was of less than six consecutive months' duration or on the basis of any active duty for training for a reserve officer who is or has been retired under section 3911, 6323, or 8911 of this title or under section 232 of title 14.

Effective Date of 2018 Amendment

Amendment by Pub. L. 115–232 effective Feb. 1, 2019, with provision for the coordination of amendments and special rule for certain redesignations, see section 800 of Pub. L. 115–232, set out as a note preceding section 3001 of this title.

Effective Date of 2011 Amendment

Amendment by Pub. L. 111–383 applicable to persons who first become entitled to retired or retainer pay under subtitle A of this title after Jan. 7, 2011, and table in subsec. (d) of this section, in effect on the day before Jan. 7, 2011, applicable to the computation or recomputation of retired or retainer pay for persons who first became entitled to retired or retainer pay under subtitle A on or before Jan. 7, 2011, see section 631(d) of Pub. L. 111–383, set out as a note under section 1401 of this title.

Effective Date of 2008 Amendment

Pub. L. 110–181, div. A, title VI, § 646(c), Jan. 28, 2008, 122 Stat. 160, provided that: "The amendments made by subsections (a) and (b) [amending this section and section 6333 of this title] shall take effect as of January 1, 2007, and shall apply with respect to retired pay and retainer pay payable on or after that date."

Effective Date of 1983 Amendment

Amendment by section 922 of Pub. L. 98–94 effective Oct. 1, 1983, see section 922(e) of Pub. L. 98–94, set out as a note under section 1401 of this title.

Amendment by section 923 of Pub. L. 98–94 applicable with respect to (1) the computation of retired or retainer pay of any individual who becomes entitled to that pay after Sept. 30, 1983, and (2) the recomputation of retired pay under this section, of any individual who after Sept. 30, 1983, becomes entitled to recompute retired pay under this section, see section 923(g) of Pub. L. 98–94, set out as a note under section 1174 of this title.

Effective Date of 1980 Amendment

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

Effective Date of 1967 Amendment

Amendment by Pub. L. 90–207 effective Oct. 1, 1967, see section 7 of Pub. L. 90–207, set out as a note under section 203 of Title 37, Pay and Allowances of the Uniformed Services.

Effective Date of 1963 Amendment

Amendment by Pub. L. 88–132 effective Oct. 1, 1963, see section 14 of Pub. L. 88–132, set out as a note under section 201 of Title 37, Pay and Allowances of the Uniformed Services.

Accrual of Benefits; Prospective Applicability

Pub. L. 102–484, div. A, title VI, § 642(c), Oct. 23, 1992, 106 Stat. 2425, provided that: "No benefits shall accrue for months beginning before the date of the enactment of this Act [Oct. 23, 1992] by reason of the amendments made by this section [amending this section and section 1402a of this title]."

Recomputation of Retired Pay of Certain Recalled Retirees

Pub. L. 98–525, title VI, § 655, Oct. 19, 1984, 98 Stat. 2552, provided that:

"(a) Notwithstanding the second sentence of footnote 1 of the table contained in section 1402(a) of title 10,

United States Code (relating to recomputation of retired pay to reflect later active duty), in the case of a member of the Armed Forces who—

''(1) was voluntarily called or ordered to active duty during the period beginning on October 1, 1963, and ending on September 30, 1971;

''(2) was at the time of such call or order entitled to retired pay or retainer pay;

''(3) served on such active duty under such call or order for a continuous period of at least two years; and

''(4) was released from such active duty before October 1, 1973,

the retired or retainer pay of such member shall be recomputed, as provided in subsection (b), under the rates of basic pay in effect at the time of that release from active duty.

''(b) The retired or retainer pay of a member of the Armed Forces described in subsection (a) shall be the amount determined under section 1402(a) of title 10, United States Code (as modified with respect to such member by subsection (a)), and increased by the amount by which the member's retired or retainer pay would have been increased during the period beginning on the date of the member's release from active duty referred to in subsection (a)(4) and ending on the day before the day on which this section becomes effective had subsection (a) applied in the case of the member at the time of that release from active duty.

''(c) This section shall apply only with respect to retired pay and retainer pay payable for months beginning after September 30, 1984, or on or after the date of the enactment of this Act [Oct. 19, 1984], whichever is later.''

RETIRED PAY AND RETAINER PAY; PROHIBITION AGAINST RECOMPUTATION UNDER 1963 PAY RATES; EXCEPTIONS; INCREMENTS BASED ON THE GREATER OF A 5 PERCENT INCREASE OR RECOMPUTATION UNDER 1958 PAY RATES FOR MEMBERS RETIRED PRIOR TO OCTOBER 1949 FOR REASONS OTHER THAN PHYSICAL DISABILITY, MEMBERS RECEIVING RETIRED PAY UNDER CAREER COMPENSATION ACT OF 1949 AND FORMER CHIEFS OF STAFF; ADDITIONAL 5 PERCENT INCREASE FOR OTHER RETIRED MEMBERS; EXCLUSION FROM INCREASE OF OFFICERS RETIRED UNDER CERTAIN PROVISIONS

Pub. L. 88–132, § 5(a)–(f), Oct. 2, 1963, 77 Stat. 212, provided that:

''(a) Except as provided in section 1402 of title 10, United States Code, the changes made by this Act [see Short Title note under section 201 of Title 37] in the rates of basic pay of members of the uniformed services do not increase the retired pay or retainer pay to which a member or former member of the uniformed services was entitled on the day before the effective date of this Act [Oct. 1, 1963]. However, except for a member covered by section 6331 [now 8331] of title 10, United States Code who became entitled to retainer pay before April 1, 1963, and subject to subsection (j) of this section [set out as a note below], a member or former member of a uniformed service who became entitled to retired pay or retainer pay after March 31, 1963, but before the effective date of this Act [Oct. 1, 1963], is entitled—

''(1) to have the retired pay or retainer pay to which he was entitled on the day before the effective date of this Act [Oct. 1, 1963] recomputed under the rates of basic pay prescribed by section 2 of this Act [amending section 203 of Title 37]; or

''(2) to continue to have that pay computed under the rates of basic pay that were in effect under section 203 of title 37, United States Code, on the day before the effective date of this Act [Oct. 1, 1963], plus the percentage increase provided by subsection (e) of this section;

whichever pay is the greater. For the purposes of the preceding sentence, a member or former member who became entitled to retired pay on April 1, 1963, by virtue of section 1 of the Act of April 23, 1930, ch. 209, as amended (5 U.S.C. 47a) [section 8301 of Title 5], shall be considered as having become entitled to that pay before April 1, 1963.

''(b) A member or former member of a uniformed service who was retired other than for physical disability and who, in accordance with section 511 of the Career Compensation Act of 1949 (63 Stat. 829) [act Oct. 12, 1949, former 10 U.S.C. 580 note], is entitled to retired pay or retainer pay computed by 'method' (a) of that section using rates of basic pay that were in effect before October 1, 1949, is entitled—

''(1) to have pay recomputed by 'method' (b) of that section using the rates of basic pay that were in effect under that Act on the day before the effective date of this Act [Oct. 1, 1963]; or

''(2) to an increase of 5 percent in the retired pay or retainer pay to which he was entitled on the day before the effective date of this Act [Oct. 1, 1963];

whichever pay is the greater.

''(c) A member or former member of a uniformed service who is entitled to retired pay or retainer pay computed under the rates of basic pay that were in effect under the Career Compensation Act of 1949 before June 1, 1958, including a member or former member who is entitled to retired pay under section 7 (b) or (c) of the Act of May 20, 1958, Public Law 85–422 (72 Stat. 130), is entitled—

''(1) to have that pay recomputed under the rates of basic pay that were in effect under that Act on the day before the effective date of this Act [Oct. 1, 1963]; or

''(2) to an increase of 5 percent in the retired pay or retainer pay to which he was entitled on the day before the effective date of this Act [Oct. 1, 1963];

whichever pay is the greater.

''(d) A member or former member of a uniformed service who was entitled to retired pay on the day before the effective date of this Act [Oct. 1, 1963] and who served as Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, or Commandant of the Marine Corps is entitled—

''(1) to have his retired pay recomputed under the formula for computing retired pay applicable to him—

''(A) when he retired; or

''(B) if he served on active duty after he retired and his retired pay was recomputed by reason of that service, when his retired pay was so recomputed;

using as his rate of basic pay the rate of basic pay prescribed for officers serving on active duty in those positions on June 1, 1958, by footnote 1 to table for commissioned officers in section 201(a) of the Career Compensation Act of 1949, as amended (72 Stat. 122) [see section 203 of Title 37]; or

''(2) to an increase of 5 percent in the retired pay to which he was entitled on the day before the effective date of this Act [Oct. 1, 1963];

whichever pay is the greater.

''(e) A member or former member of a uniformed service who was entitled to retired pay or retainer pay on the day before the effective date of this Act [Oct. 1, 1963], other than a member or former member who is covered by subsection (b), (c), or (d) of this section, is entitled to an increase of 5 percent in the retired or retainer pay to which he was entitled on the day before the effective date of this Act [Oct. 1, 1963].

''(f) Notwithstanding any other provision of law, a member of an armed force who was entitled to pay and allowances under any of the following provisions of law on the day before the effective date of this Act [Oct. 1, 1963] shall continue to receive the pay and allowances to which he was entitled on that day:

''(1) The Act of March 23, 1946, chapter 112 (60 Stat. 59).

''(2) The Act of June 26, 1948, chapter 677 (62 Stat. 1052).

''(3) The Act of September 18, 1950, chapter 952 (64 Stat. A224).''

RETIRED PAY AND RETAINER PAY; RETROACTIVE EFFECT

Pub. L. 88–132, § 5(j), Oct. 2, 1963, 77 Stat. 214, provided that: ''A member or former member of a uniformed service is not entitled to an increase in his retired pay or retainer pay because of the enactment of this Act [see Short Title note set out under section 201 of Title 37] for any period before the effective date of this Act [Oct. 1, 1963].''

SAVINGS PROVISION

Pub. L. 88–132, § 5(*l*)(2), Oct. 2, 1963, 77 Stat. 215, provided that: ''Notwithstanding paragraph (1) of this subsection [amending this section], and unless otherwise entitled to higher retired pay or retainer pay, a member of a uniformed service who is on active duty (other than for training) on the effective date of this Act [Oct. 1, 1963], who was entitled to retired pay or retainer pay before he entered on that duty, and who is released from that duty on or after the effective date of this Act after having served on that duty for a continuous period of at least one year shall, upon that release from active duty, be entitled to recompute his retired pay or retainer pay under the table in section 1402 of title 10, United States Code [this section], subject to section 6483(c) [now 8383(c)] of title 10, as that table and that section were in effect on the day before the effective date of this Act, using rates of basic pay prescribed by this Act [section 203 of Title 37].''

§ 1402a. Recomputation of retired or retainer pay to reflect later active duty of members who first became members after September 7, 1980

(a) IN GENERAL.—A member of an armed force—

(1) who first became a member of a uniformed service after September 7, 1980;

(2) who has become entitled to retired pay or retainer pay; and

(3) who thereafter serves on active duty (other than for training),

is entitled to recompute his retired pay or retainer pay upon release from that duty according to the following table.

Column 1 Take	Column 2 Multiply by
Retired pay base or retainer pay base under section 1407 which he would be entitled to use if—	The retired pay multiplier or retainer pay multiplier prescribed in section 1409 for the sum of—
(1) he were retiring upon release from that active duty; or	(1) the years of service that may be credited to him in computing retired pay or retainer pay; and
(2) he were transferring to the Fleet Reserve or Fleet Marine Corps Reserve upon that release from active duty.	(2) his years of active service after becoming entitled to retired pay or retainer pay.

(b) NEW DISABILITY INCURRED DURING LATER ACTIVE DUTY.—A member of an armed force who first became a member of a uniformed service after September 7, 1980, who has been retired other than for physical disability and who while on active duty incurs a physical disability of at least 30 percent for which he would otherwise be eligible for retired pay under chapter 61 of this title, is entitled, upon his release from active duty, to retired pay under subsection (d).

(c) ADDITIONAL OR AGGRAVATED DISABILITY INCURRED DURING LATER ACTIVE DUTY.—A member of an armed force who first became a member of a uniformed service after September 7, 1980, and who—

(1) was retired for physical disability under section 1201 or 1204 of this title or any other law or whose name is on the temporary disability retired list;

(2) incurs, while on active duty after retirement or after his name was placed on the temporary disability retired list, a physical disability that is in addition to or that aggravates the physical disability for which he was retired or for which his name was placed on that list; and

(3) is qualified under section 1201, 1202, 1204, or 1205 of this title;

is entitled, upon his release from active duty, to retired pay under subsection (d).

(d) COMPUTATION FOR LATER DISABILITY.—A member of an armed force covered by subsection (b) or (c) may elect to receive either (1) the retired pay to which he became entitled when he retired, increased by any applicable adjustments in that pay under section 1401a of this title after he initially became entitled to that pay, or (2) retired pay computed according to the following table.

Column 1 Take	Column 2 Multiply by	Column 3 Add
The retired pay base computed under section 1407(b) of this title.	As member elects— (1) 2½ percent of years of service credited under section 1208 of this title;[1] or (2) the highest percentage of disability, not to exceed 75 percent, attained while on active duty after retirement or after the date when his name was placed on temporary disability retired list, as the case may be.	Amount necessary to increase product of columns 1 and 2 to 50 percent of pay upon which computation is based, if member is on temporary disability retired list.

[1] Before applying percentage factor, credit each full month of service that is in addition to the number of full years of service creditable to the member as one-twelfth of a year and disregard any remaining fractional part of a month.

(e) ALTERNATIVE RECOMPUTATION TO SUBSECTION (a) FORMULA.—Notwithstanding subsection (a), a member covered by that subsection may elect, upon his release from that active duty, to have his retired pay or retainer pay—

(1) computed according to the formula set forth in subsection (a) but using the monthly retired pay base under which his retired pay or retainer pay was computed when he entered on that active duty; and

(2) increased by any applicable adjustments in that pay under section 1401a of this title after he initially became entitled to that pay.

(f) ADDITIONAL 10 PERCENT FOR CERTAIN ENLISTED MEMBERS CREDITED WITH EXTRAORDINARY HEROISM.—(1) In the case of a member who is entitled to recompute retired pay under this section upon release from active duty served after retiring under section 7314 or 9314 of this title, the member's retired pay as recomputed under another provision of this section shall be increased by 10 percent of the amount so recomputed if the member has been credited by the Secretary concerned with extraordinary heroism in the line of duty during any period of active duty service in the armed forces.

(2) The amount of the retired pay as recomputed under another provision of this section and as increased under paragraph (1) may not exceed the amount equal to 75 percent of the retired pay base upon which the recomputation of such retired pay is based.

(3) The determination of the Secretary concerned as to extraordinary heroism is conclusive for all purposes.

(Added Pub. L. 96–342, title VIII, § 813(b)(3)(A), Sept. 8, 1980, 94 Stat. 1102; amended Pub. L. 96–513, title V, § 511(51)(A), (B), Dec. 12, 1980, 94 Stat. 2924; Pub. L. 98–94, title IX, §§ 922(a)(5), (6), 923(a)(1), (2)(D), (E), Sept. 24, 1983, 97 Stat. 641, 642; Pub. L. 99–348, title II, § 201(b)(1), (2), July 1, 1986, 100 Stat. 693; Pub. L. 102–484, div. A, title VI, § 642(b), Oct. 23, 1992, 106 Stat. 2425; Pub. L. 111–383, div. A, title VI, § 631(c), Jan. 7, 2011, 124 Stat. 4239; Pub. L. 115–232, div. A, title VIII, § 809(a), Aug. 13, 2018, 132 Stat. 1840.)

AMENDMENTS

2018—Subsec. (f)(1). Pub. L. 115–232 substituted ''section 7314 or 9314'' for ''section 3914 or 8914''.

2011—Subsec. (d). Pub. L. 111–383, in column 2 of table, inserted '', not to exceed 75%,'' after ''percentage of disability'' and struck out column 4 of table which related to subtraction of excess over 75 percent of retired or retainer pay base upon which computation is based.

1992—Subsec. (f). Pub. L. 102–484 added subsec. (f).

1986—Subsec. (a). Pub. L. 99–348, § 201(b)(1), amended subsec. (a) generally. Prior to the amendment, subsec. (a) read as follows: ''A member of an armed force who first became a member of a uniformed service (as defined in section 1407(a)(2) of this title) after September 7, 1980, who has become entitled to retired pay or retainer pay, and who thereafter serves on active duty (other than for training), is entitled to recompute his retired pay or retainer pay upon his release from that duty according to the following table. The amount recomputed, if not a multiple of $1, shall be rounded to the next lower multiple of $1.''

Subsec. (b). Pub. L. 99–348, § 201(b)(2)(A), inserted heading.

Subsec. (c). Pub. L. 99–348, § 201(b)(2)(B), inserted heading.

Subsec. (d). Pub. L. 99–348, § 201(b)(2)(C), inserted heading, struck out provision that if the amount recomputed is not a multiple of $1, it be rounded to the next lower multiple of $1, and in column 1 of table struck out ''monthly'' before ''retired pay'' and in column 4 of table struck out ''monthly'' before ''retired or''.

Subsec. (e). Pub. L. 99–348, § 201(b)(2)(D), inserted heading.

1983—Subsec. (a). Pub. L. 98–94, § 922(a)(5), substituted ''according to the following table. The amount recomputed, if not a multiple of $1, shall be rounded to the next lower multiple of $1.'' for ''as follows:''.

Pub. L. 98–94, § 923(a)(1), (2)(D), in footnote 1 of table, substituted ''Before applying percentage factor, credit each full month of service that is in addition to the number of full years of service creditable to the member as one-twelfth of a year and disregard any remaining fractional part of a month'' for ''Before applying percentage factor, credit a part of a year that is six months or more as a whole year, and disregard a part of a year that is less than six months''.

Subsec. (d). Pub. L. 98–94, § 922(a)(6), substituted ''according to the following table. The amount computed, if not a multiple of $1, shall be rounded to the next lower multiple of $1.'' for ''as follows:''.

Pub. L. 98–94, § 923(a)(1), (2)(E), in footnote 1 of table, substituted ''Before applying percentage factor, credit each full month of service that is in addition to the number of full years of service creditable to the member as one-twelfth of a year and disregard any remaining fractional part of a month'' for ''Before applying percentage factor, credit a part of a year that is six months or more as a whole year, and disregard a part of a year that is less than six months''.

1980—Pub. L. 96–513, § 511(51)(B), substituted ''of members who first became members after September 7, 1980'' for ''in case of members who first became members after the enactment of the Department of Defense Authorization Act, 1981'' in section catchline.

Subsecs. (a) to (c). Pub. L. 96–513, § 511(51)(A), substituted ''after September 7, 1980'' for ''on or after the date of the enactment of the Department of Defense Authorization Act, 1981'' wherever appearing.

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115–232 effective Feb. 1, 2019, with provision for the coordination of amendments and special rule for certain redesignations, see section 800 of Pub. L. 115–232, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by Pub. L. 111–383 applicable to persons who first become entitled to retired or retainer pay under subtitle A of this title after Jan. 7, 2011, and table in subsec. (d) of this section, in effect on the day before Jan. 7, 2011, applicable to the computation or recomputation of retired or retainer pay for persons who first became entitled to retired or retainer pay under subtitle A on or before Jan. 7, 2011, see section 631(d) of Pub. L. 111–383, set out as a note under section 1401 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 922 of Pub. L. 98–94 effective Oct. 1, 1983, see section 922(e) of Pub. L. 98–94, set out as a note under section 1401 of this title.

Amendment by section 923 of Pub. L. 98–94 applicable with respect to (1) the computation of retired or retainer pay of any individual who becomes entitled to that pay after Sept. 30, 1983, and (2) the recomputation of retired pay under this section, of any individual who after Sept. 30, 1983, becomes entitled to recompute retired pay under this section, see section 923(g) of Pub. L. 98–94, set out as a note under section 1174 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

ACCRUAL OF BENEFITS; PROSPECTIVE APPLICABILITY

No benefits to accrue for months beginning before Oct. 23, 1992, by reason of the amendment by Pub. L. 102–484, see section 642(c) of Pub. L. 102–484, set out as a note under section 1402 of this title.

§ 1403. Disability retired pay: treatment under Internal Revenue Code of 1986

That part of the retired pay of a member of an armed force, computed under formula No. 1 or 2

of section 1401, or under section 1402(d) or 1402a(d) of this title on the basis of years of service, which exceeds the retired pay that he would receive if it were computed on the basis of percentage of disability is not considered as a pension, annuity, or similar allowance for personal injury, or sickness, resulting from active service in the armed forces, under section 104(a) of the Internal Revenue Code of 1986.

(Aug. 10, 1956, ch. 1041, 70A Stat. 108; Pub. L. 96–342, title VIII, § 813(b)(3)(C), Sept. 8, 1980, 94 Stat. 1104; Pub. L. 96–513, title V, § 511(52)(A), (B), Dec. 12, 1980, 94 Stat. 2925; Pub. L. 100–26, § 7(h)(1), (2)(A), Apr. 21, 1987, 101 Stat. 282.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
1403	37:272(h).	Oct. 12, 1949, ch. 681, § 402(h), 63 Stat. 820.

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in text, is set out in Title 26, Internal Revenue Code.

AMENDMENTS

1987—Pub. L. 100–26 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'' in section catchline and text.

1980—Pub. L. 96–513 substituted ''the Internal Revenue Code of 1954'' for ''title 26'' in section catchline and text.

Pub. L. 96–342 inserted reference to section 1402a(d) of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

§ 1404. Applicability of section 8301 of title 5

The retirement provisions of this title are subject to section 8301 of title 5.

(Aug. 10, 1956, ch. 1041, 70A Stat. 108; Pub. L. 89–718, § 3, Nov. 2, 1966, 80 Stat. 1115.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
1404	[No source].	[No source].

The effect of the act of April 23, 1930 (5 U.S.C. 47a), in temporarily deferring retirement dates otherwise specifically fixed by law is reflected in the sections of the proposed text that name those dates. This section is inserted to make clear that under that act such deferments have no effect on the applicability of the specific rates that are to be used in computing retired pay.

AMENDMENTS

1966—Pub. L. 89–718 substituted ''8301'' for ''47a'' in section catchline and text.

§ 1405. Years of service

(a) IN GENERAL.—For the purposes of the computation of the years of service of a member of the armed forces under a provision of this title providing for such computation to be made under this section, the years of service of the member are computed by adding—

(1) his years of active service;

(2) the years of service, not included in clause (1), with which he was entitled to be credited on May 31, 1958, in computing his basic pay; and

(3) the years of service, not included in clause (1) or (2), with which he would be entitled to be credited under section 12733 of this title if he were entitled to retired pay under section 12731 of this title.

(b) FRACTIONAL YEARS OF SERVICE.—In determining a member's years of service under subsection (a)—

(1) each full month of service that is in addition to the number of full years of service creditable to the member shall be credited as 1/12 of a year; and

(2) any remaining fractional part of a month shall be disregarded.

(c) EXCLUSION OF TIME REQUIRED TO BE MADE UP OR EXCLUDED.—(1) Time required to be made up by an enlisted member of the Army, Air Force, or Space Force under section 972(a) of this title, or required to be made up by an enlisted member of the Navy, Marine Corps, or Coast Guard under that section with respect to a period of time after October 5, 1994, may not be counted in determining years of service under subsection (a).

(2) Section 972(b) of this title excludes from computation of an officer's years of service for purposes of this section any time identified with respect to that officer under that section.

(Added Pub. L. 85–422, § 11(a)(1)(A), May 20, 1958, 72 Stat. 130; amended Pub. L. 85–861, § 1(31A), Sept. 2, 1958, 72 Stat. 1451; Pub. L. 87–649, § 6(f)(4), Sept. 7, 1962, 76 Stat. 494; Pub. L. 87–651, title I, § 109, Sept. 7, 1962, 76 Stat. 509; Pub. L. 90–130, § 1(7), Nov. 8, 1967, 81 Stat. 374; Pub. L. 96–513, title I, § 113(b), Dec. 12, 1980, 94 Stat. 2877; Pub. L. 97–295, § 1(17), Oct. 12, 1982, 96 Stat. 1290; Pub. L. 99–348, title I, § 106, July 1, 1986, 100 Stat. 691; Pub. L. 103–337, div. A, title VI, § 635(d), title XVI, § 1662(j)(3), Oct. 5, 1994, 108 Stat. 2789, 3004; Pub. L. 104–106, div. A, title V, § 561(d)(1), Feb. 10, 1996, 110 Stat. 322; Pub. L. 104–201, div. A, title X, § 1074(b)(1), Sept. 23, 1996, 110 Stat. 2660; Pub. L. 107–107, div. A, title X, § 1048(c)(7), Dec. 28, 2001, 115 Stat. 1226; Pub. L. 116–283, div. A, title IX, § 924(b)(25), Jan. 1, 2021, 134 Stat. 3824.)

HISTORICAL AND REVISION NOTES

1958 ACT

Revised section	Source (U.S. Code)	Source (Statutes at Large)
1405	[No source].	[No source].

The amendment reflects section 11 of the Act of May 20, 1958, Pub. L. 85–422 (72 Stat. 130).

1962 ACT

The change corrects a typographical error.

1982 ACT

This amends 10:1405 to correct an inadvertent error in the codification of title 10 in 1956 relating to retirement pay of warrant officers advanced on the retired list. Under provisions of law first enacted in 1948 through the codification of title 10 in 1956 and until 1965, warrant officers advanced on the retired list received credit for inactive service in the computation of retirement pay. The Comptroller General in 1965 (B–156576) held in

effect that computation of such retirement pay was governed by the wording of new title 10 that based the computation on years of active service only even though this had the result of making a substantive change. The Armed Services Committee of the House of Representatives concurs that an error was made in the codification of title 10 and has indicated that corrective legislative action is properly a responsibility of the House Judiciary Committee. See, also, the amendments to 10:3992 and 8992 made by sections 1(40) and 1(52), respectively.

AMENDMENTS

2021—Subsec. (c). Pub. L. 116–283 substituted '', Air Force, or Space Force'' for ''or Air Force''.

2001—Subsec. (c)(1). Pub. L. 107–107 substituted ''October 5, 1994,'' for ''the date of the enactment of the National Defense Authorization Act for Fiscal Year 1995,''.

1996—Subsec. (c). Pub. L. 104–106, as amended by Pub. L. 104–201, substituted ''Made Up or Excluded'' for ''Made Up'' in heading, designated existing provisions as par. (1), substituted ''section 972(a) of this title, or required to be made up by an enlisted member of the Navy, Marine Corps, or Coast Guard under that section with respect to a period of time after the date of the enactment of the National Defense Authorization Act for Fiscal Year 1995,'' for ''section 972 of this title'', and added par. (2).

1994—Subsec. (a)(3). Pub. L. 103–337, § 1662(j)(3), substituted ''12733'' for ''1333'' and ''12731'' for ''1331''.

Subsec. (c). Pub. L. 103–337, § 635(d), added subsec. (c).

1986—Pub. L. 99–348 designated existing provision as subsec. (a), inserted heading, and in provision preceding par. (1) substituted ''the computation of the years of service of a member of the armed forces under a provision of this title providing for such computation to be made under this section, the years of service of the member'' for ''section 1401 (formulas 4 and 5), 3991 (formula A), 3992 (formula B), 6151(b), 6323(e), 6325(a)(2) and (b)(2), 6383(c)(2), 8991 (formula A), or 8992 (formula B) of this title, the years of service of a member of the armed forces'', and added subsec. (b).

1982—Pub. L. 97–295, § 1(17), substituted ''3991 (formula A), 3992 (formula B)'' for ''3991 (formula B)'', struck out ''or'' first time appearing, and substituted ''8991 (formula A), or 8992 (formula B)'' for ''8991 (formula B)''.

1980—Pub. L. 96–513 struck out provisions that permitted the crediting of certain periods of constructive service in computing the retired pay of medical and dental officers and provided that members would compute their years of service for retirement pay by adding (1) years of active service, (2) years of service not otherwise counted with which the member was entitled to be credited on May 31, 1958, and (3) years of service not otherwise counted with which he would be credited under section 1333 if he were entitled to retired pay under section 1331.

1967—Pub. L. 90–130 struck out references to section 6399(c)(2) of this title.

1962—Pub. L. 87–651 struck out references to sections 6391(h) and 6394(g)(2) of this title and inserted a reference to section 6394(h) of this title.

Pub. L. 87–649 substituted ''section 205(a)(7) and (8) of title 37'' for ''section 233(a)(7) of title 37'' in cl. (2).

1958—Pub. L. 85–861 inserted references to sections 6323(e) and 6391(h) of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–106 effective Feb. 10, 1996, and applicable to any period of time covered by section 972 of this title that occurs after that date, see section 561(e) of Pub. L. 104–106, set out as a note under section 972 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Pub. L. 103–337, div. A, title VI, § 635(e), Oct. 5, 1994, 108 Stat. 2789, provided that: ''This section [amending this section and sections 3925, 3991, 3992, 6333, 8925, 8991, and 8992 of this title] shall apply to—

''(1) the computation of the retired pay of any enlisted member who retires on or after the date of the enactment of this Act [Oct. 5, 1994];

''(2) the computation of the retainer pay of any enlisted member who is transferred to the Fleet Reserve or the Fleet Marine Corps Reserve on or after the date of the enactment of this Act; and

''(3) the recomputation of the retired pay of any enlisted member who is advanced on the retired list on or after the date of the enactment of this Act.''

Amendment by section 1662(j)(3) of Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Sept. 15, 1981, but the authority to prescribe regulations under the amendment by Pub. L. 96–513 effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–649 effective Nov. 1, 1962, see section 15 of Pub. L. 87–649, set out as a note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE

Section effective June 1, 1958, see section 9 of Pub. L. 85–422.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

TRANSITION PROVISIONS UNDER DEFENSE OFFICER PERSONNEL MANAGEMENT ACT

For provisions to prevent extinction or premature termination of rights, duties, penalties, or proceedings that existed or were begun prior to the effective date of Pub. L. 96–513 and otherwise to allow for an orderly transition to the system of officer personnel management put in place under Pub. L. 96–513, see section 601 et seq. of Pub. L. 96–513, set out as a note under section 611 of this title.

§ 1406. Retired pay base for members who first became members before September 8, 1980: final basic pay

(a) USE OF RETIRED PAY BASE IN COMPUTING RETIRED PAY.—

(1) GENERAL RULE.—The retired pay or retainer pay of any person entitled to that pay who first became a member of a uniformed service before September 8, 1980, is computed using the retired pay base or retainer pay base determined under this section.

(2) EXCEPTION FOR RECOMPUTATION.—Recomputation of retired or retainer pay to reflect later active duty is provided for under section 1402 of this title without reference to a retired pay base or retainer pay base.

(b) RETIREMENT UNDER SUBTITLE A OR E.—

(1) DISABILITY, WARRANT OFFICER, AND DOPMA RETIREMENT.—In the case of a person whose retired pay is computed under this subtitle, the retired pay base is determined in accordance with the following table.

For a member entitled to retired pay under section:	The retired pay base is:
1201 1202 1204 1205	Monthly basic pay[1] of grade to which member is entitled under section 1372 or to which he was entitled on day before retirement or placement on temporary disability retired list, whichever is higher.
580 1263 1293 1305	Monthly basic pay to which member would have been entitled if he had served on active duty in his retired grade on day before retirement, or if the pay of that grade is less than the pay of any warrant grade satisfactorily held by him on active duty, the monthly basic pay of that warrant officer grade.
633 634 635 636 1251 1252 1253	Monthly basic pay[2] of member's retired grade.[3]

[1] Compute at rates applicable on date of retirement or date when member's name was placed on temporary disability retired list, as the case may be.
[2] Compute at rates applicable on date of retirement.
[3] For the purposes of this subsection, determine member's retired grade as if sections 7342 and 9342 did not apply.

(2) NON-REGULAR SERVICE RETIREMENT.—In the case of a person who is entitled to retired pay under section 12731 of this title, the retired pay base is the monthly basic pay, determined at the rates applicable on the date when retired pay is granted (or, in the case of a person entitled to retired pay by reason of an election under section 12741(a) of this title, at rates applicable on the date the person completes the service required under such section 12741(a)), of the highest grade held satisfactorily by the person at any time in the armed forces. For purposes of the preceding sentence, the highest grade in which a person served satisfactorily as an officer shall be determined in accordance with section 1370a of this title.

(c) VOLUNTARY RETIREMENT FOR MEMBERS OF THE ARMY.—

(1) IN GENERAL.—In the case of a member whose retired pay is computed under section 7361 of this title or who is entitled to retired pay computed under section 7362 of this title, the retired pay base is determined in accordance with the following table.

For a member entitled to retired pay under section:	The retired pay base is:
7311 7318 7320 7324	Monthly basic pay of member's retired grade.[1]
7314 7317	Monthly basic pay to which member was entitled on day before he retired.
7362	Monthly basic pay of grade to which member is advanced on retired list.

[1] For the purposes of this subsection, determine member's retired grade as if section 7342 did not apply.

(2) RATE OF BASIC PAY TO BE USED.—The rate of basic pay to be used under paragraph (1) is the rate applicable on the date of the member's retirement.

(d) RETIREMENT FOR MEMBERS OF THE NAVY AND MARINE CORPS.—In the case of a member whose retired pay is computed under section 8333 of this title, who is advanced on the retired list under section 8262 or 8334 of this title, or who is entitled to retainer pay under section 8330 of this title, the retired pay base or retainer pay base is determined in accordance with the following table.

For a member entitled to retired or retainer pay under section:	The retired pay base or retainer pay base is:
8323 8325(a) 8372	Basic pay of the grade in which the member retired.[1]
8325(b)	Basic pay of the grade the officer would hold if he had not received an appointment described in section 8325(b).
8326	Basic pay of the pay grade in which the member was serving on the day before retirement.
8330	Basic pay that the member received at the time of transfer to the Fleet Reserve or Fleet Marine Corps Reserve.
8262	Basic pay of the grade to which the member is advanced under section 8262.
8334	Basic pay of the grade to which the member is advanced under section 8334.

[1] If the rate specified is less than the pay of any warrant officer grade satisfactorily held by the member on active duty, use the monthly basic pay of that warrant officer grade.

(e) VOLUNTARY RETIREMENT FOR MEMBERS OF THE AIR FORCE AND SPACE FORCE.—

(1) IN GENERAL.—In the case of a member whose retired pay is computed under section 9361 of this title or who is entitled to retired pay computed under section 9362 of this title, the retired pay base is determined in accordance with the following table.

For a member entitled to retired pay under section:	The retired pay base is:
9311 9318 9320 9324	Monthly basic pay of member's retired grade.[1]
9314 9317	Monthly basic pay to which member was entitled on day before he retired.
9362	Monthly basic pay of grade to which member is advanced on retired list.

[1] For the purposes of this subsection, determine member's retired grade as if section 9342 did not apply.

(2) RATE OF BASIC PAY TO BE USED.—The rate of basic pay to be used under paragraph (1) is the rate applicable on the date of the member's retirement.

(f) COAST GUARD.—In the case of a member who is retired under any section of title 14, the

member's retired pay is computed under section 423(a)[1] of title 14 in the manner provided in that section.

(g) COMMISSIONED CORPS OF NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION.—In the case of an officer whose retired pay is computed under section 245 of the National Oceanic and Atmospheric Administration Commissioned Officer Corps Act of 2002 (33 U.S.C. 3045), the retired pay base is the basic pay of the rank with which the officer retired.

(h) COMMISSIONED CORPS OF PUBLIC HEALTH SERVICE.—In the case of an officer who is retired under section 210(g) or 211(a) of the Public Health Service Act (42 U.S.C. 211(g), 212(a)), the retired pay base is determined as follows:

(1) MANDATORY RETIREMENT.—If the officer is retired under section 210(g) of such Act, the retired pay base is the basic pay of the permanent grade held by the officer at the time of retirement.

(2) VOLUNTARY RETIREMENT.—If the officer is retired under section 211(a) of such Act, the retired pay base is the basic pay of the highest grade held by the officer and in which, in the case of a temporary promotion to such grade, the officer has performed active duty for not less than six months.

(i) SPECIAL RULE FOR FORMER CHAIRMEN AND VICE CHAIRMEN OF THE JCS, CHIEFS OF SERVICE, CHIEF OF THE NATIONAL GUARD BUREAU, COMMANDERS OF COMBATANT COMMANDS, AND SENIOR ENLISTED MEMBERS.—

(1) IN GENERAL.—For the purposes of subsections (b) through (e), in determining the rate of basic pay to apply in the determination of the retired pay base of a member who has served as Chairman or Vice Chairman of the Joint Chiefs of Staff, as a Chief of Service, as Chief of the National Guard Bureau, as a commander of a unified or specified combatant command (as defined in section 161(c) of this title), or as the senior enlisted member of an armed force or the senior enlisted advisor to the Chairman of the Joint Chiefs of Staff or the Chief of the National Guard Bureau, the highest rate of basic pay applicable to the member while serving in that position shall be used, if that rate is higher than the rate otherwise authorized by this section.

(2) EXCEPTION FOR MEMBERS REDUCED IN GRADE OR WHO DO NOT SERVE SATISFACTORILY.—Paragraph (1) does not apply in the case of a member who, while or after serving in a position specified in that paragraph and by reason of conduct occurring after October 16, 1998—

(A) in the case of an enlisted member, is reduced in grade as the result of a court-martial sentence, nonjudicial punishment, or other administrative process; or

(B) in the case an officer, is not certified by the Secretary of Defense under section 1370(c)[1] of this title as having served on active duty satisfactorily in the grade of general or admiral, as the case may be, while serving in that position.

(3) DEFINITIONS.—In this subsection:

(A) The term ''Chief of Service'' means any of the following:

(i) Chief of Staff of the Army.

(ii) Chief of Naval Operations.

(iii) Chief of Staff of the Air Force.

(iv) Commandant of the Marine Corps.

(v) Chief of Space Operations.

(vi) Commandant of the Coast Guard.

(B) The term ''senior enlisted member'' means any of the following:

(i) Sergeant Major of the Army.

(ii) Master Chief Petty Officer of the Navy.

(iii) Chief Master Sergeant of the Air Force.

(iv) Sergeant Major of the Marine Corps.

(v) The senior enlisted advisor of the Space Force.

(vi) Master Chief Petty Officer of the Coast Guard.

(Added Pub. L. 99–348, title I, § 104(b), July 1, 1986, 100 Stat. 686; amended Pub. L. 100–180, div. A, title V, § 512(d)(2), title XIII, § 1314(b)(6), Dec. 4, 1987, 101 Stat. 1090, 1175; Pub. L. 100–456, div. A, title XII, § 1233(c), Sept. 29, 1988, 102 Stat. 2057; Pub. L. 102–190, div. A, title XI, § 1131(7), Dec. 5, 1991, 105 Stat. 1506; Pub. L. 103–337, div. A, title XVI, § 1662(j)(4), Oct. 5, 1994, 108 Stat. 3004; Pub. L. 105–85, div. A, title X, § 1073(a)(23), Nov. 18, 1997, 111 Stat. 1901; Pub. L. 105–261, div. A, title VI, § 646, Oct. 17, 1998, 112 Stat. 2050; Pub. L. 106–65, div. A, title X, § 1066(a)(11), Oct. 5, 1999, 113 Stat. 771; Pub. L. 107–372, title II, § 272(a), Dec. 19, 2002, 116 Stat. 3094; Pub. L. 108–136, div. A, title VI, § 643(a), (b), Nov. 24, 2003, 117 Stat. 1517; Pub. L. 108–375, div. A, title X, § 1084(d)(9), Oct. 28, 2004, 118 Stat. 2061; Pub. L. 109–163, div. A, title V, § 509(d)(1)(B), title VI, § 685(d), Jan. 6, 2006, 119 Stat. 3231, 3325; Pub. L. 109–364, div. A, title V, § 502(d)(2), title X, § 1071(a)(7), Oct. 17, 2006, 120 Stat. 2178, 2398; Pub. L. 111–84, div. A, title VI, § 643(d)(1), Oct. 28, 2009, 123 Stat. 2367; Pub. L. 113–291, div. A, title VI, § 603(d), Dec. 19, 2014, 128 Stat. 3398; Pub. L. 115–232, div. A, title VIII, § 809(a), Aug. 13, 2018, 132 Stat. 1840; Pub. L. 116–283, div. A, title V, § 508(b)(1)(A), title IX, § 924(b)(26), Jan. 1, 2021, 134 Stat. 3585, 3824.)

REFERENCES IN TEXT

Section 423 of title 14, referred to in subsec. (f), was redesignated section 2504 of title 14 by Pub. L. 115–282, title I, § 114(b), Dec. 4, 2018, 132 Stat. 4223, and references to section 423 of title 14 deemed to refer to such redesignated section, see section 123(b)(1) of Pub. L. 115–282, set out as a References to Sections of Title 14 as Redesignated by Pub. L. 115–282 note preceding section 101 of Title 14, Coast Guard.

Section 1370(c) of this title, referred to in subsec. (i)(2)(B), was repealed and new sections 1370 and 1370a were enacted by Pub. L. 116–283, div. A, title V, § 508(a)(1), Jan. 1, 2021, 134 Stat. 3580. For provisions stating that in determining retired grade of certain commissioned officers of the Armed Forces who retire after Jan. 1, 2021, any reference to section 1370 of title 10 in such determination with respect to such officers is deemed to be a reference to section 1370a of title 10, see section 508(c) of Pub. L. 116–283, set out as a note under section 1370 of this title.

PRIOR PROVISIONS

A prior section 1406 was renumbered section 12738 of this title.

AMENDMENTS

2021—Subsec. (b)(2). Pub. L. 116–283, § 508(b)(1)(A), substituted ''section 1370a'' for ''section 1370(d)''.

[1] See References in Text note below.

Subsec. (e). Pub. L. 116–283, § 924(b)(26)(A), inserted ''and Space Force'' after ''Air Force'' in heading.

Subsec. (i)(3)(A)(v), (vi). Pub. L. 116–283, § 924(b)(26)(B)(i), added cl. (v) and redesignated former cl. (v) as (vi).

Subsec. (i)(3)(B)(v), (vi). Pub. L. 116–283, § 924(b)(26)(B)(ii), added cl. (v) and redesignated former cl. (v) as (vi).

2018—Subsec. (b)(1). Pub. L. 115–232 substituted ''sections 7342 and 9342'' for ''sections 3962 and 8962'' in footnote 3 in table.

Subsec. (c)(1). Pub. L. 115–232 substituted ''In the case of a member whose retired pay is computed under section 7361 of this title or who is entitled to retired pay computed under section 7362 of this title'' for ''In the case of a member whose retired pay is computed under section 3991 of this title or who is entitled to retired pay computed under section 3992 of this title'' in introductory provisions, ''7311'' for ''3911'', ''7318'' for ''3918'', ''7320'' for ''3920'', ''7324'' for ''3924'', ''7314'' for ''3914'', ''7317'' for ''3917'', and ''7362'' for ''3992'' in column 1 of table, and ''section 7342'' for ''section 3962'' in footnote 1 in table.

Subsec. (d). Pub. L. 115–232 substituted ''In the case of a member whose retired pay is computed under section 8333 of this title, who is advanced on the retired list under section 8262 or 8334 of this title, or who is entitled to retainer pay under section 8330 of this title,'' for ''In the case of a member whose retired pay is computed under section 6333 of this title, who is advanced on the retired list under section 6151 or 6334 of this title, or who is entitled to retainer pay under section 6330 of this title,'' in introductory provisions, ''8323'' for ''6323'', ''8325(a)'' for ''6325(a)'', ''8372'' for ''6383'', ''8325(b)'' for ''6325(b)'', ''8326'' for ''6326'', ''8330'' for ''6330'', ''8262'' for ''6151'', and ''8334'' for ''6334'' in column 1 of table, and ''section 8325(b)'' for ''section 6325(b)'', ''section 8262'' for ''section 6151'', and ''section 8334'' for ''section 6334'' in column 2 of table.

Subsec. (e)(1). Pub. L. 115–232 substituted ''In the case of a member whose retired pay is computed under section 9361 of this title or who is entitled to retired pay computed under section 9362 of this title'' for ''In the case of a member whose retired pay is computed under section 8991 of this title or who is entitled to retired pay computed under section 8992 of this title'' in introductory provisions, ''9311'' for ''8911'', ''9318'' for ''8918'', ''9320'' for ''8920'', ''9324'' for ''8924'', ''9314'' for ''8914'', ''9317'' for ''8917'', and ''9362'' for ''8992'' in column 1 of table, and ''section 9342'' for ''section 8962'' in footnote 1 in table.

2014—Subsec. (i). Pub. L. 113–291, § 603(d)(1), inserted ''Chief of the National Guard Bureau,'' after ''Chiefs of Service,'' in heading.

Subsec. (i)(1). Pub. L. 113–291, § 603(d)(2), inserted ''as Chief of the National Guard Bureau,'' after ''Chief of Service,'' and ''or the senior enlisted advisor to the Chairman of the Joint Chiefs of Staff or the Chief of the National Guard Bureau'' after ''of an armed force''.

Subsec. (i)(3)(B)(vi). Pub. L. 113–291, § 603(d)(3), struck out cl. (vi) which read as follows: ''Senior Enlisted Advisor to the Chairman of the Joint Chiefs of Staff.''

2009—Subsec. (b)(2). Pub. L. 111–84 inserted ''(or, in the case of a person entitled to retired pay by reason of an election under section 12741(a) of this title, at rates applicable on the date the person completes the service required under such section 12741(a))'' after ''when retired pay is granted''.

2006—Subsec. (b)(1). Pub. L. 109–364, § 502(d)(2), in table inserted ''1253'' at end of column under heading ''For a member entitled to retired pay under section:''.

Pub. L. 109–163, § 509(d)(1)(B), in table inserted ''1252'' at end of column under heading ''For a member entitled to retired pay under section:''.

Subsec. (i)(3)(B)(vi). Pub. L. 109–364, § 1071(a)(7), substituted ''to'' for ''for''.

Pub. L. 109–163, § 685(d), added cl. (vi).

2004—Subsec. (g). Pub. L. 108–375 substituted ''section 245'' for ''section 305'' and ''Officer Corps Act of 2002 (33 U.S.C. 3045)'' for ''Officers Act of 2002''.

2003—Subsec. (i). Pub. L. 108–136 inserted ''Commanders of Combatant Commands,'' after ''Chiefs of Service,'' in heading and ''as a commander of a unified or specified combatant command (as defined in section 161(c) of this title),'' after ''Chief of Service,'' in par. (1).

2002—Subsec. (g). Pub. L. 107–372 substituted ''section 305 of the National Oceanic and Atmospheric Administration Commissioned Officers Act of 2002'' for ''section 16 of the Coast and Geodetic Survey Commissioned Officers' Act of 1948 (33 U.S.C. 853*o*)''

1999—Subsec. (i)(2). Pub. L. 106–65 substituted ''after October 16, 1998'' for ''on or after the date of the enactment of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999'' in introductory provisions.

1998—Subsec. (i)(2), (3). Pub. L. 105–261 added par. (2) and redesignated former par. (2) as (3).

1997—Subsec. (b)(1). Pub. L. 105–85 substituted ''3962 and 8962'' for ''3962(b) and 8962(b)'' in footnote 3 in table.

Subsec. (c)(1). Pub. L. 105–85, § 1073(a)(23)(A), substituted ''3962'' for ''3962(b)'' in footnote 1 in table.

Subsec. (e)(1). Pub. L. 105–85, § 1073(a)(23)(B), substituted ''8962'' for ''8962(b)'' in footnote 1 in table.

1994—Subsec. (b). Pub. L. 103–337 substituted ''Subtitle A or E'' for ''Subtitle A'' in subsec. heading, designated existing provisions as par. (1), inserted par. (1) heading, in table struck out item for section 1331 which related to monthly basic pay of highest grade held satisfactorily by person at any time in armed forces, renumbered footnotes 3 and 4 as 2 and 3, respectively, and struck out former footnote 2 which provided for computations at rates applicable on date when retired pay is granted, and added par. (2).

1991—Subsec. (b). Pub. L. 102–190 substituted ''580'' for ''564'' in table.

1988—Subsec. (b). Pub. L. 100–456 substituted ''satisfactorily by person'' for ''satisfactory by person'' in item relating to section 1331 in table.

1987—Subsec. (d). Pub. L. 100–180, § 512(d)(2), inserted ''or 6334'' after ''6151'' in text, and inserted item relating to section 6334 at end of table.

Subsec. (i). Pub. L. 100–180, § 1314(b)(6), inserted ''and Vice Chairmen'' after ''Chairmen'' in heading and inserted ''or Vice Chairman'' after ''Chairman'' in par. (1).

Effective Date of 2018 Amendment

Amendment by Pub. L. 115–232 effective Feb. 1, 2019, with provision for the coordination of amendments and special rule for certain redesignations, see section 800 of Pub. L. 115–232, set out as a note preceding section 3001 of this title.

Effective Date of 2014 Amendment

Pub. L. 113–291, div. A, title VI, § 603(e), Dec. 19, 2014, 128 Stat. 3398, provided that: ''This section [amending this section and sections 210 and 414 of Title 37, Pay and Allowances of the Uniformed Services, enacting provisions set out as a note under section 203 of Title 37, and amending provisions set out as a note under section 205 of Title 37] and the amendments made by this section shall take effect on the date of the enactment of this Act [Dec. 19, 2014], and shall apply with respect to months of service that begin on or after that date.''

Effective Date of 2003 Amendment

Pub. L. 108–136, div. A, title VI, § 643(c), Nov. 24, 2003, 117 Stat. 1517, provided that: ''The amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [Nov. 24, 2003] and shall apply with respect to officers who first become entitled to retired pay under title 10, United States Code, on or after such date.''

Effective Date of 1994 Amendment

Amendment by Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–190 effective Feb. 1, 1992, see section 1132 of Pub. L. 102–190, set out as a note under section 521 of this title.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

GRADE ON TRANSFER TO RETIRED RESERVE

Pub. L. 103–337, div. A, title XVI, § 1688, Oct. 5, 1994, 108 Stat. 3025, provided that: ''In determining the highest grade held satisfactorily by a person at any time in the Armed Forces for the purposes of paragraph (2) of section 1406(b) of title 10, United States Code, as added by this title, the requirement for satisfactory service on the reserve active-status list contained in [former] section 1370(d) of title 10, United States Code, as added by this title, shall apply only to reserve commissioned officers who are promoted to a higher grade as a result of selection for promotion under chapter 36 of that title or under chapter 1405 of that title, as added by this title, or having been found qualified for Federal recognition in a higher grade under chapter 3 of title 32, United States Code, after the effective date of this title [see Effective Date note set out under section 10001 of this title].''

[In determining retired grade of certain commissioned officers of the Armed Forces who retire after Jan. 1, 2021, any reference to section 1370 of title 10 in such determination with respect to such officers deemed to be a reference to section 1370a of title 10, see section 508(c) of Pub. L. 116–283, set out as a note under section 1370 of this title.]

§ 1407. Retired pay base for members who first became members after September 7, 1980: high-36 month average

(a) USE OF RETIRED PAY BASE IN COMPUTING RETIRED PAY.—The retired pay or retainer pay of any person entitled to that pay who first became a member of a uniformed service after September 7, 1980, is computed using the retired pay base or retainer pay base determined under this section.

(b) HIGH-THREE AVERAGE.—Except as provided in subsection (f), the retired pay base or retainer pay base of a person under this section is the person's high-three average determined under subsection (c) or (d).

(c) COMPUTATION OF HIGH-THREE AVERAGE FOR MEMBERS ENTITLED TO RETIRED OR RETAINER PAY FOR REGULAR SERVICE.—

(1) GENERAL RULE.—The high-three average of a member entitled to retired or retainer pay under any provision of law other than section 1204 or 1205 or section 12731 of this title is the amount equal to—

(A) the total amount of monthly basic pay to which the member was entitled for the 36 months (whether or not consecutive) out of all the months of active service of the member for which the monthly basic pay to which the member was entitled was the highest, divided by

(B) 36.

(2) SPECIAL RULE FOR SHORT-TERM DISABILITY RETIREES.—In the case of a member who is entitled to retired pay under section 1201 or 1202 of this title and who has completed less than 36 months of active service, the member's high-three average (notwithstanding paragraph (1)) is the amount equal to—

(A) the total amount of basic pay to which the member was entitled during the period of the member's active service, divided by

(B) the number of months (including any fraction thereof) of the member's active service.

(3) SPECIAL RULE FOR RESERVE COMPONENT MEMBERS.—In the case of a member of a reserve component who is entitled to retired pay under section 1201 or 1202 of this title, the member's high-three average (notwithstanding paragraphs (1) and (2)) is computed in the same manner as prescribed in paragraphs (2) and (3) of subsection (d) for a member entitled to retired pay under section 1204 or 1205 of this title.

(d) COMPUTATION OF HIGH-THREE AVERAGE FOR MEMBERS AND FORMER MEMBERS ENTITLED TO RETIRED PAY FOR NONREGULAR SERVICE.—

(1) RETIRED PAY UNDER CHAPTER 1223.—The high-three average of a member or former member entitled to retired pay under section 12731 of this title is the amount equal to—

(A) the total amount of monthly basic pay to which the member or former member was entitled during the member or former member's high-36 months (or to which the member or former member would have been entitled if the member or former member had served on active duty during the entire period of the member or former member's high-36 months), divided by

(B) 36.

(2) NONREGULAR SERVICE DISABILITY RETIRED PAY.—The high-three average of a member entitled to retired pay under section 1204 or 1205 of this title is the amount equal to—

(A) the total amount of monthly basic pay to which the member was entitled during the member's high-36 months (or to which the member would have been entitled if the member had served on active duty during the entire period of the member's high-36 months), divided by

(B) 36.

(3) SPECIAL RULE FOR SHORT-TERM DISABILITY RETIREES.—In the case of a member who is entitled to retired pay under section 1204 or 1205 of this title and who was a member for less than 36 months before being retired under that section, the member's high-three average (notwithstanding paragraph (2)) is the amount equal to—

(A) the total amount of basic pay to which the member was entitled during the entire period the member was a member of a uniformed service before being so retired (or to which the member would have been entitled if the member had served on active duty during the entire period the member was a member of a uniformed service before being so retired), divided by

(B) the number of months (including any fraction thereof) which the member was a member before being so retired.

(4) HIGH-36 MONTHS.—The high-36 months of a member or former member whose retired pay is covered by paragraph (1) or (2) are the 36 months (whether or not consecutive) out of all the months before the member or former member became entitled to retired pay or, in the case of a member or former member entitled to retired pay by reason of an election under section 12741(a) of this title, before the member or former member completes the service required under such section 12741(a), for which the monthly basic pay to which the member or former member was entitled (or would have been entitled if serving on active duty during those months) was the highest. In the case of a former member, only months during which the former member was a member of a uniformed service may be used for purposes of the preceding sentence.

(e) LIMITATION FOR ENLISTED MEMBERS RETIRING WITH LESS THAN 30 YEARS' SERVICE.—In the case of a member who is retired under section 7314 or 9314 of this title or who is transferred to the Fleet Reserve or Fleet Marine Corps Reserve under section 8330 of this title, the member's high-36 average shall be computed using only rates of basic pay applicable to months of active duty of the member as an enlisted member.

(f) EXCEPTION FOR ENLISTED MEMBERS REDUCED IN GRADE AND OFFICERS WHO DO NOT SERVE SATISFACTORILY IN HIGHEST GRADE HELD.—

(1) COMPUTATION BASED ON PRE-HIGH-THREE RULES.—In the case of a member or former member described in paragraph (2), the retired pay base or retainer pay base is determined under section 1406 of this title in the same manner as if the member or former member first became a member of a uniformed service before September 8, 1980.

(2) AFFECTED MEMBERS.—A member or former member referred to in paragraph (1) is a member or former member who by reason of conduct occurring after October 30, 2000—

(A) in the case of a member retired in an enlisted grade or transferred to the Fleet Reserve or Fleet Marine Corps Reserve, was at any time reduced in grade as the result of a court-martial sentence, nonjudicial punishment, or an administrative action, unless the member was subsequently promoted to a higher enlisted grade or appointed to a commissioned or warrant grade; and

(B) in the case of an officer, is retired in a grade lower than the highest grade in which served pursuant to section 1370 or 1370a of this title that the officer served on active duty satisfactorily in that grade.

(3) SPECIAL RULE FOR ENLISTED MEMBERS.—In the case of a member who retires within three years after having been reduced in grade as described in paragraph (2)(A), who retires in an enlisted grade that is lower than the grade from which reduced, and who would be subject to paragraph (1) but for a subsequent promotion to a higher enlisted grade or a subsequent appointment to a warrant or commissioned grade, the rates of basic pay used in the computation of the member's high-36 average for the period of the member's service in a grade higher than the grade in which retired shall be the rates of pay that would apply if the member had been serving for that period in the grade in which retired.

(Added Pub. L. 99–348, title I, §104(b), July 1, 1986, 100 Stat. 689; amended Pub. L. 101–189, div. A, title VI, §651(a), (b)(2), Nov. 29, 1989, 103 Stat. 1459, 1460; Pub. L. 103–337, div. A, title XVI, §1662(j)(5), Oct. 5, 1994, 108 Stat. 3004; Pub. L. 104–106, div. A, title XV, §1501(c)(15), Feb. 10, 1996, 110 Stat. 499; Pub. L. 106–398, §1 [[div. A], title VI, §651], Oct. 30, 2000, 114 Stat. 1654, 1654A–163; Pub. L. 107–107, div. A, title X, §1048(c)(8), Dec. 28, 2001, 115 Stat. 1226; Pub. L. 108–375, div. A, title VI, §641(a), Oct. 28, 2004, 118 Stat. 1957; Pub. L. 111–84, div. A, title VI, §643(d)(2), Oct. 28, 2009, 123 Stat. 2367; Pub. L. 115–232, div. A, title VIII, §809(a), Aug. 13, 2018, 132 Stat. 1840; Pub. L. 116–283, div. A, title V, §508(b)(1)(B), Jan. 1, 2021, 134 Stat. 3585.)

PRIOR PROVISIONS

A prior section 1407, added Pub. L. 96–342, title VIII, §813(a)(1), Sept. 8, 1980, 94 Stat. 1100; amended Pub. L. 96–513, title I, §113(c), title V, §§501(21), 511(53), Dec. 12, 1980, 94 Stat. 2877, 2908, 2925, related to determination of retired base pay, prior to repeal by Pub. L. 99–348, §104(b).

AMENDMENTS

2021—Subsec. (f)(2)(B). Pub. L. 116–283 substituted "pursuant to section 1370 or 1370a" for "by reason of denial of a determination or certification under section 1370".

2018—Subsec. (e). Pub. L. 115–232 substituted "section 7314 or 9314" for "section 3914 or 8914" and "section 8330" for "section 6330".

2009—Subsec. (d)(4). Pub. L. 111–84 inserted "or, in the case of a member or former member entitled to retired pay by reason of an election under section 12741(a) of this title, before the member or former member completes the service required under such section 12741(a)," after "became entitled to retired pay".

2004—Subsec. (c)(3). Pub. L. 108–375 added par. (3).

2001—Subsec. (f)(2). Pub. L. 107–107 substituted "October 30, 2000—" for "the date of the enactment of this subsection—" in introductory provisions.

2000—Subsec. (b). Pub. L. 106–398, §1 [[div. A], title VI, §651(1)], substituted "Except as provided in subsection (f), the retired pay base" for "The retired pay base".

Subsec. (f). Pub. L. 106–398, §1 [[div. A], title VI, §651(2)], added subsec. (f).

1996—Subsec. (c)(1). Pub. L. 104–106, §1501(c)(15)(A), substituted "section 12731" for "section 1331".

Subsec. (d)(1). Pub. L. 104–106 substituted in heading "CHAPTER 1223" for "CHAPTER 67" and in text "section 12731" for "section 1331".

1994—Subsec. (c)(2)(B). Pub. L. 103–337, §1662(j)(5)(A), which directed substitution of "chapter 1223" for "chapter 67", could not be executed because the words "chapter 67" did not appear subsequent to amendment by Pub. L. 101–189, §651(a)(2), (4). See 1989 Amendment note below.

Subsec. (f)(2). Pub. L. 103–337, §1662(j)(5)(B), which directed amendment of subsec. (f)(2) by substituting "Chapter 1223" for "Chapter 67" in heading and "section 12731" for "section 1331" in text, could not be executed because of previous repeal of subsec. (f) by Pub. L. 101–189, §651(a)(2). See 1989 Amendment note below.

1989—Subsec. (b). Pub. L. 101–189, §651(a)(1), (b)(2), substituted "person" for "member", "person's" for "member's", and "subsection (c) or (d)" for "subsection (c)".

Subsec. (c). Pub. L. 101–189, §651(a)(2), (4), added subsec. (c) and struck out former subsec. (c) which related to computation of high-three average.

Subsec. (d). Pub. L. 101–189, §651(a)(4), added subsec. (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 101–189, § 651(a)(2), (3), redesignated subsec. (d) as (e) and struck out former subsec. (e) which related to special rules for short-term disability retirees.

Subsecs. (f), (g). Pub. L. 101–189, § 651(a)(2), struck out subsec. (f) which related to special rule for members retiring with non-regular service, and subsec. (g) which defined the term ''years of creditable service''.

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115–232 effective Feb. 1, 2019, with provision for the coordination of amendments and special rule for certain redesignations, see section 800 of Pub. L. 115–232, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–375, div. A, title VI, § 641(b), Oct. 28, 2004, 118 Stat. 1957, provided that: ''Paragraph (3) of section 1407(c) of title 10, United States Code, as added by subsection (a), shall take effect—

''(1) for purposes of determining an annuity under subchapter II or III of chapter 73 of that title, with respect to deaths on active duty on or after September 10, 2001; and

''(2) for purposes of determining the amount of retired pay of a member of a reserve component entitled to retired pay under section 1201 or 1202 of such title, with respect to such entitlement that becomes effective on or after the date of the enactment of this Act [Oct. 28, 2004].''

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–106, div. A, title XV, § 1501(c), Feb. 10, 1996, 110 Stat. 498, provided that the amendment made by that section is effective as of Dec. 1, 1994, and as if included as an amendment made by the Reserve Officer Personnel Management Act, title XVI of Pub. L. 103–337, as originally enacted.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

§ 1407a. Retired pay base: officers retired in general or flag officer grades

(a) RATES OF BASIC PAY TO BE USED IN DETERMINATION.—Except as otherwise provided in this section, in a case in which the determination under section 1406 or 1407 of this title of the retired pay base applicable to the computation of the retired pay of a covered general or flag officer involves a rate of basic pay payable to that officer for any period between October 1, 2006, and December 31, 2014, that was subject to a reduction under section 203(a)(2) of title 37 for such period, such retired-pay-base determination shall be made using the rate of basic pay for such period provided by law, without regard to the reduction under section 203(a)(2) of title 37.

(b) PARTIAL PRESERVATION OF COMPUTATION OF RETIRED PAY BASE USING UNCAPPED RATES OF BASIC PAY FOR COVERED OFFICERS WHO FIRST BECAME MEMBERS BEFORE SEPTEMBER 8, 1980, AND WHOSE RETIRED PAY COMMENCES AFTER DECEMBER 31, 2014.—

(1) OFFICERS RETIRING AFTER DECEMBER 31, 2014.—In the case of a covered general or flag officer who first became a member of a uniformed service before September 8, 1980, and who is retired after December 31, 2014, under any provision of law other than chapter 1223 of this title or is transferred to the Retired Reserve after December 31, 2014, the retired pay base applicable to the computation of the retired pay of that officer shall be determined as provided in paragraph (2) if determination of such retired pay base as provided in that paragraph results in a higher retired pay base than determination of such retired pay base as otherwise provided by law (including the application of section 203(a)(2) of title 37).

(2) ALTERNATIVE DETERMINATION OF RETIRED PAY BASE USING UNCAPPED RATES OF BASIC PAY AS OF DECEMBER 31, 2014.—For a determination in accordance with this paragraph, the amount of an officer's retired pay base shall be determined by using the rate of basic pay provided as of December 31, 2014, for that officer's grade as of that date for purposes of basic pay, with that officer's years of service creditable as of that date for purposes of basic pay, and without regard to any reduction under section 203(a)(2) of title 37.

(3) EXCEPTION FOR OFFICER RETIRED IN A LOWER GRADE.—In a case in which the retired grade of the officer is lower than the grade in which the officer was serving on December 31, 2014, paragraph (2) shall be applied as if the officer was serving on that date in the officer's retired grade.

(c) PRESERVATION OF COMPUTATION OF RETIRED PAY BASE USING UNCAPPED RATES OF BASIC PAY FOR OFFICERS TRANSFERRING TO RETIRED RESERVE DURING SPECIFIED PERIOD.—In the case of a covered general or flag officer who is transferred to the Retired Reserve between October 1, 2006, and December 31, 2014, and who becomes entitled to receive retired pay under section 12731 of this title after December 31, 2014, the retired pay base applicable to the computation of the retired pay of that officer shall be determined using the rates of basic pay provided by law without regard to any reduction in rates of basic pay under section 203(a)(2) of title 37.

(d) COVERED GENERAL OR FLAG OFFICER DEFINED.—In this section, the term ''covered general or flag officer'' means a member or former member of a uniformed service who after September 30, 2006—

(1) is retired in a general officer grade or flag officer grade (or an equivalent grade, in the case of an officer of the commissioned corps of the Public Health Service or the National Oceanic and Atmospheric Administration); or

(2) is transferred to the Retired Reserve in a general officer grade or flag officer grade.

(Added Pub. L. 109–364, div. A, title VI, § 641(a), Oct. 17, 2006, 120 Stat. 2258; amended Pub. L. 113–291, div. A, title VI, § 622(a), Dec. 19, 2014, 128 Stat. 3401.)

AMENDMENTS

2014—Pub. L. 113–291 amended section generally. Prior to amendment section related to retired pay base: officers retired in general or flag officer grades, consisting of subsecs. (a) and (b).

EFFECTIVE DATE OF 2014 AMENDMENT

Pub. L. 113–291, div. A, title VI, § 622(b), Dec. 19, 2014, 128 Stat. 3403, provided that: ''Section 1407a of title 10, United States Code, as amended by subsection (a), shall be effective for retired pay that commences after December 31, 2014.''

§ 1408. Payment of retired or retainer pay in compliance with court orders

(a) DEFINITIONS.—In this section:

(1) The term ''court'' means—

(A) any court of competent jurisdiction of any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands;

(B) any court of the United States (as defined in section 451 of title 28) having competent jurisdiction;

(C) any court of competent jurisdiction of a foreign country with which the United States has an agreement requiring the United States to honor any court order of such country; and

(D) any administrative or judicial tribunal of a State competent to enter orders for support or maintenance (including a State agency administering a program under a State plan approved under part D of title IV of the Social Security Act), and, for purposes of this subparagraph, the term ''State'' includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

(2) The term ''court order'' means a final decree of divorce, dissolution, annulment, or legal separation issued by a court, or a court ordered, ratified, or approved property settlement incident to such a decree (including a final decree modifying the terms of a previously issued decree of divorce, dissolution, annulment, or legal separation, or a court ordered, ratified, or approved property settlement incident to such previously issued decree), or a support order, as defined in section 453(p) of the Social Security Act (42 U.S.C. 653(p)), which—

(A) is issued in accordance with the laws of the jurisdiction of that court;

(B) provides for—

(i) payment of child support (as defined in section 459(i)(2) of the Social Security Act (42 U.S.C. 659(i)(2)));

(ii) payment of alimony (as defined in section 459(i)(3) of the Social Security Act (42 U.S.C. 659(i)(3))); or

(iii) division of property (including a division of community property); and

(C) in the case of a division of property, specifically provides for the payment of an amount, expressed in dollars or as a percentage of disposable retired pay, from the disposable retired pay of a member to the spouse or former spouse of that member.

(3) The term ''final decree'' means a decree from which no appeal may be taken or from which no appeal has been taken within the time allowed for taking such appeals under the laws applicable to such appeals, or a decree from which timely appeal has been taken and such appeal has been finally decided under the laws applicable to such appeals.

(4)(A) The term ''disposable retired pay'' means the total monthly retired pay to which a member is entitled less amounts which—

(i) are owed by that member to the United States for previous overpayments of retired pay and for recoupments required by law resulting from entitlement to retired pay;

(ii) are deducted from the retired pay of such member as a result of forfeitures of retired pay ordered by a court-martial or as a result of a waiver of retired pay required by law in order to receive compensation under title 5 or title 38;

(iii) in the case of a member entitled to retired pay under chapter 61 of this title, are equal to the amount of retired pay of the member under that chapter computed using the percentage of the member's disability on the date when the member was retired (or the date on which the member's name was placed on the temporary disability retired list); or

(iv) are deducted because of an election under chapter 73 of this title to provide an annuity to a spouse or former spouse to whom payment of a portion of such member's retired pay is being made pursuant to a court order under this section.

(B) For purposes of subparagraph (A), in the case of a division of property as part of a final decree of divorce, dissolution, annulment, or legal separation that becomes final prior to the date of a member's retirement, the total monthly retired pay to which the member is entitled shall be—

(i) in the case of a member not described in clause (ii), the amount of retired pay to which the member would have been entitled using the member's retired pay base and years of service on the date of the decree of divorce, dissolution, annulment, or legal separation, as computed under section 1406 or 1407 of this title, whichever is applicable, increased by the sum of the cost-of-living adjustments that—

(I) would have occurred under section 1401a(b) of this title between the date of the decree of divorce, dissolution, annulment, or legal separation and the time of the member's retirement using the adjustment provisions under section 1401a of this title applicable to the member upon retirement; and

(II) occur under 1401a of this title after the member's retirement; or

(ii) in the case of a member who becomes entitled to retired pay pursuant to chapter 1223 of this title, the amount of retired pay to which the member would have been entitled using the member's retired pay base and creditable service points on the date of the decree of divorce, dissolution, annulment, or legal separation, as computer under chapter 1223 of this title, increased by the sum of the cost-of-living adjustments as described in clause (i) that apply with respect to the member.

(5) The term ''member'' includes a former member entitled to retired pay under section 12731 of this title.

(6) The term ''spouse or former spouse'' means the husband or wife, or former husband or wife, respectively, of a member who, on or

before the date of a court order, was married to that member.

(7) The term ''retired pay'' includes retainer pay.

(b) EFFECTIVE SERVICE OF PROCESS.—For the purposes of this section—

(1) service of a court order is effective if—

(A) an appropriate agent of the Secretary concerned designated for receipt of service of court orders under regulations prescribed pursuant to subsection (i) or, if no agent has been so designated, the Secretary concerned, is personally served or is served by facsimile or electronic transmission or by mail;

(B) the court order is regular on its face;

(C) the court order or other documents served with the court order identify the member concerned and include, if possible, the social security number of such member; and

(D) the court order or other documents served with the court order certify that the rights of the member under the Servicemembers Civil Relief Act (50 U.S.C. 3901 et seq.) were observed; and

(2) a court order is regular on its face if the order—

(A) is issued by a court of competent jurisdiction;

(B) is legal in form; and

(C) includes nothing on its face that provides reasonable notice that it is issued without authority of law.

(c) AUTHORITY FOR COURT TO TREAT RETIRED PAY AS PROPERTY OF THE MEMBER AND SPOUSE.—(1) Subject to the limitations of this section, a court may treat disposable retired pay payable to a member for pay periods beginning after June 25, 1981, either as property solely of the member or as property of the member and his spouse in accordance with the law of the jurisdiction of such court. A court may not treat retired pay as property in any proceeding to divide or partition any amount of retired pay of a member as the property of the member and the member's spouse or former spouse if a final decree of divorce, dissolution, annulment, or legal separation (including a court ordered, ratified, or approved property settlement incident to such decree) affecting the member and the member's spouse or former spouse (A) was issued before June 25, 1981, and (B) did not treat (or reserve jurisdiction to treat) any amount of retired pay of the member as property of the member and the member's spouse or former spouse.

(2) Notwithstanding any other provision of law, this section does not create any right, title, or interest which can be sold, assigned, transferred, or otherwise disposed of (including by inheritance) by a spouse or former spouse. Payments by the Secretary concerned under subsection (d) to a spouse or former spouse with respect to a division of retired pay as the property of a member and the member's spouse under this subsection may not be treated as amounts received as retired pay for service in the uniformed services.

(3) This section does not authorize any court to order a member to apply for retirement or retire at a particular time in order to effectuate any payment under this section.

(4) A court may not treat the disposable retired pay of a member in the manner described in paragraph (1) unless the court has jurisdiction over the member by reason of (A) his residence, other than because of military assignment, in the territorial jurisdiction of the court, (B) his domicile in the territorial jurisdiction of the court, or (C) his consent to the jurisdiction of the court.

(d) PAYMENTS BY SECRETARY CONCERNED TO (OR FOR BENEFIT OF) SPOUSE OR FORMER SPOUSE.—(1) After effective service on the Secretary concerned of a court order providing for the payment of child support or alimony or, with respect to a division of property, specifically providing for the payment of an amount of the disposable retired pay from a member to the spouse or a former spouse of the member, the Secretary shall make payments (subject to the limitations of this section) from the disposable retired pay of the member to the spouse or former spouse (or for the benefit of such spouse or former spouse to a State disbursement unit established pursuant to section 454B of the Social Security Act or other public payee designated by a State, in accordance with part D of title IV of the Social Security Act, as directed by court order, or as otherwise directed in accordance with such part D) in an amount sufficient to satisfy the amount of child support and alimony set forth in the court order and, with respect to a division of property, in the amount of disposable retired pay specifically provided for in the court order. In the case of a spouse or former spouse who, pursuant to section 408(a)(3) of the Social Security Act (42 U.S.C. 608(a)(4)),[1] assigns to a State the rights of the spouse or former spouse to receive support, the Secretary concerned may make the child support payments referred to in the preceding sentence to that State in amounts consistent with that assignment of rights. In the case of a member entitled to receive retired pay on the date of the effective service of the court order, such payments shall begin not later than 90 days after the date of effective service. In the case of a member not entitled to receive retired pay on the date of the effective service of the court order, such payments shall begin not later than 90 days after the date on which the member first becomes entitled to receive retired pay.

(2) If the spouse or former spouse to whom payments are to be made under this section was not married to the member for a period of 10 years or more during which the member performed at least 10 years of service creditable in determining the member's eligibility for retired pay, payments may not be made under this section to the extent that they include an amount resulting from the treatment by the court under subsection (c) of disposable retired pay of the member as property of the member or property of the member and his spouse.

(3) Payments under this section shall not be made more frequently than once each month, and the Secretary concerned shall not be required to vary normal pay and disbursement cycles for retired pay in order to comply with a court order.

(4) Payments from the disposable retired pay of a member pursuant to this section shall ter-

[1] See References in Text note below.

minate in accordance with the terms of the applicable court order, but not later than the date of the death of the member or the date of the death of the spouse or former spouse to whom payments are being made, whichever occurs first.

(5) If a court order described in paragraph (1) provides for a division of property (including a division of community property) in addition to an amount of child support or alimony or the payment of an amount of disposable retired pay as the result of the court's treatment of such pay under subsection (c) as property of the member and his spouse, the Secretary concerned shall pay (subject to the limitations of this section) from the disposable retired pay of the member to the spouse or former spouse of the member, any part of the amount payable to the spouse or former spouse under the division of property upon effective service of a final court order of garnishment of such amount from such retired pay.

(6) In the case of a court order for which effective service is made on the Secretary concerned on or after August 22, 1996, and which provides for payments from the disposable retired pay of a member to satisfy the amount of child support set forth in the order, the authority provided in paragraph (1) to make payments from the disposable retired pay of a member to satisfy the amount of child support set forth in a court order shall apply to payment of any amount of child support arrearages set forth in that order as well as to amounts of child support that currently become due.

(7)(A) The Secretary concerned may not accept service of a court order that is an out-of-State modification, or comply with the provisions of such a court order, unless the court issuing that order has jurisdiction in the manner specified in subsection (c)(4) over both the member and the spouse or former spouse involved.

(B) A court order shall be considered to be an out-of-State modification for purposes of this paragraph if the order—

(i) modifies a previous court order under this section upon which payments under this subsection are based; and

(ii) is issued by a court of a State other than the State of the court that issued the previous court order.

(8) A division of property award computed as a percentage of a member's disposable retired pay shall be increased by the same percentage as any cost-of-living adjustment made under section 1401a after the member's retirement.

(e) LIMITATIONS.—(1) The total amount of the disposable retired pay of a member payable under all court orders pursuant to subsection (c) may not exceed 50 percent of such disposable retired pay.

(2) In the event of effective service of more than one court order which provide for payment to a spouse and one or more former spouses or to more than one former spouse, the disposable retired pay of the member shall be used to satisfy (subject to the limitations of paragraph (1)) such court orders on a first-come, first-served basis. Such court orders shall be satisfied (subject to the limitations of paragraph (1)) out of that amount of disposable retired pay which remains after the satisfaction of all court orders which have been previously served.

(3)(A) In the event of effective service of conflicting court orders under this section which assert to direct that different amounts be paid during a month to the same spouse or former spouse of the same member, the Secretary concerned shall—

(i) pay to that spouse from the member's disposable retired pay the least amount directed to be paid during that month by any such conflicting court order, but not more than the amount of disposable retired pay which remains available for payment of such court orders based on when such court orders were effectively served and the limitations of paragraph (1) and subparagraph (B) of paragraph (4);

(ii) retain an amount of disposable retired pay that is equal to the lesser of—

(I) the difference between the largest amount required by any conflicting court order to be paid to the spouse or former spouse and the amount payable to the spouse or former spouse under clause (i); and

(II) the amount of disposable retired pay which remains available for payment of any conflicting court order based on when such court order was effectively served and the limitations of paragraph (1) and subparagraph (B) of paragraph (4); and

(iii) pay to that member the amount which is equal to the amount of that member's disposable retired pay (less any amount paid during such month pursuant to legal process served under section 459 of the Social Security Act (42 U.S.C. 659) and any amount paid during such month pursuant to court orders effectively served under this section, other than such conflicting court orders) minus—

(I) the amount of disposable retired pay paid under clause (i); and

(II) the amount of disposable retired pay retained under clause (ii).

(B) The Secretary concerned shall hold the amount retained under clause (ii) of subparagraph (A) until such time as that Secretary is provided with a court order which has been certified by the member and the spouse or former spouse to be valid and applicable to the retained amount. Upon being provided with such an order, the Secretary shall pay the retained amount in accordance with the order.

(4)(A) In the event of effective service of a court order under this section and the service of legal process pursuant to section 459 of the Social Security Act (42 U.S.C. 659), both of which provide for payments during a month from the same member, satisfaction of such court orders and legal process from the retired pay of the member shall be on a first-come, first-served basis. Such court orders and legal process shall be satisfied out of moneys which are subject to such orders and legal process and which remain available in accordance with the limitations of paragraph (1) and subparagraph (B) of this paragraph during such month after the satisfaction of all court orders or legal process which have been previously served.

(B) Notwithstanding any other provision of law, the total amount of the disposable retired pay of a member payable by the Secretary concerned under all court orders pursuant to this section and all legal processes pursuant to section 459 of the Social Security Act (42 U.S.C. 659) with respect to a member may not exceed 65 percent of the amount of the retired pay payable to such member that is considered under section 462 of the Social Security Act (42 U.S.C. 662) to be remuneration for employment that is payable by the United States.

(5) A court order which itself or because of previously served court orders provides for the payment of an amount which exceeds the amount of disposable retired pay available for payment because of the limit set forth in paragraph (1), or which, because of previously served court orders or legal process previously served under section 459 of the Social Security Act (42 U.S.C. 659), provides for payment of an amount that exceeds the maximum amount permitted under paragraph (1) or subparagraph (B) of paragraph (4), shall not be considered to be irregular on its face solely for that reason. However, such order shall be considered to be fully satisfied for purposes of this section by the payment to the spouse or former spouse of the maximum amount of disposable retired pay permitted under paragraph (1) and subparagraph (B) of paragraph (4).

(6) Nothing in this section shall be construed to relieve a member of liability for the payment of alimony, child support, or other payments required by a court order on the grounds that payments made out of disposable retired pay under this section have been made in the maximum amount permitted under paragraph (1) or subparagraph (B) of paragraph (4). Any such unsatisfied obligation of a member may be enforced by any means available under law other than the means provided under this section in any case in which the maximum amount permitted under paragraph (1) has been paid and under section 459 of the Social Security Act (42 U.S.C. 659) in any case in which the maximum amount permitted under subparagraph (B) of paragraph (4) has been paid.

(f) IMMUNITY OF OFFICERS AND EMPLOYEES OF UNITED STATES.—(1) The United States and any officer or employee of the United States shall not be liable with respect to any payment made from retired pay to any member, spouse, or former spouse pursuant to a court order that is regular on its face if such payment is made in accordance with this section and the regulations prescribed pursuant to subsection (i).

(2) An officer or employee of the United States who, under regulations prescribed pursuant to subsection (i), has the duty to respond to interrogatories shall not be subject under any law to any disciplinary action or civil or criminal liability or penalty for, or because of, any disclosure of information made by him in carrying out any of his duties which directly or indirectly pertain to answering such interrogatories.

(g) NOTICE TO MEMBER OF SERVICE OF COURT ORDER ON SECRETARY CONCERNED.—A person receiving effective service of a court order under this section shall, as soon as possible, but not later than 30 days after the date on which effective service is made, send a written notice of such court order (together with a copy of such order) to the member affected by the court order at his last known address.

(h) BENEFITS FOR DEPENDENTS WHO ARE VICTIMS OF ABUSE BY MEMBERS LOSING RIGHT TO RETIRED PAY.—(1)(A) If, in the case of a member or former member of the armed forces referred to in paragraph (2)(A), a court order provides (in the manner applicable to a division of property) for the payment of an amount from the disposable retired pay of that member or former member (as certified under paragraph (4)) to an eligible spouse or former spouse of that member or former member, the Secretary concerned, beginning upon effective service of such court order, shall pay that amount in accordance with this subsection to such spouse or former spouse.

(B) If, in the case of a member or former member of the armed forces referred to in paragraph (2)(A), a court order provides for the payment as child support of an amount from the disposable retired pay of that member or former member (as certified under paragraph (4)) to an eligible dependent child of the member or former member, the Secretary concerned, beginning upon effective service of such court order, shall pay that amount in accordance with this subsection to such dependent child.

(2) A spouse or former spouse, or a dependent child, of a member or former member of the armed forces is eligible to receive payment under this subsection if—

(A) the member or former member, while a member of the armed forces and after becoming eligible to be retired from the armed forces on the basis of years of service, has eligibility to receive retired pay terminated as a result of misconduct while a member involving abuse of a spouse or dependent child (as defined in regulations prescribed by the Secretary of Defense or, for the Coast Guard when it is not operating as a service in the Navy, by the Secretary of Homeland Security);

(B) in the case of eligibility of a spouse or former spouse under paragraph (1)(A), the spouse or former spouse—

(i) was the victim of the abuse and was married to the member or former member at the time of that abuse; or

(ii) is a natural or adopted parent of a dependent child of the member or former member who was the victim of the abuse; and

(C) in the case of eligibility of a dependent child under paragraph (1)(B), the other parent of the child died as a result of the misconduct that resulted in the termination of retired pay.

(3) The amount certified by the Secretary concerned under paragraph (4) with respect to a member or former member of the armed forces referred to in paragraph (2)(A) shall be deemed to be the disposable retired pay of that member or former member for the purposes of this subsection.

(4) Upon the request of a court or an eligible spouse or former spouse, or an eligible dependent child, of a member or former member of the armed forces referred to in paragraph (2)(A) in connection with a civil action for the issuance

of a court order in the case of that member or former member, the Secretary concerned shall determine and certify the amount of the monthly retired pay that the member or former member would have been entitled to receive as of the date of the certification—

(A) if the member or former member's eligibility for retired pay had not been terminated as described in paragraph (2)(A); and

(B) if, in the case of a member or former member not in receipt of retired pay immediately before that termination of eligibility for retired pay, the member or former member had retired on the effective date of that termination of eligibility.

(5) A court order under this subsection may provide that whenever retired pay is increased under section 1401a of this title (or any other provision of law), the amount payable under the court order to the spouse or former spouse, or the dependent child, of a member or former member described in paragraph (2)(A) shall be increased at the same time by the percent by which the retired pay of the member or former member would have been increased if the member or former member were receiving retired pay.

(6) Notwithstanding any other provision of law, a member or former member of the armed forces referred to in paragraph (2)(A) shall have no ownership interest in, or claim against, any amount payable under this section to a spouse or former spouse, or to a dependent child, of the member or former member.

(7)(A) If a former spouse receiving payments under this subsection with respect to a member or former member referred to in paragraph (2)(A) marries again after such payments begin, the eligibility of the former spouse to receive further payments under this subsection shall terminate on the date of such marriage.

(B) A person's eligibility to receive payments under this subsection that is terminated under subparagraph (A) by reason of remarriage shall be resumed in the event of the termination of that marriage by the death of that person's spouse or by annulment or divorce. The resumption of payments shall begin as of the first day of the month in which that marriage is so terminated. The monthly amount of the payments shall be the amount that would have been paid if the continuity of the payments had not been interrupted by the marriage.

(8) Payments in accordance with this subsection shall be made out of funds in the Department of Defense Military Retirement Fund established by section 1461 of this title or, in the case of the Coast Guard, out of funds appropriated to the Department of Homeland Security for payment of retired pay for the Coast Guard.

(9)(A) A spouse or former spouse of a member or former member of the armed forces referred to in paragraph (2)(A), while receiving payments in accordance with this subsection, shall be entitled to receive medical and dental care, to use commissary and exchange stores, and to receive any other benefit that a spouse or a former spouse of a retired member of the armed forces is entitled to receive on the basis of being a spouse or former spouse, as the case may be, of a retired member of the armed forces in the same manner as if the member or former member referred to in paragraph (2)(A) was entitled to retired pay.

(B) A dependent child of a member or former member referred to in paragraph (2)(A) who was a member of the household of the member or former member at the time of the misconduct described in paragraph (2)(A) shall be entitled to receive medical and dental care, to use commissary and exchange stores, and to have other benefits provided to dependents of retired members of the armed forces in the same manner as if the member or former member referred to in paragraph (2)(A) was entitled to retired pay.

(C) If a spouse or former spouse or a dependent child eligible or entitled to receive a particular benefit under this paragraph is eligible or entitled to receive that benefit under another provision of law, the eligibility or entitlement of that spouse or former spouse or dependent child to such benefit shall be determined under such other provision of law instead of this paragraph.

(10)(A) For purposes of this subsection, in the case of a member of the armed forces who has been sentenced by a court-martial to receive a punishment that will terminate the eligibility of that member to receive retired pay if executed, the eligibility of that member to receive retired pay may, as determined by the Secretary concerned, be considered terminated effective upon entry of judgment under section 860c of this title (article 60c of the Uniform Code of Military Justice).

(B) If each form of the punishment that would result in the termination of eligibility to receive retired pay is later remitted, set aside, or mitigated to a punishment that does not result in the termination of that eligibility, a payment of benefits to the eligible recipient under this subsection that is based on the punishment so vacated, set aside, or mitigated shall cease. The cessation of payments shall be effective as of the first day of the first month following the month in which the Secretary concerned notifies the recipient of such benefits in writing that payment of the benefits will cease. The recipient may not be required to repay the benefits received before that effective date (except to the extent necessary to recoup any amount that was erroneous when paid).

(11) In this subsection, the term ''dependent child'', with respect to a member or former member of the armed forces referred to in paragraph (2)(A), means an unmarried legitimate child, including an adopted child or a stepchild of the member or former member, who—

(A) is under 18 years of age;

(B) is incapable of self-support because of a mental or physical incapacity that existed before becoming 18 years of age and is dependent on the member or former member for over one-half of the child's support; or

(C) if enrolled in a full-time course of study in an institution of higher education recognized by the Secretary of Defense for the purposes of this subparagraph, is under 23 years of age and is dependent on the member or former member for over one-half of the child's support.

(i) CERTIFICATION DATE.—It is not necessary that the date of a certification of the authen-

ticity or completeness of a copy of a court order for child support received by the Secretary concerned for the purposes of this section be recent in relation to the date of receipt by the Secretary.

(j) REGULATIONS.—The Secretaries concerned shall prescribe uniform regulations for the administration of this section.

(k) RELATIONSHIP TO OTHER LAWS.—In any case involving an order providing for payment of child support (as defined in section 459(i)(2) of the Social Security Act) by a member who has never been married to the other parent of the child, the provisions of this section shall not apply, and the case shall be subject to the provisions of section 459 of such Act.

(*l*) GARNISHMENT TO SATISFY A JUDGMENT RENDERED FOR PHYSICALLY, SEXUALLY, OR EMOTIONALLY ABUSING A CHILD.—(1) Subject to paragraph (2), any payment of retired pay that would otherwise be made to a member shall be paid (in whole or in part) by the Secretary concerned to another person if and to the extent expressly provided for in the terms of a child abuse garnishment order.

(2) A court order providing for the payment of child support or alimony or, with respect to a division of property, specifically providing for the payment of an amount of the disposable retired pay from a member to the spouse or a former spouse of the member, shall be given priority over a child abuse garnishment order. The total amount of the disposable retired pay of a member payable under a child abuse garnishment order shall not exceed 25 percent of the member's disposable retired pay.

(3) In this subsection, the term ''court order'' includes a child abuse garnishment order.

(4) In this subsection, the term ''child abuse garnishment order'' means a final decree issued by a court that—

(A) is issued in accordance with the laws of the jurisdiction of that court; and

(B) provides in the nature of garnishment for the enforcement of a judgment rendered against the member for physically, sexually, or emotionally abusing a child.

(5) For purposes of this subsection, a judgment rendered for physically, sexually, or emotionally abusing a child is any legal claim perfected through a final enforceable judgment, which claim is based in whole or in part upon the physical, sexual, or emotional abuse of an individual under 18 years of age, whether or not that abuse is accompanied by other actionable wrongdoing, such as sexual exploitation or gross negligence.

(6) If the Secretary concerned is served with more than one court order with respect to the retired pay of a member, the disposable retired pay of the member shall be available to satisfy such court orders on a first-come, first-served basis, subject to the order of precedence specified in paragraph (2), with any such process being satisfied out of such monies as remain after the satisfaction of all such processes which have been previously served.

(7) The Secretary concerned shall not be required to vary normal pay and disbursement cycles for retired pay in order to comply with a child abuse garnishment order.

(Added Pub. L. 97–252, title X, § 1002(a), Sept. 8, 1982, 96 Stat. 730; amended Pub. L. 98–525, title VI, § 643(a)–(d), Oct. 19, 1984, 98 Stat. 2547; Pub. L. 99–661, div. A, title VI, § 644(a), Nov. 14, 1986, 100 Stat. 3887; Pub. L. 100–26, §§ 3(3), 7(h)(1), Apr. 21, 1987, 101 Stat. 273, 282; Pub. L. 101–189, div. A, title VI, § 653(a)(5), title XVI, § 1622(e)(6), Nov. 29, 1989, 103 Stat. 1462, 1605; Pub. L. 101–510, div. A, title V, § 555(a)–(d), (f), (g), Nov. 5, 1990, 104 Stat. 1569, 1570; Pub. L. 102–190, div. A, title X, § 1061(a)(7), Dec. 5, 1991, 105 Stat. 1472; Pub. L. 102–484, div. A, title VI, § 653(a), Oct. 23, 1992, 106 Stat. 2426; Pub. L. 103–160, div. A, title V, § 555(a), (b), title XI, § 1182(a)(2), Nov. 30, 1993, 107 Stat. 1666, 1771; Pub. L. 104–106, div. A, title XV, § 1501(c)(16), Feb. 10, 1996, 110 Stat. 499; Pub. L. 104–193, title III, §§ 362(c), 363(c)(1)–(3), Aug. 22, 1996, 110 Stat. 2246, 2249; Pub. L. 104–201, div. A, title VI, § 636, Sept. 23, 1996, 110 Stat. 2579; Pub. L. 105–85, div. A, title X, § 1073(a)(24), (25), Nov. 18, 1997, 111 Stat. 1901; Pub. L. 107–107, div. A, title X, § 1048(c)(9), Dec. 28, 2001, 115 Stat. 1226; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 108–189, § 2(c), Dec. 19, 2003, 117 Stat. 2866; Pub. L. 109–163, div. A, title VI, § 665(a), Jan. 6, 2006, 119 Stat. 3317; Pub. L. 111–84, div. A, title X, § 1073(a)(15), Oct. 28, 2009, 123 Stat. 2473; Pub. L. 114–328, div. A, title VI, § 641(a), title X, § 1081(b)(2)(B), Dec. 23, 2016, 130 Stat. 2164, 2418; Pub. L. 115–91, div. A, title V, §§ 531(m), 534(a), title VI, § 624(a), Dec. 12, 2017, 131 Stat. 1386, 1390, 1429.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (a)(1)(D) and (d)(1), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Part D of title IV of the Act is classified generally to part D (§ 651 et seq.) of subchapter IV of chapter 7 of Title 42, The Public Health and Welfare. Section 454B of the Act is classified to section 654b of Title 42. Section 408(a)(3) of the Act is classified to section 608(a)(3) of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

The Servicemembers Civil Relief Act, referred to in subsec. (b)(1)(D), is act Oct. 17, 1940, ch. 888, 54 Stat. 1178, which is classified generally to chapter 50 (§ 3901 et seq.) of Title 50, War and National Defense. For complete classification of this Act to the Code, see section 3901 of Title 50 and Tables.

AMENDMENTS

2017—Subsec. (a)(4)(A). Pub. L. 115–91, § 624(a)(1)(A), struck out ''(as determined pursuant to subparagraph (B)'' after ''is entitled'' in introductory provisions.

Subsec. (a)(4)(B). Pub. L. 115–91, § 624(a)(1)(B), added subpar. (B) and struck out former subpar. (B) which read as follows: ''For purposes of subparagraph (A), the total monthly retired pay to which a member is entitled shall be—

''(i) the amount of basic pay payable to the member for the member's pay grade and years of service at the time of the court order, as increased by

''(ii) each cost-of-living adjustment that occurs under section 1401a(b) of this title between the time of the court order and the time of the member's retirement using the adjustment provisions under that section applicable to the member upon retirement.''

Subsec. (d)(8). Pub. L. 115–91, § 624(a)(2), added par. (8).

Subsec. (h)(10)(A). Pub. L. 115–91, § 531(m), substituted ''entry of judgment under section 860c of this title (article 60c of the Uniform Code of Military Justice)'' for ''the approval of that sentence by the person acting under section 860(c) of this title (article 60(c) of the Uniform Code of Military Justice)''.

Subsec. (*l*). Pub. L. 115–91, § 534(a), added subsec. (*l*).

2016—Subsec. (a)(4). Pub. L. 114–328, § 641(a), designated existing provisions as subpar. (A), inserted ''(as determined pursuant to subparagraph (B)'' after ''mem-

ber is entitled'' in introductory provisions, redesignated former subpars. (A) to (D) as cls. (i) to (iv), respectively, of subpar. (A), and added subpar. (B).

Subsec. (b)(1)(D). Pub. L. 114–328, §1081(b)(2)(B), substituted ''(50 U.S.C. 3901 et seq.)'' for ''(50 U.S.C. App. 501 et seq.)''.

2009—Subsec. (h)(2)(A). Pub. L. 111–84 struck out ''and'' at end.

2006—Subsec. (h)(1). Pub. L. 109–163, §665(a)(1), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (h)(2). Pub. L. 109–163, §665(a)(2)(A), inserted '', or a dependent child,'' after ''former spouse'' in introductory provisions.

Subsec. (h)(2)(B). Pub. L. 109–163, §665(a)(2)(B)(i), inserted ''in the case of eligibility of a spouse or former spouse under paragraph (1)(A),'' after ''(B)''.

Subsec. (h)(2)(C). Pub. L. 109–163, §665(a)(2)(B)(ii), (C), added subpar. (C).

Subsec. (h)(4). Pub. L. 109–163, §665(a)(3), inserted '', or an eligible dependent child,'' after ''former spouse'' in introductory provisions.

Subsec. (h)(5). Pub. L. 109–163, §665(a)(4), inserted '', or the dependent child,'' after ''former spouse''.

Subsec. (h)(6). Pub. L. 109–163, §665(a)(5), inserted '', or to a dependent child,'' after ''former spouse''.

2003—Subsec. (b)(1)(D). Pub. L. 108–189 substituted ''Servicemembers Civil Relief Act'' for ''Soldiers' and Sailors' Civil Relief Act of 1940''.

2002—Subsec. (h)(2)(A), (8). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

2001—Subsec. (d)(6). Pub. L. 107–107 substituted ''August 22, 1996,'' for ''the date of the enactment of this paragraph''.

1997—Subsec. (d). Pub. L. 105–85, §1073(a)(24)(A), substituted ''to'' for ''To'' in heading.

Subsec. (d)(6). Pub. L. 105–85, §1073(a)(24)(B), redesignated par. (6), relating to court order which is out-of-State modification, as (7).

Subsec. (d)(7). Pub. L. 105–85, §1073(a)(24)(B), redesignated par. (6), relating to court order which is out-of-State modification, as (7).

Subsec. (d)(7)(A). Pub. L. 105–85, §1073(a)(24)(C), substituted ''out-of-State'' for ''out-of State''.

Subsec. (g). Pub. L. 105–85, §1073(a)(25), in heading, substituted ''to'' for ''To'' and ''on'' for ''On''.

1996—Subsec. (a)(1)(D). Pub. L. 104–193, §362(c)(1), added subpar. (D).

Subsec. (a)(2). Pub. L. 104–193, §362(c)(2)(A), inserted ''or a support order, as defined in section 453(p) of the Social Security Act (42 U.S.C. 653(p)),'' before ''which—''.

Subsec. (a)(2)(B)(i). Pub. L. 104–193, §362(c)(2)(B), substituted ''(as defined in section 459(i)(2) of the Social Security Act (42 U.S.C. 659(i)(2)))'' for ''(as defined in section 462(b) of the Social Security Act (42 U.S.C. 662(b)))''.

Subsec. (a)(2)(B)(ii). Pub. L. 104–193, §362(c)(2)(C), substituted ''(as defined in section 459(i)(3) of the Social Security Act (42 U.S.C. 659(i)(3)))'' for ''(as defined in section 462(c) of the Social Security Act (42 U.S.C. 662(c)))''.

Subsec. (a)(5). Pub. L. 104–106 substituted ''section 12731'' for ''section 1331''.

Subsec. (b)(1)(A). Pub. L. 104–201, §636(a), substituted ''facsimile or electronic transmission or by mail'' for ''certified or registered mail, return receipt requested''.

Subsec. (d). Pub. L. 104–193, §362(c)(3)(A), inserted ''(or for benefit of)'' before ''Spouse or'' in heading.

Subsec. (d)(1). Pub. L. 104–193, §363(c)(2), inserted after first sentence ''In the case of a spouse or former spouse who, pursuant to section 408(a)(3) of the Social Security Act (42 U.S.C. 608(a)(4)), assigns to a State the rights of the spouse or former spouse to receive support, the Secretary concerned may make the child support payments referred to in the preceding sentence to that State in amounts consistent with that assignment of rights.''

Pub. L. 104–193, §362(c)(3)(B), in first sentence, inserted ''(or for the benefit of such spouse or former spouse to a State disbursement unit established pursuant to section 454B of the Social Security Act or other public payee designated by a State, in accordance with part D of title IV of the Social Security Act, as directed by court order, or as otherwise directed in accordance with such part D)'' before ''in an amount sufficient''.

Subsec. (d)(6). Pub. L. 104–201, §636(b), added par. (6) relating to court order which is out-of-State modification.

Pub. L. 104–193, §363(c)(3), added par. (6) relating to use of disposable retired pay of member to satisfy amount of child support set forth in court order.

Subsec. (i). Pub. L. 104–193, §363(c)(1), added subsec. (i). Former subsec. (i) redesignated (j).

Subsec. (j). Pub. L. 104–193, §363(c)(1), redesignated subsec. (j) as (k).

Pub. L. 104–193, §362(c)(4), added subsec. (j).

Subsec. (k). Pub. L. 104–193, §363(c)(1), redesignated subsec. (j) as (k).

1993—Subsecs. (b)(1)(A), (f)(1), (2). Pub. L. 103–160, §1182(a)(2)(A), substituted ''subsection (i)'' for ''subsection (h)''.

Subsec. (h)(2)(A). Pub. L. 103–160, §555(b)(1), inserted ''or, for the Coast Guard when it is not operating as a service in the Navy, by the Secretary of Transportation'' after ''Secretary of Defense''.

Subsec. (h)(4)(B). Pub. L. 103–160, §1182(a)(2)(B), inserted ''of'' after ''of that termination''.

Subsec. (h)(8). Pub. L. 103–160, §555(b)(2), inserted before period at end ''or, in the case of the Coast Guard, out of funds appropriated to the Department of Transportation for payment of retired pay for the Coast Guard''.

Subsec. (h)(10), (11). Pub. L. 103–160, §555(a), added par. (10) and redesignated former par. (10) as (11).

1992—Subsecs. (h), (i). Pub. L. 102–484 added subsec. (h) and redesignated former subsec. (h) as (i).

1991—Pub. L. 102–190 inserted ''or retainer'' after ''retired'' in section catchline.

1990—Pub. L. 101–510, §555(f)(2), substituted ''retired pay'' for ''retired or retainer pay'' in section catchline.

Subsec. (a). Pub. L. 101–510, §555(g)(1), inserted heading.

Subsec. (a)(2)(C). Pub. L. 101–510, §555(f)(2), substituted ''retired pay'' for ''retired or retainer pay'' wherever appearing.

Subsec. (a)(4). Pub. L. 101–510, §555(f)(2), substituted ''retired pay'' for ''retired or retainer pay'' wherever appearing in introductory provisions and in subpar. (D).

Subsec. (a)(4)(A). Pub. L. 101–510, §555(b)(1), inserted before semicolon at end ''for previous overpayments of retired pay and for recoupments required by law resulting from entitlement to retired pay''.

Subsec. (a)(4)(B). Pub. L. 101–510, §555(b)(2), added subpar. (B) and struck out former subpar. (B) which read as follows: ''are required by law to be and are deducted from the retired or retainer pay of such member, including fines and forfeitures ordered by courts-martial, Federal employment taxes, and amounts waived in order to receive compensation under title 5 or title 38;''.

Subsec. (a)(4)(C) to (F). Pub. L. 101–510, §555(b)(3), (4), redesignated subpars. (E) and (F) as (C) and (D), respectively, and struck out former subpars. (C) and (D) which read as follows:

''(C) are properly withheld for Federal, State, or local income tax purposes, if the withholding of such amounts is authorized or required by law and to the extent such amounts withheld are not greater than would be authorized if such member claimed all dependents to which he was entitled;

''(D) are withheld under section 3402(i) of the Internal Revenue Code of 1986 if such member presents evidence of a tax obligation which supports such withholding;''.

Subsec. (a)(7). Pub. L. 101–510, §555(f)(1), added par. (7).

Subsec. (b). Pub. L. 101–510, §555(g)(2), inserted heading.

Subsec. (c). Pub. L. 101–510, §555(g)(3), inserted heading.

Subsec. (c)(1). Pub. L. 101–510, § 555(f)(2), substituted "retired pay" for "retired or retainer pay".

Pub. L. 101–510, § 555(a), inserted at end "A court may not treat retired pay as property in any proceeding to divide or partition any amount of retired pay of a member as the property of the member and the member's spouse or former spouse if a final decree of divorce, dissolution, annulment, or legal separation (including a court ordered, ratified, or approved property settlement incident to such decree) affecting the member and the member's spouse or former spouse (A) was issued before June 25, 1981, and (B) did not treat (or reserve jurisdiction to treat) any amount of retired pay of the member as property of the member and the member's spouse or former spouse."

Subsec. (c)(2). Pub. L. 101–510, § 555(c), inserted at end "Payments by the Secretary concerned under subsection (d) to a spouse or former spouse with respect to a division of retired pay as the property of a member and the member's spouse under this subsection may not be treated as amounts received as retired pay for service in the uniformed services."

Subsec. (c)(4). Pub. L. 101–510, § 555(f)(2), substituted "retired pay" for "retired or retainer pay".

Subsec. (d). Pub. L. 101–510, § 555(g)(4), inserted heading.

Pub. L. 101–510, § 555(f)(2), substituted "retired pay" for "retired or retainer pay" wherever appearing.

Subsec. (e). Pub. L. 101–510, § 555(g)(5), inserted heading.

Pub. L. 101–510, § 555(f)(2), substituted "retired pay" for "retired or retainer pay" wherever appearing.

Subsec. (e)(1). Pub. L. 101–510, § 555(d)(1), substituted "payable under all court orders pursuant to subsection (c)" for "payable under subsection (d)".

Subsec. (e)(4)(B). Pub. L. 101–510, § 555(d)(2), substituted "the amount of the retired pay payable to such member that is considered under section 462 of the Social Security Act (42 U.S.C. 662) to be remuneration for employment that is payable by the United States" for "the disposable retired or retainer pay payable to such member".

Subsec. (f). Pub. L. 101–510, § 555(g)(6), inserted heading.

Subsec. (f)(1). Pub. L. 101–510, § 555(f)(2), substituted "retired pay" for "retired or retainer pay".

Subsec. (g). Pub. L. 101–510, § 555(g)(7), inserted heading.

Subsec. (h). Pub. L. 101–510, § 555(g)(8), inserted heading.

1989—Subsec. (a)(1), (2). Pub. L. 101–189, § 1622(e)(6), substituted "The term 'court'" for "'Court'" in introductory provisions.

Subsec. (a)(3). Pub. L. 101–189, § 1622(e)(6), substituted "The term 'final'" for "'Final'".

Subsec. (a)(4). Pub. L. 101–189, § 1622(e)(6), substituted "The term 'disposable'" for "'Disposable'" in introductory provisions.

Subsec. (a)(4)(D). Pub. L. 101–189, § 653(a)(5)(A), struck out "(26 U.S.C. 3402(i))" after "Code of 1986".

Subsec. (a)(5). Pub. L. 101–189, §§ 653(a)(5)(B), 1622(e)(6), substituted "The term 'member'" for "'Member'" and inserted "entitled to retired pay under section 1331 of this title" after "a former member".

Subsec. (a)(6). Pub. L. 101–189, § 1622(e)(6), substituted "The term 'spouse'" for "'Spouse'".

1987—Subsec. (a)(4). Pub. L. 100–26, § 3(3), made technical amendment to directory language of Pub. L. 99–661, § 644(a). See 1986 Amendment note below.

Subsec. (a)(4)(D). Pub. L. 100–26, § 7(h)(1), substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954".

1986—Subsec. (a)(4). Pub. L. 99–661, § 644(a), as amended by Pub. L. 100–26, § 3(3), struck out "(other than the retired pay of a member retired for disability under chapter 61 of this title)" before "less amounts" in introductory text, added subpar. (E), and struck out former subpar. (E) which read as follows: "are deducted as Government life insurance premiums (not including amounts deducted for supplemental coverage); or".

1984—Subsec. (a)(2)(C). Pub. L. 98–525, § 643(a), inserted "in the case of a division of property,".

Subsec. (b)(1)(C). Pub. L. 98–525, § 643(b), inserted ", if possible,".

Subsec. (d)(1). Pub. L. 98–525, § 643(c)(1), substituted "After effective service on the Secretary concerned of a court order providing for the payment of child support or alimony or, with respect to a division of property, specifically providing for the payment of an amount of the disposable retired or retainer pay from a member to the spouse or a former spouse of the member, the Secretary shall make payments (subject to the limitations of this section) from the disposable retired or retainer pay of the member to the spouse or former spouse in an amount sufficient to satisfy the amount of child support and alimony set forth in the court order and, with respect to a division of property, in the amount of disposable retired or retainer pay specifically provided for in the court order" for "After effective service on the Secretary concerned of a court order with respect to the payment of a portion of the retired or retainer pay of a member to the spouse or a former spouse of the member, the Secretary shall, subject to the limitations of this section, make payments to the spouse or former spouse in the amount of the disposable retired or retainer pay of the member specifically provided for in the court order".

Subsec. (d)(5). Pub. L. 98–525, § 643(c)(2), substituted "child support or alimony or the payment of an amount of disposable retired or retainer pay as the result of the court's treatment of such pay under subsection (c) as property of the member and his spouse, the Secretary concerned shall pay (subject to the limitations of this section) from the disposable retired or retainer pay of the member to the spouse or former spouse of the member, any part" for "disposable retired or retainer pay, the Secretary concerned shall, subject to the limitations of this section, pay to the spouse or former spouse of the member, from the disposable retired or retainer pay of the member, any part".

Subsec. (e)(2). Pub. L. 98–525, § 643(d)(1), substituted ", the disposable retired or retainer pay of the member" for "from the disposable retired or retainer pay of a member, such pay" before "shall be used to satisfy".

Subsec. (e)(3)(A). Pub. L. 98–525, § 643(d)(2)(A), struck out "from the disposable retired or retainer pay" before "of the same member".

Subsec. (e)(3)(A)(i). Pub. L. 98–525, § 643(d)(2)(B), substituted "from the member's disposable retired or retainer pay the least amount" for "the least amount of disposable retired or retainer pay" before "directed to be paid".

Subsec. (e)(2)(A)(ii)(I). Pub. L. 98–525, § 643(d)(2)(C), struck out "of retired or retainer pay" before "required by any conflicting".

Subsec. (e)(4)(A). Pub. L. 98–525, § 643(d)(3), struck out "the retired or retainer pay of" before "the same member" and substituted "satisfaction of such court orders and legal process from the retired or retainer pay of the members shall be" for "such court orders and legal process shall be satisfied".

Subsec. (e)(5). Pub. L. 98–525, § 643(d)(4), struck out "of disposable retired or retainer pay" after "payment of an amount" in two places and substituted "disposable retired or retainer pay" for "such pay" before "available for payment".

Effective Date of 2017 Amendment

Amendment by section 531(m) of Pub. L. 115–91 effective immediately after the amendments made by div. E (§§ 5001–5542) of Pub. L. 114–328 take effect as provided for in section 5542 of that Act (10 U.S.C. 801 note), see section 531(p) of Pub. L. 115–91, set out as a note under section 801 of this title.

Pub. L. 115–91, div. A, title V, § 534(b), Dec. 12, 2017, 131 Stat. 1391, provided that: "Subsection (*l*) of section 1408 of title 10, United States Code, as added by subsection (a), shall apply with respect to a court order received by the Secretary concerned on or after the date of the enactment of this Act [Dec. 12, 2017], regardless of the date of the court order."

Pub. L. 115–91, div. A, title VI, § 624(b), Dec. 12, 2017, 131 Stat. 1430, provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on December 23, 2016, as if enacted immediately following the enactment of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114–328) [see Tables for classification] to which such amendments relate.''

Pub. L. 115–91, div. A, title VI, § 624(c), Dec. 12, 2017, 131 Stat. 1430, provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to any division of property as part of a final decree of divorce, dissolution, annulment, or legal separation involving a member of the Armed Forces to which section 1408 of title 10, United States Code, applies that becomes final after December 23, 2016.''

EFFECTIVE DATE OF 2016 AMENDMENT

Pub. L. 114–328, div. A, title VI, § 641(b), Dec. 23, 2016, 130 Stat. 2164, provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to any division of property as part of a final decree of divorce, dissolution, annulment, or legal separation involving a member of the Armed Forces to which section 1408 of title 10, United States Code, applies that becomes final after the date of the enactment of this Act [Dec. 23, 2016].''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–163, div. A, title VI, § 665(b), Jan. 6, 2006, 119 Stat. 3318, provided that: ''A court order authorized by the amendments made by this section [amending this section] may not provide for a payment attributable to any period before the date of the enactment of this Act [Jan. 6, 2006], or the date of the court order, whichever is later.''

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1996 AMENDMENTS

Amendment by section 362(c) of Pub. L. 104–193 effective six months after Aug. 22, 1996, see section 362(d) of Pub. L. 104–193, set out as a note under section 659 of Title 42, The Public Health and Welfare.

For effective date of amendment by section 363(c)(1)–(3) of Pub. L. 104–193, see section 395(a)–(c) of Pub. L. 104–193, set out as a note under section 654 of Title 42.

Pub. L. 104–106, div. A, title XV, § 1501(c), Feb. 10, 1996, 110 Stat. 498, provided that the amendment made by that section is effective as of Dec. 1, 1994, and as if included as an amendment made by the Reserve Officer Personnel Management Act, title XVI of Pub. L. 103–337, as originally enacted.

EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103–160, div. A, title V, § 555(c), Nov. 30, 1993, 107 Stat. 1667, provided that: ''The amendments made by this section [amending this section] shall take effect as of October 23, 1992, and shall apply as if the provisions of the paragraph (10) of section 1408(h) of title 10, United States Code, added by such subsection were included in the amendment made by section 653(a)(2) of Public Law 102–484 (106 Stat. 2426) [amending this section].''

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–510, div. A, title V, § 555(e), Nov. 5, 1990, 104 Stat. 1570, as amended by Pub. L. 102–190, div. A, title X, § 1062(a)(1), Dec. 5, 1991, 105 Stat. 1475, provided that:

''(1) The amendment made by subsection (a) [amending this section] shall apply with respect to judgments issued before, on, or after the date of the enactment of this Act [Nov. 5, 1990]. In the case of a judgment issued before the date of the enactment of this Act, such amendment shall not relieve any obligation, otherwise valid, to make a payment that is due to be made before the end of the two-year period beginning on the date of the enactment of this Act.

''(2) The amendments made by subsections (b), (c), and (d) [amending this section] apply with only respect to divorces, dissolutions of marriage, annulments, and legal separations that become effective after the end of the 90-day period beginning on the date of the enactment of this Act.''

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by section 3(3) of Pub. L. 100–26 applicable as if included in Pub. L. 99–661 when enacted on Nov. 14, 1986, see section 12(a) of Pub. L. 100–26, set out as a note under section 776 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–661, div. A, title VI, § 644(b), Nov. 14, 1986, 100 Stat. 3887, provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to court orders issued after the date of the enactment of this Act [Nov. 14, 1986].''

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–525, title VI, § 643(e), Oct. 19, 1984, 98 Stat. 2548, provided that: ''The amendments made by this section [amending this section] shall apply with respect to court orders for which effective service (as described in section 1408(b)(1) of title 10, United States Code, as amended by subsection (b) of this section) is made on or after the date of the enactment of this Act [Oct. 19, 1984].''

EFFECTIVE DATE; TRANSITION PROVISIONS

Pub. L. 97–252, title X, § 1006, Sept. 8, 1982, 96 Stat. 737, as amended by Pub. L. 98–94, title IX, § 941(c)(4), Sept. 24, 1983, 97 Stat. 654; Pub. L. 98–525, title VI, § 645(b), Oct. 19, 1984, 98 Stat. 2549, provided that:

''(a) The amendments made by this title [amending this section and sections 1072, 1076, 1086, 1447, 1448, and 1450 of this title and enacting provisions set out as notes under this section and section 1401 of this title] shall take effect on the first day of the first month [February 1983] which begins more than one hundred and twenty days after the date of the enactment of this title [Sept. 8, 1982].

''(b) Subsection (d) of section 1408 of title 10, United States Code, as added by section 1002(a), shall apply only with respect to payments of retired or retainer pay for periods beginning on or after the effective date of this title [Feb. 1, 1983, provided in subsec. (a)], but without regard to the date of any court order. However, in the case of a court order that became final before June 26, 1981, payments under such subsection may only be made in accordance with such order as in effect on such date and without regard to any subsequent modifications.

''(c) The amendments made by section 1003 of this title [amending sections 1447, 1448, and 1450 of this title] shall apply to persons who become eligible to participate in the Survivor Benefit Plan provided for in subchapter II of chapter 73 of title 10, United States Code [section 1447 et seq. of this title], before, on, or after the effective date of such amendments.

''(d) The amendments made by section 1004 of this title [amending sections 1072, 1076, and 1086 of this title] and the provisions of section 1005 of this title [formerly set out as a note under this section] shall apply in the case of any former spouse of a member or former member of the uniformed services whether the final decree of divorce, dissolution, or annulment of the marriage of the former spouse and such member or former member is dated before, on, or after February 1, 1983.

''(e) For the purposes of this section—

''(1) the term 'court order' has the same meaning as provided in section 1408(a)(2) of title 10, United States Code (as added by section 1002 of this title);

''(2) the term 'former spouse' has the same meaning as provided in section 1408(a)(6) of such title (as added by section 1002 of this title); and

''(3) the term 'uniformed services' has the same meaning as provided in section 1072 of title 10, United States Code.''

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

REVIEW OF FEDERAL FORMER SPOUSE PROTECTION LAWS

Pub. L. 105–85, div. A, title VI, § 643, Nov. 18, 1997, 111 Stat. 1799, directed the Secretary of Defense to carry out a comprehensive review of the protections, benefits, and treatment afforded under Federal law to members and former members of the uniformed services and former spouses of such persons and to employees and former employees of the Government and former spouses of such persons and to submit to committees of Congress a report on the results of such review not later than Sept. 30, 1999.

PAYROLL DEDUCTIONS FOR ENFORCEMENT OF CHILD SUPPORT OBLIGATIONS

Pub. L. 104–193, title III, § 363(c)(4), Aug. 22, 1996, 110 Stat. 2249, provided that: ''The Secretary of Defense shall begin payroll deductions within 30 days after receiving notice of withholding, or for the first pay period that begins after such 30-day period.''

ACCRUAL OF PAYMENTS; PROSPECTIVE APPLICABILITY

Pub. L. 102–484, div. A, title VI, § 653(c), Oct. 23, 1992, 106 Stat. 2429, provided that: ''No payments under subsection (h) of section 1408 of title 10, United States Code (as added by subsection (a)), shall accrue for periods before the date of the enactment of this Act [Oct. 23, 1992].''

STUDY CONCERNING BENEFITS FOR DEPENDENTS WHO ARE VICTIMS OF ABUSE

Pub L. 102–484, div. A, title VI, § 653(e), Oct. 23, 1992, 106 Stat. 2429, directed the Secretary of Defense to conduct a study in order to estimate the number of persons who would become eligible to receive payments under subsec. (h) of this section during each of fiscal years 1993 through 2000 and the number of members of the Armed Forces who would be approved in each of fiscal years 1993 through 2000 for separation from the Armed Forces as a result of having abused a spouse or dependent child, and to submit to Congress a report on the results of such study not later than one year after Oct. 23, 1992.

COMMISSARY AND EXCHANGE PRIVILEGES

Pub. L. 97–252, title X, § 1005, Sept. 8, 1982, 96 Stat. 737, which directed Secretary of Defense to prescribe regulations to provide that an unremarried former spouse described in 10 U.S.C. 1072(2)(F)(i) is entitled to commissary and post exchange privileges to the same extent and on the same basis as the surviving spouse of a retired member of the uniformed services, was repealed and restated in section 1062 of this title by Pub. L. 100–370, § 1(c)(1), (5).

§ 1409. Retired pay multiplier

(a) RETIRED PAY MULTIPLIER FOR REGULAR-SERVICE NONDISABILITY RETIREMENT.—In computing—

(1) the retired pay of a member of a uniformed service who is entitled to that pay under any provision of law other than—

(A) chapter 61 of this title (relating to retirement or separation for physical disability); or

(B) chapter 1223 of this title (relating to retirement for non-regular service); or

(2) the retainer pay of a member who is transferred to the Fleet Reserve or the Fleet Marine Corps Reserve under section 8330 of this title,

the retired pay multiplier (or retainer pay multiplier) is the percentage determined under subsection (b).

(b) PERCENTAGE.—

(1) GENERAL RULE.—Subject to paragraphs (2) and (3), the percentage to be used under subsection (a) is the product (stated as a percentage) of—

(A) 2½, and

(B) the member's years of creditable service (as defined in subsection (c)).

(2) REDUCTION APPLICABLE TO CERTAIN NEW-RETIREMENT MEMBERS WITH LESS THAN 30 YEARS OF SERVICE.—In the case of a member who first became a member of a uniformed service after July 31, 1986, has elected to receive a bonus under section 322 (as in effect before the enactment of the National Defense Authorization Act for Fiscal Year 2008) or section 354 of title 37, has less than 30 years of creditable service, and is under the age of 62 at the time of retirement, the percentage determined under paragraph (1) shall be reduced by—

(A) 1 percentage point for each full year that the member's years of creditable service are less than 30; and

(B) 1/12 of 1 percentage point for each month by which the member's years of creditable service (after counting all full years of such service) are less than a full year.

(3) 30 YEARS OF SERVICE.—

(A) RETIREMENT BEFORE JANUARY 1, 2007.—In the case of a member who retires before January 1, 2007, with more than 30 years of creditable service, the percentage to be used under subsection (a) is 75 percent.

(B) RETIREMENT AFTER DECEMBER 31, 2006.—In the case of a member who retires after December 31, 2006, with more than 30 years of creditable service, the percentage to be used under subsection (a) is the sum of—

(i) 75 percent; and

(ii) the product (stated as a percentage) of—

(I) 2½; and

(II) the member's years of creditable service (as defined in subsection (c)) in excess of 30 years of creditable service, under conditions authorized for purposes of this subparagraph during a period designated by the Secretary of Defense for purposes of this subparagraph.

(4) MODERNIZED RETIREMENT SYSTEM.—

(A) REDUCED MULTIPLIER FOR FULL TSP MEMBERS.—Notwithstanding paragraphs (1), (2), and (3), in the case of a member who first becomes a member of the uniformed services on or after January 1, 2018, or a member who makes the election described in subparagraph (B) (referred to as a ''full TSP member'')—

(i) paragraph (1)(A) shall be applied by substituting ''2'' for ''2½'';

(ii) clause (i) of paragraph (3)(B) shall be applied by substituting ''60 percent'' for ''75 percent''; and

(iii) clause (ii)(I) of such paragraph shall be applied by substituting ''2'' for ''2½''.

(B) ELECTION TO PARTICIPATE IN MODERNIZED RETIREMENT SYSTEM.—Pursuant to subparagraph (C), a member of a uniformed service serving on December 31, 2017, who has served in the uniformed services for fewer than 12 years as of December 31, 2017, may elect, in exchange for the reduced multipliers described in subparagraph (A) for purposes of calculating the retired pay of the member, to receive Thrift Savings Plan contributions pursuant to section 8440e(e) of title 5.

(C) ELECTION PERIOD.—

(i) IN GENERAL.—Except as provided in clauses (ii), (iii), (iv), and (v), a member of a uniformed service described in subparagraph (B) may make the election authorized by that subparagraph only during the period that begins on January 1, 2018, and ends on December 31, 2018.

(ii) HARDSHIP EXTENSION.—The Secretary concerned may extend the election period described in clause (i) for a member who experiences a hardship as determined by the Secretary concerned.

(iii) EFFECT OF BREAK IN SERVICE.—A member of a uniformed service who returns to service after a break in service that occurs during the election period specified in clause (i) shall make the election described in subparagraph (B) within 30 days after the date of the reentry into service of the member.

(iv) CADETS AND MIDSHIPMEN, ETC.—A member of a uniformed service who serves as a cadet, midshipman, or member of the Senior Reserve Officers' Training Corps during the election period specified in clause (i) shall make the election described in subparagraph (B)—

(I) on or after the date on which such cadet, midshipman, or member of the Senior Reserve Officers' Training Corps is appointed as a commissioned officer or otherwise begins to receive basic pay; and

(II) not later than 30 days after such date or the end of such election period, whichever is later.

(v) INACTIVE RESERVES.—A member of a reserve component who is not in an active status during the election period specified in clause (i) shall make the election described in subparagraph (B)—

(I) on or after the date on which such member is transferred from an inactive status to an active status or active duty; and

(II) not later than 30 days after such date or the end of such election period, whichever is later.

(D) NO RETROACTIVE CONTRIBUTIONS PURSUANT TO ELECTION.—Thrift Savings Plan contributions may not be made for a member making an election pursuant to subparagraph (B) for any period beginning before the date of the member's election under that subparagraph by reason of the member's election.

(E) REGULATIONS.—The Secretary concerned shall prescribe regulations to implement this paragraph.

(c) YEARS OF CREDITABLE SERVICE DEFINED.—In this section, the term ''years of creditable service'' means the number of years of service creditable to a member in computing the member's retired or retainer pay (including 1/12 of a year for each full month of service that is in addition to the number of full years of service of the member).

(Added Pub. L. 99–348, title I, § 101, July 1, 1986, 100 Stat. 683; amended Pub. L. 101–189, div. A, title VI, § 651(b)(3), Nov. 29, 1989, 103 Stat. 1460; Pub. L. 103–337, div. A, title XVI, § 1662(j)(6), Oct. 5, 1994, 108 Stat. 3005; Pub. L. 106–65, div. A, title VI, §§ 641(a), 643(b)(2), Oct. 5, 1999, 113 Stat. 662, 664; Pub. L. 109–364, div. A, title VI, § 642(a), Oct. 17, 2006, 120 Stat. 2259; Pub. L. 110–181, div. A, title VI, § 661(b)(3), Jan. 28, 2008, 122 Stat. 178; Pub. L. 114–92, div. A, title VI, § 631(a), Nov. 25, 2015, 129 Stat. 842; Pub. L. 114–328, div. A, title VI, § 631(a), Dec. 23, 2016, 130 Stat. 2162; Pub. L. 115–232, div. A, title VIII, § 809(a), Aug. 13, 2018, 132 Stat. 1840.)

REFERENCES IN TEXT

Section 322 of title 37 (as in effect before the enactment of the National Defense Authorization Act for Fiscal Year 2008), referred to in subsec. (b)(2), means section 322 of title 37 as in effect before enactment of Pub. L. 110–181. Section 322 of title 37 was renumbered as section 354 of title 37 and amended by Pub. L. 110–181, div. A, title VI, § 661(b)(1), (2), Jan. 28, 2008, 122 Stat. 178.

AMENDMENTS

2018—Subsec. (a)(2). Pub. L. 115–232 substituted ''section 8330'' for ''section 6330''.

2016—Subsec. (b)(4)(C)(i). Pub. L. 114–328, § 631(a)(1), substituted '', (iii), (iv), and (v)'' for ''and (iii)''.

Subsec. (b)(4)(C)(iv), (v). Pub. L. 114–328, § 631(a)(2), added cls. (iv) and (v).

2015—Subsec. (b)(4). Pub. L. 114–92 added par. (4).

2008—Subsec. (b)(2). Pub. L. 110–181, in introductory provisions, substituted ''section 322 (as in effect before the enactment of the National Defense Authorization Act for Fiscal Year 2008) or section 354'' for ''section 322''.

2006—Subsec. (b)(3). Pub. L. 109–364 amended heading and text of par. (3) generally. Prior to amendment, text read as follows: ''In the case of a member with more than 30 years of creditable service, the percentage to be used under subsection (a) is 75 percent.''

1999—Subsec. (b)(2). Pub. L. 106–65 inserted ''certain'' after ''Reduction applicable to'' in heading and ''has elected to receive a bonus under section 322 of title 37,'' after ''July 31, 1986,'' in introductory provisions.

1994—Subsec. (a)(1)(B). Pub. L. 103–337 substituted ''chapter 1223'' for ''chapter 67''.

1989—Subsec. (a)(1). Pub. L. 101–189 substituted ''who is entitled to that pay'' for ''who is retired'' in introductory provisions.

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115–232 effective Feb. 1, 2019, with provision for the coordination of amendments and special rule for certain redesignations, see section 800 of Pub. L. 115–232, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 2016 AMENDMENT

Pub. L. 114–328, div. A, title VI, § 631(b), Dec. 23, 2016, 130 Stat. 2162, provided that: ''The amendments made

by subsection (a) [amending this section] shall take effect on January 1, 2018, immediately after the coming into effect of the amendments made by section 631(a) of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114–92; 129 Stat. 842) [amending this section], to which the amendments made by subsection (a) relate.''

EFFECTIVE DATE OF 2015 AMENDMENT; IMPLEMENTATION

Amendment by Pub. L. 114–92 effective Jan. 1, 2018, with certain implementation requirements, see section 635 of Pub. L. 114–92, set out as a note under section 8432 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–65 effective Oct. 1, 1999, see section 644 of Pub. L. 106–65, set out as a note under section 1401a of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

§ 1410. Restoral of full retirement amount at age 62 for certain members entering on or after August 1, 1986

In the case of a member or former member who first became a member of a uniformed service on or after August 1, 1986, who has elected to receive a bonus under section 322 (as in effect before the enactment of the National Defense Authorization Act for Fiscal Year 2008) or section 354 of title 37, and who becomes entitled to retired pay before the age of 62, the retired pay of such member or former member shall be recomputed, effective on the first day of the first month beginning after the member or former member attains 62 years of age, so as to be the amount equal to the amount of retired pay to which the member or former member would be entitled on that date if—

(1) increases in the retired pay of the member or former member under section 1401a(b) of this title had been computed as provided in paragraph (2) of that section (rather than under paragraph (3) of that section); and

(2) in the case of a member whose retired pay was subject to section 1409(b)(2) of this title, no reduction in the member's retired pay had been made under that section.

(Added Pub. L. 99–348, title I, § 103, July 1, 1986, 100 Stat. 685; amended Pub. L. 100–224, § 2, Dec. 30, 1987, 101 Stat. 1536; Pub. L. 101–189, div. A, title VI, § 651(b)(4), Nov. 29, 1989, 103 Stat. 1460; Pub. L. 106–65, div. A, title VI, §§ 641(c), 643(b)(3)(A), Oct. 5, 1999, 113 Stat. 662, 664; Pub. L. 110–181, div. A, title VI, § 661(b)(3), Jan. 28, 2008, 122 Stat. 178; Pub. L. 113–67, div. A, title IV, § 403(b), Dec. 26, 2013, 127 Stat. 1186; Pub. L. 114–92, div. A, title VI, § 631(d)(1), Nov. 25, 2015, 129 Stat. 845.)

REFERENCES IN TEXT

Section 322 of title 37 (as in effect before the enactment of the National Defense Authorization Act for Fiscal Year 2008), referred to in text, means section 322 of title 37 as in effect before enactment of Pub. L. 110–181. Section 322 of title 37 was renumbered as section 354 of title 37 and amended by Pub. L. 110–181, div. A, title VI, § 661(b)(1), (2), Jan. 28, 2008, 122 Stat. 178.

AMENDMENTS

2015—Par. (1). Pub. L. 114–92, § 631(d)(1), which was approved Nov. 25, 2015, provided that the amendment made by Pub. L. 113–67, § 403(b), which was effective Dec. 1, 2015, would not take effect. See 2013 Amendment note below.

2013—Par. (1). Pub. L. 113–67, § 403(b), which directed substitution of ''paragraph (3) or (4)'' for ''paragraph (3)'', did not take effect pursuant to Pub. L. 114–92, § 631(d)(1). See 2015 Amendment note above.

2008—Pub. L. 110–181, in introductory provisions, substituted ''section 322 (as in effect before the enactment of the National Defense Authorization Act for Fiscal Year 2008) or section 354'' for ''section 322''.

1999—Pub. L. 106–65 inserted ''certain'' before ''members'' in section catchline and ''who has elected to receive a bonus under section 322 of title 37,'' after ''August 1, 1986,'' in introductory provisions.

1989—Pub. L. 101–189, § 651(b)(4), in introductory provisions, inserted ''or former member'' after ''In the case of a member'', ''the retired pay of such member'', ''after the member'', and ''to which the member'', and in par. (1), substituted ''retired pay of the member or former member'' for ''member's retired pay''.

1987—Pub. L. 100–224 struck out heading ''(a) General rule'', substituted provisions that the amount equal to the amount of retired pay to which the member would be entitled on that date if (1) increases in the member's retired pay under section 1401a(b) of this title had been computed as provided in paragraph (2) of that section (rather than under paragraph (3) of that section); and (2) in the case of a member whose retired pay was subject to section 1409(b)(2) of this title, no reduction in the member's retired pay had been made under that section, for provisions that the amount equal to (1) the amount of the member's initial unreduced retired pay, increased by (2) the percent (adjusted to the nearest one-tenth of 1 percent) by which (A) the price index for the most recent base quarter ending more than 31 days before the date the member attains 62 years of age, exceeds (B) the price index for the calendar quarter immediately before the date the member first became entitled to retired pay, and struck out subsec. (b) which had directed that, in this section, the term ''initial unreduced retired pay'' meant the amount of retired pay (A) to which the member was entitled when the member first became entitled to retired pay; or (B) in the case of a member whose retired pay was subject to section 1409(b)(2) of this title, to which the member would have been entitled on the date of the member's retirement without regard to that section, and that the definitions in subsection (g), and the provisions of subsection (h), of section 1401a of this title applied to this section.

EFFECTIVE DATE OF 2013 AMENDMENT

Amendment by Pub. L. 113–67 effective Dec. 1, 2015, see section 403(c) of Pub. L. 113–67, set out as a note under section 1401a of this title. Amendment did not take effect pursuant to section 631(d)(1) of Pub. L. 114–92, set out as a Repeal of Reduced Cost-of-living Adjustments for Members Under the Age of 62 note under section 1401a of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–65 effective Oct. 1, 1999, see section 644 of Pub. L. 106–65, set out as a note under section 1401a of this title.

§ 1411. Rules of construction

(a) CONSTRUCTION OF ''FIRST BECAME A MEMBER''.—For purposes of this chapter and other provisions of law providing for computation of retired or retainer pay of members of the uniformed services, a person shall be considered to first become a member of a uniformed service on the date the person is first enlisted, inducted, or appointed in a uniformed service.

(b) REFERENCES IN TABLES.—Section references in tables in this chapter are to sections of this title.

(Added Pub. L. 99–348, title I, § 105, July 1, 1986, 100 Stat. 691.)

§ 1412. Administrative provisions

(a) ROUNDING.—Amounts computed under this chapter, if not a multiple of $1, shall be rounded to the next lower multiple of $1.

(b) PAYMENT DATE.—Amounts of retired pay and retainer pay due a retired member of the uniformed services shall be paid on the first day of each month beginning after the month in which the right to such pay accrues.

(Added Pub. L. 99–348, title I, § 105, July 1, 1986, 100 Stat. 691; amended Pub. L. 111–383, div. A, title VI, § 632(a), (b)(1), Jan. 7, 2011, 124 Stat. 4240.)

AMENDMENTS

2011—Pub. L. 111–383, § 632(b)(1), substituted ''Administrative provisions'' for ''Rounding to next lower dollar'' in section catchline.

Pub. L. 111–383, § 632(a), designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

EFFECTIVE DATE OF 2011 AMENDMENT

Pub. L. 111–383, div. A, title VI, § 632(c), Jan. 7, 2011, 124 Stat. 4240, provided that: ''Subsection (b) of section 1412 of title 10, United States Code, as added by subsection (a), shall apply beginning with the first month that begins more than 30 days after the date of the enactment of this Act [Jan. 7, 2011].''

[§ 1413. Repealed. Pub. L. 108–136, div. A, title VI, § 641(b), Nov. 24, 2003, 117 Stat. 1514]

Section, added Pub. L. 106–65, div. A, title VI, § 658(a)(1), Oct. 5, 1999, 113 Stat. 668; amended Pub. L. 106–398, § 1 [[div. A], title VI, § 657(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–166; Pub. L. 107–107, div. A, title VI, § 641(b), (e)(1), (2), Dec. 28, 2001, 115 Stat. 1150, 1151; Pub. L. 107–314, div. A, title VI, § 636(b), Dec. 2, 2002, 116 Stat. 2576; Pub. L. 108–136, div. A, title VI, § 641(c)(1), Nov. 24, 2003, 117 Stat. 1514, related to special compensation for certain severely disabled uniformed services retirees.

EFFECTIVE DATE OF REPEAL

Repeal effective Jan. 1, 2004, and applicable to payments for months beginning on or after that date, see section 641(e) of Pub. L. 108–136, set out as an Effective Date of 2003 Amendment note under section 1414 of this title.

§ 1413a. Combat-related special compensation

(a) AUTHORITY.—The Secretary concerned shall pay to each eligible combat-related disabled uniformed services retiree who elects benefits under this section a monthly amount for the combat-related disability of the retiree determined under subsection (b).

(b) AMOUNT.—

(1) DETERMINATION OF MONTHLY AMOUNT.—Subject to paragraphs (2) and (3), the monthly amount to be paid an eligible combat-related disabled uniformed services retiree under subsection (a) for any month is the amount of compensation to which the retiree is entitled under title 38 for that month, determined without regard to any disability of the retiree that is not a combat-related disability.

(2) MAXIMUM AMOUNT.—The amount paid to an eligible combat-related disabled uniformed services retiree for any month under paragraph (1) may not exceed the amount of the reduction in retired pay that is applicable to the retiree for that month under sections 5304 and 5305 of title 38.

(3) SPECIAL RULES FOR CHAPTER 61 DISABILITY RETIREES.—

(A) GENERAL RULE.—In the case of an eligible combat-related disabled uniformed services retiree who is retired under chapter 61 of this title, the amount of the payment under paragraph (1) for any month may not, when combined with the amount of retired pay payable to the retiree after any such reduction under sections 5304 and 5305 of title 38, cause the total of such combined payment to exceed the amount of retired pay to which the member would have been entitled under any other provision of law based upon the member's service in the uniformed services if the member had not been retired under chapter 61 of this title.

(B) SPECIAL RULE FOR RETIREES WITH FEWER THAN 20 YEARS OF SERVICE.—In the case of an eligible combat-related disabled uniformed services retiree who is retired under chapter 61 of this title with fewer than 20 years of creditable service, the amount of the payment under paragraph (1) for any month may not, when combined with the amount of retired pay payable to the retiree after any such reduction under sections 5304 and 5305 of title 38, cause the total of such combined payment to exceed the amount equal to the retired pay percentage (determined for the member under section 1409(b) of this title) of the member's years of creditable service multiplied by the member's retired pay base under section 1406(b)(1) or 1407 of this title, whichever is applicable to the member.

(c) ELIGIBLE RETIREES.—For purposes of this section, an eligible combat-related disabled uniformed services retiree referred to in subsection (a) is a member of the uniformed services who—

(1) is entitled to retired pay (other than by reason of section 12731b of this title); and

(2) has a combat-related disability.

(d) PROCEDURES.—The Secretary of Defense shall prescribe procedures and criteria under which a disabled uniformed services retiree may apply to the Secretary of a military department to be considered to be an eligible combat-related disabled uniformed services retiree. Such procedures shall apply uniformly throughout the Department of Defense.

(e) COMBAT-RELATED DISABILITY.—In this section, the term ''combat-related disability'' means a disability that is compensable under the laws administered by the Secretary of Veterans Affairs and that—

(1) is attributable to an injury for which the member was awarded the Purple Heart; or

(2) was incurred (as determined under criteria prescribed by the Secretary of Defense)—

(A) as a direct result of armed conflict;

(B) while engaged in hazardous service;

(C) in the performance of duty under conditions simulating war; or

(D) through an instrumentality of war.

(f) COORDINATION WITH CONCURRENT RECEIPT PROVISION.—Subsection (d) of section 1414 of this

title provides for coordination between benefits under that section and under this section.

(g) STATUS OF PAYMENTS.—Payments under this section are not retired pay.

(h) SOURCE OF PAYMENTS.—Payments under this section for a member of the Army, Navy, Air Force, Marine Corps, or Space Force shall be paid from the Department of Defense Military Retirement Fund. Payments under this section for any other member for any fiscal year shall be paid out of funds appropriated for pay and allowances payable by the Secretary concerned for that fiscal year.

(i) OTHER DEFINITIONS.—In this section:

(1) The term ''service-connected'' has the meaning given such term in section 101 of title 38.

(2) The term ''retired pay'' includes retainer pay, emergency officers' retirement pay, and naval pension.

(Added Pub. L. 107–314, div. A, title VI, § 636(a)(1), Dec. 2, 2002, 116 Stat. 2574; amended Pub. L. 108–136, div. A, title VI, §§ 641(c)(1), 642(a)–(e)(1), Nov. 24, 2003, 117 Stat. 1514, 1516, 1517; Pub. L. 110–181, div. A, title VI, § 641(a), (b), Jan. 28, 2008, 122 Stat. 156; Pub. L. 112–239, div. A, title VI, § 643(a), Jan. 2, 2013, 126 Stat. 1783; Pub. L. 113–76, div. C, title X, § 10001(b)(1), Jan. 17, 2014, 128 Stat. 151; Pub. L. 114–92, div. A, title VI, § 631(d)(2), Nov. 25, 2015, 129 Stat. 845; Pub. L. 114–328, div. A, title VI, § 634(a), Dec. 23, 2016, 130 Stat. 2163; Pub. L. 116–283, div. A, title IX, § 924(b)(3)(X), Jan. 1, 2021, 134 Stat. 3821.)

AMENDMENTS

2021—Subsec. (h). Pub. L. 116–283 substituted ''Marine Corps, or Space Force'' for ''or Marine Corps''.

2016—Subsec. (b)(3)(B). Pub. L. 114–328 substituted ''the retired pay percentage (determined for the member under section 1409(b) of this title)'' for ''2½ percent''.

2015—Subsec. (b)(3). Pub. L. 114–92, § 631(d)(2), which was approved Nov. 25, 2015, provided that the amendments made by Pub. L. 113–76, § 10001(b)(1), which were effective Dec. 1, 2015, would not take effect. See 2014 Amendment notes below.

2014—Subsec. (b)(3)(A). Pub. L. 113–76, § 10001(b)(1)(A), which directed insertion of '', with adjustment under paragraph (2) of section 1401a(b) of this title to which the member would have been entitled (but without the application of paragraph (4) of such section),'' after ''under any other provision of law'', did not take effect pursuant to Pub. L. 114–92, § 631(d)(2). See 2015 Amendment note above.

Subsec. (b)(3)(B). Pub. L. 113–76, § 10001(b)(1)(B), which directed substitution of ''with adjustment under paragraph (2) of section 1401a(b) of this title to which the member would have been entitled (but without the application of paragraph (4) of such section), whichever is applicable to the member.'' for ''whichever is applicable to the member.'', did not take effect pursuant to Pub. L. 114–92, § 631(d)(2). See 2015 Amendment note above.

2013—Subsec. (b)(3). Pub. L. 112–239 substituted ''may not, when combined with the amount of retired pay payable to the retiree after any such reduction under sections 5304 and 5305 of title 38, cause the total of such combined payment to exceed'' for ''shall be reduced by the amount (if any) by which the amount of the member's retired pay under chapter 61 of this title exceeds'' in subpars. (A) and (B).

2008—Subsec. (b)(3). Pub. L. 110–181, § 641(b), designated existing text as subpar. (A), inserted heading, and added subpar. (B).

Subsec. (c). Pub. L. 110–181, § 641(a), substituted ''who—'' for ''entitled to retired pay who—'' in introductory provisions, added pars. (1) and (2), and struck out former pars. (1) and (2) which read as follows:

''(1) has completed at least 20 years of service in the uniformed services that are creditable for purposes of computing the amount of retired pay to which the member is entitled or is entitled to retired pay under section 12731 of this title (other than by reason of section 12731b of this title); and

''(2) has a combat-related disability.''

2003—Pub. L. 108–136, § 642(e)(1), substituted ''Combat-related special compensation'' for ''Special compensation for certain combat-related disabled uniformed services retirees'' in section catchline.

Subsec. (b)(1). Pub. L. 108–136, § 642(c), substituted ''under subsection (a) for any month is the amount of compensation to which the retiree is entitled under title 38 for that month, determined without regard to any disability of the retiree that is not a combat-related disability.'' for ''for a combat-related disability under subsection (a) is the monthly amount of compensation to which the retiree would be entitled solely for the combat-related disability consistent with chapter 11 of title 38.''

Subsec. (c)(1). Pub. L. 108–136, § 642(b), inserted before semicolon at end ''or is entitled to retired pay under section 12731 of this title (other than by reason of section 12731b of this title)''.

Subsec. (c)(2). Pub. L. 108–136, § 642(a)(2), struck out ''qualifying'' before ''combat-related disability''.

Subsec. (e). Pub. L. 108–136, § 642(a)(1), amended heading and text of subsec. (e) generally. Prior to amendment, subsec. (e) defined term ''qualifying combat-related disability''.

Subsec. (f). Pub. L. 108–136, § 642(d), amended heading and text of subsec. (f) generally. Prior to amendment, text read as follows:

''(1) SINGLE SOURCE OF COMPENSATION.—An individual who is paid special compensation under this section may not receive special compensation under section 1413 of this title.

''(2) ELECTION OF SOURCE.—An individual who is eligible for special compensation under this section and special compensation under section 1413 of this title shall elect which special compensation to receive.

''(3) REGULATIONS.—The Secretary of Defense shall prescribe in regulations the manner and form of an election under this subsection.''

Subsec. (h). Pub. L. 108–136, § 641(c)(1), inserted first sentence and inserted ''for any other member'' before ''for any fiscal year''.

EFFECTIVE DATE OF 2016 AMENDMENT

Pub. L. 114–328, div. A, title VI, § 634(b), Dec. 23, 2016, 130 Stat. 2164, provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on January 1, 2018, immediately after the coming into effect of the amendments made by part I of subtitle D of title VI of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114–92; 129 Stat. 842) [§§ 631–635, enacting section 1415 of this title and section 356 of Title 37, Pay and Allowances of the Uniformed Services, and amending this section and sections 1401, 1401a, 1409, 1410, 1414, 1463, and 12739 of this title, sections 8432, 8432b, 8438, and 8440e of Title 5, Government Organization and Employees, section 3045 of Title 33, Navigation and Navigable Waters, sections 211 and 354 of Title 37, section 5304 of Title 38, Veterans' Benefits, and section 212 of Title 42, The Public Health and Welfare], to which the amendment made by subsection (a) relates.''

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113–76 effective Dec. 1, 2015, immediately after the coming into effect of section 403 of Pub. L. 113–67 and the amendments made by that section, see section 10001(c) of Pub. L. 113–76, set out as a note under section 1401a of this title. Amendment did not take effect pursuant to section 631(d)(2) of Pub. L. 114–92, set out as a Repeal of Reduced Cost-of-living Ad-

justments for Members Under the Age of 62 note under section 1401a of this title.

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112–239, div. A, title VI, §643(b), Jan. 2, 2013, 126 Stat. 1783, provided that: ''The amendment made by this section [amending this section] shall take effect as of January 1, 2013, and shall apply to payments for months beginning on or after that date.''

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–181, div. A, title VI, §641(c), Jan. 28, 2008, 122 Stat. 156, provided that: ''The amendments made by this section [amending this section] shall take effect on January 1, 2008, and shall apply to payments for months beginning on or after that date.''

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–136, div. A, title VI, §641(c)(6), Nov. 24, 2003, 117 Stat. 1516, provided that: ''The amendments made by this subsection [amending this section and sections 1413, 1463, 1465, and 1466 of this title] shall take effect as of October 1, 2003. The Secretary of Defense shall provide for such administrative adjustments as necessary to provide for payments made for any period during fiscal year 2004 before the date of the enactment of this Act [Nov. 24, 2003] to be treated as having been made in accordance with such amendments and for the provisions of such amendments to be implemented as if enacted as of September 30, 2003.''

Pub. L. 108–136, div. A, title VI, §642(f), Nov. 24, 2003, 117 Stat. 1517, provided that: ''The amendments made by subsections (a), (b), and (c) [amending this section] shall apply to payments under section 1413a of title 10, United States Code, for months beginning on or after January 1, 2004. The amendment made by subsection (d) [amending this section] shall take effect on January 1, 2004.''

EFFECTIVE DATE

Pub. L. 107–314, div. A, title VI, §636(a)(2), Dec. 2, 2002, 116 Stat. 2576, provided that: ''Section 1413a of title 10, United States Code, as added by paragraph (1), shall take effect not later than 180 days after the date of the enactment of this Act [Dec. 2, 2002].''

CLARIFICATION OF ELIGIBILITY OF MEMBERS OF THE COAST GUARD FOR COMBAT-RELATED SPECIAL COMPENSATION

Pub. L. 114–120, title II, §221, Feb. 8, 2016, 130 Stat. 48, provided that:

''(a) CONSIDERATION OF ELIGIBILITY.—

''(1) IN GENERAL.—Not later than 90 days after the date of the enactment of this Act [Feb. 8, 2016], the Secretary of the department is [sic] which the Coast Guard is operating shall issue procedures and criteria to use in determining whether the disability of a member of the Coast Guard is a combat-related disability for purposes of the eligibility of such member for combat-related special compensation under section 1413a of title 10, United States Code. Such procedures and criteria shall include the procedures and criteria prescribed by the Secretary of Defense pursuant to subsection (e)(2) of such section. Such procedures and criteria shall apply in determining whether the disability of a member of the Coast Guard is a combat-related disability for purposes of determining the eligibility of such member for combat-related special compensation under such section.

''(2) DISABILITY FOR WHICH A DETERMINATION IS MADE.—For the purposes of this section, and in the case of a member of the Coast Guard, a disability under section 1413a(e)(2)(B) of title 10, United States Code, includes a disability incurred during aviation duty, diving duty, rescue swimmer or similar duty, and hazardous service duty onboard a small vessel (such as duty as a surfman)—

''(A) in the performance of duties for which special or incentive pay was paid pursuant to section 301, 301a, 304, 307, 334, or 351 of title 37, United States Code;

''(B) in the performance of duties related to a statutory mission of the Coast Guard under paragraph (1) or paragraph (2) of section 888(a) of the Homeland Security Act of 2002 (6 U.S.C. 468(a)), including—

''(i) law enforcement, including drug or migrant interdiction;

''(ii) defense readiness; or

''(iii) search and rescue; or

''(C) while engaged in a training exercise for the performance of a duty described in subparagraphs (A) and (B).

''(b) APPLICABILITY OF PROCEDURES AND CRITERIA.—The procedures and criteria issued pursuant to subsection (a) shall apply to disabilities described in that subsection that are incurred on or after the effective date provided in section 636(a)(2) of the Bob Stump National Defense Authorization Act for Fiscal Year 2003 (Public Law 107–314; 116 Stat. 2574; 10 U.S.C. 1413a note) [See Effective Date note above].

''(c) REAPPLICATION FOR COMPENSATION.—Any member of the Coast Guard who was denied combat-related special compensation under section 1413a of title 10, United States Code, during the period beginning on the effective date specified in subsection (b) and ending on the date of the issuance of the procedures and criteria required by subsection (a) may reapply for combat-related special compensation under such section on the basis of such procedures and criteria in accordance with such procedures as the Secretary of the department in which the Coast Guard is operating shall specify.''

§1414. Members eligible for retired pay who are also eligible for veterans' disability compensation for disabilities rated 50 percent or higher: concurrent payment of retired pay and veterans' disability compensation

(a) PAYMENT OF BOTH RETIRED PAY AND COMPENSATION.—

(1) IN GENERAL.—Subject to subsection (b), a member or former member of the uniformed services who is entitled for any month to retired pay and who is also entitled for that month to veterans' disability compensation for a qualifying service-connected disability (hereinafter in this section referred to as a ''qualified retiree'') is entitled to be paid both for that month without regard to sections 5304 and 5305 of title 38. During the period beginning on January 1, 2004, and ending on December 31, 2013, payment of retired pay to such a qualified retiree is subject to subsection (c), except that payment of retired pay is subject to subsection (c) only during the period beginning on January 1, 2004, and ending on December 31, 2004, in the case of the following:

(A) A qualified retiree receiving veterans' disability compensation for a disability rated as 100 percent.

(B) A qualified retiree receiving veterans' disability compensation at the rate payable for a 100 percent disability by reason of a determination of individual unemployability.

(2) QUALIFYING SERVICE-CONNECTED DISABILITY.—In this section, the term ''qualifying service-connected disability'' means a service-connected disability or combination of service-connected disabilities that is rated as not less than 50 percent disabling by the Secretary of Veterans Affairs.

(b) SPECIAL RULES FOR CHAPTER 61 DISABILITY RETIREES.—

(1) CAREER RETIREES.—The retired pay of a member retired under chapter 61 of this title with 20 years or more of service otherwise creditable under section 1405 of this title, or at least 20 years of service computed under section 12732 of this title, at the time of the member's retirement is subject to reduction under sections 5304 and 5305 of title 38, but only to the extent that the amount of the member's retired pay under chapter 61 of this title exceeds the amount of retired pay to which the member would have been entitled under any other provision of law based upon the member's service in the uniformed services if the member had not been retired under chapter 61 of this title.

(2) DISABILITY RETIREES WITH LESS THAN 20 YEARS OF SERVICE.—Subsection (a) does not apply to a member retired under chapter 61 of this title with less than 20 years of service otherwise creditable under section 1405 of this title, or with less than 20 years of service computed under section 12732 of this title, at the time of the member's retirement.

(c) PHASE-IN OF FULL CONCURRENT RECEIPT.—During the period beginning on January 1, 2004, and ending on December 31, 2013, retired pay payable to a qualified retiree that pursuant to the second sentence of subsection (a)(1) is subject to this subsection shall be determined as follows:

(1) CALENDAR YEAR 2004.—For a month during 2004, the amount of retired pay payable to a qualified retiree is the amount (if any) of retired pay in excess of the current baseline offset plus the following:

(A) For a month for which the retiree receives veterans' disability compensation for a disability rated as total, $750.

(B) For a month for which the retiree receives veterans' disability compensation for a disability rated as 90 percent, $500.

(C) For a month for which the retiree receives veterans' disability compensation for a disability rated as 80 percent, $350.

(D) For a month for which the retiree receives veterans' disability compensation for a disability rated as 70 percent, $250.

(E) For a month for which the retiree receives veterans' disability compensation for a disability rated as 60 percent, $125.

(F) For a month for which the retiree receives veterans' disability compensation for a disability rated as 50 percent, $100.

(2) CALENDAR YEAR 2005.—For a month during 2005, the amount of retired pay payable to a qualified retiree is the sum of—

(A) the amount specified in paragraph (1) for that qualified retiree; and

(B) 10 percent of the difference between (i) the current baseline offset, and (ii) the amount specified in paragraph (1) for that member's disability.

(3) CALENDAR YEAR 2006.—For a month during 2006, the amount of retired pay payable to a qualified retiree is the sum of—

(A) the amount determined under paragraph (2) for that qualified retiree; and

(B) 20 percent of the difference between (i) the current baseline offset, and (ii) the amount determined under paragraph (2) for that qualified retiree.

(4) CALENDAR YEAR 2007.—For a month during 2007, the amount of retired pay payable to a qualified retiree is the sum of—

(A) the amount determined under paragraph (3) for that qualified retiree; and

(B) 30 percent of the difference between (i) the current baseline offset, and (ii) the amount determined under paragraph (3) for that qualified retiree.

(5) CALENDAR YEAR 2008.—For a month during 2008, the amount of retired pay payable to a qualified retiree is the sum of—

(A) the amount determined under paragraph (4) for that qualified retiree; and

(B) 40 percent of the difference between (i) the current baseline offset, and (ii) the amount determined under paragraph (4) for that qualified retiree.

(6) CALENDAR YEAR 2009.—For a month during 2009, the amount of retired pay payable to a qualified retiree is the sum of—

(A) the amount determined under paragraph (5) for that qualified retiree; and

(B) 50 percent of the difference between (i) the current baseline offset, and (ii) the amount determined under paragraph (5) for that qualified retiree.

(7) CALENDAR YEAR 2010.—For a month during 2010, the amount of retired pay payable to a qualified retiree is the sum of—

(A) the amount determined under paragraph (6) for that qualified retiree; and

(B) 60 percent of the difference between (i) the current baseline offset, and (ii) the amount determined under paragraph (6) for that qualified retiree.

(8) CALENDAR YEAR 2011.—For a month during 2011, the amount of retired pay payable to a qualified retiree is the sum of—

(A) the amount determined under paragraph (7) for that qualified retiree; and

(B) 70 percent of the difference between (i) the current baseline offset, and (ii) the amount determined under paragraph (7) for that qualified retiree.

(9) CALENDAR YEAR 2012.—For a month during 2012, the amount of retired pay payable to a qualified retiree is the sum of—

(A) the amount determined under paragraph (8) for that qualified retiree; and

(B) 80 percent of the difference between (i) the current baseline offset, and (ii) the amount determined under paragraph (8) for that qualified retiree.

(10) CALENDAR YEAR 2013.—For a month during 2013, the amount of retired pay payable to a qualified retiree is the sum of—

(A) the amount determined under paragraph (9) for that qualified retiree; and

(B) 90 percent of the difference between (i) the current baseline offset, and (ii) the amount determined under paragraph (9) for that qualified retiree.

(11) GENERAL LIMITATION.—Retired pay determined under this subsection for a qualified re-

tiree, if greater than the amount of retired pay otherwise applicable to that qualified retiree, shall be reduced to the amount of retired pay otherwise applicable to that qualified retiree.

(d) COORDINATION WITH COMBAT-RELATED SPECIAL COMPENSATION PROGRAM.—

(1) IN GENERAL.—A person who is a qualified retiree under this section and is also an eligible combat-related disabled uniformed services retiree under section 1413a of this title may receive special compensation in accordance with that section or retired pay in accordance with this section, but not both.

(2) ANNUAL OPEN SEASON.—The Secretary concerned shall provide for an annual period (referred to as an ''open season'') during which a person described in paragraph (1) shall have the right to make an election to change from receipt of special compensation in accordance with section 1413a of this title to receipt of retired pay in accordance with this section, or the reverse, as the case may be. Any such election shall be made under regulations prescribed by the Secretary concerned. Such regulations shall provide for the form and manner for making such an election and shall provide for the date as of when such an election shall become effective. In the case of the Secretary of a military department, such regulations shall be subject to approval by the Secretary of Defense.

(e) DEFINITIONS.—In this section:

(1) RETIRED PAY.—The term ''retired pay'' includes retainer pay, emergency officers' retirement pay, and naval pension.

(2) VETERANS' DISABILITY COMPENSATION.—The term ''veterans' disability compensation'' has the meaning given the term ''compensation'' in section 101(13) of title 38.

(3) DISABILITY RATED AS TOTAL.—The term ''disability rated as total'' means—

(A) a disability, or combination of disabilities, that is rated as total under the standard schedule of rating disabilities in use by the Department of Veterans Affairs; or

(B) a disability, or combination of disabilities, for which the scheduled rating is less than total but for which a rating of total is assigned by reason of inability of the disabled person concerned to secure or follow a substantially gainful occupation as a result of disabilities for which veterans' disability compensation may be paid.

(4) CURRENT BASELINE OFFSET.—

(A) IN GENERAL.—The term ''current baseline offset'' for any qualified retiree means the amount for any month that is the lesser of—

(i) the amount of the applicable monthly retired pay of the qualified retiree for that month; and

(ii) the amount of monthly veterans' disability compensation to which the qualified retiree is entitled for that month.

(B) APPLICABLE RETIRED PAY.—In subparagraph (A), the term ''applicable retired pay'' for a qualified retiree means the amount of monthly retired pay to which the qualified retiree is entitled, determined without regard to this section or sections 5304 and 5305 of title 38, except that in the case of such a retiree who was retired under chapter 61 of this title, such amount is the amount of retired pay to which the member would have been entitled under any other provision of law based upon the member's service in the uniformed services if the member had not been retired under chapter 61 of this title.

(Added Pub. L. 107–107, div. A, title VI, § 641(a), Dec. 28, 2001, 115 Stat. 1149; amended Pub. L. 108–136, div. A, title VI, § 641(a), Nov. 24, 2003, 117 Stat. 1511; Pub. L. 108–375, div. A, title VI, § 642, Oct. 28, 2004, 118 Stat. 1957; Pub. L. 109–163, div. A, title VI, § 663, Jan. 6, 2006, 119 Stat. 3316; Pub. L. 110–181, div. A, title VI, § 642(a), Jan. 28, 2008, 122 Stat. 157; Pub. L. 113–76, div. C, title X, § 10001(b)(2), Jan. 17, 2014, 128 Stat. 151; Pub. L. 114–92, div. A, title VI, § 631(d)(2), Nov. 25, 2015, 129 Stat. 845.)

AMENDMENTS

2015—Subsec. (b)(1). Pub. L. 114–92, § 631(d)(2), which was approved Nov. 25, 2015, provided that the amendment made by Pub. L. 113–76, § 10001(b)(2), which was effective Dec. 1, 2015, would not take effect. See 2014 Amendment note below.

2014—Subsec. (b)(1). Pub. L. 113–76, § 10001(b)(2), which directed insertion of ''(but without the application of section 1401a(b)(4) of this title)'' after ''under any other provision of law'', did not take effect pursuant to Pub. L. 114–92, § 631(d)(2). See 2015 Amendment note above.

2008—Subsec. (a)(1). Pub. L. 110–181 substituted ''except that payment of retired pay is subject to subsection (c) only during the period beginning on January 1, 2004, and ending on December 31, 2004, in the case of the following:'' for ''except that in the case of a qualified retiree receiving veterans' disability compensation for a disability rated as 100 percent, payment of retired pay to such veteran is subject to subsection (c) only during the period beginning on January 1, 2004, and ending on December 31, 2004, and in the case of a qualified retiree receiving veterans' disability compensation at the rate payable for a 100 percent disability by reason of a determination of individual unemployability, payment of retired pay to such veteran is subject to subsection (c) only during the period beginning on January 1, 2004, and ending on September 30, 2009.'' and added subpars. (A) and (B).

2006—Subsec. (a)(1). Pub. L. 109–163 inserted '', and in the case of a qualified retiree receiving veterans' disability compensation at the rate payable for a 100 percent disability by reason of a determination of individual unemployability, payment of retired pay to such veteran is subject to subsection (c) only during the period beginning on January 1, 2004, and ending on September 30, 2009'' before period at end.

2004—Subsec. (a)(1). Pub. L. 108–375, § 642(a), inserted before period at end '', except that in the case of a qualified retiree receiving veterans' disability compensation for a disability rated as 100 percent, payment of retired pay to such veteran is subject to subsection (c) only during the period beginning on January 1, 2004, and ending on December 31, 2004''.

Subsec. (c). Pub. L. 108–375, § 642(b), inserted ''that pursuant to the second sentence of subsection (a)(1) is subject to this subsection'' after ''a qualified retiree'' in introductory provisions.

2003—Pub. L. 108–136 amended section generally. Prior to amendment, section related to members eligible for retired pay who had service-connected disabilities: payment of retired pay and veterans' disability compensation; and contingent effectiveness based on enactment of offsetting legislation.

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113–76 effective Dec. 1, 2015, immediately after the coming into effect of section 403 of Pub. L. 113–67 and the amendments made by that section, see section 10001(c) of Pub. L. 113–76, set out as a note under section 1401a of this title. Amendment did not take effect pursuant to section 631(d)(2) of Pub. L. 114–92, set out as a Repeal of Reduced Cost-of-living Adjustments for Members Under the Age of 62 note under section 1401a of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–181, div. A, title VI, §642(b), Jan. 28, 2008, 122 Stat. 157, provided that:

''(1) IN GENERAL.—Subject to paragraph (2), the amendment made by subsection (a) [amending this section] shall take effect as of December 31, 2004.

''(2) TIMING OF PAYMENT OF RETROACTIVE BENEFITS.—Any amount payable for a period before October 1, 2008, by reason of the amendment made by subsection (a) shall not be paid until after that date.''

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–136, div. A, title VI, §641(e), Nov. 24, 2003, 117 Stat. 1516, provided that: ''The amendments made by subsections (a) and (b) [amending this section and repealing section 1413 of this title] shall take effect on January 1, 2004, and shall apply to payments for months beginning on or after that date.''

PROHIBITION OF RETROACTIVE BENEFITS

Pub. L. 107–107, div. A, title VI, §641(d), Dec. 28, 2001, 115 Stat. 1150, provided that: ''If the provisions of subsection (a) of section 1414 of title 10, United States Code, becomes [sic] effective in accordance with subsection (f) of that section, no benefit may be paid to any person by reason of those provisions for any period before the effective date specified in subsection (e) of that section.''

§ 1415. Lump sum payment of certain retired pay

(a) DEFINITIONS.—In this section:

(1) COVERED RETIRED PAY.—The term ''covered retired pay'' means retired pay under—

(A) this title;

(B) title 14;

(C) the National Oceanic and Atmospheric Administration Commissioned Officer Corps Act of 2002 (33 U.S.C. 3001 et seq.); or

(D) the Public Health Service Act (42 U.S.C. 201 et seq.).

(2) ELIGIBLE PERSON.—The term ''eligible person'' means a person who—

(A)(i) first becomes a member of a uniformed service on or after January 1, 2018; or

(ii) makes the election described in section 1409(b)(4)(B) or 12739(f)(2) of this title; and

(B) does not retire or separate under chapter 61 of this title.

(3) RETIREMENT AGE.—The term ''retirement age'' has the meaning given the term in section 216(*l*) of the Social Security Act (42 U.S.C. 416(*l*)).

(b) ELECTION OF LUMP SUM PAYMENT OF CERTAIN RETIRED PAY.—

(1) IN GENERAL.—An eligible person entitled to covered retired pay (including an eligible person who is entitled to such pay by reason of an election described in subsection (a)(2)(A)(ii)) may elect to receive—

(A) a lump sum payment of the discounted present value at the time of the election of an amount of the covered retired pay that the eligible person is otherwise entitled to receive for the period beginning on the date of retirement and ending on the date the eligible person attains the eligible person's retirement age equal to—

(i) 50 percent of the amount of such covered retired pay during such period; or

(ii) 25 percent of the amount of such covered retired pay during such period; and

(B) a monthly amount during the period described in subparagraph (A) equal to—

(i) in the case of an eligible person electing to receive an amount described in subparagraph (A)(i), 50 percent of the amount of monthly covered retired pay the eligible person is otherwise entitled to receive during such period; and

(ii) in the case of an eligible person electing to receive an amount described in subparagraph (A)(ii), 75 percent of the amount of monthly covered retired pay the eligible person is otherwise entitled to receive during such period.

(2) DISCOUNTED PRESENT VALUE.—The Secretary of Defense shall compute the discounted present value of amounts of covered retired pay that an eligible person is otherwise entitled to receive for a period for purposes of paragraph (1)(A) by—

(A) estimating the aggregate amount of retired pay the person would receive for the period, taking into account cost-of-living adjustments under section 1401a of this title projected by the Secretary at the time the person separates from service and would otherwise begin receiving covered retired pay; and

(B) reducing the aggregate amount estimated pursuant to subparagraph (A) by an appropriate percentage determined by the Secretary—

(i) using average personal discount rates (as defined and calculated by the Secretary taking into consideration applicable and reputable studies of personal discount rates for military personnel and past actuarial experience in the calculation of personal discount rates under this paragraph); and

(ii) in accordance with generally accepted actuarial principles and practices.

(3) TIMING OF ELECTION.—An eligible person shall make the election under this subsection not later than 90 days before the date of the retirement of the eligible person from the uniformed services.

(4) SINGLE PAYMENT OR COMBINATION OF PAYMENTS.—An eligible person may elect to receive a lump sum payment under this subsection in a single payment or in a combination of payments.

(5) COMMENCEMENT OF PAYMENT.—An eligible person who makes an election under this subsection shall receive the lump sum payment, or the first installment of a combination of payments of the lump sum payment if elected under paragraph (4), as follows:

(A) Not later than 60 days after the date of the retirement of the eligible person from the uniformed services.

(B) In the case of an eligible person who is a member of a reserve component, not later than 60 days after the earlier of—

(i) the date on which the eligible person attains 60 years of age; or

(ii) the date on which the eligible person first becomes entitled to covered retired pay.

(6) NO SUBSEQUENT ADJUSTMENT.—An eligible person who accepts payment of a lump sum under this subsection may not seek the review of or otherwise challenge the amount of the lump sum in light of any variation in cost-of-living adjustments under section 1401a of this title, actuarial assumptions, or other factors used by the Secretary in calculating the amount of the lump sum that occur after the Secretary pays the lump sum.

(c) RESUMPTION OF MONTHLY ANNUITY.—

(1) GENERAL RULE.—Subject to paragraph (2), an eligible person who makes an election described in subsection (b)(1) shall be entitled to receive the eligible person's monthly covered retired pay calculated in accordance with paragraph (2) after the eligible person attains the eligible person's retirement age.

(2) RESTORATION OF FULL RETIREMENT AMOUNT AT RETIREMENT AGE.—The retired pay of an eligible person who makes an election described in subsection (a) shall be recomputed, effective on the first day of the first month beginning after the person attains the eligible person's retirement age, so as to be an amount equal to the amount of covered retired pay to which the eligible person would otherwise be entitled on that date if the annual increases, in the retired pay of the eligible person made to reflect changes in the Consumer Price Index, had been made in accordance with section 1401a of this title.

(d) PAYMENT OF RETIRED PAY TO PERSONS NOT MAKING ELECTION.—An eligible person who does not make the election described in subsection (b)(1) shall be paid the retired pay to which the eligible person is otherwise entitled under the applicable provisions of law referred to in subsection (a)(1).

(e) REGULATIONS.—The Secretary of Defense shall prescribe regulations to carry out the provisions of this section.

(Added Pub. L. 114–92, div. A, title VI, § 633(a)(1), Nov. 25, 2015, 129 Stat. 847; amended Pub. L. 114–328, div. A, title X, § 1081(a)(4), Dec. 23, 2016, 130 Stat. 2417; Pub. L. 115–232, div. A, title X, § 1081(a)(14), Aug. 13, 2018, 132 Stat. 1984.)

REFERENCES IN TEXT

The National Oceanic and Atmospheric Administration Commissioned Officer Corps Act of 2002, referred to in subsec. (a)(1)(C), is title II of Pub. L. 107–372, Dec. 19, 2002, 116 Stat. 3082, which is classified principally to chapter 43 (§ 3001 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 3001 of Title 33 and Tables.

The Public Health Service Act, referred to in subsec. (a)(1)(D), is act July 1, 1944, ch. 373, 58 Stat. 682, which is classified generally to chapter 6A (§ 201 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 201 of Title 42 and Tables.

AMENDMENTS

2018—Subsec. (e). Pub. L. 115–232 struck out ''concerned'' after ''The Secretary of Defense''.

2016—Subsec. (b)(1)(B)(ii). Pub. L. 114–328 inserted period at end.

EFFECTIVE DATE; IMPLEMENTATION

Section effective Jan. 1, 2018, with certain implementation requirements, see section 635 of Pub. L. 114–92, set out as an Effective Date of 2015 Amendment; Implementation note under section 8432 of Title 5, Government Organization and Employees.

CHAPTER 73—ANNUITIES BASED ON RETIRED OR RETAINER PAY

Subchapter		Sec.
I.	Retired Serviceman's Family Protection Plan	1431
II.	Survivor Benefit Plan	1447
[III.	Repealed]	

AMENDMENTS

2004—Pub. L. 108–375, div. A, title VI, § 644(b)(2), Oct. 28, 2004, 118 Stat. 1961, struck out item for subchapter III ''Supplemental Survivor Benefit Plan'', effective Apr. 1, 2008.

1990—Pub. L. 101–510, div. A, title VI, § 631(1), title XIV, § 1484(*l*)(4)(A), Nov. 5, 1990, 104 Stat. 1580, 1719, amended Pub. L. 101–189, § 1404(a)(2), see 1989 Amendment note below.

1989—Pub. L. 101–189, div. A, title XIV, § 1404(a)(2), Nov. 29, 1989, 103 Stat. 1586, as amended by Pub. L. 101–510, div. A, title VI, § 631(1), title XIV, § 1484(*l*)(4)(A), Nov. 5, 1990, 104 Stat. 1580, 1719, added item for subchapter III, effective Apr. 1, 1992.

1980—Pub. L. 96–513, title V, § 511(54)(A), Dec. 12, 1980, 94 Stat. 2925, amended chapter heading to read: ''ANNUITIES BASED ON RETIRED OR RETAINER PAY''.

1972—Pub. L. 92–425, § 1(1), Sept. 21, 1972, 86 Stat. 706, added subchapter analysis and amended chapter heading by inserting ''; SURVIVOR BENEFIT PLAN'' after ''PAY'' which could not be executed as directed in view of amendment by Pub. L. 87–381.

1961—Pub. L. 87–381, § 1(1), Oct. 4, 1961, 75 Stat. 810, substituted ''RETIRED SERVICEMAN'S FAMILY PROTECTION PLAN'' for ''ANNUITIES BASED ON RETIRED OR RETAINER PAY'' in chapter heading.

SUBCHAPTER I—RETIRED SERVICEMAN'S FAMILY PROTECTION PLAN

Sec.	
1431.	Election of annuity: members of armed forces.
1432.	Election of annuity: former members of armed forces.
1433.	Mental incompetency of member.
1434.	Kinds of annuities that may be elected.
1435.	Eligible beneficiaries.
1436.	Computation of reduction in retired pay; withdrawal for severe financial hardship.
1436a.	Coverage paid up at 30 years and age 70.
1437.	Payment of annuity.
1438.	Deposits for amounts not deducted.
1439.	Refund of amounts deducted from retired pay.
1440.	Annuities not subject to legal process.
1441.	Annuities in addition to other payments.
1442.	Recovery of annuity erroneously paid.
[1443.	Repealed.]
1444.	Regulations; determinations.
1444a.	Regulations regarding payment of annuity to a representative payee.
1445.	Correction of administrative deficiencies.
1446.	Restriction on participation.

AMENDMENTS

1999—Pub. L. 106–65, div. A, title VI, § 655(b), Oct. 5, 1999, 113 Stat. 667, added item 1436a.

1991—Pub. L. 102–190, div. A, title VI, § 654(b)(2), Dec. 5, 1991, 105 Stat. 1390, added item 1444a.

1972—Pub. L. 92–425, § 1(2)(B), (C), Sept. 21, 1972, 86 Stat. 706, struck out item 1443 ''Board of Actuaries'', and struck out ''reports to Congress'' from item 1444.

1961—Pub. L. 87–381, § 6(2), (3), Oct. 4, 1961, 75 Stat. 812, inserted ''; withdrawal for severe financial hardship'' in item 1436, and added items 1445 and 1446.

§ 1431. Election of annuity: members of armed forces

(a) This section applies to all members of the armed forces except—

(1) members whose names are on a retired list other than a list maintained under section 12774(a) of this title;

(2) cadets at the United States Military Academy, the United States Air Force Academy, or the Coast Guard Academy; and

(3) midshipmen.

(b) To provide an annuity under section 1434 of this title, a person covered by subsection (a) may elect to receive a reduced amount of the retired pay or retainer pay to which he may become entitled as a result of service in his armed force. Except as otherwise provided in this section, unless it is made before he completes nineteen years of service for which he is entitled to credit in the computation of his basic pay, the election must be made at least two years before the first day for which retired pay or retainer pay is granted. However, if, because of military operations, a member is assigned to an isolated station or is missing, interned in a neutral country, captured by a hostile force, or beleaguered or besieged, and for that reason is unable to make an election before completing nineteen years of that service, he may make the election, to become effective immediately, within one year after he ceases to be assigned to that station or returns to the jurisdiction of his armed force, as the case may be. A member to whom retired pay or retainer pay is granted retroactively, and who is otherwise eligible to make an election, may make the election within ninety days after receiving notice that such pay has been granted to him. An election made after August 13, 1968, is not effective if—

(1) the elector dies during the first thirty-day period he is entitled to retired pay as a result of a physical condition which led to his being granted retired pay under chapter 61 of title 10 with a disability of 100 per centum under the standard schedule of rating disabilities in use by the Department of Veterans Affairs at the time of the determination of the per centum of his disability;

(2) the disability was not the result of injury or disease received in line of duty as a direct result of armed conflict; and

(3) his surviving spouse or children are entitled to dependency and indemnity compensation under chapter 13 of title 38 based upon his death.

(c) An election may be changed or revoked by the elector before the first day for which retired or retainer pay is granted. Unless it is made on the basis of restored mental competency under section 1433 of this title, or unless it is made before the elector completes nineteen years of service for which he is entitled to credit in the computation of his basic pay (in which case only the latest change or revocation shall be effective), the change or revocation is not effective if it is made less than two years before the first day for which retired or retainer pay is granted. The elector may, however, before the first day for which retired or retainer pay is granted, change or revoke his election (provided the change does not increase the amount of the annuity elected) to reflect a change in the marital or dependency status of the member or his family that is caused by death, divorce, annulment, remarriage, or acquisition of a child, if such change or revocation of election is made within two years of such change in marital or dependency status.

(d) If an election made under this section is found to be void for any reason except fraud or willful intent of the member making the election, he may make a corrected election at any time within 90 days after he is notified in writing that the election is void. A corrected election made under this subsection is effective as of the date of the voided election it replaces.

(Aug. 10, 1956, ch. 1041, 70A Stat. 108; Pub. L. 85–861, § 33(a)(11), Sept. 2, 1958, 72 Stat. 1565; Pub. L. 87–381, § 2, Oct. 4, 1961, 75 Stat. 810; Pub. L. 90–485, § 1(1), (2), Aug. 13, 1968, 82 Stat. 751; Pub. L. 96–513, title V, § 511(55), Dec. 12, 1980, 94 Stat. 2925; Pub. L. 99–145, title XIII, § 1301(a)(2), Nov. 8, 1985, 99 Stat. 735; Pub. L. 101–189, div. A, title XVI, § 1621(a)(1), Nov. 29, 1989, 103 Stat. 1602; Pub. L. 104–106, div. A, title XV, § 1501(c)(17), Feb. 10, 1996, 110 Stat. 499.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1431(a)	37:371 (less (e) and (f)). 37:372(a) (2d sentence).	Aug. 8, 1953, ch. 393, §§ 2 (less (e) and (f)), 3(a) (less 5th sentence), (b), 67 Stat. 501, 502; Apr. 29, 1954, ch. 176, 68 Stat. 64.
1431(b)	37:372(a) (less 2d, 5th, 6th, and last sentences). 37:372(b) (less last sentence).	
1431(c)	37:372(a) (6th and last sentences).	
1431(d)	37:372(b) (last sentence).	

In subsection (a), the language of the revised subsection is substituted for 37:371(b) and (c), to make clear that the section was intended to include enlisted members and members of the Army, or the Air Force, without component. The words ''the United States Air Force Academy'' are inserted to reflect its establishment by the Air Force Academy Act (68 Stat. 47). The words ''retirement pay'' are omitted as covered by the words ''retired pay''. The words ''equivalent pay'' are omitted as surplusage. 37:371(c) (less 1st 21 words) is omitted as executed, since the persons described must have completed 18 years of the required service on the effective date of the source statute and exercised the option by 180 days after that date. 37:371(a) is omitted, since the revised chapter applies only to the armed forces. 37:371(d) is omitted, since the words ''person entitled to retired or retainer pay'', or their equivalent, are used throughout the revised chapter. 37:371(g) is omitted, since the words ''retired or retainer pay'' are used throughout the revised chapter. 37:371(h) is omitted as unnecessary in view of the definitions contained in section 101(5), (7), and (8). 37:372(a) (2d sentence) is omitted as surplusage.

In subsection (b), 37:372(a) (last 28 words of 1st sentence) is omitted as covered by section 1434 of this title. The words ''or naval'' are omitted as covered by the word ''military''. The last sentence is substituted

for 37:372(a) (4th sentence, less 61st through 81st words). 37:372(a) (3d sentence, and 61st through 85th words of 4th sentence) and 37:372(b) (less last sentence) are omitted as executed.

In subsection (c), the words ''is retired or becomes entitled to retired or retainer pay'' are substituted for the words ''his retirement'' and ''he retires'' since, under sections 1331–1333 of this title, a person may be granted retired pay without having been retired. The last eight words are substituted for 37:372(a) (7th through 17th words of last sentence). 37:372(a) (last sentence, less 1st 17 words) is omitted as surplusage.

1958 ACT

The change makes clear that section 1431 applies to a person who, because of military operations, is missing under any circumstances.

AMENDMENTS

1996—Subsec. (a)(1). Pub. L. 104–106 substituted ''section 12774(a)'' for ''section 1376(a)''.

1989—Subsec. (b)(1). Pub. L. 101–189 substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

1985—Subsec. (b)(3). Pub. L. 99–145 substituted ''surviving spouse'' for ''widow''.

1980—Subsec. (b). Pub. L. 96–513 substituted ''August 13, 1968,'' for ''the date of enactment of this amendment''.

1968—Subsec. (b). Pub. L. 90–485, § 1(1), increased from eighteen to nineteen the number of years of service the annuitant must complete, decreased from three to two years before eligibility the time required to make an election, and inserted provisions that an election made after Aug. 13, 1968 will not be effective if the conditions of cls. (1) to (3) are satisfied.

Subsec. (c). Pub. L. 90–485, § 1(2), decreased from three to two years before the first day for which retired or retainer pay is granted the time required to change or revoke an election when the ground of restored mental competency is not present, inserted provision that any change or revocation in an election after the completion of 19 years of service is effective if made before the first day for which retired or retainer pay is granted, and provided for a change or revocation in an election before the first day for which retired or retainer pay is granted when there is a change in marital or dependency status, if such change or revocation of election is made within two years of such change in marital or dependency status.

1961—Subsec. (a). Pub. L. 87–381 substituted ''other than a list maintained under section 1376(a) of this title'' for ''or who are in the Retired Reserve'', redesignated pars. (4) and (5) as (2) and (3), and struck out former pars. (2) and (3) which related to reserves on an inactive status list, and members assigned to the inactive National Guard, respectively.

Subsec. (b). Pub. L. 87–381 required that unless the election is made before 18 years of service, it must be made at least three years before the first day for which retired or retainer pay is granted, inserted assignment to an isolated station among the reasons permitting a delayed election, changed the period within which to make such delayed election from within six months after return to the jurisdiction of his armed force, to within one year after he ceases to be assigned to the isolated station or his return to the jurisdiction of his armed force, and if the member is retroactively granted retired or retainer pay, and is eligible for an election, he may elect within 90 days after notice of such grant.

Subsec. (c). Pub. L. 87–381 substituted ''the first day for which retired or retainer pay is granted'' for ''his retirement or before he becomes entitled to retired or retainer pay'', the requirement that the change or revocation is not effective if made less than 3 years before the first day for which retired or retainer pay is granted, for a required period of five years after change or revocation before retirement or becoming entitled to retired or retainer pay, and deleted ''If he revokes the election, he may not change or withdraw the revocation.''

Subsec. (d). Pub. L. 87–381 substituted permission to make a corrected election within 90 days after notice that the election is void for any reason, except fraud or willful intent of the member making election, with such election effective as of the date of the election it replaces, for provisions which denied the ability to revoke any election by a person retired or granted retired or retainer pay before Nov. 1, 1953, and who elected within 180 days after that date to receive reduced pay to provide for an annuity.

1958—Subsec. (b). Pub. L. 85–861 struck out ''in action'' after ''he is missing''.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–106, div. A, title XV, § 1501(c), Feb. 10, 1996, 110 Stat. 498, provided that the amendment made by that section is effective as of Dec. 1, 1994, and as if included as an amendment made by the Reserve Officer Personnel Management Act, title XVI of Pub. L. 103–337, as originally enacted.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Pub. L. 90–485, § 6, Aug. 13, 1968, 82 Stat. 754, provided in part that: ''Clause (1) and clause (6) of section 1 [amending this section and section 1436 of this title], and sections 2, 3, and 4 of this Act [amending section 1331 [now 12731] of this title and enacting material set out as notes under this section] are effective on the date of enactment [Aug. 13, 1968]. Remaining provisions of this Act [amending this section and sections 1434, 1435, 1437, and 1446 of this title, and enacting provisions set out as a note under this section] are effective on the first day of the third calendar month following the date of enactment.''

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–861 effective Aug. 10, 1956, see section 33(g) of Pub. L. 85–861, set out as a note under section 101 of this title.

SHORT TITLE OF 1978 AMENDMENT

Section 1 of Pub. L. 95–397, Sept. 30, 1978, 92 Stat. 843, provided: ''That this Act [amending sections 1076, 1331 [now 12731], 1434, and 1447 to 1452 of this title and enacting provisions set out as notes under sections 1076, 1434, 1447, and 1448 of this title] may be cited as the 'Uniformed Services Survivors' Benefits Amendments of 1978'.''

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

PROVISIONS EFFECTIVE FOR CERTAIN MEMBERS ON AUGUST 13, 1968

Pub. L. 90–485, § 3, Aug. 13, 1968, 82 Stat. 754, provided that: ''For members to whom section 1431 of title 10, United States Code [this section], applies on the date of enactment of this Act [Aug. 13, 1968], the provisions of section 1434(c) of that title, as amended by this Act [section 1(3) of Pub. L. 90–485] are effective immediately and automatically''.

ELECTION OF ANNUITY MADE PRIOR TO AUGUST 13, 1968

Pub. L. 90–485, § 4, Aug. 13, 1968, 82 Stat. 754, provided that: ''A retired member who elected an annuity under

chapter 73 of title 10, United States Code [this chapter], before the date of enactment of this Act [Aug. 13, 1968], but did not make the election that was then provided by section 1434(c) of that title, may, before the first day of the thirteenth calendar month beginning after the date of enactment of this Act, make that election. That election becomes effective on the first day of the month following the month in which the election is made. Under regulations prescribed under section 1444(a) of this title, on or before the effective date the retired member must pay the total additional amount that would otherwise have been deducted from his retired or retainer pay to reflect such an election, had it been effective when he retired, plus the interest which would have accrued on that additional amount up to the effective date, except that if an undue hardship or financial burden would otherwise result payment may be made in from two to twelve monthly installments when the monthly amounts involved are $25, or less, or in from two to thirty-six monthly installments when the monthly amounts involved exceed $25. No amounts by which a member's retired or retainer pay was reduced may be refunded to, or credited on behalf of, the retired member by virtue of an application made by him under this section. A retired member described in the first sentence of this section, who does not make the election provided under this section, will not be allowed under section 1436(b) of title 10, to reduce an annuity or withdraw from participation in an annuity program under that title.''

ELECTIONS SUBJECT TO COST TABLES APPLICABLE ON DATE OF RETIREMENT; ANNUITIES PAYABLE TO BENEFICIARIES ELIGIBLE UNDER LAW IN EFFECT THE DAY PRIOR TO AUGUST 13, 1968

Pub. L. 90–485, §5, Aug. 13, 1968, 82 Stat. 754, provided, effective on the first day of the third calendar month following Aug. 13, 1968, that: ''Notwithstanding any other provision of this Act [see Effective Date of 1968 Amendment note set out above], elections in effect on the date of enactment [Aug. 13, 1968] will remain under the cost tables applicable on the date of retirement, and the annuities provided thereunder shall be payable to those eligible beneficiaries prescribed under the law in effect on the day prior to the date of enactment of this Act.''

APPLICABILITY OF PROVISIONS IN EFFECT ON THE DAY PRIOR TO AUGUST 13, 1968

Pub. L. 90–485, §6, Aug. 13, 1968, 82 Stat. 754, provided in part that: ''Notwithstanding any other provision of this Act [see Effective Date of 1968 Amendment note set out above], any member to whom section 1431 of title 10, United States Code [this section], applies on the date of enactment of this Act [Aug. 13, 1968] may, before the first day of the thirteenth calendar month beginning after the date of enactment of this Act, submit a written application to the Secretary concerned requesting that an election or a change or revocation of election made by such member prior to the date of enactment of this Act shall continue to be governed by the provisions of section 1431(b) or (c) of title 10, United States Code [subsec. (b) or (c) of this section] as in effect on the day before the date of enactment of this Act.''

INTERIM AUTHORITY FOR SELECTION OF COMMANDERS AND CAPTAINS FOR CONTINUATION ON ACTIVE DUTY

Pub. L. 88–130, §3(q), Sept. 24, 1963, 77 Stat. 192, rendered election, change, or revocation of election under this section effective if made prior to the convening date of the board which considers Coast Guard commanders and captains for continuation.

CHANGE OR REVOCATION OF AN ELECTION FILED PRIOR TO OCTOBER 4, 1961

Pub. L. 87–381, §7, Oct. 4, 1961, 75 Stat. 812, provided that: ''Any person who, before the date of enactment of this Act [Oct. 4, 1961], has filed a change or revocation, subject to section 1431(c) of title 10, United States Code [subsec. (c) of this section], of an election made under section 1431(b) of that title [subsec. (b) of this section], which change or revocation would be ineffective if the first day for which retired or retainer pay is granted were to be the date of enactment of this Act [Oct. 4, 1961], shall have that change or revocation become effective on that date, or three years after the date upon which it was filed, whichever is later.''

PROVISIONS APPLICABLE TO CERTAIN PERSONS RETIRING AFTER OCTOBER 4, 1961, FOR DISABILITY

Pub. L. 87–381, §8, Oct. 4, 1961, 75 Stat. 812, provided that: ''Any person who—

''(1) made an election before the date of enactment of this Act [Oct. 4, 1961], which would be effective if he retired on the day before such date; and

''(2) hereafter retires for physical disability before completing 18 years of service for which he is entitled to credit in the computation of his basic pay—

shall be considered as having applicable to him all of the provisions of chapter 73 of title 10, United States Code [this chapter], existing on the date preceding the date of enactment of this Act [Oct. 4, 1961], except that any revocation or change of an election is not effective until three years after the date of filing such revocation or change, or the date of enactment of this Act [Oct. 4, 1961], whichever is later.''

CHANGE OR REVOCATION OF ELECTION BY CERTAIN COLONELS AND LIEUTENANT COLONELS

Pub. L. 86–616, §11, July 12, 1960, 74 Stat. 396, provided that: ''Notwithstanding section 1431 of title 10, United States Code [this section], a change or revocation of an election made under that section by an officer who is retired under section 10 of this Act [set out as a note under section 3297 of this title] is effective if made at such a time that it would have been effective had he been retired on the earliest date prescribed for an officer of his kind by section 3916, 3921, 8916, or 8921 of title 10, as appropriate.''

CHANGE OR REVOCATION OF ELECTION BY CERTAIN OFFICERS OF REGULAR NAVY AND REGULAR MARINE CORPS

Pub. L. 86–616, §13, July 12, 1960, 74 Stat. 396, provided that: ''An officer who has been considered but not recommended for continuation on the active list under section 1 of the Act of August 11, 1959. Public Law 86–155 (73 Stat. 333) [set out as a note under section 5701 of this title], and who retired or retires voluntarily before the second day of the month following the month in which this Act is enacted [July 1960], may, within six months following the enactment of this Act [July 12, 1960], affirm a change or revocation of an election made under section 1431 of title 10, United States Code [this section], before his retirement, if the change or revocation would have been effective under section 3 of the Act of August 11, 1959, Public Law 86–155, as amended by this Act [set out as a note under section 5701 of this title], but for his voluntary retirement. If an officer takes no action under this section, his currently valid election under section 1431 of title 10, United States Code [this section], shall remain unchanged. The computation of the revised reduction in retired pay in the case of an officer who affirms a change of election under this section shall be in accordance with section 1436 of title 10, United States Code, and according to the conditions that existed on the day the officer became eligible for retired pay. An affirmation or revocation made under this section is effective on the first day of the month in which made. No refund may be made and no additional payment may be required with respect to any period before that date.''

ELECTION OF ANNUITY BY CERTAIN PERSONNEL

Pub. L. 86–197, §4, Aug. 25, 1959, 73 Stat. 426, provided that: ''Any person who, on the effective date of this Act [August 25, 1959], would not have completed 18 years of

service for which he is entitled to credit in the computation of his basic pay under the laws in effect prior to the effective date of this Act, and who, as a result of the enactment of this Act [amending sections 1332 [now 12732], 3683, 3926, 6324, 8683 and 8926 of this title, and enacting provisions set out as notes under sections 3441 and 12732 of this title], is credited with more than 17 years of such service, shall be allowed twelve months from the effective date of this Act to make the election provided by section 1431(b) of title 10, United States Code [subsection (b) of this section], notwithstanding the requirement of the second sentence of that section.''

CHANGE OR REVOCATION OF ELECTION BY CERTAIN OFFICERS

Effective date of change or revocation of election by certain officers, see section 3 of Pub. L. 86–155, Aug. 11, 1959, 73 Stat. 336, set out as a note under section 5701 of this title.

PUBLIC HEALTH SERVICE

Authority vested by this chapter in ''military departments'', ''the Secretary concerned'', or ''the Secretary of Defense'' to be exercised, with respect to commissioned officers of Public Health Service, by Secretary of Health and Human Services or his designee, see section 213a of Title 42, The Public Health and Welfare.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Authority vested by this chapter in ''military departments'', ''the Secretary concerned'', or ''the Secretary of Defense'' to be exercised, with respect to commissioned officer corps of National Oceanic and Atmospheric Administration, by Secretary of Commerce or Secretary's designee, see section 3071 of Title 33, Navigation and Navigable Waters.

§ 1432. Election of annuity: former members of armed forces

A person who was a former member of an armed force on November 1, 1953, and who is granted retired or retainer pay after that date, may, at the time he is granted that pay, make an election as provided in section 1431 of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 109.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1432	37:372(a) (5th sentence).	Aug. 8, 1953, ch. 393, § 3(a) (5th sentence), 67 Stat. 502.

§ 1433. Mental incompetency of member

If a person who would be entitled to make an election under section 1431 or 1432 of this title is determined to be mentally incompetent by medical officers of the armed force concerned or of the Department of Veterans Affairs, or by a court of competent jurisdiction, and for that reason cannot make the election within the prescribed time, the Secretary concerned may make an election for that person upon the request of his spouse or, if there is no spouse, of his children who would be eligible to be made beneficiaries under section 1435 of this title. If the person for whom the Secretary has made an election is later determined to be mentally competent by medical officers of the Department of Veterans Affairs or by a court of competent jurisdiction, he may, within 180 days after that determination, change or revoke that election. However, deductions made from his retired or retainer pay before that date may not be refunded.

(Aug. 10, 1956, ch. 1041, 70A Stat. 109; Pub. L. 101–189, div. A, title XVI, § 1621(a)(1), Nov. 29, 1989, 103 Stat. 1602.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1433	37:372 (less (a) and (b)).	Aug. 8, 1953, ch. 393, § 3 (less (a) and (b)), 67 Stat. 502.

The first 19 words are substituted for 37:372(c) (1st 9 words). The words ''who would be eligible to be made beneficiaries under section 1435 of this title'' are inserted to reflect the limitations in 37:371(f). The words ''for that reason cannot'' are substituted for the words ''because of such mental incompetency is incapable of''. The words ''or is adjudged mentally incompetent'', ''provided for in this section'', and ''where appropriate is subsequently adjudged mentally competent'' are omitted as surplusage. The last sentence is substituted for 37:372(c) (last sentence).

AMENDMENTS

1989—Pub. L. 101–189 substituted ''Department of Veterans Affairs'' for ''Veterans' Administration'' in two places.

§ 1434. Kinds of annuities that may be elected

(a) The annuity that a person is entitled to elect under section 1431 or 1432 of this title shall, in conformance with actuarial tables selected by the Board of Actuaries under section 1436(a) of this title, be the amount specified by the elector at the time of the election, but not more than 50 percent nor less than 12½ percent of his retired or retainer pay, in no case less than $25. He may make the annuity payable—

(1) to, or on behalf of, the surviving spouse, ending when the spouse dies or, if the spouse remarries before age 60, when the spouse remarries;

(2) in equal shares to, or on behalf of, the surviving children eligible for the annuity at the time each payment is due, ending when there is no surviving eligible child; or

(3) to, or on behalf of, the surviving spouse, and after the death of that spouse or the remarriage of that spouse before age 60, in equal shares to, or on behalf of, the surviving eligible children, ending when there is no surviving eligible child.

(b) A person may elect to provide both the annuity provided in clause (1) of subsection (a) and that provided in clause (2) of subsection (a), but the combined amount of the annuities may not be more than 50 percent nor less than 12½ percent of his retired or retainer pay but in no case less than $25.

(c) An election of any annuity under clause (1) or (2) of subsection (a), or any combination of annuities under subsection (b), shall provide that no deduction may be made from the elector's retired or retainer pay after the last day of the month in which there is no beneficiary who would be eligible for the annuity if the elector died. For the purposes of the preceding sentence, a child (other than a child who is incapable of

supporting himself because of a mental defect or physical incapacity existing before his eighteenth birthday) who is at least eighteen, but under twenty-three years of age, and who is not pursuing a course of study or training defined in section 1435 of this title, shall be considered an eligible beneficiary unless the Secretary concerned approves an application submitted by the member under section 1436(b)(4) of this title. An election of an annuity under clause (3) of subsection (a) shall provide that no deduction may be made from the elector's retired or retainer pay after the last day of the month in which there is no eligible spouse because of death or divorce.

(d) Under regulations prescribed under section 1444(a) of this title, a person may, before or after the first day for which retired or retainer pay is granted, provided for allocating, during the period of the surviving spouse's eligibility, a part of the annuity under subsection (a)(3) for payment to those of his surviving children who are not children of that spouse.

(e) Whenever there is an increase in retired and retainer pay under section 1401a of this title, each annuity that is payable under this subchapter on the day before the effective date of that increase to a spouse or child of a member who died on or before March 20, 1974, shall be increased by the same percentage as the percentage of that increase, effective on the effective date of that increase.

(Aug. 10, 1956, ch. 1041, 70A Stat. 109; Pub. L. 87–381, §3, Oct. 4, 1961, 75 Stat. 811; Pub. L. 90–485, §1(3), Aug. 13, 1968, 82 Stat. 751; Pub. L. 95–397, title I, §101(a), Sept. 30, 1978, 92 Stat. 843; Pub. L. 96–513, title V, §511(56), Dec. 12, 1980, 94 Stat. 2925.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
1434(a)	37:373(a) (less 4th par.).	Aug. 8, 1953, ch. 393, §4 (less (c) and (d)), 67 Stat. 502.
1434(b)	37:373(b).	
1434(c)	37:373(a)(4th par.).	

In subsection (a), the first 17 words are substituted for 37:373(a) (1st 26 words of 1st sentence). The words ''may be 50, 25, or 12½ percent'' are substituted for the words ''in such amount, expressed as a percentage of the reduced amount of his retired pay * * * in amounts equal to one-half, one-quarter or one-eighth''. 37:373(a) (last 53 words of 1st sentence of 2d par., and last 53 words of 1st sentence of 3d par.) is omitted as covered by section 1435(2) of this title. Clause (1) is substituted for 37:373(a)(1). Clause (2) is substituted for 37:373(a)(2) (less last 53 words of 1st sentence). Clause (3) is substituted for 37:373(a)(3) (less last 53 words of 1st sentence). The word ''eligible'' is inserted in clauses (2) and (3) to reflect the limitations in 37:371(f).

In subsection (c), the first 11 words are substituted for 37:373(a)(4) (1st 24 words). The words ''the annuity'' are substituted for the words ''an annuity payable under the election made by him''.

AMENDMENTS

1980—Subsecs. (a), (b). Pub. L. 96–513 substituted ''percent'' for ''per centum'' wherever appearing.

1978—Subsec. (a)(1). Pub. L. 95–397, §101(a)(1), substituted ''or, if the spouse remarries before age 60, when the spouse remarries'' for ''or remarries''.

Subsec. (a)(3). Pub. L. 95–397, §101(a)(2), substituted ''of that spouse or the remarriage of that spouse before age 60'' for ''or remarriage of that spouse''.

Subsec. (e). Pub. L. 95–397, §101(a)(3), added subsec. (e).

1968—Subsec. (a). Pub. L. 90–485 substituted provisions allowing election of an annuity amount, in conformance with the selected actuarial tables, of not more than 50 percent nor less than 12½ percent of retired or retired or retainer pay, but in no case less than $25, for provisions allowing election of an annuity amount of 50, 25, or 12½ percent of reduced retired or retainer pay.

Subsec. (b). Pub. L. 90–485 substituted provisions that the combined amount of annuities may not be more than 50 percent nor less than 12½ percent of retired or retainer pay, but in no case less than $25, for provisions that the combined amount of annuities may be only 25 or 12½ percent of reduced retired or retainer pay and provisions that the reduction in retired or retainer pay on account of each annuity, and the amount of each annuity, be determined in the same manner that it would be determined if the other annuity had not been elected.

Subsec. (c). Pub. L. 90–485 made mandatory the provisions that an election of any annuity under cls. (1) or (2) of subsec. (a), or any combination of annuities under subsec. (b), and the provision that an election of an annuity under cl. (3) of subsec. (a) shall provide that no deduction may be made from the elector's retired or retainer pay after the last day of the month in which there is no beneficiary who would be eligible for the annuity if the elector died or there is no eligible spouse because of death or divorce, respectively, and inserted provision determining what constitutes an eligible beneficiary.

Subsec. (d). Pub. L. 90–485 reenacted subsec. (d) without change.

1961—Subsec. (b). Pub. L. 87–381, §3(1), substituted permission to elect only 25 or 12½ percent of the member's reduced retired or retainer pay for each annuity for provisions limiting the combined amount of the annuities to not more than 50 percent or the reduced pay, and added that the reduction in pay on account of each annuity, and the amount of each annuity, shall be determined as if the other annuity had not been elected.

Subsec. (d). Pub. L. 87–381, §3(2), added subsec. (d).

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–397, title I, §101(b), Sept. 30, 1978, 92 Stat. 843, provided that: ''No benefits shall accrue to any person by virtue of the amendments made by subsection (a) [amending this section] for any period prior to the first day of the first calendar month following the month in which this Act is enacted [Sept. 1978] or October 1, 1978, whichever is later.''

EFFECTIVE DATE OF 1968 AMENDMENT

For effective date of amendment by Pub. L. 90–485, see section 6 of Pub. L. 90–485, set out as a note under section 1431 of this title.

INCREASE IN AMOUNT OF ANNUITY PAYABLE UNDER RETIRED SERVICEMAN'S FAMILY PROTECTION PLAN

Pub. L. 95–397, title I, §102, Sept. 30, 1978, 92 Stat. 843, provided that: ''Each annuity that is payable under subchapter I of chapter 73 of title 10, United States Code, on the day before the date of the enactment of this Act [Sept. 30, 1978] to a spouse or child of a member of the uniformed services who died on or before March 20, 1974, shall be increased effective as of the first day of the first calendar month following the month in which this Act [See Short Title note set out under section 1431 of this title] is enacted [September 1978], or as of October 1, 1978, whichever is later, by the percentage increase in retired and retainer pay under section 1401a of that title since September 21, 1972.''

PROVISIONS EFFECTIVE FOR CERTAIN MEMBERS ON AUGUST 13, 1968

Provisions of this section as amended by Pub. L. 90–485 effective immediately and automatically for members to whom section 1431 of this title applies on Aug. 13, 1968, see section 3 of Pub. L. 90–485, set out as a note under section 1431 of this title.

§ 1435. Eligible beneficiaries

Only the following persons are eligible to be made the beneficiaries of, or to receive payments under, an annuity elected under this subchapter by a member of the armed forces:

(1) The spouse of the member on the date when the member is retired or becomes entitled to retired or retainer pay or, if the member was already retired or entitled to retired or retainer pay on November 1, 1953, the spouse on that date.

(2) The children of the member who are—

(A) unmarried;

(B) under eighteen years of age, or incapable of supporting themselves because of a mental defect or physical incapacity existing before their eighteenth birthday, or at least eighteen, but under twenty-three, years of age and pursuing a full-time course of study or training in a high school, trade school, technical or vocational institute, junior college, college, university, or comparable recognized educational institution;

(C) legitimate or adopted children of, or stepchildren in fact dependent for their support upon, the member;

(D) living on the date when the member is retired or becomes entitled to retired or retainer pay or, if the member was already retired or entitled to retired or retainer pay on November 1, 1953, living on that date; and

(E) born on or before the date prescribed in clause (D).

For the purposes of clause (2)(B), a child is considered to be pursuing a full-time course of study or training during an interval between school years that does not exceed one hundred and fifty days if he has demonstrated to the satisfaction of the Secretary concerned that he has a bonafide intention of commencing, resuming, or continuing to pursue a full-time course of study or training in a recognized educational institution immediately after that interval.

(Aug. 10, 1956, ch. 1041, 70A Stat. 110; Pub. L. 90–485, § 1(4), (5), Aug. 13, 1968, 82 Stat. 752; Pub. L. 92–425, § 1(2)(A), Sept. 21, 1972, 86 Stat. 706.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1435(1)	37:371(e).	Aug. 8, 1953, ch. 393,
1435(2)	37:371(f).	§ 2(e), (f), 67 Stat. 501.

In clauses (1) and (2), the words ''is retired or becomes entitled to retired or retainer pay'' are substituted for the words ''retired member'', since the words ''retired member'', as defined in the source statute, included former members who have been awarded that pay.

In clause (1), the words '''widow' includes a widower'' are omitted as covered by the definition of ''spouse'' in section 101(32) of this title.

AMENDMENTS

1972—Pub. L. 92–425 substituted ''subchapter'' for ''chapter''.

1968—Pub. L. 90–485 inserted provisions in cl. (2)(B) concerning children of the member who are at least 18, but under 23 and pursuing a full-time course of study or training and inserted text following cl. (2)(E) relating to children considered to be pursuing a full-time course of study or training.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–485 effective on first day of third calendar month following Aug. 13, 1968, see section 6 of Pub. L. 90–485, set out as a note under section 1431 of this title.

§ 1436. Computation of reduction in retired pay; withdrawal for severe financial hardship

(a) The reduction in the retired or retainer pay of any person who elects an annuity under this subchapter shall be computed by the armed force concerned as of the date when the person becomes eligible for that pay but without regard to any increase in that pay to reflect changes in the Consumer Price Index. It shall be computed under an actuarial equivalent method based on (1) appropriate actuarial tables selected by the Board of Actuaries, and (2) an interest rate of 3 percent a year, or such other rate as the Secretary of the Treasury, after considering the average yield on outstanding marketable long-term obligations of the United States during the preceding six months, may specify by August 1 of any year for the following year. The method and tables shall be those in effect on the date as of which the computation is made.

(b) Under regulations prescribed under section 1444(a) of this title, the Secretary concerned may, upon application by the retired member, allow the member—

(1) to reduce the amount of the annuity specified by him under section 1434(a) and 1434(b) of this title but to not less than the prescribed minimum; or

(2) to withdraw from participation in an annuity program under this title; or

(3) to elect the annuity provided under clause (1) of section 1434(a) of this title in place of the annuity provided under clause (3) of such section, if on the first day for which retired or retainer pay is granted the member had in effect a valid election under clause (3) of such section, and he does not have a child beneficiary who would be eligible for the annuity provided under clause (3) of such section. For this purpose, a child (other than a child who is incapable of supporting himself because of a mental defect or physical incapacity existing before his eighteenth birthday) who is at least eighteen, but under twenty-three years of age shall not be considered an eligible beneficiary; or

(4) to elect that a child (other than a child who is incapable of supporting himself because of a mental defect or physical incapacity existing before his eighteenth birthday) who is at least eighteen, but under twenty-three years of age shall not be considered eligible for the annuity provided under clause (2) of section 1434(a) of this title, or for an annuity provided under section 1434(b) of this title, if on the first day for which retired or retainer pay is granted the member had in effect a valid election under clause (2) of section 1434(a) of this title, or under section 1434(b) of this title.

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A retired member may not reduce an annuity under clause (1) of this subsection, or withdraw under clause (2) of this subsection, earlier than the first day of the seventh calendar month beginning after he applies for reduction or withdrawal. A change of election under clause (3) of this subsection shall be effective on the first day of the month following the month in which application is made. An election under clause (4) of this subsection shall be effective on the first day of the month following the month in which application is made and, if on the effective date there is no surviving child who would be eligible for an annuity provided under clause (2) of section 1434(a), or under section 1434(b), of this title if the elector died, no deduction shall be made for such an annuity to, or on behalf of, a child from the elector's retired or retainer pay for that month or any subsequent month. No amounts by which a member's retired or retainer pay is reduced prior to the effective date of a reduction of annuity, withdrawal, change of election, or election under this subsection may be refunded to, or credited on behalf of, the member by virtue of an application made by him under this subsection.

(Aug. 10, 1956, ch. 1041, 70A Stat. 110; Pub. L. 87–381, § 4, Oct. 4, 1961, 75 Stat. 811; Pub. L. 90–207, § 2(a)(3), Dec. 16, 1967, 81 Stat. 653; Pub. L. 90–485, § 1(6), Aug. 13, 1968, 82 Stat. 753; Pub. L. 92–425, § 1(2)(A), Sept. 21, 1972, 86 Stat. 706; Pub. L. 104–106, div. A, title XV, § 1505(c), Feb. 10, 1996, 110 Stat. 514.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1436	37:373(c).	Aug. 8, 1953, ch. 393, § 4(c), 67 Stat. 503.

The words "of any person who elects an annuity" are substituted for the words "of an active or retired member who has made an election". The words "in each individual case" and "designated in section 8" are omitted as surplusage. The words "and as of the date of election in the case of a retired member" are omitted as executed. 37:373(c) (1st 23 words of last sentence) is omitted as otherwise covered by the language of the revised section.

AMENDMENTS

1996—Subsec. (b). Pub. L. 104–106 made technical correction to directory language of Pub. L. 90–485, § 1(6). See 1968 Amendment note below.

1972—Subsec. (a). Pub. L. 92–425 substituted "subchapter" for "chapter".

1968—Subsec. (b). Pub. L. 90–485, as amended by Pub. L. 104–106, substituted provisions authorizing the Secretary to allow the member to reduce the amount of the annuity, allow the member to withdraw from participation in an annuity program, allow the member to elect the annuity provided in section 1434(a)(1) in place of the annuity provided in section 1434(a)(3) under the specified conditions, and allow the member to elect that a child at least 18, but under 23, not be eligible for the specified annuities, setting forth the times when such reduction, withdrawal, or change of election may take place, and disallowing the refunding or crediting of any amount previously withheld, for provisions authorizing the Secretary to allow the member to withdraw from participation in an annuity program whenever the Secretary considers it necessary because of the member's severe financial hardship, the absence of an eligible beneficiary not of itself to be a basis for such action.

1967—Subsec. (a). Pub. L. 90–207 inserted "but without regard to any increase in that pay to reflect changes in the Consumer Price Index" after "that pay".

1961—Pub. L. 87–381 designated existing provisions as subsec. (a), added subsec. (b), and inserted "; withdrawal for severe financial hardship" in section catchline.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–106, div. A, title XV, § 1505(c), Feb. 10, 1996, 110 Stat. 514, provided that the amendment made by that section is effective Aug. 13, 1968, and as if included in Pub. L. 90–485 as originally enacted.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–485 effective Aug. 13, 1968, see section 6 of Pub. L. 90–485, set out as a note under section 1431 of this title.

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90–207 effective Oct. 1, 1967, see section 7 of Pub. L. 90–207, set out as a note under section 203 of Title 37, Pay and Allowances of the Uniformed Services.

§ 1436a. Coverage paid up at 30 years and age 70

Effective October 1, 2008, a reduction under this subchapter in the retired or retainer pay of a person electing an annuity under this subchapter may not be made for any month after the later of—

(1) the month that is the 360th month for which that person's retired or retainer pay is reduced pursuant to such an election; and

(2) the month during which that person attains 70 years of age.

(Added Pub. L. 106–65, div. A, title VI, § 655(a), Oct. 5, 1999, 113 Stat. 667.)

§ 1437. Payment of annuity

(a) Except as provided in subsections (b) and (c), each annuity payable under this subchapter accrues as of the first day of the month in which the person upon whose pay the annuity is based dies. Payments shall be made in equal installments and not later than the fifteenth day of each month following that month. However, no annuity accrues for the month in which entitlement thereto ends. The monthly amount of an annuity payable under this subchapter, if not a multiple of $1, shall be rounded to the next lower multiple of $1.

(b) Each annuity payable to or on behalf of an eligible child (other than a child who is incapable of supporting himself because of a mental defect or physical incapacity existing before his eighteenth birthday) as defined in section 1435(2)(B) of this title who is at least eighteen years of age and pursuing a full-time course of study or training at a recognized educational institution, accrues—

(1) as of the first day of the month in which the member upon whose pay the annuity is based dies, if the eligible child's eighteenth birthday occurs in the same or a preceding month.

(2) as of the first day of the month in which the eighteenth birthday of an eligible child occurs, if the member upon whose pay the annuity is based died in a preceding month.

(3) as of the first day of the month in which a child first becomes or again becomes eligi-

ble, if that eligible child's eighteenth birthday and the death of the member upon whose pay the annuity is based both occurred in a preceding month or months.

However, no such annuity is payable or accrues for any month before November 1, 1968.

(c)(1) Upon application of the beneficiary of a member entitled to retired or retainer pay whose retired or retainer pay has been suspended because the member has been determined to be missing, the Secretary concerned may determine for purposes of this subchapter that the member is presumed dead. Any such determination shall be made in accordance with regulations prescribed under section 1444(a) of this title. The Secretary concerned may not make a determination for purposes of this subchapter that a member is presumed dead unless he finds—

(A) that the member has been missing for at least 30 days; and

(B) that the circumstances under which the member is missing would lead a reasonably prudent person to conclude that the member is dead.

(2) Upon a determination under paragraph (1) with respect to a member, an annuity otherwise payable under this subchapter shall be paid as if the member died on the date as of which the retired or retainer pay of the member was suspended.

(3)(A) If, after a determination under paragraph (1), the Secretary concerned determines that the member is alive, any annuity being paid under this subchapter by reason of this subsection shall be promptly terminated and the total amount of any annuity payments made by reason of this subsection shall constitute a debt to the United States which may be collected or offset—

(i) from any retired or retainer pay otherwise payable to the member;

(ii) if the member is entitled to compensation under chapter 11 of title 38, from that compensation; or

(iii) if the member is entitled to any other payment from the United States, from that payment.

(B) If the member dies before the full recovery of the amount of annuity payments described in subparagraph (A) has been made by the United States, the remaining amount of such annuity payments may be collected from the member's beneficiary under this subchapter if that beneficiary was the recipient of the annuity payments made by reason of this subsection.

(Aug. 10, 1956, ch. 1041, 70A Stat. 110; Pub. L. 90–485, § 1(7), Aug. 13, 1968, 82 Stat. 753; Pub. L. 92–425, § 1(2)(A), Sept. 21, 1972, 86 Stat. 706; Pub. L. 96–513, title V, § 511(57), Dec. 12, 1980, 94 Stat. 2925; Pub. L. 98–94, title IX, § 922(a)(14)(A), Sept. 24, 1983, 97 Stat. 642; Pub. L. 98–525, title VI, § 642(a)(1), Oct. 19, 1984, 98 Stat. 2545; Pub. L. 99–145, title XIII, § 1303(a)(9), Nov. 8, 1985, 99 Stat. 739.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
1437	37:379.	Aug. 8, 1953, ch. 393, § 10, 67 Stat. 504.

The words "the person upon whose reduced pay the annuity is based" are substituted for the words "the retired member" since persons other than retired members may elect an annuity. The words "due and" and "or be paid" are omitted as surplusage.

AMENDMENTS

1985—Subsec. (c)(3)(A). Pub. L. 99–145 struck out "(notwithstanding section 144 of this title)" after "which".

1984—Subsec. (a). Pub. L. 98–525, § 642(a)(1)(A), substituted "subsections (b) and (c)," for "subsection (b)".

Subsec. (c). Pub. L. 98–525, § 642(a)(1)(B), added subsec. (c).

1983—Subsec. (a). Pub. L. 98–94 inserted "The monthly amount of an annuity payable under this subchapter, if not a multiple of $1, shall be rounded to the next lower multiple of $1."

1980—Subsec. (b). Pub. L. 96–513 substituted "before November 1, 1968" for "prior to the effective date of this subsection".

1972—Subsec. (a). Pub. L. 92–425 substituted "subchapter" for "chapter".

1968—Pub. L. 90–485 designated existing provisions as subsec. (a), inserted "Except as provided in subsection (b)", substituted "whose pay" for "whose reduced pay", and added subsec. (b).

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–94 effective Oct. 1, 1983, see section 922(e) of Pub. L. 98–94, set out as a note under section 1401 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

For effective date of amendment by Pub. L. 90–485, see section 6 of Pub. L. 90–485, set out as a note under section 1431 of this title.

§ 1438. Deposits for amounts not deducted

If, for any period, a person who has been retired or has become entitled to retired or retainer pay, and who has elected an annuity under this subchapter, is not entitled to retired or retainer pay, he must deposit in the Treasury the amount that would otherwise have been deducted from his pay for that period to provide the annuity.

(Aug. 10, 1956, ch. 1041, 70A Stat. 110; Pub. L. 92–425, § 1(2)(A), Sept. 21, 1972, 86 Stat. 706.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
1438	37:374.	Aug. 8, 1953, ch. 393, § 5, 67 Stat. 504.

The words "a person who has been retired or has become entitled to retired or retainer pay, and who has elected an annuity under this chapter" are substituted for the words "a retired member of a uniformed service who has made the election specified in section 372 of this title", since the revised chapter applies to persons who are receiving retired pay as well as retired members. The word "otherwise" is substituted for the words

''had he been receiving that pay''. The words ''to provide the annuity'' are inserted for clarity.

AMENDMENTS

1972—Pub. L. 92–425 substituted ''subchapter'' for ''chapter''.

§ 1439. Refund of amounts deducted from retired pay

If a person whose name is on the temporary disability retired list of an armed force, and who has elected an annuity under this subchapter, has his name removed from that list for any reason other than retirement or grant of retired pay, he is entitled to a refund of the difference between the amount by which his retired pay was reduced to provide the annuity and the cost of an amount of term insurance equal to the protection provided for his dependents during the period that he was on that list.

(Aug. 10, 1956, ch. 1041, 70A Stat. 111; Pub. L. 92–425, § 1(2)(A), Sept. 21, 1972, 86 Stat. 706.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
1439	37:373(d).	Aug. 8, 1953, ch. 393, § 4(d), 67 Stat. 503.

The words ''person whose name is on'' are substituted for the words ''Any active member or former member on the''. The words ''is entitled to a refund'' are substituted for the words ''shall have refunded to him''. The words ''permanent'', ''a sum which represents'', and ''in accordance with his election under section 372 of this title'' are omitted as surplusage. The words ''retirement or grant of retired pay'' are substituted for the words ''permanent retirement'', since under chapter 67 of this title a member of the Army or Air Force may be granted retired pay without being retired.

AMENDMENTS

1972—Pub. L. 92–425 substituted ''subchapter'' for ''chapter''.

§ 1440. Annuities not subject to legal process

Except as provided in section 1437(c)(3)(B) of this title, no annuity payable under this subchapter is assignable or subject to execution, levy, attachment, garnishment, or other legal process.

(Aug. 10, 1956, ch. 1041, 70A Stat. 111; Pub. L. 92–425, § 1(2)(A), Sept. 21, 1972, 86 Stat. 706; Pub. L. 98–525, title VI, § 642(a)(2), Oct. 19, 1984, 98 Stat. 2546; Pub. L. 99–145, title XIII, § 1303(a)(10), Nov. 8, 1985, 99 Stat. 739.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
1440	37:378.	Aug. 8, 1953, ch. 393, § 9, 67 Stat. 504.

The words ''either in law or equity'' are omitted as surplusage.

AMENDMENTS

1985—Pub. L. 99–145 substituted ''1437(c)(3)(B)'' for ''1437(c)(3)''.

1984—Pub. L. 98–525 substituted ''Except as provided in section 1437(c)(3) of this title, no'' for ''No''.

1972—Pub. L. 92–425 substituted ''subchapter'' for ''chapter''.

§ 1441. Annuities in addition to other payments

An annuity under this subchapter is in addition to any pension or other payment to which the beneficiary is entitled under any other provision of law, and may not be considered as income under any law administered by the Department of Veterans Affairs.

(Aug. 10, 1956, ch. 1041, 70A Stat. 111; Pub. L. 85–857, § 13(v)(1), Sept. 2, 1958, 72 Stat. 1266; Pub. L. 85–861, § 1(31B), Sept. 2, 1958, 72 Stat. 1452; Pub. L. 86–211, § 8(a), Aug. 29, 1959, 73 Stat. 436; Pub. L. 91–588, § 8(b), Dec. 24, 1970, 84 Stat. 1584; Pub. L. 92–425, § 1(2)(A), Sept. 21, 1972, 86 Stat. 706; Pub. L. 101–189, div. A, title XVI, § 1621(a)(1), Nov. 29, 1989, 103 Stat. 1602.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	Source (U.S. Code)	Source (Statutes at Large)
1441	37:380.	Aug. 8, 1953, ch. 393, § 11, 67 Stat. 504.

The word ''is'' is substituted for the words ''may now or hereafter be''.

1958 ACT

Revised section	Source (U.S. Code)	Source (Statutes at Large)
1441	37:380.	Aug. 1, 1956, ch. 837, § 501(1), 70 Stat. 884.

The change is made to reflect the amendment made by section 501(1) of the Servicemen's and Veterans' Survivor Benefits Act (70 Stat. 884) to section 11 of the Uniform Services Contingency Option Act of 1953 (restated in section 1441 of title 10).

AMENDMENTS

1989—Pub. L. 101–189 substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

1972—Pub. L. 92–425 substituted ''subchapter'' for ''chapter''.

1970—Pub. L. 91–588 struck out ''except section 415(g) and chapter 15 of title 38'' after ''Veterans' Administration''.

1959—Pub. L. 86–211 inserted reference to chapter 15 of title 38.

1958—Pub. L. 85–861 inserted ''except section 1115 of title 38'' after ''Administration''.

Pub. L. 85–857 substituted ''section 415(g) of title 38'' for ''section 1115 of title 38''.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–588 effective Jan. 1, 1971, see section 10 of Pub. L. 91–588, set out as a note under section 1521 of Title 38, Veterans' Benefits.

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment by Pub. L. 86–211 effective July 1, 1960, see section 10 of Pub. L. 86–211, set out as a note under section 1506 of Title 38, Veterans' Benefits.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–857 effective Jan. 1, 1959, see section 2 of Pub. L. 85–857, set out as a note preceding Part I of Title 38, Veterans' Benefits.

§ 1442. Recovery of annuity erroneously paid

In addition to other methods of recovery provided by law, the Secretary concerned may authorize the recovery, by deduction from later payments to a person, of any amount erro-

neously paid to him under this subchapter. However, recovery is not required if, in the judgment of the Secretary concerned, there has been no fault by the person to whom the amount was erroneously paid and recovery would be contrary to the purposes of this subchapter or against equity and good conscience.

(Aug. 10, 1956, ch. 1041, 70A Stat. 111; Pub. L. 92–425, § 1(2)(A), Sept. 21, 1972, 86 Stat. 706; Pub. L. 104–316, title I, § 105(a), Oct. 19, 1996, 110 Stat. 3830.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1442 ………	37:376.	Aug. 8, 1953, ch. 393, § 7, 67 Stat. 504.

The words ''In addition to other methods of recovery provided by law, the Secretary concerned may'' are substituted for 37:376(a) (1st 15 words of 1st sentence). The words ''from later payments to an annuitant'' are substituted for 37:376(a) (2d sentence).

AMENDMENTS

1996—Pub. L. 104–316 struck out ''and the Comptroller General'' after ''judgment of the Secretary concerned''.

1972—Pub. L. 92–425 substituted ''subchapter'' for ''chapter''.

[§ 1443. Repealed. Pub. L. 92–425, § 1(2)(B), Sept. 21, 1972, 86 Stat. 706]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 111, related to Board of Actuaries, composed of Government Actuary, Chief Actuary of Social Security Administration, and an actuary who was a member of Society of Actuaries.

§ 1444. Regulations; determinations

(a) The President shall prescribe regulations to carry out this subchapter. Those regulations shall, so far as practicable, be uniform for the armed forces, the National Oceanic and Atmospheric Administration, and the Public Health Service.

(b) Determinations and certifications of eligibility for, and payments of, annuities and other payments or refunds under this subchapter shall be made by the department concerned. However, in the case of a department other than a military department, payments shall be made through the disbursing facilities of the Department of the Treasury.

(Aug. 10, 1956, ch. 1041, 70A Stat. 111; Pub. L. 87–381, § 5, Oct. 4, 1961, 75 Stat. 811; Pub. L. 89–718, § 8(a), Nov. 2, 1966, 80 Stat. 1117; Pub. L. 92–425, § 1(2)(A), (C), Sept. 21, 1972, 86 Stat. 706; Pub. L. 96–513, title V, § 511(58), Dec. 12, 1980, 94 Stat. 2925.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1444(a) …..	37:377 (1st sentence).	Aug. 8, 1953, ch. 393, §§ 6, 8 (1st and 2d sentences), 67 Stat. 504.
1444(b) …..	37:377 (2d sentence).	
1444(c) …..	37:375.	

AMENDMENTS

1980—Subsec. (a). Pub. L. 96–513, § 511(58)(A), substituted ''National Oceanic and Atmospheric Administration'' for ''Environmental Science Services Administration''.

Subsecs. (b), (c). Pub. L. 96–513, § 511(58)(B), redesignated subsec. (c) as (b).

1972—Pub. L. 92–425, § 1(2)(C), struck out ''reports to Congress'' in section catchline.

Subsec. (a). Pub. L. 92–425, § 1(2)(A), substituted ''subchapter'' for ''chapter''.

Subsec. (b). Pub. L. 92–425, § 1(2)(C), struck out subsec. (b) which required President to submit annual reports to Congress on administration of this chapter.

Subsec. (c). Pub. L. 92–425, § 1(2)(A), substituted ''subchapter'' for ''chapter''.

1966—Subsec. (a). Pub. L. 89–718 substituted ''Environmental Science Services Administration'' for ''Coast and Geodetic Survey''.

1961—Subsec. (b). Pub. L. 87–381 required report to contain a detailed account, including an actuarial analysis, of cases in which relief is granted under sections 1436(b) and 1552 of this title, or any other statutory or administrative procedure.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

REPEALS

The directory language of, but not the amendment made by, Pub. L. 89–718, § 8(a), Nov. 2, 1966, 80 Stat. 1117, cited as a credit to this section, was repealed by Pub. L. 97–295, § 6(b), Oct. 12, 1982, 96 Stat. 1314.

TRANSFER OF FUNCTIONS

For transfer of functions of Public Health Service, see note under section 802 of this title.

§ 1444a. Regulations regarding payment of annuity to a representative payee

(a) The regulations prescribed pursuant to section 1444(a) of this title shall provide procedures for the payment of an annuity under this subchapter in the case of—

(1) a person for whom a guardian or other fiduciary has been appointed; and

(2) a minor, mentally incompetent, or otherwise legally disabled person for whom a guardian or other fiduciary has not been appointed.

(b) Those regulations may include the provisions set out in section 1455(d)(2) of this title.

(c) An annuity paid to a person on behalf of an annuitant in accordance with the regulations prescribed pursuant to subsection (a) discharges the obligation of the United States for payment to the annuitant of the amount of the annuity so paid.

(Added Pub. L. 102–190, div. A, title VI, § 654(b)(1), Dec. 5, 1991, 105 Stat. 1390; amended Pub. L. 105–85, div. A, title X, § 1073(a)(26), Nov. 18, 1997, 111 Stat. 1901.)

AMENDMENTS

1997—Subsec. (b). Pub. L. 105–85 substituted ''section 1455(d)(2)'' for ''section 1455(c)''.

§ 1445. Correction of administrative deficiencies

Whenever he considers it necessary, the Secretary concerned may, under regulations prescribed under section 1444(a) of this title, correct any election, or any change or revocation of an election, under this subchapter when he considers it necessary to correct an administrative error. Except when procured by fraud, a correction under this section is final and conclusive on all officers of the United States.

(Added Pub. L. 87–381, § 6(1), Oct. 4, 1961, 75 Stat. 811; amended Pub. L. 92–425, § 1(2)(A), Sept. 21, 1972, 86 Stat. 706.)

AMENDMENTS

1972—Pub. L. 92–425 substituted ''subchapter'' for ''chapter''.

§ 1446. Restriction on participation

(a) Notwithstanding section 1441 of this title, if a person—

(1) has made an election under this subchapter; and

(2) is retired for physical disability before he completes 19 years of service for which he is entitled to credit in the computation of his basic pay;

and thereafter dies, his beneficiaries are not entitled to the annuities provided under this subchapter until they give proof to the department concerned that they are not eligible for benefits under chapter 11 or 13 of title 38. If the beneficiaries are not eligible for benefits under chapter 11 or 13 of title 38, the annuity shall begin on the first day of the month in which the death occurs.

(b) Whenever the beneficiaries on whose behalf the election was made are restricted, under subsection (a), from participating in the annuities provided under this subchapter, the amount withheld from the elector's retired or retainer pay as a result of an election under this subchapter shall be refunded to the beneficiaries, less the amount of any annuities paid under this subchapter, and in either case without interest.

(Added Pub. L. 87–381, § 6(1), Oct. 4, 1961, 75 Stat. 811; amended Pub. L. 90–485, § 1(8), Aug. 13, 1968, 82 Stat. 754; Pub. L. 92–425, § 1(2)(A), Sept. 21, 1972, 86 Stat. 706.)

AMENDMENTS

1972—Pub. L. 92–425 substituted ''subchapter'' for ''chapter'' wherever appearing.

1968—Subsec. (a)(2). Pub. L. 90–485 substituted ''19'' for ''18''.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–485 effective on first day of third calendar month following Aug. 13, 1968, see section 6 of Pub. L. 90–485, set out as a note under section 1431 of this title.

SUBCHAPTER II—SURVIVOR BENEFIT PLAN

Sec.
1447. Definitions.
1448. Application of Plan.
1448a. Election to discontinue participation: one-year opportunity after second anniversary of commencement of payment of retired pay.
1449. Mental incompetency of member.
1450. Payment of annuity: beneficiaries.
1451. Amount of annuity.
1452. Reduction in retired pay.
1453. Recovery of amounts erroneously paid.
1454. Correction of administrative errors.
1455. Regulations.

AMENDMENTS

1997—Pub. L. 105–85, div. A, title VI, § 641(a)(2), Nov. 18, 1997, 111 Stat. 1798, added item 1448a.

1996—Pub. L. 104–201, div. A, title VI, § 634, Sept. 23, 1996, 110 Stat. 2551, amended analysis generally, reenacting items 1447 to 1452, 1454, and 1455 without change and substituting ''Recovery of amounts'' for ''Recovery of annuity'' in item 1453.

1989—Pub. L. 101–189, div. A, title XIV, § 1407(a)(10)(B), Nov. 29, 1989, 103 Stat. 1589, substituted ''errors'' for ''deficiencies'' in item 1454.

1985—Pub. L. 99–145, title VII, § 719(8)(B), Nov. 8, 1985, 99 Stat. 676, struck out ''or retainer'' after ''retired'' in item 1452.

1972—Pub. L. 92–424, § 1(3), Sept. 21, 1972, 86 Stat. 706, added subchapter II heading and items 1447 to 1455.

§ 1447. Definitions

In this subchapter:

(1) PLAN.—The term ''Plan'' means the Survivor Benefit Plan established by this subchapter.

(2) STANDARD ANNUITY.—The term ''standard annuity'' means an annuity provided by virtue of eligibility under section 1448(a)(1)(A) of this title.

(3) RESERVE-COMPONENT ANNUITY.—The term ''reserve-component annuity'' means an annuity provided by virtue of eligibility under section 1448(a)(1)(B) of this title.

(4) RETIRED PAY.—The term ''retired pay'' includes retainer pay paid under section 8330 of this title.

(5) RESERVE-COMPONENT RETIRED PAY.—The term ''reserve-component retired pay'' means retired pay under chapter 1223 of this title (or under chapter 67 of this title as in effect before the effective date of the Reserve Officer Personnel Management Act).

(6) BASE AMOUNT.—The term ''base amount'' means the following:

(A) FULL AMOUNT UNDER STANDARD ANNUITY.—In the case of a person who dies after becoming entitled to retired pay, such term means the amount of monthly retired pay (determined without regard to any reduction under section 1409(b)(2) or 1415(b)(1)(B) of this title) to which the person—

(i) was entitled when he became eligible for that pay; or

(ii) later became entitled by being advanced on the retired list, performing active duty, or being transferred from the temporary disability retired list to the permanent disability retired list.

(B) FULL AMOUNT UNDER RESERVE-COMPONENT ANNUITY.—In the case of a person who would have become eligible for reserve-component retired pay but for the fact that he died before becoming 60 years of age, such term means the amount of monthly retired pay for which the person would have been eligible—

(i) if he had been 60 years of age on the date of his death, for purposes of an annuity to become effective on the day after his death in accordance with a designation made under section 1448(e) of this title; or

(ii) upon becoming 60 years of age (if he had lived to that age), for purposes of an annuity to become effective on the 60th anniversary of his birth in accordance with a designation made under section 1448(e) of this title.

(C) REDUCED AMOUNT.—Such term means any amount less than the amount otherwise

applicable under subparagraph (A) or (B) with respect to an annuity provided under the Plan but which is not less than $300 and which is designated by the person (with the concurrence of the person's spouse, if required under section 1448(a)(3) of this title) providing the annuity on or before—

(i) the first day for which he becomes eligible for retired pay, in the case of a person providing a standard annuity, or

(ii) the end of the 90-day period beginning on the date on which he receives the notification required by section 12731(d) of this title that he has completed the years of service required for eligibility for reserve-component retired pay, in the case of a person providing a reserve-component annuity.

(7) WIDOW.—The term ''widow'' means the surviving wife of a person who, if not married to the person at the time he became eligible for retired pay—

(A) was married to him for at least one year immediately before his death; or

(B) is the mother of issue by that marriage.

(8) WIDOWER.—The term ''widower'' means the surviving husband of a person who, if not married to the person at the time she became eligible for retired pay—

(A) was married to her for at least one year immediately before her death; or

(B) is the father of issue by that marriage.

(9) SURVIVING SPOUSE.—The term ''surviving spouse'' means a widow or widower.

(10) FORMER SPOUSE.—The term ''former spouse'' means the surviving former husband or wife of a person who is eligible to participate in the Plan.

(11) DEPENDENT CHILD.—

(A) IN GENERAL.—The term ''dependent child'' means a person who—

(i) is unmarried;

(ii) is (I) under 18 years of age, (II) at least 18, but under 22, years of age and pursuing a full-time course of study or training in a high school, trade school, technical or vocational institute, junior college, college, university, or comparable recognized educational institution, or (III) incapable of self support because of a mental or physical incapacity existing before the person's eighteenth birthday or incurred on or after that birthday, but before the person's twenty-second birthday, while pursuing such a full-time course of study or training; and

(iii) is the child of a person to whom the Plan applies, including (I) an adopted child, and (II) a stepchild, foster child, or recognized natural child who lived with that person in a regular parent-child relationship.

(B) SPECIAL RULES FOR COLLEGE STUDENTS.—For the purpose of subparagraph (A), a child whose twenty-second birthday occurs before July 1 or after August 31 of a calendar year, and while regularly pursuing such a course of study or training, is considered to have become 22 years of age on the first day of July after that birthday. A child who is a student is considered not to have ceased to be a student during an interim between school years if the interim is not more than 150 days and if the child shows to the satisfaction of the Secretary of Defense that the child has a bona fide intention of continuing to pursue a course of study or training in the same or a different school during the school semester (or other period into which the school year is divided) immediately after the interim.

(C) FOSTER CHILDREN.—A foster child, to qualify under this paragraph as the dependent child of a person to whom the Plan applies, must, at the time of the death of that person, also reside with, and receive over one-half of his support from, that person, and not be cared for under a social agency contract. The temporary absence of a foster child from the residence of that person, while a student as described in this paragraph, shall not be considered to affect the residence of such a foster child.

(12) COURT.—The term ''court'' has the meaning given that term by section 1408(a)(1) of this title.

(13) COURT ORDER.—

(A) IN GENERAL.—The term ''court order'' means a court's final decree of divorce, dissolution, or annulment or a court ordered, ratified, or approved property settlement incident to such a decree (including a final decree modifying the terms of a previously issued decree of divorce, dissolution, annulment, or legal separation, or of a court ordered, ratified, or approved property settlement agreement incident to such previously issued decree).

(B) FINAL DECREE.—The term ''final decree'' means a decree from which no appeal may be taken or from which no appeal has been taken within the time allowed for the taking of such appeals under the laws applicable to such appeals, or a decree from which timely appeal has been taken and such appeal has been finally decided under the laws applicable to such appeals.

(C) REGULAR ON ITS FACE.—The term ''regular on its face'', when used in connection with a court order, means a court order that meets the conditions prescribed in section 1408(b)(2) of this title.

(Added Pub. L. 92–425, § 1(3), Sept. 21, 1972, 86 Stat. 706; amended Pub. L. 94–496, § 1(1), Oct. 14, 1976, 90 Stat. 2375; Pub. L. 95–397, title II, § 201, Sept. 30, 1978, 92 Stat. 843; Pub. L. 96–402, § 2, Oct. 9, 1980, 94 Stat. 1705; Pub. L. 97–252, title X, § 1003(a), Sept. 8, 1982, 96 Stat. 735; Pub. L. 98–94, title IX, § 941(c)(1), Sept. 24, 1983, 97 Stat. 653; Pub. L. 99–145, title VII, §§ 719(1), (2), 721(b), Nov. 8, 1985, 99 Stat. 675, 676; Pub. L. 99–348, title III, § 301(a)(1), July 1, 1986, 100 Stat. 702; Pub. L. 99–661, div. A, title XIII, § 1343(a)(8)(A), Nov. 14, 1986, 100 Stat. 3992; Pub. L. 100–180, div. A, title XII, § 1231(17), Dec. 4, 1987, 101 Stat. 1161; Pub. L. 101–189, div. A, title XIV, § 1407(a)(1)–(3), Nov. 29, 1989, 103 Stat. 1588; Pub. L. 101–510, div. A, title XIV, § 1484(*l*)(4)(C)(i), Nov. 5, 1990, 104 Stat. 1720;

Pub. L. 103–337, div. A, title XVI, §1671(d), Oct. 5, 1994, 108 Stat. 3014; Pub. L. 104–201, div. A, title VI, §634, Sept. 23, 1996, 110 Stat. 2551; Pub. L. 115–91, div. A, title VI, §622(a), Dec. 12, 2017, 131 Stat. 1428; Pub. L. 115–232, div. A, title VIII, §809(a), Aug. 13, 2018, 132 Stat. 1840.)

REFERENCES IN TEXT

Chapter 67 of this title as in effect before the effective date of the Reserve Officer Personnel Management Act, referred to in par. (5), means chapter 67 (§1331 et seq.) of this title prior to its transfer to part II of subtitle E of this title, its renumbering as chapter 1223, and its general revision by section 1662(j)(1) of Pub. L. 103–337. A new chapter 67 (§1331) of this title was added by section 1662(j)(7) of Pub. L. 103–337. For effective date of the Reserve Officer Personnel Management Act (Pub. L. 103–337, title XVI), see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

AMENDMENTS

2018—Par. (4). Pub. L. 115–232 substituted ''section 8330'' for ''section 6330''.

2017—Par. (6)(A). Pub. L. 115–91 inserted ''or 1415(b)(1)(B)'' after ''section 1409(b)(2)''.

1996—Pub. L. 104–201 amended section generally, making changes in the order, style, and substance of definitions of terms used in this subchapter and adding definition of ''surviving spouse''.

1994—Par. (2)(C). Pub. L. 103–337, §1671(d)(2), substituted ''12731(d)'' for ''1331(d)''.

Par. (14). Pub. L. 103–337, §1671(d)(1), substituted ''chapter 1223 of this title (or under chapter 67 of this title as in effect before the effective date of the Reserve Officer Personnel Management Act)'' for ''chapter 67 of this title''.

1990—Par. (5). Pub. L. 101–510 made technical correction to directory language of Pub. L. 101–189, §1407(a)(1)(A), see 1989 Amendment note below.

1989—Par. (2)(B). Pub. L. 101–189, §1407(a)(2), substituted ''reserve-component retired pay'' for ''retired pay under chapter 67 of this title''.

Par. (2)(C)(i). Pub. L. 101–189, §1407(a)(3), struck out ''or retainer'' after ''eligible for retired''.

Par. (2)(C)(ii). Pub. L. 101–189, §1407(a)(2), substituted ''reserve-component retired pay'' for ''retired pay under chapter 67 of this title''.

Pars. (3), (4). Pub. L. 101–189, §1407(a)(3), struck out ''or retainer'' after ''eligible for retired''.

Par. (5). Pub. L. 101–189, §1407(a)(1)(A), as amended by Pub. L. 101–510, substituted ''this paragraph'' for ''this clause'' in three places in concluding provisions.

Par. (11). Pub. L. 101–189, §1407(a)(1)(B), inserted ''paid under section 6330 of this title'' after ''retainer pay''.

Par. (14). Pub. L. 101–189, §1407(a)(1)(C), added par. (14).

1987—Pub. L. 100–180 inserted ''The term'' after each par. designation and revised first word in quotes in pars. (2) to (13) to make initial letter of such word lowercase.

1986—Par. (2)(A). Pub. L. 99–661 substituted ''retired pay'' for ''retired or retainer pay'' in two places in provisions preceding cl. (i).

Pub. L. 99–348 inserted ''(determined without regard to any reduction under section 1409(b)(2) of this title)''.

1985—Par. (2)(C). Pub. L. 99–145, §721(b), inserted ''(with the concurrence of the person's spouse, if required under section 1448(a)(3) of this title)'' after ''designated by the person''.

Par. (2)(C)(i). Pub. L. 99–145, §719(2)(A), substituted ''a standard annuity'' for ''an annuity by virtue of eligibility under section 1448(a)(1)(A) of this title''.

Par. (2)(C)(ii). Pub. L. 99–145, §719(2)(B), substituted ''a reserve-component annuity'' for ''an annuity by virtue of eligibility under section 1448(a)(1)(B) of this title''.

Pars. (11) to (13). Pub. L. 99–145, §719(1), added pars. (11) to (13).

1983—Par. (8). Pub. L. 98–94 substituted ''or annulment'' for ''annulment, or legal separation,'' in two places.

1982—Pars. (6) to (10). Pub. L. 97–252 added pars. (6) to (10).

1980—Par. (2). Pub. L. 96–402 inserted in subpar. (C) ''but which is not less than $300'' after ''under the Plan'', substituted a period at end of subpar. (C) for '', but not less than $300;'', and struck out following subpar. (C) ''as increased from time to time under section 1401a of this title.''

1978—Par. (2). Pub. L. 95–397 inserted ''in the case of a person who dies after becoming entitled to retired or retainer pay'' before ''the amount'' and substituted ''pay to which the person'' for ''pay to which a person'' in subpar. (A), substituted ''in the case of a person who would have become eligible for retired pay under chapter 67 of this title but for the fact that he died before becoming 60 years of age, the amount of monthly retired pay for which the person would have been eligible—'' for ''any amount less than that described by clause (A) designated by that person on or before the first day for which he became eligible for retired or retainer pay, but not less than $300'' in subpar. (B), and added subpars. (B)(i), (ii) and (C).

1976—Pars. (3)(A), (4)(A). Pub. L. 94–496 substituted ''one year'' for ''two years''.

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115–232 effective Feb. 1, 2019, with provision for the coordination of amendments and special rule for certain redesignations, see section 800 of Pub. L. 115–232, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–510, div. A, title XIV, §1484(*l*)(4)(C), Nov. 5, 1990, 104 Stat. 1720, provided that the amendment made by that section is effective Nov. 29, 1989.

EFFECTIVE DATE OF 1985 AMENDMENT

Pub. L. 99–145, title VII, §731, Nov. 8, 1985, 99 Stat. 678, provided that:

''(a) EFFECTIVE DATE.—Except as otherwise provided in this title, the amendments made by this title [see Short Title of 1985 Amendment note below] shall take effect on the first day of the first month beginning more than 90 days after the date of the enactment of this Act [Nov. 8, 1985].

''(b) PROSPECTIVE BENEFITS ONLY.—No benefit shall accrue to any person by reason of the enactment of this title for any period before the effective date under subsection (a).''

EFFECTIVE DATE OF 1982 AMENDMENT; TRANSITION PROVISIONS

Amendment by Pub. L. 97–252 effective Feb. 1, 1983, and applicable to persons becoming eligible to participate in Survivor Benefit Plan provided for in this subchapter before, on, or after Feb. 1, 1983, see section 1006 of Pub. L. 97–252, set out as an Effective Date; Transition Provisions note under section 1408 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Pub. L. 96–402, §7, Oct. 9, 1980, 94 Stat. 1708, provided that: ''The amendments made by sections 2, 3, and 4 of this Act [amending this section and sections 1451 and 1452 of this title] and the provisions of section 5 of this Act [set out as a note under section 1448 of this title] shall be effective on the first day of the second calendar month following the month in which this Act is enacted [October 1980] and shall apply to annuities pay-

able by virtue of such amendments and provisions for months beginning on or after such date. No benefits shall accrue to any person by virtue of the enactment of this Act [Pub. L. 96–402] for any period before the date of the enactment of this Act [Oct. 9, 1980].''

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–397, title II, § 210, Sept. 30, 1978, 92 Stat. 848, provided that:

''(a) Except as provided in subsection (b), the provisions of this title [amending this section and sections 1331 [now 12731] and 1448 to 1452 of this title and enacting provisions set out as notes under this section and section 1448 of this title] and the amendments made by this title shall take effect on October 1, 1978, or on the date of the enactment of this Act [Sept. 30, 1978], whichever is later, and shall apply to annuities payable by virtue of such amendments for months beginning on or after such date.

''(b) The amendment made by section 206 [amending section 1331 [now 12731] of this title] shall apply to notifications under section 1331(d) [now 12731(d)] of title 10, United States Code, after the date of the enactment of this Act [Sept. 30, 1978].''

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–496, § 3, Oct. 14, 1976, 90 Stat. 2376, provided that: ''This Act [amending this section and sections 1448, 1450, 1451, and 1452 of this title, and amending provisions set out as a note under section 1448 of this title] shall be effective as of September 21, 1972. No pay shall accrue to any person by virtue of the enactment of this Act for any period prior to October 1, 1976.''

SHORT TITLE OF 1989 AMENDMENT

Pub. L. 101–189, div. A, title XIV, § 1401, Nov. 29, 1989, 103 Stat. 1577, provided that: ''This title [enacting subchapter III of this chapter, amending this section and sections 1331 [now 12731], 1448 to 1452, and 1454 of this title and section 3101 [now 5301] of Title 38, Veterans' Benefits, and enacting provisions set out as notes under sections 1448, 1451, 1452, 1456, and 12731 of this title] may be cited as the 'Military Survivor Benefits Improvement Act of 1989'.''

SHORT TITLE OF 1985 AMENDMENT

Pub. L. 99–145, title VII, § 701, Nov. 8, 1985, 99 Stat. 666, provided that: ''This title [amending this section and sections 1448, 1450 to 1452, and 1455 of this title, enacting provisions set out as notes under this section and sections 1448 and 1452 of this title, and repealing a provision set out as a note under section 1451 of this title] may be cited as the 'Survivor Benefit Plan Amendments of 1985'.''

SHORT TITLE OF 1980 AMENDMENT

Pub. L. 96–402, § 1, Oct. 9, 1980, 94 Stat. 1705, provided: ''That this Act [amending this section and sections 1451 and 1452 of this title, enacting provisions set out as notes under this section and section 1448 of this title, and amending provisions set out as a note under section 1448 of this title] may be cited as the 'Uniformed Services Survivor Benefits Amendments of 1980'.''

END OF 90-DAY PERIOD WITH RESPECT TO CERTAIN INDIVIDUALS

Pub. L. 95–397, title II, § 208, Sept. 30, 1978, 92 Stat. 848, as amended by Pub. L. 96–107, title VIII, § 816, Nov. 9, 1979, 93 Stat. 818, provided that the 90-day period referred to in former sections 1447(2)(C) and 1448(a)(2) and (4)(B) of this title was to be considered to end on Mar. 31, 1980, for an individual who would have been eligible for retired pay under former chapter 67 of this title on the effective date of title II of Pub. L. 95–397 (see Effective Date of 1978 Amendment note above), but for the fact such individual was under 60 years of age, or for an individual who received before Jan. 1, 1980, a notification that such individual had completed the years of service required for eligibility for such retired pay.

§ 1448. Application of Plan

(a) GENERAL RULES FOR PARTICIPATION IN THE PLAN.—

(1) NAME OF PLAN; ELIGIBLE PARTICIPANTS.—The program established by this subchapter shall be known as the Survivor Benefit Plan. The following persons are eligible to participate in the Plan:

(A) Persons entitled to retired pay.

(B) Persons who would be eligible for reserve-component retired pay but for the fact that they are under 60 years of age.

(2) PARTICIPANTS IN THE PLAN.—The Plan applies to the following persons, who shall be participants in the Plan:

(A) STANDARD ANNUITY PARTICIPANTS.—A person who is eligible to participate in the Plan under paragraph (1)(A) and who is married or has a dependent child when he becomes entitled to retired pay, unless he elects (with his spouse's concurrence, if required under paragraph (3)) not to participate in the Plan before the first day for which he is eligible for that pay.

(B) RESERVE-COMPONENT ANNUITY PARTICIPANTS.—A person who (i) is eligible to participate in the Plan under paragraph (1)(B), and (ii) is married or has a dependent child when he is notified under section 12731(d) of this title that he has completed the years of service required for eligibility for reserve-component retired pay, unless the person elects (with his spouse's concurrence, if required under paragraph (3)) not to participate in the Plan before the end of the 90-day period beginning on the date on which he receives that notification.

A person who elects under subparagraph (B) not to participate in the Plan remains eligible, upon reaching 60 years of age and otherwise becoming entitled to retired pay, to participate in the Plan in accordance with eligibility under paragraph (1)(A).

(3) ELECTIONS.—

(A) SPOUSAL CONSENT FOR CERTAIN ELECTIONS RESPECTING STANDARD ANNUITY.—A married person who is eligible to provide a standard annuity may not without the concurrence of the person's spouse elect—

(i) not to participate in the Plan;

(ii) to provide an annuity for the person's spouse at less than the maximum level; or

(iii) to provide an annuity for a dependent child but not for the person's spouse.

(B) SPOUSAL CONSENT FOR CERTAIN ELECTIONS RESPECTING RESERVE-COMPONENT ANNUITY.—A married person who is eligible to provide a reserve-component annuity may not without the concurrence of the person's spouse elect—

(i) not to participate in the Plan;

(ii) to designate under subsection (e)(2) the effective date for commencement of annuity payments under the Plan in the event that the member dies before becoming 60 years of age to be the 60th anniversary of the member's birth (rather than the day after the date of the member's death);

(iii) to provide an annuity for the person's spouse at less than the maximum level; or

(iv) to provide an annuity for a dependent child but not for the person's spouse.

(C) EXCEPTION WHEN SPOUSE UNAVAILABLE.—A person may make an election described in subparagraph (A) or (B) without the concurrence of the person's spouse if the person establishes to the satisfaction of the Secretary concerned—

(i) that the spouse's whereabouts cannot be determined; or

(ii) that, due to exceptional circumstances, requiring the person to seek the spouse's consent would otherwise be inappropriate.

(D) CONSTRUCTION WITH FORMER SPOUSE ELECTION PROVISIONS.—This paragraph does not affect any right or obligation to elect to provide an annuity for a former spouse (or for a former spouse and dependent child) under subsection (b)(2).

(E) NOTICE TO SPOUSE OF ELECTION TO PROVIDE FORMER SPOUSE ANNUITY.—If a married person who is eligible to provide a standard annuity elects to provide an annuity for a former spouse (or for a former spouse and dependent child) under subsection (b)(2), that person's spouse shall be notified of that election.

(4) IRREVOCABILITY OF ELECTIONS.—

(A) STANDARD ANNUITY.—An election under paragraph (2)(A) is irrevocable if not revoked before the date on which the person first becomes entitled to retired pay.

(B) RESERVE-COMPONENT ANNUITY.—An election under paragraph (2)(B) is irrevocable if not revoked before the end of the 90-day period referred to in that paragraph.

(5) PARTICIPATION BY PERSON MARRYING AFTER RETIREMENT, ETC.—

(A) ELECTION TO PARTICIPATE IN PLAN.—A person who is not married and has no dependent child upon becoming eligible to participate in the Plan but who later marries or acquires a dependent child may elect to participate in the Plan.

(B) MANNER AND TIME OF ELECTION.—Such an election must be written, signed by the person making the election, and received by the Secretary concerned within one year after the date on which that person marries or acquires that dependent child.

(C) LIMITATION ON REVOCATION OF ELECTION.—Such an election may not be revoked except in accordance with subsection (b)(3).

(D) EFFECTIVE DATE OF ELECTION.—The election is effective as of the first day of the first calendar month following the month in which the election is received by the Secretary concerned.

(E) DESIGNATION IF RCSBP ELECTION.—In the case of a person providing a reserve-component annuity, such an election shall include a designation under subsection (e).

(6) ELECTION OUT OF PLAN BY PERSON WITH SPOUSE COVERAGE WHO REMARRIES.—

(A) GENERAL RULE.—A person—

(i) who is a participant in the Plan and is providing coverage under the Plan for a spouse (or a spouse and child);

(ii) who does not have an eligible spouse beneficiary under the Plan; and

(iii) who remarries,

may elect not to provide coverage under the Plan for the person's spouse.

(B) EFFECT OF ELECTION ON RETIRED PAY.—If such an election is made, reductions in the retired pay of that person under section 1452 of this title shall not be made.

(C) TERMS AND CONDITIONS OF ELECTION.—An election under this paragraph—

(i) is irrevocable;

(ii) shall be made within one year after the person's remarriage; and

(iii) shall be made in such form and manner as may be prescribed in regulations under section 1455 of this title.

(D) NOTICE TO SPOUSE.—If a person makes an election under this paragraph—

(i) not to participate in the Plan;

(ii) to provide an annuity for the person's spouse at less than the maximum level; or

(iii) to provide an annuity for a dependent child but not for the person's spouse,

the person's spouse shall be notified of that election.

(E) CONSTRUCTION WITH FORMER SPOUSE ELECTION PROVISIONS.—This paragraph does not affect any right or obligation to elect to provide an annuity to a former spouse under subsection (b).

(b) INSURABLE INTEREST AND FORMER SPOUSE COVERAGE.—

(1) COVERAGE FOR PERSON WITH INSURABLE INTEREST.—

(A) GENERAL RULE.—A person who is not married and does not have a dependent child upon becoming eligible to participate in the Plan may elect to provide an annuity under the Plan to a natural person with an insurable interest in that person. In the case of a person providing a reserve-component annuity, such an election shall include a designation under subsection (e).

(B) TERMINATION OF COVERAGE.—An election under subparagraph (A) for a beneficiary who is not the former spouse of the person providing the annuity may be terminated. Any such termination shall be made by a participant by the submission to the Secretary concerned of a request to discontinue participation in the Plan, and such participation in the Plan shall be discontinued effective on the first day of the first month following the month in which the request is received by the Secretary concerned. Effective on such date, the Secretary concerned shall discontinue the reduction being made in such person's retired pay on account of participation in the Plan or, in the case of a person who has been required to make deposits in the Treasury on account of participation in the Plan, such person may discontinue making such deposits effective on such date.

(C) FORM FOR DISCONTINUATION.—A request under subparagraph (B) to discontinue participation in the Plan shall be in such form and shall contain such information as may be required under regulations prescribed by the Secretary of Defense.

(D) WITHDRAWAL OF REQUEST FOR DISCONTINUATION.—The Secretary concerned shall furnish promptly to each person who submits a request under subparagraph (B) to discontinue participation in the Plan a written statement of the advantages and disadvantages of participating in the Plan and the possible disadvantages of discontinuing participation. A person may withdraw the request to discontinue participation if withdrawn within 30 days after having been submitted to the Secretary concerned.

(E) CONSEQUENCES OF DISCONTINUATION.—Once participation is discontinued, benefits may not be paid in conjunction with the earlier participation in the Plan and premiums paid may not be refunded. Participation in the Plan may not later be resumed except through a qualified election under paragraph (5) of subsection (a) or under subparagraph (G) of this paragraph.

(F) VITIATION OF ELECTION BY DISABILITY RETIREE WHO DIES OF DISABILITY-RELATED CAUSE.—If a member retired after November 23, 2003, under chapter 61 of this title dies within one year after the date on which the member is so retired and the cause of death is related to a disability for which the member was retired under that chapter (as determined under regulations prescribed by the Secretary of Defense)—

(i) an election made by the member under paragraph (1) to provide an annuity under the Plan to any person other than a dependent of that member (as defined in section 1072(2) of this title) is vitiated; and

(ii) the amounts by which the member's retired pay was reduced under section 1452 of this title shall be refunded and paid to the person to whom the annuity under the Plan would have been paid pursuant to such election.

(G) ELECTION OF NEW BENEFICIARY UPON DEATH OF PREVIOUS BENEFICIARY.—

(i) AUTHORITY FOR ELECTION.—If the reason for discontinuation in the Plan is the death of the beneficiary, the participant in the Plan may elect a new beneficiary. Any such beneficiary must be a natural person with an insurable interest in the participant. Such an election may be made only during the 180-day period beginning on the date of the death of the previous beneficiary.

(ii) PROCEDURES.—Such an election shall be in writing, signed by the participant, and made in such form and manner as the Secretary concerned may prescribe. Such an election shall be effective the first day of the first month following the month in which the election is received by the Secretary.

(iii) VITIATION OF ELECTION BY PARTICIPANT WHO DIES WITHIN TWO YEARS OF ELECTION.—If a person providing an annuity under a election under clause (i) dies before the end of the two-year period beginning on the effective date of the election—

(I) the election is vitiated; and

(II) the amount by which the person's retired pay was reduced under section 1452 of this title that is attributable to the election shall be paid in a lump sum to the person who would have been the deceased person's beneficiary under the vitiated election if the deceased person had died after the end of such two-year period.

(2) FORMER SPOUSE COVERAGE UPON BECOMING A PARTICIPANT IN THE PLAN.—

(A) GENERAL RULE.—A person who has a former spouse upon becoming eligible to participate in the Plan may elect to provide an annuity to that former spouse.

(B) EFFECT OF FORMER SPOUSE ELECTION ON SPOUSE OR DEPENDENT CHILD.—In the case of a person with a spouse or a dependent child, such an election prevents payment of an annuity to that spouse or child (other than a child who is a beneficiary under an election under paragraph (4)), including payment under subsection (d).

(C) DESIGNATION IF MORE THAN ONE FORMER SPOUSE.—If there is more than one former spouse, the person shall designate which former spouse is to be provided the annuity.

(D) DESIGNATION IF RCSBP ELECTION.—In the case of a person providing a reserve-component annuity, such an election shall include a designation under subsection (e).

(3) FORMER SPOUSE COVERAGE BY PERSONS ALREADY PARTICIPATING IN PLAN.—

(A) ELECTION OF COVERAGE.—

(i) AUTHORITY FOR ELECTION.—A person—

(I) who is a participant in the Plan and is providing coverage for a spouse or a spouse and child (even though there is no beneficiary currently eligible for such coverage), and

(II) who has a former spouse who was not that person's former spouse when that person became eligible to participate in the Plan,

may (subject to subparagraph (B)) elect to provide an annuity to that former spouse.

(ii) TERMINATION OF PREVIOUS COVERAGE.—Any such election terminates any previous coverage under the Plan.

(iii) MANNER AND TIME OF ELECTION.—Any such election must be written, signed by the person making the election, and received by the Secretary concerned within one year after the date of the decree of divorce, dissolution, or annulment.

(B) LIMITATION ON ELECTION.—A person may not make an election under subparagraph (A) to provide an annuity to a former spouse who that person married after becoming eligible for retired pay unless—

(i) the person was married to that former spouse for at least one year, or

(ii) that former spouse is the parent of issue by that marriage.

(C) IRREVOCABILITY, ETC.—An election under this paragraph may not be revoked ex-

cept in accordance with section 1450(f) of this title. This paragraph does not provide the authority to change a designation previously made under subsection (e).

(D) NOTICE TO SPOUSE.—If a person who is married makes an election to provide an annuity to a former spouse under this paragraph, that person's spouse shall be notified of the election.

(E) EFFECTIVE DATE OF ELECTION.—An election under this paragraph is effective as of—

(i) the first day of the first month following the month in which the election is received by the Secretary concerned; or

(ii) in the case of a person required (as described in section 1450(f)(3)(B) of this title) to make the election by reason of a court order or filing the date of which is after October 16, 1998, the first day of the first month which begins after the date of that court order or filing.

(4) FORMER SPOUSE AND CHILD COVERAGE.—A person who elects to provide an annuity for a former spouse under paragraph (2) or (3) may, at the time of the election, elect to provide coverage under that annuity for both the former spouse and a dependent child, if the child resulted from the person's marriage to that former spouse.

(5) DISCLOSURE OF WHETHER ELECTION OF FORMER SPOUSE COVERAGE IS REQUIRED.—A person who elects to provide an annuity to a former spouse under paragraph (2) or (3) shall, at the time of making the election, provide the Secretary concerned with a written statement (in a form to be prescribed by that Secretary and signed by such person and the former spouse) setting forth—

(A) whether the election is being made pursuant to the requirements of a court order; or

(B) whether the election is being made pursuant to a written agreement previously entered into voluntarily by such person as a part of, or incident to, a proceeding of divorce, dissolution, or annulment and (if so) whether such voluntary written agreement has been incorporated in, or ratified or approved by, a court order.

(6) SPECIAL NEEDS TRUSTS FOR SOLE BENEFIT OF CERTAIN DEPENDENT CHILDREN.—A person who has established a supplemental or special needs trust under subparagraph (A) or (C) of section 1917(d)(4) of the Social Security Act (42 U.S.C. 1396p(d)(4)) for the sole benefit of a dependent child considered disabled under section 1614(a)(3) of that Act (42 U.S.C. 1382c(a)(3)) who is incapable of self-support because of mental or physical incapacity may elect to provide an annuity to that supplemental or special needs trust.

(7) EFFECT OF DEATH OF FORMER SPOUSE BENEFICIARY.—

(A) TERMINATION OF PARTICIPATION IN PLAN.—A person who elects to provide an annuity to a former spouse under paragraph (2) or (3) and whose former spouse subsequently dies is no longer a participant in the Plan, effective on the date of death of the former spouse.

(B) AUTHORITY FOR ELECTION OF NEW SPOUSE BENEFICIARY.—If a person's participation in the Plan is discontinued by reason of the death of a former spouse beneficiary, the person may elect to resume participation in the Plan and to elect a new spouse beneficiary as follows:

(i) MARRIED ON THE DATE OF DEATH OF FORMER SPOUSE.—A person who is married at the time of the death of the former spouse beneficiary may elect to provide coverage to that person's spouse. Such an election must be received by the Secretary concerned within one year after the date of death of the former spouse beneficiary.

(ii) MARRIAGE AFTER DEATH OF FORMER SPOUSE BENEFICIARY.—A person who is not married at the time of the death of the former spouse beneficiary and who later marries may elect to provide spouse coverage. Such an election must be received by the Secretary concerned within one year after the date on which that person marries.

(C) EFFECTIVE DATE OF ELECTION.—The effective date of election under this paragraph shall be as follows:

(i) An election under subparagraph (B)(i) is effective as of the first day of the first calendar month following the death of the former spouse beneficiary.

(ii) An election under subparagraph (B)(ii) is effective as of the first day of the first calendar month following the month in which the election is received by the Secretary concerned.

(D) LEVEL OF COVERAGE.—A person making an election under subparagraph (B) may not reduce the base amount previously elected.

(E) PROCEDURES.—An election under this paragraph shall be in writing, signed by the participant, and made in such form and manner as the Secretary concerned may prescribe.

(F) IRREVOCABILITY.—An election under this paragraph is irrevocable.

(c) PERSONS ON TEMPORARY DISABILITY RETIRED LIST.—The application of the Plan to a person whose name is on the temporary disability retired list terminates when his name is removed from that list and he is no longer entitled to disability retired pay.

(d) COVERAGE FOR SURVIVORS OF MEMBERS WHO DIE ON ACTIVE DUTY.—

(1) SURVIVING SPOUSE ANNUITY.—Except as provided in paragraph (2)(B), the Secretary concerned shall pay an annuity under this subchapter to the surviving spouse of—

(A) a member who dies while on active duty after—

(i) becoming eligible to receive retired pay;

(ii) qualifying for retired pay except that the member has not applied for or been granted that pay; or

(iii) completing 20 years of active service but before the member is eligible to retire as a commissioned officer because the member has not completed 10 years of active commissioned service; or

(B) a member not described in subparagraph (A) who dies in line of duty while on active duty.

(2) DEPENDENT CHILDREN.—

(A) ANNUITY WHEN NO ELIGIBLE SURVIVING SPOUSE.—In the case of a member described in paragraph (1), the Secretary concerned shall pay an annuity under this subchapter to the member's dependent children under subsection (a)(2) or (a)(4) of section 1450 of this title as applicable.

(B) OPTIONAL ANNUITY WHEN THERE IS AN ELIGIBLE SURVIVING SPOUSE.—In the case of a member described in paragraph (1) who dies after October 7, 2001, and for whom there is a surviving spouse eligible for an annuity under paragraph (1), the Secretary may pay an annuity under this subchapter to the member's dependent children under subsection (a)(3) or (a)(4) of section 1450 of this title, if applicable, instead of paying an annuity to the surviving spouse under paragraph (1), if the Secretary concerned, in consultation with the surviving spouse, determines it appropriate to provide an annuity for the dependent children under this paragraph instead of an annuity for the surviving spouse under paragraph (1).

(3) MANDATORY FORMER SPOUSE ANNUITY.—If a member described in paragraph (1) is required under a court order or spousal agreement to provide an annuity to a former spouse upon becoming eligible to be a participant in the Plan or has made an election under subsection (b) to provide an annuity to a former spouse, the Secretary—

(A) may not pay an annuity under paragraph (1) or (2); but

(B) shall pay an annuity to that former spouse as if the member had been a participant in the Plan and had made an election under subsection (b) to provide an annuity to the former spouse, or in accordance with that election, as the case may be, if the Secretary receives a written request from the former spouse concerned that the election be deemed to have been made in the same manner as provided in section 1450(f)(3) of this title.

(4) PRIORITY.—An annuity that may be provided under this subsection shall be provided in preference to an annuity that may be provided under any other provision of this subchapter on account of service of the same member.

(5) COMPUTATION.—The amount of an annuity under this subsection is computed under section 1451(c) of this title.

(6) DEEMED ELECTION.—

(A) ANNUITY FOR DEPENDENT.—In the case of a member described in paragraph (1) who dies after November 23, 2003, the Secretary concerned may, if no other annuity is payable on behalf of the member under this subchapter, pay an annuity to a natural person who has an insurable interest in such member as if the annuity were elected by the member under subsection (b)(1). The Secretary concerned may pay such an annuity under this paragraph only in the case of a person who is a dependent of that member (as defined in section 1072(2) of this title).

(B) COMPUTATION OF ANNUITY.—An annuity under this subparagraph shall be computed under section 1451(b) of this title as if the member had retired for total disability on the date of death with reductions as specified under section 1452(c) of this title, as applicable to the ages of the member and the natural person with an insurable interest.

(e) DESIGNATION FOR COMMENCEMENT OF RESERVE-COMPONENT ANNUITY.—In any case in which a person is required to make a designation under this subsection, the person shall designate whether, in the event he dies before becoming 60 years of age, the annuity provided shall become effective on—

(1) the day after the date of his death; or

(2) the 60th anniversary of his birth.

(f) COVERAGE OF SURVIVORS OF PERSONS DYING WHEN OR BEFORE ELIGIBLE TO ELECT RESERVE-COMPONENT ANNUITY.—

(1) SURVIVING SPOUSE ANNUITY.—The Secretary concerned shall pay an annuity under this subchapter to the surviving spouse of a person who—

(A) is eligible to provide a reserve-component annuity and dies—

(i) before being notified under section 12731(d) of this title that he has completed the years of service required for eligibility for reserve-component retired pay; or

(ii) during the 90-day period beginning on the date he receives notification under section 12731(d) of this title that he has completed the years of service required for eligibility for reserve-component retired pay if he had not made an election under subsection (a)(2)(B) to participate in the Plan; or

(B) is a member of a reserve component not described in subparagraph (A) and dies from an injury or illness incurred or aggravated in the line of duty during inactive-duty training.

(2) DEPENDENT CHILDREN ANNUITY.—

(A) ANNUITY WHEN NO ELIGIBLE SURVIVING SPOUSE.—In the case of a person described in paragraph (1), the Secretary concerned shall pay an annuity under this subchapter to the dependent children of that person under section 1450(a)(2) of this title as applicable.

(B) OPTIONAL ANNUITY WHEN THERE IS AN ELIGIBLE SURVIVING SPOUSE.—The Secretary may pay an annuity under this subchapter to the dependent children of a person described in paragraph (1) under section 1450(a)(3) of this title, if applicable, instead of paying an annuity to the surviving spouse under paragraph (1), if the Secretary concerned, in consultation with the surviving spouse, determines it appropriate to provide an annuity for the dependent children under this paragraph instead of an annuity for the surviving spouse under paragraph (1).

(3) MANDATORY FORMER SPOUSE ANNUITY.—If a person described in paragraph (1) is required under a court order or spousal agreement to provide an annuity to a former spouse upon

becoming eligible to be a participant in the Plan or has made an election under subsection (b) to provide an annuity to a former spouse, the Secretary—

(A) may not pay an annuity under paragraph (1) or (2); but

(B) shall pay an annuity to that former spouse as if the person had been a participant in the Plan and had made an election under subsection (b) to provide an annuity to the former spouse, or in accordance with that election, as the case may be, if the Secretary receives a written request from the former spouse concerned that the election be deemed to have been made in the same manner as provided in section 1450(f)(3) of this title.

(4) COMPUTATION.—The amount of an annuity under this subsection is computed under section 1451(c) of this title.

(5) DEEMED ELECTION TO PROVIDE AN ANNUITY FOR DEPENDENT.—Paragraph (6) of subsection (d) shall apply in the case of a member described in paragraph (1) who dies after November 23, 2003, when no other annuity is payable on behalf of the member under this subchapter.

(g) ELECTION TO INCREASE COVERAGE UPON REMARRIAGE.—

(1) ELECTION.—A person—

(A) who is a participant in the Plan and is providing coverage under subsection (a) for a spouse or a spouse and child, but at less than the maximum level; and

(B) who remarries,

may elect, within one year of such remarriage, to increase the level of coverage provided under the Plan to a level not in excess of the current retired pay of that person.

(2) PAYMENT REQUIRED.—Such an election shall be contingent on the person paying to the United States the amount determined under paragraph (3) plus interest on such amount at a rate determined under regulations prescribed by the Secretary of Defense.

(3) AMOUNT TO BE PAID.—The amount referred to in paragraph (2) is the amount equal to the difference between—

(A) the amount that would have been withheld from such person's retired pay under section 1452 of this title if the higher level of coverage had been in effect from the time the person became a participant in the Plan; and

(B) the amount of such person's retired pay actually withheld.

(4) MANNER OF MAKING ELECTION.—An election under paragraph (1) shall be made in such manner as the Secretary shall prescribe and shall become effective upon receipt of the payment required by paragraph (2).

(5) DISPOSITION OF PAYMENTS.—A payment received under this subsection by the Secretary of Defense shall be deposited into the Department of Defense Military Retirement Fund. Any other payment received under this subsection shall be deposited in the Treasury as miscellaneous receipts.

(Added Pub. L. 92–425, § 1(3), Sept. 21, 1972, 86 Stat. 707; amended Pub. L. 94–496, § 1(2), Oct. 14, 1976, 90 Stat. 2375; Pub. L. 95–397, title II, § 202, Sept. 30, 1978, 92 Stat. 844; Pub. L. 97–252, title X, § 1003(b), Sept. 8, 1982, 96 Stat. 735; Pub. L. 97–295, § 1(18), Oct. 12, 1982, 96 Stat. 1290; Pub. L. 98–94, title IX, § 941(a)(1), (2), (c)(2), Sept. 24, 1983, 97 Stat. 652, 653; Pub. L. 99–145, title V, § 513(b), title VII, §§ 712(a), 713(a), 715, 716(a), 719(3), (8)(A), 721(a), Nov. 8, 1985, 99 Stat. 628, 670, 671, 673–676; Pub. L. 99–661, div. A, title VI, §§ 641(b)(1), 642(a), title XIII, § 1343(a)(8)(B), Nov. 14, 1986, 100 Stat. 3885, 3886, 3992; Pub. L. 101–189, div. A, title XIV, § 1407(a)(2), (3), Nov. 29, 1989, 103 Stat. 1588; Pub. L. 103–337, div. A, title VI, § 638, title XVI, § 1671(d)(2), Oct. 5, 1994, 108 Stat. 2791, 3015; Pub. L. 104–201, div. A, title VI, § 634, Sept. 23, 1996, 110 Stat. 2553; Pub. L. 105–85, div. A, title X, § 1073(a)(27), Nov. 18, 1997, 111 Stat. 1901; Pub. L. 105–261, div. A, title VI, § 643(a), Oct. 17, 1998, 112 Stat. 2047; Pub. L. 106–65, div. A, title X, § 1066(a)(12), Oct. 5, 1999, 113 Stat. 771; Pub. L. 106–398, § 1 [[div. A], title VI, § 655(a)–(c)(3), title X, § 1087(a)(10)], Oct. 30, 2000, 114 Stat. 1654, 1654A–165, 1654A–166, 1654A–290; Pub. L. 107–107, div. A, title VI, § 642(a), (c)(1), Dec. 28, 2001, 115 Stat. 1151, 1152; Pub. L. 108–136, div. A, title VI, §§ 644(a), (b), 645(a), (b)(1), (c), Nov. 24, 2003, 117 Stat. 1517–1519; Pub. L. 108–375, div. A, title X, § 1084(d)(10), Oct. 28, 2004, 118 Stat. 2061; Pub. L. 109–364, div. A, title VI, §§ 643(a), 644(a), title X, § 1071(a)(8), Oct. 17, 2006, 120 Stat. 2260, 2261, 2398; Pub. L. 113–291, div. A, title VI, § 624(a)(2)(B), Dec. 19, 2014, 128 Stat. 3403; Pub. L. 114–92, div. A, title VI, § 641(a), Nov. 25, 2015, 129 Stat. 852; Pub. L. 114–328, div. A, title VI, § 642(b), (c), Dec. 23, 2016, 130 Stat. 2165; Pub. L. 116–92, div. A, title VI, § 622(d), Dec. 20, 2019, 133 Stat. 1427.)

AMENDMENT OF SUBSECTION (d)(2)

Pub. L. 116–92, div. A, title VI, § 622(d), (f), Dec. 20, 2019, 133 Stat. 1427, 1428, provided that, effective Jan. 1, 2023, subsection (d)(2) of this section is amended by striking ''DEPENDENT CHILDREN.—'' and all that follows through ''In the case of a member described in paragraph (1),'' and inserting ''DEPENDENT CHILDREN.—In the case of a member described in paragraph (1),'' and by striking subparagraph (B). See 2019 Amendment note below.

AMENDMENTS

2019—Subsec. (d)(2). Pub. L. 116–92 struck out subpar. (A) designation and heading before ''In the case of a member described in paragraph (1)'' and struck out subpar. (B) which read as follows: ''OPTIONAL ANNUITY WHEN THERE IS AN ELIGIBLE SURVIVING SPOUSE.—In the case of a member described in paragraph (1) who dies after October 7, 2001, and for whom there is a surviving spouse eligible for an annuity under paragraph (1), the Secretary may pay an annuity under this subchapter to the member's dependent children under subsection (a)(3) or (a)(4) of section 1450 of this title, if applicable, instead of paying an annuity to the surviving spouse under paragraph (1), if the Secretary concerned, in consultation with the surviving spouse, determines it appropriate to provide an annuity for the dependent children under this paragraph instead of an annuity for the surviving spouse under paragraph (1).''

2016—Subsec. (f)(2). Pub. L. 114–328, § 642(b), amended par. (2) generally. Prior to amendment, text read as follows: ''The Secretary concerned shall pay an annuity under this subchapter to the dependent child, or to a special needs trust pursuant to section 1450(a)(4) of this title, of a person described in paragraph (1) if there is no surviving spouse or if the person's surviving spouse subsequently dies.''

Subsec. (f)(5). Pub. L. 114–328, § 642(c), added par. (5).

2015—Subsec. (b)(7). Pub. L. 114–92 added par. (7).

2014—Subsec. (b)(6). Pub. L. 113–291, § 624(a)(2)(B)(i), added par. (6).

Subsec. (d)(2)(A). Pub. L. 113–291, § 624(a)(2)(B)(ii)(I), substituted ''subsection (a)(2) or (a)(4) of section 1450'' for ''section 1450(a)(2)''.

Subsec. (d)(2)(B). Pub. L. 113–291, § 624(a)(2)(B)(ii)(II), substituted ''subsection (a)(3) or (a)(4) of section 1450'' for ''section 1450(a)(3)''.

Subsec. (f)(2). Pub. L. 113–291, § 624(a)(2)(B)(iii), inserted '', or to a special needs trust pursuant to section 1450(a)(4) of this title,'' after ''dependent child''.

2006—Subsec. (b)(1)(E). Pub. L. 109–364, § 643(a)(1), inserted ''or under subparagraph (G) of this paragraph'' before period at end.

Subsec. (b)(1)(G). Pub. L. 109–364, § 643(a)(2), added subpar. (G).

Subsec. (d)(2)(B). Pub. L. 109–364, § 644(a), substituted ''October 7, 2001'' for ''November 23, 2003''.

Subsec. (d)(6)(A). Pub. L. 109–364, § 1071(a)(8), struck out second comma after ''November 23, 2003''.

2004—Subsecs. (b)(1)(F), (d)(2)(B), (6)(A). Pub. L. 108–375 substituted ''after November 23, 2003,'' for ''on or after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2004''.

2003—Subsec. (b)(1)(F). Pub. L. 108–136, § 645(b)(1), added subpar. (F).

Subsec. (d)(1). Pub. L. 108–136, § 645(a)(2), substituted ''Except as provided in paragraph (2)(B), the Secretary concerned'' for ''The Secretary concerned'' in introductory provisions.

Subsec. (d)(2). Pub. L. 108–136, § 645(a)(1), amended heading and text of par. (2) generally. Prior to amendment, text read as follows: ''The Secretary concerned shall pay an annuity under this subchapter to the dependent child of a member described in paragraph (1) if there is no surviving spouse or if the member's surviving spouse subsequently dies.''

Subsec. (d)(6). Pub. L. 108–136, § 645(c), added par. (6).

Subsec. (f). Pub. L. 108–136, § 644(b), inserted ''or Before'' after ''Dying When'' in heading.

Subsec. (f)(1). Pub. L. 108–136, § 644(a), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''The Secretary concerned shall pay an annuity under this subchapter to the surviving spouse of a person who is eligible to provide a reserve-component annuity and who dies—

''(A) before being notified under section 12731(d) of this title that he has completed the years of service required for eligibility for reserve-component retired pay; or

''(B) during the 90-day period beginning on the date he receives notification under section 12731(d) of this title that he has completed the years of service required for eligibility for reserve-component retired pay if he had not made an election under subsection (a)(2)(B) to participate in the Plan.''

2001—Subsec. (d). Pub. L. 107–107 struck out ''Retirement-Eligible'' before ''Members'' in heading and amended par. (1) generally. Prior to amendment, par. (1) read as follows:

''(1) SURVIVING SPOUSE ANNUITY.—The Secretary concerned shall pay an annuity under this subchapter to the surviving spouse of a member who dies on active duty after—

''(A) becoming eligible to receive retired pay;

''(B) qualifying for retired pay except that he has not applied for or been granted that pay; or

''(C) completing 20 years of active service but before he is eligible to retire as a commissioned officer because he has not completed 10 years of active commissioned service.''

2000—Subsec. (a)(2). Pub. L. 106–398, § 1 [[div. A], title VI, § 655(c)(1)], substituted ''who elects under subparagraph (B) not to participate in the Plan'' for ''described in clauses (i) and (ii) of subparagraph (B) who does not elect to participate in the Plan before the end of the 90-day period referred to in that clause'' in concluding provisions.

Subsec. (a)(2)(B). Pub. L. 106–398, § 1 [[div. A], title VI, § 655(a)], amended heading and text of subpar. (B) generally. Prior to amendment, text read as follows: ''A person who (i) is eligible to participate in the Plan under paragraph (1)(B), (ii) is married or has a dependent child when he is notified under section 12731(d) of this title that he has completed the years of service required for eligibility for reserve-component retired pay, and (iii) elects to participate in the Plan (and makes a designation under subsection (e)) before the end of the 90-day period beginning on the date he receives such notification.''

Subsec. (a)(3)(B). Pub. L. 106–398, § 1 [[div. A], title VI, § 655(b)], substituted ''who is eligible to provide'' for ''who elects to provide'' in introductory provisions, added cls. (i) and (ii), and redesignated former cls. (i) and (ii) as (iii) and (iv), respectively.

Subsec. (a)(4)(A). Pub. L. 106–398, § 1 [[div. A], title VI, § 655(c)(2)(A)], struck out ''not to participate in the Plan'' after ''election under paragraph (2)(A)''.

Subsec. (a)(4)(B). Pub. L. 106–398, § 1 [[div. A], title VI, § 655(c)(2)(B)], struck out ''to participate in the Plan'' after ''under paragraph (2)(B)''.

Subsec. (b)(3)(E)(ii). Pub. L. 106–398, § 1 [[div. A], title X, § 1087(a)(10)], struck out second comma after ''October 16, 1998''.

Subsec. (e). Pub. L. 106–398, § 1 [[div. A], title VI, § 655(c)(3)], substituted ''a person is required to make a designation under this subsection, the person'' for ''a person electing to participate in the Plan is required to make a designation under this subsection, the person making such election'' in introductory provisions.

1999—Subsec. (b)(3)(E)(ii). Pub. L. 106–65 substituted ''after October 16, 1998,'' for ''on or after the date of the enactment of the subparagraph''.

1998—Subsec. (b)(3)(C). Pub. L. 105–261, § 643(a)(1), struck out ''EFFECTIVE DATE,'' after ''IRREVOCABILITY,'' in heading and ''Such an election is effective as of the first day of the first calendar month following the month in which it is received by the Secretary concerned.'' after ''section 1450(f) of this title.'' in text.

Subsec. (b)(3)(E). Pub. L. 105–261, § 643(a)(2), added subpar. (E).

1997—Pub. L. 105–85 substituted ''Plan'' for ''plan'' in section catchline.

1996—Pub. L. 104–201 amended section generally, revising and restating provisions relating to application of the Plan and inserting subsec., par., and subpar. headings.

1994—Subsec. (a)(2)(B). Pub. L. 103–337, § 1671(d)(2), substituted ''12731(d)'' for ''1331(d)''.

Subsec. (b)(1). Pub. L. 103–337, § 638, designated existing provisions as subpar. (A) and added subpars. (B) to (E).

Subsec. (f)(1). Pub. L. 103–337, § 1671(d)(2), substituted ''12731(d)'' for ''1331(d)'' in subpars. (A) and (B).

1989—Subsec. (a)(1)(B), (2)(B). Pub. L. 101–189, § 1407(a)(2), substituted ''reserve-component retired pay'' for ''retired pay under chapter 67 of this title''.

Subsec. (a)(4)(A). Pub. L. 101–189, § 1407(a)(3), struck out ''or retainer'' after ''entitled to retired''.

Subsec. (f)(1)(A), (B). Pub. L. 101–189, § 1407(a)(2), substituted ''reserve-component retired pay'' for ''retired pay under chapter 67 of this title''.

1986—Subsec. (a)(5). Pub. L. 99–661, § 1343(a)(8)(B), substituted ''a reserve-component annuity'' for ''an annuity by virtue of eligibility under paragraph (1)(B)''.

Subsec. (b)(5). Pub. L. 99–661, § 641(b)(1), inserted ''(A) whether the election is being made pursuant to the requirements of a court order, or (B)''.

Subsec. (d)(2). Pub. L. 99–661, § 642(a)(1), substituted ''if there is no surviving spouse or if the member's surviving spouse subsequently dies'' for ''if the member and the member's spouse die as a result of a common accident''.

Subsec. (f)(2). Pub. L. 99–661, § 642(a)(2), substituted ''if there is no surviving spouse or if the person's surviving spouse subsequently dies'' for ''if the person and the person's spouse die as a result of a common accident''.

1985—Subsec. (a)(1)(A). Pub. L. 99–145, § 719(8)(A), substituted ''retired pay'' for ''retired or retainer pay''.

Subsec. (a)(2)(A). Pub. L. 99–145, § 721(a)(1), inserted ''(with his spouse's concurrence, if required under paragraph (3))'' after ''unless he elects''.

Pub. L. 99–145, § 719(8)(A), substituted ''retired pay'' for ''retired or retainer pay''.

Subsec. (a)(3). Pub. L. 99–145, § 721(a)(2), amended par. (3) generally. Prior to amendment, par. (3) read as follows:

''(A) If a person who is eligible under paragraph (1)(A) to participate in the Plan and who is married elects not to participate in the Plan at the maximum level, or elects to provide an annuity for a dependent child but not for his spouse, or elects to provide an annuity for a former spouse under subsection (b)(2), that person's spouse shall be notified of that election.

''(B) If a person who is eligible under paragraph (1)(B) to participate in the Plan and who is married does not elect to participate in the Plan at the maximum level, or elects to provide an annuity for a dependent child but not for his spouse, or elects to provide an annuity for a former spouse under subsection (b)(2), that person's spouse shall be notified of that action.''

Subsec. (a)(6). Pub. L. 99–149, § 715(a), added par. (6).

Subsec. (b)(1). Pub. L. 99–145, § 719(3), substituted ''a reserve-component annuity'' for ''an annuity under this paragraph by virtue of eligibility under subsection (a)(1)(B)''.

Subsec. (b)(2). Pub. L. 99–145, § 719(3), substituted ''a reserve-component annuity'' for ''an annuity under this paragraph by virtue of eligibility under subsection (a)(1)(B)''.

Pub. L. 99–145, § 716(a)(1), inserted ''(other than a child who is a beneficiary under an election under paragraph (4))'' after ''that spouse or child'' in second sentence.

Subsec. (b)(3)(B). Pub. L. 99–145, § 719(8)(A), substituted ''retired pay'' for ''retired or retainer pay''.

Subsec. (b)(4), (5). Pub. L. 99–145, § 716(a)(2), (3), added par. (4) and redesignated former par. (4) as (5).

Subsec. (c). Pub. L. 99–145, § 513(b), inserted ''disability'' before ''retired pay''.

Subsec. (d). Pub. L. 99–145, § 712(a), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: ''If a member of an armed force dies on active duty after he has become entitled to retired or retainer pay, or after he has qualified for that pay except that he has not applied for or been granted that pay, and his spouse is eligible for dependency and indemnity compensation under section 411(a) of title 38 in an amount that is less than the annuity the spouse would have received under this subchapter if it had applied to the member when he died, the Secretary concerned shall pay to the spouse an annuity equal to the difference between that amount of compensation and 55 percent of the retired or retainer pay to which the otherwise eligible spouse described in section 1450(a)(1) of this title would have been entitled if the member had been entitled to that pay based upon his years of active service when he died.''

Subsec. (f). Pub. L. 99–145, § 713(a), added subsec. (f).

Subsec. (g). Pub. L. 99–145, § 715(b), added subsec. (g).

1983—Subsec. (a)(3). Pub. L. 98–94, § 941(c)(2), substituted ''provide an annuity for a former spouse under subsection (b)(2),'' for ''provide an annuity under subsection (b)(2) of this section,'' in subpars. (A) and (B).

Subsec. (a)(5). Pub. L. 98–94, § 941(a)(1), inserted ''except in accordance with subsection (b)(3)''.

Subsec. (b). Pub. L. 98–94, § 941(a)(2), amended subsec. (b) generally. Prior to amendment subsec. (b) read as follows:

''(1) A person who is not married and does not have a dependent child when he becomes eligible to participate in the Plan may elect to provide an annuity to a natural person with an insurable interest in that person or to provide an annuity to a former spouse.

''(2) A person who is married, or has a dependent child may elect to provide an annuity to a former spouse instead of providing an annuity to a spouse or dependent child if the election is made in order to carry out the terms of a written agreement entered into voluntarily with the former spouse (without regard to whether such agreement is included in or approved by a court order).

''(3) In the case of a person electing to provide an annuity under paragraph (1) or (2) of this subsection by virtue of eligibility under subsection (a)(1)(B), the election shall include a designation under subsection (e).

''(4) Any person who elects under paragraph (1) or (2) to provide an annuity to a former spouse shall, at the time of making such election, provide the Secretary concerned with a written statement, in a form to be prescribed by that Secretary, signed by such person and the former spouse setting forth whether the election is being made pursuant to a voluntary written agreement previously entered into by such person as a part of or incident to a proceeding of divorce, dissolution, annulment, or legal separation, and if so, whether such voluntary written agreement has been incorporated in or ratified or approved by a court order.''

1982—Pub. L. 97–295, § 1(18), substituted ''Plan'' for ''plan'' in section catchline.

Subsec. (a)(3). Pub. L. 97–252, § 1003(b)(1), inserted in subpars. (A) and (B) identical text ''or elects to provide an annuity under subsection (b)(2) of this section,'' after ''for his spouse,''.

Subsec. (b). Pub. L. 97–252, § 1003(b)(2), designated existing first sentence as par. (1), authorized an election to provide an annuity to a former spouse, added pars. (2) and (4), designated existing second sentence as par. (3), and substituted ''person electing to provide an annuity under paragraph (1) or (2) of this subsection'' for ''person providing an annuity under this subsection'' and ''the election'' for ''such an election''.

1978—Subsec. (a). Pub. L. 95–397, § 202(a), amended subsec. (a) generally, primarily inserting provision that this subchapter shall be known as the Survivor Benefit Plan and provisions of pars. (1)(B), (2)(B) and concluding sentence, (3)(B), (4)(B), and last sentence of (5).

Subsec. (b). Pub. L. 95–397, § 202(b), substituted ''entitled to retired or retainer pay'' for ''eligible to participate in the Plan'' and inserted provisions relating to the inclusion in an election a designation under subsection (e) by persons providing an annuity under this subsection by virtue of eligibility under subsection (a)(1)(B).

Subsec. (e). Pub. L. 95–397, § 202(c), added subsec. (e).

1976—Subsec. (a). Pub. L. 94–496 inserted ''or elects to provide an annuity for a dependent child but not for his spouse'' after ''maximum level''.

EFFECTIVE DATE OF 2019 AMENDMENT

Pub. L. 116–92, div. A, title VI, § 622(f), Dec. 20, 2019, 133 Stat. 1428, provided that: ''This section [amending this section and sections 1450 and 1451 of this title and enacting provisions set out as notes under this section and section 1450 of this title] and the amendments made by this section shall take effect on the first day of the first month that begins after the date of the enactment of this Act [Dec. 20, 2019], except subsections (d) and (e) of this section [amending this section and enacting provisions set out as a note below] and the amendments made thereby shall take effect on January 1, 2023.''

EFFECTIVE DATE OF 2016 AMENDMENT

Pub. L. 114–328, div. A, title VI, § 642(e), Dec. 23, 2016, 130 Stat. 2165, provided that:

''(1) PAYMENT.—No annuity benefit under subchapter II of chapter 73 of title 10, United States Code, shall accrue to any person by reason of the amendments made by this section [amending this section and sections 1450 and 1451 of this title] for any period before the date of the enactment of this Act [Dec. 23, 2016].

''(2) ELECTIONS.—For any death that occurred before the date of the enactment of this Act with respect to which an annuity under such subchapter is being paid (or could be paid) to a surviving spouse, the Secretary concerned may, within six months of that date and in consultation with the surviving spouse, determine it appropriate to provide an annuity for the dependent

children of the decedent under paragraph 1448(f)(2)(B) of title 10, United States Code, as added by subsection (b), instead of an annuity for the surviving spouse. Any such determination and resulting change in beneficiary shall be effective as of the first day of the first month following the date of the determination.''

EFFECTIVE DATE OF 2015 AMENDMENT

Pub. L. 114–92, div. A, title VI, § 641(b), Nov. 25, 2015, 129 Stat. 853, provided that: ''Paragraph (7) of section 1448(b) of title 10, United States Code, as added by subsection (a), shall apply with respect to any person whose former spouse beneficiary dies on or after the date of the enactment of this Act [Nov. 25, 2015].''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–364, div. A, title VI, § 644(b), Oct. 17, 2006, 120 Stat. 2261, provided that: ''Any annuity payable to a dependent child under subchapter II of chapter 73 of title 10, United States Code, by reason of the amendment made by subsection (a) [amending this section] shall be payable only for months beginning on or after the date of the enactment of this Act [Oct. 17, 2006].''

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–136, div. A, title VI, § 644(c), Nov. 24, 2003, 117 Stat. 1518, provided that: ''Subparagraph (B) of section 1448(f)(1) of title 10, United States Code, as added by subsection (a), shall take effect as of September 10, 2001, and shall apply with respect to performance of inactive-duty training (as defined in section 101(d) of title 10, United States Code) on or after that date.''

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–107, div. A, title VI, § 642(d), Dec. 28, 2001, 115 Stat. 1152, provided that: ''The amendments made by this section [amending this section and section 1451 of this title] shall take effect as of September 10, 2001, and shall apply with respect to deaths of members of the Armed Forces occurring on or after that date.''

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–398, § 1 [[div. A], title VI, § 655(d)], Oct. 30, 2000, 114 Stat. 1654, 1654A–166, provided that: ''The amendments made by this section [amending this section and section 1450 of this title] apply only with respect to a notification under section 12731(d) of title 10, United States Code, made after January 1, 2001, that a member of a reserve component has completed the years of service required for eligibility for reserve-component retired pay.''

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–85, div. A, title VI, § 645(c), Nov. 18, 1997, 111 Stat. 1801, provided that: ''The amendments made by this section [amending section 4(e)(1) of Pub. L. 92–425 and section 653(d) of Pub. L. 100–456, set out as notes below] take effect on the first day of the first month beginning after the date of the enactment of this Act [Nov. 18, 1997] and shall apply with respect to payments of benefits for months beginning on or after that date, except that the Secretary of Veterans Affairs may provide, if necessary for administrative implementation, that such amendments shall apply beginning with a later month, not later than the first month beginning more than 180 days after the date of the enactment of this Act.''

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 1671(d)(2) of Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 641 of Pub. L. 99–661 applicable to court orders issued on or after Nov. 14, 1986, see section 641(c) of Pub. L. 99–661, set out as a note under section 1450 of this title.

Pub. L. 99–661, div. A, title VI, § 642(c), Nov. 14, 1986, 100 Stat. 3886, provided that: ''The amendments made by subsection (a) [amending this section] shall apply only to claims arising on or after March 1, 1986. The amendments made by subsection (b) [amending section 1451 of this title] shall apply to payments for periods after February 28, 1986.''

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by title VII of Pub. L. 99–145 effective Mar. 1, 1986, with prohibition against accrual of benefits to any person by reason of the enactment of such title VII for any period before Mar. 1, 1986, see section 731 of Pub. L. 99–145, set out as a note under section 1447 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Pub. L. 98–94, title IX, § 941(b), Sept. 24, 1983, 97 Stat. 653, provided that: ''In the case of a person who on the date of the enactment of this Act [Sept. 24, 1983] is a person described in subparagraph (A) of subsection (b)(3) of section 1448 of title 10, United States Code (as amended by subsection (a)(2)), such subsection shall apply to that person as if the one-year period provided for in subparagraph (A) of such subsection began on the date of the enactment of this Act.''

EFFECTIVE DATE OF 1982 AMENDMENT; TRANSITION PROVISIONS

Amendment by Pub. L. 97–252 effective Feb. 1, 1983, and applicable to persons becoming eligible to participate in Survivor Benefit Plan provided for in this subchapter before, on, or after Feb. 1, 1983, see section 1006 of Pub. L. 97–252, set out as an Effective Date; Transition Provisions note under section 1408 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–397 effective Oct. 1, 1978, and applicable to annuities payable by virtue of amendment for months beginning on or after such date, see section 210 of Pub. L. 95–397, set out as a note under section 1447 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–496 effective Sept. 21, 1972, see section 3 of Pub. L. 94–496, set out as a note under section 1447 of this title.

RESTORATION OF ELIGIBILITY FOR PREVIOUSLY ELIGIBLE SPOUSES

Pub. L. 116–92, div. A, title VI, § 622(e), Dec. 20, 2019, 133 Stat. 1428, provided that: ''The Secretary of the military department concerned shall restore annuity eligibility to any eligible surviving spouse who, in consultation with the Secretary, previously elected to transfer payment of such annuity to a surviving child or children under the provisions of section 1448(d)(2)(B) of title 10, United States Code, as in effect on the day before the effective date provided under subsection (f) [set out as an Effective Date of 2019 Amendment note above]. Such eligibility shall be restored whether or not payment to such child or children subsequently was terminated due to loss of dependent status or death. For the purposes of this subsection, an eligible spouse includes a spouse who was previously eligible for payment of such annuity and is not remarried, or remarried after having attained age 55, or whose second or subsequent marriage has been terminated by death, divorce or annulment.''

APPLICABILITY TO FORMER SPOUSE DEATHS BEFORE ENACTMENT OF PUB. L. 114–92

Pub. L. 114–92, div. A, title VI, § 641(c), Nov. 25, 2015, 129 Stat. 853, provided that:

''(1) IN GENERAL.—A person—

''(A) who before the date of the enactment of this Act [Nov. 25, 2015] had a former spouse beneficiary under the Survivor Benefit Plan who died before that date; and

''(B) who on the date of the enactment of this Act is married,

may elect to provide spouse coverage for such spouse under the Plan, regardless of whether the person married such spouse before or after the death of the former spouse beneficiary. Any such election may only be made during the one-year period beginning on the date of the enactment of this Act.

''(2) EFFECTIVE DATE OF ELECTION IF MARRIED AT LEAST A YEAR AT DEATH FORMER SPOUSE.—If the person providing the annuity was married to the spouse beneficiary for at least one year at the time of the death of the former spouse beneficiary, the effective date of such election shall be the first day of the first month after the death of the former spouse beneficiary.

''(3) OTHER EFFECTIVE DATE.—If the person providing the annuity married the spouse beneficiary after (or during the one-year period preceding) the death of the former spouse beneficiary, the effective date of the election shall be the first day of the first month following the first anniversary of the person's marriage to the spouse beneficiary.

''(4) RESPONSIBILITY FOR PREMIUMS.—A person electing to participate in the Plan under this subsection shall be responsible for payment of all premiums due from the effective date of the election.''

TRANSITION

Pub. L. 109–364, div. A, title VI, § 643(c), Oct. 17, 2006, 120 Stat. 2261, provided that:

''(1) TRANSITION PERIOD.—In the case of a participant in the Survivor Benefit Plan who made a covered insurable-interest election (as defined in paragraph (2)) and whose designated beneficiary under that election dies before the date of the enactment of this Act [Oct. 17, 2006] or during the 18-month period beginning on such date, the time period applicable for purposes of the limitation in the third sentence of subparagraph (G)(i) of section 1448(b)(1) of title 10, United States Code, as added by subsection (a), shall be the two-year period beginning on the date of the enactment of this Act (rather than the 180-day period specified in that sentence).

''(2) COVERED INSURABLE-INTEREST ELECTIONS.—For purposes of paragraph (1), a covered insurable-interest election is an election under section 1448(b)(1) of title 10, United States Code, made before the date of the enactment of this Act [Oct. 17, 2006], or during the 18-month period beginning on such date, by a participant in the Survivor Benefit Plan to provide an annuity under that plan to a natural person with an insurable interest in that person.

''(3) SURVIVOR BENEFIT PLAN.—For purposes of this subsection, the term 'Survivor Benefit Plan' means the program under subchapter II of chapter 73 of title 10, United States Code.''

ONE-YEAR OPEN ENROLLMENT PERIOD FOR SURVIVOR BENEFIT PLAN COMMENCING OCTOBER 1, 2005

Pub. L. 108–375, div. A, title VI, § 645, Oct. 28, 2004, 118 Stat. 1962, as amended by Pub. L. 109–364, div. A, title X, § 1071(g)(5), Oct. 17, 2006, 120 Stat. 2402, provided that:

''(a) PERSONS NOT CURRENTLY PARTICIPATING IN SURVIVOR BENEFIT PLAN.—

''(1) ELECTION OF SBP COVERAGE.—An eligible retired or former member may elect to participate in the Survivor Benefit Plan during the open enrollment period specified in subsection (f).

''(2) ELECTION OF SUPPLEMENTAL ANNUITY COVERAGE.—An eligible retired or former member who elects under paragraph (1) to participate in the Survivor Benefit Plan at the maximum level may also elect during the open enrollment period to participate in the Supplemental Survivor Benefit Plan.

''(3) ELIGIBLE RETIRED OR FORMER MEMBER.—For purposes of paragraphs (1) and (2), an eligible retired or former member is a member or former member of the uniformed services who on the day before the first day of the open enrollment period is not a participant in the Survivor Benefit Plan and—

''(A) is entitled to retired pay; or

''(B) would be entitled to retired pay under chapter 1223 of title 10, United States Code, but for the fact that such member or former member is under 60 years of age.

''(4) STATUS UNDER SBP OF PERSONS MAKING ELECTIONS.—

''(A) STANDARD ANNUITY.—A person making an election under paragraph (1) by reason of eligibility under paragraph (3)(A) shall be treated for all purposes as providing a standard annuity under the Survivor Benefit Plan.

''(B) RESERVE-COMPONENT ANNUITY.—A person making an election under paragraph (1) by reason of eligibility under paragraph (3)(B) shall be treated for all purposes as providing a reserve-component annuity under the Survivor Benefit Plan.

''(b) ELECTION TO INCREASE COVERAGE UNDER SBP.—A person who on the day before the first day of the open enrollment period is a participant in the Survivor Benefit Plan but is not participating at the maximum base amount or is providing coverage under the Plan for a dependent child and not for the person's spouse or former spouse may, during the open enrollment period, elect to—

''(1) participate in the Plan at a higher base amount (not in excess of the participant's retired pay); or

''(2) provide annuity coverage under the Plan for the person's spouse or former spouse at a base amount not less than the base amount provided for the dependent child.

''(c) ELECTION FOR CURRENT SBP PARTICIPANTS TO PARTICIPATE IN SUPPLEMENTAL SBP.—

''(1) ELECTION.—A person who is eligible to make an election under this paragraph may elect during the open enrollment period to participate in the Supplemental Survivor Benefit Plan.

''(2) PERSONS ELIGIBLE.—Except as provided in paragraph (3), a person is eligible to make an election under paragraph (1) if on the day before the first day of the open enrollment period the person is a participant in the Survivor Benefit Plan at the maximum level, or during the open enrollment period the person increases the level of such participation to the maximum level under subsection (b) of this section, and under that Plan is providing annuity coverage for the person's spouse or a former spouse.

''(3) LIMITATION ON ELIGIBILITY FOR CERTAIN SBP PARTICIPANTS NOT AFFECTED BY TWO-TIER ANNUITY COMPUTATION.—A person is not eligible to make an election under paragraph (1) if (as determined by the Secretary concerned) the annuity of a spouse or former spouse beneficiary of that person under the Survivor Benefit Plan is to be computed under section 1451(e) of title 10, United States Code. However, such a person may during the open enrollment period waive the right to have that annuity computed under such section 1451(e). Any such election is irrevocable. A person making such a waiver may make an election under paragraph (1) as in the case of any other participant in the Survivor Benefit Plan.

''(d) MANNER OF MAKING ELECTIONS.—An election under this section shall be made in writing, signed by the person making the election, and received by the Secretary concerned before the end of the open enrollment period. Any such election shall be made subject to the same conditions, and with the same opportunities for designation of beneficiaries and specification of base amount, that apply under the Survivor Benefit Plan or the Supplemental Survivor Benefit Plan, as the case may be. A person making an election under subsection (a) to provide a reserve-component annuity shall make a designation described in section 1448(e) of title 10, United States Code.

''(e) EFFECTIVE DATE FOR ELECTIONS.—Any such election shall be effective as of the first day of the first calendar month following the month in which the election is received by the Secretary concerned.

''(f) OPEN ENROLLMENT PERIOD.—The open enrollment period under this section is the one-year period beginning on October 1, 2005.

''(g) EFFECT OF DEATH OF PERSON MAKING ELECTION WITHIN TWO YEARS OF MAKING ELECTION.—If a person making an election under this section dies before the end of the two-year period beginning on the effective date of the election, the election is void and the amount of any reduction in retired pay of the person that is attributable to the election shall be paid in a lump sum to the person who would have been the deceased person's beneficiary under the voided election if the deceased person had died after the end of such two-year period.

''(h) APPLICABILITY OF CERTAIN PROVISIONS OF LAW.—The provisions of sections 1449, 1453, and 1454 of title 10, United States Code, are applicable to a person making an election, and to an election, under this section in the same manner as if the election were made under the Survivor Benefit Plan or the Supplemental Survivor Benefit Plan, as the case may be.

''(i) PREMIUM FOR OPEN ENROLLMENT ELECTION.—

''(1) PREMIUMS TO BE CHARGED.—The Secretary of Defense shall prescribe in regulations premiums which a person electing under this section shall be required to pay for participating in the Survivor Benefit Plan pursuant to the election. The total amount of the premiums to be paid by a person under the regulations shall be equal to the sum of—

''(A) the total amount by which the retired pay of the person would have been reduced before the effective date of the election if the person had elected to participate in the Survivor Benefit Plan (for the same base amount specified in the election) at the first opportunity that was afforded the member to participate under chapter 73 of title 10, United States Code;

''(B) interest on the amounts by which the retired pay of the person would have been so reduced, computed from the dates on which the retired pay would have been so reduced at such rate or rates and according to such methodology as the Secretary of Defense determines reasonable; and

''(C) any additional amount that the Secretary determines necessary to protect the actuarial soundness of the Department of Defense Military Retirement Fund against any increased risk for the fund that is associated with the election.

''(2) PREMIUMS TO BE CREDITED TO RETIREMENT FUND.—Premiums paid under the regulations under paragraph (1) shall be credited to the Department of Defense Military Retirement Fund.

''(j) DEFINITIONS.—In this section:

''(1) The term 'Survivor Benefit Plan' means the program established under subchapter II of chapter 73 of title 10, United States Code.

''(2) The term 'Supplemental Survivor Benefit Plan' means the program established under subchapter III of chapter 73 of title 10, United States Code.

''(3) The term 'retired pay' includes retainer pay paid under section 6330 [now 8330] of title 10, United States Code.

''(4) The terms 'uniformed services' and 'Secretary concerned' have the meanings given those terms in section 101 of title 37, United States Code.

''(5) The term 'Department of Defense Military Retirement Fund' means the Department of Defense Military Retirement Fund established under section 1461(a) of title 10, United States Code.''

OPEN ENROLLMENT PERIOD FOR SURVIVOR BENEFIT PLAN COMMENCING MARCH 1, 1999

Pub. L. 105–261, div. A, title VI, § 642, Oct. 17, 1998, 112 Stat. 2045, as amended by Pub. L. 106–65, div. A, title VI, § 654, Oct. 5, 1999, 113 Stat. 667, provided for a one-year open enrollment period beginning on Mar. 1, 1999, during which an eligible retired or former member who was not participating in the Survivor Benefit Plan could elect to participate in the Plan and also elect to participate in the Supplemental Survivor Benefit Plan.

ANNUITIES FOR CERTAIN MILITARY SURVIVING SPOUSES

Pub. L. 105–85, div. A, title VI, § 644, Nov. 18, 1997, 111 Stat. 1800, as amended by Pub. L. 106–65, div. A, title VI, § 656(a), (b), title X, § 1066(c)(3), Oct. 5, 1999, 113 Stat. 668, 773; Pub. L. 107–314, div. A, title VI, § 634, Dec. 2, 202, 116 Stat. 2573, provided that:

''(a) SURVIVOR ANNUITY.—(1) The Secretary concerned shall pay an annuity to the qualified surviving spouse of each member of the uniformed services who—

''(A) became entitled to retired or retainer pay before September 21, 1972, died before March 21, 1974, and was entitled to retired or retainer pay on the date of death; or

''(B) died before October 1, 1978, and at the time of his death would have been entitled to retired pay under chapter 67 [now 1223] of title 10, United States Code (as in effect before December 1, 1994), but for the fact that he was under 60 years of age.

''(2) A qualified surviving spouse for purposes of this section is a surviving spouse who has not remarried.

''(b) AMOUNT OF ANNUITY.—(1) An annuity under this section shall be paid at the rate of $185.58 per month, as adjusted from time to time under paragraph (3).

''(2) The amount of an annuity to which a surviving spouse is entitled under this section for any period shall be reduced (but not below zero) by any amount paid to that surviving spouse for the same period under any of the following provisions of law:

''(A) Section 1311(a) of title 38, United States Code (relating to dependency and indemnity compensation payable by the Secretary of Veterans Affairs).

''(B) Chapter 73 of title 10, United States Code.

''(C) Section 4 of Public Law 92–425 (10 U.S.C. 1448 note).

''(3) Whenever after May 1, 2002, retired or retainer pay is increased under section 1401a(b)(2) of title 10, United States Code, each annuity that is payable under this section shall be increased at the same time and by the same total percent.

''(c) APPLICATION REQUIRED.—No benefit shall be paid to any person under this section unless an application for such benefit is filed with the Secretary concerned by or on behalf of such person.

''(d) DEFINITIONS.—For purposes of this section:

''(1) The terms 'uniformed services' and 'Secretary concerned' have the meanings given such terms in section 101 of title 37, United States Code.

''(2) The term 'surviving spouse' has the meaning given such term in paragraph (9) of section 1447 of title 10, United States Code.

''(e) PROSPECTIVE APPLICABILITY.—(1) Annuities under this section shall be paid for months beginning after November 1997.

''(2) No benefit shall accrue to any person by reason of the enactment of this section for any period before December 1997.''

[Pub. L. 106–65, div. A, title VI, § 656(c), Oct. 5, 1999, 113 Stat. 668, provided that: ''The amendment made by subsection (a) [amending section 644 of Pub. L. 105–85, set out above] shall apply with respect to annuities payable for months beginning after September 30, 1999.'']

AUTHORITY FOR RELIEF FROM PREVIOUS OVERPAYMENTS UNDER MINIMUM INCOME WIDOWS PROGRAM

Pub. L. 104–106, div. A, title VI, § 635, Feb. 10, 1996, 110 Stat. 366, authorized the Secretary of Defense to waive recovery by the United States of any overpayment by the United States that had been made before Feb. 10, 1996, under section 4 of Public Law 92–425, set out below, and that was attributable to failure by the Department of Defense to apply the eligibility provisions of subsection (a) of such section in the case of the person to whom the overpayment had been made.

OPEN ENROLLMENT PERIOD FOR SURVIVOR BENEFIT PLAN COMMENCING APRIL 1, 1992

Pub. L. 101–189, div. A, title XIV, § 1405, Nov. 29, 1989, 103 Stat. 1586, as amended by Pub. L. 101–510, div. A, title VI, § 631(2), title XIV, § 1484(*l*)(4)(B), Nov. 5, 1990, 104 Stat. 1580, 1720; Pub. L. 102–190, div. A, title VI, § 653(a)(1), (c)(2), Dec. 5, 1991, 105 Stat. 1388, 1389; Pub. L. 102–484, div. A, title VI, § 643, Oct. 23, 1992, 106 Stat. 2425,

provided for a one-year open enrollment period beginning on Apr. 1, 1992, during which: (1) an eligible retired or former member who was not participating in the Survivor Benefit Plan could elect to participate in the Plan and also elect to participate in the Supplemental Survivor Benefit Plan, (2) a current participant in the Survivor Benefit Plan who was not participating at the maximum base amount could elect to participate in the Plan at a higher base amount or provide coverage for a previously uncovered spouse or former spouse, and (3) a participant in the Survivor Benefit Plan at the maximum level who was providing annuity coverage for a spouse or former spouse could elect to participate in the Supplemental Survivor Benefit Plan, and directed the Secretary of Defense to submit to committees of Congress a report on the open season not later than June 1, 1990.

DEFINITIONS FOR 1989 AMENDMENTS

Section 1406 of title XIV of div. A of Pub. L. 101–189, as amended by Pub. L. 102–190, div. A, title VI, §653(a)(2), Dec. 5, 1991, 105 Stat. 1388, provided that: ''For the purpose of this title [see Short Title of 1989 Amendment note set out under section 1447 of this title]:

''(1) The term 'Survivor Benefit Plan' means the program established under subchapter II of chapter 73 of title 10, United States Code.

''(2) The term 'retired pay' includes retainer pay paid under section 6330 [now 8330] of title 10, United States Code.

''(3) The terms 'uniformed services' and 'Secretary concerned' have the meanings given those terms in section 101 of title 37, United States Code.

''(4) The term 'SBP premium' means the reduction in retired pay required as a condition of providing an annuity under the Survivor Benefit Plan.

''(5) The term 'base amount' has the meaning given that term in section 1447(2) [see 1447(6)] of title 10, United States Code.''

ANNUITY FOR SURVIVING SPOUSES OF MEMBERS WHO DIED BEFORE NOVEMBER 1, 1953, AND WHO WERE ENTITLED TO RETIRED OR RETAINER PAY ON DATE OF DEATH

Pub. L. 100–456, div. A, title VI, §653, Sept. 29, 1988, 102 Stat. 1991, as amended by Pub. L. 103–337, div. A, title X, §1070(d)(3), Oct. 5, 1994, 108 Stat. 2858; Pub. L. 105–85, div. A, title VI, §645(a), Nov. 18, 1997, 111 Stat. 1801, provided that:

''(a) ANNUITY.—(1) The Secretary concerned shall pay an annuity to the qualified surviving spouse of each member of the uniformed services who—

''(A) died before November 1, 1953; and

''(B) was entitled to retired or retainer pay on the date of death.

''(2) A qualified surviving spouse for purposes of this section is a surviving spouse who has not remarried and who is eligible for an annuity under section 4 of Public Law 92–425 (10 U.S.C. 1448 note).

''(b) AMOUNT OF ANNUITY.—(1) An annuity payable under this section shall be paid at the rate of $165 per month, as adjusted from time to time under subsection (c).

''(2) An annuity paid to a surviving spouse under this section shall be reduced by the amount of dependency and indemnity compensation (DIC) to which the surviving spouse is entitled under section 1311(a) of title 38, United States Code.

''(c) COST-OF-LIVING INCREASES.—Whenever retired or retainer pay is increased under section 1401a(b)(2) of title 10, United States Code, each annuity that is payable under this section shall be increased at the same time and by the same total percent. The amount of the increase shall be based on the monthly annuity payable before any reduction under this section.

''(d) RELATIONSHIP TO OTHER PROGRAMS.—(1) An annuity paid to a surviving spouse under this section is in addition to any pension to which the surviving spouse is entitled under subchapter III of chapter 15 of title 38, United States Code, or section 306 of the Veterans' and Survivors' Pension Improvement Act of 1978 (38 U.S.C. 1521 note), and any payment made under the provisions of section 4 of Public Law 92–425. An annuity paid under this section shall not be considered as income for the purposes of eligibility for any such pension.

''(2) Payment of annuities under this section shall be made by the Secretary of Veterans Affairs. In making such payments, the Secretary shall combine the payment under this section with the payment of any amount due the same person under section 4 of Public Law 92–425 (10 U.S.C. 1448 note), as provided in subsection (e)(1) of that section. The Secretary concerned shall transfer amounts for payments under this section to the Secretary of Veterans Affairs in the same manner as is provided under subsection (e)(2) of section 4 of Public Law 92–425 for payments under that section.

''(e) DEFINITIONS.—For purposes of this section:

''(1) The terms 'uniformed services' and 'Secretary concerned' have the meanings given those terms in section 101 of title 37, United States Code.

''(2) The term 'surviving spouse' has the meaning given the terms 'widow' and 'widower' in paragraphs (3) and (4), respectively, of section 1447 [see 1447(7), (8)] of title 10, United States Code.

''(f) EFFECTIVE DATE.—Annuities under this section shall be paid for months beginning after the month in which this Act is enacted [September 1988]. No benefit shall accrue to any person by reason of the enactment of this section for any period before the first month referred to in the preceding sentence. No benefit shall be paid to any person under this section unless an application for such benefit has been filed with the Secretary concerned by or on behalf of such person.''

AUTHORITY FOR CERTAIN REMARRIED SURVIVOR BENEFIT PLAN PARTICIPANTS TO WITHDRAW FROM PLAN

Pub. L. 100–180, div. A, title VI, §631, Dec. 4, 1987, 101 Stat. 1104, provided that:

''(a) AUTHORITY TO WITHDRAW.—(1) An individual who is a participant in the Survivor Benefit Plan under subchapter II of chapter 73 of title 10, United States Code, and is described in paragraph (2) may, with the consent of such individual's spouse, withdraw from participation in the Plan.

''(2) An individual referred to in paragraph (1) is an individual who—

''(A) is providing coverage for a spouse or for a spouse and child under the Plan; and

''(B) remarried before March 1, 1986, and at a time when such individual was a participant in the Plan but did not have an eligible spouse beneficiary under the Plan.

''(b) APPLICABLE PROVISIONS.—An election under subsection (a) shall be subject to subparagraphs (B) and (D) [see (E)] of section 1448(a)(6) of title 10, United States Code, except that in applying such subparagraph (B) to subsection (a), the one-year period referred to in clause (ii) of such subparagraph shall extend until the end of the one-year period beginning 90 days after the date of the enactment of this Act [Dec. 4, 1987].

''(c) TREATMENT OF PRIOR CONTRIBUTIONS.—No refund of amounts by which the retired pay of a participant in the Survivor Benefit Plan has been reduced by reason of section 1452 of title 10, United States Code, may be made to an individual who withdraws from the Survivor Benefit Plan under subsection (a).''

OPTION FOR CERTAIN PARTICIPANTS TO WITHDRAW FROM SURVIVOR BENEFIT PLAN

Pub. L. 99–145, title VII, §711(c), Nov. 8, 1985, 99 Stat. 670, provided that person who during period Oct. 19, 1984, to Nov. 8, 1985, became participant in Survivor Benefit Plan under this subchapter could withdraw from Plan before end of one-year period beginning on Nov. 8, 1985, and receive refund of contributions plus interest.

PERSONS COVERED UNDER SUBSECTIONS (d) AND (f)

Pub. L. 99–145, title VII, §712(b), Nov. 8, 1985, 99 Stat. 671, provided that:

"(1) Section 1448(d) of title 10, United States Code, as amended by subsection (a), applies to the surviving spouse and dependent children of a person who dies on active duty after September 20, 1972, and the former spouse of a person who dies after September 7, 1982.

"(2) In the case of the surviving spouse and children of a person who dies during the period beginning on September 21, 1972, and ending on October 1, 1985, the Secretary concerned shall take appropriate steps to locate persons eligible for an annuity under section 1448(d) of title 10, United States Code, as amended by subsection (a). Any such person must submit an application to the Secretary for such an annuity before October 1, 1988, to be eligible to receive such annuity. Any such annuity shall be effective only for months after the month in which the Secretary receives such application."

Pub. L. 99–145, title VII, § 713(c), Nov. 8, 1985, 99 Stat. 672, provided that:

"(1) Section 1448(f) of title 10, United States Code, as added by subsection (a), shall apply to the surviving spouse and dependent children of any person who dies after September 30, 1978, and the former spouse of a person who dies after September 7, 1982.

"(2) In the case of the surviving spouse and dependents of a person who dies during the period beginning on September 30, 1978, and ending on October 1, 1985, the Secretary concerned shall take appropriate steps to locate persons eligible for an annuity under section 1448(f) of title 10, United States Code, as added by subsection (a). Any such person must submit an application to the Secretary for such an annuity before October 1, 1988, to be eligible to receive such annuity. Any such annuity shall be effective only for months after the month in which the Secretary receives such application."

REVISION FOR FORMER SPOUSE COVERAGE ALREADY IN EFFECT

Pub. L. 99–145, title VII, § 716(b), Nov. 8, 1985, 99 Stat. 674, as amended by Pub. L. 99–661, div. A, title VI, § 645, Nov. 14, 1986, 100 Stat. 3887, provided that person who before Mar. 1, 1986, made election under subsec. (b) of this section to provide annuity for former spouse could change that election to provide annuity for former spouse and dependent children, even though former spouse had died, but such election had to be made not later than Mar. 1, 1987, in case of person who made election before Nov. 8, 1985, and not later than end of one-year period beginning on Nov. 14, 1986, in case of person who made election during period of Nov. 8, 1985, to Feb. 28, 1986.

ONE-YEAR OPEN PERIOD TO SWITCH COMPUTATION OF SBP ANNUITY

Pub. L. 99–145, title VII, § 723(c), Nov. 8, 1985, 99 Stat. 677, provided that person who, before effective date of title VII of Pub. L. 99–145 (see Effective Date of 1985 Amendment note set out under section 1447 of this title) participated in Survivor Benefit Plan under this subchapter, and had elected to provide annuity to former spouse could, with concurrence of such former spouse, elect to terminate such annuity and provide annuity to such former spouse under section 1450(a)(1) of this title, and any such election was to be made before end of 12-month period beginning on Nov. 8, 1985.

ONE-YEAR OPEN PERIOD FOR NEW FORMER SPOUSE COVERAGE

Pub. L. 99–145, title VII, § 723(d), Nov. 8, 1985, 99 Stat. 677, provided that person who before effective date of part B of title VII of Pub. L. 99–145 (see Effective Date of 1985 Amendment note set out under section 1447 of this title) was participant in Survivor Benefit Plan and did not elect to provide annuity to former spouse could elect to provide annuity to former spouse under Plan, and that any such election was to be made before end of 12-month period beginning on Nov. 8, 1985.

OPEN ENROLLMENT PERIOD FOR SURVIVOR BENEFIT PLAN

Pub. L. 97–35, title II, § 212, Aug. 13, 1981, 95 Stat. 383, as amended by Pub. L. 97–252, title XI, § 1119, Sept. 8, 1982, 96 Stat. 753, provided that certain members or former members of the uniformed services who, on Aug. 13, 1981, were not participants in the Survivor Benefit Plan established under this subchapter or were not participants in the Plan at the maximum level, could elect to participate in the Plan or to participate in the Plan at a higher level, during an open enrollment period beginning Oct. 1, 1981, and ending Sept. 30, 1982, for members and former members entitled to retired or retainer pay on Aug. 13, 1981, or beginning on Oct. 1, 1982, and ending on Sept. 30, 1983, for members or former members who on Aug. 13, 1981, would have been entitled to retired pay, but for the fact they were under 60 years of age on that date.

SURVIVING SPOUSE; ANNUITY PAYMENT AND REDUCTION PROVISIONS; ELECTION OF ANNUITY; DEFINITIONS; EFFECTIVE DATE

Pub. L. 96–402, § 5, Oct. 9, 1980, 94 Stat. 1707, provided that:

"(a)(1) The Secretary concerned shall pay an annuity to any individual who is the surviving spouse of a member of the uniformed services who—

"(A) died before September 21, 1972;

"(B) was serving on active duty in the uniformed services at the time of his death and had served on active duty for a period of not less than 20 years; and

"(C) was at the time of his death entitled to retired or retainer pay or would have been entitled to that pay except that he had not applied for or been granted that pay.

"(2) An annuity under paragraph (1) shall be paid under the provisions of subchapter II of chapter 73 of title 10, United States Code, in the same manner as if such member had died on or after September 21, 1972.

"(b)(1) The amount of retired or retainer pay to be used as the basis for the computation of an annuity under subsection (a) is the amount of the retired or retainer pay to which the member would have been entitled if the member had been entitled to that pay based upon his years of active service when he died, adjusted by the overall percentage increase in retired and retainer pay under section 1401a of title 10, United States Code (or any prior comparable provision of law), during the period beginning on the date of the member's death and ending on the day before the effective date of this section.

"(2) In addition to any reduction required under the provisions of subchapter II of chapter 73 of title 10, United States Code, the annuity paid to any surviving spouse under this section shall be reduced by any amount such surviving spouse is entitled to receive as an annuity under subchapter I of such chapter.

"(c) If an individual entitled to an annuity under this section is also entitled to an annuity under subchapter II of chapter 73 of title 10, United States Code, based upon a subsequent marriage, the individual may not receive both annuities but must elect which to receive.

"(d) As used in this section:

"(1) The term 'uniformed services' means the Armed Forces and the commissioned corps of the Public Health Service and of the National Oceanic and Atmospheric Administration.

"(2) The term 'surviving spouse' has the meaning given the terms 'widow' and 'widower' in section 1447 of title 10, United States Code.

"(3) The term 'Secretary concerned' has the meaning given such term in section 101(8) of title 10, United States Code, and includes the Secretary of Commerce, with respect to matters concerning the National Oceanic and Atmospheric Administration, and the Secretary of Health and Human Services, with respect to matters concerning the Public Health Service."

Provision effective Dec. 1, 1980, applicable to annuities payable for months beginning on or after such

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date, and prohibiting accrual of benefits for any period before Oct. 9, 1980, see section 7 of Pub. L. 96–402, set out as a note under section 1447 of this title.

ELECTION TO PARTICIPATE IN THE SURVIVOR BENEFIT PLAN AND WITHDRAW FROM THE RETIRED SERVICEMAN'S FAMILY PROTECTION PLAN

Pub. L. 92–425, § 3, Sept. 21, 1972, 86 Stat. 711, as amended by Pub. L. 93–155, title VIII, § 804, Nov. 16, 1973, 87 Stat. 615, provided that:

''(a) The Survivor Benefit Plan established pursuant to clause (3) of the first section of this Act [this subchapter] applies to any person who initially becomes entitled to retired or retainer pay on or after the effective date of this Act [Sept. 21, 1972]. An election made before that date by such a person under section 1431 of title 10, United States Code, is canceled. However, a person who initially becomes entitled to retired or retainer pay within 180 days after the effective date of this Act [Sept. 21, 1972] may, within 180 days after becoming so entitled, elect—

''(1) not to participate in such Survivor Benefit Plan if he is married or has a dependent child; or

''(2) to participate in that Plan, if he is a person covered by section 1448(b) of title 10, United States Code.

''(b) Any person who is entitled to retired or retainer pay on the effective date of this Act [Sept. 21, 1972] may elect to participate in the Survivor Benefit Plan established pursuant to clause (3) of the first section of this Act [this subchapter] at any time within eighteen months after such date. However, such a person who is receiving retired or retainer pay reduced under section 1436(a) of title 10, United States Code, or who is depositing amounts under section 1438 of that title, may elect at any time within eighteen months after the effective date of this Act [Sept. 21, 1972]—

''(1) to participate in the Plan and continue his participation under chapter 73 of that title [this chapter] as in effect on the day before the effective date of this Act [Sept. 21, 1972], except that the total of the annuities elected may not exceed 100 percent of his retired or retainer pay; or

''(2) to participate in the Plan and, notwithstanding section 1436(b) of that title, terminate his participation under chapter 73 of that title [this chapter] as in effect on the day before the effective date of this Act [Sept. 21, 1972].

A person who elects under clause (2) of this subsection is not entitled to a refund of amounts previously deducted from his retired or retainer pay under chapter 73 of title 10, United States Code [this chapter], as in effect on the day before the effective date of this Act [Sept. 21, 1972], or any payments made thereunder on his behalf. A person who is not married or does not have a dependent child on the first anniversary of the effective date of this Act [Sept. 21, 1972], but who later marries or acquires a dependent child, may elect to participate in the Plan under the fourth sentence of section 1448(a) of that title [former subsec. (a) of this section].

''(c) Notwithstanding the provisions of the Survivor Benefit Plan established pursuant to clause (3) of the first section of this Act [this subchapter], and except as otherwise provided in this section, subchapter I of chapter 73 of title 10, United States Code [subchapter I of this chapter] (other than the last two sentences of section 1436(a), section 1443, and section 1444(b)), as in effect on the day before the effective date of this Act [Sept. 21, 1972], shall continue to apply in the case of persons, and their beneficiaries, who have elected annuities under section 1431 or 1432 of that title and who have not elected under subsection (b)(2) of this section to participate in that Plan.

''(d) In this section, 'base amount' means—

''(1) the monthly retired or retainer pay to which a person—

''(A) is entitled on the effective date of this Act [Sept. 21, 1972]; or

''(B) later becomes entitled by being advanced on the retired list, performing active duty, or being transferred from the temporary disability retired list to the permanent disability retired list; or

''(2) any amount less than that described in clause (1) designated by that person at the time he makes an election under subsection (a)(2) or (b) of this section, but not less than $300;

as increased from time to time under section 1401a of title 10, United States Code.

''(e) An election made under subsection (a) or (b) of this section is effective on the date it is received by the Secretary concerned, as defined in section 101(5) of title 37, United States Code.

''(f) Sections 1449, 1453, and 1454 of title 10, United States Code, as added by clause (3) of the first section of this Act [as part of this subchapter], are applicable to persons covered by this section.''

INCOME SUPPLEMENT FOR CERTAIN WIDOWS OF RETIRED MEMBERS OF THE UNIFORMED FORCES; SPECIAL ANNUITY FOR WIDOWS OF COMMISSIONED PERSONNEL OF THE PUBLIC HEALTH SERVICE AND NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION IN LIEU OF VA PENSION

Pub. L. 92–425, § 4, Sept. 21, 1972, 86 Stat. 712, as amended by Pub. L. 94–496, § 2, Oct. 14, 1976, 90 Stat. 2375; Pub. L. 95–397, title II, § 209, Sept. 30, 1978, 92 Stat. 848; Pub. L. 96–402, § 6, Oct. 9, 1980, 94 Stat. 1708; Pub. L. 98–94, title IX, § 942(a), Sept. 24, 1983, 97 Stat. 654; Pub. L. 102–40, title IV, § 402(d)(2), May 7, 1991, 105 Stat. 239; Pub. L. 103–337, div. A, title X, § 1070(d)(4), Oct. 5, 1994, 108 Stat. 2858; Pub. L. 104–201, div. A, title VI, § 638(a)–(c), Sept. 23, 1996, 110 Stat. 2581; Pub. L. 105–85, div. A, title VI, § 645(b), Nov. 18, 1997, 111 Stat. 1801, provided that:

''(a) A person—

''(1) who, on September 21, 1972, was, or during the period beginning on September 22, 1972, and ending on March 20, 1974, became, a widow of a person who was entitled to retired or retainer pay when he died;

''(2) who is eligible for a pension under subchapter III of chapter 15 of title 38, United States Code, or section 306 of the Veterans' and Survivors' Pension Improvement Act of 1978 [set out as note under section 1521 of Title 38]; and

''(3) whose annual income, as determined in establishing that eligibility, is less than the maximum annual rate of pension in effect under section 1541(b) of title 38, United States Code;

shall be paid an annuity by the Secretary concerned unless she is eligible to receive an annuity under the Survivor Benefit Plan established pursuant to clause (3) of the first section of this Act [this subchapter]. However, such a person who is the widow of a retired officer of the Public Health Service or the National Oceanic and Atmospheric Administration, and who would otherwise be eligible for an annuity under this section except that she does not qualify for the pension described in clause (2) of this subsection because the service of her deceased spouse is not considered active duty under section 101(21) of title 38, United States Code, is entitled to an annuity under this section.

''(b) The annuity under subsection (a) of this section shall be in an amount which when added to the widow's income determined under subsection (a)(3) of this section, plus the amount of any annuity being received under sections 1431–1436 of title 10, United States Code, but exclusive of a pension described in subsection (a)(2) of this section, equals the maximum annual rate of pension in effect under section 1541(b) of title 38, United States Code. In addition, the Secretary concerned shall pay to the widow, described in the last sentence of subsection (a) of this section, an amount equal to the pension she would otherwise have been eligible to receive under subchapter III of chapter 15 of title 38, United States Code, if the service of her deceased spouse was considered active duty under section 101(21) of that title.

''(c) The amount of an annuity payable under this section, although counted as income in determining the amount of any pension described in subsection (a)(2) of

this section, shall not be considered to affect the eligiblity [sic] of the recipient of such annuity for such pension, even though, as a result of including the amount of the annuity as income, no amount of such pension is due.

''(d) Subsection 1450(i) and section 1453 as added to title 10, United States Code, by clause 3 of the first section of this Act, are applicable to persons covered by this section.

''(e)(1) Payment of annuities under this section shall be made by the Secretary of Veterans Affairs. In making such payments, the Secretary shall combine with the payment under this section payment of any amount due the same person under section 653(d) of the National Defense Authorization Act, Fiscal Year 1989 [Pub. L. 100–456] (10 U.S.C. 1448 note). If appropriate for administrative convenience (or otherwise determined appropriate by the Secretary of Veterans Affairs), that Secretary may combine a payment to any person for any month under this section (and, if applicable, under section 653(d) of the National Defense Authorization Act, Fiscal Year 1989) with any other payment for that month under laws administered by the Secretary so as to provide that person with a single payment for that month.

''(2) The Secretary concerned shall annually transfer to the Secretary of Veterans Affairs such amounts as may be necessary for payments by the Secretary of Veterans Affairs under this section and for costs of the Secretary of Veterans Affairs in administering this section. Such transfers shall be made from amounts that would otherwise be used for payment of annuities by the Secretary concerned under this section. The authority to make such a transfer is in addition to any other authority of the Secretary concerned to transfer funds for a purpose other than the purpose for which the funds were originally made available. In the case of a transfer by the Secretary of a military department, the provisions of section 2215 of title 10, United States Code, do not apply.

''(3) The Secretary concerned shall promptly notify the Secretary of Veterans Affairs of any change in beneficiaries under this section.''

[Pub. L. 104–201, div. A, title VI, § 638(d), Sept. 23, 1996, 110 Stat. 2581, provided that: ''The amendments made by this section [amending section 4 of Pub. L. 92–425, set out above] take effect on July 1, 1997, and apply with respect to payments of benefits for any month after June 1997.'']

[Pub. L. 98–94, title IX, § 942(b), Sept. 24, 1983, 97 Stat. 654, provided that: ''Any annuity payable by reason of subsection (a) [amending section 4(a)(1) of Pub. L. 92–425, set out above] shall be payable only for months after September 1983.'']

END OF 90-DAY PERIOD WITH RESPECT TO CERTAIN INDIVIDUALS

The 90-day period, referred to in subsec. (a)(2), (4)(B), with respect to certain individuals shall be considered to end on Mar. 31, 1980, see section 208 of Pub. L. 95–397, set out as a note under section 1447 of this title.

§ 1448a. Election to discontinue participation: one-year opportunity after second anniversary of commencement of payment of retired pay

(a) AUTHORITY.—A participant in the Plan may, subject to the provisions of this section, elect to discontinue participation in the Plan at any time during the one-year period beginning on the second anniversary of the date on which payment of retired pay to the participant commences.

(b) CONCURRENCE OF SPOUSE.—

(1) CONCURRENCE REQUIRED.—A married participant may not (except as provided in paragraph (2)) make an election under subsection (a) without the concurrence of the participant's spouse.

(2) EXCEPTIONS.—A participant may make such an election without the concurrence of the participant's spouse by establishing to the satisfaction of the Secretary concerned that one of the conditions specified in section 1448(a)(3)(C) of this title exists.

(3) FORM OF CONCURRENCE.—The concurrence of a spouse under paragraph (1) shall be made in such written form and shall contain such information as may be required under regulations prescribed by the Secretary of Defense.

(c) LIMITATION ON ELECTION WHEN FORMER SPOUSE COVERAGE IN EFFECT.—The limitation set forth in section 1450(f)(2) of this title applies to an election to discontinue participation in the Plan under subsection (a).

(d) WITHDRAWAL OF ELECTION TO DISCONTINUE.—Section 1448(b)(1)(D) of this title applies to an election under subsection (a).

(e) CONSEQUENCES OF DISCONTINUATION.—Section 1448(b)(1)(E) of this title applies to an election under subsection (a).

(f) NOTICE TO AFFECTED BENEFICIARIES.—The Secretary concerned shall notify any former spouse or other natural person previously designated under section 1448(b) of this title of an election to discontinue participation under subsection (a).

(g) EFFECTIVE DATE OF ELECTION.—An election under subsection (a) is effective as of the first day of the first calendar month following the month in which the election is received by the Secretary concerned.

(h) INAPPLICABILITY OF IRREVOCABILITY PROVISIONS.—Paragraphs (4)(B) and (5)(C) of section 1448(a) of this title do not apply to prevent an election under subsection (a).

(Added Pub. L. 105–85, div. A, title VI, § 641(a)(1), Nov. 18, 1997, 111 Stat. 1797.)

EFFECTIVE DATE

Pub. L. 105–85, div. A, title VI, § 641(c), Nov. 18, 1997, 111 Stat. 1799, provided that: ''Section 1448a of title 10, United States Code, as added by subsection (a), shall take effect 180 days after the date of the enactment of this Act [Nov. 18, 1997].''

TRANSITION PROVISION FOR CURRENT PARTICIPANTS

Pub. L. 105–85, div. A, title VI, § 641(b), Nov. 18, 1997, 111 Stat. 1798, provided that: ''Notwithstanding the limitation on the time for making an election under section 1448a of title 10, United States Code (as added by subsection (a)), that is specified in subsection (a) of such section, a participant in the Survivor Benefit Plan under subchapter II of chapter 73 of such title may make an election in accordance with that section within one year after the effective date of that section under subsection (c) [set out as an Effective Date note above] if the second anniversary of the commencement of payment of retired pay to the participant precedes that effective date.''

§ 1449. Mental incompetency of member

(a) ELECTION BY SECRETARY CONCERNED ON BEHALF OF MENTALLY INCOMPETENT MEMBER.—If a person to whom section 1448 of this title applies is determined to be mentally incompetent by medical officers of the armed force concerned or of the Department of Veterans Affairs, or by a court of competent jurisdiction, an election de-

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scribed in subsection (a)(2) or (b) of section 1448 of this title may be made on behalf of that person by the Secretary concerned.

(b) REVOCATION OF ELECTION BY MEMBER.—

(1) AUTHORITY UPON SUBSEQUENT DETERMINATION OF MENTAL COMPETENCE.—If a person for whom the Secretary has made an election under subsection (a) is later determined to be mentally competent by an authority named in that subsection, that person may, within 180 days after that determination, revoke that election.

(2) DEDUCTIONS FROM RETIRED PAY OR CRSC NOT TO BE REFUNDED.—Any deduction made from retired pay or combat-related special compensation by reason of such an election may not be refunded.

(Added Pub. L. 92–425, §1(3), Sept. 21, 1972, 86 Stat. 708; amended Pub. L. 95–397, title II, §207(a), Sept. 30, 1978, 92 Stat. 848; Pub. L. 101–189, div. A, title XIV, §1407(a)(3), title XVI, §1621(a)(1), Nov. 29, 1989, 103 Stat. 1588, 1602; Pub. L. 104–201, div. A, title VI, §634, Sept. 23, 1996, 110 Stat. 2560; Pub. L. 114–328, div. A, title VI, §643(c)(1), Dec. 23, 2016, 130 Stat. 2166.)

AMENDMENTS

2016—Subsec. (b)(2). Pub. L. 114–328 inserted ''or CRSC'' after ''retired pay'' in heading and ''or combat-related special compensation'' after ''from retired pay'' in text.

1996—Pub. L. 104–201 amended section generally. Prior to amendment, section read as follows: ''If a person to whom section 1448 of this title applies is determined to be mentally incompetent by medical officers of the armed force concerned or of the Department of Veterans Affairs, or by a court of competent jurisdiction, any election described in subsection (a)(2) or (b) of section 1448 of this title may be made on behalf of that person by the Secretary concerned. If the person for whom the Secretary has made an election is later determined to be mentally competent by an authority named in the first sentence, he may, within 180 days after that determination revoke that election. Any deductions made from retired pay by reason of such an election will not be refunded.''

1989—Pub. L. 101–189 substituted ''Department of Veterans Affairs'' for ''Veterans' Administration'' and struck out ''or retainer'' after ''made from retired''.

1978—Pub. L. 95–397 substituted ''subsection (a)(2) or (b)'' for ''the first sentence of subsection (a), or subsection (b)''.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–397 effective Oct. 1, 1978, and applicable to annuities payable by virtue of amendment for months beginning on or after such date, see section 210 of Pub. L. 95–397, set out as a note under section 1447 of this title.

§ 1450. Payment of annuity: beneficiaries

(a) IN GENERAL.—Effective as of the first day after the death of a person to whom section 1448 of this title applies (or on such other day as that person may provide under subsection (j)), a monthly annuity under section 1451 of this title shall be paid to the person's beneficiaries under the Plan, as follows:

(1) SURVIVING SPOUSE OR FORMER SPOUSE.—The eligible surviving spouse or the eligible former spouse.

(2) SURVIVING CHILDREN.—The surviving dependent children in equal shares, if the eligible surviving spouse or the eligible former spouse is dead, dies, or otherwise becomes ineligible under this section.

(3) DEPENDENT CHILDREN.—The dependent children in equal shares if the person to whom section 1448 of this title applies (with the concurrence of the person's spouse, if required under section 1448(a)(3) of this title) elected to provide an annuity for dependent children but not for the spouse or former spouse.

(4) SPECIAL NEEDS TRUSTS FOR SOLE BENEFIT OF CERTAIN DEPENDENT CHILDREN.—Notwithstanding subsection (i), a supplemental or special needs trust established under subparagraph (A) or (C) of section 1917(d)(4) of the Social Security Act (42 U.S.C. 1396p(d)(4)) for the sole benefit of a dependent child considered disabled under section 1614(a)(3) of that Act (42 U.S.C. 1382c(a)(3)) who is incapable of self-support because of mental or physical incapacity.

(5) NATURAL PERSON DESIGNATED UNDER ''INSURABLE INTEREST'' COVERAGE.—The natural person designated under section 1448(b)(1) of this title, unless the election to provide an annuity to the natural person has been changed as provided in subsection (f).

(b) TERMINATION OF ANNUITY FOR DEATH, REMARRIAGE BEFORE AGE 55, ETC.—

(1) GENERAL RULE.—An annuity payable to the beneficiary terminates effective as of the first day of the month in which eligibility is lost.

(2) TERMINATION OF SPOUSE ANNUITY UPON DEATH OR REMARRIAGE BEFORE AGE 55.—An annuity for a surviving spouse or former spouse shall be paid to the surviving spouse or former spouse while the surviving spouse or former spouse is living or, if the surviving spouse or former spouse remarries before reaching age 55, until the surviving spouse or former spouse remarries.

(3) EFFECT OF TERMINATION OF SUBSEQUENT MARRIAGE BEFORE AGE 55.—If the surviving spouse or former spouse remarries before reaching age 55 and that marriage is terminated by death, annulment, or divorce, payment of the annuity shall be resumed effective as of the first day of the month in which the marriage is so terminated. However, if the surviving spouse or former spouse is also entitled to an annuity under the Plan based upon the marriage so terminated, the surviving spouse or former spouse may not receive both annuities but must elect which to receive.

(c) OFFSET FOR AMOUNT OF DEPENDENCY AND INDEMNITY COMPENSATION.—

(1) REQUIRED OFFSET.—If, upon the death of a person to whom section 1448 of this title applies, the surviving spouse or former spouse of that person is also entitled to dependency and indemnity compensation under section 1311(a) of title 38, the surviving spouse or former spouse may be paid an annuity under this section, but only in the amount calculated as follows:

(A) During the period beginning on January 1, 2020, and ending on December 31, 2020, the amount that the annuity otherwise payable under this section would exceed such dependency and indemnity compensation.

(B) During the period beginning on January 1, 2021, and ending on December 31, 2021,

the amount that the annuity otherwise payable under this section would exceed two-thirds of such dependency and indemnity compensation.

(C) During the period beginning on January 1, 2022, and ending on December 31, 2022, the amount that the annuity otherwise payable under this section would exceed one-third of such dependency and indemnity compensation.

(D) On and after January 1, 2023, the full amount of the annuity under this section.

(2) EFFECTIVE DATE OF OFFSET.—A reduction in an annuity under this section required by paragraph (1) shall be effective on the date of the commencement of the period of payment of such dependency and indemnity compensation under title 38.

(3) LIMITATION ON RECOUPMENT OF OFFSET AMOUNT.—Any amount subject to offset under this subsection that was previously paid to the surviving spouse or former spouse shall be recouped only to the extent that the amount paid exceeds any amount to be refunded under subsection (e). In notifying a surviving spouse or former spouse of the recoupment requirement, the Secretary shall provide the spouse or former spouse—

(A) a single notice of the net amount to be recouped or the net amount to be refunded, as applicable, under this subsection or subsection (e);

(B) a written explanation of the statutory requirements for recoupment of the offset amount and for refund of any applicable amount deducted from retired pay;

(C) a detailed accounting of how the offset amount being recouped and retired pay deduction amount being refunded were calculated; and

(D) contact information for a person who can provide information about the offset recoupment and retired pay deduction refund processes and answer questions the surviving spouse or former spouse may have about the requirements, processes, or amounts.

(d) LIMITATION ON PAYMENT OF ANNUITIES WHEN COVERAGE UNDER CIVIL SERVICE RETIREMENT ELECTED.—If, upon the death of a person to whom section 1448 of this title applies, that person had in effect a waiver of that person's retired pay for the purposes of subchapter III of chapter 83 of title 5 or chapter 84 of such title, an annuity under this section shall not be payable unless, in accordance with section 8339(j) or 8416(a) of title 5, that person notified the Office of Personnel Management that he did not desire any spouse surviving him to receive an annuity under section 8341(b) or 8442(a) of that title.

(e) REFUND OF AMOUNTS DEDUCTED FROM RETIRED PAY OR CRSC WHEN DIC OFFSET IS APPLICABLE.—

(1) FULL REFUND WHEN DIC GREATER THAN SBP ANNUITY.—If an annuity under this section is not payable because of subsection (c), any amount deducted from the retired pay or combat-related special compensation of the deceased under section 1452 of this title shall be refunded to the surviving spouse or former spouse.

(2) PARTIAL REFUND WHEN SBP ANNUITY REDUCED BY DIC.—If, because of subsection (c), the annuity payable is less than the amount established under section 1451 of this title, the annuity payable shall be recalculated under that section. The amount of the reduction in the retired pay required to provide that recalculated annuity shall be computed under section 1452 of this title, and the difference between the amount deducted before the computation of that recalculated annuity and the amount that would have been deducted on the basis of that recalculated annuity shall be refunded to the surviving spouse or former spouse.

(f) CHANGE IN ELECTION OF INSURABLE INTEREST OR FORMER SPOUSE BENEFICIARY.—

(1) AUTHORIZED CHANGES.—

(A) ELECTION IN FAVOR OF SPOUSE OR CHILD.—A person who elects to provide an annuity to a person designated by him under section 1448(b) of this title may, subject to paragraph (2), change that election and provide an annuity to his spouse or dependent child.

(B) NOTICE.—The Secretary concerned shall notify the former spouse or other natural person previously designated under section 1448(b) of this title of any change of election under subparagraph (A).

(C) PROCEDURES, EFFECTIVE DATE, ETC.—Any such change of election is subject to the same rules with respect to execution, revocation, and effectiveness as are set forth in section 1448(a)(5) of this title (without regard to the eligibility of the person making the change of election to make such an election under that section). Notwithstanding the preceding sentence, a change of election under this subsection to provide an annuity to a spouse instead of a former spouse may (subject to paragraph (2)) be made at any time after the person providing the annuity remarries without regard to the time limitation in section 1448(a)(5)(B) of this title.

(2) LIMITATION ON CHANGE IN BENEFICIARY WHEN FORMER SPOUSE COVERAGE IN EFFECT.—A person who, incident to a proceeding of divorce, dissolution, or annulment, is required by a court order to elect under section 1448(b) of this title to provide an annuity to a former spouse (or to both a former spouse and child), or who enters into a written agreement (whether voluntary or required by a court order) to make such an election, and who makes an election pursuant to such order or agreement, may not change that election under paragraph (1) unless, of the following requirements, whichever are applicable in a particular case are satisfied:

(A) In a case in which the election is required by a court order, or in which an agreement to make the election has been incorporated in or ratified or approved by a court order, the person—

(i) furnishes to the Secretary concerned a certified copy of a court order which is regular on its face and which modifies the provisions of all previous court orders relating to such election, or the agreement

to make such election, so as to permit the person to change the election; and

(ii) certifies to the Secretary concerned that the court order is valid and in effect.

(B) In a case of a written agreement that has not been incorporated in or ratified or approved by a court order, the person—

(i) furnishes to the Secretary concerned a statement, in such form as the Secretary concerned may prescribe, signed by the former spouse and evidencing the former spouse's agreement to a change in the election under paragraph (1); and

(ii) certifies to the Secretary concerned that the statement is current and in effect.

(3) REQUIRED FORMER SPOUSE ELECTION TO BE DEEMED TO HAVE BEEN MADE.—

(A) DEEMED ELECTION UPON REQUEST BY FORMER SPOUSE.—If a person described in paragraph (2) or (3) of section 1448(b) of this title is required (as described in subparagraph (B)) to elect under section 1448(b) of this title to provide an annuity to a former spouse and such person then fails or refuses to make such an election, such person shall be deemed to have made such an election if the Secretary concerned receives the following:

(i) REQUEST FROM FORMER SPOUSE.—A written request, in such manner as the Secretary shall prescribe, from the former spouse concerned requesting that such an election be deemed to have been made.

(ii) COPY OF COURT ORDER OR OTHER OFFICIAL STATEMENT.—Either—

(I) a copy of the court order, regular on its face, which requires such election or incorporates, ratifies, or approves the written agreement of such person; or

(II) a statement from the clerk of the court (or other appropriate official) that such agreement has been filed with the court in accordance with applicable State law.

(B) PERSONS REQUIRED TO MAKE ELECTION.—A person shall be considered for purposes of subparagraph (A) to be required to elect under section 1448(b) of this title to provide an annuity to a former spouse if—

(i) the person enters, incident to a proceeding of divorce, dissolution, or annulment, into a written agreement to make such an election and the agreement (I) has been incorporated in or ratified or approved by a court order, or (II) has been filed with the court of appropriate jurisdiction in accordance with applicable State law; or

(ii) the person is required by a court order to make such an election.

(C) TIME LIMIT FOR REQUEST BY FORMER SPOUSE.—An election may not be deemed to have been made under subparagraph (A) in the case of any person unless the Secretary concerned receives a request from the former spouse of the person within one year of the date of the court order or filing involved.

(D) EFFECTIVE DATE OF DEEMED ELECTION.—An election deemed to have been made under subparagraph (A) shall become effective on the day referred to in section 1448(b)(3)(E)(ii) of this title.

(4) FORMER SPOUSE COVERAGE MAY BE REQUIRED BY COURT ORDER.—A court order may require a person to elect (or to enter into an agreement to elect) under section 1448(b) of this title to provide an annuity to a former spouse (or to both a former spouse and child).

(g) LIMITATION ON CHANGING OR REVOKING ELECTIONS.—

(1) IN GENERAL.—An election under this section may not be changed or revoked.

(2) EXCEPTIONS.—Paragraph (1) does not apply to—

(A) a revocation of an election under section 1449(b) of this title; or

(B) a change in an election under subsection (f).

(h) TREATMENT OF ANNUITIES UNDER OTHER LAWS.—Except as provided in section 1451 of this title, an annuity under this section is in addition to any other payment to which a person is entitled under any other provision of law. Such annuity shall be considered as income under laws administered by the Secretary of Veterans Affairs.

(i) ANNUITIES EXEMPT FROM CERTAIN LEGAL PROCESS.—Except as provided in subsection (a)(4) or (*l*)(3)(B), an annuity under this section is not assignable or subject to execution, levy, attachment, garnishment, or other legal process.

(j) EFFECTIVE DATE OF RESERVE-COMPONENT ANNUITIES.—

(1) PERSONS MAKING SECTION 1448(e) DESIGNATION.—A reserve-component annuity shall be effective in accordance with the designation made under section 1448(e) of this title by the person providing the annuity.

(2) PERSONS DYING BEFORE MAKING SECTION 1448(e) DESIGNATION.—An annuity payable under section 1448(f) of this title shall be effective on the day after the date of the death of the person upon whose service the right to the annuity is based.

(k) ADJUSTMENT OF SPOUSE OR FORMER SPOUSE ANNUITY UPON LOSS OF DEPENDENCY AND INDEMNITY COMPENSATION.—

(1) READJUSTMENT IF BENEFICIARY 55 YEARS OF AGE OR MORE.—If a surviving spouse or former spouse whose annuity has been adjusted under subsection (c) subsequently loses entitlement to dependency and indemnity compensation under section 1311(a) of title 38 because of the remarriage of the surviving spouse, or former spouse, and if at the time of such remarriage the surviving spouse or former spouse is 55 years of age or more, the amount of the annuity of the surviving spouse or former spouse shall be readjusted, effective on the effective date of such loss of dependency and indemnity compensation, to the amount of the annuity which would be in effect with respect to the surviving spouse or former spouse if the adjustment under subsection (c) had never been made.

(2) REPAYMENT OF AMOUNTS PREVIOUSLY REFUNDED.—

(A) GENERAL RULE.—A surviving spouse or former spouse whose annuity is readjusted under paragraph (1) shall repay any amount refunded under subsection (e) by reason of the adjustment under subsection (c).

(B) INTEREST REQUIRED IF REPAYMENT NOT A LUMP SUM.—If the repayment is not made in a lump sum, the surviving spouse or former spouse shall pay interest on the amount to be repaid. Such interest shall commence on the date on which the first such payment is due and shall be applied over the period during which any part of the repayment remains to be paid.

(C) MANNER OF REPAYMENT; RATE OF INTEREST.—The manner in which such repayment shall be made, and the rate of any such interest, shall be prescribed in regulations under section 1455 of this title.

(D) DEPOSIT OF AMOUNTS REPAID.—An amount repaid under this paragraph (including any such interest) received by the Secretary of Defense shall be deposited into the Department of Defense Military Retirement Fund. Any other amount repaid under this paragraph shall be deposited into the Treasury as miscellaneous receipts.

(*l*) PARTICIPANTS IN THE PLAN WHO ARE MISSING.—

(1) AUTHORITY TO PRESUME DEATH OF MISSING PARTICIPANT.—

(A) IN GENERAL.—Upon application of the beneficiary of a participant in the Plan who is missing, the Secretary concerned may determine for purposes of this subchapter that the participant is presumed dead.

(B) PARTICIPANT WHO IS MISSING.—A participant in the Plan is considered to be missing for purposes of this subsection if—

(i) the retired pay of the participant has been suspended on the basis that the participant is missing; or

(ii) in the case of a participant in the Plan who would be eligible for reserve-component retired pay but for the fact that he is under 60 years of age, his retired pay, if he were entitled to retired pay, would be suspended on the basis that he is missing.

(C) REQUIREMENTS APPLICABLE TO PRESUMPTION OF DEATH.—Any such determination shall be made in accordance with regulations prescribed under section 1455 of this title. The Secretary concerned may not make a determination for purposes of this subchapter that a participant who is missing is presumed dead unless the Secretary finds that—

(i) the participant has been missing for at least 30 days; and

(ii) the circumstances under which the participant is missing would lead a reasonably prudent person to conclude that the participant is dead.

(2) COMMENCEMENT OF ANNUITY.—Upon a determination under paragraph (1) with respect to a participant in the Plan, an annuity otherwise payable under this subchapter shall be paid as if the participant died on the date as of which the retired pay of the participant was suspended.

(3) EFFECT OF PERSON NOT BEING DEAD.—

(A) TERMINATION OF ANNUITY.—If, after a determination under paragraph (1), the Secretary concerned determines that the participant is alive—

(i) any annuity being paid under this subchapter by reason of this subsection shall be terminated; and

(ii) the total amount of any annuity payments made by reason of this subsection shall constitute a debt to the United States.

(B) COLLECTION FROM PARTICIPANT OF ANNUITY AMOUNTS ERRONEOUSLY PAID.—A debt under subparagraph (A)(ii) may be collected or offset—

(i) from any retired pay otherwise payable to the participant;

(ii) if the participant is entitled to compensation under chapter 11 of title 38, from that compensation; or

(iii) if the participant is entitled to any other payment from the United States, from that payment.

(C) COLLECTION FROM BENEFICIARY.—If the participant dies before the full recovery of the amount of annuity payments described in subparagraph (A)(ii) has been made by the United States, the remaining amount of such annuity payments may be collected from the participant's beneficiary under the Plan if that beneficiary was the recipient of the annuity payments made by reason of this subsection.

(m) SPECIAL SURVIVOR INDEMNITY ALLOWANCE.—

(1) PROVISION OF ALLOWANCE.—The Secretary concerned shall pay a monthly special survivor indemnity allowance under this subsection to the surviving spouse or former spouse of a member of the uniformed services to whom section 1448 of this title applies if—

(A) the surviving spouse or former spouse is entitled to dependency and indemnity compensation under section 1311(a) of title 38;

(B) except for subsection (c) of this section, the surviving spouse or former spouse is eligible for an annuity by reason of a participant in the Plan under subsection (a)(1) of section 1448 of this title or by reason of coverage under subsection (d) or (f) of such section; and

(C) the eligibility of the surviving spouse or former spouse for an annuity as described in subparagraph (B) is affected by subsection (c) of this section.

(2) AMOUNT OF PAYMENT.—Subject to paragraph (3), the amount of the allowance paid to an eligible survivor under paragraph (1) for a month shall be equal to—

(A) for months during fiscal year 2009, $50;
(B) for months during fiscal year 2010, $60;
(C) for months during fiscal year 2011, $70;
(D) for months during fiscal year 2012, $80;
(E) for months during fiscal year 2013, $90;
(F) for months during fiscal year 2014, $150;
(G) for months during fiscal year 2015, $200;
(H) for months during fiscal year 2016, $275;

(I) for months from October 2016 through November 2018, $310; and

(J) for months after November 2018, the amount determined in accordance with paragraph (6).

(3) LIMITATION.—The amount of the allowance paid to an eligible survivor under paragraph (1) for any month may not exceed the amount of the annuity for that month that is subject to offset under subsection (c).

(4) STATUS OF PAYMENTS.—An allowance paid under this subsection does not constitute an annuity, and amounts so paid are not subject to adjustment under any other provision of law.

(5) SOURCE OF FUNDS.—The special survivor indemnity allowance shall be paid from amounts in the Department of Defense Military Retirement Fund established under section 1461 of this title.

(6) COST-OF-LIVING ADJUSTMENTS AFTER NOVEMBER 2018.—

(A) IN GENERAL.—Whenever retired pay is increased for a month under section 1401a of this title (or any other provision of law), the amount of the allowance payable under paragraph (1) for that month shall also be increased.

(B) AMOUNT OF INCREASE.—With respect to an eligible survivor of a member of the uniformed services, the increase for a month shall be—

(i) the amount payable pursuant to paragraph (2) for months during the preceding 12-month period; plus

(ii) an amount equal to a percentage of the amount determined pursuant to clause (i), which percentage is the percentage by which the retired pay of the member would have increased for the month, as described in subparagraph (A), if the member was alive (and otherwise entitled to such pay).

(C) ROUNDING DOWN.—The monthly amount of an allowance payable under this subsection, if not a multiple of $1, shall be rounded to the next lower multiple of $1.

(D) PUBLIC NOTICE ON AMOUNT OF ALLOWANCE PAYABLE.—Whenever an increase in the amount of the allowance payable under paragraph (1) is made pursuant to this paragraph, the Secretary of Defense shall publish the amount of the allowance so payable by reason of such increase, including the months for which payable.

(Added Pub. L. 92–425, § 1(3), Sept. 21, 1972, 86 Stat. 708; amended Pub. L. 94–496, § 1(3), (4), Oct. 14, 1976, 90 Stat. 2375; Pub. L. 95–397, title II, §§ 203, 207(b), (c), Sept. 30, 1978, 92 Stat. 845, 848; Pub. L. 97–22, § 11(a)(3), July 10, 1981, 95 Stat. 137; Pub. L. 97–252, title X, § 1003(c), (d), Sept. 8, 1982, 96 Stat. 736; Pub. L. 98–94, title IX, § 941(a)(3), (c)(3), Sept. 24, 1983, 97 Stat. 653; Pub. L. 98–525, title VI, §§ 642(b), 644, Oct. 19, 1984, 98 Stat. 2546, 2548; Pub. L. 99–145, title VII, §§ 713(b), 717, 718, 719(4)–(6), (8)(A), 722, 723(a), (b)(1), title XIII, § 1303(a)(11), Nov. 8, 1985, 99 Stat. 672, 674–677, 739; Pub. L. 99–661, div. A, title VI, §§ 641(a), (b)(2), (3), 643(a), title XIII, § 1343(a)(8)(C), Nov. 14, 1986, 100 Stat. 3885, 3886, 3992; Pub. L. 100–26, § 3(3), Apr. 21, 1987, 101 Stat. 273; Pub. L. 100–180, div. A, title VI, § 636(a), Dec. 4, 1987, 101 Stat. 1106; Pub. L. 100–224, § 5(b)(1), Dec. 30, 1987, 101 Stat. 1538; Pub. L. 101–189, div. A, title XIV, § 1407(a)(2)–(4), title XVI, § 1621(a)(1), Nov. 29, 1989, 103 Stat. 1588, 1602; Pub. L. 103–337, div. A, title X, § 1070(e)(3), Oct. 5, 1994, 108 Stat. 2859; Pub. L. 104–201, div. A, title VI, § 634, Sept. 23, 1996, 110 Stat. 2561; Pub. L. 105–85, div. A, title VI, § 642(a), Nov. 18, 1997, 111 Stat. 1799; Pub. L. 105–261, div. A, title VI, § 643(b), Oct. 17, 1998, 112 Stat. 2048; Pub. L. 106–398, § 1 [[div. A], title VI, § 655(c)(4)], Oct. 30, 2000, 114 Stat. 1654, 1654A–166; Pub. L. 110–181, div. A, title VI, §§ 643(a), 644, Jan. 28, 2008, 122 Stat. 157, 158; Pub. L. 110–417, [div. A], title VI, § 631(a), Oct. 14, 2008, 122 Stat. 4492; Pub. L. 111–31, div. B, title II, § 201, June 22, 2009, 123 Stat. 1857; Pub. L. 112–239, div. A, title VI, § 641(b), Jan. 2, 2013, 126 Stat. 1783; Pub. L. 113–291, div. A, title VI, § 624(a)(1), (2)(A), Dec. 19, 2014, 128 Stat. 3403; Pub. L. 114–328, div. A, title VI, §§ 642(d), 643(c)(2), 646, Dec. 23, 2016, 130 Stat. 2165, 2166, 2168; Pub. L. 115–91, div. A, title VI, § 621, Dec. 12, 2017, 131 Stat. 1427; Pub. L. 115–232, div. A, title VI, § 622(a), (b), Aug. 13, 2018, 132 Stat. 1799; Pub. L. 116–92, div. A, title VI, § 622(a)(1), Dec. 20, 2019, 133 Stat. 1427.)

AMENDMENTS

2019—Subsec. (c)(1). Pub. L. 116–92 substituted ‘‘calculated as follows:’’ for ‘‘that the annuity otherwise payable under this section would exceed that compensation.’’ and added subpars. (A) to (D).

2018—Subsec. (m)(2)(I). Pub. L. 115–232, § 622(a)(1), substituted ‘‘November’’ for ‘‘December’’.

Subsec. (m)(2)(J). Pub. L. 115–232, § 622(a)(2), substituted ‘‘for months after November 2018’’ for ‘‘for months during any calendar year after 2018’’.

Subsec. (m)(6). Pub. L. 115–232, § 622(b), substituted ‘‘AFTER NOVEMBER 2018’’ for ‘‘AFTER 2018’’ in heading, added subpars. (A) to (D), and struck out former subpars. (A) and (B) which read as follows:

‘‘(A) IN GENERAL.—The amount of the allowance payable under paragraph (1) for months during any calendar year beginning after 2018 shall be—

‘‘(i) the amount payable pursuant to paragraph (2) for months during the preceding calendar year, plus

‘‘(ii) an amount equal to the percentage of the amount determined pursuant to clause (i) which percentage is equal to the percentage increase in retired pay of members and former members of the armed forces for such calendar year under section 1401a of this title.

‘‘(B) PUBLIC NOTICE ON AMOUNT OF ALLOWANCE PAYABLE.—The Secretary of Defense shall publish in the Federal Register each year the amount of the allowance payable under paragraph (1) for months in such year by reason of the operation of this paragraph.’’

2017—Subsec. (m)(2)(I), (J). Pub. L. 115–91, § 621(1), added subpars. (I) and (J) and struck out former subpar. (I) which read as follows: ‘‘for months during each of fiscal years 2017 and 2018, $310.’’

Subsec. (m)(6). Pub. L. 115–91, § 621(2), added par. (6) and struck out former par. (6). Prior to amendment, text read as follows: ‘‘This subsection shall only apply with respect to the month beginning on October 1, 2008, and subsequent months through the month ending on May 31, 2018. Effective on June 1, 2018, the authority provided by this subsection shall terminate. No special survivor indemnity allowance may be paid to any person by reason of this subsection for any period before October 1, 2008, or beginning on or after June 1, 2018.’’

2016—Subsec. (e). Pub. L. 114–328, § 643(c)(2)(A), inserted ‘‘or CRSC’’ after ‘‘Retired Pay’’ in heading.

Subsec. (e)(1). Pub. L. 114–328, § 643(c)(2)(B), inserted ‘‘or combat-related special compensation’’ after ‘‘from the retired pay’’.

Subsec. (m)(1)(B). Pub. L. 114–328, § 642(d), inserted ''or (f)'' after ''subsection (d)''.

Subsec. (m)(2)(I). Pub. L. 114–328, § 646(1), substituted ''each of fiscal years 2017 and 2018'' for ''fiscal year 2017''.

Subsec. (m)(6). Pub. L. 114–328, § 646(2), substituted ''May 31, 2018'' for ''September 30, 2017'' and substituted ''June 1, 2018'' for ''October 1, 2017'' in two places.

2014—Subsec. (a)(4), (5). Pub. L. 113–291, § 624(a)(1), added par. (4) and redesignated former par. (4) as (5).

Subsec. (i). Pub. L. 113–291, § 624(a)(2)(A), inserted ''(a)(4) or'' after ''subsection''.

2013—Subsec. (d). Pub. L. 112–239 inserted ''or chapter 84 of such title'' after ''chapter 83 of title 5'', ''or 8416(a)'' after ''8339(j)'', and ''or 8442(a)'' after ''8341(b)''.

2009—Subsec. (m)(2)(F) to (I). Pub. L. 111–31, § 201(a), added subpars. (F) to (I) and struck out former subpar. (F) which read as follows: ''for months after fiscal year 2013, $100.''

Subsec. (m)(6). Pub. L. 111–31, § 201(b), substituted ''September 30, 2017'' for ''February 28, 2016'' and substituted ''October 1, 2017'' for ''March 1, 2016'' in two places.

2008—Subsec. (c)(3). Pub. L. 110–181, § 643(a), added par. (3).

Subsec. (m). Pub. L. 110–181, § 644, added subsec. (m).

Subsec. (m)(1)(B). Pub. L. 110–417 substituted ''subsection (a)(1) of section 1448 of this title or by reason of coverage under subsection (d) of such section'' for ''section 1448(a)(1) of this title''.

2000—Subsec. (j)(1). Pub. L. 106–398 substituted ''A reserve-component annuity shall be effective in accordance with the designation made under section 1448(e) of this title by the person providing the annuity.'' for ''An annuity elected by a person providing a reserve-component annuity shall be effective in accordance with the designation made by such person under section 1448(e) of this title.''

1998—Subsec. (f)(3)(D). Pub. L. 105–261 substituted ''the day referred to in section 1448(b)(3)(E)(ii) of this title'' for ''the first day of the first month which begins after the date of the court order or filing involved''.

1997—Subsec. (f)(1)(C). Pub. L. 105–85 inserted at end ''Notwithstanding the preceding sentence, a change of election under this subsection to provide an annuity to a spouse instead of a former spouse may (subject to paragraph (2)) be made at any time after the person providing the annuity remarries without regard to the time limitation in section 1448(a)(5)(B) of this title.''

1996—Pub. L. 104–201 amended section generally, revising and restating provisions relating to payment of annuities and beneficiaries and inserting subsec., par., and subpar. headings.

1994—Subsecs. (c), (k)(1). Pub. L. 103–337 substituted ''section 1311(a) of title 38'' for ''section 411(a) of title 38''.

1989—Subsec. (f)(3)(B). Pub. L. 101–189, § 1407(a)(4), substituted ''within one year of the date of the court order or filing involved'' for ''before October 1, 1985, or within one year of the date of the court order or filing involved, whichever is later''.

Subsec. (h). Pub. L. 101–189, § 1621(a)(1), substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

Subsec. (*l*)(1). Pub. L. 101–189, § 1407(a)(2), substituted ''reserve-component retired pay'' for ''retired pay under chapter 67 of this title''.

Subsec. (*l*)(2). Pub. L. 101–189, § 1407(a)(3), struck out ''or retainer'' after ''of which the retired''.

1987—Subsec. (b). Pub. L. 100–26, § 3(3), made technical amendment to directory language of Pub. L. 99–661, § 643(a). See 1986 Amendment note below.

Subsec. (f)(3)(A). Pub. L. 100–224 struck out second of two commas after ''required by a court order to make such an election''.

Subsec. (k)(1). Pub. L. 100–180 substituted ''55 years of age'' for ''60 years of age''.

1986—Subsec. (b). Pub. L. 99–661, § 643(a), as amended by Pub. L. 100–26, § 3(3), substituted ''age 55'' for ''age 60'' in two places.

Subsec. (c). Pub. L. 99–661, § 1343(a)(8)(C), substituted ''entitled to dependency and indemnity compensation'' for ''entitled to compensation''.

Subsec. (f)(2). Pub. L. 99–661, § 641(b)(2)(A), substituted ''is required by a court order to elect under section 1448(b) of this title to provide an annuity to a former spouse (or to both a former spouse and child), or who enters into a written agreement (whether voluntary or required by a court order) to make such an election, and who makes an election pursuant to such order or agreement,'' for ''enters into a voluntary written agreement to elect under section 1448(b) of this title to provide an annuity to a former spouse and who makes an election pursuant to such agreement''.

Subsec. (f)(2)(A). Pub. L. 99–661, § 641(b)(2)(B), substituted ''in a case in which the election is required by a court order, or in which an agreement to make the election'' for ''in a case in which such agreement''.

Subsec. (f)(2)(A)(i). Pub. L. 99–661, § 641(b)(2)(C), substituted ''relating to such election, or the agreement to make such election,'' for ''relating to the agreement to make such election''.

Subsec. (f)(2)(B). Pub. L. 99–661, § 641(b)(2)(D), substituted ''of a written agreement that'' for ''in which such agreement''.

Subsec. (f)(3)(A). Pub. L. 99–661, § 641(b)(3), struck out ''voluntary'' before ''written agreement'' in two places, inserted ''or if such person is required by a court order to make such an election,'' after ''applicable'' and inserted ''requires such election or'' after ''on its face, which''.

Subsec. (f)(4). Pub. L. 99–661, § 641(a), amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''Nothing in this chapter authorizes any court to order any person to elect under section 1448(b) of this title to provide an annuity to a former spouse unless such person has voluntarily agreed in writing to make such election.''

1985—Subsec. (a)(1), (2). Pub. L. 99–145, § 723(a)(1), inserted ''or the eligible former spouse'' after ''widow or widower''.

Subsec. (a)(3). Pub. L. 99–145, § 723(a)(2), inserted ''(with the concurrence of the person's spouse, if required under section 1448(a)(3) of this title)'' after ''title applies'', and ''or former spouse'' after ''the spouse''.

Subsec. (a)(4). Pub. L. 99–145, § 723(a)(3), struck out ''former spouse or other'' before ''natural person'' in two places.

Subsec. (b). Pub. L. 99–145, § 723(b)(1), substituted ''widow, widower, or former spouse'' for ''widow or widower'' in eight places.

Pub. L. 99–145, § 719(4), substituted ''under the Plan'' for ''under this section''.

Subsec. (c). Pub. L. 99–145, § 723(b)(1), substituted ''widow, widower, or former spouse'' for ''widow or widower'' in two places.

Pub. L. 99–145, § 718, inserted provision respecting the effective date of the dependency and indemnity compensation offset.

Subsec. (d). Pub. L. 99–145, § 719(8)(A), substituted ''retired pay'' for ''retired or retainer pay''.

Subsec. (e). Pub. L. 99–145, § 719(8)(A), substituted ''retired pay'' for ''retired or retainer pay'' in two places.

Pub. L. 99–145, § 723(b)(1), substituted ''widow, widower, or former spouse'' for ''widow or widower'' in two places.

Subsec. (f)(3)(A). Pub. L. 99–145, § 722(1), inserted ''or has been filed with the court of appropriate jurisdiction in accordance with applicable State law'' after ''by a court order'' and ''or receives a statement from the clerk of the court (or other appropriate official) that such agreement has been filed with the court in accordance with applicable State law'' after ''voluntary written agreement of such person''.

Subsec. (f)(3)(B), (C). Pub. L. 99–145, § 722(2), inserted ''or filing'' after ''court order''.

Subsec. (i). Pub. L. 99–145, § 1303(a)(11)(A), substituted ''subsection (*l*)(3)(B)'' for ''subsection (*l*)''.

Subsec. (j). Pub. L. 99–145, § 719(5), substituted ''a person providing a reserve-component annuity'' for ''any

person providing an annuity by virtue of eligibility under section 1448(a)(1)(B) of this title''.

Pub. L. 99–145, §713(b), inserted provision respecting the effective date of an annuity payable under section 1448(f) of this title.

Subsec. (k). Pub. L. 99–145, §723(b)(1), substituted ''widow, widower, or former spouse'' for ''widow or widower'' wherever appearing.

Subsec. (k)(1). Pub. L. 99–145, §717(1), (2), designated existing provisions as par. (1) and substituted ''had never been made.'' for ''had never been made, but such readjustment may not be made until the widow or widower repays any amount refunded under subsection (e) by reason of the adjustment under subsection (c).''

Subsec. (k)(2). Pub. L. 99–145, §717(3), added par. (2).

Subsec. (*l*)(1). Pub. L. 99–145, §719(6)(A), (8)(A), substituted in first sentence ''the Plan'' for ''the plan'' in two places, and substituted ''retired pay'' for ''retired or retainer pay'' before ''has been suspended''.

Subsec. (*l*)(2). Pub. L. 99–145, §719(6)(B), struck out ''the provision of'' before ''this subchapter''.

Subsec. (*l*)(3)(A). Pub. L. 99–145, §1303(a)(11)(B), struck out ''(notwithstanding subsection (h))'' before ''may be collected''.

Subsec. (*l*)(3)(A)(i). Pub. L. 99–145, §719(8)(A), substituted ''retired pay'' for ''retried or retainer pay''.

1984—Subsec. (f)(3), (4). Pub. L. 98–525, §644, added par. (3) and redesignated former par. (3) as (4).

Subsec. (i). Pub. L. 98–525, §642(b)(1), substituted ''Except as provided in subsection (*l*), an'' for ''An''.

Subsec. (*l*). Pub. L. 98–525, §642(b)(2), added subsec. (*l*).

1983—Subsec. (a)(4). Pub. L. 98–94, §941(a)(3)(A), struck out ''at the time the person to whom section 1448 applies became entitled to retired or retainer pay'' after ''section 1448(b) of this title''.

Subsec. (f)(1). Pub. L. 98–94, §941(a)(3)(B), inserted ''(without regard to the eligibility of the person making the change of election to make an election under such section)'' after ''section 1448(a)(5) of this title''.

Pub. L. 98–94, §941(c)(3)(A), struck out ''of this subsection'' after ''subject to paragraph (2)''.

Subsec. (f)(2). Pub. L. 98–94, §941(c)(3)(B), substituted ''or annulment,'' for ''annulment, or legal separation,''.

1982—Subsec. (a)(4). Pub. L. 97–252, §1003(c), substituted ''former spouse or other natural person'' for ''natural person'' and ''unless the election to provide an annuity to the former spouse or other natural person has been changed as provided in subsection (f)'' for ''if there is no eligible beneficiary under clause (1) or clause (2)''.

Subsec. (f). Pub. L. 97–252, §1003(d), designated existing provisions as par. (1), substituted ''A person who elects to provide an annuity to a person designated by him under section 1448(b) of this title may, subject to paragraph (2) of this subsection,'' for ''An unmarried person who elects to provide an annuity to a person designated by him under subsection (a)(4), but who later marries or acquires a dependent child,'', inserted provision that the Secretary concerned notify the former spouse or such other natural person previously designated under section 1448(b) of any such change in election, and added pars. (2) and (3).

1981—Subsec. (d). Pub. L. 97–22 substituted ''Office of Personnel Management'' for ''Civil Service Commission''.

1978—Subsec. (a). Pub. L. 95–397, §203(1), inserted ''(or on such other day as he may provide under subsection (j))'' after ''death of a person to whom section 1448 of this title applies''.

Subsec. (d). Pub. L. 95–397, §207(b), substituted ''section 8339(j)'' for ''section 8339(i)''.

Subsec. (f). Pub. L. 95–397, §207(c), substituted ''section 1448(a)(5)'' for ''the last three sentences of section 1448(a)''.

Subsecs. (j), (k). Pub. L. 95–397, §203(2), added subsecs. (j) and (k).

1976—Subsec. (a)(3), (4). Pub. L. 94–496, §1(3), added par. (3) and redesignated former par. (3) as (4).

Subsec. (f). Pub. L. 94–496, §1(4), substituted ''(a)(4)'' for ''(a)(3)''.

EFFECTIVE DATE OF 2019 AMENDMENT

Amendment by Pub. L. 116–92 effective on the first day of the first month that begins after Dec. 20, 2019, see section 622(f) of Pub. L. 116–92, set out as a note under section 1448 of this title.

EFFECTIVE DATE OF 2018 AMENDMENT

Pub. L. 115–232, div. A, title VI, §622(c), Aug. 13, 2018, 132 Stat. 1800, provided that: ''The amendments made by this section [amending this section] shall take effect on December 1, 2018.''

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by section 642(d) of Pub. L. 114–328 inapplicable to accural of annuity benefits under subchapter II of chapter 73 of this title for any period prior to Dec. 23, 2016, with provisions for election of benefits payable to dependent children, see section 642(e) of Pub. L. 114–328, set out as a note under section 1448 of this title.

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112–239, div. A, title VI, §641(c), Jan. 2, 2013, 126 Stat. 1783, provided that: ''The amendments made by this section [amending this section and section 1452 of this title] shall apply with respect to any participant electing an annuity for survivors under chapter 84 of title 5, United States Code, on or after the date of the enactment of this Act [Jan. 2, 2013].''

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–417, [div. A], title VI, §631(b), Oct. 14, 2008, 122 Stat. 4492, provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to the month beginning on October 1, 2008, and subsequent months as provided by paragraph (6) of subsection (m) of section 1450 of title 10, United States Code, as added by section 644 of the National Defense Authorization Act for Fiscal Year 2008 [Pub. L. 110–181].''

Pub. L. 110–181, div. A, title VI, §643(b), Jan. 28, 2008, 122 Stat. 157, provided that: ''Paragraph (3) of subsection (c) of section 1450 of title 10, United States Code, as added by subsection (a), shall apply with respect to the recoupment on or after April 1, 2008, of amounts subject to offset under such subsection.''

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–85, div. A, title VI, §642(b), Nov. 18, 1997, 111 Stat. 1799, provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to marriages occurring before, on, or after the date of the enactment of this Act [Nov. 18, 1997].''

EFFECTIVE DATE OF 1987 AMENDMENTS

Pub. L. 100–180, div. A, title VI, §636(b), Dec. 4, 1987, 101 Stat. 1106, provided that: ''The amendment made by subsection (a) [amending this section] shall apply as if included in the amendments made by section 643(a) of the National Defense Authorization Act for Fiscal Year 1987 (Public Law 99–661; 100 Stat. 3886) [amending this section].''

Amendment by Pub. L. 100–26 applicable as if included in Pub. L. 99–661 when enacted on Nov. 14, 1986, see section 12(a) of Pub. L. 100–26, set out as a note under section 776 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–661, div. A, title VI, §641(c), Nov. 14, 1986, 100 Stat. 3886, provided that: ''The amendments made by this section [amending this section and section 1448 of this title] apply to court orders issued on or after the date of the enactment of this Act [Nov. 14, 1986].''

Pub. L. 99–661, div. A, title VI, §643(b), Nov. 14, 1986, 100 Stat. 3886, provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to remarriages that occur on or after the date of the enactment of this Act [Nov. 14, 1986], but

only with respect to payments for periods after the date of the enactment of this Act.''

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by title VII of Pub. L. 99–145 effective Mar. 1, 1986, with prohibition against accrual of benefits to any person by reason of the enactment of such title VII for any period before Mar. 1, 1986, see section 731 of Pub. L. 99–145, set out as a note under section 1447 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT; TRANSITION PROVISIONS

Amendment by Pub. L. 97–252 effective Feb. 1, 1983, and applicable to persons becoming eligible to participate in Survivor Benefit Plan provided for in this subchapter before, on, or after Feb. 1, 1983, see section 1006 of Pub. L. 97–252, set out as an Effective Date; Transition Provisions note under section 1408 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–397 effective Oct. 1, 1978, and applicable to annuities payable by virtue of amendment for months beginning on or after such date, see section 210 of Pub. L. 95–397, set out as a note under section 1447 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–496 effective Sept. 21, 1972, see section 3 of Pub. L. 94–496, set out as a note under section 1447 of this title.

PROHIBITION ON RETROACTIVE BENEFITS

Pub. L. 116–92, div. A, title VI, § 622(b), Dec. 20, 2019, 133 Stat. 1427, provided that: ''No benefits may be paid to any person for any period before the effective date provided under subsection (f) [enacting provisions set out as a note under section 1448 of this title] by reason of the amendments made by subsection (a) [amending this section and section 1451 of this title].''

PROHIBITION ON RECOUPMENT OF CERTAIN AMOUNTS PREVIOUSLY REFUNDED TO SBP RECIPIENTS

Pub. L. 116–92, div. A, title VI, § 622(c), Dec. 20, 2019, 133 Stat. 1427, provided that: ''A surviving spouse who is or has been in receipt of an annuity under the Survivor Benefit Plan under subchapter II of chapter 73 of title 10, United States Code, that is in effect before the effective date provided under subsection (f) [enacting provisions set out as a note under section 1448 of this title] and that is adjusted by reason of the amendments made by subsection (a) [amending this section and section 1451 of this title] and who has received a refund of retired pay under section 1450(e) of title 10, United States Code, shall not be required to repay such refund to the United States.''

RECOMPUTATION OF ANNUITIES

Pub. L. 108–375, div. A, title VI, § 644(c), Oct. 28, 2004, 118 Stat. 1961, as amended by Pub. L. 110–417, [div. A], title VI, § 632, Oct. 14, 2008, 122 Stat. 4493, provided that:

''(1) PERIODIC RECOMPUTATION REQUIRED.—Effective on the first day of each month specified in paragraph (2)—

''(A) each annuity under section 1450 of title 10, United States Code, that commenced before that month, is computed under a provision of section 1451 of that title amended by subsection (a), and is payable for that month shall be recomputed so as to be equal to the amount that would be in effect if the percent applicable for that month under that provision, as so amended, had been used for the initial computation of the annuity; and

''(B) each supplemental survivor annuity under [former] section 1457 of such title that commenced before that month and is payable for that month shall be recomputed so as to be equal to the amount that would be in effect if the percent applicable for that month under that section, as amended by this section, had been used for the initial computation of the supplemental survivor annuity.

''(2) TIME FOR RECOMPUTATION.—The requirement under paragraph (1) for recomputation of certain annuities applies with respect to the following months:

''(A) October 2005.

''(B) April 2006.

''(C) April 2007.

''(D) April 2008.

''(3) SAVINGS PROVISION.—If, as a result of the recomputation of annuities under section 1450 of title 10, United States Code, and supplemental survivor annuities under [former] section 1457 of such title, as required by paragraph (1), the total amount of both annuities to be paid to an annuitant for a month would be less (because of the offset required by section 1450(c) of such title for dependency and indemnity compensation) than the amount that would be paid to the annuitant in the absence of recomputation, the Secretary of Defense shall take such actions as are necessary to adjust the annuity amounts to eliminate the reduction.''

[Pub. L. 110–417, [div. A], title VI, § 632, Oct. 14, 2008, 122 Stat. 4493, provided that the amendment made by that section to section 644(c) of Pub. L. 108–375, set out above, is effective as of Oct. 28, 2004, and as if included in section 644(c) of Pub. L. 108–375 as enacted.]

EFFECTUATION OF INTENDED SBP ANNUITY FOR FORMER SPOUSE WHEN NOT ELECTED BY REASON OF UNTIMELY DEATH OF RETIREE

Pub. L. 106–65, div. A, title VI, § 657, Oct. 5, 1999, 113 Stat. 668, as amended by Pub. L. 106–398, § 1 [[div. A], title X, § 1087(c)(1)(D)], Oct. 30, 2000, 114 Stat. 1654, 1654A–292, provided that:

''(a) CASES NOT COVERED BY EXISTING AUTHORITY.—Paragraph (3) of section 1450(f) of title 10, United States Code, as in effect on the date of the enactment of this Act [Oct. 5, 1999], shall apply in the case of a former spouse of any person referred to in that paragraph who—

''(1) incident to a proceeding of divorce, dissolution, or annulment—

''(A) entered into a written agreement on or after August 19, 1983, to make an election under section 1448(b) of such title to provide an annuity to the former spouse (the agreement thereafter having been incorporated in or ratified or approved by a court order or filed with the court of appropriate jurisdiction in accordance with applicable State law); or

''(B) was required by a court order dated on or after such date to make such an election for the former spouse; and

''(2) before making the election, died within 21 days after the date of the agreement referred to in paragraph (1)(A) or the court order referred to in paragraph (1)(B), as the case may be.

''(b) ADJUSTED TIME LIMIT FOR REQUEST BY FORMER SPOUSE.—For the purposes of paragraph (3)(C) of section 1450(f) of title 10, United States Code, a court order or filing referred to in subsection (a)(1) of this section that is dated before October 19, 1984, shall be deemed to be dated on the date of the enactment of this Act [Oct. 5, 1999].''

[Pub. L. 106–398, § 1 [[div. A], title X, § 1087(c)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–292, provided that: ''In the case of any former spouse to whom paragraph (3) of section 1450(f) of title 10, United States Code, applies by reason of the amendment made by paragraph (1)(D) [amending section 657 of Pub. L. 106–65, set out above], the provisions of subsection (b) of section 657 of the National Defense Authorization Act for Fiscal Year 2000 [Pub. L. 106–65, set out above] shall be applied by using the date of the enactment of this Act [Oct. 30, 2000], rather than the date of the enactment of that Act [Oct. 5, 1999].'']

§ 1451. Amount of annuity

(a) COMPUTATION OF ANNUITY FOR A SPOUSE, FORMER SPOUSE, OR CHILD.—

(1) STANDARD ANNUITY.—In the case of a standard annuity provided to a beneficiary under section 1450(a) of this title (other than under section 1450(a)(5)), the monthly annuity payable to the beneficiary shall be determined as follows:

(A) BENEFICIARY UNDER 62 YEARS OF AGE.—If the beneficiary is under 62 years of age or is a dependent child when becoming entitled to the annuity, the monthly annuity shall be the amount equal to 55 percent of the base amount.

(B) BENEFICIARY 62 YEARS OF AGE OR OLDER.—

(i) GENERAL RULE.—If the beneficiary (other than a dependent child) is 62 years of age or older when becoming entitled to the annuity, the monthly annuity shall be the amount equal to the product of the base amount and the percent applicable to the month, as follows:

(I) For a month before October 2005, the applicable percent is 35 percent.

(II) For months after September 2005 and before April 2006, the applicable percent is 40 percent.

(III) For months after March 2006 and before April 2007, the applicable percent is 45 percent.

(IV) For months after March 2007 and before April 2008, the applicable percent is 50 percent.

(V) For months after March 2008, the applicable percent is 55 percent.

(ii) RULE IF BENEFICIARY ELIGIBLE FOR SOCIAL SECURITY OFFSET COMPUTATION.—If the beneficiary is eligible to have the annuity computed under subsection (e) and if computation of the annuity under that subsection is more favorable to the beneficiary than computation under clause (i), the annuity shall be computed under that subsection rather than under clause (i).

(2) RESERVE-COMPONENT ANNUITY.—In the case of a reserve-component annuity provided to a beneficiary under section 1450(a) of this title (other than under section 1450(a)(5)), the monthly annuity payable to the beneficiary shall be determined as follows:

(A) BENEFICIARY UNDER 62 YEARS OF AGE.—If the beneficiary is under 62 years of age or is a dependent child when becoming entitled to the annuity, the monthly annuity shall be the amount equal to a percentage of the base amount that—

(i) is less than 55 percent; and

(ii) is determined under subsection (f).

(B) BENEFICIARY 62 YEARS OF AGE OR OLDER.—

(i) GENERAL RULE.—If the beneficiary (other than a dependent child) is 62 years of age or older when becoming entitled to the annuity, the monthly annuity shall be the amount equal to a percentage of the base amount that—

(I) is less than the percent specified under subsection (a)(1)(B)(i) as being applicable for the month; and

(II) is determined under subsection (f).

(ii) RULE IF BENEFICIARY ELIGIBLE FOR SOCIAL SECURITY OFFSET COMPUTATION.—If the beneficiary is eligible to have the annuity computed under subsection (e) and if, at the time the beneficiary becomes entitled to the annuity, computation of the annuity under that subsection is more favorable to the beneficiary than computation under clause (i), the annuity shall be computed under that subsection rather than under clause (i).

(b) INSURABLE INTEREST BENEFICIARY.—

(1) STANDARD ANNUITY.—In the case of a standard annuity provided to a beneficiary under section 1450(a)(5) of this title, the monthly annuity payable to the beneficiary shall be the amount equal to 55 percent of the retired pay of the person who elected to provide the annuity after the reduction in that pay in accordance with section 1452(c) of this title.

(2) RESERVE-COMPONENT ANNUITY.—In the case of a reserve-component annuity provided to a beneficiary under section 1450(a)(5) of this title, the monthly annuity payable to the beneficiary shall be the amount equal to a percentage of the retired pay of the person who elected to provide the annuity after the reduction in such pay in accordance with section 1452(c) of this title that—

(A) is less than 55 percent; and

(B) is determined under subsection (f).

(3) COMPUTATION OF RESERVE-COMPONENT ANNUITY WHEN PARTICIPANT DIES BEFORE AGE 60.—For the purposes of paragraph (2), a person—

(A) who provides an annuity that is determined in accordance with that paragraph;

(B) who dies before becoming 60 years of age; and

(C) who at the time of death is otherwise entitled to retired pay,

shall be considered to have been entitled to retired pay at the time of death. The retired pay of such person for the purposes of such paragraph shall be computed on the basis of the rates of basic pay in effect on the date on which the annuity provided by such person is to become effective in accordance with the designation of such person under section 1448(e) of this title.

(c) ANNUITIES FOR SURVIVORS OF CERTAIN PERSONS DYING DURING A PERIOD OF SPECIAL ELIGIBILITY FOR SBP.—

(1) IN GENERAL.—In the case of an annuity provided under section 1448(d) or 1448(f) of this title, the amount of the annuity shall be determined as follows:

(A) BENEFICIARY UNDER 62 YEARS OF AGE.—If the person receiving the annuity is under 62 years of age or is a dependent child when the member or former member dies, the monthly annuity shall be the amount equal to 55 percent of the retired pay to which the member or former member would have been entitled if the member or former member had been entitled to that pay when he died determined as follows:

(i) In the case of an annuity provided under section 1448(d) or 1448(f) of this title (other than in a case covered by clause (ii) or (iii)), such retired pay shall be com-

puted as if the member had been retired under section 1201 of this title on the date of the member's death with a disability rated as total.

(ii) In the case of an annuity provided under section 1448(d)(1)(A) of this title by reason of the death of a member not in line of duty, such retired pay shall be computed based upon the member's years of active service when he died.

(iii) In the case of an annuity provided under section 1448(f)(1)(A) of this title by reason of the death of a member or former member not in line of duty, such retired pay shall be computed based upon the member or former member's years of service when he died computed under section 12733 of this title.

(B) BENEFICIARY 62 YEARS OF AGE OR OLDER.—

(i) GENERAL RULE.—If the person receiving the annuity (other than a dependent child) is 62 years of age or older when the member or former member dies, the monthly annuity shall be the amount equal to the applicable percent of the retired pay to which the member or former member would have been entitled as determined under subparagraph (A). The percent applicable for a month under the preceding sentence is the percent specified under subsection (a)(1)(B)(i) as being applicable for that month.

(ii) RULE IF BENEFICIARY ELIGIBLE FOR SOCIAL SECURITY OFFSET COMPUTATION.—If the beneficiary is eligible to have the annuity computed under subsection (e) and if computation of the annuity under that subsection is more favorable to the beneficiary than computation under clause (i), the annuity shall be computed under that subsection rather than under clause (i).

(2) DIC OFFSET.—An annuity computed under paragraph (1) that is paid to a surviving spouse shall be reduced by a portion (calculated under section 1450(c) of this title) of the amount of dependency and indemnity compensation to which the surviving spouse is entitled under section 1311(a) of title 38. Any such reduction shall be effective on the date of the commencement of the period of payment of such compensation under title 38.

(3) SERVICEMEMBERS NOT YET GRANTED RETIRED PAY.—In the case of an annuity provided by reason of the service of a member described in clause (ii) or (iii) of section 1448(d)(1)(A) of this title who first became a member of a uniformed service before September 8, 1980, the retired pay to which the member would have been entitled when he died shall be determined for purposes of paragraph (1) based upon the rate of basic pay in effect at the time of death for the grade in which the member was serving at the time of death, unless (as determined by the Secretary concerned) the member would have been entitled to be retired in a higher grade.

(4) RATE OF PAY TO BE USED IN COMPUTING ANNUITY.—In the case of an annuity paid under section 1448(f) of this title by reason of the service of a person who first became a member of a uniformed service before September 8, 1980, the retired pay of the person providing the annuity shall for the purposes of paragraph (1) be computed on the basis of the rates of basic pay in effect on the effective date of the annuity.

(d) REDUCTION OF ANNUITIES AT AGE 62.—

(1) REDUCTION REQUIRED.—The annuity of a person whose annuity is computed under subparagraph (A) of subsection (a)(1), (a)(2), or (c)(1) shall be reduced on the first day of the month after the month in which the person becomes 62 years of age.

(2) AMOUNT OF ANNUITY AS REDUCED.—

(A) COMPUTATION OF ANNUITY.—Except as provided in subparagraph (B), the reduced amount of the annuity shall be the amount of the annuity that the person would be receiving on that date if the annuity had initially been computed under subparagraph (B) of that subsection.

(B) SAVINGS PROVISION FOR BENEFICIARIES ELIGIBLE FOR SOCIAL SECURITY OFFSET COMPUTATION.—In the case of a person eligible to have an annuity computed under subsection (e) and for whom, at the time the person becomes 62 years of age, the annuity computed with a reduction under subsection (e)(3) is more favorable than the annuity with a reduction described in subparagraph (A), the reduction in the annuity shall be computed in the same manner as a reduction under subsection (e)(3).

(e) SAVINGS PROVISION FOR CERTAIN BENEFICIARIES.—

(1) PERSONS COVERED.—The following beneficiaries under the Plan are eligible to have an annuity under the Plan computed under this subsection:

(A) A beneficiary receiving an annuity under the Plan on October 1, 1985, as the surviving spouse or former spouse of the person providing the annuity.

(B) A spouse or former spouse beneficiary of a person who on October 1, 1985—

(i) was a participant in the Plan;

(ii) was entitled to retired pay or was qualified for that pay except that he had not applied for and been granted that pay; or

(iii) would have been eligible for reserve-component retired pay but for the fact that he was under 60 years of age.

(2) AMOUNT OF ANNUITY.—Subject to paragraph (3), an annuity computed under this subsection is determined as follows:

(A) STANDARD ANNUITY.—In the case of the beneficiary of a standard annuity, the annuity shall be the amount equal to 55 percent of the base amount.

(B) RESERVE-COMPONENT ANNUITY.—In the case of the beneficiary of a reserve-component annuity, the annuity shall be the percentage of the base amount that—

(i) is less than 55 percent; and

(ii) is determined under subsection (f).

(C) BENEFICIARIES OF PERSONS DYING DURING A PERIOD OF SPECIAL ELIGIBILITY FOR

SBP.—In the case of the beneficiary of an annuity under section 1448(d) or 1448(f) of this title, the annuity shall be the amount equal to 55 percent of the retired pay of the person providing the annuity (as that pay is determined under subsection (c)).

(3) SOCIAL SECURITY OFFSET.—An annuity computed under this subsection shall be reduced by the lesser of the following:

(A) SOCIAL SECURITY COMPUTATION.—The amount of the survivor benefit, if any, to which the surviving spouse (or the former spouse, in the case of a former spouse beneficiary who became a former spouse under a divorce that became final after November 29, 1989) would be entitled under title II of the Social Security Act (42 U.S.C. 401 et seq.) based solely upon service by the person concerned as described in section 210(*l*)(1) of such Act (42 U.S.C. 410(*l*)(1)) and calculated assuming that the person concerned lives to age 65.

(B) MAXIMUM AMOUNT OF REDUCTION.—40 percent of the amount of the monthly annuity as determined under paragraph (2).

(4) SPECIAL RULES FOR SOCIAL SECURITY OFFSET COMPUTATION.—

(A) TREATMENT OF DEDUCTIONS MADE ON ACCOUNT OF WORK.—For the purpose of paragraph (3), a surviving spouse (or a former spouse, in the case of a person who becomes a former spouse under a divorce that becomes final after November 29, 1989) shall not be considered as entitled to a benefit under title II of the Social Security Act (42 U.S.C. 401 et seq.) to the extent that such benefit has been offset by deductions under section 203 of such Act (42 U.S.C. 403) on account of work.

(B) TREATMENT OF CERTAIN PERIODS FOR WHICH SOCIAL SECURITY REFUNDS ARE MADE.—In the computation of any reduction made under paragraph (3), there shall be excluded any period of service described in section 210(*l*)(1) of the Social Security Act (42 U.S.C. 410(*l*)(1))—

(i) which was performed after December 1, 1980; and

(ii) which involved periods of service of less than 30 continuous days for which the person concerned is entitled to receive a refund under section 6413(c) of the Internal Revenue Code of 1986 of the social security tax which the person had paid.

(f) DETERMINATION OF PERCENTAGES APPLICABLE TO COMPUTATION OF RESERVE-COMPONENT ANNUITIES.—The percentage to be applied in determining the amount of an annuity computed under subsection (a)(2), (b)(2), or (e)(2)(B) shall be determined under regulations prescribed by the Secretary of Defense. Such regulations shall be prescribed taking into consideration the following:

(1) The age of the person electing to provide the annuity at the time of such election.

(2) The difference in age between such person and the beneficiary of the annuity.

(3) Whether such person provided for the annuity to become effective (in the event he died before becoming 60 years of age) on the day after his death or on the 60th anniversary of his birth.

(4) Appropriate group annuity tables.

(5) Such other factors as the Secretary considers relevant.

(g) ADJUSTMENTS TO ANNUITIES.—

(1) PERIODIC ADJUSTMENTS FOR COST-OF-LIVING.—

(A) INCREASES IN ANNUITIES WHEN RETIRED PAY INCREASED.—Whenever retired pay is increased under section 1401a of this title (or any other provision of law), each annuity that is payable under the Plan shall be increased at the same time.

(B) PERCENTAGE OF INCREASE.—The increase shall, in the case of any annuity, be by the same percent as the percent by which the retired pay of the person providing the annuity would have been increased at such time if the person were alive (and otherwise entitled to such pay).

(C) CERTAIN REDUCTIONS TO BE DISREGARDED.—The amount of the increase shall be based on the monthly annuity payable before any reduction under section 1450(c) of this title or under subsection (c)(2).

(2) ROUNDING DOWN.—The monthly amount of an annuity payable under this subchapter, if not a multiple of $1, shall be rounded to the next lower multiple of $1.

(h) ADJUSTMENTS TO BASE AMOUNT.—

(1) PERIODIC ADJUSTMENTS FOR COST-OF-LIVING.—

(A) INCREASES IN BASE AMOUNT WHEN RETIRED PAY INCREASED.—Whenever retired pay is increased under section 1401a of this title (or any other provision of law), the base amount applicable to each participant in the Plan shall be increased at the same time.

(B) PERCENTAGE OF INCREASE.—The increase shall be by the same percent as the percent by which the retired pay of the participant is so increased.

(2) RECOMPUTATION AT AGE 62.—When the retired pay of a person who first became a member of a uniformed service on or after August 1, 1986, and who is a participant in the Plan is recomputed under section 1410 of this title upon the person's becoming 62 years of age, the base amount applicable to that person shall be recomputed (effective on the effective date of the recomputation of such retired pay under section 1410 of this title) so as to be the amount equal to the amount of the base amount that would be in effect on that date if increases in such base amount under paragraph (1) had been computed as provided in paragraph (2) of section 1401a(b) of this title (rather than under paragraph (3) of that section).

(3) DISREGARDING OF RETIRED PAY REDUCTIONS FOR RETIREMENT OF CERTAIN MEMBERS BEFORE 30 YEARS OF SERVICE.—Computation of a member's retired pay for purposes of this section shall be made without regard to any reduction under section 1409(b)(2) of this title.

(i) RECOMPUTATION OF ANNUITY FOR CERTAIN BENEFICIARIES.—In the case of an annuity under the Plan which is computed on the basis of the

retired pay of a person who would have been entitled to have that retired pay recomputed under section 1410 of this title upon attaining 62 years of age, but who dies before attaining that age, the annuity shall be recomputed, effective on the first day of the first month beginning after the date on which the member or former member would have attained 62 years of age, so as to be the amount equal to the amount of the annuity that would be in effect on that date if increases under subsection (h)(1) in the base amount applicable to that annuity to the time of the death of the member or former member, and increases in such annuity under subsection (g)(1), had been computed as provided in paragraph (2) of section 1401a(b) of this title (rather than under paragraph (3) of that section).

(Added Pub. L. 92–425, § 1(3), Sept. 21, 1972, 86 Stat. 709; amended Pub. L. 94–496, § 1(4), Oct. 14, 1976, 90 Stat. 2375; Pub. L. 95–397, title II, § 204, Sept. 30, 1978, 92 Stat. 846; Pub. L. 96–402, § 3, Oct. 9, 1980, 94 Stat. 1705; Pub. L. 97–22, § 11(a)(4), July 10, 1981, 95 Stat. 137; Pub. L. 98–94, title IX, § 922(a)(14)(B), Sept. 24, 1983, 97 Stat. 642; Pub. L. 98–525, title VI, § 641(a), Oct. 19, 1984, 98 Stat. 2545; Pub. L. 99–145, title VII, § 711(a), (b), Nov. 8, 1985, 99 Stat. 666, 670; Pub. L. 99–348, title III, § 301(a)(2), (b), (c), July 1, 1986, 100 Stat. 702; Pub. L. 99–661, div. A, title VI, § 642(b), title XIII, § 1343(a)(8)(D), Nov. 14, 1986, 100 Stat. 3886, 3992; Pub. L. 100–26, § 7(h)(1), Apr. 21, 1987, 101 Stat. 282; Pub. L. 100–224, § 3(a), (c), Dec. 30, 1987, 101 Stat. 1537; Pub. L. 100–456, div. A, title VI, § 652(a), Sept. 29, 1988, 102 Stat. 1991; Pub. L. 101–189, div. A, title XIV, §§ 1403(a), 1407(a)(5)–(8), (b)(1), Nov. 29, 1989, 103 Stat. 1579, 1588, 1589; Pub. L. 103–337, div. A, title X, § 1070(e)(4), Oct. 5, 1994, 108 Stat. 2859; Pub. L. 104–201, div. A, title VI, § 634, Sept. 23, 1996, 110 Stat. 2566; Pub. L. 105–85, div. A, title X, § 1073(a)(28), Nov. 18, 1997, 111 Stat. 1901; Pub. L. 106–65, div. A, title VI, § 643(a)(1), Oct. 5, 1999, 113 Stat. 663; Pub. L. 107–107, div. A, title VI, § 642(b), (c)(2), Dec. 28, 2001, 115 Stat. 1152; Pub. L. 107–314, div. A, title X, § 1062(a)(6), Dec. 2, 2002, 116 Stat. 2650; Pub. L. 108–375, div. A, title VI, § 644(a), Oct. 28, 2004, 118 Stat. 1960; Pub. L. 114–328, div. A, title VI, § 642(a), Dec. 23, 2016, 130 Stat. 2164; Pub. L. 115–91, div. A, title X, § 1081(a)(25), Dec. 12, 2017, 131 Stat. 1595; Pub. L. 116–92, div. A, title VI, § 622(a)(2), Dec. 20, 2019, 133 Stat. 1427.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (e)(3)(A), (4)(A), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title II of the Social Security Act is classified generally to subchapter II (§ 401 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

Section 6413(c) of the Internal Revenue Code of 1986, referred to in subsec. (e)(4)(B)(ii), is classified to section 6413(c) of Title 26, Internal Revenue Code.

AMENDMENTS

2019—Subsec. (c)(2). Pub. L. 116–92 inserted ''a portion (calculated under section 1450(c) of this title) of'' before ''the amount''.

2017—Subsecs. (a), (b). Pub. L. 115–91 substituted ''section 1450(a)(5)'' for ''section 1450(a)(4)'' in two places.

2016—Subsec. (c)(1)(A)(i). Pub. L. 114–328, § 642(a)(1), inserted ''or 1448(f)'' after ''section 1448(d)'' and ''or (iii)'' after ''clause (ii)''.

Subsec. (c)(1)(A)(iii). Pub. L. 114–328, § 642(a)(2), substituted ''section 1448(f)(1)(A) of this title by reason of the death of a member or former member not in line of duty'' for ''section 1448(f) of this title'' and ''service'' for ''active service''.

2004—Subsec. (a)(1)(B)(i). Pub. L. 108–375, § 644(a)(1)(A), substituted ''the product of the base amount and the percent applicable to the month, as follows:'' and subcls. (I) to (V) for ''35 percent of the base amount.''

Subsec. (a)(1)(B)(ii). Pub. L. 108–375, § 644(a)(1)(B), struck out '', at the time the beneficiary becomes entitled to the annuity,'' after ''subsection (e) and if''.

Subsec. (a)(2)(B)(i)(I). Pub. L. 108–375, § 644(a)(2), substituted ''the percent specified under subsection (a)(1)(B)(i) as being applicable for the month'' for ''35 percent''.

Subsec. (c)(1)(B)(i). Pub. L. 108–375, § 644(a)(3)(A), substituted ''the applicable percent'' for ''35 percent'' and inserted at end ''The percent applicable for a month under the preceding sentence is the percent specified under subsection (a)(1)(B)(i) as being applicable for that month.''

Subsec. (c)(1)(B)(ii). Pub. L. 108–375, § 644(a)(3)(B), struck out '', at the time the beneficiary becomes entitled to the annuity,'' after ''subsection (e) and if''.

Subsec. (d)(2)(A). Pub. L. 108–375, § 644(a)(4), substituted ''Computation of annuity'' for ''35 percent annuity'' in heading.

2002—Subsec. (c)(3). Pub. L. 107–314 struck out ''section'' before ''clause (ii)''.

2001—Subsec. (c)(1)(A). Pub. L. 107–107, § 642(b)(1), substituted ''when he died determined as follows:'' and cls. (i) to (iii) for ''based upon his years of active service when he died.''

Subsec. (c)(1)(B)(i). Pub. L. 107–107, § 642(b)(2), substituted ''as determined under subparagraph (A)'' for ''if the member or former member had been entitled to that pay based upon his years of active service when he died''.

Subsec. (c)(3). Pub. L. 107–107, § 642(c)(2), substituted ''clause (ii) or (iii) of section 1448(d)(1)(A)'' for ''1448(d)(1)(B) or 1448(d)(1)(C)''.

1999—Subsec. (h)(3). Pub. L. 106–65 inserted ''OF CERTAIN MEMBERS'' after ''RETIREMENT'' in heading.

1997—Subsec. (a)(2). Pub. L. 105–85 substituted ''ANNUITY.—'' for ''ANNUITY—'' in heading.

1996—Pub. L. 104–201 amended section generally, revising and restating provisions relating to amounts of annuities and inserting subsec., par., and subpar. headings.

1994—Subsec. (c)(2). Pub. L. 103–337 substituted ''section 1311(a) of title 38'' for ''section 411(a) of title 38''.

1989—Subsec. (c)(3). Pub. L. 101–189, § 1403(a), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''In the case of an annuity provided by a member described in section 1448(d)(1)(C) of this title, the retired pay to which the member would have been entitled when he died shall be determined based upon the rate of basic pay in effect at the time of death for the highest grade other than a commissioned officer grade in which the member served on active duty satisfactorily, as determined by the Secretary concerned.''

Subsec. (c)(4). Pub. L. 101–189, § 1407(a)(5), inserted ''by reason of the service of a person who first became a member of a uniformed service before September 8, 1980''.

Subsec. (e)(1). Pub. L. 101–189, § 1407(a)(6), substituted ''beneficiaries under the Plan'' for ''beneficiaries under the plan'' in introductory provisions.

Subsec. (e)(1)(B). Pub. L. 101–189, § 1407(a)(7), in cl. (i), substituted ''was'' for ''is'', in cl. (ii), substituted ''was'' for ''is'' in two places and ''had'' for ''has'', and in cl. (iii), substituted ''would have been'' for ''would be'' and ''was'' for ''is''.

Subsec. (e)(2)(A), (B). Pub. L. 101–189, § 1407(a)(8), struck out ''(as the base amount is adjusted from time to time under section 1401a of this title)'' after ''base amount''.

Subsec. (e)(3)(A), (4)(A). Pub. L. 101–189, § 1407(b)(1), inserted ''or former spouse'' after ''widow or widower''.

1988—Subsec. (e)(1). Pub. L. 100–456 substituted ''widow, widower, or former spouse'' for ''widow or widower'' in subpar. (A), and inserted ''or former spouse'' after ''A spouse'' in subpar. (B).

1987—Subsec. (a)(1)(A), (B), (2)(A), (B). Pub. L. 100–224, § 3(a)(2), struck out ''(as the base amount is adjusted from time to time under section 1401a of this title)'' after ''base amount''.

Subsec. (e)(4)(B)(ii). Pub. L. 100–26 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

Subsec. (h). Pub. L. 100–224, § 3(a)(1), designated existing provisions of subsec. (h) as par. (3) and added pars. (1) and (2).

Subsec. (i). Pub. L. 100–224, § 3(c), substituted ''so as to be the amount equal to the amount of the annuity that would be in effect on that date if increases under subsection (h)(1) in the base amount applicable to that annuity to the time of the death of the member or former member, and increases in such annuity under subsection (g)(1), had been computed as provided in paragraph (2) of section 1401a(b) of this title (rather than under paragraph (3) of that section)'' for ''on the basis of the amount of retired pay to which the member or former member would have been entitled upon recomputation of such pay effective on such date under section 1410 of this title, had the member or former member attained such age''.

1986—Subsec. (a)(1)(A). Pub. L. 99–661, § 1343(a)(8)(D), substituted ''section'' for ''subsection'' before ''1401a of this title''.

Pub. L. 99–661, § 642(b)(1)(A), inserted ''or is a dependent child''.

Subsec. (a)(1)(B). Pub. L. 99–661, § 642(b)(1)(B), inserted ''(other than a dependent child)''.

Subsec. (a)(2)(A). Pub. L. 99–661, § 642(b)(1)(A), inserted ''or is a dependent child''.

Subsec. (a)(2)(B). Pub. L. 99–661, § 642(b)(1)(B), inserted ''(other than a dependent child)''.

Subsec. (c)(1)(A). Pub. L. 99–661, § 642(b)(2)(A), inserted ''or is a dependent child''.

Subsec. (c)(1)(B). Pub. L. 99–661, § 642(b)(2)(B), inserted ''(other than a dependent child)''.

Subsec. (g)(1). Pub. L. 99–348, § 301(b), struck out ''by the same total percent'' after ''same time'' in first sentence, and inserted provision that the increase, in the case of any annuity, be by the same percent as the percent by which the retired pay of the person providing the annuity would have been increased at such time if the person were alive, and otherwise entitled to such pay.

Subsecs. (h), (i). Pub. L. 99–348, § 301(a)(2), (c), added subsecs. (h) and (i).

1985—Pub. L. 99–145, § 711(a), amended section generally, eliminating the social security offset to the Plan and establishing a two-tier system under which the beneficiary would receive 55 percent of retired pay before age 62 and 35 percent thereafter in recognition of the entitlement to social security based on military service, and providing benefits to certain beneficiaries under either the old social security offset system or the new two-tier system, whichever is higher.

Subsec. (a)(3). Pub. L. 99–145, § 711(b), repealed Pub. L. 98–525, § 641(a), effective Sept. 1, 1985. See 1984 Amendment note below.

1984—Subsec. (a)(3). Pub. L. 98–525, § 641(a), which substituted ''is entitled'' for ''would be entitled'' after ''widow or widower'' in first sentence and inserted ''or to the extent that the benefit to which the beneficiary is entitled is based on the beneficiary's own earnings or self-employment'' at end of second sentence, was repealed effective Sept. 1, 1985, by Pub. L. 99–145, § 711(b). See Effective Date of 1984 Amendment note below.

1983—Subsec. (e). Pub. L. 98–94 added subsec. (e).

1981—Subsec. (a)(4). Pub. L. 97–22 substituted ''December 1, 1980'' for ''the effective date of the Uniformed Services Survivor Benefits Amendments of 1980''.

1980—Subsec. (a). Pub. L. 96–402, § 3(a), in revising subsec. (a), designated as par. (1)(A) and (B) existing first sentence containing cls. (1) and (2) and provided in subpar. (A) for adjustment of the annuity from time to time under section 1401a of this title and in subpar. (B) for a similar adjustment after the date the person becomes entitled to retired pay under chapter 67 of this title; designated as par. (2) existing second sentence but provided for reduction of the annuity by the lesser of amounts indicated in subpar. (A) or (B), previously limited to reduction by amount prescribed in predecessor of subpar. (A) provision; designated existing third and fourth sentences as par. (3) and inserted annuity reduction provision described for par. (2); and added par. (4).

Subsec. (c). Pub. L. 96–402, § 3(b), substituted in first sentence ''this section or under section 1448(d) of this title'' for ''this section, or section 1448(d) of this title, on the day before the effective day of that increase'' and in second sentence ''title or under'' for ''title, or'' before ''subsection (a)''.

Subsec. (d). Pub. L. 96–402, § 3(c), substituted reference to ''subsection (a)(1)(B)'' for ''subsection (a)(2)''.

1978—Subsec. (a). Pub. L. 95–397, § 204(a), (b), substituted ''The monthly annuity payable to a widow, widower, or dependent child who is entitled under section 1450(a) of this title to an annuity shall be—'' for ''If the widow or widower is under age 62 or there is a dependent child, the monthly annuity payable to the widow, widower, or dependent child, under section 1450 of this title shall be equal to 55 percent of the base amount.'', and added pars. (1) and (2), and substituted ''For the purpose of the preceding sentence, a widow or widower shall not be considered as entitled to a benefit under subchapter II of chapter 7 of title 42 to the extent that such benefit has been offset by deductions under section 403 of title 42 on account of work'' for ''For the purpose of the preceding sentence, a widow or widower shall be considered as entitled to a benefit under subchapter II of chapter 7 of title 42 even though that benefit has been offset by deductions under section 403 of title 42 on account of work''.

Subsec. (b). Pub. L. 95–397, § 204(c), substituted ''The monthly annuity payable under section 1450(a)(4) of this title shall be—'' for ''The monthly annuity payable under section 1450(a)(4) of this title shall be 55 percent of the retired or retainer pay of the person who elected to provide that annuity after the reduction in that retired or retainer pay in accordance with section 1452(c) of this title.'', added pars. (1) and (2) and provision following par. (2) relating to the entitlement to retirement pay, and computation thereof, by a person who provided an annuity and who dies before becoming 60 years of age.

Subsec. (d). Pub. L. 95–397, § 204(d), added subsec. (d).

1976—Subsec. (b). Pub. L. 94–496 substituted ''(a)(4)'' for ''(a)(3)''.

EFFECTIVE DATE OF 2019 AMENDMENT

Amendment by Pub. L. 116–92 effective on the first day of the first month that begins after Dec. 20, 2019, see section 622(f) of Pub. L. 116–92, set out as a note under section 1448 of this title.

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114–328 inapplicable to accural of annuity benefits under subchapter II of chapter 73 of this title for any period prior to Dec. 23, 2016, with provisions for election of benefits payable to dependent children, see section 642(e) of Pub. L. 114–328, set out as a note under section 1448 of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–107 effective Sept. 10, 2001, and applicable with respect to deaths of members of the Armed Forces occurring on or after that date, see section 642(d) of Pub. L. 107–107, set out as a note under section 1448 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–65 effective Oct. 1, 1999, see section 644 of Pub. L. 106–65, set out as a note under section 1401a of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–189, div. A, title XIV, § 1407(b)(2), Nov. 29, 1989, 103 Stat. 1589, provided that: ''The amendments made by paragraph (1) [amending this section] shall apply only with respect to the computation of an annuity for a person who becomes a former spouse under a divorce that becomes final after the date of the enactment of this Act [Nov. 29, 1989].''

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–456, div. A, title VI, § 652(b), Sept. 29, 1988, 102 Stat. 1991, provided that: ''The amendments made by subsection (a) [amending this section] shall apply to payments under the Survivor Benefit Plan established under subchapter II of chapter 73 of title 10, United States Code, for periods after February 28, 1986.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 642(b) of Pub. L. 99–661 applicable to payments for periods after Feb. 28, 1986, see section 642(c) of Pub. L. 99–661, set out as a note under section 1448 of this title.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by section 711(a) of Pub. L. 99–145 effective Mar. 1, 1986, with prohibition against accrual of benefits to any person by reason of the enactment of such title VII for any period before Mar. 1, 1986, see section 731 of Pub. L. 99–145, set out as a note under section 1447 of this title.

Pub. L. 99–145, title VII, § 711(b), Nov. 8, 1985, 99 Stat. 670, provided that the repeal of section 641 of Pub. L. 98–525 [amending this section and enacting provision set out below] is effective Sept. 1, 1985.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 641(b) of Pub. L. 98–525, which provided that the amendments made by subsection (a), amending this section, was applicable only in the case of payments of annuities payable for periods that began on or after Sept. 30, 1985, was repealed effective Sept. 1, 1985, by section 711(b) of Pub. L. 99–145.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–94 effective Oct. 1, 1983, see section 922(e) of Pub. L. 98–94, set out as a note under section 1401 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–402 effective Dec. 1, 1980, applicable to annuities payable for months beginning on or after such date, and prohibiting accrual of benefits for any period before Oct. 9, 1980, see section 7 of Pub. L. 96–402, set out as a note under section 1447 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–397 effective Oct. 1, 1978, and applicable to annuities payable by virtue of amendment for months beginning on or after such date, see section 210 of Pub. L. 95–397, set out as a note under section 1447 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–496 effective Sept. 11, 1972, see section 3 of Pub. L. 94–496, set out as a note under section 1447 of this title.

ADJUSTMENT OF ANNUITIES FOR SURVIVORS OF CERTAIN MEMBERS WHO DIED WHILE ON ACTIVE DUTY BETWEEN SEPTEMBER 21, 1972 AND NOVEMBER 29, 1990

Pub. L. 101–189, div. A, title XIV, § 1403(b)–(d), Nov. 29, 1989, 103 Stat. 1579, provided that:

''(b) ADJUSTMENT OF ANNUITIES ALREADY IN EFFECT.—

''(1) RECOMPUTATION.—The Secretary concerned shall recompute the annuity of any person who on the effective date specified in subsection (d) is entitled to an annuity under the Survivor Benefit Plan by reason of eligibility described in section 1448(d)(1)(B) or 1448(d)(1)(C) of title 10, United States Code, and who is further described in subsection (c).

''(2) AMOUNT OF RECOMPUTED ANNUITIES.—The amount of the annuity as so recomputed shall be the amount that would be in effect for that annuity on the effective date specified in subsection (d) if the annuity had originally been computed subject to the provisions of paragraph (3) of section 1451(c) of title 10, United States Code, as amended by subsection (a).

''(c) PERSONS ELIGIBLE FOR RECOMPUTATION.—A person is eligible to have an annuity under the Survivor Benefit Plan recomputed under subsection (b) if—

''(1) the annuity is based upon the service of a member of the uniformed services who died on active duty during the period beginning on September 21, 1972, and ending on the effective date specified in subsection (d); and

''(2) the retired pay of that member for the purposes of determining the amount of the annuity under the Survivor Benefit Plan was computed using a rate of basic pay lower than the rate of basic pay in effect at the time of death for the grade in which the member was serving at the time of death.

''(d) EFFECTIVE DATE.—An annuity recomputed under subsection (b) shall take effect as so recomputed on March 1, 1990.''

§ 1452. Reduction in retired pay

(a) SPOUSE AND FORMER SPOUSE ANNUITIES.—

(1) REQUIRED REDUCTION IN RETIRED PAY.—Except as provided in subsection (b), the retired pay, other than retired pay received as a lump sum under section 1415(b)(1)(A) of this title, of a participant in the Plan who is providing spouse coverage (as described in paragraph (5)) shall be reduced as follows:

(A) STANDARD ANNUITY.—If the annuity coverage being provided is a standard annuity, the reduction shall be as follows:

(i) DISABILITY AND NONREGULAR SERVICE RETIREES.—In the case of a person who is entitled to retired pay under chapter 61 or chapter 1223 of this title, the reduction shall be in whichever of the alternative reduction amounts is more favorable to that person.

(ii) MEMBERS AS OF ENACTMENT OF FLAT-RATE REDUCTION.—In the case of a person who first became a member of a uniformed service before March 1, 1990, the reduction shall be in whichever of the alternative reduction amounts is more favorable to that person.

(iii) NEW ENTRANTS AFTER ENACTMENT OF FLAT-RATE REDUCTION.—In the case of a person who first becomes a member of a uniformed service on or after March 1, 1990, and who is entitled to retired pay under a provision of law other than chapter 61 or chapter 1223 of this title, the reduction shall be in an amount equal to 6½ percent of the base amount.

(iv) ALTERNATIVE REDUCTION AMOUNTS.—For purposes of clauses (i) and (ii), the alternative reduction amounts are the following:

(I) FLAT-RATE REDUCTION.—An amount equal to 6½ percent of the base amount.

(II) AMOUNT UNDER PRE-FLAT-RATE REDUCTION.—An amount equal to 2½ percent of the first $337 (as adjusted after November 1, 1989, under paragraph (4)) of

the base amount plus 10 percent of the remainder of the base amount.

(B) RESERVE-COMPONENT ANNUITY.—If the annuity coverage being provided is a reserve-component annuity, the reduction shall be in whichever of the following amounts is more favorable to that person:

(i) FLAT-RATE REDUCTION.—An amount equal to 6½ percent of the base amount plus an amount determined in accordance with regulations prescribed by the Secretary of Defense as a premium for the additional coverage provided through reserve-component annuity coverage under the Plan.

(ii) AMOUNT UNDER PRE-FLAT-RATE REDUCTION.—An amount equal to 2½ percent of the first $337 (as adjusted after November 1, 1989, under paragraph (4)) of the base amount plus 10 percent of the remainder of the base amount plus an amount determined in accordance with regulations prescribed by the Secretary of Defense as a premium for the additional coverage provided through reserve-component annuity coverage under the Plan.

(2) ADDITIONAL REDUCTION FOR CHILD COVERAGE.—If there is a dependent child as well as a spouse or former spouse, the amount prescribed under paragraph (1) shall be increased by an amount prescribed under regulations of the Secretary of Defense.

(3) NO REDUCTION WHEN NO BENEFICIARY.—The reduction in retired pay prescribed by paragraph (1) shall not be applicable during any month in which there is no eligible spouse or former spouse beneficiary.

(4) PERIODIC ADJUSTMENTS.—

(A) ADJUSTMENTS FOR INCREASES IN RATES OF BASIC PAY.—Whenever there is an increase in the rates of basic pay of members of the uniformed services effective on or after October 1, 1985, the amounts under paragraph (1) with respect to which the percentage factor of 2½ is applied shall be increased by the overall percentage of such increase in the rates of basic pay. The increase under the preceding sentence shall apply only with respect to persons whose retired pay is computed based on the rates of basic pay in effect on or after the date of such increase in rates of basic pay.

(B) ADJUSTMENTS FOR RETIRED PAY COLAS.—In addition to the increase under subparagraph (A), the amounts under paragraph (1) with respect to which the percentage factor of 2½ is applied shall be further increased at the same time and by the same percentage as an increase in retired pay under section 1401a of this title effective on or after October 1, 1985. Such increase under the preceding sentence shall apply only with respect to a person who initially participates in the Plan on a date which is after both the effective date of such increase under section 1401a and the effective date of the rates of basic pay upon which that person's retired pay is computed.

(5) SPOUSE COVERAGE DESCRIBED.—For the purposes of paragraph (1), a participant in the Plan who is providing spouse coverage is a participant who—

(A) has (i) a spouse or former spouse, or (ii) a spouse or former spouse and a dependent child; and

(B) has not elected to provide an annuity to a person designated by him under section 1448(b)(1) of this title or, having made such an election, has changed his election in favor of his spouse under section 1450(f) of this title.

(b) CHILD-ONLY ANNUITIES.—

(1) REQUIRED REDUCTION IN RETIRED PAY.—The retired pay, other than retired pay received as a lump sum under section 1415(b)(1)(A) of this title, of a participant in the Plan who is providing child-only coverage (as described in paragraph (4)) shall be reduced by an amount prescribed under regulations by the Secretary of Defense.

(2) NO REDUCTION WHEN NO CHILD.—There shall be no reduction in retired pay under paragraph (1) for any month during which the participant has no eligible dependent child.

(3) SPECIAL RULE FOR CERTAIN RCSBP PARTICIPANTS.—In the case of a participant in the Plan who is participating in the Plan under an election under section 1448(a)(2)(B) of this title and who provided child-only coverage during a period before the participant becomes entitled to receive retired pay, the retired pay of the participant shall be reduced by an amount prescribed under regulations by the Secretary of Defense to reflect the coverage provided under the Plan during the period before the participant became entitled to receive retired pay. A reduction under this paragraph is in addition to any reduction under paragraph (1) and is made without regard to whether there is an eligible dependent child during a month for which the reduction is made.

(4) CHILD-ONLY COVERAGE DEFINED.—For the purposes of this subsection, a participant in the Plan who is providing child-only coverage is a participant who has a dependent child and who—

(A) does not have an eligible spouse or former spouse; or

(B) has a spouse or former spouse but has elected to provide an annuity for dependent children only.

(c) REDUCTION FOR INSURABLE INTEREST COVERAGE.—

(1) REQUIRED REDUCTION IN RETIRED PAY.—The retired pay, other than retired pay received as a lump sum under section 1415(b)(1)(A) of this title, of a person who has elected to provide an annuity to a person designated by him under section 1450(a)(5) of this title shall be reduced as follows:

(A) STANDARD ANNUITY.—In the case of a person providing a standard annuity, the reduction shall be by 10 percent plus 5 percent for each full five years the individual designated is younger than that person.

(B) RESERVE COMPONENT ANNUITY.—In the case of a person providing a reserve-component annuity, the reduction shall be by an amount prescribed under regulations of the Secretary of Defense.

(2) LIMITATION ON TOTAL REDUCTION.—The total reduction under paragraph (1) may not exceed 40 percent.

(3) DURATION OF REDUCTION.—The reduction in retired pay prescribed by this subsection shall continue during the lifetime of the person designated under section 1450(a)(5) of this title or until the person receiving retired pay changes his election under section 1450(f) of this title.

(4) RULE FOR COMPUTATION.—Computation of a member's retired pay for purposes of this subsection shall be made without regard to any reduction under section 1409(b)(2) or 1415(b)(1)(B) of this title.

(5) RULE FOR DESIGNATION OF NEW INSURABLE INTEREST BENEFICIARY FOLLOWING DEATH OF ORIGINAL BENEFICIARY.—The Secretary of Defense shall prescribe in regulations premiums which a participant making an election under section 1448(b)(1)(G) of this title shall be required to pay for participating in the Plan pursuant to that election. The total amount of the premiums to be paid by a participant under the regulations shall be equal to the sum of the following:

(A) The total additional amount by which the retired pay of the participant would have been reduced before the effective date of the election if the original beneficiary (i) had not died and had been covered under the Plan through the date of the election, and (ii) had been the same number of years younger than the participant (if any) as the new beneficiary designated under the election.

(B) Interest on the amounts by which the retired pay of the participant would have been so reduced, computed from the dates on which the retired pay would have been so reduced at such rate or rates and according to such methodology as the Secretary of Defense determines reasonable.

(C) Any additional amount that the Secretary determines necessary to protect the actuarial soundness of the Department of Defense Military Retirement Fund against any increased risk for the fund that is associated with the election.

(d) DEPOSITS TO COVER PERIODS WHEN RETIRED PAY NOT PAID OR NOT SUFFICIENT.—

(1) REQUIRED DEPOSITS.—If a person who has elected to participate in the Plan has been awarded retired pay and is not entitled to that pay for any period, that person must deposit in the Treasury the amount that would otherwise have been deducted from his pay for that period, except to the extent that the required deduction is made pursuant to paragraph (2).

(2) DEDUCTION FROM COMBAT-RELATED SPECIAL COMPENSATION WHEN RETIRED PAY NOT ADEQUATE.—In the case of a person who has elected to participate in the Plan and who has been awarded both retired pay and combat-related special compensation under section 1413a of this title, if a deduction from the person's retired pay for any period cannot be made in the full amount required, there shall be deducted from the person's combat-related special compensation in lieu of deduction from the person's retired pay the amount that would otherwise have been deducted from the person's retired pay for that period.

(3) DEPOSITS NOT REQUIRED WHEN PARTICIPANT ON ACTIVE DUTY.—Paragraphs (1) and (2) do not apply to a person with respect to any period when that person is on active duty under a call or order to active duty for a period of more than 30 days.

(e) DEPOSITS NOT REQUIRED FOR CERTAIN PARTICIPANTS IN CSRS AND FERS.—When a person who has elected to participate in the Plan waives that person's retired pay for the purposes of subchapter III of chapter 83 of title 5 or chapter 84 of such title, that person shall not be required to make the deposit otherwise required by subsection (d) as long as that waiver is in effect unless, in accordance with section 8339(j) or 8416(a) of title 5, that person has notified the Office of Personnel Management that he does not desire a spouse surviving him to receive an annuity under section 8341(b) or 8442(a) of title 5.

(f) REFUNDS OF DEDUCTIONS NOT ALLOWED.—

(1) GENERAL RULE.—A person is not entitled to refund of any amount deducted from retired pay or combat-related special compensation under this section.

(2) EXCEPTIONS.—Paragraph (1) does not apply—

(A) in the case of a refund authorized by section 1450(e) of this title; or

(B) in case of a deduction made through administrative error.

(g) DISCONTINUATION OF PARTICIPATION BY PARTICIPANTS WHOSE SURVIVING SPOUSES WILL BE ENTITLED TO DIC.—

(1) DISCONTINUATION.—

(A) CONDITIONS.—Notwithstanding any other provision of this subchapter but subject to paragraphs (2) and (3), a person who has elected to participate in the Plan and who is suffering from a service-connected disability rated by the Secretary of Veterans Affairs as totally disabling and has suffered from such disability while so rated for a continuous period of 10 or more years (or, if so rated for a lesser period, has suffered from such disability while so rated for a continuous period of not less than 5 years from the date of such person's last discharge or release from active duty) may discontinue participation in the Plan by submitting to the Secretary concerned a request to discontinue participation in the Plan.

(B) EFFECTIVE DATE.—Participation in the Plan of a person who submits a request under subparagraph (A) shall be discontinued effective on the first day of the first month following the month in which the request under subparagraph (A) is received by the Secretary concerned. Effective on such date, the Secretary concerned shall discontinue the reduction being made in such person's retired pay on account of participation in the Plan or, in the case of a person who has been required to make deposits in the Treasury on account of participation in the Plan, such person may discontinue making such deposits effective on such date.

(C) FORM FOR REQUEST FOR DISCONTINUATION.—Any request under this paragraph to

discontinue participation in the Plan shall be in such form and shall contain such information as the Secretary concerned may require by regulation.

(2) CONSENT OF BENEFICIARIES REQUIRED.—A person described in paragraph (1) may not discontinue participation in the Plan under such paragraph without the written consent of the beneficiary or beneficiaries of such person under the Plan.

(3) INFORMATION ON PLAN TO BE PROVIDED BY SECRETARY CONCERNED.—

(A) INFORMATION TO BE PROVIDED PROMPTLY TO PARTICIPANT.—The Secretary concerned shall furnish promptly to each person who files a request under paragraph (1) to discontinue participation in the Plan a written statement of the advantages of participating in the Plan and the possible disadvantages of discontinuing participation.

(B) RIGHT TO WITHDRAW DISCONTINUATION REQUEST.—A person may withdraw a request made under paragraph (1) if it is withdrawn within 30 days after having been submitted to the Secretary concerned.

(4) REFUND OF DEDUCTIONS FROM RETIRED PAY OR CRSC.—Upon the death of a person described in paragraph (1) who discontinued participation in the Plan in accordance with this subsection, any amount deducted from the retired pay or combat-related special compensation of that person under this section shall be refunded to the person's surviving spouse.

(5) RESUMPTION OF PARTICIPATION IN PLAN.—

(A) CONDITIONS FOR RESUMPTION.—A person described in paragraph (1) who discontinued participation in the Plan may elect to participate again in the Plan if—

(i) after having discontinued participation in the Plan the Secretary of Veterans Affairs reduces that person's service-connected disability rating to a rating of less than total; and

(ii) that person applies to the Secretary concerned, within such period of time after the reduction in such person's service-connected disability rating has been made as the Secretary concerned may prescribe, to again participate in the Plan and includes in such application such information as the Secretary concerned may require.

(B) EFFECTIVE DATE OF RESUMED COVERAGE.—Such person's participation in the Plan under this paragraph is effective beginning on the first day of the month after the month in which the Secretary concerned receives the application for resumption of participation in the Plan.

(C) RESUMPTION OF CONTRIBUTIONS.—When a person elects to participate in the Plan under this paragraph, the Secretary concerned shall begin making reductions in that person's retired pay, or require such person to make deposits in the Treasury under subsection (d), as appropriate, effective on the effective date of such participation under subparagraph (B).

(h) INCREASES IN REDUCTION WITH INCREASES IN RETIRED PAY.—

(1) GENERAL RULE.—Whenever retired pay is increased under section 1401a of this title (or any other provision of law), the amount of the reduction to be made under subsection (a) or (b) in the retired pay of any person shall be increased at the same time and by the same percentage as such retired pay is so increased.

(2) COORDINATION WHEN PAYMENT OF INCREASE IN RETIRED PAY IS DELAYED BY LAW.—

(A) IN GENERAL.—Notwithstanding paragraph (1), when the initial payment of an increase in retired pay under section 1401a of this title (or any other provision of law) to a person is for a month that begins later than the effective date of that increase by reason of the application of subsection (b)(2)(B) of such section (or section 631(b) of Public Law 104–106 (110 Stat. 364)), then the amount of the reduction in the person's retired pay shall be effective on the date of that initial payment of the increase in retired pay rather than the effective date of the increase in retired pay.

(B) DELAY NOT TO AFFECT COMPUTATION OF ANNUITY.—Subparagraph (A) may not be construed as delaying, for purposes of determining the amount of a monthly annuity under section 1451 of this title, the effective date of an increase in a base amount under subsection (h) of such section from the effective date of an increase in retired pay under section 1401a of this title to the date on which the initial payment of that increase in retired pay is made in accordance with subsection (b)(2)(B) of such section.

(i) RECOMPUTATION OF REDUCTION UPON RECOMPUTATION OF RETIRED PAY.—Whenever the retired pay of a person who first became a member of a uniformed service on or after August 1, 1986, and who is a participant in the Plan is recomputed under section 1410 of this title upon the person's becoming 62 years of age, the amount of the reduction in such retired pay under this section shall be recomputed (effective on the effective date of the recomputation of such retired pay under section 1410 of this title) so as to be the amount equal to the amount of such reduction that would be in effect on that date if increases in such retired pay under section 1401a(b) of this title, and increases in reductions in such retired pay under subsection (h), had been computed as provided in paragraph (2) of section 1401a(b) of this title (rather than under paragraph (3) of that section).

(j) COVERAGE PAID UP AT 30 YEARS AND AGE 70.—Effective October 1, 2008, no reduction may be made under this section in the retired pay of a participant in the Plan for any month after the later of—

(1) the 360th month for which the participant's retired pay is reduced under this section; and

(2) the month during which the participant attains 70 years of age.

(Added Pub. L. 92–425, §1(3), Sept. 21, 1972, 86 Stat. 710; amended Pub. L. 94–496, §1(4), (5), Oct. 14, 1976, 90 Stat. 2375; Pub. L. 95–397, title II, §205, Sept. 30, 1978, 92 Stat. 847; Pub. L. 96–402, §4, Oct. 9, 1980, 94 Stat. 1706; Pub. L. 97–22, §11(a)(3), (5), July 10, 1981, 95 Stat. 137; Pub. L. 99–145, title

VII, §§ 714(a), 719(7), (8), 723(b)(2), Nov. 8, 1985, 99 Stat. 672, 675–677; Pub. L. 99–348, title III, § 301(a)(3), July 1, 1986, 100 Stat. 702; Pub. L. 99–661, div. A, title XIII, § 1343(a)(8)(E), Nov. 14, 1986, 100 Stat. 3992; Pub. L. 100–224, § 3(b), Dec. 30, 1987, 101 Stat. 1537; Pub. L. 101–189, div. A, title XIV, §§ 1402(a)–(c), 1407(a)(9), title XVI, § 1621(a)(1), Nov. 29, 1989, 103 Stat. 1577, 1578, 1589, 1602; Pub. L. 101–510, div. A, title XIV, § 1484(*l*)(4)(C)(ii), Nov. 5, 1990, 104 Stat. 1720; Pub. L. 103–337, div. A, title VI, § 637(a), Oct. 5, 1994, 108 Stat. 2790; Pub. L. 104–201, div. A, title VI, §§ 634, 635(a), Sept. 23, 1996, 110 Stat. 2572, 2579; Pub. L. 105–85, div. A, title X, § 1073(a)(29), Nov. 18, 1997, 111 Stat. 1901; Pub. L. 105–261, div. A, title VI, § 641, Oct. 17, 1998, 112 Stat. 2045; Pub. L. 106–65, div. A, title VI, § 643(a)(2), Oct. 5, 1999, 113 Stat. 663; Pub. L. 109–364, div. A, title VI, § 643(b), Oct. 17, 2006, 120 Stat. 2260; Pub. L. 112–239, div. A, title VI, § 641(a), Jan. 2, 2013, 126 Stat. 1782; Pub. L. 114–328, div. A, title VI, § 643(a), (b), Dec. 23, 2016, 130 Stat. 2165, 2166; Pub. L. 115–91, div. A, title VI, § 622(b), title X, § 1081(a)(26), Dec. 12, 2017, 131 Stat. 1428, 1595.)

REFERENCES IN TEXT

Section 631(b) of Public Law 104–106 (110 Stat. 364), referred to in subsec. (h)(2)(A), was set out as a note under section 1401a of this title prior to repeal by Pub. L. 104–201, div. A, title VI, § 631(b), Sept. 23, 1996, 110 Stat. 2549.

AMENDMENTS

2017—Subsec. (a)(1). Pub. L. 115–91, § 622(b)(1), inserted '', other than retired pay received as a lump sum under section 1415(b)(1)(A) of this title,'' after ''the retired pay'' in introductory provisions.

Subsec. (b)(1). Pub. L. 115–91, § 622(b)(2), inserted '', other than retired pay received as a lump sum under section 1415(b)(1)(A) of this title,'' after ''The retired pay''.

Subsec. (c)(1). Pub. L. 115–91, § 1081(a)(26), substituted ''section 1450(a)(5)'' for ''section 1450(a)(4)'' in introductory provisions.

Pub. L. 115–91, § 622(b)(3)(A), inserted '', other than retired pay received as a lump sum under section 1415(b)(1)(A) of this title,'' after ''The retired pay'' in introductory provisions.

Subsec. (c)(3). Pub. L. 115–91, § 1081(a)(26), substituted ''section 1450(a)(5)'' for ''section 1450(a)(4)''.

Subsec. (c)(4). Pub. L. 115–91, § 622(b)(3)(B), inserted ''or 1415(b)(1)(B)'' after ''section 1409(b)(2)''.

2016—Subsec. (d). Pub. L. 114–328, § 643(b)(1)(A), inserted ''or Not Sufficient'' after ''Not Paid'' in heading.

Subsec. (d)(1). Pub. L. 114–328, § 643(b)(1)(B), inserted before period at end '', except to the extent that the required deduction is made pursuant to paragraph (2)''.

Subsec. (d)(2). Pub. L. 114–328, § 643(a)(2), added par. (2). Former par. (2) redesignated (3).

Subsec. (d)(3). Pub. L. 114–328, § 643(a)(1), (b)(1)(C), redesignated par. (2) as (3) and substituted ''Paragraphs (1) and (2) do not'' for ''Paragraph (1) does not''.

Subsec. (f)(1). Pub. L. 114–328, § 643(b)(2), inserted ''or combat-related special compensation'' after ''from retired pay''.

Subsec. (g)(4). Pub. L. 114–328, § 643(b)(3), inserted ''or CRSC'' after ''retired pay'' in heading and ''or combat-related special compensation'' after ''from the retired pay'' in text.

2013—Subsec. (e). Pub. L. 112–239 inserted in heading ''and FERS'' after ''CSRS'' and inserted in text ''or chapter 84 of such title'' after ''chapter 83 of title 5'', ''or 8416(a)'' after ''8339(j)'', and ''or 8442(a)'' after ''8341(b)''.

2006—Subsec. (c)(5). Pub. L. 109–364 added par. (5).

1999—Subsec. (i). Pub. L. 106–65 substituted ''Whenever the retired pay'' for ''When the retired pay''.

1998—Subsec. (j). Pub. L. 105–261 added subsec. (j).

1997—Subsec. (a)(1)(A). Pub. L. 105–85, § 1073(a)(29)(A), substituted ''provided'' for ''providing'' in introductory provisions.

Subsec. (e). Pub. L. 105–85, § 1073(a)(29)(B), substituted ''section 8339(j)'' for ''section 8339(i)'' and ''section 8341(b)'' for ''section 8331(b)''.

1996—Pub. L. 104–201, § 634, amended section generally, revising and restating provisions relating to reductions in retired pay.

Subsec. (h)(2). Pub. L. 104–201, § 635(a), added par. (2).

1994—Subsec. (b). Pub. L. 103–337 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''The retired pay of a person to whom section 1448 of this title applies who has a dependent child but does not have an eligible spouse or former spouse, or who has a spouse or former spouse but has elected to provide an annuity for dependent children only, shall, as long as he has an eligible dependent child, be reduced by an amount prescribed under regulations of the Secretary of Defense.''

1990—Subsec. (h). Pub. L. 101–510 made clarifying amendment to directory language of Pub. L. 101–189, § 1407(a)(9), see 1989 Amendment note below.

1989—Subsec. (a). Pub. L. 101–189, § 1402(a), inserted heading.

Subsec. (a)(1). Pub. L. 101–189, § 1402(a), added par. (1) and struck out former par. (1) which read as follows: ''Except as provided in subsection (b), the retired pay of a person to whom section 1448 of this title applies who has a spouse or former spouse, or who has a spouse or former spouse and a dependent child, and who has not elected to provide an annuity to a person designated by him under section 1450(a)(4) of this title, or who had elected to provide such an annuity to such a person but has changed his election in favor of his spouse under section 1450(f) of this title, shall be reduced each month—

''(A) by an amount equal to 2½ percent of the first $300 (as adjusted from time to time under paragraph (4)) of the base amount plus 10 percent of the remainder of the base amount, if the person is providing a standard annuity; or

''(B) by an amount prescribed under regulations of the Secretary of Defense, if the person is providing a reserve-component annuity.''

Subsec. (a)(4)(A), (B). Pub. L. 101–189, § 1402(c), substituted ''amounts under paragraph (1)'' for ''amount under paragraph (1)(A)''.

Subsec. (a)(5). Pub. L. 101–189, § 1402(b), added par. (5).

Subsec. (g)(1), (5). Pub. L. 101–189, § 1621(a)(1), substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

Subsec. (h). Pub. L. 101–189, § 1407(a)(9), as amended by Pub. L. 101–510, inserted ''(or any other provision of law)'' after ''Whenever retired pay is increased under section 1401a of this title'' and substituted ''such retired pay is so increased'' for ''such retired pay is increased under section 1401a of this title''.

1987—Subsec. (i). Pub. L. 100–224 added subsec. (i).

1986—Subsec. (c). Pub. L. 99–348 inserted provision that computation of a member's retired pay for purposes of this subsection be made without regard to any reduction under section 1409(b)(2) of this title.

Subsec. (h). Pub. L. 99–661 struck out ''and retainer'' after ''Whenever retired''.

1985—Pub. L. 99–145, § 719(8)(B), struck out ''or retainer'' after ''retired'' in section catchline.

Subsec. (a)(1). Pub. L. 99–145, § 714(a)(1), (2), designated existing first sentence of subsec. (a) as par. (1); redesignated cl. (1) as (A), inserting ''(as adjusted from time to time under paragraph (4))'' after ''$300'' and substituting ''a standard annuity'' for ''an annuity by virtue of eligibility under section 1448(a)(1)(A) of this title''; and redesignated cl. (2) as (B), substituting ''a reserve-component annuity'' for ''an annuity by virtue of eligibility under section 1448(a)(1)(B)''.

Pub. L. 99–145, § 719(8)(A), substituted ''retired pay'' for ''retired or retainer pay''.

Pub. L. 99–145, § 723(b)(2)(1), inserted ''or former spouse'' after first two references to ''spouse''.

Subsec. (a)(2). Pub. L. 99–145, § 714(a)(3), designated existing second sentence of subsec. (a) as par. (2), and substituted ''If there is a dependent child as well as a spouse or former spouse, the amount prescribed under paragraph (1)'' for ''As long as there is an eligible spouse and a dependent child, that amount''.

Subsec. (a)(3). Pub. L. 99–145, § 714(a)(4), designated existing third sentence of subsec. (a) as par. (3), substituted ''paragraph (1)'' for ''the first sentence of this subsection'', and inserted ''or former spouse'' after ''eligible spouse''.

Pub. L. 99–145, § 719(8)(A), substituted ''retired pay'' for ''retired or retainer pay''.

Subsec. (a)(4). Pub. L. 99–145, § 714(a)(5), added par. (4).

Subsec. (b). Pub. L. 99–145, § 723(b)(2)(2), inserted ''or former spouse'' after ''spouse'' in two places.

Pub. L. 99–145, § 719(8)(A), substituted ''retired pay'' for ''retired or retainer pay''.

Subsec. (c). Pub. L. 99–145, § 719(7), (8)(A), substituted ''retired pay'' for ''retired or retainer pay'' in three places, and substituted ''a standard annuity'' for ''the annuity by virtue of eligibility under section 1448(a)(1)(A) of this title'' in cl. (1), ''a reserve-component annuity'' for ''the annuity by virtue of eligibility under section 1448(a)(1)(B) of this title'' in cl. (2), and ''this subsection'' for ''this section'' in third sentence.

Subsecs. (d) to (h). Pub. L. 99–145, § 719(8)(A), substituted ''retired pay'' for ''retired or retainer pay'' wherever appearing.

1981—Subsec. (e). Pub. L. 97–22, § 11(a)(3), substituted ''Office of Personnel Management'' for ''Civil Service Commission''.

Subsec. (g)(4). Pub. L. 97–22, § 11(a)(5), substituted ''this section'' for ''section 1452 of this title''.

1980—Subsecs. (g), (h). Pub. L. 96–402, added subsecs. (g) and (h).

1978—Subsec. (a). Pub. L. 95–397, § 205(a), substituted pars. (1) and (2) for ''by an amount equal to 2½ percent of the first $300 of the base amount plus 10 percent of the remainder of the base amount'' after ''shall be reduced each month''.

Subsec. (c). Pub. L. 95–397, § 205(b), substituted pars. (1) and (2) for ''by 10 percent plus 5 percent for each full 5 years the individual designated is younger than that person. However, the total reduction may not exceed 40 percent. The reduction in retired or retainer pay prescribed by this subsection shall continue during the lifetime of the person designated under section 1450(a)(4) of this title or until the person receiving retired or retainer pay changes his election under section 1450(f)'', and inserted provision following par. (2) that the total reduction under clause (1) may not exceed 40 percent, and that the reduction in retired or retainer pay shall continue during the lifetime of the person designated under section 1450(a)(4) of this title or until the person changes his election under section 1450(f) of this title.

1976—Subsec. (a). Pub. L. 94–496, § 1(4), (5)(A), substituted ''Except as provided in subsection (b), the retired or retainer pay'' for ''The retired or retainer pay'', ''(a)(4)'' for ''(a)(3)'', and inserted provision prohibiting a reduction in retired or retainer pay during any month in which there is no eligible spouse beneficiary.

Subsec. (b). Pub. L. 94–496, § 1(5)(B), inserted ''or who has a spouse but has elected to provide an annuity for dependent children only,'' after ''spouse,''.

Subsec. (c). Pub. L. 94–496, § 1(4), (5)(C), substituted ''(a)(4)'' for ''(a)(3)'', and inserted provision directing that reduction in retired or retainer pay continue during the lifetime of a beneficiary designated under section 1450(a)(4) of this title or until such person change his election pursuant to section 1450(f) of this title.

Effective Date of 2013 Amendment

Amendment by Pub. L. 112–239 applicable with respect to any participant electing an annuity for survivors under chapter 84 of Title 5, United States Code, on or after Jan. 2, 2013, see section 641(c) of Pub. L. 112–239, set out as a note under section 1450 of this title.

Effective Date of 1999 Amendment

Amendment by Pub. L. 106–65 effective Oct. 1, 1999, see section 644 of Pub. L. 106–65, set out as a note under section 1401a of this title.

Effective Date of 1996 Amendment

Pub. L. 104–201, div. A, title VI, § 635(b), Sept. 23, 1996, 110 Stat. 2579, provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to retired pay payable for months beginning on or after the date of the enactment of this Act [Sept. 23, 1996].''

Effective Date of 1994 Amendment

Pub. L. 103–337, div. A, title VI, § 637(b), Oct. 5, 1994, 108 Stat. 2790, provided that:

''(1) Except as provided in paragraph (2), the amendment made by subsection (a) [amending this section] applies to any election for child-only coverage under a reserve-component annuity under the Survivor Benefit Plan, whether made before, on, or after the date of the enactment of this Act [Oct. 5, 1994].

''(2) Paragraph (1) does not apply in a case of an election referred to in that paragraph that was made before the date of the enactment of this Act if the participant was informed, in writing, before the date of the enactment of this Act that no reduction in the participant's retired pay for child-only coverage would be made during a period when there was no eligible dependent child.''

Effective Date of 1990 Amendment

Pub. L. 101–510, div. A, title XIV, § 1484(*l*)(4)(C), Nov. 5, 1990, 104 Stat. 1720, provided that the amendment made by that section is effective Nov. 29, 1989.

Effective Date of 1985 Amendment

Pub. L. 99–145, title VII, § 714(b), Nov. 8, 1985, 99 Stat. 673, provided that: ''The amendments made by clause (5) of subsection (a) [amending this section] shall apply only with respect to persons who first participate in the Plan on or after the effective date of this title [see note below].''

Amendment by title VII of Pub. L. 99–145 effective Mar. 1, 1986, except as otherwise provided, with prohibition against accrual of benefits to any person by reason of the enactment of such title VII for any period before Mar. 1, 1986, see section 731 of Pub. L. 99–145, set out as a note under section 1447 of this title.

Effective Date of 1980 Amendment

Amendment by Pub. L. 96–402 effective Dec. 1, 1980, applicable to annuities payable for months beginning on or after such date, and prohibiting accrual of benefits for any period before Oct. 9, 1980, see section 7 of Pub. L. 96–402, set out as a note under section 1447 of this title.

Effective Date of 1978 Amendment

Amendment by Pub. L. 95–397 effective Oct. 1, 1978, and applicable to annuities payable by virtue of amendment for months beginning on or after such date, see section 210 of Pub. L. 95–397, set out as a note under section 1447 of this title.

Effective Date of 1976 Amendment

Amendment by Pub. L. 94–496 effective Sept. 11, 1972, see section 3 of Pub. L. 94–496, set out as a note under section 1447 of this title.

Recomputation of SBP Premium for Current Participants

Pub. L. 101–189, div. A, title XIV, § 1402(d), Nov. 29, 1989, 103 Stat. 1578, provided that:

''(1) Recomputation.—The Secretary concerned shall recompute the SBP premium of persons described in paragraph (2). Any such recomputation shall take effect on March 1, 1990.

''(2) PERSONS COVERED.—A person referred to in paragraph (1) as described in this paragraph is a person who on March 1, 1990—

''(A) is entitled to retired pay;

''(B) is providing spouse coverage (as described in paragraph (5) of section 1452[(a)] of title 10, United States Code, as added by subsection (b)); and

''(C) is subject to an SBP premium in excess of 6½ percent of the base amount of that person under the Survivor Benefit Plan.

''(3) AMOUNT OF RECOMPUTED PREMIUM.—The amount of an SBP premium recomputed under this subsection shall be 6½ percent of the base amount under the Survivor Benefit Plan of the person whose premium is recomputed.

''(4) SBP PREMIUM DEFINED.—For purposes of this subsection, the term 'SBP premium' means a reduction in retired pay under section 1452 of title 10, United States Code.''

§ 1453. Recovery of amounts erroneously paid

(a) RECOVERY.—In addition to any other method of recovery provided by law, the Secretary concerned may authorize the recovery of any amount erroneously paid to a person under this subchapter by deduction from later payments to that person.

(b) AUTHORITY TO WAIVE RECOVERY.—Recovery of an amount erroneously paid to a person under this subchapter is not required if, in the judgment of the Secretary concerned—

(1) there has been no fault by the person to whom the amount was erroneously paid; and

(2) recovery of such amount would be contrary to the purposes of this subchapter or against equity and good conscience.

(Added Pub. L. 92–425, §1(3), Sept. 21, 1972, 86 Stat. 710; amended Pub. L. 104–201, div. A, title VI, §634, Sept. 23, 1996, 110 Stat. 2577; Pub. L. 104–316, title I, §105(a), Oct. 19, 1996, 110 Stat. 3830.)

AMENDMENTS

1996—Pub. L. 104–201 substituted ''amounts'' for ''annuity'' in section catchline and amended text generally. Prior to amendment, text read as follows: ''In addition to other methods of recovery provided by law, the Secretary concerned may authorize the recovery, by deduction from later payments to a person, of any amount erroneously paid to him under this subchapter. However, recovery is not required if, in the judgment of the Secretary concerned and the Comptroller General, there has been no fault by the person to whom the amount was erroneously paid and recovery would be contrary to the purposes of this subchapter or against equity and good conscience.''

Subsec. (b). Pub. L. 104–316 struck out ''and the Comptroller General'' after ''judgment of the Secretary concerned'' in introductory provisions.

§ 1454. Correction of administrative errors

(a) AUTHORITY.—The Secretary concerned may, under regulations prescribed under section 1455 of this title, correct or revoke any election under this subchapter when the Secretary considers it necessary to correct an administrative error.

(b) FINALITY.—Except when procured by fraud, a correction or revocation under this section is final and conclusive on all officers of the United States.

(Added Pub. L. 92–425, §1(3), Sept. 21, 1972, 86 Stat. 711; amended Pub. L. 101–189, div. A, title XIV, §1407(a)(10)(A), Nov. 29, 1989, 103 Stat. 1589; Pub. L. 104–201, div. A, title VI, §634, Sept. 23, 1996, 110 Stat. 2577.)

AMENDMENTS

1996—Pub. L. 104–201 amended section generally. Prior to amendment, section read as follows: ''The Secretary concerned may, under regulations prescribed under section 1455 of this title, correct or revoke any election under this subchapter when he considers it necessary to correct an administrative error. Except when procured by fraud, a correction or revocation under this section is final and conclusive on all officers of the United States.''

1989—Pub. L. 101–189 substituted ''errors'' for ''deficiencies'' in section catchline.

§ 1455. Regulations

(a) IN GENERAL.—The President shall prescribe regulations to carry out this subchapter. Those regulations shall, so far as practicable, be uniform for the uniformed services.

(b) NOTICE OF ELECTIONS.—Regulations prescribed under this section shall provide that before the date on which a member becomes entitled to retired pay—

(1) if the member is married, the member and the member's spouse shall be informed of the elections available under section 1448(a) of this title and the effects of such elections; and

(2) if the notification referred to in section 1448(a)(3)(E) of this title is required, any former spouse of the member shall be informed of the elections available and the effects of such elections.

(c) PROCEDURE FOR DEPOSITING CERTAIN RECEIPTS.—Regulations prescribed under this section shall establish procedures for depositing the amounts referred to in sections 1448(g), 1450(k)(2), and 1452(d) of this title.

(d) PAYMENTS TO GUARDIANS, FIDUCIARIES, AND SPECIAL NEEDS TRUSTS.—

(1) IN GENERAL.—Regulations prescribed under this section shall provide procedures for the payment of an annuity under this subchapter in the case of—

(A) a person for whom a guardian or other fiduciary has been appointed;

(B) a minor, mentally incompetent, or otherwise legally disabled person for whom a guardian or other fiduciary has not been appointed; and

(C) a dependent child incapable of self-support because of mental or physical incapacity for whom a supplemental or special needs trust has been established under subparagraph (A) or (C) of section 1917(d)(4) of the Social Security Act (42 U.S.C. 1396p(d)(4)).

(2) AUTHORIZED PROCEDURES.—The regulations under paragraph (1) may include provisions for the following:

(A) In the case of an annuitant referred to in paragraph (1)(A), payment of the annuity to the appointed guardian or other fiduciary.

(B) In the case of an annuitant referred to in paragraph (1)(B), payment of the annuity to any person who, in the judgment of the Secretary concerned, is responsible for the care of the annuitant.

(C) In the case of an annuitant referred to in paragraph (1)(C), payment of the annuity

to the supplemental or special needs trust established for the annuitant.

(D) Subject to subparagraphs (E) and (F), a requirement for the payee of an annuity to spend or invest the amounts paid on behalf of the annuitant solely for benefit of the annuitant.

(E) Authority for the Secretary concerned to permit the payee to withhold from the annuity payment such amount, not in excess of 4 percent of the annuity, as the Secretary concerned considers a reasonable fee for the fiduciary services of the payee when a court appointment order provides for payment of such a fee to the payee for such services or the Secretary concerned determines that payment of a fee to such payee is necessary in order to obtain the fiduciary services of the payee.

(F) Authority for the Secretary concerned to require the payee to provide a surety bond in an amount sufficient to protect the interests of the annuitant and to pay for such bond out of the annuity.

(G) A requirement for the payee of an annuity to maintain and, upon request, to provide to the Secretary concerned an accounting of expenditures and investments of amounts paid to the payee.

(H) In the case of an annuitant referred to in paragraph (1)(B) or (1)(C)—

(i) procedures for determining incompetency and for selecting a payee to represent the annuitant for the purposes of this section, including provisions for notifying the annuitant of the actions being taken to make such a determination and to select a representative payee, an opportunity for the annuitant to review the evidence being considered, and an opportunity for the annuitant to submit additional evidence before the determination is made;

(ii) standards for determining incompetency, including standards for determining the sufficiency of medical evidence and other evidence; and

(iii) procedures for determining when annuity payments to a supplemental or special needs trust shall end based on the death or marriage of the dependent child for which the trust was established.

(I) Provisions for any other matter that the President considers appropriate in connection with the payment of an annuity in the case of a person referred to in paragraph (1).

(3) LEGAL EFFECT OF PAYMENT TO GUARDIAN, FIDUCIARY, OR TRUST.—An annuity paid to a person on behalf of an annuitant in accordance with the regulations prescribed pursuant to paragraph (1) discharges the obligation of the United States for payment to the annuitant of the amount of the annuity so paid.

(Added Pub. L. 92–425, §1(3), Sept. 21, 1972, 86 Stat. 711; amended Pub. L. 99–145, title VII, §724, Nov. 8, 1985, 99 Stat. 678; Pub. L. 102–190, div. A, title VI, §654(a), Dec. 5, 1991, 105 Stat. 1389; Pub. L. 104–201, div. A, title VI, §634, Sept. 23, 1996, 110 Stat. 2577; Pub. L. 113–291, div. A, title VI, §624(b), Dec. 19, 2014, 128 Stat. 3404.)

AMENDMENTS

2014—Subsec. (d). Pub. L. 113–291, §624(b)(1), substituted '', FIDUCIARIES, AND SPECIAL NEEDS TRUSTS'' for ''AND FIDUCIARIES'' in heading.

Subsec. (d)(1)(C). Pub. L. 113–291, §624(b)(2), added subpar. (C).

Subsec. (d)(2)(C). Pub. L. 113–291, §624(b)(3)(B), added subpar. (C). Former subpar. (C) redesignated (D).

Subsec. (d)(2)(D). Pub. L. 113–291, §624(b)(3)(A), (C), redesignated subpar. (C) as (D) and substituted ''subparagraphs (E) and (F)'' for ''subparagraphs (D) and (E)''.

Subsec. (d)(2)(E) to (G). Pub. L. 113–291, §624(b)(3)(A), redesignated subpars. (D) to (F) as (E) to (G), respectively. Former subpar. (G) redesignated (H).

Subsec. (d)(2)(H). Pub. L. 113–291, §624(b)(3)(A), (D), redesignated subpar. (G) as (H), inserted ''or (1)(C)'' after ''(1)(B)'' in introductory provisions, and added cl. (iii).

Subsec. (d)(2)(I). Pub. L. 113–291, §624(b)(3)(A), redesignated subpar. (H) as (I).

Subsec. (d)(3). Pub. L. 113–291, §624(b)(4), substituted '', FIDUCIARY, OR TRUST'' for ''OR FIDUCIARY'' in heading.

1996—Pub. L. 104–201 amended section generally, revising and restating provisions relating to regulations to carry out this subchapter.

1991—Subsecs. (a) to (d). Pub. L. 102–190 designated existing provisions as subsec. (a) and added subsecs. (b) to (d).

1985—Pars. (1), (2). Pub. L. 99–145 amended pars. (1) and (2) generally. Prior to amendment, pars. (1) and (2) read as follows:

''(1) provide that, when the notification referred to in section 1448(a) of this title is required, the member and his spouse shall, before the date the member becomes entitled to retired or retainer pay, be informed of the elections available and the effects of such elections; and

''(2) establish procedures for depositing the amounts referred to in section 1452(d) of this title.''

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by title VII of Pub. L. 99–145 effective Mar. 1, 1986, with prohibition against accrual of benefits to any person by reason of the enactment of such title VII for any period before Mar. 1, 1986, see section 731 of Pub. L. 99–145, set out as a note under section 1447 of this title.

[SUBCHAPTER III—REPEALED]

[§§ 1456 to 1460b. Repealed. Pub. L. 108–375, div. A, title VI, § 644(b)(2), Oct. 28, 2004, 118 Stat. 1961]

Section 1456, added Pub. L. 101–189, div. A, title XIV, §1404(a)(1), Nov. 29, 1989, 103 Stat. 1580, related to supplemental spouse coverage: establishment of plan; definitions.

Section 1457, added Pub. L. 101–189, div. A, title XIV, §1404(a)(1), Nov. 29, 1989, 103 Stat. 1580; amended Pub. L. 102–190, div. A, title VI, §653(b)(1), Dec. 5, 1991, 105 Stat. 1388; Pub. L. 103–337, div. A, title X, §1070(e)(5), Oct. 5, 1994, 108 Stat. 2859; Pub. L. 108–375, div. A, title VI, §644(b)(1), Oct. 28, 2004, 118 Stat. 1960, related to supplemental spouse coverage: payment of annuity; amount.

Section 1458, added Pub. L. 101–189, div. A, title XIV, §1404(a)(1), Nov. 29, 1989, 103 Stat. 1581; amended Pub. L. 102–190, div. A, title VI, §653(c)(1), Dec. 5, 1991, 105 Stat. 1388; Pub. L. 108–136, div. A, title VI, §645(b)(2), Nov. 24, 2003, 117 Stat. 1519; Pub. L. 108–375, div. A, title X, §1084(d)(10), Oct. 28, 2004, 118 Stat. 2061, related to supplemental spouse coverage: eligible participants; elections of coverage.

Section 1459, added Pub. L. 101–189, div. A, title XIV, §1404(a)(1), Nov. 29, 1989, 103 Stat. 1584, related to former spouse coverage: special rules.

Section 1460, added Pub. L. 101–189, div. A, title XIV, §1404(a)(1), Nov. 29, 1989, 103 Stat. 1584; amended Pub. L. 102–190, div. A, title VI, §653(b)(2), Dec. 5, 1991, 105 Stat. 1388; Pub. L. 110–181, div. A, title IX, §906(c)(2), Jan. 28,

2008, 122 Stat. 277, related to supplemental spouse coverage: reductions in retired pay.

Section 1460a, added Pub. L. 101–189, div. A, title XIV, § 1404(a)(1), Nov. 29, 1989, 103 Stat. 1585; amended Pub. L. 101–510, div. A, title XIV, § 1484(k)(5), Nov. 5, 1990, 104 Stat. 1719, related to incorporation of certain administrative provisions.

Section 1460b, added Pub. L. 101–189, div. A, title XIV, § 1404(a)(1), Nov. 29, 1989, 103 Stat. 1585, related to regulations.

EFFECTIVE DATE OF REPEAL

Pub. L. 108–375, div. A, title VI, § 644(b)(2), Oct. 28, 2004, 118 Stat. 1961, provided that the repeal of this subchapter by section 644(b)(2) is effective Apr. 1, 2008.

CHAPTER 74—DEPARTMENT OF DEFENSE MILITARY RETIREMENT FUND

Sec.
1461. Establishment and purpose of Fund; definition.
1462. Assets of Fund.
1463. Payments from the Fund.
[1464. Repealed.]
1465. Determination of contributions to the Fund.
1466. Payments into the Fund.
1467. Investment of assets of Fund.

AMENDMENTS

2008—Pub. L. 110–181, div. A, title IX, § 906(b)(1)(B), Jan. 28, 2008, 122 Stat. 277, struck out item 1464 ''Board of Actuaries''.

§ 1461. Establishment and purpose of Fund; definition

(a) There is established on the books of the Treasury a fund to be known as the Department of Defense Military Retirement Fund (hereinafter in this chapter referred to as the ''Fund''), which shall be administered by the Secretary of the Treasury. The Fund shall be used for the accumulation of funds in order to finance on an actuarially sound basis liabilities of the Department of Defense and the Coast Guard under military retirement and survivor benefit programs.

(b) In this chapter, the term ''military retirement and survivor benefit programs'' means—

(1) the provisions of this title creating entitlement to, or determining the amount of, retired or retainer pay;

(2) the programs under the jurisdiction of the Department of Defense providing annuities for survivors of members and former members of the armed forces, including chapter 73 of this title, section 4 of Public Law 92–425, and section 5 of Public Law 96–402; and

(3) the authority provided in section 1408(h) of this title.

(Added Pub. L. 98–94, title IX, § 925(a)(1), Sept. 24, 1983, 97 Stat. 644; amended Pub. L. 101–189, div. A, title XVI, § 1622(e)(7), Nov. 29, 1989, 103 Stat. 1605; Pub. L. 102–484, div. A, title VI, § 653(b)(1), Oct. 23, 1992, 106 Stat. 2428; Pub. L. 116–283, div. G, title LVXXXII [LXXXII], § 8222, Jan. 1, 2021, 134 Stat. 4658.)

REFERENCES IN TEXT

Section 4 of Public Law 92–425, referred to in subsec. (b)(2), is set out as a note under section 1448 of this title.

Section 5 of Public Law 96–402, referred to in subsec. (b)(2), is set out as a note under section 1448 of this title.

AMENDMENTS

2021—Subsec. (a). Pub. L. 116–283 inserted ''and the Coast Guard'' after ''liabilities of the Department of Defense''.

1992—Subsec. (b)(3). Pub. L. 102–484 added par. (3).

1989—Subsec. (b). Pub. L. 101–189 inserted ''the term'' after ''In this chapter,''.

§ 1462. Assets of Fund

There shall be deposited into the Fund the following, which shall constitute the assets of the Fund:

(1) Amounts paid into the Fund under section 1466 of this title.

(2) Any amount appropriated to the Fund.

(3) Any return on investment of the assets of the Fund.

(Added Pub. L. 98–94, title IX, § 925(a)(1), Sept. 24, 1983, 97 Stat. 645.)

TRANSFER OF APPROPRIATIONS

Pub. L. 98–94, title IX, § 925(b)(3), Sept. 24, 1983, 97 Stat. 648, required transfer into the Fund on Oct. 1, 1984, of any unobligated balances of appropriations made to the Department of Defense that had been currently available for retired pay, and provided that amounts so transferred would be deemed part of the assets of the Fund.

§ 1463. Payments from the Fund

(a) There shall be paid from the Fund—

(1) retired pay payable to members on the retired lists of the Army, Navy, Air Force, Marine Corps, and Coast Guard, and Space Force [1] and payments under section 1413a, 1414, or 1415 of this title paid to such members;

(2) retired pay payable under chapter 1223 of this title to former members of the armed forces;

(3) retainer pay payable to members of the Fleet Reserve and Fleet Marine Corps Reserve;

(4) benefits payable under programs under the jurisdiction of the Department of Defense and the Department of Homeland Security that that [2] provide annuities for survivors of members and former members of the armed forces, including chapter 73 of this title, section 4 of Public Law 92–425, and section 5 of Public Law 96–402; and

(5) amounts payable under section 1408(h) of this title.

(b) The assets of the Fund are hereby made available for payments under subsection (a).

(Added Pub. L. 98–94, title IX, § 925(a)(1), Sept. 24, 1983, 97 Stat. 645; amended Pub. L. 101–189, div. A, title VI, § 651(c), Nov. 29, 1989, 103 Stat. 1460; Pub. L. 102–484, div. A, title VI, § 653(b)(2), Oct. 23, 1992, 106 Stat. 2428; Pub. L. 103–35, title II, § 202(a)(4), May 31, 1993, 107 Stat. 101; Pub. L. 104–106, div. A, title XV, § 1501(c)(18), Feb. 10, 1996, 110 Stat. 499; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 108–136, div. A, title VI, § 641(c)(2), Nov. 24, 2003, 117 Stat. 1515; Pub. L. 108–375, div. A, title X, § 1084(d)(11), Oct. 28, 2004, 118 Stat. 2062; Pub. L. 114–92, div. A, title VI, § 633(a)(3), Nov. 25, 2015, 129 Stat. 850; Pub. L. 116–283, div. A, title IX,

[1] See 2021 Amendment notes below.

[2] So in original.

§ 924(b)(1)(L), div. G, title LVXXXII [LXXXII], § 8223, Jan. 1, 2021, 134 Stat. 3820, 4658.)

REFERENCES IN TEXT

Section 4 of Public Law 92–425, referred to in subsec. (a)(4), is set out as a note under section 1448 of this title.

Section 5 of Public Law 96–402, referred to in subsec. (a)(4), is set out as a note under section 1448 of this title.

AMENDMENTS

2021—Subsec. (a)(1). Pub. L. 116–283, § 8223(1), which directed substitution of ''Marine Corps, and Coast Guard'' for ''and Marine Corps'', was executed by making the substitution for ''Marine Corps'' to reflect the probable intent of Congress and the intervening amendment by Pub. L. 116–283, § 924(b)(1)(L). See below.

Pub. L. 116–283, § 924(b)(1)(L), substituted ''Marine Corps, and Space Force'' for ''and Marine Corps''.

Subsec. (a)(2). Pub. L. 116–283, § 8223(2), struck out ''(other than retired pay payable by the Secretary of Homeland Security)'' after ''armed forces''.

Subsec. (a)(4). Pub. L. 116–283, § 8223(3), inserted ''and the Department of Homeland Security that'' after ''Department of Defense''.

2015—Subsec. (a)(1). Pub. L. 114–92 substituted '', 1414, or 1415'' for ''or 1414''.

2004—Subsec. (a)(1). Pub. L. 108–375 substituted ''1413a'' for ''1413, 1413a,''.

2003—Subsec. (a)(1). Pub. L. 108–136 inserted before semicolon at end ''and payments under section 1413, 1413a, or 1414 of this title paid to such members''.

2002—Subsec. (a)(2). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

1996—Subsec. (a)(2). Pub. L. 104–106 substituted ''chapter 1223'' for ''chapter 67''.

1993—Subsec. (a)(5). Pub. L. 103–35 made technical amendment to directory language of Pub. L. 102–484, § 653(b)(2). See 1992 Amendment note below.

1992—Subsec. (a). Pub. L. 102–484, as amended by Pub. L. 103–35, added par. (5).

1989—Subsec. (a). Pub. L. 101–189 substituted ''members'' for ''persons'' in par. (1), added par. (2), and redesignated former pars. (2) and (3) as (3) and (4), respectively.

EFFECTIVE DATE OF 2015 AMENDMENT; IMPLEMENTATION

Amendment by Pub. L. 114–92 effective Jan. 1, 2018, with certain implementation requirements, see section 635 of Pub. L. 114–92, set out as a note under section 8432 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–136 effective Oct. 1, 2003, with Secretary of Defense to provide for certain administrative adjustments, see section 641(c)(6) of Pub. L. 108–136, set out as a note under section 1413a of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–106, div. A, title XV, § 1501(c), Feb. 10, 1996, 110 Stat. 498, provided that the amendment made by that section is effective as of Dec. 1, 1994, and as if included as an amendment made by the Reserve Officer Personnel Management Act, title XVI of Pub. L. 103–337, as originally enacted.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–35 applicable as if included in the enactment of Pub. L. 102–484, see section 202(b) of Pub. L. 103–35, set out as a note under section 155 of this title.

EFFECTIVE DATE

Pub. L. 98–94, title IX, § 925(b)(2), Sept. 24, 1983, 97 Stat. 648, provided that: ''Sections 1463 (relating to payments from the Fund) and 1466 (relating to payments to the Fund) of title 10, United States Code, as added by subsection (a), shall take effect on October 1, 1984.''

[§ 1464. Repealed. Pub. L. 110–181, div. A, title IX, § 906(b)(1)(A), Jan. 28, 2008, 122 Stat. 277]

Section, added Pub. L. 98–94, title IX, § 925(a)(1), Sept. 24, 1983, 97 Stat. 645; amended Pub. L. 98–525, title XIV, § 1405(27), Oct. 19, 1984, 98 Stat. 2623, established in the Department of Defense a Department of Defense Retirement Board of Actuaries.

§ 1465. Determination of contributions to the Fund

(a)(1) Not later than six months after the Board of Actuaries is first appointed, the Board shall determine the amount that is the present value (as of October 1, 1984) of future benefits payable from the Fund that are attributable to service in the armed forces performed before October 1, 1984. That amount is the original unfunded liability of the Fund. The Board shall determine the period of time over which the original unfunded liability should be liquidated and shall determine an amortization schedule for the liquidation of such liability over that period. Contributions to the Fund for the liquidation of the original unfunded liability in accordance with such schedule shall be made as provided in section 1466(b) of this title.

(2) Not later than October 1, 2022, the Board of Actuaries shall determine the amount that is the present value (as of September 30, 2022) of future benefits payable from the Fund that are attributable to service in the Coast Guard performed before October 1, 2022. That amount is the original Coast Guard unfunded liability of the Fund. The Board shall determine the period of time over which the original Coast Guard unfunded liability should be liquidated and shall determine an amortization schedule for the liquidation of such liability over that period. Contributions to the Fund for the liquidation of the original Coast Guard unfunded liability in accordance with such schedule shall be made as provided in section 1466(b) of this title.

(b)(1) The Secretary of Defense, in consultation with the Secretary of the department in which the Coast Guard is operating, shall determine each year, in sufficient time for inclusion in budget requests for the following fiscal year, the total amount of Department of Defense and Coast Guard contributions to be made to the Fund during that fiscal year under section 1466(a) of this title. That amount shall be the sum of the following:

(A) The product of—

(i) the current estimate of the value of the single level percentage of basic pay to be determined under subsection (c)(1)(A) at the time of the next actuarial valuation under subsection (c); and

(ii) the total amount of basic pay expected to be paid during that fiscal year for active duty members of the Armed Forces and for full-time National Guard duty (other than full-time National Guard duty for training only), but excluding the amount expected to

be paid for any duty that would be excluded for active-duty end strength purposes by section 115(i) of this title.

(B) The product of—

(i) the current estimate of the value of the single level percentage of basic pay and of compensation (paid pursuant to section 206 of title 37) to be determined under subsection (c)(1)(B) at the time of the next actuarial valuation under subsection (c); and

(ii) the total amount of basic pay and of compensation (paid pursuant to section 206 of title 37) expected to be paid during that fiscal year to members of the Selected Reserve of the armed forces for service not otherwise described in subparagraph (A)(ii).

(2) The amount determined under paragraph (1) for any fiscal year is the amount needed to be appropriated to the Coast Guard Retired Pay account and the the[1] Department of Defense for that fiscal year for payments to be made to the Fund during that year under section 1466(a) of this title. The President shall include not less than the full amount so determined in the budget transmitted to Congress for that fiscal year under section 1105 of title 31. The President may comment and make recommendations concerning any such amount.

(3) At the same time that the Secretary of Defense makes the determination required by paragraph (1) for any fiscal year, the Secretary shall determine the amount of the Treasury contribution to be made to the Fund for the next fiscal year under section 1466(b)(2)(D) of this title. That amount shall be determined in the same manner as the determination under paragraph (1) of the total amount of Department of Defense and Coast Guard contributions to be made to the Fund during that fiscal year under section 1466(a) of this title, except that for purposes of this paragraph the Secretary, in making the calculations required by subparagraphs (A) and (B) of that paragraph, shall use the single level percentages determined under subsection (c)(4), rather than those determined under subsection (c)(1).

(c)(1) Not less often than every four years, the Secretary of Defense, in consultation with the Secretary of the department in which the Coast Guard is operating, shall carry out an actuarial valuation of Department of Defense military retirement and survivor benefit programs. Each actuarial valuation of such programs shall include—

(A) a determination (using the aggregate entry-age normal cost method) of a single level percentage of basic pay for active duty members of the Armed Forces and for full-time National Guard duty (other than full-time National Guard duty for training only), but excluding the amount expected to be paid for any duty that would be excluded for active-duty end strength purposes by section 115(i) of this title, to be determined without regard to section 1413a or 1414 of this title; and

(B) a determination (using the aggregate entry-age normal cost method) of a single level percentage of basic pay and of compensation (paid pursuant to section 206 of title 37) for members of the Selected Reserve of the armed forces for service not otherwise described by subparagraph (A), to be determined without regard to section 1413a or 1414 of this title.

Such single level percentages shall be used for the purposes of subsection (b)(1) and section 1466(a) of this title.

(2) If at the time of any such valuation (or any valuation carried out in order to comply with chapter 95 of title 31) there has been a change in benefits under a military retirement or survivor benefit program that has been made since the last such valuation and such change in benefits increases or decreases the present value of amounts payable from the Fund, the Secretary of Defense, in consultation with the Secretary of the department in which the Coast Guard is operating, shall determine an amortization methodology and schedule for the amortization of the cumulative unfunded liability (or actuarial gain to the Fund) created by such change and any previous such changes so that the present value of the sum of the amortization payments (or reductions in payments that would otherwise be made) equals the cumulative increase (or decrease) in the present value of such amounts.

(3) If at the time of any such valuation (or any valuation carried out in order to comply with chapter 95 of title 31) the Secretary of Defense, in consultation with the Secretary of the department in which the Coast Guard is operating, determines that, based upon changes in actuarial assumptions since the last valuation, there has been an actuarial gain or loss to the Fund, the Secretary shall determine an amortization methodology and schedule for the amortization of the cumulative gain or loss to the Fund created by such change in assumptions and any previous such changes in assumptions through an increase or decrease in the payments that would otherwise be made to the Fund.

(4) Whenever the Secretary carries out an actuarial valuation under paragraph (1), the Secretary shall include as part of such valuation the following:

(A) A determination of a single level percentage determined in the same manner as applies under subparagraph (A) of paragraph (1), but based only upon the provisions of sections 1413a and 1414 of this title.

(B) A determination of a single level percentage determined in the same manner as applies under subparagraph (B) of paragraph (1), but based only upon the provisions of sections 1413a and 1414 of this title.

Such single level percentages shall be used for the purposes of subsection (b)(3).

(5) Contributions to the Fund in accordance with amortization schedules under paragraphs (2) and (3) shall be made as provided in section 1466(b) of this title.

(d) All determinations under this section shall be made using methods and assumptions approved by the Board of Actuaries (including assumptions of interest rates and inflation) and in accordance with generally accepted actuarial principles and practices.

(e) The Secretary of Defense and, with regard to the Coast Guard, the Secretary of the depart-

[1] So in original.

ment in which the Coast Guard is operating provide[1] for the keeping of such records as are necessary for determining the actuarial status of the Fund.

(Added Pub. L. 98–94, title IX, § 925(a)(1), Sept. 24, 1983, 97 Stat. 646; amended Pub. L. 98–525, title XIV, § 1405(28), Oct. 19, 1984, 98 Stat. 2623; Pub. L. 99–500, § 101(c) [title IX, § 9131], Oct. 18, 1986, 100 Stat. 1783–82, 1783–128, and Pub. L. 99–591, § 101(c) [title IX, § 9131], Oct. 30, 1986, 100 Stat. 3341–82, 3341–128; Pub. L. 99–661, div. A, title VI, § 661(a), Nov. 14, 1986, 100 Stat. 3891; Pub. L. 108–136, div. A, title VI, § 641(c)(3), (4), Nov. 24, 2003, 117 Stat. 1515; Pub. L. 108–375, div. A, title X, § 1084(d)(11), Oct. 28, 2004, 118 Stat. 2062; Pub. L. 109–364, div. A, title V, § 591(a), Oct. 17, 2006, 120 Stat. 2232; Pub. L. 116–283, div. G, title LVXXXII [LXXXII], § 8224, Jan. 1, 2021, 134 Stat. 4658.)

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

Amendment of section by Pub. L. 99–500 and Pub. L. 99–591 is based on section 642 of S. 2638, Ninety-ninth Congress, as passed by the Senate on Aug. 9, 1986, which was enacted into permanent law by Pub. L. 99–500 and Pub. L. 99–591. S. 2638 was subsequently enacted as Pub. L. 99–661.

AMENDMENTS

2021—Subsec. (a). Pub. L. 116–283, § 8224(1), designated existing provisions as par. (1) and added par. (2).

Subsec. (b)(1). Pub. L. 116–283, § 8224(2)(A)(i), in introductory provisions, inserted '', in consultation with the Secretary of the department in which the Coast Guard is operating,'' after ''Secretary of Defense'' and ''and Coast Guard'' after ''Department of Defense''.

Subsec. (b)(1)(A)(ii). Pub. L. 116–283, § 8224(2)(A)(ii), substituted ''members of the Armed Forces'' for ''(other than the Coast Guard)''.

Subsec. (b)(1)(B)(ii). Pub. L. 116–283, § 8224(2)(A)(iii), struck out ''(other than the Coast Guard)'' after ''armed forces''.

Subsec. (b)(2). Pub. L. 116–283, § 8224(2)(B), inserted ''the Coast Guard Retired Pay account and the'' after ''appropriated to''.

Subsec. (b)(3). Pub. L. 116–283, § 8224(2)(C), inserted ''and Coast Guard'' after ''Department of Defense''.

Subsec. (c)(1). Pub. L. 116–283, § 8224(3)(A)(i), inserted '', in consultation with the Secretary of the department in which the Coast Guard is operating,'' after ''Secretary of Defense'' in introductory provisions.

Subsec. (c)(1)(A). Pub. L. 116–283, § 8224(3)(A)(ii), substituted ''members of the Armed Forces'' for ''(other than the Coast Guard)''.

Subsec. (c)(1)(B). Pub. L. 116–283, § 8224(3)(A)(iii), struck out ''(other than the Coast Guard)'' after ''armed forces''.

Subsec. (c)(2). Pub. L. 116–283, § 8224(3)(B), inserted '', in consultation with the Secretary of the department in which the Coast Guard is operating,'' after ''Secretary of Defense''.

Subsec. (c)(3). Pub. L. 116–283, § 8224(3)(C), inserted '', in consultation with the Secretary of the department in which the Coast Guard is operating,'' after ''Secretary of Defense''.

Subsec. (e). Pub. L. 116–283, § 8224(4), substituted ''Secretary of Defense and, with regard to the Coast Guard, the Secretary of the department in which the Coast Guard is operating'' for ''Secretary of Defense shall''.

2006—Subsec. (b)(1)(A)(ii). Pub. L. 109–364, § 591(a)(1)(A), substituted ''for active duty (other than the Coast Guard) and for full-time National Guard duty (other than full-time National Guard duty for training only), but excluding the amount expected to be paid for any duty that would be excluded for active-duty end strength purposes by section 115(i) of this title'' for ''to members of the armed forces (other than the Coast Guard) on active duty (other than active duty for training) or full-time National Guard duty (other than full-time National Guard duty for training only)''.

Subsec. (b)(1)(B)(ii). Pub. L. 109–364, § 591(a)(1)(B), substituted ''Selected Reserve'' for ''Ready Reserve'' and ''Coast Guard) for service'' for ''Coast Guard and other than members on full-time National Guard duty other than for training) who are''.

Subsec. (c)(1)(A). Pub. L. 109–364, § 591(a)(2)(A), substituted ''for active duty (other than the Coast Guard) and for full-time National Guard duty (other than full-time National Guard duty for training only), but excluding the amount expected to be paid for any duty that would be excluded for active-duty end strength purposes by section 115(i) of this title'' for ''for members of the armed forces (other than the Coast Guard) on active duty (other than active duty for training) or full-time National Guard duty (other than full-time National Guard duty for training only)''.

Subsec. (c)(1)(B). Pub. L. 109–364, § 591(a)(2)(B), substituted ''Selected Reserve'' for ''Ready Reserve'' and ''Coast Guard) for service'' for ''Coast Guard and other than members on full-time National Guard duty other than for training) who are''.

2004—Subsec. (c)(1)(A), (B), (4)(A), (B). Pub. L. 108–375 substituted ''1413a'' for ''1413, 1413a,''.

2003—Subsec. (b)(3). Pub. L. 108–136, § 641(c)(3), added par. (3).

Subsec. (c)(1). Pub. L. 108–136, § 641(c)(4)(A)(iii), substituted ''subsection (b)(1)'' for ''subsection (b)'' in concluding provisions.

Subsec. (c)(1)(A). Pub. L. 108–136, § 641(c)(4)(A)(i), inserted before semicolon '', to be determined without regard to section 1413, 1413a, or 1414 of this title''.

Subsec. (c)(1)(B). Pub. L. 108–136, § 641(c)(4)(A)(ii), inserted before period at end '', to be determined without regard to section 1413, 1413a, or 1414 of this title''.

Subsec. (c)(4), (5). Pub. L. 108–136, § 641(c)(4)(B), (C), added par. (4) and redesignated former par. (4) as (5).

1985—Subsec. (b)(1). Pub. L. 99–500 and Pub. L. 99–591, Pub. L. 99–661, § 661(a), amended par. (1) identically, inserting second sentence and striking out the existing second sentence which read as follows: ''That amount shall be determined as the product of—

''(A) the current estimate of the value of the single level percentage of basic pay to be determined at the time of the next actuarial valuation under subsection (c); and

''(B) the total amount of basic pay expected to be paid during that fiscal year to members of the armed forces (other than the Coast Guard) on active duty or in the Selected Reserve.''

Subsec. (c)(1). Pub. L. 99–500 and Pub. L. 99–591, Pub. L. 99–661, § 661(a)(2), amended par. (1) identically, inserting second and third sentences and striking out existing second sentence which read as follows: ''Each actuarial valuation of such programs shall include a determination (using the aggregate entry-age normal cost method) of a single level percentage of basic pay to be used for the purposes of subsection (b) and section 1466(a) of this title.''

1984—Subsec. (c)(1). Pub. L. 98–525 struck out ''(A)'' after ''(c)(1)''.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–364, div. A, title V, § 591(c), Oct. 17, 2006, 120 Stat. 2233, provided that: ''The amendments made by this section [amending this section and section 1466 of this title] shall take effect on October 1, 2007.''

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–136 effective Oct. 1, 2003, with Secretary of Defense to provide for certain administrative adjustments, see section 641(c)(6) of Pub. L. 108–136, set out as a note under section 1413a of this title.

EFFECTIVE DATE OF 1986 AMENDMENTS

Section 642(c) of S. 2638, as passed by the Senate on Aug. 9, 1986, and as enacted into law by section 101(c)

[title IX, § 9131] of Pub. L. 99–500 and Pub. L. 99–591, and section 661(d) of Pub. L. 99–661, provided respectively that: ''The amendments made by this section [amending this section and section 1466 of this title] shall take effect on October 1, 1986, or the date of the enactment of this Act [Oct. 18, 1986], whichever is later, and shall apply to payments required to be made under section 1466(a) of title 10, United States Code, as amended by this section, for months beginning on or after that effective date.'' and ''The amendments made by subsections (a) and (b) [amending this section and section 1466 of this title] shall apply to payments required to be made under section 1466(a) of title 10, United States Code, as amended by subsection (b), for months beginning on or after the date of the enactment of this Act [Nov. 14, 1986].''

§ 1466. Payments into the Fund

(a) The Secretary of Defense and the Secretary of the department in which the Coast Guard is operating, with respect to the Coast guard,[1] shall pay into the Fund at the end of each month the respective pro rata share contribution of the Secretary of Defense and the Secretary of the department in which the Coast Guard is operating to the Fund for that month the amount that is the sum of the following:

(1) The product of—

(A) the level percentage of basic pay determined using all the methods and assumptions approved for the most recent (as of the first day of the current fiscal year) actuarial valuation under section 1465(c)(1)(A) of this title (except that any statutory change in the military retirement and survivor benefit systems that is effective after the date of that valuation and on or before the first day of the current fiscal year shall be used in such determination); and

(B) the total amount of basic pay accrued for that month for active duty (other than the Coast Guard) and for full-time National Guard duty (other than full-time National Guard duty for training only), but excluding the amount expected to be paid for any duty that would be excluded for active-duty end strength purposes by section 115(i) of this title.

(2) The product of—

(A) the level percentage of basic pay and of compensation (paid pursuant to section 206 of title 37) determined using all the methods and assumptions approved for the most recent (as of the first day of the current fiscal year) actuarial valuation under section 1465(c)(1)(B) of this title (except that any statutory change in the military retirement and survivor benefit systems that is effective after the date of that valuation and on or before the first day of the current fiscal year shall be used in such determination); and

(B) the total amount of basic pay and of compensation (paid pursuant to section 206 of title 37) accrued for that month by members of the Selected Reserve of the armed forces for service not otherwise described in paragraph (1)(B).

(b) Amounts paid into the Fund under this subsection shall be paid from funds available for as appropriate—

(1) the pay of members of the armed forces under the jurisdiction of the Secretary of a military department; or

(2) the Retired Pay appropriation for the Coast Guard.

(c)(1) At the beginning of each fiscal year the Secretary of the Treasury shall promptly pay into the Fund from the General Fund of the Treasury the amount certified to the Secretary by the Secretary of Defense under paragraph (3). Such payment shall be the contribution to the Fund for that fiscal year required by sections 1465(a), 1465(b)(3), 1465(c)(2), and 1465(c)(3) of this title.

(2) At the beginning of each fiscal year the Secretary of Defense shall determine the sum of the following:

(A) The amount of the payment for that year under the amortization schedule determined by the Board of Actuaries under section 1465(a) of this title for the amortization of the original unfunded liabilities of the Fund for the Department of Defense and the Coast Guard.

(B) The amount (including any negative amount) for that year under the most recent amortization schedule determined by the Secretary of Defense under section 1465(c)(2) of this title for the amortization of any cumulative unfunded liability (or any gain) to the Fund resulting from changes in benefits.

(C) The amount (including any negative amount) for that year under the most recent amortization schedule determined by the Secretary of Defense under section 1465(c)(3) of this title for the amortization of any cumulative actuarial gain or loss to the Fund.

(D) The amount for that year determined by the Secretary of Defense under section 1465(b)(3) of this title for the cost to the Fund arising from increased amounts payable from the Fund by reason of section 1413a or 1414 of this title.

(3) The Secretary of Defense and the Secretary of the Department in which the Coast Guard is operating shall promptly certify the amount determined under paragraph (2) each year to the Secretary of the Treasury.

(d)(1) The Secretary of Defense shall pay into the Fund at the beginning of each fiscal year such amount as may be necessary to pay the cost to the Fund for that fiscal year resulting from the repeal, as of October 1, 1999, of section 5532 of title 5, including any actuarial loss to the Fund resulting from increased benefits paid from the Fund that are not fully covered by the payments made to the Fund for that fiscal year under subsections (a) and (b).

(2) Amounts paid into the Fund under this subsection shall be paid from funds available for the pay of members of the armed forces under the jurisdiction of the Secretary of a military department.

(3) The Department of Defense Board of Actuaries shall determine, for each armed force, the amount required under paragraph (1) to be deposited in the Fund each fiscal year.

(Added Pub. L. 98–94, title IX, § 925(a)(1), Sept. 24, 1983, 97 Stat. 647; amended Pub. L. 99–500, § 101(c) [title IX, §§ 9103(3), 9131], Oct. 18, 1986, 100 Stat. 1783–82, 1783–118, 1783–128, and Pub. L. 99–591,

[1] So in original. Probably should be capitalized.

§ 101(c) [title IX, §§ 9103(3), 9131], Oct. 30, 1986, 100 Stat. 3341–82, 3341–118, 3341–128; Pub. L. 99–661, div. A, title VI, § 661(b), Nov. 14, 1986, 100 Stat. 3892; Pub. L. 100–26, §§ 4(a)(1), 7(a)(3), Apr. 21, 1987, 101 Stat. 274, 275; Pub. L. 106–65, div. A, title VI, § 651(b), Oct. 5, 1999, 113 Stat. 664; Pub. L. 108–136, div. A, title VI, § 641(c)(5), Nov. 24, 2003, 117 Stat. 1516; Pub. L. 108–375, div. A, title X, § 1084(d)(11), Oct. 28, 2004, 118 Stat. 2062; Pub. L. 109–364, div. A, title V, § 591(b), Oct. 17, 2006, 120 Stat. 2233; Pub. L. 110–181, div. A, title IX, § 906(c)(3), title X, § 1063(c)(4), Jan. 28, 2008, 122 Stat. 277, 322; Pub. L. 116–283, div. G, title LVXXXII [LXXXII], § 8225, Jan. 1, 2021, 134 Stat. 4659.)

REFERENCES IN TEXT

Section 5532 of title 5, referred to in subsec. (d)(1), was repealed by Pub. L. 106–65, div. A, title VI, § 651(a)(1), Oct. 5, 1999, 113 Stat. 664.

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

Amendment of section by section 9131 of Pub. L. 99–500 and Pub. L. 99–591 is based on section 642 of S. 2638, Ninety-ninth Congress, as passed by the Senate on Aug. 9, 1986, which was enacted into permanent law by section 9131 of Pub. L. 99–500 and Pub. L. 99–591. S. 2638 was subsequently enacted as Pub. L. 99–661.

AMENDMENTS

2021—Subsec. (a). Pub. L. 116–283, § 8225(1)(A), (C), in introductory provisions, substituted ''Secretary of Defense and the Secretary of the department in which the Coast Guard is operating, with respect to the Coast guard, shall'' for ''Secretary of Defense shall'' and ''each month the respective pro rata share contribution of the Secretary of Defense and the Secretary of the department in which the Coast Guard is operating'' for ''each month as the Department of Defense contribution'' and struck out concluding provisions which read as follows:''Amounts paid into the Fund under this subsection shall be paid from funds available for the pay of members of the armed forces under the jurisdiction of the Secretary of a military department.''

Subsec. (a)(2)(B). Pub. L. 116–283, § 8225(1)(B), struck out ''(other than the Coast Guard)'' after ''armed forces''.

Subsec. (b). Pub. L. 116–283, § 8225(1)(C), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 116–283, § 8225(2), which directed redesignation of subsec. (b) as (c), was executed by redesignating the subsec. (b) relating to the prompt payment by the Secretary of the Treasury of certified amounts under the amortization schedule determined by the Board of Actuaries as (c). Former subsec. (c) redesignated (d).

Subsec. (c)(2)(A). Pub. L. 116–283, § 8225(3)(A), substituted ''liabilities of the Fund for the Department of Defense and the Coast Guard.'' for ''liability of the Fund.''

Subsec. (c)(3). Pub. L. 116–283, § 8225(3)(B), inserted ''and the Secretary of the Department in which the Coast Guard is operating'' before ''shall promptly''.

Subsec. (d). Pub. L. 116–283, § 8225(2), redesignated subsec. (c) as (d).

2008—Subsec. (a)(1)(B). Pub. L. 110–181, § 1063(c)(4), amended Pub. L. 109–364, § 591(b)(1). See 2006 Amendment note below.

Subsec. (c)(3). Pub. L. 110–181, § 906(c)(3), struck out ''Retirement'' before ''Board of Actuaries''.

2006—Subsec. (a)(1)(B). Pub. L. 109–364, § 591(b)(1), as amended by Pub. L. 110–181, § 1063(c)(4), substituted ''for active duty (other than the Coast Guard) and for full-time National Guard duty (other than full-time National Guard duty for training only), but excluding the amount expected to be paid for any duty that would be excluded for active-duty end strength purposes by section 115(i) of this title.'' for ''by members of the armed forces (other than the Coast Guard) on active duty (other than active duty for training) or full-time National Guard duty (other than full-time National Guard duty for training only).''

Subsec. (a)(2)(B). Pub. L. 109–364, § 591(b)(2), substituted ''Selected Reserve'' for ''Ready Reserve'' and ''Coast Guard) for service'' for ''Coast Guard and other than members on full-time National Guard duty other than for training) who are''.

2004—Subsec. (b)(2)(D). Pub. L. 108–375 substituted ''1413a'' for ''1413, 1413a,''.

2003—Subsec. (b)(1). Pub. L. 108–136, § 641(c)(5)(A), substituted ''sections 1465(a), 1465(b)(3), 1465(c)(2), and 1465(c)(3)'' for ''sections 1465(a) and 1465(c)''.

Subsec. (b)(2)(D). Pub. L. 108–136, § 641(c)(5)(B), added subpar. (D).

1999—Subsec. (c). Pub. L. 106–65 added subsec. (c).

1987—Subsec. (a). Pub. L. 100–26, § 7(a)(3), inserted at end ''Amounts paid into the Fund under this subsection shall be paid from funds available for the pay of members of the armed forces under the jurisdiction of the Secretary of a military department.''

Subsec. (a)(1)(B), (2)(B). Pub. L. 100–26, § 4(a)(1), amended Pub. L. 99–500 and 99–591, title I, § 101(c) [title IX, § 9103(3)]. See 1986 Amendment note below.

1986—Subsec. (a). Pub. L. 99–661 amended first sentence of subsec. (a), which after amendment by Pub. L. 99–500 and Pub. L. 99–591 was the only sentence of subsec. (a), by substituting language which was substantially identical to that substituted by Pub. L. 99–500 and Pub. L. 99–591.

Pub. L. 99–500 and Pub. L. 99–591, title I, § 101(c) [§ 9131], amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''The Secretary of Defense shall pay into the Fund at the end of each month as the Department of Defense contribution to the Fund for that month the amount that is the product of—

''(1) the level percentage of basic pay determined under the most recent (as of the first day of the current fiscal year) actuarial valuation under section 1465(c) of this title; and

''(2) the total amount of basic pay paid that month to members of the armed forces (other than the Coast Guard) on active duty or in the Selected Reserve.

Amounts paid into the Fund under this subsection shall be paid from funds available for the pay of members of the armed forces under the jurisdiction of the Secretary of a military department.''

Subsec. (a)(1)(B), (2)(B). Pub. L. 99–500 and Pub. L. 99–591, title I, § 101(c) [title IX, § 9103(3)], as amended by Pub. L. 100–26, § 4(a)(1), substituted ''accrued for that month by'' for ''paid that month to'' in pars. (1)(B) and (2)(B) as amended by section 661(b) of Pub. L. 99–661, see above.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–181, div. A, title X, § 1063(c), Jan. 28, 2008, 122 Stat. 322, provided that the amendment made by section 1063(c)(4) is effective as of Oct. 17, 2006, and as if included in the John Warner National Defense Authorization Act for Fiscal Year 2007, Pub. L. 109–364, as enacted.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–364 effective Oct. 1, 2007, see section 591(c) of Pub. L. 109–364, set out as a note under section 1465 of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–136 effective Oct. 1, 2003, with Secretary of Defense to provide for certain administrative adjustments, see section 641(c)(6) of Pub. L. 108–136, set out as a note under section 1413a of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–65, div. A, title VI, § 651(c), Oct. 5, 1999, 113 Stat. 664, provided that: ''The amendments made by

this section [amending this section and repealing section 5532 of Title 5, Government Organization and Employees] shall take effect on October 1, 1999.''

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100–26, § 12(b), Apr. 21, 1987, 101 Stat. 289, provided that: ''The amendments made by section 4 [amending this section and provisions set out as a note under section 1014 of Title 37, Pay and Allowances of the Uniformed Services] shall apply as if included in Public Laws 99–500 and 99–591 when enacted on October 18, 1986, and October 30, 1986, respectively.''

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by Pub. L. 99–661 applicable to payments required to be made under subsec. (a) of this section for months beginning on or after Nov. 14, 1986, see section 661(d) of Pub. L. 99–661, set out as a note under section 1465 of this title.

Amendment by section 101(c) [title IX, § 9131] of Pub. L. 99–500 and Pub. L. 99–591 effective Oct. 18, 1986, and applicable to payments required to be made under subsec. (a) of this section for months beginning on or after that date, see section 642(c) of S. 2638, as enacted into law, set out as a note under section 1465 of this title.

Amendment by section 101(c) [title IX, § 9103(3)] of Pub. L. 99–500 and Pub. L. 99–591 effective Sept. 1, 1987, see section 101(c) [title IX, § 9103(4)] of Pub. L. 99–500 and Pub. L. 99–591, as amended, set out as an Effective Date note under section 1014 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE

Section effective Oct. 1, 1984, see section 925(b)(2) of Pub. L. 98–94, set out as a note under section 1463 of this title.

§ 1467. Investment of assets of Fund

The Secretary of the Treasury shall invest such portion of the Fund as is not in the judgment of the Secretary of Defense required to meet current withdrawals. Such investments shall be in public debt securities with maturities suitable to the needs of the Fund, as determined by the Secretary of Defense, and bearing interest at rates determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities. The income on such investments shall be credited to and form a part of the Fund.

(Added Pub. L. 98–94, title IX, § 925(a)(1), Sept. 24, 1983, 97 Stat. 648.)

CHAPTER 75—DECEASED PERSONNEL

Subchapter		Sec.
I.	Death Investigations	1471
II.	Death Benefits	1475

AMENDMENTS

1999—Pub. L. 106–65, div. A, title VII, § 721(a), Oct. 5, 1999, 113 Stat. 692, substituted ''DECEASED PERSONNEL'' for ''DEATH BENEFITS'' as chapter heading and added subchapter analysis.

SUBCHAPTER I—DEATH INVESTIGATIONS

Sec.	
1471.	Forensic pathology investigations.

AMENDMENTS

1999—Pub. L. 106–65, div. A, title VII, § 721(a), Oct. 5, 1999, 113 Stat. 692, added subchapter I heading and item 1471.

§ 1471. Forensic pathology investigations

(a) AUTHORITY.—Under regulations prescribed by the Secretary of Defense, the Armed Forces Medical Examiner may conduct a forensic pathology investigation to determine the cause or manner of death of a deceased person if such an investigation is determined to be justified under circumstances described in subsection (b). The investigation may include an autopsy of the decedent's remains.

(b) BASIS FOR INVESTIGATION.—(1) A forensic pathology investigation of a death under this section is justified if at least one of the circumstances in paragraph (2) and one of the circumstances in paragraph (3) exist.

(2) A circumstance under this paragraph is a circumstance under which—

(A) it appears that the decedent was killed or that, whatever the cause of the decedent's death, the cause was unnatural;

(B) the cause or manner of death is unknown;

(C) there is reasonable suspicion that the death was by unlawful means;

(D) it appears that the death resulted from an infectious disease or from the effects of a hazardous material that may have an adverse effect on the military installation or community involved; or

(E) the identity of the decedent is unknown.

(3) A circumstance under this paragraph is a circumstance under which—

(A) the decedent—

(i) was found dead or died at an installation garrisoned by units of the armed forces that is under the exclusive jurisdiction of the United States;

(ii) was a member of the armed forces on active duty or inactive duty for training;

(iii) was recently retired under chapter 61 of this title as a result of an injury or illness incurred while a member on active duty or inactive duty for training; or

(iv) was a civilian dependent of a member of the armed forces and was found dead or died outside the United States;

(B) in any other authorized Department of Defense investigation of matters which involves the death, a factual determination of the cause or manner of the death is necessary; or

(C) in any other authorized investigation being conducted by the Federal Bureau of Investigation, the National Transportation Safety Board, or any other Federal agency, an authorized official of such agency with authority to direct a forensic pathology investigation requests that the Armed Forces Medical Examiner conduct such an investigation.

(c) DETERMINATION OF JUSTIFICATION.—(1) Subject to paragraph (2), the determination that a circumstance exists under paragraph (2) of subsection (b) shall be made by the Armed Forces Medical Examiner.

(2) A commander may make the determination that a circumstance exists under paragraph (2) of subsection (b) and require a forensic pathology investigation under this section without regard to a determination made by the Armed Forces Medical Examiner if—

(A) in a case involving circumstances described in paragraph (3)(A)(i) of that subsection, the commander is the commander of the installation where the decedent was found dead or died; or

(B) in a case involving circumstances described in paragraph (3)(A)(ii) of that subsection, the commander is the commander of the decedent's unit at a level in the chain of command designated for such purpose in the regulations prescribed by the Secretary of Defense.

(d) LIMITATION IN CONCURRENT JURISDICTION CASES.—(1) The exercise of authority under this section is subject to the exercise of primary jurisdiction for the investigation of a death—

(A) in the case of a death in a State, by the State or a local government of the State; or

(B) in the case of a death in a foreign country, by that foreign country under any applicable treaty, status of forces agreement, or other international agreement between the United States and that foreign country.

(2) Paragraph (1) does not limit the authority of the Armed Forces Medical Examiner to conduct a forensic pathology investigation of a death that is subject to the exercise of primary jurisdiction by another sovereign if the investigation by the other sovereign is concluded without a forensic pathology investigation that the Armed Forces Medical Examiner considers complete. For the purposes of the preceding sentence a forensic pathology investigation is incomplete if the investigation does not include an autopsy of the decedent.

(e) PROCEDURES.—For a forensic pathology investigation under this section, the Armed Forces Medical Examiner shall—

(1) designate one or more qualified pathologists to conduct the investigation;

(2) to the extent practicable and consistent with responsibilities under this section, give due regard to any applicable law protecting religious beliefs;

(3) as soon as practicable, notify the decedent's family, if known, that the forensic pathology investigation is being conducted;

(4) as soon as practicable after the completion of the investigation, authorize release of the decedent's remains to the family, if known; and

(5) promptly report the results of the forensic pathology investigation to the official responsible for the overall investigation of the death.

(f) DEFINITION OF STATE.—In this section, the term ''State'' includes the District of Columbia, the Commonwealth of Puerto Rico, and Guam.

(Added Pub. L. 106–65, div. A, title VII, § 721(a), Oct. 5, 1999, 113 Stat. 692.)

SUBCHAPTER II—DEATH BENEFITS

Sec.
1475. Death gratuity: death of members on active duty or inactive duty training and of certain other persons.
1476. Death gratuity: death after discharge or release from duty or training.
1477. Death gratuity: eligible survivors.
1478. Death gratuity: amount.
1479. Death gratuity: delegation of determinations, payments.
1480. Death gratuity: miscellaneous provisions.
1481. Recovery, care, and disposition of remains: decedents covered.
1482. Expenses incident to death.
1482a. Expenses incident to death: civilian employees serving with an armed force.
1483. Prisoners of war and interned enemy aliens.
1484. Pensioners, indigent patients, and persons who die on military reservations.
1485. Dependents of members of armed forces.
1486. Other citizens of United States.
1487. Temporary interment.
1488. Removal of remains.
1489. Death gratuity: members and employees dying outside the United States while assigned to intelligence duties.
1490. Transportation of remains: certain retired members and dependents who die in military medical facilities.
1491. Funeral honors functions at funerals for veterans.
1492. Authority to provide travel and transportation allowances in connection with transfer ceremonies of certain civilian employees who die overseas.

AMENDMENTS

2021—Pub. L. 116–283, div. A, title XI, § 1104(a)(2), Jan. 1, 2021, 134 Stat. 3890, added item 1492.

2001—Pub. L. 107–107, div. A, title X, § 1048(a)(14), Dec. 28, 2001, 115 Stat. 1223, transferred subchapter II heading so as to appear before the table of sections for that subchapter.

1999—Pub. L. 106–65, div. A, title VII, § 721(c)(1), Oct. 5, 1999, 113 Stat. 694, inserted ''SUBCHAPTER II—DEATH BENEFITS'' before section 1475 of this title.

Pub. L. 106–65, div. A, title V, § 578(k)(2)(A), Oct. 5, 1999, 113 Stat. 631, substituted ''Funeral honors functions at funerals for veterans'' for ''Honor guard details at funerals of veterans'' in item 1491.

1998—Pub. L. 105–261, div. A, title V, § 567(b)(2), Oct. 17, 1998, 112 Stat. 2031, added item 1491.

1994—Pub. L. 103–337, div. A, title X, § 1070(a)(8)(B), Oct. 5, 1994, 108 Stat. 2855, substituted ''civilian'' for ''Civilian'' in item 1482a.

1993—Pub. L. 103–160, div. A, title III, § 368(b), Nov. 30, 1993, 107 Stat. 1634, added item 1482a.

1991—Pub. L. 102–190, div. A, title VI, § 626(b)(2), Dec. 5, 1991, 105 Stat. 1380, substituted ''Transportation of remains: certain retired members and dependents who die in military medical facilities'' for ''Transportation of remains of members entitled to retired or retainer pay who die in a military medical facility'' in item 1490.

1983—Pub. L. 98–94, title X, § 1032(a)(2), Sept. 24, 1983, 97 Stat. 672, added item 1490.

1980—Pub. L. 96–450, title IV, § 403(b)(2), Oct. 14, 1980, 94 Stat. 1979, added item 1489.

1965—Pub. L. 89–150, § 1(2), Aug. 28, 1965, 79 Stat. 585, struck out ''; death while outside United States'' from item 1485.

1958—Pub. L. 85–861, § 1(32)(B), (C), Sept. 2, 1958, 72 Stat. 1455, struck out ''CARE OF THE DEAD'' from chapter heading, and added items 1475 to 1480.

MEETINGS OF OFFICIALS OF THE DEPARTMENT OF DEFENSE WITH REPRESENTATIVE GROUPS OF SURVIVORS OF DECEASED MEMBERS OF THE ARMED FORCES

Pub. L. 116–92, div. A, title V, § 580B, Dec. 20, 2019, 133 Stat. 1408, provided that:

''(a) CHIEFS OF THE ARMED FORCES.—The Secretary of Defense shall direct the chiefs of the Armed Forces to meet periodically with representative groups of survivors of deceased members of the Armed Forces to receive feedback from those survivors regarding issues affecting such survivors. The Chief of the National Guard Bureau shall meet with representative groups of sur-

vivors of deceased members of the Air National Guard and the Army National Guard.

"(b) UNDER SECRETARY OF DEFENSE FOR PERSONNEL AND READINESS.—The Under Secretary of Defense for Personnel and Readiness shall meet periodically with representative groups of survivors of deceased members of the Armed Forces to discuss policies of the Department of Defense regarding military casualties and Gold Star families.

"(c) BRIEFING.—Not later than April 1, 2020, the Under Secretary of Defense for Personnel and Readiness shall brief the Committee on Armed Services of the House of Representatives regarding policies established and the results of the meetings under subsection (b)."

§ 1475. Death gratuity: death of members on active duty or inactive duty training and of certain other persons

(a) Except as provided in section 1480 of this title, the Secretary concerned shall have a death gratuity paid to or for the survivor prescribed by section 1477 of this title, immediately upon receiving official notification of the death of—

(1) a member of an armed force under his jurisdiction who dies while on active duty or while performing authorized travel to or from active duty;

(2) a Reserve of an armed force who dies while on inactive duty training (other than work or study in connection with a correspondence course of an armed force or attendance, in an inactive status, at an educational institution under the sponsorship of an armed force or the Public Health Service);

(3) any Reserve of an armed force who, when authorized or required by an authority designated by the Secretary, assumed an obligation to perform active duty for training, or inactive duty training (other than work or study in connection with a correspondence course of an armed force or attendance, in an inactive status, at an educational institution, under the sponsorship of an armed force or the Public Health Service), and who dies while traveling directly to or from that active duty for training or inactive duty training or while staying at the Reserve's residence, when so authorized by proper authority, during the period of such inactive duty training or between successive days of inactive duty training;

(4) any member of a reserve officers' training corps who dies while performing annual training duty under orders for a period of more than 13 days, or while performing authorized travel to or from that annual training duty; or any applicant for membership in a reserve officers' training corps who dies while attending field training or a practice cruise under section 2104(b)(6)(B) of this title or while performing authorized travel to or from the place where the training or cruise is conducted; or a graduate of a reserve officers' training corps who has received a commission but has yet to receive a first duty assignment; or

(5) a person who dies while traveling to or from or while at a place for final acceptance, or for entry upon active duty (other than for training), in an armed force, who has been ordered or directed to go to that place, and who—

(A) has been provisionally accepted for that duty; or

(B) has been selected, under the Military Selective Service Act (50 U.S.C. 3801 et seq.), for service in that armed force.

(b) This section does not apply to the survivors of persons who were temporary members of the Coast Guard Reserve at the time of their death.

(Added Pub. L. 85–861, § 1(32)(A), Sept. 2, 1958, 72 Stat. 1452; amended Pub. L. 88–647, title III, § 301(1), Oct. 13, 1964, 78 Stat. 1071; Pub. L. 96–513, title V, § 511(59), Dec. 12, 1980, 94 Stat. 2925; Pub. L. 99–661, div. A, title VI, § 604(e)(1), Nov. 14, 1986, 100 Stat. 3877; Pub. L. 112–81, div. A, title VI, § 651(a)(1), Dec. 31, 2011, 125 Stat. 1466; Pub. L. 114–328, div. A, title X, § 1081(b)(1)(A)(vi), Dec. 23, 2016, 130 Stat. 2418; Pub. L. 116–92, div. A, title VI, § 623(a), Dec. 20, 2019, 133 Stat. 1428; Pub. L. 116–283, div. A, title X, § 1081(a)(27), Jan. 1, 2021, 134 Stat. 3872.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1475(a)	38:1101(2) (less last sentence, as applicable to death gratuity). 38:1101(4) (as applicable to death gratuity, less (D) (as applicable to 38:1133(a))). 38:1101(5) (as applicable to death gratuity, less (D) (as applicable to 38:1133(a))). 38:1101(6)(A) (less clause (3) of 2d sentence, as applicable to death gratuity). 38:1001(6)(B) (1st sentence, less last 32 words, as applicable to death gratuity, and less (ii)) (as applicable to 38: 1133 (a))). 38:1101(11)(E) (less last 27 words, as applicable to death gratuity). 38:1131(a).	Aug. 1, 1956, ch. 837, §§ 102(2) (less last sentence, as applicable to death gratuity), 102(2) (last sentence, as applicable to death gratuity), (4) (as applicable to death gratuity, less (D) (as applicable to § 303(a))), (5) (as applicable to death gratuity, less (D) (as applicable to § 303(a))), (6)(A) (as applicable to death gratuity), (B) (1st sentence, less last 32 words, as applicable to death gratuity, and less (ii) (as applicable to § 303(a))), (11)(E) (less last 27 words, as applicable to death gratuity), 301(a), 70 Stat. 858–861, 868.
1475(b)	38:1101(2) (last sentence, as applicable to death gratuity under 38: 1131(a)). 38:1101(6)(A) (clause (3) of 2d sentence, as applicable to death gratuity under 38:1131 (a)).	

In subsection (a), the word "receiving" is inserted for clarity. Clause (1) is substituted for 38:1101(2) (1st sentence, and clauses (A)–(C) of 2d sentence); 38:1101(4)(A), (C), and (D); and 38:1101(5)(A), (C), and (D). Clause (2) is based on the words "inactive duty training", in 38:1131(a). Clause (3) (less words in parentheses) is substituted for 38:1101(6)(B) (1st sentence, less last 32 words). 38:1101(6)(A) (1st sentence) is omitted as covered by section 101(31) of this title. The words in parentheses in clause (3) are substituted for 38:1101(6)(A) (2d sentence, less clause (3)). Clause (4) is substituted for 38:1101(2) (clause (D) of 2d sentence) and (5)(C). Clause (5) is substituted for 38:1101(2)(E), (11)(E) (less last 27 words). The words "active duty for training", in 38:1131(a), are omitted as covered by the definition of "active duty" in section 101(22) of this title.

REFERENCES IN TEXT

The Military Selective Service Act, referred to in subsec. (a)(5)(B), is title I of act June 24, 1948, ch. 625, 62 Stat. 604, which is classified principally to chapter 49 (§ 3801 et seq.) of Title 50, War and National Defense. For complete classification of this Act to the Code, see References in Text note set out under section 3801 of Title 50 and Tables.

AMENDMENTS

2021—Subsec. (a)(4). Pub. L. 116–283 substituted ''or a graduate'' for ''or; or a graduate''.

2019—Subsec. (a)(4). Pub. L. 116–92 inserted at end ''; or a graduate of a reserve officers' training corps who has received a commission but has yet to receive a first duty assignment; or''.

2016—Subsec. (a)(5)(B). Pub. L. 114–328 substituted ''(50 U.S.C. 3801 et seq.)'' for ''(50 U.S.C. App. 451 et seq.)''.

2011—Subsec. (a)(3). Pub. L. 112–81 inserted ''or while staying at the Reserve's residence, when so authorized by proper authority, during the period of such inactive duty training or between successive days of inactive duty training'' before the semicolon at the end.

1986—Subsec. (a)(3). Pub. L. 99–661 struck out ''from an injury incurred by him after December 31, 1956,'' before ''while traveling directly to or from''.

1980—Subsec. (a)(5)(B). Pub. L. 96–513 substituted ''Military Selective Service Act (50 U.S.C. App. 451 et seq.)'' for ''Universal Military Training and Service Act (50 App. U.S.C. 451 et seq.)''.

1964—Subsec. (a)(4). Pub. L. 88–647 inserted provisions covering applicants for membership in a reserve officers' training corps while attending, or in travel to or from field training or a practice cruise.

EFFECTIVE DATE OF 2019 AMENDMENT

Pub. L. 116–92, div. A, title VI, § 623(b), Dec. 20, 2019, 133 Stat. 1428, as amended by Pub. L. 116–283, div. A, title VI, § 623, Jan. 1, 2021, 134 Stat. 3677, provided that: ''The amendment under subsection (a) [amending this section] applies to deaths that occur on or after May 1, 2017.''

EFFECTIVE DATE OF 2011 AMENDMENT

Pub. L. 112–81, div. A, title VI, § 651(c), Dec. 31, 2011, 125 Stat. 1467, provided that: ''The amendments made by this section [amending this section and sections 1478 and 1481 of this title] shall take effect on the date of the enactment of this Act [Dec. 31, 2011], and shall apply with respect to deaths that occur on or after that date.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–661 applicable with respect to persons who, after Nov. 14, 1986, incur or aggravate an injury, illness, or disease or die, see section 604(g) of Pub. L. 99–661, set out as a note under section 1074a of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

PUBLIC HEALTH SERVICE

Authority vested by this chapter in ''military departments'', ''the Secretary concerned'', or ''the Secretary of Defense'' to be exercised, with respect to commissioned officers of Public Health Service, by Secretary of Health and Human Services or his designee, see section 213a of Title 42, The Public Health and Welfare.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Authority vested by this chapter in ''military departments'', ''the Secretary concerned'', or ''the Secretary of Defense'' to be exercised, with respect to commissioned officer corps of National Oceanic and Atmospheric Administration, by Secretary of Commerce or Secretary's designee, see section 3071 of Title 33, Navigation and Navigable Waters.

OBLIGATION OF DEFENSE HEALTH PROGRAM APPROPRIATIONS FOR DEATH GRATUITY PAYMENTS

Pub. L. 116–260, div. C, title VIII, § 8123, Dec. 27, 2020, 134 Stat. 1333, provided that: ''Amounts appropriated for 'Defense Health Program' in this Act [div. C of Pub. L. 116–260] and hereafter may be obligated to make death gratuity payments, as authorized in subchapter II of chapter 75 of title 10, United States Code, if no appropriation for 'Military Personnel' is available for obligation for such payments: *Provided*, That such obligations may subsequently be recorded against appropriations available for 'Military Personnel'.''

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 116–93, div. A, title VIII, § 8127, Dec. 20, 2019, 133 Stat. 2366.

Pub. L. 115–245, div. A, title VIII, § 8136, Sept. 28, 2018, 132 Stat. 3030.

OBLIGATION OF DEPARTMENT OF HOMELAND SECURITY APPROPRIATIONS FOR DEATH GRATUITY PAYMENTS

Pub. L. 116–93, div. D, title II, § 231, Dec. 20, 2019, 133 Stat. 2517, provided that:

''(a) Any discretionary amounts appropriated in this Act [div. D of Pub. L. 116–93] in the current fiscal year and any fiscal year thereafter may be obligated for death gratuity payments, as authorized in subchapter II of chapter 75 of title 10, United States Code.

''(b) Subsection (a) shall only apply if an appropriation for 'Coast Guard—Operations and Support' is unavailable for obligation for such payments.

''(c) Such obligations shall subsequently be recorded against appropriations that become available for 'Coast Guard—Operations and Support'.''

IMPROVED ASSISTANCE FOR GOLD STAR SPOUSES AND OTHER DEPENDENTS

Pub. L. 113–66, div. A, title VI, § 633, Dec. 26, 2013, 127 Stat. 786, as amended by Pub. L. 116–92, div. A, title VI, § 625, Dec. 20, 2019, 133 Stat. 1428; Pub. L. 116–283, div. A, title VI, § 624, Jan. 1, 2021, 134 Stat. 3677, provided that:

''(a) ADVOCATES FOR GOLD STAR SPOUSES AND OTHER DEPENDENTS.—(1) Each Secretary of a military department shall designate for each Armed Force under the jurisdiction of such Secretary a casualty assistance officer who is a member of such Armed Force or civilian employee of such military department to assist—

''(A) a spouse and any other dependent of a member of such Armed Force (including the reserve components thereof) who dies on active duty; and

''(B) a dependent described in subparagraph (A) if the spouse of the deceased member dies and the dependent (or the guardian of such dependent) requests such assistance.

''(2) Casualty assistance officers described in paragraph (1) shall provide to spouses and dependents described in that paragraph the following services:

''(A) Addressing complaints by spouses and other dependents of deceased members regarding casualty assistance or receipt of benefits authorized by law for such spouses and dependents.

''(B) Providing support to such spouses and dependents regarding such casualty assistance or receipt of such benefits.

''(C) Making reports to appropriate officers or officials in the Department of Defense or the military department concerned regarding resolution of such complaints, including recommendations regarding the settlement of claims with respect to such benefits, as appropriate.

''(D) Performing such other actions as the Secretary of the military department concerned considers appropriate.

''(b) TRAINING FOR CASUALTY ASSISTANCE PERSONNEL.—

''(1) TRAINING PROGRAM REQUIRED.—The Secretary of Defense shall implement a standardized comprehensive training program on casualty assistance for the following personnel of the Department of Defense:

''(A) Casualty assistance officers.

''(B) Casualty assistance calls officers.

''(C) Casualty assistance representatives.

''(2) GENERAL ELEMENTS.—The training program required by paragraph (1) shall include training designed to ensure that the personnel specified in that paragraph provide the spouse and other dependents of a deceased member of the Armed Forces with accurate information on the benefits to which they are entitled and other casualty assistance available to them when the member dies while serving on active duty in the Armed Forces.

''(3) SERVICE-SPECIFIC ELEMENTS.—The Secretary of the military department concerned may, in coordination with the Secretary of Defense, provide for the inclusion in the training program required by paragraph (1) that is provided to casualty assistance personnel of such military department such elements of training that are specific or unique to the requirements or particulars of the Armed Forces under the jurisdiction of such military department as the Secretary of the military department concerned considers appropriate.

''(4) FREQUENCY OF TRAINING.—Training shall be provided under the program required by paragraph (1) not less often than annually.

''(c) ROTC GRADUATES.—

''(1) TREATED AS MEMBERS.—For purposes of this section, a graduate of a reserve officers' training corps who receives a commission and who dies before receiving a first duty assignment shall be treated as a member of the Armed Forces who dies while on active duty.

''(2) EFFECTIVE DATE.—This subsection applies to deaths on or after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2020 [Dec. 20, 2019].''

POLICY AND PROCEDURES ON CASUALTY ASSISTANCE TO SURVIVORS OF MILITARY DECEDENTS

Pub. L. 109–163, div. A, title V, § 562, Jan. 6, 2006, 119 Stat. 3267, as amended by Pub. L. 109–364, div. A, title V, § 566, Oct. 17, 2006, 120 Stat. 2223, provided that:

''(a) COMPREHENSIVE POLICY ON CASUALTY ASSISTANCE.—

''(1) POLICY REQUIRED.—Not later than August 1, 2006, the Secretary of Defense shall prescribe a comprehensive policy for the Department of Defense on the provision of casualty assistance to survivors and next of kin of members of the Armed Forces who die during military service (in this section referred to as 'military decedents').

''(2) CONSULTATION.—The Secretary shall develop the policy under paragraph (1) in consultation with the Secretaries of the military departments, the Secretary of Veterans Affairs, and the Secretary of Homeland Security with respect to the Coast Guard.

''(3) INCORPORATION OF PAST EXPERIENCE AND PRACTICE.—The policy developed under paragraph (1) shall be based on—

''(A) the experience and best practices of the military departments;

''(B) the recommendations of nongovernment organizations with demonstrated expertise in responding to the needs of survivors of military decedents; and

''(C) such other matters as the Secretary of Defense considers appropriate.

''(4) PROCEDURES.—The policy shall include procedures to be followed by the military departments in the provision of casualty assistance to survivors and next of kin of military decedents. The procedures shall be uniform across the military departments except to the extent necessary to reflect the traditional practices or customs of a particular military department.

''(b) ELEMENTS OF POLICY.—The comprehensive policy developed under subsection (a) shall address the following matters:

''(1) The initial notification of primary and secondary next of kin of the deaths of military decedents and any subsequent notifications of next of kin warranted by circumstances.

''(2) The transportation and disposition of remains of military decedents, including notification of survivors of the performance of autopsies.

''(3) The qualifications, assignment, training, duties, supervision, and accountability for the performance of casualty assistance responsibilities.

''(4) The relief or transfer of casualty assistance officers, including notification to survivors and next of kin of the reassignment of such officers to other duties.

''(5) Centralized, short-term and long-term case-management procedures for casualty assistance by each military department, including rapid access by survivors of military decedents and casualty assistance officers to expert case managers and counselors.

''(6) The provision, through a computer accessible Internet website and other means and at no cost to survivors of military decedents, of personalized, integrated information on the benefits and financial assistance available to such survivors from the Federal Government.

''(7) The provision, at no cost to survivors of military decedents, of legal assistance by military attorneys on matters arising from the deaths of such decedents, including tax matters, on an expedited, prioritized basis.

''(8) The provision of financial counseling to survivors of military decedents, particularly with respect to appropriate disposition of death gratuity and insurance proceeds received by surviving spouses, minor dependent children, and their representatives.

''(9) The provision of information to survivors and next of kin of military decedents on mechanisms for registering complaints about, or requests for, additional assistance related to casualty assistance.

''(10) Liaison with the Department of Veterans Affairs and the Social Security Administration in order to ensure prompt and accurate resolution of issues relating to benefits administered by those agencies for survivors of military decedents.

''(11) Data collection regarding the incidence and quality of casualty assistance provided to survivors of military decedents, including surveys of such survivors and military and civilian members assigned casualty assistance duties.

''(12) The process by which the Department of Defense, upon request, provides information (in person and otherwise) to survivors of a military decedent on the cause of, and any investigation into, the death of such military decedent and on the disposition and transportation of the remains of such decedent, which process shall—

''(A) provide for the provision of such information (in person and otherwise) by qualified Department of Defense personnel;

''(B) ensure that information is provided as soon as possible after death and that, when requested, updates are provided, in accordance with the procedures established under this paragraph, in a timely manner when new information becomes available;

''(C) ensure that—

''(i) the initial provision of such information, and each such update, relates the most complete and accurate information available at the time, subject to limitations applicable to classified information; and

''(ii) incomplete or unverified information is identified as such during the course of the provision of such information or update; and

''(D) include procedures by which such survivors shall, upon request, receive updates or supple-

mental information from qualified Department of Defense personnel.

''(c) ADOPTION BY MILITARY DEPARTMENTS.—Not later than November 1, 2006, the Secretary of each military department shall prescribe regulations, or modify current regulations, on the policies and procedures of such military department on the provision of casualty assistance to survivors and next of kin of military decedents in order to conform such policies and procedures to the policy developed under subsection (a).

''(d) REPORT ON IMPROVEMENT OF CASUALTY ASSISTANCE PROGRAMS.—Not later than December 1, 2006, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report that includes—

''(1) the assessment of the Secretary of the adequacy and sufficiency of the current casualty assistance programs of the military departments;

''(2) a plan for a system for the uniform provision to survivors of military decedents of personalized, accurate, and integrated information on the benefits and financial assistance available to such survivors through the casualty assistance programs of the military departments under subsection (c); and

''(3) such recommendations for other legislative or administrative action as the Secretary considers appropriate to enhance and improve such programs to achieve their intended purposes.

''(e) GAO REPORT.—

''(1) REPORT REQUIRED.—Not later than July 1, 2006, the Comptroller General shall submit to the committees specified in subsection (d) a report on the evaluation by the Comptroller General of the casualty assistance programs of the Department of Defense and of such other departments and agencies of the Federal Government as provide casualty assistance to survivors and next of kin of military decedents.

''(2) ASSESSMENT.—The report shall include the assessment of the Comptroller General of the adequacy of the current policies and procedures of, and funding for, the casualty assistance programs covered by the report to achieve their intended purposes.''

§ 1476. Death gratuity: death after discharge or release from duty or training

(a)(1) Except as provided in section 1480 of this title, the Secretary concerned shall pay a death gratuity to or for the survivors prescribed in section 1477 of this title of each person who dies within 120 days after discharge or release from—

(A) active duty; or

(B) inactive-duty training (other than work or study in connection with a correspondence course of an armed force or attendance, in an inactive status, at an educational institution under the sponsorship of an armed force or the Public Health Service).

(2) A death gratuity may be paid under paragraph (1) only if the Secretary of Veterans Affairs determines that the death resulted from an injury or disease incurred or aggravated during—

(A) the active duty or inactive-duty training described in paragraph (1); or

(B) travel directly to or from such duty.

(b) For the purpose of this section, the standards and procedures for determining the incurrence or aggravation of a disease or injury are those applicable under the laws relating to disability compensation administered by the Department of Veterans Affairs, except that there is no requirement under this section that any incurrence or aggravation have been in line of duty.

(c) This section does not apply to the survivors of persons who were temporary members of the Coast Guard Reserve at the time of their death.

(Added Pub. L. 85–861, § 1(32)(A), Sept. 2, 1958, 72 Stat. 1452; amended Pub. L. 99–661, div. A, title VI, § 604(e)(2), Nov. 14, 1986, 100 Stat. 3877; Pub. L. 101–189, div. A, title XVI, § 1621(a)(1), (2), Nov. 29, 1989, 103 Stat. 1602, 1603.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
1476(a)	38:1133(a).	Aug. 1, 1956, ch. 837, §§ 102(2) (last sentence, as applicable to death gratuity under § 303(a)), 102(4)(D) (as applicable to § 303(a)), 102(5)(D) (as applicable to § 303(a)), 102(6)(A) (clause (3) of 2d sentence, as applicable to death gratuity under § 303(a)), 102(6)(B)(ii) (as applicable to § 303(a)), 303(a), (c), 70 Stat. 858, 859, 868, 869.
1476(b)	38:1101(4)(D) (as applicable to 38:1133(a)). 38:1101(5)(D) (as applicable to 38:1133(a)). 38:1101(6)(B)(ii) (as applicable to 38:1133(a)).	
1476(c)	38:1133(c).	
1476(d)	38:1101(2) (last sentence, as applicable to death gratuity under 38:1133(a)). 38:1101(6)(A) (clause (3) of 2d sentence, as applicable to death gratuity under 38:1133(a)).	

In subsection (a), the words ''Except as provided in section 1480 of this title'' are inserted to reflect 38:1134(a). The words ''to the survivor prescribed by section 1477 of this title'' are inserted for clarity. The words ''on or after January 1, 1957'' are omitted as executed. The words in parentheses in clause (2) are inserted to reflect 38:1101(6)(A) (2d sentence). The words ''active duty for training'' are omitted as covered by the definition of ''active duty'' in section 101(22) of this title.

In subsection (c), the word ''criteria'' is omitted as covered by the word ''standards''.

AMENDMENTS

1989—Subsec. (a)(2). Pub. L. 101–189, § 1621(a)(2), substituted ''Secretary of Veterans Affairs'' for ''Administrator of Veterans' Affairs''.

Subsec. (b). Pub. L. 101–189, § 1621(a)(1), substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

1986—Pub. L. 99–661 added subsec. (a), redesignated subsecs. (c) and (d) as (b) and (c), respectively, and struck out former subsecs. (a) and (b) which read as follows:

''(a) Except as provided in section 1480 of this title, the Secretary concerned shall have a death gratuity paid to or for the survivor prescribed by section 1477 of this title of each person who dies within 120 days after his discharge or release from—

''(1) active duty; or

''(2) inactive duty training (other than work or study in connection with a correspondence course of an armed force or attendance, in an inactive status, at an educational institution under the sponsorship of an armed force or the Public Health Service);

if the Administrator of Veterans' Affairs determines that the death resulted from (A) disease or injury incurred or aggravated while performing duty under clause (1) or the travel described in subsection (b), or (B) injury incurred or aggravated while performing training under clause (2) or the travel described in subsection (b)(2).

''(b) The travel covered by subsection (a) is—

''(1) authorized travel to or from the duty described in subsection (a)(1); or

''(2) travel directly to or from the duty or training described in subsection (a)(1) or (2) that is performed by a Reserve who, when authorized or required by an authority designated by the Secretary, assumed an obligation to perform that duty or training and whose injury was incurred or aggravated after December 31, 1956.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–661 applicable with respect to persons who, after Nov. 14, 1986, incur or aggravate an injury, illness, or disease or die, see section 604(g) of Pub. L. 99–661, set out as a note under section 1074a of this title.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 1477. Death gratuity: eligible survivors

(a) DESIGNATION OF RECIPIENTS.—(1) On and after July 1, 2008, or such earlier date as the Secretary of Defense may prescribe, a person covered by section 1475 or 1476 of this title may designate one or more persons to receive all or a portion of the amount payable under section 1478 of this title. The designation of a person to receive a portion of the amount shall indicate the percentage of the amount, to be specified only in 10 percent increments, that the designated person may receive. The balance of the amount of the death gratuity, if any, shall be paid in accordance with subsection (b).

(2) If a person covered by section 1475 or 1476 of this title has a spouse, but designates a person other than the spouse to receive all or a portion of the amount payable under section 1478 of this title, the Secretary concerned shall provide notice of the designation to the spouse.

(b) DISTRIBUTION OF REMAINDER; DISTRIBUTION IN ABSENCE OF DESIGNATED RECIPIENT.—If a person covered by section 1475 or 1476 of this title does not make a designation under subsection (a) or designates only a portion of the amount payable under section 1478 of this title, the amount of the death gratuity not covered by a designation shall be paid as follows:

(1) To the surviving spouse of the person, if any.

(2) If there is no surviving spouse, to any surviving children (as prescribed by subsection (d)) of the person and the descendants of any deceased children by representation.

(3) If there is none of the above, to the surviving parents (as prescribed by subsection (c)) of the person or the survivor of them.

(4) If there is none of the above, to the duly-appointed executor or administrator of the estate of the person.

(5) If there is none of the above, to other next of kin of the person entitled under the laws of domicile of the person at the time of the person's death.

(c) TREATMENT OF PARENTS.—For purposes of subsection (b)(3), parents include fathers and mothers through adoption. However, only one father and one mother may be recognized in any case, and preference shall be given to those who exercised a parental relationship on the date, or most nearly before the date, on which the decedent entered a status described in section 1475 or 1476 of this title.

(d) TREATMENT OF CHILDREN.—Subsection (b)(2) applies, without regard to age or marital status, to—

(1) legitimate children;

(2) adopted children;

(3) stepchildren who were a part of the decedent's household at the time of his death;

(4) illegitimate children of a female decedent; and

(5) illegitimate children of a male decedent—

(A) who have been acknowledged in writing signed by the decedent;

(B) who have been judicially determined, before the decedent's death, to be his children;

(C) who have been otherwise proved, by evidence satisfactory to the Secretary of Veterans Affairs, to be children of the decedent; or

(D) to whose support the decedent had been judicially ordered to contribute.

(e) EFFECT OF DEATH BEFORE RECEIPT OF GRATUITY.— If a person entitled to all or a portion of a death gratuity under subsection (a) or (b) dies before the person receives the death gratuity, it shall be paid to the living survivor next in the order prescribed by subsection (b).

(Added Pub. L. 85–861, § 1(32)(A), Sept. 2, 1958, 72 Stat. 1453; amended Pub. L. 101–189, div. A, title XVI, § 1621(a)(2), Nov. 29, 1989, 103 Stat. 1603; Pub. L. 110–28, title III, § 3306, May 25, 2007, 121 Stat. 136; Pub. L. 110–181, div. A, title VI, § 645(a), (b), Jan. 28, 2008, 122 Stat. 158, 159; Pub. L. 110–417, [div. A], title X, § 1061(a)(4), Oct. 14, 2008, 122 Stat. 4612.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
1477(a)	38:1131(c) (less words in parentheses in clause (2)). 38:1134(d).	Aug. 1, 1956, ch. 837, §§ 102(7) (as applicable to death gratuity), 301(c), (d), 304(d), 70 Stat. 860, 868, 869.
1477(b)	38:1101(7) (as applicable to children and as applicable to death gratuity). 38:1131(c) (words in parentheses in clause (2)).	
1477(c)	38:1101(7) (less applicability to children, as applicable to death gratuity).	
1477(d)	38:1131(d).	

In subsection (a), the words "highest on the following list" are substituted for the words "first listed below", in 38:1131(c). The words "as prescribed by subsection (b)" are inserted in clause (2) to reflect that subsection. The words "or persons in loco parentis, as prescribed by subsection (c)" are inserted in clauses (3) (A) and (4) to reflect the fact that certain persons who are not parents in the normal sense are included as eligible survivors.

In subsection (d), the words "the death gratuity" are substituted for the words "the amount to which he is entitled under this subchapter". The words "next in the order prescribed" are substituted for the words "first listed under".

AMENDMENTS

2008—Subsec. (a). Pub. L. 110–181, § 645(a)(3), added subsec. (a) and struck out former subsec. (a) which required a death gratuity payable upon the death of a person covered by section 1475 or 1476 of this title to be paid to or for the living survivor highest on a specified list.

Subsec. (b). Pub. L. 110–181, § 645(a)(3), added subsec. (b). Former subsec. (b) redesignated (d).

Subsec. (c). Pub. L. 110–181, § 645(a)(3), added subsec. (c).

Pub. L. 110–181, § 645(a)(1), struck out subsec. (c) which read as follows: ''Clauses (3) and (4) of subsection (a), so far as they apply to parents and persons in loco parentis, include fathers and mothers through adoption, and persons who stood in loco parentis to the decedent for a period of not less than one year at any time before he acquired a status described in section 1475 or 1476 of this title. However, only one father and one mother, or their counterparts in loco parentis, may be recognized in any case, and preference shall be given to those who exercised a parental relationship on the date, or most nearly before the date, on which the decedent entered that status.''

Subsec. (d). Pub. L. 110–181, § 645(a)(2), redesignated subsec. (b) as (d) and substituted ''Treatment of Children.—Subsection (b)(2)'' for ''Subsection (a)(2)'' in introductory provisions.

Pub. L. 110–181, § 645(a)(1), struck out subsec. (d) which read as follows: ''During the period beginning on the date of the enactment of this subsection and ending on September 30, 2007, a person covered by section 1475 or 1476 of this title may designate another person to receive not more than 50 percent of the amount payable under section 1478 of this title. The designation shall indicate the percentage of the amount, to be specified only in 10 percent increments up to the maximum of 50 percent, that the designated person may receive. The balance of the amount of the death gratuity shall be paid to or for the living survivors of the person concerned in accordance with paragraphs (1) through (5) of subsection (a).''

Subsec. (e). Pub. L. 110–417 inserted period at end.

Pub. L. 110–181, § 645(b), inserted heading and substituted ''subsection (a) or (b)'' for ''subsection (a) or (d)'' and ''subsection (b)'' for ''subsection (a).''.

2007—Subsec. (a). Pub. L. 110–28, § 3306(1), substituted ''Subject to subsection (d), a death gratuity'' for ''A death gratuity''.

Subsec. (d). Pub. L. 110–28, § 3306(3), added subsec. (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 110–28, § 3306(2), redesignated subsec. (d) as (e) and substituted ''If a person entitled to all or a portion of a death gratuity under subsection (a) or (d) dies before the person'' for ''If an eligible survivor dies before he''.

1989—Subsec. (b)(5)(C). Pub. L. 101–189 substituted ''Secretary of Veterans Affairs'' for ''Administrator of Veterans' Affairs''.

REGULATIONS

Pub. L. 110–181, div. A, title VI, § 645(d), Jan. 28, 2008, 122 Stat. 160, provided that:

''(1) IN GENERAL.—Not later than April 1, 2008, the Secretary of Defense shall prescribe regulations to implement the amendments to section 1477 of title 10, United States Code, made by subsection (a).

''(2) ELEMENTS.—The regulations required by paragraph (1) shall include forms for the making of the designation contemplated by subsection (a) of section 1477 of title 10, United States Code, as amended by subsection (a) of this section, and instructions for members of the Armed Forces in the filling out of such forms.''

EXISTING DESIGNATION AUTHORITY

Pub. L. 110–181, div. A, title VI, § 645(c), Jan. 28, 2008, 122 Stat. 159, provided that: ''The authority provided by subsection (d) of section 1477 of title 10, United States Code, as in effect on the day before the date of the enactment of this Act [Jan. 28, 2008], shall remain available to persons covered by section 1475 or 1476 of such title until July 1, 2008, or such earlier date as the Secretary of Defense may prescribe, and any designation under such subsection made before July 1, 2008, or the earlier date prescribed by the Secretary, shall continue in effect until such time as the person who made the designation makes a new designation under such section 1477, as amended by subsection (a) of this section.''

§ 1478. Death gratuity: amount

(a) The death gratuity payable under sections 1475 through 1477 of this title shall be $100,000. For this purpose:

(1) A person covered by subsection (a)(1) of section 1475 of this title who died while traveling to or from active duty (other than for training) is considered to have been on active duty on the date of his death.

(2) A person covered by subsection (a)(3) of section 1475 of this title who died while traveling directly to or from active duty for training is considered to have been on active duty for training on the date of his death.

(3) A person covered by subsection (a)(3) of section 1475 of this title who died while traveling directly to or from inactive duty training is considered to have been on inactive duty training on the date of his death.

(4) A person covered by subsection (a)(3) of section 1475 of this title who died while on authorized stay at the person's residence during a period of inactive duty training or between successive days of inactive duty training is considered to have been on inactive duty training on the date of his death.

(5) A person covered by subsection (a)(4) of section 1475 of this title who died while performing annual training duty or while traveling directly to or from that duty is considered to have been entitled, on the date of his death, to the pay prescribed by the first sentence of section 209(c) of title 37. A person covered by section 1475(a)(4) of this title who dies while attending field training or a practice cruise under section 2104(b)(6)(B) of this title, or while traveling directly to or from the place where the training or cruise is conducted, is considered to have been entitled, on the date of his death, to the pay prescribed by the second sentence of section 209(c) of title 37.

(6) A person covered by subsection (a)(5) of section 1475 of this title is considered to have been on active duty, on the date of his death, in the grade that he would have held on final acceptance, or entry on active duty.

(7) A person covered by section 1476 of this title is considered to have been entitled, on the date of his death, to pay at the rate to which he was entitled on the last day on which he performed duty or training.

(8) A person covered by section 1475 or 1476 of this title who performed active duty, or inactive duty training, without pay is considered to have been entitled to basic pay while performing that duty or training.

(9) A person covered by section 1475 or 1476 of this title who incurred a disability while on active duty or inactive duty training and who became entitled to basic pay while receiving hospital or medical care, including out-patient care, for that disability, is considered to have been on active duty or inactive duty training, as the case may be, for as long as he is entitled to that pay.

(b) A person who is discharged, or released from active duty (other than for training), is

considered to continue on that duty during the period following the date of his discharge or release that, as determined by the Secretary concerned, is necessary for that person to go to his home by the most direct route. That period may not end before midnight of the day on which the member is discharged or released.

[(c) Repealed. Pub. L. 109–163, div. A, title VI, § 664(a)(2)(B), Jan. 6, 2006, 119 Stat. 3316.]

(d)(1) In the case of a person described in paragraph (2), a death gratuity shall be payable, subject to section 664(c) of the National Defense Authorization Act for Fiscal Year 2006, for the death of such person that is in addition to the death gratuity payable in the case of such death under subsection (a).

(2) This subsection applies in the case of a person who died during the period beginning on October 7, 2001, and ending on August 31, 2005, while a member of the armed forces on active duty and whose death did not establish eligibility for an additional death gratuity under the prior subsection (e) of this section (as added by section 1013(b) of Public Law 109–13; 119 Stat. 247), because the person was not described in paragraph (2) of that prior subsection.

(3) The amount of additional death gratuity payable under this subsection shall be $150,000.

(4) A payment pursuant to this subsection shall be paid in the same manner as provided under paragraph (4) of the prior subsection (e) of this section (as added by section 1013(b) of Public Law 109–13; 119 Stat. 247), for payments pursuant to paragraph (3)(A) of that prior subsection.

(Added Pub. L. 85–861, § 1(32)(A), Sept. 2, 1958, 72 Stat. 1454; amended Pub. L. 88–647, title III, § 301(2), Oct. 13, 1964, 78 Stat. 1071; Pub. L. 89–718, § 11, Nov. 2, 1966, 80 Stat. 1117; Pub. L. 102–190, div. A, title VI, § 652(a), Dec. 5, 1991, 105 Stat. 1387; Pub. L. 108–121, title I, § 102(a)(1), Nov. 11, 2003, 117 Stat. 1337; Pub. L. 108–136, div. A, title VI, § 646(a), Nov. 24, 2003, 117 Stat. 1520; Pub. L. 108–375, div. A, title VI, § 643(b), Oct. 28, 2004, 118 Stat. 1958; Pub. L. 109–13, div. A, title I, § 1013(a)–(c), May 11, 2005, 119 Stat. 246–248; Pub. L. 109–163, div. A, title VI, § 664(a)(1), (2), (b), Jan. 6, 2006, 119 Stat. 3316; Pub. L. 109–234, title I, § 1210, June 15, 2006, 120 Stat. 430; Pub. L. 112–81, div. A, title VI, § 651(a)(2), Dec. 31, 2011, 125 Stat. 1466.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
1478(a) …..	38:1101(6)(B) (last 32 words of 1st sentence, as applicable to death gratuity). 38:1101(10)(B) (as applicable to death gratuity). 38:1101(11)(E) (last 27 words, as applicable to death gratuity). 38:1131(b). 38:1133(d). 38:1134(c).	Aug. 1, 1956, ch. 837, §§ 102(6)(B) (last 32 words of 1st sentence, as applicable to death gratuity), (10)(B) (as applicable to death gratuity), (11)(E) (last 27 words, as applicable to death gratuity), (12) (as applicable to death gratuity), 301(b), 303(d), 304(c), 70 Stat. 859—861, 868, 869.
1478(b) …..	38:1101(12) (as applicable to death gratuity).	

In subsection (a), the word ''pay'' is substituted for the words ''basic pay (plus special and incentive pays)'', since the word ''pay'', as defined in section 101(27) of this title, includes those types of pay. Clause (1) is inserted to reflect section 1475(a)(1) of this title. Clauses (2) and (3) are substituted for 38:1101(6)(B) (last 32 words of 1st sentence). Clause 4 is substituted for 38:1101(10)(B). The words ''to the pay prescribed by section 4385(c) or 9385(c) of this title'' are inserted to reflect those sections, which prescribe the training pay of members of reserve officers' training corps units. Clause (5) is substituted for 38:1101(11)(E) (last 27 words). Clause (6) is substituted for 38:1133(d). In clause (6), the word ''pay'' is substituted for the words ''basic pay (plus special and incentive pays)'', since the word ''pay'', as defined in section 101(27) of this title, includes those kinds of pay. Clauses (7) and (8) are substituted for 38:1134(c). In those clauses, the words ''active duty for training'' are omitted as covered by the definition of ''active duty'' in section 101(22) of this title. In clause (8), the words ''and who became entitled to basic pay'' are substituted for the words ''and is placed in a pay status'' and the words ''is entitled to that pay'' are substituted for the words ''remains in a pay status''.

In subsection (b), the words ''on or after January 1, 1957'' are omitted as executed. The words ''(other than for training)'' are inserted, since the words ''active duty'' in the source statute did not include active duty for training. The words ''is considered to continue on that duty'' are substituted for the words ''shall be deemed to continue on active duty''. The last sentence is substituted for 38:1101(12) (last 14 words).

REFERENCES IN TEXT

Section 664(c) of the National Defense Authorization Act for Fiscal Year 2006, referred to in subsec. (d)(1), is section 664(c) of title VI of div. A of Pub. L. 109–163, Jan. 6, 2006, 119 Stat. 3317, which is not classified to the Code.

AMENDMENTS

2011—Subsec. (a)(4) to (9). Pub. L. 112–81 added par. (4) and redesignated former pars. (4) to (8) as (5) to (9), respectively.

2006—Subsec. (a). Pub. L. 109–163, § 664(a)(1), (2)(A), in introductory provisions, substituted ''$100,000'' for ''$12,000'' and struck out ''(as adjusted under subsection (c))'' before period at end of first sentence.

Subsec. (c). Pub. L. 109–163, § 664(a)(2)(B), struck out subsec. (c) which read as follows: ''Effective on the date on which rates of basic pay under section 204 of title 37 are increased under section 1009 of that title or any other provision of law, the amount of the death gratuity in effect under subsection (a) shall be increased by the same overall average percentage of the increase in the rates of basic pay taking effect on that date.''

Subsec. (d). Pub. L. 109–163, § 664(b), added subsec. (d).

Subsec. (d)(2). Pub. L. 109–234 substituted ''August 31, 2005'' for ''May 11, 2005''.

2005—Subsec. (a). Pub. L. 109–13, § 1013(a)(2), (e), temporarily substituted ''(as adjusted under subsection (d))'' for ''(as adjusted under subsection (c))'' in introductory provisions. See Effective and Termination Dates of 2005 Amendments notes below.

Pub. L. 109–13, § 1013(a)(1)(A), (e), temporarily inserted '', except as provided in subsections (c), (e), and (f)'' after ''$12,000'' in introductory provisions. See Effective and Termination Dates of 2005 Amendments notes below.

Subsec. (c). Pub. L. 109–13, § 1013(a)(1)(C), (e), temporarily added subsec. (c) which read as follows: ''The death gratuity payable under sections 1475 through 1477 of this title is $100,000 in the case of a death resulting from wounds, injuries, or illnesses that are—

''(1) incurred as described in section 1413a(e)(2) of this title; or

''(2) incurred in an operation or area designated as a combat operation or a combat zone, respectively, by the Secretary of Defense under section 1967(e)(1)(A) of title 38.''

Former subsec. (c) temporarily redesignated (d). See Effective and Termination Dates of 2005 Amendments notes below.

Subsec. (d). Pub. L. 109–13, § 1013(a)(1)(B), (e), temporarily redesignated subsec. (c) as (d). See Effective and Termination Dates of 2005 Amendments notes below.

Subsec. (e). Pub. L. 109–13, § 1013(b), (e), temporarily added subsec. (e) which read as follows:

''(e)(1) In the case of a person described in paragraph (2), a death gratuity shall be payable in accordance with this subsection for the death of such person that is in addition to the death gratuity payable in the case of such death under subsection (a).

''(2) This subsection applies in the case of a member of the armed forces who dies before the date of the enactment of this subsection as a direct result of one or more wounds, injuries, or illnesses that—

''(A) were incurred in the theater of operations of Operation Enduring Freedom or Operation Iraqi Freedom; or

''(B) were incurred as described in section 1413a(e)(2) of this title on or after October 7, 2001.

''(3) The amount of additional death gratuity payable under this subsection shall be $238,000, of which—

''(A) $150,000 shall be paid in the manner specified in paragraph (4); and

''(B) $88,000 shall be paid in the manner specified in paragraph (5).

''(4) A payment pursuant to paragraph (3)(A) by reason of a death covered by this subsection shall be paid—

''(A) to a beneficiary in proportion to the share of benefits applicable to such beneficiary in the payment of life insurance proceeds paid on the basis of that death under the Servicemembers Group Life Insurance program under subchapter III of chapter 19 of title 38; or

''(B) in the case of a person who elected not to be insured under the provisions of that subchapter, in equal shares to the person or persons who would have received proceeds under those provisions of law for a member who is insured under that subchapter but does not designate named beneficiaries.

''(5) A payment pursuant to paragraph (3)(B) by reason of a death covered by this subsection shall be paid equal shares to the beneficiaries who were paid the death gratuity that was paid with respect to that death under this section.'' See Effective and Termination Dates of 2005 Amendments notes below.

Subsec. (f). Pub. L. 109–13, § 1013(c), (e), temporarily added subsec. (f) which read as follows:

''(f)(1) In the case of a person described in paragraph (2), a death gratuity shall be payable in accordance with this subsection for the death of such person that is in addition to the death gratuity payable in the case of such death under subsection (e).

''(2) This subsection applies in the case of a member of the armed forces who dies during the period beginning on the date of the enactment of this subsection and ending on the first day of the first month that begins more than 90 days after such date of one or more wounds, injuries, or illnesses that—

''(A) are incurred in the theater of operations of Operation Enduring Freedom or Operation Iraqi Freedom; or

''(B) are incurred as described in section 1413a(e)(2) of this title.

''(3) The amount of additional death gratuity payable under this subsection shall be $150,000.

''(4) A payment pursuant to paragraph (3) by reason of a death covered by this subsection shall be paid—

''(A) to a beneficiary in proportion to the share of benefits applicable to such beneficiary in the payment of life insurance proceeds payable on the basis of that death under the Servicemembers Group Life Insurance program under subchapter III of chapter 19 of title 38; or

''(B) in the case of a person who elected not to be insured under the provisions of that subchapter, in equal shares to the person or persons who receive proceeds under those provisions of law for a member who is insured under that subchapter but does not designate named beneficiaries.''

See Effective and Termination Dates of 2005 Amendments notes below.

2004—Subsec. (a). Pub. L. 108–375, § 643(b)(1), inserted ''(as adjusted under subsection (c))'' before period in introductory provisions.

Subsec. (c). Pub. L. 108–375, § 643(b)(2), added subsec. (c).

2003—Subsec. (a). Pub. L. 108–121 and Pub. L. 108–136 amended subsec. (a) identically, substituting ''$12,000'' for ''$6,000'' in introductory provisions.

1991—Subsec. (a). Pub. L. 102–190, in first sentence, substituted ''1475 through 1477'' for ''1475–1477'' and ''$6,000'' for ''equal to six months' pay at the rate to which the decedent was entitled on the date of his death, except that the gratuity may not be less than $800 of more than $3,000.''

1966—Subsec. (a)(4). Pub. L. 89–718 struck out '', United States Code'' after ''title 37'' in two places.

1964—Subsec. (a)(4). Pub. L. 88–647 substituted ''the first sentence of section 209(c) of title 37, United States Code'' for ''section 4385(c) or 9385(c) of this title'', and provided that a person covered by section 1475(a)(4) of this title who dies in field training or on a practice cruise, or in travel to or from such training or cruise, is considered entitled on the day of his death to the pay prescribed by the second sentence of section 209(c) of Title 37.

EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by Pub. L. 112–81 effective on Dec. 31, 2011, and applicable with respect to deaths that occur on or after that date, see section 651(c) of Pub. L. 112–81, set out as a note under section 1475 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–234, title I, § 1210, June 15, 2006, 120 Stat. 430, provided that the amendment made by section 1210 is effective as of Jan. 6, 2006, and as if included in the enactment of Pub. L. 109–163.

Pub. L. 109–163, div. A, title VI, § 664(a)(3), Jan. 6, 2006, 119 Stat. 3316, provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect as of October 7, 2001, and shall apply to deaths occurring on or after the date of the enactment of this Act [Jan. 6, 2006] and, subject to subsection (c) [119 Stat. 3317], to deaths occurring during the period beginning on October 7, 2001, and ending on the day before the date of the enactment of this Act.''

EFFECTIVE AND TERMINATION DATES OF 2005 AMENDMENTS

Pub. L. 109–77, § 115, Sept. 30, 2005, 119 Stat. 2040, provided that: ''The provisions of, and amendments made by, sections 1011, 1012, 1013, 1023, and 1026 of Public Law 109–13 [amending this section, section 411h of Title 37, Pay and Allowances of the Uniformed Services, and sections 1967, 1969, 1970, and 1977 of Title 38, Veterans' Benefits, and enacting provisions set out as notes under this section, section 411h of Title 37, and section 1967 of Title 38] shall continue in effect, notwithstanding the fiscal year limitation in section 1011 [119 Stat. 244] and the provisions of sections 1012(i), 1013(e), 1023(c), and 1026(e) of that Public Law [enacting provisions set out as notes under this section, section 411h of Title 37, and section 1967 of Title 38], through the earlier of: (1) the date specified in section 106(3) of this joint resolution [Dec. 31, 2005]; or (2) with respect to any such section of Public Law 109–13, the date of the enactment into law of legislation that supersedes the provisions of, or the amendments made by, that section.''

Pub. L. 109–13, div. A, title I, § 1013(d), (e), May 11, 2005, 119 Stat. 248, provided that:

''(d) EFFECTIVE DATE.—This section [amending this section] and the amendments made by this section shall take effect on the date of the enactment of this Act [May 11, 2005].

''(e) TERMINATION.—

''(1) IN GENERAL.—This section [amending this section] and the amendment made by this subsection

[probably means this section] shall terminate on September 30, 2005. Effective as of October 1, 2005, the provisions of section 1478 of title 10, United States Code, as in effect on the date before the date of the enactment of this Act [May 11, 2005] shall be revived.

''(2) CONTINUING OBLIGATION TO PAY.—Any amount of additional death gratuity payable under section 1478 of title 10, United States Code, by reason of the amendments made by subsections (b) and (c) of this section [amending this section] that remains payable as of September 30, 2005, shall, notwithstanding paragraph (1), remain payable after that date until paid.''

EFFECTIVE DATE OF 2003 AMENDMENTS

Pub. L. 108–136, div. A, title VI, §646(b), Nov. 24, 2003, 117 Stat. 1520, provided that: ''The amendment made by subsection (a) [amending this section] shall take effect as of September 11, 2001, and shall apply with respect to deaths occurring on or after that date.''

Pub. L. 108–121, title I, §102(a)(2), Nov. 11, 2003, 117 Stat. 1337, provided that: ''The amendment made by this subsection [amending this section] shall take effect as of September 11, 2001, and shall apply with respect to deaths occurring on or after that date.''

EFFECTIVE DATE OF 1991 AMENDMENT; TRANSITION PROVISION

Pub. L. 102–190, div. A, title VI, §652(b), Dec. 5, 1991, 105 Stat. 1388, provided that:

''(1) The amendments made by subsection (a) [amending this section] shall take effect as of August 2, 1990.

''(2) In the case of the payment of a death gratuity under sections 1475 through 1477 of title 10, United States Code, with respect to a person who died during the period beginning on August 2, 1990, and ending on the date of the enactment of this Act [Dec. 5, 1991], the amount of the death gratuity under section 1478(a) of such title (as amended by subsection (a)) shall be reduced by the amount of any such gratuity paid with respect to such person under this section (as in effect on August 1, 1990).''

TEMPORARY INCREASE IN AMOUNT OF DEATH GRATUITY; PERSIAN GULF CONFLICT

Pub. L. 102–25, title III, §307, Apr. 6, 1991, 105 Stat. 82, provided that: ''In lieu of the amount of the death gratuity specified in section 1478(a) of title 10, United States Code, the amount of the death gratuity payable under that section shall be $6,000 for a death resulting from any injury or illness incurred during the Persian Gulf conflict or during the 180-day period beginning at the end of the Persian Gulf conflict.''

DEATH GRATUITY FOR CERTAIN PARTICIPANTS WHO DIED BETWEEN AUGUST 1, 1990, AND APRIL 6, 1991

Pub. L. 102–25, title III, §308, Apr. 6, 1991, 105 Stat. 83, required Secretary of Defense to pay death gratuity to each SGLI beneficiary of each deceased member of uniformed services who died after Aug. 1, 1990, and before Apr. 6, 1991, and whose death was in conjunction with or in support of Operation Desert Storm, or attributable to hostile action in regions other than Persian Gulf, as prescribed in regulations set forth by Secretary of Defense.

§1479. Death gratuity: delegation of determinations, payments

For the purpose of making immediate payments under section 1475 of this title, the Secretary concerned shall—

(1) authorize the commanding officer of a territorial command, installation, or district in which a survivor of a person covered by that section is residing to determine the beneficiary eligible for the death gratuity; and

(2) authorize a disbursing or certifying official of each of those commands, installations, or districts to make the payments to the beneficiary, or certify the payments due them, as the case may be.

(Added Pub. L. 85–861, §1(32)(A), Sept. 2, 1958, 72 Stat. 1455; amended Pub. L. 97–258, §2(b)(1)(A), Sept. 13, 1982, 96 Stat. 1052.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
1479	38:1132.	Aug. 1, 1956, ch. 837, §302, 70 Stat. 868.

The word ''territorial'' is substituted for the words ''military or naval'', since the subsection could only apply to that type of command, installation, or district. Clause (2) is substituted for 38:1132(2).

AMENDMENTS

1982—Par. (2). Pub. L. 97–258 substituted ''official'' for ''officer''.

§1480. Death gratuity: miscellaneous provisions

(a) A payment may not be made under sections 1475–1477 of this title if the decedent was put to death as lawful punishment for a crime or a military offense, unless he was put to death by a hostile force with which the armed forces of the United States were engaged in armed conflict.

(b) A payment may not be made under section 1476 unless the Secretary of Veterans Affairs determines that the decedent was discharged or released, as the case may be, under conditions other than dishonorable from the last period of the duty or training that he performed.

(c) For the purposes of section 1475(a)(3) of this title, the Secretary concerned shall determine whether the decedent was authorized or required to perform the duty or training and whether or not he died from injury so incurred. For the purposes of section 1476 of this title, the Secretary of Veterans Affairs shall make those determinations. In making those determinations, the Secretary concerned or the Secretary of Veterans Affairs, as the case may be, shall consider—

(1) the hour on which the Reserve began to travel directly to or from the duty or training;

(2) the hour at which he was scheduled to arrive for, or at which he ceased performing, that duty or training;

(3) the method of travel used;

(4) the itinerary;

(5) the manner in which the travel was performed; and

(6) the immediate cause of death.

In cases covered by this subsection, the burden of proof is on the claimant.

(d) Payments under sections 1475–1477 of this title shall be made from appropriations available for the payment of members of the armed force concerned.

(Added Pub. L. 85–861, §1(32)(A), Sept. 2, 1958, 72 Stat. 1455; amended Pub. L. 101–189, div. A, title XVI, §1621(a)(2), (5), Nov. 29, 1989, 103 Stat. 1603.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
1480(a)	38:1134(a).	Aug. 1, 1956, ch. 837, §§102(6)(B) (less 1st sentence, as applicable to death gratuity) 303(e), 304(a), (b), 70 Stat. 859, 869.
1480(b)	38:1133(e).	
1480(c)	38:1101(6)(B) (less 1st sentence, as applicable to death gratuity).	
1480(d)	38:1134(b).	

In subsection (a), the words ''was put to death'' are substituted for the words ''suffered death''. The words ''or naval'' are omitted as covered by the word ''military''.

In subsection (b), the words ''last period * * * that he performed'' are substituted for the words ''such period''.

AMENDMENTS

1989—Subsec. (b). Pub. L. 101–189, §1621(a)(2), substituted ''Secretary of Veterans Affairs'' for ''Administrator of Veterans' Affairs''.

Subsec. (c). Pub. L. 101–189, §1621(a)(2), (5), substituted ''Secretary of Veterans Affairs'' for ''Administrator of Veterans' Affairs'' after ''section 1476 of this title, the'' and ''the Secretary concerned or the Secretary of Veterans Affairs'' for ''the Secretary or the Administrator''.

§1481. Recovery, care, and disposition of remains: decedents covered

(a) The Secretary concerned may provide for the recovery, care, and disposition of the remains of the following persons:

(1) Any Regular of an armed force under his jurisdiction who dies while on active duty.

(2) A member of a reserve component of an armed force who dies while—

(A) on active duty;

(B) performing inactive-duty training;

(C) performing authorized travel directly to or from active duty or inactive-duty training;

(D) remaining overnight immediately before the commencement of inactive-duty training, or remaining overnight, between successive periods of inactive-duty training, at or in the vicinity of the site of the inactive-duty training;

(E) staying at the member's residence, when so authorized by proper authority, during a period of inactive duty training or between successive days of inactive duty training;

(F) hospitalized or undergoing treatment for an injury, illness, or disease incurred or aggravated while on active duty or performing inactive-duty training; or

(G) either—

(i) serving on funeral honors duty under section 12503 of this title or section 115 of title 32;

(ii) traveling directly to or from the place at which the member is to so serve; or

(iii) remaining overnight at or in the vicinity of that place before so serving, if the place is outside reasonable commuting distance from the member's residence.

[(3) Repealed. Pub. L. 99–661, div. A, title VI, §604(e)(3)(B), Nov. 14, 1986, 100 Stat. 3877.]

(4) Any member of, or applicant for membership in, a reserve officers' training corps who dies while (A) attending a training camp, (B) on an authorized practice cruise, (C) performing authorized travel to or from such a camp or cruise, or (D) hospitalized or undergoing treatment at the expense of the United States for injury incurred, or disease contracted, while attending such a camp, while on such a cruise, or while performing that travel.

(5) Any accepted applicant for enlistment in an armed force under his jurisdiction.

(6) Any person who has been discharged from an enlistment in an armed force under his jurisdiction while a patient in a United States hospital, and who continues to be such a patient until the date of his death.

(7) A person who—

(A) dies as a retired member of an armed force under the Secretary's jurisdiction during a continuous hospitalization of the member as a patient in a United States hospital that began while the member was on active duty for a period of more than 30 days; or

(B) is not covered by subparagraph (A) and, while in a retired status by reason of eligibility to retire under chapter 61 of this title, dies during a continuous hospitalization of the person that began while the person was on active duty as a Regular of an armed force under the Secretary's jurisdiction.

(8) Any military prisoner who dies while in his custody.

(9) To the extent authorized under section 1482(f) of this title, any retired member of an armed force who dies while outside the United States or any individual who dies outside the United States while a dependent of such a member.

(10) To the extent authorized under section 1482(g) of this title, any person not otherwise covered by the preceding paragraphs whose remains (or partial remains) have been retained by the Secretary concerned for purposes of a forensic pathology investigation by the Armed Forces Medical Examiner under section 1471 of this title.

(b) This section applies to each person covered by subsection (a)(1)–(7) even though he may have been temporarily absent from active duty, with or without leave, at the time of his death, unless he had been dropped from the rolls of his organization before his death.

(c) In this section, the term ''dependent'' has the meaning given such term in section 1072(2) of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 112; Pub. L. 88–647, title III, §301(3), Oct. 13, 1964, 78 Stat. 1071; Pub. L. 99–661, div. A, title VI, §604(e)(3), Nov. 14, 1986, 100 Stat. 3877; Pub. L. 103–337, div. A, title VI, §652(a)(1), Oct. 5, 1994, 108 Stat. 2793; Pub. L. 104–106, div. A, title VII, §702(b), Feb. 10, 1996, 110 Stat. 371; Pub. L. 105–85, div. A, title V, §513(e), Nov. 18, 1997, 111 Stat. 1732; Pub. L. 105–261, div. A, title VI, §645(a), (b), Oct. 17, 1998, 112 Stat. 2049, 2050; Pub. L. 106–65, div. A, title V, §578(i)(5), Oct. 5, 1999, 113 Stat. 630; Pub. L. 106–398, §1 [[div. A], title X, §1087(d)(3)], Oct. 30, 2000, 114 Stat. 1654, 1654A–293; Pub. L. 107–107, div. A, title V, §513(c), title VI, §638(b)(2), Dec. 28, 2001, 115 Stat. 1093, 1147; Pub. L. 112–81, div. A, title VI, §651(b), Dec. 31, 2011, 125 Stat. 1467; Pub.

L. 113–66, div. A, title VI, § 651(a)(1), Dec. 26, 2013, 127 Stat. 787.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1481(a)	5:2151 (as applicable to armed forces). 5:2152 (1st 27 words, as applicable to armed forces). 5:2153 (less 1st 18 words, as applicable to armed forces).	July 15, 1954, ch. 507, §§ 1, 2 (1st 25 words, as applicable to armed forces), 3 (less 1st 16 words, as applicable to armed forces), 4 (as applicable to armed forces), 68 Stat. 478.
1481(b)	5:2154 (as applicable to armed forces).	

In subsection (a), 5:2151 is omitted as covered by the revised sections of this chapter. In clauses (1), (2), (5)–(7), the words ''under his jurisdiction'' are inserted for clarity. In clause (1) the words ''regular member of an armed force, or member of an armed force without component'' are substituted for the words ''military personnel'', since all other members of the military services are covered by more specific rules set forth in clauses (2) and (7). In clauses (2) and (3), the words ''active duty for training'' are omitted as covered by the words ''active duty''. The words ''injury incurred, or disease contracted'' are substituted for the words ''injuries, illness, or disease contracted or incurred''. The words ''by law'', ''authorized'', ''proper authority'', and ''as authorized by law'' are omitted as surplusage. In clause (3), the words ''while entitled to'' are substituted for the words ''in respect of duty for which they are entitled by law to receive''. In clause (4), the words ''injury incurred, or disease contracted'' are substituted for the words ''injury, disease or illness contracted or incurred''. The words ''as authorized by law'' are omitted as surplusage. In clause (6), the word ''person'' is substituted for the words ''former enlisted members''. In clause (7), the words ''active duty for a period of more than 30 days'' are substituted for the words ''extended active duty''.

In subsection (b), the words ''This section applies to each person * * * even though'' are substituted for the words ''The benefits of this Act shall not be denied in respect of a person * * * on the ground''.

AMENDMENTS

2013—Subsec. (a)(10). Pub. L. 113–66 added par. (10).

2011—Subsec. (a)(2)(E) to (G). Pub. L. 112–81 added subpar. (E) and redesignated former subpars. (E) and (F) as (F) and (G), respectively.

2001—Subsec. (a)(2)(D). Pub. L. 107–107, § 513(c), struck out '', if the site is outside reasonable commuting distance from the member's residence'' before semicolon at end.

Subsec. (a)(9). Pub. L. 107–107, § 638(b)(2), substituted ''section 1482(f)'' for ''section 1482(g)''.

2000—Subsec. (a)(1). Pub. L. 106–398 amended directory language of Pub. L. 105–261, § 645(b). See 1998 Amendment note below.

1999—Subsec. (a)(2)(F). Pub. L. 106–65 added subpar. (F).

1998—Subsec. (a)(1). Pub. L. 105–261, § 645(b), as amended by Pub. L. 106–398, struck out '', or member of an armed force without component,'' after ''Regular of an armed force''.

Subsec. (a)(7). Pub. L. 105–261, § 645(a), amended par. (7) generally. Prior to amendment, par. (7) read as follows: ''Any retired member of an armed force under his jurisdiction who becomes a patient in a United States hospital while he is on active duty for a period of more than 30 days, and who continues to be such a patient until the date of his death.''

1997—Subsec. (a)(2)(D). Pub. L. 105–85 inserted ''remaining overnight immediately before the commencement of inactive-duty training, or'' after ''(D)''.

1996—Subsec. (a)(2)(C) to (E). Pub. L. 104–106 struck out ''or'' at end of subpar. (C), added subpar. (D), and redesignated former subpar. (D) as (E).

1994—Subsec. (a). Pub. L. 103–337, § 652(a)(1)(A), substituted ''the remains of the following persons:'' for ''the remains of—'', capitalized the first letter of the first word in pars. (1) to (8), substituted a period for the last semicolon in pars. (1) to (6), substituted a period for ''; and'' in par. (7), and added par. (9).

Subsec. (c). Pub. L. 103–337, § 652(a)(1)(B), added subsec. (c).

1986—Subsec. (a)(2), (3). Pub. L. 99–661 added par. (2) and struck out former pars. (2) and (3) which read as follows:

''(2) any Reserve of an armed force under his jurisdiction who dies while (A) on active duty, (B) performing authorized travel to or from that duty, (C) on authorized inactive-duty training, or (D) hospitalized or undergoing treatment at the expense of the United States for injury incurred, or disease contracted, while on that duty or training or while performing that travel;

''(3) any member of the Army National Guard or Air National Guard who dies while entitled to pay from the United States and while (A) on active duty, (B) performing authorized travel to or from that duty, (C) on authorized inactive-duty training, or (D) hospitalized or undergoing treatment at the expense of the United States for injury incurred, or disease contracted, while on that duty or training or while performing that travel;''.

1964—Subsec. (a)(4). Pub. L. 88–647 substituted '', or applicant for membership in, a reserve officers' training corps'' for ''the Army Reserve Officers' Training Corps, Naval Reserve Officers' Training Corps, or Air Force Reserve Officers' Training Corps''.

EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by Pub. L. 112–81 effective on Dec. 31, 2011, and applicable with respect to deaths that occur on or after that date, see section 651(c) of Pub. L. 112–81, set out as a note under section 1475 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–398, § 1 [[div. A], title X, § 1087(d)], Oct. 30, 2000, 114 Stat. 1654, 1654A–292, provided that the amendment made by section 1 [[div. A], title X, § 1087(d)(3)] is effective Oct. 17, 1998, and as if included in the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999, Pub. L. 105–261, as enacted.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–261, div. A, title VI, § 645(c), Oct. 17, 1998, 112 Stat. 2050, provided that: ''The amendment made by subsection (a) [amending this section] applies with respect to deaths occurring on or after the date of the enactment of this Act [Oct. 17, 1998].''

EFFECTIVE DATE OF 1994 AMENDMENT

Pub. L. 103–337, div. A, title VI, § 652(a)(3), Oct. 5, 1994, 108 Stat. 2794, provided that: ''The amendments made by this subsection [amending this section and section 1482 of this title] shall apply with respect to the remains of, and incidental expenses incident to the recovery, care, and disposition of, an individual who dies after the date of the enactment of this Act [Oct. 5, 1994].''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–661 applicable with respect to persons who, after Nov. 14, 1986, incur or aggravate an injury, illness, or disease or die, see section 604(g) of Pub. L. 99–661, set out as a note under section 1074a of this title.

REQUIREMENT FOR DEPLOYING MILITARY MEDICAL PERSONNEL TO BE TRAINED IN PRESERVATION OF REMAINS UNDER COMBAT OR COMBAT-RELATED CONDITIONS

Pub. L. 109–364, div. A, title V, § 567, Oct. 17, 2006, 120 Stat. 2224, provided that:

''(a) REQUIREMENT.—The Secretary of each military department shall ensure that each military health care

professional under that Secretary's jurisdiction who is deployed to a theater of combat operations is trained, before such deployment, in the preservation of remains under combat or combat-related conditions.

"(b) MATTERS COVERED BY TRAINING.—The training under subsection (a) shall include, at a minimum, the following:

"(1) Best practices and procedures for the preservation of the remains of a member of the Armed Forces after death, taking into account the conditions likely to be encountered and the objective of returning the remains to the member's family in the best possible condition.

"(2) Practical case studies based on experience of the Armed Forces in a variety of climactic conditions.

"(c) COVERED MILITARY HEALTH CARE PROFESSIONALS.—In this section, the term 'military health care professional' means—

"(1) a physician, nurse, nurse practitioner, physician assistant, or combat medic; and

"(2) any other medical personnel with medical specialties who may provide direct patient care and who are designated by the Secretary of the military department concerned.

"(d) EFFECTIVE DATE.—Subsection (a) shall apply with respect to any military health care professional who is deployed to a theater of combat operations after the end of the 90-day period beginning on the date of the enactment of this Act [Oct. 17, 2006]."

§ 1482. Expenses incident to death

(a) Incident to the recovery, care, and disposition of the remains of any decedent covered by section 1481 of this title, the Secretary concerned may pay the necessary expenses of the following:

(1) Recovery and identification of the remains.

(2) Notification to the next of kin or other appropriate person.

(3) Preparation of the remains for burial, including cremation if requested by the person designated to direct disposition of the remains.

(4) Furnishing of a uniform or other clothing.

(5) Furnishing of a casket or urn, or both, with outside box.

(6) Hearse service.

(7) Funeral director's services.

(8)(A) Transportation of the remains, and travel and transportation allowances as specified in regulations prescribed under section 464 of title 37 for an escort of one person, to the place, subject to subparagraph (B), selected by the person designated to direct disposition of the remains or, if such a selection is not made, to a national or other cemetery which is selected by the Secretary and in which burial of the decedent is authorized.

(B) The person designated to direct disposition of the remains may select two places under subparagraph (A) if the second place is a national cemetery. If that person selects two places, the Secretary concerned may pay for transportation to the second place only by means of reimbursement under subsection (b).

(C) When transportation of the remains includes transportation by aircraft under section 562 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109–364; 10 U.S.C. 1482 note), the Secretary concerned shall provide, to the maximum extent practicable, for delivery of the remains by air to the commercial, general aviation, or military airport nearest to the place selected by the designee.

(9) Interment or inurnment of the remains.

(10) In the case of a decedent under the jurisdiction of a Secretary of a military department at the time of death, enduring care of remains interred in a foreign cemetery if the burial location was designated by such Secretary.

(b) If an individual pays any expense payable by the United States under this section, the Secretary concerned shall reimburse him or his representative in an amount not larger than that normally incurred by the Secretary in furnishing the supply or service concerned. If reimbursement by the United States is also authorized under another provision of law or regulation, the individual may elect under which provision to be reimbursed.

(c) The following persons may be designated to direct disposition of the remains of a decedent covered by this chapter:

(1) The person identified by the decedent on the record of emergency data maintained by the Secretary concerned (DD Form 93 or any successor to that form), as the Person Authorized to Direct Disposition (PADD), regardless of the relationship of the designee to the decedent.

(2) The surviving spouse of the decedent.

(3) Blood relatives of the decedent.

(4) Adoptive relatives of the decedent.

(5) If no person covered by paragraphs (1) through (4) can be found, a person standing in loco parentis to the decedent.

(d) When the remains of a decedent covered by section 1481 of this title, whose death occurs after January 1, 1961, are determined to be nonrecoverable, the person who would have been designated under subsection (c) to direct disposition of the remains if they had been recovered may be—

(1) presented with a flag of the United States; however, if the person designated by subsection (c) is other than a parent of the deceased member, a flag of equal size may also be presented to the parents, and

(2) reimbursed by the Secretary concerned for the necessary expenses of a memorial service.

However, the amount of the reimbursement shall be determined in the manner prescribed in subsection (b) for an interment, but may not be larger than that authorized when the United States provides the grave site. A claim for reimbursement under this subsection may be allowed only if it is presented within two years after the date of death or the date the person who would have been designated under subsection (c) to direct disposition of the remains, if they had been recovered, receives notification that the member has been reported or determined to be dead under authority of chapter 10 of title 37, whichever is later.

(e) PRESENTATION OF FLAG OF THE UNITED STATES.—(1) In the case of a decedent covered by section 1481 of this title, the Secretary concerned may pay the necessary expenses for the

presentation of a flag of the United States to the following persons:

(A) The person designated under subsection (c) to direct disposition of the remains of the decedent.

(B) The parents or parent of the decedent, if the person to be presented a flag under subparagraph (A) is other than a parent of the decedent.

(C) The surviving spouse of the decedent (including a surviving spouse who remarries after the decedent's death), if the person to be presented a flag under subparagraph (A) is other than the surviving spouse.

(D) Each child of the decedent, regardless of whether the person to be presented a flag under subparagraph (A) is a child of the decedent.

(2) The Secretary concerned may pay the necessary expenses for the presentation of a flag to the person designated to direct the disposition of the remains of a member of the Reserve of an armed force under his jurisdiction who dies under honorable circumstances as determined by the Secretary and who is not covered by section 1481 of this title if, at the time of such member's death, he—

(A) was a member of the Ready Reserve; or

(B) had performed at least twenty years of service as computed under section 12732 of this title and was not entitled to retired pay under section 12731 of this title.

(3) A flag to be presented to a person under subparagraph (B), (C), or (D) of paragraph (1) shall be of equal size to the flag presented under subparagraph (A) of such paragraph to the person designated to direct disposition of the remains of the decedent.

(4) This subsection does not apply to a military prisoner who dies while in the custody of the Secretary concerned and while under a sentence that includes a discharge.

(5) In this subsection:

(A) The term ''parent'' includes a natural parent, a stepparent, a parent by adoption, or a person who for a period of not less than one year before the death of the decedent stood in loco parentis to the decedent. Preference under paragraph (1)(B) shall be given to the persons who exercised a parental relationship at the time of, or most nearly before, the death of the decedent.

(B) The term ''child'' has the meaning prescribed by section 1477(d) of this title.

(f) The payment of expenses incident to the recovery, care, and disposition of a decedent covered by section 1481(a)(9) of this title is limited to the payment of expenses described in paragraphs (1) through (5) of subsection (a) and air transportation of the remains from a location outside the United States to a point of entry in the United States. Such air transportation may be provided without reimbursement on a space-available basis in military or military-chartered aircraft. The Secretary concerned may pay any other expenses relating to the remains of such a decedent that are authorized to be paid under this section only on a reimbursable basis. Amounts reimbursed to the Secretary concerned under this subsection shall be credited to appropriations available, at the time of reimbursement, for the payment of such expenses.

(g)(1) The payment of expenses incident to the recovery, care, and disposition of the remains of a decedent covered by section 1481(a)(10) of this title is limited to those expenses that, as determined under regulations prescribed by the Secretary of Defense, would not have been incurred but for the retention of those remains for purposes of a forensic pathology investigation by the Armed Forces Medical Examiner under section 1471 of this title.

(2) In a case covered by paragraph (1), if the person designated under subsection (c) to direct disposition of the remains of a decedent does not direct disposition of the remains that were retained for the forensic pathology investigation, the Secretary may pay for the transportation of those remains to, and interment or inurnment of those remains in, an appropriate place selected by the Secretary, in lieu of the transportation authorized to be paid under paragraph (8) of subsection (a).

(3) In a case covered by paragraph (1), expenses that may be paid do not include expenses with respect to an escort under paragraph (8) of subsection (a), whether or not on a reimbursable basis.

(4) The Secretary concerned may pay any other expenses relating to the remains of such a decedent that are authorized to be paid under this section on a reimbursable basis. Amounts reimbursed to the Secretary concerned under this subsection shall be credited to appropriations available at the time of reimbursement for the payment of such expenses.

(Aug. 10, 1956, ch. 1041, 70A Stat. 113; Pub. L. 85–716, Aug. 21, 1958, 72 Stat. 708; Pub. L. 91–397, Sept. 1, 1970, 84 Stat. 837; Pub. L. 91–487, Oct. 22, 1970, 84 Stat. 1086; Pub. L. 93–292, May 28, 1974, 88 Stat. 176; Pub. L. 93–649, Jan. 8, 1975, 88 Stat. 2361; Pub. L. 101–189, div. A, title VI, §§ 652(a)(3), 653(a)(6), title XVI, § 1622(c)(4), Nov. 29, 1989, 103 Stat. 1461, 1462, 1604; Pub. L. 103–337, div. A, title VI, § 652(a)(2), title XVI, § 1671(c)(8), Oct. 5, 1994, 108 Stat. 2793, 3014; Pub. L. 104–106, div. A, title XV, § 1501(c)(19), Feb. 10, 1996, 110 Stat. 499; Pub. L. 107–107, div. A, title VI, § 638(b)(1), Dec. 28, 2001, 115 Stat. 1147; Pub. L. 110–181, div. A, title V, § 591, Jan. 28, 2008, 122 Stat. 138; Pub. L. 110–417, [div. A], title V, § 581, Oct. 14, 2008, 122 Stat. 4472; Pub. L. 112–81, div. A, title V, § 528, Dec. 31, 2011, 125 Stat. 1402; Pub. L. 113–66, div. A, title VI, §§ 621(e), 651(a)(2)–(c), Dec. 26, 2013, 127 Stat. 784, 787, 788; Pub. L. 115–91, div. A, title VI, § 632, Dec. 12, 2017, 131 Stat. 1431; Pub. L. 116–92, div. A, title V, § 573(a), Dec. 20, 2019, 133 Stat. 1404.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1482(a)	5:2152 (less 1st 27 words, as applicable to armed forces). 5:2153 (1st 18 words, as applicable to armed forces).	July 15, 1954, ch. 507, §§ 2 (less 1st 25 words, as applicable to armed forces), 3 (1st 16 words, as applicable to armed forces), 11 (as applicable to armed forces), 12 (as applicable to armed forces), 68 Stat. 478, 480, 481.
1482(b)	5:2161 (as applicable to armed forces).	
1482(c)	5:2162 (as applicable to armed forces).	

In subsection (a), the list of payable expenses has been rearranged to produce a generally chronological

result. The words ''person designated'' are substituted for the words ''person recognized as the person.''

In subsection (a)(4), the words ''articles of'' are omitted as surplusage.

In subsection (a)(8), the word ''place'' is substituted for the words ''town or city''.

In subsection (a)(10), the words ''other than honorable'' are omitted, since a person cannot be sentenced to an honorable discharge.

In subsection (b), the words ''If an individual pays'' are substituted for the words ''In any case where expenses * * * are borne by individuals''. The second sentence of 5:2161 is omitted as executed. The last sentence is substituted for the last sentence of 5:2161.

In subsection (c), 5:2162 (1st sentence) is omitted since the Secretary has inherent authority to issue regulations appropriate to exercising his statutory functions. The introductory language is substituted for 5:2162 (1st 22 words of 2d sentence). The words ''ascertained and'' are omitted as surplusage.

AMENDMENTS

2019—Subsec. (a)(8). Pub. L. 116–92 amended par. (8) generally. Prior to amendment, par. (8) read as follows: ''Transportation of the remains, and travel and transportation allowances as specified in regulations prescribed under section 464 of title 37 for an escort of one person, to the place selected by the person designated to direct disposition of the remains or, if such a selection is not made, to a national or other cemetery which is selected by the Secretary and in which burial of the decedent is authorized. When transportation of the remains includes transportation by aircraft under section 562 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109–364; 10 U.S.C. 1482 note), the Secretary concerned shall provide, to the maximum extent practicable, for delivery of the remains by air to the commercial, general aviation, or military airport nearest to the place selected by the designee.''

2017—Subsec. (a)(10). Pub. L. 115–91 added par. (10).

2013—Subsec. (a)(8). Pub. L. 113–66, § 621(e), substituted ''and travel and transportation allowances as specified in regulations prescribed under section 464 of title 37'' for ''and roundtrip transportation and prescribed allowances''.

Subsec. (a)(9). Pub. L. 113–66, § 651(b), inserted ''or inurnment'' after ''Interment''.

Subsec. (f). Pub. L. 113–66, § 651(c), substituted ''The Secretary concerned may pay any other expenses relating to the remains of such a decedent that are authorized to be paid under this section only on a reimbursable basis.'' for ''The Secretary concerned shall pay all other expenses authorized to be paid under this subsection only on a reimbursable basis.''

Subsec. (g). Pub. L. 113–66, § 651(a)(2), added subsec. (g).

2011—Subsec. (c). Pub. L. 112–81 substituted ''The'' for ''Only the'' in introductory provisions, added par. (1), redesignated former pars. (1) to (4) as (2) to (5), respectively, and substituted ''paragraphs (1) through (4)'' for ''clauses (1)–(3)'' in par. (5).

2008—Subsec. (a)(8). Pub. L. 110–181 inserted at end ''When transportation of the remains includes transportation by aircraft under section 562 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109–364; 10 U.S.C. 1482 note), the Secretary concerned shall provide, to the maximum extent practicable, for delivery of the remains by air to the commercial, general aviation, or military airport nearest to the place selected by the designee.''

Subsec. (a)(10), (11). Pub. L. 110–417, § 581(b), struck out pars. (10) and (11) which read as follows:

''(10) Presentation of a flag of the United States to the person designated to direct disposition of the remains, except in the case of a military prisoner who dies while in the custody of the Secretary and while under a sentence that includes a discharge.

''(11) Presentation of a flag of equal size to the flag presented under paragraph (10) to the parents or parent, if the person to be presented a flag under paragraph (10) is other than the parent of the decedent. For the purpose of this paragraph, the term 'parent' includes a natural parent, a stepparent, a parent by adoption or a person who for a period of not less than one year before the death of the decedent stood in loco parentis to him, and preference under this paragraph shall be given to the persons who exercised a parental relationship at the time of, or most nearly before, the death of the decedent.''

Subsec. (e). Pub. L. 110–417, § 581(a), designated existing provisions as par. (2), redesignated former pars. (1) and (2) of subsec. (e) as subpars. (A) and (B), respectively, of par. (2), inserted subsec. (e) heading, and added pars. (1) and (3) to (5).

2001—Subsecs. (d) to (g). Pub. L. 107–107 redesignated subsecs. (e) to (g) as (d) to (f), respectively, and struck out former subsec. (d) which read as follows: ''When, as a result of a disaster involving the multiple deaths of persons covered by section 1481 of this title, the Secretary concerned has possession of commingled remains that cannot be individually identified, and burial of those remains in a common grave in a national cemetery is considered necessary, he may, for the interment services of each known decedent, pay the expenses of round-trip transportation to the cemetery of (1) the person who would have been designated under subsection (c) to direct disposition of the remains if individual identification had been made, and (2) two additional persons selected by that person who are closely related to the decedent. The transportation expenses authorized to be paid under this subsection may not exceed the transportation allowances authorized for members of the armed forces for travel on official business, but no per diem allowance may be paid.''

1996—Subsec. (f)(2). Pub. L. 104–106 inserted ''section'' before ''12731''.

1994—Subsec. (f)(2). Pub. L. 103–337, § 1671(c)(8), substituted ''section 12732'' for ''section 1332'' and ''12731'' for ''section 1331''.

Subsec. (g). Pub. L. 103–337, § 652(a)(2), added subsec. (g).

1989—Subsec. (a). Pub. L. 101–189, § 653(a)(6)(A), substituted ''expenses of the following:'' for ''expenses of—'' in introductory provisions.

Subsec. (a)(1) to (9). Pub. L. 101–189, § 653(a)(6)(B), (C), in each of pars. (1) to (9), capitalized first letter of first word and substituted period for semicolon at the end.

Subsec. (a)(10). Pub. L. 101–189, § 653(a)(6)(B), (D), capitalized first letter of first word and substituted period for ''; and''.

Subsec. (a)(11). Pub. L. 101–189, § 653(a)(6)(B), (E), capitalized first letter of first word, substituted ''paragraph'' for ''clause'' in four places, and substituted ''decedent. For the'' for ''decedent; for the''.

Subsec. (e). Pub. L. 101–189, §§ 652(a)(3), 1622(c)(4), substituted ''the date of death'' for ''the effective date of this subsection, or the date of death,'' and ''chapter 10 of title 37'' for ''chapter 10, title 37'' in last sentence.

1975—Subsec. (e). Pub. L. 93–649 inserted provision relating to date of notification of death under authority of chapter 10, title 37, to that person who would have been designated under subsection (c) to direct disposition of the remains, had they been recovered.

1974—Subsec. (f). Pub. L. 93–292 added subsec. (f).

1970—Subsec. (a)(11). Pub. L. 91–397 added cl. (11).

Subsec. (e). Pub. L. 91–487 added subsec. (e).

1958—Subsec. (d). Pub. L. 85–716 added subsec. (d).

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–106, div. A, title XV, § 1501(c), Feb. 10, 1996, 110 Stat. 498, provided that the amendment made by that section is effective as of Dec. 1, 1994, and as if included as an amendment made by the Reserve Officer Personnel Management Act, title XVI of Pub. L. 103–337, as originally enacted.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 652(a)(2) of Pub. L. 103–337 applicable with respect to remains of, and incidental ex-

penses incident to recovery, care, and disposition of, an individual who dies after Oct. 5, 1994, see section 652(a)(3) of Pub. L. 103–337, set out as a note under section 1481 of this title.

Amendment by section 1671(c)(8) of Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

DEPARTMENT OF DEFENSE POLICY AND PROCEDURES ON MEDIA ACCESS AT CEREMONIES FOR DIGNIFIED TRANSFER OF REMAINS OF MEMBERS OF THE ARMED FORCES WHO DIE OVERSEAS

Pub. L. 111–84, div. A, title V, § 542(a), Oct. 28, 2009, 123 Stat. 2299, provided that:

''(1) POLICY REQUIRED.—Not later than April 1, 2010, the Secretary of Defense shall prescribe a policy guaranteeing media access at ceremonies for the dignified transfer of remains of members of the Armed Forces who die while located or serving overseas (in this section referred to as 'military decedents') when approved by the primary next of kin of such military decedents.

''(2) PROCEDURES.—The policy developed under paragraph (1) shall include procedures to be followed by the military departments in conducting appropriate ceremonies for the dignified transfer of remains of military decedents. The procedures shall be uniform across the military departments except to the extent necessary to reflect the traditional practices or customs of a particular military department.

''(3) ELEMENTS.—The policy developed under paragraph (1) shall include, but not be limited to, the following:

''(A) Provision for access by media representatives to transfers described in paragraph (1) if approved in advance by the primary next of kin of the military decedent or their designee.

''(B) Procedures for designating with certainty who is authorized to make the decision to approve media access at transfer ceremonies described in that paragraph under reasonable, foreseeable circumstances.

''(C) Conditions for coverage that media representatives must comply with during such transfer ceremonies, and procedures for ensuring agreement in advance by media representatives with the conditions for coverage prescribed by military authorities.

''(D) Procedures for the waiver by the primary next of kin or other designees of Departmental polices relating to delays in release of casualty information to the media and general public, when such waiver is required.''

TRANSPORTATION OF REMAINS OF CASUALTIES

Pub. L. 116–92, div. A, title V, § 580A(b), Dec. 20, 2019, 133 Stat. 1408, provided that: ''The Secretary of Defense shall extend travel privileges via Invitational Travel Authorization to family members of members of the Armed Forces who die outside of the United States and whose remains are returned to the United States through the mortuary facility at Dover Air Force Base, Delaware.''

Pub. L. 109–364, div. A, title V, § 562, Oct. 17, 2006, 120 Stat. 2220, as amended by Pub. L. 116–92, div. A, title V, §§ 573(b), 580A(a), Dec. 20, 2019, 133 Stat. 1404, 1408, provided that:

''(a) REQUIRED TRANSPORTATION.—In the case of a member of the Armed Forces who dies outside of the United States and whose remains are returned to the United States through the mortuary facility at Dover Air Force Base, Delaware, the Secretary concerned, under regulations prescribed by the Secretary of Defense, shall provide transportation of the remains of that member from Dover Air Force Base to the applicable escorted remains destination in accordance with section 1482(a)(8) of title 10, United States Code, and this section.

''(b) ESCORTED REMAINS DESTINATION.—In this section, the term 'escorted remains destination' means the place to which remains are authorized to be transported under section 1482(a)(8) of title 10, United States Code. If the person designated to direct disposition of the remains selects two places under such section, the term means only the first of those two places.

''(c) AIR TRANSPORTATION FROM DOVER AFB.—

''(1) MILITARY TRANSPORTATION.—If transportation of remains under subsection (a) includes transportation by air, such transportation (except as provided under paragraph (2)) shall be made by military aircraft or military-contracted aircraft.

''(2) ALTERNATIVE TRANSPORTATION BY AIRCRAFT.—The provisions of paragraph (1) shall not be applicable to the transportation of remains by air to the extent that the person designated to direct disposition of the remains directs otherwise.

''(3) PRIMARY MISSION.—When remains are transported by military aircraft or military-contracted aircraft under this section, the primary mission of the aircraft providing that transportation shall be the transportation of such remains. However, more than one set of remains may be transported on the same flight.

''(d) ESCORT.—

''(1) IN GENERAL.—Except as provided in paragraph (2), the Secretary concerned shall ensure that remains transported under this section are continuously escorted from Dover Air Force Base to the applicable escorted remains destination by a member of the Armed Forces in an appropriate grade, as determined by the Secretary.

''(2) OTHER ESCORT.—If a specific military escort is requested by the person designated to direct disposition of such remains and the Secretary approves that request, then the Secretary is not required to provide an additional military escort under paragraph (1).

''(e) HONOR GUARD DETAIL.—

''(1) PROVISION OF DETAIL.—Except in a case in which the person designated to direct disposition of remains requests that no military honor guard be present, the Secretary concerned shall ensure that an honor guard detail is provided in each case of the transportation of remains under this section. The honor guard detail shall be in addition to the escort provided for the transportation of remains under section (d).

''(2) COMPOSITION.—An honor guard detail provided under this section shall consist of sufficient members of the Armed Forces to perform the duties specified in paragraph (3). The members of the honor guard detail shall be in uniform.

''(3) DUTIES.—Except to the extent that the person designated to direct disposition of remains requests that any of the following functions not be performed, an honor guard detail under this section—

''(A) shall—

''(i) travel with the remains during transportation; or

''(ii) meet the remains at the place to which transportation by air (or by rail or motor vehicle, if applicable) is made for the transfer of the remains;

''(B) shall provide appropriate honors at the arrival of the remains referred to in subparagraph (A)(ii) (unless airline or other security requirements do not permit such honors to be provided); and

''(C) shall participate in the transfer of the remains from an aircraft, when airport and airline security requirements permit, by carrying out the remains with a flag draped over the casket to a hearse or other form of ground transportation for travel to a funeral home or other place designated by the person designated to direct disposition of such remains.

''(f) SECRETARY CONCERNED DEFINED.—In this section, the term 'Secretary concerned' has the meaning given that term in section 101(a)(9) of title 10, United States Code.

''(g) EFFECTIVE DATE.—This section shall take effect at such time as may be prescribed by the Secretary of Defense, but not later than January 1, 2007.''

§ 1482a. Expenses incident to death: civilian employees serving with an armed force

(a) PAYMENT OF EXPENSES.—The Secretary concerned may pay the expenses incident to the death of a civilian employee who dies of injuries incurred in connection with the employee's service with an armed force in a contingency operation, or who dies of injuries incurred in connection with a terrorist incident occurring during the employee's service with an armed force, as follows:

(1) Round-trip transportation and prescribed allowances for one person to escort the remains of the employee to the place authorized under section 5742(b)(1) of title 5.

(2) Presentation of a flag of the United States to the next of kin of the employee.

(3) Presentation of a flag of equal size to the flag presented under paragraph (2) to the parents or parent of the employee, if the person to be presented a flag under paragraph (2) is other than the parent of the employee.

(b) REGULATIONS.—The Secretary of Defense shall prescribe regulations to implement this section. The Secretary of Homeland Security shall prescribe regulations to implement this section with regard to civilian employees of the Department of Homeland Security. Regulations under this subsection shall be uniform to the extent possible and shall provide for the Secretary's consideration of the conditions and circumstances surrounding the death of an employee and the nature of the employee's service with the armed force.

(c) DEFINITIONS.—In this section:

(1) The term ''civilian employee'' means a person employed by the Federal Government, including a person entitled to basic pay in accordance with the General Schedule provided in section 5332 of title 5 or a similar basic pay schedule of the Federal Government.

(2) The term ''contingency operation'' includes humanitarian operations, peacekeeping operations, and similar operations.

(3) The term ''parent'' has the meaning given such term in section 1482(e)(5)(A) of this title.

(4) The term ''Secretary concerned'' includes the Secretary of Defense with respect to employees of the Department of Defense who are not employees of a military department.

(Added Pub. L. 103–160, div. A, title III, § 368(a), Nov. 30, 1993, 107 Stat. 1633; amended Pub. L. 103–337, div. A, title X, § 1070(a)(8)(A), Oct. 5, 1994, 108 Stat. 2855; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 111–383, div. A, title X, § 1075(b)(20), Jan. 7, 2011, 124 Stat. 4370.)

AMENDMENTS

2011—Subsec. (c)(3). Pub. L. 111–383 substituted ''section 1482(e)(5)(A)'' for ''section 1482(a)(11)''.

2002—Subsec. (b). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation'' in two places.

1994—Pub. L. 103–337 substituted ''civilian'' for ''Civilian'' in section catchline.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE

Pub. L. 103–160, div. A, title III, § 368(c), Nov. 30, 1993, 107 Stat. 1634, provided that: ''The amendments made by this section [enacting this section] shall apply with respect to the payment of incidental expenses for civilian employees who die while serving in a contingency operation that occurs after the date of the enactment of this Act [Nov. 30, 1993].''

§ 1483. Prisoners of war and interned enemy aliens

The Secretary concerned may provide for the care and disposition of the remains of prisoners of war and interned enemy aliens who die while in his custody and, incident thereto, pay the necessary expenses of—

(1) notification to the next of kin or other appropriate person;

(2) preparation of the remains for burial, including cremation;

(3) furnishing of clothing;

(4) furnishing of a casket or urn, or both, with outside box;

(5) transportation of the remains to the cemetery or other place selected by the Secretary; and

(6) interment of the remains.

(Aug. 10, 1956, ch. 1041, 70A Stat. 113.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1483	5:2155 (as applicable to armed forces).	July 15, 1954, ch. 507, § 5 (as applicable to armed forces), 68 Stat. 479.

The list of payable expenses has been rearranged to produce a generally chronological result. The words ''incurred for'', and the words ''articles of'' in clause (3), are omitted as surplusage. In clause (5), the words ''cemetery or other place'' are substituted for the words ''town, city, or cemetery''.

§ 1484. Pensioners, indigent patients, and persons who die on military reservations

If proper disposition of the remains cannot otherwise be made, the Secretary concerned may provide for the care and disposition of the remains of pensioners and indigent patients who die in hospitals operated by his department and of persons who die on the military reservations of that department and, incident thereto, pay the necessary expenses of—

(1) notification to the next of kin or other appropriate person;

(2) preparation of the remains for burial, including cremation;

(3) furnishing of clothing;

(4) furnishing of a casket or urn, or both, with outside box;

(5) transportation of the remains to a cemetery selected by the Secretary; and

(6) interment of the remains.

(Aug. 10, 1956, ch. 1041, 70A Stat. 114.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1484	5:2156 (as applicable to armed forces).	July 15, 1954, ch. 507, § 6 (as applicable to armed forces), 68 Stat. 479.

The words ''If proper disposition of the remains cannot otherwise be made'' are substituted for 5:2156 (last sentence). The words ''maintained and'' and ''incurred for'', and the words ''articles of'' in clause (3), are omitted as surplusage. The words ''of that department'' are inserted for clarity.

§ 1485. Dependents of members of armed forces

(a) The Secretary concerned may, if a dependent of a member of an armed force dies while the member is on active duty (other than for training), provide for, and pay the necessary expenses of, transporting the remains of the deceased dependent to the home of the decedent or to any other place that the Secretary determines to be the appropriate place of interment.

(b) The Secretary may furnish mortuary services and supplies, on a reimbursable basis, for persons covered by subsection (a), if (1) that action is practicable, and (2) local commercial mortuary services and supplies are not available or the Secretary believes that their cost is prohibitive.

(c) Reimbursement for mortuary services and supplies furnished under this section shall be collected and credited to appropriations available, at the time of reimbursement, for those services and supplies.

(Aug. 10, 1956, ch. 1041, 70A Stat. 114; Pub. L. 89–150, § 1(1), Aug. 28, 1965, 79 Stat. 585.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1485(a)	5:2157 (1st sentence, as applicable to armed forces).	July 15, 1954, ch. 507, § 7(a) (as applicable to armed forces), 68 Stat. 479.
1485(b)	5:2157 (2d sentence, as applicable to armed forces).	
1485(c)	5:2157 (less 1st and 2d sentences, as applicable to armed forces).	

In subsection (a), the words ''a member of an armed force'' are substituted for the words ''military personnel''. The words ''the continental limits * * * or in Alaska'' are omitted as covered by the definition of ''United States'' in section 101(1) of this title. The words ''while traveling'' are substituted for the words ''while in transit''.

In subsection (b), the word ''services'' is substituted for the word ''facilities''.

In subsection (c), the words ''the authority of'' and ''the payments of'' are omitted as surplusage. The words ''at the time of reimbursement'' are substituted for the word ''current''.

AMENDMENTS

1965—Pub. L. 89–150 struck out ''; death while outside United States'' in section catchline.

Subsec. (a). Pub. L. 89–150 substituted provision for payment of transportation expenses of remains of deceased dependent of a member of an armed force while the member is on active duty (other than for training), for former provision for payment of the expenses where the member of the armed force is on active duty at a place outside the United States and the dependent dies while residing with that member or while traveling to or from that place.

§ 1486. Other citizens of United States

(a) If local commercial mortuary services and supplies are not available, or if he believes that their cost is prohibitive, the Secretary concerned may furnish those services and supplies on a reimbursable basis in the case of any of the following citizens of the United States who die outside the United States:

(1) Any employee of a humanitarian agency accredited to the armed forces, such as the American Red Cross and the United Services Organization.

(2) Any civilian performing a service directly for the Secretary because of employment by an agency under a contract with the Secretary.

(3) Any officer or member of a crew of a merchant vessel operated by or for the United States through the Secretary.

(4) Any person who is on duty with an armed force under the jurisdiction of the Secretary and who is paid from non-appropriated funds.

(5) Upon the specific request of the Department of State, any person not otherwise covered by this section.

(6) Any dependent of a person who is covered by this section, if the dependent is living outside the United States with that person at the time of death.

(b) The Secretary may furnish transportation of the remains of persons covered by this section, on a reimbursable basis, to a port of entry in the United States.

(c) Reimbursement for services, supplies, and transportation furnished under this section shall be collected and credited to appropriations available, at the time of reimbursement, for those services, supplies, and transportation.

(Aug. 10, 1956, ch. 1041, 70A Stat. 114.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1486(a)	5:2158 (1st sentence as applicable to armed forces).	July 15, 1954, ch. 507, § 8 (as applicable to armed forces), 68 Stat. 480.
1486(b)	5:2158 (2d sentence, as applicable to armed forces).	
1486(c)	5:2158 (less 1st and 2d sentences, as applicable to armed forces).	

In subsection (a), the word ''services'' is substituted for the word ''facilities''. The words ''the continental limits * * * or in Alaska'' are omitted as covered by definition of ''United States'' in section 101(1) of this title. In clause (3), the word ''masters'' is omitted as covered by the word ''officer''. In clause (4), the words ''under the jurisdiction of the Secretary'' are inserted for clarity. In clause (5), the words ''otherwise covered'' are substituted for the words ''specifically enumerated''. In clause (6), the words ''who is covered'' are substituted for the words ''within the classes enumerated''. The words ''outside the United States'' are substituted for the word ''abroad''. The words ''that person'' are substituted for the words ''the supporting citizen concerned''.

In subsection (b), the word ''Government'' is omitted as surplusage.

In subsection (c), the words ''the authority of'' are omitted as surplusage. The words ''at the time of reimbursement'' are substituted for the word ''current''.

§ 1487. Temporary interment

Whenever necessary for the temporary interment of remains pending transportation under this chapter to a designated cemetery, the Secretary concerned may acquire, and provide for the maintenance of, grave sites in commercial

cemeteries, or he may acquire the right to use such grave sites for burial purposes. If the death occurs outside the United States and a temporary commercial grave site is not available on a reasonable basis, the Secretary may acquire land, or the right to use land, necessary for the temporary interment of the remains under this chapter.

(Aug. 10, 1956, ch. 1041, 70A Stat. 115.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1487 ………	5:2159 (as applicable to armed forces).	July 15, 1954, ch. 507, §9 (as applicable to armed forces), 68 Stat. 480.

The words ''as authorized by this chapter, section 103a(c) of this Title, and section 224 of Title 42'', ''by purchase or otherwise'', ''care and'', and ''single or multiple'' are omitted as surplusage. The word ''continental'' is omitted as covered by the definition of ''United States'' in section 101(1) of this title.

§ 1488. Removal of remains

(a) REMOVAL UPON DISCONTINUANCE OF INSTALLATION CEMETERY.—If a cemetery on a military reservation, including an installation cemetery, has been or is to be discontinued, the Secretary concerned may provide for the removal of remains from that cemetery to any other cemetery.

(b) REMOVAL FROM TEMPORARY INTERMENT OR ABANDONED GRAVE OR CEMETERY.—With respect to any deceased member of an armed force under the jurisdiction of the Secretary concerned whose last service terminated honorably by death or otherwise, the Secretary may also provide for the removal of the remains from a place of temporary interment, or from an abandoned grave or cemetery, to a national cemetery.

(c) REMOVAL OF REMAINS OF CERTAIN MEMBERS WITH NO KNOWN NEXT OF KIN.—(1) The Secretary of the Army may authorize the removal of the remains of a covered member of the armed forces who is buried in an Army National Military Cemetery from the Army National Military Cemetery for transfer to any other cemetery.

(2) The Secretary of the Army, with the concurrence of the Secretary of Veterans Affairs, may authorize the removal of the remains of a covered member of the armed forces who is buried in a cemetery of the National Cemetery System from that cemetery for transfer to any Army National Military Cemetery.

(3) A removal of remains may not be authorized under this subsection unless the individual seeking the removal of the remains—

(A) demonstrates to the satisfaction of the Secretary of the Army that the member of the armed forces concerned has no known next of kin or other person who is interested in maintaining the place of burial; and

(B) undertakes full responsibility for all expenses of the removal of the remains and the reburial of the remains at another cemetery as authorized by this subsection.

(4) In this subsection:

(A) The term ''Army National Military Cemetery'' means a cemetery specified in section 7721(b) of this title.

(B) The term ''covered member of the armed forces'' means a member of the armed forces who—

(i) has been awarded the Medal of Honor; and

(ii) has no known next of kin.

(Aug. 10, 1956, ch. 1041, 70A Stat. 115; Pub. L. 113–291, div. A, title V, §594, Dec. 19, 2014, 128 Stat. 3395; Pub. L. 115–232, div. A, title VIII, §809(a), Aug. 13, 2018, 132 Stat. 1840.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1488 ………	5:2160 (as applicable to armed forces).	July 15, 1954, ch. 507, §10 (as applicable to armed forces), 68 Stat. 480.

The words ''national cemeteries, other installation cemeteries, or'' are omitted as surplusage.

AMENDMENTS

2018—Subsec. (c)(4)(A). Pub. L. 115–232 substituted ''section 7721(b)'' for ''section 4721(b)''.

2014—Pub. L. 113–291 designated first sentence of existing provisions as subsec. (a) and inserted heading, designated second sentence of existing provisions as subsec. (b), inserted heading, and substituted ''the jurisdiction of the Secretary concerned'' for ''his jurisdiction'', and added subsec. (c).

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115–232 effective Feb. 1, 2019, with provision for the coordination of amendments and special rule for certain redesignations, see section 800 of Pub. L. 115–232, set out as a note preceding section 3001 of this title.

§ 1489. Death gratuity: members and employees dying outside the United States while assigned to intelligence duties

(a) The Secretary of Defense may pay a gratuity to the surviving dependents of any member of the armed forces or of any employee of the Department of Defense—

(1) who—

(A) is assigned to duty with an intelligence component of the Department of Defense and whose identity as such a member or employee is disguised or concealed; or

(B) is within a category of individuals determined by the Secretary of Defense to be engaged in clandestine intelligence activities; and

(2) who after October 14, 1980 dies as a result of injuries (excluding disease) sustained outside the United States and whose death—

(A) resulted from hostile or terrorist activities; or

(B) occurred in connection with an intelligence activity having a substantial element of risk.

(b) Any payment under subsection (a)—

(1) shall be in an amount equal to the amount of the annual basic pay or salary of the member or employee concerned at the time of death;

(2) shall be considered a gift and shall be in lieu of payment of any lesser death gratuity authorized by this chapter or any other Federal law; and

(3) shall be made under the same conditions as apply to payments authorized by section 413

of the Foreign Service Act of 1980 (22 U.S.C. 3973).

(Added Pub. L. 96–450, title IV, § 403(b)(1), Oct. 14, 1980, 94 Stat. 1979; amended Pub. L. 97–22, § 11(a)(6), July 10, 1981, 95 Stat. 138; Pub. L. 98–94, title XII, § 1268(9), Sept. 24, 1983, 97 Stat. 706; Pub. L. 99–145, title XIII, § 1303(a)(12), Nov. 8, 1985, 99 Stat. 739.)

AMENDMENTS

1985—Subsec. (a). Pub. L. 99–145 substituted "armed forces" for "Armed Forces".

1983—Subsec. (a)(2). Pub. L. 98–94 substituted "October 14, 1980" for "the date of the enactment of this section".

1981—Subsec. (b)(3). Pub. L. 97–22 substituted "section 413 of the Foreign Service Act of 1980 (22 U.S.C. 3973)" for "section 14 of the Act of August 1, 1956 (22 U.S.C. 2679a)".

§ 1490. Transportation of remains: certain retired members and dependents who die in military medical facilities

(a) Subject to subsection (b), when a member entitled to retired or retainer pay or equivalent pay, or a dependent of such a member, dies while properly admitted under chapter 55 of this title to a medical facility of the armed forces, the Secretary concerned may transport the remains, or pay the cost of transporting the remains, of the decedent to the place of burial of the decedent.

(b)(1) Transportation provided under this section may not be to a place further from the place of death than the decedent's last place of permanent residence, and any amount paid under this section may not exceed the cost of transportation from the place of death to the decedent's last place of permanent residence.

(2) Transportation of the remains of a decedent may not be provided under this section if such transportation is authorized by sections 1481 and 1482 of this title or by chapter 23 of title 38.

(c) DEFINITION OF DEPENDENT.—In this section, the term "dependent" has the meaning given such term in section 1072(2) of this title.

(Added Pub. L. 98–94, title X, § 1032(a)(1), Sept. 24, 1983, 97 Stat. 671; amended Pub. L. 100–26, § 7(k)(3), Apr. 21, 1987, 101 Stat. 284; Pub. L. 102–190, div. A, title VI, § 626(a), (b)(1), Dec. 5, 1991, 105 Stat. 1379, 1380; Pub. L. 108–136, div. A, title V, § 562(a), (b), Nov. 24, 2003, 117 Stat. 1483.)

AMENDMENTS

2003—Subsec. (a). Pub. L. 108–136, § 562(a)(1), struck out "located in the United States" after "armed forces".

Subsec. (b)(1). Pub. L. 108–136, § 562(a)(2), struck out "outside the United States or to a place" before "further".

Subsec. (c). Pub. L. 108–136, § 562(b), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: "In this section:

"(1) The term 'United States' includes the Commonwealth of Puerto Rico and the territories and possessions of the United States.

"(2) The term 'dependent' has the meaning given such term in section 1072(2) of this title."

1991—Pub. L. 102–190, § 626(b)(1), amended section catchline generally. Prior to amendment, section catchline read as follows: "Transportation of remains of members entitled to retired or retainer pay who die in a military medical facility".

Subsec. (a). Pub. L. 102–190, § 626(a)(1), inserted ", or a dependent of such a member," after "equivalent pay".

Subsec. (c). Pub. L. 102–190, § 626(a)(2), added subsec. (c) and struck out former subsec. (c) which read as follows: "In this section, the term 'United States' includes the Commonwealth of Puerto Rico and the territories and possessions of the United States."

1987—Subsec. (c). Pub. L. 100–26 inserted "the term" after "In this section,".

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–136, div. A, title V, § 562(c), Nov. 24, 2003, 117 Stat. 1483, provided that: "The amendments made by this section [amending this section] shall apply only with respect to persons dying on or after the date of the enactment of this Act [Nov. 24, 2003]."

EFFECTIVE DATE

Pub. L. 98–94, title X, § 1032(b), Sept. 24, 1983, 97 Stat. 672, provided that: "Section 1490 of title 10, United States Code, as added by subsection (a), shall apply with respect to the transportation of the remains of persons dying after September 30, 1983."

§ 1491. Funeral honors functions at funerals for veterans

(a) AVAILABILITY OF FUNERAL HONORS DETAIL ENSURED.—The Secretary of Defense shall ensure that, upon request, a funeral honors detail is provided for the funeral of any veteran, except when military honors are prohibited under section 985(a) of this title.

(b) COMPOSITION OF FUNERAL HONORS DETAILS.—(1) The Secretary of each military department shall ensure that a funeral honors detail for the funeral of a veteran consists of two or more persons.

(2) At least two members of the funeral honors detail for a veteran's funeral shall be members of the armed forces (other than members in a retired status). The remainder of the detail may consist of members of the armed forces (including members in a retired status), or members of veterans organizations or other organizations approved for purposes of this section under regulations prescribed by the Secretary of Defense. Each member of the armed forces in the detail shall wear the uniform of the member's armed force while serving in the detail.

(3) The Secretary concerned shall provide full military honors (as determined by the Secretary concerned) for the funeral of a veteran who—

(A) is first interred or first inurned in Arlington National Cemetery on or after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2020;

(B) was awarded the medal of honor or the prisoner-of-war medal; and

(C) is not entitled to full military honors by the grade of that veteran.

(c) CEREMONY.—A funeral honors detail shall, at a minimum, perform at the funeral a ceremony that includes the folding of a United States flag and presentation of the flag to the veteran's family and the playing of Taps. Unless a bugler is a member of the detail, the funeral honors detail shall play a recorded version of Taps using audio equipment which the detail shall provide if adequate audio equipment is not otherwise available for use at the funeral.

(d) SUPPORT.—(1) To support a funeral honors detail under this section, the Secretary of a military department may provide the following:

(A) For a person who participates in a funeral honors detail (other than a person who is a member of the armed forces not in a retired status or an employee of the United States), either travel and transportation allowances as specified in regulations prescribed under section 464 of title 37 or the daily stipend prescribed under paragraph (2).

(B) For members of a veterans organization or other organization referred to in subsection (b)(2) and for members of the armed forces in a retired status, materiel, equipment, and training.

(C) For members of a veterans organization or other organization referred to in subsection (b)(2), articles of clothing that, as determined by the Secretary concerned, are appropriate as a civilian uniform for persons participating in a funeral honors detail.

(2) The Secretary of Defense shall prescribe annually a flat rate daily stipend for purposes of paragraph (1)(A). Such stipend shall be set at a rate so as to encompass typical costs for transportation and other miscellaneous expenses for persons participating in funeral honors details who are members of the armed forces in a retired status and other persons who are not members of the armed forces or employees of the United States.

(3) A stipend paid under this subsection to a member of the armed forces in a retired status is in addition to any compensation to which the member is entitled under section 495(a)(2)[1] of title 37 and any other compensation to which the member may be entitled.

(e) WAIVER AUTHORITY.—(1) The Secretary of Defense may waive any requirement provided in or pursuant to this section when the Secretary considers it necessary to do so to meet the requirements of war, national emergency, or a contingency operation or other military requirements. The authority to make such a waiver may not be delegated to an official of a military department other than the Secretary of the military department and may not be delegated within the Office of the Secretary of Defense to an official at a level below Under Secretary of Defense.

(2) Before or promptly after granting a waiver under paragraph (1), the Secretary shall transmit a notification of the waiver to the Committees on Armed Services of the Senate and House of Representatives.

(f) REGULATIONS.—The Secretary of Defense shall prescribe regulations to carry out this section. Those regulations shall include the following:

(1) A system for selection of units of the armed forces and other organizations to provide funeral honors details.

(2) Procedures for responding and coordinating responses to requests for funeral honors details.

(3) Procedures for establishing standards and protocol.

(4) Procedures for providing training and ensuring quality of performance.

(g) ANNUAL REPORT.—The Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report not later than January 31 of each year beginning with 2001 and ending with 2005 on the experience of the Department of Defense under this section. Each such report shall provide data on the number of funerals supported under this section, the cost for that support, shown by manpower and other cost factors, and the number and costs of funerals supported by each participating organization. The data in the report shall be presented in a standard format, regardless of military department or other organization.

(h) VETERAN DEFINED.—In this section, the term ''veteran'' means a decedent who—

(1) served in the active military, naval, or air service (as defined in section 101(24) of title 38) and who was discharged or released therefrom under conditions other than dishonorable; or

(2) was a member or former member of the Selected Reserve described in section 2301(f) of title 38.

(Added Pub. L. 105–261, div. A, title V, § 567(b)(1), Oct. 17, 1998, 112 Stat. 2030; amended Pub. L. 106–65, div. A, title V, § 578(a)(1), (b)–(e), (k)(1), title X, § 1067(1), Oct. 5, 1999, 113 Stat. 625–627, 630, 774; Pub. L. 107–107, div. A, title V, §§ 561(a), 564, Dec. 28, 2001, 115 Stat. 1119, 1120; Pub. L. 107–314, div. A, title V, § 571, Dec. 2, 2002, 116 Stat. 2556; Pub. L. 109–163, div. A, title VI, § 662(b)(4), Jan. 6, 2006, 119 Stat. 3315; Pub. L. 112–81, div. A, title VI, § 631(f)(4)(A), Dec. 31, 2011, 125 Stat. 1465; Pub. L. 112–239, div. A, title X, § 1076(a)(9), Jan. 2, 2013, 126 Stat. 1948; Pub. L. 113–66, div. A, title VI, § 621(f), Dec. 26, 2013, 127 Stat. 784; Pub. L. 116–92, div. A, title V, § 574(a), Dec. 20, 2019, 133 Stat. 1404; Pub. L. 116–283, div. A, title V, § 596(a)(2), Jan. 1, 2021, 134 Stat. 3667.)

REFERENCES IN TEXT

The date of the enactment of the National Defense Authorization Act for Fiscal Year 2020, referred to in subsec. (b)(3)(A), is the date of enactment of Pub. L. 116–92, which was approved Dec. 20, 2019.

Section 495 of title 37, referred to in subsec. (d)(3), was renumbered section 435 of title 37 by Pub. L. 116–283, div. A, title VI, § 604(b)(1), Jan. 1, 2021, 134 Stat. 3672.

AMENDMENTS

2021—Subsec. (b)(2). Pub. L. 116–283 struck out '', at least one of whom shall be a member of the armed force of which the veteran was a member'' after ''retired status)''.

2019—Subsec. (b)(3). Pub. L. 116–92 added par. (3).

2013—Subsec. (d)(1)(A). Pub. L. 113–66 substituted ''travel and transportation allowances as specified in regulations prescribed under section 464 of title 37'' for ''transportation (or reimbursement for transportation) and expenses''.

Subsec. (d)(3). Pub. L. 112–239, § 1076(a)(9), made technical amendment to directory language of Pub. L. 112–81, § 631(f)(4)(A). See 2011 Amendment note below.

2011—Subsec. (d)(3). Pub. L. 112–81, § 631(f)(4)(A), as amended by Pub. L. 112–239, § 1076(a)(9), substituted ''495(a)(2)'' for ''435(a)(2)''.

2006—Subsec. (a). Pub. L. 109–163 inserted '', except when military honors are prohibited under section 985(a) of this title'' before period at end.

2002—Subsec. (d)(1). Pub. L. 107–314, § 571(1), designated existing provisions as par. (1) and substituted ''To support a'' for ''To provide a''. Former par. (1) redesignated (1)(A).

[1] See References in Text note below.

Subsec. (d)(1)(A). Pub. L. 107–314, § 571(2), redesignated par. (1) as subpar. (A) of par. (1) and amended it generally. Prior to amendment, text read as follows: ''Transportation, or reimbursement for transportation, and expenses for a person who participates in the funeral honors detail and is not a member of the armed forces or an employee of the United States.''

Subsec. (d)(1)(B). Pub. L. 107–314, § 571(3), redesignated par. (2) as subpar. (B) of par. (1), substituted ''For'' for ''Materiel, equipment, and training for'', and inserted ''and for members of the armed forces in a retired status, materiel, equipment, and training'' before period at end.

Subsec. (d)(1)(C). Pub. L. 107–314, § 571(4), redesignated par. (3) as subpar. (C) of par. (1), substituted ''For'' for ''Articles of clothing for'', and inserted '', articles of clothing'' after ''subsection (b)(2)''.

Subsec. (d)(2), (3). Pub. L. 107–314, § 571(5), added pars. (2) and (3). Former pars. (2) and (3) redesignated subpars. (B) and (C), respectively, of par. (1).

2001—Subsec. (b)(2). Pub. L. 107–107, § 561(a), inserted ''(other than members in a retired status)'' after ''members of the armed forces'' in first sentence and inserted ''(including members in a retired status),'' after ''members of the armed forces'' in second sentence.

Subsec. (d)(3). Pub. L. 107–107, § 564, added par. (3).

1999—Pub. L. 106–65, § 578(k)(1), substituted ''Funeral honors functions at funerals for veterans'' for ''Honor guard details at funerals of veterans'' as section catchline.

Subsec. (a). Pub. L. 106–65, § 578(a)(1), amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: ''The Secretary of a military department shall, upon request, provide an honor guard detail (or ensure that an honor guard detail is provided) for the funeral of any veteran that occurs after December 31, 1999.''

Subsec. (b). Pub. L. 106–65, § 578(b), substituted ''Funeral Honors Details'' for ''Honor Guard Details'' in subsec. (b) heading, designated existing provisions as par. (1), substituted ''a funeral honors detail'' for ''an honor guard detail'' and ''two or more persons.'' for ''not less than three persons and (unless a bugler is part of the detail) has the capability to play a recorded version of Taps.'', redesignated subsec. (c) as subsec. (b)(2), struck out former subsec. (c) heading ''Persons Forming Honor Guards'', and substituted ''At least two members of the funeral honors detail for a veteran's funeral shall be members of the armed forces, at least one of whom shall be a member of the armed force of which the veteran was a member. The remainder of the detail'' for ''An honor guard detail'' and ''Each member of the armed forces in the detail shall wear the uniform of the member's armed force while serving in the detail.'' for ''The Secretary of a military department may provide transportation, or reimbursement for transportation, and expenses for a person who participates in an honor guard detail under this section and is not a member of the armed forces or an employee of the United States.''

Subsec. (c). Pub. L. 106–65, § 578(c)(2), added subsec. (c). Former subsec. (c) redesignated subsec. (b)(2).

Subsecs. (d), (e). Pub. L. 106–65, § 578(c)(2), added subsecs. (d) and (e). Former subsecs. (d) and (e) redesignated (f) and (g), respectively.

Subsec. (f). Pub. L. 106–65, § 578(d), amended heading and text of subsec. (f) generally. Prior to amendment, text read as follows: ''The Secretary of Defense shall by regulation establish a system for selection of units of the armed forces and other organizations to provide honor guard details. The system shall place an emphasis on balancing the funeral detail workload among the units and organizations providing honor guard details in an equitable manner as they are able to respond to requests for such details in terms of geographic proximity and available resources. The Secretary shall provide in such regulations that the armed force in which a veteran served shall not be considered to be a factor when selecting the military unit or other organization to provide an honor guard detail for the funeral of the veteran.''

Pub. L. 106–65, § 578(c)(1), redesignated subsec. (d) as (f). Former subsec. (f) redesignated (h).

Subsec. (g). Pub. L. 106–65, § 1067(1), substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security''.

Pub. L. 106–65, § 578(c)(1), redesignated subsec. (e) as (g).

Subsec. (h). Pub. L. 106–65, § 578(e), amended heading and text of subsec. (h) generally. Prior to amendment, text read as follows: ''In this section, the term 'veteran' has the meaning given that term in section 101(2) of title 38.''

Pub. L. 106–65, § 578(c)(1), redesignated subsec. (f) as (h).

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112–239, div. A, title X, § 1076(a), Jan. 2, 2013, 126 Stat. 1947, provided that the amendment made by section 1076(a)(9) is effective Dec. 31, 2011, and as if included in Pub. L. 112–81 as enacted.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–163 applicable with respect to funerals and burials that occur on or after Jan. 6, 2006, see section 662(e) of Pub. L. 109–163, set out as a note under section 985 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–65, div. A, title V, § 578(a)(2), Oct. 5, 1999, 113 Stat. 625, provided that: ''Section 1491(a) of title 10, United States Code, as amended by paragraph (1), shall apply with respect to funerals that occur after December 31, 1999.''

FULL MILITARY FUNERAL HONORS FOR VETERANS AT MILITARY INSTALLATIONS

Pub. L. 116–92, div. A, title V, § 574(b), Dec. 20, 2019, 133 Stat. 1404, provided that:

''(1) INSTALLATION PLANS FOR HONORS REQUIRED.—The commander of each military installation at or through which a funeral honors detail for a veteran is provided pursuant to section 1491 of title 10, United States Code (as amended by subsection (a)), shall maintain and carry out a plan for the provision, upon request, of full military funeral honors at funerals of veterans for whom a funeral honors detail is authorized in that section.

''(2) ELEMENTS.—Each plan of an installation under paragraph (1) shall include the following:

''(A) Mechanisms to ensure compliance with the requirements applicable to the composition of funeral honors details in section 1491(b) of title 10, United States Code (as so amended).

''(B) Mechanisms to ensure compliance with the requirements for ceremonies for funerals in section 1491(c) of such title.

''(C) In addition to the ceremonies required pursuant to subparagraph (B), the provision of a gun salute, if otherwise authorized, for each funeral by appropriate personnel, including personnel of the installation, members of the reserve components of the Armed Forces residing in the vicinity of the installation who are ordered to funeral honors duty, or members of veterans organizations or other organizations referred to in section 1491(b)(2) of such title.

''(D) Mechanisms for the provision of support authorized by section 1491(d) of such title.

''(E) Such other mechanisms and activities as the Secretary concerned considers appropriate in order to assure that full military funeral honors are provided upon request at funerals of veterans.

''(3) DEFINITIONS.—In this subsection:

''(A) The term 'Secretary concerned' has the meaning given that term in section 101(a)(9) of title 10, United States Code.

''(B) The term 'veteran' has the meaning given that term in section 1491(h) of title 10, United States Code.''

§ 1492. Authority to provide travel and transportation allowances in connection with transfer ceremonies of certain civilian employees who die overseas

(a) AUTHORITY.—A covered official may treat a covered relative of a covered employee under the jurisdiction of that covered official in the same manner the Secretary of a military department treats, under section 481f(d) of title 37, next of kin and family members of a member of the armed forces who dies while located or serving overseas.

(b) DEFINITIONS.—In this section:

(1) The term "covered employee" means a civilian employee—

(A) under the jurisdiction of a covered official; and

(B) who dies while located or serving overseas.

(2) The term "covered official" means—

(A) the Secretary of the military department concerned; and

(B) the head of a Defense Agency or Department of Defense Field Activity.

(3) The term "covered relative" means—

(A) the primary next of kin of the covered employee;

(B) two family members (other than primary next of kin) of the covered employee; and

(C) one or more additional family members of the covered employee, at the discretion of the Secretary a sibling of the covered employee.

(Added Pub. L. 116–283, div. A, title XI, § 1104(a)(1), Jan. 1, 2021, 134 Stat. 3889.)

CHAPTER 76—MISSING PERSONS

Sec.
1501. System for accounting for missing persons.
1501a. Public-private partnerships; other forms of support.
1502. Missing persons: initial report.
1503. Actions of Secretary concerned; initial board inquiry.
1504. Subsequent board of inquiry.
1505. Further review.
1506. Personnel files.
1507. Recommendation of status of death.
1508. Judicial review.
1509. Program to resolve missing person cases.
1510. Applicability to Coast Guard.
1511. Return alive of person declared missing or dead.
1512. Effect on State law.
1513. Definitions.

AMENDMENTS

2014—Pub. L. 113–291, div. A, title IX, § 916(f)(2), Dec. 19, 2014, 128 Stat. 3479, added item 1501a and substituted "Program to resolve missing person cases" for "Program to resolve preenactment missing person cases" in item 1509.

2009—Pub. L. 111–84, div. A, title V, § 541(b), Oct. 28, 2009, 123 Stat. 2298, substituted "Program to resolve preenactment missing person cases" for "Preenactment cases" in item 1509.

1996—Pub. L. 104–201, div. A, title V, § 578(f)(2)(B), Sept. 23, 1996, 110 Stat. 2537, struck out ", special interest" after "Preenactment" in item 1509.

§ 1501. System for accounting for missing persons

(a) RESPONSIBILITY FOR MISSING PERSONS.—(1)(A) The Secretary of Defense shall designate a single organization within the Department of Defense to have responsibility for Department matters relating to missing persons from past conflicts, including accounting for missing persons and persons whose remains have not been recovered from the conflict in which they were lost.

(B) The organization designated under this paragraph shall be a Defense Agency or other entity of the Department of Defense outside the military departments and is referred to in this chapter as the "designated Defense Agency".

(C) The head of the organization designated under this paragraph is referred to in this chapter as the "designated Agency Director".

(2) Subject to the authority, direction, and control of the Secretary of Defense, the responsibilities of the designated Agency Director shall include the following:

(A) Policy, control, and oversight of the program established under section 1509 of this title.

(B) Responsibility for accounting for missing persons from past conflicts, including locating, recovering, and identifying missing persons from past conflicts or their remains after hostilities have ceased.

(C) Coordination for the Department of Defense with other departments and agencies of the United States on all matters concerning missing persons from past conflicts.

(D) Dissemination of appropriate information on the status of missing persons from past conflicts to authorized family members.

(E) Establishment of a means for communication between officials of the designated Defense Agency and family members of missing persons from past conflicts, veterans service organizations, concerned citizens, and the public on the Department's efforts to account for missing persons from past conflicts, including a readily available means for communication of their views and recommendations to the designated Agency Director.

(3) In carrying out the responsibilities established under this subsection, the designated Agency Director shall be responsible for the coordination for such purposes within the Department of Defense among the military departments, the Joint Staff, and the commanders of the combatant commands.

(4) The designated Agency Director shall establish policies, which shall apply uniformly throughout the Department of Defense, for personnel accounting (including locating, recovering, and identifying missing persons from past conflicts or their remains after hostilities have ceased).

(b) UNIFORM DOD PROCEDURES.—(1) The Secretary of Defense shall prescribe procedures, to apply uniformly throughout the Department of Defense, for—

(A) the determination of the status of persons described in subsection (c); and

(B) for the systematic, comprehensive, and timely collection, analysis, review, dissemination, and periodic update of information related to such persons.

(2) Such procedures may provide for the delegation by the Secretary of Defense of any re-

sponsibility of the Secretary under this chapter to the Secretary of a military department.

(3) Such procedures shall be prescribed in a single directive applicable to all elements of the Department of Defense.

(4) As part of such procedures, the Secretary may provide for the extension, on a case-by-case basis, of any time limit specified in section 1502, 1503, or 1504 of this title. Any such extension may not be for a period in excess of the period with respect to which the extension is provided. Subsequent extensions may be provided on the same basis.

(c) COVERED PERSONS.—(1) Section 1502 of this title applies in the case of any member of the armed forces on active duty—

(A) who becomes involuntarily absent as a result of a hostile action or under circumstances suggesting that the involuntary absence is a result of a hostile action; and

(B) whose status is undetermined or who is unaccounted for.

(2) Section 1502 of this title applies in the case of any other person who is a citizen of the United States and a civilian officer or employee of the Department of Defense or (subject to paragraph (3)) an employee of a contractor of the Department of Defense—

(A) who serves in direct support of, or accompanies, the armed forces in the field under orders and becomes involuntarily absent as a result of a hostile action or under circumstances suggesting that the involuntary absence is a result of a hostile action; and

(B) whose status is undetermined or who is unaccounted for.

(3) The Secretary of Defense shall determine, with regard to a pending or ongoing military operation, the specific employees, or groups of employees, of contractors of the Department of Defense to be considered to be covered by this subsection.

(d) PRIMARY NEXT OF KIN.—The individual who is primary next of kin of any person described in subsection (c) may for purposes of this chapter designate another individual to act on behalf of that individual as primary next of kin. The Secretary concerned shall treat an individual so designated as if the individual designated were the primary next of kin for purposes of this chapter. A designation under this subsection may be revoked at any time by the person who made the designation.

(e) TERMINATION OF APPLICABILITY OF PROCEDURES WHEN MISSING PERSON IS ACCOUNTED FOR.—The provisions of this chapter relating to boards of inquiry and to the actions by the Secretary concerned on the reports of those boards shall cease to apply in the case of a missing person upon the person becoming accounted for or otherwise being determined to be in a status other than missing.

(f) SECRETARY CONCERNED.—In this chapter, the term ''Secretary concerned'' includes, in the case of a civilian officer or employee of the Department of Defense or an employee of a contractor of the Department of Defense, the Secretary of the military department or head of the element of the Department of Defense employing the officer or employee or contracting with the contractor, as the case may be.

(Added Pub. L. 104–106, div. A, title V, §569(b)(1), Feb. 10, 1996, 110 Stat. 336; amended Pub. L. 104–201, div. A, title V, §578(a)(1), Sept. 23, 1996, 110 Stat. 2536; Pub. L. 105–85, div. A, title V, §599(a)(1), Nov. 18, 1997, 111 Stat. 1766; Pub. L. 106–65, div. A, title X, §1066(a)(13), Oct. 5, 1999, 113 Stat. 771; Pub. L. 107–314, div. A, title V, §551, Dec. 2, 2002, 116 Stat. 2551; Pub. L. 108–375, div. A, title V, §582(a), Oct. 28, 2004, 118 Stat. 1928; Pub. L. 111–383, div. A, title IX, §901(g), Jan. 7, 2011, 124 Stat. 4322; Pub. L. 113–66, div. A, title V, §581(a), Dec. 26, 2013, 127 Stat. 773; Pub. L. 113–291, div. A, title IX, §916(a), Dec. 19, 2014, 128 Stat. 3476; Pub. L. 114–328, div. A, title IX, §953(a), Dec. 23, 2016, 130 Stat. 2376.)

AMENDMENTS

2016—Subsec. (a)(1)(A). Pub. L. 114–328, §953(a)(1), inserted ''from past conflicts'' after ''matters relating to missing persons''.

Subsec. (a)(2)(A). Pub. L. 114–328, §953(a)(2)(A), (B), redesignated subpar. (B) as (A) and struck out former subpar. (A) which read as follows: ''Policy, control, and oversight within the Department of Defense of the entire process for investigation and recovery related to missing persons, including matters related to search, rescue, escape, and evasion.''

Subsec. (a)(2)(B). Pub. L. 114–328, §953(a)(2)(B), (C), redesignated subpar. (C) as (B) and inserted ''from past conflicts'' after ''missing persons'' in two places. Former subpar. (B) redesignated (A).

Subsec. (a)(2)(C), (D). Pub. L. 114–328, §953(a)(2)(B), redesignated subpars. (D) and (E) as (C) and (D), respectively. Former subpar. (C) redesignated (B).

Subsec. (a)(2)(E), (F). Pub. L. 114–328, §953(a)(2)(B), (C), redesignated subpar. (F) as (E) and inserted ''from past conflicts'' after ''missing persons'' in two places.

Subsec. (a)(4). Pub. L. 114–328, §953(a)(3)(B), inserted ''from past conflicts'' after ''missing persons''.

Pub. L. 114–328, §953(a)(3)(A), which directed striking out ''for personal recovery (including search, rescue, escape, and evasion) and'' was executed by striking out ''for personnel recovery (including search, rescue, escape, and evasion) and'' after ''Department of Defense,'', to reflect the probable intent of Congress.

Subsec. (a)(5). Pub. L. 114–328, §953(a)(4), struck out par. (5) which read as follows: ''The designated Agency Director shall establish procedures to be followed by Department of Defense boards of inquiry, and by officials reviewing the reports of such boards, under this chapter.''

2014—Subsec. (a). Pub. L. 113–291 amended subsec. (a) generally. Prior to amendment, subsec. (a) related to responsibility for missing personnel, consisting of pars. (1) to (6).

2013—Subsec. (a)(1)(D). Pub. L. 113–66 added subpar. (D).

2011—Subsec. (a). Pub. L. 111–383, §901(g)(1), substituted ''Responsibility for Missing Personnel'' for ''Office for Missing Personnel'' in heading.

Subsec. (a)(1). Pub. L. 111–383, §901(g)(2)(A)–(C), in introductory provisions, substituted ''designate within the Office of the Secretary of Defense an official as the Deputy Assistant Secretary of Defense for Prisoner of War/Missing Personnel Affairs to have responsibility for Department of Defense matters'' for ''establish within the Office of the Secretary of Defense an office to have responsibility for Department of Defense policy'', struck out ''Such office shall be known as the Defense Prisoner of War/Missing Personnel Office.'' after ''persons.'', and substituted ''of the official designated under this paragraph'' for ''of the office''.

Subsec. (a)(1)(B), (C). Pub. L. 111–383, §901(g)(2)(D)–(F), added subpar. (B) and redesignated former subpar. (B) as (C).

Subsec. (a)(2). Pub. L. 111–383, §901(g)(4), added par. (2). Former par. (2) redesignated (3).

Subsec. (a)(3). Pub. L. 111–383, §901(g)(3), (5), redesignated par. (2) as (3), struck out ''of the office'' after

''responsibilities'', and substituted ''official designated under paragraph (1) and (2)'' for ''head of the office''. Former par. (3) redesignated (4).

Subsec. (a)(4). Pub. L. 111–383, § 901(g)(3), (6), redesignated par. (3) as (4), substituted ''designated official'' for ''office'', and inserted ''and for personnel accounting (including locating, recovering, and identifying missing persons or their remains after hostilities have ceased)'' after ''evasion)''. Former par. (4) redesignated (5).

Subsec. (a)(5). Pub. L. 111–383, § 901(g)(3), (7), redesignated par. (4) as (5) and substituted ''designated official'' for ''office''. Former par. (5) redesignated (6).

Subsec. (a)(6). Pub. L. 111–383, § 901(g)(3), redesignated par. (5) as (6).

Subsec. (a)(6)(A). Pub. L. 111–383, § 901(g)(8)(A)(ii), which directed the substitution of ''activity'' for ''office'' both places appearing, was executed by making the substitution in three places to reflect the probable intent of Congress.

Pub. L. 111–383, § 901(g)(8)(A)(i), inserted ''The Secretary of Defense shall establish an activity to account for personnel who are missing or whose remains have not been recovered from the conflict in which they were lost. This activity shall be known as the Defense Prisoner of War/Missing Personnel Office.'' after ''(A)''.

Subsec. (a)(6)(B)(i). Pub. L. 111–383, § 901(g)(8)(B), substituted ''activity'' for ''to the office''.

Subsec. (a)(6)(B)(ii). Pub. L. 111–383, § 901(g)(8)(C), substituted ''activity'' for ''to the office'' and ''of the activity'' for ''of the office''.

Subsec. (a)(6)(C). Pub. L. 111–383, § 901(g)(8)(D), substituted ''activity'' for ''office''.

2004—Subsec. (a)(5)(B). Pub. L. 108–375 designated existing provisions as cl. (i), inserted '', whether temporary or permanent,'' after ''civilian personnel'', and added cl. (ii).

2002—Subsec. (a)(1). Pub. L. 107–314, § 551(b), inserted ''Such office shall be known as the Defense Prisoner of War/Missing Personnel Office.'' after first sentence.

Subsec. (a)(5). Pub. L. 107–314, § 551(a), added par. (5).

1999—Subsec. (d). Pub. L. 106–65 substituted ''described'' for ''prescribed'' in first sentence.

1997—Subsec. (c). Pub. L. 105–85, § 599(a)(1)(A), added subsec. (c) and struck out former subsec. (c) which read as follows:

''(c) COVERED PERSONS.—Section 1502 of this title applies in the case of any member of the armed forces on active duty who becomes involuntarily absent as a result of a hostile action, or under circumstances suggesting that the involuntary absence is a result of a hostile action, and whose status is undetermined or who is unaccounted for.''

Subsec. (f). Pub. L. 105–85, § 599(a)(1)(B), added subsec. (f).

1996—Subsec. (c). Pub. L. 104–201, § 578(a)(1)(A), substituted ''applies in the case of'' for ''applies in the case of the following persons:'' and ''any member'' for ''(1) Any member'' and struck out par. (2) which read as follows: ''Any civilian employee of the Department of Defense, and any employee of a contractor of the Department of Defense, who serves with or accompanies the armed forces in the field under orders who becomes involuntarily absent as a result of a hostile action, or under circumstances suggesting that the involuntary absence is a result of a hostile action, and whose status is undetermined or who is unaccounted for.''

Subsec. (f). Pub. L. 104–201, § 578(a)(1)(B), struck out subsec. (f) which read as follows:

''(f) SECRETARY CONCERNED.—In this chapter, the term 'Secretary concerned' includes, in the case of a civilian employee of the Department of Defense or contractor of the Department of Defense, the Secretary of the military department or head of the element of the Department of Defense employing the employee or contracting with the contractor, as the case may be.''

EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by Pub. L. 111–383 effective Jan. 1, 2011, see section 901(p) of Pub. L. 111–383, set out as a note under section 131 of this title.

RECOVERY AND IDENTIFICATION OF REMAINS OF CERTAIN WORLD WAR II SERVICEMEN LOST IN PACIFIC THEATER OF OPERATIONS

Pub. L. 106–65, div. A, title V, § 576, Oct. 5, 1999, 113 Stat. 624, as amended by Pub. L. 107–107, div. A, title X, § 1048(g)(3), Dec. 28, 2001, 115 Stat. 1228, provided that:

''(a) RECOVERY OF REMAINS.—(1) The Secretary of Defense shall make every reasonable effort to search for, recover, and identify the remains of United States servicemen lost in the Pacific theater of operations during World War II (including in New Guinea) while engaged in flight operations.

''(2) In order to provide high priority to carrying out paragraph (1), the Secretary of Defense shall consider increasing the number of personnel assigned to the Central Identification Laboratory, Hawaii.

''(3) Not later than September 30, 2000, the Secretary shall submit to Congress a report setting forth the efforts made to accomplish the objectives specified in paragraph (1). The Secretary shall include in the report a statement of the backlog of cases at the Central Identification Laboratory, Hawaii, shown by conflict, and the status of the joint manning plan required by section 566(c) of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public Law 105–261; 112 Stat. 2029).

''(b) DIPLOMATIC INTERVENTION IF REQUIRED.—The Secretary of State, upon request by the Secretary of Defense, shall work with officials of governments of nations in the area that was covered by the Pacific theater of operations of World War II to seek to overcome any diplomatic obstacles that may impede the Secretary of Defense from carrying out the objectives specified in subsection (a)(1).''

POW/MIA INTELLIGENCE ANALYSIS

Pub. L. 105–85, div. A, title IX, § 934, Nov. 18, 1997, 111 Stat. 1866, as amended by Pub. L. 106–65, div. A, title X, § 1066(c)(4), Oct. 5, 1999, 113 Stat. 773, provided that:

''(a) INTELLIGENCE ANALYSIS.—The Director of Central Intelligence, in consultation with the Secretary of Defense, shall provide intelligence analysis on matters concerning prisoners of war and missing persons (as defined in chapter 76 of title 10, United States Code) to all departments and agencies of the Federal Government involved in such matters.

''(b) USE OF INTELLIGENCE IN ANALYSIS OF POW/MIA CASES IN DEPARTMENT OF DEFENSE.—The Secretary of Defense shall ensure that the Defense Prisoner of War/Missing Personnel Office of the Department of Defense takes into full account all intelligence regarding matters concerning prisoners of war and missing persons (as defined in chapter 76 of title 10, United States Code) in analyzing cases involving such persons.''

[Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director's capacity as the head of the intelligence community deemed to be a reference to the Director of National Intelligence. Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director's capacity as the head of the Central Intelligence Agency deemed to be a reference to the Director of the Central Intelligence Agency. See section 1081(a), (b) of Pub. L. 108–458, set out as a note under section 3001 of Title 50, War and National Defense.]

CONGRESSIONAL STATEMENT OF PURPOSE

Pub. L. 104–106, div. A, title V, § 569(a), Feb. 10, 1996, 110 Stat. 336, provided that: ''The purpose of this section [enacting this chapter and section 655 of this title, amending sections 552, 553, 555, and 556 of Title 37, Pay and Allowances of the Uniformed Services, and enacting provisions set out as a note under section 5561 of

Title 5, Government Organization and Employees] is to ensure that any member of the Armed Forces (and any Department of Defense civilian employee or contractor employee who serves with or accompanies the Armed Forces in the field under orders) who becomes missing or unaccounted for is ultimately accounted for by the United States and, as a general rule, is not declared dead solely because of the passage of time.''

§ 1501a. Public-private partnerships; other forms of support

(a) PUBLIC-PRIVATE PARTNERSHIPS.—The Secretary of Defense may enter into arrangements known as public-private partnerships with appropriate entities outside the Government for the purposes of facilitating the activities of the designated Defense Agency. The Secretary may only partner with foreign governments or foreign entities with the concurrence of the Secretary of State. Any such arrangement shall be entered into in accordance with authorities provided under this section or any other authority otherwise available to the Secretary. Regulations prescribed under subsection (f)(1) shall include provisions for the establishment and implementation of such partnerships. An employee of an entity outside the Government that has entered into a public-private partnership, cooperative agreement, or a grant arrangement with, or in direct support of, the designated Defense Agency under this section shall be considered to be an employee of the Federal Government by reason of participation in such partnership, cooperative agreement, or grant, only for the purposes of section 552a of title 5 (relating to maintenance of records on individuals).

(b) ACCEPTANCE OF VOLUNTARY PERSONAL SERVICES.—The Secretary of Defense may accept voluntary services to facilitate accounting for missing persons in the same manner as the Secretary of a military department may accept such services under section 1588(a)(9) of this title.

(c) COOPERATIVE AGREEMENTS AND GRANTS.—

(1) IN GENERAL.—The Secretary of Defense may enter into a cooperative agreement with, or make a grant to, a private entity for purposes related to support of the activities of the designated Defense Agency.

(2) INAPPLICABILITY OF CERTAIN CONTRACT REQUIREMENTS.—Notwithstanding section 2304(k) of this title, the Secretary may enter such cooperative agreements or grants on a sole-source basis pursuant to section 2304(c)(5) of this title.

(d) USE OF DEPARTMENT OF DEFENSE PERSONAL PROPERTY.—The Secretary may allow a private entity to use, at no cost, personal property of the Department of Defense to assist the entity in supporting the activities of the designated Defense Agency.

(e) ACCEPTANCE OF GIFTS.—

(1) AUTHORITY TO ACCEPT.—Subject to subsection (f)(2), the Secretary may accept, hold, administer, spend, and use any gift of personal property, money, or services made on the condition that the gift be used for the purpose of facilitating accounting for missing persons pursuant to section 1501(a)(2)(C) of this title.

(2) GIFT FUNDS.—Gifts and bequests of money accepted under this subsection shall be deposited in the Treasury in the Department of Defense General Gift Fund.

(3) USE OF GIFTS.—Personal property and money accepted under this subsection may be used by the Secretary, and services accepted under this subsection may be performed, without further specific authorization in law.

(4) EXPENSES OF TRANSFER.—The Secretary may pay all necessary expenses in connection with the conveyance or transfer of a gift accepted under this subsection.

(5) EXPENSES OF CARE.—The Secretary may pay all reasonable and necessary expenses in connection with the care of a gift accepted under this subsection.

(f) REGULATIONS.—

(1) IN GENERAL.—The Secretary of Defense shall prescribe regulations to implement this section.

(2) LIMITATION.—Such regulations shall provide that acceptance of a gift (including a gift of services) or use of a gift under this section may not occur if the nature or circumstances of the acceptance or use would compromise the integrity, or the appearance of integrity, of any program of the Department of Defense or any individual involved in such program.

(g) DEFINITIONS.—In this section:

(1) COOPERATIVE AGREEMENT.—The term ''cooperative agreement'' means an authorized cooperative agreement as described in section 6305 of title 31.

(2) GRANT.—The term ''grant'' means an authorized grant as described in section 6304 of title 31.

(3) GIFT.—The term ''gift'' includes a devise or bequest.

(Added Pub. L. 113–291, div. A, title IX, § 916(b), Dec. 19, 2014, 128 Stat. 3477; amended Pub. L. 115–232, div. A, title V, § 523, Aug. 13, 2018, 132 Stat. 1756; Pub. L. 116–283, div. A, title XVIII, § 1883(b)(2), Jan. 1, 2021, 134 Stat. 4294.)

AMENDMENT OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1883(b)(2), Jan. 1, 2021, 134 Stat. 4151, 4294, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, except as otherwise provided in title XVIII of Pub. L. 116–283, in title 10, United States Code, each reference in the text of such title to a source section that is redesignated by title XVIII of Pub. L. 116–283, is amended by striking such reference and inserting a reference to the appropriate section as so redesignated. See 2021 Amendment note below.

AMENDMENTS

2021—Subsec. (c)(2). Pub. L. 116–283 substituted ''3201(e) of this title'' for ''2304(k) of this title'' and ''3204(a)(5) of this title'' for ''2304(c)(5) of this title''.

2018—Subsec. (a). Pub. L. 115–232, § 523(a), (c), substituted ''subsection (f)(1)'' for ''subsection (e)(1)'' and inserted at end ''An employee of an entity outside the Government that has entered into a public-private partnership, cooperative agreement, or a grant arrangement with, or in direct support of, the designated Defense Agency under this section shall be considered to be an employee of the Federal Government by reason of participation in such partnership, cooperative agree-

ment, or grant, only for the purposes of section 552a of title 5 (relating to maintenance of records on individuals).''

Subsecs. (e), (f). Pub. L. 115–232, § 523(b)(1), (2), added subsec. (e) and redesignated former subsec. (e) as (f). Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 115–232, § 523(b)(1), (3), redesignated subsec. (f) as (g) and added par. (3).

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 1502. Missing persons: initial report

(a) PRELIMINARY ASSESSMENT AND RECOMMENDATION BY COMMANDER.—After receiving information that the whereabouts and status of a person described in section 1501(c) of this title is uncertain and that the absence of the person may be involuntary, the commander of the unit, facility, or area to or in which the person is assigned shall make a preliminary assessment of the circumstances. If, as a result of that assessment, the commander concludes that the person is missing, the commander shall—

(1) recommend that the person be placed in a missing status; and

(2) not later than 10 days after receiving such information, transmit a report containing that recommendation to the Secretary concerned in accordance with procedures prescribed under section 1501(b) of this title.

(b) TRANSMISSION OF ADVISORY COPY TO THEATER COMPONENT COMMANDER.—When transmitting a report under subsection (a)(2) recommending that a person be placed in a missing status, the commander transmitting that report shall transmit an advisory copy of the report to the theater component commander with jurisdiction over the missing person.

(c) SAFEGUARDING AND FORWARDING OF RECORDS.—A commander making a preliminary assessment under subsection (a) with respect to a missing person shall (in accordance with procedures prescribed under section 1501 of this title) safeguard and forward for official use any information relating to the whereabouts and status of the missing person that results from the preliminary assessment or from actions taken to locate the person.

(Added Pub. L. 104–106, div. A, title V, § 569(b)(1), Feb. 10, 1996, 110 Stat. 338; amended Pub. L. 104–201, div. A, title V, § 578(b)(1), Sept. 23, 1996, 110 Stat. 2536; Pub. L. 105–85, div. A, title V, § 599(b)(1), Nov. 18, 1997, 111 Stat. 1768.)

AMENDMENTS

1997—Subsecs. (b), (c). Pub. L. 105–85 added subsec. (b) and redesignated former subsec. (b) as (c).

1996—Subsec. (a)(2). Pub. L. 104–201, § 578(b)(1)(A), substituted ''10 days'' for ''48 hours'' and ''Secretary concerned'' for ''theater component commander with jurisdiction over the missing person''.

Subsec. (b). Pub. L. 104–201, § 578(b)(1)(D), struck out at end ''The theater component commander through whom the report with respect to the missing person is transmitted under subsection (b) shall ensure that all pertinent information relating to the whereabouts and status of the missing person that results from the preliminary assessment or from actions taken to locate the person is properly safeguarded to avoid loss, damage, or modification.''

Pub. L. 104–201, § 578(b)(1)(B), (C), redesignated subsec. (c) as (b) and struck out former subsec. (b) which read as follows: ''TRANSMISSION THROUGH THEATER COMPONENT COMMANDER.—Upon reviewing a report under subsection (a) recommending that a person be placed in a missing status, the theater component commander shall ensure that all necessary actions are being taken, and all appropriate assets are being used, to resolve the status of the missing person. Not later than 14 days after receiving the report, the theater component commander shall forward the report to the Secretary of Defense or the Secretary concerned in accordance with procedures prescribed under section 1501(b) of this title. The theater component commander shall include with such report a certification that all necessary actions are being taken, and all appropriate assets are being used, to resolve the status of the missing person.''

Subsec. (c). Pub. L. 104–201, § 578(b)(1)(C), redesignated subsec. (c) as (b).

§ 1503. Actions of Secretary concerned; initial board inquiry

(a) DETERMINATION BY SECRETARY.—Upon receiving a recommendation under section 1502(a) of this title that a person be placed in a missing status, the Secretary receiving the recommendation shall review the recommendation and, not later than 10 days after receiving such recommendation, shall appoint a board under this section to conduct an inquiry into the whereabouts and status of the person.

(b) INQUIRIES INVOLVING MORE THAN ONE MISSING PERSON.—If it appears to the Secretary who appoints a board under this section that the absence or missing status of two or more persons is factually related, the Secretary may appoint a single board under this section to conduct the inquiry into the whereabouts and status of all such persons.

(c) COMPOSITION.—(1) A board appointed under this section to inquire into the whereabouts and status of a person shall consist of at least one individual described in paragraph (2) who has experience with and understanding of military operations or activities similar to the operation or activity in which the person disappeared.

(2) An individual referred to in paragraph (1) is the following:

(A) A military officer, in the case of an inquiry with respect to a member of the armed forces.

(B) A civilian, in the case of an inquiry with respect to a civilian employee of the Department of Defense or of a contractor of the Department of Defense.

(3) An individual may be appointed as a member of a board under this section only if the individual has a security clearance that affords the individual access to all information relating to the whereabouts and status of the missing persons covered by the inquiry.

(4) A Secretary appointing a board under this subsection shall, for purposes of providing legal counsel to the board, assign to the board a judge advocate, or appoint to the board an attorney, who has expertise in the law relating to missing persons, the determination of death of such persons, and the rights of family members and dependents of such persons.

(d) DUTIES OF BOARD.—A board appointed to conduct an inquiry into the whereabouts and

status of a missing person under this section shall—

(1) collect, develop, and investigate all facts and evidence relating to the disappearance or whereabouts and status of the person;

(2) collect appropriate documentation of the facts and evidence covered by the board's investigation;

(3) analyze the facts and evidence, make findings based on that analysis, and draw conclusions as to the current whereabouts and status of the person; and

(4) with respect to each person covered by the inquiry, recommend to the Secretary who appointed the board that—

(A) the person be placed in a missing status; or

(B) the person be declared to have deserted, to be absent without leave, or (subject to the requirements of section 1507 of this title) to be dead.

(e) BOARD PROCEEDINGS.—During the proceedings of an inquiry under this section, a board shall—

(1) collect, record, and safeguard all facts, documents, statements, photographs, tapes, messages, maps, sketches, reports, and other information (whether classified or unclassified) relating to the whereabouts and status of each person covered by the inquiry;

(2) gather information relating to actions taken to find the person, including any evidence of the whereabouts and status of the person arising from such actions; and

(3) maintain a record of its proceedings.

(f) COUNSEL FOR MISSING PERSON.—(1) The Secretary appointing a board to conduct an inquiry under this section shall appoint counsel to represent each person covered by the inquiry or, in a case covered by subsection (b), one counsel to represent all persons covered by the inquiry. Counsel appointed under this paragraph may be referred to as ''missing person's counsel'' and represents the interests of the person covered by the inquiry (and not any member of the person's family or other interested parties). The identity of counsel appointed under this paragraph for a missing person shall be made known to the missing person's primary next of kin and any other previously designated person of the person.

(2) To be appointed as a missing person's counsel, a person must—

(A) have the qualifications specified in section 827(b) of this title (article 27(b) of the Uniform Code of Military Justice) for trial counsel or defense counsel detailed for a general court-martial;

(B) have a security clearance that affords the counsel access to all information relating to the whereabouts and status of the person or persons covered by the inquiry; and

(C) have expertise in the law relating to missing persons, the determination of the death of such persons, and the rights of family members and dependents of such persons.

(3) A missing person's counsel—

(A) shall have access to all facts and evidence considered by the board during the proceedings under the inquiry for which the counsel is appointed;

(B) shall observe all official activities of the board during such proceedings;

(C) may question witnesses before the board; and

(D) shall monitor the deliberations of the board.

(4) A missing person's counsel shall assist the board in ensuring that all appropriate information concerning the case is collected, logged, filed, and safeguarded. The primary next of kin of a missing person and any other previously designated person of the missing person shall have the right to submit information to the missing person's counsel relative to the disappearance or status of the missing person.

(5) A missing person's counsel shall review the report of the board under subsection (h) and submit to the Secretary concerned who appointed the board an independent review of that report. That review shall be made an official part of the record of the board.

(g) ACCESS TO PROCEEDINGS.—The proceedings of a board during an inquiry under this section shall be closed to the public (including, with respect to the person covered by the inquiry, the primary next of kin, other members of the immediate family, and any other previously designated person of the person).

(h) REPORT.—(1) A board appointed under this section shall submit to the Secretary who appointed the board a report on the inquiry carried out by the board. The report shall include—

(A) a discussion of the facts and evidence considered by the board in the inquiry;

(B) the recommendation of the board under subsection (d) with respect to each person covered by the report; and

(C) disclosure of whether classified documents and information were reviewed by the board or were otherwise used by the board in forming recommendations under subparagraph (B).

(2) A board shall submit a report under this subsection with respect to the inquiry carried out by the board not later than 30 days after the date of the appointment of the board to carry out the inquiry. The report may include a classified annex.

(3) The Secretary of Defense shall prescribe procedures for the release of a report submitted under this subsection with respect to a missing person. Such procedures shall provide that the report may not be made public (except as provided for in subsection (j)) until one year after the date on which the report is submitted.

(i) DETERMINATION BY SECRETARY.—(1) Not later than 30 days after receiving a report from a board under subsection (h), the Secretary receiving the report shall review the report.

(2) In reviewing a report under paragraph (1), the Secretary shall determine whether or not the report is complete and free of administrative error. If the Secretary determines that the report is incomplete, or that the report is not free of administrative error, the Secretary may return the report to the board for further action on the report by the board.

(3) Upon a determination by the Secretary that a report reviewed under this subsection is complete and free of administrative error, the

Secretary shall make a determination concerning the status of each person covered by the report, including whether the person shall—

(A) be declared to be missing;

(B) be declared to have deserted;

(C) be declared to be absent without leave; or

(D) be declared to be dead.

(j) REPORT TO FAMILY MEMBERS AND OTHER INTERESTED PERSONS.—Not later than 30 days after the date on which the Secretary concerned makes a determination of the status of a person under subsection (i), the Secretary shall take reasonable actions to—

(1) provide to the primary next of kin, the other members of the immediate family, and any other previously designated person of the person—

(A) an unclassified summary of the unit commander's report with respect to the person under section 1502(a) of this title; and

(B) the report of the board (including the names of the members of the board) under subsection (h); and

(2) inform each individual referred to in paragraph (1) that the United States will conduct a subsequent inquiry into the whereabouts and status of the person on or about one year after the date of the first official notice of the disappearance of the person, unless information becomes available sooner that may result in a change in status of the person.

(k) TREATMENT OF DETERMINATION.—Any determination of the status of a missing person under subsection (i) shall be treated as the determination of the status of the person by all departments and agencies of the United States.

(Added Pub. L. 104–106, div. A, title V, §569(b)(1), Feb. 10, 1996, 110 Stat. 338; amended Pub. L. 104–201, div. A, title V, §578(a)(2), (b)(2), Sept. 23, 1996, 110 Stat. 2536; Pub. L. 105–85, div. A, title V, §599(a)(2), (d), Nov. 18, 1997, 111 Stat. 1767, 1769.)

AMENDMENTS

1997—Subsec. (c)(1). Pub. L. 105–85, §599(a)(2)(A), substituted ''one individual described in paragraph (2)'' for ''one military officer''.

Subsec. (c)(2) to (4). Pub. L. 105–85, §599(a)(2)(B), (C), added par. (2) and redesignated former pars. (2) and (3) as (3) and (4), respectively.

Subsec. (f)(1). Pub. L. 105–85, §599(d)(1), inserted at end ''The identity of counsel appointed under this paragraph for a missing person shall be made known to the missing person's primary next of kin and any other previously designated person of the person.''

Subsec. (f)(4). Pub. L. 105–85, §599(d)(2), inserted at end ''The primary next of kin of a missing person and any other previously designated person of the missing person shall have the right to submit information to the missing person's counsel relative to the disappearance or status of the missing person.''

1996—Subsec. (a). Pub. L. 104–201, §578(b)(2), substituted ''section 1502(a)'' for ''section 1502(b)''.

Subsec. (c)(1). Pub. L. 104–201, §578(a)(2)(A), substituted ''one military officer'' for ''one individual described in paragraph (2)''.

Subsec. (c)(2) to (4). Pub. L. 104–201, §578(a)(2)(B), (C), redesignated pars. (3) and (4) as (2) and (3), respectively, and struck out former par. (2) which read as follows: ''An individual referred to in paragraph (1) is the following:

''(A) A military officer, in the case of an inquiry with respect to a member of the armed forces.

''(B) A civilian, in the case of an inquiry with respect to a civilian employee of the Department of Defense or of a contractor of the Department of Defense.''

§ 1504. Subsequent board of inquiry

(a) ADDITIONAL BOARD.—If information that may result in a change of status of a person covered by a determination under section 1503(i) of this title becomes available within one year after the date of the transmission of a report with respect to the person under section 1502(a)(2) of this title, the Secretary concerned shall appoint a board under this section to conduct an inquiry into the information.

(b) DATE OF APPOINTMENT.—The Secretary concerned shall appoint a board under this section to conduct an inquiry into the whereabouts and status of a missing person on or about one year after the date of the transmission of a report concerning the person under section 1502(a)(2) of this title.

(c) COMBINED INQUIRIES.—If it appears to the Secretary concerned that the absence or status of two or more persons is factually related, the Secretary may appoint one board under this section to conduct the inquiry into the whereabouts and status of such persons.

(d) COMPOSITION.—(1) A board appointed under this section shall be composed of at least three members as follows:

(A) In the case of a board that will inquire into the whereabouts and status of one or more members of the armed forces (and no civilians described in subparagraph (B)), the board shall be composed of officers having the grade of major or lieutenant commander or above.

(B) In the case of a board that will inquire into the whereabouts and status of one or more civilian employees of the Department of Defense or contractors of the Department of Defense (and no members of the armed forces), the board shall be composed of—

(i) not less than three employees of the Department of Defense whose rate of annual pay is equal to or greater than the rate of annual pay payable for grade GS–13 of the General Schedule under section 5332 of title 5; and

(ii) such members of the armed forces as the Secretary considers advisable.

(C) In the case of a board that will inquire into the whereabouts and status of both one or more members of the armed forces and one or more civilians described in subparagraph (B)—

(i) the board shall include at least one officer described in subparagraph (A) and at least one employee of the Department of Defense described in subparagraph (B)(i); and

(ii) the ratio of such officers to such employees on the board shall be roughly proportional to the ratio of the number of members of the armed forces who are subjects of the board's inquiry to the number of civilians who are subjects of the board's inquiry.

(2) The Secretary concerned shall designate one member of a board appointed under this section as president of the board. The president of the board shall have a security clearance that

affords the president access to all information relating to the whereabouts and status of each person covered by the inquiry.

(3) One member of each board appointed under this subsection shall be an individual who—

(A) has an occupational specialty similar to that of one or more of the persons covered by the inquiry; and

(B) has an understanding of and expertise in the type of official activities that one or more such persons were engaged in at the time such person or persons disappeared.

(4) The Secretary who appoints a board under this subsection shall, for purposes of providing legal counsel to the board, assign to the board a judge advocate, or appoint to the board an attorney, with the same qualifications as specified in section 1503(c)(4) of this title.

(e) DUTIES OF BOARD.—A board appointed under this section to conduct an inquiry into the whereabouts and status of a person shall—

(1) review the reports with respect to the person transmitted under section 1502(a)(2) of this title and submitted under section 1503(h) of this title;

(2) collect and evaluate any document, fact, or other evidence with respect to the whereabouts and status of the person that has become available since the determination of the status of the person under section 1503 of this title;

(3) draw conclusions as to the whereabouts and status of the person;

(4) determine on the basis of the activities under paragraphs (1) and (2) whether the status of the person should be continued or changed; and

(5) submit to the Secretary concerned a report describing the findings and conclusions of the board, together with a recommendation for a determination by the Secretary concerning the whereabouts and status of the person.

(f) COUNSEL FOR MISSING PERSONS.—(1) When the Secretary concerned appoints a board to conduct an inquiry under this section, the Secretary shall appoint counsel to represent each person covered by the inquiry. The identity of counsel appointed under this paragraph for a missing person shall be made known to the missing person's primary next of kin and any other previously designated person of the person.

(2) A person appointed as counsel under this subsection shall meet the qualifications and have the duties set forth in section 1503(f) of this title for a missing person's counsel appointed under that section.

(3) The review of the report of a board on an inquiry that is submitted by such counsel shall be made an official part of the record of the board with respect to the inquiry.

(g) ATTENDANCE OF FAMILY MEMBERS AND CERTAIN OTHER INTERESTED PERSONS AT PROCEEDINGS.—(1) With respect to any person covered by an inquiry under this section, the primary next of kin, other members of the immediate family, and any other previously designated person of the person may attend the proceedings of the board during the inquiry.

(2) The Secretary concerned shall take reasonable actions to notify each individual referred to in paragraph (1) of the opportunity to attend the proceedings of a board. Such notice shall be provided not less than 60 days before the first meeting of the board.

(3) An individual who receives notice under paragraph (2) shall notify the Secretary of the intent, if any, of that individual to attend the proceedings of the board not later than 21 days after the date on which the individual receives the notice.

(4) Each individual who notifies the Secretary under paragraph (3) of the individual's intent to attend the proceedings of the board—

(A) in the case of an individual who is the primary next of kin or the previously designated person, may attend the proceedings of the board with private counsel;

(B) shall have access to the personnel file of the missing person, to unclassified reports, if any, of the board appointed under section 1503 of this title to conduct the inquiry into the whereabouts and status of the person, and to any other unclassified information or documents relating to the whereabouts and status of the person;

(C) shall be afforded the opportunity to present information at the proceedings of the board that such individual considers to be relevant to those proceedings; and

(D) subject to paragraph (5), shall be given the opportunity to submit in writing an objection to any recommendation of the board under subsection (i) as to the status of the missing person.

(5)(A) Individuals who wish to file objections under paragraph (4)(D) to any recommendation of the board shall—

(i) submit a letter of intent to the president of the board not later than 15 days after the date on which the recommendations are made; and

(ii) submit to the president of the board the objections in writing not later than 30 days after the date on which the recommendations are made.

(B) The president of a board shall include any objections to a recommendation of the board that are submitted to the president of the board under subparagraph (A) in the report of the board containing the recommendation under subsection (i).

(6) An individual referred to in paragraph (1) who attends the proceedings of a board under this subsection shall not be entitled to reimbursement by the United States for any costs (including travel, lodging, meals, local transportation, legal fees, transcription costs, witness expenses, and other expenses) incurred by that individual in attending such proceedings.

(h) AVAILABILITY OF INFORMATION TO BOARDS.—(1) In conducting proceedings in an inquiry under this section, a board may secure directly from any department or agency of the United States any information that the board considers necessary in order to conduct the proceedings.

(2) Upon written request from the president of a board, the head of a department or agency of the United States shall release information cov-

ered by the request to the board. In releasing such information, the head of the department or agency shall—

(A) declassify to an appropriate degree classified information; or

(B) release the information in a manner not requiring the removal of markings indicating the classified nature of the information.

(3)(A) If a request for information under paragraph (2) covers classified information that cannot be declassified, or if the classification markings cannot be removed before release from the information covered by the request, or if the material cannot be summarized in a manner that prevents the release of classified information, the classified information shall be made available only to the president of the board making the request and the counsel for the missing person appointed under subsection (f).

(B) The president of a board shall close to persons who do not have appropriate security clearances the proceeding of the board at which classified information is discussed. Participants at a proceeding of a board at which classified information is discussed shall comply with all applicable laws and regulations relating to the disclosure of classified information. The Secretary concerned shall assist the president of a board in ensuring that classified information is not compromised through board proceedings.

(i) RECOMMENDATION ON STATUS.—(1) Upon completion of an inquiry under this section, a board shall make a recommendation as to the current whereabouts and status of each missing person covered by the inquiry.

(2) A board may not recommend under paragraph (1) that a person be declared dead unless in making the recommendation the board complies with section 1507 of this title.

(j) REPORT.—A board appointed under this section shall submit to the Secretary concerned a report on the inquiry carried out by the board, together with the evidence considered by the board during the inquiry. The report may include a classified annex.

(k) ACTIONS BY SECRETARY CONCERNED.—(1) Not later than 30 days after the receipt of a report from a board under subsection (j), the Secretary shall review—

(A) the report;

(B) the review of the report submitted to the Secretary under subsection (f)(3) by the counsel for each person covered by the report; and

(C) the objections, if any, to the report submitted to the president of the board under subsection (g)(5).

(2) In reviewing a report under paragraph (1) (including the objections described in subparagraph (C) of that paragraph), the Secretary concerned shall determine whether or not the report is complete and free of administrative error. If the Secretary determines that the report is incomplete, or that the report is not free of administrative error, the Secretary may return the report to the board for further action on the report by the board.

(3) Upon a determination by the Secretary that a report reviewed under this subsection is complete and free of administrative error, the Secretary shall make a determination concerning the status of each person covered by the report.

(*l*) REPORT TO FAMILY MEMBERS AND OTHER INTERESTED PERSONS.—Not later than 60 days after the date on which the Secretary concerned makes a determination with respect to a missing person under subsection (k), the Secretary shall—

(1) provide the report reviewed by the Secretary in making the determination to the primary next of kin, the other members of the immediate family, and any other previously designated person of the person; and

(2) in the case of a person who continues to be in a missing status, inform each individual referred to in paragraph (1) that the United States will conduct a further investigation into the whereabouts and status of the person as specified in section 1505 of this title.

(m) TREATMENT OF DETERMINATION.—Any determination of the status of a missing person under subsection (k) shall supersede the determination of the status of the person under section 1503 of this title and shall be treated as the determination of the status of the person by all departments and agencies of the United States.

(Added Pub. L. 104–106, div. A, title V, § 569(b)(1), Feb. 10, 1996, 110 Stat. 341; amended Pub. L. 104–201, div. A, title V, § 578(a)(3), Sept. 23, 1996, 110 Stat. 2536; Pub. L. 105–85, div. A, title V, § 599(a)(3), (d)(1), title X, § 1073(a)(30), Nov. 18, 1997, 111 Stat. 1767, 1769, 1902.)

AMENDMENTS

1997—Subsec. (d)(1). Pub. L. 105–85, § 599(a)(3)(A), substituted "as follows:" and subpars. (A) to (C) for "who are officers having the grade of major or lieutenant commander or above."

Subsec. (d)(4). Pub. L. 105–85, § 599(a)(3)(B), substituted "section 1503(c)(4)" for "section 1503(c)(3)".

Subsec. (f)(1). Pub. L. 105–85, § 599(d)(1), inserted at end "The identity of counsel appointed under this paragraph for a missing person shall be made known to the missing person's primary next of kin and any other previously designated person of the person."

Subsec. (i)(1). Pub. L. 105–85, § 1073(a)(30), substituted "this section" for "this subsection".

1996—Subsec. (d)(1). Pub. L. 104–201, § 578(a)(3)(A), added text of par. (1) and struck out former text of par. (1) which read as follows: "A board appointed under this section shall be composed of at least three members as follows:

"(A) In the case of a board that will inquire into the whereabouts and status of one or more members of the armed forces (and no civilians described in subparagraph (B)), the board shall be composed of officers having the grade of major or lieutenant commander or above.

"(B) In the case of a board that will inquire into the whereabouts and status of one or more civilian employees of the Department of Defense or contractors of the Department of Defense (and no members of the armed forces), the board shall be composed of—

"(i) not less than three employees of the Department of Defense whose rate of annual pay is equal to or greater than the rate of annual pay payable for grade GS–13 of the General Schedule under section 5332 of title 5; and

"(ii) such members of the armed forces as the Secretary considers advisable.

"(C) In the case of a board that will inquire into the whereabouts and status of both one or more members of the armed forces and one or more civilians described in subparagraph (B)—

"(i) the board shall include at least one officer described in subparagraph (A) and at least one em-

ployee of the Department of Defense described in subparagraph (B)(i); and

''(ii) the ratio of such officers to such employees on the board shall be roughly proportional to the ratio of the number of members of the armed forces who are subjects of the board's inquiry to the number of civilians who are subjects of the board's inquiry.''

Subsec. (d)(4). Pub. L. 104–201, §578(a)(3)(B), substituted ''section 1503(c)(3)'' for ''section 1503(c)(4)''.

§ 1505. Further review

(a) SUBSEQUENT REVIEW.—The Secretary concerned shall conduct subsequent inquiries into the whereabouts and status of any person determined by the Secretary under section 1504 of this title to be in a missing status.

(b) FREQUENCY OF SUBSEQUENT REVIEWS.—The Secretary concerned shall conduct inquiries into the whereabouts and status of a person under subsection (a) upon receipt of information that may result in a change of status of the person. The Secretary concerned shall appoint a board to conduct such inquiries.

(c) ACTION UPON DISCOVERY OR RECEIPT OF INFORMATION.—(1) Whenever any United States intelligence agency or other element of the Government finds or receives information that may be related to a missing person, the information shall promptly be forwarded to the Secretary of Defense.

(2) Upon receipt of information under paragraph (1), the Secretary of Defense shall as expeditiously as possible ensure that the information is added to the appropriate case file for that missing person and notify (A) the designated missing person's counsel for that person, and (B) the primary next of kin and any previously designated person for the missing person of the existence of that information.

(3) The Secretary of Defense, with the advice of the missing person's counsel notified under paragraph (2), shall determine whether the information is significant enough to require a board review under this section.

(d) CONDUCT OF PROCEEDINGS.—If it is determined that such a board should be appointed, the appointment of, and activities before, a board appointed under this section shall be governed by the provisions of section 1504 of this title with respect to a board appointed under that section.

(Added Pub. L. 104–106, div. A, title V, §569(b)(1), Feb. 10, 1996, 110 Stat. 345; amended Pub. L. 104–201, div. A, title V, §578(c), Sept. 23, 1996, 110 Stat. 2536; Pub. L. 113–291, div. A, title IX, §916(c), Dec. 19, 2014, 128 Stat. 3478; Pub. L. 114–328, div. A, title IX, §953(b), Dec. 23, 2016, 130 Stat. 2376.)

AMENDMENTS

2016—Subsec. (c). Pub. L. 114–328 substituted ''Secretary of Defense'' for ''designated Agency Director'' in pars. (1), (2), and (3).

2014—Subsec. (c)(1). Pub. L. 113–291, §916(c)(1), substituted ''the designated Agency Director'' for ''the office established under section 1501 of this title''.

Subsec. (c)(2), (3). Pub. L. 113–291, §916(c)(2), substituted ''designated Agency Director'' for ''head of the office established under section 1501 of this title''.

1996—Subsec. (b). Pub. L. 104–201 reenacted heading without change and amended text generally. Prior to amendment, text read as follows:

''(1) In the case of a missing person who was last known to be alive or who was last suspected of being alive, the Secretary shall appoint a board to conduct an inquiry with respect to a person under this subsection—

''(A) on or about three years after the date of the initial report of the disappearance of the person under section 1502(a) of this title; and

''(B) not later than every three years thereafter.

''(2) In addition to appointment of boards under paragraph (1), the Secretary shall appoint a board to conduct an inquiry with respect to a missing person under this subsection upon receipt of information that could result in a change of status of the missing person. When the Secretary appoints a board under this paragraph, the time for subsequent appointments of a board under paragraph (1)(B) shall be determined from the date of the receipt of such information.

''(3) The Secretary is not required to appoint a board under paragraph (1) with respect to the disappearance of any person—

''(A) more than 30 years after the initial report of the disappearance of the missing person required by section 1502 of this title; or

''(B) if, before the end of such 30-year period, the missing person is accounted for.''

§ 1506. Personnel files

(a) INFORMATION IN FILES.—Except as provided in subsections (b), (c), and (d), the Secretary concerned shall, to the maximum extent practicable, ensure that the personnel file of a missing person contains all information in the possession of the United States relating to the disappearance and whereabouts and status of the person.

(b) CLASSIFIED INFORMATION.—(1) The Secretary concerned may withhold classified information from a personnel file under this section. If the Secretary concerned withholds classified information from a personnel file, the Secretary shall ensure that the file contains the following:

(A) A notice that the withheld information exists.

(B) A notice of the date of the most recent review of the classification of the withheld information.

(2)(A) If classified information withheld under this subsection refers to one or more unnamed missing persons, the Secretary shall ensure that notice of that withheld information, and notice of the date of the most recent review of the classification of that withheld information, is made reasonably accessible to the primary next of kin, members of the immediate family, and the previously designated person of all missing persons from the conflict or period of war to which the classified information pertains.

(B) For purposes of subparagraph (A), information shall be considered to be made reasonably accessible if placed in a separate and distinct file that is available for review by persons specified in subparagraph (A) upon the request of any such person either to review the separate file or to review the personnel file of the missing person concerned.

(c) PROTECTION OF PRIVACY.—The Secretary concerned shall maintain personnel files under this section, and shall permit disclosure of or access to such files, in accordance with the provisions of section 552a of title 5 and with other applicable laws and regulations pertaining to the privacy of the persons covered by the files.

(d) PRIVILEGED INFORMATION.—(1) The Secretary concerned shall withhold from personnel files under this section, as privileged information, debriefing reports provided by missing persons returned to United States control which are obtained under a promise of confidentiality made for the purpose of ensuring the fullest possible disclosure of information.

(2) The Secretary concerned shall withhold from personnel files under this section, as privileged information, any survival, evasion, resistance, and escape debriefing report provided by a person described in section 1501(c) of this title who is returned to United States control which is obtained under a promise of confidentiality made for the purpose of ensuring the fullest possible disclosure of information.

(3) If a debriefing report contains non-derogatory information about the status and whereabouts of a missing person other than the source of the debriefing report or about unnamed missing persons, the Secretary concerned shall prepare an extract of the non-derogatory information. That extract, following a review by the source of the debriefing report, shall be placed in the personnel file of each missing person named in the debriefing report in such a manner as to protect the identity of the source providing the information. Any information contained in the extract of the debriefing report that pertains to unnamed missing persons shall be made reasonably accessible to the primary next of kin, members of the immediate family, and the previously designated person.

(4) Whenever the Secretary concerned withholds a debriefing report, or part of a debriefing report, from a personnel file under this subsection, the Secretary shall ensure that the file contains a notice that withheld information exists.

(e) AVAILABILITY OF INFORMATION.—The Secretary concerned shall, upon request, make available the contents of the personnel file of a missing person to the primary next of kin, the other members of the immediate family, or any other previously designated person of the person.

(f) NONDISCLOSURE OF CERTAIN INFORMATION.—A record of the content of a debriefing of a missing person returned to United States control during the period beginning on July 8, 1959, and ending on February 10, 1996, that was conducted by an official of the United States authorized to conduct the debriefing is privileged information and, notwithstanding sections 552 and 552a of title 5, may not be disclosed, in whole or in part, under either such section. However, this subsection does not limit the responsibility of the Secretary concerned under paragraphs (3) and (4) of subsection (d) to place extracts of non-derogatory information, or a notice of the existence of such information, in the personnel file of a missing person.

(Added Pub. L. 104–106, div. A, title V, § 569(b)(1), Feb. 10, 1996, 110 Stat. 346; amended Pub. L. 104–201, div. A, title V, § 578(d), Sept. 23, 1996, 110 Stat. 2537; Pub. L. 105–85, div. A, title V, § 599(f), (g), Nov. 18, 1997, 111 Stat. 1770; Pub. L. 106–65, div. A, title V, § 575, Oct. 5, 1999, 113 Stat. 624; Pub. L. 107–107, div. A, title V, § 573, Dec. 28, 2001, 115 Stat. 1122; Pub. L. 113–66, div. A, title V, § 582(a), Dec. 26, 2013, 127 Stat. 776.)

AMENDMENTS

2013—Subsec. (d)(2) to (4). Pub. L. 113–66, § 582(a)(1), added par. (2) and redesignated former pars. (2) and (3) as (3) and (4), respectively.

Subsec. (f). Pub. L. 113–66, § 582(a)(2), substituted ''paragraphs (3) and (4)'' for ''paragraphs (2) and (3)''.

2001—Subsec. (b)(2). Pub. L. 107–107 designated existing provisions as subpar. (A), inserted ''of all missing persons from the conflict or period of war to which the classified information pertains'' before period at end, and added subpar. (B).

1999—Subsec. (f). Pub. L. 106–65 added subsec. (f).

1997—Subsec. (b). Pub. L. 105–85, § 599(f), designated existing provisions as par. (1), redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, of par. (1), and added par. (2).

Subsec. (d)(2). Pub. L. 105–85, § 599(g)(1), inserted ''or about unnamed missing persons'' after ''the debriefing report'' in first sentence, substituted ''each missing person named in the debriefing report'' for ''the missing person'' in second sentence, and inserted at end ''Any information contained in the extract of the debriefing report that pertains to unnamed missing persons shall be made reasonably accessible to the primary next of kin, members of the immediate family, and the previously designated person.''

Subsec. (d)(3). Pub. L. 105–85, § 599(g)(2), inserted '', or part of a debriefing report,'' after ''a debriefing report''.

1996—Subsecs. (e), (f). Pub. L. 104–201 redesignated subsec. (f) as (e) and struck out former subsec. (e) which read as follows: ''WRONGFUL WITHHOLDING.—Except as provided in subsections (a) through (d), any person who knowingly and willfully withholds from the personnel file of a missing person any information relating to the disappearance or whereabouts and status of a missing person shall be fined as provided in title 18 or imprisoned not more than one year, or both.''

§ 1507. Recommendation of status of death

(a) REQUIREMENTS RELATING TO RECOMMENDATION.—A board appointed under section 1503, 1504, or 1505 of this title may not recommend that a person be declared dead unless—

(1) credible evidence exists to suggest that the person is dead;

(2) the United States possesses no credible evidence that suggests that the person is alive; and

(3) representatives of the United States—

(A) have made a complete search of the area where the person was last seen (unless, after making a good faith effort to obtain access to such area, such representatives are not granted such access); and

(B) have examined the records of the government or entity having control over the area where the person was last seen (unless, after making a good faith effort to obtain access to such records, such representatives are not granted such access).

(b) SUBMITTAL OF INFORMATION ON DEATH.—If a board appointed under section 1503, 1504, or 1505 of this title makes a recommendation that a missing person be declared dead, the board shall include in the report of the board with respect to the person under that section the following:

(1) A detailed description of the location where the death occurred.

(2) A statement of the date on which the death occurred.

(3) A description of the location of the body, if recovered.

(4) If the body has been recovered and is not identifiable through visual means, a certifi-

cation by a forensic pathologist that the body recovered is that of the missing person. In determining whether to make such a certification, the forensic pathologist shall consider, as determined necessary by the Secretary of the military department concerned, additional evidence and information provided by appropriate specialists in forensic medicine or other appropriate medical sciences.

(Added Pub. L. 104–106, div. A, title V, § 569(b)(1), Feb. 10, 1996, 110 Stat. 347; amended Pub. L. 104–201, div. A, title V, § 578(e), Sept. 23, 1996, 110 Stat. 2537; Pub. L. 105–85, div. A, title V, § 599(c), Nov. 18, 1997, 111 Stat. 1768.)

AMENDMENTS

1997—Subsec. (b)(3), (4). Pub. L. 105–85 added pars. (3) and (4).

1996—Subsec. (b)(3), (4). Pub. L. 104–201 struck out pars. (3) and (4) which read as follows:

"(3) A description of the location of the body, if recovered.

"(4) If the body has been recovered and is not identifiable through visual means, a certification by a practitioner of an appropriate forensic science that the body recovered is that of the missing person."

§ 1508. Judicial review

(a) RIGHT OF REVIEW.—A person who is the primary next of kin (or the previously designated person) of a person who is the subject of a finding described in subsection (b) may obtain judicial review in a United States district court of that finding, but only on the basis of a claim that there is information that could affect the status of the missing person's case that was not adequately considered during the administrative review process under this chapter. Any such review shall be as provided in section 706 of title 5.

(b) FINDINGS FOR WHICH JUDICIAL REVIEW MAY BE SOUGHT.—Subsection (a) applies to the following findings:

(1) A finding by a board appointed under section 1504 or 1505 of this title that a missing person is dead.

(2) A finding by a board appointed under section 1509 of this title that confirms that a missing person formerly declared dead is in fact dead.

(c) SUBSEQUENT REVIEW.—Appeals from a decision of the district court shall be taken to the appropriate United States court of appeals and to the Supreme Court as provided by law.

(Added Pub. L. 104–106, div. A, title V, § 569(b)(1), Feb. 10, 1996, 110 Stat. 348.)

§ 1509. Program to resolve missing person cases

(a) PROGRAM REQUIRED; COVERED CONFLICTS.—The Secretary of Defense shall implement a comprehensive, coordinated, integrated, and fully resourced program to account for persons described in subparagraph (A) or (B) of section 1513(1) of this title who are unaccounted for from the following conflicts:

(1) World War II during the period beginning on December 7, 1941, and ending on December 31, 1946, including members of the armed forces who were lost during flight operations in the Pacific theater of operations covered by section 576 of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106–65; 10 U.S.C. 1501 note).

(2) The Cold War during the period beginning on September 2, 1945, and ending on August 21, 1991.

(3) The Korean War during the period beginning on June 27, 1950, and ending on January 31, 1955.

(4) The Indochina War era during the period beginning on July 8, 1959, and ending on May 15, 1975.

(5) The Persian Gulf War during the period beginning on August 2, 1990, and ending on February 28, 1991.

(6) Such other conflicts in which members of the armed forces served as the Secretary of Defense may designate.

(b) IMPLEMENTATION.—(1) The Secretary of Defense shall implement the program within the Department of Defense through the designated Agency Director.

(2)(A) The Secretary shall assign or detail to the designated Defense Agency on a full-time basis a senior medical examiner from the personnel of the Armed Forces Medical Examiner System. The primary duties of the medical examiner so assigned or detailed shall include the identification of remains in support of the function of the designated Agency Director to account for unaccounted for persons covered by subsection (a).

(B) In carrying out functions under this chapter, the medical examiner so assigned or detailed shall report to the designated Agency Director.

(C) The medical examiner so assigned or detailed shall—

(i) exercise scientific identification authority;

(ii) establish identification and laboratory policy consistent with the Armed Forces Medical Examiner System; and

(iii) advise the designated Agency Director on forensic science disciplines.

(D) Nothing in this chapter shall be interpreted as affecting the authority of the Armed Forces Medical Examiner under section 1471 of this title.

(c) TREATMENT AS MISSING PERSONS.—Each unaccounted for person covered by subsection (a) shall be considered to be a missing person for purposes of the applicability of other provisions of this chapter to the person.

(d) ESTABLISHMENT OF PERSONNEL FILES; CENTRALIZED DATABASE.—(1) The Secretary of Defense shall ensure that a personnel file is established and maintained for each person covered by subsection (a) if the Secretary—

(A) possesses any information relevant to the status of the person; or

(B) receives any new information regarding the missing person as provided in subsection (e).

(2) The Secretary of Defense shall ensure that each file established under this subsection contains all relevant information pertaining to a person covered by subsection (a) and is readily accessible to all elements of the department, the combatant commands, and the armed forces involved in the effort to account for the person.

(3) Each file established under this subsection shall be handled in accordance with, and subject to the provisions of, section 1506 of this title in the same manner as applies to the file of a missing person otherwise subject to such section.

(4) The Secretary of Defense shall establish and maintain a single centralized database and case management system containing information on all missing persons for whom a file has been established under this subsection. The database and case management system shall be accessible to all elements of the Department of Defense involved in the search, recovery, identification, and communications phases of the program established by this section.

(e) REVIEW OF STATUS REQUIREMENTS.—(1) If new information (as described in paragraph (3)) is found or received that may be related to one or more unaccounted for persons covered by subsection (a), whether or not such information specifically relates (or may specifically relate) to any particular such unaccounted for person, that information shall be provided to the Secretary of Defense.

(2) Upon receipt of new information under paragraph (1), the Secretary shall ensure that—

(A) the information is treated under paragraph (2) of subsection (c) of section 1505 of this title, relating to addition of the information to the personnel file of a person and notification requirements, in the same manner as information received under paragraph (1) under such subsection; and

(B) the information is treated under paragraph (3) of subsection (c) and subsection (d) of such section, relating to a board review under such section, in the same manner as information received under paragraph (1) of such subsection (c).

(3) For purposes of this subsection, new information is information that is credible and that—

(A) is found or received after November 18, 1997, by a United States intelligence agency, by a Department of Defense agency, or by a person specified in section 1504(g) of this title; or

(B) is identified after November 18, 1997, in records of the United States as information that could be relevant to the case of one or more unaccounted for persons covered by subsection (a).

(f) COORDINATION REQUIREMENTS.—(1) In carrying out the program, the designated Agency Director shall ensure coordination with the Secretaries of the military departments, the Chairman of the Joint Chiefs of Staff, and the commanders of the combatant commands.

(2) In carrying out the program, the Secretary of Defense shall establish close coordination with the Department of State, the Central Intelligence Agency, and the National Security Council staff to enhance the ability of the Department of Defense to account for persons covered by subsection (a).

(3) In carrying out the program, the designated Agency Director shall coordinate all external communications and events associated with the program.

(Added Pub. L. 104–106, div. A, title V, § 569(b)(1), Feb. 10, 1996, 110 Stat. 348; amended Pub. L. 104–201, div. A, title V, § 578(f)(1), (2)(A), Sept. 23, 1996, 110 Stat. 2537; Pub. L. 105–85, div. A, title V, § 599(e), Nov. 18, 1997, 111 Stat. 1769; Pub. L. 106–65, div. A, title X, § 1066(a)(14), Oct. 5, 1999, 113 Stat. 771; Pub. L. 111–84, div. A, title V, § 541(a), Oct. 28, 2009, 123 Stat. 2296; Pub. L. 113–291, div. A, title IX, § 916(d), (f)(1), Dec. 19, 2014, 128 Stat. 3478, 3479.)

AMENDMENTS

2014—Pub. L. 113–291, § 916(f)(1), substituted ''Program to resolve missing person cases'' for ''Program to resolve preenactment missing person cases'' in section catchline.

Subsec. (b). Pub. L. 113–291, § 916(d)(1)(A), struck out ''PROCESS'' after ''IMPLEMENTATION'' in heading.

Subsec. (b)(1). Pub. L. 113–291, § 916(d)(1)(B), substituted ''through the designated Agency Director'' for ''POW/MIA accounting community''.

Subsec. (b)(2). Pub. L. 113–291, § 916(d)(1)(C), added par. (2) and struck out former par. (2) which defined ''POW/MIA accounting community''.

Subsec. (d). Pub. L. 113–291, § 916(d)(2)(A), inserted ''; CENTRALIZED DATABASE'' after ''FILES'' in heading.

Subsec. (d)(4). Pub. L. 113–291, § 916(d)(2)(B), added par. (4).

Subsec. (f)(1). Pub. L. 113–291, § 916(d)(3)(A), substituted ''In carrying out the program, the designated Agency Director shall ensure coordination'' for ''In establishing and carrying out the program, the Secretary of Defense shall coordinate''.

Subsec. (f)(2). Pub. L. 113–291, § 916(d)(3)(B), inserted ''staff'' after ''National Security Council'' and struck out ''POW/MIA accounting community'' after ''Department of Defense''.

Subsec. (f)(3). Pub. L. 113–291, § 916(d)(3)(C), added par. (3).

2009—Pub. L. 111–84 amended section generally. Prior to amendment, section consisted of subsecs. (a) to (d) relating to review of status of missing person cases arising before enactment of this chapter.

1999—Subsec. (a)(2)(A), (B). Pub. L. 106–65 substituted ''November 18, 1997,'' for ''the date of the enactment of the National Defense Authorization Act for Fiscal Year 1998''.

1997—Subsec. (a). Pub. L. 105–85, § 599(e)(1), added subsec. (a) and struck out former subsec. (a) which read as follows:

''(a) REVIEW OF STATUS.—In the case of an unaccounted for person covered by section 1501(c) of this title who is described in subsection (b), if new information that could change the status of that person is found or received by a United States intelligence agency, by a Department of Defense agency, or by a person specified in section 1504(g) of this title, that information shall be provided to the Secretary of Defense with a request that the Secretary evaluate the information in accordance with sections 1505(c) and 1505(d) of this title.''

Subsec. (d). Pub. L. 105–85, § 599(e)(2), added subsec. (d).

1996—Pub. L. 104–201, § 578(f)(2)(A), struck out '', special interest'' after ''Preenactment'' in section catchline.

Subsecs. (c), (d). Pub. L. 104–201, § 578(f)(1), redesignated subsec. (d) as (c) and struck out former subsec. (c) which read as follows:

''(c) SPECIAL RULE FOR PERSONS CLASSIFIED AS 'KIA/BNR'.—In the case of a person described in subsection (b) who was classified as 'killed in action/body not recovered', the case of that person may be reviewed under this section only if the new information referred to in subsection (a) is compelling.''

IMPLEMENTATION

Pub. L. 111–84, div. A, title V, § 541(d), Oct. 28, 2009, 123 Stat. 2298, provided that:

''(1) PRIORITY.—A priority of the program required by section 1509 of title 10, United States Code, as amended

by subsection (a), to resolve missing person cases arising before the enactment of chapter 76 of such title by section 569 of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104–106; 110 Stat. 336) [approved Feb. 10, 1996] shall be the return of missing persons to United States control alive.

''(2) ACCOUNTING FOR GOAL.—In implementing the program, the Secretary of Defense, in coordination with the officials specified in subsection (f)(1) of section 1509 of title 10, United States Code, shall provide such funds, personnel, and resources as the Secretary considers appropriate to increase significantly the capability and capacity of the Department of Defense, the Armed Forces, and commanders of the combatant commands to account for missing persons so that, beginning with fiscal year 2015, the POW/MIA accounting community has sufficient resources to ensure that at least 200 missing persons are accounted for under the program annually.

''(3) DEFINITIONS.—In this subsection:

''(A) The term 'accounted for' has the meaning given such term in section 1513(3)(B) of title 10, United States Code.

''(B) The term 'POW/MIA accounting community' has the meaning given such term in section 1509(b)(2) of such title.''

§ 1510. Applicability to Coast Guard

(a) DESIGNATED OFFICER TO HAVE RESPONSIBILITY.—The Secretary of Homeland Security shall designate an officer of the Department of Homeland Security to have responsibility within the Department of Homeland Security for matters relating to missing persons who are members of the Coast Guard.

(b) PROCEDURES.—The Secretary of Homeland Security shall prescribe procedures for the determination of the status of persons described in section 1501(c) of this title who are members of the Coast Guard and for the collection, analysis, review, and update of information on such persons. To the maximum extent practicable, the procedures prescribed under this section shall be similar to the procedures prescribed by the Secretary of Defense under section 1501(b) of this title.

(Added Pub. L. 104–106, div. A, title V, § 569(b)(1), Feb. 10, 1996, 110 Stat. 349; amended Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

AMENDMENTS

2002—Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation'' wherever appearing.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

§ 1511. Return alive of person declared missing or dead

(a) PAY AND ALLOWANCES.—Any person (except for a person subsequently determined to have been absent without leave or a deserter) in a missing status or declared dead under subchapter VII of chapter 55 of title 5 or chapter 10 of title 37 or by a board appointed under this chapter who is found alive and returned to the control of the United States shall be paid for the full time of the absence of the person while given that status or declared dead under the law and regulations relating to the pay and allowances of persons returning from a missing status.

(b) EFFECT ON GRATUITIES PAID AS A RESULT OF STATUS.—Subsection (a) shall not be interpreted to invalidate or otherwise affect the receipt by any person of a death gratuity or other payment from the United States on behalf of a person referred to in subsection (a) before February 10, 1996.

(Added Pub. L. 104–106, div. A, title V, § 569(b)(1), Feb. 10, 1996, 110 Stat. 349; amended Pub. L. 107–107, div. A, title X, § 1048(c)(10), Dec. 28, 2001, 115 Stat. 1226.)

AMENDMENTS

2001—Subsec. (b). Pub. L. 107–107 substituted ''February 10, 1996'' for ''the date of the enactment of this chapter''.

§ 1512. Effect on State law

(a) NONPREEMPTION OF STATE AUTHORITY.—Nothing in this chapter shall be construed to invalidate or limit the power of any State court or administrative entity, or the power of any court or administrative entity of any political subdivision thereof, to find or declare a person dead for purposes of such State or political subdivision.

(b) STATE DEFINED.—In this section, the term ''State'' includes the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

(Added Pub. L. 104–106, div. A, title V, § 569(b)(1), Feb. 10, 1996, 110 Stat. 349.)

§ 1513. Definitions

In this chapter:

(1) The term ''missing person'' means—

(A) a member of the armed forces on active duty who is in a missing status; or

(B) a civilian employee of the Department of Defense or an employee of a contractor of the Department of Defense who serves in direct support of, or accompanies, the armed forces in the field under orders and who is in a missing status.

Such term includes an unaccounted for person described in subsection (a) of section 1509 of this title who is required by subsection (c) of such section to be considered a missing person.

(2) The term ''missing status'' means the status of a missing person who is determined to be absent in a category of any of the following:

(A) Missing.

(B) Missing in action.

(C) Interned in a foreign country.

(D) Captured.

(E) Beleaguered.

(F) Besieged.

(G) Detained in a foreign country against that person's will.

(3) The term ''accounted for'', with respect to a person in a missing status, means that—

(A) the person is returned to United States control alive;

(B) the remains of the person are recovered to the extent practicable and, if not identifi-

able through visual means as those of the missing person, are identified as those of the missing person by a practitioner of an appropriate forensic science; or

(C) credible evidence exists to support another determination of the person's status.

(4) The term ''primary next of kin'', in the case of a missing person, means the individual authorized to direct disposition of the remains of the person under section 1482(c) of this title.

(5) The term ''member of the immediate family'', in the case of a missing person, means the following:

(A) The spouse of the person.

(B) A natural child, adopted child, stepchild, or illegitimate child (if acknowledged by the person or parenthood has been established by a court of competent jurisdiction) of the person, except that if such child has not attained the age of 18 years, the term means a surviving parent or legal guardian of such child.

(C) A biological parent of the person, unless legal custody of the person by the parent has been previously terminated by reason of a court decree or otherwise under law and not restored.

(D) A brother or sister of the person, if such brother or sister has attained the age of 18 years.

(E) Any other blood relative or adoptive relative of the person, if such relative was given sole legal custody of the person by a court decree or otherwise under law before the person attained the age of 18 years and such custody was not subsequently terminated before that time.

(6) The term ''previously designated person'', in the case of a missing person, means an individual designated by the person under section 655 of this title for purposes of this chapter.

(7) The term ''classified information'' means any information the unauthorized disclosure of which (as determined under applicable law and regulations) could reasonably be expected to damage the national security.

(8) The term ''theater component commander'' means, with respect to any of the combatant commands, an officer of any of the armed forces who (A) is commander of all forces of that armed force assigned to that combatant command, and (B) is directly subordinate to the commander of the combatant command.

(9) The term ''survival, evasion, resistance, and escape debriefing'' means an interview conducted with a person described in section 1501(c) of this title who is returned to United States control in order to record the person's experiences while surviving, evading, resisting interrogation or exploitation, or escaping.

(Added Pub. L. 104–106, div. A, title V, § 569(b)(1), Feb. 10, 1996, 110 Stat. 350; amended Pub. L. 104–201, div. A, title V, § 578(a)(4), (b)(3), Sept. 23, 1996, 110 Stat. 2536; Pub. L. 105–85, div. A, title V, § 599(a)(4), (b)(2), Nov. 18, 1997, 111 Stat. 1768; Pub. L. 106–65, div. A, title X, § 1066(a)(15), Oct. 5, 1999, 113 Stat. 771; Pub. L. 111–84, div. A, title V, § 541(c), Oct. 28, 2009, 123 Stat. 2298; Pub. L. 113–66, div. A, title V, § 582(b), Dec. 26, 2013, 127 Stat. 776; Pub. L. 113–291, div. A, title X, § 1071(f)(15), Dec. 19, 2014, 128 Stat. 3510; Pub. L. 114–328, div. A, title IX, § 953(c), Dec. 23, 2016, 130 Stat. 2376.)

AMENDMENTS

2016—Par. (3)(B). Pub. L. 114–328 inserted ''to the extent practicable'' after ''are recovered''.

2014—Par. (1). Pub. L. 113–291 substituted ''subsection (c)'' for ''subsection (b)'' in concluding provisions.

2013—Par. (9). Pub. L. 113–66 added par. (9).

2009—Par. (1). Pub. L. 111–84 substituted ''subsection (a) of section 1509 of this title who is required by subsection (b) of such section'' for ''section 1509(b) of this title who is required by section 1509(a)(1) of this title'' in concluding provisions.

1999—Par. (1). Pub. L. 106–65 substituted ''who is required by section 1509(a)(1) of this title to be considered a missing person'' for '', under the circumstances specified in the last sentence of section 1509(a) of this title'' in concluding provisions.

1997—Par. (1). Pub. L. 105–85, § 599(a)(4), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''The term 'missing person' means a member of the armed forces on active duty who is in a missing status.''

Par. (8). Pub. L. 105–85, § 599(b)(2), added par. (8).

1996—Par. (1). Pub. L. 104–201, § 578(a)(4), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''The term 'missing person' means—

''(A) a member of the Armed Forces on active duty who is in a missing status; or

''(B) a civilian employee of the Department of Defense or an employee of a contractor of the Department of Defense who serves with or accompanies the Armed Forces in the field under orders and who is in a missing status.''

Par. (8). Pub. L. 104–201, § 578(b)(3), struck out par. (8) which read as follows: ''The term 'theater component commander' means, with respect to any of the combatant commands, an officer of any of the armed forces who (A) is commander of all forces of that armed force assigned to that combatant command, and (B) is directly subordinate to the commander of the combatant command.''

CHAPTER 77—POSTHUMOUS COMMISSIONS AND WARRANTS

Sec.
1521. Posthumous commissions.
1522. Posthumous warrants.
1523. Posthumous commissions and warrants: effect on pay and allowances.
1524. Posthumous commissions and warrants: determination of date of death.

AMENDMENTS

1966—Pub. L. 89–718, § 12(a)(2), Nov. 2, 1966, 80 Stat. 1117, added item 1524.

§ 1521. Posthumous commissions

(a) The President may issue, or have issued, an appropriate commission in the name of a member of the armed forces who, after September 8, 1939—

(1) was appointed to a commissioned grade but was unable to accept the appointment because of death;

(2) successfully completed the course at an officers' training school and was recommended for appointment to a commissioned grade by the commanding officer or officer in charge of the school but was unable to accept the appointment because of death; or

(3) was officially recommended for appointment or promotion to a commissioned grade

but was unable to accept the promotion or appointment because of death.

(b) A commission issued under subsection (a) shall issue as of the date of the appointment, recommendation, or official recommendation, as the case may be, and the member's name shall be carried on the records of the military or executive department concerned as if he had served in the grade, and branch if any, in which posthumously commissioned, from the date of the appointment, recommendation, or official recommendation to the date of his death.

(c) A commission issued under subsection (a) in connection with the promotion of a deceased member to a higher commissioned grade shall require certification by the Secretary concerned that, at the time of death of the member, the member was qualified for appointment to that higher grade.

(Aug. 10, 1956, ch. 1041, 70A Stat. 115; Pub. L. 106–398, §1 [[div. A], title V, §505], Oct. 30, 2000, 114 Stat. 1654, 1654A–102; Pub. L. 110–417, [div. A], title V, §502(a), Oct. 14, 2008, 122 Stat. 4433.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1521(a)	10:491a (words before semicolon). 10:491b (words before semicolon). 10:491c (words before semicolon). 34:285b (words before semicolon). 34:285c (words before semicolon). 34:285d (words before semicolon).	July 28, 1942, ch. 528, §§1–3, 56 Stat. 722, 723; July 17, 1953, ch. 220, §1(a)–(c), 67 Stat. 176.
1521(b)	10:491a (words after semicolon). 10:491b (words after semicolon). 10:491c (words after semicolon). 34:285b (words after semicolon). 34:285c (words after semicolon). 34:285d (words after semicolon).	

In subsection (a), the words ''a member of'' are substituted for the words ''any person who, while in'', in 10:491a, 491b, 491c, and 34:285b, 285c, and 285d. The words ''armed forces'' are substituted for the words ''military service of the United States'', in 10:491a, 491b, and 491c; and the words ''naval service of the United States'', in 34:285b, 285c, and 285d (which did not appear in the source statute for the revised section, as amended by the Act of July 17, 1953, ch. 220, §1(b), 67 Stat. 177). The words ''to such grade'', in 10:491a and 34:285b, ''receive or'', in 10:491c and 34:285d, are omitted as surplusage.

In subsection (b), the words ''if any'' are substituted for words ''of the service''. The words ''appointment and'', in 10:491b and 34:285c, and ''appointment or promotion and'', in 10:491c and 34:285d, are omitted as surplusage.

AMENDMENTS

2008—Subsec. (a). Pub. L. 110–417, §502(a)(1), struck out ''in line of duty'' after ''death'' in pars. (1) to (3).

Subsec. (c). Pub. L. 110–417, §502(a)(2), added subsec. (c).

2000—Subsec. (a)(3). Pub. L. 106–398, §1 [[div. A], title V, §505(a)], struck out ''and the recommendation for whose appointment or promotion was approved by the Secretary concerned'' after ''commissioned grade''.

Subsec. (b). Pub. L. 106–398, §1 [[div. A], title V, §505(b)], substituted ''official recommendation'' for ''approval'' in two places.

DETERMINATION OF DATE OF DEATH UNDER MISSING PERSONS ACT

Act July 28, 1942, ch. 528, §5, as added July 17, 1953, ch. 220, §1(e), 67 Stat. 177, provided that for purposes of this chapter, in any case where the date of death is established under the Missing Persons Act, as amended, the date of death is the date of receipt by the head of the department concerned of evidence that the person is dead, or the date the finding of death is made under section 5 of that Act, prior to repeal by Pub. L. 89–718, §12(b), Nov. 2, 1966, 80 Stat. 1117. See section 1524 of this title.

DELEGATION OF FUNCTIONS

For assignment of functions of President under subsec. (a) of this section, see sections 1(a) and 2(a) of Ex. Ord. No. 13358, Sept. 28, 2004, 69 F.R. 58797, set out as a note under section 301 of Title 3, The President.

§ 1522. Posthumous warrants

(a) The Secretary concerned may issue, or have issued, an appropriate warrant in the name of a member of the armed forces who, after September 8, 1939, was officially recommended for appointment or promotion to a grade other than a commissioned grade but was unable to accept the appointment or promotion because of death.

(b) A warrant issued under subsection (a) shall issue as of the date of the recommendation, and the member's name shall be carried on the records of the military or executive department concerned as if he had served in the grade to which posthumously appointed or promoted from the date of the recommendation to the date of his death.

(c) A warrant issued under subsection (a) in connection with the promotion of a deceased member to a higher grade shall require a finding by the Secretary concerned that, at the time of death of the member, the member was qualified for appointment to that higher grade.

(Aug. 10, 1956, ch. 1041, 70A Stat. 116; Pub. L. 110–417, [div. A], title V, §502(b), Oct. 14, 2008, 122 Stat. 4433.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1522(a)	10:612 (words before semicolon). 34:285e (words before semicolon).	July 28, 1942, ch. 528, §4, 56 Stat. 723; July 17, 1953, ch. 220, §1 (a)–(d), 67 Stat. 176.
1522(b)	10:612 (words after semicolon). 34:285e (words after semicolon).	

In subsection (a), the words ''a member of'' are substituted for the words ''any person who, while in'', in 10:612 and 34:285e. The words ''armed forces'' are substituted for the words ''the military service of the United States'', in 10:612; and ''the naval service of the United States'', in 34:285e (which did not appear in the source statute for the revised section, as amended by the act of July 17, 1953, ch. 220, §1(b), 67 Stat. 177). The words ''other than a commissioned grade'' are substituted for the words ''noncommissioned grade'' to make it clear that the revised section covers warrant officers. The words ''receive or'' are omitted as surplusage.

In subsection (b), the words ''appointment or promotion'', ''and branch of the service'', ''official'', and ''by such warrant'' are omitted as surplusage.

AMENDMENTS

2008—Subsec. (a). Pub. L. 110–417, §502(b)(1), struck out ''in line of duty'' before period at end.

Subsec. (c). Pub. L. 110–417, § 502(b)(2), added subsec. (c).

§ 1523. Posthumous commissions and warrants: effect on pay and allowances

No person is entitled to any bonus, gratuity, pay, or allowance because of a posthumous commission or warrant.

(Aug. 10, 1956, ch. 1041, 70A Stat. 116.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1523	10:491d. 34:285f.	July 28, 1942, ch. 528, § 6, 56 Stat. 723; July 17, 1953, ch. 220, § 1(e) (1st 7 words), 67 Stat. 177.

The word ''receive'' is omitted as surplusage. The words ''because of a posthumous commission or warrant'' are substituted for the words ''by virtue of any provision of sections 491a–491d [285b–285d] and 612 [285e] of this title'', in 10:491d and 34:285f.

§ 1524. Posthumous commissions and warrants: determination of date of death

For the purposes of sections 1521 and 1522 of this title, in any case where the date of death is established or determined under section 551–558 of title 37, the date of death is the date the Secretary concerned receives evidence that the person is dead, or the date the finding of death is made under section 555 of title 37.

(Added Pub. L. 89–718, § 12(a)(1), Nov. 2, 1966, 80 Stat. 1117.)

CHAPTER 79—CORRECTION OF MILITARY RECORDS

Sec.
1551. Correction of name after separation from service under an assumed name.
1552. Correction of military records: claims incident thereto.
1553. Review of discharge or dismissal.
1553a. Review of a request for upgrade of discharge or dismissal.
1554. Review of retirement or separation without pay for physical disability.
1554a. Review of separation with disability rating of 20 percent disabled or less.
1554b. Confidential review of characterization of terms of discharge of members of the armed forces who are victims of sex-related offenses.
1555. Professional staff.
1556. Ex parte communications prohibited.
1557. Timeliness standards for disposition of applications before Corrections Boards.
1558. Review of actions of selection boards: correction of military records by special boards; judicial review.
1559. Personnel limitation.

AMENDMENTS

2019—Pub. L. 116–92, div. A, title V, § 523(b)(1), Dec. 20, 2019, 133 Stat. 1354, added item 1553a.

2017—Pub. L. 115–91, div. A, title V, § 522(a)(2), Dec. 12, 2017, 131 Stat. 1380, added item 1554b.

2008—Pub. L. 110–181, div. A, title XVI, § 1643(a)(2), Jan. 28, 2008, 122 Stat. 467, added item 1554a.

2002—Pub. L. 107–314, div. A, title V, § 552(b), Dec. 2, 2002, 116 Stat. 2552, added item 1559.

2001—Pub. L. 107–107, div. A, title V, § 503(a)(2), Dec. 28, 2001, 115 Stat. 1083, added item 1558.

1998—Pub. L. 105–261, div. A, title V, §§ 542(a)(2), 543(a)(2), 544(b), Oct. 17, 1998, 112 Stat. 2020–2022, added items 1555 to 1557.

1962—Pub. L. 87–651, title I, § 110(b), Sept. 7, 1962, 76 Stat. 510, substituted ''discharge or dismissal'' for ''discharges or dismissals'' in item 1553, and ''retirement or separation without pay for physical disability'' for ''decisions of retiring boards and similar boards'' in item 1554.

1958—Pub. L. 85–857, § 13(v)(3), Sept. 2, 1958, 72 Stat. 1268, added items 1553 and 1554.

§ 1551. Correction of name after separation from service under an assumed name

The Secretary of the military department concerned shall issue a certificate of discharge or an order of acceptance of resignation in the true name of any person who was separated from the Army, Navy, Air Force, Marine Corps, or Space Force honorably or under honorable conditions after serving under an assumed name during a war with another nation or people, upon application by, or on behalf of, that person, and upon proof of his identity. However, a certificate or order may not be issued under this section if the name was assumed to conceal a crime or to avoid its consequences.

(Aug. 10, 1956, ch. 1041, 70A Stat. 116; Pub. L. 116–283, div. A, title IX, § 924(b)(3)(Y), Jan. 1, 2021, 134 Stat. 3821.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1551	5:200. 34:597.	Apr. 14, 1890, ch. 80; restated June 25, 1910, ch. 393, 36 Stat. 824. Aug. 22, 1912, ch. 329, 37 Stat. 324.

The word ''shall'' is substituted for the words ''is authorized and required''. The word ''separated'' is substituted for the word ''discharged'', since the revised section covers acceptances of resignations as well as certificates of discharge. The words ''enlisted or'' and ''while minors or otherwise'' are omitted as surplusage. The words ''the War of the Rebellion'' are omitted as obsolete. The word ''with'' is substituted for the words ''between the United States and''. The words ''honorably or under honorable conditions'' are substituted for the word ''honorably''.

AMENDMENTS

2021—Pub. L. 116–283 substituted ''Marine Corps, or Space Force'' for ''or Marine Corps''.

PERSONNEL FREEZE FOR SERVICE REVIEW AGENCIES

Pub. L. 105–261, div. A, title V, § 541, Oct. 17, 1998, 112 Stat. 2019, provided that, during fiscal years 1999, 2000, and 2001, the Secretary of a military department could not carry out any reduction in the number of military and civilian personnel assigned to duty with the service review agency for that military department below the baseline number for that agency until: (1) the Secretary had submitted to Congress a report that described the reduction to be made and the rationale for that reduction, and specified the number of such personnel that would be assigned to duty with that agency after the reduction; and (2) a period of 90 days had elapsed after the date on which such report had been submitted.

§ 1552. Correction of military records: claims incident thereto

(a)(1) The Secretary of a military department may correct any military record of the Secretary's department when the Secretary considers it necessary to correct an error or remove

an injustice. Except as provided in paragraph (2), such corrections shall be made by the Secretary acting through boards of civilians of the executive part of that military department. The Secretary of Homeland Security may in the same manner correct any military record of the Coast Guard.

(2) The Secretary concerned is not required to act through a board in the case of the correction of a military record announcing a decision that a person is not eligible to enlist (or reenlist) or is not accepted for enlistment (or reenlistment) or announcing the promotion and appointment of an enlisted member to an initial or higher grade or the decision not to promote an enlisted member to a higher grade. Such a correction may be made only if the correction is favorable to the person concerned.

(3)(A) Corrections under this section shall be made under procedures established by the Secretary concerned. In the case of the Secretary of a military department, those procedures must be approved by the Secretary of Defense.

(B) If a board makes a preliminary determination that a claim under this section lacks sufficient information or documents to support the claim, the board shall notify the claimant, in writing, indicating the specific information or documents necessary to make the claim complete and reviewable by the board.

(C) If a claimant is unable to provide military personnel or medical records applicable to a claim under this section, the board shall make reasonable efforts to obtain the records. A claimant shall provide the board with documentary evidence of the efforts of the claimant to obtain such records. The board shall inform the claimant of the results of the board's efforts, and shall provide the claimant copies of any records so obtained upon request of the claimant.

(D) Any request for reconsideration of a determination of a board under this section, no matter when filed, shall be reconsidered by a board under this section if supported by materials not previously presented to or considered by the board in making such determination.

(4)(A) Subject to subparagraph (B), a correction under this section is final and conclusive on all officers of the United States except when procured by fraud.

(B) If a board established under this section does not grant a request for an upgrade to the characterization of a discharge or dismissal, that declination may be considered under section 1553a of this title.

(5) Each final decision of a board under this subsection shall be made available to the public in electronic form on a centralized Internet website. In any decision so made available to the public there shall be redacted all personally identifiable information.

(b) No correction may be made under subsection (a)(1) unless the claimant (or the claimant's heir or legal representative) or the Secretary concerned files a request for the correction within three years after discovering the error or injustice. The Secretary concerned may file a request for correction of a military record only if the request is made on behalf of a group of members or former members of the armed forces who were similarly harmed by the same error or injustice. A board established under subsection (a)(1) may excuse a failure to file within three years after discovery if it finds it to be in the interest of justice.

(c)(1) The Secretary concerned may pay, from applicable current appropriations, a claim for the loss of pay, allowances, compensation, emoluments, or other pecuniary benefits, or for the repayment of a fine or forfeiture, if, as a result of correcting a record under this section, the amount is found to be due the claimant on account of his or another's service in the Army, Navy, Air Force, Marine Corps, Space Force, or Coast Guard, as the case may be, or on account of his or another's service as a civilian employee.

(2) If the claimant is dead, the money shall be paid, upon demand, to his legal representative. However, if no demand for payment is made by a legal representative, the money shall be paid—

(A) to the surviving spouse, heir, or beneficiaries, in the order prescribed by the law applicable to that kind of payment;

(B) if there is no such law covering order of payment, in the order set forth in section 2771 of this title; or

(C) as otherwise prescribed by the law applicable to that kind of payment.

(3) A claimant's acceptance of a settlement under this section fully satisfies the claim concerned. This section does not authorize the payment of any claim compensated by private law before October 25, 1951.

(4) If the correction of military records under this section involves setting aside a conviction by court-martial, the payment of a claim under this subsection in connection with the correction of the records shall include interest at a rate to be determined by the Secretary concerned, unless the Secretary determines that the payment of interest is inappropriate under the circumstances. If the payment of the claim is to include interest, the interest shall be calculated on an annual basis, and compounded, using the amount of the lost pay, allowances, compensation, emoluments, or other pecuniary benefits involved, and the amount of any fine or forfeiture paid, beginning from the date of the conviction through the date on which the payment is made.

(d) Applicable current appropriations are available to continue the pay, allowances, compensation, emoluments, and other pecuniary benefits of any person who was paid under subsection (c), and who, because of the correction of his military record, is entitled to those benefits, but for not longer than one year after the date when his record is corrected under this section if he is not reenlisted in, or appointed or reappointed to, the grade to which those payments relate. Without regard to qualifications for reenlistment, or appointment or reappointment, the Secretary concerned may reenlist a person in, or appoint or reappoint him to, the grade to which payments under this section relate.

(e) No payment may be made under this section for a benefit to which the claimant might later become entitled under the laws and regulations administered by the Secretary of Veterans Affairs.

(f) With respect to records of courts-martial and related administrative records pertaining to court-martial cases tried or reviewed under chapter 47 of this title (or under the Uniform Code of Military Justice (Public Law 506 of the 81st Congress)), action under subsection (a) may extend only to—

(1) correction of a record to reflect actions taken by reviewing authorities under chapter 47 of this title (or under the Uniform Code of Military Justice (Public Law 506 of the 81st Congress)); or

(2) action on the sentence of a court-martial for purposes of clemency.

(g)(1) Any medical advisory opinion issued to a board established under subsection (a)(1) with respect to a member or former member of the armed forces who was diagnosed while serving in the armed forces as experiencing a mental health disorder shall include the opinion of a clinical psychologist or psychiatrist if the request for correction of records concerned relates to a mental health disorder.

(2) If a board established under subsection (a)(1) is reviewing a claim described in subsection (h), the board shall seek advice and counsel in the review from a psychiatrist, psychologist, or social worker with training on mental health issues associated with post-traumatic stress disorder or traumatic brain injury or other trauma as specified in the current edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association.

(3) If a board established under subsection (a)(1) is reviewing a claim in which sexual trauma, intimate partner violence, or spousal abuse is claimed, the board shall seek advice and counsel in the review from an expert in trauma specific to sexual assault, intimate partner violence, or spousal abuse, as applicable.

(h)(1) This subsection applies to a former member of the armed forces whose claim under this section for review of a discharge or dismissal is based in whole or in part on matters relating to post-traumatic stress disorder or traumatic brain injury as supporting rationale, or as justification for priority consideration, and whose post-traumatic stress disorder or traumatic brain injury is related to combat or military sexual trauma, as determined by the Secretary concerned.

(2) In the case of a claimant described in paragraph (1), a board established under subsection (a)(1) shall—

(A) review medical evidence of the Secretary of Veterans Affairs or a civilian health care provider that is presented by the claimant; and

(B) review the claim with liberal consideration to the claimant that post-traumatic stress disorder or traumatic brain injury potentially contributed to the circumstances resulting in the discharge or dismissal or to the original characterization of the claimant's discharge or dismissal.

(i) Each board established under this section shall make available to the public each calendar quarter, on an Internet website of the military department concerned or the Department of Homeland Security, as applicable, that is available to the public the following:

(1) The number of claims considered by such board during the calendar quarter preceding the calendar quarter in which such information is made available, including cases in which a mental health condition of the former member, including post-traumatic stress disorder or traumatic brain injury, is alleged to have contributed, whether in whole or part, to the original characterization of the discharge or release of the former member.

(2) The number of claims submitted during the calendar quarter preceding the calendar quarter in which such information is made available that relate to service by a former member during a war or contingency operation, catalogued by each war or contingency operation.

(3) The number of military records corrected pursuant to the consideration described in paragraph (1) to upgrade the characterization of discharge or release of former members.

(4) The number and disposition of claims decided during the calendar quarter preceding the calendar quarter in which such information is made available in which sexual assault is alleged to have contributed, whether in whole or in part, to the original characterization of the discharge or release of the former member.

(j) In this section, the term ''military record'' means a document or other record that pertains to (1) an individual member or former member of the armed forces, or (2) at the discretion of the Secretary of the military department concerned, any other military matter affecting a member or former member of the armed forces, an employee or former employee of that military department, or a dependent or current or former spouse of any such person. Such term does not include records pertaining to civilian employment matters (such as matters covered by title 5 and chapters 81, 83, 87, 108, 747, 855, 857, 871, and 947 of this title).

(Aug. 10, 1956, ch. 1041, 70A Stat. 116; Pub. L. 86–533, § 1(4), June 29, 1960, 74 Stat. 246; Pub. L. 96–513, title V, § 511(60), Dec. 12, 1980, 94 Stat. 2925; Pub. L. 98–209, § 11(a), Dec. 6, 1983, 97 Stat. 1407; Pub. L. 100–456, div. A, title XII, § 1233(a), Sept. 29, 1988, 102 Stat. 2057; Pub. L. 101–189, div. A, title V, § 514, title XVI, § 1621(a)(2), Nov. 29, 1989, 103 Stat. 1441, 1603; Pub. L. 102–484, div. A, title X, § 1052(19), Oct. 23, 1992, 106 Stat. 2500; Pub. L. 105–261, div. A, title V, § 545(a), (b), Oct. 17, 1998, 112 Stat. 2022; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 110–417, [div. A], title V, § 592(a), (b), Oct. 14, 2008, 122 Stat. 4474, 4475; Pub. L. 113–291, div. A, title V, § 521(a), Dec. 19, 2014, 128 Stat. 3360; Pub. L. 114–92, div. A, title V, § 521, Nov. 25, 2015, 129 Stat. 811; Pub. L. 114–328, div. A, title V, §§ 533(a), 534(a), (b), Dec. 23, 2016, 130 Stat. 2121, 2122; Pub. L. 115–91, div. A, title V, §§ 520(a), 521(a), (c)(1), title X, § 1081(a)(27), Dec. 12, 2017, 131 Stat. 1379, 1380, 1595; Pub. L. 115–232, div. A, title VIII, § 809(a), Aug. 13, 2018, 132 Stat. 1840; Pub. L. 116–92, div. A, title V, §§ 521(a), 523(b)(2)(A), Dec. 20, 2019, 133 Stat. 1353, 1354; Pub. L. 116–283, div. A, title IX, § 924(b)(2)(A)(vi), Jan. 1, 2021, 134 Stat. 3821.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
1552(a)	5:191a(a) (less 2d and last provisos). 5:275(a) (less 2d and last provisos).	Aug. 2, 1946, ch. 753, § 207; restated Oct. 25, 1951, ch. 588, 65 Stat. 655.
1552(b)	5:191a(a) (2d and last provisos). 5:275(a) (2d and last provisos).	
1552(c)	5:191a(b), (c). 5:275(b), (c).	
1552(d)	5:191a(d). 5:275(d).	
1552(e)	5:191a(f). 5:275(f).	
1552(f)	5:191a(e). 5:275(e).	

In subsection (a), the words ''and approved by the Secretary of Defense'' are substituted for 5:191a(a) (1st proviso). The words ''when he considers it'' are substituted for the words ''where in their judgment such action is'', in 5:191a and 275. The words ''officers or employees'' and ''means of'', in 5:191a and 275, are omitted as surplusage. The word ''naval'', in 5:191a and 275, is omitted as covered by the word ''military''.

In subsection (b), the words ''before October 26, 1961'' are substituted for the words ''or within ten years after the date of enactment of this section'', in 5:191a and 275. The last sentence of the revised subsection is substituted for 5:191a(a) (last proviso) and 275(a) (last proviso).

In subsection (c), the words ''if, as a result of correcting a record under this section * * * the amount is found to be due the claimant on account of his or another's service in the Army, Navy, Air Force, Marine Corps, or Coast Guard, as the case may be'' are substituted for the words ''which are found to be due on account of military or naval service as a result of the action * * * hereafter taken pursuant to subsection (a) of this section'', in 5:191a and 275. The words ''heretofore taken pursuant to this section'', in 5:191a and 275, are omitted as executed. The words ''of any persons, their heirs at law or legal representative as hereinafter provided'', ''(including retired or retirement pay)'', ''as the case may be'', ''duly appointed'', ''otherwise due hereunder'', ''decedent's'', ''precedence or succession'', and ''of precedence'', in 5:191a and 275, are omitted as surplusage. The last sentence is substituted for 5:191a(c) and 275(c).

In subsection (d), the word ''but'' is substituted for the words ''That, continuing payments are authorized to be made to such personnel'', in 5:191a and 275. The words ''if he is not reenlisted in, or appointed or reappointed to, the grade to which those payments relate'' are substituted for the words ''without the necessity for reenlistment, appointment, or reappointment to the grade, rank, or office to which such pay (including retired or retirement pay), allowances, compensation, emoluments, and other monetary benefits are attached'', in 5:191a and 275. The words ''or one year following the date of enactment of this section'', in 5:191a and 275, are omitted as executed. The words ''for payment of such sums as may be due for'', in 5:191a and 275, are omitted as surplusage. The words ''(including retired or retirement pay)'', in 5:191a and 275, are omitted as covered by the definition of ''pay'' in section 101(27) of this title.

In subsection (e), the words ''No payment may be made under this section'' are substituted for the words ''Nothing in this section shall be construed to authorize the payment of any amount as compensation'', in 5:191a and 275.

REFERENCES IN TEXT

The Uniform Code of Military Justice (Public Law 506 of the 81st Congress), referred to in subsec. (f), is act May 5, 1950, ch. 169, § 1, 64 Stat. 107, which was classified to chapter 22 (§ 551 et seq.) of Title 50, War and National Defense, and was repealed and reenacted as chapter 47 (§ 801 et seq.) of this title by act Aug. 10, 1956, ch. 1041, § 53, 70A Stat. 641, the first section of which enacted this title.

AMENDMENTS

2021—Subsec. (c)(1). Pub. L. 116–283 substituted ''Marine Corps, Space Force,'' for ''Marine Corps,''.

2019—Subsec. (a)(4). Pub. L. 116–92, § 523(b)(2)(A), amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''Except when procured by fraud, a correction under this section is final and conclusive on all officers of the United States.''

Subsec. (g). Pub. L. 116–92, § 521(a), designated existing provisions as par. (1) and added pars. (2) and (3).

2018—Subsec. (j). Pub. L. 115–232 substituted ''chapters 81, 83, 87, 108, 747, 855, 857, 871, and 947'' for ''chapters 81, 83, 87, 108, 373, 605, 607, 643, and 873''.

2017—Subsec. (h). Pub. L. 115–91, § 520(a)(2), added subsec. (h). Former subsec. (h) redesignated (i).

Subsec. (i). Pub. L. 115–91, § 1081(a)(27), substituted ''calendar'' for ''calender'' wherever appearing.

Pub. L. 115–91, § 520(a)(1), redesignated subsec. (h) as (i). Former subsec. (i) redesignated (j).

Subsec. (i)(1). Pub. L. 115–91, § 521(c)(1)(A), substituted ''former member'' for ''claimant'' in two places.

Subsec. (i)(2). Pub. L. 115–91, § 521(c)(1)(B), substituted ''former member'' for ''claimant''.

Subsec. (i)(3). Pub. L. 115–91, § 521(c)(1)(C), substituted ''former members'' for ''claimants''.

Subsec. (i)(4). Pub. L. 115–91, § 521(a), added par. (4).

Subsec. (j). Pub. L. 115–91, § 520(a)(1), redesignated subsec. (i) as (j).

2016—Subsec. (a)(3). Pub. L. 114–328, § 534(a), designated existing provisions as subpar. (A) and added subpars. (B) to (D).

Subsec. (a)(5). Pub. L. 114–328, § 534(b), added par. (5).

Subsecs. (h), (i). Pub. L. 114–328, § 533(a), added subsec. (h) and redesignated former subsec. (h) as (i).

2015—Subsec. (b). Pub. L. 114–92 substituted ''(or the claimant's heir or legal representative) or the Secretary concerned'' for ''or his heir or legal representative'', ''discovering'' for ''he discovers'', and ''The Secretary concerned may file a request for correction of a military record only if the request is made on behalf of a group of members or former members of the armed forces who were similarly harmed by the same error or injustice. A board'' for ''However, a board''.

2014—Subsecs. (g), (h). Pub. L. 113–291 added subsec. (g) and redesignated former subsec. (g) as (h).

2008—Subsec. (c). Pub. L. 110–417 designated existing provisions as pars. (1) to (3), redesignated former pars. (1) to (3) as subpars. (A) to (C), respectively, of par. (2), and added par. (4).

2002—Subsec. (a)(1). Pub. L. 107–296 substituted ''Secretary of Homeland Security'' for ''Secretary of Transportation''.

1998—Subsec. (c). Pub. L. 105–261, § 545(a), inserted '', or on account of his or another's service as a civilian employee'' before period at end of first sentence.

Subsec. (g). Pub. L. 105–261, § 545(b), added subsec. (g).

1992—Subsec. (a)(2). Pub. L. 102–484 substituted ''announcing the promotion and appointment of an enlisted member to an initial or higher grade or the decision not to promote an enlisted member to a higher grade'' for ''announcing a decision not to promote an enlisted member to a higher grade''.

1989—Subsec. (a). Pub. L. 101–189, § 514(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''The Secretary of a military department, under procedures established by him and approved by the Secretary of Defense, and acting through boards of civilians of the executive part of that military department, may correct any military record of that department when he considers it necessary to correct an error or remove an injustice. Under procedures prescribed by him, the Secretary of Transportation may in the same manner correct any military record of the Coast Guard. Except when procured by fraud, a correction under this section is final and conclusive on all officers of the United States.''

Subsec. (b). Pub. L. 101–189, § 514(b), substituted ''subsection (a)(1)'' for ''subsection (a)'' in two places.

Subsec. (e). Pub. L. 101–189, § 1621(a)(2), substituted ''Secretary of Veterans Affairs'' for ''Administrator of Veterans' Affairs''.

1988—Subsec. (b). Pub. L. 100–456, § 1233(a)(1), substituted ''for the correction within three years after he discovers the error or injustice'' for ''therefor before October 26, 1961, or within three years after he discovers the error or injustice, whichever is later''.

Subsec. (c). Pub. L. 100–456, § 1233(a)(2), substituted ''The Secretary concerned'' for ''The department concerned''.

1983—Subsec. (f). Pub. L. 98–209 added subsec. (f).

1980—Subsec. (a). Pub. L. 96–513 substituted ''Secretary of Transportation'' for ''Secretary of the Treasury''.

1960—Subsec. (f). Pub. L. 86–533 repealed subsec. (f) which required reports to the Congress every six months with respect to claims paid under this section.

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115–232 effective Feb. 1, 2019, with provision for the coordination of amendments and special rule for certain redesignations, see section 800 of Pub. L. 115–232, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–417, [div. A], title V, § 592(c), Oct. 14, 2008, 122 Stat. 4475, provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to any sentence of a court-martial set aside by a Corrections Board on or after October 1, 2007, when the Corrections Board includes an order or recommendation for the payment of a claim for the loss of pay, allowances, compensation, emoluments, or other pecuniary benefits, or for the repayment of a fine or forfeiture, that arose as a result of the conviction. In this subsection, the term 'Corrections Board' has the meaning given that term in section 1557 of title 10, United States Code.''

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

REMOVAL OF PERSONALLY IDENTIFYING AND OTHER INFORMATION OF CERTAIN PERSONS FROM INVESTIGATIVE REPORTS, THE DEPARTMENT OF DEFENSE CENTRAL INDEX OF INVESTIGATIONS, AND OTHER RECORDS AND DATABASES

Pub. L. 116–283, div. A, title V, § 545, Jan. 1, 2021, 134 Stat. 3613, provided that:

''(a) POLICY AND PROCESS REQUIRED.—Not later than October 1, 2021, the Secretary of Defense shall establish and maintain a policy and process through which any covered person may request that the person's name, personally identifying information, and other information pertaining to the person shall, in accordance with subsection (c), be corrected in, or expunged or otherwise removed from, the following:

''(1) A law enforcement or criminal investigative report of the Department of Defense or any component of the Department.

''(2) An index item or entry in the Department of Defense Central Index of Investigations (DCII).

''(3) Any other record maintained in connection with a report described in paragraph (1), or an index item or entry described in paragraph (2), in any system of records, records database, records center, or repository maintained by or on behalf of the Department.

''(b) COVERED PERSONS.—For purposes of this section, a covered person is any person whose name was placed or reported, or is maintained—

''(1) in the subject or title block of a law enforcement or criminal investigative report of the Department of Defense (or any component of the Department);

''(2) as an item or entry in the Department of Defense Central Index of Investigations; or

''(3) in any other record maintained in connection with a report described in paragraph (1), or an index item or entry described in paragraph (2), in any system of records, records database, records center, or repository maintained by or on behalf of the Department.

''(c) ELEMENTS.—The policy and process required by subsection (a) shall include the following elements:

''(1) BASIS FOR CORRECTION OR EXPUNGEMENT.—That the name, personally identifying information, and other information of a covered person shall be corrected in, or expunged or otherwise removed from, a report, item or entry, or record described in paragraphs (1) through (3) of subsection (a) in the following circumstances:

''(A) Probable cause did not or does not exist to believe that the offense for which the person's name was placed or reported, or is maintained, in such report, item or entry, or record occurred, or insufficient evidence existed or exists to determine whether or not such offense occurred.

''(B) Probable cause did not or does not exist to believe that the person actually committed the offense for which the person's name was so placed or reported, or is so maintained, or insufficient evidence existed or exists to determine whether or not the person actually committed such offense.

''(C) Such other circumstances, or on such other bases, as the Secretary may specify in establishing the policy and process, which circumstances and bases may not be inconsistent with the circumstances and bases provided by subparagraphs (A) and (B).

''(2) CONSIDERATIONS.—While not dispositive as to the existence of a circumstance or basis set forth in paragraph (1), the following shall be considered in the determination whether such circumstance or basis applies to a covered person for purposes of this section:

''(A) The extent or lack of corroborating evidence against the covered person concerned with respect to the offense at issue.

''(B) Whether adverse administrative, disciplinary, judicial, or other such action was initiated against the covered person for the offense at issue.

''(C) The type, nature, and outcome of any action described in subparagraph (B) against the covered person.

''(3) PROCEDURES.—The policy and process required by subsection (a) shall include procedures as follows:

''(A) Procedures under which a covered person may appeal a determination of the applicable component of the Department of Defense denying, whether in whole or in part, a request for purposes of subsection (a).

''(B) Procedures under which the applicable component of the Department will correct, expunge or remove, take other appropriate action on, or assist a covered person in so doing, any record maintained by a person, organization, or entity outside of the Department to which such component provided, submitted, or transmitted information about the covered person, which information has or will be corrected in, or expunged or removed from, Department records pursuant to this section.

''(C) The timeline pursuant to which the Department, or a component of the Department, as applicable, will respond to each of the following:

''(i) A request pursuant to subsection (a).

''(ii) An appeal under the procedures required by subparagraph (A).

''(iii) A request for assistance under the procedures required by subparagraph (B).

''(D) Mechanisms through which the Department will keep a covered person apprised of the progress of the Department on a covered person's request or appeal as described in subparagraph (C).

''(d) APPLICABILITY.—The policy and process required to be developed by the Secretary under subsection (a) shall not be subject to the notice and comment rulemaking requirements under section 553 of title 5, United States Code.

''(e) REPORT.—Not later than October 1, 2021, the Secretary shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the actions taken to carry out this section, including a comprehensive description of the policy and process developed and implemented by the Secretary under subsection (a).''

CORRECTION OF CERTAIN DISCHARGE CHARACTERIZATIONS

Pub. L. 116–92, div. A, title V, § 527, Dec. 20, 2019, 133 Stat. 1356, provided that:

''(a) IN GENERAL.—In accordance with this section, and in a manner that is consistent across the military departments to the greatest extent practicable, the appropriate board shall, at the request of a covered member or the authorized representative of a covered member—

''(1) review the discharge characterization of that covered member; and

''(2) change the discharge characterization of that covered member to honorable if the appropriate board determines such change to be appropriate after review under paragraph (1).

''(b) APPEAL.—A covered member or the authorized representative of that covered member may seek review of a decision by the appropriate board not to change the discharge characterization of that covered member. Such review may be made pursuant to section 1552 of title 10, United States Code, section 1553 of such title, or any other process established by the Secretary of Defense for such purpose.

''(c) CHANGE OF RECORDS.—For each covered member whose discharge characterization is changed under subsection (a) or (b), the Secretary of the military department concerned shall issue to the covered member or the authorized representative of the covered member a corrected Certificate of Release or Discharge from Active Duty (DD Form 214), or other like form regularly used by an Armed Force that—

''(1) reflects the upgraded discharge characterization of the covered member; and

''(2) does not reflect the sexual orientation of the covered member or the original stated reason for the discharge or dismissal of that covered member.

''(d) DEFINITIONS.—In this section:

''(1) The term 'appropriate board' means a board for the correction of military or naval records under section 1552 of title 10, United States Code, or a discharge review board under section 1553 of such title, as the case may be.

''(2) The term 'authorized representative' means an heir or legal representative of a covered member.

''(3) The term 'covered member' means any former member of the Armed Forces who was discharged from the Armed Forces because of the sexual orientation of that member.

''(4) The term 'discharge characterization' means the characterization assigned to the service of a covered member on the discharge or dismissal of that covered member from service in the Armed Forces.''

PILOT PROGRAM ON USE OF VIDEO TELECONFERENCING TECHNOLOGY BY BOARDS FOR THE CORRECTION OF MILITARY RECORDS AND DISCHARGE REVIEW BOARDS

Pub. L. 115–91, div. A, title V, § 524, Dec. 12, 2017, 131 Stat. 1381, provided that Secretary of Defense may carry out pilot program on use of video teleconferencing technology by certain boards for correction of military records and certain discharge review boards and terminated authority for carrying out program on Dec. 31, 2020.

TRAINING OF MEMBERS OF BOARDS

Pub. L. 116–92, div. A, title V, § 525(a), Dec. 20, 2019, 133 Stat. 1356, provided that: ''The curriculum of training for members of boards for the correction of military records under section 534(c) of the National Defense Authorization Act for Fiscal Year 2017 [Pub. L. 114–328] (10 U.S.C. 1552 note) shall include training on each of the following:

''(1) Sexual trauma.

''(2) Intimate partner violence.

''(3) Spousal abuse.

''(4) The various responses of individuals to trauma.''

Pub. L. 114–328, div. A, title V, § 534(c), Dec. 23, 2016, 130 Stat. 2122, as amended by Pub. L. 115–91, div. A, title V, § 523(a), Dec. 12, 2017, 131 Stat. 1381, provided that:

''(1) IN GENERAL.—Not later than one year after the date of the enactment of this Act [Dec. 23, 2016], each Secretary concerned shall develop and implement a comprehensive training curriculum for members of boards for the correction of military records under the jurisdiction of such Secretary in the duties of such boards under section 1552 of title 10, United States Code. The curriculum shall address all areas of administrative law applicable to the duties of such boards. This curriculum shall also address the proper handling of claims in which a sex-related offense is alleged to have contributed to the original characterization of the discharge or release of the claimant, including guidelines for the consideration of evidence substantiating such allegations in accordance with the requirements of section 1554b(b) of title 10, United States Code, as added by section 522 of the National Defense Authorization Act for Fiscal Year 2018 [Pub. L. 115–91].

''(2) UNIFORM CURRICULA.—The Secretary of Defense and the Secretary of Homeland Security shall jointly ensure that the curricula developed and implemented pursuant to this subsection are, to the extent practicable, uniform.

''(3) TRAINING.—

''(A) IN GENERAL.—Each member of a board for the correction of military records shall undergo retraining (consistent with the curriculum developed and implemented pursuant to this subsection) regarding the duties of boards for the correction of military records under section 1552 of title 10, United States Code, at least once every five years during the member's tenure on the board.

''(B) CURRENT MEMBERS.—Each member of a board for the correction of military records as of the date of the implementation of the curriculum required by paragraph (1) (in this paragraph referred to as the 'curriculum implementation date') shall undergo training described in subparagraph (A) not later than 90 days after the curriculum implementation date.

''(C) NEW MEMBERS.—Each individual who becomes a member of a board for the correction of military records after the curriculum implementation date shall undergo training described in subparagraph (A) by not later than 90 days after the date on which such individual becomes a member of the board.

''(4) REPORTS.—Not later than 18 months after the date of the enactment of this Act [Dec. 23, 2016], each Secretary concerned shall submit to Congress a report setting forth the following:

''(A) A description and assessment of the progress made by such Secretary in implementing training requirements for members of boards for the correction of military records under the jurisdiction of such Secretary.

''(B) A detailed description of the training curriculum required of such Secretary by paragraph (1).

''(C) A description and assessment of any impediments to the implementation of training requirements for members of boards for the correction of

military records under the jurisdiction of such Secretary.

''(5) SECRETARY CONCERNED DEFINED.—In this subsection, the term 'Secretary concerned' means a 'Secretary concerned' as that term is used in section 1552 of title 10, United States Code.''

BOARD FOR CORRECTION OF MILITARY RECORDS

Pub. L. 101–225, title II, §212, Dec. 12, 1989, 103 Stat. 1914, provided that: ''Not later than 6 months after the date of the enactment of this Act [Dec. 12, 1989], the Secretary of Transportation shall—

''(1) amend part 52 of title 33, Code of Federal Regulations, governing the proceedings of the board established by the Secretary under section 1552 of title 10, United States Code, to ensure that a complete application for correction of military records is processed expeditiously and that final action on the application is taken within 10 months of its receipt; and

''(2) appoint and maintain a permanent staff, and a panel of civilian officers or employees to serve as members of the board, which are adequate to ensure compliance with paragraph (1) of this subsection.''

§ 1553. Review of discharge or dismissal

(a) The Secretary concerned shall, after consulting the Secretary of Veterans Affairs, establish a board of review, consisting of not fewer than three members, to review the discharge or dismissal (other than a discharge or dismissal by sentence of a general court-martial) of any former member of an armed force under the jurisdiction of his department upon its own motion or upon the request of the former member or, if he is dead, his surviving spouse, next of kin, or legal representative. A motion or request for review must be made within 15 years after the date of the discharge or dismissal. With respect to a discharge or dismissal adjudged by a court-martial case tried or reviewed under chapter 47 of this title (or under the Uniform Code of Military Justice (Public Law 506 of the 81st Congress)), action under this subsection may extend only to a change in the discharge or dismissal or issuance of a new discharge for purposes of clemency.

(b)(1) A board established under this section may, subject to review by the Secretary concerned, change a discharge or dismissal, or issue a new discharge, to reflect its findings.

(2) If a board established under this section does not grant a request for an upgrade to the characterization of a discharge or dismissal, that declination may be considered under section 1552 or section 1553a of this title, as applicable.

(c) A review by a board established under this section shall be based on the records of the armed forces concerned and such other evidence as may be presented to the board. A witness may present evidence to the board in person or by affidavit. A person who requests a review under this section may appear before the board in person or by counsel or an accredited representative of an organization recognized by the Secretary of Veterans Affairs under chapter 59 of title 38.

(d)(1)(A) In the case of a former member of the armed forces who, while serving on active duty as a member of the armed forces, was deployed in support of a contingency operation and who, at any time after such deployment, was diagnosed by a physician, clinical psychologist, or psychiatrist as experiencing post-traumatic stress disorder or traumatic brain injury as a consequence of that deployment, a board established under this section to review the former member's discharge or dismissal shall include a member who is a clinical psychologist or psychiatrist, or a physician with training on mental health issues connected with post traumatic stress disorder or traumatic brain injury (as applicable).

(B) In the case of a former member described in paragraph (3)(B) who claims that the former member's post-traumatic stress disorder or traumatic brain injury as described in that paragraph is based in whole or in part on sexual trauma, intimate partner violence, or spousal abuse, a board established under this section to review the former member's discharge or dismissal shall seek advice and counsel in the review from a psychiatrist, psychologist, or social worker with training on mental health issues associated with post-traumatic stress disorder or traumatic brain injury or other trauma as specified in the current edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association.

(2) In the case of a former member described in paragraph (1) or a former member whose application for relief is based in whole or in part on matters relating to post-traumatic stress disorder or traumatic brain injury as supporting rationale or as justification for priority consideration, the Secretary concerned shall expedite a final decision and shall accord such cases sufficient priority to achieve an expedited resolution. In determining the priority of cases, the Secretary concerned shall weigh the medical and humanitarian circumstances of all cases and accord higher priority to cases not involving post-traumatic stress disorder or traumatic brain injury only when the individual cases are considered more compelling.

(3)(A) In addition to the requirements of paragraphs (1) and (2), in the case of a former member described in subparagraph (B), the Board shall—

(i) review medical evidence of the Secretary of Veterans Affairs or a civilian health care provider that is presented by the former member; and

(ii) review the case with liberal consideration to the former member that post-traumatic stress disorder or traumatic brain injury potentially contributed to the circumstances resulting in the discharge or dismissal or to the original characterization of the member's discharge or dismissal.

(B) A former member described in this subparagraph is a former member described in paragraph (1) or a former member whose application for relief is based in whole or in part on matters relating to post-traumatic stress disorder or traumatic brain injury as supporting rationale, or as justification for priority consideration, whose post-traumatic stress disorder or traumatic brain injury is related to combat or military sexual trauma, as determined by the Secretary concerned.

(e) In the case of a former member of the armed forces (other than a former member covered by subsection (d)) who was diagnosed while

serving in the armed forces as experiencing a mental health disorder, a board established under this section to review the former member's discharge or dismissal shall include a member who is a clinical psychologist or psychiatrist, or a physician with special training on mental health disorders.

(f) Each board established under this section shall make available to the public each calendar quarter, on an Internet website of the military department concerned or the Department of Homeland Security, as applicable, that is available to the public the following:

(1) The number of motions or requests for review considered by such board during the calendar quarter preceding the calendar quarter in which such information is made available, including cases in which a mental health condition of the former member, including post-traumatic stress disorder or traumatic brain injury, is alleged to have contributed, whether in whole or part, to the original characterization of the discharge or dismissal of the former member.

(2) The number of claims submitted during the calendar quarter preceding the calendar quarter in which such information is made available that relate to service by a former member during a war or contingency operation, catalogued by each war or contingency operation.

(3) The number of discharges or dismissals corrected pursuant to the consideration described in paragraph (1) to upgrade the characterization of discharge or dismissal of former members.

(4) The number and disposition of claims decided during the calendar quarter preceding the calendar quarter in which such information is made available in which sexual assault is alleged to have contributed, whether in whole or in part, to the original characterization of the discharge or release of the former member.

(Added Pub. L. 85–857, §13(v)(2), Sept. 2, 1958, 72 Stat. 1266; amended Pub. L. 87–651, title I, §110(a), Sept. 7, 1962, 76 Stat. 509; Pub. L. 98–209, §11(b), Dec. 6, 1983, 97 Stat. 1407; Pub. L. 101–189, div. A, title XVI, §1621(a)(2), Nov. 29, 1989, 103 Stat. 1603; Pub. L. 111–84, div. A, title V, §512(b), Oct. 28, 2009, 123 Stat. 2281; Pub. L. 113–291, div. A, title V, §521(b), Dec. 19, 2014, 128 Stat. 3360; Pub. L. 114–328, div. A, title V, §§533(b), 535, Dec. 23, 2016, 130 Stat. 2121, 2123; Pub. L. 115–91, div. A, title V, §§520(b), 521(b), (c)(2), title X, §1081(a)(28), Dec. 12, 2017, 131 Stat. 1379, 1380, 1595; Pub. L. 116–92, div. A, title V, §§521(b), 522, 523(b)(2)(B), Dec. 20, 2019, 133 Stat. 1353, 1354; Pub. L. 116–283, div. A, title X, §1081(a)(28), Jan. 1, 2021, 134 Stat. 3872.)

Historical and Revision Notes

Sections 1553 and 1554 are restated, without substantive change, to conform to the style adopted for title 10.

References in Text

The Uniform Code of Military Justice (Public Law 506 of the 81st Congress), referred to in subsec. (a), is act May 5, 1950, ch. 169, §1, 64 Stat. 107, which was classified to chapter 22 (§551 et seq.) of Title 50, War and National Defense, and was repealed and reenacted as chapter 47 (§801 et seq.) of this title by act Aug. 10, 1956, ch. 1041, §53, 70A Stat. 641, the first section of which enacted this title.

Amendments

2021—Subsec. (d)(1)(B). Pub. L. 116–283 substituted ''is based'' for ''in based''.

2019—Subsec. (a). Pub. L. 116–92, §522, substituted ''not fewer than three'' for ''five''.

Subsec. (b). Pub. L. 116–92, §523(b)(2)(B), designated existing provisions as par. (1) and added par. (2).

Subsec. (d)(1). Pub. L. 116–92, §521(b), designated existing provisions as subpar. (A) and added subpar. (B).

2017—Subsec. (d)(3)(A)(ii). Pub. L. 115–91, §520(b), substituted ''discharge or dismissal or to the original characterization of the member's discharge or dismissal'' for ''discharge of a lesser characterization''.

Subsec. (f). Pub. L. 115–91, §1081(a)(28), substituted ''calendar'' for ''calender'' wherever appearing.

Subsec. (f)(2). Pub. L. 115–91, §521(c)(2), substituted ''former member'' for ''claimant''.

Subsec. (f)(4). Pub. L. 115–91, §521(b), added par. (4).

2016—Subsec. (d)(3). Pub. L. 114–328, §535, added par. (3).

Subsec. (f). Pub. L. 114–328, §533(b), added subsec. (f).

2014—Subsec. (d)(1). Pub. L. 113–291, §521(b)(1), substituted ''clinical psychologist or psychiatrist, or a physician with training on mental health issues connected with post traumatic stress disorder or traumatic brain injury (as applicable)'' for ''physician, clinical psychologist, or psychiatrist'' before period at end.

Subsec. (e). Pub. L. 113–291, §521(b)(2), added subsec. (e).

2009—Subsec. (d). Pub. L. 111–84 added subsec. (d).

1989—Subsecs. (a), (c). Pub. L. 101–189 substituted ''Secretary of Veterans Affairs'' for ''Administrator of Veterans' Affairs''.

1983—Subsec. (a). Pub. L. 98–209 inserted provision that with respect to a discharge or dismissal adjudged by a court-martial case tried or reviewed under chapter 47 of this title (or under the Uniform Code of Military Justice (Public Law 506 of the 81st Congress)), action under this subsection may extend only to a change in the discharge or dismissal or issuance of a new discharge for purposes of clemency.

1962—Pub. L. 87–651 amended section generally without substantive change to conform to the style adopted for the revision of this title.

Effective Date

Section effective Jan. 1, 1959, see section 2 of Pub. L. 85–857, set out as a note preceding Part I of Title 38, Veterans' Benefits.

Discharge Review Boards

Pub. L. 116–92, div. A, title V, §525(b), Dec. 20, 2019, 133 Stat. 1356, provided that:

''(1) In general.—Each Secretary concerned shall develop and provide training for members of discharge review boards under section 1553 of title 10, United States Code, that are under the jurisdiction of such Secretary on each of the following:

''(A) Sexual trauma.

''(B) Intimate partner violence.

''(C) Spousal abuse.

''(D) The various responses of individuals to trauma.

''(2) Uniformity of training.—The Secretary of Defense and the Secretary of Homeland Security shall jointly ensure that the training developed and provided pursuant to this subsection is, to the extent practicable, uniform.

''(3) Secretary concerned defined.—In this subsection, the term 'Secretary concerned' has the mean-

ing given that term in section 101(a)(9) of title 10, United States Code.''

CONFIDENTIAL REVIEW OF CHARACTERIZATION OF TERMS OF DISCHARGE OF MEMBERS OF THE ARMED FORCES WHO ARE VICTIMS OF SEXUAL OFFENSES

Pub. L. 113–291, div. A, title V, § 547, Dec. 19, 2014, 128 Stat. 3375, which related to review process for correction of military records, consideration of individual experiences in connection with offenses, and preservation of confidentiality, was repealed by Pub. L. 115–91, div. A, title V, § 522(a)(3), Dec. 12, 2017, 131 Stat. 1380. See section 1554b of this title.

§ 1553a. Review of a request for upgrade of discharge or dismissal

(a) ESTABLISHMENT.—The Secretary of Defense shall establish a process by which to conduct a final review of a request for an upgrade in the characterization of a discharge or dismissal.

(b) CONSIDERATION; RECOMMENDATION.—(1) Upon the request of a petitioner, the Secretary of Defense shall review the findings and decisions of the boards established under sections 1552 and 1553 of this title regarding the final review of a request for an upgrade in the characterization of a discharge or dismissal.

(2) The Secretary of Defense may recommend that the Secretary of the military department concerned upgrade the characterization of the discharge or dismissal of the petitioner if the Secretary of Defense determines that such recommendation is appropriate after review under paragraph (1).

(c) DEFINITIONS.—In this section:

(1) The term ''final review of a request for an upgrade in the characterization of a discharge or dismissal'' means a request by a petitioner for an upgrade to the characterization of a discharge or dismissal—

(A) that was not granted under sections 1552 and 1553 of this title; and

(B) regarding which the Secretary of Defense determines the petitioner has exhausted all remedies available to the petitioner under sections 1552 and 1553 of this title.

(2) The term ''petitioner'' means a member or former member of the armed forces (or if the member or former member is dead, the surviving spouse, next of kin, or legal representative of the member or former member) whose request for an upgrade to the characterization of a discharge or dismissal was not granted under sections 1552 and 1553 of this title.

(Added Pub. L. 116–92, div. A, title V, § 523(a), Dec. 20, 2019, 133 Stat. 1354.)

IMPLEMENTATION AND REPORTING

Pub. L. 116–92, div. A, title V, § 523(c)–(e), Dec. 20, 2019, 133 Stat. 1355, provided that:

''(c) DEADLINE.—The Secretary of Defense shall implement section 1553a of such title [title 10, United States Code], as added by subsection (a), not later than January 1, 2021.

''(d) RESOURCES.—In establishing and implementing the process under such section 1553a, the Secretary of Defense shall, to the maximum extent practicable, use existing organizations, boards, processes, and personnel of the Department of Defense.

''(e) REPORTING.—

''(1) REPORT.—Not later than January 1, 2022, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report regarding the process established under such section 1553a. The report shall include, with respect to considerations under such process since implementation, the following:

''(A) The number of requests considered.

''(B) The number of upgrades to the characterization of a discharge or dismissal granted pursuant to such process, including the most common reasons for such upgrades.

''(C) The number of upgrades to the characterization of a discharge or dismissal declined pursuant to such process, including the most common reasons for such declinations.

''(2) ONLINE PUBLICATION.—On October 1, 2022, and annually thereafter, the Secretary shall publish the information described in paragraph (1) with regards to the immediately preceding fiscal year on a website of the Department of Defense that is accessible by the public.''

§ 1554. Review of retirement or separation without pay for physical disability

(a) The Secretary concerned shall from time to time establish boards of review, each consisting of five commissioned officers, two of whom shall be selected from officers of the Army Medical Corps, officers of the Navy Medical Corps, Air Force officers designated as medical officers, or officers of the Public Health Service, as the case may be, to review, upon the request of a member or former member of the uniformed services retired or released from active duty without pay for physical disability, the findings and decisions of the retiring board, board of medical survey, or disposition board in the member's case. A request for review must be made within 15 years after the date of the retirement or separation.

(b) A board established under this section has the same powers as the board whose findings and decision are being reviewed. The findings of the board shall be sent to the Secretary concerned, who shall submit them to the President for approval.

(c) A review by a board established under this section shall be based upon the records of the armed forces concerned and such other evidence as may be presented to the board. A witness may present evidence to the board in person or by affidavit. A person who requests a review under this section may appear before the board in person or by counsel or an accredited representative of an organization recognized by the Secretary of Veterans Affairs under chapter 59 of title 38.

(Added Pub. L. 85–857, § 13(v)(2), Sept. 2, 1958, 72 Stat. 1267; amended Pub. L. 87–651, title I, § 110(a), Sept. 7, 1962, 76 Stat. 510; Pub. L. 101–189, div. A, title XVI, § 1621(a)(2), Nov. 29, 1989, 103 Stat. 1603; Pub. L. 111–383, div. A, title V, § 533(a), Jan. 7, 2011, 124 Stat. 4216.)

HISTORICAL AND REVISION NOTES

Sections 1553 and 1554 are restated, without substantive change, to conform to the style adopted for title 10.

AMENDMENTS

2011—Subsec. (a). Pub. L. 111–383 substituted ''a member or former member of the uniformed services'' for ''an officer'' and ''the member's case'' for ''his case''.

1989—Subsec. (c). Pub. L. 101–189 substituted ''Secretary of Veterans Affairs'' for ''Administrator of Veterans' Affairs''.

1962—Pub. L. 87–651 amended section generally without substantive change to conform to the style adopted for the revision of this title.

EFFECTIVE DATE

Section effective Jan. 1, 1959, see section 2 of Pub. L. 85–857, set out as a note preceding Part I of Title 38, Veterans' Benefits.

TRANSFER OF FUNCTIONS

For transfer of functions of Public Health Service, see note set out under section 802 of this title.

§ 1554a. Review of separation with disability rating of 20 percent disabled or less

(a) IN GENERAL.—(1) The Secretary of Defense shall establish within the Office of the Secretary of Defense a board of review to review the disability determinations of covered individuals by Physical Evaluation Boards. The board shall be known as the ''Physical Disability Board of Review''.

(2) The Physical Disability Board of Review shall consist of not less than three members appointed by the Secretary.

(b) COVERED INDIVIDUALS.—For purposes of this section, covered individuals are members and former members of the armed forces who, during the period beginning on September 11, 2001, and ending on December 31, 2009—

(1) are separated from the armed forces due to unfitness for duty due to a medical condition with a disability rating of 20 percent disabled or less; and

(2) are found to be not eligible for retirement.

(c) REVIEW.—(1) Upon the request of a covered individual, or a surviving spouse, next of kin, or legal representative of a covered individual, the Physical Disability Board of Review shall review the findings and decisions of the Physical Evaluation Board with respect to such covered individual. Subject to paragraph (3), upon its own motion, the Physical Disability Board of Review may review the findings and decisions of the Physical Evaluation Board with respect to a covered individual.

(2) The review by the Physical Disability Board of Review under paragraph (1) shall be based on the records of the armed force concerned and such other evidence as may be presented to the Physical Disability Board of Review. A witness may present evidence to the Board by affidavit or by any other means considered acceptable by the Secretary of Defense.

(3) If the Physical Disability Board of Review proposes to review, upon its own motion, the findings and decisions of the Physical Evaluation Board with respect to a covered individual, the Physical Disability Board of Review shall notify the covered individual, or a surviving spouse, next of kin, or legal representative of the covered individual, of the proposed review and obtain the consent of the covered individual or a surviving spouse, next of kin, or legal representative of the covered individual before proceeding with the review.

(4) With respect to any review by the Physical Disability Board of Review of the findings and decisions of the Physical Evaluation Board with respect to a covered individual, whether initiated at the request of the covered individual or a surviving spouse, next of kin, or legal representative of the covered individual or initiated by the Physical Disability Board of Review, the Physical Disability Board of Review shall notify the covered individual or a surviving spouse, next of kin, or legal representative of the covered individual that, as a result of the request or consent, the covered individual or a surviving spouse, next of kin, or legal representative of the covered individual may not seek relief from the Board for Correction of Military Records operated by the Secretary concerned.

(d) AUTHORIZED RECOMMENDATIONS.—The Physical Disability Board of Review may, as a result of its findings under a review under subsection (c), recommend to the Secretary concerned the following (as applicable) with respect to a covered individual:

(1) No recharacterization of the separation of such individual or modification of the disability rating previously assigned such individual.

(2) The recharacterization of the separation of such individual to retirement for disability.

(3) The modification of the disability rating previously assigned such individual by the Physical Evaluation Board concerned, which modified disability rating may not be a reduction of the disability rating previously assigned such individual by that Physical Evaluation Board.

(4) The issuance of a new disability rating for such individual.

(e) CORRECTION OF MILITARY RECORDS.—(1) The Secretary concerned may correct the military records of a covered individual in accordance with a recommendation made by the Physical Disability Board of Review under subsection (d). Any such correction may be made effective as of the effective date of the action taken on the report of the Physical Evaluation Board to which such recommendation relates.

(2) In the case of a member previously separated pursuant to the findings and decision of a Physical Evaluation Board together with a lump-sum or other payment of back pay and allowances at separation, the amount of pay or other monetary benefits to which such member would be entitled based on the member's military record as corrected shall be reduced to take into account receipt of such lump-sum or other payment in such manner as the Secretary of Defense considers appropriate.

(3) If the Physical Disability Board of Review makes a recommendation not to correct the military records of a covered individual, the action taken on the report of the Physical Evaluation Board to which such recommendation relates shall be treated as final as of the date of such action.

(f) Regulations.—(1) This section shall be carried out in accordance with regulations prescribed by the Secretary of Defense.

(2) The regulations under paragraph (1) shall specify reasonable deadlines for the performance of reviews required by this section.

(3) The regulations under paragraph (1) shall specify the effect of a determination or pending

determination of a Physical Evaluation Board on considerations by boards for correction of military records under section 1552 of this title.

(g) SUNSET.—(1) On or after the date of the enactment of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, the Secretary of Defense may sunset the Physical Disability Board of Review under this section.

(2) If the Secretary sunsets the Physical Disability Board of Review under paragraph (1), the Secretary shall transfer any remaining requests for review pending at that time, and shall assign any new requests for review under this section, to a board for the correction of military records operated by the Secretary concerned under section 1552 of this title..[1]

(3) Subsection (c)(4) shall not apply with respect to any review conducted by a board for the correction of military records under paragraph (2).

(Added Pub. L. 110–181, div. A, title XVI, §1643(a)(1), Jan. 28, 2008, 122 Stat. 465; amended Pub. L. 116–283, div. A, title V, §522, Jan. 1, 2021, 134 Stat. 3597.)

REFERENCES IN TEXT

The date of the enactment of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, referred to in subsec. (g)(1), is the date of enactment of Pub. L. 116–283, which was approved Jan. 1, 2021.

AMENDMENTS

2021—Subsec. (g). Pub. L. 116–283 added subsec. (g).

IMPLEMENTATION

Pub. L. 110–181, div. A, title XVI, §1643(b), Jan. 28, 2008, 122 Stat. 467, provided that: ''The Secretary of Defense shall establish the board of review required by section 1554a of title 10, United States Code (as added by subsection (a)), and prescribe the regulations required by such section, not later than 90 days after the date of the enactment of this Act [Jan. 28, 2008].''

§ 1554b. Confidential review of characterization of terms of discharge of members of the armed forces who are victims of sex-related offenses

(a) CONFIDENTIAL REVIEW PROCESS THROUGH BOARDS FOR CORRECTION OF MILITARY RECORDS.—The Secretaries of the military departments shall each establish a confidential process, utilizing boards of the military department concerned established in accordance with this chapter, by which an individual who was the victim of a sex-related offense, or alleges that the individual was the victim of a sex-related offense, during service in the armed forces may challenge the terms or characterization of the discharge or separation of the individual from the armed forces on the grounds that the terms or characterization were adversely affected by the individual being the victim of a sex-related offense.

(b) CONSIDERATION OF INDIVIDUAL EXPERIENCES IN CONNECTION WITH OFFENSES.—In deciding whether to modify the terms or characterization of the discharge or separation from the armed forces of an individual described in subsection (a), the Secretary of the military department concerned shall instruct boards of the military department concerned established in accordance with this chapter—

(1) to give due consideration to the psychological and physical aspects of the individual's experience in connection with the sex-related offense; and

(2) to determine what bearing such experience may have had on the circumstances surrounding the individual's discharge or separation from the armed forces.

(c) PRESERVATION OF CONFIDENTIALITY.—Documents considered and decisions rendered pursuant to the process required by subsection (a) shall not be made available to the public, except with the consent of the individual concerned.

(d) SEX-RELATED OFFENSE DEFINED.—In this section, the term ''sex-related offense'' means any of the following:

(1) Rape or sexual assault under subsection (a) or (b) of section 920 of this title (article 120 of the Uniform Code of Military Justice).

(2) Forcible sodomy under section 925 of this title (article 125 of the Uniform Code of Military Justice).

(3) An attempt to commit an offense specified in paragraph (1) or (2) as punishable under section 880 of this title (article 80 of the Uniform Code of Military Justice).

(Added and amended Pub. L. 115–91, div. A, title V, §522(a)(1), (b), (c), Dec. 12, 2017, 131 Stat. 1380, 1381.)

CODIFICATION

Text of section, as added by Pub. L. 115–91, is based on text of Pub. L. 113–291, div. A, title V, §547, Dec. 19, 2014, 128 Stat. 3375, which was formerly set out in a note under section 1553 of this title before being transferred to this chapter and designated as the text of this section.

AMENDMENTS

2017—Pub. L. 115–91, §522(a)(1), inserted section enumerator and catchline and transferred text of section 547 of Pub. L. 113–291 to this section. See Codification note above.

Subsec. (a). Pub. L. 115–91, §522(c)(2), substituted ''boards of the military department concerned established in accordance with this chapter'' for ''boards for the correction of military records of the military department concerned'' and ''being the victim of a sex-related offense'' for ''being the victim of such an offense''.

Pub. L. 115–91, §522(c)(1), substituted ''armed forces'' for ''Armed Forces'' in two places.

Pub. L. 115–91, §522(b), substituted ''who was the victim of a sex-related offense, or alleges that the individual was the victim of a sex-related offense,'' for ''who was the victim of a sex-related offense''.

Subsec. (b). Pub. L. 115–91, §522(c)(3), substituted ''boards of the military department concerned established in accordance with this chapter'' for ''boards for the correction of military records'' in introductory provisions.

Pub. L. 115–91, §522(c)(1), substituted ''armed forces'' for ''Armed Forces'' in two places.

Subsec. (d)(1). Pub. L. 115–91, §522(c)(4)(B), substituted ''this title'' for ''title 10, United States Code''.

Subsec. (d)(2), (3). Pub. L. 115–91, §522(c)(4)(C), substituted ''this title'' for ''such title''.

§ 1555. Professional staff

(a) The Secretary of each military department shall assign to the staff of the service review

[1] So in original. The second period probably should not appear.

agency of that military department at least one attorney and at least one physician. Such assignments shall be made on a permanent, full-time basis and may be made from members of the armed forces or civilian employees.

(b) Personnel assigned pursuant to subsection (a)—

(1) shall work under the supervision of the director or executive director (as the case may be) of the service review agency; and

(2) shall be assigned duties as advisers to the director or executive director or other staff members on legal and medical matters, respectively, that are being considered by the agency.

(c) In this section, the term ''service review agency'' means—

(1) with respect to the Department of the Army, the Army Review Boards Agency;

(2) with respect to the Department of the Navy, the Navy Council of Personnel Boards and the Board for Correction of Naval Records; and

(3) with respect to the Department of the Air Force, the Air Force Review Boards Agency.

(Added Pub. L. 105–261, div. A, title V, § 542(a)(1), Oct. 17, 1998, 112 Stat. 2020; amended Pub. L. 106–65, div. A, title V, § 582, Oct. 5, 1999, 113 Stat. 634.)

AMENDMENTS

1999—Subsec. (c)(2). Pub. L. 106–65 inserted ''the Navy Council of Personnel Boards and'' after ''Department of the Navy,''.

EFFECTIVE DATE

Pub. L. 105–261, div. A, title V, § 542(b), Oct. 17, 1998, 112 Stat. 2020, provided that: ''Section 1555 of title 10, United States Code, as added by subsection (a), shall take effect 180 days after the date of the enactment of this Act [Oct. 17, 1998].''

§ 1556. Ex parte communications prohibited

(a) IN GENERAL.—The Secretary of each military department shall ensure that an applicant seeking corrective action by the Army Review Boards Agency, the Air Force Review Boards Agency, or the Board for Correction of Naval Records, as the case may be, is provided a copy of all correspondence and communications (including summaries of verbal communications) to or from the agency or board, or a member of the staff of the agency or board, with an entity or person outside the agency or board that pertain directly to the applicant's case or have a material effect on the applicant's case.

(b) EXCEPTIONS.—Subsection (a) does not apply to the following:

(1) Classified information.

(2) Information the release of which is otherwise prohibited by law or regulation.

(3) Any record previously provided to the applicant or known to be possessed by the applicant.

(4) Any correspondence that is purely administrative in nature.

(5) Any military record that is (or may be) provided to the applicant by the Secretary of the military department or other source.

(Added Pub. L. 105–261, div. A, title V, § 543(a)(1), Oct. 17, 1998, 112 Stat. 2020.)

EFFECTIVE DATE

Pub. L. 105–261, div. A, title V, § 543(b), Oct. 17, 1998, 112 Stat. 2021, provided that: ''Section 1556 of title 10, United States Code, as added by subsection (a), shall apply with respect to correspondence and communications made 60 days or more after the date of the enactment of this Act [Oct. 17, 1998].''

§ 1557. Timeliness standards for disposition of applications before Corrections Boards

(a) TEN-MONTH CLEARANCE PERCENTAGE.—Of the applications received by a Corrections Board during a period specified in the following table, the percentage on which final action by the Corrections Board must be completed within 10 months of receipt (other than for those applications considered suitable for administrative correction) is as follows:

For applications received during—	The percentage on which final Correction Board action must be completed within 10 months of receipt is—
the period of fiscal years 2001 and 2002	50
the period of fiscal years 2003 and 2004	60
the period of fiscal years 2005, 2006, and 2007	70
the period of fiscal years 2008, 2009, and 2010	80
the period of any fiscal year after fiscal year 2010	90.

(b) CLEARANCE DEADLINE FOR ALL APPLICATIONS.—Final action by a Corrections Board on all applications received by the Corrections Board (other than those applications considered suitable for administrative correction) shall be completed within 18 months of receipt.

(c) WAIVER AUTHORITY.—The Secretary of the military department concerned may exclude an individual application from the timeliness standards prescribed in subsections (a) and (b) if the Secretary determines that the application warrants a longer period of consideration. The authority of the Secretary of a military department under this subsection may not be delegated.

(d) FAILURE TO MEET TIMELINESS STANDARDS NOT TO AFFECT ANY INDIVIDUAL APPLICATION.—Failure of a Corrections Board to meet the applicable timeliness standard for any period of time under subsection (a) or (b) does not confer any presumption or advantage with respect to consideration by the board of any application.

(e) REPORTS ON FAILURE TO MEET TIMELINESS STANDARDS.—The Secretary of the military department concerned shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report not later than June 1 following any fiscal year during which the Corrections Board of that Secretary's military department was unable to meet the applicable timeliness standard for that fiscal year under subsections (a) and (b). The report shall specify the reasons why the standard could not be met and the corrective actions initiated to ensure compliance in the future. The report shall also

specify the number of waivers granted under subsection (c) during that fiscal year.

(f) CORRECTIONS BOARD DEFINED.—In this section, the term ''Corrections Board'' means—

(1) with respect to the Department of the Army, the Army Board for Correction of Military Records;

(2) with respect to the Department of the Navy, the Board for Correction of Naval Records; and

(3) with respect to the Department of the Air Force, the Air Force Board for Correction of Military Records.

(Added Pub. L. 105–261, div. A, title V, § 544(a), Oct. 17, 1998, 112 Stat. 2021; amended Pub. L. 106–65, div. A, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 108–375, div. A, title X, § 1084(d)(12), Oct. 28, 2004, 118 Stat. 2062.)

AMENDMENTS

2004—Subsec. (b). Pub. L. 108–375 substituted ''Final'' for ''Effective October 1, 2002, final''.

1999—Subsec. (e). Pub. L. 106–65 substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security''.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective Dec. 31, 2021, of provisions in subsec. (e) of this section requiring submittal of report to Congress, see section 1061 of Pub. L. 114–328, set out as a note under section 111 of this title.

§ 1558. Review of actions of selection boards: correction of military records by special boards; judicial review

(a) CORRECTION OF MILITARY RECORDS.—The Secretary of a military department may correct a person's military records in accordance with a recommendation made by a special board. Any such correction may be made effective as of the effective date of the action taken on a report of a previous selection board that resulted in the action corrected in the person's military records.

(b) DEFINITIONS.—In this section:

(1) SPECIAL BOARD.—(A) The term ''special board'' means a board that the Secretary of a military department convenes under any authority to consider whether to recommend a person for appointment, enlistment, reenlistment, assignment, promotion, retention, separation, retirement, or transfer to inactive status in a reserve component instead of referring the records of that person for consideration by a previously convened selection board which considered or should have considered that person.

(B) Such term includes a board for the correction of military records convened under section 1552 of this title, if designated as a special board by the Secretary concerned.

(C) Such term does not include a promotion special selection board convened under section 628 or 14502 of this title.

(2) SELECTION BOARD.—(A) The term ''selection board'' means a selection board convened under section 573(c), 580, 580a, 581, 611(b), 637, 638, 638a, 14101(b), 14701, 14704, or 14705 of this title, and any other board convened by the Secretary of a military department under any authority to recommend persons for appointment, enlistment, reenlistment, assignment, promotion, or retention in the armed forces or for separation, retirement, or transfer to inactive status in a reserve component for the purpose of reducing the number of persons serving in the armed forces.

(B) Such term does not include any of the following:

(i) A promotion board convened under section 573(a), 611(a), or 14101(a) of this title.

(ii) A special board.

(iii) A special selection board convened under section 628 of this title.

(iv) A board for the correction of military records convened under section 1552 of this title.

(3) INVOLUNTARILY BOARD-SEPARATED.—The term ''involuntarily board-separated'' means separated or retired from an armed force, or transferred to the Retired Reserve or to inactive status in a reserve component, as a result of a recommendation of a selection board.

(c) RELIEF ASSOCIATED WITH CORRECTION OF CERTAIN ACTIONS.—(1) The Secretary of the military department concerned shall ensure that an involuntarily board-separated person receives relief under paragraph (2) or under paragraph (3) if the person, as a result of a correction of the person's military records under subsection (a), becomes entitled to retention on or restoration to active duty or to active status in a reserve component.

(2)(A) A person referred to in paragraph (1) shall, with that person's consent, be restored to the same status, rights, and entitlements (less appropriate offsets against back pay and allowances) in that person's armed force as the person would have had if the person had not been selected to be involuntarily board-separated as a result of an action the record of which is corrected under subsection (a). An action under this subparagraph is subject to subparagraph (B).

(B) Nothing in subparagraph (A) may be construed to permit a person to be on active duty or in an active status in a reserve component after the date on which the person would have been separated, retired, or transferred to the Retired Reserve or to inactive status in a reserve component if the person had not been selected to be involuntarily board-separated in an action of a selection board the record of which is corrected under subsection (a).

(3) If an involuntarily board-separated person referred to in paragraph (1) does not consent to a restoration of status, rights, and entitlements under paragraph (2), the Secretary concerned shall pay that person back pay and allowances (less appropriate offsets), and shall provide that person service credit, for the period—

(A) beginning on the date of the person's separation, retirement, or transfer to the Retired Reserve or to inactive status in a reserve component, as the case may be; and

(B) ending on the earlier of—

(i) the date on which the person would have been so restored under paragraph (2), as determined by the Secretary concerned; or

(ii) the date on which the person would otherwise have been separated, retired, or transferred to the Retired Reserve or to in-

active status in a reserve component, as the case may be.

(d) FINALITY OF UNFAVORABLE ACTION.—If a special board makes a recommendation not to correct the military records of a person regarding action taken in the case of that person on the basis of a previous report of a selection board, the action previously taken on that report shall be considered as final as of the date of the action taken on that report.

(e) REGULATIONS.—(1) The Secretary of each military department shall prescribe regulations to carry out this section. Regulations under this subsection may not apply to subsection (f), other than to paragraph (4)(C) of that subsection.

(2) The Secretary may prescribe in the regulations under paragraph (1) the circumstances under which consideration by a special board may be provided for under this section, including the following:

(A) The circumstances under which consideration of a person's case by a special board is contingent upon application by or for that person.

(B) Any time limits applicable to the filing of an application for such consideration.

(3) Regulations prescribed by the Secretary of a military department under this subsection may not take effect until approved by the Secretary of Defense.

(f) JUDICIAL REVIEW.—(1) A person seeking to challenge an action or recommendation of a selection board, or an action taken by the Secretary of the military department concerned on the report of a selection board, is not entitled to relief in any judicial proceeding unless the action or recommendation has first been considered by a special board under this section or the Secretary concerned has denied the convening of such a board for such consideration.

(2)(A) A court of the United States may review a determination by the Secretary of a military department not to convene a special board in the case of any person. In any such case, the court may set aside the Secretary's determination only if the court finds the determination to be—

(i) arbitrary or capricious;

(ii) not based on substantial evidence;

(iii) a result of material error of fact or material administrative error; or

(iv) otherwise contrary to law.

(B) If a court sets aside a determination by the Secretary of a military department not to convene a special board, it shall remand the case to the Secretary concerned, who shall provide for consideration by a special board.

(3) A court of the United States may review a recommendation of a special board or an action of the Secretary of the military department concerned on the report of a special board. In any such case, a court may set aside the action only if the court finds that the recommendation or action was—

(A) arbitrary or capricious;

(B) not based on substantial evidence;

(C) a result of material error of fact or material administrative error; or

(D) otherwise contrary to law.

(4)(A) If, six months after receiving a complete application for consideration by a special board in any case, the Secretary concerned has not convened a special board and has not denied consideration by a special board in that case, the Secretary shall be deemed for the purposes of this subsection to have denied consideration of the case by a special board.

(B) If, six months after the convening of a special board in any case, the Secretary concerned has not taken final action on the report of the special board, the Secretary shall be deemed for the purposes of this subsection to have denied relief in such case.

(C) Under regulations prescribed under subsection (e), the Secretary of a military department may waive the applicability of subparagraph (A) or (B) in a case if the Secretary determines that a longer period for consideration of the case is warranted. Such a waiver may be for an additional period of not more than six months. The Secretary concerned may not delegate authority to make a determination under this subparagraph.

(g) EXISTING JURISDICTION.—Nothing in this section limits—

(1) the jurisdiction of any court of the United States under any provision of law to determine the validity of any law, regulation, or policy relating to selection boards; or

(2) the authority of the Secretary of a military department to correct a military record under section 1552 of this title.

(Added Pub. L. 107–107, div. A, title V, § 503(a)(1), Dec. 28, 2001, 115 Stat. 1080.)

EFFECTIVE DATE

Section applicable with respect to any proceeding pending on or after Dec. 28, 2001, without regard to whether a challenge to an action of a selection board of any of the Armed Forces being considered in the proceeding was initiated before, on, or after that date, but not applicable with respect to any action commenced in a court of the United States before Dec. 28, 2001, see section 503(c) of Pub. L. 107–107, set out as an Effective Date of 2001 Amendment note under section 628 of this title.

§ 1559. Personnel limitation

(a) LIMITATION.—Before December 31, 2025, the Secretary of a military department may not carry out any reduction in the number of military and civilian personnel assigned to duty with the service review agency for that military department below the baseline number for that agency.

(b) BASELINE NUMBER.—The baseline number for a service review agency under this section is—

(1) for purposes of the first report with respect to a service review agency under this section, the number of military and civilian personnel assigned to duty with that agency as of January 1, 2002; and

(2) for purposes of any subsequent report with respect to a service review agency under this section, the number of such personnel specified in the most recent report with respect to that agency under this section.

(c) SERVICE REVIEW AGENCY DEFINED.—In this section, the term ''service review agency'' means—

(1) with respect to the Department of the Army, the Army Review Boards Agency;

(2) with respect to the Department of the Navy, the Board for Correction of Naval Records; and

(3) with respect to the Department of the Air Force, the Air Force Review Boards Agency.

(Added Pub. L. 107–314, div. A, title V, § 552(a), Dec. 2, 2002, 116 Stat. 2552; amended Pub. L. 108–375, div. A, title V, § 581, Oct. 28, 2004, 118 Stat. 1928; Pub. L. 110–417, [div. A], title V, § 593, Oct. 14, 2008, 122 Stat. 4475; Pub. L. 111–383, div. A, title V, § 533(b), Jan. 7, 2011, 124 Stat. 4216; Pub. L. 112–239, div. A, title V, § 520, title X, § 1076(b)(2), Jan. 2, 2013, 126 Stat. 1722, 1949; Pub. L. 114–328, div. A, title V, § 592, Dec. 23, 2016, 130 Stat. 2152; Pub. L. 116–92, div. A, title V, § 524(a), Dec. 20, 2019, 133 Stat. 1355.)

AMENDMENTS

2019—Subsec. (a). Pub. L. 116–92 substituted ''December 31, 2025'' for ''December 31, 2019'' and ''that agency.'' for ''that agency until—'' and struck out pars. (1) and (2) which read as follows:

''(1) the Secretary submits to Congress a report that—

''(A) describes the reduction proposed to be made;

''(B) provides the Secretary's rationale for that reduction; and

''(C) specifies the number of such personnel that would be assigned to duty with that agency after the reduction; and

''(2) a period of 90 days has elapsed after the date on which the report is submitted.''

2016—Subsec. (a). Pub. L. 114–328 substituted ''December 31, 2019'' for ''December 31, 2016'' in introductory provisions.

2013—Subsec. (a). Pub. L. 112–239, § 1076(b)(2), made technical amendment to directory language of Pub. L. 111–383. See 2011 Amendment note below.

Pub. L. 112–239, § 520, substituted ''December 31, 2016'' for ''December 31, 2013'' in introductory provisions.

2011—Subsec. (a). Pub. L. 111–383, as amended by Pub. L. 112–239, § 1076(b)(2), substituted ''December 31, 2013'' for ''December 31, 2010'' in introductory provisions.

2008—Subsec. (a). Pub. L. 110–417 substituted ''December 31, 2010'' for ''October 1, 2008'' in introductory provisions.

2004—Subsec. (a). Pub. L. 108–375 substituted ''Before October 1, 2008,'' for ''During fiscal years 2003, 2004, and 2005,'' in introductory provisions.

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112–239, div. A, title X, § 1076(b), Jan. 2, 2013, 126 Stat. 1949, provided that the amendment made by section 1076(b)(2) is effective Jan. 7, 2011, and as if included in Pub. L. 111–383 as enacted.

CHAPTER 80—MISCELLANEOUS INVESTIGATION REQUIREMENTS AND OTHER DUTIES

Sec.

1561. Complaints of sexual harassment: investigation by commanding officers.
1561a. Civilian orders of protection: force and effect on military installations.
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Sec.
1565a. DNA samples maintained for identification of human remains: use for law enforcement purposes.
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1566. Voting assistance: compliance assessments; assistance.
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1567. Duration of military protective orders.
1567a. Mandatory notification of issuance of military protective order to civilian law enforcement.

PRIOR PROVISIONS

A prior chapter 80, comprised of sections 1571 to 1577, relating to Exemplary Rehabilitation Certificates, was repealed by Pub. L. 90–83, § 3(2), Sept. 11, 1967, 81 Stat. 220.

AMENDMENTS

2021—Pub. L. 116–283, div. A, title V, §§ 523(c), 532(a)(2), Jan. 1, 2021, 134 Stat. 3599, 3602, added items 1561b, 1563, and 1563a and struck out former item 1563 ''Consideration of proposals for posthumous and honorary promotions and appointments: procedures for review''. Item 1561b was added after item 1561a to reflect the probable intent of Congress, notwithstanding directory language adding it after item 1561b.

2018—Pub. L. 115–232, div. A, title XVI, § 1622(b), Aug. 13, 2018, 132 Stat. 2118, added item 1564b.

2011—Pub. L. 112–81, div. A, title V, § 581(b)(2), Dec. 31, 2011, 125 Stat. 1431, added item 1565b.

2009—Pub. L. 111–84, div. A, title V, § 583(b)(2), Oct. 28, 2009, 123 Stat. 2330, added item 1566a.

2008—Pub. L. 110–417, [div. A], title V, §§ 561(b), 562(b), Oct. 14, 2008, 122 Stat. 4470, added items 1567 and 1567a.

2003—Pub. L. 108–136, div. A, title X, §§ 1031(a)(11)(B), 1041(a)(2), Nov. 24, 2003, 117 Stat. 1597, 1608, struck out ''and recommendation'' after ''review'' in item 1563 and added item 1564a.

2002—Pub. L. 107–314, div. A, title X, § 1063(b), Dec. 2, 2002, 116 Stat. 2653, added item 1565a.

Pub. L. 107–311, § 2(b), Dec. 2, 2002, 116 Stat. 2455, added item 1561a.

2001—Pub. L. 107–107, div. A, title XVI, § 1602(a)(2), Dec. 28, 2001, 115 Stat. 1276, added item 1566.

2000—Pub. L. 106–546, § 5(a)(2), Dec. 19, 2000, 114 Stat. 2732, added item 1565.

Pub. L. 106–398, § 1 [[div. A], title V, § 542(b), title X, § 1072(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–115, 1654A–277, added items 1563 and 1564.

1999—Pub. L. 106–65, div. A, title V, § 594(b), Oct. 5, 1999, 113 Stat. 644, added item 1562.

MULTIDISCIPLINARY BOARD TO EVALUATE SUICIDE EVENTS

Pub. L. 116–283, div. A, title V, § 549A, Jan. 1, 2021, 134 Stat. 3620, provided that:

''(a) GUIDANCE REQUIRED.—The Secretary of Defense shall issue guidance that requires each suicide event involving of a member of a covered Armed Force to be reviewed by a multidisciplinary board established at the command or installation level, or by the Chief of the covered Armed Force. Such guidance shall require that, for each suicide event reviewed by such a board, the board shall—

''(1) clearly define the objective, purpose, and outcome of the review;

''(2) take a multidisciplinary approach to the review and include, as part of the review process, leaders of military units, medical and mental health professionals, and representatives of military criminal investigative organizations; and

''(3) take appropriate steps to protect and share information obtained from ongoing investigations into the event (such as medical and law enforcement reports).

''(b) IMPLEMENTATION BY COVERED ARMED FORCES.—Not later than 90 days after the date on which the guidance is issued under subsection (a), the Chiefs of the covered Armed Forces shall implement the guidance.

''(c) PROGRESS REPORT.—Not later than 180 days after the date of the enactment of this Act [Jan. 1, 2021], the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the progress of the Secretary in implementing the guidance required under subsection (a).

''(d) COVERED ARMED FORCES DEFINED.—In this section, the term 'covered Armed Forces' means the Army, Navy, Air Force, Marine Corps, and Space Force.''

INCREASE IN NUMBER OF DIGITAL FORENSIC EXAMINERS FOR CERTAIN MILITARY CRIMINAL INVESTIGATIVE ORGANIZATIONS

Pub. L. 116–92, div. A, title V, § 539, Dec. 20, 2019, 133 Stat. 1364, provided that:

''(a) IN GENERAL.—Each Secretary of a military department shall take appropriate actions to increase the number of digital forensic examiners in each military criminal investigative organization specified in subsection (b) under the jurisdiction of such Secretary by not fewer than 10 from the authorized number of such examiners for such organization as of September 30, 2019.

''(b) MILITARY CRIMINAL INVESTIGATIVE ORGANIZATIONS.—The military criminal investigative organizations specified in this subsection are the following:

''(1) The Army Criminal Investigation Command.

''(2) The Naval Criminal Investigative Service.

''(3) The Air Force Office of Special Investigations.

''(c) FUNDING.—Funds for additional digital forensic examiners as required by subsection (a) for fiscal year 2020, including for compensation, initial training, and equipment, shall be derived from amounts authorized to be appropriated for that fiscal year for the Armed Force concerned for operation and maintenance.''

INCREASE IN INVESTIGATIVE PERSONNEL AND VICTIM WITNESS ASSISTANCE PROGRAM LIAISONS

Pub. L. 116–92, div. A, title V, § 540, Dec. 20, 2019, 133 Stat. 1364, provided that:

''(a) MILITARY CRIMINAL INVESTIGATIVE SERVICES.—Not later than one year after the date of the enactment of this Act [Dec. 20, 2019], the Secretary of each military department shall increase the number of personnel assigned to the military criminal investigative services of the department with the goal of ensuring, to the extent practicable, that the investigation of any sex-related offense is completed not later than six months after the date on which the investigation is initiated. An investigation shall be considered completed for purposes of the preceding sentence when the active phase of the investigation is sufficiently complete to enable the appropriate authority to reach a decision with respect to the disposition of charges for the sex-related offense.

''(b) VICTIM WITNESS ASSISTANCE PROGRAM LIAISONS.—Not later than one year after the date of the enactment of this Act, the Secretary of each military department shall increase the number of personnel serving as Victim Witness Assistance Program liaisons to address personnel shortages in the Victim Witness Assistance Program.

''(c) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.''

ENHANCING THE CAPABILITY OF MILITARY CRIMINAL INVESTIGATIVE ORGANIZATIONS TO PREVENT AND COMBAT CHILD SEXUAL EXPLOITATION

Pub. L. 116–92, div. A, title V, § 550D, Dec. 20, 2019, 133 Stat. 1383, provided that:

''(a) IN GENERAL.—Beginning not later than 180 days after the date of the enactment of this Act [Dec. 20, 2019], the Secretary of Defense shall establish and carry out an initiative to enhance the capability of military criminal investigative organizations to prevent and combat child sexual exploitation.

''(b) ACTIVITIES.—In establishing and carrying out the initiative under subsection (a), the Secretary of Defense may—

''(1) work with internal and external functional experts to train the personnel of military criminal investigative organizations across the Department regarding—

''(A) technologies, tools, and techniques, including digital forensics, to enhance the investigation of child sexual exploitation; and

''(B) evidence-based forensic interviewing of child victims, and the referral of child victims for trauma-informed mental and medical health care, and other treatment and support services;

''(2) to the extent authorized by law, collaborate with Federal, State, local, and other civilian law enforcement agencies on issues relating to child sexual exploitation, including by—

''(A) participating in task forces established by such agencies for the purpose of preventing and combating child sexual exploitation;

''(B) establishing cooperative agreements to facilitate co-training and collaboration with such agencies; and

''(C) ensuring that streamlined processes for the referral of child sexual exploitation cases to other agencies and jurisdictions, as appropriate, are fully operational;

''(3) as appropriate, assist in educating the military community on the prevention and response to child sexual exploitation; and

''(4) carry out such other activities as the Secretary determines to be relevant.''

MULTIDISCIPLINARY TEAMS FOR MILITARY INSTALLATIONS ON CHILD ABUSE AND OTHER DOMESTIC VIOLENCE

Pub. L. 115–232, div. A, title V, § 577, Aug. 13, 2018, 132 Stat. 1781, provided that:

''(a) MULTIDISCIPLINARY TEAMS REQUIRED.—

''(1) IN GENERAL.—Under regulations prescribed by each Secretary concerned, there shall be established and maintained for each military installation, except as provided in paragraph (2), one or more multidisciplinary teams on child abuse and other domestic violence for the purposes specified in subsection (b).

''(2) SINGLE TEAM FOR PROXIMATE INSTALLATIONS.—A single multidisciplinary team described in paragraph (1) may be established and maintained under this subsection for two or more military installations in proximity with one another if the Secretary concerned determines, in consultation with the Secretary of Defense, that a single team for such installations suffices to carry out the purposes of such teams under subsection (b) for such installations.

''(b) PURPOSES.—The purposes of each multidisciplinary team maintained pursuant to subsection (a) shall be as follows:

''(1) To provide for the sharing of information among such team and other appropriate personnel on the installation or installations concerned regarding the progress of investigations into and resolutions of incidents of child abuse and other domestic violence involving members of the Armed Forces stationed at or otherwise assigned to the installation or installations.

''(2) To provide for and enhance collaborative efforts among such team and other appropriate personnel of the installation or installations regarding investigations into and resolutions of such incidents.

''(3) To enhance the social services available to military families at the installation or installations in connection with such incidents, including through the enhancement of cooperation among specialists

and other personnel providing such services to such military families in connection with such incidents.

''(4) To carry out such other duties regarding the response to child abuse and other domestic violence at the installation or installations as the Secretary concerned considers appropriate for such purposes.

''(c) PERSONNEL.—

''(1) IN GENERAL.—Each multidisciplinary team maintained pursuant to subsection (a) shall be composed of the following:

''(A) One or more judge advocates.

''(B) Appropriate personnel of one or more military criminal investigation services.

''(C) Appropriate mental health professionals.

''(D) Appropriate medical personnel.

''(E) Family advocacy case workers.

''(F) Such other personnel as the Secretary or Secretaries concerned consider appropriate.

''(2) EXPERTISE AND TRAINING.—Any individual assigned to a multidisciplinary team shall possess such expertise, and shall undertake such training as is required to maintain such expertise, as the Secretary concerned shall specify for purposes of this section in order to ensure that members of the team remain appropriately qualified to carry out the purposes of the team under this section. The training and expertise so specified shall include training and expertise on special victims' crimes, including child abuse and other domestic violence.

''(d) COORDINATION AND COLLABORATION WITH NON-MILITARY RESOURCES.—

''(1) USE OF COMMUNITY RESOURCES SERVING INSTALLATIONS.—In providing under this section for a multidisciplinary team for a military installation or installations that benefit from services or resources on child abuse or other domestic violence that are provided by civilian entities in the vicinity of the installation or installations, the Secretary concerned may take the availability of such services or resources to the installation or installations into account in providing for the composition and duties of the team.

''(2) BEST PRACTICES.—The Secretaries concerned shall take appropriate actions to ensure that multidisciplinary teams maintained pursuant to subsection (a) remain fully and currently apprised of best practices in the civilian sector on investigations into and resolutions of incidents of child abuse and other domestic violence and on the social services provided in connection with such incidents.

''(3) COLLABORATION.—In providing for the enhancement of social services available to military families in accordance with subsection (b)(3), the Secretaries concerned shall permit, facilitate, and encourage multidisciplinary teams to collaborate with appropriate civilian agencies in the vicinity of the military installations concerned with regard to availability, provision, and use of such services to and by such families.

''(e) ANNUAL REPORTS.—Not later than March 1 of each year from 2020 through 2022, each Secretary concerned shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the activities of multidisciplinary teams maintained pursuant to subsection (a) under the jurisdiction of such Secretary during the preceding year. Each report shall set forth, for the period covered by such report, the following:

''(1) A summary description of the activities of the multidisciplinary teams concerned, including the number and composition of such teams, the recurring activities of such teams, and any notable achievements of such teams.

''(2) A description of any impediments to the effectiveness of such teams.

''(3) Such recommendations for legislative or administrative action as such Secretary considers appropriate in order to improve the effectiveness of such teams.

''(4) Such other matters with respect to such teams as such Secretary considers appropriate.

''(f) SECRETARY CONCERNED.—

''(1) DEFINITION.—In this section, the term 'Secretary concerned' has the meaning given that term in section 101(a)(9) of title 10, United States Code.

''(2) USAGE WITH RESPECT TO MULTIPLE INSTALLATIONS.—For purposes of this section, any reference to 'Secretary concerned' with respect to a single multidisciplinary team established and maintained pursuant to subsection (a) for two or more military installations that are under the jurisdiction of different Secretaries concerned, shall be deemed to refer to each Secretary concerned who has jurisdiction of such an installation, acting jointly.''

§ 1561. Complaints of sexual harassment: investigation by commanding officers

(a) ACTION ON COMPLAINTS ALLEGING SEXUAL HARASSMENT.—A commanding officer or officer in charge of a unit, vessel, facility, or area of the Army, Navy, Air Force, Marine Corps, or Space Force who receives from a member of the command or a civilian employee under the supervision of the officer a complaint alleging sexual harassment by a member of the armed forces or a civilian employee of the Department of Defense shall carry out an investigation of the matter in accordance with this section.

(b) COMMENCEMENT OF INVESTIGATION.—To the extent practicable, a commanding officer or officer in charge receiving such a complaint shall, within 72 hours after receipt of the complaint—

(1) forward the complaint or a detailed description of the allegation to the next superior officer in the chain of command who is authorized to convene a general court-martial;

(2) commence, or cause the commencement of, an investigation of the complaint; and

(3) advise the complainant of the commencement of the investigation.

(c) DURATION OF INVESTIGATION.—To the extent practicable, a commanding officer or officer in charge receiving such a complaint shall ensure that the investigation of the complaint is completed not later than 14 days after the date on which the investigation is commenced.

(d) REPORT ON INVESTIGATION.—To the extent practicable, a commanding officer or officer in charge receiving such a complaint shall—

(1) submit a final report on the results of the investigation, including any action taken as a result of the investigation, to the next superior officer referred to in subsection (b)(1) within 20 days after the date on which the investigation is commenced; or

(2) submit a report on the progress made in completing the investigation to the next superior officer referred to in subsection (b)(1) within 20 days after the date on which the investigation is commenced and every 14 days thereafter until the investigation is completed and, upon completion of the investigation, then submit a final report on the results of the investigation, including any action taken as a result of the investigation, to that next superior officer.

(e) SEXUAL HARASSMENT DEFINED.—In this section, the term ''sexual harassment'' means any of the following:

(1) Conduct that—

(A) involves unwelcome sexual advances, requests for sexual favors, and deliberate or

repeated offensive comments or gestures of a sexual nature when—

(i) submission to such conduct is made either explicitly or implicitly a term or condition of a person's job, pay, or career;

(ii) submission to or rejection of such conduct by a person is used as a basis for career or employment decisions affecting that person; or

(iii) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creates an intimidating, hostile, or offensive working environment; and

(B) is so severe or pervasive that a reasonable person would perceive, and the victim does perceive, the environment as hostile or offensive.

(2) Any use or condonation, by any person in a supervisory or command position, of any form of sexual behavior to control, influence, or affect the career, pay, or job of a member of the armed forces or a civilian employee of the Department of Defense.

(3) Any deliberate or repeated unwelcome verbal comment or gesture of a sexual nature by any member of the armed forces or civilian employee of the Department of Defense.

(Added Pub. L. 105–85, div. A, title V, § 591(a)(1), Nov. 18, 1997, 111 Stat. 1760; amended Pub. L. 114–328, div. A, title V, § 548(a), Dec. 23, 2016, 130 Stat. 2129; Pub. L. 116–283, div. A, title IX, § 924(b)(3)(Z), Jan. 1, 2021, 134 Stat. 3821.)

Prior Provisions

Prior sections 1571 to 1577, Pub. L. 89–690, § 1, Oct. 15, 1966, 80 Stat. 1016, related to creation of Exemplary Rehabilitation Certificates to be issued by the Secretary of Labor to persons discharged or dismissed from the Armed Forces under conditions other than honorable or to persons who had received a general discharge but who had established that they had rehabilitated themselves and established the administrative and other authority in connection therewith, prior to repeal by Pub. L. 90–83, § 3(2), Sept. 11, 1967, 81 Stat. 220.

Amendments

2021—Subsec. (a). Pub. L. 116–283 substituted ''Marine Corps, or Space Force'' for ''or Marine Corps''.

2016—Subsec. (e)(1). Pub. L. 114–328, § 548(a)(1)(A), in introductory provisions, struck out ''(constituting a form of sex discrimination)'' after ''Conduct''.

Subsec. (e)(1)(B). Pub. L. 114–328, § 548(a)(1)(B), substituted ''the environment'' for ''the work environment''.

Subsec. (e)(3). Pub. L. 114–328, § 548(a)(2), struck out ''in the workplace'' after ''of a sexual nature''.

Effective Date of 2016 Amendment

Pub. L. 114–328, div. A, title V, § 548(b), Dec. 23, 2016, 130 Stat. 2129, provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Dec. 23, 2016], and shall apply with respect to complaints described in section 1561 of title 10, United States Code, that are first received by a commanding officer or officer in charge on or after that date.''

Short Title of 2002 Amendment

Pub. L. 107–311, § 1, Dec. 2, 2002, 116 Stat. 2455, provided that: ''This Act [enacting section 1561a of this title] may be cited as the 'Armed Forces Domestic Security Act'.''

Safe-To-Report Policy Applicable Across the Armed Forces

Pub. L. 116–283, div. A, title V, § 539A, Jan. 1, 2021, 134 Stat. 3607, provided that:

''(a) In General.—The Secretary of Defense shall, in consultation with the Secretaries of the military departments, prescribe in regulations a safe-to-report policy described in subsection (b) that applies with respect to all members of the Armed Forces (including members of the reserve components of the Armed Forces) and cadets and midshipmen at the military service academies.

''(b) Safe-to-report Policy.—The safe-to-report policy described in this subsection is a policy that prescribes the handling of minor collateral misconduct involving a member of the Armed Forces who is the alleged victim of sexual assault.

''(c) Aggravating Circumstances.—The regulations under subsection (a) shall specify aggravating circumstances that increase the gravity of minor collateral misconduct or its impact on good order and discipline for purposes of the safe-to-report policy.

''(d) Tracking of Collateral Misconduct Incidents.—In conjunction with the issuance of regulations under subsection (a), Secretary shall develop and implement a process to track incidents of minor collateral misconduct that are subject to the safe-to-report policy.

''(e) Definitions.—In this section:

''(1) The term 'Armed Forces' has the meaning given that term in section 101(a)(4) of title 10, United States Code, except such term does not include the Coast Guard.

''(2) The term 'military service academy' means the following:

''(A) The United States Military Academy.

''(B) The United States Naval Academy.

''(C) The United States Air Force Academy.

''(3) The term 'minor collateral misconduct' means any minor misconduct that is potentially punishable under chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), that—

''(A) is committed close in time to or during the sexual assault, and directly related to the incident that formed the basis of the sexual assault allegation;

''(B) is discovered as a direct result of the report of sexual assault or the ensuing investigation into the sexual assault; and

''(C) does not involve aggravating circumstances (as specified in the regulations prescribed under subsection (c)) that increase the gravity of the minor misconduct or its impact on good order and discipline.''

Accountability of Leadership of the Department of Defense for Discharging the Sexual Harassment Policies and Programs of the Department

Pub. L. 116–283, div. A, title V, § 539B, Jan. 1, 2021, 134 Stat. 3608, provided that:

''(a) Strategy on Holding Leadership Accountable Required.—The Secretary of Defense shall develop and implement Department of Defense-wide a strategy to hold individuals in positions of leadership in the Department (including members of the Armed Forces and civilians) accountable for the promotion, support, and enforcement of the policies and programs of the Department on sexual harassment.

''(b) Oversight Framework.—

''(1) In general.—The strategy required by subsection (a) shall provide for an oversight framework for the efforts of the Department of Defense to promote, support, and enforce the policies and programs of the Department on sexual harassment.

''(2) Elements.—The oversight framework required by paragraph (1) shall include the following:

''(A) Long-term goals, objectives, and milestones in connection with the policies and programs of the Department on sexual harassment.

''(B) Strategies to achieve the goals, objectives, and milestones referred to in subparagraph (A).

''(C) Criteria for assessing progress toward the achievement of the goals, objectives, and milestones referred to in subparagraph (A).

''(D) Criteria for assessing the effectiveness of the policies and programs of the Department on sexual harassment.

''(E) Mechanisms to ensure that adequate resources are available to the Office of the Secretary of Defense to develop and discharge the oversight framework.

''(c) REPORT.—Not later than one year after the date of the enactment of this Act [Jan. 1, 2021], the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the actions taken to carry out this section, including the strategy developed and implemented pursuant to subsection (a), and the oversight framework developed and implemented pursuant to subsection (b).''

TRAINING FOR COMMANDERS IN THE ARMED FORCES ON THEIR ROLE IN ALL STAGES OF MILITARY JUSTICE IN CONNECTION WITH SEXUAL ASSAULT

Pub. L. 116–92, div. A, title V, § 540B, Dec. 20, 2019, 133 Stat. 1365, as amended by Pub. L. 116–283, div. A, title X, § 1081(c)(2), Jan. 1, 2021, 134 Stat. 3873, provided that:

''(a) IN GENERAL.—The training provided commanders in the Armed Forces shall include comprehensive training on the role of commanders in all stages of military justice in connection with sexual assaults by members of the Armed Forces.

''(b) ELEMENTS TO BE COVERED.—The training provided pursuant to subsection (a) shall include training on the following:

''(1) The role of commanders in each stage of the military justice process in connection with sexual assault committed by a member of the Armed Forces, including investigation and prosecution.

''(2) The role of commanders in assuring that victims of sexual assault described in paragraph (1) are informed of, and have the opportunity to obtain, assistance available for victims of sexual assault by law.

''(3) The role of commanders in assuring that victims of sexual assault described in paragraph (1) are afforded the rights and protections available to victims by law.

''(4) The role of commanders in preventing retaliation against victims, their family members, witnesses, first responders, and bystanders for their complaints, statements, testimony, and status in connection with sexual assault described in paragraph (1), including the role of commanders in ensuring that subordinates in the command are aware of their responsibilities in preventing such retaliation.

''(5) The role of commanders in establishing and maintaining a healthy command climate in connection with reporting on sexual assault described in paragraph (1), and in the response of the commander, subordinates in the command, and other personnel in the command to such sexual assault, such reporting, and the military justice process in connection with such sexual assault.

''(6) Any other matters on the role of commanders in connection with sexual assault described in paragraph (1) that the Secretary of Defense considers appropriate for purposes of this section.

''(c) INCORPORATION OF BEST PRACTICES.—

''(1) IN GENERAL.—The training provided pursuant to subsection (a) shall incorporate best practices on all matters covered by the training.

''(2) IDENTIFICATION OF BEST PRACTICES.—The Secretaries of the military departments shall, acting through the training and doctrine commands of the Armed Forces, undertake from time to time surveys and other reviews of the matters covered by the training provided pursuant to subsection (a) in order to identify and incorporate into such training the most current practicable best practices on such matters.

''(d) UNIFORMITY.—The Secretary of Defense shall ensure that the training provided pursuant to subsection (a) is, to the extent practicable, uniform across the Armed Forces.''

[Pub. L. 116–283, div. A, title X, § 1081(c), Jan. 1, 2021, 134 Stat. 3873, provided that the amendment made by section 1081(c)(2) of Pub. L. 116–283 to section 540B of Pub. L. 116–92, set out above, is effective as of Dec. 20, 2020 (probably should be Dec. 20, 2019) and as if included in Pub. L. 116–92.]

DEPARTMENT OF DEFENSE-WIDE POLICY AND MILITARY DEPARTMENT-SPECIFIC PROGRAMS ON REINVIGORATION OF THE PREVENTION OF SEXUAL ASSAULT INVOLVING MEMBERS OF THE ARMED FORCES

Pub. L. 116–92, div. A, title V, § 540D, Dec. 20, 2019, 133 Stat. 1366, provided that:

''(a) POLICY REQUIRED.—Not later than 180 days after the date of the enactment of this Act [Dec. 20, 2019], the Secretary of Defense shall develop and issue a comprehensive policy for the Department of Defense to reinvigorate the prevention of sexual assault involving members of the Armed Forces.

''(b) POLICY ELEMENTS.—

''(1) IN GENERAL.—The policy required by subsection (a) shall include the following:

''(A) Education and training for members of the Armed Forces on the prevention of sexual assault.

''(B) Elements for programs designed to encourage and promote healthy relationships among members of the Armed Forces.

''(C) Elements for programs designed to empower and enhance the role of non-commissioned officers in the prevention of sexual assault.

''(D) Elements for programs to foster social courage among members of the Armed Forces to encourage and promote intervention in situations in order to prevent sexual assault.

''(E) Processes and mechanisms designed to address behaviors among members of the Armed Forces that are included in the continuum of harm that frequently results in sexual assault.

''(F) Elements for programs designed to address alcohol abuse, including binge drinking, among members of the Armed Forces.

''(G) Such other elements, processes, mechanisms, and other matters as the Secretary of Defense considers appropriate.

''(2) CONTINUUM OF HARM RESULTING IN SEXUAL ASSAULT.—For purposes of paragraph (1)(E), the continuum of harm that frequently results in sexual assault includes hazing, sexual harassment, and related behaviors (including language choices, off-hand statements, jokes, and unconscious attitudes or biases) that create a permissive climate for sexual assault.

''(c) PROGRAMS REQUIRED.—Not later than 180 days after the issuance of the policy required by subsection (a), each Secretary of a military department shall develop and implement for each Armed Force under the jurisdiction of such Secretary a program to reinvigorate the prevention of sexual assaults involving members of the Armed Forces. Each program shall include the elements, processes, mechanisms, and other matters developed by the Secretary of Defense pursuant to subsection (a) tailored to the requirements and circumstances of the Armed Force or Armed Forces concerned.''

DEFENSE ADVISORY COMMITTEE FOR THE PREVENTION OF SEXUAL MISCONDUCT

Pub. L. 116–92, div. A, title V, § 550B, Dec. 20, 2019, 133 Stat. 1380, as amended by Pub. L. 116–283, div. A, title V, § 533–535, Jan. 1, 2021, 134 Stat. 3603, 3604, provided that:

''(a) ESTABLISHMENT REQUIRED.—

''(1) IN GENERAL.—The Secretary of Defense shall establish and maintain within the Department of De-

fense an advisory committee to be known as the 'Defense Advisory Committee for the Prevention of Sexual Misconduct' (in this section referred to as the 'Advisory Committee').

''(2) DEADLINE FOR ESTABLISHMENT.—The Secretary shall establish the Advisory Committee not later than one year after the date of the enactment of this Act [Dec. 20, 2019].

''(b) MEMBERSHIP.—

''(1) IN GENERAL.—The Advisory Committee shall consist of not more than 20 members, appointed by the Secretary from among individuals who have an expertise appropriate for the work of the Advisory Committee, including at least one individual with each expertise as follows:

''(A) Expertise in the prevention of sexual assault and behaviors on the sexual assault continuum of harm.

''(B) Expertise in adverse behaviors, including the prevention of suicide and the prevention of substance abuse.

''(C) Expertise in the change of culture of large organizations.

''(D) Expertise in implementation science.

''(2) BACKGROUND OF INDIVIDUALS.—Individuals appointed to the Advisory Committee may include individuals with expertise in sexual assault prevention efforts of institutions of higher education, public health officials, and such other individuals as the Secretary considers appropriate.

''(3) PROHIBITION ON MEMBERSHIP OF MEMBERS OF ARMED FORCES ON ACTIVE DUTY.—A member of the Armed Forces serving on active duty may not serve as a member of the Advisory Committee.

''(c) DUTIES.—

''(1) IN GENERAL.—The Advisory Committee shall advise the Secretary on the following:

''(A) The prevention of sexual assault (including rape, forcible sodomy, other sexual assault, and other sexual misconduct (including behaviors on the sexual assault continuum of harm)) involving members of the Armed Forces.

''(B) The policies, programs, and practices of each military department, each Armed Force, and each military service academy, including the United States Coast Guard Academy, for the prevention of sexual assault as described in subparagraph (A).

''(2) BASIS FOR PROVISION OF ADVICE.—For purposes of providing advice to the Secretary pursuant to this subsection, the Advisory Committee shall review, on an ongoing basis, the following:

''(A) Closed cases involving allegations of sexual assault described in paragraph (1).

''(B) Efforts of institutions of higher education to prevent sexual assault among students.

''(C) Efforts among private employers to prevent sexual assault and sexual harassment among their employees.

''(D) Evidence-based studies on the prevention of sexual assault and sexual harassment in the Armed Forces, institutions of higher education, and the private sector.

''(E) Any other information or matters that the Advisory Committee or the Secretary considers appropriate.

''(3) COORDINATION OF EFFORTS.—In addition to the reviews required by paragraph (2), for purposes of providing advice to the Secretary the Advisory Committee shall also consult and coordinate with the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-IPAD) on matters of joint interest to the two Advisory Committees.

''(d) ADVISORY DUTIES ON COAST GUARD ACADEMY.—In providing advice under subsection (c)(1)(B), the Advisory Committee shall also advise the Secretary of the Department in which the Coast Guard is operating in accordance with this section on policies, programs, and practices of the United States Coast Guard Academy.

''(e) ANNUAL REPORT.—Not later than March 30 each year, the Advisory Committee shall submit to the Secretary and the Committees on Armed Services and Commerce, Science, and Transportation of the Senate and the Committees on Armed Services and Transportation and Infrastructure of the House of Representatives a report on the activities of the Advisory Committee pursuant to this section during the preceding year. The report in 2021 shall also include the following:

''(1) A description and assessment of the extent and effectiveness of the inclusion by the Armed Forces of sexual assault prevention and response training in leader professional military education (PME), especially in such education for personnel in junior noncommissioned officer grades.

''(2) An assessment of the feasibility of—

''(A) the screening before entry into military service of recruits who may have been the subject or perpetrator of prior incidents of sexual assault and harassment, including through background checks; and

''(B) the administration of screening tests to recruits to assess recruit views and beliefs on equal opportunity, and whether such views and beliefs are compatible with military service.

''(3) An assessment of the feasibility of conducting exit interviews of members of the Armed Forces upon their discharge release from the Armed Forces in order to determine whether they experienced or witnessed sexual assault or harassment during military service and did not report it, and an assessment of the feasibility of combining such exit interviews with the Catch a Serial Offender (CATCH) Program of the Department of Defense.

''(4) An assessment whether the sexual assault reporting databases of the Department are sufficiently anonymized to ensure privacy while still providing military leaders with the information as follows:

''(A) The approximate length of time the victim and the assailant had been at the duty station at which the sexual assault occurred.

''(B) The percentage of sexual assaults occurring while the victim or assailant were on temporary duty, leave, or otherwise away from their permanent duty station.

''(C) The number of sexual assaults that involve an abuse of power by a commander or supervisor.

''(f) SEXUAL ASSAULT CONTINUUM OF HARM.—In this section, the term 'sexual assault continuum of harm' includes—

''(1) inappropriate actions (such as sexist jokes), sexual harassment, gender discrimination, hazing, cyber bullying, or other behavior that contributes to a culture that is tolerant of, or increases risk for, sexual assault; and

''(2) maltreatment or ostracism of a victim for a report of sexual misconduct.

''(g) TERMINATION.—

''(1) IN GENERAL.—Except as provided in paragraph (2), the Advisory Committee shall terminate on the date that is five years after the date of the establishment of the Advisory Committee pursuant to subsection (a).

''(2) CONTINUATION.—The Secretary of Defense may continue the Advisory Committee after the termination date applicable under paragraph (1) if the Secretary determines that continuation of the Advisory Committee after that date is advisable and appropriate. If the Secretary determines to continue the Advisory Committee after that date, the Secretary shall notify the Committees on Armed Services and Commerce, Science, and Transportation of the Senate and the Committees on Armed Services and Transportation and Infrastructure of the House of Representatives.''

[Pub. L. 116–283, div. A, title V, §535(4), Jan. 1, 2021, 134 Stat. 3604, which directed amendment of section 550B(g)(2) of Pub. L. 116–92, set out above, by substituting ''the Committees on Armed Services and Commerce, Science, and Transportation of the Senate and the Committees on Armed Services and Transportation and Infrastructure of the House of Representa-

tives'' for ''the Committees on Armed Services of the Senate and the House of Representatives'', was executed by making the substitution for ''the Committees on the Armed Services of the Senate and House of Representatives'' to reflect the probable intent of Congress.]

UNIFORM COMMAND ACTION FORM ON DISPOSITION OF UNRESTRICTED SEXUAL ASSAULT CASES INVOLVING MEMBERS OF THE ARMED FORCES

Pub. L. 115–232, div. A, title V, §535, Aug. 13, 2018, 132 Stat. 1761, provided that: ''The Secretary of Defense shall establish a uniform command action form, applicable across the Armed Forces, for reporting the final disposition of cases of sexual assault in which—

''(1) the alleged offender is a member of the Armed Forces; and

''(2) the victim files an unrestricted report on the alleged assault.''

REPORT ON VICTIMS OF SEXUAL ASSAULT IN REPORTS OF MILITARY CRIMINAL INVESTIGATIVE ORGANIZATIONS

Pub. L. 115–232, div. A, title V, §547, Aug. 13, 2018, 132 Stat. 1765, as amended by Pub. L. 116–283, div. A, title V, §536, Jan. 1, 2021, 134 Stat. 3604, provided that:

''(a) REPORT.—Not later than September 30, 2019, and not less frequently than once every two years thereafter, the Secretary of Defense, acting through the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report that includes, with respect to the period of two years preceding the date of the submittal of the report, the following:

''(1) The number of instances in which a covered individual was suspected of misconduct or crimes considered collateral to the investigation of a sexual offense committed against the individual.

''(2) The number of instances in which adverse action was taken against a covered individual who was suspected of collateral misconduct or crimes as described in paragraph (1).

''(3) The percentage of investigations of sexual offenses that involved suspicion of or adverse action against a covered individual as described in paragraphs (1) and (2).

''(b) GUIDANCE REQUIRED.—The Secretary of Defense shall issue guidance to ensure the uniformity of the data collected by each Armed Force for purposes of subsection (a). At a minimum, such guidance shall establish—

''(1) standardized methods for the collection of the data required to be reported under such subsection; and

''(2) standardized definitions for the terms 'sexual offense', 'collateral miconduct', and 'adverse action'.

''(c) DEFINITIONS.—In this section:

''(1) The term 'covered individual' means an individual who is identified in the case files of a military criminal investigative organization as a victim of a sexual offense that occurred while that individual was serving on active duty as a member of the Armed Forces.

''(2) The term 'suspected of', when used with respect to a covered individual suspected of collateral misconduct or crimes as described in subsection (a), means that an investigation by a military criminal investigative organization reveals facts and circumstances that would lead a reasonable person to believe that the individual committed an offense under chapter 47 of title 10, United States Code (the Uniform Code of Military Justice).''

SEXUAL ASSAULT PREVENTION AND RESPONSE TRAINING FOR ALL INDIVIDUALS ENLISTED IN THE ARMED FORCES UNDER A DELAYED ENTRY PROGRAM

Pub. L. 115–91, div. A, title V, §535, Dec. 12, 2017, 131 Stat. 1391, provided that:

''(a) TRAINING REQUIRED.—Commencing not later than 180 days after the date of the enactment of this Act [Dec. 12, 2017], each Secretary concerned shall, insofar as practicable, provide training on sexual assault prevention and response to each individual under the jurisdiction of such Secretary who is enlisted in the Armed Forces under a delayed entry program such that each such individual completes such training before the date of commencement of basic training or initial active duty for training in the Armed Forces.

''(b) TRAINING ELEMENTS.—The training provided pursuant to subsection (a)—

''(1) shall, to the extent practicable, be uniform across the Armed Forces;

''(2) should be provided through in-person instruction, whenever possible;

''(3) should include instruction on the proper use of social media; and

''(4) shall meet such other requirements as the Secretary of Defense may establish.

''(c) DEFINITIONS.—In this section:

''(1) The term 'delayed entry program' means the following:

''(A) The Future Soldiers Program of the Army.

''(B) The Delayed Entry Program of the Navy and the Marine Corps.

''(C) The program of the Air Force for the delayed entry of enlistees into the Air Force.

''(D) The program of the Coast Guard for the delayed entry of enlistees into the Coast Guard.

''(E) Any successor program to a program referred to in subparagraphs (A) through (D).

''(2) The term 'Secretary concerned' has the meaning given that term in section 101(a)(9) of title 10, United States Code.''

METRICS FOR EVALUATING THE EFFORTS OF THE ARMED FORCES TO PREVENT AND RESPOND TO RETALIATION IN CONNECTION WITH REPORTS OF SEXUAL ASSAULT IN THE ARMED FORCES

Pub. L. 114–328, div. A, title V, §545, Dec. 23, 2016, 130 Stat. 2128, provided that:

''(a) METRICS REQUIRED.—The Sexual Assault Prevention and Response Office of the Department of Defense shall establish and issue to the military departments metrics to be used to evaluate the efforts of the Armed Forces to prevent and respond to retaliation in connection with reports of sexual assault in the Armed Forces.

''(b) BEST PRACTICES.—For purposes of enhancing and achieving uniformity in the efforts of the Armed Forces to prevent and respond to retaliation in connection with reports of sexual assault in the Armed Forces, the Sexual Assault Prevention and Response Office shall identify and issue to the military departments best practices to be used in the prevention of and response to retaliation in connection with such reports.''

TRAINING FOR DEPARTMENT OF DEFENSE PERSONNEL WHO INVESTIGATE CLAIMS OF RETALIATION

Pub. L. 114–328, div. A, title V, §546, Dec. 23, 2016, 130 Stat. 2128, as amended by Pub. L. 115–91, div. A, title V, §523(b), Dec. 12, 2017, 131 Stat. 1381, provided that:

''(a) TRAINING REGARDING NATURE AND CONSEQUENCES OF RETALIATION.—The Secretary of Defense shall ensure that the personnel of the Department of Defense specified in subsection (b) who investigate claims of retaliation receive training on the nature and consequences of retaliation, and, in cases involving reports of sexual assault, the nature and consequences of sexual assault trauma. The training shall include such elements as the Secretary shall specify for purposes of this section, including guidelines for the consideration of evidence substantiating such allegations in accordance with the requirements of section 1554b(b) of title 10, United States Code, as added by section 522 of the National Defense Authorization Act for Fiscal Year 2018 [Pub. L. 115–91].

''(b) COVERED PERSONNEL.—The personnel of the Department of Defense covered by subsection (a) are the following:

''(1) Personnel of military criminal investigation services.

''(2) Personnel of Inspectors General offices.

''(3) Personnel of any command of the Armed Forces who are assignable by the commander of such command to investigate claims of retaliation made by or against members of such command.

''(c) RETALIATION DEFINED.—In this section, the term 'retaliation' has the meaning given the term by the Secretary of Defense in the strategy required by section 539 of the National Defense Authorization Act of Fiscal Year 2016 [National Defense Authorization Act for Fiscal Year 2016] (Public Law 114–92; 129 Stat. 818) or a subsequent meaning specified by the Secretary.''

NOTIFICATION TO COMPLAINANTS OF RESOLUTION OF INVESTIGATIONS INTO RETALIATION

Pub. L. 114–328, div. A, title V, § 547, Dec. 23, 2016, 130 Stat. 2128, provided that:

''(a) NOTIFICATION REQUIRED.—

''(1) MEMBERS OF THE ARMY, NAVY, AIR FORCE, AND MARINE CORPS.—Under regulations prescribed by the Secretary of Defense, upon the conclusion of an investigation by an office, element, or personnel of the Department of Defense or of the Armed Forces of a complaint by a member of the Armed Forces of retaliation, the member shall be informed in writing of the results of the investigation, including whether the complaint was substantiated, unsubstantiated, or dismissed.

''(2) MEMBERS OF COAST GUARD.—The Secretary of Homeland Security shall provide in a similar manner for notification in writing of the results of investigations by offices, elements, or personnel of the Department of Homeland Security or of the Coast Guard of complaints of retaliation made by members of the Coast Guard when it is not operating as a service in the Navy.

''(b) RETALIATION DEFINED.—In this section, the term 'retaliation' has the meaning given the term by the Secretary of Defense in the strategy required by section 539 of the National Defense Authorization Act of Fiscal Year 2016 [National Defense Authorization Act for Fiscal Year 2016] (Public Law 114–92; 129 Stat. 818) or a subsequent meaning specified by the Secretary.''

RETENTION OF CASE NOTES IN INVESTIGATIONS OF SEX-RELATED OFFENSES INVOLVING MEMBERS OF THE ARMY, NAVY, AIR FORCE, OR MARINE CORPS

Pub. L. 114–92, div. A, title V, § 541, Nov. 25, 2015, 129 Stat. 819, as amended by Pub. L. 116–283, div. A, title X, § 1081(f)(1), Jan. 1, 2021, 134 Stat. 3874, provided that:

''(a) RETENTION OF ALL INVESTIGATIVE RECORDS REQUIRED.—Not later than 180 days after the date of the enactment of this Act [Nov. 25, 2015], the Secretary of Defense shall update Department of Defense records retention policies to ensure that, for all investigations relating to an alleged sex-related offense (as defined in section 1044e(h) of title 10, United States Code) involving a member of the Army, Navy, Air Force, or Marine Corps, all elements of the case file shall be retained as part of the investigative records retained in accordance with section 586 of the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112–81; 10 U.S.C. 1561 note).

''(b) ELEMENTS.—In updating records retention policies as required by subsection (a), the Secretary of Defense shall address, at a minimum, the following matters:

''(1) The elements of the case file to be retained must include, at a minimum, the case activity record, case review record, investigative plans, and all case notes made by an investigating agent or agents.

''(2) All investigative records must be retained for no less than 50 years.

''(3) No element of the case file may be destroyed until the expiration of the time that investigative records must be kept.

''(4) Records may be stored digitally or in hard copy, in accordance with existing law or regulations or additionally prescribed policy considered necessary by the Secretary of the military department concerned.

''(c) CONSISTENT EDUCATION AND POLICY.—The Secretary of Defense shall ensure that existing policy, education, and training are updated to reflect policy changes in accordance with subsection (a).

''(d) UNIFORM APPLICATION TO MILITARY DEPARTMENTS.—The Secretary of Defense shall ensure that, to the maximum extent practicable, the policy developed under subsections (a) is implemented uniformly by the military departments.''

[Pub. L. 116–283, div. A, title X, § 1081(f), Jan. 1, 2021, 134 Stat. 3874, provided that the amendment made by section 1081(f)(1) of Pub. L. 116–283 to section 541 of Pub. L. 114–92, set out above, is effective as of Dec. 23, 2016, and as if included in Pub. L. 114–92.]

REQUIRED CONSIDERATION OF CERTAIN ELEMENTS OF COMMAND CLIMATE IN PERFORMANCE APPRAISALS OF COMMANDING OFFICERS

Pub. L. 113–291, div. A, title V, § 508, Dec. 19, 2014, 128 Stat. 3357, provided that: ''The Secretary of a military department shall ensure that the performance appraisal of a commanding officer in an Armed Force under the jurisdiction of that Secretary indicates the extent to which the commanding officer has or has not established a command climate in which—

''(1) allegations of sexual assault are properly managed and fairly evaluated; and

''(2) a victim of criminal activity, including sexual assault, can report the criminal activity without fear of retaliation, including ostracism and group pressure from other members of the command.''

REQUIREMENTS RELATING TO SEXUAL ASSAULT FORENSIC EXAMINERS FOR THE ARMED FORCES

Pub. L. 113–291, div. A, title V, § 539(a), (b), Dec. 19, 2014, 128 Stat. 3370, provided that:

''(a) PERSONNEL ELIGIBLE FOR ASSIGNMENT.—

''(1) SPECIFIED PERSONNEL.—Except as provided in paragraph (2), an individual who may be assigned to duty as a Sexual Assault Forensic Examiner (SAFE) for the Armed Forces is limited to members of the Armed Forces and civilian employees of the Department of Defense who are also one of the following:

''(A) A physician.

''(B) A nurse practitioner.

''(C) A nurse midwife.

''(D) A physician assistant.

''(E) A registered nurse.

''(2) INDEPENDENT DUTY CORPSMEN.—An independent duty corpsman or equivalent may be assigned to duty as a Sexual Assault Forensic Examiner for the Armed Forces if the assignment of an individual specified in paragraph (1) is impracticable.

''(b) TRAINING AND CERTIFICATION.—

''(1) IN GENERAL.—The Secretary of Defense shall establish and maintain, and update when appropriate, a training and certification program for Sexual Assault Forensic Examiners. The training and certification programs shall apply uniformly to all Sexual Assault Forensic Examiners under the jurisdiction of the Secretaries of the military departments.

''(2) ELEMENTS.—Each training and certification program under this subsection shall include training in sexual assault forensic examinations by qualified personnel who possess—

''(A) a Sexual Assault Nurse Examiner—Adult/Adolescent (SANE–A) certification or equivalent certification; or

''(B) training and clinical or forensic experience in sexual assault forensic examinations similar to that required for a certification described in subparagraph (A).

''(3) NATURE OF TRAINING.—The training provided under each training and certification program under

this subsection shall incorporate and reflect current best practices and standards on sexual assault forensic examinations.

''(4) APPLICABILITY OF TRAINING REQUIREMENTS.—Effective beginning one year after the date of the enactment of this Act [Dec. 19, 2014], an individual may not be assigned to duty as a Sexual Assault Forensic Examiner for the Armed Forces unless the individual has completed, by the date of such assignment, all training required under the training and certification program under this subsection.''

DEFENSE ADVISORY COMMITTEE ON INVESTIGATION, PROSECUTION, AND DEFENSE OF SEXUAL ASSAULT IN THE ARMED FORCES

Pub. L. 113–291, div. A, title V, § 546(a)–(f), Dec. 19, 2014, 128 Stat. 3374, 3375, as amended by Pub. L. 114–92, div. A, title V, § 537, Nov. 25, 2015, 129 Stat. 817; Pub. L. 115–232, div. A, title V, § 533, Aug. 13, 2018, 132 Stat. 1760; Pub. L. 116–92, div. A, title V, § 535, Dec. 20, 2019, 133 Stat. 1362, provided that:

''(a) ESTABLISHMENT REQUIRED.—

''(1) IN GENERAL.—The Secretary of Defense shall establish and maintain within the Department of Defense an advisory committee to be known as the 'Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces' (in this section referred to as the 'Advisory Committee').

''(2) DEADLINE FOR ESTABLISHMENT.—The Secretary shall establish the Advisory Committee not later than 90 days after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2016 [Nov. 25, 2015].

''(b) MEMBERSHIP.—The Advisory Committee shall consist of not more than 20 members, to be appointed by the Secretary of Defense, who have experience with the investigation, prosecution, and defense of allegations of sexual assault offenses. Members of the Advisory Committee may include Federal and State prosecutors, judges, law professors, and private attorneys. Members of the Armed Forces serving on active duty may not serve as a member of the Advisory Committee.

''(c) DUTIES.—

''(1) IN GENERAL.—The Advisory Committee shall advise the Secretary of Defense on the investigation, prosecution, and defense of allegations of rape, forcible sodomy, sexual assault, and other sexual misconduct involving members of the Armed Forces.

''(2) BASIS FOR PROVISION OF ADVICE.—For purposes of providing advice to the Secretary pursuant to this subsection, the Advisory Committee shall review, on an ongoing basis, cases involving allegations of sexual misconduct described in paragraph (1).

''(d) AUTHORITIES.—

''(1) HEARINGS.—The Advisory Committee may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the committee considers appropriate to carry out its duties under this section.

''(2) INFORMATION FROM FEDERAL AGENCIES.—Upon request by the chair of the Advisory Committee, a department or agency of the Federal Government shall provide information that the Advisory Committee considers necessary to carry out its duties under this section. In carrying out this paragraph, the department or agency shall take steps to prevent the unauthorized disclosure of personally identifiable information.

''(e) ANNUAL REPORTS.—Not later than March 30 each year, the Advisory Committee shall submit to the Secretary of Defense and the Committees on Armed Services of the Senate and the House of Representatives a report describing the results of the activities of the Advisory Committee pursuant to this section during the preceding year.

''(f) TERMINATION.—

''(1) IN GENERAL.—Except as provided in paragraph (2), the Advisory Committee shall terminate on the date that is 10 years after the date of the establishment of the Advisory Committee pursuant to subsection (a).

''(2) CONTINUATION.—The Secretary of Defense may continue the Advisory Committee after the termination date applicable under paragraph (1) if the Secretary determines that continuation of the Advisory Committee after that date is advisable and appropriate. If the Secretary determines to continue the Advisory Committee after that date, the Secretary shall submit to the President and the congressional committees specified in subsection (d) a report describing the reasons for that determination and specifying the new termination date for the Advisory Committee.''

[For termination, effective Dec. 31, 2021, of annual reporting provisions in section 546(e) of Pub. L. 113–291, set out above, see section 1061 of Pub. L. 114–328, set out as a note under section 111 of this title.]

IMPROVED CLIMATE ASSESSMENTS AND DISSEMINATION OF RESULTS

Pub. L. 113–66, div. A, title V, § 587, Dec. 26, 2013, 127 Stat. 778, provided that:

''(a) IMPROVED DISSEMINATION OF RESULTS IN CHAIN OF COMMAND.—The Secretary of Defense shall ensure that the results of command climate assessments are provided to the relevant individual commander and to the next higher level of command.

''(b) EVIDENCE OF COMPLIANCE.—The Secretary of each military department shall require in the performance evaluations and assessments used by each Armed Force under the jurisdiction of the Secretary a statement by the commander regarding whether the commander has conducted the required command climate assessments.

''(c) EFFECT OF FAILURE TO CONDUCT ASSESSMENT.—The failure of a commander to conduct the required command climate assessments shall be noted in the commander's performance evaluation.''

AVAILABILITY OF SEXUAL ASSAULT FORENSIC EXAMINERS AT MILITARY MEDICAL TREATMENT FACILITIES

Pub. L. 113–66, div. A, title XVII, § 1725(b), Dec. 26, 2013, 127 Stat. 971, as amended by Pub. L. 113–291, div. A, title V, § 539(d)(1), Dec. 19, 2014, 128 Stat. 3371, provided that:

''(1) FACILITIES WITH FULL-TIME EMERGENCY DEPARTMENT.—The Secretary of a military department shall require the assignment of at least one full-time Sexual Assault Forensic Examiner to each military medical treatment facility under the jurisdiction of that Secretary in which an emergency department operates 24 hours per day. The Secretary may assign additional Sexual Assault Forensic Examiners based on the demographics of the patients who utilize the military medical treatment facility.

''(2) OTHER FACILITIES.—In the case of a military medical treatment facility not covered by paragraph (1), the Secretary of the military department concerned shall require that a Sexual Assault Forensic Examiner be made available to a patient of the facility, consistent with the Department of Justice National Protocol for Sexual Assault Medical Forensic Examinations, Adult/Adolescent, when a determination is made regarding the patient's need for the services of a Sexual Assault Forensic Examiner.''

COMMANDING OFFICER ACTION ON REPORTS ON SEXUAL OFFENSES INVOLVING MEMBERS OF THE ARMED FORCES

Pub. L. 113–66, div. A, title XVII, § 1742, Dec. 26, 2013, 127 Stat. 979, provided that:

''(a) IMMEDIATE ACTION REQUIRED.—A commanding officer who receives a report of a sex-related offense involving a member of the Armed Forces in the chain of command of such officer shall act upon the report in accordance with subsection (b) immediately after receipt of the report by the commanding officer.

''(b) ACTION REQUIRED.—The action required by this subsection with respect to a report described in subsection (a) is the referral of the report to the military

criminal investigation organization with responsibility for investigating that offense of the military department concerned or such other investigation service of the military department concerned as the Secretary of the military department concerned may specify for purposes of this section.''

EIGHT-DAY INCIDENT REPORTING REQUIREMENT IN RESPONSE TO UNRESTRICTED REPORT OF SEXUAL ASSAULT IN WHICH THE VICTIM IS A MEMBER OF THE ARMED FORCES

Pub. L. 113–66, div. A, title XVII, § 1743, Dec. 26, 2013, 127 Stat. 979, provided that:

''(a) INCIDENT REPORTING POLICY REQUIREMENT.—The Secretary of Defense and the Secretary of the Department in which the Coast Guard is operating shall establish and maintain a policy to require the submission by a designated person of a written incident report not later than eight days after an unrestricted report of sexual assault has been made in which a member of the Armed Forces is the victim. At a minimum, this incident report shall be provided to the following:

''(1) The installation commander, if such incident occurred on or in the vicinity of a military installation.

''(2) The first officer in the grade of 0–6, and the first general officer or flag officer, in the chain of command of the victim.

''(3) The first officer in the grade of 0–6, and the first general officer or flag officer, in the chain of command of the alleged offender if the alleged offender is a member of the Armed Forces.

''(b) PURPOSE OF REPORT.—The purpose of the required incident report under subsection (a) is to detail the actions taken or in progress to provide the necessary care and support to the victim of the assault, to refer the allegation of sexual assault to the appropriate investigatory agency, and to provide initial notification of the serious incident when that notification has not already taken place.

''(c) ELEMENTS OF REPORT.—

''(1) IN GENERAL.—The report of an incident under subsection (a) shall include, at a minimum, the following:

''(A) Time/Date/Location of the alleged incident.

''(B) Type of offense alleged.

''(C) Service affiliation, assigned unit, and location of the victim.

''(D) Service affiliation, assigned unit, and location of the alleged offender, including information regarding whether the alleged offender has been temporarily transferred or removed from an assigned billet or ordered to pretrial confinement or otherwise restricted, if applicable.

''(E) Post-incident actions taken in connection with the incident, including the following:

''(i) Referral of the victim to a Sexual Assault Response Coordinator for referral to services available to members of the Armed Forces who are victims of sexual assault, including the date of each such referral.

''(ii) Notification of incident to appropriate military criminal investigative organization, including the organization notified and date of such notification.

''(iii) Receipt and processing status of a request for expedited victim transfer, if applicable.

''(iv) Issuance of any military protective orders in connection with the incident.

''(2) MODIFICATION.—

''(A) IN GENERAL.—The Secretary of Defense may modify the elements required in a report under this section regarding an incident involving a member of the Armed Forces (including the Coast Guard when it is operating as service in the Department of the Navy) if the Secretary determines that such modification will facilitate compliance with best practices for such reporting as identified by the Sexual Assault Prevention and Response Office of the Department of Defense.

''(B) COAST GUARD.—The Secretary of the Department in which the Coast Guard is operating may modify the elements required in a report under this section regarding an incident involving a member of the Coast Guard if the Secretary determines that such modification will facilitate compliance with best practices for such reporting as identified by the Coast Guard Office of Work-Life Programs.

''(d) REGULATIONS.—Not later than 180 days after the date of the enactment of this Act [Dec. 26, 2013], the Secretary of Defense and the Secretary of the Department in which the Coast Guard is operating shall prescribe regulations to carry out this section.''

INCLUSION AND COMMAND REVIEW OF INFORMATION ON SEX-RELATED OFFENSES IN PERSONNEL SERVICE RECORDS OF MEMBERS OF THE ARMED FORCES

Pub. L. 113–66, div. A, title XVII, § 1745, Dec. 26, 2013, 127 Stat. 982, provided that:

''(a) INFORMATION ON REPORTS ON SEX-RELATED OFFENSES.—

''(1) IN GENERAL.—If a complaint of a sex-related offense is made against a member of the Armed Forces and the member is convicted by court-martial or receives non-judicial punishment or punitive administrative action for such sex-related offense, a notation to that effect shall be placed in the personnel service record of the member, regardless of the member's grade.

''(2) PURPOSE.—The purpose of the inclusion of information in personnel service records under paragraph (1) is to alert commanders to the members of their command who have received courts-martial conviction, non-judicial punishment, or punitive administrative action for sex-related offenses in order to reduce the likelihood that repeat offenses will escape the notice of commanders.

''(b) LIMITATION ON PLACEMENT.—A notation under subsection (a) may not be placed in the restricted section of the personnel service record of a member.

''(c) CONSTRUCTION.—Nothing in subsection (a) or (b) may be construed to prohibit or limit the capacity of a member of the Armed Forces to challenge or appeal the placement of a notation, or location of placement of a notation, in the member's personnel service record in accordance with procedures otherwise applicable to such challenges or appeals.

''(d) COMMAND REVIEW OF HISTORY OF SEX-RELATED OFFENSES OF MEMBERS UPON ASSIGNMENT OR TRANSFER TO NEW UNIT.—

''(1) REVIEW REQUIRED.—Under uniform regulations prescribed by the Secretary of Defense, the commanding officer of a facility, installation, or unit to which a member of the Armed Forces described in paragraph (2) is permanently assigned or transferred shall review the history of sex-related offenses as documented in the personnel service record of the member in order to familiarize such officer with such history of the member.

''(2) COVERED MEMBERS.—A member of the Armed Forces described in this paragraph is a member of the Armed Forces who, at the time of assignment or transfer as described in paragraph (1), has a history of one or more sex-related offenses as documented in the personnel service record of such member or such other records or files as the Secretary shall specify in the regulations prescribed under paragraph (1).''

ESTABLISHMENT OF SPECIAL VICTIM CAPABILITIES WITHIN THE MILITARY DEPARTMENTS TO RESPOND TO ALLEGATIONS OF CERTAIN SPECIAL VICTIM OFFENSES

Pub. L. 112–239, div. A, title V, § 573, Jan. 2, 2013, 126 Stat. 1755, provided that:

''(a) ESTABLISHMENT REQUIRED.—Under regulations prescribed by the Secretary of Defense, the Secretary of each military department shall establish special victim capabilities for the purposes of—

''(1) investigating and prosecuting allegations of child abuse, serious domestic violence, or sexual offenses; and

''(2) providing support for the victims of such offenses.

''(b) PERSONNEL.—The special victim capabilities developed under subsection (a) shall include specially trained and selected—

''(1) investigators from the Army Criminal Investigative Command, Naval Criminal Investigative Service, or Air Force Office of Special Investigations;

''(2) judge advocates;

''(3) victim witness assistance personnel; and

''(4) administrative paralegal support personnel.

''(c) TRAINING, SELECTION, AND CERTIFICATION STANDARDS.—The Secretary of Defense shall prescribe standards for the training, selection, and certification of personnel who will provide special victim capabilities for a military department.

''(d) DISCRETION REGARDING EXTENT OF CAPABILITIES.—

''(1) IN GENERAL.—Subject to paragraph (2), the Secretary of a military department shall determine the extent to which special victim capabilities will be established within the military department and prescribe regulations for the management and use of the special victim capabilities.

''(2) REQUIRED ELEMENTS.—At a minimum, the special victim capabilities established within a military department must provide effective, timely, and responsive world-wide support for the purposes described in subsection (a).

''(e) TIME FOR ESTABLISHMENT.—

''(1) IMPLEMENTATION PLAN.—Not later than 270 days after the date of the enactment of this Act [Jan. 2, 2013], the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report containing—

''(A) the plans and time lines of the Secretaries of the military departments for the establishment of the special victims capabilities; and

''(B) an assessment by the Secretary of Defense of the plans and time lines.

''(2) INITIAL CAPABILITIES.—Not later than one year after the date of the enactment of this Act, the Secretary of each military department shall have available an initial special victim capability consisting of the personnel specified in subsection (b).

''(f) EVALUATION OF EFFECTIVENESS.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall—

''(1) prescribe the common criteria to be used by the Secretaries of the military departments to measure the effectiveness and impact of the special victim capabilities from the investigative, prosecutorial, and victim's perspectives; and

''(2) require the Secretaries of the military departments to collect and report the data used to measure such effectiveness and impact.

''(g) SPECIAL VICTIM CAPABILITIES DEFINED.—In this section, the term 'special victim capabilities' means a distinct, recognizable group of appropriately skilled professionals who work collaboratively to achieve the purposes described in subsection (a). This section does not require that the special victim capabilities be created as separate military unit or have a separate chain of command.''

RETENTION OF CERTAIN FORMS IN CONNECTION WITH RESTRICTED REPORTS AND UNRESTRICTED REPORTS ON SEXUAL ASSAULT INVOLVING MEMBERS OF THE ARMED FORCES

Pub. L. 112–239, div. A, title V, § 577, Jan. 2, 2013, 126 Stat. 1762, as amended by Pub. L. 113–66, div. A, title XVII, § 1723, Dec. 26, 2013, 127 Stat. 970, provided that:

''(a) PERIOD OF RETENTION.—The Secretary of Defense shall ensure that all copies of Department of Defense Form 2910 and Department of Defense Form 2911 filed in connection with a Restricted Report or Unrestricted Report on an incident of sexual assault involving a member of the Armed Forces be retained for the longer of—

''(1) 50 years commencing on the date of signature of the member on Department of Defense Form 2910; or

''(2) the time provided for the retention of such forms in connection with Unrestricted Reports on incidents of sexual assault involving members of the Armed Forces under Department of Defense Directive-Type Memorandum (DTM) 11–062, entitled 'Document Retention in Cases of Restricted and Unrestricted Reports of Sexual Assault', or any successor directive or policy.

''(b) PROTECTION OF CONFIDENTIALITY.—Any Department of Defense form retained under subsection (a) shall be retained in a manner that protects the confidentiality of the member of the Armed Forces concerned in accordance with procedures for the protection of confidentiality of information in Restricted Reports under Department of Defense memorandum JTF–SAPR–009, relating to the Department of Defense policy on confidentiality for victims of sexual assault, or any successor policy or directive.''

GENERAL OR FLAG OFFICER REVIEW OF AND CONCURRENCE IN SEPARATION OF MEMBERS OF THE ARMED FORCES MAKING AN UNRESTRICTED REPORT OF SEXUAL ASSAULT

Pub. L. 112–239, div. A, title V, § 578, Jan. 2, 2013, 126 Stat. 1763, provided that:

''(a) REVIEW REQUIRED.—The Secretary of Defense shall develop a policy to require a general officer or flag officer of the Armed Forces to review the circumstances of, and grounds for, the proposed involuntary separation of any member of the Armed Forces who—

''(1) made an Unrestricted Report of a sexual assault;

''(2) within one year after making the Unrestricted Report of a sexual assault, is recommended for involuntary separation from the Armed Forces; and

''(3) requests the review on the grounds that the member believes the recommendation for involuntary separation from the Armed Forces was initiated in retaliation for making the report.

''(b) CONCURRENCE REQUIRED.—If a review is requested by a member of the Armed Forces as authorized by subsection (a), the concurrence of the general officer or flag officer conducting the review of the proposed involuntary separation of the member is required in order to separate the member.

''(c) SUBMISSION OF POLICY.—Not later than 180 days after the date of the enactment of this Act [Jan. 2, 2013], the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report containing the policy developed under subsection (a).

''(d) APPLICATION OF POLICY.—The policy developed under subsection (a) shall take effect on the date of the submission of the policy to Congress under subsection (c) and apply to members of the Armed Forces described in subsection (a) who are proposed to be involuntarily separated from the Armed Forces on or after that date.''

DEPARTMENT OF DEFENSE POLICY AND PLAN FOR PREVENTION AND RESPONSE TO SEXUAL HARASSMENT IN THE ARMED FORCES

Pub. L. 112–239, div. A, title V, § 579, Jan. 2, 2013, 126 Stat. 1763, provided that:

''(a) COMPREHENSIVE PREVENTION AND RESPONSE POLICY.—

''(1) POLICY REQUIRED.—The Secretary of Defense shall develop a comprehensive policy to prevent and respond to sexual harassment in the Armed Forces. The policy shall provide for the following:

''(A) Training for members of the Armed Forces on the prevention of sexual harassment.

''(B) Mechanisms for reporting incidents of sexual harassment in the Armed Forces, including procedures for reporting anonymously.

''(C) Mechanisms for responding to and resolving incidents of alleged sexual harassment incidences involving members of the Armed Forces, including through the prosecution of offenders.

"(2) REPORT.—Not later than one year after the date of the enactment of this Act [Jan. 2, 2013], the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report setting forth the policy required by paragraph (1).

"(3) CONSULTATION.—The Secretary of Defense shall prepare the policy and report required by this subsection in consultation with the Secretaries of the military departments and the Equal Opportunity Office of the Department of Defense.

"(b) DATA COLLECTION AND REPORTING REGARDING SUBSTANTIATED INCIDENTS OF SEXUAL HARASSMENT.—

"(1) PLAN REQUIRED.—The Secretary of Defense shall develop a plan to collect information and data regarding substantiated incidents of sexual harassment involving members of the Armed Forces. The plan shall specifically deal with the need to identify cases in which a member is accused of multiple incidents of sexual harassment.

"(2) SUBMISSION OF PLAN.—Not later than June 1, 2013, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives the plan developed under paragraph (1).

"(3) REPORTING REQUIREMENT.—As part of the reports required to be submitted in 2014 under section 1631 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (Public Law 111–383; 124 Stat. 4433; 10 U.S.C. 1561 note), the Secretary of Defense shall include information and data collected under the plan during the preceding year regarding substantiated incidents of sexual harassment involving members of the Armed Forces."

SEXUAL ASSAULT RESPONSE COORDINATORS AND SEXUAL ASSAULT VICTIM ADVOCATES

Pub. L. 112–81, div. A, title V, § 584, Dec. 31, 2011, 125 Stat. 1432, as amended by Pub. L. 113–66, div. A, title XVII, § 1724, Dec. 26, 2013, 127 Stat. 970, provided that:

"(a) ASSIGNMENT OF COORDINATORS.—

"(1) ASSIGNMENT REQUIREMENTS.—At least one full-time Sexual Assault Response Coordinator shall be assigned to each brigade or equivalent unit level of the armed forces. The Secretary of the military department concerned may assign additional Sexual Assault Response Coordinators as necessary based on the demographics or needs of the unit. An additional Sexual Assault Response Coordinator may serve on a full-time or part-time basis at the discretion of the Secretary.

"(2) AVAILABILITY FOR RESERVE COMPONENT MEMBERS.—The Secretary of the military department concerned shall ensure the timely access to a Sexual Assault Response Coordinator by any member of the National Guard or Reserve who—

"(A) is the victim of a sexual assault during the performance of duties as a member of the National Guard or Reserves; or

"(B) is the victim of a sexual assault committed by a member of the National Guard or Reserves.

"(3) ELIGIBLE PERSONS.—On and after October 1, 2013, only members of the armed forces and civilian employees of the Department of Defense may be assigned to duty as a Sexual Assault Response Coordinator.

"(b) ASSIGNMENT OF VICTIM ADVOCATES.—

"(1) ASSIGNMENT REQUIREMENTS.—At least one full-time Sexual Assault Victim Advocate shall be assigned to each brigade or equivalent unit level of the armed forces. The Secretary of the military department concerned may assign additional Victim Advocates as necessary based on the demographics or needs of the unit. An additional Victim Advocate may serve on a full-time or part-time basis at the discretion of the Secretary.

"(2) ELIGIBLE PERSONS.—On and after October 1, 2013, only members of the armed forces and civilian employees of the Department of Defense may be assigned to duty as a Victim Advocate.

"(c) TRAINING AND CERTIFICATION.—

"(1) TRAINING AND CERTIFICATION PROGRAM.—As part of the sexual assault prevention and response program, the Secretary of Defense shall establish a professional and uniform training and certification program for Sexual Assault Response Coordinators assigned under subsection (a) and Sexual Assault Victim Advocates assigned under subsection (b). The program shall be structured and administered in a manner similar to the professional training available for Equal Opportunity Advisors through the Defense Equal Opportunity Management Institute.

"(2) CONSULTATION.—In developing the curriculum and other components of the program, the Secretary of Defense shall work with experts outside of the Department of Defense who are experts in victim advocacy and sexual assault prevention and response training.

"(3) EFFECTIVE DATE.—On and after October 1, 2013, before a member or civilian employee may be assigned to duty as a Sexual Assault Response Coordinator under subsection (a) or Victim Advocate under subsection (b), the member or employee must have completed the training program required by paragraph (1) and obtained the certification.

"(d) DEFINITIONS.—In this section:

"(1) The term 'armed forces' means the Army, Navy, Air Force, and Marine Corps.

"(2) The term 'sexual assault prevention and response program' has the meaning given such term in section 1601(a) of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (Public Law 111–383; 10 U.S.C. 1561 note)."

TRAINING AND EDUCATION PROGRAMS FOR SEXUAL ASSAULT PREVENTION AND RESPONSE PROGRAM

Pub. L. 113–66, div. A, title XVII, § 1713(c), Dec. 26, 2013, 127 Stat. 964, provided that: "The Secretary of Defense shall provide for the inclusion of information and discussion regarding the availability and use of the authority described by section 674 of title 10, United States Code, as added by subsection (a), as part of the training for new and prospective commanders at all levels of command required by section 585(b) of the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112–81; 10 U.S.C. 1561 note)."

Pub. L. 112–81, div. A, title V, § 585, Dec. 31, 2011, 125 Stat. 1434, as amended by Pub. L. 112–239, div. A, title V, § 574, Jan. 2, 2013, 126 Stat. 1756; Pub. L. 113–66, div. A, title X, § 1091(c)(2), Dec. 26, 2013, 127 Stat. 876, provided that:

"(a) SEXUAL ASSAULT PREVENTION AND RESPONSE TRAINING AND EDUCATION.—

"(1) DEVELOPMENT OF CURRICULUM.—Not later than one year after the date of the enactment of this Act [Dec. 31, 2011], the Secretary of each military department shall develop a curriculum to provide sexual assault prevention and response training and education for members of the Armed Forces under the jurisdiction of the Secretary and civilian employees of the military department to strengthen individual knowledge, skills, and capacity to prevent and respond to sexual assault. In developing the curriculum, the Secretary shall work with experts outside of the Department of Defense who are experts in sexual assault prevention and response training.

"(2) SCOPE OF TRAINING AND EDUCATION.—The sexual assault prevention and response training and education shall encompass initial entry and accession programs, annual refresher training, professional military education, peer education, and specialized leadership training. Training shall be tailored for specific leadership levels and local area requirements.

"(3) CONSISTENT TRAINING.—The Secretary of Defense shall ensure that the sexual assault prevention and response training provided to members of the Armed Forces and Department of Defense civilian employees is consistent throughout the military departments.

"(b) INCLUSION IN PROFESSIONAL MILITARY EDUCATION.—The Secretary of Defense shall provide for the

inclusion of a sexual assault prevention and response training module at each level of professional military education. The training shall be tailored to the new responsibilities and leadership requirements of members of the Armed Forces as they are promoted.

''(c) INCLUSION IN FIRST RESPONDER TRAINING.—

''(1) IN GENERAL.—The Secretary of Defense shall direct that managers of specialty skills associated with first responders described in paragraph (2) integrate sexual assault response training in initial and recurring training courses.

''(2) COVERED FIRST RESPONDERS.—First responders referred to in paragraph (1) include firefighters, emergency medical technicians, law enforcement officers, military criminal investigators, healthcare personnel, judge advocates, and chaplains.

''(d) COMMANDERS' TRAINING.—The Secretary of Defense shall provide for the inclusion of a sexual assault prevention and response training module in the training for new or prospective commanders at all levels of command. The training shall be tailored to the responsibilities and leadership requirements of members of the Armed Forces as they are assigned to command positions. Such training shall include the following:

''(1) Fostering a command climate that does not tolerate sexual assault.

''(2) Fostering a command climate in which persons assigned to the command are encouraged to intervene to prevent potential incidents of sexual assault.

''(3) Fostering a command climate that encourages victims of sexual assault to report any incident of sexual assault.

''(4) Understanding the needs of, and the resources available to, the victim after an incident of sexual assault.

''(5) Use of military criminal investigative organizations for the investigation of alleged incidents of sexual assault.

''(6) Available disciplinary options, including court-martial, non-judicial punishment, administrative action, and deferral of discipline for collateral misconduct, as appropriate.

''(e) EXPLANATION TO BE INCLUDED IN INITIAL ENTRY AND ACCESSION TRAINING.—

''(1) REQUIREMENT.—The Secretary of Defense shall require that the matters specified in paragraph (2) be carefully explained to each member of the Army, Navy, Air Force, and Marine Corps at the time of (or within fourteen duty days after)—

''(A) the member's initial entrance on active duty; or

''(B) the member's initial entrance into a duty status with a reserve component.

''(2) MATTERS TO BE EXPLAINED.—This subsection applies with respect to the following:

''(A) Department of Defense policy with respect to sexual assault.

''(B) The resources available with respect to sexual assault reporting and prevention and the procedures to be followed by a member seeking to access those resources.''

[Pub. L. 113–66, div. A, title X, §1091(c), Dec. 26, 2013, 127 Stat. 876, provided in part that the amendment made by section 1091(c)(2) to section 585 of Pub. L. 112–81, set out above, is effective as of Dec. 31, 2011, and as if included in Pub. L. 112–81 as enacted.]

DEPARTMENT OF DEFENSE POLICY AND PROCEDURES ON RETENTION AND ACCESS TO EVIDENCE AND RECORDS RELATING TO SEXUAL ASSAULTS INVOLVING MEMBERS OF THE ARMED FORCES

Pub. L. 112–81, div. A, title V, §586, Dec. 31, 2011, 125 Stat. 1434, as amended by Pub. L. 113–291, div. A, title V, §538, Dec. 19, 2014, 128 Stat. 3369; Pub. L. 116–92, div. A, title V, §536, Dec. 20, 2019, 133 Stat. 1362, provided that:

''(a) COMPREHENSIVE POLICY ON RETENTION AND ACCESS TO RECORDS.—Not later than October 1, 2012, the Secretary of Defense shall, in consultation with the Secretary of Veterans Affairs, develop a comprehensive policy for the Department of Defense on the retention of and access to evidence and records relating to sexual assaults involving members of the Armed Forces.

''(b) OBJECTIVES.—The comprehensive policy required by subsection (a) shall include policies and procedures (including systems of records) necessary to ensure preservation of records and evidence for periods of time that ensure that members of the Armed Forces and veterans of military service who were the victims of sexual assault during military service are able to substantiate claims for veterans benefits, to support criminal or civil prosecutions by military or civil authorities, and for such purposes relating to the documentation of the incidence of sexual assault in the Armed Forces as the Secretary of Defense considers appropriate.

''(c) ELEMENTS.—In developing the comprehensive policy required by subsection (a), the Secretary of Defense shall consider, at a minimum, the following matters:

''(1) Identification of records, including non-Department of Defense records, relating to an incident of sexual assault, that must be retained.

''(2) Criteria for collection and retention of records.

''(3) Identification of physical evidence and non-documentary forms of evidence relating to sexual assaults that must be retained.

''(4) Length of time records, including Department of Defense Forms 2910 and 2911, and evidence must be retained, except that—

''(A) the length of time physical evidence and forensic evidence must be retained shall be not less than five years; and

''(B) the length of time documentary evidence relating to sexual assaults must be retained shall be not less than the length of time investigative records relating to reports of sexual assaults of that type (restricted or unrestricted reports) must be retained.

''(5) Locations where records must be stored.

''(6) Media which may be used to preserve records and assure access, including an electronic systems [sic] of records.

''(7) Protection of privacy of individuals named in records and status of records under section 552 of title 5, United States Code (commonly referred to as the 'Freedom of Information Act'), section 552a of title 5, United States Code (commonly referred to as the 'Privacy Act'), restricted reporting cases, and laws related to privilege.

''(8) Access to records by victims of sexual assault, the Department of Veterans Affairs, and others, including alleged assailants and law enforcement authorities.

''(9) Responsibilities for record retention by the military departments.

''(10) Education and training on record retention requirements.

''(11) Uniform collection of data on the incidence of sexual assaults and on disciplinary actions taken in substantiated cases of sexual assault.

''(d) UNIFORM APPLICATION TO MILITARY DEPARTMENTS.—The Secretary of Defense shall ensure that, to the maximum extent practicable, the policy developed under subsection (a) is implemented uniformly by the military departments.

''(e) COPY OF RECORDS OF COURT-MARTIAL TO VICTIMS OF SEXUAL ASSAULT.—[Amended section 854 of this title.]

''(e) RETURN OF PERSONAL PROPERTY UPON COMPLETION OF RELATED PROCEEDINGS IN UNRESTRICTED REPORTING CASES.—Notwithstanding subsection (c)(4)(A), personal property retained as evidence in connection with an incident of sexual assault involving a member of the Armed Forces may be returned to the rightful owner of such property after the conclusion of all legal, adverse action, and administrative proceedings related to such incident.

''(f) RETURN OF PERSONAL PROPERTY IN RESTRICTED REPORTING CASES.—(1) The Secretary of Defense shall prescribe procedures under which a victim who files a

restricted report on an incident of sexual assault may request, at any time, the return of any personal property of the victim obtained as part of the sexual assault forensic examination.

''(2) The procedures shall ensure that—

''(A) a request of a victim under paragraph (1) may be made on a confidential basis and without affecting the restricted nature of the restricted report; and

''(B) at the time of the filing of the restricted report, a Sexual Assault Response Coordinator or Sexual Assault Prevention and Response Victim Advocate—

''(i) informs the victim that the victim may request the return of personal property as described in paragraph (1); and

''(ii) advises the victim that such a request for the return of personal property may negatively impact a subsequent case adjudication, if the victim later decides to convert the restricted report to an unrestricted report.

''(3) Except with respect to personal property returned to a victim under this subsection, nothing in this subsection shall affect the requirement to retain a sexual assault forensic examination (SAFE) kit for the period specified in subsection (c)(4)(A).''

[Pub. L. 116–92, § 536(1), amended section 586 of Pub. L. 112–81, set out above, by redesignating subsec. (f) as (e), resulting in two subsecs. designated (e).]

IMPROVED SEXUAL ASSAULT PREVENTION AND RESPONSE IN THE ARMED FORCES

Pub. L. 115–91, div. A, title V, § 538, Dec. 12, 2017, 131 Stat. 1393, provided that: ''Beginning with the reports required to be submitted by March 1, 2019, under section 1631 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (Public Law 111–383; 10 U.S.C. 1561 note), information regarding a sexual assault committed by a member of the Armed Forces against the spouse or intimate partner of the member or another dependent of the member shall be included in such reports in addition to the annual Family Advocacy Program report. The information may be included as an annex to such reports.''

Pub. L. 112–239, div. A, title V, § 572, Jan. 2, 2013, 126 Stat. 1753, as amended by Pub. L. 113–66, div. A, title XVII, § 1721, Dec. 26, 2013, 127 Stat. 970, provided that:

''(a) POLICY MODIFICATIONS.—Not later than 180 days after the date of the enactment of this Act [Jan. 2, 2013], the Secretary of Defense shall modify the revised comprehensive policy for the Department of Defense sexual assault prevention and response program required by section 1602 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (Public Law 111–383; 124 Stat. 4430; 10 U.S.C. 1561 note) to include in the policy the following new requirements:

''(1) Subject to subsection (b), a requirement that the Secretary of each military department establish a record on the disposition of any Unrestricted Report of sexual assault involving a member of the Armed Forces, whether such disposition is court martial, nonjudicial punishment, or other administrative action.

''(2) A requirement that the Secretary of each military department establish policies to require the processing for administrative separation of any member of the Armed Forces under the jurisdiction of such Secretary whose conviction for a covered offense is final and who is not punitively discharged from the Armed Forces in connection with such conviction. Such requirement—

''(A) shall ensure that any separation decision is based on the full facts of the case and that due process procedures are provided under regulations prescribed by the Secretary of Defense; and

''(B) shall not be interpreted to limit or alter the authority of the Secretary of the military department concerned to process members of the Armed Forces for administrative separation for other offenses or under other provisions of law.

''(3) A requirement that the commander of each military command and other units specified by the Secretary of Defense for purposes of the policy shall conduct, within 120 days after the commander assumes command and at least annually thereafter while retaining command, a climate assessment of the command or unit for purposes of preventing and responding to sexual assaults. The climate assessment shall include an opportunity for members of the Armed Forces to express their opinions regarding the manner and extent to which their leaders, including commanders, respond to allegations of sexual assault and complaints of sexual harassment and the effectiveness of such response.

''(4) A requirement to post and widely disseminate information about resources available to report and respond to sexual assaults, including the establishment of hotline phone numbers and Internet websites available to all members of the Armed Forces.

''(5) A requirement for a general education campaign to notify members of the Armed Forces regarding the authorities available under chapter 79 of title 10, United States Code, for the correction of military records when a member experiences any retaliatory personnel action for making a report of sexual assault or sexual harassment.

''(b) ADDITIONAL REQUIREMENTS REGARDING DISPOSITION RECORDS OF SEXUAL ASSAULT REPORTS.—

''(1) ELEMENTS.—The record of the disposition of an Unrestricted Report of sexual assault established under subsection (a)(1) shall include information regarding the following, as appropriate:

''(A) Documentary information collected about the incident, other than investigator case notes.

''(B) Punishment imposed, including the sentencing by judicial or non-judicial means, including incarceration, fines, restriction, and extra duty as a result of military court-martial, Federal or local court and other sentencing, or any other punishment imposed.

''(C) Adverse administrative actions taken against the subject of the investigation, if any.

''(D) Any pertinent referrals made for the subject of the investigation, offered as a result of the incident, such as drug and alcohol counseling and other types of counseling or intervention.

''(2) RETENTION OF RECORDS.—The Secretary of Defense shall require that—

''(A) the disposition records established pursuant to subsection (a)(1) be retained for a period of not less than 20 years; and

''(B) information from the records that satisfies the reporting requirements established in section 1631 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (Public Law 111–383; 10 U.S.C. 1561 note) be incorporated into the Defense Sexual Assault Incident Database and maintained for the same period as applies to retention of the records under subparagraph (A).

''(c) COVERED OFFENSE DEFINED.—For purposes of subsection (a)(2), the term 'covered offense' means the following:

''(1) Rape or sexual assault under subsection (a) or (b) of section 920 of title 10, United States Code (article 120 of the Uniform Code of Military Justice).

''(2) Forcible sodomy under section 925 of title 10, United States Code (article 125 of the Uniform Code of Military Justice).

''(3) An attempt to commit an offense specified in paragraph (1) or (2) under section 880 of title 10, United States Code (article 80 of the Uniform Code of Military Justice).

''(d) TRACKING OF ORGANIZATIONAL CLIMATE ASSESSMENT COMPLIANCE.—The Secretary of Defense shall direct the Secretaries of the military departments to verify and track the compliance of commanding officers in conducting organizational climate assessments, as required by subsection (a)(3).''

Pub. L. 111–383, div. A, title XVI, Jan. 7, 2011, 124 Stat. 4429, as amended by Pub. L. 112–81, div. A, title V, § 583, Dec. 31, 2011, 125 Stat. 1432; Pub. L. 112–239, div. A, title V, § 575(a), (b), Jan. 2, 2013, 126 Stat. 1757, 1758; Pub. L.

113–66, div. A, title XVII, §§ 1725(a), 1726, Dec. 26, 2013, 127 Stat. 971, 972; Pub. L. 113–291, div. A, title V, § 542(a), (b), title X, § 1071(i), Dec. 19, 2014, 128 Stat. 3372, 3373, 3512; Pub. L. 114–328, div. A, title V, §§ 543, 544, Dec. 23, 2016, 130 Stat. 2127; Pub. L. 115–91, div. A, title V, § 537(a), Dec. 12, 2017, 131 Stat. 1392; Pub. L. 116–283, div. A, title V, § 537(a), Jan. 1, 2021, 134 Stat. 3605, provided that:

''SEC. 1601. DEFINITION OF DEPARTMENT OF DEFENSE SEXUAL ASSAULT PREVENTION AND RESPONSE PROGRAM AND OTHER DEFINITIONS.

''(a) SEXUAL ASSAULT PREVENTION AND RESPONSE PROGRAM DEFINED.—In this title, the term 'sexual assault prevention and response program' refers to Department of Defense policies and programs, including policies and programs of a specific military department or Armed Force, that, as modified as required by this title—

''(1) are intended to reduce the number of sexual assaults involving members of the Armed Forces, whether members are the victim, alleged assailant, or both; and

''(2) improve the response of the Department of Defense, the military departments, and the Armed Forces to reports of sexual assaults involving members of the Armed Forces, whether members are the victim, alleged assailant, or both, and to reports of sexual assaults when a covered beneficiary under chapter 55 of title 10, United States Code, is the victim.

''(b) OTHER DEFINITIONS.—In this title:

''(1) The term 'Armed Forces' means the Army, Navy, Air Force, and Marine Corps.

''(2) The terms 'covered beneficiary' and 'dependent' have the meanings given those terms in section 1072 of title 10, United States Code.

''(3) The term 'department' has the meaning given that term in section 101(a)(6) of title 10, United States Code.

''(4) The term 'military installation' has the meaning given that term by the Secretary concerned.

''(5) The term 'Secretary concerned' means—

''(A) the Secretary of the Army, with respect to matters concerning the Army;

''(B) the Secretary of the Navy, with respect to matters concerning the Navy and the Marine Corps; and

''(C) the Secretary of the Air Force, with respect to matters concerning the Air Force.

''(6) The term 'sexual assault' has the definition developed for that term by the Secretary of Defense pursuant to subsection (a)(3) of section 577 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (Public Law 108–375; 10 U.S.C. 113 note) [now set out below], subject to such modifications as the Secretary considers appropriate.

''SEC. 1602. COMPREHENSIVE DEPARTMENT OF DEFENSE POLICY ON SEXUAL ASSAULT PREVENTION AND RESPONSE PROGRAM.

''(a) COMPREHENSIVE POLICY REQUIRED.—Not later than March 30, 2012, the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a revised comprehensive policy for the Department of Defense sexual assault prevention and response program that—

''(1) builds upon the comprehensive sexual assault prevention and response policy developed under subsections (a) and (b) of section 577 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (Public Law 108–375; 10 U.S.C. 113 note) [now set out below];

''(2) incorporates into the sexual assault prevention and response program the new requirements identified by this title; and

''(3) ensures that the policies and procedures of the military departments regarding sexual assault prevention and response are consistent with the revised comprehensive policy.

''(b) CONSIDERATION OF TASK FORCE FINDINGS, RECOMMENDATIONS, AND PRACTICES.—In developing the comprehensive policy required by subsection (a), the Secretary of Defense shall take into account the findings and recommendations found in the report of the Defense Task Force on Sexual Assault in the Military Services issued in December 2009.

''(c) SEXUAL ASSAULT PREVENTION AND RESPONSE EVALUATION PLAN.—

''(1) PLAN REQUIRED.—The Secretary of Defense shall develop and implement an evaluation plan for assessing the effectiveness of the comprehensive policy prepared under subsection (a) in achieving its intended outcomes at the department and individual Armed Force levels.

''(2) ROLE OF SERVICE SECRETARIES.—As a component of the evaluation plan, the Secretary of each military department shall assess the adequacy of measures undertaken at military installations and by units of the Armed Forces under the jurisdiction of the Secretary to ensure the safest and most secure living and working environments with regard to preventing sexual assault.

''(d) PROGRESS REPORT.—Not later than October 1, 2011, the Secretary of Defense shall submit to the congressional defense committees a report—

''(1) describing the process by which the comprehensive policy required by subsection (a) is being revised;

''(2) describing the extent to which revisions of the comprehensive policy and the evaluation plan required by subsection (c) have already been implemented; and

''(3) containing a determination by the Secretary regarding whether the Secretary will be able to comply with the revision deadline specified in subsection (a).

''(e) CONSISTENCY OF TERMINOLOGY, POSITION DESCRIPTIONS, PROGRAM STANDARDS, AND ORGANIZATIONAL STRUCTURES.—

''(1) IN GENERAL.—The Secretary of Defense shall require the use of consistent terminology, position descriptions, minimum program standards, and organizational structures throughout the Armed Forces in implementing the sexual assault prevention and response program.

''(2) MINIMUM STANDARDS.—The Secretary of Defense shall establish minimum standards for—

''(A) the qualifications necessary for a member of the Armed Forces or a civilian employee of the Department of Defense to be selected for assignment to duty as a Sexual Assault Response and Prevention Program Manager, Sexual Assault Response Coordinator, or Sexual Assault Victim Advocate, whether assigned to such duty on a full-time or part-time basis;

''(B) consistent with section 584(c) of the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112–81; 10 U.S.C. 1561 note; 125 Stat. 1433), the training, certification, and status of members of the Armed Forces and civilian employees of the department assigned to duty as Sexual Assault Response and Prevention Program Managers, Sexual Assault Response Coordinators, and Sexual Assault Victim Advocates for the Armed Forces; and

''(C) the curricula to be used to provide sexual assault prevention and response training and education for members of the Armed Forces and civilian employees of the department to strengthen individual knowledge, skills, and capacity to prevent and respond to sexual assault.

''(3) RECOGNIZING OPERATIONAL DIFFERENCES.—In complying with this subsection, the Secretary of Defense shall take into account the responsibilities of the Secretary concerned and operational needs of the Armed Force involved.

''SUBTITLE A—ORGANIZATIONAL STRUCTURE AND APPLICATION OF SEXUAL ASSAULT PREVENTION AND RESPONSE PROGRAM ELEMENTS

''SEC. 1611. SEXUAL ASSAULT PREVENTION AND RESPONSE OFFICE.

''(a) APPOINTMENT OF DIRECTOR.—There shall be a Director of the Sexual Assault Prevention and Response

Office, who shall be appointed from among general or flag officers of the Armed Forces or employees of the Department of Defense in a comparable Senior Executive Service position. During the development and implementation of the comprehensive policy for the Department of Defense sexual assault prevention and response program, the Director shall operate under the oversight of the Advisory Working Group of the Deputy Secretary of Defense.

''(b) DUTIES OF DIRECTOR.—The Director of the Sexual Assault Prevention and Response Office shall—

''(1) oversee implementation of the comprehensive policy for the Department of Defense sexual assault prevention and response program;

''(2) serve as the single point of authority, accountability, and oversight for the sexual assault prevention and response program;

''(3) provide oversight to ensure that the military departments comply with the sexual assault prevention and response program;

''(4) collect and maintain data of the military departments on sexual assault in accordance with subsection (e);

''(5) act as liaison between the Department of Defense and other Federal and State agencies on programs and efforts relating to sexual assault prevention and response; and

''(6) oversee development of strategic program guidance and joint planning objectives for resources in support of the sexual assault prevention and response program, and make recommendations on modifications to policy, law, and regulations needed to ensure the continuing availability of such resources.

''(c) ROLE OF INSPECTORS GENERAL.—

''(1) IN GENERAL.—The Inspector General of the Department of Defense, the Inspector General of the Army, the Naval Inspector General, and the Inspector General of the Air Force shall treat the sexual assault prevention and response program as an item of special interest when conducting inspections of organizations and activities with responsibilities regarding the prevention and response to sexual assault.

''(2) COMPOSITION OF INVESTIGATION TEAMS.—The Inspector General inspection teams shall include at least one member with expertise and knowledge of sexual assault prevention and response policies related to a specific Armed Force.

''(d) STAFF.—

''(1) ASSIGNMENT.—Not later than 18 months after the date of the enactment of this Act [Jan. 7, 2011], an officer from each of the Armed Forces in the grade of O–4 or above shall be assigned to the Sexual Assault Prevention and Response Office for a minimum tour length of at least 18 months.

''(2) HIGHER GRADE.—Notwithstanding paragraph (1), of the four officers assigned to the Sexual Assault Prevention and Response Office under this subsection at any time, one officer shall be in the grade of O–6 or above.

''(e) DATA COLLECTION AND MAINTENANCE METRICS.—In carrying out the requirements of subsection (b)(4), the Director of the Sexual Assault Prevention and Response Office shall develop metrics to measure the effectiveness of, and compliance with, training and awareness objectives of the military departments on sexual assault prevention and response.

''SEC. 1612. OVERSIGHT AND EVALUATION STANDARDS.

''(a) ISSUANCE OF STANDARDS.—The Secretary of Defense shall issue standards to assess and evaluate the effectiveness of the sexual assault prevention and response program of each Armed Force in reducing the number of sexual assaults involving members of the Armed Forces and in improving the response of the department to reports of sexual assaults involving members of the Armed Forces, whether members of the Armed Forces are the victim, alleged assailant, or both.

''(b) SEXUAL ASSAULT PREVENTION EVALUATION PLAN.—The Secretary of Defense shall use the sexual assault prevention and response evaluation plan developed under section 1602(c) to ensure that the Armed Forces implement and comply with assessment and evaluation standards issued under subsection (a).

''SEC. 1613. REPORT AND PLAN FOR COMPLETION OF ACQUISITION OF CENTRALIZED DEPARTMENT OF DEFENSE SEXUAL ASSAULT DATABASE.

''(a) REPORT AND PLAN REQUIRED.—Not later than April 1, 2011, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives a report—

''(1) describing the status of development and implementation of the centralized Department of Defense sexual assault database required by section 563 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110–417; 122 Stat. 4470; 10 U.S.C. 113 note) [now set out below];

''(2) containing a revised implementation plan under subsection (c) of such section for completing implementation of the database; and

''(3) indicating the date by which the database will be operational.

''(b) CONTENT OF IMPLEMENTATION PLAN.—The plan referred to in subsection (a)(2) shall address acquisition best practices associated with successfully acquiring and deploying information technology systems related to the centralized sexual assault database, such as economically justifying the proposed system solution and effectively developing and managing requirements.

''SEC. 1614. RESTRICTED REPORTING OF SEXUAL ASSAULTS.

''The Secretary of Defense shall clarify the limitations on the ability of a member of the Armed Forces to make a restricted report regarding the occurrence of a sexual assault and the circumstances under which information contained in a restricted report may no longer be confidential.

''SUBTITLE B—IMPROVED AND EXPANDED AVAILABILITY OF SERVICES

''SEC. 1621. IMPROVED PROTOCOLS FOR PROVIDING MEDICAL CARE FOR VICTIMS OF SEXUAL ASSAULT.

''The Secretary of Defense shall establish comprehensive and consistent protocols for providing and documenting medical care to a member of the Armed Forces or covered beneficiary who is a victim of a sexual assault, including protocols with respect to the appropriate screening, prevention, and mitigation of diseases. In establishing the protocols, the Secretary shall take into consideration the gender of the victim.

''SEC. 1622. SEXUAL ASSAULT VICTIMS ACCESS TO VICTIM ADVOCATE SERVICES.

''(a) AVAILABILITY OF VICTIM ADVOCATE SERVICES.—

''(1) AVAILABILITY.—A member of the Armed Forces or a dependent, as described in paragraph (2), who is the victim of a sexual assault is entitled to assistance provided by a qualified Sexual Assault Victim Advocate.

''(2) COVERED DEPENDENTS.—The assistance described in paragraph (1) is available to a dependent of a member of the Armed Forces who is the victim of a sexual assault and who resides on or in the vicinity of a military installation. The Secretary concerned shall define the term ''vicinity'' for purposes of this paragraph.

''(b) NOTICE OF AVAILABILITY OF ASSISTANCE; OPT OUT.—The member or dependent shall be informed of the availability of assistance under subsection (a) as soon as the member or dependent seeks assistance from a Sexual Assault Response Coordinator. The victim shall also be informed that the services of a Sexual Assault Response Coordinator and Sexual Assault Victim Advocate are optional and that these services may be declined, in whole or in part, at any time.

''(c) NATURE OF REPORTING IMMATERIAL.—In the case of a member of the Armed Forces, Victim Advocate

services are available regardless of whether the member elects unrestricted or restricted (confidential) reporting of the sexual assault.

"SUBTITLE C—REPORTING REQUIREMENTS

"SEC. 1631. ANNUAL REPORT REGARDING SEXUAL ASSAULTS INVOLVING MEMBERS OF THE ARMED FORCES AND IMPROVEMENT TO SEXUAL ASSAULT PREVENTION AND RESPONSE PROGRAM.

"(a) ANNUAL REPORTS ON SEXUAL ASSAULTS.—Not later than March 1, 2012, and each March 1 thereafter through March 1, 2021, the Secretary of each military department shall submit to the Secretary of Defense a report on the sexual assaults involving members of the Armed Forces under the jurisdiction of that Secretary during the preceding year. In the case of the Secretary of the Navy, separate reports shall be prepared for the Navy and for the Marine Corps.

"(b) CONTENTS.—The report of a Secretary of a military department for an Armed Force under subsection (a) shall contain the following:

"(1) The number of sexual assaults committed against members of the Armed Force that were reported to military officials during the year covered by the report, and the number of the cases so reported that were substantiated.

"(2) The number of sexual assaults committed by members of the Armed Force that were reported to military officials during the year covered by the report, and the number of the cases so reported that were substantiated. The information required by this paragraph may not be combined with the information required by paragraph (1).

"(3) A synopsis of each such substantiated case, organized by offense, and, for each such case, the action taken in the case, including the type of disciplinary or administrative sanction imposed, if any, including courts-martial sentences, non-judicial punishments administered by commanding officers pursuant to section 815 of title 10, United States Code (article 15 of the Uniform Code of Military Justice), and administrative separations.

"(4) The policies, procedures, and processes implemented by the Secretary concerned during the year covered by the report in response to incidents of sexual assault involving members of the Armed Force concerned.

"(5) The number of substantiated sexual assault cases in which the victim is a deployed member of the Armed Forces and the assailant is a foreign national, and the policies, procedures, and processes implemented by the Secretary concerned to monitor the investigative processes and disposition of such cases and any actions taken to eliminate any gaps in investigating and adjudicating such cases.

"(6) A description of the implementation of the accessibility plan implemented pursuant to section 596(b) of the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109–163; 10 U.S.C. 1561 note), including a description of the steps taken during that year to ensure that trained personnel, appropriate supplies, and transportation resources are accessible to deployed units in order to provide an appropriate and timely response in any case of reported sexual assault in a deployed unit, location, or environment.

"(7) The number of applications submitted under section 673 of title 10, United States Code, during the year covered by the report for a permanent change of station or unit transfer for members of the Armed Forces on active duty who are the victim of a sexual assault or related offense, the number of applications denied, and, for each application denied, a description of the reasons why the application was denied.

"(8) An analysis and assessment of trends in the incidence, disposition, and prosecution of sexual assaults by units, commands, and installations during the year covered by the report, including trends relating to prevalence of incidents, prosecution of incidents, and avoidance of incidents.

"(9) An assessment of the adequacy of sexual assault prevention and response activities carried out by training commands during the year covered by the report.

"(10) An analysis of the specific factors that may have contributed to sexual assault during the year covered by the report, an assessment of the role of such factors in contributing to sexual assaults during that year, and recommendations for mechanisms to eliminate or reduce the incidence of such factors or their contributions to sexual assaults.

"(11) An analysis of the disposition of the most serious offenses occurring during sexual assaults committed by members of the Armed Force during the year covered by the report, as identified in unrestricted reports of sexual assault by any members of the Armed Forces, including the numbers of reports identifying offenses that were disposed of by each of the following:

"(A) Conviction by court-martial, including a separate statement of the most serious charge preferred and the most serious charge for which convicted.

"(B) Acquittal of all charges at court-martial.

"(C) Non-judicial punishment under section 815 of title 10, United States Code (article 15 of the Uniform Code of Military Justice).

"(D) Administrative action, including by each type of administrative action imposed.

"(E) Dismissal of all charges, including by reason for dismissal and by stage of proceedings in which dismissal occurred.

"(12) Information on each claim of retaliation in connection with a report of sexual assault in the Armed Force made by or against a member of such Armed Force as follows:

"(A) A narrative description of each complaint.

"(B) The nature of such complaint, including whether the complainant claims professional or social retaliation.

"(C) The gender of the complainant.

"(D) The gender of the individual claimed to have committed the retaliation.

"(E) The nature of the relationship between the complainant and the individual claimed to have committed the retaliation.

"(F) The nature of the relationship, if any, between the individual alleged to have committed the sexual assault concerned and the individual claimed to have committed the retaliation.

"(G) The official or office that received the complaint.

"(H) The organization that investigated or is investigating the complaint.

"(I) The current status of the investigation.

"(J) If the investigation is complete, a description of the results of the investigation, including whether the results of the investigation were provided to the complainant.

"(K) If the investigation determined that retaliation occurred, whether the retaliation was an offense under chapter 47 of title 10, United States Code (the Uniform Code of Military Justice).

"(13) Information and data collected through formal and informal reports of sexual harassment involving members of the Armed Forces during the year covered by the report, as follows:

"(A) The number of substantiated and unsubstantiated reports.

"(B) A synopsis of each substantiated report.

"(C) The action taken in the case of each substantiated report, including the type of disciplinary or administrative sanction imposed, if any, such as—

"(i) conviction and sentence by court-martial;

"(ii) imposition of non-judicial punishment under section 815 of title 10, United States Code (article 15 of the Uniform Code of Military Justice); or

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''(iii) administrative separation or other type of administrative action imposed.

''(14) Information and data collected during the year covered by the report on each reported incident involving the nonconsensual distribution by a person subject to chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), of a private sexual image of another person, including the following:

''(A) The number of substantiated and unsubstantiated reports.

''(B) A synopsis of each substantiated report.

''(C) The action taken in the case of each substantiated report, including the type of disciplinary or administrative sanction imposed, if any, such as—

''(i) conviction and sentence by court-martial;

''(ii) imposition of non-judicial punishment under section 815 of title 10, United States Code (article 15 of the Uniform Code of Military Justice); or

''(iii) administrative separation or other type of administrative action imposed.

''(c) CONSISTENT DEFINITION OF SUBSTANTIATED.—Not later than December 31, 2011, the Secretary of Defense shall establish a consistent definition of 'substantiated' for purposes of paragraphs (1), (2), (3), and (5) of subsection (b) and provide synopses for those cases for the preparation of reports under this section.

''(d) SUBMISSION TO CONGRESS.—Not later than April 30 of each year in which the Secretary of Defense receives reports under subsection (a), the Secretary of Defense shall forward the reports to the Committees on Armed Services of the Senate and House of Representatives and the Committees on Veterans' Affairs of the Senate and the House of Representatives, together with—

''(1) the results of assessments conducted under the evaluation plan required by section 1602(c);

''(2) an assessment of the information submitted to the Secretary pursuant to subsection (b)(11); and

''(3) such other assessments on the reports as the Secretary of Defense considers appropriate.

''(e) REPEAL OF SUPERSEDED REPORTING REQUIREMENT.—

''(1) [Amended section 577 of Pub. L. 108–375, set out below.]

''(2) SUBMISSION OF 2010 REPORT.—The reports required by subsection (f) of section 577 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (Public Law 108–375; 10 U.S.C. 113 note) [now set out below] covering calendar year 2010 are still required to be submitted to the Secretary of Defense and the Committees on Armed Services of the Senate and House of Representatives pursuant to the terms of such subsection, as in effect before the date of the enactment of this Act [Jan. 7, 2011].

''(f) ADDITIONAL DETAILS FOR CASE SYNOPSES PORTION OF REPORT.—The Secretary of each military department shall include in the case synopses portion of each report described in subsection (b)(3) the following additional information:

''(1) If charges are dismissed following an investigation conducted under section 832 of title 10, United States Code (article 32 of the Uniform Code of Military Justice), the case synopsis shall include the reason for the dismissal of the charges.

''(2) If the case synopsis states that a member of the Armed Forces accused of committing a sexual assault was administratively separated or, in the case of an officer, allowed to resign in lieu of facing a court-martial, the case synopsis shall include the characterization (honorable, general, or other than honorable) given the service of the member upon separation.

''(3) The case synopsis shall indicate whether a member of the Armed Forces accused of committing a sexual assault was ever previously accused of a substantiated sexual assault or was admitted to the Armed Forces under a moral waiver granted with respect to prior sexual misconduct.

''(4) The case synopsis shall indicate the branch of the Armed Forces of each member accused of committing a sexual assault and the branch of the Armed Forces of each member who is a victim of a sexual assault.

''(5) If the case disposition includes non-judicial punishment, the case synopsis shall explicitly state the nature of the punishment.

''(6) The case synopsis shall indicate whether alcohol was involved in any way in a substantiated sexual assault incident.

''(g) COORDINATION OF RELEASE DATE BETWEEN ANNUAL REPORTS REGARDING SEXUAL ASSAULTS AND FAMILY ADVOCACY REPORT.—The Secretary of Defense shall ensure that the reports required under subsection (a) for a given year are delivered to the Committees on Armed Services of the Senate and House of Representatives simultaneously with the Family Advocacy Program report for that year regarding child abuse and domestic violence, as required by section 574 of the National Defense Authorization Act for Fiscal Year 2017 [Pub. L. 114–328, 130 Stat. 2141].

''SEC. 1632. ADDITIONAL REPORTS.

''(a) EXTENSION OF SEXUAL ASSAULT PREVENTION AND RESPONSE SERVICES TO ADDITIONAL PERSONS.—The Secretary of Defense shall evaluate the feasibility of extending department sexual assault prevention and response services to Department of Defense civilian employees and employees of defense contractors who—

''(1) are victims of a sexual assault; and

''(2) work on or in the vicinity of a military installation or with members of the Armed Forces.

''(b) EXTENSION OF SEXUAL ASSAULT PREVENTION AND RESPONSE PROGRAM TO RESERVE COMPONENTS.—The Secretary of Defense shall evaluate the application of the sexual assault prevention and response program to members of the reserve components, including, at a minimum, the following:

''(1) The ability of members of the reserve components to access the services available under the sexual assault prevention and response program, including policies and programs of a specific military department or Armed Force.

''(2) The quality of training provided to Sexual Assault Response Coordinators and Sexual Assault Victim Advocates in the reserve components.

''(3) The degree to which the services available for regular and reserve members under the sexual assault prevention and response program are integrated.

''(4) Such recommendations as the Secretary of Defense considers appropriate on how to improve the services available for reserve members under the sexual assault prevention and response program and their access to the services.

''(c) COPY OF RECORD OF COURT-MARTIAL TO VICTIM OF SEXUAL ASSAULT.—The Secretary of Defense shall evaluate the feasibility of requiring that a copy of the prepared record of the proceedings of a general or special court-martial involving a sexual assault be given to the victim in cases in which the victim testified during the proceedings.

''(d) ACCESS TO LEGAL ASSISTANCE.—The Secretary of Defense shall evaluate the feasibility of authorizing members of the Armed Forces who are victims of a sexual assault and dependents of members who are victims of a sexual assault to receive legal assistance provided by a military legal assistance counsel certified as competent to provide legal assistance related to responding to sexual assault.

''(e) USE OF FORENSIC MEDICAL EXAMINERS.—The Secretary of Defense shall evaluate the feasibility of utilizing, when sexual assaults involving members of the Armed Forces occur in a military environment where civilian resources are limited or unavailable, forensic medical examiners who are specially trained regarding the collection and preservation of evidence in cases involving sexual assault.

''(f) SUBMISSION OF RESULTS.—The Secretary of Defense shall submit the results of the evaluations re-

quired by this section to the Committees on Armed Services of the Senate and House of Representatives.''

[Pub. L. 116–283, div. A, title V, § 537(b), Jan. 1, 2021, 134 Stat. 3605, provided that: ''The amendment made by subsection (a) [amending section 1631 of Pub. L. 111–383, set out above] shall take effect on the date of the enactment of this Act [Jan. 1, 2021] and shall apply to reports required to be submitted under such section on or after such date.'']

[Pub. L. 115–91, div. A, title V, § 537(b), Dec. 12, 2017, 131 Stat. 1393, provided that: ''The amendment made by this section [amending section 1631 of Pub. L. 111–383, set out above] shall take effect on the date of the enactment of this Act [Dec. 12, 2017] and apply beginning with the reports required to be submitted by March 1, 2020, under section 1631 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (Public Law 111–383; 10 U.S.C. 1561 note).'']

[Pub. L. 113–291, div. A, title V, § 542(c), Dec. 19, 2014, 128 Stat. 3373, provided that: ''The amendments made by this section [amending section 1631 of Pub. L. 111–383, set out above] shall take effect on the date of the enactment of this Act [Dec. 19, 2014] and apply beginning with the report regarding sexual assaults involving members of the Armed Forces required to be submitted by March 1, 2015, under section 1631 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 [Pub. L. 111–383].'']

[Pub. L. 112–239, div. A, title V, § 575(c), Jan. 2, 2013, 126 Stat. 1758. provided that: ''The amendments made by this section [amending section 1631 of Pub. L. 111–383, set out above] shall apply beginning with the report regarding sexual assaults involving members of the Armed Forces required to be submitted by March 1, 2014, under section 1631 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 [Pub. L. 111–383].'']

[For termination, effective Dec. 31, 2021, of annual reporting provisions in section 1631(d) of Pub. L. 111–383, set out above, see section 1061 of Pub. L. 114–328, set out as a note under section 111 of this title.]

DEFENSE INCIDENT-BASED REPORTING SYSTEM AND DEFENSE SEXUAL ASSAULT INCIDENT DATABASE

Pub. L. 111–84, div. A, title V, § 598, Oct. 28, 2009, 123 Stat. 2345, provided that: ''Not later than 120 days after the date of the enactment of this Act [Oct. 28, 2009], and every six months thereafter, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report detailing the progress of the Secretary with respect to the completion of the following:

''(1) The Defense Incident-Based Reporting System.

''(2) The Defense Sexual Assault Incident Database.''

Pub. L. 110–417, [div. A], title V, § 563(a)–(d), Oct. 14, 2008, 122 Stat. 4470, 4471, as amended by Pub. L. 115–232, div. A, title VIII, § 809(b)(3), Aug. 13, 2018, 132 Stat. 1840; Pub. L. 116–283, div. A, title X, § 1081(d)(3), Jan. 1, 2021, 134 Stat. 3874, provided that:

''(a) DATABASE REQUIRED.—The Secretary of Defense shall implement a centralized, case-level database for the collection, in a manner consistent with Department of Defense regulations for restricted reporting, and maintenance of information regarding sexual assaults involving a member of the Armed Forces, including information, if available, about the nature of the assault, the victim, the offender, and the outcome of any legal proceedings in connection with the assault.

''(b) AVAILABILITY OF DATABASE.—The database required by subsection (a) shall be available to personnel of the Sexual Assault Prevention and Response Office of the Department of Defense.

''(c) IMPLEMENTATION.—

''(1) PLAN FOR IMPLEMENTATION.—Not later than 90 days after the date of the enactment of this Act [Oct. 14, 2008], the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a plan to provide for the implementation of the database required by subsection (a).

''(2) RELATION TO DEFENSE INCIDENT-BASED REPORTING SYSTEM.—Not later than 180 days after the date of enactment of this Act, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives a report containing—

''(A) a description of the current status of the Defense Incident-Based Reporting System; and

''(B) an explanation of how the Defense Incident-Based Reporting System will relate to the database required by subsection (a).

''(3) COMPLETION.—Not later than 15 months after the date of enactment of this Act, the Secretary shall complete implementation of the database required by subsection (a).

''(d) REPORTS.—The database required by subsection (a) shall be used to develop and implement congressional reports, as required by—

''(1) section 577(f) of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (Public Law 108–375) [set out below];

''(2) section 596(c) of the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109–163) [amending Pub. L. 108–375, § 577, set out below];

''(3) section 532 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109–364) [enacting sections 4361, 6980, and 9361 of this title and provisions set out as a note under section 4361 of this title and repealing provisions set out as a note under section 4331 of this title]; and

''(4) sections 7461, 8480, and 9461 of title 10, United States Code.''

IMPROVEMENT TO DEPARTMENT OF DEFENSE CAPACITY TO RESPOND TO SEXUAL ASSAULT AFFECTING MEMBERS OF THE ARMED FORCES

Pub. L. 109–163, div. A, title V, § 596(a), (b), Jan. 6, 2006, 119 Stat. 3282, provided that:

''(a) PLAN FOR SYSTEM TO TRACK CASES IN WHICH CARE OR PROSECUTION HINDERED BY LACK OF AVAILABILITY.—

''(1) PLAN REQUIRED.—The Secretary of Defense shall develop and implement a system to track cases under the jurisdiction of the Department of Defense in which care to a victim of rape or sexual assault, or the investigation or prosecution of an alleged perpetrator of rape or sexual assault, is hindered by the lack of availability of a rape kit or other needed supplies or by the lack of timely access to appropriate laboratory testing resources.

''(2) SUBMITTAL TO CONGRESSIONAL COMMITTEES.—The Secretary shall submit the plan developed under paragraph (1) to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives not later than 120 days after the date of the enactment of this Act [Jan. 6, 2006].

''(b) ACCESSIBILITY PLAN FOR DEPLOYED UNITS.—

''(1) PLAN REQUIRED.—The Secretary of Defense shall develop and implement a plan for ensuring accessibility and availability of supplies, trained personnel, and transportation resources for responding to sexual assaults occurring in deployed units. The plan shall include the following:

''(A) A plan for the training of personnel who are considered to be 'first responders' to sexual assaults (including criminal investigators, medical personnel responsible for rape kit evidence collection, and victims advocates), such training to include current techniques on the processing of evidence, including rape kits, and on conducting investigations.

''(B) A plan for ensuring the availability at military hospitals of supplies needed for the treatment of victims of sexual assault who present at a military hospital, including rape kits, equipment for processing rape kits, and supplies for testing and treatment for sexually transmitted infections and diseases, including HIV, and for testing for pregnancy.

"(2) SUBMITTAL TO CONGRESSIONAL COMMITTEES.—The Secretary shall submit the plan developed under paragraph (1) to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives not later than 120 days after the date of the enactment of this Act [Jan. 6, 2006]."

DEPARTMENT OF DEFENSE POLICY AND PROCEDURES ON PREVENTION AND RESPONSE TO SEXUAL ASSAULTS INVOLVING MEMBERS OF THE ARMED FORCES

Pub. L. 111–84, div. A, title V, § 567(c), Oct. 28, 2009, 123 Stat. 2314, provided that:

"(1) REQUIREMENT FOR DATA COLLECTION.—

"(A) IN GENERAL.—Pursuant to regulations prescribed by the Secretary of Defense, information shall be collected on—

"(i) whether a military protective order was issued that involved either the victim or alleged perpetrator of a sexual assault; and

"(ii) whether military protective orders involving members of the Armed Forces were violated in the course of substantiated incidents of sexual assaults against members of the Armed Forces.

"(B) SUBMISSION OF DATA.—The data required to be collected under this subsection shall be included in the annual report submitted to Congress on sexual assaults involving members of the Armed Forces.

"(2) INFORMATION TO MEMBERS.—Not later than 180 days after the date of the enactment of this Act [Oct. 28, 2009], the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report explaining the measures being taken to ensure that, when a military protective order has been issued, the member of the Armed Forces who is protected by the order is informed, in a timely manner, of the member's option to request transfer from the command to which the member is assigned."

Pub. L. 108–375, div. A, title V, § 577, Oct. 28, 2004, 118 Stat. 1926, as amended by Pub. L. 109–163, div. A, title V, § 596(c), Jan. 6, 2006, 119 Stat. 3283; Pub. L. 109–364, div. A, title V, § 583, Oct. 17, 2006, 120 Stat. 2230; Pub. L. 110–417, [div. A], title V, § 563(e), Oct. 14, 2008, 122 Stat. 4471; Pub. L. 111–383, div. A, title X, § 1075(i)(1), title XVI, § 1631(e)(1), Jan. 7, 2011, 124 Stat. 4377, 4435, provided that:

"(a) COMPREHENSIVE POLICY ON PREVENTION AND RESPONSE TO SEXUAL ASSAULTS.—(1) Not later than January 1, 2005, the Secretary of Defense shall develop a comprehensive policy for the Department of Defense on the prevention of and response to sexual assaults involving members of the Armed Forces.

"(2) The policy shall be based on the recommendations of the Department of Defense Task Force on Care for Victims of Sexual Assaults and on such other matters as the Secretary considers appropriate.

"(3) Before developing the comprehensive policy required by paragraph (1), the Secretary of Defense shall develop a definition of sexual assault. The definition so developed shall be used in the comprehensive policy under paragraph (1) and otherwise within the Department of Defense and Coast Guard in matters involving members of the Armed Forces. The definition shall be uniform for all the Armed Forces and shall be developed in consultation with the Secretaries of the military departments and the Secretary of Homeland Security with respect to the Coast Guard.

"(b) ELEMENTS OF COMPREHENSIVE POLICY.—The comprehensive policy developed under subsection (a) shall, at a minimum, address the following matters:

"(1) Prevention measures.

"(2) Education and training on prevention and response.

"(3) Investigation of complaints by command and law enforcement personnel.

"(4) Medical treatment of victims.

"(5) Confidential reporting of incidents.

"(6) Victim advocacy and intervention.

"(7) Oversight by commanders of administrative and disciplinary actions in response to substantiated incidents of sexual assault.

"(8) Disposition of victims of sexual assault, including review by appropriate authority of administrative separation actions involving victims of sexual assault.

"(9) Disposition of members of the Armed Forces accused of sexual assault.

"(10) Liaison and collaboration with civilian agencies on the provision of services to victims of sexual assault.

"(11) Uniform collection of data on the incidence of sexual assaults and on disciplinary actions taken in substantiated cases of sexual assault.

"(12) Implementation of clear, consistent, and streamlined sexual assault terminology for use throughout the Department of Defense.

"(c) REPORT ON IMPROVEMENT OF CAPABILITY TO RESPOND TO SEXUAL ASSAULTS.—Not later than March 1, 2005, the Secretary of Defense shall submit to Congress a proposal for such legislation as the Secretary considers necessary to enhance the capability of the Department of Defense to address matters relating to sexual assaults involving members of the Armed Forces.

"(d) APPLICATION OF COMPREHENSIVE POLICY TO MILITARY DEPARTMENTS.—The Secretary of Defense shall ensure that, to the maximum extent practicable, the policy developed under subsection (a) is implemented uniformly by the military departments.

"(e) POLICIES AND PROCEDURES OF MILITARY DEPARTMENTS.—(1) Not later than March 1, 2005, the Secretaries of the military departments shall prescribe regulations, or modify current regulations, on the policies and procedures of the military departments on the prevention of and response to sexual assaults involving members of the Armed Forces in order—

"(A) to conform such policies and procedures to the policy developed under subsection (a); and

"(B) to ensure that such policies and procedures include the elements specified in paragraph (2).

"(2) The elements specified in this paragraph are as follows:

"(A) A program to promote awareness of the incidence of sexual assaults involving members of the Armed Forces.

"(B) A program to provide victim advocacy and intervention for members of the Armed Force concerned who are victims of sexual assault, which program shall make available, at home stations and in deployed locations, trained advocates who are readily available to intervene on behalf of such victims.

"(C) Procedures for members of the Armed Force concerned to follow in the case of an incident of sexual assault involving a member of such Armed Force, including—

"(i) specification of the person or persons to whom the alleged offense should be reported;

"(ii) specification of any other person whom the victim should contact;

"(iii) procedures for the preservation of evidence; and

"(iv) procedures for confidential reporting and for contacting victim advocates.

"(D) Procedures for disciplinary action in cases of sexual assault by members of the Armed Force concerned.

"(E) Other sanctions authorized to be imposed in substantiated cases of sexual assault, whether forcible or nonforcible, by members of the Armed Force concerned.

"(F) Training on the policies and procedures for all members of the Armed Force concerned, including specific training for members of the Armed Force concerned who process allegations of sexual assault against members of such Armed Force.

"(G) Any other matters that the Secretary of Defense considers appropriate."

REPORTS

Pub. L. 105–85, div. A, title V, § 591(b), Nov. 18, 1997, 111 Stat. 1762, required each officer receiving a complaint forwarded in accordance with subsec. (b) of this section

during 1997 and 1998 to submit to the Secretary of the military department concerned a report on all such complaints and the investigations of such complaints not later than Jan. 1 of each of 1998 and 1999, required each Secretary receiving a report for a year to submit to the Secretary of Defense a report on all reports received not later than Mar. 1 of each of 1998 and 1999, and required the Secretary of Defense to transmit to Congress all reports received for the year together with the Secretary's assessment of each report not later than Apr. 1 following receipt of a report for a year.

DEPARTMENT OF DEFENSE POLICIES AND PROCEDURES ON DISCRIMINATION AND SEXUAL HARASSMENT

Pub. L. 103–337, div. A, title V, § 532, Oct. 5, 1994, 108 Stat. 2759, provided that:

''(a) REPORT OF TASK FORCE.—(1) The Department of Defense Task Force on Discrimination and Sexual Harassment, constituted by the Secretary of Defense on March 15, 1994, shall transmit a report of its findings and recommendations to the Secretary of Defense not later than October 1, 1994.

''(2) The Secretary shall transmit to Congress the report of the task force not later than October 10, 1994.

''(b) SECRETARIAL REVIEW.—Not later than 45 days after receiving the report under subsection (a), the Secretary shall—

''(1) review the recommendations for action contained in the report;

''(2) determine which recommendations the Secretary approves for implementation and which recommendations the Secretary disapproves; and

''(3) submit to Congress a report that—

''(A) identifies the approved recommendations and the disapproved recommendations; and

''(B) explains the reasons for each such approval and disapproval.

''(c) COMPREHENSIVE DOD POLICY.—(1) Based on the approved recommendations of the task force and such other factors as the Secretary considers appropriate, the Secretary shall develop a comprehensive Department of Defense policy for processing complaints of sexual harassment and discrimination involving members of the Armed Forces under the jurisdiction of the Secretary.

''(2) The Secretary shall issue policy guidance for the implementation of the comprehensive policy and shall require the Secretaries of the military departments to prescribe regulations to implement that policy not later than March 1, 1995.

''(3) The Secretary shall ensure that the policy is implemented uniformly by the military departments insofar as practicable.

''(4) Not later than March 31, 1995, the Secretary of Defense shall submit to Congress a proposal for any legislation necessary to enhance the capability of the Department of Defense to address the issues of unlawful discrimination and sexual harassment.

''(d) MILITARY DEPARTMENT POLICIES.—(1) The Secretary of the Navy and the Secretary of the Air Force shall review and revise the regulations of the Department of the Navy and the Department of the Air Force, respectively, relating to equal opportunity policy and procedures in that Department for the making of, and responding to, complaints of unlawful discrimination and sexual harassment in order to ensure that those regulations are substantially equivalent to the regulations of the Department of the Army on such matters.

''(2) In revising regulations pursuant to paragraph (1), the Secretary of the Navy and the Secretary of the Air Force may make such additions and modifications as the Secretary of Defense determines appropriate to strengthen those regulations beyond the substantial equivalent of the Army regulations in accordance with—

''(A) the approved recommendations of the Department of Defense Task Force on Discrimination and Sexual Harassment; and

''(B) the experience of the Army, Navy, Air Force, and Marine Corps regarding equal opportunity cases.

''(3) The Secretary of the Army shall review the regulations of the Department of the Army relating to equal opportunity policy and complaint procedures and revise the regulations as the Secretary of Defense considers appropriate to strengthen the regulations in accordance with the recommendations and experience described in subparagraphs (A) and (B) of paragraph (2).

''(e) REPORT OF ADVISORY BOARD.—(1) The Secretary of Defense shall direct the Advisory Board on the Investigative Capability of the Department of Defense, established by the Secretary of Defense in November 1993, to include in its report to the Secretary (scheduled to be transmitted to the Secretary during December 1994)—

''(A) the recommendations of the Advisory Board as to whether the current Department of Defense organizational structure is adequate to oversee all investigative matters related to unlawful discrimination, sexual harassment, and other misconduct related to the gender of the victim; and

''(B) recommendations as to whether additional data collection and reporting procedures are needed to enhance the ability of the Department of Defense to respond to unlawful discrimination, sexual harassment, and other misconduct related to the gender of the victim.

''(2) The Secretary shall transmit to Congress the report of the Advisory Board not later than 15 days after receiving the report.

''(f) PERFORMANCE EVALUATION STANDARDS FOR MEMBERS OF THE ARMED FORCES.—The Secretary of Defense shall ensure that Department of Defense regulations governing consideration of equal opportunity matters in evaluations of the performance of members of the Armed Forces include provisions requiring as a factor in such evaluations consideration of a member's commitment to elimination of unlawful discrimination or of sexual harassment in the Armed Forces.''

§ 1561a. Civilian orders of protection: force and effect on military installations

(a) FORCE AND EFFECT.—A civilian order of protection shall have the same force and effect on a military installation as such order has within the jurisdiction of the court that issued such order.

(b) CIVILIAN ORDER OF PROTECTION DEFINED.—In this section, the term ''civilian order of protection'' has the meaning given the term ''protection order'' in section 2266(5) of title 18.

(c) REGULATIONS.—The Secretary of Defense shall prescribe regulations to carry out this section. The regulations shall be designed to further good order and discipline by members of the armed forces and civilians present on military installations.

(Added Pub. L. 107–311, § 2(a), Dec. 2, 2002, 116 Stat. 2455.)

POLICIES AND PROCEDURES ON REGISTRATION AT MILITARY INSTALLATIONS OF CIVILIAN PROTECTIVE ORDERS APPLICABLE TO MEMBERS OF THE ARMED FORCES ASSIGNED TO SUCH INSTALLATIONS AND CERTAIN OTHER INDIVIDUALS

Pub. L. 116–92, div. A, title V, § 550A, Dec. 20, 2019, 133 Stat. 1380, provided that:

''(a) POLICIES AND PROCEDURES REQUIRED.—Not later than one year after the date of the enactment of this Act [Dec. 20, 2019], the Secretary of Defense shall, in consultation with the Secretaries of the military departments, establish policies and procedures for the registration at military installations of any civilian protective orders described in subsection (b), including the duties and responsibilities of commanders of installations in the registration process.

''(b) CIVILIAN PROTECTIVE ORDERS.—A civilian protective order described in this subsection is any civilian protective order as follows:

''(1) A civilian protective order against a member of the Armed Forces assigned to the installation concerned.

''(2) A civilian protective order against a civilian employee employed at the installation concerned.

''(3) A civilian protective order against the civilian spouse or intimate partner of a member of the Armed Forces on active duty and assigned to the installation concerned, or of a civilian employee described in paragraph (2), which order provides for the protection of such member or employee.

''(c) PARTICULAR ELEMENTS.—The policies and procedures required by subsection (a) shall include the following:

''(1) A requirement for notice between and among the commander, military law enforcement elements, and military criminal investigative elements of an installation when a member of the Armed Forces assigned to such installation, a civilian employee employed at such installation, a civilian spouse or intimate partner of a member assigned to such installation, or a civilian spouse or intimate partner of a civilian employee employed at such installation becomes subject to a civilian protective order.

''(2) A statement of policy that failure to register a civilian protective order may not be a justification for the lack of enforcement of such order by military law enforcement and other applicable personnel who have knowledge of such order.

''(d) LETTER.—As soon as practicable after establishing the policies and procedures required by subsection (a), the Secretary shall submit to the Committees on Armed Services of the Senate and the House of Representatives a letter that includes the following:

''(1) A detailed description of the policies and procedures.

''(2) A certification by the Secretary that the policies and procedures have been implemented on each military installation.''

§ 1561b. Confidential reporting of sexual harassment

(a) REPORTING PROCESS.—Notwithstanding section 1561 of this title, the Secretary of Defense shall prescribe in regulations a process by which a member of an armed force under the jurisdiction of the Secretary of a military department may confidentially allege a complaint of sexual harassment to an individual outside the immediate chain of command of the member.

(b) RECEIPT OF COMPLAINTS.—An individual designated and trained to receive complaints under the process under subsection (a) shall—

(1) maintain the confidentiality of the member alleging the complaint;

(2) explain to the member alleging the complaint the different avenues of redress available to resolve the complaint and the different consequences of each avenue on the manner in which the complaint will be investigated (if at all), including an explanation of the following:

(A) The manner in which to file a complaint concerning alleged sexual harassment with the official or office designated for receipt of such complaint through such avenue of redress.

(B) That confidentiality in connection with the complaint cannot be maintained when there is a clear and present risk to health or safety.

(C) If the alleged sexual harassment also involves an allegation of sexual assault, including sexual contact—

(i) the manner in which to file a confidential report with a Sexual Assault Response Coordinator or a Sexual Assault Prevention and Response Victim Advocate; and

(ii) options available pursuant to such reporting, including a Restricted Report or Unrestricted Report, and participation in the Catch a Serial Offender Program.

(D) The services and assistance available to the member in connection with the complaint and the alleged sexual harassment.

(c) EDUCATION AND TRACKING.—The Secretary of Defense shall—

(1) educate members under the jurisdiction of the Secretaries of the military departments regarding the process established under this section; and

(2) track complaints alleged pursuant to the process.

(d) REPORTS.—Not later than April 30, 2023, and April 30 every two years thereafter, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report containing data on the complaints of sexual harassment alleged pursuant to the process under subsection (a) during the previous two calendar years. Any data on such complaints shall not contain any personally identifiable information.

(Added Pub. L. 116–283, div. A, title V, § 532(a)(1), Jan. 1, 2021, 134 Stat. 3601.)

§ 1562. Database on domestic violence incidents

(a) DATABASE ON DOMESTIC VIOLENCE INCIDENT.—The Secretary of Defense shall establish a central database of information on the incidents of domestic violence involving members of the armed forces.

(b) REPORTING OF INFORMATION FOR THE DATABASE.—The Secretary shall require that the Secretaries of the military departments maintain and report annually to the administrator of the database established under subsection (a) any information received on the following matters:

(1) Each domestic violence incident reported to a commander, a law enforcement authority of the armed forces, or a family advocacy program of the Department of Defense.

(2) The number of those incidents that involve evidence determined sufficient for supporting disciplinary action and, for each such incident, a description of the substantiated allegation and the action taken by command authorities in the incident.

(3) The number of those incidents that involve evidence determined insufficient for supporting disciplinary action and for each such case, a description of the allegation.

(Added Pub. L. 106–65, div. A, title V, § 594(a), Oct. 5, 1999, 113 Stat. 643.)

IMPROVEMENTS TO DEPARTMENT OF DEFENSE DOMESTIC VIOLENCE PROGRAMS

Pub. L. 111–383, div. A, title V, § 543, Jan. 7, 2011, 124 Stat. 4218, as amended by Pub. L. 113–291, div. A, title V, § 544(b), Dec. 19, 2014, 128 Stat. 3374, provided that:

''(a) IMPLEMENTATION OF OUTSTANDING COMPTROLLER GENERAL RECOMMENDATIONS.—Consistent with the recommendations contained in the report of the Comptroller General of the United States titled 'Status of

Implementation of GAO's 2006 Recommendations on the Department of Defense's Domestic Violence Program' (GAO–10–577R), the Secretary of Defense shall complete, not later than one year after the date of enactment of this Act [Jan. 7, 2011], implementation of actions to address the following recommendations:

"(1) ADEQUATE PERSONNEL.—The Secretary of Defense shall develop a plan to ensure that adequate personnel are available to implement recommendations made by the Defense Task Force on Domestic Violence.

"(2) DOMESTIC VIOLENCE TRAINING DATA FOR CHAPLAINS.—The Secretary of Defense shall develop a plan to collect domestic violence training data for chaplains.

"(3) OVERSIGHT FRAMEWORK.—The Secretary of Defense shall develop an oversight framework for Department of Defense domestic violence programs, to include oversight of implementation of recommendations made by the Defense Task Force on Domestic Violence, including budgeting, communication initiatives, and policy compliance.

"(b) IMPLEMENTATION REPORT.—The Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] an implementation report within 90 days of the completion of actions outlined in subsection (a)."

COMPTROLLER GENERAL REVIEW AND REPORT

Pub. L. 108–136, div. A, title V, § 575, Nov. 24, 2003, 117 Stat. 1486, provided that:

"(a) REVIEW.—During the two-year period beginning on the date of the enactment of this Act [Nov. 24, 2003], the Comptroller General shall review and assess the progress of the Department of Defense in implementing the recommendations of the Defense Task Force on Domestic Violence. In reviewing the status of the Department's efforts, the Comptroller General should specifically focus on—

"(1) the efforts of the Department to ensure confidentiality for victims and accountability and education of commanding officers and chaplains; and

"(2) the resources that the Department of Defense has provided toward such implementation, including personnel, facilities, and other administrative support, in order to ensure that necessary resources are provided to the organization within the Office of the Secretary of Defense with direct responsibility for oversight of implementation by the military departments of recommendations of the Task Force in order for that organization to carry out its duties and responsibilities.

"(b) REPORT.—The Comptroller General shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the results of the review and assessment under subsection (a) not later than 30 months after the date of the enactment of this Act [Nov. 24, 2003]."

DEFENSE TASK FORCE ON DOMESTIC VIOLENCE

Pub. L. 106–65, div. A, title V, § 591, Oct. 5, 1999, 113 Stat. 639, as amended by Pub. L. 107–107, div. A, title V, § 575, Dec. 28, 2001, 115 Stat. 1123, directed the Secretary of Defense to establish a Department of Defense Task Force on Domestic Violence; required the task force to submit to the Secretary of Defense a long-term, strategic plan to address matters relating to domestic violence within the military more effectively, to review the victims' safety program under Pub. L. 106–65, § 592, set out below, and other matters relating to acts of domestic violence involving members of the Armed Forces, and to submit to the Secretary an annual report on its activities and activities of the military departments; directed the Secretary to submit the report and the Secretary's evaluation of the report to committees of Congress; and provided for the termination of the task force on Apr. 24, 2003.

INCENTIVE PROGRAM FOR IMPROVING RESPONSES TO DOMESTIC VIOLENCE INVOLVING MEMBERS OF THE ARMED FORCES AND MILITARY FAMILY MEMBERS

Pub. L. 106–65, div. A, title V, § 592, Oct. 5, 1999, 113 Stat. 642, provided that:

"(a) PURPOSE.—The purpose of this section is to provide a program for the establishment on military installations of collaborative projects involving appropriate elements of the Armed Forces and the civilian community to improve, strengthen, or coordinate prevention and response efforts to domestic violence involving members of the Armed Forces, military family members, and others.

"(b) PROGRAM.—The Secretary of Defense shall establish a program to provide funds and other incentives to commanders of military installations for the following purposes:

"(1) To improve coordination between military and civilian law enforcement authorities in policies, training, and responses to, and tracking of, cases involving military domestic violence.

"(2) To develop, implement, and coordinate with appropriate civilian authorities tracking systems (A) for protective orders issued to or on behalf of members of the Armed Forces by civilian courts, and (B) for orders issued by military commanders to members of the Armed Forces ordering them not to have contact with a dependent.

"(3) To strengthen the capacity of attorneys and other legal advocates to respond appropriately to victims of military domestic violence.

"(4) To assist in educating judges, prosecutors, and legal offices in improved handling of military domestic violence cases.

"(5) To develop and implement more effective policies, protocols, orders, and services specifically devoted to preventing, identifying, and responding to domestic violence.

"(6) To develop, enlarge, or strengthen victims' services programs, including sexual assault and domestic violence programs, developing or improving delivery of victims' services, and providing confidential access to specialized victims' advocates.

"(7) To develop and implement primary prevention programs.

"(8) To improve the response of health care providers to incidents of domestic violence, including the development and implementation of screening protocols.

"(c) PRIORITY.—The Secretary shall give priority in providing funds and other incentives under the program to installations at which the local program will emphasize building or strengthening partnerships and collaboration among military organizations such as family advocacy program, military police or provost marshal organizations, judge advocate organizations, legal offices, health affairs offices, and other installation-level military commands between those organizations and appropriate civilian organizations, including civilian law enforcement, domestic violence advocacy organizations, and domestic violence shelters.

"(d) APPLICATIONS.—The Secretary shall establish guidelines for applications for an award of funds under the program to carry out the program at an installation.

"(e) AWARDS.—The Secretary shall determine the award of funds and incentives under this section. In making a determination of the installations to which funds or other incentives are to be provided under the program, the Secretary shall consult with an award review committee consisting of representatives from the Armed Forces, the Department of Justice, the Department of Health and Human Services, and organizations with a demonstrated expertise in the areas of domestic violence and victims' safety."

UNIFORM DEPARTMENT OF DEFENSE POLICIES FOR RESPONSES TO DOMESTIC VIOLENCE

Pub. L. 106–65, div. A, title V, § 593, Oct. 5, 1999, 113 Stat. 643, provided that:

''(a) REQUIREMENT.—The Secretary of Defense shall prescribe the following:

''(1) Standard guidelines to be used by the Secretaries of the military departments for negotiating agreements with civilian law enforcement authorities relating to acts of domestic violence involving members of the Armed Forces.

''(2) A requirement (A) that when a commanding officer issues to a member of the Armed Forces under that officer's command an order that the member not have contact with a specified person that a written copy of that order be provided within 24 hours after the issuance of the order to the person with whom the member is ordered not to have contact, and (B) that there be a system of recording and tracking such orders.

''(3) Standard guidelines on the factors for commanders to consider when seeking to substantiate allegations of domestic violence by a person subject to the Uniform Code of Military Justice and when determining appropriate action for such allegations that are so substantiated.

''(4) A standard training program for all commanding officers in the Armed Forces, including a standard curriculum, on the handling of domestic violence cases.

''(b) DEADLINE.—The Secretary of Defense shall carry out subsection (a) not later than six months after the date on which the Secretary receives the first report of the Defense Task Force on Domestic Violence under section 591(e) [set out as a note above].''

§ 1563. Consideration of proposals from Members of Congress for honorary promotions: procedures for review and promotion

(a) REVIEW BY SECRETARY CONCERNED.—Upon request of a Member of Congress, the Secretary concerned shall review a proposal for the honorary promotion (whether or not posthumous) of a former member or retired member of the armed forces that is not otherwise authorized by law. Based upon such review, the Secretary shall make a determination as to the merits of approving the promotion.

(b) NOTICE OF RESULTS OF REVIEW.—Upon making a determination under subsection (a) as to the merits of approving the honorary promotion, the Secretary concerned shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives and to the requesting Member of Congress a detailed discussion of the rationale supporting the determination.

(c) AUTHORITY TO MAKE.—(1) Under regulations prescribed by the Secretary of Defense, the Secretary of Defense may make an honorary promotion (whether or not posthumous) of a former member or retired member of the armed forces to any grade not exceeding the grade of major general, rear admiral (upper half), or an equivalent grade in the Space Force following the submittal of the determination of the Secretary concerned under subsection (b) in connection with the proposal for the promotion if the determination is to approve the making of the promotion.

(2) The Secretary of Defense may not make an honorary promotion under this subsection until 60 days after the date on which the Secretary concerned submits the determination in connection with the proposal for the promotion under subsection (b), and the detailed rationale supporting the determination as described in that subsection, to the Committees on Armed Services of the Senate and the House of Representatives and the requesting Member in accordance with that subsection.

(3) The authority to make an honorary promotion under this subsection shall apply notwithstanding that the promotion is not otherwise authorized by law.

(4) Any promotion pursuant to this subsection is honorary, and shall not affect the pay, retired pay, or other benefits from the United States to which the former member or retired member concerned is or would have been entitled based upon the military service of such former member or retired member, nor affect any benefits to which any other person may become entitled based on the military service of such former member or retired member.

(d) DEFINITION.—In this section, the term ''Member of Congress'' means—

(1) a Senator; or

(2) a Representative in, or a Delegate or Resident Commissioner to, Congress.

(Added Pub. L. 106–398, § 1 [[div. A], title V, § 542(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–114; amended Pub. L. 108–136, div. A, title X, § 1031(a)(11), Nov. 24, 2003, 117 Stat. 1597; Pub. L. 116–283, div. A, title V, § 523(b), Jan. 1, 2021, 134 Stat. 3598.)

AMENDMENTS

2021—Pub. L. 116–283, § 523(b)(3), substituted ''Consideration of proposals from Members of Congress for honorary promotions: procedures for review and promotion'' for ''Consideration of proposals for posthumous and honorary promotions and appointments: procedures for review'' in section catchline.

Subsec. (a). Pub. L. 116–283, § 523(b)(1)(A), substituted, in first sentence, ''the honorary promotion (whether or not posthumous) of a former member or retired member of the armed forces'' for ''the posthumous or honorary promotion or appointment of a member or former member of the armed forces, or any other person considered qualified,'' and, in second sentence, ''the promotion'' for ''the posthumous or honorary promotion or appointment''.

Subsec. (b). Pub. L. 116–283, § 523(b)(1)(B), substituted ''the honorary promotion'' for ''the posthumous or honorary promotion or appointment''.

Subsecs. (c), (d). Pub. L. 116–283, § 523(b)(2), added subsec. (c) and redesignated former subsec. (c) as (d).

2003—Pub. L. 108–136, § 1031(a)(11)(B), struck out ''and recommendation'' after ''review'' in section catchline.

Subsec. (a). Pub. L. 108–136, § 1031(a)(11)(A)(i), struck out ''and the other determinations necessary to comply with subsection (b)'' before period at end.

Subsec. (b). Pub. L. 108–136, § 1031(a)(11)(A)(ii), substituted ''a detailed discussion of the rationale supporting the determination.'' for ''notice in writing of one of the following:

''(1) The posthumous or honorary promotion or appointment does not warrant approval on the merits.

''(2) The posthumous or honorary promotion or appointment warrants approval and authorization by law for the promotion or appointment is recommended.

''(3) The posthumous or honorary promotion or appointment warrants approval on the merits and has been recommended to the President as an exception to policy.

''(4) The posthumous or honorary promotion or appointment warrants approval on the merits and au-

thorization by law for the promotion or appointment is required but is not recommended.

A notice under paragraph (1) or (4) shall be accompanied by a statement of the reasons for the decision of the Secretary.''

§ 1563a. Honorary promotions on the initiative of the Department of Defense

(a) IN GENERAL.—(1) Under regulations prescribed by the Secretary of Defense, the Secretary may make an honorary promotion (whether or not posthumous) of a former member or retired member of the armed forces to any grade not exceeding the grade of major general, rear admiral (upper half), or an equivalent grade in the Space Force if the Secretary determines that the promotion is merited.

(2) The authority to make an honorary promotion under this subsection shall apply notwithstanding that the promotion is not otherwise authorized by law.

(b) NOTICE TO CONGRESS.—The Secretary may not make an honorary promotion pursuant to subsection (a) until 60 days after the date on which the Secretary submits to the Committees on Armed Services of the Senate and the House of Representatives a notice of the determination to make the promotion, including a detailed discussion of the rationale supporting the determination.

(c) NOTICE OF PROMOTION.—Upon making an honorary promotion pursuant to subsection (a), the Secretary shall expeditiously notify the former member or retired member concerned, or the next of kin of such former member or retired member if such former member or retired member is deceased, of the promotion.

(d) NATURE OF PROMOTION.—Any promotion pursuant to this section is honorary, and shall not affect the pay, retired pay, or other benefits from the United States to which the former member or retired member concerned is entitled or would have been entitled based on the military service of such former member or retired member, nor affect any benefits to which any other person is or may become entitled based on the military service of such former member or retired member.

(Added Pub. L. 116–283, div. A, title V, § 523(a), Jan. 1, 2021, 134 Stat. 3597.)

§ 1564. Security clearance investigations

(a) EXPEDITED PROCESS.—The Secretary of Defense may prescribe a process for expediting the completion of the background investigations necessary for granting security clearances for—

(1) Department of Defense personnel and Department of Defense contractor personnel who are engaged in sensitive duties that are critical to the national security; and

(2) any individual who—

(A) submits an application for a position as an employee of the Department of Defense for which—

(i) the individual is qualified; and

(ii) a security clearance is required; and

(B) is—

(i) a member of the armed forces who was retired or separated, or is expected to be retired or separated, for physical disability pursuant to chapter 61 of this title;

(ii) the spouse of a member of the armed forces who retires or is separated, after January 7, 2011, for a physical disability as a result of a wound, injuries or illness incurred or aggravated in the line of duty (as determined by the Secretary concerned); or

(iii) the spouse of a member of the armed forces who dies, after January 7, 2011, as a result of a wound, injury, or illness incurred or aggravated in the line of duty (as determined by the Secretary concerned).

(b) REQUIRED FEATURES.—The process developed under subsection (a) shall provide for the following:

(1) Quantification of the requirements for background investigations necessary for grants of security clearances for Department of Defense personnel and Department of Defense contractor personnel.

(2) Categorization of personnel on the basis of the degree of sensitivity of their duties and the extent to which those duties are critical to the national security.

(3) Prioritization of the processing of background investigations on the basis of the categories of personnel determined under paragraph (2).

(c) REINVESTIGATION OR READJUDICATION OF CERTAIN INDIVIDUALS.—(1) The Secretary of Defense shall conduct an investigation or adjudication under subsection (a) of any individual described in paragraph (2) upon—

(A) conviction of that individual by a court of competent jurisdiction for—

(i) sexual assault;

(ii) sexual harassment;

(iii) fraud against the United States; or

(iv) any other violation that the Secretary determines renders that individual susceptible to blackmail or raises serious concern regarding the ability of that individual to hold a security clearance; or

(B) determination by a commanding officer that that individual has committed an offense described in subparagraph (A).

(2) An individual described in this paragraph is an individual who has a security clearance and is—

(A) a flag officer;

(B) a general officer; or

(C) an employee of the Department of Defense in the Senior Executive Service.

(3) The Secretary shall ensure that relevant information on the conviction or determination described in paragraph (1) of an individual described in paragraph (2) during the preceding year, regardless of whether the individual has retired or resigned or has been discharged, released, or otherwise separated from the armed forces, is reported into Federal law enforcement records and security clearance databases, and that such information is transmitted, as appropriate, to other Federal agencies.

(4) In this subsection:

(A) The term ''sexual assault'' includes rape, sexual assault, forcible sodomy, aggravated sexual contact, abusive sexual contact, and attempts to commit such offenses, as those

terms are defined in chapter 47 of this title (the Uniform Code of Military Justice).

(B) The term ''sexual harassment'' has the meaning given that term in section 1561 of this title.

(C) The term ''fraud against the United States'' means a violation of section 932 of this title (article 132 of the Uniform Code of Military Justice).

(d) ANNUAL REVIEW.—The Secretary shall conduct an annual review of the process prescribed under subsection (a) and shall revise that process as determined necessary in relation to ongoing Department of Defense missions.

(e) CONSULTATION REQUIREMENT.—The Secretary shall consult with the Secretaries of the military departments and the heads of Defense Agencies in carrying out this section.

(f) SENSITIVE DUTIES.—For the purposes of this section, it is not necessary for the performance of duties to involve classified activities or classified matters in order for the duties to be considered sensitive and critical to the national security.

(g) USE OF APPROPRIATED FUNDS.—The Secretary of Defense may use funds authorized to be appropriated to the Department of Defense for operation and maintenance to conduct background investigations under this section for individuals described in subsection (a)(2).

(Added Pub. L. 106–398, §1 [[div. A], title X, §1072(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–276; amended Pub. L. 111–383, div. A, title III, §351(a), Jan. 7, 2011, 124 Stat. 4192; Pub. L. 112–239, div. A, title X, §1076(e)(1), Jan. 2, 2013, 126 Stat. 1951; Pub. L. 115–232, div. A, title V, §542, Aug. 13, 2018, 132 Stat. 1762; Pub. L. 116–283, div. A, title X, §1081(a)(29), Jan. 1, 2021, 134 Stat. 3872.)

AMENDMENTS

2021—Subsec. (c)(2). Pub. L. 116–283 substituted ''is an individual'' for ''in an individual'' in introductory provisions.

2018—Subsecs. (c) to (g). Pub. L. 115–232 added subsec. (c) and redesignated former subsecs. (c) to (f) as (d) to (g), respectively.

2013—Subsec. (a)(2)(B)(ii), (iii). Pub. L. 112–239 substituted ''January 7, 2011'' for ''the date of the enactment of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011''.

2011—Subsec. (a). Pub. L. 111–383, §351(a)(1), added subsec. (a) and struck out former subsec. (a). Prior to amendment, text read as follows: ''The Secretary of Defense shall prescribe a process for expediting the completion of the background investigations necessary for granting security clearances for Department of Defense personnel and Department of Defense contractor personnel who are engaged in sensitive duties that are critical to the national security.''

Subsec. (f). Pub. L. 111–383, §351(a)(2), added subsec. (f).

EFFECTIVE DATE OF 2011 AMENDMENT

Pub. L. 111–383, div. A, title III, §351(b), Jan. 7, 2011, 124 Stat. 4193, provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to a background investigation conducted after the date of the enactment of this Act [Jan. 7, 2011].''

DEPARTMENT OF DEFENSE POLICY ON UNCLASSIFIED WORKSPACES AND JOB FUNCTIONS OF PERSONNEL WITH PENDING SECURITY CLEARANCES

Pub. L. 116–283, div. A, title XI, §1101, Jan. 1, 2021, 134 Stat. 3884, provided that:

''(a) POLICY REQUIRED.—The Secretary of Defense shall develop and implement a policy under which a covered individual may occupy a position within the Department of Defense that requires a security clearance to perform appropriate unclassified work, or work commensurate with a security clearance already held by the individual (which may include an interim security clearance), while such individual awaits a final determination with respect to the security clearance required for such position.

''(b) UNCLASSIFIED WORK SPACES.—As part of the policy under subsection (a), the Secretary of Defense shall—

''(1) ensure, to the extent practicable, that all facilities of the Department of Defense at which covered individuals perform job functions have unclassified workspaces; and

''(2) issue guidelines under which appropriately screened individuals, who are not covered individuals, may use the unclassified workspaces on a space-available basis.

''(c) REPORT.—Not later than one year after the date of enactment of this Act [Jan. 1, 2021], the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report setting forth the policy required by subsection (a). The report shall include the following:

''(1) Identification of any challenges or impediments to allowing covered individuals fill positions on a probationary basis as described in subsection (a).

''(2) A plan for implementing the policy.

''(3) A description of how existing facilities may be modified to accommodate unclassified workspaces.

''(4) Identification of impediments to making unclassified workspace available.

''(d) COVERED INDIVIDUAL DEFINED.—In this section, the term 'covered individual' includes a member of the Armed Forces, a civilian employee of the Department of Defense, or an applicant for a civilian position within the Department of Defense, who has applied for, but who has not yet received, a security clearance that is required for the individual to perform one or more job functions.''

DEFENSE COUNTERINTELLIGENCE AND SECURITY AGENCY ACTIVITIES ON FACILITATING ACCESS TO LOCAL CRIMINAL RECORDS HISTORICAL DATA

Pub. L. 116–92, div. A, title XVI, §1625, Dec. 20, 2019, 133 Stat. 1736, provided that:

''(a) ACTIVITY AUTHORIZED.—Subject to subsection (c), the Director of the Defense Counterintelligence and Security Agency may carry out a set of activities to reduce the time and cost of accessing State, local, and tribal law enforcement records for the background investigations required for current and prospective Federal Government employees and contractors.

''(b) ACTIVITIES CHARACTERIZED.—The activities carried out under subsection (a) shall include only that training, education, and direct assistance to State, local, and tribal communities needed for the purpose of streamlining access to historical criminal record data.

''(c) LIMITATIONS.—

''(1) COMMENCEMENT OF ACTIVITIES.—The Director may not commence carrying out any activities under subsection (a) until the date that is 90 days after the date on which the Director submits the report required by subsection (d)(1).

''(2) LEGAL AND REPORTING OBLIGATIONS.—The Director shall ensure that no activity carried out under subsection (a) obligates a State, local, or tribal entity to any additional legal or reporting obligation to the Defense Counterintelligence and Security Agency.

''(3) SCOPE.—No activity may be carried out under subsection (a) that applies to any matter outside the limited purpose of conducting background investigations for current and prospective Federal Government employees and contractors.

''(4) CONSISTENCY WITH ACCESS PROVIDED.—The Director shall ensure that the activities carried out

under subsection (a) are carried out in a manner that is consistent with the access provided by Federal law enforcement entities to the Defense Counterintelligence and Security Agency.

''(d) REPORTS.—

''(1) INITIAL REPORT.—Not later than 90 days after the date of the enactment of this Act [Dec. 20, 2019], the Director shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives], the Select Committee on Intelligence of the Senate, and the Permanent Select Committee on Intelligence of the House of Representatives a report that details a concept of operation for the set of activities authorized by subsection (a).

''(2) ANNUAL REPORTS.—Not later than one year after the date on which the Director submits a report pursuant to paragraph (1) and not less frequently than once each year thereafter, the Director shall submit to the congressional defense committees, the Select Committee on Intelligence of the Senate, and the Permanent Select Committee on Intelligence of the House of Representatives a detailed report on the activities carried out by the Director under subsection (a).''

REPORTS ON CONSOLIDATED ADJUDICATION FACILITY OF THE DEFENSE COUNTERINTELLIGENCE AND SECURITY AGENCY

Pub. L. 116–92, div. A, title XVI, § 1627, Dec. 20, 2019, 133 Stat. 1740, provided that:

''(a) REPORTS.—On a semiannual basis during the period beginning on the date of the enactment of this Act [Dec. 20, 2019] and ending on the date specified in subsection (b), and annually thereafter, the Director of the Defense Counterintelligence and Security Agency shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the processes in place for adjudicating security clearances and the progress made to address the backlog of security clearance applications, including—

''(1) metrics used by the Director to evaluate the inventory and timeliness of adjudicating security clearance cases; and

''(2) details on the resources used by the Director in carrying out the security clearance mission of the Consolidated Adjudication Facility.

''(b) DETERMINATION AND BRIEFING.—Upon the date on which the Director of the Defense Counterintelligence and Security Agency determines both that the backlog of security clearance adjudications has been substantially eliminated and that the timeline to conduct background investigations reflects the type of investigation being conducted and the level of clearance required, the Director shall—

''(1) notify the congressional defense committees of such determination; and

''(2) provide to such committees a briefing on the progress made by the Director with respect to security clearance adjudications.''

TERMINATION OF REQUIREMENT FOR DEPARTMENT OF DEFENSE FACILITY ACCESS CLEARANCES FOR JOINT VENTURES COMPOSED OF PREVIOUSLY-CLEARED ENTITIES

Pub. L. 116–92, div. A, title XVI, § 1629, Dec. 20, 2019, 133 Stat. 1741, provided that: ''A clearance for access to a Department of Defense installation or facility may not be required for a joint venture if that joint venture is composed entirely of entities that are currently cleared for access to such installation or facility.''

BACKGROUND AND SECURITY INVESTIGATIONS FOR DEPARTMENT OF DEFENSE PERSONNEL BY DEFENSE COUNTERINTELLIGENCE AND SECURITY AGENCY

Pub. L. 115–91, div. A, title IX, § 925, Dec. 12, 2017, 131 Stat. 1526, as amended by Pub. L. 115–232, div. A, title IX, § 937, Aug. 13, 2018, 132 Stat. 1940, provided that:

''(a) TRANSITION TO DISCHARGE BY DEFENSE SECURITY SERVICE [now DEFENSE COUNTERINTELLIGENCE AND SECURITY AGENCY].—

''(1) SECRETARIAL AUTHORITY.—The Secretary of Defense has the authority to conduct security, suitability, and credentialing background investigations for Department of Defense personnel. In carrying out such authority, the Secretary may use such authority, or may delegate such authority to another entity.

''(2) PHASED TRANSITION.—As part of providing for the conduct of background investigations initiated by the Department of Defense through the Defense Security Service [now Defense Counterintelligence and Security Agency] by not later than the deadline specified in subsection (b), the Secretary shall, in consultation with the Director of the Office of Personnel Management, provide for a phased transition from the conduct of such investigations by the National Background Investigations Bureau of the Office of Personnel Management to the conduct of such investigations by the Defense Security Service by that deadline.

''(3) TRANSITION ELEMENTS.—The phased transition required by paragraph (2) shall—

''(A) provide for the transition of the conduct of investigations to the Defense Security Service [now Defense Counterintelligence and Security Agency] using a risk management approach; and

''(B) be consistent with the transition from legacy information technology operated by the Office of Personnel Management to the new information technology, including the National Background Investigations System, as described in subsection (f).

''(b) COMMENCEMENT OF IMPLEMENTATION PLAN FOR ONGOING DISCHARGE OF INVESTIGATIONS THROUGH DSS.—Not later than October 1, 2020, the Secretary of Defense shall commence carrying out the implementation plan developed pursuant to section 951(a)(1) of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114–328; 130 Stat. 2371; 10 U.S.C. 1564 note).

''(c) TRANSFER OF CERTAIN FUNCTIONS WITHIN DOD TO DSS.—

''(1) TRANSFER REQUIRED.—For purposes of meeting the requirements in subsections (a) and (b), the Secretary of Defense shall transfer to the Defense Security Service [now Defense Counterintelligence and Security Agency] the functions, personnel, and associated resources of the following organizations:

''(A) The Consolidated Adjudications Facility.

''(B) Other organizations identified by the Secretary for purposes of this paragraph.

''(2) SUPPORTING ORGANIZATIONS.—In addition to the organizations identified pursuant to paragraph (1), the following organizations shall prioritize resources to directly support the execution of requirements in subsections (a) and (b):

''(A) The Office of Cost Analysis and Program Evaluation.

''(B) The Defense Digital Service.

''(C) Other organizations designated by the Secretary for purposes of this paragraph.

''(3) TIMING AND MANNER OF TRANSFER.—The Secretary—

''(A) may carry out the transfer required by paragraph (1) at any time before the date specified in subsection (b) that the Secretary considers appropriate for purposes of this section; and

''(B) shall carry out the transfer in a manner designed to minimize disruptions to the conduct of background investigations for personnel of the Department of Defense.

''(d) TRANSFER OF CERTAIN FUNCTIONS IN OPM TO DSS [now DCSA].—

''(1) IN GENERAL.—For purposes of meeting the requirements in subsections (a) and (b), the Secretary of Defense shall provide for the transfer of the functions described in paragraph (2), and any associated personnel and resources, to the Department of Defense.

''(2) FUNCTIONS.—The functions to be transferred pursuant to paragraph (1) are the following:

''(A) Any personnel security investigations functions transferred by the Secretary to the Director of the Office of Personnel Management pursuant to section 906 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136; 5 U.S.C. 1101 note).

''(B) Any other functions of the Office of Personnel Management in connection with background investigations initiated by the Department of Defense that the Secretary and the Director jointly consider appropriate.

''(3) ASSESSMENT.—In carrying out the transfer of functions pursuant to paragraph (1), the Secretary shall conduct a comprehensive assessment of workforce requirements for both the Department of Defense and the National Background Investigations Bureau synchronized to the transition plan, including a forecast of workforce needs across the current future-years defense plan for the Department. Not later than 180 days after the date of the enactment of this Act [Dec. 12, 2017], the Secretary shall submit to the appropriate congressional committees a report containing the results of the assessment.

''(4) CONSULTATION.—The Secretary shall carry out paragraphs (1), (2), and (3) in consultation with the Director of the Office of Personnel Management and the Director of the Office of Management and Budget.

''(5) LOCATION WITHIN DOD.—Any functions transferred to the Department of Defense pursuant to this subsection shall be located within the Defense Security Service [now Defense Counterintelligence and Security Agency].

''(e) CONDUCT OF CERTAIN ACTIONS.—For purposes of the conduct of background investigations following the commencement of carrying out the implementation plan referred to in subsection (b), the Secretary of Defense shall provide for the following:

''(1) A single capability for the centralized funding, submissions, and processing of all background investigations, from within the Defense Security Service [now Defense Counterintelligence and Security Agency].

''(2) The discharge by the Consolidated Adjudications Facility, from within the Defense Security Service [now Defense Counterintelligence and Security Agency] pursuant to transfer under subsection (c), of adjudications in connection with the following:

''(A) Background investigations.

''(B) Continuous evaluation and vetting checks.

''(f) ENHANCEMENT OF INFORMATION TECHNOLOGY CAPABILITIES OF NBIS.—

''(1) IN GENERAL.—The Secretary of Defense shall conduct a review of the information technology capabilities of the National Background Investigations System in order to determine whether enhancements to such capabilities are required for the following:

''(A) Support for background investigations pursuant to this section and section 951 of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114–328; 130 Stat. 2371; 10 U.S.C. 1564 note).

''(B) Support of the National Background Investigations Bureau.

''(C) Execution of the conduct of background investigations initiated by the Department of Defense pursuant to this section, including submissions and adjudications.

''(2) COMMON COMPONENT.—In providing for the transition and operation of the National Background Investigations System as described in paragraph (1)(C), the Secretary shall develop a common component of the System usable for background investigations by both the Defense Security Service [now Defense Counterintelligence and Security Agency] and the National Background Investigations Bureau.

''(3) ENHANCEMENTS.—If the review pursuant to paragraph (1) determines that enhancements described in that paragraph are required, the Secretary shall carry out such enhancements.

''(4) CONSULTATION.—The Secretary shall carry out this subsection in consultation with the Director of the Office of Personnel Management.

''(g) USE OF CERTAIN PRIVATE INDUSTRY DATA.—In carrying out background and security investigations pursuant to this section and section 951 of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114–328; 130 Stat. 2371; 10 U.S.C. 1564 note), the Secretary of Defense may use background materials collected on individuals by the private sector, in accordance with national policies and standards, that are applicable to such investigations, including materials as follows:

''(1) Financial information, including credit scores and credit status.

''(2) Criminal records.

''(3) Drug screening.

''(4) Verifications of information on resumes and employment applications, such as previous employers, educational achievement, and educational institutions attended.

''(5) Other publicly available electronic information.

''(h) SECURITY CLEARANCES FOR CONTRACTOR PERSONNEL.—

''(1) IN GENERAL.—The Secretary of Defense shall review the requirements of the Department of Defense relating to position sensitivity designations for contractor personnel in order to determine whether such requirements may be reassessed or modified to reduce the number and range of contractor personnel who are issued security clearances in connection with work under contracts with the Department.

''(2) GUIDANCE.—The Secretary shall issue guidance to program managers, contracting officers, and security personnel of the Department specifying requirements for the review of contractor position sensitivity designations and the number of contractor personnel of the Department who are issued security clearances for the purposes of determining whether the number of such personnel who are issued security clearances should and can be reduced.

''(i) PERSONNEL TO SUPPORT THE TRANSFER OF FUNCTIONS.—The Secretary of Defense shall authorize the Director of the Defense Security Service [now Defense Counterintelligence and Security Agency] to promptly increase the number of personnel of the Defense Security Service for the purpose of beginning the establishment and expansion of investigative capacity to support the phased transfer of investigative functions from the Office of Personnel Management to the Department of Defense under this section. The Director of Cost Analysis and Program Assessment shall advise the Secretary on the size of the initial investigative workforce and the rate of growth of that workforce.

''(j) REPORT ON FUTURE PERIODIC REINVESTIGATIONS, INSIDER THREAT, AND CONTINUOUS VETTING.—

''(1) REPORT REQUIRED.—Not later than 90 days after the date of the enactment of this Act [Dec. 12, 2017], the Secretary of Defense shall submit to the appropriate congressional committees a report that includes the following:

''(A) An assessment of the feasibility and advisability of periodic reinvestigations of backgrounds of Government and contractor personnel with security clearances, including lessons from all of the continuous evaluation pilots being conducted throughout the Government, and identification of new or additional data sources and data analytic tools needed for improving current continuous evaluation or vetting capabilities.

''(B) A plan to provide the Government with an enhanced risk management model that reduces the gaps in coverage perpetuated by the current time-based periodic reinvestigations model, particularly in light of the increasing use of continuous background evaluations of personnel referred to in subparagraph (A).

''(C) A plan for expanding continuous background vetting capabilities, such as the Installation

Matching Engine for Security and Analysis, to the broader population, including those at the lowest tiers and levels of access, which plan shall include details to ensure that all individuals credentialed for physical access to Department of Defense facilities and installations are vetted to the same level of fitness determinations and subject to appropriate continuous vetting.

''(D) A plan to fully integrate and incorporate insider threat data, tools, and capabilities into the new end-to-end vetting processes and supporting information technology established by the Defense Security Service [now Defense Counterintelligence and Security Agency] to ensure a holistic and transformational approach to detecting, deterring, and mitigating threats posed by trusted insiders.

''(2) CONSULTATION.—The Secretary shall prepare the report under paragraph (1) in consultation with the Director of National Intelligence and the Director of the Office of Personnel Management.

''(k) QUARTERLY AND ANNUAL BRIEFINGS AND REPORTS.—

''(1) ANNUAL ASSESSMENT OF TIMELINESS.—Not later than December 31, 2018, and each December 31 thereafter through the date specified in paragraph (4), the Security Executive Agent, in coordination with the Chair and other Principals of the Security, Suitability, and Credentialing Performance Accountability Council, shall submit to the appropriate committees of Congress a report on the timeliness of personnel security clearance initiations, investigations, and adjudications, by clearance level, for both initial investigations and periodic reinvestigations during the prior fiscal year for Government and contractor employees, including the following:

''(A) The average periods of time taken by each authorized investigative agency and authorized adjudicative agency to initiate cases, conduct investigations, and adjudicate cases as compared with established timeliness objectives, from the date a completed security clearance application is received to the date of adjudication and notification to the subject and the subject's employer.

''(B) The number of initial investigations and periodic reinvestigations initiated and adjudicated by each authorized adjudicative agency.

''(C) The number of initial investigations and periodic reinvestigations carried over from prior fiscal years by each authorized investigative and adjudicative agency.

''(D) The number of initial investigations and periodic reinvestigations that resulted in a denial or revocation of a security clearance by each authorized adjudicative agency.

''(E) The costs to the executive branch related to personnel security clearance initiations, investigations, adjudications, revocations, and continuous evaluation.

''(F) A discussion of any impediments to the timely processing of personnel security clearances.

''(G) The number of clearance holders enrolled in continuous evaluation and the numbers and types of adverse actions taken as a result by each authorized adjudicative agency.

''(H) The number of personnel security clearance cases, both initial investigations and periodic reinvestigations, awaiting or under investigation by the National Background Investigations Bureau.

''(I) Other information as appropriate, including any recommendations to improve the timeliness and efficiency of personnel security clearance initiations, investigations, and adjudications.

''(2) QUARTERLY BRIEFINGS.—Not later than the end of each calendar-year quarter beginning after January 1, 2018, through the date specified in paragraph (4), the Secretary of Defense shall provide the appropriate congressional committees a briefing on the progress of the Secretary in carrying out the requirements of this section during that calendar-year quarter. Until the backlog of security clearance applications at the National Background Investigations Bureau is eliminated, each quarterly briefing shall also include the current status of the backlog and the resulting mission and resource impact to the Department of Defense and the defense industrial base. Until the phased transition described in subsection (a) is complete, each quarterly briefing shall also include identification of any resources planned for movement from the National Background Investigations Bureau to the Department of Defense during the next calendar-year quarter.

''(3) ANNUAL REPORTS.—Not later than December 31, 2018, and each December 31 thereafter through the date specified in paragraph (4), the Secretary of Defense shall submit to the appropriate congressional committees a report on the following for the calendar year in which the report is to be submitted:

''(A) The status of the Secretary in meeting the requirements in subsections (a), (b), and (c).

''(B) The status of any transfers to be carried out pursuant to subsection (d).

''(C) An assessment of the personnel security capabilities of the Department of Defense.

''(D) The average periods of time taken by each authorized investigative agency and authorized adjudicative agency to initiate cases, conduct investigations, and adjudicate cases as compared with established timeliness objectives, from the date a completed security clearance application is received to the date of adjudication and notification to the subject and the subject's employer.

''(E) The number of initial investigations and periodic reinvestigations initiated and adjudicated by each authorized adjudicative agency.

''(F) The number of initial investigations and periodic reinvestigations carried over from prior fiscal years by each authorized investigative and adjudicative agency.

''(G) The number of initial investigations and periodic reinvestigations that resulted in a denial or revocation of a security clearance by each authorized adjudicative agency.

''(H) The number of denials or revocations of a security clearance by each authorized adjudicative agency that occurred separately from a periodic reinvestigation.

''(I) The costs to the Department of Defense related to personnel security clearance initiations, investigations, adjudications, revocations, and continuous evaluation.

''(J) A discussion of any impediments to the timely processing of personnel security clearances.

''(K) The number of clearance holders enrolled in continuous evaluation and the numbers and types of adverse actions taken as a result.

''(L) The number of personnel security clearance cases, both initial investigations and periodic reinvestigations, awaiting or under investigation by the National Background Investigations Bureau.

''(M) Other information that the Secretary considers appropriate, including any recommendations to improve the timeliness and efficiency of personnel security clearance initiations, investigations, and adjudications.

''(4) TERMINATION.—No briefing or report is required under this subsection after December 31, 2021.

''(*l*) APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.—In this section, the term 'appropriate congressional committees' means—

''(1) the Committees on Armed Services, Appropriations, Homeland Security and Governmental Affairs, and the Select Committee on Intelligence of the Senate; and

''(2) the Committees on Armed Services, Appropriations, Oversight and Government Reform, and the Permanent Select Committee on Intelligence of the House of Representatives.''

ENHANCED SECURITY PROGRAMS FOR DEPARTMENT OF DEFENSE PERSONNEL AND INNOVATION INITIATIVES

Pub. L. 114–328, div. A, title IX, § 951, Dec. 23, 2016, 130 Stat. 2371, provided that:

''(a) ENHANCEMENT OF SECURITY PROGRAMS GENERALLY.—

''(1) PERSONNEL BACKGROUND AND SECURITY PLAN REQUIRED.—The Secretary of Defense shall develop an implementation plan for the Defense Security Service [now Defense Counterintelligence and Security Agency] to conduct, after October 1, 2017, background investigations for personnel of the Department of Defense whose investigations are adjudicated by the Consolidated Adjudication Facility of the Department. The Secretary shall submit the implementation plan to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] by not later than August 1, 2017.

''(2) PLAN FOR POTENTIAL TRANSFER OF INVESTIGATIVE PERSONNEL TO DEPARTMENT OF DEFENSE.—Not later than October 1, 2017, the Secretary and the Director of the Office of Personnel Management shall develop a plan to transfer Government investigative personnel and contracted resources to the Department in proportion to the background and security investigative workload that would be assumed by the Department if the plan required by paragraph (1) were implemented.

''(3) REPORT.—Not later than August 1, 2017, the Secretary shall submit to the congressional defense committees a report on the number of full-time equivalent employees of the management headquarters of the Department that would be required by the Defense Security Service [now Defense Counterintelligence and Security Agency] to carry out the plan developed under paragraph (1).

''(4) COLLECTION, STORAGE, AND RETENTION OF INFORMATION BY INSIDER THREAT PROGRAMS.—In order to enable detection and mitigation of potential insider threats, the Secretary shall ensure that insider threat programs of the Department collect, store, and retain information from the following:

''(A) Personnel security.

''(B) Physical security.

''(C) Information security.

''(D) Law enforcement.

''(E) Counterintelligence.

''(F) User activity monitoring.

''(G) Information assurance.

''(H) Such other data sources as the Secretary considers necessary and appropriate.

''(b) ELEMENTS OF SYSTEM.—

''(1) IN GENERAL.—In developing a system for the performance of background investigations for personnel in carrying out subsection (a), the Secretary shall—

''(A) conduct a review of security clearance business processes and, to the extent practicable, modify such processes to maximize compatibility with the security clearance information technology architecture to minimize the need for customization of the system;

''(B) conduct business process mapping of the business processes described in subparagraph (A);

''(C) use spiral development and incremental acquisition practices to rapidly deploy the system, including through the use of prototyping and open architecture principles;

''(D) establish a process to identify and limit interfaces with legacy systems and to limit customization of any commercial information technology tools used;

''(E) establish automated processes for measuring the performance goals of the system;

''(F) incorporate capabilities for the continuous monitoring of network security and the mitigation of insider threats to the system;

''(G) institute a program to collect and maintain data and metrics on the background investigation process; and

''(H) establish a council (to be known as the 'Department of Defense Background Investigations Rate Council') to advise and advocate for rate efficiencies for background clearance investigation rates, and to negotiate rates for background investigation services provided to outsides [sic] entities and agencies when requested.

''(2) COMPLETION DATE.—The Secretary shall complete the development and implementation of the system described in paragraph (1) by not later than September 30, 2019.

''(c) ESTABLISHMENT OF ENHANCED SECURITY PROGRAM TO SUPPORT DEPARTMENT OF DEFENSE INNOVATION INITIATIVE.—

''(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act [Dec. 23, 2016], the Secretary shall establish a personnel security program, and take such other actions as the Secretary considers appropriate, to support the Innovation Initiative of the Department to better leverage commercial technology.

''(2) POLICIES AND PROCEDURES.—In establishing the program required by paragraph (1), the Secretary shall develop policies and procedures to rapidly and inexpensively investigate and adjudicate security clearances for personnel from commercial companies with innovative technologies and solutions to enable such companies to receive relevant threat reporting and to propose solutions for a broader set of Department requirements.

''(3) ACCESS TO CLASSIFIED INFORMATION.—The Secretary shall ensure that access to classified information under the program required by paragraph (1) is not contingent on a company already being under contract with the Department.

''(4) AWARD OF SECURITY CLEARANCES.—The Secretary may award secret clearances under the program required by paragraph (1) for limited purposes and periods relating to the acquisition or modification of capabilities and services.

''(d) UPDATED GUIDANCE AND REVIEW OF POLICIES.—

''(1) REVIEW OF APPLICABLE LAWS.—The Secretary shall review laws, regulations, and executive orders relating to the maintenance of personnel security clearance information by the Federal Government, including the investigation timeline metrics established in the Intelligence Reform and Prevention of Terrorism Act of 2004 (Public Law 108–458 [see Tables for classification]). The review should also identify recommendations to eliminate duplicative or outdated authorities in current executive orders, regulations and guidance. Not later than 90 days after the date of the enactment of this Act [Dec. 23, 2016], the Secretary shall provide to the Committees on Armed Services of the Senate and the House of Representatives a briefing that includes—

''(A) the results of the review; and

''(B) recommendations, if any, for consolidating and clarifying laws, regulations, and executive orders relating to the maintenance of personnel security clearance information by the Federal Government.

''(2) RECIPROCITY DIRECTIVE.—Not later than 180 days after the date of the enactment of this Act, the Secretary shall coordinate with the Security Executive Agent, in consultation with the Suitability Executive Agent, to issue an updated reciprocity directive that accounts for security policy changes associated with new position designation regulations under section 1400 of title 5, Code of Federal Regulations, new continuous evaluation policies, and new Federal investigative standards.

''(3) IMPLEMENTATION DIRECTIVES.—The Secretary, working with the Security Executive Agent and the Suitability Executive Agent, shall jointly develop and issue directives on—

''(A) completing the implementation of the National Security Sensitive Position designations required by section 1400 of title 5, Code of Federal Regulations; and

''(B) aligning to the maximum practical extent the investigative and adjudicative standards and criteria for positions requiring access to classified

information and national security sensitive positions not requiring access to classified information to ensure effective and efficient reciprocity and consistent designation of like-positions across the Federal Government.

''(e) WAIVER OF CERTAIN DEADLINES.—For each of fiscal years 2017 through 2019, the Secretary may waive any background investigation timeline specified in the Intelligence Reform and Prevention of Terrorism Act of 2004 if the Secretary submits to the appropriate committees of Congress a written notification on the waiver not later than 30 days before the beginning of the fiscal year concerned.

''(f) DEFINITIONS.—In this section:

''(1) The term 'appropriate committees of Congress' has the meaning given that term in section 3001(a)(8) of the Intelligence Reform and Prevention of Terrorism Act of 2004 (50 U.S.C. 3341(a)(8)).

''(2) The term 'business process mapping' has the meaning given that term in section 2222(i) of title 10, United States Code.

''(3) The term 'insider threat' means, with respect to the Department, a threat presented by a person who—

''(A) has, or once had, authorized access to information, a facility, a network, a person, or a resource of the Department; and

''(B) wittingly, or unwittingly, commits—

''(i) an act in contravention of law or policy that resulted in, or might result in, harm through the loss or degradation of government or company information, resources, or capabilities; or

''(ii) a destructive act, which may include physical harm to another in the workplace.''

REFORM AND IMPROVEMENT OF PERSONNEL SECURITY, INSIDER THREAT DETECTION AND PREVENTION, AND PHYSICAL SECURITY

Pub. L. 114–92, div. A, title X, § 1086, Nov. 25, 2015, 129 Stat. 1006, as amended by Pub. L. 114–328, div. A, title X, § 1081(c)(7), Dec. 23, 2016, 130 Stat. 2420, provided that:

''(a) PERSONNEL SECURITY AND INSIDER THREAT PROTECTION IN DEPARTMENT OF DEFENSE.—

''(1) PLANS AND SCHEDULES.—Consistent with the Memorandum of the Secretary of Defense dated March 18, 2014, regarding the recommendations of the reviews of the Washington Navy Yard shooting, the Secretary of Defense shall develop plans and schedules—

''(A) to implement a continuous evaluation capability for the national security population for which clearance adjudications are conducted by the Department of Defense Central Adjudication Facility, in coordination with the heads of other relevant agencies;

''(B) to produce a Department-wide insider threat strategy and implementation plan, which includes—

''(i) resourcing for the Defense Insider Threat Management and Analysis Center and component insider threat programs, and

''(ii) alignment of insider threat protection programs with continuous evaluation capabilities and processes for personnel security;

''(C) to centralize the authority, accountability, and programmatic integration responsibilities, including fiscal control, for personnel security and insider threat protection under the Under Secretary of Defense for Intelligence [now Under Secretary of Defense for Intelligence and Security];

''(D) to develop a defense security enterprise reform investment strategy to ensure a consistent, long-term focus on funding to strengthen all of the Department's security and insider threat programs, policies, functions, and information technology capabilities, including detecting threat behaviors conveyed in the cyber domain, in a manner that keeps pace with evolving threats and risks;

''(E) to resource and expedite deployment of the Identity Management Enterprise Services Architecture; and

''(F) to implement the recommendations contained in the study conducted by the Director of Cost Analysis and Program Evaluation required by section 907 of the National Defense Authorization Act for Fiscal Year 2014 (Public Law 113–66; 10 U.S.C. 1564 note), including, specifically, the recommendations to centrally manage and regulate Department of Defense requests for personnel security background investigations.

''(2) REPORTING REQUIREMENT.—Not later than 180 days after the date of the enactment of this Act [Nov. 25, 2015], the Secretary of Defense shall submit to the appropriate committees of Congress a report describing the plans and schedules required under paragraph (1).

''(b) PHYSICAL AND LOGICAL ACCESS.—Not later than 270 days after the date of the enactment of this Act—

''(1) the Secretary of Defense shall define physical and logical access standards, capabilities, and processes applicable to all personnel with access to Department of Defense installations and information technology systems, including—

''(A) periodic or regularized background or records checks appropriate to the type of physical or logical access involved, the security level, the category of individuals authorized, and the level of access to be granted;

''(B) standards and methods for verifying the identity of individuals seeking access; and

''(C) electronic attribute-based access controls that are appropriate for the type of access and facility or information technology system involved;

''(2) the Director of the Office of Management and Budget and the Chair of the Performance Accountability Council, in coordination with the Secretary of Defense, the Administrator of General Services, and, when appropriate, the Director of National Intelligence, and in consultation with representatives from stakeholder organizations, shall design a capability to share and apply electronic identity information across the Government to enable real-time, risk-managed physical and logical access decisions; and

''(3) the Director of the Office of Management and Budget, in conjunction with the Director of the Office of Personnel Management and in consultation with representatives from stakeholder organizations, shall establish investigative and adjudicative standards for the periodic or regularized reevaluation of the eligibility of an individual to retain credentials issued pursuant to Homeland Security Presidential Directive 12 (dated August 27, 2004), as appropriate, but not less frequently than the authorization period of the issued credentials.

''(c) SECURITY ENTERPRISE MANAGEMENT.—Not later than 180 days after the date of enactment of this Act [Nov. 25, 2015], the Director of the Office of Management and Budget shall—

''(1) formalize the Security, Suitability, and Credentialing Line of Business; and

''(2) submit to the appropriate congressional committee a report that describes plans—

''(A) for oversight by the Office of Management and Budget of activities of the executive branch of the Government for personnel security, suitability, and credentialing;

''(B) to designate enterprise shared services to optimize investments;

''(C) to define and implement data standards to support common electronic access to critical Government records; and

''(D) to reduce the burden placed on Government data providers by centralizing requests for records access and ensuring proper sharing of the data with appropriate investigative and adjudicative elements.

''(d) RECIPROCITY MANAGEMENT.—Not later than two years after the date of the enactment of this Act, the Chair of the Performance Accountability Council shall ensure that—

''(1) a centralized system is available to serve as the reciprocity management system for the Federal Government; and

''(2) the centralized system described in paragraph (1) is aligned with, and incorporates results from, continuous evaluation and other enterprise reform initiatives.

''(e) REPORTING REQUIREMENTS IMPLEMENTATION.—Not later than 180 days after the date of enactment of this Act, the Chair of the Performance Accountability Council, in coordination with the Security Executive Agent, the Suitability Executive Agent, and the Secretary of Defense, shall jointly develop a plan to—

''(1) implement the Security Executive Agent Directive on common, standardized employee and contractor security reporting requirements;

''(2) establish and implement uniform reporting requirements for employees and Federal contractors, according to risk, relative to the safety of the workforce and protection of the most sensitive information of the Government; and

''(3) ensure that reported information is shared appropriately.

''(f) Access to Criminal History Records for National Security and Other Purposes.—

''(1) DEFINITION.—[Amended section 9101 of Title 5, Government Organization and Employees.]

''(2) COVERED AGENCIES.—[Amended section 9101 of Title 5.]

''(3) APPLICABLE PURPOSES OF INVESTIGATIONS.—[Amended section 9101 of Title 5.]

''(4) BIOMETRIC AND BIOGRAPHIC SEARCHES.—[Amended section 9101 of Title 5.]

''(5) USE OF MOST COST-EFFECTIVE SYSTEM.—[Amended section 9101 of Title 5.]

''(6) SEALED OR EXPUNGED RECORDS; JUVENILE RECORDS.—

''(A) IN GENERAL.—[Amended section 9101 of Title 5.]

''(B) REGULATIONS.—

''(i) DEFINITION.—In this subparagraph, the terms 'Security Executive Agent' and 'Suitability Executive Agent' mean the Security Executive Agent and the Suitability Executive Agent, respectively, established under Executive Order 13467 (73 Fed. Reg. 38103) [50 U.S.C. 3161 note], or any successor thereto.

''(ii) DEVELOPMENT; PROMULGATION.—The Security Executive Agent shall—

''(I) not later than 45 days after the date of enactment of this Act [Nov. 25, 2015], and in conjunction with the Suitability Executive Agent and the Attorney General, begin developing regulations to implement the amendments made by subparagraph (A); and

''(II) not later than 120 days after the date of enactment of this Act, promulgate regulations to implement the amendments made by subparagraph (A).

''(C) SENSE OF CONGRESS.—It is the sense of Congress that the Federal Government should not uniformly reject applicants for employment with the Federal Government or Federal contractors based on—

''(i) sealed or expunged criminal records; or

''(ii) juvenile records.

''(7) INTERACTION WITH LAW ENFORCEMENT AND INTELLIGENCE AGENCIES ABROAD.—[Amended section 9101 of Title 5.]

''(8) CLARIFICATION OF SECURITY REQUIREMENTS FOR CONTRACTORS CONDUCTING BACKGROUND INVESTIGATIONS.—[Amended section 9101 of Title 5.]

''(9) CLARIFICATION REGARDING ADVERSE ACTIONS.—[Amended section 7512 of Title 5.]

''(10) ANNUAL REPORT BY SUITABILITY AND SECURITY CLEARANCE PERFORMANCE ACCOUNTABILITY COUNCIL.—[Amended section 9101 of Title 5.]

''(11) GAO REPORT ON ENHANCING INTEROPERABILITY AND REDUCING REDUNDANCY IN FEDERAL CRITICAL INFRASTRUCTURE PROTECTION ACCESS CONTROL, BACKGROUND CHECK, AND CREDENTIALING STANDARDS.—

''(A) IN GENERAL.—Not later than one year after the date of the enactment of this Act, the Comptroller General of the United States shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives], the Committee on Homeland Security of the House of Representatives, and the Committee on Homeland Security and Governmental Affairs of the Senate a report on the background check, access control, and credentialing requirements of Federal programs for the protection of critical infrastructure and key resources.

''(B) CONTENTS.—The Comptroller General shall include in the report required under subparagraph (A)—

''(i) a summary of the major characteristics of each such Federal program, including the types of infrastructure and resources covered;

''(ii) a comparison of the requirements, whether mandatory or voluntary in nature, for regulated entities under each such program to—

''(I) conduct background checks on employees, contractors, and other individuals;

''(II) adjudicate the results of a background check, including the utilization of a standardized set of disqualifying offenses or the consideration of minor, non-violent, or juvenile offenses; and

''(III) establish access control systems to deter unauthorized access, or provide a security credential for any level of access to a covered facility or resource;

''(iii) a review of any efforts that the Screening Coordination Office of the Department of Homeland Security has undertaken or plans to undertake to harmonize or standardize background check, access control, or credentialing requirements for critical infrastructure and key resource protection programs overseen by the Department; and

''(iv) recommendations, developed in consultation with appropriate stakeholders, regarding—

''(I) enhancing the interoperability of security credentials across critical infrastructure and key resource protection programs;

''(II) eliminating the need for redundant background checks or credentials across existing critical infrastructure and key resource protection programs;

''(III) harmonizing, where appropriate, the standards for identifying potentially disqualifying criminal offenses and the weight assigned to minor, nonviolent, or juvenile offenses in adjudicating the results of a completed background check; and

''(IV) the development of common, risk-based standards with respect to the background check, access control, and security credentialing requirements for critical infrastructure and key resource protection programs.

''(g) DEFINITIONS.—In this section—

''(1) the term 'appropriate committees of Congress' means—

''(A) the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives];

''(B) the Select Committee on Intelligence and the Committee on Homeland Security and Governmental Affairs of the Senate; and

''(C) the Permanent Select Committee on Intelligence, the Committee on Oversight and Government Reform, and the Committee on Homeland Security of the House of Representatives; and

''(2) the term 'Performance Accountability Council' means the Suitability and Security Clearance Performance Accountability Council established under Executive Order 13467 (73 Fed. Reg. 38103) [50 U.S.C. 3161 note], or any successor thereto.''

[Pub. L. 114–328, div. A, title X, §1081(c), Dec. 23, 2016, 130 Stat. 2419, provided that the amendment made by

section 1081(c)(7) to section 1086 of Pub. L. 114–92, set out above, is effective as of Nov. 25, 2015, and as if included in Pub. L. 114–92 as enacted.]

PERSONNEL SECURITY

Pub. L. 113–66, div. A, title IX, § 907, Dec. 26, 2013, 127 Stat. 818, as amended by Pub. L. 115–91, div. A, title X, § 1051(s)(1), Dec. 12, 2017, 131 Stat. 1566, provided that:

''(a) COMPARATIVE ANALYSIS.—

''(1) IN GENERAL.—Not later than 90 days after the date of the enactment of this Act [Dec. 26, 2013], the Secretary of Defense shall, acting through the Director of Cost Assessment and Program Evaluation and in consultation with the Director of the Office of Management and Budget, submit to the appropriate committees of Congress a report setting forth a comprehensive analysis comparing the quality, cost, and timeliness of personnel security clearance investigations and reinvestigations for employees and contractor personnel of the Department of Defense that are conducted by the Office of Personnel Management with the quality, cost, and timeliness of personnel security clearance investigations and reinvestigations for such personnel that are conducted by components of the Department of Defense.

''(2) ELEMENTS OF ANALYSIS.—The analysis under paragraph (1) shall do the following:

''(A) Determine and compare, for each of the Office of Personnel Management and the components of the Department that conduct personnel security investigations as of the date of the analysis, the quality, cost, and timeliness associated with personnel security investigations and reinvestigations of each type and level of clearance, and identify the elements that contribute to such cost, schedule, and performance.

''(B) Identify mechanisms for permanently improving the transparency of the cost structure of personnel security investigations and reinvestigations.

''(b) PERSONNEL SECURITY FOR DEPARTMENT OF DEFENSE EMPLOYEES AND CONTRACTORS.—If the Secretary of Defense determines that the current approach for obtaining personnel security investigations and reinvestigations for employees and contractor personnel of the Department of Defense is not the most efficient and effective approach for the Department, the Secretary shall develop a plan, by not later than October 1, 2014, for the transition of personnel security investigations and reinvestigations to the approach preferred by the Secretary.

''(c) STRATEGY FOR MODERNIZING PERSONNEL SECURITY.—

''(1) STRATEGY REQUIRED.—Not later than 180 days after the date of the enactment of this Act [Dec. 26, 2013], the Secretary of Defense, the Director of National Intelligence, and the Director of the Office of Management and Budget shall jointly develop, implement, and provide to the appropriate committees of Congress a strategy to modernize all aspects of personnel security for the Department of Defense with the objectives of improving quality, providing for continuous monitoring, decreasing unauthorized disclosures of classified information, lowering costs, increasing efficiencies, and enabling and encouraging reciprocity.

''(2) CONSIDERATION OF ANALYSIS.—In developing the strategy under paragraph (1), the Secretary and the Directors shall consider the results of the analysis required by subsection (a) and the results of any ongoing reviews of recent unauthorized disclosures of national security information.

''(3) METRICS.—In developing the strategy required by paragraph (1), the Secretary and the Directors shall jointly establish metrics to measure the effectiveness of the strategy in meeting the objectives specified in that paragraph.

''(4) ELEMENTS.—In developing the strategy required by paragraph (1), the Secretary and the Directors shall address issues including but not limited to the following:

''(A) Elimination of manual or inefficient processes in investigations and reinvestigations for personnel security, wherever practicable, and automating and integrating the elements of the investigation and adjudication processes, including in the following:

''(i) The clearance application process.

''(ii) Investigation case management.

''(iii) Adjudication case management.

''(iv) Investigation methods for the collection, analysis, storage, retrieval, and transfer of data and records from investigative sources and between any case management systems.

''(v) Records management for hiring and clearance decisions.

''(B) Elimination or reduction, where possible, of the use of databases and information sources that cannot be accessed and processed automatically electronically, or modification of such databases and information sources, if appropriate and cost-effective, to enable electronic access and processing.

''(C) Access and analysis of government, publically available, and commercial data sources, including social media, that provide independent information pertinent to adjudication guidelines and termination standards to improve quality and timeliness, and reduce costs, of investigations and reinvestigations.

''(D) Use of government-developed and commercial technology for continuous monitoring and evaluation of government and commercial data sources that can identify and flag information pertinent to hiring and clearance determinations.

''(E) Standardization of forms used for routine reporting required of cleared personnel (such as travel, foreign contacts, and financial disclosures) and use of continuous monitoring technology to access databases containing such reportable information to independently obtain and analyze reportable data and events.

''(F) Establishment of an authoritative central repository of personnel security information that is accessible electronically at multiple levels of classification and eliminates technical barriers to rapid access to information necessary for eligibility determinations and reciprocal recognition thereof, including the ability to monitor the status of an individual and any events related to the continued eligibility of such individual for employment or clearance during intervals between investigations.

''(G) Elimination or reduction of the scope of, or alteration of the schedule for, periodic reinvestigations of cleared personnel, when such action is appropriate in light of the information provided by continuous monitoring or evaluation technology.

''(H) Electronic integration of personnel security processes and information systems with insider threat detection and monitoring systems, and pertinent law enforcement, counterintelligence and intelligence information, for threat detection and correlation, including those processes and systems operated by components of the Department of Defense for purposes of local security, workforce management, or other related purposes.

''(5) RISK-BASED MONITORING.—The strategy required by paragraph (1) shall—

''(A) include the development of a risk-based approach to monitoring and reinvestigation that prioritizes which cleared individuals shall be subject to frequent reinvestigations and random checks, such as the personnel with the broadest access to classified information or with access to the most sensitive classified information, including information technology specialists or other individuals with such broad access commonly known as 'super users';

''(B) ensure that if the system of continuous monitoring for all cleared individuals described in paragraph (4)(D) is implemented in phases, such system shall be implemented on a priority basis for the individuals prioritized under subparagraph (A); and

''(C) ensure that the activities of individuals prioritized under subparagraph (A) shall be monitored especially closely.

''(d) RECIPROCITY OF CLEARANCES.—The Secretary of Defense and the Director of National Intelligence shall jointly ensure the reciprocity of personnel security clearances among positions requiring personnel holding secret, top secret, or sensitive compartmented information clearances, to the maximum extent feasible consistent with national security requirements.

''(e) COMPTROLLER GENERAL REVIEW.—

''(1) REVIEW REQUIRED.—Not later than 150 days after the date of the enactment of this Act [Dec. 26, 2013], the Comptroller General of the United States shall carry out a review of the personnel security process.

''(2) OBJECTIVE OF REVIEW.—The objective of the review required by paragraph (1) shall be to identify the following:

''(A) Differences between the metrics used by the Department of Defense and other departments and agencies that grant security clearances in granting reciprocity for security clearances, and the manner in which such differences can be harmonized.

''(B) The extent to which existing Federal Investigative Standards are relevant, complete, and sufficient for guiding agencies and individual investigators as they conduct their security clearance background investigations.

''(C) The processes agencies have implemented to ensure quality in the security clearance background investigation process.

''(D) The extent to which agencies have developed and implemented outcome-focused performance measures to track the quality of security clearance investigations and any insights from these measures.

''(E) The processes agencies have implemented for resolving incomplete or subpar investigations, and the actions taken against government employees and contractor personnel who have demonstrated a consistent failure to abide by quality assurance measures.

''(3) REPORT.—Not later than 180 days after the date of the enactment of this Act, the Comptroller General shall submit to the appropriate committees of Congress a report on the results of the review required by paragraph (1).

''(f) TASK FORCE ON RECORDS ACCESS FOR SECURITY CLEARANCE BACKGROUND INVESTIGATIONS.—

''(1) ESTABLISHMENT.—The Suitability and Security Clearance Performance Accountability Council, as established by Executive Order No. 13467 [50 U.S.C. 3161 note], shall convene a task force to examine the different policies and procedures that determine the level of access to public records provided by State and local authorities in response to investigative requests by Federal Government employees or contracted employees carrying out background investigations to determine an individual's suitability for access to classified information or secure government facilities.

''(2) MEMBERSHIP.—The members of the task force shall include, but need not be limited to, the following:

''(A) The Chair of the Suitability and Security Clearance Performance and Accountability Council, who shall serve as chair of the task force.

''(B) A representative from the Office of Personnel Management.

''(C) A representative from the Office of the Director of National Intelligence.

''(D) A representative from the Department of Defense responsible for administering security clearance background investigations.

''(E) Representatives from Federal law enforcement agencies within the Department of Justice and the Department of Homeland Security involved in security clearance background investigations.

''(F) Representatives from State and local law enforcement agencies, including—

''(i) agencies in rural areas that have limited resources and less than 500 officers; and

''(ii) agencies that have more than 1,000 officers and significant technological resources.

''(G) A representative from Federal, State, and local law enforcement associations involved with security clearance background administrative actions and appeals.

''(H) Representatives from Federal, State, and local judicial systems involved in the sharing of records to support security clearance background investigations.

''(3) INITIAL MEETING.—The task force shall convene its initial meeting not later than 45 days after the date of the enactment of this Act [Dec. 26, 2013].

''(4) DUTIES.—The task force shall do the following:

''(A) Analyze the degree to which State and local authorities comply with investigative requests made by Federal Government employees or contractor employees carrying out background investigations to determine an individual's suitability for access to classified information or secure government facilities, including the degree to which investigative requests are required but never formally requested.

''(B) Analyze limitations on the access to public records provided by State and local authorities in response to investigative requests by Federal Government employees and contractor employees described in subparagraph (A), including, but not be limited to, limitations relating to budget and staffing constraints on State and local authorities, any procedural and legal obstacles impairing Federal access to State and local law enforcement records, or inadequate investigative procedural standards for background investigators.

''(C) Provide recommendations for improving the degree of cooperation and records-sharing between State and local authorities and Federal Government employees and contractor employees described in subparagraph (A).

''(5) REPORT.—Not later than 120 days after the date of the enactment of this Act, the task force shall submit to the appropriate committees of Congress a report setting forth a detailed statement of the findings and conclusions of the task force pursuant to this subsection, together with the recommendations of the task force for such legislative or administrative action as the task force considers appropriate.

''(g) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this section, the term 'appropriate committees of Congress' means—

''(1) the Committee on Armed Services, the Committee on Homeland Security and Governmental Affairs, the Committee on Appropriations, and the Select Committee on Intelligence of the Senate; and

''(2) the Committee on Armed Services, the Committee on Oversight and Government Reform, the Committee on Appropriations, and the Permanent Select Committee on Intelligence of the House of Representatives.''

REQUIRED NOTIFICATION WHENEVER MEMBERS OF THE ARMED FORCES ARE COMPLETING STANDARD FORM 86 OF THE QUESTIONNAIRE FOR NATIONAL SECURITY POSITIONS

Pub. L. 113–66, div. A, title XVII, § 1747, Dec. 26, 2013, 127 Stat. 983, provided that:

''(a) NOTIFICATION OF POLICY.—Whenever a member of the Armed Forces is required to complete Standard Form 86 of the Questionnaire for National Security Positions in connection with an application, investigation, or reinvestigation for a security clearance, the member shall be notified of the policy described in subsection (b) regarding question 21 of such form.

''(b) POLICY DESCRIBED.—The policy referred to in subsection (a) is the policy of instructing an individual to answer 'no' to question 21 of Standard Form 86 of the Questionnaire for National Security Positions with respect to consultation with a health care professional if—

''(1) the individual is a victim of a sexual assault; and

''(2) the consultation occurred with respect to an emotional or mental health condition strictly in relation to the sexual assault.''

DEADLINE FOR PRESCRIBING PROCESS FOR PRIORITIZING BACKGROUND INVESTIGATIONS FOR SECURITY CLEARANCES

Pub. L. 106–398, §1 [[div. A], title X, §1072(c)], Oct. 30, 2000, 114 Stat. 1654, 1654A–277, provided that the process required by subsec. (a) of this section for expediting the completion of security clearance background investigations was to be prescribed by Jan. 1, 2001.

EX. ORD. NO. 13869. TRANSFERRING RESPONSIBILITY FOR BACKGROUND INVESTIGATIONS TO THE DEPARTMENT OF DEFENSE

Ex. Ord. No. 13869, Apr. 24, 2019, 84 F.R. 18125, provided:

By the power vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

SECTION 1. *Findings and Purpose*. Section 925 of the National Defense Authorization Act for Fiscal Year 2018 (10 U.S.C. 1564 note) provides that the Secretary of Defense has the authority to conduct security, suitability, and credentialing background investigations for Department of Defense personnel and requires the Secretary, in consultation with the Director of the Office of Personnel Management, to provide for a phased transition to the Department of Defense of the conduct of such investigations conducted by the National Background Investigations Bureau (NBIB). Implementing that legislative mandate while retaining the benefit of economies of scale in addressing the Federal Government's background investigations workload, avoiding unnecessary risk, promoting the ongoing alignment of efforts with respect to vetting Federal employees and contractors, and facilitating needed reforms in this critical area requires that the primary responsibility for conducting background investigations Government-wide be transferred from the Office of Personnel Management to the Department of Defense.

SEC. 2. *Transfer or Delegation of Background Investigation Functions; Further Amendments to Executive Order 13467 of June 30, 2008, as amended*. [Amended Ex. Ord. No. 13467, set out as a note under section 3161 of Title 50, War and National Defense.]

SEC. 3. *Amendment to Executive Order 12171 of November 18, 1979, as amended*.

(a) *Determinations*. Pursuant to section 7103(b)(1) of title 5, United States Code, the DCSA, previously known as the DSS, is hereby determined to have as a primary function intelligence, counterintelligence, investigative, or national security work. It is further determined that chapter 71 of title 5, United States Code, cannot be applied to the DCSA in a manner consistent with national security requirements and considerations.

(b) *Exclusion*. [Amended Ex. Ord. No. 12171, set out as a note under section 7103 of Title 5, Government Organization and Employees.]

SEC. 4. *Conforming References to the Defense Security Service and the Defense Counterintelligence and Security Agency*. Any reference to the Defense Security Service or NBIB in any Executive Order or other Presidential document that is in effect on the day before the date of this order shall be deemed or construed to be a reference to the Defense Counterintelligence and Security Agency or any other entity that the Secretary of Defense names, consistent with section 2(b)(i) of Executive Order 13467, and agencies whose regulations, rules, or other documents reference the Defense Security Service or NBIB shall revise any such respective regulations, rules, or other documents as soon as practicable to update them for consistency with this order.

SEC. 5. *Review of Vetting Policies*. No later than July 24, 2019, the Council Principals identified in section 2.4(b) of Executive Order 13467 shall review the laws, regulations, Executive Orders, and guidance relating to the Federal Government's vetting of Federal employees and contractors and shall submit to the President, through the Chair of the Council, a report recommending any appropriate legislative, regulatory, or policy changes, including any such changes to civil service regulations or policies, Executive Order 13467 or Executive Order 13488 [5 U.S.C. 7301 note].

SEC. 6. *General Provisions*. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

DONALD J. TRUMP.

§ 1564a. Counterintelligence polygraph program

(a) AUTHORITY FOR PROGRAM.—The Secretary of Defense may carry out a program for the administration of counterintelligence polygraph examinations to persons described in subsection (b). The program shall be conducted in accordance with the standards specified in subsection (e).

(b) PERSONS COVERED.—Except as provided in subsection (d), the following persons are subject to this section:

(1) With respect to persons whose duties are described in subsection (c)—

(A) military and civilian personnel of the Department of Defense;

(B) personnel of defense contractors;

(C) persons assigned or detailed to the Department of Defense; and

(D) applicants for a position in the Department of Defense.

(2) A person who is—

(A) a national of the United States (as such term is defined in section 101 of the Immigration and Nationality Act (8 U.S.C. 1101)) and also a national of a foreign state; and

(B) either—

(i) a civilian employee or contractor who requires access to classified information; or

(ii) a member of the armed forces who requires access to classified information.

(c) COVERED TYPES OF DUTIES.—The Secretary of Defense may provide, under standards established by the Secretary, that a person described in subsection (b)(1) is subject to this section if that person's duties involve—

(1) access to information that—

(A) has been classified at the level of top secret; or

(B) is designated as being within a special access program under section 4.4(a) of Executive Order No. 12958 (or a successor Executive order); or

(2) assistance in an intelligence or military mission in a case in which the unauthorized

disclosure or manipulation of information, as determined under standards established by the Secretary of Defense, could reasonably be expected to—

(A) jeopardize human life or safety;

(B) result in the loss of unique or uniquely productive intelligence sources or methods vital to United States security; or

(C) compromise technologies, operational plans, or security procedures vital to the strategic advantage of the United States and its allies.

(d) EXCEPTIONS FROM COVERAGE FOR CERTAIN INTELLIGENCE AGENCIES AND FUNCTIONS.—This section does not apply to the following persons:

(1) A person assigned or detailed to the Central Intelligence Agency or to an expert or consultant under a contract with the Central Intelligence Agency.

(2) A person who is—

(A) employed by or assigned or detailed to the National Security Agency;

(B) an expert or consultant under contract to the National Security Agency;

(C) an employee of a contractor of the National Security Agency; or

(D) a person applying for a position in the National Security Agency.

(3) A person assigned to a space where sensitive cryptographic information is produced, processed, or stored.

(4) A person employed by, or assigned or detailed to, an office within the Department of Defense for the collection of specialized national foreign intelligence through reconnaissance programs or a contractor of such an office.

(e) STANDARDS.—(1) Polygraph examinations conducted under this section shall comply with all applicable laws and regulations.

(2) Such examinations may be authorized for any of the following purposes:

(A) To assist in determining the initial eligibility for duties described in subsection (c) of, and aperiodically thereafter, on a random basis, to assist in determining the continued eligibility of, persons described in subsections (b)(1) and (c).

(B) With the consent of, or upon the request of, the examinee, to—

(i) resolve serious credible derogatory information developed in connection with a personnel security investigation; or

(ii) exculpate him- or herself of allegations or evidence arising in the course of a counterintelligence or personnel security investigation.

(C) To assist, in a limited number of cases when operational exigencies require the immediate use of a person's services before the completion of a personnel security investigation, in determining the interim eligibility for duties described in subsection (c) of the person.

(D) With respect to persons described in subsection (b)(2), to assist in assessing any counterintelligence threats identified in an authorized investigation of foreign preference or foreign influence risks, as described in part 147 of title 32, Code of Federal Regulations, or such successor regulations.

(3) Polygraph examinations conducted under this section shall provide adequate safeguards, prescribed by the Secretary of Defense, for the protection of the rights and privacy of persons subject to this section under subsection (b) who are considered for or administered polygraph examinations under this section. Such safeguards shall include the following:

(A) The examinee shall receive timely notification of the examination and its intended purpose and may only be given the examination with the consent of the examinee.

(B) The examinee shall be advised of the examinee's right to consult with legal counsel.

(C) All questions asked concerning the matter at issue, other than technical questions necessary to the polygraph technique, must have a relevance to the subject of the inquiry.

(f) OVERSIGHT.—(1) The Secretary shall establish a process to monitor responsible and effective application of polygraph examinations within the Department of Defense.

(2) The Secretary shall make information on the use of polygraphs within the Department of Defense available to the congressional defense committees.

(g) POLYGRAPH RESEARCH PROGRAM.—The Secretary shall carry out a continuing research program to support the polygraph examination activities of the Department of Defense. The program shall include the following:

(1) An on-going evaluation of the validity of polygraph techniques used by the Department.

(2) Research on polygraph countermeasures and anti-countermeasures.

(3) Developmental research on polygraph techniques, instrumentation, and analytic methods.

(Added Pub. L. 108–136, div. A, title X, §1041(a)(1), Nov. 24, 2003, 117 Stat. 1607; amended Pub. L. 109–163, div. A, title X, §1054(a), Jan. 6, 2006, 119 Stat. 3436; Pub. L. 115–232, div. A, title XVI, §1623(a)–(c), Aug. 13, 2018, 132 Stat. 2119.)

REFERENCES IN TEXT

Executive Order No. 12958, referred to in subsec. (c)(1)(B), which was formerly set out as a note under section 435 (now section 3161) of Title 50, War and National Defense, was revoked by Ex. Ord. No. 13526, §6.2(g), Dec. 29, 2009, 75 F.R. 731.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in Pub. L. 100–180, title XI, §1121, Dec. 4, 1987, 101 Stat. 1147, as amended, which was set out as a note under section 113 of this title, prior to repeal by Pub. L. 108–136, div. A, title X, §1041(b), Nov. 24, 2003, 117 Stat. 1608.

AMENDMENTS

2018—Subsec. (b). Pub. L. 115–232, §1623(a), amended subsec. (b) generally. Prior to amendment, text read as follows: "Except as provided in subsection (d), the following persons, if their duties are described in subsection (c), are subject to this section:

"(1) Military and civilian personnel of the Department of Defense.

"(2) Personnel of defense contractors.

"(3) A person assigned or detailed to the Department of Defense.

"(4) An applicant for a position in the Department of Defense."

Subsec. (c). Pub. L. 115–232, §1623(c)(1), substituted "subsection (b)(1)" for "subsection (b)" in introductory provisions.

Subsec. (e)(2)(A). Pub. L. 115–232, §1623(c)(2), substituted ''subsections (b)(1) and (c)'' for ''subsections (b) and (c)''.

Subsec. (e)(2)(D). Pub. L. 115–232, §1623(b), added subpar. (D).

2006—Pub. L. 109–163 reenacted section catchline without change and amended text generally. Prior to amendment, section related to authority for program for administration of counterintelligence polygraph examinations in subsec. (a), persons covered in subsec. (b), exceptions from coverage for certain intelligence agencies and functions in subsec. (c), oversight in subsec. (d), and polygraph research program in subsec. (e).

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–163, div. A, title X, §1054(b), Jan. 6, 2006, 119 Stat. 3438, provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to polygraph examinations administered beginning on the date of the enactment of this Act [Jan. 6, 2006].''

CONSTRUCTION

Pub. L. 115–232, div. A, title XVI, §1623(d), Aug. 13, 2018, 132 Stat. 2119, provided that: ''Nothing in section 1564a of title 10, United States Code, as amended by this section, shall be construed to prohibit the granting of a security clearance to persons described in subsection (b)(2) of such section absent information relevant to the adjudication process, as described in part 147 of title 32, Code of Federal Regulations, or such successor regulations.''

§ 1564b. Security vetting for foreign nationals

(a) STANDARDS AND PROCESS.—(1) The Secretary of Defense, in coordination with the Security Executive Agent established pursuant to Executive Order 13467 (73 Fed. Reg. 38103; 50 U.S.C. 3161 note), shall develop uniform and consistent standards and a centralized process for the screening and vetting of covered foreign individuals requiring access to systems, facilities, personnel, information, or operations, of the Department of Defense, including with respect to the background investigations of covered foreign individuals requiring access to classified information.

(2) The Secretary shall ensure that the standards developed under paragraph (1) are consistent with relevant directives of the Security Executive Agent.

(3) The Secretary shall designate an official of the Department of Defense to be responsible for executing the centralized process developed under paragraph (1) and adjudicating any information discovered pursuant to such process.

(b) OTHER USES.—In addition to using the centralized process developed under subsection (a)(1) for covered foreign individuals, the Secretary may use the centralized process in determining whether to grant a security clearance to any individual with significant foreign influence or foreign preference issues, in accordance with the adjudicative guidelines under part 147 of title 32, Code of Federal Regulations, or such successor regulation.

(c) COVERED FOREIGN INDIVIDUAL DEFINED.—In this section, the term ''covered foreign individual'' means an individual who meets the following criteria:

(1) The individual is—

(A) a national of a foreign state;

(B) a national of the United States (as such term is defined in section 101 of the Immigration and Nationality Act (8 U.S.C. 1101)) and also a national of a foreign state; or

(C) an alien who is lawfully admitted for permanent residence (as such term is defined in section 101 of the Immigration and Nationality Act (8 U.S.C. 1101)).

(2) The individual is either—

(A) a civilian employee of the Department of Defense or a contractor of the Department; or

(B) a member of the armed forces.

(Added Pub. L. 115–232, div. A, title XVI, §1622(a), Aug. 13, 2018, 132 Stat. 2117.)

REFERENCES IN TEXT

Executive Order 13467, referred to in subsec. (a)(1), is Ex. Ord. No. 13467, June 30, 2008, 73 F.R. 38103, which is set out as a note under section 3161 of Title 50, War and National Defense.

§ 1565. DNA identification information: collection from certain offenders; use

(a) COLLECTION OF DNA SAMPLES.—(1) The Secretary concerned shall collect a DNA sample from each member of the armed forces under the Secretary's jurisdiction who is, or has been, convicted of a qualifying military offense (as determined under subsection (d)).

(2) For each member described in paragraph (1), if the Combined DNA Index System (in this section referred to as ''CODIS'') of the Federal Bureau of Investigation contains a DNA analysis with respect to that member, or if a DNA sample has been or is to be collected from that member under section 3(a) of the DNA Analysis Backlog Elimination Act of 2000, the Secretary concerned may (but need not) collect a DNA sample from that member.

(3) The Secretary concerned may enter into agreements with other Federal agencies, units of State or local government, or private entities to provide for the collection of samples described in paragraph (1).

(b) ANALYSIS AND USE OF SAMPLES.—The Secretary concerned shall furnish each DNA sample collected under subsection (a) to the Secretary of Defense. The Secretary of Defense shall—

(1) carry out a DNA analysis on each such DNA sample in a manner that complies with the requirements for inclusion of that analysis in CODIS; and

(2) furnish the results of each such analysis to the Director of the Federal Bureau of Investigation for inclusion in CODIS.

(c) DEFINITIONS.—In this section:

(1) The term ''DNA sample'' means a tissue, fluid, or other bodily sample of an individual on which a DNA analysis can be carried out.

(2) The term ''DNA analysis'' means analysis of the deoxyribonucleic acid (DNA) identification information in a bodily sample.

(d) QUALIFYING MILITARY OFFENSES.—The offenses that shall be treated for purposes of this section as qualifying military offenses are the following offenses, as determined by the Secretary of Defense, in consultation with the Attorney General:

(1) Any offense under the Uniform Code of Military Justice for which a sentence of con-

finement for more than one year may be imposed.

(2) Any other offense under the Uniform Code of Military Justice that is comparable to a qualifying Federal offense (as determined under section 3(d) of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135a(d))).[1]

(e) EXPUNGEMENT.—(1) The Secretary of Defense shall promptly expunge, from the index described in subsection (a) of section 210304 of the Violent Crime Control and Law Enforcement Act of 1994, the DNA analysis of a person included in the index on the basis of a qualifying military offense if the Secretary receives, for each conviction of the person of a qualifying offense, a certified copy of a final court order establishing that such conviction has been overturned.

(2) For purposes of paragraph (1), the term ''qualifying offense'' means any of the following offenses:

(A) A qualifying Federal offense, as determined under section 3 of the DNA Analysis Backlog Elimination Act of 2000.

(B) A qualifying District of Columbia offense, as determined under section 4 of the DNA Analysis Backlog Elimination Act of 2000.

(C) A qualifying military offense.

(3) For purposes of paragraph (1), a court order is not ''final'' if time remains for an appeal or application for discretionary review with respect to the order.

(f) REGULATIONS.—This section shall be carried out under regulations prescribed by the Secretary of Defense, in consultation with the Secretary of Homeland Security and the Attorney General. Those regulations shall apply, to the extent practicable, uniformly throughout the armed forces.

(Added Pub. L. 106–546, § 5(a)(1), Dec. 19, 2000, 114 Stat. 2731; amended Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 108–405, title II, § 203(c), Oct. 30, 2004, 118 Stat. 2270.)

REFERENCES IN TEXT

Section 3 of the DNA Analysis Backlog Elimination Act of 2000, referred to in subsecs. (a)(2), (d)(2), and (e)(2)(A), is section 3 of Pub. L. 106–546, which was classified to section 14135a of Title 42, The Public Health and Welfare, prior to editorial reclassification as section 40702 of Title 34, Crime Control and Law Enforcement.

Section 4 of the DNA Analysis Backlog Elimination Act of 2000, referred to in subsec. (e)(2)(B), is section 4 of Pub. L. 106–546, which is classified to section 40703 of Title 34, Crime Control and Law Enforcement.

The Uniform Code of Military Justice, referred to in subsec. (d), is classified to chapter 47 (§ 801 et seq.) of this title.

Section 210304 of the Violent Crime Control and Law Enforcement Act of 1994, referred to in subsec. (e)(1), is classified to section 12592 of Title 34, Crime Control and Law Enforcement.

AMENDMENTS

2004—Subsec. (d). Pub. L. 108–405 reenacted heading without change and amended text generally. Prior to amendment, text read as follows:

''(1) Subject to paragraph (2), the Secretary of Defense, in consultation with the Attorney General, shall determine those felony or sexual offenses under the Uniform Code of Military Justice that shall be treated for purposes of this section as qualifying military offenses.

''(2) An offense under the Uniform Code of Military Justice that is comparable to a qualifying Federal offense (as determined under section 3(d) of the DNA Analysis Backlog Elimination Act of 2000), as determined by the Secretary in consultation with the Attorney General, shall be treated for purposes of this section as a qualifying military offense.''

2002—Subsec. (f). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

INITIAL DETERMINATION OF QUALIFYING MILITARY OFFENSES

Pub. L. 106–546, § 5(b), Dec. 19, 2000, 114 Stat. 2733, provided that: ''The initial determination of qualifying military offenses under section 1565(d) of title 10, United States Code, as added by subsection (a)(1), shall be made not later than 120 days after the date of the enactment of this Act [Dec. 19, 2000].''

COMMENCEMENT OF COLLECTION

Pub. L. 106–546, § 5(c), Dec. 19, 2000, 114 Stat. 2733, provided that: ''Collection of DNA samples under section 1565(a) of such title, as added by subsection (a)(1), shall, subject to the availability of appropriations, commence not later than the date that is 60 days after the date of the initial determination referred to in subsection (b) [set out above].''

§ 1565a. DNA samples maintained for identification of human remains: use for law enforcement purposes

(a) COMPLIANCE WITH COURT ORDER.—(1) Subject to paragraph (2), if a valid order of a Federal court (or military judge) so requires, an element of the Department of Defense that maintains a repository of DNA samples for the purpose of identification of human remains shall make available, for the purpose specified in subsection (b), such DNA samples on such terms and conditions as such court (or military judge) directs.

(2) A DNA sample with respect to an individual shall be provided under paragraph (1) in a manner that does not compromise the ability of the Department of Defense to maintain a sample with respect to that individual for the purpose of identification of human remains.

(b) COVERED PURPOSE.—The purpose referred to in subsection (a) is the purpose of an investigation or prosecution of a felony, or any sexual offense, for which no other source of DNA information is reasonably available.

(c) DEFINITION.—In this section, the term ''DNA sample'' has the meaning given such term in section 1565(c) of this title.

(Added Pub. L. 107–314, div. A, title X, § 1063(a), Dec. 2, 2002, 116 Stat. 2653.)

§ 1565b. Victims of sexual assault: access to legal assistance and services of Sexual Assault Response Coordinators and Sexual Assault Victim Advocates

(a) AVAILABILITY OF LEGAL ASSISTANCE AND VICTIM ADVOCATE SERVICES.—(1) A member of

[1] See References in Text note below.

the armed forces, or a dependent of a member, who is the victim of a sexual assault may be provided the following:

(A) Legal assistance provided by military or civilian legal assistance counsel pursuant to sections 1044 and 1044e of this title.

(B) Assistance provided by a Sexual Assault Response Coordinator.

(C) Assistance provided by a Sexual Assault Victim Advocate.

(2) A member of the armed forces or dependent who is the victim of sexual assault shall be informed of the availability of assistance under paragraph (1) as soon as the member or dependent seeks assistance from a Sexual Assault Response Coordinator, a Sexual Assault Victim Advocate, a military criminal investigator, a victim/witness liaison, or a trial counsel. The member or dependent shall also be informed that the legal assistance and the services of a Sexual Assault Response Coordinator or a Sexual Assault Victim Advocate under paragraph (1) are optional and may be declined, in whole or in part, at any time.

(3) Subject to such exceptions for exigent circumstances as the Secretary of Defense and the Secretary of the Department in which the Coast Guard is operating may prescribe, notice of the availability of a Special Victims' Counsel under section 1044e of this title shall be provided to a member of the armed forces or dependent who is the victim of sexual assault before any military criminal investigator or trial counsel interviews, or requests any statement from, the member or dependent regarding the alleged sexual assault.

(4) Legal assistance and the services of Sexual Assault Response Coordinators and Sexual Assault Victim Advocates under paragraph (1) shall be available to a member or dependent regardless of whether the member or dependent elects unrestricted or restricted (confidential) reporting of the sexual assault.

(b) RESTRICTED REPORTING.—(1) Under regulations prescribed by the Secretary of Defense, a member of the armed forces, or an adult dependent of a member, who is the victim of a sexual assault may elect to confidentially disclose the details of the assault to an individual specified in paragraph (2) and receive medical treatment, legal assistance under section 1044 of this title, or counseling, without initiating an official investigation of the allegations.

(2) The individuals specified in this paragraph are the following:

(A) A Sexual Assault Response Coordinator.

(B) A Sexual Assault Victim Advocate.

(C) Healthcare personnel specifically identified in the regulations required by paragraph (1).

(3) In the case of information disclosed pursuant to paragraph (1), any State law or regulation that would require an individual specified in paragraph (2) to disclose the personally identifiable information of the adult victim or alleged perpetrator of the sexual assault to a State or local law enforcement agency shall not apply, except when reporting is necessary to prevent or mitigate a serious and imminent threat to the health or safety of an individual.

(c) DEFINITIONS.—In this section:

(1) SEXUAL ASSAULT.—The term ''sexual assault'' includes the offenses of rape, sexual assault, forcible sodomy, aggravated sexual contact, abusive sexual contact, and attempts to commit such offenses, as punishable under applicable Federal or State law.

(2) STATE.—The term ''State'' includes the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and any territory or possession of the United States.

(Added Pub. L. 112–81, div. A, title V, § 581(b)(1), Dec. 31, 2011, 125 Stat. 1431; amended Pub. L. 113–66, div. A, title XVII, § 1716(a)(3)(C), Dec. 26, 2013, 127 Stat. 969; Pub. L. 114–92, div. A, title V, §§ 534(b), 536, Nov. 25, 2015, 129 Stat. 816, 817.)

AMENDMENTS

2015—Subsec. (a)(3), (4). Pub. L. 114–92, § 534(b), added par. (3) and redesignated former par. (3) as (4).

Subsec. (b)(1). Pub. L. 114–92, § 536(b), substituted ''an adult dependent'' for ''a dependent''.

Subsec. (b)(3). Pub. L. 114–92, § 536(a), added par. (3).

Subsec. (c). Pub. L. 114–92, § 536(c), added subsec. (c).

2013—Subsec. (a)(1)(A). Pub. L. 113–66 substituted ''sections 1044 and 1044e'' for ''section 1044''.

COORDINATION OF SUPPORT FOR SURVIVORS OF SEXUAL TRAUMA

Pub. L. 116–283, div. A, title V, § 538, Jan. 1, 2021, 134 Stat. 3605, provided that:

''(a) IN GENERAL.—Not later than one year after the date of the enactment of this Act [Jan. 1, 2021], the Secretaries of Defense and Veterans Affairs shall jointly develop, implement, and maintain a standard of coordinated care for members of the Armed Forces who are survivors of sexual trauma. Such standard shall include the following:

''(b) MINIMUM ELEMENTS.—The standard developed and implemented under subsection (a) by the Secretaries of Defense and Veterans Affairs shall include the following:

''(1) INFORMATION FOR MEMBERS OF THE ARMED FORCES.—The Secretary of Defense shall ensure that—

''(A) Sexual Assault Response Coordinators and Uniformed Victim Advocates receive annual training on resources of the Department of Veterans Affairs regarding sexual trauma;

''(B) information regarding services furnished by the Secretary of Veterans Affairs to survivors of sexual trauma is provided to each such survivor; and

''(C) information described in subparagraph (B) is posted in the following areas in each facility of the Department of Defense:

''(i) An office of the Family Advocacy Program.

''(ii) An office of a mental health care provider.

''(iii) Each area in which sexual assault prevention staff normally post notices or information.

''(iv) High-traffic areas (including dining facilities).

''(2) COORDINATION BETWEEN STAFF OF THE DEPARTMENTS.—The Secretaries shall ensure that a Sexual Assault Response Coordinator or Uniformed Victim Advocate of the Department of Defense who receives a report of an instance of sexual trauma connects the survivor to the Military Sexual Trauma Coordinator of the Department of Veterans Affairs at the facility of that Department nearest to the residence of that survivor if that survivor is a member separating or retiring from the Armed Forces.

''(c) REPORTS.—

''(1) REPORT ON RESIDENTIAL TREATMENT.—Not later than 180 days after the date of the enactment of this Act, the Secretaries of Defense and Veterans Affairs

shall provide a report to the appropriate committees of Congress regarding the availability of residential treatment programs for survivors of sexual trauma, including—

''(A) barriers to access for such programs; and

''(B) resources required to reduce such barriers.

''(2) INITIAL REPORT.—Upon implementation of the standard under subsection (a), the Secretaries of Defense and Veterans Affairs shall jointly submit to the appropriate committees of Congress a report on the standard.

''(3) PROGRESS REPORTS.—Not later than 180 days after submitting the initial report under paragraph (2), and on December 1 of each subsequent year, the Secretaries of Defense and Veterans Affairs shall jointly submit to the appropriate committees of Congress a report on the progress of the Secretaries in implementing and improving the standard.

''(4) UPDATES.—Whenever the Secretaries of Defense and Veterans Affairs update the standard developed under subsection (a), the Secretaries shall jointly submit to the appropriate committees of Congress a report on such update, including a comprehensive and detailed description of such update and the reasons for such update.

''(d) DEFINITIONS.—In this section:

''(1) The term 'sexual trauma' means a condition described in section 1720D(a)(1) of title 38, United States Code.

''(2) The term 'appropriate committees of Congress' means—

''(A) the Committees on Veterans' Affairs of the House of Representatives and the Senate; and

''(B) the Committees on Armed Services of the House of Representatives and the Senate.''

INFORMATION FOR MEMBERS OF THE ARMED FORCES ON AVAILABILITY OF SERVICES OF THE DEPARTMENT OF VETERANS AFFAIRS RELATING TO SEXUAL TRAUMA

Pub. L. 116–92, div. A, title V, § 599, Dec. 20, 2019, 133 Stat. 1421, provided that:

''(a) IN GENERAL.—The Secretary of Defense shall inform members of the Armed Forces, using mechanisms available to the Secretary, of the eligibility of such members for services of the Department of Veterans Affairs relating to sexual trauma.

''(b) INFORMATION FROM SEXUAL ASSAULT RESPONSE COORDINATORS.—The Secretary of Defense shall ensure—

''(1) that Sexual Assault Response Coordinators and uniformed victims advocates of the Department of Defense advise members of the Armed Forces who report instances of sexual trauma regarding the eligibility of such members for services at the Department of Veterans Affairs; and

''(2) that such information is included in mandatory training materials.

''(c) SEXUAL TRAUMA DEFINED.—In this section, the term 'sexual trauma' means psychological trauma described in section 1720D(a)(1) of title 38, United States Code.''

LEGAL ASSISTANCE FOR VICTIMS OF SEXUAL ASSAULT

Pub. L. 112–81, div. A, title V, § 581(a), Dec. 31, 2011, 125 Stat. 1430, provided that: ''Not later than 180 days after the date of the enactment of this Act [Dec. 31, 2011], the Secretaries of the military departments shall prescribe regulations on the provision of legal assistance to victims of sexual assault. Such regulations shall require that legal assistance be provided by military or civilian legal assistance counsel pursuant to section 1044 of title 10, United States Code.''

§ 1566. Voting assistance: compliance assessments; assistance

(a) REGULATIONS.—The Secretary of Defense shall prescribe regulations to require that the Army, Navy, Air Force, Marine Corps, and Space Force ensure their compliance with any directives issued by the Secretary of Defense in implementing any voting assistance program.

(b) VOTING ASSISTANCE PROGRAMS DEFINED.—In this section, the term ''voting assistance programs'' means—

(1) the Federal Voting Assistance Program carried out under the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff et seq.);[1] and

(2) any similar program.

(c) ANNUAL EFFECTIVENESS AND COMPLIANCE REVIEWS.—(1) The Inspector General of each of the Army, Navy, Air Force, Marine Corps, and Space Force shall conduct—

(A) an annual review of the effectiveness of voting assistance programs; and

(B) an annual review of the compliance with voting assistance programs of that armed force.

(2) Upon the completion of each annual review under paragraph (1), each Inspector General specified in that paragraph shall submit to the Inspector General of the Department of Defense a report on the results of each such review. Such report shall be submitted in time each year to be reflected in the report of the Inspector General of the Department of Defense under paragraph (3).

(3) Not later than March 31 each year, the Inspector General of the Department of Defense shall submit to Congress a report on—

(A) the effectiveness during the preceding calendar year of voting assistance programs; and

(B) the level of compliance during the preceding calendar year with voting assistance programs of each of the Army, Navy, Air Force, Marine Corps, and Space Force.

[(d) Repealed. Pub. L. 109–364, div. A, title V, § 596(a), Oct. 17, 2006, 120 Stat. 2235.]

(e) REGULAR MILITARY DEPARTMENT ASSESSMENTS.—The Secretary of each military department shall include in the set of issues and programs to be reviewed during any management effectiveness review or inspection at the installation level an assessment of compliance with the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff et seq.)[1] and with Department of Defense regulations regarding the Federal Voting Assistance Program.

(f) VOTING ASSISTANCE OFFICERS.—(1) Voting assistance officers shall be appointed or assigned under Department of Defense regulations. Commanders at all levels are responsible for ensuring that unit voting officers are trained and equipped to provide information and assistance to members of the armed forces on voting matters. Performance evaluation reports pertaining to a member who has been assigned to serve as a voting assistance officer shall comment on the performance of the member as a voting assistance officer.

(2) Under regulations and procedures (including directives) prescribed by the Secretary, a member of the armed forces appointed or assigned to duty as a voting assistance officer shall, to the maximum extent practicable, be

[1] See References in Text note below.

given the time and resources needed to perform the member's duties as a voting assistance officer during the period in advance of a general election when members and their dependents are preparing and submitting absentee ballots.

(g) DELIVERY OF MAIL FROM OVERSEAS PRECEDING FEDERAL ELECTIONS.—(1) During the four months preceding a general Federal election month, the Secretary of Defense shall periodically conduct surveys of all overseas locations and vessels at sea with military units responsible for collecting mail for return shipment to the United States and all port facilities in the United States and overseas where military-related mail is collected for shipment to overseas locations or to the United States. The purpose of each survey shall be to determine if voting materials are awaiting shipment at any such location and, if so, the length of time that such materials have been held at that location. During the fourth and third months before a general Federal election month, such surveys shall be conducted biweekly. During the second and first months before a general Federal election month, such surveys shall be conducted weekly.

(2) The Secretary shall ensure that voting materials are transmitted expeditiously by military postal authorities at all times. The Secretary shall, to the maximum extent practicable, implement measures to ensure that a postmark or other official proof of mailing date is provided on each absentee ballot collected at any overseas location or vessel at sea whenever the Department of Defense is responsible for collecting mail for return shipment to the United States. The Secretary shall ensure that the measures implemented under the preceding sentence do not result in the delivery of absentee ballots to the final destination of such ballots after the date on which the election for Federal office is held.

(3) In this section, the term ''general Federal election month'' means November in an even-numbered year.

(h) NOTICE OF DEADLINES AND REQUIREMENTS.—The Secretary of each military department, utilizing the voting assistance officer network established for each military installation, shall, to the maximum extent practicable, provide notice to members of the armed forces stationed at that installation of the last date before a general Federal election for which absentee ballots mailed from a postal facility located at that installation can reasonably be expected to be timely delivered to the appropriate State and local election officials.

(i) REGISTRATION AND VOTING INFORMATION FOR MEMBERS AND DEPENDENTS.—(1) The Secretary of each military department, using a variety of means including both print and electronic media, shall, to the maximum extent practicable, ensure that members of the armed forces and their dependents who are qualified to vote have ready access to information regarding voter registration requirements and deadlines (including voter registration), absentee ballot application requirements and deadlines, and the availability of voting assistance officers to assist members and dependents to understand and comply with these requirements.

(2) The Secretary of each military department shall make the national voter registration form prepared for purposes of the Uniformed and Overseas Citizens Absentee Voting Act by the Federal Election Commission available so that each person who enlists shall receive such form at the time of the enlistment, or as soon thereafter as practicable.

(3) Where practicable, a special day or days shall be designated at each military installation for the purpose of informing members of the armed forces and their dependents of election timing, registration requirements, and voting procedures.

(Added Pub. L. 107–107, div. A, title XVI, § 1602(a)(1), Dec. 28, 2001, 115 Stat. 1274; amended Pub. L. 107–252, title VII, § 701, Oct. 29, 2002, 116 Stat. 1722; Pub. L. 108–375, div. A, title X, § 1084(d)(13), Oct. 28, 2004, 118 Stat. 2062; Pub. L. 109–364, div. A, title V, § 596(a), (d), Oct. 17, 2006, 120 Stat. 2235, 2236; Pub. L. 116–283, div. A, title IX, § 924(b)(1)(M), Jan. 1, 2021, 134 Stat. 3820.)

REFERENCES IN TEXT

The Uniformed and Overseas Citizens Absentee Voting Act, referred to in subsecs. (b)(1), (e), and (i)(2), is Pub. L. 99–410, Aug. 28, 1986, 100 Stat. 924, which was formerly classified principally to subchapter I–G (§ 1973ff et seq.) of chapter 20 of Title 42, The Public Health and Welfare, prior to editorial reclassification and renumbering in Title 52, Voting and Elections, and is now classified principally to chapter 203 (§ 20301 et seq.) of Title 52. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

2021—Subsecs. (a), (c)(1), (3)(B). Pub. L. 116–283 substituted ''Marine Corps, and Space Force'' for ''and Marine Corps''.

2006—Subsec. (d). Pub. L. 109–364, § 596(a), struck out subsec. (d), which required the Inspector General of the Department of Defense to periodically conduct unannounced assessments of compliance with requirements of law regarding voting by members of the armed forces at Department of Defense installations.

Subsec. (g)(2). Pub. L. 109–364, § 596(d), struck out at end ''Not later than April 29, 2003, the Secretary shall submit to Congress a report describing the measures to be implemented to ensure the timely transmittal and postmarking of voting materials and identifying the persons responsible for implementing such measures.''

2004—Subsec. (g)(2). Pub. L. 108–375, § 1084(d)(13)(A), substituted ''April 29, 2003'' for ''the date that is 6 months after the date of the enactment of the Help America Vote Act of 2002''.

Subsecs. (h), (i)(1), (3). Pub. L. 108–375, § 1084(d)(13)(B), substituted ''armed forces'' for ''Armed Forces''.

2002—Subsec. (f). Pub. L. 107–252, § 701(a), designated existing provisions as par. (1) and added par. (2).

Subsec. (g)(2). Pub. L. 107–252, § 701(b), inserted at end ''The Secretary shall, to the maximum extent practicable, implement measures to ensure that a postmark or other official proof of mailing date is provided on each absentee ballot collected at any overseas location or vessel at sea whenever the Department of Defense is responsible for collecting mail for return shipment to the United States. The Secretary shall ensure that the measures implemented under the preceding sentence do not result in the delivery of absentee ballots to the final destination of such ballots after the date on which the election for Federal office is held. Not later than the date that is 6 months after the date of the enactment of the Help America Vote Act of 2002, the Secretary shall submit to Congress a report describing the measures to be implemented to ensure the timely transmittal and postmarking of voting materials and identifying the persons responsible for implementing such measures.''

Subsec. (h). Pub. L. 107–252, § 701(c), added subsec. (h).
Subsec. (i). Pub. L. 107–252, § 701(d), added subsec. (i).

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective Dec. 31, 2021, of provisions in subsec. (c)(3) of this section requiring submittal of annual report to Congress, see section 1061 of Pub. L. 114–328, set out as a note under section 111 of this title.

INFORMATION AND OPPORTUNITIES FOR REGISTRATION FOR VOTING AND ABSENTEE BALLOT REQUESTS FOR MEMBERS OF THE ARMED FORCES UNDERGOING DEPLOYMENT OVERSEAS

Pub. L. 116–92, div. A, title V, § 580C, Dec. 20, 2019, 133 Stat. 1409, provided that:

''(a) IN GENERAL.—Not later than 45 days prior to a general election for Federal office, a member of the Armed Forces shall, upon request, be provided with the following:

''(1) A Federal write-in absentee ballot prescribed pursuant to section 103 of the Uniformed and Overseas Citizens Absentee Voting Act (52 U.S.C. 20303), together with instructions on the appropriate use of the ballot with respect to the State in which the member is registered to vote.

''(2) In the case of a member intending to vote in a State that does not accept the Federal write-in absentee ballot as a simultaneous application and acceptable ballot for Federal elections, instructions on, and an opportunity to fill out, the official post card form for absentee voter registration application and absentee ballot application prescribed under section 101(b)(2) of the Uniformed and Overseas Citizens Absentee Voting Act (52 U.S.C. 20301(b)(2)).

''(b) PERSONNEL RESPONSIBLE OF DISCHARGE.—Ballots and instructions pursuant to paragraph (1) of subsection (a), and briefings and forms pursuant to paragraph (2) of such subsection, shall be provided by Voting Assistance Officers or such other personnel as the Secretary of the military department concerned shall designate.''

INITIAL REPORT

Pub. L. 107–107, div. A, title XVI, § 1602(b), Dec. 28, 2001, 115 Stat. 1276, directed that the first report under subsec. (c)(3) of this section be submitted not later than Mar. 31, 2003.

§ 1566a. Voting assistance: voter assistance offices

(a) DESIGNATION OF OFFICES ON MILITARY INSTALLATIONS AS VOTER ASSISTANCE OFFICES.—Under regulations prescribed by the Secretary of Defense under subsection (f), the Secretaries of the military departments shall designate offices on installations under their jurisdiction, or at such installations as the Secretary of the military department concerned shall determine are best located to provide access to voter assistance services for all covered individuals in a particular location, to provide absent uniformed services voters, particularly those individuals described in subsection (b), and their family members with the following:

(1) Information on voter registration procedures and absentee ballot procedures (including the official post card form prescribed under section 101 of the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff)).[1]

(2) Information and assistance, if requested, including access to the Internet where practicable, to register to vote in an election for Federal office.

(3) Information and assistance, if requested, including access to the Internet where practicable, to update the individual's voter registration information, including instructions for absent uniformed services voters to change their address by submitting the official post card form prescribed under section 101 of the Uniformed and Overseas Citizens Absentee Voting Act to the appropriate State election official.

(4) Information and assistance, if requested, to request an absentee ballot under the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff et seq.).[1]

(b) COVERED INDIVIDUALS.—The individuals described in this subsection are absent uniformed services voters who—

(1) are undergoing a permanent change of duty station;

(2) are deploying overseas for at least six months;

(3) are returning from an overseas deployment of at least six months; or

(4) otherwise request assistance related to voter registration.

(c) TIMING OF PROVISION OF ASSISTANCE.—The regulations prescribed by the Secretary of Defense under subsection (f) shall ensure, to the maximum extent practicable and consistent with military necessity, that the assistance provided under subsection (a) is provided to a covered individual described in subsection (b)—

(1) if described in subsection (b)(1), as part of the administrative in-processing of the covered individual upon arrival at the new duty station of the covered individual;

(2) if described in subsection (b)(2), as part of the administrative out-processing of the covered individual in preparation for deployment from the home duty station of the covered individual;

(3) if described in subsection (b)(3), as part of the administrative in-processing of the covered individual upon return to the home duty station of the covered individual; or

(4) if described in subsection (b)(4), at the time the covered individual requests such assistance.

(d) OUTREACH.—The Secretary of each military department, or the Presidential designee, shall take appropriate actions to inform absent uniformed services voters of the assistance available under subsection (a), including—

(1) the availability of information and voter registration assistance at offices designated under subsection (a); and

(2) the time, location, and manner in which an absent uniformed services voter may utilize such assistance.

(e) AUTHORITY TO DESIGNATE VOTING ASSISTANCE OFFICES AS VOTER REGISTRATION AGENCY ON MILITARY INSTALLATIONS.—The Secretary of Defense may authorize the Secretaries of the military departments to designate offices on military installations as voter registration agencies under section 7(a)(2) of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg–5(a)(2))[1] for all purposes of such Act. Any office so designated shall discharge the require-

[1] See References in Text note below.

ments of this section, under the regulations prescribed by the Secretary of Defense under subsection (f).

(f) REGULATIONS.—

(1) The Secretary of Defense shall prescribe regulations relating to the administration of the requirements of this section. The regulations shall be prescribed before the regularly scheduled general election for Federal office held in November 2010, and shall be implemented for such general election for Federal office and for each succeeding election for Federal office.

(2) The Secretary of a military department shall provide the Committees on Armed Services of the Senate and the House of Representatives with notice of any decision by the Secretary to close a voter assistance office that was designated on an installation before the date of the enactment of this paragraph. The notice shall include the rational for the closure, the timing of the closure, the number of covered individuals supported by the office, and the plan for providing the assistance available under subsection (a) to covered individuals after the closure of the office.

(g) DEFINITIONS.—In this section:

(1) The term ''absent uniformed services voter'' has the meaning given that term in section 107(1) of the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff–6(1)).[1]

(2) The term ''Federal office'' has the meaning given that term in section 107(3) of the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff–6(3)).[1]

(3) The term ''Presidential designee'' means the official designated by the President under section 101(a) of the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff(a)).[1]

(Added Pub. L. 111–84, div. A, title V, § 583(b)(1), Oct. 28, 2009, 123 Stat. 2328; amended Pub. L. 111–383, div. A, title X, § 1075(b)(21), Jan. 7, 2011, 124 Stat. 4370; Pub. L. 113–291, div. A, title V, § 592, title X, § 1071(e)(2), Dec. 19, 2014, 128 Stat. 3395, 3509.)

REFERENCES IN TEXT

The Uniformed and Overseas Citizens Absentee Voting Act, referred to in text, is Pub. L. 99–410, Aug. 28, 1986, 100 Stat. 924, which was formerly classified principally to subchapter I–G (§ 1973ff et seq.) of chapter 20 of Title 42, The Public Health and Welfare, prior to editorial reclassification and renumbering in Title 52, Voting and Elections, and is now classified principally to chapter 203 (§ 20301 et seq.) of Title 52. Sections 101 and 107 of the Act are now classified to sections 20301 and 20310, respectively, of Title 52. For complete classification of this Act to the Code, see Tables.

The National Voter Registration Act of 1993, referred to in subsec. (e), is Pub. L. 103–31, May 20, 1993, 107 Stat. 77, which was formerly classified principally to subchapter I–H (§ 1973gg et seq.) of chapter 20 of Title 42, The Public Health and Welfare, prior to editorial reclassification and renumbering in Title 52, Voting and Elections, and is now classified principally to chapter 205 (§ 20501 et seq.) of Title 52. Section 7 of the Act is now classified to section 20506 of Title 52. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

2014—Subsec. (a). Pub. L. 113–291, § 1071(e)(2), which directed substitution of ''Under'' for ''Not later than 180 days after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2010 and under'' in introductory provisions, could not be executed because of the prior amendment by Pub. L. 113–291, § 592(a)(1). See below.

Pub. L. 113–291, § 592(a), in introductory provisions, substituted ''Under'' for ''Not later than 180 days after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2010 and under'' and inserted '', or at such installations as the Secretary of the military department concerned shall determine are best located to provide access to voter assistance services for all covered individuals in a particular location,'' after ''their jurisdiction''.

Subsec. (f). Pub. L. 113–291, § 592(b), designated existing provisions as par. (1) and added par. (2).

2011—Subsec. (a)(1). Pub. L. 111–383 inserted closing parenthesis before period at end.

§ 1567. Duration of military protective orders

A military protective order issued by a military commander shall remain in effect until such time as the military commander terminates the order or issues a replacement order.

(Added Pub. L. 110–417, [div. A], title V, § 561(a), Oct. 14, 2008, 122 Stat. 4470; amended Pub. L. 111–84, div. A, title X, § 1073(a)(16), Oct. 28, 2009, 123 Stat. 2473.)

AMENDMENTS

2009—Pub. L. 111–84 made technical amendment to section catchline.

§ 1567a. Mandatory notification of issuance of military protective order to civilian law enforcement

(a) INITIAL NOTIFICATION.—In the event a military protective order is issued against a member of the armed forces, the commander of the unit to which the member is assigned shall, not later than seven days after the date of the issuance of the order, notify the appropriate civilian authorities of—

(1) the issuance of the protective order; and

(2) the individuals involved in the order.

(b) NOTIFICATION IN EVENT OF TRANSFER.—In the event that a member of the armed forces against whom a military protective order is issued is transferred to another unit—

(1) not later than the date of the transfer, the commander of the unit from which the member is transferred shall notify the commander of the unit to which the member is transferred of—

(A) the issuance of the protective order; and

(B) the individuals involved in the order; and

(2) not later than seven days after receiving the notice under paragraph (1), the commander of the unit to which the member is transferred shall provide notice of the order to the appropriate civilian authorities in accordance with subsection (a).

(c) NOTIFICATION OF CHANGES OR TERMINATION.—The commander of the unit to which the member is assigned also shall notify the appropriate civilian authorities of—

(1) any change made in a protective order covered by subsection (a); and

(2) the termination of the protective order.

(Added Pub. L. 110–417, [div. A], title V, §562(a), Oct. 14, 2008, 122 Stat. 4470; amended Pub. L. 111–84, div. A, title X, §1073(a)(17), Oct. 28, 2009, 123 Stat. 2473; Pub. L. 116–92, div. A, title V, §543(a), Dec. 20, 2019, 133 Stat. 1376.)

AMENDMENTS

2019—Subsec. (a). Pub. L. 116–92, §543(a)(1), substituted '', the commander of the unit to which the member is assigned shall, not later than seven days after the date of the issuance of the order, notify'' for ''and any individual involved in the order does not reside on a military installation at any time during the duration of the military protective order, the commander of the military installation shall notify'' in introductory provisions.

Subsec. (b). Pub. L. 116–92, §543(a)(3), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 116–92, §543(a)(2), (4), redesignated subsec. (b) as (c) and substituted ''commander of the unit to which the member is assigned'' for ''commander of the military installation''.

2009—Pub. L. 111–84 made technical amendment to section catchline.

CHAPTER 81—CIVILIAN EMPLOYEES

Sec.
1580. Emergency essential employees: designation.
1580a. Emergency essential employees: notification of required participation in anthrax vaccine immunization program.
1581. Foreign National Employees Separation Pay Account.
1582. Assistive technology, assistive technology devices, and assistive technology services.
1583. Employment of certain persons without pay.
1584. Employment of non-citizens.
1585. Carrying of firearms.
1585a. Special agents of the Defense Criminal Investigative Service: authority to execute warrants and make arrests.
1586. Rotation of career-conditional and career employees assigned to duty outside the United States.
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[1590. Repealed.]
1591. Reimbursement for travel and transportation expenses when accompanying Members of Congress.
1592. Prohibition on payment of severance pay to foreign nationals in the event of certain overseas base closures.
1593. Uniform allowance: civilian employees.
1594. Reimbursement for financial institution charges incurred because of Government error in direct deposit of pay.
1595. Civilian faculty members at certain Department of Defense schools: employment and compensation.
1596. Foreign language proficiency: special pay for proficiency beneficial for intelligence interests.
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1596b. Foreign language proficiency: National Foreign Language Skills Registry.
1596c. Programming language proficiency: special pay for proficiency beneficial for national security interests.
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1598. Assistance to terminated employees to obtain certification and employment as teachers or employment as teachers' aides.
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1599a. Financial assistance to certain employees in acquisition of critical skills.
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1599c. Health care professionals: enhanced appointment and compensation authority for personnel for care and treatment of wounded and injured members of the armed forces.
1599d. Financial management positions: authority to prescribe professional certification and credential standards.
1599e. Probationary period for employees.
1599f. United States Cyber Command recruitment and retention.
1599g. Public-private talent exchange.
1599h. Personnel management authority to attract experts in science and engineering.
1599i. Recruitment incentives for placement at remote locations.

AMENDMENTS

2021—Pub. L. 116–283, div. A, title II, §241(c)(2), title XI, §1120(d), Jan. 1, 2021, 134 Stat. 3487, 3900, added items 1596c and 1599i.

2016—Pub. L. 114–328, div. A, title XI, §§1104(b), 1121(a)(2), Dec. 23, 2016, 130 Stat. 2447, 2452, added items 1599g and 1599h.

2015—Pub. L. 114–92, div. A, title XI, §§1105(a)(2), 1107(c), Nov. 25, 2015, 129 Stat. 1024, 1027, added items 1599e and 1599f.

2011—Pub. L. 112–81, div. A, title X, §1051(b), Dec. 31, 2011, 125 Stat. 1582, added item 1599d and struck out former item 1599d ''Professional accounting positions: authority to prescribe certification and credential standards''.

2008—Pub. L. 110–181, div. A, title XVI, §1636(b), Jan. 28, 2008, 122 Stat. 464, added item 1599c and struck out former item 1599c ''Appointment in excepted service of certain health care professionals''.

2004—Pub. L. 108–375, div. A, title XI, §1104(b), Oct. 28, 2004, 118 Stat. 2074, added item 1587a.

Pub. L. 108–375, div. A, title X, §1084(g), Oct. 28, 2004, 118 Stat. 2064, amended directory language of Pub. L. 107–314, §1064(a)(2), effective Dec. 2, 2002, as if included in Pub. L. 107–314 as enacted. See 2002 Amendment note below.

2002—Pub. L. 107–314, div. A, title XI, §1104(a)(2), Dec. 2, 2002, 116 Stat. 2661, added item 1599d.

Pub. L. 107–314, div. A, title X, §1064(a)(2), Dec. 2, 2002, 116 Stat. 2654, as amended by Pub. L. 108–375, div. A, title X, §1084(g), Oct. 28, 2004, 118 Stat. 2064, added item 1596b.

2001—Pub. L. 107–107, div. A, title XI, §1104(b), Dec. 28, 2001, 115 Stat. 1238, added item 1599c.

2000—Pub. L. 106–398, §1 [[div. A], title VII, §751(c)(2), title XI, §§1102(b), 1131(c)], Oct. 30, 2000, 114 Stat. 1654, 1654A–194, 1654A–311, 1654A–317, added items 1580a, 1582, 1596, and 1596a and struck out former item 1596 ''Foreign language proficiency: special pay''.

1999—Pub. L. 106–65, div. A, title XI, §1103(b)(2), Oct. 5, 1999, 113 Stat. 777, added item 1580.

1998—Pub. L. 105–339, §6(c)(1)(B), Oct. 31, 1998, 112 Stat. 3188, struck out item 1599c ''Veterans' preference requirements: Department of Defense failure to comply treated as a prohibited personnel practice''.

1997—Pub. L. 105–85, div. A, title V, §593(b)(2), title X, §1071(b), Nov. 18, 1997, 111 Stat. 1764, 1898, added items 1585a and 1589.

1996—Pub. L. 104–201, div. A, title X, §1074(a)(7), title XVI, §§1604(b), 1614(b)(2), 1615(a)(2), 1633(c)(2), Sept. 23, 1996, 110 Stat. 2659, 2736, 2739, 2741, 2751, struck out items 1589 ''Prohibition on payment of lodging expenses when adequate Government quarters are available'', 1590 ''Management of civilian intelligence personnel of the military departments'', and 1599 ''Postemployment

assistance: certain terminated intelligence employees'', struck out ''Sec.'' at beginning of item 1599a, and added items 1599b and 1599c.

Pub. L. 104–106, div. A, title X, § 1040(d)(2), Feb. 10, 1996, 110 Stat. 433, inserted '': reprisals'' after ''instrumentalities'' in item 1587.

Pub. L. 104–93, title V, § 505(b), Jan. 6, 1996, 109 Stat. 974, added item 1599a.

1994—Pub. L. 103–359, title VIII, § 806(a)(2), Oct. 14, 1994, 108 Stat. 3442, added item 1599.

1993—Pub. L. 103–160, div. A, title IX, § 923(a)(2), Nov. 30, 1993, 107 Stat. 1731, substituted ''Civilian faculty members at certain Department of Defense schools: employment and compensation'' for ''National Defense University; Foreign Language Center of the Defense Language Institute: civilian faculty members'' in item 1595.

1992—Pub. L. 102–484, div. A, title III, § 371(b), title IX, § 923(a)(2)(B), div. D, title XLIV, § 4442(b), Oct. 23, 1992, 106 Stat. 2384, 2474, 2732, substituted ''University; Foreign Language Center of the Defense Language Institute'' for ''University:'' in item 1595, substituted ''Civilian positions: guidelines for reductions'' for ''Employees of industrial-type or commercial-type activities: guidelines for future reductions'' in item 1597, and added item 1598.

1991—Pub. L. 102–190, div. A, title X, § 1003(a)(2), Dec. 5, 1991, 105 Stat. 1456, added item 1581.

Pub. L. 102–25, title VII, § 701(e)(4), (8)(B), Apr. 6, 1991, 105 Stat. 114, 115, substituted ''Employment of non-citizens'' for ''Laws relating to employment of non-citizens: not applicable to research and development activities'' in item 1584 and struck out ''mandatory'' after ''error in'' in item 1594.

1990—Pub. L. 101–510, div. A, title III, § 322(a)(2), title XIV, § 1484(a), Nov. 5, 1990, 104 Stat. 1529, 1715, redesignated item 1592 ''Foreign language proficiency: special pay'' as item 1596 and added item 1597.

1989—Pub. L. 101–193, title V, § 501(a)(2), Nov. 30, 1989, 103 Stat. 1708, added item 1592 ''Foreign language proficiency: special pay''.

Pub. L. 101–189, div. A, title III, §§ 311(b)(2), 336(a)(2), title VI, § 664(b)(2), title XI, § 1124(a)(2), Nov. 29, 1989, 103 Stat. 1412, 1419, 1467, 1558, added item 1592 ''Prohibition on payment of severance pay to foreign nationals in the event of certain overseas base closures.'', and items 1593 to 1595.

1987—Pub. L. 100–180, div. A, title VI, § 617(b)(2), Dec. 4, 1987, 101 Stat. 1097, added item 1591.

1986—Pub. L. 99–569, title V, § 504(b), Oct. 27, 1986, 100 Stat. 3199, added item 1590.

1984—Pub. L. 98–525, title XIV, § 1401(f)(2), Oct. 19, 1984, 98 Stat. 2618, added item 1589.

1983—Pub. L. 98–94, title XII, §§ 1253(a)(2), 1266(b), Sept. 24, 1983, 97 Stat. 700, 705, added items 1587 and 1588.

1982—Pub. L. 97–295, § 1(19)(B), (20)(C), Oct. 12, 1982, 96 Stat. 1290, struck out items 1581 ''Appointment: professional and scientific services'' and 1582 ''Professional and scientific services: reports to Congress on appointments'', and substituted ''pay'' for ''compensation'' in item 1583.

1966—Pub. L. 89–718, § 13, Nov. 2, 1966, 80 Stat. 1117, struck out item 1580 ''Appointment generally''.

1962—Pub. L. 87–651, title II, § 206(b), Sept. 7, 1962, 76 Stat. 520, added item 1580.

1960—Pub. L. 86–585, § 2, July 5, 1960, 74 Stat. 327, added item 1586.

1958—Pub. L. 85–577, § 1(2), July 31, 1958, 72 Stat. 456, added item 1585.

PILOT PROGRAM ON THE USE OF ELECTRONIC PORTFOLIOS TO EVALUATE CERTAIN APPLICANTS FOR TECHNICAL POSITIONS

Pub. L. 116–283, div. A, title II, § 247, Jan. 1, 2021, 134 Stat. 3491, provided that:

''(a) PILOT PROGRAM.—Beginning not later than one year after the date of the enactment of this Act [Jan. 1, 2021], the Secretary of Defense shall carry out a pilot program under which certain applicants for technical positions within the Department of Defense will be evaluated, in part, based on electronic portfolios of the applicant's work, as described in subsection (b).

''(b) ACTIVITIES.—Under the pilot program, the human resources manager of each organization of the Department of Defense participating in the program, in consultation with relevant subject matter experts, shall—

''(1) identify a subset of technical positions for which the evaluation of electronic portfolios would be appropriate as part of the hiring process; and

''(2) as appropriate, assess applicants for such positions by reviewing electronic portfolios of the applicants' best work, as selected by the applicant concerned.

''(c) SCOPE OF PROGRAM.—The Secretary of Defense shall carry out the pilot program under subsection (a) in—

''(1) the Joint Artificial Intelligence Center;

''(2) the Defense Digital Service;

''(3) at least one activity of each military department, as identified by the Secretary of the department concerned; and

''(4) such other organizations and elements of the Department of Defense as the Secretary determines appropriate.

''(d) REPORT.—Not later than two years after the commencement of the pilot program under subsection (a), the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the results of the program. At a minimum, the report shall—

''(1) describe how the use of electronic portfolios in the hiring process affected the timeliness of the hiring process for technical positions in organizations of the Department of Defense participating in the program;

''(2) assess the level of satisfaction of organization leaders, hiring authorities, and subject matter experts with the quality of applicants who were hired based on evaluations of electronic portfolios;

''(3) identify other job series that could benefit from the use of electronic portfolios in the hiring process;

''(4) recommend whether the use of electronic portfolios in the hiring process should be expanded or made permanent; and

''(5) recommend any statutory, regulatory, or policy changes required to support the goals of the pilot program under subsection (a).

''(e) TECHNICAL POSITION DEFINED.—In this section, the term 'technical position' means a position in the Department of Defense that—

''(1) requires expertise in artificial intelligence, data science, or software development; and

''(2) is eligible for direct hire authority under section 9905 of title 5, United States Code, or section 2358a of title 10, United States Code.

''(f) TERMINATION.—The authority to carry out the pilot program under subsection (a) shall terminate 5 years after the date of the enactment of this Act.''

COORDINATION OF SCHOLARSHIP AND EMPLOYMENT PROGRAMS OF THE DEPARTMENT OF DEFENSE

Pub. L. 116–283, div. A, title II, § 251, Jan. 1, 2021, 134 Stat. 3496, provided that:

''(a) ESTABLISHMENT OR DESIGNATION OF ORGANIZATION.—The Secretary of Defense shall establish or designate an organization within the Department of Defense which shall have primary responsibility for building cohesion and collaboration across the various scholarship and employment programs of the Department.

''(b) DUTIES.—The organization established or designated under subsection (a) shall have the following duties:

''(1) To establish an interconnected network and database across the scholarship and employment programs of the Department.

''(2) To aid in matching scholarships to individuals pursuing courses of study in high demand skill areas.

"(3) To build a network of current and former program participants for potential engagement or employment with Department activities.

"(c) ANNUAL LISTING.—On an annual basis, the organization established or designated under subsection (a) shall publish, on a publicly accessible website of the Department, a listing of scholarship and employment programs carried out by the Department."

TEMPORARY AUTHORITY TO APPOINT RETIRED MEMBERS OF THE ARMED FORCES TO POSITIONS IN THE DEPARTMENT OF DEFENSE

Pub. L. 116–283, div. A, title XI, § 1108, Jan. 1, 2021, 134 Stat. 3891, provided that:

"(a) IN GENERAL.—Notwithstanding the requirements of section 3326 of title 5, United States Code, the Secretary of Defense may appoint retired members of the Armed Forces to positions in the Department of Defense described in subsection (b).

"(b) POSITIONS.—

"(1) IN GENERAL.—The positions in the Department described in this subsection are positions classified at or below GS–13 under the General Schedule under subchapter III of chapter 53 of title 5, United States Code, or an equivalent level under another wage system, in the competitive service—

"(A) at any defense industrial base facility (as that term is defined in section 2208(u)(3) of title 10, United States Code) that is part of the core logistics capabilities (as described in section 2464(a) of such title); and

"(B) that have been certified by the Secretary of the military department concerned as lacking sufficient numbers of potential applicants.

"(2) LIMITATION ON DELEGATION OF CERTIFICATION.—The Secretary of a military department may not delegate the authority to make a certification described in paragraph (1)(B) to an individual in a grade lower than colonel, captain in the Navy, or an equivalent grade in the Space Force, or an individual with an equivalent civilian grade.

"(c) REPORT.—Not later than two years after the date of enactment of this Act [Jan. 1, 2021], the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on this section and the authority provided by this section. The report shall include the following:

"(1) A description of the use of such authority, including the positions to which appointments are authorized to be made under such authority and the number of retired members appointed to each such position under such authority.

"(2) Any other matters in connection with such section or such authority that the Secretary considers appropriate.

"(d) SUNSET.—Effective on the date that is 3 years after the date of enactment of this Act, the authority provided under subsection (a) shall expire.

"(e) DEFINITIONS.—In this section, the terms 'member' and 'Secretary concerned' have the meaning given those terms in section 101 of title 37, United States Code."

PILOT PROGRAM ON ENHANCED PAY AUTHORITY FOR CERTAIN HIGH-LEVEL MANAGEMENT POSITIONS IN THE DEPARTMENT OF DEFENSE

Pub. L. 116–283, div. A, title XI, § 1119, Jan. 1, 2021, 134 Stat. 3897, provided that:

"(a) PILOT PROGRAM AUTHORIZED.—The Secretary of Defense may carry out a pilot program to assess the feasibility and advisability of using the pay authority specified in subsection (d) to fix the rate of basic pay for positions described in subsection (c) in order to assist the Department of Defense in attracting and retaining personnel with significant experience in high-level management of complex organizations and enterprise functions in order to lead implementation by the Department of the National Defense Strategy.

"(b) APPROVAL REQUIRED.—The pilot program may be carried out only with approval as follows:

"(1) Approval of the Deputy Secretary of Defense, in the case of a position not under the authority, direction, and control of an Under Secretary of Defense and not under the authority, direction, and control of the Under Secretary of a military department.

"(2) Approval of the applicable Under Secretary of Defense, in the case of a position under the authority, direction, and control of an Under Secretary of Defense.

"(3) Approval of the Under Secretary or an Assistant Secretary of the military department concerned, in the case of a position in a military department.

"(c) POSITIONS.—The positions described in this subsection are positions that require expertise of an extremely high level in innovative leadership and management of enterprise-wide business operations, including financial management, health care, supply chain and logistics, information technology, real property stewardship, and human resources, across a large and complex organization.

"(d) RATE OF BASIC PAY.—Without regard to the basic pay authorities in sections 5376, 5382, 5383 and 9903 of title 5, United States Code, the pay authority specified in this subsection is authority as follows:

"(1) Authority to fix the rate of basic pay for a position at a rate not to exceed 150 percent of the rate of basic pay payable for level I of the Executive Schedule, upon the approval of the applicable official under subsection (b).

"(2) Authority to fix the rate of basic pay for a position at a rate in excess of 150 percent of the rate of basic pay payable for level I of the Executive Schedule, upon the approval of the Secretary of Defense.

"(e) LIMITATIONS.—

"(1) IN GENERAL.—The authority in subsection (a) may be used only to the extent necessary to competitively recruit or retain individuals exceptionally well qualified for positions described in subsection (c).

"(2) NUMBER OF POSITIONS.—The authority in subsection (a) may not be used with respect to—

"(A) more than 10 positions in the Office of the Secretary of Defense and components of the Department of Defense other than the military departments at any one time; and

"(B) more than five positions in each military department at any one time.

"(3) TERM OF POSITIONS.—The authority in subsection (a) may be used only for positions having terms less than five years.

"(4) PAST SERVICE.—An individual may not be appointed to a position pursuant to the authority provided by subsection (a) if the individual separated or retired from Federal civil service or service as a commissioned officer of an Armed Force on a date that is less than five years before the date of such appointment of the individual.

"(f) TERMINATION.—

"(1) IN GENERAL.—The authority to fix rates of basic pay for a position under this section shall terminate on October 1, 2025.

"(2) CONTINUATION OF PAY.—Nothing in paragraph (1) shall be construed to prohibit the payment after October 1, 2025, of basic pay at rates fixed under this section before that date for positions whose terms continue after that date."

TECHNOLOGY AND NATIONAL SECURITY FELLOWSHIP

Pub. L. 116–92, div. A, title II, § 235, Dec. 20, 2019, 133 Stat. 1279, as amended by Pub. L. 116–283, div. A, title II, § 243, Jan. 1, 2021, 134 Stat. 3488, provided that:

"(a) FELLOWSHIP PROGRAM.—

"(1) IN GENERAL.—The Secretary of Defense, acting through the Under Secretary of Defense for Research and Engineering, may establish a civilian fellowship program designed to place eligible individuals within the Department of Defense and Congress to increase the number of national security professionals with science, technology, engineering, and mathematics credentials employed by the Department.

''(2) DESIGNATION.—The fellowship program established under paragraph (1) shall be known as the 'Technology and National Security Fellowship' (in this section referred to as the 'fellows program').

''(3) ASSIGNMENTS.—Each individual selected for participation in the fellows program shall be assigned to a one year position within—

''(A) the Department of Defense; or

''(B) a congressional office with emphasis on defense and national security matters.

''(4) PAY AND BENEFITS.—To the extent practicable, each individual assigned to a position under paragraph (3)—

''(A) shall be compensated at a rate of basic pay that is not less than the minimum rate of basic pay payable for a position at GS–10 of the General Schedule (subchapter III of chapter 53 of title 5, United States Code) and not more than the maximum rate of basic pay payable for a position at GS–15 of such Schedule; and

''(B) shall be treated as an employee of the United States during the assignment.

''(b) ELIGIBLE INDIVIDUALS.—

''(1) ELIGIBILITY FOR DOD ASSIGNMENT.—Subject to subsection (e), an individual eligible for an assignment in the Department of Defense under subsection (a)(3)(A) is an individual who—

''(A) is a citizen of the United States; and

''(B) either—

''(i) expects to be awarded a bachelor's degree, associate's degree, or graduate degree that, as determined by the Secretary, focuses on science, technology, engineering, or mathematics course work not later than 180 days after the date on which the individual submits an application for participation in the fellows program;

''(ii) possesses a bachelor's degree, associate's degree, or graduate degree that, as determined by the Secretary, focuses on science, technology, engineering, or mathematics course work; or

''(iii) is an employee of the Department of Defense and possesses a bachelor's degree, associate's degree, or graduate degree that, as determined by the Secretary, focuses on science, technology, engineering, or mathematics course work.

''(2) ELIGIBILITY FOR CONGRESSIONAL ASSIGNMENT.—Subject to subsection (e), an individual eligible for an assignment in a congressional office under subsection (a)(3)(B) is an individual who—

''(A) meets the requirements specified in paragraph (1); and

''(B) has not less than 3 years of relevant work experience in the field of science, technology, engineering, or mathematics.

''(3) BACKGROUND CHECK REQUIREMENT.—No individual may participate in the fellows program without first undergoing a background check that the Secretary of Defense considers appropriate for participation in the program.

''(c) APPLICATION.—Each individual seeking to participate in the fellows program shall submit to the Secretary an application therefor at such time and in such manner as the Secretary shall specify.

''(d) COORDINATION.—In carrying out this section, the Secretary may consider working through the following entities:

''(1) The National Security Innovation Network.

''(2) Universities.

''(3) Science and technology reinvention laboratories and test and evaluation centers of the Department of Defense.

''(4) Other organizations of the Department of Defense or public and private sector organizations, as determined appropriate by the Secretary.

''(e) MODIFICATIONS TO FELLOWS PROGRAM.—The Secretary may modify the terms and procedures of the fellows program in order to better achieve the goals of the program and to support workforce needs of the Department of Defense.

''(f) CONSULTATION.—The Secretary may consult with the heads of the agencies, components, and other elements of the Department of Defense, Members and committees of Congress, and such institutions of higher education and private entities engaged in work on national security and emerging technologies as the Secretary considers appropriate for purposes of the fellows program, including with respect to assignments in the fellows program.''

JOHN S. MCCAIN STRATEGIC DEFENSE FELLOWS PROGRAM

Pub. L. 115–232, div. A, title IX, § 932, Aug. 13, 2018, 132 Stat. 1935, as amended by Pub. L. 116–92, div. A, title IX, § 906, Dec. 20, 2019, 133 Stat. 1559, provided that:

''(a) FELLOWSHIP PROGRAM.—

''(1) IN GENERAL.—Not later than one year after the date of the enactment of this Act [Aug. 13, 2018], the Secretary of Defense shall establish within the Department of Defense a civilian fellowship program designed to provide leadership development and the commencement of a career track toward senior leadership in the Department.

''(2) DESIGNATION.—The fellowship program shall be known as the 'John S. McCain Strategic Defense Fellows Program' (in this section referred to as the 'fellows program').

''(b) ELIGIBILITY.—An individual is eligible for participation in the fellows program if the individual—

''(1) is a citizen of the United States or a lawful permanent resident of the United States in the year in which the individual applies for participation in the fellows program; and

''(2) either—

''(A) possesses a graduate degree from an accredited institution of higher education in the United States that was awarded not later than two years before the date of the acceptance of the individual into the fellows program; or

''(B) will be awarded a graduate degree from an accredited institution of higher education in the United States not later than six months after the date of the acceptance of the individual into the fellows program.

''(c) APPLICATION.—

''(1) APPLICATION REQUIRED.—Each individual seeking to participate in the fellows program shall submit to the Secretary of Defense an application therefor at such time and in such manner as the Secretary shall specify.

''(2) ELEMENTS.—Each application of an individual under this subsection shall include the following:

''(A) Transcripts of educational achievement at the undergraduate and graduate level.

''(B) A resume.

''(C) Proof of citizenship or lawful permanent residence.

''(D) An endorsement from the applicant's graduate institution of higher education.

''(E) An academic writing sample.

''(F) Letters of recommendation addressing the applicant's character, academic ability, and any extracurricular activities.

''(G) A personal statement by the applicant explaining career areas of interest and motivations for service in the Department.

''(H) Such other information as the Secretary considers appropriate.

''(d) SELECTION.—

''(1) IN GENERAL.—Each year, the Secretary of Defense shall select participants in the fellows program from among applicants for the fellows program for such year who qualify for participation in the fellows program based on character, commitment to public service, academic achievement, extracurricular activities, and such other qualifications for participation in the fellows program as the Secretary considers appropriate.

''(2) NUMBER.—The number of individuals selected to participate in the fellows program in any year may not exceed the numbers as follows:

''(A) Ten individuals from each geographic region of the United States as follows:

''(i) The Northeast.
''(ii) The Southeast.
''(iii) The Midwest.
''(iv) The Southwest.
''(v) The West.

''(B) Ten additional individuals.

''(3) BACKGROUND INVESTIGATION.—An individual selected to participate in the fellows program may not participate in the program unless the individual successfully undergoes a background investigation applicable to the position to which the individual will be assigned under the fellows program and otherwise meets such requirements applicable to assignment to a sensitive position within the Department that the Secretary considers appropriate.

''(e) ASSIGNMENT.—

''(1) IN GENERAL.—Each individual who participates in the fellows program shall be assigned to a position in one of the following:

''(A) The Office of the Secretary of Defense.

''(B) An office of the Secretary of a military department.

''(2) POSITION REQUIREMENTS.—Each Secretary of a military department, and each Under Secretary of Defense and Director of a Defense Agency who reports directly to the Secretary of Defense, shall submit to the Secretary of Defense each year the qualifications and skills to be demonstrated by participants in the fellows program to qualify for assignment under this subsection for service in a position of the office of such Secretary, Under Secretary, or Director.

''(3) ASSIGNMENT TO POSITIONS.—The Secretary of Defense shall each year assign participants in the fellows program to positions in the offices of the Secretaries of the military departments, and the offices of the Under Secretaries and Directors described in paragraph (2). In making such assignments, the Secretary of Defense shall seek to best match the qualifications and skills of participants in the fellows program with the requirements of positions available for assignment. Each participant so assigned shall serve as a special assistant to the Secretary, Under Secretary, or Director to whom assigned.

''(4) LIMITATION ON NUMBER ASSIGNABLE TO SECRETARIES OF MILITARY DEPARTMENTS.—The number of participants in the fellows program who are assigned to the office of a Secretary of a military department in any year may not exceed five participants.

''(5) TERM.—The term of each assignment under the fellows program shall be one year.

''(6) PAY AND BENEFITS.—An individual assigned to a position under the fellows program shall be compensated at the rate of compensation for employees at level GS–10 of the General Schedule, and shall be treated as an employee of the United States during the term of assignment, including for purposes of eligibility for health care benefits and retirement benefits available to employees of the United States.

''(7) EDUCATION LOAN REPAYMENT.—To the extent that funds are provided in advance in appropriations Acts, the Secretary of Defense may repay any loan of a participant in the fellows program if the loan is described by subparagraph (A), (B), or (C) of section 16301(a)(1) of title 10, United States Code. Any repayment of loans under this paragraph shall be on a first-come, first-served basis.

''(f) CAREER DEVELOPMENT.—

''(1) IN GENERAL.—The Secretary of Defense shall ensure that participants in the fellows program—

''(A) receive opportunities and support appropriate for the commencement of a career track within the Department leading toward a future position of senior leadership within the Department, including ongoing mentorship support through appropriate personnel from entities within the Department such as the Defense Business Board and the Defense Innovation Board; and

''(B) are provided appropriate opportunities for employment and advancement within the Department upon successful completion of the fellows program, including, if appropriate, opportunities to work at Department installations or Field Activities for between 12 and 24 months.

''(2) RESERVATION OF POSITIONS.—In carrying out paragraph (1)(B), the Secretary shall reserve for participants who successfully complete the fellows program not fewer than 30 positions in the excepted service within the Department that are suitable for the commencement of a career track toward senior leadership within the Department. Any position so reserved shall not be subject to or covered by any reduction in headquarters personnel required under any other provision of law.

''(3) NONCOMPETITIVE APPOINTMENT.—Upon the successful completion of the assignment of a participant in the fellows program in a position pursuant to subsection (e), the Secretary may, without regard to the provisions of subchapter I of chapter 33 of title 5, United States Code, appoint the participant to a position reserved pursuant to paragraph (2) if the Secretary determines that such appointment will contribute to the development of highly qualified future senior leaders for the Department. An individual appointed pursuant to this paragraph shall not count against the limitation on the number of Office of the Secretary of Defense personnel in section 143 of title 10, United States Code, or any similar limitation in law on the number of personnel in headquarters of the Department that would otherwise apply to the office or headquarters to which appointed.

''(4) PUBLICATION OF SELECTION.—The Secretary shall publish on an Internet website of the Department available to the public the names of the individuals selected to participate in the fellows program.

''(g) OUTREACH.—The Secretary of Defense shall undertake appropriate outreach to inform potential participants in the fellows program of the nature and benefits of participation in the fellows program.

''(h) REGULATIONS.—The Secretary of Defense shall carry out this section in accordance with such regulations as the Secretary may prescribe for purposes of this section.

''(i) FUNDING.—Of the amounts authorized to be appropriated for each fiscal year for the Department of Defense for operation and maintenance, Defense-wide, $10,000,000 may be available to carry out the fellows program in such fiscal year.''

PILOT PROGRAMS ON APPOINTMENT IN THE EXCEPTED SERVICE IN THE DEPARTMENT OF DEFENSE OF PHYSICALLY DISQUALIFIED FORMER CADETS AND MIDSHIPMEN

Pub. L. 115–91, div. A, title V, § 549, Dec. 12, 2017, 131 Stat. 1399, as amended by Pub. L. 115–232, div. A, title VIII, § 809(b)(4), Aug. 13, 2018, 132 Stat. 1840, provided that:

''(a) PILOT PROGRAMS AUTHORIZED.—

''(1) IN GENERAL.—Each Secretary of a military department may carry out a pilot program under which former cadets or midshipmen described in paragraph (2) (in this section referred to as 'eligible individuals') under the jurisdiction of such Secretary may be appointed by the Secretary of Defense in the excepted service under section 3320 of title 5, United States Code, in the Department of Defense.

''(2) CADETS AND MIDSHIPMEN.—Except as provided in paragraph (3), a former cadet or midshipman described in this paragraph is any former cadet at the United States Military Academy or the United States Air Force Academy, and any former midshipman at the United States Naval Academy, who—

''(A) completed the prescribed course of instruction and graduated from the applicable service academy; and

''(B) is determined to be medically disqualified to complete a period of active duty in the Armed Forces prescribed in an agreement signed by such cadet or midshipman in accordance with section 7448, 8459, or 9448 of title 10, United States Code.

''(3) EXCEPTION.—A former cadet or midshipman whose medical disqualification as described in paragraph (2)(B) is the result of the gross negligence or misconduct of the former cadet or midshipman is not an eligible individual for purposes of appointment under a pilot program.

''(b) PURPOSE.—The purpose of the pilot programs conducted under this section is to evaluate the feasibility and advisability of permitting eligible individuals who cannot accept a commission or complete a period of active duty in the Armed Forces prescribed by the Secretary of the military department concerned to fulfill an obligation for active duty service in the Armed Forces through service as a civilian employee of the Department of Defense.

''(c) POSITIONS.—

''(1) IN GENERAL.—The positions to which an eligible individual may be appointed under a pilot program conducted under this section are existing positions within the Department of Defense in grades up to GS–9 under the General Schedule under section 5332 of title 5, United States Code (or equivalent). The authority in subsection (a) does not authorize the creation of additional positions, or create any vacancies to which eligible individuals may be appointed under a pilot program.

''(2) TERM POSITIONS.—Any appointment under a pilot program shall be to a position having a term of five years or less.

''(d) SCOPE OF AUTHORITY.—

''(1) RECRUITMENT AND RETENTION OF ELIGIBLE INDIVIDUALS.—The authority in subsection (a) may be used only to the extent necessary to recruit and retain on a non-competitive basis cadets and midshipmen who are relieved of an obligation for active duty in the Armed Forces due to becoming medically disqualified from serving on active duty in the Armed Forces, and may not be used to appoint any other individuals in the excepted service.

''(2) VOLUNTARY ACCEPTANCE OF APPOINTMENTS.—A pilot program conducted under this section may not be used as an implicit or explicit basis for compelling an eligible individual to accept an appointment in the excepted service in accordance with this section.

''(e) RELATIONSHIP TO REPAYMENT PROVISIONS.—Completion of a term appointment pursuant to a pilot program conducted under this section shall relieve the eligible individual concerned of any repayment obligation under section 303a(e) or 373 of title 37, United States Code, with respect to the agreement of the individual described in subsection (a)(2)(B).

''(f) TERMINATION.—

''(1) IN GENERAL.—The authority to appoint eligible individuals in the excepted service under a pilot program conducted under this section shall expire on the date that is four years after the date of the enactment of this Act [Dec. 12, 2017].

''(2) EFFECT ON EXISTING APPOINTMENTS.—The termination by paragraph (1) of the authority in subsection (a) shall not affect any appointment made under that authority before the termination date specified in paragraph (1) in accordance with the terms of such appointment.

''(g) REPORTING REQUIREMENT.—

''(1) REPORT REQUIRED.—Not later than the date that is three years after the date of the enactment of this Act [Dec. 12, 2017], each Secretary of a military department shall submit to the appropriate congressional committees a report containing an evaluation of the effectiveness of the pilot program conducted by such Secretary under this section, including the number of eligible individuals appointed as civilian employees of the Department of Defense under the program and the retention rate for such employees.

''(2) APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.—In this section, the term 'appropriate congressional committees' means the Committee on Armed Services and the Committee on Homeland Security and Government Affairs of the Senate and the Committee on Armed Services and the Committee on Oversight and Government Reform [now Committee on Oversight and Reform] of the House of Representatives.''

DIRECT HIRE AUTHORITY FOR THE DEPARTMENT OF DEFENSE FOR PERSONNEL TO ASSIST IN BUSINESS TRANSFORMATION AND MANAGEMENT INNOVATION

Pub. L. 115–91, div. A, title XI, § 1101, Dec. 12, 2017, 131 Stat. 1627, provided that:

''(a) AUTHORITY.—The Secretary of Defense may appoint in the Department of Defense individuals described in subsection (b) without regard to the provisions of subchapter I of chapter 33 of title 5, United States Code, for the purpose of assisting and facilitating the efforts of the Department in business transformation and management innovation.

''(b) COVERED INDIVIDUALS.—The individuals described in this subsection are individuals who have all of the following:

''(1) A management or business background.

''(2) Experience working with large or complex organizations.

''(3) Expertise in management and organizational change, data analytics, or business process design.

''(c) LIMITATION ON NUMBER.—The number of individuals appointed pursuant to this section at any one time may not exceed 10 individuals.

''(d) NATURE OF APPOINTMENT.—Any appointment under this section shall be on a term basis, and shall be subject to the term appointment regulations in part 316 of title 5, Code of Federal Regulations (other than requirements in such regulations relating to competitive hiring). The term of any such appointment shall be specified by the Secretary at the time of the appointment.

''(e) BRIEFINGS.—

''(1) IN GENERAL.—Not later than September 30, 2019, and September 30, 2021, the Secretary shall brief the appropriate committees of Congress on the exercise of the authority in this section.

''(2) ELEMENTS.—Each briefing under this subsection shall include the following:

''(A) A description and assessment of the results of the use of such authority as of the date of such briefing.

''(B) Such recommendations as the Secretary considers appropriate for extension or modification of such authority.

''(3) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this subsection, the term 'appropriate committees of Congress' means—

''(A) the Committee on Armed Services and the Committee on Homeland Security and Governmental Affairs of the Senate; and

''(B) the Committee on Armed Services and the Committee on Government Oversight and Reform [probably means Committee on Oversight and Government Reform, now Committee on Oversight and Reform] of the House of Representatives.

''(f) SUNSET.—

''(1) IN GENERAL.—The authority to appoint individuals in this section shall expire on September 30, 2021.

''(2) CONSTRUCTION WITH EXISTING APPOINTMENTS.—The expiration in paragraph (1) of the authority in this section shall not be construed to terminate any appointment made under this section before the date of expiration that continues according to its term as of the date of expiration.''

PILOT PROGRAM ON ENHANCED PERSONNEL MANAGEMENT SYSTEM FOR CYBERSECURITY AND LEGAL PROFESSIONALS IN THE DEPARTMENT OF DEFENSE

Pub. L. 115–91, div. A, title XI, § 1110, Dec. 12, 2017, 131 Stat. 1631, provided that:

''(a) PILOT PROGRAM REQUIRED.—The Secretary of Defense shall carry out within the Department of Defense a pilot program to assess the feasability and advisability of an enhanced personnel management system in accordance with this section for cybersecurity and

legal professionals in the Department described in subsection (b) who enter civilian service with the Department on or after January 1, 2020.

''(b) CYBERSECURITY AND LEGAL PROFESSIONALS.—

''(1) IN GENERAL.—The cybersecurity and legal professionals described in this subsection are the following:

''(A) Civilian cybersecurity professionals in the Department of Defense consisting of civilian personnel engaged in or directly supporting planning, commanding and controlling, training, developing, acquiring, modifying, and operating systems and capabilities, and military units and intelligence organizations (other than those funded by the National Intelligence Program) that are directly engaged in or used for offensive and defensive cyber and information warfare or intelligence activities in support thereof.

''(B) Civilian legal professionals in the Department occupying legal or similar positions, as determined by the Secretary of Defense for purposes of the pilot program, that require eligibility to practice law in a State or territory of the United States.

''(2) INAPPLICABILITY TO SES POSITIONS.—The pilot program shall not apply to positions within the Senior Executive Service under subchapter VIII of chapter 53 of title 5, United States Code.

''(c) DIRECT-APPOINTMENT AUTHORITY.—

''(1) INAPPLICABILITY OF GENERAL CIVIL SERVICE APPOINTMENT AUTHORITIES TO APPOINTMENTS.—Under the pilot program, the Secretary of Defense, with respect to the Defense Agencies, and the Secretary of the military department concerned, with respect to the military departments, may appoint qualified candidates as cybersecurity and legal professionals without regard to the provisions of subchapter I of chapter 33 of title 5, United States Code.

''(2) APPOINTMENT ON DIRECT-HIRE BASIS.—Appointments under the pilot program shall be made on a direct-hire basis.

''(d) TERM APPOINTMENTS.—

''(1) RENEWABLE TERM APPOINTMENTS.—Each individual shall serve with the Department of Defense as a cybersecurity or legal professional under the pilot program pursuant to an initial appointment to service with the Department for a term of not less than 2 years nor more than 8 years. Any term of appointment under the pilot program may be renewed for one or more additional terms of not less than 2 years nor more than 8 years as provided in subsection (h).

''(2) LENGTH OF TERMS.—The length of the term of appointment to a position under the pilot program shall be prescribed by the Secretary of Defense taking into account the national security, mission, and other applicable requirements of the position. Positions having identical or similar requirements or terms may be grouped into categories for purposes of the pilot program. The Secretary may delegate any authority in this paragraph to a commissioned officer of the Armed Forces in pay grade O–7 or above or an employee in the Department in the Senior Executive Service.

''(e) NATURE OF SERVICE UNDER APPOINTMENTS.—

''(1) TREATMENT OF PERSONNEL APPOINTED AS EMPLOYEES.—Except as otherwise provided by this section, individuals serving with the Department of Defense as cybersecurity or legal professionals under the pilot program pursuant to appointments under this section shall be considered employees (as specified in section 2105 of title 5, United States Code) for purposes of the provisions of title 5, United States Code, and other applicable provisions of law, including, in particular, for purposes as follows:

''(A) Eligibility for participation in the Federal Employees' Retirement System under chapter 84 of title 5, United States Code, subject to the provisions of section 8402 of such title and the regulations prescribed pursuant to such section.

''(B) Eligibility for enrollment in a health benefits plan under chapter 89 of title 5, United States Code (commonly referred as the 'Federal Employees Health Benefits Program').

''(C) Eligibility for and subject to the employment protections of subpart F of part III of title 5, United States Code, relating to merit principles and protections.

''(D) Eligibility for the protections of chapter 81, of title 5, United States Code, relating to workers compensation.

''(2) SCOPE OF RIGHTS AND BENEFITS.—In administering the pilot program, the Secretary of Defense shall specify, and from time to time update, a comprehensive description of the rights and benefits of individuals serving with the Department under the pilot program pursuant to this subsection and of the provisions of law under which such rights and benefits arise.

''(f) COMPENSATION.—

''(1) BASIC PAY.—Individuals serving with the Department of Defense as cybersecurity or legal professionals under the pilot program shall be paid basic pay for such service in accordance with a schedule of pay prescribed by the Secretary of Defense for purposes of the pilot program.

''(2) TREATMENT AS BASIC PAY.—Basic pay payable under the pilot program shall be treated for all purposes as basic pay paid under the provisions of title 5, United States Code.

''(3) PERFORMANCE AWARDS.—Individuals serving with the Department as cybersecurity or legal professionals under the pilot program may be awarded such performance awards for outstanding performance as the Secretary shall prescribe for purposes of the pilot program. The performance awards may include a monetary bonus, time off with pay, or such other awards as the Secretary considers appropriate for purposes of the pilot program. The award of performance awards under the pilot program shall be based in accordance with such policies and requirements as the Secretary shall prescribe for purposes of the pilot program.

''(4) ADDITIONAL COMPENSATION.—Individuals serving with the Department as cybersecurity or legal professionals under the pilot program may be awarded such additional compensation above basic pay as the Secretary (or the designees of the Secretary) consider appropriate in order to promote the recruitment and retention of highly skilled and productive cybersecurity and legal professionals to and with the Department.

''(g) PROBATIONARY PERIOD.—The following terms of appointment shall be treated as a probationary period under the pilot program:

''(1) The first term of appointment of an individual to service with the Department of Defense as a cybersecurity or legal professional, regardless of length.

''(2) The first term of appointment of an individual to a supervisory position in the Department as a cybersecurity or legal professional, regardless of length and regardless of whether or not such term of appointment to a supervisory position is the first term of appointment of the individual concerned to service with the Department as a cybersecurity or legal professional.

''(h) RENEWAL OF APPOINTMENTS.—

''(1) IN GENERAL.—The Secretary of Defense shall prescribe the conditions for the renewal of appointments under the pilot program. The conditions may apply to one or more categories of positions, positions on a case-by-case basis, or both.

''(2) PARTICULAR CONDITIONS.—In prescribing conditions for the renewal of appointments under the pilot program, the Secretary shall take into account the following (in the order specified):

''(A) The necessity for the continuation of the position concerned based on mission requirements and other applicable justifications for the position.

''(B) The service performance of the individual serving in the position concerned, with individuals

with satisfactory or better performance afforded preference in renewal.

''(C) Input from employees on conditions for renewal.

''(D) Applicable private and public sector labor market conditions.

''(3) SERVICE PERFORMANCE.—The assessment of the service performance of an individual under the pilot program for purposes of paragraph (2)(B) shall consist of an assessment of the ability of the individual to effectively accomplish mission goals for the position concerned as determined by the supervisor or manager of the individual based on the individual's performance evaluations and the knowledge of and review by such supervisor or manager (developed in consultation with the individual) of the individual's performance in the position. An individual's tenure of service in a position or the Department of Defense may not be the primary element of the assessment.

''(i) PROFESSIONAL DEVELOPMENT.—The pilot program shall provide for the professional development of individuals serving with the Department of Defense as cybersecurity and legal professionals under the pilot program in a manner that—

''(1) creates opportunities for education, training, and career-broadening experiences, and for experimental opportunities in other organizations within and outside the Federal Government; and

''(2) reflects the differentiated needs of personnel at different stages of their careers.

''(j) SABBATICALS.—

''(1) IN GENERAL.—The pilot program shall provide for an individual who is in a successive term after the first 8 years with the Department of Defense as a cybersecurity or legal professional under the pilot program to take, at the election of the individual, a paid or unpaid sabbatical from service with the Department for professional development or education purposes. The length of a sabbatical shall be any length not less than 6 months nor more than 1 year (unless a different period is approved by the Secretary of the military department or head of the organization or element of the Department concerned for purposes of this subsection). The purpose of any sabbatical shall be subject to advance approval by the organization or element in the Department in which the individual is currently performing service. The taking of a sabbatical shall be contingent on the written agreement of the individual concerned to serve with the Department for an appropriate length of time at the conclusion of the term of appointment in which the sabbatical commences, with the period of such service to be in addition to the period of such term of appointment.

''(2) NUMBER OF SABBATICALS.—An individual may take more than one sabbatical under this subsection.

''(3) REPAYMENT.—Except as provided in paragraph (4), an individual who fails to satisfy a written agreement executed under paragraph (1) with respect to a sabbatical shall repay the Department an amount equal to any pay, allowances, and other benefits received by the individual from the Department during the period of the sabbatical.

''(4) WAIVER OF REPAYMENT.—An agreement under paragraph (1) may include such conditions for the waiver of repayment otherwise required under paragraph (3) for failure to satisfy such agreement as the Secretary specifies in such agreement.

''(k) REGULATIONS.—The Secretary of Defense shall administer the pilot program under regulations prescribed by the Secretary for purposes of the pilot program.

''(*l*) TERMINATION.—

''(1) IN GENERAL.—The authority of the Secretary of Defense to appoint individuals for service with the Department of Defense as cybersecurity or legal professionals under the pilot program shall expire on December 31, 2029.

''(2) EFFECT ON EXISTING APPOINTMENTS.—The termination of authority in paragraph (1) shall not be construed to terminate or otherwise affect any appointment made under this section before December 31, 2029, that remains valid as of that date.

''(m) IMPLEMENTATION.—

''(1) INTERIM FINAL RULE.—Not later than one year after the date of the enactment of this Act [Dec. 12, 2017], the Secretary of Defense shall prescribe an interim final rule to implement the pilot program.

''(2) FINAL RULE.—Not later than 180 days after prescribing the interim final rule under paragraph (1) and considering public comments with respect to such interim final rule, the Secretary shall prescribe a final rule to implement the pilot program.

''(3) OBJECTIVES.—The regulations prescribed under paragraphs (1) and (2) shall accomplish the objectives set forth in subsections (a) through (j) and otherwise ensure flexibility and expedited appointment of cybersecurity and legal professionals in the Department of Defense under the pilot program.

''(n) REPORTS.—

''(1) REPORTS REQUIRED.—Not later than January 30 of each of 2022, 2025, and 2028, the Secretary of Defense shall submit to the appropriate committees of Congress a report on the carrying out of the pilot program. Each report shall include the following:

''(A) A description and assessment of the carrying out of the pilot program during the period since the commencement of the pilot program or the previous submittal of a report under this subsection, as applicable.

''(B) A description and assessment of the successes in and impediments to carrying out the pilot program system during such period.

''(C) Such recommendations as the Secretary considers appropriate for legislative action to improve the pilot program and to otherwise improve civilian personnel management of cybersecurity and legal professionals by the Department of Defense.

''(D) In the case of the report submitted in 2028, an assessment and recommendations by the Secretary on whether to make the pilot program permanent.

''(2) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this subsection, the term 'appropriate committees of Congress' means—

''(A) the Committee on Armed Services and the Committee on Homeland Security and Governmental Affairs of the Senate; and

''(B) the Committee on Armed Services and the Committee on Oversight and Government Reform [now Committee on Oversight and Reform] of the House of Representatives.''

TEMPORARY AND TERM APPOINTMENTS IN THE COMPETITIVE SERVICE IN THE DEPARTMENT OF DEFENSE

Pub. L. 114–328, div. A, title XI, § 1105, Dec. 23, 2016, 130 Stat. 2447, provided that:

''(a) APPOINTMENT.—

''(1) IN GENERAL.—The Secretary of Defense may make a temporary appointment or a term appointment in the Department when the need for the services of an employee in the Department is not permanent.

''(2) EXTENSION.—The Secretary may extend a temporary appointment or a term appointment made under paragraph (1).

''(b) APPOINTMENTS FOR CRITICAL HIRING NEEDS.—

''(1) IN GENERAL.—If there is a critical hiring need, the Secretary of Defense may make a noncompetitive temporary appointment or a noncompetitive term appointment in the Department of Defense, without regard to the requirements of sections 3327 and 3330 of title 5, United States Code, for a period that is not more than 18 months.

''(2) NO EXTENSION AVAILABLE.—An appointment made under paragraph (1) may not be extended.

''(c) REGULATIONS.—The Secretary may prescribe regulations to carry out this section.

''(d) DEFINITIONS.—In this section:

''(1) The term 'temporary appointment' means the appointment of an employee in the competitive service for a period that is not more than one year.

''(2) The term 'term appointment' means the appointment of an employee in the competitive service for a period that is more than one year and not more than five years, unless the Secretary of Defense, before the appointment of the employee, authorizes a longer period.''

DIRECT-HIRE AUTHORITY FOR THE DEPARTMENT OF DEFENSE FOR POST-SECONDARY STUDENTS AND RECENT GRADUATES

Pub. L. 114–328, div. A, title XI, § 1106, Dec. 23, 2016, 130 Stat. 2447, as amended by Pub. L. 115–232, div. A, title XI, § 1102, Aug. 13, 2018, 132 Stat. 2001, provided that:

''(a) HIRING AUTHORITY.—Without regard to sections 3309 through 3318, 3327, and 3330 of title 5, United States Code, the Secretary of Defense may recruit and appoint qualified recent graduates and current post-secondary students to competitive service positions in professional and administrative occupations within the Department of Defense.

''(b) LIMITATION ON APPOINTMENTS.—Subject to subsection (c)(2), the total number of employees appointed by the Secretary under subsection (a) during a fiscal year may not exceed the number equal to 25 percent of the number of hires made into professional and administrative occupations of the Department at the GS–11 level and below (or equivalent) under competitive examining procedures during the previous fiscal year.

''(c) REGULATIONS.—

''(1) IN GENERAL.—The Secretary shall administer this section in accordance with regulations prescribed by the Secretary for purposes of this section.

''(2) LOWER LIMIT ON APPOINTMENTS.—The regulations may establish a lower limit on the number of individuals appointable under subsection (a) during a fiscal year than is otherwise provided for under subsection (b), based on such factors as the Secretary considers appropriate.

''(3) PUBLIC NOTICE AND ADVERTISING.—To the extent practical, as determined by the Secretary, the Secretary shall publicly advertise positions available under this section. In carrying out the preceding sentence, the Secretary shall—

''(A) take into account merit system principles, mission requirements, costs, and organizational benefits of any advertising of positions; and

''(B) advertise such positions in the manner the Secretary determines is most likely to provide diverse and qualified candidates and ensure potential applicants have appropriate information relevant to the positions available.

''(d) SUNSET.—The authority provided under this section shall terminate on September 30, 2025.

''(e) DEFINITIONS.—In this section:

''(1) The term 'current post-secondary student' means a person who—

''(A) is currently enrolled in, and in good academic standing at, a full-time program at an institution of higher education;

''(B) is making satisfactory progress toward receipt of a baccalaureate or graduate degree; and

''(C) has completed at least one year of the program.

''(2) The term 'institution of higher education' has the meaning given the term in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001).

''(3) The term 'recent graduate', with respect to appointment of a person under this section, means a person who was awarded a degree by an institution of higher education not more than two years before the date of the appointment of such person, except that in the case of a person who has completed a period of obligated service in a uniformed service of more than four years, such term means a person who was awarded a degree by an institution of higher education not more than four years before the date of the appointment of such person.''

DIRECT HIRE AUTHORITY FOR FINANCIAL MANAGEMENT EXPERTS IN THE DEPARTMENT OF DEFENSE WORKFORCE

Pub. L. 114–328, div. A, title XI, § 1110, Dec. 23, 2016, 130 Stat. 2450, as amended by Pub. L. 115–91, div. A, title XI, § 1106(a), Dec. 12, 2017, 131 Stat. 1629; Pub. L. 115–232, div. A, title XI, § 1113, Aug. 13, 2018, 132 Stat. 2013, provided that:

''(a) AUTHORITY.—Each Secretary concerned may appoint qualified candidates possessing a finance, accounting, management, or actuarial science degree, or a related degree or equivalent experience, to positions specified in subsection (c) for a Department of Defense component without regard to the provisions of subchapter I of chapter 33 of title 5, United States Code.

''(b) SECRETARY CONCERNED.—For purposes of this section, the Secretary concerned is as follows:

''(1) The Secretary of Defense with respect to each Department of Defense component listed in subsection (f) other than the Department of the Army, the Department of the Navy, and the Department of the Air Force.

''(2) The Secretary of a military department with respect to such military department.

''(c) POSITIONS.—The positions specified in this subsection are the positions within the Department of Defense workforce as follows:

''(1) Financial management positions.

''(2) Accounting positions.

''(3) Auditing positions.

''(4) Actuarial positions.

''(5) Cost estimation positions.

''(6) Operational research positions.

''(7) Business and business administration positions.

''(d) LIMITATION.—Authority under this section may not, in any calendar year and with respect to any Department of Defense component, be exercised with respect to a number of candidates greater than the number equal to 10 percent of the total number of the financial management, accounting, auditing, and actuarial positions within the financial management workforce of such Department of Defense component that are filled as of the close of the fiscal year last ending before the start of such calendar year.

''(e) NATURE OF APPOINTMENT.—Any appointment under this section shall be treated as an appointment on a full-time equivalent basis, unless such appointment is made on a term or temporary basis.

''(f) DEPARTMENT OF DEFENSE COMPONENT DEFINED.—In this section, the term 'Department of Defense component' means the following:

''(1) The Office of the Secretary of Defense.

''(2) A Defense Agency.

''(3) The Office of the Chairman of the Joint Chiefs of Staff.

''(4) The Joint Staff.

''(5) A combatant command.

''(6) The Office of the Inspector General of the Department of Defense.

''(7) A Field Activity of the Department of Defense.

''(8) The Department of the Army.

''(9) The Department of the Navy.

''(10) The Department of the Air Force.

''(g) TERMINATION.—The authority to make appointments under this section shall not be available after December 31, 2022.''

[Pub. L. 115–91, div. A, title XI, § 1106(a)(1), Dec. 12, 2017, 131 Stat. 1629, which directed amendment of section 1110(a) of Pub. L. 114–328, set out above, by substituting ''a Department of Defense component'' for ''the Defense Agencies or the applicable military Department'', was executed by making the substitution for ''the Defense Agencies or the applicable military department'', to reflect the probable intent of Congress.]

TEMPORARY DIRECT HIRE AUTHORITY FOR DOMESTIC DEFENSE INDUSTRIAL BASE FACILITIES, THE MAJOR RANGE AND TEST FACILITIES BASE, AND THE OFFICE OF THE DIRECTOR OF OPERATIONAL TEST AND EVALUATION

Pub. L. 114–328, div. A, title XI, § 1125, Dec. 23, 2016, 130 Stat. 2457, as amended by Pub. L. 115–91, div. A, title XI, § 1102(a), Dec. 12, 2017, 131 Stat. 1628; Pub. L. 116–92,

div. A, title XI, § 1107(a), Dec. 20, 2019, 133 Stat. 1597, provided that:

''(a) DEFENSE INDUSTRIAL BASE FACILITY AND MRTFB.—During each of fiscal years 2017 through 2025, the Secretary of Defense may appoint, without regard to the provisions of subchapter I of chapter 33 of title 5, United States Code, other than sections 3303 and 3328 of such title, qualified candidates to positions in the competitive service at any defense industrial base facility or the Major Range and Test Facilities Base.

''(b) OFFICE OF THE DIRECTOR OF OPERATIONAL TEST AND EVALUATION.—During fiscal years 2017 through 2021, the Secretary of Defense may, acting through the Director of Operational Test and Evaluation, appoint qualified candidates possessing an advanced degree to scientific and engineering positions within the Office of the Director of Operational Test and Evaluation without regard to the provisions of subchapter I of chapter 33 of title 5, United States Code, other than sections 3303 and 3328 of such title.

''(c) DEFINITION OF DEFENSE INDUSTRIAL BASE FACILITY.—In this section, the term 'defense industrial base facility' means any Department of Defense depot, arsenal, or shipyard located within the United States.''

TEMPORARY PERSONNEL FLEXIBILITIES FOR DOMESTIC DEFENSE INDUSTRIAL BASE FACILITIES AND MAJOR RANGE AND TEST FACILITIES BASE CIVILIAN PERSONNEL

Pub. L. 114–328, div. A, title XI, § 1132, Dec. 23, 2016, 130 Stat. 2457, as amended by Pub. L. 115–91, div. A, title XI, § 1107(a), Dec. 12, 2017, 131 Stat. 1630, provided that:

''(a) IN GENERAL.—Notwithstanding chapter 33 of title 5, United States Code, or any other provision of law relating to the examination, certification, and appointment of individuals in the competitive service, during fiscal years 2017 through 2021, an employee of a defense industrial base facility or the Major Range and Test Facilities Base serving under a time-limited appointment in the competitive service is eligible to compete for a permanent appointment in the competitive service at (A) any such facility, Base, or any other component of the Department of Defense when such facility, Base, or component (as the case may be) is accepting applications from individuals within the facility, Base, or component's workforce under merit promotion procedures, or (B) any agency when the agency is accepting applications from individuals outside its own workforce under merit promotion procedures of the applicable agency, if—

''(1) the employee was appointed initially under open, competitive examination under subchapter I of chapter 33 of such title to the time-limited appointment;

''(2) the employee has served under 1 or more time-limited appointments by a defense industrial base facility or the Major Range and Test Facilities Base for a period or periods totaling more than 24 months without a break of 2 or more years; and

''(3) the employee's performance has been at an acceptable level of performance throughout the period or periods (as the case may be) referred to in paragraph (2).

''(b) WAIVER OF AGE REQUIREMENT.—In determining the eligibility of a time-limited employee under this section to be examined for or appointed in the competitive service, the Office of Personnel Management or other examining agency shall waive requirements as to age, unless the requirement is essential to the performance of the duties of the position.

''(c) STATUS.—An individual appointed under this section—

''(1) becomes a career-conditional employee, unless the employee has otherwise completed the service requirements for career tenure; and

''(2) acquires competitive status upon appointment.

''(d) FORMER EMPLOYEES.—A former employee of a defense industrial base facility or the Major Range and Test Facilities Base who served under a time-limited appointment and who otherwise meets the requirements of this section shall be deemed a time-limited employee for purposes of this section if—

''(1) such employee applies for a position covered by this section within the period of 2 years after the most recent date of separation; and

''(2) such employee's most recent separation was for reasons other than misconduct or performance.

''(e) BENEFITS.—Any employee of a defense industrial base facility or the Major Range and Test Facilities Base serving under a time-limited appointment in the competitive service shall be provided with benefits that are comparable to the benefits provided to similar employees not serving under time-limited appointments at the defense industrial base facility or the Major Range and Test Facilities Base concerned, including professional development opportunities, eligibility for awards programs, and designation as status applicants for purposes of eligibility for positions in the civil service.

''(f) DEFINITION OF DEFENSE INDUSTRIAL BASE FACILITY.—In this section, the term 'defense industrial base facility' means any Department of Defense depot, arsenal, or shipyard located within the United States.''

COMPLIANCE WITH LAW REGARDING AVAILABILITY OF FUNDING FOR CIVILIAN PERSONNEL

Pub. L. 113–66, div. A, title XI, § 1108, Dec. 26, 2013, 127 Stat. 889, provided that:

''(a) REGULATIONS.—No later than 90 days after the date of the enactment of this Act [Dec. 26, 2013], the Secretary of Defense shall prescribe regulations implementing the authority in subsection (a) of section 1111 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84; 10 U.S.C. 1580 note prec.).

''(b) COORDINATION.—The Under Secretary of Defense (Comptroller), in consultation with the Under Secretary of Defense for Personnel and Readiness, shall be responsible for coordinating the preparation of the regulations required under subsection (a).

''(c) LIMITATIONS.—The regulations required under subsection (a) shall not be restricted by any civilian full-time equivalent or end-strength limitation, nor shall such regulations require offsetting civilian pay funding, civilian full-time equivalents, or civilian end-strengths.''

AVAILABILITY OF FUNDS FOR COMPENSATION OF CERTAIN CIVILIAN EMPLOYEES OF THE DEPARTMENT OF DEFENSE

Pub. L. 111–84, div. A, title XI, § 1111, Oct. 28, 2009, 123 Stat. 2495, as amended by Pub. L. 111–383, div. A, title X, § 1075(d)(16), Jan. 7, 2011, 124 Stat. 4373, provided that:

''(a) AVAILABILITY OF FUNDS.—Funds authorized to be appropriated for the Department of Defense that are available for the purchase of contract services to meet a requirement that is anticipated to continue for five years or more shall be available to provide compensation for civilian employees of the Department to meet the same requirement.

''(b) REGULATIONS.—Not later than 120 days after the date of the enactment of this Act [Oct. 28, 2009], the Secretary of Defense shall prescribe regulations implementing the authority in subsection (a). Such regulations—

''(1) shall ensure that the authority in subsection (a) is utilized to build government capabilities that are needed to perform inherently governmental functions, functions closely associated with inherently governmental functions, and other critical functions;

''(2) shall include a mechanism to ensure that follow-on funding to provide compensation for civilian employees of the Department to perform functions described in paragraph (1) is provided from appropriate accounts; and

''(3) may establish additional criteria and levels of approval within the Department for the utilization of funds to provide compensation for civilian employees of the Department pursuant to subsection (a).

''(c) ANNUAL REPORT.—Not later than 60 days after the end of each fiscal year for which the authority in

subsection (a) is in effect, the Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the use of such authority. Each report shall cover the preceding fiscal year and shall identify, at a minimum, the following:

''(1) The amount of funds used under the authority in subsection (a) to provide compensation for civilian employees.

''(2) The source or sources of the funds so used.

''(3) The number of civilian employees employed through the use of such funds.

''(4) The actions taken by the Secretary to ensure that follow-on funding for such civilian employees is provided through appropriate accounts.

''(d) TEMPORARY AUTHORITY.—The authority in subsection (a) shall apply to funds authorized to be appropriated for the Department of Defense for fiscal years 2010 through 2019.''

DEPARTMENT OF DEFENSE CIVILIAN LEADERSHIP PROGRAM

Pub. L. 111–84, div. A, title XI, § 1112, Oct. 28, 2009, 123 Stat. 2496, provided that:

''(a) LEADERSHIP PROGRAM REQUIRED.—

''(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act [Oct. 28, 2009], the Secretary of Defense shall establish a program of leadership recruitment and development for civilian employees of the Department of Defense, to be known as the 'Department of Defense Civilian Leadership Program' (in this section referred to as the 'program').

''(2) OBJECTIVES.—The objectives of the program shall be as follows:

''(A) To develop a new generation of civilian leaders for the Department of Defense.

''(B) To recruit individuals with the academic merit, work experience, and demonstrated leadership skills to meet the future needs of the Department.

''(C) To offer rapid advancement, competitive compensation, and leadership opportunities to highly qualified civilian employees of the Department.

''(3) AVAILABLE AUTHORITIES.—In carrying out the program, the Secretary may exercise any authority available to the Office of Personnel Management under section 4703 of title 5, United States Code, except that the Secretary shall not be bound by the limitations in subsection (d) of such section. Nothing in this section shall be construed to authorize the waiver of any part of chapter 71 of title 5, United States Code, or any regulation implementing such chapter, in the carrying out of the program.

''(b) ELIGIBLE INDIVIDUALS.—

''(1) IN GENERAL.—The following individuals shall be eligible to participate in the program:

''(A) Current employees of the Department of Defense.

''(B) Appropriate individuals in the private sector.

''(2) LIMITATION ON NUMBER OF PARTICIPANTS IN PROGRAM.—The total number of individuals who may participate in the program in any fiscal year may not exceed 5,000.

''(3) LIMITATION ON PERIOD OF PARTICIPATION IN PROGRAM.—The maximum period of time that an individual may participate in the program is three years.

''(c) ELEMENTS OF PROGRAM.—

''(1) COMPETITIVE ENTRY.—The selection of individuals for entry into the program shall be made on the basis of a competition conducted at least twice each year. In each competition, participants in the program shall be selected from among applicants determined by the Secretary to be the most highly qualified in terms of academic merit, work experience, and demonstrated leadership skills. Each competition shall provide for entry-level participants and midcareer participants in the program.

''(2) ALLOCATION OF POSITIONS.—The Secretary shall allocate positions in the program among the components of the Department of Defense that—

''(A) offer the most challenging assignments;

''(B) provide the greatest level of responsibility; and

''(C) demonstrate the greatest need for participants in the program.

''(3) ASSIGNMENTS TO POSITIONS.—Participants in the program shall be assigned to components of the Department that best match their skills and qualifications. Participants in the program may be rotated among components of the Department of Defense at the discretion of the Secretary.

''(4) INITIAL COMPENSATION.—The initial compensation of participants in the program shall be determined by the Secretary based on the qualifications of such participants and applicable market conditions.

''(5) EDUCATION AND TRAINING.—The Secretary shall provide participants in the program with training, mentoring, and educational opportunities that are appropriate to facilitate the development of such participants into effective civilian leaders for the Department of Defense.

''(6) OBJECTIVE, MERIT-BASED PRINCIPLES FOR PERSONNEL DECISIONS.—The Secretary shall make personnel decisions under the program in accordance with such objective, merit-based criteria as the Secretary shall prescribe in regulations for purposes of the program. Such criteria shall include, but not be limited to, criteria applicable to the following:

''(A) The selection of individuals for entry into the program.

''(B) The assignment of participants in the program to positions in the Department of Defense.

''(C) The initial compensation of participants in the program.

''(D) The access of participants in the program to training, mentoring, and educational opportunities under the program.

''(E) The consideration of participants in the program for selection into the senior management, functional, and technical workforce of the Department.

''(7) CONSIDERATION FOR SENIOR MANAGEMENT, FUNCTIONAL, AND TECHNICAL WORKFORCE.—Any participant in the program who, as determined by the Secretary, demonstrates outstanding performance shall be afforded priority in consideration for selection into the appropriate element of the senior management, functional, and technical workforce of the Department of Defense (as defined in [former] section 115b(f) of title 10, United States Code).''

DIRECT HIRE AUTHORITY AT PERSONNEL DEMONSTRATION LABORATORIES FOR CERTAIN CANDIDATES

Pub. L. 110–417, [div. A], title XI, § 1108, Oct. 14, 2008, 122 Stat. 4618, as amended by Pub. L. 111–383, div. A, title XI, § 1101(a), Jan. 7, 2011, 124 Stat. 4381; Pub. L. 112–81, div. A, title XI, § 1103, Dec. 31, 2011, 125 Stat. 1612, provided that:

''(a) AUTHORITY.—The Secretary of Defense may appoint qualified candidates possessing an advanced degree to positions described in subsection (b) without regard to the provisions of subchapter I of chapter 33 of title 5, United States Code, other than sections 3303 and 3328 of such title.

''(b) APPLICABILITY.—This section applies with respect to candidates for scientific and engineering positions within any laboratory designated by section 1105(a) of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84; 123 Stat. 2486; 10 U.S.C. 2358 note) as a Department of Defense science and technology reinvention laboratory.

''(c) LIMITATION.—(1) Authority under this section may not, in any calendar year and with respect to any laboratory, be exercised with respect to a number of candidates greater than the number equal to 5 percent of the total number of scientific and engineering positions within such laboratory that are filled as of the

close of the fiscal year last ending before the start of such calendar year.

"(2) For purposes of this subsection, positions and candidates shall be counted on a full-time equivalent basis.

"(d) EMPLOYEE DEFINED.—As used in this section, the term 'employee' has the meaning given such term by section 2105 of title 5, United States Code.

[Amendment by section 1101(a)(1) of Pub. L. 111–383 to section 1108(b) of Pub. L. 110–417, set out above, effective Oct. 28, 2009, and amendment by section 1101(a)(2) of Pub. L. 111–383 to section 1108(c) of Pub. L. 110–417, set out above, effective Jan. 7, 2011, see section 1101(d) of Pub. L. 111–383, set out as an Effective Date of 2011 Amendment note under section 9902 of Title 5, Government Organization and Employees.]

EMPLOYMENT FOR RESETTLED IRAQIS

Pub. L. 110–417, [div. A], title XII, §1235, Oct. 14, 2008, 122 Stat. 4641, provided that:

"(a) IN GENERAL.—The Secretary of Defense and the Secretary of State are authorized to jointly establish and operate a temporary program to offer employment as translators, interpreters, or cultural awareness instructors to individuals described in subsection (b). Individuals described in such subsection may be appointed to temporary positions of one year or less outside Iraq with either the Department of Defense or the Department of State, without competition and without regard for the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code. Such individuals may also be hired as personal services contractors by either of such Departments to provide translation, interpreting, or cultural awareness instruction, except that such individuals so hired shall not by virtue of such employment be considered employees of the United States Government, except for purposes of chapter 81 of title 5, United States Code, and chapter 171 of title 28, United States Code.

"(b) ELIGIBILITY.—Individuals referred to in subsection (a) are Iraqi nationals who—

"(1) have received a special immigrant visa issued pursuant to section 1059 of the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109–163) [8 U.S.C. 1101 note] or section 1244 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110–181) [8 U.S.C. 1157 note]; and

"(2) are lawfully present in the United States.

"(c) FUNDING.—

"(1) IN GENERAL.—Except as provided in paragraph (2), the program established under subsection (a) shall be funded from the annual general operating budget of the Department of Defense.

"(2) EXCEPTION.—The Secretary of State shall reimburse the Department of Defense for any costs associated with individuals described in subsection (b) whose work is for or on behalf of the Department of State.

"(d) RULE OF CONSTRUCTION REGARDING ACCESS TO CLASSIFIED INFORMATION.—Nothing in this section may be construed as affecting in any manner practices and procedures regarding the handling of or access to classified information.

"(e) INFORMATION SHARING.—The Secretary of Defense and the Secretary of State shall work with the Secretary of Homeland Security and the Office of Refugee Resettlement of the Department of Health and Human Services to ensure that individuals described in subsection (b) are informed of the program established under subsection (a).

"(f) REGULATION.—The Secretary of Defense, jointly with the Secretary of State and with the concurrence of the Director of the Office of Personnel Management, shall prescribe such regulations as are necessary to carry out the program established under subsection (a), including ensuring the suitability for employment described in subsection (a) of individuals described in subsection (b), determining the number of positions, and establishing pay scales and hiring procedures.

"(g) TERMINATION.—

"(1) IN GENERAL.—Except as provided in paragraph (2), the program established under subsection (a) shall terminate on December 31, 2014.

"(2) EARLIER TERMINATION.—If the Secretary of Defense, jointly with the Secretary of State, determines that the program established under subsection (a) should terminate before the date specified in paragraph (1), the Secretaries may terminate the program if the Secretaries notify Congress in writing of such termination at least 180 days before such termination."

STRATEGIC HUMAN CAPITAL PLAN FOR CIVILIAN EMPLOYEES OF THE DEPARTMENT OF DEFENSE

Pub. L. 110–181, div. A, title VIII, §851, Jan. 28, 2008, 122 Stat. 247, which required that, in updates of the strategic human capital plan, the Secretary of Defense was to include a separate section focused on the defense acquisition workforce, was repealed by Pub. L. 111–84, div. A, title XI, §1108(c)(3), Oct. 28, 2009, 123 Stat. 2492.

Pub. L. 109–163, div. A, title XI, §1122, Jan. 6, 2006, 119 Stat. 3452, which required the Secretary of Defense to develop and submit to the Committees on Armed Services of the Senate and House of Representatives a strategic human capital plan to shape and improve the civilian employee workforce of the Department of Defense, along with updates and the assessment of the Secretary of the progress of the Department in implementing the plan, and required the Comptroller General to submit to the Committees on Armed Services a report on the plan, was repealed by Pub. L. 111–84, div. A, title XI, §1108(c)(1), Oct. 28, 2009, 123 Stat. 2491.

§ 1580. Emergency essential employees: designation

(a) CRITERIA FOR DESIGNATION.—The Secretary of Defense or the Secretary of the military department concerned may designate as an emergency essential employee any employee of the Department of Defense, whether permanent or temporary, the duties of whose position meet all of the following criteria:

(1) It is the duty of the employee to provide immediate and continuing support for combat operations or to support maintenance and repair of combat essential systems of the armed forces.

(2) It is necessary for the employee to perform that duty in a combat zone after the evacuation of nonessential personnel, including any dependents of members of the armed forces, from the zone in connection with a war, a national emergency declared by Congress or the President, or the commencement of combat operations of the armed forces in the zone.

(3) It is impracticable to convert the employee's position to a position authorized to be filled by a member of the armed forces because of a necessity for that duty to be performed without interruption.

(b) ELIGIBILITY OF EMPLOYEES OF NONAPPROPRIATED FUND INSTRUMENTALITIES.—A nonappropriated fund instrumentality employee is eligible for designation as an emergency essential employee under subsection (a).

(c) DEFINITIONS.—In this section:

(1) The term "combat zone" has the meaning given that term in section 112(c)(2) of the Internal Revenue Code of 1986.

(2) The term "nonappropriated fund instrumentality employee" has the meaning given that term in section 1587(a)(1) of this title.

(Added Pub. L. 106–65, div. A, title XI, §1103(b)(1), Oct. 5, 1999, 113 Stat. 776.)

REFERENCES IN TEXT

Section 112(c)(2) of the Internal Revenue Code of 1986, referred to in subsec. (c)(1), is classified to section 112(c)(2) of Title 26, Internal Revenue Code.

PRIOR PROVISIONS

A prior section 1580, added Pub. L. 87–651, title II, §206(a), Sept. 7, 1962, 76 Stat. 519, related to appointment of civilian employees by the Secretary of Defense, prior to repeal by Pub. L. 89–554, §8(a), Sept. 6, 1966, 80 Stat. 663.

§ 1580a. Emergency essential employees: notification of required participation in anthrax vaccine immunization program

The Secretary of Defense shall—

(1) prescribe regulations for the purpose of ensuring that any civilian employee of the Department of Defense who is determined to be an emergency essential employee and who is required to participate in the anthrax vaccine immunization program is notified of the requirement to participate in the program and the consequences of a decision not to participate; and

(2) ensure that any individual who is being considered for a position as such an employee is notified of the obligation to participate in the program before being offered employment in such position.

(Added Pub. L. 106–398, §1 [[div. A], title VII, §751(c)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–194.)

§ 1581. Foreign National Employees Separation Pay Account

(a) ESTABLISHMENT AND PURPOSE.—There is established on the books of the Treasury an account to be known as the "Foreign National Employees Separation Pay Account, Defense". The account shall be used for the accumulation of funds to finance obligations of the United States for separation pay for foreign nationals referred to in subsection (e).

(b) DEPOSITS INTO ACCOUNT.—The Secretary of Defense shall deposit into the account from applicable appropriations all amounts obligated for separation pay for foreign nationals referred to in subsection (e).

(c) PAYMENTS FROM ACCOUNT.—Amounts in the account shall remain available for expenditure in accordance with the purpose for which obligated until expended.

(d) DEOBLIGATED FUNDS.—Any amount in the account that is deobligated shall be available for a period of two years from the date of deobligation for recording, adjusting, and liquidating amounts properly chargeable to the liability of the United States for which the obligation was made. Any such deobligated amount remaining at the end of such two-year period shall be canceled.

(e) EMPLOYEES COVERED.—This section applies only with respect to separation pay of foreign nationals employed by the Department of Defense, and foreign nationals employed by a foreign government for the benefit of the Department of Defense, under any of the following agreements that provide for payment of separation pay:

(1) A contract.

(2) A treaty.

(3) A memorandum of understanding with a foreign nation.

(Added Pub. L. 102–190, div. A, title X, §1003(a)(1), Dec. 5, 1991, 105 Stat. 1456; amended Pub. L. 102–484, div. A, title X, §1052(20), Oct. 23, 1992, 106 Stat. 2500; Pub. L. 103–337, div. A, title III, §346, Oct. 5, 1994, 108 Stat. 2724; Pub. L. 107–107, div. A, title X, §1048(e)(2), Dec. 28, 2001, 115 Stat. 1227.)

PRIOR PROVISIONS

A prior section 1581, acts Aug. 10, 1956, ch. 1041, 70A Stat. 118; Sept. 2, 1958, Pub. L. 85–861, §1(34), 72 Stat. 1456; May 29, 1959, Pub. L. 86–36, §3, 73 Stat. 63; Sept. 23, 1959, Pub. L. 86–377, §2, 73 Stat. 701; Oct. 4, 1961, Pub. L. 87–367, title II, §203, 75 Stat. 790; Oct. 11, 1962, Pub. L. 87–793, §1001(b), 76 Stat. 863, provided for appointment of a limited number of civilian research and development personnel and prescribed their relationship to civil service provisions, prior to repeal by Pub. L. 97–295, §1(19)(A), Oct. 12, 1982, 96 Stat. 1290.

AMENDMENTS

2001—Subsec. (b). Pub. L. 107–107 struck out par. (2) designation and "on or after December 5, 1991," after "all amounts obligated" and struck out par. (1) which read as follows: "The Secretary of the Treasury shall deposit into the account all amounts that were obligated by the Secretary of Defense before December 5, 1991, and that remain unexpended for separation pay for foreign nationals referred to in subsection (e)."

1994—Subsecs. (a), (b). Pub. L. 103–337, §346(1), substituted "foreign nationals referred to in subsection (e)" for "foreign national employees of the Department of Defense" wherever appearing.

Subsec. (e). Pub. L. 103–337, §346(2), added subsec. (e) and struck out former subsec. (e) which read as follows: "EMPLOYEES COVERED.—This section applies only with respect to separation pay of foreign nationals employed by the Department of Defense under any of the following agreements that provide for payment of separation pay:

"(1) A contract.

"(2) A treaty.

"(3) A memorandum of understanding with a foreign nation."

1992—Subsec. (b)(1), (2). Pub. L. 102–484 substituted "December 5, 1991," for "the date of the enactment of this section".

§ 1582. Assistive technology, assistive technology devices, and assistive technology services

(a) AUTHORITY.—The Secretary of Defense may provide assistive technology, assistive technology devices, and assistive technology services to the following:

(1) Department of Defense employees with disabilities.

(2) Organizations within the Department that have requirements to make programs or facilities accessible to, and usable by, persons with disabilities.

(3) Any other department or agency of the Federal Government, upon the request of the head of that department or agency, for its employees with disabilities or for satisfying a requirement to make its programs or facilities accessible to, and usable by, persons with disabilities.

(b) DEFINITIONS.—In this section, the terms "assistive technology", "assistive technology device", "assistive technology service", and "disability" have the meanings given those

terms in section 3 of the Assistive Technology Act of 1998 (29 U.S.C. 3002).

(Added Pub. L. 106–398, § 1 [[div. A], title XI, § 1102(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–311.)

PRIOR PROVISIONS

A prior section 1582, acts Aug. 10, 1956, ch. 1041, 70A Stat. 118; Sept. 2, 1958, Pub. L. 85–861, § 1(35), 72 Stat. 1456; Sept. 23, 1959, Pub. L. 86–377, § 3, 73 Stat. 701, directed Secretary of Defense to report annually to Congress on civilian research and development personnel employed by Department of Defense under former section 1581 of this title, prior to repeal by Pub. L. 97–295, § 1(19)(A), Oct. 12, 1982, 96 Stat. 1290.

§ 1583. Employment of certain persons without pay

The Secretary of Defense and the Secretaries of the military departments may each employ, without pay, not more than 10 persons of outstanding experience and ability. However, a person so employed may be allowed transportation, and not more than $15 a day instead of subsistence, while away from his home or regular place of business pursuant to employment under this section.

(Aug. 10, 1956, ch. 1041, 70A Stat. 118; Pub. L. 89–718, § 14, Nov. 2, 1966, 80 Stat. 1117; Pub. L. 97–295, § 1(20)(A), (B), Oct. 12, 1982, 96 Stat. 1290; Pub. L. 112–81, div. A, title XI, § 1111, Dec. 31, 2011, 125 Stat. 1616.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1583(a)	5:171v (less words of 1st sentence after semicolon).	Jan. 6, 1951, ch. 1213, subch. VII, § 704, 64 Stat. 1235.
1583(b)	5:171v (words of 1st sentence after semicolon).	

AMENDMENTS

2011—Pub. L. 112–81, § 1111(2), inserted "each" after "may" in first sentence.

Pub. L. 112–81, § 1111(1), which directed amendment of first sentence by inserting "and the Secretaries of the military departments" after "the Secretary of Defense", was executed by making the insertion after "The Secretary of Defense" to reflect the probable intent of Congress.

1982—Pub. L. 97–295 substituted "pay" for "compensation" in section catchline and text.

1966—Pub. L. 89–718 struck out designation "(a)" at beginning of section and repealed subsec. (b) which authorized the Secretary, by regulation, to exempt persons employed under provisions formerly designated subsec. (a) from former sections 281, 283, 284, 434, and 1914 of title 18 and former section 99 of title 5.

§ 1584. Employment of non-citizens

Laws prohibiting the employment of, or payment of pay or expenses to, a person who is not a citizen of the United States do not apply to personnel of the Department of Defense.

(Aug. 10, 1956, ch. 1041, 70A Stat. 118; Pub. L. 97–295, § 1(20)(A), Oct. 12, 1982, 96 Stat. 1290; Pub. L. 101–510, div. A, title XIV, §§ 1481(d)(1), (2), 1482(b), Nov. 5, 1990, 104 Stat. 1706, 1709; Pub. L. 104–106, div. A, title X, § 1062(b), Feb. 10, 1996, 110 Stat. 444.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1584	5:235c. 5:475h. 5:628c.	July 16, 1952, ch. 882, § 2, 66 Stat. 725.

The words "appointment or" are omitted as surplusage.

AMENDMENTS

1996—Pub. L. 104–106 struck out subsec. (a) heading "Waiver of employment restrictions for certain personnel", designated subsec. (a) as entire section, and struck out subsec. (b) which read as follows: "NOTICE TO CONGRESS OF CERTAIN SALARY INCREASES.—The Secretary of Defense shall notify the Committees on Armed Services and the Committees on Appropriations of the Senate and House of Representatives when any salary increase granted to direct and indirect hire foreign national employees of the Department of Defense overseas, stated as a percentage, is greater than the higher of the following percentages:

"(1) The percentage pay increase authorized by law for civilian employees of the Department of Defense whose pay is computed under the provisions of section 5332 of title 5.

"(2) The percentage increase provided to national government employees of the host nation."

1990—Pub. L. 101–510, § 1482(b), substituted "personnel of the Department of Defense" for "any expert, scientist, technician, or professional person whose employment in connection with the research and development activities of a military department is determined to be necessary by the Secretary of that department" in subsec. (a).

Pub. L. 101–510, § 1481(d)(1), (2), substituted "Employment of non-citizens" for "Laws relating to employment of non-citizens: not applicable to research and development activities" in section catchline, designated existing provisions as subsec. (a) and inserted heading, and added subsec. (b).

1982—Pub. L. 97–295 substituted "pay" for "compensation".

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 1482(b) of Pub. L. 101–510 effective Oct. 1, 1991, see section 1482(d) of Pub. L. 101–510, set out as a note under section 119 of this title.

CITIZENSHIP REQUIREMENT NOT APPLICABLE

Pub. L. 116–260, div. C, title VIII, § 8002, Dec. 27, 2020, 134 Stat. 1302, provided that: "During the current fiscal year, provisions of law prohibiting the payment of compensation to, or employment of, any person not a citizen of the United States shall not apply to personnel of the Department of Defense: *Provided*, That salary increases granted to direct and indirect hire foreign national employees of the Department of Defense funded by this Act [div. C of Pub. L. 116–260, see Tables for classification] shall not be at a rate in excess of the percentage increase authorized by law for civilian employees of the Department of Defense whose pay is computed under the provisions of section 5332 of title 5, United States Code, or at a rate in excess of the percentage increase provided by the appropriate host nation to its own employees, whichever is higher: *Provided further*, That this section shall not apply to Department of Defense foreign service national employees serving at United States diplomatic missions whose pay is set by the Department of State under the Foreign Service Act of 1980 [22 U.S.C. 3901 et seq.]: *Provided further*, That the limitations of this provision shall not apply to foreign national employees of the Department of Defense in the Republic of Turkey."

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 116–93, div. A, title VIII, § 8002, Dec. 20, 2019, 133 Stat. 2334.

Pub. L. 115–245, div. A, title VIII, § 8002, Sept. 28, 2018, 132 Stat. 2998.
Pub. L. 115–141, div. C, title VIII, § 8002, Mar. 23, 2018, 132 Stat. 462.
Pub. L. 115–31, div. C, title VIII, § 8002, May 5, 2017, 131 Stat. 245.
Pub. L. 114–113, div. C, title VIII, § 8002, Dec. 18, 2015, 129 Stat. 2349.
Pub. L. 113–235, div. C, title VIII, § 8002, Dec. 16, 2014, 128 Stat. 2251.
Pub. L. 113–76, div. C, title VIII, § 8002, Jan. 17, 2014, 128 Stat. 103.
Pub. L. 113–6, div. C, title VIII, § 8002, Mar. 26, 2013, 127 Stat. 295.
Pub. L. 112–74, div. A, title VIII, § 8002, Dec. 23, 2011, 125 Stat. 804.
Pub. L. 112–10, div. A, title VIII, § 8002, Apr. 15, 2011, 125 Stat. 55.
Pub. L. 111–118, div. A, title VIII, § 8002, Dec. 19, 2009, 123 Stat. 3426.
Pub. L. 110–329, div. C, title VIII, § 8002, Sept. 30, 2008, 122 Stat. 3619.
Pub. L. 110–116, div. A, title VIII, § 8002, Nov. 13, 2007, 121 Stat. 1313.
Pub. L. 109–289, div. A, title VIII, § 8002, Sept. 29, 2006, 120 Stat. 1271.
Pub. L. 109–148, div. A, title VIII, § 8002, Dec. 30, 2005, 119 Stat. 2697.
Pub. L. 108–287, title VIII, § 8002, Aug. 5, 2004, 118 Stat. 968.
Pub. L. 108–87, title VIII, § 8002, Sept. 30, 2003, 117 Stat. 1071.
Pub. L. 107–248, title VIII, § 8002, Oct. 23, 2002, 116 Stat. 1536.
Pub. L. 107–117, div. A, title VIII, § 8002, Jan. 10, 2002, 115 Stat. 2247.
Pub. L. 106–259, title VIII, § 8002, Aug. 9, 2000, 114 Stat. 674.
Pub. L. 106–79, title VIII, § 8002, Oct. 25, 1999, 113 Stat. 1230.
Pub. L. 105–262, title VIII, § 8002, Oct. 17, 1998, 112 Stat. 2296.
Pub. L. 105–56, title VIII, § 8002, Oct. 8, 1997, 111 Stat. 1219.
Pub. L. 104–208, div. A, title I, § 101(b) [title VIII, § 8002], Sept. 30, 1996, 110 Stat. 3009–71, 3009–87.
Pub. L. 104–61, title VIII, § 8002, Dec. 1, 1995, 109 Stat. 651.
Pub. L. 103–335, title VIII, § 8002, Sept. 30, 1994, 108 Stat. 2616.
Pub. L. 103–139, title VIII, § 8002, Nov. 11, 1993, 107 Stat. 1437.
Pub. L. 102–396, title IX, § 9002, Oct. 6, 1992, 106 Stat. 1900.
Pub. L. 102–172, title VIII, § 8002, Nov. 26, 1991, 105 Stat. 1170.
Pub. L. 101–511, title VIII, § 8002, Nov. 5, 1990, 104 Stat. 1873.
Pub. L. 101–165, title IX, § 9003, Nov. 21, 1989, 103 Stat. 1129.
Pub. L. 100–463, title VIII, § 8003, Oct. 1, 1988, 102 Stat. 2270–17.
Pub. L. 100–202, § 101(b) [title VIII, § 8004], Dec. 22, 1987, 101 Stat. 1329–43, 1329–62.
Pub. L. 99–500, § 101(c) [title IX, § 9004], Oct. 18, 1986, 100 Stat. 1783–82, 1783–101, and Pub. L. 99–591, § 101(c) [title IX, § 9004], Oct. 30, 1986, 100 Stat. 3341–82, 3341–101.
Pub. L. 99–190, § 101(b) [title VIII, § 8004], Dec. 19, 1985, 99 Stat. 1185, 1202.
Pub. L. 98–473, title I, § 101(h) [title VIII, § 8004], Oct. 12, 1984, 98 Stat. 1904, 1922.
Pub. L. 98–212, title VII, § 704, Dec. 8, 1983, 97 Stat. 1437.
Pub. L. 97–377, title I, § 101(c) [title VII, § 704], Dec. 21, 1982, 96 Stat. 1833, 1349.
Pub. L. 97–114, title VII, § 704, Dec. 29, 1981, 95 Stat. 1578.
Pub. L. 96–527, title VII, § 704, Dec. 15, 1980, 94 Stat. 3080.
Pub. L. 96–154, title VII, § 704, Dec. 21, 1979, 93 Stat. 1152.
Pub. L. 95–457, title VIII, § 804, Oct. 13, 1978, 92 Stat. 1243.
Pub. L. 95–111, title VIII, § 803, Sept. 21, 1977, 91 Stat. 899.
Pub. L. 94–419, title VII, § 703, Sept. 22, 1976, 90 Stat. 1290.
Pub. L. 94–212, title VII, § 703, Feb. 9, 1976, 90 Stat. 168.
Pub. L. 93–437, title VIII, § 803, Oct. 8, 1974, 88 Stat. 1224.
Pub. L. 93–238, title VII, § 703, Jan. 2, 1974, 87 Stat. 1038.
Pub. L. 92–570, title VII, § 703, Oct. 26, 1972, 86 Stat. 1196.
Pub. L. 92–204, title VII, § 703, Dec. 18, 1971, 85 Stat. 726.
Pub. L. 91–668, title VIII, § 803, Jan. 11, 1971, 84 Stat. 2029.
Pub. L. 91–171, title VI, § 603, Dec. 29, 1969, 83 Stat. 479.
Pub. L. 90–580, title V, § 502, Oct. 17, 1968, 82 Stat. 1129.
Pub. L. 90–96, title VI, § 602, Sept. 29, 1967, 81 Stat. 241.
Pub. L. 89–687, title VI, § 602, Oct. 15, 1966, 80 Stat. 990.
Pub. L. 89–213, title VI, § 602, Sept. 29, 1965, 79 Stat. 873.
Pub. L. 88–446, title V, § 502, Aug. 19, 1964, 78 Stat. 474.
Pub. L. 88–149, title V, § 502, Oct. 17, 1963, 77 Stat. 263.
Pub. L. 87–577, title V, § 502, Aug. 9, 1962, 76 Stat. 327.
Pub. L. 87–144, title VI, § 602, Aug. 17, 1961, 75 Stat. 375.
Pub. L. 86–601, title V, § 502, July 7, 1960, 74 Stat. 349.
Pub. L. 86–166, title V, § 602, Aug. 18, 1959, 73 Stat. 378.
Pub. L. 85–724, title VI, § 602, Aug. 22, 1958, 72 Stat. 723.
Pub. L. 85–117, title VI, § 602, Aug. 2, 1957, 71 Stat. 323.
July 2, 1956, ch. 488, title VI, § 602, 70 Stat. 467.
July 13, 1955, ch. 358, title VI, § 603, 69 Stat. 314.
June 30, 1954, ch. 432, title VII, § 703, 68 Stat. 349.
Aug. 1, 1953, ch. 305, title VI, § 603, 67 Stat. 349.
July 10, 1952, ch. 630, title VI, § 603, 66 Stat. 531.
Oct. 18, 1951, ch. 512, title VI, § 603, 65 Stat. 444.
Sept. 6, 1950, ch. 896, Ch. X, title VI, § 603, 64 Stat. 752.
Oct. 29, 1949, ch. 787, title VI, § 603, 63 Stat. 1017.
June 24, 1948, ch. 632, 62 Stat. 651.
July 30, 1947, ch. 357, title I, § 1, 61 Stat. 553.
July 16, 1946, ch. 583, § 1, 60 Stat. 543.
July 28, 1945, ch. 265, § 1, 59 Stat. 386.
June 28, 1944, ch. 303, § 1, 58 Stat. 575.
July 1, 1943, ch. 185, § 1, 57 Stat. 349.
July 2, 1942, ch. 477, § 1, 56 Stat. 613.

SALARY INCREASES TO FOREIGN NATIONAL EMPLOYEES; NOTICE TO CONGRESS

Pub. L. 100–463, title VIII, § 8114, Oct. 1, 1988, 102 Stat. 2270–38, which directed Secretary of Defense to notify House and Senate Committees on Appropriations when salary increases granted to foreign national employees were at a rate in excess of the percentage pay increase authorized by law for civilian employees of Department of Defense whose pay was computed under section 5332 of title 5 or at a rate in excess of the percentage increase provided to National Government employees of the host nation, whichever was higher, was repealed and restated in subsec. (b) of this section by Pub. L. 101–510, § 1481(d)(1)(B), (4)(A).

§ 1585. Carrying of firearms

Under regulations to be prescribed by the Secretary of Defense, civilian officers and employees of the Department of Defense may carry firearms or other appropriate weapons while assigned investigative duties or such other duties as the Secretary may prescribe.

(Added Pub. L. 85–577, § 1(1), July 31, 1958, 72 Stat. 455.)

§ 1585a. Special agents of the Defense Criminal Investigative Service: authority to execute warrants and make arrests

(a) AUTHORITY.—The Secretary of Defense may authorize any DCIS special agent described in subsection (b)—

(1) to execute and serve any warrant or other process issued under the authority of the United States; and

(2) to make arrests without a warrant—

(A) for any offense against the United States committed in the presence of that agent; and

(B) for any felony cognizable under the laws of the United States if the agent has probable cause to believe that the person to be arrested has committed or is committing the felony.

(b) AGENTS TO HAVE AUTHORITY.—Subsection (a) applies to any DCIS special agent whose duties include conducting, supervising, or coordinating investigations of criminal activity in programs and operations of the Department of Defense.

(c) GUIDELINES ON EXERCISE OF AUTHORITY.—The authority provided under subsection (a) shall be exercised in accordance with guidelines prescribed by the Inspector General of the Department of Defense and approved by the Attorney General and any other applicable guidelines prescribed by the Secretary of Defense or the Attorney General.

(d) DCIS SPECIAL AGENT DEFINED.—In this section, the term ''DCIS special agent'' means an employee of the Department of Defense who is a special agent of the Defense Criminal Investigative Service (or any successor to that service).

(Added Pub. L. 105–85, div. A, title X, § 1071(a), Nov. 18, 1997, 111 Stat. 1897.)

§ 1586. Rotation of career-conditional and career employees assigned to duty outside the United States

(a) In order to advance the programs and activities of the Defense Establishment, it is hereby declared to be the policy of the Congress to facilitate the interchange of civilian employees of the Defense Establishment between posts of duty in the United States and posts of duty outside the United States through the establishment and operation of programs for the rotation, to the extent consistent with the missions of the Defense Establishment and sound principles of administration, of such employees who are assigned to duty outside the United States.

(b) Notwithstanding any other provision of law, the Secretary of Defense with respect to civilian employees of the Department of Defense other than employees of a military department, and the Secretary of each military department with respect to civilian employees of such military department, may, under such regulations as each such Secretary may prescribe with respect to the employees concerned and in accordance with the policy and other provisions of this section, establish and operate programs of rotation which provide for the granting of the right to return to a position in the United States to each civilian employee in the department concerned—

(1) who, while serving under a career-conditional or career appointment in the competitive civil service, is assigned at the request of the department concerned to duty outside the United States,

(2) who satisfactorily completes such duty, and

(3) who applies, not later than 30 days after his completion of such duty, for the right to return to a position in the United States as provided by subsection (c).

The Secretary of the department concerned may provide by regulation for the waiver of the provisions of paragraphs (2) and (3), or of either of such paragraphs, in those cases in which the application of such paragraphs, or either of them, would be against equity and good conscience or against the public interest.

(c) The right to return to a position in the United States granted under this section shall be without reduction in the seniority, status, and tenure held by the employee immediately before his assignment to duty outside the United States and the employee shall be placed, not later than 30 days after the date on which he is determined to be immediately available to exercise such right in accordance with the following provisions:

(1) The employee shall be placed in the position which he held immediately before his assignment to duty outside the United States, if such position exists.

(2) If such position does not exist, or with his consent, the employee shall be placed in a vacant existing position, or in a new continuing position, for which he is qualified, available for the purposes of this section in the department concerned, in the same geographical area as, with rights and benefits equal to the rights and benefits of, and in a grade equal to the grade of, the position which he held immediately before his assignment to duty outside the United States.

(3) If the positions described in paragraph (1) and paragraph (2) do not exist, the employee shall be placed in an additional position which shall be established by the department concerned for a period not in excess of 90 days in order to carry out the purposes of this section. Such additional position shall be in the same geographical area as, with rights and benefits not less than the rights and benefits of, and in a grade not lower than the grade of, the position held by the employee immediately before his assignment to duty outside the United States.

(4) If, within 90 days after his placement in a position under paragraph (3) a vacant existing position or new continuing position, for which the employee is qualified, is available for the purposes of this section in the department concerned, in the same geographical area as, with rights and benefits equal to the rights and benefits of, and in a grade equal to the grade of, the position which he held immediately before his assignment to duty outside the United States, the employee shall be placed in such vacant existing position or new continuing position.

(5) If, within the 90-day period referred to in paragraphs (3) and (4), the employee cannot be placed in a position under paragraph (4), he shall be reassigned or separated under the regulations prescribed by the Office of Personnel Management to carry out sections 3501–3503 of title 5.

(6) If there is a termination of or material change in the activity in which the former po-

sition of the employee (referred to in paragraph (1)) was located, he shall be placed, in the manner provided by paragraphs (2), (3), and (4), as applicable, in a position in the department concerned in a geographical area other than the geographical area in which such former position was located.

(d) Each employee who is placed in a position under paragraph (1), (2), (3), (4), or (6) of subsection (c) shall be paid at a rate of basic pay which is not less than the rate of basic pay to which he would have been entitled if he had not been assigned to duty outside the United States.

(e)(1) Each employee who is displaced from a position by reason of the exercise of a return right under subsection (c)(1) shall be placed, as of the date of such displacement, without reduction in seniority, status, and tenure, in a vacant existing position or new continuing position, for which he is qualified, available in the department concerned, in the same geographical area as, with rights and benefits equal to the rights and benefits of, in a grade equal to the grade of, and at a rate of basic pay not less than the last rate of basic pay which is not less than the last rate of basic pay to which he was entitled while in, the position from which he is displaced.

(2) If the employee cannot be placed in a position under paragraph (1), he shall be reassigned to a position other than the position from which he is displaced, or separated, under the regulations prescribed by the Office of Personnel Management to carry out sections 3501–3503 of title 5.

(f) The President may, upon his determination that such action is necessary in the national interest, declare that, for such period as he may specify, an assignment of an employee to duty in Alaska or Hawaii shall be held and considered, for the purposes of this section, to be an assignment to duty outside the United States.

(g) In this section:

(1) The term ''rotation'' means the assignment of civilian employees referred to in subsection (b) to duty outside the United States and the return of such employees to duty within the United States.

(2) The term ''grade'' means, as applicable, a grade of the General Schedule as prescribed in section 5104 of title 5 or a grade or level of the appropriate prevailing rate schedule.

(h) The Secretary of Defense may, under such regulations as he may prescribe, make the provisions of subsections (a) through (g) applicable to civilian employees of the Department of Defense who are residents of Guam, the Virgin Islands, or the Commonwealth of Puerto Rico at the time of their employment by the Department of Defense in the same manner as if the references in such subsections to the United States (when used in a geographical sense) were references to Guam, the Virgin Islands, or the Commonwealth of Puerto Rico, as the case may be.

(Added Pub. L. 86–585, § 1, July 5, 1960, 74 Stat. 325; amended Pub. L. 89–718, § 15, Nov. 2, 1966, 80 Stat. 1117; Pub. L. 90–83, § 3(3), Sept. 11, 1967, 81 Stat. 220; Pub. L. 96–513, title V, § 511(61), Dec. 12, 1980, 94 Stat. 2925; Pub. L. 96–600, § 1, Dec. 24, 1980, 94 Stat. 3493; Pub. L. 97–295, § 1(20)(A), Oct. 12, 1982, 96 Stat. 1290; Pub. L. 98–525, title XIV, § 1405(29), Oct. 19, 1984, 98 Stat. 2623; Pub. L. 101–189, div. A, title XVI, § 1622(e)(4), Nov. 29, 1989, 103 Stat. 1605.)

AMENDMENTS

1989—Subsec. (g). Pub. L. 101–189, in introductory provisions, substituted ''In this section:'' for ''For the purposes of this section—'', in par. (1), inserted ''The term'' before '' 'rotation' '' and substituted the period for ''; and'', and in par. (2), inserted ''The term'' before '' 'grade' ''.

1984—Subsec. (b). Pub. L. 98–525, § 1405(29)(A)(iii), in provisions following par. (3) struck out ''of this subsection'' after ''paragraphs (2) and (3)''.

Subsec. (b)(3). Pub. L. 98–525, § 1405(29)(A)(i), (ii), substituted ''30'' for ''thirty'' and struck out ''of this section'' after ''subsection (c)''.

Subsec. (c). Pub. L. 98–525, § 1405(29)(B)(i), in provisions preceding par. (1) substituted ''30'' for ''thirty''.

Subsec. (c)(3). Pub. L. 98–525, § 1405(29)(B)(ii), (iv), substituted ''90 days'' for ''ninety days'' and struck out ''of this subsection'' after ''paragraph (2)''.

Subsec. (c)(4). Pub. L. 98–525, § 1405(29)(B)(ii), (iv), substituted ''90 days'' for ''ninety days'' and struck out ''of this subsection'' after ''paragraph (3)''.

Subsec. (c)(5). Pub. L. 98–525, § 1405(29)(B)(iii)–(v), substituted ''90-day'' for ''ninety-day'', struck out ''of this subsection'' after ''paragraphs (3) and (4)'', and struck out ''such'' before ''paragraph (4)''.

Subsec. (c)(6). Pub. L. 98–525, § 1405(29)(B)(vi), struck out ''of this subsection'' after ''paragraph (1)'' and ''of this subsection,'' after ''as applicable,''.

Subsec. (d). Pub. L. 98–525, § 1405(29)(C), struck out ''of this section'' after ''subsection (c)''.

Subsec. (e)(1). Pub. L. 98–525, § 1405(29)(C), struck out ''of this section'' after ''subsection (c)(1)''.

Subsec. (e)(2). Pub. L. 98–525, § 1405(29)(D), struck out ''of this subsection'' after ''paragraph (1)''.

Subsec. (g)(1). Pub. L. 98–525, § 1405(29)(C), struck out ''of this section'' after ''subsection (b)''.

1982—Subsecs. (d), (e)(1). Pub. L. 97–295 substituted ''pay'' for ''compensation'' wherever appearing.

1980—Subsecs. (c)(5), (e)(2). Pub. L. 96–513 substituted ''Office of Personnel Management'' for ''United States Civil Service Commission''.

Subsec. (h). Pub. L. 96–600 added subsec. (h).

1967—Subsec. (g)(2). Pub. L. 90–83 substituted ''General Schedule as prescribed in section 5104 of title 5'' for ''compensation schedule for the General Schedule of the Classification Act of 1949, as amended,''.

1966—Pub. L. 89–718 substituted ''sections 3501–3503 of title 5'' for ''section 12 of the Act of June 27, 1944 (5 U.S.C. 861)'' wherever appearing.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

EX. ORD. NO. 10895. DUTY IN ALASKA OR HAWAII

Ex. Ord. No. 10895, Nov. 25, 1960, 25 F.R. 12165, provided:

By virtue of the authority vested in me by section 1586(f) of title 10 of the United States Code, and as President of the United States, and having determined that such action is necessary in the national interest, it is ordered as follows:

SECTION 1. Assignment of an employee to duty in the State of Alaska or Hawaii under regulations prescribed pursuant to section 1586 of title 10 of the United States Code shall be held and considered for the purposes of that section, to be an assignment to duty outside the United States.

SEC. 2. The Secretary of Defense shall from time to time, and at least annually, consider the need for continuing this order in effect, and he shall recommend the revocation thereof at such time as he may deem such action advisable.

DWIGHT D. EISENHOWER.

§1587. Employees of nonappropriated fund instrumentalities: reprisals

(a) In this section:

(1) The term ''nonappropriated fund instrumentality employee'' means a civilian employee who is paid from nonappropriated funds of Army and Air Force Exchange Service, Navy Exchange Service Command, Marine Corps exchanges, or any other instrumentality of the United States under the jurisdiction of the armed forces which is conducted for the comfort, pleasure, contentment, or physical or mental improvement of members of the armed forces. Such term includes a civilian employee of a support organization within the Department of Defense or a military department, such as the Defense Finance and Accounting Service, who is paid from nonappropriated funds on account of the nature of the employee's duties.

(2) The term ''civilian employee'' has the meaning given the term ''employee'' by section 2105(a) of title 5.

(3) The term ''personnel action'', with respect to a nonappropriated fund instrumentality employee (or an applicant for a position as such an employee), means—

(A) an appointment;

(B) a promotion;

(C) a disciplinary or corrective action;

(D) a detail, transfer, or reassignment;

(E) a reinstatement, restoration, or reemployment;

(F) a decision concerning pay, benefits, or awards, or concerning education or training if the education or training may reasonably be expected to lead to an appointment, promotion, or other action described in this paragraph; and

(G) any other significant change in duties or responsibilities that is inconsistent with the employee's salary or grade level.

(b) Any civilian employee or member of the armed forces who has authority to take, direct others to take, recommend, or approve any personnel action shall not, with respect to such authority, take or fail to take, or threaten to take or fail to take, a personnel action with respect to any nonappropriated fund instrumentality employee (or any applicant for a position as such an employee) as a reprisal for—

(1) a disclosure of information by such an employee or applicant which the employee or applicant reasonably believes evidences—

(A) a violation of any law, rule, or regulation; or

(B) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;

if such disclosure is not specifically prohibited by law and if the information is not specifically required by or pursuant to executive order to be kept secret in the interest of national defense or the conduct of foreign affairs; or

(2) a disclosure by such an employee or applicant to any civilian employee or member of the armed forces designated by law or by the Secretary of Defense to receive disclosures described in clause (1), of information which the employee or applicant reasonably believes evidences—

(A) a violation of any law, rule, or regulation; or

(B) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

(c) This section does not apply to an employee in a position excluded from the coverage of this section by the President based upon a determination by the President that the exclusion is necessary and warranted by conditions of good administration.

(d) The Secretary of Defense shall be responsible for the prevention of actions prohibited by subsection (b) and for the correction of any such actions that are taken. The authority of the Secretary to correct such actions may not be delegated to the Secretary of a military department or to the Assistant Secretary of Defense for Manpower and Logistics.

(e) The Secretary of Defense, after consultation with the Director of the Office of Personnel Management and the Special Counsel of the Merit Systems Protection Board, shall prescribe regulations to carry out this section. Such regulations shall include provisions to protect the confidentiality of employees and applicants making disclosures described in clauses (1) and (2) of subsection (b) and to permit the reporting of alleged violations of subsection (b) directly to the Inspector General of the Department of Defense.

(Added Pub. L. 98–94, title XII, §1253(a)(1), Sept. 24, 1983, 97 Stat. 699; amended Pub. L. 100–26, §7(k)(2), Apr. 21, 1987, 101 Stat. 284; Pub. L. 104–106, div. A, title IX, §903(f)(3), title X, §1040(a)–(d)(1), Feb. 10, 1996, 110 Stat. 402, 433; Pub. L. 104–201, div. A, title IX, §901, Sept. 23, 1996, 110 Stat. 2617; Pub. L. 113–66, div. A, title VI, §641, Dec. 26, 2013, 127 Stat. 787.)

AMENDMENTS

2013—Subsec. (b). Pub. L. 113–66 inserted '', or threaten to take or fail to take,'' after ''take or fail to take''.

1996—Pub. L. 104–106, §1040(d)(1), inserted '': reprisals'' after ''instrumentalities'' in section catchline.

Subsec. (a)(1). Pub. L. 104–106, §1040(c), substituted ''Navy Exchange Service Command'' for ''Navy Resale and Services Support Office''.

Pub. L. 104–106, §1040(a), inserted at end ''Such term includes a civilian employee of a support organization within the Department of Defense or a military department, such as the Defense Finance and Accounting Service, who is paid from nonappropriated funds on account of the nature of the employee's duties.''

Subsec. (d). Pub. L. 104–106, §903(a), (f)(3), which directed amendment of subsec. (d), eff. Jan. 31, 1997, by substituting ''official in the Department of Defense with principal responsibility for personnel and readiness'' for ''Assistant Secretary of Defense for Manpower and Logistics'', was repealed by Pub. L. 104–201.

Subsec. (e). Pub. L. 104–106, §1040(b), inserted before period at end of second sentence ''and to permit the reporting of alleged violations of subsection (b) directly to the Inspector General of the Department of Defense''.

1987—Subsec. (a). Pub. L. 100–26 inserted ''The term'' after each par. designation and struck out uppercase letter of first word after first quotation marks in each par. and substituted lowercase letter.

EFFECTIVE DATE

Pub. L. 98–94, title XII, § 1253(b), Sept. 24, 1983, 97 Stat. 700, provided that: ''Section 1587 of such title [this section], as added by subsection (a), shall apply with respect to any conduct prohibited by subsection (b) of such section which occurs after the date of the enactment of this Act [Sept. 24, 1983].''

LIMITATION ON PROVISION OF OVERSEAS LIVING QUARTERS ALLOWANCES FOR NONAPPROPRIATED FUND INSTRUMENTALITY EMPLOYEES

Pub. L. 104–106, div. A, title X, § 1042, Feb. 10, 1996, 110 Stat. 434, provided that:

''(a) CONFORMING ALLOWANCE TO ALLOWANCES FOR OTHER CIVILIAN EMPLOYEES.—Subject to subsection (b), an overseas living quarters allowance paid from nonappropriated funds and provided to a nonappropriated fund instrumentality employee after the date of the enactment of this Act [Feb. 10, 1996] may not exceed the amount of a quarters allowance provided under subchapter III of chapter 59 of title 5 to a similarly situated civilian employee of the Department of Defense paid from appropriated funds.

''(b) APPLICATION TO CERTAIN CURRENT EMPLOYEES.—In the case of a nonappropriated fund instrumentality employee who, as of the date of the enactment of this Act [Feb. 10, 1996], receives an overseas living quarters allowance under any other authority, subsection (a) shall apply to such employee only after the earlier of—

''(1) September 30, 1997; or

''(2) the date on which the employee otherwise ceases to be eligible for such an allowance under such other authority.

''(c) NONAPPROPRIATED FUND INSTRUMENTALITY EMPLOYEE DEFINED.—For purposes of this section, the term 'nonappropriated fund instrumentality employee' has the meaning given such term in section 1587(a)(1) of title 10, United States Code.''

UNIFORM HEALTH BENEFITS PROGRAM FOR EMPLOYEES OF DEPARTMENT OF DEFENSE ASSIGNED TO NONAPPROPRIATED FUND INSTRUMENTALITIES

Pub. L. 103–337, div. A, title III, § 349, Oct. 5, 1994, 108 Stat. 2727, as amended by Pub. L. 108–375, div. A, title VI, § 652, Oct. 28, 2004, 118 Stat. 1973, provided that:

''(a) IN GENERAL.—Not later than October 1, 1995, the Secretary of Defense shall take such steps as may be necessary to provide a uniform health benefits program for employees of the Department of Defense assigned to a nonappropriated fund instrumentality of the Department.

''(b) PROGRESS REPORT.—Not later than March 15, 1995, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives a report on the progress made by the Secretary in implementing subsection (a).

''(c) TREATMENT OF PROGRAM AS FEDERAL HEALTH BENEFIT PROGRAM.—(1) No State tax, fee, other monetary payment, or State health plan requirement, may be imposed, directly or indirectly, on the Nonappropriated Fund Uniform Health Benefits Program of the Department of Defense, or on a carrier or an underwriting or plan administration contractor of the Program, to the same extent as such prohibition applies to the health insurance program authorized by chapter 89 of title 5, United States Code, under section 8909(f) of such title.

''(2) Paragraph (1) shall not be construed to exempt the Nonappropriated Fund Uniform Health Benefits Program of the Department of Defense, or any carrier or underwriting or plan administration contractor of the Program from the imposition, payment, or collection of a tax, fee, or other monetary payment on the net income or profit accruing to, or realized by, the Program or by such carrier or contractor from business conducted under the Program, so long as the tax, fee, or payment is applicable to a broad range of business activity.

''(3) In this subsection, the term 'State' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, and any political subdivision or other non-Federal authority thereof.''

§ 1587a. Employees of nonappropriated fund instrumentalities: senior executive pay levels

(a) AUTHORITY.—To achieve the objective stated in subsection (b), the Secretary of Defense may regulate the amount of total compensation that is provided for senior executives of nonappropriated fund instrumentalities who, for the fixing of pay by administrative action, are under the jurisdiction of the Secretary of Defense or the Secretary of a military department.

(b) PAY PARITY.—The objective of an action taken with respect to the compensation of senior executives under subsection (a) is to provide for parity between the total compensation provided for such senior executives and total compensation that is provided for Department of Defense employees in Senior Executive Service positions or other senior executive positions.

(c) STANDARDS OF COMPARABILITY.—Subject to subsection (d), the Secretary of Defense shall prescribe the standards of comparison that are to apply in the making of the determinations necessary to achieve the objective stated in subsection (b).

(d) ESTABLISHMENT OF PAY RATES.—The Secretary of Defense shall apply subsections (a) and (b) of section 5382 of title 5 in the regulation of compensation under this section.

(e) RELATIONSHIP TO PAY LIMITATION.—The Secretary of Defense may exercise the authority provided in subsection (a) without regard to section 5373 of title 5.

(f) DEFINITIONS.—In this section:

(1) The term ''compensation'' includes rate of basic pay.

(2) The term ''Senior Executive Service position'' has the meaning given such term in section 3132 of title 5.

(Added Pub. L. 108–375, div. A, title XI, § 1104(a), Oct. 28, 2004, 118 Stat. 2073.)

§ 1588. Authority to accept certain voluntary services

(a) AUTHORITY TO ACCEPT SERVICES.—Subject to subsection (b) and notwithstanding section 1342 of title 31, the Secretary concerned may accept from any person the following services:

(1) Voluntary medical services, dental services, nursing services, or other health-care related services.

(2) Voluntary services to be provided for a museum or a natural resources program.

(3) Voluntary services to be provided for programs providing services to members of the uniformed services and the families of such members, including the following programs:

(A) Family support programs.

(B) Child development and youth services programs.

(C) Library and education programs.

(D) Religious programs.

(E) Housing referral programs.

(F) Programs providing employment assistance to spouses of such members.

(G) Morale, welfare, and recreation programs, to the extent not covered by another subparagraph of this paragraph.

(4) Voluntary services as a member of a funeral honors detail under section 1491 of this title.

(5) Legal services voluntarily provided as legal assistance under section 1044 of this title.

(6) Voluntary services as a proctor for administration to secondary school students of the test known as the ''Armed Services Vocational Aptitude Battery''.

(7) Voluntary translation or interpretation services offered with respect to a foreign language by a person (A) who is registered for such foreign language on the National Foreign Language Skills Registry under section 1596b of this title, or (B) who otherwise is approved to provide voluntary translation or interpretation services for national security purposes, as determined by the Secretary of Defense.

(8) Voluntary services to support programs of a committee of the Employer Support of the Guard and Reserve as authorized by the Secretary of Defense.

(9) Voluntary services to facilitate accounting for missing persons.

(10) Voluntary legal support services provided by law students through internship and externship programs approved by the Secretary concerned.

(b) REQUIREMENTS AND LIMITATIONS.—(1) The Secretary concerned shall notify the person of the scope of the services accepted.

(2) With respect to a person providing voluntary services accepted under subsection (a), the Secretary concerned shall—

(A) supervise the person to the same extent as the Secretary would supervise a compensated employee providing similar services; and

(B) ensure that the person is licensed, privileged, has appropriate credentials, or is otherwise qualified under applicable law or regulations to provide such services.

(3) With respect to a person providing voluntary services accepted under subsection (a), the Secretary concerned may not—

(A) place the person in a policy-making position; or

(B) except as provided in subsection (e), compensate the person for the provision of such services.

(c) AUTHORITY TO RECRUIT AND TRAIN PERSONS PROVIDING SERVICES.—The Secretary concerned may recruit and train persons to provide voluntary services accepted under subsection (a).

(d) STATUS OF PERSONS PROVIDING SERVICES.—(1) Subject to paragraph (3), while providing voluntary services accepted under subsection (a) or receiving training under subsection (c), a person, other than a person referred to in paragraph (2), shall be considered to be an employee of the Federal Government only for purposes of the following provisions of law:

(A) Subchapter I of chapter 81 of title 5 (relating to compensation for work-related injuries).

(B) Section 2733 of this title and chapter 171 of title 28 (relating to claims for damages or loss) and chapters 309 and 311 of title 46 (relating to claims for damages or loss on navigable waters).

(C) Section 552a of title 5 (relating to maintenance of records on individuals).

(D) Chapter 11 of title 18 (relating to conflicts of interest).

(E) Section 1054 of this title (relating to legal malpractice), for a person voluntarily providing legal services accepted under subsection (a)(5), as if the person were providing the services as an attorney of a legal staff within the Department of Defense.

(2) Subject to paragraph (3), while providing a nonappropriated fund instrumentality of the United States with voluntary services accepted under subsection (a), or receiving training under subsection (c) to provide such an instrumentality with services accepted under subsection (a), a person shall be considered an employee of that instrumentality only for the following purposes:

(A) Subchapter II of chapter 81 of title 5 (relating to compensation of nonappropriated fund employees for work-related injuries).

(B) Section 2733 of this title and chapter 171 of title 28 (relating to claims for damages or loss).

(3) A person providing voluntary services accepted under subsection (a) shall be considered to be an employee of the Federal Government under paragraph (1) or (2) only with respect to services that are within the scope of the services so accepted.

(4) For purposes of determining the compensation for work-related injuries payable under chapter 81 of title 5 (pursuant to this subsection) to a person providing voluntary services accepted under subsection (a), the monthly pay of the person for such services shall be deemed to be the amount determined by multiplying—

(A) the average monthly number of hours that the person provided the services, by

(B) the minimum wage determined in accordance with section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)).

(e) REIMBURSEMENT OF INCIDENTAL EXPENSES.—The Secretary concerned may provide for reimbursement of a person for incidental expenses incurred by the person in providing voluntary services accepted under subsection (a). The Secretary shall determine which expenses are eligible for reimbursement under this subsection. Any such reimbursement may be made from appropriated or nonappropriated funds.

(f) AUTHORITY TO INSTALL EQUIPMENT.—(1) The Secretary concerned may install telephone lines and any necessary telecommunication equipment in the private residences of persons, designated in accordance with the regulations prescribed under paragraph (4), who provide voluntary services accepted under paragraph (3) or (8) of subsection (a).

(2) In the case of equipment installed under the authority of paragraph (1), the Secretary concerned may pay the charges incurred for the use of the equipment for authorized purposes.

(3) To carry out this subsection, the Secretary concerned may use appropriated funds (notwith-

standing section 1348 of title 31) or nonappropriated funds of the military department under the jurisdiction of the Secretary or, with respect to the Coast Guard, the department in which the Coast Guard is operating.

(4) The Secretary of Defense and, with respect to the Coast Guard when it is not operating as a service in the Navy, the Secretary of Homeland Security shall prescribe regulations to carry out this subsection.

(g) SECRETARY CONCERNED FOR ACCEPTANCE OF SERVICES FOR PROGRAMS SERVING MEMBERS OF NOAA CORPS AND THEIR FAMILIES.—For purposes of the acceptance of services described in subsection (a)(3), the term ''Secretary concerned'' in subsection (a) shall include the Secretary of Commerce with respect to members of the commissioned officer corps of the National Oceanic and Atmospheric Administration.

(Added Pub. L. 98–94, title XII, § 1266(a), Sept. 24, 1983, 97 Stat. 704; amended Pub. L. 99–145, title XVI, § 1624(a), Nov. 8, 1985, 99 Stat. 778; Pub. L. 99–661, div. A, title XIII, § 1355, Nov. 14, 1986, 100 Stat. 3996; Pub. L. 100–26, § 3(9), Apr. 21, 1987, 101 Stat. 274; Pub. L. 101–189, div. A, title XVI, § 1634, Nov. 29, 1989, 103 Stat. 1608; Pub. L. 102–190, div. A, title III, § 345, Dec. 5, 1991, 105 Stat. 1346; Pub. L. 103–337, div. A, title X, § 1061(a), Oct. 5, 1994, 108 Stat. 2845; Pub. L. 104–201, div. A, title X, § 1074(a)(8), Sept. 23, 1996, 110 Stat. 2659; Pub. L. 106–65, div. A, title III, § 371(a), title V, § 578(f), Oct. 5, 1999, 113 Stat. 579, 627; Pub. L. 107–107, div. A, title V, § 583, Dec. 28, 2001, 115 Stat. 1125; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 107–314, div. A, title V, § 553, title X, § 1064(b), Dec. 2, 2002, 116 Stat. 2552, 2654; Pub. L. 108–375, div. A, title V, § 516, title X, § 1081, Oct. 28, 2004, 118 Stat. 1884, 2059; Pub. L. 110–181, div. A, title X, § 1063(a)(9), Jan. 28, 2008, 122 Stat. 322; Pub. L. 112–239, div. A, title V, § 587(b), Jan. 2, 2013, 126 Stat. 1768; Pub. L. 113–291, div. A, title X, § 1043, Dec. 19, 2014, 128 Stat. 3493; Pub. L. 116–259, title II, § 205(b)(2), Dec. 23, 2020, 134 Stat. 1167.)

AMENDMENTS

2020—Subsec. (a)(3). Pub. L. 116–259, § 205(b)(2)(A), substituted ''uniformed services'' for ''armed forces'' in introductory provisions.

Subsec. (g). Pub. L. 116–259, § 205(b)(2)(B), added subsec. (g).

2014—Subsec. (a)(10). Pub. L. 113–291 added par. (10).

2013—Subsec. (a)(9). Pub. L. 112–239 added par. (9).

2008—Subsec. (d)(1)(B). Pub. L. 110–181 substituted ''chapters 309 and 311 of title 46'' for ''the Act of March 9, 1920, commonly known as the 'Suits in Admiralty Act' (41 Stat. 525; 46 U.S.C. App. 741 et seq.) and the Act of March 3, 1925, commonly known as the 'Public Vessels Act' (43 Stat. 1112; 46 U.S.C. App. 781 et seq.)''.

2004—Subsec. (a)(8). Pub. L. 108–375, § 516(1), added par. (8).

Subsec. (d)(1)(B). Pub. L. 108–375, § 1081, inserted before period at end ''and the Act of March 9, 1920, commonly known as the 'Suits in Admiralty Act' (41 Stat. 525; 46 U.S.C. App. 741 et seq.) and the Act of March 3, 1925, commonly known as the 'Public Vessels Act' (43 Stat. 1112; 46 U.S.C. App. 781 et seq.) (relating to claims for damages or loss on navigable waters)''.

Subsec. (f)(1). Pub. L. 108–375, § 516(2), substituted ''paragraph (3) or (8) of subsection (a)'' for ''subsection (a)(3)''.

2002—Subsec. (a)(6). Pub. L. 107–314, § 553, added par. (6).

Subsec. (a)(7). Pub. L. 107–314, § 1064(b), added par. (7).

Subsec. (f)(4). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

2001—Subsec. (a)(5). Pub. L. 107–107, § 583(a), added par. (5).

Subsec. (d)(1)(E). Pub. L. 107–107, § 583(b), added subpar. (E).

1999—Subsec. (a)(4). Pub. L. 106–65, § 578(f), added par. (4).

Subsec. (f). Pub. L. 106–65, § 371(a), added subsec. (f).

1996—Subsec. (d)(1)(C). Pub. L. 104–201 substituted ''Section 552a'' for ''Section 522a''.

1994—Pub. L. 103–337 amended section generally, substituting subsecs. (a) to (e) for former subsecs. (a) to (c) which related to acceptance by Secretary concerned of voluntary services, status of persons providing voluntary services, and reimbursement of expenses incurred by such persons.

1991—Subsec. (c). Pub. L. 102–190 substituted ''may be made from appropriated or nonappropriated funds'' for ''may only be made from nonappropriated funds''.

1989—Subsec. (a). Pub. L. 101–189 substituted ''a museum, a natural resources program, or'' for ''a museum or''.

1987—Subsec. (c). Pub. L. 100–26 made technical amendment to directory language of Pub. L. 99–661. See 1986 Amendment note below.

1986—Subsec. (c). Pub. L. 99–661, as amended by Pub. L. 100–26, added subsec. (c).

1985—Subsec. (a). Pub. L. 99–145 substituted ''Secretary concerned'' and ''operated by the military department concerned or the Coast Guard, as appropriate'' for ''Secretary of a military department'' and ''operated by that military department'', respectively.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–26 applicable as if included in Pub. L. 99–661 when enacted on Nov. 14, 1986, see section 12(a) of Pub. L. 100–26, set out as a note under section 776 of this title.

EFFECTIVE DATE OF 1985 AMENDMENT

Pub. L. 99–145, title XVI, § 1624(b), Nov. 8, 1985, 99 Stat. 778, provided that: ''The amendments made by this section [amending this section] shall take effect on October 1, 1985.''

REPORT ON IMPLEMENTATION OF AUTHORITY TO INSTALL TELECOMMUNICATIONS EQUIPMENT FOR PERSONS PERFORMING VOLUNTARY SERVICES

Pub. L. 106–65, div. A, title III, § 371(b), Oct. 5, 1999, 113 Stat. 579, provided that: ''Not later than two years after final regulations prescribed under subsection (f)(4) of section 1588 of title 10, United States Code, as added by subsection (a), take effect, the Comptroller General shall review the exercise of authority under such subsection (f) and submit to Congress a report on the findings resulting from the review.''

ACCEPTANCE OF VOLUNTARY SERVICES PILOT PROGRAM

Pub. L. 103–337, div. A, title X, § 1061(b), Oct. 5, 1994, 108 Stat. 2847, required the Secretary of Defense to conduct a pilot program, for not less than six months, to evaluate the policies and procedures of the Department of Defense for the acceptance of voluntary services under this section, with a final report due to Congress no later than 60 days after the termination of the program.

§ 1589. Participation in management of specified non-Federal entities: authorized activities

(a) AUTHORIZATION.—(1) The Secretary concerned may authorize an employee described in

paragraph (2) to serve without compensation as a director, officer, or trustee, or to otherwise participate, in the management of an entity designated under subsection (b). Any such authorization shall be made on a case-by-case basis, for a particular employee to participate in a specific capacity with a specific designated entity. Such authorization may be made only for the purpose of providing oversight and advice to, and coordination with, the designated entity, and participation of the employee in the activities of the designated entity may not extend to participation in the day-to-day operations of the entity.

(2) Paragraph (1) applies to any employee of the Department of Defense or, in the case of the Coast Guard when not operating as a service in the Navy, of the Department of Homeland Security. For purposes of this section, the term ''employee'' includes a civilian officer.

(b) DESIGNATED ENTITIES.—The Secretary of Defense, and the Secretary of Homeland Security in the case of the Coast Guard when it is not operating as a service in the Navy, shall designate those entities for which authorization under subsection (a) may be provided. The list of entities so designated may not be revised more frequently than semiannually. In making such designations, the Secretary shall designate each military welfare society named in paragraph (2) of section 1033(b) of this title and may designate any other entity described in paragraph (3) of such section. No other entities may be designated.

(c) PUBLICATION OF DESIGNATED ENTITIES AND OF AUTHORIZED PERSONS.—A designation of an entity under subsection (b), and an authorization under subsection (a) of an employee to participate in the management of such an entity, shall be published in the Federal Register.

(d) CIVILIANS OUTSIDE THE MILITARY DEPARTMENTS.—In this section, the term ''Secretary concerned'' includes the Secretary of Defense with respect to employees of the Department of Defense who are not employees of a military department.

(e) REGULATIONS.—The Secretary of Defense, and the Secretary of Homeland Security in the case of the Coast Guard when it is not operating as a service in the Navy, shall prescribe regulations to carry out this section.

(Added Pub. L. 105–85, div. A, title V, § 593(b)(1), Nov. 18, 1997, 111 Stat. 1763; amended Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

PRIOR PROVISIONS

A prior section 1589, added Pub. L. 98–525, title XIV, § 1401(f)(1), Oct. 19, 1984, 98 Stat. 2618, provided, with exceptions, for prohibition on payment of lodging expenses when adequate Government quarters were available, prior to repeal by Pub. L. 104–201, div. A, title XVI, § 1614(b)(1), Sept. 23, 1996, 110 Stat. 2739.

AMENDMENTS

2002—Subsecs. (a)(2), (b), (e). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

[§ 1590. Repealed. Pub. L. 104–201, div. A, title XVI, § 1633(a), Sept. 23, 1996, 110 Stat. 2751]

Section, added Pub. L. 99–569, title V, § 504(a), Oct. 27, 1986, 100 Stat. 3198; amended Pub. L. 100–178, title VI, § 602(b), Dec. 2, 1987, 101 Stat. 1016; Pub. L. 101–193, title V, § 503(a), Nov. 30, 1989, 103 Stat. 1708; Pub. L. 102–496, title IV, § 402(a), Oct. 24, 1992, 106 Stat. 3184; Pub. L. 103–35, title II, § 201(g)(2), May 31, 1993, 107 Stat. 100, related to management of civilian intelligence personnel of the military departments. See sections 1601 to 1603, 1606, and 1609 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1996, see section 1635 of Pub. L. 104–201, set out as an Effective Date of 1996 Amendment note under section 1593 of this title.

§ 1591. Reimbursement for travel and transportation expenses when accompanying Members of Congress

(a) Subject to subsection (b), the Secretary concerned may authorize reimbursement to a civilian employee who is accompanying a Member of Congress or a congressional employee on official travel for actual travel and transportation expenses incurred for such travel.

(b) The allowance provided in subsection (a) may be paid—

(1) at a rate that does not exceed the rate approved for official congressional travel; and

(2) only when the travel of the member is directed or approved by the Secretary concerned.

(c) In this section:

(1) The term ''Member of Congress'' means a member of the Senate or the House of Representatives, a Delegate to the House of Representatives, and the Resident Commissioner from Puerto Rico.

(2) The term ''congressional employee'' means an employee of a Member of Congress or an employee of Congress.

(3) The term ''Secretary concerned'' includes the Secretary of Defense with respect to civilian employees of the Department of Defense other than a military department.

(Added Pub. L. 100–180, div. A, title VI, § 617(b)(1), Dec. 4, 1987, 101 Stat. 1097.)

EFFECTIVE DATE

Pub. L. 100–180, div. A, title VI, § 617(c), Dec. 4, 1987, 101 Stat. 1097, as amended by Pub. L. 112–81, div. A, title VI, § 631(f)(4)(B), Dec. 31, 2011, 125 Stat. 1465; Pub. L. 112–239, div. A, title X, § 1076(a)(9), Jan. 2, 2013, 126 Stat. 1948, provided that: ''Subsection (h) of section 474 of title 37, United States Code (as added by subsection (a)), and section 1591 of title 10, United States Code (as added by subsection (b)), shall apply with respect to travel performed after the date of the enactment of this Act [Dec. 4, 1987].''

§ 1592. Prohibition on payment of severance pay to foreign nationals in the event of certain overseas base closures

Funds available to the Department of Defense (including funds in the Foreign National Employees Separation Pay Account, Defense, established under section 1581 of this title) may not be used to pay severance pay to a foreign na-

tional employed by the Department of Defense under a contract, a treaty, or a memorandum of understanding with a foreign nation that provides for payment of separation pay if the termination of the employment of the foreign national is the result of the closing of, or the curtailment of activities at, a United States military facility in that country at the request of the government of that country.

(Added Pub. L. 101–189, div. A, title III, §311(b)(1), Nov. 29, 1989, 103 Stat. 1411; amended Pub. L. 102–190, div. A, title X, §1003(b), Dec. 5, 1991, 105 Stat. 1456; Pub. L. 102–484, div. A, title X, §1052(21), Oct. 23, 1992, 106 Stat. 2500.)

CODIFICATION

Another section 1592 was renumbered section 1596 of this title.

AMENDMENTS

1992—Pub. L. 102–484 inserted ''section'' after ''established under''.

1991—Pub. L. 102–190 inserted ''(including funds in the Foreign National Employees Separation Pay Account, Defense, established under 1581 of this title)'' and substituted ''a contract, a treaty, or a memorandum of understanding with a foreign nation that provides for payment of separation pay'' for ''a contract performed in a foreign country''.

EFFECTIVE DATE

Pub. L. 101–189, div. A, title III, §311(b)(3), Nov. 29, 1989, 103 Stat. 1412, as amended by Pub. L. 102–484, div. A, title XIII, §1352(a), Oct. 23, 1992, 106 Stat. 2558, provided that:

''(A) Section 1592 of title 10, United States Code, as added by paragraph (1), shall take effect on the date of the enactment of this Act [Nov. 29, 1989].

''[(B) Repealed. Pub. L. 102–484, div. A, title XIII, §1352(a), Oct. 23, 1992, 106 Stat. 2558.]''

PROHIBITION ON PAYMENT OF SEVERANCE PAY TO CERTAIN FOREIGN NATIONALS IN THE PHILIPPINES

Pub. L. 102–484, div. A, title XIII, §1351, Oct. 23, 1992, 106 Stat. 2558, provided that:

''(a) PROHIBITION.—Funds available to the Department of Defense may not be used to pay severance pay to a foreign national employed by the Department of Defense in the Republic of the Philippines if the discontinuation of the employment of the foreign national is the result of the termination of basing rights of the United States military in the Republic of the Philippines.

''(b) PROHIBITION ON ALLOWANCE OF CERTAIN SEVERANCE PAY AS CONTRACT COSTS.—Funds available to the Department of Defense may not be used to pay the costs of severance pay paid by a contractor to a foreign national employed by the contractor under a defense service contract in the Philippines if the discontinuation of the employment of the foreign national is the result of the termination of basing rights of the United States military in the Philippines.''

§1593. Uniform allowance: civilian employees

(a) ALLOWANCE AUTHORIZED.—(1) The Secretary of Defense may pay an allowance to each civilian employee of the Department of Defense who is required by law or regulation to wear a prescribed uniform in the performance of official duties.

(2) In lieu of providing an allowance under paragraph (1), the Secretary may provide a uniform to a civilian employee referred to in such paragraph.

(3) This subsection shall not apply with respect to a civilian employee of the Defense Intelligence Agency who is entitled to an allowance under section 1622 of this title.

(b) AMOUNT OF ALLOWANCE.—Notwithstanding section 5901(a) of title 5, the amount of an allowance paid, and the cost of uniforms provided, under subsection (a) to a civilian employee may not exceed $400 per year (or such higher maximum amount as the Secretary of Defense may by regulation prescribe).

(c) TREATMENT OF ALLOWANCE.—An allowance paid, or uniform provided, under subsection (a) shall be treated in the same manner as is provided in section 5901(c) of title 5 for an allowance paid under that section.

(d) USE OF APPROPRIATED FUNDS FOR ALLOWANCE.—Amounts appropriated annually to the Department of Defense for the pay of civilian employees may be used for uniforms, or for allowance for uniforms, as authorized by this section and section 5901 of title 5.

(Added Pub. L. 101–189, div. A, title III, §336(a)(1), Nov. 29, 1989, 103 Stat. 1419; amended Pub. L. 101–510, div. A, title XIV, §1481(d)(3), Nov. 5, 1990, 104 Stat. 1706; Pub. L. 104–201, div. A, title XVI, §1633(e)(1), Sept. 23, 1996, 110 Stat. 2752; Pub. L. 110–181, div. A, title XI, §1113, Jan. 28, 2008, 122 Stat. 360.)

PRIOR PROVISIONS

Provisions similar to those in subsec. (d) of this section were contained in Pub. L. 101–165, title IX, §9010, Nov. 21, 1989, 103 Stat. 1131, which was set out as a note below, prior to repeal by Pub. L. 101–510, §1481(d)(4)(B).

AMENDMENTS

2008—Subsec. (b). Pub. L. 110–181 substituted ''$400 per year (or such higher maximum amount as the Secretary of Defense may by regulation prescribe).'' for ''$400 per year.''

1996—Subsec. (a)(3). Pub. L. 104–201 substituted ''section 1622'' for ''section 1606''.

1990—Subsec. (d). Pub. L. 101–510 added subsec. (d).

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–201, div. A, title XVI, §1635, Sept. 23, 1996, 110 Stat. 2752, provided that: ''This subtitle [subtitle B (§§1631–1635) of title XVI of div. A of Pub. L. 104–201, enacting sections 1601 to 1603, 1606 to 1610, and 1612 to 1614 of this title, amending this section, sections 1596, 1605, 1611, and 1621 of this title, and sections 7103 and 7511 of Title 5, Government Organization and Employees, renumbering sections 1599, 1602, 1606, and 1608 of this title as sections 1611, 1621, 1622, and 1623 of this title, respectively, repealing sections 1590, 1601, 1603, and 1604 of this title and section 833 of Title 50, War and National Defense, enacting provisions set out as a note under section 1601 of this title, and repealing provisions formerly set out in a National Security Agency Act of 1959 note under section 402 of Title 50] and the amendments made by this subtitle shall take effect on October 1, 1996.''

EFFECTIVE DATE

Pub. L. 101–189, div. A, title III, §336(c), Nov. 29, 1989, 103 Stat. 1419, provided that: ''The amendments made by this section [enacting this section and amending section 1606 of this title] shall take effect on January 1, 1990.''

AVAILABILITY OF FUNDS FOR PAY OF CIVILIAN EMPLOYEES FOR UNIFORMS

Pub. L. 101–165, title IX, §9010, Nov. 21, 1989, 103 Stat. 1131, which made appropriations available to Department of Defense for pay of civilian employees for uniforms, or allowances therefor, as authorized by section

5901 of title 5, was repealed and restated in subsec. (d) of this section by Pub. L. 101–510, § 1481(d)(3), (4)(B).

§ 1594. Reimbursement for financial institution charges incurred because of Government error in direct deposit of pay

(a)(1) A civilian officer or employee of the Department of Defense who, in accordance with law or regulation, participates in a program for the automatic deposit of pay to a financial institution may be reimbursed for a covered late-deposit charge.

(2) A covered late-deposit charge for purposes of paragraph (1) is a charge (including an overdraft charge or a minimum balance charge) that is levied by a financial institution and that results from an administrative or mechanical error on the part of the Government that causes the pay of the officer or employee concerned to be deposited late or in an incorrect manner or amount.

(b) Reimbursements under this section shall be made from appropriations available for the pay of the officer or employee concerned.

(c) The Secretaries concerned shall prescribe regulations to carry out this section, including regulations for the manner in which reimbursement under this section is to be made.

(d) In this section:

(1) The term ''financial institution'' means a bank, savings and loan association, or similar institution or a credit union chartered by the United States or a State.

(2) The term ''pay'' includes allowances.

(Added Pub. L. 101–189, div. A, title VI, § 664(b)(1), Nov. 29, 1989, 103 Stat. 1466; amended Pub. L. 101–510, div. A, title XIV, § 1484(k)(6), Nov. 5, 1990, 104 Stat. 1719; Pub. L. 102–25, title VII, § 701(e)(8)(A), Apr. 6, 1991, 105 Stat. 115; Pub. L. 105–261, div. A, title V, § 564(b), Oct. 17, 1998, 112 Stat. 2029.)

AMENDMENTS

1998—Subsec. (d)(1). Pub. L. 105–261 amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''The term 'financial institution' has the meaning given the term 'financial organization' in section 3332(a) of title 31.''

1991—Pub. L. 102–25 struck out ''mandatory'' after ''error in'' in section catchline.

1990—Subsec. (d). Pub. L. 101–510 substituted ''In this section'' for ''in this section''.

EFFECTIVE DATE

Section applicable with respect to pay and allowances deposited (or scheduled to be deposited) on or after first day of first month beginning after Nov. 29, 1989, see section 664(c) of Pub. L. 101–189, set out as an Effective Date of 1989 Amendment note under section 1053 of this title.

§ 1595. Civilian faculty members at certain Department of Defense schools: employment and compensation

(a) AUTHORITY OF SECRETARY.—The Secretary of Defense may employ as many civilians as professors, instructors, and lecturers at the institutions specified in subsection (c) as the Secretary considers necessary.

(b) COMPENSATION OF FACULTY MEMBERS.—The compensation of persons employed under this section shall be as prescribed by the Secretary.

(c) COVERED INSTITUTIONS.—This section applies with respect to the following institutions of the Department of Defense:

(1) The National Defense University.

(2) The Foreign Language Center of the Defense Language Institute.

(3) The English Language Center of the Defense Language Institute.

(4) The Western Hemisphere Institute for Security Cooperation.

(5) The Joint Special Operations University.

(6) The Defense Security Cooperation University.

(7) The Defense Institute for Security Governance.

(d) APPLICATION TO FACULTY MEMBERS AT NDU.—In the case of the National Defense University, this section applies with respect to persons selected by the Secretary for employment as professors, instructors, and lecturers at the National Defense University after February 27, 1990.

(Added Pub. L. 101–189, div. A, title XI, § 1124(a)(1), Nov. 29, 1989, 103 Stat. 1558; amended Pub. L. 102–25, title VII, § 701(h)(1), Apr. 6, 1991, 105 Stat. 115; Pub. L. 102–190, div. A, title IX, § 911, Dec. 5, 1991, 105 Stat. 1452; Pub. L. 102–484, div. A, title IX, § 923(a)(1), (2)(A), Oct. 23, 1992, 106 Stat. 2474; Pub. L. 103–160, div. A, title IX, § 923(a)(1), Nov. 30, 1993, 107 Stat. 1731; Pub. L. 104–201, div. A, title XVI, § 1607, Sept. 23, 1996, 110 Stat. 2737; Pub. L. 105–85, div. A, title IX, §§ 921(c), 922(b), Nov. 18, 1997, 111 Stat. 1863; Pub. L. 108–136, div. A, title XI, § 1115, Nov. 24, 2003, 117 Stat. 1636; Pub. L. 109–364, div. A, title IX, § 904(b)(1), Oct. 17, 2006, 120 Stat. 2353; Pub. L. 115–232, div. A, title V, § 555, Aug. 13, 2018, 132 Stat. 1773; Pub. L. 116–283, div. A, title XI, § 1107, Jan. 1, 2021, 134 Stat. 3891.)

AMENDMENTS

2021—Subsec. (c)(6), (7). Pub. L. 116–283 added pars. (6) and (7).

2018—Subsec. (c)(5). Pub. L. 115–232 added par. (5).

2006—Subsec. (c)(3) to (6). Pub. L. 109–364, § 904(b)(1)(A), redesignated pars. (4) and (6) as (3) and (4), respectively, and struck out former pars. (3) and (5) which related to the George C. Marshall European Center for Security Studies and the Asia-Pacific Center for Security Studies, respectively.

Subsec. (e). Pub. L. 109–364, § 904(b)(1)(B), struck out heading and text of subsec. (e). Text read as follows: ''In addition to the persons specified in subsection (a), this section also applies with respect to the Director and the Deputy Director of the following:

''(1) The George C. Marshall European Center for Security Studies.

''(2) The Asia-Pacific Center for Security Studies.

''(3) The Center for Hemispheric Defense Studies.''

2003—Subsec. (c)(6). Pub. L. 108–136 added par. (6).

1997—Subsec. (d). Pub. L. 105–85, § 921(c), struck out ''(1)'' before ''In the case of'' and struck out par. (2) which read as follows: ''For purposes of this section, the National Defense University includes the National War College, the Armed Forces Staff College, the Institute for National Strategic Study, and the Industrial College of the Armed Forces.''

Subsecs. (e), (f). Pub. L. 105–85, § 922(b), added subsec. (e) and struck out former subsecs. (e) and (f) which read as follows:

''(e) APPLICATION TO DIRECTOR AND DEPUTY DIRECTOR AT GEORGE C. MARSHALL CENTER.—In the case of the George C. Marshall European Center for Security Studies, this section also applies with respect to the Director and the Deputy Director.

"(f) APPLICATION TO DIRECTOR AND DEPUTY DIRECTOR AT ASIA-PACIFIC CENTER FOR SECURITY STUDIES.—In the case of the Asia-Pacific Center for Security Studies, this section also applies with respect to the Director and the Deputy Director."

1996—Subsec. (c)(4), (5). Pub. L. 104–201, §1607(a), added pars. (4) and (5).

Subsec. (f). Pub. L. 104–201, §1607(b), added subsec. (f).

1993—Pub. L. 103–160 substituted "Civilian faculty members at certain Department of Defense schools: employment and compensation" for "National Defense University: Foreign Language Center of the Defense Language Institute: civilian faculty members" as section catchline and amended text generally, substituting subsecs. (a) to (e) for former subsecs. (a) to (d) relating to similar subject matter but not including coverage of the George C. Marshall European Center for Security Studies.

1992—Pub. L. 102–484, §923(a)(2)(A), substituted "University; Foreign Language Center of the Defense Language Institute" for "University:" in section catchline.

Subsec. (a). Pub. L. 102–484, §923(a)(1)(A), inserted "and the Foreign Language Center of the Defense Language Institute" after "National Defense University".

Subsec. (c). Pub. L. 102–484, §923(a)(1)(B), substituted "In the case of the National Defense University, this section" for "This section".

1991—Subsec. (c). Pub. L. 102–25 substituted "after February 27, 1990" for "after the end of the 90-day period beginning on the date of the enactment of this section".

Subsec. (d). Pub. L. 102–190 inserted "the Institute for National Strategic Study," after "Staff College,".

EFFECT OF 1992 AMENDMENTS ON CURRENT EMPLOYEES

Pub. L. 102–484, div. A, title IX, §923(b), Oct. 23, 1992, 106 Stat. 2474, provided that: "In the case of a person who, on the day before the date of the enactment of this Act [Oct. 23, 1992], is employed as a professor, instructor, or lecturer at the Foreign Language Center of the Defense Language Institute, the Secretary of Defense shall afford the person an opportunity to elect to be paid under the compensation plan authorized by section 1595(b) of title 10, United States Code, or to continue to be paid under the General Schedule (with no reduction in pay) under section 5332 of title 5, United States Code."

§1596. Foreign language proficiency: special pay for proficiency beneficial for intelligence interests

(a) The Secretary of Defense may pay special pay under this section to a civilian officer or employee of the Department of Defense who—

(1) has been certified as being proficient in a foreign language identified by the Secretary of Defense as being a language in which proficiency by civilian personnel of the Department is important for the effective collection, production, or dissemination of foreign intelligence information; and

(2) is serving in a position, or is subject to assignment to a position, in which proficiency in that language facilitates performance of officially assigned intelligence or intelligence-related duties.

(b) The annual rate of special pay under subsection (a) shall be determined by the Secretary of Defense.

(c) Special pay under this section may be paid in addition to any compensation authorized under section 1602 of this title for which an officer or employee is eligible.

(Added Pub. L. 101–193, title V, §501(a)(1), Nov. 30, 1989, 103 Stat. 1707, §1592; renumbered §1596, Pub. L. 101–510, div. A, title XIV, §1484(a), Nov. 5, 1990, 104 Stat. 1715; amended Pub. L. 104–201, div. A, title XVI, §1633(e)(2), Sept. 23, 1996, 110 Stat. 2752; Pub. L. 106–398, §1 [[div. A], title XI, §1131(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–317.)

AMENDMENTS

2000—Pub. L. 106–398 substituted "Foreign language proficiency: special pay for proficiency beneficial for intelligence interests" for "Foreign language proficiency: special pay" as section catchline.

1996—Subsec. (c). Pub. L. 104–201 substituted "section 1602" for "section 1604(b)".

1990—Pub. L. 101–510 renumbered the second section 1592 of this title as this section.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–201 effective Oct. 1, 1996, see section 1635 of Pub. L. 104–201, set out as a note under section 1593 of this title.

EFFECTIVE DATE

Pub. L. 101–193, title V, §501(b), Nov. 30, 1989, 103 Stat. 1708, provided that: "Section 1592 [now 1596] of title 10, United States Code, as added by subsection (a), shall take effect on the first day of the first pay period beginning on or after the later of—

"(1) October 1, 1989, or

"(2) the date of the enactment of this Act [Nov. 30, 1989]."

§1596a. Foreign language proficiency: special pay for proficiency beneficial for other national security interests

(a) AUTHORITY.—The Secretary of Defense may pay special pay under this section to an employee of the Department of Defense who—

(1) has been certified by the Secretary to be proficient in a foreign language identified by the Secretary as being a language in which proficiency by civilian personnel of the Department is necessary because of national security interests;

(2) is assigned duties requiring proficiency in that foreign language; and

(3) is not receiving special pay under section 1596 of this title.

(b) RATE.—The rate of special pay for an employee under this section shall be prescribed by the Secretary, but may not exceed five percent of the employee's rate of basic pay.

(c) RELATIONSHIP TO OTHER PAY AND ALLOWANCES.—Special pay under this section is in addition to any other pay or allowances to which the employee is entitled.

(d) REGULATIONS.—The Secretary of Defense shall prescribe regulations to carry out this section.

(Added Pub. L. 106–398, §1 [[div. A], title XI, §1131(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–317; amended Pub. L. 108–375, div. A, title XI, §1102(a), Oct. 28, 2004, 118 Stat. 2072.)

AMENDMENTS

2004—Subsec. (a)(2). Pub. L. 108–375 struck out "during a contingency operation supported by the armed forces" after "foreign language".

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–375, div. A, title XI, §1102(b), Oct. 28, 2004, 118 Stat. 2072, provided that: "The amendment by this section [amending this section] shall take effect on the first day of the first month that begins after the date of the enactment of this Act [Oct. 28, 2004]."

§ 1596b. Foreign language proficiency: National Foreign Language Skills Registry

(a) ESTABLISHMENT.—(1) The Secretary of Defense may establish and maintain a registry of persons who—

(A) have proficiency in one or more critical foreign languages;

(B) are willing to provide linguistic services to the United States in the interests of national security during war or a national emergency; and

(C) meet the eligibility requirements of subsection (b).

(2) The registry shall be known as the ''National Foreign Language Skills Registry'' (in this section referred to as the ''Registry'').

(b) ELIGIBLE PERSONS.—To be eligible for listing on the Registry, a person—

(1) must be—

(A) a national of the United States (as defined in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22))); or

(B) an alien lawfully admitted for permanent residence (as defined in section 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(20)));

(2) shall express willingness, in a form and manner prescribed by the Secretary—

(A) to provide linguistic services for a foreign language as described in subsection (a); and

(B) to be listed on the Registry; and

(3) shall meet such language proficiency and other selection criteria as may be prescribed by the Secretary.

(c) REGISTERED INFORMATION.—The Registry shall consist of the following:

(1) The names of eligible persons selected by the Secretary for listing on the Registry.

(2) Such other information on such persons as the Secretary determines pertinent to the use of such persons to provide linguistic services as described in subsection (a).

(d) PROTECTION OF PRIVACY.—The Secretary may withhold from public disclosure the information maintained in the Registry in accordance with section 552a of title 5.

(e) DESIGNATION OF CRITICAL FOREIGN LANGUAGES.—The Secretary shall designate those languages that are critical foreign languages for the purposes of this section. The Secretary shall make such a designation for any foreign language for which there is a shortage of experts in translation or interpretation available to meet requirements of the Secretary or of the head of any other department or agency of the United States for translation or interpretation in the national security interests of the United States.

(f) LINGUISTIC SERVICES DEFINED.—In this section, the term ''linguistic services'' means translation or interpretation of communication in a foreign language.

(Added Pub. L. 107–314, div. A, title X, § 1064(a)(1), Dec. 2, 2002, 116 Stat. 2653.)

§ 1596c. Programming language proficiency: special pay for proficiency beneficial for national security interests

(a) AUTHORITY.—The Secretary of Defense, under the sole and exclusive discretion of the Secretary, may pay special pay under this section to an employee of the Department of Defense who—

(1) has been certified by the Secretary to be proficient in a computer or digital programming language identified by the Secretary as being a language in which proficiency by civilian personnel of the Department is necessary because of national security interests; and

(2) is assigned duties requiring proficiency in that programming language.

(b) RATE.—The rate of special pay for an employee under this section shall be prescribed by the Secretary, but may not exceed 20 percent of the employee's rate of basic pay.

(c) RELATIONSHIP TO OTHER PAY AND ALLOWANCES.—Special pay under this section is in addition to any other pay or allowances to which the employee is entitled.

(d) REGULATIONS.—The Secretary of Defense shall prescribe regulations to carry out this section.

(Added Pub. L. 116–283, div. A, title II, § 241(c)(1), Jan. 1, 2021, 134 Stat. 3487.)

§ 1597. Civilian positions: guidelines for reductions

(a) REQUIREMENT OF GUIDELINES FOR REDUCTIONS IN CIVILIAN POSITIONS.—Reductions in the number of civilian positions of the Department of Defense during a fiscal year, if any, shall be carried out in accordance with the guidelines established pursuant to subsection (b).

(b) GUIDELINES.—The Secretary of Defense shall establish guidelines for the manner in which reductions in the number of civilian positions of the Department of Defense are made. In establishing the guidelines, the Secretary shall ensure that nothing in the guidelines conflicts with the requirements of section 129 of this title or the policies and procedures established under section 129a of this title. The guidelines shall include procedures for reviewing civilian positions for reductions according to the following order:

(1) Positions filled by foreign national employees overseas.

(2) All other positions filled by civilian employees overseas.

(3) Overhead, indirect, and administrative positions in headquarters or field operating agencies in the United States.

(4) Direct operating or production positions in the United States.

(c) EXCEPTIONS.—The Secretary of Defense may permit a variation from the guidelines established under subsection (b) if the Secretary determines that such variation is critical to the national security. The Secretary shall immediately notify the Congress of any such variation and the reasons for such variation.

(d) INVOLUNTARY REDUCTIONS OF CIVILIAN POSITIONS.—The Secretary of Defense may not implement any involuntary reduction or furlough of civilian positions in a military department, Defense Agency, or other component of the Department of Defense until the expiration of the 45-day period beginning on the date on which the Secretary submits to Congress a report setting forth the reasons why such reductions or fur-

loughs are required and a description of any change in workload or positions requirements that will result from such reductions or furloughs.

(e) REDUCTIONS BASED PRIMARILY ON PERFORMANCE.—The Secretary of Defense shall establish procedures to provide that, in implementing any reduction in force for civilian positions in the Department of Defense in the competitive service or the excepted service, the determination of which employees shall be separated from employment in the Department shall be made primarily on the basis of performance, as determined under any applicable performance management system.

(Added Pub. L. 101–510, div. A, title III, § 322(a)(1), Nov. 5, 1990, 104 Stat. 1528; amended Pub. L. 102–484, div. A, title III, § 371(a), Oct. 23, 1992, 106 Stat. 2382; Pub. L. 103–35, title II, § 201(d)(1), May 31, 1993, 107 Stat. 98; Pub. L. 103–160, div. A, title III, § 363, Nov. 30, 1993, 107 Stat. 1628; Pub. L. 112–81, div. A, title IX, § 933(b), Dec. 31, 2011, 125 Stat. 1544; Pub. L. 114–92, div. A, title XI, § 1101(a), Nov. 25, 2015, 129 Stat. 1022; Pub. L. 115–91, div. A, title X, § 1051(a)(6)(A), Dec. 12, 2017, 131 Stat. 1560.)

AMENDMENTS

2017—Subsec. (c). Pub. L. 115–91, § 1051(a)(6)(A)(iii), struck out ''or a master plan prepared under subsection (c)'' after ''established under subsection (b)''.

Pub. L. 115–91, § 1051(a)(6)(A)(ii), which directed the ''striking'' of subsec. (d) as (c), was executed by redesignating subsec. (d) as (c), to reflect the probable intent of Congress.

Pub. L. 115–91, § 1051(a)(6)(A)(i), struck out subsec. (c) which related to civilian positions master plan.

Subsecs. (d) to (f). Pub. L. 115–91, § 1051(a)(6)(A)(ii), which directed the ''striking'' of subsecs. (e) and (f) as (d) and (e), respectively, was executed by redesignating subsecs. (e) and (f) as (d) and (e), respectively, to reflect the probable intent of Congress.

2015—Subsec. (f). Pub. L. 114–92 added subsec. (f).

2011—Subsec. (b). Pub. L. 112–81 inserted after first sentence ''In establishing the guidelines, the Secretary shall ensure that nothing in the guidelines conflicts with the requirements of section 129 of this title or the policies and procedures established under section 129a of this title.''

1993—Subsec. (a). Pub. L. 103–160, § 363(a)(1), substituted ''during a fiscal year'' for ''during fiscal year 1993''.

Subsec. (b). Pub. L. 103–160, § 363(a)(2), struck out ''for fiscal year 1993'' after ''establish guidelines'' in introductory provisions.

Subsec. (c)(1). Pub. L. 103–160, § 363(b)(1), substituted ''for each fiscal year'' for ''for fiscal year 1994''.

Subsec. (c)(3)(A)(v). Pub. L. 103–35, § 201(d)(1)(A)(i), substituted ''Defense Agency'' for ''defense agency''.

Subsec. (c)(3)(A)(vii). Pub. L. 103–160, § 363(b)(2), added cl. (vii).

Subsec. (c)(3)(C). Pub. L. 103–35, § 201(d)(1)(A)(ii), substituted ''Defense Agency'' for ''defense agency'' after ''to which the military department,'' and ''Defense Agency,'' for ''defense agency'' after ''for the military department,''.

Subsec. (c)(4). Pub. L. 103–160, § 363(b)(3), added par. (4).

Subsec. (e). Pub. L. 103–35, § 201(d)(1)(B), substituted ''on the date'' for ''of the date''.

1992—Pub. L. 102–484 substituted ''Civilian positions: guidelines for reductions'' for ''Employees of industrial-type or commercial-type activities: guidelines for future reductions'' as section catchline and amended text generally, substituting subsecs. (a) to (e) for former subsecs. (a) to (c).

PILOT PROGRAM FOR PAYMENT OF RETRAINING EXPENSES

Pub. L. 107–107, div. A, title XI, § 1102, Dec. 28, 2001, 115 Stat. 1235, authorized the Secretary of Defense to establish a pilot program to facilitate the reemployment of eligible employees of the Department of Defense who were involuntarily separated due to a reduction in force, relocation as a result of a transfer of function, realignment, or change of duty station, and to pay retraining incentives to encourage non-Federal employers to hire and retain such employees, and provided that no incentive could be paid under such program for training commenced after Sept. 30, 2005.

NON-FEDERAL EMPLOYMENT INCENTIVE PILOT PROGRAM

Pub. L. 103–337, div. A, title III, § 348, Oct. 5, 1994, 108 Stat. 2725, authorized the Secretary of Defense to establish a pilot program for the payment of incentives to facilitate the reemployment of eligible employees of the Department of Defense whose employment with the Department was being terminated by reason of the closure or realignment of the military installations where such persons were employed, to pay retraining and relocation incentives to encourage non-Federal employers to hire and retain such employees, and to pay a relocation incentive to an eligible employee if it was necessary for the employee to relocate in order to commence employment with a non-Federal employer under such program, and provided that no incentive could be paid under such program for training or relocations commenced after Sept. 30, 1999.

SKILL TRAINING PROGRAMS IN DEPARTMENT OF DEFENSE

Pub. L. 102–484, div. D, title XLIV, § 4435, Oct. 23, 1992, 106 Stat. 2722, authorized the Secretaries of the military departments and the Secretary of Defense, during the period beginning on Oct. 1, 1992, and ending on Sept. 30, 1995, to provide not more than one year of training in training facilities of the Department of Defense to civilian employees of the Department who were separated from employment as a result of a reduction in force or a closure or realignment of a military installation, and directed the Secretary to publish a register of the skill training programs carried out by the Department not later than Feb. 1, 1993.

INVOLUNTARY REDUCTIONS OF CIVILIAN PERSONNEL IN FISCAL YEAR 1991

Pub. L. 101–510, div. A, title III, § 322(b), Nov. 5, 1990, 104 Stat. 1529, provided that after Nov. 5, 1990, an agency or component of the Department of Defense could not implement any involuntary reductions or furloughs of civilian personnel in industrial-type or commercial-type activities in fiscal year 1991 until 45 days after the date on which the agency or component submitted a report to Congress outlining the reasons why such reductions or furloughs were required.

§ 1598. Assistance to terminated employees to obtain certification and employment as teachers or employment as teachers' aides

(a) PLACEMENT PROGRAM.—The Secretary of Defense may establish a program—

(1) to assist eligible civilian employees of the Department of Defense and the Department of Energy after the termination of their employment to obtain—

(A) certification or licensure as elementary or secondary school teachers; or

(B) the credentials necessary to serve as teachers' aides; and

(2) to facilitate the employment of such employees by local educational agencies that—

(A) are receiving grants under title I of the Elementary and Secondary Education Act of

1965 (20 U.S.C. 6301 et seq.) as a result of having within their jurisdictions concentrations of children from low-income families; and

(B) are also experiencing a shortage of teachers or teachers' aides.

(b) ELIGIBLE EMPLOYEES.—(1) A civilian employee of the Department of Defense or the Department of Energy shall be eligible for selection by the Secretary of Defense to participate in the placement program authorized by subsection (a) if the employee—

(A) during the five-year period beginning October 1, 1992, is terminated from such employment as a result of reductions in defense spending or the closure or realignment of a military installation, as determined by the Secretary of Defense or the Secretary of Energy, as the case may be;

(B) has received—

(i) in the case of an employee applying for assistance for placement as an elementary or secondary school teacher, a baccalaureate or advanced degree from an accredited institution of higher education; or

(ii) in the case of an employee applying for assistance for placement as a teacher's aide in an elementary or secondary school, an associate, baccalaureate, or advanced degree from an accredited institution of higher education or a junior or community college; and

(C) satisfies such other criteria for selection as the Secretary of Defense may prescribe.

(2) The Secretary of Defense may accept an application from a civilian employee referred to in paragraph (1) who was terminated during the period beginning on October 1, 1990, and ending on October 1, 1992, if the employee otherwise satisfies the eligibility criteria specified in that paragraph.

(c) SELECTION OF PARTICIPANTS.—(1) Selection of civilian employees to participate in the placement program shall be made on the basis of applications submitted to the Secretary of Defense after the employees receive a notice of termination. An application shall be filed within such time, in such form, and contain such information as the Secretary of Defense may require.

(2) In selecting participants to receive assistance for placement as elementary or secondary school teachers, the Secretary of Defense shall give priority to civilian employees who—

(A) have educational, military, or employment experience in science, mathematics, or engineering and agree to seek employment as science, mathematics, or engineering teachers in elementary or secondary schools; or

(B) have educational, military, or employment experience in another subject area identified by the Secretary, in consultation with the Secretary of Education, as important for national educational objectives and agree to seek employment in that subject area in elementary or secondary schools.

(3) The Secretary of Defense may not select a civilian employee to participate in the program unless the Secretary has sufficient appropriations for the placement program available at the time of the selection to satisfy the obligations to be incurred by the United States under the program with respect to that member.

(d) AGREEMENT.—A civilian employee selected to participate in the placement program shall be required to enter into an agreement with the Secretary of Defense in which the employee agrees—

(1) to obtain, within such time as the Secretary may require, certification or licensure as an elementary or secondary school teacher or the necessary credentials to serve as a teacher's aide in an elementary or secondary school; and

(2) to accept—

(A) in the case of an employee selected for assistance for placement as a teacher, an offer of full-time employment as an elementary or secondary school teacher for not less than two school years with a local educational agency identified under section 1151(b)(2)[1] of this title, as in effect on October 4, 1999, to begin the school year after obtaining that certification or licensure; or

(B) in the case of an employee selected for assistance for placement as a teacher's aide, an offer of full-time employment as a teacher's aide in an elementary or secondary school for not less than two school years with a local educational agency identified under section 1151(b)(3)[1] of this title, as in effect on October 4, 1999, to begin the school year after obtaining the necessary credentials.

(e) STIPEND FOR PARTICIPANTS.—(1) Except as provided in paragraph (2), the Secretary of Defense shall pay to each participant in the placement program a stipend in an amount equal to the lesser of—

(A) $5,000; or

(B) the total costs of the type described in paragraphs (1), (2), (3), (8), and (9) of section 472 of the Higher Education Act of 1965 (20 U.S.C. 1087*ll*) incurred by the participant while obtaining teacher certification or licensure or the necessary credentials to serve as a teacher's aide and employment as an elementary or secondary school teacher or teacher aide.

(2) A civilian employee selected to participate in the placement program who receives separation pay under section 5597 of title 5 shall not be paid a stipend under paragraph (1).

(3) A stipend paid under paragraph (1) shall be taken into account in determining the eligibility of the participant for Federal student financial assistance provided under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.).

(f) PLACEMENT OF PARTICIPANTS AS TEACHERS AND TEACHERS' AIDES.—Subsections (h) through (k) of section 1151[1] of this title, as in effect on October 4, 1999, shall apply with respect to the placement program authorized by this section.

(Added Pub. L. 102–484, div. D, title XLIV, §4442(a), Oct. 23, 1992, 106 Stat. 2730; amended Pub. L. 103–35, title II, §201(h)(1), May 31, 1993, 107 Stat. 100; Pub. L. 103–160, div. A, title XIII, §1331(c)(2), Nov. 30, 1993, 107 Stat. 1792; Pub. L. 103–382, title III, §391(b)(3), Oct. 20, 1994, 108 Stat. 4021; Pub. L. 104–106, div. A, title XV, §1503(a)(14), Feb. 10, 1996, 110 Stat. 511; Pub. L.

[1] See References in Text note below.

104–201, div. A, title V, § 576(b), Sept. 23, 1996, 110 Stat. 2535; Pub. L. 106–398, § 1 [[div. A], title X, § 1087(a)(11)], Oct. 30, 2000, 114 Stat. 1654, 1654A–290.)

REFERENCES IN TEXT

The Elementary and Secondary Education Act of 1965, referred to in subsec. (a)(2)(A), is Pub. L. 89–10, Apr. 11, 1965, 79 Stat. 27. Title I of the Act is classified generally to subchapter I (§ 6301 et seq.) of chapter 70 of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 6301 of Title 20 and Tables.

Section 1151 of this title, referred to in subsecs. (d)(2)(A), (B) and (f), was repealed by Pub. L. 106–65, div. A, title XVII, § 1707(a)(1), Oct. 5, 1999, 113 Stat. 823, and a new section 1151 of this title was subsequently added by Pub. L. 109–364, § 561(a).

The Higher Education Act of 1965, referred to in subsec. (e)(3), is Pub. L. 89–329, Nov. 8, 1965, 79 Stat. 1219. Title IV of the Act is classified generally to subchapter IV (§ 1070 et seq.) of chapter 28 of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20 and Tables.

AMENDMENTS

2000—Subsec. (d)(2). Pub. L. 106–398, § 1 [[div. A], title X, § 1087(a)(11)(A)], inserted ''as in effect on October 4, 1999,'' after ''of this title,'' in subpars. (A) and (B).

Subsec. (f). Pub. L. 106–398, § 1 [[div. A], title X, § 1087(a)(11)(B)], inserted '', as in effect on October 4, 1999,'' after ''of this title''.

1996—Subsec. (a)(2)(A). Pub. L. 104–106 substituted ''6301'' for ''2701''.

Subsec. (d)(2)(A), (B). Pub. L. 104–201 substituted ''two school years'' for ''five school years''.

1994—Subsec. (a)(2)(A). Pub. L. 103–382 struck out ''chapter 1 of'' after ''grants under''.

1993—Subsec. (d)(2)(A), (B). Pub. L. 103–160 substituted ''five school years'' for ''two school years''.

Subsec. (e)(4). Pub. L. 103–35 struck out par. (4) which read as follows: ''A person who receives a stipend under section 4436 of this title shall not be paid a stipend pursuant to paragraph (1).''

EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103–160, div. A, title XIII, § 1331(h), Nov. 30, 1993, 107 Stat. 1793, provided that: ''The amendments made by subsections (c) and (d) [amending this section and sections 1151 and 2410j of this title] shall not apply with respect to—

''(1) persons selected by the Secretary of Defense before the date of the enactment of this Act [Nov. 30, 1993] to participate in the teacher and teacher's aide placement programs established pursuant to sections 1151, 1598, and 2410j of title 10, United States Code; or

''(2) agreements entered into by the Secretary before such date with local educational agencies under such sections.''

SAVINGS PROVISION

Pub. L. 104–201, div. A, title V, § 576(d), Sept. 23, 1996, 110 Stat. 2535, provided that: ''The amendments made by this section [amending this section and sections 1151 and 2410j of this title] do not affect obligations under agreements entered into in accordance with section 1151, 1598, or 2410j of title 10, United States Code, before the date of the enactment of this Act [Sept. 23, 1996].''

[§ 1599. Renumbered § 1611]

§ 1599a. Financial assistance to certain employees in acquisition of critical skills

(a) TRAINING PROGRAM.—The Secretary of Defense shall establish an undergraduate training program with respect to civilian employees in the Military Department Civilian Intelligence Personnel Management System that is similar in purpose, conditions, content, and administration to the program established by the Secretary of Defense under section 16 of the National Security Agency Act of 1959 (50 U.S.C. 3614) for civilian employees of the National Security Agency.

(b) USE OF FUNDS FOR TRAINING PROGRAM.—Any payment made by the Secretary to carry out the program required to be established by subsection (a) may be made in any fiscal year only to the extent that appropriated funds are available for that purpose.

(Added Pub. L. 104–93, title V, § 505(a), Jan. 6, 1996, 109 Stat. 973; amended Pub. L. 112–239, div. A, title X, § 1076(f)(20), Jan. 2, 2013, 126 Stat. 1952; Pub. L. 113–291, div. A, title X, § 1071(c)(9), Dec. 19, 2014, 128 Stat. 3509.)

AMENDMENTS

2014—Subsec. (a). Pub. L. 113–291 substituted ''(50 U.S.C. 3614)'' for ''(50 U.S.C. 402 note)''.

2013—Subsec. (a). Pub. L. 112–239 substituted ''National Security Agency Act'' for ''National Security Act''.

§ 1599b. Employees abroad: travel expenses; health care

(a) IN GENERAL.—The Secretary of Defense may provide civilian employees, and members of their families, abroad with benefits that are comparable to certain benefits that are provided by the Secretary of State to members of the Foreign Service and their families abroad as described in subsections (b) and (c). The Secretary may designate the employees and members of families who are eligible to receive the benefits.

(b) TRAVEL AND RELATED EXPENSES.—The Secretary of Defense may pay travel expenses and related expenses for purposes and in amounts that are comparable to the purposes for which, and the amounts in which, travel and related expenses are paid by the Secretary of State under section 901 of the Foreign Service Act of 1980 (22 U.S.C. 4081).

(c) HEALTH CARE PROGRAM.—The Secretary of Defense may establish a health care program that is comparable to the health care program established by the Secretary of State under section 904 of the Foreign Service Act of 1980 (22 U.S.C. 4084).

(d) ASSISTANCE.—The Secretary of Defense may enter into agreements with the heads of other departments and agencies of the Government in order to facilitate the payment of expenses authorized by subsection (b) and to carry out a health care program authorized by subsection (c).

(e) ABROAD DEFINED.—In this section, the term ''abroad'' means outside—

(1) the United States; and

(2) the territories and possessions of the United States.

(Added Pub. L. 104–201, div. A, title XVI, § 1604(a), Sept. 23, 1996, 110 Stat. 2735.)

§ 1599c. Health care professionals: enhanced appointment and compensation authority for personnel for care and treatment of wounded and injured members of the armed forces

(a) IN GENERAL.—(1) The Secretary of Defense may, at the discretion of the Secretary, exercise any authority for the appointment and pay of health care personnel under chapter 74 of title 38 for purposes of the recruitment, employment, and retention of civilian health care professionals for the Department of Defense if the Secretary determines that the exercise of such authority is necessary in order to provide or enhance the capacity of the Department to provide care and treatment for members of the armed forces who are wounded or injured on active duty in the armed forces and to support the ongoing patient care and medical readiness, education, and training requirements of the Department of Defense.

(2)(A) For purposes of section 3304 of title 5, the Secretary of Defense may—

(i) designate any category of medical or health professional positions within the Department of Defense as a shortage category occupation or critical need occupation; and

(ii) utilize the authority in such section to recruit and appoint qualified persons directly in the competitive service to positions so designated.

(B) In using the authority provided by this paragraph, the Secretary shall apply the principles of preference for the hiring of veterans and other persons established in subchapter I of chapter 33 of title 5.

(C) Any designation by the Secretary for purposes of subparagraph (A)(i) shall be based on an analysis of current and future Department of Defense workforce requirements.

(b) TERMINATION OF AUTHORITY.—(1) The authority of the Secretary of Defense under subsection (a)(1) to exercise authorities available under chapter 74 of title 38 for purposes of the recruitment, employment, and retention of civilian health care professionals for the Department of Defense expires December 31, 2025.

(2) The Secretary may not appoint a person to a position of employment under subsection (a)(2) after December 31, 2025.

(Added Pub. L. 107–107, div. A, title XI, § 1104(a), Dec. 28, 2001, 115 Stat. 1236; amended Pub. L. 110–181, div. A, title XVI, § 1636(a), Jan. 28, 2008, 122 Stat. 463; Pub. L. 110–417, [div. A], title XI, § 1107, Oct. 14, 2008, 122 Stat. 4617; Pub. L. 111–383, div. A, title X, § 1075(b)(22), title XI, § 1104, Jan. 7, 2011, 124 Stat. 4370, 4383; Pub. L. 113–66, div. A, title XI, § 1109, Dec. 26, 2013, 127 Stat. 890; Pub. L. 116–283, div. A, title XI, § 1116, Jan. 1, 2021, 134 Stat. 3897.)

PRIOR PROVISIONS

A prior section 1599c, added Pub. L. 104–201, div. A, title XVI, § 1615(a)(1), Sept. 23, 1996, 110 Stat. 2740; amended Pub. L. 105–85, div. A, title X, § 1073(a)(31), Nov. 18, 1997, 111 Stat. 1902, related to treatment of a Department of Defense violation of veterans' preference requirements as a prohibited personnel practice, prior to repeal by Pub. L. 105–339, § 6(c)(1)(A), Oct. 31, 1998, 112 Stat. 3188.

AMENDMENTS

2021—Subsec. (b). Pub. L. 116–283 substituted "December 31, 2025" for "December 31, 2020" in pars. (1) and (2).

2013—Subsec. (a)(2)(A). Pub. L. 113–66, § 1109(c)(1), substituted "section 3304 of title 5" for "sections 3304, 5333, and 5753 of title 5" in introductory provisions.

Subsec. (a)(2)(A)(ii). Pub. L. 113–66, § 1109(c)(2), substituted "the authority in such section" for "the authorities in such sections".

Subsec. (b). Pub. L. 113–66, § 1109(b), redesignated subsec. (c) as (b) and struck out former subsec. (b) which related to recruitment of personnel.

Subsec. (c). Pub. L. 113–66, § 1109(b)(2), redesignated subsec. (c) as (b).

Pub. L. 113–66, § 1109(a), substituted "December 31, 2020" for "December 31, 2015" in pars. (1) and (2).

2011—Subsec. (a)(2)(A)(i). Pub. L. 111–383, § 1104(a)(1)(A), substituted "a shortage category occupation or critical need occupation" for "shortage category positions".

Subsec. (a)(2)(A)(ii). Pub. L. 111–383, § 1104(a)(1)(B), substituted "qualified persons directly in the competitive service" for "highly qualified persons directly".

Subsec. (a)(2)(B). Pub. L. 111–383, § 1075(b)(22), substituted "subchapter I" for "subchapter 1".

Subsec. (a)(2)(C). Pub. L. 111–383, § 1104(a)(2), added subpar. (C).

Subsec. (c)(1). Pub. L. 111–383, § 1104(b)(1), inserted "under subsection (a)(1)" after "Secretary of Defense" and substituted "December 31, 2015" for "September 30, 2012".

Subsec. (c)(2). Pub. L. 111–383, § 1104(b)(2), substituted "December 31, 2015" for "September 30, 2012".

2008—Pub. L. 110–181 amended section generally. Prior to amendment, section related to appointment in excepted service of certain health care professionals.

Subsec. (a). Pub. L. 110–417, § 1107(a), designated existing provisions as par. (1) and added par. (2).

Subsec. (c). Pub. L. 110–417, § 1107(b), designated existing provisions as par. (1), substituted "September 30, 2012" for "September 30, 2010", and added par. (2).

WAGE RATE ADJUSTMENT FOR CERTAIN HEALTH CARE OCCUPATIONS

Pub. L. 112–10, div. A, title VIII, § 8086, Apr. 15, 2011, 125 Stat. 76, provided that: "Notwithstanding any other provision of law or regulation, during the current fiscal year and hereafter, the Secretary of Defense may adjust wage rates for civilian employees hired for certain health care occupations as authorized for the Secretary of Veterans Affairs by section 7455 of title 38, United States Code."

§ 1599d. Financial management positions: authority to prescribe professional certification and credential standards

(a) AUTHORITY TO PRESCRIBE PROFESSIONAL CERTIFICATION AND CREDENTIAL STANDARDS.—The Secretary of Defense may prescribe professional certification and credential standards for financial management positions within the Department of Defense, including requirements for formal education and requirements for certifications that individuals have met predetermined qualifications set by an agency of Government or by an industry or professional group. Any such professional certification or credential standard shall be prescribed as a Department regulation.

(b) WAIVER.—The Secretary may waive any standard prescribed under subsection (a) whenever the Secretary determines such a waiver to be appropriate.

(c) APPLICABILITY.—(1) Except as provided in paragraph (2), the Secretary may, in the Secretary's discretion—

(A) require that a standard prescribed under subsection (a) apply immediately to all personnel holding financial management positions designated by the Secretary; or

(B) delay the imposition of such a standard for a reasonable period to permit persons holding financial management positions so designated time to comply.

(2) A formal education requirement prescribed under subsection (a) shall not apply to any person employed by the Department in a financial management position before the standard is prescribed.

(d) DISCHARGE OF AUTHORITY.—The Secretary shall prescribe any professional certification or credential standards under subsection (a) through the Under Secretary of Defense (Comptroller), in consultation with the Under Secretary of Defense for Personnel and Readiness.

(e) REPORTS.—Not later than one year after the effective date of any regulations prescribed under subsection (a), or any significant modification of such regulations, the Secretary shall, in conjunction with the Director of the Office of Personnel Management, submit to Congress a report setting forth the plans of the Secretary to provide training to appropriate Department personnel to meet any new professional certification or credential standard under such regulations or modification.

(f) FINANCIAL MANAGEMENT POSITION DEFINED.—In this section, the term ''financial management position'' means a position or group of positions (including civilian and military positions), as designated by the Secretary for purposes of this section, that perform, supervise, or manage work of a fiscal, financial management, accounting, auditing, cost, or budgetary nature, or that require the performance of financial management-related work.

(Added Pub. L. 107–314, div. A, title XI, § 1104(a)(1), Dec. 2, 2002, 116 Stat. 2661; amended Pub. L. 110–417, [div. A], title XI, § 1110, Oct. 14, 2008, 122 Stat. 4619; Pub. L. 112–81, div. A, title X, § 1051(a), Dec. 31, 2011, 125 Stat. 1581.)

AMENDMENTS

2011—Pub. L. 112–81 amended section generally. Prior to amendment, section related to the authority to prescribe certification and credential standards for professional accounting positions.

2008—Subsec. (e). Pub. L. 110–417 substituted ''0505, 0510, 0511, or equivalent'' for ''GS–510, GS–511, and GS–505''.

EFFECTIVE DATE

Pub. L. 107–314, div. A, title XI, § 1104(b), Dec. 2, 2002, 116 Stat. 2661, provided that: ''Standards established pursuant to section 1599d of title 10, United States Code, as added by subsection (a), may take effect no sooner than 120 days after the date of the enactment of this Act [Dec. 2, 2002].''

§ 1599e. Probationary period for employees

(a) IN GENERAL.—Notwithstanding sections 3321 and 3393(d) of title 5, the appointment of a covered employee shall become final only after such employee has served a probationary period of two years. The Secretary concerned may extend a probationary period under this subsection at the discretion of such Secretary.

(b) DEFINITIONS.—In this section:

(1) The term ''covered employee'' means any individual—

(A) appointed to a permanent position within the competitive service at the Department of Defense; or

(B) appointed as a career appointee (as that term is defined in section 3132(a)(4) of title 5) within the Senior Executive Service at the Department.

(2) The term ''Secretary concerned'' includes the Secretary of Defense with respect to employees of the Department of Defense who are not employees of a military department.

(c) EMPLOYMENT BECOMES FINAL.—Upon the expiration of a covered employee's probationary period under subsection (a), the supervisor of the employee shall determine whether the appointment becomes final based on regulations prescribed for such purpose by the Secretary of Defense.

(d) APPLICATION OF CHAPTER 75 OF TITLE 5 FOR EMPLOYEES IN THE COMPETITIVE SERVICE.—With respect to any individual described in subsection (b)(1)(A) and to whom this section applies, section 7501(1) and section 7511(a)(1)(A)(ii) of title 5 shall be applied to such individual by substituting ''completed 2 years'' for ''completed 1 year'' in each instance it appears.

(Added Pub. L. 114–92, div. A, title XI, § 1105(a)(1), Nov. 25, 2015, 129 Stat. 1023.)

EFFECTIVE DATE

Pub. L. 114–92, div. A, title XI, § 1105(b), Nov. 25, 2015, 129 Stat. 1024, provided that: ''The amendment made by subsection (a) [enacting this section] shall apply to any covered employee (as that term is defined in section 1599e of title 10, United States Code, as added by such subsection) appointed after the date of the enactment of this section [Nov. 25, 2015].''

§ 1599f. United States Cyber Command recruitment and retention

(a) GENERAL AUTHORITY.—(1) The Secretary of Defense may—

(A) establish, as positions in the excepted service, such qualified positions in the Department of Defense as the Secretary determines necessary to carry out the responsibilities of the United States Cyber Command, including—

(i) positions held by staff of the headquarters of the United States Cyber Command;

(ii) positions held by elements of the United States Cyber Command enterprise relating to cyberspace operations, including elements assigned to the Joint Task Force-Department of Defense Information Networks; and

(iii) positions held by elements of the military departments supporting the United States Cyber Command;

(B) appoint an individual to a qualified position (after taking into consideration the availability of preference eligibles for appointment to the position); and

(C) subject to the requirements of subsections (b) and (c), fix the compensation of an individual for service in a qualified position.

(2) The authority of the Secretary under this subsection applies without regard to the provisions of any other law relating to the appointment, number, classification, or compensation of employees.

(b) BASIC PAY.—(1) In accordance with this section, the Secretary shall fix the rates of basic pay for any qualified position established under subsection (a)—

(A) in relation to the rates of pay provided for employees in comparable positions in the Department, in which the employee occupying the comparable position performs, manages, or supervises functions that execute the cyber mission of the Department; and

(B) subject to the same limitations on maximum rates of pay established for such employees by law or regulation.

(2) The Secretary may—

(A) consistent with section 5341 of title 5, adopt such provisions of that title to provide for prevailing rate systems of basic pay; and

(B) apply those provisions to qualified positions for employees in or under which the Department may employ individuals described by section 5342(a)(2)(A) of such title.

(c) ADDITIONAL COMPENSATION, INCENTIVES, AND ALLOWANCES.—(1) The Secretary may provide employees in qualified positions compensation (in addition to basic pay), including benefits, incentives, and allowances, consistent with, and not in excess of the level authorized for, comparable positions authorized by title 5.

(2) An employee in a qualified position whose rate of basic pay is fixed under subsection (b)(1) shall be eligible for an allowance under section 5941 of title 5 on the same basis and to the same extent as if the employee was an employee covered by such section, including eligibility conditions, allowance rates, and all other terms and conditions in law or regulation.

(d) IMPLEMENTATION PLAN REQUIRED.—The authority granted in subsection (a) shall become effective 30 days after the date on which the Secretary of Defense provides to the congressional defense committees a plan for implementation of such authority. The plan shall include the following:

(1) An assessment of the current scope of the positions covered by the authority.

(2) A plan for the use of the authority.

(3) An assessment of the anticipated workforce needs of the United States Cyber Command across the future-years defense plan.

(4) Other matters as appropriate.

(e) COLLECTIVE BARGAINING AGREEMENTS.—Nothing in subsection (a) may be construed to impair the continued effectiveness of a collective bargaining agreement with respect to an office, component, subcomponent, or equivalent of the Department that is a successor to an office, component, subcomponent, or equivalent of the Department covered by the agreement before the succession.

(f) TRAINING.—(1) The Secretary shall provide training to covered personnel on hiring and pay matters relating to authorities under this section.

(2) For purposes of this subsection, covered personnel are employees of the Department who—

(A) carry out functions relating to—

(i) the management of human resources and the civilian workforce of the Department; or

(ii) the writing of guidance for the implementation of authorities regarding hiring and pay under this section; or

(B) are employed in supervisory positions or have responsibilities relating to the hiring of individuals for positions in the Department and to whom the Secretary intends to delegate authority under this section.

(g) REQUIRED REGULATIONS.—The Secretary, in coordination with the Director of the Office of Personnel Management, shall prescribe regulations for the administration of this section.

(h) ANNUAL REPORT.—(1) Not later than one year after the date of the enactment of this section and not less frequently than once each year thereafter until the date that is five years after the date of the enactment of this section, the Director of the Office of Personnel Management, in coordination with the Secretary, shall submit to the appropriate committees of Congress a detailed report on the administration of this section during the most recent one-year period.

(2) Each report submitted under paragraph (1) shall include, for the period covered by the report, the following:

(A) A discussion of the process used in accepting applications, assessing candidates, ensuring adherence to veterans' preference, and selecting applicants for vacancies to be filled by an individual for a qualified position.

(B) A description of the following:

(i) How the Secretary plans to fulfill the critical need of the Department to recruit and retain employees in qualified positions.

(ii) The measures that will be used to measure progress.

(iii) Any actions taken during the reporting period to fulfill such critical need.

(C) A discussion of how the planning and actions taken under subparagraph (B) are integrated into the strategic workforce planning of the Department.

(D) The metrics on actions occurring during the reporting period, including the following:

(i) The number of employees in qualified positions hired, disaggregated by occupation, grade, and level or pay band.

(ii) The placement of employees in qualified positions, disaggregated by military department, Defense Agency, or other component within the Department.

(iii) The total number of veterans hired.

(iv) The number of separations of employees in qualified positions, disaggregated by occupation and grade and level or pay band.

(v) The number of retirements of employees in qualified positions, disaggregated by occupation, grade, and level or pay band.

(vi) The number and amounts of recruitment, relocation, and retention incentives paid to employees in qualified positions, disaggregated by occupation, grade, and level or pay band.

(E) A description of the training provided to employees described in subsection (f)(2) on the use of authorities under this section.

(i) THREE-YEAR PROBATIONARY PERIOD.—The probationary period for all employees hired under the authority established in this section shall be three years.

(j) INCUMBENTS OF EXISTING COMPETITIVE SERVICE POSITIONS.—(1) An individual occupying a position on the date of the enactment of this section that is selected to be converted to a position in the excepted service under this section shall have the right to refuse such conversion.

(2) After the date on which an individual who refuses a conversion under paragraph (1) stops serving in the position selected to be converted, the position may be converted to a position in the excepted service.

(k) DEFINITIONS.—In this section:

(1) The term ''appropriate committees of Congress'' means—

(A) the Committee on Armed Services, the Committee on Homeland Security and Governmental Affairs, and the Committee on Appropriations of the Senate; and

(B) the Committee on Armed Services, the Committee on Oversight and Government Reform, and the Committee on Appropriations of the House of Representatives.

(2) The term ''collective bargaining agreement'' has the meaning given that term in section 7103(a)(8) of title 5.

(3) The term ''excepted service'' has the meaning given that term in section 2103 of title 5.

(4) The term ''preference eligible'' has the meaning given that term in section 2108(3) of title 5.

(5) The term ''qualified position'' means a position, designated by the Secretary for the purpose of this section, in which the individual occupying such position performs, manages, or supervises functions that execute the responsibilities of the United States Cyber Command relating to cyber operations.

(6) The term ''Senior Executive Service'' has the meaning given that term in section 2101a of title 5.

(Added Pub. L. 114–92, div. A, title XI, §1107(a), Nov. 25, 2015, 129 Stat. 1024; amended Pub. L. 114–328, div. A, title XI, §1103(a), (b)(2), Dec. 23, 2016, 130 Stat. 2444.)

REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsecs. (h)(1) and (j)(1), is the date of enactment of Pub. L. 114–92, which was approved Nov. 25, 2015.

AMENDMENTS

2016—Subsecs. (f), (g). Pub. L. 114–328, §1103(a), added subsec. (f) and redesignated former subsec. (f) as (g). Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 114–328, §1103(a)(1), redesignated subsec. (g) as (h). Former subsec. (h) redesignated (i).

Subsec. (h)(2)(E). Pub. L. 114–328, §1103(b)(2), substituted ''employees described in subsection (f)(2) on the use of authorities under this section'' for ''supervisors of employees in qualified positions at the Department on the use of the new authorities''.

Subsecs. (i) to (k). Pub. L. 114–328, §1103(a)(1), redesignated subsecs. (h) to (j) as (i) to (k), respectively.

CHANGE OF NAME

Committee on Oversight and Government Reform of House of Representatives changed to Committee on Oversight and Reform of House of Representatives by House Resolution No. 6, One Hundred Sixteenth Congress, Jan. 9, 2019.

DEPARTMENT OF DEFENSE CYBER WORKFORCE EFFORTS

Pub. L. 116–283, div. A, title XVII, §1726(a), Jan. 1, 2021, 134 Stat. 4115, provided that:

''(a) RESOURCES FOR CYBER EDUCATION.—

''(1) IN GENERAL.—The Chief Information Officer of the Department of Defense, in consultation with the Director of the National Security Agency (NSA), shall examine the current policies permitting National Security Agency employees to use up to 140 hours of paid time toward NSA's cyber education programs.

''(2) REPORT.—

''(A) IN GENERAL.—Not later than 90 days after the date of the enactment of this Act [Jan. 1, 2021], the Chief Information Officer shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] and the congressional intelligence committees a strategy for expanding the policies described in paragraph (1) to—

''(i) individuals who occupy positions described in section 1599f of title 10, United States Code; and

''(ii) any other individuals who the Chief Information Officer determines appropriate.

''(B) IMPLEMENTATION PLAN.—The report required under subparagraph (A) shall detail the utilization of the policies in place at the National Security Agency, as well as an implementation plan that describes the mechanisms needed to expand the use of such policies to accommodate wider participation by individuals described in such subparagraph. Such implementation plan shall detail how such individuals would be able to connect to the instructional and participatory opportunities available through the efforts, programs, initiatives, and investments accounted for in the report required under section 1649 of the National Defense Authorization Act for Fiscal Year 2020 (Public Law 116–92 [133 Stat. 1758]), including the following programs:

''(i) GenCyber.

''(ii) Centers for Academic Excellence – Cyber Defense.

''(iii) Centers for Academic Excellence – Cyber Operations.

''(C) DEADLINE.—Not later than 120 days after the submission of the report required under subparagraph (A), the Chief Information Officer of the Department of Defense shall carry out the implementation plan contained in such report.''

ZERO-BASED REVIEW OF DEPARTMENT OF DEFENSE CYBER AND INFORMATION TECHNOLOGY PERSONNEL

Pub. L. 116–92, div. A, title XVI, §1652, Dec. 20, 2019, 133 Stat. 1761, provided that:

''(a) REVIEW REQUIRED.—Not later than January 1, 2021, each head of a covered department, component, or agency shall—

''(1) complete a zero-based review of the cyber and information technology personnel of the head's covered department, component, or agency; and

''(2) provide the Principal Cyber Advisor, the Chief Information Officer of the Department of Defense, and the Under Secretary of Defense for Personnel and Readiness the findings of the head with respect to the head's covered department, component, or agency.

''(b) COVERED DEPARTMENTS, COMPONENTS, AND AGENCIES.—For purposes of this section, a covered department, component, or agency is—

''(1) an independent Department of Defense component or agency;

''(2) the Office of the Secretary of Defense;

''(3) a component of the Joint Staff;

''(4) a military department or an armed force; or

''(5) a reserve component of the Armed Forces.

''(c) SCOPE OF REVIEW.—As part of a review conducted pursuant to subsection (a)(1), the head of a covered department, component, or agency shall, with respect to the covered department, component, or agency of the head—

''(1) assess military, civilian, and contractor positions and personnel performing cyber and information technology missions;

''(2) determine the roles and functions assigned by reviewing existing position descriptions and conducting interviews to quantify the current workload performed by military, civilian, and contractor workforce;

''(3) compare the Department's manning with the manning of comparable industry organizations;

''(4) include evaluation of the utility of cyber- and information technology-focused missions, positions, and personnel within such components—

''(A) to assess the effectiveness and efficiency of current activities;

''(B) to assess the necessity of increasing, reducing, or eliminating resources; and

''(C) to guide prioritization of investment and funding;

''(5) develop recommendations and objectives for organizational, manning, and equipping change, taking into account anticipated developments in information technologies, workload projections, automation and process enhancements, and Department requirements;

''(6) develop a gap analysis, contrasting the current organization and the objectives developed pursuant to paragraph (5); and

''(7) develop roadmaps of prioritized activities and a timeline for implementing the activities to close the gaps identified pursuant to paragraph (6).

''(d) ELEMENTS.—In carrying out a review pursuant to subsection (a)(1), the head of a covered department, component, or agency shall consider the following:

''(1) Whether position descriptions and coding designators for given cybersecurity and information technology roles are accurate indicators of the work being performed.

''(2) Whether the function of any cybersecurity or information technology position or personnel can be replaced by acquisition of cybersecurity or information technology products or automation.

''(3) Whether a given component or subcomponent is over- or under-resourced in terms of personnel, using industry standards as a benchmark where applicable.

''(4) Whether cybersecurity service provider positions and personnel fit coherently into the enterprise-wide cybersecurity architecture and with the Department's cyber protection teams.

''(5) Whether the function of any cybersecurity or information technology position or personnel could be conducted more efficiently or effectively by enterprise-level cyber or information technology personnel.

''(e) FURNISHING DATA AND ANALYSIS.—

''(1) DATA AND ANALYSIS.—In carrying out subsection (a)(2), each head of a covered department, component, or agency, shall furnish to the Principal Cyber Advisor, the Chief Information Officer, and the Under Secretary a description of the analysis that led to the findings submitted under such subsection and the data used in such analysis.

''(2) CERTIFICATION.—The Principal Cyber Advisor, the Chief Information Officer, and the Under Secretary of Defense shall jointly review each submittal under subsection (a)(2) and certify whether the findings and analysis are in compliance with the requirements of this section.

''(f) RECOMMENDATIONS.—After receiving findings submitted by a head of a covered department, component, or agency pursuant to paragraph (2) of subsection (a) with respect to a review conducted by the head pursuant to paragraph (1) of such subsection, the Principal Cyber Advisor, the Chief Information Officer, and the Under Secretary shall jointly provide to such head such recommendations as the Principal Cyber Advisor, the Chief Information Officer, and the Under Secretary may have for changes in manning or acquisition that proceed from such review.

''(g) IMPLEMENTATION.—The Principal Cyber Advisor, the Chief Information Officer, and the Under Secretary shall jointly oversee and assist in the implementation of the roadmaps developed pursuant to subsection (c)(7) and the recommendations developed pursuant to subsection (f).

''(h) IN-PROGRESS REVIEWS.—Not later than six months after the date of the enactment of this Act [Dec. 20, 2019] and not less frequently than once every six months thereafter until the Principal Cyber Advisor, the Chief Information Officer, and the Under Secretary give the briefing required by subsection (i), the Principal Cyber Advisor, the Chief Information Officer, and the Under Secretary shall jointly—

''(1) conduct in-progress reviews of the status of the reviews required by subsection (a)(1); and

''(2) provide the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] with a briefing on such in-progress reviews.

''(i) FINAL BRIEFING.—After all of the reviews have been completed under paragraph (1) of subsection (a), after receiving all of the findings pursuant to paragraph (2) of such subsection, and not later than June 1, 2021, the Principal Cyber Advisor, the Chief Information Officer, and the Under Secretary shall jointly provide to the congressional defense committees a briefing on the findings of the Principal Cyber Advisor, the Chief Information Officer, and the Under Secretary with respect to such reviews, including such recommendations as the Principal Cyber Advisor, the Chief Information Officer, and the Under Secretary may have for changes to the budget of the Department as a result of such reviews.

''(j) DEFINITION OF ZERO-BASED REVIEW.—In this section, the term 'zero-based review' means a review in which an assessment is conducted with each item, position, or person costed anew, rather than in relation to its size or status in any previous budget.''

ACTIONS PENDING FULL IMPLEMENTATION OF PLAN FOR CYBER MISSION FORCE POSITIONS

Pub. L. 114–328, div. A, title XVI, §1643(a), Dec. 23, 2016, 130 Stat. 2602, provided that: ''Until the Secretary of Defense completes implementation of the authority in subsection (a) of section 1599f of title 10, United States Code, for United States Cyber Command workforce positions in accordance with the implementation plan required by subsection (d) of such section, the Secretary shall do each of the following:

''(1) Notwithstanding sections 3309 through 3318 of title 5, United States Code, provide for and implement an interagency transfer agreement between excepted service position systems and competitive service position systems in military departments and Defense Agencies concerned to satisfy the requirements for cyber workforce positions from among a mix of employees in the excepted service and the competitive service in such military departments and Defense Agencies.

''(2) Implement in the defense civilian cyber personnel system a classification system commonly known as a 'Rank-in-person' classification system similar to such classification system used by the National Security Agency as of the date of the enactment of this Act [Dec. 23, 2016].

''(3) Approve direct hiring authority for cyber workforce positions up to the GG or GS–15 level in accordance with the criteria in section 3304 of title 5, United States Code.

''(4) Notwithstanding section 5333 of title 5, United States Code, authorize officials conducting hiring in the competitive service for cyber workforce positions to set starting salaries at up to a step-five level with no justification and at up to a step-ten level with jus-

tification that meets published guidelines applicable to the excepted service.''

§1599g. Public-private talent exchange

(a) ASSIGNMENT AUTHORITY.—Under regulations prescribed by the Secretary of Defense, the Secretary may, with the agreement of a private-sector organization and the consent of the employee, arrange for the temporary assignment of an employee to such private-sector organization, or from such private-sector organization to a Department of Defense organization under this section.

(b) AGREEMENTS.—(1) The Secretary of Defense shall provide for a written agreement among the Department of Defense, the private-sector organization, and the employee concerned regarding the terms and conditions of the employee's assignment under this section. The agreement—

(A) shall require that the employee of the Department of Defense, upon completion of the assignment, will serve in the Department of Defense, or elsewhere in the civil service if approved by the Secretary, for a period equal to twice the length of the assignment;

(B) shall provide that if the employee of the Department of Defense or of the private-sector organization (as the case may be) fails to carry out the agreement, such employee shall be liable to the United States for payment of all expenses of the assignment, unless that failure was for good and sufficient reason, as determined by the Secretary of Defense; and

(C) shall contain language ensuring that such employee of the Department does not improperly use information that such employee knows relates to a Department acquisition or procurement for the benefit or advantage of the private-sector organization.

(2) An amount for which an employee is liable under paragraph (1) shall be treated as a debt due the United States.

(3) The Secretary may waive, in whole or in part, collection of a debt described in paragraph (2) based on a determination that the collection would be against equity and good conscience and not in the best interests of the United States, after taking into account any indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee.

(c) TERMINATION.—An assignment under this section may, at any time and for any reason, be terminated by the Department of Defense or the private-sector organization concerned.

(d) DURATION.—(1) An assignment under this section shall be for a period of not less than three months and not more than two years, renewable up to a total of four years. No employee of the Department of Defense may be assigned under this section for more than a total of 4 years inclusive of all such assignments.

(2) An assignment under this section may be for a period in excess of two years, but not more than four years, if the Secretary determines that such assignment is necessary to meet critical mission or program requirements.

(e) STATUS OF FEDERAL EMPLOYEES ASSIGNED TO PRIVATE-SECTOR ORGANIZATIONS.—(1) An employee of the Department of Defense who is assigned to a private-sector organization under this section shall be considered, during the period of assignment, to be on detail to a regular work assignment in the Department for all purposes. The written agreement established under subsection (b)(1) shall address the specific terms and conditions related to the employee's continued status as a Federal employee.

(2) In establishing a temporary assignment of an employee of the Department of Defense to a private-sector organization, the Secretary of Defense shall—

(A) ensure that the normal duties and functions of such employee can be reasonably performed by other employees of the Department of Defense without the permanent transfer or reassignment of other personnel of the Department of Defense, including members of the armed forces;

(B) ensure that the normal duties and functions of such employees are not, as a result of and during the course of such temporary assignment, performed or augmented by contractor personnel in violation of the provisions of section 2461 of this title; and

(C) certify that the temporary assignment of such employee shall not have an adverse or negative impact on mission attainment, warfighter support, or organizational capabilities associated with the assignment.

(f) TERMS AND CONDITIONS FOR PRIVATE-SECTOR EMPLOYEES.—An employee of a private-sector organization who is assigned to a Department of Defense organization under this section—

(1) shall continue to receive pay and benefits from the private-sector organization from which such employee is assigned and shall not receive pay or benefits from the Department of Defense, except as provided in paragraph (2);

(2) is deemed to be an employee of the Department of Defense for the purposes of—

(A) chapters 73 and 81 of title 5;

(B) sections 201, 203, 205, 207, 208, 209, 603, 606, 607, 643, 654, 1905, and 1913 of title 18;

(C) sections 1343, 1344, and 1349(b) of title 31;

(D) the Federal Tort Claims Act and any other Federal tort liability statute;

(E) the Ethics in Government Act of 1978; and

(F) chapter 21 of title 41;

(3) shall not have access to any trade secrets or to any other nonpublic information which is of commercial value to the private-sector organization from which such employee is assigned;

(4) may not perform work that is considered inherently governmental in nature; and

(5) may not be used to circumvent the provision of section 2461 of this title nor to circumvent any limitation or restriction on the size of the Department's workforce.

(g) PROHIBITION AGAINST CHARGING CERTAIN COSTS TO THE FEDERAL GOVERNMENT.—A private-sector organization may not charge the Department or any other agency of the Federal Government, as direct or indirect costs under a Federal contract, the costs of pay or benefits paid by the organization to an employee assigned to a Department organization under this section for the period of the assignment.

(h) CONSIDERATIONS.—In carrying out this section, the Secretary of Defense—

(1) shall ensure that, of the assignments made under this section each year, at least 20 percent are from small business concerns (as defined by section 3703(e)(2)(A) of title 5);

(2) shall take into consideration the question of how assignments under this section might best be used to help meet the needs of the Department of Defense with respect to the training of employees; and

(3) shall take into consideration, where applicable, areas of particular private sector expertise, such as cybersecurity.

(i) CONFLICTS OF INTEREST.—A private-sector organization that is temporarily assigned a member of the acquisition workforce under this section shall not be considered to have a conflict of interest with the Department of Defense solely because of participation in the program established under this section.

(j) FUNDING; USE OF DEFENSE ACQUISITION WORKFORCE DEVELOPMENT FUND.—Funds for the expenses for the program established under this section may be provided from amounts in the Department of Defense Acquisition Workforce Development Fund. Expenses for the program include—

(1) notwithstanding section 1705(e)(5) of this title, the base salary of a civilian member of the acquisition workforce assigned to a private-sector organization under this section, during the period of that assignment;

(2) expenses relating to assignment under this section of a member of the acquisition workforce away from the member's regular duty station, including expenses for travel, per diem, and lodging; and

(3) expenses for the administration of the program.

(Added Pub. L. 114–328, div. A, title XI, §1104(a), Dec. 23, 2016, 130 Stat. 2445; amended Pub. L. 116–92, div. A, title VIII, §863(a), title XI, §1116, Dec. 20, 2019, 133 Stat. 1522, 1604; Pub. L. 116–283, div. A, title XI, §1102(a), Jan. 1, 2021, 134 Stat. 3885.)

REFERENCES IN TEXT

The Federal Tort Claims Act, referred to in subsec. (f)(2)(D), is title IV of act Aug. 2, 1946, ch. 753, 60 Stat. 842, which was classified principally to chapter 20 (§§921, 922, 931–934, 941–946) of former Title 28, Judicial Code and Judiciary. Title IV of act Aug. 2, 1946, was substantially repealed and reenacted as sections 1346(b) and 2671 et seq. of Title 28, Judiciary and Judicial Procedure, by act June 25, 1948, ch. 646, 62 Stat. 992, the first section of which enacted Title 28. The Federal Tort Claims Act is also commonly used to refer to chapter 171 of Title 28, Judiciary and Judicial Procedure. For complete classification of title IV to the Code, see Tables. For distribution of former sections of Title 28 into the revised Title 28, see Table at the beginning of Title 28.

The Ethics in Government Act of 1978, referred to in subsec. (f)(2)(E), is Pub. L. 95–521, Oct. 26, 1978, 92 Stat. 1824. For complete classification of this Act to the Code, see Short Title note set out under section 101 of Pub. L. 95–521 in the Appendix to Title 5, Government Organization and Employees, and Tables.

AMENDMENTS

2021—Subsec. (b)(1)(C). Pub. L. 116–283, §1102(a)(1), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: "shall contain language ensuring that such employee of the Department does not improperly use pre-decisional or draft deliberative information that such employee may be privy to or aware of related to Department programing, budgeting, resourcing, acquisition, or procurement for the benefit or advantage of the private-sector organization."

Subsec. (f)(4). Pub. L. 116–283, §1102(a)(2), amended par. (4) generally. Prior to amendment, par. (4) read as follows: "may perform work that is considered inherently governmental in nature only when requested in writing by the Secretary of Defense; and".

2019—Subsec. (e)(2)(A). Pub. L. 116–92, §1116, inserted "permanent" after "without the".

Subsecs. (i), (j). Pub. L. 116–92, §863(a), added subsecs. (i) and (j).

ENHANCEMENT OF PUBLIC-PRIVATE TALENT EXCHANGE PROGRAMS IN THE DEPARTMENT OF DEFENSE

Pub. L. 116–283, div. A, title XI, §1102(b)–(d), Jan. 1, 2021, 134 Stat. 3885, 3886, provided that:

"(b) APPLICATION OF EXCHANGE AUTHORITY TO MODERNIZATION PRIORITIES.—Not later than 90 days after the date of the enactment of this Act [Jan. 1, 2021], the Secretary of Defense shall take steps to ensure that the authority of the Secretary to carry out a public-private talent exchange program under section 1599g of title 10, United States Code (as amended by subsection (a)), is used to—

"(1) carry out exchanges of personnel with private sector entities that are working on the modernization priorities of the Department of Defense; and

"(2) carry out exchanges in—

"(A) the office of the Under Secretary of Defense for Research and Engineering;

"(B) the office of the Chief Information Officer of the Department of Defense;

"(C) each Armed Force under the jurisdiction of the Secretary of a military department; and

"(D) any other organizations or elements of the Department of Defense the Secretary determines appropriate.

"(c) CONFLICTS OF INTEREST.—The Secretary shall implement a system to identify, mitigate, and manage any conflicts of interests that may arise as a result of an individual's participation in a public-private talent exchange under section 1599g of title 10, United States Code.

"(d) TREATMENT OF PROGRAM PARTICIPANTS.—The Secretary of Defense, in consultation with each Secretary of a military department, shall develop practices to ensure that participation by a member of an Armed Force under the jurisdiction of the Secretary of a military department in an public-private talent exchange under section 1599g of title 10, United States Code, is taken into consideration in subsequent assignments."

§ 1599h. Personnel management authority to attract experts in science and engineering

(a) PROGRAMS AUTHORIZED.—

(1) LABORATORIES OF THE MILITARY DEPARTMENTS.—The Secretary of Defense may carry out a program of personnel management authority provided in subsection (b) in order to facilitate recruitment of eminent experts in science or engineering for such laboratories of the military departments as the Secretary shall designate for purposes of the program for research and development projects of such laboratories.

(2) DARPA.—The Director of the Defense Advanced Research Projects Agency may carry out a program of personnel management authority provided in subsection (b) in order to facilitate recruitment of eminent experts in science or engineering for research and devel-

opment projects and to enhance the administration and management of the Agency.

(3) DOTE.—The Director of the Office of Operational Test and Evaluation may carry out a program of personnel management authority provided in subsection (b) in order to facilitate recruitment of eminent experts in science or engineering to support operational test and evaluation missions of the Office.

(4) STRATEGIC CAPABILITIES OFFICE.—The Director of the Strategic Capabilities Office may carry out a program of personnel management authority provided in subsection (b) in order to facilitate recruitment of eminent experts in science or engineering for the Office.

(5) DIU.—The Director of the Defense Innovation Unit may carry out a program of personnel management authority provided in subsection (b) in order to facilitate recruitment of eminent experts in science or engineering for the Unit.

(6) JOINT ARTIFICIAL INTELLIGENCE CENTER.—The Director of the Joint Artificial Intelligence Center may carry out a program of personnel management authority provided in subsection (b) in order to facilitate recruitment of eminent experts in science or engineering for the Center. The authority to carry out the program under this paragraph shall terminate on December 31, 2024.

(7)[1] NGA.—The Director of the National Geospatial-Intelligence Agency may carry out a program of personnel management authority provided in subsection (b) in order to facilitate recruitment of eminent experts in science or engineering for research and development projects and to enhance the administration and management of the Agency.

(7)[1] SDA.—The Director of the Space Development Agency may carry out a program of personnel management authority provided in subsection (b) in order to facilitate recruitment of eminent experts in science or engineering for research and development projects and to enhance the administration and management of the Agency. The authority to carry out the program under this paragraph shall terminate on December 31, 2025.

(8) UNITED STATES CYBER COMMAND.—The Commander of United States Cyber Command may carry out a program of personnel management authority provided in subsection (b) in order to facilitate the recruitment of eminent experts in computer science, data science, engineering, mathematics, and computer network exploitation within the headquarters of United States Cyber Command and the Cyber National Mission Force.

(b) PERSONNEL MANAGEMENT AUTHORITY.—Under a program under subsection (a), the official responsible for administration of the program may—

(1) without regard to any provision of title 5 governing the appointment of employees in the civil service—

(A) in the case of the laboratories of the military departments designated pursuant to subsection (a)(1), appoint scientists and engineers to a total of not more than 40 scientific and engineering positions in such laboratories;

(B) in the case of the Defense Advanced Research Projects Agency, appoint individuals to a total of not more than 140 positions in the Agency, of which not more than 5 such positions may be positions of administration or management of the Agency;

(C) in the case of the Office of Operational Test and Evaluation, appoint scientists and engineers to a total of not more than 10 scientific and engineering positions in the Office;

(D) in the case of the Strategic Capabilities Office, appoint scientists and engineers to a total of not more than 5 scientific and engineering positions in the Office;

(E) in the case of the Defense Innovation Unit, appoint scientists and engineers to a total of not more than 5 scientific and engineering positions in the Unit;

(F) in the case of the Joint Artificial Intelligence Center, appoint scientists and engineers to a total of not more than 5 scientific and engineering positions in the Center;

(G)[2] in the case of the National Geospatial-Intelligence Agency, appoint individuals to a total of not more than 7 positions in the Agency, of which not more than 2 such positions may be positions of administration or management in the Agency;

(G)[2] in the case of the Space Development Agency, appoint individuals to a total of not more than 10 positions in the Agency, of which not more than 3 such positions may be positions of administration or management of the Agency; and

(H) in the case of United States Cyber Command, appoint computer scientists, data scientists, engineers, mathematicians, and computer network exploitation specialists to a total of not more than 10 scientific and engineering positions in the Command;

(2) notwithstanding any provision of title 5 governing the rates of pay or classification of employees in the executive branch, prescribe the rates of basic pay for positions to which employees are appointed under paragraph (1)—

(A) in the case of employees appointed pursuant to paragraph (1)(B) to any of 5 positions designated by the Director of the Defense Advanced Research Projects Agency for purposes of this subparagraph, at rates not in excess of a rate equal to 150 percent of the maximum rate of basic pay authorized for positions at Level I of the Executive Schedule under section 5312 of title 5; and

(B) in the case of any other employee appointed pursuant to paragraph (1), at rates not in excess of the maximum rate of basic pay authorized for senior-level positions under section 5376 of title 5; and

(3) pay any employee appointed under paragraph (1), other than an employee appointed to a position designated as described in paragraph (2)(A), payments in addition to basic pay within the limit applicable to the employee under subsection (d).

[1] So in original. Two pars. (7) have been enacted.

[2] So in original. Two subpars. (G) have been enacted.

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(c) LIMITATION ON TERM OF APPOINTMENT.—

(1) IN GENERAL.—Except as provided in paragraph (2), the service of an employee under an appointment under subsection (b)(1) may not exceed four years.

(2) EXTENSION.—The official responsible for the administration of a program under subsection (a) may, in the case of a particular employee under the program, extend the period to which service is limited under paragraph (1) by up to two years if the official determines that such action is necessary to promote the efficiency of a laboratory of a military department, the Defense Advanced Research Projects Agency, the Office of Operational Test and Evaluation, the Strategic Capabilities Office, the Defense Innovation Unit, the Joint Artificial Intelligence Center, or the National Geospatial-Intelligence Agency, as applicable.

(d) MAXIMUM AMOUNT OF ADDITIONAL PAYMENTS PAYABLE.—Notwithstanding any other provision of this section or section 5307 of title 5, no additional payments may be paid to an employee under subsection (b)(3) in any calendar year if, or to the extent that, the employee's total annual compensation in such calendar year will exceed the maximum amount of total annual compensation payable at the salary set in accordance with section 104 of title 3.

(Added Pub. L. 114–328, div. A, title XI, § 1121(a)(1), Dec. 23, 2016, 130 Stat. 2451; amended Pub. L. 115–232, div. A, title XI, § 1111, Aug. 13, 2018, 132 Stat. 2011; Pub. L. 116–92, div. A, title II, § 212, title XI, § 1101, Dec. 20, 2019, 133 Stat. 1255, 1595; Pub. L. 116–260, div. W, title IV, § 402, Dec. 27, 2020, 134 Stat. 2377; Pub. L. 116–283, div. A, title XVI, § 1602, title XVII, § 1708(a), Jan. 1, 2021, 134 Stat. 4042, 4085.)

AMENDMENTS

2021—Subsec. (a)(7). Pub. L. 116–283, § 1602(a), added par. (7) relating to the Space Development Agency.

Subsec. (a)(8). Pub. L. 116–283, § 1708(a)(1), added par. (8).

Subsec. (b)(1)(G). Pub. L. 116–283, § 1602(b), added subpar. (G) relating to the Space Development Agency. Similar conforming amendments to subsec. (b)(1)(E) and (F) were made by Pub. L. 116–260 and Pub. L. 116–283. Text of subsec. (b)(1)(E) reflects amendment made by Pub. L. 116–283.

Subsec. (b)(1)(H). Pub. L. 116–283, § 1708(a)(2), added subpar. (H). Conforming amendment inserting ''and'' at end of subpar. (G) was executed to the second subpar. (G) to reflect the probable intent of Congress.

2020—Subsec. (a)(7). Pub. L. 116–260, § 402(1), added par. (7) relating to the National Geospatial-Intelligence Agency.

Subsec. (b)(1)(G). Pub. L. 116–260, § 402(2), added subpar. (G) relating to the National Geospatial-Intelligence Agency.

Subsec. (c)(2). Pub. L. 116–260, § 402(3), substituted ''the Joint Artificial Intelligence Center, or the National Geospatial-Intelligence Agency'' for ''or the Joint Artificial Intelligence Center''.

2019—Subsec. (a)(5). Pub. L. 116–92, § 212(d)(1), substituted ''DIU'' for ''DIUX'' in heading and struck out ''Experimental'' after ''Innovation Unit''.

Subsec. (a)(6). Pub. L. 116–92, § 212(a), added par. (6).

Subsec. (b)(1)(B). Pub. L. 116–92, § 1101, substituted ''140 positions'' for ''100 positions''.

Subsec. (b)(1)(E). Pub. L. 116–92, § 212(d)(2), struck out ''Experimental'' after ''Innovation Unit''.

Subsec. (b)(1)(F). Pub. L. 116–92, § 212(b), added subpar. (F).

Subsec. (c)(2). Pub. L. 116–92, § 212(c), substituted ''the Defense Innovation Unit, or the Joint Artificial Intelligence Center'' for ''or the Defense Innovation Unit Experimental''.

2018—Subsec. (a)(4), (5). Pub. L. 115–232, § 1111(a), added pars. (4) and (5).

Subsec. (b)(1)(D), (E). Pub. L. 115–232, § 1111(b), added subpars. (D) and (E).

Subsec. (c)(2). Pub. L. 115–232, § 1111(c), substituted ''the Office of Operational Test and Evaluation, the Strategic Capabilities Office, or the Defense Innovation Unit Experimental'' for ''or the Office of Operational Test and Evaluation''.

PROGRAM TO DEVELOP ACCESSES, DISCOVER VULNERABILITIES, AND ENGINEER CYBER TOOLS AND DEVELOP TACTICS, TECHNIQUES, AND PROCEDURES FOR OFFENSIVE CYBER OPERATIONS

Pub. L. 116–283, div. A, title XVII, § 1708(b), Jan. 1, 2021, 134 Stat. 4085, provided that:

''(1) IN GENERAL.—Pursuant to the authority provided under section 1599h(a)(8) of title 10, United States Code, as added by subsection (a), the Commander of United States Cyber Command shall establish a program or augment an existing program within the Command to develop accesses, discover vulnerabilities, and engineer cyber tools and develop tactics, techniques, and procedures for the use of these assets and capabilities in offensive cyber operations.

''(2) ELEMENTS.—The program or augmented program required by paragraph (1) shall—

''(A) develop accesses, discover vulnerabilities, and engineer cyber tools and develop tactics, techniques, and procedures fit for Department of Defense military operations in cyberspace, such as reliability, meeting short development and operational timelines, low cost, and expendability;

''(B) aim to decrease the reliance of Cyber Command on accesses, tools, and expertise provided by the intelligence community;

''(C) be designed to provide technical and operational expertise on par with that of programs of the intelligence community;

''(D) enable the Commander to attract and retain expertise resident in the private sector and other technologically elite government organizations; and

''(E) coordinate development activities with, and, as appropriate, facilitate transition of capabilities from, the Defense Advanced Research Projects Agency, the Strategic Capabilities Office, and components within the intelligence community.

''(3) INTELLIGENCE COMMUNITY DEFINED.—In this subsection, the term 'intelligence community' has the meaning given such term in section 3 of the National Security Act of 1947 (50 U.S.C. 3003).''

GUIDANCE AND DIRECTION ON USE OF DIRECT HIRING PROCESSES FOR ARTIFICIAL INTELLIGENCE PROFESSIONALS AND OTHER DATA SCIENCE AND SOFTWARE DEVELOPMENT PERSONNEL

Pub. L. 116–283, div. A, title XVII, § 1751, Jan. 1, 2021, 134 Stat. 4143, provided that:

''(a) GUIDANCE REQUIRED.—Not later than 180 days after the date of the enactment of this Act [Jan. 1, 2021], the Secretary of Defense shall review applicable Department of Defense guidance and where beneficial issue new guidance to the secretaries of the military departments and the heads of the defense components on improved use of the direct hiring processes for artificial intelligence professionals and other data science and software development personnel.

''(b) OBJECTIVE.—The objective of the guidance issued under subsection (a) shall be to ensure that organizational leaders assume greater responsibility for the results of civilian hiring of artificial intelligence professionals and other data science and software development personnel.

''(c) CONTENTS OF GUIDANCE.—At a minimum, the guidance required by subsection (a) shall—

"(1) instruct human resources professionals and hiring authorities to utilize available direct hiring authorities (including excepted service authorities) for the hiring of artificial intelligence professionals and other data science and software development personnel, to the maximum extent practicable;

"(2) instruct hiring authorities, when using direct hiring authorities, to prioritize utilization of panels of subject matter experts over human resources professionals to assess applicant qualifications and determine which applicants are best qualified for a position;

"(3) authorize and encourage the use of ePortfolio reviews to provide insight into the previous work of applicants as a tangible demonstration of capabilities and contribute to the assessment of applicant qualifications by subject matter experts; and

"(4) encourage the use of referral bonuses for recruitment and hiring of highly qualified artificial intelligence professionals and other data science and software development personnel in accordance with volume 451 of Department of Defense Instruction 1400.25.

"(d) REPORT.—

"(1) IN GENERAL.—Not later than one year after the date on which the guidance is issued under subsection (a), the Secretary shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the guidance issued pursuant to subsection (a).

"(2) CONTENTS.—At a minimum, the report submitted under paragraph (1) shall address the following:

"(A) The objectives of the guidance and the manner in which the guidance seeks to achieve those objectives.

"(B) The effect of the guidance on the hiring process for artificial intelligence professionals and other data science and software development personnel, including the effect on—

"(i) hiring time;

"(ii) the use of direct hiring authority;

"(iii) the use of subject matter experts; and

"(iv) the quality of new hires, as assessed by hiring managers and organizational leaders."

APPLICABILITY OF PERSONNEL MANAGEMENT AUTHORITY TO PERSONNEL CURRENTLY EMPLOYED UNDER SUPERSEDED AUTHORITY

Pub. L. 114–328, div. A, title XI, §1121(c), Dec. 23, 2016, 130 Stat. 2452, provided that:

"(1) IN GENERAL.—Any individual employed as of the date of the enactment of this Act [Dec. 23, 2016] under section 1101(b)(1) of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (5 U.S.C. 3104 note) (as in effect on the day before such date) shall remain employed under section 1599h of title 10, United States Code (as added by subsection (a)), after such date in accordance with such section 1599h and the applicable program carried out under such section 1599h.

"(2) DATE OF APPOINTMENT.—For purposes of subsection (c) of section 1599h of title 10, United States Code (as so added), the date of the appointment of any employee who remains employed as described in paragraph (1) shall be the date of the appointment of such employee under section 1101(b)(1) of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (5 U.S.C. 3104 note) (as so in effect)."

§ 1599i. Recruitment incentives for placement at remote locations

(a) RECRUITMENT INCENTIVE.—

(1) IN GENERAL.—An individual appointed to a position in the Department of Defense at a covered location may be paid a recruitment incentive in connection with such appointment.

(2) AMOUNT.—The amount of a recruitment incentive payable to an individual under this subsection may not exceed the amount equal to—

(A) 25 percent of the annual rate of basic pay of the employee for the position concerned as of the date on which the service period in such position agreed to by the individual under paragraph (3) commences; multiplied by

(B) the number of years (including fractions of a year) of such service period (not to exceed four years).

(3) SERVICE AGREEMENT.—To receive a recruitment incentive under this subsection, an individual appointed to a position under paragraph (1) shall enter into an agreement with the Secretary of Defense to complete a period of service at the covered location. The period of obligated service of the individual at such location under the agreement may not exceed four years. The agreement shall include such repayment or alternative employment obligations as the Secretary considers appropriate for failure of the individual to complete the period of obligated service specified in the agreement.

(4) COVERED LOCATIONS DEFINED.—In this section, a covered location is a location for which the Secretary of Defense has determined that critical hiring needs are not being met due to the geographic remoteness or isolation or extreme climate conditions of the location.

(b) SUNSET.—Effective on September 30, 2022, the authority provided under subsection (a) shall expire.

(Added Pub. L. 116–283, div. A, title XI, §1120(a), Jan. 1, 2021, 134 Stat. 3898.)

OUTCOME MEASUREMENTS

Pub. L. 116–283, div. A, title XI, §1120(b), Jan. 1, 2021, 134 Stat. 3899, provided that: "The Secretary of Defense shall develop outcome measurements to evaluate the effect of the authority provided under subsection (a) of section 1599i of title 10, United States Code, as added by subsection (a), and any relocation incentives provided under subsection (b) of such section."

CHAPTER 83—CIVILIAN DEFENSE INTELLIGENCE EMPLOYEES

Subchapter		Sec.
I.	Defense-Wide Intelligence Personnel Policy	1601
II.	Defense Intelligence Agency Personnel	1621

PRIOR PROVISIONS

A prior chapter 85 of this title was repealed by Pub. L. 102–190, div. A, title X, §1061(a)(26)(C)(i), Dec. 5, 1991, 105 Stat. 1474, effective Oct. 1, 1993. Previously, the individual sections of that chapter, sections 1621 to 1624, were repealed by Pub. L. 101–510, div. A, title XII, §1207(c)(1), (3), (4), Nov. 5, 1990, 104 Stat. 1665.

AMENDMENTS

1996—Pub. L. 104–201, div. A, title XVI, §1632(a)(3), Sept. 23, 1996, 110 Stat. 2745, substituted "CIVILIAN DEFENSE INTELLIGENCE EMPLOYEES" for "DEFENSE INTELLIGENCE AGENCY AND CENTRAL IMAGERY OFFICE CIVILIAN PERSONNEL" as chapter heading and added subchapter analysis.

SUBCHAPTER I—DEFENSE-WIDE INTELLIGENCE PERSONNEL POLICY

Sec.
1601. Civilian intelligence personnel: general authority to establish excepted positions, appoint personnel, and fix rates of pay.
1602. Basic pay.
1603. Additional compensation, incentives, and allowances.
[1604. Repealed.]
1605. Benefits for certain employees assigned outside the United States.
1606. Defense Intelligence Senior Executive Service.
1607. Intelligence Senior Level positions.
1608. Time-limited appointments.
1609. Termination of defense intelligence employees.
1610. Reductions and other adjustments in force.
1611. Postemployment assistance: certain terminated intelligence employees.
1612. Merit system principles and civil service protections: applicability.
1613. Miscellaneous provisions.
1614. Definitions.

AMENDMENTS

1996—Pub. L. 104–201, div. A, title XVI, §1632(a)(3), Sept. 23, 1996, 110 Stat. 2745, added table of sections for subchapter and struck out former table of sections consisting of items 1601 ''Defense Intelligence Senior Executive Service'', 1602 ''Defense Intelligence Agency merit pay system'', 1603 ''Limit on pay'', 1604 ''Civilian personnel management'', 1605 ''Benefits for certain employees of the Defense Intelligence Agency'', 1606 ''Uniform allowance: civilian employees'', and 1608 ''Financial assistance to certain employees in acquisition of critical skills''.

1994—Pub. L. 103–359, title V, §501(b)(1)(A), Oct. 14, 1994, 108 Stat. 3428, amended chapter heading generally, inserting ''AND CENTRAL IMAGERY OFFICE''.

1989—Pub. L. 101–193, title V, §507(a)(2), Nov. 30, 1989, 103 Stat. 1710, added item 1608.

1987—Pub. L. 100–178, title VI, §601(b), Dec. 2, 1987, 101 Stat. 1015, added item 1606.

1985—Pub. L. 99–145, title XIII, §1302(a)(2), Nov. 8, 1985, 99 Stat. 737, redesignated item 192 of chapter 8 of this title as item 1605 and transferred it to this chapter.

1984—Pub. L. 98–618, title V, §501(b), Nov. 8, 1984, 98 Stat. 3302, added item 1604.

§ 1601. Civilian intelligence personnel: general authority to establish excepted positions, appoint personnel, and fix rates of pay

(a) GENERAL AUTHORITY.—The Secretary of Defense may—

(1) establish, as positions in the excepted service, such defense intelligence positions in the Department of Defense as the Secretary determines necessary to carry out the intelligence functions of the Department, including—

(A) Intelligence Senior Level positions designated under section 1607 of this title; and

(B) positions in the Defense Intelligence Senior Executive Service;

(2) appoint individuals to those positions (after taking into consideration the availability of preference eligibles for appointment to those positions); and

(3) fix the compensation of such individuals for service in those positions.

(b) CONSTRUCTION WITH OTHER LAWS.—The authority of the Secretary of Defense under subsection (a) applies without regard to the provisions of any other law relating to the appointment, number, classification, or compensation of employees.

(Added Pub. L. 104–201, div. A, title XVI, §1632(a)(3), Sept. 23, 1996, 110 Stat. 2746; amended Pub. L. 106–398, §1 [[div. A], title XI, §1141(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–318.)

PRIOR PROVISIONS

A prior section 1601, added Pub. L. 97–89, title VII, §701(a)(1), Dec. 4, 1981, 95 Stat. 1159; amended Pub. L. 101–194, title V, §506(c)(3), Nov. 30, 1989, 103 Stat. 1759; Pub. L. 101–280, §6(d)(4), May 4, 1990, 104 Stat. 161; Pub. L. 101–510, div. A, title XIV, §1484(*l*)(5), Nov. 5, 1990, 104 Stat. 1720; Pub. L. 103–359, title V, §501(b)(1)(B), Oct. 14, 1994, 108 Stat. 3428, related to the Defense Intelligence Senior Executive Service, prior to repeal by Pub. L. 104–201, div. A, title XVI, §§1632(a)(3), 1635, Sept. 23, 1996, 110 Stat. 2745, 2752, effective Oct. 1, 1996. See section 1606 of this title.

Provisions similar to those in this section were contained in sections 1590(a) and 1604(a) of this title prior to repeal by Pub. L. 104–201, §§1632(a)(3), 1633(a).

AMENDMENTS

2000—Subsec. (a)(1). Pub. L. 106–398, in introductory provisions, substituted ''in the Department of Defense'' for ''in the intelligence components of the Department of Defense and the military departments'' and ''of the Department'' for ''of those components and departments''.

EFFECTIVE DATE

Section effective Oct. 1, 1996, see section 1635 of Pub. L. 104–201, set out as an Effective Date of 1996 Amendment note under section 1593 of this title.

SHORT TITLE OF 1996 AMENDMENT

Pub. L. 104–201, div. A, title XVI, §1631, Sept. 23, 1996, 110 Stat. 2745, provided that: ''This subtitle [subtitle B (§§1631–1635) of title XVI of div. A of Pub. L. 104–201, enacting this section and sections 1602, 1603, 1606 to 1610, and 1612 to 1614 of this title, amending sections 1593, 1596, 1605, 1611, and 1621 of this title and sections 7103 and 7511 of Title 5, Government Organization and Employees, renumbering sections 1599, 1602, 1606, and 1608 of this title as sections 1611, 1621, 1622, and 1623 of this title, respectively, repealing sections 1590, 1601, 1603, and 1604 of this title and section 833 of Title 50, War and National Defense, enacting provisions set out as a note under section 1593 of this title, and repealing provisions set out as a note under section 402 of Title 50] may be cited as the 'Department of Defense Civilian Intelligence Personnel Policy Act of 1996'.''

DELEGATION OF AUTHORITY

Pub. L. 97–89, title VII, §701(b), Dec. 4, 1981, 95 Stat. 1160, provided that: ''The authority of the Secretary of Defense under chapter 83 of title 10, United States Code, as added by subsection (a), may be delegated in accordance with section 133(d) [now 113(d)] of title 10, United States Code.''

PROVISIONS RELATING TO THE DEFENSE CIVILIAN INTELLIGENCE PERSONNEL SYSTEM

Pub. L. 111–84, div. A, title XI, §1114, Oct. 28, 2009, 123 Stat. 2504, provided that:

''(a) SUSPENSION OF CERTAIN PAY AUTHORITY.—Effective with respect to amounts paid during the period beginning on the date of the enactment of this Act [Oct. 28, 2009] and ending on December 31, 2010, rates of basic pay for employees and positions within any element of the intelligence community (as defined by the National Security Act of 1947 [50 U.S.C. 3001 et seq.])—

''(1) may not be fixed under the Defense Civilian Intelligence Personnel System; and

"(2) shall instead be fixed in accordance with the provisions of law that (disregarding DCIPS) would then otherwise apply.

The preceding sentence shall not apply with respect to the National Geospatial-Intelligence Agency.

"(b) RESPONSE TO GAO REPORT.—Not later than 3 months after the date of the enactment of this Act, the Secretary of Defense shall submit to the congressional oversight committees a written description of any actions taken or proposed to be taken by such Secretary in response to the review and recommendations of the Government Accountability Office regarding the Defense Civilian Intelligence Personnel System.

"(c) INDEPENDENT ORGANIZATION.—

"(1) IN GENERAL.—Not later than 30 days after the date of the enactment of this Act, the Secretary of Defense, the Director of the Office of Personnel Management, and the Director of National Intelligence shall jointly designate an independent organization to review the operation of the Defense Civilian Intelligence Personnel System, including—

"(A) its impact on career progression;

"(B) its appropriateness or inappropriateness in light of the complexities of the workforce affected;

"(C) its sufficiency in terms of providing protections for diversity in promotion and retention of personnel; and

"(D) the adequacy of the training, policy guidelines, and other preparations afforded in connection with transitioning to that system.

"(2) DEADLINE.—The independent organization shall, after appropriate consultation with employees and employee organizations, submit its findings and recommendations under this section to the Secretary of Defense and the congressional oversight committees, in a written report, not later than June 1, 2010.

"(d) PROPOSED ACTIONS BASED ON REPORT.—Not later than 60 days after receiving the report of the independent organization under subsection (c), the Secretary of Defense, in coordination with the Director of the Office of Personnel Management and the Director of National Intelligence, shall submit to the congressional oversight committees a written report describing any actions that the Secretary has taken or proposes to take in response to such report.

"(e) HOLD-HARMLESS PROVISION.—No employee shall suffer any loss of or decrease in pay as a result of being converted from DCIPS in compliance with subsection (a).

"(f) DEFINITIONS.—For purposes of this section—

"(1) the terms 'Defense Civilian Intelligence Personnel System' and 'DCIPS' mean the civilian personnel system established by the Secretary of Defense under regulations—

"(A) prescribed pursuant to sections 1601 through 1614 of title 10, United States Code; and

"(B) taking effect in September 2008 or thereafter; and

"(2) the term 'congressional oversight committees' means—

"(A) the Committee on Armed Services and the Permanent Select Committee on Intelligence of the House of Representatives; and

"(B) the Committee on Armed Services and the Select Committee on Intelligence of the Senate."

§1602. Basic pay

(a) AUTHORITY TO FIX RATES OF BASIC PAY.—The Secretary of Defense (subject to the provisions of this section) shall fix the rates of basic pay for positions established under section 1601 of this title in relation to the rates of pay provided for comparable positions in the Department of Defense and subject to the same limitations on maximum rates of pay established for employees of the Department of Defense by law or regulation.

(b) PREVAILING RATE SYSTEMS.—The Secretary of Defense may, consistent with section 5341 of title 5, adopt such provisions of that title as provide for prevailing rate systems of basic pay and may apply those provisions to positions for civilian employees in or under which the Department of Defense may employ individuals described by section 5342(a)(2)(A) of that title.

(Added Pub. L. 104–201, div. A, title XVI, §1632(a)(3), Sept. 23, 1996, 110 Stat. 2746; amended Pub. L. 108–375, div. A, title XI, §1103(a), Oct. 28, 2004, 118 Stat. 2072; Pub. L. 109–364, div. A, title X, §1071(g)(12), Oct. 17, 2006, 120 Stat. 2403.)

PRIOR PROVISIONS

A prior section 1602 was renumbered section 1621 of this title.

Provisions similar to those in this section were contained in sections 1590(b) and (c) and 1604(b)(1) and (c) of this title prior to repeal by Pub. L. 104–201, §§1632(a)(3), 1633(a).

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–364 made technical correction to directory language of Pub. L. 108–375, §1103(a)(1). See 2004 Amendment note below.

2004—Subsec. (a). Pub. L. 108–375, §1103(a)(1), as amended by Pub. L. 109–364, substituted "in relation to the rates of pay provided for comparable positions in the Department of Defense and subject to the same limitations on maximum rates of pay established for employees of the Department of Defense by law or regulation" for "in relation to the rates of basic pay provided in subpart D of part III of title 5 for positions subject to that subpart which have corresponding levels of duties and responsibilities".

Subsecs. (b), (c). Pub. L. 108–375, §1103(a)(2), (3), redesignated subsec. (c) as (b) and struck out heading and text of former subsec. (b). Text read as follows: "A rate of basic pay fixed under subsection (a) for a position established under section 1601 of this title may not (except as otherwise provided by law) exceed—

"(1) in the case of a Defense Intelligence Senior Executive Service position, the maximum rate provided in section 5382 of title 5;

"(2) in the case of an Intelligence Senior Level position, the maximum rate provided in section 5382 of title 5; and

"(3) in the case of any other position, the maximum rate provided in section 5306(e) of title 5."

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–364, div. A, title X, §1071(g), Oct. 17, 2006, 120 Stat. 2402, provided that the amendment made by section 1071(g)(12) is effective as of Oct. 28, 2004, and as if included in Pub. L. 108–375 as enacted.

EFFECTIVE DATE

Section effective Oct. 1, 1996, see section 1635 of Pub. L. 104–201, set out as an Effective Date of 1996 Amendment note under section 1593 of this title.

§1603. Additional compensation, incentives, and allowances

(a) ADDITIONAL COMPENSATION BASED ON TITLE 5 AUTHORITIES.—The Secretary of Defense may provide employees in defense intelligence positions compensation (in addition to basic pay), including benefits, incentives, and allowances, consistent with, and not in excess of the level authorized for, comparable positions authorized by title 5.

(b) ALLOWANCES BASED ON LIVING COSTS AND ENVIRONMENT.—(1) In addition to basic pay, employees in defense intelligence positions who are citizens or nationals of the United States and are stationed outside the continental United

States or in Alaska may be paid an allowance, in accordance with regulations prescribed by the Secretary of Defense, while they are so stationed.

(2) An allowance under this subsection shall be based on—

(A) living costs substantially higher than in the District of Columbia;

(B) conditions of environment which (i) differ substantially from conditions of environment in the continental United States, and (ii) warrant an allowance as a recruitment incentive; or

(C) both of the factors specified in subparagraphs (A) and (B).

(3) An allowance under this subsection may not exceed the allowance authorized to be paid by section 5941(a) of title 5 for employees whose rates of basic pay are fixed by statute.

(c) ADDITIONAL ALLOWANCES AND BENEFITS FOR CERTAIN EMPLOYEES OF THE DEFENSE CLANDESTINE SERVICE.—(1) Beginning on the date on which the Secretary of Defense submits the report under paragraph (3)(A), in addition to the authority to provide compensation under subsection (a), the Secretary may provide a covered employee allowances and benefits under paragraph (1) of section 9904 of title 5 without regard to the limitations in that section—

(A) that the employee be assigned to activities outside the United States; or

(B) that the activities to which the employee is assigned be in support of Department of Defense activities abroad.

(2) The Secretary may not provide allowances and benefits under paragraph (1) to more than 125 covered employees per year.

(3)(A) The Secretary shall submit to the appropriate congressional committees a report containing a strategy addressing the mission of the Defense Clandestine Service during the period covered by the most recent future-years defense program submitted under section 221 of this title, including—

(i) how such mission will evolve during such period;

(ii) how the authority provided by paragraph (1) will assist the Secretary in carrying out such mission; and

(iii) an implementation plan for carrying out paragraph (1), including a projection of how much the amount of the allowances and benefits provided under such paragraph compare with the amount of the allowances and benefits provided before the date of the report.

(B) Not later than December 31, 2020, and each year thereafter, the Secretary shall submit to the appropriate congressional committees a report, with respect to the fiscal year preceding the date on which the report is submitted—

(i) identifying the number of covered employees for whom the Secretary provided allowances and benefits under paragraph (1); and

(ii) evaluating the efficacy of such allowances and benefits in enabling the execution of the objectives of the Defense Intelligence Agency.

(C) The reports under subparagraphs (A) and (B) may be submitted in classified form.

(4) In this subsection:

(A) The term ''appropriate congressional committees'' means—

(i) the congressional defense committees; and

(ii) the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate.

(B) The term ''covered employee'' means an employee in a defense intelligence position who is assigned to the Defense Clandestine Service at a location in the United States that the Secretary determines has living costs equal to or higher than the District of Columbia.

(Added Pub. L. 104–201, div. A, title XVI, § 1632(a)(3), Sept. 23, 1996, 110 Stat. 2746; amended Pub. L. 116–92, div. A, title XI, § 1108, Dec. 20, 2019, 133 Stat. 1597.)

PRIOR PROVISIONS

A prior section 1603, added Pub. L. 97–89, title VII, § 701(a)(1), Dec. 4, 1981, 95 Stat. 1160; amended Pub. L. 99–145, title XIII, § 1302(a)(3), Nov. 8, 1985, 99 Stat. 738; Pub. L. 99–661, div. A, title XIII, § 1343(a)(9), Nov. 14, 1986, 100 Stat. 3992, related to limits on pay to members of the Defense Intelligence Senior Executive Service, prior to repeal by Pub. L. 104–201, div. A, title XVI, §§ 1632(a)(3), 1635, Sept. 23, 1996, 110 Stat. 2745, 2752, effective Oct. 1, 1996.

Provisions similar to those in this section were contained in sections 1590(d) and 1604(b)(2), (d) of this title prior to repeal by Pub. L. 104–201, §§ 1632(a)(3), 1633(a).

AMENDMENTS

2019—Subsec. (c). Pub. L. 116–92 added subsec. (c).

EFFECTIVE DATE

Section effective Oct. 1, 1996, see section 1635 of Pub. L. 104–201, set out as an Effective Date of 1996 Amendment note under section 1593 of this title.

[§ 1604. Repealed. Pub. L. 104–201, div. A, title XVI, § 1632(a)(3), Sept. 23, 1996, 110 Stat. 2745]

Section, added Pub. L. 98–618, title V, § 501(a), Nov. 8, 1984, 98 Stat. 3301; amended Pub. L. 99–569, title V, § 502, Oct. 27, 1986, 100 Stat. 3198; Pub. L. 100–178, title VI, § 602(a), Dec. 2, 1987, 101 Stat. 1015; Pub. L. 101–193, title V, § 503(b), Nov. 30, 1989, 103 Stat. 1708; Pub. L. 102–496, title IV, § 401(a), Oct. 24, 1992, 106 Stat. 3183; Pub. L. 103–359, title V, § 501(b)(1)(D), title VIII, § 806(b)(1), Oct. 14, 1994, 108 Stat. 3428, 3442; Pub. L. 104–93, title V, § 501, Jan. 6, 1996, 109 Stat. 970, related to civilian personnel management. See sections 1601 to 1603, 1607, and 1609 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1996, see section 1635 of Pub. L. 104–201, set out as an Effective Date of 1996 Amendment note under section 1593 of this title.

§ 1605. Benefits for certain employees assigned outside the United States

(a)(1) The Secretary of Defense may provide to civilian personnel described in subsection (d) allowances and benefits comparable to those provided by the Secretary of State to officers and employees of the Foreign Service under paragraphs (2), (3), (4), (5), (6), (7), (8), and (13) of section 901 and sections 705 and 903 of the Foreign Service Act of 1980 (22 U.S.C. 4081(2), (3), (4), (5),

(6), (7), (8), and (13), 4025, 4083) and under section 5924(4) of title 5.

(2) The Secretary may also provide to any such civilian personnel special retirement accrual benefits in the same manner provided for certain officers and employees of the Central Intelligence Agency in section 303 of the Central Intelligence Agency Retirement Act (50 U.S.C. 2153) and in section 18 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 3518).

(b) The authority of the Secretary of Defense to make payments under subsection (a) is effective for any fiscal year only to the extent that appropriated funds are available for such purpose.

(c) Regulations prescribed under subsection (a) may not take effect until the Secretary of Defense has submitted such regulations to—

(1) the Committee on Armed Services and the Select Committee on Intelligence of the Senate; and

(2) the Committee on Armed Services and the Permanent Select Committee on Intelligence of the House of Representatives.

(d) Subsection (a) applies to civilian personnel of the Department of Defense who—

(1) are United States nationals;

(2) in the case of employees of the Defense Intelligence Agency, are assigned to duty outside the United States and, in the case of other employees, are assigned to Defense Attaché Offices or Defense Intelligence Agency Liaison Offices outside the United States; and

(3) are designated by the Secretary of Defense for the purposes of subsection (a).

(Added Pub. L. 98–215, title V, § 501(a), Dec. 9, 1983, 97 Stat. 1478, § 192; renumbered § 1605 and amended Pub. L. 99–145, title XIII, § 1302(a)(1), Nov. 8, 1985, 99 Stat. 737; Pub. L. 99–335, title V, § 507(b), June 6, 1986, 100 Stat. 628; Pub. L. 99–569, title V, § 501, Oct. 27, 1986, 100 Stat. 3198; Pub. L. 101–193, title V, § 505(a), Nov. 30, 1989, 103 Stat. 1709; Pub. L. 102–496, title VIII, § 803(d), Oct. 24, 1992, 106 Stat. 3253; Pub. L. 103–160, div. A, title XI, § 1182(a)(3), Nov. 30, 1993, 107 Stat. 1771; Pub. L. 104–93, title V, § 502(a), Jan. 6, 1996, 109 Stat. 972; Pub. L. 104–201, div. A, title XVI, § 1633(c)(1), Sept. 23, 1996, 110 Stat. 2751; Pub. L. 106–65, div. A, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 113–291, div. A, title X, § 1071(c)(11), Dec. 19, 2014, 128 Stat. 3509.)

AMENDMENTS

2014—Subsec. (a)(2). Pub. L. 113–291 substituted ''(50 U.S.C. 3518)'' for ''(50 U.S.C. 403r)''.

1999—Subsec. (c)(2). Pub. L. 106–65 substituted ''Committee on Armed Services'' for ''Committee on National Security''.

1996—Pub. L. 104–201 substituted ''assigned outside the United States'' for ''of the Defense Intelligence Agency'' in section catchline.

Subsec. (a). Pub. L. 104–93, § 502(a)(1), designated first sentence of existing text as par. (1) and substituted ''described in subsection (d)'' for ''of the Department of Defense who are United States nationals, who are assigned to Defense Attaché Offices and Defense Intelligence Agency Liaison Offices outside the United States, and who are designated by the Secretary of Defense for the purposes of this subsection,'', and designated second sentence of existing text as par. (2).

Subsec. (c). Pub. L. 104–93, § 502(a)(2), added subsec. (c) and struck out former subsec. (c) which read as follows: ''Regulations issued pursuant to subsection (a) shall be submitted to the Committee on Armed Services and the Permanent Select Committee on Intelligence of the House of Representatives and the Committee on Armed Services and the Select Committee on Intelligence of the Senate before such regulations take effect.''

Subsec. (d). Pub. L. 104–93, § 502(a)(3), added subsec. (d).

1993—Subsec. (a). Pub. L. 103–160 substituted ''(50 U.S.C. 2153)'' for ''(50 U.S.C. 403 note)''.

1992—Subsec. (a). Pub. L. 102–496 substituted ''the Central Intelligence Agency Retirement Act'' for ''the Central Intelligence Agency Retirement Act of 1964 for Certain Employees'' and inserted ''(50 U.S.C. 403r)'' after ''the Central Intelligence Agency Act of 1949''.

1989—Subsec. (a). Pub. L. 101–193 struck out ''who are subject to chapter 84 of title 5,'' after ''such civilian personnel'' in last sentence and inserted reference to section 18 of the Central Intelligence Agency Act of 1949.

1986—Subsec. (a). Pub. L. 99–569 inserted reference to par. (5) of section 901 of the Foreign Service Act of 1980 (22 U.S.C. 4081(5)).

Pub. L. 99–335 inserted provision authorizing the Secretary to provide to any civilian personnel subject to chapter 84 of title 5 special retirement accrual benefits in the same manner provided for certain officers and employees of the Central Intelligence Agency in section 303 of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees.

1985—Subsec. (a). Pub. L. 99–145, § 1302(a)(1)(A), (B), struck out references to Director of the Defense Intelligence Agency and to military personnel, substituted ''sections 705 and 903'' for ''under sections 903, 705, and 2308'', and substituted ''(22 U.S.C. 4081(2), (3), (4), (6), (7), (8), and (13), 4025, 4083) and under section 5924(4) of title 5.'' for ''(22 U.S.C. 4025; 22 U.S.C. 4081(2), (3), (4), (6), (7), (8), and (13); 22 U.S.C. 4083; 5 U.S.C. 5924(4)).''

Subsec. (b). Pub. L. 99–145, § 1302(a)(1)(A), struck out reference to Director of the Defense Intelligence Agency.

Subsecs. (c), (d). Pub. L. 99–145, § 1302(a)(1)(C), struck out subsec. (c) which read as follows: ''Members of the Armed Forces may not receive benefits under both subsection (a) and title 37, United States Code, for the same purpose. The Secretary of Defense shall prescribe such regulations as may be necessary to carry out this subsection.'', and redesignated former subsec. (d) as (c).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–201 effective Oct. 1, 1996, see section 1635 of Pub. L. 104–201, set out as a note under section 1593 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–496 effective on first day of fourth month beginning after Oct. 24, 1992, see section 805 of Pub. L. 102–496, set out as a note under section 2001 of Title 50, War and National Defense.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–335 effective Jan. 1, 1987, see section 702(a) of Pub. L. 99–335, set out as an Effective Date note under section 8401 of Title 5, Government Organization and Employees.

§ 1606. Defense Intelligence Senior Executive Service

(a) ESTABLISHMENT.—The Secretary of Defense may establish a Defense Intelligence Senior Executive Service for defense intelligence positions established pursuant to section 1601(a) of this title that are equivalent to Senior Executive Service positions. The number of positions in the Defense Intelligence Senior Executive Service may not exceed 594.

(b) REGULATIONS CONSISTENT WITH TITLE 5 PROVISIONS.—The Secretary of Defense shall pre-

scribe regulations for the Defense Intelligence Senior Executive Service which are consistent with the requirements set forth in sections 3131, 3132(a)(2), 3396(c), 3592, 3595(a), 5384, and 6304 of title 5, subsections (a), (b), and (c) of section 7543 of such title (except that any hearing or appeal to which a member of the Defense Intelligence Senior Executive Service is entitled shall be held or decided pursuant to those regulations), and subchapter II of chapter 43 of such title. To the extent that the Secretary determines it practicable to apply to members of, or applicants for, the Defense Intelligence Senior Executive Service other provisions of title 5 that apply to members of, or applicants for, the Senior Executive Service, the Secretary shall also prescribe regulations to implement those provisions with respect to the Defense Intelligence Senior Executive Service.

(c) AWARD OF RANK TO MEMBERS OF THE DEFENSE INTELLIGENCE SENIOR EXECUTIVE SERVICE.—The President, based on the recommendations of the Secretary of Defense, may award a rank referred to in section 4507 of title 5 to members of the Defense Intelligence Senior Executive Service. The award of such rank shall be made in a manner consistent with the provisions of that section.

(d) PERFORMANCE APPRAISALS.—(1) The Defense Intelligence Senior Executive Service shall be subject to a performance appraisal system which, as designed and applied, is certified by the Secretary of Defense under section 5307 of title 5 as making meaningful distinctions based on relative performance.

(2) The performance appraisal system applicable to the Defense Intelligence Senior Executive Service under paragraph (1) may be the same performance appraisal system that is established and implemented within the Department of Defense for members of the Senior Executive Service.

(Added Pub. L. 104–201, div. A, title XVI, § 1632(b), Sept. 23, 1996, 110 Stat. 2747; amended Pub. L. 106–398, § 1 [[div. A], title XI, § 1142], Oct. 30, 2000, 114 Stat. 1654, 1654A–319; Pub. L. 107–107, div. A, title XI, § 1121, Dec. 28, 2001, 115 Stat. 1242; Pub. L. 108–375, div. A, title XI, § 1103(b), Oct. 28, 2004, 118 Stat. 2073; Pub. L. 109–163, div. A, title XI, § 1125, Jan. 6, 2006, 119 Stat. 3454.)

PRIOR PROVISIONS

A prior section 1606 was renumbered section 1622 of this title.

Provisions similar to those in this section were contained in sections 1590(f), (g) and 1601(a)–(c) of this title prior to repeal by Pub. L. 104–201, §§ 1632(a)(3), 1633(a).

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–163 substituted "594" for "544".

2004—Subsec. (d). Pub. L. 108–375 added subsec. (d).

2001—Subsec. (a). Pub. L. 107–107 substituted "544" for "517".

2000—Subsec. (a). Pub. L. 106–398 substituted "517" for "492".

EFFECTIVE DATE

Section effective Oct. 1, 1996, see section 1635 of Pub. L. 104–201, set out as an Effective Date of 1996 Amendment note under section 1593 of this title.

§ 1607. Intelligence Senior Level positions

(a) DESIGNATION OF POSITIONS.—The Secretary of Defense may designate as an Intelligence Senior Level position any defense intelligence position that, as determined by the Secretary—

(1) is classifiable above grade GS–15 of the General Schedule;

(2) does not satisfy functional or program management criteria for being designated a Defense Intelligence Senior Executive Service position; and

(3) has no more than minimal supervisory responsibilities.

(b) REGULATIONS.—Subsection (a) shall be carried out in accordance with regulations prescribed by the Secretary of Defense.

(c) AWARD OF RANK TO EMPLOYEES IN INTELLIGENCE SENIOR LEVEL POSITIONS.—The President, based on the recommendations of the Secretary of Defense, may award a rank referred to in section 4507a of title 5 to employees in Intelligence Senior Level positions designated under subsection (a). The award of such rank shall be made in a manner consistent with the provisions of that section.

(Added Pub. L. 104–201, div. A, title XVI, § 1632(b), Sept. 23, 1996, 110 Stat. 2747; amended Pub. L. 107–306, title V, § 503, Nov. 27, 2002, 116 Stat. 2407.)

REFERENCES IN TEXT

Grade GS–15 of the General Schedule, referred to in subsec. (a)(1), is set out under section 5332 of Title 5, Government Organization and Employees.

PRIOR PROVISIONS

A prior section 1607 was renumbered section 424 of this title.

Provisions similar to those in this section were contained in section 1604(f)(1), (3) of this title prior to repeal by Pub. L. 104–201, § 1632(a)(3).

AMENDMENTS

2002—Subsec. (c). Pub. L. 107–306 added subsec. (c).

EFFECTIVE DATE

Section effective Oct. 1, 1996, see section 1635 of Pub. L. 104–201, set out as an Effective Date of 1996 Amendment note under section 1593 of this title.

§ 1608. Time-limited appointments

(a) AUTHORITY FOR TIME-LIMITED APPOINTMENTS.—The Secretary of Defense may by regulation authorize appointing officials to make time-limited appointments to defense intelligence positions specified in the regulations.

(b) REVIEW OF USE OF AUTHORITY.—The Secretary of Defense shall review each time-limited appointment in a defense intelligence position at the end of the first year of the period of the appointment and determine whether the appointment should be continued for the remainder of the period. The continuation of a time-limited appointment after the first year shall be subject to the approval of the Secretary.

(c) CONDITION ON PERMANENT APPOINTMENT TO DEFENSE INTELLIGENCE SENIOR EXECUTIVE SERVICE.—An employee serving in a defense intelligence position pursuant to a time-limited appointment is not eligible for a permanent appointment to a Defense Intelligence Senior Ex-

ecutive Service position (including a position in which the employee is serving) unless the employee is selected for the permanent appointment on a competitive basis.

(d) TIME-LIMITED APPOINTMENT DEFINED.—In this section, the term ''time-limited appointment'' means an appointment (subject to the condition in subsection (b)) for a period not to exceed two years.

(Added Pub. L. 104–201, div. A, title XVI, § 1632(b), Sept. 23, 1996, 110 Stat. 2748.)

PRIOR PROVISIONS

A prior section 1608 was renumbered section 1623 of this title.

EFFECTIVE DATE

Section effective Oct. 1, 1996, see section 1635 of Pub. L. 104–201, set out as an Effective Date of 1996 Amendment note under section 1593 of this title.

§ 1609. Termination of defense intelligence employees

(a) TERMINATION AUTHORITY.—Notwithstanding any other provision of law, the Secretary of Defense may terminate the employment of any employee in a defense intelligence position if the Secretary—

(1) considers that action to be in the interests of the United States; and

(2) determines that the procedures prescribed in other provisions of law that authorize the termination of the employment of such employee cannot be invoked in a manner consistent with the national security.

(b) FINALITY.—A decision by the Secretary of Defense to terminate the employment of an employee under this section is final and may not be appealed or reviewed outside the Department of Defense.

(c) NOTIFICATION TO CONGRESSIONAL COMMITTEES.—Whenever the Secretary of Defense terminates the employment of an employee under the authority of this section, the Secretary shall promptly notify the congressional oversight committees of such termination.

(d) PRESERVATION OF RIGHT TO SEEK OTHER EMPLOYMENT.—Any termination of employment under this section does not affect the right of the employee involved to seek or accept employment with any other department or agency of the United States if that employee is declared eligible for such employment by the Director of the Office of Personnel Management.

(e) LIMITATION ON DELEGATION.—The authority of the Secretary of Defense under this section may be delegated only to the Deputy Secretary of Defense, the head of an intelligence component of the Department of Defense (with respect to employees of that component), or the Secretary of a military department (with respect to employees of that department). An action to terminate employment of such an employee by any such official may be appealed to the Secretary of Defense.

(Added Pub. L. 104–201, div. A, title XVI, § 1632(b), Sept. 23, 1996, 110 Stat. 2748.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 1590(e) and 1604(e) of this title prior to repeal by Pub. L. 104–201, §§ 1632(a)(3), 1633(a).

EFFECTIVE DATE

Section effective Oct. 1, 1996, see section 1635 of Pub. L. 104–201, set out as an Effective Date of 1996 Amendment note under section 1593 of this title.

§ 1610. Reductions and other adjustments in force

(a) IN GENERAL.—The Secretary of Defense shall prescribe regulations for the separation of employees in defense intelligence positions, including members of the Defense Intelligence Senior Executive Service and employees in Intelligence Senior Level positions, during a reduction in force or other adjustment in force. The regulations shall apply to such a reduction in force or other adjustment in force notwithstanding sections 3501(b) and 3502 of title 5.

(b) MATTERS TO BE GIVEN EFFECT.—The regulations shall give effect to the following:

(1) Tenure of employment.

(2) Military preference, subject to sections 3501(a)(3) and 3502(b) of title 5.

(3) The veteran's preference under section 3502(b) of title 5.

(4) Performance.

(5) Length of service computed in accordance with the second sentence of section 3502(a) of title 5.

(c) REGULATIONS RELATING TO DEFENSE INTELLIGENCE SES.—The regulations relating to removal from the Defense Intelligence Senior Executive Service in a reduction in force or other adjustment in force shall be consistent with section 3595(a) of title 5.

(d) RIGHT OF APPEAL.—(1) The regulations shall provide a right of appeal regarding a personnel action under the regulations. The appeal shall be determined within the Department of Defense. An appeal determined at the highest level provided in the regulations shall be final and not subject to review outside the Department of Defense. A personnel action covered by the regulations is not subject to any other provision of law that provides appellate rights or procedures.

(2) Notwithstanding paragraph (1), a preference eligible referred to in section 7511(a)(1)(B) of title 5 may elect to have an appeal of a personnel action taken against the preference eligible under the regulation determined by the Merit Systems Protection Board instead of having the appeal determined within the Department of Defense. Section 7701 of title 5 shall apply to any such appeal to the Merit Systems Protection Board.

(e) CONSULTATION WITH OPM.—Regulations under this section shall be prescribed in consultation with the Director of the Office of Personnel Management.

(Added Pub. L. 104–201, div. A, title XVI, § 1632(b), Sept. 23, 1996, 110 Stat. 2749.)

EFFECTIVE DATE

Section effective Oct. 1, 1996, see section 1635 of Pub. L. 104–201, set out as an Effective Date of 1996 Amendment note under section 1593 of this title.

§ 1611. Postemployment assistance: certain terminated intelligence employees

(a) AUTHORITY.—Subject to subsection (c), the Secretary of Defense may, in the case of any in-

dividual who is a qualified former intelligence employee, use appropriated funds—

(1) to assist that individual in finding and qualifying for employment other than in a defense intelligence position;

(2) to assist that individual in meeting the expenses of treatment of medical or psychological disabilities of that individual; and

(3) to provide financial support to that individual during periods of unemployment.

(b) QUALIFIED FORMER INTELLIGENCE EMPLOYEES.—For purposes of this section, a qualified former intelligence employee is an individual who was employed as a civilian employee of the Department of Defense in a sensitive defense intelligence position—

(1) who has been found to be ineligible for continued access to information designated as ''Sensitive Compartmented Information'' and employment in a defense intelligence position; or

(2) whose employment in a defense intelligence position has been terminated.

(c) CONDITIONS.—Assistance may be provided to a qualified former intelligence employee under subsection (a) only if the Secretary determines that such assistance is essential to—

(1) maintain the judgment and emotional stability of the qualified former intelligence employee; and

(2) avoid circumstances that might lead to the unlawful disclosure of classified information to which the qualified former intelligence employee had access.

(d) DURATION OF ASSISTANCE.—Assistance may not be provided under this section in the case of any individual after the end of the five-year period beginning on the date of the termination of the employment of the individual in a defense intelligence position.

(Added Pub. L. 103–359, title VIII, § 806(a)(1), Oct. 14, 1994, 108 Stat. 3441, § 1599; amended Pub. L. 104–106, div. A, title XV, § 1502(a)(11), Feb. 10, 1996, 110 Stat. 503; renumbered § 1611 and amended Pub. L. 104–201, div. A, title XVI, § 1632(c), Sept. 23, 1996, 110 Stat. 2749; Pub. L. 106–65, div. A, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 106–398, § 1 [[div. A], title XI, § 1141(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–318; Pub. L. 107–107, div. A, title X, § 1048(a)(15), Dec. 28, 2001, 115 Stat. 1223; Pub. L. 107–306, title VIII, § 811(b)(4)(B), Nov. 27, 2002, 116 Stat. 2423; Pub. L. 108–177, title III, § 361(h), Dec. 13, 2003, 117 Stat. 2625.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 1604(e)(4) of this title and in section 17 of Pub. L. 86–36 as added by Pub. L. 102–88, title V, § 503, Aug. 14, 1991, 105 Stat. 436, which was formerly set out in a note under section 402 of Title 50, War and National Defense, prior to repeal by Pub. L. 103–359, § 806(b), and editorial reclassification to section 3615 of Title 50.

AMENDMENTS

2003—Subsec. (e). Pub. L. 108–177 struck out heading and text of subsec. (e). Text read as follows:

''(1) The Secretary of Defense shall submit to the congressional committees specified in paragraph (3) an annual report with respect to any expenditure made under this section.

''(2) In the case of a report required to be submitted under paragraph (1) to the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives, the date for the submittal of such report shall be as provided in section 507 of the National Security Act of 1947.

''(3) The committees referred to in paragraph (1) are the following:

''(A) The Committee on Armed Services, the Committee on Appropriations, and the Permanent Select Committee on Intelligence of the House of Representatives.

''(B) The Committee on Armed Services, the Committee on Appropriations, and the Select Committee on Intelligence of the Senate.''

2002—Subsec. (e)(1). Pub. L. 107–306, § 811(b)(4)(B)(i), substituted ''paragraph (3)'' for ''paragraph (2)''.

Subsec. (e)(2), (3). Pub. L. 107–306, § 811(b)(4)(B)(ii), (iii), added par. (2) and redesignated former par. (2) as (3).

2001—Subsec. (d). Pub. L. 107–107 struck out ''with'' before ''in a defense intelligence position''.

2000—Subsec. (a)(1). Pub. L. 106–398, § 1 [[div. A], title XI, § 1141(b)(1)], substituted ''a defense intelligence position'' for ''an intelligence component of the Department of Defense''.

Subsec. (b). Pub. L. 106–398, § 1 [[div. A], title XI, § 1141(b)(2)], substituted ''sensitive defense intelligence position'' for ''sensitive position in an intelligence component of the Department of Defense'' in introductory provisions and ''in a defense intelligence position'' for ''with the intelligence component'' in pars. (1) and (2).

Subsec. (d). Pub. L. 106–398, § 1 [[div. A], title XI, § 1141(b)(3)], substituted ''in a defense intelligence position'' for ''an intelligence component of the Department of Defense''.

Subsec. (f). Pub. L. 106–398, § 1 [[div. A], title XI, § 1141(b)(4)], struck out heading and text of subsec. (f). Text read as follows: ''In this section, the term 'intelligence component of the Department of Defense' includes the National Reconnaissance Office and any intelligence component of a military department.''

1999—Subsec. (e)(2)(A). Pub. L. 106–65 substituted ''Committee on Armed Services'' for ''Committee on National Security''.

1996—Pub. L. 104–201 renumbered section 1599 of this title as this section.

Subsec. (e)(2)(A). Pub. L. 104–106, § 1502(a)(11)(A), substituted ''The Committee on National Security, the Committee on Appropriations,'' for ''The Committees on Armed Services and Appropriations''.

Subsec. (e)(2)(B). Pub. L. 104–106, § 1502(a)(11)(B), substituted ''The Committee on Armed Services, the Committee on Appropriations,'' for ''The Committees on Armed Services and Appropriations''.

Subsec. (f). Pub. L. 104–201 substituted ''includes the National Reconnaissance Office and any intelligence component of a military department.'' for ''means any of the following:

''(1) The National Security Agency.

''(2) The Defense Intelligence Agency.

''(3) The National Reconnaissance Office.

''(4) The Central Imagery Office.

''(5) The intelligence components of any of the military departments.''

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–177, title III, § 361(n), Dec. 13, 2003, 117 Stat. 2626, provided that: ''The amendments made by this section [amending this section, section 1681b of Title 15, Commerce and Trade, and sections 2366, 3038, 3047, 3050, 3106, and 3381 of Title 50, War and National Defense, repealing section 540C of Title 28, Judiciary and Judicial Procedure, and repealing provisions set out as notes under sections 3036 and 3381 of Title 50] shall take effect on December 31, 2003.''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–201 effective Oct. 1, 1996, see section 1635 of Pub. L. 104–201, set out as a note under section 1593 of this title.

§ 1612. Merit system principles and civil service protections: applicability

(a) APPLICABILITY OF MERIT SYSTEM PRINCIPLES.—Section 2301 of title 5 shall apply to the exercise of authority under this subchapter (other than sections 1605 and 1611).

(b) CIVIL SERVICE PROTECTIONS.—(1) If, in the case of a position established under authority other than section 1601(a)(1) of this title that is reestablished as an excepted service position under that section, the provisions of law referred to in paragraph (2) applied to the person serving in that position immediately before the position is so reestablished and such provisions of law would not otherwise apply to the person while serving in the position as so reestablished, then such provisions of law shall, subject to paragraph (3), continue to apply to the person with respect to service in that position for as long as the person continues to serve in the position without a break in service.

(2) The provisions of law referred to in paragraph (1) are the following provisions of title 5:

(A) Section 2302, relating to prohibited personnel practices.

(B) Chapter 75, relating to adverse actions.

(3)(A) Notwithstanding any provision of chapter 75 of title 5, an appeal of an adverse action by an individual employee covered by paragraph (1) shall be determined within the Department of Defense if the employee so elects.

(B) The Secretary of Defense shall prescribe the procedures for initiating and determining appeals of adverse actions pursuant to elections made under subparagraph (A).

(Added Pub. L. 104–201, div. A, title XVI, § 1632(d), Sept. 23, 1996, 110 Stat. 2750.)

EFFECTIVE DATE

Section effective Oct. 1, 1996, see section 1635 of Pub. L. 104–201, set out as an Effective Date of 1996 Amendment note under section 1593 of this title.

§ 1613. Miscellaneous provisions

(a) COLLECTIVE BARGAINING AGREEMENTS.—Nothing in sections 1601 through 1603 and 1606 through 1610 may be construed to impair the continued effectiveness of a collective bargaining agreement with respect to an agency or office that is a successor to an agency or office covered by the agreement before the succession.

(b) NOTICE TO CONGRESS OF REGULATIONS.—The Secretary of Defense shall notify Congress of any regulations prescribed to carry out this subchapter (other than sections 1605 and 1611). Such notice shall be provided by submitting a copy of the regulations to the congressional oversight committees not less than 60 days before such regulations take effect.

(Added Pub. L. 104–201, div. A, title XVI, § 1632(d), Sept. 23, 1996, 110 Stat. 2750; amended Pub. L. 105–85, div. A, title X, § 1073(a)(32), Nov. 18, 1997, 111 Stat. 1902.)

AMENDMENTS

1997—Subsec. (a). Pub. L. 105–85 substituted ‘‘1603’’ for ‘‘1604’’.

EFFECTIVE DATE

Section effective Oct. 1, 1996, see section 1635 of Pub. L. 104–201, set out as an Effective Date of 1996 Amendment note under section 1593 of this title.

§ 1614. Definitions

In this subchapter:

(1) The term ‘‘defense intelligence position’’ means a civilian position as an intelligence officer or intelligence employee of the Department of Defense.

(2) The term ‘‘intelligence component of the Department of Defense’’ means any of the following:

(A) The National Security Agency.

(B) The Defense Intelligence Agency.

(C) The National Geospatial-Intelligence Agency.

(D) Any other component of the Department of Defense that performs intelligence functions and is designated by the Secretary of Defense as an intelligence component of the Department of Defense.

(E) Any successor to a component specified in, or designated pursuant to, this paragraph.

(3) The term ‘‘congressional oversight committees’’ means—

(A) the Committee on Armed Services and the Select Committee on Intelligence of the Senate; and

(B) the Committee on Armed Services and the Permanent Select Committee on Intelligence of the House of Representatives.

(4) The term ‘‘excepted service’’ has the meaning given such term in section 2103 of title 5.

(5) The term ‘‘preference eligible’’ has the meaning given such term in section 2108(3) of title 5.

(6) The term ‘‘Senior Executive Service position’’ has the meaning given such term in section 3132(a)(2) of title 5.

(7) The term ‘‘collective bargaining agreement’’ has the meaning given such term in section 7103(8) of title 5.

(Added Pub. L. 104–201, div. A, title XVI, § 1632(d), Sept. 23, 1996, 110 Stat. 2750; amended Pub. L. 106–65, div. A, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 106–398, § 1 [[div. A], title XI, § 1141(c)], Oct. 30, 2000, 114 Stat. 1654, 1654A–319; Pub. L. 108–136, div. A, title IX, § 921(d)(7), Nov. 24, 2003, 117 Stat. 1569.)

AMENDMENTS

2003—Par. (2)(C). Pub. L. 108–136 substituted ‘‘National Geospatial-Intelligence Agency’’ for ‘‘National Imagery and Mapping Agency’’.

2000—Par. (1). Pub. L. 106–398 substituted ‘‘of the Department of Defense’’ for ‘‘of an intelligence component of the Department of Defense or of a military department’’.

1999—Par. (3)(B). Pub. L. 106–65 substituted ‘‘Committee on Armed Services’’ for ‘‘Committee on National Security’’.

EFFECTIVE DATE

Section effective Oct. 1, 1996, see section 1635 of Pub. L. 104–201, set out as an Effective Date of 1996 Amendment note under section 1593 of this title.

SUBCHAPTER II—DEFENSE INTELLIGENCE AGENCY PERSONNEL

Sec.
1621. Defense Intelligence Agency merit pay system.
1622. Uniform allowance: civilian employees.
1623. Financial assistance to certain employees in acquisition of critical skills.

§ 1621. Defense Intelligence Agency merit pay system

The Secretary of Defense may by regulation establish a merit pay system for such employees of the Defense Intelligence Agency as the Secretary considers appropriate. The merit pay system shall be designed to carry out purposes consistent with those set forth in section 5401 of title 5, as in effect on October 31, 1993.

(Added Pub. L. 97–89, title VII, § 701(a)(1), Dec. 4, 1981, 95 Stat. 1160, § 1602; amended Pub. L. 98–615, title II, § 204(b), Nov. 8, 1984, 98 Stat. 3216; Pub. L. 103–89, § 3(b)(3)(A), Sept. 30, 1993, 107 Stat. 982; Pub. L. 103–359, title V, § 501(b)(1)(C), Oct. 14, 1994, 108 Stat. 3428; renumbered § 1621 and amended Pub. L. 104–201, div. A, title XVI, §§ 1632(a)(1), 1633(d), Sept. 23, 1996, 110 Stat. 2745, 2752.)

REFERENCES IN TEXT

Section 5401 of title 5, referred to in text, was repealed by Pub. L. 103–89, § 3(a)(1), (c), Sept. 30, 1993, 107 Stat. 981, eff. Nov. 1, 1993.

PRIOR PROVISIONS

A prior section 1621, added Pub. L. 99–145, title IX, § 924(a)(1), Nov. 8, 1985, 99 Stat. 697; amended Pub. L. 99–433, title I, § 110(g)(2), Oct. 1, 1986, 100 Stat. 1004; Pub. L. 100–26, § 7(c)(2), (k)(2), Apr. 21, 1987, 101 Stat. 280, 284; Pub. L. 101–189, div. A, title VIII, § 853(c)(1), Nov. 29, 1989, 103 Stat. 1518, defined ''program manager'', ''procurement command'', and ''major defense acquisition program'', prior to repeal by Pub. L. 101–510, div. A, title XII, § 1207(c)(4), Nov. 5, 1990, 104 Stat. 1665; Pub. L. 102–190, div. A, title X, § 1061(a)(26)(C)(i), Dec. 5, 1991, 105 Stat. 1474, effective Oct. 1, 1993.

AMENDMENTS

1996—Pub. L. 104–201 renumbered section 1602 of this title as this section and struck out ''and Central Imagery Office'' after ''Intelligence Agency''.

1994—Pub. L. 103–359 inserted ''and Central Imagery Office'' after ''Defense Intelligence Agency''.

1993—Pub. L. 103–89 inserted '', as in effect on October 31, 1993''.

1984—Pub. L. 98–615 substituted ''section 5401 of title 5'' for ''section 5401(a) of title 5''.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–201 effective Oct. 1, 1996, see section 1635 of Pub. L. 104–201, set out as a note under section 1593 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–89 effective Nov. 1, 1993, see section 3(c) of Pub. L. 103–89, set out as a note under section 3372 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–615, title II, § 205, Nov. 8, 1984, 98 Stat. 3217, provided that amendment by Pub. L. 98–615 was effective Oct. 1, 1984, and applicable with respect to pay periods commencing on or after that date, with certain exceptions and qualifications.

EFFECTIVE DATE

Pub. L. 97–89, title VIII, § 806, Dec. 4, 1981, 95 Stat. 1162, provided that: ''The amendments made by titles V, VI, and VII and by this title [enacting this chapter and sections 3513 and 3610 to 3613 of Title 50, War and National Defense, and amending sections 2108, 6304, and 8336 of Title 5, Government Organization and Employees, and sections 3073, 3505, 3506, 3607, and 3608 of Title 50] shall take effect as of October 1, 1981.''

§ 1622. Uniform allowance: civilian employees

(a) The Secretary of Defense may pay an allowance under this section to any civilian employee of the Defense Intelligence Agency who—

(1) is assigned to a Defense Attaché Office outside the United States; and

(2) is required by regulation to wear a prescribed uniform in performance of official duties.

(b) Notwithstanding section 5901(a) of title 5, the amount of any such allowance shall be the greater of the following:

(1) The amount provided for employees of the Department of State assigned to positions outside the United States and required by regulation to wear a prescribed uniform in performance of official duties.

(2) The maximum allowance provided under section 1593(b) of this title.

(c) An allowance paid under this section shall be treated in the same manner as is provided in subsection (c) of section 5901 of title 5 for an allowance paid under that section.

(Added Pub. L. 100–178, title VI, § 601(a), Dec. 2, 1987, 101 Stat. 1015, § 1606; amended Pub. L. 101–189, div. A, title III, § 336(b), Nov. 29, 1989, 103 Stat. 1419; renumbered § 1622, Pub. L. 104–201, div. A, title XVI, § 1632(a)(2), Sept. 23, 1996, 110 Stat. 2745.)

PRIOR PROVISIONS

A prior section 1622, added Pub. L. 99–145, title IX, § 924(a)(1), Nov. 8, 1985, 99 Stat. 698; amended Pub. L. 99–500, § 101(c) [title X, § 933], Oct. 18, 1986, 100 Stat. 1783–82, 1783–161; Pub. L. 99–591, § 101(c) [title X, § 933], Oct. 30, 1986, 100 Stat. 3341–82, 3341–161; Pub. L. 99–661, div. A, title IX, formerly title IV, § 933, Nov. 14, 1986, 100 Stat. 3940, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; Pub. L. 101–189, div. A, title VIII, § 853(c)(2), Nov. 29, 1989, 103 Stat. 1518, related to education, training, and experience requirements for persons assigned as program managers of major defense acquisition programs, prior to repeal by Pub. L. 101–510, div. A, title XII, § 1207(c)(1), Nov. 5, 1990, 104 Stat. 1665, effective Oct. 1, 1991.

AMENDMENTS

1996—Pub. L. 104–201 renumbered section 1606 of this title as this section.

1989—Subsec. (b)(2). Pub. L. 101–189 substituted ''The maximum allowance provided under section 1593(b) of this title'' for ''$360 per year''.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–189 effective Jan. 1, 1990, see section 336(c) of Pub. L. 101–189, set out as an Effective Date note under section 1593 of this title.

§ 1623. Financial assistance to certain employees in acquisition of critical skills

(a) The Secretary of Defense shall establish an undergraduate training program with respect to civilian employees of the Defense Intelligence Agency that is similar in purpose, conditions, content, and administration to the program

which the Secretary of Defense is authorized to establish under section 16 of the National Security Agency Act of 1959 (50 U.S.C. 3614) for civilian employees of the National Security Agency.

(b) Any payments made by the Secretary to carry out the program required to be established by subsection (a) may be made in any fiscal year only to the extent that appropriated funds are available for that purpose.

(Added Pub. L. 101–193, title V, §507(a)(1), Nov. 30, 1989, 103 Stat. 1709, §1608; renumbered §1623, Pub. L. 104–201, div. A, title XVI, §1632(a)(2), Sept. 23, 1996, 110 Stat. 2745; amended Pub. L. 113–291, div. A, title X, §1071(c)(9), Dec. 19, 2014, 128 Stat. 3509.)

PRIOR PROVISIONS

A prior section 1623, added Pub. L. 99–145, title IX, §924(a)(1), Nov. 8, 1985, 99 Stat. 698; amended Pub. L. 99–661, div. A, title XIII, §1343(a)(10), Nov. 14, 1986, 100 Stat. 3993; Pub. L. 100–26, §7(j)(4), Apr. 21, 1987, 101 Stat. 283; Pub. L. 101–189, div. A, title VIII, §853(c)(3), Nov. 29, 1989, 103 Stat. 1519, related to education, training, and experience requirements for general and flag officers assigned to a procurement command, prior to repeal by Pub. L. 101–510, div. A, title XII, §1207(c)(3), Nov. 5, 1990, 104 Stat. 1665, effective Oct. 1, 1992.

A prior section 1624, added Pub. L. 99–145, title IX, §924(a)(1), Nov. 8, 1985, 99 Stat. 698, required a training program for quality assurance personnel, prior to repeal by Pub. L. 101–510, div. A, title XII, §1207(c)(4), Nov. 5, 1990, 104 Stat. 1665; Pub. L. 102–190, div. A, title X, §1061(a)(26)(C)(i), Dec. 5, 1991, 105 Stat. 1474, effective Oct. 1, 1993.

AMENDMENTS

2014—Subsec. (a). Pub. L. 113–291 substituted ''(50 U.S.C. 3614)'' for ''(50 U.S.C. 402 note)''.

1996—Pub. L. 104–201 renumbered section 1608 of this title as this section.

EFFECTIVE DATE

Pub. L. 101–193, title V, §507(b), Nov. 30, 1989, 103 Stat. 1710, provided that: ''Section 1608 [now 1623] of title 10, United States Code, as added by subsection (a), shall take effect on the date of enactment of this Act [Nov. 30, 1989].''

CHAPTER 87—DEFENSE ACQUISITION WORKFORCE

Subchapter		Sec.
I.	General Authorities and Responsibilities	1701
II.	Acquisition Positions And Acquisition Workforce Career Fields	1721
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AMENDMENTS

2019—Pub. L. 116–92, div. A, title VIII, §861(f)(3)(B), (j)(7)(B), Dec. 20, 2019, 133 Stat. 1518, 1519, substituted ''Acquisition Positions And Acquisition Workforce Career Fields'' for ''Defense Acquisition Positions'' in item for subchapter II and ''Critical Acquisition Positions'' for ''Acquisition Corps'' in item for subchapter III.

1991—Pub. L. 102–25, title VII, §704(b)(1), Apr. 6, 1991, 105 Stat. 119, made technical amendment to directory language of Pub. L. 101–510, div. A, title XII, §1202(a), Nov. 5, 1990, 104 Stat. 1638, which enacted this chapter.

SUBCHAPTER I—GENERAL AUTHORITIES AND RESPONSIBILITIES

Sec.	
1701.	Management policies.
1701a.	Management for acquisition workforce excellence.
1701b.	Enhanced pay authority for certain acquisition and technology positions.
1702.	Under Secretary of Defense for Acquisition and Sustainment: authorities and responsibilities.
[1703.	Repealed.]
1704.	Service acquisition executives: authorities and responsibilities.
1705.	Department of Defense Acquisition Workforce Development Account.
1706.	Government performance of certain acquisition functions.
[1707.	Repealed.][1]

AMENDMENTS

2021—Pub. L. 116–283, div. A, title X, §1081(a)(30), title XI, §1114(b), Jan. 1, 2021, 134 Stat. 3872, 3895, added items 1701b and 1702 and struck out former item 1702 ''Under Secretary of Defense for Acquisition, Technology, and Logistics: authorities and responsibilities''.

2019—Pub. L. 116–92, div. A, title X, §1010(a)(2)(B), Dec. 20, 2019, 133 Stat. 1576, substituted ''Department of Defense Acquisition Workforce Development Account'' for ''Department of Defense Acquisition Workforce Development Fund'' in item 1705.

2013—Pub. L. 112–239, div. A, title VIII, §824(a)(2), Jan. 2, 2013, 126 Stat. 1833, added item 1706.

2011—Pub. L. 111–383, div. A, title VIII, §871(b), Jan. 7, 2011, 124 Stat. 4300, added item 1701a.

2008—Pub. L. 110–181, div. A, title VIII, §852(a)(2), Jan. 28, 2008, 122 Stat. 250, added item 1705.

2003—Pub. L. 108–136, div. A, title VIII, §836(1), Nov. 24, 2003, 117 Stat. 1551, struck out items 1703 ''Director of Acquisition Education, Training, and Career Development'', 1705 ''Directors of Acquisition Career Management in the military departments'', 1706 ''Acquisition career program boards'', and 1707 ''Personnel in the Office of the Secretary of Defense and in the Defense Agencies''.

2001—Pub. L. 107–107, div. A, title X, §1048(b)(3)(B), Dec. 28, 2001, 115 Stat. 1225, substituted ''Under Secretary of Defense for Acquisition, Technology, and Logistics: authorities and responsibilities'' for ''Under Secretary of Defense for Acquisition and Technology: authorities and responsibilities'' in item 1702.

1993—Pub. L. 103–160, div. A, title IX, §904(d)(2), Nov. 30, 1993, 107 Stat. 1728, inserted ''and Technology'' after ''Acquisition'' in item 1702.

§1701. Management policies

(a) POLICIES AND PROCEDURES.—The Secretary of Defense shall establish policies and procedures for the effective management (including accession, education, training, and career development) of persons serving in acquisition positions in the Department of Defense.

(b) UNIFORM IMPLEMENTATION.—The Secretary shall ensure that, to the maximum extent practicable, acquisition workforce policies and procedures established in accordance with this chapter are uniform in their implementation throughout the Department of Defense.

(Added Pub. L. 101–510, div. A, title XII, §1202(a), Nov. 5, 1990, 104 Stat. 1638.)

EFFECTIVE DATE

Pub. L. 101–510, div. A, title XII, §1211, Nov. 5, 1990, 104 Stat. 1667, provided that: ''Except as otherwise provided in this title [see Short Title note below], this title and the amendments made by this title, including chapter

[1] New section 1707 enacted by Pub. L. 116–283 without corresponding amendment of subchapter analysis.

87 of title 10, United States Code (as added by section 1202), shall take effect on the date of the enactment of this Act [Nov. 5, 1990].''

SHORT TITLE

Pub. L. 101–510, div. A, title XII, § 1201, Nov. 5, 1990, 104 Stat. 1638, provided that: ''This title [enacting this chapter, sections 5379 and 5380 of Title 5, Government Organization and Employees, and section 317 of Title 37, Pay and Allowances of the Uniformed Services, amending sections 101 and 2435 of this title and sections 4107, 4301, 5102, 5532, 5724, 5742, 5924, 5942, 8344, and 8468 of Title 5, repealing sections 1621 to 1624 of this title, enacting provisions set out as notes under this section and sections 1621 to 1623, 1705, 1721, 1722, 1724, 1733, 1734, 1746, 1761, 1762, and 2435 of this title, sections 3326, 5380, and 5532 of Title 5, and section 317 of Title 37, and repealing provisions set out as a note under section 2304 of this title] may be cited as the 'Defense Acquisition Workforce Improvement Act'.''

REGULATIONS

Pub. L. 101–510, div. A, title XII, § 1210(a), Nov. 5, 1990, 104 Stat. 1667, provided that: ''Unless otherwise provided in this title [see Short Title note above] and in subsection (b) [set out below], the Secretary of Defense shall promulgate regulations to implement this title and the amendments made by this title not later than one year after the date of the enactment of this Act [Nov. 5, 1990].''

CONTINUATION OF PAY

Pub. L. 116–283, div. A, title XI, § 1114(c)(2), Jan. 1, 2021, 134 Stat. 3895, provided that: ''The repeal in paragraph (1) [repealing section 1111 of Pub. L. 114–92, formerly set out as a note below] shall not be interpreted to prohibit the payment of basic pay at rates fixed under such section 1111 before the date of the enactment of this Act [Jan. 1, 2021] for positions having terms that continue after that date.''

EXCHANGE PROGRAM FOR ACQUISITION WORKFORCE EMPLOYEES

Pub. L. 115–232, div. A, title VIII, § 884, Aug. 13, 2018, 132 Stat. 1915, provided that:

''(a) PROGRAM AUTHORIZED.—The Secretary of Defense shall establish an exchange program under which the Under Secretary of Defense for Acquisition and Sustainment shall arrange for the temporary assignment of civilian personnel in the Department of Defense acquisition workforce.

''(b) PURPOSES.—The purposes of the exchange program established pursuant to subsection (a) are—

''(1) to familiarize personnel from the acquisition workforce with the equities, priorities, processes, culture, and workforce of the acquisition-related defense agencies;

''(2) to enable participants in the exchange program to return the expertise gained through their exchanges to their original organizations; and

''(3) to improve communication between and integration of the organizations that support the policy, implementation, and oversight of defense acquisition through lasting relationships.

''(c) PARTICIPANTS.—

''(1) NUMBER OF PARTICIPANTS.—The Under Secretary shall select not less than 10 and no more than 20 participants per year for participation in the exchange program established under subsection (a).

''(2) CRITERIA FOR SELECTION.—The Under Secretary shall select participants for the exchange program established under subsection (a) from among mid-career employees and based on—

''(A) the qualifications and desire to participate in the program of the employee; and

''(B) the technical needs and capacities of the acquisition workforce, as applicable.

''(d) TERMS.—Exchanges pursuant to the exchange program established under subsection (a) shall be for terms of one to two years, as determined and negotiated by the Under Secretary. The terms may begin and end on a rolling basis.

''(e) GUIDANCE AND IMPLEMENTATION.—

''(1) GUIDANCE.—Not later than 90 days after the date of the enactment of this Act [Aug. 13, 2018], the Under Secretary shall develop and submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] interim guidance on the form and contours of the exchange program established under subsection (a).

''(2) IMPLEMENTATION.—Not later than 180 days after the date of the enactment of this Act, the Under Secretary shall implement the guidance developed under paragraph (1).''

PILOT PROGRAM ON TEMPORARY EXCHANGE OF FINANCIAL MANAGEMENT AND ACQUISITION PERSONNEL

Pub. L. 114–92, div. A, title XI, § 1110, Nov. 25, 2015, 129 Stat. 1030, as amended by Pub. L. 116–283, div. A, title XVIII, § 1806(e)(3)(A), Jan. 1, 2021, 134 Stat. 4156, provided that:

''(a) IN GENERAL.—The Secretary of Defense may carry out a pilot program to assess the feasibility and advisability of the temporary assignment of covered employees of the Department of Defense to nontraditional defense contractors and of covered employees of such contractors to the Department.

''(b) COVERED EMPLOYEES; NONTRADITIONAL DEFENSE CONTRACTORS.—

''(1) COVERED EMPLOYEES.—An employee of the Department of Defense or a nontraditional Defense contractor is a covered employee for purposes of this section if the employee—

''(A) works in the field of financial management or in the acquisition field;

''(B) is considered by the Secretary of Defense to be an exceptional employee; and

''(C) is compensated at not less than the GS–11 level (or the equivalent).

''(2) NONTRADITIONAL DEFENSE CONTRACTORS.—For purposes of this section, the term 'nontraditional defense contractor' has the meaning given that term in section 2302(9) of title 10, United States Code.

''(c) AGREEMENTS.—

''(1) IN GENERAL.—The Secretary of Defense shall provide for a written agreement among the Department of Defense, the nontraditional defense contractor concerned, and the employee concerned regarding the terms and conditions of the employee's assignment under this section.

''(2) ELEMENTS.—An agreement under this subsection—

''(A) shall require, in the case of an employee of the Department, that upon completion of the assignment, the employee will serve in the civil service for a period at least equal to three times the length of the assignment, unless the employee is sooner involuntarily separated from the service of the employee's agency; and

''(B) shall provide that if the employee of the Department or of the contractor (as the case may be) fails to carry out the agreement, or if the employee is voluntarily separated from the service of the employee's agency before the end of the period stated in the agreement, the employee shall be liable to the United States for payment of all expenses of the assignment unless that failure or voluntary separation was for good and sufficient reason, as determined by the Secretary.

''(3) DEBT TO THE UNITED STATES.—An amount for which an employee is liable under paragraph (2)(B) shall be treated as a debt due the United States. The Secretary may waive, in whole or in part, collection of such a debt based on a determination that the collection would be against equity and good conscience and not in the best interests of the United States.

''(d) TERMINATION.—An assignment under this section may, at any time and for any reason, be terminated by

the Department of Defense or the nontraditional defense contractor concerned.

''(e) DURATION.—An assignment under this section shall be for a period of not less than three months and not more than one year.

''(f) STATUS OF FEDERAL EMPLOYEES ASSIGNED TO CONTRACTORS.—An employee of the Department of Defense who is assigned to a nontraditional defense contractor under this section shall be considered, during the period of assignment, to be on detail to a regular work assignment in the Department for all purposes. The written agreement established under subsection (c) shall address the specific terms and conditions related to the employee's continued status as a Federal employee.

''(g) TERMS AND CONDITIONS FOR PRIVATE SECTOR EMPLOYEES.—An employee of a nontraditional defense contractor who is assigned to a Department of Defense organization under this section—

''(1) shall continue to receive pay and benefits from the contractor from which such employee is assigned;

''(2) shall be deemed to be an employee of the Department of Defense for the purposes of—

''(A) chapter 73 of title 5, United States Code;

''(B) sections 201, 203, 205, 207, 208, 209, 603, 606, 607, 643, 654, 1905, and 1913 of title 18, United States Code, and any other conflict of interest statute;

''(C) sections 1343, 1344, and 1349(b) of title 31, United States Code;

''(D) chapter 171 and section 1346(b) of title 28, United States Code (popularly known as the Federal Tort Claims Act), and any other Federal tort liability statute;

''(E) the Ethics in Government Act of 1978 (5 U.S.C. App. 101 et seq.);

''(F) chapter 21 of title 41, United States Code; and

''(G) subchapter I of chapter 81 of title 5, United States Code, relating to compensation for work-related injuries; and

''(3) may not have access, while the employee is assigned to a Department organization, to any trade secrets or to any other nonpublic information which is of commercial value to the contractor from which such employee is assigned.

''(h) PROHIBITION AGAINST CHARGING CERTAIN COSTS TO FEDERAL GOVERNMENT.—A nontraditional defense contractor may not charge the Department of Defense or any other agency of the Federal Government, as direct or indirect costs under a Federal contract, the costs of pay or benefits paid by the contractor to an employee assigned to a Department organization under this section for the period of the assignment.

''(i) CONSIDERATION.—In providing for assignments of employees under this section, the Secretary of Defense shall take into consideration the question of how assignments might best be used to help meet the needs of the Department of Defense with respect to the training of employees in financial management or in acquisition.

''(j) NUMERICAL LIMITATIONS.—

''(1) DEPARTMENT EMPLOYEES.—The number of employees of the Department of Defense who may be assigned to nontraditional defense contractors under this section at any given time may not exceed the following:

''(A) Five employees in the field of financial management.

''(B) Five employees in the acquisition field.

''(2) NONTRADITIONAL DEFENSE CONTRACTOR EMPLOYEES.—The total number of nontraditional defense contractor employees who may be assigned to the Department under this section at any given time may not exceed 10 such employees.

''(k) TERMINATION OF AUTHORITY FOR ASSIGNMENTS.—No assignment of an employee may commence under this section after September 30, 2019.''

[Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1806(e)(3)(A), Jan. 1, 2021, 134 Stat. 4151, 4156, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, section 1110(b)(2) of Pub. L. 114–92, set out above, is amended by substituting ''section 3014'' for ''section 2302(9)''.]

PILOT PROGRAM ON ENHANCED PAY AUTHORITY FOR CERTAIN ACQUISITION AND TECHNOLOGY POSITIONS IN THE DEPARTMENT OF DEFENSE

Pub. L. 114–92, div. A, title XI, § 1111, Nov. 25, 2015, 129 Stat. 1032, as amended by Pub. L. 116–92, div. A, title IX, § 902(9), Dec. 20, 2019, 133 Stat. 1543, which authorized a pilot program on enhanced pay authority for certain acquisition and technology positions in the Department of Defense, was repealed by Pub. L. 116–283, div. A, title XI, § 1114(c)(1), Jan. 1, 2021, 134 Stat. 3895. See Continuation of Pay note above and section 1701b of this title.

PILOT PROGRAM ON DIRECT HIRE AUTHORITY FOR VETERAN TECHNICAL EXPERTS INTO THE DEFENSE ACQUISITION WORKFORCE

Pub. L. 114–92, div. A, title XI, § 1112, Nov. 25, 2015, 129 Stat. 1033, provided that:

''(a) PILOT PROGRAM.—The Secretary of Defense may carry out a pilot program to assess the feasibility and advisability of appointing qualified veteran candidates to positions described in subsection (b) in the defense acquisition workforce of the military departments without regard to the provisions of subchapter I of chapter 33 of title 5, United States Code. The Secretary shall carry out the pilot program in each military department through the service acquisition executive of such military department.

''(b) POSITIONS.—The positions described in this subsection are scientific, technical, engineering, and mathematics positions, including technicians, within the defense acquisition workforce.

''(c) LIMITATION.—Authority under subsection (a) may not, in any calendar year and with respect to any military department, be exercised with respect to a number of candidates greater than the number equal to 1 percent of the total number of positions in the acquisition workforce of that military department that are filled as of the close of the fiscal year last ending before the start of such calendar year.

''(d) DEFINITIONS.—In this section:

''(1) The term 'employee' has the meaning given that term in section 2105 of title 5, United States Code.

''(2) The term 'veteran' has the meaning given that term in section 101 of title 38, United States Code.

''(e) TERMINATION.—

''(1) IN GENERAL.—The authority to appoint candidates to positions under the pilot program shall expire on the date that is five years after the date of the enactment of this Act [Nov. 25, 2015].

''(2) EFFECT ON EXISTING APPOINTMENTS.—The termination by paragraph (1) of the authority in subsection (a) shall not affect any appointment made under that authority before the termination date specified in paragraph (1) in accordance with the terms of such appointment.''

DIRECT HIRE AUTHORITY FOR TECHNICAL EXPERTS INTO THE DEFENSE ACQUISITION WORKFORCE

Pub. L. 114–92, div. A, title XI, § 1113, Nov. 25, 2015, 129 Stat. 1033, provided that:

''(a) AUTHORITY.—Each Secretary of a military department may appoint qualified candidates possessing a scientific or engineering degree to positions described in subsection (b) for that military department without regard to the provisions of subchapter I of chapter 33 of title 5, United States Code.

''(b) APPLICABILITY.—Positions described in this subsection are scientific and engineering positions within the defense acquisition workforce.

''(c) LIMITATION.—Authority under this section may not, in any calendar year and with respect to any military department, be exercised with respect to a number of candidates greater than the number equal to 5 percent of the total number of scientific and engineering

positions within the acquisition workforce of that military department that are filled as of the close of the fiscal year last ending before the start of such calendar year.

''(d) NATURE OF APPOINTMENT.—Any appointment under this section shall be treated as an appointment on a full-time equivalent basis, unless such appointment is made on a term or temporary basis.

''(e) EMPLOYEE DEFINED.—In this section, the term 'employee' has the meaning given that term in section 2105 of title 5, United States Code.

''(f) TERMINATION.—The authority to make appointments under this section shall not be available after December 31, 2020.''

COORDINATION OF HUMAN SYSTEMS INTEGRATION ACTIVITIES RELATED TO ACQUISITION PROGRAMS

Pub. L. 110–181, div. A, title II, § 231, Jan. 28, 2008, 122 Stat. 45, as amended by Pub. L. 115–232, div. A, title VIII, § 811(f), Aug. 13, 2018, 132 Stat. 1845; Pub. L. 116–92, div. A, title IX, § 902(10), Dec. 20, 2019, 133 Stat. 1543, provided that: ''The Secretary of Defense, acting through the Under Secretary of Defense for Acquisition and Sustainment, shall coordinate and manage human systems integration activities throughout the acquisition programs of the Department of Defense.''

REQUIREMENTS FOR SENIOR DEPARTMENT OF DEFENSE OFFICIALS SEEKING EMPLOYMENT WITH DEFENSE CONTRACTORS

Pub. L. 110–181, div. A, title VIII, § 847, Jan. 28, 2008, 122 Stat. 243, as amended by Pub. L. 113–291, div. A, title VIII, § 855, title X, § 1071(b)(2)(C), Dec. 19, 2014, 128 Stat. 3460, 3506, provided that:

''(a) REQUIREMENT TO SEEK AND OBTAIN WRITTEN OPINION.—

''(1) REQUEST.—An official or former official of the Department of Defense described in subsection (c) who, within two years after leaving service in the Department of Defense, expects to receive compensation from a Department of Defense contractor, shall, prior to accepting such compensation, request a written opinion regarding the applicability of post-employment restrictions to activities that the official or former official may undertake on behalf of a contractor.

''(2) SUBMISSION OF REQUEST.—A request for a written opinion under paragraph (1) shall be submitted in writing to an ethics official of the Department of Defense having responsibility for the organization in which the official or former official serves or served and shall set forth all information relevant to the request, including information relating to government positions held and major duties in those positions, actions taken concerning future employment, positions sought, and future job descriptions, if applicable.

''(3) WRITTEN OPINION.—Not later than 30 days after receiving a request by an official or former official of the Department of Defense described in subsection (c), the appropriate ethics counselor shall provide such official or former official a written opinion regarding the applicability or inapplicability of post-employment restrictions to activities that the official or former official may undertake on behalf of a contractor.

''(4) CONTRACTOR REQUIREMENT.—A Department of Defense contractor may not knowingly provide compensation to a former Department of Defense official described in subsection (c) within two years after such former official leaves service in the Department of Defense, without first determining that the former official has sought and received (or has not received after 30 days of seeking) a written opinion from the appropriate ethics counselor regarding the applicability of post-employment restrictions to the activities that the former official is expected to undertake on behalf of the contractor.

''(5) ADMINISTRATIVE ACTIONS.—In the event that an official or former official of the Department of Defense described in subsection (c), or a Department of Defense contractor, knowingly fails to comply with the requirements of this subsection, the Secretary of Defense may take any of the administrative actions set forth in section 2105 of title 41, United States Code[,] that the Secretary of Defense determines to be appropriate.

''(b) RECORDKEEPING REQUIREMENT.—

''(1) DATABASE.—Each request for a written opinion made pursuant to this section, and each written opinion provided pursuant to such a request, shall be retained by the Department of Defense in a central database or repository maintained by the General Counsel of the Department for not less than five years beginning on the date on which the written opinion was provided.

''(2) INSPECTOR GENERAL REVIEW.—The Inspector General of the Department of Defense shall conduct periodic reviews to ensure that written opinions are being provided and retained in accordance with the requirements of this section. The first such review shall be conducted no later than two years after the date of the enactment of this Act [Jan. 28, 2008].

''(c) COVERED DEPARTMENT OF DEFENSE OFFICIALS.—An official or former official of the Department of Defense is covered by the requirements of this section if such official or former official—

''(1) participated personally and substantially in an acquisition as defined in section 131 of title 41, United States Code[,] with a value in excess of $10,000,000 and serves or served—

''(A) in an Executive Schedule position under subchapter II of chapter 53 of title 5, United States Code;

''(B) in a position in the Senior Executive Service under subchapter VIII of chapter 53 of title 5, United States Code; or

''(C) in a general or flag officer position compensated at a rate of pay for grade O–7 or above under section 201 of title 37, United States Code; or

''(2) serves or served as a program manager, deputy program manager, procuring contracting officer, administrative contracting officer, source selection authority, member of the source selection evaluation board, or chief of a financial or technical evaluation team for a contract in an amount in excess of $10,000,000.

''(d) DEFINITION.—In this section, the term 'post-employment restrictions' includes—

''(1) chapter 21 of title 41, United States Code;

''(2) section 207 of title 18, United States Code; and

''(3) any other statute or regulation restricting the employment or activities of individuals who leave government service in the Department of Defense.''

GOVERNMENT PERFORMANCE OF CRITICAL ACQUISITION FUNCTIONS

Pub. L. 109–364, div. A, title VIII, § 820, Oct. 17, 2006, 120 Stat. 2330, as amended by Pub. L. 111–84, div. A, title VIII, § 805(c), Oct. 28, 2009, 123 Stat. 2403; Pub. L. 112–81, div. A, title VIII, § 835(a), Dec. 31, 2011, 125 Stat. 1507, which related to government performance of critical acquisition functions, was repealed by Pub. L. 112–239, div. A, title VIII, § 824(b), Jan. 2, 2013, 126 Stat. 1833.

DEMONSTRATION PROJECT RELATING TO CERTAIN PERSONNEL MANAGEMENT POLICIES AND PROCEDURES

Pub. L. 104–106, div. D, title XLIII, § 4308, Feb. 10, 1996, 110 Stat. 669, as amended by Pub. L. 105–85, div. A, title VIII, § 845, Nov. 18, 1997, 111 Stat. 1845; Pub. L. 107–314, div. A, title VIII, § 813(b), Dec. 2, 2002, 116 Stat. 2609; Pub. L. 108–136, div. A, title XI, § 1112, Nov. 24, 2003, 117 Stat. 1634, which encouraged the Secretary of Defense to commence a demonstration project relating to improving the personnel management policies or procedures that apply to the acquisition workforce of the Department of Defense and supporting personnel, was repealed and restated as section 1762 of this title by Pub. L. 111–383, div. A, title VIII, § 872(a)(1), (b), Jan. 7, 2011, 124 Stat. 4300, 4302.

EVALUATION BY COMPTROLLER GENERAL

Pub. L. 101–510, div. A, title XII, §1208, Nov. 5, 1990, 104 Stat. 1665, as amended by Pub. L. 102–25, title VII, §704(b)(2), Apr. 6, 1991, 105 Stat. 119; Pub. L. 102–484, div. A, title VIII, §812(g), Oct. 23, 1992, 106 Stat. 2452; Pub. L. 104–106, div. A, title XV, §1502(c)(4)(A), Feb. 10, 1996, 110 Stat. 507, provided for evaluation by Comptroller General of actions taken by Secretary of Defense to carry out requirements of Defense Acquisition Workforce Improvement Act and submission of annual reports to Congress, prior to repeal by Pub. L. 104–66, title I, §1031(b)(1), Dec. 21, 1995, 109 Stat. 714.

DEADLINES FOR QUALIFICATION REQUIREMENTS

Pub. L. 101–510, div. A, title XII, §1210(b), Nov. 5, 1990, 104 Stat. 1667, provided that: ''Not later than October 1, 1992, the Secretary of Defense shall prescribe regulations to implement sections 1723, 1724, and 1732 of title 10, United States Code (as added by section 1202).''

§1701a. Management for acquisition workforce excellence

(a) PURPOSE.—The purpose of this chapter is to require the Department of Defense to develop and manage a highly skilled professional acquisition workforce—

(1) in which excellence and contribution to mission is rewarded;

(2) which has the technical expertise and business skills to ensure the Department receives the best value for the expenditure of public resources;

(3) which serves as a model for performance management of employees of the Department; and

(4) which is managed in a manner that complements and reinforces the management of the defense acquisition system pursuant to chapter 149 of this title.

(b) PERFORMANCE MANAGEMENT.—In order to achieve the purpose set forth in subsection (a), the Secretary of Defense shall—

(1) use the full authorities provided in subsections (a) through (d) of section 9902 of title 5, including flexibilities related to performance management and hiring and to training of managers;

(2) require managers to develop performance plans for individual members of the acquisition workforce in order to give members an understanding of how their performance contributes to their organization's mission and the success of the defense acquisition system (as defined in section 2545 of this title);

(3) to the extent appropriate, use the lessons learned from the acquisition demonstration project carried out under section 1762 of this title related to contribution-based compensation and appraisal, and how those lessons may be applied within the General Schedule system;

(4) develop and implement a career path, as described in section 1722(a) of this title, for each career field designated by the Secretary under section 1721(a) of this title as an acquisition workforce career field;

(5) direct continuing education and training;

(6) authorize a member of the acquisition workforce to participate in professional associations, consistent with the performance plan of such a member in order to provide the member with the opportunity to gain leadership and management skills;

(7) develop appropriate procedures for warnings and consequences during performance evaluations for members of the acquisition workforce who consistently fail to meet performance standards;

(8) take full advantage of the Defense Civilian Leadership Program established under section 1112 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84; 123 Stat. 2496; 10 U.S.C. 1580 note prec.);

(9) use the authorities for highly qualified experts under section 9903 of title 5, to hire experts who are skilled acquisition professionals to—

(A) serve in leadership positions within the acquisition workforce to strengthen management and oversight;

(B) provide mentors to advise individuals within the acquisition workforce on their career paths and opportunities to advance and excel within the acquisition workforce; and

(C) assist with the design of education and training courses and the training of individuals in the acquisition workforce; and

(10) use the authorities for expedited security clearance processing pursuant to section 1564 of this title.

(c) PROFESSIONAL CERTIFICATION.—(1) The Secretary of Defense shall implement a certification program to provide for a professional certification requirement for all members of the acquisition workforce. Except as provided in paragraph (2), the certification requirement for any acquisition workforce career field shall be based on standards developed by a third-party accredited program based on nationally or internationally recognized standards.

(2) If the Secretary determines that, for a particular acquisition workforce career field, a third-party accredited program based on nationally or internationally recognized standards does not exist, the Secretary shall establish the certification requirement for that career field that conforms with the practices of national or international accrediting organizations. The Secretary shall determine the best approach for meeting the certification requirement for any such career field, including by implementing such certification requirement through entities outside the Department of Defense, and may design and implement such certification requirement without regard to section 1746 of this title.

(d) NEGOTIATIONS.—Any action taken by the Secretary under this section, or to implement this section, shall be subject to the requirements of chapter 71 of title 5.

(e) REGULATIONS.—Any rules or regulations prescribed pursuant to this section shall be deemed an agency rule or regulation under section 7117(a)(2) of title 5, and shall not be deemed a Government-wide rule or regulation under section 7117(a)(1) of such title.

(Added Pub. L. 111–383, div. A, title VIII, §871(a), Jan. 7, 2011, 124 Stat. 4299; amended Pub. L. 116–92, div. A, title VIII, §861(a)(1)–(3), (e)(1), Dec. 20, 2019, 133 Stat. 1515, 1517; Pub. L. 116–283, div. A, title X, §1081(a)(31), title XVIII, §§1808(d)(2), 1883(b)(2), Jan. 1, 2021, 134 Stat. 3872, 4160, 4294.)

AMENDMENT OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1808(d)(2), 1883(b)(2), Jan. 1, 2021, 134 Stat. 4151, 4160, 4294, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is amended as follows:

(1) by striking ''chapter 149'' and inserting ''chapter 205''; and

(2) for any other reference in the text to a source section that is redesignated by title XVIII of Pub. L. 116–283, by striking such reference and inserting a reference to the appropriate section as so redesignated.

See 2021 Amendment notes below.

AMENDMENTS

2021—Subsec. (a)(4). Pub. L. 116–283, § 1808(d)(2), substituted ''chapter 205'' for ''chapter 149''.

Subsec. (b)(2). Pub. L. 116–283, § 1883(b)(2), which directed that each reference in the text of title 10 to a section that was redesignated by title XVIII of Pub. L. 116–283, as such section was in effect before the redesignation, be amended by striking such reference and inserting a reference to the appropriate redesignated section, was not executed with respect to ''section 2545'', which was redesignated as multiple sections.

Subsec. (b)(6). Pub. L. 116–283, § 1081(a)(31)(A), substituted a semicolon for the period at end.

Subsec. (c). Pub. L. 116–283, § 1081(a)(31)(B), struck out par. (1) heading ''In General'' and par. (2) heading ''Requirements for Secretary''.

2019—Subsec. (b)(4). Pub. L. 116–92, § 861(e)(1), amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''develop attractive career paths;''.

Subsec. (b)(5). Pub. L. 116–92, § 861(a)(2)(A), substituted ''direct'' for ''encourage''.

Subsec. (b)(6). Pub. L. 116–92, § 861(a)(3)(B), added par. (6). Former par. (6) redesignated (7).

Pub. L. 116–92, § 861(a)(2)(B), inserted ''and consequences'' after ''warnings''.

Subsec. (b)(7) to (10). Pub. L. 116–92, § 861(a)(3)(A), redesignated pars. (6) to (9) as (7) to (10), respectively.

Subsecs. (c) to (e). Pub. L. 116–92, § 861(a)(1), added subsec. (c) and redesignated former subsecs. (c) and (d) as (d) and (e), respectively.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by sections 1808(d)(2) and 1883(b)(2) of Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

DEADLINE FOR IMPLEMENTATION OF PROCEDURES TO INSTITUTE CERTIFICATION PROGRAM

Pub. L. 116–92, div. A, title VIII, § 861(a)(5), Dec. 20, 2019, 133 Stat. 1516, provided that: ''The Secretary of Defense shall implement procedures to institute the program required by subsection (c) of section 1701a of title 10, United States Code, as added by paragraph (1), not later than 180 days after the date of the enactment of this Act [Dec. 20, 2019].''

DEADLINE FOR IMPLEMENTATION OF CAREER PATHS

Pub. L. 116–92, div. A, title VIII, § 861(e)(3), Dec. 20, 2019, 133 Stat. 1517, provided that: ''Not later than the end of the two-year period beginning on the date of the enactment of this Act [Dec. 20, 2019], the Secretary of Defense shall carry out the requirements of paragraph (4) of section 1701a(b) of title 10, United States Code (as amended by paragraph (1)).''

FLEXIBILITY IN CONTRACTING AWARD PROGRAM

Pub. L. 114–328, div. A, title VIII, § 834, Dec. 23, 2016, 130 Stat. 2285, provided that:

''(a) ESTABLISHMENT OF AWARD PROGRAM.—The Secretary of Defense shall create an award to recognize those acquisition programs and professionals that make the best use of the flexibilities and authorities granted by the Federal Acquisition Regulation and Department of Defense Instruction 5000.02 (Operation of the Defense Acquisition System).

''(b) PURPOSE OF AWARD.—The award established under subsection (a) shall recognize outstanding performers whose approach to program management emphasizes innovation and local adaptation, including the use of—

''(1) simplified acquisition procedures;

''(2) inherent flexibilities within the Federal Acquisition Regulation;

''(3) commercial contracting approaches;

''(4) public-private partnership agreements and practices;

''(5) cost-sharing arrangements;

''(6) innovative contractor incentive practices; and

''(7) other innovative implementations of acquisition flexibilities.''

§ 1701b. Enhanced pay authority for certain acquisition and technology positions

(a) IN GENERAL.—The Secretary of Defense may carry out a program using the pay authority specified in subsection (d) to fix the rate of basic pay for positions described in subsection (c) in order to assist the Office of the Secretary of Defense and the military departments in attracting and retaining high-quality acquisition and technology experts in positions responsible for managing and developing complex, high-cost, technological acquisition efforts of the Department of Defense.

(b) APPROVAL REQUIRED.—The program may be carried out only with approval as follows:

(1) Approval of the Under Secretary of Defense for Acquisition and Sustainment, in the case of positions in the Office of the Secretary of Defense.

(2) Approval of the service acquisition executive of the military department concerned, in the case of positions in a military department.

(c) POSITIONS.—The positions described in this subsection are positions that—

(1) require expertise of an extremely high level in a scientific, technical, professional, or acquisition management field; and

(2) are critical to the successful accomplishment of an important acquisition or technology development mission.

(d) RATE OF BASIC PAY.—The pay authority specified in this subsection is authority as follows:

(1) Authority to fix the rate of basic pay for a position at a rate not to exceed 150 percent of the rate of basic pay payable for level I of the Executive Schedule, upon the approval of the Under Secretary of Defense for Acquisition and Sustainment or the service acquisition executive concerned, as applicable.

(2) Authority to fix the rate of basic pay for a position at a rate in excess of 150 percent of the rate of basic pay payable for level I of the Executive Schedule, upon the approval of the Secretary of Defense.

(e) LIMITATIONS.—

(1) IN GENERAL.—The authority in subsection (a) may be used only to the extent necessary to competitively recruit or retain individuals

exceptionally well qualified for positions described in subsection (c).

(2) NUMBER OF POSITIONS.—The authority in subsection (a) may not be used with respect to more than five positions in the Office of the Secretary of Defense and more than five positions in each military department at any one time.

(3) TERM OF POSITIONS.—The authority in subsection (a) may be used only for positions having terms less than five years.

(Added Pub. L. 116–283, div. A, title XI, § 1114(a), Jan. 1, 2021, 134 Stat. 3894.)

REFERENCES IN TEXT

Level I of the Executive Schedule, referred to in subsec. (d), is set out in section 5312 of Title 5, Government Organization and Employees.

§ 1702. Under Secretary of Defense for Acquisition and Sustainment: authorities and responsibilities

Subject to the authority, direction, and control of the Secretary of Defense, the Under Secretary of Defense for Acquisition and Sustainment shall carry out all powers, functions, and duties of the Secretary of Defense with respect to the acquisition workforce in the Department of Defense. The Under Secretary shall ensure that the policies of the Secretary of Defense established in accordance with this chapter are implemented throughout the Department of Defense. The Under Secretary shall prescribe policies and requirements for the educational programs of the defense acquisition university structure established under section 1746 of this title.

(Added Pub. L. 101–510, div. A, title XII, § 1202(a), Nov. 5, 1990, 104 Stat. 1638; amended Pub. L. 103–160, div. A, title IX, § 904(d)(1), Nov. 30, 1993, 107 Stat. 1728; Pub. L. 105–261, div. A, title VIII, § 815, Oct. 17, 1998, 112 Stat. 2088; Pub. L. 107–107, div. A, title X, § 1048(b)(2), (3)(A), Dec. 28, 2001, 115 Stat. 1225; Pub. L. 116–92, div. A, title IX, § 902(11), Dec. 20, 2019, 133 Stat. 1544.)

AMENDMENTS

2019—Pub. L. 116–92 substituted ''Under Secretary of Defense for Acquisition and Sustainment'' for ''Under Secretary of Defense for Acquisition, Technology, and Logistics'' in section catchline and in text.

2001—Pub. L. 107–107 substituted ''Under Secretary of Defense for Acquisition, Technology, and Logistics'' for ''Under Secretary of Defense for Acquisition and Technology'' in section catchline and in text.

1998—Pub. L. 105–261 inserted at end ''The Under Secretary shall prescribe policies and requirements for the educational programs of the defense acquisition university structure established under section 1746 of this title.''

1993—Pub. L. 103–160 substituted ''Under Secretary of Defense for Acquisition and Technology'' for ''Under Secretary of Defense for Acquisition'' in section catchline and in text.

QUICK-REACTION SPECIAL PROJECTS ACQUISITION TEAM

Pub. L. 107–314, div. A, title VIII, § 807, Dec. 2, 2002, 116 Stat. 2608, as amended by Pub. L. 116–92, div. A, title IX, § 902(12), Dec. 20, 2019, 133 Stat. 1544, provided that:

''(a) ESTABLISHMENT.—The Under Secretary of Defense for Acquisition and Sustainment shall establish a team of highly qualified acquisition professionals who shall be available to advise the Under Secretary on actions that can be taken to expedite the acquisition of urgently needed systems.

''(b) DUTIES.—The issues on which the team may provide advice shall include the following:

''(1) Industrial base issues, including the limited availability of suppliers.

''(2) Technology development and technology transition issues.

''(3) Issues of acquisition policy, including the length of the acquisition cycle.

''(4) Issues of testing policy and ensuring that weapon systems perform properly in combat situations.

''(5) Issues of procurement policy, including the impact of socio-economic requirements.

''(6) Issues relating to compliance with environmental requirements.''

[§ 1703. Repealed. Pub. L. 108–136, div. A, title VIII, § 831(a), Nov. 24, 2003, 117 Stat. 1549]

Section, added Pub. L. 101–510, div. A, title XII, § 1202(a), Nov. 5, 1990, 104 Stat. 1639; amended Pub. L. 103–160, div. A, title IX, § 904(d)(1), Nov. 30, 1993, 107 Stat. 1728; Pub. L. 107–107, div. A, title X, § 1048(b)(2), Dec. 28, 2001, 115 Stat. 1225, related to Director of Acquisition Education, Training, and Career Development.

§ 1704. Service acquisition executives: authorities and responsibilities

Subject to the authority, direction, and control of the Secretary of the military department concerned, the service acquisition executive for each military department shall carry out all powers, functions, and duties of the Secretary concerned with respect to the acquisition workforce within the military department concerned and shall ensure that the policies of the Secretary of Defense established in accordance with this chapter are implemented in that department.

(Added Pub. L. 101–510, div. A, title XII, § 1202(a), Nov. 5, 1990, 104 Stat. 1639.)

§ 1705. Department of Defense Acquisition Workforce Development Account

(a) ESTABLISHMENT.—The Secretary of Defense shall establish a fund[1] to be known as the ''Department of Defense Acquisition Workforce Development Account'' (in this section referred to as the ''Account'') to provide funds, in addition to other funds that may be available, for the recruitment, training, and retention of acquisition personnel of the Department of Defense.

(b) PURPOSE.—The purpose of the Account is to ensure that the Department of Defense acquisition workforce has the capacity, in both personnel and skills, needed to properly perform its mission, provide appropriate oversight of contractor performance, and ensure that the Department receives the best value for the expenditure of public resources.

(c) MANAGEMENT.—The Account shall be managed by a senior official of the Department of Defense designated by the Under Secretary of Defense for Acquisition and Sustainment for that purpose, from among persons with an extensive background in management relating to acquisition and personnel.

(d) ELEMENTS.—The Account shall consist of amounts appropriated to the Account by law.

(e) AVAILABILITY OF FUNDS.—

[1] So in original. Probably should be ''an account''.

(1) IN GENERAL.—(A) Subject to the provisions of this subsection, amounts in the Account shall be available to the Secretary of Defense for expenditure, or for transfer to a military department or Defense Agency, for the recruitment, training, and retention of acquisition personnel of the Department of Defense for the purpose of the Account, including for the provision of training and retention incentives to the acquisition workforce of the Department and to develop acquisition tools and methodologies, and undertake research and development activities, leading to acquisition policies and practices that will improve the efficiency and effectiveness of defense acquisition efforts. In the case of temporary members of the acquisition workforce designated pursuant to subsection (g)(2), such funds shall be available only for the limited purpose of providing training in the performance of acquisition-related functions and duties.

(B) Amounts in the Account also may be used to pay salaries of personnel at the Office of the Secretary of Defense, military departments, and Defense Agencies to manage the Account.

(C) Amounts in the Account may be used to pay the expenses of the public-private talent exchange program established under section 1599g of this title.

(2) PROHIBITION.—Amounts in the Account may not be obligated for any purpose other than purposes described in paragraph (1) or otherwise in accordance with this subsection.

(3) GUIDANCE.—The Under Secretary of Defense for Acquisition and Sustainment, acting through the senior official designated to manage the Account, shall issue guidance for the administration of the Account. Such guidance shall include provisions—

(A) identifying areas of need in the acquisition workforce for which amounts in the Account may be used, including—

(i) changes to the types of skills needed in the acquisition workforce;

(ii) incentives to retain in the acquisition workforce qualified, experienced acquisition workforce personnel; and

(iii) incentives for attracting new, high-quality personnel to the acquisition workforce;

(B) describing the manner and timing for applications for amounts in the Account to be submitted;

(C) describing the evaluation criteria to be used for approving or prioritizing applications for amounts in the Account in any fiscal year;

(D) describing measurable objectives of performance for determining whether amounts in the Account are being used in compliance with this section; and

(E) describing the amount from the Account that may be used to pay salaries of personnel at the Office of the Secretary of Defense, military departments, and Defense Agencies to manage the Account and the circumstances under which such amounts may be used for such purpose.

(4) LIMITATION ON PAYMENTS TO OR FOR CONTRACTORS.—Amounts in the Account shall not be available for payments to contractors or contractor employees, other than for the purposes of—

(A) providing advanced training to Department of Defense employees;

(B) developing acquisition tools and methodologies and performing research on acquisition policies and best practices that will improve the efficiency and effectiveness of defense acquisition efforts; and

(C) supporting human capital and talent management of the acquisition workforce, including benchmarking studies, assessments, and requirements planning.

(5) PROHIBITION ON PAYMENT OF BASE SALARY OF CURRENT EMPLOYEES.—Amounts in the Account may not be used to pay the base salary of any person who was an employee of the Department serving in a position in the acquisition workforce as of January 28, 2008, and who has continued in the employment of the Department since such time without a break in such employment of more than a year.

(6) DURATION OF AVAILABILITY.—Amounts appropriated to the Account pursuant to subsection (d) shall remain available for expenditure for the fiscal year in which appropriated and the succeeding fiscal year.

(f) EXPEDITED HIRING AUTHORITY.—For purposes of sections 3304, 5333, and 5753 of title 5, the Secretary of Defense may—

(1) designate any category of positions in the acquisition workforce as positions for which there exists a shortage of candidates or there is a critical hiring need; and

(2) utilize the authorities in such sections to recruit and appoint qualified persons directly to positions so designated.

(g) ACQUISITION WORKFORCE DEFINED.—In this section, the term ''acquisition workforce'' means the following:

(1) Personnel in positions designated under section 1721 of this title as acquisition positions for purposes of this chapter.

(2) Other military personnel or civilian employees of the Department of Defense who—

(A)(i) contribute significantly to the acquisition process by virtue of their assigned duties; or

(ii) contribute significantly to the acquisition or development of systems relating to cybersecurity; and

(B) are designated as temporary members of the acquisition workforce by the Under Secretary of Defense for Acquisition and Sustainment, or by the senior acquisition executive of a military department, for the limited purpose of receiving training for the performance of acquisition-related functions and duties.

(Added Pub. L. 110–181, div. A, title VIII, § 852(a)(1), Jan. 28, 2008, 122 Stat. 248; amended Pub. L. 110–417, [div. A], title VIII, § 833, Oct. 14, 2008, 122 Stat. 4535; Pub. L. 111–84, div. A, title VIII, §§ 831, 832(a)–(g), Oct. 28, 2009, 123 Stat. 2414, 2415; Pub. L. 112–81, div. A, title VIII, § 804(a), Dec. 31, 2011, 125 Stat. 1486; Pub. L. 112–239, div. A, title VIII, § 803(a), (b), Jan. 2, 2013, 126 Stat. 1825; Pub. L. 114–92, div. A, title VIII, § 841(a),

Nov. 25, 2015, 129 Stat. 913; Pub. L. 114–328, div. A, title VIII, § 863(a), (b), title X, § 1081(a)(5), Dec. 23, 2016, 130 Stat. 2302, 2303, 2417; Pub. L. 115–91, div. A, title VIII, §§ 842, 843(a)(1), title X, § 1051(a)(7), title XVI, § 1636, Dec. 12, 2017, 131 Stat. 1479, 1480, 1560, 1741; Pub. L. 116–92, div. A, title VIII, § 863(b), title IX, § 902(13), title X, § 1010(a)(1), (2)(A), (b)–(d), Dec. 20, 2019, 133 Stat. 1522, 1544, 1576.)

PRIOR PROVISIONS

A prior section 1705, added Pub. L. 101–510, div. A, title XII, § 1202(a), Nov. 5, 1990, 104 Stat. 1639, related to Directors of Acquisition Career Management in the military departments, prior to repeal by Pub. L. 108–136, div. A, title VIII, § 831(a), Nov. 24, 2003, 117 Stat. 1549.

AMENDMENTS

2019—Pub. L. 116–92, § 1010(a)(2)(A), substituted ''Department of Defense Acquisition Workforce Development Account'' for ''Department of Defense Acquisition Workforce Development Fund'' in section catchline.

Pub. L. 116–92, § 1010(a)(1)(B), substituted ''Account'' for ''Fund'' wherever appearing except in subsec. (e)(6) prior to its subsequent amendment.

Pub. L. 116–92, § 1010(b), substituted ''Under Secretary of Defense for Acquisition and Sustainment'' for ''Under Secretary of Defense for Acquisition, Technology, and Logistics'' wherever appearing.

Pub. L. 116–92, § 902(13)(A)–(C), which directed amendment of subsecs. (c), (e)(3), and (g)(2)(B), respectively, by substituting ''Under Secretary of Defense for Acquisition and Sustainment'' for ''Under Secretary of Defense for Acquisition, Technology, and Logistics'', effective Dec. 20, 2019, could not be executed because of the identical amendment made by Pub. L. 116–92, § 1010(b), effective Oct. 1, 2019. See Amendment note above and Effective Date of 2019 Amendment note below.

Subsec. (a). Pub. L. 116–92, § 1010(a)(1)(A), substituted ''the 'Department of Defense Acquisition Workforce Development Account' (in this section referred to as the 'Account')'' for ''the 'Department of Defense Acquisition Workforce Development Fund' (in this section referred to as the 'Fund')''.

Subsec. (d). Pub. L. 116–92, § 1010(c), amended subsec. (d) generally. Prior to amendment, subsec. (d) listed elements comprising the Fund.

Subsec. (e)(1)(C). Pub. L. 116–92, § 863(b), added subpar. (C).

Subsec. (e)(6). Pub. L. 116–92, § 1010(d), substituted ''appropriated to the Account pursuant to subsection (d) shall remain available for expenditure for the fiscal year in which appropriated and the succeeding fiscal year.'' for ''credited to the Fund in accordance with subsection (d)(2), transferred to the Fund pursuant to subsection (d)(3), appropriated to the Fund, or deposited to the Fund shall remain available for obligation in the fiscal year for which credited, transferred, appropriated, or deposited and the two succeeding fiscal years.''

2017—Subsec. (d)(2)(D). Pub. L. 115–91, § 842, amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: ''The Secretary of Defense may reduce the amount specified in subparagraph (C) for a fiscal year if the Secretary determines that the amount is greater than is reasonably needed for purposes of the Fund for such fiscal year. The Secretary may not reduce the amount for a fiscal year to an amount that is less than $400,000,000.''

Subsec. (e)(1). Pub. L. 115–91, § 843(a)(1)(A), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (e)(1)(A). Pub. L. 115–91, § 1051(a)(7)(A), substituted ''subsection (g)(2)'' for ''subsection (h)(2)''.

Subsec. (e)(3)(E). Pub. L. 115–91, § 843(a)(1)(B), added subpar. (E).

Subsec. (f). Pub. L. 115–91, § 1051(a)(7)(B), (C), redesignated subsec. (g) as (f) and struck out former subsec. (f). Prior to amendment, text of subsec. (f) read as follows: ''Not later than February 1 each year, the Secretary of Defense shall submit to the congressional defense committees a report on the operation of the Fund during the preceding fiscal year.''

Subsec. (g). Pub. L. 115–91, § 1051(a)(7)(C), redesignated subsec. (h) as (g). Former subsec. (g) redesignated (f).

Subsec. (g)(2)(A). Pub. L. 115–91, § 1636, which directed amendment of subsec. (h)(2)(A) by inserting ''(i)'' after ''(A)'', substituting ''; or'' for ''; and'', and adding cl. (ii), was executed by making the amendment in subsec. (g)(2)(A) to reflect the probable intent of Congress and the redesignation of subsec. (h) as (g), see below.

Subsec. (h). Pub. L. 115–91, § 1051(a)(7)(C), redesignated subsec. (h) as (g).

2016—Subsec. (d)(2)(C). Pub. L. 114–328, § 863(b)(1), substituted ''in such'' for ''in each''.

Subsec. (e)(1). Pub. L. 114–328, § 863(a)(1)(A), inserted ''and to develop acquisition tools and methodologies, and undertake research and development activities, leading to acquisition policies and practices that will improve the efficiency and effectiveness of defense acquisition efforts'' after ''workforce of the Department''.

Subsec. (e)(4). Pub. L. 114–328, § 863(a)(1)(B), substituted ''other than for the purposes of—'' for ''other than for the purpose of providing advanced training to Department of Defense employees.'' and added subpars. (A) to (C).

Subsec. (f). Pub. L. 114–328, § 863(a)(2), (b)(2), substituted ''Not later than February 1 each year'' for ''Not later than 120 days after the end of each fiscal year'' and ''the preceding fiscal year'' for ''such fiscal year'' and struck out at end ''Each report shall include, for the fiscal year covered by such report, the following:

''(1) A statement of the amounts remitted to the Secretary for crediting to the Fund for such fiscal year by each military department and Defense Agency, and a statement of the amounts credited to the Fund for such fiscal year.

''(2) A description of the expenditures made from the Fund (including expenditures following a transfer of amounts in the Fund to a military department or Defense Agency) in such fiscal year, including the purpose of such expenditures.

''(3) A description and assessment of improvements in the Department of Defense acquisition workforce resulting from such expenditures.

''(4) Recommendations for additional authorities to fulfill the purpose of the Fund.

''(5) A statement of the balance remaining in the Fund at the end of such fiscal year.''

Subsec. (g)(1). Pub. L. 114–328, § 863(b)(3)(B), struck out '', as defined in subsection (h),'' after ''acquisition workforce''.

Pub. L. 114–328, §§ 863(b)(3)(A), 1081(a)(5), amended par. (1) identically, substituting ''of positions'' for ''of of positions''.

2015—Subsec. (d)(2)(C). Pub. L. 114–92, § 841(a)(1)(A), amended subpar. (C) generally. Prior to amendment, subpar. (C) defined the applicable percentage for fiscal years 2013 to 2018.

Subsec. (d)(2)(D). Pub. L. 114–92, § 841(a)(1)(B), substituted ''the amount specified in subparagraph (C)'' for ''an amount specified in subparagraph (C)'' and ''an amount that is less than $400,000,000.'' for ''an amount that is less than 80 percent of the amount otherwise specified in subparagraph (C) for such fiscal year.''

Subsec. (d)(3). Pub. L. 114–92, § 841(a)(1)(C), substituted ''36-month period'' for ''24-month period''.

Subsec. (f). Pub. L. 114–92, § 841(a)(2), substituted ''120 days'' for ''60 days'' in introductory provisions.

Subsec. (g). Pub. L. 114–92, § 841(a)(3), struck out par. (1) designation before ''For purposes of''; redesignated subpars. (A) and (B) as pars. (1) and (2), respectively, and realigned margins; substituted ''of positions in the acquisition workforce, as defined in subsection (h),'' for ''acquisition workforce positions'' in par. (1); and struck out former par. (2) which read as follows: ''The Secretary may not appoint a person to a position of

employment under this subsection after September 30, 2017.''

2013—Subsec. (d)(2)(C). Pub. L. 112–239, § 803(a)(1), added cls. (i) to (vi) and struck out former cls. (i) to (vi) which established applicable amounts for fiscal years 2010 to 2015.

Subsec. (e)(1). Pub. L. 112–239, § 803(a)(2)(A), inserted at end ''In the case of temporary members of the acquisition workforce designated pursuant to subsection (h)(2), such funds shall be available only for the limited purpose of providing training in the performance of acquisition-related functions and duties.''

Subsec. (e)(5). Pub. L. 112–239, § 803(a)(2)(B), inserted before period at end '', and who has continued in the employment of the Department since such time without a break in such employment of more than a year''.

Subsec. (g). Pub. L. 112–239, § 803(a)(3), (4), struck out subsec. (g) which defined ''acquisition workforce'' and redesignated subsec. (h) as (g).

Subsec. (g)(2). Pub. L. 112–239, § 803(b), substituted ''September 30, 2017'' for ''September 30, 2015''.

Subsec. (h). Pub. L. 112–239, § 803(a)(5), added subsec. (h). Former subsec. (h) redesignated (g).

2011—Subsec. (e)(6). Pub. L. 112–81 amended par. (6) generally. Prior to amendment, text read as follows: ''Amounts credited to the Fund under subsection (d)(2) shall remain available for expenditure in the fiscal year for which credited and the two succeeding fiscal years.''

2009—Subsec. (a). Pub. L. 111–84, § 832(g)(1), inserted ''Development'' after ''Workforce''.

Subsec. (d)(1)(B), (C). Pub. L. 111–84, § 832(a)(1), added subpar. (B) and redesignated former subpar. (B) as (C).

Subsec. (d)(2)(A). Pub. L. 111–84, § 832(b), substituted ''from amounts available for contract services for operation and maintenance.'' for '', other than services relating to research and development and services relating to military construction.''

Subsec. (d)(2)(B). Pub. L. 111–84, § 832(d)(1), (2)(A), substituted ''Subject to paragraph (4), not later than'' for ''Not later than'' and ''the first quarter of each fiscal year'' for ''the third fiscal year quarter of fiscal year 2008, and 30 days after the end of each fiscal year quarter thereafter'' and struck out ''quarter'' before ''for services''.

Pub. L. 111–84, § 832(c), inserted '', from amounts available to such military department or Defense Agency, as the case may be, for contract services for operation and maintenance,'' after ''remit to the Secretary of Defense''.

Subsec. (d)(2)(C), (D). Pub. L. 111–84, § 832(e), added subpars. (C) and (D) and struck out former subpars. (C) and (D), which established applicable percentages for fiscal years 2008 to 2010 and thereafter and authorized the Secretary of Defense to reduce such percentages under certain circumstances and to a certain limit.

Subsec. (d)(3). Pub. L. 111–84, § 832(a)(2), added par. (3).

Subsec. (d)(4). Pub. L. 111–84, § 832(d)(2)(B), added par. (4).

Subsec. (e)(5). Pub. L. 111–84, § 832(f), substituted ''serving in a position in the acquisition workforce as of January 28, 2008'' for ''as of the date of the enactment of the National Defense Authorization Act for Fiscal Year 2008''.

Subsec. (f). Pub. L. 111–84, § 832(g)(2), struck out ''beginning with fiscal year 2008'' after ''each fiscal year'' in introductory provisions.

Subsec. (h)(1). Pub. L. 111–84, § 831(c), struck out ''United States Code,'' after ''title 5,'' in introductory provisions.

Subsec. (h)(1)(A). Pub. L. 111–84, § 831(a)(1), substituted ''acquisition workforce positions as positions for which there exists a shortage of candidates or there is a critical hiring need'' for ''acquisition positions within the Department of Defense as shortage category positions''.

Subsec. (h)(1)(B). Pub. L. 111–84, § 831(a)(2), struck out ''highly'' after ''appoint''.

Subsec. (h)(2). Pub. L. 111–84, § 831(b), substituted ''September 30, 2015'' for ''September 30, 2012''.

2008—Subsec. (h). Pub. L. 110–417 added subsec. (h).

EFFECTIVE DATE OF 2019 AMENDMENT

Pub. L. 116–92, div. A, title X, § 1010(e), Dec. 20, 2019, 133 Stat. 1576, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section] shall take effect on October 1, 2019, and shall apply with respect to fiscal years that begin on or after that date.

''(2) DURATION OF AVAILABILITY OF PREVIOUSLY DEPOSITED FUNDS.—Nothing in the amendments made by this section shall modify the duration of availability of amounts in the Department of Defense Acquisition Workforce Development Fund that were appropriated or credited to, or deposited, in the Fund, before October 1, 2019, as provided for in section 1705(e)(6) of title 10, United States Code, as in effect on the day before such date.''

EFFECTIVE DATE OF 2011 AMENDMENT

Pub. L. 112–81, div. A, title VIII, § 804(b), Dec. 31, 2011, 125 Stat. 1486, provided that: ''Paragraph (6) of such section [10 U.S.C. 1705(e)(6)], as amended by subsection (a), shall not apply to funds directly appropriated to the Fund before the date of the enactment of this Act [Dec. 31, 2011].''

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–84, div. A, title VIII, § 832(h), Oct. 28, 2009, 123 Stat. 2416, provided that:

''(1) FUNDING AMENDMENTS.—The amendments made by subsections (a) through (c) [amending this section] shall take effect as of October 1, 2009.

''(2) TECHNICAL AMENDMENTS.—The amendments made by subsections (f) and (g) [amending this section] shall take effect on the date of the enactment of this Act [Oct. 28, 2009].''

EFFECTIVE DATE

Pub. L. 110–181, div. A, title VIII, § 852(b), Jan. 28, 2008, 122 Stat. 250, provided that: ''Section 1705 of title 10, United States Code, as added by subsection (a), shall take effect on the date of the enactment of this Act [Jan. 28, 2008].''

GUIDANCE

Pub. L. 115–91, div. A, title VIII, § 843(a)(2), Dec. 12, 2017, 131 Stat. 1480, provided that: ''Not later than 180 days after the date of the enactment of this Act [Dec. 12, 2017], the Secretary of Defense shall issue, and submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives], the policy guidance required by subparagraph (E) of section 1705(e)(3) of title 10, United States Code, as added by paragraph (1).''

PLAN REQUIRED FOR TEMPORARY MEMBERS OF DEFENSE ACQUISITION WORKFORCE

Pub. L. 112–239, div. A, title VIII, § 803(c), Jan. 2, 2013, 126 Stat. 1825, as amended by Pub. L. 116–92, div. A, title IX, § 902(14), Dec. 20, 2019, 133 Stat. 1544, provided that: ''Not later than 180 days after the date of the enactment of this Act [Jan. 2, 2013], the Under Secretary of Defense for Acquisition and Sustainment shall develop a plan for the implementation of the authority provided by the amendments made by subsection (a) [amending this section] with regard to temporary members of the defense acquisition workforce. The plan shall include policy, criteria, and processes for designating temporary members and appropriate safeguards to prevent the abuse of such authority.''

§ 1706. Government performance of certain acquisition functions

(a) GOAL.—It shall be the goal of the Department of Defense and each of the military departments to ensure that, for each major defense acquisition program (as defined in section 2430 of

this title), each acquisition program that is estimated by the Secretary of Defense to require an eventual total expenditure greater than the amount described in section 2430(a)(1)(B) of this title, and any other acquisition program identified by the Secretary, each of the following positions is performed by a properly qualified member of the armed forces or full-time employee of the Department of Defense:

(1) Program executive officer.

(2) Deputy program executive officer.

(3) Program manager.

(4) Deputy program manager.

(5) Senior contracting official.

(6) Chief developmental tester.

(7) Program lead product support manager.

(8) Program lead systems engineer.

(9) Program lead cost estimator.

(10) Program lead contracting officer.

(11) Program lead business financial manager.

(12) Program lead production, quality, and manufacturing.

(13) Program lead information technology.

(14) Program lead software.

(b) PLAN OF ACTION.—The Secretary of Defense shall develop and implement a plan of action for recruiting, training, and ensuring appropriate career development of military and civilian personnel to achieve the objective established in subsection (a).

(Added Pub. L. 112–239, div. A, title VIII, § 824(a)(1), Jan. 2, 2013, 126 Stat. 1832; amended Pub. L. 116–283, div. A, title VIII, § 812, title XVIII, §§ 1846(i)(3), 1883(b)(2), Jan. 1, 2021, 134 Stat. 3749, 4252, 4294.)

PRIOR PROVISIONS

A prior section 1706, added Pub. L. 101–510, div. A, title XII, § 1202(a), Nov. 5, 1990, 104 Stat. 1639, which related to acquisition career program boards, was repealed by Pub. L. 108–136, div. A, title VIII, § 831(a), Nov. 24, 2003, 117 Stat. 1549.

AMENDMENTS

2021—Subsec. (a). Pub. L. 116–283, § 1883(b)(2), which directed that each reference in the text of title 10 to a section that was redesignated by title XVIII of Pub. L. 116–283, as such section was in effect before the redesignation, be amended by striking such reference and inserting a reference to the appropriate redesignated section, was executed by substituting ''section 4201(a)(2) of this title'' for ''section 2430(a)(1)(B) of this title'' but was not executed with respect to ''section 2430 of this title'', which was redesignated as multiple sections.

Pub. L. 116–283, § 812(1)(A), substituted ''(as defined in section 2430 of this title), each acquisition program that is estimated by the Secretary of Defense to require an eventual total expenditure greater than the amount described in section 2430(a)(1)(B) of this title, and any other acquisition program identified by the Secretary'' for ''and each major automated information system program'' in introductory provisions.

Subsec. (a)(14). Pub. L. 116–283, § 812(1)(B), added par. (14).

Subsec. (c). Pub. L. 116–283, § 812(2), struck out subsec. (c) which defined ''major defense acquisition program'' and ''major automated information system program''.

Subsec. (c)(1). Pub. L. 116–283, § 1846(i)(3), which directed substitution of ''section 4201'' for ''section 2430(a)'', could not be executed because of the intervening amendment by Pub. L. 116–283, § 812(2). See above.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by sections 1846(i)(3) and 1883(b)(2) of Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

SIMILAR PROVISIONS

Provisions similar to this section were contained in section 820 of Pub. L. 109–364, which was set out as a note under section 1701 of this title prior to repeal by Pub. L. 112–239, div. A, title VIII, § 824(b), Jan. 2, 2013, 126 Stat. 1833.

§ 1707. Cadre of intellectual property experts

(a) CADRE.—The Secretary of Defense, acting through the Under Secretary of Defense for Acquisition and Sustainment, shall establish a cadre of personnel who are experts in intellectual property matters. The purpose of the cadre is to ensure a consistent, strategic, and highly knowledgeable approach to acquiring or licensing intellectual property by providing expert advice, assistance, and resources to the acquisition workforce on intellectual property matters, including acquiring or licensing intellectual property.

(b) LEADERSHIP STRUCTURE.—The Under Secretary—

(1) shall establish an appropriate leadership structure and office within which the cadre shall be managed; and

(2) shall determine the appropriate official to whom members of the cadre shall report.

(c) DUTIES.—The cadre of experts shall be assigned to a program office or an acquisition command within a military department to advise, assist, and provide resources to a program manager or program executive officer on intellectual property matters at various stages of the life cycle of a system. In performing such duties, the experts shall—

(1) interpret and provide counsel on laws, regulations, and policies relating to intellectual property;

(2) advise and assist in the development of an acquisition strategy, product support strategy, and intellectual property strategy for a system;

(3) conduct or assist with financial analysis and valuation of intellectual property;

(4) assist in the drafting of a solicitation, contract, or other transaction;

(5) interact with or assist in interactions with contractors, including communications and negotiations with contractors on solicitations and awards; and

(6) conduct or assist with mediation if technical data delivered pursuant to a contract is incomplete or does not comply with the terms of agreements.

(d) ADMINISTRATION.—

(1) In order to achieve the purpose set forth in subsection (a), the Under Secretary shall ensure the cadre has the appropriate number of staff and such staff possesses the necessary skills, knowledge, and experience to carry out the duties under subsection (b), including in relevant areas of law, contracting, acquisition, logistics, engineering, financial analysis, and valuation. The Under Secretary, in coordination with the Defense Acquisition University and in consultation with academia and indus-

try, shall develop a career path, including development opportunities, exchanges, talent management programs, and training, for the cadre. The Under Secretary may use existing authorities to staff the cadre, including those in paragraphs (2), (3), (4), and (6).

(2) Civilian personnel from within the Office of the Secretary of Defense, Joint Staff, military departments, Defense Agencies, and combatant commands may be assigned to serve as members of the cadre, upon request of the Director.

(3) The Under Secretary may use the authorities for highly qualified experts under section 9903 of title 5, to hire experts as members of the cadre who are skilled professionals in intellectual property and related matters.

(4) The Under Secretary may enter into a contract with a private-sector entity for specialized expertise to support the cadre. Such entity may be considered a covered Government support contractor, as defined in section 3775(a) of this title.

(5) In establishing the cadre, the Under Secretary shall give preference to civilian employees of the Department of Defense, rather than members of the armed forces, to maintain continuity in the cadre.

(6) The Under Secretary is authorized to use amounts in the Defense Acquisition Workforce Development Fund for the purpose of recruitment, training, and retention of the cadre, including paying salaries of newly hired members of the cadre for up to three years.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1877, Jan. 1, 2021, 134 Stat. 4291.)

PRIOR PROVISIONS

A prior section 1707, added Pub. L. 101–510, div. A, title XII, § 1202(a), Nov. 5, 1990, 104 Stat. 1639; amended Pub. L. 103–160, div. A, title IX, § 904(d)(1), Nov. 30, 1993, 107 Stat. 1728; Pub. L. 107–107, div. A, title X, § 1048(b)(2), Dec. 28, 2001, 115 Stat. 1225, related to personnel in the Office of the Secretary of Defense and in the Defense Agencies, prior to repeal by Pub. L. 108–136, div. A, title VIII, § 831(a), Nov. 24, 2003, 117 Stat. 1549.

CODIFICATION

The text of subsec. (b) of section 2322 of title, which was transferred to this section and amended by Pub. L. 116–283, § 1877(b)–(e), was based on Pub. L. 115–91, div. A, title VIII, § 802(a)(1), Dec. 12, 2017, 131 Stat. 1450.

AMENDMENTS

2021—Subsec. (a). Pub. L. 116–283, § 1877(b)(1), redesignated subsec. (b)(1) of section 2322 of this title as subsec. (a) of this section and inserted heading.

Subsec. (b). Pub. L. 116–283, § 1877(b)(3), (c), redesignated subsec. (b)(2) of section 2322 of this title as subsec. (b) of this section, inserted heading, inserted dash after ‘‘Secretary’’, and reorganized remainder of text into designated pars. (1) and (2).

Subsec. (c). Pub. L. 116–283, § 1877(b)(3), (d), redesignated subsec. (b)(3) of section 2322 of this title as subsec. (c) of this section, inserted heading, and redesignated subpars. (A) to (F) as pars. (1) to (6), respectively. Amendment by section 1877(d) was executed to subsec. (c) of this section to reflect the probable intent of Congress, notwithstanding directory language amending subsec. (c) of section ‘‘17017’’.

Subsec. (d). Pub. L. 116–283, § 1877(b)(3), (e)(1), (2), redesignated subsec. (b)(4) of section 2322 of this title as subsec. (d) of this section, inserted heading, and redesignated subpars. (A) to (F) as pars. (1) to (6), respectively.

Subsec. (d)(1). Pub. L. 116–283, § 1877(e)(3), in first sentence, substituted ‘‘subsection (a)’’ for ‘‘paragraph (1)’’ and ‘‘subsection (b)’’ for ‘‘paragraph (2)’’ and, in third sentence, substituted ‘‘paragraphs (2), (3), (4), and (6)’’ for ‘‘subparagraphs (B), (C), (D), and (F)’’.

Subsec. (d)(4). Pub. L. 116–283, § 1877(e)(4), substituted ‘‘section 3775(a)’’ for ‘‘section 2320’’.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

SUBCHAPTER II—ACQUISITION POSITIONS AND ACQUISITION WORKFORCE CAREER FIELDS

Sec.
1721. Designation of acquisition positions and acquisition workforce career fields.
1722. Career development.
1722a. Special requirements for military personnel in the acquisition field.
1722b. Special requirements for civilian employees in the acquisition field.
1723. General education, training, and experience requirements.
1724. Contracting positions: qualification requirements.
1725. Senior Military Acquisition Advisors.

AMENDMENTS

2019—Pub. L. 116–92, div. A, title VIII, § 861(f)(2)(B), (3)(A), Dec. 20, 2019, 133 Stat. 1518, substituted ‘‘ACQUISITION POSITIONS AND ACQUISITION WORKFORCE CAREER FIELDS’’ for ‘‘DEFENSE ACQUISITION POSITIONS’’ in heading for subchapter II and ‘‘Designation of acquisition positions and acquisition workforce career fields’’ for ‘‘Designation of acquisition positions’’ in item 1721.

2016—Pub. L. 114–328, div. A, title VIII, § 866(a)(2), Dec. 23, 2016, 130 Stat. 2306, added item 1725.

2011—Pub. L. 111–383, div. A, title VIII, § 873(a)(2), Jan. 7, 2011, 124 Stat. 4303, added item 1722b.

2009—Pub. L. 111–84, div. A, title X, § 1073(c)(6), Oct. 28, 2009, 123 Stat. 2474, amended Pub. L. 110–417, § 834(a)(2). See 2008 Amendment note below.

2008—Pub. L. 110–417, [div. A], title VIII, § 834(a)(2), Oct. 14, 2008, 122 Stat. 4537, as amended by Pub. L. 111–84, div. A, title X, § 1073(c)(6), Oct. 28, 2009, 123 Stat. 2474, added item 1722a.

2003—Pub. L. 108–136, div. A, title VIII, § 836(2), Nov. 24, 2003, 117 Stat. 1551, struck out item 1725 ‘‘Office of Personnel Management approval’’.

§ 1721. Designation of acquisition positions and acquisition workforce career fields

(a) DESIGNATION.—The Secretary of Defense shall designate in regulations those positions in the Department of Defense that are acquisition positions for purposes of this chapter. The Secretary shall also designate in regulations those career fields in the Department of Defense that are acquisition workforce career fields for purposes of this chapter.

(b) REQUIRED POSITIONS.—In designating the positions under subsection (a), the Secretary shall include, at a minimum, all acquisition-related positions in the following areas:

(1) Program management.

(2) Systems planning, research, development, engineering, and testing.

(3) Procurement, including contracting.

(4) Industrial property management.

(5) Logistics.
(6) Quality control and assurance.
(7) Manufacturing and production.
(8) Business, cost estimating, financial management, and auditing.
(9) Education, training, and career development.
(10) Construction.
(11) Security cooperation.
(12) Intellectual property.
(13) Other positions, as necessary.

(c) MANAGEMENT HEADQUARTERS ACTIVITIES.—The Secretary also shall designate as acquisition positions under subsection (a) those acquisition-related positions which are in management headquarters activities and in management headquarters support activities. For purposes of this subsection, the terms ''management headquarters activities'' and ''management headquarters support activities'' have the meanings given those terms in Department of Defense Directive 5100.73, entitled ''Department of Defense Management Headquarters and Headquarters Support Activities'', dated November 12, 1996.

(Added Pub. L. 101–510, div. A, title XII, § 1202(a), Nov. 5, 1990, 104 Stat. 1640; amended Pub. L. 102–25, title VII, § 701(j)(1), Apr. 6, 1991, 105 Stat. 116; Pub. L. 105–85, div. A, title IX, § 912(f), Nov. 18, 1997, 111 Stat. 1862; Pub. L. 115–91, div. A, title VIII, § 802(b), Dec. 12, 2017, 131 Stat. 1451; Pub. L. 116–92, div. A, title VIII, § 861(d), (f)(1), (2)(A), Dec. 20, 2019, 133 Stat. 1517.)

AMENDMENTS

2019—Pub. L. 116–92, § 861(f)(2)(A), substituted ''Designation of acquisition positions and acquisition workforce career fields'' for ''Designation of acquisition positions'' in section catchline.

Subsec. (a). Pub. L. 116–92, § 861(f)(1), inserted at end ''The Secretary shall also designate in regulations those career fields in the Department of Defense that are acquisition workforce career fields for purposes of this chapter.''

Subsec. (b)(11). Pub. L. 116–92, § 861(d)(1), amended par. (11) generally. Prior to amendment, par. (11) read as follows: ''Joint development and production with other government agencies and foreign countries.''

Subsec. (b)(13). Pub. L. 116–92, § 861(d)(2), added par. (13).

2017—Subsec. (b)(12). Pub. L. 115–91 added par. (12).

1997—Subsec. (c). Pub. L. 105–85 substituted ''November 12, 1996'' for ''November 25, 1988''.

1991—Subsec. (c). Pub. L. 102–25 substituted ''Activities', dated'' for ''Activities,' dated'' in last sentence.

DEADLINE FOR DESIGNATION OF CAREER FIELDS

Pub. L. 116–92, div. A, title VIII, § 861(f)(4), Dec. 20, 2019, 133 Stat. 1518, provided that: ''Not later than the end of the six-month period beginning on the date of the enactment of this Act [Dec. 20, 2019], the Secretary of Defense shall carry out the requirements of the second sentence of section 1721(a) of title 10, United States Code (as added by paragraph (1)).''

TWENTY PERCENT REDUCTION IN DEFENSE ACQUISITION WORKFORCE

Pub. L. 101–510, div. A, title IX, § 905, Nov. 5, 1990, 104 Stat. 1621, required Secretary of Defense to reduce number of employees in Department of Defense acquisition workforce on last day of each of fiscal years 1991 through 1995 below number of employees in such workforce on last day of preceding fiscal year by not less than number equal to 4 percent of number of employees in such workforce on Sept. 30, 1990, and which defined ''Department of Defense acquisition workforce'', prior to repeal by Pub. L. 102–190, div. A, title IX, § 904, Dec. 5, 1991, 105 Stat. 1451.

DEADLINE FOR DESIGNATION OF ACQUISITION POSITIONS

Pub. L. 101–510, div. A, title XII, § 1209(b), Nov. 5, 1990, 104 Stat. 1666, as amended by Pub. L. 102–25, title VII, § 704(b)(3)(B), Apr. 6, 1991, 105 Stat. 119; Pub. L. 103–160, div. A, title IX, § 904(f), Nov. 30, 1993, 107 Stat. 1729, provided that the designation of acquisition positions required by this section was to be made by the Secretary of Defense, acting through the Under Secretary of Defense for Acquisition and Technology, not later than Oct. 1, 1991.

§ 1722. Career development

(a) CAREER PATHS.—The Secretary of Defense, acting through the Under Secretary of Defense for Acquisition and Sustainment, shall ensure that an appropriate career path for civilian and military personnel who wish to pursue careers in acquisition is identified for each acquisition workforce career field in terms of the education, training, experience, and assignments necessary for career progression of civilians and members of the armed forces to the most senior acquisition positions. The Secretary shall make available published information on such career paths.

(b) LIMITATION ON PREFERENCE FOR MILITARY PERSONNEL.—(1) The Secretary of Defense shall ensure that no requirement or preference for a member of the armed forces is used in the consideration of persons for acquisition positions, except as provided in the policy established under paragraph (2).

(2)(A) The Secretary shall establish a policy permitting a particular acquisition position to be specified as available only to members of the armed forces if a determination is made, under criteria specified in the policy, that a member of the armed forces is required for that position by law, is essential for performance of the duties of the position, or is necessary for another compelling reason.

(B) Not later than December 15 of each year, the Under Secretary of Defense for Acquisition and Sustainment shall submit to the Secretary a report that lists each acquisition position that is restricted to members of the armed forces under such policy and the recommendation of the Under Secretary as to whether such position should remain so restricted.

(c) OPPORTUNITIES FOR CIVILIANS TO QUALIFY.—The Secretary of Defense shall ensure that civilian personnel are provided the opportunity to acquire the education, training, and experience necessary to qualify for senior acquisition positions.

(d) BEST QUALIFIED.—The Secretary of Defense shall ensure that the policies established under this chapter are designed to provide for the selection of the best qualified individual for a position, consistent with other applicable law.

[(e) Repealed. Pub. L. 107–107, div. A, title X, § 1048(e)(3), Dec. 28, 2001, 115 Stat. 1227.]

(f) ASSIGNMENTS POLICY.—(1) The Secretary of Defense shall establish a policy on assigning military personnel to acquisition positions that provides for a balance between (A) the need for personnel to serve in career broadening positions, and (B) the need for requiring service in

each such position for sufficient time to provide the stability necessary to effectively carry out the duties of the position and to allow for the establishment of responsibility and accountability for actions taken in the position.

(2) In implementing the policy established under paragraph (1), the Secretaries of the military departments shall provide, as appropriate, for longer lengths of assignments to acquisition positions than assignments to other positions.

(g) PERFORMANCE APPRAISALS.—The Secretary of each military department, acting through the service acquisition executive for that department, shall provide an opportunity for review and inclusion of any comments on any appraisal of the performance of a person serving in an acquisition position by a person serving in an acquisition position in the same acquisition career field.

(h) BALANCED WORKFORCE POLICY.—In the development of defense acquisition workforce policies under this chapter with respect to any civilian employees or applicants for employment, the Secretary of Defense or the Secretary of a military department (as applicable) shall, consistent with the merit system principles set out in paragraphs (1) and (2) of section 2301(b) of title 5, take into consideration the need to maintain a balanced workforce in which women and members of racial and ethnic minority groups are appropriately represented in Government service.

(Added Pub. L. 101–510, div. A, title XII, § 1202(a), Nov. 5, 1990, 104 Stat. 1641; amended Pub. L. 103–160, div. A, title IX, § 904(d)(1), Nov. 30, 1993, 107 Stat. 1728; Pub. L. 107–107, div. A, title X, § 1048(b)(2), (e)(3), Dec. 28, 2001, 115 Stat. 1225, 1227; Pub. L. 116–92, div. A, title VIII, § 861(e)(2), title IX, § 902(15), Dec. 20, 2019, 133 Stat. 1517, 1544.)

AMENDMENTS

2019—Subsec. (a). Pub. L. 116–92, § 902(15)(A), substituted ''Under Secretary of Defense for Acquisition and Sustainment'' for ''Under Secretary of Defense for Acquisition''.

Pub. L. 116–92, § 861(e)(2), substituted ''an appropriate career path'' for ''appropriate career paths'' and ''is identified for each acquisition workforce career field'' for ''are identified''.

Subsec. (b)(2)(B). Pub. L. 116–92, § 902(15)(B), substituted ''Under Secretary of Defense for Acquisition and Sustainment'' for ''Secretary of Defense for Acquisition, Technology, and Logistics''.

2001—Subsecs. (a), (b)(2)(B). Pub. L. 107–107, § 1048(b)(2), substituted ''Under Secretary of Defense for Acquisition, Technology, and Logistics'' for ''Under Secretary of Defense for Acquisition and Technology''.

Subsec. (e). Pub. L. 107–107, § 1048(e)(3), struck out heading and text of subsec. (e). Text read as follows: ''The Secretary of Defense shall ensure that the acquisition workforce is managed such that, for each fiscal year from October 1, 1991, through September 30, 1996, there is a substantial increase in the proportion of civilians (as compared to armed forces personnel) serving in critical acquisition positions in general, in program manager positions, and in division head positions over the proportion of civilians (as compared to armed forces personnel) in such positions on October 1, 1990.''

1993—Subsecs. (a), (b)(2)(B). Pub. L. 103–160 substituted ''Under Secretary of Defense for Acquisition and Technology'' for ''Under Secretary of Defense for Acquisition''.

MILITARY POSITIONS AND ASSIGNMENTS POLICY DEADLINES

Pub. L. 101–510, div. A, title XII, § 1209(c), (d), Nov. 5, 1990, 104 Stat. 1666, provided that:

''(c) MILITARY POSITIONS POLICY DEADLINES.—(1) The policy required by paragraph (2) of section 1722(b) of title 10, United States Code (as added by section 1202), shall be established by the Secretary of Defense not later than October 1, 1991.

''(2) The first report required by section 1722(b)(2)(B) of title 10, United States Code (as added by section 1202), shall be submitted to the Secretary of Defense not later than September 30, 1993.

''(d) ASSIGNMENTS POLICY DEADLINE.—Not later than October 1, 1991, the Secretary of Defense shall establish, and require commencement of implementation of, an assignments policy pursuant to section 1722(f) of title 10, United States Code (as added by section 1202).''

§ 1722a. Special requirements for military personnel in the acquisition field

(a) REQUIREMENT FOR POLICY AND GUIDANCE REGARDING MILITARY PERSONNEL IN ACQUISITION.—The Secretary of Defense shall require the Secretary of each military department (with respect to such military department), in collaboration with the Chief of Staff of the Army, the Chief of Naval Operations, the Chief of Staff of the Air Force,,[1] the Commandant of the Marine Corps, and the Chief of Space Operations (with respect to the Army, Navy, Air Force, Marine Corps, and Space Force, respectively), and the Under Secretary of Defense for Acquisition and Sustainment (with respect to the Office of the Secretary of Defense, the unified combatant commands, the Defense Agencies, and the Defense Field Activities) to establish policies and issue guidance to ensure the proper development, assignment, and employment of members of the armed forces in the acquisition field to achieve the objectives of this section as specified in subsection (b).

(b) OBJECTIVES.—Policies established and guidance issued pursuant to subsection (a) shall ensure, at a minimum, the following:

(1) A single-track career path in the acquisition field that attracts the highest quality officers and enlisted personnel.

(2) A dual-track career path that attracts the highest quality officers and enlisted personnel and allows them to gain experience in and receive credit for a primary career in combat arms and a functional secondary career in the acquisition field in order to more closely align the military operational, requirements, and acquisition workforces of each armed force.

(3) A number of command positions and senior noncommissioned officer positions, including acquisition billets reserved for general officers and flag officers under subsection (c), sufficient to ensure that members of the armed forces have opportunities for promotion and advancement in the acquisition field.

(4) A number of qualified, trained members of the armed forces eligible for and active in the acquisition field sufficient to ensure the optimum management of the acquisition functions of the Department of Defense and the appropriate use of military personnel in contingency contracting.

[1] So in original.

(c) RESERVATION OF ACQUISITION BILLETS FOR GENERAL OFFICERS AND FLAG OFFICERS.—(1) The Secretary of Defense shall—

(A) establish for each military department a sufficient number of billets coded or classified for acquisition personnel that are reserved for general officers and flag officers that are needed for the purpose of ensuring the optimum management of the acquisition functions of the Department of Defense; and

(B) ensure that the policies established and guidance issued pursuant to subsection (a) by the Secretary of each military department reserve at least that minimum number of billets and fill the billets with qualified and trained general officers and flag officers who have significant acquisition experience.

(2) The Secretary of Defense shall ensure—

(A) a sufficient number of billets for acquisition personnel who are general officers or flag officers exist within the Office of the Secretary of Defense, the unified combatant commands, the Defense Agencies, and the Defense Field Activities to ensure the optimum management of the acquisition functions of the Department of Defense; and

(B) that the policies established and guidance issued pursuant to subsection (a) by the Secretary reserve within the Office of the Secretary of Defense, the unified combatant commands, the Defense Agencies, and the Defense Field Activities at least that minimum number of billets and fill the billets with qualified and trained general officers and flag officers who have significant acquisition experience.

(3) The Secretary of Defense shall ensure that a portion of the billets referred to in paragraphs (1) and (2) involve command of organizations primarily focused on contracting and are reserved for general officers and flag officers who have significant contracting experience.

(d) RELATIONSHIP TO LIMITATION ON PREFERENCE FOR MILITARY PERSONNEL.—Any designation or reservation of a position for a member of the armed forces as a result of a policy established or guidance issued pursuant to this section shall be deemed to meet the requirements for an exception under paragraph (2) of section 1722(b) of this title from the limitation in paragraph (1) of such section.

(e) REPORT.—Not later than January 1 of each year, the Secretary of each military department shall submit to the Under Secretary of Defense for Acquisition and Sustainment a report describing how the Secretary fulfilled the objectives of this section in the preceding calendar year. The report shall include information on the reservation of acquisition billets for general officers and flag officers within the department concerned.

(Added Pub. L. 110–417, [div. A], title VIII, §834(a)(1), Oct. 14, 2008, 122 Stat. 4535; amended Pub. L. 114–92, div. A, title VIII, §842, Nov. 25, 2015, 129 Stat. 914; Pub. L. 116–92, div. A, title IX, §902(16), Dec. 20, 2019, 133 Stat. 1544; Pub. L. 116–283, div. A, title IX, §924(b)(27), Jan. 1, 2021, 134 Stat. 3825.)

AMENDMENTS

2021—Subsec. (a). Pub. L. 116–283, §924(b)(27)(B), which directed substitution of ''the Under Secretary of Defense for Acquisition and Sustainment'' for ''the Under Secretary of Defense for Acquisition, Technology, and Logistics'', could not be executed because of the intervening amendment by Pub. L. 116–92. See 2019 Amendment note below.

Pub. L. 116–283, §924(b)(27)(A), substituted '', the Commandant of the Marine Corps, and the Chief of Space Operations (with respect to the Army, Navy, Air Force, Marine Corps, and Space Force, respectively)'' for ''and the Commandant of the Marine Corps (with respect to the Army, Navy, Air Force, and Marine Corps, respectively)''.

2019—Subsecs. (a), (e). Pub. L. 116–92 substituted ''Under Secretary of Defense for Acquisition and Sustainment'' for ''Under Secretary of Defense for Acquisition, Technology, and Logistics''.

2015—Subsec. (a). Pub. L. 114–92, §842(a), inserted '', in collaboration with the Chief of Staff of the Army, the Chief of Naval Operations, the Chief of Staff of the Air Force, and the Commandant of the Marine Corps (with respect to the Army, Navy, Air Force, and Marine Corps, respectively),'' after ''military department)''.

Subsec. (b)(1). Pub. L. 114–92, §842(b)(2), inserted ''single-track'' before ''career path''.

Subsec. (b)(2) to (4). Pub. L. 114–92, §842(b)(1), (3), added par. (2) and redesignated former pars. (2) and (3) as (3) and (4), respectively.

§1722b. Special requirements for civilian employees in the acquisition field

(a) REQUIREMENT FOR POLICY AND GUIDANCE REGARDING CIVILIAN PERSONNEL IN ACQUISITION.—The Secretary of Defense, acting through the Under Secretary of Defense for Acquisition and Sustainment, shall establish policies and issue guidance to ensure the proper development, assignment, and employment of civilian members of the acquisition workforce to achieve the objectives specified in subsection (b).

(b) OBJECTIVES.—Policies established and guidance issued pursuant to subsection (a) shall ensure, at a minimum, the following:

(1) A career path in the acquisition field that attracts the highest quality civilian personnel, from either within or outside the Federal Government.

(2) A deliberate workforce development strategy that increases attainment of key experiences that contribute to a highly qualified acquisition workforce.

(3) Sufficient opportunities for promotion and advancement in the acquisition field.

(4) A sufficient number of qualified, trained members eligible for and active in the acquisition field to ensure adequate capacity, capability, and effective succession for acquisition functions, including contingency contracting, of the Department of Defense.

(5) A deliberate workforce development strategy that ensures diversity in promotion, advancement, and experiential opportunities commensurate with the general workforce outlined in this section.

(c) KEY WORK EXPERIENCES.—In carrying out subsection (b)(2), the Secretary shall ensure that key work experiences, in the form of multidisciplinary experiences, are developed for each acquisition workforce career field.

(Added Pub. L. 111–383, div. A, title VIII, §873(a)(1), Jan. 7, 2011, 124 Stat. 4302; amended Pub. L. 112–239, div. A, title X, §1076(d)(1), Jan. 2, 2013, 126 Stat. 1951; Pub. L. 115–91, div. A, title X, §1051(a)(8), Dec. 12, 2017, 131 Stat. 1560; Pub. L.

116–92, div. A, title VIII, § 861(g)(1), title IX, § 902(17), Dec. 20, 2019, 133 Stat. 1518, 1545.)

AMENDMENTS

2019—Subsec. (a). Pub. L. 116–92, § 902(17), substituted ''Under Secretary of Defense for Acquisition and Sustainment'' for ''Under Secretary of Defense for Acquisition, Technology, and Logistics''.

Subsec. (c). Pub. L. 116–92, § 861(g)(1), added subsec. (c).

2017—Subsec. (c). Pub. L. 115–91 struck out subsec. (c) which related to inclusion of information in annual report to Congress required under former section 115b(d) of this title.

2013—Subsec. (c)(3). Pub. L. 112–239, § 1076(d)(1)(A), substituted ''subsections (b)(1)(A) and (b)(1)(B)'' for ''subsections (b)(2)(A) and (b)(2)(B)''.

Subsec. (c)(4). Pub. L. 112–239, § 1076(d)(1)(B), substituted ''or 1734(d)'' for ''1734(d), or 1736(c)''.

PLAN FOR IMPLEMENTATION OF KEY WORK EXPERIENCES

Pub. L. 116–92, div. A, title VIII, § 861(g)(2), Dec. 20, 2019, 133 Stat. 1518, provided that: ''Not later than one year after the date of the enactment of this Act [Dec. 20, 2019], the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a plan identifying the specific actions the Secretary has taken, and is planning to take, to develop and establish key work experiences for each acquisition workforce career field as required by subsection (c) of section 1722b of title 10, United States Code (as added by paragraph (1)). The plan shall specify the percentage of the acquisition workforce, or funds available for administration of the acquisition workforce on an annual basis, that the Secretary will dedicate towards developing and establishing such key work experiences.''

ENHANCEMENTS TO THE CIVILIAN PROGRAM MANAGEMENT WORKFORCE

Pub. L. 115–91, div. A, title VIII, § 841(a), Dec. 12, 2017, 131 Stat. 1477, provided that:

''(a) ESTABLISHMENT OF PROGRAM MANAGER DEVELOPMENT PROGRAM.—

''(1) IN GENERAL.—The Secretary of Defense, in consultation with the Secretaries of the military departments, shall implement a program manager development program to provide for the professional development of high-potential, experienced civilian personnel. Personnel shall be competitively selected for the program based on their potential to become a program manager of a major defense acquisition program, as defined in section 2430 of title 10, United States Code. The program shall be administered and overseen by the Secretary of each military department, acting through the service acquisition executive for the department concerned.

''(2) PLAN REQUIRED.—Not later than one year after the date of the enactment of this Act [Dec. 12, 2017], the Secretary of Defense shall provide to the Committees on Armed Services of the Senate and the House of Representatives a comprehensive plan to implement the program established under paragraph (1). In developing the plan, the Secretary of Defense shall seek the input of relevant external parties, including professional associations, other government entities, and industry. The plan shall include the following elements:

''(A) An assessment of the minimum level of subject matter experience, education, years of experience, certifications, and other qualifications required to be selected into the program, set forth separately for current Department of Defense employees and for personnel hired into the program from outside the Department of Defense.

''(B) A description of hiring flexibilities to be used to recruit qualified personnel from outside the Department of Defense.

''(C) A description of the extent to which mobility agreements will be required to be signed by personnel selected for the program during their participation in the program and after their completion of the program. The use of mobility agreements shall be applied to help maximize the flexibility of the Department of Defense in assigning personnel, while not inhibiting the participation of the most capable candidates.

''(D) A description of the tenure obligation required of personnel selected for the program.

''(E) A plan for training during the course of the program, including training in leadership, program management, engineering, finance and budgeting, market research, business acumen, contracting, supplier management, requirement setting and tradeoffs, intellectual property matters, and software.

''(F) A description of career paths to be followed by personnel in the program in order to ensure that personnel in the program gain expertise in the program management functional career field competencies identified by the Department in existing guidance and the topics listed in subparagraph (E), including—

''(i) a determination of the types of advanced educational degrees that enhance program management skills and the mechanisms available to the Department of Defense to facilitate the attainment of those degrees by personnel in the program;

''(ii) a determination of required assignments to positions within acquisition programs, including position type and acquisition category of the program office;

''(iii) a determination of required or encouraged rotations to career broadening positions outside of acquisition programs; and

''(iv) a determination of how the program will ensure the opportunity for a required rotation to industry of at least six months to develop an understanding of industry motivation and business acumen, such as by developing an industry exchange program for civilian program managers, similar to the Corporate Fellows Program of the Secretary of Defense.

''(G) A general description of the number of personnel anticipated to be selected into the program, how frequently selections will occur, how long personnel selected into the program will participate in the program, and how personnel will be placed into an assignment at the completion of the program.

''(H) A description of benefits that will be offered under the program using existing human capital flexibilities to retain qualified employees, such as student loan repayments, bonuses, or pay banding.

''(I) An assessment of personnel flexibilities needed to allow the military departments and the Defense Agencies to reassign or remove program managers that do not perform effectively.

''(J) A description of how the program will be administered and overseen by the Secretaries of each military department, acting through the service acquisition executive for the department concerned.

''(K) A description of how the program will be integrated with existing program manager development efforts at each military department.

''(3) USE OF DEFENSE ACQUISITION WORKFORCE DEVELOPMENT FUND.—Amounts in the Department of Defense Acquisition Workforce Development Fund (established under section 1705 of title 10, United States Code) may be used to pay the base salary of personnel in the program established under paragraph (1) during the period of time such personnel are temporarily assigned to a developmental rotation or training program anticipated to last at least six months.

''(4) IMPLEMENTATION.—The program established under paragraph (1) shall be implemented not later than September 30, 2019.''

§ 1723. General education, training, and experience requirements

(a) QUALIFICATION REQUIREMENTS.—(1) The Secretary of Defense shall establish education, training, and experience requirements for each acquisition position, based on the level of complexity of duties carried out in the position. In establishing such requirements, the Secretary shall ensure the availability and sufficiency of training in all areas of acquisition, including additional training courses with an emphasis on services contracting, market research strategies (including assessments of local contracting capabilities), long-term sustainment strategies, information technology, and rapid acquisition.

(2) In establishing such requirements for positions other than critical acquisition positions designated pursuant to section 1731 of this title, the Secretary may state the requirements by categories of positions.

(3) The Secretary of Defense, acting through the Under Secretary of Defense for Acquisition and Sustainment, shall establish requirements for continuing education and periodic renewal of an individual's certification.

(b) CAREER PATH REQUIREMENTS.—For each career path, the Secretary of Defense, acting through the Under Secretary of Defense for Acquisition and Sustainment, shall establish requirements for the completion of course work and related on-the-job training and demonstration of qualifications in duties and tasks of the career path. The Secretary of Defense, acting through the Under Secretary, shall also—

(1) direct individuals in the acquisition workforce to maintain the currency of their acquisition knowledge and generally enhance their knowledge of related acquisition management disciplines through academic programs and other self-developmental activities; and

(2) develop key work experiences, including the creation of a program sponsored by the Department of Defense that facilitates the periodic interaction between individuals in the acquisition workforce and the end user in such end user's environment to enhance the knowledge base of such workforce, for individuals in the acquisition workforce so that the individuals may gain in-depth knowledge and experience in the acquisition process and become seasoned, well-qualified members of the acquisition workforce.

(c) LIMITATION ON CREDIT FOR TRAINING OR EDUCATION.—Not more than one year of a period of time spent pursuing a program of academic training or education in acquisition may be counted toward fulfilling any requirement established under this chapter for a certain period of experience.

(Added Pub. L. 101–510, div. A, title XII, § 1202(a), Nov. 5, 1990, 104 Stat. 1642; amended Pub. L. 104–201, div. A, title X, § 1074(a)(9)(A), Sept. 23, 1996, 110 Stat. 2659; Pub. L. 111–383, div. A, title VIII, §§ 873(b), 874(a), Jan. 7, 2011, 124 Stat. 4303, 4304; Pub. L. 116–92, div. A, title VIII, § 861(a)(4), (h), (j)(8), title IX, § 902(18), Dec. 20, 2019, 133 Stat. 1515, 1518, 1520, 1545.)

AMENDMENTS

2019—Subsec. (a)(2). Pub. L. 116–92, § 861(j)(8), substituted ''section 1731 of this title'' for ''section 1733 of this title''.

Subsec. (a)(3). Pub. L. 116–92, § 902(18)(A), substituted ''Under Secretary of Defense for Acquisition and Sustainment'' for ''Under Secretary of Defense for Acquisition, Technology, and Logistics''.

Pub. L. 116–92, § 861(a)(4)(A), struck out second sentence which read as follows: ''Any requirement for a certification renewal shall not require a renewal more often than once every five years.''

Subsec. (b). Pub. L. 116–92, § 902(18)(B), substituted ''Under Secretary of Defense for Acquisition and Sustainment'' for ''Under Secretary of Defense for Acquisition, Technology, and Logistics'' in introductory provisions.

Pub. L. 116–92, § 861(h), struck out ''the critical acquisition-related'' after ''qualifications in'' in introductory provisions.

Subsec. (b)(1). Pub. L. 116–92, § 861(a)(4)(B), substituted ''direct'' for ''encourage''.

2011—Subsec. (a). Pub. L. 111–383, § 874(a), amended subsec. (a) generally. Prior to amendment, text read as follows: ''The Secretary of Defense shall establish education, training, and experience requirements for each acquisition position, based on the level of complexity of duties carried out in the position. In establishing such requirements for positions other than critical acquisition positions designated pursuant to section 1733 of this title, the Secretary may state the requirements by categories of positions.''

Subsecs. (b), (c). Pub. L. 111–383, § 873(b), added subsec. (b) and redesignated former subsec. (b) as (c).

1996—Subsec. (a). Pub. L. 104–201 struck out ''Unless otherwise provided in this chapter, such requirements shall take effect not later than October 1, 1993.'' after first sentence.

INFORMATION TECHNOLOGY ACQUISITION WORKFORCE

Pub. L. 111–383, div. A, title VIII, § 875, Jan. 7, 2011, 124 Stat. 4305, provided that:

''(a) PLAN REQUIRED.—The Secretary of Defense shall develop and carry out a plan to strengthen the part of the acquisition workforce that specializes in information technology. The plan shall include the following:

''(1) Defined targets for billets devoted to information technology acquisition.

''(2) Specific certification requirements for individuals in the acquisition workforce who specialize in information technology acquisition.

''(3) Defined career paths for individuals in the acquisition workforce who specialize in information technology acquisitions.

''(b) DEFINITIONS.—In this section:

''(1) The term 'information technology' has the meaning provided such term in section 11101 of title 40, United States Code, and includes information technology incorporated into a major weapon system.

''(2) The term 'major weapon system' has the meaning provided such term in section 2379(f) of title 10, United States Code.

''(c) DEADLINE.—The Secretary of Defense shall develop the plan required under this section not later than 270 days after the date of the enactment of this Act [Jan. 7, 2011].''

GUIDANCE AND STANDARDS FOR DEFENSE ACQUISITION WORKFORCE TRAINING REQUIREMENTS

Pub. L. 105–85, div. A, title VIII, § 853, Nov. 18, 1997, 111 Stat. 1851, which related to guidance and standards for defense acquisition workforce training requirements, was repealed and restated as section 1748 of this title by Pub. L. 111–383, div. A, title VIII, § 874(b)(1), (4), Jan. 7, 2011, 124 Stat. 4304, 4305.

FULFILLMENT STANDARDS FOR MANDATORY TRAINING

Pub. L. 102–484, div. A, title VIII, § 812(c), Oct. 23, 1992, 106 Stat. 2451, as amended by Pub. L. 105–85, div. A, title

X, § 1073(d)(2)(A), Nov. 18, 1997, 111 Stat. 1905, provided that the Secretary of Defense, acting through the Under Secretary of Defense for Acquisition and Technology, was to develop, not later than 90 days after Oct. 23, 1992, fulfillment standards, and implement a program, for purposes of the training requirements of sections 1723, 1724, and 1735 of this title, and that the standards were to take effect as of Nov. 5, 1990, and cease to be in effect on Oct. 1, 1997.

§ 1724. Contracting positions: qualification requirements

(a) CONTRACTING OFFICERS.—The Secretary of Defense shall require that, in order to qualify to serve in an acquisition position as a contracting officer with authority to award or administer contracts for amounts above the simplified acquisition threshold referred to in section 2304(g) of this title, an employee of the Department of Defense or member of the armed forces (other than the Coast Guard) must, except as provided in subsections (c) and (d)—

(1) have completed all contracting courses required for a contracting officer (A) in the case of an employee, serving in the position within the grade of the General Schedule in which the employee is serving, and (B) in the case of a member of the armed forces, in the member's grade;

(2) have at least two years of experience in a contracting position;

(3) have received a baccalaureate degree from an accredited educational institution authorized to grant baccalaureate degrees; and

(4) meet such additional requirements, based on the dollar value and complexity of the contracts awarded or administered in the position, as may be established by the Secretary of Defense for the position.

(b) GS–1102 SERIES POSITIONS AND SIMILAR MILITARY POSITIONS.—(1) The Secretary of Defense shall require that in order to qualify to serve in a position in the Department of Defense that is in the GS–1102 occupational series an employee or potential employee of the Department of Defense meet the requirement set forth in paragraph (3) of subsection (a). The Secretary may not require that in order to serve in such a position an employee or potential employee meet any of the requirements of paragraphs (1) and (2) of that subsection.

(2) The Secretary of Defense shall require that in order for a member of the armed forces to be selected for an occupational specialty within the armed forces that (as determined by the Secretary) is similar to the GS–1102 occupational series a member of the armed forces meet the requirement set forth in paragraph (3) of subsection (a). The Secretary may not require that in order to be selected for such an occupational specialty a member meet any of the requirements of paragraphs (1) and (2) of that subsection.

(c) EXCEPTIONS.—The qualification requirements imposed by the Secretary of Defense pursuant to subsections (a) and (b) shall not apply to an employee of the Department of Defense or member of the armed forces who—

(1) served as a contracting officer with authority to award or administer contracts in excess of the simplified acquisition threshold on or before September 30, 2000;

(2) served, on or before September 30, 2000, in a position either as an employee in the GS–1102 series or as a member of the armed forces in a similar occupational specialty;

(3) is in the contingency contracting force; or

(4) is described in subsection (e)(1)(B).

(d) WAIVER.—The Secretary of Defense may waive any or all of the requirements of subsections (a) and (b) with respect to an employee of the Department of Defense or member of the armed forces if the Secretary determines that the individual possesses significant potential for advancement to levels of greater responsibility and authority, based on demonstrated job performance and qualifying experience. With respect to each waiver granted under this subsection, the Secretary shall set forth in a written document the rationale for the decision of the Secretary to waive such requirements.

(e) DEVELOPMENTAL OPPORTUNITIES.—(1) The Secretary of Defense may—

(A) establish or continue one or more programs for the purpose of recruiting, selecting, appointing, educating, qualifying, and developing the careers of individuals to meet the requirement of subsection (a)(3);

(B) appoint individuals to developmental positions in those programs; and

(C) separate from the civil service after a three-year probationary period any individual appointed under this subsection who fails to meet the requirement described in subsection (a)(3).

(2) To qualify for any developmental program described in paragraph (1)(B), an individual shall have been awarded a baccalaureate degree, with a grade point average of at least 3.0 (or the equivalent), from an accredited institution of higher education authorized to grant baccalaureate degrees.

(f) CONTINGENCY CONTRACTING FORCE.—The Secretary shall establish qualification requirements for the contingency contracting force consisting of members of the armed forces whose mission is to deploy in support of contingency operations and other operations of the Department of Defense.

(Added Pub. L. 101–510, div. A, title XII, § 1202(a), Nov. 5, 1990, 104 Stat. 1642; amended Pub. L. 103–35, title I, § 101, May 31, 1993, 107 Stat. 97; Pub. L. 104–201, div. A, title X, § 1074(a)(9)(B), Sept. 23, 1996, 110 Stat. 2659; Pub. L. 106–398, § 1 [[div. A], title VIII, § 808(a)–(d)], Oct. 30, 2000, 114 Stat. 1654, 1654A–208; Pub. L. 107–107, div. A, title VIII, § 824(a), Dec. 28, 2001, 115 Stat. 1183; Pub. L. 108–136, div. A, title VIII, § 831(b)(1), Nov. 24, 2003, 117 Stat. 1549; Pub. L. 108–375, div. A, title X, § 1084(d)(14), (h)(1), Oct. 28, 2004, 118 Stat. 2062, 2064; Pub. L. 116–92, div. A, title VIII, § 861(b)(1), Dec. 20, 2019, 133 Stat. 1516; Pub. L. 116–283, div. A, title XVIII, § 1883(b)(2), Jan. 1, 2021, 134 Stat. 4294.)

AMENDMENT OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1883(b)(2), Jan. 1, 2021, 134 Stat. 4151, 4294, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, except as oth-

erwise provided in title XVIII of Pub. L. 116–283, in title 10, United States Code, each reference in the text of such title to a source section that is redesignated by title XVIII of Pub. L. 116–283, is amended by striking such reference and inserting a reference to the appropriate section as so redesignated. See 2021 Amendment note below.

REFERENCES IN TEXT

The General Schedule, referred to in subsec. (a)(1)(A), is set out under section 5332 of Title 5, Government Organization and Employees.

AMENDMENTS

2021—Subsec. (a). Pub. L. 116–283 substituted ''section 3205''for ''section 2304(g)''.

2019—Subsec. (a)(3). Pub. L. 116–92, § 861(b)(1)(A), struck out ''(A)'' before ''have received a baccalaureate degree'' and '', and (B) have completed at least 24 semester credit hours (or the equivalent) of study from an accredited institution of higher education in any of the following disciplines: accounting, business, finance, law, contracts, purchasing, economics, industrial management, marketing, quantitative methods, and organization and management'' after ''grant baccalaureate degrees''.

Subsec. (b). Pub. L. 116–92, § 861(b)(1)(B), substituted ''requirement set forth'' for ''requirements set forth'' in pars. (1) and (2).

Subsec. (e)(1)(A). Pub. L. 116–92, § 861(b)(1)(C)(i)(I), substituted ''requirement of subsection (a)(3)'' for ''requirements in subparagraphs (A) and (B) of subsection (a)(3)''.

Subsec. (e)(1)(C). Pub. L. 116–92, § 861(b)(1)(C)(i)(II), substituted ''requirement'' for ''requirements''.

Subsec. (e)(2). Pub. L. 116–92, § 861(b)(1)(C)(ii), struck out dash after ''shall have'' and subpar. (A) designation before ''been awarded'', substituted period at end for ''; or'', and struck out subpar. (B) which read as follows: ''completed at least 24 semester credit hours or the equivalent of study from an accredited institution of higher education in any of the disciplines of accounting, business, finance, law, contracts, purchasing, economics, industrial management, marketing, quantitative methods, or organization and management.''

Subsec. (f). Pub. L. 116–92, § 861(b)(1)(D), substituted ''Department of Defense.'' for ''Department of Defense, including—

''(1) completion of at least 24 semester credit hours or the equivalent of study from an accredited institution of higher education or similar educational institution in any of the disciplines of accounting, business, finance, law, contracts, purchasing, economics, industrial management, marketing, quantitative methods, or organization and management; or

''(2) passing an examination that demonstrates skills, knowledge, or abilities comparable to that of an individual who has completed at least 24 semester credit hours or the equivalent of study in any of the disciplines described in paragraph (1).''

2004—Subsec. (a)(3)(B). Pub. L. 108–375, § 1084(h)(1), amended directory language of Pub. L. 107–107, § 824(a)(1)(C). See 2001 Amendment note below.

Subsec. (d). Pub. L. 108–375, § 1084(d)(14), substituted ''the decision of the Secretary'' for ''its decision'' before ''to waive such requirements''.

2003—Subsec. (d). Pub. L. 108–136 substituted ''The Secretary of Defense may waive any or all of the requirements of subsections (a) and (b) with respect to an employee of the Department of Defense or member of the armed forces if the Secretary determines'' for ''The acquisition career program board concerned may waive any or all of the requirements of subsections (a) and (b) with respect to an employee of the Department of Defense or member of the armed forces if the board certifies'' in first sentence and ''the Secretary'' for ''the board'' in second sentence, and struck out third sentence which read ''Such document shall be submitted to and retained by the Director of Acquisition Education, Training, and Career Development.''

2001—Subsec. (a). Pub. L. 107–107, § 824(a)(1)(A), reenacted heading without change and substituted introductory provisions for provisions which read ''The Secretary of Defense shall require that in order to qualify to serve in an acquisition position as a contracting officer with authority to award or administer contracts for amounts above the simplified acquisition threshold referred to in section 2304(g) of this title, a person must—''.

Subsec. (a)(1). Pub. L. 107–107, § 824(a)(1)(B), struck out ''mandatory'' before ''contracting courses'' and substituted cls. (A) and (B) for ''at the grade level, or in the position within the grade of the General Schedule (in the case of an employee), that the person is serving in;''.

Subsec. (a)(3)(B). Pub. L. 107–107, § 824(a)(1)(C), as amended by Pub. L. 108–375, § 1084(h)(1), inserted comma after ''business''.

Subsec. (b). Pub. L. 107–107, § 824(a)(2), added subsec. (b) and struck out former subsec. (b) which read as follows:

''(b) GS–1102 SERIES POSITIONS AND SIMILAR MILITARY POSITIONS.—The Secretary of Defense shall require that a person meet the requirements set forth in paragraph (3) of subsection (a), but not the other requirements set forth in that subsection, in order to qualify to serve in a position in the Department of Defense in—

''(1) the GS–1102 occupational series; or

''(2) a similar occupational specialty if the position is to be filled by a member of the armed forces.''

Subsecs. (c) to (f). Pub. L. 107–107, § 824(a)(3), added subsecs. (c) to (f) and struck out former subsecs. (c) and (d) which related to exception to requirements of subsecs. (a) and (b) and waiver of such requirements, respectively.

2000—Subsec. (a). Pub. L. 106–398, § 1 [[div. A], title VIII, § 808(d)], struck out ''(except as provided in subsections (c) and (d))'' after ''a person must'' in introductory provisions.

Subsec. (a)(3). Pub. L. 106–398, § 1 [[div. A], title VIII, § 808(b)(1)], inserted ''and'' before ''(B) have completed'' and struck out '', or (C) have passed an examination considered by the Secretary of Defense to demonstrate skills, knowledge, or abilities comparable to that of an individual who has completed at least 24 semester credit hours (or the equivalent) of study from an accredited institution of higher education in any of the disciplines listed in subparagraph (B)'' after ''organization and management''.

Subsec. (b). Pub. L. 106–398, § 1 [[div. A], title VIII, § 808(b)(2)], amended heading and text of subsec. (b) generally. Prior to amendment, text read as follows: ''The Secretary of Defense shall require that a person may not be employed by the Department of Defense in the GS–1102 occupational series unless the person (except as provided in subsections (c) and (d)) meets the requirements set forth in subsection (a)(3).''

Subsec. (c). Pub. L. 106–398, § 1 [[div. A], title VIII, § 808(c)], amended heading and text of subsec. (c) generally. Prior to amendment, text read as follows:

''(1) The requirements set forth in subsections (a)(3) and (b) shall not apply to any employee who, on October 1, 1991, has at least 10 years of experience in acquisition positions, in comparable positions in other government agencies or the private sector, or in similar positions in which an individual obtains experience directly relevant to the field of contracting.

''(2) The requirements of subsections (a) and (b) shall not apply to any employee for purposes of qualifying to serve in the position in which the employee is serving on October 1, 1993, or any other position in the same or lower grade and involving the same or lower level of responsibilities as the position in which the employee is serving on such date.''

Subsec. (d). Pub. L. 106–398, § 1 [[div. A], title VIII, § 808(a)], in first sentence, substituted ''employee or member of'' for ''employee of'' and ''employee or member possesses'' for ''employee possesses''.

1996—Subsec. (a). Pub. L. 104–201, in introductory provisions, struck out ", beginning on October 1, 1993," after "require that" and substituted "simplified acquisition threshold" for "small purchase threshold".

Subsec. (b). Pub. L. 104–201, §1074(a)(9)(B)(ii), struck out ", beginning on October 1, 1993," after "require that".

1993—Subsec. (c)(2). Pub. L. 103–35 inserted "or lower" before "grade" and before "level".

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–375, div. A, title X, §1084(h), Oct. 28, 2004, 118 Stat. 2064, provided that the amendment made by section 1084(h) [amending this section, section 1732 of this title, and provisions set out as a note under section 5949 of Title 5, Government Organization and Employees] is effective as of Dec. 28, 2001, and as if included in Pub. L. 107–107 as enacted.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–398, §1 [[div. A], title VIII, §808(e)], Oct. 30, 2000, 114 Stat. 1654, 1654A–208, provided that: "This section [amending this section], and the amendments made by this section, shall take effect on October 1, 2000, and shall apply to appointments and assignments to contracting positions made on or after that date."

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

FULFILLMENT STANDARDS FOR MANDATORY TRAINING

For provisions relating to development of fulfillment standards for purposes of the training requirements of this section, see section 812(c) of Pub. L. 102–484, set out as a note under section 1723 of this title.

CREDIT FOR EXPERIENCE IN CERTAIN POSITIONS

Pub. L. 101–510, div. A, title XII, §1209(i), Nov. 5, 1990, 104 Stat. 1667, as amended by Pub. L. 102–25, title VII, §704(b)(3)(D), Apr. 6, 1991, 105 Stat. 119, provided that: "For purposes of meeting any requirement under chapter 87 of title 10, United States Code (as added by section 1202), for a period of experience (such as requirements for experience in acquisition positions or in critical acquisition positions) and for purposes of coverage under the exceptions established by section 1724(c)(1) and section 1732(c)(1) of such title, any period of time spent serving in a position later designated as an acquisition position or a critical acquisition position under such chapter may be counted as experience in such a position for such purposes."

§ 1725. Senior Military Acquisition Advisors

(a) POSITION.—

(1) IN GENERAL.—The Secretary of Defense may establish in the acquisition workforce a position to be known as "Senior Military Acquisition Advisor".

(2) APPOINTMENT.—A Senior Military Acquisition Advisor shall be appointed by the President, by and with the advice and consent of the Senate.

(3) SCOPE OF POSITION.—An officer who is appointed as a Senior Military Acquisition Advisor—

(A) shall serve as an advisor to, and provide senior level acquisition expertise to, the service acquisition executive of that officer's military department in accordance with this section; and

(B) shall be assigned as an adjunct professor at the Defense Acquisition University.

(b) CONTINUATION ON ACTIVE DUTY.—An officer who is appointed as a Senior Military Acquisition Advisor may continue on active duty while serving in such position without regard to any mandatory retirement date that would otherwise be applicable to that officer by reason of years of service or age. An officer who is continued on active duty pursuant to this section is not eligible for consideration for selection for promotion.

(c) RETIRED GRADE.—Upon retirement, an officer who is a Senior Military Acquisition Advisor may, in the discretion of the President, be retired in the grade of brigadier general or rear admiral (lower half) if—

(1) the officer has served as a Senior Military Acquisition Advisor for a period of not less than three years; and

(2) the officer's service as a Senior Military Acquisition Advisor has been distinguished.

(d) SELECTION AND TENURE.—

(1) IN GENERAL.—Selection of an officer for recommendation for appointment as a Senior Military Acquisition Advisor shall be made competitively, and shall be based upon demonstrated experience and expertise in acquisition.

(2) OFFICERS ELIGIBLE.—Officers shall be selected for recommendation for appointment as Senior Military Acquisition Advisors from among officers in the acquisition workforce serving in critical acquisition positions who are serving in the grade of colonel or, in the case of the Navy, captain, and who have at least 12 years of acquisition experience. An officer selected for recommendation for appointment as a Senior Military Acquisition Advisor shall have at least 30 years of active commissioned service at the time of appointment.

(3) TERM.—The appointment of an officer as a Senior Military Acquisition Advisor shall be for a term of not longer than five years.

(e) LIMITATION.—

(1) LIMITATION ON NUMBER AND DISTRIBUTION.—There may not be more than 15 Senior Military Acquisition Advisors at any time, of whom—

(A) not more than five may be officers of the Army;

(B) not more than five may be officers of the Navy and Marine Corps; and

(C) not more than five may be officers of the Air Force and Space Force.

(2) NUMBER IN EACH MILITARY DEPARTMENT.—Subject to paragraph (1), the number of Senior Military Acquisition Advisors for each military department shall be as required and identified by the service acquisition executive of such military department and approved by the

Under Secretary of Defense for Acquisition and Sustainment.

(f) ADVICE TO SERVICE ACQUISITION EXECUTIVE.—An officer who is a Senior Military Acquisition Advisor shall have as the officer's primary duty providing strategic, technical, and programmatic advice to the service acquisition executive of the officer's military department on matters pertaining to the Defense Acquisition System, including matters pertaining to procurement, research and development, advanced technology, test and evaluation, production, program management, systems engineering, and lifecycle logistics.

(Added Pub. L. 114–328, div. A, title VIII, § 866(a)(1), Dec. 23, 2016, 130 Stat. 2305; amended Pub. L. 116–92, div. A, title VIII, § 861(j)(9), title IX, § 902(19), Dec. 20, 2019, 133 Stat. 1520, 1545; Pub. L. 116–283, div. A, title IX, § 924(b)(28), Jan. 1, 2021, 134 Stat. 3825.)

PRIOR PROVISIONS

A prior section 1725, added Pub. L. 101–510, div. A, title XII, § 1202(a), Nov. 5, 1990, 104 Stat. 1643, which related to Office of Personnel Management approval, was repealed by Pub. L. 108–136, div. A, title VIII, § 832(a), Nov. 24, 2003, 117 Stat. 1550; amended Pub. L. 108–375, div. A, title X, § 1084(f)(1), Oct. 28, 2004, 118 Stat. 2064.

AMENDMENTS

2021—Subsec. (e)(1)(C). Pub. L. 116–283 inserted ''and Space Force'' before period at end.

2019—Subsec. (a)(1). Pub. L. 116–92, § 861(j)(9)(A), substituted ''acquisition workforce'' for ''Defense Acquisition Corps''.

Subsec. (d)(2). Pub. L. 116–92, § 861(j)(9)(B), substituted ''in the acquisition workforce serving in critical acquisition positions'' for ''of the Defense Acquisition Corps''.

Subsec. (e)(2). Pub. L. 116–92, § 902(19), substituted ''Under Secretary of Defense for Acquisition and Sustainment'' for ''Under Secretary of Defense for Acquisition, Technology, and Logistics''.

SUBCHAPTER III—CRITICAL ACQUISITION POSITIONS

Sec.
1731. Critical acquisition positions.
[1732. Repealed.]
[1733. Renumbered.]
1734. Career development.
1735. Education, training, and experience requirements for critical acquisition positions.
[1736. Repealed.]
1737. Definitions and general provisions.

AMENDMENTS

2019—Pub. L. 116–92, div. A, title VIII, § 861(j)(6)(B), (7)(A), Dec. 20, 2019, 133 Stat. 1519, substituted ''CRITICAL ACQUISITION POSITIONS'' for ''ACQUISITION CORPS'' in heading for subchapter III, added item 1731, and struck out former items 1731 ''Acquisition Corps: in general'', 1732 ''Selection criteria and procedures'', and 1733 ''Critical acquisition positions''

2001—Pub. L. 107–107, div. A, title X, § 1048(e)(6)(B), Dec. 28, 2001, 115 Stat. 1227, struck out item 1736 ''Applicability''.

§ 1731. Critical acquisition positions

(a) DESIGNATION OF CRITICAL ACQUISITION POSITIONS.—(1) The Secretary of Defense shall designate the acquisition positions in the Department of Defense that are critical acquisition positions. Such positions shall include the following:

(A) Any acquisition position which—

(i) in the case of employees, is required to be filled by an employee in a senior position in the National Security Personnel System, as determined in accordance with guidelines prescribed by the Secretary, or in the Senior Executive Service; or

(ii) in the case of members of the armed forces, is required to be filled by a commissioned officer of the Army, Navy, Air Force, Marine Corps, or Space Force who is serving in the grade of lieutenant colonel, or, in the case of the Navy, commander, or a higher grade.

(B) Other selected acquisition positions not covered by subparagraph (A), including the following:

(i) Program executive officer.

(ii) Program manager of a major defense acquisition program (as defined in section 2430 of this title) or of a significant nonmajor defense acquisition program (as defined in section 1737(a)(3) of this title).

(iii) Deputy program manager of a major defense acquisition program.

(C) Any other acquisition position of significant responsibility in which the primary duties are supervisory or management duties.

(2) The Secretary shall periodically publish a list of the positions designated under this subsection.

(b) PROMOTION RATE FOR OFFICERS IN THE ACQUISITION WORKFORCE.—The Secretary of Defense shall ensure that the qualifications of commissioned officers in the acquisition workforce are such that those officers are expected, as a group, to be promoted at a rate not less than the rate for all line (or the equivalent) officers of the same armed force (both in the zone and below the zone) in the same grade.

(c) MOBILITY STATEMENTS.—(1) The Secretary of Defense is authorized to require civilians in critical acquisition positions to sign mobility statements.

(2) The Secretary of Defense shall identify which categories of civilians in critical acquisition positions, as a condition of employment, shall be required to sign mobility statements. The Secretary shall make available published information on such identification of categories.

(Added Pub. L. 101–510, div. A, title XII, § 1202(a), Nov. 5, 1990, 104 Stat. 1646, § 1733; amended Pub. L. 102–484, div. A, title X, § 1052(22), Oct. 23, 1992, 106 Stat. 2500; Pub. L. 103–89, § 3(b)(3)(C), Sept. 30, 1993, 107 Stat. 983; Pub. L. 104–201, div. A, title X, § 1074(a)(9)(C), Sept. 23, 1996, 110 Stat. 2659; Pub. L. 108–136, div. A, title VIII, § 833(2), Nov. 24, 2003, 117 Stat. 1550; Pub. L. 108–375, div. A, title VIII, § 812(a)(2), Oct. 28, 2004, 118 Stat. 2013; renumbered § 1731 and amended Pub. L. 116–92, div. A, title VIII, § 861(j)(2)–(4), (6)(A), Dec. 20, 2019, 133 Stat. 1519; Pub. L. 116–283, div. A, title IX, § 924(b)(3)(AA), title XVIII, § 1846(i)(4), Jan. 1, 2021, 134 Stat. 3821, 4252.)

AMENDMENT OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1846(i)(4), Jan. 1, 2021, 134 Stat. 4151, 4252, provided that, effective Jan. 1, 2022, with addi-

tional provisions for delayed implementation and applicability of existing law, subsection (b)(1)(B)(ii) [probably should be ''subsection (a)(1)(B)(ii)''] of this section is amended by striking ''section 2430'' and inserting ''section 4201''. See 2021 Amendment note below.

CODIFICATION

The text of former section 1731(b) of this title, which was transferred to section 1733(b) of this title and then to subsec. (b) of this section by Pub. L. 116–92, §861(j)(3), (6)(A), was based on Pub. L. 101–510, div. A, title XII, §1202(a), Nov. 5, 1990, 104 Stat. 1644; Pub. L. 108–136, div. A, title VIII, §833(1)(B), Nov. 24, 2003, 117 Stat. 1550.

The text of section 1732(e) of this title, which was transferred to section 1733(c) of this title and then to subsec. (c) of this section by Pub. L. 116–92, §861(j)(4), (6)(A), was based on Pub. L. 101–510, div. A, title XII, §1202(a), Nov. 5, 1990, 104 Stat. 1644; Pub. L. 108–136, div. A, title VIII, §833(2), Nov. 24, 2003, 117 Stat. 1550.

PRIOR PROVISIONS

A prior section 1731, added Pub. L. 101–510, div. A, title XII, §1202(a), Nov. 5, 1990, 104 Stat. 1644; amended Pub. L. 108–136, div. A, title VIII, §§832(b)(1), 833(1), Nov. 24, 2003, 117 Stat. 1550; Pub. L. 116–92, div. A, title VIII, §861(j)(3), Dec. 20, 2019, 133 Stat. 1519, related to establishment of the Acquisition Corps, prior to repeal by Pub. L. 116–92, div. A, title VIII, §861(j)(5), Dec. 20, 2019, 133 Stat. 1519.

AMENDMENTS

2021—Subsec. (a)(1)(A)(ii). Pub. L. 116–283, §924(b)(3)(AA), substituted ''Marine Corps, or Space Force'' for ''or Marine Corps''.

Subsec. (a)(1)(B)(ii). Pub. L. 116–283, §1846(i)(4), which directed amendment of subsec. (b)(1)(B)(ii) of this section by substituting ''section 4201'' for ''section 2430'', was executed to subsec. (a)(1)(B)(ii) of this section, to reflect the probable intent of Congress.

2019—Pub. L. 116–92, §861(j)(6)(A), renumbered section 1733 of this title as this section.

Subsec. (a). Pub. L. 116–92, §861(j)(2), in section 1733 of this title prior to renumbering as this section, redesignated subsec. (b) as (a) and struck out former subsec. (a). Prior to amendment, text of subsec. (a) of section 1733 read as follows: ''A critical acquisition position may be filled only by a member of the Acquisition Corps.''

Subsec. (b). Pub. L. 116–92, §861(j)(3), prior to repeal of former section 1731, transferred subsec. (b) of that section to section 1733 of this title and substituted ''the Acquisition Workforce'' for ''Acquisition Corps'' in heading and ''in the acquisition workforce'' for ''selected for the Acquisition Corps'' in text. See Codification note above. Section 1733 was subsequently renumbered as this section.

Subsec. (c). Pub. L. 116–92, §861(j)(4), prior to repeal of section 1732 of this title, transferred subsec. (e) of that section to section 1733 of this title, redesignated it as (c), and substituted ''in critical acquisition positions'' for ''in the Acquisition Corps'' in pars. (1) and (2) and ''employment'' for ''serving in the Corps'' in par. (2). See Codification note above. Section 1733 was subsequently renumbered as this section.

2004—Subsec. (b)(1)(A)(i). Pub. L. 108–375 substituted ''in a senior position in the National Security Personnel System, as determined in accordance with guidelines prescribed by the Secretary,'' for ''in a position within grade GS–14 or above of the General Schedule,''.

2003—Subsec. (a). Pub. L. 108–136 substituted ''the Acquisition Corps'' for ''an Acquisition Corps''.

1996—Subsec. (a). Pub. L. 104–201 substituted ''A critical'' for ''On and after October 1, 1993, a critical''.

1993—Subsec. (b)(1)(A)(i). Pub. L. 103–89 substituted ''Schedule'' for ''Schedule (including an employee covered by chapter 54 of title 5)''.

1992—Subsec. (b)(1)(B)(ii). Pub. L. 102–484 substituted ''1737(a)(3)'' for ''1736(a)(3)''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by section 1846(i)(4) of Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–89 effective Nov. 1, 1993, see section 3(c) of Pub. L. 103–89, set out as a note under section 3372 of Title 5, Government Organization and Employees.

EFFECTIVE DATE FOR REQUIREMENT FOR CORPS MEMBERS TO FILL CRITICAL ACQUISITION POSITIONS

Pub. L. 101–510, div. A, title XII, §1209(f), Nov. 5, 1990, 104 Stat. 1666, as amended by Pub. L. 102–25, title VII, §704(b)(3)(C), Apr. 6, 1991, 105 Stat. 119; Pub. L. 103–160, div. A, title IX, §904(f), Nov. 30, 1993, 107 Stat. 1729, provided that the Secretaries of the military departments were to make every effort to fill critical acquisition positions by Acquisition Corps members as soon as possible after Nov. 5, 1990, and that for each of the first three years after Nov. 5, 1990, the report of the Under Secretary of Defense for Acquisition and Technology to the Secretary of Defense under section 1762 of this title was to include the number of critical acquisition positions filled by Acquisition Corps members.

TERMINATION OF DEFENSE ACQUISITION CORPS

Pub. L. 116–92, div. A, title VIII, §861(j)(1), Dec. 20, 2019, 133 Stat. 1519, provided that: ''The Acquisition Corps for the Department of Defense referred to in [former] section 1731(a) of title 10, United States Code, is terminated.''

[§ 1732. Repealed. Pub. L. 116–92, div. A, title VIII, § 861(j)(5), Dec. 20, 2019, 133 Stat. 1519]

Section, added Pub. L. 101–510, div. A, title XII, §1202(a), Nov. 5, 1990, 104 Stat. 1644; amended Pub. L. 102–484, div. A, title VIII, §812(e)(1), Oct. 23, 1992, 106 Stat. 2451; Pub. L. 103–89, §3(b)(3)(B), Sept. 30, 1993, 107 Stat. 982; Pub. L. 105–261, div. A, title VIII, §811, Oct. 17, 1998, 112 Stat. 2086; Pub. L. 107–107, div. A, title VIII, §824(b), title X, §1048(e)(4), Dec. 28, 2001, 115 Stat. 1185, 1227; Pub. L. 108–136, div. A, title VIII, §§831(b)(2), (3), 832(b)(2), 833(2), Nov. 24, 2003, 117 Stat. 1549, 1550; Pub. L. 108–375, div. A, title VIII, §812(a)(1), title X, §1084(d)(14), (h)(2), Oct. 28, 2004, 118 Stat. 2013, 2062, 2064; Pub. L. 109–163, div. A, title X, §1056(c)(3), Jan. 6, 2006, 119 Stat. 3439; Pub. L. 116–92, div. A, title VIII, §861(b)(2), (j)(4), Dec. 20, 2019, 133 Stat. 1516, 1519, related to selection criteria and procedures for membership in the Acquisition Corps.

[§ 1733. Renumbered § 1731]

§ 1734. Career development

(a) THREE-YEAR ASSIGNMENT PERIOD.—(1) Except as provided under subsection (b) and paragraph (3), the Secretary of each military department, acting through the service acquisition executive for that department, shall provide that any person who is assigned to a critical acquisition position shall be assigned to the position for not fewer than three years. Except as provided in subsection (d), the Secretary concerned may not reassign a person from such an assignment before the end of the three-year period.

(2) A person may not be assigned to a critical acquisition position unless the person executes a written agreement to remain on active duty (in the case of a member of the armed forces) or to

remain in Federal service (in the case of an employee) in that position for at least three years. The service obligation contained in such a written agreement shall remain in effect unless and until waived by the Secretary concerned under subsection (b).

(3) The assignment period requirement of the first sentence of paragraph (1) is waived for any individual serving as a deputy program manager if the individual is assigned to a critical acquisition position upon completion of the individual's assignment as a deputy program manager.

(b) ASSIGNMENT PERIOD FOR PROGRAM MANAGERS.—(1) The Secretary of Defense shall prescribe in regulations—

(A) a requirement that a program manager and a deputy program manager (except as provided in paragraph (3)) of a major defense acquisition program be assigned to the position at least until completion of the major milestone that occurs closest in time to the date on which the person has served in the position for four years; and

(B) a requirement that, to the maximum extent practicable, a program manager who is the replacement for a reassigned program manager arrive at the assignment location before the reassigned program manager leaves.

Except as provided in subsection (d), the Secretary concerned may not reassign a program manager or deputy program manager from such an assignment until after such major milestone has occurred.

(2) A person may not be assigned to a critical acquisition position as a program manager or deputy program manager of a major defense acquisition program unless the person executes a written agreement to remain on active duty (in the case of a member of the armed forces) or to remain in Federal service (in the case of an employee) in that position at least until completion of the first major milestone that occurs closest in time to the date on which the person has served in the position for four years. The service obligation contained in such a written agreement shall remain in effect unless and until waived by the Secretary concerned under subsection (d).

(3) The assignment period requirement under subparagraph (A) of paragraph (1) is waived for any individual serving as a deputy program manager if the individual is assigned to a critical acquisition position upon completion of the individual's assignment as a deputy program manager.

(c) MAJOR MILESTONE REGULATIONS.—(1) The Secretary of Defense shall issue regulations defining what constitutes major milestones for purposes of this section. The service acquisition executive of each military department shall establish major milestones at the beginning of a major defense acquisition program consistent with such regulations and shall use such milestones to determine the assignment period for program managers and deputy program managers under subsection (b).

(2) The regulations shall require that major milestones be clearly definable and measurable events that mark the completion of a significant phase in a major defense acquisition program and that such milestones be the same as the milestones contained in the baseline description established for the program pursuant to section 2435(a) of this title. The Secretary shall require that the major milestones as defined in the regulations be included in the Selected Acquisition Report required for such program under section 2432 of this title.

(d) WAIVER OF ASSIGNMENT PERIOD.—(1) With respect to a person assigned to a critical acquisition position, the Secretary concerned may waive the prohibition on reassignment of that person (in subsection (a)(1) or (b)(1)) and the service obligation in an agreement executed by that person (under subsection (a)(2) or (b)(2)), but only in exceptional circumstances in which a waiver is necessary for reasons permitted in regulations prescribed by the Secretary of Defense.

(2) With respect to each waiver granted under this subsection, the service acquisition executive (or his delegate) shall set forth in a written document the rationale for the decision to grant the waiver.

(e) ROTATION POLICY.—(1) The Secretary of Defense shall establish a policy encouraging the rotation of members of the acquisition workforce serving in critical acquisition positions to new assignments after completion of five years of service in such positions, or, in the case of a program manager, after completion of a major program milestone, whichever is longer. Such rotation policy shall be designed to ensure opportunities for career broadening assignments and an infusion of new ideas into critical acquisition positions.

(2) The Secretary of Defense shall establish a procedure under which the assignment of each person assigned to a critical acquisition position shall be reviewed on a case-by-case basis for the purpose of determining whether the Government and such person would be better served by a reassignment to a different position. Such a review shall be carried out with respect to each such person not later than five years after that person is assigned to a critical position.

(f) CENTRALIZED JOB REFERRAL SYSTEM.—The Secretary of Defense shall prescribe regulations providing for the use of centralized lists to ensure that persons are selected for critical positions without regard to geographic location of applicants for such positions.

(g) EXCHANGE PROGRAM.—The Secretary of Defense shall establish, for purposes of broadening the experience of members of the acquisition workforce, a test program in which members of the acquisition workforce serving in a military department or Defense Agency are assigned or detailed to an acquisition position in another department or agency. Under the test program, the Secretary of Defense shall ensure that, to the maximum extent practicable, at least 5 percent of the members of the acquisition workforce in critical acquisition positions shall serve in such exchange assignments each year. The test program shall operate for not less than a period of three years.

(h) RESPONSIBILITY FOR ASSIGNMENTS.—The Secretary of each military department, acting through the service acquisition executive for that department, is responsible for making assignments of civilian and military personnel of

that military department who are members of the acquisition workforce to critical acquisition positions.

(Added Pub. L. 101–510, div. A, title XII, § 1202(a), Nov. 5, 1990, 104 Stat. 1646; amended Pub. L. 102–484, div. A, title VIII, § 812(a), (b), Oct. 23, 1992, 106 Stat. 2450; Pub. L. 104–201, div. A, title X, § 1074(a)(9)(D), Sept. 23, 1996, 110 Stat. 2659; Pub. L. 107–107, div. A, title X, § 1048(e)(5), Dec. 28, 2001, 115 Stat. 1227; Pub. L. 108–136, div. A, title VIII, §§ 831(b)(4), 832(b)(3), 833(2), (3), Nov. 24, 2003, 117 Stat. 1549, 1550; Pub. L. 116–92, div. A, title VIII, § 861(j)(10), Dec. 20, 2019, 133 Stat. 1520; Pub. L. 116–283, div. A, title XVIII, §§ 1849(m), 1883(b)(2), Jan. 1, 2021, 134 Stat. 4264, 4294.)

AMENDMENT OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1849(m), 1883(b)(2), Jan. 1, 2021, 134 Stat. 4151, 4264, 4294, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is amended as follows:

(1) in subsection (c)(2), by striking ''section 2432'' and inserting ''chapter 324''; and

(2) for any other reference in the text to a source section that is redesignated by title XVIII of Pub. L. 116–283, by striking such reference and inserting a reference to the appropriate section as so redesignated.

See 2021 Amendment notes below.

AMENDMENTS

2021—Subsec. (c)(2). Pub. L. 116–283, § 1883(b)(2), substituted ''section 4214(a)'' for ''section 2435(a)''.

Pub. L. 116–283, § 1849(m), substituted ''chapter 324'' for ''section 2432''.

2019—Subsec. (e)(1). Pub. L. 116–92, § 861(j)(10)(A), substituted ''of the acquisition workforce'' for ''of the Acquisition Corps''.

Subsec. (g). Pub. L. 116–92, § 861(j)(10)(B), substituted ''experience of members of the acquisition workforce'' for ''experience of members of the Acquisition Corps'', ''in which members of the acquisition workforce'' for ''in which members of the Corps'', and ''of the acquisition workforce in critical acquisition positions'' for ''of the Acquisition Corps''.

Subsec. (h). Pub. L. 116–92, § 861(j)(10)(A), substituted ''of the acquisition workforce'' for ''of the Acquisition Corps''.

2003—Subsec. (d)(2). Pub. L. 108–136, § 831(b)(4)(A)(ii), redesignated par. (3) as (2) and struck out at end ''The document shall be submitted to the Director of Acquisition Education, Training, and Career Development.''

Pub. L. 108–136, § 831(b)(4)(A)(i), struck out par. (2) which read as follows: ''The authority to grant such waivers may be delegated by the service acquisition executive of a military department only to the Director of Acquisition Career Management for the military department.''

Subsec. (d)(3). Pub. L. 108–136, § 831(b)(4)(A)(ii), redesignated par. (3) as (2).

Subsec. (e)(1). Pub. L. 108–136, § 833(2), substituted ''the Acquisition Corps'' for ''an Acquisition Corps''

Subsec. (e)(2). Pub. L. 108–136, § 831(b)(4)(B), struck out '', by the acquisition career program board of the department concerned,'' after ''case-by-case basis''.

Subsec. (g). Pub. L. 108–136, § 833(3)(A), substituted ''the Acquisition Corps, a test program in which members of the Corps'' for ''each Acquisition Corps, a test program in which members of a Corps''.

Pub. L. 108–136, § 832(b)(3), substituted ''The Secretary'' for ''(1) The Secretary'' and struck out par. (2) which read as follows: ''The Secretary of Defense shall submit the portion of the test program applicable to civilian employees to the Director of the Office of Personnel Management for approval. If the Director does not disapprove that portion of the test program within 30 days after the date on which the Director receives it, that portion of the test program is deemed to be approved by the Director.''

Subsec. (h). Pub. L. 108–136, § 833(3)(B), substituted ''making assignments of civilian and military personnel of that military department who are members of the Acquisition Corps'' for ''making assignments of civilian and military members of the Acquisition Corps of that military department''.

2001—Subsec. (b)(1)(B). Pub. L. 107–107, § 1048(e)(5)(A), struck out ''on and after October 1, 1991,'' before ''to the maximum extent practicable''.

Subsec. (e)(2). Pub. L. 107–107, § 1048(e)(5)(B), struck out at end ''Reviews under this subsection shall be carried out after October 1, 1995, but may be carried out before that date.''

1996—Subsec. (a)(1). Pub. L. 104–201, § 1074(a)(9)(D)(i), struck out '', on and after October 1, 1993,'' after ''provide that''.

Subsec. (b)(1)(A). Pub. L. 104–201, § 1074(a)(9)(D)(ii), struck out '', on and after October 1, 1991,'' after ''requirement that''.

1992—Subsec. (a)(1). Pub. L. 102–484, § 812(b)(1)(A), inserted before first comma ''and paragraph (3)''.

Subsec. (a)(3). Pub. L. 102–484, § 812(b)(1)(B), added par. (3).

Subsec. (b)(1)(A). Pub. L. 102–484, § 812(b)(2)(A), inserted ''(except as provided in paragraph (3))'' after ''deputy program manager''.

Subsec. (b)(3). Pub. L. 102–484, § 812(b)(2)(B), added par. (3).

Subsec. (e)(2). Pub. L. 102–484, § 812(a), inserted at end ''Reviews under this subsection shall be carried out after October 1, 1995, but may be carried out before that date.''

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

JOB REFERRAL SYSTEM DEADLINE

Pub. L. 101–510, div. A, title XII, § 1209(e), Nov. 5, 1990, 104 Stat. 1666, provided that: ''Not later than October 1, 1991, the Secretary of Defense shall prescribe regulations required under section 1734(f) of title 10, United States Code (as added by section 1202).''

§ 1735. Education, training, and experience requirements for critical acquisition positions

(a) QUALIFICATION REQUIREMENTS.—In establishing the education, training, and experience requirements under section 1723 of this title for critical acquisition positions, the Secretary of Defense shall, at a minimum, include the requirements set forth in subsections (b) through (e).

(b) PROGRAM MANAGERS AND DEPUTY PROGRAM MANAGERS.—Before being assigned to a position as a program manager or deputy program manager of a major defense acquisition program or a significant nonmajor defense acquisition program, a person—

(1) must have completed the program management course at the Defense Systems Management College or a management program at an accredited educational institution determined to be comparable by the Secretary of Defense;

(2) must have executed a written agreement as required in section 1734(b)(2); and

(3) in the case of—

(A) a program manager of a major defense acquisition program, must have at least eight years of experience in acquisition, at least two years of which were performed in a systems program office or similar organization;

(B) a program manager of a significant nonmajor defense acquisition program, must have at least six years of experience in acquisition;

(C) a deputy program manager of a major defense acquisition program, must have at least six years of experience in acquisition, at least two years of which were performed in a systems program office or similar organization; and

(D) a deputy program manager of a significant nonmajor defense acquisition program, must have at least four years of experience in acquisition.

(c) PROGRAM EXECUTIVE OFFICERS.—Before being assigned to a position as a program executive officer, a person—

(1) must have completed the program management course at the Defense Systems Management College or a management program at an accredited educational institution in the private sector determined to be comparable by the Secretary of Defense, acting through the Under Secretary of Defense for Acquisition and Sustainment;

(2) must have at least 10 years experience in an acquisition position, at least four years of which were performed while assigned to a critical acquisition position; and

(3) must have held a position as a program manager or a deputy program manager.

(d) GENERAL AND FLAG OFFICERS AND CIVILIANS IN EQUIVALENT POSITIONS.—Before a general or flag officer, or a civilian serving in a position equivalent in grade to the grade of such an officer, may be assigned to a critical acquisition position, the person must have at least 10 years experience in an acquisition position, at least four years of which were performed while assigned to a critical acquisition position.

(e) SENIOR CONTRACTING OFFICIALS.—Before a person may be assigned to a critical acquisition position as a senior contracting official, the person must have at least four years experience in contracting.

(Added Pub. L. 101–510, div. A, title XII, §1202(a), Nov. 5, 1990, 104 Stat. 1648; amended Pub. L. 102–484, div. A, title VIII, §812(d), Oct. 23, 1992, 106 Stat. 2451; Pub. L. 103–160, div. A, title IX, §904(d)(1), Nov. 30, 1993, 107 Stat. 1728; Pub. L. 107–107, div. A, title X, §1048(b)(2), Dec. 28, 2001, 115 Stat. 1225; Pub. L. 116–92, div. A, title IX, §902(20), Dec. 20, 2019, 133 Stat. 1545.)

AMENDMENTS

2019—Subsec. (c)(1). Pub. L. 116–92 substituted ''Under Secretary of Defense for Acquisition and Sustainment'' for ''Under Secretary of Defense for Acquisition, Technology, and Logistics''.

2001—Subsec. (c)(1). Pub. L. 107–107 substituted ''Under Secretary of Defense for Acquisition, Technology, and Logistics'' for ''Under Secretary of Defense for Acquisition and Technology''.

1993—Subsec. (c)(1). Pub. L. 103–160 substituted ''Under Secretary of Defense for Acquisition and Technology'' for ''Under Secretary of Defense for Acquisition''.

1992—Subsec. (b)(3). Pub. L. 102–484 struck out ''or deputy program manager'' after ''program manager'' in subpars. (A) and (B), struck out ''and'' at end of subpar. (A), substituted semicolon for period at end of subpar. (B), and added subpars. (C) and (D).

FULFILLMENT STANDARDS FOR MANDATORY TRAINING

For provisions relating to development of fulfillment standards for purposes of the training requirements of this section, see section 812(c) of Pub. L. 102–484, set out as a note under section 1723 of this title.

[§1736. Repealed. Pub. L. 107–107, div. A, title X, §1048(e)(6)(A), Dec. 28, 2001, 115 Stat. 1227]

Section, added Pub. L. 101–510, div. A, title XII, §1202(a), Nov. 5, 1990, 104 Stat. 1649, related to applicability of the qualification requirements.

§1737. Definitions and general provisions

(a) DEFINITIONS.—In this subchapter:

(1) The term ''program manager'' means, with respect to a defense acquisition program, the member of the acquisition workforce responsible for managing the program, regardless of the title given the member.

(2) The term ''deputy program manager'' means the person who has authority to act on behalf of the program manager in the absence of the program manager.

(3) The term ''significant nonmajor defense acquisition program'' means a Department of Defense acquisition program that is not a major defense acquisition program (as defined in section 2430 of this title) and that is estimated by the Secretary of Defense to require an eventual total expenditure for research, development, test, and evaluation of more than the dollar threshold set forth in section 2302(5)(A) of this title for such purposes for a major system or an eventual total expenditure for procurement of more than the dollar threshold set forth in section 2302(5)(A) of this title for such purpose for a major system.

(4) The term ''program executive officer'' has the meaning given such term in regulations prescribed by the Secretary of Defense.

(5) The term ''senior contracting official'' means a director of contracting, or a principal deputy to a director of contracting, serving in the office of the Secretary of a military department, the headquarters of a military department, the head of a Defense Agency, a subordinate command headquarters, or in a major systems or logistics contracting activity in the Department of Defense.

(b) LIMITATION.—Any civilian or military member of the acquisition workforce who does not meet the education, training, and experience requirements for a critical acquisition position established under this subchapter may not carry out the duties or exercise the authorities of that position, except for a period not to exceed six months, unless a waiver of the requirements is granted under subsection (c).

(c) WAIVER.—The Secretary of each military department (acting through the service acquisition executive for that department) or the Secretary of Defense (acting through the Under Secretary of Defense for Acquisition and

Sustainment) for Defense Agencies and other components of the Department of Defense may waive, on a case-by-case basis, the requirements established under this subchapter with respect to the assignment of an individual to a particular critical acquisition position. Such a waiver may be granted only if unusual circumstances justify the waiver or if the Secretary concerned (or official to whom the waiver authority is delegated) determines that the individual's qualifications obviate the need for meeting the education, training, and experience requirements established under this subchapter.

(Added Pub. L. 101–510, div. A, title XII, § 1202(a), Nov. 5, 1990, 104 Stat. 1650; amended Pub. L. 102–190, div. A, title X, § 1061(a)(8), (c), Dec. 5, 1991, 105 Stat. 1472, 1475; Pub. L. 103–160, div. A, title IX, § 904(d)(1), Nov. 30, 1993, 107 Stat. 1728; Pub. L. 107–107, div. A, title X, § 1048(b)(2), Dec. 28, 2001, 115 Stat. 1225; Pub. L. 108–136, div. A, title VIII, §§ 831(b)(5), 832(b)(4), 833(2), Nov. 24, 2003, 117 Stat. 1549, 1550; Pub. L. 116–92, div. A, title VIII, § 861(j)(11), title IX, § 902(21), Dec. 20, 2019, 133 Stat. 1520, 1545; Pub. L. 116–283, div. A, title XVIII, §§ 1806(e)(4), 1846(i)(4), Jan. 1, 2021, 134 Stat. 4156, 4252.)

AMENDMENT OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1806(e)(4), 1846(i)(4), Jan. 1, 2021, 134 Stat. 4151, 4156, 4252, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, subsection (a)(3) of this section is amended by striking ''section 2430'' and inserting ''section 4201'' and by striking ''section 2302(5)(A)'' both places it appears and inserting ''section 3041(b)(1)''. See 2021 Amendment note below.

AMENDMENTS

2021—Subsec. (a)(3). Pub. L. 116–283 substituted ''section 4201'' for ''section 2430'' and substituted ''section 3041(b)(1)'' for ''section 2302(5)(A)'' in two places.

2019—Subsec. (a)(1). Pub. L. 116–92, § 861(j)(11)(A), substituted ''of the acquisition workforce'' for ''of the Acquisition Corps''.

Subsec. (b). Pub. L. 116–92, § 861(j)(11)(B), substituted ''of the acquisition workforce'' for ''of the Corps''.

Subsec. (c). Pub. L. 116–92, § 902(21), substituted ''Under Secretary of Defense for Acquisition and Sustainment'' for ''Under Secretary of Defense for Acquisition, Technology, and Logistics''.

2003—Subsec. (a)(1). Pub. L. 108–136, § 833(2), substituted ''the Acquisition Corps'' for ''an Acquisition Corps''.

Subsec. (c). Pub. L. 108–136, § 831(b)(5), substituted ''The Secretary'' for ''(1) The Secretary'' and struck out par. (2) which read as follows: ''The authority to grant such waivers may be delegated—

''(A) in the case of the service acquisition executives of the military departments, only to the Director of Acquisition Career Management for the military department concerned; and

''(B) in the case of the Under Secretary of Defense for Acquisition, Technology, and Logistics, only to the Director of Acquisition Education, Training, and Career Development.''

Subsec. (d). Pub. L. 108–136, § 832(b)(4), struck out heading and text of subsec. (d). Text read as follows: ''The Secretary of Defense shall submit any requirement with respect to civilian employees established under this subchapter to the Director of the Office of Personnel Management for approval. If the Director does not disapprove the requirement within 30 days after the date on which the Director receives the requirement, the requirement is deemed to be approved by the Director.''

2001—Subsec. (c)(1), (2)(B). Pub. L. 107–107 substituted ''Under Secretary of Defense for Acquisition, Technology, and Logistics'' for ''Under Secretary of Defense for Acquisition and Technology''.

1993—Subsec. (c)(1), (2)(B). Pub. L. 103–160 substituted ''Under Secretary of Defense for Acquisition and Technology'' for ''Under Secretary of Defense for Acquisition''.

1991—Subsec. (a)(3). Pub. L. 102–190, § 1061(c), substituted ''the dollar threshold set forth in section 2302(5)(A) of this title for such purposes for a major system'' for ''$50,000,000 (based on fiscal year 1980 constant dollars)'' and ''the dollar threshold set forth in section 2302(5)(A) of this title for such purpose for a major system'' for ''$250,000,000 (based on fiscal year 1980 constant dollars)''.

Subsec. (c)(2)(B). Pub. L. 102–190, § 1061(a)(8), struck out comma after ''Director of Acquisition''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

SUBCHAPTER IV—EDUCATION AND TRAINING

Sec.

1741. Policies and programs: establishment and implementation.
1742. Internship, cooperative education, and scholarship programs.
[1743, 1744. Repealed.]
1745. Additional education and training programs available to acquisition personnel.
1746. Defense Acquisition University.
1747. Acquisition fellowship program.
1748. Fulfillment standards for acquisition workforce training.

AMENDMENTS

2011—Pub. L. 111–383, div. A, title VIII, §§ 874(b)(2), 877(c)(2)(B), Jan. 7, 2011, 124 Stat. 4305, 4306, substituted ''Defense Acquisition University'' for ''Defense acquisition university structure'' in item 1746 and added item 1748.

2003—Pub. L. 108–136, div. A, title VIII, § 836(3), Nov. 24, 2003, 117 Stat. 1552, substituted ''Internship, cooperative education, and scholarship programs'' for ''Intern program'' in item 1742 and struck out items 1743 ''Cooperative education program'' and 1744 ''Scholarship program''.

2002—Pub. L. 107–314, div. A, title X, § 1062(a)(10)(B), Dec. 2, 2002, 116 Stat. 2650, transferred former item 2410h from chapter 141 to this subchapter and redesignated it as item 1747.

§ 1741. Policies and programs: establishment and implementation

(a) POLICIES AND PROCEDURES.—The Secretary of Defense shall establish policies and procedures for the establishment and implementation of the education and training programs authorized by this subchapter.

(b) FUNDING LEVELS.—The Under Secretary of Defense for Acquisition and Sustainment each year shall recommend to the Secretary of Defense the funding levels to be requested in the defense budget to implement the education and training programs under this subchapter. The Secretary of Defense shall set forth separately the funding levels requested for such programs

in the Department of Defense budget justification documents submitted in support of the President's budget submitted to Congress under section 1105 of title 31.

(c) PROGRAMS.—The Secretary of each military department, acting through the service acquisition executive for that department, shall establish and implement the education and training programs authorized by this subchapter. In carrying out such requirement, the Secretary concerned shall ensure that such programs are established and implemented throughout the military department concerned and, to the maximum extent practicable, uniformly with the programs of the other military departments.

(Added Pub. L. 101–510, div. A, title XII, § 1202(a), Nov. 5, 1990, 104 Stat. 1651; amended Pub. L. 103–160, div. A, title IX, § 904(d)(1), Nov. 30, 1993, 107 Stat. 1728; Pub. L. 107–107, div. A, title X, § 1048(b)(2), Dec. 28, 2001, 115 Stat. 1225; Pub. L. 116–92, div. A, title IX, § 902(22), Dec. 20, 2019, 133 Stat. 1545.)

AMENDMENTS

2019—Subsec. (b). Pub. L. 116–92 substituted ''Under Secretary of Defense for Acquisition and Sustainment'' for ''Under Secretary of Defense for Acquisition, Technology, and Logistics''.

2001—Subsec. (b). Pub. L. 107–107 substituted ''Under Secretary of Defense for Acquisition, Technology, and Logistics'' for ''Under Secretary of Defense for Acquisition and Technology''.

1993—Subsec. (b). Pub. L. 103–160 substituted ''Under Secretary of Defense for Acquisition and Technology'' for ''Under Secretary of Defense for Acquisition''.

SOFTWARE DEVELOPMENT AND SOFTWARE ACQUISITION TRAINING AND MANAGEMENT PROGRAMS

Pub. L. 116–92, div. A, title VIII, § 862, Dec. 20, 2019, 133 Stat. 1520, provided that:

''(a) ESTABLISHMENT OF SOFTWARE DEVELOPMENT AND SOFTWARE ACQUISITION TRAINING AND MANAGEMENT PROGRAMS.—

''(1) IN GENERAL.—The Secretary of Defense, acting through the Under Secretary of Defense for Acquisition and Sustainment and in consultation with the Under Secretary of Defense for Research and Engineering, the Under Secretary of Defense for Personnel and Readiness, and the Chief Information Officer of the Department of Defense, shall establish software development and software acquisition training and management programs for all software acquisition professionals, software developers, and other appropriate individuals (as determined by the Secretary of Defense), to earn a certification in software development and software acquisition.

''(2) PROGRAM CONTENTS.—The programs established under paragraph (1) shall—

''(A) develop and expand the use of specialized training programs for chief information officers of the military departments and the Defense Agencies, service acquisition executives, program executive officers, and program managers to include training on and experience in—

''(i) continuous software development; and

''(ii) acquisition pathways available to acquire software;

''(B) ensure that appropriate program managers—

''(i) have demonstrated competency in current software processes;

''(ii) have the skills to lead a workforce that can quickly meet challenges, use software tools that prioritize continuous or frequent upgrades as such tools become available, take up opportunities provided by new innovations, and plan software activities in short iterations to learn from risks of software testing; and

''(iii) have the experience and training to delegate technical oversight and execution decisions; and

''(C) include continuing education courses, exchanges with private-sector organizations, and experiential training to help individuals maintain skills learned through the programs.

''(b) REPORTS.—

''(1) REPORTS REQUIRED.—The Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives]—

''(A) not later than 90 days after the date of the enactment of this Act [Dec. 20, 2019], an initial report; and

''(B) not later than one year after the date of the enactment of this Act, a final report.

''(2) CONTENTS.—Each report required under paragraph (1) shall include—

''(A) the status of implementing the software development and software acquisition training and management programs established under subsection (a)(1);

''(B) a description of the requirements for certification, including the requirements for competencies in current software processes;

''(C) a description of potential career paths in software development and software acquisition within the Department of Defense;

''(D) an independent assessment conducted by the Defense Innovation Board of the progress made on implementing the programs established under subsection (a)(1); and

''(E) any recommendations for changes to existing law to facilitate the implementation of the programs established under subsection (a)(1).

''(c) DEFINITIONS.—In this section:

''(1) PROGRAM EXECUTIVE OFFICER; PROGRAM MANAGER.—The terms 'program executive officer' and 'program manager' have the meanings given those terms, respectively, in section 1737 of title 10, United States Code.

''(2) SERVICE ACQUISITION EXECUTIVE.—The terms 'military department', 'Defense Agency', and 'service acquisition executive' have the meanings given those terms, respectively, in section 101 of title 10, United States Code.

''(3) MAJOR DEFENSE ACQUISITION PROGRAM.—The term 'major defense acquisition program' has the meaning given in section 2430 of title 10, United States Code.

''(4) DEFENSE BUSINESS SYSTEM.—The term 'defense business system' has the meaning given in section 2222(i)(1) of title 10, United States Code.''

REVIEW OF GUIDANCE TO CONTRACTORS ON NONDISCRIMINATION ON THE BASIS OF SEX

Pub. L. 116–92, div. A, title VIII, § 885, Dec. 20, 2019, 133 Stat. 1535, provided that:

''(a) REVIEW.—Not later than 180 days after the date of the enactment of this Act [Dec. 20, 2019], the Under Secretary of Defense for Acquisition and Sustainment, serving as the senior procurement executive for the Department of Defense pursuant to section 133b(b)(4)(B) of title 10, United States Code, shall conduct a review of the implementation of the requirement for Government contracting agencies under Executive Order 11246 (42 U.S.C. 2000e note) relating to expectations of contractors and subcontractors to ensure nondiscrimination on the basis of sex.

''(b) ELEMENTS.—The review required under subsection (a) shall, at a minimum, consider—

''(1) existing contracting processes and tools for oversight of contracts, including contractor responsibility determinations and documentation of performance; and

''(2) the extent to which best practices for contractors and subcontractors identified in the appendix to

part 60–20 of title 41 of the Code of Federal Regulations, such as establishing and implementing procedures for handling and resolving complaints about harassment and intimidation based on sex, have been incorporated in Department policies and procedures.

''(c) UPDATED TRAINING GUIDANCE.—Not later than 180 days after the date of the completion of the review required under subsection (a), the Under Secretary of Defense for Acquisition and Sustainment shall update any relevant training guidance for the acquisition workforce to account for the conclusions of the review.

''(d) BRIEFING REQUIRED.—Not later than December 15, 2020, the Secretary of Defense shall brief the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] on the review required under subsection (a), which shall include any updates to training guidance or contracting procedures resulting from the review.''

GUIDANCE REGARDING TRAINING AND DEVELOPMENT OF THE ACQUISITION WORKFORCE

Pub. L. 114–328, div. A, title VIII, § 803(b), Dec. 23, 2016, 130 Stat. 2249, provided that:

''(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act [Dec. 23, 2016], the Secretary of Defense shall issue guidance addressing the training and development of the Department of Defense workforce engaged in the procurement of services, including those personnel not designated as members of the acquisition workforce.

''(2) IDENTIFICATION OF TRAINING AND PROFESSIONAL DEVELOPMENT OPPORTUNITIES AND ALTERNATIVES.—The guidance required under paragraph (1) shall identify training and professional development opportunities and alternatives, not limited to existing Department of Defense institutions, that focus on and provide relevant training and professional development in commercial business models and contracting.

''(3) TREATMENT OF TRAINING AND PROFESSIONAL DEVELOPMENT.—Any training and professional development provided pursuant to this subsection outside Department of Defense institutions shall be deemed to be equivalent to similar training certified or provided by the Defense Acquisition University.''

§ 1742. Internship, cooperative education, and scholarship programs

(a) PROGRAMS.—The Secretary of Defense shall conduct the following education and training programs:

(1) An intern program for purposes of providing highly qualified and talented individuals an opportunity for accelerated promotions, career broadening assignments, and specified training to prepare them for entry into acquisition positions in the Department of Defense.

(2) A cooperative education credit program under which the Secretary arranges, through cooperative arrangements entered into with one or more accredited institutions of higher education, for such institutions to grant undergraduate credit for work performed by students who are employed by the Department of Defense in acquisition positions.

(3) A scholarship program for the purpose of qualifying personnel for acquisition positions in the Department of Defense.

(b) SCHOLARSHIP PROGRAM REQUIREMENTS.—Each recipient of a scholarship under a program conducted under subsection (a)(3) shall be required to sign a written agreement that sets forth the terms and conditions of the scholarship. The agreement shall be in a form prescribed by the Secretary and shall include terms and conditions, including terms and conditions addressing reimbursement in the event that a recipient fails to fulfill the requirements of the agreement, that are comparable to those set forth as a condition for providing advanced education assistance under section 2005. The obligation to reimburse the United States under an agreement under this subsection is, for all purposes, a debt owing the United States.

(Added Pub. L. 101–510, div. A, title XII, § 1202(a), Nov. 5, 1990, 104 Stat. 1651; amended Pub. L. 108–136, div. A, title VIII, § 834(a), Nov. 24, 2003, 117 Stat. 1550; Pub. L. 108–375, div. A, title VIII, § 812(b), title X, § 1084(f)(1), Oct. 28, 2004, 118 Stat. 2013, 2064; Pub. L. 116–92, div. A, title VIII, § 861(j)(12), Dec. 20, 2019, 133 Stat. 1520.)

AMENDMENTS

2019—Subsec. (a)(1). Pub. L. 116–92 substituted ''acquisition positions in the Department of Defense'' for ''the Acquisition Corps''.

2004—Pub. L. 108–375, § 1084(f)(1), amended directory language of Pub. L. 108–136, § 834(a). See 2003 Amendment note below.

Pub. L. 108–375, § 812(b), designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

2003—Pub. L. 108–136, § 834(a), as amended by Pub. L. 108–375, § 1084(f)(1), amended section catchline and text generally. Prior to amendment, text read as follows: ''The Secretary of Defense shall require that each military department conduct an intern program for purposes of providing highly qualified and talented individuals an opportunity for accelerated promotions, career broadening assignments, and specified training to prepare them for entry into the Acquisition Corps.''

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–375, div. A, title X, § 1084(f), Oct. 28, 2004, 118 Stat. 2064, provided that the amendment made by section 1084(f)(1) is effective as of Nov. 24, 2003, and as if included in Pub. L. 108–136 as enacted.

[§§ 1743, 1744. Repealed. Pub. L. 108–136, div. A, title VIII, § 834(b), Nov. 24, 2003, 117 Stat. 1551]

Section 1743, added Pub. L. 101–510, div. A, title XII, § 1202(a), Nov. 5, 1990, 104 Stat. 1651, related to cooperative education program.

Section 1744, added Pub. L. 101–510, div. A, title XII, § 1202(a), Nov. 5, 1990, 104 Stat. 1652; amended Pub. L. 102–484, div. A, title VIII, § 812(f), Oct. 23, 1992, 106 Stat. 2451; Pub. L. 108–136, div. A, title VIII, § 832(c), Nov. 24, 2003, 117 Stat. 1550, related to scholarship program.

§ 1745. Additional education and training programs available to acquisition personnel

(a) TUITION REIMBURSEMENT AND TRAINING.—(1) The Secretary of Defense shall provide for tuition reimbursement and training (including a full-time course of study leading to a degree) for acquisition personnel in the Department of Defense.

(2) For civilian personnel, the reimbursement and training shall be provided under section 4107(b) of title 5 for the purposes described in that section. For purposes of such section 4107(b), there is deemed to be, until September 30, 2010, a shortage of qualified personnel to serve in acquisition positions in the Department of Defense.

(3) In the case of members of the armed forces, the limitation in section 2007(a) of this title

shall not apply to tuition reimbursement and training provided for under this subsection.

(b) REPAYMENT OF STUDENT LOANS.—The Secretary of Defense may repay all or part of a student loan under section 5379 of title 5 for an employee of the Department of Defense appointed to an acquisition position.

(Added Pub. L. 101–510, div. A, title XII, § 1202(a), Nov. 5, 1990, 104 Stat. 1653; amended Pub. L. 104–106, div. A, title XV, § 1503(a)(15), Feb. 10, 1996, 110 Stat. 511; Pub. L. 106–65, div. A, title IX, § 925(a), Oct. 5, 1999, 113 Stat. 726; Pub. L. 106–398, § 1 [[div. A], title XI, § 1123], Oct. 30, 2000, 114 Stat. 1654, 1654A–317.)

AMENDMENTS

2000—Subsec. (a)(2). Pub. L. 106–398 substituted ''September 30, 2010'' for ''September 30, 2001''.

1999—Subsec. (a). Pub. L. 106–65 amended heading and text of subsec. (a) generally. Text read as follows: ''The Secretary of Defense shall provide for tuition reimbursement and training (including a full-time course of study leading to a degree) under section 4107(b) of title 5 for acquisition personnel in the Department of Defense for the purposes described in that section. For purposes of such section 4107(b), there is deemed to be, until September 30, 2001, a shortage of qualified personnel to serve in acquisition positions in the Department of Defense.''

1996—Subsec. (a). Pub. L. 104–106 substituted ''section 4107(b)'' for ''section 4107(d)'' in two places.

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–65, div. A, title IX, § 925(b), Oct. 5, 1999, 113 Stat. 726, provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to charges for tuition or expenses incurred after the date of the enactment of this Act [Oct. 5, 1999].''

§ 1746. Defense Acquisition University

(a) DEFENSE ACQUISITION UNIVERSITY STRUCTURE.—The Secretary of Defense, acting through the Under Secretary of Defense for Acquisition and Sustainment, shall establish and maintain a defense acquisition university structure to provide for—

(1) the professional educational development and training of the acquisition workforce; and

(2) research and analysis of defense acquisition policy issues from an academic perspective.

(b) CIVILIAN FACULTY MEMBERS.—(1) The Secretary of Defense may employ as many civilians as professors, instructors, and lecturers in the defense acquisition university structure as the Secretary considers necessary.

(2) The professors, instructors, and lecturers employed under paragraph (1) shall include individuals from civilian colleges or universities that are not owned or operated by the Federal Government, commercial learning and development organizations, industry, or federally funded research and development centers.

(3) The Secretary of Defense shall ensure that—

(A) not later than September 1, 2021, not less than five full-time visiting professors employed under paragraph (1) are from civilian colleges or universities described under paragraph (2); and

(B) not later than September 1, 2022, not less than ten full-time visiting professors employed under paragraph (1) are from such civilian colleges or universities.

(4) The compensation of persons employed under this subsection shall be as prescribed by the Secretary.

(5) In this subsection, the term ''defense acquisition university'' includes the Defense Systems Management College.

(c) CURRICULUM DEVELOPMENT.—The President of the Defense Acquisition University shall work with the relevant professional schools and degree-granting institutions of the Department of Defense and military departments, and with commercial training providers, to ensure that best practices are used in curriculum development to support acquisition workforce positions.

(d) COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENTS.—(1) In engaging in research and development projects pursuant to subsection (a) of section 2358 of this title by a contract, cooperative agreement, or grant pursuant to subsection (b)(1) of such section, the Secretary may enter into such contract or cooperative agreement or award such grant through the Defense Acquisition University.

(2) The Defense Acquisition University shall be considered a Government-operated Federal laboratory for purposes of section 12 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a).

(Added Pub. L. 101–510, div. A, title XII, § 1202(a), Nov. 5, 1990, 104 Stat. 1653; amended Pub. L. 103–160, div. A, title IX, § 904(d)(1), Nov. 30, 1993, 107 Stat. 1728; Pub. L. 104–106, div. A, title XV, § 1503(a)(16), Feb. 10, 1996, 110 Stat. 512; Pub. L. 107–107, div. A, title X, § 1048(b)(2), Dec. 28, 2001, 115 Stat. 1225; Pub. L. 111–383, div. A, title VIII, § 877(c)(1), (2)(A), Jan. 7, 2011, 124 Stat. 4306; Pub. L. 114–328, div. A, title II, § 214(b), Dec. 23, 2016, 130 Stat. 2048; Pub. L. 116–92, div. A, title VIII, § 861(c), title IX, § 902(23), Dec. 20, 2019, 133 Stat. 1516, 1545; Pub. L. 116–283, div. A, title X, § 1081(a)(32), title XVIII, § 1841(e)(1), Jan. 1, 2021, 134 Stat. 3872, 4244.)

AMENDMENT OF SUBSECTION (d)(1)

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1841(e)(1), Jan. 1, 2021, 134 Stat. 4151, 4244, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, subsection (d)(1) of this section is amended by striking ''section 2358'' and inserting ''section 4001''. See 2021 Amendment note below.

AMENDMENTS

2021—Subsec. (b)(3)(A). Pub. L. 116–283, § 1081(a)(32), struck out the second semicolon before ''and''.

Subsec. (d)(1). Pub. L. 116–283, § 1841(e)(1), substituted ''section 4001'' for ''section 2358''.

2019—Subsec. (a). Pub. L. 116–92, § 902(23), substituted ''Under Secretary of Defense for Acquisition and Sustainment'' for ''Under Secretary of Defense for Acquisition, Technology, and Logistics'' in introductory provisions.

Subsec. (b)(2) to (5). Pub. L. 116–92, § 861(c)(1), added pars. (2) and (3) and redesignated former pars. (2) and (3) as (4) and (5), respectively.

Subsec. (c). Pub. L. 116–92, § 861(c)(2), inserted '', and with commercial training providers,'' after ''military departments''.

2016—Subsec. (d). Pub. L. 114–328 added subsec. (d).

2011—Pub. L. 111–383, §877(c)(2)(A), substituted ''Defense Acquisition University'' for ''Defense acquisition university structure'' in section catchline.

Subsec. (c). Pub. L. 111–383, §877(c)(1), added subsec. (c).

2001—Subsec. (a). Pub. L. 107–107 substituted ''Under Secretary of Defense for Acquisition, Technology, and Logistics'' for ''Under Secretary of Defense for Acquisition and Technology'' in introductory provisions.

1996—Subsec. (a). Pub. L. 104–106 struck out ''(1)'' before ''The Secretary of Defense'' and redesignated subpars. (A) and (B) as pars. (1) and (2), respectively.

1993—Subsec. (a)(1). Pub. L. 103–160 substituted ''Under Secretary of Defense for Acquisition and Technology'' for ''Under Secretary of Defense for Acquisition''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by section 1841(e)(1) of Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE

Pub. L. 101–510, div. A, title XII, §1209(h)(1), Nov. 5, 1990, 104 Stat. 1667, provided that: ''Subsection (b) of section 1746 of title 10, United States Code (as added by section 1202), shall take effect with respect to the Defense Systems Management College on the date of the enactment of this Act [Nov. 5, 1990].''

TRAINING IN COMMERCIAL ITEMS PROCUREMENT

Pub. L. 115–91, div. A, title VIII, §850, Dec. 12, 2017, 131 Stat. 1488, provided that:

''(a) TRAINING.—Not later than one year after the date of the enactment of this Act [Dec. 12, 2017], the President of the Defense Acquisition University shall establish a comprehensive training program on part 12 of the Federal Acquisition Regulation. The training shall cover, at a minimum, the following topics:

''(1) The origin of part 12 and the congressional mandate to prefer commercial procurements.

''(2) The definition of a commercial item, with a particular focus on the 'of a type' concept.

''(3) Price analysis and negotiations.

''(4) Market research and analysis.

''(5) Independent cost estimates.

''(6) Parametric estimating methods.

''(7) Value analysis.

''(8) Best practices in pricing from commercial sector organizations, foreign government organizations, and other Federal, State, and local public sectors organizations.

''(9) Other topics on commercial procurements necessary to ensure a well-educated acquisition workforce.

''(b) ENROLLMENTS GOALS.—The President of the Defense Acquisition University shall set goals for student enrollment for the comprehensive training program established under subsection (a).

''(c) SUPPORTING ACTIVITIES.—The Secretary of Defense shall, in support of the achievement of the goals of this section—

''(1) engage academic experts on research topics of interest to improve commercial item identification and pricing methodologies; and

''(2) facilitate exchange and interface opportunities between government personnel to increase awareness of best practices and challenges in commercial item identification and pricing.

''(d) FUNDING.—The Secretary of Defense shall use amounts available in the Department of Defense Acquisition Workforce Development Fund established under section 1705 of title 10, United States Code, to fund the comprehensive training program established under subsection (a).''

TRAINING ON AGILE OR ITERATIVE DEVELOPMENT METHODS

Pub. L. 115–91, div. A, title VIII, §891, Dec. 12, 2017, 131 Stat. 1509, provided that:

''(a) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act [Dec. 12, 2017], the Secretary of Defense, in consultation with the President of the Defense Acquisition University, shall establish a training course at the Defense Acquisition University on agile or iterative development methods to provide training for personnel implementing and supporting the pilot programs required by sections 873 and 874 of this Act [10 U.S.C. 2223a note, 10 U.S.C. 2302 note].

''(b) COURSE ELEMENTS.—

''(1) IN GENERAL.—The course shall be taught in residence at the Defense Acquisition University and shall include the following elements:

''(A) Training designed to instill a common understanding of all functional roles and dependencies involved in developing and producing a capability using agile or iterative development methods.

''(B) An exercise involving teams composed of personnel from pertinent functions and functional organizations engaged in developing an integrated agile or iterative development method for a specific program.

''(C) Instructors and content from non-governmental entities, as appropriate, to highlight commercial best practices in using an agile or iterative development method.

''(2) COURSE UPDATES.—The Secretary shall ensure that the course is updated as needed, including through incorporating lessons learned from the implementation of the pilot programs required by sections 873 and 874 of this Act in subsequent versions of the course.

''(c) COURSE ATTENDANCE.—The course shall be—

''(1) available for certified acquisition personnel working on programs or projects using agile or iterative development methods; and

''(2) mandatory for personnel participating in the pilot programs required by sections 873 and 874 of this Act from the relevant organizations in each of the military departments and Defense Agencies, including organizations responsible for engineering, budgeting, contracting, test and evaluation, requirements validation, and certification and accreditation.

''(d) AGILE ACQUISITION SUPPORT.—The Secretary and the senior acquisition executives in each of the military departments and Defense Agencies, in coordination with the Director of the Defense Digital Service, shall assign to offices supporting systems selected for participation in the pilot programs required by sections 873 and 874 of this Act a subject matter expert with knowledge of commercial agile acquisition methods and Department of Defense acquisition processes to provide assistance and to advise appropriate acquisition authorities of the expert's observations.

''(e) AGILE RESEARCH PROGRAM.—The President of the Defense Acquisition University shall establish a research program to conduct research on and development of agile acquisition practices and tools best tailored to meet the mission needs of the Department of Defense.

''(f) AGILE OR ITERATIVE DEVELOPMENT DEFINED.—The term 'agile or iterative development', with respect to software—

''(1) means acquisition pursuant to a method for delivering multiple, rapid, incremental capabilities to the user for operational use, evaluation, and feedback not exclusively linked to any single, proprietary method or process; and

''(2) involves—

''(A) the incremental development and fielding of capabilities, commonly called 'spirals', 'spins', or 'sprints', which can be measured in a few weeks or months; and

''(B) continuous participation and collaboration by users, testers, and requirements authorities.''

CONTRACTOR INCENTIVES TO ACHIEVE SAVINGS AND IMPROVE MISSION PERFORMANCE

Pub. L. 114–328, div. A, title VIII, § 832, Dec. 23, 2016, 130 Stat. 2283, provided that: ''Not later than 180 days after the date of the enactment of this Act [Dec. 23, 2016], the Defense Acquisition University shall develop and implement a training program for Department of Defense acquisition personnel on fixed-priced incentive fee contracts, public-private partnerships, performance-based contracting, and other authorities in law and regulation designed to give incentives to contractors to achieve long-term savings and improve administrative practices and mission performance.''

ESTABLISHMENT OF INITIAL DEFENSE ACQUISITION UNIVERSITY STRUCTURE

Pub. L. 101–510, div. A, title XII, § 1205, Nov. 5, 1990, 104 Stat. 1658, as amended by Pub. L. 105–85, div. A, title X, § 1073(d)(4)(A), Nov. 18, 1997, 111 Stat. 1905, provided that, not later than Oct. 1, 1991, the Secretary of Defense, acting through the Under Secretary of Defense for Acquisition and Technology, was to prescribe regulations for the initial structure for a defense acquisition university under this section and to prescribe and submit to the Committees on Armed Services of the Senate and House of Representatives an implementation plan, including a charter, for the university structure, and not later than Aug. 1, 1992, the Secretary was to carry out the implementation plan.

§ 1747. Acquisition fellowship program

(a) ESTABLISHMENT.—The Secretary of Defense shall establish and carry out an acquisition fellowship program in accordance with this section in order to enhance the ability of the Department of Defense to recruit employees who are highly qualified in fields of acquisition.

(b) NUMBER OF FELLOWSHIPS.—The Secretary of Defense may designate up to 25 prospective employees of the Department of Defense as acquisition fellows.

(c) ELIGIBILITY.—In order to be eligible for designation as an acquisition fellow, an employee—

(1) must complete at least 2 years of Federal Government service as an employee in an acquisition position in the Department of Defense; and

(2) must be serving in an acquisition position in the Department of Defense that involves the performance of duties likely to result in significant restrictions under law on the employment activities of that employee after leaving Government service.

(d) TWO-YEAR PERIOD OF RESEARCH AND TEACHING.—Under the fellowship program, the Secretary of Defense shall pay designated acquisition fellows to engage in research or teaching for a 2-year period in a field related to Federal Government acquisition policy. Such research or teaching may be conducted in the defense acquisition university structure of the Department of Defense, any other institution of professional education of the Federal Government, or a nonprofit institution of higher education. Each fellow shall be paid at a rate equal to the rate of pay payable for the level of the position in which the fellow served in the Department of Defense before undertaking such research or teaching.

(Added Pub. L. 102–484, div. A, title VIII, § 841(a), Oct. 23, 1992, 106 Stat. 2468, § 2410h; renumbered § 1747, Pub. L. 107–314, div. A, title X, § 1062(a)(10)(A), Dec. 2, 2002, 116 Stat. 2650.)

AMENDMENTS

2002—Pub. L. 107–314 renumbered section 2410h of this title as this section.

§ 1748. Fulfillment standards for acquisition workforce training

The Secretary of Defense, acting through the Under Secretary of Defense for Acquisition and Sustainment, shall develop fulfillment standards, and implement and maintain a program, for purposes of the training requirements of sections 1723, 1724, and 1735 of this title. Such fulfillment standards shall consist of criteria for determining whether an individual has demonstrated competence in the areas that would be taught in the training courses required under those sections. If an individual meets the appropriate fulfillment standard, the applicable training requirement is fulfilled.

(Added Pub. L. 111–383, div. A, title VIII, § 874(b)(1), Jan. 7, 2011, 124 Stat. 4304; amended Pub. L. 116–92, div. A, title IX, § 902(24), Dec. 20, 2019, 133 Stat. 1545.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in Pub. L. 105–85, div. A, title VIII, § 853, Nov. 18, 1997, 111 Stat. 1851, which was set out as a note under section 1723 of this title, prior to repeal by Pub. L. 111–383, § 874(b)(4).

AMENDMENTS

2019—Pub. L. 116–92 substituted ''Under Secretary of Defense for Acquisition and Sustainment'' for ''Under Secretary of Defense for Acquisition, Technology, and Logistics''.

DEADLINE FOR FULFILLMENT STANDARDS

Pub. L. 111–383, div. A, title VIII, § 874(b)(3), Jan. 7, 2011, 124 Stat. 4305, provided that: ''The fulfillment standards required under section 1748 of title 10, United States Code, as added by paragraph (1), shall be developed not later than 270 days after the date of the enactment of this Act [Jan. 7, 2011].''

SUBCHAPTER V—GENERAL MANAGEMENT PROVISIONS

Sec.
1761. Management information system.
1762. Demonstration project relating to certain acquisition personnel management policies and procedures.
[1763. Repealed.]
1764. Authority to establish different minimum requirements.
1765. Competency development.

AMENDMENTS

2021—Pub. L. 116–283, div. A, title X, § 1081(c)(4), Jan. 1, 2021, 134 Stat. 3873, amended Pub. L. 116–92, 861(i)(2). See 2019 Amendment note below.

2019—Pub. L. 116–92, div. A, title VIII, § 861(i)(2), Dec. 20, 2019, 133 Stat. 1519, as amended by Pub. L. 116–283, div. A, title X, § 1081(c)(4), Jan. 1, 2021, 134 Stat. 3873, added item 1765.

2011—Pub. L. 111–383, div. A, title VIII, § 872(a)(2), Jan. 7, 2011, 124 Stat. 4302, added item 1762.

2003—Pub. L. 108–136, div. A, title VIII, § 836(4), Nov. 24, 2003, 117 Stat. 1552, added item 1764 and struck out item 1763 ''Reassignment of authority''.

2001—Pub. L. 107–107, div. A, title X, § 1048(e)(7)(B), Dec. 28, 2001, 115 Stat. 1228, struck out items 1762 ''Report to Secretary of Defense'' and 1764 ''Authority to establish different minimum experience requirements''.

EFFECTIVE DATE OF 2021 AMENDMENT

Pub. L. 116–283, div. A, title X, §1081(c), Jan. 1, 2021, 134 Stat. 3873, provided that the amendment made by section 1081(c)(4) of Pub. L. 116–283 is effective as of Dec. 20, 2020 [probably should be Dec. 20, 2019], and as if included in Pub. L. 116–92.

§ 1761. Management information system

(a) IN GENERAL.—The Secretary of Defense shall prescribe regulations to ensure that the military departments and Defense Agencies establish a management information system capable of providing standardized information to the Secretary on persons serving in acquisition positions.

(b) MINIMUM INFORMATION.—The management information system shall, at a minimum, provide for the following:

(1) The collection and retention of information concerning the qualifications, assignments, and tenure of persons in the acquisition workforce.

(2) Any exceptions and waivers granted with respect to the application of qualification, assignment, and tenure policies, procedures, and practices to such persons.

(3) Relative promotion rates for military personnel in the acquisition workforce.

(Added Pub. L. 101–510, div. A, title XII, §1202(a), Nov. 5, 1990, 104 Stat. 1653; amended Pub. L. 103–160, div. A, title IX, §904(d)(1), Nov. 30, 1993, 107 Stat. 1728; Pub. L. 107–107, div. A, title X, §1048(b)(2), Dec. 28, 2001, 115 Stat. 1225; Pub. L. 108–375, div. A, title X, §1084(d)(15), Oct. 28, 2004, 118 Stat. 2062.)

AMENDMENTS

2004—Subsec. (b). Pub. L. 108–375 substituted ''provide for the following:'' for ''provide for—'' in introductory provisions, capitalized first letter of first word in pars. (1) to (3), substituted period for semicolon at end in pars. (1) and (2), substituted period for ''; and'' at end in par. (3), and struck out par. (4) which read as follows: ''collection of the information necessary for the Under Secretary of Defense for Acquisition, Technology, and Logistics and the Secretary of Defense to comply with the requirements of section 1762 for the years in which that section is in effect.''

2001—Subsec. (b)(4). Pub. L. 107–107 substituted ''Under Secretary of Defense for Acquisition, Technology, and Logistics'' for ''Under Secretary of Defense for Acquisition and Technology''.

1993—Subsec. (b)(4). Pub. L. 103–160 substituted ''Under Secretary of Defense for Acquisition and Technology'' for ''Under Secretary of Defense for Acquisition''.

ESTABLISHMENT OF MANAGEMENT INFORMATION SYSTEM

Pub. L. 101–510, div. A, title XII, §1209(k), Nov. 5, 1990, 104 Stat. 1667, required the Secretary of Defense to prescribe in regulations the requirements under this section for the uniform management information system by Oct. 1, 1991, and ensure that the requirements were implemented by Oct. 1, 1992.

§ 1762. Demonstration project relating to certain acquisition personnel management policies and procedures

(a) COMMENCEMENT.—The Secretary of Defense is authorized to carry out a demonstration project, the purpose of which is to determine the feasibility or desirability of one or more proposals for improving the personnel management policies or procedures that apply with respect to the acquisition workforce of the Department of Defense and supporting personnel assigned to work directly with the acquisition workforce.

(b) TERMS AND CONDITIONS.—(1) Except as otherwise provided in this subsection, any demonstration project described in subsection (a) shall be subject to section 4703 of title 5 and all other provisions of such title that apply with respect to any demonstration project under such section.

(2) Subject to paragraph (3), in applying section 4703 of title 5 with respect to a demonstration project described in subsection (a)—

(A) ''180 days'' in subsection (b)(4) of such section shall be deemed to read ''120 days'';

(B) ''90 days'' in subsection (b)(6) of such section shall be deemed to read ''30 days''; and

(C) subsection (d)(1) of such section shall be disregarded.

(3) Paragraph (2) shall not apply with respect to a demonstration project unless—

(A) for each organization or team participating in the demonstration project—

(i) at least one-third of the workforce participating in the demonstration project consists of members of the acquisition workforce; and

(ii) at least two-thirds of the workforce participating in the demonstration project consists of members of the acquisition workforce and supporting personnel assigned to work directly with the acquisition workforce; and

(B) the demonstration project commences before October 1, 2007.

(4) The Secretary of Defense shall exercise the authorities granted to the Office of Personnel Management under section 4703 of title 5 for purposes of the demonstration project authorized under this section.

(c) LIMITATION ON NUMBER OF PARTICIPANTS.—The total number of persons who may participate at any one time in the demonstration project under this section may not exceed 130,000.

(d) EFFECT OF REORGANIZATIONS.—The applicability of paragraph (2) of subsection (b) to an organization or team shall not terminate by reason that the organization or team, after having satisfied the conditions in paragraph (3) of such subsection when it began to participate in a demonstration project under this section, ceases to meet one or both of the conditions set forth in subparagraph (A) of such paragraph (3) as a result of a reorganization, restructuring, realignment, consolidation, or other organizational change.

(e) ASSESSMENTS.—(1) The Secretary of Defense shall designate an independent organization to conduct two assessments of the acquisition workforce demonstration project described in subsection (a).

(2) Each such assessment shall include the following:

(A) A description of the workforce included in the project.

(B) An explanation of the flexibilities used in the project to appoint individuals to the acquisition workforce and whether those ap-

pointments are based on competitive procedures and recognize veteran's preferences.

(C) An explanation of the flexibilities used in the project to develop a performance appraisal system that recognizes excellence in performance and offers opportunities for improvement.

(D) The steps taken to ensure that such system is fair and transparent for all employees in the project.

(E) How the project allows the organization to better meet mission needs.

(F) An analysis of how the flexibilities in subparagraphs (B) and (C) are used, and what barriers have been encountered that inhibit their use.

(G) Whether there is a process for—

(i) ensuring ongoing performance feedback and dialogue among supervisors, managers, and employees throughout the performance appraisal period; and

(ii) setting timetables for performance appraisals.

(H) The project's impact on career progression.

(I) The project's appropriateness or inappropriateness in light of the complexities of the workforce affected.

(J) The project's sufficiency in terms of providing protections for diversity in promotion and retention of personnel.

(K) The adequacy of the training, policy guidelines, and other preparations afforded in connection with using the project.

(L) Whether there is a process for ensuring employee involvement in the development and improvement of the project.

(3) The first assessment under this subsection shall be completed not later than September 30, 2012. The second and final assessment shall be completed not later than September 30, 2016. The Secretary shall submit to the covered congressional committees a copy of each assessment within 30 days after receipt by the Secretary of the assessment.

(f) COVERED CONGRESSIONAL COMMITTEES.—In this section, the term ''covered congressional committees'' means—

(1) the Committees on Armed Services of the Senate and the House of Representatives;

(2) the Committee on Homeland Security and Governmental Affairs of the Senate; and

(3) the Committee on Oversight and Government Reform of the House of Representatives.

(g) TERMINATION OF AUTHORITY.—The authority to conduct a demonstration project under this section shall terminate on December 31, 2023.

(h) CONVERSION.—Within 6 months after the authority to conduct a demonstration project under this section is terminated as provided in subsection (g), employees in the project shall convert to the civilian personnel system created pursuant to section 9902 of title 5.

(Added Pub. L. 111–383, div. A, title VIII, § 872(a)(1), Jan. 7, 2011, 124 Stat. 4300; amended Pub. L. 114–92, div. A, title VIII, § 846, Nov. 25, 2015, 129 Stat. 916; Pub. L. 114–328, div. A, title VIII, § 867(a), Dec. 23, 2016, 130 Stat. 2306; Pub. L. 115–91, div. A, title VIII, § 844(a), (b), Dec. 12, 2017, 131 Stat. 1482; Pub. L. 116–92, div. A, title XVII, § 1731(a)(27), Dec. 20, 2019, 133 Stat. 1813.)

PRIOR PROVISIONS

A prior section 1762, added Pub. L. 101–510, div. A, title XII, § 1202(a), Nov. 5, 1990, 104 Stat. 1654; amended Pub. L. 103–160, div. A, title IX, § 904(d)(1), Nov. 30, 1993, 107 Stat. 1728; Pub. L. 106–65, div. A, title IX, § 911(a)(1), Oct. 5, 1999, 113 Stat. 717, related to report by the Under Secretary of Defense for Acquisition, Technology, and Logistics to the Secretary of Defense on the status of the defense acquisition workforce, prior to repeal by Pub. L. 107–107, div. A, title X, § 1048(e)(7)(A), Dec. 28, 2001, 115 Stat. 1227.

Provisions similar to those in this section were contained in Pub. L. 104–106, div. D, title XLIII, § 4308, Feb. 10, 1996, 110 Stat. 669, which was set out as a note under section 1701 of this title, prior to repeal by Pub. L. 111–383, § 872(b).

AMENDMENTS

2019—Subsec. (c). Pub. L. 116–92 substituted ''at any one time in'' for ''in at any one time''.

2017—Subsec. (c). Pub. L. 115–91, § 844(b), substituted ''at any one time the demonstration project under this section may not exceed 130,000'' for ''the demonstration project under this section may not exceed 120,000''.

Subsec. (g). Pub. L. 115–91, § 844(a), substituted ''December 31, 2023'' for ''December 31, 2020''.

2016—Subsec. (b)(4). Pub. L. 114–328 added par. (4).

2015—Subsec. (g). Pub. L. 114–92 substituted ''demonstration project'' for ''demonstration program'' and ''December 31, 2020'' for ''September 30, 2017''.

EFFECTIVE DATE OF 2016 AMENDMENT

Pub. L. 114–328, div. A, title VIII, § 867(b), Dec. 23, 2016, 130 Stat. 2306, provided that: ''Paragraph (4) of section 1762(b) of title 10, United States Code, as added by subsection (a), shall take effect on the first day of the first month beginning 60 days after the date of the enactment of this Act [Dec. 23, 2016].''

[§ 1763. Repealed. Pub. L. 108–136, div. A, title VIII, § 835(1), Nov. 24, 2003, 117 Stat. 1551]

Section, added Pub. L. 101–510, div. A, title XII, § 1202(a), Nov. 5, 1990, 104 Stat. 1656; amended Pub. L. 103–160, div. A, title IX, § 904(d)(1), Nov. 30, 1993, 107 Stat. 1728; Pub. L. 105–85, div. A, title X, § 1073(a)(33), Nov. 18, 1997, 111 Stat. 1902; Pub. L. 107–107, div. A, title X, § 1048(b)(2), Dec. 28, 2001, 115 Stat. 1225, related to reassignment of authority by Secretary of Defense.

§ 1764. Authority to establish different minimum requirements

(a) AUTHORITY.—(1) The Secretary of Defense may prescribe a different minimum number of years of experience, different minimum education qualifications, and different tenure of service qualifications to be required for eligibility for appointment or advancement to an acquisition position referred to in subsection (b) than is required for such position under or pursuant to any provision of this chapter.

(2) Any requirement prescribed under paragraph (1) for a position referred to in any paragraph of subsection (b) shall be applied uniformly to all positions referred to in such paragraph.

(b) APPLICABILITY.—This section applies to the following acquisition positions in the Department of Defense:

(1) Contracting officer, except a position referred to in paragraph (6).

(2) Program executive officer.

(3) Senior contracting official.
(4) Program manager.
(5) Deputy program manager.
(6) A position in the contract contingency force of an armed force that is filled by a member of that armed force.

(c) DEFINITION.—In this section, the term ''contract contingency force'', with respect to an armed force, has the meaning given such term in regulations prescribed by the Secretary concerned.

(Added Pub. L. 108–136, div. A, title VIII, § 835(2), Nov. 24, 2003, 117 Stat. 1551; amended Pub. L. 108–375, div. A, title VIII, § 812(c), Oct. 28, 2004, 118 Stat. 2013.)

PRIOR PROVISIONS

A prior section 1764, added Pub. L. 101–510, div. A, title XII, § 1202(a), Nov. 5, 1990, 104 Stat. 1656, related to authority to establish different minimum experience requirements, prior to repeal by Pub. L. 107–107, div. A, title X, § 1048(e)(7)(A), Dec. 28, 2001, 115 Stat. 1227.

AMENDMENTS

2004—Subsec. (b)(1). Pub. L. 108–375, § 812(c)(2), substituted ''in paragraph (6)'' for ''in paragraph (5)''.

Subsec. (b)(5), (6). Pub. L. 108–375, § 812(c)(1), added par. (5) and redesignated former par. (5) as (6).

§ 1765. Competency development

For each acquisition workforce career field, the Secretary of Defense shall—

(1) establish, for the civilian personnel in that career field, defined proficiency standards and technical and nontechnical competencies which shall be used in personnel qualification assessments; and

(2) assign resources to accomplish such technical and nontechnical competencies.

(Added Pub. L. 116–92, div. A, title VIII, § 861(i)(1), Dec. 20, 2019, 133 Stat. 1518.)

DEADLINE FOR IMPLEMENTATION

Pub. L. 116–92, div. A, title VIII, § 861(i)(3), Dec. 20, 2019, 133 Stat. 1519, provided that: ''Not later than the end of the two-year period beginning on the date of the enactment of this Act [Dec. 20, 2019], the Secretary of Defense shall carry out the requirements of section 1765 of title 10, United States Code (as added by paragraph (1)).''

CHAPTER 88—MILITARY FAMILY PROGRAMS AND MILITARY CHILD CARE

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SUBCHAPTER I—MILITARY FAMILY PROGRAMS

Sec.
1781. Office of Military Family Readiness Policy.
1781a. Department of Defense Military Family Readiness Council.
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1781c. Office of Special Needs.
1782. Surveys of military families.
1783. Family members serving on advisory committees.
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1785. Youth sponsorship program.
1786. Dependent student travel within the United States.
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1788a. Support programs: special operations forces personnel; immediate family members.
1789. Chaplain-led programs: authorized support.
1790. Military personnel citizenship processing.

AMENDMENTS

2021—Pub. L. 116–283, div. A, title V, § 583(b), Jan. 1, 2021, 134 Stat. 3654, which directed amendment of the table of sections at the beginning of chapter 88 by adding item 1788a and striking out former item 1788a ''Family support programs: immediate family members of members of special operations forces'', was executed to the analysis of this subchapter, to reflect the probable intent of Congress.

2017—Pub. L. 115–91, div. A, title V, § 555(e), Dec. 12, 2017, 131 Stat. 1403, added item 1788a.

2016—Pub. L. 114–328, div. A, title IX, § 933(a)(4)(B), (b)(5)(B), Dec. 23, 2016, 130 Stat. 2364, 2365, substituted ''Office of Military Family Readiness Policy'' for ''Office of Family Policy'' in item 1781 and ''Office of Special Needs'' for ''Office of Community Support for Military Families With Special Needs'' in item 1781c.

2011—Pub. L. 112–74, div. A, title VIII, § 8070(b), Dec. 23, 2011, 125 Stat. 823, added item 1790.

2009—Pub. L. 111–84, div. A, title V, § 563(a)(2), Oct. 28, 2009, 123 Stat. 2307, added item 1781c.

2008—Pub. L. 110–417, [div. A], title V, § 582(b), Oct. 14, 2008, 122 Stat. 4474, added item 1784a.

Pub. L. 110–181, div. A, title V, § 581(d), Jan. 28, 2008, 122 Stat. 122, added items 1781a and 1781b.

2003—Pub. L. 108–136, div. A, title V, § 582(a)(2), Nov. 24, 2003, 117 Stat. 1490, added item 1789.

2002—Pub. L. 107–314, div. A, title VI, § 652(a)(2), Dec. 2, 2002, 116 Stat. 2581, added item 1788.

§ 1781. Office of Military Family Readiness Policy

(a) ESTABLISHMENT.—There is in the Office of the Secretary of Defense an Office of Military Family Readiness Policy (in this section referred to as the ''Office''). The Office shall be headed by the Director of Military Family Readiness Policy, who shall serve within the Office of the Under Secretary of Defense for Personnel and Readiness.

(b) DUTIES.—The Office—

(1) shall coordinate programs and activities of the military departments to the extent that they relate to military families; and

(2) shall make recommendations to the Secretaries of the military departments with respect to programs and policies regarding military families.

(c) STAFF.—The Office shall have not less than five professional staff members.

(Added Pub. L. 104–106, div. A, title V, § 568(a)(1), Feb. 10, 1996, 110 Stat. 330; amended Pub. L. 111–383, div. A, title IX, § 901(h), Jan. 7, 2011, 124 Stat. 4323; Pub. L. 112–239, div. A, title X, § 1076(f)(21), Jan. 2, 2013, 126 Stat. 1952; Pub. L. 114–328, div. A, title IX, § 933(a)(1), (4)(A), Dec. 23, 2016, 130 Stat. 2364.)

PRIOR PROVISIONS

Provisions similar to those in this subchapter were contained in Pub. L. 99–145, title VIII, Nov. 8, 1985, 99 Stat. 678, as amended, which was set out as a note under section 113 of this title, prior to repeal by Pub. L. 104–106, § 568(e)(1).

AMENDMENTS

2016—Pub. L. 114–328, § 933(a)(4)(A), substituted ''Office of Military Family Readiness Policy'' for ''Office of Family Policy'' in section catchline.

Subsec. (a). Pub. L. 114–328, § 933(a)(1), substituted ''Office of Military Family Readiness Policy'' for ''Office of Family Policy'' and ''Director of Military Family Readiness Policy'' for ''Director of Family Policy''.

2013—Subsec. (a). Pub. L. 112–239, in first sentence, substituted ''in the Office'' for ''in the Director'' and struck out ''hereinafter'' before ''in this section'', and in second sentence, substituted ''Office'' for ''office'' in two places.

2011—Subsec. (a). Pub. L. 111–383 substituted ''the Director'' for ''the Office'' before ''of the Secretary'' and ''The office shall be headed by the Director of Family Policy, who shall serve within the office of the Under Secretary of Defense for Personnel and Readiness.'' for ''The Office shall be under the Assistant Secretary of Defense for Force Management and Personnel.''

EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by Pub. L. 111–383 effective Jan. 1, 2011, see section 901(p) of Pub. L. 111–383, set out as a note under section 131 of this title.

EXPANSION OF PERIOD OF AVAILABILITY OF MILITARY ONESOURCE PROGRAM FOR RETIRED AND DISCHARGED MEMBERS OF THE ARMED FORCES AND THEIR IMMEDIATE FAMILIES

FAMILY READINESS: DEFINITIONS; COMMUNICATION STRATEGY; REVIEW; REPORT

Pub. L. 116–283, div. A, title V, § 581, Jan. 1, 2021, 134 Stat. 3651, provided that:

''(a) DEFINITIONS.—Not later than six months after the date of the enactment of this Act [Jan. 1, 2021], the Secretary of Defense, in coordination with the Secretaries of the military departments, shall act on recommendation one of the report, dated July 2019, of the National Academies of Science, Engineering and Medicine, titled 'Strengthening the Military Family Readiness System for a Changing American Society', by establishing definitions of 'family well-being', 'family readiness', and 'family resilience' for use by the Department of Defense.

''(b) COMMUNICATION STRATEGY.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense, in coordination with the Secretaries of the military departments, shall—

''(1) ensure that the Secretary of Defense has carried out section 561 of the National Defense Authorization Act for Fiscal Year 2010 ([Pub. L. 111–84]; 10 U.S.C. 1781 note);

''(2) implement a strategy to use of a variety of modes of communication to ensure the broadest means of communicating with military families; and

''(3) establish a process to measure the effectiveness of the modes of communication described in paragraph (2).

''(c) REVIEW.—Not later than 90 days after the date of the enactment of this Act, the Secretary of Defense shall conduct a review of current programs, policies, services, resources, and practices of the Department for military families as outlined in recommendation four of the report described in subsection (a).

''(d) REPORT.—Not later than 60 days after completing the review under subsection (c), the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report detailing the results of the review and how the Secretary shall improve programs, policies, services, resources, and practices for military families, based on the review.''

TIME REQUIREMENTS FOR CERTIFICATION OF HONORABLE SERVICE

Pub. L. 116–92, div. A, title V, § 526, Dec. 20, 2019, 133 Stat. 1356, provided that: ''The Secretary of Defense shall publish regulations for submission and processing of a completed United States Citizenship and Immigration Services Form N–426, by a member of the Armed Forces. Such regulations shall designate the appropriate level for the certifying officer as well as establish time requirements for the form to be returned to the member of the Armed Forces.''

COUNSELING FOR MEMBERS OF THE ARMED FORCES WHO ARE NOT CITIZENS OF THE UNITED STATES ON NATURALIZATION IN THE UNITED STATES

Pub. L. 116–92, div. A, title V, § 570D, Dec. 20, 2019, 133 Stat. 1399, provided that:

''(a) IN GENERAL.—The Secretary concerned shall furnish to covered individuals under the jurisdiction of that Secretary counseling regarding how to apply for naturalization in the United States.

''(b) DEFINITIONS.—In this section:

''(1) The term 'covered individual' means a member of the Armed Forces who is not a citizen of the United States.

''(2) The term 'Secretary concerned' has the meaning given that term in section 101(a)(9) of title 10, United States Code.''

PILOT PROGRAM ON INFORMATION SHARING BETWEEN DEPARTMENT OF DEFENSE AND DESIGNATED RELATIVES AND FRIENDS OF MEMBERS OF THE ARMED FORCES REGARDING THE EXPERIENCES AND CHALLENGES OF MILITARY SERVICE

Pub. L. 116–92, div. A, title V, § 570E, Dec. 20, 2019, 133 Stat. 1400, provided that:

''(a) PILOT PROGRAM REQUIRED.—

''(1) IN GENERAL.—Not later than one year after the date of the enactment of this Act [Dec. 20, 2019], the Secretary of Defense shall seek to enter into an agreement with the American Red Cross to carry out a pilot program under which the American Red Cross—

''(A) encourages a member of the Armed Forces, upon the enlistment or appointment of such member, to designate up to 10 persons to whom information regarding the military service of such member shall be disseminated using contact information obtained under paragraph (6); and

''(B) provides such persons, within 30 days after the date on which such persons are designated under subparagraph (A), the option to elect to receive such information regarding military service.

''(2) DISSEMINATION.—The Secretary shall disseminate information described in paragraph (1)(A) under the pilot program on a regular basis.

''(3) TYPES OF INFORMATION.—The types of information to be disseminated under the pilot program to persons who elect to receive such information shall include information regarding—

''(A) aspects of daily life and routine experienced by members of the Armed Forces;

''(B) the challenges and stresses of military service, particularly during and after deployment as part of a contingency operation;

''(C) the services available to members of the Armed Forces and the dependents of such members to cope with the experiences and challenges of military service;

''(D) benefits administered by the Department of Defense for members of the Armed Forces and the dependents of such members;

''(E) a toll-free telephone number through which such persons who elect to receive information under the pilot program may request information regarding the program; and

''(F) such other information as the Secretary determines to be appropriate.

''(4) PRIVACY OF INFORMATION.—In carrying out the pilot program, the Secretary may not disseminate information under paragraph (3) in violation of laws and regulations pertaining to the privacy of members of the Armed Forces, including requirements pursuant to—

''(A) section 552a of title 5, United States Code; and

''(B) the Health Insurance Portability and Accountability Act of 1996 (Public Law 104–191) [see Tables for classification].

''(5) NOTICE AND MODIFICATIONS.—In carrying out the pilot program, the Secretary shall, with respect to a member of the Armed Forces—

''(A) ensure that such member is notified of the ability to modify designations made by such member under paragraph (1)(A); and

''(B) upon the request of a member, authorize such member to modify such designations at any time.

''(6) CONTACT INFORMATION.—In making a designation under the pilot program, a member of the Armed Forces shall provide necessary contact information, specifically including an email address, to facilitate the dissemination of information regarding the military service of the member.

''(7) OPT-IN AND OPT-OUT OF PROGRAM.—

''(A) OPT-IN BY MEMBERS.—A member may participate in the pilot program only if the member voluntarily elects to participate in the program. A member seeking to make such an election shall make such election in a manner, and by including such information, as the Secretary and the Red Cross shall jointly specify for purposes of the pilot program.

''(B) OPT-IN BY DESIGNATED RECIPIENTS.—A person designated pursuant to paragraph (1)(A) may receive information under the pilot program only if the person makes the election described in paragraph (1)(B).

''(C) OPT-OUT.—In carrying out the pilot program, the Secretary shall, with respect to a person who has elected to receive information under such pilot program, cease disseminating such information to that person upon request of such person.

''(b) SURVEY AND REPORT ON PILOT PROGRAM.—

''(1) SURVEY.—Not later than two years after the date on which the pilot program commences, the Secretary, in consultation with the American Red Cross, shall administer a survey to persons who elected to receive information under the pilot program for the purpose of receiving feedback regarding the quality of information disseminated under this section, including whether such information appropriately reflects the military career progression of members of the Armed Forces.

''(2) REPORT.—Not later than three years after the date on which the pilot program commences, the Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a final report on the pilot program which includes—

''(A) the results of the survey administered under paragraph (1);

''(B) a determination as to whether the pilot program should be made permanent; and

''(C) recommendations as to modifications necessary to improve the program if made permanent.

''(c) TERMINATION OF PILOT PROGRAM.—The pilot program shall terminate upon submission of the report required by subsection (b)(2).''

Pub. L. 115–232, div. A, title V, § 558, Aug. 13, 2018, 132 Stat. 1775, provided that:

''(a) IN GENERAL.—Under regulations prescribed by the Secretary of Defense, the period of eligibility for the Military OneSource program of the Department of Defense of an eligible individual retired, discharged, or otherwise released from the Armed Forces, and for the eligible immediate family members of such an individual, shall be the one-year period beginning on the date of the retirement, discharge, or release, as applicable, of such individual.

''(b) INFORMATION TO FAMILIES.—The Secretary shall, in such manner as the Secretary considers appropriate, inform military families and families of veterans of the Armed Forces of the wide range of benefits available through the Military OneSource program.''

POLICY ON RESPONSE TO JUVENILE-ON-JUVENILE PROBLEMATIC SEXUAL BEHAVIOR COMMITTED ON MILITARY INSTALLATIONS

Pub. L. 115–232, div. A, title X, § 1089, Aug. 13, 2018, 132 Stat. 1996, provided that:

''(a) POLICY REQUIRED.—The Secretary of Defense shall establish a policy, applicable across the military installations of the Department of Defense (including installations outside the United States), on the response of the Department to allegations of juvenile-on-juvenile problematic sexual behavior on military installations. The policy shall be designed to ensure a consistent, standardized response to such allegations across the Department.

''(b) ELEMENTS.—The policy required by this section shall provide for the following:

''(1) Any report or other allegation of juvenile-on-juvenile problematic sexual behavior on a military installation that is received by the installation commander, a law enforcement organization, a Family Advocacy Program, a child development center, a military treatment facility, or a Department school operating on the installation or otherwise under Department administration for the installation shall be reviewed by the Family Advocacy Program of the installation.

''(2) Personnel of Family Advocacy Programs conducting reviews shall have appropriate training and experience in working with juveniles.

''(3) Family Advocacy Programs conducting reviews shall conduct a multi-faceted, multi-disciplinary review and recommend treatment, counseling, or other appropriate interventions for complainants and respondents.

''(4) Each review shall be conducted—

''(A) with full involvement of appropriate authorities and entities, including parents or legal guardians of the juveniles involved (if practicable); and

''(B) to the extent practicable, in a manner that protects the sensitive nature of the incident concerned, using language appropriate to the treatment of juveniles in written policies and communication with families.

''(5) The requirement for investigation of a report or other allegation shall not be deemed to terminate or alter any otherwise applicable requirement to report or forward the report or allegation to appropriate Federal, State, or local authorities as possible criminal activity.

''(6) There shall be established and maintained a centralized database of information on each incident of problematic sexual behavior that is reviewed by a Family Advocacy Program under the policy established under this section, with—

''(A) the information in such database kept strictly confidential; and

''(B) because the information involves alleged conduct by juveniles, additional special precautions taken to ensure the information is available only to persons who require access to the information.

''(7) There shall be entered into the database, for each substantiated or unsubstantiated incident of problematic sexual behavior, appropriate information on the incident, including—

''(A) a description of the allegation;

''(B) whether or not the review is completed;

''(C) whether or not the incident was subject to an investigation by a law enforcement organization or entity, and the status and results of such investigation; and

''(D) whether or not action was taken in response to the incident, and the nature of the action, if any, so taken.''

PROVISION OF INFORMATION ON NATURALIZATION THROUGH MILITARY SERVICE

Pub. L. 115–91, div. A, title V, § 530, Dec. 12, 2017, 131 Stat. 1383, provided that: ''The Secretary of Defense

shall ensure that members of the Army, Navy, Air Force, and Marine Corps who are aliens lawfully admitted to the United States for permanent residence are informed of the availability of naturalization through service in the Armed Forces under section 328 of the Immigration and Nationality Act (8 U.S.C. 1439) and the process by which to pursue naturalization. The Secretary shall ensure that resources are available to assist qualified members of the Armed Forces to navigate the application and naturalization process.''

SUPPORT FOR PROGRAMS PROVIDING CAMP EXPERIENCE FOR CHILDREN OF MILITARY FAMILIES

Pub. L. 114–328, div. A, title V, § 577, Dec. 23, 2016, 130 Stat. 2143, provided that:

''(a) AUTHORITY TO PROVIDE SUPPORT.—The Secretary of Defense may provide financial or non-monetary support to qualified nonprofit organizations in order to assist such organizations in carrying out programs to support the attendance at a camp, or camp-like setting, of children of military families who have experienced the death of a family member or other loved one or who have another family member living with a substance use disorder or post-traumatic stress disorder.

''(b) APPLICATION FOR SUPPORT.—

''(1) IN GENERAL.—Each organization seeking support pursuant to subsection (a) shall submit to the Secretary of Defense an application therefor containing such information as the Secretary shall specify for purposes of this section.

''(2) CONTENTS.—Each application submitted under paragraph (1) shall include the following:

''(A) A description of the program for which support is being sought, including the location of the setting or settings under the program, the duration of such setting or settings, any local partners participating in or contributing to the program, and the ratio of counselors, trained volunteers, or both to children at such setting or settings.

''(B) An estimate of the number of children of military families to be supported using the support sought.

''(C) A description of the type of activities that will be conducted using the support sought, including the manner in which activities are particularly supportive to children of military families described in subsection (a).

''(D) A description of the outreach conducted or to be conducted by the organization to military families regarding the program.

''(c) USE OF SUPPORT.—Support provided by the Secretary of Defense to an organization pursuant to subsection (a) shall be used by the organization to support attendance at a camp, or camp-like setting, of children of military families described in subsection (a).''

ESTABLISHMENT OF ONLINE RESOURCES TO PROVIDE INFORMATION ABOUT BENEFITS AND SERVICES AVAILABLE TO MEMBERS OF THE ARMED FORCES AND THEIR FAMILIES

Pub. L. 111–84, div. A, title V, § 561, Oct. 28, 2009, 123 Stat. 2302, provided that:

''(a) INTERNET OUTREACH WEBSITE.—

''(1) ESTABLISHMENT.—The Secretary of Defense shall establish an Internet website or other online resources for the purpose of providing comprehensive information to members of the Armed Forces and their families about the benefits and services described in subsection (b) that are available to members of the Armed Forces and their families.

''(2) CONTACT INFORMATION.—The online resources shall provide contact information, both telephone and e-mail, that a member of the Armed Forces or dependent of the member can use to get specific information about benefits and services that may be available for the member or dependent.

''(b) COVERED BENEFITS AND SERVICES.—The information provided through the online resources established pursuant to subsection (a) shall include information regarding the following benefits and services that may be available to a member of the Armed Forces and dependents of the member:

''(1) Financial compensation, including financial counseling.

''(2) Health care and life insurance programs.

''(3) Death benefits.

''(4) Entitlements and survivor benefits for dependents, including offsets in the receipt of such benefits under the Survivor Benefit Plan and in connection with the receipt of dependency and indemnity compensation.

''(5) Educational assistance benefits, including limitations on and the transferability of such assistance.

''(6) Housing assistance benefits, including counseling.

''(7) Relocation planning and preparation.

''(8) Maintaining military records.

''(9) Legal assistance.

''(10) Quality of life programs.

''(11) Family and community programs.

''(12) Employment assistance upon separation or retirement of a member or for the spouse of the member.

''(13) Reserve component service for members completing service in a regular component.

''(14) Disability benefits, including offsets in connection with the receipt of such benefits.

''(15) Benefits and services provided under laws administered by the Secretary of Veterans Affairs.

''(16) Such other benefits and services as the Secretary of Defense considers appropriate.

''(c) DISSEMINATION OF INFORMATION ON AVAILABILITY ON ONLINE RESOURCES.—The Secretaries of the military departments shall use public service announcements, publications, and such other announcements through the general media as the Secretaries consider appropriate to inform members of the Armed Forces and their families and the general public about the information available through the online resources established pursuant to subsection (a).

''(d) IMPLEMENTATION REPORT.—Not later than one year after the date of the enactment of this Act [Oct. 28, 2009], the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the quality and scope of the online resources established pursuant to subsection (a) to provide information about benefits and services for members of the Armed Forces and their families.''

EDUCATION AND TREATMENT SERVICES FOR MILITARY DEPENDENT CHILDREN WITH AUTISM

Pub. L. 110–181, div. A, title V, § 587, Jan. 28, 2008, 122 Stat. 133, which related to comprehensive assessment of the availability of Federal, State, and local education and treatment services for military dependent children with autism, was repealed by Pub. L. 111–84, div. A, title V, § 563(a)(3), Oct. 28, 2009, 123 Stat. 2307.

JOINT FAMILY SUPPORT ASSISTANCE PROGRAM

Pub. L. 109–364, div. A, title VI, § 675, Oct. 17, 2006, 120 Stat. 2273, as amended by Pub. L. 111–383, div. A, title V, § 584, Jan. 7, 2011, 124 Stat. 4228, provided that:

''(a) PROGRAM REQUIRED.—The Secretary of Defense shall carry out a joint family support assistance program for the purpose of providing to families of members of the Armed Forces the following types of assistance:

''(1) Financial and material assistance.

''(2) Mobile support services.

''(3) Sponsorship of volunteers and family support professionals for the delivery of support services.

''(4) Coordination of family assistance programs and activities provided by Military OneSource, Military Family Life Consultants, counselors, the Department of Defense, other Federal agencies, State and local agencies, and non-profit entities.

''(5) Facilitation of discussion on military family assistance programs, activities, and initiatives between and among the organizations, agencies, and entities referred to in paragraph (4).

''(6) Such other assistance that the Secretary considers appropriate.

''(b) LOCATIONS.—The Secretary of Defense shall carry out the program in not less than six areas of the United States selected by the Secretary. At least three of the areas selected for the program shall be areas that are geographically isolated from military installations.

''(c) RESOURCES AND VOLUNTEERS.—The Secretary of Defense shall provide personnel and other resources of the Department of Defense necessary for the implementation and operation of the program and may accept and utilize the services of non-Government volunteers and non-profit entities under the program.

''(d) PROCEDURES.—The Secretary of Defense shall establish procedures for the operation of the program and for the provision of assistance to families of members of the Armed Forces under the program.

''(e) RELATION TO FAMILY SUPPORT CENTERS.—The program is not intended to operate in lieu of existing family support centers, but is instead intended to augment the activities of the family support centers.

''(f) IMPLEMENTATION PLAN.—

''(1) PLAN REQUIRED.—Not later than 90 days after the date on which funds are first obligated for the program, the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report setting forth a plan for the implementation of the program.

''(2) ELEMENTS.—The plan required under paragraph (1) shall include the following:

''(A) A description of the actions taken to select the areas in which the program will be conducted.

''(B) A description of the procedures established under subsection (d).

''(C) A review of proposed actions to be taken under the program to improve coordination of family assistance program and activities between and among the Department of Defense, other Federal agencies, State and local agencies, and non-profit entities.

''(g) REPORT.—

''(1) REPORT REQUIRED.—Not later than 270 days after the date on which funds are first obligated for the program, the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the program.

''(2) ELEMENTS.—The report shall include the following:

''(A) A description of the program, including the areas in which the program is conducted, the procedures established under subsection (d) for operation of the program, and the assistance provided through the program for families of members of the Armed Forces.

''(B) An assessment of the effectiveness of the program in providing assistance to families of members of the Armed Forces.

''(C) An assessment of the advisability of extending the program or making it permanent.

''(h) DURATION.—The authority to carry out the program shall expire on December 31, 2012.''

RECOGNITION OF MILITARY FAMILIES

Pub. L. 108–136, div. A, title V, § 581, Nov. 24, 2003, 117 Stat. 1489, provided that:

''(a) FINDINGS.—Congress makes the following findings:

''(1) The families of both active and reserve component members of the Armed Forces, through their sacrifices and their dedication to the Nation and its values, contribute immeasurably to the readiness of the Armed Forces.

''(2) Without the continued support of military families, the Nation's ability to sustain a high quality all-volunteer military force would be undermined.

''(3) In the perilous and challenging times of the global war on terrorism, with hundreds of thousands of active and reserve component military personnel deployed overseas in places of combat and other imminent danger, military families are making extraordinary sacrifices and will be required to do so for the foreseeable future.

''(4) Beginning in 1997, military family service and support centers have responded to the encouragement and support of private, non-profit organizations to recognize and honor the American military family during the Thanksgiving period each November.

''(b) MILITARY FAMILY RECOGNITION.—In view of the findings in subsection (a), Congress determines that it is appropriate that special measures be taken annually to recognize and honor the American military family.

''(c) DEPARTMENT OF DEFENSE PROGRAMS AND ACTIVITIES.—The Secretary of Defense shall—

''(1) implement and sustain programs, including appropriate ceremonies and activities, to recognize and honor the contributions and sacrifices of the American military family, including families of both active and reserve component military personnel;

''(2) focus the celebration of the American military family during a specific period of each year to give full and proper recognition to those families; and

''(3) seek the assistance and support of appropriate civilian organizations, associations, and other entities (A) in carrying out the annual celebration of the American military family, and (B) in sustaining other, longer-term efforts to support the American military family.''

SUPPORTING NEW AMERICAN SERVICE MEMBERS, VETERANS, AND THEIR FAMILIES

Memorandum of President of the United States, Dec. 22, 2016, 81 F.R. 95849, provided:

Memorandum for the Heads of Executive Departments and Agencies

My Administration has maintained a steadfast commitment to honor and serve the brave men and women who have served this country. Like all service members and veterans, foreign-born residents and naturalized citizens serving in the United States Armed Forces are shining examples of the American dream. These brave new Americans have taken the extraordinary step of answering the call to duty, to support and defend our country. Some have made the ultimate sacrifice for our country before becoming American citizens.

New American service members are undoubtedly a critical element of our national security. They risk their lives all over the world in the name of the United States, securing shipping lanes, protecting bases and embassies, providing medical assistance, and conducting humanitarian missions. Tens of thousands of lawful permanent residents and naturalized U.S. citizens currently serve in our Armed Forces. Many more are veterans who have served previously in the Armed Forces. Additionally, many U.S.-born service members have immediate family members who were born abroad.

Over the past decade, the Departments of Defense, Veterans Affairs, and Homeland Security have strengthened partnerships to provide services and opportunities to service members, veterans, and their families interacting with the U.S. immigration system. Indeed, since 2001, more than 110,000 service members have been naturalized and many were assisted in the process through partnerships such as the ''Naturalization at Basic Training Initiative,'' which gives non-citizen enlistees the opportunity to naturalize during basic training. Despite these efforts, service members, veterans, and their families still face barriers to accessing immigration benefits and other assistance for which they may be eligible.

In light of the sacrifices that all of these individuals make and have made for our country, it is critical that executive departments and agencies (agencies) enhance

collaboration and streamline processes to ensure that they receive the services and benefits they need and have earned. Therefore, by the authority vested in me as President by the Constitution and the laws of the United States of America, and to address the issues facing new American service members, veterans, and their families, I hereby direct as follows:

SECTION 1. *Interagency Working Group to Support New American Service Members, Veterans, and their Families*. There is established a Working Group to Support New American Service Members, Veterans, and their Families (Working Group) to coordinate records, benefits, and immigration and citizenship services for these service members, veterans, and their families. The Working Group shall convene its first meeting within 10 days of the date of this memorandum.

(a) The Working Group shall consist of representatives from:

(i) the Department of State;

(ii) the Department of Defense;

(iii) the Department of Justice;

(iv) the Department of Labor;

(v) the Department of Veterans Affairs; and

(vi) the Department of Homeland Security.

(b) The Working Group shall consult with additional agencies or offices, as appropriate.

SEC. 2. *Mission and Functions of the Working Group*. (a) The Working Group shall coordinate agency efforts to support service members, veterans, and their families who are navigating the immigration, veterans, and military systems. Such efforts shall include:

(i) coordinating the sharing of military records and other information relevant to immigration or veterans benefits;

(ii) enhancing awareness of naturalization and immigration benefits to provide timely assistance and information to service members, veterans, and their families;

(iii) coordinating and facilitating the process of adjudicating immigration applications and petitions; and

(iv) other efforts that further support service members, veterans, and their families.

(b) Within 30 days of the date of this memorandum, the Working Group shall develop an initial 3-year strategic action plan that details broad approaches to be taken to enhance access to services and benefits. This initial plan shall be supplemented by a more detailed plan, to be published within 120 days of the date of this memorandum that discusses the steps to be taken in greater detail. The Working Group shall also report periodically on its accomplishments and ongoing initiatives.

SEC. 3. *Outreach*. Consistent with the objectives of this memorandum and applicable law, the Working Group shall seek the views of representatives of private and nonprofit organizations; veterans and military service organizations; State, tribal, and local government agencies; elected officials; and other interested persons to inform the Working Group's plans.

SEC. 4. *General Provisions*. (a) The heads of agencies shall assist and provide information to the Working Group, consistent with applicable law, as may be necessary to carry out the functions of the Working Group. Each agency and office shall bear its own expense for carrying out activities related to the Working Group.

(b) Nothing in this memorandum shall be construed to impair or otherwise affect the authority granted by law to an executive department or an agency, or the head thereof, or the status of that department or agency within the Federal Government.

(c) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(d) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(e) The Secretary of Homeland Security is hereby authorized and directed to publish this memorandum in the Federal Register.

BARACK OBAMA.

§ 1781a. Department of Defense Military Family Readiness Council

(a) IN GENERAL.—There is in the Department of Defense the Department of Defense Military Family Readiness Council (in this section referred to as the ''Council'').

(b) MEMBERS.—(1) The Council shall consist of the following members:

(A) The Under Secretary of Defense for Personnel and Readiness, who shall serve as chair of the Council and who may designate a representative to chair the council in the Under Secretary's absence.

(B) The following persons, who shall be appointed or designated by the Secretary of Defense:

(i) One representative of each of the Army, Navy, Air Force, Marine Corps, and Space Force, each of whom shall be a member or civilian employee of the armed force to be represented.

(ii) One representative, who shall be a member or civilian employee of the National Guard Bureau, to represent both the Army National Guard and the Air National Guard.

(iii) One spouse or parent of a member of each of the Army, Navy, Air Force, Marine Corps, and Space Force, two of whom shall be the spouse or parent of an active component member and two of whom shall be the spouse or parent of a reserve component member.

(C) Three individuals appointed by the Secretary of Defense from among representatives of military family organizations, including military family organizations of families of members of the regular components and of families of members of the reserve components.

(D) The senior enlisted advisor from each of the Army, Navy, Air Force, Marine Corps, and Space Force, except that two of these members may instead be selected from among the spouses of the senior enlisted advisors.

(E) The Director of the Office of Military Family Readiness Policy.

(2)(A) The term on the Council of the members appointed or designated under subparagraph (B) of paragraph (1) shall be two years and may be renewed by the Secretary of Defense.

(B) The term on the Council of the members appointed under subparagraph (C) of paragraph (1) shall be two years.

(c) MEETINGS.—The Council shall meet not less often than twice each year.

(d) DUTIES.—The duties of the Council shall include the following:

(1) To review and make recommendations to the Secretary of Defense regarding the policy and plans required under section 1781b of this title.

(2) To monitor requirements for the support of military family readiness programs and activities of the Department of Defense.

(3) To evaluate and assess the effectiveness of the military family readiness programs and activities of the Department of Defense.

(4) To make recommendations to the Secretary of Defense to improve collaboration, awareness, and promotion of accurate and timely military family readiness information and support services by policy makers, service providers, and targeted beneficiaries.

(e) ANNUAL REPORTS.—(1) Not later than July 1 each year, the Council shall submit to the Secretary of Defense and the congressional defense committees a report on military family readiness.

(2) Each report under this subsection shall include the following:

(A) An assessment of the adequacy and effectiveness of the military family readiness programs and activities of the Department of Defense during the preceding fiscal year in meeting the needs and requirements of military families.

(B) Recommendations on actions to be taken to improve the capability of the military family readiness programs and activities of the Department of Defense to meet the needs and requirements of military families, including actions relating to the allocation of funding and other resources to and among such programs and activities.

(Added Pub. L. 110–181, div. A, title V, § 581(a), Jan. 28, 2008, 122 Stat. 120; amended Pub. L. 111–84, div. A, title V, § 562, Oct. 28, 2009, 123 Stat. 2303; Pub. L. 111–383, div. A, title V, § 581, Jan. 7, 2011, 124 Stat. 4226; Pub. L. 112–81, div. A, title V, § 574, Dec. 31, 2011, 125 Stat. 1427; Pub. L. 114–328, div. A, title IX, § 933(a)(2), Dec. 23, 2016, 130 Stat. 2364; Pub. L. 115–232, div. A, title V, § 571(a)–(c), Aug. 13, 2018, 132 Stat. 1777, 1778; Pub. L. 116–283, div. A, title IX, § 924(b)(29), Jan. 1, 2021, 134 Stat. 3825.)

AMENDMENTS

2021—Subsec. (b)(1). Pub. L. 116–283 substituted ‘‘Air Force, Marine Corps, and Space Force’’ for ‘‘Marine Corps, and Air Force’’ wherever appearing.

2018—Subsec. (b)(1)(B)(i). Pub. L. 115–232, § 571(a)(1)(A), substituted ‘‘a member or civilian employee of the armed force to be represented’’ for ‘‘a member of the armed force to be represented’’.

Subsec. (b)(1)(B)(ii). Pub. L. 115–232, § 571(a)(1)(B), added cl. (ii) and struck out former cl. (ii) which read as follows: ‘‘One representative of the Army National Guard or the Air National Guard, who may be a member of the National Guard.’’

Subsec. (b)(2)(A). Pub. L. 115–232, § 571(a)(2)(A), struck out ‘‘clauses (i) and (iii) of’’ before ‘‘subparagraph (B)’’ and ‘‘Representation on the Council under clause (ii) of that subparagraph shall rotate between the Army National Guard and Air National Guard every two years on a calendar year basis.’’ after ‘‘Secretary of Defense.’’

Subsec. (b)(2)(B). Pub. L. 115–232, § 571(a)(2)(B), substituted ‘‘two years’’ for ‘‘three years’’.

Subsec. (d)(2). Pub. L. 115–232, § 571(b)(1), substituted ‘‘military family readiness programs and activities of the Department of Defense’’ for ‘‘military family readiness by the Department of Defense’’.

Subsec. (d)(4). Pub. L. 115–232, § 571(b)(2), added par. (4).

Subsec. (e)(1). Pub. L. 115–232, § 571(c), substituted ‘‘July 1’’ for ‘‘February 1’’.

2016—Subsec. (b)(1)(E). Pub. L. 114–328 substituted ‘‘Office of Military Family Readiness Policy’’ for ‘‘Office of Community Support for Military Families with Special Needs’’.

2011—Subsec. (b). Pub. L. 112–81 amended subsec. (b) generally. Prior to amendment, subsec. (b) related to members.

Subsec. (b)(1)(B). Pub. L. 111–383, § 581(d)(1)(A), struck out ‘‘, who shall be appointed by the Secretary of Defense’’ after ‘‘Air Force’’.

Subsec. (b)(1)(C). Pub. L. 111–383, § 581(d)(1)(B), struck out ‘‘, who shall be appointed by the Secretary of Defense’’ after ‘‘Air National Guard’’ in cl. (i) and after ‘‘Air Force Reserve’’ in cl. (ii).

Subsec. (b)(1)(D). Pub. L. 111–383, § 581(d)(1)(C), struck out ‘‘by the Secretary of Defense’’ after ‘‘appointed’’.

Subsec. (b)(1)(E). Pub. L. 111–383, § 581(a)(1)(B), added subpar. (E). Former subpar. (E) redesignated (F).

Subsec. (b)(1)(F). Pub. L. 111–383, § 581(c), amended subpar. (F) generally. Prior to amendment, subpar. (F) read as follows: ‘‘In addition to the representatives appointed under subparagraphs (B) and (C), the senior enlisted advisors of the Army, Navy, Marine Corps, and Air Force, or the spouse of a senior enlisted member from each of the Army, Navy, Marine Corps, and Air Force.’’

Pub. L. 111–383, § 581(a)(1)(A), redesignated subpar. (E) as (F).

Subsec. (b)(1)(G). Pub. L. 111–383, § 581(b), added subpar. (G).

Subsec. (b)(2). Pub. L. 111–383, § 581(a)(2), substituted ‘‘subparagraphs (C), (D), and (E)’’ for ‘‘subparagraphs (C) and (D)’’.

Subsec. (b)(3). Pub. L. 111–383, § 581(d)(2), added par. (3).

2009—Subsec. (b)(1)(C) to (E). Pub. L. 111–84, § 562(a), added subpar. (C), redesignated former subpars. (C) and (D) as (D) and (E), respectively, and substituted ‘‘subparagraphs (B) and (C)’’ for ‘‘subparagraph (B)’’ in subpar. (E).

Subsec. (b)(2). Pub. L. 111–84, § 562(b), substituted ‘‘subparagraphs (C) and (D) of paragraph (1)’’ for ‘‘paragraph (1)(C)’’ and inserted at end ‘‘Representation on the Council required by clause (i) of paragraph (1)(C) shall rotate between the Army National Guard and Air National Guard. Representation required by clause (ii) of such paragraph shall rotate among the reserve components specified in such clause.’’

EFFECTIVE DATE OF 2018 AMENDMENT

Pub. L. 115–232, div. A, title V, § 571(d), Aug. 13, 2018, 132 Stat. 1778, provided that:

‘‘(1) IN GENERAL.—The amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [Aug. 13, 2018].

‘‘(2) APPLICABILITY OF MEMBERSHIP AND TERM AMENDMENTS.—The amendments made by subsection (a) shall apply to members of the Department of Defense Military Family Readiness Council appointed after the date of the enactment of this Act.’’

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective Dec. 31, 2021, of provisions in subsec. (e) of this section requiring submittal of annual report to Congress, see section 1061 of Pub. L. 114–328, set out as a note under section 111 of this title.

§ 1781b. Department of Defense policy and plans for military family readiness

(a) POLICY AND PLANS REQUIRED.—The Secretary of Defense shall develop a policy and plans for the Department of Defense for the support of military family readiness.

(b) PURPOSES.—The purposes of the policy and plans required under subsection (a) are as follows:

(1) To ensure that the military family readiness programs and activities of the Department of Defense are comprehensive, effective, and properly supported.

(2) To ensure that support is continuously available to military families in peacetime and in war, as well as during periods of force structure change and relocation of military units.

(3) To ensure that the military family readiness programs and activities of the Department of Defense are available to all military families, including military families of members of the regular components and military families of members of the reserve components.

(4) To make military family readiness an explicit element of applicable Department of Defense plans, programs, and budgeting activities, and that achievement of military family readiness is expressed through Department-wide goals that are identifiable and measurable.

(5) To ensure that the military family readiness programs and activities of the Department of Defense undergo continuous evaluation in order to ensure that resources are allocated and expended for such programs and activities to achieve Department-wide family readiness goals.

(c) ELEMENTS OF POLICY.—The policy required under subsection (a) shall include the following elements:

(1) A list of military family readiness programs and activities.

(2) Department of Defense-wide goals for military family support, including joint programs, both for military families of members of the regular components and military families of members of the reserve components.

(3) Policies on access to military family support programs and activities based on military family populations served and geographical location.

(4) Metrics to measure the performance and effectiveness of the military family readiness programs and activities of the Department of Defense.

(5) A summary, by fiscal year, of the allocation of funds (including appropriated funds and nonappropriated funds) for major categories of military family readiness programs and activities of the Department of Defense, set forth for each of the military departments and for the Office of the Secretary of Defense.

(Added Pub. L. 110–181, div. A, title V, § 581(a), Jan. 28, 2008, 122 Stat. 121; amended Pub. L. 111–383, div. A, title X, § 1075(b)(23), Jan. 7, 2011, 124 Stat. 4370; Pub. L. 115–91, div. A, title X, § 1051(a)(9), Dec. 12, 2017, 131 Stat. 1560.)

AMENDMENTS

2017—Subsec. (d). Pub. L. 115–91 struck out subsec. (d). Text read as follows: ''Not later than March 1 each year, the Secretary of Defense shall submit to the congressional defense committees a report on the plans required under subsection (a) for the five-fiscal year period beginning with the fiscal year in which the report is submitted. Each report shall include the plans covered by the report and an assessment of the discharge by the Department of Defense of the previous plans submitted under this section.''

2011—Subsec. (d). Pub. L. 111–383 substituted ''March 1 each year'' for ''March 1, 2008, and each year thereafter''.

CONSIDERATION OF CERTAIN MILITARY FAMILY READINESS ISSUES IN MAKING BASING DECISIONS ASSOCIATED WITH CERTAIN MILITARY UNITS AND MAJOR HEADQUARTERS

Pub. L. 116–283, div. B, title XXVIII, § 2883, Jan. 1, 2021, 134 Stat. 4370, provided that:

''(a) TAKING INTO CONSIDERATION MILITARY FAMILY READINESS ISSUES.—In determining whether to proceed with any basing decision associated with a covered military unit or major headquarters in the United States after the date of the enactment of this Act [Jan. 1, 2021], the Secretary of the military department concerned shall take into account, among such other factors as that Secretary considers appropriate, the military family readiness considerations specified in this section, including those military family readiness considerations specified pursuant to subsection (e).

''(b) INTERSTATE PORTABILITY OF LICENSURE AND CERTIFICATION CREDENTIALS.—With regard to the State in which an installation subject to a basing decision covered by subsection (a) is or will be located, the Secretary of the military department concerned shall take into account the extent to which the State—

''(1) has entered into reciprocity agreements to recognize and accept professional and occupational licensure and certification credentials granted by or in other States; or

''(2) allows for the transfer of such licenses and certifications granted by or in other States.

''(c) HOUSING.—With regard to the military housing area in which an installation subject to a basing decision covered by subsection (a) is or will be located, the Secretary of the military department concerned shall take into account the extent to which housing (including military family housing) that meets Department of Defense requirements is available and accessible to members of the Armed Forces through the private sector in such military housing area.

''(d) HEALTH CARE.—With regard to the community in which an installation subject to a basing decision covered by subsection (a) is or will be located, the Secretary of the military department concerned shall take into account the extent to which primary healthcare and specialty healthcare is available and accessible to dependents, including dependents with disabilities, of members of the Armed Forces through the private sector in such local community.

''(e) OTHER SPECIFIED CONSIDERATIONS.—The Secretary of the military department concerned shall take into account such other considerations in connection with military family readiness as the Secretary of Defense shall specify for purposes of compliance with this section.

''(f) SAVINGS CLAUSE.—Nothing in this section shall be construed as requiring the Secretary of a military department to make a basing decision covered by subsection (a) that the Secretary determines would diminish military readiness or impede military mission for the purpose of military family readiness.

''(g) ANALYTICAL FRAMEWORK.—The Secretary of the military department concerned shall take into account the considerations specified in this section, among such other factors as the Secretary considers appropriate, in determining whether to proceed with a basing decision covered by subsection (a) using an analytical framework developed by that Secretary that uses criteria based on—

''(1) quantitative data available within the Department of Defense; and

''(2) such reliable quantitative data from sources outside the Department as the Secretary considers appropriate.

''(h) BASING DECISION SCORECARD.—

''(1) SCORECARD REQUIRED.—The Secretary of the military department concerned shall establish a scorecard for military installations under the jurisdiction of such Secretary, and for States and localities in which such installations are or may be located, to facilitate taking into account the considerations specified in this section whenever that Secretary makes a basing decision covered by subsection (a).

''(2) UPDATE.—The Secretary of the military department concerned shall update the scorecard established by that Secretary under this subsection not less frequently than once each year in order to keep

the information in such scorecard as current as is practicable.

''(3) AVAILABILITY TO PUBLIC.—A current version of each scorecard established under this subsection shall be available to the public through an Internet website of the military department concerned that is accessible to the public.

''(i) BRIEFINGS.—Not later than April 1 of each of 2021, 2022, and 2023, the Secretary of Defense shall brief the Committees on Armed Services of the Senate and the House of Representatives on actions taken pursuant to this section, including a description and assessment of the effect of the taking into account of the considerations specified in this section on particular basing decisions in the United States during the one-year period ending on the date of the briefing.

''(j) DEFINITIONS.—In this section:

''(1) The term 'covered military unit' means a unit of the Armed Forces whose initial assignment to a military installation or relocation from a military installation to a different military installation requires the preparation of an environmental impact statement in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

''(2) The term 'major headquarters' means the headquarters of a unit of the Armed Forces or command that is the appropriate command of a general officer or flag officer.''

§ 1781c. Office of Special Needs

(a) ESTABLISHMENT.—There is in the Office of Military Family Readiness Policy the Office of Special Needs (in this section referred to as the ''Office'').

(b) PURPOSE.—The purpose of the Office is to standardize, enhance, and improve Department of Defense support around the world for military families with special needs (whether medical or educational needs) through the development of appropriate policies, enhancement and dissemination of appropriate information throughout the Department of Defense, support for such families in obtaining referrals for services and in obtaining service, and oversight of the activities of the military departments in support of such families.

(c) RESPONSIBILITIES.—The Office shall have the responsibilities as follows:

(1) To develop and implement a comprehensive and standard policy on support for military families with special needs as required by subsection (d).

(2) To establish and oversee the programs required by subsection (e).

(3) To identify gaps in services available through the Department of Defense for military families with special needs.

(4) To develop plans to address gaps identified under paragraph (3) through appropriate mechanisms, such as enhancing resources and training and ensuring the provision of special assistance to military families with special needs and military parents of individuals with special needs (including through the provision of training and seminars to members of the armed forces).

(5) To monitor the programs of the military departments for the assignment of members of the armed forces who are members of military families with special needs, and the programs for the support of such military families, and to advise the Secretary of Defense on the adequacy of such programs in conjunction with the preparation of future-years defense programs and other budgeting and planning activities of the Department of Defense.

(6) To monitor the availability and accessibility of programs provided by other Federal, State, local, and non-governmental agencies to military families with special needs.

(7) To conduct periodic reviews of best practices in the United States in the provision of medical and educational services for children with special needs.

(8) To carry out such other matters with respect to the programs and activities of the Department of Defense regarding military families with special needs as the Under Secretary of Defense for Personnel and Readiness shall specify.

(d) POLICY.—(1) The Office shall develop, and regularly update, a uniform policy for the Department of Defense regarding military families with special needs. The policy shall apply with respect to members of the armed forces without regard to their location, whether within or outside the continental United States.

(2) The policy developed under this subsection shall include elements regarding the following:

(A) The assignment of members of the armed forces who are members of military families with special needs.

(B) Support for military families with special needs.

(3) In addressing the assignment of members of the armed forces under paragraph (2)(A), the policy developed under this subsection shall, in a manner consistent with the needs of the armed forces and responsive to the career development of members of the armed forces on active duty, provide for such members each of the following:

(A) Assignment to locations where care and support for family members with special needs are available.

(B) Stabilization of assignment for a minimum of 4 years.

(C) Ability to request a second review of the approved assignment within or outside the continental United States if the member believes the location is inappropriate for the member's family and would cause undue hardship.

(D) Protection from having a medical recommendation for an approved assignment overridden by the commanding officer.

(E) Ability to request continuation of location when there is a documented substantial risk of transferring medical care or educational services to a new provider or school at the specific time of permanent change of station.

(4) In addressing support for military families under paragraph (2)(B), the policy developed under this subsection shall provide the following:

(A) Procedures to identify members of the armed forces who are members of military families with special needs.

(B) Mechanisms to ensure timely and accurate evaluations of members of such families who have special needs.

(C) Procedures to facilitate the enrollment of such members of the armed forces and their families in programs of the military depart-

ment for the support of military families with special needs.

(D) Procedures to ensure the coordination of Department of Defense health care programs and support programs for military families with special needs, and the coordination of such programs with other Federal, State, local, and non-governmental health care programs and support programs intended to serve such families.

(E) Requirements for resources (including staffing) to ensure the availability through the Department of Defense of appropriate numbers of case managers to provide individualized support for military families with special needs.

(F) Requirements regarding the development and continuous updating by an appropriate office of an individualized services plan (whether medical, educational, or both) for each military family with special needs.

(G) Requirements for record keeping, reporting, and continuous monitoring of available resources and family needs under individualized services support plans for military families with special needs, including the establishment and maintenance of a central or various regional databases for such purposes.

(H) Procedures for the development of an individualized services plan for military family members with special needs who have requested family support services and have a completed family needs assessment.

(I) Requirements to prohibit disenrollment from the Exceptional Family Member Program unless there is new supporting medical or educational information that indicates the original condition is no longer present, and to track disenrollment data in each armed force.

(e) PROGRAMS.—(1) The Office shall establish, maintain, and oversee a program to provide information and referral services on special needs matters to military families with special needs on a continuous basis regardless of the location of the member's assignment. The program shall provide for timely access by members of such military families to individual case managers and counselors on matters relating to special needs.

(2) The Office shall establish, maintain, and oversee a program of outreach on special needs matters for military families with special needs. The program shall—

(A) assist military families in identifying whether or not they have a member with special needs; and

(B) provide military families with special needs with information on the services, support, and assistance available through the Department of Defense regarding such members with special needs, including information on enrollment in programs of the military departments for such services, support, and assistance.

(3)(A) The Office shall provide support to the Secretary of each military department in the establishment and sustainment by such Secretary of a program for the support of military families with special needs under the jurisdiction of such Secretary. Each program shall be consistent with the policy developed by the Office under subsection (d).

(B) Each program under this paragraph shall provide for appropriate numbers of case managers for the development and oversight of individualized services plans for educational and medical support for military families with special needs.

(C) Services under a program under this paragraph may be provided by contract or other arrangements with non-Department of Defense entities qualified to provide such services.

(f) RESOURCES.—The Secretary of Defense shall assign to the Office such resources, including personnel, as the Secretary considers necessary for the discharge of the responsibilities of the Office, including a sufficient number of members of the armed forces to ensure appropriate representation by the military departments in the personnel of the Office.

(g) REPORTS.—(1) Not later than April 30 each year, the Secretary of Defense shall submit to the congressional defense committees a report on the activities of the Office.

(2) Each report under this subsection shall include the following:

(A) A description of any gaps in services available through the Department of Defense for military families with special needs that were identified under subsection (c)(3).

(B) A description of the actions being taken, or planned, to address such gaps, including any plans developed under subsection (c)(4).

(C) With respect to the Extended Care Health Option program under section 1079(d) of this title—

(i) the utilization rates of services under such program by eligible dependents (as such term is defined in such section) during the prior year;

(ii) a description of gaps in such services, as ascertained by the Secretary from information provided by families of eligible dependents;

(iii) an assessment of factors that prevent knowledge of and access to such program, including a discussion of actions the Secretary may take to address these factors; and

(iv) an assessment of the average wait time for an eligible dependent enrolled in the program to access alternative health coverage for a qualifying condition (as such term is defined in such section), including a discussion of any adverse health outcomes associated with such wait.

(D) Such recommendations for legislative action as the Secretary considers appropriate to provide for the continuous improvement of support and services for military families with special needs.

(h) MILITARY FAMILY WITH SPECIAL NEEDS.—For purposes of this section, a military family with special needs is any military family with one or more members who has a medical or educational special need (as defined by the Secretary in regulations for purposes of this section), including a condition covered by the Extended Health Care Option Program under section 1079f of this title.

(Added Pub. L. 111–84, div. A, title V, § 563(a)(1), Oct. 28, 2009, 123 Stat. 2304; amended Pub. L. 111–383, div. A, title V, § 582(a), (b), title X, § 1075(b)(24), Jan. 7, 2011, 124 Stat. 4226, 4227, 4370; Pub. L. 114–328, div. A, title IX, § 933(b)(1)–(5)(A), Dec. 23, 2016, 130 Stat. 2364, 2365; Pub. L. 116–283, div. A, title V, § 582(a), title VII, § 704(c), Jan. 1, 2021, 134 Stat. 3651, 3688.)

AMENDMENTS

2021—Subsec. (b). Pub. L. 116–283, § 582(a)(1), substituted ''standardize, enhance,'' for ''enhance''.

Subsec. (c)(1). Pub. L. 116–283, § 582(a)(2), inserted ''and standard'' after ''comprehensive''.

Subsec. (d)(1). Pub. L. 116–283, § 582(a)(3)(A), substituted ''regularly update'' for ''update from time to time''.

Subsec. (d)(3)(C) to (E). Pub. L. 116–283, § 582(a)(3)(B), added subpars. (C) to (E).

Subsec. (d)(4)(F). Pub. L. 116–283, § 582(a)(3)(C)(i), substituted ''by an appropriate office of an individualized services plan (whether medical, educational, or both)'' for ''of an individualized services plan (medical and educational)''.

Subsec. (d)(4)(H), (I). Pub. L. 116–283, § 582(a)(3)(C)(ii), which directed adding subpars. (H) and (I) after subpar. (F), was executed by adding them after subpar. (G) to reflect the probable intent of Congress.

Subsec. (g)(2)(C), (D). Pub. L. 116–283, § 704(c), added subpar. (C) and redesignated former subpar. (C) as (D).

2016—Pub. L. 114–328, § 933(b)(5)(A), substituted ''Office of Special Needs'' for ''Office of Community Support for Military Families With Special Needs'' in section catchline.

Subsec. (a). Pub. L. 114–328, § 933(b)(2), substituted ''Office of Military Family Readiness Policy'' for ''Office of the Under Secretary of Defense for Personnel and Readiness''.

Pub. L. 114–328, § 933(b)(1), which directed substitution of ''Office of Special Needs'' for ''Office of Community Support for Military Families with Special Needs'', was executed by making the substitution for ''Office of Community Support for Military Families With Special Needs'' to reflect the probable intent of Congress.

Subsec. (c). Pub. L. 114–328, § 933(b)(3), (4)(A)–(C), redesignated subsec. (d) as (c), substituted ''subsection (d)'' for ''subsection (e)'' in par. (1) and ''subsection (e)'' for ''subsection (f)'' in par. (2), and struck out former subsec. (c). Prior to amendment, text read as follows:

''(1) The head of the Office shall be the Director of the Office of Community Support for Military Families With Special Needs, who shall be a member of the Senior Executive Service or a general officer or flag officer.

''(2) In the discharge of the responsibilities of the Office, the Director shall be subject to the supervision, direction, and control of the Under Secretary of Defense for Personnel and Readiness.''

Subsec. (d). Pub. L. 114–328, § 933(b)(4)(A), redesignated subsec. (e) as (d). Former subsec. (d) redesignated (c).

Subsec. (e). Pub. L. 114–328, § 933(b)(4)(A), (B), redesignated subsec. (f) as (e) and substituted ''subsection (d)'' for ''subsection (e)'' in par. (3)(A). Former subsec. (e) redesignated (d).

Subsec. (f). Pub. L. 114–328, § 933(b)(4)(A), redesignated subsec. (g) as (f). Former subsec. (f) redesignated (e).

Subsec. (g). Pub. L. 114–328, § 933(b)(4)(A), (D), redesignated subsec. (h) as (g) and substituted ''subsection (c)(3)'' for ''subsection (d)(3)'' in par. (2)(A) and ''subsection (c)(4)'' for ''subsection (d)(4)'' in par. (2)(B). Former subsec. (g) redesignated (f).

Subsecs. (h), (i). Pub. L. 114–328, § 933(b)(4)(A), redesignated subsec. (i) as (h). Former subsec. (h) redesignated (g).

2011—Subsec. (c). Pub. L. 111–383, § 582(a), amended subsec. (c) generally. Prior to amendment, text read as follows:

''(1) The head of the Office shall be the Director of the Office of Community Support for Military Families With Special Needs, who shall be appointed by the Secretary of Defense from among civilian employees of the Department of Defense who are members of the Senior Executive Service or members of the armed forces in a general or flag grade.

''(2) The Director shall be subject to the supervision, direction, and control of the Under Secretary of Defense for Personnel and Readiness in the discharge of the responsibilities of the Office, and shall report directly to the Under Secretary regarding the discharge of such responsibilities.''

Subsec. (d)(7), (8). Pub. L. 111–383, § 582(b), added par. (7) and redesignated former par. (7) as (8).

Subsec. (h)(1). Pub. L. 111–383, § 1075(b)(24), substituted ''April 30 each year'' for ''180 days after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2010, and annually thereafter''.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective Dec. 31, 2021, of provisions in subsec. (g) of this section requiring submittal of annual report to Congress, see section 1061 of Pub. L. 114–328, set out as a note under section 111 of this title.

IMPROVEMENTS TO EXCEPTIONAL FAMILY MEMBER PROGRAM

Pub. L. 116–283, div. A, title V, § 582(b)–(e), Jan. 1, 2021, 134 Stat. 3652, 3653, provided that:

''(b) STANDARDIZATION.—Not later than six months after the date of the enactment of this Act [Jan. 1, 2021], the Secretary of Defense, in coordination with the Secretaries of the military departments, shall, to the extent practicable, standardize the Exceptional Family Member Program (in this section referred to as the 'EFMP') across the military departments. The EFMP, standardized under this subsection, shall include the following:

''(1) Processes for the identification and enrollment of dependents of covered members with special needs.

''(2) A process for the permanent change of orders for covered members, to ensure seamless continuity of services at the new permanent duty station.

''(3) If an order for assignment is declined for a military family with special needs, the member will receive a reason for the decline of that order.

''(4) A review process for installations to ensure that health care furnished through the TRICARE program, special needs education programs, and installation-based family support programs are available to military families enrolled in the EFMP.

''(5) A standardized respite care benefit across the covered Armed Forces, including the number of hours available under such benefit to military families enrolled in the EFMP.

''(6) Performance metrics for measuring, across the Department and with respect to each military department, the following:

''(A) Assignment coordination and support for military families with special needs, including a systematic process for evaluating each military department's program for the support of military families with special needs.

''(B) The reassignment of military families with special needs, including how often members request reassignments, for what reasons, and from what military installations.

''(C) The level of satisfaction of military families with special needs with the family and medical support they are provided.

''(7) A requirement that the Secretary of each military department provide legal services by an attorney, trained in education law, at each military installation—

''(A) the Secretary determines is a primary receiving installation for military families with special needs; and

''(B) in a State that the Secretary determines has historically not supported families enrolled in the EFMP.

''(8) The option for a family enrolled in the EFMP to continue to receive all services under that program and a family separation allowance, if otherwise authorized, if—

''(A) the covered member receives a new permanent duty station; and

''(B) the covered member and family elect for the family not to relocate with the covered member.

''(9) The solicitation of feedback from military families with special needs, and discussions of challenges and best practices of the EFMP, using existing family advisory organizations.

''(c) CASE MANAGEMENT.—The Secretary of Defense, in coordination with the Secretaries of the military departments, shall develop an EFMP case management model, including the following:

''(1) A single EFMP office, located at the headquarters of each covered Armed Force, to oversee implementation of the EFMP and coordinate health care services, permanent change of station order processing, and educational support services for that covered Armed Force.

''(2) An EFMP office at each military installation with case managers to assist each family of a covered member in the development of a plan that addresses the areas specified in subsection (b)(1).

''(d) REPORT.—Not later than 180 days after the date of the enactment of the Act, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the implementation of this section, including any recommendations of the Secretary regarding additional legislation.

''(e) DEFINITIONS.—In this section:

''(1) The term 'covered Armed Force' means an Armed Force under the jurisdiction of the Secretary of a military department.

''(2) The term 'covered member' means a member—

''(A) of a covered Armed Force; and

''(B) with a dependent with special needs.''

MATTERS RELATING TO EDUCATION FOR MILITARY DEPENDENT STUDENTS WITH SPECIAL NEEDS

Pub. L. 116–283, div. A, title V, § 589G, Jan. 1, 2021, 134 Stat. 3663, provided that:

''(a) INFORMATION ON SPECIAL EDUCATION DISPUTES.—

''(1) IN GENERAL.—Each Secretary of a military department shall collect and maintain information on special education disputes filed by members of the Armed Forces under the jurisdiction of such Secretary.

''(2) INFORMATION.—The information collected and maintained under this subsection shall include the following:

''(A) The number of special education disputes filed.

''(B) The outcome or disposition of the disputes.

''(3) SOURCE OF INFORMATION.—The information collected and maintained pursuant to this subsection shall be derived from the following:

''(A) Records and reports of case managers and navigators under the Exceptional Family Member Program of the Department of Defense.

''(B) Reports submitted by members of the Armed Forces to officials at military installations or other relevant military officials.

''(C) Such other sources as the Secretary of the military department concerned considers appropriate.

''(4) ANNUAL REPORTS.—On an annual basis, each Secretary of a military department shall submit to the Office of Special Needs of the Department of Defense a report on the information collected by such Secretary under this subsection during the preceding year.

''(b) GAO STUDY AND REPORT.—

''(1) IN GENERAL.—The Comptroller General of the United States shall conduct a study on the following:

''(A) The manner in which local educational agencies with schools that serve military dependent students use the following:

''(i) Funds made available for impact aid for children with severe disabilities under section 363 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (Public Law 106–398; 20 U.S.C. 7703a).

''(ii) Funds made available for assistance to schools with a significant number of military dependent students under subsection (a) of section 572 of the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109–163; 20 U.S.C. 7703b).

''(C) The efficacy of attorneys and other legal support for military families in special education disputes.

''(E) Whether, and to what extent, policies and guidance for School Liaison Officers are standardized between the Office of Special Needs of the Department of Defense and the military departments, and the efficacy of such policies and guidance.

''(F) The improvements made to family support programs of the Office of Special Needs, and of each military department, in light of the recommendations of the Comptroller General in the report titled 'DOD Should Improve Its Oversight of the Exceptional Family Member Program' (GAO–18–348).

''(2) RECOMMENDATIONS.—As part of the study under paragraph (1), the Comptroller General shall develop recommendations on the following:

''(A) Improvements to the ability of the Department of Defense to monitor and enforce the compliance of local educational agencies with requirements for the provision of a free appropriate public education to military dependent students with special needs.

''(B) Improvements to the policies of the Office of Special Needs, and of each military department, with respect to the standardization and efficacy of policies and programs for military dependent students with special needs.

''(3) BRIEFING AND REPORT.—Not later than March 31, 2021, the Comptroller General of the United States shall provide to the Committees on Armed Services of the Senate and the House of Representatives a briefing and a report [on] the results of the study conducted under paragraph (1).

''(c) DEFINITIONS.—In this section:

''(1) The term 'free appropriate public education' has the meaning given that term in section 602 of the Individuals with Disabilities Education Act (20 U.S.C. 1401).

''(2) The term 'local educational agency' has the meaning given that term in section 8101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801).

''(3) The term 'special education dispute' means a complaint filed regarding the education provided to a child with a disability (as defined in section 602 of the Individuals with Disabilities Education Act (20 U.S.C. 1401)), including a complaint filed in accordance with section 615 or 639 of such Act (20 U.S.C. 1415, 1439).''

FOUNDATION FOR SUPPORT OF MILITARY FAMILIES WITH SPECIAL NEEDS

Pub. L. 111–84, div. A, title V, § 563(b), Oct. 28, 2009, 123 Stat. 2307, provided that:

''(1) ESTABLISHMENT AUTHORIZED.—The Secretary of Defense may establish a foundation for the provision of assistance to the Department of Defense in providing support to military families with special needs.

''(2) PURPOSES.—The purposes of the foundation shall be to assist the Department of Defense as follows:

''(A) In conducting outreach to identify military families with special needs.

''(B) In developing programs to support and provide services to military families with special needs.

''(C) In developing educational curricula for the training of professional and paraprofessional personnel providing support and services on special needs to military families with special needs.

''(D) In conducting research on the following:

''(i) The unique factors associated with a military career (including deployments of members of the Armed Forces) and their effects on families and individuals with special needs.

''(ii) Evidence-based therapeutic and medical services for members of military families with special needs, including research in conjunction with non-Department of Defense entities such as the National Institutes of Health.

''(E) In providing vocational education and training for adolescent and adult members of military families with special needs.

''(F) In carrying out other initiatives to contribute to improved support for military families with special needs.

''(3) DEPARTMENT OF DEFENSE FUNDING.—The Secretary may provide the foundation such financial support as the Secretary considers appropriate, including the provision to the foundation of appropriated funds and non-appropriated funds available to the Department of Defense.

''(4) ANNUAL REPORT.—The foundation shall submit to the Secretary, and to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives], each year a report on its activities under this subsection during the preceding year. Each report shall include, for the year covered by such report, the following:

''(A) A description of the programs and activities of the foundation.

''(B) The budget of the foundation, including the sources of any funds provided to the foundation.

''(5) MILITARY FAMILY WITH SPECIAL NEEDS DEFINED.—In this subsection, the term 'military family with special needs' has the meaning given such term in section 1781c(i) of title 10, United States Code (as added by subsection (a)).''

MILITARY DEPARTMENT SUPPORT FOR LOCAL CENTERS TO ASSIST MILITARY CHILDREN WITH SPECIAL NEEDS

Pub. L. 111–84, div. A, title V, § 563(c), as added Pub. L. 111–383, div. A, title V, § 582(c)(2), Jan. 7, 2011, 124 Stat. 4227, provided that: ''The Secretary of a military department may establish or support centers on or in the vicinity of military installations under the jurisdiction of such Secretary to coordinate and provide medical and educational services for children with special needs of members of the Armed Forces who are assigned to such installations.''

ADVISORY PANEL ON COMMUNITY SUPPORT FOR MILITARY FAMILIES WITH SPECIAL NEEDS

Pub. L. 111–84, div. A, title V, § 563(d), as added Pub. L. 111–383, div. A, title V, § 582(c)(2), Jan. 7, 2011, 124 Stat. 4227, provided that:

''(1) ESTABLISHMENT.—Not later than 90 days after the date of the enactment of this subsection [Jan. 7, 2011], the Secretary of Defense shall establish an advisory panel on community support for military families with special needs.

''(2) MEMBERS.—The advisory panel shall consist of seven individuals who are a member of a military family with special needs. The Secretary of Defense shall appoint the members of the advisory panel.

''(3) DUTIES.—The advisory panel shall—

''(A) provide informed advice to the Director of the Office of Community Support for Military Families With Special Needs [now Office of Special Needs] on the implementation of the policy required by subsection (e) [now (d)] of section 1781c of title 10, United States Code, and on the discharge of the programs required by subsection (f) [now (e)] of such section;

''(B) assess and provide information to the Director on services and support for children with special needs that is available from other departments and agencies of the Federal Government and from State and local governments; and

''(C) otherwise advise and assist the Director in the discharge of the duties of the Office of Community Support for Military Families With Special Needs in such manner as the Secretary of Defense and the Director jointly determine appropriate.

''(4) MEETINGS.—The Director shall meet with the advisory panel at such times, and with such frequency, as the Director considers appropriate. The Director shall meet with the panel at least once each year. The Director may meet with the panel through teleconferencing or by other electronic means.''

§ 1782. Surveys of military families

(a) AUTHORITY.—The Secretary of Defense, in order to determine the effectiveness of Federal programs relating to military families and the need for new programs, may conduct surveys of—

(1) members of the armed forces who are on active duty, in an active status, or retired;

(2) family members of such members; and

(3) survivors of deceased retired members and of members who died while on active duty.

(b) RESPONSES TO BE VOLUNTARY.—Responses to surveys conducted under this section shall be voluntary.

(c) FEDERAL RECORDKEEPING REQUIREMENTS.—With respect to a survey authorized under subsection (a) that includes a person referred to in that subsection who is not an employee of the United States or is not otherwise considered an employee of the United States for the purposes of section 3502(3)(A)(i) of title 44, the person shall be considered as being an employee of the United States for the purposes of that section.

(d) SURVEY REQUIRED FOR FISCAL YEAR 2010.—Notwithstanding subsection (a), during fiscal year 2010, the Secretary of Defense shall conduct a survey otherwise authorized under such subsection. Thereafter, additional surveys may be conducted not less often than once every three fiscal years.

(Added Pub. L. 104–106, div. A, title V, § 568(a)(1), Feb. 10, 1996, 110 Stat. 330; amended Pub. L. 107–107, div. A, title V, § 572, Dec. 28, 2001, 115 Stat. 1122; Pub. L. 110–181, div. A, title V, § 581(c), Jan. 28, 2008, 122 Stat. 122.)

AMENDMENTS

2008—Subsec. (d). Pub. L. 110–181 added subsec. (d).

2001—Subsec. (a). Pub. L. 107–107, § 572(a), reenacted heading without change and amended text generally. Text read as follows: ''The Secretary of Defense may conduct surveys of members of the armed forces on active duty or in an active status, members of the families of such members, and retired members of the armed forces to determine the effectiveness of Federal programs relating to military families and the need for new programs.''

Subsec. (c). Pub. L. 107–107, § 572(b), reenacted heading without change and amended text generally. Text read as follows: ''With respect to such surveys, family members of members of the armed forces and reserve and retired members of the armed forces shall be considered to be employees of the United States for purposes of section 3502(3)(A)(i) of title 44.''

§ 1783. Family members serving on advisory committees

A committee within the Department of Defense which advises or assists the Department in the performance of any function which affects members of military families and which includes members of military families in its mem-

bership shall not be considered an advisory committee under section 3(2) of the Federal Advisory Committee Act (5 U.S.C. App.) solely because of such membership.

(Added Pub. L. 104–106, div. A, title V, §568(a)(1), Feb. 10, 1996, 110 Stat. 330.)

REFERENCES IN TEXT

Section 3(2) of the Federal Advisory Committee Act, referred to in text, is section 3(2) of Pub. L. 92–463, which is set out in the Appendix to Title 5, Government Organization and Employees.

§1784. Employment opportunities for military spouses

(a) AUTHORITY.—The President shall order such measures as the President considers necessary to increase employment opportunities for spouses of members of the armed forces. Such measures may include—

(1) excepting, pursuant to section 3302 of title 5, from the competitive service positions in the Department of Defense located outside of the United States to provide employment opportunities for qualified spouses of members of the armed forces in the same geographical area as the permanent duty station of the members; and

(2) providing preference in hiring for positions in nonappropriated fund activities to qualified spouses of members of the armed forces stationed in the same geographical area as the nonappropriated fund activity for positions in wage grade UA–8 and below and equivalent positions and for positions paid at hourly rates.

(b) REGULATIONS.—The Secretary of Defense shall prescribe regulations—

(1) to implement such measures as the President orders under subsection (a);

(2) to provide preference to qualified spouses of members of the armed forces in hiring for any civilian position in the Department of Defense if the spouse is among persons determined to be best qualified for the position and if the position is located in the same geographical area as the permanent duty station of the member;

(3) to ensure that notice of any vacant position in the Department of Defense is provided in a manner reasonably designed to reach spouses of members of the armed forces whose permanent duty stations are in the same geographic area as the area in which the position is located; and

(4) to ensure that the spouse of a member of the armed forces who applies for a vacant position in the Department of Defense shall, to the extent practicable, be considered for any such position located in the same geographic area as the permanent duty station of the member.

(c) STATUS OF PREFERENCE ELIGIBLES.—Nothing in this section shall be construed to provide a spouse of a member of the armed forces with preference in hiring over an individual who is a preference eligible.

(d) SPACE-AVAILABLE USE OF FACILITIES FOR SPOUSE TRAINING PURPOSES.—Under regulations prescribed by the Secretary of Defense, the Secretary of a military department may make available to a non-Department of Defense entity space in non-excess facilities controlled by that Secretary for the purpose of the non-Department of Defense entity providing employment-related training for military spouses.

(e) EMPLOYMENT BY OTHER FEDERAL AGENCIES.—The Secretary of Defense shall work with the Director of the Office of Personnel Management and the heads of other Federal departments and agencies to expand and facilitate the use of existing Federal programs and resources in support of military spouse employment.

(f) PRIVATE-SECTOR EMPLOYMENT.—The Secretary of Defense—

(1) shall seek to develop partnerships with firms in the private sector to enhance employment opportunities for spouses of members of the armed forces and to provide for improved job portability for such spouses, especially in the case of the spouse of a member of the armed forces accompanying the member to a new geographical area because of a change of permanent duty station of the member; and

(2) shall work with the United States Chamber of Commerce and other appropriate private-sector entities to facilitate the formation of such partnerships.

(g) EMPLOYMENT WITH DOD CONTRACTORS.—The Secretary of Defense shall examine and seek ways for incorporating hiring preferences for qualified spouses of members of the armed forces into contracts between the Department of Defense and private-sector entities.

(h) IMPROVEMENT OF OCCUPATIONAL LICENSE PORTABILITY THROUGH INTERSTATE COMPACTS.—

(1) IN GENERAL.—The Secretary of Defense shall seek to enter into a cooperative agreement with the Council of State Governments to assist with funding of the development of interstate compacts on licensed occupations in order to alleviate the burden associated with relicensing in such an occupation by spouse of a members of the armed forces in connection with a permanent change of duty station of members to another State.

(2) LIMITATION ON ASSISTANCE PER COMPACT.—The amount provided under paragraph (1) as assistance for the development of any particular interstate compact may not exceed $1,000,000.

(3) LIMITATION ON TOTAL AMOUNT OF ASSISTANCE.—The total amount of assistance provided under paragraph (1) in any fiscal year may not exceed $4,000,000.

(4) ANNUAL REPORT.—Not later than February 28 each year, the Secretary shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on interstate compacts described in paragraph (1) developed through assistance provided under that paragraph. Each report shall set forth the following:

(A) Any interstate compact developed during the preceding calendar year, including the occupational licenses covered by such compact and the States agreeing to enter into such compact.

(B) Any interstate compact developed during a prior calendar year into which one or more additional States agreed to enter during the preceding calendar year.

(5) EXPIRATION.—The authority to enter into a cooperative agreement under paragraph (1), and to provide assistance described in that paragraph pursuant to such cooperative agreement, expires on September 30, 2024.

(Added Pub. L. 104–106, div. A, title V, § 568(a)(1), Feb. 10, 1996, 110 Stat. 330; amended Pub. L. 107–107, div. A, title V, § 571(c), Dec. 28, 2001, 115 Stat. 1121; Pub. L. 116–92, div. A, title V, § 575, Dec. 20, 2019, 133 Stat. 1405; Pub. L. 116–283, div. A, title X, § 1081(a)(33), Jan. 1, 2021, 134 Stat. 3872.)

AMENDMENTS

2021—Subsec. (h)(5). Pub. L. 116–283 substituted ''expires'' for ''expire''.

2019—Subsec. (h). Pub. L. 116–92 added subsec. (h).

2001—Subsecs. (d) to (g). Pub. L. 107–107 added subsecs. (d) to (g).

IMPROVEMENTS TO PARTNER CRITERIA OF THE MILITARY SPOUSE EMPLOYMENT PARTNERSHIP PROGRAM

Pub. L. 116–283, div. A, title V, § 587, Jan. 1, 2021, 134 Stat. 3655, provided that:

''(a) EVALUATION; UPDATES.—Not later than 180 days after the date of the enactment of this Act [Jan. 1, 2021], the Secretary of Defense shall evaluate the partner criteria set forth in the Military Spouse Employment Partnership Program (in this section referred to as the 'MSEP Program') and implement updates that the Secretary determines will improve such criteria without diminishing the need for partners to exhibit sound business practices, broad diversity efforts, and relative financial stability. Such updates may expand the number of the following entities that meet such criteria:

''(1) Institutions of primary, secondary, and higher education.

''(2) Software and coding companies.

''(3) Local small businesses.

''(4) Companies that employ telework.

''(b) NEW PARTNERSHIPS.—Upon completion of the evaluation under subsection (a), the Secretary, in consultation with the Department of Labor, shall seek to enter into agreements with entities described in paragraphs (1) through (4) of subsection (a) that are located near military installations (as that term is defined in section 2687 of title 10, United States Code).

''(c) REVIEW; REPORT.—Not later than one year after implementation under subsection (a), the Secretary shall review updates under subsection (a) and publish a report regarding such review on a publicly-accessible website of the Department of Defense. Such report shall include the following:

''(1) The results of the evaluation of the MSEP Program, including the implementation plan for any change to partnership criteria.

''(2) Data on the new partnerships undertaken as a result of the evaluation, including the type, size, and location of the partner entities.

''(3) Data on the utility of the MSEP Program, including—

''(A) the number of military spouses who have applied through the MSEP Program;

''(B) the average length of time a job is available before being filled or removed from the MSEP Program portal; and

''(C) the average number of new jobs posted on the MSEP Program portal each month.''

PILOT PROGRAM ON PUBLIC-PRIVATE PARTNERSHIPS FOR TELEWORK FACILITIES FOR MILITARY SPOUSES ON MILITARY INSTALLATIONS OUTSIDE THE UNITED STATES

Pub. L. 115–91, div. A, title V, § 560, Dec. 12, 2017, 131 Stat. 1406, provided that:

''(a) IN GENERAL.—Commencing not later than one year after the date of the enactment of this Act [Dec. 12, 2017], the Secretary of Defense shall carry out a pilot program to assess the feasability and advisability of providing telework facilities for military spouses on military installations outside the United States. The Secretary shall consult with the host nation or nations concerned in carrying out the pilot program.

''(b) NUMBER OF INSTALLATIONS.—The Secretary shall carry out the pilot program at not less than two military installations outside the United States selected by the Secretary for purposes of the pilot program.

''(c) DURATION.—The duration of the pilot program shall be a period selected by the Secretary, but not more than three years.

''(d) ELEMENTS.—The pilot program shall include the following elements:

''(1) The pilot program shall be conducted as one or more public-private partnerships between the Department of Defense and a private corporation or partnership of private corporations.

''(2) The corporation or corporations participating in the pilot program shall contribute to the carrying out of the pilot program an amount equal to the amount committed by the Secretary to the pilot program at the time of its commencement.

''(3) The Secretary shall enter into one or more memoranda of understanding with the corporation or corporations participating in the pilot program for purposes of the pilot program, including the amounts to be contributed by such corporation or corporations pursuant to paragraph (2).

''(4) The telework undertaken by military spouses under the pilot program may only be for United States companies.

''(5) The pilot program shall permit military spouses to provide administrative, informational technology, professional, and other necessary support to companies through telework from Department installations outside the United States.

''(e) FUNDING.—Of the amount authorized to be appropriated for fiscal year 2018 by section 421 [131 Stat. 1370] and available for military personnel as specified in the funding table in section 4401 [131 Stat. 1996], up to $1,000,000 may be available to carry out the pilot program, including entry into memoranda of understanding pursuant to subsection (d)(3) and payment by the Secretary of the amount committed by the Secretary to the pilot program pursuant to subsection (d)(2).''

IMPROVED DATA COLLECTION RELATED TO EFFORTS TO REDUCE UNDEREMPLOYMENT OF SPOUSES OF MEMBERS OF THE ARMED FORCES AND CLOSE THE WAGE GAP BETWEEN MILITARY SPOUSES AND THEIR CIVILIAN COUNTERPARTS

Pub. L. 113–291, div. A, title V, § 568, Dec. 19, 2014, 128 Stat. 3386, provided that:

''(a) DATA COLLECTION EFFORTS.—In addition to monitoring the number of spouses of members of the Armed Forces who obtain employment through military spouse employment programs, the Secretary of Defense shall collect data to evaluate the effectiveness of military spouse employment programs—

''(1) in addressing the underemployment of military spouses;

''(2) in matching military spouses' education and experience to available employment positions; and

''(3) in closing the wage gap between military spouses and their civilian counterparts.

''(b) REPORT REQUIRED.—Not later than one year after the date of the enactment of this Act [Dec. 19, 2014], the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report evaluating the progress of military spouse employment programs—

''(1) in reducing military spouse unemployment and underemployment; and

''(2) in reducing the wage gap between military spouses and their civilian counterparts.

''(c) MILITARY SPOUSE EMPLOYMENT PROGRAMS DEFINED.—In this section, the term 'military spouse em-

ployment programs' means the Military Spouse Employment Partnership (MSEP).''

PILOT PROGRAM TO SECURE INTERNSHIPS FOR MILITARY SPOUSES WITH FEDERAL AGENCIES

Pub. L. 111–84, div. A, title V, § 564, Oct. 28, 2009, 123 Stat. 2308, provided that:

''(a) COST-REIMBURSEMENT AGREEMENTS WITH FEDERAL AGENCIES.—The Secretary of Defense may enter into an agreement with the head of an executive department or agency that has an established internship program to reimburse the department or agency for authorized costs associated with the first year of employment of an eligible military spouse who is selected to participate in the internship program of the department or agency.

''(b) ELIGIBLE MILITARY SPOUSES.—

''(1) ELIGIBILITY.—Except as provided in paragraph (2), any person who is married to a member of the Armed Forces on active duty is eligible for selection to participate in an internship program under a reimbursement agreement entered into under subsection (a).

''(2) EXCLUSIONS.—Reimbursement may not be provided with respect to the following persons:

''(A) A person who is legally separated from a member of the Armed Forces under court order or statute of any State, the District of Columbia, or possession of the United States when the person begins the internship.

''(B) A person who is also a member of the Armed Forces on active duty.

''(C) A person who is a retired member of the Armed Forces.

''(c) FUNDING SOURCE.—Amounts authorized to be appropriated for operation and maintenance, for Defense-wide activities, shall be available to carry out this section.

''(d) DEFINITIONS.—In this section:

''(1) The term 'authorized costs' includes the costs of the salary, benefits and allowances, and training for an eligible military spouse during the first year of the participation of the military spouse in an internship program pursuant to an agreement under subsection (a).

''(2) The term 'internship' means a professional, analytical, or administrative position in the Federal Government that operates under a developmental program leading to career advancement.

''(e) TERMINATION OF AGREEMENT AUTHORITY.—No agreement may be entered into under subsection (a) after September 30, 2011. Authorized costs incurred after that date may be reimbursed under an agreement entered into before that date in the case of eligible military spouses who begin their internship by that date.

''(f) REPORTING REQUIREMENT.—Not later than January 1, 2012, the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report that provides information on how many eligible military spouses received internships pursuant to agreements entered into under subsection (a) and the types of internship positions they occupied. The report shall specify the number of interns who subsequently obtained permanent employment with the department or agency administering the internship program or with another department or agency. The Secretary shall include a recommendation regarding whether, given the investment of Department of Defense funds, the authority to enter into agreements should be extended, modified, or terminated.''

CONTINUATION OF DELEGATION OF AUTHORITY WITH RESPECT TO HIRING PREFERENCE FOR QUALIFIED MILITARY SPOUSES

Pub. L. 104–106, div. A, title V, § 568(d), Feb. 10, 1996, 110 Stat. 336, provided that: ''The provisions of Executive Order No. 12568, issued October 2, 1986 (10 U.S.C. 113 note) [set out below], shall apply as if the reference in that Executive order to section 806(a)(2) of the Department of Defense Authorization Act of 1986 refers to section 1784 of title 10, United States Code, as added by subsection (a).''

EX. ORD. NO. 12568. EMPLOYMENT OPPORTUNITIES FOR MILITARY SPOUSES AT NONAPPROPRIATED FUND ACTIVITIES

Ex. Ord. No. 12568, Oct. 2, 1986, 51 F.R. 35497, provided:

By the authority vested in me as President by the laws of the United States of America, including section 301 of Title 3 of the United States Code, it is ordered that the Secretary of Defense and, as designated by him for this purpose, any of the Secretaries, Under Secretaries, and Assistant Secretaries of the Military Departments, are hereby empowered to exercise the discretionary authority granted to the President by subsection 806(a)(2) of the Department of Defense Authorization Act of 1986, Public Law No. 99–145 [formerly set out as a note under section 113 of this title, now deemed to refer to this section, see above], to give preference in hiring for positions in nonappropriated fund activities to qualified spouses of members of the Armed Forces stationed in the same geographical area as the nonappropriated fund activity for positions in wage grade UA–8 and below and equivalent positions and for positions paid at hourly rates.

RONALD REAGAN.

§ 1784a. Education and training opportunities for military spouses to expand employment and portable career opportunities

(a) PROGRAMS AND TUITION ASSISTANCE.—(1) The Secretary of Defense may establish programs to assist the spouse of a member of the armed forces described in subsection (b) in achieving—

(A) the education and training required for a degree or credential at an accredited college, university, or technical school in the United States that expands employment and portable career opportunities for the spouse; or

(B) the education prerequisites and professional licensure or credential required, by a government or government sanctioned licensing body, for an occupation that expands employment and portable career opportunities for the spouse.

(2) As an alternative to, or in addition to, establishing a program under this subsection, the Secretary may provide tuition assistance to an eligible spouse who is pursuing education, training, or a license or credential to expand the spouse's employment and portable career opportunities.

(b) ELIGIBLE SPOUSES.—(1) Assistance under this section is limited to a spouse of a member of the armed forces who is serving on active duty.

(2) A spouse who is eligible for a program under this section and begins a course of education or training for a degree, license, or credential described in subsection (a) may not become ineligible to complete such course of education or training solely because the member to whom the spouse is married is promoted to a higher grade.

(c) EXCEPTIONS.—Subsection (b) does not include—

(1) a person who is married to, but legally separated from, a member of the armed forces

under court order or statute of any State or territorial possession of the United States; and

(2) a spouse of a member of the armed forces who is also a member of the armed forces.

(d) PORTABLE CAREER OPPORTUNITIES DEFINED.—In this section, the term ''portable career'' includes an occupation identified by the Secretary of Defense, in consultation with the Secretary of Labor, as requiring education and training that results in a credential that is recognized nationwide by industry or specific businesses.

(e) REGULATIONS.—The Secretary of Defense shall prescribe regulations to govern the availability and use of assistance under this section. The Secretary shall ensure that programs established under this section do not result in inequitable treatment for spouses of members of the armed forces who are also members, since they are excluded from participation in the programs under subsection (c)(2).

(Added Pub. L. 110–417, [div. A], title V, § 582(a), Oct. 14, 2008, 122 Stat. 4473; amended Pub. L. 116–92, div. A, title V, § 576, Dec. 20, 2019, 133 Stat. 1406.)

AMENDMENTS

2019—Subsec. (b). Pub. L. 116–92 designated existing provisions as par. (1) and added par. (2).

FIRST EXPANSION OF THE MY CAREER ADVANCEMENT ACCOUNT PROGRAM FOR MILITARY SPOUSES

Pub. L. 116–92, div. A, title V, § 580F, Dec. 20, 2019, 133 Stat. 1410, as amended by Pub. L. 116–283, div. A, title V, § 586, Jan. 1, 2021, 134 Stat. 3655, provided that:

''(a) PROFESSIONAL LICENSE OR CERTIFICATION; ASSOCIATE'S DEGREE.—The Secretary of Defense shall modify the My Career Advancement Account program of the Department of Defense to ensure that military spouses participating in the program may receive financial assistance for the pursuit or maintenance (including continuing education courses) of a license, certification, or Associate's degree in any career field or occupation.

''(b) NATIONAL TESTING.—Financial assistance under subsection (a) may be applied to the costs of national tests that may earn a participating military spouse course credits required for a degree approved under the program (including the College Level Examination Program tests).''

IMPROVEMENT OF MY CAREER ADVANCEMENT ACCOUNT PROGRAM FOR MILITARY SPOUSES

Pub. L. 115–232, div. A, title V, § 574, Aug. 13, 2018, 132 Stat. 1780, provided that:

''(a) OUTREACH ON AVAILABILITY OF PROGRAM.—The Secretary of Defense shall take appropriate actions to ensure that military spouses who are eligible for participation in the My Career Advancement Account program of the Department of Defense are, to the extent practicable, made aware of the program.

''(b) COMPTROLLER GENERAL REPORT.—Not later than 180 days after the date of the enactment of this Act [Aug. 13, 2018], the Comptroller General of the United States shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report setting forth such recommendations as the Comptroller General considers appropriate regarding the following:

''(1) Mechanisms to increase awareness of the My Career Advancement Account program of the Department of Defense among military spouses who are eligible to participate in the program.

''(2) Mechanisms to increase participation in the My Career Advancement Account program among military spouses who are eligible to participate in the program.

''(c) TRAINING FOR INSTALLATION CAREER COUNSELORS ON PROGRAM.—The Secretaries of the military departments shall take appropriate actions to ensure that career counselors at military installations receive appropriate training and current information on eligibility for and use of benefits under the My Career Advancement Account program, including financial assistance to cover costs associated with professional recertification, portability of occupational licenses, professional credential exams, and other mechanisms in connection with the portability of professional licenses.''

§ 1785. Youth sponsorship program

(a) REQUIREMENT.—The Secretary of Defense shall require that there be at each military installation a youth sponsorship program to facilitate the integration of dependent children of members of the armed forces into new surroundings when moving to that military installation as a result of a parent's permanent change of station.

(b) DESCRIPTION OF PROGRAMS.—The program at each installation shall provide for involvement of dependent children of members presently stationed at the military installation and shall be directed primarily toward children in their preteen and teenage years.

(Added Pub. L. 104–106, div. A, title V, § 568(a)(1), Feb. 10, 1996, 110 Stat. 331.)

§ 1786. Dependent student travel within the United States

Funds available to the Department of Defense for the travel and transportation of dependent students of members of the armed forces stationed overseas may be obligated for transportation allowances for travel within or between the contiguous States.

(Added Pub. L. 104–106, div. A, title V, § 568(a)(1), Feb. 10, 1996, 110 Stat. 331.)

§ 1787. Reporting of child abuse

(a) IN GENERAL.—The Secretary of Defense shall request each State to provide for the reporting to the Secretary of any report the State receives of known or suspected instances of child abuse and neglect in which the person having care of the child is a member of the armed forces (or the spouse of the member).

(b) DEFINITION.—In this section, the term ''child abuse and neglect'' has the meaning provided in section 3 of the Child Abuse Prevention and Treatment Act (Public Law 93–247; 42 U.S.C. 5101 note).

(Added Pub. L. 104–106, div. A, title V, § 568(a)(1), Feb. 10, 1996, 110 Stat. 331; amended Pub. L. 112–239, div. A, title X, § 1076(d)(2), Jan. 2, 2013, 126 Stat. 1951.)

AMENDMENTS

2013—Subsec. (b). Pub. L. 112–239 substituted ''section 3'' for ''section 3(1)'' and ''Public Law 93–247; 42 U.S.C. 5101 note'' for ''42 U.S.C. 5102''.

IMPROVEMENTS TO DEPARTMENT OF DEFENSE TRACKING OF AND RESPONSE TO INCIDENTS OF CHILD ABUSE, ADULT CRIMES AGAINST CHILDREN, AND SERIOUS HARMFUL BEHAVIOR BETWEEN CHILDREN AND YOUTH INVOLVING MILITARY DEPENDENTS ON MILITARY INSTALLATIONS

Pub. L. 116–283, div. A, title V, § 549B, Jan. 1, 2021, 134 Stat. 3621, provided that:

''(a) IMPROVEMENTS REQUIRED.—

''(1) IN GENERAL.—The Secretary of Defense shall, consistent with recommendations of the Comptroller General of the United States in Government Accountability Office report GA0–20–110, take actions in accordance with this section in order to improve the efforts of the Department of Defense to track and respond to incidents of serious harm to children involving dependents of members of the Armed Forces that occur on military installations (in this section referred to as 'covered incidents of serious harm to children').

''(2) SERIOUS HARM TO CHILDREN DEFINED.—In this section, the term 'serious harm to children' includes the following:

''(A) Caregiver child abuse involving physical abuse, sexual abuse, emotional abuse, or neglect.

''(B) Non-caregiver adult crimes against children.

''(C) Serious harmful behaviors between children and youth of a physical, sexual, or emotional nature.

''(b) DATA COLLECTION AND TRACKING OF INCIDENTS OF HARM TO CHILDREN.—

''(1) NON-CAREGIVER ADULT CRIMES AGAINST CHILDREN.—The Secretary of Defense shall establish a process for the Department of Defense to track reported covered incidents of serious harm to children described in subsection (a)(2)(B) in which the alleged offender is an adult who is not a parent, guardian, or someone in a caregiving role at the time of the incident. The information so tracked shall comport with the information tracked by the Department in reported covered incidents of serious harm to children in which the alleged offender is a parent, guardian, or someone in a caregiving role at the time of the incident.

''(2) SERIOUS HARMFUL BEHAVIORS BETWEEN CHILDREN AND YOUTH.—

''(A) IN GENERAL.—The Secretary of Defense shall develop and maintain in the Department of Defense a centralized database to track incidents of serious harmful behaviors between children and youth described in subsection (a)(2)(C), including information across the Department on problematic sexual behavior in children and youth that are reported to an appropriate office, as determined by the Secretary, or investigated by a military criminal investigative organization, regardless of whether the alleged offender was another child, an adult, or someone in a non-caregiving role at the time of an incident.

''(B) ELEMENTS.—The centralized database required by this paragraph shall include, for each incident within the database, the following:

''(i) Information pertinent to a determination by the Department on whether such incident meets the definition of an incident of serious harmful behavior between children and youth.

''(ii) The results of any investigation of such incident by a military criminal investigative organization.

''(iii) Information on the ultimate disposition of the incident, if any, including any administrative or prosecutorial action taken.

''(C) ANNUAL REPORTS ON INFORMATION.—The information collected and maintained in the centralized database required by this paragraph shall be reported on an annual basis as part of the annual reports by the Secretary on child abuse and domestic abuse in the military as required by section 574 of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114–328; 130 Stat. 2141).

''(D) BRIEFINGS.—Not later than March 31, 2021, and every six months thereafter until the centralized database required by this paragraph is fully operational, the Secretary shall brief the Committees on Armed Services of the Senate and the House of Representatives on the status of the database.

''(3) DEPARTMENT OF DEFENSE REPORTING GUIDANCE.—The Secretary of Defense shall issue guidance regarding which incidents of serious harmful behavior between children and youth require reporting to the Family Advocacy Program, a military criminal investigative organization, or another component of the Department of Defense designated by the Secretary.

''(c) RESPONSE PROCEDURES FOR INCIDENTS OF SERIOUS HARM TO CHILDREN REPORTED TO FAMILY ADVOCACY PROGRAMS.—

''(1) INCIDENT DETERMINATION COMMITTEE MEMBERSHIP.—The Secretary of Defense shall ensure that the voting membership of each Incident Determination Committee, as defined in paragraph (7), on a military installation includes medical personnel with the knowledge and expertise required to determine whether a reported incident of serious harm to a child meets the criteria of the Department of Defense for treatment as child abuse.

''(2) SCREENING REPORTED INCIDENTS OF SERIOUS HARM TO CHILDREN.—

''(A) DEVELOPMENT OF STANDARDIZED PROCESS.—The Secretary of Defense shall develop a standardized process by which the Family Advocacy Programs of the military departments screen reported covered incidents of serious harm to children to determine whether to present such incident to an Incident Determination Committee.

''(B) MONITORING.—The Secretary of each military department shall develop a process to monitor the manner in which reported incidents of serious harm to children are screened by each installation under the jurisdiction of such Secretary in order to ensure that such screening complies with the standardized screening process developed pursuant to subparagraph (A).

''(3) REQUIRED NOTIFICATIONS.—

''(A) DOCUMENTATION.—The Secretary of each military department shall require that installation Family Advocacy Programs and military criminal investigative organizations under the jurisdiction of such Secretary document in their respective databases the date on which they notified the other of a reported incident of serious harm to a child.

''(B) OVERSIGHT.—The Secretary of each military department shall require that the Family Advocacy Program of such military department, and the headquarters of the military criminal investigative organizations of such military department, develop processes to oversee the documentation of notifications required by subparagraph (A) in order to ensure that such notifications occur on a consistent basis at installation level.

''(4) CERTIFIED PEDIATRIC SEXUAL ASSAULT FORENSIC EXAMINERS.—

''(A) GEOGRAPHIC REGIONS FOR EXAMINERS.—The Secretary of Defense shall specify geographic regions in which military families reside for purposes of the availability of and access to certified pediatric sexual assault examiners in such regions.

''(B) AVAILABILITY.—The Secretary shall ensure that—

''(i) one or more certified pediatric sexual assault examiners are located in each geographic region specified pursuant to subparagraph (A); and

''(ii) examiners so located serve as certified pediatric sexual assault examiners throughout such

region, without regard to Armed Force or installation.

''(5) REMOVAL OF CHILDREN FROM UNSAFE HOMES OVERSEAS.—The Secretary of Defense shall issue policy that clarifies and standardizes across the Armed Forces the circumstances under which a commander may remove a child from a potentially unsafe home at an installation overseas.

''(6) RESOURCE GUIDE FOR VICTIMS OF SERIOUS HARM TO CHILDREN.—

''(A) IN GENERAL.—The Secretary of each military department shall develop and maintain a comprehensive guide on resources available through the Department of Defense and such military department for military families under the jurisdiction of such Secretary who are victims of serious harm to children.

''(B) ELEMENTS.—Each guide under this paragraph shall include the following:

''(i) Information on the response processes of the Family Advocacy Programs and military criminal investigative organizations of the military department concerned.

''(ii) Lists of available support services, such as legal, medical, and victim advocacy services, through the Department of Defense and the military department concerned.

''(C) DISTRIBUTION.—A resource guide under this paragraph shall be presented to a military family by an installation Family Advocacy Program and military criminal investigative personnel when a covered incident of serious harm to a child involving a child in such family is reported.

''(D) AVAILABILITY ON INTERNET.—A current version of each resource guide under this paragraph shall be available to the public on an Internet website of the military department concerned available to the public.

''(7) INCIDENT DETERMINATION COMMITTEE DEFINED.—In this subsection, the term 'Incident Determination Committee' means a committee established at a military installation that is responsible for reviewing reported incidents of child abuse and determining whether such incidents constitute serious harm to children according to the applicable criteria of the Department of Defense.

''(d) COORDINATION AND COLLABORATION WITH NON-MILITARY RESOURCES.—

''(1) CONSULTATION WITH STATES.—The Secretary of Defense shall—

''(A) continue the outreach efforts of the Department of Defense to the States in order to ensure that States are notified when a member of the Armed Forces or a military dependent is involved in a reported incident of serious harm to a child off a military installation; and

''(B) increase efforts at information sharing between the Department and the States on such incidents of serious harm to children, including entry into memoranda of understanding with State child welfare agencies on information sharing in connection with such incidents.

''(2) COLLABORATION WITH NATIONAL CHILDREN'S ALLIANCE.—

''(A) MEMORANDA OF UNDERSTANDING.—The Secretary of each military department shall seek to enter into a memorandum of understanding with the National Children's Alliance, or similar organization, under which—

''(i) the children's advocacy center services of the Alliance are available to all installations in the continental United States under the jurisdiction of such Secretary; and

''(ii) members of the Armed Forces under the jurisdiction of such Secretary are made aware of the nature and availability of such services.

''(B) PARTICIPATION OF CERTAIN ENTITIES.—Each memorandum of understanding under this paragraph shall provide for the appropriate participation of the Family Advocacy Program and military criminal investigative organizations of the military department concerned in activities under such memorandum of understanding.

''(C) BRIEFING.—Not later than one year after the date of the enactment of this Act [Jan. 1, 2021], the Secretary of each military department shall provide to the Committees on Armed Services of the Senate and the House of Representatives a briefing on the status of the development of a memorandum of understanding with the National Children's Alliance under this paragraph, together with information on which installations, if any, under the jurisdiction of such Secretary have entered into a written agreement with a local children's advocacy center with respect to serious harm to children on such installations.''

REPORTING ON ALLEGATIONS OF CHILD ABUSE IN MILITARY FAMILIES AND HOMES

Pub. L. 114–328, div. A, title V, § 575(a), Dec. 23, 2016, 130 Stat. 2142, provided that:

''(a) REPORTS TO FAMILY ADVOCACY PROGRAM OFFICES.—

''(1) IN GENERAL.—The following information shall be reported immediately to the Family Advocacy Program office at the military installation to which the member of the Armed Forces concerned is assigned:

''(A) Credible information (which may include a reasonable belief), obtained by any individual within the chain of command of the member, that a child in the family or home of the member has suffered an incident of child abuse.

''(B) Information, learned by a member of the Armed Forces engaged in a profession or activity described in section 226(b) of the Victims of Child Abuse Act of 1990 (42 U.S.C. 13031(b)) [now 34 U.S.C. 20341(b)] for members of the Armed Forces and their dependents, that gives reason to suspect that a child in the family or home of the member has suffered an incident of child abuse.

''(2) REGULATIONS.—The Secretary of Defense and the Secretary of Homeland Security (with respect to the Coast Guard when it is not operating as a service in the Navy) shall jointly prescribe regulations to carry out this subsection.

''(3) CHILD ABUSE DEFINED.—In this subsection, the term 'child abuse' has the meaning given that term in section 226(c) of the Victims of Child Abuse Act of 1990 (42 U.S.C. 13031(c)) [now 34 U.S.C. 20341(c)].''

PLAN FOR IMPLEMENTATION OF ACCREDITATION REQUIREMENT

Pub. L. 104–106, div. A, title V, § 568(c), Feb. 10, 1996, 110 Stat. 335, directed Secretary of Defense to submit to Congress, not later than Apr. 1, 1997, a plan for carrying out the requirements of this section.

§ 1788. Additional family assistance

(a) AUTHORITY.—The Secretary of Defense may provide for the families of members of the armed forces serving on active duty, in addition to any other assistance available for such families, any assistance that the Secretary considers appropriate to ensure that the children of such members obtain needed child care, education, and other youth services.

(b) PRIMARY PURPOSE OF ASSISTANCE.—The assistance authorized by this section should be directed primarily toward providing needed family support, including child care, education, and other youth services, for children of members of the armed forces who are deployed, assigned to duty, or ordered to active duty in connection with a contingency operation.

(Added Pub. L. 107–314, div. A, title VI, § 652(a)(1), Dec. 2, 2002, 116 Stat. 2581; amended Pub. L.

111–383, div. A, title X, § 1075(b)(25), Jan. 7, 2011, 124 Stat. 4370.)

AMENDMENTS

2011—Subsec. (b). Pub. L. 111–383 substituted ''armed forces'' for ''Armed Forces''.

EFFECTIVE DATE

Pub. L. 107–314, div. A, title VI, § 652(b), Dec. 2, 2002, 116 Stat. 2581, provided that: ''Section 1788 of title 10, United States Code, as added by subsection (a), shall take effect on October 1, 2002.''

PILOT PROGRAM FOR MILITARY FAMILIES: PREVENTION OF CHILD ABUSE AND TRAINING ON SAFE CHILDCARE PRACTICES

Pub. L. 115–232, div. A, title V, § 578, Aug. 13, 2018, 132 Stat. 1783, provided that:

''(a) PILOT PROGRAM.—

''(1) PURPOSE.—In order to reduce child abuse and fatalities due to abuse or neglect in covered households, the Secretary of Defense, acting through the Defense Health Agency, shall carry out a pilot program to—

''(A) provide information regarding safe childcare practices to covered households;

''(B) identify and assess risk factors for child abuse in covered households; and

''(C) facilitate connections between covered households and community resources.

''(2) PROHIBITION ON DELEGATION.—The Secretary may not carry out the pilot program through the Family Advocacy Program.

''(3) LOCATIONS.—The Secretary shall carry out the pilot program at no fewer than five military installations that reflect a range of characteristics including the following:

''(A) Urban location.

''(B) Rural location.

''(C) Large population.

''(D) Small population.

''(E) High incidence of child abuse, neglect, or both.

''(F) Low incidence of child abuse, neglect, or both.

''(G) Presence of a hospital or clinic.

''(H) Lack of a hospital or clinic.

''(I) Joint installation.

''(J) Serving only one Armed Force.

''(4) TERM.—The pilot program shall terminate two years after implementation.

''(5) DESIGN.—The Secretary shall design the pilot program in consultation with military family groups to respond to the needs of covered households.

''(6) ELEMENTS.—The pilot program shall include the following elements:

''(A) Postnatal services, including screening to identify family needs and potential risk factors, and make referrals to appropriate community services with the use of the electronic data described in subparagraphs (F) and (G).

''(B) The Secretary shall identify at least three approaches to screening, identification, and referral under subparagraph (A) that empirically improve outcomes for parents and infants.

''(C) Services and resources designed for a covered household by the Secretary after considering the information gained from the screening and identification under subparagraph (A). Such services and resources may include or address the following:

''(i) General maternal and infant health exam.

''(ii) Safe sleeping environments.

''(iii) Feeding and bathing.

''(iv) Adequate child supervision.

''(v) Common hazards.

''(vi) Self-care.

''(vii) Postpartum depression, substance abuse, or domestic violence.

''(viii) Community violence.

''(ix) Skills for management of infant crying.

''(x) Other positive parenting skills and practices.

''(xi) The importance of participating in ongoing healthcare for an infant and for treating postpartum depression.

''(xii) Finding, qualifying for, and participating in available community resources with respect to infant care, childcare, parenting support, and home visits.

''(xiii) Planning for parenting or guardianship of children during deployment and reintegration.

''(xiv) Such other matters as the Secretary, in consultation with military families, considers appropriate.

''(D) Home visits to provide support, screening and referral services shall be offered as needed. The number of visits offered shall be guided by parental interest and family need, but in general is expected to be no more than three.

''(E) If a parent is deployed at the time of birth—

''(i) the first in-home visit under subparagraph (D) shall, to the extent practicable, incorporate both parents, in person with the local parent and by electronic means with the deployed parent; and

''(ii) another such home visit shall be offered upon the return of the parent from deployment, and shall include both parents, if determined in the best interest of the family.

''(F) An electronic directory of community resources available to covered households and pilot program personnel to help covered households access such resources.

''(G) An electronic integrated data system to—

''(i) help pilot program personnel refer eligible covered beneficiaries to services and resources under the pilot program;

''(ii) track usage of such services and resources and interactions between such personnel and covered households; and

''(iii) evaluate the implementation, outcomes, and effectiveness of the pilot program.

''(b) VOLUNTARY PARTICIPATION.—Participation in the pilot program shall be at the election of a covered beneficiary in an eligible household.

''(c) OUTREACH.—

''(1) IN GENERAL.—Not later than 30 days after implementing the pilot program, the Secretary shall notify each covered household of the services provided under subsection (b).

''(2) COVERED HOUSEHOLDS WITH NEWBORNS.—No later than 30 days after a birth in a covered household, the Secretary shall contact such covered household to encourage participation in the pilot program.

''(d) ASSESSMENTS.—

''(1) NUMBER.—The Secretary shall carry out no fewer than five assessments of the pilot program.

''(2) COMPARISON INSTALLATIONS.—For purposes of this subsection, the Secretary shall also select such number of other military installations the Secretary determines appropriate as comparison installations for purposes of assessing the outcomes of the pilot.

''(3) ASSESSMENT.—The Secretary shall assess each of the following:

''(A) Success in contacting covered households for participation in the pilot.

''(B) The percentage of covered households that elect to participate in the pilot program.

''(C) The extent to which covered households participating in the pilot program are connected to services and resources under the pilot program.

''(D) The extent to which covered households participating in the pilot program use services and resources under the pilot program.

''(E) Compliance of pilot program personnel with pilot program protocols.

''(e) REPORTS.—

''(1) INITIAL REPORT.—Not later than 180 days after the date of the enactment of this Act [Aug. 13, 2018],

the Secretary shall submit to the Committees on Armed Services of the Senate and House of Representatives a report on the pilot program under this section. The report shall include a comprehensive description of the assessments under subsection (d), as well as the following:

''(A) Which installations the Secretary selected for the pilot program under subsection (a)(2).

''(B) Why the Secretary selected the installations described in subparagraph (A).

''(C) Names of the installations the Secretary selected as comparison installations under subsection (d)(2).

''(D) How the pilot program is carried out, including strategy and metrics for evaluating effectiveness of the pilot program.

''(2) FINAL REPORT.—Not later than 180 days after the termination of the pilot program, the Secretary shall submit to the committees specified in paragraph (1) a final report on the pilot program. The report shall include the following:

''(A) A comprehensive description of, and findings of, the assessments under subsection (d).

''(B) A comprehensive description and assessment of the pilot.

''(C) Such recommendations for legislative or administrative action the Secretary determines appropriate, including whether to—

''(i) extend the term of the pilot program;

''(ii) expand the pilot program to additional installations; or

''(iii) make the pilot program permanent.

''(f) DEPARTMENTAL IMPLEMENTATION.—If the Secretary determines that any element of the pilot program is effective, the Secretary shall implement such element permanently for the Department of Defense.

''(g) DEFINITIONS.—In this section:

''(1) The term 'covered household' means a household that—

''(A) contains an eligible covered beneficiary; and

''(B) is located at a location selected by the Secretary for the pilot program.

''(2) The term 'eligible covered beneficiary' means a covered beneficiary (as that term is defined in section 1072 of title 10, United States Code) who obtains prenatal or obstetrical care in a military medical treatment facility in connection with a birth covered by the pilot program.

''(3) With respect to a military installation, the term 'community' means the catchment area for community services of the installation, including services provided on the installation by the Secretary and services provided by State, county, and local jurisdictions in which the installation is located, or in the vicinity of the installation.''

FAMILY SUPPORT PROGRAMS FOR IMMEDIATE FAMILY MEMBERS OF MEMBERS OF THE ARMED FORCES ASSIGNED TO SPECIAL OPERATIONS FORCES

Pub. L. 113–66, div. A, title V, §554, Dec. 26, 2013, 127 Stat. 765, as amended by Pub. L. 114–92, div. A, title V, §574, Nov. 25, 2015, 129 Stat. 831; Pub. L. 115–91, div. A, title X, §1081(e), Dec. 12, 2017, 131 Stat. 1601, related to pilot programs for family members of members of the Armed Forces assigned to special operations forces, prior to repeal by Pub. L. 115–91, div. A, title V, §555(f), Dec. 12, 2017, 131 Stat. 1403. See section 1788a of this title.

[Pub. L. 115–91, div. A, title X, §1081(e), Dec. 12, 2017, 131 Stat. 1601, provided that the amendment made by section 1081(e) (amending section 574 of Pub. L. 114–92, which amended section 554 of Pub. L. 113–66, formerly set out above) is effective Nov. 25, 2015, and as if included in Pub. L. 114–92 as enacted.]

PILOT PROGRAM ON PARENT EDUCATION TO PROMOTE EARLY CHILDHOOD EDUCATION FOR DEPENDENT CHILDREN AFFECTED BY MILITARY DEPLOYMENT OR RELOCATION OF MILITARY UNITS

Pub. L. 109–364, div. A, title V, §575, Oct. 17, 2006, 120 Stat. 2227, provided that:

''(a) PILOT PROGRAM AUTHORIZED.—Using such funds as may be appropriated for this purpose, the Secretary of Defense may carry out a pilot program on the provision of educational and support tools to the parents of preschool-age children—

''(1) whose parent or parents serve as members of the Armed Forces on active duty (including members of the Selected Reserve on active duty pursuant to a call or order to active duty of 180 days or more); and

''(2) who are affected by the deployment of their parent or parents or the relocation of the military unit of which their parent or parents are a member.

''(b) PURPOSE.—The purpose of the pilot program is to develop models for improving the capability of military child and youth programs on or near military installations to provide assistance to military parents with young children through a program of activities focusing on the unique needs of children described in subsection (a).

''(c) LIMITS ON COMMENCEMENT AND DURATION OF PROGRAM.—The Secretary of Defense may not commence the pilot program before October 1, 2007, and shall conclude the pilot program not later than the end of the three-year period beginning on the date on which the Secretary commences the program.

''(d) SCOPE OF PROGRAM.—Under the pilot program, the Secretary of Defense shall utilize one or more models, demonstrated through research, of universal access of parents of children described in subsection (a) to assistance under the pilot program to achieve the following goals:

''(1) The identification and mitigation of specific risk factors for such children related to military life.

''(2) The maximization of the educational readiness of such children.

''(e) LOCATIONS AND GOALS.—

''(1) SELECTION OF PARTICIPATING INSTALLATIONS.—In selecting military installations to participate in the pilot program, the Secretary of Defense shall limit selection to those military installations whose military personnel are experiencing significant transition or deployment or which are undergoing transition as a result of the relocation or activation of military units or activities relating to defense base closure and realignment.

''(2) SELECTION OF CERTAIN INSTALLATIONS.—At least one of the installations selected under paragraph (1) shall be a military installation that will permit, under the pilot program, the meaningful evaluation of a model under subsection (d) that provides outreach to parents in families with a parent who is a member of the National Guard or Reserve, which families live more than 40 miles from the installation.

''(3) GOALS OF PARTICIPATING INSTALLATIONS.—If a military installation is selected under paragraph (1), the Secretary shall require appropriate personnel at the military installation to develop goals, and specific outcome measures with respect to such goals, for the conduct of the pilot program at the installation.

''(4) EVALUATION REQUIRED.—Upon completion of the pilot program at a military installation, the personnel referred to in paragraph (3) at the installation shall be required to conduct an evaluation and assessment of the success of the pilot program at the installation in meeting the goals developed for that installation.

''(f) GUIDELINES.—As part of conducting the pilot program, the Secretary of Defense shall issue guidelines regarding—

''(1) the goals to be developed under subsection (e)(3);

''(2) specific outcome measures; and

''(3) the selection of curriculum and the conduct of developmental screening under the pilot program.

''(g) REPORT.—Upon completion of the pilot program, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representa-

tives a report on all of the evaluations prepared under subsection (e)(4) for the military installations participating in the pilot program. The report shall describe the results of the evaluations, and may include such recommendations for legislative or administrative action as the Secretary considers appropriate in light of the evaluations, including recommendations for the continuation of the pilot program.''

§ 1788a. Support programs: special operations forces personnel; immediate family members

(a) PROGRAMS AUTHORIZED.—Consistent with such regulations as the Secretary of Defense may prescribe to carry out this section, the Commander of the United States Special Operations Command may conduct programs to provide family support services. In selecting and conducting any program under this subsection, the Commander shall coordinate with the Under Secretary of Defense for Personnel and Readiness.

(b) SELECTION OF PROGRAMS.—In selecting the programs to be conducted under subsection (a), the Commander shall—

(1) identify family support services that have a direct and concrete impact on the readiness of special operations forces, but that are not being provided by the Secretary of a military department to covered individuals; and

(2) conduct a cost-benefit analysis of each family support service proposed to be included in a program.

(c) ADDITIONAL AUTHORITY.—The Commander may expend up to $10,000,000 during each fiscal year, from funds available for Major Force Program 11, to carry out family support programs under this section.

(d) ANNUAL REPORT.—

(1) REPORT REQUIRED.—Not later than March 1 each year, the Commander, in coordination with the Under Secretary of Defense for Personnel and Readiness, shall submit to the congressional defense committees a report describing the progress made in achieving the goals of the family support programs conducted under this section.

(2) ELEMENTS OF REPORTS.—Each report under this subsection shall include the following:

(A) A detailed description of the programs conducted under this section to address family support requirements for covered individuals.

(B) An assessment of the impact of the programs on military readiness and on covered individuals.

(C) A description of the special operations-peculiar aspects of the programs and a comparison and differentiation of these programs with other programs conducted by the Secretaries of the military departments to provide family support services to immediate family members of members of the armed forces.

(D) Recommendations for incorporating lessons learned into other family support programs.

(E) Any other matters the Commander considers appropriate regarding the programs.

(e) DEFINITIONS.—In this section:

(1) The term ''Commander'' means the Commander of the United States Special Operations Command.

(2) The term ''immediate family members'' has the meaning given that term in section 1789(c) of this title.

(3) The term ''special operations forces'' means those forces of the armed forces identified as special operations forces under section 167(i)[1] of this title.

(4) The term ''family support services'' includes psychological support, spiritual support, and costs of transportation, food, lodging, child care, supplies, fees, and training materials for covered personnel while participating in programs under subsection (a).

(5) The term ''covered personnel'' means—

(A) members of the Armed Forces (including the reserve components) assigned to special operations forces;

(B) service personnel assigned to support special operations forces; and

(C) immediate family members of individuals described in subparagraphs (A) and (B).

(Added and amended Pub. L. 115–91, div. A, title V, § 555(a)–(d), Dec. 12, 2017, 131 Stat. 1402, 1403; Pub. L. 115–232, div. A, title V, § 572, Aug. 13, 2018, 132 Stat. 1778; Pub. L. 116–92, div. A, title XVII, §§ 1702(c)(1), 1731(a)(28), Dec. 20, 2019, 133 Stat. 1796, 1813; Pub. L. 116–283, div. A, title V, § 583(a), Jan. 1, 2021, 134 Stat. 3653.)

AMENDMENT OF SECTION

Pub. L. 116–92, div. A, title XVII, § 1702(c), Dec. 20, 2019, 133 Stat. 1796, provided that, effective on Dec. 30, 2021, this section is amended by striking out subsection (d). See 2019 Amendment note below.

REFERENCES IN TEXT

Section 167(i) of this title, referred to in subsec. (e)(3), was redesignated section 167(j) of this title by Pub. L. 114–328, div. A, title IX, § 922(c)(2)(A), Dec. 23, 2016, 130 Stat. 2356.

CODIFICATION

Text of section, as added by Pub. L. 115–91, is based on text of subsecs. (a), (b), (d), and (e) of section 554 of Pub. L. 113–66, div. A, title V, Dec. 26, 2013, 127 Stat. 765, which was formerly set out as a note under section 1788 of this title, prior to repeal by Pub. L. 115–91, div. A, title X, § 1081(e), Dec. 12, 2017, 131 Stat. 1601.

AMENDMENTS

2021—Pub. L. 116–283, § 583(a)(1), substituted ''Support programs: special operations forces personnel; immediate family members'' for ''Family support programs: immediate family members of members of special operations forces'' in section catchline.

Subsec. (a). Pub. L. 116–283, § 583(a)(2), struck out ''for the immediate family members of members of the armed forces assigned to special operations forces'' after ''family support services''.

Subsec. (b)(1). Pub. L. 116–283, § 583(a)(3), substituted ''covered individuals'' for ''the immediate family members of members of the armed forces assigned to special operations forces''.

Subsec. (d)(2)(A). Pub. L. 116–283, § 583(a)(4)(A), substituted ''covered individuals'' for ''family members of members of the armed forces assigned to special operations forces''.

Subsec. (d)(2)(B). Pub. L. 116–283, § 583(a)(4)(B), substituted ''covered individuals'' for ''family members of

[1] See References in Text note below.

members of the armed forces assigned to special operations forces''.

Subsec. (e)(4). Pub. L. 116–283, § 583(a)(5)(A), (B), inserted ''psychological support, spiritual support, and'' before ''costs'' and substituted ''covered personnel'' for ''immediate family members of members of the armed forces assigned to special operations forces''.

Subsec. (e)(5). Pub. L. 116–283, § 583(a)(5)(C), which directed amendment of subsec. (e)(4) ''by adding at the end'' par. (5), was executed by adding par. (5) after par. (4), to reflect the probable intent of Congress.

2019—Subsec. (d). Pub. L. 116–92, § 1702(c)(1), struck out subsec. (d) which required an annual report regarding the family support programs.

Subsec. (d)(1). Pub. L. 116–92, § 1731(a)(28), substituted ''Not later than March 1 each year'' for ''Not later than March 1, 2019, and each March 1 thereafter''.

2018—Subsecs. (a), (b)(1). Pub. L. 115–232, § 572(1), substituted ''services'' for ''activities''.

Subsec. (b)(2). Pub. L. 115–232, § 572(2), substituted ''service'' for ''activity''.

Subsec. (c). Pub. L. 115–232, § 572(3), substituted ''$10,000,000'' for ''$5,000,000''.

Subsec. (e)(4). Pub. L. 115–232, § 572(4), added par. (4).

2017—Subsec. (a). Pub. L. 115–91, § 555(d)(3), struck out ''Pilot'' before ''Programs'' in heading and substituted ''programs to provide'' for ''up to three pilot programs to assess the feasibility and benefits of providing'' in text.

Pub. L. 115–91, § 555(d)(1), (2), substituted ''armed forces'' for ''Armed Forces'' and struck out ''pilot'' before ''program''.

Subsec. (b)(1). Pub. L. 115–91, § 555(d)(1), substituted ''armed forces'' for ''Armed Forces''.

Subsec. (b)(2). Pub. L. 115–91, § 555(d)(2), struck out ''pilot'' before ''program''.

Subsec. (c). Pub. L. 115–91, § 555(b)(1), (c), redesignated subsec. (d) as (c) and substituted '', from funds available for Major Force Program 11, to carry out family support programs under this section.'' for ''specified in subsection (f) to carry out the pilot programs under subsection (a).''

Subsec. (d). Pub. L. 115–91, § 555(b)(2), added subsec. (d). Former subsec. (d) redesignated (c).

Subsec. (e)(2). Pub. L. 115–91, § 555(d)(4)(A), substituted ''this title'' for ''title 10, United States Code''.

Subsec. (e)(3). Pub. L. 115–91, § 555(d)(4)(B), substituted ''this title'' for ''such title''.

Pub. L. 115–91, § 555(d)(1), substituted ''armed forces'' for ''Armed Forces''.

EFFECTIVE DATE OF 2019 AMENDMENT

Pub. L. 116–92, div. A, title XVII, § 1702(c)(2), Dec. 20, 2019, 133 Stat. 1796, provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect on December 30, 2021.''

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective Dec. 30, 2021, of provisions in subsec. (d) of this section requiring submittal of annual report to Congress, see section 1702(a), (b) of Pub. L. 116–92, set out as a note under section 111 of this title.

§ 1789. Chaplain-led programs: authorized support

(a) AUTHORITY.—The Secretary of a military department may provide support services described in subsection (b) to support chaplain-led programs to assist members of the armed forces on active duty and their immediate family members, and members of reserve components in an active status and their immediate family members, in building and maintaining a strong family structure.

(b) AUTHORIZED SUPPORT SERVICES.—The support services referred to in subsection (a) are costs of transportation, food, lodging, child care, supplies, fees, and training materials for members of the armed forces and their family members while participating in programs referred to in that subsection, including participation at retreats and conferences.

(c) IMMEDIATE FAMILY MEMBERS.—In this section, the term ''immediate family members'', with respect to a member of the armed forces, means—

(1) the member's spouse; and

(2) any child (as defined in section 1072(6) of this title) of the member who is described in subparagraph (D) of section 1072(2) of this title.

(Added Pub. L. 108–136, div. A, title V, § 582(a)(1), Nov. 24, 2003, 117 Stat. 1489.)

EFFECTIVE DATE

Pub. L. 108–136, div. A, title V, § 582(b), Nov. 24, 2003, 117 Stat. 1490, provided that: ''Section 1789 of title 10, United States Code, as added by subsection (a), shall take effect on October 1, 2003.''

§ 1790. Military personnel citizenship processing

Using funds provided for operation and maintenance and notwithstanding section 2215 of this title, the Secretary of Defense may reimburse the Secretary of Homeland Security for costs associated with the processing and adjudication by the United States Citizenship and Immigration Services (USCIS) of applications for naturalization described in sections 328(b)(4) and 329(b)(4) of the Immigration and Nationality Act (8 U.S.C. 1439(b)(4) and 1440(b)(4)). Such reimbursements shall be deposited and remain available as provided by subsections (m) and (n) of section 286 of such Act (8 U.S.C. 1356). Such reimbursements shall be based on actual costs incurred by USCIS for processing applications for naturalization, and shall not exceed $7,500,000 per fiscal year.

(Added Pub. L. 112–74, div. A, title VIII, § 8070(a), Dec. 23, 2011, 125 Stat. 822; amended Pub. L. 112–239, div. A, title X, § 1076(f)(22), Jan. 2, 2013, 126 Stat. 1953.)

AMENDMENTS

2013—Pub. L. 112–239, in section catchline, substituted ''Military personnel citizenship processing'' for ''MILITARY PERSONNEL CITIZENSHIP PROCESSING'', and in text, struck out ''AUTHORIZATION OF PAYMENTS.—'' before ''Using funds'' and substituted ''this title'' for ''title 10, United States Code'', ''8 U.S.C. 1439(b)(4)'' for ''8 U.S.C. §§ 1439(b)(4)'', and ''subsections (m) and (n) of section 286 of such Act (8 U.S.C. 1356)'' for ''sections 286(m) and (n) of such Act (8 U.S.C. § 1356(m))''.

SUBCHAPTER II—MILITARY CHILD CARE

Sec.
1791. Funding for military child care.
1792. Child care employees.
1793. Parent fees.
1794. Child abuse prevention and safety at facilities.
1795. Parent partnerships with child development centers.
1796. Subsidies for family home day care.
1797. Early childhood education program.
1798. Child care services and youth program services for dependents: financial assistance for providers.

Sec.
1799. Child care services and youth program services for dependents: participation by children and youth otherwise ineligible.
1800. Definitions.

AMENDMENTS

1999—Pub. L. 106–65, div. A, title V, §584(a)(2), Oct. 5, 1999, 113 Stat. 636, added items 1798, 1799, and 1800 and struck out former item 1798 ''Definitions''.

§ 1791. Funding for military child care

(a) POLICY.—It is the policy of Congress that the amount of appropriated funds available during a fiscal year for operating expenses for military child development centers and programs shall be not less than the amount of child care fee receipts that are estimated to be received by the Department of Defense during that fiscal year.

(b) RESPONSIBILITY FOR ALLOCATIONS OF CERTAIN FUNDS.—The Secretary of Defense shall be responsible for the allocation of Office of the Secretary of Defense level funds for military child development programs for children from birth through 12 years of age, and may not delegate such responsibility to the military departments.

(Added Pub. L. 104–106, div. A, title V, §568(a)(1), Feb. 10, 1996, 110 Stat. 332; amended Pub. L. 116–283, div. A, title V, §584, Jan. 1, 2021, 134 Stat. 3654.)

PRIOR PROVISIONS

Provisions similar to those in this subchapter were contained in Pub. L. 101–189, div. A, title XV, Nov. 29, 1989, 103 Stat. 1589, which was set out as a note under section 113 of this title, prior to repeal by Pub. L. 104–106, §568(e)(2).

AMENDMENTS

2021—Pub. L. 116–283 designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

24-HOUR CHILD CARE

Pub. L. 116–283, div. A, title V, §588, Jan. 1, 2021, 134 Stat. 3656, provided that:

''(a) 24-HOUR CHILD CARE.—If the Secretary of Defense determines it feasible, pursuant to the study conducted pursuant to subsection (b), the Secretary shall furnish child care to each child of a member of the Armed Forces or civilian employee of the Department of Defense while that member or employee works on rotating shifts at a military installation.

''(b) FEASIBILITY STUDY; REPORT.—Not later than 270 days after the date of the enactment of this Act [Jan. 1, 2021], the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report setting forth the results of a study, conducted by the Secretary for purposes of this section, on the feasibility of furnishing child care described in subsection (a).

''(c) ELEMENTS.—The report required by subsection (b) shall include the following:

''(1) The results of the study described in that subsection.

''(2) If the Secretary determines that furnishing child care available as described in subsection (a) is feasible, such matters as the Secretary determines appropriate in connection with furnishing such child care, including—

''(A) an identification of the installations at which such child care would be beneficial to members of the Armed Forces, civilian employees of the Department, or both;

''(B) an identification of any barriers to making such child care available at the installations identified pursuant to subparagraph (A);

''(C) an assessment whether the child care needs of members of the Armed Forces and civilian employees of the Department described in subsection (a) would be better met by an increase in assistance for child care fees;

''(D) a description and assessment of the actions, if any, being taken to furnish such child care at the installations identified pursuant to subparagraph (A); and

''(E) such recommendations for legislative or administrative action the Secretary determines appropriate to make such child care available at the installations identified pursuant to subparagraph (A), or at any other military installation.''

PILOT PROGRAM TO PROVIDE FINANCIAL ASSISTANCE TO MEMBERS OF THE ARMED FORCES FOR IN-HOME CHILD CARE

Pub. L. 116–283, div. A, title V, §589, Jan. 1, 2021, 134 Stat. 3657, provided that:

''(a) ESTABLISHMENT.—Not later than March 1, 2021, the Secretary of Defense shall establish a pilot program to provide financial assistance to members of the Armed Forces who pay for services provided by in-home child care providers. In carrying out the pilot program, the Secretary shall take the following steps:

''(1) Determine the needs of military families who request services provided by in-home child care providers.

''(2) Determine the appropriate amount of financial assistance to provide to military families described in paragraph (1).

''(3) Determine the appropriate qualifications for an in-home child care provider for whose services the Secretary shall provide financial assistance to a military family. In carrying out this paragraph, the Secretary shall—

''(A) take into consideration qualifications for in-home child care providers in the private sector; and

''(B) ensure that the qualifications the Secretary determines appropriate under this paragraph are comparable to the qualifications for a provider of child care services in a military child development center or family home day care.

''(4) Establish a marketing and communications plan to inform members of the Armed Forces who live in the locations described in subsection (b) about the pilot program.

''(b) LOCATIONS.—The Secretary shall carry out the pilot program in the five locations that the Secretary determines have the greatest demand for child care services for children of members of the Armed Forces.

''(c) REPORTS.—

''(1) INTERIM REPORTS.—Not later than one year after the Secretary establishes the pilot program and thrice annually thereafter, the Secretary shall submit to the Committees on Armed Services of the Senate and the House of Representatives an interim report on the pilot program. Each interim report shall include the following elements:

''(A) The number of military families participating in the pilot program, disaggregated by location and duration of participation.

''(B) The amount of financial assistance provided to participating military families in each location.

''(C) Metrics by which the Secretary carries out subsection (a)(3)(B);

''(D) The feasibility of expanding the pilot program.

''(E) Legislation or administrative action that the Secretary determines necessary to make the pilot program permanent.

''(F) Any other information the Secretary determines appropriate.

''(2) FINAL REPORT.—Not later than 90 days after the termination of the pilot program, the Secretary shall submit to the Committees on Armed Services of the

Senate and the House of Representatives a final report on the pilot program. The final report shall include the following elements:

''(A) The elements specified in paragraph (1).

''(B) The recommendation of the Secretary whether to make the pilot program permanent.

''(d) TERMINATION.—The pilot program shall terminate five years after the date on which the Secretary establishes the pilot program.

''(e) DEFINITIONS.—In this section:

''(1) The term 'in-home child care provider' means an individual who provides child care services in the home of the child.

''(2) The terms 'military child development center' and 'family home day care' have the meanings given those terms in section 1800 of title 10, United States Code.''

REDUCTION IN WAIT LISTS FOR CHILD CARE AT MILITARY INSTALLATIONS

Pub. L. 116–92, div. A, title V, §580(c), Dec. 20, 2019, 133 Stat. 1407, provided that:

''(1) REMEDIAL ACTION.—The Secretary of Defense shall take steps the Secretary determines necessary to reduce the waiting lists for child care at military installations to ensure that members of the Armed Forces have meaningful access to child care during tours of duty.

''(2) REPORT.—Not later than June 1, 2020, the Secretary of Defense shall provide a report to the Committees on Armed Forces of the Senate and the House of Representative regarding—

''(A) action taken under paragraph (1); and

''(B) any additional resources (including additional funding for and child care facilities and workers) the Secretary determines necessary to increase access described in paragraph (1).''

ENHANCING MILITARY CHILDCARE PROGRAMS AND ACTIVITIES OF THE DEPARTMENT OF DEFENSE

Pub. L. 115–91, div. A, title V, §558, Dec. 12, 2017, 131 Stat. 1405, provided that:

''(a) HOURS OF OPERATION OF MILITARY CHILDCARE DEVELOPMENT CENTERS.—Each Secretary of a military department shall ensure, to the extent practicable, that the hours of operation of each childcare development center under the jurisdiction of the Secretary are established and maintained in manner that takes into account the demands and circumstances of members of the Armed Forces, including members of the reserve components, who use such center in facilitation of the performance of their military duties.

''(b) MATTERS TO BE TAKEN INTO ACCOUNT.—The demands and circumstances to be taken into account under subsection (a) for purposes of setting and maintaining the hours of operation of a childcare development center shall include the following:

''(1) Mission requirements of units whose members use the childcare development center.

''(2) The unpredictability of work schedules, and fluctuations in day-to-day work hours, of such members.

''(3) The potential for frequent and prolonged absences of such members for training, operations, and deployments.

''(4) The location of the childcare development center on the military installation concerned, including the location in connection with duty locations of members and applicable military family housing.

''(5) Such other matters as the Secretary of the military department concerned considers appropriate for purposes of this section.

''(c) CHILDCARE COORDINATORS FOR MILITARY INSTALLATIONS.—Each Secretary of a military department may provide for a childcare coordinator at each military installation under the jurisdiction of the Secretary at which are stationed significant numbers of members of the Armed Forces with accompanying dependent children, as determined by the Secretary. The childcare coordinator may work with the commander of the installation to ensure that childcare is available and responsive to the needs of members assigned to the installation.''

REPORTS ON CHILD DEVELOPMENT CENTERS AND FINANCIAL ASSISTANCE FOR CHILD CARE FOR MEMBERS OF THE ARMED FORCES

Pub. L. 111–383, div. A, title V, §587, Jan. 7, 2011, 124 Stat. 4230, provided that:

''(a) REPORTS REQUIRED.—Not later than six months after the date of the enactment of this Act [Jan. 7, 2011], and every two years thereafter, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on Department of Defense child development centers and financial assistance for child care provided by the Department of Defense off-installation to members of the Armed Forces.

''(b) ELEMENTS.—Each report required by subsection (a) shall include the following, current as of the date of such report:

''(1) The number of child development centers currently located on military installations.

''(2) The number of dependents of members of the Armed Forces utilizing such child development centers.

''(3) The number of dependents of members of the Armed Forces that are unable to utilize such child development centers due to capacity limitations.

''(4) The types of financial assistance available for child care provided by the Department of Defense off-installation to members of the Armed Forces (including eligible members of the reserve components).

''(5) The extent to which members of the Armed Forces are utilizing such financial assistance for child care off-installation.

''(6) The methods by which the Department of Defense reaches out to eligible military families to increase awareness of the availability of such financial assistance.

''(7) The formulas used to calculate the amount of such financial assistance provided to members of the Armed Forces.

''(8) The funding available for such financial assistance in the Department of Defense and in the military departments.

''(9) The barriers to access, if any, to such financial assistance faced by members of the Armed Forces, including whether standards and criteria of the Department of Defense for child care off-installation may affect access to child care.

''(10) Any other matters the Secretary considers appropriate in connection with such report, including with respect to the enhancement of access to Department of Defense child care development centers and financial assistance for child care off-installation for members of the Armed Forces.''

§ 1792. Child care employees

(a) REQUIRED TRAINING.—(1) The Secretary of Defense shall prescribe regulations implementing a training program for child care employees. Those regulations shall apply uniformly among the military departments. Subject to paragraph (2), satisfactory completion of the training program shall be a condition of employment of any person as a child care employee.

(2) Under those regulations, the Secretary shall require that each child care employee complete the training program not later than six months after the date on which the employee is employed as a child care employee.

(3) The training program established under this subsection shall cover, at a minimum, training in the following:

(A) Early childhood development.

(B) Activities and disciplinary techniques appropriate to children of different ages.

(C) Child abuse prevention and detection.

(D) Cardiopulmonary resuscitation and other emergency medical procedures.

(b) TRAINING AND CURRICULUM SPECIALISTS.—(1) The Secretary of Defense shall require that at least one employee at each military child development center be a specialist in training and curriculum development. The Secretary shall ensure that such employees have appropriate credentials and experience.

(2) The duties of such employees shall include the following:

(A) Special teaching activities at the center.

(B) Daily oversight and instruction of other child care employees at the center.

(C) Daily assistance in the preparation of lesson plans.

(D) Assistance in the center's child abuse prevention and detection program.

(E) Advising the director of the center on the performance of other child care employees.

(3) Each employee referred to in paragraph (1) shall be an employee in a competitive service position.

(c) COMPETITIVE RATES OF PAY.—For the purpose of providing military child development centers with a qualified and stable civilian workforce, employees at a military installation who are directly involved in providing child care and are paid from nonappropriated funds—

(1) in the case of entry-level employees, shall be paid at rates of pay competitive with the rates of pay paid to other entry-level employees at that installation who are drawn from the same labor pool; and

(2) in the case of other employees, shall be paid at rates of pay substantially equivalent to the rates of pay paid to other employees at that installation with similar training, seniority, and experience.

(d) COMPETITIVE SERVICE POSITION DEFINED.—In this section, the term ''competitive service position'' means a position in the competitive service, as defined in section 2102(a)(1) of title 5.

(Added Pub. L. 104–106, div. A, title V, § 568(a)(1), Feb. 10, 1996, 110 Stat. 332; amended Pub. L. 105–85, div. A, title X, § 1073(a)(34), Nov. 18, 1997, 111 Stat. 1902; Pub. L. 105–261, div. A, title XI, § 1106, Oct. 17, 1998, 112 Stat. 2142.)

AMENDMENTS

1998—Subsecs. (d), (e). Pub. L. 105–261 redesignated subsec. (e) as (d) and struck out former subsec. (d) which read as follows:

''(d) EMPLOYMENT PREFERENCE PROGRAM FOR MILITARY SPOUSES.—(1) The Secretary of Defense shall conduct a program under which qualified spouses of members of the armed forces shall be given a preference in hiring for the position of child care employee in a position paid from nonappropriated funds if the spouse is among persons determined to be best qualified for the position.

''(2) A spouse who is provided a preference under this subsection at a military child development center may not be precluded from obtaining another preference, in accordance with section 1784 of this title, in the same geographic area as the military child development center.''

1997—Subsec. (a)(1). Pub. L. 105–85, § 1073(a)(34)(A), struck out comma after ''implementing''.

Subsec. (d)(2). Pub. L. 105–85, § 1073(a)(34)(B), substituted ''section 1784'' for ''section 1794''.

PORTABILITY OF BACKGROUND INVESTIGATIONS FOR CHILD CARE PROVIDERS

Pub. L. 116–92, div. A, title V, § 580(f), Dec. 20, 2019, 133 Stat. 1408, provided that: ''Not later than 180 days after the date of the enactment of this Act [Dec. 20, 2019], the Secretary of Defense shall ensure that the background investigation and training certification for a child care provider employed by the Department of Defense in a facility of the Department may be transferred to another facility of the Department, without regard to which Secretary of a military department has jurisdiction over either such facility.''

PROVISIONAL OR INTERIM CLEARANCES TO PROVIDE CHILDCARE SERVICES AT MILITARY CHILDCARE CENTERS

Pub. L. 115–232, div. A, title V, § 576, Aug. 13, 2018, 132 Stat. 1781, provided that:

''(a) IN GENERAL.—The Secretary of Defense shall implement a policy to permit the issuance on a provisional or interim basis of clearances for the provision of childcare services at military childcare centers.

''(b) ELEMENTS.—The policy required by subsection (a) shall provide for the following:

''(1) Any clearance issued under the policy shall be temporary and contingent upon the satisfaction of such requirements for the issuance of a clearance on a permanent basis as the Secretary considers appropriate.

''(2) Any individual issued a clearance on a provisional or interim basis under the policy shall be subject to such supervision in the provision of childcare services using such clearance as the Secretary considers appropriate.

''(c) CLEARANCE DEFINED.—In this section, the term 'clearance', with respect to an individual and the provision of childcare services, means the formal approval of the individual, after appropriate background checks and other review, to provide childcare services to children at a military childcare center of the Department of Defense.''

DIRECT HIRE AUTHORITY FOR DEPARTMENT OF DEFENSE FOR CHILDCARE SERVICES PROVIDERS FOR DEPARTMENT CHILD DEVELOPMENT CENTERS AND EMPLOYEES AT INSTALLATION MILITARY HOUSING OFFICES

Pub. L. 116–92, div. B, title XXX, § 3035(c), Dec. 20, 2019, 133 Stat. 1937, provided that: ''The Secretary of Defense shall use the authority in section 559 of the National Defense Authorization Act for Fiscal Year 2018 [Pub. L. 115–91, set out below] granted by the amendments made by this section [amending section 559 of Pub. L. 115–91] in a manner consistent with the regulations prescribed for purposes of such section 559 pursuant to subsection (b) of such section 559, without the need to prescribe separate regulations for the use of such authority.''

Pub. L. 115–91, div. A, title V, § 559, Dec. 12, 2017, 131 Stat. 1406, as amended by Pub. L. 116–92, div. A, title V, § 580(a), div. B, title XXX, § 3035(a), (b), Dec. 20, 2019, 133 Stat. 1407, 1937, provided that:

''(a) IN GENERAL.—The Secretary of Defense may appoint, without regard to any provision of subchapter I of chapter 33 of title 5, United States Code, qualified childcare services providers, and individuals to fill vacancies in installation military housing offices, in the competitive service if the Secretary determines that—

''(1) there is a critical hiring need for childcare services providers for Department of Defense child development centers or for employees at installation military housing offices; and

''(2) there is a shortage of childcare services providers or for installation military housing office employees.

''(b) REGULATIONS.—The Secretary shall carry out this section in accordance with regulations prescribed by the Secretary for purposes of this section.

''(c) DEADLINE FOR IMPLEMENTATION.—The Secretary shall prescribe the regulations required by subsection (b), and commence implementation of subsection (a), by not later than May 1, 2018.

''(d) BRIEFING.—Not later than 90 days after the end of each of fiscal years 2019 and 2021, the Secretary of Defense shall provide a briefing to the Committee on Armed Services of the House of Representatives, the Committee on Armed Services of the Senate, the Committee on Oversight and Reform of the House of Representatives, and the Committee on Homeland Security and Governmental Affairs of the Senate on the use of the appointment authority provided by subsection (a).

''(e) CHILDCARE SERVICES PROVIDER DEFINED.—In this section, the term 'childcare services provider' means a person who provides childcare services (including family childcare coordinator services and school age childcare coordinator services) for dependent children of members of the Armed Forces and civilian employees of the Department of Defense in child development centers on Department installations.

''(f) INSTALLATION MILITARY HOUSING OFFICE DEFINED.—The term 'installation military housing office' means any office whose primary function is performing day-to-day supervision of military housing covered by subchapter IV of chapter 169 of title 10, United States Code.

''(g) EXPIRATION OF AUTHORITY.—The appointment authority provided by subsection (a) expires on September 30, 2021.''

§ 1793. Parent fees

(a) IN GENERAL.—The Secretary of Defense shall prescribe regulations establishing fees to be charged parents for the attendance of children at military child development centers. Those regulations shall be uniform for the military departments and shall require that, in the case of children who attend the centers on a regular basis, the fees shall be based on family income.

(b) LOCAL WAIVER AUTHORITY.—The Secretary of Defense may provide authority to installation commanders, on a case-by-case basis, to establish fees for attendance of children at child development centers at rates lower than those prescribed under subsection (a) if the rates prescribed under subsection (a) are not competitive with rates at local non-military child development centers.

(c) FAMILY DISCOUNT.—In the case of a family with two or more children attending a child development center, the regulations prescribed pursuant to subsection (a) may require that installations commanders charge a fee for attendance at the center of any child of the family after the first child of the family in amount equal to 85 percent of the amount of the fee otherwise chargeable for the attendance of such child at the center.

(Added Pub. L. 104–106, div. A, title V, § 568(a)(1), Feb. 10, 1996, 110 Stat. 333; amended Pub. L. 116–283, div. A, title V, § 585(a), Jan. 1, 2021, 134 Stat. 3654.)

AMENDMENTS

2021—Subsec. (c). Pub. L. 116–283 added subsec. (c).

§ 1794. Child abuse prevention and safety at facilities

(a) CHILD ABUSE TASK FORCE.—The Secretary of Defense shall maintain a special task force to respond to allegations of widespread child abuse at a military installation. The task force shall be composed of personnel from appropriate disciplines, including, where appropriate, medicine, psychology, and childhood development. In the case of such allegations, the task force shall provide assistance to the commander of the installation, and to parents at the installation, in helping them to deal with such allegations.

(b) NATIONAL HOTLINE.—(1) The Secretary of Defense shall maintain a national telephone number for persons to use to report suspected child abuse or safety violations at a military child development center or family home day care site. The Secretary shall ensure that such reports may be made anonymously if so desired by the person making the report. The Secretary shall establish procedures for following up on complaints and information received over that number.

(2) The Secretary shall publicize the existence of the number.

(c) ASSISTANCE FROM LOCAL AUTHORITIES.—The Secretary of Defense shall prescribe regulations requiring that, in a case of allegations of child abuse at a military child development center or family home day care site, the commander of the military installation or the head of the task force established under subsection (a) shall seek the assistance of local child protective authorities if such assistance is available.

(d) SAFETY REGULATIONS.—The Secretary of Defense shall prescribe regulations on safety and operating procedures at military child development centers. Those regulations shall apply uniformly among the military departments.

(e) INSPECTIONS.—The Secretary of Defense shall require that each military child development center be inspected not less often than four times a year. Each such inspection shall be unannounced. At least one inspection a year shall be carried out by a representative of the installation served by the center, and one inspection a year shall be carried out by a representative of the major command under which that installation operates.

(f) REMEDIES FOR VIOLATIONS.—(1) Except as provided in paragraph (2), any violation of a safety, health, or child welfare law or regulation (discovered at an inspection or otherwise) at a military child development center shall be remedied immediately.

(2) In the case of a violation that is not life threatening, the commander of the major command under which the installation concerned operates may waive the requirement that the violation be remedied immediately for a period of up to 90 days beginning on the date of the discovery of the violation. If the violation is not remedied as of the end of that 90-day period, the military child development center shall be closed until the violation is remedied. The Secretary of the military department concerned may waive the preceding sentence and authorize the center to remain open in a case in which the violation cannot reasonably be remedied within that 90-day period or in which major facility reconstruction is required.

(Added Pub. L. 104–106, div. A, title V, § 568(a)(1), Feb. 10, 1996, 110 Stat. 333.)

§ 1795. Parent partnerships with child development centers

(a) PARENT BOARDS.—The Secretary of Defense shall require that there be established at each military child development center a board of parents, to be composed of parents of children attending the center. The board shall meet periodically with staff of the center and the commander of the installation served by the center for the purpose of discussing problems and concerns. The board, together with the staff of the center, shall be responsible for coordinating the parent participation program described in subsection (b).

(b) PARENT PARTICIPATION PROGRAMS.—The Secretary of Defense shall require the establishment of a parent participation program at each military child development center. As part of such program, the Secretary of Defense may establish fees for attendance of children at such a center, in the case of parents who participate in the parent participation program at that center, at rates lower than the rates that otherwise apply.

(Added Pub. L. 104–106, div. A, title V, § 568(a)(1), Feb. 10, 1996, 110 Stat. 334.)

§ 1796. Subsidies for family home day care

The Secretary of Defense may use appropriated funds available for military child care purposes to provide assistance to family home day care providers so that family home day care services can be provided to members of the armed forces at a cost comparable to the cost of services provided by military child development centers. The Secretary shall prescribe regulations for the provision of such assistance.

(Added Pub. L. 104–106, div. A, title V, § 568(a)(1), Feb. 10, 1996, 110 Stat. 334.)

PRIORITY FOR CERTAIN MILITARY FAMILY HOUSING TO A MEMBER OF THE ARMED FORCES WHOSE SPOUSE AGREES TO PROVIDE FAMILY HOME DAY CARE SERVICES

Pub. L. 116–283, div. A, title VI, § 627, Jan. 1, 2021, 134 Stat. 3678, provided that:

''(a) PRIORITY.—If the Secretary of a military department determines that not enough child care employees are employed at a military child development center on a military installation under the jurisdiction of that Secretary to adequately care for the children of members of the Armed Forces stationed at that military installation, the Secretary, to the extent practicable, may give priority for covered military family housing to a member whose spouse is an eligible military spouse.

''(b) NUMBER OF PRIORITY POSITIONS.—A Secretary of a military department may grant priority under subsection (a) only to the minimum number of eligible military spouses that the Secretary determines necessary to provide adequate child care to the children of members stationed at a military installation described in subsection (a).

''(c) LIMITATION.—Nothing in this section may be construed to require the Secretary of a military department to provide covered military family housing that has been adapted for disabled individuals to a member under this section instead of to a member with one more dependents enrolled in the Exceptional Family Member Program.

''(d) RESULT OF FAILURE TO PROVIDE FAMILY HOME DAY CARE SERVICES OR LOSS OF ELIGIBILITY.—The Secretary of the military department concerned may remove a household provided covered military family housing under this section therefrom if the Secretary determines the spouse of that member has failed to abide by an agreement described in subsection (e)(3) or has ceased to be an eligible military spouse. Such removal may not occur sooner than 60 days after the date of such determination.

''(e) DEFINITIONS.—In this section:

''(1) The terms 'child care employee', 'family home day care', and 'military child development center' have the meanings given those terms in section 1800 of title 10, United States Code.

''(2) The term 'covered military family housing' means military family housing—

''(A) located on a military installation described in subsection (a); and

''(B) that the Secretary of the military department concerned determines is large enough to provide family home day care services to no fewer than six children (not including children in the household of the eligible military spouse).

''(3) The term 'eligible military spouse' means a military spouse who—

''(A) is eligible for military family housing;

''(B) is eligible to provide family home day care services;

''(C) has provided family home day care services for at least one year; and

''(D) agrees in writing to provide family home day care services in covered military family housing for a period not shorter than one year.''

§ 1797. Early childhood education program

The Secretary of Defense shall require that all military child development centers meet standards of operation necessary for accreditation by an appropriate national early childhood programs accrediting body.

(Added Pub. L. 104–106, div. A, title V, § 568(a)(1), Feb. 10, 1996, 110 Stat. 335.)

§ 1798. Child care services and youth program services for dependents: financial assistance for providers

(a) AUTHORITY.—The Secretary of Defense may provide financial assistance to an eligible civilian provider of child care services or youth program services that furnishes such services for members of the armed forces, survivors of members of the armed forces who die in combat-related incidents in the line of duty, and employees of the United States if the Secretary determines that providing such financial assistance—

(1) is in the best interest of the Department of Defense;

(2) enables supplementation or expansion of furnishing of child care services or youth program services for military installations, while not supplanting or replacing such services; and

(3) ensures that the eligible provider is able to comply, and does comply, with the regulations, policies, and standards of the Department of Defense that are applicable to the furnishing of such services.

(b) ELIGIBLE PROVIDERS.—A provider of child care services or youth program services is eligible for financial assistance under this section if the provider—

(1) is licensed to provide those services under applicable State and local law;

(2) has previously provided such services for members of the armed forces or employees of the United States; and

(3) either—

(A) is a family home day care provider; or

(B) is a provider of family child care services that—

(i) otherwise provides federally funded or sponsored child development services;

(ii) provides the services in a child development center owned and operated by a private, not-for-profit organization;

(iii) provides before-school or after-school child care program in a public school facility;

(iv) conducts an otherwise federally funded or federally sponsored school age child care or youth services program;

(v) conducts a school age child care or youth services program that is owned and operated by a not-for-profit organization; or

(vi) is a provider of another category of child care services or youth services determined by the Secretary of Defense as appropriate for meeting the needs of members of the armed forces or employees of the Department of Defense.

(c) FUNDING.—To provide financial assistance under this subsection, the Secretary of Defense may use any funds appropriated to the Department of Defense for operation and maintenance.

(Added Pub. L. 106–65, div. A, title V, § 584(a)(1)(B), Oct. 5, 1999, 113 Stat. 634; amended Pub. L. 107–314, div. A, title X, § 1041(a)(6), Dec. 2, 2002, 116 Stat. 2645; Pub. L. 116–92, div. A, title VI, § 624, Dec. 20, 2019, 133 Stat. 1428.)

PRIOR PROVISIONS

A prior section 1798 was renumbered section 1800 of this title.

AMENDMENTS

2019—Subsec. (a). Pub. L. 116–92 inserted '', survivors of members of the armed forces who die in combat-related incidents in the line of duty,'' after ''armed forces'' in introductory provisions.

2002—Subsec. (d). Pub. L. 107–314 struck out heading and text of subsec. (d). Text read as follows:

''(1) Every two years the Secretary of Defense shall submit to Congress a report on the exercise of authority under this section. The report shall include an evaluation of the effectiveness of that authority for meeting the needs of members of the armed forces or employees of the Department of Defense for child care services and youth program services. The report may include any recommendations for legislation that the Secretary considers appropriate to enhance the capability of the Department of Defense to meet those needs.

''(2) A biennial report under this subsection may be combined with the biennial report under section 1799(d) of this title into a single report for submission to Congress.''

FIRST BIENNIAL REPORTS

Pub. L. 106–65, div. A, title V, § 584(b), Oct. 5, 1999, 113 Stat. 636, provided that the first biennial reports under former sections 1798(d) and 1799(d) of this title were to be submitted not later than Mar. 31, 2002, and were to cover fiscal years 2000 and 2001.

§ 1799. Child care services and youth program services for dependents: participation by children and youth otherwise ineligible

(a) AUTHORITY.—The Secretary of Defense may authorize participation in child care or youth programs of the Department of Defense, to the extent of the availability of space and services, by children and youth under the age of 19 who are not dependents of members of the armed forces or of employees of the Department of Defense and are not otherwise eligible for participation in those programs.

(b) LIMITATION.—Authorization of participation in a program under subsection (a) shall be limited to situations in which that participation promotes the attainment of the objectives set forth in subsection (c), as determined by the Secretary.

(c) OBJECTIVES.—The objectives for authorizing participation in a program under subsection (a) are as follows:

(1) To support the integration of children and youth of military families into civilian communities.

(2) To make more efficient use of Department of Defense facilities and resources.

(3) To establish or support a partnership or consortium arrangement with schools and other youth services organizations serving children of members of the armed forces.

(Added Pub. L. 106–65, div. A, title V, § 584(a)(1)(B), Oct. 5, 1999, 113 Stat. 634; amended Pub. L. 107–314, div. A, title X, § 1041(a)(7), Dec. 2, 2002, 116 Stat. 2645.)

AMENDMENTS

2002—Subsec. (d). Pub. L. 107–314 struck out heading and text of subsec. (d). Text read as follows:

''(1) Every two years the Secretary of Defense shall submit to Congress a report on the exercise of authority under this section. The report shall include an evaluation of the effectiveness of that authority for achieving the objectives set out under subsection (c). The report may include any recommendations for legislation that the Secretary considers appropriate to enhance the capability of the Department of Defense to attain those objectives.

''(2) A biennial report under this subsection may be combined with the biennial report under section 1798(d) of this title into a single report for submission to Congress.''

§ 1800. Definitions

In this subchapter:

(1) The term ''military child development center'' means a facility on a military installation (or on property under the jurisdiction of the commander of a military installation) at which child care services are provided for members of the armed forces or any other facility at which such child care services are provided that is operated by the Secretary of a military department.

(2) The term ''family home day care'' means home-based child care services that are provided for members of the armed forces by an individual who (A) is certified by the Secretary of the military department concerned as qualified to provide those services, and (B) provides those services on a regular basis for compensation.

(3) The term ''child care employee'' means a civilian employee of the Department of Defense who is employed to work in a military child development center (regardless of whether the employee is paid from appropriated funds or nonappropriated funds).

(4) The term ''child care fee receipts'' means those nonappropriated funds that are derived from fees paid by members of the armed forces for child care services provided at military child development centers.

(Added Pub. L. 104–106, div. A, title V, § 568(a)(1), Feb. 10, 1996, 110 Stat. 335, § 1798; renumbered § 1800, Pub. L. 106–65, div. A, title V, § 584(a)(1)(A), Oct. 5, 1999, 113 Stat. 634.)

AMENDMENTS

1999—Pub. L. 106–65 renumbered section 1798 of this title as this section.

[CHAPTER 89—REPEALED]

[§§ 1801 to 1805. Repealed. Pub. L. 104–106, div. A, title X, § 1061(a)(1), Feb. 10, 1996, 110 Stat. 442]

Section 1801, added Pub. L. 102–484, div. A, title XIII, § 1322(a)(1), Oct. 23, 1992, 106 Stat. 2551, related to volunteer program to assist independent states of former Soviet Union.

Section 1802, added Pub. L. 102–484, div. A, title XIII, § 1322(a)(1), Oct. 23, 1992, 106 Stat. 2551; amended Pub. L. 103–35, title II, § 201(f)(3), (g)(3), May 31, 1993, 107 Stat. 99, 100, set out criteria to be used in selecting volunteers.

Section 1803, added Pub. L. 102–484, div. A, title XIII, § 1322(a)(1), Oct. 23, 1992, 106 Stat. 2552, related to determining needs for volunteers and role of Secretary of State.

Section 1804, added Pub. L. 102–484, div. A, title XIII, § 1322(a)(1), Oct. 23, 1992, 106 Stat. 2553; amended Pub. L. 103–160, div. A, title XI, § 1182(a)(4), Nov. 30, 1993, 107 Stat. 1771, related to the compensation and benefits of volunteers.

Section 1805, added Pub. L. 102–484, div. A, title XIII, § 1322(a)(1), Oct. 23, 1992, 106 Stat. 2553, provided that selection of volunteers to participate in program under this chapter terminate Sept. 30, 1995.

PART III—TRAINING AND EDUCATION

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113.	Defense Civilian Training Corps	2200g.[1]

AMENDMENTS

2021—Pub. L. 116–283, div. A, title X, § 1081(c)(8), Jan. 1, 2021, 134 Stat. 3873, amended Pub. L. 116–92, § 1731(a)(2). See 2019 Amendment note below.

Pub. L. 116–283, div. A, title X, § 1081(a)(2), Jan. 1, 2021, 134 Stat. 3870, which directed the amendment of the table of chapters ''at the beginning of part IV'' of this subtitle by adding item for chapter 113, was executed in the analysis for this part to reflect the probable intent of Congress.

2019—Pub. L. 116–92, div. A, title XVII, § 1731(a)(2), Dec. 20, 2019, 133 Stat. 1812, as amended by Pub. L. 116–283, div. A, title X, § 1081(c)(8), Jan. 1, 2021, 134 Stat. 3873, added item for chapter 112 and struck out former item for chapter 112 ''Information Security Scholarship Program''.

2004—Pub. L. 108–375, div. A, title V, § 532(e), Oct. 28, 2004, 118 Stat. 1900, added item for chapter 107 and redesignated former item for chapter 107 as 106A.

2000—Pub. L. 106–398, § 1 [[div. A], title IX, § 922(a)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–236, added item for chapter 112.

1991—Pub. L. 102–25, title VII, § 701(e)(2), Apr. 6, 1991, 105 Stat. 114, inserted ''2161'' in item for chapter 108.

1990—Pub. L. 101–510, div. A, title II, § 247(a)(2)(B), title IX, § 911(b)(3), Nov. 5, 1990, 104 Stat. 1523, 1626, substituted ''Department of Defense Schools'' for ''Granting of Advanced Degrees at Department of Defense Schools'' in item for chapter 108 and ''Support of Science, Mathematics, and Engineering Education'' for ''National Defense Science and Engineering Graduate Fellowships'' in item for chapter 111.

1989—Pub. L. 101–189, div. A, title VIII, § 843(d)(2), title XVI, § 1622(d)(1), Nov. 29, 1989, 103 Stat. 1517, 1604, substituted ''TRAINING AND EDUCATION'' for ''TRAINING'' in heading for part III and added item for chapter 111.

1987—Pub. L. 100–180, div. A, title VII, § 711(b), Dec. 4, 1987, 101 Stat. 1111, substituted ''Financial Assistance Programs'' for ''Scholarship Program'' in item for chapter 105.

1986—Pub. L. 99–399, title VIII, § 806(d)(2), Aug. 27, 1986, 100 Stat. 888, added item for chapter 110.

1985—Pub. L. 99–145, title VI, § 671(a)(2), Nov. 8, 1985, 99 Stat. 663, added item for chapter 109.

1984—Pub. L. 98–525, title VII, § 705(a)(2), Oct. 19, 1984, 98 Stat. 2567, substituted ''Members of the Selected Reserve'' for ''Enlisted Members of the Selected Reserve of the Ready Reserve'' in item for chapter 106.

1980—Pub. L. 96–513, title V, § 511(99), Dec. 12, 1980, 94 Stat. 2929, capitalized ''Assistance'', ''Persons'', ''Enlisting'', ''Active'', and ''Duty'' in item for chapter 107.

Pub. L. 96–450, title IV, § 406(b), Oct. 14, 1980, 94 Stat. 1981, added item for chapter 108.

Pub. L. 96–342, title IX, § 901(b), Sept. 8, 1980, 94 Stat. 1114, added item for chapter 107.

1977—Pub. L. 95–79, title IV, § 402(b), July 30, 1977, 91 Stat. 330, added item for chapter 106.

1972—Pub. L. 92–426, § 2(b), Sept. 21, 1972, 86 Stat. 719, added items for chapters 104 and 105.

1964—Pub. L. 88–647, title I, § 101(2), title II, § 201(2), Oct. 13, 1964, 78 Stat. 1064, 1069, added items for chapters 102 and 103.

CHAPTER 101—TRAINING GENERALLY

Sec.	
[2001.	Repealed.]
2002.	Dependents of members of armed forces: language training.
2003.	Aeronautical rating as pilot: qualifications.
2004.	Detail as students at law schools; commissioned officers; certain enlisted members.
2004a.	Detail of commissioned officers as students at medical schools.
2004b.	Detail of commissioned officers as students at schools of psychology.
2005.	Advanced education assistance: active duty agreement; reimbursement requirements.
2006.	Department of Defense Education Benefits Fund.
2006a.	Assistance for education and training: availability of certain assistance for use only for certain programs of education.
2007.	Payment of tuition for off-duty training or education.

[1] So in original. The period probably should not appear.

Sec.
2008. Authority to use funds for certain educational purposes.
2009. Military colleges: female students.
[2010, 2011. Renumbered.]
2012. Support and services for eligible organizations and activities outside Department of Defense.
2013. Training at non-Government facilities.
2014. Administrative actions adversely affecting military training or other readiness activities.
2015. Program to assist members in obtaining professional credentials.
2016. Undergraduate nurse training program: establishment through agreement with academic institution.
2017. Limitation on establishment of postsecondary educational institutions pending notice to Congress.

AMENDMENTS

2019—Pub. L. 116–92, div. A, title V, §§ 551(b)(2), 553(b)(2), Dec. 20, 2019, 133 Stat. 1386, 1387, substituted ''Detail as students at law schools; commissioned officers; certain enlisted members'' for ''Detail of commissioned officers as students at law schools'' in item 2004 and added item 2017.

2016—Pub. L. 114–328, div. A, title XII, § 1244(d), Dec. 23, 2016, 130 Stat. 2518, struck out items 2010 ''Participation of developing countries in combined exercises: payment of incremental expenses'' and 2011 ''Special operations forces: training with friendly foreign forces''.

2014—Pub. L. 113–291, div. A, title V, § 551(b), Dec. 19, 2014, 128 Stat. 3377, substituted ''Program to assist members in obtaining professional credentials'' for ''Payment of expenses to obtain professional credentials'' in item 2015.

2013—Pub. L. 113–66, div. A, title V, § 541(b), Dec. 26, 2013, 127 Stat. 762, added item 2006a.

2009—Pub. L. 111–84, div. A, title V, §§ 521(b), 525(b)(2), Oct. 28, 2009, 123 Stat. 2285, 2287, added items 2004b and 2016.

2006—Pub. L. 109–364, div. A, title V, § 536(b), Oct. 17, 2006, 120 Stat. 2209, added item 2004a.

Pub. L. 109–163, div. A, title V, § 538(b), Jan. 6, 2006, 119 Stat. 3250, added item 2015.

1997—Pub. L. 105–85, div. A, title III, § 325(b), Nov. 18, 1997, 111 Stat. 1679, added item 2014.

1996—Pub. L. 104–201, div. A, title III, § 362(a)(2), Sept. 23, 1996, 110 Stat. 2493, added item 2013.

Pub. L. 104–106, div. A, title V, § 572(b), Feb. 10, 1996, 110 Stat. 355, added item 2012.

1994—Pub. L. 103–337, div. A, title XVI, § 1671(b)(12), Oct. 5, 1994, 108 Stat. 3014, struck out item 2001 ''Reserve components''.

1991—Pub. L. 102–190, div. A, title X, § 1052(a)(2), Dec. 5, 1991, 105 Stat. 1471, added item 2011.

1990—Pub. L. 101–510, div. A, title XIV, § 1484(i)(3)(B), (4)(B), Nov. 5, 1990, 104 Stat. 1718, struck out ''of the military departments'' after ''officers'' in item 2004 and substituted ''Payment'' for ''Limitation on payment'' in item 2007.

1986—Pub. L. 99–661, div. A, title XIII, § 1321(a)(2), Nov. 14, 1986, 100 Stat. 3988, added item 2010.

1984—Pub. L. 98–525, title VII, § 706(a)(2), title XIV, §§ 1401(g)(2), 1405(31), Oct. 19, 1984, 98 Stat. 2570, 2619, 2624, substituted a colon for a semicolon in item 2003 and added items 2006 to 2009.

1980—Pub. L. 96–357, § 2(b), Sept. 24, 1980, 94 Stat. 1182, added item 2005.

1973—Pub. L. 93–155, title VIII, § 817(b), Nov. 16, 1973, 87 Stat. 622, added item 2004.

1971—Pub. L. 92–168, § 4(2), Nov. 24, 1971, 85 Stat. 489, added item 2003.

1970—Pub. L. 91–278, § 2(3), June 12, 1970, 84 Stat. 306, substituted ''armed forces'' for ''Army, Navy, Air Force, or Marine Corps'' in item 2002.

1965—Pub. L. 89–160, § 1(2), Sept. 1, 1965, 79 Stat. 615, added item 2002.

TRAINING PROGRAM FOR HUMAN RESOURCES PERSONNEL IN BEST PRACTICES FOR TECHNICAL WORKFORCE

Pub. L. 116–283, div. A, title II, § 246, Jan. 1, 2021, 134 Stat. 3490, provided that:

''(a) PILOT TRAINING PROGRAM.—

''(1) IN GENERAL.—Not later than one year after the date of the enactment of this Act [Jan. 1, 2021], the Secretary of Defense, acting through the Under Secretary of Defense for Personnel and Readiness and the Under Secretary of Defense for Research and Engineering, shall develop and implement a pilot program to provide covered human resources personnel with training in public and private sector best practices for attracting and retaining technical talent.

''(2) TRAINING AREAS.—The pilot program shall include training in the authorities and procedures that may be used to recruit technical personnel for positions in the Department of Defense, including—

''(A) appropriate direct hiring authorities;

''(B) excepted service authorities;

''(C) personnel exchange authorities;

''(D) authorities for hiring special government employees and highly qualified experts;

''(E) special pay authorities; and

''(F) private sector best practices to attract and retain technical talent.

''(3) METRICS.—The Secretary of Defense shall develop metrics to evaluate the effectiveness of the pilot program in contributing to the ability of the Department of Defense to attract and retain technical talent.

''(4) PLAN REQUIRED.—The Secretary of Defense shall develop a plan for the implementation of the pilot program.

''(b) REPORTS.—

''(1) REPORT ON PLAN.—Not later than one year after the date of the enactment of this Act, the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report that sets forth the plan required under subsection (a)(4).

''(2) REPORT ON PILOT PROGRAM.—Not later than three years after the date of the enactment of this Act, the Secretary of Defense shall submit to the congressional defense committees a report on the results of the pilot program.

''(c) DEFINITIONS.—In this section:

''(1) The term 'covered human resources personnel' means members of the Armed Forces and civilian employees of the Department of Defense, including human resources professionals, hiring managers, and recruiters, who are responsible for hiring technical talent.

''(2) The term 'technical talent' means individuals with expertise in high priority technical disciplines.

''(d) TERMINATION.—The requirement to carry out the pilot program under this section shall terminate five years after the date of the enactment of this Act.''

PILOT PROGRAM ON SELF-DIRECTED TRAINING IN ADVANCED TECHNOLOGIES

Pub. L. 116–283, div. A, title II, § 248, Jan. 1, 2021, 134 Stat. 3492, provided that:

''(a) ONLINE COURSES.—The Secretary of Defense shall carry out a pilot program under which the Secretary makes available a list of approved online courses relating to advanced technologies that may be taken by civilian employees of the Department of Defense and members of the Armed Forces on a voluntary basis while not engaged in the performance of their duties.

''(b) PROCEDURES.—The Secretary shall establish procedures for the development, selection, approval, adoption, and evaluation of online courses under subsection (a) to ensure that such courses are supportive of the goals of this section and overall goals for the training and education of the civilian and military workforce of the Department of Defense.

''(c) DOCUMENTATION OF COMPLETION.—The Secretary of Defense shall develop and implement a system—

"(1) to confirm whether a civilian employee of the Department of Defense or member of the Armed Forces has completed an online course approved by the Secretary under subsection (a); and

"(2) to document the completion of such course by such employee or member.

"(d) INCENTIVES.—The Secretary of Defense shall develop and implement incentives to encourage civilian employees of the Department of Defense and members of the Armed Forces to complete online courses approved by the Secretary under subsection (a).

"(e) METRICS.—The Secretary of Defense shall develop metrics to evaluate whether, and to what extent, the pilot program under this section improves the ability of participants—

"(1) to perform job-related functions; and

"(2) to execute relevant missions of the Department of Defense.

"(f) ADVANCED TECHNOLOGIES DEFINED.—In this section, the term 'advanced technologies' means technologies that the Secretary of Defense determines to be in high-demand within the Department of Defense and to which significant research and development efforts are devoted, including technologies such as artificial intelligence, data science, machine learning, fifth-generation telecommunications technology, and biotechnology.

"(g) DEADLINE.—The Secretary of Defense shall carry out the activities described in subsections (a) through (e) not later than one year after the date of the enactment of this Act [Jan. 1, 2021].

"(h) SUNSET.—This section shall terminate on October 1, 2024."

TRAINING PROGRAM REGARDING FOREIGN MALIGN INFLUENCE CAMPAIGNS

Pub. L. 116–283, div. A, title V, §589E, Jan. 1, 2021, 134 Stat. 3661, provided that:

"(a) ESTABLISHMENT.—Not later than September 30, 2021, the Secretary of Defense shall establish a program for training members of the Armed Forces and civilian employees of the Department of Defense regarding the threat of foreign malign influence campaigns targeted at such individuals and the families of such individuals, including such campaigns carried out through social media.

"(b) DESIGNATION OF OFFICIAL TO COORDINATE AND INTEGRATE.—Not later than 30 days after the date of enactment of this Act [Jan. 1, 2021], the Secretary shall designate an official of the Department who shall be responsible for coordinating and integrating the training program under this section.

"(c) BEST PRACTICES.—In coordinating and integrating the training program under this section, the official designated under subsection (b) shall review best practices of existing training programs across the Department.

"(d) REPORT REQUIRED.—Not later than October 30, 2021, the Secretary shall submit a report to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] detailing the program established under this section.

"(e) FOREIGN MALIGN INFLUENCE DEFINED.—In this section, the term 'foreign malign influence' has the meaning given that term in section 119C of the National Security Act of 1947 (50 U.S.C. 3059)."

COLLECTION OF BLAST EXPOSURE INFORMATION

Pub. L. 116–92, div. A, title VII, §742(b), Dec. 20, 2019, 133 Stat. 1469, provided that: "The Secretary of Defense shall collect blast exposure information with respect to a member of the Armed Forces in a manner—

"(1) consistent with blast exposure measurement training guidance of the Department of Defense, including any guidance developed pursuant to—

"(A) the longitudinal medical study on blast pressure exposure required by section 734 of the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115–91; 131 Stat. 1444); and

"(B) the review of guidance on blast exposure during training required by section 253 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232; 10 U.S.C. 2001 note prec.);

"(2) compatible with training and operational objectives of the Department; and

"(3) that is automated, to the extent practicable, to minimize the reporting burden of unit commanders."

REVIEW OF GUIDANCE ON BLAST EXPOSURE DURING TRAINING

Pub. L. 115–232, div. A, title II, §253, Aug. 13, 2018, 132 Stat. 1704, provided that:

"(a) INITIAL REVIEW.—Not later than 180 days after the date of the enactment of this Act [Aug. 13, 2018], the Secretary of Defense shall review the decibel level exposure, concussive effects exposure, and the frequency of exposure to heavy weapons fire of an individual during training exercises to establish appropriate limitations on such exposures.

"(b) ELEMENTS.—The review required by subsection (a) shall take into account current data and evidence on the cognitive effects of blast exposure and shall include consideration of the following:

"(1) The impact of exposure over multiple successive days of training.

"(2) The impact of multiple types of heavy weapons being fired in close succession.

"(3) The feasibility of cumulative annual or lifetime exposure limits.

"(4) The minimum safe distance for observers and instructors.

"(c) UPDATED TRAINING GUIDANCE.—Not later than 180 days after the date of the completion of the review under subsection (a), each Secretary of a military department shall update any relevant training guidance to account for the conclusions of the review.

"(d) UPDATED REVIEW.—

"(1) IN GENERAL.—Not later than two years after the initial review conducted under subsection (a), and not later than two years thereafter, the Secretary of Defense shall conduct an updated review under such subsection, including consideration of the matters set forth under subsection (b), and update training guidance under subsection (c).

"(2) CONSIDERATION OF NEW RESEARCH AND EVIDENCE.—Each updated review conducted under paragraph (1) shall take into account new research and evidence that has emerged since the previous review.

"(e) BRIEFING REQUIRED.—The Secretary of Defense shall brief the Committees on Armed Services of the Senate and the House of Representatives on a summary of the results of the initial review under subsection (a), each updated review conducted under subsection (d), and any updates to training guidance and procedures resulting from any such review or updated review."

ANNUAL TRAINING REGARDING THE INFLUENCE CAMPAIGN OF THE RUSSIAN FEDERATION

Pub. L. 115–91, div. A, title X, §1048, Dec. 12, 2017, 131 Stat. 1558, provided that: "In addition to any currently mandated training, the Secretary of Defense may furnish annual training to all members of the Armed Forces and all civilian employees of the Department of Defense, regarding attempts by the Russian Federation and its proxies and agents to influence and recruit members of the Armed Forces as part of its influence campaign."

POLICY ON ACTIVE SHOOTER TRAINING FOR CERTAIN LAW ENFORCEMENT PERSONNEL

Pub. L. 112–81, div. A, title III, §367, Dec. 31, 2011, 125 Stat. 1381, provided that: "The Secretary of Defense shall establish policy and promulgate guidelines to ensure civilian and military law enforcement personnel charged with security functions on military installations shall receive Active Shooter Training as de-

scribed in finding 4.3 of the document entitled 'Protecting the Force: Lessons From Fort Hood'.''

LANGUAGE TRAINING CENTERS FOR MEMBERS OF THE ARMED FORCES AND CIVILIAN EMPLOYEES OF THE DEPARTMENT OF DEFENSE

Pub. L. 111–84, div. A, title V, §529, Oct. 28, 2009, 123 Stat. 2290, provided that:

''(a) PROGRAM AUTHORIZED.—The Secretary of Defense may carry out a program to establish language training centers at accredited universities, senior military colleges, or other similar institutions of higher education for purposes of accelerating the development of foundational expertise in critical and strategic languages and regional area studies (as defined by the Secretary of Defense for purposes of this section) for members of the Armed Forces, including members of the reserve components and candidates of the Reserve Officers' Training Corps programs, and civilian employees of the Department of Defense.

''(b) ELEMENTS.—Each language training center established under the program authorized by subsection (a) shall include the following:

''(1) Programs to provide that members of the Armed Forces or civilian employees of the Department of Defense who graduate from the institution of higher education concerned include members or employees, as the case may be, who are skilled in the languages and area studies covered by the program from beginning through advanced skill levels.

''(2) Programs of language proficiency training for such members and civilian employees at the institution of higher education concerned in critical and strategic languages tailored to meet operational readiness requirements.

''(3) Alternative language training delivery systems and modalities to meet language and regional area study requirements for such members and employees whether prior to deployment, during deployment, or post-deployment.

''(4) Programs on critical and strategic languages under the program that can be incorporated into Reserve Officers' Training Corps programs to facilitate the development of language skills in such languages among future officers of the Armed Forces.

''(5) Training and education programs to expand the pool of qualified instructors and educators on critical and strategic languages and regional area studies under the program for the Armed Forces.

''(6) Programs to facilitate and encourage the recruitment of native and heritage speakers of critical and strategic languages under the program into the Armed Forces and the civilian workforce of the Department of Defense and to support the Civilian Linguist Reserve Corps.

''(c) PARTNERSHIPS WITH OTHER SCHOOLS.—Any language training center established under the program authorized by subsection (a) may enter into a partnership with one or more local educational agencies to facilitate the development of skills in critical and strategic languages under the program among students attending the elementary and secondary schools of such agencies who may pursue a military career.

''(d) COORDINATION.—The Secretary of Defense shall ensure that the language training centers established under the program authorized by subsection (a) are aligned with those of the National Security Education Program, the Defense Language Institute, and other appropriate Department of Defense programs to facilitate and encourage the recruitment of native and heritage speakers of critical and strategic languages under the program into the Armed Forces and the civilian workforce of the Department of Defense and to support the Civilian Linguist Reserve Corps.

''(e) REPORT.—Not later than one year after the date of the establishment of the program authorized by subsection (a), the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the program. The report shall include the following:

''(1) A description of each language training center established under the program.

''(2) An assessment of the cost-effectiveness of the program in providing foundational expertise in critical and strategic languages and regional area studies in support of the Defense Language Transformation Roadmap.

''(3) An assessment of the progress made by each language training center in providing capabilities in critical and strategic languages under the program to members of the Armed Forces and Department of Defense employees.

''(4) A recommendation whether the program should be continued and, if so, recommendations as to any modifications of the program that the Secretary considers appropriate.''

ENHANCING EDUCATION PARTNERSHIPS TO IMPROVE ACCESSIBILITY AND FLEXIBILITY FOR MEMBERS OF THE ARMED FORCES

Pub. L. 110–417, [div. A], title V, §550, Oct. 14, 2008, 122 Stat. 4468, provided that:

''(a) AUTHORITY.—The Secretary of a military department may enter into one or more education partnership agreements with educational institutions in the United States for the purpose of—

''(1) developing plans to improve the accessibility and flexibility of college courses available to eligible members of the Armed Forces;

''(2) improving the application process for the Armed Forces tuition assistance programs and raising awareness regarding educational opportunities available to such members;

''(3) developing curriculum, distance education programs, and career counseling designed to meet the professional, financial, academic, and social needs of such members; and

''(4) assessing how resources may be applied more effectively to meet the educational needs of such members.

''(b) COST.—Except as provided in this section, execution of an education partnership agreement with an educational institution shall be at no cost to the Government.

''(c) EDUCATIONAL INSTITUTION DEFINED.—In this section, the term 'educational institution' means an accredited college, university, or technical school in the United States.''

[§ 2001. Repealed. Pub. L. 103–337, div. A, title XVI, § 1661(a)(3)(A), Oct. 5, 1994, 108 Stat. 2980]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 119, related to division of reserve components into training categories. See section 10141(c) of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

§ 2002. Dependents of members of armed forces: language training

(a) Notwithstanding section 701(b) of the Foreign Service Act of 1980 (22 U.S.C. 4021(b)) or any other provision of law, and under regulations to be prescribed by the Secretary of Defense or, with respect to the Coast Guard when it is not operating as a service in the Navy, the Secretary of Homeland Security, language training may be provided in—

(1) a facility of the Department of Defense;

(2) a facility of the George P. Shultz National Foreign Affairs Training Center established under section 701(a) of the Foreign Service Act of 1980 (22 U.S.C. 4021(a)); or

(3) a civilian educational institution;

to a dependent of a member of the armed forces in anticipation of the member's assignment to permanent duty outside the United States.

(b) In this section, the term ''dependent'' has the same meaning that it has under section 401 of title 37.

(Added Pub. L. 89–160, § 1(1), Sept. 1, 1965, 79 Stat. 615; amended Pub. L. 91–278, § 2(1), (2), June 12, 1970, 84 Stat. 306; Pub. L. 96–465, title II, § 2206(c)(1), Oct. 17, 1980, 94 Stat. 2162; Pub. L. 97–22, § 11(a)(7), July 10, 1981, 95 Stat. 138; Pub. L. 98–525, title XIV, § 1405(30), Oct. 19, 1984, 98 Stat. 2624; Pub. L. 100–180, div. A, title XII, § 1231(18)(A), Dec. 4, 1987, 101 Stat. 1161; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 108–136, div. A, title X, § 1045(a)(4), Nov. 24, 2003, 117 Stat. 1612.)

AMENDMENTS

2003—Subsec. (a)(2). Pub. L. 108–136 substituted ''George P. Shultz National Foreign Affairs Training Center'' for ''Foreign Service Institute''.

2002—Subsec. (a). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation'' in introductory provisions.

1987—Subsec. (b). Pub. L. 100–180 inserted ''the term'' after ''In this section,''.

1984—Subsec. (b). Pub. L. 98–525 substituted ''In this section,'' for ''For the purposes of this section, the word''.

1981—Subsec. (a). Pub. L. 97–22 inserted ''(22 U.S.C. 4021(b))'' after ''section 701(b) of the Foreign Service Act of 1980'' in provisions preceding par. (1) and, in par. (2), inserted ''(22 U.S.C. 4021(a))'' after ''section 701(a) of the Foreign Service Act of 1980''.

1980—Subsec. (a). Pub. L. 96–465, in provisions preceding par. (1) substituted ''section 701(b) of the Foreign Service Act of 1980'' for ''section 1041 of title 22'' and in par. (2) substituted ''section 701(a) of the Foreign Service Act of 1980'' for ''section 1041 of title 22''.

1970—Pub. L. 91–278, § 2(1), substituted ''armed forces'' for ''Army, Navy, Air Force, or Marine Corps'' in section catchline.

Subsec. (a). Pub. L. 91–278, § 2(2)(A), authorized Secretary of Transportation to prescribe regulations for Coast Guard when not operating as a service in the Navy.

Subsec. (a)(3). Pub. L. 91–278, § 2(2)(B), substituted ''armed forces'' for ''Army, Navy, Air Force, or Marine Corps''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–465 effective Feb. 15, 1981, except as otherwise provided, see section 2403 of Pub. L. 96–465, set out as an Effective Date note under section 3901 of Title 22, Foreign Relations and Intercourse.

§ 2003. Aeronautical rating as pilot: qualifications

To be eligible to receive an aeronautical rating as a pilot in the Army or Air Force or be designated as a naval aviator, a member of an armed force must successfully complete an undergraduate pilot course of instruction prescribed or approved by the Secretary of his military department.

(Added Pub. L. 92–168, § 4(1), Nov. 24, 1971, 85 Stat. 489.)

§ 2004. Detail as students at law schools; commissioned officers; certain enlisted members

(a) The Secretary of each military department may, under regulations prescribed by the Secretary of Defense, detail commissioned officers and enlisted members of the armed forces as students at accredited law schools, located in the United States, for a period of training leading to the degree of juris doctor. No more than twenty-five officers and enlisted members from each military department may commence such training in any single fiscal year.

(b) To be eligible for detail under subsection (a), an officer or enlisted member must be a citizen of the United States and must—

(1) either—

(A) have served on active duty for a period of not less than two years nor more than six years and be an officer in the pay grade O–3 or below as of the time the training is to begin; or

(B) have served on active duty for a period of not less than four years nor more than eight years and be an enlisted member in the pay grade E–5, E–6, or E–7 as of the time the training is to begin;

(2) in the case of an enlisted member, meet all requirements for acceptance of a commission as a commissioned officer in the armed forces; and

(3) sign an agreement that unless sooner separated he will—

(A) complete the educational course of legal training;

(B) accept transfer or detail as a judge advocate within the department concerned when his legal training is completed; and

(C) agree to serve on active duty following completion or other termination of training for a period of two years for each year or part thereof of his legal training under subsection (a).

(c) Officers and enlisted members detailed for legal training under subsection (a) shall be selected on a competitive basis by the Secretary of the military department concerned, under regulations prescribed by the Secretary of Defense. Any service obligation incurred by an officer or enlisted member under an agreement entered into under subsection (b) shall be in addition to any service obligation incurred by any such officer or enlisted member under any other provision of law or agreement.

(d) Expenses incident to the detail of officers and enlisted members under this section shall be paid from any funds appropriated for the military department concerned.

(e) An officer or enlisted member who, under regulations prescribed by the Secretary of Defense, is dropped from the program of legal training authorized by subsection (a) for deficiency in conduct or studies, or for other reasons, may be required to perform active duty in an appropriate military capacity in accordance with the active duty obligation imposed by regulations issued by the Secretary of Defense, except that in no case shall any such member be required to serve on active duty for any period in excess of one year for each year or part thereof he participated in the program.

(f) No agreement detailing any officer or enlisted member of the armed forces to an accredited law school may be entered into during any period that the President is authorized by law to induct persons into the armed forces involuntarily. Nothing in this subsection shall affect any agreement entered into during any period when the President is not authorized by law to so induct persons into the armed forces.

(Added Pub. L. 93–155, title VIII, § 817(a), Nov. 16, 1973, 87 Stat. 621; amended Pub. L. 101–510, div. A, title XIV, § 1484(i)(3)(A), Nov. 5, 1990, 104 Stat. 1718; Pub. L. 116–92, div. A, title V, § 551(a), (b)(1), Dec. 20, 2019, 133 Stat. 1385, 1386; Pub. L. 116–283, div. A, title X, § 1081(a)(34), Jan. 1, 2021, 134 Stat. 3872.)

AMENDMENTS

2021—Subsecs. (d), (e). Pub. L. 116–283 substituted ''enlisted'' for ''enlistment''.

2019—Pub. L. 116–92, § 551(b)(1), substituted ''Detail as students at law schools; commissioned officers; certain enlisted members'' for ''Detail of commissioned officers as students at law schools'' in section catchline.

Subsec. (a). Pub. L. 116–92, § 551(a)(1), inserted ''and enlisted members'' after ''commissioned officers'' and after ''twenty-five officers'' and struck out ''bachelor of laws or'' before ''juris doctor''.

Subsec. (b). Pub. L. 116–92, § 551(a)(2)(A), inserted ''or enlisted member'' after ''officer'' in introductory provisions.

Subsec. (b)(1). Pub. L. 116–92, § 551(a)(2)(B), added par. (1) and struck out former par. (1) which read as follows: ''have served on active duty for a period of not less than two years nor more than six years and be in the pay grade O–3 or below as of the time the training is to begin; and''.

Subsec. (b)(2), (3). Pub. L. 116–92, § 551(a)(2)(C), (D), added par. (2) and redesignated former par. (2) as (3).

Subsec. (b)(3)(B). Pub. L. 116–92, § 551(a)(2)(E), struck out ''or law specialist'' after ''judge advocate''.

Subsec. (c). Pub. L. 116–92, § 551(a)(3), inserted ''and enlisted members'' after ''Officers'' and, in two places, inserted ''or enlisted member'' after ''officer''.

Subsec. (d). Pub. L. 116–92, § 551(a)(4), inserted ''and enlistment members'' after ''officers''.

Subsec. (e). Pub. L. 116–92, § 551(a)(5), inserted ''or enlistment member'' after ''officer''.

Subsec. (f). Pub. L. 116–92, § 551(a)(6), inserted ''or enlisted member'' after ''officer''.

1990—Pub. L. 101–510 struck out ''of the military departments'' after ''officers'' in section catchline.

SELECTION OF OFFICERS IN MISSING STATUS FOR LEGAL TRAINING ON A NONCOMPETITIVE BASIS; EXEMPTION FROM NUMERICAL LIMITATIONS

Pub. L. 94–106, title VIII, § 821, Oct. 7, 1975, 89 Stat. 545, provided that: ''Notwithstanding any provision of section 2004 of title 10 United States Code, an officer in any pay grade who was in a missing status (as defined in section 551(2) of title 37, United States Code) after August 4, 1964, and before May 8, 1975, may be selected for detail for legal training under that section 2004 on other than a competitive basis and, if selected for that training, is not counted in computing, for the purpose of subsection (a) of that section 2004, the number of officers who may commence that training in any single fiscal year. For the purposes of determining eligibility under that section 2004, the period of time during which an officer was in that missing status may be disregarded in computing the period he has served on active duty.''

§ 2004a. Detail of commissioned officers as students at medical schools

(a) DETAIL AUTHORIZED.—The Secretary of each military department may detail commissioned officers of the armed forces as students at accredited medical schools or schools of osteopathy located in the United States for a period of training leading to the degree of doctor of medicine. No more than 25 officers from each military department may commence such training in any single fiscal year.

(b) ELIGIBILITY FOR DETAIL.—To be eligible for detail under subsection (a), an officer must be a citizen of the United States and must—

(1) have served on active duty for a period of not less than two years nor more than six years and be in the pay grade O–3 or below as of the time the training is to begin; and

(2) sign an agreement that unless sooner separated the officer will—

(A) complete the educational course of medical training;

(B) accept transfer or detail as a medical officer within the military department concerned when the officer's training is completed; and

(C) agree to serve, following completion of the officer's training, on active duty (or on active duty and in the Selected Reserve) for a period as specified pursuant to subsection (c).

(c) SERVICE OBLIGATION.—An agreement under subsection (b) shall provide that the officer shall serve on active duty for two years for each year or part thereof of the officer's medical training under subsection (a), except that the agreement may authorize the officer to serve a portion of the officer's service obligation on active duty and to complete the service obligation that remains upon separation from active duty in the Selected Reserve, in which case the officer shall serve three years in the Selected Reserve for each year or part thereof of the officer's medical training under subsection (a) for any service obligation that was not completed before separation from active duty.

(d) SELECTION OF OFFICERS FOR DETAIL.—Officers detailed for medical training under subsection (a) shall be selected on a competitive basis by the Secretary of the military department concerned.

(e) APPOINTMENT AND TREATMENT OF PRIOR ACTIVE SERVICE.—(1) A commissioned officer detailed as a student at a medical school under subsection (a) shall be appointed as a regular officer in the grade of second lieutenant or ensign and shall serve on active duty in that grade with full pay and allowances of that grade.

(2) If an officer detailed to be a medical student has prior active service in a pay grade and with years of service credited for pay that would entitle the officer, if the officer remained in the former grade, to a rate of basic pay in excess of the rate of basic pay for regular officers in the grade of second lieutenant or ensign, the officer shall be paid basic pay based on the former grade and years of service credited for pay. The amount of such basic pay for the officer shall be increased on January 1 of each year by the percentage by which basic pay is increased on average on that date for that year, and the officer shall continue to receive basic pay based on the former grade and years of service until the date, whether occurring before or after graduation, on which the basic pay for the officer in the offi-

cer's actual grade and years of service credited for pay exceeds the amount of basic pay to which the officer is entitled based on the officer's former grade and years of service.

(f) RELATION OF SERVICE OBLIGATIONS TO OTHER SERVICE OBLIGATIONS.—Any service obligation incurred by an officer under an agreement entered into under subsection (b) shall be in addition to any service obligation incurred by the officer under any other provision of law or agreement.

(g) EXPENSES.—Expenses incident to the detail of officers under this section shall be paid from any funds appropriated for the military department concerned.

(h) FAILURE TO COMPLETE PROGRAM.—(1) An officer who is dropped from a program of medical training to which detailed under subsection (a) for deficiency in conduct or studies, or for other reasons, may be required to perform active duty in an appropriate military capacity in accordance with the active duty obligation imposed on the officer under regulations issued by the Secretary of Defense for purposes of this section.

(2) In no case shall an officer be required to serve on active duty under paragraph (1) for any period in excess of one year for each year or part thereof the officer participated in the program.

(i) LIMITATION ON DETAILS.—No agreement detailing an officer of the armed forces to an accredited medical school or school of osteopathy may be entered into during any period in which the President is authorized by law to induct persons into the armed forces involuntarily. Nothing in this subsection shall affect any agreement entered into during any period when the President is not authorized by law to so induct persons into the armed forces.

(Added Pub. L. 109–364, div. A, title V, § 536(a), Oct. 17, 2006, 120 Stat. 2207; amended Pub. L. 110–181, div. A, title V, § 524(c), Jan. 28, 2008, 122 Stat. 104; Pub. L. 111–84, div. A, title X, § 1073(a)(18), Oct. 28, 2009, 123 Stat. 2473.)

AMENDMENTS

2009—Subsec. (b)(1). Pub. L. 111–84, § 1073(a)(18)(A), substituted "pay grade O–3" for "pay grade 0–3".

Subsec. (i). Pub. L. 111–84, § 1073(a)(18)(B), inserted period at end.

2008—Subsec. (c). Pub. L. 110–181, § 524(c)(2), substituted "subsection (b)" for "subsection (c)".

Subsecs. (e) to (i). Pub. L. 110–181, § 524(c)(1), added subsec. (e) and redesignated former subsecs. (e) to (h) as (f) to (i), respectively.

§ 2004b. Detail of commissioned officers as students at schools of psychology

(a) DETAIL AUTHORIZED.—The Secretary of each military department may detail commissioned officers of the armed forces as students at accredited schools of psychology located in the United States for a period of training leading to the degree of Doctor of Philosophy in clinical psychology. No more than 25 officers from each military department may commence such training in any single fiscal year.

(b) ELIGIBILITY FOR DETAIL.—To be eligible for detail under subsection (a), an officer must be a citizen of the United States and must—

(1) have served on active duty for a period of not less than two years nor more than six years and be in the pay grade O–3 or below as of the time the training is to begin; and

(2) sign an agreement that unless sooner separated the officer will—

(A) complete the educational course of psychological training;

(B) accept transfer or detail as a commissioned officer within the military department concerned when the officer's training is completed; and

(C) agree to serve, following completion of the officer's training, on active duty (or on active duty and in the Selected Reserve) for a period as specified pursuant to subsection (c).

(c) SERVICE OBLIGATION.—(1) Except as provided in paragraph (2), the agreement of an officer under subsection (b) shall provide that the officer shall serve on active duty for two years for each year or part thereof of the officer's training under subsection (a).

(2) The agreement of an officer may authorize the officer to serve a portion of the officer's service obligation on active duty and to complete the service obligation that remains upon separation from active duty in the Selected Reserve. Under any such agreement, an officer shall serve three years in the Selected Reserve for each year or part thereof of the officer's training under subsection (a) for any service obligation that was not completed before separation from active duty.

(d) SELECTION OF OFFICERS FOR DETAIL.—Officers detailed for training under subsection (a) shall be selected on a competitive basis by the Secretary of the military department concerned.

(e) RELATION OF SERVICE OBLIGATIONS TO OTHER SERVICE OBLIGATIONS.—Any service obligation incurred by an officer under an agreement entered into under subsection (b) shall be in addition to any service obligation incurred by the officer under any other provision of law or agreement.

(f) EXPENSES.—Expenses incident to the detail of officers under this section shall be paid from any funds appropriated for the military department concerned.

(g) FAILURE TO COMPLETE PROGRAM.—(1) An officer who is dropped from a program of psychological training to which detailed under subsection (a) for deficiency in conduct or studies, or for other reasons, may be required to perform active duty in an appropriate military capacity in accordance with the active duty obligation imposed on the officer under regulations issued by the Secretary of Defense for purposes of this section.

(2) In no case shall an officer be required to serve on active duty under paragraph (1) for any period in excess of one year for each year or part thereof the officer participated in the program.

(h) LIMITATION ON DETAILS.—No agreement detailing an officer of the armed forces to an accredited school of psychology may be entered into during any period in which the President is authorized by law to induct persons into the armed forces involuntarily. Nothing in this subsection shall affect any agreement entered into during any period when the President is not authorized by law to so induct persons into the armed forces.

(Added Pub. L. 111–84, div. A, title V, § 521(a), Oct. 28, 2009, 123 Stat. 2283; amended Pub. L. 111–383, div. A, title X, § 1075(b)(26), Jan. 7, 2011, 124 Stat. 4370.)

AMENDMENTS

2011—Subsec. (b)(1). Pub. L. 111–383 substituted ''pay grade O–3'' for ''pay grade 0–3''.

§ 2005. Advanced education assistance: active duty agreement; reimbursement requirements

(a) The Secretary concerned may require, as a condition to the Secretary providing advanced education assistance to any person, that such person enter into a written agreement with the Secretary concerned under the terms of which such person shall agree—

(1) to complete the educational requirements specified in the agreement and to serve on active duty for a period specified in the agreement;

(2) that if such person fails to complete the education requirements specified in the agreement, such person will serve on active duty for a period specified in the agreement;

(3) that if such person does not complete the period of active duty specified in the agreement, or does not fulfill any term or condition prescribed pursuant to paragraph (4), such person shall be subject to the repayment provisions of section 303a(e) or 373 of title 37; and

(4) to such other terms and conditions as the Secretary concerned may prescribe to protect the interest of the United States.

(b) The Secretary concerned shall determine the period of active duty to be served by any person for advanced education assistance to be provided such person by an armed force, except that if the period of active duty required to be served is specified under another provision of law with respect to the advanced education assistance to be provided, the period specified in the agreement referred to in subsection (a) shall be the same as the period specified in such other provision of law.

(c) As a condition of the Secretary concerned providing financial assistance under section 2107 or 2107a of this title to any person, the Secretary concerned shall require that the person enter into the agreement described in subsection (a). In addition to the requirements of paragraphs (1) through (4) of such subsection, the agreement shall specify that, if the person does not complete the education requirements specified in the agreement or does not fulfill any term or condition prescribed pursuant to paragraph (4) of such subsection, the person shall be subject to the repayment provisions of section 303a(e) or 373 of title 37 without the Secretary first ordering such person to active duty as provided for under subsection (a)(2) and sections 2107(f) and 2107a(f) of this title.

(d) In this section:

(1) The term ''advanced education'' means education or training above the secondary school level but does not include technical training provided to a member of the armed forces to qualify such member to perform a specified military function, to workshops, or to short-term training programs.

(2) The term ''assistance'' means the direct provision of any course of advanced education by the Secretary concerned, reimbursement by the Secretary concerned for any course of advanced education provided by another department or agency of the Federal Government, or the payment, in whole or in part, by the Secretary concerned for any course of advanced education provided by any public or private educational institution or other entity, but such term does not include the payment for any course of advanced education which is paid for under chapter 106 or 107 of this title.

(3) The term ''cost of advanced education'' means those costs which are, under regulations prescribed by the Secretary concerned, directly attributable to the education of the person to whom a course of advanced education is provided, including the cost of tuition and other fees (or, if none is charged, an amount determined by the Secretary concerned to be a reasonable charge for the education provided), the cost of books, supplies, transportation, and miscellaneous expenses, and the cost of room and board, but such term does not include pay or allowances under title 37 or a stipend under section 2121 of this title.

(Added Pub. L. 96–357, § 2(a), Sept. 24, 1980, 94 Stat. 1180; amended Pub. L. 98–94, title X, § 1003(b)(1), title XII, § 1268(10), Sept. 24, 1983, 97 Stat. 656, 706; Pub. L. 100–180, div. A, title XII, § 1231(17), Dec. 4, 1987, 101 Stat. 1161; Pub. L. 101–510, div. A, title V, § 534, Nov. 5, 1990, 104 Stat. 1564; Pub. L. 103–160, div. A, title V, § 573(a), Nov. 30, 1993, 107 Stat. 1673; Pub. L. 109–163, div. A, title VI, § 687(c)(2), Jan. 6, 2006, 119 Stat. 3333; Pub. L. 115–91, div. A, title VI, § 618(a)(1)(B), Dec. 12, 2017, 131 Stat. 1426.)

AMENDMENTS

2017—Subsecs. (a)(3), (c). Pub. L. 115–91 inserted ''or 373'' before ''of title 37''.

2006—Subsec. (a)(3). Pub. L. 109–163, § 687(c)(2)(A), added par. (3) and struck out former par. (3) which read as follows: ''that if such person, voluntarily or because of misconduct, fails to complete the period of active duty specified in the agreement, or fails to fulfill any term or condition prescribed pursuant to clause (4), such person will reimburse the United States in an amount that bears the same ratio to the total cost of advanced education provided such person as the unserved portion of active duty bears to the total period of active duty such person agreed to serve; and''.

Subsecs. (c) to (h). Pub. L. 109–163, § 687(c)(2)(B)–(D), added subsec. (c), redesignated former subsec. (e) as (d), and struck out former subsecs. (c), (d), and (f) to (h) relating to the obligation to reimburse the United States under an advanced education assistance agreement in subsec. (c), the effect of a discharge in bankruptcy under title 11 in subsec. (d), requirements for providing financial assistance in subsec. (f), failure to complete a period of active duty specified in an agreement in subsec. (g), and modification of agreements by the Secretary concerned in subsec. (h).

1993—Subsecs. (g), (h). Pub. L. 103–160 added subsecs. (g) and (h).

1990—Subsec. (a)(3). Pub. L. 101–510, § 534(1), inserted ''or fails to fulfill any term or condition prescribed pursuant to clause (4),'' after ''agreement,''.

Subsec. (f)(1). Pub. L. 101–510, § 534(2), inserted ''or fails to fulfill any term or condition prescribed pursuant to clause (4) of such subsection,'' after ''agreement,''.

1987—Subsec. (e). Pub. L. 100–180, § 1231(17), inserted ''The term'' after each par. designation and revised

first word in quotes in each par. to make initial letter of such word lowercase.

1983—Subsec. (c). Pub. L. 98–94, § 1268(10)(A), struck out ''of this section'' after ''subsection (d)'' and ''subsection (a)''.

Subsec. (d). Pub. L. 98–94, § 1268(10)(A), struck out ''of this section'' after ''subsection (a)''.

Subsec. (e). Pub. L. 98–94, § 1268(10)(B), substituted a colon for a dash after ''In this section'' preceding par. (1).

Subsec. (f). Pub. L. 98–94, § 1003(b)(1), added subsec. (f).

EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103–160, div. A, title V, § 573(b), Nov. 30, 1993, 107 Stat. 1674, provided that:

''(1) Subsection (g) of section 2005 of title 10, United States Code, as added by subsection (a), shall apply with respect to persons separated from the Armed Forces after the end of the six-month period beginning on the date of the enactment of this Act [Nov. 30, 1993].

''(2) Subsection (h) of such section, as added by subsection (a), shall apply with respect to persons separated from the Armed Forces after the date of the enactment of this Act.''

EFFECTIVE DATE OF 1983 AMENDMENT

Pub. L. 98–94, title X, § 1003(b)(2), Sept. 24, 1983, 97 Stat. 657, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply with respect to agreements entered into after September 30, 1983.''

SAVINGS PROVISION

For savings provision relating to payment or repayment of any bonus, incentive pay, special pay, or similar pay obligated to be paid before Apr. 1, 2006, under a provision of this section amended by section 687(c) of Pub. L. 109–163, see section 687(f) of Pub. L. 109–163, set out as a note under section 510 of this title.

§ 2006. Department of Defense Education Benefits Fund

(a) There is established on the books of the Treasury a fund to be known as the Department of Defense Education Benefits Fund (hereinafter in this section referred to as the ''Fund''), which shall be administered by the Secretary of the Treasury. The Fund shall be used for the accumulation of funds in order to finance armed forces education liabilities on an actuarially sound basis.

(b) In this section:

(1) The term ''armed forces education liabilities'' means liabilities of the armed forces for benefits under chapter 30 or 33 of title 38 and for Department of Defense benefits under paragraphs (3) and (4) of section 510(e) and chapters 1606 and 1607 of this title, including funds provided by the Secretary of Homeland Security for education liabilities for the Coast Guard when it is not operating as a service in the Department of the Navy.

(2) The term ''normal cost'', with respect to any period of time, means the total of the following:

(A) The present value of the future benefits payable from the Fund for amounts attributable to increased amounts of educational assistance authorized under section 3015(d) of title 38 to persons who were not on active duty on July 1, 1985, and who during such period enter on active duty.

(B) The present value of the future benefits payable from the Fund for amounts attributable to educational assistance authorized under subchapter III of chapter 30 of title 38 to persons who were not on active duty on July 1, 1985, and who during such period—

(i) enter a fourth year of active duty, in the case of persons eligible for basic educational assistance under section 3011 of such title; or

(ii) enter a period of service that will establish entitlement to such educational assistance under section 3021(b) of such title, in the case of persons eligible for basic educational assistance under section 3012 of such title.

(C) The present value of the future Department of Defense benefits payable from the Fund (including funds from the Department in which the Coast Guard is operating) for educational assistance under chapters 1606 and 1607 of this title to persons who during such period become entitled to such assistance.

(D) The present value of future benefits payable from the Fund for the Department of Defense portion of payments of educational assistance under subchapter II of chapter 30 of title 38 attributable to increased usage of benefits as a result of transfers of entitlement to basic educational assistance under section 3020 of that title during such period.

(E) The present value of future benefits payable from the Fund for educational assistance under paragraphs (3) and (4) of section 510(e) of this title to persons who during such period become entitled to such assistance.

(F) The present value of any future benefits payable from the Fund for amounts attributable to increased amounts of educational assistance authorized by section 3316 of title 38.

(c) There shall be deposited into the Fund the following, which shall constitute the assets of the Fund:

(1) Amounts paid into the Fund by the Secretary of Defense and the Secretary of the Department in which the Coast Guard is operating under subsection (f).

(2) Any amount appropriated to the Fund.

(3) Any return on investment of the assets of the Fund.

(d) The Secretary of the Treasury shall transfer from the Fund to the Secretary of Veterans Affairs such amounts as may be necessary to enable the Secretary of Veterans Affairs to make required payments of armed forces education liabilities. The Secretary of the Treasury, the Secretary of Defense, the Secretary of the Department in which the Coast Guard is operating, and the Secretary of Veterans Affairs shall enter into an agreement as to how and when, and the amounts in which, such transfers shall be made. Except for investments under subsection (h), amounts in the Fund may not be used for any purpose other than transfers as described in this subsection.

(e)(1) The Secretary of Defense shall carry out periodic actuarial valuations of the educational programs described in subsection (b)(1).

(2) Based on the most recent such valuation, the Secretary of Defense shall estimate the normal cost for the next fiscal year.

(3) If at the time of any such valuation there has been a change in benefits under an education program described in subsection (b)(1) that has been made since the last such valuation and that increases or decreases the present value of benefits payable from the Fund, the Secretary of Defense shall determine an amortization methodology and schedule for the liquidation of the unfunded liability (or negative unfunded liability) thus created such that the present value of the sum of the amortization payments equals the increase or decrease in the present value of such benefits.

(4) If at the time of any such valuation the Secretary of Defense determines that, based upon changes in actuarial assumptions since the last valuation, there has been an actuarial gain or loss to the Fund, the Secretary shall determine an amortization methodology and schedule for the liquidation of such gain or loss through an increase or decrease in the payments that would otherwise be made to the Fund.

(5) Based on the determinations under paragraphs (2), (3), and (4) the Secretary of Defense shall determine the amount needed to be appropriated to the Department of Defense and the Department in which the Coast Guard is operating for the next fiscal year for payments to be made to the Fund under subsection (f). The President shall include not less than the full amount so determined in the budget transmitted to Congress for the next fiscal year under section 1105 of title 31. The President may comment and make recommendations concerning any such amount.

(6) All determinations under this subsection shall be made using methods and assumptions approved by the Board of Actuaries (including assumptions of interest rates and inflation) and in accordance with generally accepted actuarial principles and practices.

(f)(1) The Secretary of Defense and the Secretary of the Department in which the Coast Guard is operating shall pay into the Fund each month the amount that, based upon the most recent actuarial valuation of the education programs described in subsection (b)(1), is equal to the actual total normal cost for the preceding month.

(2) The Secretary of Defense and the Secretary of the Department in which the Coast Guard is operating shall pay into the Fund at the beginning of each fiscal year (or as soon thereafter as appropriations are available for such purpose) the sum of the following:

(A) The amount of the payment for that year, if any, for the amortization of any liability to the Fund resulting from a change in benefits, as determined by the Secretary of Defense under subsection (e)(3).

(B) The amount of the payment for that year, if any, for the amortization of any actuarial gain or loss to the Fund, as determined by the Secretary of Defense under subsection (e)(4).

(3) Amounts paid into the Fund under this subsection shall be paid from appropriations available for the pay of members of the armed forces under the jurisdiction of the Secretary concerned.

(g) The Secretary of the Treasury shall invest such portion of the Fund as is not in the judgment of the Secretary required to meet current withdrawals. Such investments shall be in public debt securities with maturities suitable to the needs of the Fund, as determined by the Secretary, and bearing interest at rates determined by the Secretary, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities. The income on such investments shall be credited to and form a part of the Fund.

(Added Pub. L. 98–525, title VII, § 706(a)(1), Oct. 19, 1984, 98 Stat. 2568; amended Pub. L. 100–26, § 7(k)(2), Apr. 21, 1987, 101 Stat. 284; Pub. L. 101–189, div. A, title XVI, § 1621(a)(2), (6), Nov. 29, 1989, 103 Stat. 1603; Pub. L. 101–510, div. A, title XIII, § 1322(a)(2), title XIV, § 1484(j)(2), Nov. 5, 1990, 104 Stat. 1671, 1718; Pub. L. 103–337, div. A, title X, § 1070(e)(6), Oct. 5, 1994, 108 Stat. 2859; Pub. L. 104–106, div. A, title XV, §§ 1501(c)(21), 1503(a)(17), Feb. 10, 1996, 110 Stat. 499, 512; Pub. L. 106–65, div. A, title V, § 550, Oct. 5, 1999, 113 Stat. 611; Pub. L. 107–107, div. A, title VI, § 654(b), Dec. 28, 2001, 115 Stat. 1157; Pub. L. 108–136, div. A, title V, § 535(b), Nov. 24, 2003, 117 Stat. 1474; Pub. L. 108–375, div. A, title V, § 527(b)(1), Oct. 28, 2004, 118 Stat. 1894; Pub. L. 109–364, div. A, title X, § 1071(a)(9), Oct. 17, 2006, 120 Stat. 2398; Pub. L. 110–181, div. A, title IX, § 906(b)(2), Jan. 28, 2008, 122 Stat. 277; Pub. L. 111–377, title I, § 109(b)(2), Jan. 4, 2011, 124 Stat. 4120; Pub. L. 112–239, div. A, title X, § 1076(f)(23), Jan. 2, 2013, 126 Stat. 1953.)

AMENDMENTS

2013—Subsec. (b)(2)(F). Pub. L. 112–239 redesignated subpar. (E) relating to amounts attributable to increased amounts of educational assistance authorized by section 3316 of title 38 as (F).

2011—Subsec. (b)(1). Pub. L. 111–377, § 109(b)(2)(A), inserted "or 33" after "chapter 30".

Subsec. (b)(2)(E). Pub. L. 111–377, § 109(b)(2)(B), added subpar. (E) relating to amounts attributable to increased amounts of educational assistance authorized by section 3316 of title 38.

2008—Subsec. (c)(1). Pub. L. 110–181, § 906(b)(2)(A), substituted "subsection (f)" for "subsection (g)".

Subsec. (e). Pub. L. 110–181, § 906(b)(2)(B), (C), redesignated subsec. (f) as (e) and struck out former subsec. (e) which established in the Department of Defense a Department of Defense Education Benefits Board of Actuaries.

Subsec. (e)(5). Pub. L. 110–181, § 906(b)(2)(D), substituted "subsection (f)" for "subsection (g)".

Subsec. (f). Pub. L. 110–181, § 906(b)(2)(C), redesignated subsec. (g) as (f). Former subsec. (f) redesignated (e).

Subsec. (f)(2)(A). Pub. L. 110–181, § 906(b)(2)(E)(i), substituted "subsection (e)(3)" for "subsection (f)(3)".

Subsec. (f)(2)(B). Pub. L. 110–181, § 906(b)(2)(E)(ii), substituted "subsection (e)(4)" for "subsection (f)(4)".

Subsecs. (g), (h). Pub. L. 110–181, § 906(b)(2)(C), redesignated subsec. (h) as (g). Former subsec. (g) redesignated (f).

2006—Subsec. (b)(1). Pub. L. 109–364 inserted "of this title" after "1607" and struck out "of this title" before period at end.

2004—Subsec. (b)(1). Pub. L. 108–375, § 527(b)(1)(A), substituted "chapters 1606 and 1607, including funds provided by the Secretary of Homeland Security for education liabilities for the Coast Guard when it is not operating as a service in the Department of the Navy" for "chapter 1606".

Subsec. (b)(2)(C). Pub. L. 108–375, § 527(b)(1)(B), substituted "(including funds from the Department in

which the Coast Guard is operating) for educational assistance under chapters 1606 and 1607'' for ''for educational assistance under chapter 1606''.

2003—Subsec. (b)(1). Pub. L. 108–136, § 535(b)(1), inserted ''paragraphs (3) and (4) of section 510(e) and'' after ''Department of Defense benefits under''.

Subsec. (b)(2)(E). Pub. L. 108–136, § 535(b)(2), added subpar. (E).

2001—Subsec. (b)(2)(D). Pub. L. 107–107 added subpar. (D).

1999—Subsec. (a). Pub. L. 106–65, § 550(1), substituted ''armed forces education liabilities'' for ''Department of Defense education liabilities''.

Subsec. (b)(1). Pub. L. 106–65, § 550(2), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''The term 'Department of Defense education liabilities' means liabilities of the Department of Defense for benefits under chapter 30 of title 38 and for benefits under chapter 1606 of this title.''

Subsec. (b)(2)(C). Pub. L. 106–65, § 550(3), inserted ''Department of Defense'' after ''future'' and substituted ''chapter 1606'' for ''chapter 106''.

Subsec. (c)(1). Pub. L. 106–65, § 550(4), inserted ''and the Secretary of the Department in which the Coast Guard is operating'' after ''Defense''.

Subsec. (d). Pub. L. 106–65, § 550(5), substituted ''armed forces'' for ''Department of Defense'' and inserted ''the Secretary of the Department in which the Coast Guard is operating,'' after ''Secretary of Defense,''.

Subsec. (f)(5). Pub. L. 106–65, § 550(6), inserted ''and the Department in which the Coast Guard is operating'' after ''Department of Defense''.

Subsec. (g). Pub. L. 106–65, § 550(7), inserted ''and the Secretary of the Department in which the Coast Guard is operating'' after ''The Secretary of Defense'' in pars. (1) and (2) and substituted ''concerned'' for ''of a military department'' in par. (3).

1996—Subsec. (b)(1). Pub. L. 104–106, § 1501(c)(21), substituted ''chapter 1606 of this title'' for ''chapter 106 of this title''.

Subsec. (b)(2)(B)(ii). Pub. L. 104–106, § 1503(a)(17), substituted ''section 3012 of such title'' for ''section 1412 of such title''.

1994—Subsec. (b)(2). Pub. L. 103–337 substituted ''section 3015(d)'', ''section 3011'', and ''section 3021(b)'' for ''section 1415(c)'', ''section 1411'', and ''section 1421(b)'', respectively.

1990—Subsec. (d). Pub. L. 101–510, § 1484(j)(2), substituted ''enable the Secretary of Veterans Affairs'' for ''enable the Administrator''.

Subsec. (e)(3). Pub. L. 101–510, § 1322(a)(2), substituted ''and shall recommend to the President and Congress'' for ''and report periodically, not less than once every four years, to the President and Congress on the status of the Fund and shall recommend''.

1989—Subsec. (d). Pub. L. 101–189 substituted ''Secretary of Veterans Affairs'' for ''Administrator of Veterans' Affairs'' in first sentence and ''Secretary of Veterans Affairs'' for ''Administrator'' in second sentence.

1987—Subsec. (b). Pub. L. 100–26 inserted ''The term'' after each par. designation and substituted ''normal'' for ''Normal'' in par. (2).

EFFECTIVE DATE OF 2011 AMENDMENT

Pub. L. 111–377, title I, § 109(c), Jan. 4, 2011, 124 Stat. 4120, provided that: ''The amendments made by this section [amending this section and section 3316 of Title 38, Veterans' Benefits] shall take effect on August 1, 2011.''

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–106, div. A, title XV, § 1501(c), Feb. 10, 1996, 110 Stat. 498, provided that the amendment made by that section is effective as of Dec. 1, 1994, and as if included as an amendment made by the Reserve Officer Personnel Management Act, title XVI of Pub. L. 103–337, as originally enacted.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

FIRST PAYMENT INTO FUND

Pub. L. 98–525, title VII, § 706(b), Oct. 19, 1984, 98 Stat. 2570, directed that first payment into Department of Defense Education Benefits Fund under this section be made not later than three months after Board of Actuaries determined amounts needed to be paid into Fund for that portion of fiscal year 1985 beginning on July 1, 1985, with first payment in a lump sum equal to total of amounts that would have been paid to Fund each month between July 1, 1985, and time such first payment was made.

§ 2006a. Assistance for education and training: availability of certain assistance for use only for certain programs of education

(a) IN GENERAL.—Effective as of August 1, 2014, an individual eligible for assistance under a Department of Defense educational assistance program or authority covered by this section may, except as provided in subsection (b), only use such assistance for educational expenses incurred for a program as follows:

(1) An eligible program (as defined in section 481 of the Higher Education Act of 1965 (20 U.S.C. 1088)) that is offered by an institution of higher education that has entered into, and is complying with, a program participation agreement under section 487 of such Act (20 U.S.C. 1094).

(2) In the case of a program designed to prepare individuals for licensure or certification in any State, if the program meets the instructional curriculum licensure or certification requirements of such State.

(3) In the case of a program designed to prepare individuals for employment pursuant to standards developed by a State board or agency in an occupation that requires approval or licensure for such employment, if the program is approved or licensed by such State board or agency.

(b) WAIVER.—The Secretary of Defense may, by regulation, authorize the use of educational assistance under a Department of Defense educational assistance program or authority covered by this chapter for educational expenses incurred for a program of education that is not described in subsection (a) if the program—

(1) is accredited and approved by a nationally or regionally recognized accrediting agency or association recognized by the Department of Education;

(2) was not an eligible program described in subsection (a) at any time during the most recent two-year period;

(3) is a program that the Secretary determines would further the purposes of the educational assistance programs or authorities covered by this chapter, or would further the education interests of students eligible for assistance under such programs or authorities; and

(4) the institution providing the program does not provide any commission, bonus, or other incentive payment based directly or indirectly on success in securing enrollments or financial aid to any persons or entities engaged in any student recruiting or admission activities or in making decisions regarding the award of student financial assistance, except for the recruitment of foreign students residing in foreign countries who are not eligible to receive Federal student assistance.

(c) DEFINITIONS.—In this section:

(1) The term ''Department of Defense educational assistance programs and authorities covered by this section'' means the programs and authorities as follows:

(A) The programs to assist military spouses in achieving education and training to expand employment and portable career opportunities under section 1784a of this title.

(B) The authority to pay tuition for off-duty training or education of members of the armed forces under section 2007 of this title.

(C) The program of educational assistance for members of the Selected Reserve under chapter 1606 of this title.

(D) The program of educational assistance for reserve component members supporting contingency operations and certain other operations under chapter 1607 of this title.

(E) Any other program or authority of the Department of Defense for assistance in education or training carried out under the laws administered by the Secretary of Defense that is designated by the Secretary, by regulation, for purposes of this section.

(2) The term ''institution of higher education'' has the meaning given that term in section 102 of the Higher Education Act for 1965 (20 U.S.C. 1002).

(Added Pub. L. 113–66, div. A, title V, § 541(a), Dec. 26, 2013, 127 Stat. 760; amended Pub. L. 114–92, div. A, title X, § 1081(a)(6), Nov. 25, 2015, 129 Stat. 1001; Pub. L. 115–232, div. A, title X, § 1081(a)(15), Aug. 13, 2018, 132 Stat. 1984.)

AMENDMENTS

2018—Subsec. (b)(3). Pub. L. 115–232 substituted ''such programs'' for ''the such programs''.

2015—Subsec. (a). Pub. L. 114–92 substituted ''August 1'' for ''August, 1'' in introductory provisions.

EFFECTIVE DATE

Pub. L. 113–66, div. A, title V, § 541(c), Dec. 26, 2013, 127 Stat. 762, provided that: ''The amendments made by this section [enacting this section] shall take effect on August 1, 2014.''

§ 2007. Payment of tuition for off-duty training or education

(a) Subject to subsections (b) and (c), the Secretary concerned may pay all or a portion of the charges of an educational institution for the tuition or expenses of a member of the armed forces enrolled in such educational institution for education or training during the member's off-duty periods.

(b)(1) In the case of a commissioned officer on active duty (other than a member of the Ready Reserve), the Secretary concerned may not pay charges under subsection (a) unless the officer agrees to remain on active duty for a period of at least two years after the completion of the training or education for which the charges are paid.

(2) Notwithstanding paragraph (1), the Secretary concerned may reduce or waive the active duty service obligation—

(A) in the case of a commissioned officer who is subject to mandatory separation;

(B) in the case of a commissioned officer who has completed the period of active duty service for which the officer was ordered to active duty in support of a contingency operation; or

(C) in other exigent circumstances as determined by the Secretary concerned.

(c)(1) Subject to paragraphs (3) and (5), the Secretary concerned may pay the charges of an educational institution for the tuition or expenses described in subsection (a) of a member of the Selected Reserve.

(2) Subject to paragraphs (4) and (5), the Secretary concerned may pay the charges of an educational institution for the tuition or expenses described in subsection (a) of a member of the Individual Ready Reserve who has a military occupational specialty designated by the Secretary concerned for purposes of this subsection.

(3) The Secretary concerned may not pay charges under paragraph (1) for tuition or expenses of an officer of the Selected Reserve unless the officer enters into an agreement to remain a member of the Selected Reserve for at least 4 years after completion of the education or training for which the charges are paid.

(4) The Secretary concerned may not pay charges under paragraph (2) for tuition or expenses of an officer of the Individual Ready Reserve unless the officer enters into an agreement to remain in the Selected Reserve or Individual Ready Reserve for at least 4 years after completion of the education or training for which the charges are paid.

(5) The Secretary of a military department may require an enlisted member of the Selected Reserve or Individual Ready Reserve to enter into an agreement to serve for up to 4 years in the Selected Reserve or Individual Ready Reserve, as the case may be, after completion of the education or training for which tuition or expenses are paid under paragraph (1) or (2), as applicable.

(d)(1) A member of the armed forces who is entitled to basic educational assistance under chapter 30 of title 38 may use such entitlement for purposes of paying any portion of the charges described in subsection (a) or (c) that are not paid for by the Secretary of the military department concerned under such subsection.

(2) The use of entitlement under paragraph (1) shall be governed by the provisions of section 3014(b) of title 38.

(e)(1) If an officer who enters into an agreement under subsection (b) does not complete the

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period of active duty specified in the agreement, the officer shall be subject to the repayment provisions of section 303a(e) or 373 of title 37.

(2) If a member of the Ready Reserve who enters into an agreement under subsection (c) does not complete the period of service specified in the agreement, the member shall be subject to the repayment provisions of section 303a(e) or 373 of title 37.

(f) This section shall be administered under regulations prescribed by the Secretary of Defense or, with respect to the Coast Guard when it is not operating as a service in the Navy, the Secretary of Homeland Security.

(Added Pub. L. 98–525, title XIV, § 1401(g)(1), Oct. 19, 1984, 98 Stat. 2618; amended Pub. L. 99–661, div. A, title VI, § 651(a), Nov. 14, 1986, 100 Stat. 3887; Pub. L. 100–26, § 3(4), Apr. 21, 1987, 101 Stat. 273; Pub. L. 101–510, div. A, title XIV, § 1484(i)(4)(A), Nov. 5, 1990, 104 Stat. 1718; Pub. L. 103–160, div. A, title VI, § 632, Nov. 30, 1993, 107 Stat. 1684; Pub. L. 106–65, div. A, title VI, § 675, Oct. 5, 1999, 113 Stat. 675; Pub. L. 106–398, § 1 [[div. A], title XVI, § 1602(a), (b)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–358, 1654A–359; Pub. L. 108–375, div. A, title V, § 553(a), (b), Oct. 28, 2004, 118 Stat. 1912; Pub. L. 109–163, div. A, title VI, § 687(c)(3), Jan. 6, 2006, 119 Stat. 3334; Pub. L. 110–181, div. A, title V, § 521(a)–(d), Jan. 28, 2008, 122 Stat. 100–102; Pub. L. 115–91, div. A, title VI, § 618(a)(1)(C), Dec. 12, 2017, 131 Stat. 1426.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in the following appropriation acts:

Pub. L. 98–473, title I, § 101(h) [title VIII, § 8017], Oct. 12, 1984, 98 Stat. 1904, 1926.

Pub. L. 98–212, title VII, § 720, Dec. 8, 1983, 97 Stat. 1441.

Pub. L. 97–377, title I, § 101(c) [title VII, § 721], Dec. 21, 1982, 96 Stat. 1833, 1854.

Pub. L. 97–114, title VII, § 721, Dec. 29, 1981, 95 Stat. 1582.

Pub. L. 96–527, title VII, § 722, Dec. 15, 1980, 94 Stat. 3084.

Pub. L. 96–154, title VII, § 722, Dec. 21, 1979, 93 Stat. 1156.

Pub. L. 95–457, title VIII, § 822, Oct. 13, 1978, 92 Stat. 1247.

Pub. L. 95–111, title VIII, § 821, Sept. 21, 1977, 91 Stat. 903.

Pub. L. 94–419, title VII, § 721, Sept. 22, 1976, 90 Stat. 1295.

Pub. L. 94–212, title VII, § 721, Feb. 9, 1976, 90 Stat. 172.

Pub. L. 93–437, title VIII, § 821, Oct. 8, 1974, 88 Stat. 1228.

Pub. L. 93–238, title VII, § 722, Jan. 2, 1974, 87 Stat. 1042.

Pub. L. 92–570, title VII, § 722, Oct. 26, 1972, 86 Stat. 1200.

Pub. L. 92–204, title VII, § 722, Dec. 18, 1971, 85 Stat. 731.

Pub. L. 91–668, title VIII, § 822, Jan. 11, 1971, 84 Stat. 2034.

Pub. L. 91–171, title VI, § 622, Dec. 29, 1969, 83 Stat. 483.

Pub. L. 90–580, title V, § 521, Oct. 17, 1968, 82 Stat. 1133.

Pub. L. 90–96, title VI, § 621, Sept. 29, 1967, 81 Stat. 246.

Pub. L. 89–687, title VI, § 621, Oct. 15, 1966, 80 Stat. 995.

Pub. L. 89–213, title VI, § 621, Sept. 29, 1965, 79 Stat. 877.

Pub. L. 88–446, title V, § 521, Aug. 19, 1964, 78 Stat. 478.

Pub. L. 88–149, title V, § 521, Oct. 17, 1963, 77 Stat. 267.

Pub. L. 87–577, title V, § 521, Aug. 9, 1962, 76 Stat. 332.

Pub. L. 87–144, title VI, § 621, Aug. 17, 1961, 75 Stat. 379.

Pub. L. 86–601, title V, § 521, July 7, 1960, 74 Stat. 353.

Pub. L. 86–166, title V, § 621, Aug. 18, 1959, 73 Stat. 382.

Pub. L. 85–724, title VI, § 623, Aug. 22, 1958, 72 Stat. 727.

Pub. L. 85–117, title VI, § 624, Aug. 2, 1957, 71 Stat. 327.

July 2, 1956, ch. 488, title VI, § 624, 70 Stat. 471.

July 13, 1955, ch. 358, title VI, § 628, 69 Stat. 320.

June 30, 1954, ch. 432, title VII, § 730, 68 Stat. 355.

AMENDMENTS

2017—Subsec. (e). Pub. L. 115–91 inserted ''or 373'' before ''of title 37'' in pars. (1) and (2).

2008—Subsec. (a). Pub. L. 110–181, § 521(a), substituted ''Subject to subsections (b) and (c), the Secretary concerned'' for ''Subject to subsection (b), the Secretary of a military department''.

Subsec. (b)(1). Pub. L. 110–181, § 521(b)(1), struck out ''or full-time National Guard duty'' after ''active duty'' in two places, inserted ''(other than a member of the Ready Reserve)'' after ''commissioned officer on active duty'', and substituted ''the Secretary concerned'' for ''the Secretary of the military department''.

Subsec. (b)(2). Pub. L. 110–181, § 521(b)(2)(A), substituted ''the Secretary concerned'' for ''the Secretary of the military department'' in introductory provisions.

Subsec. (b)(2)(B). Pub. L. 110–181, § 521(b)(2)(B), inserted ''for which the officer was ordered to active duty'' after ''active duty service''.

Subsec. (b)(2)(C). Pub. L. 110–181, § 521(b)(2)(C), substituted ''Secretary concerned'' for ''Secretary''.

Subsec. (c). Pub. L. 110–181, § 521(c)(1), amended subsec. (c) generally. Prior to amendment, subsec. (c) consisted of pars. (1) to (3) which authorized Secretary of the Army, subject to certain limitations, to pay the charges of an educational institution for the tuition or expenses of an officer in the Selected Reserve of the Army National Guard or the Army Reserve for education or training of such officer.

Subsec. (d). Pub. L. 110–181, § 521(c)(2), redesignated subsec. (e) as (d) and struck out former subsec. (d) which read as follows: ''Subsection (c)(3) may not be construed to prohibit the Secretary of a military department from exercising any authority that the Secretary may have to pay charges of an educational institution in the case of—

''(1) a warrant officer on active duty or full-time National Guard duty;

''(2) a commissioned officer on full-time National Guard duty; or

''(3) a commissioned officer on active duty who satisfies the condition in subsection (b) relating to an agreement to remain on active duty.''

Subsec. (e). Pub. L. 110–181, § 521(c)(3), designated existing provisions as par. (1) and added par. (2).

Pub. L. 110–181, § 521(c)(2)(B), redesignated subsec. (f) as (e). Former subsec. (e) redesignated (d).

Subsec. (f). Pub. L. 110–181, § 521(d), added subsec. (f).

Pub. L. 110–181, § 521(c)(2)(B), redesignated subsec. (f) as (e).

2006—Subsec. (f). Pub. L. 109–163 added subsec. (f).

2004—Subsec. (b). Pub. L. 108–375, § 553(a), designated existing provisions as par. (1), inserted ''or full-time National Guard duty'' after ''active duty'' in two places, and added par. (2).

Subsec. (c)(1). Pub. L. 108–375, § 553(b), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''Subject to paragraphs (2) and (3), the Secretary of the Army may pay not more than 75 percent of the charges of an educational institution for the tuition or expenses of an officer in the Selected Reserve of the Army National Guard or the Army Reserve for education or training of such officer in a program leading to a baccalaureate degree.''

2000—Subsec. (a). Pub. L. 106–398, § 1 [[div. A], title XVI, § 1602(a)(1)], added subsec. (a) and struck out former subsec. (a) which read as follows: ''The Secretary of a military department may not pay more than 75 percent of the charges of an educational institution for the tuition or expenses of a member of the armed forces enrolled in such institution for education or training during his off-duty periods, except that—

''(1) in the case of an enlisted member in the pay grade of E–5 or higher with less than 14 years' service, not more than 90 percent of the charges may be paid;

''(2) in the case of a member enrolled in a high school completion program, all of the charges may be paid;

''(3) in the case of a commissioned officer on active duty, no part of the charges may be paid unless the officer agrees to remain on active duty for a period of at least two years after the completion of the training or education; and

''(4) in the case of a member serving in a contingency operation or similar operational mission (other than for training) designated by the Secretary concerned, all of the charges may be paid.''

Subsec. (b). Pub. L. 106–398, §1 [[div. A], title XVI, §1602(a)(1)], added subsec. (b) and struck out former subsec. (b) which read as follows: ''The limitation in subsection (a) does not apply to the Program for Afloat College Education.''

Subsec. (d). Pub. L. 106–398, §1 [[div. A], title XVI, §1602(a)(2)(A)], struck out ''(within the limits set forth in subsection (a))'' after ''educational institution'' in introductory provisions.

Subsec. (d)(3). Pub. L. 106–398, §1 [[div. A], title XVI, §1602(a)(2)(B)], substituted ''subsection (b)'' for ''subsection (a)(3)''.

Subsec. (e). Pub. L. 106–398, §1 [[div. A], title XVI, §1602(b)(1)], added subsec. (e).

1999—Subsec. (a)(4). Pub. L. 106–65 added par. (4).

1993—Subsec. (d). Pub. L. 103–160 added subsec. (d).

1990—Pub. L. 101–510 substituted ''Payment'' for ''Limitation on payment'' in section catchline.

1987—Subsec. (c). Pub. L. 100–26 made technical amendment to directory language of Pub. L. 99–661, §651(a)(2). See 1986 Amendment note below.

1986—Subsec. (a)(3). Pub. L. 99–661, §651(a)(1), inserted ''on active duty''.

Subsec. (c). Pub. L. 99–661, §651(a)(2), as amended by Pub. L. 100–26, added subsec. (c).

Effective Date of 2004 Amendment

Pub. L. 108–375, div. A, title V, §553(c), Oct. 28, 2004, 118 Stat. 1913, provided that: ''The amendment made by subsection (a) [amending this section] may, at the discretion of the Secretary concerned, be applied to a service obligation incurred by an officer serving on active duty as of the date of the enactment of this Act [Oct. 28, 2004].''

Effective Date of 1987 Amendment

Amendment by Pub. L. 100–26 applicable as if included in Pub. L. 99–661 when enacted on Nov. 14, 1986, see section 12(a) of Pub. L. 100–26, set out as a note under section 776 of this title.

Effective Date of 1986 Amendment

Pub. L. 99–661, div. A, title VI, §651(c), Nov. 14, 1986, 100 Stat. 3888, provided that: ''Subsection (c) of section 2007 of title 10, United States Code, as added by subsection (a), shall take effect on the date of the enactment of this Act [Nov. 14, 1986].''

Effective Date

Section effective Oct. 1, 1985, see section 1404 of Pub. L. 98–525, set out as a note under section 520b of this title.

Savings Provision

For savings provision relating to payment or repayment of any bonus, incentive pay, special pay, or similar pay obligated to be paid before Apr. 1, 2006, under a provision of this section amended by section 687(c) of Pub. L. 109–163, see section 687(f) of Pub. L. 109–163, set out as a note under section 510 of this title.

Information on Institutions of Higher Education Participating in the Department of Defense Tuition Assistance Program

Pub. L. 116–92, div. A, title V, §560, Dec. 20, 2019, 133 Stat. 1393, provided that:

''(a) List of Participating Institutions.—The Secretary of Defense shall make available, on a publicly accessible website of the Department of Defense, a list that identifies—

''(1) each institution of higher education that receives funds under the Department of Defense Tuition Assistance Program; and

''(2) the amount of such funds received by the institution.

''(b) Annual Updates.—The Secretary of Defense shall update the list described in subsection (a) not less frequently than once annually.''

Tuition Payments Contingent Upon Agreement by Officer To Remain in Ready Reserve for At Least Four Years

Pub. L. 104–61, title VIII, §8019, Dec. 1, 1995, 109 Stat. 655, provided that: ''Funds appropriated for the Department of Defense during the current fiscal year and hereafter shall be available for the payment of not more than 75 percent of the charges of a postsecondary educational institution for the tuition or expenses of an officer in the Ready Reserve of the Army National Guard or Army Reserve for education or training during his off-duty periods, except that no part of the charges may be paid unless the officer agrees to remain a member of the Ready Reserve for at least four years after completion of such training or education.''

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 103–335, title VIII, §8019, Sept. 30, 1994, 108 Stat. 2621.

Pub. L. 103–139, title VIII, §8021, Nov. 11, 1993, 107 Stat. 1441.

Pub. L. 102–396, title IX, §9025, Oct. 6, 1992, 106 Stat. 1906.

Pub. L. 102–172, title VIII, §8025, Nov. 26, 1991, 105 Stat. 1177.

Pub. L. 101–511, title VIII, §8025, Nov. 5, 1990, 104 Stat. 1880.

Pub. L. 101–165, title IX, §9035, Nov. 21, 1989, 103 Stat. 1136.

Pub. L. 100–463, title VIII, §8059, Oct. 1, 1988, 102 Stat. 2270–27.

Pub. L. 100–202, §101(b) [title VIII, §8072], Dec. 22, 1987, 101 Stat. 1329–43, 1329–74.

Pub. L. 99–500, §101(c) [title IX, §9076], Oct. 18, 1986, 100 Stat. 1783–82, 1783–114, and Pub. L. 99–591, §101(c) [title IX, §9076], Oct. 30, 1986, 100 Stat. 3341–82, 3341–114.

Pub. L. 99–190, §101(b) [title VIII, §8086], Dec. 19, 1985, 99 Stat. 1185, 1216.

§ 2008. Authority to use funds for certain educational purposes

Funds appropriated to the Department of Defense may be used to carry out construction, as defined in section 7013(3) of the Elementary and Secondary Education Act of 1965, or to carry out section 7008 of such Act, relating to the provision of assistance to certain school facilities under the impact aid program.

(Added Pub. L. 98–525, title XIV, §1401(g)(1), Oct. 19, 1984, 98 Stat. 2618; amended Pub. L. 104–106, div. B, title XXVIII, §2891, Feb. 10, 1996, 110 Stat. 590; Pub. L. 114–95, title IX, §9215(uuu)(3), Dec. 10, 2015, 129 Stat. 2190.)

References in Text

Sections 7008 and 7013(3) of the Elementary and Secondary Education Act of 1965, referred to in text, are classified to sections 7708 and 7713(3), respectively, of Title 20, Education.

Amendments

2015—Pub. L. 114–95 substituted ''section 7013(3) of the Elementary and Secondary Education Act of 1965, or to

carry out section 7008 of such Act'' for ''section 8013(3) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7713(3)), or to carry out section 8008 of such Act (20 U.S.C. 7708)''.

1996—Pub. L. 104–106 substituted ''construction, as defined in section 8013(3) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7713(3)), or to carry out section 8008 of such Act (20 U.S.C. 7708), relating to the provision of assistance to certain school facilities under the impact aid program.'' for ''section 10 of the Act of September 23, 1950 (20 U.S.C. 640), relating to impact aid authorization.''

EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114–95 effective Dec. 10, 2015, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 114–95, set out as a note under section 6301 of Title 20, Education.

EFFECTIVE DATE

Section effective Oct. 1, 1985, see section 1404 of Pub. L. 98–525, set out as a note under section 520b of this title.

§ 2009. Military colleges: female students

(a) Under regulations prescribed by the Secretary of Defense, any college or university designated by the Secretary of Defense as a military college shall, as a condition of maintaining such designation, provide that qualified female undergraduate students enrolled in such college or university be eligible to participate in military training at such college or university.

(b) Regulations prescribed under subsection (a) may not require a college or university, as a condition of maintaining its designation as a military college or for any other purpose, to require female undergraduate students enrolled in such college or university to participate in military training.

(Added Pub. L. 98–525, title XIV, § 1401(g)(1), Oct. 19, 1984, 98 Stat. 2619.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in Pub. L. 95–485, title VIII, § 809, Oct. 20, 1978, 92 Stat. 1623, which was set out as a note under section 2102 of this title, prior to repeal by Pub. L. 98–525, §§ 1403(b), 1404.

EFFECTIVE DATE

Section effective Oct. 1, 1985, see section 1404 of Pub. L. 98–525, set out as a note under section 520b of this title.

[§ 2010. Renumbered § 321]

[§ 2011. Renumbered § 322]

§ 2012. Support and services for eligible organizations and activities outside Department of Defense

(a) AUTHORITY TO PROVIDE SERVICES AND SUPPORT.—Under regulations prescribed by the Secretary of Defense, the Secretary of a military department may in accordance with this section authorize units or individual members of the armed forces under that Secretary's jurisdiction to provide support and services to non-Department of Defense organizations and activities specified in subsection (e), but only if—

(1) such assistance is authorized by a provision of law (other than this section); or

(2) the provision of such assistance is incidental to military training.

(b) SCOPE OF COVERED ACTIVITIES SUBJECT TO SECTION.—This section does not—

(1) apply to the provision by the Secretary concerned, under regulations prescribed by the Secretary of Defense, of customary community relations and public affairs activities conducted in accordance with Department of Defense policy; or

(2) prohibit the Secretary concerned from encouraging members of the armed forces under the Secretary's jurisdiction to provide volunteer support for community relations activities under regulations prescribed by the Secretary of Defense.

(c) REQUIREMENT FOR SPECIFIC REQUEST.—Assistance under subsection (a) may only be provided if—

(1) the assistance is requested by a responsible official of the organization to which the assistance is to be provided; and

(2) the assistance is not reasonably available from a commercial entity or (if so available) the official submitting the request for assistance certifies that the commercial entity that would otherwise provide such services has agreed to the provision of such services by the armed forces.

(d) RELATIONSHIP TO MILITARY TRAINING.—(1) Assistance under subsection (a) may only be provided if the following requirements are met:

(A) The provision of such assistance—

(i) in the case of assistance by a unit, will accomplish valid unit training requirements; and

(ii) in the case of assistance by an individual member, will involve tasks directly related to the specific military occupational specialty of the member.

(B) The provision of such assistance will not adversely affect the quality of training or otherwise interfere with the ability of a member or unit of the armed forces to perform the military functions of the member or unit.

(C) The provision of such assistance will not result in a significant increase in the cost of the training.

(2) Subparagraph (A)(i) of paragraph (1) does not apply in a case in which the assistance to be provided consists primarily of military manpower and the total amount of such assistance in the case of a particular project does not exceed 100 man-hours.

(e) ELIGIBLE ENTITIES.—The following organizations and activities are eligible for assistance under this section:

(1) Any Federal, regional, State, or local governmental entity.

(2) Youth and charitable organizations specified in section 508 of title 32.

(3) Any other entity as may be approved by the Secretary of Defense on a case-by-case basis.

(f) REGULATIONS.—The Secretary of Defense shall prescribe regulations governing the provision of assistance under this section. The regulations shall include the following:

(1) Rules governing the types of assistance that may be provided.

(2) Procedures governing the delivery of assistance that ensure, to the maximum extent practicable, that such assistance is provided in conjunction with, rather than separate from, civilian efforts.

(3) Procedures for appropriate coordination with civilian officials to ensure that the assistance—

(A) meets a valid need; and

(B) does not duplicate other available public services.

(4) Procedures to ensure that Department of Defense resources are not applied exclusively to the program receiving the assistance.

(g) TREATMENT OF MEMBER'S PARTICIPATION IN PROVISION OF SUPPORT OR SERVICES.—(1) The Secretary of a military department may not require or request a member of the armed forces to submit for consideration by a selection board (including a promotion board, command selection board, or any other kind of selection board) evidence of the member's participation in the provision of support and services to non-Department of Defense organizations and activities under this section or the member's involvement in, or support of, other community relations and public affairs activities of the armed forces.

(2) Paragraph (1) does not prevent a selection board from considering material submitted voluntarily by a member of the armed forces which provides evidence of the participation of that member or another member in activities described in that paragraph.

(h) ADVISORY COUNCILS.—(1) The Secretary of Defense shall encourage the establishment of advisory councils at regional, State, and local levels, as appropriate, in order to obtain recommendations and guidance concerning assistance under this section from persons who are knowledgeable about regional, State, and local conditions and needs.

(2) The advisory councils should include officials from relevant military organizations, representatives of appropriate local, State, and Federal agencies, representatives of civic and social service organizations, business representatives, and labor representatives.

(3) The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to such councils.

(i) CONSTRUCTION OF PROVISION.—Nothing in this section shall be construed as authorizing—

(1) the use of the armed forces for civilian law enforcement purposes or for response to natural or manmade disasters; or

(2) the use of Department of Defense personnel or resources for any program, project, or activity that is prohibited by law.

(j) OVERSIGHT AND COST ACCOUNTING.—The Secretary of Defense shall establish a program to improve the oversight and cost accounting of training projects conducted in accordance with this section. The program shall include measures to accomplish the following:

(1) Ensure that each project that is proposed to be conducted in accordance with this section (regardless of whether additional funding from the Secretary of Defense is sought) is requested in writing, reviewed for full compliance with this section, and approved in advance of initiation by the Secretary of the military department concerned and, in the case of a project that seeks additional funding from the Secretary of Defense, by the Secretary of Defense.

(2) Ensure that each project that is conducted in accordance with this section is required to provide, within a specified period following completion of the project, an after-action report to the Secretary of Defense.

(3) Require that each application for a project to be conducted in accordance with this section include an analysis and certification that the proposed project would not result in a significant increase in the cost of training (as determined in accordance with procedures prescribed by the Secretary of Defense).

(4) Determine the total program cost for each project, including both those costs that are borne by the military departments from their own accounts and those costs that are borne by defense-wide accounts.

(5) Provide for oversight of project execution to ensure that a training project under this section is carried out in accordance with the proposal for that project as approved.

(Added Pub. L. 104–106, div. A, title V, § 572(a)(1), Feb. 10, 1996, 110 Stat. 353; amended Pub. L. 105–85, div. A, title V, § 594, Nov. 18, 1997, 111 Stat. 1764; Pub. L. 105–261, div. A, title V, § 525(a), Oct. 17, 1998, 112 Stat. 2014.)

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (h)(3), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

AMENDMENTS

1998—Subsec. (j). Pub. L. 105–261 added subsec. (j).

1997—Subsecs. (g) to (i). Pub. L. 105–85 added subsec. (g) and redesignated former subsecs. (g) and (h) as (h) and (i), respectively.

IMPLEMENTATION

Pub. L. 105–261, div. A, title V, § 525(b), Oct. 17, 1998, 112 Stat. 2014, as amended by Pub. L. 106–65, div. A, title X, § 1066(b)(4), Oct. 5, 1999, 113 Stat. 772, provided that: ''The Secretary of Defense may not initiate any project under section 2012 of title 10, United States Code, after October 1, 1998, until the program required by subsection (j) of that section (as added by subsection (a)) has been established.''

TERMINATION OF FUNDING FOR OFFICE OF CIVIL-MILITARY PROGRAMS IN OFFICE OF THE SECRETARY OF DEFENSE

Pub. L. 104–106, div. A, title V, § 574, Feb. 10, 1996, 110 Stat. 356, provided that: ''No funds may be obligated or expended after the date of the enactment of this Act [Feb. 10, 1996] (1) for the office that as of the date of the enactment of this Act is designated, within the Office of the Assistant Secretary of Defense for Reserve Affairs [now Assistant Secretary of Defense for Manpower and Reserve Affairs], as the Office of Civil-Military Programs, or (2) for any other entity within the Office of the Secretary of Defense that has an exclusive or principal mission of providing centralized direction for activities under section 2012 of title 10, United States Code, as added by section 572.''

§ 2013. Training at non-Government facilities

(a) AUTHORITY TO ENTER INTO AGREEMENTS.—(1) The Secretary concerned, without regard to

section 6101 of title 41, may make agreements or other arrangements for the training of members of the uniformed services under the jurisdiction of that Secretary by, in, or through non-Government facilities.

(2) In this section, the term ''non-Government facility'' means any of the following:

(A) The government of a State or of a territory or possession of the United States, including the Commonwealth of Puerto Rico, an interstate governmental organization, and a unit, subdivision, or instrumentality of any of the foregoing.

(B) A foreign government or international organization, or instrumentality of either, which is designated by the President as eligible to provide training under this section.

(C) A medical, scientific, technical, educational, research, or professional institution, foundation, or organization.

(D) A business, commercial, or industrial firm, corporation, partnership, proprietorship, or other organization.

(E) Individuals other than civilian or military personnel of the Government.

(F) The services and property of any of the foregoing providing the training.

(b) EXPENSES.—The Secretary concerned, from appropriations or other funds available to the Secretary, may—

(1) pay all or a part of the pay of a member of a uniformed service who is selected and assigned for training under this section, for the period of training; and

(2) pay, or reimburse the member of a uniformed service for, all or a part of the necessary expenses of the training (without regard to subsections (a) and (b) of section 3324 of title 31), including among those expenses the necessary costs of the following:

(A) Travel and per diem instead of subsistence under sections 474 and 475[1] of title 37 and the Joint Travel Regulations for the Uniformed Services.

(B) Transportation of immediate family, household goods and personal effects, packing, crating, temporarily storing, draying, and unpacking under sections 476 and 479 of title 37 and the Joint Travel Regulations for the Uniformed Services when the estimated costs of transportation and related services are less than the estimated aggregate per diem payments for the period of training.

(C) Tuition and matriculation fees.

(D) Library and laboratory services.

(E) Purchase or rental of books, materials, and supplies.

(F) Other services or facilities directly related to the training of the member.

(c) CERTAIN EXPENSES EXCLUDED.—The expenses of training do not include membership fees except to the extent that the fee is a necessary cost directly related to the training itself or that payment of the fee is a condition precedent to undergoing the training.

(Added Pub. L. 104–201, div. A, title III, §362(a)(1), Sept. 23, 1996, 110 Stat. 2491; amended Pub. L. 111–350, §5(b)(2), Jan. 4, 2011, 124 Stat. 3842; Pub. L. 112–81, div. A, title VI, §631(f)(4)(A), Dec. 31, 2011, 125 Stat. 1465; Pub. L. 112–239, div. A, title X, §1076(a)(9), Jan. 2, 2013, 126 Stat. 1948; Pub. L. 113–291, div. A, title X, §1071(a)(1), Dec. 19, 2014, 128 Stat. 3504.)

[1] See References in Text note below.

REFERENCES IN TEXT

Section 475 of title 37, referred to in subsec. (b)(2)(A), was renumbered section 405 of title 37 by Pub. L. 116–283, div. A, title VI, §604(a)(1), Jan. 1, 2021, 134 Stat. 3672.

AMENDMENTS

2014—Subsec. (a)(1). Pub. L. 113–291 substituted ''section 6101 of title 41'' for ''section 6101(b)–(d) of title 41''.

2013—Subsec. (b)(2)(A), (B). Pub. L. 112–239, §1076(a)(9), made technical amendment to directory language of Pub. L. 112–81, §631(f)(4)(A). See 2011 Amendment note below.

2011—Subsec. (a)(1). Pub. L. 111–350 substituted ''section 6101(b)–(d) of title 41'' for ''section 3709 of the Revised Statutes (41 U.S.C. 5)''.

Subsec. (b)(2)(A), (B). Pub. L. 112–81, §631(f)(4)(A), as amended by Pub. L. 112–239, §1076(a)(9), substituted ''474'' for ''404'' and ''475'' for ''405'' in subpar. (A), and ''476'' for ''406'' and ''479'' for ''409'' in subpar. (B).

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112–239, div. A, title X, §1076(a), Jan. 2, 2013, 126 Stat. 1947, provided that the amendment made by section 1076(a)(9) is effective Dec. 31, 2011, and as if included in Pub. L. 112–81 as enacted.

EFFECTIVE DATE

Pub. L. 104–201, div. A, title III, §362(b), Sept. 23, 1996, 110 Stat. 2493, provided that: ''Section 2013 of title 10, United States Code, as added by subsection (a), shall take effect on October 1, 1996.''

§ 2014. Administrative actions adversely affecting military training or other readiness activities

(a) CONGRESSIONAL NOTIFICATION.—Whenever an official of an Executive agency takes or proposes to take an administrative action that, as determined by the Secretary of Defense in consultation with the Chairman of the Joint Chiefs of Staff, affects training or any other readiness activity in a manner that has or would have a significant adverse effect on the military readiness of any of the armed forces or a critical component thereof, the Secretary shall submit a written notification of the action and each significant adverse effect to the head of the Executive agency taking or proposing to take the administrative action. At the same time, the Secretary shall transmit a copy of the notification to the President, the Committee on Armed Services of the Senate, and the Committee on Armed Services of the House of Representatives.

(b) NOTIFICATION TO BE PROMPT.—(1) Subject to paragraph (2), the Secretary shall submit a written notification of an administrative action or proposed administrative action required by subsection (a) as soon as possible after the Secretary becomes aware of the action or proposed action.

(2) The Secretary shall prescribe policies and procedures to ensure that the Secretary receives information on an administrative action or proposed administrative action described in subsection (a) promptly after Department of Defense personnel receive notice of such an action or proposed action.

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(c) CONSULTATION BETWEEN SECRETARY AND HEAD OF EXECUTIVE AGENCY.—Upon notification with respect to an administrative action or proposed administrative action under subsection (a), the head of the Executive agency concerned shall—

(1) respond promptly to the Secretary; and

(2) consistent with the urgency of the training or readiness activity involved and the provisions of law under which the administrative action or proposed administrative action is being taken, seek to reach an agreement with the Secretary on immediate actions to attain the objective of the administrative action or proposed administrative action in a manner which eliminates or mitigates the adverse effects of the administrative action or proposed administrative action upon the training or readiness activity.

(d) MORATORIUM.—(1) Subject to paragraph (2), upon notification with respect to an administrative action or proposed administrative action under subsection (a), the administrative action or proposed administrative action shall cease to be effective with respect to the Department of Defense until the earlier of—

(A) the end of the five-day period beginning on the date of the notification; or

(B) the date of an agreement between the head of the Executive agency concerned and the Secretary as a result of the consultations under subsection (c).

(2) Paragraph (1) shall not apply with respect to an administrative action or proposed administrative action if the head of the Executive agency concerned determines that the delay in enforcement of the administrative action or proposed administrative action will pose an actual threat of an imminent and substantial endangerment to public health or the environment.

(e) EFFECT OF LACK OF AGREEMENT.—(1) If the head of an Executive agency and the Secretary do not enter into an agreement under subsection (c)(2), the Secretary shall submit a written notification to the President who shall take final action on the matter.

(2) Not later than 30 days after the date on which the President takes final action on a matter under paragraph (1), the President shall submit to the committees referred to in subsection (a) a notification of the action.

(f) LIMITATION ON DELEGATION OF AUTHORITY.—The head of an Executive agency may not delegate any responsibility under this section.

(g) DEFINITION.—In this section, the term ''Executive agency'' has the meaning given such term in section 105 of title 5, except that the term does not include the Government Accountability Office.

(Added Pub. L. 105–85, div. A, title III, § 325(a), Nov. 18, 1997, 111 Stat. 1678; amended Pub. L. 106–65, div. A, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 108–375, div. A, title X, § 1084(c)(3), Oct. 28, 2004, 118 Stat. 2061.)

AMENDMENTS

2004—Subsec. (g). Pub. L. 108–375 substituted ''Government Accountability Office'' for ''General Accounting Office''.

1999—Subsec. (a). Pub. L. 106–65 substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security''.

§ 2015. Program to assist members in obtaining professional credentials

(a) PROGRAM REQUIRED.—The Secretary of Defense and the Secretary of Homeland Security, with respect to the Coast Guard when it is not operating as a service in the Navy, shall carry out a program to enable members of the armed forces to obtain, while serving in the armed forces, professional credentials that translate into civilian occupations.

(b) PAYMENT OF EXPENSES.—(1) Under the program required by this section, the Secretary of Defense and the Secretary of Homeland Security, with respect to the Coast Guard when it is not operating as a service in the Navy, shall provide for the payment of expenses of members for professional accreditation, Federal occupational licenses, State-imposed and professional licenses, professional certification, and related expenses.

(2) The authority under paragraph (1) may not be used to pay the expenses of a member to obtain professional credentials that are a prerequisite for appointment in the armed forces.

(c) QUALITY ASSURANCE OF CERTIFICATION PROGRAMS AND STANDARDS.—(1) Commencing not later than three years after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2016, each Secretary concerned shall ensure that any credentialing program used in connection with the program under subsection (a) meets one of the requirements specified in paragraph (2).

(2) The requirements for a credentialing program specified in this paragraph are that the credentialing program—

(A) is accredited by a nationally-recognized, third-party personnel certification program accreditor;

(B)(i) is sought or accepted by employers within the industry or sector involved as a recognized, preferred, or required credential for recruitment, screening, hiring, retention, or advancement purposes; and

(ii) where appropriate, is endorsed by a nationally-recognized trade association or organization representing a significant part of the industry or sector;

(C) grants licenses that are recognized by the Federal Government or a State government; or

(D) meets credential standards of a Federal agency.

(d) REGULATIONS.—(1) The Secretary of Defense and the Secretary of Homeland Security shall prescribe regulations to carry out this section.

(2) The regulations shall apply uniformly to the armed forces to the extent practicable.

(3) The regulations shall include the following:

(A) Requirements for eligibility for participation in the program under this section.

(B) A description of the professional credentials and occupations covered by the program.

(C) Mechanisms for oversight of the payment of expenses and the provision of other benefits under the program.

(D) Such other matters in connection with the payment of expenses and the provision of other benefits under the program as the Secretaries consider appropriate.

(e) EXPENSES DEFINED.—In this section, the term ''expenses'' means expenses for class room instruction, hands-on training (and associated materials), manuals, study guides and materials, text books, processing fees, and test fees and related fees.

(Added Pub. L. 109–163, div. A, title V, § 538(a), Jan. 6, 2006, 119 Stat. 3250; amended Pub. L. 113–291, div. A, title V, § 551(a), Dec. 19, 2014, 128 Stat. 3376; Pub. L. 114–92, div. A, title V, § 559, Nov. 25, 2015, 129 Stat. 827; Pub. L. 114–328, div. A, title V, § 561, Dec. 23, 2016, 130 Stat. 2137; Pub. L. 115–232, div. A, title V, § 556, Aug. 13, 2018, 132 Stat. 1773.)

REFERENCES IN TEXT

The date of the enactment of the National Defense Authorization Act for Fiscal Year 2016, referred to in subsec. (c)(1), is the date of enactment of Pub. L. 114–92, which was approved Nov. 25, 2015.

AMENDMENTS

2018—Subsec. (a). Pub. L. 115–232 substituted ''that translate into civilian occupations.'' for ''related to military training and skills that—

''(1) are acquired during service in the armed forces; and

''(2) translate into civilian occupations.''

2016—Subsec. (a)(1). Pub. L. 114–328, § 561(a), struck out ''incident to the performance of their military duties'' after ''in the armed forces''.

Subsec. (c)(1). Pub. L. 114–328, § 561(b)(1), substituted ''meets one of the requirements specified in paragraph (2).'' for ''is accredited by an accreditation body that meets the requirements specified in paragraph (2).''

Subsec. (c)(2). Pub. L. 114–328, § 561(b)(2), added par. (2) and struck out former par. (2) which read as follows: ''The requirements for accreditation bodies specified in this paragraph are requirements that an accreditation body—

''(A) be an independent body that has in place mechanisms to ensure objectivity and impartiality in its accreditation activities;

''(B) meet a recognized national or international standard that directs its policy and procedures regarding accreditation;

''(C) apply a recognized national or international certification standard in making its accreditation decisions regarding certification bodies and programs;

''(D) conduct on-site visits, as applicable, to verify the documents and records submitted by credentialing bodies for accreditation;

''(E) have in place policies and procedures to ensure due process when addressing complaints and appeals regarding its accreditation activities;

''(F) conduct regular training to ensure consistent and reliable decisions among reviewers conducting accreditations; and

''(G) meet such other criteria as the Secretary concerned considers appropriate in order to ensure quality in its accreditation activities.''

2015—Subsecs. (c) to (e). Pub. L. 114–92 added subsec. (c) and redesignated former subsecs. (c) and (d) as (d) and (e), respectively.

2014—Pub. L. 113–291 amended section generally. Prior to amendment, section related to payment of certain expenses to obtain professional credentials.

IMPROVEMENTS TO THE CREDENTIALING OPPORTUNITIES ON-LINE PROGRAMS OF THE ARMED FORCES

Pub. L. 116–283, div. A, title V, § 578, Jan. 1, 2021, 134 Stat. 3649, provided that:

''(a) STUDY ON PERFORMANCE MEASURES.—The Secretary of Defense shall conduct a study to determine additional performance measures to evaluate the effectiveness of the Credentialing Opportunities On-Line programs (in this section referred to as the 'COOL programs') of each Armed Force in connecting members of the Armed Forces with professional credential programs. The study shall include the following:

''(1) The percentage of members of the Armed Force concerned described in section 1142(a) of title 10, United States Code, who participate in a professional credential program through the COOL program of the Armed Force concerned.

''(2) The percentage of members of the Armed Force concerned described in paragraph (1) who have completed a professional credential program described in that paragraph.

''(3) The amount of funds obligated and expended to execute the COOL program of each Armed Force during the five fiscal years immediately preceding the date of the study.

''(4) Any other element determined by the Secretary of Defense.

''(b) INFORMATION TRACKING.—The Secretary of Defense shall establish a process to standardize the tracking of information regarding the COOL programs across the Armed Forces.

''(c) COORDINATION.—To carry out this section, the Secretary of Defense may coordinate with the Secretaries of Veterans Affairs and Labor.

''(d) REPORT.—Not later than 180 days after the date of the enactment of this Act [Jan. 1, 2021], the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives a report on—

''(1) the study conducted under subsection (a); and

''(2) the process established under subsection (b), including a timeline to implement such process.''

PROGRAMS TO FACILITATE THE AWARD OF PRIVATE PILOT'S CERTIFICATES

Pub. L. 116–92, div. A, title V, § 560B, Dec. 20, 2019, 133 Stat. 1393, provided that:

''(a) PROGRAMS AUTHORIZED.—Each Secretary of a military department may carry out a program under which qualified participants may obtain a private pilot's certificate through an institution of higher education with an accredited aviation program that is approved by such Secretary pursuant to subsection (c).

''(b) PARTICIPANT QUALIFICATIONS AND TYPES OF ASSISTANCE.—

''(1) IN GENERAL.—In carrying out a program under subsection (a), the Secretary of a military department shall prescribe—

''(A) the standards to be met for participation in the program; and

''(B) the types of assistance, if any, to be provided to individuals who participate in the program.

''(2) UNIFORMITY ACROSS MILITARY DEPARTMENTS.—To the extent practicable, the standards and types of assistance prescribed under paragraph (1) shall be uniform across the military departments.

''(c) APPROVED INSTITUTIONS OF HIGHER EDUCATION.—

''(1) IN GENERAL.—In carrying out a program under subsection (a), the Secretary of a military department shall maintain a list of institutions of higher education (as that term is defined in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001)) through which an individual participating in the program may obtain a private pilot's certificate.

''(2) QUALIFICATIONS AND STANDARDS.—Any institution of higher education included on a list under paragraph (1), and any course of instruction toward obtaining a private pilot's certificate offered by such institution, shall meet such qualifications and standards as the Secretary shall prescribe for purposes of the program. Such qualifications and standards shall include a requirement that any institution included on the list award, to individual participating in the program, academic credit at such institution for any

portion of course work completed on the ground school course of instruction of such institution in connection with obtaining a private pilot's certificate, regardless of whether the participant fully completed the ground school course of instruction.

''(d) ANNUAL REPORTS ON PROGRAMS.—

''(1) IN GENERAL.—Not later than February 28, 2021, and each year thereafter, each Secretary of a military department shall submit to Congress a report on the program, if any, carried out by such Secretary under subsection (a) during the preceding calendar year.

''(2) ELEMENTS.—Each report under paragraph (1) shall include, for the program and year covered by such report, the following:

''(A) The total number of participants in the program.

''(B) The number of private pilot's certificates awarded to participants in the program.

''(C) The number of participants in the program who fully completed a ground school course of instruction in connection with obtaining a private pilot's certificate.''

PILOT PROGRAM ON EARNING BY SPECIAL OPERATIONS FORCES MEDICS OF CREDIT TOWARD A PHYSICIAN ASSISTANT DEGREE

Pub. L. 115–232, div. A, title VII, § 735, Aug. 13, 2018, 132 Stat. 1819, provided that:

''(a) IN GENERAL.—The Assistant Secretary of Defense for Health Affairs may conduct a pilot program to assess the feasibility and advisability of partnerships between special operations forces and institutions of higher education, and health care systems if determined appropriate by the Assistant Secretary for purposes of the pilot program, through which special operations forces medics earn credit toward the master's degree of physician assistant for military operational work and training performed by the medics.

''(b) DURATION.—The Assistant Secretary shall conduct the pilot program for a period not to exceed five years.

''(c) CLINICAL TRAINING.—Partnerships under subsection (a) shall permit medics participating in the pilot program to conduct clinical training at medical facilities of the Department of Defense and the civilian sector.

''(d) EVALUATION.—The evaluation of work and training performed by medics for which credits are earned under the pilot program shall comply with civilian clinical evaluation standards applicable to the awarding of the master's degree of physician assistant.

''(e) REPORTS.—

''(1) INITIAL REPORT.—Not later than 180 days after the date of the enactment of this Act [Aug. 13, 2018], the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the pilot program that shall include the following:

''(A) A comprehensive framework for the military education to be provided to special operations forces medics under the pilot program, including courses of instruction at institutions of higher education and any health care systems participating in the pilot program.

''(B) Metrics to be used to assess the effectiveness of the pilot program.

''(C) A description of the mechanisms to be used by the Department, medics, or both to cover the costs of education received by medics under the pilot program through institutions of higher education or health care systems, including payment by the Department in return for a military service commitment, tuition or other educational assistance by the Department, use by medics of post-9/11 educational assistance available through the Department of Veterans Affairs, and any other mechanisms the Secretary considers appropriate for purposes of the pilot program.

''(2) FINAL REPORT.—Not later than 180 days after completion of the pilot program, the Secretary shall submit to the committees of Congress referred to in paragraph (1) a final report on the pilot program. The report shall include the following:

''(A) An evaluation of the pilot program using the metrics of assessment set forth pursuant to paragraph (1)(B).

''(B) An assessment of the utility of the funding mechanisms set forth pursuant to paragraph (1)(C).

''(C) An assessment of the effects of the pilot program on recruitment and retention of medics for special operations forces.

''(D) An assessment of the feasibility and advisability of extending one or more authorities for joint professional military education under chapter 107 of title 10, United States Code, to warrant officers or enlisted personnel, and if the Secretary considers the extension of any such authorities feasible and advisable, recommendations for legislative or administrative action to so extend such authorities.

''(f) CONSTRUCTION OF AUTHORITIES.—Nothing in this section may be construed to—

''(1) authorize an officer or employee of the Federal Government to create, endorse, or otherwise incentivize a particular curriculum or degree track; or

''(2) require, direct, review, or control a State or educational institution, or the instructional content, curriculum, and related activities of a State or educational institution.''

ENHANCEMENT OF MECHANISMS TO CORRELATE SKILLS AND TRAINING FOR MILITARY OCCUPATIONAL SPECIALTIES WITH SKILLS AND TRAINING REQUIRED FOR CIVILIAN CERTIFICATIONS AND LICENSES

Pub. L. 113–66, div. A, title V, § 542, Dec. 26, 2013, 127 Stat. 762, provided that:

''(a) IMPROVEMENT OF INFORMATION AVAILABLE TO MEMBERS OF THE ARMED FORCES ABOUT CORRELATION.—

''(1) IN GENERAL.—The Secretaries of the military departments, in coordination with the Under Secretary of Defense for Personnel and Readiness, shall, to the maximum extent practicable, make information on civilian credentialing opportunities available to members of the Armed Forces beginning with, and at every stage of, training of members for military occupational specialties, in order to permit members—

''(A) to evaluate the extent to which such training correlates with the skills and training required in connection with various civilian certifications and licenses; and

''(B) to assess the suitability of such training for obtaining or pursuing such civilian certifications and licenses.

''(2) COORDINATION WITH TRANSITION GOALS PLANS SUCCESS PROGRAM.—Information shall be made available under paragraph (1) in a manner consistent with the Transition Goals Plans Success (GPS) program.

''(3) TYPES OF INFORMATION.—The information made available under paragraph (1) shall include, but not be limited to, the following:

''(A) Information on the civilian occupational equivalents of military occupational specialties (MOS).

''(B) Information on civilian license or certification requirements, including examination requirements.

''(C) Information on the availability and opportunities for use of educational benefits available to members of the Armed Forces, as appropriate, corresponding training, or continuing education that leads to a certification exam in order to provide a pathway to credentialing opportunities.

''(4) USE AND ADAPTATION OF CERTAIN PROGRAMS.—In making information available under paragraph (1), the Secretaries of the military departments may use and adapt appropriate portions of the Credentialing Opportunities On-Line (COOL) programs of the Army and the Navy and the Credentialing and Educational Research Tool (CERT) of the Air Force.

''(b) IMPROVEMENT OF ACCESS OF ACCREDITED CIVILIAN CREDENTIALING AND RELATED ENTITIES TO MILITARY TRAINING CONTENT.—

''(1) IN GENERAL.—The Secretaries of the military departments, in coordination with the Under Secretary of Defense for Personnel and Readiness, shall, to the maximum extent practicable consistent with national security and privacy requirements, make available to entities specified in paragraph (2), upon request of such entities, information such as military course training curricula, syllabi, and materials, levels of military advancement attained, and professional skills developed.

''(2) ENTITIES.—The entities specified in this paragraph are the following:

''(A) Civilian credentialing agencies.

''(B) Entities approved by the Secretary of Veterans Affairs, or by State approving agencies, for purposes of the use of educational assistance benefits under the laws administered by the Secretary of Veterans Affairs.

''(3) CENTRAL REPOSITORY.—The actions taken pursuant to paragraph (1) may include the establishment of a central repository of information on training and training materials provided members in connection with military occupational specialities that is readily accessible by entities specified in paragraph (2) in order to meet requests described in paragraph (1).''

PILOT PROGRAM ON RECEIPT OF CIVILIAN CREDENTIALING FOR SKILLS REQUIRED FOR MILITARY OCCUPATIONAL SPECIALTIES

Pub. L. 112–81, div. A, title V, § 558, Dec. 31, 2011, 125 Stat. 1418, as amended by Pub. L. 112–239, div. A, title V, § 543, Jan. 2, 2013, 126 Stat. 1737, provided that:

''(a) PILOT PROGRAM REQUIRED.—Commencing not later than nine months after the date of the enactment of this Act [Dec. 31, 2011], the Secretary of Defense shall carry out a pilot program to assess the feasibility and advisability of permitting enlisted members of the Armed Forces to obtain civilian credentialing or licensing for skills required for military occupational specialties (MOS) or qualification for duty specialty codes.

''(b) ELEMENTS.—In carrying out the pilot program, the Secretary shall—

''(1) designate not less than three military occupational specialities or duty speciality codes for coverage under the pilot program;

''(2) consider utilizing industry-recognized certifications or licensing standards for civilian occupational skills comparable to the specialties or codes so designated; and

''(3) permit enlisted members of the Armed Forces to obtain the credentials or licenses required for the specialities or codes so designated through civilian credentialing or licensing entities, institutions, or bodies selected by the Secretary for purposes of the pilot program, whether concurrently with military training, at the completion of military training, or both.

''(c) DURATION.—The Secretary shall complete the pilot program by not later than five years after the date of the commencement of the pilot program.

''(d) REPORT.—Not later than one year after commencement of the pilot program, the Secretary shall submit to Congress a report on the pilot program. The report shall set forth the following:

''(1) The number of enlisted members who participated in the pilot program.

''(2) A description of the costs incurred by the Department of Defense in connection with the receipt by members of credentialing or licensing under the pilot program.

''(3) A comparison of the cost associated with receipt by members of credentialing or licensing under the pilot program with the cost of receipt of similar credentialing or licensing by recently-discharged veterans of the Armed Forces under programs currently operated by the Department of Veterans Affairs and the Department of Labor.

''(4) The recommendation of the Secretary as to the feasibility and advisability of expanding the pilot program to additional military occupational specialties or duty specialty codes, and, if such expansion is considered feasible and advisable, a list of the military occupational specialties and duty specialty codes recommended for inclusion in the expansion.''

EX. ORD. NO. 13860. SUPPORTING THE TRANSITION OF ACTIVE DUTY SERVICE MEMBERS AND MILITARY VETERANS INTO THE MERCHANT MARINE

Ex. Ord. No. 13860, Mar. 4, 2019, 84 F.R. 8407, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and to promote employment opportunities for United States military veterans while growing the cadre of trained United States mariners available to meet United States requirements for national and economic security, it is hereby ordered as follows:

SECTION 1. *Policy*. It is the policy of the United States to support practices and programs that ensure that members of the United States Armed Forces receive appropriate credit for their military training and experience, upon request, toward credentialing requirements as a merchant mariner. It is further the policy of the United States to establish and maintain an effective merchant marine program by providing sufficient support and resources to active duty and separating service members who pursue or possess merchant mariner credentials.

A robust merchant marine is vital to the national and economic security of the United States. Credentialed United States merchant mariners support domestic and international trade, are critical for strategic defensive and offensive military sealift operations, and bring added expertise to Federal vessel operations. Unfortunately, the United States faces a shortage of qualified merchant mariners. As our strategic competitors expand their global footprint, the United States must retain its ability to project and sustain forces globally. This capability requires a sufficient corps of credentialed merchant mariners available to crew the necessary sealift fleet. Attracting additional trained and credentialed mariners, particularly from active duty service members and military veterans, will support United States national security requirements and provide meaningful, well-paying jobs to United States veterans.

SEC. 2. *Definition*. For the purposes of this order, the term ''applicable service'' includes any of the ''armed forces,'' as that term is defined in section 101(a)(4)(A) [sic] of title 10, United States Code.

SEC. 3. *Credentialing Support*. (a) To support merchant mariner credentialing and the maintenance of such credentials, the Secretary of Defense and the Secretary of Homeland Security, with respect to the applicable services in their respective departments, and in coordination with one another and with the United States Committee on the Marine Transportation System, shall, consistent with applicable law:

(i) Within 1 year from the date of this order [Mar. 4, 2019], identify all military training and experience within the applicable service that may qualify for merchant mariner credentialing, and submit a list of all identified military training and experience to the United States Coast Guard National Maritime Center for a determination of whether such training and experience counts for credentialing purposes;

(ii) With respect to National Maritime Center license evaluation, issuance, and examination, take all necessary and appropriate actions to provide for the waiver of fees for active duty service members, if a waiver is authorized and appropriate, and, if a waiver is not granted, take all necessary and appropriate actions to provide for the payment of fees for active duty service members by the applicable service to the fullest extent permitted by law;

(iii) Direct the applicable services to take all necessary and appropriate actions to pay for Transportation Worker Identification Credential cards for ac-

tive duty service members pursuing or possessing a mariner credential;

(iv) Ensure that members of the applicable services who are to be discharged or released from active duty and who request certification or verification of sea service be provided such certification or verification no later than 1 month after discharge or release; and

(v) Ensure the applicable services have developed, or continue to operate, as appropriate, the online resource known as Credentialing Opportunities On-Line to support separating service members seeking information and assistance on merchant mariner credentialing.

(b) The United States Committee on the Marine Transportation System shall pursue innovative ways to support merchant mariner credentialing, including through continuation of the Military to Mariner Initiative as appropriate, and shall provide a yearly status report on its efforts under the provisions of this order to the President through the White House Office of Trade and Manufacturing Policy.

SEC. 4. *General Provisions*. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

DONALD J. TRUMP.

§ 2016. Undergraduate nurse training program: establishment through agreement with academic institution

(a) ESTABLISHMENT AUTHORIZED.—(1) To increase the number of nurses in the armed forces, the Secretary of Defense may enter into an agreement with one or more academic institutions to establish and operate an undergraduate program (in this section referred to as a ''undergraduate nurse training program'') under which participants will earn a bachelor of science degree in nursing and serve as a member of the armed forces.

(2) The Secretary of Defense may authorize the participation of members of the other uniformed services in the undergraduate nurse training program if the Secretary of Defense and the Secretary of Health and Human Services jointly determine the participation of such members in the program will facilitate an increase in the number of nurses in the other uniformed services.

(b) GRADUATION RATES.—An undergraduate nurse training program shall have the capacity to graduate 25 students with a bachelor of science degree in nursing in the first class of the program, 50 in the second class, and 100 annually thereafter.

(c) ELEMENTS.—An undergraduate nurse training program shall have the following elements:

(1) It shall involve an academic partnership with one or more academic institutions with existing accredited schools of nursing.

(2) It shall recruit as participants qualified individuals with at least two years of appropriate academic preparation, as determined by the Secretary of Defense.

(d) LOCATION OF PROGRAMS.—(1) An academic institution selected to operate an undergraduate nurse training program shall establish the program at or near a military installation that has a military treatment facility designated as a medical center with inpatient capability and multiple graduate medical education programs located on the installation or within reasonable proximity to the installation.

(2) Before approving a location as the site of an undergraduate nurse training program, the Secretary of Defense shall conduct an assessment to ensure that the establishment of the program at that location will not adversely impact or displace existing nurse training programs, either conducted by the Department of Defense or by a civilian entity, at the location.

(e) LIMITATION ON FACULTY.—An agreement entered into under subsection (a) shall not require members of the armed forces who are nurses to serve as faculty members for an undergraduate nurse training program.

(f) MILITARY SERVICE COMMITMENT.—The Secretary of Defense shall encourage members of the armed forces to apply to participate in an undergraduate nurse training program. Graduates of the program shall incur a military service obligation in a regular or reserve component, as determined by the Secretary.

(Added Pub. L. 111–84, div. A, title V, § 525(b)(1), Oct. 28, 2009, 123 Stat. 2286; amended Pub. L. 111–383, div. A, title V, § 551(a)–(c), Jan. 7, 2011, 124 Stat. 4219.)

AMENDMENTS

2011—Subsec. (a)(1). Pub. L. 111–383, § 551(a), substituted ''a bachelor of science degree in nursing'' for ''a nursing degree''.

Subsec. (b). Pub. L. 111–383, § 551(b), inserted ''in nursing'' after ''bachelor of science degree''.

Subsec. (d). Pub. L. 111–383, § 551(c), amended subsec. (d) generally. Prior to amendment, text read as follows: ''An academic institution selected to operate an undergraduate nurse training program shall establish the program at or near a military installation. A military installation at or near which an undergraduate nurse training program is established must—

''(1) be one of the ten largest military installations in the United States, in terms of the number of active duty personnel assigned to the installation and family members residing on or in the vicinity of the installations; and

''(2) have a military treatment facility with inpatient capability designated as a medical center located on the installation or within 10 miles of the installation.''

PLAN AND PILOT PROGRAM TO ESTABLISH UNDERGRADUATE NURSE TRAINING PROGRAM

Pub. L. 111–84, div. A, title V, § 525(c)–(f), Oct. 28, 2009, 123 Stat. 2287, 2288, as amended by Pub. L. 111–383, div. A, title V, § 551(d), Jan. 7, 2011, 124 Stat. 4219, provided that:

''(c) UNDERGRADUATE NURSE TRAINING PROGRAM PLAN.—Not later than 180 days after the date of the enactment of this Act [Oct. 28, 2009], the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives a plan to establish an undergraduate nurse training program in the Department of Defense in accordance with the authority provided by section 2169 of title 10, United States Code, as added by subsection (a), section 2016 of such title, as added by subsection (b), or any other authority available to the Secretary.

''(d) PILOT PROGRAM.—

"(1) PILOT PROGRAM REQUIRED.—The plan required by subsection (c) shall provide for the establishment of a pilot program to increase the number of nurses serving in the Armed Forces.

"(2) IMPLEMENTATION AND DURATION.—The pilot program shall begin not later than December 31, 2011, and be of not less than five years in duration.

"(3) GRADUATION RATES.—The goal of the pilot program is to achieve graduation rates at least equal to the rates required for the undergraduate nurse training programs authorized by section 2016 of title 10, United States Code, as added by subsection (b).

"(4) IMPLEMENTATION REPORT.—Not later than 270 days after the date of the enactment of this Act [Oct. 28, 2009], the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives a report on the pilot program, including a description of the program selected to be undertaken, the program's goals, and any additional legal authorities that may be needed to undertake the program.

"(5) PROGRESS REPORTS.—Not later than 90 days after the end of each academic year of the pilot program, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives a report specifying the number of nurses accessed into the Armed Forces through the program and the number of students accepted for the upcoming academic year.

"(6) FINAL REPORT.—Not later than one year before the end of the pilot program, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives a report specifying the number of nurses accessed through the program, evaluating the overall effectiveness of the program, and containing the Secretary's recommendations regarding whether the program should be extended.

"(e) EFFECT ON OTHER NURSING PROGRAMS.—Notwithstanding the development of undergraduate nurse training programs under the amendments made by this section [enacting this section and section 2169 of this title and repealing section 2117 of this title] and subsection (d), the Secretary of Defense shall ensure that graduate degree programs in nursing, including advanced practice nursing, continue.

"(f) EFFECT ON OTHER RECRUITMENT EFFORTS.—Nothing in this section shall be construed as limiting or terminating any current or future program of the Department of Defense related to the recruitment, accession, training, or retention of nurses."

§ 2017. Limitation on establishment of postsecondary educational institutions pending notice to Congress

(a) LIMITATION.—The Secretary of Defense may not establish a postsecondary educational institution within the Department of Defense until a period of one year has elapsed following the date on which the Secretary notifies the congressional defense committees of the intent of the Secretary to establish the institution.

(b) POSTSECONDARY EDUCATIONAL INSTITUTION DEFINED.—In this section, the term "postsecondary educational institution" means a school or other educational institution that is intended to provide students with a course of instruction that is comparable, in length and academic rigor, to a course of instruction for which an associate's, bachelor's, or graduate degree may be awarded.

(Added Pub. L. 116–92, div. A, title V, § 553(b)(1), Dec. 20, 2019, 133 Stat. 1387.)

APPLICABILITY

Pub. L. 116–92, div. A, title V, § 553(b)(3), Dec. 20, 2019, 133 Stat. 1387, provided that: "Section 2017 of title 10, United States Code, as added by paragraph (1), shall apply with respect to postsecondary educational institutions intended to be established by the Secretary of Defense on or after the date of the enactment of this Act [Dec. 20, 2019]."

CHAPTER 102—JUNIOR RESERVE OFFICERS' TRAINING CORPS

Sec.

2031. Junior Reserve Officers' Training Corps.
2032. Responsibility of the Secretaries of the military departments to maximize enrollment and enhance efficiency.
2033. Instructor qualifications.
2034. Educational institutions not maintaining units of Junior Reserve Officers' Training Corps: issuance of arms, tentage, and equipment.
2035. Flexibility in authorities for management of programs and units.
2036. Grants to support science, technology, engineering, and mathematics education.

AMENDMENTS

2021—Pub. L. 116–283, div. A, title V, § 513(a)(2), Jan. 1, 2021, 134 Stat. 3588, added item 2036.

2018—Pub. L. 115–232, div. A, title V, § 557(a)(2), Aug. 13, 2018, 132 Stat. 1774, added item 2035.

2013—Pub. L. 112–239, div. A, title V, § 552(c)(1), Jan. 2, 2013, 126 Stat. 1741, added item 2034.

2006—Pub. L. 109–364, div. A, title V, § 539(b), Oct. 17, 2006, 120 Stat. 2211, added item 2033.

2001—Pub. L. 107–107, div. A, title V, § 596(c)(2), Dec. 28, 2001, 115 Stat. 1127, struck out item 2033 "Contingent funding increase".

1999—Pub. L. 106–65, div. A, title V, § 547(a)(2), Oct. 5, 1999, 113 Stat. 609, added item 2033.

1997—Pub. L. 105–85, div. A, title V, § 546(b), Nov. 18, 1997, 111 Stat. 1747, added item 2032.

1964—Pub. L. 88–647, title I, § 101(1), Oct. 13, 1964, 78 Stat. 1063, added item 2031 and chapter heading.

§ 2031. Junior Reserve Officers' Training Corps

(a)(1) The Secretary of each military department shall establish and maintain a Junior Reserve Officers' Training Corps, organized into units, at public and private secondary educational institutions which apply for a unit and meet the standards and criteria prescribed pursuant to this section. The President shall promulgate regulations prescribing the standards and criteria to be followed by the military departments in selecting the institutions at which units are to be established and maintained and shall provide for the fair and equitable distribution of such units throughout the Nation, except that more than one such unit may be established and maintained at any military institute.

(2) It is a purpose of the Junior Reserve Officers' Training Corps to instill in students in United States secondary educational institutions the values of citizenship, service to the United States (including an introduction to service opportunities in military, national, and public service), and personal responsibility and a sense of accomplishment.

(b) No unit may be established or maintained at an institution unless—

(1) the number of physically fit students in such unit who are in a grade above the 7th grade and physically co-located with the 9th grade participating unit and are citizens or nationals of the United States, or aliens lawfully admitted to the United States for perma-

nent residence, is not less than (A) 10 percent of the number of students enrolled in the institution who are in a grade above the 7th grade and physically co-located with the 9th grade participating unit, or (B) 100, whichever is less;

(2) the institution has adequate facilities for classroom instruction, storage of arms and other equipment which may be furnished in support of the unit, and adequate drill areas at or in the immediate vicinity of the institution, as determined by the Secretary of the military department concerned;

(3) the institution provides a course of military instruction of not less than three academic years' duration and which may include instruction or activities in the fields of science, technology, engineering, and mathematics, as prescribed by the Secretary of the military department concerned;

(4) the institution agrees to limit membership in the unit to students who maintain acceptable standards of academic achievement and conduct, as prescribed by the Secretary of the military department concerned; and

(5) the unit meets such other requirements as may be established by the Secretary of the military department concerned.

(c) The Secretary of the military department concerned shall, to support the Junior Reserve Officers' Training Corps program—

(1) detail officers and noncommissioned officers of an armed force under his jurisdiction to institutions having units of the Corps as administrators and instructors;

(2) provide necessary text materials, equipment, and uniforms and, to the extent considered appropriate by the Secretary concerned, such additional resources (including transportation and billeting) as may be available to support activities of the program; and

(3) establish minimum acceptable standards for performance and achievement for qualified units.

(d) Instead of, or in addition to, detailing officers and noncommissioned officers on active duty under subsection (c)(1), the Secretary of the military department concerned may authorize qualified institutions to employ, as administrators and instructors in the program, retired officers and noncommissioned officers who are in receipt of retired pay, and members of the Fleet Reserve and Fleet Marine Corps Reserve, whose qualifications are approved by the Secretary and the institution concerned and who request such employment, subject to the following:

(1) A retired member so employed is entitled to receive the member's retired or retainer pay without reduction by reason of any additional amount paid to the member by the institution concerned. In the case of payment of any such additional amount by the institution concerned, the Secretary of the military department concerned shall pay to that institution the amount equal to one-half of the amount paid to the retired member by the institution for any period, up to a maximum of one-half of the difference between the member's retired or retainer pay for that period and the active duty pay and allowances which the member would have received for that period if on active duty. Notwithstanding the limitation in the preceding sentence, the Secretary concerned may pay to the institution more than one-half of the additional amount paid to the retired member by the institution if (as determined by the Secretary) the institution is in an educationally and economically deprived area and the Secretary determines that such action is in the national interest. Payments by the Secretary concerned under this paragraph shall be made from funds appropriated for that purpose.

(2) Notwithstanding any other provision of law, such a retired member is not, while so employed, considered to be on active duty or inactive duty training for any purpose.

(e) Instead of, or in addition to, detailing officers and noncommissioned officers on active duty under subsection (c)(1) and authorizing the employment of retired officers and noncommissioned officers who are in receipt of retired pay and members of the Fleet Reserve and Fleet Marine Corps Reserve under subsection (d), the Secretary of the military department concerned may authorize qualified institutions to employ as administrators and instructors in the program officers and noncommissioned officers who are under 60 years of age and who, but for age, would be eligible for retired pay for non-regular service under section 12731 of this title and whose qualifications are approved by the Secretary and the institution concerned and who request such employment, subject to the following:

(1) The Secretary concerned shall pay to the institution an amount equal to one-half of the amount paid to the member by the institution for any period, up to a maximum of one-half of the difference between—

(A) the retired or retainer pay for an active duty officer or noncommissioned officer of the same grade and years of service for such period; and

(B) the active duty pay and allowances which the member would have received for that period if on active duty.

(2) Notwithstanding the limitation in paragraph (1), the Secretary concerned may pay to the institution more than one-half of the amount paid to the member by the institution if (as determined by the Secretary)—

(A) the institution is in an educationally and economically deprived area; and

(B) the Secretary determines that such action is in the national interest.

(3) Payments by the Secretary concerned under this subsection shall be made from funds appropriated for that purpose.

(4) Amounts may be paid under this subsection with respect to a member after the member reaches the age of 60.

(5) Notwithstanding any other provision of law, a member employed by a qualified institution pursuant to an authorization under this subsection is not, while so employed, considered to be on active duty or inactive duty training for any purpose.

(f)(1) When determined by the Secretary of the military department concerned to be in the na-

tional interest and agreed upon by the institution concerned, the institution may reimburse a Junior Reserve Officers' Training Corps instructor for moving expenses incurred by the instructor to accept employment at the institution in a position that the Secretary concerned determines is hard-to-fill for geographic or economic reasons.

(2) As a condition on providing reimbursement under paragraph (1), the institution shall require the instructor to execute a written agreement to serve a minimum of two years of employment at the institution in the hard-to-fill position.

(3) Any reimbursement provided to an instructor under paragraph (1) is in addition to the minimum instructor pay otherwise payable to the instructor.

(4) The Secretary concerned shall reimburse an institution providing reimbursement to an instructor under paragraph (1) in an amount equal to the amount of the reimbursement paid by the institution under that paragraph. Any reimbursement provided by the Secretary concerned shall be provided from funds appropriated for that purpose.

(5) The provision of reimbursement under paragraph (1) or (4) shall be subject to regulations prescribed by the Secretary of Defense for purposes of this subsection.

(g)(1) Each public secondary educational institution that maintains a unit under this section shall permit membership in the unit to homeschooled students residing in the area served by the institution who are qualified for membership in the unit (but for lack of enrollment in the institution).

(2) A student who is a member of a unit pursuant to this subsection shall count toward the satisfaction by the institution concerned of the requirement in subsection (b)(1) relating to the minimum number of student members in the unit necessary for the continuing maintenance of the unit.

(Added Pub. L. 88–647, title I, § 101(1), Oct. 13, 1964, 78 Stat. 1063; amended Pub. L. 89–718, § 16, Nov. 2, 1966, 80 Stat. 1117; Pub. L. 90–83, § 3(4), Sept. 11, 1967, 81 Stat. 220; Pub. L. 93–165, Nov. 29, 1973, 87 Stat. 660; Pub. L. 94–361, title VIII, § 807, July 14, 1976, 90 Stat. 933; Pub. L. 95–358, Sept. 8, 1978, 92 Stat. 592; Pub. L. 98–525, title IV, § 422, title XIV, § 1405(32), Oct. 19, 1984, 98 Stat. 2520, 2624; Pub. L. 100–26, § 7(i)(3), Apr. 21, 1987, 101 Stat. 282; Pub. L. 102–484, div. A, title V, § 533(a)–(e)(1), Oct. 23, 1992, 106 Stat. 2411, 2412; Pub. L. 103–160, div. A, title XI, § 1182(g)(1), Nov. 30, 1993, 107 Stat. 1774; Pub. L. 107–107, div. A, title V, § 537, Dec. 28, 2001, 115 Stat. 1107; Pub. L. 109–364, div. A, title V, § 540, Oct. 17, 2006, 120 Stat. 2211; Pub. L. 110–181, div. A, title VI, § 635, Jan. 28, 2008, 122 Stat. 155; Pub. L. 116–92, div. A, title V, §§ 511, 512(a), 513, Dec. 20, 2019, 133 Stat. 1348; Pub. L. 116–283, div. A, title V, § 512, Jan. 1, 2021, 134 Stat. 3587.)

AMENDMENTS

2021—Subsec. (a)(2). Pub. L. 116–283 inserted "(including an introduction to service opportunities in military, national, and public service)" after "service to the United States".

2019—Subsec. (b)(1). Pub. L. 116–92, § 511, substituted "above the 7th grade and physically co-located with the 9th grade participating unit" for "above the 8th grade" in two places.

Subsec. (b)(3). Pub. L. 116–92, § 512(a), inserted "and which may include instruction or activities in the fields of science, technology, engineering, and mathematics" after "duration".

Subsec. (g). Pub. L. 116–92, § 513, added subsec. (g).

2008—Subsec. (f). Pub. L. 110–181 added subsec. (f).

2006—Subsec. (d). Pub. L. 109–364, § 540(b), inserted "who are in receipt of retired pay" after "retired officers and noncommissioned officers" in introductory provisions.

Subsec. (e). Pub. L. 109–364, § 540(a), added subsec. (e).

2001—Subsec. (a)(1). Pub. L. 107–107 struck out after first sentence "The total number of units which may be established and maintained by all of the military departments under authority of this section, including those units already established on October 13, 1964, may not exceed 3,500."

1993—Subsec. (a)(1). Pub. L. 103–160 substituted "The" for "Not more than 200 units may be established by all of the military departments each year, and the" in second sentence.

1992—Subsec. (a). Pub. L. 102–484, § 533(a), (b), designated existing provisions as par. (1), substituted "3,500" for "1,600", and added par. (2).

Subsec. (b)(1). Pub. L. 102–484, § 533(c), substituted "in a grade above the 8th grade" for "at least 14 years of age" in two places and inserted ", or aliens lawfully admitted to the United States for permanent residence," after "of the United States".

Subsec. (c)(2). Pub. L. 102–484, § 533(d), inserted before semicolon "and, to the extent considered appropriate by the Secretary concerned, such additional resources (including transportation and billeting) as may be available to support activities of the program".

Subsec. (d)(1). Pub. L. 102–484, § 533(e)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "Retired members so employed are entitled to receive their retired or retainer pay and an additional amount of not more than the difference between their retired pay and the active duty pay and allowances which they would receive if ordered to active duty, and one-half of that additional amount shall be paid to the institution concerned by the Secretary of the military department concerned from funds appropriated for that purpose."

1987—Subsec. (a). Pub. L. 100–26 struck out "beginning with the calendar year 1966" after "each year" in second sentence.

1984—Subsec. (a). Pub. L. 98–525, § 1405(32), substituted "October 13, 1964" for "the date of enactment of this section".

Subsec. (b)(1). Pub. L. 98–525, § 422(1), substituted "the number of physically fit students in such unit who are at least 14 years of age and are citizens or nationals of the United States is not less than (A) 10 percent of the number of students enrolled in the institution who are at least 14 years of age, or (B) 100, whichever is less" for "the unit contains at least 100 physically fit students who are at least 14 years of age and are citizens or nationals of the United States".

Subsec. (b)(5). Pub. L. 98–525, § 422(2)–(4), added par. (5).

1978—Subsec. (b)(1). Pub. L. 95–358 inserted "or nationals" after "citizens".

1976—Subsec. (a). Pub. L. 94–361 increased total number of units authorized to be established to 1,600 from 1,200 and limited the military institutes to establishment and maintenance of only one unit.

1973—Subsec. (b)(1). Pub. L. 93–165 substituted "physically fit students" for "physically fit male students".

1967—Subsecs. (c), (d). Pub. L. 90–83 substituted "officers and noncommissioned officers" for "noncommissioned and commissioned officers" wherever appearing.

1966—Subsec. (d). Pub. L. 89–718 capitalized first letter of first word in cls. (1) and (2).

EFFECTIVE DATE OF 2019 AMENDMENT

Pub. L. 116–92, div. A, title V, § 512(b), Dec. 20, 2019, 133 Stat. 1348, provided that: "The amendment made by

subsection (a) [amending this section] shall take effect 180 days after the date of the enactment of this Act [Dec. 20, 2019].''

EFFECTIVE DATE OF 1992 AMENDMENT

Pub. L. 102–484, div. A, title V, § 533(e)(2), Oct. 23, 1992, 106 Stat. 2412, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply with respect to payments for periods of instructor service performed after September 30, 1992.''

SHORT TITLE

Pub. L. 88–647, § 1, Oct. 13, 1964, 78 Stat. 1063, provided: ''That the Act [enacting this chapter, and chapter 103 of this title, amending section 802 of former Title 5, sections 1475, 1478, 1481, 3201, 4348, 5404, 5504, 5652b, 6023, 6387, 6959, 8201, and 9348 of this title, and sections 205, 209, 415, 416 and 422 of Title 37, Pay and Allowances of the Uniformed Services, repealing sections 3355, 3540, 4381 to 4387, 6901 to 6906, 6908, 6910, 8355, 8540, and 9381 to 9387 of this title, and enacting provisions set out as notes under this section and section 2107 and former section 9385 of this title, may be cited as the 'Reserve Officers' Training Corps Vitalization Act of 1964'.''

ISSUANCE OF REGULATIONS

Pub. L. 88–647, title I, § 102, Oct. 13, 1964, 78 Stat. 1064, directed that regulations implementing subsec. (a) of this section be issued by President and by Secretary of each military department not later than Jan. 1, 1966.

SAVINGS CLAUSE

Pub. L. 88–647, title IV, § 402, Oct. 13, 1964, 78 Stat. 1074, provided that: ''If a part of this Act [see Short Title note above] is invalid, all valid parts that are severable from the invalid part remains in effect. If a part of this Act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.''

INCREASE IN NUMBER OF UNITS OF JUNIOR RESERVE OFFICERS' TRAINING CORPS

Pub. L. 110–417, [div. A], title V, § 548, Oct. 14, 2008, 122 Stat. 4466, as amended by Pub. L. 112–239, div. A, title V, § 553, Jan. 2, 2013, 126 Stat. 1742; Pub. L. 114–92, div. A, title X, § 1072(c), Nov. 25, 2015, 129 Stat. 995, provided that:

''(a) PLAN FOR INCREASE.—The Secretary of Defense, in consultation with the Secretaries of the military departments, shall develop and implement a plan to establish and support, not later than September 30, 2020, not less than 3,000, and not more than 3,700, units of the Junior Reserve Officers' Training Corps.

''(b) EXCEPTIONS.—The requirement imposed in subsection (a) shall not apply—

''(1) if the Secretary fails to receive an adequate number or requests for Junior Reserve Officers' Training Corps units by public and private secondary educational institutions;

''(2) during a time of national emergency when the Secretaries of the military departments determine that funding must be allocated elsewhere; or

''(3) if the Secretaries of the military departments determine that the level of support of all kinds (including appropriated funds) provided to youth development programs within the Armed Forces is consistent with funding limitations and the achievement of the objectives of such programs.

''(c) COOPERATION.—The Secretary of Defense, as part of the plan to establish and support additional Junior Reserve Officers' Training Corps units, shall work with local educational agencies to increase the employment in Junior Reserve Officers' Training Corps units of retired members of the Armed Forces who are retired under chapter 61 of title 10, United States Code, especially members who were wounded or injured while deployed in a contingency operation.

''(d) REPORT ON PLAN.—Upon completion of the plan, the Secretary of Defense shall provide a report to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] containing, at a minimum, the following:

''(1) A description of how the Secretaries of the military departments expect to achieve the number of units of the Junior Reserve Officers' Training Corps specified in subsection (a), including how many units will be established per year by each service.

''(2) The annual funding necessary to support the increase in units, including the personnel costs associated.

''(3) The number of qualified private and public schools, if any, who have requested a Junior Reserve Officers' Training Corps unit that are on a waiting list.

''(4) Efforts to improve the increased distribution of units geographically across the United States.

''(5) Efforts to increase distribution of units in educationally and economically deprived areas.

''(6) Efforts to enhance employment opportunities for qualified former military members retired for disability, especially those wounded while deployed in a contingency operation.''

EXPANSION OF JUNIOR RESERVE OFFICERS' TRAINING CORPS PROGRAM

Pub. L. 109–364, div. A, title V, § 541, Oct. 17, 2006, 120 Stat. 2212, provided that:

''(a) IN GENERAL.—The Secretaries of the military departments shall take appropriate actions to increase the number of secondary educational institutions at which a unit of the Junior Reserve Officers' Training Corps is organized under chapter 102 of title 10, United States Code.

''(b) EXPANSION TARGETS.—In increasing under subsection (a) the number of secondary educational institutions at which a unit of the Junior Reserve Officers' Training Corps is organized, the Secretaries of the military departments shall seek to organize units at an additional number of institutions as follows:

''(1) In the case of Army units, 15 institutions.

''(2) In the case of Navy units, 10 institutions.

''(3) In the case of Marine Corps units, 15 institutions.

''(4) In the case of Air Force units, 10 institutions.''

REDUCTION IN NUMBER OF STUDENTS REQUIRED TO BE IN JUNIOR RESERVE OFFICERS' TRAINING CORPS UNITS FOR PERIOD OF SEPTEMBER 1, 1980, TO AUGUST 31, 1984

Pub. L. 96–342, title VI, § 602, Sept. 8, 1980, 94 Stat. 1087, as amended by Pub. L. 97–86, title VII, § 702(a), Dec. 1, 1981, 95 Stat. 1111; Pub. L. 97–252, title VII, § 702, Sept. 8, 1982, 96 Stat. 728; Pub. L. 98–94, title VII, § 702, Sept. 24, 1983, 97 Stat. 634, authorized the Secretary of any military department, during the period beginning on Sept. 1, 1980, and ending on Aug. 31, 1984, to maintain a unit of the Junior Reserve Officers' Training Corps at any public or private secondary educational institution.

§ 2032. Responsibility of the Secretaries of the military departments to maximize enrollment and enhance efficiency

(a) COORDINATION.—The Secretary of each military department, in establishing, maintaining, transferring, and terminating Junior Reserve Officers' Training Corps units under section 2031 of this title, shall do so in a coordinated manner that is designed to maximize enrollment in the Corps and to enhance administrative efficiency in the management of the Corps.

(b) CONSIDERATION OF NEW SCHOOL OPENINGS AND CONSOLIDATIONS.—In carrying out subsection (a), the Secretary of a military department shall take into consideration—

(1) openings of new schools;

(2) consolidations of schools; and

(3) the desirability of continuing the opportunity for participation in the Corps by participants whose continued participation would otherwise be adversely affected by new school openings and consolidations of schools.

(Added Pub. L. 105–85, div. A, title V, § 546(a), Nov. 18, 1997, 111 Stat. 1746.)

§ 2033. Instructor qualifications

(a) IN GENERAL.—In order for a retired officer or noncommissioned officer to be employed as an instructor in the program, the officer must be certified by the Secretary of the military department concerned as a qualified instructor in leadership, wellness and fitness, civics, and other courses related to the content of the program, according to the qualifications set forth in subsection (b)(2) or (c)(2), as appropriate.

(b) SENIOR MILITARY INSTRUCTORS.—

(1) ROLE.—Senior military instructors shall be retired officers of the armed forces and shall serve as instructional leaders who oversee the program.

(2) QUALIFICATIONS.—A senior military instructor shall have the following qualifications:

(A) Professional military qualification, as determined by the Secretary of the military department concerned.

(B) Award of a baccalaureate degree from an institution of higher learning.

(C) Completion of secondary education teaching certification requirements for the program as established by the Secretary of the military department concerned.

(D) Award of an advanced certification by the Secretary of the military department concerned in core content areas based on—

(i) accumulated points for professional activities, services to the profession, awards, and recognitions;

(ii) professional development to meet content knowledge and instructional skills; and

(iii) performance evaluation of competencies and standards within the program through site visits and inspections.

(c) NON-SENIOR MILITARY INSTRUCTORS.—

(1) ROLE.—Non-senior military instructors shall be retired noncommissioned officers of the armed forces and shall serve as instructional leaders and teach independently of, but share program responsibilities with, senior military instructors.

(2) QUALIFICATIONS.—A non-senior military instructor shall demonstrate a depth of experience, proficiency, and expertise in coaching, mentoring, and practical arts in executing the program, and shall have the following qualifications:

(A) Professional military qualification, as determined by the Secretary of the military department concerned.

(B) Award of an associates degree from an institution of higher learning within five years of employment.

(C) Completion of secondary education teaching certification requirements for the program as established by the Secretary of the military department concerned.

(D) Award of an advanced certification by the Secretary of the military department concerned in core content areas based on—

(i) accumulated points for professional activities, services to the profession, awards, and recognitions;

(ii) professional development to meet content knowledge and instructional skills; and

(iii) performance evaluation of competencies and standards within the program through site visits and inspections.

(Added Pub. L. 109–364, div. A, title V, § 539(a), Oct. 17, 2006, 120 Stat. 2210.)

PRIOR PROVISIONS

A prior section 2033, added Pub. L. 106–65, div. A, title V, § 547(a)(1), Oct. 5, 1999, 113 Stat. 608; amended Pub. L. 106–398, § 1 [[div. A], title V, § 577(d)], Oct. 30, 2000, 114 Stat. 1654, 1654A–140, provided that certain excess amounts appropriated for the National Guard Challenge Program were to be made available for the Junior Reserve Officers' Training Corps program, prior to repeal by Pub. L. 107–107, div. A, title V, § 596(c)(1), (3), Dec. 28, 2001, 115 Stat. 1127, effective Oct. 1, 2002.

§ 2034. Educational institutions not maintaining units of Junior Reserve Officers' Training Corps: issuance of arms, tentage, and equipment

The Secretary of a military department may issue arms, tentage, and equipment to an educational institution at which no unit of the Junior Reserve Officers' Training Corps is maintained if the educational institution—

(1) offers a course in military training prescribed by that Secretary; and

(2) has a student body of at least 50 students who are in a grade above the eighth grade.

(Added Pub. L. 112–239, div. A, title V, § 552(a), Jan. 2, 2013, 126 Stat. 1741.)

§ 2035. Flexibility in authorities for management of programs and units

(a) AUTHORITY TO CONVERT OTHERWISE CLOSING UNITS TO NATIONAL DEFENSE CADET CORPS PROGRAM UNITS.—If the Secretary of a military department is notified by a local educational agency of the intent of the agency to close its Junior Reserve Officers' Training Corps, the Secretary shall offer the agency the option of converting the unit to a National Defense Cadet Corps (NDCC) program unit in lieu of closing the unit.

(b) FLEXIBILITY IN ADMINISTRATION OF INSTRUCTORS.—

(1) IN GENERAL.—The Secretaries of the military departments may, without regard to any other provision of this chapter, undertake initiatives designed to promote flexibility in the hiring and compensation of instructors for the Junior Reserve Officers' Training Corps program under the jurisdiction of such Secretaries.

(2) ELEMENTS.—The initiatives undertaken pursuant to this subsection may provide for one or more of the following:

(A) Termination of the requirement for a waiver as a condition of the hiring of well-

qualified non-commissioned officers with a bachelor's degree for senior instructor positions within the Junior Reserve Officers' Training Corps.

(B) Specification of a single instructor as the minimum number of instructors required to found and operate a Junior Reserve Officers' Training Corps unit.

(C) Authority for Junior Reserve Officers' Training Corps instructors to undertake school duties, in addition to Junior Reserve Officers' Training Corps duties, at small schools.

(D) Authority for the payment of instructor compensation for a limited number of Junior Reserve Officers' Training Corps instructors on a 10-month per year basis rather than a 12-month per year basis.

(E) Such other actions as the Secretaries of the military departments consider appropriate.

(c) FLEXIBILITY IN ALLOCATION AND USE OF TRAVEL FUNDING.—The Secretaries of the military departments shall take appropriate actions to provide so-called regional directors of the Junior Reserve Officers' Training Corps programs located at remote rural schools enhanced discretion in the allocation and use of funds for travel in connection with Junior Reserve Officers' Training Corps activities.

(d) STANDARDIZATION OF PROGRAM DATA.—The Secretary of Defense shall take appropriate actions to standardize the data collected and maintained on the Junior Reserve Officers' Training Corps programs in order to facilitate and enhance the collection and analysis of such data. Such actions shall include a requirement for the use of the National Center for Education Statistics (NCES) identification code for each school with a unit under a Junior Reserve Officers' Training Corps program in order to facilitate identification of such schools and their units under the Junior Reserve Officers' Training Corps programs.

(Added Pub. L. 115–232, div. A, title V, § 557(a)(1), Aug. 13, 2018, 132 Stat. 1773.)

§ 2036. Grants to support science, technology, engineering, and mathematics education

(a) AUTHORITY.—The Secretary, in consultation with the Secretary of Education, may carry out a program to make grants to eligible entities to assist such entities in providing education in covered subjects to students in the Junior Reserve Officers' Training Corps.

(b) COORDINATION.—In carrying out a program under subsection (a), the Secretary may coordinate with the following:

(1) The Director of the National Science Foundation.

(2) The Administrator of the National Aeronautics and Space Administration.

(3) The heads of such other Federal, State, and local government entities the Secretary of Defense determines to be appropriate.

(c) ACTIVITIES.—Activities funded with grants under this section may include the following:

(1) Training and other support for instructors to teach courses in covered subjects to students.

(2) The acquisition of materials, hardware, and software necessary for the instruction of covered subjects.

(3) Activities that improve the quality of educational materials, training opportunities, and curricula available to students and instructors in covered subjects.

(4) Development of travel opportunities, demonstrations, mentoring programs, and informal education in covered subjects for students and instructors.

(5) Students' pursuit of certifications in covered subjects.

(d) PREFERENCE.—In making any grants under this section, the Secretary shall give preference to eligible entities that are eligible for assistance under part A of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311 et seq.).

(e) EVALUATIONS.—In carrying out a program under this section, the Secretary shall establish outcome-based metrics and internal and external assessments to evaluate the merits and benefits of the activities funded with grants under this section with respect to the needs of the Department of Defense.

(f) AUTHORITIES.—In carrying out a program under this section, the Secretary shall, to the extent practicable, make use of the authorities under chapter 111 and sections 2601 and 2605 of this title, and other authorities the Secretary determines appropriate.

(g) DEFINITIONS.—In this section:

(1) The term ''eligible entity'' means a local education agency that hosts a unit of the Junior Reserve Officers' Training Corps.

(2) The term ''covered subjects'' means—

(A) science;
(B) technology;
(C) engineering;
(D) mathematics;
(E) computer science;
(F) computational thinking;
(G) artificial intelligence;
(H) machine learning;
(I) data science;
(J) cybersecurity;
(K) robotics;
(L) health sciences; and
(M) other subjects determined by the Secretary of Defense to be related to science, technology, engineering, and mathematics.

(Added Pub. L. 116–283, div. A, title V, § 513(a)(1), Jan. 1, 2021, 134 Stat. 3587.)

REFERENCES IN TEXT

The Elementary and Secondary Education Act of 1965, referred to in subsec. (d), is Pub. L. 89–10, Apr. 11, 1965, 79 Stat. 27. Part A of title I of the Act is classified generally to part A (§ 6311 et seq.) of subchapter I of chapter 70 of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 6301 of Title 20 and Tables.

CHAPTER 103—SENIOR RESERVE OFFICERS' TRAINING CORPS

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AMENDMENTS

2003—Pub. L. 108–136, div. A, title V, § 523(b)(2), Nov. 24, 2003, 117 Stat. 1464, added item 2103a.

1999—Pub. L. 106–65, div. A, title V, § 541(a)(2), Oct. 5, 1999, 113 Stat. 606, added item 2111b.

1997—Pub. L. 105–85, div. A, title V, § 544(f)(2), Nov. 18, 1997, 111 Stat. 1746, substituted ''Support for'' for ''Detail of officers to'' in item 2111a.

1996—Pub. L. 104–106, div. A, title V, § 545(b), Feb. 10, 1996, 110 Stat. 318, added item 2111a.

1991—Pub. L. 102–190, div. A, title V, § 522(b)(2), Dec. 5, 1991, 105 Stat. 1362, substituted ''Army Reserve and Army National Guard'' for ''military junior colleges'' in item 2107a.

1988—Pub. L. 100–456, div. A, title VI, § 633(a)(3)(B), Sept. 29, 1988, 102 Stat. 1986, substituted ''Practical military training'' for ''Field training; practice cruises'' in item 2109.

1980—Pub. L. 96–357, § 1(c)(2), Sept. 24, 1980, 94 Stat. 1180, added item 2107a.

1964—Pub. L. 88–647, title II, § 201(1), Oct. 13, 1964, 78 Stat. 1064, added chapter heading and items 2101 to 2111.

§ 2101. Definitions

In this chapter:

(1) The term ''program'' means the Senior Reserve Officers' Training Corps of an armed force.

(2) The term ''member of the program'' means a student who is enrolled in the Senior Reserve Officers' Training Corps of an armed force.

(3) The term ''advanced training'' means the training and instruction offered in the Senior Reserve Officers' Training Corps to students enrolled in an advanced education program beyond the baccalaureate degree level or to students in the third and fourth years of a four-year Senior Reserve Officers' Training Corps course, or the equivalent period of training in an approved two-year Senior Reserve Officers' Training Corps course (except that, in the case of a student enrolled in an academic program which has been approved by the Secretary of the military department concerned and which requires more than four academic years for completion of baccalaureate degree requirements, including elective requirements of the Senior Reserve Officers' Training Corps course, such term includes a fifth academic year or a combination of a part of a fifth academic year and summer sessions).

(Added Pub. L. 88–647, title II, § 201(1), Oct. 13, 1964, 78 Stat. 1064; amended Pub. L. 98–94, title X, § 1003(a)(1), title XII, § 1268(11), Sept. 24, 1983, 97 Stat. 656, 706; Pub. L. 100–180, div. A, title XII, § 1231(17), Dec. 4, 1987, 101 Stat. 1161; Pub. L. 104–201, div. A, title V, § 553(b), Sept. 23, 1996, 110 Stat. 2526.)

AMENDMENTS

1996—Par. (3). Pub. L. 104–201 inserted ''students enrolled in an advanced education program beyond the baccalaureate degree level or to'' after ''Training Corps to''.

1987—Pub. L. 100–180, in pars. (1) to (3), inserted ''The term'' after each par. designation, and struck out uppercase letter of first word after first quotation marks in each par. and substituted lowercase letter.

1983—Pub. L. 98–94, § 1268(11)(A), substituted a colon for a dash after ''In this chapter'' in provision preceding par. (1).

Par. (1). Pub. L. 98–94, § 1268(11)(B), (C), substituted ''Program'' for ''program'' and a period for a semicolon after ''armed force''.

Par. (2). Pub. L. 98–94, § 1268(11)(D), (E), substituted ''Member'' for ''member'', and a period for ''; and'' after ''armed force''.

Par. (3). Pub. L. 98–94, § 1268(11)(F), substituted ''Advanced'' for ''advanced''.

Pub. L. 98–94, § 1003(a)(1), inserted parenthetical provision relating to a fifth academic year or a combination of a fifth academic year and summer sessions.

PILOT PROGRAMS AUTHORIZED IN CONNECTION WITH SROTC UNITS AND CSPI PROGRAMS AT HISTORICALLY BLACK COLLEGES AND UNIVERSITIES AND MINORITY INSTITUTIONS

Pub. L. 116–283, div. A, title V, § 519, Jan. 1, 2021, 134 Stat. 3591, provided that:

''(a) PILOT PROGRAMS REQUIRED.—The Secretary of Defense may carry out two pilot programs as follows:

''(1) A pilot program, with elements as provided for in subsection (c), at covered institutions in order to assess the feasibility and advisability of mechanisms to reduce barriers to participation in the Senior Reserve Officers' Training Corps at such institutions by creating partnerships between satellite or extension Senior Reserve Officers' Training Corps units at such institutions and covered military installations.

''(2) In consultation with the Secretary of Homeland Security, a pilot program, with elements as provided for in subsection (d), in order to assess the feasibility and advisability of the provision of financial assistance to members of the Senior Reserve Officers' Training Corps, and members of the Coast Guard College Student Pre-Commissioning Initiative, at covered institutions for participation in flight training.

''(b) DURATION.—The duration of each pilot program under subsection (a) may not exceed 5 years.

''(c) PILOT PROGRAM ON PARTNERSHIPS BETWEEN SATELLITE OR EXTENSION SROTC UNITS AND COVERED MILITARY INSTALLATIONS.—

''(1) PARTICIPATING INSTITUTIONS.—The Secretary of Defense shall carry out the pilot program required by subsection (a)(1) at not fewer than five covered institutions selected by the Secretary for purposes of the pilot program.

''(2) REQUIREMENTS FOR SELECTION.—Each covered institution selected by the Secretary for purposes of the pilot program under subsection (a)(1) shall—

''(A) currently maintain a satellite or extension Senior Reserve Officers' Training Corps unit under chapter 103 of title 10, United States Code, that is located more than 20 miles from the host unit of such unit; or

''(B) establish and maintain a satellite or extension Senior Reserve Officers' Training Corps unit that meets the requirements in subparagraph (A).

''(3) PREFERENCE IN SELECTION OF INSTITUTIONS.—In selecting covered institutions under this subsection for participation in the pilot program under subsection (a)(1), the Secretary shall give preference to

covered institutions that are located within 20 miles of a covered military installation of the same Armed Force as the host unit of the Senior Reserve Officers' Training Corps of the covered institution concerned.

''(4) PARTNERSHIP ACTIVITIES.—The activities conducted under the pilot program under subsection (a)(1) between a satellite or extension Senior Reserve Officers' Training Corps unit and the covered military installation concerned shall include such activities designed to reduce barriers to participation in the Senior Reserve Officers' Training Corps at the covered institution concerned as the Secretary considers appropriate, including measures to mitigate travel time and expenses in connection with receipt of Senior Reserve Officers' Training Corps instruction.

''(d) PILOT PROGRAM ON FINANCIAL ASSISTANCE FOR SROTC AND CSPI MEMBERS FOR FLIGHT TRAINING.—

''(1) ELIGIBILITY FOR PARTICIPATION BY SROTC AND CSPI MEMBERS.—A member of a Senior Reserve Officers' Training Corps unit, or a member of a Coast Guard College Student Pre-Commissioning Initiative program, at a covered institution may participate in the pilot program under subsection (a)(2) if the member meets such academic requirements at the covered institution, and such other requirements, as the Secretary concerned shall establish for purposes of the pilot program.

''(2) PREFERENCE IN SELECTION OF PARTICIPANTS.—In selecting members under this subsection for participation in the pilot program under subsection (a)(2), the Secretary concerned shall give a preference to members who will pursue flight training under the pilot program at a covered institution.

''(3) FINANCIAL ASSISTANCE FOR FLIGHT TRAINING.—

''(A) IN GENERAL.—The Secretary concerned may provide any member of a Senior Reserve Officers' Training Corps unit or a College Student Pre-Commissioning Initiative program who participates in the pilot program under subsection (a)(2) financial assistance to defray, whether in whole or in part, the charges and fees imposed on the member for flight training.

''(B) FLIGHT TRAINING.—Financial assistance may be used under subparagraph (A) for a course of flight training only if the course meets Federal Aviation Administration standards and is approved by the Federal Aviation Administration and the applicable State approving agency.

''(C) USE.—Financial assistance received by a member under subparagraph (A) may be used only to defray the charges and fees imposed on the member as described in that subparagraph.

''(D) CESSATION OF ELIGIBILITY.—Financial assistance may not be provided to a member under subparagraph (A) as follows:

''(i) If the member ceases to meet the academic and other requirements established pursuant to paragraph (1).

''(ii) If the member ceases to be a member of the Senior Reserve Officers' Training Corps or the College Student Pre-Commissioning Initiative, as applicable.

''(e) EVALUATION METRICS.—The Secretary of Defense shall establish metrics to evaluate the effectiveness of the pilot programs under subsection (a).

''(f) REPORTS.—

''(1) INITIAL REPORT.—Not later than 180 days after the commencement of the pilot programs under subsection (a), the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the pilot programs. The report shall include the following:

''(A) A description of each pilot program, including in the case of the pilot program under subsection (a)(2) the requirements established pursuant to subsection (d)(1).

''(B) The evaluation metrics established under subsection (e).

''(C) Such other matters relating to the pilot programs as the Secretary considers appropriate.

''(2) ANNUAL REPORT.—Not later than 90 days after the end of each fiscal year in which the Secretary carries out the pilot programs, the Secretary shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the pilot programs during such fiscal year. Each report shall include, for the fiscal year covered by such report, the following:

''(A) In the case of the pilot program required by subsection (a)(1), a description of the partnerships between satellite or extension Senior Reserve Officers' Training Corps units and covered military installations under the pilot program.

''(B) In the case of the pilot program required by subsection (a)(2), the following:

''(i) The number of members of Senior Reserve Officers' Training Corps units, and the number of members of Coast Guard College Student Pre-Commissioning Initiative programs, at covered institutions selected for purposes of the pilot program, including the number of such members participating in the pilot program.

''(ii) The number of recipients of financial assistance provided under the pilot program, including the number who—

''(I) completed a ground school course of instruction in connection with obtaining a private pilot's certificate;

''(II) completed flight training, and the type of training, certificate, or both received;

''(III) were selected for a pilot training slot in the Armed Forces;

''(IV) initiated pilot training in the Armed Forces; or

''(V) successfully completed pilot training in the Armed Forces.

''(iii) The amount of financial assistance provided under the pilot program, broken out by covered institution, course of study, and such other measures as the Secretary considers appropriate.

''(C) Data collected in accordance with the evaluation metrics established under subsection (e).

''(3) FINAL REPORT.—Not later than 180 days prior to the completion of the pilot programs, the Secretary shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the pilot programs. The report shall include the following:

''(A) A description of the pilot programs.

''(B) An assessment of the effectiveness of each pilot program.

''(C) A description of the cost of each pilot program, and an estimate of the cost of making each pilot program permanent.

''(D) An estimate of the cost of expanding each pilot program throughout all eligible Senior Reserve Officers' Training Corps units and College Student Pre-Commissioning Initiative programs.

''(E) Such recommendations for legislative or administrative action as the Secretary considers appropriate in light of the pilot programs, including recommendations for extending or making permanent the authority for each pilot program.

''(g) DEFINITIONS.—In this section:

''(1) The term 'covered institution' has the meaning given that term in section 262(g)(2) of the National Defense Authorization Act for Fiscal Year 2020 (Public Law 116–92; [10 U.S.C. 2362 note]).

''(2) The term 'covered military installation' means an installation of the Department of Defense for the regular components of the Armed Forces.

''(3) The term 'flight training' means a course of instruction toward obtaining any of the following:

''(A) A private pilot's certificate.

''(B) A commercial pilot certificate.

''(C) A certified flight instructor certificate.

''(D) A multi-crew pilot's license.

''(E) A flight instrument rating.

"(F) Any other certificate, rating, or pilot privilege the Secretary considers appropriate for purposes of this section."

SEXUAL ASSAULT PREVENTION AND RESPONSE TRAINING FOR ADMINISTRATORS AND INSTRUCTORS OF SENIOR RESERVE OFFICERS' TRAINING CORPS

Pub. L. 114–92, div. A, title V, § 540, Nov. 25, 2015, 129 Stat. 818, provided that: "The Secretary of a military department shall ensure that the commander of each unit of the Senior Reserve Officers' Training Corps and all Professors of Military Science, senior military instructors, and civilian employees detailed, assigned, or employed as administrators and instructors of the Senior Reserve Officers' Training Corps receive regular sexual assault prevention and response training and education."

PROMOTION OF FOREIGN LANGUAGE SKILLS AMONG MEMBERS OF THE RESERVE OFFICERS' TRAINING CORPS

Pub. L. 109–163, div. A, title V, § 535, Jan. 6, 2006, 119 Stat. 3249, as amended by Pub. L. 111–383, div. A, title X, § 1075(h)(2), Jan. 7, 2011, 124 Stat. 4377, provided that:

"(a) IN GENERAL.—The Secretary of Defense shall support the acquisition of foreign language skills among cadets and midshipmen in the Reserve Officers' Training Corps, including through the development and implementation of—

"(1) incentives for cadets and midshipmen to participate in study of a foreign language, including special emphasis for Arabic, Chinese, and other 'strategic languages', as defined by the Secretary of Defense in consultation with other relevant agencies; and

"(2) a recruiting strategy to target foreign language speakers, including members of heritage communities, to participate in the Reserve Officers' Training Corps.

"(b) REPORT REQUIRED.—Not later than 180 days after the date of the enactment of this Act [Jan. 6, 2006], the Secretary shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the actions taken to carry out this section."

§ 2102. Establishment

(a) For the purpose of preparing selected students for commissioned service in the Army, Navy, Air Force, Marine Corps, or Space Force, the Secretary of each military department, under regulations prescribed by the President, may establish and maintain a Senior Reserve Officers' Training Corps program, organized into one or more units, at any accredited civilian educational institution authorized to grant baccalaureate degrees, and at any school essentially military that does not confer baccalaureate degrees, upon the request of the authorities at that institution.

(b) No unit may be established or maintained at an institution unless—

(1) the senior commissioned officer of the armed force concerned who is assigned to the program at that institution is given the academic rank of professor;

(2) the institution fulfills the terms of its agreement with the Secretary of the military department concerned; and

(3) the institution adopts, as a part of its curriculum, a four-year course of military instruction or a two-year course of advanced training of military instruction, or both, which the Secretary of the military department concerned prescribes and conducts.

(c) At those institutions where a unit of the program is established membership of students in the program shall be elective or compulsory as provided by State law or the authorities of the institution concerned.

(d) The President shall cause to be established and maintained in each State at least one unit of the program if—

(1) a unit is requested by an educational institution in the State;

(2) such request is approved by the Governor of the State in which the institution requesting the unit is located; and

(3) the Secretary of the military department concerned determines that there will be not less than 40 students enrolled in such unit and that the provisions of this section are otherwise satisfied.

(Added Pub. L. 88–647, title II, § 201(1), Oct. 13, 1964, 78 Stat. 1065; amended Pub. L. 95–79, title VI, § 602, July 30, 1977, 91 Stat. 332; Pub. L. 116–283, div. A, title IX, § 924(b)(3)(BB), Jan. 1, 2021, 134 Stat. 3822.)

AMENDMENTS

2021—Subsec. (a). Pub. L. 116–283 substituted "Marine Corps, or Space Force" for "or Marine Corps".

1977—Subsec. (d). Pub. L. 95–79 added subsec. (d).

MILITARY TRAINING FOR FEMALE UNDERGRADUATES AT MILITARY COLLEGES; REGULATIONS

Pub. L. 95–485, title VIII, § 809, Oct. 20, 1978, 92 Stat. 1623, directed the Secretary of Defense to require that any college or university designated as a military college provide that qualified female undergraduate students be eligible to participate in military training at such college or university, and prohibited the Secretary from requiring such college or university to require female undergraduate students enrolled in such college or university to participate in military training, prior to repeal by Pub. L. 98–525, title XIV, §§ 1403(b), 1404, Oct. 19, 1984, 98 Stat. 2621, eff. Oct. 1, 1985. See section 2009 of this title.

DELEGATION OF FUNCTIONS

Functions of President under subsec. (a) of this section delegated to Secretary of Defense, see section 1(10) of Ex. Ord. No. 11390, Jan. 22, 1968, 33 F.R. 841, set out as a note under section 301 of Title 3, The President.

§ 2103. Eligibility for membership

(a) To be eligible for membership in the program a person must be a student at an institution where a unit of the Senior Reserve Officers' Training Corps is established. However, a student at an institution that does not have a unit of the Corps is eligible, if otherwise qualified, to be a member of a unit at another institution.

(b) Persons from foreign countries may be enrolled as members of the program when their enrollment is approved by the Secretary of the military department concerned under criteria approved by the Secretary of State.

(c) A medical, dental, pharmacy, veterinary, or sciences allied to medicine, student may be admitted to a unit of the program for a course of training consisting of 90 hours of instruction a year for four academic years.

(d) Under such conditions as the Secretary of the military department concerned may prescribe, a medical, dental, pharmacy, veterinary, or sciences allied to medicine, student who is a commissioned officer of a reserve component of an armed force may be admitted to and trained in a unit of the program.

(e) An educational institution at which a unit of the program has been established shall give priority for enrollment in the program to students who are eligible for advanced training under section 2104 of this title.

(Added Pub. L. 88–647, title II, § 201(1), Oct. 13, 1964, 78 Stat. 1065; amended Pub. L. 104–201, div. A, title V, § 551(a)(1), Sept. 23, 1996, 110 Stat. 2525.)

AMENDMENTS

1996—Subsec. (e). Pub. L. 104–201 added subsec. (e).

§ 2103a. Students not eligible for advanced training: commitment to military service

(a) AUTHORITY.—A member of the program who has completed successfully the first year of a four-year Senior Reserve Officers' Training Corps course and who is not eligible for advanced training under section 2104 of this title and is not a cadet or midshipman appointed under section 2107 of this title may—

(1) contract with the Secretary of the military department concerned, or the Secretary's designated representative, to serve for the period required by the program; and

(2) agree in writing to accept an appointment, if offered, as a commissioned officer in the Army, Navy, Air Force, Marine Corps, or Space Force, as the case may be, and to serve in the armed forces for the period prescribed by the Secretary.

(b) ELIGIBILITY REQUIREMENTS.—A member of the program may enter into a contract and agreement under this section (and receive a subsistence allowance under section 209(c) of title 37) only if the person—

(1) is a citizen of the United States;

(2) enlists in an armed force under the jurisdiction of the Secretary of the military department concerned for the period prescribed by the Secretary; and

(3) executes a certificate of loyalty in such form as the Secretary of Defense prescribes or take a loyalty oath as prescribed by the Secretary.

(c) PARENTAL CONSENT FOR MINORS.—A member of the program who is a minor may enter into a contract under subsection (a)(1) only with the consent of the member's parent or guardian.

(Added Pub. L. 108–136, div. A, title V, § 523(b)(1), Nov. 24, 2003, 117 Stat. 1464; amended Pub. L. 108–375, div. A, title V, § 525, Oct. 28, 2004, 118 Stat. 1889; Pub. L. 109–364, div. A, title X, § 1071(a)(10), Oct. 17, 2006, 120 Stat. 2398; Pub. L. 116–283, div. A, title IX, § 924(b)(3)(CC), Jan. 1, 2021, 134 Stat. 3822.)

AMENDMENTS

2021—Subsec. (a)(2). Pub. L. 116–283 substituted ''Marine Corps, or Space Force'' for ''or Marine Corps''.

2006—Subsec. (b). Pub. L. 109–364 substituted ''Eligibility'' for ''Eligibilty'' in heading.

2004—Subsec. (d). Pub. L. 108–375 struck out heading and text of subsec. (d). Text read as follows: ''No contract may be entered into under subsection (a)(1) after December 31, 2006.''

EFFECTIVE DATE

Pub. L. 108–136, div. A, title V, § 523(c), Nov. 24, 2003, 117 Stat. 1464, provided that: ''The amendments made by subsections (a) and (b) [enacting this section and amending section 209 of Title 37, Pay and Allowances of the Uniformed Services] shall take effect on January 1, 2004.''

§ 2104. Advanced training; eligibility for

(a) Advanced training shall be provided to eligible members of the program and, if the institution concerned so requests, to eligible applicants for membership in the program.

(b) To be eligible for continuation, or initial enrollment, in the program for advanced training, a person must—

(1) be a citizen of the United States;

(2) be selected for advanced training under procedures prescribed by the Secretary of the military department concerned;

(3) enlist in an armed force under the jurisdiction of the Secretary of the military department concerned for the period prescribed by the Secretary;

(4) contract, with the consent of his parent or guardian if he is a minor, with the Secretary of the military department concerned, or his designated representative, to serve for the period required by the program;

(5) agree in writing that he will accept an appointment, if offered, as a commissioned officer in the Army, Navy, Air Force, Marine Corps, or Space Force, as the case may be, and that he will serve in the armed forces for the period prescribed by the Secretary;

(6) either—

(A) complete successfully—

(i) the first two years of a four-year Senior Reserve Officers' Training Corps course; or

(ii) field training or a practice cruise of a duration which is prescribed by the Secretary concerned as a preliminary requirement for admission to the advanced course; or

(B) at the discretion of the Secretary concerned, agree in writing to complete field training or a practice cruise, as prescribed by the Secretary concerned, within two years after admission to the advanced course; and

(7) execute a certificate of loyalty in such form as the Secretary of Defense prescribes or take a loyalty oath as prescribed by the Secretary.

(c) A member of the program who is ineligible under subsection (b) for advanced training shall be released from the program.

(d) This section does not apply to cadets and midshipmen appointed under section 2107, or foreign students enrolled under section 2103(b), of this title.

(Added Pub. L. 88–647, title II, § 201(1), Oct. 13, 1964, 78 Stat. 1065; amended Pub. L. 98–94, title X, § 1003(a)(2), Sept. 24, 1983, 97 Stat. 656; Pub. L. 98–525, title V, § 543(a), title XIV, § 1401(h), Oct. 19, 1984, 98 Stat. 2530, 2619; Pub. L. 104–106, div. A, title V, § 544, Feb. 10, 1996, 110 Stat. 317; Pub. L. 107–107, div. A, title V, § 535(a), Dec. 28, 2001, 115 Stat. 1106; Pub. L. 116–283, div. A, title IX, § 924(b)(3)(DD), Jan. 1, 2021, 134 Stat. 3822.)

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PRIOR PROVISIONS

Provisions similar to those in subsec. (b)(7) of this section were contained in the following appropriation acts:

Pub. L. 98–473, title I, § 101(h) [title VIII, § 8018], Oct. 12, 1984, 98 Stat. 1904, 1926.

Pub. L. 98–212, title VII, § 722, Dec. 8, 1983, 97 Stat. 1442.

Pub. L. 97–377, title I, § 101(c) [title VII, § 722], Dec. 21, 1982, 96 Stat. 1833, 1854.

Pub. L. 97–114, title VII, § 722, Dec. 29, 1981, 95 Stat. 1582.

Pub. L. 96–527, title VII, § 723, Dec. 15, 1980, 94 Stat. 3085.

Pub. L. 96–154, title VII, § 723, Dec. 21, 1979, 93 Stat. 1156.

Pub. L. 95–457, title VIII, § 823, Oct. 13, 1978, 92 Stat. 1248.

Pub. L. 95–111, title VIII, § 822, Sept. 21, 1977, 91 Stat. 903.

Pub. L. 94–419, title VII, § 722, Sept. 22, 1976, 90 Stat. 1295.

Pub. L. 94–212, title VII, § 722, Feb. 9, 1976, 90 Stat. 172.

Pub. L. 93–437, title VIII, § 822, Oct. 8, 1974, 88 Stat. 1228.

Pub. L. 93–238, title VII, § 723, Jan. 2, 1974, 87 Stat. 1042.

Pub. L. 92–570, title VII, § 723, Oct. 26, 1972, 86 Stat. 1200.

Pub. L. 92–204, title VII, § 723, Dec. 18, 1971, 85 Stat. 731.

Pub. L. 91–668, title VIII, § 823, Jan. 11, 1971, 84 Stat. 2034.

Pub. L. 91–171, title VI, § 623, Dec. 29, 1969, 83 Stat. 484.

Pub. L. 90–580, title V, § 522, Oct. 17, 1968, 82 Stat. 1133.

Pub. L. 90–96, title VI, § 622, Sept. 29, 1967, 81 Stat. 246.

Pub. L. 89–687, title VI, § 622, Oct. 15, 1966, 80 Stat. 995.

Pub. L. 89–213, title VI, § 622, Sept. 29, 1965, 79 Stat. 877.

Pub. L. 88–446, title VI, § 522, Aug. 19, 1964, 78 Stat. 478.

Pub. L. 88–149, title V, § 522, Oct. 17, 1963, 77 Stat. 267.

Pub. L. 87–577, title V, § 522, Aug. 9, 1962, 76 Stat. 332.

Pub. L. 87–144, title VI, § 622, Aug. 17, 1961, 75 Stat. 379.

Pub. L. 86–601, title V, § 522, July 7, 1960, 74 Stat. 353.

Pub. L. 86–166, title V, § 622, Aug. 18, 1959, 73 Stat. 382.

Pub. L. 85–724, title VI, § 624, Aug. 22, 1958, 72 Stat. 728.

Pub. L. 85–117, title VI, § 625, Aug. 2, 1957, 71 Stat. 327.

July 2, 1956, ch. 488, title VI, § 625, 70 Stat. 471.

July 13, 1955, ch. 358, title VI, § 629, 69 Stat. 320.

June 30, 1954, ch. 432, title VII, § 731, 68 Stat. 356.

AMENDMENTS

2021—Subsec. (b)(5). Pub. L. 116–283 substituted ''Marine Corps, or Space Force'' for ''or Marine Corps''.

2001—Subsec. (b)(3). Pub. L. 107–107 struck out ''a reserve component of'' before ''an armed force''.

1996—Subsec. (b)(6)(A)(ii). Pub. L. 104–106 substituted ''a duration'' for ''not less than six weeks' duration''.

1984—Subsec. (a). Pub. L. 98–525, § 543(a)(1), struck out '', who have at least two academic years remaining at such educational institution'' after ''in the program''.

Subsec. (b)(6). Pub. L. 98–525, § 543(a)(2), inserted initial word ''either'', redesignated existing subpars. (A) and (B) as cls. (i) and (ii) of subpar. (A), and added subpar. (B).

Subsec. (b)(7). Pub. L. 98–525, § 1401(h), added par. (7).

1983—Subsec. (a). Pub. L. 98–94 substituted ''who have at least two academic years'' for ''who have two academic years''.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–525, title V, § 543(b), Oct. 19, 1984, 98 Stat. 2530, provided that: ''The amendments made by subsection (a) [amending this section] do not constitute authority for the enactment of new budget authority for a fiscal year beginning before October 1, 1984.''

Amendment by section 1401(h) of Pub. L. 98–525 effective Oct. 1, 1985, see section 1404 of Pub. L. 98–525, set out as an Effective Date note under section 520b of this title.

§ 2105. Advanced training; failure to complete or to accept commission

A member of the program who is selected for advanced training under section 2104 of this title, and who does not complete the course of instruction, or who completes the course but declines to accept a commission when offered, may be ordered to active duty by the Secretary of the military department concerned to serve in his enlisted grade or rating for such period of time as the Secretary prescribes but not for more than two years. If the member does not complete the period of active duty prescribed by the Secretary concerned, the member shall be subject to the repayment provisions of section 303a(e) or 373 of title 37.

(Added Pub. L. 88–647, title II, § 201(1), Oct. 13, 1964, 78 Stat. 1066; amended Pub. L. 109–163, div. A, title VI, § 687(c)(4), Jan. 6, 2006, 119 Stat. 3334; Pub. L. 109–364, div. A, title X, § 1071(a)(11), Oct. 17, 2006, 120 Stat. 2398; Pub. L. 115–91, div. A, title VI, § 618(a)(1)(D), Dec. 12, 2017, 131 Stat. 1426.)

AMENDMENTS

2017—Pub. L. 115–91 inserted ''or 373'' before ''of title 37''.

2006—Pub. L. 109–364 inserted period at end.

Pub. L. 109–163 inserted at end ''If the member does not complete the period of active duty prescribed by the Secretary concerned, the member shall be subject to the repayment provisions of section 303a(e) of title 37''.

SAVINGS PROVISION

For savings provision relating to payment or repayment of any bonus, incentive pay, special pay, or similar pay obligated to be paid before Apr. 1, 2006, under a provision of this section amended by section 687(c) of Pub. L. 109–163, see section 687(f) of Pub. L. 109–163, set out as a note under section 510 of this title.

§ 2106. Advanced training; commission on completion

(a) Upon satisfactorily completing the academic and military requirements of the program of advanced training, a member of the program who was selected for advanced training under section 2104 of this title may be appointed as a regular or reserve officer in the appropriate armed force in the grade of second lieutenant or ensign, even though he is under 21 years of age.

(b) The date of rank of officers appointed under this section in May or June of any year is the date of graduation of cadets or midshipmen from the United States Military Academy, the United States Naval Academy, or the United States Air Force Academy, as the case may be, in that year. The Secretary of the military department concerned shall establish the date of rank of all other officers appointed under this section.

(c) In computing length of service for any purpose, an officer appointed under this section may not be credited with enlisted service for the period covered by his advanced training, other than any period of enlisted service performed on or after August 1, 1979, as a member of the Selected Reserve.

(Added Pub. L. 88–647, title II, § 201(1), Oct. 13, 1964, 78 Stat. 1066; amended Pub. L. 102–484, div. A, title V, § 517(a)(1), Oct. 23, 1992, 106 Stat. 2407;

Pub. L. 104–201, div. A, title V, § 507(a)(1), Sept. 23, 1996, 110 Stat. 2512.)

AMENDMENTS

1996—Subsec. (c). Pub. L. 104–201 substituted ''performed on or after August 1, 1979, as a member of the Selected Reserve'' for ''while serving on active duty other than for training after July 31, 1990, while a member of the Selected Reserve''.

1992—Subsec. (c). Pub. L. 102–484 inserted before period at end '', other than any period of enlisted service while serving on active duty other than for training after July 31, 1990, while a member of the Selected Reserve''.

BENEFITS NOT TO ACCRUE FOR PERIODS PRIOR TO SEPTEMBER 23, 1996

Pub. L. 104–201, div. A, title V, § 507(c), Sept. 23, 1996, 110 Stat. 2512, provided that: ''No increase in pay or retired or retainer pay shall accrue for periods before the date of the enactment of this Act [Sept. 23, 1996] by reason of the amendments made by this section [amending this section, sections 2107 and 2107a of this title, and section 205 of Title 37, Pay and Allowances of the Uniformed Services].''

§ 2107. Financial assistance program for specially selected members

(a) The Secretary of the military department concerned may appoint as a cadet or midshipman, as appropriate, in the reserve of an armed force under his jurisdiction any eligible member of the program who will be under 31 years of age on December 31 of the calendar year in which he is eligible under this section for appointment as an ensign in the Navy, as a second lieutenant in the Army, Air Force, Marine Corps, or as an officer in the equivalent grade in the Space Force or Space Force,[1] as the case may be.

(b) To be eligible for appointment as a cadet or midshipman under this section a member must—

(1) be a citizen or national of the United States;

(2) be specially selected for the financial assistance program under procedures prescribed by the Secretary of the military department concerned;

(3) enlist in the reserve component of an armed force for the period prescribed by the Secretary of the military department concerned;

(4) contract, with the consent of his parent or guardian if he is a minor, with the Secretary of the military department concerned, or his designated representative, to serve for the period required by the program; and

(5) agree in writing that, at the discretion of the Secretary of the military department concerned, he will—

(A)(i) accept an appointment, if offered, as a commissioned officer in the Army, Navy, Air Force, Marine Corps, or Space Force, as the case may be, and that, if he is commissioned as a regular officer and his regular commission is terminated before the sixth anniversary of his date of rank, he will accept an appointment, if offered, in the reserve component of an armed force and not resign before that anniversary or before such other date, not beyond the eighth anniversary of the midshipman's date of rank, that the Secretary of Defense may prescribe; and

(ii) serve on active duty for four or more years;

(B)(i) accept an appointment, if offered, as a commissioned officer in the Army, Navy, Air Force, Marine Corps, or Space Force, as the case may be; and

(ii) serve in a reserve component of an armed force until the eighth anniversary of the receipt of such appointment, unless otherwise extended by subsection (d) of section 2108 of this title, under such terms and conditions as shall be prescribed by the Secretary of the military department concerned; or

(C)(i) accept an appointment, if offered, as a commissioned officer in the Army, Navy, Air Force, Marine Corps, or Space Force, as the case may be; and

(ii) serve in a reserve component of an armed force until at least the sixth anniversary and, at the discretion of the Secretary of Defense, up to the eighth anniversary of the receipt of such appointment, unless such appointment is otherwise extended by subsection (d) of section 2108 of this title, under such terms and conditions as may be prescribed by the Secretary of the military department concerned.

The performance of service under clause (5)(B) or (5)(C) may include periods of active duty, active duty for training, and other service in an active or inactive status in the reserve component in which appointed, except that performance of service under clause (5)(C) shall include not less than two years of active duty.

(c)(1) The Secretary of the military department concerned may provide for the payment of all expenses in his department of administering the financial assistance program under this section, including tuition, fees, books, and laboratory expenses. In the case of a student enrolled in an academic program which has been approved by the Secretary of the military department concerned and which requires more than four academic years for completion of baccalaureate degree requirements, including elective requirements of the Senior Reserve Officers' Training Corps course, financial assistance under this section may also be provided during a fifth academic year or during a combination of a part of a fifth academic year and summer sessions.

(2) The Secretary of the military department concerned may provide financial assistance, as described in paragraph (1), to a student enrolled in an advanced education program beyond the baccalaureate degree level if the student also is a cadet or midshipman in an advanced training program. Not more than 15 percent of the total number of scholarships awarded under this section in any year may be awarded under this paragraph.

(3) In the case of a cadet or midshipman eligible to receive financial assistance under paragraph (1) or (2), the Secretary of the military department concerned may, in lieu of all or part of the financial assistance described in paragraph (1), provide financial assistance in the form of

[1] So in original. See 2021 Amendment notes below.

room and board expenses for the cadet or midshipman and other expenses required by the educational institution.

[(4) Repealed. Pub. L. 109–163, div. A, title V, § 531(a)(1), Jan. 6, 2006, 119 Stat. 3247.]

(5)(A) The Secretary of the Army, under regulations and criteria established by the Secretary, may provide an individual who received a commission as a Reserve officer in the Army from a military junior college through a program under this chapter and who does not have a baccalaureate degree with financial assistance for pursuit of a baccalaureate degree.

(B) Such assistance is in addition to any financial assistance provided under paragraph (1) or (3).

(C) The agreement and reimbursement requirements established in section 2005 of this title are applicable to financial assistance under this paragraph.

(D) An officer receiving financial assistance under this paragraph shall be attached to a unit of the Army as determined by the Secretary and shall be considered to be a member of the Senior Reserve Officers' Training Corps on inactive duty for training, as defined in section 101(23) of title 38.

(E) A qualified officer who did not previously receive financial assistance under this section is eligible to receive educational assistance under this paragraph.

(F) A Reserve officer may not be called or ordered to active duty for a deployment while participating in the program under this paragraph.

(G) Any service obligation incurred by an officer under an agreement entered into under this paragraph shall be in addition to any service obligation incurred by that officer under any other provision of law or agreement.

(d) Upon satisfactorily completing the academic and military requirements of the four-year program, a cadet or midshipman may be appointed as a regular or reserve officer in the appropriate armed force in the grade of second lieutenant, ensign, or an equivalent grade in the Space Force, even though he is under 21 years of age.

(e) The date of rank of officers appointed under this section in May or June of any year is the date of graduation of cadets or midshipmen from the United States Military Academy, the United States Naval Academy, or the United States Air Force Academy, as the case may be in that year. The Secretary of the military department concerned shall establish the date of rank of all other officers appointed under this section.

(f) A cadet or midshipman who does not complete the four-year course of instruction, or who completes the course but declines to accept a commission when offered, may be ordered to active duty by the Secretary of the military department concerned to serve in his enlisted grade or rating for such period of time as the Secretary prescribes but not for more than four years.

(g) In computing length of service for any purpose, an officer appointed under this section may not be credited with service either as a cadet or midshipman or concurrent enlisted service, other than concurrent enlisted service performed on or after August 1, 1979, as a member of the Selected Reserve.

(h)(1) The Secretary of Defense shall determine the number of cadets and midshipmen appointed under this section who may be in the financial assistance programs at any one time in each military department.

(2) Of the total number of cadets appointed in the financial assistance programs under this section in any year, not less than 100 shall be designated for placement in the program of the Army for service upon commissioning in the Army National Guard, of which one-half shall be for financial assistance awarded for a period of two years and the remainder shall be for financial assistance awarded for a period of four years. A cadet designated under this paragraph who, having initially contracted for service as provided in subsection (b)(5)(A) and having received financial assistance for two years under an award providing for four years of financial assistance under this section, modifies such contract with the consent of the Secretary of the Army to provide for service as described in subsection (b)(5)(B), may be counted, for the year in which the contract is modified, toward the number of appointments required under the preceding sentence for financial assistance awarded for a period of four years. A cadet who receives financial assistance under this paragraph and is commissioned in the Army National Guard shall perform service as provided in subsection (b)(5)(B) and may not be accepted for service on full-time active duty pursuant to the member's voluntary application until the completion of the period of service prescribed in that subsection. The Secretary of the Army shall prescribe regulations to ensure a geographical distribution of the cadets who receive financial assistance under this paragraph.

(i) The Secretary of each military department shall seek to achieve an increase in the number of agreements entered into under this section so as to achieve an increase, by the 2006–2007 academic year, of not less than 400 in the number of cadets or midshipmen, as the case may be, enrolled under this section, compared to such number enrolled for the 2002–2003 academic year. In the case of the Secretary of the Navy, the Secretary shall seek to ensure that not less than one-third of such increase in agreements under this section are with students enrolled (or seeking to enroll) in programs of study leading to a baccalaureate degree in nuclear engineering or another appropriate technical, scientific, or engineering field of study.

(j)(1) Payment of financial assistance under this section for, and payment of a monthly subsistence allowance under section 209 of title 37 to, a cadet or midshipman appointed under this section may be suspended on the basis of health-related incapacity of the cadet or midshipman only in accordance with regulations prescribed under paragraph (2).

(2) The Secretary of Defense shall prescribe in regulations the policies and procedures for suspending payments under paragraph (1). The regulations shall apply uniformly to all of the military departments. The regulations shall include the following matters:

(A) The standards of health-related fitness that are to be applied.

(B) Requirements for—

(i) the health-related condition and prognosis of a cadet or midshipman to be determined, in relation to the applicable standards prescribed under subparagraph (A), by a health care professional on the basis of a medical examination of the cadet or midshipman; and

(ii) the Secretary concerned to take into consideration the determinations made under clause (i) with respect to such condition in deciding whether to suspend payment in the case of such cadet or midshipman on the basis of that condition.

(C) A requirement for the Secretary concerned to transmit to a cadet or midshipman proposed for suspension under this subsection a notification of the proposed suspension together with the determinations made under subparagraph (B)(i) in the case of the proposed suspension.

(D) A procedure for a cadet or midshipman proposed for suspension under this subsection to submit a written response to the proposal for suspension, including any supporting information.

(E) Requirements for—

(i) one or more health-care professionals to review, in the case of such a response of a cadet or midshipman, each health-related condition and prognosis addressed in the response, taking into consideration the matters submitted in such response; and

(ii) the Secretary concerned to take into consideration the determinations made under clause (i) with respect to such condition in making a final decision regarding whether to suspend payment in the case of such cadet or midshipman on the basis of that condition, and the conditions under which such suspension may be lifted.

(Added Pub. L. 88–647, title II, § 201(1), Oct. 13, 1964, 78 Stat. 1066; amended Pub. L. 92–166, § 1, Nov. 24, 1971, 85 Stat. 487; Pub. L. 96–357, § 1(a), (b), Sept. 24, 1980, 94 Stat. 1178; Pub. L. 96–513, title V, § 511(62), Dec. 12, 1980, 94 Stat. 2925; Pub. L. 97–60, title II, § 201, Oct. 14, 1981, 95 Stat. 1005; Pub. L. 98–94, title X, § 1003(a)(3), (c)(1), (2), Sept. 24, 1983, 97 Stat. 656, 657; Pub. L. 98–525, title V, § 542(a), title XIV, § 1405(33), Oct. 19, 1984, 98 Stat. 2529, 2624; Pub. L. 100–180, div. A, title V, § 510, Dec. 4, 1987, 101 Stat. 1087; Pub. L. 102–484, div. A, title V, §§ 517(a)(2), 532(a), Oct. 23, 1992, 106 Stat. 2407, 2411; Pub. L. 104–106, div. A, title V, § 542, Feb. 10, 1996, 110 Stat. 316; Pub. L. 104–201, div. A, title V, §§ 507(a)(2), 553(a), 555(a), Sept. 23, 1996, 110 Stat. 2512, 2526, 2527; Pub. L. 106–65, div. A, title V, § 545, Oct. 5, 1999, 113 Stat. 608; Pub. L. 107–107, div. A, title V, § 534(a), Dec. 28, 2001, 115 Stat. 1106; Pub. L. 107–314, div. A, title V, § 532(d), (e), Dec. 2, 2002, 116 Stat. 2547; Pub. L. 108–136, div. A, title V, § 521(a), Nov. 24, 2003, 117 Stat. 1462; Pub. L. 108–375, div. A, title V, § 524(a), Oct. 28, 2004, 118 Stat. 1888; Pub. L. 109–163, div. A, title V, §§ 531(a), 533(a), 534(a), Jan. 6, 2006, 119 Stat. 3247, 3248; Pub. L. 112–239, div. A, title V, § 551, Jan. 2, 2013, 126 Stat. 1741; Pub. L. 116–283, div. A, title IX, § 924(b)(3)(EE), (30), Jan. 1, 2021, 134 Stat. 3822, 3825.)

AMENDMENTS

2021—Pub. L. 116–283, § 924(b)(3)(EE), substituted ''Marine Corps, or Space Force'' for ''or Marine Corps'' wherever appearing.

Subsec. (a). Pub. L. 116–283, § 924(b)(30)(A), substituted '', as a second lieutenant'' for ''or as a second lieutenant'' and inserted ''or as an officer in the equivalent grade in the Space Force'' after ''Marine Corps,''.

Subsec. (b)(3). Pub. L. 116–283, § 924(b)(30)(B)(i), substituted ''the reserve component of an armed force'' for ''the reserve component of the armed force in which he is appointed as a cadet or midshipman''.

Subsec. (b)(5). Pub. L. 116–283, § 924(b)(30)(B)(ii), substituted ''reserve component of an armed force'' for ''reserve component of that armed force'' wherever appearing.

Subsec. (d). Pub. L. 116–283, § 924(b)(30)(C), substituted ''second lieutenant, ensign, or an equivalent grade in the Space Force'' for ''second lieutenant or ensign''.

2013—Subsec. (c)(1). Pub. L. 112–239 struck out at end ''At least 50 percent of the cadets and midshipmen appointed under this section must qualify for in-State tuition rates at their respective institutions and will receive tuition benefits at that rate.''

2006—Subsec. (b)(1). Pub. L. 109–163, § 534(a), inserted ''or national'' after ''citizen''.

Subsec. (c)(4). Pub. L. 109–163, § 531(a)(1), struck out par. (4) which read as follows: ''The total amount of financial assistance, including the payment of room and board and other educational expenses, provided to a cadet or midshipman in an academic year under this subsection may not exceed an amount equal to the amount that could be provided as financial assistance for such cadet or midshipman under paragraph (1) or (2), or another amount determined by the Secretary concerned, without regard to whether room and board and other educational expenses for such cadet or midshipman are paid under paragraph (3).''

Subsec. (c)(5)(B). Pub. L. 109–163, § 531(a)(2), substituted ''or (3)'' for '', (3), or (4)''.

Subsec. (j). Pub. L. 109–163, § 533(a), added subsec. (j).

2004—Subsec. (c)(5). Pub. L. 108–375 added par. (5).

2003—Subsec. (c)(3), (4). Pub. L. 108–136 added pars. (3) and (4).

2002—Subsec. (h)(1). Pub. L. 107–314, § 532(e), struck out first sentence which read as follows: ''Not more than 29,500 cadets and midshipmen appointed under this section may be in the financial assistance programs at any one time.''

Subsec. (i). Pub. L. 107–314, § 532(d), added subsec. (i).

2001—Subsec. (a). Pub. L. 107–107 substituted ''31 years of age on December 31'' for ''27 years of age on June 30'' and struck out '', except that the age of any such member who has served on active duty in the armed forces may exceed such age limitation on such date by a period equal to the period such member served on active duty, but only if such member will be under 30 years of age on such date'' before period at end.

1999—Subsec. (c)(2). Pub. L. 106–65 amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''The Secretary of Defense shall authorize the Secretaries of the military departments to carry out a test program to determine the desirability of enabling graduate students to participate in the financial assistance program under this section. As part of such test program, the Secretary of a military department may provide financial assistance, as described in paragraph (1), to a student enrolled in an advanced education program beyond the baccalaureate degree level if the student also is a cadet or midshipman in an advanced training program. Not more than 15 percent of the total number of scholarships awarded under this section in any year may be awarded under the test program. No scholarship may be awarded under the test program after September 30, 1999.''

1996—Subsec. (a). Pub. L. 104–201, § 555(a), substituted ''27 years of age'' for ''25 years of age'' and ''30 years of age'' for ''29 years of age''.

Subsec. (c). Pub. L. 104–201, § 553(a), designated existing provisions as par. (1) and added par. (2).

Subsec. (g). Pub. L. 104–201, § 507(a)(2), substituted ''performed on or after August 1, 1979, as a member'' for ''while serving on active duty other than for training after July 31, 1990, while a member''.

Subsec. (h)(2). Pub. L. 104–106 inserted ''A cadet designated under this paragraph who, having initially contracted for service as provided in subsection (b)(5)(A) and having received financial assistance for two years under an award providing for four years of financial assistance under this section, modifies such contract with the consent of the Secretary of the Army to provide for service as described in subsection (b)(5)(B), may be counted, for the year in which the contract is modified, toward the number of appointments required under the preceding sentence for financial assistance awarded for a period of four years.'' after first sentence and ''full-time'' after ''for service on'' in penultimate sentence.

1992—Subsec. (g). Pub. L. 102–484, § 517(a)(2), inserted before period at end '', other than concurrent enlisted service while serving on active duty other than for training after July 31, 1990, while a member of the Selected Reserve''.

Subsec. (h). Pub. L. 102–484, § 532(a), designated existing provisions as par. (1) and added par. (2).

1987—Subsec. (h). Pub. L. 100–180 amended subsec. (h) generally. Prior to amendment, subsec. (h) read as follows: ''Not more than the following numbers of cadets and midshipmen appointed under this section may be in the financial assistance programs at any one time:

''Army program: 12,000.

''Navy program: 8,000.

''Air Force program: 9,500.''

1984—Subsec. (b). Pub. L. 98–525, § 1405(33), aligned margin of provision following par. (5)(C)(ii) flush with left margin.

Subsec. (b)(5)(A)(i). Pub. L. 98–525, § 542(a)(1), inserted ''or before such other date, not beyond the eighth anniversary of the midshipman's date of rank, that the Secretary of Defense may prescribe''.

Subsec. (b)(5)(C)(ii). Pub. L. 98–525, § 542(a)(2), substituted ''at least the sixth anniversary and, at the discretion of the Secretary of Defense, up to the eighth anniversary'' for ''the sixth anniversary''.

1983—Subsec. (b)(5). Pub. L. 98–94, § 1003(c)(1), struck out ''either'' after ''he will'' in provisions preceding subpar. (A)(i), and added subpar. (C).

Pub. L. 98–94, § 1003(c)(2), inserted in provisions following subpar. (C) ''or (5)(C)'' after ''(5)(B)'' and '', except that performance of service under clause (5)(C) shall include not less than two years of active duty''.

Subsec. (c). Pub. L. 98–94, § 1003(a)(3), inserted provision relating to a student enrolled in an approved academic program which requires more than four academic years for completion of the baccalaureate degree requirements.

1981—Subsec. (h). Pub. L. 97–60 substituted ''8,000'' for ''6,000'' in item covering the Navy program and ''9,500'' for ''6,500'' in item covering the Air Force program.

1980—Subsec. (a). Pub. L. 96–357, § 1(a), authorized cadet or midshipmen appointments in the reserve of an armed force for eligible members of the program with active duty service in the armed forces beyond the age limitation equal to period of active duty service not to exceed 29 years of age by June 30 of calendar year of appointment and deleted provision for appointment as cadets or midshipmen from persons in two-year Senior Reserve Officers' Training Corps course up to 20 percent of number of appointees.

Subsec. (b)(5). Pub. L. 96–357, § 1(b)(2), provided for exercise of discretion by the Secretary concerned, incorporated existing provisions in subcl. (A)(i), incorporated in subcl. (A)(ii) provision of former cl. (6), added subcl. (B) and defined the performance of service under such subcl. (B).

Subsec. (b)(6). Pub. L. 96–357, § 1(b)(2), struck out cl. (6) requiring as condition of appointment a written agreement for active duty service of four or more years. See subcl. (5)(A)(ii).

Subsec. (e). Pub. L. 96–513, § 511(62)(A), substituted ''Military'' for ''Miilitary''.

Subsec. (h). Pub. L. 96–513, § 511(62)(B), substituted ''this section'' for ''section 2107 of this title''.

Pub. L. 96–357, § 1(b)(3), substituted ''Army program: 12,000'' for ''Army program: 6,500''.

1971—Subsec. (a). Pub. L. 92–166, § 1(1), substituted ''Not more than 20 percent of the persons appointed as cadets or midshipmen by the Secretary in any year may be appointed from persons in the two-year Senior Reserve Officers' Training Corps course.'', for ''However, a member whose enrollment in the Senior Reserve Officers' Training Corps program contemplates less than four years of participation in the program may not be appointed a cadet or midshipman under this section, or receive any financial assistance authorized by this section.''.

Subsec. (c). Pub. L. 92–166, § 1(2), provided that at least 50% of the cadets and midshipmen appointed under this section must qualify for in-State tuition rates at their respective institutions and will receive tuition benefits at the rate.

Subsec. (h). Pub. L. 92–166, § 1(4), substituted ''Army program: 6500'' for ''Army program: 5500'', ''Navy program: 6000'' for ''Navy program: 5500'' and ''Air Force program: 6500'' for ''Air Force program: 5500''.

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–136, div. A, title V, § 521(c), Nov. 24, 2003, 117 Stat. 1463, provided that: ''The amendments made by this section [amending this section and section 2107a of this title] shall apply to payment of expenses of cadets and midshipmen of the Senior Reserve Officers' Training Corps program that are due after the date of the enactment of this Act [Nov. 24, 2003].''

EFFECTIVE DATE OF 1992 AMENDMENT

Pub. L. 102–484, div. A, title V, § 532(b), Oct. 23, 1992, 106 Stat. 2411, provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on January 1, 1993.''

EFFECTIVE DATE OF 1983 AMENDMENT

Pub. L. 98–94, title X, § 1003(c)(3), Sept. 24, 1983, 97 Stat. 657, provided that: ''The amendments made by this subsection [amending this section] shall apply with respect to agreements entered into under section 2107(b)(5) of title 10, United States Code, after September 30, 1983.''

EFFECTIVE DATE OF 1980 AMENDMENTS

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

Amendment by Pub. L. 96–357 effective Oct. 1, 1980, see section 1(e) of Pub. L. 96–357, set out as a note under section 2107a of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Pub. L. 92–166, § 2, Nov. 24, 1971, 85 Stat. 487, provided that: ''This Act [amending this section] is effective July 1, 1971.''

EFFECTIVE DATE

Pub. L. 88–647, title IV, § 403, Oct. 13, 1964, 78 Stat. 1074, provided that: ''Insofar as it relates to the Army program and the Air Force program, section 2107(h) of title 10, United States Code [subsec. (h) of this section], becomes effective on September 1, 1968. Until that date, not more than four thousand cadets may be in either of those programs at any one time. So far as it relates to the Navy program, section 2107(h) of title 10 becomes effective on September 1, 1965.''

REGULATIONS

Pub. L. 109–163, div. A, title V, § 533(b), Jan. 6, 2006, 119 Stat. 3248, provided that: ''The Secretary of Defense shall prescribe the regulations required under sub-

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section (j) of section 2107 of title 10, United States Code (as added by subsection (a)), not later than May 1, 2006.''

SAVINGS PROVISION

Pub. L. 109–163, div. A, title V, § 531(c), Jan. 6, 2006, 119 Stat. 3247, provided that: ''Paragraph (4) of section 2107(c) of title 10, United States Code, and paragraph (3) of section 2107a(c) of such title, as in effect on the day before the date of the enactment of this Act [Jan. 6, 2006], shall continue to apply in the case of any individual selected before the date of the enactment of this Act for appointment as a cadet or midshipman under section 2107 or 2107a of such title.''

LIEUTENANT HENRY OSSIAN FLIPPER LEADERSHIP SCHOLARSHIPS

Pub. L. 115–91, div. A, title V, § 548, Dec. 12, 2017, 131 Stat. 1398, provided that:

''(a) IN GENERAL.—The Secretary of the Army shall designate a number of scholarships under the Army Senior Reserve Officers' Training Corps (SROTC) program that are available to students at minority-serving institutions as 'Lieutenant Henry Ossian Flipper Leadership Scholarships'.

''(b) NUMBER DESIGNATED.—The number of scholarships designated pursuant to subsection (a) shall be the number the Secretary determines appropriate to increase the number of Senior Reserve Officers' Training Corps scholarships at minority-serving institutions. In making the determination, the Secretary shall give appropriate consideration to the following:

''(1) The number of Senior Reserve Officers' Training Corps scholarships available at all institutions participating in the Senior Reserve Officer's Training Corps program.

''(2) The number of such minority-serving institutions that offer the Senior Reserve Officers' Training Corps program to their students.

''(c) AMOUNT OF SCHOLARSHIP.—The Secretary may increase any scholarship designated pursuant to subsection (a) to an amount in excess of the amount of the Senior Reserve Officers' Training Corps program scholarship that would otherwise be offered at the minority-serving institution concerned if the Secretary considers that a scholarship of such increased amount is appropriate for the purpose of the scholarship.

''(d) MINORITY-SERVING INSTITUTION DEFINED.—In this section, the term 'minority-serving institution' means an institution of higher education described in section 371(a) of the Higher Education Act of 1965 (20 U.S.C. 1067q(a)).''

REVIEW REGARDING ALLOCATION OF NAVAL RESERVE OFFICERS' TRAINING CORPS SCHOLARSHIPS AMONG PARTICIPATING COLLEGES AND UNIVERSITIES

Pub. L. 105–261, div. A, title V, § 507, Oct. 17, 1998, 112 Stat. 2004, provided that:

''(a) REVIEW.—The Secretary of the Navy should review the process and criteria used to determine the number of Naval Reserve Officer Training Corps (NROTC) scholarship recipients who attend each college and university participating in the NROTC program and how those scholarships are allocated to those schools.

''(b) PURPOSE OF REVIEW.—The review should seek to determine—

''(1) whether the method used by the Navy to allocate NROTC scholarships could be changed so as to increase the likelihood that scholarship awardees attend the school of their choice while maintaining the Navy's capability to attain the objectives of the Naval ROTC program to meet the annual requirement for newly commissioned Navy ensigns and Marine Corps second lieutenants, as well as the overall needs of the officer corps of the Department of the Navy; and

''(2) within the determination under paragraph (1), whether the likelihood of a scholarship awardee who wants to attend a school of choice in the student's State of residence can be increased.

''(c) MATTERS REVIEWED.—The matters reviewed should include the following:

''(1) The factors and criteria considered in the process of determining the allocation of NROTC scholarships to host colleges and universities.

''(2) Historical data indicating the extent to which NROTC scholarship recipients attend colleges and universities they have indicated a preference to attend, as opposed to attending solely or mainly in order to receive an NROTC scholarship.

''(3) The extent to which the process used by the Navy to allocate NROTC scholarships to participating colleges and universities contributes to optimizing resources available for the operation of the NROTC program and improving the professional education of NROTC midshipmen.

''(4) The effects that eliminating the controlled allocation of scholarships to host colleges and universities, entirely or by State, would have on the NROTC program.

''(d) CONSULTATION REQUIREMENT.—In carrying out a review under subsection (a), the Secretary should consult with officials of interested associations and of colleges and universities which host ROTC units and such other officials as the Secretary considers appropriate.''

BENEFITS NOT TO ACCRUE FOR PERIODS PRIOR TO SEPTEMBER 23, 1996

No increase in pay or retired or retainer pay to accrue for periods before Sept. 23, 1996, by reason of amendments made by section 507 of Pub. L. 104–201, see section 507(c) of Pub. L. 104–201, set out as a note under section 2106 of this title.

REPORT TO CONGRESS ON TEST PROGRAM FOR GRADUATE STUDENT PARTICIPATION IN FINANCIAL ASSISTANCE PROGRAM

Pub. L. 104–201, div. A, title V, § 553(c), Sept. 23, 1996, 110 Stat. 2526, directed the Secretary of Defense to submit to Congress a report, not later than Dec. 31, 1998, on the experience to that date under the test program authorized under the amendment to this section made by Pub. L. 104–201, § 553(a)(2).

APPLICATION OF ROTC VITALIZATION ACT OF 1964 TO APPOINTEES IN NAVAL RESERVE BEFORE OCTOBER 13, 1964

Pub. L. 89–51, § 1, June 28, 1965, 79 Stat. 173, provided: ''That all provisions of law except sections 2107(b)(3) and (f) of title 10, United States Code [subsecs. (b)(3) and (f) of this section], that apply to midshipmen appointed under Public Law 88–647 [see Short Title note set out under section 2031 of this title], apply to midshipmen appointed in the Naval Reserve [now Navy Reserve] before October 13, 1964.'' Section 4 of Pub. L. 89–51, set out as Effective Date of 1965 Amendment note under section 2109 of this title, provided that section 1 of Pub. L. 89–51 was effective Oct. 13, 1964.

§ 2107a. Financial assistance program for specially selected members: Army Reserve and Army National Guard

(a)(1) The Secretary of the Army may appoint as a cadet in the Army Reserve or Army National Guard of the United States any eligible member of the program who is enrolled in the Advanced Course of the Army Reserve Officers' Training Corps at a military college, military junior college, or civilian institution and who will be under 31 years of age on December 31 of the calendar year in which he is eligible under this section for appointment as a second lieutenant in the Army Reserve or Army National Guard.

(2) To be considered a military college or military junior college for the purposes of this sec-

tion, a school must be a civilian postsecondary educational institution essentially military in nature and meet such other requirements as the Secretary of the Army may prescribe. For purposes of this section, a military junior college does not confer a baccalaureate degree.

(b)(1) To be eligible for appointment as a cadet under this section, a member of the program must—

(A) be a citizen or national of the United States;

(B) be specially selected for the financial assistance program under this section under procedures prescribed by the Secretary of the Army;

(C) enlist in a reserve component of the Army for the period prescribed by the Secretary of the Army;

(D) contract, with the consent of his parent or guardian if he is a minor, with the Secretary of the Army to serve for the period required by the program;

(E) agree in writing that he will accept an appointment, if offered, as a commissioned officer in the Army Reserve or the Army National Guard of the United States; and

(F) agree in writing that he will serve in a troop program unit of the Army Reserve or Army National Guard for not less than eight years.

(2) Performance of duty under an agreement under this subsection shall be under such terms and conditions as the Secretary of the Army may prescribe and may include periods of active duty, active duty for training, and other service in an active or inactive status in the reserve component in which appointed.

(3)(A) Subject to subparagraph (C), in the case of a person described in subparagraph (B), the Secretary may, at any time and with the consent of the person, modify an agreement described in paragraph (1)(F) submitted by the person for the purpose of reducing or eliminating the troop program unit service obligation specified in the agreement and to establish, in lieu of that obligation, an active duty service obligation.

(B) Subparagraph (A) applies with respect to the following persons:

(i) A cadet under this section at a military junior college.

(ii) A cadet or former cadet under this section who is selected under section 2114 of this title to be a medical student at the Uniformed Services University of the Health Sciences.

(iii) A cadet or former cadet under this section who signs an agreement under section 2122 of this title for participation in the Armed Forces Health Professions Scholarship and Financial Assistance program.

(C) The modification of an agreement described in paragraph (1)(F) may be made only if the Secretary determines that it is in the best interests of the United States to do so.

(c)(1) The Secretary of the Army shall provide for the payment of all expenses of the Department of the Army in administering the financial assistance program under this section, including the cost of tuition, fees, books, and laboratory expenses which are incurred by members of the program appointed as cadets under this section while such members are students at a military junior college.

(2) In the case of a cadet eligible to receive financial assistance under paragraph (1), the Secretary of the military department concerned may, in lieu of all or part of the financial assistance described in paragraph (1), provide financial assistance in the form of room and board expenses for such cadet and other expenses required by the educational institution.

[(3) Repealed. Pub. L. 109–163, div. A, title V, § 531(b), Jan. 6, 2006, 119 Stat. 3247.]

(4)(A) The Secretary of the Army may provide an individual who received a commission as a Reserve officer in the Army from a military junior college through a program under this chapter and who does not have a baccalaureate degree with financial assistance for pursuit of a baccalaureate degree.

(B) Such assistance is in addition to any provided under paragraph (1) or (2).

(C) The agreement and reimbursement requirements established in section 2005 of this title are applicable to financial assistance under this paragraph.

(D) An officer receiving financial assistance under this paragraph shall be attached to a unit of the Army as determined by the Secretary and shall be considered to be a member of the Senior Reserve Officers' Training Corps on inactive duty for training, as defined in section 101(23) of title 38.

(E) A qualified officer who did not previously receive financial assistance under this section is eligible to receive educational assistance under this paragraph.

(F) A Reserve officer may not be called or ordered to active duty for a deployment while participating in the program under this paragraph.

(G) Any service obligation incurred by an officer under an agreement entered into under this paragraph shall be in addition to any service obligation incurred by that officer under any other provision of law or agreement.

(d) Upon satisfactorily completing the academic and military requirements of the program, a cadet may be appointed as a reserve officer in the Army in the grade of second lieutenant, even though he is under 21 years of age.

(e) The date of rank of officers appointed under this section in May or June of any year is the date of graduation of cadets from the United States Military Academy in that year. The Secretary of the Army shall establish the date of rank of all other officers appointed under this section.

(f) A cadet who does not complete the course of instruction, or who completes the course but declines to accept a commission when offered, or who does not complete a baccalaureate degree within five years after appointment as a cadet under this section, may be ordered to active duty by the Secretary of the Army to serve in his enlisted grade for such period of time as the Secretary prescribes but not for more than four years.

(g) In computing length of service for any purpose, an officer appointed under this section may not be credited with service as a cadet or with concurrent enlisted service, other than en-

listed service performed after August 1, 1979, as a member of the Selected Reserve.

(h) The Secretary of the Army shall appoint each year under this section not less than 22 cadets at each military junior college at which there are not less than 22 members of the program eligible under subsection (b) for such an appointment. At any military junior college at which in any year there are fewer than 22 such members, the Secretary shall appoint each such member as a cadet under this section.

(i) Cadets appointed under this section are in addition to the number appointed under section 2107 of this title.

(j) Financial assistance provided under this section to a cadet appointed at a military junior college is designated as, and shall be known as, an ''Ike Skelton Early Commissioning Program Scholarship''.

(Added Pub. L. 96–357, § 1(c)(1), Sept. 24, 1980, 94 Stat. 1179; amended Pub. L. 102–190, div. A, title V, § 522(a), (b)(1), Dec. 5, 1991, 105 Stat. 1362; Pub. L. 104–201, div. A, title V, §§ 507(a)(3), 555(a), Sept. 23, 1996, 110 Stat. 2512, 2527; Pub. L. 105–85, div. A, title X, § 1073(a)(36), Nov. 18, 1997, 111 Stat. 1902; Pub. L. 107–107, div. A, title V, §§ 534(b), 536(a), (c), Dec. 28, 2001, 115 Stat. 1106, 1107; Pub. L. 108–136, div. A, title V, §§ 521(b), 522, Nov. 24, 2003, 117 Stat. 1463; Pub. L. 108–375, div. A, title V, § 524(b), Oct. 28, 2004, 118 Stat. 1889; Pub. L. 109–163, div. A, title V, §§ 531(b), 532, 534(b), 536, Jan. 6, 2006, 119 Stat. 3247–3249; Pub. L. 109–364, div. A, title V, § 535, Oct. 17, 2006, 120 Stat. 2207; Pub. L. 110–181, div. A, title V, §§ 522, 523, Jan. 28, 2008, 122 Stat. 102, 103; Pub. L. 111–84, div. A, title V, § 522, Oct. 28, 2009, 123 Stat. 2285.)

AMENDMENTS

2009—Subsec. (h). Pub. L. 111–84 substituted ''22 cadets'' for ''17 cadets'', ''22 members'' for ''17 members'', and ''22 such members'' for ''17 such members''.

2008—Subsec. (b)(3). Pub. L. 110–181, § 522, amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''In the case of a cadet under this section at a military junior college, or a cadet or former cadet under this section who signs an agreement under section 2122 of this title, the Secretary may, at any time and with the consent of the cadet, or former cadet, concerned, modify an agreement described in paragraph (1)(F) submitted by the cadet, or former cadet, to reduce or eliminate the troop program unit service obligation specified in the agreement and to establish, in lieu of that obligation, an active duty service obligation. Such a modification may be made only if the Secretary determines that it is in the best interests of the United States to do so.''

Subsec. (h). Pub. L. 110–181, § 523, substituted ''each year under this section'' for ''not more than 416 cadets each year under this section, to include''.

2006—Subsec. (b)(1)(A). Pub. L. 109–163, § 534(b), inserted ''or national'' after ''citizen''.

Subsec. (b)(3). Pub. L. 109–364 inserted ''or a cadet or former cadet under this section who signs an agreement under section 2122 of this title,'' after ''military junior college,'' and '', or former cadet,'' after ''consent of the cadet'' and after ''submitted by the cadet''.

Subsec. (c)(3). Pub. L. 109–163, § 531(b), struck out par. (3) which read as follows: ''The total amount of financial assistance, including the payment of room and board and any other educational expenses, provided to a cadet in an academic year under this subsection may not exceed an amount equal to the amount that could be provided as financial assistance for such cadet under paragraph (1), or another amount determined by the Secretary of the Army, without regard to whether the room and board and other educational expenses for such cadet are paid under paragraph (2).''

Subsec. (h). Pub. L. 109–163, § 532, substituted ''416'' for ''208''.

Subsec. (j). Pub. L. 109–163, § 536, added subsec. (j).

2004—Subsec. (c)(4). Pub. L. 108–375 added par. (4).

2003—Subsec. (c). Pub. L. 108–136, § 521(b), designated existing provisions as par. (1) and added pars. (2) and (3).

Subsec. (h). Pub. L. 108–136, § 522, substituted ''17'' for ''10'' wherever appearing.

2001—Subsec. (a)(1). Pub. L. 107–107, § 534(b), substituted ''31 years of age on December 31'' for ''27 years of age on June 30'' and struck out '', except that the age of any such member who has served on active duty in the armed forces may exceed such age limitation on such date by a period equal to the period such member served on active duty, but only if such member will be under 30 years of age on such date'' before period at end.

Subsec. (b). Pub. L. 107–107, § 536(a), designated introductory provisions of subsec. (b) as introductory provisions of par. (1), redesignated former pars. (1) to (6) as subpars. (A) to (F), respectively, of par. (1), redesignated former concluding provisions as par. (2), and added par. (3).

Subsec. (h). Pub. L. 107–107, § 536(c), substituted ''At any military junior college'' for ''At any military college'' in second sentence.

1997—Subsec. (g). Pub. L. 105–85 inserted ''the'' after ''August 1, 1979, as a member of''.

1996—Subsec. (a)(1). Pub. L. 104–201, § 555(a), substituted ''27 years of age'' for ''25 years of age'' and ''30 years of age'' for ''29 years of age''.

Subsec. (g). Pub. L. 104–201, § 507(a)(3), inserted '', other than enlisted service performed after August 1, 1979, as a member of Selected Reserve'' before period at end.

1991—Pub. L. 102–190, § 522(b)(1), substituted ''Army Reserve and Army National Guard'' for ''military junior colleges'' in section catchline.

Subsec. (a)(1). Pub. L. 102–190, § 522(a)(1), substituted ''enrolled in the Advanced Course of the Army Reserve Officers' Training Corps at a military college, military junior college, or civilian institution'' for ''a student at a military junior college'' and inserted ''Reserve or Army National Guard'' after ''second lieutenant in the Army''.

Subsec. (a)(2). Pub. L. 102–190, § 522(a)(2), inserted ''military college or'' after ''To be considered a'', substituted ''and meet'' for ''that does not confer baccalaureate degrees and that meets'', and inserted at end ''For purposes of this section, a military junior college does not confer a baccalaureate degree.''

Subsec. (b)(6). Pub. L. 102–190, § 522(a)(3), substituted ''a troop program unit of the Army Reserve or Army National Guard'' for ''such reserve component''.

Subsec. (f). Pub. L. 102–190, § 522(a)(4), inserted ''or who does not complete a baccalaureate degree within five years after appointment as a cadet under this section,'' after ''when offered,''.

Subsec. (h). Pub. L. 102–190, § 522(a)(5), struck out par. (1) designation, substituted ''not more than 208 cadets each year under this section, to include not less than 10 cadets'' for ''not less than 10 cadets under this section each year'', and struck out par. (2) which read as follows: ''If the level of participation in the program at any military junior college meets criteria for such participation established by the Secretary of the Army by regulation, the Secretary shall appoint additional cadets under this section from among members of the program at such military junior college who are eligible under subsection (b) for such an appointment.''

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by section 521(b) of Pub. L. 108–136 applicable to payment of expenses of cadets and midshipmen of Senior Reserve Officers' Training Corps Program that are due after Nov. 24, 2003, see section 521(c) of Pub. L. 108–136, set out as a note under section 2107 of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–107, div. A, title V, § 536(b), Dec. 28, 2001, 115 Stat. 1107, provided that: ''The authority of the Secretary of Defense under paragraph (3) of section 2107a(b) of title 10, United States Code, as added by subsection (a), may be exercised with regard to any agreement described in paragraph (1)(F) of such section (including agreements related to participation in the Advanced Course of the Army Reserve Officers' Training Corps at a military college or civilian institution) that was entered into during the period beginning on January 1, 1991, and ending on July 12, 2000 (in addition to any agreement described in that paragraph that is entered into on or after the date of the enactment of this Act [Dec. 28, 2001]).''

EFFECTIVE DATE

Pub. L. 96–357, § 1(e), Sept. 24, 1980, 94 Stat. 1180, provided that: ''The amendments made by this section [enacting this section and amending sections 2107 and 2108 of this title] shall take effect on October 1, 1980.''

SAVINGS PROVISION

Paragraph (3) of subsec. (c) of this section, as in effect on the day before Jan. 6, 2006, to continue to apply in the case of any individual selected before Jan. 6, 2006, for appointment as a cadet under this section, see section 531(c) of Pub. L. 109–163, set out as a note under section 2107 of this title.

BENEFITS NOT TO ACCRUE FOR PERIODS PRIOR TO SEPTEMBER 23, 1996

No increase in pay or retired or retainer pay to accrue for periods before Sept. 23, 1996, by reason of amendments made by section 507 of Pub. L. 104–201, see section 507(c) of Pub. L. 104–201, set out as a note under section 2106 of this title.

§ 2108. Advanced standing; interruption of training; delay in starting obligated service; release from program

(a) The Secretary of the military department concerned may give to any enlisted member of an armed force under his jurisdiction, or any person who has served on active duty in any armed force, such advanced standing in the program as may be justified by his education and training.

(b) In determining a member's eligibility for advanced training, the Secretary of the military department concerned may credit him with any military training that is substantially equivalent in kind to that prescribed for admission to advanced training and was received while he was taking a course of instruction in a program under the jurisdiction of another armed force or while he was on active duty in the armed forces.

(c) The Secretary of the military department concerned may excuse from a portion of the prescribed course of military instruction, including field training and practice cruises, any person found qualified on the basis of his previous education, military experience, or both.

(d) A person may become, remain, or be readmitted as, a member of the advanced training program after receiving a baccalaureate degree or completing pre-professional studies if he has not completed the course of military instruction or all field training or practice cruises prescribed by the Secretary of the military department concerned. If a member of the program has been accepted for resident graduate or professional study, the Secretary of the military department concerned may delay the commencement of that member's obligated period of active duty, and any obligated period of active duty for training or other service in an active or inactive status in a reserve component, until the member has completed that study. If a cadet appointed under section 2107a of this title has been accepted for a course of study at an accredited civilian educational institution authorized to grant baccalaureate degrees, the Secretary of the Army may delay the beginning of that member's obligated period of service in a reserve component until the member has completed such course of study.

(e) The Secretary of the military department concerned may, when he determines that the interest of the service so requires, release any person from the program and discharge him from his armed force.

(Added Pub. L. 88–647, title II, § 201(1), Oct. 13, 1964, 78 Stat. 1068; amended Pub. L. 96–357, § 1(d), Sept. 24, 1980, 94 Stat. 1180.)

AMENDMENTS

1980—Subsec. (d). Pub. L. 96–357 authorized delay in starting obligated period of active duty for training or other service in an active or inactive status in a reserved component until completion of resident graduate or professional study or military junior college studies.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–357 effective Oct. 1, 1980, see section 1(e) of Pub. L. 96–357, set out as a note under section 2107a of this title.

§ 2109. Practical military training

(a) For the further practical instruction of members of, and designated applicants for membership in, the program, the Secretary of the military department concerned may prescribe and conduct practical military training, in addition to field training and practice cruises prescribed under section 2104(b)(6) of this title. The Secretary concerned may require that some or all of the training prescribed under this subsection must be completed by a member before the member is commissioned.

(b) The Secretary of the military department concerned, with respect to practical military training prescribed under this section and field training and practice cruises prescribed under section 2104(b)(6) of this title, may—

(1) transport members of, and designated applicants for membership in, the program to and from the places designated for such training or practice cruises and furnish them subsistence while traveling to and from those places, or, instead of furnishing them transportation and subsistence, pay them a travel allowance at the rate prescribed for cadets and midshipmen at the United States Military, Naval, and Air Force Academies for travel by the shortest usually traveled route from the places from which they are authorized to proceed to the place designated for the training or cruise and return, and pay the allowance for the return trip in advance;

(2) furnish medical attendance and supplies to members of, and designated applicants for membership in, the program while attending such training and practice cruises, and admit them to military hospitals;

(3) furnish subsistence, uniform clothing, and equipment to members of, and designated applicants for membership in, the program while attending such training or practice cruises or, instead of furnishing uniform clothing, pay them allowances at such rates as he may prescribe; and

(4) use any member of, and designated applicants for membership in, an armed force, or any employee of the department, under his jurisdiction, and such property of the United States as he considers necessary, for the training and administration of members of, and designated applicants for membership in, the program at the places designated for training or practice cruises.

(c)(1) A person who is not qualified for, and (as determined by the Secretary concerned) will not be able to become qualified for, advanced training by reason of one or more of the requirements prescribed in paragraphs (1) through (3) of section 2104(b) of this title shall not be permitted to participate in—

(A) field training or a practice cruise under section 2104(b)(6) of this title; or

(B) practical military training under subsection (a).

(2) The Secretary of the military department concerned may waive the limitation in paragraph (1) under procedures prescribed by the Secretary. Such procedures shall ensure uniform application of limitations and restrictions without regard to the reason for disqualification for advanced training.

(Added Pub. L. 88–647, title II, § 201(1), Oct. 13, 1964, 78 Stat. 1068; amended Pub. L. 89–51, § 2, June 28, 1965, 79 Stat. 173; Pub. L. 89–718, § 17, Nov. 2, 1966, 80 Stat. 1118; Pub. L. 100–456, div. A, title VI, § 633(a)(1)–(3)(A), Sept. 29, 1988, 102 Stat. 1986; Pub. L. 104–201, div. A, title V, § 551(a)(2), Sept. 23, 1996, 110 Stat. 2525; Pub. L. 105–85, div. A, title X, § 1073(a)(37), Nov. 18, 1997, 111 Stat. 1902.)

AMENDMENTS

1997—Subsec. (c)(1)(A). Pub. L. 105–85 substituted ''section 2104(b)(6)'' for ''section 2106(b)(6)''.

1996—Subsec. (c). Pub. L. 104–201 added subsec. (c).

1988—Pub. L. 100–456, § 633(a)(3)(A), substituted ''Practical military training'' for ''Field training; practice cruises'' in section catchline.

Subsec. (a). Pub. L. 100–456, § 633(a)(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''For the further practical instruction of members of the program, the Secretary of the military department concerned may prescribe and conduct field training and practice cruises (other than field training and practice cruises prescribed under section 2104(b)(6)(B) of this title) which members must complete before they are commissioned.''

Subsec. (b). Pub. L. 100–456, § 633(a)(2), inserted '', with respect to practical military training prescribed under this section and field training and practice cruises prescribed under section 2104(b)(6) of this title,'' before ''may'' in introductory provisions, and substituted ''such training'' for ''field training'' in pars. (1) to (3).

1966—Subsec. (b). Pub. L. 89–718 inserted ''and'' at end of par. (3).

1965—Subsec. (b). Pub. L. 89–51 inserted '', and designated applicants for membership in,'' after ''members of'' in pars. (1) to (4).

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–456, div. A, title VI, § 633(e), Sept. 29, 1988, 102 Stat. 1987, provided that: ''The amendments made by this section [amending this section, section 8140 of Title 5, Government Organization and Employees, section 209 of Title 37, Pay and Allowances of the Uniformed Services, and section 101 of Title 38, Veterans' Benefits] shall apply only with respect to training performed after September 30, 1988.''

EFFECTIVE DATE OF 1965 AMENDMENT

Pub. L. 89–51, § 4, June 28, 1965, 79 Stat. 173, provided that: ''The effective date of this Act [amending this section and section 209 of Title 37, Pay and Allowances of the Uniformed Services, and enacting provisions set out as a note under section 2107 of this title] is October 13, 1964.''

§ 2110. Logistical support

(a) The Secretary of the military department concerned may issue to institutions having units of the program, or to the officers of the armed force concerned who are designated as accountable or responsible for such property—

(1) supplies, means of transportation including aircraft, arms and ammunition, and military textbooks and educational materials; and

(2) uniform clothing, except that he may pay monetary allowances for uniform clothing at such rate as he may prescribe.

(b) The Secretary of the military department concerned may provide, or contract with civilian flying or aviation schools or educational institutions to provide, the personnel, aircraft, supplies, facilities, services, and instruction necessary for flight instruction and orientation for properly designated members of the program.

(c) The Secretary of the military department concerned may transport members of, and designated applicants for membership in, the program to and from installations when it is necessary for them to undergo medical or other examinations or for the purposes of making visits of observation. He may also furnish them subsistence, quarters, and necessary medical care, including hospitalization, while they are at, or traveling to or from, such an installation.

(d) The Secretary of the military department concerned may authorize members of, and designated applicants for membership in, the program to participate in aerial flights in military aircraft and in indoctrination cruises in naval vessels.

(e) The Secretary of the military department concerned may authorize such expenditures as he considers necessary for the efficient maintenance of the program.

(f) The Secretary of the military department concerned shall require, from each institution to which property is issued under subsection (a), a bond or other indemnity in such amount as he considers adequate, but not less than $5,000, for the care and safekeeping of all property so issued except uniforms, expendable articles, and supplies expended in operation, maintenance, and instruction. The Secretary may accept a bond without surety if the institution to which the property is issued furnishes to him satisfactory evidence of its financial responsibility.

(Added Pub. L. 88–647, title II, § 201(1), Oct. 13, 1964, 78 Stat. 1069; amended Pub. L. 89–718, § 18,

Nov. 2, 1966, 80 Stat. 1118; Pub. L. 94–273, § 11(2), Apr. 21, 1976, 90 Stat. 378; Pub. L. 97–375, title I, § 104(c), Dec. 21, 1982, 96 Stat. 1819.)

AMENDMENTS

1982—Subsec. (b). Pub. L. 97–375 struck out requirement that the Secretary of each military department report annually to Congress in April on the progress of the flight instruction program.

1976—Subsec. (b). Pub. L. 94–273 substituted ''April'' for ''January''.

1966—Subsec. (a)(1). Pub. L. 89–718 substituted ''educational'' for ''education''.

§ 2111. Personnel: administrators and instructors

The Secretary of the military department concerned may detail regular or reserve members of an armed force under his jurisdiction (including retired members and members of the Fleet Reserve and Fleet Marine Corps Reserve recalled to active duty with their consent) for instructional and administrative duties at educational institutions where units of the program are maintained.

(Added Pub. L. 88–647, title II, § 201(1), Oct. 13, 1964, 78 Stat. 1069.)

DEMONSTRATION PROJECT FOR INSTRUCTION AND SUPPORT OF ARMY ROTC UNITS BY ARMY RESERVE AND NATIONAL GUARD

Pub. L. 104–201, div. A, title V, § 554, Sept. 23, 1996, 110 Stat. 2527, directed the Secretary of the Army to carry out a demonstration project in order to assess the feasibility and advisability of providing instruction and similar support to units of the Senior Reserve Officers' Training Corps of the Army through members of the Army Reserve, including members of the Individual Ready Reserve, and members of the Army National Guard, at at least one institution of higher education, and to submit to Congress a report assessing the activities under the project not later than Feb. 1 in each of 1998 and 1999, and provided that the Secretary's authority to carry out the project would expire three years after Sept. 23, 1996.

§ 2111a. Support for senior military colleges

(a) DETAIL OF OFFICERS TO SERVE AS COMMANDANT OR ASSISTANT COMMANDANT OF CADETS.—(1) Upon the request of a senior military college, the Secretary of Defense may detail an officer on the active-duty list to serve as Commandant of Cadets at that college or (in the case of a college with an Assistant Commandant of Cadets) detail an officer on the active-duty list to serve as Assistant Commandant of Cadets at that college (but not both).

(2) In the case of an officer detailed as Commandant of Cadets, the officer may, upon the request of the college, be assigned from among the Professor of Military Science, the Professor of Naval Science (if any), and the Professor of Aerospace Science (if any) at that college or may be in addition to any other officer detailed to that college in support of the program.

(3) In the case of an officer detailed as Assistant Commandant of Cadets, the officer may, upon the request of the college, be assigned from among officers otherwise detailed to duty at that college in support of the program or may be in addition to any other officer detailed to that college in support of the program.

(b) DESIGNATION OF OFFICERS AS TACTICAL OFFICERS.—Upon the request of a senior military college, the Secretary of Defense may authorize officers (other than officers covered by subsection (a)) who are detailed to duty as instructors at that college to act simultaneously as tactical officers (with or without compensation) for the Corps of Cadets at that college.

(c) DETAIL OF OFFICERS.—The Secretary of a military department shall designate officers for detail to the program at a senior military college in accordance with criteria provided by the college. An officer may not be detailed to a senior military college without the approval of that college.

(d) TERMINATION OR REDUCTION OF PROGRAM PROHIBITED.—The Secretary of Defense and the Secretaries of the military departments may not take or authorize any action to terminate or reduce a unit of the Senior Reserve Officers' Training Corps at a senior military college unless the termination or reduction is specifically requested by the college.

(e) ASSIGNMENT TO ACTIVE DUTY.—(1) The Secretary of the Army shall ensure that a graduate of a senior military college who desires to serve as a commissioned officer on active duty upon graduation from the college, who is medically and physically qualified for active duty, and who is recommended for such duty by the professor of military science at the college, shall be assigned to active duty.

(2) Nothing in this section shall be construed to prohibit the Secretary of the Army from requiring a member of the program who graduates from a senior military college to serve on active duty.

(f) SENIOR MILITARY COLLEGES.—The senior military colleges are the following:

(1) Texas A&M University.

(2) Norwich University.

(3) The Virginia Military Institute.

(4) The Citadel.

(5) Virginia Polytechnic Institute and State University.

(6) The University of North Georgia.

(Added Pub. L. 104–106, div. A, title V, § 545(a), Feb. 10, 1996, 110 Stat. 317; amended Pub. L. 105–85, div. A, title V, § 544(d)–(f)(1), Nov. 18, 1997, 111 Stat. 1745, 1746; Pub. L. 106–65, div. A, title V, § 541(c), Oct. 5, 1999, 113 Stat. 607; Pub. L. 113–66, div. A, title V, § 583, Dec. 26, 2013, 127 Stat. 776.)

AMENDMENTS

2013—Subsec. (f)(6). Pub. L. 113–66 amended par. (6) generally. Prior to amendment, par. (6) read as follows: ''North Georgia College and State University.''

1999—Subsec. (e)(1). Pub. L. 106–65 struck out at end ''This paragraph shall apply to a member of the program at a senior military college who graduates from the college after March 31, 1997.''

1997—Pub. L. 105–85, § 544(f)(1), substituted ''Support for'' for ''Detail of officers to'' in section catchline.

Subsecs. (d), (e). Pub. L. 105–85, § 544(d)(2), added subsecs. (d) and (e). Former subsec. (d) redesignated (f).

Subsec. (f). Pub. L. 105–85, § 544(e), substituted ''University'' for ''College'' in par. (2) and inserted ''and State University'' before period at end of par. (6).

Pub. L. 105–85, § 544(d)(1), redesignated subsec. (d) as (f).

CONTINUATION OF SUPPORT TO SENIOR MILITARY COLLEGES

Pub. L. 105–85, div. A, title V, § 544(a)–(c), Nov. 18, 1997, 111 Stat. 1744, provided that:

"(a) DEFINITION OF SENIOR MILITARY COLLEGES.—For purposes of this section, the term 'senior military colleges' means the following:

"(1) Texas A&M University.

"(2) Norwich University.

"(3) The Virginia Military Institute.

"(4) The Citadel.

"(5) Virginia Polytechnic Institute and State University.

"(6) North Georgia College and State University.

"(b) FINDINGS.—Congress finds the following:

"(1) The senior military colleges consistently have provided substantial numbers of highly qualified, long-serving leaders to the Armed Forces.

"(2) The quality of the military leaders produced by the senior military colleges is, in part, the result of the rigorous military environment imposed on students attending the senior military colleges by the colleges, as well as the result of the long-standing close support relationship between the Corps of Cadets at each college and the Reserve Officer Training Corps personnel at the colleges who serve as effective leadership role models and mentors.

"(3) In recognition of the quality of the young leaders produced by the senior military colleges, the Department of Defense and the military services have traditionally maintained special relationships with the colleges, including the policy to grant active duty service in the Army to graduates of the colleges who desire such service and who are recommended for such service by their ROTC professors of military science.

"(4) Each of the senior military colleges has demonstrated an ability to adapt its systems and operations to changing conditions in, and requirements of, the Armed Forces without compromising the quality of leaders produced and without interruption of the close relationship between the colleges and the Department of Defense.

"(c) SENSE OF CONGRESS.—In light of the findings in subsection (b), it is the sense of Congress that—

"(1) the proposed initiative of the Secretary of the Army to end the commitment to active duty service for all graduates of senior military colleges who desire such service and who are recommended for such service by their ROTC professors of military science is short-sighted and contrary to the long-term interests of the Army;

"(2) as they have in the past, the senior military colleges can and will continue to accommodate to changing military requirements to ensure that future graduates entering military service continue to be officers of superb quality who are quickly assimilated by the Armed Forces and fully prepared to make significant contributions to the Armed Forces through extended military careers; and

"(3) decisions of the Secretary of Defense or the Secretary of a military department that fundamentally and unilaterally change the long-standing relationship of the Armed Forces with the senior military colleges are not in the best interests of the Department of Defense or the Armed Forces and are patently unfair to students who made decisions to enroll in the senior military colleges on the basis of existing Department and Armed Forces policy."

§ 2111b. Senior military colleges: Department of Defense international student program

(a) PROGRAM REQUIREMENT.—The Secretary of Defense shall establish a program to facilitate the enrollment and instruction of persons from foreign countries as international students at the senior military colleges.

(b) PURPOSES.—The purposes of the program shall be—

(1) to provide a high-quality, cost-effective military-based educational experience for international students in furtherance of the military-to-military program objectives of the Department of Defense; and

(2) to enhance the educational experience and preparation of future United States military leaders through increased, extended interaction with highly qualified potential foreign military leaders.

(c) COORDINATION WITH THE SENIOR MILITARY COLLEGES.—Guidelines for implementation of the program shall be developed in coordination with the senior military colleges.

(d) RECOMMENDATIONS FOR ADMISSION OF STUDENTS UNDER THE PROGRAM.—The Secretary of Defense shall annually identify to the senior military colleges the international students who, based on criteria established by the Secretary, the Secretary recommends be considered for admission under the program. The Secretary shall identify the recommended international students to the senior military colleges as early as possible each year to enable those colleges to consider them in a timely manner in their respective admissions processes.

(e) DOD FINANCIAL SUPPORT.—An international student who is admitted to a senior military college under the program under this section is responsible for the cost of instruction at that college. The Secretary of Defense may, from funds available to the Department of Defense other than funds available for financial assistance under section 2107a of this title, provide some or all of the costs of instruction for any such student.

(Added Pub. L. 106–65, div. A, title V, § 541(a)(1), Oct. 5, 1999, 113 Stat. 606.)

EFFECTIVE DATE

Pub. L. 106–65, div. A, title V, § 541(b), Oct. 5, 1999, 113 Stat. 607, provided that: "The Secretary of Defense shall implement the program under section 2111b of title 10, United States Code, as added by subsection (a), with students entering the senior military colleges after May 1, 2000."

CHAPTER 104—UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES

Sec.

2112. Establishment.

2112a. Continued operation of University.

2113. Administration of University.

2113a. Board of Regents.

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2114. Students: selection; status; obligation.

2115. Graduates: limitation on number permitted to perform civilian Federal service.

2116. Military nursing research.

[2117. Repealed.]

AMENDMENTS

2019—Pub. L. 116–92, div. A, title VII, § 734(b), Dec. 20, 2019, 133 Stat. 1462, added item 2113b.

2011—Pub. L. 111–383, div. A, title X, § 1075(b)(27), Jan. 7, 2011, 124 Stat. 4370, transferred item 2113a "Board of Regents" to appear after item 2113.

2009—Pub. L. 111–84, div. A, title V, § 525(a)(3)(A), Oct. 28, 2009, 123 Stat. 2286, struck out item 2117 "School of Nursing".

2008—Pub. L. 110–181, div. A, title IX, § 955(g)(2), Jan. 28, 2008, 122 Stat. 296, added item 2117.

Pub. L. 110–181, div. A, title IX, § 954(a)(2), Jan. 28, 2008, 122 Stat. 293, added item 2113a at the end.

1996—Pub. L. 104–201, div. A, title IX, § 907(a)(2), Sept. 23, 1996, 110 Stat. 2620, added item 2112a.

Pub. L. 104–106, div. A, title VII, §741(b), title X, §1072(c)(2), Feb. 10, 1996, 110 Stat. 385, 446, substituted ''Administration of University'' for ''Board of Regents'' in item 2113 and added item 2116.

1990—Pub. L. 101–510, div. A, title XIV, §1484(b)(2)(B), Nov. 5, 1990, 104 Stat. 1716, struck out item 2117 ''Authorization for appropriations''.

1983—Pub. L. 98–94, title XII, §1268(12)(B), Sept. 24, 1983, 97 Stat. 706, struck out item 2116 ''Reports to Congress''.

1979—Pub. L. 96–107, title VIII, §803(c)(3), Nov. 9, 1979, 93 Stat. 812, substituted ''permitted'' for ''electing'' and ''service'' for ''duty'' in item 2115.

§2112. Establishment

(a)(1) There is established a Uniformed Services University of the Health Sciences (in this chapter referred to as the ''University'') with authority to grant appropriate certificates, certifications, undergraduate degrees, and advanced degrees.

(2) The University shall be so organized as to graduate not fewer than 100 medical students annually.

(3) The headquarters of the University shall be at a site or sites selected by the Secretary of Defense within 25 miles of the District of Columbia.

(b) Except as provided in subsection (a), the numbers of persons to be graduated from the University shall be prescribed by the Secretary of Defense. In so prescribing the number of persons to be graduated from the University, the Secretary of Defense shall institute actions necessary to ensure the maximum number of first-year enrollments in the University consistent with the academic capacity of the University and the needs of the uniformed services for medical personnel.

(c) The development of the University may be by such phases as the Secretary of Defense may prescribe subject to the requirements of subsection (a).

(Added Pub. L. 92–426, §2(a), Sept. 21, 1972, 86 Stat. 713; amended Pub. L. 96–107, title VIII, §803(a), Nov. 9, 1979, 93 Stat. 811; Pub. L. 96–513, title V, §511(63), (64), Dec. 12, 1980, 94 Stat. 2925, 2926; Pub. L. 104–106, div. A, title X, §1072(b)(1), Feb. 10, 1996, 110 Stat. 446; Pub. L. 107–107, div. A, title X, §1048(e)(8), Dec. 28, 2001, 115 Stat. 1228; Pub. L. 114–328, div. A, title VII, §724(a), Dec. 23, 2016, 130 Stat. 2230.)

Amendments

2016—Subsec. (a). Pub. L. 114–328 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''There is hereby authorized to be established within 25 miles of the District of Columbia a Uniformed Services University of the Health Sciences (hereinafter in this chapter referred to as the 'University'), at a site or sites to be selected by the Secretary of Defense, with authority to grant appropriate advanced degrees. It shall be so organized as to graduate not less than 100 medical students annually.''

2001—Subsec. (a). Pub. L. 107–107 struck out '', with the first class graduating not later than September 21, 1982'' before period at end.

1996—Subsec. (b). Pub. L. 104–106 struck out '', upon recommendation of the Board of Regents,'' before ''institute actions necessary''.

1980—Subsec. (a). Pub. L. 96–513 inserted ''in this chapter'' after ''hereinafter'', and substituted ''September 21, 1982'' for ''10 years after the date of the enactment of this chapter''.

1979—Subsec. (b). Pub. L. 96–107 inserted provisions respecting the maximum number of first-year enrollments in the University.

Effective Date of 1980 Amendment

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

Short Title

Pub. L. 92–426, §1, Sept. 21, 1972, 86 Stat. 713, provided: ''That this Act [enacting this chapter and chapter 105 of this title] may be cited as the 'Uniformed Services Health Professions Revitalization Act of 1972'.''

Transfer of Functions

For transfer of authority of Board of Regents of Uniformed Services University of the Health Sciences to Secretary of Defense, see section 8091 of Pub. L. 101–511, set out as a note under section 2113 of this title.

Temporary Exemption for Uniformed Services University of the Health Sciences From Certain Paperwork Reduction Act Requirements

Pub. L. 116–283, div. A, title VII, §716(a), Jan. 1, 2021, 134 Stat. 3694, provided that:

''(a) Temporary Exemption From Certain Paperwork Reduction Act Requirements.—

''(1) In general.—During the two-year period beginning on the date that is 30 days after the date of the enactment of this Act [Jan. 1, 2021], the requirements described in paragraph (2) shall not apply with respect to the voluntary collection of information during the conduct of research and program evaluations—

''(A) conducted or sponsored by the Uniformed Services University of the Health Sciences; and

''(B) funded through the Defense Health Program.

''(2) Requirements described.—The requirements described in this paragraph are the requirements under the following provisions of law:

''(A) Section 3506(c) of title 44, United States Code.

''(B) Sections 3507 and 3508 of such title.''

Continuation of Uniformed Services University of the Health Sciences

Pub. L. 104–106, div. A, title X, §1071, Feb. 10, 1996, 110 Stat. 445, as amended by Pub. L. 104–201, div. A, title IX, §907(b)(2), Sept. 23, 1996, 110 Stat. 2620, provided that:

''(a) Policy.—Congress reaffirms—

''(1) the prohibition set forth in subsection (a) of section 922 of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337; 108 Stat. 2829; 10 U.S.C. 2112 note) regarding closure of the Uniformed Services University of the Health Sciences; and

''(2) the expression of the sense of Congress set forth in subsection (b) of such section regarding the budgetary commitment to continuation of the University.

''[(b) Repealed. Pub. L. 104–201, div. A, title IX, §907(b)(2), Sept. 23, 1996, 110 Stat. 2620.]

''(c) Budgetary Commitment to Continuation.—It is the sense of Congress that the Secretary of Defense should budget for the operation of the Uniformed Services University of the Health Sciences during fiscal year 1997 at a level at least equal to the level of operations conducted at the University during fiscal year 1995.''

Pub. L. 103–337, div. A, title IX, §922, Oct. 5, 1994, 108 Stat. 2829, as amended by Pub. L. 104–201, div. A, title IX, §907(b)(1), Sept. 23, 1996, 110 Stat. 2620, provided that:

[(a) Repealed. Pub. L. 104–201, div. A, title IX, §907(b)(1), Sept. 23, 1996, 110 Stat. 2620. See section 2112a of this title.]

''(b) Budgetary Commitment to Continuation.—It is the sense of Congress that the Secretary of Defense

should budget for the ongoing operation of the Uniformed Services University of the Health Sciences as an institution of professional education that is vital to the education and training each year of significant numbers of personnel of the uniformed services for careers as uniformed services health care providers.

''(c) GAO EVALUATION.—Not later than June 1, 1995, the Comptroller General of the United States shall submit to Congress a detailed report on the Uniformed Services University of the Health Sciences. The report shall include the following:

''(1) A comparison of the cost of obtaining physicians for the Armed Forces from the University with the cost of obtaining physicians from other sources.

''(2) An assessment of the retention rate needs of the Armed Forces for physicians in relation to the respective retention rates of physicians obtained from the University and physicians obtained from other sources and the factors that contribute to retention rates among military physicians obtained from all sources.

''(3) A review of the quality of the medical education provided at the University with the quality of medical education provided by other sources of military physicians.

''(4) A review of the overall issue of the special needs of military medicine and how those special needs are being met by physicians obtained from University and physicians obtained from other sources.

''(5) An assessment of the extent to which the University has responded to the 1990 report of the Inspector General of the Department of Defense, including recommendations as to resolution of any continuing issues relating to management and internal fiscal controls of the University, including issues relating to the Henry M. Jackson Foundation for the Advancement of Military Medicine identified in the 1990 report.

''(6) Such other recommendations as the Comptroller General considers appropriate.''

F. EDWARD HÉBERT SCHOOL OF MEDICINE

Pub. L. 98–94, title XII, § 1265, Sept. 24, 1983, 97 Stat. 704, provided that: ''The School of Medicine of the Uniformed Services University of the Health Sciences shall after the date of the enactment of this Act [Sept. 24, 1983] be known and designated as the 'F. Edward Hébert School of Medicine'. Any reference to such school of medicine in any law, regulation, map, document, or other record of the United States shall after such date be deemed to be a reference to such school of medicine as the F. Edward Hébert School of Medicine.''

§ 2112a. Continued operation of University

The University may not be closed.

(Added Pub. L. 104–201, div. A, title IX, § 907(a)(1), Sept. 23, 1996, 110 Stat. 2620; amended Pub. L. 114–328, div. A, title VII, § 724(c), Dec. 23, 2016, 130 Stat. 2230.)

PRIOR PROVISIONS

Provisions similar to those in subsec. (a) of this section were contained in Pub. L. 103–337, div. A, title IX, § 922(a), Oct. 5, 1994, 108 Stat. 2829, which was set out as a note under section 2112 of this title prior to repeal by Pub. L. 104–201, § 907(b)(1).

Provisions similar to those in subsec. (b) of this section were contained in Pub. L. 104–106, div. A, title X, § 1071(b), Feb. 10, 1996, 110 Stat. 445, which was set out as a note under section 2112 of this title prior to repeal by Pub. L. 104–201, § 907(b)(2).

AMENDMENTS

2016—Pub. L. 114–328, § 724(c), struck out ''(a) CLOSURE PROHIBITED.—'' before ''The University'' and struck out subsec. (b). Prior to amendment, text of subsec. (b) read as follows: ''During the five-year period beginning on October 1, 1996, the personnel staffing levels for the University may not be reduced below the personnel staffing levels for the University as of October 1, 1993.''

§ 2113. Administration of University

(a) The business of the University shall be conducted by the Secretary of Defense with funds appropriated for and provided by the Department of Defense.

(b) The Secretary shall appoint a President of the University (hereinafter in this chapter referred to as the ''President'').

(c)(1) The Secretary, after considering the recommendations of the President, shall obtain the services of such military and civilian professors, instructors, and administrative and other employees as may be necessary to operate the University. Civilian members of the faculty and staff shall be employed under salary schedules and granted retirement and other related benefits prescribed by the Secretary (after due consideration by the Secretary) so as to place the employees of the University on a comparable basis with the employees of fully accredited schools of the health professions identified by the Secretary for purposes of this paragraph.

(2) The Secretary may confer academic titles, as appropriate, upon military and civilian members of the faculty.

(3) The military members of the faculty shall include a professor of military, naval, or air science as the Secretary may determine.

(4) The limitations in sections 5307 and 5373 of title 5 do not apply to the authority of the Secretary under paragraph (1) to prescribe salary schedules and other related benefits. In no event may the total amount of compensation paid to an employee under paragraph (1) in any year (including salary, allowances, differentials, bonuses, awards, and other similar cash payments) exceed the total amount of annual compensation (excluding expenses) specified in section 102 of title 3.

(d) The Secretary may negotiate agreements with agencies of the Federal Government to utilize on a reimbursable basis appropriate existing Federal medical resources. Under such agreements the facilities concerned will retain their identities and basic missions. The Secretary may negotiate affiliation agreements with an accredited university or universities. Such agreements may include provisions for payments for educational services provided students participating in Department of Defense educational programs.

(e) The Secretary of Defense may establish the following educational programs at the University:

(1) Postdoctoral, postgraduate, and technological institutes.

(2) A graduate school of nursing.

(3) Other schools or programs, including certificate, certification, and undergraduate degree programs, that the Secretary determines necessary in order to operate the University in a cost-effective manner.

(f) The Secretary shall also establish programs in continuing medical education for military members of the health professions to the end that high standards of health care may be maintained within the military medical services.

(g)(1) The Secretary also is authorized—

(A) to enter into contracts with, accept grants from, and make grants to the Henry M. Jackson Foundation for the Advancement of Military Medicine established under section 178 of this title, or any other nonprofit entity, for the purpose of carrying out cooperative enterprises in medical research, medical consultation, and medical education;

(B) to make available to the Henry M. Jackson Foundation for the Advancement of Military Medicine, or any other nonprofit entity, on such terms and conditions as the Secretary determines appropriate, such space, facilities, equipment, and support services within the University as the Secretary considers necessary to accomplish cooperative enterprises undertaken by such Foundation, or nonprofit entity, and the University;

(C) to enter into contracts with the Henry M. Jackson Foundation for the Advancement of Military Medicine, or any other nonprofit entity, under which the Secretary may furnish the services of such professional, technical, or clerical personnel as may be necessary to fulfill cooperative enterprises undertaken by such foundation, or nonprofit entity, and the University;

(D) to accept, hold, administer, invest, and spend any gift, devise, or bequest of personal property made to the University, including any gift, devise, or bequest for the support of an academic chair, teaching, research, or demonstration project;

(E) to enter into agreements with the Henry M. Jackson Foundation for the Advancement of Military Medicine, or with any other nonprofit entity, under which scientists or other personnel of the Foundation or other entity may be utilized by the University for the purpose of enhancing the activities of the University in education, research, and technological applications of knowledge;

(F) to accept the voluntary services of guest scholars and other persons; and

(G) notwithstanding sections 2304, 2361, and 2374 of this title, to enter into contracts and cooperative agreements with, accept grants from, and make grants to, nonprofit entities (on a sole-source basis) for the purpose specified in subparagraph (A) or for any other purpose the Secretary determines to be consistent with the mission of the University.

(2) The Secretary may not enter into any contract with the Henry M. Jackson Foundation for the Advancement of Military Medicine, or with any other entity, if the contract would obligate the University to make outlays in advance of the enactment of budget authority for such outlays.

(3) Scientists or other medical personnel utilized by the University under an agreement described in clause (E) of paragraph (1) may be appointed to any position within the University and may be permitted to perform such duties within the University as the Secretary may approve.

(4) A person who provides voluntary services under the authority of clause (F) of paragraph (1) shall be considered to be an employee of the Federal Government for the purposes of chapter 81 of title 5, relating to compensation for work-related injuries, and to be an employee of the Federal Government for the purposes of chapter 171 of title 28, relating to tort claims. Such a person who is not otherwise employed by the Federal Government shall not be considered to be a Federal employee for any other purpose by reason of the provision of such services.

(Added Pub. L. 92–426, §2(a), Sept. 21, 1972, 86 Stat. 714; amended Pub. L. 95–589, Nov. 4, 1978, 92 Stat. 2512; Pub. L. 96–513, title V, §511(64), Dec. 12, 1980, 94 Stat. 2926; Pub. L. 98–36, §3, May 27, 1983, 97 Stat. 201; Pub. L. 98–132, §2(b), Oct. 17, 1983, 97 Stat. 849; Pub. L. 99–661, div. A, title V, §505, Nov. 14, 1986, 100 Stat. 3864; Pub. L. 101–189, div. A, title VII, §726(a), (b)(1), Nov. 29, 1989, 103 Stat. 1480; Pub. L. 101–510, div. A, title XIII, §1322(a)(3), Nov. 5, 1990, 104 Stat. 1671; Pub. L. 104–106, div. A, title X, §1072(a), (b)(2), (c)(1), Feb. 10, 1996, 110 Stat. 446; Pub. L. 106–65, div. A, title XI, §1108, Oct. 5, 1999, 113 Stat. 778; Pub. L. 106–398, §1 [[div. A], title X, §1087(a)(12)], Oct. 30, 2000, 114 Stat. 1654, 1654A–291; Pub. L. 110–181, div. A, title IX, §954(a)(3)(A), (b)(1), title XI, §1116, Jan. 28, 2008, 122 Stat. 294, 361; Pub. L. 113–66, div. A, title VII, §711, Dec. 26, 2013, 127 Stat. 793; Pub. L. 114–328, div. A, title VII, §724(b), Dec. 23, 2016, 130 Stat. 2230; Pub. L. 116–283, div. A, title VII, §714(a), title XVIII, §1883(b)(2), Jan. 1, 2021, 134 Stat. 3694, 4294.)

AMENDMENT OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§1801(d), 1883(b)(2), Jan. 1, 2021, 134 Stat. 4151, 4294, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, except as otherwise provided in title XVIII of Pub. L. 116–283, in title 10, United States Code, each reference in the text of such title to a source section that is redesignated by title XVIII of Pub. L. 116–283, is amended by striking such reference and inserting a reference to the appropriate section as so redesignated. See 2021 Amendment note below.

AMENDMENTS

2021—Subsec. (g)(1)(G). Pub. L. 116–283, §1883(b)(2), substituted "4015, and 4008 of this title" for "2361, and 2374 of this title". Amendment directing that each reference in the text of title 10 to a section that was redesignated by title XVIII of Pub. L. 116–283, as such section was in effect before the redesignation, be amended by striking such reference and inserting a reference to the appropriate redesignated section, was not executed with respect to "section 2304", which was redesignated as multiple sections.

Pub. L. 116–283, §714(a), added subpar. (G).

2016—Subsec. (d). Pub. L. 114–328, §724(b)(1), struck out "located in or near the District of Columbia" after "Federal medical resources", "in or near the District of Columbia" after "university or universities", and "The Secretary may enter into an agreement under which the University would become part of a national university of health sciences should such an institution be established in the vicinity of the District of Columbia." after "educational programs."

Subsec. (e)(3). Pub. L. 114–328, §724(b)(2), inserted ", including certificate, certification, and undergraduate degree programs," after "or programs".

2013—Subsec. (g)(1)(B). Pub. L. 113–66, §711(1), inserted ", or any other nonprofit entity" after "Military Medicine" and ", or nonprofit entity," after "such Foundation".

Subsec. (g)(1)(C). Pub. L. 113–66, § 711(2), inserted '', or any other nonprofit entity,'' after ''Military Medicine'' and '', or nonprofit entity,'' after ''such foundation''.

2008—Subsec. (a). Pub. L. 110–181, § 954(a)(3)(A)(i), struck out after first sentence ''To assist the Secretary in an advisory capacity, there is a Board of Regents for the University. The Board shall consist of—

''(1) nine persons outstanding in the fields of health and health education who shall be appointed from civilian life by the President, by and with the advice and consent of the Senate;

''(2) the Secretary of Defense, or his designee, who shall be an ex officio member;

''(3) the surgeons general of the uniformed services, who shall be ex officio members; and

''(4) the person referred to in subsection (d).''

Subsec. (b). Pub. L. 110–181, § 954(b)(1), substituted ''President'' for ''Dean'' in two places.

Pub. L. 110–181, § 954(a)(3)(A)(iv), struck out ''who shall also serve as a nonvoting ex officio member of the Board'' before period at end.

Pub. L. 110–181, § 954(a)(3)(A)(ii), (iii), redesignated subsec. (d) as (b) and struck out former subsec. (b) which read as follows: ''The term of office of each member of the Board (other than ex officio members) shall be six years except that—

''(1) any member appointed to fill a vacancy occurring before the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term;

''(2) the terms of office of the members first taking office shall expire, as designated by the President at the time of the appointment, three at the end of two years, three at the end of four years, and three at the end of six years; and

''(3) any member whose term of office has expired shall continue to serve until his successor is appointed.''

Subsec. (c). Pub. L. 110–181, § 954(a)(3)(A)(ii), (iii), redesignated subsec. (f) as (c) and struck out former subsec. (c) which read as follows: ''One of the members of the Board (other than an ex officio member) shall be designated by the President as Chairman. He shall be the presiding officer of the Board.''

Subsec. (c)(1). Pub. L. 110–181, § 1116(1), inserted ''(after due consideration by the Secretary)'' before ''so as'' and substituted ''identified by the Secretary for purposes of this paragraph'' for ''within the vicinity of the District of Columbia''.

Pub. L. 110–181, § 954(b)(1), substituted ''President'' for ''Dean''.

Subsec. (c)(4). Pub. L. 110–181, § 1116(2), substituted ''sections 5307 and 5373'' for ''section 5373'' and inserted at end ''In no event may the total amount of compensation paid to an employee under paragraph (1) in any year (including salary, allowances, differentials, bonuses, awards, and other similar cash payments) exceed the total amount of annual compensation (excluding expenses) specified in section 102 of title 3.''

Subsecs. (d) to (j). Pub. L. 110–181, § 954(a)(3)(A)(ii), (iii), redesignated subsecs. (d), (f), (g), (h), (i), and (j) as (b), (c), (d), (e), (f), and (g), respectively, and struck out former subsec. (e) which read as follows: ''Members of the Board (other than ex officio members) while attending conferences or meetings or while otherwise performing their duties as members shall be entitled to receive compensation at a rate to be fixed by the Secretary, but not exceeding $100 per diem and shall also be entitled to receive an allowance for necessary travel expenses while so serving away from their place of residence.''

2000—Subsec. (f). Pub. L. 106–398 designated penultimate sentence and last sentence of par. (1) as pars. (2) and (3), respectively, redesignated former par. (3) as (4), and struck out former par. (2) which read as follows: ''The Secretary may exempt, at any time, a physician who is a member of the faculty from the restrictions in subsections (a), (b), and (c) of section 5532 of title 5, if the Secretary determines that such exemption is necessary to recruit or retain well-qualified physicians for the faculty of the University. An exemption granted under this paragraph shall terminate upon any break in employment with the University by a physician of three days or more. An exemption granted under this paragraph to a person shall apply to the retired pay of such person beginning with the first month after the month in which the exemption is granted. Not more than five exemptions may be in effect under this paragraph at any time.''

1999—Subsec. (f)(3). Pub. L. 106–65 added par. (3).

1996—Pub. L. 104–106, § 1072(c)(1), substituted ''Administration of University'' for ''Board of Regents'' as section catchline.

Subsec. (a). Pub. L. 104–106, § 1072(b)(2)(A), substituted ''conducted by the Secretary of Defense'' for ''conducted by a Board of Regents (hereinafter in this chapter referred to as the 'Board')'' and inserted after first sentence ''To assist the Secretary in an advisory capacity, there is a Board of Regents for the University.''

Subsec. (d). Pub. L. 104–106, § 1072(b)(2)(B), substituted ''The Secretary shall appoint'' for ''The Board shall appoint''.

Subsec. (e). Pub. L. 104–106, § 1072(b)(2)(C), struck out ''of Defense'' after ''Secretary''.

Subsec. (f). Pub. L. 104–106, § 1072(b)(2)(D), (F), in par. (1), substituted ''Secretary, after'' for ''Board, after'', ''Secretary so'' for ''Secretary of Defense so'', and ''Secretary may'' for ''Board may'' in two places, and in par. (2), substituted ''Secretary'' for ''Board'' in two places.

Subsec. (g). Pub. L. 104–106, § 1072(b)(2)(E), substituted ''Secretary may negotiate agreements'' for ''Board is authorized to negotiate agreements'', ''Secretary may negotiate affiliation'' for ''Board is also authorized to negotiate affiliation'', and ''Secretary may enter'' for ''Board may also, subject to the approval of the Secretary of Defense, enter''.

Subsec. (h). Pub. L. 104–106, § 1072(a), amended subsec. (h) generally. Prior to amendment, subsec. (h) read as follows: ''The Board may establish postdoctoral, postgraduate, and technological institutes.''

Subsecs. (i), (j). Pub. L. 104–106, § 1072(b)(2)(F), substituted ''Secretary'' for ''Board'' wherever appearing.

1990—Subsec. (j)(1). Pub. L. 101–510, § 1322(a)(3)(A), struck out ''subject to paragraph (2),'' before ''to make'' in subpar. (B) and before ''to enter'' in subpars. (C) and (E).

Subsec. (j)(2) to (5). Pub. L. 101–510, § 1322(a)(3)(B), (C), redesignated pars. (3) to (5) as (2) to (4), respectively, and struck out former par. (2) which read as follows: ''The authority of the Board under clauses (B), (C), and (E) of paragraph (1) may be exercised only if—

''(A) before the Board enters into any arrangement under which any space, facility, equipment, or support service is made available under clause (B) of such paragraph, before the Board enters into any contract under clause (C) of such paragraph, or before the Board enters into any agreement under clause (E) of such paragraph, it notifies the Committees on Armed Services of the Senate and the House of Representatives in writing of the proposed arrangement, contract, or agreement, as the case may be, the terms and conditions thereof, and, in the case of a proposed agreement under clause (E) of paragraph (1), any appointments proposed to be made under the authority of paragraph (4) in connection with the agreement, and

''(B) a period of fifteen days has elapsed following the date on which the notice is received by such committees.''

1989—Subsec. (f)(2). Pub. L. 101–189, § 726(a), substituted ''five exemptions'' for ''two exemptions''.

Subsec. (j)(1)(A). Pub. L. 101–189, § 726(b)(1), inserted '', accept grants from, and make grants to'' after ''contracts with'' and substituted ''or any other'' for ''or with any other''.

1986—Subsec. (f). Pub. L. 99–661 designated existing provisions as par. (1) and added par. (2).

1983—Subsec. (j). Pub. L. 98–132 inserted ''Henry M. Jackson'' before ''Foundation for the Advancement of Military Medicine'' wherever appearing.

Pub. L. 98–36 added subsec. (j).

1980—Subsecs. (a) and (d). Pub. L. 96–513 inserted ''in this chapter'' after ''hereinafter''.

1978—Subsec. (b)(3). Pub. L. 95–589 added par. (3).

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by section 1883(b)(2) of Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

RULE OF CONSTRUCTION

Pub. L. 116–283, div. A, title VII, § 714(b), Jan. 1, 2021, 134 Stat. 3694, provided that: ''Nothing in section 2113(g) of title 10, United States Code, as amended by subsection (a), shall be construed to limit the ability of the Secretary of Defense, in carrying out such section, to use competitive procedures to award contracts, cooperative agreements, or grants.''

TRANSFER OF FUNCTIONS

Pub. L. 101–511, title VIII, § 8091, Nov. 5, 1990, 104 Stat. 1896, provided that: ''Notwithstanding any other provision of law, all authority of the Board of Regents of the Uniformed Services University of the Health Sciences is hereby transferred to the Secretary of Defense, and the Board hereafter shall be an advisory board to the Secretary of Defense.''

§ 2113a. Board of Regents

(a) IN GENERAL.—To assist the Secretary of Defense in an advisory capacity, there is a Board of Regents of the University.

(b) MEMBERSHIP.—The Board shall consist of—

(1) nine persons outstanding in the fields of health care, higher education administration, or public policy who shall be appointed from civilian life by the Secretary of Defense;

(2) the Secretary of Defense, or his designee, who shall be an ex officio member;

(3) the Director of the Defense Health Agency, who shall be an ex officio member;

(4) the surgeons general of the uniformed services, who shall be ex officio members; and

(5) the President of the University, who shall be a nonvoting ex officio member.

(c) TERM OF OFFICE.—The term of office of each member of the Board (other than ex officio members) shall be six years except that—

(1) any member appointed to fill a vacancy occurring before the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term; and

(2) any member whose term of office has expired shall continue to serve until his successor is appointed.

(d) CHAIRMAN.—One of the members of the Board (other than an ex officio member) shall be designated by the Secretary as Chairman. He shall be the presiding officer of the Board.

(e) COMPENSATION.—Members of the Board (other than ex officio members) while attending conferences or meetings or while otherwise performing their duties as members shall be entitled to receive compensation at a rate to be fixed by the Secretary and shall also be entitled to receive an allowance for necessary travel expenses while so serving away from their place of residence.

(f) MEETINGS.—The Board shall meet at least once a quarter.

(Added Pub. L. 110–181, div. A, title IX, § 954(a)(1), Jan. 28, 2008, 122 Stat. 293; amended Pub. L. 111–84, div. A, title V, § 523, Oct. 28, 2009, 123 Stat. 2285; Pub. L. 116–283, div. A, title VII, § 715(a), Jan. 1, 2021, 134 Stat. 3694.)

AMENDMENTS

2021—Subsec. (b)(3) to (5). Pub. L. 116–283 added par. (3) and redesignated former pars. (3) and (4) as (4) and (5), respectively.

2009—Subsec. (b)(1). Pub. L. 111–84 substituted ''health care, higher education administration, or public policy'' for ''health and health education''.

EFFECTIVE DATE OF 2021 AMENDMENT

Pub. L. 116–283, div. A, title VII, § 715(c), Jan. 1, 2021, 134 Stat. 3694, provided that: ''The amendments made by this section [amending this section] shall take effect on January 1, 2021.''

RULE OF CONSTRUCTION

Pub. L. 116–283, div. A, title VII, § 715(b), Jan. 1, 2021, 134 Stat. 3694, provided that: ''The amendments made by this section [amending this section] may not be construed to invalidate any action taken by the Uniformed Services University of the Health Sciences or its Board of Regents prior to the effective date of this section [see Effective Date of 2021 Amendment note above].''

§ 2113b. Academic Health System

(a) IN GENERAL.—The Secretary of Defense may establish an Academic Health System to integrate the health care, health professions education, and health research activities of the military health system, including under this chapter, in the National Capital Region.

(b) LEADERSHIP.—(1) The Secretary may appoint employees of the Department of Defense to leadership positions in the Academic Health System established under subsection (a).

(2) Such positions may include responsibilities for management of the health care, health professions education, and health research activities described in subsection (a) and are in addition to similar leadership positions for members of the armed forces.

(c) NATIONAL CAPITAL REGION DEFINED.—In this section, the term ''National Capital Region'' means the area, or portion thereof, as determined by the Secretary, in the vicinity of the District of Columbia.

(Added Pub. L. 116–92, div. A, title VII, § 734(a), Dec. 20, 2019, 133 Stat. 1461.)

§ 2114. Students: selection; status; obligation

(a) Medical students at the University shall be selected under procedures prescribed by the Secretary of Defense. In so prescribing, the Secretary shall consider the recommendations of the Board. However, selection procedures prescribed by the Secretary of Defense shall emphasize the basic requirement that students demonstrate sincere motivation and dedication to a career in the uniformed services (as defined in section 1072(1) of this title).

(b)(1) Medical students shall be commissioned officers of a uniformed service as determined

under regulations prescribed by the Secretary of Defense after consulting with the Secretary of Health and Human Services. They shall be appointed as regular officers in the grade of second lieutenant or ensign and shall serve on active duty in that grade.

(2) If a member of the uniformed services selected to be a student has prior active service in a pay grade and with years of service credited for pay that would entitle the member, if the member remained in the former grade, to a rate of basic pay in excess of the rate of basic pay for regular officers in the grade of second lieutenant or ensign, the member shall be paid basic pay based on the former grade and years of service credited for pay. The amount of such basic pay for the member shall be increased on January 1 of each year by the percentage by which basic pay is increased on average on that date for that year, and the member shall continue to receive basic pay based on the former grade and years of service until the date, whether occurring before or after graduation, on which the basic pay for the member in the member's actual grade and years of service credited for pay exceeds the amount of basic pay to which the member is entitled based on the member's former grade and years of service.

(c) Medical students who graduate shall be required to serve on active duty unless they are covered by section 2115 of this title. Medical students who graduate shall be required, except as provided in section 2115 of this title, to serve thereafter on active duty under such regulations as the Secretary of Defense or the Secretary of Health and Human Services, as appropriate, may prescribe for not less than seven years, unless sooner released. Upon completion of, or release from, the active-duty service obligation, a member of the program who served on active-duty for less than 10 years shall serve in the Ready Reserve for the period specified in the following table:

Period of Service on Active Duty	**Ready Reserve Obligation**
Less than 8 years	6 years
8 years or more, but less than 9	4 years
9 years or more, but less than 10	2 years

The service credit exclusions specified in section 2126 of this title shall apply to students covered by this section.

(d) A period of time spent in military intern or residency training shall not be creditable in satisfying a commissioned service obligation imposed by this section.

(e) A medical student who, under regulations prescribed by the Secretary of Defense, is dropped from the program for deficiency in conduct or studies, or for other reasons, may be required to perform active duty in an appropriate military capacity in accordance with the active duty obligation imposed by this section. In no case shall any such student be required to serve on active duty for any period in excess of a period equal to the period he participated in the program, except that in no case may any such student be required to serve on active duty less than one year.

(f)(1) The Secretary of Defense may enter into agreements with foreign military medical schools for reciprocal education programs under which students at the University receive specialized military medical instruction at the foreign military medical school and military medical personnel of the country of such medical school receive specialized military medical instruction at the University. Any such agreement may be made on a reimbursable basis or a nonreimbursable basis.

(2) Not more than 40 persons at any one time may receive instruction at the University under this subsection. Attendance of such persons at the University may not result in a decrease in the number of students enrolled in the University. Subsection (b) does not apply to students receiving instruction under this subsection.

(3) The President of the University, with the approval of the Secretary of Defense, shall determine the countries from which persons may be selected to receive instruction under this subsection and the number of persons that may be selected from each country. The President may establish qualifications and methods of selection and shall select those persons who will be permitted to receive instruction at the University. The qualifications established shall be comparable to those required of United States citizens.

(4) Each foreign country from which a student is permitted to receive instruction at the University under this subsection shall reimburse the United States for the cost of providing such instruction, unless such reimbursement is waived by the Secretary of Defense. The Secretary of Defense shall prescribe the rates for reimbursement under this paragraph.

(5) Except as the President determines, a person receiving instruction at the University under this subsection is subject to the same regulations governing attendance, discipline, discharge, and dismissal as a student enrolled in the University. The Secretary may prescribe regulations with respect to access to classified information by a person receiving instruction under this subsection that differ from the regulations that apply to a student enrolled in the University.

(g) In this section, the term ''commissioned service obligation'' means, with respect to an officer who is a graduate of the University, the period beginning on the date of the appointment of the officer in a regular component after graduation and ending on the tenth anniversary of that appointment.

(h) The Secretary of Defense shall establish such selection procedures, service obligations, and other requirements as the Secretary considers appropriate for graduate students (other than medical students) in a postdoctoral, postgraduate, or technological institute established pursuant to section 2113(e) of this title.

(i) A graduate of the University who is relieved of the graduate's active-duty service obligation under subsection (c) before the completion of that active-duty service obligation may be given, with or without the consent of the graduate, an alternative obligation in the same manner as provided in subparagraphs (A) and (B) of paragraph (1) of section 2123(e) of this title or paragraph (2) of such section for members of the Armed Forces Health Professions Scholarship and Financial Assistance program.

(Added Pub. L. 92–426, § 2(a), Sept. 21, 1972, 86 Stat. 715; amended Pub. L. 96–107, title VIII, § 803(b), Nov. 9, 1979, 93 Stat. 812; Pub. L. 96–513, title I, § 114, title V, § 511(65), Dec. 12, 1980, 94 Stat. 2877, 2926; Pub. L. 98–525, title XV, § 1535, Oct. 19, 1984, 98 Stat. 2633; Pub. L. 101–189, div. A, title V, § 511(a), Nov. 29, 1989, 103 Stat. 1439; Pub. L. 101–510, div. A, title V, § 533(a), (b), Nov. 5, 1990, 104 Stat. 1564; Pub. L. 103–160, div. A, title VII, § 732(a), Nov. 30, 1993, 107 Stat. 1696; Pub. L. 104–106, div. A, title X, § 1072(b)(3), Feb. 10, 1996, 110 Stat. 446; Pub. L. 104–201, div. A, title VII, § 741(b), Sept. 23, 1996, 110 Stat. 2599; Pub. L. 105–85, div. A, title X, § 1073(a)(38), Nov. 18, 1997, 111 Stat. 1902; Pub. L. 108–375, div. A, title V, § 501(e), Oct. 28, 2004, 118 Stat. 1874; Pub. L. 110–181, div. A, title V, § 524(a), title IX, § 954(a)(3)(B), (b)(2), Jan. 28, 2008, 122 Stat. 103, 294; Pub. L. 110–417, [div. A], title X, § 1061(b)(8), (9), Oct. 14, 2008, 122 Stat. 4613.)

AMENDMENTS

2008—Subsecs. (b), (c). Pub. L. 110–181, § 524(a)(1)(B), (2)(A), designated first 3 sentences of subsec. (b) as subsec. (b)(1), added subsec. (b)(2), designated last 3 sentences of subsec. (b) as subsec. (c), and substituted ''Medical students who graduate'' for ''Upon graduation they''. Former subsec. (c) redesignated (d).

Subsecs. (d) to (f). Pub. L. 110–181, § 524(a)(1)(A), redesignated subsecs. (c) to (e) as (d) to (f), respectively. Former subsec. (f) redesignated (g).

Subsec. (f)(3), (5). Pub. L. 110–181, § 954(b)(2), as amended by Pub. L. 110–417, § 1061(b)(9), substituted ''President'' for ''Dean'' wherever appearing.

Subsec. (g). Pub. L. 110–181, § 524(a)(1)(A), redesignated subsec. (f) as (g). Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 110–181, § 954(a)(3)(B), as amended by Pub. L. 110–417, § 1061(b)(8), substituted ''2113(e)'' for ''2113(h)''.

Pub. L. 110–181, § 524(a)(1)(A), redesignated subsec. (g) as (h). Former subsec. (h) redesignated (i).

Subsec. (i). Pub. L. 110–181, § 524(a)(2)(B), substituted ''subsection (c)'' for ''subsection (b)''.

Pub. L. 110–181, § 524(a)(1)(A), redesignated subsec. (h) as (i).

2004—Subsec. (b). Pub. L. 108–375, in introductory provisions, substituted ''They shall be appointed as regular officers in the grade of second lieutenant or ensign and shall serve on active duty in that grade. Upon graduation they shall be required to serve on active duty'' for ''Notwithstanding any other provision of law, they shall serve on active duty in pay grade O–1 with full pay and allowances of that grade. Upon graduation they shall be appointed in a regular component, if qualified,''.

1997—Subsec. (h). Pub. L. 105–85 substituted ''section 2123(e)'' for ''section 2123(e)(1)''.

1996—Subsec. (e)(1). Pub. L. 104–106 substituted ''The Secretary of Defense'' for ''The Board, upon approval of the Secretary of Defense,''.

Subsec. (h). Pub. L. 104–201 added subsec. (h).

1993—Subsec. (a). Pub. L. 103–160, § 732(a)(1), substituted ''Medical students'' for ''Students'' in first sentence.

Subsec. (b). Pub. L. 103–160, § 732(a)(2), substituted ''Medical students'' for ''Students'' in two places.

Subsec. (d). Pub. L. 103–160, § 732(a)(3), substituted ''medical student'' for ''member of the program'' in first sentence and ''any such student'' for ''any such member'' in two places in second sentence.

Subsec. (g). Pub. L. 103–160, § 732(a)(4), added subsec. (g).

1990—Subsec. (b). Pub. L. 101–510, § 533(b)(1), after fourth sentence inserted provisions relating to the time obligation to be served in the Ready Reserve upon completion of, or release from, the active-duty service obligation for members of the program who served on active duty for less than 10 years.

Pub. L. 101–510, § 533(a), substituted ''seven years'' for ''10 years'' in fourth sentence.

Subsec. (c). Pub. L. 101–510, § 533(b)(2), substituted ''a commissioned service obligation'' for ''an active duty obligation''.

Subsec. (f). Pub. L. 101–510, § 533(b)(3), added subsec. (f).

1989—Subsec. (b). Pub. L. 101–189 substituted ''10 years'' for ''seven years'' in fourth sentence.

1984—Subsec. (e). Pub. L. 98–525 added subsec. (e).

1980—Subsec. (b). Pub. L. 96–513, § 511(65), substituted ''Secretary of Health and Human Services'' for ''Secretary of Health, Education, and Welfare'' wherever appearing.

Pub. L. 96–513, § 114, struck out provision under which officers attending the Uniformed Services University of Health Sciences were not counted against authorized military strengths.

1979—Subsec. (b). Pub. L. 96–107 substituted ''uniformed'' for ''uniform''.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–417 effective Jan. 28, 2008, and as if included in Pub. L. 110–181 as enacted, see section 1061(b) of Pub. L. 110–417, set out as a note under section 6382 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–375 effective on the first day of the first month beginning more than 180 days after Oct. 28, 2004, see section 501(g) of Pub. L. 108–375, set out as a note under section 531 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–201, div. A, title VII, § 741(c), Sept. 23, 1996, 110 Stat. 2600, provided that: ''The amendments made by this section [amending this section and section 2123 of this title] shall apply with respect to individuals who first become members of the Armed Forces Health Professions Scholarship and Financial Assistance program or students of the Uniformed Services University of the Health Sciences on or after October 1, 1996.''

EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103–160, div. A, title VII, § 732(b), Nov. 30, 1993, 107 Stat. 1697, provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to students attending the Uniformed Services University of the Health Sciences on or after the date of the enactment of this Act [Nov. 30, 1993].''

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–510, div. A, title V, § 533(d), Nov. 5, 1990, 104 Stat. 1564, provided that: ''The amendment made by subsection (b) [amending this section] shall take effect on December 31, 1991, and shall apply to persons who are first admitted to the Uniformed Services University of the Health Sciences after that date.''

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–189, div. A, title V, § 511(e), Nov. 29, 1989, 103 Stat. 1439, as amended by Pub. L. 101–510, div. A, title V, § 533(c), Nov. 5, 1990, 104 Stat. 1564, provided that: ''The amendments made by this section [amending this section and sections 4348, 6959, and 9348 of this title] shall apply to persons who are first admitted to one of the military service academies after December 31, 1991.''

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by section 114 of Pub. L. 96–513 effective Sept. 15, 1981, but the authority to prescribe regulations under the amendment by Pub. L. 96–513 effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

Amendment by section 511(65) of Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513.

TRANSFER OF FUNCTIONS

For transfer of authority of Board of Regents of Uniformed Services University of the Health Sciences to Secretary of Defense, see section 8091 of Pub. L. 101–511, set out as a note under section 2113 of this title.

TRANSITION PROVISIONS

Pub. L. 104–201, div. A, title VII, § 741(d)(2), Sept. 23, 1996, 110 Stat. 2600, provided that: ''In the case of any person who, as of October 1, 1996, is serving an active-duty service obligation as a graduate of the Uniformed Services University of the Health Sciences or is incurring an active-duty service obligation as a student of the University, and who is subsequently relieved of the active-duty service obligation before the completion of the obligation, the alternative obligations authorized by the amendment made by subsection (b) [amending this section] may be implemented by the Secretary of Defense with the agreement of the person.''

§ 2115. Graduates: limitation on number permitted to perform civilian Federal service

The Secretary of Defense may allow not more than 20 percent of the graduates of each class at the University to perform civilian Federal service for not less than seven years following the completion of their professional education in lieu of active duty in a uniformed service if the needs of the uniformed services do not require that such graduates perform active duty in a uniformed service and as long as the Secretary of Defense does not recall such persons to active duty in the uniformed services. Such persons who execute an agreement in writing to perform such civilian Federal service may be released from active duty following the completion of their professional education. The location and type of their duty shall be determined by the Secretary of Defense after consultation with the heads of Federal agencies concerned.

(Added Pub. L. 92–426, § 2(a), Sept. 21, 1972, 86 Stat. 716; amended Pub. L. 96–107, title VIII, § 803(c)(1), (2), Nov. 9, 1979, 93 Stat. 812.)

AMENDMENTS

1979—Pub. L. 96–107, § 803(c)(2), substituted ''permitted'' for ''electing'' and ''service'' for ''duty'' in section catchline.

Pub. L. 96–107, § 803(c)(1), substituted provisions respecting authority of the Secretary of Defense to allow graduates to perform civilian Federal service and the execution of agreements for such service as prerequisites for release from active duty following completion of education, for provisions relating to limitations on the number of graduates electing to perform civilian Federal duty, agreements respecting such service, and release from active duty upon completion of their education.

§ 2116. Military nursing research

(a) DEFINITIONS.—In this section:

(1) The term ''military nursing research'' means research on the furnishing of care and services by nurses in the armed forces.

(2) The term ''TriService Nursing Research Program'' means the program of military nursing research authorized under this section.

(b) PROGRAM AUTHORIZED.—The Secretary of Defense may establish at the University a program of military nursing research.

(c) TRISERVICE RESEARCH GROUP.—The TriService Nursing Research Program shall be administered by a TriService Nursing Research Group composed of Army, Navy, and Air Force nurses who are involved in military nursing research and are designated by the Secretary concerned to serve as members of the group.

(d) DUTIES OF GROUP.—The TriService Nursing Research Group shall—

(1) develop for the Department of Defense recommended guidelines for requesting, reviewing, and funding proposed military nursing research projects; and

(2) make available to Army, Navy, and Air Force nurses and Department of Defense officials concerned with military nursing research—

(A) information about nursing research projects that are being developed or carried out in the Army, Navy, and Air Force; and

(B) expertise and information beneficial to the encouragement of meaningful nursing research.

(e) RESEARCH TOPICS.—For purposes of this section, military nursing research includes research on the following issues:

(1) Issues regarding how to improve the results of nursing care and services provided in the armed forces in time of peace.

(2) Issues regarding how to improve the results of nursing care and services provided in the armed forces in time of war.

(3) Issues regarding how to prevent complications associated with battle injuries.

(4) Issues regarding how to prevent complications associated with the transporting of patients in the military medical evacuation system.

(5) Issues regarding how to improve methods of training nursing personnel.

(6) Clinical nursing issues, including such issues as prevention and treatment of child abuse and spouse abuse.

(7) Women's health issues.

(8) Wellness issues.

(9) Preventive medicine issues.

(10) Home care management issues.

(11) Case management issues.

(Added Pub. L. 104–106, div. A, title VII, § 741(a), Feb. 10, 1996, 110 Stat. 384.)

PRIOR PROVISIONS

A prior section 2116, added Pub. L. 92–426, § 2(a), Sept. 21, 1972, 86 Stat. 716, directed Secretary of Defense to report periodically to Committees on Armed Services of the Senate and House of Representatives on feasibility of establishing educational institutions similar or identical to University at any other locations he deemed appropriate, with last such report to be submitted by June 30, 1976, prior to repeal by Pub. L. 98–94, title XII, § 1268(12)(A), Sept. 24, 1983, 97 Stat. 706.

[§ 2117. Repealed. Pub. L. 111–84, div. A, title V, § 525(a)(1), Oct. 28, 2009, 123 Stat. 2286]

Section, added Pub. L. 110–181, div. A, title IX, § 955(g)(1), Jan. 28, 2008, 122 Stat. 295, authorized Secretary of Defense to establish a School of Nursing. See section 2169 of this title.

PRIOR PROVISIONS

A prior section 2117, added Pub. L. 92–426, § 2(a), Sept. 21, 1972, 86 Stat. 716, authorized appropriations for the Uniformed Services University of the Health Sciences,

prior to repeal by Pub. L. 101–510, div. A, title XIV, § 1484(b)(2)(A), Nov. 5, 1990, 104 Stat. 1716.

CHAPTER 105—ARMED FORCES HEALTH PROFESSIONS FINANCIAL ASSISTANCE PROGRAMS

Subchapter		Sec.
I.	Health Professions Scholarship and Financial Assistance Program for Active Service	2120
II.	Nurse Officer Candidate Accession Program	2130a

AMENDMENTS

1994—Pub. L. 103–337, div. A, title XVI, § 1663(c)(7)(A), Oct. 5, 1994, 108 Stat. 3008, redesignated item for subchapter III as item for subchapter II and struck out former item for subchapter II ''Health Professions Stipend Program for Reserve Service''.

1989—Pub. L. 101–189, div. A, title VII, §§ 707(b), 725(h)(3), Nov. 29, 1989, 103 Stat. 1475, 1480, substituted ''and Financial Assistance Program'' for ''Program'' in item for subchapter I and added item for subchapter III.

1987—Pub. L. 100–180, div. A, title VII, § 711(a)(1), Dec. 4, 1987, 101 Stat. 1108, substituted ''FINANCIAL ASSISTANCE PROGRAMS'' for ''SCHOLARSHIP PROGRAM'' in chapter heading, and added subchapter analysis, consisting of subchapters I and II.

SUBCHAPTER I—HEALTH PROFESSIONS SCHOLARSHIP AND FINANCIAL ASSISTANCE PROGRAM FOR ACTIVE SERVICE

Sec.	
2120.	Definitions.
2121.	Establishment.
2122.	Eligibility for participation.
2123.	Members of the program: active duty obligation; failure to complete training; release from program.
2124.	Members of the program: numbers appointed.
2125.	Members of the program: exclusion from authorized strengths.
2126.	Members of the program: service credit.
2127.	Scholarships and financial assistance: payments.
2128.	Accession bonus for members of the program.

AMENDMENTS

2008—Pub. L. 110–181, div. A, title VI, § 623(b), Jan. 28, 2008, 122 Stat. 152, added item 2128.

1989—Pub. L. 101–189, div. A, title VII, § 725(d)(3), (h)(2), Nov. 29, 1989, 103 Stat. 1479, 1480, substituted ''AND FINANCIAL ASSISTANCE PROGRAM'' for ''PROGRAM'' in subchapter heading and ''Scholarships and financial assistance'' for ''Contracts for scholarships'' in item 2127.

1987—Pub. L. 100–180, div. A, title VII, § 711(a)(1), Dec. 4, 1987, 101 Stat. 1108, added subchapter heading.

1980—Pub. L. 96–513, title V, § 511(66), Dec. 12, 1980, 94 Stat. 2926, substituted in item 2123 ''program:'' for ''program;'', and in items 2124 to 2127 '':'' for '';'' wherever appearing.

§ 2120. Definitions

In this subchapter:

(1) The term ''program'' means the Armed Forces Health Professions Scholarship and Financial Assistance program provided for in this subchapter.

(2) The term ''member of the program'' means a person appointed a commissioned officer in a reserve component of the armed forces who is enrolled in the Armed Forces Health Professions Scholarship and Financial Assistance program.

(3) The term ''course of study'' means education received at an accredited college, university, or institution in medicine, dentistry, or other health profession, leading, respectively, to a degree related to the health professions as determined under regulations prescribed by the Secretary of Defense.

(4) The term ''specialized training'' means advanced training in a health professions specialty received in an accredited program that is beyond the basic education required for appointment as a commissioned officer with a designation as a health professional.

(Added Pub. L. 92–426, § 2(a), Sept. 21, 1972, 86 Stat. 717; amended Pub. L. 98–94, title XII, § 1268(13), Sept. 24, 1983, 97 Stat. 706; Pub. L. 100–26, § 7(k)(2), Apr. 21, 1987, 101 Stat. 284; Pub. L. 100–180, div. A, title VII, § 711(a)(2), Dec. 4, 1987, 101 Stat. 1108; Pub. L. 101–189, div. A, title VII, § 725(a), (h)(1), Nov. 29, 1989, 103 Stat. 1478, 1480.)

AMENDMENTS

1989—Pars. (1), (2). Pub. L. 101–189, § 725(h)(1), substituted ''Scholarship and Financial Assistance program'' for ''Scholarship program''.

Par. (4). Pub. L. 101–189, § 725(a), added par. (4).

1987—Pub. L. 100–180 substituted ''subchapter'' for ''chapter'' in introductory text and in par. (1).

Pub. L. 100–26 inserted ''The term'' after each par. designation and struck out uppercase letter of first word after first quotation marks in each par. and substituted lowercase letter.

1983—Pub. L. 98–94 substituted a colon for a dash after ''In this chapter'' in text preceding par. (1).

DEMONSTRATION PROJECT ON SERVICE OF RETIRED NURSE CORPS OFFICERS AS FACULTY AT CIVILIAN NURSING SCHOOLS

Pub. L. 110–417, [div. A], title V, § 597, Oct. 14, 2008, 122 Stat. 4479, as amended by Pub. L. 111–383, div. A, title X, § 1075(e)(8), Jan. 7, 2011, 124 Stat. 4375, which authorized the Secretary of Defense to conduct a demonstration project to encourage retired military nurses to serve as faculty at civilian nursing schools, expired on June 30, 2014.

§ 2121. Establishment

(a)(1) For the purpose of obtaining adequate numbers of commissioned officers on active duty who are qualified (A) in the various health professions or (B) as a health professional with specific skills to assist in providing mental health care to members of the armed forces, the Secretary of each military department, under regulations prescribed by the Secretary of Defense, may establish and maintain a health professions scholarship and financial assistance program for his department.

(2) Under the program of a military department, the Secretary of that military department shall allocate a portion of the total number of scholarships to members of the program described in paragraph (1)(B) for the purpose of assisting such members to pursue a degree at the masters and doctoral level in any of the following disciplines:

(A) Social work.

(B) Clinical psychology.

(C) Psychiatry.

(D) Other disciplines that contribute to mental health care programs in that military department.

(b) The program shall consist of courses of study and specialized training in designated health professions, with obligatory periods of military training.

(c)(1) Persons participating in the program shall be commissioned officers in reserve components of the armed forces. Members pursuing a course of study shall serve on active duty in pay grade O–1 with full pay and allowances of that grade for a period of 45 days during each year of participation in the program. Members pursuing specialized training shall serve on active duty in a pay grade commensurate with their educational level, as determined by appointment under section 12207 of this title, with full pay and allowances of that grade for a period of 14 days during each year of participation in the program. They shall be detailed as students at accredited civilian institutions, located in the United States or Puerto Rico, for the purpose of acquiring knowledge or training in a designated health profession. In addition, members of the program shall, under regulations prescribed by the Secretary of Defense, receive military and professional training and instruction.

(2) If a member of the uniformed services selected to participate in the program as a medical student has prior active service in a pay grade and with years of service credited for pay that would entitle the member, if the member remained in the former grade, to a rate of basic pay in excess of the rate of basic pay for regular officers in the grade of second lieutenant or ensign, the member shall be paid basic pay based on the former grade and years of service credited for pay. The amount of such basic pay for the member shall be increased on January 1 of each year by the percentage by which basic pay is increased on average on that date for that year, and the member shall continue to receive basic pay based on the former grade and years of service until the date, whether occurring before or after the conclusion of such participation, on which the basic pay for the member in the member's actual grade and years of service credited for pay exceeds the amount of basic pay to which the member is entitled based on the member's former grade and years of service.

(d) Except when serving on active duty pursuant to subsection (c), a member of the program shall be entitled to a stipend at a monthly rate established by the Secretary of Defense, but not to exceed a total of $30,000 per year. The maximum annual amount of the stipend shall be increased annually by the Secretary of Defense effective on July 1 of each year by an amount (rounded to the next highest multiple of $1) equal to—

(1) the amount of such stipend (as previously adjusted (if at all)), multiplied by

(2) the overall percentage of the adjustment (if such adjustment is an increase) in the rates of basic pay for members of the uniformed services made effective for the fiscal year in which the school year ends.

(Added Pub. L. 92–426, § 2(a), Sept. 21, 1972, 86 Stat. 717; amended Pub. L. 96–107, title VIII, § 804(a), Nov. 9, 1979, 93 Stat. 812; Pub. L. 98–94, title IX, § 935(a), Sept. 24, 1983, 97 Stat. 652; Pub. L. 101–189, div. A, title VII, § 725(b), Nov. 29, 1989, 103 Stat. 1479; Pub. L. 101–510, div. A, title XIV, § 1484(k)(7), Nov. 5, 1990, 104 Stat. 1719; Pub. L. 104–106, div. A, title XV, § 1501(c)(22), Feb. 10, 1996, 110 Stat. 499; Pub. L. 109–364, div. A, title V, § 538(a), Oct. 17, 2006, 120 Stat. 2209; Pub. L. 110–181, div. A, title V, § 524(b), Jan. 28, 2008, 122 Stat. 103; Pub. L. 111–84, div. A, title V, § 524(a), Oct. 28, 2009, 123 Stat. 2285.)

AMENDMENTS

2009—Subsec. (a). Pub. L. 111–84 designated existing provisions as par. (1), substituted ''(A) in the various health professions or (B) as a health professional with specific skills to assist in providing mental health care to members of the armed forces'' for ''in the various health professions'', and added par. (2).

2008—Subsec. (c). Pub. L. 110–181 designated existing provisions as par. (1) and added par. (2).

2006—Subsec. (d). Pub. L. 109–364, in introductory provisions, substituted ''at a monthly rate established by the Secretary of Defense, but not to exceed a total of $30,000 per year'' for ''at the rate of $579 per month'' and ''The maximum annual amount of the stipend'' for ''That rate''.

1996—Subsec. (c). Pub. L. 104–106 substituted ''section 12207'' for ''section 3353, 5600, or 8353''.

1990—Subsec. (c). Pub. L. 101–510 substituted ''section'' for ''sections'' in third sentence.

1989—Subsec. (a). Pub. L. 101–189, § 725(b)(1), substituted ''scholarship and financial assistance program'' for ''scholarship program''.

Subsec. (b). Pub. L. 101–189, § 725(b)(2), substituted ''study and specialized training'' for ''study''.

Subsec. (c). Pub. L. 101–189, § 725(b)(3), substituted ''pursuing a course of study'' for ''of the program'' and inserted after second sentence ''Members pursuing specialized training shall serve on active duty in a pay grade commensurate with their educational level, as determined by appointment under sections 3353, 5600, or 8353 of this title, with full pay and allowances of that grade for a period of 14 days during each year of participation in the program.''

1983—Subsec. (d). Pub. L. 98–94 amended subsec. (d) generally, substituting ''a stipend at the rate of $579 per month'' for ''a stipend at the rate in effect under paragraph (1)(B) of section 751(g) of the Public Health Service Act (42 U.S.C. 294t(g)) for students in the National Health Service Corps Scholarship program'' and inserting provision relating to an annual increase in the rate by the Secretary of Defense effective on July 1 of each year.

1979—Subsec. (d). Pub. L. 96–107 substituted provisions relating to entitlement to a stipend at the rate in effect for students in the National Health Services Corps Scholarship program, for provisions authorizing a stipend at the rate of $400 per month.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–364, div. A, title V, § 538(d), Oct. 17, 2006, 120 Stat. 2210, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and section 2127 of this title] shall take effect on October 1, 2006.

''(2) PROHIBITION ON ADJUSTMENTS.—The adjustments required by the second sentence of subsection (d) of section 2121 of title 10, United States Code, and the second sentence of subsection (e) of section 2127 of such title to be made in 2007 shall not be made.''

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–106, div. A, title XV, § 1501(c)(22), Feb. 10, 1996, 110 Stat. 499, provided that the amendment made by that section is effective on the effective date specified in section 1691(b)(1) of Pub. L. 103–337, set out as a note under section 10001 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Pub. L. 98–94, title IX, § 935(b), Sept. 24, 1983, 97 Stat. 652, provided that: ''The amendment made by sub-

section (a) [amending this section] shall take effect on October 1, 1983.''

EFFECTIVE DATE OF 1979 AMENDMENT

Pub. L. 96–107, title VIII, § 804(c), Nov. 9, 1979, 93 Stat. 812, provided that: ''The amendments made by this section [amending this section and section 313 of Title 37, Pay and Allowances of the Uniformed Services] shall take effect on October 1, 1979.''

MEMBERS OF RESERVE COMPONENTS; SPECIALIZED TRAINING ASSISTANCE IN THE HEALTH PROFESSIONS

Pub. L. 99–145, title VI, § 672(a)–(h), (j), Nov. 8, 1985, 99 Stat. 663, 664, effective Oct. 1, 1985, related to establishment and maintenance of program to provide financial assistance to persons engaged in specialized training in health professions who agree to incur Selective Reserve obligation of 3 years for each year for which financial assistance is provided, prior to repeal by Pub. L. 100–180, div. A, title VII, § 711(c)(1), (e)(1), Dec. 4, 1987, 101 Stat. 1111, effective Dec. 4, 1987, subject to a savings provision, see below.

Pub. L. 100–180, div. A, title VII, § 711(c)(2), Dec. 4, 1987, 101 Stat. 1111, provided that: ''The repeal of section 672 of the Department of Defense Authorization Act, 1986 [section 672 of Pub. L. 99–145, see above], by paragraph (1) does not affect an agreement entered into under that section before such repeal, and the provisions of such section as in effect before such repeal shall continue to apply with respect to such agreement.''

§ 2122. Eligibility for participation

(a) To be eligible for participation as a member of the program, a person must be a citizen of the United States and must—

(1) be accepted for admission to, or enrolled in, an institution in a course of study or selected to receive specialized training;

(2) sign an agreement that unless sooner separated he will—

(A) complete the educational phase of the program;

(B) accept an appropriate reappointment or designation within his military service, if tendered, based upon his health profession, following satisfactory completion of the program;

(C) participate in the intern program of his service if selected for such participation;

(D) participate in the residency program of his service, if selected, or be released from active duty for the period required to undergo civilian residency if selected for such training; and

(E) because of his sincere motivation and dedication to a career in the uniformed services, participate in military training while he is in the program, under regulations prescribed by the Secretary of Defense; and

(3) meet the requirements for appointment as a commissioned officer.

(b) The Secretary of Defense may require, as part of the agreement under subsection (a)(2), that a person must agree to accept, if offered, residency training in a health profession skill which has been designated by the Secretary as a critically needed wartime skill.

(Added Pub. L. 92–426, § 2(a), Sept. 21, 1972, 86 Stat. 717; amended Pub. L. 100–180, div. A, title VII, § 712(a), Dec. 4, 1987, 101 Stat. 1112; Pub. L. 101–189, div. A, title VII, § 725(c), Nov. 29, 1989, 103 Stat. 1479.)

AMENDMENTS

1989—Subsec. (a)(1). Pub. L. 101–189 substituted ''study or selected to receive specialized training'' for ''study, as that term is defined in section 2120(3) of this title''.

1987—Pub. L. 100–180 designated existing provisions as subsec. (a) and added subsec. (b).

§ 2123. Members of the program: active duty obligation; failure to complete training; release from program

(a) A member of the program incurs an active duty obligation. The amount of his obligation shall be determined under regulations prescribed by the Secretary of Defense, but those regulations may not provide for a period of obligation of less than one year for each year of participation in the program.

(b) A period of time spent in military intern or residency training shall not be creditable in satisfying an active duty obligation imposed by this section.

(c) A member of the program who, under regulations prescribed by the Secretary of Defense, is dropped from the program for deficiency in conduct or studies, or for other reasons, may be required to perform active duty in an appropriate military capacity in accordance with the active duty obligation imposed by this section.

(d) The Secretary of a military department, under regulations prescribed by the Secretary of Defense, may relieve a member of the program who is dropped from the program from an active duty obligation imposed by this section, but such relief shall not relieve him from any military obligation imposed by any other law.

(e)(1) A member of the program who is relieved of the member's active duty obligation under this subchapter before the completion of that active duty obligation may be given, with or without the consent of the member, any of the following alternative obligations, as determined by the Secretary of the military department concerned:

(A) A service obligation in another armed force for a period of time not less than the member's remaining active duty service obligation.

(B) A service obligation in a component of the Selected Reserve for a period not less than twice as long as the member's remaining active duty service obligation.

(C) Repayment to the Secretary of Defense of a percentage of the total cost incurred by the Secretary under this subchapter on behalf of the member pursuant to the repayment provisions of section 303a(e) or 373 of title 37.

(2) In addition to the alternative obligations specified in paragraph (1), if the member is relieved of an active duty obligation by reason of the separation of the member because of a physical disability, the Secretary of the military department concerned may give the member a service obligation as a civilian employee employed as a health care professional in a facility of the uniformed services for a period of time equal to the member's remaining active duty service obligation.

(3) The Secretary of Defense shall prescribe regulations describing the manner in which an alternative obligation may be given under this subsection.

(Added Pub. L. 92–426, § 2(a), Sept. 21, 1972, 86 Stat. 718; amended Pub. L. 96–513, title V, § 511(67), Dec. 12, 1980, 94 Stat. 2926; Pub. L. 100–180, div. A, title VII, § 711(a)(2), Dec. 4, 1987, 101 Stat. 1108; Pub. L. 101–597, title IV, § 401(b), Nov. 16, 1990, 104 Stat. 3035; Pub. L. 104–201, div. A, title VII, § 741(a), Sept. 23, 1996, 110 Stat. 2599; Pub. L. 109–163, div. A, title VI, § 687(c)(5), Jan. 6, 2006, 119 Stat. 3334; Pub. L. 115–91, div. A, title VI, § 618(a)(1)(E), Dec. 12, 2017, 131 Stat. 1426.)

AMENDMENTS

2017—Subsec. (e)(1)(C). Pub. L. 115–91 inserted ''or 373'' before ''of title 37''.

2006—Subsec. (e)(1)(C). Pub. L. 109–163 substituted ''pursuant to the repayment provisions of section 303a(e) of title 37.'' for ''equal to the percentage of the member's total active duty service obligation being relieved, plus interest.''

1996—Subsec. (e). Pub. L. 104–201 amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: ''Any member of the program relieved of his active duty obligation under this subchapter before the completion of such obligation may, under regulations prescribed by the Secretary of Defense, be assigned to a health professional shortage area designated by the Secretary of Health and Human Services for a period equal to the period of obligation from which he was relieved.''

1990—Subsec. (e). Pub. L. 101–597 substituted ''a health professional shortage area'' for ''an area of health manpower shortage''.

1987—Subsec. (e). Pub. L. 100–180 substituted ''subchapter'' for ''chapter''.

1980—Subsec. (e). Pub. L. 96–513 substituted ''Secretary of Health and Human Services'' for ''Secretary of Health, Education, and Welfare''.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–201 applicable with respect to individuals who first become members of Armed Forces Health Professions Scholarship and Financial Assistance program or students of Uniformed Services University of the Health Sciences on or after Oct. 1, 1996, see section 741(c) of Pub. L. 104–201, set out as a note under section 2114 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

SAVINGS PROVISION

For savings provision relating to payment or repayment of any bonus, incentive pay, special pay, or similar pay obligated to be paid before Apr. 1, 2006, under a provision of this section amended by section 687(c) of Pub. L. 109–163, see section 687(f) of Pub. L. 109–163, set out as a note under section 510 of this title.

TRANSITION PROVISIONS

Pub. L. 104–201, div. A, title VII, § 741(d)(1), Sept. 23, 1996, 110 Stat. 2600, provided that: ''In the case of any member of the Armed Forces Health Professions Scholarship and Financial Assistance program who, as of October 1, 1996, is serving an active duty obligation under the program or is incurring an active duty obligation as a participant in the program, and who is subsequently relieved of the active duty obligation before the completion of the obligation, the alternative obligations authorized by the amendment made by subsection (a) [amending this section] may be used by the Secretary of the military department concerned with the agreement of the member.''

§ 2124. Members of the program: numbers appointed

(a) AUTHORIZED NUMBER OF MEMBERS OF THE PROGRAM.—The number of persons who may be designated as members of the program for training in each health profession shall be as prescribed by the Secretary of Defense, except that the total number of persons so designated may not, at any time, exceed 6,300.

(b) MENTAL HEALTH PROFESSIONALS.—Of the number of persons designated as members of the program at any time, 300 may be members of the program described in section 2121(a)(1)(B) of this title.

(Added Pub. L. 92–426, § 2(a), Sept. 21, 1972, 86 Stat. 718; amended Pub. L. 99–145, title VI, § 672(i), Nov. 8, 1985, 99 Stat. 664; Pub. L. 100–180, div. A, title VII, §§ 711(a)(2), 712(b)(1), Dec. 4, 1987, 101 Stat. 1108, 1112; Pub. L. 101–189, div. A, title VII, § 725(g), Nov. 29, 1989, 103 Stat. 1480; Pub. L. 102–190, div. A, title VII, § 717, Dec. 5, 1991, 105 Stat. 1404; Pub. L. 111–84, div. A, title V, § 524(b), Oct. 28, 2009, 123 Stat. 2285.)

AMENDMENTS

2009—Pub. L. 111–84 designated existing provisions as subsec. (a), inserted heading, substituted ''6,300'' for ''6,000'', and added subsec. (b).

1991—Pub. L. 102–190 substituted ''except that the total number of persons so designated may not, at any time, exceed 6,000.'' for ''except that—

''(1) the total number of persons so designated in all of the programs authorized by this subchapter shall not, at any time, exceed 6,000; and

''(2) after September 30, 1991, of the total number of persons so designated, at least 2,500 shall be persons—

''(A) who are in the final two years of their course of study; and

''(B) who have agreed to accept, if offered, residency training in a health profession skill which has been designated by the Secretary as a critically needed wartime skill.''

1989—Par. (2). Pub. L. 101–189 inserted ''after September 30, 1991,'' after ''(2)''.

1987—Pub. L. 100–180, § 712(b)(1), substituted ''except that—'' and pars. (1) and (2) for ''except that the total number of persons so designated in all of the programs authorized by this subchapter shall not, at any time, exceed 6,000.''

Pub. L. 100–180, § 711(a)(2), substituted ''subchapter'' for ''chapter''.

1985—Pub. L. 99–145 substituted ''6,000'' for ''5,000''.

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100–180, div. A, title VII, § 712(b)(2), Dec. 4, 1987, 101 Stat. 1112, provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect on October 1, 1989.''

EFFECTIVE DATE OF 1985 AMENDMENT

Pub. L. 99–145, title VI, § 672(j), Nov. 8, 1985, 99 Stat. 664, which provided that amendment made by that section was to take effect on Oct. 1, 1985, was repealed by Pub. L. 100–180, § 711(c)(1), (e)(1), eff. Dec. 4, 1987.

REPEALS

The directory language of, but not the amendment made by, Pub. L. 99–145, title VI, § 672(i), Nov. 8, 1985, 99 Stat. 664, cited as a credit to this section, was repealed by Pub. L. 100–180, § 711(c)(1), (e)(1), eff. Dec. 4, 1987.

§ 2125. Members of the program: exclusion from authorized strengths

Notwithstanding any other provision of law, members of the program shall not be counted against any prescribed military strengths.

(Added Pub. L. 92–426, § 2(a), Sept. 21, 1972, 86 Stat. 718.)

§ 2126. Members of the program: service credit

(a) SERVICE NOT CREDITABLE.—Except as provided in subsection (b), service performed while a member of the program shall not be counted—

(1) in determining eligibility for retirement other than by reason of a physical disability incurred while on active duty as a member of the program; or

(2) in computing years of service creditable under section 205 of title 37.

(b) SERVICE CREDITABLE FOR CERTAIN PURPOSES.—(1) The Secretary concerned may authorize service performed by a member of the program in pursuit of a course of study under this subchapter to be counted in accordance with this subsection if the member—

(A) completes the course of study;

(B) completes the active duty obligation imposed under section 2123(a) of this title; and

(C) possesses a specialty designated by the Secretary concerned as critically needed in wartime.

(2) Service credited under paragraph (1) counts only for the award of retirement points for computation of years of service under section 12732 of this title and for computation of retired pay under section 12733 of this title.

(3) The number of points credited to a member under paragraph (1) for a year of participation in a course of study is 50. The points shall be credited to the member for one of the years of that participation at the end of each year after the completion of the course of study that the member serves in the Selected Reserve and is credited under section 12732(a)(2) of this title with at least 50 points. The points credited for the participation shall be recorded in the member's records as having been earned in the year of the participation in the course of study.

(4) Service may not be counted under paragraph (1) for more than four years of participation in a course of study as a member of the program.

(5) A member of the Selected Reserve may be considered to be in an active status while pursuing a course of study under this subchapter only for purposes of sections 12732(a) and 12733(3) of this title.

(6) A member is not entitled to any retroactive award of, or increase in, pay or allowances under title 37 by reason of an award of service credit under paragraph (1).

(Added Pub. L. 92–426, § 2(a), Sept. 21, 1972, 86 Stat. 718; amended Pub. L. 96–513, title V, § 501(22), Dec. 12, 1980, 94 Stat. 2908; Pub. L. 104–201, div. A, title V, § 543(a), Sept. 23, 1996, 110 Stat. 2521; Pub. L. 106–65, div. A, title V, § 544, Oct. 5, 1999, 113 Stat. 608.)

AMENDMENTS

1999—Subsec. (b)(2). Pub. L. 106–65, § 544(1), added par. (2) and struck out former par. (2) which read as follows: "Service credited under paragraph (1) counts only for the following purposes:

"(A) Award of retirement points for computation of years of service under section 12732 of this title and for computation of retired pay under section 12733 of this title.

"(B) Computation of years of service creditable under section 205 of title 37."

Subsec. (b)(3). Pub. L. 106–65, § 544(1), added par. (3) and struck out former par. (3) which read as follows: "For purposes of paragraph (2)(A), a member may be credited in accordance with paragraph (1) with not more than 50 points for each year of participation in a course of study that the member satisfactorily completes as a member of the program."

Subsec. (b)(5), (6). Pub. L. 106–65, § 544(2), (3), added par. (5) and redesignated former par. (5) as (6).

1996—Pub. L. 104–201 designated existing provisions as subsec. (a), inserted heading, substituted "Except as provided in subsection (b), service performed" for "Service performed", and added subsec. (b).

1980—Cl. (2). Pub. L. 96–513 struck out ", other than subsection (a)(7) and (8)," after "section 205".

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

§ 2127. Scholarships and financial assistance: payments

(a) The Secretary of Defense may provide for the payment of all educational expenses incurred by a member of the program, including tuition, fees, books, and laboratory expenses. Such payments, however, shall be limited to those educational expenses normally incurred by students at the institution and in the health profession concerned who are not members of the program.

(b) The Secretary of Defense may contract with an accredited civilian educational institution for the payment of tuition and other educational expenses of members of the program authorized by this subchapter. Payment to such institutions may be made without regard to subsections (a) and (b) of section 3324 of title 31.

(c) Payments made under subsection (b) shall not cover any expenses other than those covered by subsection (a).

(d) When the Secretary of Defense determines, under regulations prescribed by the Secretary of Health and Human Services, that an accredited civilian educational institution has increased its total enrollment for the sole purpose of accepting members of the program covered by this subchapter, he may provide under a contract with such an institution for additional payments to cover the portion of the increased costs of the additional enrollment which are not covered by the institution's normal tuition and fees.

(e) A person participating as a member of the program in specialized training shall be paid an annual grant in an amount not to exceed $45,000 in addition to the stipend under section 2121(d) of this title. The maximum amount of the grant shall be increased annually by the Secretary of Defense, effective July 1 of each year, in the same manner as provided for stipends.

(Added Pub. L. 92–426, § 2(a), Sept. 21, 1972, 86 Stat. 718; amended Pub. L. 96–513, title V, § 511(67), Dec. 12, 1980, 94 Stat. 2926; Pub. L. 97–258, § 3(b)(3), Sept. 13, 1982, 96 Stat. 1063; Pub. L. 98–525, title XIV, § 1405(56)(A), Oct. 19, 1984, 98 Stat. 2626; Pub. L. 100–180, div. A, title VII, § 711(a)(2), Dec. 4, 1987, 101 Stat. 1108; Pub. L. 101–189, div. A, title VII, § 725(d)(1), (2), Nov. 29, 1989, 103 Stat. 1479; Pub. L. 109–364, div. A, title V, § 538(b), Oct. 17, 2006, 120 Stat. 2209; Pub. L. 111–84, div. A, title X, § 1073(a)(19), Oct. 28, 2009, 123 Stat. 2473.)

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AMENDMENTS

2009—Subsec. (e). Pub. L. 111–84 struck out ''of'' after ''an annual grant''.

2006—Subsec. (e). Pub. L. 109–364 substituted ''in an amount not to exceed $45,000'' for ''$15,000'' and ''The maximum amount'' for ''The amount''.

1989—Pub. L. 101–189, § 725(d)(2), substituted ''Scholarships and financial assistance'' for ''Contracts for scholarships'' in section catchline.

Subsec. (e). Pub. L. 101–189, § 725(d)(1), added subsec. (e).

1987—Subsecs. (b), (d). Pub. L. 100–180 substituted ''subchapter'' for ''chapter''.

1984—Subsec. (b). Pub. L. 98–525 substituted ''subsections (a) and (b) of section 3324'' for ''section 3324(a) and (b)''.

1982—Subsec. (b). Pub. L. 97–258 substituted ''section 3324(a) and (b) of title 31'' for ''section 3648 of the Revised Statutes (31 U.S.C. 529)''.

1980—Subsec. (d). Pub. L. 96–513 substituted ''Secretary of Health and Human Services'' for ''Secretary of Health, Education, and Welfare''.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–364 effective Oct. 1, 2006, except that adjustments required by the second sentence of subsec. (e) of this section to be made in 2007 shall not be made, see section 538(d) of Pub. L. 109–364, set out as a note under section 2121 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

REPORTS ON IMPLEMENTATION AND ON SUCCESS OF FINANCIAL ASSISTANCE PROGRAM

Pub. L. 101–189, div. A, title VII, § 725(e), Nov. 29, 1989, 103 Stat. 1479, directed Secretary of Defense, not later than Mar. 1, 1990, to submit to Congress a report describing the manner in which the new authority provided by such section 725 (amending 10 U.S.C. 2120 to 2122, 2124, and 2127) was implemented.

Pub. L. 101–189, div. A, title VII, § 725(f), Nov. 29, 1989, 103 Stat. 1479, directed Secretary of Defense, not later than Mar. 1, 1991, to submit to Congress a report evaluating the success of the financial assistance program established by such section 725 and describing the number of participants in the program receiving specialized training payments under 10 U.S.C. 2127(e) and the projected number of officers to be gained, by specialty, as a result of the program for each military department.

§ 2128. Accession bonus for members of the program

(a) AVAILABILITY OF BONUS.—The Secretary of Defense may offer a person who enters into an agreement under section 2122(a)(2) of this title an accession bonus of not more than $20,000 as part of the agreement.

(b) RELATION TO OTHER PAYMENTS.—An accession bonus paid a person under this section is in addition to any other amounts payable to the person under this subchapter.

(c) REPAYMENT.—A person who receives an accession bonus under this section, but fails to comply with the agreement under section 2122(a)(2) of this title or to commence or complete the active duty obligation imposed by section 2123 of this title, shall be subject to the repayment provisions of section 303a(e) or 373 of title 37.

(Added Pub. L. 110–181, div. A, title VI, § 623(a), Jan. 28, 2008, 122 Stat. 152; amended Pub. L. 115–91, div. A, title VI, § 618(a)(1)(F), Dec. 12, 2017, 131 Stat. 1426.)

PRIOR PROVISIONS

Prior sections 2128 to 2130 were renumbered sections 16201 to 16203 of this title, respectively.

AMENDMENTS

2017—Subsec. (c). Pub. L. 115–91 inserted ''or 373'' before ''of title 37''.

EFFECTIVE DATE

Pub. L. 110–181, div. A, title VI, § 623(c), Jan. 28, 2008, 122 Stat. 152, provided that: ''The amendment made by subsection (a) [enacting this section] shall apply with respect to agreements entered into under section 2122(a)(2) of title 10, United States Code, on or after the date of the enactment of this Act [Jan. 28, 2008].''

SUBCHAPTER II—NURSE OFFICER CANDIDATE ACCESSION PROGRAM

Sec.
2130a. Financial assistance: nurse officer candidates.

PRIOR PROVISIONS

A prior subchapter II heading and analysis consisting of items 2128 to 2130 was repealed and sections 2128 to 2130 of this title were renumbered sections 16201 to 16203 of this title, respectively, by Pub. L. 103–337, div. A, title XVI, § 1663(c)(2)–(4)(A), (7)(B), Oct. 5, 1994, 108 Stat. 3007, 3008.

AMENDMENTS

1994—Pub. L. 103–337, div. A, title XVI, § 1663(c)(7)(C), Oct. 5, 1994, 108 Stat. 3008, redesignated subchapter III of this chapter as this subchapter.

1991—Pub. L. 101–189, div. A, title VII, § 707(a), Nov. 29, 1989, 103 Stat. 1474, added subchapter heading and item 2130a.

§ 2130a. Financial assistance: nurse officer candidates

(a) BONUS AUTHORIZED.—(1) A person described in subsection (b) who, during the period beginning on November 29, 1989, and ending on December 31, 2021, executes a written agreement in accordance with subsection (c) to accept an appointment as a nurse officer may, upon the acceptance of the agreement by the Secretary concerned, be paid an accession bonus of not more than $20,000. The bonus shall be paid in periodic installments, as determined by the Secretary concerned at the time the agreement is accepted, except that the first installment may not exceed $10,000.

(2) In addition to the accession bonus payable under paragraph (1), a person selected under such paragraph shall be entitled to a monthly stipend in an amount not to exceed the stipend rate in effect under section 2121(d) of this title for each month the individual is enrolled as a full-time student in an accredited baccalaureate degree program in nursing at a civilian educational institution by the Secretary selecting the person. The continuation bonus may be paid for not more than 24 months.

(b) ELIGIBLE STUDENTS.—A person eligible to enter into an agreement under subsection (a) is a person who—

(1) is enrolled as a full-time student in an accredited baccalaureate degree program in nursing at a civilian educational institution that does not have a Senior Reserve Officers' Training Corps program established under section 2102 of this title by the Secretary select-

ing the person or that has a Senior Reserve Officers' Training Corps program for which the student is ineligible;

(2) has completed the second year of an accredited baccalaureate degree program in nursing and has more than 6 months of academic work remaining before graduation; and

(3) meets the qualifications for appointment as an officer of a reserve component of the Army, Navy, or Air Force as set forth in section 12201 of this title or, in the case of the Public Health Service, section 207 of the Public Health Service Act (42 U.S.C. 209) and the regulations of the Secretary concerned.

(c) REQUIRED AGREEMENT.—The agreement referred to in subsection (a) shall provide that the person executing the agreement agrees to the following:

(1) That the person will complete the nursing degree program described in subsection (b)(1).

(2) That, upon acceptance of the agreement by the Secretary concerned, the person will enlist in a reserve component of an armed force.

(3) That the person will accept an appointment as an officer in the Nurse Corps of the Army or the Navy or as an officer designated as a nurse officer in the Air Force or commissioned corps of the Public Health Service, as the case may be, upon graduation from the nursing degree program.

(4) That the person will serve on active duty as such an officer—

(A) for a period of 4 years in the case of a person whose agreement was accepted by the Secretary concerned during that person's fourth year of the nursing degree program; or

(B) for a period of 5 years in the case of a person whose agreement was accepted by the Secretary concerned during that person's third year of the nursing degree program.

(d) REPAYMENT.—A person who does not complete a nursing degree program in which the person is enrolled in accordance with the agreement entered into under subsection (a), or having completed the nursing degree program, does not become an officer in the Nurse Corps of the Army or the Navy or an officer designated as a nurse officer of the Air Force or commissioned corps of the Public Health Service or does not complete the period of obligated active service required under the agreement, shall be subject to the repayment provisions of section 303a(e) or 373 of title 37.

(e) REGULATIONS.—The Secretaries concerned shall prescribe regulations to carry out this section.

(Added Pub. L. 101–189, div. A, title VII, § 707(a), Nov. 29, 1989, 103 Stat. 1474; amended Pub. L. 101–510, div. A, title VI, § 613(c), title XIV, § 1484(d)(1), Nov. 5, 1990, 104 Stat. 1577, 1716; Pub. L. 102–190, div. A, title VI, § 612(c)(1), Dec. 5, 1991, 105 Stat. 1376; Pub. L. 102–484, div. A, title VI, § 612(h), Oct. 23, 1992, 106 Stat. 2421; Pub. L. 103–160, div. A, title VI, § 611(a), Nov. 30, 1993, 107 Stat. 1679; Pub. L. 103–337, div. A, title VI, § 612(a), Oct. 5, 1994, 108 Stat. 2783; Pub. L. 104–106, div. A, title VI, § 612(a), title XV, § 1501(c)(23), Feb. 10, 1996, 110 Stat. 359, 499; Pub. L. 104–201, div. A, title VI, § 612(a), Sept. 23, 1996, 110 Stat. 2543; Pub. L. 105–85, div. A, title VI, § 612(a), Nov. 18, 1997, 111 Stat. 1786; Pub. L. 105–261, div. A, title VI, § 612(a), Oct. 17, 1998, 112 Stat. 2039; Pub. L. 106–65, div. A, title VI, § 612(a), Oct. 5, 1999, 113 Stat. 650; Pub. L. 106–398, § 1 [[div. A], title VI, § 622(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–151; Pub. L. 107–107, div. A, title V, § 538, title VI, § 612(a), Dec. 28, 2001, 115 Stat. 1107, 1135; Pub. L. 107–314, div. A, title VI, §§ 612(a), 615(h), Dec. 2, 2002, 116 Stat. 2567, 2569; Pub. L. 108–136, div. A, title VI, § 612(a), Nov. 24, 2003, 117 Stat. 1501; Pub. L. 108–375, div. A, title VI, § 612(a), Oct. 28, 2004, 118 Stat. 1947; Pub. L. 109–163, div. A, title VI, §§ 622(a), 687(c)(6), Jan. 6, 2006, 119 Stat. 3294, 3334; Pub. L. 109–364, div. A, title VI, § 612(a), Oct. 17, 2006, 120 Stat. 2248; Pub. L. 110–181, div. A, title VI, § 612(a), Jan. 28, 2008, 122 Stat. 148; Pub. L. 110–417, [div. A], title VI, §§ 612(a), 616(a), (b), Oct. 14, 2008, 122 Stat. 4484, 4486; Pub. L. 111–84, div. A, title VI, § 612(a)(1), title X, § 1073(c)(3), Oct. 28, 2009, 123 Stat. 2353, 2474; Pub. L. 111–383, div. A, title VI, § 612(a)(1), title X, § 1075(b)(28), Jan. 7, 2011, 124 Stat. 4236, 4370; Pub. L. 112–81, div. A, title VI, § 612(a)(1), Dec. 31, 2011, 125 Stat. 1449; Pub. L. 112–239, div. A, title VI, § 612(a)(1), Jan. 2, 2013, 126 Stat. 1776; Pub. L. 113–66, div. A, title VI, § 612(a)(1), Dec. 26, 2013, 127 Stat. 780; Pub. L. 113–291, div. A, title VI, § 612(a)(1), Dec. 19, 2014, 128 Stat. 3400; Pub. L. 114–92, div. A, title VI, § 612(a)(1), Nov. 25, 2015, 129 Stat. 838; Pub. L. 114–328, div. A, title VI, § 612(a)(1), Dec. 23, 2016, 130 Stat. 2157; Pub. L. 115–91, div. A, title VI, §§ 612(a)(1), 618(a)(1)(G), Dec. 12, 2017, 131 Stat. 1421, 1426; Pub. L. 115–232, div. A, title VI, § 611(b)(1), Aug. 13, 2018, 132 Stat. 1797; Pub. L. 116–92, div. A, title VI, § 611(b)(1), Dec. 20, 2019, 133 Stat. 1426; Pub. L. 116–283, div. A, title VI, § 611(b)(1), Jan. 1, 2021, 134 Stat. 3673.)

AMENDMENTS

2021—Subsec. (a)(1). Pub. L. 116–283 substituted ''December 31, 2021'' for ''December 31, 2020''.

2019—Subsec. (a)(1). Pub. L. 116–92 substituted ''December 31, 2020'' for ''December 31, 2019''.

2018—Subsec. (a)(1). Pub. L. 115–232 substituted ''December 31, 2019'' for ''December 31, 2018''.

2017—Subsec. (a)(1). Pub. L. 115–91, § 612(a)(1), substituted ''December 31, 2018'' for ''December 31, 2017''.

Subsec. (d). Pub. L. 115–91, § 618(a)(1)(G), inserted ''or 373'' before ''of title 37''.

2016—Subsec. (a)(1). Pub. L. 114–328 substituted ''December 31, 2017'' for ''December 31, 2016''.

2015—Subsec. (a)(1). Pub. L. 114–92 substituted ''December 31, 2016'' for ''December 31, 2015''.

2014—Subsec. (a)(1). Pub. L. 113–291 substituted ''December 31, 2015'' for ''December 31, 2014''.

2013—Subsec. (a)(1). Pub. L. 113–66 substituted ''December 31, 2014'' for ''December 31, 2013''.

Pub. L. 112–239 substituted ''December 31, 2013'' for ''December 31, 2012''.

2011—Subsec. (a)(1). Pub. L. 112–81 substituted ''December 31, 2012'' for ''December 31, 2011''.

Pub. L. 111–383, § 612(a)(1), substituted ''December 31, 2011'' for ''December 31, 2010''.

Subsec. (b)(1). Pub. L. 111–383, § 1075(b)(28), substituted ''Training Corps program'' for ''Training Program'' in two places.

2009—Subsec. (a)(1). Pub. L. 111–84, § 612(a)(1), substituted ''December 31, 2010'' for ''December 31, 2009''.

Subsec. (a)(2). Pub. L. 111–84, § 1073(c)(3), made technical amendment to directory language of Pub. L. 110–417, § 616(b). See 2008 Amendment note below.

2008—Subsec. (a)(1). Pub. L. 110–417, § 616(a), substituted ''$20,000'' for ''$10,000'' and ''$10,000'' for ''$5,000''.

Pub. L. 110–417, § 612(a), substituted ''December 31, 2009'' for ''December 31, 2008''.

Pub. L. 110–181 substituted ''December 31, 2008'' for ''December 31, 2007''.

Subsec. (a)(2). Pub. L. 110–417, § 616(b), as amended by Pub. L. 111–84, § 1073(c)(3), substituted ''in an amount not to exceed the stipend rate in effect under section 2121(d) of this title'' for ''of not more than $1,000''.

2006—Subsec. (a)(1). Pub. L. 109–364 substituted ''December 31, 2007'' for ''December 31, 2006''.

Pub. L. 109–163, § 622(a), substituted ''December 31, 2006'' for ''December 31, 2005''.

Subsec. (d). Pub. L. 109–163, § 687(c)(6), amended heading and text of subsec. (d) generally. Prior to amendment, text related to persons required to refund accession bonuses or stipends in par. (1), treatment of a reimbursement obligation as a debt owed to the United States in par. (2), and the effect of a discharge in bankruptcy in par. (3).

2004—Subsec. (a)(1). Pub. L. 108–375 substituted ''December 31, 2005'' for ''December 31, 2004''.

2003—Subsec. (a)(1). Pub. L. 108–136 substituted ''December 31, 2004'' for ''December 31, 2003''.

2002—Subsec. (a)(1). Pub. L. 107–314 substituted ''December 31, 2003'' for ''December 31, 2002'' and ''$10,000'' for ''$5,000'' in first sentence and ''$5,000'' for ''$2,500'' in second sentence.

Subsec. (a)(2). Pub. L. 107–314, § 615(h)(2), substituted ''$1,000'' for ''$500''.

2001—Subsec. (a)(1). Pub. L. 107–107, § 612(a), substituted ''December 31, 2002'' for ''December 31, 2001''.

Subsec. (a)(2). Pub. L. 107–107, § 538(1), struck out ''that does not have a Senior Reserve Officers' Training Program established under section 2102 of this title'' after ''civilian educational institution''.

Subsec. (b)(1). Pub. L. 107–107, § 538(2), inserted ''or that has a Senior Reserve Officers' Training Program for which the student is ineligible'' before semicolon at end.

2000—Subsec. (a)(1). Pub. L. 106–398 substituted ''December 31, 2001'' for ''December 31, 2000''.

1999—Subsec. (a)(1). Pub. L. 106–65 substituted ''December 31, 2000'' for ''December 31, 1999''.

1998—Subsec. (a)(1). Pub. L. 105–261 substituted ''December 31, 1999'' for ''September 30, 1999''.

1997—Subsec. (a)(1). Pub. L. 105–85 substituted ''September 30, 1999'' for ''September 30, 1998''.

1996—Subsec. (a)(1). Pub. L. 104–201 substituted ''September 30, 1998'' for ''September 30, 1997''.

Pub. L. 104–106, § 612(a), substituted ''September 30, 1997'' for ''September 30, 1996''.

Subsec. (b)(3). Pub. L. 104–106, § 1501(c)(23), substituted ''section 12201'' for ''section 591''.

1994—Subsec. (a)(1). Pub. L. 103–337 substituted ''September 30, 1996'' for ''September 30, 1995''.

1993—Subsec. (a)(1). Pub. L. 103–160 substituted ''September 30, 1995'' for ''September 30, 1993''.

1992—Subsec. (a)(1). Pub. L. 102–484 substituted ''September 30, 1993'' for ''September 30, 1992''.

1991—Subsec. (a)(1). Pub. L. 102–190 made amendment identical to that made by Pub. L. 101–510, § 613(c)(1). See 1990 Amendment note below.

1990—Subsec. (a)(1). Pub. L. 101–510, § 1484(d)(1)(A), substituted ''November 29, 1989,'' for ''the date of the enactment of the National Defense Authorization Act for Fiscal Years 1990 and 1991''.

Pub. L. 101–510, § 613(c)(1), substituted ''September 30, 1992,'' for ''September 30, 1991,''.

Subsecs. (a)(2), (b)(1). Pub. L. 101–510, § 613(c)(2), inserted ''by the Secretary selecting the person'' after ''section 2102 of this title''.

Subsec. (d)(3). Pub. L. 101–510, § 1484(d)(1)(B), substituted ''November 29, 1989'' for ''the date of the enactment of the National Defense Authorization Act for Fiscal Years 1990 and 1991''.

Effective Date of 2009 Amendment

Pub. L. 111–84, div. A, title X, § 1073(c), Oct. 28, 2009, 123 Stat. 2474, provided that the amendment made by section 1073(c)(3) is effective as of Oct. 14, 2008, and as if included in Pub. L. 110–417 as enacted.

Effective Date of 1996 Amendment

Pub. L. 104–106, div. A, title XV, § 1501(c), Feb. 10, 1996, 110 Stat. 498, provided that the amendment made by that section is effective as of Dec. 1, 1994, and as if included as an amendment made by the Reserve Officer Personnel Management Act, title XVI of Pub. L. 103–337, as originally enacted.

Savings Provision

For savings provision relating to payment or repayment of any bonus, incentive pay, special pay, or similar pay obligated to be paid before Apr. 1, 2006, under a provision of this section amended by section 687(c) of Pub. L. 109–163, see section 687(f) of Pub. L. 109–163, set out as a note under section 510 of this title.

Correction of Lapsed Authorities for Payment of Bonuses, Special Pays, and Similar Benefits for Members of the Uniformed Services

Pub. L. 110–181, div. A, title VI, § 610, Jan. 28, 2008, 122 Stat. 147, provided that:

''(a) Retroactive Effective Date for Payment Authorities.—The amendments made by sections 611, 612, 613, and 614 [amending this section and section 16302 of this title and sections 301b, 302d, 302e, 302g, 302h, 302j to 302*l*, 308, 308b, 308c, 308d, 308g to 308i, 309, 312, 312b, 312c, 323, 324, 326, 330, and 402 of Title 37, Pay and Allowances of the Uniformed Services] shall take effect as of December 31, 2007.

''(b) Ratification of Existing Contingent Agreements.—In the case of a provision of title 10 or 37, United States Code, amended by section 611, 612, 613, or 614 under which an individual must enter into an agreement with the Secretary concerned for receipt of a bonus, special pay, or similar benefit, the Secretary concerned may treat any agreement entered into under such a provision during the period beginning on January 1, 2008, and ending on the date of the enactment of this Act [Jan. 28, 2008] as having taken effect as of the date on which the agreement was signed by the individual.

''(c) Temporary Additional Agreement Authority.—

''(1) Authority.—In the case of a provision of title 10 or 37, United States Code, amended by section 611, 612, 613, or 614 under which an individual must enter into an agreement with the Secretary concerned for receipt of a bonus, special pay, or similar benefit, the Secretary concerned, during the 120-day period beginning on the date of the enactment of this Act [Jan. 28, 2008], may treat any agreement entered into under such a provision by an individual described in paragraph (2) as having been signed by the individual during the period beginning on January 1, 2008, and ending on the date of the enactment of this Act.

''(2) Covered individuals.—An individual referred to in paragraph (1) is an individual who would have met all of the qualifications for a bonus, special pay, or similar benefit under a provision of title 10 or 37, United States Code, amended by section 611, 612, 613, or 614 at any time during the period beginning on January 1, 2008, and ending on the date of the enactment of this Act, but for the fact that the statutory authority for the bonus, special pay, or similar benefit lapsed on December 31, 2007.

''(d) Tax Treatment.—The payment of a bonus, special pay, or similar benefit under a provision of title 10 or 37, United States Code, amended by section 611, 612, 613, or 614 to an individual who would have been entitled to the tax treatment accorded by section 112 of the Internal Revenue Code of 1986 [26 U.S.C. 112] on the date on which the member would have otherwise earned the bonus, special pay, or similar benefit, but for the fact that the statutory authority for the bonus, special pay, or similar benefit lapsed on December 31, 2007, shall be treated as covered by such section 112.

''(e) Retroactive Implementation of Army Referral Bonus.—The Secretary of the Army may pay a bonus under [former] section 3252 of title 10, United

States Code, as added by section 671(a)(1), to an individual referred to in subsection (a)(2) of such section 3252 who made a referral, as described in subsection (b) of such section 3252, to an Army recruiter during the period beginning on January 1, 2008, and ending on the date of the enactment of this Act [Jan. 28, 2008].

''(f) SECRETARY CONCERNED DEFINED.—In this section, the term 'Secretary concerned' has the meaning given that term in section 101(5) of title 37, United States Code.''

APPLICATION OF INCREASE

In case of amendment by section 615(h) of Pub. L. 107–314 to increase maximum amount of special pay or bonus that may be paid during any 12-month period, amended limitation is applicable to 12-month periods beginning after Sept. 30, 2002, see section 615(i) of Pub. L. 107–314, set out as a note under section 301d of Title 37, Pay and Allowances of the Uniformed Services.

COVERAGE OF PERIOD OF LAPSED AUTHORITY

Pub. L. 103–160, div. A, title VI, § 611(d), Nov. 30, 1993, 107 Stat. 1679, provided that:

''(1) In the case of a person described in paragraph (2) who executes an agreement described in paragraph (3) during the 90-day period beginning on the date of the enactment of this Act [Nov. 30, 1993], the Secretary concerned may treat the agreement for purposes of the accession bonus, monthly stipend, or special pay authorized under the agreement as having been executed and accepted on the first date on which the person would have qualified for such an agreement had the amendments made by this section [amending this section and sections 302d and 302e of Title 37, Pay and Allowances of the Uniformed Services] taken effect on October 1, 1993.

''(2) A person referred to in paragraph (1) is a person described in section 2130a(b) of title 10, United States Code, or section 302d(a)(1) or 302e(b) of title 37, United States Code, who, during the period beginning on October 1, 1993, and ending on the date of the enactment of this Act, would have qualified for an agreement described in paragraph (3) had the amendments made by this section taken effect on October 1, 1993.

''(3) An agreement referred to in this subsection is an agreement with the Secretary concerned that is a condition for the payment of an accession bonus and monthly stipend under section 2130a of title 10, United States Code, an accession bonus under section 302d of title 37, United States Code, or incentive special pay under section 302e of title 37, United States Code.

''(4) For purposes of this subsection, the term 'Secretary concerned' has the meaning given that term in section 101(5) of title 37, United States Code.''

[For provisions relating to coverage of period of lapsed authority from Oct. 1, 1992, to Oct. 23, 1992, for payment of bonuses or other special pay under this section, see section 612(j)(2) of Pub. L. 102–484, set out as a note under section 301b of Title 37, Pay and Allowances of the Uniformed Services.]

ACCESSION BONUSES FOR CANDIDATES EXECUTING AGREEMENTS DURING 90-DAY PERIOD BEGINNING DECEMBER 5, 1991

Section 612(c)(2) of Pub. L. 102–190 provided that:

''(A) In the case of a person described in subparagraph (B) who executes an agreement under section 2130a of such title [10 U.S.C. 2130a] during the 90-day period beginning on the date of the enactment of this Act [Dec. 5, 1991], the Secretary concerned may treat such agreement as having been executed and accepted for purposes of such section on the first date on which the person would have qualified for such an agreement had the amendment made by paragraph (1) [amending this section] taken effect on October 1, 1991.

''(B) A person referred to in subparagraph (A) is a person who, during the period beginning on October 1, 1991, and ending on the date of the enactment of this Act, would have qualified for an agreement under such section had the amendment made by paragraph (1) taken effect on October 1, 1991.

''(C) For purposes of this paragraph, the term 'Secretary concerned' has the meaning given that term in section 101(8) of such title [10 U.S.C. 101(8)].''

CHAPTER 106—EDUCATIONAL ASSISTANCE FOR MEMBERS OF THE SELECTED RESERVE

Sec.
2131. Reference to chapter 1606.
[2132 to 2137. Renumbered.]
2138. Savings provision.

AMENDMENTS

1994—Pub. L. 103–337, div. A, title XVI, § 1663(b)(7), Oct. 5, 1994, 108 Stat. 3007, added items 2131 and 2138 and struck out former items 2131 to 2138.

1984—Pub. L. 98–525, title VII, § 705(a)(1), Oct. 19, 1984, 98 Stat. 2564, substituted ''MEMBERS OF THE SELECTED RESERVE'' for ''ENLISTED MEMBERS OF THE SELECTED RESERVE OF THE READY RESERVE'' in chapter heading, ''Time limitation for use of entitlement'' for ''Termination of assistance; refund by member'' in item 2133, ''Termination of assistance'' for ''Reports to Congress'' in item 2134, ''Failure to participate satisfactorily; penalties'' for ''Termination of program'' in item 2135, and added items 2136 to 2138.

§ 2131. Reference to chapter 1606

Provisions of law relating to educational assistance for members of the Selected Reserve under the Montgomery GI Bill program are set forth in chapter 1606 of this title (beginning with section 16131).

(Added Pub. L. 103–337, div. A, title XVI, § 1663(b)(7), Oct. 5, 1994, 108 Stat. 3007.)

PRIOR PROVISIONS

Prior section 2131 was renumbered section 16131 of this title.

EFFECTIVE DATE

Section effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as a note under section 10001 of this title.

[§ 2132. Renumbered § 16132]

[§ 2133. Renumbered § 16133]

[§ 2134. Renumbered § 16134]

[§ 2135. Renumbered § 16135]

[§ 2136. Renumbered § 16136]

[§ 2137. Renumbered § 16137]

§ 2138. Savings provision

A member who entered into an agreement under this chapter before July 1, 1985, shall continue to be eligible for educational assistance in accordance with the terms of such agreement and of this chapter as in effect before such date.

(Added Pub. L. 98–525, title VII, § 705(a)(1), Oct. 19, 1984, 98 Stat. 2567.)

EFFECTIVE DATE

Section effective July 1, 1985, applicable only to members of the Armed Forces who qualify for educational assistance under this chapter on or after such date, see section 705(b) of Pub. L. 98–525, set out as an Effective Date of 1984 Amendment note under section 16131 of this title.

CHAPTER 106A—EDUCATIONAL ASSISTANCE FOR PERSONS ENLISTING FOR ACTIVE DUTY

Sec.

2141. Educational assistance program: establishment.
2142. Educational assistance program: eligibility.
2143. Educational assistance: amount.
2144. Subsistence allowance.
2145. Adjustments of amount of educational assistance and of subsistence allowance.
2146. Right of member upon subsequent reenlistment to lump-sum payment in lieu of educational assistance.
2147. Right of member after reenlisting to transfer entitlement to spouse or dependent children.
2148. Duration of entitlement.
2149. Applications for educational assistance.

AMENDMENTS

2004—Pub. L. 108–375, div. A, title V, § 532(a)(1), Oct. 28, 2004, 118 Stat. 1896, renumbered chapter 107 of this title as this chapter.

§ 2141. Educational assistance program: establishment

(a) To encourage enlistments and reenlistments for service on active duty in the armed forces, the Secretary of each military department may establish a program in accordance with this chapter to provide educational assistance to persons enlisting or reenlisting in an armed force under his jurisdiction. The costs of any such program shall be borne by the Department of Defense, and a person participating in any such program may not be required to make any contribution to the program.

(b) The Secretary of Defense shall prescribe regulations for the administration of this chapter. Such regulations shall take account of the differences among the several armed forces.

(c) In this chapter, the term ''enlistment'' means original enlistment or reenlistment.

(Added Pub. L. 96–342, title IX, § 901(a), Sept. 8, 1980, 94 Stat. 1111; amended Pub. L. 100–180, div. A, title XII, § 1231(18)(A), Dec. 4, 1987, 101 Stat. 1161; Pub. L. 100–456, div. A, title XII, § 1233(k)(1), Sept. 29, 1988, 102 Stat. 2058.)

AMENDMENTS

1988—Subsec. (c). Pub. L. 100–456 inserted ''the term'' after ''In this chapter,''.

1987—Pub. L. 100–180, which directed that subsec. (c) be amended by inserting ''the term'' after ''In this section,'', could not be executed because that phrase did not appear. See 1988 Amendment note above.

REPAYMENT OF LOANS FOR SERVICE IN THE ARMED FORCES; AUTHORIZATION, CRITERIA, ETC.

Pub. L. 96–342, title IX, § 902, Sept. 8, 1980, 94 Stat. 1115, as amended by Pub. L. 97–86, title IV, § 406, Dec. 1, 1981, 95 Stat. 1106; Pub. L. 98–94, title X, § 1034, Sept. 24, 1983, 97 Stat. 672; Pub. L. 98–525, title VII, § 709, Oct. 19, 1984, 98 Stat. 2572, provided that the Secretary of Defense could repay any loan made, insured, or guaranteed under part B of the Higher Education Act of 1965, or any loan made under part E of that Act, after Oct. 1, 1975, and further provided for the administration and criteria for such repayment, prior to repeal by Pub. L. 99–145, title VI, § 671(a)(3), Nov. 8, 1985, 99 Stat. 663. See section 2171 et seq. of this title.

EDUCATIONAL ASSISTANCE PILOT PROGRAM; PAYMENT OF MONTHLY CONTRIBUTION BY SECRETARY; MANNER, SCOPE, ETC., OF PAYMENTS

Pub. L. 96–342, title IX, § 903, Sept. 8, 1980, 94 Stat. 1115, provided that:

''(a)(1) As a means of encouraging enlistments and reenlistments in the Armed Forces, the Secretary of Defense, on behalf of any person who enlists or reenlists in the Armed Forces after September 30, 1980, and before October 1, 1981, and who elects or has elected to participate in the Post-Vietnam Era Veterans' Educational Assistance Program provided for under chapter 32 of title 38, United States Code, may pay the monthly contribution otherwise deducted from the military pay of such person. No deduction may be made under section 1622 [now 3222] of title 38, United States Code, from the military pay of any person for any month to the extent that the contribution otherwise required to be made by such person under such section for such month is paid by the Secretary of Defense.

''(2) No payment may be made under this section on behalf of any person for any month before the month in which such person enlisted or reenlisted in the Armed Forces or for any month before October 1980.

''(b) The amount paid by the Secretary of Defense under this section on behalf of any person shall be deposited to the credit of such person in the Post-Vietnam Era Veterans Education Account established under section 1622(a) [now 3222(a)] of title 38, United States Code.

''(c)(1) Except as provided in paragraph (2), the provisions of chapter 32 of title 38, United States Code, shall be applicable to payments made by the Secretary of Defense under this section.

''(2) Notwithstanding the provisions of section 1631(a)(4) [now 3231(a)(4)] of title 38, United States Code, the Secretary of Defense, in the case of any person who enlists or reenlists in the Armed Forces or any officer who is ordered to active duty with the Armed Forces after September 30, 1980, and before October 1, 1981, or whose active duty obligation with the Armed Forces is extended after September 30, 1980, and before October 1, 1981, and who is a participant in the educational assistance program described in subsection (a), may make monthly payments out of the Post-Vietnam Era Veterans Education Account to the spouse or child of such person to assist such spouse or child in the pursuit of a program of education. Payments under this subsection may be made to the spouse or child of a person participating in such educational assistance program only upon the request of such person and only for such period of time as may be specified by such person. The total amount paid under this subsection in the case of any spouse or child may not exceed the amount credited to such person in the Post-Vietnam Era Veterans Education Account.

''(d)(1) The authority conferred on the Secretary of Defense under this section shall be used by the Secretary only for the purpose of encouraging persons who possess critical military specialties (as determined by the Secretary of Defense) to enter or to remain in the Armed Forces.

''(2) Except as otherwise provided in this section, the Secretary of Defense may offer the benefits of this section to persons eligible therefor for such period as the Secretary determines necessary or appropriate to achieve the purpose of this section.

''(f) As used in this section:

''(1) The term 'program of education' shall have the same meaning as provided in chapter 32 of title 38, United States Code.

''(2) The term 'child' shall have the same meaning as provided in section 101(4) of title 38, United States Code.

''(3) The term 'Armed Forces' means the Army, Navy, Air Force, and Marine Corps.''

AUTHORIZATION OF APPROPRIATIONS; ALLOCATION OF AMOUNTS

Pub. L. 96–342, title IX, § 904, Sept. 8, 1980, 94 Stat. 1116, provided that:

''(a) There is hereby authorized to be appropriated to carry out chapter 107 of title 10, United States Code (as added by section 901), and sections 902 and 903 [set out above] a total of $75,000,000.

''(b) The Secretary of Defense shall equitably allocate the amount appropriated under this section among the educational assistance program provided for under chapter 107 of title 10, United States Code (as added by section 901), the repayment as authorized by section 902 [set out above] of loans made, insured, or guaranteed under part B of the Higher Education Act of 1965 [20 U.S.C. 1071 et seq.] and of loans made under part E of such Act [20 U.S.C. 1087aa et seq.], and the educational assistance program provided for under section 903 [set out above].''

REPORTS ON EDUCATIONAL ASSISTANCE PROGRAMS; SUBMISSION, CONTENTS, ETC.

Pub. L. 96–342, title IX, § 905, Sept. 8, 1980, 94 Stat. 1117, directed Secretary of Defense to submit to Congress, quarterly for fiscal year 1981, a report on the implementation and operation of the educational assistance program provided for under chapter 107 of this title and of the programs provided for under sections 902 and 903 of Pub. L. 96–342, set out above, and to also submit, not later than Dec. 31, 1981, a report on the extent to which the educational assistance program provided for under chapter 107 of this title, the Post-Vietnam Era Veterans' Educational Assistance Program provided for under chapter 32 of title 38, and the program established under section 902 of Pub. L. 96–342 have encouraged persons to enter or remain in the Armed Forces.

§ 2142. Educational assistance program: eligibility

(a)(1) A program of educational assistance established under this chapter shall provide that any person enlisting or reenlisting in an armed force under the jurisdiction of the Secretary of the military department concerned who meets the eligibility requirements established by the Secretary in accordance with subsection (b) shall, subject to paragraph (3), become entitled to educational assistance under section 2143 of this title at the time of such enlistment.

(2) The period of educational assistance to which such a person becomes entitled is one standard academic year (or the equivalent) for each year of the enlistment of such person, up to a maximum of four years. However, if the person is discharged or otherwise released from active duty after completing two years of the term of such enlistment but before completing the full term of such enlistment (or before completing four years of such term, in the case of an enlistment of more than four years), then the period of educational assistance to which the person is entitled is one standard academic year (or the equivalent) for each year of active service of such person during such term. For the purposes of the preceding sentence, a portion of a year of active service shall be rounded to the nearest month and shall be prorated to a standard academic year.

(3)(A) A member who is discharged or otherwise released from active duty before completing two years of active service of an enlistment which is the basis for entitlement to educational assistance under this chapter or who is discharged or otherwise released from active duty under other than honorable conditions is not entitled to educational assistance under this chapter.

(B) Entitlement to educational assistance under this chapter may not be used until a member has completed two years of active service of the enlistment which is the basis for entitlement to such educational assistance.

(b) In establishing requirements for eligibility for an educational assistance program under this chapter, the Secretary concerned shall limit eligibility to persons who—

(1) enlist or reenlist for service on active duty as a member of the Army, Navy, Air Force, or Marine Corps after September 30, 1980, and before October 1, 1981;

(2) are graduates from a secondary school; and

(3) meet such other requirements as the Secretary may consider appropriate for the purposes of this chapter and the needs of the armed forces.

(Added Pub. L. 96–342, title IX, § 901(a), Sept. 8, 1980, 94 Stat. 1111.)

§ 2143. Educational assistance: amount

(a) Subject to subsection (b), an educational assistance program established under section 2141 of this title shall provide for payment by the Secretary concerned of educational expenses incurred for instruction at an accredited institution by a person entitled to such assistance under this chapter. Expenses for which payment may be made under this section include tuition, fees, books, laboratory fees, and shop fees for consumable materials used as part of classroom or laboratory instruction. Payments under this section shall be limited to those educational expenses normally incurred by students at the institution involved.

(b)(1) The Secretary concerned shall establish the amount of educational assistance for a standard academic year (or the equivalent) to which a person becomes entitled under this chapter at the time of an enlistment described in section 2142 of this title. Depending on the needs of the service, different amounts may be established for different categories of persons or enlistments. The amount of educational assistance to which any person is entitled shall be adjusted in accordance with section 2145 of this title.

(2) The amount of educational assistance which may be provided to any person for a standard academic year (or the equivalent) may not exceed $1,200, adjusted in accordance with section 2145 of this title.

(c) In this section, the term ''accredited institution'' means a civilian college or university or a trade, technical, or vocational school in the United States (including the District of Columbia, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands) that provides education at the postsecondary level and that is accredited by a nationally recognized accrediting agency or association or by an accrediting agency or association recognized by the Secretary of Education.

(Added Pub. L. 96–342, title IX, § 901(a), Sept. 8, 1980, 94 Stat. 1112; amended Pub. L. 100–180, div.

A, title XII, § 1231(18)(A), Dec. 4, 1987, 101 Stat. 1161.)

AMENDMENTS

1987—Subsec. (c). Pub. L. 100–180 inserted "the term" after "In this section,".

§ 2144. Subsistence allowance

(a) Subject to subsection (b), a person entitled to educational assistance under this chapter is entitled to receive a monthly subsistence allowance during any period for which educational assistance is provided such person. The amount of a subsistence allowance under this section is $300 per month, adjusted in accordance with section 2145 of this title, in the case of a person pursuing a course of instruction on a full-time basis and is one-half of such amount (as so adjusted) in the case of a person pursuing a course of instruction on less than a full-time basis.

(b) The number of months for which a subsistence allowance may be provided to any person under this section is computed on the basis of nine months for each standard academic year of educational assistance to which such person is entitled.

(c) For purposes of subsection (a), a person shall be considered to be pursuing a course of instruction on a full-time basis if the person is enrolled in twelve or more semester hours of instruction (or the equivalent, as determined by Secretary concerned).

(Added Pub. L. 96–342, title IX, § 901(a), Sept. 8, 1980, 94 Stat. 1112.)

§ 2145. Adjustments of amount of educational assistance and of subsistence allowance

(a) Once each year, the Secretary of Defense shall adjust the amount of educational assistance which may be provided to any person in any standard academic year under section 2143 of this title, and the amount of the subsistence allowance authorized under section 2144 of this title for pursuit of a course of instruction on a full-time basis, in a manner consistent with the change over the preceding twelve-month period in the average actual cost of attendance at public institutions of higher education.

(b) In this section, the term "actual cost of attendance" has the meaning given the term "cost of attendance" by section 472 of the Higher Education Act of 1965 (20 U.S.C. 1087*ll*).

(Added Pub. L. 96–342, title IX, § 901(a), Sept. 8, 1980, 94 Stat. 1113; amended Pub. L. 100–180, div. A, title XII, § 1231(18)(A), Dec. 4, 1987, 101 Stat. 1161; Pub. L. 103–35, title II, § 201(c)(2), May 31, 1993, 107 Stat. 98.)

AMENDMENTS

1993—Subsec. (b). Pub. L. 103–35 substituted "has the meaning given the term 'cost of attendance' by section 472 of the Higher Education Act of 1965 (20 U.S.C. 1087*ll*)" for "means the actual cost of attendance as determined by the Secretary of Education pursuant to section 411(a)(2)(B)(iv) of the Higher Education Act of 1965 (20 U.S.C. 1070a(a)(2)(B)(iv))".

1987—Subsec. (b). Pub. L. 100–180 inserted "the term" after "In this section,".

§ 2146. Right of member upon subsequent reenlistment to lump-sum payment in lieu of educational assistance

(a) A member who is entitled to educational assistance under this chapter and who reenlists at the end of the enlistment which established such entitlement may, at the time of such reenlistment, elect to receive a lump-sum payment computed under subsection (b) in lieu of receiving such educational assistance. An election to receive such a lump-sum payment is irrevocable.

(b) The amount of a lump-sum payment under subsection (a) is 60 percent of the sum of—

(1) the product of (A) the rate for educational assistance under section 2143(b) of this title applicable to such member which is in effect at the time of such reenlistment, and (B) the number of standard academic years of entitlement of such member to such assistance; and

(2) the product of (A) the rate for the subsistence allowance authorized under section 2144 of this title for pursuit of a course of instruction on a full-time basis at the time of such reenlistment, and (B) the number of months of entitlement of such member to such allowance.

(Added Pub. L. 96–342, title IX, § 901(a), Sept. 8, 1980, 94 Stat. 1113.)

§ 2147. Right of member after reenlisting to transfer entitlement to spouse or dependent children

(a)(1)(A) A person who is entitled to educational assistance under section 2142 of this title and who reenlisted in an armed force at any time after the end of the enlistment which established such entitlement may at any time after such reenlistment elect to transfer all or any part of such entitlement to the spouse or dependent child of such person.

(B) The Secretary of the Navy may authorize a member of the Navy or Marine Corps who is entitled to educational assistance under section 2142 of this title and whose enlistment that established such entitlement was the member's second reenlistment as a member of the armed forces to transfer all or part of such entitlement to the spouse or dependent child of such member after the completion of four years of active service of that second reenlistment if that reenlistment was for a period of at least six years.

(C) A transfer under this paragraph may be revoked at any time by the person making the transfer.

(2) If a person described in paragraph (1) dies before making an election authorized by such paragraph but has never made an election not to transfer such entitlement, any unused entitlement of such person shall be automatically transferred to such person's surviving spouse or (if there is no eligible surviving spouse) to such person's dependent children. A surviving spouse to whom entitlement to educational assistance is transferred under this paragraph may elect to transfer such entitlement to the dependent children of the person whose service established such entitlement.

(3) Any transfer of entitlement under this subsection shall be made in accordance with regula-

tions prescribed by the Secretary of the military department concerned.

(b) A spouse or surviving spouse or a dependent child to whom entitlement is transferred under subsection (a) is entitled to educational assistance under this chapter in the same manner and at the same rate as the person from whom the entitlement was transferred.

(c) The total amount of educational assistance available to a person entitled to educational assistance under section 2142 of this title and to the person's spouse, surviving spouse, and dependent children is the amount of educational assistance to which the person is entitled. If more than one person is being provided educational assistance for the same period by virtue of the entitlement of the same person, the subsistence allowance authorized by section 2144 of this title shall be divided in such manner as the person may specify or (if the person fails to specify) as the Secretary concerned may prescribe.

(d) In this section:

(1) The term ''dependent child'' has the meaning given the term ''dependent'' in section 1072(2)(D) of this title.

(2) The term ''surviving spouse'' means a widow or widower who is not remarried.

(Added Pub. L. 96–342, title IX, § 901(a), Sept. 8, 1980, 94 Stat. 1113; amended Pub. L. 97–22, § 10(b)(3), July 10, 1981, 95 Stat. 137; Pub. L. 99–145, title VI, § 673, Nov. 8, 1985, 99 Stat. 664; Pub. L. 100–180, div. A, title XII, § 1231(17), Dec. 4, 1987, 101 Stat. 1161.)

AMENDMENTS

1987—Subsec. (d)(1), (2). Pub. L. 100–180 inserted ''The term'' after each par. designation and revised first word in quotes in each par. to make initial letter of such word lowercase.

1985—Subsec. (a)(1). Pub. L. 99–145 designated existing first sentence as subpar. (A), added subpar. (B), and incorporated existing second sentence as subpar. (C).

1981—Subsec. (d)(1). Pub. L. 97–22 substituted ''section 1072(2)(D) of this title'' for ''section 1072(2)(E) of this title''.

EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97–22, § 10(b), July 10, 1981, 95 Stat. 137, provided that the amendment made by that section is effective Sept. 15, 1981.

§ 2148. Duration of entitlement

The entitlement of any person to educational assistance under this chapter expires at the end of the ten-year period beginning on the date of the retirement or discharge or other separation from active duty of the person upon whose service such entitlement is based. In the case of a member entitled to educational assistance under this chapter who dies while on active duty and whose entitlement is transferred to a spouse or dependent child, such entitlement expires at the end of the ten-year period beginning on the date of such member's death.

(Added Pub. L. 96–342, title IX, § 901(a), Sept. 8, 1980, 94 Stat. 1114.)

§ 2149. Applications for educational assistance

To receive educational assistance benefits under this chapter, a person entitled to such assistance under section 2142 or 2147 of this title shall submit an application for such assistance to the Secretary concerned in such form and manner as the Secretary concerned may prescribe.

(Added Pub. L. 96–342, title IX, § 901(a), Sept. 8, 1980, 94 Stat. 1114.)

CHAPTER 107—PROFESSIONAL MILITARY EDUCATION

Sec.
2151. Definitions.
2152. Joint professional military education: general requirements.
2153. Capstone course: newly selected general and flag officers.
2154. Joint professional military education: three-phase approach.
2155. Joint professional military education Phase II program of instruction.
2156. Joint Forces Staff College: duration of principal course of instruction.
[2157. Repealed.]

PRIOR PROVISIONS

A prior chapter 107 was renumbered chapter 106A of this title.

AMENDMENTS

2017—Pub. L. 115–91, div. A, title X, § 1051(a)(10)(B), Dec. 12, 2017, 131 Stat. 1561, struck out item 2157 ''Annual report to Congress''.

2006—Pub. L. 109–364, div. A, title X, § 1071(a)(12), (13), Oct. 17, 2006, 120 Stat. 2399, substituted ''Joint professional'' for ''Professional'' in item 2152 and ''Phase'' for ''phase'' in item 2155.

§ 2151. Definitions

(a) JOINT PROFESSIONAL MILITARY EDUCATION.—Joint professional military education consists of the rigorous and thorough instruction and examination of officers of the armed forces in an environment designed to promote a theoretical and practical in-depth understanding of joint matters and, specifically, of the subject matter covered. The subject matter to be covered by joint professional military education shall include at least the following:

(1) National Military Strategy.

(2) Joint planning at all levels of war.

(3) Joint doctrine.

(4) Joint command and control.

(5) Joint force and joint requirements development.

(6) Operational contract support.

(b) OTHER DEFINITIONS.—In this chapter:

(1) The term ''senior level service school'' means any of the following:

(A) The Army War College.

(B) The College of Naval Warfare.

(C) The Air War College.

(D) The Marine Corps War College.

(2) The term ''intermediate level service school'' means any of the following:

(A) The United States Army Command and General Staff College.

(B) The College of Naval Command and Staff.

(C) The Air Command and Staff College.

(D) The Marine Corps Command and Staff College.

(3) The term ''joint intermediate level school'' includes the National Defense Intelligence College.

(Added Pub. L. 108–375, div. A, title V, § 532(a)(2), Oct. 28, 2004, 118 Stat. 1897; amended Pub. L. 112–81, div. A, title V, § 552(a)(2), Dec. 31, 2011, 125 Stat. 1412; Pub. L. 112–239, div. A, title VIII, § 845(c), Jan. 2, 2013, 126 Stat. 1848.)

AMENDMENTS

2013—Subsec. (a)(6). Pub. L. 112–239 added par. (6).

2011—Subsec. (b)(3). Pub. L. 112–81 added par. (3).

CHANGE OF NAME

National Defense Intelligence College changed to National Intelligence University by Department of Defense Instruction 3305.01 on Feb. 9, 2011.

§ 2152. Joint professional military education: general requirements

(a) IN GENERAL.—The Secretary of Defense shall implement a comprehensive framework for the joint professional military education of officers, including officers nominated under section 661 of this title for the joint specialty.

(b) JOINT MILITARY EDUCATION SCHOOLS.—The Secretary of Defense, with the advice and assistance of the Chairman of the Joint Chiefs of Staff, shall periodically review and revise the curriculum of each school of the National Defense University (and of any other joint professional military education school) to enhance the education and training of officers in joint matters. The Secretary shall require such schools to maintain rigorous standards for the military education of officers with the joint specialty.

(c) OTHER PROFESSIONAL MILITARY EDUCATION SCHOOLS.—The Secretary of Defense shall require that each Department of Defense school concerned with professional military education periodically review and revise its curriculum for senior and intermediate grade officers in order to strengthen the focus on—

(1) joint matters; and

(2) preparing officers for joint duty assignments.

(Added and amended Pub. L. 108–375, div. A, title V, § 532(a)(2), (b), Oct. 28, 2004, 118 Stat. 1897, 1900.)

CODIFICATION

Subsecs. (b) and (c) of section 663 of this title, which were transferred to this section by Pub. L. 108–375, § 532(b), were based on Pub. L. 99–433, title IV, § 401(a), Oct. 1, 1986, 100 Stat. 1027.

AMENDMENTS

2004—Subsecs. (b), (c). Pub. L. 108–375, § 532(b), transferred subsecs. (b) and (c) of section 663 of this title to end of this section. See Codification note above.

§ 2153. Capstone course: newly selected general and flag officers

(a) REQUIREMENT.—Each officer selected for promotion to the grade of brigadier general or, in the case of the Navy or the commissioned officer corps of the National Oceanic and Atmospheric Administration, rear admiral (lower half) shall be required, after such selection, to attend a military education course designed specifically to prepare new general and flag officers to work with the other uniformed services.

(b) WAIVER AUTHORITY.—(1) Subject to paragraph (2), the Secretary of Defense or the Secretary of Commerce, as applicable, may waive subsection (a)—

(A) in the case of an officer whose immediately previous assignment was in a joint duty assignment and who is thoroughly familiar with joint matters;

(B) when necessary for the good of the service;

(C) in the case of an officer whose proposed selection for promotion is based primarily upon scientific and technical qualifications for which joint requirements do not exist (as determined under regulations prescribed under section 619(e)(4)[1] of this title); and

(D) in the case of a medical officer, dental officer, veterinary officer, medical service officer, nurse, biomedical science officer, or chaplain.

(2) The authority of the Secretary of Defense to grant a waiver under paragraph (1) may only be delegated to the Deputy Secretary of Defense, an Under Secretary of Defense, or an Assistant Secretary of Defense. Such a waiver may be granted only on a case-by-case basis in the case of an individual officer.

(Added Pub. L. 108–375, div. A, title V, § 532(a)(2), Oct. 28, 2004, 118 Stat. 1897; amended Pub. L. 116–259, title II, § 205(b)(3), Dec. 23, 2020, 134 Stat. 1167.)

REFERENCES IN TEXT

Section 619(e)(4) of this title, referred to in subsec. (b)(1)(C), was repealed by Pub. L. 103–160, div. A, title IX, § 931(b), Nov. 30, 1993, 107 Stat. 1734. See section 619a(f) of this title.

AMENDMENTS

2020—Subsec. (a). Pub. L. 116–259, § 205(b)(3)(A), inserted ''or the commissioned officer corps of the National Oceanic and Atmospheric Administration'' after ''in the case of the Navy'' and substituted ''other uniformed services'' for ''other armed forces''.

Subsec. (b)(1). Pub. L. 116–259, § 205(b)(3)(B), inserted ''or the Secretary of Commerce, as applicable,'' after ''the Secretary of Defense'' in introductory provisions.

§ 2154. Joint professional military education: three-phase approach

(a) THREE-PHASE APPROACH.—The Secretary of Defense shall implement a three-phase approach to joint professional military education, as follows:

(1) There shall be a course of instruction, designated and certified by the Secretary of Defense with the advice and assistance of the Chairman of the Joint Chiefs of Staff as Phase I instruction, consisting of all the elements of a joint professional military education (as specified in section 2151(a) of this title), in addition to the principal curriculum taught to all officers at an intermediate level service school or at a joint intermediate level school.

(2) There shall be a course of instruction, designated and certified by the Secretary of Defense with the advice and assistance of the Chairman of the Joint Chiefs of Staff as Phase II instruction, consisting of—

[1] See References in Text note below.

(A) a joint professional military education curriculum taught in residence at, or offered through, the Joint Forces Staff College or a senior level service school that has been designated and certified by the Secretary of Defense as a joint professional military education institution; or

(B) a senior level service course of at least ten months that has been designated and certified by the Secretary of Defense as a joint professional military education course.

(3) There shall be a course of instruction, designated and certified by the Secretary of Defense with the advice and assistance of the Chairman of the Joint Chiefs of Staff as the Capstone course, for officers selected for promotion to the grade of brigadier general or, in the case of the Navy, rear admiral (lower half) and offered in accordance with section 2153 of this title.

(b) SEQUENCED APPROACH.—The Secretary shall require the sequencing of joint professional military education so that the standard sequence of assignments for such education requires an officer to complete Phase I instruction before proceeding to Phase II instruction, as provided in section 2155(a) of this title.

(Added Pub. L. 108–375, div. A, title V, § 532(a)(2), Oct. 28, 2004, 118 Stat. 1898; amended Pub. L. 112–81, div. A, title V, § 552(a)(1), Dec. 31, 2011, 125 Stat. 1412; Pub. L. 113–291, div. A, title V, § 506, Dec. 19, 2014, 128 Stat. 3356; Pub. L. 114–92, div. A, title V, § 554, Nov. 25, 2015, 129 Stat. 824.)

AMENDMENTS

2015—Subsec. (a)(2)(A). Pub. L. 114–92 inserted '', or offered through,'' after ''taught in residence at''.

2014—Subsec. (a)(2). Pub. L. 113–291 substituted ''consisting of—'' for ''consisting of a joint professional military education curriculum taught in residence at—'' in introductory provisions, added subpars. (A) and (B), and struck out former subpars. (A) and (B) which read as follows:

''(A) the Joint Forces Staff College; or

''(B) a senior level service school that has been designated and certified by the Secretary of Defense as a joint professional military education institution.''

2011—Subsec. (a)(1). Pub. L. 112–81 inserted ''or at a joint intermediate level school'' before period at end.

§ 2155. Joint professional military education Phase II program of instruction

(a) PREREQUISITE OF COMPLETION OF JOINT PROFESSIONAL MILITARY EDUCATION PHASE I PROGRAM OF INSTRUCTION.—(1) After September 30, 2009, an officer of the armed forces may not be accepted for, or assigned to, a program of instruction designated by the Secretary of Defense as joint professional military education Phase II unless the officer has successfully completed a program of instruction designated by the Secretary of Defense as joint professional military education Phase I.

(2) The Chairman of the Joint Chiefs of Staff may grant exceptions to the requirement under paragraph (1). Such an exception may be granted only on a case-by-case basis under exceptional circumstances, as determined by the Chairman. An officer selected to receive such an exception shall have knowledge of joint matters and other aspects of the Phase I curriculum that, to the satisfaction of the Chairman, qualifies the officer to meet the minimum requirements established for entry into Phase II instruction without first completing Phase I instruction. The number of officers selected to attend an offering of the principal course of instruction at the Joint Forces Staff College or a senior level service school designated by the Secretary of Defense as a joint professional military education institution who have not completed Phase I instruction should comprise no more than 10 percent of the total number of officers selected.

(b) PHASE II REQUIREMENTS.—The Secretary shall require that the curriculum for Phase II joint professional military education at any school—

(1) focus on developing joint operational expertise and perspectives and honing joint warfighting skills; and

(2) be structured—

(A) so as to adequately prepare students to perform effectively in an assignment to a joint, multiservice organization; and

(B) so that students progress from a basic knowledge of joint matters learned in Phase I instruction to the level of expertise necessary for successful performance in the joint arena.

(c) CURRICULUM CONTENT.—In addition to the subjects specified in section 2151(a) of this title, the curriculum for Phase II joint professional military education shall include the following:

(1) National security strategy.

(2) Theater strategy and campaigning.

(3) Joint planning processes and systems.

(4) Joint, interagency, and multinational capabilities and the integration of those capabilities.

(d) STUDENT RATIO; FACULTY RATIO.—Not later than September 30, 2009, for courses of instruction in a Phase II program of instruction that is offered at senior level service school that has been designated by the Secretary of Defense as a joint professional military education institution—

(1) the percentage of students enrolled in any such course who are officers of the armed force that administers the school may not exceed 60 percent, with the remaining services proportionally represented; and

(2) of the faculty at the school who are active-duty officers who provide instruction in such courses, the percentage who are officers of the armed force that administers the school may not exceed 60 percent, with the remaining services proportionally represented.

(Added Pub. L. 108–375, div. A, title V, § 532(a)(2), Oct. 28, 2004, 118 Stat. 1898; amended Pub. L. 109–364, div. A, title X, § 1071(a)(13), (14), Oct. 17, 2006, 120 Stat. 2399.)

AMENDMENTS

2006—Pub. L. 109–364, § 1071(a)(13), substituted ''Phase'' for ''phase'' in section catchline.

Subsec. (a). Pub. L. 109–364, § 1071(a)(14), inserted ''Phase'' after ''Education'' in heading.

PILOT PROGRAM ON JPME PHASE II ON OTHER THAN IN-RESIDENCE BASIS

Pub. L. 112–81, div. A, title V, § 552(b), Dec. 31, 2011, 125 Stat. 1412, authorized the Secretary of Defense to carry

out a pilot program to assess the feasibility and advisability of offering a program of instruction under this section on an other than in-residence basis and provided that the authority for the program would expire five years after Dec. 31, 2011.

§ 2156. Joint Forces Staff College: duration of principal course of instruction

(a) DURATION.—The duration of the principal course of instruction offered at the Joint Forces Staff College may not be less than 10 weeks of resident instruction.

(b) DEFINITION.—In this section, the term ''principal course of instruction'' means any course of instruction offered at the Joint Forces Staff College as Phase II joint professional military education.

(Added Pub. L. 108–375, div. A, title V, § 532(a)(2), Oct. 28, 2004, 118 Stat. 1900.)

[§ 2157. Repealed. Pub. L. 115–91, div. A, title X, § 1051(a)(10)(A), Dec. 12, 2017, 131 Stat. 1560]

Section, added Pub. L. 108–375, div. A, title V, § 532(a)(2), Oct. 28, 2004, 118 Stat. 1900; amended Pub. L. 109–364, div. A, title X, § 1071(a)(15), Oct. 17, 2006, 120 Stat. 2399, required annual reports to Congress regarding joint professional military education.

CHAPTER 108—DEPARTMENT OF DEFENSE SCHOOLS

Sec.
2161. Degree granting authority for National Intelligence University.
2162. Preparation of budget requests for operation of professional military education schools.
2163. Degree granting authority for National Defense University.
2164. Department of Defense domestic dependent elementary and secondary schools.
2165. National Defense University: component institutions.
[2166. Renumbered.]
2167. National Defense University: admission of private sector civilians to professional military education program.
2167a. Defense Cyber Investigations Training Academy: admission of private sector civilians to receive instruction.
2168. Defense Language Institute Foreign Language Center: degree of Associate of Arts in foreign language.
2169. School of Nursing: establishment.

AMENDMENT OF ANALYSIS

Pub. L. 116–92, div. E, title LIII, § 5324(e), formerly § 5324(g), Dec. 20, 2019, 133 Stat. 2137, renumbered § 5324(e), Pub. L. 116–260, div. W, title III, § 305(c)(3), Dec. 27, 2020, 134 Stat. 2367, provided that, effective on the date on which the Secretary of Defense and the Director of National Intelligence jointly submit the joint certifications required under section 3334a(b)(1) of Title 50, War and National Defense, this analysis is amended by striking out item 2161. See 2019 Amendment note below.

AMENDMENTS

2019—Pub. L. 116–92, div. E, title LIII, § 5324(e)(1), formerly § 5324(g)(1), Dec. 20, 2019, 133 Stat. 2137, renumbered § 5324(e)(1), Pub. L. 116–260, div. W, title III, § 305(c)(3), Dec. 27, 2020, 134 Stat. 2367, struck out item 2161 ''Degree granting authority for National Intelligence University''.

2016—Pub. L. 114–328, div. A, title XII, § 1241(*o*)(5), Dec. 23, 2016, 130 Stat. 2512, struck out item 2166 ''Western Hemisphere Institute for Security Cooperation''.

2013—Pub. L. 112–239, div. A, title IX, § 922(b)(2), Jan. 2, 2013, 126 Stat. 1879, substituted ''National Intelligence University'' for ''National Defense Intelligence College'' in item 2161.

2009—Pub. L. 111–84, div. A, title V, § 525(a)(3)(B), title IX, § 901(b), Oct. 28, 2009, 123 Stat. 2286, 2423, added items 2167a and 2169.

2008—Pub. L. 110–417, [div. A], title V, § 543(a)(2), (b)(2), Oct. 14, 2008, 122 Stat. 4457, 4458, added items 2161 and 2163 and struck out former items 2161 ''Joint Military Intelligence College: academic degrees'' and 2163 ''National Defense University: master's degree programs''.

Pub. L. 110–181, div. A, title V, § 526(b)(2), Jan. 28, 2008, 122 Stat. 105, added item 2163 and struck out former item 2163 ''National Defense University: master of science degrees''.

2006—Pub. L. 109–163, div. A, title V, § 521(b), Jan. 6, 2006, 119 Stat. 3240, substituted ''National Defense University: master of science degrees'' for ''National Defense University: masters of science in national security strategy and in national resource strategy'' in item 2163.

2001—Pub. L. 107–107, div. A, title V, §§ 528(a)(2), 531(b), Dec. 28, 2001, 115 Stat. 1103, 1104, added items 2167 and 2168.

2000—Pub. L. 106–398, § 1 [[div. A], title IX, § 911(c)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–228, added item 2166.

1997—Pub. L. 105–107, title V, § 501(b), Nov. 20, 1997, 111 Stat. 2262, substituted ''Joint Military Intelligence College: academic degrees'' for ''Defense Intelligence School; master of science of strategic intelligence'' in item 2261.

Pub. L. 105–85, div. A, title IX, § 921(a)(2), Nov. 18, 1997, 111 Stat. 1862, added item 2165.

1994—Pub. L. 103–337, div. A, title III, § 351(b), Oct. 5, 1994, 108 Stat. 2730, added item 2164.

1993—Pub. L. 103–160, div. A, title IX, § 922(b), Nov. 30, 1993, 107 Stat. 1731, added item 2163.

1990—Pub. L. 101–510, div. A, title IX, § 911(b)(1), (2), Nov. 5, 1990, 104 Stat. 1626, substituted ''DEPARTMENT OF DEFENSE SCHOOLS'' for ''GRANTING OF ADVANCED DEGREES AT DEPARTMENT OF DEFENSE SCHOOLS'' as chapter heading and added item 2162.

DANIEL K. INOUYE ASIA-PACIFIC CENTER FOR SECURITY STUDIES: REIMBURSEMENT WAIVER FOR PERSONNEL OF FOREIGN NATIONS

Pub. L. 107–248, title VIII, § 8073, Oct. 23, 2002, 116 Stat. 1553, as amended by Pub. L. 113–291, div. B, title XXVIII, § 2861(c), Dec. 19, 2014, 128 Stat. 3716, related to waiver by the Secretary of Defense of reimbursement of the cost of conferences, seminars, courses of instruction, or similar educational activities of the Daniel K. Inouye Asia-Pacific Center for Security Studies for military officers and civilian officials of foreign nations, prior to repeal by Pub. L. 114–328, div. A, title XII, § 1241(e)(5)(D), Dec. 23, 2016, 130 Stat. 2507.

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 107–117, div. A, title VIII, § 8081, Jan. 10, 2002, 115 Stat. 2265.

Pub. L. 106–259, title VIII, § 8080, Aug. 9, 2000, 114 Stat. 692.

Pub. L. 106–79, title VIII, § 8085, Oct. 25, 1999, 113 Stat. 1251.

Pub. L. 105–262, title VIII, § 8086, Oct. 17, 1998, 112 Stat. 2318.

Pub. L. 105–56, title VIII, § 8094, Oct. 8, 1997, 111 Stat. 1242.

Pub. L. 104–208, div. A, title I, § 101(b) [title VIII, § 8121], Sept. 30, 1996, 110 Stat. 3009–71, 3009–115.

REGIONAL DEFENSE COUNTER-TERRORISM FELLOWSHIP PROGRAM

Pub. L. 107–117, div. A, title VIII, § 8125, Jan. 10, 2002, 115 Stat. 2275, provided that: ''In addition to amounts provided elsewhere in this Act [see Tables for classification], $17,900,000 is hereby appropriated for the Sec-

retary of Defense, to remain available until expended, to establish a Regional Defense Counter-terrorism Fellowship Program: *Provided*, That funding provided herein may be used by the Secretary to fund foreign military officers to attend U.S. military educational institutions and selected regional centers for non-lethal training: *Provided further*, That United States Regional Commanders in Chief will be the nominative authority for candidates and schools for attendance with joint staff review and approval by the Secretary of Defense: *Provided further*, That the Secretary of Defense shall establish rules to govern the administration of this program.''

ATTENDANCE AT PROFESSIONAL MILITARY EDUCATION SCHOOLS BY MILITARY PERSONNEL OF THE NEW MEMBER NATIONS OF NATO

Pub. L. 106–65, div. A, title XII, § 1223, Oct. 5, 1999, 113 Stat. 787, provided that:

''(a) FINDING.—Congress finds that it is in the national interest of the United States to fully integrate Poland, Hungary, and the Czech Republic (the new member nations of the North Atlantic Treaty Organization) into the NATO alliance as quickly as possible.

''(b) MILITARY EDUCATION AND TRAINING PROGRAMS.—The Secretary of each military department shall give due consideration to according a high priority to the attendance of military personnel of Poland, Hungary, and the Czech Republic at professional military education schools and training programs in the United States, including the United States Military Academy, the United States Naval Academy, the United States Air Force Academy, the National Defense University, the war colleges of the Armed Forces, the command and general staff officer courses of the Armed Forces, and other schools and training programs of the Armed Forces that admit personnel of foreign armed forces.''

SENSE OF CONGRESS ON GRADE OF HEADS OF SENIOR PROFESSIONAL MILITARY EDUCATION SCHOOLS

Pub. L. 103–337, div. A, title IX, § 914, Oct. 5, 1994, 108 Stat. 2829, provided that: ''It is the sense of Congress that an officer serving in a position as the head of one of the senior professional military education schools of the Department of Defense (or of the separate military departments) should, while so serving, hold a grade not less than the grade (or its equivalent) held by the officer serving in that position on the date of the enactment of this Act [Oct. 5, 1994].''

MILITARY DEPARTMENT AFFILIATION OF WAR COLLEGE STUDENTS

Pub. L. 104–208, div. A, title I, § 101(b) [title VIII, § 8069], Sept. 30, 1996, 110 Stat. 3009–71, 3009–102, which provided that, for resident classes entering war colleges after Sept. 30, 1997, Department of Defense was to require that not less than 20 percent of total of United States military students at each war college was to be from military departments other than hosting military department and provided that each military department was to recognize attendance at sister military department war college as equivalent of attendance at its own war college for promotion and advancement of personnel, was from the Department of Defense Appropriations Act, 1997, and was not repeated in subsequent appropriations acts. Similar provisions were contained in the following prior appropriation acts:

Pub. L. 104–61, title VIII, § 8084, Dec. 1, 1995, 109 Stat. 667.

Pub. L. 103–335, title VIII, § 8108A, Sept. 30, 1994, 108 Stat. 2646.

AUTHORITY FOR MILITARY SCHOOL FACULTY MEMBERS AND STUDENTS TO ACCEPT HONORARIA FOR CERTAIN SCHOLARLY AND ACADEMIC ACTIVITIES

Pub. L. 102–484, div. A, title V, § 542, Oct. 23, 1992, 106 Stat. 2413, related to conditions for and exceptions to authority of Department of Defense school faculty and students to accept honoraria for appearance, speech, or article published in bona fide publication, prior to repeal by Pub. L. 107–314, div. A, title VI, § 653(a), Dec. 2, 2002, 116 Stat. 2581.

[Pub. L. 107–314, div. A, title VI, § 653(b), Dec. 2, 2002, 116 Stat. 2581, provided that: ''The repeal made by subsection (a) [repealing section 542 of Pub. L. 102–484, formerly set out above] shall apply with respect to appearances made, speeches presented, and articles published on or after October 1, 2002.'']

§ 2161. Degree granting authority for National Intelligence University

(a) AUTHORITY.—Under regulations prescribed by the Secretary of Defense, the President of the National Intelligence University may, upon the recommendation of the faculty of the National Intelligence University, confer appropriate degrees upon graduates who meet the degree requirements.

(b) LIMITATION.—A degree may not be conferred under this section unless—

(1) the Secretary of Education has recommended approval of the degree in accordance with the Federal Policy Governing Granting of Academic Degrees by Federal Agencies; and

(2) the National Intelligence University is accredited by the appropriate civilian academic accrediting agency or organization to award the degree, as determined by the Secretary of Education.

(c) CONGRESSIONAL NOTIFICATION REQUIREMENTS.—(1) When seeking to establish degree granting authority under this section, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives—

(A) a copy of the self assessment questionnaire required by the Federal Policy Governing Granting of Academic Degrees by Federal Agencies, at the time the assessment is submitted to the Department of Education's National Advisory Committee on Institutional Quality and Integrity; and

(B) the subsequent recommendations and rationale of the Secretary of Education regarding the establishment of the degree granting authority.

(2) Upon any modification or redesignation of existing degree granting authority, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives a report containing the rationale for the proposed modification or redesignation and any subsequent recommendation of the Secretary of Education on the proposed modification or redesignation.

(3) The Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives a report containing an explanation of any action by the appropriate academic accrediting agency or organization not to accredit the National Intelligence University to award any new or existing degree.

(Added Pub. L. 96–450, title IV, § 406(a), Oct. 14, 1980, 94 Stat. 1980; amended Pub. L. 105–107, title V, § 501(a), Nov. 20, 1997, 111 Stat. 2261; Pub. L. 110–417, [div. A], title V, § 543(a)(1), Oct. 14, 2008, 122 Stat. 4456; Pub. L. 112–239, div. A, title IX, § 922(a), (b)(1), Jan. 2, 2013, 126 Stat. 1879.)

REPEAL OF SECTION

Pub. L. 116–92, div. E, title LIII, § 5324(e), formerly § 5324(g), Dec. 20, 2019, 133 Stat. 2137, renumbered § 5324(e), Pub. L. 116–260, div. W, title III, § 305(c)(3), Dec. 27, 2020, 134 Stat. 2367, provided that, effective on the date on which the Secretary of Defense and the Director of National Intelligence jointly submit the joint certifications required under section 3334a(b)(1) of Title 50, War and National Defense, this section is repealed.

AMENDMENTS

2013—Pub. L. 112–239 substituted ''National Intelligence University'' for ''National Defense Intelligence College'' wherever appearing in section catchline and text.

2008—Pub. L. 110–417 amended section generally. Prior to amendment, section related to conferral of academic degrees by the Joint Military Intelligence College.

1997—Pub. L. 105–107 substituted ''Joint Military Intelligence College: academic degrees'' for ''Defense Intelligence School: master of science of strategic intelligence'' in section catchline and amended text generally. Prior to amendment, text read as follows: ''Under regulations prescribed by the Secretary of Defense, the Commandant of the Defense Intelligence School may, upon recommendation by the faculty of such school, confer the degree of master of science of strategic intelligence upon graduates of the school who have fulfilled the requirements for that degree.''

EFFECTIVE DATE OF REPEAL

Repeal effective on the date on which the Secretary of Defense and the Director of National Intelligence jointly submit the joint certifications required under section 3334a(b)(1) of Title 50, War and National Defense, see section 3334a(e)(2) of Title 50.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–417, [div. A], title V, § 543(j), Oct. 14, 2008, 122 Stat. 4465, provided that: ''The amendments made by this section [amending this section and sections 2163, 4314, 4321, 7048, 7101, 7102, 9314, and 9317 of this title] shall apply to any degree granting authority established, modified, or redesignated on or after the date of enactment of this Act [Oct. 14, 2008] for an institution of professional military education referred to in such amendments.''

§ 2162. Preparation of budget requests for operation of professional military education schools

(a) UNIFORM COST ACCOUNTING.—The Secretary of Defense, with the advice and assistance of the Chairman of the Joint Chiefs of Staff, shall promulgate a uniform cost accounting system for use by the Secretaries of the military departments in preparing budget requests for the operation of professional military education schools.

(b) PREPARATION OF BUDGET REQUESTS.—(1) Amounts requested for a fiscal year for the operation of each professional military education school shall be set forth as a separate budget request in the materials submitted by the Secretary of Defense to Congress in support of the budget request for the Department of Defense.

(2) As executive agent for funding professional development education at the National Defense University, including the Joint Forces Staff College, the Secretary of Defense, with the advice of the Chairman of the Joint Chiefs of Staff, shall prepare the annual budget for professional development education operations at the National Defense University and set forth that request as a separate budget request in the materials submitted to Congress in support of the budget request for the Department of Defense. Nothing in the preceding sentence affects policies in effect on December 28, 2001, with respect to budgeting for the funding of logistical and base operations support for components of the National Defense University through the military departments.

(3) The Secretary of a military department preparing a budget request for a professional military education school shall carefully consider the views of the Chairman of the Joint Chiefs of Staff, particularly with respect to the amount of the request for the operation of the schools of the National Defense University and the joint professional military education curricula of the other professional military education schools.

(c) COMPARISON OF BUDGET REQUESTS.—Materials prepared in support of the budget request for a professional military education school shall describe whether the amount requested for that school is comparable to the amounts requested for other professional military education schools, taking into consideration the size and activities of the schools.

(d) PROFESSIONAL MILITARY EDUCATION SCHOOLS.—This section applies to each of the following professional military education schools:

(1) The National Defense University.

(2) The Army War College.

(3) The College of Naval Warfare.

(4) The Air War College.

(5) The United States Army Command and General Staff College.

(6) The College of Naval Command and Staff.

(7) The Air Command and Staff College.

(8) The Marine Corps University.

(Added Pub. L. 101–510, div. A, title IX, § 911(a), Nov. 5, 1990, 104 Stat. 1625; amended Pub. L. 105–85, div. A, title IX, § 921(b), Nov. 18, 1997, 111 Stat. 1862; Pub. L. 107–107, div. A, title V, § 527(b), Dec. 28, 2001, 115 Stat. 1102; Pub. L. 107–314, div. A, title X, § 1062(a)(7), Dec. 2, 2002, 116 Stat. 2650.)

AMENDMENTS

2002—Subsec. (b)(2). Pub. L. 107–314 substituted ''December 28, 2001,'' for ''the date of the enactment of this paragraph''.

2001—Subsec. (b)(2), (3). Pub. L. 107–107 added par. (2) and redesignated former par. (2) as (3).

1997—Subsec. (d). Pub. L. 105–85 amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows:

''(d) DEFINITIONS.—In this section:

''(1) The term 'professional military education school' means—

''(A) the National Defense University;

''(B) the Army War College;

''(C) the College of Naval Warfare;

''(D) the Air War College;

''(E) the United States Army Command and General Staff College;

''(F) the College of Naval Command and Staff;

''(G) the Air Command and Staff College; or

''(H) the Marine Corps Command and Staff College.

''(2) The term 'National Defense University' means the National War College, the Armed Forces Staff College, and the Industrial College of the Armed Forces.''

EFFECTIVE DATE

Pub. L. 101–510, div. A, title IX, § 911(b)[(c)], Nov. 5, 1990, 104 Stat. 1626, provided that: ''Section 2162 of title 10, United States Code, as added by subsection (a), shall apply with respect to fiscal years after fiscal year 1991.''

EXECUTIVE AGENT FOR FUNDING PROFESSIONAL DEVELOPMENT EDUCATION

Pub. L. 107–107, div. A, title V, § 527(a), Dec. 28, 2001, 115 Stat. 1101, provided that:

''(1) Effective beginning with fiscal year 2003, the Secretary of Defense shall be the executive agent for funding professional development education operations of all components of the National Defense University, including the Joint Forces Staff College. The Secretary may not delegate the Secretary's functions and responsibilities under the preceding sentence to the Secretary of a military department.

''(2) Nothing in this subsection affects policies in effect on the date of the enactment of this Act [Dec. 28, 2001] with respect to—

''(A) the reporting of the President of the National Defense University to the Chairman of the Joint Chiefs of Staff; or

''(B) provision of logistical and base operations support for components of the National Defense University by the military departments.''

§ 2163. Degree granting authority for National Defense University

(a) AUTHORITY.—Under regulations prescribed by the Secretary of Defense, the President of the National Defense University may, upon the recommendation of the faculty of the National Defense University, confer appropriate degrees upon graduates who meet the degree requirements.

(b) LIMITATION.—A degree may not be conferred under this section unless—

(1) the Secretary of Education has recommended approval of the degree in accordance with the Federal Policy Governing Granting of Academic Degrees by Federal Agencies; and

(2) the National Defense University is accredited by the appropriate civilian academic accrediting agency or organization to award the degree, as determined by the Secretary of Education.

(c) CONGRESSIONAL NOTIFICATION REQUIREMENTS.—(1) When seeking to establish degree granting authority under this section, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives—

(A) a copy of the self assessment questionnaire required by the Federal Policy Governing Granting of Academic Degrees by Federal Agencies, at the time the assessment is submitted to the Department of Education's National Advisory Committee on Institutional Quality and Integrity; and

(B) the subsequent recommendations and rationale of the Secretary of Education regarding the establishment of the degree granting authority.

(2) Upon any modification or redesignation of existing degree granting authority, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives a report containing the rationale for the proposed modification or redesignation and any subsequent recommendation of the Secretary of Education on the proposed modification or redesignation.

(3) The Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives a report containing an explanation of any action by the appropriate academic accrediting agency or organization not to accredit the National Defense University to award any new or existing degree.

(Added Pub. L. 103–160, div. A, title IX, § 922(a), Nov. 30, 1993, 107 Stat. 1730; amended Pub. L. 109–163, div. A, title V, § 521(a), Jan. 6, 2006, 119 Stat. 3239; Pub. L. 110–181, div. A, title V, § 526(a), (b)(1), Jan. 28, 2008, 122 Stat. 104, 105; Pub. L. 110–417, [div. A], title V, § 543(b)(1), Oct. 14, 2008, 122 Stat. 4457.)

AMENDMENTS

2008—Pub. L. 110–417 amended section generally. Prior to amendment, section related to conferral of master of science and master of arts degrees by National Defense University.

Pub. L. 110–181, § 526(b)(1), substituted ''National Defense University: master's degree programs'' for ''National Defense University: master of science degrees'' in section catchline.

Subsec. (a). Pub. L. 110–181, § 526(a)(1), inserted ''or master of arts'' after ''master of science''.

Subsec. (b)(4). Pub. L. 110–181, § 526(a)(2), added par. (4).

2006—Pub. L. 109–163 amended section catchline and text generally. Prior to amendment, text read as follows:

''(a) NATIONAL WAR COLLEGE DEGREE.—The President of the National Defense University, upon the recommendation of the faculty and commandant of the National War College, may confer the degree of master of science of national security strategy upon graduates of the National War College who fulfill the requirements for the degree.

''(b) ICAF DEGREE.—The President of the National Defense University, upon the recommendation of the faculty and commandant of the Industrial College of the Armed Forces, may confer the degree of master of science of national resource strategy upon graduates of the Industrial College of the Armed Forces who fulfill the requirements for the degree.

''(c) REGULATIONS.—The authority provided by subsections (a) and (b) shall be exercised under regulations prescribed by the Secretary of Defense.''

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–417 applicable to any degree granting authority established, modified, or redesignated on or after Oct. 14, 2008, for an institution of professional military education referred to in such amendment, see section 543(j) of Pub. L. 110–417, set out as a note under section 2161 of this title.

Pub. L. 110–181, div. A, title V, § 526(c), Jan. 28, 2008, 122 Stat. 105, provided that: ''Paragraph (4) of section 2163(b) of title 10, United States Code, as added by subsection (a) of this section, applies with respect to any person who becomes a graduate of the National Defense University on or after September 6, 2006, and fulfills the requirements of the program referred to in such paragraph (4).''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–163, div. A, title V, § 521(c), Jan. 6, 2006, 119 Stat. 3240, provided that: ''Paragraph (3) of section 2163(b) of title 10, United States Code, as amended by subsection (a), shall take effect for degrees awarded after May 2005.''

§2164. Department of Defense domestic dependent elementary and secondary schools

(a) AUTHORITY OF SECRETARY.—(1) If the Secretary of Defense makes a determination that appropriate educational programs are not available through a local educational agency for dependents of members of the armed forces and dependents of civilian employees of the Federal Government residing on a military installation in the United States (including territories, commonwealths, and possessions of the United States), the Secretary may enter into arrangements to provide for the elementary or secondary education of the dependents of such members of the armed forces and, to the extent authorized in subsection (c), the dependents of such civilian employees.

(2) The Secretary may, at the discretion of the Secretary, permit dependents of members of the armed forces and, to the extent provided in subsection (c), dependents of civilian employees of the Federal Government residing in a territory, commonwealth, or possession of the United States but not on a military installation, to enroll in an educational program provided by the Secretary pursuant to this subsection. If a member of the armed forces is assigned to a remote location or is assigned to an unaccompanied tour of duty, a dependent of the member who resides, on or off a military installation, in a territory, commonwealth, or possession of the United States, as authorized by the member's orders, may be enrolled in an educational program provided by the Secretary under this subsection.

(3)(A) Under the circumstances described in subparagraph (B), the Secretary may, at the discretion of the Secretary, permit a dependent of a member of the armed forces to enroll in an educational program provided by the Secretary pursuant to this subsection without regard to the requirement in paragraph (1) with respect to residence on a military installation.

(B) Subparagraph (A) applies only if—

(i) the dependents reside in temporary housing (regardless of whether the temporary housing is on Federal property)—

(I) because of the unavailability of adequate permanent living quarters on the military installation to which the member is assigned; or

(II) while the member is wounded, ill, or injured; and

(ii) the Secretary determines that the circumstances of such living arrangements justify extending the enrollment authority to include the dependents.

(b) FACTORS FOR SECRETARY TO CONSIDER.—(1) Factors to be considered by the Secretary of Defense in making a determination under subsection (a) shall include the following:

(A) The extent to which such dependents are eligible for free public education in the local area adjacent to the military installation.

(B) The extent to which the local educational agency is able to provide an appropriate educational program for such dependents.

(2) For purposes of paragraph (1)(B), an appropriate educational program is a program that, as determined by the Secretary, is comparable to a program of free public education provided for children by the following local educational agencies:

(A) In the case of a military installation located in a State (other than an installation referred to in subparagraph (B)), local educational agencies in the State that are similar to the local educational agency referred to in paragraph (1)(B).

(B) In the case of a military installation with boundaries contiguous to two or more States, local educational agencies in the contiguous States that are similar to the local educational agency referred to in paragraph (1)(B).

(C) In the case of a military installation located in a territory, commonwealth, or possession, the District of Columbia public schools, except that an educational program determined comparable under this subparagraph may be considered appropriate for the purposes of paragraph (1)(B) only if the program is conducted in the English language.

(c) ELIGIBILITY OF DEPENDENTS OF FEDERAL EMPLOYEES.—(1)(A) A dependent of a Federal employee residing in permanent living quarters on a military installation at any time during the school year may enroll in an educational program provided by the Secretary of Defense pursuant to subsection (a) for dependents residing on such installation.

(B) A dependent of a United States Customs Service employee who resides in Puerto Rico, but not on a military installation, may enroll in an educational program provided by the Secretary pursuant to subsection (a) in Puerto Rico in accordance with the same rules as apply to a dependent of a Federal employee residing in permanent living quarters on a military installation.

(2)(A) Except as provided in subparagraphs (B) and (C), a dependent of a Federal employee who is enrolled in an educational program provided by the Secretary pursuant to subsection (a) and who is not residing on a military installation may be enrolled in the program for not more than five consecutive school years.

(B) At the discretion of the Secretary, a dependent referred to in subparagraph (A) may be enrolled in the program for more than five consecutive school years if the dependent is otherwise qualified for enrollment, space is available in the program, and the Secretary will be reimbursed for the educational services provided. Any such extension shall cover only one school year at a time.

(C) Subparagraph (A) shall not apply to an individual who is a dependent of a Federal employee in the excepted service (as defined in section 2103 of title 5) and who is enrolled in an educational program provided by the Secretary pursuant to subsection (a) in Puerto Rico, Wake Island, Guam, American Samoa, the Northern Mariana Islands, or the Virgin Islands.

(D) Subparagraph (A) shall not apply to a dependent covered by paragraph (1)(B). No requirement under this paragraph for reimbursement for educational services provided for the dependent shall apply with respect to the dependent, except that the Secretary may require the

United States Customs Service to reimburse the Secretary for the cost of the educational services provided for the dependent.

(d) SCHOOL BOARDS.—(1) The Secretary of Defense shall provide for the establishment of a school board for Department of Defense elementary and secondary schools established at each military installation under this section. The Secretary may provide for the establishment of one school board for all such schools in the Commonwealth of Puerto Rico and one school board for all such schools in Guam instead of one school board for each military installation in those locations.

(2) The school board shall be composed of the number of members, not fewer than three, prescribed by the Secretary.

(3) The parents of the students attending the school shall elect the school board in accordance with procedures which the Secretary shall prescribe.

(4)(A) A school board elected for a school under this subsection may participate in the development and oversight of fiscal, personnel, and educational policies, procedures, and programs for the school, except that the Secretary may issue any directive that the Secretary considers necessary for the effective operation of the school or the entire school system.

(B) A directive referred to in subparagraph (A) shall, to the maximum extent practicable, be issued only after the Secretary consults with the appropriate school boards elected under this subsection. The Secretary shall establish a process by which a school board or school administrative officials may formally appeal the directive to the Secretary of Defense.

(5) Meetings conducted by the school board shall be open to the public, except as provided in paragraph (6).

(6) A school board need not comply with the provisions of the Federal Advisory Committee Act (5 U.S.C. App.), but may close meetings in accordance with such Act.

(7) The Secretary may provide for reimbursement of a school board member for expenses incurred by the member for travel, transportation, lodging, meals, program fees, activity fees, and other appropriate expenses that the Secretary determines are reasonable and necessary for the performance of school board duties by the member.

(e) ADMINISTRATION AND STAFF.—(1) The Secretary of Defense may enter into such arrangements as may be necessary to provide educational programs at the school.

(2) The Secretary may, without regard to the provisions of any other law relating to the number, classification, or compensation of employees—

(A) establish positions for civilian employees in schools established under this section;

(B) appoint individuals to such positions; and

(C) fix the compensation of such individuals for service in such positions.

(3)(A) Except as provided in subparagraph (B), in fixing the compensation of employees appointed for a school pursuant to paragraph (2), the Secretary shall consider—

(i) the compensation of comparable employees of the local educational agency in the capital of the State where the military installation is located;

(ii) the compensation of comparable employees in the local educational agency that provides public education to students who reside adjacent to the military installation; and

(iii) the average compensation for similar positions in not more than three other local educational agencies in the State in which the military installation is located.

(B) In fixing the compensation of employees in schools established in the territories, commonwealths, and possessions pursuant to the authority of this section, the Secretary shall determine the level of compensation required to attract qualified employees. For employees in such schools, the Secretary, without regard to the provisions of title 5, may provide for the tenure, leave, hours of work, and other incidents of employment to be similar to that provided for comparable positions in the public schools of the District of Columbia. For purposes of the first sentence, a school established before the effective date of this section pursuant to authority similar to the authority in this section shall be considered to have been established pursuant to the authority of this section.

(4)(A) The Secretary may, without regard to the provisions of any law relating to the number, classification, or compensation of employees—

(i) transfer employees from schools established under this section to schools in the defense dependents' education system in order to provide the services referred to in subparagraph (B) to such system; and

(ii) transfer employees from such system to schools established under this section in order to provide such services to those schools.

(B) The services referred to in subparagraph (A) are the following:

(i) Administrative services.

(ii) Logistical services.

(iii) Personnel services.

(iv) Such other services as the Secretary considers appropriate.

(C) Transfers under this paragraph shall extend for such periods as the Secretary considers appropriate. The Secretary shall provide appropriate compensation for employees so transferred.

(D) The Secretary may provide that the transfer of an employee under this paragraph occur without reimbursement of the school or system concerned.

(E) In this paragraph, the term ''defense dependents' education system'' means the program established and operated under section 1402(a) of the Defense Dependents' Education Act of 1978 (20 U.S.C. 921(a)).

(f) SUBSTANTIVE AND PROCEDURAL RIGHTS AND PROTECTIONS FOR CHILDREN.—(1) The Secretary shall provide the following substantive rights, protections, and procedural safeguards (including due process procedures) in the educational programs provided for under this section:

(A) In the case of children with disabilities aged 3 to 5, inclusive, all substantive rights, protections, and procedural safeguards (including due process procedures) available to

children with disabilities aged 3 to 5, inclusive, under part B of the Individuals with Disabilities Education Act (20 U.S.C. 1411 et seq.).

(B) In the case of infants or toddlers with disabilities, all substantive rights, protections, and procedural safeguards (including due process procedures) available to infants or toddlers with disabilities under part C of such Act (20 U.S.C. 1431 et seq.).

(C) In the case of all other children with disabilities, all substantive rights, protections, and procedural safeguards (including due process procedures) available to children with disabilities who are 3 to 5 years old under part B of such Act.

(2) Paragraph (1) may not be construed as diminishing for children with disabilities enrolled in day educational programs provided for under this section the extent of substantive rights, protections, and procedural safeguards that were available under section 6(a) of Public Law 81–874 (20 U.S.C. 241(a)) to children with disabilities as of October 7, 1991.

(3) In this subsection:

(A) The term ''children with disabilities'' has the meaning given the term in section 602 of the Individuals with Disabilities Education Act (20 U.S.C. 1401).

(B) The term ''infants or toddlers with disabilities'' has the meaning given the term in section 632 of such Act (20 U.S.C. 1432).

(g) REIMBURSEMENT.—When the Secretary of Defense provides educational services under this section to an individual who is a dependent of an employee of a Federal agency outside the Department of Defense, the head of the other Federal agency shall, upon request of the Secretary of Defense, reimburse the Secretary for those services at rates routinely prescribed by the Secretary for those services. Any payments received by the Secretary under this subsection shall be credited to the account designated by the Secretary for the operation of educational programs under this section.

(h) CONTINUATION OF ENROLLMENT DESPITE CHANGE IN STATUS.—(1) The Secretary of Defense shall permit a dependent of a member of the armed forces or a dependent of a Federal employee to continue enrollment in an educational program provided by the Secretary pursuant to subsection (a) for the remainder of a school year notwithstanding a change during such school year in the status of the member or Federal employee that, except for this paragraph, would otherwise terminate the eligibility of the dependent to be enrolled in the program.

(2) The Secretary may, for good cause, authorize a dependent of a member of the armed forces or a dependent of a Federal employee to continue enrollment in an educational program provided by the Secretary pursuant to subsection (a) notwithstanding a change in the status of the member or employee that, except for this paragraph, would otherwise terminate the eligibility of the dependent to be enrolled in the program. The enrollment may continue for as long as the Secretary considers appropriate.

(3) Paragraphs (1) and (2) do not limit the authority of the Secretary to remove a dependent from enrollment in an educational program provided by the Secretary pursuant to subsection (a) at any time for good cause determined by the Secretary.

(i) AMERICAN RED CROSS EMPLOYEE DEPENDENTS IN PUERTO RICO.—(1) The Secretary may authorize the dependent of an American Red Cross employee described in paragraph (2) to enroll in an education program provided by the Secretary pursuant to subsection (a) in Puerto Rico if the American Red Cross agrees to reimburse the Secretary for the educational services so provided.

(2) An employee referred to in paragraph (1) is an American Red Cross employee who—

(A) resides in Puerto Rico; and

(B) performs, on a full-time basis, emergency services on behalf of members of the armed forces.

(3) In determining the dependency status of any person for the purposes of paragraph (1), the Secretary shall apply the same definitions as apply to the determination of such status with respect to Federal employees in the administration of this section.

(4) Subsection (g) shall apply with respect to determining the reimbursement rates for educational services provided pursuant to this subsection. Amounts received as reimbursement for such educational services shall be treated in the same manner as amounts received under subsection (g).

(j) TUITION-FREE ENROLLMENT OF DEPENDENTS OF FOREIGN MILITARY PERSONNEL RESIDING ON DOMESTIC MILITARY INSTALLATIONS AND DEPENDENTS OF CERTAIN DECEASED MEMBERS OF THE ARMED FORCES.—(1) The Secretary may authorize the enrollment in a Department of Defense education program provided by the Secretary pursuant to subsection (a) of a dependent not otherwise eligible for such enrollment who is the dependent of an individual described in paragraph (2). Enrollment of such a dependent shall be on a tuition-free basis.

(2) An individual referred to in paragraph (1) is any of the following:

(A) A member of a foreign armed force residing on a military installation in the United States (including territories, commonwealths, and possessions of the United States).

(B) A deceased member of the armed forces who died in the line of duty in a combat-related operation, as designated by the Secretary.

(k) ENROLLMENT OF RELOCATED DEFENSE DEPENDENTS' EDUCATION SYSTEM STUDENTS.—(1) The Secretary of Defense may authorize the enrollment in a Department of Defense education program provided by the Secretary pursuant to subsection (a) of a dependent of a member of the armed forces or a dependent of a Federal employee who is enrolled in the defense dependents' education system established under section 1402 of the Defense Dependents' Education Act of 1978 (20 U.S.C. 921) if—

(A) the dependents departed the overseas location as a result of a evacuation order;

(B) the designated safe haven of the dependent is located within reasonable commuting distance of a school operated by the Department of Defense education program; and

(C) the school possesses the capacity and resources necessary to enable the student to attend the school.

(2) Unless waived by the Secretary of Defense, a dependent described in paragraph (1) who is enrolled in a school operated by the Department of Defense education program pursuant to such paragraph may attend the school only through the end of the school year.

(*l*) ENROLLMENT IN VIRTUAL ELEMENTARY AND SECONDARY EDUCATION PROGRAM.—(1) Under regulations prescribed by the Secretary of Defense, the Secretary may authorize the enrollment in the virtual elementary and secondary education program established as a component of the Department of Defense education program of a dependent of a member of the armed forces on active duty who—

(A) is enrolled in an elementary or secondary school operated by a local educational agency or another accredited educational program in the United States (other than a school operated by the Department of Defense education program); and

(B) immediately before such enrollment, was enrolled in the defense dependents' education system established under section 1402 of the Defense Dependents' Education Act of 1978 (20 U.S.C. 921).

(2) Enrollment of a dependent described in paragraph (1) pursuant to such paragraph shall be on a tuition basis.

(3) Any payments received by the Secretary of Defense under this subsection shall be credited to the account designated by the Secretary for the operation of the virtual educational program under this subsection. Payments so credited shall be merged with other funds in the account and shall be available, to the extent provided in advance in appropriation Acts, for the same purposes and the same period as other funds in the account.

(Added Pub. L. 103–337, div. A, title III, § 351(a), Oct. 5, 1994, 108 Stat. 2727; amended Pub. L. 104–106, div. A, title X, § 1075, Feb. 10, 1996, 110 Stat. 450; Pub. L. 104–201, div. A, title XVI, § 1608, Sept. 23, 1996, 110 Stat. 2737; Pub. L. 105–261, div. A, title III, § 371(a)–(c)(2), Oct. 17, 1998, 112 Stat. 1988, 1989; Pub. L. 106–65, div. A, title III, §§ 352, 353, Oct. 5, 1999, 113 Stat. 572; Pub. L. 106–398, § 1 [[div. A], title III, § 361], Oct. 30, 2000, 114 Stat. 1654, 1654A–76; Pub. L. 108–446, title III, § 305(a), Dec. 3, 2004, 118 Stat. 2804; Pub. L. 111–84, div. A, title V, § 534, Oct. 28, 2009, 123 Stat. 2292; Pub. L. 111–383, div. A, title V, § 561, Jan. 7, 2011, 124 Stat. 4221; Pub. L. 112–239, div. A, title V, § 565, Jan. 2, 2013, 126 Stat. 1749; Pub. L. 113–66, div. A, title V, § 553(a), Dec. 26, 2013, 127 Stat. 764.)

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (d)(6), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

The effective date of this section, referred to in subsec. (e)(3)(B), is the date of enactment of Pub. L. 103–337 which was approved Oct. 5, 1994.

The Individuals with Disabilities Education Act, referred to in subsec. (f)(1), is title VI of Pub. L. 91–230, Apr. 13, 1970, 84 Stat. 175, as amended. Parts B and C of the Act are classified generally to subchapters II (§ 1411 et seq.) and III (§ 1431 et seq.), respectively, of chapter 33 of Title 20, Education. For complete classification of this Act to the Code, see section 1400 of Title 20 and Tables.

Section 6(a) of Public Law 81–874 (20 U.S.C. 241(a)), referred to in subsec. (f)(2), was repealed by Pub. L. 103–382, title III, § 331(b), Oct. 20, 1994, 108 Stat. 3965.

AMENDMENTS

2013—Subsecs. (k), (*l*). Pub. L. 112–239 added subsecs. (k) and (*l*).

Subsec. (*l*)(3). Pub. L. 113–66 added par. (3).

2011—Subsec. (a)(3). Pub. L. 111–383 added par. (3).

2009—Subsec. (j). Pub. L. 111–84 added subsec. (j).

2004—Subsec. (f)(1)(B). Pub. L. 108–446, § 305(a)(1), substituted ''infants or toddlers'' for ''infants and toddlers'' in two places, ''part C'' for ''part H'', and ''1431 et seq.'' for ''1471 et seq.''.

Subsec. (f)(3)(A). Pub. L. 108–446, § 305(a)(2)(A), substituted ''section 602'' for ''section 602(a)(1)'' and ''1401'' for ''1401(a)(1)''.

Subsec. (f)(3)(B). Pub. L. 108–446, § 305(a)(2)(D), substituted ''or toddlers'' for ''and toddlers'', ''632'' for ''672(1)'', and ''1432'' for ''1472(1)''.

Pub. L. 108–446, § 305(a)(2)(B), (C), redesignated subpar. (C) as (B) and struck out former subpar. (B) which defined the term ''children with disabilities aged 3 to 5, inclusive''.

Subsec. (f)(3)(C). Pub. L. 108–446, § 305(a)(2)(C), redesignated subpar. (C) as (B).

2000—Subsec. (i). Pub. L. 106–398 added subsec. (i).

1999—Subsec. (c)(3). Pub. L. 106–65, § 353(1), struck out par. (3) which read as follows: ''A dependent of a Federal employee may continue enrollment in a program under this subsection for the remainder of a school year notwithstanding a change during such school year in the status of the Federal employee that, except for this paragraph, would otherwise terminate the eligibility of the dependent to be enrolled in the program. The preceding sentence does not limit the authority of the Secretary to remove the dependent from enrollment in the program at any time for good cause determined by the Secretary.''

Subsec. (d)(1). Pub. L. 106–65, § 352, inserted at end ''The Secretary may provide for the establishment of one school board for all such schools in the Commonwealth of Puerto Rico and one school board for all such schools in Guam instead of one school board for each military installation in those locations.''

Subsec. (h). Pub. L. 106–65, § 353(2), added subsec. (h).

1998—Subsec. (a). Pub. L. 105–261, § 371(a)(1), (2), designated first sentence as par. (1) and second sentence as par. (2).

Subsec. (a)(2). Pub. L. 105–261, § 371(a)(3), inserted at end ''If a member of the armed forces is assigned to a remote location or is assigned to an unaccompanied tour of duty, a dependent of the member who resides, on or off a military installation, in a territory, commonwealth, or possession of the United States, as authorized by the member's orders, may be enrolled in an educational program provided by the Secretary under this subsection.''

Subsec. (c)(1). Pub. L. 105–261, § 371(c)(1), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (c)(2)(B). Pub. L. 105–261, § 371(b), added subpar. (B) and struck out former subpar. (B) which read as follows: ''A dependent referred to in subparagraph (A) may be enrolled in the program for more than five consecutive school years if the Secretary determines that, in the interest of the dependent's educational well-being, there is good cause to extend the enrollment for more than the five-year period described in such subparagraph. Any such extension may be made for only one school year at a time.''

Subsec. (c)(2)(D). Pub. L. 105–261, § 371(c)(2), added subpar. (D).

1996—Subsec. (d)(7). Pub. L. 104–201 added par. (7).

Subsec. (e)(4). Pub. L. 104–106 added par. (4).

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 113–66, div. A, title V, § 553(b), Dec. 26, 2013, 127 Stat. 764, provided that: ''The amendment made by sub-

section (a) [amending this section] shall apply only with respect to tuition payments received under section 2164(*l*) of title 10, United States Code, for enrollments authorized by such section, after the date of the enactment of this Act [Dec. 26, 2013], in the virtual elementary and secondary education program of the Department of Defense education program.''

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–261, div. A, title III, § 371(c)(3), Oct. 17, 1998, 112 Stat. 1989, provided that: ''The amendments made by this subsection [amending this section] shall apply with respect to academic years beginning on or after the date of the enactment of this Act [Oct. 17, 1998].''

SAVINGS PROVISION

Pub. L. 103–337, div. A, title III, § 351(c), Oct. 5, 1994, 108 Stat. 2730, provided that: ''Nothing in section 2164 of title 10, United States Code, as added by subsection (a), shall be construed as affecting the rights in existence on the date of the enactment of this Act [Oct. 5, 1994] of an employee of any school established under such section (or any other provision of law enacted before the date of the enactment of this Act that established a similar school) to negotiate or bargain collectively with the Secretary with respect to wages, hours, and other terms and conditions of employment.''

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6. For establishment of U.S. Customs and Border Protection in the Department of Homeland Security, treated as if included in Pub. L. 107–296 as of Nov. 25, 2002, see section 211 of Title 6, as amended generally by Pub. L. 114–125, and section 802(b) of Pub. L. 114–125, set out as a note under section 211 of Title 6.

PILOT PROGRAM TO EXPAND ELIGIBILITY FOR ENROLLMENT AT DOMESTIC DEPENDENT ELEMENTARY AND SECONDARY SCHOOLS

Pub. L. 116–283, div. A, title V, § 589C, Jan. 1, 2021, 134 Stat. 3659, provided that:

''(a) PILOT PROGRAM AUTHORIZED.—Beginning not later than 180 days after the date of the enactment of this Act [Jan. 1, 2021], the Secretary of Defense shall carry out a pilot program under which a dependent of a full-time, active-duty member of the Armed Forces may enroll in a covered DODEA school at the military installation to which the member is assigned, on a space-available basis as described in subsection (c), without regard to whether the member resides on the installation as described in [section] 2164(a)(1) of title 10, United States Code.

''(b) PURPOSES.—The purposes of the pilot program under this section are—

''(1) to evaluate the feasibility and advisability of expanding enrollment in covered DODEA schools; and

''(2) to determine how increased access to such schools will affect military and family readiness.

''(c) ENROLLMENT ON SPACE-AVAILABLE BASIS.—A student participating in the pilot program under this section may be enrolled in a covered DODEA school only if the school has the capacity to accept the student, as determined by the Director of the Department of Defense Education Activity.

''(d) LOCATIONS.—The Secretary of Defense shall carry out the pilot program under this section at not more than four military installations at which covered DODEA schools are located. The Secretary shall select military installations for participation in the program based on—

''(1) the readiness needs of the Secretary of a the military department concerned; and

''(2) the capacity of the DODEA schools located at the installation to accept additional students, as determined by the Director of the Department of Defense Education Activity.

''(e) TERMINATION.—The authority to carry out the pilot program under this section shall terminate four years after the date of the enactment of this Act.

''(f) COVERED DODEA SCHOOL DEFINED.—In this Section, the term 'covered DODEA school' means a domestic dependent elementary or secondary school operated by the Department of Defense Education Activity that—

''(1) has been established on or before the date of the enactment of this Act; and

''(2) is located in the continental United States.''

PILOT PROGRAM ON EXPANDED ELIGIBILITY FOR DEPARTMENT OF DEFENSE EDUCATION ACTIVITY VIRTUAL HIGH SCHOOL PROGRAM

Pub. L. 116–283, div. A, title V, § 589D, Jan. 1, 2021, 134 Stat. 3660, provided that:

''(a) PILOT PROGRAM REQUIRED.—

''(1) IN GENERAL.—The Secretary of Defense shall carry out a pilot program on permitting dependents of members of the Armed Forces on active duty to enroll in the Department of Defense Education Activity Virtual High School program (in this section referred to as the 'DVHS program').

''(2) PURPOSES.—The purposes of the pilot program shall be as follows:

''(A) To evaluate the feasibility and scalability of the DVHS program.

''(B) To assess the impact of expanded enrollment in the DVHS program under the pilot program on military and family readiness.

''(3) DURATION.—The duration of the pilot program shall be four academic years.

''(b) PARTICIPANTS.—

''(1) IN GENERAL.—Participants in the pilot program shall be selected by the Secretary from among dependents of members of the Armed Forces on active duty who—

''(A) are in a grade 9 through 12;

''(B) are currently ineligible to enroll in the DVHS program; and

''(C) either—

''(i) require supplementary courses to meet graduation requirements in the current State of residence; or

''(ii) otherwise demonstrate to the Secretary a clear need to participate in the DVHS program.

''(2) PREFERENCE IN SELECTION.—In selecting participants in the pilot program, the Secretary shall afford a preference to the following:

''(A) Dependents who reside in a rural area.

''(B) Dependents who are home-schooled students.

''(3) LIMITATIONS.—The total number of course enrollments per academic year authorized under the pilot program may not exceed 400 course enrollments. No single dependent participating in the pilot program may take more than two courses per academic year under the pilot program.

''(c) REPORTS.—

''(1) INTERIM REPORT.—Not later than two years after the date of the enactment of this Act [Jan. 1, 2021], the Secretary shall submit to the Committees on Armed Services of the Senate and the House of Representatives an interim report on the pilot program.

''(2) FINAL REPORT.—Not later than 180 days after the completion of the pilot program, the Secretary shall submit to the committees of Congress referred to in paragraph (1) a final report on the pilot programs.

''(3) ELEMENTS.—Each report under this subsection shall include the following:

''(A) A description of the demographics of the dependents participating in the pilot program through the date of such report.

''(B) Data on, and an assessment of, student performance in virtual coursework by dependents participating in the pilot program over the duration of the pilot program.

''(C) Such recommendation as the Secretary considers appropriate on whether to make the pilot program permanent.

''(d) DEFINITIONS.—In this section:

''(1) The term 'rural area' has the meaning given the term in section 520 of the Housing Act of 1949 (42 U.S.C. 1490).

''(2) The term 'home-schooled student' means a student in a grade equivalent to grade 9 through 12 who receives educational instruction at home or by other non-traditional means outside of a public or private school system, either all or most of the time.''

PILOT PROGRAM ON ENHANCED CIVICS EDUCATION

Pub. L. 116–92, div. A, title II, §234, Dec. 20, 2019, 133 Stat. 1278, as amended by Pub. L. 116–283, div. A, title X, §1081(c)(1), Jan. 1, 2021, 134 Stat. 3873, provided that:

''(a) IN GENERAL.—The Secretary of Defense, in consultation with the Secretary of Education, shall carry out a pilot program under which the Secretary provides enhanced educational support and funding to eligible entities to improve civics education programs taught by such entities.

''(b) PURPOSE.—The purpose of the pilot program is to provide enhanced civics education on the following topics:

''(1) Critical thinking and media literacy.

''(2) Voting and other forms of political and civic engagement.

''(3) Interest in employment, and careers, in public service.

''(4) Understanding of United States law, history, and Government.

''(5) The ability of participants to collaborate and compromise with others to solve problems.

''(c) CONSIDERATIONS.—In carrying out the pilot program, the Secretary of Defense shall consider innovative approaches for improving civics education.

''(d) METRICS AND EVALUATIONS.—The Secretary of Defense shall establish metrics and undertake evaluations to determine the effectiveness of the pilot program, including each of the activities carried out under subsection (e).

''(e) TYPES OF SUPPORT AUTHORIZED.—Under the pilot program the Secretary of Defense—

''(1) shall provide support to eligible entities to address, at a minimum—

''(A) the development or modification of curricula relating to civics education;

''(B) classroom activities, thesis projects, individual or team projects, internships, or community service activities relating to civics;

''(C) collaboration with government entities, nonprofit organizations, or consortia of such entities and organizations to provide participants with civics-related experiences;

''(D) civics-related faculty development programs;

''(E) recruitment of educators who are highly qualified in civics education to teach civics or to assist with the development of curricula for civics education;

''(F) presentation of seminars, workshops, and training for the development of skills associated with civic engagement;

''(G) activities that enable participants to interact with government officials and entities;

''(H) expansion of civics education programs and outreach for members of the Armed Forces, dependents and children of such members, and employees of the Department of Defense; and

''(I) opportunities for participants to obtain work experience in fields relating to civics; and

''(2) may provide any other form of support the Secretary determines to be appropriate to enhance the civics education taught by eligible entities.

''(f) REPORT.—Not later than 180 days after the conclusion of the first full academic year during which the pilot program is carried out, the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report that includes—

''(1) a description of the pilot program, including a description of the specific activities carried out under subsection (e); and

''(2) the metrics and evaluations used to assess the effectiveness of the program as required under subsection (d).

''(g) DEFINITIONS.—In this section:

''(1) The term 'civics education program' means an educational program that provides participants with—

''(A) knowledge of law, government, and the rights of citizens; and

''(B) skills that enable participants to responsibly participate in democracy.

''(2) The term 'eligible entity' means any of following:

''(A) A local education agency that hosts a unit of the Junior Reserve Officers' Training Corps.

''(B) A school operated by the Department of Defense Education Activity.''

[Pub. L. 116–283, div. A, title X, §1081(c), Jan. 1, 2021, 134 Stat. 3873, provided that the amendment made by section 1081(c)(1) of Pub. L. 116–283 to section 234 of Pub. L. 116–92, set out above, is effective as of Dec. 20, 2020 (probably should be Dec. 20, 2019) and as if included in Pub. L. 116–92.]

SUPPORT FOR WORLD LANGUAGE ADVANCEMENT AND READINESS

Pub. L. 116–92, div. A, title XVII, §1751, Dec. 20, 2019, 133 Stat. 1849, provided that:

''(a) PROGRAM AUTHORITY.—

''(1) IN GENERAL.—The Secretary of Defense, in consultation with the Director of National Intelligence and the Secretary of Education, may carry out a program under which the Secretary may provide support to eligible entities for the establishment, improvement, or expansion of world language study for elementary school and secondary school students.

''(2) SPECIAL REQUIREMENTS FOR LOCAL EDUCATIONAL AGENCIES.—In providing support under paragraph (1) to an eligible entity that is a local educational agency, the Secretary of Defense shall support programs that—

''(A) show the promise of being continued after such support is no longer available;

''(B) demonstrate approaches that can be disseminated to and duplicated in other local educational agencies; and

''(C) may include a professional development component.

''(3) APPLICATIONS.—

''(A) IN GENERAL.—To be considered for support under paragraph (1), an eligible entity shall submit an application to the Secretary of Defense at such time, in such manner, and containing such information and assurances as the Secretary may require.

''(B) SPECIAL CONSIDERATION.—The Secretary of Defense shall give special consideration to applications describing programs that—

''(i) include intensive summer world language programs for professional development of world language teachers;

''(ii) link nonnative English speakers in the community with the schools in order to promote two-way language learning;

''(iii) promote the sequential study of a world language for students, beginning in elementary schools;

''(iv) make effective use of technology, such as computer-assisted instruction, language laboratories, or distance learning, to promote world language study;

''(v) promote innovative activities, such as dual language immersion, partial world language immersion, or content-based instruction; and

''(vi) are carried out through a consortium comprised of the eligible entity receiving the grant, an elementary school or secondary school, and an institution of higher education (as that term is defined in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001)).

''(b) DEFINITIONS.—In this section:

''(1) ELIGIBLE ENTITY.—The term 'eligible entity' means the following:

''(A) A local educational agency that hosts a unit of the Junior Reserve Officers' Training Corps.

''(B) A school operated by the Department of Defense Education Activity.

''(2) ESEA TERMS.—The terms 'elementary school', 'local educational agency' and 'secondary school' have the meanings given the terms in section 8101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801).

''(3) WORLD LANGUAGE.—The term 'world language' means—

''(A) any natural language other than English, including—

''(i) languages determined by the Secretary of Defense to be critical to the national security interests of the United States;

''(ii) classical languages;

''(iii) American sign language; and

''(iv) Native American languages; and

''(B) any language described in subparagraph (A) that is taught in combination with English as part of a dual language or immersion learning program.''

§2165. National Defense University: component institutions

(a) IN GENERAL.—There is a National Defense University in the Department of Defense.

(b) COMPONENT INSTITUTIONS.—The National Defense University consists of the following institutions:

(1) The National War College.

(2) The Dwight D. Eisenhower School for National Security and Resource Strategy.

(3) The Joint Forces Staff College.

(4) The Institute for National Strategic Studies.

(5) The College of Information and Cyberspace.

(6) Any other educational institution of the Department of Defense that the Secretary considers appropriate and designates as an institution of the university.

[(c) Repealed. Pub. L. 109–364, div. A, title IX, §904(b)(2)(B), Oct. 17, 2006, 120 Stat. 2353.]

(d) SOURCE OF FUNDS FOR PROFESSIONAL DEVELOPMENT EDUCATION OPERATIONS.—Funding for the professional development education operations of the National Defense University shall be provided from funds made available to the Secretary of Defense from the annual appropriation ''Operation and Maintenance, Defense-wide''.

(e) ACCEPTANCE OF FACULTY RESEARCH GRANTS.—(1) The Secretary of Defense may authorize the President of the National Defense University to accept qualifying research grants. Any such grant may only be accepted if the work under the grant is to be carried out by a professor or instructor of one of the institutions comprising the University for a scientific, literary, or educational purpose.

(2) A qualifying research grant under this subsection is a grant that is awarded on a competitive basis by an entity referred to in paragraph (3) for a research project with a scientific, literary, or educational purpose.

(3) A grant may be accepted under this subsection only from a corporation, fund, foundation, educational institution, or similar entity that is organized and operated primarily for scientific, literary, or educational purposes.

(4) The Secretary shall establish an account for administering funds received as research grants under this subsection. The President of the University shall use the funds in the account in accordance with applicable provisions of the regulations and the terms and condition of the grants received.

(5) Subject to such limitations as may be provided in appropriations Acts, appropriations available for the National Defense University may be used to pay expenses incurred by the University in applying for, and otherwise pursuing, the award of qualifying research grants.

(6) The Secretary shall prescribe regulations for the administration of this subsection.

(f) COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENTS.—(1) In engaging in research and development projects pursuant to subsection (a) of section 2358 of this title by a contract, cooperative agreement, or grant pursuant to subsection (b)(1) of such section, the Secretary may enter into such contract or cooperative agreement or award such grant through the National Defense University.

(2) The National Defense University shall be considered a Government-operated Federal laboratory for purposes of section 12 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a).

(Added and amended Pub. L. 105–85, div. A, title IX, §§921(a)(1), 922(a), Nov. 18, 1997, 111 Stat. 1862, 1863; Pub. L. 105–261, div. A, title IX, §§904, 905(a), Oct. 17, 1998, 112 Stat. 2093; Pub. L. 106–398, §1 [[div. A], title IX, §913(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–230; Pub. L. 107–107, div. A, title V, §527(c)(1), Dec. 28, 2001, 115 Stat. 1102; Pub. L. 109–163, div. A, title V, §522(a), Jan. 6, 2006, 119 Stat. 3240; Pub. L. 109–364, div. A, title IX, §904(b)(2), Oct. 17, 2006, 120 Stat. 2353; Pub. L. 112–81, div. B, title XXVIII, §2861(b), Dec. 31, 2011, 125 Stat. 1701; Pub. L. 114–328, div. A, title II, §214(a), title XVI, §1648(a), Dec. 23, 2016, 130 Stat. 2048, 2606; Pub. L. 116–283, div. A, title XVIII, §1841(e)(1), Jan. 1, 2021, 134 Stat. 4244.)

AMENDMENT OF SUBSECTION (f)(1)

Pub. L. 116–283, div. A, title XVIII, §§1801(d), 1841(e)(1), Jan. 1, 2021, 134 Stat. 4244, 4155, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, subsection (f)(1) of this section is amended by striking ''section 2358'' and inserting ''section 4001''. See 2021 Amendment note below.

AMENDMENTS

2021—Subsec. (f)(1). Pub. L. 116–283 substituted ''section 4001'' for ''section 2358''.

2016—Subsec. (b)(5). Pub. L. 114–328, §1648(a), substituted ''College of Information and Cyberspace'' for ''Information Resources Management College''.

Subsec. (f). Pub. L. 114–328, § 214(a), added subsec. (f).

2011—Subsec. (b)(2). Pub. L. 112–81 amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''The Industrial College of the Armed Forces.''

2006—Subsec. (b)(6), (7). Pub. L. 109–364, § 904(b)(2)(A), redesignated par. (7) as (6) and struck out former par. (6) which read as follows: ''The Center for Hemispheric Defense Studies.''

Subsec. (c). Pub. L. 109–364, § 904(b)(2)(B), struck out heading and text of subsec. (c). Text read as follows: ''Funds available for the payment of personnel expenses under the Latin American cooperation authority set forth in section 1050 of this title are also available for the costs of the operation of the Center for Hemispheric Defense Studies.''

Subsec. (e). Pub. L. 109–163 added subsec. (e).

2001—Subsec. (d). Pub. L. 107–107 added subsec. (d).

2000—Subsec. (b)(3). Pub. L. 106–398 substituted ''Joint Forces Staff College'' for ''Armed Forces Staff College''.

1998—Subsec. (b)(7). Pub. L. 105–261, § 904, added par. (7).

Subsec. (c). Pub. L. 105–261, § 905(a), added subsec. (c).

1997—Subsec. (b)(6). Pub. L. 105–85, § 922(a), added par. (6).

CHANGE OF NAME

Pub. L. 114–328, div. A, title XVI, § 1648(b), Dec. 23, 2016, 130 Stat. 2606, provided that: ''Any reference in any law, regulation, document, record, or other paper of the United States to the Information Resources Management College shall be considered to be a reference to the College of Information and Cyberspace.''

Pub. L. 112–81, div. B, title XXVIII, § 2861, Dec. 31, 2011, 125 Stat. 1701, provided that:

''(a) REDESIGNATION.—The Industrial College of the Armed Forces is hereby renamed the 'Dwight D. Eisenhower School for National Security and Resource Strategy'.

''(b) CONFORMING AMENDMENT.—[Amended section 2165(b)(2) of this title.]

''(c) REFERENCES.—Any reference to the Industrial College of the Armed Forces in any law, regulation, map, document, record, or other paper of the United States shall be deemed to be a reference to the Dwight D. Eisenhower School for National Security and Resource Strategy.''

Pub. L. 106–398, § 1 [[div. A], title IX, § 913(a), (c)], Oct. 30, 2000, 114 Stat. 1654, 1654A–230, provided that:

''(a) CHANGE IN NAME.—The Armed Forces Staff College of the Department of Defense is hereby renamed the 'Joint Forces Staff College'.

''(c) REFERENCES.—Any reference to the Armed Forces Staff College in any law, regulation, map, document, record, or other paper of the United States shall be considered to be a reference to the Joint Forces Staff College.''

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–107, div. A, title V, § 527(c)(2), Dec. 28, 2001, 115 Stat. 1102, provided that: ''Subsection (d) of section 2165 of title 10, United States Code, as added by paragraph (1), shall become effective beginning with fiscal year 2003.''

CENTER FOR THE STUDY OF CHINESE MILITARY AFFAIRS

Pub. L. 106–65, div. A, title IX, § 914, Oct. 5, 1999, 113 Stat. 721, provided that:

''(a) ESTABLISHMENT.—The Secretary of Defense shall establish a Center for the Study of Chinese Military Affairs as part of the National Defense University. The Center shall be organized under the Institute for National Strategic Studies of the University.

''(b) QUALIFICATIONS OF DIRECTOR.—The Director of the Center shall be an individual who is a distinguished scholar of proven academic, management, and leadership credentials with a superior record of achievement and publication regarding Chinese political, strategic, and military affairs.

''(c) MISSION.—The mission of the Center is to study and inform policymakers in the Department of Defense, Congress, and throughout the Government regarding the national goals and strategic posture of the People's Republic of China and the ability of that nation to develop, field, and deploy an effective military instrument in support of its national strategic objectives. The Center shall accomplish that mission by a variety of means intended to widely disseminate the research findings of the Center.

''(d) STARTUP OF CENTER.—The Secretary of Defense shall establish the Center for the Study of Chinese Military Affairs not later than March 1, 2000. The first Director of the Center shall be appointed not later than June 1, 2000. The Center should be fully operational not later than June 1, 2001.

''(e) IMPLEMENTATION REPORT.—(1) Not later than January 1, 2001, the President of the National Defense University shall submit to the Secretary of Defense a report setting forth the President's organizational plan for the Center for the Study of Chinese Military Affairs, the proposed budget for the Center, and the timetable for initial and full operations of the Center. The President of the National Defense University shall prepare that report in consultation with the Director of the Center and the Director of the Institute for National Strategic Studies of the University.

''(2) The Secretary of Defense shall transmit the report under paragraph (1), together with whatever comments the Secretary considers appropriate, to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives not later than February 1, 2001.''

[§ 2166. Renumbered § 343]

§ 2167. National Defense University: admission of private sector civilians to professional military education program

(a) AUTHORITY FOR ADMISSION.—The Secretary of Defense may permit eligible private sector employees who work in organizations relevant to national security to receive instruction at the National Defense University in accordance with this section. No more than the equivalent of 35 full-time student positions may be filled at any one time by private sector employees enrolled under this section. Upon successful completion of the course of instruction in which enrolled, any such private sector employee may be awarded an appropriate diploma or degree under section 2165 of this title.

(b) ELIGIBLE PRIVATE SECTOR EMPLOYEES.—For purposes of this section, an eligible private sector employee is an individual employed by a private firm that is engaged in providing to the Department of Defense or other Government departments or agencies significant and substantial defense-related systems, products, or services or whose work product is relevant to national security policy or strategy. A private sector employee admitted for instruction at the National Defense University remains eligible for such instruction only so long as that person remains employed by the same firm.

(c) ANNUAL CERTIFICATION BY SECRETARY OF DEFENSE.—Private sector employees may receive instruction at the National Defense University during any academic year only if, before

the start of that academic year, the Secretary of Defense determines, and certifies to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives, that providing instruction to private sector employees under this section during that year will further national security interests of the United States.

(d) PROGRAM REQUIREMENTS.—The Secretary of Defense shall ensure that—

(1) the curriculum for the professional military education program in which private sector employees may be enrolled under this section is not readily available through other schools and concentrates on national security relevant issues; and

(2) the course offerings at the National Defense University continue to be determined solely by the needs of the Department of Defense.

(e) TUITION.—The President of the National Defense University shall charge students enrolled under this section a rate—

(1) that is at least the rate charged for employees of the United States outside the Department of Defense, less infrastructure costs, and

(2) that considers the value to the school and course of the private sector student.

(f) STANDARDS OF CONDUCT.—While receiving instruction at the National Defense University, students enrolled under this section, to the extent practicable, are subject to the same regulations governing academic performance, attendance, norms of behavior, and enrollment as apply to Government civilian employees receiving instruction at the university.

(g) USE OF FUNDS.—Amounts received by the National Defense University for instruction of students enrolled under this section shall be retained by the university to defray the costs of such instruction. The source, and the disposition, of such funds shall be specifically identified in records of the university.

(Added Pub. L. 107–107, div. A, title V, §528(a)(1), Dec. 28, 2001, 115 Stat. 1102; amended Pub. L. 111–84, div. A, title V, §526, Oct. 28, 2009, 123 Stat. 2288; Pub. L. 111–383, div. A, title V, §592, Jan. 7, 2011, 124 Stat. 4232.)

AMENDMENTS

2011—Subsec. (a). Pub. L. 111–383 substituted ''35 full-time student positions'' for ''20 full-time student positions''.

2009—Subsec. (a). Pub. L. 111–84 substituted ''20'' for ''10''.

EFFECTIVE DATE

Pub. L. 107–107, div. A, title V, §528(b), Dec. 28, 2001, 115 Stat. 1103, provided that: ''Section 2167 of title 10, United States Code, as added by subsection (a), shall take effect on January 1, 2002.''

§2167a. Defense Cyber Investigations Training Academy: admission of private sector civilians to receive instruction

(a) AUTHORITY FOR ADMISSION.—The Secretary of Defense may permit eligible private sector employees to receive instruction at the Defense Cyber Investigations Training Academy operating under the direction of the Defense Cyber Crime Center. No more than the equivalent of 200 full-time student positions may be filled at any one time by private sector employees enrolled under this section, on a yearly basis. Upon successful completion of the course of instruction in which enrolled, any such private sector employee may be awarded an appropriate certification or diploma.

(b) ELIGIBLE PRIVATE SECTOR EMPLOYEES.—For purposes of this section, an eligible private sector employee is an individual employed by a private firm that is engaged in providing to the Department of Defense or other Government departments or agencies significant and substantial defense-related systems, products, or services, or whose work product is relevant to national security policy or strategy. A private sector employee remains eligible for such instruction only so long as that person remains employed by an eligible private sector firm.

(c) PROGRAM REQUIREMENTS.—The Secretary of Defense shall ensure that—

(1) the curriculum in which private sector employees may be enrolled under this section is not readily available through other schools; and

(2) the course offerings at the Defense Cyber Investigations Training Academy continue to be determined solely by the needs of the Department of Defense.

(d) TUITION.—The Secretary of Defense shall charge private sector employees enrolled under this section tuition at a rate that is at least equal to the rate charged for employees of the United States. In determining tuition rates, the Secretary shall include overhead costs of the Defense Cyber Investigations Training Academy.

(e) STANDARDS OF CONDUCT.—While receiving instruction at the Defense Cyber Investigations Training Academy, students enrolled under this section, to the extent practicable, are subject to the same regulations governing academic performance, attendance, norms of behavior, and enrollment as apply to Government civilian employees receiving instruction at the Academy.

(f) USE OF FUNDS.—Amounts received by the Defense Cyber Investigations Training Academy for instruction of students enrolled under this section shall be retained by the Academy to defray the costs of such instruction. The source, and the disposition, of such funds shall be specifically identified in records of the Academy.

(Added Pub. L. 111–84, div. A, title IX, §901(a), Oct. 28, 2009, 123 Stat. 2422.)

§2168. Defense Language Institute Foreign Language Center: degree of Associate of Arts in foreign language

(a) Subject to subsection (b), the Commandant of the Defense Language Institute may confer an Associate of Arts degree in a foreign language upon any graduate of the Foreign Language Center of the Institute who fulfills the requirements for that degree.

(b) A degree may be conferred upon a student under this section only if the Provost of the Center certifies to the Commandant that the student has satisfied all the requirements prescribed for the degree.

(c) The authority provided by subsection (a) shall be exercised under regulations prescribed by the Secretary of Defense.

(Added Pub. L. 107–107, div. A, title V, § 531(a), Dec. 28, 2001, 115 Stat. 1104.)

§ 2169. School of Nursing: establishment

(a) ESTABLISHMENT AUTHORIZED.—The Secretary of Defense may establish a School of Nursing.

(b) DEGREE GRANTING AUTHORITY.—The School of Nursing may include a program that awards a bachelor of science in nursing.

(c) PHASED DEVELOPMENT.—The Secretary of Defense may develop the School of Nursing in phases as determined appropriate by the Secretary.

(Added Pub. L. 111–84, div. A, title V, § 525(a)(2), Oct. 28, 2009, 123 Stat. 2286.)

CHAPTER 109—EDUCATIONAL LOAN REPAYMENT PROGRAMS

Sec.

2171. Education loan repayment program: enlisted members on active duty in specified military specialties.

[2172. Renumbered.]

2173. Education loan repayment program: commissioned officers in specified health professions.

2174. Interest payment program: members on active duty.

AMENDMENTS

2002—Pub. L. 107–314, div. A, title VI, § 651(a)(2), Dec. 2, 2002, 116 Stat. 2579, added item 2174.

1997—Pub. L. 105–85, div. A, title VI, § 651(b), Nov. 18, 1997, 111 Stat. 1803, added item 2173.

1994—Pub. L. 103–337, div. A, title XVI, § 1671(b)(13), Oct. 5, 1994, 108 Stat. 3014, added item 2171 and struck out former items 2171 ''General educational loan repayment program'' and 2172 ''Education loans for certain health professionals who serve in the Selected Reserve''.

§ 2171. Education loan repayment program: enlisted members on active duty in specified military specialties

(a)(1) Subject to the provisions of this section, the Secretary of Defense may repay—

(A) any loan made, insured, or guaranteed under part B of title IV of the Higher Education Act of 1965 (20 U.S.C. 1071 et seq.);

(B) any loan made under part D of such title (the William D. Ford Federal Direct Loan Program, 20 U.S.C. 1087a et seq.);

(C) any loan made under part E of such title (20 U.S.C. 1087aa et seq.); or

(D) any loan incurred for educational purposes made by a lender that is—

(i) an agency or instrumentality of a State;

(ii) a financial or credit institution (including an insurance company) that is subject to examination and supervision by an agency of the United States or any State;

(iii) a pension fund approved by the Secretary for purposes of this section; or

(iv) a non-profit private entity designated by a State, regulated by such State, and approved by the Secretary for purposes of this section.

Repayment of any such loan shall be made on the basis of each complete year of service performed by the borrower.

(2) The Secretary may repay loans described in paragraph (1) in the case of any person for service performed on active duty as a member in an officer program or military specialty specified by the Secretary.

(b) The portion or amount of a loan that may be repaid under subsection (a) is 33⅓ percent or $1,500, whichever is greater, for each year of service.

(c) If a portion of a loan is repaid under this section for any year, interest on the remainder of such loan shall accrue and be paid in the same manner as is otherwise required.

(d) Nothing in this section shall be construed to authorize refunding any repayment of a loan.

(e) A person who transfers from service making the person eligible for repayment of loans under this section (as described in subsection (a)(2)) to service making the person eligible for repayment of loans under section 16301 of this title (as described in subsection (a)(2) of that section) during a year shall be eligible to have repaid a portion of such loan determined by giving appropriate fractional credit for each portion of the year so served, in accordance with regulations of the Secretary concerned.

(f) The Secretary of Defense shall, by regulation, prescribe a schedule for the allocation of funds made available to carry out the provisions of this section and section 16301 of this title during any year for which funds are not sufficient to pay the sum of the amounts eligible for repayment under subsection (a) and section 16301(a) of this title.

(g) Except a person described in subsection (e) who transfers to service making the person eligible for repayment of loans under section 16301 of this title, a member of the armed forces who fails to complete the period of service required to qualify for loan repayment under this section shall be subject to the repayment provisions of section 303a(e) or 373 of title 37.

(h) The Secretary of Defense may prescribe, by regulations, procedures for implementing this section, including standards for qualified loans and authorized payees and other terms and conditions for making loan repayments. Such regulations may include exceptions that would allow for the payment as a lump sum of any loan repayment due to a member under a written agreement that existed at the time of a member's death or disability.

(Added Pub. L. 99–145, title VI, § 671(a)(1), Nov. 8, 1985, 99 Stat. 661; amended Pub. L. 103–337, div. A, title XVI, § 1663(e), Oct. 5, 1994, 108 Stat. 3009; Pub. L. 104–106, div. A, title X, § 1079(a), Feb. 10, 1996, 110 Stat. 451; Pub. L. 109–163, div. A, title V, § 537, Jan. 6, 2006, 119 Stat. 3249; Pub. L. 111–383, div. A, title V, § 552(a), Jan. 7, 2011, 124 Stat. 4220; Pub. L. 115–91, div. A, title VI, § 618(a)(1)(H), Dec. 12, 2017, 131 Stat. 1426.)

REFERENCES IN TEXT

The Higher Education Act of 1965, referred to in subsec. (a)(1), is Pub. L. 89–329, Nov. 8, 1965, 79 Stat. 1219. Parts B, D, and E of title IV of the Act are classified to parts B (§ 1071 et seq.), D (§ 1087a et seq.), and E (§ 1087aa et seq.), respectively, of subchapter IV of chap-

ter 28 of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20 and Tables.

AMENDMENTS

2017—Subsec. (g). Pub. L. 115–91 inserted ''or 373'' before ''of title 37''.

2011—Subsecs. (g), (h). Pub. L. 111–383 added subsecs. (g) and (h).

2006—Subsec. (a)(1)(D). Pub. L. 109–163, § 537(a), added subpar. (D).

Subsec. (a)(2). Pub. L. 109–163, § 537(b), substituted ''a member in an officer program or military specialty'' for ''an enlisted member in a military specialty''.

1996—Subsec. (a)(1). Pub. L. 104–106 struck out ''or'' at end of subpar. (A), added subpar. (B), and redesignated former subpar. (B) as (C).

1994—Pub. L. 103–337, § 1663(e)(6), substituted ''Education loan repayment program: enlisted members on active duty in specified military specialties'' for ''General educational loan repayment program'' as section catchline.

Subsec. (a)(1)(B). Pub. L. 103–337, § 1663(e)(1), struck out ''or'' after ''(B)''.

Subsec. (a)(2). Pub. L. 103–337, § 1663(e)(2), substituted ''case of any person for—

''(A) service performed—

''(i) as an enlisted member of the Selected Reserve of the Ready Reserve of an armed force; and

''(ii) in a reserve component and military specialty specified by the Secretary of Defense; or

''(B) service performed''

and struck out at end ''In the case of service described in clause (A) of the first sentence of this paragraph, the Secretary may repay a loan described in paragraph (1) only if the person to whom the loan was made performed such service after the loan was made.''

Subsec. (b). Pub. L. 103–337, § 1663(e)(3), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''The portion or amount of a loan that may be repaid under subsection (a) is—

''(1) 15 percent or $500, whichever is greater, for each year of service, in the case of service described in subsection (a)(2)(A); or

''(2) 33⅓ percent or $1,500, whichever is greater, for each year of service, in the case of service described in subsection (a)(2)(B).''

Subsec. (e). Pub. L. 103–337, § 1663(e)(4), substituted ''A person who transfers from service making the person eligible for repayment of loans under this section (as described in subsection (a)(2)) to service making the person eligible for repayment of loans under section 16301 of this title (as described in subsection (a)(2) of that section)'' for ''Any individual who transfers from service described in clause (A) or (B) of subsection (a)(2) to service described in the other clause of such subsection''.

Subsec. (f). Pub. L. 103–337, § 1663(e)(5), inserted ''and section 16301 of this title'' after ''this section'' and ''and section 16301(a) of this title'' after ''subsection (a)''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

EFFECTIVE DATE

Pub. L. 99–145, title VI, § 671(b)(1), Nov. 8, 1985, 99 Stat. 663, provided that: ''The authority provided under section 2171 of title 10, United States Code, as added by subsection (a), shall apply only—

''(A) in the case of persons who enlist or reenlist in the Selected Reserve of the Ready Reserve of an Armed Force or enlist or reenlist for service on active duty after September 30, 1980;

''(B) with respect to service performed after that date; and

''(C) with respect to loans made after October 1, 1975.''

[§ 2172. Renumbered § 16302]

§ 2173. Education loan repayment program: commissioned officers in specified health professions

(a) AUTHORITY TO REPAY EDUCATION LOANS.—For the purpose of maintaining adequate numbers of commissioned officers of the armed forces on active duty who are qualified in the various health professions, the Secretary of a military department may repay, in the case of a person described in subsection (b), a loan that—

(1) was used by the person to finance education regarding a health profession; and

(2) was obtained from a governmental entity, private financial institution, school, or other authorized entity.

(b) ELIGIBLE PERSONS.—To be eligible to obtain a loan repayment under this section, a person must—

(1) satisfy one of the requirements specified in subsection (c);

(2) be fully qualified for, or hold, an appointment as a commissioned officer in one of the health professions; and

(3) sign a written agreement to serve on active duty, or, if on active duty, to remain on active duty for a period in addition to any other incurred active duty obligation.

(c) ACADEMIC AND PROFESSIONAL REQUIREMENTS.—One of the following academic requirements must be satisfied for purposes of determining the eligibility of a person for a loan repayment under this section:

(1) The person is fully qualified in a health care profession that the Secretary of the military department concerned has determined to be necessary to meet identified skill shortages.

(2) The person is enrolled as a full-time student in the final year of a course of study at an accredited educational institution leading to a degree in a health profession other than medicine or osteopathic medicine.

(3) The person is enrolled in the final year of an approved graduate program leading to specialty qualification in medicine, dentistry, osteopathic medicine, or other health profession.

(4) The person is enrolled in the Armed Forces Health Professions Scholarship and Financial Assistance Program under subchapter I of chapter 105 of this title for a number of years less than is required to complete the normal length of the course of study required for the health profession concerned.

(d) CERTAIN PERSONS INELIGIBLE.—Students of the Uniformed Services University of the Health Sciences established under section 2112 of this title are not eligible for the repayment of an education loan under this section.

(e) LOAN REPAYMENTS.—(1) Subject to the limits established by paragraph (2), a loan repayment under this section may consist of payment of the principal, interest, and related expenses of a loan obtained by a person described in subsection (b) for—

(A) all educational expenses, comparable to all educational expenses recognized under sec-

tion 2127(a) of this title for participants in the Armed Forces Health Professions Scholarship and Financial Assistance program; and

(B) reasonable living expenses, not to exceed expenses comparable to the stipend paid under section 2121(d) of this title for participants in the Armed Forces Health Professions Scholarship and Financial Assistance program.

(2) For each year of obligated service that a person agrees to serve in an agreement described in subsection (b)(3), the Secretary of the military department concerned may pay not more than $60,000 on behalf of the person. This maximum amount shall be increased annually by the Secretary of Defense effective October 1 of each year by the percentage equal to the percent increase in the average annual cost of educational expenses and stipend costs of a single scholarship under the Armed Forces Health Professions Scholarship and Financial Assistance program.

(f) ACTIVE DUTY SERVICE OBLIGATION.—(1) A person entering into an agreement described in subsection (b)(3) incurs an active duty service obligation. The length of this obligation shall be determined under regulations prescribed by the Secretary of Defense, but those regulations may not provide for a period of obligation of less than one year for each maximum annual amount, or portion thereof, paid on behalf of the person for qualified loans.

(2) For persons on active duty before entering into the agreement, the active duty service obligation shall be served consecutively to any other obligation incurred under the agreement.

(g) EFFECT OF FAILURE TO COMPLETE OBLIGATION.—(1) A commissioned officer who is relieved of the officer's active duty obligation under this section before the completion of that obligation may be given, with or without the consent of the officer, any alternative obligation comparable to any of the alternative obligations authorized by section 2123(e) of this title for participants in the Armed Forces Health Professions Scholarship and Financial Assistance program.

(2) An officer who does not complete the period of active duty specified in the agreement entered into under subsection (b)(3), or the alternative obligation imposed under paragraph (1), shall be subject to the repayment provisions of section 303a(e) or 373 of title 37.

(h) REGULATIONS.—The Secretary of Defense shall prescribe regulations to carry out this section, including standards for qualified loans and authorized payees and other terms and conditions for the making of loan repayments.

(Added Pub. L. 105–85, div. A, title VI, § 651(a), Nov. 18, 1997, 111 Stat. 1802; amended Pub. L. 107–314, div. A, title V, § 573, Dec. 2, 2002, 116 Stat. 2558; Pub. L. 109–163, div. A, title VI, § 687(c)(7), Jan. 6, 2006, 119 Stat. 3334; Pub. L. 109–364, div. A, title V, § 537(a), Oct. 17, 2006, 120 Stat. 2209; Pub. L. 111–383, div. A, title V, § 553, Jan. 7, 2011, 124 Stat. 4220; Pub. L. 115–91, div. A, title VI, § 618(a)(1)(I), Dec. 12, 2017, 131 Stat. 1426.)

AMENDMENTS

2017—Subsec. (g)(2). Pub. L. 115–91 inserted ''or 373'' before ''of title 37''.

2011—Subsec. (c)(4). Pub. L. 111–383 added par. (4).

2006—Subsec. (e)(2). Pub. L. 109–364 substituted ''$60,000'' for ''$22,000''.

Subsec. (g). Pub. L. 109–163 designated existing provisions as par. (1) and added par. (2).

2002—Subsec. (d). Pub. L. 107–314, § 573(a), substituted ''Students'' for ''Participants of the Armed Forces Health Professions Scholarship and Financial Assistance program under subchapter I of chapter 105 of this title and students''.

Subsec. (e)(2). Pub. L. 107–314, § 573(b), struck out at end ''The total amount that may be repaid on behalf of any person may not exceed an amount determined on the basis of a four-year active duty service obligation.''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–364, div. A, title V, § 537(b), Oct. 17, 2006, 120 Stat. 2209, provided that:

''(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall take effect on October 1, 2006, and shall apply to agreements entered into or revised under section 2173 of title 10, United States Code, on or after that date.

''(2) PROHIBITION ON ADJUSTMENT.—The adjustment required by the second sentence of section 2173(e)(2) of title 10, United States Code, to be made on October 1, 2006, shall not be made.''

SAVINGS PROVISION

For savings provision relating to payment or repayment of any bonus, incentive pay, special pay, or similar pay obligated to be paid before Apr. 1, 2006, under a provision of this section amended by section 687(c) of Pub. L. 109–163, see section 687(f) of Pub. L. 109–163, set out as a note under section 510 of this title.

§ 2174. Interest payment program: members on active duty

(a) AUTHORITY.—(1) The Secretary concerned may pay in accordance with this section the interest and any special allowances that accrue on one or more student loans of an eligible member of the armed forces.

(2) The Secretary of a military department may exercise the authority under paragraph (1) only if approved by the Secretary of Defense and subject to such requirements, conditions, and restrictions as the Secretary of Defense may prescribe.

(b) ELIGIBLE MEMBERS.—A member of the armed forces is eligible for the benefit under subsection (a) while the member—

(1) is serving on active duty in fulfillment of the member's first enlistment in the armed forces or, in the case of an officer, is serving on active duty and has not completed more than three years of service on active duty;

(2) is the debtor on one or more unpaid loans described in subsection (c); and

(3) is not in default on any such loan.

(c) STUDENT LOANS.—The authority to make payments under subsection (a) may be exercised with respect to the following loans:

(1) A loan made, insured, or guaranteed under part B of title IV of the Higher Education Act of 1965 (20 U.S.C. 1071 et seq.).

(2) A loan made under part D of such title (20 U.S.C. 1087a et seq.).

(3) A loan made under part E of such title (20 U.S.C. 1087aa et seq.).

(d) MAXIMUM BENEFIT.—The months for which interest and any special allowance may be paid on behalf of a member of the armed forces under this section are any 36 consecutive months dur-

ing which the member is eligible under subsection (b).

(e) FUNDS FOR PAYMENTS.—Appropriations available for the pay and allowances of military personnel shall be available for payments under this section.

(f) COORDINATION.—(1) The Secretary of Defense and, with respect to the Coast Guard when it is not operating as a service in the Navy, the Secretary of the Department in which the Coast Guard is operating shall consult with the Secretary of Education regarding the administration of the authority under this section.

(2) The Secretary concerned shall transfer to the Secretary of Education the funds necessary—

(A) to pay interest and special allowances on student loans under this section (in accordance with sections 428(*o*), 455(*l*), and 464(j) of the Higher Education Act of 1965 (20 U.S.C. 1078(*o*), 1087e(*l*), and 1087dd(j)); and

(B) to reimburse the Secretary of Education for any reasonable administrative costs incurred by the Secretary in coordinating the program under this section with the administration of the student loan programs under parts B, D, and E of title IV of the Higher Education Act of 1965.

(g) SPECIAL ALLOWANCE DEFINED.—In this section, the term ''special allowance'' means a special allowance that is payable under section 438 of the Higher Education Act of 1965 (20 U.S.C. 1087–1).

(Added Pub. L. 107–314, div. A, title VI, § 651(a)(1), Dec. 2, 2002, 116 Stat. 2578.)

REFERENCES IN TEXT

The Higher Education Act of 1965, referred to in subsecs. (c) and (f)(2)(B), is Pub. L. 89–329, Nov. 8, 1965, 79 Stat. 1219. Parts B, D, and E of title IV of the Act are classified to parts B (§ 1071 et seq.), D (§ 1087a et seq.), and E (§ 1087aa et seq.), respectively, of subchapter IV of chapter 28 of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20 and Tables.

EFFECTIVE DATE

Pub. L. 107–314, div. A, title VI, § 651(e), Dec. 2, 2002, 116 Stat. 2581, provided that: ''The amendments made by this section [enacting this section and amending sections 1078, 1087e, and 1087dd of Title 20, Education] shall apply with respect to interest, and any special allowance under section 438 of the Higher Education Act of 1965 [20 U.S.C. 1087–1], that accrue for months beginning on or after October 1, 2003, on student loans described in subsection (c) of section 2174 of title 10, United States Code (as added by subsection (a)), that were made before, on, or after such date to members of the Armed Forces who are on active duty (as defined in section 101(d) of title 10, United States Code) on or after that date.''

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

CHAPTER 110—EDUCATIONAL ASSISTANCE FOR MEMBERS HELD AS CAPTIVES AND THEIR DEPENDENTS

Sec.
2181. Definitions.
2182. Educational assistance: dependents of captives.
2183. Educational assistance: former captives.
2184. Termination of assistance.
2185. Programs to be consistent with programs administered by the Department of Veterans Affairs.

AMENDMENTS

1990—Pub. L. 101–510, div. A, title XIV, § 1484(i)(5), Nov. 5, 1990, 104 Stat. 1718, inserted ''administered by'' after ''programs'' in item 2185.

1989—Pub. L. 101–189, div. A, title XVI, § 1621(a)(7)(B), Nov. 29, 1989, 103 Stat. 1603, substituted ''programs the Department of Veterans Affairs'' for ''programs administered by the Veterans' Administration'' in item 2185.

§ 2181. Definitions

In this chapter:

(1) The terms ''captive status'' and ''former captive'' have the meanings given those terms in section 559 of title 37.

(2) The term ''dependent'' has the meaning given that term in section 551 of that title.

(Added Pub. L. 99–399, title VIII, § 806(d)(1), Aug. 27, 1986, 100 Stat. 887, and Pub. L. 100–26, § 7(k)(6), Apr. 21, 1987, 101 Stat. 284.)

AMENDMENTS

1987—Pub. L. 100–26, substituted ''The terms 'captive' '' for '' 'Captive' '' in par. (1) and ''The term 'dependent' '' for '' 'Dependent' '' in par. (2).

EFFECTIVE DATE

Pub. L. 99–399, title VIII, § 806(d)(3), Aug. 27, 1986, 100 Stat. 888, provided that: ''Chapter 110 of title 10, United States Code, as added by paragraph (1), shall apply with respect to persons whose captive status begins after January 21, 1981.''

§ 2182. Educational assistance: dependents of captives

(a) Under regulations prescribed by the President, the Secretary concerned shall pay (by advancement or reimbursement) a dependent of a person who is in a captive status for expenses incurred, while attending an educational or training institution, for—

(1) subsistence;
(2) tuition;
(3) fees;
(4) supplies;
(5) books;
(6) equipment; and
(7) other educational expenses.

(b) Except as provided in section 2184 of this title, payments shall be available under this section for a dependent of a person who is in a captive status for education or training that occurs—

(1) after that person is in a captive status for not less than 90 days; and

(2) on or before—

(A) the end of any semester or quarter (as appropriate) that begins before the date on which the captive status of that person terminates;

(B) the earlier of the end of any course that began before such date or the end of the 16-week period following that date if the educational or training institution is not operated on a semester or quarter system; or

(C) a date specified by the Secretary concerned in order to respond to special circumstances.

(c) If a person in a captive status or a former captive dies and the death is incident to the captivity, payments shall be available under this section for a dependent of that person for education or training that occurs after the date of the death of that person.

(d) The provisions of this section shall not apply to any dependent who is eligible for assistance under chapter 35 of title 38 or similar assistance under any other provision of law.

(Added Pub. L. 99–399, title VIII, § 806(d)(1), Aug. 27, 1986, 100 Stat. 887.)

EFFECTIVE DATE

Section applicable with respect to persons whose captive status begins after Jan. 21, 1981, see section 806(d)(3) of Pub. L. 99–399, set out as a note under 2181 of this title.

DELEGATION OF FUNCTIONS

Functions of the President under this section delegated to the Secretary of Defense, see section 3 of Ex. Ord. No. 12598, June 17, 1987, 52 F.R. 23421, set out as a note under section 5569 of Title 5, Government Organization and Employees.

§ 2183. Educational assistance: former captives

(a) In order to respond to special circumstances, the Secretary concerned may pay (by advancement or reimbursement) a person who is a former captive for expenses incurred, while attending an educational or training institution, for—

(1) subsistence;
(2) tuition;
(3) fees;
(4) supplies;
(5) books;
(6) equipment; and
(7) other educational expenses.

(b) Except as provided in section 2184 of this title, payments shall be available under this section for a person who is a former captive for education or training that occurs—

(1) after the termination of the status of that person as a captive; and

(2) on or before—

(A) the end of any semester or quarter (as appropriate) that begins before the end of the 10-year period beginning on the date on which the status of that person as a captive terminates; or

(B) if the educational or training institution is not operated on a semester or quarter system, the earlier of the end of any course that began before such date or the end of the 16-week period following that date.

(c) Payments shall be available under this section only to the extent that such payments are not otherwise authorized by law.

(Added Pub. L. 99–399, title VIII, § 806(d)(1), Aug. 27, 1986, 100 Stat. 888.)

EFFECTIVE DATE

Section applicable with respect to persons whose captive status begins after Jan. 21, 1981, see section 806(d)(3) of Pub. L. 99–399, set out as a note under 2181 of this title.

§ 2184. Termination of assistance

Assistance under this chapter—

(1) shall be discontinued for any person whose conduct or progress is unsatisfactory under standards consistent with those established under section 3524 of title 38; and

(2) may not be provided for any person for more than 45 months (or the equivalent in other than full-time education or training).

(Added Pub. L. 99–399, title VIII, § 806(d)(1), Aug. 27, 1986, 100 Stat. 888; amended Pub. L. 103–337, div. A, title X, § 1070(e)(7), Oct. 5, 1994, 108 Stat. 2859.)

AMENDMENTS

1994—Par. (1). Pub. L. 103–337 substituted ''3524'' for ''1724''.

EFFECTIVE DATE

Section applicable with respect to persons whose captive status begins after Jan. 21, 1981, see section 806(d)(3) of Pub. L. 99–399, set out as a note under 2181 of this title.

§ 2185. Programs to be consistent with programs administered by the Department of Veterans Affairs

Regulations prescribed to carry out this chapter shall provide that the programs under this chapter shall be consistent with the educational assistance programs under chapters 35 and 36 of title 38.

(Added Pub. L. 99–399, title VIII, § 806(d)(1), Aug. 27, 1986, 100 Stat. 888; amended Pub. L. 101–189, div. A, title XVI, § 1621(a)(7)(A), Nov. 29, 1989, 103 Stat. 1603.)

AMENDMENTS

1989—Pub. L. 101–189 substituted ''the Department of Veterans Affairs'' for ''the Veterans' Administration'' in section catchline.

EFFECTIVE DATE

Section applicable with respect to persons whose captive status begins after Jan. 21, 1981, see section 806(d)(3) of Pub. L. 99–399, set out as a note under 2181 of this title.

CHAPTER 111—SUPPORT OF SCIENCE, MATHEMATICS, AND ENGINEERING EDUCATION

Sec.
2191. Graduate fellowships.
2192. Improvement of education in technical fields: general authority regarding education in science, mathematics, and engineering.
2192a. Science, Mathematics, and Research for Transformation (SMART) Defense Education Program.
2192b. Program on enhancement of preparation of dependents of members of armed forces for careers in science, technology, engineering, and mathematics.
2193. Improvement of education in technical fields: grants for higher education in science and mathematics.

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Sec.
2193a. Improvement of education in technical fields: general authority for support of elementary and secondary education in science and mathematics.
2193b. Improvement of education in technical fields: program for support of elementary and secondary education in science, technology, engineering, art and design, and mathematics.
2194. Education partnerships.
2195. Department of Defense cooperative education programs.
2196. Manufacturing engineering education: grant program.[1]
2197. Manufacturing experts in the classroom.
2198. Management training program in Japanese language and culture.
2199. Definitions.

AMENDMENTS

2021—Pub. L. 116–283, div. A, title V, § 591(b), Jan. 1, 2021, 134 Stat. 3665, added item 2193b and struck out former item 2193b ''Improvement of education in technical fields: program for support of elementary and secondary education in science, mathematics, and technology''.

2019—Pub. L. 116–92, div. A, title II, § 211(b), Dec. 20, 2019, 133 Stat. 1255, added item 2192b.

2006—Pub. L. 109–163, div. A, title XI, § 1104(d)(2), Jan. 6, 2006, 119 Stat. 3450, added item 2192a.

1999—Pub. L. 106–65, div. A, title V, § 580(d)(3), Oct. 5, 1999, 113 Stat. 633, added items 2192, 2193, 2193a, and 2193b and struck out former items 2192 ''Science, mathematics, and engineering education'' and 2193 ''Science and mathematics education improvement program''.

1992—Pub. L. 102–484, div. D, title XLII, § 4238(b)(2), Oct. 23, 1992, 106 Stat. 2694, substituted ''experts'' for ''managers'' in item 2197.

1991—Pub. L. 102–190, div. A, title VIII, §§ 825(a)(2), 828(b), Dec. 5, 1991, 105 Stat. 1442, 1444, struck out item 2196 ''Definition'' and added items 2196 to 2199.

1990—Pub. L. 101–510, div. A, title II, § 247(a)(2)(A), (C), Nov. 5, 1990, 104 Stat. 1523, substituted ''SUPPORT OF SCIENCE, MATHEMATICS, AND ENGINEERING EDUCATION'' for ''NATIONAL DEFENSE SCIENCE AND ENGINEERING GRADUATE FELLOWSHIPS'' in chapter heading and added items 2192 to 2196.

ENCOURAGEMENT OF CONTRACTOR SCIENCE, TECHNOLOGY, ENGINEERING, AND MATHEMATICS (STEM) PROGRAMS

Pub. L. 116–283, div. A, title II, § 245(a)–(d), Jan. 1, 2021, 134 Stat. 3489, 3490, provided that:

''(a) IN GENERAL.—The Under Secretary of Defense for Research and Engineering, in coordination with the Under Secretary of Defense for Acquisition and Sustainment, shall develop programs and incentives to ensure that Department of Defense contractors take appropriate steps to—

''(1) enhance undergraduate, graduate, and doctoral programs in science, technology, engineering, and mathematics (in this section referred to as 'STEM');

''(2) make investments, such as programming and curriculum development, in STEM programs within elementary schools and secondary schools;

''(3) encourage employees to volunteer in elementary schools and secondary schools, including schools that the Secretary of Defense determines serve high numbers or percentages of students from low-income families or that serve significant populations of military dependents, in order to enhance STEM education and programs;

''(4) establish partnerships with appropriate entities, including institutions of higher education for the purpose of training students in technical disciplines;

''(5) make personnel available to advise and assist in STEM educational activities aligned with functions of the Department of Defense;

''(6) award scholarships and fellowships, and establish work-based learning programs in scientific disciplines;

''(7) conduct recruitment activities to enhance the diversity of the STEM workforce; or

''(8) make internships available to students of secondary schools, undergraduate, graduate, and doctoral programs in STEM disciplines.

''(b) AWARD PROGRAM.—The Secretary of Defense shall establish procedures to recognize defense industry contractors that demonstrate excellence in supporting STEM education, partnerships, programming, and other activities to enhance participation in STEM fields.

''(c) IMPLEMENTATION.—Not later than 270 days after the date of the enactment of this Act [Jan. 1, 2021], the Under Secretary of Defense for Research and Engineering shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and House of Representatives] a report on the steps taken to implement the requirements of this section.

''(d) DEFINITIONS.—In this section:

''(1) The terms 'elementary school' and 'secondary school' have the meanings given those terms in section 8101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801).

''(2) The term 'institution of higher education' has the meaning given such term in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001).''

Pub. L. 112–81, div. A, title VIII, § 862, Dec. 31, 2011, 125 Stat. 1521, which related to the encouragement of contractor science, technology, engineering, and math (STEM) programs, was repealed by Pub. L. 116–283, div. A, title II, § 245(e), Jan. 1, 2021, 134 Stat. 3490.

§ 2191. Graduate fellowships

(a) The Secretary of Defense shall prescribe regulations providing for the award of fellowships to citizens and nationals of the United States who agree to pursue graduate degrees in science, engineering, or other fields of study designated by the Secretary to be of priority interest to the Department of Defense.

(b) A fellowship awarded pursuant to regulations prescribed under subsection (a) shall be known as a ''National Defense Science and Engineering Graduate Fellowship''.

(c) National Defense Science and Engineering Graduate Fellowships shall be awarded solely on the basis of academic ability. The Secretary shall take all appropriate actions to encourage applications for such fellowships of persons who are members of groups (including minority groups, women, and disabled persons) which historically have been underrepresented in science and technology fields. Recipients shall be selected on the basis of a nationwide competition. The award of a fellowship under this section may not be predicated on the geographic region in which the recipient lives or the geographic region in which the recipient will pursue an advanced degree.

(d) The regulations prescribed under this section shall include—

(1) the criteria for award of fellowships;

(2) the procedures for selecting recipients;

(3) the basis for determining the amount of a fellowship; and

(4) the maximum amount that may be awarded to an individual during an academic year.

[1] Section catchline amended by Pub. L. 114–328 without corresponding amendment of chapter analysis.

(Added Pub. L. 101–189, div. A, title VIII, § 843(d)(1), Nov. 29, 1989, 103 Stat. 1516.)

§ 2192. Improvement of education in technical fields: general authority regarding education in science, mathematics, and engineering

(a) The Secretary of Defense, in consultation with the Secretary of Education, shall, on a continuing basis—

(1) identify actions which the Department of Defense may take to improve education in the scientific, mathematics, and engineering skills necessary to meet the long-term national defense needs of the United States for personnel proficient in such skills; and

(2) establish and conduct programs to carry out such actions.

(b)(1) In furtherance of the authority of the Secretary of Defense under any provision of this chapter or any other provision of law to support educational programs in science, mathematics, engineering, and technology, the Secretary of Defense may, unless otherwise specified in such provision—

(A) enter into contracts and cooperative agreements with eligible entities;

(B) make grants of financial assistance to eligible entities;

(C) provide cash awards and other items to eligible entities;

(D) accept voluntary services from eligible entities; and

(E) support national competition judging, other educational event activities, and associated award ceremonies in connection with these educational programs.

(2) The Secretary of Defense may carry out the authority in paragraph (1) through the Secretaries of the military departments.

(3) In this subsection:

(A) The term ''eligible entity'' includes a department or agency of the Federal Government, a State, a political subdivision of a State, an individual, and a not-for-profit or other organization in the private sector.

(B) The term ''State'' means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, and any other territory or possession of the United States.

(c) The Secretary shall designate an individual within the Office of the Secretary of Defense to advise and assist the Secretary regarding matters relating to science, mathematics, and engineering education and training.

(Added Pub. L. 101–510, div. A, title II, § 247(a)(1), Nov. 5, 1990, 104 Stat. 1521; amended Pub. L. 106–65, div. A, title V, § 580(d)(1), Oct. 5, 1999, 113 Stat. 633; Pub. L. 108–136, div. A, title II, § 233, Nov. 24, 2003, 117 Stat. 1423; Pub. L. 111–383, div. A, title II, § 211(a), Jan. 7, 2011, 124 Stat. 4162.)

AMENDMENTS

2011—Subsec. (b)(2), (3). Pub. L. 111–383 added par. (2) and redesignated former par. (2) as (3).

2003—Subsecs. (b), (c). Pub. L. 108–136 added subsec. (b) and redesignated former subsec. (b) as (c).

1999—Pub. L. 106–65 amended section catchline generally. Prior to amendment, catchline read as follows: ''Science, mathematics, and engineering education''.

SCIENCE, MATHEMATICS, AND RESEARCH FOR TRANSFORMATION (SMART) DEFENSE SCHOLARSHIP PILOT PROGRAM

Pub. L. 108–375, div. A, title XI, § 1105, Oct. 28, 2004, 118 Stat. 2074, as amended by Pub. L. 109–163, div. A, title X, § 1056(d), title XI, § 1104(a)–(c), Jan. 6, 2006, 119 Stat. 3440, 3448, 3449; Pub. L. 111–383, div. A, title X, § 1075(h)(5), Jan. 7, 2011, 124 Stat. 4377, which related to a pilot program to provide financial assistance for education in science, mathematics, engineering, and technology skills and disciplines that were determined to be critical to the national security functions of the Department of Defense, was repealed and restated in section 2192a of this title by Pub. L. 109–163, div. A, title XI, § 1104(d)(1)(B), (e)(1), Jan. 6, 2006, 119 Stat. 3450.

DEPARTMENT OF DEFENSE SUPPORT FOR SCIENCE, MATHEMATICS, AND ENGINEERING EDUCATION

Pub. L. 102–190, div. A, title VIII, § 829, Dec. 5, 1991, 105 Stat. 1444, directed Secretary of Defense to develop and submit to Congress a master plan for activities by Department of Defense during each of fiscal years 1993 through 1997 to support education in science, mathematics, and engineering at all levels of education in the United States, with each such plan to be developed in consultation with Secretary of Education, prior to repeal by Pub. L. 104–106, div. A, title X, § 1063(c), Feb. 10, 1996, 110 Stat. 444.

§ 2192a. Science, Mathematics, and Research for Transformation (SMART) Defense Education Program

(a) REQUIREMENT FOR PROGRAM.—The Secretary of Defense shall carry out a program to provide financial assistance for education in science, mathematics, engineering, and technology skills and disciplines that, as determined by the Secretary, are critical to the national security functions of the Department of Defense and are needed in the Department of Defense workforce.

(b) FINANCIAL ASSISTANCE.—(1) Under the program under this section, the Secretary of Defense may award a scholarship or fellowship in accordance with this section to a person who—

(A) is a citizen of the United States or, subject to subsection (g), a country the government of which is a party to The Technical Cooperation Program (TTCP) memorandum of understanding of October 24, 1995;

(B) is pursuing an associates degree, undergraduate degree, or advanced degree in a critical skill or discipline described in subsection (a) at an accredited institution of higher education; and

(C) enters into a service agreement with the Secretary of Defense as described in subsection (c).

(2) The amount of the financial assistance provided under a scholarship or fellowship awarded to a person under this subsection shall be an amount determined by the Secretary of Defense.

(3) Financial assistance provided under a scholarship or fellowship awarded under this section may be paid directly to the recipient of such scholarship or fellowship or to an administering entity for disbursement of the funds.

(c) SERVICE AGREEMENT FOR RECIPIENTS OF FINANCIAL ASSISTANCE.—(1) To receive financial assistance under this section—

(A) in the case of an employee of the Department of Defense, the employee shall enter into a written agreement to continue in the employment of the department for the period of obligated service determined under paragraph (2); and

(B) in the case of a person not an employee of the Department of Defense, the person shall enter into a written agreement to accept and continue employment for the period of obligated service determined under paragraph (2)—

(i) with the Department, including by serving on active duty in the Armed Forces; or

(ii) with a public or private entity or organization outside of the Department if the Secretary—

(I) is unable to find an appropriate position for the person within the Department; and

(II) determines that employment of the person with such entity or organization for the purpose of such obligated service would provide a benefit to the Department.

(2) For the purposes of this subsection, the period of obligated service for a recipient of financial assistance under this section shall be the period determined by the Secretary of Defense as being appropriate to obtain adequate service in exchange for such financial assistance. The period of service required of a recipient may not be less than the total period of pursuit of a degree that is covered by such financial assistance. The period of obligated service is in addition to any other period for which the recipient is obligated to serve in the civil service of the United States.

(3) An agreement entered into under this subsection by a person pursuing an academic degree shall include any terms and conditions that the Secretary of Defense determines necessary to protect the interests of the United States or otherwise appropriate for carrying out this section.

(d) EMPLOYMENT OF PROGRAM PARTICIPANTS.—The Secretary of Defense—

(1) may, without regard to any provision of title 5 governing appointment of employees to competitive service positions within the Department of Defense, appoint to a position in the Department of Defense in the excepted service an individual who has successfully completed an academic program for which a scholarship or fellowship under this section was awarded and who, under the terms of the agreement for such scholarship or fellowship, at the time of such appointment, owes a service commitment to the Department;

(2) may, upon satisfactory completion of 2 years of substantially continuous service by an incumbent who was appointed to an excepted service position under the authority of paragraph (1), convert the appointment of such individual, without competition, to a career or career conditional appointment; and

(3) may establish arrangements so that participants may participate in a paid internship for an appropriate period with an industry sponsor.

(e) REFUND FOR PERIOD OF UNSERVED OBLIGATED SERVICE.—(1)(A) A participant in the program under this section who is not an employee of the Department of Defense and who voluntarily fails to complete the educational program for which financial assistance has been provided under this section, or fails to maintain satisfactory academic progress as determined in accordance with regulations prescribed by the Secretary of Defense, shall refund to the United States an appropriate amount, as determined by the Secretary.

(B) A participant in the program under this section who is an employee of the Department of Defense and who—

(i) voluntarily fails to complete the educational program for which financial assistance has been provided, or fails to maintain satisfactory academic progress as determined in accordance with regulations prescribed by the Secretary; or

(ii) before completion of the period of obligated service required of such participant—

(I) voluntarily terminates such participant's employment with the Department; or

(II) is removed from such participant's employment with the Department on the basis of misconduct,

shall refund the United States an appropriate amount, as determined by the Secretary.

(2) An obligation to reimburse the United States imposed under paragraph (1) is for all purposes a debt owed to the United States.

(3) The Secretary of Defense may waive, in whole or in part, a refund required under paragraph (1) if the Secretary determines that recovery would be against equity and good conscience or would be contrary to the best interests of the United States.

(4) A discharge in bankruptcy under title 11 that is entered less than five years after the termination of an agreement under this section does not discharge the person signing such agreement from a debt arising under such agreement or under this subsection.

(f) RELATIONSHIP TO OTHER PROGRAMS.—(1) The Secretary of Defense shall coordinate the provision of financial assistance under the authority of this section with the provision of financial assistance under the other authorities provided in this chapter in order to maximize the benefits derived by the Department of Defense from the exercise of all such authorities.

(2) The Secretary of Defense shall seek to enter into partnerships with minority institutions of higher education and appropriate public and private sector organizations to diversify the participants in the program under subsection (a).

(g) LIMITATION ON PARTICIPATION.—(1) The Secretary may not award scholarships or fellowships under this section to more than five individuals described in paragraph (2) per year.

(2) An individual described in this paragraph is an individual who—

(A) has not previously been awarded a scholarship or fellowship under the program under this section;

(B) is not a citizen of the United States; and

(C) is a citizen of a country the government of which is a party to The Technical Cooperation Program (TTCP) memorandum of understanding of October 24, 1995.

(h) INSTITUTION OF HIGHER EDUCATION DEFINED.—In this section, the term ''institution of higher education'' has the meaning given such term in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001).

(Added Pub. L. 109–163, div. A, title XI, § 1104(d)(1), Jan. 6, 2006, 119 Stat. 3449; amended Pub. L. 110–417, [div. A], title X, § 1061(a)(5), Oct. 14, 2008, 122 Stat. 4612; Pub. L. 111–84, div. A, title XI, § 1102(a)–(d)(1), Oct. 28, 2009, 123 Stat. 2484, 2485; Pub. L. 113–66, div. A, title XI, § 1105(a)(1), Dec. 26, 2013, 127 Stat. 886; Pub. L. 113–291, div. A, title II, § 215, Dec. 19, 2014, 128 Stat. 3327; Pub. L. 114–92, div. A, title II, § 212, Nov. 25, 2015, 129 Stat. 767; Pub. L. 116–283, div. A, title II, § 242, Jan. 1, 2021, 134 Stat. 3488.)

CODIFICATION

Section, as added by Pub. L. 109–163, consists of text of Pub. L. 108–375, div. A, title XI, § 1105, Oct. 28, 2004, 118 Stat. 2074; Pub. L. 109–163, div. A, title X, § 1056(d), title XI, § 1104(a)–(c), Jan. 6, 2006, 119 Stat. 3440, 3448, 3449; Pub. L. 111–383, div. A, title X, § 1075(h)(5), Jan. 7, 2011, 124 Stat. 4377, which was formerly set out as a note under section 2192 of this title, and was repealed by Pub. L. 109–163, div. A, title XI, § 1104(e)(1), Jan. 6, 2006, 119 Stat. 3450.

AMENDMENTS

2021—Subsec. (c)(1)(B)(i). Pub. L. 116–283, § 242(1), inserted '', including by serving on active duty in the Armed Forces'' after ''Department''.

Subsec. (d)(3). Pub. L. 116–283, § 242(2), added par. (3).

Subsec. (f). Pub. L. 116–283, § 242(3), designated existing provisions as par. (1) and added par. (2).

2015—Subsec. (b)(1)(A). Pub. L. 114–92, § 212(1), inserted ''or, subject to subsection (g), a country the government of which is a party to The Technical Cooperation Program (TTCP) memorandum of understanding of October 24, 1995'' after ''United States''.

Subsecs. (g), (h). Pub. L. 114–92, § 212(2), (3), added subsec. (g) and redesignated former subsec. (g) as (h).

2014—Subsec. (c)(1)(B). Pub. L. 113–291 amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''in the case of a person not an employee of the Department of Defense, the person shall enter into a written agreement to accept and continue employment in the Department of Defense for the period of obligated service determined under paragraph (2).''

2013—Subsec. (b)(2). Pub. L. 113–66 substituted ''an amount determined by the Secretary of Defense'' for ''the amount determined by the Secretary of Defense as being necessary to pay all educational expenses incurred by that person, including tuition, fees, cost of books, laboratory expenses, equipment expenses, and expenses of room and board''.

2009—Subsec. (c)(2). Pub. L. 111–84, § 1102(b), substituted ''The'' for ''Except as provided in subsection (d), the'' in second sentence.

Subsec. (d). Pub. L. 111–84, § 1102(a), amended subsec. (d) generally. Prior to amendment, subsec. (d) provided that, under certain circumstances, the Secretary of Defense could appoint or retain a SMART program participant as an interim employee and separate such participant from employment if no appropriate permanent position was available at the end of the interim period and that the period of interim service would count towards the participant's obligated service requirements.

Subsec. (f). Pub. L. 111–84, § 1102(c), struck out ''The program under this section is in addition to the authorities provided in chapter 111 of this title.'' before ''The Secretary'' and substituted ''the other authorities provided in this chapter'' for ''the authorities provided in such chapter''.

Subsecs. (g), (h). Pub. L. 111–84, § 1102(d)(1), redesignated subsec. (h) as (g) and struck out former subsec. (g). Prior to amendment, text read as follows: ''Not later than February 1, 2007, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Committee on Government Reform of the House of Representatives a plan for expanding and improving the national defense science and engineering workforce educational assistance program carried out under this section as appropriate to improve recruitment and retention to meet the requirements of the Department of Defense for its science and engineering workforce on a short-term basis and on a long-term basis.''

2008—Subsec. (e)(4). Pub. L. 110–417, § 1061(a)(5)(A), substituted ''title 11'' for ''title 11, United States Code,''.

Subsec. (f). Pub. L. 110–417, § 1061(a)(5)(B), substituted ''this title'' for ''title 10, United States Code''.

NATIONAL SECURITY WORKFORCE AND EDUCATIONAL DIVERSITY ACTIVITIES

Pub. L. 116–283, div. A, title II, § 250, Jan. 1, 2021, 134 Stat. 3495, provided that:

''(a) IN GENERAL.—The Secretary of Defense shall seek to diversify participation in the Science, Mathematics, and Research for Transformation (SMART) Defense Education Program under section 2192a of title 10, United States Code.

''(b) ACTIVITIES.—In carrying out subsection (a), the Secretary shall—

''(1) subject to the availability of appropriations for this purpose, set aside funds for financial assistance, scholarships, and fellowships for students at historically Black colleges or universities or at minority institutions of higher education and such other institutions as the Secretary considers appropriate;

''(2) partner with institutions of higher education, and such other public and private sector organizations as the Secretary considers appropriate, to increase diversity of participants in the program described in subsection (a);

''(3) establish individual and organizational incentives, and such other activities as the Secretary considers appropriate, to increase diversity of student participation in the program described in subsection (a);

''(4) increase awareness of opportunities to participate in the program described in subsection (a);

''(5) evaluate the potential for new programs, fellowships, and other activities at historically Black colleges or universities and minority institutions of higher education to increase diversity in educational and workforce development programs;

''(6) identify potential changes to the program described in subsection (a) that would improve diversity of participants in such program; and

''(7) establish metrics to evaluate success of activities under this section.

''(c) REPORT.—Not later than September 30, 2024, the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report that evaluates the success of activities conducted by the Secretary in increasing diversity in appropriate programs of the Department of Defense and hiring and retaining diverse individuals in the science, mathematics, and research workforce of the public sector.''

EFFECT ON CURRENT PARTICIPANTS IN SMART PILOT PROGRAM

Pub. L. 109–163, div. A, title XI, § 1104(f), Jan. 6, 2006, 119 Stat. 3450, provided that: ''Participation in the Science, Mathematics, and Research for Transformation (SMART) Defense Scholarship Pilot Program under section 1105 of Public Law 108–375 [see Codification note above] by an individual who has entered into an agreement under that pilot program before the date of the enactment of this Act [Jan. 6, 2006] shall be

governed by the terms of such agreement without regard to the amendments made by this section [enacting this section, amending section 3304 of Title 5, Government Organization and Employees, and amending and repealing provisions set out as a note under section 2192 of this title].''

§ 2192b. Program on enhancement of preparation of dependents of members of armed forces for careers in science, technology, engineering, and mathematics

(a) PROGRAM REQUIRED.—The Secretary of Defense shall carry out a program to—

(1) enhance the preparation of students at covered schools for careers in science, technology, engineering, and mathematics; and

(2) provide assistance to teachers at covered schools to enhance preparation described in paragraph (1).

(b) COORDINATION.—In carrying out the program, the Secretary shall coordinate with the following:

(1) The Secretaries of the military departments.

(2) The Secretary of Education.

(3) The National Science Foundation.

(4) Other organizations as the Secretary of Defense considers appropriate.

(c) ACTIVITIES.—Activities under the program may include the following:

(1) Establishment of targeted internships and cooperative research opportunities at defense laboratories and other technical centers for students and teachers at covered schools.

(2) Establishment of scholarships and fellowships for students at covered schools.

(3) Efforts and activities that improve the quality of science, technology, engineering, and mathematics educational and training opportunities for students and teachers at covered schools, including with respect to improving the development of curricula at covered schools.

(4) Development of travel opportunities, demonstrations, mentoring programs, and informal science education for students and teachers at covered schools.

(d) METRICS.—The Secretary shall establish outcome-based metrics and internal and external assessments to evaluate the merits and benefits of activities conducted under the program with respect to the needs of the Department of Defense.

(e) COVERED SCHOOLS DEFINED.—In this section, the term ''covered schools'' means elementary or secondary schools at which the Secretary determines a significant number of dependents of members of the armed forces are enrolled.

(Added Pub. L. 116–92, div. A, title II, § 211(a), Dec. 20, 2019, 133 Stat. 1254.)

§ 2193. Improvement of education in technical fields: grants for higher education in science and mathematics

(a)(1) The Secretary of Defense may, in accordance with the provisions of this subsection, carry out a program for awarding grants to students who have been accepted for enrollment in, or who are enrolled in, an institution of higher education as undergraduate or graduate students in scientific and engineering disciplines critical to the national security functions of the Department of Defense.

(2) Grant proceeds shall be disbursed on behalf of students awarded grants under this subsection to the institutions of higher education at which the students are enrolled. No grant proceeds shall be disbursed on behalf of a student until the student is enrolled at an institution of higher education.

(3) The amount of a grant awarded a student under this subsection may not exceed the student's cost of attendance.

(4) The amount of a grant awarded a student under this subsection shall not be reduced on the basis of the student's receipt of other forms of Federal student financial assistance, but shall be taken into account in determining the eligibility of the student for those other forms of Federal student financial assistance.

(5) The Secretary shall give priority to awarding grants under this subsection in a manner likely to stimulate the interest of women and members of minority groups in pursuing scientific and engineering careers. The Secretary may consider the financial need of applicants in making awards in accordance with such priority.

(b) In this section:

(1) The term ''institution of higher education'' has the meaning given such term in section 101 of the Higher Education Act of 1965.

(2) The term ''cost of attendance'' has the meaning given such term in section 472 of the Higher Education Act of 1965 (20 U.S.C. 1087*ll*).

(Added Pub. L. 101–510, div. A, title II, § 247(a)(1), Nov. 5, 1990, 104 Stat. 1521; amended Pub. L. 105–244, title I, § 102(a)(2)(A), Oct. 7, 1998, 112 Stat. 1617; Pub. L. 106–65, div. A, title V, § 580(c)(2), (3), (d)(2), Oct. 5, 1999, 113 Stat. 633.)

REFERENCES IN TEXT

Section 101 of the Higher Education Act of 1965, referred to in subsec. (b)(1), is classified to section 1001 of Title 20, Education.

AMENDMENTS

1999—Pub. L. 106–65, § 580(d)(2), amended section catchline generally. Prior to amendment, catchline read as follows: ''Science and mathematics education improvement program''.

Subsec. (b). Pub. L. 106–65, § 580(c)(3), redesignated subsec. (c) as (b).

Pub. L. 106–65, § 580(c)(2), redesignated subsec. (b) as section 2193a of this title.

Subsec. (c). Pub. L. 106–65, § 580(c)(3), redesignated subsec. (c) as (b).

1998—Subsec. (c)(1). Pub. L. 105–244 substituted ''section 101 of the Higher Education Act of 1965'' for ''section 1201(a) of the Higher Education Act of 1965 (20 U.S.C. 1141(a))''.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as a note under section 1001 of Title 20, Education.

§ 2193a. Improvement of education in technical fields: general authority for support of elementary and secondary education in science and mathematics

The Secretary of Defense, in coordination with the Secretary of Education, may establish programs for the purpose of improving the mathematics and scientific knowledge and skills of elementary and secondary school students and faculty members.

(Added and amended Pub. L. 106–65, div. A, title V, § 580(c)(1), (2), Oct. 5, 1999, 113 Stat. 632, 633.)

CODIFICATION

The text of section 2193(b) of this title, which was transferred to, and redesignated as text of, this section, was based on Pub. L. 101–510, div. A, title II, § 247(a)(1), Nov. 5, 1990, 104 Stat. 1521.

AMENDMENTS

1999—Pub. L. 106–65, § 580(c)(2), renumbered section 2193(b) of this title as text of this section. See Codification note above.

PILOT PROGRAM ON ENHANCEMENT OF PREPARATION OF DEPENDENTS OF MEMBERS OF ARMED FORCES FOR CAREERS IN SCIENCE, TECHNOLOGY, ENGINEERING, AND MATHEMATICS

Pub. L. 113–291, div. A, title II, § 233, Dec. 19, 2014, 128 Stat. 3334, which required the Secretary of Defense to carry out a pilot program related to the enhancement of preparation of certain students for careers in science, technology, engineering, and mathematics, was repealed by Pub. L. 116–92, div. A, title II, § 211(c), Dec. 20, 2019, 133 Stat. 1255. See section 2192b of this title.

§ 2193b. Improvement of education in technical fields: program for support of elementary and secondary education in science, technology, engineering, art and design, and mathematics

(a) AUTHORITY FOR PROGRAM.—The Secretary of Defense may conduct a science, technology, engineering, art and design, and mathematics education improvement program known as the ''Department of Defense STARBASE Program''. The Secretary shall carry out the program in coordination with the Secretaries of the military departments and the Secretary of the Department in which the Coast Guard is operating.

(b) PURPOSE.—The purpose of the program is to improve knowledge and skills of students in kindergarten through twelfth grade in science, technology, engineering, art and design, and mathematics.

(c) STARBASE ACADEMIES.—(1) The Secretary shall provide for the establishment of at least 25 academies under the program.

(2) The Secretary of Defense shall establish guidelines, criteria, and a process for the establishment of STARBASE programs in addition to those in operation on October 5, 1999.

(3)(A) Except as otherwise provided under subparagraph (B), the Secretary may not support the establishment in any State of more than four academies under the program.

(B) The Secretary may support the establishment and operation of an academy in a State in excess of four academies in that State if the Secretary expressly waives, in writing, the limitation in subparagraph (A) with respect to that State. In the case of any such waiver, appropriated funds may be used for the establishment and operation of an academy in excess of four in that State only to the extent that appropriated funds are expressly available for that purpose. Any such waiver shall be made under criteria to be prescribed by the Secretary.

(d) PERSONS ELIGIBLE TO PARTICIPATE IN PROGRAM.—The Secretary shall prescribe standards and procedures for selection of persons for participation in the program.

(e) REGULATIONS.—The Secretary of Defense shall prescribe regulations governing the conduct of the program.

(f) AUTHORITY TO ACCEPT FINANCIAL AND OTHER SUPPORT.—(1) The Secretary of Defense, the Secretaries of the military departments, and the Secretary of the Department in which the Coast Guard is operating may accept financial and other support for the program from other departments and agencies of the Federal Government, State governments, local governments, and not-for-profit and other organizations in the private sector.

(2) The Secretary of Defense shall remain the executive agent to carry out the program regardless of the source of funds for the program or any transfer of jurisdiction over the program within the executive branch.

(g) ANNUAL REPORT.—Not later than March 31 of each year, the Secretary of Defense shall submit to Congress a report on the program under this section. The report shall contain a discussion of the design and conduct of the program and an evaluation of the effectiveness of the program.

(h) STATE DEFINED.—In this section, the term ''State'' includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, and Guam.

(Added Pub. L. 106–65, div. A, title V, § 580(a), Oct. 5, 1999, 113 Stat. 631; amended Pub. L. 107–107, div. A, title V, § 596(b), Dec. 28, 2001, 115 Stat. 1127; Pub. L. 108–375, div. A, title V, § 519, title X, § 1084(d)(16), Oct. 28, 2004, 118 Stat. 1886, 2062; Pub. L. 110–181, div. A, title V, § 592, Jan. 28, 2008, 122 Stat. 138; Pub. L. 111–383, div. A, title V, § 595, Jan. 7, 2011, 124 Stat. 4234; Pub. L. 116–92, div. A, title V, § 552, Dec. 20, 2019, 133 Stat. 1386; Pub. L. 116–283, div. A, title V, §§ 591(a), 592, Jan. 1, 2021, 134 Stat. 3665, 3666.)

AMENDMENTS

2021—Pub. L. 116–283, § 591(a)(1), substituted ''science, technology, engineering, art and design, and mathematics'' for ''science, mathematics, and technology'' in section catchline.

Subsec. (a). Pub. L. 116–283, § 591(a)(2), substituted ''science, technology, engineering, art and design, and mathematics'' for ''science, mathematics, and technology''.

Subsec. (b). Pub. L. 116–283, § 591(a)(3), substituted ''science, technology, engineering, art and design, and mathematics'' for ''mathematics, science, and technology''.

Subsec. (h). Pub. L. 116–283, § 592, inserted ''the Commonwealth of the Northern Mariana Islands, American Samoa,'' before ''Guam''.

2019—Subsec. (a). Pub. L. 116–92, § 552(1), inserted ''and the Secretary of the Department in which the Coast Guard is operating'' after ''military departments''.

Subsec. (f). Pub. L. 116–92, § 552(2), substituted '', the Secretaries of the military departments, and the Sec-

retary of the Department in which the Coast Guard is operating'' for ''and the Secretaries of the military departments''.

2011—Subsec. (g). Pub. L. 111–383 substituted ''March 31 of each year'' for ''90 days after the end of each fiscal year''.

2008—Subsec. (c)(3)(A). Pub. L. 110–181, § 592(1), substituted ''more than four academies'' for ''more than two academies''.

Subsec. (c)(3)(B). Pub. L. 110–181, § 592(2), substituted ''in excess of four'' for ''in excess of two'' in two places.

2004—Subsec. (c)(2). Pub. L. 108–375, § 1084(d)(16), substituted ''October 5, 1999'' for ''the date of the enactment of this section''.

Subsec. (c)(3). Pub. L. 108–375, § 519, amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''The Secretary may support the establishment and operation of any academy in excess of two academies in a State only if the Secretary has first authorized in writing the establishment of the academy and the costs of the establishment and operation of the academy are paid out of funds provided by sources other than the Department of Defense. Any such costs that are paid out of appropriated funds shall be considered as paid out of funds provided by such other sources if such sources fully reimburse the United States for the costs.''

2001—Subsec. (f). Pub. L. 107–107 designated existing provisions as par. (1) and added par. (2).

EXISTING STARBASE ACADEMIES

Pub. L. 106–65, div. A, title V, § 580(b), Oct. 5, 1999, 113 Stat. 632, provided that: ''While continuing in operation, the academies existing on the date of the enactment of this Act [Oct. 5, 1999] under the Department of Defense STARBASE Program, as such program is in effect on such date, shall be counted for the purpose of meeting the requirement under section 2193b(c)(1) of title 10, United States Code (as added by subsection (a)), relating to the minimum number of STARBASE academies.''

§ 2194. Education partnerships

(a) The Secretary of Defense shall authorize the director of each defense laboratory to enter into one or more education partnership agreements with educational institutions in the United States for the purpose of encouraging and enhancing study in scientific disciplines at all levels of education. The educational institutions referred to in the preceding sentence are local educational agency, colleges, universities, and any other nonprofit institutions that are dedicated to improving science, mathematics, business, law, technology transfer or transition and engineering education.

(b) Under a partnership agreement entered into with an educational institution under this section, the director of a defense laboratory may provide, and is encouraged to provide, assistance to the educational institution by—

(1) loaning defense laboratory equipment to the institution for any purpose and duration in support of such agreement that the director considers appropriate;

(2) notwithstanding the provisions of subtitle I of title 40 and division C (except sections 3302, 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41 or any provision of law or regulation relating to transfers of surplus property, transferring to the institution any computer equipment, or other scientific equipment, that is—

(A) commonly used by educational institutions;

(B) surplus to the needs of the defense laboratory; and

(C) determined by the director to be appropriate for support of such agreement;

(3) making laboratory personnel available to teach science courses or to assist in the development of science courses and materials for the institution;

(4) providing in the defense laboratory sabbatical opportunities for faculty and internship opportunities for students;

(5) involving faculty and students of the institution in defense laboratory projects, including research and technology transfer or transition projects;

(6) cooperating with the institution in developing a program under which students may be given academic credit for work on defense laboratory projects, including research and technology transfer or transition projects; and

(7) providing academic and career advice and assistance to students of the institution.

(c) The Secretary of Defense shall ensure that the director of each defense laboratory shall give a priority under this section to entering into an education partnership agreement with one or more historically Black colleges and universities and other minority institutions referred to in paragraphs (3), (4), and (5) of section 312(b)[1] of the Higher Education Act of 1965 (20 U.S.C. 1058(b)).

(d) The Secretary of Defense shall ensure that, in entering into education partnership agreements under this section, the director of a defense laboratory gives a priority to providing assistance to educational institutions serving women, members of minority groups, and other groups of individuals who traditionally are involved in the engineering and science professions in disproportionately low numbers.

(e) The Secretary of Defense may permit the director of a defense laboratory to enter into a cooperative agreement with an appropriate entity to act as an intermediary and assist the director in carrying out activities under this section.

(f) In this section:

(1) The term ''defense laboratory'' means any laboratory, product center, test center, depot, training and educational organization, or operational command under the jurisdiction of the Department of Defense.

(2) The term ''local educational agency'' has the meaning given such term in section 8101 of the Elementary and Secondary Education Act of 1965.

(3) The term ''United States'' includes the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and any other territory or possession of the United States.

(Added Pub. L. 101–510, div. A, title II, § 247(a)(1), Nov. 5, 1990, 104 Stat. 1522; amended Pub. L. 103–382, title III, § 391(b)(4), Oct. 20, 1994, 108 Stat. 4021; Pub. L. 104–106, div. A, title XV, § 1503(a)(19), Feb. 10, 1996, 110 Stat. 512; Pub. L. 106–398, § 1 [[div. A], title II, § 253], Oct. 30, 2000, 114 Stat. 1654, 1654A–49; Pub. L. 107–110, title X,

[1] See References in Text note below.

§ 1076(e), Jan. 8, 2002, 115 Stat. 2091; Pub. L. 108–178, § 4(b)(1), Dec. 15, 2003, 117 Stat. 2640; Pub. L. 111–350, § 5(b)(3), Jan. 4, 2011, 124 Stat. 3842; Pub. L. 111–383, div. A, title II, § 211(b), Jan. 7, 2011, 124 Stat. 4163; Pub. L. 112–239, div. A, title II, § 251, Jan. 2, 2013, 126 Stat. 1688; Pub. L. 114–92, div. A, title II, § 213, Nov. 25, 2015, 129 Stat. 767; Pub. L. 114–95, title IX, § 9215(uuu)(4), Dec. 10, 2015, 129 Stat. 2190.)

REFERENCES IN TEXT

Paragraphs (3), (4), and (5) of section 312(b) of the Higher Education Act of 1965 (20 U.S.C. 1058(b)), referred to in subsec. (c), were repealed by Pub. L. 102–325, title III, § 302(a)(3), July 23, 1992, 106 Stat. 472.

Section 8101 of the Elementary and Secondary Education Act of 1965, referred to in subsec. (f)(2), is classified to section 7801 of Title 20, Education.

AMENDMENTS

2015—Subsec. (a). Pub. L. 114–92, § 213(1), inserted "business, law, technology transfer or transition" after "mathematics,".

Subsec. (b)(4) to (7). Pub. L. 114–92, § 213(2), added par. (4), redesignated former pars. (4) to (6) as (5) to (7), respectively, and, in pars. (5) and (6), substituted "projects, including research and technology transfer or transition projects" for "research projects".

Subsec. (f)(2). Pub. L. 114–95 substituted "section 8101 of the Elementary and Secondary Education Act of 1965" for "section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801)".

2013—Subsec. (f)(2). Pub. L. 112–239, § 251(b), inserted "(20 U.S.C. 7801)" before period at end.

Subsec. (f)(3). Pub. L. 112–239, § 251(a), added par. (3).

2011—Subsec. (b)(2). Pub. L. 111–350 substituted "division C (except sections 3302, 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41" for "title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)" in introductory provisions.

Subsecs. (e), (f). Pub. L. 111–383 added subsec. (e) and redesignated former subsec. (e) as (f).

2003—Subsec. (b)(2). Pub. L. 108–178 inserted "subtitle I of title 40 and title III of" before "the Federal" and substituted "(41 U.S.C. 251 et seq.)" for "(40 U.S.C. 471 et seq.)".

2002—Subsec. (e)(2). Pub. L. 107–110 substituted "section 9101 of the Elementary and Secondary Education Act of 1965" for "section 14101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801)".

2000—Subsec. (b). Pub. L. 106–398, § 1 [[div. A], title II, § 253(a)(1)], inserted ", and is encouraged to provide," after "may provide" in introductory provisions.

Subsec. (b)(1). Pub. L. 106–398, § 1 [[div. A], title II, § 253(a)(2)], inserted before semicolon "for any purpose and duration in support of such agreement that the director considers appropriate".

Subsec. (b)(2). Pub. L. 106–398, § 1 [[div. A], title II, § 253(a)(3)], added par. (2) and struck out former par. (2) which read as follows: "transferring to the institution defense laboratory equipment determined by the director to be surplus;".

Subsec. (e). Pub. L. 106–398, § 1 [[div. A], title II, § 253(b)], amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: "In this section, the term 'local educational agency' has the meaning given such term in section 14101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801)."

1996—Subsec. (e). Pub. L. 104–106 substituted "(20 U.S.C. 8801)" for "(20 U.S.C. 2891(12))".

1994—Subsec. (a). Pub. L. 103–382, § 391(b)(4)(A), substituted "educational agency" for "education agencies".

Subsec. (e). Pub. L. 103–382, § 394(b)(4)(B)(iii), which directed amendment of subsec. (e) by striking out "(20 U.S.C. 1058(b)" could not be executed because "(20 U.S.C. 1058(b)" does not appear in subsec. (e).

Pub. L. 103–382, § 391(b)(4)(B)(i), (ii), substituted "educational agency" for "education agency" and "section 14101" for "section 1471(12)".

EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114–95 effective Dec. 10, 2015, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 114–95, set out as a note under section 6301 of Title 20, Education.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–178 effective Aug. 21, 2002, see section 5 of Pub. L. 108–178, set out as a note under section 5334 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–110 effective Jan. 8, 2002, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 107–110, set out as an Effective Date note under section 6301 of Title 20, Education.

§ 2195. Department of Defense cooperative education programs

(a) The Secretary of Defense shall ensure that the director of each defense laboratory establishes, in association with one or more public or private colleges or universities in the United States or one or more consortia of colleges or universities in the United States, cooperative work-education programs for undergraduate and graduate students.

(b) Under a cooperative work-education program established under subsection (a), a director referred to in that subsection may, without regard to any applicable non-statutory limitation on the number of authorized personnel or on the aggregate amount of any personnel cost—

(1) make an offer for participation in the cooperative work-education program directly to a student and appoint such student to an entry-level position of employment in the laboratory of such director;

(2) pay such person a rate of basic pay, not to exceed the maximum rate of pay provided for grade GS–9 under the General Schedule under section 5332 of title 5, that is competitive with compensation levels provided for entry-level positions in similar industry-sponsored cooperative work-education programs;

(3) pay all travel expenses between the college or university in which the student is enrolled and the laboratory concerned for not more than six round trips per year; and

(4) pay all or part of such fees, charges, and costs related to the participation of such student in the cooperative work-education program as tuition, matriculation fees, charges for library and laboratory services, materials, and supplies, and the purchase or rental price of books.

(c) A director of a defense laboratory may—

(1) require a student, as a condition for receiving payments referred to in subsection (b)(4), to enter into a written agreement to continue employment in such defense laboratory for a period of service specified in the agreement; or

(2) make such payments without requiring such an agreement.

(d)(1) The Director of the National Security Agency may provide a qualifying employee of a defense laboratory of that Agency with living

quarters at no charge, or at a rate or charge prescribed by the Director by regulation, without regard to section 5911(c) of title 5.

(2) In this subsection, the term ''qualifying employee'' means a student who is employed at the National Security Agency under—

(A) a Student Educational Employment Program of the Agency conducted under this section or any other provision of law; or

(B) a similar cooperative or summer education program of the Agency that meets the criteria for Federal cooperative or summer education programs prescribed by the Office of Personnel Management.

(Added Pub. L. 101–510, div. A, title II, § 247(a)(1), Nov. 5, 1990, 104 Stat. 1522; amended Pub. L. 108–136, div. A, title IX, § 926, Nov. 24, 2003, 117 Stat. 1579.)

AMENDMENTS

2003—Subsec. (d). Pub. L. 108–136 added subsec. (d).

§ 2196. Manufacturing engineering education program

(a) ESTABLISHMENT OF MANUFACTURING ENGINEERING EDUCATION PROGRAM.—(1) The Secretary of Defense shall establish a program under which the Secretary makes grants or other awards to support—

(A) the enhancement of existing programs in manufacturing engineering education to further a mission of the department; or

(B) the establishment of new programs in manufacturing engineering education that meet such requirements.

(2) Grants and awards under this section may be made to industry, not-for-profit institutions, institutions of higher education, or to consortia of such institutions or industry.

(3) The Secretary shall establish the program in consultation with the Secretary of Education, the Director of the National Science Foundation, the Director of the Office of Science and Technology Policy, and the secretaries of such other relevant Federal agencies as the Secretary considers appropriate.

(4) The Secretary shall ensure that the program is coordinated with Department programs associated with advanced manufacturing.

(5) The program shall be known as the ''Manufacturing Engineering Education Program''.

(b) Geographical Distribution of Grants and Awards.—In awarding grants and other awards under this subsection, the Secretary shall, to the maximum extent practicable, avoid geographical concentration of awards.

(c) COVERED PROGRAMS.—A program of engineering education supported pursuant to this section shall meet the requirements of this section.

(d) COMPONENTS OF PROGRAM.—The program of education for which such a grant is made shall be a consolidated and integrated multidisciplinary program of education with an emphasis on the following components:

(1) Multidisciplinary instruction that encompasses the total manufacturing engineering enterprise and that may include—

(A) manufacturing engineering education and training through classroom activities, laboratory activities, thesis projects, individual or team projects, internships, cooperative work-study programs, and interactions with industrial facilities, consortia, or such other activities and organizations in the United States and foreign countries as the Secretary considers appropriate;

(B) faculty development programs;

(C) recruitment of educators highly qualified in manufacturing engineering to teach or develop manufacturing engineering courses;

(D) presentation of seminars, workshops, and training for the development of specific manufacturing engineering skills;

(E) activities involving interaction between students and industry, including programs for visiting scholars, personnel exchange, or industry executives;

(F) development of new, or updating and modification of existing, manufacturing curriculum, course offerings, and education programs;

(G) establishment of programs in manufacturing workforce training;

(H) establishment of joint manufacturing engineering programs with defense laboratories and depots; and

(I) expansion of manufacturing training and education programs and outreach for members of the armed forces, dependents and children of such members, veterans, and employees of the Department of Defense.

(2) Opportunities for students to obtain work experience in manufacturing through such activities as internships, summer job placements, or cooperative work-study programs.

(3) Faculty and student engagement with industry that is directly related to, and supportive of, the education of students in manufacturing engineering because of—

(A) the increased understanding of manufacturing engineering challenges and potential solutions; and

(B) the enhanced quality and effectiveness of the instruction that result from that increased understanding.

(e) PROPOSALS.—The Secretary of Defense shall solicit proposals for grants and other awards to be made pursuant to this section for the support of programs of manufacturing engineering education that are consistent with the purposes of this section.

(f) MERIT COMPETITION.—Applications for awards shall be evaluated on the basis of merit pursuant to competitive procedures prescribed by the Secretary.

(g) SELECTION CRITERIA.—The Secretary may select a proposal for an award pursuant to this section if the proposal, at a minimum, does each of the following:

(1) Contains innovative approaches for improving engineering education in manufacturing technology.

(2) Demonstrates a strong commitment by the proponents to apply the resources necessary to achieve the objectives for which the award is to be made.

(3) Provides for effective engagement with industry or government organizations that

supports the instruction to be provided in the proposed program and is likely to improve manufacturing engineering and technology.

(4) Demonstrates a significant level of involvement of United States industry in the proposed instructional and research activities.

(5) Is likely to attract superior students and promote careers in manufacturing engineering.

(6) Proposes to involve fully qualified personnel who are experienced in manufacturing engineering education and technology.

(7) Proposes a program that, within three years after the award is made, is likely to attract from sources other than the Federal Government the financial and other support necessary to sustain such program.

(8) Proposes to achieve a significant level of participation by women, members of minority groups, and individuals with disabilities through active recruitment of students from among such persons.

(9) Trains students in advanced manufacturing and in relevant emerging technologies and production processes.

(h) INSTITUTION OF HIGHER EDUCATION DEFINED.—In this section, the term ''institution of higher education'' has the meaning given such term in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)).

(Added Pub. L. 102–190, div. A, title VIII, § 825(a)(1), Dec. 5, 1991, 105 Stat. 1438; amended Pub. L. 114–328, div. A, title II, § 215, Dec. 23, 2016, 130 Stat. 2048.)

PRIOR PROVISIONS

A prior section 2196, added Pub. L. 101–510, div. A, title II, § 247(a)(1), Nov. 5, 1990, 104 Stat. 1523; amended Pub. L. 102–25, title VII, § 701(i)(2), Apr. 6, 1991, 105 Stat. 116, defined ''defense laboratory'', prior to repeal by Pub. L. 102–190, § 825(a)(1). See section 2199 of this title.

AMENDMENTS

2016—Pub. L. 114–328 amended section generally. Prior to amendment, section related to grants for manufacturing engineering education.

IMPLEMENTATION OF GRANT PROGRAM; PRIORITY IN FUNDING

Pub. L. 102–190, div. A, title VIII, § 825(b), Dec. 5, 1991, 105 Stat. 1442, provided that: ''Within one year after the date of the enactment of this Act [Dec. 5, 1991], the Secretary of Defense, in consultation with the Director of the National Science Foundation, shall award grants under section 2196 of title 10, United States Code (as added by subsection (a)), to institutions of higher education throughout the United States.''

§ 2197. Manufacturing experts in the classroom

(a) ESTABLISHMENT OF PROGRAM.—The Secretary of Defense, in consultation with the Secretary of Education and the Secretary of Commerce, shall conduct a program to support the following activities of one or more manufacturing experts at institutions of higher education:

(1) Identifying the education and training requirements of United States manufacturing firms located in the same geographic region as an institution participating in the program.

(2) Assisting in the development of teaching curricula for classroom and in-factory education and training classes at such an institution.

(3) Teaching such classes and overseeing the teaching of such classes by others.

(4) Improving the knowledge and expertise of permanent faculty and staff of such an institution.

(5) Marketing the programs and facilities of such an institution to firms referred to in paragraph (1).

(6) Coordinating the activities described in the other provisions of this subsection with other programs conducted by the Federal Government, any State, any local government, or any private, nonprofit organization to modernize United States manufacturing firms, especially the regional centers for the transfer of manufacturing technology and programs receiving financial assistance under section 2196 of this title.

(b) MERIT COMPETITION.—Applications for assistance under this section shall be evaluated on the basis of merit pursuant to competitive procedures prescribed by the Secretary.

(c) SELECTION CRITERIA.—The Secretary shall select institutions for the award of financial assistance under this section from among institutions submitting applications for such assistance that—

(1) demonstrate that the proposed activities are of an appropriate scale and a sufficient quality to ensure long term improvement in the applicant's capability to serve the education and training needs of United States manufacturing firms in the same region as the applicant;

(2) demonstrate a significant level of industry involvement and support;

(3) demonstrate attention to the needs of any United States industries that supply manufactured products to the Department of Defense or to a contractor of the Department of Defense; and

(4) meet such other criteria as the Secretary may prescribe.

(d) FEDERAL SUPPORT.—The amount of financial assistance furnished to an institution under this section may not exceed 50 percent of the estimated cost of carrying out the activities proposed to be supported in part with such financial assistance for the period for which the assistance is to be provided. In no event may the amount of the financial assistance provided to an institution exceed $250,000 per year. The period for which financial assistance is provided an institution under this section shall be at least two years unless such assistance is earlier terminated for cause determined by the Secretary.

(e) MANUFACTURING EXPERT DEFINED.—In this section, the term ''manufacturing expert'' means manufacturing managers and workers having experience in the organization of production and education and training needs and other experts in manufacturing.

(Added Pub. L. 102–190, div. A, title VIII, § 825(a)(1), Dec. 5, 1991, 105 Stat. 1440; amended Pub. L. 102–484, div. D, title XLII, § 4238(a), (b)(1), Oct. 23, 1992, 106 Stat. 2694.)

AMENDMENTS

1992—Pub. L. 102–484, §4238(b)(1), substituted ''experts'' for ''managers'' in section catchline.

Subsec. (a). Pub. L. 102–484, §4238(a)(1), struck out ''managers and'' after ''manufacturing'' in introductory provisions.

Subsec. (e). Pub. L. 102–484, §4238(a)(2), added subsec. (e).

§ 2198. Management training program in Japanese language and culture

(a) The Secretary of Defense, in coordination with the National Science Foundation, shall establish a program for the making of grants on a competitive basis to United States institutions of higher education and other United States not-for-profit organizations for the conduct of programs for scientists, engineers, and managers to learn Japanese language and culture.

(b) The Secretary of Defense shall prescribe in regulations the criteria for awarding a grant under the program for activities of an institution or organization referred to in subsection (a), including the following:

(1) Whether scientists, engineers, and managers of defense laboratories and Department of Energy laboratories are permitted a level of participation in such activities that is beneficial to the development and application of defense critical technologies by such laboratories.

(2) Whether such activities include the placement of United States scientists, engineers, and managers in Japanese government and industry laboratories—

(A) to improve the knowledge of such scientists, engineers, and managers in (i) Japanese language and culture, and (ii) the research and development and management practices of such laboratories; and

(B) to provide opportunities for the encouragement of technology transfer from Japan to the United States.

(3) Whether an appropriate share of the costs of such activities will be paid out of funds derived from non-Federal Government sources.

(c) In this section, the term ''defense critical technology'' means a technology that is identified under section 2505 of this title as critical for attaining the national security objectives set forth in section 2501(a) of this title.

(Added Pub. L. 102–190, div. A, title VIII, §828(a), Dec. 5, 1991, 105 Stat. 1444; amended Pub. L. 103–35, title II, §201(c)(3), May 31, 1993, 107 Stat. 98; Pub. L. 105–85, div. A, title X, §1073(a)(39), Nov. 18, 1997, 111 Stat. 1902; Pub. L. 116–283, div. A, title XVIII, §1867(e)(1), Jan. 1, 2021, 134 Stat. 4282.)

AMENDMENT OF SUBSECTION (c)

Pub. L. 116–283, div. A, title XVIII, §§1801(d), 1867(e)(1), Jan. 1, 2021, 134 Stat. 4151, 4282, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, subsection (c) of this section is amended by striking ''section 2505'' and ''section 2501(a)'' and inserting ''section 4816'' and ''section 4811(a)'', respectively. See 2021 Amendment note below.

AMENDMENTS

2021—Subsec. (c). Pub. L. 116–283 substituted ''section 4816'' for ''section 2505'' and ''section 4811(a)'' for ''section 2501(a)''.

1997—Subsec. (c). Pub. L. 105–85 substituted ''that is identified under section 2505 of this title as critical for attaining the national security objectives set forth in section 2501(a) of this title.'' for ''identified in a defense critical technologies plan submitted to the Congress under section 2506 of this title.''

1993—Subsec. (c). Pub. L. 103–35 substituted ''a defense'' for ''an annual defense'' and ''section 2506'' for ''section 2522''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 2199. Definitions

In this chapter:

(1) The term ''defense laboratory'' means a laboratory operated by the Department of Defense or owned by the Department of Defense and operated by a contractor or a facility of a Defense Agency at which research and development activities are conducted.

(2) The term ''institution of higher education'' has the meaning given such term in section 101 of the Higher Education Act of 1965.

(3) The term ''regional center for the transfer of manufacturing technology'' means a manufacturing extension center for the transfer of manufacturing technology and best business practices referred to in section 25(b) of the National Institute of Standards and Technology Act (15 U.S.C. 278k).

(Added Pub. L. 102–190, div. A, title VIII, §825(a)(1), Dec. 5, 1991, 105 Stat. 1441; amended Pub. L. 105–244, title I, §102(a)(2)(B), Oct. 7, 1998, 112 Stat. 1617; Pub. L. 114–329, title V, §501(e)(1), Jan. 6, 2017, 130 Stat. 3032.)

REFERENCES IN TEXT

Section 101 of the Higher Education Act of 1965, referred to in par. (2), is classified to section 1001 of Title 20, Education.

AMENDMENTS

2017—Par. (3). Pub. L. 114–329, §501(e)(1)(B), (C), inserted ''and best business practices'' before ''referred'' and substituted ''section 25(b)'' for ''section 25(a)''.

Pub. L. 114–329, §501(e)(1)(A), which directed substitution of ''manufacturing extension center'' for ''regional center'', was executed by making the substitution after ''means a'' outside of the defined term, to reflect the probable intent of Congress.

1998—Par. (2). Pub. L. 105–244 substituted ''section 101 of the Higher Education Act of 1965'' for ''section 1201(a) of the Higher Education Act of 1965 (20 U.S.C. 1141(a))''.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as a note under section 1001 of Title 20, Education.

CHAPTER 112—CYBER SCHOLARSHIP PROGRAM

Sec.
2200. Programs; purpose.

Sec.
2200a. Scholarship program.
2200b. Grant program.
2200c. Special considerations in awarding scholarships and grants.
2200d. Regulations.
2200e. Definitions.
2200f. Inapplicability to Coast Guard.

AMENDMENTS

2018—Pub. L. 115–232, div. A, title XVI, §1633(b)(2), Aug. 13, 2018, 132 Stat. 2125, added item 2200c and struck out former item 2200c ''Centers of Academic Excellence in Cyber Education''.

2017—Pub. L. 115–91, div. A, title XVI, §1649(d)(1)(A), (2), Dec. 12, 2017, 131 Stat. 1752, 1753, substituted ''CYBER'' for ''INFORMATION SECURITY'' in chapter heading and ''Centers of Academic Excellence in Cyber Education'' for ''Centers of Academic Excellence in Information Assurance Education'' in item 2200c.

§ 2200. Programs; purpose

(a) IN GENERAL.—To encourage the recruitment and retention of Department of Defense personnel who have the computer and network security skills necessary to meet the cyber requirements of the Department of Defense, the Secretary of Defense may carry out programs in accordance with this chapter to provide financial support for education in disciplines relevant to those requirements at institutions of higher education.

(b) TYPES OF PROGRAMS.—The programs authorized under this chapter are as follows:

(1) Scholarships for pursuit of programs of education in cyber disciplines at institutions of higher education.

(2) Grants to institutions of higher education.

(c) NAME OF PROGRAM.—The programs authorized under this chapter shall be known as the ''Cyber Scholarship Program''.

(Added Pub. L. 106–398, §1 [[div. A], title IX, §922(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–233; amended Pub. L. 115–91, div. A, title XVI, §1649(a), (d)(1)(B), Dec. 12, 2017, 131 Stat. 1752.)

AMENDMENTS

2017—Subsec. (a). Pub. L. 115–91, §1649(d)(1)(B)(i), substituted ''the cyber requirements of the Department of Defense'' for ''Department of Defense information assurance requirements''.

Subsec. (b)(1). Pub. L. 115–91, §1649(d)(1)(B)(ii), substituted ''cyber disciplines'' for ''information assurance''.

Subsec. (c). Pub. L. 115–91, §1649(a), added subsec. (c).

CHANGE OF NAME

Pub. L. 115–91, div. A, title XVI, §1649(e)(1), Dec. 12, 2017, 131 Stat. 1753, provided that: ''The Information Security Scholarship program under chapter 112 of title 10, United States Code, is redesignated as the 'Cyber Scholarship program'. Any reference in a law (other than this section), map, regulation, document, paper, or other record of the United States to the Information Security Scholarship program shall be deemed to be a reference to the Cyber Scholarship Program.''

PROGRAM TO ESTABLISH CYBER INSTITUTES AT INSTITUTIONS OF HIGHER LEARNING

Pub. L. 115–232, div. A, title XVI, §1640, Aug. 13, 2018, 132 Stat. 2130, as amended by Pub. L. 116–283, div. A, title XVII, §1710, Jan. 1, 2021, 134 Stat. 4086, provided that:

''(a) PROGRAM AUTHORIZED.—The Secretary of Defense may carry out a program to establish a Cyber Institute at institutions of higher learning selected under subsection (b) for purposes of accelerating and focusing the development of foundational expertise in critical cyber operational skills for future military and civilian leaders of the Armed Forces and the Department of Defense, including such leaders of the reserve components.

''(b) SELECTED INSTITUTIONS OF HIGHER LEARNING.—

''(1) IN GENERAL.—The Secretary of Defense shall select institutions of higher learning for purposes of the program established under subsection (a) from among institutions of higher learning that have a Reserve Officers' Training Corps program.

''(2) CONSIDERATION OF SENIOR MILITARY COLLEGES.—In selecting institutions of higher learning under paragraph (1), the Secretary shall consider the senior military colleges with Reserve Officers' Training Corps programs.

''(c) ELEMENTS.—Each institute established under the program authorized by subsection (a) shall include the following:

''(1) Programs to provide future military and civilian leaders of the Armed Forces or the Department of Defense who possess cyber operational expertise from beginning through advanced skill levels. Such programs shall include instruction and practical experiences that lead to recognized certifications and degrees in the cyber field.

''(2) Programs of targeted strategic foreign language proficiency training for such future leaders that—

''(A) are designed to significantly enhance critical cyber operational capabilities; and

''(B) are tailored to current and anticipated readiness requirements.

''(3) Programs related to mathematical foundations of cryptography and courses in cryptographic theory and practice designed to complement and reinforce cyber education along with the strategic language programs critical to cyber operations.

''(4) Programs related to data science and courses in data science theory and practice designed to complement and reinforce cyber education along with the strategic language programs critical to cyber operations.

''(5) Programs designed to develop early interest and cyber talent through summer programs, dual enrollment opportunities for cyber, strategic language, data science, and cryptography related courses.

''(6) Training and education programs to expand the pool of qualified cyber instructors necessary to support cyber education in regional school systems.

''(d) PARTNERSHIPS WITH DEPARTMENT OF DEFENSE AND THE ARMED FORCES.—Any institute established under the program authorized by subsection (a) may enter into a partnership with one or more components of the Armed Forces, active or reserve, or any agency of the Department of Defense to facilitate the development of critical cyber skills for students who may pursue a military career.

''(e) PARTNERSHIPS.—Any institute established under the program authorized by subsection (a) may enter into a partnership with one or more local educational agencies to facilitate the development of critical cyber skills.

''(f) SENIOR MILITARY COLLEGES DEFINED.—The term 'senior military colleges' has the meaning given such term in section 2111a(f) of title 10, United States Code.

''(g) REPORT TO CONGRESS.—Not later than September 30, 2021, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the effectiveness of the Cyber Institutes and on opportunities to expand the Cyber Institutes to additional select institutions of higher learning that have a Reserve Officers' Training Corps program.''

REPORT

Pub. L. 106–398, §1 [[div. A], title IX, §922(c)], Oct. 30, 2000, 114 Stat. 1654, 1654A–236, directed the Secretary of

Defense to submit to committees of Congress a plan for implementing the programs under this chapter not later than Apr. 1, 2001.

§ 2200a. Scholarship program

(a) AUTHORITY.—The Secretary of Defense may, subject to subsection (f), provide financial assistance in accordance with this section to a person—

(1) who is pursuing an associate, baccalaureate, advanced degree, or certificate in a cyber discipline referred to in section 2200(a) of this title at an institution of higher education; and

(2) who enters into an agreement with the Secretary as described in subsection (b).

(b) SERVICE AGREEMENT FOR SCHOLARSHIP RECIPIENTS.—(1) To receive financial assistance under this section—

(A) a member of the armed forces shall enter into an agreement to serve on active duty in the member's armed force for the period of obligated service determined under paragraph (2);

(B) an employee of the Department of Defense shall enter into an agreement to continue in the employment of the department for the period of obligated service determined under paragraph (2); and

(C) a person not referred to in subparagraph (A) or (B) shall enter into an agreement—

(i) to enlist or accept a commission in one of the armed forces and to serve on active duty in that armed force for the period of obligated service determined under paragraph (2); or

(ii) to accept and continue employment in the Department of Defense for the period of obligated service determined under paragraph (2).

(2) For the purposes of this subsection, the period of obligated service for a recipient of financial assistance under this section shall be the period determined by the Secretary of Defense as being appropriate to obtain adequate service in exchange for the financial assistance and otherwise to achieve the goals set forth in section 2200(a) of this title. In no event may the period of service required of a recipient be less than the period equal to three-fourths of the total period of pursuit of a degree for which the Secretary agrees to provide the recipient with financial assistance under this section. The period of obligated service is in addition to any other period for which the recipient is obligated to serve on active duty or in the civil service, as the case may be.

(3) An agreement entered into under this section by a person pursuing an academic degree shall include terms that provide the following:

(A) That the period of obligated service begins on a date after the award of the degree that is determined under the regulations prescribed under section 2200d of this title.

(B) That the person will maintain satisfactory academic progress, as determined in accordance with those regulations, and that failure to maintain such progress constitutes grounds for termination of the financial assistance for the person under this section.

(C) Any other terms and conditions that the Secretary of Defense determines appropriate for carrying out this section.

(c) AMOUNT OF ASSISTANCE.—The amount of the financial assistance provided for a person under this section shall be the amount determined by the Secretary of Defense as being necessary to pay all educational expenses incurred by that person, including tuition, fees, cost of books, laboratory expenses, and expenses of room and board. The expenses paid, however, shall be limited to those educational expenses normally incurred by students at the institution of higher education involved.

(d) USE OF ASSISTANCE FOR SUPPORT OF INTERNSHIPS.—The financial assistance for a person under this section may also be provided to support internship activities of the person at the Department of Defense in periods between the academic years leading to the degree for which assistance is provided the person under this section.

(e) REPAYMENT FOR PERIOD OF UNSERVED OBLIGATED SERVICE.—(1) A member of an armed force who does not complete the period of active duty specified in the service agreement under subsection (b) shall be subject to the repayment provisions of section 303a(e) or 373 of title 37.

(2) A civilian employee of the Department of Defense who voluntarily terminates service before the end of the period of obligated service required under an agreement entered into under subsection (b) shall be subject to the repayment provisions of section 303a(e) or 373 of title 37 in the same manner and to the same extent as if the civilian employee were a member of the armed forces.

(f) ALLOCATION OF FUNDING.—(1) Not less than 50 percent of the amount available for financial assistance under this section for a fiscal year shall be available only for providing financial assistance for the pursuit of degrees referred to in subsection (a) at institutions of higher education that have established, improved, or are administering programs of education in cyber disciplines under the grant program established in section 2200b of this title, as determined by the Secretary of Defense.

(2) Not less than five percent of the amount available for financial assistance under this section for a fiscal year shall be available for providing financial assistance for the pursuit of an associate degree at an institution described in paragraph (1).

(g) EMPLOYMENT OF PROGRAM PARTICIPANTS.—The Secretary of Defense—

(1) may, without regard to any provision of title 5 governing appointments in the competitive service, appoint to a cyber position in the Department of Defense in the excepted service an individual who has successfully completed an academic program for which a scholarship under this section was awarded and who, under the terms of the agreement for such scholarship, at the time of such appointment owes a service commitment to the Department; and

(2) may, upon satisfactory completion of two years of substantially continuous service by an incumbent who was appointed to an excepted service position under the authority of paragraph (1), convert the appointment of

such individual, without competition, to a career or career conditional appointment.

(Added Pub. L. 106–398, §1 [[div. A], title IX, §922(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–234; amended Pub. L. 109–163, div. A, title VI, §687(c)(8), Jan. 6, 2006, 119 Stat. 3334; Pub. L. 111–84, div. A, title X, §1073(a)(20), title XI, §1103, Oct. 28, 2009, 123 Stat. 2473, 2485; Pub. L. 115–91, div. A, title VI, §618(a)(1)(J), title XVI, §1649(b), (d)(1)(C), Dec. 12, 2017, 131 Stat. 1426, 1752; Pub. L. 116–92, div. A, title XVI, §1637, Dec. 20, 2019, 133 Stat. 1749.)

AMENDMENTS

2019—Subsec. (a)(1). Pub. L. 116–92 substituted ''advanced degree, or certificate'' for ''or advanced degree, or a certification,''.

2017—Subsec. (a)(1). Pub. L. 115–91, §1649(d)(1)(C)(i), substituted ''a cyber discipline'' for ''an information assurance discipline''.

Subsec. (e). Pub. L. 115–91, §618(a)(1)(J), inserted ''or 373'' before ''of title 37'' in pars. (1) and (2).

Subsec. (f). Pub. L. 115–91, §1649(b), designated existing provisions as par. (1) and added par. (2).

Subsec. (f)(1). Pub. L. 115–91, §1649(d)(1)(C)(ii), substituted ''cyber disciplines'' for ''information assurance''.

Subsec. (g)(1). Pub. L. 115–91, §1649(d)(1)(C)(iii), substituted ''a cyber position'' for ''an information technology position''.

2009—Subsec. (a). Pub. L. 111–84, §1103(b), substituted ''subsection (f),'' for ''subsection (g),'' in introductory provisions.

Subsec. (e)(1). Pub. L. 111–84, §1073(a)(20), substituted ''subsection (b)'' for ''section (b)''.

Subsec. (g). Pub. L. 111–84, §1103(a), added subsec. (g).

2006—Subsec. (e). Pub. L. 109–163, §687(c)(8)(A), added subsec. (e) and struck out heading and text of former subsec. (e). Text read as follows:

''(1) A person who voluntarily terminates service before the end of the period of obligated service required under an agreement entered into under subsection (b) shall refund to the United States an amount determined by the Secretary of Defense as being appropriate to obtain adequate service in exchange for financial assistance and otherwise to achieve the goals set forth in section 2200(a) of this title.

''(2) An obligation to reimburse the United States imposed under paragraph (1) is for all purposes a debt owed to the United States.

''(3) The Secretary of Defense may waive, in whole or in part, a refund required under paragraph (1) if the Secretary determines that recovery would be against equity and good conscience or would be contrary to the best interests of the United States.''

Subsecs. (f), (g). Pub. L. 109–163, §687(c)(8)(B), (C), redesignated subsec. (g) as (f) and struck out heading and text of former subsec. (f). Text read as follows: ''A discharge in bankruptcy under title 11 that is entered less than five years after the termination of an agreement under this section does not discharge the person signing such agreement from a debt arising under such agreement or under subsection (e).''

SAVINGS PROVISION

For savings provision relating to payment or repayment of any bonus, incentive pay, special pay, or similar pay obligated to be paid before Apr. 1, 2006, under a provision of this section amended by section 687(c) of Pub. L. 109–163, see section 687(f) of Pub. L. 109–163, set out as a note under section 510 of this title.

§ 2200b. Grant program

(a) AUTHORITY.—The Secretary of Defense may provide grants of financial assistance to institutions of higher education to support the establishment, improvement, or administration of programs of education in cyber disciplines referred to in section 2200(a) of this title.

(b) PURPOSES.—The proceeds of grants under this section may be used by an institution of higher education for the following purposes:

(1) Faculty development.

(2) Curriculum development.

(3) Laboratory improvements.

(4) Faculty research in information security.

(Added Pub. L. 106–398, §1 [[div. A], title IX, §922(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–235; amended Pub. L. 115–91, div. A, title XVI, §1649(d)(1)(D), Dec. 12, 2017, 131 Stat. 1753.)

AMENDMENTS

Subsec. (a). Pub. L. 115–91 substituted ''cyber disciplines'' for ''information assurance disciplines''.

§ 2200c. Special considerations in awarding scholarships and grants

(a) CENTERS OF ACADEMIC EXCELLENCE IN CYBER EDUCATION.—In the selection of a recipient for the award of a scholarship or grant under this chapter, consideration shall be given to whether—

(1) in the case of a scholarship, the institution at which the recipient pursues a degree is a Center of Academic Excellence in Cyber Education; and

(2) in the case of a grant, the recipient is a Center of Academic Excellence in Cyber Education.

(b) CERTAIN INSTITUTIONS OF HIGHER EDUCATION.—In the selection of a recipient for the award of a scholarship or grant under this chapter, consideration shall be given to whether—

(1) in the case of a scholarship, the institution of higher education at which the recipient pursues a degree is an institution described in section 371(a) of the Higher Education Act of 1965 (20 U.S.C. 1067q(a)); and

(2) in the case of a grant, the recipient is an institution described in such section.

(Added Pub. L. 106–398, §1 [[div. A], title IX, §922(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–236; amended Pub. L. 115–91, div. A, title XVI, §1649(d)(1)(E), (F), Dec. 12, 2017, 131 Stat. 1753; Pub. L. 115–232, div. A, title XVI, §1633(a), (b)(1), Aug. 13, 2018, 132 Stat. 2125.)

AMENDMENTS

2018—Pub. L. 115–232 substituted ''Special considerations in awarding scholarships and grants'' for ''Centers of Academic Excellence in Cyber Education'' in section catchline, designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

2017—Pub. L. 115–91 substituted ''Cyber'' for ''Information Assurance'' in heading and in pars. (1) and (2).

CHANGE OF NAME

Pub. L. 115–91, div. A, title XVI, §1649(e)(2), Dec. 12, 2017, 131 Stat. 1753, provided that: ''Any institution of higher education designated by the Director of the National Security Agency as a Center of Academic Excellence in Information Assurance Education is redesignated as a Center of Academic Excellence in Cyber Education. Any reference in a law (other than this section), map, regulation, document, paper, or other record of the United States to a Center of Academic Excellence in Information Assurance Education shall be

deemed to be a reference to a Center of Academic Excellence in Cyber Education.''

§ 2200d. Regulations

The Secretary of Defense shall prescribe regulations for the administration of this chapter.

(Added Pub. L. 106–398, § 1 [[div. A], title IX, § 922(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–236.)

§ 2200e. Definitions

In this chapter:

(1) The term ''cyber'' includes the following:

(A) Offensive cyber operations.

(B) Defensive cyber operations.

(C) Department of Defense information network operations and defense.

(D) Any other information technology that the Secretary of Defense considers to be related to the cyber activities of the Department of Defense.

(2) The term ''institution of higher education'' has the meaning given the term in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001).

(3) The term ''Center of Academic Excellence in Cyber Education'' means an institution of higher education that is designated by the Director of the National Security Agency as a Center of Academic Excellence in Cyber Education.

(Added Pub. L. 106–398, § 1 [[div. A], title IX, § 922(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–236; amended Pub. L. 115–91, div. A, title XVI, § 1649(c), Dec. 12, 2017, 131 Stat. 1752.)

AMENDMENTS

2017—Pub. L. 115–91 amended section generally. Prior to amendment, section defined ''information assurance'', ''institution of higher education'', and ''Center of Academic Excellence in Information Assurance Education''.

§ 2200f. Inapplicability to Coast Guard

This chapter does not apply to the Coast Guard when it is not operating as a service in the Navy.

(Added Pub. L. 106–398, § 1 [[div. A], title IX, § 922(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–236.)

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

CHAPTER 113—DEFENSE CIVILIAN TRAINING CORPS

Sec.
2200g. Establishment.
2200h. Program elements.
2200i. Model authorities.
2200j. Definitions.

AMENDMENTS

2021—Pub. L. 116–283, div. A, title X, § 1081(a)(4)(B), Jan. 1, 2021, 134 Stat. 3870, struck out ''Sec.'' before each item in this analysis, except where it appears preceding item 2200g.

§ 2200g. Establishment

For the purposes of preparing selected students for public service in Department of Defense occupations relating to acquisition, science, engineering, or other civilian occupations determined by the Secretary of Defense, and to target critical skill gaps in the Department of Defense, the Secretary of Defense shall establish and maintain a Defense Civilian Training Corps program, organized into one or more units, at any accredited civilian educational institution authorized to grant baccalaureate degrees.

(Added Pub. L. 116–92, div. A, title VIII, § 860(a), Dec. 20, 2019, 133 Stat. 1513; amended Pub. L. 116–283, div. A, title X, § 1081(a)(4)(A), Jan. 1, 2021, 134 Stat. 3870.)

AMENDMENTS

2021—Pub. L. 116–283 substituted ''§'' for ''SEC.'' in section designation.

IMPLEMENTATION TIMELINE

Pub. L. 116–92, div. A, title VIII, § 860(b), Dec. 20, 2019, 133 Stat. 1514, provided that:

''(1) INITIAL IMPLEMENTATION.—Not later than February 15, 2020, the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a plan and schedule to implement the Defense Civilian Training Corps program established under chapter 113 of title 10, United States Code (as added by subsection (a)) at one accredited civilian educational institution authorized to grant baccalaureate degrees not later than August 1, 2021. The plan shall include a list of critical skills gaps the program will address and recommendations for any legislative changes required for effective implementation of the program.

''(2) EXPANSION.—Not later than December 31, 2020, the Secretary of Defense shall submit to the congressional defense committees an expansion plan and schedule to expand the Defense Civilian Training Corps program to five accredited civilian educational institutions not later than August 1, 2022.

''(3) FULL IMPLEMENTATION.—Not later than December 31, 2021, the Secretary of Defense shall submit to the congressional defense committees a full implementation plan and schedule to expand the Defense Civilian Training Corps program to at least 20 accredited civilian educational institutions with not fewer than 400 members enrolled in the program not later than August 1, 2023.''

§ 2200h. Program elements

In establishing the program, the Secretary of Defense shall determine the following:

(1) A methodology to identify and target critical skills gaps in Department of Defense occupations relating to acquisition, science, engineering, or other civilian occupations determined by the Secretary of Defense.

(2) A mechanism to track and report the success of the program in eliminating any critical skills gaps identified under paragraph (1).

(3) Criteria for an accredited civilian educational institution to participate in the program.

(4) The eligibility of a student to become a member of the program.

(5) Criteria required for a member of the program to receive financial assistance from the Department of Defense.

(6) The term of service as an employee of the Department of Defense required for a member of the program to receive such financial assistance.

(7) Criteria required for a member of the program to be released from a term of service.

(8) The method by which a successful graduate of the program may gain immediate employment in the Department of Defense.

(9) Resources required for implementation of the program.

(Added Pub. L. 116–92, div. A, title VIII, § 860(a), Dec. 20, 2019, 133 Stat. 1514; amended Pub. L. 116–283, div. A, title X, § 1081(a)(4)(A), Jan. 1, 2021, 134 Stat. 3870.)

AMENDMENTS

2021—Pub. L. 116–283 substituted "§" for "SEC." in section designation.

§ 2200i. Model authorities

In making determinations under section 2200h of this title, the Secretary of Defense shall use the authorities under chapters 103 and 111 of this title as guides.

(Added Pub. L. 116–92, div. A, title VIII, § 860(a), Dec. 20, 2019, 133 Stat. 1514; amended Pub. L. 116–283, div. A, title X, § 1081(a)(4)(A), Jan. 1, 2021, 134 Stat. 3870.)

AMENDMENTS

2021—Pub. L. 116–283 substituted "§" for "SEC." in section designation.

§ 2200j. Definitions

In this chapter:

(1) The term "program" means the Defense Civilian Training Corps program established under section 2200g.

(2) The term "member of the program" means a student at an accredited civilian educational institution who is enrolled in the program.

(Added Pub. L. 116–92, div. A, title VIII, § 860(a), Dec. 20, 2019, 133 Stat. 1514; amended Pub. L. 116–283, div. A, title X, § 1081(a)(4)(A), Jan. 1, 2021, 134 Stat. 3870.)

AMENDMENTS

2021—Pub. L. 116–283 substituted "§" for "SEC." in section designation.

PART IV—SERVICE, SUPPLY, AND PROCUREMENT

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[144A.	Repealed.]	
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[150.	Repealed.]	
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153.	Exchange of Material and Disposal of Obsolete, Surplus, or Unclaimed Property	2571
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160.	Environmental Restoration	2700
161.	Property Records and Report of Theft or Loss of Certain Property	2721
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165.	Accountability and Responsibility	2771
[167.	Repealed.]	
169.	Military Construction and Military Family Housing	2801
[171.	Repealed.]	
172.	Strategic Environmental Research and Development Program	2901
173.	Energy Security	2911

[1] So in original. The period probably should not appear.

AMENDMENT OF ANALYSIS

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1808(a)(4), 1821(a)(4), 1851(d)(2), 1872(b)(2), 1880(a), 1881(b), 1882(a)(2), Jan. 1, 2021, 134 Stat. 4151, 4159, 4195, 4273, 4289, 4293, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this analysis is amended as follows:

(1) by amending part heading to read "SERVICE, SUPPLY, AND PROPERTY";

(2) by striking items for chapters 137, 139, 140, 142, 144, 144B, 148, and 149; and

(3) by amending item for chapter 141 to read "Miscellaneous Provisions Relating to Property".

See 2021 Amendment note below.

AMENDMENTS

2021—Pub. L. 116–283, div. A, title XVIII, §§ 1808(a)(4), 1821(a)(4), 1851(d)(2), 1872(b)(2), 1880(a), 1881(b), 1882(a)(2), Jan. 1, 2021, 134 Stat. 4159, 4195, 4273, 4289, 4293, substituted "SERVICE, SUPPLY, AND PROPERTY" for "SERVICE, SUPPLY, AND PROCUREMENT" in heading for part IV and "Miscellaneous Provisions Relating to Property" for "Miscellaneous Procurement Provisions" in item for chapter 141 and struck out items for chapters 137 "Procurement Generally", 139 "Research and Development", 140 "Procurement of Commercial Products and Commercial Services", 142 "Procurement Technical Assistance Cooperative Agreement Program", 144 "Major Defense Acquisition Programs", 144B "Weapon Systems Development and Related Matters", 148 "National Defense Technology and Industrial

Base, Defense Reinvestment, and Defense Conversion'', and 149 ''Defense Acquisition System''.

Pub. L. 116–283, div. A, title X, §1081(a)(3), Jan. 1, 2021, 134 Stat. 3870, substituted ''2375.'' for ''2377'' in item for chapter 140.

2018—Pub. L. 115–232, div. A, title VIII, §836(e)(12), Aug. 13, 2018, 132 Stat. 1870, substituted ''Procurement of Commercial Products and Commercial Services'' for ''Procurement of Commercial Items'' and ''2377'' for ''2375'' in item for chapter 140.

2017—Pub. L. 115–91, div. A, title X, §1081(d)(4), Dec. 12, 2017, 131 Stat. 1600, amended directory language of Pub. L. 114–328, §805(a)(2). See 2016 Amendment note below.

2016—Pub. L. 114–328, div. A, title VIII, §846(2), Dec. 23, 2016, 130 Stat. 2292, struck out item for chapter 144A ''Major Automated Information System Programs''.

Pub. L. 114–328, div. A, title VIII, §805(a)(2), Dec. 23, 2016, 130 Stat. 2255, as amended by Pub. L. 115–91, div. A, title X, §1081(d)(4), Dec. 12, 2017, 131 Stat. 1600, added item for chapter 144B.

2011—Pub. L. 111–383, div. A, title VIII, §861(b), Jan. 7, 2011, 124 Stat. 4292, added item for chapter 149.

2009—Pub. L. 111–84, div. A, title X, §1073(a)(21), Oct. 28, 2009, 123 Stat. 2473, substituted ''2551'' for ''2541'' in item for chapter 152.

2006—Pub. L. 109–364, div. A, title VIII, §816(a)(2), div. B, title XXVIII, §2851(c)(1), Oct. 17, 2006, 120 Stat. 2326, 2495, added items for chapters 144A and 173.

2003—Pub. L. 108–136, div. A, title X, §1045(a)(1), Nov. 24, 2003, 117 Stat. 1612, substituted ''2700'' for ''2701'' in item for chapter 160.

2001—Pub. L. 107–107, div. A, title IX, §911(b), Dec. 28, 2001, 115 Stat. 1196, added item for chapter 135.

1997—Pub. L. 105–85, div. A, title III, §§355(c)(2), 371(a)(2), (c)(5), title X, §§1073(a)(2), 1074(d)(2), Nov. 18, 1997, 111 Stat. 1694, 1705, 1900, 1910, added item for chapter 136 and substituted ''2460'' for ''2461'' in item for chapter 146, ''Commissaries and Exchanges and Other Morale, Welfare, and Recreation Activities'' for ''Utilities and Services'' in item for chapter 147, ''2500'' for ''2491'' in item for chapter 148, and ''2541'' for ''2540'' in item for chapter 152.

1996—Pub. L. 104–201, div. A, title XI, §1123(a)(3), Sept. 23, 1996, 110 Stat. 2688, struck out item for chapter 167 ''Defense Mapping Agency''.

Pub. L. 104–106, div. A, title X, §1061(b)(2), Feb. 10, 1996, 110 Stat. 442, struck out item for chapter 171 ''Security and Control of Supplies''.

1994—Pub. L. 103–355, title VIII, §8101(b), Oct. 13, 1994, 108 Stat. 3389, added item for chapter 140.

1993—Pub. L. 103–160, div. A, title VIII, §828(b)(1), Nov. 30, 1993, 107 Stat. 1713, struck out item for chapter 135 ''Encouragement of Aviation''.

1992—Pub. L. 102–484, div. D, title XLII, §4271(b)(1), Oct. 23, 1992, 106 Stat. 2695, added item for chapter 148 and struck out former items for chapters 148 ''Defense Industrial Base'', 149 ''Manufacturing Technology'', and 150 ''Development of Dual-Use Critical Technologies''.

1991—Pub. L. 102–190, div. A, title VIII, §821(f), title X, §1061(a)(27)(A), Dec. 5, 1991, 105 Stat. 1432, 1474, substituted ''Manufacturing'' for ''Maufacturing'' in item for chapter 149, substituted ''Development of Dual-Use Critical Technologies'' for ''Issue to Armed Forces'' in item for chapter 150, struck out item for chapter 151 ''Issue of Serviceable Material Other Than to Armed Forces'', and added item for chapter 152.

1990—Pub. L. 101–510, div. A, title VIII, §823(b)(1), title XVIII, §1801(a)(2), Nov. 5, 1990, 104 Stat. 1602, 1757, added item for chapter 149, redesignated former item for chapter 149 as item for chapter 150, and added item for chapter 172.

1989—Pub. L. 101–189, div. A, title IX, §931(e)(2), Nov. 29, 1989, 103 Stat. 1535, substituted ''Cooperative Agreements'' for ''Acquisition and Cross-Servicing Agreements'' in item for chapter 138.

1988—Pub. L. 100–456, div. A, title III, §§342(a)(2), 344(b)(2), title VIII, §821(b)(2), Sept. 29, 1988, 102 Stat. 1961, 1962, 2016, substituted ''Defense Industrial Base'' for ''Buy American Requirements'' in item for chapter 148, substituted ''Property Records and Report of Theft or Loss of Certain Property'' for ''Property Records'' in item for chapter 161, and added item for chapter 171.

Pub. L. 100–370, §§1(e)(2), 2(a)(2), 3(a)(2), July 19, 1988, 102 Stat. 845, 854, 855, added items for chapters 134, 146, and 148.

1987—Pub. L. 100–26, §7(c)(1), Apr. 21, 1987, 101 Stat. 280, substituted ''Acquisition and Cross-Servicing Agreements with NATO Allies and Other Countries'' for ''North Atlantic Treaty Organization Acquisition and Cross-Servicing Agreements'' in item for chapter 138, substituted ''Major Defense Acquisition Programs'' for ''Oversight of Cost Growth in Major Programs'' and ''2430'' for ''2431'' in item for chapter 144, and substituted ''2721'' for ''2701'' in item for chapter 161.

1986—Pub. L. 99–661, div. A, title XIII, §1343(a)(22), Nov. 14, 1986, 100 Stat. 3994, substituted ''2341'' for ''2321'' in item for chapter 138.

Pub. L. 99–499, title II, §211(a)(2), Oct. 17, 1986, 100 Stat. 1725, added item for chapter 160.

Pub. L. 99–433, title VI, §605(b), Oct. 1, 1986, 100 Stat. 1075a, added item for chapter 144.

1984—Pub. L. 98–525, title XII, §1241(a)(2), Oct. 19, 1984, 98 Stat. 2606, added item for chapter 142.

1982—Pub. L. 97–295, §1(50)(E), Oct. 12, 1982, 96 Stat. 1300, added item for chapter 167.

Pub. L. 97–214, §2(b), July 12, 1982, 96 Stat. 169, added item for chapter 169.

1980—Pub. L. 96–323, §2(b), Aug. 4, 1980, 94 Stat. 1019, added item for chapter 138.

CHAPTER 131—PLANNING AND COORDINATION

Sec.

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AMENDMENT OF ANALYSIS

Pub. L. 116–283, div. A, title XVIII, §§1801(d), 1807(b)(2)(B), (g)(2), 1809(f)(2), (g)(2), (i)(2), Jan. 1, 2021, 134 Stat. 4151, 4157, 4159, 4161, 4162, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this analysis is amended as follows:

(1) by amending item 2202 to read ''Regulations on production, warehousing, and supply distribution functions''; and

(2) by striking items 2212, 2213, 2216, 2217, and 2229b.

See 2021 Amendment note below.

AMENDMENTS

2021—Pub. L. 116–283, div. A, title XVIII, §§1807(b)(2)(B), (g)(2), 1809(f)(2), (g)(2), (i)(2), Jan. 1, 2021, 134 Stat. 4157, 4159, 4161, 4162, substituted ''Regulations on production, warehousing, and supply distribution functions'' for ''Regulations on procurement, production, warehousing, and supply distribution functions'' in item 2202 and struck out items 2212 ''Obligations for contract services: reporting in budget object classes'', 2213 ''Limitation on acquisition of excess supplies'', 2216 ''Defense Modernization Account'', 2217 ''Comparable budgeting for common procurement weapon systems'', and 2229b ''Comptroller General assessment of acquisition programs and initiatives''.

2019—Pub. L. 116–92, div. A, title XVII, §1731(a)(33), Dec. 20, 2019, 133 Stat. 1814, substituted ''Comptroller General assessment of acquisition programs and initiatives'' for ''Comptroller General assessment of acquisition programs and related initiatives'' in item 2229b.

2018—Pub. L. 115–232, div. A, title VIII, §833(b), Aug. 13, 2018, 132 Stat. 1859, added item 2229b.

2016—Pub. L. 114–328, div. A, title X, §1081(c)(4), Dec. 23, 2016, 130 Stat. 2419, made technical correction to directory language of Pub. L. 114–92, §883(a)(2). See 2015 Amendment note below.

Pub. L. 114–328, div. A, title VIII, §833(b)(2)(B), Dec. 23, 2016, 130 Stat. 2284, struck out item 2225 ''Information technology purchases: tracking and management''.

2015—Pub. L. 114–92, div. A, title VIII, §883(a)(2), Nov. 25, 2015, 129 Stat. 947, as amended by Pub. L. 114–328, div. A, title X, §1081(c)(4), Dec. 23, 2016, 130 Stat. 2419, added item 2222 and struck out former item 2222 ''Defense business systems: architecture, accountability, and modernization''.

2014—Pub. L. 113–291, div. A, title X, §1022(a)(2), Dec. 19, 2014, 128 Stat. 3487, added item 2218a.

2011—Pub. L. 112–81, div. A, title VIII, §846(a)(2), Dec. 31, 2011, 125 Stat. 1517, added item 2216a.

Pub. L. 111–383, div. A, title VIII, §805(a)(2), Jan. 7, 2011, 124 Stat. 4259, added item 2223a.

2008—Pub. L. 110–181, div. A, title III, §§352(b), 371(f), Jan. 28, 2008, 122 Stat. 72, 81, added items 2228 and 2229a and struck out former item 2228 ''Military equipment and infrastructure: prevention and mitigation of corrosion''.

2006—Pub. L. 109–364, div. A, title III, §351(b), Oct. 17, 2006, 120 Stat. 2160, added item 2229.

2004—Pub. L. 108–375, div. A, title III, §332(a)(2), title VI, §651(f)(2), Oct. 28, 2004, 118 Stat. 1854, 1972, struck out item 2219 ''Retention of morale, welfare, and recreation funds by military installations: limitation'' and added item 2222.

2002—Pub. L. 107–314, div. A, title X, §§1004(h)(1), 1052(b)(2), 1067(a)(2), Dec. 2, 2002, 116 Stat. 2631, 2649, 2658, struck out item 2222 ''Annual financial management improvement plan'' and added items 2224a and 2228.

2001—Pub. L. 107–107, div. A, title X, §1009(b)(3)(B), Dec. 28, 2001, 115 Stat. 1209, substituted ''Annual'' for ''Biennial'' in item 2222.

2000—Pub. L. 106–398, §1 [[div. A], title VIII, §812(a)(2), title X, §§1006(a)(2), 1008(a)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–214, 1654A–247, 1654A–250, added items 2225, 2226, and 2227.

1999—Pub. L. 106–65, div. A, title X, §1043(b), Oct. 5, 1999, 113 Stat. 761, added item 2224.

1998—Pub. L. 105–261, div. A, title III, §331(a)(2), title IX, §§906(f)(1), 911(a)(2), title X, §1008(b), Oct. 17, 1998, 112 Stat. 1968, 2096, 2099, 2117, added item 2212, struck out items 2216a ''Defense Business Operations Fund'' and 2221 ''Fisher House trust funds'', and added item 2223.

1997—Pub. L. 105–85, div. A, title X, §1008(a)(2), Nov. 18, 1997, 111 Stat. 1871, added item 2222.

1996—Pub. L. 104–201, div. A, title X, §1074(a)(10), Sept. 23, 1996, 110 Stat. 2659, redesignated item 2216 ''Defense Business Operations Fund'' as 2216a.

Pub. L. 104–106, div. A, title III, §371(a)(2), title IX, §§912(a)(2), 914(a)(2), Feb. 10, 1996, 110 Stat. 279, 410, 412, added two items 2216 and item 2221.

1994—Pub. L. 103–355, title II, §2454(c)(3)(A), title III, §3061(b), title V, §5001(a)(2), Oct. 13, 1994, 108 Stat. 3326, 3336, 3350, substituted ''Regulations on procurement, production, warehousing, and supply distribution functions'' for ''Obligation of funds: limitation'' in item 2202, struck out item 2212 ''Contracted advisory and assistance services: accounting procedures'', and added item 2220.

Pub. L. 103–337, div. A, title III, §373(b), div. B, title XXVIII, §2804(b)(2), Oct. 5, 1994, 108 Stat. 2736, 3053, substituted ''Reimbursements'' for ''Availability of reimbursements'' in item 2205 and added item 2219.

1993—Pub. L. 103–160, div. A, title XI, §1106(a)(2), Nov. 30, 1993, 107 Stat. 1750, added item 2215.

1992—Pub. L. 102–484, div. A, title X, §1024(a)(2), Oct. 23, 1992, 106 Stat. 2488, added item 2218.

1991—Pub. L. 102–190, div. A, title III, §317(b), Dec. 5, 1991, 105 Stat. 1338, added item 2213.

1990—Pub. L. 101–510, div. A, title XIII, §1331(2), title XIV, §§1482(c)(2), 1484(i)(6), Nov. 5, 1990, 104 Stat. 1673, 1710, 1718, struck out item 2213 ''Cooperative military airlift agreements'', added item 2214, and struck out items 2215 ''Reports on unobligated balances'' and 2216 ''Annual report on budgeting for inflation''.

1988—Pub. L. 100–370, §1(d)(4), July 19, 1988, 102 Stat. 843, added items 2201, 2212, and 2217.

1986—Pub. L. 99–661, div. A, title XIII, §1307(a)(2), Nov. 14, 1986, 100 Stat. 3981, added items 2215 and 2216.

1982—Pub. L. 97–252, title XI, §1125(b), Sept. 8, 1982, 96 Stat. 758, added item 2213.

Pub. L. 97–214, §10(a)(1), July 12, 1982, 96 Stat. 174, struck out item 2212 ''Transmission of annual military construction authorization request''.

1978—Pub. L. 95–356, title VIII, §802(a)(2), Sept. 8, 1978, 92 Stat. 585, added item 2212.

1962—Pub. L. 87–651, title II, §207(b), Sept. 7, 1962, 76 Stat. 523, added items 2203 to 2211.

1958—Pub. L. 85–599, §3(c), Aug. 6, 1958, 72 Stat. 516, struck out item 2201 ''General functions of Secretary of Defense''.

STRATEGIC MANAGEMENT PLAN

Pub. L. 110–181, div. A, title IX, §904(d), (e), Jan. 28, 2008, 122 Stat. 275, as amended by Pub. L. 114–92, div. A, title X, §1079(e), Nov. 25, 2015, 129 Stat. 999, provided that:

''(d) STRATEGIC MANAGEMENT PLAN REQUIRED.—

''(1) REQUIREMENT.—The Secretary of Defense, acting through the Chief Management Officer of the De-

partment of Defense, shall develop a strategic management plan for the Department of Defense.

''(2) MATTERS COVERED.—Such plan shall include, at a minimum, detailed descriptions of—

''(A) performance goals and measures for improving and evaluating the overall efficiency and effectiveness of the business operations of the Department of Defense and achieving an integrated management system for business support areas within the Department of Defense;

''(B) key initiatives to be undertaken by the Department of Defense to achieve the performance goals under subparagraph (A), together with related resource needs;

''(C) procedures to monitor the progress of the Department of Defense in meeting performance goals and measures under subparagraph (A);

''(D) procedures to review and approve plans and budgets for changes in business operations, including any proposed changes to policies, procedures, processes, and systems, to ensure the compatibility of such plans and budgets with the strategic management plan of the Department of Defense; and

''(E) procedures to oversee the development of, and review and approve, all budget requests for defense business systems.

''(e) REPORT.—Not later than 180 days after the date of the enactment of this Act [Jan. 28, 2008], the Secretary of Defense shall provide to the Committees on Armed Services of the Senate and the House of Representatives a report on the implementation of this section and a copy of the strategic management plan required by subsection (d).''

§ 2201. Apportionment of funds: authority for exemption; excepted expenses

(a) EXEMPTION FROM APPORTIONMENT REQUIREMENT.—If the President determines such action to be necessary in the interest of national defense, the President may exempt from the provisions of section 1512 of title 31 appropriations, funds, and contract authorizations available for military functions of the Department of Defense.

(b) AIRBORNE ALERTS.—Upon a determination by the President that such action is necessary, the Secretary of Defense may provide for the cost of an airborne alert as an excepted expense under section 6301(a) and (b)(1)–(3) of title 41.

(c) MEMBERS ON ACTIVE DUTY.—Upon a determination by the President that it is necessary to increase (subject to limits imposed by law) the number of members of the armed forces on active duty beyond the number for which funds are provided in appropriation Acts for the Department of Defense, the Secretary of Defense may provide for the cost of such additional members as an excepted expense under section 6301(a) and (b)(1)–(3) of title 41.

(d) NOTIFICATION TO CONGRESS.—The Secretary of Defense shall immediately notify Congress of the use of any authority under this section.

(Added Pub. L. 100–370, § 1(d)(1)(A), July 19, 1988, 102 Stat. 841; amended Pub. L. 106–65, div. A, title X, § 1032(a)(1), Oct. 5, 1999, 113 Stat. 751; Pub. L. 111–350, § 5(b)(4), Jan. 4, 2011, 124 Stat. 3842.)

HISTORICAL AND REVISION NOTES

Section is based on Pub. L. 99–190, § 101(b) [title VIII, § 8009], Dec. 19, 1985, 99 Stat. 1185, 1204.

In two instances, the source law to be codified by the bill includes provisions that on their face require that the Department of Defense notify Congress of certain actions. These notification requirements were terminated by section 602 of the Goldwater-Nichols Department of Defense Reorganization Act of 1986 (Public Law 99–433), which terminated all recurring reporting requirements applicable to the Department of Defense except for those requirements that were specifically exempted in that section. The source law sections are sections 8009(c) and 8005(j) (proviso) of the FY86 defense appropriations Act (Public Law 99–190), enacted December 19, 1985, which would be codified as section 2201 of title 10 (by section 1(d) of the bill) and section 7313(a) of title 10 (by section 1(n) of the bill). In codifying the authorities provided the Department of Defense by these two provisions of law, the committee believes that it is appropriate to reinstate the congressional notification requirements that go with those authorities. These sections were recurring annual appropriation provisions for many years and were made permanent only months before the enactment of the 1986 Reorganization Act. It is the committee's belief that the failure to exempt these provisions from the general reports termination provision was inadvertent and notes that the notification provisions had in fact previously applied to the Department of Defense for many years. The action of the committee restores the status quo as it existed before the Reorganization Act.

PRIOR PROVISIONS

A prior section 2201, act Aug. 10, 1956, ch. 1041, 70A Stat. 119, prescribed the general functions of the Secretary of Defense, prior to repeal by Pub. L. 85–599, § 3(c), Aug. 6, 1958, 72 Stat. 516. See section 113 of this title.

AMENDMENTS

2011—Subsec. (b). Pub. L. 111–350, § 5(b)(4)(A), substituted ''section 6301(a) and (b)(1)–(3) of title 41'' for ''section 3732(a) of the Revised Statutes (41 U.S.C. 11(a))''.

Subsec. (c). Pub. L. 111–350, § 5(b)(4)(B), substituted ''section 6301(a) and (b)(1)–(3) of title 41'' for ''section 3732(a) of the Revised Statutes (41 U.S.C. 11(a))''.

1999—Subsec. (d). Pub. L. 106–65 substituted ''Defense'' for ''Defense—'', struck out par. (1) designation, substituted ''this section.'' for ''this section; and'', and struck out par. (2) which read as follows: ''shall submit monthly reports to Congress on the estimated obligations incurred pursuant to subsections (b) and (c).''

§ 2202. Regulations on procurement, production, warehousing, and supply distribution functions

The Secretary of Defense shall prescribe regulations governing the performance within the Department of Defense of the procurement, production, warehousing, and supply distribution functions, and related functions, of the Department of Defense.

(Aug. 10, 1956, ch. 1041, 70A Stat. 120; Pub. L. 100–180, div. A, title XII, § 1202, Dec. 4, 1987, 101 Stat. 1153; Pub. L. 103–355, title III, § 3061(a), Oct. 13, 1994, 108 Stat. 3336; Pub. L. 116–283, div. A, title XVIII, § 1807(b)(2), Jan. 1, 2021, 134 Stat. 4157.)

AMENDMENT OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1807(b)(2), Jan. 1, 2021, 134 Stat. 4151, 4157, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is amended by striking ''procurement,'' in section catchline and text. See 2021 Amendment note below.

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
2202	41:162.	July 10, 1952, ch. 630, § 638, 66 Stat. 537.

The words ''an officer or agency * * * may * * * only'' are substituted for the words ''no officer or agency * * * shall * * * except''. The word ''of'', before the words ''the Department'', is substituted for the words ''in or under''. The words ''under regulations prescribed'' are substituted for the words ''in accordance with regulations issued''. The words ''after the effective date of this section'' and 41:162(b) are omitted as executed. The words ''or equipment'' are omitted as covered by the definition of ''supplies'' in section 101(26) of this title.

AMENDMENTS

2021—Pub. L. 116–283 struck out ''procurement,'' before ''production,'' in section catchline and text.

1994—Pub. L. 103–355 amended heading and text generally. Prior to amendment, text read as follows:

''(a) Notwithstanding any other provision of law, an officer or agency of the Department of Defense may obligate funds for procuring, producing, warehousing, or distributing supplies, or for related functions of supply management, only under regulations prescribed by the Secretary of Defense. The purpose of this section is to achieve the efficient, economical, and practical operation of an integrated supply system to meet the needs of the military departments without duplicate or overlapping operations or functions.

''(b) Except as otherwise provided by law, the availability for obligation of funds appropriated for any program, project, or activity of the Department of Defense expires at the end of the three-year period beginning on the date that such funds initially become available for obligation unless before the end of such period the Secretary of Defense enters into a contract for such program, project, or activity.''

1987—Pub. L. 100–180 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 2302 of this title.

§ 2203. Budget estimates

To account for, and report, the cost of performance of readily identifiable functional programs and activities, with segregation of operating and capital programs, budget estimates of the Department of Defense shall be prepared, presented, and justified, where practicable, and authorized programs shall be administered, in such form and manner as the Secretary of Defense, subject to the authority and direction of the President, may prescribe. As far as practicable, budget estimates and authorized programs of the military departments shall be uniform and in readily comparable form. The budget for the Department of Defense submitted to Congress for each fiscal year shall include data projecting the effect of the appropriations requested for materiel readiness requirements. The Secretary of Defense shall provide that the budget justification documents for such budget include information on the number of employees of contractors estimated to be working on contracts of the Department of Defense during the fiscal year for which the budget is submitted. Such information shall be set forth in terms of employee-years or such other measure as will be uniform and readily comparable with civilian personnel of the Department of Defense.

(Added Pub. L. 87–651, title II, § 207(a), Sept. 7, 1962, 76 Stat. 520; amended Pub. L. 97–295, § 1(21), Oct. 12, 1982, 96 Stat. 1290; Pub. L. 99–661, div. A, title III, § 311, Nov. 14, 1986, 100 Stat. 3851.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	Source (U.S. Code)	Source (Statutes at Large)
2203	5:172b.	July 26, 1947, ch. 343, § 403; added Aug. 10, 1949, ch. 412, § 11 (5th and 6th pars.), 63 Stat. 586.

The word ''prescribe'' is substituted for the word ''determine''. 5 U.S.C. 172b(b) is omitted as executed.

1982 ACT

Revised section	Source (U.S. Code)	Source (Statutes at Large)
2203 (last sentence).	10:2203 (note).	July 30, 1977, Pub. L. 95–79, § 812 (last sentence), 91 Stat. 336.

The words ''for fiscal year 1979'' are omitted as executed. The words ''for each fiscal year'' are substituted for ''subsequent fiscal years'' for consistency.

AMENDMENTS

1986—Pub. L. 99–661 inserted provisions that budget justification documents include information on number of employees estimated to be working during the fiscal year, such information to be set forth in terms of employee-years or other measure as is uniform and comparable with civilian personnel of the Department of Defense.

1982—Pub. L. 97–295 inserted provision requiring that the budget for the Department of Defense submitted annually to Congress include data projecting the effect of the appropriations requested for materiel readiness requirements.

PRESIDENTIAL RECOMMENDATIONS RESPECTING MODIFICATIONS IN CRUISE MISSILE PROGRAM

Pub. L. 95–184, title II, § 203, Nov. 15, 1977, 91 Stat. 1382, provided that in authorizing funds under that Act [Pub. L. 95–184], Congress was asserting its readiness to consider, in accordance with the processes set forth in the Congressional Budget and Impoundment Control Act of 1974 [2 U.S.C. 621 et seq.] and the Budget and Accounting Act, 1921 [31 U.S.C. 1101 et seq.], such modifications in the United States cruise missile programs as the President might recommend to facilitate either negotiation or agreement in arms limitation or reduction talks.

REPORT TO CONGRESSIONAL COMMITTEES ON MATERIAL READINESS REQUIREMENTS FOR ARMED FORCES

Pub. L. 95–79, title VIII, § 812, July 30, 1977, 91 Stat. 336, as amended by Pub. L. 97–295, § 6(b), Oct. 12, 1982, 96 Stat. 1314, directed Secretary of Defense to submit to Congress, not later than February 15, 1978, a report setting forth quantifiable and measurable material readiness requirements for the Armed Forces, including the Reserve components thereof, monthly readiness status of the Armed Forces, including the reserve components thereof, during fiscal year 1977, and any changes in

such requirements and status projected for fiscal years 1978 and 1979 and in the five-year defense program, and to inform Congress of any subsequent changes in the aforementioned materiel readiness requirements and the reasons for such changes.

MODIFICATIONS IN UNITED STATES STRATEGIC ARMS PROGRAMS ON RECOMMENDATION OF PRESIDENT

Pub. L. 95–79, title VIII, § 813, July 30, 1977, 91 Stat. 337, provided that in authorizing procurement under section 101 of that Act and research and development under section 201 of that Act, Congress was asserting its readiness to consider, in accordance with the processes set forth in the Congressional Budget and Impoundment Control Act of 1974 [2 U.S.C. 621 et seq.] and the Budget and Accounting Act, 1921 [31 U.S.C. 1101 et seq.], such modifications in United States strategic arms programs as the President might recommend to facilitate either negotiation or agreement in the Strategic Arms Limitation Talks.

§ 2204. Obligation of appropriations

To prevent overdrafts and deficiencies in the fiscal year for which appropriations are made, appropriations made to the Department of Defense or to a military department, and reimbursements thereto, are available for obligation and expenditure only under scheduled rates of obligation, or changes thereto, that have been approved by the Secretary of Defense. This section does not prohibit the Department of Defense from incurring a deficiency that it has been authorized by law to incur.

(Added Pub. L. 87–651, title II, § 207(a), Sept. 7, 1962, 76 Stat. 520.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2204	5:172c.	July 26, 1947, ch. 343, § 404; added Aug. 10, 1949, ch. 412, § 11 (7th par.), 63 Stat. 587.

The words ''on and after the beginning of the next fiscal year following August 10, 1949,'' are omitted as executed. The last sentence is substituted for the proviso in 5 U.S.C. 172c.

§ 2205. Reimbursements

(a) AVAILABILITY OF REIMBURSEMENTS.—Reimbursements made to appropriations of the Department of Defense or a department or agency thereof under sections 1535 and 1536 of title 31, or other amounts paid by or on behalf of a department or agency of the Department of Defense to another department or agency of the Department of Defense, or by or on behalf of personnel of any department or organization, for services rendered or supplies furnished, may be credited to authorized accounts. Funds so credited are available for obligation for the same period as the funds in the account so credited. Such an account shall be accounted for as one fund on the books of the Department of the Treasury.

(b) FIXED RATE FOR REIMBURSEMENT FOR CERTAIN SERVICES.—The Secretary of Defense and the Secretaries of the military departments may charge a fixed rate for reimbursement of the costs of providing planning, supervision, administrative, or overhead services incident to any construction, maintenance, or repair project to real property or for providing facility services, irrespective of the appropriation financing the project or facility services.

(Added Pub. L. 87–651, title II, § 207(a), Sept. 7, 1962, 76 Stat. 520; amended Pub. L. 96–513, title V, § 511(71), Dec. 12, 1980, 94 Stat. 2926; Pub. L. 97–258, § 3(b)(4), Sept. 13, 1982, 96 Stat. 1063; Pub. L. 103–337, div. B, title XXVIII, § 2804(a), (b)(1), Oct. 5, 1994, 108 Stat. 3053.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2205	5:172g.	July 26, 1947, ch. 343, § 408; added Aug. 10, 1949, ch. 412, § 11 (23d par.), 63 Stat. 590.

5 U.S.C. 172g is restated to reflect more clearly its purpose to authorize the Department of Defense to operate as an integrated department by permitting supplies to be furnished and services to be rendered within and among agencies of the Department of Defense and provide that reimbursements therefor be credited to authorized accounts and be available for the same purpose and period as the accounts so credited. (See Senate Report No. 366, 81st Congress, pp. 23, 24.)

AMENDMENTS

1994—Pub. L. 103–337 substituted ''Reimbursements'' for ''Availability of reimbursements'' as section catchline, designated existing provisions as subsec. (a) and inserted subsec. heading, and added subsec. (b).

1982—Pub. L. 97–258 substituted ''sections 1535 and 1536 of title 31'' for ''the Act of March 4, 1915 (31 U.S.C. 686)''.

1980—Pub. L. 96–513 substituted ''the Act of March 4, 1915 (31 U.S.C. 686)'' for ''section 686 of title 31''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

§ 2206. Disbursement of funds of military department to cover obligation of another agency of Department of Defense

As far as authorized by the Secretary of Defense, a disbursing official of a military department may, out of available advances, make disbursements to cover obligations in connection with any function, power, or duty of another department or agency of the Department of Defense and charge those disbursements on vouchers, to the appropriate appropriation of that department or agency. Disbursements so made shall be adjusted in settling the accounts of the disbursing official.

(Added Pub. L. 87–651, title II, § 207(a), Sept. 7, 1962, 76 Stat. 520; amended Pub. L. 97–258, § 2(b)(1)(A), Sept. 13, 1982, 96 Stat. 1052.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2206	5:172h. 5:171n(a) (as applicable to 5:172h).	July 26, 1947, ch. 343, § 409; added Aug. 10, 1949, ch. 412, § 11 (24th par.), 63 Stat. 590. July 26, 1947, ch. 343, § 308(a) (as applicable to § 409), 61 Stat. 509.

The word ''agency'' is substituted for the word ''organization''. The last sentence is substituted for the proviso in 5 U.S.C. 172h.

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AMENDMENTS

1982—Pub. L. 97–258 substituted ''official'' for ''officer'' wherever appearing.

§ 2207. Expenditure of appropriations: limitation

(a) Money appropriated to the Department of Defense may not be spent under a contract other than a contract for personal services unless that contract provides that—

(1) the United States may, by written notice to the contractor, terminate the right of the contractor to proceed under the contract if the Secretary concerned or his designee finds, after notice and hearing, that the contractor, or his agent or other representative, offered or gave any gratuity, such as entertainment or a gift, to an officer, official, or employee of the United States to obtain a contract or favorable treatment in the awarding, amending, or making of determinations concerning the performance, of a contract; and

(2) if a contract is terminated under clause (1), the United States has the same remedies against the contractor that it would have had if the contractor had breached the contract and, in addition to other damages, is entitled to exemplary damages in an amount at least three, but not more than 10, as determined by the Secretary or his designee, times the cost incurred by the contractor in giving gratuities to the officer, official, or employee concerned.

The existence of facts upon which the Secretary makes findings under clause (1) may be reviewed by any competent court.

(b) This section does not apply to a contract that is for an amount not greater than the simplified acquisition threshold (as defined in section 134 of title 41).

(Added Pub. L. 87–651, title II, § 207(a), Sept. 7, 1962, 76 Stat. 520; amended Pub. L. 104–106, div. A, title VIII, § 801, Feb. 10, 1996, 110 Stat. 389; Pub. L. 111–350, § 5(b)(5), Jan. 4, 2011, 124 Stat. 3842.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1862(b), Jan. 1, 2021, 134 Stat. 4151, 4277, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 363 of this title, as amended by section 1862(a) of Pub. L. 116–283, inserted after the table of sections at the beginning of such chapter, and redesignated as section 4651 of this title. See Effective Date of 2021 Amendment note below.

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
2207	5:174d.	June 30, 1954, ch. 432, §719, 68 Stat. 353.

The following substitutions are made: ''spent'' for ''expended''; ''United States'' for ''Government''; ''if a contract is terminated under clause (1)'' for ''that in the event any such contract is so terminated''; and ''has . . . that it would have had if'' for ''shall be entitled . . . to pursue . . . as it could pursue in the event of''. The word ''official'' is inserted for clarity. The words ''entered into after June 30, 1954'' are omitted as executed.

AMENDMENTS

2011—Subsec. (b). Pub. L. 111–350 substituted ''section 134 of title 41'' for ''section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11))''.

1996—Pub. L. 104–106 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 2208. Working-capital funds

(a) To control and account more effectively for the cost of programs and work performed in the Department of Defense, the Secretary of Defense may require the establishment of working-capital funds in the Department of Defense to—

(1) finance inventories of such supplies as he may designate; and

(2) provide working capital for such industrial-type activities, and such commercial-type activities that provide common services within or among departments and agencies of the Department of Defense, as he may designate.

(b) Upon the request of the Secretary of Defense, the Secretary of the Treasury shall establish working-capital funds established under this section on the books of the Department of the Treasury.

(c) Working-capital funds shall be charged, when appropriate, with the cost of—

(1) supplies that are procured or otherwise acquired, manufactured, repaired, issued, or used, including the cost of the procurement and qualification of technology-enhanced maintenance capabilities that improve either reliability, maintainability, sustainability, or supportability and have, at a minimum, been demonstrated to be functional in an actual system application or operational environment; and

(2) services or work performed;

including applicable administrative expenses, and be reimbursed from available appropriations or otherwise credited for those costs, including applicable administrative expenses and costs of using equipment.

(d) The Secretary of Defense may provide capital for working-capital funds by capitalizing inventories. In addition, such amounts may be appropriated for the purpose of providing capital for working-capital funds as have been specifically authorized by law.

(e) Subject to the authority and direction of the Secretary of Defense, the Secretary of each military department shall allocate responsibility for its functions, powers, and duties to accomplish the most economical and efficient organization and operation of the activities, and the most economical and efficient use of the inventories, for which working-capital funds are authorized by this section. The accomplishment of the most economical and efficient organization and operation of working capital fund activities for the purposes of this subsection shall include actions toward the following:

(1) Undertaking efforts to optimize the rate structure for all requisitioning entities.

(2) Encouraging a working capital fund activity to perform reimbursable work for other entities to sustain the efficient use of the workforce.

(3) Determining the appropriate leadership level for approving work from outside entities to maximize efficiency.

(f) The requisitioning agency may not incur a cost for supplies drawn from inventories, or services or work performed by industrial-type or commercial-type activities for which working-capital funds may be established under this section, that is more than the amount of appropriations or other funds available for those purposes.

(g) The appraised value of supplies returned to working-capital funds by a department, activity, or agency may be charged to that fund. The proceeds thereof shall be credited to current applicable appropriations and are available for expenditure for the same purposes that those appropriations are so available. Credits may not be made to appropriations under this subsection as the result of capitalization of inventories under subsection (d).

(h) The Secretary of Defense shall prescribe regulations governing the operation of activities and use of inventories authorized by this section. The regulations may, if the needs of the Department of Defense require it and it is otherwise authorized by law, authorize supplies to be sold to, or services to be rendered or work performed for, persons outside the Department of Defense. However, supplies available in inventories financed by working capital funds established under this section may be sold to contractors for use in performing contracts with the Department of Defense. Working-capital funds shall be reimbursed for supplies so sold, services so rendered, or work so performed by charges to applicable appropriations or payments received in cash.

(i) For provisions relating to sales outside the Department of Defense of manufactured articles and services by a working-capital funded Army industrial facility (including a Department of the Army arsenal) that manufactures large caliber cannons, gun mounts, recoil mechanisms, ammunition, munitions, or components thereof, see section 7543 of this title.

(j)(1) The Secretary of a military department may authorize a working capital funded industrial facility of that department to manufacture or remanufacture articles and sell these articles, as well as manufacturing, remanufacturing, and engineering services provided by such facilities, to persons outside the Department of Defense if—

(A) the person purchasing the article or service is fulfilling a Department of Defense contract or a subcontract under a Department of Defense contract, and the solicitation for the contract or subcontract is open to competition between Department of Defense activities and private firms; or

(B) the Secretary would advance the objectives set forth in section 2474(b)(2) of this title by authorizing the facility to do so.

(2) The Secretary of Defense may waive the conditions in paragraph (1) in the case of a particular sale if the Secretary determines that the waiver is necessary for reasons of national security and notifies Congress regarding the reasons for the waiver.

(k)(1) Subject to paragraph (2), a contract for the procurement of a capital asset financed by a working-capital fund may be awarded in advance of the availability of funds in the working-capital fund for the procurement.

(2) Paragraph (1) applies to any of the following capital assets that have a development or acquisition cost of not less than $500,000 for procurements by a major range and test facility installation or a science and technology reinvention laboratory and not less than $250,000 for procurements at all other facilities:

(A) An unspecified minor military construction project under section 2805(c) of this title.

(B) Automatic data processing equipment or software.

(C) Any other equipment.

(D) Any other capital improvement.

(*l*)(1) An advance billing of a customer of a working-capital fund may be made if the Secretary of the military department concerned submits to Congress written notification of the advance billing within 30 days after the end of the month in which the advanced billing was made. The notification shall include the following:

(A) The reasons for the advance billing.

(B) An analysis of the effects of the advance billing on military readiness.

(C) An analysis of the effects of the advance billing on the customer.

(2) The Secretary of Defense may waive the notification requirements of paragraph (1)—

(A) during a period of war or national emergency; or

(B) to the extent that the Secretary determines necessary to support a contingency operation.

(3) The total amount of the advance billings rendered or imposed for all working-capital funds of the Department of Defense in a fiscal year may not exceed $1,000,000,000.

(4) This subsection shall not apply to advance billing for background investigation and related services performed by the Defense Counterintelligence and Security Agency.

(5) In this subsection:

(A) The term ''advance billing'', with respect to a working-capital fund, means a billing of a customer by the fund, or a requirement for a customer to reimburse or otherwise credit the fund, for the cost of goods or services provided (or for other expenses incurred) on behalf of the customer that is rendered or imposed before the customer receives the goods or before the services have been performed.

(B) The term ''customer'' means a requisitioning component or agency.

(m) CAPITAL ASSET SUBACCOUNTS.—Amounts charged for depreciation of capital assets shall be credited to a separate capital asset subaccount established within a working-capital fund.

(n) SEPARATE ACCOUNTING, REPORTING, AND AUDITING OF FUNDS AND ACTIVITIES.—The Secretary

of Defense, with respect to the working-capital funds of each Defense Agency, and the Secretary of each military department, with respect to the working-capital funds of the military department, shall provide for separate accounting, reporting, and auditing of funds and activities managed through the working-capital funds.

(*o*) CHARGES FOR GOODS AND SERVICES PROVIDED THROUGH THE FUND.—(1) Charges for goods and services provided for an activity through a working-capital fund shall include the following:

(A) Amounts necessary to recover the full costs of the goods and services provided for that activity.

(B) Amounts for depreciation of capital assets, set in accordance with generally accepted accounting principles.

(2) Charges for goods and services provided through a working-capital fund may not include the following:

(A) Amounts necessary to recover the costs of a military construction project (as defined in section 2801(b) of this title), other than a minor construction project financed by the fund pursuant to section 2805(c) of this title.

(B) Amounts necessary to cover costs incurred in connection with the closure or realignment of a military installation.

(C) Amounts necessary to recover the costs of functions designated by the Secretary of Defense as mission critical, such as ammunition handling safety, and amounts for ancillary tasks not directly related to the mission of the function or activity managed through the fund.

(p) PROCEDURES FOR ACCUMULATION OF FUNDS.—The Secretary of Defense, with respect to each working-capital fund of a Defense Agency, and the Secretary of a military department, with respect to each working-capital fund of the military department, shall establish billing procedures to ensure that the balance in that working-capital fund does not exceed the amount necessary to provide for the working-capital requirements of that fund, as determined by the Secretary.

(q) ANNUAL REPORTS AND BUDGET.—The Secretary of Defense, with respect to each working-capital fund of a Defense Agency, and the Secretary of each military department, with respect to each working-capital fund of the military department, shall annually submit to Congress, at the same time that the President submits the budget under section 1105 of title 31, the following:

(1) A detailed report that contains a statement of all receipts and disbursements of the fund (including such a statement for each subaccount of the fund) for the fiscal year ending in the year preceding the year in which the budget is submitted.

(2) A detailed proposed budget for the operation of the fund for the fiscal year for which the budget is submitted.

(3) A comparison of the amounts actually expended for the operation of the fund for the fiscal year referred to in paragraph (1) with the amount proposed for the operation of the fund for that fiscal year in the President's budget.

(4) A report on the capital asset subaccount of the fund that contains the following information:

(A) The opening balance of the subaccount as of the beginning of the fiscal year in which the report is submitted.

(B) The estimated amounts to be credited to the subaccount in the fiscal year in which the report is submitted.

(C) The estimated amounts of outlays to be paid out of the subaccount in the fiscal year in which the report is submitted.

(D) The estimated balance of the subaccount at the end of the fiscal year in which the report is submitted.

(E) A statement of how much of the estimated balance at the end of the fiscal year in which the report is submitted will be needed to pay outlays in the immediately following fiscal year that are in excess of the amount to be credited to the subaccount in the immediately following fiscal year.

(r) NOTIFICATION OF TRANSFERS.—(1) Notwithstanding any authority provided in this section to transfer funds, the transfer of funds from a working-capital fund, including a transfer to another working-capital fund, shall not be made under such authority unless the Secretary of Defense submits, in advance, a notification of the proposed transfer to the congressional defense committees in accordance with customary procedures.

(2) The amount of a transfer covered by a notification under paragraph (1) that is made in a fiscal year does not count toward any limitation on the total amount of transfers that may be made for that fiscal year under authority provided to the Secretary of Defense in a law authorizing appropriations for a fiscal year for military activities of the Department of Defense or a law making appropriations for the Department of Defense.

(s) LIMITATION ON CESSATION OR SUSPENSION OF DISTRIBUTION OF FUNDS FOR CERTAIN WORKLOAD.—(1) Except as provided in paragraph (2), the Secretary of Defense or the Secretary of a military department is not authorized—

(A) to suspend the employment of indirectly funded Government employees of the Department of Defense who are paid for out of working-capital funds by ceasing or suspending the distribution of such funds; or

(B) to cease or suspend the distribution of funds from a working-capital fund for a current project undertaken to carry out the functions or activities of the Department.

(2) Paragraph (1) shall not apply with respect to a working-capital fund if—

(A) the working-capital fund is insolvent; or

(B) there are insufficient funds in the working-capital fund to pay labor costs for the current project concerned.

(3) The Secretary of Defense or the Secretary of a military department may waive the limitation in paragraph (1) if such Secretary determines that the waiver is in the national security interests of the United States.

(4) This subsection shall not be construed to provide for the exclusion of any particular category of employees of the Department of De-

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fense from furlough due to absence of or inadequate funding.

(t) MARKET FLUCTUATION ACCOUNT.—(1) From amounts available for Working Capital Fund, Defense, the Secretary shall reserve up to $1,000,000,000, to remain available without fiscal year limitation, for petroleum market price fluctuations. Such amounts may only be disbursed if the Secretary determines such a disbursement is necessary to absorb volatile market changes in fuel prices without affecting the standard price charged for fuel.

(2) A budget request for the anticipated costs of fuel may not take into account the availability of funds reserved under paragraph (1).

(u) USE FOR UNSPECIFIED MINOR MILITARY CONSTRUCTION PROJECTS TO REVITALIZE AND RECAPITALIZE DEFENSE INDUSTRIAL BASE FACILITIES.—(1) The Secretary of a military department may use a working capital fund of the department under this section to fund an unspecified minor military construction project under section 2805 of this title for the revitalization and recapitalization of a defense industrial base facility owned by the United States and under the jurisdiction of the Secretary.

(2)(A) Except as provided in subparagraph (B), section 2805 of this title shall apply with respect to a project funded using a working capital fund under the authority of this subsection in the same manner as such section applies to any unspecified minor military construction project under section 2805 of this title.

(B) For purposes of applying subparagraph (A), the dollar limitation specified in subsection (a)(2) of section 2805 of this title, subject to adjustment as provided in subsection (f) of such section, shall apply rather than the dollar limitation specified in subsection (c) of such section.

(3) In this subsection, the term ''defense industrial base facility'' means any Department of Defense depot, arsenal, shipyard, or plant located within the United States.

(4) The authority to use a working capital fund to fund a project under the authority of this subsection expires on September 30, 2023.

(Added Pub. L. 87–651, title II, § 207(a), Sept. 7, 1962, 76 Stat. 521; amended Pub. L. 97–295, § 1(22), Oct. 12, 1982, 96 Stat. 1290; Pub. L. 98–94, title XII, § 1204(a), Sept. 24, 1983, 97 Stat. 683; Pub. L. 98–525, title III, § 305, Oct. 19, 1984, 98 Stat. 2513; Pub. L. 100–26, § 7(d)(2), Apr. 21, 1987, 101 Stat. 280; Pub. L. 101–510, div. A, title VIII, § 801, title XIII, § 1301(6), Nov. 5, 1990, 104 Stat. 1588, 1668; Pub. L. 102–172, title VIII, § 8137, Nov. 26, 1991, 105 Stat. 1212; Pub. L. 102–484, div. A, title III, § 374, Oct. 23, 1992, 106 Stat. 2385; Pub. L. 103–160, div. A, title I, § 158(b), Nov. 30, 1993, 107 Stat. 1582; Pub. L. 105–85, div. A, title X, § 1011(a), (b), Nov. 18, 1997, 111 Stat. 1873; Pub. L. 105–261, div. A, title X, §§ 1007(e)(1), 1008(a), Oct. 17, 1998, 112 Stat. 2115; Pub. L. 105–262, title VIII, § 8146(d)(1), Oct. 17, 1998, 112 Stat. 2340; Pub. L. 106–65, div. A, title III, §§ 331(a)(1), 332, title X, § 1066(a)(16), Oct. 5, 1999, 113 Stat. 566, 567, 771; Pub. L. 106–398, § 1 [[div. A], title III, § 341(f)], Oct. 30, 2000, 114 Stat. 1654, 1654A–64; Pub. L. 108–375, div. A, title X, § 1009, Oct. 28, 2004, 118 Stat. 2037; Pub. L. 111–383, div. A, title XIV, § 1403, Jan. 7, 2011, 124 Stat. 4410; Pub. L. 112–81, div. B, title XXVIII, § 2802(c)(1), Dec. 31, 2011, 125 Stat. 1684; Pub. L. 114–92, div. A, title XIV, §§ 1421, 1422, Nov. 25, 2015, 129 Stat. 1083, 1084; Pub. L. 115–91, div. A, title II, § 212, Dec. 12, 2017, 131 Stat. 1324; Pub. L. 115–232, div. A, title III, § 321, title VIII, § 809(a), title XIV, § 1422, Aug. 13, 2018, 132 Stat. 1718, 1840, 2093; Pub. L. 116–92, div. A, title III, § 352, title XVII, § 1731(a)(29), Dec. 20, 2019, 133 Stat. 1320, 1813; Pub. L. 116–283, div. A, title III, § 366, Jan. 1, 2021, 134 Stat. 3551.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2208(a)	5:172d(a).	July 26, 1947, ch. 343, § 405; added Aug. 10, 1949, ch. 412, § 11 (8th through 15th pars.), 63 Stat. 587.
2208(b)	5:172d(b).	
2208(c)	5:172d(c) (less 2d sentence).	
2208(d)	5:172d(d).	
2208(e)	5:172d(e)	
2208(f)	5:172d(f).	
2208(g)	5:172d(h).	
2208(h)	5:172d(g).	
2208(i)	5:172d(c) (2d sentence).	

In subsection (a)(1), (c)(1), (f), (g), and (h), the words ''stores, . . . materials, and equipment'' are omitted as covered by the word ''supplies'', as defined in section 101(26) of title 10.

In subsection (c), the word ''used'' is substituted for the word ''consumed''. The words ''and costs of using equipment'' are inserted to reflect an opinion of the Assistant General Counsel (Fiscal Matters), Department of Defense, February 2, 1960.

In subsection (d), the first sentence (less 1st 18 words) of 5 U.S.C. 172d(d) is omitted as executed.

In subsection (h), the following substitutions are made: ''prescribe'' for ''issue''; and ''persons'' for ''purchasers or users''. The word ''shall'' is substituted for the words ''is authorized to'' in the first sentence and for the word ''may'' in the last sentence to reflect the opinion of the Assistant General Counsel (Fiscal Matters), October 2, 1959, that the source law requires the action in question.

1982 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2208(h) (3d sentence).	10:2208 (note).	Dec. 21, 1979, Pub. L. 96–154, § 767, 93 Stat. 1163.

The word ''hereafter'' is omitted as executed.

PRIOR PROVISIONS

Provisions similar to those in subsecs. (m) to (q) of this section were contained in section 2216a of this title prior to repeal by Pub. L. 105–261, § 1008(b).

AMENDMENTS

2021—Subsec. (*l*)(4), (5). Pub. L. 116–283 added par. (4) and redesignated former par. (4) as (5).

2019—Subsec. (u). Pub. L. 116–92, § 1731(a)(29), inserted ''of this title'' after ''2805'' wherever appearing.

Subsec. (u)(1). Pub. L. 116–92, § 352(1), substituted ''to fund'' for ''to carry out''.

Subsec. (u)(2). Pub. L. 116–92, § 352(2), designated existing provisions as subpar. (A), substituted ''Except as provided in subparagraph (B), section 2805'' for ''Section 2805'' and ''carried out with'' for ''funded using'', and added subpar. (B).

Subsec. (u)(4). Pub. L. 116–92, § 352(3), substituted ''to fund'' for ''to carry out''.

2018—Subsec. (e). Pub. L. 115–232, § 1422, inserted at end ''The accomplishment of the most economical and efficient organization and operation of working capital fund activities for the purposes of this subsection shall include actions toward the following:

''(1) Undertaking efforts to optimize the rate structure for all requisitioning entities.

''(2) Encouraging a working capital fund activity to perform reimbursable work for other entities to sustain the efficient use of the workforce.

''(3) Determining the appropriate leadership level for approving work from outside entities to maximize efficiency.''

Subsec. (i). Pub. L. 115–232, § 809(a), substituted ''section 7543'' for ''section 4543''.

Subsec. (u). Pub. L. 115–232, § 321, added subsec. (u).

2017—Subsec. (k)(2). Pub. L. 115–91 substituted ''$500,000 for procurements by a major range and test facility installation or a science and technology reinvention laboratory and not less than $250,000 for procurements at all other facilities'' for ''$250,000'' in introductory provisions.

2015—Subsec. (s). Pub. L. 114–92, § 1421, added subsec. (s).

Subsec. (t). Pub. L. 114–92, § 1422, added subsec. (t).

2011—Subsec. (c)(1). Pub. L. 111–383, § 1403(1), inserted before semicolon '', including the cost of the procurement and qualification of technology-enhanced maintenance capabilities that improve either reliability, maintainability, sustainability, or supportability and have, at a minimum, been demonstrated to be functional in an actual system application or operational environment''.

Subsec. (k)(2). Pub. L. 111–383, § 1403(2), substituted ''$250,000'' for ''$100,000'' in introductory provisions.

Subsec. (k)(2)(A). Pub. L. 112–81, § 2802(c)(1)(A), substituted ''section 2805(c)'' for ''section 2805(c)(1)''.

Subsec. (*o*)(2)(A). Pub. L. 112–81, § 2802(c)(1)(B), substituted ''section 2805(c)'' for ''section 2805(c)(1)''.

2004—Subsec. (r). Pub. L. 108–375 added subsec. (r).

2000—Subsec. (j)(1). Pub. L. 106–398 substituted ''contract, and the solicitation'' for ''contract; and'' at end of subpar. (A) and all that follows through ''(B) the solicitation'', substituted ''; or'' for period after ''private firms'', and added a new subpar. (B).

1999—Subsec. (j). Pub. L. 106–65, §§ 331(a)(1), 332, designated existing provisions as par. (1), redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, substituted '', remanufacturing, and engineering'' for ''or remanufacturing'' in introductory provisions, inserted ''or a subcontract under a Department of Defense contract'' before the semicolon in subpar. (A), substituted ''solicitation for the contract or subcontract'' for ''Department of Defense solicitation for such contract'' in subpar. (B), and added par. (2).

Subsec. (*l*)(2)(A). Pub. L. 106–65, § 1066(a)(16), inserted ''of'' after ''during a period''.

1998—Subsec. (*l*)(3), (4). Pub. L. 105–261, § 1007(e)(1), and Pub. L. 105–262 amended subsec. (*l*) identically, adding par. (3) and redesignating former par. (3) as (4).

Subsecs. (m) to (q). Pub. L. 105–261, § 1008(a), added subsecs. (m) to (q).

1997—Subsec. (k). Pub. L. 105–85, § 1011(a), added subsec. (k) and struck out former subsec. (k) which read as follows: ''The Secretary of Defense shall provide that of the total amount of payments received in a fiscal year by funds established under this section for industrial-type activities, not less than 3 percent during fiscal year 1985, not less than 4 percent during fiscal year 1986, and not less than 5 percent during fiscal year 1987 shall be used for the acquisition of capital equipment for such activities.''

Subsec. (*l*). Pub. L. 105–85, § 1011(b), added subsec. (*l*).

1993—Subsec. (i). Pub. L. 103–160 amended subsec. (i) generally. Prior to amendment, subsec. (i) required that regulations under subsec. (h) authorize working-capital funded Army industrial facilities to sell manufactured articles and services to persons outside the Department of Defense in specified cases.

1992—Subsec. (j). Pub. L. 102–484 substituted ''The Secretary of a military department may authorize a working capital funded industrial facility of that department'' for ''The Secretary of the Army may authorize a working capital funded Army industrial facility''.

1991—Subsecs. (j), (k). Pub. L. 102–172 added subsec. (j) and redesignated former subsec. (j) as (k).

1990—Subsec. (i)(1). Pub. L. 101–510, § 801, added par. (1), redesignated par. (3) as (2), and struck out former pars. (1) and (2) which read as follows:

''(1) Regulations under subsection (h) may authorize an article manufactured by a working-capital funded Department of the Army arsenal that manufactures large caliber cannons, gun mounts, or recoil mechanisms to be sold to a person outside the Department of Defense if—

''(A) the article is sold to a United States manufacturer, assembler, or developer (i) for use in developing new products, or (ii) for incorporation into items to be sold to, or to be used in a contract with, an agency of the United States or a friendly foreign government;

''(B) the purchaser is determined by the Department of Defense to be qualified to carry out the proposed work involving the article to be purchased;

''(C) the article is not readily available from a commercial source in the United States; and

''(D) the sale is to be made on a basis that does not interfere with performance of work by the arsenal for the Department of Defense or for a contractor of the Department of Defense.

''(2) Services related to an article sold under this subsection may also be sold to the purchaser if the services are to be performed in the United States for the purchaser.''

Subsec. (k). Pub. L. 101–510, § 1301(6), struck out subsec. (k) which read as follows: ''Reports annually shall be made to the President and to Congress on the condition and operation of working-capital funds established under this section.''

1987—Subsec. (i)(3). Pub. L. 100–26 inserted ''(22 U.S.C. 2778)'' after ''Arms Export Control Act''.

1984—Subsecs. (i) to (k). Pub. L. 98–525 added subsecs. (i) and (j) and redesignated former subsec. (i) as (k).

1983—Subsec. (d). Pub. L. 98–94 substituted ''In addition, such amounts may be appropriated for the purpose of providing capital for working-capital funds as have been specifically authorized by law'' for ''If this method does not, in the determination of the Secretary of Defense, provide adequate amounts of working capital, such amounts as may be necessary may be appropriated for that purpose''.

1982—Subsec. (h). Pub. L. 97–295 inserted provision that supplies available in inventories financed by working capital funds established under this section may be sold to contractors for use in performing contracts with the Department of Defense.

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by section 809(a) of Pub. L. 115–232 effective Feb. 1, 2019, with provision for the coordination of amendments and special rule for certain redesignations, see section 800 of Pub. L. 115–232, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–261, div. A, title X, § 1007(e)(2), Oct. 17, 1998, 112 Stat. 2115, and Pub. L. 105–262, title VIII, § 8146(d)(2), Oct. 17, 1998, 112 Stat. 2340, provided that: ''Section 2208(*l*)(3) of such title, as added by paragraph (1), applies to fiscal years after fiscal year 1999.''

EFFECTIVE DATE OF 1983 AMENDMENT

Pub. L. 98–94, title XII, § 1204(b), Sept. 24, 1983, 97 Stat. 683, provided that: ''The amendment made by subsection (a) [amending this section] shall apply only with respect to appropriations for fiscal years beginning after September 30, 1984.''

ADVANCE BILLING FOR FISCAL YEAR 2020

Pub. L. 116–136, div. B, title III, § 13003, Mar. 27, 2020, 134 Stat. 522, provided that:

''(a) Notwithstanding section 2208(*l*)(3) of title 10, United States Code, during fiscal year 2020, the total amount of the advance billings rendered or imposed for all working-capital funds of the Department of Defense

may exceed the amount otherwise specified in such section.

''(b) In this section, the term 'advance billing' has the meaning given that term in section 2208(*l*)(4) [now 2208(*l*)(5)] of title 10, United States Code.''

PILOT PROGRAM FOR ACQUISITION OF COMMERCIAL SATELLITE COMMUNICATION SERVICES

Pub. L. 113–291, div. A, title XVI, § 1605, Dec. 19, 2014, 128 Stat. 3623, as amended by Pub. L. 114–92, div. A, title XVI, § 1612, Nov. 25, 2015, 129 Stat. 1103; Pub. L. 114–328, div. A, title XVI, § 1606(a), Dec. 23, 2016, 130 Stat. 2586, provided that:

''(a) PILOT PROGRAM.—

''(1) IN GENERAL.—The Secretary of Defense shall develop and carry out a pilot program to effectively and efficiently acquire commercial satellite communications services to meet the requirements of the military departments, Defense Agencies, and combatant commanders.

''(2) FUNDING.—Of the funds authorized to be appropriated for any of fiscal years 2015 through 2020 for the Department of Defense for the acquisition of satellite communications, not more than $50,000,000 may be obligated or expended for such pilot program during such a fiscal year.

''(3) CERTAIN AUTHORITIES.—In carrying out the pilot program under paragraph (1), the Secretary may not use the authorities provided in sections 2208(k) and 2210(b) of title 10, United States Code.

''(4) METHODS.—In carrying out the pilot program under paragraph (1), the Secretary may use a variety of methods authorized by law to effectively and efficiently acquire commercial satellite communications services, including by carrying out multiple pathfinder activities under the pilot program.

''(b) GOALS.—In developing and carrying out the pilot program under subsection (a)(1), the Secretary shall ensure that the pilot program—

''(1) provides a cost-effective and strategic method to acquire commercial satellite communications services;

''(2) incentivizes private-sector participation and investment in technologies to meet future requirements of the Department of Defense with respect to commercial satellite communications services;

''(3) takes into account the potential for a surge or other change in the demand of the Department for commercial satellite communications services in response to global or regional events;

''(4) ensures the ability of the Secretary to control and account for the cost of programs and work performed under the pilot program; and

''(5) demonstrates the potential to achieve order-of-magnitude improvements in satellite communications capability.

''(c) DURATION.—The pilot program under subsection (a)(1) shall terminate on October 1, 2020.

''(d) REPORTS AND BRIEFINGS.—

''(1) INITIAL REPORT.—Not later than 270 days after the date of the enactment of this Act [Dec. 19, 2014], the Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report that includes—

''(A) a plan and schedule to carry out the pilot program under subsection (a)(1); and

''(B) a description of the appropriate metrics established by the Secretary to meet the goals of the pilot program.

''(2) BRIEFING.—At the same time as the President submits to Congress the budget pursuant to section 1105 of title 31, for each of fiscal years 2017 through 2020, the Secretary shall provide to the congressional defense committees briefing on the pilot program.

''(3) FINAL REPORT.—Not later than December 1, 2020, the Secretary shall submit to the congressional defense committees a report on the pilot program under subsection (a)(1). The report shall include—

''(A) an assessment of the pilot program and whether the pilot program effectively and efficiently acquires commercial satellite communications services to meet the requirements of the military departments, Defense Agencies, and combatant commanders; and

''(B) a description of—

''(i) any contract entered into under the pilot program, the funding used under such contract, and the efficiencies realized under such contract;

''(ii) the advantages and challenges of using the pilot program;

''(iii) any additional authorities the Secretary determines necessary to acquire commercial satellite communications services as described in subsection (a)(1); and

''(iv) any recommendations of the Secretary with respect to improving or extending the pilot program.

''(e) IMPLEMENTATION OF GOALS.—In developing and carrying out the pilot program under subsection (a)(1), by not later than September 30, 2017, the Secretary shall take actions to begin the implementation of each goal specified in subsection (b).''

ADVANCE BILLING FOR FISCAL YEAR 2006

Pub. L. 109–234, title I, § 1206, June 15, 2006, 120 Stat. 430, provided in part that: ''Notwithstanding 10 U.S.C. 2208(*l*), the total amount of advance billings rendered or imposed for all working capital funds of the Department of Defense in fiscal year 2006 shall not exceed $1,200,000,000''.

ADVANCE BILLING FOR FISCAL YEAR 2005

Pub. L. 109–13, div. A, title I, § 1005, May 11, 2005, 119 Stat. 243, provided that for fiscal year 2005, the limitation under subsec. (*l*)(3) of this section on the total amount of advance billings rendered or imposed for all working capital funds of the Department of Defense in a fiscal year would be applied by substituting ''$1,500,000,000'' for ''$1,000,000,000''.

OVERSIGHT OF DEFENSE BUSINESS OPERATIONS FUND

Pub. L. 103–337, div. A, title III, § 311(b)–(e), Oct. 5, 1994, 108 Stat. 2708, which related to purchase from other sources, limitation on inclusion of certain costs in DBOF charges, procedures for accumulation of funds, and annual reports and budget, was repealed and restated in section 2216a(d)(2)(B), (f) to (h)(3) of this title by Pub. L. 104–106, div. A, title III, § 371(a)(1), (b)(1), Feb. 10, 1996, 110 Stat. 277–279.

Pub. L. 103–337, div. A, title III, § 311(f), (g), Oct. 5, 1994, 108 Stat. 2709, required Secretary of Defense to submit to congressional defense committees, not later than Feb. 1, 1995, a report on progress made in implementing the Defense Business Operations Fund Improvement Plan, dated September 1993, and required Comptroller General to monitor and evaluate the Department of Defense implementation of the Plan and to report to congressional defense committees not later than Mar. 1, 1995.

CHARGES FOR GOODS AND SERVICES PROVIDED THROUGH DEFENSE BUSINESS OPERATIONS FUND

Pub. L. 103–160, div. A, title III, § 333(a), (b), Nov. 30, 1993, 107 Stat. 1621, which provided that charges for goods and services provided through Defense Business Operations Fund were to include amounts necessary to recover full costs of development, implementation, operation, and maintenance of systems supporting wholesale supply and maintenance activities of Department of Defense and use of military personnel in provision of goods and services, and were not to include amounts necessary to recover costs of military construction project other than minor construction project financed by Defense Business Operations Fund pursuant to section 2805(c)(1) of this title, and which required full cost of operation of Defense Finance Accounting Service to be financed within Defense Business Operations Fund through charges for goods and services provided through Fund, was repealed and restated in section

2216a(d)(1)(A), (C), (2)(A) of this title by Pub. L. 104–106, div. A, title III, § 371(a)(1), (b)(2), Feb. 10, 1996, 110 Stat. 277–279.

CAPITAL ASSET SUBACCOUNT

Pub. L. 102–484, div. A, title III, § 342, Oct. 23, 1992, 106 Stat. 2376, as amended by Pub. L. 103–160, div. A, title III, § 333(c), Nov. 30, 1993, 107 Stat. 1622, which provided that charges for goods and services provided through the Defense Business Operations Fund include amounts for depreciation of capital assets which were to be credited to a separate capital asset subaccount in the Fund, authorized Secretary of Defense to award contracts for capital assets of the Fund in advance of availability of funds in the subaccount, required Secretary to submit annual reports to congressional defense committees, authorized appropriations to the Fund for fiscal years 1993 and 1994, and defined terms, was repealed and restated in section 2216a(d)(1)(B), (e), (h)(4), and (i) of this title by Pub. L. 104–106, div. A, title III, § 371(a)(1), (b)(3), Feb. 10, 1996, 110 Stat. 277–279.

LIMITATIONS ON USE OF DEFENSE BUSINESS OPERATIONS FUND

Pub. L. 102–190, div. A, title III, § 316, Dec. 5, 1991, 105 Stat. 1338, as amended by Pub. L. 102–484, div. A, title III, § 341, Oct. 23, 1992, 106 Stat. 2374; Pub. L. 103–160, div. A, title III, §§ 331, 332, Nov. 30, 1993, 107 Stat. 1620; Pub. L. 103–337, div. A, title III, § 311(a), Oct. 5, 1994, 108 Stat. 2708, which authorized Secretary of Defense to manage performance of certain working-capital funds established under this section, the Defense Finance and Accounting Service, the Defense Industrial Plan Equipment Center, the Defense Commissary Agency, the Defense Technical Information Service, the Defense Reutilization and Marketing Service, and certain activities funded through use of working-capital fund established under this section, directed Secretary to maintain separate accounting, reporting, and auditing of such funds and activities, required Secretary to submit to congressional defense committees, by not later than 30 days after Nov. 30, 1993, a comprehensive management plan and, by not later than Feb. 1, 1994, a progress report on plan's implementation, and directed Comptroller General to monitor and evaluate the plan and submit to congressional defense committees, not later than Mar. 1, 1994, a report, was repealed and restated in section 2216a(a)–(c) of this title by Pub. L. 104–106, div. A, title III, § 371(a)(1), (b)(4), Feb. 10, 1996, 110 Stat. 277, 279.

DEFENSE BUSINESS OPERATIONS FUND

Pub. L. 102–172, title VIII, § 8121, Nov. 26, 1991, 105 Stat. 1204, which established on the books of the Treasury a fund entitled the ''Defense Business Operations Fund'' to be operated as a working capital fund under the provisions of this section and to include certain existing organizations including the Defense Finance and Accounting Service, the Defense Commissary Agency, the Defense Technical Information Center, the Defense Reutilization and Marketing Service, and the Defense Industrial Plant Equipment Service, directed transfer of assets and balances of those organizations to the Fund, provided for budgeting and accounting of charges for supplies and services provided by the Fund, and directed that capital asset charges collected be credited to a subaccount of the Fund, was repealed by Pub. L. 104–106, div. A, title III, § 371(b)(5), Feb. 10, 1996, 110 Stat. 280.

SALE OF INVENTORIES FOR PERFORMANCE OF CONTRACTS WITH DEFENSE DEPARTMENT

Pub. L. 96–154, title VII, § 767, Dec. 21, 1979, 93 Stat. 1163, which had provided that supplies available in inventories financed by working capital funds established pursuant to this section could, on and after Dec. 21, 1979, be sold to contractors for use in performing contracts with the Department of Defense, was repealed and restated in subsec. (h) of this section by Pub. L. 97–295, §§ 1(22), 6(b), Oct. 12, 1982, 96 Stat. 1290, 1315.

§ 2209. Management funds

(a) To conduct economically and efficiently the operations of the Department of Defense that are financed by at least two appropriations but whose costs cannot be immediately distributed and charged to those appropriations, there is the Army Management Fund, the Navy Management Fund, and the Air Force Management Fund, each within its respective department and under the direction of the Secretary of that department. Each such fund shall consist of a corpus of $1,000,000 and such amounts as may be appropriated thereto from time to time. An account for an operation that is to be financed by such a fund may be established only with the approval of the Secretary of Defense.

(b) Under such regulations as the Secretary of Defense may prescribe, expenditures may be made from a management fund for material (other than for stock), personal services, and services under contract. However, obligation may not be incurred against that fund if it is not chargeable to funds available under an appropriation of the department concerned or funds of another department or agency of the Department of Defense. The fund shall be promptly reimbursed from those funds for expenditures made from it.

(c) Notwithstanding any other provision of law, advances, by check or warrant, or reimbursements, may be made from available appropriations to a management fund on the basis of the estimated cost of a project. As adequate data becomes available, the estimated cost shall be revised and necessary adjustments made. Final adjustment shall be made with the appropriate funds for the fiscal year in which the advances or reimbursements are made. Except as otherwise provided by law, amounts advanced to management funds are available for obligation only during the fiscal year in which they are advanced.

(Added Pub. L. 87–651, title II, § 207(a), Sept. 7, 1962, 76 Stat. 522.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2209(a)	5:172e(a), (b).	July 3, 1942, ch. 484; restated Aug. 10, 1949, ch. 412, § 11 (16th through 19th pars.), 63 Stat. 588.
2209(b)	5:172e(c) (last sentence).	
2209(c)	5:172e(c) (less last sentence). 5:172e(d).	

In subsection (a), the second sentence is substituted for the second sentence of 5 U.S.C. 172e(a) and the first sentence (less last 21 words) of 5 U.S.C. 172e(b) which are omitted as unnecessary.

In subsection (c), the 13th through 33d words of 5 U.S.C. 172e(d) are omitted as surplusage.

§ 2210. Proceeds of sales of supplies: credit to appropriations

(a)(1) A working-capital fund established pursuant to section 2208 of this title may retain so much of the proceeds of disposals of property referred to in paragraph (2) as is necessary to recover the expenses incurred by the fund in disposing of such property. Proceeds from the sale or disposal of such property in excess of amounts necessary to recover the expenses may be credited to current applicable appropriations of the Department of Defense.

(2) Paragraph (1) applies to disposals of supplies, material, equipment, and other personal property that were not financed by stock funds established under section 2208 of this title.

(b) Obligations may, without regard to fiscal year limitations, be incurred against anticipated reimbursements to stock funds in such amounts and for such period as the Secretary of Defense, with the approval of the President, may determine to be necessary to maintain stock levels consistently with planned operations for the next fiscal year.

(Added Pub. L. 87–651, title II, § 207(a), Sept. 7, 1962, 76 Stat. 522; amended Pub. L. 96–513, title V, § 511(72), Dec. 12, 1980, 94 Stat. 2926; Pub. L. 105–261, div. A, title X, § 1009, Oct. 17, 1998, 112 Stat. 2117.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2210(a)	5:172d–1 (less proviso).	Aug. 1, 1953, ch. 305, § 645, 67 Stat. 357.
2210(b)	5:172d–1 (proviso).	

In section (a), the words ''proceeds of the disposal'' are substituted for the words ''moneys arising from the disposition''.

AMENDMENTS

1998—Subsec. (a). Pub. L. 105–261 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''Current applicable appropriations of the Department of Defense may be credited with proceeds of the disposals of supplies that are not financed by stock funds established under section 2208 of this title.''

1980—Subsec. (b). Pub. L. 96–513 substituted ''President'' for ''Director of the Bureau of the Budget''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

§ 2211. Reimbursement for equipment, material, or services furnished members of the United Nations

Amounts paid by members of the United Nations for equipment or materials furnished, or services performed, in joint military operations shall be credited to appropriate appropriations of the Department of Defense in the manner authorized by section 632(d) of the Foreign Assistance Act of 1961 (22 U.S.C. 2392(d)).

(Added Pub. L. 87–651, title II, § 207(a), Sept. 7, 1962, 76 Stat. 522; amended Pub. L. 96–513, title V, § 511(73), Dec. 12, 1980, 94 Stat. 2926.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2211	5:171m–1.	Jan. 6, 1951, ch. 1213, § 703, 64 Stat. 1235.

The reference to section 2392(d) of title 22 is substituted for the reference to section 1574(b) of that title to reflect section 542(b) of the Act of August 26, 1954, ch. 937 (68 Stat. 861) and section 642(a)(2) and (b) of the Act of September 4, 1961, Pub. L. 87–195 (75 Stat. 460).

AMENDMENTS

1980—Pub. L. 96–513 substituted ''section 632(d) of the Foreign Assistance Act of 1961 (22 U.S.C. 2392(d))'' for ''section 2392(d) of title 22''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

§ 2212. Obligations for contract services: reporting in budget object classes

(a) LIMITATION ON REPORTING IN MISCELLANEOUS SERVICES OBJECT CLASS.—The Secretary of Defense shall ensure that, in reporting to the Office of Management and Budget (pursuant to OMB Circular A–11 (relating to preparation and submission of budget estimates)) obligations of the Department of Defense for any period of time for contract services, no more than 15 percent of the total amount of obligations so reported is reported in the miscellaneous services object class.

(b) DEFINITION OF REPORTING CATEGORIES FOR ADVISORY AND ASSISTANCE SERVICES.—In carrying out section 1105(g) of title 31 for the Department of Defense (and in determining what services are to be reported to the Office of Management and Budget in the advisory and assistance services object class), the Secretary of Defense shall apply to the terms used for the definition of ''advisory and assistance services'' in paragraph (2)(A) of that section the following meanings (subject to the authorized exemptions):

(1) MANAGEMENT AND PROFESSIONAL SUPPORT SERVICES.—The term ''management and professional support services'' (used in clause (i) of section 1105(g)(2)(A) of title 31) means services that provide engineering or technical support, assistance, advice, or training for the efficient and effective management and operation of organizations, activities, or systems. Those services—

(A) are closely related to the basic responsibilities and mission of the using organization; and

(B) include efforts that support or contribute to improved organization or program management, logistics management, project monitoring and reporting, data collection, budgeting, accounting, auditing, and administrative or technical support for conferences and training programs.

(2) STUDIES, ANALYSES, AND EVALUATIONS.—The term ''studies, analyses, and evaluations'' (used in clause (ii) of section 1105(g)(2)(A) of title 31) means services that provide organized, analytic assessments to understand or evaluate complex issues to improve policy development, decisionmaking, management, or administration and that result in documents containing data or leading to conclusions or recommendations. Those services may include databases, models, methodologies, and related software created in support of a study, analysis, or evaluation.

(3) ENGINEERING AND TECHNICAL SERVICES.—The term ''engineering and technical services'' (used in clause (iii) of section 1105(g)(2)(A) of title 31) means services that take the form of advice, assistance, training, or hands-on training necessary to maintain and operate fielded weapon systems, equipment, and components (including software when applicable) at design or required levels of effectiveness.

(c) PROPER CLASSIFICATION OF ADVISORY AND ASSISTANCE SERVICES.—Before the submission to the Office of Management and Budget of the proposed Department of Defense budget for inclusion in the President's budget for a fiscal year pursuant to section 1105 of title 31, the Secretary of Defense, acting through the Under Secretary of Defense (Comptroller), shall conduct a review of Department of Defense services expected to be performed as contract services during the fiscal year for which that budget is to be submitted in order to ensure that those services that are advisory and assistance services (as defined in accordance with subsection (b)) are in fact properly classified, in accordance with that subsection, in the advisory and assistance services object class.

(d) REPORT TO CONGRESS.—The Secretary shall submit to Congress each year, not later than 30 days after the date on which the budget for the next fiscal year is submitted pursuant to section 1105 of title 31, a report containing the information derived from the review under subsection (c).

(e) ASSESSMENT BY COMPTROLLER GENERAL.—(1) The Comptroller General shall conduct a review of the report of the Secretary of Defense under subsection (d) each year and shall—

(A) assess the methodology used by the Secretary in obtaining the information submitted to Congress in that report; and

(B) assess the information submitted to Congress in that report.

(2) Not later than 120 days after the date on which the Secretary submits to Congress the report required under subsection (d) for any year, the Comptroller General shall submit to Congress the Comptroller General's report containing the results of the review for that year under paragraph (1).

(f) DEFINITIONS.—In this section:

(1) The term ''contract services'' means all services that are reported to the Office of Management and Budget pursuant to OMB Circular A–11 (relating to preparation and submission of budget estimates) in budget object classes that are designated in the Object Class 25 series.

(2) The term ''advisory and assistance services object class'' means those contract services constituting the budget object class that is denominated ''Advisory and Assistance Service'' and designated (as of October 17, 1998) as Object Class 25.1 (or any similar object class established after October 17, 1998, for the reporting of obligations for advisory and assistance contract services).

(3) The term ''miscellaneous services object class'' means those contract services constituting the budget object class that is denominated ''Other Services (services not otherwise specified in the 25 series)'' and designated (as of October 17, 1998) as Object Class 25.2 (or any similar object class established after October 17, 1998, for the reporting of obligations for miscellaneous or unspecified contract services).

(4) The term ''authorized exemptions'' means those exemptions authorized (as of October 17, 1998) under Department of Defense Directive 4205.2, captioned ''Acquiring and Managing Contracted Advisory and Assistance Services (CAAS)'' and issued by the Under Secretary of Defense for Acquisition and Technology on February 10, 1992, such exemptions being set forth in Enclosure 3 to that directive (captioned ''CAAS Exemptions'').

(Added Pub. L. 105–261, div. A, title IX, § 911(a)(1), Oct. 17, 1998, 112 Stat. 2097; amended Pub. L. 106–65, div. A, title X, § 1066(a)(17), Oct. 5, 1999, 113 Stat. 771.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1809(i)(1), Jan. 1, 2021, 134 Stat. 4151, 4162, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 207 of this title, as amended by section 1809(a) of Pub. L. 116–283, added after section 3137, and redesignated as section 3138 of this title. See Effective Date of 2021 Amendment note below.

PRIOR PROVISIONS

A prior section 2212, added Pub. L. 100–370, § 1(d)(2)(A), July 19, 1988, 102 Stat. 842, directed Secretary of Defense to maintain within each military department an accounting procedure to aid in identification and control of expenditures for contracted advisory and assistance services, prior to repeal by Pub. L. 103–355, title II, § 2454(c)(1), Oct. 13, 1994, 108 Stat. 3326.

Another prior section 2212, added Pub. L. 95–356, title VIII, § 802(a)(1), Sept. 8, 1978, 92 Stat. 585; amended Pub. L. 97–258, § 3(b)(5), Sept. 18, 1982, 96 Stat. 1063, related to transmission of annual military construction authorization request, prior to repeal by Pub. L. 97–214, § 7(1), July 12, 1982, 96 Stat. 173, eff. Oct. 1, 1982, applicable to military construction projects, and to construction and acquisition of military family housing authorized before, on, or after such date. See section 2859 of this title.

AMENDMENTS

1999—Subsec. (f)(2), (3). Pub. L. 106–65 substituted ''as of October 17, 1998'' for ''as of the date of the enactment of this section'' and ''after October 17, 1998,'' for ''after the date of the enactment of this section''.

Subsec. (f)(4). Pub. L. 106–65, § 1066(a)(17)(B), substituted ''as of October 17, 1998'' for ''as of the date of the enactment of this section''.

CHANGE OF NAME

Reference to Under Secretary of Defense for Acquisition and Technology deemed to refer to Under Secretary of Defense for Acquisition, Technology, and Logistics, pursuant to section 911(a)(1) of Pub. L. 106–65, formerly set out as a note under section 133 of this title.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

TRANSITION

Pub. L. 105–261, div. A, title IX, § 911(b), Oct. 17, 1998, 112 Stat. 2099, provided that for the budget for fiscal year 2000, and the reporting of information to the Office of Management and Budget in connection with the preparation of that budget, this section would be applied by substituting ''30 percent'' in subsec. (a) for ''15 percent''.

§ 2213. Limitation on acquisition of excess supplies

(a) TWO-YEAR SUPPLY.—The Secretary of Defense may not incur any obligation against a stock fund of the Department of Defense for the acquisition of any item of supply if that acquisition is likely to result in an on-hand inventory (excluding war reserves) of that item of supply in excess of two years of operating stocks.

(b) EXCEPTIONS.—The head of a procuring activity may authorize the acquisition of an item of supply in excess of the limitation contained in subsection (a) if that activity head determines in writing—

(1) that the acquisition is necessary to achieve an economical order quantity and will not result in an on-hand inventory (excluding war reserves) in excess of three years of operating stocks and that the need for the item is unlikely to decline during the period for which the acquisition is made; or

(2) that the acquisition is necessary for purposes of maintaining the industrial base or for other reasons of national security.

(Added Pub. L. 102–190, div. A, title III, § 317(a), Dec. 5, 1991, 105 Stat. 1338.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1807(g)(1), Jan. 1, 2021, 134 Stat. 4151, 4159, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 203 of this title, inserted after section 3069, and redesignated as section 3070 of this title. See Effective Date of 2021 Amendment note below.

PRIOR PROVISIONS

A prior section 2213 was renumbered section 2350c of this title.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 2214. Transfer of funds: procedure and limitations

(a) PROCEDURE FOR TRANSFER OF FUNDS.—Whenever authority is provided in an appropriation Act to transfer amounts in working capital funds or to transfer amounts provided in appropriation Acts for military functions of the Department of Defense (other than military construction) between such funds or appropriations (or any subdivision thereof), amounts transferred under such authority shall be merged with and be available for the same purposes and for the same time period as the fund or appropriations to which transferred.

(b) LIMITATIONS ON PROGRAMS FOR WHICH AUTHORITY MAY BE USED.—Such authority to transfer amounts—

(1) may not be used except to provide funds for a higher priority item, based on unforeseen military requirements, than the items for which the funds were originally appropriated; and

(2) may not be used if the item to which the funds would be transferred is an item for which Congress has denied funds.

(c) NOTICE TO CONGRESS.—The Secretary of Defense shall promptly notify the Congress of each transfer made under such authority to transfer amounts.

(d) LIMITATIONS ON REQUESTS TO CONGRESS FOR REPROGRAMMINGS.—Neither the Secretary of Defense nor the Secretary of a military department may prepare or present to the Congress, or to any committee of either House of the Congress, a request with respect to a reprogramming of funds—

(1) unless the funds to be transferred are to be used for a higher priority item, based on unforeseen military requirements, than the item for which the funds were originally appropriated; or

(2) if the request would be for authority to reprogram amounts to an item for which the Congress has denied funds.

(Added Pub. L. 101–510, div. A, title XIV, § 1482(c)(1), Nov. 5, 1990, 104 Stat. 1709.)

EFFECTIVE DATE

Section effective Oct. 1, 1991, see section 1482(d) of Pub. L. 101–510, set out as an Effective Date of 1990 Amendment note under section 119 of this title.

§ 2215. Transfer of funds to other departments and agencies: limitation

Funds available for military functions of the Department of Defense may not be made available to any other department or agency of the Federal Government pursuant to a provision of law enacted after November 29, 1989, unless, not less than 30 days before such funds are made available to such other department or agency, the Secretary of Defense submits to the congressional defense committees a certification that making those funds available to such other department or agency is in the national security interest of the United States.

(Added Pub. L. 103–160, div. A, title XI, § 1106(a)(1), Nov. 30, 1993, 107 Stat. 1750; amended Pub. L. 104–106, div. A, title XV, § 1502(a)(14), Feb. 10, 1996, 110 Stat. 503; Pub. L. 106–65, div. A, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 108–375, div. A, title X, § 1084(b)(1), Oct. 28, 2004, 118 Stat. 2060.)

PRIOR PROVISIONS

A prior section 2215, added Pub. L. 99–661, div. A, title XIII, § 1307(a)(1), Nov. 14, 1986, 100 Stat. 3980, related to reports on unobligated balances, prior to repeal by Pub. L. 101–510, div. A, title XIII, § 1301(7), Nov. 5, 1990, 104 Stat. 1668.

Provisions similar to those in this section were contained in Pub. L. 101–189, div. A, title XVI, § 1604, Nov. 29, 1989, 103 Stat. 1598, which was set out as a note under section 1531 of Title 31, Money and Finance, prior to repeal by Pub. L. 103–160, § 1106(b).

AMENDMENTS

2004—Pub. L. 108–375 struck out subsec. (a) designation and heading before "Funds available", substituted "congressional defense committees" for "congressional committees specified in subsection (b)", and struck out heading and text of subsec. (b). Text of subsec. (b) read as follows: "The committees referred to in subsection (a) are—

"(1) the Committee on Armed Services and the Committee on Appropriations of the Senate; and

"(2) the Committee on Armed Services and the Committee on Appropriations of the House of Representatives."

1999—Subsec. (b)(2). Pub. L. 106–65 substituted "Committee on Armed Services" for "Committee on National Security".

1996—Pub. L. 104–106 designated existing provisions as subsec. (a), inserted heading, substituted "to the congressional committees specified in subsection (b)" for "to the Committees on Armed Services and the Committees on Appropriations of the Senate and House of Representatives", and added subsec. (b).

§ 2216. Defense Modernization Account

(a) ESTABLISHMENT.—There is established in the Treasury an account to be known as the "Defense Modernization Account".

(b) FUNDS AVAILABLE FOR ACCOUNT.—The Defense Modernization Account shall consist of the following:

(1) Amounts appropriated to the Defense Modernization Account for the costs of projects described in subsection (d)(1), and amounts reimbursed to the Defense Modernization Account under subsection (c)(1)(B)(ii) out of savings derived from such projects.

(2) Amounts transferred to the Defense Modernization Account under subsection (c).

(c) TRANSFERS TO ACCOUNT.—(1)(A) Upon a determination by the Secretary of a military department, or the Secretary of Defense with respect to Defense-wide appropriations accounts, of the availability and source of funds described in subparagraph (B), the Secretary concerned may transfer to the Defense Modernization Account during any fiscal year any amount of funds available to the Secretary described in that subparagraph. Such funds may be transferred to that account only after the Secretary concerned notifies the congressional defense committees in writing of the amount and source of the proposed transfer.

(B) This subsection applies to the following funds that have been appropriated for fiscal years after fiscal year 2016 and are available to the Secretary concerned:

(i) Unexpired funds in appropriations accounts that are available for new obligations and that, as a result of economies, efficiencies, and other savings achieved in carrying out an acquisition program, are excess to the requirements of that program.

(ii) Unexpired funds in appropriations accounts that are available for procurement or operation and maintenance of a system, if and to the extent that savings are achieved for such accounts through reductions in life cycle costs of such system that result from one or more projects undertaken with respect to such systems with funds made available from the Defense Modernization Account under subsection (b)(1).

(C) Any transfer under subparagraph (A) shall be made under regulations prescribed by the Secretary of Defense.

(2) Funds referred to in paragraph (1) may not be transferred to the Defense Modernization Account if the balance of funds in the account, after transfer of funds to the account, would exceed $1,000,000,000.

(3) Amounts deposited in the Defense Modernization Account shall remain available for transfer and obligation until the end of the third fiscal year that follows the fiscal year in which the amounts are deposited in the account.

(d) AUTHORIZED USE OF FUNDS.—Funds in the Defense Modernization Account may be used for the following purposes:

(1) For paying the costs of any project that, in accordance with criteria prescribed by the Secretary concerned, is undertaken by the Secretary of a military department or the head of a Defense Agency or other element of the Department of Defense to reduce the life cycle cost of a new or existing system.

(2) For increasing, subject to subsection (e), the quantity of items and services procured under an acquisition program in order to achieve a more efficient production or delivery rate.

(3) For research, development, test, and evaluation, for procurement, and for sustainment activities necessary for paying costs of unforeseen contingencies that are approved by the milestone decision authority concerned, that could prevent an ongoing acquisition program from meeting critical schedule or performance requirements.

(4) For paying costs of changes to program requirements or system configuration that are approved by the configuration steering board for a major defense acquisition program.

(e) LIMITATIONS.—(1) Funds in the Defense Modernization Account may not be used to increase the quantity of an item or services procured under a particular acquisition program to the extent that doing so would—

(A) result in procurement of a total quantity of items or services in excess of—

(i) a specific limitation provided by law on the quantity of the items or services that may be procured; or

(ii) the requirement for the items or services as approved by the Joint Requirements Oversight Council and reported to Congress by the Secretary of Defense; or

(B) result in an obligation or expenditure of funds in excess of a specific limitation provided by law on the amount that may be obligated or expended, respectively, for that acquisition program.

(2) Funds in the Defense Modernization Account may not be used for a purpose or program for which Congress has not authorized appropriations, unless the procedures for initiating a new start program are complied with.

(3) Funds may not be transferred from the Defense Modernization Account in any year for the purpose of—

(A) making an expenditure for which there is no corresponding obligation; or

(B) making an expenditure that would satisfy an unliquidated or unrecorded obligation arising in a prior fiscal year.

(f) TRANSFER OF FUNDS.—(1) The Secretary of a military department, or the Secretary of Defense with respect to Defense-wide appropria-

tions accounts, may transfer funds in the Defense Modernization Account to appropriations available for purposes set forth in subsection (d).

(2) Funds in the Defense Modernization Account may not be transferred under paragraph (1) until 30 days after the date on which the Secretary concerned notifies the congressional defense committees in writing of the amount and purpose of the proposed transfer.

(3) The total amount of transfers from the Defense Modernization Account during any fiscal year under this subsection may not exceed $500,000,000.

(g) AVAILABILITY OF FUNDS BY APPROPRIATION.—In addition to transfers under subsection (f), funds in the Defense Modernization Account may be made available for purposes set forth in subsection (d), but only to the extent authorized in an Act other than an appropriations Act. Funds deposited in the Defense Modernization Account shall remain available for obligation until the end of the third fiscal year that follows the fiscal year in which the amounts are deposited in the account.

(h) SECRETARY TO ACT THROUGH COMPTROLLER.—(1) The Secretary of Defense shall carry out this section through the Under Secretary of Defense (Comptroller), who shall be authorized to implement this section through the issuance of any necessary regulations, policies, and procedures after consultation with the General Counsel and Inspector General of the Department of Defense.

(2) The regulations prescribed under paragraph (1) shall, at a minimum, provide for—

(A) the establishment and management of subaccounts for each of the military departments and Defense Agencies concerned for the use of funds in the Defense Modernization Account, consistent with each military department's or Defense Agency's deposits in the Account;

(B) the submission of proposals by the Secretaries concerned or heads of Defense Agencies or other elements of the Department of Defense to the Comptroller for the use of Defense Modernization Account funds for purposes set forth in subsection (d);

(C) the use of a competitive process for the evaluation of such proposals and the selection of programs, projects, and activities to be funded out of the Defense Modernization Account and subaccounts from among those proposed for such funding; and

(D) the calculation of—

(i) the savings to be derived from projects described in subsection (d)(1) that are to be funded out of the Defense Modernization Account; and

(ii) the amounts to be reimbursed to the Defense Modernization Account out of such savings pursuant to subsection (c)(1)(B)(ii).

(i) DEFINITIONS.—In this section:

(1) The term ''major defense acquisition program'' has the meaning given the term in section 2430(a) of this title.

(2) The term ''unexpired funds'' means funds appropriated for a definite period that remain available for obligation.

(j) EXPIRATION OF AUTHORITY AND ACCOUNT.—(1) The authority under subsection (c) to transfer funds into the Defense Modernization Account terminates at the close of September 30, 2022.

(2) Three years after the termination date specified in paragraph (1), the Defense Modernization Account shall be closed and any remaining balance in the account shall be canceled and thereafter shall not be available for any purpose.

(Added Pub. L. 104–106, div. A, title IX, § 912(a)(1), Feb. 10, 1996, 110 Stat. 407; amended Pub. L. 106–65, div. A, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 108–136, div. A, title X, §§ 1008(a)–(f)(1), 1043(b)(8), Nov. 24, 2003, 117 Stat. 1586, 1587, 1611; Pub. L. 109–364, div. A, title X, § 1071(a)(16), Oct. 17, 2006, 120 Stat. 2399; Pub. L. 113–66, div. A, title X, § 1084(a)(2), Dec. 26, 2013, 127 Stat. 871; Pub. L. 114–328, div. A, title VIII, § 804, Dec. 23, 2016, 130 Stat. 2250; Pub. L. 116–92, div. A, title XVII, § 1731(a)(30), Dec. 20, 2019, 133 Stat. 1814.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1809(g)(1), Jan. 1, 2021, 134 Stat. 4151, 4161, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 207 of this title, as amended by section 1809(a) of Pub. L. 116–283, added after section 3135, and redesignated as section 3136 of this title. See Effective Date of 2021 Amendment note below.

CODIFICATION

Another section 2216 was renumbered section 2216a of this title and subsequently repealed.

PRIOR PROVISIONS

A prior section 2216, added Pub. L. 99–661, div. A, title XIII, § 1307(a)(1), Nov. 14, 1986, 100 Stat. 3980, related to annual reports on budgeting for inflation, prior to repeal by Pub. L. 101–510, div. A, title XIII, § 1301(8), Nov. 5, 1990, 104 Stat. 1668.

AMENDMENTS

2019—Subsec. (b)(1). Pub. L. 116–92 substituted ''subsection (c)(1)(B)(ii)'' for ''subsection (c)(1)(B)(iii)''.

2016—Subsec. (b)(1). Pub. L. 114–328, § 804(a), struck out ''commencing'' before ''projects described''.

Subsec. (c)(1)(A). Pub. L. 114–328, § 804(b)(1), substituted '', or the Secretary of Defense with respect to Defense-wide appropriations accounts,'' for ''or the Secretary of Defense with respect to Defense-wide appropriations accounts'' and ''the Secretary concerned'' for ''that Secretary'' before ''may transfer''.

Subsec. (c)(1)(B). Pub. L. 114–328, § 804(b)(2)(A), in introductory provisions, inserted ''that have been appropriated for fiscal years after fiscal year 2016 and are'' after ''following funds''.

Subsec. (c)(1)(B)(i). Pub. L. 114–328, § 804(b)(2)(B), substituted ''or new obligations'' for ''for procurement'', ''an acquisition program'' for ''a particular procurement'', and ''that program'' for ''that procurement''.

Subsec. (c)(1)(B)(ii), (iii). Pub. L. 114–328, § 804(b)(2)(C), (D), redesignated cl. (iii) as (ii) and struck out former cl. (ii) which read as follows: ''Unexpired funds that are available during the final 30 days of a fiscal year for support of installations and facilities and that, as a result of economies, efficiencies, and other savings, are excess to the requirements for support of installations and facilities.''

Subsec. (c)(2). Pub. L. 114–328, § 804(b)(3), struck out '', other than funds referred to in subparagraph (B)(iii) of such paragraph,'' after ''Funds referred to in para-

graph (1)'' and substituted ''if the balance of funds'' for ''if—

''(A) the funds are necessary for programs, projects, and activities that, as determined by the Secretary, have a higher priority than the purposes for which the funds would be available if transferred to that account; or

''(B) the balance of funds''.

Subsec. (c)(3). Pub. L. 114–328, § 804(b)(4), substituted ''deposited in'' for ''credited to'' in two places and inserted ''and obligation'' after ''available for transfer''.

Subsec. (c)(4). Pub. L. 114–328, § 804(b)(5), struck out par. (4) which read as follows: ''The period of availability of funds for expenditure provided for in sections 1551 and 1552 of title 31 may not be extended by transfer into the Defense Modernization Account.''

Subsec. (d)(1). Pub. L. 114–328, § 804(c)(1), struck out ''commencing'' before ''any project'' and substituted ''Secretary concerned'' for ''Secretary of Defense''.

Subsec. (d)(2). Pub. L. 114–328, § 804(c)(2), substituted ''an acquisition program'' for ''a procurement program''.

Subsec. (d)(3). Pub. L. 114–328, § 804(c)(3), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''For research, development, test, and evaluation and for procurement necessary for modernization of an existing system or of a system being procured under an ongoing procurement program.''

Subsec. (d)(4). Pub. L. 114–328, § 804(c)(4), added par. (4).

Subsec. (e)(1). Pub. L. 114–328, § 804(d)(1), substituted ''acquisition program'' for ''procurement program'' in introductory provisions and subpar. (B).

Subsec. (e)(2). Pub. L. 114–328, § 804(d)(2), substituted ''authorized appropriations, unless the procedures for initiating a new start program are complied with'' for ''authorized appropriations''.

Subsec. (f)(1). Pub. L. 114–328, § 804(e), substituted ''Secretary of a military department, or the Secretary of Defense with respect to Defense-wide appropriations accounts,'' for ''Secretary of Defense''.

Subsec. (g). Pub. L. 114–328, § 804(f), struck out ''in accordance with the provisions of appropriations Acts'' after ''subsection (d)'' and inserted at end ''Funds deposited in the Defense Modernization Account shall remain available for obligation until the end of the third fiscal year that follows the fiscal year in which the amounts are deposited in the account.''

Subsec. (h)(2)(A), (B). Pub. L. 114–328, § 804(g)(1), (2), added subpar. (A) and redesignated former subpar. (A) as (B). Former subpar. (B) redesignated (C).

Subsec. (h)(2)(C). Pub. L. 114–328, § 804(g)(1), (3), redesignated subpar. (B) as (C) and inserted ''and subaccounts'' after ''Account''. Former subpar. (C) redesignated (D).

Subsec. (h)(2)(D). Pub. L. 114–328, § 804(g)(1), redesignated subpar. (C) as (D).

Subsec. (h)(2)(D)(ii). Pub. L. 114–328, § 804(g)(4), substituted ''subsection (c)(1)(B)(ii)'' for ''subsection (c)(1)(B)(iii)''.

Subsec. (i)(1). Pub. L. 114–328, § 804(h), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''The term 'Secretary concerned' includes the Secretary of Defense with respect to Defense-wide appropriations accounts.''

Subsec. (j)(1). Pub. L. 114–328, § 804(j), substituted ''terminates at the close of September 30, 2022'' for ''terminates at the close of September 30, 2006''.

2013—Subsecs. (i) to (k). Pub. L. 113–66 redesignated subsecs. (j) and (k) as (i) and (j), respectively, and struck out former subsec. (i) which related to an annual report submitted by the Secretary of Defense to the congressional defense committees and the Committee on Governmental Affairs of the Senate and the Committee on Government Reform and Oversight of the House of Representatives.

2006—Subsec. (b)(1). Pub. L. 109–364 substituted ''subsection (c)(1)(B)(iii)'' for ''subsections (c)(1)(B)(iii)''.

2003—Subsec. (b). Pub. L. 108–136, § 1008(a)(3), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 108–136, § 1008(a)(1), (2), redesignated subsec. (b) as (c) and struck out heading and text of former subsec. (c). Text read as follows: ''Funds transferred to the Defense Modernization Account from funds appropriated for a military department, Defense Agency, or other element of the Department of Defense shall be available in accordance with subsections (f) and (g) only for transfer to funds available for that military department, Defense Agency, or other element.''

Subsec. (c)(1)(B)(iii). Pub. L. 108–136, § 1008(c)(1), added cl. (iii).

Subsec. (c)(2). Pub. L. 108–136, § 1008(c)(2), inserted '', other than funds referred to in subparagraph (B)(iii) of such paragraph,'' after ''Funds referred to in paragraph (1)''.

Subsec. (d). Pub. L. 108–136, § 1008(b), substituted ''in the Defense Modernization Account'' for ''available from the Defense Modernization Account pursuant to subsection (f) or (g)'' in introductory provisions, added par. (1), and redesignated former pars. (1) and (2) as (2) and (3), respectively.

Subsec. (h). Pub. L. 108–136, § 1008(d), designated existing provisions as par. (1) and added par. (2).

Subsec. (i). Pub. L. 108–136, § 1008(e)(1), substituted ''Annual Report'' for ''Quarterly Reports'' in heading.

Subsec. (i)(1). Pub. L. 108–136, § 1008(e)(1), (2), substituted ''fiscal year'' for ''calendar quarter'' in introductory provisions and ''fiscal year'' for ''quarter'' in subpars. (A) to (C).

Subsec. (j)(3). Pub. L. 108–136, § 1043(b)(8), struck out par. (3) which read as follows: ''The term 'congressional defense committees' means—

''(A) the Committee on Armed Services and the Committee on Appropriations of the Senate; and

''(B) the Committee on Armed Services and the Committee on Appropriations of the House of Representatives.''

Subsec. (k). Pub. L. 108–136, § 1008(f)(1), added subsec. (k).

1999—Subsec. (j)(3)(B). Pub. L. 106–65 substituted ''Committee on Armed Services'' for ''Committee on National Security''.

CHANGE OF NAME

Committee on Governmental Affairs of Senate changed to Committee on Homeland Security and Governmental Affairs of Senate, effective Jan. 4, 2005, by Senate Resolution No. 445, One Hundred Eighth Congress, Oct. 9, 2004.

Committee on Government Reform and Oversight of House of Representatives changed to Committee on Government Reform of House of Representatives by House Resolution No. 5, One Hundred Sixth Congress, Jan. 6, 1999. Committee on Government Reform of House of Representatives changed to Committee on Oversight and Government Reform of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007. Committee on Oversight and Government Reform of House of Representatives changed to Committee on Oversight and Reform of House of Representatives by House Resolution No. 6, One Hundred Sixteenth Congress, Jan. 9, 2019.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE

Pub. L. 104–106, div. A, title IX, § 912(b), Feb. 10, 1996, 110 Stat. 410, provided that: ''Section 2216 of title 10, United States Code (as added by subsection (a)), shall apply only to funds appropriated for fiscal years after fiscal year 1995.''

EXPIRATION OF AUTHORITY AND ACCOUNT

Pub. L. 104–106, div. A, title IX, § 912(c), Feb. 10, 1996, 110 Stat. 410, as amended by Pub. L. 107–314, div. A, title

VIII, § 825(a)(1), Dec. 2, 2002, 116 Stat. 2615, provided that authority under section 2216(b) of this title to transfer funds into Defense Modernization Account terminated at close of Sept. 30, 2002, and the Account was to be closed three years later, prior to repeal by Pub. L. 108–136, div. A, title X, § 1008(f)(2), Nov. 24, 2003, 117 Stat. 1587.

GAO REVIEWS

Pub. L. 104–106, div. A, title IX, § 912(d), Feb. 10, 1996, 110 Stat. 410, required Comptroller General of the United States to conduct two reviews of the administration of the Defense Modernization Account, prior to repeal by Pub. L. 107–314, div. A, title VIII, § 825(a)(2), Dec. 2, 2002, 116 Stat. 2615.

§ 2216a. Rapidly meeting urgent needs: Joint Urgent Operational Needs Fund

(a) ESTABLISHMENT.—There is established in the Treasury an account to be known as the ''Joint Urgent Operational Needs Fund'' (in this section referred to as the ''Fund'').

(b) ELEMENTS.—The Fund shall consist of the following:

(1) Amounts appropriated to the Fund.

(2) Amounts transferred to the Fund.

(3) Any other amounts made available to the Fund by law.

(c) USE OF FUNDS.—(1) Amounts in the Fund shall be available to the Secretary of Defense for capabilities that are determined by the Secretary, pursuant to the review process required by section 804(b) of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (10 U.S.C. 2302 note), to be suitable for rapid fielding in response to urgent operational needs.

(2) The Secretary shall establish a merit-based process for identifying equipment, supplies, services, training, and facilities suitable for funding through the Fund.

(3) Nothing in this section shall be interpreted to require or enable any official of the Department of Defense to provide funding under this section pursuant to a congressional earmark, as defined in clause 9 of Rule XXI of the Rules of the House of Representatives, or a congressionally directed spending item, as defined in paragraph 5 of Rule XLIV of the Standing Rules of the Senate.

(d) TRANSFER AUTHORITY.—(1) Amounts in the Fund may be transferred by the Secretary of Defense from the Fund to any of the following accounts of the Department of Defense to accomplish the purpose stated in subsection (c):

(A) Operation and maintenance accounts.

(B) Procurement accounts.

(C) Research, development, test, and evaluation accounts.

(2) Upon determination by the Secretary that all or part of the amounts transferred from the Fund under paragraph (1) are not necessary for the purpose for which transferred, such amounts may be transferred back to the Fund.

(3) The transfer of an amount to an account under the authority in paragraph (1) shall be deemed to increase the amount authorized for such account by an amount equal to the amount so transferred.

(4) The transfer authority provided by paragraphs (1) and (2) is in addition to any other transfer authority available to the Department of Defense by law.

(e) SUNSET.—The authority to make expenditures or transfers from the Fund shall expire on September 30, 2018.

(Added Pub. L. 112–81, div. A, title VIII, § 846(a)(1), Dec. 31, 2011, 125 Stat. 1516; amended Pub. L. 112–239, div. A, title X, § 1076(e)(2), Jan. 2, 2013, 126 Stat. 1951; Pub. L. 113–291, div. A, title VIII, § 860, Dec. 19, 2014, 128 Stat. 3461.)

REFERENCES IN TEXT

Section 804(b) of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011, referred to in subsec. (c)(1), is section 804(b) of Pub. L. 111–383, which is set out as a note under section 2302 of this title.

PRIOR PROVISIONS

A prior section 2216a, added Pub. L. 104–106, div. A, title III, § 371(a)(1), Feb. 10, 1996, 110 Stat. 277, § 2216; renumbered § 2216a and amended Pub. L. 104–201, div. A, title III, §§ 363(c), 364, title X, § 1074(a)(10), Sept. 23, 1996, 110 Stat. 2493, 2494, 2659, related to Defense Business Operations Fund, prior to repeal by Pub. L. 105–261, div. A, title X, § 1008(b), Oct. 17, 1998, 112 Stat. 2117.

AMENDMENTS

2014—Subsec. (e). Pub. L. 113–291 substituted ''September 30, 2018'' for ''September 30, 2015''.

2013—Subsec. (e). Pub. L. 112–239 substituted ''on September 30, 2015.'' for ''on the last day of the third fiscal year that begins after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2012.''

LIMITATION ON COMMENCEMENT OF EXPENDITURES FROM FUND

Pub. L. 112–81, div. A, title VIII, § 846(b), Dec. 31, 2011, 125 Stat. 1517, provided that: ''No expenditure may be made from the Joint Urgent Operational Needs Fund established by section 2216a of title 10, United States Code (as added by subsection (a)), until the Secretary of Defense certifies to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] that the Secretary has developed and implemented an expedited review process in compliance with the requirements of section 804 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (Public Law 111–383; 124 Stat. 4256; 10 U.S.C. 2302 note).''

§ 2217. Comparable budgeting for common procurement weapon systems

(a) MATTERS TO BE INCLUDED IN ANNUAL DEFENSE BUDGETS.—In preparing the defense budget for any fiscal year, the Secretary of Defense shall—

(1) specifically identify each common procurement weapon system included in the budget;

(2) take all feasible steps to minimize variations in procurement unit costs for any such system as shown in the budget requests of the different armed forces requesting procurement funds for the system; and

(3) identify and justify in the budget all such variations in procurement unit costs for common procurement weapon systems.

(b) COMPTROLLER.—The Secretary shall carry out this section through the Under Secretary of Defense (Comptroller).

(c) DEFINITIONS.—In this section:

(1) The term ''defense budget'' means the budget of the Department of Defense included in the President's budget submitted to Con-

gress under section 1105 of title 31 for a fiscal year.

(2) The term ''common procurement weapon system'' means a weapon system for which two or more of the Army, Navy, Air Force, Marine Corps, and Space Force request procurement funds in a defense budget.

(Added Pub. L. 100–370, § 1(d)(3)(A), July 19, 1988, 102 Stat. 843; amended Pub. L. 104–106, div. A, title XV, § 1503(a)(20), Feb. 10, 1996, 110 Stat. 512; Pub. L. 116–283, div. A, title IX, § 924(b)(1)(N), Jan. 1, 2021, 134 Stat. 3820.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1809(f)(1), Jan. 1, 2021, 134 Stat. 4151, 4161, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 207 of this title, as amended by section 1809(a) of Pub. L. 116–283, added after section 3134, and redesignated as section 3135 of this title. See Effective Date of 2021 Amendment note below.

HISTORICAL AND REVISION NOTES

Section is based on Pub. L. 99–500, § 101(c) [title X, § 955], Oct. 18, 1986, 100 Stat. 1783–82, 1783–173, and Pub. L. 99–591, § 101(c) [title X, § 955], Oct. 30, 1986, 100 Stat. 3341–82, 3341–173; Pub. L. 99–661, div. A, title IX, formerly title IV, § 955, Nov. 14, 1986, 100 Stat. 3953, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273.

AMENDMENTS

2021—Subsec. (c)(2). Pub. L. 116–283, § 924(b)(1)(N), substituted ''Marine Corps, and Space Force'' for ''and Marine Corps''.

1996—Subsec. (b). Pub. L. 104–106 substituted ''Under Secretary of Defense (Comptroller)'' for ''Comptroller of the Department of Defense''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by section 1809(f)(1) of Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 2218. National Defense Sealift Fund

(a) ESTABLISHMENT.—There is established in the Treasury of the United States a fund to be known as the ''National Defense Sealift Fund''.

(b) ADMINISTRATION OF FUND.—The Secretary of Defense shall administer the Fund consistent with the provisions of this section.

(c) FUND PURPOSES.—(1) Funds in the National Defense Sealift Fund shall be available for obligation and expenditure only for the following purposes:

(A) Construction (including design of vessels), purchase, alteration, and conversion of Department of Defense sealift vessels.

(B) Operation, maintenance, and lease or charter of Department of Defense vessels for national defense purposes.

(C) Installation and maintenance of defense features for national defense purposes on privately owned and operated vessels that are constructed in the United States and documented under the laws of the United States.

(D) Expenses for maintaining the National Defense Reserve Fleet under section 11 of the Merchant Ship Sales Act of 1946 (50 U.S.C. 4405),[1] and for the costs of acquisition of vessels for, and alteration and conversion of vessels in (or to be placed in), the fleet, but only for vessels built in United States shipyards.

(2) Funds in the National Defense Sealift Fund may be obligated or expended only in amounts authorized by law.

(3) Funds obligated and expended for a purpose set forth in subparagraph (B) of paragraph (1) may be derived only from funds deposited in the National Defense Sealift Fund pursuant to subsection (d)(1).

(d) DEPOSITS.—There shall be deposited in the Fund the following:

(1) All funds appropriated to the Department of Defense for—

(A) construction (including design of vessels), purchase, alteration, and conversion of national defense sealift vessels;

(B) operations, maintenance, and lease or charter of national defense sealift vessels; and

(C) installation and maintenance of defense features for national defense purposes on privately owned and operated vessels.

(2) All receipts from the disposition of national defense sealift vessels, excluding receipts from the sale, exchange, or scrapping of National Defense Reserve Fleet vessels under sections 57101–57104 and chapter 573 of title 46.

(3) All receipts from the charter of vessels under section 1424(c) of the National Defense Authorization Act for Fiscal Year 1991 (10 U.S.C. 8661 note).

(4) Any other funds made available to the Department of Defense to carry out any of the purposes described in subsection (c).

(e) ACCEPTANCE OF SUPPORT.—(1) The Secretary of Defense may accept from any person, foreign government, or international organization any contribution of money, personal property (excluding vessels), or assistance in kind for support of the sealift functions of the Department of Defense.

(2) Any contribution of property accepted under paragraph (1) may be retained and used by the Department of Defense or disposed of in accordance with procedures prescribed by the Secretary of Defense.

(3) The Secretary of Defense shall deposit in the Fund money and receipts from the disposition of any property accepted under paragraph (1).

(f) LIMITATIONS.—(1) A vessel built in a foreign ship yard may not be purchased with funds in the National Defense Sealift Fund pursuant to subsection (c)(1), unless specifically authorized by law.

(2) Construction, alteration, or conversion of vessels with funds in the National Defense Sealift Fund pursuant to subsection (c)(1) shall be conducted in United States ship yards and shall be subject to section 1424(b) of Public Law 101–510 (104 Stat. 1683).

(3)(A) Notwithstanding the limitations under subsection (c)(1)(E) and paragraph (1), the Secretary of Defense may, as part of a program to

[1] See References in Text note below.

recapitalize the Ready Reserve Force component of the national defense reserve fleet and the Military Sealift Command surge fleet, purchase any used vessel, regardless of where such vessel was constructed if such vessel—

(i) participated in the Maritime Security Fleet; and

(ii) is available for purchase at a reasonable cost, as determined by the Secretary.

(B) If the Secretary determines that no used vessel meeting the requirements under clauses (i) and (ii) of subparagraph (A) is available, the Secretary may purchase a used vessel comparable to a vessel described in clause (i) of subparagraph (A), regardless of the source of the vessel or where the vessel was constructed, if such vessel is available for purchase at a reasonable cost, as determined by the Secretary.

(C) The Secretary may not use the authority under this paragraph to purchase more than nine foreign constructed vessels.

(D) The Secretary shall ensure that the initial conversion, or modernization of any vessel purchased under the authority of subparagraph (A) occurs in a shipyard located in the United States.

(E) The Secretary may not use the authority under this paragraph to procure more than four foreign constructed vessels unless the Secretary submits to Congress, by not later than the second week of February of the fiscal year during which the Secretary plans to use such authority, a certification that—

(i) the Secretary has initiated an acquisition strategy for the construction in United States shipyards of not less than ten new vessels that are sealift vessels, auxiliary vessels, or a combination of such vessels; and

(ii) of such new vessels, the lead ship is anticipated to be delivered by not later than 2028.

(F) Not later than 30 days before the purchase of any vessel using the authority under this paragraph, the Secretary, in consultation with the Maritime Administrator, shall submit to the congressional defense committees a report that contains each of the following with respect to such purchase:

(i) The proposed date of the purchase.

(ii) The price at which the vessel would be purchased.

(iii) The anticipated cost of modernization of the vessel.

(iv) The proposed military utility of the vessel.

(v) The proposed date on which the vessel will be available for use by the Ready Reserve.

(vi) The contracting office responsible for the completion of the purchase.

(vii) Certification that—

(I) there was no vessel available for purchase at a reasonable price that was constructed in the United States; and

(II) the used vessel purchased supports the recapitalization of the Ready Reserve Force component of the National Defense Reserve Fleet or the Military Sealift Command surge fleet.

(viii) A detailed account of the criteria used to make the determination under subparagraph (B).

(G) The Secretary may not finalize or execute the final purchase of any vessel using the authority under this paragraph until 30 days after the date on which a report under subparagraph (F) is submitted with respect to such purchase.

(g) EXPIRATION OF FUNDS AFTER 5 YEARS.—No part of an appropriation that is deposited in the National Defense Sealift Fund pursuant to subsection (d)(1) shall remain available for obligation more than five years after the end of fiscal year for which appropriated except to the extent specifically provided by law.

(h) BUDGET REQUESTS.—Budget requests submitted to Congress for the National Defense Sealift Fund shall separately identify—

(1) the amount requested for programs, projects, and activities for construction (including design of vessels), purchase, alteration, and conversion of national defense sealift vessels;

(2) the amount requested for programs, projects, and activities for operation, maintenance, and lease or charter of national defense sealift vessels;

(3) the amount requested for programs, projects, and activities for installation and maintenance of defense features for national defense purposes on privately owned and operated vessels that are constructed in the United States and documented under the laws of the United States; and

(4) the amount requested for programs, projects, and activities for research and development relating to national defense sealift.

(i) TITLE OR MANAGEMENT OF VESSELS.—Nothing in this section (other than subsection (c)(1)(E)) shall be construed to affect or modify title to, management of, or funding responsibilities for, any vessel of the National Defense Reserve Fleet, or assigned to the Ready Reserve Force component of the National Defense Reserve Fleet, as established by section 57100 of title 46.

(j) CONTRACTS FOR INCORPORATION OF DEFENSE FEATURES IN COMMERCIAL VESSELS.—(1) The head of an agency may enter into a contract with a company submitting an offer for that company to install and maintain defense features for national defense purposes in one or more commercial vessels owned or controlled by that company in accordance with the purpose for which funds in the National Defense Sealift Fund are available under subsection (c)(1)(C). The head of the agency may enter into such a contract only after the head of the agency makes a determination of the economic soundness of the offer. As consideration for a contract with the head of an agency under this subsection, the company entering into the contract shall agree with the Secretary of Defense to make any vessel covered by the contract available to the Secretary, fully crewed and ready for sea, at any time at any port determined by the Secretary, and for whatever duration the Secretary determines necessary.

(2) The head of an agency may make advance payments to the contractor under a contract under paragraph (1) in a lump sum, in annual payments, or in a combination thereof for costs associated with the installation and maintenance of the defense features on a vessel covered by the contract, as follows:

(A) The costs to build, procure, and install a defense feature in the vessel.

(B) The costs to periodically maintain and test any defense feature on the vessel.

(C) Any increased costs of operation or any loss of revenue attributable to the installation or maintenance of any defense feature on the vessel.

(D) Any additional costs associated with the terms and conditions of the contract.

(E) Payments of such sums as the Government would otherwise expend, if the vessel were placed in the Ready Reserve Fleet, for maintaining the vessel in the status designated as ''ROS–4 status'' in the Ready Reserve Fleet for 25 years.

(3) For any contract under paragraph (1) under which the United States makes advance payments under paragraph (2) for the costs associated with installation or maintenance of any defense feature on a commercial vessel, the contractor shall provide to the United States such security interests in the vessel, by way of a preferred mortgage under section 31322 of title 46 or otherwise, as the head of the agency may prescribe in order to adequately protect the United States against loss for the total amount of those costs.

(4) Each contract entered into under this subsection shall—

(A) set forth terms and conditions under which, so long as a vessel covered by the contract is owned or controlled by the contractor, the contractor is to operate the vessel for the Department of Defense notwithstanding any other contract or commitment of that contractor; and

(B) provide that the contractor operating the vessel for the Department of Defense shall be paid for that operation at fair and reasonable rates.

(5) The head of an agency may not delegate authority under this subsection to any officer or employee in a position below the level of head of a procuring activity.

(6) The head of an agency may not enter into a contract under paragraph (1) that would provide for payments to the contractor as authorized in paragraph (2)(E) until notice of the proposed contract is submitted to the congressional defense committees and a period of 90 days has elapsed.

(k) DEFINITIONS.—In this section:

(1) The term ''Fund'' means the National Defense Sealift Fund established by subsection (a).

(2) The term ''Department of Defense sealift vessel'' means any ship owned, operated, controlled, or chartered by the Department of Defense that is any of the following:

(A) A fast sealift ship, including any vessel in the Fast Sealift Program established under section 1424 of Public Law 101–510 (104 Stat. 1683).

(B) Any other auxiliary vessel that was procured or chartered with specific authorization in law for the vessel, or class of vessels, to be funded in the National Defense Sealift Fund.

(3) The term ''national defense sealift vessel'' means—

(A) a Department of Defense sealift vessel; and

(B) a national defense reserve fleet vessel, including a vessel in the Ready Reserve Force maintained under section 11 of the Merchant Ship Sales Act of 1946 (50 U.S.C. 4405).[1]

(4) The term ''head of an agency'' has the meaning given that term in section 2302(1) of this title.

(5) The term ''Maritime Security Fleet'' means the fleet established under section 53102(a) of title 46.

(Added Pub. L. 102–484, div. A, title X, § 1024(a)(1), Oct. 23, 1992, 106 Stat. 2486; amended Pub. L. 102–396, title V, Oct. 6, 1992, 106 Stat. 1896; Pub. L. 104–106, div. A, title X, § 1014(a), title XV, § 1502(a)(15), Feb. 10, 1996, 110 Stat. 423, 503; Pub. L. 106–65, div. A, title X, §§ 1014(b), 1015, 1067(1), Oct. 5, 1999, 113 Stat. 742, 743, 774; Pub. L. 106–398, § 1 [[div. A], title X, § 1011], Oct. 30, 2000, 114 Stat. 1654, 1654A–251; Pub. L. 107–107, div. A, title X, § 1048(e)(9), Dec. 28, 2001, 115 Stat. 1228; Pub. L. 108–136, div. A, title X, § 1043(b)(9), Nov. 24, 2003, 117 Stat. 1611; Pub. L. 109–163, div. A, title X, § 1018(d), Jan. 6, 2006, 119 Stat. 3426; Pub. L. 109–304, § 17(a)(2), Oct. 6, 2006, 120 Stat. 1706; Pub. L. 110–417, [div. A], title XIV, § 1407, Oct. 14, 2008, 122 Stat. 4647; Pub. L. 114–328, div. A, title X, § 1081(b)(5), Dec. 23, 2016, 130 Stat. 2419; Pub. L. 115–91, div. A, title X, § 1021(a)–(c), div. C, title XXXV, § 3502(b)(1), Dec. 12, 2017, 131 Stat. 1546, 1547, 1910; Pub. L. 115–232, div. A, title VIII, § 809(a), title X, §§ 1012, 1013, Aug. 13, 2018, 132 Stat. 1840, 1947, 1948; Pub. L. 116–92, div. A, title X, § 1031(a), Dec. 20, 2019, 133 Stat. 1579; Pub. L. 116–283, div. A, title X, § 1022, title XVIII, § 1806(e)(1)(A), Jan. 1, 2021, 134 Stat. 3840, 4155.)

AMENDMENT OF SUBSECTION (k)(4)

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1806(e)(1)(A), Jan. 1, 2021, 134 Stat. 4151, 4155, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, subsection (k)(4) of this section is amended by striking ''section 2302(1)'' and inserting ''section 3004''. See 2021 Amendment note below.

REFERENCES IN TEXT

Section 11 of the Merchant Ship Sales Act of 1946 (50 U.S.C. 4405), referred to in subsecs. (c)(1)(D) and (k)(3)(B), was redesignated as and transferred to section 57100 of Title 46, Shipping, by Pub. L. 115–91, div. C, title XXXV, § 3502(a)(3), Dec. 12, 2017, 131 Stat. 1910.

Section 1424 of Public Law 101–510, referred to in subsecs. (d)(3), (f)(2), and (k)(2)(A), is section 1424 of the National Defense Authorization Act for Fiscal Year 1991, which is set out as a note under section 7291 of this title.

CODIFICATION

Pub. L. 102–396, title V, Oct. 6, 1992, 106 Stat. 1896, provided that section 1024 of the National Defense Authorization Act for Fiscal Year 1993 [H.R. 5006, Pub. L. 102–484], as it passed the Senate on Oct. 3, 1992, shall be amended in subsection 2218(c)(2) proposed for inclusion in this chapter by deleting all after ''expended only'' down to and including ''appropriations Act'' and inserting in lieu thereof ''in amounts authorized by law''. It further provided that for purposes of that amendment, Pub. L. 102–396 shall be treated as having been enacted

after Pub. L. 102–484, regardless of the actual dates of enactment. The date of Oct. 3, 1992, referred to as the date the Senate passed the National Defense Authorization Act for Fiscal Year 1993, apparently is based on an order adopted by the Senate on Oct. 3, 1992 [Cong. Rec., vol. 138, pt. 21, p. 30919] providing that when the conference report on the National Defense Authorization Act for Fiscal Year 1993 was received by the Senate from the House of Representatives it would be deemed to have been agreed to. On Oct. 5, 1992, the Senate received the conference report from the House, and it was considered adopted pursuant to that order [Cong. Rec., vol. 138, pt. 22, p. 31565].

AMENDMENTS

2021—Subsec. (f)(3)(C). Pub. L. 116–283, §1022(1), substituted ''nine'' for ''seven''.

Subsec. (f)(3)(E). Pub. L. 116–283, §1022(2)(A), substituted ''four'' for ''two'' in introductory provisions.

Subsec. (f)(3)(E)(ii). Pub. L. 116–283, §1022(2)(B), substituted ''2028'' for ''2026''.

Subsec. (f)(3)(G). Pub. L. 116–283, §1022(3), substituted ''subparagraph (F)'' for ''subparagraph (E)''.

Subsec. (k)(4). Pub. L. 116–283, §1806(e)(1)(A), substituted ''section 3004'' for ''section 2302(1)''.

2019—Subsec. (f)(3)(E)(i). Pub. L. 116–92, §1031(a)(1), substituted ''ten new vessels that are sealift vessels, auxiliary vessels, or a combination of such vessels'' for ''ten new sealift vessels''.

Subsec. (f)(3)(E)(ii). Pub. L. 116–92, §1031(a)(2), struck out ''sealift'' before ''vessels''.

2018—Subsec. (d)(3). Pub. L. 115–232, §809(a), substituted ''section 1424(c) of the National Defense Authorization Act for Fiscal Year 1991 (10 U.S.C. 8661 note)'' for ''section 1424(c) of the National Defense Authorization Act for Fiscal Year 1991 (10 U.S.C. 7291 note)''.

Subsec. (f)(3)(C). Pub. L. 115–232, §1012(1), substituted ''seven'' for ''two'' and ''vessels'' for ''ships''.

Subsec. (f)(3)(E). Pub. L. 115–232, §1012(3), added subpar. (E). Former subpar. (E) redesignated (F).

Subsec. (f)(3)(F). Pub. L. 115–232, §§1012(2), 1013(1)(A), redesignated subpar. (E) as (F) and substituted ''30 days before'' for ''30 days after'' in introductory provisions.

Subsec. (f)(3)(F)(i). Pub. L. 115–232, §1013(1)(B), inserted ''proposed'' before ''date''.

Subsec. (f)(3)(F)(ii). Pub. L. 115–232, §1013(1)(C), substituted ''would be purchased.'' for ''was purchased.''

Subsec. (f)(3)(F)(viii). Pub. L. 115–232, §1013(1)(D), added cl. (viii).

Subsec. (f)(3)(G). Pub. L. 115–232, §1013(2), added subpar. (G).

2017—Subsec. (c)(1)(D), (E). Pub. L. 115–91, §1021(a)(1)(A), redesignated subpar. (E) as (D) and struck out former subpar. (D) which read as follows: ''Research and development relating to national defense sealift.''

Subsec. (c)(3). Pub. L. 115–91, §1021(a)(1)(B), struck out ''or (D)'' after ''subparagraph (B)''.

Subsec. (d)(1)(D). Pub. L. 115–91, §1021(a)(2)(A), struck out subpar. (D) which read as follows: ''research and development relating to national defense sealift.''

Subsec. (d)(4). Pub. L. 115–91, §1021(a)(2)(B), added par. (4).

Subsec. (f)(3). Pub. L. 115–91, §1021(b), added par. (3).

Subsec. (i). Pub. L. 115–91, §3502(b)(1), substituted ''section 57100 of title 46'' for ''section 11 of the Merchant Ship Sales Act of 1946 (50 U.S.C. App. 1744)''.

Subsec. (k)(5). Pub. L. 115–91, §1021(c), added par. (5).

2016—Subsecs. (c)(1)(E), (k)(3)(B). Pub. L. 114–328 substituted ''(50 U.S.C. 4405)'' for ''(50 U.S.C. App. 1744)''.

2008—Subsecs. (j), (k). Pub. L. 110–417, §1407(1), redesignated subsecs. (k) and (*l*) as (j) and (k), respectively, and struck out heading and text of former subsec. (j). Text read as follows: ''Upon a determination by the Secretary of Defense that such action serves the national defense interest and after consultation with the congressional defense committees, the Secretary may use funds available for obligation or expenditure for a purpose specified under subsection (c)(1)(A), (B), (C), and (D) for any purpose under subsection (c)(1).''

Subsec. (k)(2)(B) to (I). Pub. L. 110–417, §1407(2), added subpar. (B) and struck out former subpars. (B) to (I) which read as follows:

''(B) A maritime prepositioning ship.
''(C) An afloat prepositioning ship.
''(D) An aviation maintenance support ship.
''(E) A hospital ship.
''(F) A strategic sealift ship.
''(G) A combat logistics force ship.
''(H) A maritime prepositioned ship.
''(I) Any other auxiliary support vessel.''

Subsec. (*l*). Pub. L. 110–417, §1407(1), redesignated subsec. (*l*) as (k).

2006—Subsec. (d)(2). Pub. L. 109–304 substituted ''sections 57101–57104 and chapter 573 of title 46'' for ''sections 508 and 510 of the Merchant Marine Act of 1936 (46 U.S.C. App. 1158, 1160), shall be deposited in the Fund''.

Subsec. (f)(1). Pub. L. 109–163 substituted ''A vessel built in a foreign ship yard may not be'' for ''Not more than a total of five vessels built in foreign ship yards may be'' and inserted '', unless specifically authorized by law'' before period at end.

2003—Subsec. (*l*)(4), (5). Pub. L. 108–136 redesignated par. (5) as (4) and struck out former par. (4) which read as follows: ''The term 'congressional defense committees' means—

''(A) the Committee on Armed Services and the Committee on Appropriations of the Senate; and

''(B) the Committee on Armed Services and the Committee on Appropriations of the House of Representatives.''

2001—Subsec. (d)(1). Pub. L. 107–107 struck out ''for fiscal years after fiscal year 1993'' after ''Department of Defense'' in introductory provisions.

2000—Subsec. (k)(1). Pub. L. 106–398, §1 [[div. A], title X, §1011(1)], inserted at end ''As consideration for a contract with the head of an agency under this subsection, the company entering into the contract shall agree with the Secretary of Defense to make any vessel covered by the contract available to the Secretary, fully crewed and ready for sea, at any time at any port determined by the Secretary, and for whatever duration the Secretary determines necessary.''

Subsec. (k)(2)(E). Pub. L. 106–398, §1 [[div. A], title X, §1011(2)], added subpar. (E).

Subsec. (k)(6). Pub. L. 106–398, §1 [[div. A], title X, §1011(3)], added par. (6).

1999—Subsec. (k). Pub. L. 106–65, §1015(a)(2), added subsec. (k). Former subsec. (k) redesignated (*l*).

Subsec. (k)(2). Pub. L. 106–65, §1014(b), substituted ''that is any of the following:'' for ''that is—'' in introductory provisions, substituted ''A'' for ''a'' and a period for the semicolon in subpars. (A) and (B), ''An'' for ''an'' and a period for the semicolon in subpar. (C), ''An'' for ''an'' and a period for ''; or'' in subpar. (D), and ''A'' for ''a'' in subpar. (E), and added subpars. (F) to (I).

Subsec. (*l*). Pub. L. 106–65, §1015(a)(1), redesignated subsec. (k) as (*l*).

Subsec. (*l*)(4)(B). Pub. L. 106–65, §1067(1), substituted ''Committee on Armed Services'' for ''Committee on National Security''.

Subsec. (*l*)(5). Pub. L. 106–65, §1015(b), added par. (5).

1996—Subsec. (c)(1). Pub. L. 104–106, §1014(a)(1)(A), substituted ''only for the following purposes:'' for ''only for—''.

Subsec. (c)(1)(A). Pub. L. 104–106, §1014(a)(1)(B), (C), substituted ''Construction'' for ''construction'' and ''vessels.'' for ''vessels;''.

Subsec. (c)(1)(B). Pub. L. 104–106, §1014(a)(1)(B), (C), substituted ''Operation'' for ''operation'' and ''purposes.'' for ''purposes;''.

Subsec. (c)(1)(C). Pub. L. 104–106, §1014(a)(1)(B), (D), substituted ''Installation'' for ''installation'' and ''States.'' for ''States; and''.

Subsec. (c)(1)(D). Pub. L. 104–106, §1014(a)(1)(B), substituted ''Research'' for ''research''.

Subsec. (c)(1)(E). Pub. L. 104–106, §1014(a)(1)(E), added subpar. (E).

Subsec. (i). Pub. L. 104–106, §1014(a)(2), inserted ''(other than subsection (c)(1)(E))'' after ''Nothing in this section''.

Subsec. (j). Pub. L. 104–106, § 1502(a)(15)(A), substituted ''the congressional defense committees'' for ''the Committees on Armed Services and on Appropriations of the Senate and the House of Representatives''.

Subsec. (k)(4). Pub. L. 104–106, § 1502(a)(15)(B), added par. (4).

1992—Subsec. (c)(2). Pub. L. 102–396 substituted ''in amounts authorized by law'' for ''for programs, projects, and activities and only in amounts authorized in, or otherwise permitted under, an Act other than an appropriations Act''. See Codification note above.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by section 1806(e)(1)(A) of Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 2019 AMENDMENT

Pub. L. 116–92, div. A, title X, § 1031(b), Dec. 20, 2019, 133 Stat. 1579, provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on October 1, 2019, and shall apply with respect to fiscal years beginning on or after that date.''

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by section 809(a) of Pub. L. 115–232 effective Feb. 1, 2019, with provision for the coordination of amendments and special rule for certain redesignations, see section 800 of Pub. L. 115–232, set out as a note preceding section 3001 of this title.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective Dec. 31, 2021, of provisions in subsec. (h) of this section relating to submitting budget requests to Congress, see section 1061 of Pub. L. 114–328, set out as a note under section 111 of this title.

COMPLIANCE BY READY RESERVE FLEET VESSELS WITH SOLAS LIFEBOATS AND FIRE SUPPRESSION REQUIREMENTS

Pub. L. 115–232, div. C, title XXXV, § 3502, Aug. 13, 2018, 132 Stat. 2308, provided that: ''The Secretary of Defense shall, consistent with section 2244a of title 10, United States Code, use authority under section 2218 of such title to make such modifications to Ready Reserve Fleet vessels as are necessary for such vessels to comply [with] requirements for lifeboats and fire suppression under the International Convention for the Safety of Life at Sea by not later than October 1, 2021.''

§ 2218a. National Sea-Based Deterrence Fund

(a) ESTABLISHMENT.—There is established in the Treasury of the United States a fund to be known as the ''National Sea-Based Deterrence Fund''.

(b) ADMINISTRATION OF FUND.—The Secretary of Defense shall administer the Fund consistent with the provisions of this section.

(c) FUND PURPOSES.—(1) Funds in the Fund shall be available for obligation and expenditure only for construction (including design of vessels), purchase, alteration, and conversion of national sea-based deterrence vessels.

(2) Funds in the Fund may not be used for a purpose or program unless the purpose or program is authorized by law.

(d) DEPOSITS.—There shall be deposited in the Fund all funds appropriated to the Department of Defense for construction (including design of vessels), purchase, alteration, and conversion of national sea-based deterrence vessels.

(e) EXPIRATION OF FUNDS AFTER 5 YEARS.—No part of an appropriation that is deposited in the Fund pursuant to subsection (d) shall remain available for obligation more than five years after the end of fiscal year for which appropriated except to the extent specifically provided by law.

(f) AUTHORITY TO ENTER INTO ECONOMIC ORDER QUANTITY CONTRACTS.—(1) The Secretary of the Navy may use funds deposited in the Fund to enter into contracts known as ''economic order quantity contracts'' with private shipyards and other commercial or government entities to achieve economic efficiencies based on production economies for major components or subsystems. The authority under this subsection extends to the procurement of parts, components, and systems (including weapon systems) common with and required for other nuclear powered vessels under joint economic order quantity contracts.

(2) A contract entered into under paragraph (1) shall provide that any obligation of the United States to make a payment under the contract is subject to the availability of appropriations for that purpose, and that total liability to the Government for termination of any contract entered into shall be limited to the total amount of funding obligated at time of termination.

(g) AUTHORITY TO BEGIN MANUFACTURING AND FABRICATION EFFORTS PRIOR TO SHIP AUTHORIZATION.—(1) The Secretary of the Navy may use funds deposited into the Fund to enter into contracts for advance construction of national sea-based deterrence vessels to support achieving cost savings through workload management, manufacturing efficiencies, or workforce stability, or to phase fabrication activities within shipyard and manage sub-tier manufacturer capacity.

(2) A contract entered into under paragraph (1) shall provide that any obligation of the United States to make a payment under the contract is subject to the availability of appropriations for that purpose, and that total liability to the Government for termination of any contract entered into shall be limited to the total amount of funding obligated at time of termination.

(h) AUTHORITY TO USE INCREMENTAL FUNDING TO ENTER INTO CONTRACTS FOR CERTAIN ITEMS.—(1) The Secretary of the Navy may use funds deposited into the Fund to enter into incrementally funded contracts for—

(A) advance procurement of high value, long lead time items for nuclear powered vessels to better support construction schedules and achieve cost savings through schedule reductions and properly phased installment payments; and

(B) construction of the first two Columbia class submarines.

(2) A contract entered into under paragraph (1) shall provide that any obligation of the United States to make a payment under the contract is subject to the availability of appropriations for that purpose, and that total liability to the Government for termination of any contract entered into shall be limited to the total amount of funding obligated at time of termination.

(i) AUTHORITY FOR MULTIYEAR PROCUREMENT OF CRITICAL COMPONENTS TO SUPPORT CONTINUOUS PRODUCTION.—(1) To implement the continuous production of critical components, the Sec-

retary of the Navy may use funds deposited in the Fund, in conjunction with funds appropriated for the procurement of other nuclear-powered vessels, to enter into one or more multiyear contracts (including economic ordering quantity contracts), for the procurement of critical contractor-furnished and Government-furnished components for critical components of national sea-based deterrence vessels. The authority under this subsection extends to the procurement of equivalent critical components common with and required for other nuclear-powered vessels.

(2) In each annual budget request submitted to Congress, the Secretary shall clearly identify funds requested for critical components and the individual ships and programs for which such funds are requested.

(3) Any contract entered into pursuant to paragraph (1) shall provide that any obligation of the United States to make a payment under the contract is subject to the availability of appropriations for that purpose and that the total liability to the Government for the termination of the contract shall be limited to the total amount of funding obligated for the contract as of the date of the termination.

(j) BUDGET REQUESTS.—Budget requests submitted to Congress for the Fund shall separately identify the amount requested for programs, projects, and activities for construction (including design of vessels), purchase, alteration, and conversion of national sea-based deterrence vessels.

(k) DEFINITIONS.—In this section:

(1) The term ''Fund'' means the National Sea-Based Deterrence Fund established by subsection (a).

(2) The term ''national sea-based deterrence vessel'' means any submersible vessel constructed or purchased after fiscal year 2016 that is owned, operated, or controlled by the Department of Defense and that carries operational intercontinental ballistic missiles.

(3) The term ''critical component'' means any of the following:

(A) A common missile compartment component.

(B) A spherical air flask.

(C) An air induction diesel exhaust valve.

(D) An auxiliary seawater valve.

(E) A hovering valve.

(F) A missile compensation valve.

(G) A main seawater valve.

(H) A launch tube.

(I) A trash disposal unit.

(J) A logistics escape trunk.

(K) A torpedo tube.

(L) A weapons shipping cradle weldment.

(M) A control surface.

(N) A launcher component.

(O) A propulsor.

(Added Pub. L. 113–291, div. A, title X, §1022(a)(1), Dec. 19, 2014, 128 Stat. 3486; amended Pub. L. 114–92, div. A, title X, §1022(a), Nov. 25, 2015, 129 Stat. 965; Pub. L. 114–328, div. A, title X, §1023, Dec. 23, 2016, 130 Stat. 2388; Pub. L. 115–91, div. A, title X, §1022, Dec. 12, 2017, 131 Stat. 1548; Pub. L. 116–283, div. A, title X, §1023(a), Jan. 1, 2021, 134 Stat. 3840.)

AMENDMENTS

2021—Subsec. (h)(1). Pub. L. 116–283 substituted ''incrementally funded contracts for—'' for ''incrementally funded contracts for advance procurement of high value, long lead time items for nuclear powered vessels to better support construction schedules and achieve cost savings through schedule reductions and properly phased installment payments.'' and added subpars. (A) and (B).

2017—Subsec. (i). Pub. L. 115–91, §1022(c), struck out ''of the Common Missile Compartment'' after ''Continuous Production'' in heading.

Subsec. (i)(1). Pub. L. 115–91, §1022(a)(2), substituted ''equivalent critical components'' for ''equivalent critical parts, components, systems, and subsystems''.

Pub. L. 115–91, §1022(a)(1), which directed the substitution of ''critical components'' for ''the common missile compartment'' wherever appearing, was executed by making the substitution for ''the common missile compartment'' the first time appearing and for ''the common missile compartments'' the second time appearing, to reflect the probable intent of Congress.

Subsec. (i)(2). Pub. L. 115–91, §1022(a)(1), substituted ''critical components'' for ''the common missile compartment''.

Subsec. (k)(3). Pub. L. 115–91, §1022(b), added par. (3).

2016—Subsecs. (i), (j). Pub. L. 114–328, §1023(a), added subsec. (i) and redesignated former subsec. (i) as (j). Former subsec. (j) redesignated (k).

Subsec. (k). Pub. L. 114–328, §1023(a)(1), redesignated subsec. (j) as (k).

Subsec. (k)(2). Pub. L. 114–328, §1023(b), substituted ''any submersible vessel constructed or purchased after fiscal year 2016 that is'' for ''any vessel'' and inserted ''and'' before ''that carries''.

2015—Subsecs. (f) to (j). Pub. L. 114–92 added subsecs. (f) to (h) and redesignated former subsecs. (f) and (g) as (i) and (j), respectively.

[§ 2219. Renumbered § 2491c]

§ 2220. Performance based management: acquisition programs

(a) ESTABLISHMENT OF GOALS.—The Secretary of Defense shall approve or define the cost, performance, and schedule goals for major defense acquisition programs of the Department of Defense and for each phase of the acquisition cycle of such programs.

(b) EVALUATION OF COST GOALS.—The Under Secretary of Defense (Comptroller) shall evaluate the cost goals proposed for each major defense acquisition program of the Department.

(c) SUNSET.—The authority under this section shall terminate on September 30, 2018.

(Added Pub. L. 103–355, title V, §5001(a)(1), Oct. 13, 1994, 108 Stat. 3349; amended Pub. L. 104–106, div. A, title XV, §1503(a)(20), div. D, title XLIII, §4321(b)(1), Feb. 10, 1996, 110 Stat. 512, 671; Pub. L. 105–85, div. A, title VIII, §841(a), Nov. 18, 1997, 111 Stat. 1843; Pub. L. 107–314, div. A, title X, §1041(a)(8), Dec. 2, 2002, 116 Stat. 2645; Pub. L. 114–328, div. A, title VIII, §833(a)(2), Dec. 23, 2016, 130 Stat. 2283.)

AMENDMENTS

2016—Subsec. (c). Pub. L. 114–328 added subsec. (c).

2002—Subsec. (a). Pub. L. 107–314, §1041(a)(8)(B), (C), struck out par. (1) designation and redesignated par. (2) as subsec. (b).

Subsec. (b). Pub. L. 107–314, §1041(a)(8)(A), (C), redesignated subsec. (a)(2) as (b) and struck out heading and text of former subsec. (b). Text read as follows: ''The Secretary of Defense shall include in the annual report submitted to Congress pursuant to section 113(c) of this

title an assessment of whether major acquisition programs of the Department of Defense are achieving, on average, 90 percent of cost, performance, and schedule goals established pursuant to subsection (a) and whether the average period for converting emerging technology into operational capability has decreased by 50 percent or more from the average period required for such conversion as of October 13, 1994. The Secretary shall use data from existing management systems in making the assessment.''

Subsec. (c). Pub. L. 107–314, § 1041(a)(8)(A), struck out heading and text of subsec. (c). Text read as follows: ''Whenever the Secretary of Defense, in the assessment required by subsection (b), determines that major defense acquisition programs of the Department of Defense are not achieving, on average, 90 percent of cost, performance, and schedule goals established pursuant to subsection (a), the Secretary shall ensure that there is a timely review of major defense acquisition programs and other programs as appropriate. In conducting the review, the Secretary shall—

''(1) determine whether there is a continuing need for programs that are significantly behind schedule, over budget, or not in compliance with performance or capability requirements; and

''(2) identify suitable actions to be taken, including termination, with respect to such programs.''

1997—Subsec. (b). Pub. L. 105–85 substituted ''whether major acquisition programs'' for ''whether major and nonmajor acquisition programs''.

1996—Subsec. (a)(2). Pub. L. 104–106, § 1503(a)(20), substituted ''Under Secretary of Defense (Comptroller)'' for ''Comptroller of the Department of Defense''.

Subsec. (b). Pub. L. 104–106, § 4321(b)(1), substituted ''October 13, 1994'' for ''the date of the enactment of the Federal Acquisition Streamlining Act of 1994''.

EFFECTIVE DATE OF 1996 AMENDMENT

For effective date and applicability of amendment by section 4321(b)(1) of Pub. L. 104–106, see section 4401 of Pub. L. 104–106, set out as a note under section 2302 of this title.

PILOT PROGRAMS FOR TESTING PROGRAM MANAGER PERFORMANCE OF PRODUCT SUPPORT OVERSIGHT RESPONSIBILITIES FOR LIFE CYCLE OF ACQUISITION PROGRAMS

Pub. L. 105–261, div. A, title VIII, § 816, Oct. 17, 1998, 112 Stat. 2088, authorized the Secretary of Defense to designate 10 acquisition programs of the military departments as pilot programs on program manager responsibility for product support and required report to Congress by Feb. 1, 1999.

ENHANCED SYSTEM OF PERFORMANCE INCENTIVES

Pub. L. 103–355, title V, § 5001(b), Oct. 13, 1994, 108 Stat. 3350, provided that, within one year after Oct. 13, 1994, the Secretary of Defense should review the incentives and personnel actions available for encouraging excellence in the management of defense acquisition programs and provide an enhanced system of incentives, including pay for performance, to facilitate the achievement of goals approved or defined pursuant to subsec. (a) of this section.

RECOMMENDED LEGISLATION

Pub. L. 103–355, title V, § 5001(c), Oct. 13, 1994, 108 Stat. 3350, directed the Secretary of Defense, not later than one year after Oct 13, 1994, to submit to Congress any recommended legislation that the Secretary considered necessary to carry out this section and otherwise to facilitate and enhance management of Department of Defense acquisition programs on the basis of performance.

[§ 2221. Repealed. Pub. L. 105–261, div. A, title IX, § 906(f)(1), Oct. 17, 1998, 112 Stat. 2096]

Section, added Pub. L. 104–106, div. A, title IX, § 914(a)(1), Feb. 10, 1996, 110 Stat. 412; amended Pub. L. 104–201, div. A, title X, § 1008(a), Sept. 23, 1996, 110 Stat. 2633; Pub. L. 105–85, div. A, title X, § 1006(a), Nov. 18, 1997, 111 Stat. 1869; Pub. L. 105–261, div. A, title X, § 1069(b)(2), Oct. 17, 1998, 112 Stat. 2136, related to Fisher House trust funds. See section 2493 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective 90 days after Oct. 17, 1998, see section 906(f)(3) of Pub. L. 105–261, set out as an Effective Date of 1998 Amendment note under section 1321 of Title 31, Money and Finance.

§ 2222. Defense business systems: business process reengineering; enterprise architecture; management

(a) DEFENSE BUSINESS PROCESSES GENERALLY.—The Secretary of Defense shall ensure that defense business processes are reviewed, and as appropriate revised, through business process reengineering to match best commercial practices, to the maximum extent practicable, so as to minimize customization of commercial business systems.

(b) DEFENSE BUSINESS SYSTEMS GENERALLY.—The Secretary of Defense shall ensure that each covered defense business system developed, deployed, and operated by the Department of Defense—

(1) supports efficient business processes that have been reviewed, and as appropriate revised, through business process reengineering;

(2) is integrated into a comprehensive defense business enterprise architecture;

(3) is managed in a manner that provides visibility into, and traceability of, expenditures for the system; and

(4) uses an acquisition and sustainment strategy that prioritizes the use of commercial software and business practices.

(c) ISSUANCE OF GUIDANCE.—

(1) SECRETARY OF DEFENSE GUIDANCE.—The Secretary shall issue guidance to provide for the coordination of, and decision making for, the planning, programming, and control of investments in covered defense business systems.

(2) SUPPORTING GUIDANCE.—The Secretary shall direct the Chief Management Officer of the Department of Defense, the Under Secretary of Defense for Acquisition and Sustainment, the Chief Information Officer, and the Chief Management Officer of each of the military departments to issue and maintain supporting guidance, as appropriate and within their respective areas of responsibility, for the guidance of the Secretary issued under paragraph (1).

(d) GUIDANCE ELEMENTS.—The guidance issued under subsection (c) shall include the following elements:

(1) Policy to ensure that the business processes of the Department of Defense are continuously reviewed and revised—

(A) to implement the most streamlined and efficient business processes practicable; and

(B) to eliminate or reduce the need to tailor commercial off-the-shelf systems to meet or incorporate requirements or interfaces that are unique to the Department of Defense.

(2) A process to establish requirements for covered defense business systems.

(3) Mechanisms for the planning and control of investments in covered defense business systems, including a process for the collection and review of programming and budgeting information for covered defense business systems.

(4) Policy requiring the periodic review of covered defense business systems that have been fully deployed, by portfolio, to ensure that investments in such portfolios are appropriate.

(5) Policy to ensure full consideration of sustainability and technological refreshment requirements, and the appropriate use of open architectures.

(6) Policy to ensure that best acquisition and systems engineering practices are used in the procurement and deployment of commercial systems, modified commercial systems, and defense-unique systems to meet Department of Defense missions.

(7) Policy to ensure a covered defense business system is in compliance with the Department's auditability requirements.

(8) Policy to ensure approvals required for the development of a covered defense business system.

(e) DEFENSE BUSINESS ENTERPRISE ARCHITECTURE.—

(1) BLUEPRINT.—The Secretary, working through the Chief Management Officer of the Department of Defense, shall develop and maintain a blueprint to guide the development of integrated business processes within the Department of Defense. Such blueprint shall be known as the ''defense business enterprise architecture''.

(2) PURPOSE.—The defense business enterprise architecture shall be sufficiently defined to effectively guide implementation of interoperable defense business system solutions and shall be consistent with the policies and procedures established by the Director of the Office of Management and Budget.

(3) ELEMENTS.—The defense business enterprise architecture shall—

(A) include policies, procedures, business data standards, business performance measures, and business information requirements that apply uniformly throughout the Department of Defense; and

(B) enable the Department of Defense to—

(i) comply with all applicable law, including Federal accounting, financial management, and reporting requirements;

(ii) routinely produce verifiable, timely, accurate, and reliable business and financial information for management purposes;

(iii) integrate budget, accounting, and program information and systems; and

(iv) identify whether each existing business system is a part of the business systems environment outlined by the defense business enterprise architecture, will become a part of that environment with appropriate modifications, or is not a part of that environment.

(4) INTEGRATION INTO INFORMATION TECHNOLOGY ARCHITECTURE.—(A) The defense business enterprise architecture shall be integrated into the information technology enterprise architecture required under subparagraph (B).

(B) The Chief Information Officer of the Department of Defense shall develop an information technology enterprise architecture. The architecture shall describe a plan for improving the information technology and computing infrastructure of the Department of Defense, including for each of the major business processes conducted by the Department of Defense.

(5) COMMON ENTERPRISE DATA.—The defense business enterprise shall include enterprise data that may be automatically extracted from the relevant systems to facilitate Department of Defense-wide analysis and management of its business operations.

(6) ROLES AND RESPONSIBILITIES.—

(A) The Chief Management Officer of the Department of Defense shall have primary decision-making authority with respect to the development of common enterprise data. In consultation with the Defense Business Council, the Chief Management Officer shall—

(i) develop an associated data governance process; and

(ii) oversee the preparation, extraction, and provision of data across the defense business enterprise.

(B) The Chief Management Officer and the Under Secretary of Defense (Comptroller) shall—

(i) in consultation with the Defense Business Council, document and maintain any common enterprise data for their respective areas of authority;

(ii) participate in any related data governance process;

(iii) extract data from defense business systems as needed to support priority activities and analyses;

(iv) when appropriate, ensure the source data is the same as that used to produce the financial statements subject to annual audit;

(v) in consultation with the Defense Business Council, provide access, except as otherwise provided by law or regulation, to such data to the Office of the Secretary of Defense, the Joint Staff, the military departments, the combatant commands, the Defense Agencies, the Department of Defense Field Activities, and all other offices, agencies, activities, and commands of the Department of Defense; and

(vi) ensure consistency of the common enterprise data maintained by their respective organizations.

(C) The Director of Cost Assessment and Program Evaluation shall have access to data for the purpose of executing missions as designated by the Secretary of Defense.

(D) The Secretary of Defense, the Chairman of the Joint Chiefs of Staff, the Secretaries of the military departments, commanders of combatant commands, the heads of the Defense Agencies, the heads of the Department of Defense Field Activities, and

the heads of all other offices, agencies, activities, and commands of the Department of Defense shall provide access to the relevant system of such department, combatant command, Defense Agency, Defense Field Activity, or office, agency, activity, and command organization, as applicable, and data extracted from such system, for purposes of automatically populating data sets coded with common enterprise data.

(f) DEFENSE BUSINESS COUNCIL.—

(1) REQUIREMENT FOR COUNCIL.—The Secretary shall establish a Defense Business Council to provide advice to the Secretary on developing the defense business enterprise architecture, reengineering the Department's business processes, developing and deploying defense business systems, and developing requirements for defense business systems. The Council shall be chaired by the Chief Management Officer and the Chief Information Officer of the Department of Defense.

(2) MEMBERSHIP.—The membership of the Council shall include the following:

(A) The Chief Management Officers of the military departments, or their designees.

(B) The following officials of the Department of Defense, or their designees:

(i) The Under Secretary of Defense for Acquisition and Sustainment with respect to acquisition, logistics, and installations management processes.

(ii) The Under Secretary of Defense (Comptroller) with respect to financial management and planning and budgeting processes.

(iii) The Under Secretary of Defense for Personnel and Readiness with respect to human resources management processes.

(g) APPROVALS REQUIRED FOR DEVELOPMENT.—

(1) INITIAL APPROVAL REQUIRED.—The Secretary shall ensure that a covered defense business system program cannot proceed into development (or, if no development is required, into production or fielding) unless the appropriate approval official (as specified in paragraph (2)) determines that—

(A) the system has been, or is being, reengineered to be as streamlined and efficient as practicable, and the implementation of the system will maximize the elimination of unique software requirements and unique interfaces;

(B) the system and business system portfolio are or will be in compliance with the defense business enterprise architecture developed pursuant to subsection (e) or will be in compliance as a result of modifications planned;

(C) the system has valid, achievable requirements and a viable plan for implementing those requirements (including, as appropriate, market research, business process reengineering, and prototyping activities);

(D) the system has an acquisition strategy designed to eliminate or reduce the need to tailor commercial off-the-shelf systems to meet unique requirements, incorporate unique requirements, or incorporate unique interfaces to the maximum extent practicable; and

(E) the system is in compliance with the Department's auditability requirements.

(2) APPROPRIATE OFFICIAL.—For purposes of paragraph (1), the appropriate approval official with respect to a covered defense business system is the following:

(A) Except as may be provided in subparagraph (C), in the case of a priority defense business system, the Chief Management Officer of the Department of Defense.

(B) Except as may be provided in subparagraph (C), for any defense business system other than a priority defense business system—

(i) in the case of a system of a military department, the Chief Management Officer of that military department; and

(ii) in the case of a system of a Defense Agency or Department of Defense Field Activity, or a system that will support the business process of more than one military department or Defense Agency or Department of Defense Field Activity, the Chief Management Officer of the Department of Defense.

(C) In the case of any defense business system, such official other than the applicable official under subparagraph (A) or (B) as the Secretary designates for such purpose.

(3) ANNUAL CERTIFICATION.—For any fiscal year in which funds are expended for development or sustainment pursuant to a covered defense business system program, the appropriate approval official shall review the system and certify, certify with conditions, or decline to certify, as the case may be, that it continues to satisfy the requirements of paragraph (1). If the approval official determines that certification cannot be granted, the approval official shall notify the milestone decision authority for the program and provide a recommendation for corrective action.

(4) OBLIGATION OF FUNDS IN VIOLATION OF REQUIREMENTS.—The obligation of Department of Defense funds for a covered defense business system program that has not been certified in accordance with paragraph (3) is a violation of section 1341(a)(1)(A) of title 31.

(h) RESPONSIBILITY OF MILESTONE DECISION AUTHORITY.—The milestone decision authority for a covered defense business system program shall be responsible for the acquisition of such system and shall ensure that acquisition process approvals are not considered for such system until the relevant certifications and approvals have been made under this section.

(i) DEFINITIONS.—In this section:

(1)(A) DEFENSE BUSINESS SYSTEM.—The term ''defense business system'' means an information system that is operated by, for, or on behalf of the Department of Defense, including any of the following:

(i) A financial system.

(ii) A financial data feeder system.

(iii) A contracting system.

(iv) A logistics system.

(v) A planning and budgeting system.

(vi) An installations management system.
(vii) A human resources management system.
(viii) A training and readiness system.

(B) The term does not include—
(i) a national security system; or
(ii) an information system used exclusively by and within the defense commissary system or the exchange system or other instrumentality of the Department of Defense conducted for the morale, welfare, and recreation of members of the armed forces using nonappropriated funds.

(2) COVERED DEFENSE BUSINESS SYSTEM.—The term ''covered defense business system'' means a defense business system that is expected to have a total amount of budget authority, over the period of the current future-years defense program submitted to Congress under section 221 of this title, in excess of $50,000,000.

(3) BUSINESS SYSTEM PORTFOLIO.—The term ''business system portfolio'' means all business systems performing functions closely related to the functions performed or to be performed by a covered defense business system.

(4) COVERED DEFENSE BUSINESS SYSTEM PROGRAM.—The term ''covered defense business system program'' means a defense acquisition program to develop and field a covered defense business system or an increment of a covered defense business system.

(5) PRIORITY DEFENSE BUSINESS SYSTEM.—The term ''priority defense business system'' means a defense business system that is—
(A) expected to have a total amount of budget authority over the period of the current future-years defense program submitted to Congress under section 221 of this title in excess of $250,000,000; or
(B) designated by the Chief Management Officer of the Department of Defense as a priority defense business system, based on specific program analyses of factors including complexity, scope, and technical risk, and after notification to Congress of such designation.

(6) ENTERPRISE ARCHITECTURE.—The term ''enterprise architecture'' has the meaning given that term in section 3601(4) of title 44.

(7) INFORMATION SYSTEM.—The term ''information system'' has the meaning given that term in section 11101 of title 40, United States Code.

(8) NATIONAL SECURITY SYSTEM.—The term ''national security system'' has the meaning given that term in section 3552(b)(6)(A) of title 44.

(9) BUSINESS PROCESS MAPPING.—The term ''business process mapping'' means a procedure in which the steps in a business process are clarified and documented in both written form and in a flow chart.

(10) COMMON ENTERPRISE DATA.—The term ''common enterprise data'' means business operations or management-related data, generally from defense business systems, in a usable format that is automatically accessible by authorized personnel and organizations.

(11) DATA GOVERNANCE PROCESS.—The term ''data governance process'' means a system to manage the timely Department of Defense-wide sharing of data described under subsection (e)(6)(A).

(Added Pub. L. 108–375, div. A, title III, §332(a)(1), Oct. 28, 2004, 118 Stat. 1851; amended Pub. L. 109–364, div. A, title IX, §906(a), Oct. 17, 2006, 120 Stat. 2354; Pub. L. 110–417, [div. A], title III, §351, Oct. 14, 2008, 122 Stat. 4425; Pub. L. 111–84, div. A, title X, §1072(a), Oct. 28, 2009, 123 Stat. 2470; Pub. L. 111–383, div. A, title X, §1075(b)(29), Jan. 7, 2011, 124 Stat. 4370; Pub. L. 112–81, div. A, title IX, §901, Dec. 31, 2011, 125 Stat. 1527; Pub. L. 112–239, div. A, title IX, §906, Jan. 2, 2013, 126 Stat. 1869; Pub. L. 113–66, div. A, title IX, §901, Dec. 26, 2013, 127 Stat. 815; Pub. L. 113–283, §2(e)(5)(A), Dec. 18, 2014, 128 Stat. 3087; Pub. L. 113–291, div. A, title VIII, §803, title IX, §901(d), (k)(3), title X, §1071(f)(16), Dec. 19, 2014, 128 Stat. 3427, 3463, 3468, 3511; Pub. L. 114–92, div. A, title VIII, §883(a)(1), (f), title X, §1081(a)(7), Nov. 25, 2015, 129 Stat. 942, 1001; Pub. L. 114–328, div. A, title X, §1081(a)(6), (c)(5), Dec. 23, 2016, 130 Stat. 2417, 2419; Pub. L. 115–91, div. A, title IX, §912(a), title X, §1081(b)(2), Dec. 12, 2017, 131 Stat. 1519, 1597; Pub. L. 115–232, div. A, title X, §1081(f)(1)(A)(ii), Aug. 13, 2018, 132 Stat. 1986; Pub. L. 116–92, div. A, title VIII, §839(a), title IX, §902(25), title XVII, §1731(a)(31), Dec. 20, 2019, 133 Stat. 1498, 1545, 1814.)

PRIOR PROVISIONS

A prior section 2222, added Pub. L. 105–85, div. A, title X, §1008(a)(1), Nov. 18, 1997, 111 Stat. 1870; amended Pub. L. 107–107, div. A, title X, §1009(b)(1)–(3)(A), Dec. 28, 2001, 115 Stat. 1208, 1209, required Secretary of Defense to submit to Congress an annual strategic plan for improvement of financial management within Department of Defense and specified statements and matters to be included in the plan, prior to repeal by Pub. L. 107–314, div. A, title X, §1004(h)(1), Dec. 2, 2002, 116 Stat. 2631.

AMENDMENTS

2019—Subsec. (c)(2). Pub. L. 116–92, §902(25)(A), substituted ''Under Secretary of Defense for Acquisition and Sustainment'' for ''Under Secretary of Defense for Acquisition, Technology, and Logistics''.

Subsec. (d). Pub. L. 116–92, §839(a)(1), substituted ''subsection (c)'' for ''subsection (c)(1)'' in introductory provisions.

Subsec. (d)(7), (8). Pub. L. 116–92, §839(a)(2), added pars. (7) and (8).

Subsec. (f)(2)(B)(i). Pub. L. 116–92, §902(25)(B), substituted ''Under Secretary of Defense for Acquisition and Sustainment'' for ''Under Secretary of Defense for Acquisition, Technology, and Logistics''.

Subsec. (i)(11). Pub. L. 116–92, §1731(a)(31), substituted ''subsection (e)(6)(A)'' for ''subsection (a)(6)(A)''.

2018—Pub. L. 115–232 substituted ''Chief Management Officer'' for ''Deputy Chief Management Officer'' in subsec. (c)(2) after ''shall direct the'' and in subsecs. (e)(1), (f)(1), (g)(2)(A), (B)(ii), and (i)(5)(B).

2017—Subsecs. (c)(2), (e)(1). Pub. L. 115–91, §1081(b)(2), repealed Pub. L. 114–92, §883(f)(1)(A). See 2015 Amendment notes below.

Subsec. (e)(5), (6). Pub. L. 115–91, §912(a)(1), added pars. (5) and (6).

Subsec. (f)(1). Pub. L. 115–91, §1081(b)(2), repealed Pub. L. 114–92, §883(f)(1)(B). See 2015 Amendment note below.

Subsecs. (g)(2)(A), (B)(ii), (i)(5)(B). Pub. L. 115–91, §1081(b)(2), repealed Pub. L. 114–92, §883(f)(1)(A). See 2015 Amendment notes below.

Subsec. (i)(10), (11). Pub. L. 115–91, §912(a)(2), added pars. (10) and (11).

2016—Pub. L. 114–328, §1081(c)(5), added subsec. (f) to section 883 of Pub. L. 114–92. See 2015 Amendment notes below.

Subsec. (d)(1)(B). Pub. L. 114–328, §1081(a)(6)(A), inserted ''to'' before ''eliminate''.

Subsec. (g)(1)(E). Pub. L. 114–328, §1081(a)(6)(B), inserted ''the system'' before ''is in compliance''.

Subsec. (i)(5). Pub. L. 114–328, §1081(a)(6)(C), struck out ''program'' after ''system'' in heading.

2015—Pub. L. 114–92, §883(f)(2), as added by Pub. L. 114–328, §1081(c)(5), repealed second par. (3) of section 901(k) of Pub. L. 113–291. See 2014 Amendment notes below.

Pub. L. 114–92, §883(a)(1), amended section generally. Prior to amendment, section related to architecture, accountability, and modernization of defense business systems.

Subsecs. (c)(2), (e)(1). Pub. L. 114–92, §883(f)(1)(A), as added by Pub. L. 114–328, §1081(c)(5), which directed the substitution of ''Under Secretary of Defense for Business Management and Information'' for ''Deputy Chief Management Officer of the Department of Defense'', was repealed by Pub. L. 115–91, §1081(b)(2).

Subsec. (f)(1). Pub. L. 114–92, §883(f)(1)(B), as added by Pub. L. 114–328, §1081(c)(5), which directed the substitution of ''Under Secretary of Defense for Business Management and Information'' for ''Deputy Chief Management Officer'', was repealed by Pub. L. 115–91, §1081(b)(2).

Subsecs. (g)(2)(A), (B)(ii), (i)(5)(B). Pub. L. 114–92, §883(f)(1)(A), as added by Pub. L. 114–328, §1081(c)(5), which directed the substitution of ''Under Secretary of Defense for Business Management and Information'' for ''Deputy Chief Management Officer of the Department of Defense'', was repealed by Pub. L. 115–91, §1081(b)(2).

Subsec. (j)(5). Pub. L. 114–92, §1081(a)(7), substituted ''section 3552(b)(6)'' for ''section 3552(b)(5)''. Amendment was executed prior to amendment by Pub. L. 114–92, §883(a)(1), see above, pursuant to section 1081(e) of Pub. L. 114–92, set out as a note under section 101 of this title.

2014—Subsec. (a). Pub. L. 113–291, §901(d)(1), inserted ''and'' at end of par. (1), substituted period for ''; and'' at end of par. (2), and struck out par. (3) which read as follows: ''the certification of the investment review board under paragraph (2) has been approved by the Defense Business Systems Management Committee established by section 186 of this title.''

Subsec. (a)(1)(A). Pub. L. 113–291, §803(b)(1), inserted '', including business process mapping,'' after ''re-engineering efforts''.

Subsec. (c)(1). Pub. L. 113–291, §901(d)(2), substituted ''investment review board established under subsection (g)'' for ''Defense Business Systems Management Committee'' in introductory provisions.

Subsecs. (c)(2)(E), (f)(1)(D), (E), (2)(E). Pub. L. 113–291, §901(k)(3), which directed substitution of ''the Under Secretary of Defense for Business Management and Information'' for ''the Deputy Chief Management Officer of the Department of Defense'', but could not be executed following the general amendment of the section by Pub. L. 114–92, was repealed by Pub. L. 114–92, §883(f)(2), as added by Pub. L. 114–328, §1081(c)(5). See 2015 and 2016 Amendment notes above.

Subsec. (g)(1). Pub. L. 113–291, §901(k)(3), which directed substitution of ''the Under Secretary of Defense for Business Management and Information'' for ''the Deputy Chief Management Officer of the Department of Defense'', but could not be executed following the general amendment of the section by Pub. L. 114–92, was repealed by Pub. L. 114–92, §883(f)(2), as added by Pub. L. 114–328, §1081(c)(5). See 2015 and 2016 Amendment notes above.

Pub. L. 113–291, §901(d)(3)(A), struck out '', not later than March 15, 2012,'' before ''to establish an investment review board''.

Subsec. (g)(2)(C). Pub. L. 113–291, §901(d)(3)(B), substituted ''the investment review'' for ''each investment review'' in introductory provisions.

Subsec. (g)(2)(F). Pub. L. 113–291, §901(d)(3)(C), struck out ''and the Defense Business Systems Management Committee, as required by section 186(c) of this title,'' after ''Secretary of Defense''.

Subsec. (g)(3). Pub. L. 113–291, §1071(f)(16), struck out ''(A)'' after ''(3)''.

Subsec. (g)(3)(A). Pub. L. 113–291, §901(k)(3), which directed substitution of ''Under Secretary of Defense for Business Management and Information'' for ''Deputy Chief Management Officer'' the first place appearing, and ''Under Secretary'' for ''Deputy Chief Management Officer'' the second, third, and fourth places appearing, but could not be executed following the general amendment of the section by Pub. L. 114–92, was repealed by Pub. L. 114–92, §883(f)(2), as added by Pub. L. 114–328, §1081(c)(5). See 2015 and 2016 Amendment notes above.

Subsec. (j)(1). Pub. L. 113–291, §803(a), designated existing provisions as subpar. (A), struck out '', other than a national security system,'' after ''information system'', and added subpar. (B).

Subsec. (j)(5). Pub. L. 113–283 substituted ''section 3552(b)(5)'' for ''section 3542(b)(2)''.

Subsec. (j)(6). Pub. L. 113–291, §803(b)(2), added par. (6).

2013—Subsec. (e)(1). Pub. L. 113–66, §901(1), substituted ''target defense business systems computing environment described in subsection (d)(3)'' for ''defense business enterprise architecture''.

Subsec. (e)(2). Pub. L. 113–66, §901(2), substituted ''that will be phased out of the defense business systems computing environment within three years after review and certification as 'legacy systems' by the investment management process established under subsection (g)'' for ''existing as of September 30, 2011 (known as 'legacy systems') that will not be part of the defense business enterprise architecture'' and struck out ''that provides for reducing the use of those legacy systems in phases'' before period at end.

Subsec. (e)(3). Pub. L. 113–66, §901(3), substituted ''existing systems that are part of the target defense business systems computing environment'' for ''legacy systems (referred to in subparagraph (B)) that will be a part of the target defense business systems computing environment described in subsection (d)(3)''.

Subsec. (g)(3). Pub. L. 112–239 added par. (3).

2011—Pub. L. 112–81 amended section generally. Prior to amendment, section related to architecture, accountability, and modernization of defense business systems.

Subsec. (a). Pub. L. 111–383 substituted ''Funds'' for ''Effective October 1, 2005, funds''.

2009—Subsec. (a). Pub. L. 111–84, §1072(a)(1)(A), (B), added par. (1) and redesignated former pars. (1) and (2) as (2) and (3), respectively.

Subsec. (a)(2)(A). Pub. L. 111–84, §1072(a)(1)(C), added subpar. (A) and struck out former subpar. (A), which read as follows: ''is in compliance with the enterprise architecture developed under subsection (c);''.

Subsec. (a)(3). Pub. L. 111–84, §1072(a)(1)(D), substituted ''the certification by the approval authority and the determination by the chief management officer are'' for ''the certification by the approval authority is''.

Subsec. (f). Pub. L. 111–84, §1072(a)(2), designated existing provisions as par. (1), redesignated former pars. (1) to (5) as subpars. (A) to (E), respectively, of par. (1), in subpar. (E) substituted ''subparagraphs (A) through (D)'' for ''paragraphs (1) through (4)'', and added par. (2).

2008—Subsec. (i). Pub. L. 110–417 substituted ''2013'' for ''2009'' in introductory provisions.

2006—Subsec. (j)(6). Pub. L. 109–364 substituted ''in section 3542(b)(2) of title 44'' for ''in section 2315 of this title''.

EFFECTIVE DATE OF 2017 AMENDMENT

Pub. L. 115–91, div. A, title X, §1081(b)(2), Dec. 12, 2017, 131 Stat. 1597, provided that the amendment made by section 1081(b)(2) is effective as of Nov. 25, 2015.

EFFECTIVE DATE OF 2016 AMENDMENT

Pub. L. 114–328, div. A, title X, §1081(c), Dec. 23, 2016, 130 Stat. 2419, provided that the amendment made by

section 1081(c)(5) is effective as of Nov. 25, 2015, and as if included in Pub. L. 114–92 as enacted.

EFFECTIVE DATE OF 2015 AMENDMENT

Pub. L. 114–92, div. A, title VIII, §883(f)(1), as added by Pub. L. 114–328, div. A, title X, §1081(c)(5), Dec. 23, 2016, 130 Stat. 2419, which provided that the amendment made by section 883(f)(1) was effective on the effective date specified in former section 901(a)(1) of Pub. L. 113–291 (Feb. 1, 2017), was repealed by Pub. L. 115–91, div. A, title X, §1081(b)(2), Dec. 12, 2017, 131 Stat. 1597.

EFFECTIVE DATE OF 2014 AMENDMENT

Pub. L. 113–291, div. A, title IX, §901(k)(3), Dec. 19, 2014, 128 Stat. 3468, which provided that the amendment made by section 901(k)(3) was effective on the effective date specified in former section 901(a)(1) of Pub. L. 113–291 (Feb. 1, 2017), was repealed by Pub. L. 114–92, div. A, title VIII, §883(f)(2), as added by Pub. L. 114–328, div. A, title X, §1081(c)(5), Dec. 23, 2016, 130 Stat. 2420.

IMPROVED RECORDING AND MAINTAINING OF DEPARTMENT OF DEFENSE REAL PROPERTY DATA

Pub. L. 116–92, div. B, title XXVIII, §2823, Dec. 20, 2019, 133 Stat. 1889, provided that:

''(a) INITIAL REPORT.—Not later than 150 days after the date of the enactment of this Act [Dec. 20, 2019], the Undersecretary [probably should be ''Under Secretary''] of Defense for Acquisition and Sustainment shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report that evaluates service-level best practices for recording and maintaining real property data.

''(b) ISSUANCE OF GUIDANCE.—Not later than 300 days after the date of the enactment of this Act, the Undersecretary [probably should be ''Under Secretary''] of Defense for Acquisition and Sustainment shall issue service-wide guidance on the recording and collection of real property data based on the best practices described in the report.''

REFORM OF BUSINESS ENTERPRISE OPERATIONS IN SUPPORT OF CERTAIN ACTIVITIES ACROSS DEPARTMENT OF DEFENSE

Pub. L. 115–232, div. A, title IX, §921(b), Aug. 13, 2018, 132 Stat. 1927, provided that:

''(1) PERIODIC REFORM.—

''(A) IN GENERAL.—Not later than January 1, 2020, and not less frequently than once every five years thereafter, the Secretary of Defense shall, acting through the Chief Management Officer of the Department of Defense, reform enterprise business operations of the Department of Defense, through reductions, eliminations, or improvements, across all organizations and elements of the Department with respect to covered activities in order to increase effectiveness and efficiency of mission execution.

''(B) CMO REPORTS.—Not later than January 1 of every fifth calendar year beginning with January 1, 2025, the Chief Management Officer shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report that describes the activities carried out by the Chief Management Officer under this subsection during the preceding five years, including an estimate of any cost savings achieved as a result of such activities.

''(2) COVERED ACTIVITIES DEFINED.—In this subsection, the term 'covered activities' means any activity relating to civilian resources management, logistics management, services contracting, or real estate management.

''(3) REPORTING FRAMEWORK.—Not later than January 1, 2020, the Chief Management Officer shall establish a consistent reporting framework to establish a baseline for the costs to perform all covered activities, and shall submit to Congress a report that, for each individual covered activity performed in fiscal year 2019, identifies the following:

''(A) The component or components of the Department responsible for performing such activity, and a business process map of such activity, in fiscal year 2019.

''(B) The number of the military, civilian, and contractor personnel of the component or components of the Department who performed such activity in that fiscal year.

''(C) The manpower requirements for such activity as of that fiscal year.

''(D) The systems and other resources associated with such activity as of that fiscal year.

''(E) The cost in dollars of performing such activity in fiscal year 2019.

''(4) INITIAL PLAN.—Not later than February 1, 2019, the Chief Management Officer shall submit to the congressional defense committees a plan, schedule, and cost estimate for conducting the reforms required under paragraph (1)(A).

''(5) CERTIFICATION OF COST SAVINGS.—Not later than January 1, 2020, the Chief Management Officer shall certify to the congressional defense committees that the savings and costs incurred as a result of activities carried out under paragraph (1) will achieve savings in fiscal year 2020 against the total amount obligated and expended for covered activities in fiscal year 2019 of—

''(A) not less than 25 percent of the cost in dollars of performing covered activities in fiscal year 2019 as specified pursuant to paragraph (3)(E); or

''(B) if the Chief Management Officer determines that achievement of savings of 25 percent or more will create overall inefficiencies for the Department, notice and justification will be submitted to the congressional defense committees specifying a lesser percentage of savings that the Chief Management Officer determines to be necessary to achieve efficiencies in the delivery of covered activities, which notice and justification shall be submitted by not later than October 1, 2019, together with a description of the efficiencies to be achieved.

''(6) COMPTROLLER GENERAL REPORTS.—The Comptroller General of the United States shall submit to the congressional defense committees the following:

''(A) Not later than 90 days after the submittal of the plan under paragraph (4), a report that verifies whether the plan is feasible.

''(B) Not later than 270 days after the date of enactment of this Act [Aug. 13, 2018], a report setting forth an assessment of the actions taken under paragraph (1)(A) since the date of the enactment of this Act.

''(C) Not later than 270 days after the submittal of the reporting framework under paragraph (3), a report that verifies whether the baseline established in the framework is accurate.

''(D) Not later than 270 days after the submittal of the report under paragraph (5), a report that verifies—

''(i) whether the activities described in the report were carried out; and

''(ii) whether any cost savings estimated in the report are accurate.''

ANALYSIS OF DEPARTMENT OF DEFENSE BUSINESS MANAGEMENT AND OPERATIONS DATASETS TO PROMOTE SAVINGS AND EFFICIENCIES

Pub. L. 115–232, div. A, title IX, §922, Aug. 13, 2018, 132 Stat. 1929, provided that:

''(a) IN GENERAL.—The Chief Management Officer of the Department of Defense shall develop a policy on analysis of Department of Defense datasets on business management and business operations by the public for purposes of accessing data analysis capabilities that would promote savings and efficiencies and otherwise enhance the utility of such datasets to the Department.

''(b) INITIAL DISCHARGE OF POLICY.—

''(1) IN GENERAL.—The Chief Management Officer shall commence the discharge of the policy required pursuant to subsection (a) by—

''(A) identifying one or more matters—

''(i) that are of significance to the Department of Defense;

''(ii) that are currently unresolved; and

''(iii) whose resolution from a business management or business operations dataset of the Department could benefit from a method or technique of analysis not currently familiar to the Department;

''(B) identifying between three and five business management or business operations datasets of the Department not currently available to the public whose evaluation could result in novel data analysis solutions toward management or operations problems of the Department identified by the Chief Management Officer; and

''(C) encouraging, whether by competition or other mechanisms, the evaluation of the datasets described in subparagraph (B) by appropriate persons and entities in the public or private sector (including academia).

''(2) PROTECTION OF SECURITY AND CONFIDENTIALITY.—In providing for the evaluation of datasets pursuant to this subsection, the Chief Management Officer shall take appropriate actions to protect the security and confidentiality of any information contained in the datasets, including through special precautions to ensure that any personally identifiable information is not included and no release of information will adversely affect national security missions.''

AUDIT OF FINANCIAL SYSTEMS OF THE DEPARTMENT OF DEFENSE BY PROFESSIONAL ACCOUNTANTS

Pub. L. 115–232, div. A, title X, § 1004, Aug. 13, 2018, 132 Stat. 1947, provided that: ''The Secretary of Defense, acting through the Under Secretary of Defense (Comptroller) or an appropriate official of a military department, shall ensure that each major implementation of, or modification to, a business system that contributes to financial information of the Department of Defense is reviewed by professional accountants with experience reviewing Federal financial systems to validate that such financial system will meet any applicable Federal requirements. The Secretary of Defense shall ensure that such accountants—

''(1) are provided all necessary data and records; and

''(2) report independently on their findings.''

STANDARDIZED BUSINESS PROCESS RULES FOR MILITARY INTELLIGENCE PROGRAM

Pub. L. 115–232, div. A, title XVI, § 1624(a), Aug. 13, 2018, 132 Stat. 2119, provided that:

''(1) DEVELOPMENT.—Not later than October 1, 2020, the Chief Management Officer of the Department of Defense, in coordination with the Under Secretary of Defense (Comptroller) and the Under Secretary of Defense for Intelligence [now Under Secretary of Defense for Intelligence and Security], shall develop and implement standardized business process rules for the planning, programming, budgeting, and execution process for the Military Intelligence Program.

''(2) TREATMENT OF DATA.—The Chief Management Officer shall develop the standardized business process rules under paragraph (1) in accordance with section 911 of the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115–91; 131 Stat. 1519; 10 U.S.C. 2222 note) [set out below] and section 2222(e)(6) of title 10, United States Code.

''(3) USE OF EXISTING SYSTEMS.—In developing the standardized business process rules under paragraph (1), to the extent practicable, the Chief Management Officer shall use enterprise business systems of the Department of Defense in existence as of the date of the enactment of this Act [Aug. 13, 2018].

''(4) REPORT.—Not later than March 1, 2019, the Chief Management Officer of the Department of Defense, the Under Secretary of Defense (Comptroller), and the Under Secretary of Defense for Intelligence shall jointly submit to the appropriate congressional committees a report containing a plan to develop the standardized business process rules under paragraph (1).

''(5) APPROPRIATE CONGRESSIONAL COMMITTEES.—In this subsection, the term 'appropriate congressional committees' means the following:

''(A) The congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives].

''(B) The Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate.''

POLICY ON TREATMENT OF DEFENSE BUSINESS SYSTEM DATA RELATED TO BUSINESS OPERATIONS AND MANAGEMENT

Pub. L. 115–91, div. A, title IX, § 911, Dec. 12, 2017, 131 Stat. 1519, provided that:

''(a) ESTABLISHMENT OF POLICY.—Not later than one year after the date of the enactment of this Act [Dec. 12, 2017], the Secretary of Defense shall establish a data policy for the Department of Defense that mandates that any data contained in a defense business system related to business operations and management is an asset of the Department of Defense.

''(b) AVAILABILITY.—As part of the policy required by subsection (a), the Secretary of Defense shall ensure that, except as otherwise provided by law or regulation, data described in such subsection shall be made readily available to members of the Office of the Secretary of Defense, the Joint Staff, the military departments, the combatant commands, the Defense Agencies, the Department of Defense Field Activities, and all other offices, agencies, activities, and commands of the Department of Defense, as applicable.''

ESTABLISHMENT OF DATA ANALYTICS CAPABILITY

Pub. L. 115–91, div. A, title IX, § 912(e), Dec. 12, 2017, 131 Stat. 1521, provided that:

''(1) DATA ANALYTICS CAPABILITY REQUIRED.—Not later than September 30, 2020, the Chief Management Officer of the Department of Defense shall establish and maintain within the Department of Defense a data analytics capability for purposes of supporting enhanced oversight and management of the Defense Agencies and Department of Defense Field Activities.

''(2) ELEMENTS.—The data analytics capability shall permit the following:

''(A) The maintenance on a continuing basis of an accurate tabulation of the amounts expended by the Defense Agencies and Department of Defense Field Activities on Government and contractor personnel.

''(B) The maintenance on a continuing basis of an accurate number of the personnel currently supporting the Defense Agencies and Department of Defense Field Activities, including the following:

''(i) Members of the regular components of the Armed Forces.

''(ii) Members of the reserve components of the Armed Forces.

''(iii) Civilian employees of the Department of Defense.

''(iv) Detailees, whether from another organization or element of the Department or from another department or agency of the Federal Government.

''(C) The tracking of costs for employing contract personnel, including federally funded research and development centers.

''(D) The maintenance on a continuing basis of the following:

''(i) An identification of the functions being performed by each Defense Agency and Department of Defense Field Activity.

''(ii) An accurate tabulation of the amounts being expended by each Defense Agency and Department of Defense Field Activity on its functions.

''(3) REPORTING REQUIREMENTS.—

''(A) INTERIM REPORT.—Not later than one year after the date of the enactment of this Act [Dec. 12, 2017], the Chief Management Officer of the Department of Defense shall submit to the congressional defense committees [Committees on Armed Services

and Appropriations of the Senate and the House of Representatives] a report on progress in establishing the data analytics capability. The report shall include the following:

''(i) A description and assessment of the efforts of the Chief Management Officer through the date of the report to establish the data analytics capability.

''(ii) A description of current gaps in the data required to establish the data analytics capability, and a description of the efforts to be undertaken to eliminate such gaps.

''(B) FINAL REPORT.—Not later than December 31, 2020, the Chief Management Officer shall submit to the congressional defense committees a report on the data analytics capability as established pursuant to this section.''

DATA INTEGRATION STRATEGIES PILOT PROGRAMS

Pub. L. 115–91, div. A, title IX, § 912(f), Dec. 12, 2017, 131 Stat. 1522, provided that:

''(1) IN GENERAL.—The Secretary of Defense shall carry out pilot programs to develop data integration strategies for the Department of Defense to address high-priority management challenges of the Department.

''(2) ELEMENTS.—The pilot programs carried out under the authority of this subsection shall involve data integration strategies to address challenges of the Department with respect to the following:

''(A) The budget of the Department.

''(B) Logistics.

''(C) Personnel security and insider threats.

''(D) At least two other high-priority challenges of the Department identified by the Secretary for purposes of this subsection.

''(3) REPORT ON PILOT PROGRAMS.—Not later than one year after the date of the enactment of this Act [Dec. 12, 2017], the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report describing the pilot programs to be carried out under this section, including the challenge of the Department to be addressed by the pilot program and the manner in which the data integration strategy under the pilot program will address the challenge. If any proposed pilot program requires legislative action for the waiver or modification of a statutory requirement that otherwise prevents or impedes the implementation of the pilot program, the Secretary shall include in the report a recommendation for legislative action to waive or modify the statutory requirement.''

IMPROPER PAYMENT MATTERS

Pub. L. 115–91, div. A, title X, § 1003, Dec. 12, 2017, 131 Stat. 1542, provided that: ''Subject to the authority, direction, and control of the Secretary of Defense, the Under Secretary of Defense (Comptroller) shall take the following actions:

''(1) With regard to estimating improper payments:

''(A) Establish and implement key quality assurance procedures, such as reconciliations, to ensure the completeness and accuracy of sampled populations.

''(B) Revise the procedures for the sampling methodologies of the Department of Defense so that such procedures—

''(i) comply with Office of Management and Budget guidance and generally accepted statistical standards;

''(ii) produce statistically valid improper payment error rates, statistically valid improper payment dollar estimates, and appropriate confidence intervals for both; and

''(iii) in meeting clauses (i) and (ii), take into account the size and complexity of the transactions being sampled.

''(2) With regard to identifying programs susceptible to significant improper payments, conduct a risk assessment that complies with the Improper Payments Elimination and Recovery Act of 2010 (Public Law 111–204 [See Short Title of 2010 Amendment note set out under section 3301 of Title 31, Money and Finance]) and the amendments made by that Act (in this section collectively referred to as 'IPERA').

''(3) With regard to reducing improper payments, establish procedures that produce corrective action plans that—

''(A) comply fully with IPERA and associated Office of Management and Budget guidance, including by holding individuals responsible for implementing corrective actions and monitoring the status of corrective actions; and

''(B) are in accordance with best practices, such as those recommended by the Chief Financial Officers Council, including by providing for—

''(i) measurement of the progress made toward remediating root causes of improper payments; and

''(ii) communication to the Secretary of Defense and the heads of departments, agencies, and organizations and elements of the Department of Defense, and key stakeholders, on the progress made toward remediating the root causes of improper payments.

''(4) With regard to implementing recovery audits for improper payments, develop and implement procedures to—

''(A) identify costs related to the recovery audits and recovery efforts of the Department of Defense; and

''(B) evaluate improper payment recovery efforts in order to ensure that they are cost effective.

''(5) Monitor the implementation of the revised chapter of the Financial Management Regulations on recovery audits in order to ensure that the Department of Defense, the military departments, the Defense Agencies, and the other organizations and elements of the Department of Defense either conduct recovery audits or demonstrate that it is not cost effective to do so.

''(6) Develop and submit to the Office of Management and Budget for approval a payment recapture audit plan that fully complies with Office of Management and Budget guidance.

''(7) With regard to reporting on improper payments, design and implement procedures to ensure that the annual improper payment and recovery audit reporting of the Department of Defense is complete, accurate, and complies with IPERA and associated Office of Management and Budget guidance.''

FINANCIAL OPERATIONS DASHBOARD FOR THE DEPARTMENT OF DEFENSE

Pub. L. 115–91, div. A, title X, § 1005, Dec. 12, 2017, 131 Stat. 1544, provided that:

''(a) IN GENERAL.—The Under Secretary of Defense (Comptroller) shall develop and maintain on an Internet website available to Department of Defense agencies a tool (commonly referred to as a 'dashboard)' [sic] to permit officials to track key indicators of the financial performance of the Department of Defense. Such key indicators may include outstanding accounts payable, abnormal accounts payable, outstanding advances, unmatched disbursements, abnormal undelivered orders, negative unliquidated obligations, violations of sections 1341 and 1517(a) of title 31, United States Code (commonly referred to as the 'Anti-Deficiency Act'), costs deriving from payment delays, interest penalty payments, and improper payments, and actual savings realized through interest payments made, discounts for timely or advanced payments, and other financial management and improvement initiatives.

''(b) INFORMATION COVERED.—The tool shall cover financial performance information for the military departments, the defense agencies, and any other organizations or elements of the Department of Defense.

"(c) TRACKING OF PERFORMANCE OVER TIME.—The tool shall permit the tracking of financial performance over time, including by month, quarter, and year, and permit users of the tool to export both current and historical data on financial performance.

"(d) UPDATES.—The information covered by the tool shall be updated not less frequently than quarterly."

IMPROVED MANAGEMENT PRACTICES TO REDUCE COST AND IMPROVE PERFORMANCE OF CERTAIN DEPARTMENT OF DEFENSE ORGANIZATIONS

Pub. L. 114–328, div. A, title VIII, § 894, Dec. 23, 2016, 130 Stat. 2325, provided that:

"(a) IN GENERAL.—Beginning not later than 180 days after the date of the enactment of this Act [Dec. 23, 2016], the Secretary of Defense shall designate units, subunits, or entities of the Department of Defense, other than Centers of Industrial and Technical Excellence designated pursuant to section 2474 of title 10, United States Code, that conduct work that is commercial in nature or is not inherently governmental to prioritize efforts to conduct business operations in a manner that uses modern, commercial management practices and principles to reduce the costs and improve the performance of such organizations.

"(b) ADOPTION OF MODERN BUSINESS PRACTICES.—The Secretary shall ensure that each such unit, subunit, or entity of the Department described in subsection (a) is authorized to adopt and implement best commercial and business management practices to achieve the goals described in such subsection.

"(c) WAIVERS.—The Secretary shall authorize waivers of Department of Defense, military service, and Defense Agency regulations, as appropriate, to achieve the goals in subsection (a), including in the following areas:

"(1) Financial management.

"(2) Human resources.

"(3) Facility and plant management.

"(4) Acquisition and contracting.

"(5) Partnerships with the private sector.

"(6) Other business and management areas as identified by the Secretary.

"(d) GOALS.—The Secretary of Defense shall identify savings goals to be achieved through the implementation of the commercial and business management practices adopted under subsection (b), and establish a schedule for achieving the savings.

"(e) BUDGET ADJUSTMENT.—The Secretary shall establish policies to adjust organizational budget allocations, at the Secretary's discretion, for purposes of—

"(1) using savings derived from implementation of best commercial and business management practices for high priority military missions of the Department of Defense;

"(2) creating incentives for the most efficient and effective development and adoption of new commercial and business management practices by organizations; and

"(3) investing in the development of new commercial and business management practices that will result in further savings to the Department of Defense.

"(f) BUDGET BASELINES.—Beginning not later than one year after the date of the enactment of this Act [Dec. 23, 2016], each such unit, subunit, or entity of the Department described in subsection (a) shall, in accordance with such guidance as the Secretary of Defense shall establish for purposes of this section—

"(1) establish an annual baseline cost estimate of its operations; and

"(2) certify that costs estimated pursuant to paragraph (1) are wholly accounted for and presented in a format that is comparable to the format for the presentation of such costs for other elements of the Department or consistent with best commercial practices."

INCREASED USE OF COMMERCIAL DATA INTEGRATION AND ANALYSIS PRODUCTS FOR THE PURPOSE OF PREPARING FINANCIAL STATEMENT AUDITS

Pub. L. 114–328, div. A, title X, § 1003, Dec. 23, 2016, 130 Stat. 2380, which required the Secretary of Defense to procure or develop technologies or services to improve data collection and analyses to support preparation of auditable financial statements for the Department of Defense, was repealed by Pub. L. 115–91, div. A, title X, § 1002(f)(3), Dec. 12, 2017, 131 Stat. 1542. See section 240e of this title.

SCIENCE AND TECHNOLOGY ACTIVITIES TO SUPPORT BUSINESS SYSTEMS INFORMATION TECHNOLOGY ACQUISITION PROGRAMS

Pub. L. 114–92, div. A, title II, § 217, Nov. 25, 2015, 129 Stat. 770, as amended by Pub. L. 115–232, div. A, title X, § 1081(f)(1)(A)(v), Aug. 13, 2018, 132 Stat. 1986; Pub. L. 116–92, div. A, title IX, § 902(26), Dec. 20, 2019, 133 Stat. 1545; Pub. L. 116–283, div. A, title XVIII, § 1806(e)(3)(B), Jan. 1, 2021, 134 Stat. 4156, provided that:

"(a) IN GENERAL.—The Secretary of Defense, acting through the Under Secretary of Defense for Acquisition and Sustainment and Under Secretary of Defense for Research and Engineering, the Chief Management Officer, and the Chief Information Officer, shall establish a set of science, technology, and innovation activities to improve the acquisition outcomes of major automated information systems through improved performance and reduced developmental and life cycle costs.

"(b) EXECUTION OF ACTIVITIES.—The activities established under subsection (a) shall be carried out by such military departments and Defense Agencies as the Under Secretary and the Chief Management Officer consider appropriate.

"(c) ACTIVITIES.—

"(1) IN GENERAL.—The set of activities established under subsection (a) may include the following:

"(A) Development of capabilities in Department of Defense laboratories, test centers, and federally funded research and development centers to provide technical support for acquisition program management and business process re-engineering activities.

"(B) Funding of intramural and extramural research and development activities as described in subsection (e).

"(2) CURRENT ACTIVITIES.—The Secretary shall identify the current activities described in subparagraphs (A) and (B) of paragraph (1) that are being carried out as of the date of the enactment of this Act [Nov. 25, 2015]. The Secretary shall consider such current activities in determining the set of activities to establish pursuant to subsection (a).

"(d) GAP ANALYSIS.—In establishing the set of activities under subsection (a), not later than 270 days after the date of the enactment of this Act [Nov. 25, 2015], the Secretary, in coordination with the Secretaries of the military departments and the heads of the Defense Agencies, shall conduct a gap analysis to identify activities that are not, as of such date, being pursued in the current science and technology program of the Department. The Secretary shall use such analysis in determining—

"(1) the set of activities to establish pursuant to subsection (a) that carry out the purposes specified in subsection (c)(1); and

"(2) the proposed funding requirements and timelines.

"(e) FUNDING OF INTRAMURAL AND EXTRAMURAL RESEARCH AND DEVELOPMENT.—

"(1) IN GENERAL.—In carrying out the set of activities required by subsection (a), the Secretary may award grants or contracts to eligible entities to carry out intramural or extramural research and development in areas of interest described in paragraph (3).

"(2) ELIGIBLE ENTITIES.—For purposes of this subsection, an eligible entity includes the following:

"(A) Entities in the defense industry.

"(B) Institutions of higher education.

"(C) Small businesses.

"(D) Nontraditional defense contractors (as defined in section 2302 of title 10, United States Code).

"(E) Federally funded research and development centers, primarily for the purpose of improving technical expertise to support acquisition efforts.

''(F) Nonprofit research institutions.

''(G) Government laboratories and test centers, primarily for the purpose of improving technical expertise to support acquisition efforts.

''(3) AREAS OF INTEREST.—The areas of interest described in this paragraph are the following:

''(A) Management innovation, including personnel and financial management policy innovation.

''(B) Business process re-engineering.

''(C) Systems engineering of information technology business systems.

''(D) Cloud computing to support business systems and business processes.

''(E) Software development, including systems and techniques to limit unique interfaces and simplify processes to customize commercial software to meet the needs of the Department of Defense.

''(F) Hardware development, including systems and techniques to limit unique interfaces and simplify processes to customize commercial hardware to meet the needs of the Department of Defense.

''(G) Development of methodologies and tools to support development and operational test of large and complex business systems.

''(H) Analysis tools to allow decision-makers to make tradeoffs between requirements, costs, technical risks, and schedule in major automated information system acquisition programs.

''(I) Information security in major automated information system systems.

''(J) Innovative acquisition policies and practices to streamline acquisition of information technology systems.

''(K) Such other areas as the Secretary considers appropriate.

''(f) PRIORITIES.—

''(1) IN GENERAL.—In carrying out the set of activities required by subsection (a), the Secretary shall give priority to—

''(A) projects that—

''(i) address the innovation and technology needs of the Department of Defense; and

''(ii) support activities of initiatives, programs, and offices identified by the Under Secretary and Chief Management Officer; and

''(B) the projects and programs identified in paragraph (2).

''(2) PROJECTS AND PROGRAMS IDENTIFIED.—The projects and programs identified in this paragraph are the following:

''(A) Major automated information system programs.

''(B) Projects and programs under the oversight of the Chief Management Officer.

''(C) Projects and programs relating to defense procurement acquisition policy.

''(D) Projects and programs of the agencies and field activities of the Office of the Secretary of Defense that support business missions such as finance, human resources, security, management, logistics, and contract management.

''(E) Military and civilian personnel policy development for information technology workforce.''

[Pub. L. 116–283, div. A, title XVIII, §§1801(d), 1806(e)(3)(B), Jan. 1, 2021, 134 Stat. 4151, 4156, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, section 217(e)(2)(D) of Pub. L. 114–92, set out above, is amended by substituting ''section 3014'' for ''section 2302''.]

DEADLINE FOR GUIDANCE ON COVERED DEFENSE BUSINESS SYSTEMS

Pub. L. 114–92, div. A, title VIII, §883(b), Nov. 25, 2015, 129 Stat. 947, provided that: ''The guidance required by subsection (c)(1) of section 2222 of title 10, United States Code, as amended by subsection (a)(1), shall be issued not later than December 31, 2016.''

COMPTROLLER GENERAL ASSESSMENT REQUIREMENT

Pub. L. 114–92, div. A, title VIII, §883(d)(1), Nov. 25, 2015, 129 Stat. 947, which required the Comptroller General, in odd-numbered years, to submit an assessment of the extent to which the actions taken by the Department of Defense complied with the requirements of this section, was repealed by Pub. L. 115–232, div. A, title VIII, §833(c), Aug. 13, 2018, 132 Stat. 1859, effective Jan. 1, 2020.

ACCOUNTING STANDARDS TO VALUE CERTAIN PROPERTY, PLANT, AND EQUIPMENT ITEMS

Pub. L. 114–92, div. A, title X, §1002, Nov. 25, 2015, 129 Stat. 960, provided that:

''(a) REQUIREMENT FOR CERTAIN ACCOUNTING STANDARDS.—The Secretary of Defense shall work in coordination with the Federal Accounting Standards Advisory Board to establish accounting standards to value large and unordinary general property, plant, and equipment items.

''(b) DEADLINE.—The accounting standards required by subsection (a) shall be established by not later than September 30, 2017, and be available for use for the full audit on the financial statements of the Department of Defense for fiscal year 2018, as required by section 1003(a) of the National Defense Authorization Act for Fiscal Year 2014 (Public Law 113–66; 127 Stat. 842; 10 U.S.C. 2222 note).''

ANNUAL AUDIT OF FINANCIAL STATEMENTS OF DEPARTMENT OF DEFENSE COMPONENTS BY INDEPENDENT EXTERNAL AUDITORS

Pub. L. 114–92, div. A, title X, §1005, Nov. 25, 2015, 129 Stat. 961, which required an annual audit of financial statements of Department of Defense components by independent external auditors, was repealed by Pub. L. 115–91, div. A, title X, §1002(e)(4), Dec. 12, 2017, 131 Stat. 1541. See section 240d of this title.

DEADLINE FOR ESTABLISHMENT OF INVESTMENT REVIEW BOARD AND INVESTMENT MANAGEMENT PROCESS

Pub. L. 113–291, div. A, title IX, §901(e), Dec. 19, 2014, 128 Stat. 3464, provided that: ''The investment review board and investment management process required by [former] section 2222(g) of title 10, United States Code, as amended by subsection (d)(3), shall be established not later than March 15, 2015.''

AUDIT OF DEPARTMENT OF DEFENSE FISCAL YEAR 2018 FINANCIAL STATEMENTS

Pub. L. 113–66, div. A, title X, §1003(a), Dec. 26, 2013, 127 Stat. 842, which required a full audit of the financial statements of the Department of Defense for fiscal year 2018, was repealed by Pub. L. 115–91, div. A, title X, §1002(b)(2), Dec. 12, 2017, 131 Stat. 1538. For similar provisions requiring annual audits, see section 240a of this title.

REVIEW OF OBLIGATION AND EXPENDITURE THRESHOLDS

Pub. L. 111–383, div. A, title VIII, §882, Jan. 7, 2011, 124 Stat. 4308, as amended by Pub. L. 113–291, div. A, title IX, §901(n)(1), Dec. 19, 2014, 128 Stat. 3469; Pub. L. 115–91, div. A, title X, §1081(b)(1)(D), Dec. 12, 2017, 131 Stat. 1597; Pub. L. 116–92, div. A, title IX, §902(27), Dec. 20, 2019, 133 Stat. 1546, provided that:

''(a) PROCESS REVIEW.—Not later than one year after the date of the enactment of this Act [Jan. 7, 2011], the Chief Management Officer of the Department of Defense, in coordination with the Chief Management Officer of each military department, the Director of the Office of Performance Assessment and Root Cause Analysis, the Under Secretary of Defense (Comptroller), and the Comptrollers of the military departments, shall complete a comprehensive review of the use and value of obligation and expenditure benchmarks and propose new benchmarks or processes for tracking financial performance, including, as appropriate—

''(1) increased reliance on individual obligation and expenditure plans for measuring program financial performance;

''(2) mechanisms to improve funding stability and to increase the predictability of the release of funding for obligation and expenditure; and

''(3) streamlined mechanisms for a program manager to submit an appeal for funding changes and to have such appeal evaluated promptly.

''(b) TRAINING.—The Under Secretary of Defense for Acquisition and Sustainment and the Under Secretary of Defense (Comptroller) shall ensure that, as part of the training required for program managers and business managers, an emphasis is placed on obligating and expending appropriated funds in a manner that achieves the best value for the Government and that the purpose and limitations of obligation and expenditure benchmarks are made clear.

''(c) REPORT.—The Deputy Chief Management Officer of the Department of Defense shall include a report on the results of the review under this section in the next update of the strategic management plan transmitted to the Committees on Armed Services of the Senate and the House of Representatives under section 904(d) of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110–181; 122 Stat. 275; 10 U.S.C. note prec. 2201) after the completion of the review.''

[Pub. L. 113–291, div. A, title IX, § 901(n)(1), Dec. 19, 2014, 128 Stat. 3469, formerly set out as a References note under section 131 of this title, which provided that, effective after Feb. 1, 2017, any reference to the Deputy Chief Management Officer of the Department of Defense was to be deemed to refer to the Under Secretary of Defense for Business Management and Information, was repealed by Pub. L. 115–91, div. A, title X, § 1081(b)(1)(D), Dec. 12, 2017, 131 Stat. 1597, effective as of Dec. 23, 2016.]

AUDIT READINESS OF FINANCIAL STATEMENTS OF THE DEPARTMENT OF DEFENSE

Pub. L. 112–239, div. A, title X, § 1005(b), Jan. 2, 2013, 126 Stat. 1904, provided that:

''(1) IN GENERAL.—The Chief Management Officer of the Department of Defense and the Chief Management Officers of each of the military departments shall ensure that plans to achieve an auditable statement of budgetary resources of the Department of Defense by September 30, 2014, include appropriate steps to minimize one-time fixes and manual work-arounds, are sustainable and affordable, and will not delay full auditability of financial statements.

''(2) ADDITIONAL ELEMENTS IN FIAR PLAN REPORT.—Each semi-annual report on the Financial Improvement and Audit Readiness Plan of the Department of Defense submitted by the Under Secretary of Defense (Comptroller) under section 1003(b) of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84; 123 Stat. 2439; 10 U.S.C. 2222 note) during the period beginning on the date of the enactment of this Act [Jan. 2, 2013] and ending on September 30, 2014, shall include the following:

''(A) A description of the actions taken by the military departments pursuant to paragraph (1).

''(B) A determination by the Chief Management Officer of each military department whether or not such military department is able to achieve an auditable statement of budgetary resources by September 30, 2014, without an unaffordable or unsustainable level of one-time fixes and manual work-arounds and without delaying the full auditability of the financial statements of such military department.

''(C) If the Chief Management Officer of a military department determines under subparagraph (B) that the military department is not able to achieve an auditable statement of budgetary resources by September 30, 2014, as described in that subparagraph—

''(i) an explanation why the military department is unable to meet the deadline;

''(ii) an alternative deadline by which the military department will achieve an auditable statement of budgetary resources; and

''(iii) a description of the plan of the military department for meeting the alternative deadline.''

Pub. L. 112–81, div. A, title X, § 1003, Dec. 31, 2011, 125 Stat. 1555, as amended by Pub. L. 113–291, div. A, title IX, § 901(n)(1), Dec. 19, 2014, 128 Stat. 3469; Pub. L. 115–91, div. A, title X, § 1081(b)(1)(D), Dec. 12, 2017, 131 Stat. 1597, provided that:

''(a) PLANNING REQUIREMENT.—

''(1) IN GENERAL.—The report to be issued pursuant to section 1003(b) of the National Defense Authorization Act for 2010 (Public Law 111–84; 123 Stat. 2440; 10 U.S.C. 2222 note) and provided by not later than May 15, 2012, shall include a plan, including interim objectives and a schedule of milestones for each military department and for the defense agencies, to support the goal established by the Secretary of Defense that the statement of budgetary resources is validated for audit by not later than September 30, 2014. Consistent with the requirements of such section, the plan shall include process and control improvements and business systems modernization efforts necessary for the Department of Defense to consistently prepare timely, reliable, and complete financial management information.

''(2) SEMIANNUAL UPDATES.—The reports to be issued pursuant to such section after the report described in paragraph (1) shall update the plan required by such paragraph and explain how the Department has progressed toward meeting the milestones established in the plan.

''(b) INCLUSION OF SUBORDINATE ACTIVITIES FOR INTERIM MILESTONES.—For each interim milestone established pursuant to section 881 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (Public Law 111–383; 124 Stat. 4306; 10 U.S.C. 2222 note), the Under Secretary of Defense (Comptroller), in consultation with the Deputy Chief Management Officer of the Department of Defense, the Secretaries of the military departments, and the heads of the defense agencies and defense field activities, shall include a detailed description of the subordinate activities necessary to accomplish each interim milestone, including—

''(1) a justification of the time required for each activity;

''(2) metrics identifying the progress made within each activity; and

''(3) mitigating strategies for milestone timeframe slippages.

''(c) REPORT REQUIRED.—

''(1) IN GENERAL.—The Secretary of Defense shall submit to Congress a report relating to the Financial Improvement and Audit Readiness Plan of the Department of Defense submitted in accordance with section 1003 of the National Defense Authorization Act for 2010 (Public Law 111–84; 123 Stat. 2440 [2439]; 10 U.S.C. 2222 note) and section 881 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (Public Law 111–383; 121 Stat. 4306; 10 U.S.C. 2222 note).

''(2) MATTERS COVERED.—The report shall include a corrective action plan for any identified weaknesses or deficiencies in the execution of the Financial Improvement and Audit Readiness Plan. The corrective action plan shall—

''(A) identify near- and long-term measures for resolving any such weaknesses or deficiencies;

''(B) assign responsibilities within the Department of Defense to implement such measures;

''(C) specify implementation steps for such measures; and

''(D) provide timeframes for implementation of such measures.''

[Pub. L. 113–291, div. A, title IX, § 901(n)(1), Dec. 19, 2014, 128 Stat. 3469, formerly set out as a References note under section 131 of this title, which provided that, effective after Feb. 1, 2017, any reference to the Deputy Chief Management Officer of the Department of Defense was to be deemed to refer to the Under Secretary of Defense for Business Management and Information, was repealed by Pub. L. 115–91, div. A, title X, § 1081(b)(1)(D), Dec. 12, 2017, 131 Stat. 1597, effective as of Dec. 23, 2016.]

Pub. L. 111–383, div. A, title VIII, § 881, Jan. 7, 2011, 124 Stat. 4306, as amended by Pub. L. 113–291, div. A, title

IX, § 901(n)(1), Dec. 19, 2014, 128 Stat. 3469; Pub. L. 115–91, div. A, title X, § 1081(b)(1)(D), Dec. 12, 2017, 131 Stat. 1597, provided that:

''(a) INTERIM MILESTONES.—

''(1) REQUIREMENT.—Not later than 90 days after the date of the enactment of this Act [Jan. 7, 2011], the Under Secretary of Defense (Comptroller), in consultation with the Deputy Chief Management Officer of the Department of Defense, the secretaries of the military departments, and the heads of the defense agencies and defense field activities, shall establish interim milestones for achieving audit readiness of the financial statements of the Department of Defense, consistent with the requirements of section 1003 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84; 123 Stat. 2439; 10 U.S.C. 2222 note).

''(2) MATTERS INCLUDED.—The interim milestones established pursuant to paragraph (1) shall include, at a minimum, for each military department and for the defense agencies and defense field activities—

''(A) an interim milestone for achieving audit readiness for each major element of the statement of budgetary resources, including civilian pay, military pay, supply orders, contracts, and funds balance with the Treasury; and

''(B) an interim milestone for addressing the existence and completeness of each major category of Department of Defense assets, including military equipment, real property, inventory, and operating material and supplies.

''(3) DESCRIPTION IN SEMIANNUAL REPORTS.—The Under Secretary shall describe each interim milestone established pursuant to paragraph (1) in the next semiannual report submitted pursuant to section 1003(b) of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84; 123 Stat. 2439; 10 U.S.C. 2222 note). Each subsequent semiannual report submitted pursuant to section 1003(b) shall explain how the Department has progressed toward meeting such interim milestones.

''(b) VALUATION OF DEPARTMENT OF DEFENSE ASSETS.—

''(1) REQUIREMENT.—Not later than 120 days after the date of the enactment of this Act, the Under Secretary of Defense (Comptroller) shall, in consultation with other appropriate Federal agencies and officials—

''(A) examine the costs and benefits of alternative approaches to the valuation of Department of Defense assets;

''(B) select an approach to such valuation that is consistent with principles of sound financial management and the conservation of taxpayer resources; and

''(C) begin the preparation of a business case analysis supporting the selected approach.

''(2) The Under Secretary shall include information on the alternatives considered, the selected approach, and the business case analysis supporting that approach in the next semiannual report submitted pursuant to section 1003(b) of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84; 123 Stat. 2439; 10 U.S.C. 2222 note).

''(c) REMEDIAL ACTIONS REQUIRED.—In the event that the Department of Defense, or any component of the Department of Defense, is unable to meet an interim milestone established pursuant to subsection (a), the Under Secretary of Defense (Comptroller) shall—

''(1) develop a remediation plan to ensure that—

''(A) the component will meet the interim milestone no more than one year after the originally scheduled date; and

''(B) the component's failure to meet the interim milestone will not have an adverse impact on the Department's ability to carry out the plan under section 1003(a) of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84; 123 Stat. 2439; 10 U.S.C. 2222 note); and

''(2) include in the next semiannual report submitted pursuant to section 1003(b) of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84; 123 Stat. 2439; 10 U.S.C. 2222 note)—

''(A) a statement of the reasons why the Department of Defense, or component of the Department of Defense, will be unable to meet such interim milestone;

''(B) the revised completion date for meeting such interim milestone; and

''(C) a description of the actions that have been taken and are planned to be taken by the Department of Defense, or component of the Department of Defense, to meet such interim milestone.

''(d) INCENTIVES FOR ACHIEVING AUDITABILITY.—

''(1) REVIEW REQUIRED.—Not later than 120 days after the date of the enactment of this Act, the Under Secretary of Defense (Comptroller) shall review options for providing appropriate incentives to the military departments, Defense Agencies, and defense field activities to ensure that financial statements are validated as ready for audit earlier than September 30, 2017.

''(2) OPTIONS REVIEWED.—The review performed pursuant to paragraph (1) shall consider changes in policy that reflect the increased confidence that can be placed in auditable financial statements, and shall include, at a minimum, consideration of the following options:

''(A) Consistent with the need to fund urgent warfighter requirements and operational needs, priority in the release of appropriated funds.

''(B) Relief from the frequency of financial reporting in cases in which such reporting is not required by law.

''(C) Relief from departmental obligation and expenditure thresholds to the extent that such thresholds establish requirements more restrictive than those required by law.

''(D) Increases in thresholds for reprogramming of funds.

''(E) Personnel management incentives for the financial and business management workforce.

''(F) Such other measures as the Under Secretary considers appropriate.

''(3) REPORT.—The Under Secretary shall include a discussion of the review performed pursuant to paragraph (1) in the next semiannual report pursuant to section 1003(b) of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84; 123 Stat. 2439; 10 U.S.C. 2222 note) and for each option considered pursuant to paragraph (2) shall include—

''(A) an assessment of the extent to which the implementation of the option—

''(i) would be consistent with the efficient operation of the Department of Defense and the effective funding of essential Department of Defense programs and activities; and

''(ii) would contribute to the achievement of Department of Defense goals to prepare auditable financial statements; and

''(B) a recommendation on whether such option should be adopted, a schedule for implementing the option if adoption is recommended, or a reason for not recommending the option if adoption is not recommended.''

[Pub. L. 113–291, div. A, title IX, § 901(n)(1), Dec. 19, 2014, 128 Stat. 3469, formerly set out as a References note under section 131 of this title, which provided that, effective after Feb. 1, 2017, any reference to the Deputy Chief Management Officer of the Department of Defense was to be deemed to refer to the Under Secretary of Defense for Business Management and Information, was repealed by Pub. L. 115–91, div. A, title X, § 1081(b)(1)(D), Dec. 12, 2017, 131 Stat. 1597, effective as of Dec. 23, 2016.]

Pub. L. 111–84, div. A, title X, § 1003, Oct. 28, 2009, 123 Stat. 2439, as amended by Pub. L. 112–239, div. A, title X, § 1005(a), Jan. 2, 2013, 126 Stat. 1904; Pub. L. 113–66, div. A, title X, § 1003(b), Dec. 26, 2013, 127 Stat. 842, which directed the Chief Management Officer of the Department of Defense to develop a Financial Improve-

ment and Audit Readiness Plan and to submit semi-annual reports to Congress on the status of the implementation of such plan, was repealed by Pub. L. 115–91, div. A, title X, § 1002(c)(4), Dec. 12, 2017, 131 Stat. 1540.

BUSINESS PROCESS REENGINEERING EFFORTS; ONGOING PROGRAMS

Pub. L. 111–84, div. A, title X, § 1072(b), Oct. 28, 2009, 123 Stat. 2471, provided that:

''(1) IN GENERAL.—Not later than one year after the date of the enactment of this Act [Oct. 28, 2009], the appropriate chief management officer for each defense business system modernization approved by the Defense Business Systems Management Committee before the date of the enactment of this Act that will have a total cost in excess of $100,000,000 shall review such defense business system modernization to determine whether or not appropriate business process reengineering efforts have been undertaken to ensure that—

''(A) the business process to be supported by such defense business system modernization will be as streamlined and efficient as practicable; and

''(B) the need to tailor commercial-off-the-shelf systems to meet unique requirements or incorporate unique interfaces has been eliminated or reduced to the maximum extent practicable.

''(2) ACTION ON FINDING OF LACK OF REENGINEERING EFFORTS.—If the appropriate chief management officer determines that appropriate business process reengineering efforts have not been undertaken with regard to a defense business system modernization as described in paragraph (1), that chief management officer—

''(A) shall develop a plan to undertake business process reengineering efforts with respect to the defense business system modernization; and

''(B) may direct that the defense business system modernization be restructured or terminated, if necessary to meet the requirements of paragraph (1).

''(3) DEFINITIONS.—In this subsection:

''(A) The term 'appropriate chief management officer', with respect to a defense business system modernization, has the meaning given that term in paragraph (2) of [former] subsection (f) of section 2222 of title 10, United States Code (as amended by subsection (a)(2) of this section).

''(B) The term 'defense business system modernization' has the meaning given that term in [former] subsection (j)(3) of section 2222 of title 10, United States Code.''

BUSINESS TRANSFORMATION INITIATIVES FOR THE MILITARY DEPARTMENTS

Pub. L. 110–417, [div. A], title IX, § 908, Oct. 14, 2008, 122 Stat. 4569, provided that:

''(a) IN GENERAL.—The Secretary of each military department shall, acting through the Chief Management Officer of such military department, carry out an initiative for the business transformation of such military department.

''(b) OBJECTIVES.—The objectives of the business transformation initiative of a military department under this section shall include, at a minimum, the following:

''(1) The development of a comprehensive business transformation plan, with measurable performance goals and objectives, to achieve an integrated management system for the business operations of the military department.

''(2) The development of a well-defined enterprise-wide business systems architecture and transition plan encompassing end-to-end business processes and capable of providing accurately and timely information in support of business decisions of the military department.

''(3) The implementation of the business transformation plan developed pursuant to paragraph (1) and the business systems architecture and transition plan developed pursuant to paragraph (2).

''(c) BUSINESS TRANSFORMATION OFFICES.—

''(1) ESTABLISHMENT.—Not later than 180 days after the date of the enactment of this Act [Oct. 14, 2008], the Secretary of each military department shall establish within such military department an office (to be known as the 'Office of Business Transformation' of such military department) to assist the Chief Management Officer of such military department in carrying out the initiative required by this section for such military department.

''(2) HEAD.—The Office of Business Transformation of a military department under this subsection shall be headed by a Director of Business Transformation, who shall be appointed by the Chief Management Officer of the military department, in consultation with the Director of the Business Transformation Agency of the Department of Defense, from among individuals with significant experience managing large-scale organizations or business transformation efforts.

''(3) SUPERVISION.—The Director of Business Transformation of a military department under paragraph (2) shall report directly to the Chief Management Officer of the military department, subject to policy guidance from the Director of the Business Transformation Agency of the Department of Defense.

''(4) AUTHORITY.—In carrying out the initiative required by this section for a military department, the Director of Business Transformation of the military department under paragraph (2) shall have the authority to require elements of the military department to carry out actions that are within the purpose and scope of the initiative.

''(d) RESPONSIBILITIES OF BUSINESS TRANSFORMATION OFFICES.—The Office of Business Transformation of a military department established pursuant to subsection (b) may be responsible for the following:

''(1) Transforming the budget, finance, accounting, and human resource operations of the military department in a manner that is consistent with the business transformation plan developed pursuant to subsection (b)(1).

''(2) Eliminating or replacing financial management systems of the military department that are inconsistent with the business systems architecture and transition plan developed pursuant to subsection (b)(2).

''(3) Ensuring that the business transformation plan and the business systems architecture and transition plan are implemented in a manner that is aggressive, realistic, and accurately measured.

''(4) Such other responsibilities as the Secretary of that military department determines are appropriate.

''(e) REQUIRED ELEMENTS.—In carrying out the initiative required by this section for a military department, the Chief Management Officer and the Director of Business Transformation of the military department shall ensure that each element of the initiative is consistent with—

''(1) the requirements of the Business Enterprise Architecture and Transition Plan developed by the Secretary of Defense pursuant to section 2222 of title 10, United States Code;

''(2) the Standard Financial Information Structure of the Department of Defense;

''(3) the Federal Financial Management Improvement Act of 1996 [section 101(f) [title VIII] of title I of div. A of Pub. L. 104–208, 31 U.S.C. 3512 note] (and the amendments made by that Act); and

''(4) other applicable requirements of law and regulation.

''(f) REPORTS ON IMPLEMENTATION.—

''(1) INITIAL REPORTS.—Not later than nine months after the date of the enactment of this Act [Oct. 14, 2008], the Chief Management Officer of each military department shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the actions taken, and on the actions planned to be taken, by such military de-

partment to implement the requirements of this section.

''(2) UPDATES.—Not later than March 1 of each of 2010, 2011, and 2012, the Chief Management Officer of each military department shall submit to the congressional defense committees a current update of the report submitted by such Chief Management Officer under paragraph (1).''

FINANCIAL MANAGEMENT TRANSFORMATION INITIATIVE FOR THE DEFENSE AGENCIES

Pub. L. 110–181, div. A, title X, § 1005, Jan. 28, 2008, 122 Stat. 301, provided that:

''(a) FINANCIAL MANAGEMENT TRANSFORMATION INITIATIVE.—

''(1) IN GENERAL.—The Director of the Business Transformation Agency of the Department of Defense shall carry out an initiative for financial management transformation in the Defense Agencies. The initiative shall be known as the 'Defense Agencies Initiative' (in this section referred to as the 'Initiative').

''(2) SCOPE OF AUTHORITY.—In carrying out the Initiative, the Director of the Business Transformation Agency may require the heads of the Defense Agencies to carry out actions that are within the purpose and scope of the Initiative.

''(b) PURPOSES.—The purposes of Initiative shall be as follows:

''(1) To eliminate or replace financial management systems of the Defense Agencies that are duplicative, redundant, or fail to comply with the standards set forth in subsection (d).

''(2) To transform the budget, finance, and accounting operations of the Defense Agencies to enable the Defense Agencies to achieve accurate and reliable financial information needed to support financial accountability and effective and efficient management decisions.

''(c) REQUIRED ELEMENTS.—The Initiative shall include, to the maximum extent practicable—

''(1) the utilization of commercial, off-the-shelf technologies and web-based solutions;

''(2) a standardized technical environment and an open and accessible architecture; and

''(3) the implementation of common business processes, shared services, and common data structures.

''(d) STANDARDS.—In carrying out the Initiative, the Director of the Business Transformation Agency shall ensure that the Initiative is consistent with—

''(1) the requirements of the Business Enterprise Architecture and Transition Plan developed pursuant to section 2222 of title 10, United States Code;

''(2) the Standard Financial Information Structure of the Department of Defense;

''(3) the Federal Financial Management Improvement Act of 1996 [section 101(f) [title VIII] of title I of div. A of Pub. L. 104–208, 31 U.S.C. 3512 note] (and the amendments made by that Act); and

''(4) other applicable requirements of law and regulation.

''(e) SCOPE.—The Initiative shall be designed to provide, at a minimum, capabilities in the major process areas for both general fund and working capital fund operations of the Defense Agencies as follows:

''(1) Budget formulation.

''(2) Budget to report, including general ledger and trial balance.

''(3) Procure to pay, including commitments, obligations, and accounts payable.

''(4) Order to fulfill, including billing and accounts receivable.

''(5) Cost accounting.

''(6) Acquire to retire (account management).

''(7) Time and attendance and employee entitlement.

''(8) Grants financial management.

''(f) CONSULTATION.—In carrying out subsections (d) and (e), the Director of the Business Transformation Agency shall consult with the Comptroller of the Department of Defense [now Under Secretary of Defense (Comptroller)] to ensure that any financial management systems developed for the Defense Agencies, and any changes to the budget, finance, and accounting operations of the Defense Agencies, are consistent with the financial standards and requirements of the Department of Defense.

''(g) PROGRAM CONTROL.—In carrying out the Initiative, the Director of the Business Transformation Agency shall establish—

''(1) a board (to be known as the 'Configuration Control Board') to manage scope and cost changes to the Initiative; and

''(2) a program management office (to be known as the 'Program Management Office') to control and enforce assumptions made in the acquisition plan, the cost estimate, and the system integration contract for the Initiative, as directed by the Configuration Control Board.

''(h) PLAN ON DEVELOPMENT AND IMPLEMENTATION OF INITIATIVE.—Not later than six months after the date of the enactment of this Act [Jan. 28, 2008], the Director of the Business Transformation Agency shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a plan for the development and implementation of the Initiative. The plan shall provide for the implementation of an initial capability under the Initiative as follows:

''(1) In at least one Defense Agency by not later than eight months after the date of the enactment of this Act.

''(2) In not less than five Defense Agencies by not later than 18 months after the date of the enactment of this Act.''

LIMITATION ON FINANCIAL MANAGEMENT IMPROVEMENT AND AUDIT INITIATIVES WITHIN THE DEPARTMENT OF DEFENSE

Pub. L. 109–364, div. A, title III, § 321, Oct. 17, 2006, 120 Stat. 2144, as amended by Pub. L. 111–383, div. A, title X, § 1075(g)(1), Jan. 7, 2011, 124 Stat. 4376, provided that:

''(a) LIMITATION.—The Secretary of Defense may not obligate or expend any funds for the purpose of any financial management improvement activity relating to the preparation, processing, or auditing of financial statements until the Secretary submits to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a written determination that each activity proposed to be funded is—

''(1) consistent with the financial management improvement plan of the Department of Defense required by section 376(a)(1) of the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109–163; 119 Stat. 3213); and

''(2) likely to improve internal controls or otherwise result in sustained improvements in the ability of the Department to produce timely, reliable, and complete financial management information.

''(b) EXCEPTION.—The limitation in subsection (a) shall not apply to an activity directed exclusively at assessing the adequacy of internal controls and remediating any inadequacy identified pursuant to such assessment.''

TIME-CERTAIN DEVELOPMENT FOR DEPARTMENT OF DEFENSE INFORMATION TECHNOLOGY BUSINESS SYSTEMS

Pub. L. 109–364, div. A, title VIII, § 811, Oct. 17, 2006, 120 Stat. 2316, which provided limitations for Milestone A approval and initial operational capability regarding certain Department of Defense information technology business systems, was repealed by Pub. L. 114–92, div. A, title VIII, § 883(c), Nov. 25, 2015, 129 Stat. 947.

§ 2223. Information technology: additional responsibilities of Chief Information Officers

(a) ADDITIONAL RESPONSIBILITIES OF CHIEF INFORMATION OFFICER OF DEPARTMENT OF DE-

FENSE.—In addition to the responsibilities provided for in chapter 35 of title 44 and in section 11315 of title 40, the Chief Information Officer of the Department of Defense shall—

(1) review and provide recommendations to the Secretary of Defense on Department of Defense budget requests for information technology and national security systems;

(2) ensure the interoperability of information technology and national security systems throughout the Department of Defense;

(3) ensure that information technology and national security systems standards that will apply throughout the Department of Defense are prescribed;

(4) provide for the elimination of duplicate information technology and national security systems within and between the military departments and Defense Agencies; and

(5) maintain a consolidated inventory of Department of Defense mission critical and mission essential information systems, identify interfaces between those systems and other information systems, and develop and maintain contingency plans for responding to a disruption in the operation of any of those information systems.

(b) ADDITIONAL RESPONSIBILITIES OF CHIEF INFORMATION OFFICER OF MILITARY DEPARTMENTS.—In addition to the responsibilities provided for in chapter 35 of title 44 and in section 11315 of title 40, the Chief Information Officer of a military department, with respect to the military department concerned, shall—

(1) review budget requests for all information technology and national security systems;

(2) ensure that information technology and national security systems are in compliance with standards of the Government and the Department of Defense;

(3) ensure that information technology and national security systems are interoperable with other relevant information technology and national security systems of the Government and the Department of Defense; and

(4) coordinate with the Joint Staff with respect to information technology and national security systems.

(c) DEFINITIONS.—In this section:

(1) The term ''Chief Information Officer'' means the senior official designated by the Secretary of Defense or a Secretary of a military department pursuant to section 3506 of title 44.

(2) The term ''information technology'' has the meaning given that term by section 11101 of title 40.

(3) The term ''national security system'' has the meaning given that term by section 3552(b)(6) of title 44.

(Added Pub. L. 105–261, div. A, title III, §331(a)(1), Oct. 17, 1998, 112 Stat. 1967; amended Pub. L. 106–398, §1 [[div. A], title VIII, §811(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–210; Pub. L. 107–217, §3(b)(1), Aug. 21, 2002, 116 Stat. 1295; Pub. L. 109–364, div. A, title IX, §906(b), Oct. 17, 2006, 120 Stat. 2354; Pub. L. 113–283, §2(e)(5)(B), Dec. 18, 2014, 128 Stat. 3087; Pub. L. 114–92, div. A, title X, §1081(a)(7), Nov. 25, 2015, 129 Stat. 1001.)

AMENDMENTS

2015—Subsec. (c)(3). Pub. L. 114–92 substituted ''section 3552(b)(6)'' for ''section 3552(b)(5)''.

2014—Subsec. (c)(3). Pub. L. 113–283 substituted ''section 3552(b)(5)'' for ''section 3542(b)(2)''.

2006—Subsec. (c)(3). Pub. L. 109–364 substituted ''section 3542(b)(2) of title 44'' for ''section 11103 of title 40''.

2002—Subsecs. (a), (b). Pub. L. 107–217, §3(b)(1)(A), (B), substituted ''section 11315 of title 40'' for ''section 5125 of the Clinger-Cohen Act of 1996 (40 U.S.C. 1425)'' in introductory provisions.

Subsec. (c)(2). Pub. L. 107–217, §3(b)(1)(C), substituted ''section 11101 of title 40'' for ''section 5002 of the Clinger-Cohen Act of 1996 (40 U.S.C. 1401)''.

Subsec. (c)(3). Pub. L. 107–217, §3(b)(1)(D), substituted ''section 11103 of title 40'' for ''section 5142 of the Clinger-Cohen Act of 1996 (40 U.S.C. 1452)''.

2000—Subsec. (a)(5). Pub. L. 106–398 added par. (5).

EFFECTIVE DATE

Pub. L. 105–261, div. A, title III, §331(b), Oct. 17, 1998, 112 Stat. 1968, provided that: ''Section 2223 of title 10, United States Code, as added by subsection (a), shall take effect on October 1, 1998.''

IMPROVED MANAGEMENT OF INFORMATION TECHNOLOGY AND CYBERSPACE INVESTMENTS

Pub. L. 116–92, div. A, title VIII, §892, Dec. 20, 2019, 133 Stat. 1539, provided that:

''(a) IMPROVED MANAGEMENT.—

''(1) IN GENERAL.—The Chief Information Officer of the Department of Defense shall work with the Chief Data Officer of the Department of Defense to optimize the Department's process for accounting for, managing, and reporting its information technology and cyberspace investments. The optimization should include alternative methods of presenting budget justification materials to the public and congressional staff to more accurately communicate when, how, and with what frequency capability is delivered to end users, in accordance with best practices for managing and reporting on information technology investments.

''(2) BRIEFING.—Not later than February 3, 2020, the Chief Information Officer of the Department of Defense shall brief the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] on the process optimization undertaken pursuant to paragraph (1), including any recommendations for legislation.

''(b) DELIVERY OF INFORMATION TECHNOLOGY BUDGET.—The Secretary of Defense shall submit to the congressional defense committees the Department of Defense budget request for information technology not later than 15 days after the submittal to Congress of the budget of the President for a fiscal year pursuant to section 1105 of title 31, United States Code.''

CHIEF DATA OFFICER RESPONSIBILITY FOR DOD DATA SETS

Pub. L. 116–92, div. A, title IX, §903(b), Dec. 20, 2019, 133 Stat. 1555, provided that:

''(1) IN GENERAL.—In addition to any other functions and responsibilities specified in section 3520(c) of title 44, United States, Code, the Chief Data Officer of the Department of Defense shall also be the official in the Department of Defense with principal responsibility for providing for the availability of common, usable, Defense-wide data sets.

''(2) ACCESS TO ALL DOD DATA.—In order to carry out the responsibility specified in paragraph (1), the Chief Data Officer shall have access to all Department of Defense data, including data in connection with warfighting missions and back-office data.

''(3) RESPONSIBLE TO CIO.—The Chief Data Officer shall report directly to the Chief Information Officer of the Department of Defense in the performance of the responsibility specified in paragraph (1).

''(4) REPORT.—Not later than December 1, 2019, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report setting forth such recommendations for legislative or administrative action as the Secretary considers appropriate to carry out this subsection.''

PILOT PROGRAM FOR OPEN SOURCE SOFTWARE

Pub. L. 115–91, div. A, title VIII, § 875, Dec. 12, 2017, 131 Stat. 1503, provided that:

''(a) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act [Dec. 12, 2017], the Secretary of Defense shall initiate for the Department of Defense the open source software pilot program established by the Office of Management and Budget Memorandum M-16-21 titled 'Federal Source Code Policy: Achieving Efficiency, Transparency, and Innovation through Reusable and Open Source Software' and dated August 8, 2016.

''(b) REPORT TO CONGRESS.—Not later than 60 days after the date of the enactment of this Act, the Secretary of Defense shall provide a report to Congress with details of the plan of the Department of Defense to implement the pilot program required by subsection (a). Such plan shall include identifying candidate software programs, selection criteria, intellectual property and licensing issues, and other matters determined by the Secretary.

''(c) COMPTROLLER GENERAL REPORT.—Not later than June 1, 2019, the Comptroller General of the United States shall provide a report to Congress on the implementation of the pilot program required by subsection (a) by the Secretary of Defense. The report shall address, at a minimum, the compliance of the Secretary with the requirements of the Office of Management and Budget Memorandum M-16-21, the views of various software and information technology stakeholders in the Department of Defense, and any other matters determined by the Comptroller General.''

PILOT PROGRAM ON EVALUATION OF COMMERCIAL INFORMATION TECHNOLOGY

Pub. L. 114–328, div. A, title II, § 232, Dec. 23, 2016, 130 Stat. 2061, provided that:

''(a) PILOT PROGRAM.—The Director of the Defense Information Systems Agency may carry out a pilot program to evaluate commercially available information technology tools to better understand the potential impact of such tools on networks and computing environments of the Department of Defense.

''(b) ACTIVITIES.—Activities under the pilot program may include the following:

''(1) Prototyping, experimentation, operational demonstration, military user assessments, and other means of obtaining quantitative and qualitative feedback on the commercial information technology products.

''(2) Engagement with the commercial information technology industry to—

''(A) forecast military requirements and technology needs; and

''(B) support the development of market strategies and program requirements before finalizing acquisition decisions and strategies.

''(3) Assessment of novel or innovative commercial technology for use by the Department of Defense.

''(4) Assessment of novel or innovative contracting mechanisms to speed delivery of capabilities to the Armed Forces.

''(5) Solicitation of operational user input to shape future information technology requirements of the Department of Defense.

''(c) LIMITATION ON AVAILABILITY OF FUNDS.—Of the amounts authorized to be appropriated for research, development, test, and evaluation, Defense-wide, for each of fiscal years 2017 through 2022, not more than $15,000,000 may be expended on the pilot program in any such fiscal year.''

ADDITIONAL REQUIREMENTS RELATING TO THE SOFTWARE LICENSES OF THE DEPARTMENT OF DEFENSE

Pub. L. 113–66, div. A, title IX, § 935, Dec. 26, 2013, 127 Stat. 833, provided that:

''(a) UPDATED PLAN.—

''(1) UPDATE.—The Chief Information Officer of the Department of the Defense shall, in consultation with the chief information officers of the military departments and the Defense Agencies, update the plan for the inventory of selected software licenses of the Department of Defense required under section 937 of the National Defense Authorization Act for 2013 [probably means the National Defense Authorization Act for Fiscal Year 2013] (Public Law 112–239; 10 U.S.C. 2223 note) to include a plan for the inventory of all software licenses of the Department of Defense for which a military department spends more than $5,000,000 annually on any individual title, including a comparison of licenses purchased with licenses in use.

''(2) ELEMENTS.—The update required under paragraph (1) shall—

''(A) include plans for implementing an automated solution capable of reporting the software license compliance position of the Department and providing a verified audit trail, or an audit trail otherwise produced and verified by an independent third party;

''(B) include details on the process and business systems necessary to regularly perform reviews, a procedure for validating and reporting deregistering and registering new software, and a mechanism and plan to relay that information to the appropriate chief information officer; and

''(C) a proposed timeline for implementation of the updated plan in accordance with paragraph (3).

''(3) SUBMISSION.—Not later than September 30, 2015, the Chief Information Officer of the Department of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] the updated plan required under paragraph (1).

''(b) PERFORMANCE PLAN.—If the Chief Information Officer of the Department of Defense determines through the implementation of the process and business systems in the updated plan required by subsection (a) that the number of software licenses of the Department for an individual title for which a military department spends greater than $5,000,000 annually exceeds the needs of the Department for such software licenses, or the inventory discloses that there is a discrepancy between the number of software licenses purchased and those in actual use, the Chief Information Officer of the Department of Defense shall implement a plan to bring the number of such software licenses into balance with the needs of the Department and the terms of any relevant contract.''

COLLECTION AND ANALYSIS OF NETWORK FLOW DATA

Pub. L. 112–239, div. A, title IX, § 935, Jan. 2, 2013, 126 Stat. 1886, provided that:

''(a) DEVELOPMENT OF TECHNOLOGIES.—The Chief Information Officer of the Department of Defense may, in coordination with the Under Secretary of Defense for Policy and the Under Secretary of Defense for Intelligence [now Under Secretary of Defense for Intelligence and Security] and acting through the Director of the Defense Information Systems Agency, use the available funding and research activities and capabilities of the Community Data Center of the Defense Information Systems Agency to develop and demonstrate collection, processing, and storage technologies for network flow data that—

''(1) are potentially scalable to the volume used by Tier 1 Internet Service Providers to collect and analyze the flow data across their networks;

''(2) will substantially reduce the cost and complexity of capturing and analyzing high volumes of flow data; and

''(3) support the capability—

''(A) to detect and identify cyber security threats, networks of compromised computers, and command and control sites used for managing illicit cyber operations and receiving information from compromised computers;

''(B) to track illicit cyber operations for attribution of the source; and

''(C) to provide early warning and attack assessment of offensive cyber operations.

''(b) COORDINATION.—Any research and development required in the development of the technologies described in subsection (a) shall be conducted in cooperation with the heads of other appropriate departments and agencies of the Federal Government and, whenever feasible, Tier 1 Internet Service Providers and other managed security service providers.''

COMPETITION FOR LARGE-SCALE SOFTWARE DATABASE AND DATA ANALYSIS TOOLS

Pub. L. 112–239, div. A, title IX, § 936, Jan. 2, 2013, 126 Stat. 1886, provided that:

''(a) ANALYSIS.—

''(1) REQUIREMENT.—The Secretary of Defense, acting through the Chief Information Officer of the Department of Defense, shall conduct an analysis of large-scale software database tools and large-scale software data analysis tools that could be used to meet current and future Department of Defense needs for large-scale data analytics.

''(2) ELEMENTS.—The analysis required under paragraph (1) shall include—

''(A) an analysis of the technical requirements and needs for large-scale software database and data analysis tools, including prioritization of key technical features needed by the Department of Defense; and

''(B) an assessment of the available sources from Government and commercial sources to meet such needs, including an assessment by the Deputy Assistant Secretary of Defense for Manufacturing and Industrial Base Policy to ensure sufficiency and diversity of potential commercial sources.

''(3) SUBMISSION.—Not later than 180 days after the date of the enactment of this Act [Jan. 2, 2013], the Chief Information Officer shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] the results of the analysis required under paragraph (1).

''(b) COMPETITION REQUIRED.—

''(1) IN GENERAL.—If, following the analysis required under subsection (a), the Chief Information Officer of the Department of Defense identifies needs for software systems or large-scale software database or data analysis tools, the Department shall acquire such systems or such tools based on market research and using competitive procedures in accordance with applicable law and the Defense Federal Acquisition Regulation Supplement.

''(2) NOTIFICATION.—If the Chief Information Officer elects to acquire large-scale software database or data analysis tools using procedures other than competitive procedures, the Chief Information Officer and the Under Secretary of Defense for Acquisition, Technology, and Logistics shall submit a written notification to the congressional defense committees on a quarterly basis until September 30, 2018, that describes the acquisition involved, the date the decision was made, and the rationale for not using competitive procedures.''

SOFTWARE LICENSES OF THE DEPARTMENT OF DEFENSE

Pub. L. 112–239, div. A, title IX, § 937, Jan. 2, 2013, 126 Stat. 1887, provided that:

''(a) PLAN FOR INVENTORY OF LICENSES.—

''(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act [Jan. 2, 2013], the Chief Information Officer of the Department of the [sic] Defense shall, in consultation with the chief information officers of the military departments and the Defense Agencies, issue a plan for the inventory of selected software licenses of the Department of Defense, including a comparison of licenses purchased with licenses installed.

''(2) SELECTED SOFTWARE LICENSES.—The Chief Information Officer shall determine the software licenses to be treated as selected software licenses of the Department for purposes of this section. The licenses shall be determined so as to maximize the return on investment in the inventory conducted pursuant to the plan required by paragraph (1).

''(3) PLAN ELEMENTS.—The plan under paragraph (1) shall include the following:

''(A) An identification and explanation of the software licenses determined by the Chief Information Officer under paragraph (2) to be selected software licenses for purposes of this section, and a summary outline of the software licenses determined not to be selected software licenses for such purposes.

''(B) Means to assess the needs of the Department and the components of the Department for selected software licenses during the two fiscal years following the date of the issuance of the plan.

''(C) Means by which the Department can achieve the greatest possible economies of scale and cost savings in the procurement, use, and optimization of selected software licenses.

''(b) PERFORMANCE PLAN.—If the Chief Information Officer determines through the inventory conducted pursuant to the plan required by subsection (a) that the number of selected software licenses of the Department and the components of the Department exceeds the needs of the Department for such software licenses, the Secretary of Defense shall implement a plan to bring the number of such software licenses into balance with the needs of the Department.''

OZONE WIDGET FRAMEWORK

Pub. L. 112–81, div. A, title IX, § 924, Dec. 31, 2011, 125 Stat. 1539, provided that:

''(a) MECHANISM FOR INTERNET PUBLICATION OF INFORMATION FOR DEVELOPMENT OF ANALYSIS TOOLS AND APPLICATIONS.—The Chief Information Officer of the Department of Defense, acting through the Director of the Defense Information Systems Agency, shall implement a mechanism to publish and maintain on the public Internet the application programming interface specifications, a developer's toolkit, source code, and such other information on, and resources for, the Ozone Widget Framework (OWF) as the Chief Information Officer considers necessary to permit individuals and companies to develop, integrate, and test analysis tools and applications for use by the Department of Defense and the elements of the intelligence community.

''(b) PROCESS FOR VOLUNTARY CONTRIBUTION OF IMPROVEMENTS BY PRIVATE SECTOR.—In addition to the requirement under subsection (a), the Chief Information Officer shall also establish a process by which private individuals and companies may voluntarily contribute the following:

''(1) Improvements to the source code and documentation for the Ozone Widget Framework.

''(2) Alternative or compatible implementations of the published application programming interface specifications for the Framework.

''(c) ENCOURAGEMENT OF USE AND DEVELOPMENT.—The Chief Information Officer shall, whenever practicable, encourage and foster the use, support, development, and enhancement of the Ozone Widget Framework by the computer industry and commercial information technology vendors, including the development of tools that are compatible with the Framework.''

CONTINUOUS MONITORING OF DEPARTMENT OF DEFENSE INFORMATION SYSTEMS FOR CYBERSECURITY

Pub. L. 111–383, div. A, title IX, § 931, Jan. 7, 2011, 124 Stat. 4334, provided that:

''(a) IN GENERAL.—The Secretary of Defense shall direct the Chief Information Officer of the Department of Defense to work, in coordination with the Chief Information Officers of the military departments and the Defense Agencies and with senior cybersecurity and information assurance officials within the Department of Defense and otherwise within the Federal Government, to achieve, to the extent practicable, the following:

''(1) The continuous prioritization of the policies, principles, standards, and guidelines developed under section 20 of the National Institute of Standards and Technology Act (15 U.S.C. 278g–3) with agencies and offices operating or exercising control of national security systems (including the National Security Agency) based upon the evolving threat of information security incidents with respect to national security systems, the vulnerability of such systems to such incidents, and the consequences of information security incidents involving such systems.

''(2) The automation of continuous monitoring of the effectiveness of the information security policies, procedures, and practices within the information infrastructure of the Department of Defense, and the compliance of that infrastructure with such policies, procedures, and practices, including automation of—

''(A) management, operational, and technical controls of every information system identified in the inventory required under section 3505(c) of title 44, United States Code; and

''(B) management, operational, and technical controls relied on for evaluations under [former] section 3545 of title 44, United States Code [see now 44 U.S.C. 3555].

''(b) DEFINITIONS.—In this section:

''(1) The term 'information security incident' means an occurrence that—

''(A) actually or potentially jeopardizes the confidentiality, integrity, or availability of an information system or the information such system processes, stores, or transmits; or

''(B) constitutes a violation or imminent threat of violation of security policies, security procedures, or acceptable use policies with respect to an information system.

''(2) The term 'information infrastructure' means the underlying framework, equipment, and software that an information system and related assets rely on to process, transmit, receive, or store information electronically.

''(3) The term 'national security system' has the meaning given that term in [former] section 3542(b)(2) of title 44, United States Code [see now 44 U.S.C. 3552(b)(6)].''

§ 2223a. Information technology acquisition planning and oversight requirements

(a) ESTABLISHMENT OF PROGRAM.—The Secretary of Defense shall establish a program to improve the planning and oversight processes for the acquisition of major automated information systems by the Department of Defense.

(b) PROGRAM COMPONENTS.—The program established under subsection (a) shall include—

(1) a documented process for information technology acquisition planning, requirements development and management, project management and oversight, earned value management, and risk management;

(2) the development of appropriate metrics that can be implemented and monitored on a real-time basis for performance measurement of—

(A) processes and development status of investments in major automated information system programs;

(B) continuous process improvement of such programs; and

(C) achievement of program and investment outcomes;

(3) a process to ensure that key program personnel have an appropriate level of experience, training, and education in the planning, acquisition, execution, management, and oversight of information technology systems;

(4) a process to ensure sufficient resources and infrastructure capacity for test and evaluation of information technology systems;

(5) a process to ensure that military departments and Defense Agencies adhere to established processes and requirements relating to the planning, acquisition, execution, management, and oversight of information technology programs and developments; and

(6) a process under which an appropriate Department of Defense official may intervene or terminate the funding of an information technology investment if the investment is at risk of not achieving major project milestones.

(Added Pub. L. 111–383, div. A, title VIII, § 805(a)(1), Jan. 7, 2011, 124 Stat. 4259.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1857(b)(1), Jan. 1, 2021, 134 Stat. 4151, 4276, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 345 of this title, as amended by section 1857(a) of Pub. L. 116–283, inserted after the table of sections, and redesignated as section 4571 of this title. See Effective Date of 2021 Amendment note below.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

ESTABLISHMENT OF SECURE NEXT-GENERATION WIRELESS NETWORK (5G) INFRASTRUCTURE FOR THE NEVADA TEST AND TRAINING RANGE AND BASE INFRASTRUCTURE

Pub. L. 116–92, div. A, title II, § 226, Dec. 20, 2019, 133 Stat. 1269, provided that:

''(a) ESTABLISHMENT REQUIRED.—Not later than one year after the date of the enactment of this Act [Dec. 20, 2019], the Secretary of Defense shall establish secure fifth-generation wireless network components and capabilities at no fewer than two Department of Defense installations in accordance with this section.

''(b) INSTALLATIONS.—

''(1) LOCATIONS.—The Secretary shall establish components and capabilities under subsection (a) at the following:

''(A) The Nevada Test and Training Range, which shall serve as a Major Range and Test Facility Base (MRTFB) for fifth-generation wireless networking.

''(B) Such Department installations or other installations as the Secretary considers appropriate for the purpose set forth in paragraph (2).

''(2) PURPOSE.—The purpose of the establishment of components and capabilities under subsection (a) at the locations described in paragraph (1) of this subsection is to demonstrate the following:

''(A) The potential military utility of high bandwidth, scalable, and low latency fifth-generation wireless networking technology.

''(B) Advanced security technology that is applicable to fifth-generation networks as well as legacy Department command and control networks.

''(C) Secure interoperability with fixed and wireless systems (legacy and future systems).

''(D) Enhancements such as spectrum and waveform diversity, frequency hopping and spreading, and beam forming for military requirements.

''(E) Technology for dynamic network slicing for specific use cases and applications requiring varying levels of latency, scale, and throughput.

''(F) Technology for dynamic spectrum sharing and network isolation.

''(G) Base infrastructure installation of high bandwidth, scalable, and low latency fifth-generation wireless networking technology.

''(H) Applications for secure fifth-generation wireless network capabilities for the Department, such as the following:

''(i) Interactive augmented reality or synthetic training environments.

''(ii) Internet of things devices.

''(iii) Autonomous systems.

''(iv) Advanced manufacturing through the following:

''(I) Department-sponsored centers for manufacturing innovation (as defined in section 34(c) of the National Institute of Standards and Technology Act (15 U.S.C. 278s(c))).

''(II) Department research and development organizations.

''(III) Manufacturers in the defense industrial base of the United States.''

DIGITAL ENGINEERING CAPABILITY TO AUTOMATE TESTING AND EVALUATION

Pub. L. 116–92, div. A, title II, § 231, Dec. 20, 2019, 133 Stat. 1274, provided that:

''(a) DIGITAL ENGINEERING CAPABILITY.—

''(1) IN GENERAL.—The Secretary of Defense shall establish a digital engineering capability to be used—

''(A) for the development and deployment of digital engineering models for use in the defense acquisition process; and

''(B) to provide testing infrastructure and software to support automated approaches for testing, evaluation, and deployment throughout the defense acquisition process.

''(2) REQUIREMENTS.—The capability developed under subsection (a) shall meet the following requirements:

''(A) The capability will be accessible to, and useable by, individuals throughout the Department of Defense who have responsibilities relating to capability design, development, testing, evaluation, and operation.

''(B) The capability will provide for the development, validation, use, curation, and maintenance of technically accurate digital systems, models of systems, subsystems, and their components, at the appropriate level of fidelity to ensure that test activities adequately simulate the environment in which a system will be deployed.

''(C) The capability will include software to automate testing throughout the program life cycle, including to satisfy developmental test requirements and operational test requirements. Such software may be developed in accordance with the authorities provided under section 800 [of Pub. L. 116–92, set out as a note below], and shall support—

''(i) security testing that includes vulnerability scanning and penetration testing performed by individuals, including threat-based red team exploitations and assessments with zero-trust assumptions; and

''(ii) high-confidence distribution of software to the field on a time-bound, repeatable, frequent, and iterative basis.

''(b) DEMONSTRATION ACTIVITIES.—

''(1) IN GENERAL.—In developing the capability required under subsection (a), the Secretary of Defense shall carry out activities to demonstrate digital engineering approaches to automated testing that—

''(A) enable continuous software development and delivery;

''(B) satisfy developmental test requirements for the software-intensive programs of the Department of Defense; and

''(C) satisfy operational test and evaluation requirements for such programs.

''(2) PROGRAM SELECTION.—Not later than 180 days after the date of the enactment of this Act [Dec. 20, 2019], the Secretary of Defense shall assess and select not fewer than four and not more than ten programs of the Department of Defense to participate in the demonstration activities under paragraph (1), including—

''(A) at least one program participating in the pilot program authorized under section 873 of the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115–91; 10 U.S.C. 2223a note);

''(B) at least one program participating in the pilot program authorized under section 874 of such Act (Public Law 115–91; 10 U.S.C. 2302 note);

''(C) at least one major defense acquisition program (as defined in section 2430 of title 10, United States Code);

''(D) at least one command and control program;

''(E) at least one defense business system (as defined in section 2222(i) of title 10, United States Code); and

''(F) at least one program from each military service.

''(3) ADDITIONAL REQUIREMENTS.—As part of the demonstration activities under paragraph (1), the Secretary shall—

''(A) conduct a comparative analysis that assesses the risks and benefits of the digital engineering supported automated testing approaches of the programs participating in the demonstration activities relative to traditional testing approaches that are not supported by digital engineering;

''(B) ensure that the intellectual property strategy for each of the programs participating in the demonstration activities is best aligned to meet the goals of the program; and

''(C) develop a workforce and infrastructure plan to support any new policies and guidance implemented in connection with the demonstration activities, including any policies and guidance implemented after the completion of such activities.

''(c) POLICIES AND GUIDANCE REQUIRED.—Not later than one year after the date of the enactment of this Act [Dec. 20, 2019], based on the results of the demonstration activities carried out under subsection (b), the Secretary of Defense shall issue or modify policies and guidance to—

''(1) promote the use of digital engineering capabilities for development and for automated testing; and

''(2) address roles, responsibilities, and procedures relating to such capabilities.

''(d) STEERING COMMITTEE.—

''(1) IN GENERAL.—The Secretary of Defense shall establish a steering committee to assist the Secretary in carrying out subsections (a) through (c).

''(2) MEMBERSHIP.—The steering committee shall be composed of the following members or their designees:

''(A) The Under Secretary of Defense for Research and Engineering.

''(B) The Under Secretary of Defense for Acquisition and Sustainment.

''(C) The Chief Information Officer.

''(D) The Director of Operational Test and Evaluation.

''(E) The Director of Cost Assessment and Program Evaluation.

''(F) The Service Acquisition Executives.

''(G) The Service testing commands.

''(H) The Director of the Defense Digital Service.

''(e) REPORTS REQUIRED.—

''(1) IMPLEMENTATION.—Not later than March 15, 2020, the Secretary of Defense shall submit to the

congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the progress of the Secretary in implementing subsections (a) through (c). The report shall include an explanation of how the results of the demonstration activities carried out under subsection (b) will be incorporated into the policy and guidance required under subsection (c), particularly the policy and guidance of the members of the steering committee established under subsection (d).

''(2) LEGISLATIVE RECOMMENDATIONS.—Not later than October 15, 2020, the Secretary of Defense shall provide to the congressional defense committees a briefing that identifies any changes to existing law that may be necessary to facilitate the implementation of subsections (a) through (c).

''(f) INDEPENDENT ASSESSMENT.—

''(1) IN GENERAL.—Not later than March 15, 2021, the Defense Innovation Board and the Defense Science Board shall jointly complete an independent assessment of the progress of the Secretary in implementing subsections (a) through (c). The Secretary of Defense shall ensure that the Defense Innovation Board and the Defense Science Board have access to the resources, data, and information necessary to complete the assessment.

''(2) INFORMATION TO CONGRESS.—Not later than 30 days after the date on which the assessment under paragraph (1) is completed, the Defense Innovation Board and the Defense Science Board shall jointly provide to the congressional defense committees—

''(A) a report summarizing the assessment; and

''(B) a briefing on the findings of the assessment.''

STRATEGY AND IMPLEMENTATION PLAN FOR FIFTH GENERATION INFORMATION AND COMMUNICATIONS TECHNOLOGIES

Pub. L. 116–92, div. A, title II, § 254, Dec. 20, 2019, 133 Stat. 1287, provided that:

''(a) IN GENERAL.—Not later than 270 days after the date of the enactment of this Act [Dec. 20, 2019], the Secretary of Defense shall develop—

''(1) a strategy for harnessing fifth generation (commonly known as '5G') information and communications technologies to enhance military capabilities, maintain a technological advantage on the battlefield, and accelerate the deployment of new commercial products and services enabled by 5G networks throughout the Department of Defense; and

''(2) a plan for implementing the strategy developed under paragraph (1).

''(b) ELEMENTS.—The strategy required under subsection (a) shall include the following elements:

''(1) Adoption and use of secure fourth generation (commonly known as '4G') communications technologies and the transition to advanced and secure 5G communications technologies for military applications and for military infrastructure.

''(2) Science, technology, research, and development efforts to facilitate the advancement and adoption of 5G technology and new uses of 5G systems, subsystems, and components, including—

''(A) 5G testbeds for developing military and dual-use applications; and

''(B) spectrum-sharing technologies and frameworks.

''(3) Strengthening engagement and outreach with industry, academia, international partners, and other departments and agencies of the Federal Government on issues relating to 5G technology and the deployment of such technology, including development of a common industrial base for secure microelectronics.

''(4) Defense industrial base supply chain risk, management, and opportunities.

''(5) Preserving the ability of the Joint Force to achieve objectives in a contested and congested spectrum environment.

''(6) Strengthening the ability of the Joint Force to conduct full spectrum operations that enhance the military advantages of the United States.

''(7) Securing the information technology and weapon systems of the Department against malicious activity.

''(8) Advancing the deployment of secure 5G networks nationwide.

''(9) Such other matters as the Secretary of Defense determines to be relevant.

''(c) CONSULTATION.—In developing the strategy and implementation plan required under subsection (a), the Secretary of Defense shall consult with the following:

''(1) The Chief Information Officer of the Department of Defense.

''(2) The Under Secretary of Defense for Research and Engineering.

''(3) The Under Secretary of Defense for Acquisition and Sustainment.

''(4) The Under Secretary of Defense for Intelligence [now Under Secretary of Defense for Intelligence and Security].

''(5) Service Acquisition Executives of each military service.

''(d) PERIODIC BRIEFINGS.—

''(1) IN GENERAL.—Not later than March 15, 2020, and not less frequently than once every three months thereafter through March 15, 2022, the Secretary of Defense shall provide to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a briefing on the development and implementation of the strategy required under subsection (a), including an explanation of how the Department of Defense—

''(A) is using secure 5G wireless network technology;

''(B) is reshaping the Department's policy for producing and procuring secure microelectronics; and

''(C) is working in the interagency and internationally to develop common policies and approaches.

''(2) ELEMENTS.—Each briefing under paragraph (1) shall include information on—

''(A) efforts to ensure a secure supply chain for 5G wireless network equipment and microelectronics;

''(B) the continued availability of electromagnetic spectrum for warfighting needs;

''(C) planned implementation of 5G wireless network infrastructure in warfighting networks, base infrastructure, defense-related manufacturing, and logistics;

''(D) steps taken to work with allied and partner countries to protect critical networks and supply chains; and

''(E) such other topics as the Secretary of Defense considers relevant.''

DEPARTMENT-WIDE SOFTWARE SCIENCE AND TECHNOLOGY STRATEGY

Pub. L. 116–92, div. A, title II, § 255, Dec. 20, 2019, 133 Stat. 1288, provided that:

''(a) DESIGNATION OF SENIOR OFFICIAL.—Not later than 180 days after the date of the enactment of this Act [Dec. 20, 2019], the Secretary of Defense, acting through the Under Secretary of Defense for Research and Engineering and in consultation with the Under Secretary of Defense for Acquisition and Sustainment and appropriate public and private sector organizations, shall designate a single official or existing entity within the Department of Defense as the official or entity (as the case may be) with principal responsibility for guiding the development of science and technology activities related to next generation software and software reliant systems for the Department, including—

''(1) research and development activities on new technologies for the creation of highly secure, scalable, reliable, time-sensitive, and mission-critical software;

''(2) research and development activities on new approaches and tools to software development and deployment, testing, integration, and next generation software management tools to support the rapid insertion of such software into defense systems;

''(3) foundational scientific research activities to support advances in software;

''(4) technical workforce and infrastructure to support defense science and technology and software needs and mission requirements;

''(5) providing capabilities, including technologies, systems, and technical expertise to support improved acquisition of software reliant business and warfighting systems; and

''(6) providing capabilities, including technologies, systems, and technical expertise to support defense operational missions which are reliant on software.

''(b) DEVELOPMENT OF STRATEGY.—The official or entity designated under subsection (a) shall develop a Department-wide strategy for the research and development of next generation software and software reliant systems for the Department of Defense, including strategies for—

''(1) types of software-related activities within the science and technology portfolio of the Department;

''(2) investment in new approaches to software development and deployment, and next generation management tools;

''(3) ongoing research and other support of academic, commercial, and development community efforts to innovate the software development, engineering, and testing process, automated testing, assurance and certification for safety and mission critical systems, large scale deployment, and sustainment;

''(4) to the extent practicable, implementing or continuing the implementation of the recommendations set forth in—

''(A) the final report of the Defense Innovation Board submitted to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] under section 872 of the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115–91; 131 Stat. 1497);

''(B) the final report of the Defense Science Board Task Force on the Design and Acquisition of Software for Defense Systems described in section 868 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232; 10 U.S.C. 2223 [2223a] note); and

''(C) other relevant studies on software research, development, and acquisition activities of the Department of Defense.

''(5) supporting the acquisition, technology development, testing, assurance, and certification and operational needs of the Department through the development of capabilities, including personnel and research and production infrastructure, and programs in—

''(A) the science and technology reinvention laboratories (as designated under section 1105 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84; 10 U.S.C. 2358 note));

''(B) the facilities of the Major Range and Test Facility Base (as defined in section 2358a(f)(3) of title 10, United States Code);

''(C) the Defense Advanced Research Projects Agency; and

''(D) universities, federally funded research and development centers, and service organizations with activities in software engineering; and

''(6) the transition of relevant capabilities and technologies to relevant programs of the Department, including software-reliant cyber-physical systems, tactical systems, enterprise systems, and business systems.

''(c) SUBMITTAL TO CONGRESS.—Not later than one year after the date of the enactment of this Act [Dec. 20, 2019], the official or entity designated under subsection (a) shall submit to the congressional defense committees the strategy developed under subsection (b).''

AUTHORITY FOR CONTINUOUS INTEGRATION AND DELIVERY OF SOFTWARE APPLICATIONS AND UPGRADES TO EMBEDDED SYSTEMS

Pub. L. 116–92, div. A, title VIII, § 800, Dec. 20, 2019, 133 Stat. 1478, provided that:

''(a) SOFTWARE ACQUISITION AND DEVELOPMENT PATHWAYS.—The Secretary of Defense shall establish pathways as described under subsection (b) to provide for the efficient and effective acquisition, development, integration, and timely delivery of secure software. Such a pathway shall include the following:

''(1) USE OF PROVEN TECHNOLOGIES AND SOLUTIONS.—A pathway established under this section shall provide for the use of proven technologies and solutions to continuously engineer and deliver capabilities in software.

''(2) USE OF AUTHORITY.—In using the authority under this section, the Secretary shall consider how such use will—

''(A) initiate the engineering of new software capabilities quickly;

''(B) demonstrate the viability and effectiveness of such capabilities for operational use not later than one year after the date on which funds are first obligated to acquire or develop software; and

''(C) allow for the continuous updating and delivery of new capabilities not less frequently than annually to iteratively meet a requirement.

''(3) TREATMENT NOT AS MAJOR DEFENSE ACQUISITION PROGRAM.—Software acquired or developed using the authority under this section shall not be treated as a major defense acquisition program for purposes of section 2430 of title 10, United States Code, or Department of Defense Directive 5000.01 without the specific direction of the Under Secretary of Defense for Acquisition and Sustainment or a Senior Acquisition Executive.

''(4) RISK-BASED APPROACH.—The Secretary of Defense shall use a risk-based approach for the consideration of innovative technologies and new capabilities for software to be acquired or developed under this authority to meet needs communicated by the Joint Chiefs of Staff and the combatant commanders.

''(b) PATHWAYS.—The Secretary of Defense may establish as many pathways as the Secretary determines appropriate and shall establish the following pathways:

''(1) APPLICATIONS.—The applications software acquisition pathway shall provide for the use of rapid development and implementation of applications and other software or software improvements operated by the Department of Defense, which may include applications running on commercial commodity hardware (including modified hardware) and commercially available cloud computing platforms.

''(2) EMBEDDED SYSTEMS.—The embedded systems software acquisition pathway shall provide for the rapid development and insertion of upgrades and improvements for software embedded in weapon systems and other military-unique hardware systems.

''(c) EXPEDITED PROCESS.—

''(1) IN GENERAL.—A pathway established under subsection (a) shall provide for—

''(A) a streamlined and coordinated requirements, budget, and acquisition process to support rapid fielding of software applications and of software upgrades to embedded systems for operational use in a period of not more than one year from the time that the process is initiated;

''(B) the collection of data on software fielded; and

''(C) continuous engagement with the users of software to support engineering activities, and to support delivery of software for operational use in periods of not more than one year.

''(2) EXPEDITED SOFTWARE REQUIREMENTS PROCESS.—

''(A) INAPPLICABILITY OF JOINT CAPABILITIES INTEGRATION AND DEVELOPMENT SYSTEM (JCIDS) MAN-

UAL.—Software acquisition or development conducted under the authority of this section shall not be subject to the Joint Capabilities Integration and Development System Manual, except pursuant to a modified process specifically provided for the acquisition or development of software by the Vice Chairman of the Joint Chiefs of Staff, in consultation with Under Secretary of Defense for Acquisition and Sustainment and each service acquisition executive (as defined in section 101(a)(10) of title 10, United States Code).

''(B) INAPPLICABILITY OF DEFENSE ACQUISITION SYSTEM DIRECTIVE.—Software acquisition or development conducted under the authority of this section shall not be subject to Department of Defense Directive 5000.01, except when specifically provided for the acquisition or development of software by the Under Secretary of Defense for Acquisition and Sustainment, in consultation with the Vice Chairman of the Joint Chiefs of Staff and each service acquisition executive.

''(d) ELEMENTS.—In implementing a pathway established under the authority of this section, the Secretary shall tailor requirements relating to—

''(1) iterative development of requirements for software to be acquired or developed under the authority of this section through engagement with the user community and through the use of operational user feedback, in order to continuously define and update priorities for such requirements;

''(2) early identification of the warfighter or user need, including the rationale for how software capabilities will support increased lethality and efficiency, and identification of a relevant user community;

''(3) initial contract requirements and format, including the use of summary-level lists of problems and shortcomings in existing software and desired features or capabilities of new or upgraded software;

''(4) continuous refinement and prioritization of contract requirements through use of evolutionary processes, informed by continuous engagement with operational users throughout the development and implementation period;

''(5) continuous consideration of issues related to lifecycle costs, technical data rights, and systems interoperability;

''(6) planning for support of software capabilities in cases where the software developer may stop supporting the software;

''(7) rapid contracting procedures, including expedited timeframes for making awards, selecting contract types, defining teaming arrangements, and defining options;

''(8) program execution processes, including supporting development and test infrastructure, automation and tools, digital engineering, data collection and sharing with Department of Defense oversight organizations and with Congress, the role of developmental and operational testing activities, key decision making and oversight events, and supporting processes and activities (such as independent costing activity, operational demonstration, and performance metrics);

''(9) assurances that cybersecurity metrics of the software to be acquired or developed, such as metrics relating to the density of vulnerabilities within the code of such software, the time from vulnerability identification to patch availability, the existence of common weaknesses within such code, and other cybersecurity metrics based on widely-recognized standards and industry best practices, are generated and made available to the Department of Defense and the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives];

''(10) administrative procedures, including procedures related to who may initiate and approve an acquisition under this authority, the roles and responsibilities of the implementing project or product teams and supporting activities, team selection and staffing process, governance and oversight roles and responsibilities, and appropriate independent technology assessments, testing, and cost estimation (including relevant thresholds or designation criteria);

''(11) mechanisms and waivers designed to ensure flexibility in the implementation of a pathway under this section, including the use of other transaction authority, broad agency announcements, and other procedures; and

''(12) mechanisms the Secretary will use for appropriate reporting to Congress on the use of this authority, including notice of initiation of the use of a pathway and data regarding individual programs or acquisition activities, how acquisition activities are reflected in budget justification materials or requests to reprogram appropriated funds, and compliance with other reporting requirements.

''(e) GUIDANCE REQUIRED.—

''(1) IN GENERAL.—Not later than 90 days after the date of the enactment of this Act [Dec. 20, 2019], the Secretary of Defense shall issue initial guidance to implement the requirements of this section.

''(2) LIMITATION.—If the Secretary of Defense has not issued final guidance to implement the requirements of this section before October 1, 2021, the Secretary may not use the authority under this section—

''(A) to establish a new pathway to acquire or develop software; or

''(B) to continue activities to acquire or develop software using a pathway established under initial guidance described in paragraph (1).

''(f) REPORT.—

''(1) IN GENERAL.—Not later than October 15, 2020, the Under Secretary of Defense for Acquisition and Sustainment, in consultation with the secretaries of the military departments and other appropriate officials, shall report on the use of the authority under this section using the initial guidance issued under subsection (d).

''(2) ELEMENTS.—The report required under paragraph (1) shall include the following elements:

''(A) The final guidance required by subsection (d)(2), including a description of the treatment of use of the authority that was initiated before such final guidance was issued.

''(B) A summary of how the authority under this section has been used, including a list of the cost estimate, schedule for development, testing and delivery, and key management risks for each initiative conducted pursuant to such authority.

''(C) Accomplishments from and challenges to using the authority under this section, including organizational, cultural, talent, infrastructure, testing, and training considerations.

''(D) Recommendations for legislative changes to the authority under this section.

''(E) Recommendations for regulatory changes to the authority under this section to promote effective development and deployment of software acquired or developed under this section.''

REORIENTATION OF BIG DATA PLATFORM PROGRAM

Pub. L. 116–92, div. A, title XVI, § 1651, Dec. 20, 2019, 133 Stat. 1759, as amended by Pub. L. 116–283, div. A, title XVII, § 1709(a), Jan. 1, 2021, 134 Stat. 4086, provided that:

''(a) REORIENTATION OF PROGRAM.—

''(1) IN GENERAL.—Not later than January 1, 2021, the Secretary of Defense shall—

''(A) reorient the Big Data Platform program as specified in this section; and

''(B) align the reorientation effort under an existing line of effort of the Cyber Strategy of the Department of Defense.

''(2) OVERSIGHT OF IMPLEMENTATION.—The Secretary shall act through the Principal Cyber Advisor and the supporting Cross Functional Team in the oversight of the implementation of paragraph (1).

''(b) COMMON BASELINE AND SECURITY CLASSIFICATION SCHEME.—

''(1) IN GENERAL.—Not later than January 1, 2021, the Secretary shall establish a common baseline and security classification scheme for the collection, storage, processing, querying, analysis, and accessibility of a common and comprehensive set of metadata from sensors, applications, appliances, products, and systems deployed across the Department of Defense Information Network (DODIN) to enable the discovery, tracking, and remediation of cybersecurity threats.

''(2) REQUIREMENTS.—In carrying out paragraph (1), the Secretary shall—

''(A) take such actions as the Secretary considers necessary to standardize deployed infrastructure, including the Department of Defense's perimeter capabilities at the Internet Access Points, the Joint Regional Security Stacks, or other approved solutions, and the routing of data laterally and vertically from Department of Defense Information Network segments and tiers, to enable standard and comprehensive metadata collection;

''(B) take such actions as the Secretary considers necessary to standardize deployed cybersecurity applications, products, and sensors and the routing of data laterally and vertically from Department of Defense Information Network segments and tiers, to enable standard and comprehensive metadata collection;

''(C) develop an enterprise-wide architecture and strategy for—

''(i) where to place sensors or extract data from network information technology, operational technology, and cybersecurity appliances, applications, products, and systems for cybersecurity purposes;

''(ii) which metadata data records should be universally sent to Big Data Platform instances and which metadata data records, if any, should be locally retained; and

''(iii) expeditiously and efficiently transmitting metadata records to the Big Data Platform instances, including the acquisition and installation of further data bandwidth;

''(D) determine the appropriate number, organization, and functions of separate Big Data Platform instances, and whether the Big Data Platform instances that are currently managed by Department of Defense components, including the military services, should instead be jointly and regionally organized, or terminated;

''(E) determine the appropriate roles of the Defense Information Systems Agency's Acropolis, United States Cyber Command's Scarif, and any similar Big Data Platforms as enterprise-wide real-time cybersecurity situational awareness capabilities or as complements or replacements for component level Big Data Platform instances;

''(F) ensure that all Big Data Platform instances are engineered and approved to enable standard access and expeditious query capabilities by the Unified Platform, the network defense service providers, and the Cyber Mission Forces, with centrally managed authentication and authorization services;

''(G) prohibit and remove barriers to information sharing, distributed query, data analysis, and collaboration across Big Data Platform instances, such as incompatible interfaces, interconnection service agreements, and the imposition of accreditation boundaries;

''(H) transition all Big Data Platform instances to a cloud computing environment in alignment with the cloud strategy of the Chief Information Officer of the Department of Defense;

''(I) consider whether packet capture databases should continue to be maintained separately from the Big Data Platform instances, managed at the secret level of classification, and treated as malware-infected when the packet data are copies of packets extant in the Department of Defense Information Network;

''(J) in the case that the Secretary decides to sustain the status quo on packet capture databases, ensure that analysts operating on or from the Unified Platform, the Big Data Platform instances, the network defense services providers, and the Cyber Mission Forces can directly access packets and query the database; and

''(K) consider whether the Joint Artificial Intelligence Center's cybersecurity artificial intelligence national mission initiative, and any other similar initiatives, should include an application for the metadata residing in the Big Data Platform instances.

''(c) LIMIT ON DATA AND DATA INDEXING SCHEMA.—The Secretary shall ensure that the Unified Platform and the Big Data Platform programs achieve data and data indexing schema standardization and integration to ensure interoperability, access, and sharing by and between Big Data Platform and other data sources and stores.

''(d) ANALYTICS AND APPLICATION SOURCING AND COLLABORATION.—The Secretary shall ensure that the services, U.S. Cyber Command, and Defense Information Systems Agency—

''(1) seek advanced analytics and applications from Government and commercial sources that can be executed on the deployed Big Data Platform architecture; and

''(2) collaborate with vendors offering commercial analytics and applications, including support to refactoring commercial capabilities to the Government platform where industry can still own the intellectual property embedded in the analytics and applications.

''(e) BRIEFING REQUIRED.—Not later than 180 days after the date of the enactment of this Act [Dec. 20, 2019] and not less frequently than once every 180 days thereafter until the activities required by subsection (a)(1) are completed, the Secretary shall brief the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] on the activities of the Secretary in carrying out subsection (b).

''(f) APPLICABILITY.—The requirements of this section shall apply in full to the Department of the Navy, including the Sharkcage and associated programs.''

POLICY REGARDING THE TRANSITION OF DATA AND APPLICATIONS TO THE CLOUD

Pub. L. 116–92, div. A, title XVII, §1755, Dec. 20, 2019, 133 Stat. 1854, provided that:

''(a) POLICY REQUIRED.—Not later than 180 days after the date of the enactment of this Act [Dec. 20, 2019], the Chief Information Officer of the Department of Defense and the Chief Data Officer of the Department shall, in consultation with the J6 of the Joint Staff and the Chief Management Officer, develop and issue enterprise-wide policy and implementing instructions regarding the transition of data and applications to the cloud under the Department cloud strategy in accordance with subsection (b).

''(b) DESIGN.—The policy required by subsection (a) shall be designed to dramatically improve support to operational missions and management processes, including by the use of artificial intelligence and machine learning technologies, by—

''(1) making the data of the Department available to support new types of analyses;

''(2) preventing, to the maximum extent practicable, the replication in the cloud of data stores that cannot readily be accessed by applications for which the data stores were not originally engineered;

''(3) ensuring that data sets can be readily discovered and combined with others to enable new insights and capabilities; and

''(4) ensuring that data and applications are readily portable and not tightly coupled to a specific cloud infrastructure or platform.''

IMPLEMENTATION OF RECOMMENDATIONS OF THE FINAL REPORT OF THE DEFENSE SCIENCE BOARD TASK FORCE ON THE DESIGN AND ACQUISITION OF SOFTWARE FOR DEFENSE SYSTEMS

Pub. L. 115–232, div. A, title VIII, § 868, Aug. 13, 2018, 132 Stat. 1902, provided that:

''(a) IMPLEMENTATION REQUIRED.—Not later than 18 months after the date of the enactment of this Act [Aug. 13, 2018], the Secretary of Defense shall, except as provided under subsection (b), commence implementation of each recommendation submitted as part of the final report of the Defense Science Board Task Force on the Design and Acquisition of Software for Defense Systems.

''(b) EXCEPTIONS.—

''(1) DELAYED IMPLEMENTATION.—The Secretary of Defense may commence implementation of a recommendation described under subsection (a) later than the date required under such subsection if the Secretary provides the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] with a specific justification for the delay in implementation of such recommendation.

''(2) NONIMPLEMENTATION.—The Secretary of Defense may opt not to implement a recommendation described under subsection (a) if the Secretary provides to the congressional defense committees—

''(A) the reasons for the decision not to implement the recommendation; and

''(B) a summary of the alternative actions the Secretary plans to take to address the purposes underlying the recommendation.

''(c) IMPLEMENTATION PLANS.—For each recommendation that the Secretary is implementing, or that the Secretary plans to implement, the Secretary shall submit to the congressional defense committees—

''(1) a summary of actions that have been taken to implement the recommendation; and

''(2) a schedule, with specific milestones, for completing the implementation of the recommendation.''

ACTIVITIES AND REPORTING RELATING TO DEPARTMENT OF DEFENSE'S CLOUD INITIATIVE

Pub. L. 115–232, div. A, title X, § 1064, Aug. 13, 2018, 132 Stat. 1971, provided that:

''(a) ACTIVITIES REQUIRED.—Commencing not later than 90 days after the date of the enactment of this Act [Aug. 13, 2018], the Chief Information Officer of the Department of Defense, acting through the Cloud Executive Steering Group established by the Deputy Secretary of Defense in a directive memorandum dated September 13, 2017, in order to support its Joint Enterprise Defense Infrastructure initiative to procure commercial cloud services, shall conduct certain key enabling activities as follows:

''(1) Develop an approach to rapidly acquire advanced commercial network capabilities, including software-defined networking, on-demand bandwidth, and aggregated cloud access gateways, through commercial service providers in order—

''(A) to support the migration of applications and systems to commercial cloud platforms;

''(B) to increase visibility of end-to-end performance to enable and enforce service level agreements for cloud services;

''(C) to ensure efficient and common cloud access;

''(D) to facilitate shifting data and applications from one cloud platform to another;

''(E) to improve cybersecurity; and

''(F) to consolidate networks and achieve efficiencies and improved performance;

''(2) Conduct an analysis of existing workloads that would be migrated to the Joint Enterprise Defense Infrastructure, including—

''(A) identifying all of the cloud initiatives across the Department of Defense, and determining the objectives of such initiatives in connection with the intended scope of the Infrastructure;

''(B) identifying all the systems and applications that the Department would intend to migrate to the Infrastructure;

''(C) conducting rationalization of applications to identify applications and systems that may duplicate the processing of workloads in connection with the Infrastructure; and

''(D) as result of such actions, arriving at dispositions about migration or termination of systems and applications in connection with the Infrastructure.

''(b) REPORT REQUIRED.—The Chief Information Officer shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the Department of Defense's Cloud Initiative to manage networks, data centers, and clouds at the enterprise level. Such report shall include each of the following:

''(1) A description [of] the status of completion of the activities required under subsection (a).

''(2) Information relating to the current composition of the Cloud Executive Steering Group and the stakeholders relating to the Department of Defense's Cloud Initiative and associated mission, objectives, goals, and strategy.

''(3) A description of the characteristics and considerations for accelerating the cloud architecture and services required for a global, resilient, and secure information environment.

''(4) Information relating to acquisition strategies and timeline for efforts associated with the Department of Defense's Cloud Initiative, including the Joint Enterprise Defense Infrastructure.

''(5) A description of how the acquisition strategies referred to in paragraph (4) provides [sic] for a full and open competition, enable the Department of Defense to continuously leverage and acquire new cloud computing capabilities, maintain the ability of the Department to leverage other cloud computing vendor products and services, incorporate elements to maintain security, and provide for the best performance, cost, and schedule to meet the cloud architecture and services requirements of the Department for the duration of such contract.

''(6) A detailed description of existing workloads that will be migrated to enterprise-wide cloud infrastructure or platforms as a result of the Department of Defense's Cloud Initiative, including estimated migration costs and timelines, based on the analysis required under subsection (a)(2).

''(7) A description of the program management and program office of the Department of Defense's Cloud Initiative, including the number of personnel, overhead costs, and organizational structure.

''(8) A description of the effect of the Joint Enterprise Defense Infrastructure on and the relationship of such Infrastructure to existing cloud computing infrastructure, platform, and service contracts across the Department of Defense, specifically the effect and relationship to the private cloud infrastructure of the Department, MilCloud 2.0 run by the Defense Information Systems Agency based on the analysis required under subsection (a)(2).

''(9) Information relating to the most recent Department of Defense Cloud Computing Strategy and description of any initiatives to update such Strategy.

''(10) Information relating to Department of Defense guidance pertaining to cloud computing capability or platform acquisition and standards, and a description of any initiatives to update such guidance.

''(11) Any other matters the Secretary of Defense determines relevant.

''(c) LIMITATION ON USE OF FUNDS.—Of the amounts authorized to be appropriated or otherwise made avail-

able by this Act [see Tables for classification] for fiscal year 2019 for the Department of Defense's Cloud Initiative, not more than 85 percent may be obligated or expended until the Secretary of Defense submits to the congressional defense committees the report required by subsection (b).

''(d) LIMITATION ON NEW SYSTEMS AND APPLICATIONS.—

''(1) IN GENERAL.—Except as provided in paragraph (2), the Deputy Secretary shall require that no new system or application will be approved for development or modernization without an assessment that such system or application is already, or can and would be, cloud-hosted.

''(2) WAIVER.—The Deputy Secretary may issue a national waiver to the requirement under paragraph (1) if the Deputy Secretary determines, pursuant to the assessment described in such paragraph, that the requirement would adversely affect the national security of the United States. If the Deputy Secretary issues a waiver under this paragraph, the Deputy Secretary shall provide to the congressional defense committees a written notification of such waiver, justification for the waiver, and identification of the system or application to which the waiver applies by not later than 15 days after the date on which the waiver is issued.

''(e) TRANSPARENCY AND COMPETITION.—The Deputy Secretary shall ensure that the acquisition approach of the Department continues to follow the Federal Acquisition Regulation with respect to competition.''

PILOT PROGRAM TO USE AGILE OR ITERATIVE DEVELOPMENT METHODS TO TAILOR MAJOR SOFTWARE-INTENSIVE WARFIGHTING SYSTEMS AND DEFENSE BUSINESS SYSTEMS

Pub. L. 115–232, div. A, title VIII, §869(a)–(d), Aug. 13, 2018, 132 Stat. 1902, 1903, provided that:

''(a) IN GENERAL.—Not later than 30 days after the date of the enactment of this Act [Aug. 13, 2018], the Secretary of Defense shall include the following systems in the pilot program to use agile or iterative development methods pursuant to section 873 of the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115–91; 10 U.S.C. 2223a note):

''(1) Defense Retired and Annuitant Pay System 2 (DRAS2), Defense Logistics Agency.

''(2) Army Integrated Air and Missile Defense (AIAMD), Army.

''(3) Army Contract Writing System (ACWS), Army.

''(4) Defense Enterprise Accounting and Management System (DEAMS) Inc2, Air Force.

''(5) Item Master, Air Force.

''(b) ADDITIONS TO LIST.—Not later than 30 days after the date of the enactment of this Act, the Secretary of Defense shall identify three additional systems for participation in the pilot program pursuant to section 873 of the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115–91; 10 U.S.C. 2223a note) and notify the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] of the additions.

''(c) COMMUNITY OF PRACTICE ADVISING ON AGILE OR ITERATIVE DEVELOPMENT.—The Under Secretary of Defense for Acquisition and Sustainment shall establish a Community of Practice on agile or iterative methods so that programs that have been incorporating agile or iterative methods can share with programs participating in the pilot the lessons learned, best practices, and recommendations for improvements to acquisition and supporting processes. The Service Acquisition Executives of the military departments shall send representation from the following programs, which have reported using agile or iterative methods:

''(1) Air and Space Operations Center (AOC).

''(2) Command Control Battle Management and Communications (C2BMC).

''(3) The family of Distributed Common Ground Systems.

''(4) The family of Global Command and Control Systems.

''(5) Navy Personnel and Pay (NP2).

''(6) Other programs and activities as appropriate.

''(d) REPORT.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall report to the congressional defense committees on the status of the pilot program and each system participating in the pilot. The report shall include the following elements:

''(1) A description of how cost and schedule estimates in support of the program are being conducted and using what methods.

''(2) The contracting strategy and types of contracts that will be used in executing the program.

''(3) A description of how intellectual property ownership issues associated with software applications developed with agile or iterative methods will be addressed to ensure future sustainment, maintenance, and upgrades to software applications after the applications are fielded.

''(4) A description of the tools and software applications that are expected to be developed for the program and the costs and cost categories associated with each.

''(5) A description of challenges the program has faced in realigning the program to use agile or iterative methods.''

Pub. L. 115–91, div. A, title VIII, §873, Dec. 12, 2017, 131 Stat. 1498, as amended by Pub. L. 115–232, div. A, title VIII, §869(e), Aug. 13, 2018, 132 Stat. 1903, provided that:

''(a) PILOT PROGRAM.—

''(1) IN GENERAL.—Not later than 30 days after the date of the enactment of this Act [Dec. 12, 2017], the Secretary of Defense, in consultation with the Secretaries of the military departments and the chiefs of the armed forces, shall establish a pilot program to tailor and simplify software development requirements and methods for major software-intensive warfighting systems and defense business systems.

''(2) IMPLEMENTATION PLAN FOR PILOT PROGRAM.—Not later than 120 days after the date of the enactment of this Act, the Secretary of Defense, in consultation with the Secretaries of the military departments and the chiefs of the armed forces, shall develop a plan for implementing the pilot program required under this subsection, including guidance for implementing the program and for selecting systems for participation in the program.

''(3) SELECTION OF SYSTEMS FOR PILOT PROGRAM.—

''(A) The implementation plan shall require that systems be selected as follows:

''(i) For major software-intensive warfighting systems, one system per armed force and one defense-wide system, including at least one major defense acquisition program or major automated information system.

''(ii) For defense business systems, not fewer than two systems and not greater than eight systems.

''(B) In selecting systems or subsystems for participation, the Secretary shall prioritize systems as follows:

''(i) For major software-intensive warfighting systems, systems that—

''(I) have identified software development as a high risk;

''(II) have experienced cost growth and schedule delay; or

''(III) did not deliver any operational capability within the prior calendar year.

''(ii) For defense business systems, systems that—

''(I) have experienced cost growth and schedule delay;

''(II) did not deliver any operational capability within the prior calendar year; or

''(III) are underperforming other systems within a defense business system portfolio with similar user requirements.

''(b) REALIGNMENT PLANS.—

''(1) IN GENERAL.—Not later than 60 days after selecting a system for the pilot program under sub-

section (a)(3), the Secretary shall develop a plan for realigning the system by breaking down the system into smaller increments using agile or iterative development methods. The realignment plan shall include a revised cost estimate that is lower than the cost estimate for the system that was current as of the date of the enactment of this Act [Dec. 12, 2017].

''(2) REALIGNMENT EXECUTION.—Each increment for a realigned system shall—

''(A) be designed to deliver a meaningfully useful capability within the first 180 days following realignment;

''(B) be designed to deliver subsequent meaningfully useful capabilities in time periods of less than 180 days;

''(C) incorporate multidisciplinary teams focused on software production that prioritize user needs and control of total cost of ownership;

''(D) be staffed with highly qualified technically trained staff and personnel with management and business process expertise in leadership positions to support requirements modification, acquisition strategy, and program decisionmaking;

''(E) ensure that the acquisition strategy for the realigned system is broad enough to allow for proposals of a service, system, modified business practice, configuration of personnel, or combination thereof for implementing the strategy;

''(F) include periodic engagement with the user community, as well as representation by the user community in program management and software production activity;

''(G) ensure that the acquisition strategy for the realigned system favors outcomes-based requirements definition and capability as a service, including the establishment of technical evaluation criteria as outcomes to be used to negotiate service-level agreements with vendors; and

''(H) consider options for termination of the relationship with any vendor unable or unwilling to offer terms that meet the requirements of this section.

''(c) REMOVAL OF SYSTEMS.—The Secretary may remove a system selected for the pilot program under subsection (a)(3) only after the Secretary submits to the Committees on Armed Services of the Senate and House of Representatives a written determination that indicates that the selected system has been unsuccessful in reducing cost or schedule growth, or is not meeting the overall needs of the pilot program.

''(d) EDUCATION AND TRAINING IN AGILE OR ITERATIVE DEVELOPMENT METHODS.—

''(1) TRAINING REQUIREMENT.—The Secretary shall ensure that any personnel from the relevant organizations in each of the military departments and Defense Agencies participating in the pilot program, including organizations responsible for engineering, budgeting, contracting, test and evaluation, requirements validation, and certification and accreditation, receive targeted training in agile or iterative development methods, including the interim course required by section 891 of this Act [10 U.S.C. 1746 note].

''(2) SUPPORT.—In carrying out the pilot program under subsection (a), the Secretary shall ensure that personnel participating in the program provide feedback to inform the development of education and training curricula as required by section 891.

''(e) SUNSET.—The pilot program required under subsection (a) shall terminate on September 30, 2023. Any system selected under subsection (a)(3) for the pilot program shall continue after that date through the execution of its realignment plan.

''(f) AGILE OR ITERATIVE DEVELOPMENT DEFINED.—In this section, the term 'agile or iterative development', with respect to software—

''(1) means acquisition pursuant to a method for delivering multiple, rapid, incremental capabilities to the user for operational use, evaluation, and feedback not exclusively linked to any single, proprietary method or process; and

''(2) involves—

''(A) the incremental development and fielding of capabilities, commonly called 'spirals', 'spins', or 'sprints', which can be measured in a few weeks or months; and

''(B) continuous participation and collaboration by users, testers, and requirements authorities.''

GLOBAL THEATER SECURITY COOPERATION MANAGEMENT INFORMATION SYSTEM

Pub. L. 115–91, div. A, title XII, § 1272, Dec. 12, 2017, 131 Stat. 1695, provided that:

''(a) UPDATE OF GUIDANCE.—

''(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act [Dec. 12, 2017], the Secretary of Defense shall—

''(A) update relevant security cooperation guidance issued by the Secretary for use of the Global Theater Security Cooperation Management Information System (in this section referred to as 'G-TSCMIS'), including guidance relating to the matters described in paragraph (3); and

''(B) submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report that contains such guidance.

''(2) SUCCESSOR SYSTEM.—Not later than 180 days after the date of the adoption of any security cooperation information system that is a successor to G-TSCMIS, the Secretary of Defense shall—

''(A) update relevant security cooperation guidance issued by the Secretary for use of such system, including guidance relating to the matters described in paragraph (3); and

''(B) submit to the congressional defense committees a report that contains such guidance.

''(3) MATTERS DESCRIBED.—The matters described in this paragraph are the following:

''(A) Designation of an authoritative data repository for security cooperation information, with enforceable data standards and data controls.

''(B) Responsibilities for entry of data relating to programs and activities into the system.

''(C) Oversight and accountability measures to ensure the full scope of activities are entered into the system consistently and in a timely manner.

''(D) Such other matters as the Secretary considers appropriate.

''(b) REPORT.—

''(1) IN GENERAL.—Not later than 270 days after the adoption of any security cooperation information system that is the successor to G-TSCMIS, the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report setting forth a review of measures for evaluating the system in order to comply with guidance required by subsection (a).

''(2) ELEMENTS.—The review required by paragraph (1) shall include the following:

''(A) An evaluation of the impacts of inconsistent information on the system's functionality as a tool for planning, resource allocation, and adjustment.

''(B) An evaluation of the effectiveness of oversight and accountability measures.

''(C) An evaluation of feedback from the operational community to inform future requirements.

''(D) Such other matters as the Secretary considers appropriate.

''(3) FORM.—The report required under paragraph (1) shall be submitted in unclassified form, but may include a classified annex.''

GUIDANCE ON ACQUISITION OF BUSINESS SYSTEMS

Pub. L. 114–92, div. A, title VIII, § 883(e), Nov. 25, 2015, 129 Stat. 947, provided that: ''The Secretary of Defense shall issue guidance for major automated information systems acquisition programs to promote the use of best acquisition, contracting, requirement develop-

ment, systems engineering, program management, and sustainment practices, including—

''(1) ensuring that an acquisition program baseline has been established within two years after program initiation;

''(2) ensuring that program requirements have not changed in a manner that increases acquisition costs or delays the schedule, without sufficient cause and only after maximum efforts to reengineer business processes prior to changing requirements;

''(3) policies to evaluate commercial off-the-shelf business systems for security, resilience, reliability, interoperability, and integration with existing interrelated systems where such system integration and interoperability are essential to Department of Defense operations;

''(4) policies to work with commercial off-the-shelf business system developers and owners in adapting systems for Department of Defense use;

''(5) policies to perform Department of Defense legacy system audits to determine which systems are related to or rely upon the system to be replaced or integrated with commercial off-the-shelf business systems;

''(6) policies to perform full backup of systems that will be changed or replaced by the installation of commercial off-the-shelf business systems prior to installation and deployment to ensure reconstitution of the system to a functioning state should it become necessary;

''(7) policies to engage the research and development activities and laboratories of the Department of Defense to improve acquisition outcomes; and

''(8) policies to refine and improve developmental and operational testing of business processes that are supported by the major automated information systems.''

DESIGNATION OF MILITARY DEPARTMENT ENTITY RESPONSIBLE FOR ACQUISITION OF CRITICAL CYBER CAPABILITIES

Pub. L. 114–92, div. A, title XVI, § 1645, Nov. 25, 2015, 129 Stat. 1117, provided that:

''(a) DESIGNATION.—

''(1) IN GENERAL.—Not later than 90 days after the date of the enactment of this Act [Nov. 25, 2015], the Secretary of Defense shall designate an entity within a military department to be responsible for the acquisition of each critical cyber capability described in paragraph (2).

''(2) CRITICAL CYBER CAPABILITIES DESCRIBED.—The critical cyber capabilities described in this paragraph are the cyber capabilities that the Secretary considers critical to the mission of the Department of Defense, including the following:

''(A) The Unified Platform described in the Department of Defense document titled 'The Department of Defense Cyber Strategy' dated April 15, 2015.

''(B) A persistent cyber training environment.

''(C) A cyber situational awareness and battle management system.

''(b) REPORT.—

''(1) IN GENERAL.—Not later than 90 days after the date of the enactment of this Act, the Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report containing the information described in paragraph (2).

''(2) CONTENTS.—The report under paragraph (1) shall include the following with respect to the critical cyber capabilities described in subsection (a)(2):

''(A) Identification of each critical cyber capability and the entity of a military department responsible for the acquisition of the capability.

''(B) Estimates of the funding requirements and acquisition timelines for each critical cyber capability.

''(C) An explanation of whether critical cyber capabilities could be acquired more quickly with changes to acquisition authorities.

''(D) Such recommendations as the Secretary may have for legislation or administrative action to improve the acquisition of, or to acquire more quickly, the critical cyber capabilities for which designations are made under subsection (a).''

MODULAR OPEN SYSTEMS APPROACHES IN ACQUISITION PROGRAMS

Pub. L. 113–291, div. A, title VIII, § 801, Dec. 19, 2014, 128 Stat. 3425, provided that:

''(a) PLAN FOR MODULAR OPEN SYSTEMS APPROACH THROUGH DEVELOPMENT AND ADOPTION OF STANDARDS AND ARCHITECTURES.—Not later than January 1, 2016, the Under Secretary of Defense for Acquisition, Technology, and Logistics shall submit a report to the Committees on Armed Services of the Senate and the House of Representatives detailing a plan to develop standards and define architectures necessary to enable open systems approaches in the key mission areas of the Department of Defense with respect to which the Under Secretary determines that such standards and architectures would be feasible and cost effective.

''(b) CONSIDERATION OF MODULAR OPEN SYSTEMS APPROACHES.—

''(1) Review of acquisition guidance.—The Under Secretary of Defense for Acquisition, Technology, and Logistics shall review current acquisition guidance, and modify such guidance as necessary, to—

''(A) ensure that acquisition programs include open systems approaches in the product design and acquisition of information technology systems to the maximum extent practicable; and

''(B) for any information technology system not using an open systems approach, ensure that written justification is provided in the contract file for the system detailing why an open systems approach was not used.

''(2) ELEMENTS.—The review required in paragraph (1) shall—

''(A) consider whether the guidance includes appropriate exceptions for the acquisition of—

''(i) commercial items; and

''(ii) solutions addressing urgent operational needs;

''(B) determine the extent to which open systems approaches should be addressed in analysis of alternatives, acquisition strategies, system engineering plans, and life cycle sustainment plans; and

''(C) ensure that increments of acquisition programs consider the extent to which the increment will implement open systems approaches as a whole.

''(3) DEADLINE FOR REVIEW.—The review required in this subsection shall be completed no later than 180 days after the date of the enactment of this Act [Dec. 19, 2014].

''(c) TREATMENT OF ONGOING AND LEGACY PROGRAMS.—

''(1) REPORT REQUIREMENT.—Not later than one year after the date of the enactment of this Act, the Under Secretary of Defense for Acquisition, Technology, and Logistics shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report covering the matters specified in paragraph (2).

''(2) MATTERS COVERED.—Subject to paragraph (3), the report required in this subsection shall—

''(A) identify all information technology systems that are in development, production, or deployed status as of the date of the enactment of this Act, that are or were major defense acquisition programs or major automated information systems, and that are not using an open systems approach;

''(B) identify gaps in standards and architectures necessary to enable open systems approaches in the key mission areas of the Department of Defense, as determined pursuant to the plan submitted under subsection (a); and

''(C) outline a process for potential conversion to an open systems approach for each information technology system identified under subparagraph (A).

''(3) LIMITATIONS.—The report required in this subsection shall not include information technology systems—

''(A) having a planned increment before fiscal year 2021 that will result in conversion to an open systems approach; and

''(B) that will be in operation for fewer than 15 years after the date of the enactment of this Act.

''(d) DEFINITIONS.—In this section:

''(1) INFORMATION TECHNOLOGY.—The term 'information technology' has the meaning given the term in section 11101(6) of title 40, United States Code.

''(2) OPEN SYSTEMS APPROACH.—The term 'open systems approach' means, with respect to an information technology system, an integrated business and technical strategy that—

''(A) employs a modular design and uses widely supported and consensus-based standards for key interfaces;

''(B) is subjected to successful validation and verification tests to ensure key interfaces comply with widely supported and consensus-based standards; and

''(C) uses a system architecture that allows components to be added, modified, replaced, removed, or supported by different vendors throughout the lifecycle of the system to afford opportunities for enhanced competition and innovation while yielding—

''(i) significant cost and schedule savings; and

''(ii) increased interoperability.''

OPERATIONAL METRICS FOR JOINT INFORMATION ENVIRONMENT AND SUPPORTING ACTIVITIES

Pub. L. 113–291, div. A, title VIII, § 854, Dec. 19, 2014, 128 Stat. 3459, provided that:

''(a) GUIDANCE.—Not later than 180 days after the date of the enactment of this Act [Dec. 19, 2014], the Secretary of Defense, acting through the Chief Information Officer of the Department of Defense, shall issue guidance for measuring the operational effectiveness and efficiency of the Joint Information Environment within the military departments, Defense Agencies, and combatant commands. The guidance shall include a definition of specific metrics for data collection, and a requirement for each military department, Defense Agency, and combatant command to regularly collect and assess data on such operational effectiveness and efficiency and report the results to such Chief Information Officer on a regular basis.

''(b) BASELINE ARCHITECTURE.—The Chief Information Officer of the Department of Defense shall identify a baseline architecture for the Joint Information Environment by identifying and reporting to the Secretary of Defense any information technology programs or other investments that support that architecture.

''(c) JOINT INFORMATION ENVIRONMENT DEFINED.—In this section, the term 'Joint Information Environment' means the initiative of the Department of Defense to modernize the information technology networks and systems within the Department.''

SUPERVISION OF THE ACQUISITION OF CLOUD COMPUTING CAPABILITIES

Pub. L. 113–66, div. A, title IX, § 938, Dec. 26, 2013, 127 Stat. 835, provided that:

''(a) SUPERVISION.—

''(1) IN GENERAL.—The Secretary of Defense shall, acting through the Under Secretary of Defense for Acquisition, Technology, and Logistics, the Under Secretary of Defense for Intelligence [now Under Secretary of Defense for Intelligence and Security], the Chief Information Officer of the Department of Defense, and the Chairman of the Joint Requirements Oversight Council, supervise the following:

''(A) Review, development, modification, and approval of requirements for cloud computing solutions for data analysis and storage by the Armed Forces and the Defense Agencies, including requirements for cross-domain, enterprise-wide discovery and correlation of data stored in cloud and non-cloud computing databases, relational and non-relational databases, and hybrid databases.

''(B) Review, development, modification, approval, and implementation of plans for the competitive acquisition of cloud computing systems or services to meet requirements described in subparagraph (A), including plans for the transition from current computing systems to systems or services acquired.

''(C) Development and implementation of plans to ensure that the cloud systems or services acquired pursuant to subparagraph (B) are interoperable and universally accessible and usable through attribute-based access controls.

''(D) Integration of plans under subparagraphs (B) and (C) with enterprise-wide plans of the Armed Forces and the Department of Defense for the Joint Information Environment and the Defense Intelligence Information Environment.

''(2) DIRECTION.—The Secretary shall provide direction to the Armed Forces and the Defense Agencies on the matters covered by paragraph (1) by not later than March 15, 2014.

''(b) INTEGRATION WITH INTELLIGENCE COMMUNITY EFFORTS.—The Secretary shall coordinate with the Director of National Intelligence to ensure that activities under this section are integrated with the Intelligence Community Information Technology Enterprise in order to achieve interoperability, information sharing, and other efficiencies.

''(c) LIMITATION.—The requirements of subparagraphs (B), (C), and (D) of subsection (a)(1) shall not apply to a contract for the acquisition of cloud computing capabilities in an amount less than $1,000,000.

''(d) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to alter or affect the authorities or responsibilities of the Director of National Intelligence under section 102A of the National Security Act of 1947 (50 U.S.C. 3024).''

COMPETITION IN CONNECTION WITH DEPARTMENT OF DEFENSE TACTICAL DATA LINK SYSTEMS

Pub. L. 112–239, div. A, title IX, § 934, Jan. 2, 2013, 126 Stat. 1885, as amended by Pub. L. 113–66, div. A, title IX, § 931, Dec. 26, 2013, 127 Stat. 829, which provided that the upgrade, new deployment, or replacement of defense tactical data link systems should be open to competition, was repealed by Pub. L. 115–232, div. A, title VIII, § 812(b)(1), Aug. 13, 2018, 132 Stat. 1847.

DATA SERVERS AND CENTERS

Pub. L. 112–81, div. B, title XXVIII, § 2867, Dec. 31, 2011, 125 Stat. 1704, as amended by Pub. L. 112–239, div. B, title XXVIII, § 2853, Jan. 2, 2013, 126 Stat. 2161; Pub. L. 115–91, div. A, title X, § 1051(q)(3), Dec. 12, 2017, 131 Stat. 1565, provided that:

''(a) LIMITATIONS ON OBLIGATION OF FUNDS.—

''(1) LIMITATIONS.—

''(A) BEFORE PERFORMANCE PLAN.—During the period beginning on the date of the enactment of this Act [Dec. 31, 2011] and ending on May 1, 2012, a department, agency, or component of the Department of Defense may not obligate funds for a data server farm or data center unless approved by the Chief Information Officer of the Department of Defense or the Chief Information Officer of a component of the Department to whom the Chief Information Officer of the Department has specifically delegated such approval authority.

''(B) UNDER PERFORMANCE PLAN.—After May 1, 2012, a department, agency, or component of the Department may not obligate funds for a data center, or any information systems technology used therein, unless that obligation is in accordance with the performance plan required by subsection (b) and is approved as described in subparagraph (A).

''(2) REQUIREMENTS FOR APPROVALS.—

''(A) BEFORE PERFORMANCE PLAN.—An approval of the obligation of funds may not be granted under paragraph (1)(A) unless the official granting the approval determines, in writing, that existing resources of the agency, component, or element concerned cannot affordably or practically be used or modified to meet the requirements to be met through the obligation of funds.

''(B) UNDER PERFORMANCE PLAN.—An approval of the obligation of funds may not be granted under paragraph (1)(B) unless the official granting the approval determines that—

''(i) existing resources of the Department do not meet the operation requirements to be met through the obligation of funds; and

''(ii) the proposed obligation is in accordance with the performance standards and measures established by the Chief Information Officer of the Department under subsection (b).

''(3) REPORTS.—Not later than 30 days after the end of each calendar quarter, each Chief Information Officer of a component of the Department who grants an approval under paragraph (1) during such calendar quarter shall submit to the Chief Information Officer of the Department a report on the approval or approvals so granted during such calendar quarter.

''(b) PERFORMANCE PLAN FOR REDUCTION OF RESOURCES REQUIRED FOR DATA SERVERS AND CENTERS.—

''(1) COMPONENT PLANS.—

''(A) IN GENERAL.—Not later than January 15, 2012, the Secretaries of the military departments and the heads of the Defense Agencies shall each submit to the Chief Information Officer of the Department a plan for the department or agency concerned to achieve the following:

''(i) A reduction in the square feet of floor space devoted to information systems technologies, attendant support technologies, and operations within data centers.

''(ii) A reduction in the use of all utilities necessary to power and cool information systems technologies and data centers.

''(iii) An increase in multi-organizational utilization of data centers, information systems technologies, and associated resources.

''(iv) A reduction in the investment for capital infrastructure or equipment required to support data centers as measured in cost per megawatt of data storage.

''(v) A reduction in the number of commercial and government developed applications running on data servers and within data centers.

''(vi) A reduction in the number of government and vendor provided full-time equivalent personnel, and in the cost of labor, associated with the operation of data servers and data centers.

''(B) SPECIFICATION OF REQUIRED ELEMENTS.—The Chief Information Officer of the Department shall specify the particular performance standards and measures and implementation elements to be included in the plans submitted under this paragraph, including specific goals and schedules for achieving the matters specified in subparagraph (A).

''(2) DEFENSE-WIDE PLAN.—

''(A) IN GENERAL.—Not later than April 1, 2012, the Chief Information Officer of the Department shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a performance plan for a reduction in the resources required for data centers and information systems technologies Department-wide. The plan shall be based upon and incorporate appropriate elements of the plans submitted under paragraph (1).

''(B) ELEMENTS.—The performance plan required under this paragraph shall include the following:

''(i) A Department-wide performance plan for achieving the matters specified in paragraph (1)(A), including performance standards and measures for data centers and information systems technologies, goals and schedules for achieving such matters, and an estimate of cost savings anticipated through implementation of the plan.

''(ii) A Department-wide strategy for each of the following:

''(I) Desktop, laptop, and mobile device virtualization.

''(II) Transitioning to cloud computing.

''(III) Migration of Defense data and government-provided services from Department-owned and operated data centers to cloud computing services generally available within the private sector that provide a better capability at a lower cost with the same or greater degree of security.

''(IV) Utilization of private sector-managed security services for data centers and cloud computing services.

''(V) A finite set of metrics to accurately and transparently report on data center infrastructure (space, power and cooling): age, cost, capacity, usage, energy efficiency and utilization, accompanied with the aggregate data for each data center site in use by the Department in excess of 100 kilowatts of information technology power demand.

''(VI) Transitioning to just-in-time delivery of Department-owned data center infrastructure (space, power and cooling) through use of modular data center technology and integrated data center infrastructure management software.

''(3) RESPONSIBILITY.—The Chief Information Officer of the Department shall discharge the responsibility for establishing performance standards and measures for data centers and information systems technologies for purposes of this subsection. Such responsibility may not be delegated.

''(c) EXCEPTIONS.—

''(1) INTELLIGENCE COMPONENTS.—The Chief Information Officer of the Department and the Chief Information Officer of the Intelligence Community may jointly exempt from the applicability of this section such intelligence components of the Department of Defense (and the programs and activities thereof) that are funded through the National Intelligence Program (NIP) as the Chief Information Officers consider appropriate.

''(2) RESEARCH, DEVELOPMENT, TEST, AND EVALUATION PROGRAMS.—The Chief Information Officer of the Department may exempt from the applicability of this section research, development, test, and evaluation programs that use authorization of appropriations for the High Performance Computing Modernization Program (Program Element 0603461A) if the Chief Information Officer determines that the exemption is in the best interest of national security.''

DEMONSTRATION AND PILOT PROJECTS ON CYBERSECURITY

Pub. L. 111–383, div. A, title II, §215, Jan. 7, 2011, 124 Stat. 4165, provided that:

''(a) DEMONSTRATION PROJECTS ON PROCESSES FOR APPLICATION OF COMMERCIAL TECHNOLOGIES TO CYBERSECURITY REQUIREMENTS.—

''(1) PROJECTS REQUIRED.—The Secretary of Defense and the Secretaries of the military departments shall jointly carry out demonstration projects to assess the feasibility and advisability of using various business models and processes to rapidly and effectively identify innovative commercial technologies and apply such technologies to Department of Defense and other cybersecurity requirements.

''(2) SCOPE OF PROJECTS.—Any demonstration project under paragraph (1) shall be carried out in such a manner as to contribute to the cyber policy review of the President and the Comprehensive National Cybersecurity Initiative.

''(b) PILOT PROGRAMS ON CYBERSECURITY REQUIRED.—The Secretary of Defense shall support or conduct pilot programs on cybersecurity with respect to the following areas:

''(1) Threat sensing and warning for information networks worldwide.

''(2) Managed security services for cybersecurity within the defense industrial base, military departments, and combatant commands.

''(3) Use of private processes and infrastructure to address threats, problems, vulnerabilities, or opportunities in cybersecurity.

''(4) Processes for securing the global supply chain.

''(5) Processes for threat sensing and security of cloud computing infrastructure.

''(c) REPORTS.—

''(1) REPORTS REQUIRED.—Not later than 240 days after the date of the enactment of this Act [Jan. 7, 2011], and annually thereafter at or about the time of the submittal to Congress of the budget of the President for a fiscal year (as submitted pursuant to section 1105(a) of title 31, United States Code), the Secretary of Defense shall, in coordination with the Secretary of Homeland Security, submit to Congress a report on any demonstration projects carried out under subsection (a), and on the pilot projects carried out under subsection (b), during the preceding year.

''(2) ELEMENTS.—Each report under this subsection shall include the following:

''(A) A description and assessment of any activities under the demonstration projects and pilot projects referred to in paragraph (1) during the preceding year.

''(B) For the pilot projects supported or conducted under subsection (b)(2)—

''(i) a quantitative and qualitative assessment of the extent to which managed security services covered by the pilot project could provide effective and affordable cybersecurity capabilities for components of the Department of Defense and for entities in the defense industrial base, and an assessment whether such services could be expanded rapidly to a large scale without exceeding the ability of the Federal Government to manage such expansion; and

''(ii) an assessment of whether managed security services are compatible with the cybersecurity strategy of the Department of Defense with respect to conducting an active, in-depth defense under the direction of United States Cyber Command.

''(C) For the pilot projects supported or conducted under subsection (b)(3)—

''(i) a description of any performance metrics established for purposes of the pilot project, and a description of any processes developed for purposes of accountability and governance under any partnership under the pilot project; and

''(ii) an assessment of the role a partnership such as a partnership under the pilot project would play in the acquisition of cyberspace capabilities by the Department of Defense, including a role with respect to the development and approval of requirements, approval and oversight of acquiring capabilities, test and evaluation of new capabilities, and budgeting for new capabilities.

''(D) For the pilot projects supported or conducted under subsection (b)(4)—

''(i) a framework and taxonomy for evaluating practices that secure the global supply chain, as well as practices for securely operating in an uncertain or compromised supply chain;

''(ii) an assessment of the viability of applying commercial practices for securing the global supply chain; and

''(iii) an assessment of the viability of applying commercial practices for securely operating in an uncertain or compromised supply chain.

''(E) For the pilot projects supported or conducted under subsection (b)(5)—

''(i) an assessment of the capabilities of Federal Government providers to offer secure cloud computing environments; and

''(ii) an assessment of the capabilities of commercial providers to offer secure cloud computing environments to the Federal Government.

''(3) FORM.—Each report under this subsection shall be submitted in unclassified form, but may include a classified annex.''

IMPLEMENTATION OF NEW ACQUISITION PROCESS FOR INFORMATION TECHNOLOGY SYSTEMS

Pub. L. 111–84, div. A, title VIII, § 804, Oct. 28, 2009, 123 Stat. 2402, which provided for development and implementation of a new acquisition process for information technology systems, was repealed by Pub. L. 115–232, div. A, title VIII, § 812(b)(2), Aug. 13, 2018, 132 Stat. 1848.

CLEARINGHOUSE FOR RAPID IDENTIFICATION AND DISSEMINATION OF COMMERCIAL INFORMATION TECHNOLOGIES

Pub. L. 110–181, div. A, title VIII, § 881, Jan. 28, 2008, 122 Stat. 262, provided that:

''(a) REQUIREMENT TO ESTABLISH CLEARINGHOUSE.—Not later than 180 days after the date of the enactment of this Act [Jan. 28, 2008], the Secretary of Defense, acting through the Assistant Secretary of Defense for Networks and Information Integration, shall establish a clearinghouse for identifying, assessing, and disseminating knowledge about readily available information technologies (with an emphasis on commercial off-the-shelf information technologies) that could support the warfighting mission of the Department of Defense.

''(b) RESPONSIBILITIES.—The clearinghouse established pursuant to subsection (a) shall be responsible for the following:

''(1) Developing a process to rapidly assess and set priorities and needs for significant information technology needs of the Department of Defense that could be met by commercial technologies, including a process for—

''(A) aligning priorities and needs with the requirements of the commanders of the combatant command; and

''(B) proposing recommendations to the commanders of the combatant command of feasible technical solutions for further evaluation.

''(2) Identifying and assessing emerging commercial technologies (including commercial off-the-shelf technologies) that could support the warfighting mission of the Department of Defense, including the priorities and needs identified pursuant to paragraph (1).

''(3) Disseminating information about commercial technologies identified pursuant to paragraph (2) to commanders of combatant commands and other potential users of such technologies.

''(4) Identifying gaps in commercial technologies and working to stimulate investment in research and development in the public and private sectors to address those gaps.

''(5) Enhancing internal data and communications systems of the Department of Defense for sharing and retaining information regarding commercial technology priorities and needs, technologies available to meet such priorities and needs, and ongoing research and development directed toward gaps in such technologies.

''(6) Developing mechanisms, including web-based mechanisms, to facilitate communications with industry regarding the priorities and needs of the Department of Defense identified pursuant to paragraph (1) and commercial technologies available to address such priorities and needs.

''(7) Assisting in the development of guides to help small information technology companies with promising technologies to understand and navigate the funding and acquisition processes of the Department of Defense.

''(8) Developing methods to measure how well processes developed by the clearinghouse are being utilized and to collect data on an ongoing basis to assess the benefits of commercial technologies that are procured on the recommendation of the clearinghouse.

''(c) PERSONNEL.—The Secretary of Defense, acting through the Assistant Secretary of Defense for Net-

works and Information Integration, shall provide for the hiring and support of employees (including detailees from other components of the Department of Defense and from other Federal departments or agencies) to assist in identifying, assessing, and disseminating information regarding commercial technologies under this section.

''(d) REPORT TO CONGRESS.—Not later than one year after the date of the enactment of this Act [Jan. 28, 2008], the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the implementation of this section.''

§ 2224. Defense Information Assurance Program

(a) DEFENSE INFORMATION ASSURANCE PROGRAM.—The Secretary of Defense shall carry out a program, to be known as the ''Defense Information Assurance Program'', to protect and defend Department of Defense information, information systems, and information networks that are critical to the Department and the armed forces during day-to-day operations and operations in times of crisis.

(b) OBJECTIVES OF THE PROGRAM.—The objectives of the program shall be to provide continuously for the availability, integrity, authentication, confidentiality, nonrepudiation, and rapid restitution of information and information systems that are essential elements of the Defense Information Infrastructure.

(c) PROGRAM STRATEGY.—In carrying out the program, the Secretary shall develop a program strategy that encompasses those actions necessary to assure the readiness, reliability, continuity, and integrity of Defense information systems, networks, and infrastructure, including through compliance with subchapter II of chapter 35 of title 44, including through compliance with subchapter III of chapter 35 of title 44. The program strategy shall include the following:

(1) A vulnerability and threat assessment of elements of the defense and supporting nondefense information infrastructures that are essential to the operations of the Department and the armed forces.

(2) Development of essential information assurances technologies and programs.

(3) Organization of the Department, the armed forces, and supporting activities to defend against information warfare.

(4) Joint activities of the Department with other departments and agencies of the Government, State and local agencies, and elements of the national information infrastructure.

(5) The conduct of exercises, war games, simulations, experiments, and other activities designed to prepare the Department to respond to information warfare threats.

(6) Development of proposed legislation that the Secretary considers necessary for implementing the program or for otherwise responding to the information warfare threat.

(d) COORDINATION.—In carrying out the program, the Secretary shall coordinate, as appropriate, with the head of any relevant Federal agency and with representatives of those national critical information infrastructure systems that are essential to the operations of the Department and the armed forces on information assurance measures necessary to the protection of these systems.

[(e) Repealed. Pub. L. 108–136, div. A, title X, §1031(a)(12), Nov. 24, 2003, 117 Stat. 1597.]

(f) INFORMATION ASSURANCE TEST BED.—The Secretary shall develop an information assurance test bed within the Department of Defense to provide—

(1) an integrated organization structure to plan and facilitate the conduct of simulations, war games, exercises, experiments, and other activities to prepare and inform the Department regarding information warfare threats; and

(2) organization and planning means for the conduct by the Department of the integrated or joint exercises and experiments with elements of the national information systems infrastructure and other non-Department of Defense organizations that are responsible for the oversight and management of critical information systems and infrastructures on which the Department, the armed forces, and supporting activities depend for the conduct of daily operations and operations during crisis.

(Added Pub. L. 106–65, div. A, title X, §1043(a), Oct. 5, 1999, 113 Stat. 760; amended Pub. L. 106–398, §1 [[div. A], title X, §1063], Oct. 30, 2000, 114 Stat. 1654, 1654A–274; Pub. L. 107–296, title X, §1001(c)(1)(B), Nov. 25, 2002, 116 Stat. 2267; Pub. L. 107–347, title III, §301(c)(1)(B), Dec. 17, 2002, 116 Stat. 2955; Pub. L. 108–136, div. A, title X, §1031(a)(12), Nov. 24, 2003, 117 Stat. 1597; Pub. L. 108–375, div. A, title X, §1084(d)(17), Oct. 28, 2004, 118 Stat. 2062.)

AMENDMENTS

2004—Subsec. (c). Pub. L. 108–375 substituted ''subchapter II'' for ''subtitle II'' in introductory provisions.

2003—Subsec. (e). Pub. L. 108–136 struck out subsec. (e) which directed the Secretary of Defense to annually submit to Congress a report on the Defense Information Assurance Program.

2002—Subsec. (b). Pub. L. 107–296, §1001(c)(1)(B)(i), and Pub. L. 107–347, §301(c)(1)(B)(i), amended subsec. (b) identically, substituting ''Objectives of the Program'' for ''Objectives and Minimum Requirements'' in heading and striking out par. (1) designation before ''The objectives''.

Subsec. (b)(2). Pub. L. 107–347, §301(c)(1)(B)(ii), struck out par. (2) which read as follows: ''The program shall at a minimum meet the requirements of sections 3534 and 3535 of title 44.''

Pub. L. 107–296, §1001(c)(1)(B)(ii), which directed the striking out of ''(2) the program shall at a minimum meet the requirements of section 3534 and 3535 of title 44, United States Code.'' could not be executed. See above par.

Subsec. (c). Pub. L. 107–347, §301(c)(1)(B)(iii), inserted '', including through compliance with subchapter III of chapter 35 of title 44'' after ''infrastructure'' in introductory provisions.

Pub. L. 107–296, §1001(c)(1)(B)(iii), inserted '', including through compliance with subtitle II of chapter 35 of title 44'' after ''infrastructure'' in introductory provisions.

2000—Subsec. (b). Pub. L. 106–398, §1 [[div. A], title X, §1063(a)], substituted ''OBJECTIVES AND MINIMUM REQUIREMENTS'' for ''OBJECTIVES OF THE PROGRAM'' in heading, designated existing provisions as par. (1), and added par. (2).

Subsec. (e)(7). Pub. L. 106–398, §1 [[div. A], title X, §1063(b)], added par. (7).

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as

an Effective Date note under section 101 of Title 6, Domestic Security.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–398 effective 30 days after Oct. 30, 2000, see section 1 [[div. A], title X, §1065] of Pub. L. 106–398, Oct. 30, 2000, 114 Stat. 1654, formerly set out as an Effective Date note under former section 3531 of Title 44, Public Printing and Documents.

CONSIDERATIONS RELATING TO PERMANENTLY BASING UNITED STATES EQUIPMENT OR ADDITIONAL FORCES IN HOST COUNTRIES WITH AT-RISK VENDORS IN 5G OR 6G NETWORKS

Pub. L. 116–283, div. A, title X, §1058, Jan. 1, 2021, 134 Stat. 3856, provided that:

''(a) IN GENERAL.—Prior to basing a major weapon system or additional permanently assigned forces comparable to or larger than a battalion, squadron, or naval combatant in a host country with at-risk 5th generation (in this section referred to as '5G') or sixth generation (in this section referred to as '6G') wireless network equipment, software, or services, including supply chain vulnerabilities identified by the Federal Acquisition Security Council, where United States military personnel and their families will be directly connected or subscribers to networks that include such at-risk equipment, software, and services in their official duties or in the conduct of personal affairs, the Secretary of Defense shall take into consideration the risks to personnel, equipment, and operations of the Department of Defense in the host country posed by current or intended use by such country of 5G or 6G telecommunications architecture provided by at-risk vendors, including Huawei and ZTE, and any steps to mitigate those risks, including—

''(1) any steps being taken by the host country to mitigate any potential risks to the weapon systems, military units, or personnel, and the Department of Defense's assessment of those efforts;

''(2) any steps being taken by the United States Government, separately or in collaboration with the host country, to mitigate any potential risks to the weapon systems, permanently deployed forces, or personnel;

''(3) any defense mutual agreements between the host country and the United States intended to allay the costs of risk mitigation posed by the at-risk infrastructure; and

''(4) any other matters the Secretary determines to be relevant.

''(b) APPLICABILITY.—The requirements under subsection (a)—

''(1) apply with respect to the permanent long-term stationing of equipment and permanently assigned forces; and

''(2) do not apply with respect to the short-term deployment or rotational presence of equipment or forces to a military installation outside the United States in connection with any exercise, dynamic force employment, contingency operation, or combat operation.

''(c) REPORT.—

''(1) IN GENERAL.—Not later than one year after the date of the enactment of this Act [Jan. 1, 2021], the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report that contains an assessment of—

''(A) the risk to personnel, equipment, and operations of the Department of Defense in host countries posed by the current or intended use by such countries of 5G or 6G telecommunications architecture provided by at-risk vendors, including Huawei and ZTE; and

''(B) measures required to mitigate the risk described in paragraph (1).

''(2) FORM.—The report required by paragraph (1) shall be submitted in a classified form with an unclassified summary.

''(d) MAJOR WEAPON SYSTEM DEFINED.—In this section, the term 'major weapon system' has the meaning given that term in section 2379(f) of title 10, United States Code.''

RESPONSIBILITY FOR CYBERSECURITY AND CRITICAL INFRASTRUCTURE PROTECTION OF THE DEFENSE INDUSTRIAL BASE

Pub. L. 116–283, div. A, title XVII, §1724, Jan. 1, 2021, 134 Stat. 4111, provided that:

''(a) CRITICAL INFRASTRUCTURE DEFINED.—In this section, the term 'critical infrastructure' has the meaning given such term in section 1016(e) of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001 (42 U.S.C. 5195c(e)).

''(b) DESIGNATION.—The Secretary of Defense shall designate the Principal Cyber Advisor of the Department of Defense as the coordinating authority for cybersecurity issues relating to the defense industrial base.

''(c) RESPONSIBILITIES.—As the coordinating authority for cybersecurity issues relating to the defense industrial base, the Principal Cyber Advisor of the Department of Defense shall synchronize, harmonize, deconflict, and coordinate all policies and programs germane to defense industrial base cybersecurity, including the following:

''(1) The Sector Specific Agency functions under Presidential Policy Directive-21 the Department of Defense has assigned to the Under Secretary of Defense for Policy for implementation.

''(2) The Under Secretary of Defense for Acquisition and Sustainment's policies and programs germane to contracting and contractual enforcement as such relate to cybersecurity assessment and assistance, and industrial base health and security.

''(3) The Under Secretary of Defense for Intelligence and Security's policies and programs germane to physical security, information security, industrial security, acquisition security and cybersecurity, all source intelligence, classified threat intelligence sharing related to defense industrial base cybersecurity activities, counterintelligence, and foreign ownership control or influence, including the Defense Intelligence Agency and National Security Agency support provided to the Department of Defense – Defense Industrial Base Collaborative Information Sharing Environment and cyber intrusion damage assessment analysis as part of defense industrial base cybersecurity activities.

''(4) The Department of Defense Chief Information Officer's policies and programs for cybersecurity standards and integrating cybersecurity threat intelligence-sharing activities and enhancing Department of Defense and defense industrial base cyber situational awareness.

''(5) The Under Secretary of Defense for Research and Engineering's policies and programs germane to protection planning requirements of emerging technologies as such relate to cybersecurity assessment and assistance, and industrial base health and security.

''(6) Other Department of Defense components' policies and programs germane to the cybersecurity of the defense industrial base, including the policies and programs of the military services and the combatant commands.

''(d) ADDITIONAL FUNCTIONS.—In carrying out this section, the Principal Cyber Advisor of the Department of Defense shall—

''(1) coordinate or facilitate coordination with relevant Federal departments and agencies, defense industrial base entities, independent regulatory agencies, and with State, local, territorial, and Tribal entities, as appropriate;

''(2) facilitate or coordinate the provision of incident management support to defense industrial base entities, as appropriate;

''(3) facilitate or coordinate the provision of technical assistance to and consultations with defense in-

dustrial base entities to identify cyber or cyber-physical vulnerabilities and minimize the damage of potential incidents, as appropriate; and

''(4) support or facilitate the supporting of the statutorily required reporting requirements of such relevant Federal departments and agencies by providing or facilitating the provision to such departments and agencies on an annual basis relevant critical infrastructure information, as appropriate.

''(e) DEPARTMENT OF DEFENSE ROLES AND RESPONSIBILITIES.—No later than 180 days after the date of the enactment of this Act [Jan. 1, 2021], the Secretary of Defense shall brief the Committees on Armed Services of the Senate and the House of Representatives on the following issues:

''(1) A plan for implementation of this section, including an assessment of the roles and responsibilities of entities across the Department of Defense and mechanisms and processes for coordination of policy and programs germane to defense industrial base cybersecurity.

''(2) An analysis of the feasibility and advisability of separating cybersecurity Sector Specific Agency functions under Presidential Policy Directive-21 from non-cybersecurity Sector Specific Agency functions.

''(3) Regarding the non-cybersecurity Sector Specific Agency functions the Department has assigned to the Under Secretary of Defense for Policy for implementation, the implications of reassigning such responsibilities to the Under Secretary of Defense for Acquisition and Sustainment.''

IMPROVING THE TRAINING WITH INDUSTRY PROGRAM

Pub. L. 116–283, div. A, title XVII, §1726(b), Jan. 1, 2021, 134 Stat. 4116, provided that:

''(1) IN GENERAL.—Not later than 120 days after the date of the enactment of this Act [Jan. 1, 2021], the Principal Cyber Advisor of the Department of Defense, in consultation with the Principal Cyber Advisors of the military services and the Under Secretary of Defense for Personnel and Readiness, shall submit to the Secretary of Defense and the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a review of the current utilization and utility of the Training With Industry (TWI) programs, including relating to the following:

''(A) Recommendations regarding how to improve and better utilize such programs, including regarding individuals who have completed such programs.

''(B) An implementation plan to carry out such recommendations.

''(2) ADDITIONAL.—Not later than 90 days after the submission of the report required under paragraph (1), the Secretary of Defense shall carry out such elements of the implementation plan required under paragraph (1)(B) as the Secretary considers appropriate and notify the congressional defense committees of the determinations of the Secretary relating thereto.''

REPORTING REQUIREMENTS FOR CROSS DOMAIN INCIDENTS AND EXEMPTIONS TO POLICIES FOR INFORMATION TECHNOLOGY

Pub. L. 116–283, div. A, title XVII, §1727, Jan. 1, 2021, 134 Stat. 4117, provided that:

''(a) INCIDENT REPORTING.—

''(1) IN GENERAL.—Effective beginning on the date of the enactment of this Act [Jan. 1, 2021], the Secretary of Defense and the secretaries of the military services shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a monthly report in writing that documents each instance or indication of a cross-domain incident within the Department of Defense.

''(2) PROCEDURES.—The Secretary of Defense shall submit to the congressional defense committees procedures for complying with the requirements of paragraph (1) consistent with the national security of the United States and the protection of operational integrity. The Secretary shall promptly notify such committees in writing of any changes to such procedures at least 14 days prior to the adoption of any such changes.

''(3) DEFINITION.—In this subsection, the term 'cross domain incident' means any unauthorized connection of any duration between software, hardware, or both that is either used on, or designed for use on a network or system built for classified data, and systems not accredited or authorized at the same or higher classification level, including systems on the public internet, regardless of whether the unauthorized connection is later determined to have resulted in the exfiltration, exposure, or spillage of data across the cross domain connection.

''(b) EXEMPTIONS TO POLICY FOR INFORMATION TECHNOLOGY.—Not later than six months after the date of the enactment of this Act and biannually thereafter, the Secretary of Defense and the secretaries of the military services shall submit to the congressional defense committees a report in writing that enumerates and details each current exemption to information technology policy, interim Authority To Operate (ATO) order, or both. Each such report shall include other relevant information pertaining to each such exemption, including relating to the following:

''(1) Risk categorization.

''(2) Duration.

''(3) Estimated time remaining.''

PILOT PROGRAM ON CYBERSECURITY CAPABILITY METRICS

Pub. L. 116–283, div. A, title XVII, §1733, Jan. 1, 2021, 134 Stat. 4123, provided that:

''(a) PILOT PROGRAM REQUIRED.—The Secretary of Defense, acting through the Chief Information Officer of the Department of Defense and the Commander of United States Cyber Command, shall conduct a pilot program to assess the feasibility and advisability of developing and using speed-based metrics to measure the performance and effectiveness of security operations centers and cyber security service providers in the Department of Defense.

''(b) REQUIREMENTS.—

''(1) DEVELOPMENT OF METRICS.—(A) Not later than July 1, 2021, the Chief Information Officer and the Commander shall jointly develop metrics described in subsection (a) to carry out the pilot program under such subsection.

''(B) The Chief Information Officer and the Commander shall ensure that the metrics developed under subparagraph (A) are commensurate with the representative timelines of nation-state and non-nation-state actors when gaining access to, and compromising, Department networks.

''(2) USE OF METRICS.—(A) Not later than December 1, 2021, the Secretary shall, in carrying out the pilot program required by subsection (a), begin using the metrics developed under paragraph (1) of this subsection to assess select security operations centers and cyber security service providers, which the Secretary shall select specifically for purposes of the pilot program, for a period of not less than four months.

''(B) In carrying out the pilot program under subsection (a), the Secretary shall evaluate the effectiveness of operators, capabilities available to operators, and operators' tactics, techniques, and procedures.

''(c) AUTHORITIES.—In carrying out the pilot program under subsection (a), the Secretary may—

''(1) assess select security operations centers and cyber security service providers—

''(A) over the course of their mission performance; or

''(B) in the testing and accreditation of cybersecurity products and services on test networks designated pursuant to section 1658 of the National Defense Authorization Act for Fiscal Year 2020 (Public Law 116–92) [set out as a note below]; and

''(2) assess select elements' use of security orchestration and response technologies, modern endpoint security technologies, Big Data Platform instantiations, and technologies relevant to zero trust architectures.

''(d) BRIEFING.—

''(1) IN GENERAL.—Not later than March 1, 2022, the Secretary shall brief the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives on the findings of the Secretary with respect to the pilot program required by subsection (a).

''(2) ELEMENTS.—The briefing provided under paragraph (1) shall include the following:

''(A) The pilot metrics developed under subsection (b)(1).

''(B) The findings of the Secretary with respect to the assessments carried out under subsection (b)(2).

''(C) An analysis of the utility of speed-based metrics in assessing security operations centers and cyber security service providers.

''(D) An analysis of the utility of the extension of the pilot metrics to or speed-based assessment of the Cyber Mission Forces.

''(E) An assessment of the technical and procedural measures that would be necessary to meet the speed-based metrics developed and applied in the pilot program.''

INTEGRATION OF DEPARTMENT OF DEFENSE USER ACTIVITY MONITORING AND CYBERSECURITY

Pub. L. 116–283, div. A, title XVII, § 1735, Jan. 1, 2021, 134 Stat. 4125, provided that:

''(a) INTEGRATION OF PLANS, CAPABILITIES, AND SYSTEMS.—The Secretary of Defense shall integrate the plans, capabilities, and systems for user activity monitoring, and the plans, capabilities, and systems for endpoint cybersecurity and the collection of metadata on network activity for cybersecurity to enable mutual support and information sharing.

''(b) REQUIREMENTS.—In carrying out subsection (a), the Secretary shall—

''(1) consider using the Big Data Platform instances that host cybersecurity metadata for storage and analysis of all user activity monitoring data collected across the Department of Defense Information Network at all security classification levels;

''(2) develop policies and procedures governing access to user activity monitoring data or data derived from user activity monitoring by cybersecurity operators; and

''(3) develop processes and capabilities for using metadata on host and network activity for user activity monitoring in support of the insider threat mission.

''(c) CONGRESSIONAL BRIEFING.—Not later than October 1, 2021, the Secretary shall provide a briefing to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] on actions taken to carry out this section.''

ASSESSMENT ON DEFENSE INDUSTRIAL BASE PARTICIPATION IN A THREAT INFORMATION SHARING PROGRAM

Pub. L. 116–283, div. A, title XVII, § 1737, Jan. 1, 2021, 134 Stat. 4127, provided that:

''(a) DEFENSE INDUSTRIAL BASE THREAT INFORMATION PROGRAM ASSESSMENT.—Not later than 270 days after the date of the enactment of this Act [Jan. 1, 2021], the Secretary of Defense shall complete an assessment of the feasibility, suitability, and definition of, and resourcing required to establish, a defense industrial base threat information sharing program to collaborate and share threat information with, and obtain threat information from, the defense industrial base.

''(b) ELEMENTS.—The assessment regarding the establishment of a defense industrial base threat information sharing program under subsection (a) shall include evaluation of the following:

''(1) The feasibility and suitability of, and requirements for, the establishment of a defense industrial base threat information sharing program, including cybersecurity incident reporting requirements applicable to the defense industrial base that—

''(A) extend beyond mandatory cybersecurity incident reporting requirements as in effect on the day before the date of the enactment of this Act;

''(B) set specific, consistent timeframes for all categories of cybersecurity incident reporting;

''(C) establish a single clearinghouse for all mandatory cybersecurity incident reporting to the Department of Defense, including incidents involving covered unclassified information, and classified information; and

''(D) provide that, unless authorized or required by another provision of law or the element of the defense industrial base making the report consents, nonpublic information of which the Department becomes aware only because of a report provided pursuant to the program shall be disseminated and used only for a cybersecurity purpose (as such term is defined in section 102 of the Cybersecurity Information Sharing Act of 2015 (6 U.S.C. 1501)) and in support of national defense activities.

''(2) A mechanism for developing a shared and realtime picture of the threat environment.

''(3) Options for joint, collaborative, and co-located analytics.

''(4) Possible investments in technology and capabilities to support automated detection and analysis across the defense industrial base.

''(5) Coordinated information tipping, sharing, and deconfliction, as necessary, with relevant Federal Government agencies with similar information sharing programs.

''(6) Processes for direct sharing of threat information related to a specific defense industrial base entity with such entity.

''(7) Mechanisms for providing defense industrial base entities with clearances for national security information access, as appropriate.

''(8) Requirements to consent to queries of foreign intelligence collection databases related to a specific defense industrial base entity as a condition of participation in the threat information sharing program.

''(9) Recommendations with respect to threat information sharing program participation, including the following:

''(A) Incentives for defense industrial base entities to participate in the threat information sharing program.

''(B) Mandating minimum levels of threat information sharing program participation for any entity that is part of the defense industrial base.

''(C) Procurement prohibitions on any defense industrial base entity that are not in compliance with the requirements of the threat information sharing program.

''(D) Waiver authority and criteria.

''(E) Adopting tiers of requirements for participation within the threat information sharing program based on—

''(i) the role of and relative threats related to defense industrial base entities; and

''(ii) Cybersecurity Maturity Model Certification level.

''(10) Options to utilize an existing federally recognized information sharing program to satisfy the requirement for a threat information sharing program if—

''(A) the existing program includes, or is modified to include, two-way sharing of threat information that is specifically relevant to the defense industrial base; and

''(B) such a program is coordinated with other Federal Government agencies with existing information sharing programs where overlap occurs.

''(11) Methods to encourage participation of defense industrial base entities in appropriate private sector information sharing and analysis centers (ISACs).

''(12) Methods to coordinate collectively with defense industrial base entities to consider methods for mitigating compliance costs.

''(13) The resources needed, governance roles and structures required, and changes in regulation or law needed for execution of a threat information sharing program, as well as any other considerations determined relevant by the Secretary.

''(14) Identification of any barriers that would prevent the establishment of a defense industrial base threat information sharing program.

''(c) CONSULTATION.—In conducting the assessment required under subsection (a), the Secretary of Defense shall consult with and solicit recommendations from representative industry stakeholders across the defense industrial base regarding the elements described in subsection (b) and potential stakeholder costs of compliance.

''(d) DETERMINATION AND BRIEFING.—Upon completion of the assessment required under subsection (a), the Secretary of Defense shall make a determination regarding the establishment by the end of fiscal year 2021 of a defense industrial base threat information sharing program and provide a briefing to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives on—

''(1) the findings of the Secretary with respect to such assessment and such determination; and

''(2) such implementation plans as the Secretary may have arising from such findings.

''(e) IMPLEMENTATION.—If the Secretary of Defense makes a positive determination pursuant to subsection (d) of the feasibility and suitability of establishing a defense industrial base threat information sharing program, the Secretary shall establish such program. Not later than 180 days after a positive determination, the Secretary of Defense shall promulgate such rules and regulations as are necessary to establish the defense industrial base threat information sharing program under this section.''

ASSISTANCE FOR SMALL MANUFACTURERS IN THE DEFENSE INDUSTRIAL SUPPLY CHAIN ON MATTERS RELATING TO CYBERSECURITY

Pub. L. 116–283, div. A, title XVII, § 1738, Jan. 1, 2021, 134 Stat. 4129, provided that:

''(a) IN GENERAL.—Subject to the availability of appropriations, the Secretary of Defense, in consultation with the Director of the National Institute of Standards and Technology, may award financial assistance to a Center for the purpose of providing cybersecurity services to small manufacturers.

''(b) CRITERIA.—If the Secretary carries out subsection (a), the Secretary, in consultation with the Director, shall establish and publish on the grants.gov website, or successor website, criteria for selecting recipients for financial assistance under this section.

''(c) USE OF FINANCIAL ASSISTANCE.—Financial assistance under this section—

''(1) shall be used by a Center to provide small manufacturers with cybersecurity services, including—

''(A) compliance with the cybersecurity requirements of the Department of Defense Supplement to the Federal Acquisition Regulation, including awareness, assessment, evaluation, preparation, and implementation of cybersecurity services; and

''(B) achieving compliance with the Cybersecurity Maturity Model Certification framework of the Department of Defense; and

''(2) may be used by a Center to employ trained personnel to deliver cybersecurity services to small manufacturers.

''(d) BIENNIAL REPORTS.—

''(1) IN GENERAL.—Not less frequently than once every two years, the Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives], the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Science, Space, and Technology of the House of Representatives a report on financial assistance awarded under this section.

''(2) CONTENTS.—To the extent practicable, each report submitted under paragraph (1) shall include the following with respect to the years covered by each such report:

''(A) The number of small manufacturers assisted.

''(B) A description of the cybersecurity services provided.

''(C) A description of the cybersecurity matters addressed.

''(D) An analysis of the operational effectiveness and cost-effectiveness of such cybersecurity services.

''(e) TERMINATION.—The authority of the Secretary to award financial assistance under this section shall terminate on the date that is five years after the date of the enactment of this section [Jan. 1, 2021].

''(f) DEFINITIONS.—In this section:

''(1) CENTER.—The term 'Center' has the meaning given such term in section 25(a) of the National Institute of Standards and Technology Act (15 U.S.C. 278k(a)).

''(2) SMALL MANUFACTURER.—The term 'small manufacturer' has the meaning given such term in section 1644(g) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232; 10 U.S.C. 2224 note).''

ASSESSMENT ON DEFENSE INDUSTRIAL BASE CYBERSECURITY THREAT HUNTING PROGRAM

Pub. L. 116–283, div. A, title XVII, § 1739, Jan. 1, 2021, 134 Stat. 4130, provided that:

''(a) ASSESSMENT REQUIRED.—Not later than 270 days after the date of the enactment of this Act [Jan. 1, 2021], the Secretary of Defense shall complete an assessment of the feasibility, suitability, definition of, and resourcing required to establish a defense industrial base cybersecurity threat hunting program to actively identify cybersecurity threats and vulnerabilities within the defense industrial base.

''(b) ELEMENTS.—The assessment required under section [sic] (a) shall include evaluation of the following:

''(1) Existing defense industrial base cybersecurity threat hunting policies and programs, including the threat hunting elements at each level of the compliance-based Cybersecurity Maturity Model Certification program of the Department of Defense, including requirements germane to continuous monitoring, discovery, and investigation of anomalous activity indicative of a cybersecurity incident.

''(2) The suitability of a continuous cybersecurity threat hunting program, as a supplement to the cyber hygiene requirements of the Cybersecurity Maturity Model Certification, including consideration of the following:

''(A) Collection and analysis of metadata on network activity to detect possible intrusions.

''(B) Rapid investigation and remediation of possible intrusions.

''(C) Requirements for mitigating any vulnerabilities identified pursuant to the cybersecurity threat hunting program.

''(D) Mechanisms for the Department of Defense to share with entities in the defense industrial base malicious code, indicators of compromise, and insights on the evolving threat landscape.

''(3) Recommendations with respect to cybersecurity threat hunting program participation of prime contractors and subcontractors, including relating to the following:

''(A) Incentives for defense industrial base entities to share with the Department of Defense threat and vulnerability information collected pursuant to threat monitoring and hunting activities.

''(B) Mandating minimum levels of program participation for any defense industrial base entity.

''(C) Procurement prohibitions on any defense industrial base entity that is not in compliance with the requirements of the cybersecurity threat hunting program.

''(D) Waiver authority and criteria.

''(E) Consideration of a tiered cybersecurity threat hunting program that takes into account the following:

''(i) The cybersecurity maturity of defense industrial base entities.

''(ii) The roles of such entities.

''(iii) Whether each such entity possesses classified information or controlled unclassified information and covered defense networks.

''(iv) The covered defense information to which each such entity has access as a result of contracts with the Department of Defense.

''(4) Whether the continuous cybersecurity threat-hunting program described in paragraph (2) should be conducted by—

''(A) qualified prime contractors or subcontractors;

''(B) accredited third-party cybersecurity vendors;

''(C) with contractor consent—

''(i) United States Cyber Command; or

''(ii) a component of the Department of Defense other than United States Cyber Command;

''(D) the deployment of network sensing technologies capable of identifying and filtering malicious network traffic; or

''(E) a combination of the entities specified in subparagraphs (A) through (D).

''(5) The resources necessary, governance structures or changes in regulation or law needed, and responsibility for execution of a defense industrial base cybersecurity threat hunting program, as well as any other considerations determined relevant by the Secretary.

''(6) A timelime for establishing the defense industrial base cybersecurity threat hunting program not later than two years after the date of the enactment of this Act [Jan. 1, 2021].

''(7) Identification of any barriers that would prevent such establishment.

''(c) CONSULTATION.—In conducting the assessment required under subsection (a), the Secretary of Defense shall consult with and solicit recommendations from representative industry stakeholders across the defense industrial base regarding the elements described in subsection (b) and potential stakeholder costs of compliance.

''(d) DETERMINATION AND BRIEFING.—Upon completion of the assessment required under subsection (a), the Secretary of Defense shall make a determination regarding the establishment of a defense industrial base cybersecurity threat hunting program and provide a briefing to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives on—

''(1) the findings of the Secretary with respect to such assessment and such determination; and

''(2) such implementation plans as the Secretary may have arising from such findings.

''(e) IMPLEMENTATION.—If the Secretary of Defense makes a positive determination pursuant to subsection (d) of the feasibility and suitability of establishing a defense industrial base threat cybersecurity threat hunting program, the Secretary shall establish such program. Not later than 180 days after a positive determination, the Secretary of Defense shall promulgate such rules and regulations as are necessary to establish the defense industrial base cybersecurity threat hunting program under this section.''

ROLE OF CHIEF INFORMATION OFFICER IN IMPROVING ENTERPRISE-WIDE CYBERSECURITY

Pub. L. 116–92, div. A, title XVI, § 1641, Dec. 20, 2019, 133 Stat. 1750, provided that:

''(a) IN GENERAL.—In carrying out the responsibilities established in section 142 of title 10, United States Code, the Chief Information Officer of the Department of Defense shall, to the maximum extent practicable, ensure that the cybersecurity programs and capabilities of the Department—

''(1) fit into an enterprise-wide cybersecurity architecture;

''(2) are maximally interoperable with each other, including those programs and capabilities deployed by the components of the Department;

''(3) enhance enterprise-level visibility and responsiveness to threats; and

''(4) are developed, procured, instituted, and managed in a cost-efficient manner, exploiting economies of scale and enterprise-wide services and discouraging unnecessary customization and piecemeal acquisition.

''(b) REQUIREMENTS.—In carrying out subsection (a), the Chief Information Officer shall—

''(1) manage and modernize the cybersecurity architecture of the Department, including—

''(A) ensuring the cybersecurity architecture of the Department maximizes cybersecurity capability, network, and endpoint activity data sharing across Department components;

''(B) ensuring the cybersecurity architecture of the Department supports improved automaticity of cybersecurity detection and response; and

''(C) modernizing and configuring the Department's standardized deployed perimeter, network-level, and endpoint capabilities to improve interoperability, meet pressing capability needs, and negate common adversary tactics, techniques, and procedures;

''(2) establish mechanisms to enable and mandate, as necessary, cybersecurity capability and network and endpoint activity data-sharing across Department components;

''(3) make mission data, through data tagging, automatic transmission, and other means, accessible and discoverable by Department components other than owners of such mission data;

''(4) incorporate into the cybersecurity architecture of the Department emerging cybersecurity technologies from the Defense Advanced Research Projects Agency, the Strategic Capabilities Office, the Defense Innovation Unit, the laboratories of the military departments, and the commercial sector;

''(5) ensure that the Department possesses the necessary computing infrastructure, through technology refresh, installation or acquisition of bandwidth, and the use of cloud computing power, to host and enable necessary cybersecurity capabilities; and

''(6) utilize the Department's cybersecurity expertise to improve cybersecurity performance, operations, and acquisition, including—

''(A) the cybersecurity testing, architecting, and engineering expertise of the National Security Agency; and

''(B) the technology policy, workforce, and engineering expertise of the Defense Digital Service.''

CONTROL AND ANALYSIS OF DEPARTMENT OF DEFENSE DATA STOLEN THROUGH CYBERSPACE

Pub. L. 116–92, div. A, title XVI, § 1646, Dec. 20, 2019, 133 Stat. 1753, provided that:

''(a) REQUIREMENTS.—If the Secretary of Defense determines that significant Department of Defense data may have been stolen through cyberspace and evidence of theft of the data in question—

''(1) is in the possession of a component of the Department, the Secretary shall—

''(A) either transfer or replicate and transfer such Department data in a prompt and secure manner to a secure repository with access by Department personnel appropriately limited on a need-to-know basis or otherwise ensure such consistent access to the relevant data by other means;

''(B) ensure the Department applies such automated analytic tools and capabilities to the repository of potentially compromised data as are necessary to rapidly understand the scope and effect of the potential compromise;

''(C) for high priority and mission critical Department systems, develop analytic products that characterize the scope of data compromised;

''(D) ensure that relevant mission-affected entities in the Department are made aware of the theft or possible theft and, as damage assessment and mitigation proceeds, are kept apprised of the extent of the data stolen; and

''(E) ensure that Department counterintelligence organizations are—

''(i) fully integrated with any damage assessment team assigned to the breach;

''(ii) fully informed of the data that have or potentially have been stolen and the effect of such theft; and

''(iii) provided resources and tasked, in conjunction with subject matter experts and responsible authorities, to immediately and appropriately respond, including through the development and execution of relevant countermeasures, to any breach involving espionage and data theft; or

''(2) is in the possession of or under controls or restrictions imposed by the Federal Bureau of Investigation, or a national counterintelligence or intelligence organization, the Secretary shall determine, jointly with the Director of the Federal Bureau of Investigation or the Director of National Intelligence, as appropriate, the most expeditious process, means, and conditions for carrying out the activities otherwise required by paragraph (1).

''(b) RECOMMENDATIONS.—Not later than 90 days after the date of the enactment of this Act [Dec. 20, 2019], the Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] such recommendations as the Secretary may have for legislative or administrative action to address such barriers that may be inhibiting the implementation of this section.''

USE OF NATIONAL SECURITY AGENCY CYBERSECURITY EXPERTISE TO SUPPORT EVALUATION OF COMMERCIAL CYBERSECURITY PRODUCTS

Pub. L. 116–92, div. A, title XVI, § 1647, Dec. 20, 2019, 133 Stat. 1754, as amended by Pub. L. 116–283, div. A, title X, § 1081(c)(7), Jan. 1, 2021, 134 Stat. 3873, provided that:

''(a) ADVISORY MISSION.—The National Security Agency shall, as a mission in its role in securing the information systems of the Department of Defense, advise and assist the Department of Defense in its evaluation and adoption of cybersecurity products and services from industry, especially the commercial cybersecurity sector.

''(b) PROGRAM TO IMPROVE ACQUISITION OF CYBERSECURITY PRODUCTS AND SERVICES.—

''(1) ESTABLISHMENT.—Consistent with subsection (a), the Director of the National Security Agency shall establish a permanent program consisting of market research, testing, and expertise transmission, or augments to existing programs, to improve the evaluation by the Department of Defense of cybersecurity products and services.

''(2) REQUIREMENTS.—Under the program established pursuant to paragraph (1), the Director shall, independently and at the request of the components of the Department of Defense—

''(A) test and evaluate commercially available cybersecurity products and services using—

''(i) generally known cyber operations techniques; and

''(ii) tools and cyber operations techniques and advanced tools and techniques available to the National Security Agency;

''(B) develop and establish standard procedures, techniques, and threat-informed metrics to perform the testing and evaluation required by subparagraph (A); and

''(C) advise the Chief Information Officer and the components of the Department of Defense on the merits and disadvantages of evaluated cybersecurity products, including with respect to—

''(i) any synergies between products;

''(ii) value;

''(iii) matters relating to operation and maintenance; and

''(iv) matters relating to customization requirements.

''(3) LIMITATIONS.—The program established under paragraph (1) may not—

''(A) be used to accredit cybersecurity products and services for use by the Department;

''(B) create approved products lists; or

''(C) be used for the procurement and fielding of cybersecurity products on behalf of the Department.''

[Pub. L. 116–283, div. A, title X, § 1081(c), Jan. 1, 2021, 134 Stat. 3873, provided that the amendment made by section 1081(c)(7) of Pub. L. 116–283 to section 1647 of Pub. L. 116–92, set out above, is effective as of Dec. 20, 2020 (probably should be Dec. 20, 2019) and as if included in Pub. L. 116–92.]

FRAMEWORK TO ENHANCE CYBERSECURITY OF THE UNITED STATES DEFENSE INDUSTRIAL BASE

Pub. L. 116–92, div. A, title XVI, § 1648, Dec. 20, 2019, 133 Stat. 1755, provided that:

''(a) FRAMEWORK REQUIRED.—Not later than February 1, 2020, the Secretary of Defense shall develop a consistent, comprehensive framework to enhance cybersecurity for the United States defense industrial base.

''(b) ELEMENTS.—The framework developed pursuant to subsection (a) shall include the following:

''(1) Identification of unified cybersecurity standards, regulations, metrics, ratings, third-party certifications, or requirements to be imposed on the defense industrial base for the purpose of assessing the cybersecurity of individual contractors.

''(2) Roles and responsibilities of the Under Secretary of Defense for Acquisition and Sustainment, the Under Secretary of Defense for Intelligence and Security, the Chief Information Officer, the Director of the Protecting Critical Technologies Task Force, and the Secretaries of the military departments relating to the following:

''(A) Establishing and ensuring compliance with cybersecurity standards, regulations, and policies.

''(B) Deconflicting existing cybersecurity standards, regulations, and policies.

''(C) Coordinating with and providing assistance to the defense industrial base for cybersecurity matters, particularly as relates to the programs and processes described in paragraphs (8) and (9).

''(D) Management and oversight of the acquisition process, including responsibility determination, solicitation, award, and contractor management, relating to cybersecurity standards, regulations, metrics, ratings, third-party certifications, or requirements.

''(3) The responsibilities of the prime contractors, and all subcontractors in the supply chain, for implementing the required cybersecurity standards, regulations, metrics, ratings, third-party certifications, and requirements identified under paragraph (1).

''(4) Definitions for 'Controlled Unclassified Information' (CUI) and 'For Official Use Only' (FOUO), as well as policies regarding protecting information designated as either of such.

''(5) Methods and programs for managing controlled unclassified information, and for limiting the presence of unnecessary sensitive information on contractor networks.

''(6) A plan to provide implementation guidance, education, manuals, and, as necessary, direct technical support or assistance, to contractors on matters relating to cybersecurity.

''(7) Quantitative metrics for assessing the effectiveness of the overall framework over time, with respect to the exfiltration of controlled unclassified information from the defense industrial base.

''(8) A comprehensive list of current and planned Department of Defense programs to assist the defense

industrial base with cybersecurity compliance requirements of the Department, including those programs that provide training, expertise, and funding, and maintain approved security products lists and approved providers lists.

''(9) Processes for enhanced threat information sharing between the Department of Defense and the defense industrial base.

''(c) MATTERS FOR CONSIDERATION.—In developing the framework pursuant to subsection (a), the Secretary shall consider the following:

''(1) Designating an official to be responsible for the cybersecurity of the defense industrial base.

''(2) Risk-based methodologies, standards, metrics, and tiered cybersecurity requirements for the defense industrial base, including third-party certifications such as the Cybersecurity Maturity Model Certification pilot program, as the basis for a mandatory Department standard.

''(3) Tailoring cybersecurity requirements for small- and medium-sized contractors based on a risk-based approach.

''(4) Ensuring a consistent approach across the Department to cybersecurity standards, regulations, metrics, ratings, third-party certifications, or requirements of the defense industrial base.

''(5) Ensuring the Department's traceability and visibility of cybersecurity compliance of suppliers to all levels of the supply chain.

''(6) Evaluating incentives and penalties for cybersecurity performance of suppliers.

''(7) Integrating cybersecurity and traditional counterintelligence measures, requirements, and programs.

''(8) Establishing a secure software development environment (DevSecOps) in a cloud environment inside the perimeter of the Department for contractors to perform their development work.

''(9) Establishing a secure cloud environment through which contractors may access the data of the Department needed for their contract work.

''(10) An evaluation of the resources and utilization of Department programs to assist the defense industrial base in complying with cybersecurity compliance requirements referred to in subsection (b)(1).

''(11) Technological means, operational concepts, reference architectures, offensive counterintelligence operation concepts, and plans for operationalization to complicate adversary espionage, including honeypotting and data obfuscation.

''(12) Implementing enhanced security vulnerability assessments for contractors working on critical acquisition programs, technologies, manufacturing capabilities, and research areas.

''(13) Identifying ways to better leverage technology and employ machine learning or artificial intelligence capabilities, such as Internet Protocol monitoring and data integrity capabilities, to be applied to contractor information systems that host, receive, or transmit controlled unclassified information.

''(14) Developing tools to easily segregate program data to only allow subcontractors access to their specific information.

''(15) Appropriate communications of threat assessments of the defense industrial base to the acquisition workforce at all classification levels.

''(16) A single Sector Coordinating Council for the defense industrial base.

''(17) Appropriate communications with the defense industrial base on the impact of cybersecurity requirements in contracting and procurement decisions.

''(d) CONSULTATION.—In developing the framework required pursuant to subsection (a), the Secretary shall consult with the following:

''(1) Industry groups representing the defense industrial base.

''(2) Contractors in the defense industrial base.

''(3) The Director of the National Institute of Standards and Technology.

''(4) The Secretary of Energy.

''(5) The Director of National Intelligence.

''(6) Relevant Federal regulatory agencies.

''(e) BRIEFING.—

''(1) IN GENERAL.—Not later than March 11, 2020, the Secretary of Defense shall provide the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] with a briefing on the framework developed pursuant to subsection (a).

''(2) CONTENTS.—The briefing required by paragraph (1) shall include the following:

''(A) An overview of the framework developed pursuant to subsection (a).

''(B) Identification of such pilot programs as the Secretary considers may be required to improve the cybersecurity of the defense industrial base.

''(C) Implementation timelines and identification of costs.

''(D) Such recommendations as the Secretary may have for legislative action to improve the cybersecurity of the defense industrial base.

''(f) QUARTERLY BRIEFINGS.—

''(1) IN GENERAL.—Not less frequently than once each quarter after the briefing provided pursuant to subsection (e) until February 1, 2022, the Secretary of Defense shall brief the congressional defense committees on the status of development and implementation of the framework developed pursuant to subsection (a).

''(2) COORDINATION WITH OTHER BRIEFINGS.—Each briefing under paragraph (1) shall be conducted in conjunction with a quarterly briefing under section 484(a) of title 10, United States Code.

''(3) ELEMENTS.—Each briefing under paragraph (1) shall include the following:

''(A) The current status of the development and implementation of the framework developed pursuant to subsection (a).

''(B) A description of the efforts undertaken by the Secretary to evaluate the matters for consideration set forth in subsection (c).

''(C) The current status of any pilot programs the Secretary is carrying out to develop the framework.''

DESIGNATION OF TEST NETWORKS FOR TESTING AND ACCREDITATION OF CYBERSECURITY PRODUCTS AND SERVICES

Pub. L. 116–92, div. A, title XVI, § 1658, Dec. 20, 2019, 133 Stat. 1769, provided that:

''(a) DESIGNATION.—Not later than April 1, 2020, the Secretary of Defense shall designate, for use by the Defense Information Systems Agency and such other components of the Department of Defense as the Secretary considers appropriate, three test networks for the testing and accreditation of cybersecurity products and services.

''(b) REQUIREMENTS.—The networks designated under subsection (a) shall—

''(1) be of sufficient scale to realistically test cybersecurity products and services;

''(2) feature substantially different architectures and configurations;

''(3) be live, operational networks; and

''(4) feature cybersecurity processes, tools, and technologies that are appropriate for test purposes and representative of the processes, tools, and technologies that are widely used throughout the Department.

''(c) ACCESS.—Upon request, information generated in the testing and accreditation of cybersecurity products and services shall be made available to the Office of the Director, Operational Test and Evaluation.''

PROCEDURES AND REPORTING REQUIREMENT ON CYBERSECURITY BREACHES AND LOSS OF PERSONALLY IDENTIFIABLE INFORMATION AND CONTROLLED UNCLASSIFIED INFORMATION

Pub. L. 115–232, div. A, title XVI, § 1639, Aug. 13, 2018, 132 Stat. 2129, provided that:

''(a) IN GENERAL.—In the event of a significant loss of personally identifiable information of civilian or uniformed members of the Armed Forces, or a significant loss of controlled unclassified information by a cleared defense contractor, the Secretary of Defense shall promptly submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] notice in writing of such loss. Such notice may be submitted in classified or unclassified formats.

''(b) PROCEDURES.—Not later than 180 days after the date of the enactment of this Act [Aug. 13, 2018], the Secretary of Defense shall establish and submit to the congressional defense committees procedures for complying with the requirement of subsection (a). Such procedures shall be consistent with the national security of the United States, the protection of operational integrity, the protection of personally identifiable information of civilian and uniformed members of the Armed Forces, and the protection of controlled unclassified information.

''(c) DEFINITIONS.—In this section:

''(1) SIGNIFICANT LOSS OF CONTROLLED UNCLASSIFIED INFORMATION.—The term 'significant loss of controlled unclassified information' means an intentional, accidental, or otherwise known theft, loss, or disclosure of Department of Defense programmatic or technical controlled unclassified information the loss of which would have significant impact or consequence to a program or mission of the Department of Defense, or the loss of which is of substantial volume.

''(2) SIGNIFICANT LOSS OF PERSONALLY IDENTIFIABLE INFORMATION.—The term 'significant loss of personally identifiable information' means an intentional, accidental, or otherwise known disclosure of information that can be used to distinguish or trace an individual's identity, such as the name, Social Security number, date and place of birth, biometric records, home or other phone numbers, or other demographic, personnel, medical, or financial information, involving 250 or more civilian or uniformed members of the Armed Forces.''

MATTERS PERTAINING TO THE SHARKSEER CYBERSECURITY PROGRAM

Pub. L. 115–232, div. A, title XVI, § 1641, Aug. 13, 2018, 132 Stat. 2131, provided that:

''(a) TRANSFER OF PROGRAM.—Not later than March 1, 2019, the Secretary of Defense shall transfer the operations and maintenance for the Sharkseer cybersecurity program from the National Security Agency to the Defense Information Systems Agency, including all associated funding and, as the Secretary considers necessary, personnel.

''(b) LIMITATION ON FUNDING FOR THE INFORMATION SYSTEMS SECURITY PROGRAM.—Of the funds authorized to be appropriated by this Act [see Tables for classification] or otherwise made available for fiscal year 2019 or any subsequent fiscal year for research, development, test, and evaluation for the Information Systems Security Program for the National Security Agency, not more than 90 percent may be obligated or expended unless the Chief of Information Officer, in consultation with the Principal Cyber Advisor, certifies to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] that the operations and maintenance funding for the Sharkseer program for fiscal year 2019 and the subsequent fiscal years of the current Future Years Defense Program are available or programmed.

''(c) REPORT.—Not later than 90 days after the date of the enactment of this Act [Aug. 13, 2018], the Chief Information Officer shall provide to the congressional defense committees a report that assesses the transition of base operations of the SharkSeer program to the Defense Information Systems Agency, including with respect to staffing, acquisition, contracts, sensor management, and the ability to conduct cyber threat analyses and detect advanced malware. Such report shall also include a plan for continued capability development.

''(d) SHARKSEER BREAK AND INSPECT CAPABILITY.—

''(1) IN GENERAL.—The Secretary of Defense shall ensure that the decryption capability described in section 1636 of the Carl Levin and Howard P. 'Buck' McKeon National Defense Authorization Act for Fiscal Year 2015 (Public Law 113–291) [128 Stat. 3644] is provided by the break and inspect subsystem of the Sharkseer cybersecurity program, unless the Chief of Information Officer, in consultation with the Principal Cyber Advisor, notifies the congressional defense committees on or before the date that is 90 days after the date of the enactment of this Act that a superior enterprise solution will be operational before October 1, 2019.

''(2) INTEGRATION OF CAPABILITY.—The Secretary shall take such actions as are necessary to integrate the break and inspect subsystem of the Sharkseer cybersecurity program with the Department of Defense public key infrastructure.

''(e) VISIBILITY TO ENDPOINTS.—The Secretary shall take such actions as are necessary to enable, by October 1, 2020, the Sharkseer cybersecurity program and computer network defense service providers to instantly and automatically determine the specific identity and location of computer hosts and other endpoints that received or sent malware detected by the Sharkseer cybersecurity program or other network perimeter defenses.

''(f) SANDBOX AS A SERVICE.—The Secretary shall use the Sharkseer cybersecurity program sandbox-as-a-service capability as an enterprise solution and terminate all other such projects, unless the Chief of Information Officer, in consultation with the Principal Cyber Advisor, notifies the congressional defense committees on or before the date that is 90 days after the date of the enactment of this Act that a superior enterprise solution will be operational before October 1, 2019.''

DESIGNATION OF OFFICIAL FOR MATTERS RELATING TO INTEGRATING CYBERSECURITY AND INDUSTRIAL CONTROL SYSTEMS WITHIN THE DEPARTMENT OF DEFENSE

Pub. L. 115–232, div. A, title XVI, § 1643, Aug. 13, 2018, 132 Stat. 2133, provided that:

''(a) DESIGNATION OF INTEGRATING OFFICIAL.—Not later than 180 days after the date of the enactment of this Act [Aug. 13, 2018], the Secretary of Defense shall designate one official to be responsible for matters relating to integrating cybersecurity and industrial control systems for the Department of Defense.

''(b) RESPONSIBILITIES.—The official designated pursuant to subsection (a) shall be responsible for matters described in such subsection at all levels of command, from the Department's leadership to the facilities owned by or operated on behalf of the Department of Defense using industrial control systems, including developing Department-wide certification standards for integration of industrial control systems and taking into consideration frameworks set forth by the National Institute of Standards and Technology for the cybersecurity of such systems.''

ASSISTANCE FOR SMALL MANUFACTURERS IN THE DEFENSE INDUSTRIAL SUPPLY CHAIN AND UNIVERSITIES ON MATTERS RELATING TO CYBERSECURITY

Pub. L. 115–232, div. A, title XVI, § 1644, Aug. 13, 2018, 132 Stat. 2133, as amended by Pub. L. 116–283, div. A, title XVIII, §§ 1844(e)(2), 1869(e), Jan. 1, 2021, 134 Stat. 4246, 4284, provided that:

''(a) DISSEMINATION OF CYBERSECURITY RESOURCES.—

''(1) IN GENERAL.—The Secretary of Defense, in consultation with the Director of the National Institute of Standards and Technology, shall take such actions as may be necessary to enhance awareness of cybersecurity threats among small manufacturers and universities working on Department of Defense programs and activities.

''(2) PRIORITY.—The Secretary of Defense shall prioritize efforts to increase awareness to help reduce cybersecurity risks faced by small manufacturers and universities referred to in paragraph (1).

''(3) SECTOR FOCUS.—The Secretary of Defense shall carry out this subsection with a focus on such small manufacturers and universities as the Secretary considers critical.

''(4) OUTREACH EVENTS.—Under paragraph (1), the Secretary of Defense shall conduct outreach to support activities consistent with this section. Such outreach may include live events with a physical presence and outreach conducted through Internet websites. Such outreach may include training, including via courses and classes, to help small manufacturers and universities improve their cybersecurity.

''(5) ROADMAPS AND ASSESSMENTS.—The Secretary of Defense shall ensure that cybersecurity for defense industrial base manufacturing is included in appropriate research and development roadmaps and threat assessments.

''(b) VOLUNTARY CYBERSECURITY SELF-ASSESSMENTS.—The Secretary of Defense shall develop mechanisms to provide assistance to help small manufacturers and universities conduct voluntary self-assessments in order to understand operating environments, cybersecurity requirements, and existing vulnerabilities, including through the Mentor Protégé Program, small business programs, and engagements with defense laboratories and test ranges.

''(c) TRANSFER OF RESEARCH FINDINGS AND EXPERTISE.—

''(1) IN GENERAL.—The Secretary of Defense shall promote the transfer of appropriate technology, threat information, and cybersecurity techniques developed in the Department of Defense to small manufacturers and universities throughout the United States to implement security measures that are adequate to protect covered defense information, including controlled unclassified information.

''(2) COORDINATION WITH OTHER FEDERAL EXPERTISE AND CAPABILITIES.—The Secretary of Defense shall coordinate efforts, when appropriate, with the expertise and capabilities that exist in Federal agencies and federally sponsored laboratories.

''(3) AGREEMENTS.—In carrying out this subsection, the Secretary of Defense may enter into agreements with private industry, institutes of higher education, or a State, United States territory, local, or tribal government to ensure breadth and depth of coverage to the United States defense industrial base and to leverage resources.

''(d) DEFENSE ACQUISITION WORKFORCE CYBER TRAINING PROGRAM.—The Secretary of Defense shall establish a cyber counseling certification program, or approve a similar existing program, to certify small business professionals and other relevant acquisition staff within the Department of Defense to provide cyber planning assistance to small manufacturers and universities.

''(e) ESTABLISHMENT OF CYBERSECURITY FOR DEFENSE INDUSTRIAL BASE MANUFACTURING ACTIVITY.—

''(1) AUTHORITY.—The Secretary of Defense may establish an activity to assess and strengthen the cybersecurity resiliency of the defense industrial base, if the Secretary determines such is appropriate.

''(2) DESIGNATION.—The activity described in paragraph (1), if established, shall be known as the 'Cybersecurity for Defense Industrial Base Manufacturing Activity'.

''(3) SPECIFICATION.—The Cybersecurity for Defense Industrial Base Manufacturing Activity, if established, shall implement the requirements specified in subsections (a) through (c).

''(f) AUTHORITIES.—In carrying out this section, the Secretary may use the following authorities:

''(1) The Manufacturing Technology Program established under section 2521 of title 10, United States Code.

''(2) The Centers for Science, Technology, and Engineering Partnership program under section 2368 of title 10, United States Code.

''(3) The Manufacturing Engineering Education Program established under section 2196 of title 10, United States Code.

''(4) The Small Business Innovation Research program.

''(5) The mentor-protégé program.

''(6) Other legal authorities as the Secretary determines necessary to effectively and efficiently carry out this section.

''(g) DEFINITIONS.—In this section:

''(1) RESOURCES.—The term 'resources' means guidelines, tools, best practices, standards, methodologies, and other ways of providing information.

''(2) SMALL BUSINESS CONCERN.—The term 'small business concern' means a small business concern as that term is used in section 3 of the Small Business Act (15 U.S.C. 632).

''(3) SMALL MANUFACTURER.—The term 'small manufacturer' means a small business concern that is a manufacturer in the defense industrial supply chain.

''(4) STATE.—The term 'State' means each of the several States, Territories, and possessions of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.''

[Pub. L. 116–283, div. A, title XVIII, §§1801(d), 1844(e)(2), 1869(e), Jan. 1, 2021, 134 Stat. 4151, 4246, 4284, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, section 1644 of Pub. L. 115–232, set out above, is amended by substituting ''section 4841'' for ''section 2521'' in subsec. (f)(1) and ''section 4146'' for ''section 2368'' in subsec. (f)(2).]

EMAIL AND INTERNET WEBSITE SECURITY AND AUTHENTICATION

Pub. L. 115–232, div. A, title XVI, §1645, Aug. 13, 2018, 132 Stat. 2135, provided that:

''(a) IMPLEMENTATION OF PLAN REQUIRED.—Except as provided by subsection (b), the Secretary of Defense shall develop and implement the plan outlined in Binding Operational Directive 18–01, issued by the Secretary of Homeland Security on October 16, 2017, relating to email security and authentication and Internet website security, according to the schedule established by the Binding Operational Directive for the rest of the Executive Branch beginning with the date of enactment of this Act [Aug. 13, 2018].

''(b) WAIVER.—The Secretary may waive the requirements of subsection (a) if the Secretary submits to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives], the Committee on Oversight and Government Reform [now Committee on Oversight and Reform] of the House of Representatives, and the Committee on Homeland Security and Government Affairs of the Senate a certification that existing or planned security measures for the Department of Defense either meet or exceed the information security requirements of Binding Operational Directive 18–01.

''(c) FUTURE BINDING OPERATIONAL DIRECTIVES.—The Chief Information Officer of the Department of Defense shall notify the congressional defense committees, the Committee on Oversight and Government Reform [now Committee on Oversight and Reform] of the House of Representatives, and the Committee on Homeland Security and Government Affairs of the Senate within 180 days of the issuance by the Secretary of Homeland Security after the date of the enactment of this Act of any Binding Operational Directive for cybersecurity whether the Department of Defense will comply with the Directive or how the Department of Defense plans to meet or exceed the security objectives of the Directive.''

RISK THRESHOLDS FOR SYSTEMS AND NETWORK OPERATIONS

Pub. L. 115–232, div. A, title XVI, §1647(c), Aug. 13, 2018, 132 Stat. 2136, provided that: ''The Chief Information Officer of the Department of Defense, in coordina-

tion with the Principal Cyber Advisor, the Director of Operations of the Joint Staff, and the Commander of United States Cyber Command, shall establish risk thresholds for systems and network operations that, when exceeded, would trigger heightened security measures, such as enhanced monitoring and access policy changes.''

MITIGATION OF RISKS TO NATIONAL SECURITY POSED BY PROVIDERS OF INFORMATION TECHNOLOGY PRODUCTS AND SERVICES WHO HAVE OBLIGATIONS TO FOREIGN GOVERNMENTS

Pub. L. 115–232, div. A, title XVI, § 1655, Aug. 13, 2018, 132 Stat. 2149, provided that:

''(a) DISCLOSURE REQUIRED.—Subject to the regulations issued under subsection (b), the Department of Defense may not use a product, service, or system procured or acquired after the date of the enactment of this Act [Aug. 13, 2018] relating to information or operational technology, cybersecurity, an industrial control system, or weapons system provided by a person unless that person discloses to the Secretary of Defense the following:

''(1) Whether, and if so, when, within five years before or at any time after the date of the enactment of this Act, the person has allowed a foreign government to review the code of a non-commercial product, system, or service developed for the Department, or whether the person is under any obligation to allow a foreign person or government to review the code of a non-commercial product, system, or service developed for the Department as a condition of entering into an agreement for sale or other transaction with a foreign government or with a foreign person on behalf of such a government.

''(2) Whether, and if so, when, within five years before or at any time after the date of the enactment of this Act, the person has allowed a foreign government listed in section 1654 [of Pub. L. 115–232, 10 U.S.C. 394 note] to review the source code of a product, system, or service that the Department is using or intends to use, or is under any obligation to allow a foreign person or government to review the source code of a product, system, or service that the Department is using or intends to use as a condition of entering into an agreement for sale or other transaction with a foreign government or with a foreign person on behalf of such a government.

''(3) Whether or not the person holds or has sought a license pursuant to the Export Administration Regulations under subchapter C of chapter VII of title 15, Code of Federal Regulations, the International Traffic in Arms Regulations under subchapter M of chapter I of title 22, Code of Federal Regulations, or successor regulations, for information technology products, components, software, or services that contain code custom-developed for the non-commercial product, system, or service the Department is using or intends to use.

''(b) REGULATIONS.—

''(1) IN GENERAL.—The Secretary of Defense shall issue regulations regarding the implementation of subsection (a).

''(2) UNIFORM REVIEW PROCESS.—If information obtained from a person under subsection (a) or the contents of the registry under subsection (f) are the subject of a request under section 552 of title 5, United States Code (commonly referred to as the 'Freedom of Information Act'), the Secretary of Defense shall conduct a uniform review process, without regard to the office holding the information, to determine if the information is exempt from disclosure under such section 552.

''(c) PROCUREMENT.—Procurement contracts for covered products or systems shall include a clause requiring the information contained in subsection (a) be disclosed during the period of the contract if an entity becomes aware of information requiring disclosure required pursuant to such subsection, including any mitigation measures taken or anticipated.

''(d) MITIGATION OF RISKS.—

''(1) IN GENERAL.—If, after reviewing a disclosure made by a person under subsection (a), the Secretary determines that the disclosure relating to a product, system, or service entails a risk to the national security infrastructure or data of the United States, or any national security system under the control of the Department, the Secretary shall take such measures as the Secretary considers appropriate to mitigate such risks, including, as the Secretary considers appropriate, by conditioning any agreement for the use, procurement, or acquisition of the product, system, or service on the inclusion of enforceable conditions or requirements that would mitigate such risks.

''(2) THIRD-PARTY TESTING STANDARD.—Not later than two years after the date of the enactment of this Act the Secretary shall develop such third-party testing standard as the Secretary considers acceptable for commercial off the shelf (COTS) products, systems, or services to use when dealing with foreign governments.

''(e) EXEMPTION OF OPEN SOURCE SOFTWARE.—This section shall not apply to open source software.

''(f) ESTABLISHMENT OF REGISTRY.—Not later than one year after the date of the enactment of this Act, the Secretary of Defense shall—

''(1) establish within the operational capabilities of the Committee for National Security Systems (CNSS) or within such other agency as the Secretary considers appropriate a registry containing the information disclosed under subsection (a); and

''(2) upon request, make such information available to any agency conducting a procurement pursuant to the Federal Acquisition Regulations or the Defense Federal Acquisition Regulations.

''(g) ANNUAL REPORTS.—Not later than one year after the date of the enactment of this Act and not less frequently than once each year thereafter, the Secretary of Defense shall submit to the appropriate committees of Congress a report detailing the number, scope, product classifications, and mitigation agreements related to each product, system, and service for which a disclosure is made under subsection (a).

''(h) DEFINITIONS.—In this section:

''(1) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—The term 'appropriate committees of Congress' means—

''(A) the Committee on Armed Services, the Select Committee on Intelligence, and the Committee on Homeland Security and Governmental Affairs of the Senate; and

''(B) the Committee on Armed Services, the Permanent Select Committee on Intelligence, the Committee on Homeland Security, and the Committee on Oversight and Government Reform [now Committee on Oversight and Reform] of the House of Representatives.

''(2) COMMERCIAL ITEM.—The term 'commercial item' has the meaning given such term in section 103 of title 41, United States Code.

''(3) INFORMATION TECHNOLOGY.—The term 'information technology' has the meaning given such term in section 11101 of title 40, United States Code.

''(4) NATIONAL SECURITY SYSTEM.—The term 'national security system' has the meaning given such term in section 3552(b) of title 44, United States Code.

''(5) NON-COMMERCIAL PRODUCT, SYSTEM, OR SERVICE.—The term 'non-commercial product, system, or service' means a product, system, or service that does not meet the criteria of a commercial item.

''(6) OPEN SOURCE SOFTWARE.—The term 'open source software' means software for which the human-readable source code is available for use, study, re-use, modification, enhancement, and re-distribution by the users of such software.''

INTEGRATION OF STRATEGIC INFORMATION OPERATIONS AND CYBER-ENABLED INFORMATION OPERATIONS

Pub. L. 115–91, div. A, title XVI, § 1637, Dec. 12, 2017, 131 Stat. 1742, provided that:

''(a) PROCESSES AND PROCEDURES FOR INTEGRATION.—

''(1) IN GENERAL.—The Secretary of Defense shall—

''(A) establish processes and procedures to integrate strategic information operations and cyber-enabled information operations across the elements of the Department of Defense responsible for such operations, including the elements of the Department responsible for military deception, public affairs, electronic warfare, and cyber operations; and

''(B) ensure that such processes and procedures provide for integrated Defense-wide strategy, planning, and budgeting with respect to the conduct of such operations by the Department, including activities conducted to counter and deter such operations by malign actors.

''(2) DESIGNATED SENIOR OFFICIAL.—The Secretary of Defense shall designate a senior official of the Department of Defense (in this section referred to as the 'designated senior official') who shall implement and oversee the processes and procedures established under paragraph (1). The designated senior official shall be selected by the Secretary from among individuals serving in the Department of Defense at or below the level of an Under Secretary of Defense.

''(3) RESPONSIBILITIES.—The designated senior official shall have, with respect to the implementation and oversight of the processes and procedures established under paragraph (1), the following responsibilities:

''(A) Oversight of strategic policy and guidance.

''(B) Overall resource management for the integration of information operations and cyber-enabled information operations of the Department.

''(C) Coordination with the head of the Global Engagement Center to support the purpose of the Center (as described [in] section 1287(a)(2) of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114–328; 22 U.S.C. 2656 note)) and liaison with the Center and other relevant Federal Government entities to support such purpose.

''(D) Development of a strategic framework for the conduct of information operations by the Department of Defense, including cyber-enabled information operations, coordinated across all relevant elements of the Department of Defense, including both near-term and long-term guidance for the conduct of such coordinated operations.

''(E) Development and dissemination of a common operating paradigm across the elements of the Department of Defense specified in paragraph (1) to counter the influence, deception, and propaganda activities of key malign actors, including in cyberspace.

''(F) Development of guidance for, and promotion of, the capability of the Department of Defense to liaison with the private sector, including social media, on matters relating to the influence activities of malign actors.

''(b) REQUIREMENTS AND PLANS FOR INFORMATION OPERATIONS.—

''(1) COMBATANT COMMAND PLANNING AND REGIONAL STRATEGY.—(A) The Secretary shall require each commander of a combatant command to develop, in coordination with the relevant regional Assistant Secretary of State or Assistant Secretaries of State and with the assistance of the Coordinator of the Global Engagement Center and the designated senior official, a regional information strategy and interagency coordination plan for carrying out the strategy, where applicable.

''(B) The Secretary shall require each commander of a combatant command to develop such requirements and specific plans as may be necessary for the conduct of information operations in support of the strategy required under subparagraph (A), including plans for deterring information operations, including deterrence in the cyber domain, by malign actors against the United States, allies of the United States, and interests of the United States.

''(2) IMPLEMENTATION PLAN FOR DOD STRATEGY FOR OPERATIONS IN THE INFORMATION ENVIRONMENT.—

''(A) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act [Dec. 12, 2017], the designated senior official shall—

''(i) review the strategy of the Department of Defense titled 'Department of Defense Strategy for Operations in the Information Environment' and dated June 2016; and

''(ii) submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a plan for implementation of such strategy.

''(B) ELEMENTS.—The plan required under subparagraph (A) shall include, at a minimum, the following:

''(i) An accounting of the efforts undertaken in support of the strategy described in subparagraph (A)(i) in the period since it was issued in June 2016.

''(ii) A description of any updates or changes to such strategy that have been made since it was first issued, as well as any expected updates or changes resulting from the designation of the designated senior official.

''(iii) A description of the role of the Department of Defense as part of a broader whole-of-Government strategy for strategic communications, including a description of any assumptions about the roles and contributions of other departments and agencies of the Federal Government with respect to such a strategy.

''(iv) Defined actions, performance metrics, and projected timelines for achieving each of the 15 tasks specified in the strategy described in subparagraph (A)(i).

''(v) An analysis of any personnel, resourcing, capability, authority, or other gaps that will need to be addressed to ensure effective implementation of the strategy described in subparagraph (A)(i) across all relevant elements of the Department of Defense.

''(vi) An investment framework and projected timeline for addressing any gaps identified under clause (v).

''(vii) Such other matters as the Secretary of Defense considers relevant.

''(C) PERIODIC STATUS REPORTS.—Not less frequently than once every 90 days during the three-year period beginning on the date on which the implementation plan is submitted under subparagraph (A)(ii), the designated senior official shall submit to the congressional defense committees a report describing the status of the efforts of the Department of Defense in accomplishing the tasks specified under clauses (iv) and (vi) of subparagraph (B).

''(c) TRAINING AND EDUCATION.—Consistent with the elements of the implementation plan under paragraph (2), the designated senior official shall recommend the establishment of programs to provide training and education to such members of the Armed Forces and civilian employees of the Department of Defense as the Secretary considers appropriate to ensure that such members and employees understand the role of information in warfare, the central goal of all military operations to affect the perceptions, views, and decision making of adversaries, and the effective management and conduct of operations in the information environment.''

EXERCISE ON ASSESSING CYBERSECURITY SUPPORT TO ELECTION SYSTEMS OF STATES

Pub. L. 115–91, div. A, title XVI, § 1638, Dec. 12, 2017, 131 Stat. 1744, provided that:

''(a) INCLUSION OF CYBER VULNERABILITIES IN ELECTION SYSTEMS IN CYBER GUARD EXERCISES.—Subject to subsection (b), the Secretary of Defense, in consultation with the Secretary of Homeland Security, may carry out exercises relating to the cybersecurity of election systems of States as part of the exercise commonly known as the 'Cyber Guard Exercise'.

''(b) AGREEMENT REQUIRED.—The Secretary of Defense may carry out an exercise relating to the cybersecurity

of a State's election system under subsection (a) only if the State enters into a written agreement with the Secretary under which the State—

''(1) agrees to participate in such exercise; and

''(2) agrees to allow vulnerability testing of the components of the State's election system.

''(c) REPORT.—Not later than 90 days after the completion of any Cyber Guard Exercise, the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the ability of the National Guard to assist States, if called upon, in defending election systems from cyberattacks. Such report shall include a description of the capabilities, readiness levels, and best practices of the National Guard with respect to the prevention of cyber attacks on State election systems.''

MEASUREMENT OF COMPLIANCE WITH CYBERSECURITY REQUIREMENTS FOR INDUSTRIAL CONTROL SYSTEMS

Pub. L. 115–91, div. A, title XVI, §1639, Dec. 12, 2017, 131 Stat. 1744, provided that:

''(a) IN GENERAL.—Not later than January 1, 2018, the Secretary of Defense shall make such changes to the cybersecurity scorecard as are necessary to ensure that the Secretary measures the progress of each element of the Department of Defense in securing the industrial control systems of the Department against cyber threats, including such industrial control systems as supervisory control and data acquisition systems, distributed control systems, programmable logic controllers, and platform information technology.

''(b) CYBERSECURITY SCORECARD DEFINED.—In this section, the term 'cybersecurity scorecard' means the Department of Defense Cybersecurity Scorecard used by the Department to measure compliance with cybersecurity requirements as described in the plan of the Department titled 'Department of Defense Cybersecurity Discipline Implementation Plan'.''

STRATEGIC CYBERSECURITY PROGRAM

Pub. L. 115–91, div. A, title XVI, §1640, Dec. 12, 2017, 131 Stat. 1745, as amended by Pub. L. 116–283, div. A, title XVII, §1712(b), Jan. 1, 2021, 134 Stat. 4087, provided that:

''(a) IN GENERAL.—Not later than August 1, 2021, the Secretary of Defense shall, acting through the Under Secretary of Defense for Acquisition and Sustainment, the Chief Information Officer, the Vice Chairman of the Joint Chiefs of Staff, the Commander of United States Cyber Command, and the Director of the National Security Agency, establish a program to be known as the 'Strategic Cybersecurity Program' (in this section referred to as the 'Program') to ensure that the Department of Defense is always able to conduct the most important military missions of the Department.

''(b) PERSONNEL SUPPORT TO THE PROGRAM.—

''(1) IN GENERAL.—The Director of the National Security Agency shall establish a program office within the Cybersecurity Directorate to support the Program by identifying threats to, vulnerabilities in, and remediations for the missions and mission elements described in paragraph (1) of subsection (c). Such program office shall be headed by a program manager selected by the Director.

''(2) NATIONAL SECURITY AGENCY PROGRAM OFFICE STAFF AUGMENTATION.—The Secretary may augment the personnel assigned to the program office required under paragraph (1) by assigning personnel as appropriate from among regular and reserve members of the Armed Forces, civilian employees of the Department of Defense (including the Defense intelligence agencies), and personnel of the research laboratories of the Department and the Department of Energy, who have particular expertise in the areas of responsibility described in subsection (c).

''(3) DEPARTMENT OF ENERGY PERSONNEL.—Any personnel assigned to the program office from among personnel of the Department of Energy shall be so assigned with the concurrence of the Secretary of Energy.

''(c) RESPONSIBILITIES.—

''(1) DESIGNATION OF MISSION ELEMENTS OF THE PROGRAM.—The Under Secretary of Defense for Policy, the Under Secretary of Defense for Acquisition and Sustainment, and the Vice Chairman of the Joint Chiefs of Staff shall identify and designate for inclusion in the Program all of the systems, critical infrastructure, kill chains, and processes, including systems and components in development, that comprise the following military missions of the Department of Defense:

''(A) Nuclear deterrence and strike.

''(B) Select long-range conventional strike missions germane to the warfighting plans of United States European Command and United States Indo-Pacific Command.

''(C) Offensive cyber operations.

''(D) Homeland missile defense.

''(2) OFFICE OF THE UNDER SECRETARY OF DEFENSE FOR ACQUISITION AND SUSTAINMENT.—The Office of the Under Secretary of Defense for Acquisition and Sustainment shall serve as the office of primary responsibility for the Program, providing policy, direction, and oversight regarding the execution of the National Security Agency program manager's responsibilities described in paragraph (5).

''(3) VICE CHAIRMAN OF THE JOINT CHIEFS OF STAFF.—The Vice Chairman of the Joint Chiefs of Staff shall coordinate the identification and prioritization of the missions and mission components, and the development and approval of requirements relating to the cybersecurity of the missions and mission components, of the Program.

''(4) CHIEF INFORMATION OFFICER.—The Chief Information Officer, in exercising authority, direction, and control over the Cybersecurity Directorate of the National Security Agency, shall ensure that the National Security Agency program office is responsive to the requirements and direction of the Under Secretary of Defense for Acquisition and Sustainment.

''(5) PROGRAM MANAGER.—The program manager shall be responsible for—

''(A) Conducting end-to-end vulnerability assessments of the missions of the Program and their constituent systems, infrastructure, kill chains, and processes.

''(B) Prioritizing and facilitating the remediation of identified vulnerabilities in the constituent systems, infrastructure, kill chains, and processes of the missions of the Program.

''(C) Conducting, prior to the Milestone B approval for any such system or infrastructure, appropriate reviews of acquisition and system engineering plans for proposed systems and infrastructure germane to the missions of the Program, in accordance with the Under Secretary of Defense for Acquisition and Sustainment's policy and guidance regarding the components of such reviews and the range of systems and infrastructure to be reviewed.

''(D) Advising the military departments, combatant commands, and Joint Staff on the vulnerabilities and cyberattack vectors that pose substantial risk to the missions of the Program and their constituent systems, critical infrastructure, kill chains, or processes.

''(6) SECRETARY OF DEFENSE DIRECTIVE.—The Secretary of Defense shall define and issue guidance on the roles and responsibilities for other components with respect to the Program, including—

''(A) the military departments' acquisition and sustainment organizations in supporting and implementing remedial actions;

''(B) the alignment of Cyber Protection Teams with the prioritized missions of the Program;

''(C) the role of the Director of Operational Test and Evaluation in conducting periodic assessments, including through red teams, of the cybersecurity of missions in the Program; and

''(D) the role of the Principal Cyber Adviser in coordinating and monitoring the Department's execution of the Program.

''(d) INTEGRATION WITH OTHER EFFORTS.—The Under Secretary of Defense for Acquisition and Sustainment shall ensure that the Program builds upon, and does not duplicate, other efforts of the Department of Defense relating to cybersecurity, including the following:

''(1) The evaluation of cyber vulnerabilities of major weapon systems of the Department of Defense required under section 1647 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114–92) [set out as a note below].

''(2) The evaluation of cyber vulnerabilities of Department of Defense critical infrastructure required under section 1650 of the National Defense Authorization Act for Fiscal year 2017 (Public Law 114–328; 10 U.S.C. 2224 note).

''(3) The activities of the cyber protection teams of the Department of Defense.

''(e) BRIEFING.—Not later than December 1, 2021, the Secretary of Defense shall provide to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a briefing on the establishment of the Program, and the plans, funding, and staffing of the Program.''

REQUIREMENT TO ENTER INTO AGREEMENTS RELATING TO USE OF CYBER OPPOSITION FORCES

Pub. L. 114–328, div. A, title XVI, § 1644, Dec. 23, 2016, 130 Stat. 2602, provided that:

''(a) REQUIREMENT FOR AGREEMENTS.—Not later than September 30, 2017, the Secretary of Defense shall ensure that each commander of a combatant command establishes appropriate agreements with the Secretary relating to the use of cyber opposition forces. Each agreement shall require the command—

''(1) to support a high state of mission readiness in the command through the use of one or more cyber opposition forces in continuous exercises and other training activities as considered appropriate by the commander of the command; and

''(2) in conducting such exercises and training activities, [to] meet the standard required under subsection (b).

''(b) JOINT STANDARD FOR CYBER OPPOSITION FORCES.—Not later than March 31, 2017, the Secretary of Defense shall issue a joint training and certification standard for use by all cyber opposition forces within the Department of Defense.

''(c) JOINT STANDARD FOR PROTECTION OF CONTROL SYSTEMS.—Not later than June 30, 2017, the Secretary of Defense shall issue a joint training and certification standard for the protection of control systems for use by all cyber operations forces within the Department of Defense. Such standard shall—

''(1) provide for applied training and exercise capabilities; and

''(2) use expertise and capabilities from other departments and agencies of the Federal Government, as appropriate.

''(d) BRIEFING REQUIRED.—Not later than September 30, 2017, the Secretary of Defense shall provide to the Committees on Armed Services of the Senate and the House of Representatives a briefing that includes—

''(1) a list of each combatant command that has established an agreement under subsection (a);

''(2) with respect to each such agreement—

''(A) special conditions in the agreement placed on any cyber opposition force used by the command;

''(B) the process for making decisions about deconfliction and risk mitigation of cyber opposition force activities in continuous exercises and training;

''(C) identification of cyber opposition forces trained and certified to operate at the joint standard, as issued under subsection (b);

''(D) identification of the annual exercises that will include participation of the cyber opposition forces; and

''(E) identification of any shortfalls in resources that may prevent annual exercises using cyber opposition forces; and

''(3) any other matters the Secretary of Defense considers appropriate.''

CYBER PROTECTION SUPPORT FOR DEPARTMENT OF DEFENSE PERSONNEL IN POSITIONS HIGHLY VULNERABLE TO CYBER ATTACK

Pub. L. 114–328, div. A, title XVI, § 1645, Dec. 23, 2016, 130 Stat. 2603, provided that:

''(a) AUTHORITY TO PROVIDE CYBER PROTECTION SUPPORT.—

''(1) IN GENERAL.—Subject to a determination by the Secretary of Defense, the Secretary may provide cyber protection support for the personal technology devices of the personnel described in paragraph (2).

''(2) AT-RISK PERSONNEL.—The personnel described in this paragraph are personnel of the Department of Defense—

''(A) who the Secretary determines to be highly vulnerable to cyber attacks and hostile information collection activities because of the positions occupied by such personnel in the Department; and

''(B) whose personal technology devices are highly vulnerable to cyber attacks and hostile information collection activities.

''(b) NATURE OF CYBER PROTECTION SUPPORT.—Subject to the availability of resources, the cyber protection support provided to personnel under subsection (a) may include training, advice, assistance, and other services relating to cyber attacks and hostile information collection activities.

''(c) LIMITATION ON SUPPORT.—Nothing in this section shall be construed—

''(1) to encourage personnel of the Department of Defense to use personal technology devices for official business; or

''(2) to authorize cyber protection support for senior Department personnel using personal devices and networks in an official capacity.

''(d) REPORT.—Not later than 180 days after the date of the enactment of this Act [Dec. 23, 2016], the Secretary shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the provision of cyber protection support under subsection (a). The report shall include—

''(1) a description of the methodology used to make the determination under subsection (a)(2); and

''(2) guidance for the use of cyber protection support and tracking of support requests for personnel receiving cyber protection support under subsection (a).

''(e) PERSONAL TECHNOLOGY DEVICES DEFINED.—In this section, the term 'personal technology devices' means technology devices used by Department of Defense personnel outside of the scope of their employment with the Department and includes networks to which such devices connect.''

LIMITATION ON FULL DEPLOYMENT OF JOINT REGIONAL SECURITY STACKS

Pub. L. 114–328, div. A, title XVI, § 1646, Dec. 23, 2016, 130 Stat. 2604, provided that:

''(a) LIMITATION.—The Secretary of a military department or the head of a Defense Agency may not declare that such department or Defense Agency has achieved full operational capability for the deployment of joint regional security stacks until the date on which—

''(1) the department or Defense Agency concerned completes operational test and evaluation activities to determine the effectiveness, suitability, and survivability of the joint regional security stacks system of such department or Defense Agency; and

''(2) written certification that such testing and evaluation activities have been completed is provided

to the Secretary of such department or the head of such Defense Agency by the appropriate operational test and evaluation organization of such department or Defense Agency.

''(b) WAIVER.—

''(1) IN GENERAL.—The Secretary of a military department or the head of a Defense Agency may waive the requirements of subsection (a) if a certification described in paragraph (2) is provided to the Secretary of Defense, and signed by—

''(A) the Secretary of the military department or the head of the Defense Agency concerned;

''(B) the Director of Operational Test and Evaluation for the Department of Defense; and

''(C) the Chief Information Officer of the Department of Defense.

''(2) CERTIFICATION.—A certification described in this subsection is a written certification that—

''(A) the testing and evaluation activities required under subsection (a) are unnecessary, accompanied by an explanation of the reasons such activities are unnecessary;

''(B) the effectiveness, suitability, and survivability of the joint regional security stacks system of the military department or Defense Agency concerned has been demonstrated by methods other than the testing and evaluation activities required under subsection (a), accompanied by supporting data; or

''(C) national security needs justify full deployment of the joint regional security stacks system of the military department or Defense Agency concerned before the test and evaluation activities required under subsection (a) can be completed, accompanied by an explanation of such justification and a risk management plan.''

EVALUATION OF CYBER VULNERABILITIES OF DEPARTMENT OF DEFENSE CRITICAL INFRASTRUCTURE

Pub. L. 114–328, div. A, title XVI, §1650, Dec. 23, 2016, 130 Stat. 2607, as amended by Pub. L. 115–91, div. A, title XVI, §1643, Dec. 12, 2017, 131 Stat. 1748; Pub. L. 115–232, div. A, title XVI, §1634, Aug. 13, 2018, 132 Stat. 2125, provided that:

''(a) PLAN FOR EVALUATION.—

''(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act [Dec. 23, 2016], the Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a plan for the evaluation of the cyber vulnerabilities of the critical infrastructure of the Department of Defense.

''(2) ELEMENTS.—The plan under paragraph (1) shall include—

''(A) an identification of each of the military installations to be evaluated; and

''(B) an estimate of the cost of the evaluation.

''(3) PRIORITY IN EVALUATION.—The plan under paragraph (1) shall prioritize the evaluation of military installations based on the criticality of the infrastructure supporting such installations, as determined by the Chairman of the Joint Chiefs of Staff based on an assessment of—

''(A) the Armed Forces stationed at such military installations; and

''(B) threats to such military installations.

''(4) INTEGRATION WITH OTHER EFFORTS.—The plan under paragraph (1) shall build upon other efforts of Department of Defense relating to the identification and mitigation of cyber vulnerabilities of major weapon systems and critical infrastructure of the Department and shall not duplicate such efforts.

''(b) PILOT PROGRAM.—

''(1) IN GENERAL.—Not later than 30 days after the date on which the Secretary submits the plan under subsection (a), the Secretary, acting through a covered research laboratory and the Defense Digital Service, shall initiate a pilot program under which the Secretary shall assess the feasibility and advisability of applying new, innovative methodologies or engineering approaches—

''(A) to improve the defense of control systems against cyber attacks;

''(B) to increase the resilience of military installations against cybersecurity threats;

''(C) to prevent or mitigate the potential for high-consequence cyber attacks;

''(D) to inform future requirements for the development of such control systems; and

''(E) to assess the strategic benefits derived from, and the challenges associated with, isolating military infrastructure from the national electric grid and the use of microgrids.

''(2) LOCATIONS.—The Secretary shall carry out the pilot program under paragraph (1) at not fewer than two military installations selected by the Secretary from among military installations that support the most critical mission-essential functions of the Department of Defense as identified in the plan under subsection (a).

''(3) TOOLS.—In carrying out the pilot program under paragraph (1), the Secretary may use tools and solutions developed under subsection (e).

''(4) REPORT.—Not later than December 31, 2020, the Secretary shall submit to the congressional defense committees a final report on the pilot program that includes—

''(A) a description of the activities carried out under the pilot program at each military installation concerned;

''(B) an assessment of the value of the methodologies or tools applied during the pilot program in increasing the resilience of military installations against cybersecurity threats;

''(C) recommendations for administrative or legislative actions to improve the ability of the Department to employ methodologies and tools for reducing cyber vulnerabilities in other activities of the Department of Defense; and

''(D) recommendations for including such methodologies or tools as requirements for relevant activities, including technical requirements for systems or military construction projects.

''(5) TERMINATION.—The authority of the Secretary to carry out the pilot program under this subsection shall terminate on September 30, 2020.

''(c) EVALUATION.—

''(1) IN GENERAL.—Not later than December 31, 2020, the Secretary shall complete an evaluation of the cyber vulnerabilities of the critical infrastructure of the Department of Defense in accordance with the plan under subsection (a).

''(2) RISK MITIGATION STRATEGIES.—The Secretary shall develop strategies for mitigating the risks of cyber vulnerabilities identified in the course of the evaluation under paragraph (1).

''(d) STATUS ON PROGRESS.—The Secretary shall include in each quarterly cyber operations briefing submitted to Congress under section 484 of title 10, United States Code, a summary of any activities carried out as part of—

''(1) the pilot program under subsection (b); or

''(2) the evaluation under subsection (c).

''(e) TOOLS AND SOLUTIONS.—The Secretary may—

''(1) develop tools that improve assessments of cyber vulnerabilities of Department of Defense critical infrastructure;

''(2) conduct non-recurring engineering for the design of mitigation solutions for such vulnerabilities; and

''(3) establish Department-wide information repositories to share findings relating to such assessments and to share such mitigation solutions.

''(f) DEFINITIONS.—In this section:

''(1) CRITICAL INFRASTRUCTURE OF THE DEPARTMENT OF DEFENSE.—The term 'critical infrastructure of the Department of Defense' means any asset of the Department of Defense of such extraordinary importance to the functioning of the Department and the

operation of the Armed Forces that the incapacitation or destruction of such asset by a cyber attack would have a debilitating effect on the ability of the Department to fulfill its missions.

''(2) COVERED RESEARCH LABORATORY.—The term 'covered research laboratory' means—

''(A) a research laboratory of the Department of Defense; or

''(B) a research laboratory of the Department of Energy approved by the Secretary of Energy to carry out the pilot program under subsection (b).''

PLAN FOR INFORMATION SECURITY CONTINUOUS MONITORING CAPABILITY AND COMPLY-TO-CONNECT POLICY; LIMITATION ON SOFTWARE LICENSING

Pub. L. 114–328, div. A, title XVI, § 1653, Dec. 23, 2016, 130 Stat. 2610, provided that:

''(a) INFORMATION SECURITY MONITORING PLAN AND POLICY.—

''(1) PLAN AND POLICY.—The Chief Information Officer of the Department of Defense and the Commander of the United States Cyber Command shall jointly develop—

''(A) a plan for a modernized, Department-wide automated information security continuous monitoring capability that includes—

''(i) a proposed information security architecture for the capability;

''(ii) a concept of operations for the capability; and

''(iii) requirements with respect to the functionality and interoperability of the tools, sensors, systems, processes, and other components of the continuous monitoring capability; and

''(B) a comply-to-connect policy that requires systems to automatically comply with the configurations of the networks of the Department as a condition of connecting to such networks.

''(2) CONSULTATION.—In developing the plan and policy under paragraph (1), the Chief Information Officer and the Commander shall consult with the Principal Cyber Advisor to the Secretary of Defense.

''(3) IMPLEMENTATION.—The Chief Information Officer and the Commander shall each issue such directives as they each consider appropriate to ensure compliance with the plan and policy developed under paragraph (1).

''(4) INCLUSION IN BUDGET MATERIALS.—The Secretary of Defense shall include funding and program plans relating to the plan and policy under paragraph (1) in the budget materials submitted by the Secretary in support of the budget of the President for fiscal year 2019 (as submitted to Congress under section 1105(a) of title 31, United States Code).

''(5) INTEGRATION WITH OTHER CAPABILITIES.—The Chief Information Officer and the Commander shall ensure that information generated through automated and automation-assisted processes for continuous monitoring, asset management, and comply-to-connect policies and processes shall be accessible and usable in machine-readable form to appropriate cyber protection teams and computer network defense service providers.

''(6) SOFTWARE LICENSE COMPLIANCE MATTERS.—The plan and policy required by paragraph (1) shall comply with the software license inventory requirements of the plan issued pursuant to section 937 of the National Defense Authorization Act for Fiscal Year 2013 (Public Law 112–239; 10 U.S.C. 2223 note) and updated pursuant to section 935 of the National Defense Authorization Act for Fiscal Year 2014 (Public Law 113–66; 10 U.S.C. 2223 note).

''(b) LIMITATION ON FUTURE SOFTWARE LICENSING.—

''(1) IN GENERAL.—Subject to paragraph (2), none of the funds authorized to be appropriated by this Act [see Tables for classification] or otherwise made available for fiscal year 2017 or any fiscal year thereafter for the Department of Defense may be obligated or expended on a contract for a software license with a cost of more than $5,000,000 in a fiscal year unless the Department is able, through automated means—

''(A) to count the number of such licenses in use; and

''(B) to determine the security status of each instance of use of the software licensed.

''(2) EFFECTIVE DATE.—Paragraph (1) shall apply—

''(A) beginning on January 1, 2018, with respect to any contract entered into by the Secretary of Defense on or after such date for the licensing of software; and

''(B) beginning on January 1, 2020, with respect to any contract entered into by the Secretary for the licensing of software that was in effect on December 31, 2017.''

ACQUISITION AUTHORITY OF THE COMMANDER OF UNITED STATES CYBER COMMAND

Pub. L. 114–92, div. A, title VIII, § 807, Nov. 25, 2015, 129 Stat. 886, as amended by Pub. L. 115–232, div. A, title XVI, § 1635, Aug. 13, 2018, 132 Stat. 2125; Pub. L. 116–92, div. A, title VIII, § 821, Dec. 20, 2019, 133 Stat. 1490; Pub. L. 116–283, div. A, title XVII, § 1711, Jan. 1, 2021, 134 Stat. 4086, provided that:

''(a) AUTHORITY.—

''(1) IN GENERAL.—The Commander of the United States Cyber Command shall be responsible for, and shall have the authority to conduct, the following acquisition activities:

''(A) Development and acquisition of cyber operations-peculiar equipment and capabilities.

''(B) Acquisition and sustainment of cyber capability-peculiar equipment, capabilities, and services.

''(2) ACQUISITION FUNCTIONS.—Subject to the authority, direction, and control of the Secretary of Defense, the Commander shall have authority to exercise the functions of the head of an agency under chapter 137 of title 10, United States Code.

''(b) COMMAND ACQUISITION EXECUTIVE.—

''(1) IN GENERAL.—The staff of the Commander shall include a command acquisition executive, who shall be responsible for the overall supervision of acquisition matters for the United States Cyber Command. The command acquisition executive shall have the authority—

''(A) to negotiate memoranda of agreement with the military departments and Department of Defense components to carry out the acquisition of equipment, capabilities, and services described in subsection (a)(1) on behalf of the Command;

''(B) to supervise the acquisition of equipment, capabilities, and services described in subsection (a)(1);

''(C) to represent the Command in discussions with the military departments regarding acquisition programs for which the Command is a customer; and

''(D) to work with the military departments to ensure that the Command is appropriately represented in any joint working group or integrated product team regarding acquisition programs for which the Command is a customer.

''(2) DELIVERY OF ACQUISITION SOLUTIONS.—The command acquisition executive of the United States Cyber Command shall be—

''(A) responsible to the Commander for rapidly delivering acquisition solutions to meet validated cyber operations-peculiar requirements;

''(B) subordinate to the defense acquisition executive in matters of acquisition;

''(C) subject to the same oversight as the service acquisition executives; and

''(D) included on the distribution list for acquisition directives and instructions of the Department of Defense.

''(c) ACQUISITION PERSONNEL.—

''(1) IN GENERAL.—The Secretary of Defense shall provide the United States Cyber Command with the personnel or funding equivalent to ten full-time

equivalent personnel to support the Commander in fulfilling the acquisition responsibilities provided for under this section with experience in—

''(A) program acquisition;

''(B) the Joint Capabilities Integration and Development System Process;

''(C) program management;

''(D) system engineering; and

''(E) costing.

''(2) EXISTING PERSONNEL.—The personnel provided under this subsection shall be provided from among the existing personnel of the Department of Defense.

''(d) BUDGET.—In addition to the activities of a combatant command for which funding may be requested under section 166 of title 10, United States Code, the budget proposal of the United States Cyber Command shall include requests for funding for—

''(1) development and acquisition of cyber operations-peculiar equipment; and

''(2) acquisition and sustainment of other capabilities or services that are peculiar to cyber operations activities.

''(e) RULE OF CONSTRUCTION REGARDING INTELLIGENCE AND SPECIAL ACTIVITIES.—Nothing in this section shall be construed to constitute authority to conduct any activity which, if carried out as an intelligence activity by the Department of Defense, would require a notice to the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives under title V of the National Security Act of 1947 (50 U.S.C. 3091 et seq.).

''(f) IMPLEMENTATION PLAN REQUIRED.—The authority granted in subsection (a) shall become effective 30 days after the date on which the Secretary of Defense provides to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a plan for implementation of those authorities under subsection (a). The plan shall include the following:

''(1) A Department of Defense definition of—

''(A) cyber operations-peculiar equipment and capabilities; and

''(B) cyber capability-peculiar equipment, capabilities, and services.

''(2) Summaries of the components to be negotiated in the memorandum of agreements with the military departments and other Department of Defense components to carry out the development, acquisition, and sustainment of equipment, capabilities, and services described in subparagraphs (A) and (B) of subsection (a)(1).

''(3) Memorandum of agreement negotiation and approval timelines.

''(4) Plan for oversight of the command acquisition executive established in subsection (b).

''(5) Assessment of the acquisition workforce needs of the United States Cyber Command to support the authority in subsection (a) until 2021.

''(6) Other matters as appropriate.

''(g) ANNUAL END-OF-YEAR ASSESSMENT.—Each year, the Cyber Investment Management Board shall review and assess the acquisition activities of the United States Cyber Command, including contracting and acquisition documentation, for the previous fiscal year, and provide any recommendations or feedback to the acquisition executive of Cyber Command.''

EVALUATION OF CYBER VULNERABILITIES OF MAJOR WEAPON SYSTEMS OF THE DEPARTMENT OF DEFENSE

Pub. L. 114–92, div. A, title XVI, §1647, Nov. 25, 2015, 129 Stat. 1118, as amended by Pub. L. 114–328, div. A, title XVI, §1649(b), Dec. 23, 2016, 130 Stat. 2606; Pub. L. 116–92, div. A, title XVI, §1633, Dec. 20, 2019, 133 Stat. 1746; Pub. L. 116–283, div. A, title XVII, §1712(a), Jan. 1, 2021, 134 Stat. 4087, provided that:

''(a) EVALUATION REQUIRED.—

''(1) IN GENERAL.—The Secretary of Defense shall, in accordance with the plan under subsection (b), complete an evaluation of the cyber vulnerabilities of each major weapon system of the Department of Defense by not later than December 31, 2019.

''(2) EXCEPTION.—The Secretary may waive the requirement of paragraph (1) with respect to a weapon system or complete the evaluation of a weapon system required by such paragraph after the date specified in such paragraph if the Secretary certifies to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] before that date that all known cyber vulnerabilities in the weapon system have minimal consequences for the capability of the weapon system to meet operational requirements or otherwise satisfy mission requirements.

''(b) PLAN FOR EVALUATION.—

''(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act [Nov. 25, 2015], the Secretary shall submit to the congressional defense committees the plan of the Secretary for the evaluations of major weapon systems under subsection (a), including an identification of each of the weapon systems to be evaluated and an estimate of the funding required to conduct the evaluations.

''(2) PRIORITY IN EVALUATIONS.—The plan under paragraph (1) shall accord a priority among evaluations based on the criticality of major weapon systems, as determined by the Chairman of the Joint Chiefs of Staff based on an assessment of employment of forces and threats.

''(3) INTEGRATION WITH OTHER EFFORTS.—The plan under paragraph (1) shall build upon existing efforts regarding the identification and mitigation of cyber vulnerabilities of major weapon systems, and shall not duplicate similar ongoing efforts such as Task Force Cyber Awakening of the Navy or Task Force Cyber Secure of the Air Force.

''(c) STATUS ON PROGRESS.—The Secretary shall inform the congressional defense committees of the activities undertaken in the evaluation of major weapon systems under this section as part of the quarterly cyber operations briefings under section 484 of title 10, United States Code.

''(d) TOOLS AND SOLUTIONS FOR ASSESSING AND MITIGATING CYBER VULNERABILITIES.—In addition to carrying out the evaluation of cyber vulnerabilities of major weapon systems of the Department under this section, the Secretary may—

''(1) develop tools to improve the detection and evaluation of cyber vulnerabilities;

''(2) conduct non-recurring engineering for the design of solutions to mitigate cyber vulnerabilities; and

''(3) establish Department-wide information repositories to share findings relating to the evaluation and mitigation of cyber vulnerabilities.

''(e) RISK MITIGATION STRATEGIES.—As part of the evaluation of cyber vulnerabilities of major weapon systems of the Department under this section, the Secretary shall develop strategies for mitigating the risks of cyber vulnerabilities identified in the course of such evaluations.

''(f) AUTHORIZATION OF APPROPRIATIONS.—Of the funds authorized to be appropriated by this Act [see Tables for classification] or otherwise made available for fiscal year 2016 for research, development, test, and evaluation, Defense-wide, not more than $200,000,000 shall be available to the Secretary to conduct the evaluations under subsection (a)(1).

''(g) WRITTEN NOTIFICATION.—If the Secretary determines that the Department will not complete an evaluation of the cyber vulnerabilities of each major weapon system of the Department by the date specified in subsection (a)(1), the Secretary shall provide to the congressional defense committees written notification relating to each such incomplete evaluation. Such a written notification shall include the following:

''(1) An identification of each major weapon system for which an evaluation will not be complete by the date specified in subsection (a)(1), the anticipated date of completion of the evaluation of each such weapon system, and a description of the remaining work to be done for the evaluation of each such weapon system.

''(2) A justification for the inability to complete such an evaluation by the date specified in subsection (a)(1).

''(h) REPORT.—The Secretary, acting through the Under Secretary of Defense for Acquisition and Sustainment, shall provide a report to the congressional defense committees upon completion of the requirement for an evaluation of the cyber vulnerabilities of each major weapon system of the Department under this section. Such report shall include the following:

''(1) An identification of cyber vulnerabilities of each major weapon system requiring mitigation.

''(2) An identification of current and planned efforts to address the cyber vulnerabilities of each major weapon system requiring mitigation, including efforts across the doctrine, organization, training, materiel, leadership and education, personnel, and facilities of the Department.

''(3) A description of joint and common cyber vulnerability mitigation solutions and efforts, including solutions and efforts across the doctrine, organization, training, materiel, leadership and education, personnel, and facilities of the Department.

''(4) A description of lessons learned and best practices regarding evaluations of the cyber vulnerabilities and cyber vulnerability mitigation efforts relating to major weapon systems, including an identification of useful tools and technologies for discovering and mitigating vulnerabilities, such as those specified in section 1657 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232) [132 Stat. 2151], and steps taken to institutionalize the use of these tools and technologies.

''(5) A description of efforts to share lessons learned and best practices regarding evaluations of the cyber vulnerabilities and cyber vulnerability mitigation efforts of major weapon systems across the Department.

''(6) An identification of measures taken to institutionalize evaluations of cyber vulnerabilities of major weapon systems, including an identification of which major weapon systems evaluated under this section will be reevaluated in the future, when these evaluations will occur, and how evaluations will occur for future major weapon systems.

''(7) Information relating to guidance, processes, procedures, or other activities established to mitigate or address the likelihood of cyber vulnerabilities of major weapon systems by incorporation of lessons learned in the research, development, test, evaluation, and acquisition cycle, including promotion of cyber education of the acquisition workforce.

''(8) An identification of systems to be incorporated into or that have been incorporated into the National Security Agency's Strategic Cybersecurity Program and the status of these systems in the Program.

''(9) Any other matters the Secretary determines relevant.

''(i) ESTABLISHING REQUIREMENTS FOR PERIODICITY OF VULNERABILITY REVIEWS.—The Secretary of Defense shall establish policies and requirements for each major weapon system, and the priority critical infrastructure essential to the proper functioning of major weapon systems in broader mission areas, to be re-assessed for cyber vulnerabilities, taking into account upgrades or other modifications to systems and changes in the threat landscape.

''(j) IDENTIFICATION OF SENIOR OFFICIAL.—Each secretary of a military department shall identify a senior official who shall be responsible for ensuring that cyber vulnerability assessments and mitigations for weapon systems and critical infrastructure are planned, funded, and carried out.''

NOTIFICATION OF FOREIGN THREATS TO INFORMATION TECHNOLOGY SYSTEMS IMPACTING NATIONAL SECURITY

Pub. L. 113–291, div. A, title X, § 1078, Dec. 19, 2014, 128 Stat. 3520, provided that:

''(a) NOTIFICATION REQUIRED.—

''(1) IN GENERAL.—Not later than 30 days after the Secretary of Defense determines, through the use of open source information or the use of existing authorities (including section 806 of the National Defense Authorization Act for Fiscal Year 2011 (Public Law 111–383; 124 Stat. 4260; 10 U.S.C. 2304 note)), that there is evidence of a national security threat described in paragraph (2), the Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a notification of such threat.

''(2) NATIONAL SECURITY THREAT.—A national security threat described in this paragraph is a threat to an information technology or telecommunications component or network by an agent of a foreign power in which the compromise of such technology, component, or network poses a significant risk to the programs and operations of the Department of Defense, as determined by the Secretary of Defense.

''(3) FORM.—A notification under this subsection shall be submitted in classified form.

''(b) ACTION PLAN REQUIRED.—In the event that a notification is submitted pursuant to subsection (a), the Secretary shall work with the head of any department or agency affected by the national security threat to develop a plan of action for responding to the concerns leading to the notification.

''(c) AGENT OF A FOREIGN POWER.—In this section, the term 'agent of a foreign power' has the meaning given such term in section 101(b) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801(b)).''

AUTHORITIES, CAPABILITIES, AND OVERSIGHT OF THE UNITED STATES CYBER COMMAND

Pub. L. 113–66, div. A, title IX, § 932, Dec. 26, 2013, 127 Stat. 829, as amended by Pub. L. 116–283, div. A, title XVII, § 1713(a), Jan. 1, 2021, 134 Stat. 4089, provided that:

''(a) PROVISION OF CERTAIN OPERATIONAL CAPABILITIES.—The Secretary of Defense shall take such actions as the Secretary considers appropriate to provide the United States Cyber Command operational military units with infrastructure and equipment enabling access to the Internet and other types of networks to permit the United States Cyber Command to conduct the peacetime and wartime missions of the Command.

''(b) CYBER RANGES.—

''(1) IN GENERAL.—The Secretary shall review existing cyber ranges and adapt one or more such ranges, as necessary, to support training and exercises of cyber units that are assigned to execute offensive military cyber operations.

''(2) ELEMENTS.—Each range adapted under paragraph (1) shall have the capability to support offensive military operations against targets that—

''(A) have not been previously identified and prepared for attack; and

''(B) must be compromised or neutralized immediately without regard to whether the adversary can detect or attribute the attack.

''(c) PRINCIPAL CYBER ADVISOR.—

''(1) DESIGNATION.—The Secretary shall designate a Principal Cyber Advisor from among those civilian officials of the Department of Defense who have been appointed to the positions in which they serve by the President, by and with the advice and consent of the Senate.

''(2) RESPONSIBILITIES.—The Principal Cyber Advisor shall be responsible for the following:

''(A) Acting as the principal advisor to the Secretary on military cyber forces and activities.

''(B) Overall integration of Cyber Operations Forces activities relating to cyberspace operations, including associated policy and operational considerations, resources, personnel, technology development and transition, and acquisition.

''(C) Assessing and overseeing the implementation of the cyber strategy of the Department and execution of the cyber posture review of the Department on behalf of the Secretary.

''(D) Coordinating activities pursuant to subparagraphs (A) and (B) of subsection (c)(3) with the Principal Information Operations Advisor, the Chief Information Officer of the Department, and other officials as determined by the Secretary of Defense, to ensure the integration of activities in support of cyber, information, and electromagnetic spectrum operations.

''(E) Such other matters relating to the offensive military cyber forces of the Department as the Secretary shall specify for the purposes of this subsection.

''(3) CROSS-FUNCTIONAL TEAM.—Consistent with section 911 of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114–328; 10 U.S.C. 111 note), the Principal Cyber Advisor shall—

''(A) integrate the cyber expertise and perspectives of appropriate organizations within the Office of the Secretary of Defense, Joint Staff, military departments, the Defense Agencies and Field Activities, and combatant commands, by establishing and maintaining a full-time cross-functional team of subject matter experts from those organizations; and

''(B) select team members, and designate a team leader, from among those personnel nominated by the heads of such organizations.

''(d) TRAINING OF CYBER PERSONNEL.—The Secretary shall establish and maintain training capabilities and facilities in the Armed Forces and, as the Secretary considers appropriate, at the United States Cyber Command, to support the needs of the Armed Forces and the United States Cyber Command for personnel who are assigned offensive and defensive cyber missions in the Department of Defense.''

Pub. L. 114–328, div. A, title XVI, § 1643(b), Dec. 23, 2016, 130 Stat. 2602, provided that: ''The Principal Cyber Advisor, acting through the cross-functional team established by section 932(c)(3) of the National Defense Authorization Act for Fiscal Year 2014 (Public Law 113–66; 10 U.S.C. 2224 note) [set out above] and in consultation with the Commander of the United States Cyber Command, shall supervise—

''(1) the development of training standards for computer network operations tool developers for military, civilian, and contractor personnel supporting the cyber mission forces;

''(2) the rapid enhancement of capacity to train personnel to those standards to meet the needs of the cyber mission forces for tool development; and

''(3) actions necessary to ensure timely completion of personnel security investigations and adjudications of security clearances for tool development personnel.''

JOINT FEDERATED CENTERS FOR TRUSTED DEFENSE SYSTEMS FOR THE DEPARTMENT OF DEFENSE

Pub. L. 113–66, div. A, title IX, § 937, Dec. 26, 2013, 127 Stat. 834, as amended by Pub. L. 114–92, div. A, title II, § 231, Nov. 25, 2015, 129 Stat. 778, provided that:

''(a) FEDERATION REQUIRED.—

''(1) IN GENERAL.—The Secretary of Defense shall provide for the establishment of a joint federation of capabilities to support the trusted defense system needs of the Department of Defense (in this section referred to as the 'federation').

''(2) PURPOSE.—The purpose of the federation shall be to serve as a joint, Department-wide federation of capabilities to support the trusted defense system needs of the Department to ensure security in the software and hardware developed, acquired, maintained, and used by the Department, pursuant to the trusted defense systems strategy of the Department and supporting policies related to software assurance and supply chain risk management.

''(b) DISCHARGE OF ESTABLISHMENT.—In providing for the establishment of the federation, the Secretary shall consider whether the purpose of the federation can be met by existing centers in the Department. If the Department determines that there are capabilities gaps that cannot be satisfied by existing centers, the Department shall devise a strategy for creating and providing resources for such capabilities to fill such gaps.

''(c) CHARTER.—Not later than 180 days after the date of the enactment of this Act [Dec. 26, 2013], the Secretary shall issue a charter for the federation. The charter shall—

''(1) be established pursuant to the trusted defense systems strategy of the Department and supporting policies related to software assurance and supply chain risk management; and

''(2) set forth—

''(A) the role of the federation in supporting program offices in implementing the trusted defense systems strategy of the Department;

''(B) the software and hardware assurance expertise and capabilities of the federation, including policies, standards, requirements, best practices, contracting, training, and testing;

''(C) the requirements for the discharge by the federation of a program of research and development to improve automated software code vulnerability analysis and testing tools;

''(D) the requirements for the federation to procure, manage, and distribute enterprise licenses for automated software vulnerability analysis tools; and

''(E) the requirements for the discharge by the federation of a program of research and development to improve hardware vulnerability, testing, and protection tools.

''(d) REPORT.—The Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives], at the time of the submittal to Congress of the budget of the President for fiscal year 2016 pursuant to section 1105 of title 31, United States Code, a report on the funding and management of the federation. The report shall set forth such recommendations as the Secretary considers appropriate regarding the optimal placement of the federation within the organizational structure of the Department, including responsibility for the funding and management of the federation.''

IMPROVEMENTS IN ASSURANCE OF COMPUTER SOFTWARE PROCURED BY THE DEPARTMENT OF DEFENSE

Pub. L. 112–239, div. A, title IX, § 933, Jan. 2, 2013, 126 Stat. 1884, as amended by Pub. L. 116–283, div. A, title XVIII, § 1806(e)(2)(A), Jan. 1, 2021, 134 Stat. 4155, provided that:

''(a) BASELINE SOFTWARE ASSURANCE POLICY.—The Under Secretary of Defense for Acquisition, Technology, and Logistics, in coordination with the Chief Information Officer of the Department of Defense, shall develop and implement a baseline software assurance policy for the entire lifecycle of covered systems. Such policy shall be included as part of the strategy for trusted defense systems of the Department of Defense.

''(b) POLICY ELEMENTS.—The baseline software assurance policy under subsection (a) shall—

''(1) require use of appropriate automated vulnerability analysis tools in computer software code during the entire lifecycle of a covered system, including during development, operational testing, operations and sustainment phases, and retirement;

''(2) require covered systems to identify and prioritize security vulnerabilities and, based on risk, determine appropriate remediation strategies for such security vulnerabilities;

''(3) ensure such remediation strategies are translated into contract requirements and evaluated during source selection;

''(4) promote best practices and standards to achieve software security, assurance, and quality; and

''(5) support competition and allow flexibility and compatibility with current or emerging software methodologies.

''(c) VERIFICATION OF EFFECTIVE IMPLEMENTATION.—The Under Secretary of Defense for Acquisition, Tech-

nology, and Logistics, in coordination with the Chief Information Officer of the Department of Defense, shall—

''(1) collect data on implementation of the policy developed under subsection (a) and measure the effectiveness of such policy, including the particular elements required under subsection (b); and

''(2) identify and promote best practices, tools, and standards for developing and validating assured software for the Department of Defense.

''(d) BRIEFING ON ADDITIONAL MEANS OF IMPROVING SOFTWARE ASSURANCE.—Not later than one year after the date of the enactment of this Act [Jan. 2, 2013], the Under Secretary for Acquisition, Technology, and Logistics shall, in coordination with the Chief Information Officer of the Department of Defense, provide to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a briefing on the following:

''(1) A research and development strategy to advance capabilities in software assurance and vulnerability detection.

''(2) The state-of-the-art of software assurance analysis and test.

''(3) How the Department might hold contractors liable for software defects or vulnerabilities.

''(e) DEFINITIONS.—In this section:

''(1) COVERED SYSTEM.—The term 'covered system' means any Department of Defense critical information, business, or weapons system that is—

''(A) a major system, as that term is defined in section 2302(5) of title 10, United States Code;

''(B) a national security system, as that term is defined in [former] section 3542(b)(2) of title 44, United States Code [see now 44 U.S.C. 3552(b)(6)]; or

''(C) a Department of Defense information system categorized as Mission Assurance Category I in Department of Defense Directive 8500.01E that is funded by the Department of Defense.

''(2) SOFTWARE ASSURANCE.—The term 'software assurance' means the level of confidence that software functions as intended and is free of vulnerabilities, either intentionally or unintentionally designed or inserted as part of the software, throughout the life cycle.''

[Pub. L. 116–283, div. A, title XVIII, §§1801(d), 1806(e)(2)(A), Jan. 1, 2021, 134 Stat. 4151, 4155, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, section 933(e)(1)(A) of Pub. L. 112–239, set out above, is amended by substituting ''section 3041'' for ''section 2302(5)''.]

REPORTS TO DEPARTMENT OF DEFENSE ON PENETRATIONS OF NETWORKS AND INFORMATION SYSTEMS OF CERTAIN CONTRACTORS

Pub. L. 112–239, div. A, title IX, §941, Jan. 2, 2013, 126 Stat. 1889, which authorized the Secretary of Defense to establish criteria and reporting procedures applicable to penetration of cleared defense contractors' networks or information systems, was transferred to chapter 19 of this title, redesignated as section 393, and amended by Pub. L. 114–92, div. A, title XVI, §1641(a), Nov. 25, 2015, 129 Stat. 1114.

INSIDER THREAT DETECTION

Pub. L. 112–81, div. A, title IX, §922, Dec. 31, 2011, 125 Stat. 1537, as amended by Pub. L. 114–92, div. A, title X, §1073(e), Nov. 25, 2015, 129 Stat. 996, provided that:

''(a) PROGRAM REQUIRED.—The Secretary of Defense shall establish a program for information sharing protection and insider threat mitigation for the information systems of the Department of Defense to detect unauthorized access to, use of, or transmission of classified or controlled unclassified information.

''(b) ELEMENTS.—The program established under subsection (a) shall include the following:

''(1) Technology solutions for deployment within the Department of Defense that allow for centralized monitoring and detection of unauthorized activities, including—

''(A) monitoring the use of external ports and read and write capability controls;

''(B) disabling the removable media ports of computers physically or electronically;

''(C) electronic auditing and reporting of unusual and unauthorized user activities;

''(D) using data-loss prevention and data-rights management technology to prevent the unauthorized export of information from a network or to render such information unusable in the event of the unauthorized export of such information;

''(E) a roles-based access certification system;

''(F) cross-domain guards for transfers of information between different networks; and

''(G) patch management for software and security updates.

''(2) Policies and procedures to support such program, including special consideration for policies and procedures related to international and interagency partners and activities in support of ongoing operations in areas of hostilities.

''(3) A governance structure and process that integrates information security and sharing technologies with the policies and procedures referred to in paragraph (2). Such structure and process shall include—

''(A) coordination with the existing security clearance and suitability review process;

''(B) coordination of existing anomaly detection techniques, including those used in counterintelligence investigation or personnel screening activities; and

''(C) updating and expediting of the classification review and marking process.

''(4) A continuing analysis of—

''(A) gaps in security measures under the program; and

''(B) technology, policies, and processes needed to increase the capability of the program beyond the initially established full operating capability to address such gaps.

''(5) A baseline analysis framework that includes measures of performance and effectiveness.

''(6) A plan for how to ensure related security measures are put in place for other departments or agencies with access to Department of Defense networks.

''(7) A plan for enforcement to ensure that the program is being applied and implemented on a uniform and consistent basis.

''(c) OPERATING CAPABILITY.—The Secretary shall ensure the program established under subsection (a)—

''(1) achieves initial operating capability not later than October 1, 2012; and

''(2) achieves full operating capability not later than October 1, 2013.

''(d) REPORT.—Not later than 90 days after the date of the enactment of this Act [Dec. 31, 2011], the Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report that includes—

''(1) the implementation plan for the program established under subsection (a);

''(2) the resources required to implement the program;

''(3) specific efforts to ensure that implementation does not negatively impact activities in support of ongoing operations in areas of hostilities;

''(4) a definition of the capabilities that will be achieved at initial operating capability and full operating capability, respectively; and

''(5) a description of any other issues related to such implementation that the Secretary considers appropriate.

''(e) BRIEFING REQUIREMENT.—The Secretary shall provide briefings to the Committees on Armed Services of the House of Representatives and the Senate as follows:

''(1) Not later than 90 days after the date of the enactment of this Act [Dec. 31, 2011], a briefing describ-

ing the governance structure referred to in subsection (b)(3).

''(2) Not later than 120 days after the date of the enactment of this Act, a briefing detailing the inventory and status of technology solutions deployment referred to in subsection (b)(1), including an identification of the total number of host platforms planned for such deployment, the current number of host platforms that provide appropriate security, and the funding and timeline for remaining deployment.

''(3) Not later than 180 days after the date of the enactment of this Act, a briefing detailing the policies and procedures referred to in subsection (b)(2), including an assessment of the effectiveness of such policies and procedures and an assessment of the potential impact of such policies and procedures on information sharing within the Department of Defense and with interagency and international partners.''

STRATEGY TO ACQUIRE CAPABILITIES TO DETECT PREVIOUSLY UNKNOWN CYBER ATTACKS

Pub. L. 112–81, div. A, title IX, § 953, Dec. 31, 2011, 125 Stat. 1550, provided that:

''(a) IN GENERAL.—The Secretary of Defense shall develop and implement a plan to augment the cybersecurity strategy of the Department of Defense through the acquisition of advanced capabilities to discover and isolate penetrations and attacks that were previously unknown and for which signatures have not been developed for incorporation into computer intrusion detection and prevention systems and anti-virus software systems.

''(b) CAPABILITIES.—

''(1) NATURE OF CAPABILITIES.—The capabilities to be acquired under the plan required by subsection (a) shall—

''(A) be adequate to enable well-trained analysts to discover the sophisticated attacks conducted by nation-state adversaries that are categorized as 'advanced persistent threats';

''(B) be appropriate for—

''(i) endpoints or hosts;

''(ii) network-level gateways operated by the Defense Information Systems Agency where the Department of Defense network connects to the public Internet; and

''(iii) global networks owned and operated by private sector Tier 1 Internet Service Providers;

''(C) at the endpoints or hosts, add new discovery capabilities to the Host-Based Security System of the Department, including capabilities such as—

''(i) automatic blocking of unauthorized software programs and accepting approved and vetted programs;

''(ii) constant monitoring of all key computer attributes, settings, and operations (such as registry keys, operations running in memory, security settings, memory tables, event logs, and files); and

''(iii) automatic baselining and remediation of altered computer settings and files;

''(D) at the network-level gateways and internal network peering points, include the sustainment and enhancement of a system that is based on full-packet capture, session reconstruction, extended storage, and advanced analytic tools, by—

''(i) increasing the number and skill level of the analysts assigned to query stored data, whether by contracting for security services, hiring and training Government personnel, or both; and

''(ii) increasing the capacity of the system to handle the rates for data flow through the gateways and the storage requirements specified by the United States Cyber Command; and

''(E) include the behavior-based threat detection capabilities of Tier 1 Internet Service Providers and other companies that operate on the global Internet.

''(2) SOURCE OF CAPABILITIES.—The capabilities to be acquired shall, to the maximum extent practicable, be acquired from commercial sources. In making decisions on the procurement of such capabilities from among competing commercial and Government providers, the Secretary shall take into consideration the needs of other departments and agencies of the Federal Government, State and local governments, and critical infrastructure owned and operated by the private sector for unclassified, affordable, and sustainable commercial solutions.

''(c) INTEGRATION AND MANAGEMENT OF DISCOVERY CAPABILITIES.—The plan required by subsection (a) shall include mechanisms for improving the standardization, organization, and management of the security information and event management systems that are widely deployed across the Department of Defense to improve the ability of United States Cyber Command to understand and control the status and condition of Department networks, including mechanisms to ensure that the security information and event management systems of the Department receive and correlate data collected and analyses conducted at the host or endpoint, at the network gateways, and by Internet Service Providers in order to discover new attacks reliably and rapidly.

''(d) PROVISION FOR CAPABILITY DEMONSTRATIONS.—The plan required by subsection (a) shall provide for the conduct of demonstrations, pilot projects, and other tests on cyber test ranges and operational networks in order to determine and verify that the capabilities to be acquired pursuant to the plan are effective, practical, and affordable.

''(e) REPORT.—Not later than April 1, 2012, the Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the plan required by subsection (a). The report shall set forth the plan and include a comprehensive description of the actions being undertaken by the Department to implement the plan.''

STRATEGY ON COMPUTER SOFTWARE ASSURANCE

Pub. L. 111–383, div. A, title IX, § 932, Jan. 7, 2011, 124 Stat. 4335, as amended by Pub. L. 116–283, div. A, title XVIII, § 1806(e)(2)(B), Jan. 1, 2021, 134 Stat. 4155, provided that:

''(a) STRATEGY REQUIRED.—The Secretary of Defense shall develop and implement, by not later than October 1, 2011, a strategy for assuring the security of software and software-based applications for all covered systems.

''(b) COVERED SYSTEMS.—For purposes of this section, a covered system is any critical information system or weapon system of the Department of Defense, including the following:

''(1) A major system, as that term is defined in section 2302(5) of title 10, United States Code.

''(2) A national security system, as that term is defined in [former] section 3542(b)(2) of title 44, United States Code [see now 44 U.S.C. 3552(b)(6)].

''(3) Any Department of Defense information system categorized as Mission Assurance Category I.

''(4) Any Department of Defense information system categorized as Mission Assurance Category II in accordance with Department of Defense Directive 8500.01E.

''(c) ELEMENTS.—The strategy required by subsection (a) shall include the following:

''(1) Policy and regulations on the following:

''(A) Software assurance generally.

''(B) Contract requirements for software assurance for covered systems in development and production.

''(C) Inclusion of software assurance in milestone reviews and milestone approvals.

''(D) Rigorous test and evaluation of software assurance in development, acceptance, and operational tests.

''(E) Certification and accreditation requirements for software assurance for new systems and for updates for legacy systems, including mechanisms to

monitor and enforce reciprocity of certification and accreditation processes among the military departments and Defense Agencies.

''(F) Remediation in legacy systems of critical software assurance deficiencies that are defined as critical in accordance with the Application Security Technical Implementation Guide of the Defense Information Systems Agency.

''(2) Allocation of adequate facilities and other resources for test and evaluation and certification and accreditation of software to meet applicable requirements for research and development, systems acquisition, and operations.

''(3) Mechanisms for protection against compromise of information systems through the supply chain or cyber attack by acquiring and improving automated tools for—

''(A) assuring the security of software and software applications during software development;

''(B) detecting vulnerabilities during testing of software; and

''(C) detecting intrusions during real-time monitoring of software applications.

''(4) Mechanisms providing the Department of Defense with the capabilities—

''(A) to monitor systems and applications in order to detect and defeat attempts to penetrate or disable such systems and applications; and

''(B) to ensure that such monitoring capabilities are integrated into the Department of Defense system of cyber defense-in-depth capabilities.

''(5) An update to Committee for National Security Systems Instruction No. 4009, entitled 'National Information Assurance Glossary', to include a standard definition for software security assurance.

''(6) Either—

''(A) mechanisms to ensure that vulnerable Mission Assurance Category III information systems, if penetrated, cannot be used as a foundation for penetration of protected covered systems, and means for assessing the effectiveness of such mechanisms; or

''(B) plans to address critical vulnerabilities in Mission Assurance Category III information systems to prevent their use for intrusions of Mission Assurance Category I systems and Mission Assurance Category II systems.

''(7) A funding mechanism for remediation of critical software assurance vulnerabilities in legacy systems.

''(d) REPORT.—Not later than October 1, 2011, the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the strategy required by subsection (a). The report shall include the following:

''(1) A description of the current status of the strategy required by subsection (a) and of the implementation of the strategy, including a description of the role of the strategy in the risk management by the Department regarding the supply chain and in operational planning for cyber security.

''(2) A description of the risks, if any, that the Department will accept in the strategy due to limitations on funds or other applicable constraints.''

[Pub. L. 116–283, div. A, title XVIII, §§1801(d), 1806(e)(2)(B), Jan. 1, 2021, 134 Stat. 4151, 4155, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, section 932(b)(1) of Pub. L. 111–383, set out above, is amended by substituting ''section 3041'' for ''section 2302(5)''.]

INSTITUTE FOR DEFENSE COMPUTER SECURITY AND INFORMATION PROTECTION

Pub. L. 106–398, §1 [[div. A], title IX, §921], Oct. 30, 2000, 114 Stat. 1654, 1654A–233, provided that:

''(a) ESTABLISHMENT.—The Secretary of Defense shall establish an Institute for Defense Computer Security and Information Protection.

''(b) MISSION.—The Secretary shall require the institute—

''(1) to conduct research and technology development that is relevant to foreseeable computer and network security requirements and information assurance requirements of the Department of Defense with a principal focus on areas not being carried out by other organizations in the private or public sector; and

''(2) to facilitate the exchange of information regarding cyberthreats, technology, tools, and other relevant issues.

''(c) CONTRACTOR OPERATION.—The Secretary shall enter into a contract with a not-for-profit entity, or a consortium of not-for-profit entities, to organize and operate the institute. The Secretary shall use competitive procedures for the selection of the contractor to the extent determined necessary by the Secretary.

''(d) FUNDING.—Of the amount authorized to be appropriated by section 301(5) [114 Stat. 1654A–52], $5,000,000 shall be available for the Institute for Defense Computer Security and Information Protection.

''(e) REPORT.—Not later than April 1, 2001, the Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] the Secretary's plan for implementing this section.''

§2224a. Information security: continued applicability of expiring Governmentwide requirements to the Department of Defense

(a) IN GENERAL.—The provisions of subchapter II[1] of chapter 35 of title 44 shall continue to apply through September 30, 2004, with respect to the Department of Defense, notwithstanding the expiration of authority under section 3536[1] of such title.

(b) RESPONSIBILITIES.—In administering the provisions of subchapter II[1] of chapter 35 of title 44 with respect to the Department of Defense after the expiration of authority under section 3536[1] of such title, the Secretary of Defense shall perform the duties set forth in that subchapter for the Director of the Office of Management and Budget.

(Added Pub. L. 107–314, div. A, title X, §1052(b)(1), Dec. 2, 2002, 116 Stat. 2648.)

REFERENCES IN TEXT

Provisions relating to the expiration of authority of subchapter II of chapter 35 of title 44, referred to in text, did not appear in section 3536 of title 44 subsequent to the general revision of subchapter II by Pub. L. 107–296, title X, §1001(b)(1), Nov. 25, 2002, 116 Stat. 2259. Subchapter II, as revised by Pub. L. 107–296, was repealed and a new subchapter II enacted by Pub. L. 113–283, §2(a), Dec. 18, 2014, 128 Stat. 3073.

[§2225. Repealed. Pub. L. 114–328, div. A, title VIII, §833(b)(2)(A), Dec. 23, 2016, 130 Stat. 2284]

Section, added Pub. L. 106–398, §1 [[div. A], title VIII, §812(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–212; amended Pub. L. 108–178, §4(b)(2), Dec. 15, 2003, 117 Stat. 2640; Pub. L. 109–364, div. A, title X, §1071(a)(2), Oct. 17, 2006, 120 Stat. 2398; Pub. L. 111–350, §5(b)(6), Jan. 4, 2011, 124 Stat. 3842, related to tracking and management of information technology purchases.

TIME FOR IMPLEMENTATION; APPLICABILITY

Pub. L. 106–398, §1 [[div. A], title VIII, §812(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–214, which provided that the Secretary of Defense was to collect data as required under section 2225 of this title for all contractual ac-

[1] See References in Text note below.

tions covered by such section entered into on or after Oct. 30, 2000, was repealed by Pub. L. 114–328, div. A, title VIII, § 833(b)(2)(C)(i), Dec. 23, 2016, 130 Stat. 2284.

GAO REPORT

Pub. L. 106–398, § 1 [[div. A], title VIII, § 812(c)], Oct. 30, 2000, 114 Stat. 1654, 1654A–214, which directed the Comptroller General to submit to committees of Congress a report on the collection of data under this section not later than 15 months after Oct. 30, 2000, was repealed by Pub. L. 114–328, div. A, title VIII, § 833(b)(2)(C)(i), Dec. 23, 2016, 130 Stat. 2284.

§ 2226. Contracted property and services: prompt payment of vouchers

(a) REQUIREMENT.—Of the contract vouchers that are received by the Defense Finance and Accounting Service by means of the mechanization of contract administration services system, the number of such vouchers that remain unpaid for more than 30 days as of the last day of each month may not exceed 5 percent of the total number of the contract vouchers so received that remain unpaid on that day.

(b) CONTRACT VOUCHER DEFINED.—In this section, the term ''contract voucher'' means a voucher or invoice for the payment to a contractor for services or deliverable items provided by the contractor under a contract funded by the Department of Defense.

(Added Pub. L. 106–398, § 1 [[div. A], title X, § 1006(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–247; amended Pub. L. 111–350, § 5(b)(7), Jan. 4, 2011, 124 Stat. 3842; Pub. L. 115–232, div. A, title VIII, § 836(e)(1), Aug. 13, 2018, 132 Stat. 1869.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1861(b), Jan. 1, 2021, 134 Stat. 4151, 4277, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 361 of this title, as amended by section 1861(a) of Pub. L. 116–283, inserted after section 4601, and redesignated as section 4602 of this title. See Effective Date of 2021 Amendment note below.

AMENDMENTS

2018—Subsec. (b). Pub. L. 115–232 substituted ''for services or deliverable items'' for ''for services, commercial items (as defined in section 103 of title 41), or other deliverable items''.

2011—Subsec. (b). Pub. L. 111–350 substituted ''section 103 of title 41'' for ''section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12))''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115–232 effective Jan. 1, 2020, subject to a savings provision, see section 836(h) of Pub. L. 115–232, set out as an Effective Date of 2018 Amendment; Savings Provision note under section 453b of Title 6, Domestic Security.

EFFECTIVE DATE

Pub. L. 106–398, § 1 [[div. A], title X, § 1006(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–248, provided that: ''Section 2226 of title 10, United States Code (as added by subsection (a)), shall take effect on December 1, 2000.''

CONDITIONAL REQUIREMENT FOR REPORT

Pub. L. 106–398, § 1 [[div. A], title X, § 1006(c)], Oct. 30, 2000, 114 Stat. 1654, 1654A–248, required submission of a report for any month between Dec. 1, 2000, and Nov. 30, 2004, in which the requirement in 10 U.S.C. 2226 was not met.

§ 2227. Electronic submission and processing of claims for contract payments

(a) SUBMISSION OF CLAIMS.—The Secretary of Defense shall require that any claim for payment under a Department of Defense contract shall be submitted to the Department of Defense in electronic form.

(b) PROCESSING.—A contracting officer, contract administrator, certifying official, or other officer or employee of the Department of Defense who receives a claim for payment in electronic form in accordance with subsection (a) and is required to transmit the claim to any other officer or employee of the Department of Defense for processing under procedures of the department shall transmit the claim and any additional documentation necessary to support the determination and payment of the claim to such other officer or employee electronically.

(c) WAIVER AUTHORITY.—If the Secretary of Defense determines that the requirement for using electronic means for submitting claims under subsection (a), or for transmitting claims and supporting documentation under subsection (b), is unduly burdensome in any category of cases, the Secretary may exempt the cases in that category from the application of the requirement.

(d) IMPLEMENTATION OF REQUIREMENTS.—In implementing subsections (a) and (b), the Secretary of Defense shall provide for the following:

(1) Policies, requirements, and procedures for using electronic means for the submission of claims for payment to the Department of Defense and for the transmission, between Department of Defense officials, of claims for payment received in electronic form, together with supporting documentation (such as receiving reports, contracts and contract modifications, and required certifications).

(2) The format in which information can be accepted by the corporate database of the Defense Finance and Accounting Service.

(3) The requirements to be included in contracts regarding the electronic submission of claims for payment by contractors.

(e) CLAIM FOR PAYMENT DEFINED.—In this section, the term ''claim for payment'' means an invoice or any other demand or request for payment.

(Added Pub. L. 106–398, § 1 [[div. A], title X, § 1008(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–249.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1861(b), Jan. 1, 2021, 134 Stat. 4151, 4277, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 361 of this title, as

amended by section 1861(a) of Pub. L. 116–283, inserted after the table of sections at the beginning, and redesignated as section 4601 of this title. See Effective Date of 2021 Amendment note below.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE

Pub. L. 106–398, §1 [[div. A], title X, §1008(c)], Oct. 30, 2000, 114 Stat. 1654, 1654A–250, provided that:

''(1) Subject to paragraph (2), the Secretary of Defense shall apply section 2227 of title 10, United States Code (as added by subsection (a)), with respect to contracts for which solicitations of offers are issued after June 30, 2001.

''(2)(A) The Secretary may delay the implementation of section 2227 to a date after June 30, 2001, upon a finding that it is impracticable to implement that section until that later date. In no event, however, may the implementation be delayed to a date after October 1, 2002.

''(B) Upon determining to delay the implementation of such section 2227 to a later date under subparagraph (A), the Secretary shall promptly publish a notice of the delay in the Federal Register. The notice shall include a specification of the later date on which the implementation of that section is to begin. Not later than 30 days before the later implementation date, the Secretary shall publish in the Federal Register another notice that such section is being implemented beginning on that date.''

[Notice by Department of Defense of delay in the implementation of this section from June 30, 2001, until Oct. 1, 2002, was published on Aug. 21, 2001, at 66 F.R. 43841.]

IMPLEMENTATION PLAN

Pub. L. 106–398, §1 [[div. A], title X, §1008(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–250, directed the Secretary of Defense, not later than Mar. 30, 2001, to submit to committees of Congress a plan for the implementation of the requirements imposed under this section.

§ 2228. Office of Corrosion Policy and Oversight

(a) OFFICE AND DIRECTOR.—(1) There is an Office of Corrosion Policy and Oversight within the Office of the Under Secretary of Defense for Acquisition and Sustainment.

(2) The Office shall be headed by a Director of Corrosion Policy and Oversight, who shall be assigned to such position by the Under Secretary from among civilian employees of the Department of Defense with the qualifications described in paragraph (3). The Director is responsible in the Department of Defense to the Secretary of Defense (after the Under Secretary of Defense for Acquisition and Sustainment) for the prevention and mitigation of corrosion of the military equipment and infrastructure of the Department of Defense.

(3) In order to qualify to be assigned to the position of Director, an individual shall—

(A) have management expertise in, and professional experience with, corrosion project and policy implementation, including an understanding of the effects of corrosion policies on infrastructure; research, development, test, and evaluation; and maintenance; and

(B) have an understanding of Department of Defense budget formulation and execution, policy formulation, and planning and program requirements.

(4) The Secretary of Defense shall designate the position of Director as a critical acquisition position under section 1731 of this title.

(b) DUTIES.—(1) The Director of Corrosion Policy and Oversight (in this section referred to as the ''Director'') shall oversee and coordinate efforts throughout the Department of Defense to prevent and mitigate corrosion of the military equipment and infrastructure of the Department. The duties under this paragraph shall include the duties specified in paragraphs (2) through (5).

(2) The Director shall develop and recommend any policy guidance on the prevention and mitigation of corrosion to be issued by the Secretary of Defense.

(3) The Director shall review the programs and funding levels proposed by the Secretary of each military department during the annual internal Department of Defense budget review process as those programs and funding proposals relate to programs and funding for the prevention and mitigation of corrosion and shall submit to the Secretary of Defense recommendations regarding those programs and proposed funding levels.

(4) The Director shall provide oversight and coordination of the efforts within the Department of Defense to prevent or mitigate corrosion during—

(A) the design, acquisition, and maintenance of military equipment; and

(B) the design, construction, and maintenance of infrastructure.

(5) The Director shall monitor acquisition practices within the Department of Defense—

(A) to ensure that the use of corrosion prevention technologies and the application of corrosion prevention treatments are fully considered during research and development in the acquisition process; and

(B) to ensure that, to the extent determined appropriate for each acquisition program, such technologies and treatments are incorporated into that program, particularly during the engineering and design phases of the acquisition process.

(c) ADDITIONAL AUTHORITIES FOR DIRECTOR.—The Director is authorized to—

(1) develop, update, and coordinate corrosion training with the Defense Acquisition University;

(2) participate in the process within the Department of Defense for the development of relevant directives and instructions; and

(3) interact directly with the corrosion prevention industry, trade associations, other government corrosion prevention agencies, academic research and educational institutions, and scientific organizations engaged in corrosion prevention, including the National Academy of Sciences.

(d) LONG-TERM STRATEGY.—(1) The Secretary of Defense shall develop and implement a long-term strategy to reduce corrosion and the effects of corrosion on the military equipment and infrastructure of the Department of Defense.

(2) The strategy under paragraph (1) shall include the following:

(A) Expansion of the emphasis on corrosion prevention and mitigation within the Department of Defense to include coverage of infrastructure.

(B) Application uniformly throughout the Department of Defense of requirements and criteria for the testing and certification of new corrosion-prevention technologies for equipment and infrastructure with similar characteristics, similar missions, or similar operating environments.

(C) Implementation of programs, including supporting databases, to ensure that a focused and coordinated approach is taken throughout the Department of Defense to collect, review, validate, and distribute information on proven methods and products that are relevant to the prevention of corrosion of military equipment and infrastructure.

(D) Establishment of a coordinated research and development program for the prevention and mitigation of corrosion for new and existing military equipment and infrastructure that includes a plan to transition new corrosion prevention technologies into operational systems, including through the establishment of memoranda of agreement, joint funding agreements, public-private partnerships, university research and education centers, and other cooperative research agreements.

(3) The strategy shall include, for the matters specified in paragraph (2), the following:

(A) Policy guidance.

(B) Performance measures and milestones.

(C) An assessment of the necessary personnel and funding necessary to accomplish the long-term strategy.

(e) REPORT.—(1) For each budget for a fiscal year, beginning with the budget for fiscal year 2009 and ending with the budget for fiscal year 2022, the Secretary of Defense shall submit, with the defense budget materials, a report on the following:

(A) Funding requirements for the long-term strategy developed under subsection (d).

(B) The estimated composite return on investment achieved by implementing the strategy, and documented in the assessments by the Department of Defense of completed corrosion projects and activities.

(C) For the fiscal year covered by the report and the preceding fiscal year, the funds requested in the budget compared to the funding requirements.

(D) If the full amount of funding requirements is not requested in the budget, the reasons for not including the full amount and a description of the impact on readiness, logistics, and safety of not fully funding required corrosion prevention and mitigation activities.

(E) For the fiscal year preceding the fiscal year covered by the report, the amount of funds requested in the budget for each project or activity described in subsection (d) compared to the funding requirements for the project or activity.

(F) For the fiscal year preceding the fiscal year covered by the report, a description of the specific amount of funds used for military corrosion projects, the Technical Corrosion Collaboration program, and other corrosion-related activities.

(2)(A) Each report under this section shall include, in an annex to the report, a summary of the most recent report required by subparagraph (B).

(B) Not later than December 31 of each year, through December 31, 2020, the corrosion control and prevention executive of a military department shall submit to the Director of Corrosion Policy and Oversight a report containing recommendations pertaining to the corrosion control and prevention program of the military department. Such report shall include recommendations for the funding levels necessary for the executive to carry out the duties of the executive under this section. The report required under this subparagraph shall—

(i) provide a summary of key accomplishments, goals, and objectives of the corrosion control and prevention program of the military department; and

(ii) include the performance measures used to ensure that the corrosion control and prevention program achieved the goals and objectives described in clause (i).

(f) DEFINITIONS.—In this section:

(1) The term ''corrosion'' means the deterioration of a material or its properties due to a reaction of that material with its chemical environment.

(2) The term ''military equipment'' includes all weapon systems, weapon platforms, vehicles, and munitions of the Department of Defense, and the components of such items.

(3) The term ''infrastructure'' includes all buildings, structures, airfields, port facilities, surface and subterranean utility systems, heating and cooling systems, fuel tanks, pavements, and bridges.

(4) The term ''budget'', with respect to a fiscal year, means the budget for that fiscal year that is submitted to Congress by the President under section 1105(a) of title 31.

(5) The term ''defense budget materials'', with respect to a fiscal year, means the materials submitted to Congress by the Secretary of Defense in support of the budget for that fiscal year.

(Added Pub. L. 107–314, div. A, title X, § 1067(a)(1), Dec. 2, 2002, 116 Stat. 2657; amended Pub. L. 110–181, div. A, title III, § 371(a)–(e), Jan. 28, 2008, 122 Stat. 79–81; Pub. L. 110–417, [div. A], title X, § 1061(b)(1), Oct. 14, 2008, 122 Stat. 4612; Pub. L. 111–383, div. A, title III, § 331, Jan. 7, 2011, 124 Stat. 4185; Pub. L. 112–239, div. A, title III, § 341, Jan. 2, 2013, 126 Stat. 1699; Pub. L. 114–328, div. A, title IX, § 954(a), (b), Dec. 23, 2016, 130 Stat. 2376, 2377; Pub. L. 115–232, div. A, title VIII, § 811(a), Aug. 13, 2018, 132 Stat. 1845; Pub. L. 116–92, div. A, title VIII, § 861(j)(13), title XVII, § 1731(a)(32), Dec. 20, 2019, 133 Stat. 1520, 1814.)

AMENDMENTS

2019—Subsec. (a)(2). Pub. L. 116–92, § 1731(a)(32), struck out second period at end.

Subsec. (a)(4). Pub. L. 116–92, § 861(j)(13), substituted ''under section 1731 of this title'' for ''under section 1733(b)(1)(C) of this title''.

2018—Subsec. (a)(1). Pub. L. 115–232, § 811(a)(1), substituted ''and Sustainment'' for '', Technology, and Logistics''.

Subsec. (a)(2). Pub. L. 115–232 substituted ''and Sustainment'' for '', Technology, and Logistics'' and struck out ''The Director shall report directly to the Under Secretary'' after ''infrastructure of the Department of Defense.''

2016—Subsec. (e)(1). Pub. L. 114–328, § 954(a)(1), inserted ''and ending with the budget for fiscal year 2022'' after ''2009'' in introductory provisions.

Subsec. (e)(1)(B). Pub. L. 114–328, § 954(a)(2), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''The return on investment that would be achieved by implementing the strategy, including available validated data on return on investment for completed corrosion projects and activities.''

Subsec. (e)(1)(D). Pub. L. 114–328, § 954(a)(3), amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: ''An explanation if the funding requirements are not fully funded in the budget.''

Subsec. (e)(1)(F). Pub. L. 114–328, § 954(a)(4), struck out ''pilot'' before ''program''.

Subsec. (e)(2). Pub. L. 114–328, § 954(b), designated existing provisions as subpar. (A), substituted ''a summary of the most recent report required by subparagraph (B).'' for ''a copy of the annual corrosion report most recently submitted by the corrosion control and prevention executive of each military department under section 903(b)(5) of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110–417; 122 Stat. 4567; 10 U.S.C. 2228 note).'', and added subpar. (B).

2013—Subsec. (e)(1)(B). Pub. L. 112–239, § 341(1)(A), inserted '', including available validated data on return on investment for completed corrosion projects and activities'' before period at end.

Subsec. (e)(1)(E). Pub. L. 112–239, § 341(1)(B), substituted ''For the fiscal year preceding the fiscal year covered by the report'' for ''For the fiscal year covered by the report and the preceding fiscal year''.

Subsec. (e)(1)(F). Pub. L. 112–239, § 341(1)(C), added subpar. (F).

Subsec. (e)(2), (3). Pub. L. 112–239, § 341(2), (3), redesignated par. (3) as (2) and struck out former par. (2) which read as follows: ''Within 60 days after submission of the budget for a fiscal year, the Comptroller General shall provide to the congressional defense committees—

''(A) an analysis of the budget submission for corrosion control and prevention by the Department of Defense; and

''(B) an analysis of the report required under paragraph (1), including the annex to the report described in paragraph (3).''

2011—Subsec. (e)(1)(C). Pub. L. 111–383, § 331(1)(A), substituted ''For the fiscal year covered by the report and the preceding fiscal year, the'' for ''The''.

Subsec. (e)(1)(E). Pub. L. 111–383, § 331(1)(B), added subpar. (E).

Subsec. (e)(2)(B). Pub. L. 111–383, § 331(2), inserted before period at end '', including the annex to the report described in paragraph (3)''.

Subsec. (e)(3). Pub. L. 111–383, § 331(3), added par. (3).

2008—Pub. L. 110–181, § 371(a)(1), substituted ''Office of Corrosion Policy and Oversight'' for ''Military equipment and infrastructure: prevention and mitigation of corrosion'' in section catchline.

Subsec. (a). Pub. L. 110–181, § 371(a)(1), added subsec. (a) and struck out heading and text of former subsec. (a). Former text read as follows: ''The Secretary of Defense shall designate an officer or employee of the Department of Defense, or a standing board or committee of the Department of Defense, as the senior official or organization responsible in the Department to the Secretary of Defense (after the Under Secretary of Defense for Acquisition, Technology, and Logistics) for the prevention and mitigation of corrosion of the military equipment and infrastructure of the Department.''

Subsec. (b)(1). Pub. L. 110–181, § 371(a)(2)(A), substituted ''Director of Corrosion Policy and Oversight (in this section referred to as the 'Director')'' for ''official or organization designated under subsection (a)''.

Subsec. (b)(2) to (5). Pub. L. 110–181, § 371(a)(2)(B), substituted ''Director'' for ''designated official or organization''.

Subsecs. (c), (d). Pub. L. 110–181, § 371(b), added subsec. (c) and redesignated former subsec. (c) as (d). Former subsec. (d) redesignated (f).

Subsec. (d)(2)(D). Pub. L. 110–181, § 371(c), as amended by Pub. L. 110–417, inserted '', including through the establishment of memoranda of agreement, joint funding agreements, public-private partnerships, university research and education centers, and other cooperative research agreements'' after ''operational systems''.

Subsec. (e). Pub. L. 110–181, § 371(d), added subsec. (e).

Subsec. (f). Pub. L. 110–181, § 371(b), redesignated subsec. (d) as (f).

Subsec. (f)(4), (5). Pub. L. 110–181, § 371(e), added pars. (4) and (5).

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–417 effective Jan. 28, 2008, and as if included in Pub. L. 110–181 as enacted, see section 1061(b) of Pub. L. 110–417, set out as a note under section 6382 of Title 5, Government Organization and Employees.

SUBMISSION OF NOTICE AND PLAN TO CONGRESS BEFORE REORGANIZING, RESTRUCTURING, OR ELIMINATING ANY POSITION OR OFFICE

Pub. L. 115–232, div. A, title VIII, § 811(i), Aug. 13, 2018, 132 Stat. 1846, provided that: ''Not less than 30 days before reorganizing, restructuring, or eliminating any position or office specified in this section, the Secretary shall submit to the Committees on Armed Services of the Senate and House of Representatives notice of such reorganization, restructuring, or elimination together with a plan to ensure that mission requirements are met and appropriate oversight is conducted in carrying out such reorganization, restructuring, or elimination. Such plan shall address how user needs will be met and how associated roles and responsibilities will be accomplished for each position or office that the Secretary determines requiring reorganization, restructuring, or elimination.''

IMPLEMENTATION OF CORRECTIVE ACTIONS RESULTING FROM CORROSION STUDY OF THE F–22 AND F–35 AIRCRAFT

Pub. L. 112–81, div. A, title III, § 324, Dec. 31, 2011, 125 Stat. 1362, provided that:

''(a) IMPLEMENTATION; CONGRESSIONAL BRIEFING.—Not later than January 31, 2012, the Under Secretary of Defense for Acquisition, Technology, and Logistics shall implement the recommended actions described in subsection (b) and provide to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a briefing on the actions taken by the Under Secretary to implement such recommended actions.

''(b) RECOMMENDED ACTIONS.—The recommended actions described in this subsection are the following four recommended actions included in the report of the Government Accountability Office report numbered GAO–11–117R and titled 'Defense Management: DOD Needs to Monitor and Assess Corrective Actions Resulting from Its Corrosion Study of the F–35 Joint Strike Fighter':

''(1) The documentation of program-specific recommendations made as a result of the corrosion study described in subsection (d) with regard to the F–35 and F–22 aircraft and the establishment of a process for monitoring and assessing the effectiveness of the corrective actions taken with respect to such aircraft in response to such recommendations.

''(2) The documentation of program-specific recommendations made as a result of such corrosion study with regard to the other weapon systems identified in the study, specifically the CH–53K heli-

copter, the Joint High Speed Vessel, the Broad Area Maritime Surveillance Unmanned Aircraft System, and the Joint Light Tactical Vehicle, and the establishment of a process for monitoring and assessing the effectiveness of the corrosion prevention and control programs implemented for such weapons systems in response to such recommendations.

''(3) The documentation of Air Force-specific and Navy-specific recommendations made as a result of such corrosion study and the establishment of a process for monitoring and assessing the effectiveness of the corrective actions taken by the Air Force and the Navy in response to such recommendations.

''(4) The documentation of Department of Defense-wide recommendations made as a result of such corrosion study, the implementation of any needed changes in policies and practices to improve corrosion prevention and control in new systems acquired by the Department, and the establishment of a process for monitoring and assessing the effectiveness of the corrective actions taken by the Department in response to such recommendations.

''(c) DEADLINE FOR COMPLIANCE.—Not later than December 31, 2012, the Under Secretary of Defense for Acquisition, Technology, and Logistics, in conjunction with the directors of the F–35 and F–22 program offices, the directors of the program offices for the weapons systems referred to in subsection (b)(2), the Secretary of the Army, the Secretary of the Air Force, and the Secretary of the Navy, shall—

''(1) take whatever steps necessary to comply with the recommendations documented pursuant to the required implementation under subsection (a) of the recommended actions described in subsection (b); or

''(2) submit to the congressional defense committees written justification of why compliance was not feasible or achieved.

''(d) CORROSION STUDY.—The corrosion study described in this subsection is the study required in House Report 111–166 accompanying H.R. 2647 of the 111th Congress [Pub. L. 111–84] conducted by the Office of the Director of Corrosion Policy and Oversight of the Office of the Secretary of Defense and titled 'Corrosion Evaluation of the F–22 Raptor and F–35 Lightning II Joint Strike Fighter'.''

CORROSION CONTROL AND PREVENTION EXECUTIVES FOR THE MILITARY DEPARTMENTS

Pub. L. 114–328, div. A, title III, § 322, Dec. 23, 2016, 130 Stat. 2075, provided that:

''(a) IN GENERAL.—Not later than 90 days after the date of the enactment of this Act [Dec. 23, 2016], the Under Secretary of Defense for Acquisition, Technology, and Logistics, in coordination with the Director of Corrosion Policy and Oversight for the Department of Defense, shall revise guidance relating to corrosion control and prevention executives to—

''(1) clarify the role of each such executive with respect to assisting the Office of Corrosion Policy and Oversight in holding the appropriate project management office in each military department accountable for submitting the annual report required under [former] section 903(b)(5) of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110–417; 10 U.S.C. 2228 note [set out below]); and

''(2) ensure that corrosion control and prevention executives emphasize the reduction of corrosion and the effects of corrosion on the military equipment and infrastructure of the Department of Defense, as required in the long-term strategy of the Department of Defense under section 2228(d) of title 10, United States Code.

''(b) CORROSION CONTROL AND PREVENTION EXECUTIVE DEFINED.—In this section, the term 'corrosion control and prevention executive' means the employee of a military department designated as the corrosion control and prevention executive of the department under section 903(a) of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110–417; 10 U.S.C. 2228 note).''

Pub. L. 110–417, [div. A], title IX, § 903, Oct. 14, 2008, 122 Stat. 4566, as amended by Pub. L. 113–66, div. A, title III, § 334, title X, § 1084(b)(1), Dec. 26, 2013, 127 Stat. 740, 871; Pub. L. 114–328, div. A, title IX, § 954(c), Dec. 23, 2016, 130 Stat. 2377; Pub. L. 115–91, div. A, title IX, § 924, Dec. 12, 2017, 131 Stat. 1526, provided that:

''(a) REQUIREMENT TO DESIGNATE CORROSION CONTROL AND PREVENTION EXECUTIVE.—Not later than 90 days after the date of the enactment of this Act [Oct. 14, 2008], the Assistant Secretary of each military department with responsibility for acquisition, technology, and logistics shall designate an employee of the military department as the corrosion control and prevention executive. Such executive shall be a senior official in the department with responsibility for coordinating department-level corrosion control and prevention program activities (including budget programming) with the military department and the Office of the Secretary of Defense, the program executive officers of the military departments, and relevant major subordinate commands of the military departments. Each individual so designated shall be a senior civilian employee of the military department concerned in pay grade GS–15 or higher.

''(b) QUALIFICATIONS.—Any individual designated as a corrosion control and prevention executive of a military department pursuant to subsection (a) shall—

''(1) have a working knowledge of corrosion prevention and control;

''(2) have strong program management and communication skills; and

''(3) understand the acquisition, research, development, test, and evaluation, and sustainment policies and procedures of the military department, including for the sustainment of infrastructure.

''(c) DUTIES.—(1) The corrosion control and prevention executive of a military department shall ensure that corrosion control and prevention is maintained in the department's policy and guidance for management of each of the following:

''(A) System acquisition and production, including design and maintenance.

''(B) Research, development, test, and evaluation programs and activities.

''(C) Equipment standardization programs, including international standardization agreements.

''(D) Logistics research and development initiatives.

''(E) Logistics support analysis as it relates to integrated logistic support in the materiel acquisition process.

''(F) Military infrastructure design, construction, and maintenance.

''(2) The corrosion control and prevention executive of a military department shall be responsible for identifying the funding levels necessary to accomplish the items listed in subparagraphs (A) through (F) of paragraph (1).

''(3) The corrosion control and prevention executive of a military department shall, in cooperation with the appropriate staff of the department, develop, support, and provide the rationale for resources—

''(A) to initiate and sustain an effective corrosion control and prevention program in the department;

''(B) to evaluate the program's effectiveness; and

''(C) to ensure that corrosion control and prevention requirements for materiel are reflected in budgeting and policies of the department for the formulation, management, and evaluation of personnel and programs for the entire department, including its reserve components.

''(4) The corrosion control and prevention executive of a military department shall be the principal point of contact of the department to the Director of Corrosion Policy and Oversight (as assigned under section 2228 of title 10, United States Code).

"[(5) Repealed. Pub. L. 114–328, div. A, title IX, § 954(c), Dec. 23, 2016, 130 Stat. 2377.]"

DEADLINE FOR DESIGNATION OF RESPONSIBLE OFFICIAL OR ORGANIZATION; INTERIM REPORT; DEADLINE FOR LONG-TERM STRATEGY; GAO REVIEW

Pub. L. 107–314, div. A, title X, § 1067(b)–(e), Dec. 2, 2002, 116 Stat. 2658, 2659, directed the Secretary of Defense to designate a responsible official or organization under subsec. (a) of this section not later than 90 days after Dec. 2, 2002, directed the Secretary to submit to Congress a report setting forth the long-term strategy required under subsec. (c) of this section not later than one year after Dec. 2, 2002, and required the Comptroller General to monitor the implementation of such long-term strategy and, not later than 18 months after Dec. 2, 2002, to submit to Congress an assessment of the extent to which that strategy had been implemented.

§ 2229. Strategic policy on prepositioning of materiel and equipment

(a) POLICY REQUIRED.—

(1) IN GENERAL.—The Secretary of Defense shall maintain a strategic policy on the programs of the Department of Defense for prepositioned materiel and equipment. Such policy shall take into account national security threats, strategic mobility, service requirements, support for crisis response elements, and the requirements of the combatant commands, and shall address how the Department's prepositioning programs, both ground and afloat, align with national defense strategies and departmental priorities.

(2) ELEMENTS.—The strategic policy required under paragraph (1) shall include the following elements:

(A) Overarching strategic guidance concerning planning and resource priorities that link the Department of Defense's current and future needs for prepositioned stocks, such as desired responsiveness, to evolving national defense objectives.

(B) A description of the Department's vision for prepositioning programs and the desired end state.

(C) Specific interim goals demonstrating how the vision and end state will be achieved.

(D) A description of the strategic environment, requirements for, and challenges associated with, prepositioning.

(E) Metrics for how the Department will evaluate the extent to which prepositioned assets are achieving defense objectives.

(F) A framework for joint departmental oversight that reviews and synchronizes the military services' prepositioning strategies to minimize potentially duplicative efforts and maximize efficiencies in prepositioned materiel and equipment across the Department of Defense.

(3) JOINT OVERSIGHT.—The Secretary of Defense shall establish joint oversight of the military services' prepositioning efforts to maximize efficiencies across the Department of Defense.

(b) LIMITATION OF DIVERSION OF PREPOSITIONED MATERIEL.—The Secretary of a military department may not divert materiel or equipment from prepositioned stocks except—

(1) in accordance with a change made by the Secretary of Defense to the policy maintained under subsection (a); or

(2) for the purpose of directly supporting a contingency operation or providing humanitarian assistance under chapter 20 of this title.

(c) CONGRESSIONAL NOTIFICATION.—The Secretary of Defense may not implement or change the policy required under subsection (a) until the Secretary submits to the congressional defense committees a report describing the policy or change to the policy.

(d) ANNUAL CERTIFICATION.—(1) Not later than the date of the submission of the President's budget request for a fiscal year under section 1105 of title 31, the Secretary of Defense shall submit to the congressional defense committees a certification in writing that the prepositioned stocks of each of the military departments meet all operations plans, in both fill and readiness, that are in effect as of the date of the submission of the certification.

(2) If, for any year, the Secretary cannot certify that any of the prepositioned stocks meet such operations plans, the Secretary shall include with the certification for that year a list of the operations plans affected, a description of any measures that have been taken to mitigate any risk associated with prepositioned stock shortfalls, and an anticipated timeframe for the replenishment of the stocks.

(3) A certification under this subsection shall be in an unclassified form but may have a classified annex.

(Added Pub. L. 109–364, div. A, title III, § 351(a), Oct. 17, 2006, 120 Stat. 2160; amended Pub. L. 112–81, div. A, title III, § 341(a), Dec. 31, 2011, 125 Stat. 1369; Pub. L. 113–66, div. A, title III, § 321(a), Dec. 26, 2013, 127 Stat. 730; Pub. L. 113–291, div. A, title III, § 322, Dec. 19, 2014, 128 Stat. 3343; Pub. L. 114–92, div. A, title X, § 1081(a)(8), Nov. 25, 2015, 129 Stat. 1001.)

AMENDMENTS

2015—Subsec. (d)(1). Pub. L. 114–92 substituted "a certification in writing" for "certification in writing".

2014—Subsec. (a)(1). Pub. L. 113–291 inserted "support for crisis response elements," after "service requirements,".

2013—Subsec. (a). Pub. L. 113–66 amended subsec. (a) generally. Prior to amendment, text read as follows: "The Secretary of Defense shall maintain a strategic policy on the programs of the Department of Defense for the prepositioning of materiel and equipment. Such policy shall take into account national security threats, strategic mobility, service requirements, and the requirements of the combatant commands."

2011—Subsec. (d). Pub. L. 112–81 added subsec. (d).

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective Dec. 31, 2021, of provisions in subsec. (d) of this section requiring submittal of annual report to Congress, see section 1061 of Pub. L. 114–328, set out as a note under section 111 of this title.

IMPLEMENTATION PLAN AND REPORT

Pub. L. 113–66, div. A, title III, § 321(b), (c), Dec. 26, 2013, 127 Stat. 731, 732, as amended by Pub. L. 113–291, div. A, title III, § 324, Dec. 19, 2014, 128 Stat. 3343, provided that:

"(b) IMPLEMENTATION PLAN.—

"(1) IN GENERAL.—Not later than 120 days after the date of the enactment of this Act [Dec. 26, 2013], the

Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a plan for implementation of the prepositioning strategic policy required under section 2229(a) of title 10, United States Code, as amended by subsection (a).

''(2) ELEMENTS.—The implementation plan required under paragraph (1) shall include the following elements:

''(A) Detailed guidance for how the Department of Defense will achieve the vision, end state, and goals outlined in the strategic policy.

''(B) A comprehensive list of the Department's prepositioned materiel and equipment programs.

''(C) A detailed description of how the plan will be implemented.

''(D) A schedule with milestones for the implementation of the plan.

''(E) An assignment of roles and responsibilities for the implementation of the plan.

''(F) A description of the resources required to implement the plan.

''(G) A description of how the plan will be reviewed and assessed to monitor progress.

''(c) COMPTROLLER GENERAL REPORT.—

''(1) INITIAL REPORT.—Not later than 180 days after the date of the enactment of this Act, the Comptroller General of the United States shall review the implementation plan submitted under subsection (b) and the prepositioning strategic policy required under section 2229(a) of title 10, United States Code, as amended by subsection (a), and submit to the congressional defense committees a report describing the findings of such review and including any additional information relating to the propositioning strategic policy and plan that the Comptroller General determines appropriate.

''(2) PROGRESS REPORTS.—Not later than one year after submitting the report required under paragraph (1), and annually thereafter for two years, the Comptroller General shall submit to the congressional defense committees a report assessing the progress of the Department of Defense in implementing its strategic policy and plan for its prepositioned stocks and including any additional information related to the Department's management of its prepositioned stocks that the Comptroller General determines appropriate.''

DEADLINE FOR ESTABLISHMENT OF POLICY

Pub. L. 109–364, div. A, title III, § 351(c), Oct. 17, 2006, 120 Stat. 2160, provided that:

''(1) DEADLINE.—Not later than six months after the date of the enactment of this Act [Oct. 17, 2006], the Secretary of Defense shall establish the strategic policy on the programs of the Department of Defense for the prepositioning of materiel and equipment required under section 2229 of title 10, United States Code, as added by subsection (a).

''(2) LIMITATION ON DIVERSION OF PREPOSITIONED MATERIEL.—During the period beginning on the date of the enactment of this Act [Oct. 17, 2006] and ending on the date on which the Secretary of Defense submits the report required under section 2229(c) of title 10, United States Code, on the policy referred to in paragraph (1), the Secretary of a military department may not divert materiel or equipment from prepositioned stocks except for the purpose of directly supporting a contingency operation or providing humanitarian assistance under chapter 20 of that title.''

IMPROVING DEPARTMENT OF DEFENSE SUPPORT FOR CIVIL AUTHORITIES

Pub. L. 109–364, div. A, title III, § 359, Oct. 17, 2006, 120 Stat. 2164, provided that:

''(a) CONSULTATION.—In the development of concept plans for the Department of Defense for providing support to civil authorities, the Secretary of Defense may consult with the Secretary of Homeland Security and State governments.

''(b) PREPOSITIONING OF DEPARTMENT OF DEFENSE ASSETS.—The Secretary of Defense may provide for the prepositioning of prepackaged or preidentified basic response assets, such as medical supplies, food and water, and communications equipment, in order to improve the ability of the Department of Defense to rapidly provide support to civil authorities. The prepositioning of basic response assets shall be carried out in a manner consistent with Department of Defense concept plans for providing support to civil authorities and section 2229 of title 10, United States Code, as added by section 351.

''(c) REIMBURSEMENT.—To the extent required by section 1535 of title 31, United States Code, or other applicable law, the Secretary of Defense shall require that the Department of Defense be reimbursed for costs incurred by the Department in the prepositioning of basic response assets under subsection (b).

''(d) MILITARY READINESS.—The Secretary of Defense shall ensure that the prepositioning of basic response assets under subsection (b) does not adversely affect the military preparedness of the United States.

''(e) PROCEDURES AND GUIDELINES.—The Secretary may develop procedures and guidelines applicable to the prepositioning of basic response assets under subsection (b).''

§ 2229a. Annual report on prepositioned materiel and equipment

(a) ANNUAL REPORT REQUIRED.—Not later than the date of the submission of the President's budget request for a fiscal year under section 1105 of title 31, the Secretary of Defense shall submit to the congressional defense committees a report on the status of the materiel in the prepositioned stocks as of the end of the fiscal year preceding the fiscal year during which the report is submitted. Each report shall be unclassified and may contain a classified annex. Each report shall include the following information:

(1) The level of fill for major end items of equipment and spare parts in each prepositioned set as of the end of the fiscal year covered by the report.

(2) The material condition of equipment in the prepositioned stocks as of the end of such fiscal year, grouped by category or major end item.

(3) A list of major end items of equipment drawn from the prepositioned stocks during such fiscal year and a description of how that equipment was used and whether it was returned to the stocks after being used.

(4) A timeline for completely reconstituting any shortfall in the prepositioned stocks.

(5) An estimate of the amount of funds required to completely reconstitute any shortfall in the prepositioned stocks and a description of the Secretary's plan for carrying out such complete reconstitution.

(6) A list of any operations plan affected by any shortfall in the prepositioned stocks and a description of any action taken to mitigate any risk that such a shortfall may create.

(7) A list of any non-standard items slated for inclusion in the prepositioned stocks and a plan for funding the inclusion and sustainment of such items.

(8) A list of any equipment used in support of contingency operations slated for retrograde and subsequent inclusion in the prepositioned stocks.

(9) An efficiency strategy for limited shelf-life medical stock replacement.

(10) The status of efforts to develop a joint strategy, integrate service requirements, and eliminate redundancies.

(11) The operational planning assumptions used in the formulation of prepositioned stock levels and composition.

(12) A list of any strategic plans affected by changes to the levels, composition, or locations of the prepositioned stocks and a description of any action taken to mitigate any risk that such changes may create.

(b) COMPTROLLER GENERAL REVIEW.—(1) The Comptroller General shall review each report submitted under subsection (a) and, as the Comptroller General determines appropriate, submit to the congressional defense committees any additional information that the Comptroller General determines will further inform such committees on issues relating to the status of the materiel in the prepositioned stocks.

(2) The Secretary of Defense shall ensure the full cooperation of the Department of Defense with the Comptroller General for purposes of the conduct of the review required by this subsection, both before and after each report is submitted under subsection (a). The Secretary shall conduct periodic briefings for the Comptroller General on the information covered by each report required under subsection (a) and provide to the Comptroller General access to the data and preliminary results to be used by the Secretary in preparing each such report before the Secretary submits the report to enable the Comptroller General to conduct each review required under paragraph (1) in a timely manner.

(3) The requirement to conduct a review under this subsection shall terminate on September 30, 2015.

(Added Pub. L. 110–181, div. A, title III, § 352(a), Jan. 28, 2008, 122 Stat. 71; amended Pub. L. 112–81, div. A, title III, § 341(b), Dec. 31, 2011, 125 Stat. 1369; Pub. L. 112–239, div. A, title III, § 343, Jan. 2, 2013, 126 Stat. 1700; Pub. L. 114–92, div. A, title III, § 331, Nov. 25, 2015, 129 Stat. 791.)

AMENDMENTS

2015—Subsec. (a)(8). Pub. L. 114–92 amended par. (8) generally. Prior to amendment, par. (8) read as follows: ''A list of any equipment used in support of Operation Iraqi Freedom, Operation New Dawn, or Operation Enduring Freedom slated for retrograde and subsequent inclusion in the prepositioned stocks.''

2013—Subsec. (b)(1). Pub. L. 112–239 substituted ''The'' for ''By not later than 120 days after the date on which a report is submitted under subsection (a), the'' and ''each report submitted under subsection (a)'' for ''the report''.

2011—Subsec. (a)(7) to (12). Pub. L. 112–81 added pars. (7) to (12).

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective Dec. 31, 2021, of provisions of this section requiring submittal of annual report to Congress, see section 1061 of Pub. L. 114–328, set out as a note under section 111 of this title.

§ 2229b. Comptroller General assessment of acquisition programs and initiatives

(a) ASSESSMENT REQUIRED.—The Comptroller General of the United States shall submit to the congressional defense committees an annual assessment of selected acquisition programs and initiatives of the Department of Defense by March 30th of each year from 2020 through 2023.

(b) ANALYSES TO BE INCLUDED.—The assessment required under subsection (a) shall include—

(1) a macro analysis of how well acquisition programs and initiatives are performing and reasons for that performance;

(2) a discussion of selected organizational, policy, and legislative changes, as determined appropriate by the Comptroller General, and the potential implications for execution and oversight of programs and initiatives; and

(3) specific analyses of individual acquisition programs and initiatives.

(c) ACQUISITION PROGRAMS AND INITIATIVES TO BE CONSIDERED.—The assessment required under subsection (a) shall consider the following programs and initiatives:

(1) Selected weapon systems, as determined appropriate by the Comptroller General.

(2) Selected information technology systems and initiatives, including defense business systems, networks, and software-intensive systems, as determined appropriate by the Comptroller General.

(3) Selected prototyping and rapid fielding activities and initiatives, as determined appropriate by the Comptroller General.

(Added Pub. L. 115–232, div. A, title VIII, § 833(a), Aug. 13, 2018, 132 Stat. 1858; amended Pub. L. 116–283, div. A, title VIII, § 813, Jan. 1, 2021, 134 Stat. 3749.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1807(g)(1), Jan. 1, 2021, 134 Stat. 4151, 4159, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 203 of this title, inserted after section 3070, and redesignated as section 3072 of this title. See Effective Date of 2021 Amendment note below.

AMENDMENTS

2021—Subsec. (b)(2). Pub. L. 116–283 substituted ''a discussion of selected organizational, policy, and legislative changes, as determined appropriate by the Comptroller General, and the potential'' for ''a summary of organizational and legislative changes and emerging assessment methodologies since the last assessment, and a discussion of the''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by section 1807(g)(1) of Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

CHAPTER 133—FACILITIES FOR RESERVE COMPONENTS

Sec.
2231. Reference to chapter 1803.

PRIOR PROVISIONS

A prior chapter 133 was transferred to end of part V of subtitle E of this title and renumbered chapter 1803.

§ 2231. Reference to chapter 1803

Provisions of law relating to facilities for reserve components are set forth in chapter 1803 of this title (beginning with section 18231).

(Added Pub. L. 103–337, div. A, title XVI, § 1664(b)(11), Oct. 5, 1994, 108 Stat. 3011.)

PRIOR PROVISIONS

Prior sections 2231 to 2239 were renumbered sections 18231 to 18239 of this title, respectively.

EFFECTIVE DATE

Section effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as a note under section 10001 of this title.

CHAPTER 134—MISCELLANEOUS ADMINISTRATIVE PROVISIONS

Subchapter		Sec.
I.	Miscellaneous Authorities, Prohibitions, and Limitations on the Use of Appropriated Funds	2241
II.	Miscellaneous Administrative Authority	2251

SUBCHAPTER I—MISCELLANEOUS AUTHORITIES, PROHIBITIONS, AND LIMITATIONS ON THE USE OF APPROPRIATED FUNDS

Sec.
2241. Availability of appropriations for certain purposes.
2241a. Prohibition on use of funds for publicity or propaganda purposes within the United States.
2241b. Prohibition on contracts providing payments for activities at sporting events to honor members of the armed forces.
2242. Authority to use appropriated funds for certain investigations and security services.
2243. Authority to use appropriated funds to support student meal programs in overseas defense dependents' schools.
2244. Security investigations.
2244a. Equipment scheduled for retirement or disposal: limitation on expenditures for modifications.
2245. Use of aircraft for proficiency flying: limitation.
[2245a, 2246 to 2248. Renumbered or Repealed.]
2249. Prohibition on use of funds for documenting economic or employment impact of certain acquisition programs.
[2249a. Renumbered.]
2249b. Display of State, District of Columbia, commonwealth, and territorial flags by the armed forces.
[2249c to 2249e. Renumbered.]

AMENDMENTS

2016—Pub. L. 114–328, div. A, title VIII, § 833(b)(1)(B), title XII, §§ 1241(*o*)(6), 1247(d), Dec. 23, 2016, 130 Stat. 2284, 2512, 2522, struck out items 2245a ''Use of operation and maintenance funds for purchase of investment items: limitation'', 2249a ''Prohibition on providing financial assistance to terrorist countries'', 2249c ''Regional Defense Combating Terrorism Fellowship Program: authority to use appropriated funds for costs associated with education and training of foreign officials'', 2249d ''Distribution to certain foreign personnel of education and training materials and information technology to enhance military interoperability with the armed forces'', and 2249e ''Prohibition on use of funds for assistance to units of foreign security forces that have committed a gross violation of human rights''.

2015—Pub. L. 114–92, div. A, title III, § 341(b), title V, § 573(b)(2), Nov. 25, 2015, 129 Stat. 793, 831, added item 2241b and substituted ''Authority to use appropriated funds to support student meal programs in overseas defense dependents' schools'' for ''Authority to use appropriated funds to support student meal programs in overseas dependents' schools'' in item 2243.

2014—Pub. L. 113–291, div. A, title XII, § 1204(a)(2), Dec. 19, 2014, 128 Stat. 3533, added item 2249e.

2013—Pub. L. 112–239, div. A, title V, § 588(b)(2), Jan. 2, 2013, 126 Stat. 1769, substituted ''Display of State, District of Columbia, commonwealth, and territorial flags by the armed forces.'' for ''Display of State flags: prohibition on use of funds to arbitrarily exclude flag; position and manner of display.'' in item 2249b.

2011—Pub. L. 111–383, div. A, title X, § 1075(b)(30), Jan. 7, 2011, 124 Stat. 4370, transferred item 2241a ''Prohibition on use of funds for publicity or propaganda purposes within the United States'' to appear after item 2241.

2009—Pub. L. 111–84, div. A, title X, § 1031(a)(2), Oct. 28, 2009, 123 Stat. 2448, added item 2241a at the end.

2008—Pub. L. 110–417, [div. A], title XII, § 1205(a)(2), Oct. 14, 2008, 122 Stat. 4624, added item 2249d.

2006—Pub. L. 109–364, div. A, title XII, § 1204(d)(3), Oct. 17, 2006, 120 Stat. 2416, substituted ''Regional Defense Combating Terrorism Fellowship Program: authority to use appropriated funds for costs associated with education and training of foreign officials'' for ''Authority to use appropriated funds for costs of attendance of foreign visitors under Regional Defense Counterterrorism Fellowship Program'' in item 2249c.

Pub. L. 109–163, div. A, title III, §§ 372(b), 373(b), Jan. 6, 2006, 119 Stat. 3210, 3211, added items 2244a and 2245a.

2004—Pub. L. 108–375, div. A, title VI, § 651(f)(3), Oct. 28, 2004, 118 Stat. 1972, struck out items 2246 ''Department of Defense golf courses: limitation on use of appropriated funds'' and 2247 ''Use of appropriated funds for operation of Armed Forces Recreation Center, Europe: limitation''.

2003—Pub. L. 108–136, div. A, title X, § 1045(a)(5)(B), title XII, § 1221(a)(2), Nov. 24, 2003, 117 Stat. 1612, 1651, struck out item 2248 ''Purchase of surety bonds: prohibition'' and added item 2249c.

1996—Pub. L. 104–201, div. A, title X, § 1071(b), Sept. 23, 1996, 110 Stat. 2657, added item 2249b.

Pub. L. 104–106, div. A, title XIII, § 1341(b), div. D, title XLIII, § 4321(b)(2)(B), Feb. 10, 1996, 110 Stat. 485, 672, redesignated item 2247, relating to prohibition on use of funds for documenting economic or employment impact of certain acquisition programs, as 2249 and added item 2249a.

1994—Pub. L. 103–355, title VII, § 7202(a)(2), Oct. 13, 1994, 108 Stat. 3379, added item 2247 relating to prohibition on use of funds for documenting economic or employment impact of certain acquisition programs.

Pub. L. 103–337, div. A, title III, § 372(b), title X, § 1063(b), Oct. 5, 1994, 108 Stat. 2736, 2848, added item 2247 relating to use of appropriated funds for operation of Armed Forces Recreation Center, Europe: limitation and item 2248.

1993—Pub. L. 103–160, div. A, title III, § 312(b), Nov. 30, 1993, 107 Stat. 1618, added item 2246.

1991—Pub. L. 102–190, div. A, title X, § 1062(a)(3), Dec. 5, 1991, 105 Stat. 1475, made technical correction to directory language of Pub. L. 101–510, div. A, title XIV, § 1481(e)(2), Nov. 5, 1990, 104 Stat. 1706. See 1990 amendment note below.

1990—Pub. L. 101–510, div. A, title XIV, § 1481(e)(2), Nov. 5, 1990, 104 Stat. 1706, as amended by Pub. L. 102–190, div. A, title X, § 1062(a)(3), Dec. 5, 1991, 105 Stat. 1475, added item 2245.

Pub. L. 101–510, div. A, title IX, § 904(b), Nov. 5, 1990, 104 Stat. 1621, added item 2244.

1989—Pub. L. 101–189, div. A, title III, § 326(b), Nov. 29, 1989, 103 Stat. 1416, added item 2243.

§ 2241. Availability of appropriations for certain purposes

(a) OPERATION AND MAINTENANCE APPROPRIATIONS.—Amounts appropriated to the Depart-

ment of Defense for operation and maintenance of the active forces may be used for the following purposes:

(1) Morale, welfare, and recreation.

(2) Modification of personal property.

(3) Design of vessels.

(4) Industrial mobilization.

(5) Military communications facilities on merchant vessels.

(6) Acquisition of services, special clothing, supplies, and equipment.

(7) Expenses for the Reserve Officers' Training Corps and other units at educational institutions.

(b) NECESSARY EXPENSES.—Amounts appropriated to the Department of Defense may be used for all necessary expenses, at the seat of the Government or elsewhere, in connection with communication and other services and supplies that may be necessary for the national defense.

(c) ACTIVITIES OF THE NATIONAL COMMITTEE FOR EMPLOYER SUPPORT OF THE GUARD AND RESERVE.—Amounts appropriated for operation and maintenance may, under regulations prescribed by the Secretary of Defense, be used by the Secretary for official reception, representation, and advertising activities and materials of the National Committee for Employer Support of the Guard and Reserve to further employer commitments to their employees who are members of a reserve component.

(Added Pub. L. 100–370, § 1(e)(1), July 19, 1988, 102 Stat. 844; amended Pub. L. 108–136, div. A, title V, § 518, Nov. 24, 2003, 117 Stat. 1462.)

HISTORICAL AND REVISION NOTES

Subsection (a) of this section and sections 2253(b) and 2661(a) of this title are based on Pub. L. 98–212, title VII, § 735, Dec. 8, 1983, 97 Stat. 1444, as amended by Pub. L. 98–525, title XIV, §§ 1403(a)(2), 1404, Oct. 19, 1984, 98 Stat. 2621.

In two instances, the source section for provisions to be codified provides that defense appropriations may be used for ''welfare and recreation'' or ''welfare and recreational'' purposes. (Section 735 of Public Law 98–212 and section 8006(b) of Public Law 99–190, to be codified as 10 U.S.C. 2241(a)(1) and 2490(2), respectively). The committee added the term ''morale'' in both of these two instances to conform to the usual ''MWR'' usage for morale, welfare, and recreation activities.

Subsection (b) of this section and sections 2242(1), (4) and 2253(a)(1) of this title are based on Pub. L. 98–212, title VII, § 705, Dec. 8, 1983, 97 Stat. 1437.

Section 705 of Public Law 98–212, to be codified as 10 U.S.C. 2241(b), provides that defense appropriations may be used in connection with certain services and supplies ''as may be necessary to carry out the purposes of this Act''. The reference to ''this Act'' means Public Law 98–212, the FY84 Defense Appropriations Act. Language similar to section 705 had been enacted as part of the annual defense appropriation Act for many years. In the FY84 Act, section 705 was enacted as a permanent provision. The quoted phrase above was not, however, revised from the traditional annual wording as the provision had appeared in annual appropriations Acts in order to give it effect beyond the fiscal year concerned. Since the general purpose of a defense appropriations Act is to provide funds for national defense purposes, the committee, in codifying this provision, revised the quoted phrase so as to read ''that may be necessary for the national defense''. No change in meaning is intended.

AMENDMENTS

2003—Subsec. (c). Pub. L. 108–136 added subsec. (c).

LIMITATION ON PROVISION OF FUNDS TO INSTITUTIONS OF HIGHER EDUCATION HOSTING CONFUCIUS INSTITUTES

Pub. L. 116–283, div. A, title X, § 1062, Jan. 1, 2021, 134 Stat. 3859, provided that:

''(a) LIMITATION.—Except as provided in subsection (b), none of the funds authorized to be appropriated or otherwise made available for any fiscal year for the Department of Defense may be provided to an institution of higher education that hosts a Confucius Institute, other than amounts provided directly to students as educational assistance.

''(b) WAIVER.—

''(1) IN GENERAL.—The Secretary of Defense may waive the limitation under subsection (a) with respect to an institution of higher education if the Secretary, after consultation with the National Academies of Sciences, Engineering, and Medicine, determines such a waiver is appropriate.

''(2) MANAGEMENT PROCESS.—If the Secretary issues a waiver under paragraph (1), the academic liaison designated pursuant to subsection (g) of section 1286 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 [Pub. L. 115–232] (10 U.S.C. 2358 note), as amended by section 1299C of this Act, shall manage the waiver process on behalf of the Secretary.

''(c) EFFECTIVE DATE.—The limitation under subsection (a) shall apply with respect to the first fiscal year that begins after the date that is 24 months after the date of the enactment of this Act [Jan. 1, 2021] and to any subsequent fiscal year.

''(d) DEFINITIONS.—In this section:

''(1) The term 'Confucius Institute' means a cultural institute directly or indirectly funded by the Government of the People's Republic of China.

''(2) The term 'institution of higher education' has the meaning given such term in section 102 of the Higher Education Act of 1965 (20 U.S.C. 1002).''

OBLIGATION OF FUNDS FOR SPACE FORCE PROCUREMENT

Pub. L. 116–260, div. C, title VIII, § 8089, Dec. 27, 2020, 134 Stat. 1326, provided that: ''In this fiscal year and each fiscal year thereafter, funds appropriated under the heading 'Procurement, Space Force' may be obligated for payment of satellite on-orbit incentives in the fiscal year in which an incentive payment is earned: *Provided*, That any obligation made pursuant to this section may not be entered into until 30 calendar days in session after the congressional defense committees [see section 8028 of Pub. L. 116–260, set out below] have been notified that an on-orbit incentive payment has been earned.''

[Pub. L. 116–260, div. C, title VIII, § 8028, Dec. 27, 2020, 134 Stat. 1310, provided that: ''For the purposes of this Act [div. C of 116–260, see Tables for classification], the term 'congressional defense committees' means the Armed Services Committee of the House of Representatives, the Armed Services Committee of the Senate, the Subcommittee on Defense of the Committee on Appropriations of the Senate, and the Subcommittee on Defense of the Committee on Appropriations of the House of Representatives.'']

PROHIBITION ON USE OF FUNDS FOR CERTAIN PROGRAMS AND PROJECTS OF THE DEPARTMENT OF DEFENSE IN AFGHANISTAN THAT CANNOT BE SAFELY ACCESSED BY UNITED STATES GOVERNMENT PERSONNEL

Pub. L. 114–328, div. A, title XII, § 1216, Dec. 23, 2016, 130 Stat. 2480, provided that:

''(a) PROHIBITION.—

''(1) IN GENERAL.—Amounts available to the Department of Defense may not be obligated or expended for a construction or other infrastructure program or project of the Department in Afghanistan if military or civilian personnel of the United States Government or their representatives with authority to conduct oversight of such program or project cannot safely access such program or project.

''(2) APPLICABILITY.—Paragraph (1) shall apply only with respect to a program or project that is initiated

on or after the date of the enactment of this Act [Dec. 23, 2016].

''(b) WAIVER.—

''(1) IN GENERAL.—The prohibition in subsection (a) may be waived with respect to a program or project otherwise covered by that subsection if a determination described in paragraph (2) is made as follows:

''(A) In the case of a program or project with an estimated lifecycle cost of less than $1,000,000, by the contracting officer assigned to oversee the program or project.

''(B) In the case of a program or project with an estimated lifecycle cost of $1,000,000 or more, but less than $20,000,000, by the Commander of the Combined Security Transition Command-Afghanistan.

''(C) In the case of a program or project with an estimated lifecycle cost of $20,000,000 or more, but less than $40,000,000, by the Commander of United States Forces-Afghanistan.

''(D) In the case of a program or project with an estimated lifecycle cost of $40,000,000 or more, by the Secretary of Defense.

''(2) DETERMINATION.—A determination described in this paragraph with respect to a program or project is a determination of each of the following:

''(A) That the program or project clearly contributes to United States national interests or strategic objectives.

''(B) That the Government of Afghanistan has requested or expressed a need for the program or project.

''(C) That the program or project has been coordinated with the Government of Afghanistan, and with any other implementing agencies or international donors.

''(D) That security conditions permit effective implementation and oversight of the program or project.

''(E) That the program or project includes safeguards to detect, deter, and mitigate corruption and waste, fraud, and abuse of funds.

''(F) That adequate arrangements have been made for the sustainment of the program or project following its completion, including arrangements with respect to funding and technical capacity for sustainment.

''(G) That meaningful metrics have been established to measure the progress and effectiveness of the program or project in meeting its objectives.

''(3) NOTICE ON CERTAIN WAIVERS.—In the event a waiver is issued under paragraph (1) for a program or project described in subparagraph (D) of that paragraph, the Secretary of Defense shall notify Congress of the waiver not later than 15 days after the issuance of the waiver.''

FUNDS PROHIBITED FOR SUPPORT OF DEPARTMENT OR AGENCY IN ARREARS IN MAKING PAYMENT TO DEPARTMENT OF DEFENSE

Pub. L. 113–235, div. C, title VIII, § 8063, Dec. 16, 2014, 128 Stat. 2268, provided that: ''During the current fiscal year and hereafter, none of the funds available to the Department of Defense may be used to provide support to another department or agency of the United States if such department or agency is more than 90 days in arrears in making payment to the Department of Defense for goods or services previously provided to such department or agency on a reimbursable basis: *Provided*, That this restriction shall not apply if the department is authorized by law to provide support to such department or agency on a nonreimbursable basis, and is providing the requested support pursuant to such authority: *Provided further*, That the Secretary of Defense may waive this restriction on a case-by-case basis by certifying in writing to the Committees on Appropriations of the House of Representatives and the Senate that it is in the national security interest to do so.''

PUBLIC FINANCIAL DISCLOSURE REQUIRED BY SENIOR MENTOR ADVISING DEPARTMENT OF DEFENSE

Pub. L. 113–235, div. C, title VIII, § 8104, Dec. 16, 2014, 128 Stat. 2278, provided that: ''None of the funds appropriated or otherwise made available by this Act [div. C of Pub. L. 113–235, see Tables for classification] and hereafter may be obligated or expended to pay a retired general or flag officer to serve as a senior mentor advising the Department of Defense unless such retired officer files a Standard Form 278 (or successor form concerning public financial disclosure under part 2634 of title 5, Code of Federal Regulations) to the Office of Government Ethics.''

LIMITATION ON SOURCE OF FUNDS FOR CERTAIN JOINT CARGO AIRCRAFT EXPENDITURES

Pub. L. 110–417, [div. A], title II, § 216, Oct. 14, 2008, 122 Stat. 4387, provided that:

''(a) LIMITATION.—Of the amounts appropriated pursuant to an authorization of appropriations in this Act [see Tables for classification] or otherwise made available for fiscal year 2009 or any fiscal year thereafter for the Army or the Air Force, the Secretary of the Army and the Secretary of the Air Force may fund relevant expenditures for the Joint Cargo Aircraft only through amounts made available for procurement or for research, development, test, and evaluation.

''(b) RELEVANT EXPENDITURES FOR THE JOINT CARGO AIRCRAFT DEFINED.—In this section, the term 'relevant expenditures for the Joint Cargo Aircraft' means expenditures relating to—

''(1) support equipment;

''(2) initial spares;

''(3) training simulators;

''(4) systems engineering and management; and

''(5) post-production modifications.''

PROHIBITIONS RELATING TO PROPAGANDA

Pub. L. 110–417, [div. A], title X, § 1056, Oct. 14, 2008, 122 Stat. 4610, provided that:

''(a) PROHIBITION.—No part of any funds authorized to be appropriated in this or any other Act shall be used by the Department of Defense for publicity or propaganda purposes within the United States not otherwise specifically authorized by law.

''(b) REPORT.—Not later than 90 days after the date of the enactment of this Act [Oct. 14, 2008], the Inspector General of the Department of Defense shall submit to Congress a report on the findings of their project number D2008–DIPOEF–0209.000, entitled 'Examination of Allegations Involving DoD Office of Public Affairs Outreach Program'.

''(c) LEGAL OPINION.—Not later than 120 days after the date of the enactment of this Act, the Comptroller General of the United States shall issue a legal opinion to Congress on whether the Department of Defense violated appropriations prohibitions on publicity or propaganda activities established in Public Laws 107–117, 107–248, 108–87, 108–287, 109–148, 109–289, and 110–116, the Department of Defense Appropriations Acts for fiscal years 2002 through 2008, respectively, by offering special access to prominent persons in the private sector who serve as media analysts, including briefings and information on war efforts, meetings with high level government officials, and trips to Iraq and Guantanamo Bay, Cuba.

''(d) RULE OF CONSTRUCTION RELATED TO INTELLIGENCE ACTIVITIES.—Nothing in this section shall be construed to apply to any lawful and authorized intelligence activity of the United States Government.''

FUNDS MADE AVAILABLE FOR TRANSPORTATION OF MEDICAL SUPPLIES TO AMERICAN SAMOA AND INDIAN HEALTH SERVICE

Pub. L. 110–329, div. C, title VIII, § 8058, Sept. 30, 2008, 122 Stat. 3634, provided that: ''Notwithstanding any other provision of law, funds available to the Department of Defense in this Act [div. C of Pub. L. 110–329, see Tables for classification], and hereafter, shall be

made available to provide transportation of medical supplies and equipment, on a nonreimbursable basis, to American Samoa, and funds available to the Department of Defense shall be made available to provide transportation of medical supplies and equipment, on a nonreimbursable basis, to the Indian Health Service when it is in conjunction with a civil-military project.''

OBLIGATION OF FUNDS FOR INSTALLATION SUPPORT FUNCTIONS

Pub. L. 108–287, title VIII, §8070, Aug. 5, 2004, 118 Stat. 987, provided that: ''Hereafter, funds appropriated for Operation and maintenance and for the Defense Health Program in this Act [see Tables for classification], and in future appropriations acts for the Department of Defense, for supervision and administration costs for facilities maintenance and repair, minor construction, or design projects, or any planning studies, environmental assessments, or similar activities related to installation support functions, may be obligated at the time the reimbursable order is accepted by the performing activity: *Provided*, That for the purpose of this section, supervision and administration costs includes all inhouse Government cost.''

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 108–87, title VIII, §8071, Sept. 30, 2003, 117 Stat. 1088.

Pub. L. 107–248, title VIII, §8072, Oct. 23, 2002, 116 Stat. 1553.

Pub. L. 107–117, div. A, title VIII, §8080, Jan. 10, 2002, 115 Stat. 2265.

Pub. L. 106–259, title VIII, §8079, Aug. 9, 2000, 114 Stat. 691.

Pub. L. 106–79, title VIII, §8084, Oct. 25, 1999, 113 Stat. 1251.

Pub. L. 105–262, title VIII, §8085, Oct. 17, 1998, 112 Stat. 2318.

Pub. L. 105–56, title VIII, §8093, Oct. 8, 1997, 111 Stat. 1241.

Pub. L. 104–208, div. A, title I, §101(b) [title VIII, §8119], Sept. 30, 1996, 110 Stat. 3009–71, 3009–114.

LIMITATION ON PAYMENT OF FACILITIES CHARGES ASSESSED BY DEPARTMENT OF STATE

Pub. L. 108–136, div. A, title X, §1007, Nov. 24, 2003, 117 Stat. 1585, provided that:

''(a) COSTS OF GOODS AND SERVICES PROVIDED TO DEPARTMENT OF STATE.—Funds appropriated for the Department of Defense may be transferred to the Department of State as remittance for a fee charged to the Department of Defense by the Department of State for any year for the maintenance, upgrade, or construction of United States diplomatic facilities only to the extent that the amount charged (when added to other amounts previously so charged for that fiscal year) exceeds the total amount of the unreimbursed costs incurred by the Department of Defense during that year in providing goods and services to the Department of State.

''(b) EFFECTIVE DATE.—Subsection (a) shall take effect as of October 1, 2003.''

TOTAL INFORMATION AWARENESS PROGRAM

Pub. L. 108–7, div. M, §111, Feb. 20, 2003, 117 Stat. 534, provided that:

''(a) LIMITATION ON USE OF FUNDS FOR RESEARCH AND DEVELOPMENT ON TOTAL INFORMATION AWARENESS PROGRAM.—Notwithstanding any other provision of law, commencing 90 days after the date of the enactment of this Act [Feb. 20, 2003], no funds appropriated or otherwise made available to the Department of Defense, whether to an element of the Defense Advanced Research Projects Agency or any other element, or to any other department, agency, or element of the Federal Government, may be obligated or expended on research and development on the Total Information Awareness program unless—

''(1) the report described in subsection (b) is submitted to Congress not later than 90 days after the date of the enactment of this Act; or

''(2) the President certifies to Congress in writing, that—

''(A) the submittal of the report to Congress within 90 days after the date of the enactment of this Act is not practicable; and

''(B) the cessation of research and development on the Total Information Awareness program would endanger the national security of the United States.

''(b) REPORT.—The report described in this subsection is a report, in writing, of the Secretary of Defense, the Attorney General, and the Director of Central Intelligence, acting jointly, that—

''(1) contains—

''(A) a detailed explanation of the actual and intended use of funds for each project and activity of the Total Information Awareness program, including an expenditure plan for the use of such funds;

''(B) the schedule for proposed research and development on each project and activity of the Total Information Awareness program; and

''(C) target dates for the deployment of each project and activity of the Total Information Awareness program;

''(2) assesses the likely efficacy of systems such as the Total Information Awareness program in providing practically valuable predictive assessments of the plans, intentions, or capabilities of terrorists or terrorist groups;

''(3) assesses the likely impact of the implementation of a system such as the Total Information Awareness program on privacy and civil liberties;

''(4) sets forth a list of the laws and regulations that govern the information to be collected by the Total Information Awareness program, and a description of any modifications of such laws that will be required to use the information in the manner proposed under such program; and

''(5) includes recommendations, endorsed by the Attorney General, for practices, procedures, regulations, or legislation on the deployment, implementation, or use of the Total Information Awareness program to eliminate or minimize adverse effects of such program on privacy and other civil liberties.

''(c) LIMITATION ON DEPLOYMENT OF TOTAL INFORMATION AWARENESS PROGRAM.—(1) Notwithstanding any other provision of law and except as provided in paragraph (2), if and when research and development on the Total Information Awareness program, or any component of such program, permits the deployment or implementation of such program or component, no department, agency, or element of the Federal Government may deploy or implement such program or component, or transfer such program or component to another department, agency, or element of the Federal Government, until the Secretary of Defense—

''(A) notifies Congress of that development, including a specific and detailed description of—

''(i) each element of such program or component intended to be deployed or implemented; and

''(ii) the method and scope of the intended deployment or implementation of such program or component (including the data or information to be accessed or used); and

''(B) has received specific authorization by law from Congress for the deployment or implementation of such program or component, including—

''(i) a specific authorization by law for the deployment or implementation of such program or component; and

''(ii) a specific appropriation by law of funds for the deployment or implementation of such program or component.

''(2) The limitation in paragraph (1) shall not apply with respect to the deployment or implementation of the Total Information Awareness program, or a component of such program, in support of the following:

''(A) Lawful military operations of the United States conducted outside the United States.

''(B) Lawful foreign intelligence activities conducted wholly against non-United States persons.

''(d) SENSE OF CONGRESS.—It is the sense of Congress that—

''(1) the Total Information Awareness program should not be used to develop technologies for use in conducting intelligence activities or law enforcement activities against United States persons without appropriate consultation with Congress or without clear adherence to principles to protect civil liberties and privacy; and

''(2) the primary purpose of the Defense Advanced Research Projects Agency is to support the lawful activities of the Department of Defense and the national security programs conducted pursuant to the laws assembled for codification purposes in title 50, United States Code.

''(e) DEFINITIONS.—In this section:

''(1) TOTAL INFORMATION AWARENESS PROGRAM.—The term 'Total Information Awareness program'—

''(A) means the computer hardware and software components of the program known as Total Information Awareness, any related information awareness program, or any successor program under the Defense Advanced Research Projects Agency or another element of the Department of Defense; and

''(B) includes a program referred to in subparagraph (1), or a component of such program, that has been transferred from the Defense Advanced Research Projects Agency or another element of the Department of Defense to any other department, agency, or element of the Federal Government.

''(2) NON-UNITED STATES PERSON.—The term 'non-United States person' means any person other than a United States person.

''(3) UNITED STATES PERSON.—The term 'United States person' has the meaning given that term in section 101(i) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801(i)).''

[Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director's capacity as the head of the intelligence community deemed to be a reference to the Director of National Intelligence. Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director's capacity as the head of the Central Intelligence Agency deemed to be a reference to the Director of the Central Intelligence Agency. See section 1081(a), (b) of Pub. L. 108–458, set out as a note under section 3001 of Title 50, War and National Defense.]

FUNDS PROHIBITED FOR CONTRACTS WITH PERSONS CONVICTED OF UNLAWFUL MANUFACTURE OR SALE OF CONGRESSIONAL MEDALS OF HONOR

Pub. L. 105–262, title VIII, § 8118, Oct. 17, 1998, 112 Stat. 2331, provided that: ''During the current fiscal year and hereafter, no funds appropriated or otherwise available to the Department of Defense may be used to award a contract to, extend a contract with, or approve the award of a subcontract to any person who within the preceding 15 years has been convicted under section 704 of title 18, United States Code, of the unlawful manufacture or sale of the Congressional Medal of Honor.''

USE OF FUNDS FOR MODIFICATION OF RETIRED AIRCRAFT, WEAPON, SHIP OR OTHER ITEM OF EQUIPMENT

Pub. L. 105–56, title VIII, § 8053, Oct. 8, 1997, 111 Stat. 1232, which provided that none of the funds provided in the Act and hereafter would be available for use by a military department to modify an aircraft, weapon, ship or other item of equipment, that the military department concerned planned to retire or otherwise dispose of within 5 years after completion of the modification, was repealed and restated in section 2244a of this title by Pub. L. 109–163, div. A, title III, § 372(a), (c), 119 Stat. 3209, 3210.

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 104–208, div. A, title I, § 101(b) [title VIII, § 8055], Sept. 30, 1996, 110 Stat. 3009–71, 3009–99.

Pub. L. 104–61, title VIII, § 8068, Dec. 1, 1995, 109 Stat. 664.

Pub. L. 103–335, title VIII, § 8079, Sept. 30, 1994, 108 Stat. 2636.

Pub. L. 103–139, title VIII, § 8098, Nov. 11, 1993, 107 Stat. 1462.

Pub. L. 102–396, title IX, § 9034, Oct. 6, 1992, 106 Stat. 1908.

Pub. L. 102–172, title VIII, § 8034, Nov. 26, 1991, 105 Stat. 1178.

Pub. L. 101–511, title VIII, § 8035, Nov. 5, 1990, 104 Stat. 1882.

DEMONSTRATION PROJECT FOR UNIFORM FUNDING OF MORALE, WELFARE, AND RECREATION ACTIVITIES AT CERTAIN MILITARY INSTALLATIONS

Pub. L. 104–106, div. A, title III, § 335, Feb. 10, 1996, 110 Stat. 262, directed the Secretary of Defense to conduct a demonstration project to evaluate the feasibility of using only nonappropriated funds to support morale, welfare, and recreation programs at military installations in order to facilitate the procurement of property and services for those programs and the management of employees used to carry out those programs, directed the Secretary to submit to Congress a final report on the results of the project not later than Dec. 31, 1998, and provided that the project would terminate not later than Sept. 30, 1998.

INTERAGENCY COURIER SERVICE

Pub. L. 103–335, title VIII, § 8119, Sept. 30, 1994, 108 Stat. 2649, provided that: ''During the current fiscal year and hereafter, the Department of State and the Department of Defense are authorized to provide interagency courier service on a non-reimbursable basis.''

RESTRICTIONS ON PROCUREMENTS FROM OUTSIDE OF UNITED STATES

Pub. L. 104–208, div. A, title I, § 101(b) [title VIII, § 8109], Sept. 30, 1996, 110 Stat. 3009–71, 3009–111, provided for application of section 9005 of Public Law 102–396 (formerly set out below), prior to repeal by Pub. L. 107–107, div. A, title VIII, § 832(b)(2), Dec. 28, 2001, 115 Stat. 1190.

Pub. L. 102–396, title IX, § 9005, Oct. 6, 1992, 106 Stat. 1900, as amended by Pub. L. 103–139, title VIII, § 8005, Nov. 11, 1993, 107 Stat. 1438; Pub. L. 103–355, title IV, § 4401(e), Oct. 13, 1994, 108 Stat. 3348, provided for restrictions on procurements from outside of the United States, prior to repeal by Pub. L. 107–107, div. A, title VIII, § 832(b)(1), Dec. 28, 2001, 115 Stat. 1190.

PROHIBITION ON USE OF FUNDS TO PURCHASE DOGS OR CATS FOR MEDICAL TRAINING

Pub. L. 101–511, title VIII, § 8019, Nov. 5, 1990, 104 Stat. 1879, provided that: ''None of the funds appropriated by this Act [see Tables for classification] or hereafter shall be used to purchase dogs or cats or otherwise fund the use of dogs or cats for the purpose of training Department of Defense students or other personnel in surgical or other medical treatment of wounds produced by any type of weapon: *Provided*, That the standards of such training with respect to the treatment of animals shall adhere to the Federal Animal Welfare Law and to those prevailing in the civilian medical community.''

RESTORATION, CANCELLATION, OR CLOSURE OF CERTAIN DEPARTMENT OF DEFENSE APPROPRIATION ACCOUNT BALANCES

Pub. L. 101–511, title VIII, § 8080, Nov. 5, 1990, 104 Stat. 1893, provided that:

''(a) Upon the date of enactment of this Act [Nov. 5, 1990], the balances of any unobligated amount of an appropriation of the Department of Defense which has been withdrawn under the provisions of section 1552(a)(2) of title 31, United States Code, the obligated balance of which has not been transferred pursuant to the provisions of section 1552(a)(1) of title 31, United States Code, shall be restored to that appropriation.

Thirty days following enactment of this Act all balances of unobligated funds withdrawn from any account of the Department of Defense under the provisions of section 1552(a)(2) of title 31, United States Code, prior to the enactment of this Act, (other than those restored pursuant to the provisions of this subsection) are cancelled.

''(b) During the current fiscal year and thereafter—

''(1) on the 3rd September 30th after enactment of this section [Nov. 5, 1990], all obligated balances transferred under section 1552(a)(1) of title 31, United States Code;

''(2) on September 30th of the 5th fiscal year after the period of availability of an appropriation account of the Department of Defense available for obligation for a definite period ends or has ended, with respect to those accounts which, upon the date of enactment of this section have expired for obligation but whose obligated balances have not been transferred pursuant to the provisions of section 1552(a)(1) of title 31, United States Code; and

''(3) with respect to any appropriation account made available to the Department of Defense for an indefinite period against which no obligations have been made for two consecutive years and upon a determination by the Secretary of Defense or the President that the purposes of such indefinite appropriation have been carried out,

any remaining obligated or unobligated balance of such accounts are closed and thereafter shall not be available for obligation or expenditure for any purpose: *Provided*, That collections authorized to be credited to an account which were not credited to the account before it was closed shall be deposited in the Treasury as miscellaneous receipts: *Provided further*, That, without prior action by the Comptroller General but without relieving the Comptroller General of the duty to make decisions under any law or to settle claims and accounts, when an account is closed (including accounts covered by subsection (a) of this section) and currently applicable appropriations of the Department of Defense are not chargeable, obligations and adjustments to obligations that would have been chargeable to an account prior to closing, may be chargeable to currently applicable appropriations of the Department of Defense available for the same purpose in amounts equal to one percent of the total appropriation for the current account or the amount of the original appropriation, whichever is less: *Provided further*, That after the end of the period of availability of an appropriation account available for a definite period and before closing of that account under this section such account shall be available for recording, adjusting, and liquidating obligations properly chargeable to such account in amounts not to exceed the unobligated expired balances of such appropriation: *Provided further*, That with respect to a change to a contract under which the contractor is required to perform additional work, other than adjustments to pay claims or increases under an escalation clause (hereinafter referred to as a contract change), if such a charge for such a contract change with respect to a program, project or activity would cause the total amount of such obligations to exceed $4,000,000 in any single fiscal year for a program, project, or activity, the obligation may only be made if the obligation is approved by the Secretary of Defense or, if such a change would cause the total amount of such obligations to exceed $25,000,000 in any single fiscal year for a program, project or activity, the obligation may be made only after 30 days have elapsed after the Secretary of Defense submits to the Committees on Appropriations and Armed Services of the Senate and the House of Representatives a notice of the intention to obligate such funds, together with the legal basis and the policy reasons for making such an obligation.

''(c) The provisions of this section shall apply to any appropriation account now or hereafter made unless the appropriation Act for that account specifically provides for an extension of the availability of such account and provides an exception to the five year period of availability for recording, adjusting and liquidating obligations properly chargeable to that account.''

AVAILABILITY OF APPROPRIATIONS

The following general provisions, that had been repeated as fiscal year provisions in prior appropriation acts, were enacted as permanent law in the Department of Defense Appropriations Act, 1990, Pub. L. 101–165, title IX, §§ 9002, 9006, 9020, 9025, 9030, 9079, Nov. 21, 1989, 103 Stat. 1129, 1130, 1133–1135, 1147:

''SEC. 9002. [Authorized Secretaries of Defense, Army, Navy, and Air Force to procure services in accordance with section 3109 of Title 5, Government Organization and Employees, under regulations prescribed by the Secretary of Defense, and to pay in connection therewith travel expenses of individuals while traveling from their homes or places of business to official duty stations and return; and was repealed and restated in section 129b of this title by Pub. L. 101–510, div. A, title XIV, § 1481(b)(1), (3), Nov. 5, 1990, 104 Stat. 1704, 1705.]

''SEC. 9006. [Provided that no appropriations available to the Department of Defense could be used for operating aircraft under the jurisdiction of the armed forces for the purpose of proficiency flying, as defined in Department of Defense Directive 1340.4, except in accordance with regulations prescribed by the Secretary of Defense; and was repealed and restated in section 2245 of this title by Pub. L. 101–510, div. A, title XIV, § 1481(e)(1), (3), Nov. 5, 1990, 104 Stat. 1706.]

''SEC. 9020. [Provided that no funds available to the Department of Defense could be used to provide medical care in the United States on an inpatient basis to foreign military and diplomatic personnel or their dependents unless the Department is reimbursed for the costs of providing such care; and was repealed and restated in section 2549 of this title by Pub. L. 101–510, div. A, title XIV, § 1481(f)(1), (3), Nov. 5, 1990, 104 Stat. 1707.]

''SEC. 9025. [Provided that no funds available to the Department of Defense could be used to lease to non-Federal agencies in the United States aircraft or vehicles owned or operated by the Department when suitable aircraft or vehicles are commercially available in the private sector; and was repealed and restated in section 2550 of this title by Pub. L. 101–510, div. A, title XIV, § 1481(g)(1), (4), Nov. 5, 1990, 104 Stat. 1707.]

''SEC. 9030. [Provided that funds available to the Department of Defense could be used by the Department for helicopters and motorized equipment at Defense installations for removal of feral burros and horses; and was repealed and restated in section 2678 of this title by Pub. L. 101–510, div. A, title XIV, § 1481(h)(1), (3), Nov. 5, 1990, 104 Stat. 1708.]

''SEC. 9079. None of the funds appropriated by this Act or hereafter shall be obligated for the second career training program authorized by Public Law 96–347 [amending sections 2109, 3307, 3381 to 3385, and 8335 of Title 5, Government Organization and Employees].''

The following general provision, that had been repeated as fiscal year provision in prior appropriation acts, was enacted as permanent law in the Department of Defense Appropriations Act, 1989, Pub. L. 100–463, title VIII, § 8098, Oct. 1, 1988, 102 Stat. 2270–35, which provided that appropriations available to the Department of Defense for operation and maintenance could be used to pay claims authorized by law to be paid by the Department (except for civil functions), was repealed and restated in section 2732 of this title by Pub. L. 101–510, div. A, title XIV, § 1481(j)(1), (3), Nov. 5, 1990, 104 Stat. 1708, 1709.

§ 2241a. Prohibition on use of funds for publicity or propaganda purposes within the United States

Funds available to the Department of Defense may not be obligated or expended for publicity or propaganda purposes within the United States not otherwise specifically authorized by law.

(Added Pub. L. 111–84, div. A, title X, § 1031(a)(1), Oct. 28, 2009, 123 Stat. 2448.)

EFFECTIVE DATE

Pub. L. 111–84, div. A, title X, § 1031(b), Oct. 28, 2009, 123 Stat. 2448, provided that: ''Section 2241a of title 10, United States Code, as added by subsection (a), shall take effect on October 1, 2009, or the date of the enactment of this Act [Oct. 28, 2009], whichever is later.''

§ 2241b. Prohibition on contracts providing payments for activities at sporting events to honor members of the armed forces

(a) PROHIBITION.—The Department of Defense may not enter into any contract or other agreement under which payments are to be made in exchange for activities by the contractor intended to honor, or giving the appearance of honoring, members of the armed forces (whether members of the regular components or the reserve components) at any form of sporting event.

(b) CONSTRUCTION.—Nothing in subsection (a) shall be construed as prohibiting the Department of Defense from taking actions to facilitate activities intended to honor members of the armed forces at sporting events that are provided on a pro bono basis or otherwise funded with non-Federal funds if such activities are provided and received in accordance with applicable rules and regulations regarding the acceptance of gifts by the military departments, the armed forces, and members of the armed forces.

(Added Pub. L. 114–92, div. A, title III, § 341(a), Nov. 25, 2015, 129 Stat. 792.)

§ 2242. Authority to use appropriated funds for certain investigations and security services

The Secretary of Defense and the Secretary of each military department may—

(1) pay in advance for the expenses of conducting investigations in foreign countries incident to matters relating to the Department of Defense, to the extent such expenses are determined by the investigating officer to be necessary and in accord with local custom;

(2) pay expenses incurred in connection with the administration of occupied areas;

(3) pay expenses of military courts, boards, and commissions; and

(4) reimburse the Administrator of General Services for security guard services furnished by the Administrator to the Department of Defense for the protection of confidential files.

(Added Pub. L. 100–370, § 1(e)(1), July 19, 1988, 102 Stat. 844.)

HISTORICAL AND REVISION NOTES

Paragraphs (1) and (4) of this section and sections 2241(b) and 2253(a)(1) of this title are based on Pub. L. 98–212, title VII, § 705, Dec. 8, 1983, 97 Stat. 1437.

Paragraphs (2) and (3) are based on Pub. L. 99–190, § 101(b) [title VIII, §§ 8005(a), 8006(a)], Dec. 19, 1985, 99 Stat. 1185, 1202, 1203.

§ 2243. Authority to use appropriated funds to support student meal programs in overseas defense dependents' schools

(a) AUTHORITY.—Subject to subsection (b), amounts appropriated to the Department of Defense for the operation of overseas defense dependents' schools may be used by the Secretary of Defense to enable an overseas meal program to provide students enrolled in such a school with meals at a price equal to the average price paid by students for equivalent meals under a comparable public school meal program in the United States.

(b) LIMITATION.—The authority provided by subsection (a) may be used only if the Secretary of Defense determines that Federal payments and commodities provided under section 20 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769b) and section 20 of the Child Nutrition Act of 1966 (42 U.S.C. 1789) to support an overseas meal program are insufficient to provide meals under that program at a price for students equal to the average price paid by students for equivalent meals under a comparable public school meal program in the United States.

(c) DETERMINING AVERAGE PRICE.—In determining the average price paid by students in the United States for meals under a school meal program, the Secretary of Defense shall exclude free and reduced price meals provided pursuant to income guidelines.

(d) OVERSEAS MEAL PROGRAM DEFINED.—In this section, the term ''overseas meal program'' means a program administered by the Secretary of Defense to provide breakfasts or lunches to students attending overseas defense dependents' schools.

(e) OVERSEAS DEFENSE DEPENDENTS' SCHOOL DEFINED.—In this section, the term ''overseas defense dependents' school'' means the following:

(1) A school established as part of the defense dependents' education system provided for under the Defense Dependents' Education Act of 1978 (20 U.S.C. 921 et seq.).

(2) An elementary or secondary school established pursuant to section 2164 of this title that is located in a territory, commonwealth, or possession of the United States.

(Added Pub. L. 101–189, div. A, title III, § 326(a), Nov. 29, 1989, 103 Stat. 1415; amended Pub. L. 106–78, title VII, § 752(b)(7), Oct. 22, 1999, 113 Stat. 1169; Pub. L. 114–92, div. A, title V, § 573(a), (b)(1), Nov. 25, 2015, 129 Stat. 830, 831.)

REFERENCES IN TEXT

The Defense Dependents' Education Act of 1978, referred to in subsec. (e)(1), is title XIV of Pub. L. 95–561, Nov. 1, 1978, 92 Stat. 2365, which is classified principally to chapter 25A (§ 921 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 921 of Title 20 and Tables.

AMENDMENTS

2015—Pub. L. 114–92, § 573(b)(1), substituted ''Authority to use appropriated funds to support student meal programs in overseas defense dependents' schools'' for ''Authority to use appropriated funds to support student meal programs in overseas dependents' schools'' in section catchline.

Subsec. (a). Pub. L. 114–92, § 573(a)(1), substituted ''overseas defense dependents' schools'' for ''the defense dependents' education system'' and ''students enrolled in such a school'' for ''students enrolled in that system''.

Subsec. (d). Pub. L. 114–92, § 573(a)(2), substituted ''overseas defense dependents' schools'' for ''Depart-

ment of Defense dependents' schools which are located outside the United States''.

Subsec. (e). Pub. L. 114–92, § 573(a)(3), added subsec. (e).

1999—Subsec. (b). Pub. L. 106–78 substituted ''Richard B. Russell National School Lunch Act'' for ''National School Lunch Act''.

§ 2244. Security investigations

(a) Funds appropriated to the Department of Defense may not be used for the conduct of an investigation by the Department of Defense, or by any other Federal department or agency, for purposes of determining whether to grant a security clearance to an individual or a facility unless the Secretary of Defense determines both of the following:

(1) That a current, complete investigation file is not available from any other department or agency of the Federal Government with respect to that individual or facility.

(2) That no other department or agency of the Federal Government is conducting an investigation with respect to that individual or facility that could be used as the basis for determining whether to grant the security clearance.

(b) For purposes of subsection (a)(1), a current investigation file is a file on an investigation that has been conducted within the past five years.

(Added Pub. L. 101–510, div. A, title IX, § 904(a), Nov. 5, 1990, 104 Stat. 1621; amended Pub. L. 102–190, div. A, title X, § 1061(a)(11), Dec. 5, 1991, 105 Stat. 1473.)

AMENDMENTS

1991—Subsec. (a)(1), (2). Pub. L. 102–190 substituted ''Government'' for ''government''.

§ 2244a. Equipment scheduled for retirement or disposal: limitation on expenditures for modifications

(a) PROHIBITION.—Except as otherwise provided in this section, the Secretary of a military department may not carry out a modification of an aircraft, weapon, vessel, or other item of equipment that the Secretary plans to retire or otherwise dispose of within five years after the date on which the modification, if carried out, would be completed.

(b) EXCEPTIONS.—

(1) EXCEPTION FOR BELOW-THRESHOLD MODIFICATIONS.—The prohibition in subsection (a) does not apply to a modification for which the cost is less than $100,000.

(2) EXCEPTION FOR TRANSFER OF REUSABLE ITEMS OF VALUE.—The prohibition in subsection (a) does not apply to a modification in a case in which—

(A) the reusable items of value, as determined by the Secretary, installed on the item of equipment as part of such modification will, upon the retirement or disposal of the item to be modified, be removed from such item of equipment, refurbished, and installed on another item of equipment; and

(B) the cost of such modification (including the cost of the removal and refurbishment of reusable items of value under subparagraph (A)) is less than $1,000,000.

(3) EXCEPTION FOR SAFETY MODIFICATIONS.—The prohibition in subsection (a) does not apply to a safety modification.

(c) WAIVER AUTHORITY.—The Secretary concerned may waive the prohibition in subsection (a) in the case of any modification otherwise subject to that subsection if the Secretary determines that carrying out the modification is in the national security interest of the United States. Whenever the Secretary issues such a waiver, the Secretary shall notify the congressional defense committees in writing.

(Added Pub. L. 109–163, div. A, title III, § 372(a), Jan. 6, 2006, 119 Stat. 3209.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in Pub. L. 105–56, title VIII, § 8053, Oct. 8, 1997, 111 Stat. 1232, which was set out as a note under section 2241 of this title, prior to repeal by Pub. L. 109–163, div. A, title III, § 372(c), 119 Stat. 3210.

§ 2245. Use of aircraft for proficiency flying: limitation

(a) An aircraft under the jurisdiction of a military department may not be used by a member of the armed forces for the purpose of proficiency flying except in accordance with regulations prescribed by the Secretary of Defense.

(b) Such regulations—

(1) may not require proficiency flying by a member except to the extent required for the member to maintain flying proficiency in anticipation of the member's assignment to combat operations; and

(2) may not permit proficiency flying in the case of a member who is assigned to a course of instruction of 90 days or more.

(c) In this section, the term ''proficiency flying'' means flying performed under competent orders by a rated or designated member of the armed forces while serving in a non-aviation assignment or in an assignment in which skills would normally not be maintained in the performance of assigned duties.

(Added Pub. L. 101–510, div. A, title XIV, § 1481(e)(1), Nov. 5, 1990, 104 Stat. 1706; amended Pub. L. 110–181, div. A, title X, § 1077, Jan. 28, 2008, 122 Stat. 333.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in Pub. L. 101–165, title IX, § 9006, Nov. 21, 1989, 103 Stat. 1130, which was set out as a note under section 2241 of this title, prior to repeal by Pub. L. 101–510, § 1481(e)(3).

AMENDMENTS

2008—Subsec. (c). Pub. L. 110–181 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''In this section, the term 'proficiency flying' has the meaning given that term in Department of Defense Directive 1340.4.''

[§ 2245a. Repealed. Pub. L. 114–328, div. A, title VIII, § 833(b)(1)(A), Dec. 23, 2016, 130 Stat. 2284]

Section, added Pub. L. 109–163, div. A, title III, § 373(a), Jan. 6, 2006, 119 Stat. 3210, related to limitation on use of operation and maintenance funds for purchase of investment items.

[§ 2246. Renumbered § 2491a]

[§ 2247. Renumbered § 2491b]

PRIOR PROVISIONS

Another section 2247 was renumbered section 2249 of this title.

[§ 2248. Repealed. Pub. L. 108–136, div. A, title X, § 1045(a)(5)(A), Nov. 24, 2003, 117 Stat. 1612]

Section, added Pub. L. 103–337, div. A, title X, §1063(a), Oct. 5, 1994, 108 Stat. 2848, related to prohibition on purchase of surety bonds.

§ 2249. Prohibition on use of funds for documenting economic or employment impact of certain acquisition programs

No funds appropriated by the Congress may be obligated or expended to assist any contractor of the Department of Defense in preparing any material, report, lists, or analysis with respect to the actual or projected economic or employment impact in a particular State or congressional district of an acquisition program for which all research, development, testing, and evaluation has not been completed.

(Added Pub. L. 103–355, title VII, §7202(a)(1), Oct. 13, 1994, 108 Stat. 3379, §2247; renumbered §2249, Pub. L. 104–106, div. D, title XLIII, §4321(b)(2)(A), Feb. 10, 1996, 110 Stat. 672.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§1801(d), 1862(b), Jan. 1, 2021, 134 Stat. 4151, 4277, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 363 of this title, as amended by section 1862(a) of Pub. L. 116–283, inserted after section 4651, and redesignated as section 4652 of this title. See Effective Date of 2021 Amendment note below.

AMENDMENTS

1996—Pub. L. 104–106 renumbered section 2247 of this title as this section.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE

For effective date and applicability of section, see section 10001 of Pub. L. 103–355 set out as an Effective Date of 1994 Amendment note under section 2302 of this title.

[§ 2249a. Renumbered § 361]

§ 2249b. Display of State, District of Columbia, commonwealth, and territorial flags by the armed forces

(a) DISPLAY OF FLAGS BY ARMED FORCES.—The Secretary of Defense shall ensure that, whenever the official flags of all 50 States are displayed by the armed forces, such display shall include the flags of the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(b) POSITION AND MANNER OF DISPLAY.—The display of an official flag of a State, territory, or possession of the United States at an installation or other facility of the Department shall be governed by section 7 of title 4 and any modification of section 7 under section 10 of title 4.

(Added Pub. L. 104–201, div. A, title X, §1071(a), Sept. 23, 1996, 110 Stat. 2656; amended Pub. L. 105–225, §4(a)(1), Aug. 12, 1998, 112 Stat. 1498; Pub. L. 112–239, div. A, title V, §588(a), (b)(1), Jan. 2, 2013, 126 Stat. 1768, 1769.)

AMENDMENTS

2013—Pub. L. 112–239, §588(b)(1), substituted ''Display of State, District of Columbia, commonwealth, and territorial flags by the armed forces'' for ''Display of State flags: prohibition on use of funds to arbitrarily exclude flag; position and manner of display'' in section catchline.

Subsec. (a). Pub. L. 112–239, §588(a), amended subsec. (a) generally. Prior to amendment, text read as follows: ''Funds available to the Department of Defense may not be used to prescribe or enforce any rule that arbitrarily excludes the official flag of any State, territory, or possession of the United States from any display of the flags of the States, territories, and possessions of the United States at an official ceremony of the Department of Defense.''

1998—Subsec. (b). Pub. L. 105–225 substituted ''section 7 of title 4 and any modification of section 7 under section 10 of title 4'' for ''the provisions of section 3 of the Joint Resolution of June 22, 1942 (56 Stat. 378, chapter 435; 36 U.S.C. 175), and any modification of such provisions under section 8 of that Joint Resolution (36 U.S.C. 178)''.

[§ 2249c. Renumbered § 345]

[§ 2249d. Renumbered § 346]

[§ 2249e. Renumbered § 362]

SUBCHAPTER II—MISCELLANEOUS ADMINISTRATIVE AUTHORITY

Sec.
2251. Household furnishings and other property: personnel outside the United States or in Alaska or Hawaii.
2252. Rewards: missing property.
2253. Motor vehicles.
2254. Treatment of reports of aircraft accident investigations.
2254a. Data files of military flight operations quality assurance systems: exemption from disclosure under Freedom of Information Act.
2255. Aircraft accident investigation boards: composition requirements.
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2264. Reimbursement for assistance provided to nongovernmental entertainment-oriented media producers.

AMENDMENTS

2014—Pub. L. 113–291, div. A, title VIII, § 859(b), Dec. 19, 2014, 128 Stat. 3461, added item 2264.

2011—Pub. L. 112–81, div. A, title X, § 1082(a)(2), Dec. 31, 2011, 125 Stat. 1601, added item 2254a.

2008—Pub. L. 110–417, [div. A], title X, § 1004(a)(2), Oct. 14, 2008, 122 Stat. 4583, added item 2263.

2006—Pub. L. 109–364, div. A, title X, § 1051(b), Oct. 17, 2006, 120 Stat. 2396, added item 2262.

Pub. L. 109–163, div. A, title V, § 589(a)(2), Jan. 6, 2006, 119 Stat. 3279, added item 2261.

2004—Pub. L. 108–375, div. A, title X, § 1004(b), Oct. 28, 2004, 118 Stat. 2036, added item 2260.

2000—Pub. L. 106–398, § 1 [[div. A], title X, § 1082(a)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–285, added item 2259.

1999—Pub. L. 106–65, div. A, title V, § 574(b), Oct. 5, 1999, 113 Stat. 624, added item 2257.

1996—Pub. L. 104–201, div. A, title IX, § 911(a)(2), Sept. 23, 1996, 110 Stat. 2622, added item 2255.

1992—Pub. L. 102–484, div. A, title X, § 1071(a)(2), Oct. 23, 1992, 106 Stat. 2508, added item 2254.

CLARIFICATION OF FOOD INGREDIENT REQUIREMENTS FOR FOOD OR BEVERAGES PROVIDED BY THE DEPARTMENT OF DEFENSE

Pub. L. 116–283, div. A, title III, § 369, Jan. 1, 2021, 134 Stat. 3552, provided that:

''(a) IN GENERAL.—Before making any final rule, statement, or determination regarding the limitation or prohibition of any food or beverage ingredient in military food service, military medical foods, commissary food, or commissary food service, the Secretary of Defense shall publish in the Federal Register a notice of a preliminary rule, statement, or determination (in this section referred to as a 'proposed action') and provide opportunity for public comment.

''(b) MATTERS TO BE INCLUDED.—The Secretary shall include in any notice published under subsection (a) the following:

''(1) The date of the notice.

''(2) Contact information for the appropriate office at the Department of Defense.

''(3) A summary of the notice.

''(4) A date for comments to be submitted and specific methods for submitting comments.

''(5) A description of the substance of the proposed action.

''(6) Findings and a statement of reasons supporting the proposed action.

''(c) WAIVER AUTHORITY.—

''(1) MILITARY OPERATIONS AND EMERGENCY RESPONSE.—The Secretary may waive subsections (a) and (b) if the Secretary determines that such a waiver is necessary for military operations or for the response to a national emergency declared by the President under the National Emergencies Act (50 U.S.C. 1601 et seq.), a medical emergency, or a pandemic.

''(2) PROTECTION OF HUMAN HEALTH.—The Secretary may waive subsections (a) and (b) if the Food and Drug Administration, the Surgeon General of the United States, or the Surgeons General of the Department of Defense makes a recall or prohibition determination due to certain ingredients being harmful for human consumption.

''(3) NOTIFICATION REQUIRED.—

''(A) IN GENERAL.—The Secretary shall notify the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] not later than 60 days after exercising waiver authority under paragraph (1).

''(B) ELEMENTS.—The notification required under subparagraph (A) shall include, with respect to each waiver, the following elements:

''(i) The date, time, and location of the issuance of the waiver.

''(ii) A detailed justification for the issuance of the waiver.

''(iii) An identification of the rule, statement, or determination for which the Secretary issued the waiver, including the proposed duration of such rule, statement, or determination.''

§ 2251. Household furnishings and other property: personnel outside the United States or in Alaska or Hawaii

(a) IN GENERAL.—Subject to subsection (b), the Secretary of the military department concerned may—

(1) purchase household furnishings and automobiles from members of the armed forces and civilian employees of the Department of Defense on duty outside the United States or in Hawaii for resale at cost to incoming personnel; and

(2) provide household furnishings, without charge, in other than public quarters occupied by members of the armed forces or civilian employees of the Department of Defense who are on duty outside the United States or in Alaska or Hawaii.

(b) REQUIRED DETERMINATION.—The authority provided in subsection (a) may be used only when it is determined, under regulations approved by the Secretary of Defense, that the use of that authority would be advantageous to the United States.

(Added Pub. L. 100–370, § 1(e)(1), July 19, 1988, 102 Stat. 845.)

HISTORICAL AND REVISION NOTES

Section is based on Pub. L. 98–212, title VII, § 723, Dec. 8, 1983, 97 Stat. 1443.

§ 2252. Rewards: missing property

The Secretary of Defense and the Secretary of each military department may pay a reward of not more than $500 in any case for information leading to the discovery of missing property under the jurisdiction of that Secretary or leading to the recovery of such property.

(Added Pub. L. 100–370, § 1(e)(1), July 19, 1988, 102 Stat. 845.)

HISTORICAL AND REVISION NOTES

Section is based on Pub. L. 99–190, § 101(b) [title VIII, § 8005(b)], Dec. 19, 1985, 99 Stat. 1185, 1202.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 7209 of this title prior to repeal by Pub. L. 100–370, § 1(e)(3)(A).

§ 2253. Motor vehicles

(a) GENERAL AUTHORITIES.—The Secretary of Defense and the Secretary of each military department may—

(1) provide for insurance of official motor vehicles in a foreign country when the laws of such country require such insurance; and

(2) purchase right-hand drive passenger sedans at a cost of not more than $30,000 each.

(b) HIRE OF PASSENGER VEHICLES.—Amounts appropriated to the Department of Defense for operation and maintenance of the active forces may be used for the hire of passenger motor vehicles.

(Added Pub. L. 100–370, § 1(e)(1), July 19, 1988, 102 Stat. 845; amended Pub. L. 105–85, div. A, title

VIII, § 805, Nov. 18, 1997, 111 Stat. 1834; Pub. L. 112–81, div. A, title VIII, § 814(a), Dec. 31, 2011, 125 Stat. 1491.)

HISTORICAL AND REVISION NOTES

Subsection (a)(1) of this section and sections 2241(b) and 2242(1), (4) of this title are based on Pub. L. 98–212, title VII, § 705, Dec. 8, 1983, 97 Stat. 1437.

Subsection (a)(2) is based on Pub. L. 99–190, § 101(b) [title VIII, § 8005(i)], Dec. 19, 1985, 99 Stat. 1185, 1202.

Subsection (b) of this section and sections 2241(a) and 2661(a) of this title are based on Pub. L. 98–212, title VII, § 735, Dec. 8, 1983, 97 Stat. 1444, as amended by Pub. L. 98–525, title XIV, §§ 1403(a)(2), 1404, Oct. 19, 1984, 98 Stat. 2621.

AMENDMENTS

2011—Subsec. (a)(2). Pub. L. 112–81 substituted ''passenger sedans'' for ''vehicles''.

1997—Subsec. (a)(2). Pub. L. 105–85 substituted ''$30,000'' for ''$12,000''.

§ 2254. Treatment of reports of aircraft accident investigations

(a) IN GENERAL.—(1) Whenever the Secretary of a military department conducts an accident investigation of an accident involving an aircraft under the jurisdiction of the Secretary, the records and report of the investigations shall be treated in accordance with this section.

(2) For purposes of this section, an accident investigation is any form of investigation of an aircraft accident other than an investigation (known as a ''safety investigation'') that is conducted solely to determine the cause of the accident and to obtain information that may prevent the occurrence of similar accidents.

(b) PUBLIC DISCLOSURE OF CERTAIN ACCIDENT INVESTIGATION INFORMATION.—(1) The Secretary concerned, upon request, shall publicly disclose unclassified tapes, scientific reports, and other factual information pertinent to an aircraft accident investigation, before the release of the final accident investigation report relating to the accident, if the Secretary concerned determines—

(A) that such tapes, reports, or other information would be included within and releasable with the final accident investigation report; and

(B) that release of such tapes, reports, or other information—

(i) would not undermine the ability of accident or safety investigators to continue to conduct the investigation; and

(ii) would not compromise national security.

(2) A disclosure under paragraph (1) may not be made by or through officials with responsibility for, or who are conducting, a safety investigation with respect to the accident.

(c) OPINIONS REGARDING CAUSATION OF ACCIDENT.—Following a military aircraft accident—

(1) if the evidence surrounding the accident is sufficient for the investigators who conduct the accident investigation to come to an opinion (or opinions) as to the cause or causes of the accident, the final report of the accident investigation shall set forth the opinion (or opinions) of the investigators as to the cause or causes of the accident; and

(2) if the evidence surrounding the accident is not sufficient for those investigators to come to an opinion as to the cause or causes of the accident, the final report of the accident investigation shall include a description of those factors, if any, that, in the opinion of the investigators, substantially contributed to or caused the accident.

(d) USE OF INFORMATION IN CIVIL PROCEEDINGS.—For purposes of any civil or criminal proceeding arising from an aircraft accident, any opinion of the accident investigators as to the cause of, or the factors contributing to, the accident set forth in the accident investigation report may not be considered as evidence in such proceeding, nor may such information be considered an admission of liability by the United States or by any person referred to in those conclusions or statements.

(e) REGULATIONS.—The Secretary of each military department shall prescribe regulations to carry out this section.

(Added Pub. L. 102–484, div. A, title X, § 1071(a)(1), Oct. 23, 1992, 106 Stat. 2507.)

EFFECTIVE DATE

Pub. L. 102–484, div. A, title X, § 1071(c), Oct. 23, 1992, 106 Stat. 2508, provided that: ''Section 2254 of title 10, United States Code, as added by subsection (a), shall apply with respect to accidents occurring on or after the date on which regulations are first prescribed under that section.''

REGULATIONS

Pub. L. 105–261, div. A, title X, § 1065(c), Oct. 17, 1998, 112 Stat. 2134, provided that: ''The Secretary of Defense shall prescribe regulations, which shall be applied uniformly across the Department of Defense, establishing procedures by which the military departments shall provide to the family members of any person involved in a military aviation accident periodic update reports on the conduct and progress of investigations into the accident.''

Pub. L. 102–484, div. A, title X, § 1071(b), Oct. 23, 1992, 106 Stat. 2508, provided that: ''Regulations under section 2254 of title 10, United States Code, as added by subsection (a), shall be prescribed not later than 180 days after the date of the enactment of this Act [Oct. 23, 1992].''

§ 2254a. Data files of military flight operations quality assurance systems: exemption from disclosure under Freedom of Information Act

(a) AUTHORITY TO EXEMPT CERTAIN DATA FILES FROM DISCLOSURE UNDER FOIA.—

(1) The Secretary of Defense may exempt information contained in any data file of the military flight operations quality assurance system of a military department from disclosure under section 552(b)(3) of title 5, upon a written determination that—

(A) the information is sensitive information concerning military aircraft, units, or aircrew; and

(B) the public interest consideration in the disclosure of such information does not outweigh preventing the disclosure of such information.

(2) In this section, the term ''data file'' means a file of the military flight operations quality assurance (in this section referred to as ''MFOQA'') system that contains information acquired or generated by the MFOQA system, including—

(A) any data base containing raw MFOQA data; and

(B) any analysis or report generated by the MFOQA system or which is derived from MFOQA data.

(3) Information that is exempt under paragraph (1) from disclosure under section 552(b)(3) of title 5 shall be exempt from such disclosure even if such information is contained in a data file that is not exempt in its entirety from such disclosure.

(4) The provisions of paragraph (1) may not be superseded except by a provision of law which is enacted after the date of the enactment of this section and which specifically cites and repeals or modifies those provisions.

(b) REGULATIONS.—The Secretary of Defense shall prescribe regulations for the administration of this section. Such regulations shall ensure consistent application of the authority in subsection (a) across the military departments.

(c) DELEGATION.—The Secretary of Defense may delegate the authority to make a determination under subsection (a) to the Director of Administration and Management of the Department.

(d) TRANSPARENCY.—Each determination of the Secretary, or the Secretary's designee, under subsection (a) shall be made in writing and accompanied by a statement of the basis for the determination. All such determinations and statements of basis shall be available to the public, upon request, through the Office of the Director of Administration and Management.

(Added Pub. L. 112–81, div. A, title X, § 1082(a)(1), Dec. 31, 2011, 125 Stat. 1600.)

REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsec. (a)(4), is the date of enactment of Pub. L. 112–81, which was approved Dec. 31, 2011.

EFFECTIVE DATE

Pub. L. 112–81, div. A, title X, § 1082(b), Dec. 31, 2011, 125 Stat. 1601, provided that: ''Section 2254a of title 10, United States Code, as added by subsection (a), shall apply to any information entered into any data file of the military flight operations quality assurance system before, on, or after the date of the enactment of this Act [Dec. 31, 2011].''

§ 2255. Aircraft accident investigation boards: composition requirements

(a) REQUIRED MEMBERSHIP OF BOARDS.—Whenever the Secretary of a military department convenes an aircraft accident investigation board to conduct an accident investigation (as described in section 2254(a)(2) of this title) with respect to a Class A accident involving an aircraft under the jurisdiction of the Secretary, the Secretary shall select the membership of the board so that—

(1) a majority of the members (or in the case of a board consisting of a single member, the member) is selected from units other than the mishap unit or a unit subordinate to the mishap unit; and

(2) in the case of a board consisting of more than one member, at least one member of the board is a member of the armed forces or an officer or an employee of the Department of Defense who possesses knowledge and expertise relevant to aircraft accident investigations.

(b) EXCEPTION.—The Secretary of the military department concerned may waive the requirement of subsection (a)(1) in the case of an aircraft accident if the Secretary determines that—

(1) it is not practicable to meet the requirement because of—

(A) the remote location of the aircraft accident;

(B) an urgent need to promptly begin the investigation; or

(C) a lack of available persons outside of the mishap unit who have adequate knowledge and expertise regarding the type of aircraft involved in the accident; and

(2) the objectivity and independence of the aircraft accident investigation board will not be compromised.

(c) CONSULTATION REQUIREMENT.—In the case of an aircraft accident investigation board consisting of a single member, the member shall consult with a member of the armed forces or an officer or an employee of the Department of Defense who possesses knowledge and expertise relevant to aircraft accident investigations.

(d) DESIGNATION OF CLASS A ACCIDENTS.—Not later than 60 days after an aircraft accident involving an aircraft under the jurisdiction of the Secretary of a military department, the Secretary shall determine whether the aircraft accident should be designated as a Class A accident for purposes of this section.

(e) DEFINITIONS.—In this section:

(1) The term ''Class A accident'' means an accident involving an aircraft that results in—

(A) the loss of life or permanent disability;

(B) damages to the aircraft, other property, or a combination of both, in an amount in excess of the amount specified by the Secretary of Defense for purposes of determining Class A accidents; or

(C) the destruction of the aircraft.

(2) The term ''mishap unit'', with respect to an aircraft accident investigation, means the unit of the armed forces (at the squadron or battalion level or equivalent) to which was assigned the flight crew of the aircraft that sustained the accident that is the subject of the investigation.

(Added Pub. L. 104–201, div. A, title IX, § 911(a)(1), Sept. 23, 1996, 110 Stat. 2621; amended Pub. L. 108–136, div. A, title X, § 1031(a)(13), Nov. 24, 2003, 117 Stat. 1597.)

AMENDMENTS

2003—Subsec. (b). Pub. L. 108–136 struck out par. (1) designation before ''The Secretary'', redesignated subpars. (A) and (B) of former par. (1) as pars. (1) and (2), respectively, redesignated cls. (i) to (iii) of former subpar. (A) as subpars. (A) to (C), respectively, of par. (1), and struck out par. (2) which read as follows: ''The Secretary shall notify Congress of a waiver exercised under this subsection and the reasons therefor.''

EFFECTIVE DATE

Pub. L. 104–201, div. A, title IX, § 911(b), Sept. 23, 1996, 110 Stat. 2622, provided that: ''Section 2255 of title 10,

United States Code, as added by subsection (a), shall apply with respect to any aircraft accident investigation board convened by the Secretary of a military department after the end of the six-month period beginning on the date of the enactment of this Act [Sept. 23, 1996].''

§ 2257. Use of recruiting materials for public relations

The Secretary of Defense may use for public relations purposes of the Department of Defense any advertising materials developed for use for recruitment and retention of personnel for the armed forces. Any such use shall be under such conditions and subject to such restrictions as the Secretary of Defense shall prescribe.

(Added Pub. L. 106–65, div. A, title V, § 574(a), Oct. 5, 1999, 113 Stat. 624.)

§ 2259. Transit pass program: personnel in poor air quality areas

(a) ESTABLISHMENT OF PROGRAM.—To encourage Department of Defense personnel assigned to duty, or employed, in poor air quality areas to use means other than single-occupancy motor vehicles to commute to or from the location of their duty assignments, the Secretary of Defense shall exercise the authority provided in section 7905 of title 5 to establish a program to provide a transit pass benefit under subsection (b)(2)(A) of that section for members of the Army, Navy, Air Force, Marine Corps, and Space Force who are assigned to duty, and to Department of Defense civilian officers and employees who are employed, in a poor air quality area.

(b) POOR AIR QUALITY AREAS.—In this section, the term ''poor air quality area'' means an area—

(1) that is subject to the national ambient air quality standards promulgated by the Administrator of the Environmental Protection Agency under section 109 of the Clean Air Act (42 U.S.C. 7409); and

(2) that, as determined by the Administrator of the Environmental Protection Agency, is a nonattainment area with respect to any of those standards.

(Added Pub. L. 106–398, § 1 [[div. A], title X, § 1082(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–285; amended Pub. L. 116–283, div. A, title IX, § 924(b)(1)(O), Jan. 1, 2021, 134 Stat. 3820.)

AMENDMENTS

2021—Subsec. (a). Pub. L. 116–283 substituted ''Marine Corps, and Space Force'' for ''and Marine Corps''.

TIME FOR IMPLEMENTATION

Pub. L. 106–398, § 1 [[div. A], title X, § 1082(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–285, provided that: ''The Secretary of Defense shall prescribe the effective date for the transit pass program required under section 2259 of title 10, United States Code, as added by subsection (a). The effective date so prescribed may not be later than the first day of the first month that begins on or after the date that is 180 days after the date of the enactment of this Act [Oct. 30, 2000].''

§ 2260. Licensing of intellectual property: retention of fees

(a) AUTHORITY.—Under regulations prescribed by the Secretary of Defense or the Secretary of Homeland Security, the Secretary concerned may license trademarks, service marks, certification marks, and collective marks owned or controlled by the Secretary concerned and may retain and expend fees received from such licensing in accordance with this section.

(b) DESIGNATED MARKS.—The Secretary concerned shall designate the trademarks, service marks, certification marks, and collective marks regarding which the Secretary will exercise the authority to retain licensing fees under this section.

(c) LICENSES FOR QUALIFYING COMPANIES.—(1) The Secretary concerned may license trademarks, service marks, certification marks, and collective marks owned or controlled by the Secretary relating to military designations and likenesses of military weapons systems to any qualifying company upon receipt of a request from the company.

(2) For purposes of paragraph (1), a qualifying company is any United States company that—

(A) is a toy or hobby manufacturer; and

(B) is determined by the Secretary concerned to be qualified in accordance with such criteria as determined appropriate by the Secretary of Defense.

(3) The fee for a license under this subsection shall not exceed by more than a nominal amount the amount needed to recover all costs of the Department of Defense in processing the request for the license and supplying the license.

(4) A license to a qualifying company under this subsection shall provide that the license may not be transferred, sold, or relicensed by the qualifying company.

(5) A license under this subsection shall not be an exclusive license.

(d) USE OF FEES.—The Secretary concerned shall use fees retained under this section for the following purposes:

(1) For payment of the following costs incurred by the Secretary:

(A) Costs of securing trademark registrations.

(B) Costs of operating the licensing program under this section.

(2) For morale, welfare, and recreation activities under the jurisdiction of the Secretary, to the extent (if any) that the total amount of the licensing fees available under this section for a fiscal year exceed the total amount needed for such fiscal year under paragraph (1).

(e) AVAILABILITY.—Fees received in a fiscal year and retained under this section shall be available for obligation in such fiscal year and the following two fiscal years.

(f) DEFINITIONS.—In this section:

(1) The terms ''trademark'', ''service mark'', ''certification mark'', and ''collective mark'' have the meanings given such terms in section 45 of the Act of July 5, 1946 (commonly referred to as the Trademark Act of 1946; 15 U.S.C. 1127).

(2) The term ''Secretary concerned'' has the meaning provided in section 101(a)(9) of this title and also includes—

(A) the Secretary of Defense, with respect to matters concerning the Defense Agencies

and Department of Defense Field Activities; and

(B) the Secretary of Homeland Security, with respect to matters concerning the Coast Guard when it is not operating as a service in the Department of the Navy.

(Added Pub. L. 108–375, div. A, title X, § 1004(a), Oct. 28, 2004, 118 Stat. 2035; amended Pub. L. 110–181, div. A, title VIII, § 882(a), Jan. 28, 2008, 122 Stat. 263; Pub. L. 110–417, [div. A], title VIII, § 881, Oct. 14, 2008, 122 Stat. 4559.)

AMENDMENTS

2008—Subsec. (a). Pub. L. 110–417, § 881(1), inserted ''or the Secretary of Homeland Security'' after ''Secretary of Defense''.

Subsecs. (c) to (e). Pub. L. 110–181, § 882(a), added subsec. (c) and redesignated former subsecs. (c) and (d) as (d) and (e), respectively. Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 110–417, § 881(2), substituted ''this section:'' for ''this section,'' and ''(1) The'' for ''the'' and added par. (2).

Pub. L. 110–181, § 882(a)(1), redesignated subsec. (e) as (f).

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–181, div. A, title VIII, § 882(b), Jan. 28, 2008, 122 Stat. 264, provided that: ''The Secretary of Defense shall prescribe regulations to implement the amendment made by this section [amending this section] not later than 180 days after the date of the enactment of this Act [Jan. 28, 2008].''

§ 2261. Presentation of recognition items for recruitment and retention purposes

(a) EXPENDITURES FOR RECOGNITION ITEMS.—Under regulations prescribed by the Secretary of Defense, appropriated funds may be expended—

(1) to procure recognition items of nominal or modest value for recruitment or retention purposes; and

(2) to present such items—

(A) to members of the armed forces; and

(B) to members of the families of members of the armed forces, and other individuals, recognized as providing support that substantially facilitates service in the armed forces.

(b) PROVISION OF MEALS AND REFRESHMENTS.—For purposes of section 520c of this title and any regulation prescribed to implement that section, functions conducted for the purpose of presenting recognition items described in subsection (a) shall be treated as recruiting functions, and recipients of such items shall be treated as persons who are the objects of recruiting efforts.

(c) RECOGNITION ITEMS OF NOMINAL OR MODEST VALUE.—In this section, the term ''recognition item of nominal or modest value'' means a commemorative coin, medal, trophy, badge, flag, poster, painting, or other similar item that is valued at less than $50 per item and is designed to recognize or commemorate service in the armed forces.

(Added Pub. L. 109–163, div. A, title V, § 589(a)(1), Jan. 6, 2006, 119 Stat. 3279; amended Pub. L. 109–364, div. A, title V, § 594, Oct. 17, 2006, 120 Stat. 2235.)

AMENDMENTS

2006—Subsec. (d). Pub. L. 109–364 struck out heading and text of subsec. (d). Text read as follows: ''The authority under this section shall expire December 31, 2007.''

§ 2262. Department of Defense conferences: collection of fees to cover Department of Defense costs

(a) AUTHORITY TO COLLECT FEES.—(1) The Secretary of Defense may collect fees from any individual or commercial participant in a conference, seminar, exhibition, symposium, or similar meeting conducted by the Department of Defense (in this section referred to collectively as a ''conference'').

(2) The Secretary may provide for the collection of fees under this section directly or by contract. The fees may be collected in advance of a conference.

(b) USE OF COLLECTED FEES.—Amounts collected under subsection (a) with respect to a conference shall be credited to the appropriation or account from which the costs of the conference are paid and shall be available to pay the costs of the Department of Defense with respect to the conference or to reimburse the Department for costs incurred with respect to the conference.

(c) TREATMENT OF EXCESS AMOUNTS.—In the event the total amount of fees collected under subsection (a) with respect to a conference exceeds the actual costs of the Department of Defense with respect to the conference, the amount of such excess shall be deposited into the Treasury as miscellaneous receipts.

(Added Pub. L. 109–364, div. A, title X, § 1051(a), Oct. 17, 2006, 120 Stat. 2395; amended Pub. L. 115–91, div. A, title X, § 1051(a)(11), Dec. 12, 2017, 131 Stat. 1561.)

AMENDMENTS

2017—Subsec. (d). Pub. L. 115–91 struck out subsec. (d) which required annual reports on conferences, including information on costs and fees collected.

§ 2263. United States contributions to the North Atlantic Treaty Organization common-funded budgets

(a) IN GENERAL.—The total amount contributed by the Secretary of Defense in any fiscal year for the common-funded budgets of NATO may be an amount in excess of the maximum amount that would otherwise be applicable to those contributions in such fiscal year under the fiscal year 1998 baseline limitation.

(b) DEFINITIONS.—In this section:

(1) COMMON-FUNDED BUDGETS OF NATO.—The term ''common-funded budgets of NATO'' means the Military Budget, the Security Investment Program, and the Civil Budget of the North Atlantic Treaty Organization (and any successor or additional account or program of NATO).

(2) FISCAL YEAR 1998 BASELINE LIMITATION.—The term ''fiscal year 1998 baseline limitation'' means the maximum annual amount of Department of Defense contributions for common-funded budgets of NATO that is set forth as the annual limitation in section 3(2)(C)(ii) of the resolution of the Senate giving the advice and consent of the Senate to the ratification of the Protocols to the North Atlantic

Treaty of 1949 on the Accession of Poland, Hungary, and the Czech Republic (as defined in section 4(7) of that resolution), approved by the Senate on April 30, 1998.

(Added Pub. L. 110–417, [div. A], title X, § 1004(a)(1), Oct. 14, 2008, 122 Stat. 4582; amended Pub. L. 115–91, div. A, title X, § 1051(a)(12), Dec. 12, 2017, 131 Stat. 1561.)

REFERENCES IN TEXT

The resolution of ratification of the Protocols to the North Atlantic Treaty of 1949 on the Accession of Poland, Hungary, and the Czech Republic approved by the Senate on April 30, 1998, referred to in subsec. (b)(2), was adopted in the 105th Congress and is not classified to the Code. See Cong. Rec., vol. 144, pt. 5, p. 7555, Apr. 30, 1998.

AMENDMENTS

2017—Subsecs. (b), (c). Pub. L. 115–91 redesignated subsec. (c) as (b) and struck out former subsec. (b) which required annual reports on contributions to the common-funded budgets of NATO.

EFFECTIVE DATE

Pub. L. 110–417, [div. A], title X, § 1004(b), Oct. 14, 2008, 122 Stat. 4583, provided that: ''The amendments made by this section [enacting this section] shall take effect on October 1, 2008, and shall apply to fiscal years that begin on or after that date.''

§ 2264. Reimbursement for assistance provided to nongovernmental entertainment-oriented media producers

(a) IN GENERAL.—There shall be credited to the applicable appropriations account or fund from which the expenses described in subsection (b) were charged any amounts received by the Department of Defense as reimbursement for such expenses.

(b) DESCRIPTION OF EXPENSES.—The expenses referred to in subsection (a) are any expenses—

(1) incurred by the Department of Defense as a result of providing assistance to a nongovernmental entertainment-oriented media producer;

(2) for which the Department of Defense requires reimbursement under section 9701 of title 31 or any other provision of law; and

(3) for which the Department of Defense received reimbursement after December 19, 2014.

(Added Pub. L. 113–291, div. A, title VIII, § 859(a), Dec. 19, 2014, 128 Stat. 3461; amended Pub. L. 115–91, div. A, title X, § 1081(a)(29), Dec. 12, 2017, 131 Stat. 1595.)

AMENDMENTS

2017—Subsec. (b)(3). Pub. L. 115–91 substituted ''December 19, 2014'' for ''the date of the enactment of the Carl Levin and Howard P. 'Buck' McKeon National Defense Authorization Act for Fiscal Year 2015''.

CHAPTER 135—SPACE PROGRAMS

Sec.
2271. Management of space programs: joint program offices and officer management programs.
2272. Space science and technology strategy: coordination.
2273. Policy regarding assured access to space: national security payloads.
2273a. Space Rapid Capabilities Office.
2274. Space situational awareness services and information: provision to non-United States Government entities.
Sec.
2275. Reports on integration of acquisition and capability delivery schedules for segments of major satellite acquisition programs and funding for such programs.
2276. Commercial space launch cooperation.
[2277. Repealed.]
2278. Notification of foreign interference of national security space.
2279. Foreign commercial satellite services and foreign launches.
[2279a. Repealed.]
2279b. Council on Oversight of the Department of Defense Positioning, Navigation, and Timing Enterprise.
[2279c. Renumbered.]
2279d. Limitation on construction on United States territory of satellite positioning ground monitoring stations of certain foreign governments.

AMENDMENTS

2021—Pub. L. 116–283, div. A, title X, § 1081(a)(35), Jan. 1, 2021, 134 Stat. 3872, struck out item 2279c ''Air Force Space Command''.

2018—Pub. L. 115–232, div. A, title X, § 1081(a)(18)(B), Aug. 13, 2018, 132 Stat. 1984, added item 2279d.

2017—Pub. L. 115–91, div. A, title X, § 1051(a)(13)(B), title XVI, §§ 1601(a)(2), (b)(2)(B), (b)(2), 1603(d)(2), Dec. 12, 2017, 131 Stat. 1561, 1719, 1720, 1723, added item 2279c, substituted ''Space Rapid Capabilities Office'' for ''Operationally Responsive Space Program Office'' in item 2273a and ''Foreign commercial satellite services and foreign launches'' for ''Foreign commercial satellite services'' in item 2279, and struck out items 2277 ''Report on foreign counter-space programs'' and 2279a ''Principal Advisor on Space Control''.

2015—Pub. L. 114–92, div. A, title XVI, §§ 1602(b), 1603(b), Nov. 25, 2015, 129 Stat. 1096, 1098, added items 2279a and 2279b.

2013—Pub. L. 113–66, div. A, title IX, § 911(b), title XVI, § 1602(a)(2), Dec. 26, 2013, 127 Stat. 823, 942, added items 2278 and 2279.

Pub. L. 112–239, div. A, title IX, §§ 911(b), 912(b), 913(c)(2), Jan. 2, 2013, 126 Stat. 1872, 1874, 1876, added items 2275 to 2277.

2009—Pub. L. 111–84, div. A, title IX, § 912(b), Oct. 28, 2009, 123 Stat. 2431, added item 2274 and struck out former item 2274 ''Space surveillance network: pilot program for provision of satellite tracking support to entities outside United States Government''.

2006—Pub. L. 109–364, div. A, title IX, § 913(b)(2), Oct. 17, 2006, 120 Stat. 2357, substituted ''Operationally Responsive Space Program Office'' for ''Operationally responsive national security payloads and buses: separate program element required'' in item 2273a.

2004—Pub. L. 108–375, div. A, title IX, § 913(a)(2), Oct. 28, 2004, 118 Stat. 2028, added item 2273a.

2003—Pub. L. 108–136, div. A, title IX, §§ 911(a)(2), 912(b), 913(b), Nov. 24, 2003, 117 Stat. 1564, 1565, 1567, added items 2272 to 2274.

§ 2271. Management of space programs: joint program offices and officer management programs

(a) JOINT PROGRAM OFFICES.—The Secretary of Defense shall take appropriate actions to ensure, to the maximum extent practicable, that space development and acquisition programs of the Department of Defense are carried out through joint program offices.

(b) OFFICER MANAGEMENT PROGRAMS.—(1) The Secretary of Defense shall take appropriate actions to ensure, to the maximum extent practicable, that—

(A) Army, Navy, and Marine Corps officers, as well as Air Force officers, are assigned to

the space development and acquisition programs of the Department of Defense; and

(B) Army, Navy, and Marine Corps officers, as well as Air Force officers, are eligible, on the basis of qualification, to hold leadership positions within the joint program offices referred to in subsection (a).

(2) The Secretary of Defense shall designate those positions in the Office of the National Security Space Architect of the Department of Defense (or any successor office) that qualify as joint duty assignment positions for purposes of chapter 38 of this title.

(Added Pub. L. 107–107, div. A, title IX, § 911(a), Dec. 28, 2001, 115 Stat. 1195.)

PRIOR PROVISIONS

A prior section 2271, act Aug. 10, 1956, ch. 1041, 70A Stat. 123, related to competitions for designs of aircraft, aircraft parts, and aeronautical accessories, prior to repeal by Pub. L. 103–160, div. A, title VIII, § 821(a)(1), Nov. 30, 1993, 107 Stat. 1704.

COMMERCIAL SPACE DOMAIN AWARENESS CAPABILITIES

Pub. L. 116–283, div. A, title XVI, § 1607, Jan. 1, 2021, 134 Stat. 4047, provided that:

''(a) PROCUREMENT.—Not later than 90 days after the date of the enactment of this Act [Jan. 1, 2021], the Secretary of the Air Force shall procure commercial space domain awareness services by awarding at least two contracts for such services.

''(b) LIMITATION.—Of the funds authorized to be appropriated by this Act or otherwise made available for fiscal year 2021 for the Office of the Secretary of the Air Force, not more than 75 percent may be obligated or expended until the date on which the Secretary of Defense, without delegation, certifies to the congressional committees that the Secretary of the Air Force has awarded the contracts under subsection (a).

''(c) REPORT.—Not later than January 31, 2021, the Chief of Space Operations, in coordination with the Secretary of the Air Force, shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report detailing the commercial space domain awareness services, data, and analytics of objects in low-Earth orbit that have been purchased during the two-year period preceding the date of the report. The report shall be submitted in unclassified form.

''(d) COMMERCIAL SPACE DOMAIN AWARENESS SERVICES DEFINED.—In this section, the term 'commercial space domain awareness services' means space domain awareness data, processing software, and analytics derived from best-in-breed commercial capabilities to address warfighter requirements in low-Earth orbit and fill gaps in current space domain capabilities of the Space Force, including commercial capabilities to—

''(1) provide conjunction and maneuver alerts;

''(2) monitor breakup and launch events; and

''(3) detect and track objects smaller than 10 centimeters in size.''

TACTICALLY RESPONSIVE SPACE LAUNCH OPERATIONS

Pub. L. 116–283, div. A, title XVI, § 1609, Jan. 1, 2021, 134 Stat. 4048, provided that: ''The Secretary of the Air Force shall implement a tactically responsive space launch program—

''(1) to provide long-term continuity for tactically responsive space launch operations across the future-years defense program submitted to Congress under section 221 of title 10, United States Code;

''(2) to accelerate the development of—

''(A) responsive launch concepts of operations;

''(B) tactics;

''(C) training; and

''(D) procedures;

''(3) to develop appropriate processes for tactically responsive space launch, including—

''(A) mission assurance processes; and

''(B) command and control, tracking, telemetry, and communications; and

''(4) to identify basing capabilities necessary to enable tactically responsive space launch, including mobile launch range infrastructure.''

SPACE-BASED ENVIRONMENTAL MONITORING MISSION REQUIREMENTS

Pub. L. 116–92, div. A, title XVI, § 1605, Dec. 20, 2019, 133 Stat. 1723, provided that:

''(a) PROCUREMENT OF MODERNIZED PATHFINDER PROGRAM SATELLITE.—

''(1) IN GENERAL.—The Secretary of the Air Force shall procure a modernized pathfinder program satellite that—

''(A) addresses space-based environmental monitoring mission requirements;

''(B) reduces the risk that the Department of Defense experiences a gap in meeting such requirements during the period beginning January 1, 2023, and ending December 31, 2025; and

''(C) is launched not later than January 1, 2023.

''(2) TYPE OF SATELLITE.—The satellite described in paragraph (1) may be a free-flyer or a hosted payload satellite.

''(3) PLAN.—Not later than 60 days after the date of the enactment of this Act [Dec. 20, 2019], the Secretary of the Air Force shall submit to the appropriate congressional committees a plan to procure and launch the satellite described in paragraph (1), including with respect to—

''(A) the requirements for such satellite, including operational requirements;

''(B) timelines for such procurement and launch;

''(C) costs for such procurement and launch; and

''(D) the launch plan.

''(4) PROCEDURES.—The Secretary of the Air Force shall ensure that the satellite described in paragraph (1) is procured using full and open competition through the use of competitive procedures.

''(5) WITHHOLDING OF FUNDS.—The amount equal to 10 percent of the total amount authorized to be appropriated to the Office of the Secretary of Air Force for the travel of persons under the Operations and Maintenance, Defense-Wide account shall be withheld from obligation or expenditure until the date on which a contract is awarded for the procurement of the satellite described in paragraph (1).

''(b) WEATHER SYSTEM SATELLITE.—The Secretary of the Air Force shall ensure that the electro-optical/infrared weather system satellite—

''(1) meets space-based environmental monitoring mission requirements;

''(2) is procured using full and open competition through the use of competitive procedures; and

''(3) is launched not later than September 30, 2025.

''(c) DEFINITIONS.—In this section:

''(1) The term 'appropriate congressional committees' means—

''(A) the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives]; and

''(B) the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate.

''(2) The term 'space-based environmental monitoring mission requirements' means the national security requirements for cloud characterization and theater weather imagery.''

RESILIENT ENTERPRISE GROUND ARCHITECTURE

Pub. L. 116–92, div. A, title XVI, § 1606, Dec. 20, 2019, 133 Stat. 1724, provided that:

''(a) SENSE OF CONGRESS.—It is the sense of Congress that the Secretary of the Air Force, to advance the se-

curity of the space assets of the Department of Defense, should—

"(1) expand on complementary efforts within the Air Force that promote the adoption of a resilient enterprise ground architecture that is responsive to new and changing threats and can rapidly integrate new capabilities to make the warfighting force of the United States more resilient in a contested battlespace; and

"(2) prioritize the swift transition of space ground architecture to a common platform and leverage commercial capabilities in concurrence with the 2015 intent memorandum of the Commander of the Air Force Space Command.

"(b) FUTURE ARCHITECTURE.—The Secretary of Defense shall, to the extent practicable—

"(1) develop future satellite ground architectures of the Department of Defense to be compatible with complementary commercial systems that can support uplink and downlink capabilities with dual-band spacecraft; and

"(2) emphasize that future ground architecture transition away from stove-piped systems to a service-based platform that provides members of the Armed Forces with flexible and adaptable capabilities that—

"(A) use, as applicable, commercially available capabilities and technologies for increased resiliency and cost savings; and

"(B) build commercial opportunity and integration across the range of resilient space systems.

"(c) REPORT.—Not later than 180 days after the date of the enactment of this Act [Dec. 20, 2019], the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the future architecture described in subsection (b)."

SPACE WARFIGHTING POLICY, REVIEW OF SPACE CAPABILITIES, AND PLAN ON SPACE WARFIGHTING READINESS

Pub. L. 115–232, div. A, title XVI, § 1607, Aug. 13, 2018, 132 Stat. 2108, provided that:

"(a) SPACE WARFIGHTING POLICY.—Not later than March 29, 2019, the Secretary of Defense shall develop a space warfighting policy.

"(b) REVIEW OF SPACE CAPABILITIES.—

"(1) IN GENERAL.—The Secretary shall conduct a review relating to the national security space enterprise that evaluates the following:

"(A) The resiliency of the national security space enterprise with respect to a conflict.

"(B) The ability of the national security space enterprise to attribute an attack on a space system in a timely manner.

"(C) The ability of the United States—

"(i) to resolve a conflict in space; and

"(ii) to determine the material means by which such conflict may be resolved.

"(D) Specific options for the national security space enterprise to provide the ability—

"(i) to defend against aggressive behavior in space at all levels of conflict;

"(ii) to defeat any adversary that demonstrates aggressive behavior in space at all levels of conflict;

"(iii) to deter aggressive behavior in space at all levels of conflict; and

"(iv) to develop a declassification strategy, if required to demonstrate deterrence.

"(E) The effectiveness and efficiency of the national security space enterprise to rapidly research, develop, acquire, and deploy space capabilities and capacities—

"(i) to deter and defend the national security space assets of the United States; and

"(ii) to respond to any new threat to such space assets.

"(F) The roles, responsibilities, and authorities of the Department of Defense with respect to space control activities.

"(G) Any emerging space threat the Secretary expects the United States to confront during the 10-year period beginning on the date of the enactment of this Act [Aug. 13, 2018].

"(H) Such other matters as the Secretary considers appropriate.

"(2) REPORT.—

"(A) IN GENERAL.—Not later than March 29, 2019, the Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the findings of the review under paragraph (1).

"(B) FORM.—The report under subparagraph (A) shall be submitted in unclassified form, but may include a classified annex.

"(c) PLAN ON SPACE WARFIGHTING READINESS.—

"(1) IN GENERAL.—Not later than March 29, 2019, the Secretary of Defense shall develop, and commence the implementation of, a plan that—

"(A) identifies joint mission-essential tasks for space as a warfighting domain;

"(B) identifies any additional authorities, or delegated authorities, that would need to accompany the employment of forces to meet such mission-essential tasks;

"(C) meets the readiness requirements for space warfighting, including with respect to equipment, training, and personnel, to meet such mission-essential tasks; and

"(D) considers the contributions by allies and partners of the United States with respect to defense space capabilities to increase burden sharing across space systems, as appropriate.

"(2) BRIEFING.—Not later than March 29, 2019, the Secretary shall provide to the Committees on Armed Services of the House of Representatives and the Senate, and to any other congressional defense committee upon request, a briefing describing the authorities identified under paragraph (1)(B) that the Secretary determines require legislative action."

DESIGNATION OF COMPONENT OF DEPARTMENT OF DEFENSE RESPONSIBLE FOR COORDINATION OF HOSTED PAYLOAD INFORMATION

Pub. L. 115–232, div. A, title XVI, § 1611, Aug. 13, 2018, 132 Stat. 2112, provided that:

"Not later than 30 days after the date of the enactment of this Act [Aug. 13, 2018], the Secretary of Defense, in coordination with the Secretary of the Air Force, and other Secretaries of the military departments and the heads of Defense Agencies the Secretary determines appropriate, shall designate a component of the Department of Defense or a military department to be responsible for coordinating information, processes, and lessons learned relating to using commercially hosted payloads across the military departments, Defense Agencies, and other appropriate elements of the Department of Defense. The functions of such designated component shall include, at a minimum, the following:

"(1) Systematically collecting information from past and planned hosted payload arrangements to inform future acquisition planning and space system architecture design, including integration test data, lessons learned, and design solutions.

"(2) Creating a centralized database for cost, technical data, and lessons learned on commercially hosted payloads and sharing such information with other elements of the Department."

AIR FORCE SPACE CONTRACTOR RESPONSIBILITY WATCH LIST

Pub. L. 115–91, div. A, title XVI, § 1612, Dec. 12, 2017, 131 Stat. 1729, provided that:

"(a) IN GENERAL.—The Commander of the Air Force Space and Missile Systems Center shall establish and maintain a watch list of contractors with a history of poor performance on space procurement contracts or

research, development, test, and evaluation space program contracts.

''(b) BASIS FOR INCLUSION ON LIST.—

''(1) DETERMINATION.—The Commander may place a contractor on the watch list established under subsection (a) upon determining that the ability of the contractor to perform a contract specified in such subsection is uncertain because of any of the following issues:

''(A) Poor performance or award fee scores below 50 percent.

''(B) Financial concerns.

''(C) Felony convictions or civil judgements.

''(D) Security or foreign ownership and control issues.

''(2) DISCRETION OF THE COMMANDER.—The Commander shall be responsible for determining which contractors to place on the watch list, whether an entire company or a specific division should be included, and when to remove a contractor from the list.

''(c) EFFECT OF LISTING.—

''(1) PRIME CONTRACTS.—The Commander may not solicit an offer from, award a contract to, execute an engineering change proposal with, or exercise an option on any space program of the Air Force with a contractor included on the list established under subsection (a) without the prior approval of the Commander.

''(2) SUBCONTRACTS.—A prime contractor on a contract entered into with the Air Force Space and Missile Systems Center may not enter into a subcontract valued in excess of $3,000,000 or five percent of the prime contract value, whichever is lesser, with a contractor included on the watch list established under subsection (a) without the prior approval of the Commander.

''(d) REQUEST FOR REMOVAL FROM LIST.—A contractor may submit to the Commander a written request for removal from the watch list, including evidence that the contractor has resolved the issue that was the basis for inclusion on the list.

''(e) RULE OF CONSTRUCTION.—Nothing in this section shall be construed as preventing the suspension or debarment of a contractor, but inclusion on the watch list shall not be construed as a punitive measure or de facto suspension or debarment of a contractor.''

BRIEFINGS ON THE NATIONAL SPACE DEFENSE CENTER

Pub. L. 115–31, div. N, title VI, §605(e)(2), May 5, 2017, 131 Stat. 832, as amended by Pub. L. 116–283, div. A, title XVI, §1604(c)(2), (3), Jan. 1, 2021, 134 Stat. 4043, 4044, provided that: ''The Director of the National Reconnaissance Office and the Commander of the United States Space Command, in coordination with the Director of National Intelligence and Under Secretary of Defense for Intelligence [now Under Secretary of Defense for Intelligence and Security], shall provide to the appropriate committees of Congress briefings providing updates on activities and progress of the National Space Defense Center to begin 30 days after the date of the enactment of this Act [May 5, 2017]. Such briefings shall be quarterly for the first year following enactment, and annually thereafter.''

[Pub. L. 115–31, div. N, title VI, §605(a), May 5, 2017, 131 Stat. 830, provided that: ''In this section [enacting provisions set out as a note above], the term 'appropriate committees of Congress' means the congressional intelligence committees [Select Committee on Intelligence of the Senate and Permanent Select Committee on Intelligence of the House of Representatives], the Committee on Armed Services of the Senate, and the Committee on Armed Services of the House of Representatives.'']

SPACE-BASED ENVIRONMENTAL MONITORING

Pub. L. 114–328, div. A, title XVI, §1607, Dec. 23, 2016, 130 Stat. 2586, provided that:

''(a) ROLES OF DOD AND NOAA.—

''(1) MECHANISMS.—The Secretary of Defense and the Administrator of the National Oceanic and Atmospheric Administration shall jointly establish mechanisms to collaborate and coordinate in defining the roles and responsibilities of the Department of Defense and the National Oceanic and Atmospheric Administration to—

''(A) carry out space-based environmental monitoring; and

''(B) plan for future non-governmental space-based environmental monitoring capabilities, as appropriate.

''(2) RULE OF CONSTRUCTION.—Nothing in paragraph (1) may be construed to authorize a joint satellite program of the Department of Defense and the National Oceanic and Atmospheric Administration.

''(b) REPORT.—Not later than 120 days after the date of the enactment of this Act [Dec. 23, 2016], the Secretary and the Administrator shall jointly submit to the appropriate congressional committees a report on the mechanisms established under subsection (a)(1).

''(c) APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.—In this section, the term 'appropriate congressional committees' means—

''(1) the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives];

''(2) the Committee on Science, Space, and Technology of the House of Representatives; and

''(3) the Committee on Commerce, Science, and Transportation of the Senate.''

CONSOLIDATION OF ACQUISITION OF WIDEBAND SATELLITE COMMUNICATIONS

Pub. L. 114–92, div. A, title XVI, §1610, Nov. 25, 2015, 129 Stat. 1102, provided that:

''(a) PLAN.—

''(1) CONSOLIDATION.—Not later than one year after the date of the enactment of this Act [Nov. 25, 2015], the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a plan for the consolidation, during the one-year period beginning on the date on which the plan is submitted, of the acquisition of wideband satellite communications necessary to meet the requirements of the Department of Defense for such communications, including with respect to military and commercial satellite communications.

''(2) ELEMENTS.—The plan under paragraph (1) shall include—

''(A) an assessment of the management and overhead costs relating to the acquisition of commercial satellite communications services across the Department of Defense;

''(B) an estimate of—

''(i) the costs of implementing the consolidation of the acquisition of such services described in paragraph (1); and

''(ii) the projected savings of the consolidation;

''(C) the identification and designation of a single acquisition agent pursuant to paragraph (3)(A); and

''(D) the roles and responsibilities of officials of the Department, including pursuant to paragraph (3).

''(3) SINGLE ACQUISITION AGENT.—

''(A) Except as provided by subparagraph (B), under the plan under paragraph (1), the Secretary of Defense shall identify and designate a single senior official of the Department of Defense to procure wideband satellite communications necessary to meet the requirements of the Department of Defense for such communications, including with respect to military and commercial satellite communications.

''(B) Notwithstanding subparagraph (A), under the plan under paragraph (1), an official described in subparagraph (C) may carry out the procurement of commercial wideband satellite communications

if the official determines that such procurement is required to meet an urgent need.

''(C) An official described in this subparagraph is any of the following:

''(i) A Secretary of a military department.

''(ii) The Under Secretary of Defense for Acquisition, Technology, and Logistics.

''(iii) The Chief Information Office[r] of the Department of Defense.

''(iv) A commander of a combatant command.

''(4) VALIDATION.—The Director of Cost Assessment and Program Evaluation shall validate the assessment required by subparagraph (A) of paragraph (2) and the estimates required by subparagraph (B) of such paragraph.

''(b) IMPLEMENTATION.—

''(1) IN GENERAL.—Except as provided by paragraph (2), the Secretary of Defense shall complete the implementation of the plan under subsection (a) by not later than one year after the date on which the Secretary submits the plan under such paragraph.

''(2) WAIVER.—The Secretary may waive the implementation of the plan under subsection (a) if the Secretary—

''(A) determines that—

''(i) such implementation will require significant additional funding; or

''(ii) such waiver is in the interests of national security; and

''(B) submits to the congressional defense committees notice of such waiver and the justifications for such waiver.''

SATELLITE COMMUNICATIONS RESPONSIBILITIES OF EXECUTIVE AGENT FOR SPACE

Pub. L. 113–291, div. A, title XVI, § 1603, Dec. 19, 2014, 128 Stat. 3622, directed the revision of Department of Defense guidance relating to acquisition of satellite communications no later than 180 days after Dec. 19, 2014.

PROHIBITION ON CONTRACTING WITH RUSSIAN SUPPLIERS OF ROCKET ENGINES FOR THE NATIONAL SECURITY SPACE LAUNCH PROGRAM

Pub. L. 113–291, div. A, title XVI, § 1608, Dec. 19, 2014, 128 Stat. 3626, as amended by Pub. L. 114–92, div. A, title XVI, § 1607, Nov. 25, 2015, 129 Stat. 1100; Pub. L. 114–328, div. A, title XVI, § 1602, Dec. 23, 2016, 130 Stat. 2582, provided that:

''(a) IN GENERAL.—Except as provided by subsections (b) and (c), beginning on the date of the enactment of this Act [Dec. 19, 2014], the Secretary of Defense may not award or renew a contract for the procurement of property or services for space launch activities under the evolved expendable launch vehicle program [now the National Security Space Launch program] if such contract carries out such space launch activities using rocket engines designed or manufactured in the Russian Federation.

''(b) WAIVER.—The Secretary may waive the prohibition under subsection (a) with respect to a contract for the procurement of property or services for space launch activities if the Secretary determines, and certifies to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] not later than 30 days before the waiver takes effect, that—

''(1) the waiver is necessary for the national security interests of the United States; and

''(2) the space launch services and capabilities covered by the contract could not be obtained at a fair and reasonable price without the use of rocket engines designed or manufactured in the Russian Federation.

''(c) EXCEPTION.—The prohibition in subsection (a) shall not apply to any of the following:

''(1) The placement of orders or the exercise of options under the contract numbered FA8811–13–C–0003 and awarded on December 18, 2013.

''(2) Contracts that are awarded during the period beginning on the date of the enactment of the National Defense Authorization Act for Fiscal Year 2017 [Dec. 23, 2016] and ending December 31, 2022, for the procurement of property or services for space launch activities that include the use of a total of 18 rocket engines designed or manufactured in the Russian Federation, in addition to the Russian-designed or Russian-manufactured engines to which paragraph (1) applies.''

INTEGRATED SPACE ARCHITECTURES

Pub. L. 111–383, div. A, title IX, § 911, Jan. 7, 2011, 124 Stat. 4328, as amended by Pub. L. 113–291, div. A, title X, § 1071(d)(1)(A), Dec. 19, 2014, 128 Stat. 3509, provided that: ''The Secretary of Defense and the Director of National Intelligence shall develop an integrated process for national security space architecture planning, development, coordination, and analysis that—

''(1) encompasses defense and intelligence space plans, programs, budgets, and organizations;

''(2) provides mid-term to long-term recommendations to guide space-related defense and intelligence acquisitions, requirements, and investment decisions;

''(3) is independent of, but coordinated with, the space architecture planning, development, coordination, and analysis activities of each military department and each element of the intelligence community (as defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 3003(4))); and

''(4) makes use of, to the maximum extent practicable, joint duty assignment (as defined in section 668 of title 10, United States Code) positions.''

SPACE PROTECTION STRATEGY

Pub. L. 110–181, div. A, title IX, § 911(a)–(f), Jan. 28, 2008, 122 Stat. 279, 280, as amended by Pub. L. 113–66, div. A, title IX, § 912(c), Dec. 26, 2013, 127 Stat. 824; Pub. L. 113–291, div. A, title X, § 1071(d)(1)(B), title XVI, § 1606(e), Dec. 19, 2014, 128 Stat. 3509, 3625; Pub. L. 115–232, div. A, title VIII, § 813(b)(1), Aug. 13, 2018, 132 Stat. 1851, provided that:

''(a) SENSE OF CONGRESS.—It is the Sense of Congress that the United States should place greater priority on the protection of national security space systems.

''(b) STRATEGY.—The Secretary of Defense, in conjunction with the Director of National Intelligence, shall develop a strategy, to be known as the Space Protection Strategy, for the development and fielding by the United States of the capabilities that are necessary to ensure freedom of action in space for the United States.

''(c) MATTERS INCLUDED.—The strategy required by subsection (b) shall include each of the following:

''(1) An identification of the threats to, and the vulnerabilities of, the national security space systems of the United States.

''(2) A description of the capabilities currently contained in the program of record of the Department of Defense and the intelligence community that ensure freedom of action in space.

''(3) For each period covered by the strategy, a description of the capabilities that are needed for the period, including—

''(A) the hardware, software, and other materials or services to be developed or procured;

''(B) the management and organizational changes to be achieved; and

''(C) concepts of operations, tactics, techniques, and procedures to be employed.

''(4) For each period covered by the strategy, an assessment of the gaps and shortfalls between the capabilities that are needed for the period and the capabilities currently contained in the program of record.

''(5) For each period covered by the strategy, a comprehensive plan for investment in capabilities that identifies specific program and technology investments to be made in that period.

''(6) A description of the current processes by which the systems protection requirements of the Depart-

ment of Defense and the intelligence community are addressed in space acquisition programs and during key milestone decisions, an assessment of the adequacy of those processes, and an identification of the actions of the Department and the intelligence community for addressing any inadequacies in those processes.

''(7) A description of the current processes by which the Department of Defense and the intelligence community program and budget for capabilities (including capabilities that are incorporated into single programs and capabilities that span multiple programs), an assessment of the adequacy of those processes, and an identification of the actions of the Department and the intelligence community for addressing any inadequacies in those processes.

''(8) A description of the organizational and management structure of the Department of Defense and the intelligence community for addressing policy, planning, acquisition, and operations with respect to capabilities, a description of the roles and responsibilities of each organization, and an identification of the actions of the Department and the intelligence community for addressing any inadequacies in that structure.

''(d) PERIODS COVERED.—The strategy required by subsection (b) shall cover the following periods:

''(1) Fiscal years 2008 through 2013.

''(2) Fiscal years 2014 through 2019.

''(3) Fiscal years 2020 through 2025.

''(4) Fiscal years 2026 through 2030.

''(e) DEFINITIONS.—In this section—

''(1) the term 'capabilities' means space, airborne, and ground systems and capabilities for space situational awareness and for space systems protection; and

''(2) the term 'intelligence community' has the meaning given such term in section 3(4) of the National Security Act of 1947 (50 U.S.C. 3003(4)).

''(f) REPORT.—

''(1) REPORT.—Not later than six months after the date of the enactment of this Act [Jan. 28, 2008], the Secretary of Defense, in conjunction with the Director of National Intelligence, shall submit to Congress a report on the strategy required by subsection (b), including—

''(A) each of the matters required by subsection (c); and

''(B) a description of how the Department of Defense and the intelligence community plan to provide necessary national security capabilities, through alternative space, airborne, or ground systems, if a foreign actor degrades, denies access to, or destroys United States national security space capabilities.

''(2) CLASSIFICATION.—The report required by paragraph (1) shall be in unclassified form, but may include a classified annex.''

MAINTENANCE OF CAPABILITY FOR SPACE-BASED NUCLEAR DETECTION

Pub. L. 110–181, div. A, title X, §1065, Jan. 28, 2008, 122 Stat. 324, provided that: ''The Secretary of Defense shall maintain the capability for space-based nuclear detection at a level that meets or exceeds the level of capability as of the date of the enactment of this Act [Jan. 28, 2008].''

SPACE SITUATIONAL AWARENESS STRATEGY AND SPACE CONTROL MISSION REVIEW

Pub. L. 109–163, div. A, title IX, §911, Jan. 6, 2006, 119 Stat. 3405, required the Secretary of Defense to develop a ''Space Situational Awareness Strategy'' for ensuring freedom to operate United States space assets affecting national security, and to provide for a review and assessment of the requirements of the Department of Defense for the space control mission, prior to repeal by Pub. L. 110–181, div. A, title IX, §911(g), Jan. 28, 2008, 122 Stat. 280.

SPACE PERSONNEL CAREER FIELDS

Pub. L. 108–136, div. A, title V, §547, Nov. 24, 2003, 117 Stat. 1480, as amended by Pub. L. 108–271, §8(b), July 7, 2004, 118 Stat. 814, provided that:

''(a) STRATEGY REQUIRED.—The Secretary of Defense shall develop a strategy for the Department of Defense that will—

''(1) promote the development of space personnel career fields within each of the military departments; and

''(2) ensure that the space personnel career fields developed by the military departments are integrated with each other to the maximum extent practicable.

''(b) REPORT.—Not later than February 1, 2004, the Secretary shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the strategy developed under subsection (a). The report shall include the following:

''(1) A statement of the strategy developed under subsection (a), together with an explanation of that strategy.

''(2) An assessment of the measures required for the Department of Defense and the military departments to integrate the space personnel career fields of the military departments.

''(3) A comprehensive assessment of the adequacy of the actions of the Secretary of Air Force pursuant to section 8084 [now 9084] of title 10, United States Code, to establish for Air Force officers a career field for space.

''(c) GOVERNMENT ACCOUNTABILITY OFFICE REVIEW AND REPORTS.—(1) The Comptroller General shall review the strategy developed under subsection (a) and the status of efforts by the military departments in developing space personnel career fields.

''(2) The Comptroller General shall submit to the committees referred to in subsection (b) two reports on the review under paragraph (1), as follows:

''(A) Not later than June 15, 2004, the Comptroller General shall submit a report that assesses how effective that Department of Defense strategy and the efforts by the military departments, when implemented, are likely to be for developing the personnel required by each of the military departments who are expert in development of space doctrine and concepts of space operations, the development of space systems, and operation of space systems.

''(B) Not later than March 15, 2005, the Comptroller General shall submit a report that assesses, as of the date of the report—

''(i) the effectiveness of that Department of Defense strategy and the efforts by the military departments in developing the personnel required by each of the military departments who are expert in development of space doctrine and concepts of space operations, the development of space systems, and in operation of space systems; and

''(ii) progress made in integrating the space career fields of the military departments.''

COMPTROLLER GENERAL ASSESSMENT OF IMPLEMENTATION OF RECOMMENDATIONS OF SPACE COMMISSION

Pub. L. 107–107, div. A, title IX, §914, Dec. 28, 2001, 115 Stat. 1197, directed the Comptroller General to carry out an assessment through Feb. 15, 2003, of the actions taken by the Secretary of Defense in implementing the recommendations in the report of the Space Commission submitted to Congress pursuant to Pub. L. 106–65, §1623, formerly set out as a note under section 111 of this title, that were applicable to the Department of Defense, and to submit reports to committees of Congress, not later than Feb. 15, 2002, and Feb. 15, 2003, setting forth the results of the assessment.

§ 2272. Space science and technology strategy: coordination

The Secretary of Defense and the Director of National Intelligence shall jointly develop and

implement a space science and technology strategy and shall review and, as appropriate, revise the strategy biennially. Functions of the Secretary under this section shall be carried out jointly by the Under Secretary of Defense for Research and Engineering and the official of the Department of Defense designated as the Department of Defense Executive Agent for Space.[1]

(Added Pub. L. 108–136, div. A, title IX, § 911(a)(1), Nov. 24, 2003, 117 Stat. 1563; amended Pub. L. 111–84, div. A, title IX, § 911(a)(1)–(3), Oct. 28, 2009, 123 Stat. 2428, 2429; Pub. L. 111–383, div. A, title IX, § 901(j)(2), Jan. 7, 2011, 124 Stat. 4324; Pub. L. 114–92, div. A, title XVI, § 1604, Nov. 25, 2015, 129 Stat. 1098; Pub. L. 116–92, div. A, title IX, § 902(28), Dec. 20, 2019, 133 Stat. 1546.)

PRIOR PROVISIONS

A prior section 2272, act Aug. 10, 1956, ch. 1041, 70A Stat. 124, related to contracts to obtain designs submitted in design competitions, prior to repeal by Pub. L. 103–160, div. A, title VIII, § 821(a)(1), Nov. 30, 1993, 107 Stat. 1704.

AMENDMENTS

2019—Pub. L. 116–92 substituted ''Under Secretary of Defense for Research and Engineering'' for ''Assistant Secretary of Defense for Research and Engineering''.

2015—Pub. L. 114–92 amended section generally. Prior to amendment, section consisted of subsecs. (a) to (c) relating to space science and technology strategy, required coordination, and definitions.

2011—Subsecs. (a), (b). Pub. L. 111–383 substituted ''Assistant Secretary of Defense for Research and Engineering'' for ''Director of Defense Research and Engineering'' wherever appearing.

2009—Subsec. (a)(1). Pub. L. 111–84, § 911(a)(1), substituted ''The Secretary of Defense and the Director of National Intelligence shall jointly develop'' for ''The Secretary of Defense shall develop''.

Subsec. (a)(2)(D). Pub. L. 111–84, § 911(a)(2), added subpar. (D).

Subsec. (a)(5). Pub. L. 111–84, § 911(a)(3), amended par. (5) generally. Prior to amendment, par. (5) read as follows: ''The strategy shall be available for review by the congressional defense committees.''

EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by Pub. L. 111–383 effective Jan. 1, 2011, see section 901(p) of Pub. L. 111–383, set out as a note under section 131 of this title.

TRANSFER OF FUNCTIONS

For termination and transfer of functions of the Department of Defense Executive Agent for Space, see section 1601(b)(1) of Pub. L. 115–91, set out as a Termination of Certain Positions and Entities note under former section 2279a of this title.

INITIAL REPORT

Pub. L. 111–84, div. A, title IX, § 911(a)(4), Oct. 28, 2009, 123 Stat. 2429, required the first space science and technology strategy required to be submitted under former 10 U.S.C. 2272(a)(5) to be submitted on the date on which the President submitted to Congress the budget for fiscal year 2012 under 31 U.S.C. 1105.

§ 2273. Policy regarding assured access to space: national security payloads

(a) POLICY.—It is the policy of the United States for the President to undertake actions appropriate to ensure, to the maximum extent practicable, that the United States has the capabilities necessary to launch and insert United States national security payloads into space whenever such payloads are needed in space.

(b) INCLUDED ACTIONS.—The appropriate actions referred to in subsection (a) shall include, at a minimum, providing resources and policy guidance to sustain—

(1) the availability of at least two space launch vehicles (or families of space launch vehicles) capable of delivering into space any payload designated by the Secretary of Defense or the Director of National Intelligence as a national security payload;

(2) a robust space launch infrastructure and industrial base; and

(3) the availability of rapid, responsive, and reliable space launches for national security space programs to—

(A) improve the responsiveness and flexibility of a national security space system;

(B) lower the costs of launching a national security space system; and

(C) maintain risks of mission success at acceptable levels.

(c) COORDINATION.—The Secretary of Defense shall, to the maximum extent practicable, pursue the attainment of the capabilities described in subsection (a) in coordination with the Administrator of the National Aeronautics and Space Administration and the Director of National Intelligence.

(Added Pub. L. 108–136, div. A, title IX, § 912(a)(1), Nov. 24, 2003, 117 Stat. 1565; Pub. L. 110–181, div. A, title IX, § 931(a)(12), Jan. 28, 2008, 122 Stat. 285; Pub. L. 110–417, [div. A], title IX, § 932(a)(11), Oct. 14, 2008, 122 Stat. 4576; Pub. L. 111–84, div. A, title X, § 1073(c)(10), Oct. 28, 2009, 123 Stat. 2475; Pub. L. 115–232, div. A, title XVI, § 1603(a), Aug. 13, 2018, 132 Stat. 2105; Pub. L. 116–92, div. A, title XVII, § 1731(a)(34), Dec. 20, 2019, 133 Stat. 1814.)

PRIOR PROVISIONS

A prior section 2273, acts Aug. 10, 1956, ch. 1041, 70A Stat. 125; Apr. 2, 1982, Pub. L. 97–164, title I, § 160(a)(4), 96 Stat. 48; Oct. 29, 1992, Pub. L. 102–572, title IX, § 902(b)(1), 106 Stat. 4516, related to right of United States to designs, rights of designers to patents, and rights to sue United States, prior to repeal by Pub. L. 103–160, div. A, title VIII, § 821(a)(1), Nov. 30, 1993, 107 Stat. 1704.

AMENDMENTS

2019—Subsec. (b)(1). Pub. L. 116–92 inserted semicolon at end.

2018—Subsec. (b)(3). Pub. L. 115–232, § 1603(a)(1), added par. (3).

Subsec. (c). Pub. L. 115–232, § 1603(a)(2), inserted ''and the Director of National Intelligence'' before period at end.

2009—Subsec. (b)(1). Pub. L. 111–84 repealed Pub. L. 110–417, § 932(a)(11). See 2008 Amendment note below.

2008—Subsec. (b)(1). Pub. L. 110–181 and Pub. L. 110–417, § 932(a)(11), amended par. (1) identically, substituting ''Director of National Intelligence'' for ''Director of Central Intelligence''. Pub. L. 110–417, § 932(a)(11), was repealed by Pub. L. 111–84.

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–84, div. A, title X, § 1073(c), Oct. 28, 2009, 123 Stat. 2474, provided that the amendment made by section 1073(c)(10) is effective as of Oct. 14, 2008, and as if included in Pub. L. 110–417 as enacted.

NATIONAL SECURITY SPACE LAUNCH PROGRAM

Pub. L. 116–283, div. A, title XVI, § 1606, Jan. 1, 2021, 134 Stat. 4044, provided that:

[1] See Transfer of Functions note below.

"(a) LAUNCH SERVICES AGREEMENT.—

"(1) LIMITATION ON AMOUNTS.—Except as provided by paragraph (2), in carrying out the phase two acquisition strategy, the Secretary of the Air Force may not obligate or expend a total amount for a launch services agreement that is greater than the amount specifically appropriated for the launch services agreement.

"(2) USE OF REPROGRAMMING AND TRANSFER AUTHORITY.—The Secretary may exceed the limitation under paragraph (1) if the Secretary carries out a reprogramming or transfer for such purpose in accordance with established procedures for reprogrammings or transfers, including with respect to presenting a request for a reprogramming of funds.

"(b) REUSABILITY.—

"(1) VALIDATION.—Not later than 18 months after the date on which the Secretary determines the down-selected National Security Space Launch providers, the Secretary shall—

"(A) complete all non-recurring design validation of previously flown launch hardware for National Security Space Launch providers offering such hardware for use in phase two contracts; and

"(B) notify the appropriate congressional committees that such design validation has been completed.

"(2) REPORT.—Not later than 210 days after the date on which the Secretary determines the down-selected National Security Space Launch providers, the Secretary shall submit to the appropriate congressional committees a report on the progress of the Secretary with respect to completing all non-recurring design validation of previously flown launch hardware described in paragraph (1), including—

"(A) a justification for any deviation from the new entrant certification guide; and

"(B) a description of such progress with respect to National Security Space Launch providers that are not down-selected National Security Space Launch providers, if applicable.

"(c) FUNDING AND STRATEGY FOR TECHNOLOGY DEVELOPMENT FOR CERTIFICATION, INFRASTRUCTURE, AND INNOVATION.—

"(1) AUTHORITY.—Pursuant to section 2371b of title 10, United States Code, not later than September 30, 2021, the Secretary of the Air Force shall enter into agreements described in paragraph (3) with potential phase three National Security Space Launch providers—

"(A) to maintain competition in order to maximize the likelihood of at least three National Security Space Launch providers competing for phase three contracts; and

"(B) to support innovation for national security launches, including innovative technologies and systems to further advance launch capability associated with the insertion of national security payloads into relevant classes of orbits.

"(2) COMPETITIVE PROCEDURES.—The Secretary shall carry out paragraph (1) by conducting a full and open competition among all National Security Space Launch providers that plan to submit bids for a phase three contract.

"(3) AGREEMENTS.—An agreement described in this paragraph is an agreement that could provide value or technical advances to phase three of the National Security Space Launch program and that includes not more than $90,000,000 in fiscal year 2021, subject to the availability of appropriations for such purpose, for the provider to conduct either or both of the following activities:

"(A) Develop enabling technologies to meet the certification and infrastructure requirements that are—

"(i) unique to national security space missions; and

"(ii) support the likely requirements of a phase three contract.

"(B) Develop transformational technologies in support of the national security space launch capability for phase three contracts (such as technologies regarding launch, maneuver, and transport capabilities for enhanced resiliency and security technologies, technologies to support progress toward phase three national security space launches, or technologies to inform the National Security Launch Architecture study of the Space Force).

"(4) TECHNOLOGY DEVELOPMENT INVESTMENT STRATEGY.—Not later than March 15, 2021, the Secretary shall submit to the appropriate congressional committees a strategy to support investments in technologies for phase three pursuant to paragraph (1) that includes—

"(A) the funding requirements for such strategy during fiscal years 2022 through 2026;

"(B) a schedule for investments toward phase three;

"(C) associated milestones; and

"(D) a planned schedule for awarding phase three contracts.

"(5) REPORT.—Not later than 30 days after the date on which the Secretary enters into an agreement under paragraph (1), the Secretary shall submit to the appropriate congressional committees a report explaining which enabling technologies are funded under such agreement.

"(d) BRIEFING.—Not later than March 15, 2021, and quarterly thereafter through September 30, 2023, the Secretary shall provide to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a briefing on the progress made by the Secretary in ensuring that full and open competition exists for phase three contracts, including—

"(1) a description of progress made to establish the requirements for phase three contracts, including such requirements that the Secretary determines cannot be met by the commercial market;

"(2) whether the Secretary determines that additional development funding will be necessary for such phase;

"(3) a description of the estimated costs for the development described in subparagraphs (A) and (B) of subsection (c)(3); and

"(4) how the Secretary will—

"(A) ensure full and open competition for technology development for phase three contracts; and

"(B) maintain competition.

"(e) RULE OF CONSTRUCTION.—Nothing in this section may be construed to delay the award of phase two contracts.

"(f) DEFINITIONS.—In this section:

"(1) The term 'appropriate congressional committees' means—

"(A) the congressional defense committees; and

"(B) the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate.

"(2) The term 'down-selected National Security Space Launch provider' means a National Security Space Launch provider that the Secretary of the Air Force selected to be awarded phase two contracts.

"(3) The term 'phase three contract' means a contract awarded using competitive procedures for launch services under the National Security Space Launch program after fiscal year 2024.

"(4) The term 'phase two acquisition strategy' means the process by which the Secretary of the Air Force enters into phase two contracts during fiscal year 2020, orders launch missions during fiscal years 2020 through 2024, and carries out such launches under the National Security Space Launch program.

"(5) The term 'phase two contract' means a contract awarded during fiscal year 2020 using competitive procedures for launch missions ordered under the National Security Space Launch program during fiscal years 2020 through 2024."

POLICY TO ENSURE LAUNCH OF SMALL-CLASS PAYLOADS

Pub. L. 116–283, div. A, title XVI, §1608, Jan. 1, 2021, 134 Stat. 4047, provided that:

"(a) In General.—The Secretary of Defense shall establish a small launch and satellite policy to ensure responsive and reliable access to space through the processing and launch of Department of Defense small-class payloads.

"(b) Policy.—The policy under subsection (a) shall include, at a minimum, providing resources and policy guidance to sustain—

"(1) the availability of small-class payload launch service providers using launch vehicles capable of delivering into space small payloads designated by the Secretary of Defense as a national security payload;

"(2) a robust small-class payload space launch infrastructure and industrial base, including small launch systems and small satellite rideshare opportunities;

"(3) the availability of rapid, responsive, and reliable space launches for national security space programs to—

"(A) improve the responsiveness and flexibility of a national security space system;

"(B) lower the costs of launching a national security space system; and

"(C) maintain risks to mission success at acceptable levels;

"(4) a minimum number of dedicated launches each year; and

"(5) full and open competition, including small launch providers and rideshare opportunities."

Program To Enhance and Improve Launch Support and Infrastructure

Pub. L. 116–92, div. A, title XVI, §1609, Dec. 20, 2019, 133 Stat. 1727, provided that:

"(a) In General.—In support of the policy described in section 2273(a) of title 10, United States Code, the Secretary of Defense, in coordination with the Administrator of the Federal Aviation Administration, may carry out a program to enhance infrastructure and improve support activities for the processing and launch of Department of Defense small-class and medium-class payloads.

"(b) Program.—The program under subsection (a) shall include improvements to operations at launch ranges and Federal Aviation Administration-licensed spaceports that are consistent with, and necessary to permit, the use of such launch ranges and spaceports by the Department.

"(c) Consultation.—In carrying out the program under subsection (a), the Secretary may consult with current and anticipated users of launch ranges and Federal Aviation Administration-licensed spaceports, including the Space Rapid Capabilities Office.

"(d) Cooperation.—In carrying out the program under subsection (a), the Secretary may enter into a contract or agreement under section 2276 of title 10, United States Code.

"(e) Report.—Not later than 270 days after the date of the enactment of this Act [Dec. 20, 2019], the Secretary shall submit to the appropriate committees of Congress a report describing a plan for the program under subsection (a).

"(f) Appropriate Committees of Congress Defined.—In this section, the term 'appropriate committees of Congress' means—

"(1) the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives];

"(2) the Committee on Commerce, Science, and Transportation and the Select Committee on Intelligence of the Senate; and

"(3) the Committee on Transportation and Infrastructure, the Committee on Science, Space, and Technology, and the Permanent Select Committee on Intelligence of the House of Representatives."

Use of Reusable Launch Vehicles

Pub. L. 115–232, div. A, title XVI, §1603, Aug. 13, 2018, 132 Stat. 2105, provided that:

"(a) Assured Access to Space.—[Amended this section.]

"(b) Reusability of Launch Vehicles.—

"(1) Designation.—Effective March 1, 2019, the Evolved Expendable Launch Vehicle program of the Department of Defense shall be known as the 'National Security Space Launch program'. Any reference in Federal law, regulations, guidance, instructions, or other documents of the Federal Government to the Evolved Expendable Launch Vehicle program shall be deemed to be a reference to the National Security Space Launch program.

"(2) Requirement.—In carrying out the National Security Space Launch program, the Secretary of Defense shall provide for consideration of both reusable and expendable launch vehicles with respect to any solicitation occurring on or after March 1, 2019, for which the use of a reusable launch vehicle is technically capable and maintains risk at acceptable levels.

"(3) Notification of solicitations for non-reusable launch vehicles.—Beginning March 1, 2019, if the Secretary proposes to issue a solicitation for a contract for space launch services for which the use of reusable launch vehicles is not eligible for the award of the contract, the Secretary shall notify in writing the appropriate congressional committees of such proposed solicitation, including justifications for such ineligibility, by not later than 10 days after issuing such solicitation.

"(c) Risk and Cost Impact Analysis.—

"(1) In general.—The Secretary shall conduct a risk and cost impact analysis with respect to launch services that use reusable launch vehicles. Such analysis shall include—

"(A) an assessment of how the inspection and certification regime of the Air Force for previously flown launch vehicles will ensure increased responsiveness and operational flexibility while maintaining acceptable risk; and

"(B) an assessment of the anticipated cost savings to the Department of Defense realized by using a previously flown launch vehicle or components.

"(2) Submission.—Not later than 180 days after the date of the enactment of this Act [Aug. 13, 2018], the Secretary shall submit to the appropriate congressional committees the analysis conducted under paragraph (1).

"(d) Appropriate Congressional Committees Defined.—In this section, the term 'appropriate congressional committees' means the following:

"(1) The congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives].

"(2) The Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate."

Launch Support and Infrastructure Modernization

Pub. L. 115–91, div. A, title XVI, §1609, Dec. 12, 2017, 131 Stat. 1727, as amended by Pub. L. 116–92, div. A, title XVII, §1731(c), Dec. 20, 2019, 133 Stat. 1816, provided that:

"(a) In General.—In support of the policy specified in section 2273 of title 10, United States Code, the Secretary of Defense shall carry out a program to modernize infrastructure and improve support activities for the processing and launch of United States national security space vehicles launching from Federal ranges.

"(b) Elements.—The program under subsection (a) shall include—

"(1) investments in infrastructure to improve operations at the Eastern and Western Ranges that may benefit all users, to enhance the overall capabilities of ranges, to improve safety, and to reduce the long-term cost of operations and maintenance;

"(2) measures to normalize processes, systems, and products across the Eastern and Western ranges to minimize the burden on launch providers; and

"(3) improvements in transparency, flexibility, and responsiveness for launch scheduling.

''(c) CONSULTATION.—In carrying out the program under subsection (a), the Secretary may consult with current and anticipated users of the Eastern and Western Ranges.

''(d) COOPERATION.—In carrying out the program under subsection (a), the Secretary may consider partnerships authorized under section 2276 of title 10, United States Code.

''(e) REPORT.—

''(1) REPORT REQUIRED.—Not later than 120 days after the date of the enactment of this Act [Dec. 12, 2017], the Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the plan for the implementation of the program under subsection (a).

''(2) ELEMENTS.—The report under paragraph (1) shall include—

''(A) a description of plans and the resources needed to improve launch support infrastructure, utilities, support equipment, and range operations;

''(B) a description of plans to streamline and normalize processes, systems, and products at the Eastern and Western ranges, to ensure consistency for range users; and

''(C) recommendations for improving transparency, flexibility, and responsiveness in launch scheduling.''

[Pub. L. 116–92, div. A, title XVII, §1731(c), Dec. 20, 2019, 133 Stat. 1816, provided that the amendment made by section 1731(c) to section 1609(b)(3) of Pub. L. 115–91, set out above, is effective as of Dec. 12, 2017, and as if included in Pub. L. 115–91 as enacted.]

ACQUISITION STRATEGY FOR NATIONAL SECURITY SPACE LAUNCH PROGRAM

Pub. L. 114–92, div. A, title XVI, §1608, Nov. 25, 2015, 129 Stat. 1100, as amended by Pub. L. 116–283, div. A, title XVIII, §1831(j)(1), Jan. 1, 2021, 134 Stat. 4216, provided that:

''(a) TREATMENT OF CERTAIN ARRANGEMENT.—

''(1) DISCONTINUATION.—The Secretary of the Air Force shall discontinue the evolved expendable launch vehicle launch capability arrangement, as structured as of the date of the enactment of this Act [Nov. 25, 2015], for—

''(A) existing contracts using rocket engines designed or manufactured in the Russian Federation by not later than December 31, 2019; and

''(B) existing contracts using domestic rocket engines by not later than December 31, 2020.

''(2) WAIVER.—The Secretary may waive paragraph (1) if the Secretary—

''(A) determines that such waiver is necessary for the national security interests of the United States;

''(B) notifies the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] of such waiver; and

''(C) a period of 90 days has elapsed following the date of such notification.

''(b) CONSISTENT STANDARDS.—In accordance with section 2306a of title 10, United States Code, the Secretary shall—

''(1) apply consistent and appropriate standards to certified evolved expendable launch vehicle providers with respect to certified cost and pricing data; and

''(2) conduct the appropriate audits.

''(c) ACQUISITION STRATEGY.—In accordance with subsections (a) and (b) and section 2273 of title 10, United States Code, the Secretary shall develop and carry out a 10-year phased acquisition strategy, including near and long term, for the evolved expendable launch vehicle program [now the National Security Space Launch program].

''(d) ELEMENTS.—The acquisition strategy under subsection (c) for the evolved expendable launch vehicle program [now the National Security Space Launch program] shall—

''(1) provide the necessary—

''(A) stability in budgeting and acquisition of capabilities;

''(B) flexibility to the Federal Government; and

''(C) procedures for fair competition; and

''(2) specifically take into account, as appropriate per competition, the effect of—

''(A) contracts or agreements for launch services or launch capability entered into by the Department of Defense and the National Aeronautics and Space Administration with certified evolved expendable launch vehicle providers;

''(B) the requirements of the Department of Defense, including with respect to launch capabilities and pricing data, that are met by such providers;

''(C) the cost of integrating a satellite onto a launch vehicle; and

''(D) any other matters the Secretary considers appropriate.

''(e) COMPETITION.—In awarding any contract for launch services in a national security space mission pursuant to a competitive acquisition, the evaluation shall account for the value of the evolved expendable launch vehicle launch capability arrangement per contract line item numbers in the bid price of the offeror as appropriate per launch.

''(f) REPORT.—Not later than 180 days after the date of the enactment of this Act, the Secretary shall submit to the congressional defense committees, the Permanent Select Committee on Intelligence of the House of Representatives, and the Select Committee on Intelligence of the Senate a report on the acquisition strategy developed under subsection (c).''

[Pub. L. 116–283, div. A, title XVIII, §§1801(d), 1831(j)(1), Jan. 1, 2021, 134 Stat. 4151, 4216, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, section 1608(b) of Pub. L. 114–92, set out above, is amended by substituting ''chapter 271'' for ''section 2306a''.]

ROCKET PROPULSION SYSTEM DEVELOPMENT PROGRAM

Pub. L. 113–291, div. A, title XVI, §1604, Dec. 19, 2014, 128 Stat. 3623, as amended by Pub. L. 114–92, div. A, title XVI, §1606(a), Nov. 25, 2015, 129 Stat. 1099; Pub. L. 114–328, div. A, title XVI, §1603, Dec. 23, 2016, 130 Stat. 2582, provided that:

''(a) DEVELOPMENT.—

''(1) IN GENERAL.—The Secretary of Defense shall develop a next-generation rocket propulsion system that enables the effective, efficient, and expedient transition from the use of non-allied space launch engines to a domestic alternative for national security space launches.

''(2) REQUIREMENTS.—The system developed under paragraph (1) shall—

''(A) be made in the United States;

''(B) meet the requirements of the national security space community;

''(C) be developed by not later than 2019;

''(D) be developed using full and open competition; and

''(E) be available for purchase by all space launch providers of the United States.

''(b) REPORT.—Not later than 180 days after the date of the enactment of this Act [Dec. 19, 2014], the Secretary shall submit to the appropriate congressional committees a report that includes—

''(1) a plan to carry out the development of the rocket propulsion system under subsection (a), including an analysis of the benefits of using public-private partnerships;

''(2) the requirements of the program to develop such system; and

''(3) the estimated cost of such system.

''(c) STREAMLINED ACQUISITION.—In developing the rocket propulsion system required under subsection (a), the Secretary shall—

''(1) use a streamlined acquisition approach, including tailored documentation and review processes, that enables the effective, efficient, and expedient

transition from the use of non-allied space launch engines to a domestic alternative for national security space launches; and

''(2) prior to establishing such acquisition approach, establish well-defined requirements with a clear acquisition strategy.

''(d) USE OF FUNDS UNDER DEVELOPMENT PROGRAM.—

''(1) DEVELOPMENT OF ROCKET PROPULSION SYSTEM.—The funds described in paragraph (2)—

''(A) may be obligated or expended for—

''(i) the development of the rocket propulsion system to replace non-allied space launch engines pursuant to subsection (a); and

''(ii) the necessary interfaces to, or integration of, the rocket propulsion system with an existing or new launch vehicle; and

''(B) except as provided by paragraph (3), may not be obligated or expended to develop or procure a launch vehicle, an upper stage, a strap-on motor, or related infrastructure.

''(2) FUNDS DESCRIBED.—The funds described in this paragraph are the following:

''(A) Funds authorized to be appropriated by the National Defense Authorization Act for Fiscal Year 2017 [Pub. L. 114–328, see Tables for classification] or otherwise made available for fiscal year 2017 for the Department of Defense for the development of the rocket propulsion system under subsection (a).

''(B) Funds authorized to be appropriated by this Act [see Tables for classification] or the National Defense Authorization Act for Fiscal Year 2016 [Pub. L. 114–92, see Tables for classification] or otherwise made available for fiscal years 2015 or 2016 for the Department of Defense for the development of the rocket propulsion system under subsection (a) that are unobligated as of the date of the enactment of the National Defense Authorization Act for Fiscal Year 2017 [Dec. 23, 2016].

''(3) OTHER PURPOSES.—The Secretary may obligate or expend not more than a total of the amount calculated under paragraph (4) of the funds that are authorized to be appropriated by the National Defense Authorization Act for Fiscal Year 2017 or otherwise made available for fiscal year 2017 for the rocket propulsion system and launch system investment for activities not authorized by paragraph (1)(A), including for developing a launch vehicle, an upper stage, a strap-on motor, or related infrastructure. The Secretary may exceed such limit calculated under paragraph (4) in fiscal year 2017 for such purposes if—

''(A) the Secretary certifies to the appropriate congressional committees that, as of the date of the certification—

''(i) the development of the rocket propulsion system is being carried out pursuant to paragraph (1)(A) in a manner that ensures that the rocket propulsion system will meet each requirement under subsection (a)(2); and

''(ii) such obligation or expenditure will not negatively affect the development of the rocket propulsion system, including with respect to meeting such requirements; and

''(B) the reprogramming or transfer is carried out in accordance with established procedures for reprogramming or transfers, including with respect to presenting a request for a reprogramming of funds.

''(4) CALCULATION OF AMOUNTS FOR OTHER PURPOSES.—In carrying out paragraph (3), the Secretary shall calculate the amount of the funds specified in such paragraph as follows:

''(A) If the total amount of funds that are authorized to be appropriated by the National Defense Authorization Act for Fiscal Year 2017 or otherwise made available for fiscal year 2017 for the rocket propulsion system and launch system investment is equal to or less than $320,000,000, such amount shall equal 31 percent.

''(B) If the total amount of funds that are authorized to be appropriated by the National Defense Authorization Act for Fiscal Year 2017 or otherwise made available for fiscal year 2017 for the rocket propulsion system and launch system investment is greater than $320,000,000, such amount shall equal the difference of—

''(i) the amount of funds so authorized to be appropriated, minus

''(ii) $220,000,000.

''(e) DEFINITIONS.—In this section:

''(1) The term 'appropriate congressional committees' means—

''(A) the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives]; and

''(B) the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate.

''(2) The term 'rocket propulsion system' means, with respect to the development authorized by subsection (a), a main booster, first-stage rocket engine or motor. The term does not include a launch vehicle, an upper stage, a strap-on motor, or related infrastructure.''

§ 2273a. Space Rapid Capabilities Office

(a) IN GENERAL.—There is within the Space Force a program office known as the Space Rapid Capabilities Office (in this section referred to as the ''Office''). The facilities of the Office may not be co-located with the headquarters facilities of the Air Force Space and Missile Systems Center.

(b) HEAD OF OFFICE.—The head of the Office shall be the designee of the Secretary of the Air Force. The head of the Office shall report to the Chief of Space Operations.

(c) MISSION.—The mission of the Office shall be—

(1) to contribute to the development of low-cost, rapid reaction payloads, busses, launch, and launch control capabilities in order to fulfill joint military operational requirements for on-demand space support and reconstitution;

(2) to coordinate and execute space rapid capabilities efforts across the Department of Defense with respect to planning, acquisition, and operations; and

(3) to rapidly develop and field new classified space capabilities.

(d) ACQUISITION AUTHORITY.—The acquisition activities of the Office shall be subject to the following:

(1) The Secretary of the Air Force shall designate the acquisition executive of the Office who shall provide streamlined acquisition authorities for projects of the Office.

(2) The Joint Capabilities Integration and Development System process shall not apply to acquisitions by the Office.

(e) REQUIRED PROGRAM ELEMENT.—(1) The Secretary of the Air Force shall ensure, within budget program elements for space programs, that—

(A) there are separate, dedicated unclassified and classified program elements for space rapid capabilities; and

(B) the Office executes the responsibilities of the Office through such program elements.

(2) The Office shall manage the program elements required by paragraph (1).

(f) BOARD OF DIRECTORS.—The Secretary of the Air Force shall establish for the Office a Board

of Directors (to be known as the ''Space Rapid Capabilities Board of Directors'') to provide coordination, oversight, and approval of projects of the Office.

(Added Pub. L. 108–375, div. A, title IX, § 913(a)(1), Oct. 28, 2004, 118 Stat. 2028; amended Pub. L. 109–364, div. A, title IX, § 913(b)(1), Oct. 17, 2006, 120 Stat. 2355; Pub. L. 112–239, div. A, title IX, § 914, Jan. 2, 2013, 126 Stat. 1876; Pub. L. 115–91, div. A, title XVI, § 1601(b)(1), Dec. 12, 2017, 131 Stat. 1720; Pub. L. 115–232, div. A, title XVI, § 1602, Aug. 13, 2018, 132 Stat. 2104; Pub. L. 116–92, div. A, title IX, § 958(a)(2), title XVI, § 1601(b)(2), Dec. 20, 2019, 133 Stat. 1567, 1722; Pub. L. 116–283, div. A, title IX, § 924(b)(31), Jan. 1, 2021, 134 Stat. 3825.)

AMENDMENTS

2021—Subsec. (d)(3). Pub. L. 116–283 struck out par. (3) which read as follows: ''The Commander of the United States Space Command, or, if no such command exists, the Commander of the United States Strategic Command, shall—

''(A) establish and validate capability requirements; and

''(B) recommend priorities as the Commander determines appropriate.''

2019—Subsec. (a). Pub. L. 116–92, § 958(a)(2)(A), substituted ''Space Force'' for ''Air Force Space Command''.

Subsec. (b). Pub. L. 116–92, § 958(a)(2)(B), substituted ''Chief of Space Operations'' for ''Commander of the Air Force Space Command''.

Subsec. (d)(3). Pub. L. 116–92, § 1601(b)(2), substituted ''The Commander of the United States Space Command, or, if no such command exists, the Commander of the United States Strategic Command,'' for ''The Commander of the United States Strategic Command, acting through the United States Space Command,''.

2018—Pub. L. 115–232 amended section generally. Prior to amendment, section related to: in subsec. (a) the Space Rapid Capabilities Office, in subsec. (b) the head of the Office, in subsec. (c) the mission of the Office, in subsec. (d) elements of the Department of Defense to be included in the Office, in subsec. (e) acquisition activities of the Office, in subsec. (f) required program elements, and in subsec. (g) establishment of an Executive Committee to provide coordination, oversight, and approval of projects.

2017—Pub. L. 115–91, § 1601(b)(1)(A), substituted ''Space Rapid Capabilities'' for ''Operationally Responsive Space Program'' in section catchline.

Subsec. (a). Pub. L. 115–91, § 1601(b)(1)(B), substituted ''Air Force Space Command'' for ''Air Force Space and Missile Systems Center of the Department of Defense'' and ''Space Rapid Capabilities'' for ''Operationally Responsive Space Program''.

Subsec. (b). Pub. L. 115–91, § 1601(b)(1)(C), substituted ''Air Force Space Command'' for ''Air Force Space and Missile Systems Center''.

Subsec. (c)(2). Pub. L. 115–91, § 1601(b)(1)(D), substituted ''space rapid capabilities'' for ''operationally responsive space''.

Subsec. (d). Pub. L. 115–91, § 1601(b)(1)(E), substituted ''space rapid capabilities'' for ''operationally responsive space'' in introductory provisions and pars. (2) and (3)(A), ''space rapid capabilities'' for ''capabilities for operationally responsive space'' in par. (1), and ''space rapid capabilities'' for ''operationally responsive space capabilities'' in introductory provisions of par. (4)(B).

Subsec. (f)(1)(A). Pub. L. 115–91, § 1601(b)(1)(D), substituted ''space rapid capabilities'' for ''operationally responsive space''.

Subsec. (g)(1). Pub. L. 115–91, § 1601(b)(1)(F), substituted ''Space Rapid Capabilities'' for ''Operationally Responsive Space''.

2013—Subsec. (a). Pub. L. 112–239, § 914(a), amended subsec. (a) generally. Prior to amendment, text read as follows: ''The Secretary of Defense shall establish within the Department of Defense an office to be known as the Operationally Responsive Space Program Office (in this section referred to as the 'Office').''

Subsec. (b). Pub. L. 112–239, § 914(b), substituted ''shall be the designee of the Department of Defense Executive Agent for Space. The head of the Office shall report to the Commander of the Air Force Space and Missile Systems Center.'' for ''shall be—

''(1) the Department of Defense Executive Agent for Space; or

''(2) the designee of the Secretary of Defense, who shall report to the Department of Defense Executive Agent for Space.''

Subsec. (c)(1). Pub. L. 112–239, § 914(c), substituted ''launch'' for ''spacelift''.

Subsec. (e)(1). Pub. L. 112–239, § 914(d), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''The Department of Defense Executive Agent for Space shall be the senior acquisition executive of the Office.''

Subsec. (g). Pub. L. 112–239, § 914(e), added subsec. (g).

2006—Pub. L. 109–364 amended section catchline and text generally, substituting provisions relating to establishment, control, mission, elements, and authority of the Operationally Responsive Space Program Office within the Department of Defense for provisions relating to requirement for a separate, dedicated program element for operationally responsive national security payloads and buses within budget program elements for space programs of the Department of Defense.

EFFECTIVE DATE

Pub. L. 108–375, div. A, title IX, § 913(b), Oct. 28, 2004, 118 Stat. 2028, provided that: ''Subsection (a) of section 2273a of title 10, United States Code, as added by subsection (a), shall apply with respect to fiscal years after fiscal year 2005.''

UNITED STATES POLICY ON OPERATIONALLY RESPONSIVE SPACE

Pub. L. 109–364, div. A, title IX, § 913(a), Oct. 17, 2006, 120 Stat. 2355, provided that: ''It is the policy of the United States to demonstrate, acquire, and deploy an effective capability for operationally responsive space to support military users and operations from space, which shall consist of—

''(1) responsive satellite payloads and busses built to common technical standards;

''(2) low-cost space launch vehicles and supporting range operations that facilitate the timely launch and on-orbit operations of satellites;

''(3) responsive command and control capabilities; and

''(4) concepts of operations, tactics, techniques, and procedures that permit the use of responsive space assets for combat and military operations other than war.''

JOINT OPERATIONALLY RESPONSIVE SPACE PAYLOAD TECHNOLOGY ORGANIZATION

Pub. L. 109–163, div. A, title IX, § 913(a), Jan. 6, 2006, 119 Stat. 3408, which directed the Secretary of Defense to establish or designate an organization in the Department of Defense to coordinate joint operationally responsive space payload technology, was repealed by Pub. L. 109–364, div. A, title IX, § 913(d), Oct. 17, 2006, 120 Stat. 2358.

§ 2274. Space situational awareness services and information: provision to non-United States Government entities

(a) AUTHORITY.—(1) Except as provided by paragraph (2), the Secretary of Defense may provide space situational awareness services and information to, and may obtain space situational awareness data and information from, non-United States Government entities in accord-

ance with this section. Any such action may be taken only if the Secretary determines that such action is consistent with the national security interests of the United States.

(2) Beginning January 1, 2024, the Secretary may provide space situational awareness services and information to, and may obtain space situational awareness data and information from, non-United States Government entities under paragraph (1) only to the extent that the Secretary determines such actions are necessary to meet the national security interests of the United States.

(b) ELIGIBLE ENTITIES.—The Secretary may provide services and information under subsection (a) to, and may obtain data and information under subsection (a) from, any non-United States Government entity, including any of the following:

(1) A State.

(2) A political subdivision of a State.

(3) A United States commercial entity.

(4) The government of a foreign country.

(5) A foreign commercial entity.

(c) AGREEMENT.—The Secretary may not provide space situational awareness services and information under subsection (a) to a non-United States Government entity unless that entity enters into an agreement with the Secretary under which the entity—

(1) agrees to pay an amount that may be charged by the Secretary under subsection (d);

(2) agrees not to transfer any data or technical information received under the agreement, including the analysis of data, to any other entity without the express approval of the Secretary; and

(3) agrees to any other terms and conditions considered necessary by the Secretary.

(d) CHARGES.—(1) As a condition of an agreement under subsection (c), the Secretary may (except as provided in paragraph (2)) require the non-United States Government entity entering into the agreement to pay to the Department of Defense such amounts as the Secretary determines appropriate to reimburse the Department for the costs to the Department of providing space situational awareness services or information under the agreement.

(2) The Secretary may not require the government of a State, or of a political subdivision of a State, to pay any amount under paragraph (1).

(e) CREDITING OF FUNDS RECEIVED.—(1) Funds received for the provision of space situational awareness services or information pursuant to an agreement under this section shall be credited, at the election of the Secretary, to the following:

(A) The appropriation, fund, or account used in incurring the obligation.

(B) An appropriate appropriation, fund, or account currently available for the purposes for which the expenditures were made.

(2) Funds credited under paragraph (1) shall be merged with, and remain available for obligation with, the funds in the appropriation, fund, or account to which credited.

(f) PROCEDURES.—The Secretary shall establish procedures by which the authority under this section shall be carried out. As part of those procedures, the Secretary may allow space situational awareness services or information to be provided through a contractor of the Department of Defense.

(g) IMMUNITY.—The United States, any agencies and instrumentalities thereof, and any individuals, firms, corporations, and other persons acting for the United States, shall be immune from any suit in any court for any cause of action arising from the provision or receipt of space situational awareness services or information, whether or not provided in accordance with this section, or any related action or omission.

(h) NOTICE OF CONCERNS OF DISCLOSURE OF INFORMATION.—If the Secretary determines that a commercial or foreign entity has declined or is reluctant to provide data or information to the Secretary in accordance with this section due to the concerns of such entity about the potential disclosure of such data or information, the Secretary shall, not later than 60 days after the Secretary makes that determination, provide notice to the congressional defense committees of the declination or reluctance of such entity.

(Added Pub. L. 108–136, div. A, title IX, § 913(a), Nov. 24, 2003, 117 Stat. 1565; amended Pub. L. 109–364, div. A, title IX, § 912, Oct. 17, 2006, 120 Stat. 2355; Pub. L. 110–417, [div. A], title IX, § 911, Oct. 14, 2008, 122 Stat. 4571; Pub. L. 111–84, div. A, title IX, § 912(a), Oct. 28, 2009, 123 Stat. 2429; Pub. L. 115–232, div. A, title XVI, § 1604(a), Aug. 13, 2018, 132 Stat. 2106.)

PRIOR PROVISIONS

A prior section 2274, act Aug. 10, 1956, ch. 1041, 70A Stat. 126, which related to procurement for experimental purposes, was repealed by Pub. L. 103–160, div. A, title VIII, § 821(a)(1), Nov. 30, 1993, 107 Stat. 1704.

AMENDMENTS

2018—Subsec. (a). Pub. L. 115–232 designated existing provisions as par. (1), substituted ''Except as provided by paragraph (2), the Secretary of Defense may'' for ''The Secretary of Defense may'', and added par. (2).

2009—Pub. L. 111–84 amended section generally. Prior to amendment, section related to space surveillance network: pilot program for provision of satellite tracking support to entities outside United States Government.

2008—Subsec. (i). Pub. L. 110–417 substituted ''September 30, 2010'' for ''September 30, 2009''.

2006—Subsec. (i). Pub. L. 109–364 substituted ''may be conducted through September 30, 2009'' for ''shall be conducted during the three-year period beginning on a date specified by the Secretary of Defense, which date shall be not later than 180 days after the date of the enactment of this section''.

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–84, div. A, title IX, § 912(c), Oct. 28, 2009, 123 Stat. 2431, provided that: ''The amendments made by this section [amending this section] shall take effect on October 1, 2009, or the date of the enactment of this Act [Oct. 28, 2009], whichever is later.''

LIMITATION ON AVAILABILITY OF FUNDING FOR JOINT SPACE OPERATIONS CENTER MISSION SYSTEM

Pub. L. 115–91, div. A, title XVI, § 1610, Dec. 12, 2017, 131 Stat. 1728, provided that:

''(a) LIMITATION.—Of the funds authorized to be appropriated by this Act [see Tables for classification] or otherwise made available for fiscal year 2018 for the Joint Space Operations Center mission system, not more than 75 percent may be obligated or expended

until the date on which the Secretary of the Air Force certifies to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] that the Secretary has developed the plan under subsection (b).

"(b) PLAN.—The Secretary shall develop and implement a plan to operationalize existing commercial space situational awareness capabilities to address warfighter requirements, consistent with the best-in-breed concept. Except as provided by subsection (c), the Secretary shall commence such implementation by not later than May 30, 2018.

"(c) WAIVER.—The Secretary may waive the implementation of the plan developed under subsection (b) if the Secretary determines that existing commercial capabilities will not address national security requirements or existing space situational awareness capability gaps. The authority under this subsection may not be delegated below the Deputy Secretary of Defense."

§ 2275. Reports on integration of acquisition and capability delivery schedules for segments of major satellite acquisition programs and funding for such programs

(a) REPORTS REQUIRED.—The Under Secretary of Defense for Acquisition and Sustainment shall submit to the congressional defense committees a report on each major satellite acquisition program in accordance with subsection (d) that assesses—

(1) the integration of the schedules for the acquisition and the delivery of the capabilities of the segments for the program; and

(2) funding for the program.

(b) ELEMENTS.—Each report required by subsection (a) with respect to a major satellite acquisition program shall include the following:

(1) The amount of funding approved for the program and for each segment of the program that is necessary for full operational capability of the program.

(2) The dates by which the program and each segment of the program is anticipated to reach initial and full operational capability.

(3) A description of the intended primary capabilities and key performance parameters of the program.

(4) An assessment of the extent to which the schedules for the acquisition and the delivery of the capabilities of the segments for the program or any related program referred to in paragraph (1) are integrated.

(5) If the Under Secretary determines pursuant to the assessment under paragraph (4) that the program is a non-integrated program, an identification of—

(A) the impact on the mission of the program of having the delivery of the segment capabilities of the program more than one year apart;

(B) the measures the Under Secretary is taking or is planning to take to improve the integration of the acquisition and delivery schedules of the segment capabilities; and

(C) the risks and challenges that impede the ability of the Department of Defense to fully integrate those schedules.

(c) CONSIDERATION BY MILESTONE DECISION AUTHORITY.—The Milestone Decision Authority shall include the report required by subsection (a) with respect to a major satellite acquisition program as part of the documentation used to approve the acquisition of the program.

(d) SUBMITTAL OF REPORTS.—(1) In the case of a major satellite acquisition program initiated before January 2, 2013, the Under Secretary shall submit the report required by subsection (a) with respect to the program not later than one year after such date of enactment.[1]

(2) In the case of a major satellite acquisition program initiated on or after January 2, 2013, the Under Secretary shall submit the report required by subsection (a) with respect to the program at the time of the Milestone B approval of the program.

(e) NOTIFICATION TO CONGRESS OF NON-INTEGRATED ACQUISITION AND CAPABILITY DELIVERY SCHEDULES.—If, after submitting the report required by subsection (a) with respect to a major satellite acquisition program, the Under Secretary determines that the program is a non-integrated program, the Under Secretary shall, not later than 30 days after making that determination, submit to the congressional defense committees a report—

(1) notifying the committees of that determination; and

(2) identifying—

(A) the impact on the mission of the program of having the delivery of the segment capabilities of the program more than one year apart;

(B) the measures the Under Secretary is taking or is planning to take to improve the integration of the acquisition and delivery schedules of the segment capabilities; and

(C) the risks and challenges that impede the ability of the Department of Defense to fully integrate those schedules.

(f) ANNUAL UPDATES FOR NON-INTEGRATED PROGRAMS.—

(1) REQUIREMENT.—For each major satellite acquisition program that the Under Secretary has determined under subsection (b)(5) or subsection (e) is a non-integrated program, the Under Secretary shall annually submit to Congress, at the same time the budget of the President for a fiscal year is submitted under section 1105 of title 31, an update to the report required by subsection (a) for such program.

(2) TERMINATION OF REQUIREMENT.—The requirement to submit an annual report update for a program under paragraph (1) shall terminate on the date on which the Under Secretary submits to the congressional defense committees notice that the Under Secretary has determined that such program is no longer a non-integrated program, or on the date that is five years after the date on which the initial report update required under paragraph (1) is submitted, whichever is earlier.

(3) GAO REVIEW OF CERTAIN NON-INTEGRATED PROGRAMS.—If at the time of the termination of the requirement to annually update a report for a program under paragraph (1) the Under Secretary has not provided notice to the congressional defense committees that the Under Secretary has determined that the program is no longer a non-integrated program,

[1] See References in Text note below.

the Comptroller General shall conduct a review of such program and submit the results of such review to the congressional defense committees.

(g) DEFINITIONS.—In this section:

(1) SEGMENTS.—The term ''segments'', with respect to a major satellite acquisition program, refers to any satellites acquired under the program and the ground equipment and user terminals necessary to fully exploit the capabilities provided by those satellites.

(2) MAJOR SATELLITE ACQUISITION PROGRAM.—The term ''major satellite acquisition program'' means a major defense acquisition program (as defined in section 2430 of this title) for the acquisition of a satellite.

(3) MILESTONE B APPROVAL.—The term ''Milestone B approval'' has the meaning given that term in section 2366(e)(7) of this title.

(4) NON-INTEGRATED PROGRAM.—The term ''non-integrated program'' means a program with respect to which the schedules for the acquisition and the delivery of the capabilities of the segments for the program, or a related program that is necessary for the operational capability of the program, provide for the acquisition or the delivery of the capabilities of at least two of the three segments for the program or related program more than one year apart.

(Added Pub. L. 112–239, div. A, title IX, § 911(a), Jan. 2, 2013, 126 Stat. 1870; amended Pub. L. 113–291, div. A, title X, § 1071(e)(3), Dec. 19, 2014, 128 Stat. 3509; Pub. L. 116–92, div. A, title IX, § 902(29), Dec. 20, 2019, 133 Stat. 1546; Pub. L. 116–283, div. A, title XVIII, §§ 1845(c)(3), 1846(i)(5), Jan. 1, 2021, 134 Stat. 4247, 4252.)

AMENDMENT OF SUBSECTION (g)

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1845(c)(3), 1846(i)(5), Jan. 1, 2021, 134 Stat. 4151, 4247, 4252, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, subsection (g) of this section is amended as follows:

(1) in paragraph (2), by striking ''section 2430'' and inserting ''section 4201''; and

(2) in paragraph (3), by striking ''section 2366(e)(7)'' and inserting ''sections 4172(e)(7)''.

See 2021 Amendment notes below.

REFERENCES IN TEXT

Such date of enactment, referred to in subsec. (d)(1), is a reference to the date of enactment of the National Defense Authorization Act for Fiscal Year 2013, Pub. L. 112–239, which was approved Jan. 2, 2013. Such reference was struck out by Pub. L. 113–291, § 1071(e)(3)(A), see 2014 Amendment note below.

PRIOR PROVISIONS

A prior section 2275, act Aug. 10, 1956, ch. 1041, 70A Stat. 126, which related to award of contracts and review of decisions, was repealed by Pub. L. 103–160, div. A, title VIII, § 821(a)(1), Nov. 30, 1993, 107 Stat. 1704.

AMENDMENTS

2021—Subsec. (g)(2). Pub. L. 116–283, § 1846(i)(5), substituted ''section 4201'' for ''section 2430''.

Subsec. (g)(3). Pub. L. 116–283, § 1845(c)(3), substituted ''sections 4172(e)(7)'' for ''section 2366(e)(7)''.

2019—Subsec. (a). Pub. L. 116–92 substituted ''Under Secretary of Defense for Acquisition and Sustainment'' for ''Under Secretary of Defense for Acquisition, Technology, and Logistics'' in introductory provisions.

2014—Subsec. (d)(1). Pub. L. 113–291, § 1071(e)(3)(A), substituted ''before January 2, 2013'' for ''before the date of the enactment of the National Defense Authorization Act for Fiscal Year 2013''.

Subsec. (d)(2). Pub. L. 113–291, § 1071(e)(3)(B), substituted ''on or after January 2, 2013'' for ''on or after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2013''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective Dec. 31, 2021, of provisions of this section requiring submittal of annual reports to Congress, see section 1061 of Pub. L. 114–328, set out as a note under section 111 of this title.

§ 2276. Commercial space launch cooperation

(a) AUTHORITY.—The Secretary of Defense may take such actions as the Secretary considers to be in the best interest of the Federal Government to—

(1) maximize the use of the capacity of the space transportation infrastructure of the Department of Defense by the private sector in the United States;

(2) maximize the effectiveness and efficiency of the space transportation infrastructure of the Department of Defense;

(3) reduce the cost of services provided by the Department of Defense related to space transportation infrastructure at launch support facilities and space recovery support facilities;

(4) encourage commercial space activities by enabling investment by covered entities in the space transportation infrastructure of the Department of Defense; and

(5) foster cooperation between the Department of Defense and covered entities.

(b) AUTHORITY FOR CONTRACTS AND OTHER AGREEMENTS RELATING TO SPACE TRANSPORTATION INFRASTRUCTURE.—The Secretary of Defense—

(1) may enter into an agreement with a covered entity to provide the covered entity with support and services related to the space transportation infrastructure of the Department of Defense; and

(2) upon the request of such covered entity, may include such support and services in the space launch and reentry range support requirements of the Department of Defense if—

(A) the Secretary determines that the inclusion of such support and services in such requirements—

(i) is in the best interest of the Federal Government;

(ii) does not interfere with the requirements of the Department of Defense; and

(iii) does not compete with the commercial space activities of other covered entities, unless that competition is in the national security interests of the United States; and

(B) any commercial requirement included in the agreement has full non-Federal funding before the execution of the agreement.

(c) CONTRIBUTIONS.—

(1) IN GENERAL.—The Secretary of Defense may enter into an agreement with a covered entity on a cooperative and voluntary basis to accept contributions of funds, services, and equipment to carry out this section.

(2) USE OF CONTRIBUTIONS.—Any funds, services, or equipment accepted by the Secretary under this subsection—

(A) may be used only for the objectives specified in this section in accordance with terms of use set forth in the agreement entered into under this subsection; and

(B) shall be managed by the Secretary in accordance with regulations of the Department of Defense.

(3) REQUIREMENTS WITH RESPECT TO AGREEMENTS.—An agreement entered into with a covered entity under this subsection—

(A) shall address the terms of use, ownership, and disposition of the funds, services, or equipment contributed pursuant to the agreement; and

(B) shall include a provision that the covered entity will not recover the costs of its contribution through any other agreement with the United States.

(d) DEFENSE COOPERATION SPACE LAUNCH ACCOUNT.—

(1) ESTABLISHMENT.—There is established in the Treasury of the United States a special account to be known as the ''Defense Cooperation Space Launch Account''.

(2) CREDITING OF FUNDS.—Funds received by the Secretary of Defense under subsection (c) shall be credited to the Defense Cooperation Space Launch Account.

(3) USE OF FUNDS.—Funds deposited in the Defense Cooperation Space Launch Account under paragraph (2) are authorized to be appropriated and shall be available for obligation only to the extent provided in advance in an appropriation Act for costs incurred by the Department of Defense in carrying out subsection (b). Funds in the Account shall remain available until expended.

[(e) Repealed. Pub. L. 115–232, div. A, title VIII, § 813(a)(2), Aug. 13, 2018, 132 Stat. 1851.]

(f) REGULATIONS.—The Secretary of Defense shall prescribe regulations to carry out this section.

(g) DEFINITIONS.—In this section:

(1) COVERED ENTITY.—The term ''covered entity'' means a non-Federal entity that—

(A) is organized under the laws of the United States or of any jurisdiction within the United States; and

(B) is engaged in commercial space activities.

(2) LAUNCH SUPPORT FACILITIES.—The term ''launch support facilities'' has the meaning given the term in section 50501(7) of title 51.

(3) SPACE RECOVERY SUPPORT FACILITIES.—The term ''space recovery support facilities'' has the meaning given the term in section 50501(11) of title 51.

(4) SPACE TRANSPORTATION INFRASTRUCTURE.—The term ''space transportation infrastructure'' has the meaning given that term in section 50501(12) of title 51.

(Added Pub. L. 112–239, div. A, title IX, § 912(a), Jan. 2, 2013, 126 Stat. 1872; amended Pub. L. 115–232, div. A, title VIII, § 813(a)(2), Aug. 13, 2018, 132 Stat. 1851.)

PRIOR PROVISIONS

A prior section 2276, acts Aug. 10, 1956, ch. 1041, 70A Stat. 126; Sept. 7, 1962, Pub. L. 87–651, title I, § 131, 76 Stat. 514, which related to inspection and audit of plants and books of contractors and provided criminal penalties for violations, was repealed by Pub. L. 103–160, div. A, title VIII, § 821(a)(1), Nov. 30, 1993, 107 Stat. 1704.

AMENDMENTS

2018—Subsec. (e). Pub. L. 115–232 struck out subsec. (e). Text read as follows: ''Not later than January 31 of each year, the Secretary of Defense shall submit to the congressional defense committees a report on the funds, services, and equipment accepted and used by the Secretary under this section during the preceding fiscal year.''

[§ 2277. Repealed. Pub. L. 115–91, div. A, title X, § 1051(a)(13)(A), Dec. 12, 2017, 131 Stat. 1561]

Section, added Pub. L. 112–239, div. A, title IX, § 913(c)(1), Jan. 2, 2013, 126 Stat. 1875, related to report on foreign counter-space programs.

A prior section 2277, act Aug. 10, 1956, ch. 1041, 70A Stat. 127, related to availability of appropriations, prior to repeal by Pub. L. 103–160, div. A, title VIII, § 821(a)(1), Nov. 30, 1993, 107 Stat. 1704.

§ 2278. Notification of foreign interference of national security space

(a) NOTICE REQUIRED.—The Commander of the United States Space Command shall, with respect to each intentional attempt by a foreign actor to disrupt, degrade, or destroy a United States national security space capability, provide to the appropriate congressional committees—

(1) not later than 48 hours after the Commander determines that there is reason to believe such attempt occurred, notice of such attempt; and

(2) not later than 10 days after the date on which the Commander determines that there is reason to believe such attempt occurred, a notification described in subsection (b) with respect to such attempt.

(b) NOTIFICATION DESCRIPTION.—A notification described in this subsection is a written notification that includes—

(1) the name and a brief description of the national security space capability that was impacted by an attempt by a foreign actor to disrupt, degrade, or destroy a United States national security space capability;

(2) a description of such attempt, including the foreign actor, the date and time of such attempt, and any related capability outage and the mission impact of such outage; and

(3) any other information the Commander considers relevant.

(c) APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.—In this section, the term ''appropriate congressional committees'' means—

(1) the congressional defense committees; and

(2) with respect to a notice or notification related to an attempt by a foreign actor to disrupt, degrade, or destroy a United States national security space capability that is intelligence-related, the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate.

(Added Pub. L. 113–66, div. A, title IX, § 911(a), Dec. 26, 2013, 127 Stat. 823; amended Pub. L. 116–283, div. A, title XVI, § 1604(d), Jan. 1, 2021, 134 Stat. 4044.)

PRIOR PROVISIONS

A prior section 2278, act Aug. 10, 1956, ch. 1041, 70A Stat. 127, related to purchases of sample aircraft, prior to repeal by Pub. L. 103–160, div. A, title VIII, § 821(a)(1), Nov. 30, 1993, 107 Stat. 1704.

AMENDMENTS

2021—Subsec. (a). Pub. L. 116–283 substituted ''Space Command'' for ''Strategic Command''.

§ 2279. Foreign commercial satellite services and foreign launches

(a) PROHIBITION.—Except as provided in subsection (c), the Secretary of Defense may not enter into a contract for satellite services with a foreign entity if the Secretary reasonably believes that—

(1) the foreign entity is an entity in which the government of a covered foreign country has an ownership interest that enables that government to affect satellite operations;

(2) the foreign entity plans to or is expected to provide satellite services under the contract from a covered foreign country; or

(3) entering into such contract would create an unacceptable cybersecurity risk for the Department of Defense.

(b) LAUNCHES AND MANUFACTURERS.—

(1) LIMITATION.—In addition to the prohibition in subsection (a), and except as provided in paragraph (2) and in subsection (c), the Secretary may not enter into a contract for satellite services with any entity if the Secretary reasonably believes that such satellite services will be provided using satellites that will be—

(A) designed or manufactured in a covered foreign country, or by an entity controlled in whole or in part by, or acting on behalf of, the government of a covered foreign country; or

(B) launched using a launch vehicle that is designed or manufactured in a covered foreign country, or that is provided by the government of a covered foreign country or by an entity controlled in whole or in part by, or acting on behalf of, the government of a covered foreign country, regardless of the location of the launch (unless such location is in the United States).

(2) EXCEPTION.—The limitation in paragraph (1) shall not apply with respect to—

(A) a launch that occurs prior to December 31, 2022; or

(B) a contract or other agreement relating to launch services that, prior to the date that is 180 days after the date of the enactment of this subsection, was either fully paid for by the contractor or covered by a legally binding commitment of the contractor to pay for such services.

(3) LAUNCH VEHICLE DEFINED.—In this subsection, the term ''launch vehicle'' means a fully integrated space launch vehicle.

(c) NOTICE AND EXCEPTION.—The prohibitions in subsections (a) and (b) shall not apply to a contract if—

(1) the Secretary determines it is in the national security of the United States to enter into such contract; and

(2) not later than 7 days before entering into such contract, the Secretary, in consultation with the Director of National Intelligence, submits to the congressional defense committees a national security assessment for such contract that includes the following:

(A) The projected period of performance (including any period covered by options to extend the contract), the financial terms, and a description of the services to be provided under the contract.

(B) To the extent practicable, a description of the ownership interest that a covered foreign country has in the foreign entity providing satellite services to the Department of Defense under the contract and the launch or other satellite services that will be provided in a covered foreign country under the contract.

(C) A justification for entering into a contract with such foreign entity and a description of the actions necessary to eliminate the need to enter into such a contract with such foreign entity in the future.

(D) A risk assessment of entering into a contract with such foreign entity, including an assessment of mission assurance and security of information and a description of any measures necessary to mitigate risks found by such risk assessment.

(d) DELEGATION OF NOTICE AND EXCEPTION AUTHORITY.—The Secretary of Defense may only delegate the authority under subsection (c) to enter into a contract subject to the prohibition under subsection (a) or (b) to the Deputy Secretary of Defense, the Under Secretary of Defense for Policy, or the Under Secretary of Defense for Acquisition and Sustainment and such authority may not be further delegated.

(e) FORM OF ASSESSMENTS.—Each assessment under subsection (c) shall be submitted in unclassified form, but may include a classified annex.

(f) DEFINITIONS.—In this section:

(1) The term ''covered foreign country'' means any of the following:

(A) A country described in section 1261(c)(2) of the National Defense Authorization Act for Fiscal Year 2013 (Public Law 112–239; 126 Stat. 2019).

(B) The Russian Federation.

(2) The term ''cybersecurity risk'' means threats to and vulnerabilities of information or information systems and any related consequences caused by or resulting from unau-

thorized access, use, disclosure, degradation, disruption, modification, or destruction of such information or information systems, including such related consequences caused by an act of terrorism.

(Added Pub. L. 113–66, div. A, title XVI, § 1602(a)(1), Dec. 26, 2013, 127 Stat. 941; amended Pub. L. 115–91, div. A, title XVI, § 1603(a)–(d)(1), Dec. 12, 2017, 131 Stat. 1722, 1723; Pub. L. 115–232, div. A, title X, § 1081(a)(16), Aug. 13, 2018, 132 Stat. 1984; Pub. L. 116–92, div. A, title IX, § 902(30), Dec. 20, 2019, 133 Stat. 1546.)

REFERENCES IN TEXT

The date of the enactment of this subsection, referred to in subsec. (b)(2)(B), is the date of enactment of Pub. L. 115–91, which was approved Dec. 12, 2017.

Section 1261(c)(2) of the National Defense Authorization Act for Fiscal Year 2013, referred to in subsec. (f)(1)(A), is section 1261(c)(2) of Pub. L. 112–239, which is set out in a note under section 2778 of Title 22, Foreign Relations and Intercourse.

PRIOR PROVISIONS

A prior section 2279, act Aug. 10, 1956, ch. 1041, 70A Stat. 127, related to restrictions on alien employees of contractors as to access to plans and specifications, prior to repeal by Pub. L. 103–160, div. A, title VIII, § 821(a)(1), Nov. 30, 1993, 107 Stat. 1704.

AMENDMENTS

2019—Subsec. (d). Pub. L. 116–92 substituted ''Under Secretary of Defense for Acquisition and Sustainment'' for ''Under Secretary of Defense for Acquisition, Technology, and Logistics''.

2018—Subsec. (c). Pub. L. 115–232 substituted ''subsections (a) and (b)'' for ''subsection (a) and (b)'' in introductory provisions.

2017—Pub. L. 115–91, § 1603(d)(1)(A), substituted ''services and foreign launches'' for ''services'' in section catchline.

Subsec. (a). Pub. L. 115–91, § 1603(d)(1)(B), substituted ''subsection (c)'' for ''subsection (b)'' in introductory provisions.

Subsec. (a)(2). Pub. L. 115–91, § 1603(d)(1)(C), struck out ''launch or other'' before ''satellite services''.

Subsec. (a)(3). Pub. L. 115–91, § 1603(a), added par. (3).

Subsec. (b). Pub. L. 115–91, § 1603(b)(2), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 115–91, § 1603(b)(1), (d)(1)(D), redesignated subsec. (b) as (c) and substituted ''prohibitions in subsection (a) and (b)'' for ''prohibition in subsection (a)'' in introductory provisions. Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 115–91, § 1603(b)(1), (d)(1)(B), (E), redesignated subsec. (c) as (d) and substituted ''subsection (c)'' for ''subsection (b)'' and ''prohibition under subsection (a) or (b)'' for ''prohibition under subsection (a)''. Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 115–91, § 1603(b)(1), (d)(1)(B), redesignated subsec. (d) as (e) and substituted ''subsection (c)'' for ''subsection (b)''. Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 115–91, § 1603(b)(1), (c), redesignated subsec. (e) as (f) and amended it generally. Prior to amendment, text read as follows: ''In this section, the term 'covered foreign country' means a country described in section 1261(c)(2) of the National Defense Authorization Act for Fiscal Year 2013 (Public Law 112–239; 126 Stat. 2019).''

EFFECTIVE DATE OF 2017 AMENDMENT

Pub. L. 115–91, div. A, title XVI, § 1603(e), Dec. 12, 2017, 131 Stat. 1723, provided that: ''Except as otherwise specifically provided, the amendments made by this section [amending this section] shall apply with respect to contracts for satellite services awarded by the Secretary of Defense on or after the date of the enactment of this Act [Dec. 12, 2017].''

[§ 2279a. Repealed. Pub. L. 115–91, div. A, title XVI, § 1601(b)(2)(A), Dec. 12, 2017, 131 Stat. 1719]

Section, added Pub. L. 114–92, div. A, title XVI, § 1602(a), Nov. 25, 2015, 129 Stat. 1096, related to principal advisor on space control.

TERMINATION OF CERTAIN POSITIONS AND ENTITIES

Pub. L. 115–91, div. A, title XVI, § 1601(b)(1), Dec. 12, 2017, 131 Stat. 1719, provided that:

''(1) IN GENERAL.—Effective 30 days after the date of the enactment of this Act [Dec. 12, 2017]—

''(A) the position, and the office of, the Principal Department of Defense Space Advisor (previously known as the Department of Defense Executive Agent for Space) shall be terminated;

''(B) the duties, responsibilities, and personnel of such office specified in subparagraph (A) shall be transferred to a single official selected by the Deputy Secretary of Defense, without delegation, except the Deputy Secretary may not select the Secretary of the Air Force nor the Under Secretary of Defense for Intelligence [now Under Secretary of Defense for Intelligence and Security];

''(C) any reference in Federal law, regulations, guidance, instructions, or other documents of the Federal Government to the Principal Department of Defense Space Advisor or the Department of Defense Executive Agent for Space shall be deemed to be a reference to the official selected by the Deputy Secretary under subparagraph (B);

''(D) the position, and the office of, the Deputy Chief of Staff of the Air Force for Space Operations shall be terminated; and

''(E) the Defense Space Council shall be terminated.''

§ 2279b. Council on Oversight of the Department of Defense Positioning, Navigation, and Timing Enterprise

(a) ESTABLISHMENT.—There is within the Department of Defense a council to be known as the ''Council on Oversight of the Department of Defense Positioning, Navigation, and Timing Enterprise'' (in this section referred to as the ''Council'').

(b) MEMBERSHIP.—The members of the Council shall be as follows:

(1) The Under Secretary of Defense for Policy.

(2) The Under Secretary of Defense for Research and Engineering.

(3) The Under Secretary of Defense for Acquisition and Sustainment.

(4) The Vice Chairman of the Joint Chiefs of Staff.

(5) The Commander of the United States Strategic Command.

(6) The Commander of the United States Northern Command.

(7) The Commander of the United States Space Command.

(8) The Commander of United States Cyber Command.

(9) The Director of the National Security Agency.

(10) The Chief Information Officer of the Department of Defense.

(11)[1] The Secretaries of the military departments, who shall be ex officio members.

[1] So in original. There are two pars. (11).

(11)[1] Such other officers of the Department of Defense as the Secretary may designate.

(c) CO-CHAIR.—The Council shall be co-chaired by the Under Secretary of Defense for Research and Engineering, the Under Secretary of Defense for Acquisition and Sustainment, and the Vice Chairman of the Joint Chiefs of Staff.

(d) RESPONSIBILITIES.—(1) The Council shall be responsible for oversight of the Department of Defense positioning, navigation, and timing enterprise, including positioning, navigation, and timing services provided to civil, commercial, scientific, and international users.

(2) In carrying out the responsibility for oversight of the Department of Defense positioning, navigation, and timing enterprise as specified in paragraph (1), the Council shall be responsible for the following:

(A) Oversight of performance assessments (including interoperability).

(B) Vulnerability identification and mitigation.

(C) Architecture development.

(D) Resource prioritization.

(E) Such other responsibilities as the Secretary of Defense shall specify for purposes of this section.

(e) ANNUAL REPORTS.—At the same time each year that the budget of the President is submitted to Congress under section 1105(a) of title 31, the Council shall submit to the congressional defense committees a report on the activities of the Council. Each report shall include the following:

(1) A description and assessment of the activities of the Council during the previous fiscal year.

(2) A description of the activities proposed to be undertaken by the Council during the period covered by the current future-years defense program under section 221 of this title.

(3) Any changes to the requirements of the Department of Defense positioning, navigation, and timing enterprise made during the previous year, along with an explanation for why the changes were made and a description of the effects of the changes to the capability of such enterprise.

(4) A breakdown of each program element in such budget that relates to the Department of Defense positioning, navigation, and timing enterprise, including how such program element relates to the operation and sustainment, research and development, procurement, or other activity of such enterprise.

(f) BUDGET AND FUNDING MATTERS.—(1) Not later than 30 days after the President submits to Congress the budget for a fiscal year under section 1105(a) of title 31, the Commander of the United States Space Command shall submit to the Chairman of the Joint Chiefs of Staff an assessment of—

(A) whether such budget allows the Federal Government to meet the required capabilities of the Department of Defense positioning, navigation, and timing enterprise during the fiscal year covered by the budget and the four subsequent fiscal years; and

(B) if the Commander determines that such budget does not allow the Federal Government to meet such required capabilities, a description of the steps being taken to meet such required capabilities.

(2) Not later than 30 days after the date on which the Chairman of the Joint Chiefs of Staff receives the assessment of the Commander of the United States Space Command under paragraph (1), the Chairman shall submit to the congressional defense committees—

(A) such assessment as it was submitted to the Chairman; and

(B) any comments of the Chairman.

(3) If a House of Congress adopts a bill authorizing or appropriating funds for the activities of the Department of Defense positioning, navigation, and timing enterprise that, as determined by the Council, provides insufficient funds for such activities for the period covered by such bill, the Council shall notify the congressional defense committees of the determination.

(g) NOTIFICATION OF ANOMALIES.—(1) The Secretary of Defense shall submit to the congressional defense committees written notification of an anomaly in the Department of Defense positioning, navigation, and timing enterprise that is reported to the Secretary or the Council by not later than 14 days after the date on which the Secretary or the Council learns of such anomaly, as the case may be.

(2) In this subsection, the term ''anomaly'' means any unplanned, irregular, or abnormal event, whether unexplained or caused intentionally or unintentionally by a person or a system.

(h) TERMINATION.—The Council shall terminate on the date that is 10 years after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2016.

(Added Pub. L. 114–92, div. A, title XVI, § 1603(a), Nov. 25, 2015, 129 Stat. 1096; amended Pub. L. 116–92, div. A, title IX, § 902(31), Dec. 20, 2019, 133 Stat. 1546; Pub. L. 116–283, div. A, title XVI, § 1604(b), Jan. 1, 2021, 134 Stat. 4043.)

REFERENCES IN TEXT

The date of the enactment of the National Defense Authorization Act for Fiscal Year 2016, referred to in subsec. (h), is the date of enactment of Pub. L. 114–92, which was approved Nov. 25, 2015.

AMENDMENTS

2021—Subsec. (b)(7) to (11). Pub. L. 116–283, § 1604(b)(1), added par. (7) and redesignated former pars. (7) to (10) as (8) to (11) (relating to the Secretaries of the military departments), respectively.

Subsec. (f)(1), (2). Pub. L. 116–283, § 1604(b)(2), substituted ''Space Command'' for ''Strategic Command'' in introductory provisions.

2019—Subsec. (b)(2) to (11). Pub. L. 116–92, § 902(31)(A), added pars. (2) and (3), redesignated former pars. (3) to (10) as (4) to (11), respectively, and struck out former par. (2) which read as follows: ''The Under Secretary of Defense for Acquisition, Technology, and Logistics.''

Subsec. (c). Pub. L. 116–92, § 902(31)(B), substituted ''the Under Secretary of Defense for Research and Engineering, the Under Secretary of Defense for Acquisition and Sustainment,'' for ''the Under Secretary of Defense for Acquisition, Technology, and Logistics''.

[§ 2279c. Renumbered § 9081]

PRIOR PROVISIONS

A prior section 2279c was renumbered section 2279d of this title.

§ 2279d. Limitation on construction on United States territory of satellite positioning ground monitoring stations of certain foreign governments

(a) LIMITATION.—

(1) CERTIFICATION.—

(A) IN GENERAL.—The President may not authorize or permit the construction of a global navigation satellite system ground monitoring station directly or indirectly controlled by a foreign government (including a ground monitoring station owned, operated, or controlled on behalf of a foreign government) in the territory of the United States unless the Secretary of Defense and the Director of National Intelligence jointly certify to the appropriate congressional committees that such ground monitoring station will not possess the capability or potential to be used for the purpose of gathering intelligence in the United States or improving any foreign weapon system.

(B) FORM.—Each certification under subparagraph (A) shall be submitted in unclassified form, but may include a classified annex.

(2) NATIONAL SECURITY WAIVER.—The Secretary of Defense and the Director of National Intelligence may jointly waive the certification requirement in paragraph (1) for a ground monitoring station if—

(A) the Secretary and the Director jointly determine that the waiver is in the vital interests of the national security of the United States; and

(B) the Secretary and the Director ensure that—

(i) all data collected or transmitted from ground monitoring stations covered by the waiver are not encrypted;

(ii) all persons involved in the construction, operation, and maintenance of such ground monitoring stations are United States persons;

(iii) such ground monitoring stations are not located in geographic proximity to sensitive United States national security sites;

(iv) the United States approves all equipment to be located at such ground monitoring stations;

(v) appropriate actions are taken to ensure that any such ground monitoring stations do not pose a cyber espionage or other threat, including intelligence or counterintelligence, to the national security of the United States; and

(vi) any improvements to such ground monitoring stations do not reduce or compete with the advantages of Global Positioning System technology for users.

(3) WAIVER REPORT.—For each waiver under paragraph (2), the Secretary of Defense and the Director of National Intelligence, in consultation with the Secretary of State, shall jointly submit to the appropriate congressional committees a report containing—

(A) the reason why it is not possible to provide the certification under paragraph (1) for the ground monitoring stations covered by such waiver;

(B) an assessment of the impact of the exercise of authority under paragraph (2) with respect to such ground monitoring stations on the national security of the United States;

(C) a description of the means to be used to mitigate any such impact to the United States for the duration that such ground monitoring stations are operated in the territory of the United States; and

(D) any other information in connection with the waiver that the Secretary of Defense and the Director of National Intelligence, in consultation with the Secretary of State, consider appropriate.

(4) NOTICE.—Not later than 30 days before the exercise of the authority to waive under paragraph (2) the certification requirement under paragraph (1) for a ground monitoring station, the Secretary of Defense and the Director of National Intelligence shall jointly provide to the appropriate congressional committees notice of the exercise of such authority and the report required under paragraph (3) with respect to such ground monitoring station.

(5) APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.—In this subsection, the term ''appropriate congressional committees'' means—

(A) the Committee on Armed Services, the Committee on Foreign Relations, and the Select Committee on Intelligence of the Senate; and

(B) the Committee on Armed Services, the committee on Foreign Affairs, and the Permanent Select Committee on Intelligence of the House of Representatives.

(b) EXCEPTION.—The limitation in subsection (a) shall not apply to foreign governments that are allies of the United States.

(c) SUNSET.—The limitation in subsection (a) shall terminate on December 31, 2023.

(Added and amended Pub. L. 115–91, div. A, title XVI, § 1602, Dec. 12, 2017, 131 Stat. 1721, § 2279c; renumbered § 2279d, Pub. L. 115–232, div. A, title X, § 1081(a)(18)(A), Aug. 13, 2018, 132 Stat. 1984; Pub. L. 116–92, div. A, title XVII, § 1731(a)(35), Dec. 20, 2019, 133 Stat. 1814.)

CODIFICATION

Section 1602(b) of Pub. L. 113–66, formerly set out as a note under section 2281 of this title, which was transferred to and inserted as the first subsection of this section, redesignated as subsec. (a), and amended by Pub. L. 115–91, § 1602(b), was based on Pub. L. 113–66, div. A, title XVI, § 1602(b), Dec. 26, 2013, 127 Stat. 943.

AMENDMENTS

2019—Pub. L. 116–92 struck out period at end of section catchline.

2018—Pub. L. 115–232 renumbered section 2279c of this title as this section.

2017—Subsec. (a). Pub. L. 115–91, § 1602(b), transferred section 1602(b) of Pub. L. 113–66 to this section, inserted it as the first subsection of this section, designated it as subsec. (a), substituted ''Limitation'' for ''Limitation on Construction on United States Territory of Satellite Positioning Ground Monitoring Stations of Foreign Governments'' in heading, and struck out par. (6). Prior to amendment, text of par. (6) read as follows: ''Effective on the date that is five years after the date of the enactment of this Act, paragraphs (1) through (5) are repealed.'' See Codification note above.

CHAPTER 136—PROVISIONS RELATING TO SPECIFIC PROGRAMS

Sec.
2281. Global Positioning System.
[2282. Repealed.]
2283. Department of Defense small business strategy.
2284. Explosive Ordnance Disposal Defense Program.

AMENDMENTS

2018—Pub. L. 115–232, div. A, title III, §311(b), title VIII, §851(c), Aug. 13, 2018, 132 Stat. 1709, 1884, added items 2283 and 2284.

2016—Pub. L. 114–328, div. A, title XII, §1241(d)(6), Dec. 23, 2016, 130 Stat. 2505, struck out item 2282 ''Authority to build the capacity of foreign security forces''.

2014—Pub. L. 113–291, div. A, title XII, §1205(a)(2), Dec. 19, 2014, 128 Stat. 3536, added item 2282.

2011—Pub. L. 112–81, div. A, title X, §1061(13)(B), Dec. 31, 2011, 125 Stat. 1583, struck out item 2282 ''B–2 bomber: annual report''.

2000—Pub. L. 106–398, §1 [[div. A], title I, §131(a)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–29, added item 2282.

§ 2281. Global Positioning System

(a) SUSTAINMENT AND OPERATION FOR MILITARY PURPOSES.—The Secretary of Defense shall provide for the sustainment of the capabilities of the Global Positioning System (hereinafter in this section referred to as the ''GPS''), and the operation of basic GPS services, that are beneficial for the national security interests of the United States. In doing so, the Secretary shall—

(1) develop appropriate measures for preventing hostile use of the GPS so as to make it unnecessary for the Secretary to use the selective availability feature of the system continuously while not hindering the use of the GPS by the United States and its allies for military purposes; and

(2) ensure that United States armed forces have the capability to use the GPS effectively despite hostile attempts to prevent the use of the system by such forces.

(b) SUSTAINMENT AND OPERATION FOR CIVILIAN PURPOSES.—The Secretary of Defense shall provide for the sustainment and operation of the GPS Standard Positioning Service for peaceful civil, commercial, and scientific uses on a continuous worldwide basis free of direct user fees. In doing so, the Secretary—

(1) shall provide for the sustainment and operation of the GPS Standard Positioning Service in order to meet the performance requirements of the Federal Radionavigation Plan prepared jointly by the Secretary of Defense and the Secretary of Transportation pursuant to subsection (c);

(2) shall coordinate with the Secretary of Transportation regarding the development and implementation by the Government of augmentations to the basic GPS that achieve or enhance uses of the system in support of transportation;

(3) shall coordinate with the Secretary of Commerce, the United States Trade Representative, and other appropriate officials to facilitate the development of new and expanded civil and commercial uses for the GPS;

(4) shall develop measures for preventing hostile use of the GPS in a particular area without hindering peaceful civil use of the system elsewhere; and

(5) may not agree to any restriction on the Global Positioning System proposed by the head of a department or agency of the United States outside the Department of Defense in the exercise of that official's regulatory authority that would adversely affect the military potential of the Global Positioning System.

(c) FEDERAL RADIONAVIGATION PLAN.—The Secretary of Defense and the Secretary of Transportation shall jointly prepare the Federal Radionavigation Plan. The plan shall be revised and updated not less often than every two years. The plan shall be prepared in accordance with the requirements applicable to such plan as first prepared pursuant to section 507 of the International Maritime Satellite Telecommunications Act[1] (47 U.S.C. 756). The plan, and any amendment to the plan, shall be published in the Federal Register.

(d) DEFINITIONS.—In this section:

(1) The term ''basic GPS services'' means the following components of the Global Positioning System that are operated and maintained by the Department of Defense:

(A) The constellation of satellites.

(B) The navigation payloads that produce the Global Positioning System signals.

(C) The ground stations, data links, and associated command and control facilities.

(2) The term ''GPS Standard Positioning Service'' means the civil and commercial service provided by the basic Global Positioning System as defined in the 1996 Federal Radionavigation Plan (published jointly by the Secretary of Defense and the Secretary of Transportation in July 1997).

(Added Pub. L. 105–85, div. A, title X, §1074(d)(1), Nov. 18, 1997, 111 Stat. 1909; amended Pub. L. 106–65, div. A, title X, §1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 108–136, div. A, title IX, §914, Nov. 24, 2003, 117 Stat. 1567; Pub. L. 111–84, div. A, title X, §1032, Oct. 28, 2009, 123 Stat. 2448; Pub. L. 112–239, div. A, title X, §1064, Jan. 2, 2013, 126 Stat. 1941.)

REFERENCES IN TEXT

Section 507 of the International Maritime Satellite Telecommunications Act, referred to in subsec. (c), is section 507 of Pub. L. 87–624 which was classified to section 756 of Title 47, Telecommunications, prior to repeal by Pub. L. 103–414, title III, §304(b)(5), Oct. 25, 1994, 108 Stat. 4298.

AMENDMENTS

2013—Subsecs. (d), (e). Pub. L. 112–239 redesignated subsec. (e) as (d) and struck out former subsec. (d) which related to biennial reports on the Global Positioning System.

2009—Subsec. (d)(1). Pub. L. 111–84, §1032(a)(1), in introductory provisions, substituted ''the Deputy Secretary of Defense and the Deputy Secretary of Transportation, in their capacity as co-chairs of the National Executive Committee for Space-Based Positioning, Navigation, and Timing,'' for ''the Secretary of Defense'' and ''the Committees on Armed Services and Commerce, Science, and Transportation of the Senate and the Committees on Armed Services, Energy and

[1] See References in Text note below.

Commerce, and Transportation and Infrastructure of the House of Representatives'' for ''the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives''.

Subsec. (d)(1)(B)(ii). Pub. L. 111–84, § 1032(b), inserted ''validated'' before ''performance requirements'' and ''in accordance with Office of Management and Budget Circular A–109'' after ''Plan''.

Subsec. (d)(2). Pub. L. 111–84, § 1032(a)(2), added par. (2) and struck out former par. (2), which read as follows: ''In preparing the parts of each such report required under subparagraphs (C), (D), (E), (F), and (G) of paragraph (1), the Secretary of Defense shall consult with the Secretary of State, the Secretary of Commerce, and the Secretary of Transportation.''

2003—Subsec. (d)(1)(C). Pub. L. 108–136, § 914(a)(1), (2), redesignated subpar. (D) as (C) and struck out former subpar. (C) which read as follows: ''The most recent determination by the President regarding continued use of the selective availability feature of the system and the expected date of any change or elimination of the use of that feature.''

Subsec. (d)(1)(D). Pub. L. 108–136, § 914(a)(3), redesignated subpar. (E) as (D) and substituted ''Progress and challenges in'' for ''Any progress made toward''. Former subpar. (D) redesignated (C).

Subsec. (d)(1)(E). Pub. L. 108–136, § 914(a)(4), added subpar. (E). Former subpar. (E) redesignated (D).

Subsec. (d)(1)(F). Pub. L. 108–136, § 914(a)(4), added subpar. (F) and struck out former subpar. (F) which read as follows: ''Any progress made toward protecting GPS from disruption and interference.''

Subsec. (d)(2). Pub. L. 108–136, § 914(b), inserted ''(C),'' after ''under subparagraphs''.

1999—Subsec. (d)(1). Pub. L. 106–65 substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security'' in introductory provisions.

RESILIENT AND SURVIVABLE POSITIONING, NAVIGATION, AND TIMING CAPABILITIES

Pub. L. 116–283, div. A, title XVI, § 1611, Jan. 1, 2021, 134 Stat. 4048, provided that:

''(a) IN GENERAL.—Not later than two years after the date of the enactment of this Act [Jan. 1, 2021], consistent with the timescale applicable to joint urgent operational needs statements, the Secretary of Defense shall—

''(1) prioritize and rank order the mission elements, platforms, and weapons systems most critical for the operational plans of the combatant commands;

''(2) mature, test, and produce for such prioritized mission elements sufficient equipment—

''(A) to generate resilient and survivable alternative positioning, navigation, and timing signals; and

''(B) to process resilient survivable data provided by signals of opportunity and on-board sensor systems; and

''(3) integrate and deploy such equipment into the prioritized operational systems, platforms, and weapons systems.

''(b) PLAN.—

''(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a plan to commence carrying out subsection (a) in fiscal year 2021.

''(2) REPROGRAMMING AND BUDGET PROPOSALS.—The plan submitted under paragraph (1) may include any reprogramming or supplemental budget request the Secretary considers necessary to carry out subsection (a).

''(c) COORDINATION.—In carrying out this section, the Secretary shall consult with the National Security Council, the Secretary of Homeland Security, the Secretary of Transportation, and the head of any other relevant Federal department or agency to enable civilian and commercial adoption of technologies and capabilities for resilient and survivable alternative positioning, navigation, and timing capabilities to complement the global positioning system.''

PROHIBITION ON AVAILABILITY OF FUNDS FOR CERTAIN PURPOSES RELATING TO THE GLOBAL POSITIONING SYSTEM

Pub. L. 116–283, div. A, title XVI, § 1661, Jan. 1, 2021, 134 Stat. 4073, provided that:

''(a) PROHIBITION.—Except as provided by subsection (b), none of the funds authorized to be appropriated by this Act or otherwise made available for fiscal year 2021 or any subsequent fiscal year for the Department of Defense may be obligated or expended to retrofit any Global Positioning System device or system, or network that uses the Global Positioning System, in order to mitigate harmful interference from commercial terrestrial operations using the 1526–1536 megahertz band, the 1627.5–1637.5 megahertz band, or the 1646.5–1656.5 megahertz band.

''(b) ACTIONS NOT PROHIBITED.—The prohibition in subsection (a) shall not apply to any action taken by the Secretary of Defense relating to—

''(1) conducting technical or information exchanges with the entity that operates the commercial terrestrial operations in the megahertz bands specified in such subsection;

''(2) seeking compensation for harmful interference from such entity; or

''(3) Global Positioning System receiver upgrades needed to address other resiliency requirements.''

LIMITATION ON AWARDING CONTRACTS TO ENTITIES OPERATING COMMERCIAL TERRESTRIAL COMMUNICATION NETWORKS THAT CAUSE HARMFUL INTERFERENCE WITH THE GLOBAL POSITIONING SYSTEM

Pub. L. 116–283, div. A, title XVI, § 1662, Jan. 1, 2021, 134 Stat. 4074, provided that: ''The Secretary of Defense may not enter into a contract, or extend or renew a contract, with an entity that engages in commercial terrestrial operations using the 1525–1559 megahertz band or the 1626.5–1660.5 megahertz band unless the Secretary has certified to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] that such operations do not cause harmful interference to a Global Positioning System device of the Department of Defense.''

PROTOTYPE PROGRAM FOR MULTI-GLOBAL NAVIGATION SATELLITE SYSTEM RECEIVER DEVELOPMENT

Pub. L. 116–92, div. A, title XVI, § 1607, Dec. 20, 2019, 133 Stat. 1724, provided that:

''(a) PROTOTYPE MULTI-GNSS PROGRAM.—The Secretary of the Air Force shall carry out a program to prototype an M-code based, multi-global navigation satellite system receiver that is capable of receiving covered signals to increase the resilience and capability of military position, navigation, and timing equipment against threats to the Global Positioning System and to deter the likelihood of attack on the worldwide Global Positioning System by reducing the benefits of such an attack.

''(b) ELEMENTS.—In carrying out the program under subsection (a), the Secretary shall—

''(1) with respect to each covered signal that could be received by the prototype receiver under such program, conduct an assessment of the relative benefits and risks of using that signal, including with respect to any existing or needed monitoring infrastructure that would alert users of the Department of Defense of potentially corrupted signal information, and the cyber risks and challenges of incorporating such signals into a properly designed receiver;

''(2) ensure that monitoring systems are able to include any monitoring network of the United States or allies of the United States;

''(3) conduct an assessment of the benefits and risks, including with respect to the compatibility of

non-United States global navigation satellite system signals with existing position, navigation, and timing equipment of the United States, and the extent to which the capability to receive such signals would impact current receiver or antenna design; and

''(4) conduct an assessment of the desirability of establishing a program for the development and deployment of the receiver system described in subsection (a) in a manner that—

''(A) is a cooperative effort, coordinated with the Secretary of State, between the United States and the allies of the United States that may also have interest in funding a multi-global navigation satellite system and M-code program; and

''(B) the Secretary of Defense, in coordination with the Secretary of State, ensures that the United States has access to sufficient insight into trusted signals of allied systems to assure potential reliance by the United States on such signals.

''(c) BRIEFING.—Not later than 120 days after the date of the enactment of this Act [Dec. 20, 2019], the Secretary, in coordination with the Air Force GPS User Equipment Program office, shall provide to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a briefing on a plan to carry out the program under subsection (a) that includes—

''(1) the estimated cost, including total cost and out-year funding requirements for a program to develop and deploy the receiver system described in subsection (a);

''(2) the schedule for such program;

''(3) a plan for how the results of the program could be incorporated into future blocks of the Global Positioning System military user equipment program; and

''(4) the recommendations and analysis contained in the study sponsored by the Department of Defense conducted by the MITRE Corporation on the risks, benefits, and approaches to adding multi-global navigation satellite system capabilities to military user equipment.

''(d) REPORT.—Not later than 150 days after the date of the enactment of this Act [Dec. 20, 2019], the Secretary of Defense shall submit to the congressional defense committees a report containing—

''(1) an explanation of how the Secretary intends to comply with section 1609 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232; 10 U.S.C. 2281 note);

''(2) an outline of any potential cooperative efforts acting in accordance with the North Atlantic Treaty Organization, the European Union, or Japan that would support such compliance;

''(3) an assessment of the potential to host, or incorporate through software-defined payloads, Global Positioning System M-code functionality onto allied global navigation satellite system systems; and

''(4) an assessment of new or enhanced monitoring capabilities that would be needed to incorporate global navigation satellite system functionality into weapon systems of the Department.

''(e) LIMITATION.—Of the funds authorized to be appropriated by this Act or otherwise made available for fiscal year 2020 for increment 2 of the acquisition of military Global Positioning System user equipment terminals, not more than 90 percent may be obligated or expended until the date on which the briefing has been provided under subsection (c) and the report has been submitted under subsection (d).

''(f) WAIVER AUTHORITY FOR TRUSTED SIGNALS CAPABILITIES.—[Amended section 1609 of Pub. L. 115–232, set out as a note below.]

''(g) DEFINITIONS.—In this section:

''(1) The term 'allied systems' means—

''(A) the Galileo system of the European Union;

''(B) the QZSS system of Japan; and

''(C) upon designation by the Secretary of Defense, in consultation with the Director of National Intelligence—

''(i) the NAVIC system of India; and

''(ii) any similarly associated wide area augmentation systems.

''(2) The term 'covered signals'—

''(A) means global navigation satellite system signals from—

''(i) allied systems; and

''(ii) non-allied systems; and

''(B) includes both encrypted signals and open signals.

''(3) The term 'encrypted signals' means global navigation satellite system signals that incorporate encryption or other internal methods to authenticate signal information.

''(4) The term 'M-code' means, with respect to global navigation satellite system signals, military code that provides enhanced positioning, navigation, and timing capabilities and improved resistance to existing and emerging threats, such as jamming.

''(5) The term 'non-allied systems' means—

''(A) the Russian GLONASS system; and

''(B) the Chinese Beidou system.

''(6) The term 'open signals' means global navigation satellite system [signals] that do not include encryption or other internal methods to authenticate signal information.''

CAPACITY TO RECEIVE ALLIED AND NON-ALLIED SIGNALS

Pub. L. 115–232, div. A, title XVI, §1609, Aug. 13, 2018, 132 Stat. 2110, as amended by Pub. L. 116–92, div. A, title XVI, §1607(f), Dec. 20, 2019, 133 Stat. 1726, provided that:

''(a) CAPABILITY FOR TRUSTED SIGNALS.—

''(1) REQUIREMENT.—Except as provided by paragraph (2), subject to appropriate mitigation efforts, the Secretary of the Air Force shall ensure that military Global Positioning System user equipment terminals have the capability to receive trusted signals from the Galileo satellites of the European Union and the QZSS satellites of Japan, beginning with increment 2 of the acquisition of such terminals.

''(2) WAIVER.—The Secretary of Defense may waive, on a case-by-case basis, the requirement under paragraph (1) for military Global Positioning System user equipment terminals to have the capability described in such paragraph if the Secretary submits to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report containing—

''(A) the rationale for why the Secretary could not integrate such capability beginning with increment 2 of the acquisition of such terminals; and

''(B) a plan, including a timeline, to incorporate the capability to add multi-Global Navigation Satellite System signals to provide substantive military utility in future increments of such terminals.

''(3) LIMITATION ON DELEGATION.—The Secretary of Defense may not delegate the authority under paragraph (2) to make a waiver below the Deputy Secretary of Defense.

''(b) CAPABILITY FOR OTHER SIGNALS.—The Secretary of the Air Force shall ensure that military Global Positioning System user equipment terminals having the capability to receive non-allied positioning, navigation, and timing signals, beginning with increment 2 of the acquisition of such terminals, if the Secretary of Defense, in consultation with the Commander of the United States Strategic Command, determines that—

''(1) the benefits of receiving such signals outweigh the risks; or

''(2) such risks can be appropriately mitigated.

''(c) ENGAGEMENT.—The Secretary of Defense and the Secretary of State shall jointly engage with relevant allies of the United States to—

''(1) enable military Global Positioning System user equipment terminals to receive the positioning, navigation, and timing signals of such allies; and

''(2) negotiate as appropriate other potential agreements relating to the enhancement of positioning, navigation, and timing.''

DESIGNATION OF COMPONENT OF DEPARTMENT OF DEFENSE RESPONSIBLE FOR COORDINATION OF MODERNIZATION EFFORTS RELATING TO MILITARY-CODE CAPABLE GPS RECEIVER CARDS

Pub. L. 115–232, div. A, title XVI, §1610, Aug. 13, 2018, 132 Stat. 2111, as amended by Pub. L. 116–92, div. A, title XVI, §1602, Dec. 20, 2019, 133 Stat. 1722, provided that:

''(a) DESIGNATION.—Not later than 30 days after the date of the enactment of this Act [Aug. 13, 2018], the Secretary of Defense, in coordination with the Secretaries of the military departments and the heads of Defense Agencies the Secretary determines appropriate, shall designate a component of the Office of the Secretary of Defense to be responsible for coordinating common solutions for the M-code modernization efforts among the military departments, Defense Agencies, and other appropriate elements of the Department of Defense.

''(b) ROLES AND RESPONSIBILITIES.—The roles and responsibilities of the component selected under subsection (a) shall include the following:

''(1) Identify the elements of the Department of Defense and the programs of the Department that require M-code capable receiver cards and determine—

''(A) the number of total receiver cards required by the Department, including the number required for each such element and program and the military departments;

''(B) the timeline, by fiscal year, for each program of the Department conducting M-code modernization efforts; and

''(C) the projected cost for each such program.

''(2) Systematically collect integration test data, lessons learned, and design solutions, and share such information with other elements of the Department, including with respect to each program of the Department that requires M-code capable receiver cards.

''(3) Identify ways the Department can prevent duplication in conducting M-code modernization efforts, and identify, to the extent practicable, potential cost savings that could be realized by addressing such duplication.

''(4) Coordinate the integration, testing, and procurement of M-code capable receiver cards to ensure that the Department maximizes the buying power of the Department, reduces duplication, and saves resources, where possible.

''(c) SUPPORT.—The Secretary of Defense shall ensure the military departments, the Defense Agencies, and other elements of the Department of Defense provide the component selected under subsection (a) with the appropriate support and resources needed to perform the roles and responsibilities under subsection (b), and shall clarify the roles of the Chief Information Officer and the Council on Oversight of the Department of Defense Positioning, Navigation, and Timing Enterprise with respect to M-code modernization efforts.

''(d) REPORTS.—Not later than March 15, 2019, and annually thereafter through 2021, the Secretary of Defense shall provide to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on M-code modernization efforts. Each report shall include, with respect to the period covered by the report, the following:

''(1) The projected cost and schedule, by fiscal year, for the Department to acquire M-code capable receiver cards.

''(2) The programs of the Department conducting M-code modernization efforts.

''(3) The number of M-code capable receiver cards procured by the Department, the number of such receiver cards yet to be procured, and the percentage of the M-code modernization efforts completed by each program identified under paragraph (2).

''(e) DEFINITIONS.—In this section:

''(1) The term 'M-code capable receiver card' means a Global Positioning System receiver card that is capable of receiving military code that provides enhanced positioning, navigation, and timing capabilities and improved resistance to existing and emerging threats, such as jamming.

''(2) The term 'M-code modernization efforts' means the development, integration, testing, and procurement programs of the Department of Defense relating to developing M-code capable receiver cards.''

QUARTERLY REPORTS ON GLOBAL POSITIONING SYSTEM III SPACE SEGMENT, GLOBAL POSITIONING SYSTEM OPERATIONAL CONTROL SEGMENT, AND MILITARY GLOBAL POSITIONING SYSTEM USER EQUIPMENT ACQUISITION PROGRAMS

Pub. L. 114–92, div. A, title XVI, §1621, Nov. 25, 2015, 129 Stat. 1109, provided that:

''(a) REPORTS REQUIRED.—Not later than 90 days after the date of the enactment of this Act [Nov. 25, 2015], and every 90 days thereafter, the Secretary of the Air Force shall submit to the Comptroller General of the United States a report and supporting documentation on the Global Positioning System III space segment, the Global Positioning System operational control segment, and the Military Global Positioning System user equipment acquisition programs.

''(b) ELEMENTS.—Each report required by subsection (a) shall include, with respect to an acquisition program specified in that subsection, the following:

''(1) A statement of the status of the program with respect to cost, schedule, and performance.

''(2) A description of any changes to the requirements of the program.

''(3) A description of any technical risks impacting the cost, schedule, and performance of the program.

''(4) An assessment of how such risks are to be addressed and the costs associated with such risks.

''(5) An assessment of the extent to which the segments of the program are synchronized.

''(c) BRIEFINGS BY COMPTROLLER GENERAL.—The Comptroller General shall provide to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a briefing on a report submitted under subsection (a)—

''(1) in the case of the first such report, not later than 30 days after receiving that report; and

''(2) as the Comptroller General considers appropriate thereafter.

''(d) TERMINATION.—The requirement under subsection (a) shall terminate with respect to an acquisition program specified in that subsection on the date on which that program reaches initial operational capability.''

LIMITATION ON CONSTRUCTION ON UNITED STATES TERRITORY OF SATELLITE POSITIONING GROUND MONITORING STATIONS OF FOREIGN GOVERNMENTS

Pub. L. 113–66, div. A, title XVI, §1602(b), Dec. 26, 2013, 127 Stat. 943, which limited construction within United States territory of global navigation satellite system ground monitoring stations controlled by foreign governments, was transferred to subsec. (a) of section 2279c (now 2279d) of this title by Pub. L. 115–91, div. A, title XVI, §1602(b)(1), Dec. 12, 2017, 131 Stat. 1722.

USE OF FUNDS FOR GLOBAL POSITIONING SYSTEM

Pub. L. 112–10, div. A, title VIII, §8068, Apr. 15, 2011, 125 Stat. 73, provided that: ''Funds available to the Department of Defense for the Global Positioning System during the current fiscal year, and hereafter, may be used to fund civil requirements associated with the satellite and ground control segments of such system's modernization program.''

LIMITATION ON USE OF FUNDS FOR PURCHASING GLOBAL POSITIONING SYSTEM USER EQUIPMENT

Pub. L. 111–383, div. A, title IX, §913, Jan. 7, 2011, 124 Stat. 4328, as amended by Pub. L. 114–92, div. A, title XVI, §1605, Nov. 25, 2015, 129 Stat. 1099, provided that:

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''(a) IN GENERAL.—Except as provided in subsections (b) and (c), none of the funds authorized to be appropriated or otherwise made available by this Act or any other Act for the Department of Defense may be obligated or expended to purchase user equipment for the Global Positioning System during fiscal years after fiscal year 2017 unless the equipment is capable of receiving the military code (commonly known as the 'M code') from the Global Positioning System.

''(b) EXCEPTION.—The limitation under subsection (a) shall not apply with respect to the purchase of passenger vehicles or commercial vehicles in which Global Positioning System equipment is installed.

''(c) WAIVER.—The Secretary of Defense may waive the limitation under subsection (a) if the Secretary determines that—

''(1) suitable user equipment capable of receiving the military code from the Global Positioning System is not available; or

''(2) with respect to a purchase of user equipment, the Department of Defense does not require that user equipment to be capable of receiving the military code from the Global Positioning System.

''(d) LIMITATION ON DELEGATION OF WAIVER AUTHORITY.—The Secretary of Defense may not delegate the authority to make a waiver under subsection (c) to an official below the level of the Secretaries of the military departments or the Under Secretary of Defense for Acquisition, Technology, and Logistics.''

AUTHORIZATION OF INTERAGENCY SUPPORT FOR GLOBAL POSITIONING SYSTEM

Pub. L. 106–405, § 8, Nov. 1, 2000, 114 Stat. 1753, as amended by Pub. L. 109–364, div. A, title IX, § 911, Oct. 17, 2006, 120 Stat. 2354, provided that: ''The use of multiagency funding and other forms of support is hereby authorized for the functions and activities of the following organizations established pursuant to the United States Space-Based Position, Navigation, and Timing Policy issued December 8, 2004 (and any successor organization, to the extent the successor organization performs the functions of the specified organization):

''(1) The interagency committee known as the National Space-Based Positioning, Navigation, and Timing Executive Committee.

''(2) The support office for the committee specified in paragraph (1) known as the National Space-Based Positioning, Navigation, and Timing Coordination Office.

''(3) The Federal advisory committee known as the National Space-Based Positioning, Navigation, and Timing Advisory Board.''

ENHANCED GLOBAL POSITIONING SYSTEM PROGRAM

Pub. L. 105–261, div. A, title II, § 218, Oct. 17, 1998, 112 Stat. 1951, provided that:

''(a) POLICY ON PRIORITY FOR DEVELOPMENT OF ENHANCED GPS SYSTEM.—The development of an enhanced Global Positioning System is an urgent national security priority.

''(b) DEVELOPMENT REQUIRED.—To fulfill the requirements described in section 279(b) of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104–106; 110 Stat. 243) [set out as a note below] and section 2281 of title 10, United States Code, the Secretary of Defense shall develop an enhanced Global Positioning System in accordance with the priority declared in subsection (a). The enhanced Global Positioning System shall include the following elements:

''(1) An evolved satellite system that includes increased signal power and other improvements such as regional-level directional signal enhancements.

''(2) Enhanced receivers and user equipment that are capable of providing military users with direct access to encrypted Global Positioning System signals.

''(3) To the extent funded by the Secretary of Transportation, additional civil frequencies and other enhancements for civil users.

''(c) SENSE OF CONGRESS REGARDING FUNDING.—It is the sense of Congress that—

''(1) the Secretary of Defense should ensure that the future-years defense program provides for sufficient funding to develop and deploy an enhanced Global Positioning System in accordance with the priority declared in subsection (a); and

''(2) the Secretary of Transportation should provide sufficient funding to support additional civil frequencies for the Global Positioning System and other enhancements of the system for civil users.

''(d) PLAN FOR DEVELOPMENT OF ENHANCED GLOBAL POSITIONING SYSTEM.—Not later than April 15, 1999, the Secretary of Defense shall submit to Congress a plan for carrying out the requirements of subsection (b).

''(e) DELAYED EFFECTIVE DATE FOR LIMITATION ON PROCUREMENT OF SYSTEMS NOT GPS-EQUIPPED.—[Amended section 152(b) of Pub. L. 103–160, set out as a note below.]

''(f) FUNDING FROM AUTHORIZED APPROPRIATIONS FOR FISCAL YEAR 1999.—Of the amounts authorized to be appropriated under section 201(3) [112 Stat. 1946], $44,000,000 shall be available to establish and carry out an enhanced Global Positioning System program.''

SUSTAINMENT AND OPERATION OF GLOBAL POSITIONING SYSTEM

Pub. L. 105–85, div. A, title X, § 1074(a), (b), Nov. 18, 1997, 111 Stat. 1907, provided that:

''(a) FINDINGS.—Congress makes the following findings:

''(1) The Global Positioning System (consisting of a constellation of satellites and associated facilities capable of providing users on earth with a highly precise statement of their location on earth) makes significant contributions to the attainment of the national security and foreign policy goals of the United States, the safety and efficiency of international transportation, and the economic growth, trade, and productivity of the United States.

''(2) The infrastructure for the Global Positioning System (including both space and ground segments of the infrastructure) is vital to the effectiveness of United States and allied military forces and to the protection of the national security interests of the United States.

''(3) In addition to having military uses, the Global Positioning System has essential civil, commercial, and scientific uses.

''(4) As a result of the increasing demand of civil, commercial, and scientific users of the Global Positioning System—

''(A) there has emerged in the United States a new commercial industry to provide Global Positioning System equipment and related services to the many and varied users of the system; and

''(B) there have been rapid technical advancements in Global Positioning System equipment and services that have contributed significantly to reductions in the cost of the Global Positioning System and increases in the technical capabilities and availability of the system for military uses.

''(5) It is in the national interest of the United States for the United States—

''(A) to support continuation of the multiple-use character of the Global Positioning System;

''(B) to promote broader acceptance and use of the Global Positioning System and the technological standards that facilitate expanded use of the system for civil purposes;

''(C) to coordinate with other countries to ensure (i) efficient management of the electromagnetic spectrum used by the Global Positioning System, and (ii) protection of that spectrum in order to prevent disruption of signals from the system and interference with that portion of the electromagnetic spectrum used by the system; and

''(D) to encourage open access in all international markets to the Global Positioning System and supporting equipment, services, and techniques.

''(b) INTERNATIONAL COOPERATION.—Congress urges the President to promote the security of the United States and its allies, the public safety, and commercial interests by taking the following steps:

''(1) Undertaking a coordinated effort within the executive branch to seek to establish the Global Positioning System, and augmentations to the system, as a worldwide resource.

''(2) Seeking to enter into international agreements to establish signal and service standards that protect the Global Positioning System from disruption and interference.

''(3) Undertaking efforts to eliminate any barriers to, and other restrictions of foreign governments on, peaceful uses of the Global Positioning System.

''(4) Requiring that any proposed international agreement involving nonmilitary use of the Global Positioning System or any augmentation to the system not be agreed to by the United States unless the proposed agreement has been reviewed by the Secretary of State, the Secretary of Defense, the Secretary of Transportation, and the Secretary of Commerce (acting as the Interagency Global Positioning System Executive Board established by Presidential Decision Directive NSTC–6, dated March 28, 1996).''

ACCESS TO GLOBAL POSITIONING SYSTEM

Pub. L. 104–106, div. A, title II, §279, Feb. 10, 1996, 110 Stat. 243, provided that:

''(a) CONDITIONAL PROHIBITION ON USE OF SELECTIVE AVAILABILITY FEATURE.—Except as provided in subsection (b), after May 1, 1996, the Secretary of Defense may not (through use of the feature known as 'selective availability') deny access of non-Department of Defense users to the full capabilities of the Global Positioning System.

''(b) PLAN.—Subsection (a) shall cease to apply upon submission by the Secretary of Defense to the Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives of a plan for enhancement of the Global Positioning System that provides for—

''(1) development and acquisition of effective capabilities to deny hostile military forces the ability to use the Global Positioning System without hindering the ability of United States military forces and civil users to have access to and use of the system, together with a specific date by which those capabilities could be operational; and

''(2) development and acquisition of receivers for the Global Positioning System and other techniques for weapons and weapon systems that provide substantially improved resistance to jamming and other forms of electronic interference or disruption, together with a specific date by which those receivers and other techniques could be operational with United States military forces.''

LIMITATION ON PROCUREMENT OF SYSTEMS NOT GPS-EQUIPPED

Pub. L. 103–160, div. A, title I, §152(b), Nov. 30, 1993, 107 Stat. 1578, as amended by Pub. L. 105–261, div. A, title II, §218(e), Oct. 17, 1998, 112 Stat. 1952; Pub. L. 109–163, div. A, title II, §260(a), Jan. 6, 2006, 119 Stat. 3185, provided that: ''After September 30, 2007, funds may not be obligated to modify or procure any Department of Defense aircraft, ship, armored vehicle, or indirect-fire weapon system that is not equipped with a Global Positioning System receiver.''

[Pub. L. 109–163, div. A, title II, §260(b), Jan. 6, 2006, 119 Stat. 3186, provided that: ''The amendment made by subsection (a) [amending section 152(b) of Pub. L. 103–160, set out above] shall be deemed to have taken effect at the close of September 30, 2005, and any obligation or expenditure of funds by the Department of Defense during the period beginning on October 1, 2005, and ending on the date of the enactment of this Act [Jan. 6, 2006] to modify or procure a Department of Defense aircraft, ship, armored vehicle, or indirect-fire weapon system that is not equipped with a Global Positioning System receiver is hereby ratified with respect to the provision of law specified in subsection (a).'']

[§ 2282. Repealed. Pub. L. 114–328, div. A, title XII, § 1241(d)(5)(A), Dec. 23, 2016, 130 Stat. 2504]

Section, added Pub. L. 113–291, div. A, title XII, §1205(a)(1), Dec. 19, 2014, 128 Stat. 3533, related to authority to build the capacity of foreign security forces. See section 333 of this title.

A prior section 2282, added Pub. L. 106–398, §1 [[div. A], title I, §131(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–28; amended Pub. L. 108–136, div. A, title X, §1031(a)(14), Nov. 24, 2003, 117 Stat. 1597, related to annual report on the B–2 bomber aircraft, prior to repeal by Pub. L. 112–81, div. A, title X, §1061(13)(A), Dec. 31, 2011, 125 Stat. 1583.

EFFECTIVE DATE OF REPEAL

Pub. L. 114–328, div. A, title XII, §1241(d)(5), Dec. 23, 2016, 130 Stat. 2504, provided that the repeal of this section is effective as of the date that is 270 days after Dec. 23, 2016.

§ 2283. Department of Defense small business strategy

(a) IN GENERAL.—The Secretary of Defense shall implement a small business strategy for the Department of Defense that meets the requirements of this section.

(b) UNIFIED MANAGEMENT STRUCTURE.—As part of the small business strategy described in subsection (a), the Secretary shall ensure that there is a unified management structure within the Department for the functions of the Department relating to—

(1) programs and activities related to small business concerns (as defined in section 3 of the Small Business Act);

(2) manufacturing and industrial base policy; and

(3) any procurement technical assistance program established under chapter 142 of this title.

(c) PURPOSE OF SMALL BUSINESS PROGRAMS.—The Secretary shall ensure that programs and activities of the Department of Defense related to small business concerns are carried out so as to further national defense programs and priorities and the statements of purpose for Department of Defense acquisition set forth in section 801 of the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115–91; 131 Stat. 1449).

(d) POINTS OF ENTRY INTO DEFENSE MARKET.—The Secretary shall ensure—

(1) that opportunities for small business concerns to contract with the Department of Defense are identified clearly; and

(2) that small business concerns are able to have access to program managers, contracting officers, and other persons using the products or services of such concern to the extent necessary to inform such persons of emerging and existing capabilities of such concerns.

(e) ENHANCED OUTREACH UNDER PROCUREMENT TECHNICAL ASSISTANCE PROGRAM MARKET.—The Secretary shall enable and promote activities to provide coordinated outreach to small business concerns through any procurement technical as-

sistance program established under chapter 142 of this title to facilitate small business contracting with the Department of Defense.

(Added Pub. L. 115–232, div. A, title VIII, § 851(a), Aug. 13, 2018, 132 Stat. 1883.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1871(b), Jan. 1, 2021, 134 Stat. 4151, 4287, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 387 of this title, as added by ''paragraph (1)'' (probably means subsection (a)(2)) of section 1871 of Pub. L. 116–283, inserted after the table of sections at the end of subchapter I, and redesignated as section 4901 of this title. See Effective Date of 2021 Amendment note below.

REFERENCES IN TEXT

Section 3 of the Small Business Act, referred to in subsec. (b)(1), is classified to section 632 of Title 15, Commerce and Trade.

Section 801 of the National Defense Authorization Act for Fiscal Year 2018, referred to in subsec. (c), is section 801 of Pub. L. 115–91, which is set out as a note under section 2302 of this title.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

PILOT PROGRAM FOR DEVELOPMENT OF TECHNOLOGY-ENHANCED CAPABILITIES WITH PARTNERSHIP INTERMEDIARIES

Pub. L. 116–92, div. A, title VIII, § 851, Dec. 20, 2019, 133 Stat. 1510, provided that:

''(a) ESTABLISHMENT.—The Commander of the United States Special Operations Command may use the greater of $2,000,000 or 5 percent of the funds required to be expended by the United States Special Operations Command under section 9(f)(1) of the Small Business Act (15 U.S.C. 638(f)(1)) for a pilot program to increase participation by small business concerns in the development of technology-enhanced capabilities for special operations forces.

''(b) USE OF PARTNERSHIP INTERMEDIARY.—

''(1) AUTHORIZATION.—The Commander of the United States Special Operations Command may modify an existing agreement with a partnership intermediary to assist the Commander in carrying out the pilot program under this section, including with respect to the award of contracts and agreements to small business concerns.

''(2) USE OF FUNDS.—None of the funds referred to in subsection (a) shall be used to pay a partnership intermediary for any administrative costs associated with the pilot program.

''(c) REPORT.—Not later than October 1, 2020, and October 1, 2021, the Commander of the United States Special Operations Command, in coordination with the Under Secretary of Defense for Research and Engineering, shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives], the Committee on Small Business of the House of Representatives, and the Committee on Small Business and Entrepreneurship of the Senate a report describing any agreement with a partnership intermediary entered into pursuant to this section. The report shall include, for each such agreement, the amount of funds obligated, an identification of the recipient of such funds, and a description of the use of such funds.

''(d) TERMINATION.—The authority to carry out a pilot program under this section shall terminate on September 30, 2021.

''(e) DEFINITIONS.—In this section:

''(1) PARTNERSHIP INTERMEDIARY.—The term 'partnership intermediary' has the meaning given the term in section 23(c) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3715(c)).

''(2) SMALL BUSINESS CONCERN.—The term 'small business concern' has the meaning given the term under section 3 of the Small Business Act (15 U.S.C. 632).

''(3) SMALL BUSINESS INNOVATION RESEARCH PROGRAM.—The term 'Small Business Innovation Research Program' has the meaning given the term in section 9(e)(4) of the Small Business Act (15 U.S.C. 638(e)[(4)]).

''(4) SMALL BUSINESS TECHNOLOGY TRANSFER PROGRAM.—The term 'Small Business Technology Transfer Program' has the meaning given the term in section 9(e)(6) of the Small Business Act (15 U.S.C. 638(e)[(6)]).

''(5) TECHNOLOGY-ENHANCED CAPABILITY.—The term 'technology-enhanced capability' means a product, concept, or process that improves the ability of a member of the Armed Forces to achieve an assigned mission.''

IMPLEMENTATION

Pub. L. 115–232, div. A, title VIII, § 851(b), Aug. 13, 2018, 132 Stat. 1884, provided that:

''(1) DEADLINE.—The Secretary of Defense shall develop the small business strategy required by section 2283 of title 10, United States Code, as added by subsection (a), not later than 180 days after the date of the enactment of this Act [Aug. 13, 2018].

''(2) NOTICE TO CONGRESS AND PUBLICATION.—Upon completion of the development of the small business strategy pursuant to paragraph (1), the Secretary shall—

''(A) transmit the strategy to Congress; and

''(B) publish the strategy on a public website of the Department of Defense.''

§ 2284. Explosive Ordnance Disposal Defense Program

(a) IN GENERAL.—The Secretary of Defense shall carry out a program to be known as the ''Explosive Ordnance Disposal Defense Program'' (in this section referred to as the ''Program'') under which the Secretary shall ensure close and continuous coordination between military departments on matters relating to explosive ordnance disposal support for commanders of geographic and functional combatant commands.

(b) ROLES, RESPONSIBILITIES, AND AUTHORITIES.—The plan under subsection (a) shall include provisions under which—

(1) the Secretary of Defense shall—

(A) assign the responsibility for the direction, coordination, and integration of the Program within the Department of Defense to the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict; and

(B) designate the Secretary of the Navy, or a designee of the Secretary's choice, as the executive agent for the Department of Defense responsible for providing oversight of the training and technology program that coordinates and integrates joint requirements for explosive ordnance disposal, provides common individual training, and carries out joint research, development, test,

and evaluation activities for common tools on behalf of the military departments with respect to explosive ordnance disposal;

(2) the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict shall serve as the key individual for the Program responsible for developing and overseeing policy, plans, programs, and budgets, and issuing guidance and providing direction on Department of Defense explosive ordnance disposal activities;

(3) the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict shall coordinate with—

(A) the Under Secretary of Defense for Intelligence on explosive ordnance technical intelligence;

(B) the Under Secretary of Defense for Acquisition and Sustainment on explosive ordnance disposal research, development, acquisition, and sustainment;

(C) the Under Secretary of Defense for Research and Engineering on explosive ordnance disposal research, development, test, and evaluation;

(D) the Assistant Secretary of Defense for Homeland Security and Global Security on explosive ordnance disposal on defense support of civil authorities; and

(E) the Assistant Secretary of Defense for Nuclear, Chemical, and Biological Defense programs on explosive ordnance disposal for combating weapons of mass destruction;

(4) the Secretary of each military department shall assess the needs of the military department concerned with respect to explosive ordnance disposal and may carry out research, development, test, and evaluation activities, including other transactions and procurement activities to address military department unique needs; and

(5) the Secretary of the Army shall designate an Army explosive ordnance disposal-qualified general officer to serve as the co-chair of the Department of Defense explosive ordnance disposal defense program.

(c) ANNUAL BUDGET JUSTIFICATION DOCUMENTS.—

(1) For fiscal year 2021 and each fiscal year thereafter, the Secretary of Defense shall submit to Congress with the defense budget materials a consolidated budget justification display, in classified and unclassified form, that includes all of activities of the Department of Defense relating to the Program.

(2) The budget display under paragraph (1) for a fiscal year shall include a single program element for each of the following:

(A) Civilian and military pay.

(B) Research, development, test, and evaluation.

(C) Procurement.

(D) Other transaction agreements.

(E) Military construction.

(3) The budget display shall include funding data for each of the military department's respective activities related to explosive ordnance disposal, including—

(A) operation and maintenance; and

(B) overseas contingency operations.

(d) DEFINITIONS.—In this section:

(1) The term ''explosive ordnance'' has the meaning given such term in section 283(d) of this title.

(2) The term ''explosive ordnance disposal'' means the detection, identification, on-site evaluation, rendering safe, exploitation, recovery, and final disposal of explosive ordnance.

(Added Pub. L. 115–232, div. A, title III, § 311(a), Aug. 13, 2018, 132 Stat. 1708; amended Pub. L. 116–92, div. A, title X, § 1052, title XVII, § 1731(a)(36), Dec. 20, 2019, 133 Stat. 1590, 1814; Pub. L. 116–283, div. A, title III, § 352(a), Jan. 1, 2021, 134 Stat. 3544.)

AMENDMENTS

2021—Subsec. (b)(1)(A). Pub. L. 116–283, § 352(a)(1), inserted ''and'' before ''integration'' and substituted ''the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict'' for ''an Assistant Secretary of Defense''.

Subsec. (b)(2). Pub. L. 116–283, § 352(a)(2), substituted ''for Special Operations and Low Intensity Conflict'' for ''to whom responsibility is assigned under paragraph (1)(A)''.

Subsec. (b)(3) to (5). Pub. L. 116–283, § 352(a)(3), (4), added par. (3) and redesignated former pars. (3) and (4) as (4) and (5), respectively.

2019—Pub. L. 116–92, § 1731(a)(36), substituted section symbol for ''SEC.'' before section designation.

Subsec. (b)(1)(A). Pub. L. 116–92, § 1052(a)(2)(A), inserted ''and'' at end.

Subsec. (b)(1)(B). Pub. L. 116–92, § 1052(a)(2)(D)(iii)–(v), substituted ''evaluation activities for common tools on behalf of the military departments'' for ''evaluation and procurement activities on behalf of the military departments and combatant commands''.

Pub. L. 116–92, § 1052(a)(2)(D)(ii), which directed insertion of '', provides common individual training,'' after ''explosive ordnance disposal'', was executed by making the insertion after ''explosive ordnance disposal'' the first place appearing to reflect the probable intent of Congress.

Pub. L. 116–92, § 1052(a)(2)(D)(i), substituted ''training and technology program that'' for ''joint program executive officer who''.

Pub. L. 116–92, § 1052(a)(2)(C), redesignated subpar. (C) as (B). Former subpar. (B) redesignated par. (2).

Pub. L. 116–92, § 1052(a)(2)(B), redesignated subpar. (B) as par. (2).

Subsec. (b)(1)(C) to (E). Pub. L. 116–92, § 1052(a)(2)(C), (E), redesignated subpar. (C) as (B) and struck out subpars. (D) and (E) which read as follows:

''(D) designate a combat support agency to exercise fund management responsibility of the Department of Defense-wide program element for explosive ordnance disposal research, development, test, and evaluation, transactions other than contracts, cooperative agreements, and grants related to section 2371 of this title during research projects including rapid prototyping and limited procurement urgent activities, and acquisition; and

''(E) designate an Army explosive ordnance disposal-qualified general officer from the combat support agency designated under subparagraph (D) to serve as the Chairman of the Department of Defense explosive ordnance disposal defense program board; and''.

Subsec. (b)(2). Pub. L. 116–92, § 1052(a)(3), inserted ''(A)'' after ''paragraph (1)''.

Pub. L. 116–92, § 1052(a)(2)(B), redesignated subpar. (B) of par. (1) as par. (2). Former par. (2) redesignated (3).

Pub. L. 116–92, § 1052(a)(1), redesignated par. (2) as (3).

Subsec. (b)(3). Pub. L. 116–92, § 1052(a)(4), substituted ''; and'' for ''such as weapon systems, manned and unmanned vehicles and platforms, cyber and communication equipment, and the integration of explosive ord-

nance disposal sets, kits and outfits and explosive ordnance disposal tools, equipment, sets, kits, and outfits developed by the department.''

Pub. L. 116–92, § 1052(a)(1), redesignated par. (2) as (3).

Subsec. (b)(4). Pub. L. 116–92, § 1052(a)(5), added par. (4).

Subsec. (d). Pub. L. 116–92, § 1052(b), added subsec. (d).

CHAPTER 137—PROCUREMENT GENERALLY

Sec.
[2301. Repealed.]
2302. Definitions.
2302a. Simplified acquisition threshold.
2302b. Implementation of simplified acquisition procedures.
[2302c. Repealed.]
2302d. Major system: definitional threshold amounts.
2302e. Contract authority for development and demonstration of initial or additional prototype units.
2303. Applicability of chapter.
[2303a. Repealed.]
2304. Contracts: competition requirements.
2304a. Task and delivery order contracts: general authority.
2304b. Task order contracts: advisory and assistance services.
2304c. Task and delivery order contracts: orders.
2304d. Task and delivery order contracts: definitions.
2304e. Contracts: prohibition on competition between Department of Defense and small businesses.
2305. Contracts: planning, solicitation, evaluation, and award procedures.
2305a. Design-build selection procedures.
2306. Kinds of contracts.
2306a. Cost or pricing data: truth in negotiations.
2306b. Multiyear contracts: acquisition of property.
2306c. Multiyear contracts: acquisition of services.
2307. Contract financing.
2308. Buy-to-budget acquisition: end items.
2309. Allocation of appropriations.
2310. Determinations and decisions.
2311. Assignment and delegation of procurement functions and responsibilities.
2312. Remission of liquidated damages.
2313. Examination of records of contractor.
2313a. Defense Contract Audit Agency: annual report.
2313b. Performance of incurred cost audits.
2314. Laws inapplicable to agencies named in section 2303 of this title.
2315. Law inapplicable to the procurement of automatic data processing equipment and services for certain defense purposes.
2316. Disclosure of identity of contractor.
[2317. Repealed.]
2318. Advocates for competition.
2319. Encouragement of new competitors.
2320. Rights in technical data.
2321. Validation of proprietary data restrictions.
2322. Management of intellectual property matters within the Department of Defense.
2322a. Requirement for consideration of certain matters during acquisition of noncommercial computer software.
[2323. Repealed.]
2323a. Credit for Indian contracting in meeting certain subcontracting goals for small disadvantaged businesses.
2324. Allowable costs under defense contracts.
2325. Restructuring costs.
2326. Undefinitized contractual actions: restrictions.
2327. Contracts: consideration of national security objectives.
2328. Release of technical data under Freedom of Information Act: recovery of costs.
Sec.
2329. Procurement of services: data analysis and requirements validation.
2330. Procurement of contract services: management structure.
2330a. Procurement of services: tracking of purchases.
2331. Procurement of services: contracts for professional and technical services.
[2332. Repealed.]
2333. Joint policies on requirements definition, contingency program management, and contingency contracting.
2334. Independent cost estimation and cost analysis.
2335. Prohibition on collection of political information.
[2336. Repealed.]
2337. Life-cycle management and product support.
2337a. Assessment, management, and control of operating and support costs for major weapon systems.
2338. Micro-purchase threshold.
2339. Prohibition on criminal history inquiries by contractors prior to conditional offer.
2339a. Requirements for information relating to supply chain risk.
2339b. Notification of Navy procurement production disruptions.
2339c. Disclosures for offerors for certain shipbuilding major defense acquisition program contracts.

Repeal of Chapter

Pub. L. 116–283, div. A, title XVIII, §§1801(d), 1881(a), Jan. 1, 2021, 134 Stat. 4151, 4293, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this chapter is repealed.

Amendments

2021—Pub. L. 116–283, div. A, title VIII, §§ 803(b), 831(b), Jan. 1, 2021, 134 Stat. 3735, 3753, added items 2302e and 2339c and struck out former item 2302e ''Contract authority for advanced development of initial or additional prototype units''.

2019—Pub. L. 116–92, div. A, title VIII, § 820(b), title XI, § 1123(b)(3), title XVII, § 1731(a)(39)(C), Dec. 20, 2019, 133 Stat. 1490, 1614, 1814, struck out ''and certain other entities'' after ''businesses'' in item 2304e and ''and certain institutions of higher education'' after ''businesses'' in item 2323a and added items 2339 and 2339b.

2018—Pub. L. 115–232, div. A, title VIII, §§ 812(a)(2)(B), (3)(B), 821(c)(2), 881(a)(2), Aug. 13, 2018, 132 Stat. 1846, 1847, 1853, 1913, struck out items 2323 ''Contract goal for small disadvantaged businesses and certain institutions of higher education'', 2332 ''Share-in-savings contracts'', and 2339 ''Micro-purchase threshold for basic research programs and activities of the Department of Defense science and technology reinvention laboratories'' and added item 2339a.

2017—Pub. L. 115–91, div. A, title X, § 1081(d)(1), Dec. 12, 2017, 131 Stat. 1599, amended directory language of Pub. L. 114–328, § 217(a)(2), effective Dec. 23, 2016, and as if included in Pub. L. 114–328 as enacted. See 2016 Amendment note below.

Pub. L. 115–91, div. A, title VIII, §§ 803(b), 836(a)(2), 851(a)(2), 861(a)(2), 871(a)(2), Dec. 12, 2017, 131 Stat. 1455, 1473, 1492, 1494, 1497, added items 2302e, 2313b, 2322a, 2329, and 2337a.

Pub. L. 115–91, div. A, title VIII, § 802(a)(2), Dec. 12, 2017, 131 Stat. 1451, which directed amendment of the table of sections for this chapter by adding item 2322 at the end, was executed by adding item 2322 after item 2321, to reflect the probable intent of Congress.

2016—Pub. L. 114–328, div. A, title VIII, §§ 821(b), 833(b)(5)(B), Dec. 23, 2016, 130 Stat. 2276, 2285, added item 2338 and struck out item 2302c ''Implementation of electronic commerce capability''.

Pub. L. 114–328, div. A, title II, § 217(a)(2), Dec. 23, 2016, 130 Stat. 2051, as amended by Pub. L. 115–91, div. A, title X, § 1081(d)(1), Dec. 12, 2017, 131 Stat. 1599, added item 2339.

2014—Pub. L. 113–291, div. A, title III, § 351(c)(1), Dec. 19, 2014, 128 Stat. 3347, struck out item 2336 ''Intergovernmental support agreements with State and local governments''.

2013—Pub. L. 112–239, div. A, title III, § 331(b), title VIII, § 823(a)(2), Jan. 2, 2013, 126 Stat. 1697, 1832, added items 2336 and 2337.

2011—Pub. L. 112–81, div. A, title VIII, § 805(b), 823(b), Dec. 31, 2011, 125 Stat. 1486, 1503, added items 2313a and 2335.

2009—Pub. L. 111–23, title I, § 101(b)(2), May 22, 2009, 123 Stat. 1709, added item 2334.

2008—Pub. L. 110–181, div. A, title X, § 1063(a)(10), Jan. 28, 2008, 122 Stat. 322, added item 2333 and struck out former item 2333 ''Joint policies on requirements definition, contingency contracting, and program management''.

2006—Pub. L. 109–364, div. A, title VIII, § 854(a)(2), Oct. 17, 2006, 120 Stat. 2346, added item 2333.

Pub. L. 109–163, div. A, title VIII, § 812(a)(2), Jan. 6, 2006, 119 Stat. 3378, substituted ''Procurement of contract services: management structure'' for ''Procurement of services: management structure'' in item 2330.

2002—Pub. L. 107–347, title II, § 210(a)(2), Dec. 17, 2002, 116 Stat. 2934, added item 2332.

Pub. L. 107–314, div. A, title VIII, § 801(a)(2), Dec. 2, 2002, 116 Stat. 2602, added item 2308.

2001—Pub. L. 107–107, div. A, title VIII, § 801(g)(2), Dec. 28, 2001, 115 Stat. 1178, added items 2330, 2330a, and 2331 and struck out former item 2331 ''Contracts for professional and technical services''.

2000—Pub. L. 106–398, § 1 [[div. A], title VIII, § 802(a)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–205, added item 2306c.

1998—Pub. L. 105–261, div. A, title X, § 1069(a)(3), Oct. 17, 1998, 112 Stat. 2135, substituted ''electronic commerce capability'' for ''FACNET capability'' in item 2302c.

1997—Pub. L. 105–85, div. A, title VIII, § 804(a)(2), title X, § 1073(a)(48)(B), Nov. 18, 1997, 111 Stat. 1833, 1903, substituted ''contracts: acquisition of property'' for ''contracts'' in item 2306b and added item 2325.

1996—Pub. L. 104–201, div. A, title VIII, § 805(b), Sept. 23, 1996, 110 Stat. 2606, added item 2302d.

Pub. L. 104–106, div. D, title XLI, § 4105(a)(2), title XLIII, § 4321(b)(6)(B), Feb. 10, 1996, 110 Stat. 647, 672, redesignated item 2304a, relating to contracts: prohibition on competition between Department of Defense and small businesses and certain other entities, as 2304e and added item 2305a.

1994—Pub. L. 103–355, title I, §§ 1004(a)(2), 1022(a)(2), 1501(b), 1503(a)(2), (b)(2), 1506(b), title II, §§ 2001(i), 2201(a)(2), title IV, §§ 4002(b), 4203(a)(2), title VIII, § 8104(b)(2), title IX, § 9002(b), Oct. 13, 1994, 108 Stat. 3253, 3260, 3296–3298, 3303, 3318, 3338, 3346, 3391, 3402, struck out items 2301 ''Congressional defense procurement policy'', 2308 ''Assignment and delegation of procurement functions and responsibilities'', 2325 ''Preference for nondevelopmental items'', and 2329 ''Production special tooling and production special test equipment: contract terms and conditions'', added items 2302a to 2302c, 2304a relating to task and delivery order contracts: general authority, 2304b to 2304d, and 2306b, and substituted ''Contract financing'' for ''Advance payments'' in item 2307, ''Assignment and delegation of procurement functions and responsibilities'' for ''Delegation'' in item 2311, and ''Examination of records of contractor'' for ''Examination of books and records of contractor'' in item 2313.

1993—Pub. L. 103–160, div. A, title VIII, §§ 828(a)(1), 848(a)(2), Nov. 30, 1993, 107 Stat. 1713, 1725, added item 2304a and struck out item 2317 ''Encouragement of competition and cost savings''.

1992—Pub. L. 102–484, div. A, title VIII, § 801(a)(2), (g)(2), title X, § 1052(25)(B), div. D, title XLII, § 4271(b)(2), Oct. 23, 1992, 106 Stat. 2442, 2445, 2500, 2695, struck out items 2322 ''Limitation on small business set-asides'' and 2330 ''Integrated financing policy'' and added items 2323 and 2323a.

1990—Pub. L. 101–510, div. A, title VIII, §§ 804(b), 834(a)(2), Nov. 5, 1990, 104 Stat. 1591, 1614, struck out item 2323 ''Commercial pricing for spare or repair parts'' and added item 2331.

1988—Pub. L. 100–456, div. A, title VIII, § 801(a)(2), Sept. 29, 1988, 102 Stat. 2007, added item 2330.

1987—Pub. L. 100–180, div. A, title VIII, § 810(a)(2), Dec. 4, 1987, 101 Stat. 1132, added item 2329.

Pub. L. 100–26, § 7(a)(7)(B)(ii), (b)(9)(B), Apr. 21, 1987, 101 Stat. 278, 280, transferred item 2305a ''Major programs: competitive alternative sources'', to chapter 144 as item 2438 and substituted ''Release of technical data under Freedom of Information Act: recovery of costs'' for ''Release of technical data'' in item 2328.

Pub. L. 100–26, § 5(4), (6), made technical amendments to directory language of sections 926(a)(2) and 954(a)(2), respectively, of Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661. See 1986 Amendment note below.

1986—Pub. L. 99–661, div. A, title XIII, § 1343(a)(12), Nov. 14, 1986, 100 Stat. 3993, substituted ''competitors'' for ''competition'' in item 2319.

Pub. L. 99–500, § 101(c) [title X, §§ 907(a)(2), 908(d)(1)(B), 926(a)(2), 951(a)(2), 952(c)(2), 954(a)(2)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–138, 1783–141, 1783–155, 1783–165, 1783–169, 1783–173, and Pub. L. 99–591, § 101(c) [title X, §§ 907(a)(2), 908(d)(1)(B), 926(a)(2), 951(a)(2), 952(c)(2), 954(a)(2)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–138, 3341–141, 3341–155, 3341–165, 3341–169, 3341–173; Pub. L. 99–661, div. A, title IX, formerly title IV, §§ 907(a)(2), 908(d)(1)(B), 926(a)(2), 951(a)(2), 952(c)(2), 954(a)(2), Nov. 14, 1986, 100 Stat. 3917, 3921, 3935, 3945, 3949, 3953, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; as amended by Pub. L. 100–26, § 5(4), (6), Apr. 21, 1987, 101 Stat. 274, amended chapter analysis identically striking out '': cost or pricing data: truth in negotiations'' after ''contracts'' in item 2306, substituting ''spare or repair parts'' for ''supplies'' in item 2323, and adding items 2306a and 2325 to 2328.

1985—Pub. L. 99–145, title IX, §§ 911(a)(2), 912(a)(2), Nov. 8, 1985, 99 Stat. 685, 686, added items 2305a and 2324.

1984—Pub. L. 98–577, title III, § 302(c)(2), Oct. 30, 1984, 98 Stat. 3077, struck out item 2303a ''Publication of proposed regulations''.

Pub. L. 98–525, title XII, § 1217, Oct. 19, 1984, 98 Stat. 2599, added items 2303a and 2317 to 2323.

Pub. L. 98–369, div. B, title VII, § 2727(a), July 18, 1984, 98 Stat. 1194, substituted ''Congressional defense procurement policy'' for ''Declaration of policy'' in item 2301, ''Contracts: competition requirements'' for ''Purchases and contracts: formal advertising; exceptions'' in item 2304, ''Contracts: planning, solicitation, evaluation, and award procedures'' for ''Formal advertisements for bids; time; opening; award; rejection'' in item 2305, and ''Kinds of contracts; cost or pricing data: truth in negotiation'' for ''Kinds of contracts'' in item 2306.

1982—Pub. L. 97–295, § 1(26)(B), Oct. 12, 1982, 96 Stat. 1291, added item 2316.

1981—Pub. L. 97–86, title IX, § 908(a)(2), Dec. 1, 1981, 95 Stat. 1118, added item 2315.

1980—Pub. L. 96–513, title V, § 511(75), Dec. 12, 1980, 94 Stat. 2926, inserted ''formal'' before ''advertising'' in item 2304.

[§ 2301. Repealed. Pub. L. 103–355, title I, § 1501(a), Oct. 13, 1994, 108 Stat. 3296]

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 127; Dec. 1, 1981, Pub. L. 97–86, title IX, § 909(a), 95 Stat. 1118; July 18, 1984, Pub. L. 98–369, div. B, title VII, § 2721, 98 Stat. 1185; Oct. 18, 1986, Pub. L. 99–500, § 101(c) [title X, § 925(a)], 100 Stat. 1783–82, 1783–153, and Oct. 30, 1986, Pub. L. 99–591, § 101(c) [title X, § 925(a)], 100 Stat. 3341–82, 3341–153; Nov. 14, 1986, Pub. L. 99–661, div. A, title IX, formerly title IV, § 925(a), 100 Stat. 3933, renumbered title IX, Apr. 21, 1987, Pub. L. 100–26, § 3(5), 101 Stat. 273; Oct. 23, 1992, Pub. L. 102–484, div. A, title VIII, § 808(a),

106 Stat. 2449, related to Congressional defense procurement policy.

EFFECTIVE DATE OF REPEAL

For effective date and applicability of repeal, see section 10001 of Pub. L. 103–355, set out as an Effective Date of 1994 Amendment note under section 2302 of this title.

§ 2302. Definitions

In this chapter:

(1) The term ''head of an agency'' means the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, the Secretary of the Air Force, the Secretary of Homeland Security, and the Administrator of the National Aeronautics and Space Administration.

(2) The term ''competitive procedures'' means procedures under which the head of an agency enters into a contract pursuant to full and open competition. Such term also includes—

(A) procurement of architectural or engineering services conducted in accordance with chapter 11 of title 40;

(B) the competitive selection for award of science and technology proposals resulting from a general solicitation and the peer review or scientific review (as appropriate) of such proposals;

(C) the procedures established by the Administrator of General Services for the multiple award schedule program of the General Services Administration if—

(i) participation in the program has been open to all responsible sources; and

(ii) orders and contracts under such program result in the lowest overall cost alternative to meet the needs of the United States;

(D) procurements conducted in furtherance of section 15 of the Small Business Act (15 U.S.C. 644) as long as all responsible business concerns that are entitled to submit offers for such procurements are permitted to compete; and

(E) a competitive selection of research proposals resulting from a general solicitation and peer review or scientific review (as appropriate) solicited pursuant to section 9 of the Small Business Act (15 U.S.C. 638).

(3) The following terms have the meanings provided such terms in chapter 1 of title 41:

(A) The term ''procurement''.
(B) The term ''procurement system''.
(C) The term ''standards''.
(D) The term ''full and open competition''.
(E) The term ''responsible source''.
(F) The term ''item''.
(G) The term ''item of supply''.
(H) The term ''supplies''.
(I) The term ''commercial product''.
(J) The term ''commercial service''.
(K) The term ''nondevelopmental item''.
(L) The term ''commercial component''.
(M) The term ''component''.

(4) The term ''technical data'' means recorded information (regardless of the form or method of the recording) of a scientific or technical nature (including computer software documentation) relating to supplies procured by an agency. Such term does not include computer software or financial, administrative, cost or pricing, or management data or other information incidental to contract administration.

(5) The term ''major system'' means a combination of elements that will function together to produce the capabilities required to fulfill a mission need. The elements may include hardware, equipment, software or any combination thereof, but excludes construction or other improvements to real property. A system shall be considered a major system if (A) the conditions of section 2302d of this title are satisfied, or (B) the system is designated a ''major system'' by the head of the agency responsible for the system.

(6) The term ''Federal Acquisition Regulation'' means the Federal Acquisition Regulation issued pursuant to section 1303(a)(1) of title 41.

(7) The term ''simplified acquisition threshold'' has the meaning provided that term in section 134 of title 41, except that, in the case of any contract to be awarded and performed, or purchase to be made, outside the United States in support of a contingency operation or a humanitarian or peacekeeping operation, the term means an amount equal to two times the amount specified for that term in such section.

(8) The term ''humanitarian or peacekeeping operation'' means a military operation in support of the provision of humanitarian or foreign disaster assistance or in support of a peacekeeping operation under chapter VI or VII of the Charter of the United Nations. The term does not include routine training, force rotation, or stationing.

(9) The term ''nontraditional defense contractor'', with respect to a procurement or with respect to a transaction authorized under section 2371(a) or 2371b of this title, means an entity that is not currently performing and has not performed, for at least the one-year period preceding the solicitation of sources by the Department of Defense for the procurement or transaction, any contract or subcontract for the Department of Defense that is subject to full coverage under the cost accounting standards prescribed pursuant to section 1502 of title 41 and the regulations implementing such section.

(Aug. 10, 1956, ch. 1041, 70A Stat. 127; Pub. L. 85–568, title III, § 301(b), July 29, 1958, 72 Stat. 432; Pub. L. 85–861, § 1(43A), Sept. 2, 1958, 72 Stat. 1457; Pub. L. 96–513, title V, § 511(74), Dec. 12, 1980, 94 Stat. 2926; Pub. L. 98–369, div. B, title VII, § 2722(a), July 18, 1984, 98 Stat. 1186; Pub. L. 98–525, title XII, § 1211, Oct. 19, 1984, 98 Stat. 2589; Pub. L. 98–577, title V, § 504(b)(3), Oct. 30, 1984, 98 Stat. 3087; Pub. L. 99–661, div. A, title XIII, § 1343(a)(13), Nov. 14, 1986, 100 Stat. 3993; Pub. L. 100–26, § 7(k)(2), Apr. 21, 1987, 101 Stat. 284; Pub. L. 101–189, div. A, title VIII, § 853(b)(1), Nov. 29, 1989, 103 Stat. 1518; Pub. L. 102–25, title VII, § 701(d)(1), Apr. 6, 1991, 105 Stat. 113; Pub. L. 102–190, div. A, title VIII, § 805, Dec. 5, 1991, 105 Stat. 1417; Pub. L. 103–355, title I, § 1502, Oct. 13,

1994, 108 Stat. 3296; Pub. L. 104–106, div. D, title XLIII, § 4321(b)(3), Feb. 10, 1996, 110 Stat. 672; Pub. L. 104–201, div. A, title VIII, §§ 805(a)(1), 807(a), Sept. 23, 1996, 110 Stat. 2605, 2606; Pub. L. 105–85, div. A, title VIII, § 803(b), Nov. 18, 1997, 111 Stat. 1832; Pub. L. 107–217, § 3(b)(2), Aug. 21, 2002, 116 Stat. 1295; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 111–350, § 5(b)(8), Jan. 4, 2011, 124 Stat. 3842; Pub. L. 111–383, div. A, title VIII, § 866(g)(1), Jan. 7, 2011, 124 Stat. 4298; Pub. L. 113–291, div. A, title X, § 1071(a)(2), Dec. 19, 2014, 128 Stat. 3504; Pub. L. 114–92, div. A, title VIII, § 815(b), Nov. 25, 2015, 129 Stat. 896; Pub. L. 115–91, div. A, title II, § 221, Dec. 12, 2017, 131 Stat. 1333; Pub. L. 115–232, div. A, title VIII, § 836(c)(1), Aug. 13, 2018, 132 Stat. 1864; Pub. L. 116–283, div. A, title XVIII, § 1806(a)(5), (6), (b)(2)–(6), (c)(2), Jan. 1, 2021, 134 Stat. 4152–4154.)

AMENDMENT OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1806(a)(5), (6), (b)(2)–(6), (c)(2), Jan. 1, 2021, 134 Stat. 4151–4154, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is amended as follows:

(1) by transferring paragraph (1) to section 3004 of this title;

(2) by transferring paragraph (2) to section 3012 of this title;

(3) by transferring paragraph (3) to section 3011 of this title;

(4) by transferring paragraph (4) to section 3013 of this title;

(5) by transferring paragraph (5) to section 3041(a) of this title;

(6) by transferring paragraph (6) to section 3002 of this title;

(7) by transferring paragraphs (7) and (8) to paragraphs (1) and (2), respectively, of section 3015 of this title; and

(8) by transferring paragraph (9) to section 3014 of this title.

See 2021 Amendment notes below.

REPEAL OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1806(d), Jan. 1, 2021, 134 Stat. 4151, 4155, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is repealed.

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	Source (U.S. Code)	Source (Statutes at Large)
2302	41:158 (less clause (b)).	Feb. 19, 1948, ch. 65, § 9 (less clause (b)), 62 Stat. 24.

In clause (1), the words ''(if any)'' are omitted as surplusage. The words ''Secretary of the Treasury'' are substituted for the words ''Commandant, United States Coast Guard, Treasury Department'', since the functions of the Coast Guard and its officers, while operating under the Department of the Treasury, were vested in the Secretary of the Treasury by 1950 Reorganization Plan No. 26, effective July 31, 1950, 64 Stat. 1280. Under that plan the Secretary of the Treasury was authorized to delegate any of those functions to the agencies and employees of the Department of the Treasury.

Clauses (2) and (3) are inserted for clarity, and are based on the usage of those terms throughout the revised chapter.

1958 ACT

Revised section	Source (U.S. Code)	Source (Statutes at Large)
2302(3)	[No source].	[No source].

The amendments reflect section 1(44) of the bill [amending section 2305 of Title 10].

AMENDMENTS

2021—Par. (1). Pub. L. 116–283, § 1806(a)(6), redesignated par. (1) as section 3004 of this title.

Par. (2). Pub. L. 116–283, § 1806(b)(3), redesignated par. (2) as section 3012 of this title.

Par. (3). Pub. L. 116–283, § 1806(b)(2), redesignated par. (3) as section 3011 of this title.

Par. (4). Pub. L. 116–283, § 1806(b)(4), redesignated par. (4) as section 3013 of this title.

Par. (5). Pub. L. 116–283, § 1806(c)(2), redesignated par. (5) as section 3041(a) of this title.

Par. (6). Pub. L. 116–283, § 1806(a)(5), redesignated par. (6) as section 3002 of this title.

Pars. (7), (8). Pub. L. 116–283, § 1806(b)(6), redesignated pars. (7) and (8) as section 3015(1), (2), respectively, of this title.

Par. (9). Pub. L. 116–283, § 1806(b)(5), redesignated par. (9) as section 3014 of this title.

2018—Par. (3)(I) to (M). Pub. L. 115–232 added subpars. (I) and (J), redesignated former subpars. (J) to (L) as (K) to (M), respectively, and struck out former subpar. (I) which read as follows: ''The term 'commercial item'.''

2017—Par. (2)(B). Pub. L. 115–91 substituted ''science and technology'' for ''basic research''.

2015—Par. (9). Pub. L. 114–92 amended par. (9) generally. Prior to amendment, par. (9) read as follows: ''The term 'nontraditional defense contractor', with respect to a procurement or with respect to a transaction authorized under section 2371(a) of this title, means an entity that is not currently performing and has not performed, for at least the one-year period preceding the solicitation of sources by the Department of Defense for the procurement or transaction, any of the following for the Department of Defense:

''(A) Any contract or subcontract that is subject to full coverage under the cost accounting standards prescribed pursuant to chapter 15 of title 41 and the regulations implementing such chapter.

''(B) Any other contract in excess of $500,000 under which the contractor is required to submit certified cost or pricing data under section 2306a of this title.''

2014—Par. (7). Pub. L. 113–291, § 1071(a)(2)(A), substituted ''such section'' for ''section 4 of such Act''.

Par. (9)(A). Pub. L. 113–291, § 1071(a)(2)(B), substituted ''chapter 15 of title 41'' for ''section 26 of the Office of Federal Procurement Policy Act (41 U.S.C. 422)'' and ''such chapter'' for ''such section''.

2011—Par. (3). Pub. L. 111–350, § 5(b)(8)(A), substituted ''chapter 1 of title 41'' for ''section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403)'' in introductory provisions.

Par. (6). Pub. L. 111–350, § 5(b)(8)(B), substituted ''section 1303(a)(1) of title 41'' for ''section 25(c)(1) of the Office of Federal Procurement Policy Act (41 U.S.C. 421(c)(1))''.

Par. (7). Pub. L. 111–350, § 5(b)(8)(C), substituted ''section 134 of title 41'' for ''section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403)''.

Par. (9). Pub. L. 111–383 added par. (9).

2002—Par. (1). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

Par. (2)(A). Pub. L. 107–217 substituted ''chapter 11 of title 40'' for ''title IX of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 541 et seq.)''.

1997—Pars. (7), (8). Pub. L. 105–85 struck out ''(A)'' before ''The term 'simplified'' in par. (7), redesignated

par. (7)(B) as par. (8), and substituted ''The'' for ''In subparagraph (A), the'' in that par.

1996—Par. (3)(K). Pub. L. 104–106 inserted period at end.

Par. (5). Pub. L. 104–201, § 805(a)(1), substituted ''A system shall be considered a major system if (A) the conditions of section 2302d of this title are satisfied, or (B) the system is designated a 'major system' by the head of the agency responsible for the system.'' for ''A system shall be considered a major system if (A) the Department of Defense is responsible for the system and the total expenditures for research, development, test, and evaluation for the system are estimated to be more than $75,000,000 (based on fiscal year 1980 constant dollars) or the eventual total expenditure for procurement of more than $300,000,000 (based on fiscal year 1980 constant dollars); (B) a civilian agency is responsible for the system and total expenditures for the system are estimated to exceed $750,000 (based on fiscal year 1980 constant dollars) or the dollar threshold for a 'major system' established by the agency pursuant to Office of Management and Budget (OMB) Circular A–109, entitled 'Major Systems Acquisitions', whichever is greater; or (C) the system is designated a 'major system' by the head of the agency responsible for the system.''

Par. (7). Pub. L. 104–201, § 807(a), designated existing provisions as subpar. (A), inserted ''or a humanitarian or peacekeeping operation'' after ''contingency operation'', and added subpar. (B).

1994—Par. (3). Pub. L. 103–355, § 1502(1), added par. (3) and struck out former par. (3) which read as follows: ''The terms 'full and open competition' and 'responsible source' have the same meanings provided such terms in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403).''

Par. (7). Pub. L. 103–355, § 1502(2), added par. (7) and struck out former par. (7) which read as follows: ''The term 'small purchase threshold' has the meaning given that term in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11)), except that, in the case of any contract to be awarded and performed, or purchase to be made, outside the United States in support of a contingency operation, the term means $100,000.''

1991—Par. (7). Pub. L. 102–190 inserted before period '', except that, in the case of any contract to be awarded and performed, or purchase to be made, outside the United States in support of a contingency operation, the term means $100,000''.

Pub. L. 102–25 added par. (7).

1989—Par. (6). Pub. L. 101–189 added par. (6).

1987—Pub. L. 100–26 inserted ''The term'' after each par. designation except par. (3) and struck out uppercase letter of first word after first quotation marks in each par. and substituted lowercase letter.

1986—Par. (2)(A). Pub. L. 99–661 substituted ''(40 U.S.C.'' for ''(41 U.S.C.''.

1984—Pub. L. 98–369 amended section generally, substituting in cl. (1) ''the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, the Secretary of the Air Force'' for ''the Secretary, the Under Secretary, or any Assistant Secretary, of the Army, Navy, or Air Force'', in cl. (2) definition of ''competitive procedures'' for a definition of ''negotiate'', and in cl. (3) definition of the terms ''full and open competition'' and ''responsible source'' for a definition of ''formal advertising''.

Cl. (2)(D), (E). Pub. L. 98–577 added subpars. (D) and (E).

Cls. (4), (5). Pub. L. 98–525 added cls. (4) and (5).

1980—Cl. (1). Pub. L. 96–513 substituted ''Secretary of Transportation'' for ''Secretary of the Treasury''.

1958—Cl. (1). Pub. L. 85–568 substituted ''Administrator of the National Aeronautics and Space Administration'' for ''Executive Secretary of the National Advisory Committee for Aeronautics'', in cl. (1).

Cl. (3). Pub. L. 85–861 substituted ''section 2305 of this title'' for ''section 2305(a) and (b) of this title''.

Effective Date of Repeal

Repeal effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

Effective Date of 2021 Amendment

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

Effective Date of 2018 Amendment

Amendment by Pub. L. 115–232 effective Jan. 1, 2020, subject to a savings provision, see section 836(h) of Pub. L. 115–232, set out as an Effective Date of 2018 Amendment; Savings Provision note under section 453b of Title 6, Domestic Security.

Effective Date of 2002 Amendment

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

Effective Date of 1996 Amendment

Pub. L. 104–106, div. D, title XLIV, § 4401, Feb. 10, 1996, 110 Stat. 678, provided that:

''(a) Effective Date.—Except as otherwise provided in this division [div. D (§§ 4001–4402) of Pub. L. 104–106, see Tables for classification], this division and the amendments made by this division shall take effect on the date of the enactment of this Act [Feb. 10, 1996].

''(b) Applicability of Amendments.—

''(1) Solicitations, unsolicited proposals, and related contracts.—An amendment made by this division shall apply, in the manner prescribed in the final regulations promulgated pursuant to section 4402 [110 Stat. 678] to implement such amendment, with respect to any solicitation that is issued, any unsolicited proposal that is received, and any contract entered into pursuant to such a solicitation or proposal, on or after the date described in paragraph (3).

''(2) Other matters.—An amendment made by this division shall also apply, to the extent and in the manner prescribed in the final regulations promulgated pursuant to section 4402 to implement such amendment, with respect to any matter related to—

''(A) a contract that is in effect on the date described in paragraph (3);

''(B) an offer under consideration on the date described in paragraph (3); or

''(C) any other proceeding or action that is ongoing on the date described in paragraph (3).

''(3) Demarcation date.—The date referred to in paragraphs (1) and (2) is the date specified in such final regulations. The date so specified shall be January 1, 1997, or any earlier date that is not within 30 days after the date on which such final regulations are published.''

Effective Date of 1994 Amendment

Pub. L. 103–355, title X, § 10001, Oct. 13, 1994, 108 Stat. 3404, provided that:

''(a) Effective Date.—Except as otherwise provided in this Act, this Act [see Tables for classification] and the amendments made by this Act shall take effect on the date of the enactment of this Act [Oct. 13, 1994].

''(b) Applicability of Amendments.—(1) An amendment made by this Act shall apply, in the manner prescribed in the final regulations promulgated pursuant to section 10002 [108 Stat. 3404, formerly set out as a Regulations note under section 251 of former Title 41, Public Contracts] to implement such amendment, with respect to any solicitation that is issued, any unsolicited proposal that is received, and any contract entered into pursuant to such a solicitation or proposal, on or after the date described in paragraph (3).

''(2) An amendment made by this Act shall also apply, to the extent and in the manner prescribed in the final regulations promulgated pursuant to section

10002 to implement such amendment, with respect to any matter related to—

''(A) a contract that is in effect on the date described in paragraph (3);

''(B) an offer under consideration on the date described in paragraph (3); or

''(C) any other proceeding or action that is ongoing on the date described in paragraph (3).

''(3) The date referred to in paragraphs (1) and (2) is the date specified in such final regulations [Oct. 1, 1995, see 60 F.R. 48231, Sept. 18, 1995]. The date so specified shall be October 1, 1995, or any earlier date that is not within 30 days after the date on which such final regulations are published.

''(c) IMMEDIATE APPLICABILITY OF CERTAIN AMENDMENTS.—Notwithstanding subsection (b), the amendments made by the following provisions of this Act apply on and after the date of the enactment of this Act [Oct. 13, 1994]: sections 1001, 1021, 1031, 1051, 1071, 1092, 1201, 1506(a), 1507, 1554, 2002(a), 2191, 3062(a), 3063, 3064, 3065(a)(1), 3065(b), 3066, 3067, 6001(a), 7101, 7103, 7205, and 7206, the provisions of subtitles A, B, and C of title III [§§ 3001–3025], and the provisions of title V [see Tables for classification].''

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. B, title VII, § 2751, July 18, 1984, 98 Stat. 1203, provided that:

''(a) Except as provided in subsection (b), the amendments made by this title [see Tables for classification] shall apply with respect to any solicitation for bids or proposals issued after March 31, 1985.

''(b) The amendments made by section 2713 [amending section 759 of former Title 40, Public Buildings, Property, and Works, and enacting provisions set out as a note under section 759 of former Title 40] and subtitle D [enacting sections 3551 to 3556 of Title 31, Money and Finance] shall apply with respect to any protest filed after January 14, 1985.''

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Pub. L. 85–568, title III, § 301(e), July 29, 1958, 72 Stat. 433, provided that: ''This section [amending this section, section 2303 of this title, section 22–1 of former Title 5, and sections 511 to 513 and 515 of Title 50, War and National Defense, and enacting provisions set out as a note under section 2472 of Title 42, The Public Health and Welfare] shall take effect ninety days after the date of the enactment of this Act [July 29, 1958], or on any earlier date on which the Administrator [of the National Aeronautics and Space Administration] shall determine, and announce by proclamation published in the Federal Register, that the Administration has been organized and is prepared to discharge the duties and exercise the powers conferred upon it by this Act.''

SHORT TITLE OF 1986 AMENDMENT

Pub. L. 99–500, § 101(c) [title X, § 900], Oct. 18, 1986, 100 Stat. 1783–82, 1783–130, Pub. L. 99–591, § 101(c) [title X, § 900], Oct. 30, 1986, 100 Stat. 3341–82, 3341–130, and Pub. L. 99–661, div. A, title IX, formerly title IV, § 900, Nov. 14, 1986, 100 Stat. 3910, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273, provided that: ''This title [enacting sections 133a, 2306a, 2325–2328, 2365–2367, 2397b, 2397c, 2408, 2409, 2416, and 2435–2437 of this title, amending sections 133, 134, 135, 138, 171, 1622, 2301, 2304, 2305, 2306, 2320, 2321, 2323, 2384, 2406, 2411, 2413, 2432, and 2433 of this title, sections 5314 and 5315 of Title 5, Government Organization and Employees, sections 632, 637, and 644 of Title 15, Commerce and Trade, and section 416 of Title 41, Public Contracts, renumbering section 2416 as 2417 of this title, enacting provisions set out as notes under sections 113, 1621, 2304, 2305, 2306a, 2320, 2323, 2325–2328, 2365–2367, 2384, 2397b, 2406, 2408, 2409, 2416, 2432, 2435–2437 of this title and section 632 of Title 15, amending provisions set out as a note under this section, and repealing provisions set out as notes under section 2304 and 2397a of this title] may be cited as the 'Defense Acquisition Improvement Act of 1986'.''

SHORT TITLE OF 1985 AMENDMENT

Pub. L. 99–145, title IX, § 901, Nov. 8, 1985, 99 Stat. 682, provided that: ''This title [enacting sections 1621 to 1624, 2305a, 2324, 2397a, and 2406 of this title, amending sections 2304, 2313, 2320, 2323, 2397, and 2411 to 2415 of this title, section 759 of former Title 40, Public Buildings, Property, and Works, sections 253 and 418a of Title 41, Public Contracts, and former section 2168 of the former Appendix to Title 50, War and National Defense, enacting provisions set out as notes under this section and sections 139, 139c, 1622 to 1624, 2304, 2305a, 2307, 2324, 2397a, and 2411 of this title, section 287 of Title 18, Crimes and Criminal Procedure, section 3729 of Title 31, Money and Finance, and former section 2168 of the former Appendix to Title 50, and amending provisions set out as a note under section 418a of Title 41] may be cited as the 'Defense Procurement Improvement Act of 1985'.''

SHORT TITLE OF 1984 AMENDMENT

Pub. L. 98–525, title XII, § 1201, Oct. 19, 1984, 98 Stat. 2588, provided that: ''This title [enacting sections 2303a, 2317 to 2323, 2384a, 2402 to 2405, and 2411 to 2416 of this title, amending sections 139a, 139b, 2302, 2305, 2311, 2384, and 2401 of this title, enacting provisions set out as notes under this section and sections 139, 139a, 2303a, 2305, 2318, 2319, 2322, 2323, 2384, 2384a, 2392, and 2402 of this title, amending provisions set out as notes under sections 2392, 2401, and 2452 of this title, and repealing provisions set out as notes under section 2304 of this title] may be cited as the 'Defense Procurement Reform Act of 1984'.''

PERSONAL PROTECTIVE EQUIPMENT MATTERS

Pub. L. 116–283, div. A, title X, § 1091, Jan. 1, 2021, 134 Stat. 3882, provided that:

''(a) BRIEFINGS ON FIELDING OF NEWEST GENERATIONS OF PPE TO THE ARMED FORCES.—

''(1) BRIEFINGS REQUIRED.—Not later than January 31, 2021, each Secretary of a military department shall submit to Congress a briefing on the fielding of the newest generations of personal protective equipment to the Armed Forces under the jurisdiction of such Secretary.

''(2) ELEMENTS.—Each briefing under paragraph (1) shall include, for each Armed Force covered by such briefing, the following:

''(A) A description and assessment of the fielding of newest generations of personal protective equipment to members of such Armed Force, including the following:

''(i) The number (aggregated by total number and by sex) of members of such Armed Force issued the Army Soldiers Protective System and the Modular Scalable Vest Generation II body armor as of December 31, 2020.

''(ii) The number (aggregated by total number and by sex) of members of such Armed Force issued Marine Corps Plate Carrier Generation III body armor as of that date.

''(iii) The number (aggregated by total number and by sex) of members of such Armed Force fitted with legacy personal protective equipment as of that date.

''(B) A description and assessment of the barriers, if any, to the fielding of such generations of equipment to such members.

''(C) A description and assessment of challenges in the fielding of such generations of equipment to such members, including cost overruns, contractor delays, and other challenges.

''(b) SYSTEM FOR TRACKING DATA ON INJURIES AMONG MEMBERS OF THE ARMED FORCES IN USE OF NEWEST GENERATION PPE.—

''(1) SYSTEM REQUIRED.—

''(A) IN GENERAL.—The Secretary of Defense shall develop and maintain a system for tracking data on injuries among members of the Armed Forces in and during the use of newest generation personal protective equipment.

''(B) SCOPE OF SYSTEM.—The system required by this paragraph may, at the election of the Secretary, be new for purposes of this subsection or within or a modification of an appropriate existing system.

''(2) BRIEFING.—Not later than January 31, 2025, the Secretary shall submit to Congress a briefing on the prevalence among members of the Armed Forces of preventable injuries attributable to ill-fitting or malfunctioning personal protective equipment.

''(c) ASSESSMENTS OF MEMBERS OF THE ARMED FORCES OF INJURIES INCURRED IN CONNECTION WITH ILL-FITTING OR MALFUNCTIONING PPE.—

''(1) IN GENERAL.—Each health assessment specified in paragraph (2) that is undertaken after the date of the enactment of this Act [Jan. 1, 2021] shall include the following:

''(A) One or more questions on whether members incurred an injury in connection with ill-fitting or malfunctioning personal protective equipment during the period covered by such assessment, including the nature of such injury.

''(B) In the case of any member who has so incurred such an injury, one or more elements of self-evaluation of such injury by such member for purposes of facilitating timely documentation and enhanced monitoring of such members and injuries.

''(2) ASSESSMENTS.—The health assessments specified in this paragraph are the following:

''(A) The annual Periodic Health Assessment of members of the Armed Forces.

''(B) The post-deployment health assessment of members of the Armed Forces.''

REQUIRING DEFENSE MICROELECTRONICS PRODUCTS AND SERVICES MEET TRUSTED SUPPLY CHAIN AND OPERATIONAL SECURITY STANDARDS

Pub. L. 116–92, div. A, title II, § 224, Dec. 20, 2019, 133 Stat. 1266, provided that:

''(a) PURCHASES.—To protect the United States from intellectual property theft and to ensure national security and public safety in the application of new generations of wireless network technology and microelectronics, beginning no later than January 1, 2023, the Secretary of Defense shall ensure that each microelectronics product or service that the Department of Defense purchases on or after such date meets the applicable trusted supply chain and operational security standards established pursuant to subsection (b), except in a case in which the Department seeks to purchase a microelectronics product or service but—

''(1) no such product or service is available for purchase that meets such standards; or

''(2) no such product or service is available for purchase that—

''(A) meets such standards; and

''(B) is available at a price that the Secretary does not consider prohibitively expensive.

''(b) TRUSTED SUPPLY CHAIN AND OPERATIONAL SECURITY STANDARDS.—

''(1) STANDARDS REQUIRED.—(A) Not later than January 1, 2021, the Secretary shall establish trusted supply chain and operational security standards for the purchase of microelectronics products and services by the Department.

''(B) For purposes of this section, a trusted supply chain and operational security standard—

''(i) is a standard that systematizes best practices relevant to—

''(I) manufacturing location;

''(II) company ownership;

''(III) workforce composition;

''(IV) access during manufacturing, suppliers' design, sourcing, manufacturing, packaging, and distribution processes;

''(V) reliability of the supply chain; and

''(VI) other matters germane to supply chain and operational security; and

''(ii) is not a military standard (also known as 'MIL-STD') or a military specification (also known as 'MIL-SPEC') for microelectronics that—

''(I) specifies individual features for Department of Defense microelectronics; or

''(II) otherwise inhibits the acquisition by the Department of securely manufactured, commercially-available products.

''(2) CONSULTATION REQUIRED.—In developing standards under paragraph (1), the Secretary shall consult with the following:

''(A) The Secretary of Homeland Security, the Secretary of State, the Secretary of Commerce, and the Director of the National Institute of Standards and Technology.

''(B) Suppliers of microelectronics products and services from the United States and allies and partners of the United States.

''(C) Representatives of major United States industry sectors that rely on a trusted supply chain and the operational security of microelectronics products and services.

''(D) Representatives of the United States insurance industry.

''(3) TIERS OF TRUST AND LEVELS OF SECURITY AUTHORIZED.—In carrying out paragraph (1), the Secretary may establish tiers and levels of trust and security within the supply chain and operational security standards for microelectronics products and services.

''(4) GENERAL APPLICABILITY.—The standards established pursuant to paragraph (1) shall be, to the greatest extent practicable, generally applicable to the trusted supply chain and operational security needs and use cases of the United States Government and commercial industry, such that the standards could be widely adopted by government agencies, commercial industry, and allies and partners of the United States as the basis for procuring microelectronics products and services.

''(5) ANNUAL REVIEW.—Not later than October 1 of each year, the Secretary shall, in consultation with persons and entities set forth under paragraph (2), review the standards established pursuant to paragraph (1) and issue updates or modifications as the Secretary considers necessary or appropriate.

''(c) ENSURING ABILITY TO SELL COMMERCIALLY.—

''(1) IN GENERAL.—The Secretary shall, to the greatest extent practicable, ensure that suppliers of microelectronics products and services for the Department of Defense subject to subsection (a) are able and incentivized to sell products commercially and to governments of allies and partners of the United States that are produced on the same production lines as the microelectronics products supplied to the Department of Defense.

''(2) EFFECT OF REQUIREMENTS AND ACQUISITIONS.—The Secretary shall, to the greatest extent practicable, ensure that the requirements of the Department and the acquisition by the Department of microelectronics enable the success of a dual-use microelectronics industry.

''(d) MAINTAINING COMPETITION AND INNOVATION.—The Secretary shall take such actions as the Secretary considers necessary and appropriate, within the Secretary's authorized activities to maintain the health of the defense industrial base, to ensure that—

''(1) providers of microelectronics products and services that meet the standards established under subsection (b) are exposed to competitive market pressures to achieve competitive pricing and sustained innovation; and

''(2) the industrial base of microelectronics products and services that meet the standards established under subsection (b) includes providers manufacturing in the United States or in countries that are allies or partners of the United States.''

PROHIBITION ON OPERATION OR PROCUREMENT OF FOREIGN-MADE UNMANNED AIRCRAFT SYSTEMS

Pub. L. 116–92, div. A, title VIII, § 848, Dec. 20, 2019, 133 Stat. 1508, provided that:

''(a) PROHIBITION ON AGENCY OPERATION OR PROCUREMENT.—The Secretary of Defense may not operate or enter into or renew a contract for the procurement of—

''(1) a covered unmanned aircraft system that—

''(A) is manufactured in a covered foreign country or by an entity domiciled in a covered foreign country;

''(B) uses flight controllers, radios, data transmission devices, cameras, or gimbals manufactured in a covered foreign country or by an entity domiciled in a covered foreign country;

''(C) uses a ground control system or operating software developed in a covered foreign country or by an entity domiciled in a covered foreign country; or

''(D) uses network connectivity or data storage located in or administered by an entity domiciled in a covered foreign country; or

''(2) a system manufactured in a covered foreign country or by an entity domiciled in a covered foreign country for the detection or identification of covered unmanned aircraft systems.

''(b) EXEMPTION.—The Secretary of Defense is exempt from the restriction under subsection (a) if the operation or procurement is for the purposes of—

''(1) Counter-UAS surrogate testing and training; or

''(2) intelligence, electronic warfare, and information warfare operations, testing, analysis, and training.

''(c) WAIVER.—The Secretary of Defense may waive the restriction under subsection (a) on a case by case basis by certifying in writing to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] that the operation or procurement is required in the national interest of the United States.

''(d) DEFINITIONS.—In this section:

''(1) COVERED FOREIGN COUNTRY.—The term 'covered foreign country' means the People's Republic of China.

''(2) COVERED UNMANNED AIRCRAFT SYSTEM.—The term 'covered unmanned aircraft system' means an unmanned aircraft system and any related services and equipment.''

POLICIES AND PROCEDURES FOR CONTRACTORS TO REPORT GROSS VIOLATIONS OF INTERNATIONALLY RECOGNIZED HUMAN RIGHTS

Pub. L. 116–92, div. A, title VIII, § 888, Dec. 20, 2019, 133 Stat. 1536, provided that:

''(a) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act [Dec. 20, 2019], the Secretary of Defense shall update Department of Defense policy and guidance and the Department of Defense Supplement to the Federal Acquisition Regulation to provide specific guidance to Department of Defense employees and contractors performing a Department of Defense contract that supports United States Armed Forces deployed outside of the United States on monitoring and reporting allegations of gross violations of internationally recognized human rights.

''(b) REPORT.—Not later than 180 days after the date of the enactment of this Act [Dec. 20, 2019], the Secretary of Defense, with the concurrence of the Secretary of State, shall submit to the appropriate congressional committees a report that describes—

''(1) the policies and procedures in place to obtain information about possible cases of gross violations of internationally recognized human rights from Department of Defense contractors described in subsection (a), including the methods for tracking cases; and

''(2) the resources needed to investigate reports made pursuant to subsection (a).

''(c) FORM OF REPORT.—The report required by subsection (b) shall be submitted in unclassified form, but may include a classified annex.

''(d) DEFINITIONS.—In this section:

''(1) APPROPRIATE CONGRESSIONAL COMMITTEES.—the term 'appropriate congressional committees' means—

''(A) the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives]; and

''(B) the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives.

''(2) GROSS VIOLATIONS OF INTERNATIONALLY RECOGNIZED HUMAN RIGHTS.—The term 'gross violations of internationally recognized human rights' has the meaning given such term in subsection (d)(1) of section 502B of the Foreign Assistance Act of 1961 (22 U.S.C. 2304).''

PROHIBITION ON CONTRACTING WITH PERSONS THAT HAVE BUSINESS OPERATIONS WITH THE MADURO REGIME

Pub. L. 116–92, div. A, title VIII, § 890, Dec. 20, 2019, 133 Stat. 1538, provided that:

''(a) PROHIBITION.—Except as provided under subsections (c), (d), and (e), the Department of Defense may not enter into a contract for the procurement of goods or services with any person that has business operations with an authority of the Government of Venezuela that is not recognized as the legitimate Government of Venezuela by the United States Government.

''(b) EXCEPTIONS.—

''(1) IN GENERAL.—The prohibition under subsection (a) does not apply to a contract that the Secretary of Defense and the Secretary of State jointly determine—

''(A) is necessary—

''(i) for purposes of providing humanitarian assistance to the people of Venezuela;

''(ii) for purposes of providing disaster relief and other urgent life-saving measures; or

''(iii) to carry out noncombatant evacuations; or

''(B) is vital to the national security interests of the United States.

''(2) NOTIFICATION REQUIREMENT.—The Secretary of Defense shall notify the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives], the Committee on Foreign Affairs of the House of Representatives, and the Committee on Foreign Relations of the Senate of any contract entered into on the basis of an exception provided for under paragraph (1).

''(c) OFFICE OF FOREIGN ASSETS CONTROL LICENSES.—The prohibition in subsection (a) shall not apply to a person that has a valid license to operate in Venezuela issued by the Office of Foreign Assets Control of the Department of the Treasury.

''(d) AMERICAN DIPLOMATIC MISSION IN VENEZUELA.—The prohibition in subsection (a) shall not apply to contracts related to the operation and maintenance of the United States Government's consular offices and diplomatic posts in Venezuela.

''(e) DEFINITIONS.—In this section:

''(1) BUSINESS OPERATIONS.—The term 'business operations' means engaging in commerce in any form, including acquiring, developing, maintaining, owning, selling, possessing, leasing, or operating equipment, facilities, personnel, products, services, personal property, real property, or any other apparatus of business or commerce.

''(2) GOVERNMENT OF VENEZUELA.—The term 'Government of Venezuela' includes the government of any political subdivision of Venezuela, and any agency or instrumentality of the Government of Venezuela. For purposes of this paragraph, the term 'agency or instrumentality of the Government of Venezuela' means an agency or instrumentality of a foreign state as defined in section 1603(b) of title 28, United States Code, with each reference in such section to 'a foreign state' deemed to be a reference to 'Venezuela'.

''(3) PERSON.—The term 'person' means—

''(A) a natural person, corporation, company, business association, partnership, society, trust, or any other nongovernmental entity, organization, or group;

''(B) any governmental entity or instrumentality of a government, including a multilateral development institution (as defined in section 1701(c)(3) of the International Financial Institutions Act (22 U.S.C. 262r(c)(3))); and

''(C) any successor, subunit, parent entity, or subsidiary of, or any entity under common ownership or control with, any entity described in subparagraph (A) or (B).

''(f) APPLICABILITY.—This section shall apply with respect to any contract entered into on or after the date of the enactment of this section [Dec. 20, 2019].''

ARMORED COMMERCIAL PASSENGER-CARRYING VEHICLES

Pub. L. 115–232, div. A, title I, § 154, Aug. 13, 2018, 132 Stat. 1672, as amended by Pub. L. 116–283, div. A, title X, § 1081(d)(1), Jan. 1, 2021, 134 Stat. 3873, provided that:

''(a) IMPLEMENTATION OF GAO RECOMMENDATIONS.—In accordance with the recommendations of the Government Accountability Office in the report titled 'Armored Commercial Vehicles: DOD Has Procurement Guidance, but Army Could Take Actions to Enhance Inspections and Oversight' (GAO-17-513), not later than 180 days after the date of the enactment of this Act [Aug. 13, 2018], the Secretary of Army shall—

''(1) ensure that in-progress inspections are conducted at the armoring vendor's facility for each procurement of armored commercial passenger-carrying vehicles until the date on which the Secretary of Defense approves and implements an updated armoring and inspection standard for such vehicles; and

''(2) designate a central point of contact for collecting and reporting information on armored commercial passenger-carrying vehicles (such as information on contracts execution and vehicle inspections).

''(b) BRIEFING REQUIRED.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall provide to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a briefing on the progress of the Secretary in implementing Department of Defense Instruction O–2000.16 Volume 1, dated November 2016, with respect to armored commercial passenger-carrying vehicles, including—

''(1) whether criteria for the procurement of such vehicles have been established and distributed to the relevant components of the Department; and

''(2) whether a process is in place for ensuring that the relevant components of the Department incorporate those criteria into contracts for such vehicles.''

[Pub. L. 116–283, div. A, title X, § 1081(d), Jan. 1, 2021, 134 Stat. 3873, provided that the amendment made by section 1081(d)(1) of Pub. L. 116–283 to section 154 of Pub. L. 115–232, set out above, is effective as of Aug. 13, 2018, and as if included in Pub. L. 115–232.]

ACTIVITIES ON IDENTIFICATION AND DEVELOPMENT OF ENHANCED PERSONAL PROTECTIVE EQUIPMENT AGAINST BLAST INJURY

Pub. L. 115–232, div. A, title II, § 226, Aug. 13, 2018, 132 Stat. 1685, as amended by Pub. L. 116–283, div. A, title X, § 1081(d)(2), Jan. 1, 2021, 134 Stat. 3873, provided that:

''(a) ACTIVITIES REQUIRED.—During calendar year 2019, the Secretary of the Army shall, in consultation with the Director of Operational Test and Evaluation, carry out a set of activities to identify and develop personal equipment to provide enhanced protection against injuries caused by blasts in combat and training.

''(b) ACTIVITIES.—

''(1) CONTINUOUS EVALUATION PROCESS.—For purposes of the activities required by subsection (a), the Secretary shall establish a process to continuously solicit from government, industry, academia, and other appropriate entities personal protective equipment that is ready for testing and evaluation in order to identify and evaluate equipment or clothing that is more effective in protecting members of the Armed Forces from the harmful effects of blast injuries, including traumatic brain injuries, and would be suitable for expedited procurement and fielding.

''(2) GOALS.—The goals of the activities shall include:

''(A) Development of streamlined requirements for procurement of personal protective equipment.

''(B) Appropriate testing of personal protective equipment prior to procurement and fielding.

''(C) Development of expedited mechanisms for deployment of effective personal protective equipment.

''(D) Identification of areas of research in which increased investment has the potential to improve the quality of personal protective equipment and the capability of the industrial base to produce such equipment.

''(E) Such other goals as the Secretary considers appropriate.

''(3) PARTNERSHIPS FOR CERTAIN ASSESSMENTS.—As part of the activities, the Secretary should continue to establish partnerships with appropriate academic institutions for purposes of assessing the following:

''(A) The ability of various forms of personal protective equipment to protect against common blast injuries, including traumatic brain injuries.

''(B) The value of real-time data analytics to track the effectiveness of various forms of personal protective equipment to protect against common blast injuries, including traumatic brain injuries.

''(C) The availability of commercially available off-the-shelf items (as defined in section 104 of title 41, United States Code) that may serve as personal protective technology to protect against traumatic brain injury resulting from blasts.

''(D) The extent to which the equipment determined through the assessment to be most effective to protect against common blast injuries is readily modifiable for different body types and to provide lightweight material options to enhance maneuverability.

''(c) AUTHORITIES.—In carrying out activities under subsection (a), the Secretary may use any authority as follows:

''(1) Experimental procurement authority under section 2373 of title 10, United States Code.

''(2) Other transactions authority under section 2371 and 2371b of title 10, United States Code.

''(3) Authority to award technology prizes under section 2374a of title 10, United States Code.

''(4) Authority under the Defense Acquisition Challenge Program under section 2359b of title 10, United States Code.

''(5) Any other authority on acquisition, technology transfer, and personnel management that the Secretary considers appropriate.

''(d) CERTAIN TREATMENT OF ACTIVITIES.—Any activities under this section shall be deemed to have been through the use of competitive procedures for the purposes of section 2304 of title 10, United States Code.

''(e) ON-GOING ASSESSMENT FOLLOWING ACTIVITIES.—After the completion of activities under subsection (a), the Secretary shall, on an on-going basis, do the following:

''(1) Evaluate the extent to which personal protective equipment identified through the activities would—

''(A) enhance survivability of personnel from blasts in combat and training; and

''(B) enhance prevention of brain damage, and reduction of any resultant chronic brain dysfunction, from blasts in combat and training.

''(2) In the case of personal protective equipment so identified that would provide enhancements as de-

scribed in paragraph (1), estimate the costs that would be incurred to procure such enhanced personal protective equipment, and develop a schedule for the procurement of such equipment.

''(3) Estimate the potential health care cost savings that would occur from expanded use of personal protective equipment described in paragraph (2).

''(f) REPORT.—Not later than December 1, 2019, the Secretary shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the activities under subsection (a) as of the date of the report.

''(g) FUNDING.—Of the amount authorized to be appropriated for fiscal year 2019 by this Act for research, development, test, and evaluation, as specified in the funding tables in division D [div. D of Pub. L. 115–232, 132 Stat. 2328], $10,000,000 may be used to carry out this section.''

[Pub. L. 116–283, div. A, title X, § 1081(d), Jan. 1, 2021, 134 Stat. 3873, provided that the amendment made by section 1081(d)(2) of Pub. L. 116–283 to section 226 of Pub. L. 115–232, set out above, is effective as of Aug. 13, 2018, and as if included in Pub. L. 115–232.]

PILOT PROGRAM TO TEST MACHINE-VISION TECHNOLOGIES TO DETERMINE THE AUTHENTICITY AND SECURITY OF MICROELECTRONIC PARTS IN WEAPON SYSTEMS

Pub. L. 115–232, div. A, title VIII, § 843, Aug. 13, 2018, 132 Stat. 1878, as amended by Pub. L. 116–283, div. A, title XVIII, §§ 1806(e)(3)(C), 1866(d)(1), Jan. 1, 2021, 134 Stat. 4156, 4280, provided that:

''(a) PILOT PROGRAM AUTHORIZED.—The Undersecretary of Defense for Research and Engineering, in coordination with the Defense Microelectronics Activity, shall establish a pilot program to test the feasibility and reliability of using machine-vision technologies to determine the authenticity and security of microelectronic parts in weapon systems.

''(b) OBJECTIVES OF PILOT PROGRAM.—The Undersecretary of Defense for Research and Engineering, in coordination with the Defense Microelectronics Activity, shall design any pilot program conducted under this section to determine the following:

''(1) The effectiveness and technology readiness level of machine-vision technologies to determine the authenticity of microelectronic parts at the time of the creation of such part through final insertion of such part into weapon systems.

''(2) The best method of incorporating machine-vision technologies into the process of developing, transporting, and inserting microelectronics into weapon systems.

''(3) The rules, regulations, or processes that hinder the development and incorporation of machine-vision technologies, and the application of such rules, regulations, or processes to mitigate counterfeit microelectronics proliferation throughout the Department of Defense.

''(c) CONSULTATION.—To develop the pilot program under this section, the Undersecretary of Defense for Research and Engineering, in coordination with the Defense Microelectronics Activity, may consult with the following entities:

''(1) Manufacturers of semiconductors or electronics.

''(2) Industry associations relating to semiconductors or electronics.

''(3) Original equipment manufacturers of products for the Department of Defense.

''(4) Nontraditional defense contractors (as defined in section 2302(9) of title 10, United States Code) that are machine vision companies.

''(5) Federal laboratories (as defined in section 2500(5) of title 10, United States Code).

''(6) Other elements of the Department of Defense that fall under the authority of the Undersecretary of Defense for Research and Engineering.

''(d) COMMENCEMENT AND DURATION.—The pilot program established under this section shall be established not later than April 1, 2019, and all activities under such pilot program shall terminate not later than December 31, 2020.''

[Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1806(e)(3)(C), 1866(d)(1), Jan. 1, 2021, 134 Stat. 4151, 4156, 4280, provided that effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, section 843(c) of Pub. L. 115–232, set out above, is amended, in par. (4), by substituting ''section 3014'' and ''section 3021'' for ''section 2302(9)'' and, in par. (5), by substituting ''section 4801(5)'' for ''section 2500(5)''.]

AUTHORITY FOR EXPLOSIVE ORDNANCE DISPOSAL UNITS TO ACQUIRE NEW OR EMERGING TECHNOLOGIES AND CAPABILITIES

Pub. L. 115–91, div. A, title I, § 142, Dec. 12, 2017, 131 Stat. 1320, provided that: ''The Secretary of Defense, after consultation with the head of each military service, may provide to an explosive ordnance disposal unit the authority to acquire new or emerging technologies and capabilities that are not specifically provided for in the authorized equipment allowance for the unit, as such allowance is set forth in the table of equipment and table of allowance for the unit.''

ANNUAL REPORT ON MILITARY WORKING DOGS USED BY THE DEPARTMENT OF DEFENSE

Pub. L. 115–91, div. A, title III, § 334, Dec. 12, 2017, 131 Stat. 1356, provided that:

''(a) CAPACITY.—The Secretary of Defense, acting through the Executive Agent for Military Working Dogs (hereinafter in this section referred to as the 'Executive Agent'), shall—

''(1) identify the number of military working dogs required to fulfill the various missions of the Department of Defense for which such dogs are used, including force protection, facility and check point security, and explosives and drug detection;

''(2) take such steps as are practicable to ensure an adequate number of military working dog teams are available to meet and sustain the mission requirements identified in paragraph (1);

''(3) ensure that the Department's needs and performance standards with respect to military working dogs are readily available to dog breeders and trainers; and

''(4) coordinate with other Federal, State, and local agencies, nonprofit organizations, universities, and private sector entities, as appropriate, to increase the training capacity for military working dog teams.

''(b) MILITARY WORKING DOG PROCUREMENT.—The Secretary, acting through the Executive Agent, shall work to ensure that military working dogs are procured as efficiently as possible and at the best value to the Government, while maintaining the necessary level of quality and encouraging increased domestic breeding.

''(c) ANNUAL REPORT.—Not later than 90 days after the date of the enactment of this Act [Dec. 12, 2017], and annually thereafter until September 30, 2021, the Secretary, acting through the Executive Agent, shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the procurement and retirement of military working dogs for the fiscal year preceding the fiscal year during which the report is submitted. Each report under this subsection shall include the following for the fiscal year covered by the report:

''(1) The number of military working dogs procured, by source, by each military department or Defense Agency.

''(2) The cost of procuring military working dogs incurred by each military department or Defense Agency.

''(3) The number of domestically-bred and sourced military working dogs procured by each military department or Defense Agency, including a list of vendors, their location, cost, and the quantity of dogs procured from each vendor.

''(4) The number of non-domestically-bred military working dogs procured from non-domestic sources by each military department or Defense Agency, including a list of vendors, their location, cost, and the quantity of dogs procured from each vendor.

''(5) The cost of procuring pre-trained and green dogs for force protection, facility and checkpoint security, and improvised explosive device, other explosives, and drug detection.

''(6) An analysis of the procurement practices of each military department or Defense Agency that limit market access for domestic canine vendors and breeders.

''(7) The total cost of procuring domestically-bred military working dogs versus the total cost of procuring dogs from non-domestic sources.

''(8) The total number of domestically-bred dogs and the number of dogs from foreign sources procured by each military department or Defense Agency and the number and percentage of those dogs that are ultimately deployed for their intended use.

''(9) An explanation for any significant difference in the cost of procuring military working dogs from different sources.

''(10) An estimate of the number of military working dogs expected to retire annually and an identification of the primary cause of the retirement of such dogs.

''(11) An identification of the final disposition of military working dogs no longer in service.

''(d) MILITARY WORKING DOG DEFINED.—For purposes of this section, the term 'military working dog' means a dog used in any official military capacity, as defined by the Secretary of Defense.''

COST-BENEFIT ANALYSIS OF UNIFORM SPECIFICATIONS FOR AFGHAN MILITARY OR SECURITY FORCES

Pub. L. 115–91, div. A, title III, § 344, Dec. 12, 2017, 131 Stat. 1362, provided that: ''Beginning on the date of the enactment of this Act [Dec. 12, 2017], whenever the Secretary of Defense enters into a contract for the provision of uniforms for Afghan military or security forces, the Secretary shall conduct a cost-benefit analysis of the uniform specification for the Afghan military or security forces uniform. Such analysis shall determine—

''(1) whether there is a more effective alternative uniform specification, considering both operational environment and cost, available to the Afghan military or security forces;

''(2) the efficacy of the existing pattern compared to other alternatives (both proprietary and non-proprietary patterns); and

''(3) the costs and feasibility of transitioning the uniforms of the Afghan military or security forces to a pattern owned by the United States, using existing excess inventory where available, and acquiring the rights to the Spec4ce Forest pattern.''

STATEMENTS OF PURPOSE FOR DEPARTMENT OF DEFENSE ACQUISITION

Pub. L. 115–91, div. A, title VIII, § 801, Dec. 12, 2017, 131 Stat. 1449, provided that: ''Not later than 180 days after the date of the enactment of this Act [Dec. 12, 2017], the Secretary of Defense shall revise the Defense Federal Acquisition Regulation Supplement to include the following statements of purpose:

''(1) The defense acquisition system (as defined in section 2545 of title 10, United States Code) exists to manage the investments of the United States in technologies, programs, and product support necessary to achieve the national security strategy prescribed by the President pursuant to section 108 of the National Security Act of 1947 (50 U.S.C. 3043) and to support the United States Armed Forces.

''(2) The investment strategy of the Department of Defense shall be postured to support not only the current United States Armed Forces, but also future Armed Forces of the United States.

''(3) The primary objective of Department of Defense acquisition is to acquire quality products that satisfy user needs with measurable improvements to mission capability and operational support, in a timely manner, and at a fair and reasonable price.''

PROCESS FOR ENHANCED SUPPLY CHAIN SCRUTINY

Pub. L. 115–91, div. A, title VIII, § 807, Dec. 12, 2017, 131 Stat. 1456, provided that:

''(a) PROCESS.—Not later than 90 days after the date of the enactment of this Act [Dec. 12, 2017], the Secretary of Defense shall establish a process for enhancing scrutiny of acquisition decisions in order to improve the integration of supply chain risk management into the overall acquisition decision cycle.

''(b) ELEMENTS.—The process under subsection (a) shall include the following elements:

''(1) Designation of a senior official responsible for overseeing the development and implementation of the process.

''(2) Development or integration of tools to support commercial due-diligence, business intelligence, or otherwise analyze and monitor commercial activity to understand business relationships with entities determined to be threats to the United States.

''(3) Development of risk profiles of products or services based on commercial due-diligence tools and data services.

''(4) Development of education and training curricula for the acquisition workforce that supports the process.

''(5) Integration, as needed, with intelligence sources to develop threat profiles of entities determined to be threats to the United States.

''(6) Periodic review and assessment of software products and services on computer networks of the Department of Defense to remove prohibited products or services.

''(7) Synchronization of the use of current authorities for making supply chain decisions, including section 806 of Public Law 111–383 (10 U.S.C. 2304 note) or improved use of suspension and debarment officials.

''(8) Coordination with interagency, industrial, and international partners, as appropriate, to share information, develop Government-wide strategies for dealing with significant entities determined to be significant threats to the United States, and effectively use authorities in other departments and agencies to provide consistent, Government-wide approaches to supply chain threats.

''(9) Other matters as the Secretary considers necessary.

''(c) NOTIFICATION.—Not later than 90 days after establishing the process required by subsection (a), the Secretary shall provide a written notification to the Committees on Armed Services of the Senate and House of Representatives that the process has been established. The notification also shall include the following:

''(1) Identification of the official designated under subsection (b)(1).

''(2) Identification of tools and services currently available to the Department of Defense under subsection (b)(2).

''(3) Assessment of additional tools and services available under subsection (b)(2) that the Department of Defense should evaluate.

''(4) Identification of, or recommendations for, any statutory changes needed to improve the effectiveness of the process.

''(5) Projected resource needs for implementing any recommendations made by the Secretary.''

PROTOTYPE PROJECTS TO DIGITIZE DEFENSE ACQUISITION REGULATIONS, POLICIES, AND GUIDANCE, AND EMPOWER USER TAILORING OF ACQUISITION PROCESS

Pub. L. 115–91, div. A, title VIII, § 868, Dec. 12, 2017, 131 Stat. 1495, provided that:

''(a) IN GENERAL.—The Secretary of Defense, acting through the Under Secretary of Defense for Research and Engineering, shall conduct development efforts to

develop prototypes to digitize defense acquisition regulations, policies, and guidance and to develop a digital decision support tool that facilitates the ability of users to tailor programs in accordance with existing laws, regulations, and guidance.

''(b) ELEMENTS.—Under the prototype projects, the Secretary shall—

''(1) convert existing acquisition policies, guides, memos, templates, and reports to an online, interactive digital format to create a dynamic, integrated, and authoritative knowledge environment for purposes of assisting program managers and the acquisition workforce of the Department of Defense to navigate the complex lifecycle for each major type of acquisition program or activity of the Department;

''(2) as part of this digital environment, create a digital decision support capability that uses decision trees and tailored acquisition models to assist users to develop strategies and facilitate coordination and approvals; and

''(3) as part of this environment, establish a foundational data layer to enable advanced data analytics on the acquisition enterprise of the Department, to include business process reengineering to improve productivity.

''(c) USE OF PROTOTYPES IN ACQUISITION ACTIVITIES.—The Under Secretary of Defense for Research and Engineering shall encourage the use of these prototypes to model, develop, and test any procedures, policies, instructions, or other forms of direction and guidance that may be required to support acquisition training, practices, and policies of the Department of Defense.

''(d) FUNDING.—The Secretary may use the authority under section 1705(e)(4)(B) of title 10, United States Code, to develop acquisition support prototypes and tools under this program.''

SOFTWARE DEVELOPMENT PILOT PROGRAM USING AGILE BEST PRACTICES

Pub. L. 115–91, div. A, title VIII, § 874, Dec. 12, 2017, 131 Stat. 1500, provided that:

''(a) IN GENERAL.—Not later than 30 days after the date of the enactment of this Act [Dec. 12, 2017], the Secretary of Defense shall identify no fewer than four and up to eight software development activities within the Department of Defense or military departments to be developed in a pilot program using agile acquisition methods.

''(b) STREAMLINED PROCESSES.—Software development activities identified under subsection (a) shall be selected for the pilot program and developed without incorporation of the following contract or transaction requirements:

''(1) Earned value management (EVM) or EVM-like reporting.

''(2) Development of integrated master schedule.

''(3) Development of integrated master plan.

''(4) Development of technical requirement document.

''(5) Development of systems requirement documents.

''(6) Use of information technology infrastructure library agreements.

''(7) Use of software development life cycle (methodology).

''(c) ROLES AND RESPONSIBILITIES.—

''(1) IN GENERAL.—Selected activities shall include the following roles and responsibilities:

''(A) A program manager that is authorized to make all programmatic decisions within the overarching activity objectives, including resources, funding, personnel, and contract or transaction termination recommendations.

''(B) A product owner that reports directly to the program manager and is responsible for the overall design of the product, prioritization of roadmap elements and interpretation of their acceptance criteria, and prioritization of the list of all features desired in the product.

''(C) An engineering lead that reports directly to the program manager and is responsible for the implementation and operation of the software.

''(D) A design lead that reports directly to the program manager and is responsible for identifying, communicating, and visualizing user needs through a human-centered design process.

''(2) QUALIFICATIONS.—The Secretary shall establish qualifications for personnel filling the positions described in paragraph (1) prior to their selection. The qualifications may not include a positive education requirement and must be based on technical expertise or experience in delivery of software products, including agile concepts.

''(3) COORDINATION PLAN FOR TESTING AND CERTIFICATION ORGANIZATIONS.—The program manager shall ensure the availability of resources for test and certification organizations support of iterative development processes.

''(d) PLAN.—The Secretary of Defense shall develop a plan for each selected activity under the pilot program. The plan shall include the following elements:

''(1) Definition of a product vision, identifying a succinct, clearly defined need the software will address.

''(2) Definition of a product road map, outlining a noncontractual plan that identifies short-term and long-term product goals and specific technology solutions to help meet those goals and adjusts to mission and user needs at the product owner's discretion.

''(3) The use of a broad agency announcement, other transaction authority, or other rapid merit-based solicitation procedure.

''(4) Identification of, and continuous engagement with, end users.

''(5) Frequent and iterative end user validation of features and usability consistent with the principles outlined in the Digital Services Playbook of the U.S. Digital Service.

''(6) Use of commercial best practices for advanced computing systems, including, where applicable—

''(A) Automated testing, integration, and deployment;

''(B) compliance with applicable commercial accessibility standards;

''(C) capability to support modern versions of multiple, common web browsers;

''(D) capability to be viewable across commonly used end user devices, including mobile devices; and

''(E) built-in application monitoring.

''(e) PROGRAM SCHEDULE.—The Secretary shall ensure that each selected activity includes—

''(1) award processes that take no longer than three months after a requirement is identified;

''(2) planned frequent and iterative end user validation of implemented features and their usability;

''(3) delivery of a functional prototype or minimally viable product in three months or less from award; and

''(4) follow-on delivery of iterative development cycles no longer than four weeks apart, including security testing and configuration management as applicable.

''(f) OVERSIGHT METRICS.—The Secretary shall ensure that the selected activities—

''(1) use a modern tracking tool to execute requirements backlog tracking; and

''(2) use agile development metrics that, at a minimum, track—

''(A) pace of work accomplishment;

''(B) completeness of scope of testing activities (such as code coverage, fault tolerance, and boundary testing);

''(C) product quality attributes (such as major and minor defects and measures of key performance attributes and quality attributes);

''(D) delivery progress relative to the current product roadmap; and

''(E) goals for each iteration.

''(g) RESTRICTIONS.—

''(1) USE OF FUNDS.—No funds made available for the selected activities may be expended on estimation or evaluation using source lines of code methodologies.

''(2) CONTRACT TYPES.—The Secretary of Defense may not use lowest price technically acceptable contracting methods or cost plus contracts to carry out selected activities under this section, and shall encourage the use of existing streamlined and flexible contracting arrangements.

''(h) REPORTS.—

''(1) SOFTWARE DEVELOPMENT ACTIVITY COMMENCEMENT.—

''(A) IN GENERAL.—Not later than 30 days before the commencement of a software development activity under the pilot program under subsection (a), the Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the activity (in this subsection referred to as a 'pilot activity').

''(B) ELEMENTS.—The report on a pilot activity under this paragraph shall set forth a description of the pilot activity, including the following information:

''(i) The purpose of the pilot activity.

''(ii) The duration of the pilot activity.

''(iii) The efficiencies and benefits anticipated to accrue to the Government under the pilot program.

''(2) SOFTWARE DEVELOPMENT ACTIVITY COMPLETION.—

''(A) IN GENERAL.—Not later than 60 days after the completion of a pilot activity, the Secretary shall submit to the congressional defense committees a report on the pilot activity.

''(B) ELEMENTS.—The report on a pilot activity under this paragraph shall include the following elements:

''(i) A description of results of the pilot activity.

''(ii) Such recommendations for legislative or administrative action as the Secretary considers appropriate in light of the pilot activity.

''(i) DEFINITIONS.—In this section:

''(1) AGILE ACQUISITION.—The term 'agile acquisition' means acquisition using agile or iterative development.

''(2) AGILE OR ITERATIVE DEVELOPMENT.—The term 'agile or iterative development', with respect to software—

''(A) means acquisition pursuant to a method for delivering multiple, rapid, incremental capabilities to the user for operational use, evaluation, and feedback not exclusively linked to any single, proprietary method or process; and

''(B) involves—

''(i) the incremental development and fielding of capabilities, commonly called 'spirals', 'spins', or 'sprints', which can be measured in a few weeks or months; and

''(ii) continuous participation and collaboration by users, testers, and requirements authorities.''

DEVELOPMENT OF PROCUREMENT ADMINISTRATIVE LEAD TIME

Pub. L. 115–91, div. A, title VIII, § 886, Dec. 12, 2017, 131 Stat. 1505, provided that:

''(a) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act [Dec. 12, 2017], the Secretary of Defense shall develop, make available for public comment, and finalize—

''(1) a definition of the term 'Procurement Administrative Lead Time' or 'PALT', to be applied Department of Defense-wide, that describes the amount of time from the date on which a solicitation is issued to the date of an initial award of a contract or task order of the Department of Defense; and

''(2) a plan for measuring and publicly reporting data on PALT for Department of Defense contracts and task orders above the simplified acquisition threshold.

''(b) REQUIREMENT FOR DEFINITION.—Unless the Secretary determines otherwise, the amount of time in the definition of PALT developed under subsection (a) shall—

''(1) begin on the date on which the initial solicitation is issued for a contract or task order of the Department of Defense by the Secretary of a military department or head of a Defense Agency; and

''(2) end on the date of the award of the contract or task order.

''(c) COORDINATION.—In developing the definition of PALT, the Secretary shall coordinate with—

''(1) the senior contracting official of each military department and Defense Agency to determine the variations of the definition in use across the Department of Defense and each military department and Defense Agency; and

''(2) the Administrator of the General Services Administration on modifying the existing data system of the Federal Government to determine the date on which the initial solicitation is issued.

''(d) USE OF EXISTING PROCUREMENT DATA SYSTEMS.—In developing the plan for measuring and publicly reporting data on PALT required by subsection (a), the Secretary shall, to the maximum extent practicable, rely on the information contained in the Federal procurement data system established pursuant to section 1122(a)(4) of title 41, United States Code, including any modifications to that system.''

ESTABLISHMENT OF SET OF ACTIVITIES THAT USE DATA ANALYSIS, MEASUREMENT, AND OTHER EVALUATION-RELATED METHODS TO IMPROVE ACQUISITION PROGRAM OUTCOMES

Pub. L. 115–91, div. A, title IX, § 913, Dec. 12, 2017, 131 Stat. 1523, as amended by Pub. L. 115–232, div. A, title X, § 1081(c)(2), Aug. 13, 2018, 132 Stat. 1985, provided that:

''(a) ESTABLISHMENT REQUIRED.—Not later than one year after the date of the enactment of this Act [Dec. 12, 2017], the Secretary of Defense shall establish a set of activities that use data analysis, measurement, and other evaluation-related methods to improve the acquisition outcomes of the Department of Defense and enhance organizational learning.

''(b) TYPES OF ACTIVITIES.—The set of activities established under subsection (a) may include any or all of the following:

''(1) Establishment of data analytics capabilities and organizations within an Armed Force.

''(2) Development of capabilities in Department of Defense laboratories, test centers, and federally funded research and development centers to provide technical support for data analytics activities that support acquisition program management and business process re-engineering activities.

''(3) Increased use of existing analytical capabilities available to acquisition programs and offices to support improved acquisition outcomes.

''(4) Funding of intramural and extramural research and development activities to develop and implement data analytics capabilities in support of improved acquisition outcomes.

''(5) Publication, to the maximum extent practicable, and in a manner that protects classified and proprietary information, of data collected by the Department of Defense related to acquisition program costs and activities for access and analyses by the general public or Department research and education organizations.

''(6) Promulgation by the Chief of Staff of the Army, the Chief of Naval Operations, the Chief of Staff of the Air Force, and the Commandant of the Marine Corps, in coordination with the Deputy Secretary of Defense, the Under Secretary of Defense for Research and Engineering, and the Under Secretary for Acquisition and Sustainment, of a consistent policy as to the role of data analytics in establishing budgets and making milestone decisions for major defense acquisition programs.

''(7) Continual assessment, in consultation with the private sector, of the efficiency of current data collection and analyses processes, so as to minimize the

requirement for collection and delivery of data by, from, and to Government organizations.

''(8) Promulgation of guidance to acquisition programs and activities on the efficient use, quality, and sharing of enterprise data between programs and organizations to improve acquisition program analytics and outcomes.

''(9) Establishment of focused research and educational activities at the Defense Acquisition University, and appropriate private sector academic institutions, to support enhanced use of data management, data analytics, and other evaluation-related methods to improve acquisition outcomes.''

[Pub. L. 115–232, div. A, title X, § 1081(c), Aug. 13, 2018, 132 Stat. 1985, provided that the amendment made by section 1081(c)(2) to section 913 of Pub. L. 115–91, set out above, is effective as of Dec. 12, 2017, and as if included in Pub. L. 115–91 as enacted.]

REQUIREMENTS RELATING TO MULTI-USE SENSITIVE COMPARTMENTED INFORMATION FACILITIES

Pub. L. 115–91, div. A, title XVI, § 1628, Dec. 12, 2017, 131 Stat. 1735, provided that:

''(a) IN GENERAL.—In order to facilitate access for small business concerns and nontraditional defense contractors to affordable secure spaces, the Secretary of Defense, in consultation with the Director of National Intelligence, shall develop processes and procedures necessary to build, certify, and maintain certifications for multi-use sensitive compartmented information facilities not tied to a single contract and where multiple companies can securely work on multiple projects at different security levels.

''(b) DEFINITIONS.—In this section:

''(1) The term 'small business concern' has the meaning given that term under section 3 of the Small Business Act (15 U.S.C. 632).

''(2) The term 'nontraditional defense contractors' has the meaning given that term in section 2302 of title 10, United States Code.''

PILOT PROGRAM ON ENHANCING INFORMATION SHARING FOR SECURITY OF SUPPLY CHAIN

Pub. L. 115–91, div. A, title XVI, § 1696, Dec. 12, 2017, 131 Stat. 1793, provided that:

''(a) ESTABLISHMENT.—Not later than June 1, 2019, the Secretary of Defense shall establish a pilot program to enhance information sharing with cleared defense contractors to ensure all source information is appropriately, singularly, and exclusively shared for the purpose of ensuring the security or integrity of the supply chain of covered programs.

''(b) SELECTION.—The Secretary shall select not more than 10 acquisition or sustainment programs of the Department of Defense to participate in the pilot program under subsection (a), of which—

''(1) not fewer than one program shall be related to nuclear weapons;

''(2) not fewer than one program shall be related to nuclear command, control, and communications;

''(3) not fewer than one program shall be related to continuity of government;

''(4) not fewer than one program shall be related to ballistic missile defense;

''(5) not fewer than one program shall be related to other command and control systems; and

''(6) not fewer than one program shall be related to space systems.

''(c) REPORT.—Not later than March 1, 2018, the Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report that includes—

''(1) details on how the Secretary will establish the pilot program under subsection (a) to ensure all source information is appropriately, singularly, and exclusively shared for the purpose of ensuring the security or integrity of the supply chain of covered programs;

''(2) details of any personnel, funding, or statutory constraints in carrying out the pilot program; and

''(3) the identification of any legislative action or administrative action required to provide the Secretary with specific additional authorities required to fully implement the pilot program.

''(d) CLEARED DEFENSE CONTRACTORS DEFINED.—In this section, the term 'cleared defense contractors' means contractors of the Department of Defense who have a security clearance, including contractor facilities that have a security clearance.''

USE OF COMMERCIAL ITEMS IN DISTRIBUTED COMMON GROUND SYSTEMS

Pub. L. 115–91, div. A, title XVI, § 1698, Dec. 12, 2017, 131 Stat. 1794, provided that:

''(a) IN GENERAL.—The procurement process for each covered Distributed Common Ground System shall be carried out in accordance with section 2377 of title 10, United States Code.

''(b) CERTIFICATION.—Not later than 30 days after the date of the enactment of this Act [Dec. 12, 2017], the service acquisition executive responsible for each covered Distributed Common Ground System shall certify to the appropriate congressional committees that the procurement process for increments of the system procured after the date of the enactment of this Act will be carried out in accordance with section 2377 of title 10, United States Code.

''(c) DEFINITIONS.—In this section:

''(1) The term 'appropriate congressional committees' means—

''(A) the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives]; and

''(B) the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives.

''(2) The term 'covered Distributed Common Ground System' includes the following:

''(A) The Distributed Common Ground System of the Army.

''(B) The Distributed Common Ground System of the Navy.

''(C) The Distributed Common Ground System of the Marine Corps.

''(D) The Distributed Common Ground System of the Air Force.

''(E) The Distributed Common Ground System of the Special Operations Forces.''

STRATEGY FOR ASSURED ACCESS TO TRUSTED MICROELECTRONICS

Pub. L. 114–328, div. A, title II, § 231, Dec. 23, 2016, 130 Stat. 2059, as amended by Pub. L. 116–283, div. A, title II, § 276, Jan. 1, 2021, 134 Stat. 3504, provided that:

''(a) STRATEGY.—The Secretary of Defense shall, in collaboration with the Under Secretary of Defense for Acquisition and Sustainment, the Under Secretary for Research and Engineering, and the Director of the Defense Advanced Research Projects Agency, develop a strategy to ensure that the Department of Defense has assured access to trusted microelectronics by not later than June 1, 2021.

''(b) ELEMENTS.—The strategy under subsection (a) shall include the following:

''(1) Definitions of the various levels of trust required by classes of Department of Defense systems.

''(2) Means of classifying systems of the Department of Defense based on the level of trust such systems are required to maintain with respect to microelectronics.

''(3) Means by which trust in microelectronics can be assured.

''(4) Means to increase the supplier base for assured microelectronics to ensure multiple supply pathways.

''(5) An assessment of the microelectronics needs of the Department of Defense in future years, including the need for trusted, radiation-hardened microelectronics.

''(6) An assessment of the microelectronic needs of the Department of Defense that may not be fulfilled by entities outside the Department of Defense.

''(7) The resources required to assure access to trusted microelectronics, including infrastructure, workforce, and investments in science and technology.

''(8) A research and development strategy to ensure that the Department of Defense can, to the maximum extent practicable, use state of the art commercial microelectronics capabilities or their equivalent, while satisfying the needs for trust.

''(9) Recommendations for changes in authorities, regulations, and practices, including acquisition policies, financial management, public-private partnership policies, or in any other relevant areas, that would support the achievement of the goals of the strategy.

''(10) An approach to ensuring the continuing production of cutting-edge microelectronics for national security needs, including access to state-of-the-art node sizes through commercial manufacturing, heterogeneous integration, advantaged sensor manufacturing, boutique chip designs, and variable volume production capabilities.

''(11) An assessment of current microelectronics supply chain management best practices, including—

''(A) intellectual property controls;

''(B) international standards;

''(C) guidelines of the National Institute of Standards and Technology;

''(D) product traceability and provenance; and

''(E) location of design, manufacturing, and packaging facilities.

''(12) An assessment of existing risks to the current microelectronics supply chain.

''(13) A description of actions that may be carried out by the defense industrial base to implement best practices described in paragraph (11) and mitigate risks described in paragraph (12).

''(14) A plan for increasing commercialization of intellectual property developed by the Department of Defense for commercial microelectronics research and development.

''(15) An assessment of the feasibility, usefulness, efficacy, and cost of—

''(A) developing a national laboratory exclusively focused on the research and development of microelectronics to serve as a center for Federal Government expertise in high-performing, trusted microelectronics and as a hub for Federal Government research into breakthrough microelectronics-related technologies; and

''(B) incorporating into such national laboratory a commercial incubator to provide early-stage microelectronics startups, which face difficulties scaling due to the high costs of microelectronics design and fabrication, with access to funding resources, fabrication facilities, design tools, and shared intellectual property.

''(16) The development of multiple models of public-private partnerships to execute the strategy, including in-depth analysis of establishing a semiconductor manufacturing corporation to leverage private sector technical, managerial, and investment expertise, and private capital, that would have the authority and funds to provide grants or approve investment tax credits, or both, to implement the strategy.

''(17) Processes and criteria for competitive selection of commercial companies, including companies headquartered in countries that are allies or partners with the United States, to provide design, foundry and assembly, and packaging services and to build and operate the industrial capabilities associated with such services.

''(18) The role that other Federal agencies should play in organizing and supporting the strategy, including any required direct or indirect funding support, or legislative and regulatory actions, including restricting procurement to domestic sources, and providing antitrust and export control relief.

''(19) All potential funding sources and mechanisms for initial and sustaining investments in microelectronics.

''(20) Such other matters as the Secretary of Defense determines to be relevant.

''(c) SUBMISSION AND UPDATES.—(1) Not later than one year after the date of the enactment of this Act [Dec. 23, 2016], the Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] the strategy developed under subsection (a). The strategy shall be submitted in unclassified form, but may include a classified annex.

''(2) Not later than two years after submitting the strategy under paragraph (1) and not less frequently than once every two years thereafter until September 30, 2024, the Secretary shall update the strategy as the Secretary considers appropriate to support Department of Defense missions.

''(d) DIRECTIVE REQUIRED.—Not later than June 1, 2021, the Secretary of Defense shall issue a directive for the Department of Defense describing how Department of Defense entities may access assured and trusted microelectronics supply chains for Department of Defense systems.

''(e) REPORT AND CERTIFICATION.—Not later than June 1, 2021, the Secretary of the Defense shall submit to the congressional defense committees—

''(1) a report on—

''(A) the status of the implementation of the strategy developed under subsection (a);

''(B) the actions being taken to achieve full implementation of such strategy, and a timeline for such implementation; and

''(C) the status of the implementation of the directive required by subsection (d); and

''(2) a certification of whether the Department of Defense has an assured means for accessing a sufficient supply of trusted microelectronics, as required by the strategy developed under subsection (a).

''(f) SUBMISSION.—Not later than June 1, 2021, the Secretary of Defense shall submit the strategy required in subsection (a), along with any views and recommendations and an estimated budget to implement the strategy, to the President, the National Security Council, and the National Economic Council.

''(g) DEFINITIONS.—In this section:

''(1) The term 'assured' refers, with respect to microelectronics, to the ability of the Department of Defense to guarantee availability of microelectronics parts at the necessary volumes and with the performance characteristics required to meet the needs of the Department of Defense.

''(2) The terms 'trust' and 'trusted' refer, with respect to microelectronics, to the ability of the Department of Defense to have confidence that the microelectronics function as intended and are free of exploitable vulnerabilities, either intentionally or unintentionally designed or inserted as part of the system at any time during its life cycle.''

UTILITY DATA MANAGEMENT FOR MILITARY FACILITIES

Pub. L. 114–328, div. A, title III, § 313, Dec. 23, 2016, 130 Stat. 2073, provided that:

''(a) PILOT PROGRAM.—The Secretary of Defense, in consultation with the Secretary of Energy, may carry out a pilot program to investigate the use of utility data management services to perform utility bill aggregation, analysis, third-party payment, storage, and distribution for the Department of Defense.

''(b) USE OF FUNDS.—Of the funds authorized to be appropriated by this Act [see Tables for classification] or otherwise made available for fiscal year 2017 for operation and maintenance, Navy, for enterprise information, not more than $250,000 may be obligated or expended to carry out the pilot program under subsection (a).''

PROCUREMENT OF PERSONAL PROTECTIVE EQUIPMENT

Pub. L. 114–328, div. A, title VIII, § 814(a), Dec. 23, 2016, 130 Stat. 2271, as amended by Pub. L. 115–91, div. A, title VIII, § 882, Dec. 12, 2017, 131 Stat. 1504, provided that:

''(a) LIMITATION.—Not later than 90 days after the date of the enactment of this Act [Dec. 23, 2016], the Defense Federal Acquisition Regulation Supplement shall be revised—

''(1) to prohibit the use by the Department of Defense of reverse auctions or lowest price technically acceptable contracting methods for the procurement of personal protective equipment or an aviation critical safety item (as defined in section 2319(g) of this title [probably means section 2319(g) of title 10, United States Code]) if the level of quality or failure of the equipment or item could result in combat casualties; and

''(2) to establish a preference for the use of best value contracting methods for the procurement of such equipment or item.''

Pub. L. 114–92, div. A, title VIII, § 884, Nov. 25, 2015, 129 Stat. 948, which required the Secretary of Defense to ensure that the Secretaries of the Army, Navy, and Air Force, in procuring an item of personal protective equipment or a critical safety item, use source selection criteria that were predominately based on technical qualifications of the item and not predominately based on price to the maximum extent practicable if the level of quality or failure of the item could result in death or severe bodily harm to the user, as determined by the Secretaries, was repealed by Pub. L. 114–328, div. A, title VIII, § 814(b), Dec. 23, 2016, 130 Stat. 2271.

CONTRACT CLOSEOUT AUTHORITY

Pub. L. 114–328, div. A, title VIII, § 836, Dec. 23, 2016, 130 Stat. 2285, as amended by Pub. L. 115–91, div. A, title VIII, § 824, Dec. 12, 2017, 131 Stat. 1465; Pub. L. 116–283, div. A, title VIII, § 820, Jan. 1, 2021, 134 Stat. 3752, provided that:

''(a) AUTHORITY.—The Secretary of Defense may close out a contract or group of contracts as described in subsection (b) through the issuance of one or more modifications to such contracts without completing a reconciliation audit or other corrective action. To accomplish closeout of such contracts—

''(1) remaining contract balances may be offset with balances in other contract line items within a contract regardless of the year or type of appropriation obligated to fund each contract line item and regardless of whether the appropriation for such contract line item has closed; and

''(2) remaining contract balances may be offset with balances on other contracts regardless of the year or type of appropriation obligated to fund each contract and regardless of whether the appropriation has closed.

''(b) COVERED CONTRACTS.—This section covers any contract or group of contracts between the Department of Defense and a defense contractor, each one of which—

''(1) was entered into—

''(A) with respect to a contract or group of contracts not described in subparagraph (B), at least 7 fiscal years before the current fiscal year; and

''(B) with respect to a contract or group of contracts for military construction (as defined in section 2801 of title 10, United States Code) or shipbuilding, at least 10 fiscal years before the current fiscal year;

''(2) the performance or delivery has been completed at least 4 years before the current fiscal year; and

''(3) is determined by the Secretary of Defense to be not otherwise reconcilable because—

''(A) the records have been destroyed or lost; or

''(B) the records are available but the Secretary of Defense has determined that the time or effort required to determine the exact amount owed to the United States Government or amount owed to the contractor is disproportionate to the amount at issue.

''(c) NEGOTIATED SETTLEMENT AUTHORITY.—Any contract or group of contracts covered by this section may be closed out through a negotiated settlement with the contractor.

''(d) WAIVER AUTHORITY.—

''(1) IN GENERAL.—The Secretary of Defense is authorized to waive any provision of acquisition law or regulation to carry out the authority under subsection (a).

''(2) NOTIFICATION REQUIREMENT.—The Secretary of Defense shall notify the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] not later than 10 days after exercising the authority under subsection (d). The notice shall include an identification of each provision of law or regulation waived.

''(e) ADJUSTMENT AND CLOSURE OF RECORDS.—After closeout of any contract described in subsection (b) using the authority under this section, the payment or accounting offices concerned may adjust and close any open finance and accounting records relating to the contract.

''(f) NO LIABILITY.—No liability shall attach to any accounting, certifying, or payment official, or any contracting officer, for any adjustments or closeout made pursuant to the authority under this section.

''(g) REGULATIONS.—The Secretary of Defense shall prescribe regulations for the administration of the authority under this section.''

KEY PERFORMANCE PARAMETER REDUCTION PILOT PROGRAM

Pub. L. 114–328, div. A, title VIII, § 854, Dec. 23, 2016, 130 Stat. 2297, provided that:

''(a) IN GENERAL.—The Secretary of Defense may carry out a pilot program under which the Secretary may identify at least one acquisition program in each military department for reduction of the total number of key performance parameters established for the program, for purposes of determining whether operational and programmatic outcomes of the program are improved by such reduction.

''(b) LIMITATION ON KEY PERFORMANCE PARAMETERS.—Any acquisition program identified for the pilot program carried out under subsection (a) shall establish no more than three key performance parameters, each of which shall describe a program-specific performance attribute. Any key performance parameters for such a program that are required by statute shall be treated as key system attributes.''

DEFENSE PILOT PROGRAM FOR AUTHORITY TO ACQUIRE INNOVATIVE COMMERCIAL PRODUCTS, TECHNOLOGIES, AND SERVICES USING GENERAL SOLICITATION COMPETITIVE PROCEDURES

Pub. L. 114–328, div. A, title VIII, § 879, Dec. 23, 2016, 130 Stat. 2312, as amended by Pub. L. 115–232, div. A, title VIII, § 836(f)(9), Aug. 13, 2018, 132 Stat. 1872, provided that:

''(a) AUTHORITY.—The Secretary of Defense and the Secretaries of the military departments may carry out a pilot program, to be known as the 'defense commercial solutions opening pilot program', under which the Secretary may acquire innovative commercial products, technologies, and services through a competitive selection of proposals resulting from a general solicitation and the peer review of such proposals.

''(b) TREATMENT AS COMPETITIVE PROCEDURES.—Use of general solicitation competitive procedures for the pilot program under subsection (a) shall be considered to be use of competitive procedures for purposes of chapter 137 of title 10, United States Code.

''(c) LIMITATIONS.—

''(1) IN GENERAL.—The Secretary may not enter into a contract or agreement under the pilot program for an amount in excess of $100,000,000 without a written determination from the Under Secretary for Acquisition, Logistics, and Technology or the relevant service acquisition executive of the efficacy of the effort to meet mission needs of the Department of Defense or the relevant military department.

''(2) FIXED-PRICE REQUIREMENT.—Contracts or agreements entered into under the program shall be fixed-price, including fixed-price incentive fee contracts.

''(3) TREATMENT AS COMMERCIAL PRODUCTS OR COMMERCIAL SERVICES.—Notwithstanding section 2376(1) of title 10, United States Code, items, technologies, and services acquired under the pilot program shall be treated as commercial products or commercial services.

''(d) GUIDANCE.—Not later than six months after the date of the enactment of this Act [Dec. 23, 2016], the Secretary shall issue guidance for the implementation of the pilot program under this section within the Department of Defense. Such guidance shall be issued in consultation with the Director of the Office of Management and Budget and shall be posted for access by the public.

''(e) CONGRESSIONAL NOTIFICATION REQUIRED.—

''(1) IN GENERAL.—Not later than 45 days after the award of a contract for an amount exceeding $100,000,000 using the authority in subsection (a), the Secretary of Defense shall notify the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] of such award.

''(2) ELEMENTS.—Notice of an award under paragraph (1) shall include the following:

''(A) Description of the innovative commercial products, technology, or service acquired.

''(B) Description of the requirement, capability gap, or potential technological advancement with respect to which the innovative commercial products, technology, or service acquired provides a solution or a potential new capability.

''(C) Amount of the contract awarded.

''(D) Identification of contractor awarded the contract.

''(f) DEFINITION.—In this section, the term 'innovative' means—

''(1) any technology, process, or method, including research and development, that is new as of the date of submission of a proposal; or

''(2) any application that is new as of the date of submission of a proposal of a technology, process, or method existing as of such date.

''(g) SUNSET.—The authority to enter into contracts under the pilot program shall expire on September 30, 2022.''

PILOT PROGRAM FOR DISTRIBUTION SUPPORT AND SERVICES FOR WEAPON SYSTEMS CONTRACTORS

Pub. L. 114–328, div. A, title VIII, § 883, Dec. 23, 2016, 130 Stat. 2316, provided that:

''(a) AUTHORITY.—The Secretary of Defense may carry out a six-year pilot program under which the Secretary may make available storage and distribution services support to a contractor in support of the performance by the contractor of a contract for the production, modification, maintenance, or repair of a weapon system that is entered into by the Department of Defense.

''(b) SUPPORT CONTRACTS.—

''(1) IN GENERAL.—Any storage and distribution services to be provided under the pilot program under this section to a contractor in support of the performance of a contract described in subsection (a) shall be provided under a separate contract that is entered into by the Director of the Defense Logistics Agency with that contractor. The requirements of section 2208(h) of title 10, United States Code, and the regulations prescribed pursuant to such section shall apply to any such separate support contract between the Director of the Defense Logistics Agency and the contractor.

''(2) LIMITATION.—Not more than five support contracts between the Director and the contractor may be awarded under the pilot program.

''(c) SCOPE OF SUPPORT AND SERVICES.—The storage and distribution support services that may be provided under this section in support of the performance of a contract described in subsection (a) are storage and distribution of materiel and repair parts necessary for the performance of that contract.

''(d) REGULATIONS.—Before exercising the authority under the pilot program under this section, the Secretary of Defense shall prescribe in regulations such requirements, conditions, and restrictions as the Secretary determines appropriate to ensure that storage and distribution services are provided under the pilot program only when it is in the best interests of the United States to do so. The regulations shall include, at a minimum, the following:

''(1) A requirement for the solicitation of offers for a contract described in subsection (a), for which storage and distribution services are to be made available under the pilot program, including—

''(A) a statement that the storage and distribution services are to be made available under the authority of the pilot program under this section to any contractor awarded the contract, but only on a basis that does not require acceptance of the support and services; and

''(B) a description of the range of the storage and distribution services that are to be made available to the contractor.

''(2) A requirement for the rates charged a contractor for storage and distribution services provided to a contractor under the pilot program to reflect the full cost to the United States of the resources used in providing the support and services, including the costs of resources used, but not paid for, by the Department of Defense.

''(3) With respect to a contract described in subsection (a) that is being performed for a department or agency outside the Department of Defense, a prohibition, in accordance with applicable contracting procedures, on the imposition of any charge on that department or agency for any effort of Department of Defense personnel or the contractor to correct deficiencies in the performance of such contract.

''(4) A prohibition on the imposition of any charge on a contractor for any effort of the contractor to correct a deficiency in the performance of storage and distribution services provided to the contractor under this section.

''(5) A requirement that storage and distribution services provided under the pilot program may not interfere with the mission of the Defense Logistics Agency or of any military department involved with the pilot program.

''(6) A requirement that any support contract for storage and distribution services entered into under the pilot program shall include a clause to indemnify the Government against any failure by the contractor to perform the support contract, and to remain responsible for performance of the primary contract.

''(e) RELATIONSHIP TO TREATY OBLIGATIONS.—The Secretary shall ensure that the exercise of authority under the pilot program under this section does not conflict with any obligation of the United States under any treaty or other international agreement.

''(f) REPORTS.—

''(1) SECRETARY OF DEFENSE.—Not later than the end of the fourth year of operation of the pilot program, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives a report describing—

''(A) the cost effectiveness for both the Government and industry of the pilot program; and

''(B) how support contracts under the pilot program affected meeting the requirements of primary contracts.

''(2) COMPTROLLER GENERAL.—Not later than the end of the fifth year of operation of the pilot program, the Comptroller General of the United States shall review the report of the Secretary under paragraph (1) for sufficiency and provide such recommendations in a report to the Committees on Armed Services of the Senate and House of Representatives as the Comptroller General considers appropriate.

''(g) SUNSET.—The authority to enter into contracts under the pilot program shall expire six years after the date of the enactment of this Act. Any contracts entered into before such date shall continue in effect according to their terms.''

NONTRADITIONAL AND SMALL CONTRACTOR INNOVATION PROTOTYPING PROGRAM

Pub. L. 114–328, div. A, title VIII, § 884, Dec. 23, 2016, 130 Stat. 2318, as amended by Pub. L. 115–91, div. A, title VIII, § 865, Dec. 12, 2017, 131 Stat. 1495; Pub. L. 116–283, div. A, title XVIII, § 1806(e)(3)(D), Jan. 1, 2021, 134 Stat. 4156, provided that:

''(a) IN GENERAL.—The Secretary of Defense shall conduct a pilot program for nontraditional defense contractors and small business concerns to design, develop, and demonstrate innovative prototype military platforms of significant scope for the purpose of demonstrating new capabilities that could provide alternatives to existing acquisition programs and assets. The Secretary shall establish the pilot program within the Departments of the Army, Navy, and Air Force, the Missile Defense Agency, and the United States Special Operations Command.

''(b) FUNDING.—There is authorized to be made available $250,000,000 from the Rapid Prototyping Fund established under section 804(d) of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114–92; 10 U.S.C. 2302 note) to carry out the pilot program.

''(c) PLAN.—

''(1) IN GENERAL.—The Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives], concurrent with the budget for the Department of Defense for fiscal year 2018, as submitted to Congress pursuant to section 1105 of title 31, United States Code, a plan to fund and carry out the pilot program in future years.

''(2) ELEMENTS.—The plan submitted under paragraph (1) shall consider maximizing use of—

''(A) broad agency announcements or other merit-based selection procedures;

''(B) the Department of Defense Acquisition Challenge Program authorized under section 2359b of title 10, United States Code;

''(C) the foreign comparative test program;

''(D) projects carried out under the Rapid Innovation Program of the Department of Defense or pursuant to a Phase III agreement (as defined in section 9(r)(2) of the Small Business Act (15 U.S.C. 638(r)(2))); and

''(E) streamlined procedures for acquisition provided under section 804 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114–92; 10 U.S.C. 2302 note) and procedures for alternative acquisition pathways established under section 805 of such Act (10 U.S.C. 2302 note).

''(d) PROGRAMS TO BE INCLUDED.—As part of the pilot program, the Secretary of Defense shall allocate up to $50,000,000 on a fixed price contractual basis for fiscal year 2017 or pursuant to the plan submitted under subsection (c) for demonstrations of the following capabilities:

''(1) Swarming of multiple unmanned air vehicles.

''(2) Unmanned, modular fixed-wing aircraft that can be rapidly adapted to multiple missions and serve as a fifth generation weapons augmentation platform.

''(3) Vertical takeoff and landing tiltrotor aircraft.

''(4) Integration of a directed energy weapon on an air, sea, or ground platform.

''(5) Swarming of multiple unmanned underwater vehicles.

''(6) Commercial small synthetic aperture radar (SAR) satellites with on-board machine learning for automated, real-time feature extraction and predictive analytics.

''(7) Active protection system to defend against rocket-propelled grenades and anti-tank missiles.

''(8) Defense against hypersonic weapons, including sensors.

''(9) Unmanned ground logistics and unmanned air logistics capabilities enhancement.

''(10) Other systems as designated by the Secretary.

''(e) DEFINITIONS.—In this section:

''(1) NONTRADITIONAL DEFENSE CONTRACTOR.—The term 'nontraditional defense contractor' has the meaning given the term in section 2302(9) of title 10, United States Code.

''(2) SMALL BUSINESS CONCERN.—The term 'small business concern' has the meaning given the term in section 3 of the Small Business Act (15 U.S.C. 632).

''(f) SUNSET.—The authority under this section expires at the close of September 30, 2026.''

[Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1806(e)(3)(D), Jan. 1, 2021, 134 Stat. 4151, 4156, provided that effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, section 884(e)(1) of Pub. L. 114–328, set out above, is amended by substituting ''section 3014'' for ''section 2302(9)''.]

ESTABLISHMENT OF PANEL ON DEPARTMENT OF DEFENSE AND ABILITYONE CONTRACTING OVERSIGHT, ACCOUNTABILITY, AND INTEGRITY; DEFENSE ACQUISITION UNIVERSITY TRAINING

Pub. L. 114–328, div. A, title VIII, § 898, Dec. 23, 2016, 130 Stat. 2327, as amended by Pub. L. 116–92, div. A, title IX, § 902(32), Dec. 20, 2019, 133 Stat. 1546, provided that:

''(a) ESTABLISHMENT OF PANEL ON DEPARTMENT OF DEFENSE AND ABILITYONE CONTRACTING OVERSIGHT, ACCOUNTABILITY, AND INTEGRITY.—

''(1) IN GENERAL.—The Secretary of Defense shall establish a panel to be known as the 'Panel on Department of Defense and AbilityOne Contracting Oversight, Accountability, and Integrity' (hereafter in this section referred to as the 'Panel'). The Panel shall be supported by the Defense Acquisition University, established under section 1746 of title 10, United States Code, and the National Defense University, including administrative support.

''(2) COMPOSITION.—The Panel shall be composed of the following:

''(A) A representative of the Under Secretary of Defense for Acquisition and Sustainment, who shall be the chairman of the Panel.

''(B) A representative from the AbilityOne Commission.

''(C) A representative of the service acquisition executive of each military department and Defense Agency (as such terms are defined, respectively, in section 101 of title 10, United States Code).

''(D) A representative of the Under Secretary of Defense (Comptroller).

''(E) A representative of the Inspector General of the Department of Defense and the AbilityOne Commission.

''(F) A representative from each of the Army Audit Agency, the Navy Audit Service, the Air Force Audit Agency, and the Defense Contract Audit Agency.

''(G) The President of the Defense Acquisition University, or a designated representative.

''(H) One or more subject matter experts on veterans employment from a veterans service organization.

''(I) A representative of the Commission Directorate of Veteran Employment of the AbilityOne Commission whose duties include maximizing opportunities to employ significantly disabled veterans in accordance with the regulations of the AbilityOne Commission.

''(J) One or more representatives from the Department of Justice who are subject matter experts on compliance with disability rights laws applicable to contracts of the Department of Defense and the AbilityOne Commission.

''(K) One or more representatives from the Department of Justice who are subject matter experts on Department of Defense contracts, Federal Prison

Industries, and the requirements of the Javits-Wagner-O'Day Act [see 41 U.S.C. 8501 et seq.].

''(L) Such other representatives as may be determined appropriate by the Under Secretary of Defense for Acquisition and Sustainment.

''(b) MEETINGS.—The Panel shall meet as determined necessary by the chairman of the Panel, but not less often than once every three months.

''(c) DUTIES.—The Panel shall—

''(1) review the status of and progress relating to the implementation of the recommendations of report number DODIG–2016–097 of the Inspector General of the Department of Defense titled 'DoD Generally Provided Effective Oversight of AbilityOne Contracts', published on June 17, 2016;

''(2) recommend actions the Department of Defense and the AbilityOne Commission may take to eliminate waste, fraud, and abuse with respect to contracts of the Department of Defense and the AbilityOne Commission;

''(3) recommend actions the Department of Defense and the AbilityOne Commission may take to ensure opportunities for the employment of significantly disabled veterans and the blind and other severely disabled individuals;

''(4) recommend changes to law, regulations, and policy that the Panel determines necessary to eliminate vulnerability to waste, fraud, and abuse with respect to the performance of contracts of the Department of Defense;

''(5) recommend criteria for veterans with disabilities to be eligible for employment opportunities through the programs of the AbilityOne Commission that considers the definitions of disability used by the Secretary of Veterans Affairs and the AbilityOne Commission;

''(6) recommend ways the Department of Defense and the AbilityOne Commission may explore opportunities for competition among qualified nonprofit agencies or central nonprofit agencies and ensure an equitable selection and allocation of work to qualified nonprofit agencies;

''(7) recommend changes to business practices, information systems, and training necessary to ensure that—

''(A) the AbilityOne Commission complies with regulatory requirements related to the establishment and maintenence of the procurement list established pursuant to section 8503 of title 41, United States Code; and

''(B) the Department of Defense complies with the statutory and regulatory requirements for use of such procurement list; and

''(8) any other duties determined necessary by the Secretary of Defense.

''(d) CONSULTATION.—To carry out the duties described in subsection (c), the Panel may consult or contract with other executive agencies and with experts from qualified nonprofit agencies or central nonprofit agencies on—

''(1) compliance with disability rights laws applicable to contracts of the Department of Defense and the AbilityOne Commission;

''(2) employment of significantly disabled veterans; and

''(3) vocational rehabilitation.

''(e) AUTHORITY.—To carry out the duties described in subsection (c), the Panel may request documentation or other information needed from the AbilityOne Commission, central nonprofit agencies, and qualified nonprofit agencies.

''(f) PANEL RECOMMENDATIONS AND MILESTONE DATES.—

''(1) MILESTONE DATES FOR IMPLEMENTING RECOMMENDATIONS.—After consulting with central nonprofit agencies and qualified nonprofit agencies, the Panel shall suggest milestone dates for the implementation of the recommendations made under subsection (c) and shall notify the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives], the Committee on Oversight and Government Reform [now Committee on Oversight and Reform] of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, qualified nonprofit agencies, and central nonprofit agencies of such dates.

''(2) NOTIFICATION OF IMPLEMENTATION OF RECOMMENDATIONS.—After the establishment of milestone dates under paragraph (1), the Panel may review the activities, including contracts, of the AbilityOne Commission, the central nonprofit agencies, and the relevant qualified nonprofit agencies to determine if the recommendations made under subsection (c) are being substantially implemented in good faith by the AbilityOne Commission or such agencies. If the Panel determines that the AbilityOne Commission or any such agency is not implementing the recommendations, the Panel shall notify the Secretary of Defense, the congressional defense committees, the Committee on Oversight and Government Reform [now Committee on Oversight and Reform] of the House of Representatives, and the Committee on Homeland Security and Governmental Affairs of the Senate.

''(g) REMEDIES.—

''(1) IN GENERAL.—Upon receiving notification under subsection (f)(2) and subject to the limitation in paragraph (2), the Secretary of Defense may take one of the following actions:

''(A) With respect to a notification relating to the AbilityOne Commission, the Secretary may suspend compliance with the requirement to procure a product or service in section 8504 of title 41, United States Code, until the date on which the Secretary notifies Congress, in writing, that the AbilityOne Commission is substantially implementing the recommendations made under subsection (c).

''(B) With respect to a notification relating to a qualified nonprofit agency, the Secretary may terminate a contract with such agency that is in existence on the date of receipt of such notification, or elect to not enter into a contract with such agency after such date, until the date on which the AbilityOne Commission certifies to the Secretary that such agency is substantially implementing the recommendations made under subsection (c).

''(C) With respect to a notification relating to a central nonprofit agency, the Secretary may include a term in a contract entered into after the date of receipt of such notification with a qualified nonprofit agency that is under such central nonprofit agency that states that such qualified nonprofit agency shall not pay a fee to such central nonprofit agency until the date on which the AbilityOne Commission certifies to the Secretary that such central nonprofit agency is substantially implementing the recommendations made under subsection (c).

''(2) LIMITATION.—If the Secretary of Defense takes any of the actions described in paragraph (1), the Secretary shall coordinate with the AbilityOne Commission or the relevant central nonprofit agency, as appropriate, to fully implement the recommendations made under subsection (c). On the date on which such recommendations are fully implemented, the Secretary shall notify Congress, in writing, and the Secretary's authority under paragraph (1) shall terminate.

''(h) PROGRESS REPORTS.—

''(1) CONSULTATION ON RECOMMENDATIONS.—Before submitting the progress report required under paragraph (2), the Panel shall consult with the AbilityOne Commission on draft recommendations made pursuant to subsection (c). The Panel shall include any recommendations of the AbilityOne Commission in the progress report submitted under paragraph (2).

''(2) PROGRESS REPORT.—Not later than 180 days after the date of the enactment of this Act [Dec. 23, 2016], the Panel shall submit to the Secretary of De-

fense, the Chairman of the AbilityOne Commission, the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives], the Committee on Oversight and Government Reform [now Committee on Oversight and Reform] of the House of Representatives, and the Committee on Homeland Security and Governmental Affairs of the Senate a progress report on the activities of the Panel.

''(i) ANNUAL REPORT.—

''(1) CONSULTATION ON REPORT.—Before submitting the annual report required under paragraph (2), the Panel shall consult with the AbilityOne Commission on the contents of the report. The Panel shall include any recommendations of the AbilityOne Commission in the report submitted under paragraph (2).

''(2) REPORT.—Not later than September 30, 2017, and annually thereafter for the next three years, the Panel shall submit to the Secretary of Defense, the Chairman of the AbilityOne Commission, the congressional defense committees, the Committee on Oversight and Government Reform [now Committee on Oversight and Reform] of the House of Representatives, and the Committee on Homeland Security and Governmental Affairs of the Senate a report that includes—

''(A) a summary of findings and recommendations for the year covered by the report;

''(B) a summary of the progress of the relevant qualified nonprofit agencies or central nonprofit agencies in implementing recommendations of the previous year's report, if applicable;

''(C) an examination of the current structure of the AbilityOne Commission to eliminate waste, fraud, and abuse and to ensure contracting integrity and accountability for any violations of law or regulations;

''(D) recommendations for any changes to the acquisition and contracting practices of the Department of Defense and the AbilityOne Commission to improve the delivery of goods and services to the Department of Defense; and

''(E) recommendations for administrative safeguards to ensure the Department of Defense and the AbilityOne Commission are in compliance with the requirements of the Javits-Wagner-O'Day Act [see 41 U.S.C. 8501 et seq.], Federal civil rights law, and regulations and policy related to the performance of contracts of the Department of Defense with qualified nonprofit agencies and the contracts of the AbilityOne Commission with central nonprofit agencies.

''(j) SUNSET.—The Panel shall terminate on the date of submission of the last annual report required under subsection (i).

''(k) INAPPLICABILITY OF FACA.—The requirements of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Panel established pursuant to subsection (a).

''(*l*) DEFENSE ACQUISITION UNIVERSITY TRAINING.—

''(1) IN GENERAL.—The Secretary of Defense shall establish a training program at the Defense Acquisition University established under section 1746 of title 10, United States Code. Such training shall include—

''(A) information about—

''(i) the mission of the AbilityOne Commission;

''(ii) the employment of significantly disabled veterans through contracts from the procurement list maintained by the AbilityOne Commission;

''(iii) reasonable accommodations and accessibility requirements for the blind and other severely disabled individuals; and

''(iv) Executive orders and other subjects related to the blind and other severely disabled individuals, as determined by the Secretary of Defense; and

''(B) procurement, acquisition, program management, and other training specific to procuring goods and services for the Department of Defense pursuant to the Javits-Wagner-O'Day Act.

''(2) ACQUISITION WORKFORCE ASSIGNMENT.—Members of the acquisition workforce (as defined in section 101 of title 10, United States Code) who have participated in the training described in paragraph (1) are eligible for a detail to the AbilityOne Commission.

''(3) ABILITYONE COMMISSION ASSIGNMENT.—Career employees of the AbilityOne Commission may participate in the training program described in paragraph (1) on a non-reimbursable basis for up to three years and on a non-reimbursable or reimbursable basis thereafter.

''(4) FUNDING.—Amounts from the Department of Defense Acquisition Workforce Development Fund established under section 1705 of title 10, United States Code, are authorized for use for the detail of members of the acquisition workforce to the AbilityOne Commission.

''(m) DEFINITIONS.—In this section:

''(1) The term 'AbilityOne Commission' means the Committee for Purchase From People Who Are Blind or Severely Disabled established under section 8502 of title 41, United States Code.

''(2) The terms 'blind', 'qualified nonprofit agency for the blind', 'qualified nonprofit agency for other severely disabled', and 'severely disabled individual' have the meanings given such terms under section 8501 of such title.

''(3) The term 'central nonprofit agency' means a central nonprofit agency designated under section 8503(c) of such title.

''(4) The term 'executive agency' has the meaning given such term in section 133 of such title.

''(5) The term 'Javits-Wagner-O'Day Act' means chapter 85 of such title.

''(6) The term 'qualified nonprofit agency' means—

''(A) a qualified nonprofit agency for the blind; or

''(B) a qualified nonprofit agency for other severely disabled.

''(7) The term 'significantly disabled veteran' means a veteran (as defined in section 101 of title 38, United States Code) who is a severely disabled individual.''

ENHANCED AUTHORITY TO ACQUIRE PRODUCTS AND SERVICES PRODUCED IN AFRICA IN SUPPORT OF CERTAIN ACTIVITIES

Pub. L. 114–328, div. A, title VIII, §899A(a)–(e), Dec. 23, 2016, 130 Stat. 2336, 2337, provided that:

''(a) IN GENERAL.—Except as provided in subsection (c), in the case of a product or service to be acquired in support of covered activities in a covered African country for which the Secretary of Defense makes a determination described in subsection (b), the Secretary may conduct a procurement in which—

''(1) competition is limited to products or services from the host nation;

''(2) a preference is provided for products or services from the host nation; or

''(3) a preference is provided for products or services from a covered African country, other than the host nation.

''(b) DETERMINATION.—

''(1) IN GENERAL.—A determination described in this subsection is a determination by the Secretary of any of the following:

''(A) That the product or service concerned is to be used only in support of covered activities.

''(B) That it is in the national security interests of the United States to limit competition or provide a preference as described in subsection (a) because such limitation or preference is necessary—

''(i) to reduce overall United States transportation costs and risks in shipping products in support of operations, exercises, theater security cooperation activities, and other missions in the African region;

''(ii) to reduce delivery times in support of covered activities; or

''(iii) to promote regional security and stability in Africa.

''(C) That the product or service is of equivalent quality to a product or service that would have otherwise been acquired without such limitation or preference.

''(2) REQUIREMENT FOR EFFECTIVENESS OF ANY PARTICULAR DETERMINATION.—A determination under paragraph (1) shall not be effective for purposes of a limitation or preference under subsection (a) unless the Secretary also determines that—

''(A) the limitation or preference will not adversely affect—

''(i) United States military operations or stability operations in the African region; or

''(ii) the United States industrial base; and

''(B) in the case of air transportation, an air carrier holding a certificate under section 41102 of title 49, United States Code, is not reasonably available to provide the air transportation.

''(c) INAPPLICABILITY OF AUTHORITY TO PROCUREMENT OF ITEMS ON ABILITYONE PROCUREMENT CATALOG.—The authority under subsection (a) may not be used for the procurement of any good that is contained in the procurement list described in section 8503(a) of title 41, United States Code, if such good can be produced and delivered by a qualified non profit agency for the blind or a nonprofit agency for other severely disabled in a timely fashion to support mission requirements.

''(d) REPORT ON USE OF AUTHORITY.—Not later than December 31, 2017, the Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the use of the authority in subsection (a). The report shall include, but not be limited to, the following:

''(1) The number of determinations made by the Secretary pursuant to subsection (b).

''(2) A list of the countries providing products or services as a result of determinations made pursuant to subsection (b).

''(3) A description of the products and services acquired using the authority.

''(4) The extent to which the use of the authority has met the one or more of the objectives specified in clause (i), (ii), or (iii) of subsection (b)(1)(B).

''(5) Such recommendations for improvements to the authority as the Secretary considers appropriate.

''(6) Such other matters as the Secretary considers appropriate.

''(e) DEFINITIONS.—In this section:

''(1) COVERED ACTIVITIES.—The term 'covered activities' means Department of Defense activities in the African region or a regional neighbor.

''(2) COVERED AFRICAN COUNTRY.—The term 'covered African country' means a country in Africa that has signed a long-term agreement with the United States related to the basing or operational needs of the United States Armed Forces.

''(3) HOST NATION.—The term 'host nation' means a nation that allows the Armed Forces and supplies of the United States to be located on, to operate in, or to be transported through its territory.

''(4) PRODUCT OR SERVICE OF A COVERED AFRICAN COUNTRY.—The term 'product or service of a covered African country' means the following:

''(A) A product from a covered African country that is wholly grown, mined, manufactured, or produced in the covered African country.

''(B) A service from a covered African country that is performed by a person or entity that—

''(i) is properly licensed or registered by appropriate authorities of the covered African country; and

''(ii) as determined by the Chief of Mission concerned—

''(I) is operating primarily in the covered African country; or

''(II) is making a significant contribution to the economy of the covered African country through payment of taxes or use of products, materials, or labor that are primarily grown, mined, manufactured, produced, or sourced from the covered African country.''

MIDDLE TIER OF ACQUISITION FOR RAPID PROTOTYPING AND RAPID FIELDING

Pub. L. 116–92, div. A, title VIII, § 837, Dec. 20, 2019, 133 Stat. 1497, provided that:

''(a) REPORT.—Not later than December 15, 2019, the Under Secretary of Defense for Acquisition and Sustainment shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report that includes the guidance required under section 804(a) of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114–92; 10 U.S.C. 2302 note). The Under Secretary of Defense for Acquisition and Sustainment shall ensure such guidance includes the business case elements required by an acquisition program established pursuant to such guidance and the metrics required to assess the performance of such a program.

''(b) LIMITATION.—

''(1) IN GENERAL.—Beginning on December 15, 2019, if the Under Secretary of Defense for Acquisition and Sustainment has not submitted the report required under subsection (a), not more than 75 percent of the funds specified in paragraph (2) may be obligated or expended until the date on which the report required under subsection (a) has been submitted.

''(2) FUNDS SPECIFIED.—The funds specified in this paragraph are the funds authorized to be appropriated by this Act or otherwise made available for fiscal year 2020 for the Department of Defense that remain unobligated as of December 15, 2019, for the following:

''(A) The execution of any acquisition program established pursuant to the guidance required under such section 804(a).

''(B) The operations of the Office of the Under Secretary of Defense for Research & Engineering.

''(C) The operations of the Office of the Under Secretary of Defense for Acquisition & Sustainment.

''(D) The operations of the Office of the Director of Cost Analysis and Program Evaluation.

''(E) The operations of the offices of the service acquisition executives of the military departments.''

Pub. L. 114–92, div. A, title VIII, § 804, Nov. 25, 2015, 129 Stat. 882, as amended by Pub. L. 114–328, div. A, title VIII, §§ 849(a), 864(b), 897, title X, § 1081(c)(2), Dec. 23, 2016, 130 Stat. 2293, 2304, 2327, 2419; Pub. L. 115–91, div. A, title VIII, § 866, Dec. 12, 2017, 131 Stat. 1495; Pub. L. 116–92, div. A, title IX, § 902(33), Dec. 20, 2019, 133 Stat. 1546; Pub. L. 116–283, div. A, title VIII, § 805, Jan. 1, 2021, 134 Stat. 3742, provided that:

''(a) GUIDANCE REQUIRED.—Not later than 180 days after the date of the enactment of this Act [Nov. 25, 2015], the Under Secretary of Defense for Acquisition and Sustainment, in consultation with the Comptroller of the Department of Defense and the Vice Chairman of the Joint Chiefs of Staff, shall establish guidance for a 'middle tier' of acquisition programs that are intended to be completed in a period of two to five years.

''(b) ACQUISITION PATHWAYS.—The guidance required by subsection (a) shall cover the following two acquisition pathways:

''(1) RAPID PROTOTYPING.—The rapid prototyping pathway shall provide for the use of innovative technologies to rapidly develop fieldable prototypes to demonstrate new capabilities and meet emerging military needs. The objective of an acquisition program under this pathway shall be to field a prototype that can be demonstrated in an operational environment and provide for a residual operational capability within five years of the development of an approved requirement.

''(2) RAPID FIELDING.—The rapid fielding pathway shall provide for the use of proven technologies to field production quantities of new or upgraded sys-

tems with minimal development required. The objective of an acquisition program under this pathway shall be to begin production within six months and complete fielding within five years of the development of an approved requirement.

''(c) EXPEDITED PROCESS.—

''(1) IN GENERAL.—The guidance required by subsection (a) shall provide for a streamlined and coordinated requirements, budget, and acquisition process that results in the development of an approved requirement for each program in a period of not more than six months from the time that the process is initiated. Programs that are subject to the guidance shall not be subject to the Joint Capabilities Integration and Development System Manual and Department of Defense Directive 5000.01, except to the extent specifically provided in the guidance.

''(2) RAPID PROTOTYPING.—With respect to the rapid prototyping pathway, the guidance shall include—

''(A) a merit-based process for the consideration of innovative technologies and new capabilities to meet needs communicated by the Joint Chiefs of Staff and the combatant commanders;

''(B) a process for developing and implementing acquisition and funding strategies for the program;

''(C) a process for demonstrating and evaluating the performance of fieldable prototypes developed pursuant to the program in an operational environment; and

''(D) a process for transitioning successful prototypes to new or existing acquisition programs for production and fielding under the rapid fielding pathway or the traditional acquisition system.

''(3) RAPID FIELDING.—With respect to the rapid fielding pathway, the guidance shall include—

''(A) a merit-based process for the consideration of existing products and proven technologies to meet needs communicated by the Joint Chiefs of Staff and the combatant commanders;

''(B) a process for demonstrating performance and evaluating for current operational purposes the proposed products and technologies;

''(C) a process for developing and implementing acquisition and funding strategies for the program;

''(D) a process for considering lifecycle costs and addressing issues of logistics support and system interoperability; and

''(E) a process for identifying and exploiting opportunities to use the rapid fielding pathway to reduce total ownership costs.

''(4) STREAMLINED PROCEDURES.—The guidance for the programs may provide for any of the following streamlined procedures:

''(A) The service acquisition executive of the military department concerned shall appoint a program manager for such program from among candidates from among civilian employees or members of the Armed Forces who have significant and relevant experience managing large and complex programs.

''(B) The program manager for each program shall report with respect to such program directly, without intervening review or approval, to the service acquisition executive of the military department concerned.

''(C) The service acquisition executive of the military department concerned shall evaluate the job performance of such manager on an annual basis. In conducting an evaluation under this paragraph, a service acquisition executive shall consider the extent to which the manager has achieved the objectives of the program for which the manager is responsible, including quality, timeliness, and cost objectives.

''(D) The program manager of a defense streamlined program shall be authorized staff positions for a technical staff, including experts in business management, contracting, auditing, engineering, testing, and logistics, to enable the manager to manage the program without the technical assistance of another organizational unit of an agency to the maximum extent practicable.

''(E) The program manager of a defense streamlined program shall be authorized, in coordination with the users of the equipment and capability to be acquired and the test community, to make trade-offs among life-cycle costs, requirements, and schedules to meet the goals of the program.

''(F) The service acquisition executive, acting in coordination with the defense acquisition executive, shall serve as the milestone decision authority for the program.

''(G) The program manager of a defense streamlined program shall be provided a process to expeditiously seek a waiver from Congress from any statutory or regulatory requirement that the program manager determines adds little or no value to the management of the program.

''(d) RAPID PROTOTYPING FUNDS.—

''(1)DEPARTMENT OF DEFENSE RAPID PROTOTYPING FUND.—

''(A) IN GENERAL.—The Secretary of Defense shall establish a fund to be known as the 'Department of Defense Rapid Prototyping Fund' to provide funds, in addition to other funds that may be available, for acquisition programs under the rapid prototyping pathway established pursuant to this section and other purposes specified in law. The Fund shall be managed by a senior official of the Department of Defense designated by the Deputy Secretary of Defense. The Fund shall consist of—

''(i) amounts appropriated to the Fund;

''(ii) amounts credited to the Fund pursuant to section 828 of this Act [set out as a note under section 2430 of this title]; and

''(iii) any other amounts appropriated to, credited to, or transferred to the Fund.

''(B) TRANSFER AUTHORITY.—Amounts available in the Fund may be transferred to a military department for the purpose of carrying out an acquisition program under the rapid prototyping pathway established pursuant to this section. Any amount so transferred shall be credited to the account to which it is transferred. The transfer authority provided in this paragraph is in addition to any other transfer authority available to the Department of Defense.

''(C) CONGRESSIONAL NOTICE.—The senior official designated to manage the Fund shall notify the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] of all transfers under paragraph (2) within 5 business days after such transfer. Each notification shall specify the amount transferred, the purpose of the transfer, and the total projected cost and estimated cost to complete the acquisition program to which the funds were transferred.''

''(2) RAPID PROTOTYPING FUNDS FOR THE MILITARY DEPARTMENTS.—The Secretary of each military department may establish a military department-specific fund (and, in the case of the Secretary of the Navy, including the Marine Corps) to provide funds, in addition to other funds that may be available to the military department concerned, for acquisition programs under the rapid fielding and prototyping pathways established pursuant to this section. Each military department-specific fund shall consist of amounts appropriated or credited to the fund.

''(e) REPORT.—Not later than 30 days after the date of termination of an acquisition program commenced using the authority under this section, the Secretary of Defense shall submit to Congress a notification of such termination. Such notice shall include—

''(1) the initial amount of a contract awarded under such acquisition program;

''(2) the aggregate amount of funds awarded under such contract; and

''(3) written documentation of the reason for termination of such acquisition program.''

[Pub. L. 114–328, div. A, title X, § 1081(c), Dec. 23, 2016, 130 Stat. 2419, provided that the amendment made by section 1081(c)(2) to section 804 of Pub. L. 114–92, set out above, is effective as of Nov. 25, 2015, and as if included in Pub. L. 114–92 as enacted.]

USE OF ALTERNATIVE ACQUISITION PATHS TO ACQUIRE CRITICAL NATIONAL SECURITY CAPABILITIES

Pub. L. 114–92, div. A, title VIII, § 805, Nov. 25, 2015, 129 Stat. 885, as amended by Pub. L. 114–328, div. A, title VIII, § 849(b), Dec. 23, 2016, 130 Stat. 2293, provided that: ''Not later than 180 days after the date of the enactment of this Act [Nov. 25, 2015], the Secretary of Defense shall establish procedures for alternative acquisition pathways to acquire capital assets and services that meet critical national security needs. The procedures shall—

''(1) be separate from existing acquisition procedures;

''(2) be supported by streamlined contracting, budgeting, life-cycle cost management, and requirements processes;

''(3) establish alternative acquisition paths based on the capabilities being bought and the time needed to deploy these capabilities; and

''(4) maximize the use of flexible authorities in existing law and regulation.''

SECRETARY OF DEFENSE WAIVER OF ACQUISITION LAWS TO ACQUIRE VITAL NATIONAL SECURITY CAPABILITIES

Pub. L. 114–92, div. A, title VIII, § 806, Nov. 25, 2015, 129 Stat. 885, as amended by Pub. L. 114–328, div. A, title VIII, § 819, Dec. 23, 2016, 130 Stat. 2273, which authorized the Secretary of Defense to waive any provision of certain acquisition laws or regulations for the purpose of acquiring a capability that would not otherwise be available to the Armed Forces of the United States after national security interest determinations were made, was repealed by Pub. L. 116–92, div. A, title VIII, § 809, Dec. 20, 2019, 133 Stat. 1487.

CONSIDERATION OF POTENTIAL PROGRAM COST INCREASES AND SCHEDULE DELAYS RESULTING FROM OVERSIGHT OF DEFENSE ACQUISITION PROGRAMS

Pub. L. 114–92, div. A, title VIII, § 881, Nov. 25, 2015, 129 Stat. 942, as amended by Pub. L. 115–232, div. A, title X, § 1081(f)(1)(A)(iv), Aug. 13, 2018, 132 Stat. 1986, provided that:

''(a) AVOIDANCE OF UNNECESSARY COST INCREASES AND SCHEDULE DELAYS.—The Director of Operational Test and Evaluation, the Chief Management Officer, the Director of the Defense Contract Management Agency, the Director of the Defense Contract Audit Agency, the Inspector General of the Department of Defense, and the heads of other defense audit, testing, acquisition, and management agencies shall ensure that policies, procedures, and activities implemented by their offices and agencies in connection with defense acquisition program oversight do not result in unnecessary increases in program costs or cost estimates or delays in schedule or schedule estimates.

''(b) CONSIDERATION OF PRIVATE SECTOR BEST PRACTICES.—In considering potential cost increases and schedule delays as a result of oversight efforts pursuant to subsection (a), the officials described in such subsection shall consider private sector best practices with respect to oversight implementation.''

PROHIBITION ON CONTRACTING WITH THE ENEMY

Pub. L. 113–291, div. A, title VIII, subtitle E, Dec. 19, 2014, 128 Stat. 3450, as amended by Pub. L. 115–232, div. A, title VIII, § 872, title XII, § 1251(b)(2), Aug. 13, 2018, 132 Stat. 1905, 2053; Pub. L. 116–92, div. A, title VIII, § 822, Dec. 20, 2019, 133 Stat. 1490, as amended by Pub. L. 116–283, div. A, title X, § 1081(c)(3), Jan. 1, 2021, 134 Stat. 3873, provided that:

''SEC. 841. PROHIBITION ON PROVIDING FUNDS TO THE ENEMY.

''(a) IDENTIFICATION OF PERSONS AND ENTITIES.—The Secretary of Defense shall, in conjunction with the Director of National Intelligence and in consultation with the Secretary of State, establish in each covered combatant command a program to identify persons and entities within the area of responsibility of such command that—

''(1) provide funds, including goods and services, received under a covered contract, grant, or cooperative agreement of an executive agency directly or indirectly to a covered person or entity; or

''(2) fail to exercise due diligence to ensure that none of the funds, including goods and services, received under a covered contract, grant, or cooperative agreement of an executive agency are provided directly or indirectly to a covered person or entity.

''(b) NOTICE OF IDENTIFIED PERSONS AND ENTITIES.—

''(1) NOTICE.—Upon the identification of a person or entity as being described by subsection (a), the head of the executive agency concerned (or the designee of such head) and the commander of the covered combatant command concerned (or the specified deputies of the commander) shall be notified, in writing, of such identification of the person or entity.

''(2) RESPONSIVE ACTIONS.—Upon receipt of a notice under paragraph (1), the head of the executive agency concerned (or the designee of such head) and the commander of the covered combatant command concerned (or the specified deputies of the commander) may notify the heads of contracting activities, or other appropriate officials of the agency or command, in writing of such identification.

''(3) MAKING OF NOTIFICATIONS.—Any written notification pursuant to this subsection shall be made in accordance with procedures established to implement the revisions of regulations required by this section.

''(c) AUTHORITY TO TERMINATE OR VOID CONTRACTS, GRANTS, AND COOPERATIVE AGREEMENTS AND TO RESTRICT FUTURE AWARD.—Not later than 270 days after the date of the enactment of this Act [Dec. 19, 2014], the Federal Acquisition Regulation, the Defense Federal Acquisition Regulation Supplement, and the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards shall be revised to provide that, upon notice from the head of an executive agency (or the designee of such head) or the commander of a covered combatant command (or the specified deputies of the commander) pursuant to subsection (b), the head of contracting activity of an executive agency, or other appropriate official, may do the following:

''(1) Restrict the award of contracts, grants, or cooperative agreements of the executive agency concerned upon a written determination by the head of contracting activity or other appropriate official that the contract, grant, or cooperative agreement would provide funds received under such contract, grant, or cooperative agreement directly or indirectly to a covered person or entity.

''(2) Terminate for default any contract, grant, or cooperative agreement of the executive agency concerned upon a written determination by the head of contracting activity or other appropriate official that the contractor, or the recipient of the grant or cooperative agreement, has failed to exercise due diligence to ensure that none of the funds received under the contract, grant, or cooperative agreement are provided directly or indirectly to a covered person or entity.

''(3) Void in whole or in part any contract, grant, or cooperative agreement of the executive agency concerned upon a written determination by the head of contracting activity or other appropriate official that the contract, grant, or cooperative agreement provides funds directly or indirectly to a covered person or entity.

''(d) CLAUSE.—

''(1) IN GENERAL.—Not later than 270 days after the date of the enactment of this Act, the Federal Acquisition Regulation, the Defense Federal Acquisition Regulation Supplement, and the Uniform Administrative Requirements, Cost Principles, and Audit Re-

quirements for Federal Awards shall be revised to require that—

"(A) the clause described in paragraph (2) shall be included in each covered contract, grant, and cooperative agreement of an executive agency that is awarded on or after the date that is 270 days after the date of the enactment of this Act; and

"(B) to the maximum extent practicable, each covered contract, grant, and cooperative agreement of an executive agency that is awarded before the date of the enactment of this Act shall be modified to include the clause described in paragraph (2).

"(2) CLAUSE DESCRIBED.—The clause described in this paragraph is a clause that—

"(A) requires the contractor, or the recipient of the grant or cooperative agreement, to exercise due diligence to ensure that none of the funds, including goods and services, received under the contract, grant, or cooperative agreement are provided directly or indirectly to a covered person or entity; and

"(B) notifies the contractor, or the recipient of the grant or cooperative agreement, of the authority of the head of contracting activity, or other appropriate official, to terminate or void the contract, grant, or cooperative agreement, in whole or in part, as provided in subsection (c).

"(3) TREATMENT AS VOID.—For purposes of this section:

"(A) A contract, grant, or cooperative agreement that is void is unenforceable as contrary to public policy.

"(B) A contract, grant, or cooperative agreement that is void in part is unenforceable as contrary to public policy with regard to a segregable task or effort under the contract, grant, or cooperative agreement.

"(4) PUBLIC COMMENT.—The President shall ensure that the process for revising regulations required by paragraph (1) shall include an opportunity for public comment, including an opportunity for comment on standards of due diligence required by this section.

"(e) REQUIREMENTS FOLLOWING CONTRACT ACTIONS.—Not later than 270 days after the date of the enactment of this Act, the Federal Acquisition Regulation, the Defense Federal Acquisition Regulation Supplement, and the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards shall be revised as follows:

"(1) To require that any head of contracting activity, or other appropriate official, taking an action under subsection (c) to terminate, void, or restrict a contract, grant, or cooperative agreement notify in writing the contractor or recipient of the grant or cooperative agreement, as applicable, of the action.

"(2) To permit the contractor or recipient of a grant or cooperative agreement subject to an action taken under subsection (c) to terminate or void the contract, grant, or cooperative agreement, as the case may be, an opportunity to challenge the action by requesting an administrative review of the action under the procedures of the executive agency concerned not later than 30 days after receipt of notice of the action.

"(f) ANNUAL REVIEW; PROTECTION OF CLASSIFIED INFORMATION.—

"(1) ANNUAL REVIEW.—The Secretary of Defense, in conjunction with the Director of National Intelligence and in consultation with the Secretary of State shall, on an annual basis, review the lists of persons and entities previously covered by a notice under subsection (b) as having been identified as described by subsection (a) in order to determine whether or not such persons and entities continue to warrant identification as described by subsection (a). If a determination is made pursuant to such a review that a person or entity no longer warrants identification as described by subsection (a), the Secretary of Defense shall notify the head of the executive agency concerned (or the designee of such head) and the commander of the covered combatant command concerned (or the specified deputies of the commander) in writing of such determination.

"(2) PROTECTION OF CLASSIFIED INFORMATION.—Classified information relied upon to make an identification in accordance with subsection (a) may not be disclosed to a contractor or a recipient of a grant or cooperative agreement with respect to which an action is taken pursuant to the authority provided in subsection (c), or to their representatives, in the absence of a protective order issued by a court of competent jurisdiction established under Article I or Article III of the Constitution of the United States that specifically addresses the conditions upon which such classified information may be so disclosed.

"(g) DELEGATION OF CERTAIN RESPONSIBILITIES.—

"(1) COMBATANT COMMAND RESPONSIBILITIES.—The commander of a covered combatant command may delegate the responsibilities in this section to any deputies of the commander specified by the commander for purposes of this section. Any delegation of responsibilities under this paragraph shall be made in writing.

"(2) NONDELEGATION OF RESPONSIBILITY FOR CERTAIN ACTIONS.—The authority provided by subsection (c) to terminate, void, or restrict contracts, grants, and cooperative agreements, in whole or in part, may not be delegated below the level of head of contracting activity, or equivalent official for purposes of grants or cooperative agreements.

"(h) ADDITIONAL RESPONSIBILITIES OF EXECUTIVE AGENCIES.—

"(1) SHARING OF INFORMATION ON SUPPORTERS OF THE ENEMY.—The Secretary of Defense shall, in consultation with the Director of the Office of Management and Budget, carry out a program through which agency components may provide information to heads of executive agencies (or the designees of such heads) and the commanders of the covered combatant commands (or the specified deputies of the commanders) relating to persons or entities who may be providing funds, including goods and services, received under contracts, grants, or cooperative agreements of the executive agencies directly or indirectly to a covered person or entity. The program shall be designed to facilitate and encourage the sharing of risk and threat information between executive agencies and the covered combatant commands.

"(2) INCLUSION OF INFORMATION ON CONTRACT ACTIONS IN FAPIIS AND OTHER SYSTEMS.—Upon the termination, voiding, or restriction of a contract, grant, or cooperative agreement of an executive agency under subsection (c), the head of contracting activity of the executive agency shall provide for the inclusion in the Federal Awardee Performance and Integrity Information System (FAPIIS), or other formal system of records on contractors or entities, of appropriate information on the termination, voiding, or restriction, as the case may be, of the contract, grant, or cooperative agreement.

"(3) REPORTS.—The head of contracting activity that receives a notice pursuant to subsection (b) shall submit to the head of the executive agency concerned (or the designee of such head) and the commander of the covered combatant command concerned (or specified deputies) a report on the action, if any, taken by the head of contracting activity pursuant to subsection (c), including a determination not to terminate, void, or restrict the contract, grant, or cooperative agreement as otherwise authorized by subsection (c).

"(i) REPORTS.—

"(1) IN GENERAL.—Not later than March 1 of 2016, 2017, and 2018, the Director of the Office of Management and Budget shall submit to the appropriate committees of Congress a report on the use of the authorities in this section in the preceding calendar year, including the following:

"(A) For each instance in which an executive agency exercised the authority to terminate, void,

or restrict a contract, grant, and cooperative agreement pursuant to subsection (c), based on a notification under subsection (b), the following:

''(i) The executive agency taking such action.

''(ii) An explanation of the basis for the action taken.

''(iii) The value of the contract, grant, or cooperative agreement voided or terminated.

''(iv) The value of all contracts, grants, or cooperative agreements of the executive agency in force with the person or entity concerned at the time the contract, grant, or cooperative agreement was terminated or voided.

''(B) For each instance in which an executive agency did not exercise the authority to terminate, void, or restrict a contract, grant, and cooperative agreement pursuant to subsection (c), based on a notification under subsection (b), the following:

''(i) The executive agency concerned.

''(ii) An explanation of the basis for not taking the action.

''(2) FORM.—Any report under this subsection may, at the election of the Director—

''(A) be submitted in unclassified form, but with a classified annex; or

''(B) be submitted in classified form.

''(j) INAPPLICABILITY TO CERTAIN CONTRACTS, GRANTS, AND COOPERATIVE AGREEMENTS.—The provisions of this section do not apply to contracts, grants, and cooperative agreements that are performed entirely inside the United States.

''(k) NATIONAL SECURITY EXCEPTION.—Nothing in this section shall apply to the authorized intelligence or law enforcement activities of the United States Government.

''(*l*) CONSTRUCTION WITH OTHER AUTHORITIES.—Except as provided in subsection (m), the authorities in this section shall be in addition to, and not to the exclusion of, any other authorities available to executive agencies to implement policies and purposes similar to those set forth in this section.

''(m) COORDINATION WITH CURRENT AUTHORITIES.—

''(1) REPEAL OF SUPERSEDED AUTHORITY RELATED TO CENTCOM.—[Repealed section 841 of Pub. L. 112–81, effective 270 days after Dec. 19, 2014. See below.]

''(2) REPEAL OF SUPERSEDED AUTHORITY RELATED TO DEPARTMENT OF DEFENSE.—[Repealed section 831 of Pub. L. 113–66, effective 270 days after Dec. 19, 2014. See below.]

''(3) USE OF SUPERSEDED AUTHORITIES IN IMPLEMENTATION OF REQUIREMENTS.—In providing for the implementation of the requirements of this section by the Department of Defense, the Secretary of Defense may use and modify for that purpose the regulations and procedures established for purposes of the implementation of the requirements of section 841 of the National Defense Authorization Act for Fiscal Year 2012 [Pub. L. 112–81] and section 831 of the National Defense Authorization Act for Fiscal Year 2014 [Pub. L. 113–66].

''(n) SUNSET.—The provisions of this section shall cease to be effective on December 31, 2023.

''SEC. 842. ADDITIONAL ACCESS TO RECORDS.

''(a) CONTRACTS, GRANTS, AND COOPERATIVE AGREEMENTS.—

''(1) IN GENERAL.—Not later than 270 days after the date of the enactment of this Act [Dec. 19, 2014], applicable regulations shall be revised to provide that, except as provided under subsection (c)(1), the clause described in paragraph (2) may, as appropriate, be included in each covered contract, grant, and cooperative agreement of an executive agency that is awarded on or after the date of the enactment of this Act.

''(2) CLAUSE.—The clause described in this paragraph is a clause authorizing the head of the executive agency concerned, upon a written determination pursuant to paragraph (3), to examine any records of the contractor, the recipient of a grant or cooperative agreement, or any subcontractor or subgrantee under such contract, grant, or cooperative agreement to the extent necessary to ensure that funds, including goods and services, available under the contract, grant, or cooperative agreement are not provided directly or indirectly to a covered person or entity.

''(3) WRITTEN DETERMINATION.—The authority to examine records pursuant to the contract clause described in paragraph (2) may be exercised only upon a written determination by the contracting officer, or comparable official responsible for a grant or cooperative agreement, upon a finding by the commander of a covered combatant command (or the specified deputies of the commander) or the head of an executive agency (or the designee of such head) that there is reason to believe that funds, including goods and services, available under the contract, grant, or cooperative agreement concerned may have been provided directly or indirectly to a covered person or entity.

''(4) FLOWDOWN.—A clause described in paragraph (2) may also be included in any subcontract or subgrant under a covered contract, grant, or cooperative agreement if the subcontract or subgrant has an estimated value in excess of $50,000.

''(b) REPORTS.—

''(1) IN GENERAL.—Not later than March 1 of 2016, 2017, and 2018, the Director of the Office of Management and Budget shall submit to the appropriate committees of Congress a report on the use of the authority provided by this section in the preceding calendar year.

''(2) ELEMENTS.—Each report under this subsection shall identify, for the calendar year covered by such report, each instance in which an executive agency exercised the authority provided under this section to examine records, explain the basis for the action taken, and summarize the results of any examination of records so undertaken.

''(3) FORM.—Any report under this subsection may be submitted in classified form.

''(c) RELATIONSHIP TO EXISTING AUTHORITIES APPLICABLE TO CENTCOM.—

''(1) APPLICABILITY.—This section shall not apply to contracts, grants, or cooperative agreements covered under section 842 of the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112–81; 125 Stat. 1513; 10 U.S.C. 2313 note).

''(2) EXTENSION OF CURRENT AUTHORITIES APPLICABLE TO CENTCOM.—[Amended section 842(d)(1) of Pub. L. 112–81, set out as a note under section 2313 of this title.]

''SEC. 843. DEFINITIONS.

''In this subtitle:

''(1) APPROPRIATE COMMITTEES OF CONGRESS.—The term 'appropriate committees of Congress' means—

''(A) the Committee on Armed Services, the Committee on Homeland Security and Governmental Affairs, the Committee on Foreign Relations, and the Committee on Appropriations of the Senate; and

''(B) the Committee on Armed Services, the Committee on Oversight and Government Reform, the Committee on Foreign Affairs, and the Committee on Appropriations of the House of Representatives.

''(2) CONTINGENCY OPERATION.—The term 'contingency operation' has the meaning given that term in section 101(a)(13) of title 10, United States Code.

''(3) CONTRACT.—The term 'contract' includes a contract for commercial items but is not limited to a contract for commercial items.

''(4) COVERED COMBATANT COMMAND.—The term 'covered combatant command' means the following:

''(A) The United States Africa Command.

''(B) The United States Central Command.

''(C) The United States European Command.

''(D) United States Indo-Pacific Command.

''(E) The United States Southern Command.

''(F) The United States Transportation Command.

''(5) COVERED CONTRACT, GRANT, OR COOPERATIVE AGREEMENT DEFINED.—The term 'covered contract,

grant, or cooperative agreement' means a contract, grant, or cooperative agreement with an estimated value in excess of $50,000 that is performed outside the United States, including its possessions and territories, in support of a contingency operation in which members of the Armed Forces are actively engaged in hostilities.

''(6) COVERED PERSON OR ENTITY.—The term 'covered person or entity' means a person or entity that is actively opposing United States or coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities.

''(7) EXECUTIVE AGENCY.—The term 'executive agency' has the meaning given that term in section 133 of title 41, United States Code.

''(8) HEAD OF CONTRACTING ACTIVITY.—The term 'head of contracting activity' has the meaning described in section 1.601 of the Federal Acquisition Regulation.

''(9) UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS.—The term 'Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards' means the guidance issued by the Office of Management and Budget in part 200 of chapter II of title 2 of the Code of Federal Regulations.''

[Pub. L. 116–283, div. A, title X, §1081(c)(3), Jan. 1, 2021, 134 Stat. 3873, which directed technical amendment of section 821 of Pub. L. 116–92 by inserting ''Carl Levin and Howard P. 'Buck' McKeon'' before ''National Defense Authorization Act for Fiscal Year 2015'', was executed to section 822 of Pub. L. 116–92, which amended the Carl Levin and Howard P. ''Buck'' McKeon National Defense Authorization Act for Fiscal Year 2015 (Pub. L. 113–291), set out above, to reflect the probable intent of Congress.]

[Pub. L. 116–283, div. A, title X, §1081(c), Jan. 1, 2021, 134 Stat. 3873, provided that the amendment made by section 1081(c)(3) of Pub. L. 116–283 to section 821 (probably should be 822) of Pub. L. 116–92, which amended section 841 of Pub. L. 113–291, set out above, is effective as of Dec. 20, 2020 (probably should be Dec. 20, 2019), and as if included in Pub. L. 116–92.]

Pub. L. 113–66, div. A, title VIII, §831, Dec. 26, 2013, 127 Stat. 810, related to prohibition on contracting with the enemy, prior to repeal by Pub. L. 113–291, div. A, title VIII, §841(m)(2), Dec. 19, 2014, 128 Stat. 3454, effective 270 days after Dec. 19, 2014.

Pub. L. 112–81, div. A, title VIII, §841, Dec. 31, 2011, 125 Stat. 1510, related to prohibition on contracting with the enemy in the United States Central Command theater of operations, prior to repeal by Pub. L. 113–291, div. A, title VIII, §841(m)(1), Dec. 19, 2014, 128 Stat. 3454, effective 270 days after Dec. 19, 2014.

RAPID ACQUISITION AND DEPLOYMENT PROCEDURES FOR UNITED STATES SPECIAL OPERATIONS COMMAND

Pub. L. 113–291, div. A, title VIII, §851, Dec. 19, 2014, 128 Stat. 3457, provided that:

''(a) AUTHORITY TO ESTABLISH PROCEDURES.—The Secretary may prescribe procedures for the rapid acquisition and deployment of items for the United States Special Operations Command that are currently under development by the Department of Defense or available from the commercial sector and are—

''(1) urgently needed to react to an enemy threat or to respond to significant and urgent safety situations;

''(2) needed to avoid significant risk of loss of life or mission failure; or

''(3) needed to avoid collateral damage risk where the absence of collateral damage is a requirement for mission success.

''(b) ISSUES TO BE ADDRESSED.—The procedures prescribed under subsection (a) shall include the following:

''(1) A process for streamlined communication between the Commander of the United States Special Operations Command and the acquisition and research and development communities, including—

''(A) a process for the Commander to communicate needs to the acquisition community and the research and development community; and

''(B) a process for the acquisition community and the research and development community to propose items that meet the needs communicated by the Commander.

''(2) Procedures for demonstrating, rapidly acquiring, and deploying items proposed pursuant to paragraph (1)(B), including—

''(A) a process for demonstrating performance and evaluating for current operational purposes the existing capability of an item;

''(B) a process for developing an acquisition and funding strategy for the deployment of an item; and

''(C) a process for making deployment determinations based on information obtained pursuant to subparagraphs (A) and (B).

''(c) TESTING REQUIREMENT.—

''(1) IN GENERAL.—The process for demonstrating performance and evaluating for current operational purposes the existing capability of an item prescribed under subsection (b)(2)(A) shall include—

''(A) an operational assessment in accordance with expedited procedures prescribed by the Director of Operational Testing and Evaluation; and

''(B) a requirement to provide information to the deployment decision-making authority about any deficiency of the item in meeting the original requirements for the item (as stated in an operational requirements document or similar document).

''(2) DEFICIENCY NOT A DETERMINING FACTOR.—The process may not include a requirement for any deficiency of an item to be the determining factor in deciding whether to deploy the item.

''(3) ADDITIONAL REQUIREMENT IN CASE OF DEFICIENCY.—In the case of any deficiency of an item, a decision to deploy the item may be made only if the Commander of the United States Special Operations Command determines that, for reasons of national security, the deficiency of the item is acceptable.

''(d) LIMITATION.—The quantity of items of a system procured using the procedures prescribed pursuant to this section may not exceed the number established for low-rate initial production for the system. Any such items shall be counted for purposes of the number of items of the system that may be procured through low-rate initial production.

''(e) ANNUAL FUNDING LIMITATION.—Of the funds available to the Commander of the United States Special Operations Command in any given fiscal year, not more than $50,000,000 may be used to procure items under this section.

''(f) RELATIONSHIP TO OTHER RAPID ACQUISITION AUTHORITY.—The Commander of the United States Special Operations Command may not use the authority under this section at the same time the Commander uses the authority under section 806 of the Bob Stump National Defense Authorization Act for Fiscal Year 2003 (Public Law 107–314; 10 U.S.C. 2302 note).

''(g) CONGRESSIONAL NOTIFICATIONS.—

''(1) NOTIFICATION BEFORE PROCEDURES GO INTO EFFECT.—The Secretary of Defense shall notify the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] at least 30 days before the procedures prescribed pursuant to this section are made effective.

''(2) NOTIFICATION AFTER USE OF PROCEDURES.—The Secretary of Defense shall notify the congressional defense committees not later than 48 hours after each use of the procedures prescribed pursuant to this section.''

CONSIDERATION OF CORROSION CONTROL IN PRELIMINARY DESIGN REVIEW

Pub. L. 113–291, div. A, title VIII, §852, Dec. 19, 2014, 128 Stat. 3458, as amended by Pub. L. 116–92, div. A, title IX, §902(34), Dec. 20, 2019, 133 Stat. 1546, provided that: ''The Under Secretary of Defense for Acquisition and

Sustainment shall ensure that Department of Defense Instruction 5000.02 and other applicable guidance require full consideration, during preliminary design review for a product, of metals, materials, and technologies that effectively prevent or control corrosion over the life cycle of the product.''

EQUIPMENT DISPOSAL

Pub. L. 113–66, div. A, title XV, §1531(d), Dec. 26, 2013, 127 Stat. 938, as amended by Pub. L. 113–291, div. A, title XV, §1532(d), Dec. 19, 2014, 128 Stat. 3614, provided that:

''(1) ACCEPTANCE OF CERTAIN EQUIPMENT.—The Secretary of Defense may accept equipment procured using funds authorized under this Act [see Tables for classification] or prior Acts that was transferred to the security forces of Afghanistan and returned by such forces to the United States if the Secretary provides written notification to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] of the Secretary's intention to accept such equipment.

''(2) TREATMENT AS DEPARTMENT OF DEFENSE STOCKS.—The equipment described in paragraph (1), and equipment not yet transferred to the security forces of Afghanistan that is determined by the Commander, Combined Security Transition Command-Afghanistan (or the Commander's designee) to no longer be required for transfer to such forces, may be treated as stocks of the Department of Defense upon notification to the congressional defense committees of such treatment.''

DEPARTMENT OF DEFENSE POLICY ON CONTRACTOR PROFITS

Pub. L. 112–239, div. A, title VIII, §804, Jan. 2, 2013, 126 Stat. 1826, which required the Secretary to review profit guidelines to ensure an appropriate link between contractor profit and contractor performance, was repealed by Pub. L. 115–232, div. A, title VIII, §812(b)(3), Aug. 13, 2018, 132 Stat. 1848.

EXTENSION OF CONTRACTOR CONFLICT OF INTEREST LIMITATIONS

Pub. L. 112–239, div. A, title VIII, §829, Jan. 2, 2013, 126 Stat. 1841, which related to extending existing guidance on personal conflicts of interest to certain contractor personnel, was repealed by Pub. L. 115–232, div. A, title VIII, §812(b)(4), Aug. 13, 2018, 132 Stat. 1848.

RESPONSIBILITY WITHIN DEPARTMENT OF DEFENSE FOR OPERATIONAL CONTRACT SUPPORT

Pub. L. 112–239, div. A, title VIII, §843, Jan. 2, 2013, 126 Stat. 1845, provided that:

''(a) GUIDANCE REQUIRED.—Not later than one year after the date of the enactment of this Act [Jan. 2, 2013], the Secretary of Defense shall develop and issue guidance establishing the chain of authority and responsibility within the Department of Defense for policy, planning, and execution of operational contract support.

''(b) ELEMENTS.—The guidance under subsection (a) shall, at a minimum—

''(1) specify the officials, offices, and components of the Department within the chain of authority and responsibility described in subsection (a);

''(2) identify for each official, office, and component specified under paragraph (1)—

''(A) requirements for policy, planning, and execution of contract support for operational contract support, including, at a minimum, requirements in connection with—

''(i) coordination of functions, authorities, and responsibilities related to operational contract support, including coordination with relevant Federal agencies;

''(ii) assessments of total force data in support of Department force planning scenarios, including the appropriateness of and necessity for the use of contractors for identified functions;

''(iii) determinations of capability requirements for nonacquisition community operational contract support, and identification of resources required for planning, training, and execution to meet such requirements; and

''(iv) determinations of policy regarding the use of contractors by function, and identification of the training exercises that will be required for operational contract support (including an assessment [of] whether or not such exercises will include contractors); and

''(B) roles, authorities, responsibilities, and lines of supervision for the achievement of the requirements identified under subparagraph (A); and

''(3) ensure that the chain of authority and responsibility described in subsection (a) is appropriately aligned with, and appropriately integrated into, the structure of the Department for the conduct of overseas contingency operations, including the military departments, the Joint Staff, and the commanders of the unified combatant commands.''

DATA COLLECTION ON CONTRACT SUPPORT FOR FUTURE OVERSEAS CONTINGENCY OPERATIONS INVOLVING COMBAT OPERATIONS

Pub. L. 112–239, div. A, title VIII, §844, Jan. 2, 2013, 126 Stat. 1846, provided that:

''(a) IN GENERAL.—Not later than one year after the date of the enactment of this Act [Jan. 2, 2013], the Secretary of Defense, the Secretary of State, and the Administrator of the United States Agency for International Development shall each issue guidance regarding data collection on contract support for future contingency operations outside the United States that involve combat operations.

''(b) ELEMENTS.—The guidance required by subsection (a) shall ensure that the Department of Defense, the Department of State, and the United States Agency for International Development take the steps necessary to ensure that each agency has the capability to collect and report, at a minimum, the following data regarding such contract support:

''(1) The total number of contracts entered into as of the date of any report.

''(2) The total number of such contracts that are active as of such date.

''(3) The total value of contracts entered into as of such date.

''(4) The total value of such contracts that are active as of such date.

''(5) An identification of the extent to which the contracts entered into as of such date were entered into using competitive procedures.

''(6) The total number of contractor personnel working under contracts entered into as of the end of each calendar quarter during the one-year period ending on such date.

''(7) The total number of contractor personnel performing security functions under contracts entered into as of the end of each calendar quarter during the one-year period ending on such date.

''(8) The total number of contractor personnel killed or wounded under any contracts entered into.

''(c) COMPTROLLER GENERAL REVIEW AND REPORT.—

''(1) REVIEW.—The Comptroller General of the United States shall review the data system or systems established to track contractor data pursuant to subsections (a) and (b). The review shall, with respect to each such data system, at a minimum—

''(A) identify each such data system and assess the resources needed to sustain such system;

''(B) determine if all such data systems are interoperable, use compatible data standards, and meet the requirements of section 2222 of title 10, United States Code; and

''(C) make recommendations on the steps that the Department of Defense, the Department of State, and the United States Agency for International Development should take to ensure that all such data systems—

''(i) meet the requirements of the guidance issued pursuant to subsections (a) and (b);

''(ii) are interoperable, use compatible data standards, and meet the requirements of section 2222 of such title; and

''(iii) are supported by appropriate business processes and rules to ensure the timeliness and reliability of data.

''(2) REPORT.—Not later than two years after the date of the enactment of this Act, the Comptroller General shall submit a report on the review required by paragraph (1) to the following committees:

''(A) The congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives].

''(B) The Committee on Foreign Relations and the Committee on Homeland Security and Governmental Affairs of the Senate.

''(C) The Committee on Foreign Affairs and the Committee on Oversight and Government Reform of the House of Representatives.''

REQUIREMENTS FOR RISK ASSESSMENTS RELATED TO CONTRACTOR PERFORMANCE

Pub. L. 112–239, div. A, title VIII, § 846, Jan. 2, 2013, 126 Stat. 1848, provided that:

''(a) RISK ASSESSMENTS FOR CONTRACTOR PERFORMANCE IN OPERATIONAL OR CONTINGENCY PLANS.—The Secretary of Defense shall require that a risk assessment on reliance on contractors be included in operational or contingency plans developed by a commander of a combatant command in executing the responsibilities prescribed in section 164 of title 10, United States Code. Such risk assessments shall address, at a minimum, the potential risks listed in subsection (c).

''(b) COMPREHENSIVE RISK ASSESSMENTS AND MITIGATION PLANS FOR CONTRACTOR PERFORMANCE IN SUPPORT OF OVERSEAS CONTINGENCY OPERATIONS.—

''(1) IN GENERAL.—Subject to paragraphs (2) and (3), not later than six months after the commencement or designation of a contingency operation outside the United States that includes or is expected to include combat operations, the head of each covered agency shall perform a comprehensive risk assessment and develop a risk mitigation plan for operational and political risks associated with contractor performance of critical functions in support of the operation for such covered agency.

''(2) EXCEPTIONS.—Except as provided in paragraph (3), a risk assessment and risk mitigation plan shall not be required under paragraph (1) for an overseas contingency operation if—

''(A) the operation is not expected to continue for more than one year; and

''(B) the total amount of obligations for contracts for support of the operation for the covered agency is not expected to exceed $250,000,000.

''(3) TERMINATION OF EXCEPTIONS.—Notwithstanding paragraph (2), the head of a covered agency shall perform a risk assessment and develop a risk mitigation plan under paragraph (1) for an overseas contingency operation with regard to which a risk assessment and risk mitigation plan has not previously been performed under paragraph (1) not later than 60 days after the date on which—

''(A) the operation has continued for more than one year; or

''(B) the total amount of obligations for contracts for support of the operation for the covered agency exceeds $250,000,000.

''(c) COMPREHENSIVE RISK ASSESSMENTS.—A comprehensive risk assessment under subsection (b) shall consider, at a minimum, risks relating to the following:

''(1) The goals and objectives of the operation (such as risks from contractor behavior or performance that may injure innocent members of the local population or offend their sensibilities).

''(2) The continuity of the operation (such as risks from contractors refusing to perform or being unable to perform when there may be no timely replacements available).

''(3) The safety of military and civilian personnel of the United States if the presence or performance of contractor personnel creates unsafe conditions or invites attack.

''(4) The safety of contractor personnel employed by the covered agency.

''(5) The managerial control of the Government over the operation (such as risks from over-reliance on contractors to monitor other contractors or inadequate means for Government personnel to monitor contractor performance).

''(6) The critical organic or core capabilities of the Government, including critical knowledge or institutional memory of key operations areas and subject-matter expertise.

''(7) The ability of the Government to control costs, avoid organizational or personal conflicts of interest, and minimize waste, fraud, and abuse.

''(d) RISK MITIGATION PLANS.—A risk mitigation plan under subsection (b) shall include, at a minimum, the following:

''(1) For each high-risk area identified in the comprehensive risk assessment for the operation performed under subsection (b)—

''(A) specific actions to mitigate or reduce such risk, including the development of alternative capabilities to reduce reliance on contractor performance of critical functions;

''(B) measurable milestones for the implementation of planned risk mitigation or risk reduction measures; and

''(C) a process for monitoring, measuring, and documenting progress in mitigating or reducing risk.

''(2) A continuing process for identifying and addressing new and changed risks arising in the course of the operation, including the periodic reassessment of risks and the development of appropriate risk mitigation or reduction plans for any new or changed high-risk area identified.

''(e) CRITICAL FUNCTIONS.—For purposes of this section, critical functions include, at a minimum, the following:

''(1) Private security functions, as that term is defined in section 864(a)(6) of the National Defense Authorization Act for Fiscal Year 2008 [Pub. L. 110–181] (10 U.S.C. 2302 note).

''(2) Training and advising Government personnel, including military and security personnel, of a host nation.

''(3) Conducting intelligence or information operations.

''(4) Any other functions that are closely associated with inherently governmental functions, including the functions set forth in section 7.503(d) of the Federal Acquisition Regulation.

''(5) Any other functions that are deemed critical to the success of the operation.

''(f) COVERED AGENCY.—In this section, the term 'covered agency' means the Department of Defense, the Department of State, and the United States Agency for International Development.''

REQUIREMENT FOR FOCUS ON URGENT OPERATIONAL NEEDS AND RAPID ACQUISITION

Pub. L. 112–239, div. A, title IX, § 902, Jan. 2, 2013, 126 Stat. 1865, which related to the designation and responsibilities of the senior official responsible for leading the Department's actions on urgent operational needs and rapid acquisition, was repealed by Pub. L. 115–232, div. A, title VIII, § 811(g), Aug. 13, 2018, 132 Stat. 1846.

PROCUREMENT OF TENTS OR OTHER TEMPORARY STRUCTURES

Pub. L. 112–81, div. A, title III, § 368, Dec. 31, 2011, 125 Stat. 1381, provided that:

''(a) IN GENERAL.—In procuring tents or other temporary structures for use by the Armed Forces, and in establishing or maintaining an alternative source for

such tents and structures, the Secretary of Defense shall award contracts that provide the best value to the United States. In determining the best value to the United States under this section, the Secretary shall consider the total life-cycle costs of such tents or structures, including the costs associated with any equipment or fuel needed to heat or cool such tents or structures.

''(b) INTERAGENCY PROCUREMENT.—The requirements of this section shall apply to any agency or department of the United States that procures tents or other temporary structures on behalf of the Department of Defense.''

INCLUSION OF DATA ON CONTRACTOR PERFORMANCE IN PAST PERFORMANCE DATABASES FOR SOURCE SELECTION DECISIONS

Pub. L. 112–81, div. A, title VIII, § 806, Dec. 31, 2011, 125 Stat. 1487, as amended by Pub. L. 112–239, div. A, title X, § 1076(a)(11), Jan. 2, 2013, 126 Stat. 1948; Pub. L. 116–92, div. A, title IX, § 902(35), Dec. 20, 2019, 133 Stat. 1547, provided that:

''(a) STRATEGY ON INCLUSION REQUIRED.—Not later than 180 days after the date of the enactment of this Act [Dec. 31, 2011], the Under Secretary of Defense for Acquisition and Sustainment shall develop a strategy for ensuring that timely, accurate, and complete information on contractor performance is included in past performance databases used for making source selection decisions.

''(b) ELEMENTS.—The strategy required by subsection (a) shall, at a minimum—

''(1) establish standards for the timeliness and completeness of past performance submissions for purposes of databases described in subsection (a);

''(2) assign responsibility and management accountability for the completeness of past performance submissions for such purposes; and

''(3) ensure that past performance submissions for such purposes are consistent with award fee evaluations in cases where such evaluations have been conducted.

''(c) CONTRACTOR COMMENTS.—Not later than 180 days after the date of the enactment of this Act [Dec. 31, 2011], the Under Secretary of Defense for Acquisition and Sustainment shall revise the Defense Supplement to the Federal Acquisition Regulation to require the following:

''(1) That affected contractors are provided, in a timely manner, information on contractor performance to be included in past performance databases in accordance with subsection (a).

''(2) That such contractors are afforded up to 14 calendar days, from the date of delivery of the information provided in accordance with paragraph (1), to submit comments, rebuttals, or additional information pertaining to past performance for inclusion in such databases.

''(3) That agency evaluations of contractor past performance, including any information submitted under paragraph (2), are included in the relevant past performance database not later than the date that is 14 days after the date of delivery of the information provided in accordance with paragraph (1).

''(d) CONSTRUCTION.—Nothing in this section shall be construed to prohibit a contractor from submitting comments, rebuttals, or additional information pertaining to past performance after the period described in subsection (c)(2) has elapsed or to prohibit a contractor from challenging a past performance evaluation in accordance with applicable laws, regulations, or procedures.

''(e) COMPTROLLER GENERAL REPORT.—Not later than 18 months after the date of the enactment of this Act [Dec. 31, 2011], the Comptroller General of the United States shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the actions taken by the Under Secretary of Defense for Acquisition and Sustainment pursuant to this section, including an assessment of the extent to which such actions have achieved the objectives of this section.''

DETECTION AND AVOIDANCE OF COUNTERFEIT ELECTRONIC PARTS

Pub. L. 112–81, div. A, title VIII, § 818(a)–(g), Dec. 31, 2011, 125 Stat. 1493–1496, as amended by Pub. L. 112–239, div. A, title VIII, § 833, Jan. 2, 2013, 126 Stat. 1844; Pub. L. 113–291, div. A, title VIII, § 817, Dec. 19, 2014, 128 Stat. 3432; Pub. L. 114–92, div. A, title VIII, § 885, Nov. 25, 2015, 129 Stat. 948; Pub. L. 114–328, div. A, title VIII, § 815, Dec. 23, 2016, 130 Stat. 2271; Pub. L. 115–232, div. A, title VIII, § 812(b)(5), Aug. 13, 2018, 132 Stat. 1848, provided that:

''(a) ASSESSMENT OF DEPARTMENT OF DEFENSE POLICIES AND SYSTEMS.—The Secretary of Defense shall conduct an assessment of Department of Defense acquisition policies and systems for the detection and avoidance of counterfeit electronic parts.

''(b) ACTIONS FOLLOWING ASSESSMENT.—Not later than 180 days after the date of the enactment of the [probably should be ''this''] Act [Dec. 31, 2011], the Secretary shall, based on the results of the assessment required by subsection (a)—

''(1) establish Department-wide definitions of the terms 'counterfeit electronic part' and 'suspect counterfeit electronic part', which definitions shall include previously used parts represented as new;

''(2) issue or revise guidance applicable to Department components engaged in the purchase of electronic parts to implement a risk-based approach to minimize the impact of counterfeit electronic parts or suspect counterfeit electronic parts on the Department, which guidance shall address requirements for training personnel, making sourcing decisions, ensuring traceability of parts, inspecting and testing parts, reporting and quarantining counterfeit electronic parts and suspect counterfeit electronic parts, and taking corrective actions (including actions to recover costs as described in subsection (c)(2));

''(3) issue or revise guidance applicable to the Department on remedial actions to be taken in the case of a supplier who has repeatedly failed to detect and avoid counterfeit electronic parts or otherwise failed to exercise due diligence in the detection and avoidance of such parts, including consideration of whether to suspend or debar a supplier until such time as the supplier has effectively addressed the issues that led to such failures;

''(4) establish processes for ensuring that Department personnel who become aware of, or have reason to suspect, that any end item, component, part, or material contained in supplies purchased by or for the Department contains counterfeit electronic parts or suspect counterfeit electronic parts provide a report in writing within 60 days to appropriate Government authorities and to the Government-Industry Data Exchange Program (or a similar program designated by the Secretary); and

''(5) establish a process for analyzing, assessing, and acting on reports of counterfeit electronic parts and suspect counterfeit electronic parts that are submitted in accordance with the processes under paragraph (4).

''(c) REGULATIONS.—

''(1) IN GENERAL.—Not later than 270 days after the date of the enactment of this Act [Dec. 31, 2011], the Secretary shall revise the Department of Defense Supplement to the Federal Acquisition Regulation to address the detection and avoidance of counterfeit electronic parts.

''(2) CONTRACTOR RESPONSIBILITIES.—The revised regulations issued pursuant to paragraph (1) shall provide that—

''(A) covered contractors who supply electronic parts or products that include electronic parts are responsible for detecting and avoiding the use or inclusion of counterfeit electronic parts or suspect counterfeit electronic parts in such products and

for any rework or corrective action that may be required to remedy the use or inclusion of such parts; and

"(B) the cost of counterfeit electronic parts and suspect counterfeit electronic parts and the cost of rework or corrective action that may be required to remedy the use or inclusion of such parts are not allowable costs under Department contracts, unless—

"(i) the covered contractor has an operational system to detect and avoid counterfeit electronic parts and suspect counterfeit electronic parts that has been reviewed and approved by the Department of Defense pursuant to subsection (e)(2)(B);

"(ii) the counterfeit electronic parts or suspect counterfeit electronic parts were provided to the covered contractor as Government property in accordance with part 45 of the Federal Acquisition Regulation or were obtained by the covered contractor in accordance with regulations described in paragraph (3); and

"(iii) the covered contractor discovers the counterfeit electronic parts or suspect counterfeit electronic parts and provides timely notice to the Government pursuant to paragraph (4).

"(3) SUPPLIERS MEETING ANTICOUNTERFEITING REQUIREMENTS.—The revised regulations issued pursuant to paragraph (1) shall—

"(A) require that the Department and Department contractors and subcontractors at all tiers—

"(i) obtain electronic parts that are in production or currently available in stock from the original manufacturers of the parts or their authorized dealers, or from suppliers identified as suppliers that meet anticounterfeiting requirements in accordance with regulations issued pursuant to subparagraph (C) or (D) and that obtain such parts exclusively from the original manufacturers of the parts or their authorized dealers;

"(ii) obtain electronic parts that are not in production or currently available in stock from suppliers identified as suppliers that meet anticounterfeiting requirements in accordance with regulations issued pursuant to subparagraph (C) or (D); and

"(iii) obtain electronic parts from alternate suppliers if such parts are not available from original manufacturers, their authorized dealers, or suppliers identified as suppliers that meet anticounterfeiting requirements in accordance with regulations prescribed pursuant to subparagraph (C) or (D);

"(B) establish requirements for notification of the Department, and for inspection, testing, and authentication of electronic parts that the Department or a Department contractor or subcontractor obtains from any source other than a source described in clause (i) or (ii) of subparagraph (A), if obtaining the electronic parts in accordance with such clauses is not possible;

"(C) establish qualification requirements, consistent with the requirements of section 2319 of title 10, United States Code, pursuant to which the Department may identify suppliers that have appropriate policies and procedures in place to detect and avoid counterfeit electronic parts and suspect counterfeit electronic parts; and

"(D) authorize Department contractors and subcontractors to identify and use additional suppliers that meet anticounterfeiting requirements, provided that—

"(i) the standards and processes for identifying such suppliers comply with established industry standards;

"(ii) the contractor or subcontractor assumes responsibility for the authenticity of parts provided by such suppliers as provided in paragraph (2); and

"(iii) the selection of such suppliers is subject to review, audit, and approval by appropriate Department officials.

"(4) REPORTING REQUIREMENT.—The revised regulations issued pursuant to paragraph (1) shall require that any Department contractor or subcontractor who becomes aware, or has reason to suspect, that any end item, component, part, or material contained in supplies purchased by the Department, or purchased by a contractor or subcontractor for delivery to, or on behalf of, the Department, contains counterfeit electronic parts or suspect counterfeit electronic parts report in writing within 60 days to appropriate Government authorities and the Government-Industry Data Exchange Program (or a similar program designated by the Secretary).

"(5) CONSTRUCTION OF COMPLIANCE WITH REPORTING REQUIREMENT.—A Department contractor or subcontractor that provides a written report required under this subsection shall not be subject to civil liability on the basis of such reporting, provided the contractor or subcontractor made a reasonable effort to determine that the end item, component, part, or material concerned contained counterfeit electronic parts or suspect counterfeit electronic parts.

"(d) INSPECTION PROGRAM.—The Secretary of Homeland Security shall establish and implement a risk-based methodology for the enhanced targeting of electronic parts imported from any country, after consultation with the Secretary of Defense as to sources of counterfeit electronic parts and suspect counterfeit electronic parts in the supply chain for products purchased by the Department of Defense.

"(e) IMPROVEMENT OF CONTRACTOR SYSTEMS FOR DETECTION AND AVOIDANCE OF COUNTERFEIT ELECTRONIC PARTS.—

"(1) IN GENERAL.—Not later than 270 days after the date of the enactment of this Act [Dec. 31, 2011], the Secretary of Defense shall implement a program to enhance contractor detection and avoidance of counterfeit electronic parts.

"(2) ELEMENTS.—The program implemented pursuant to paragraph (1) shall—

"(A) require covered contractors that supply electronic parts or systems that contain electronic parts to establish policies and procedures to eliminate counterfeit electronic parts from the defense supply chain, which policies and procedures shall address—

"(i) the training of personnel;

"(ii) the inspection and testing of electronic parts;

"(iii) processes to abolish counterfeit parts proliferation;

"(iv) mechanisms to enable traceability of parts;

"(v) the use of suppliers that meet applicable anticounterfeiting requirements;

"(vi) the reporting and quarantining of counterfeit electronic parts and suspect counterfeit electronic parts;

"(vii) methodologies to identify suspect counterfeit parts and to rapidly determine if a suspect counterfeit part is, in fact, counterfeit;

"(viii) the design, operation, and maintenance of systems to detect and avoid counterfeit electronic parts and suspect counterfeit electronic parts; and

"(ix) the flow down of counterfeit avoidance and detection requirements to subcontractors; and

"(B) establish processes for the review and approval of contractor systems for the detection and avoidance of counterfeit electronic parts and suspect counterfeit electronic parts, which processes shall be comparable to the processes established for contractor business systems under section 893 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (Public Law 111–383; 124 Stat. 4311; 10 U.S.C. 2302 note).

"(f) DEFINITIONS.—In subsections (a) through (e) of this section:

"(1) The term 'covered contractor' has the meaning given that term in section 893(f)(2) of the Ike Skelton

National Defense Authorization Act for Fiscal Year 2011.

''(2) The term 'electronic part' means an integrated circuit, a discrete electronic component (including, but not limited to, a transistor, capacitor, resistor, or diode), or a circuit assembly.''

[(g) Repealed. Pub. L. 115–232, div. A, title VIII, § 812(b)(5), Aug. 13, 2018, 132 Stat. 1848.]

REACH-BACK CONTRACTING AUTHORITY FOR OPERATION ENDURING FREEDOM AND OPERATION NEW DAWN

Pub. L. 112–81, div. A, title VIII, § 843, Dec. 31, 2011, 125 Stat. 1514, as amended by Pub. L. 116–92, div. A, title IX, § 902(36), Dec. 20, 2019, 133 Stat. 1547, provided that:

''(a) AUTHORITY TO DESIGNATE LEAD CONTRACTING ACTIVITY.—The Under Secretary of Defense for Acquisition and Sustainment may designate a single contracting activity inside the United States to act as the lead contracting activity with authority for use of domestic capabilities in support of overseas contracting for Operation Enduring Freedom and Operation New Dawn. The contracting activity so designated shall be known as the 'lead reach-back contracting authority' for such operations.

''(b) LIMITED AUTHORITY FOR USE OF OUTSIDE-THE-UNITED-STATES-THRESHOLDS.—The head of the contracting authority designated pursuant to subsection (a) may, when awarding a contract inside the United States for performance in the theater of operations for Operation Enduring Freedom or Operation New Dawn, use the overseas increased micro-purchase threshold and the overseas increased simplified acquisition threshold in the same manner and to the same extent as if the contract were to be awarded and performed outside the United States.

''(c) DEFINITIONS.—In this section:

''(1) The term 'overseas increased micro-purchase threshold' means the amount specified in paragraph (1)(B) of section 1903(b) of title 41, United States Code.

''(2) The term 'overseas increased simplified acquisition threshold' means the amount specified in paragraph (2)(B) of section 1903(b) of title 41, United States Code.''

COMPETITION AND REVIEW OF CONTRACTS FOR PROPERTY OR SERVICES IN SUPPORT OF A CONTINGENCY OPERATION

Pub. L. 112–81, div. A, title VIII, § 844(a), (b), Dec. 31, 2011, 125 Stat. 1515, provided that:

''(a) CONTRACTING GOALS.—Not later than 90 days after the date of the enactment of this Act [Dec. 31, 2011], the Secretary of Defense shall—

''(1) establish goals for competition in contracts awarded by the Secretary of Defense for the procurement of property or services to be used outside the United States in support of a contingency operation; and

''(2) develop processes by which to measure and monitor such competition, including in task-order categories for services, construction, and supplies.

''(b) ANNUAL REVIEW OF CERTAIN CONTRACTS.—For each year the Logistics Civil Augmentation Program contract, or other similar omnibus contract awarded by the Secretary of Defense for the procurement of property or services to be used outside the United States in support of a contingency operation, is in force, the Secretary shall require a competition advocate of the Department of Defense to conduct an annual review of each such contract.''

CONTRACTS FOR COMMERCIAL IMAGING SATELLITE CAPACITIES

Pub. L. 111–383, div. A, title I, § 127, Jan. 7, 2011, 124 Stat. 4161, provided that:

''(a) TELESCOPE REQUIREMENTS UNDER CONTRACTS AFTER 2010.—Except as provided in subsection (b), any contract for additional commercial imaging satellite capability or capacity entered into by the Department of Defense after December 31, 2010, shall require that the imaging telescope providing such capability or capacity under such contract has an aperture of not less than 1.5 meters.

''(b) WAIVER.—The Secretary of Defense may waive the limitation in subsection (a) if—

''(1) the Secretary submits to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] written certification that the waiver is in the national security interests of the United States; and

''(2) a period of 30 days has elapsed following the date on which the certification under paragraph (1) is submitted.

''(c) CONTINUATION OF CURRENT CONTRACTS.—The limitation in subsection (a) may not be construed to prohibit or prevent the Secretary of Defense from continuing or maintaining current commercial imaging satellite capability or capacity in orbit or under contract by December 31, 2010.''

REVIEW OF ACQUISITION PROCESS FOR RAPID FIELDING OF CAPABILITIES IN RESPONSE TO URGENT OPERATIONAL NEEDS

Pub. L. 111–383, div. A, title VIII, § 804, Jan. 7, 2011, 124 Stat. 4256, provided that:

''(a) REVIEW OF RAPID ACQUISITION PROCESS REQUIRED.—

''(1) IN GENERAL.—Not later than one year after the date of the enactment of this Act [Jan. 7, 2011], the Secretary of Defense shall complete a review of the process for the fielding of capabilities in response to urgent operational needs and submit a report on the review to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives].

''(2) REVIEW AND REPORT REQUIREMENTS.—The review pursuant to this section shall include consideration of various improvements to the acquisition process for rapid fielding of capabilities in response to urgent operational needs. For each improvement, the report on the review shall discuss—

''(A) the Department's review of the improvement;

''(B) if the improvement is being implemented by the Department, a schedule for implementing the improvement; and

''(C) if the improvement is not being implemented by the Department, an explanation of why the improvement is not being implemented.

''(3) IMPROVEMENTS TO BE CONSIDERED.—The improvements that shall be considered during the review are the following:

''(A) Providing a streamlined, expedited, and tightly integrated iterative approach to—

''(i) the identification and validation of urgent operational needs;

''(ii) the analysis of alternatives and identification of preferred solutions;

''(iii) the development and approval of appropriate requirements and acquisition documents;

''(iv) the identification and minimization of development, integration, and manufacturing risks;

''(v) the consideration of operation and sustainment costs;

''(vi) the allocation of appropriate funding; and

''(vii) the rapid production and delivery of required capabilities.

''(B) Clearly defining the roles and responsibilities of the Office of the Secretary of Defense, the Joint Chiefs of Staff, the military departments, and other components of the Department of Defense for carrying out all phases of the process.

''(C) Designating a senior official within the Office of the Secretary of Defense with primary responsibility for making recommendations to the Secretary on the use of the authority provided by subsections (c) and (d) of section 806 of the Bob Stump National Defense Authorization Act for Fiscal Year 2003 [Pub. L. 107–314] (10 U.S.C. 2302 note),

as amended by section 803 of this Act, in appropriate circumstances.

''(D) Establishing a target date for the fielding of a capability pursuant to each validated urgent operational need.

''(E) Implementing a system for—

''(i) documenting key process milestones, such as funding, acquisition, fielding, and assessment decisions and actions; and

''(ii) tracking the cost, schedule, and performance of acquisitions conducted pursuant to the process.

''(F) Establishing a formal feedback mechanism for the commanders of the combatant commands to provide information to the Joint Chiefs of Staff and senior acquisition officials on how well fielded solutions are meeting urgent operational needs.

''(G) Establishing a dedicated source of funding for the rapid fielding of capabilities in response to urgent operational needs.

''(H) Issuing guidance to provide for the appropriate transition of capabilities acquired through rapid fielding into the traditional budget, requirements, and acquisition process for purposes of contracts for follow-on production, sustainment, and logistics support.

''(I) Such other improvements as the Secretary considers appropriate.

''(b) DISCRIMINATING URGENT OPERATIONAL NEEDS FROM TRADITIONAL REQUIREMENTS.—

''(1) EXPEDITED REVIEW PROCESS.—Not later than 270 days after the date of the enactment of this Act, the Secretary shall develop and implement an expedited review process to determine whether capabilities proposed as urgent operational needs are appropriate for fielding through the process for the rapid fielding of capabilities or should be fielded through the traditional acquisition process.

''(2) ELEMENTS.—The review process developed and implemented pursuant to paragraph (1) shall—

''(A) apply to the rapid fielding of capabilities in response to joint urgent operational need statements and to other urgent operational needs statements generated by the military departments and the combatant commands;

''(B) identify officials responsible for making determinations described in paragraph (1);

''(C) establish appropriate time periods for making such determinations;

''(D) set forth standards and criteria for making such determinations based on considerations of urgency, risk, and life-cycle management;

''(E) establish appropriate thresholds for the applicability of the review process, or of elements of the review process; and

''(F) authorize appropriate officials to make exceptions from standards and criteria established under subparagraph (D) in exceptional circumstances.

''(3) COVERED CAPABILITIES.—The review process developed and implemented pursuant to paragraph (1) shall provide that, subject to such exceptions as the Secretary considers appropriate for purposes of this section, the acquisition process for rapid fielding of capabilities in response to urgent operational needs is appropriate only for capabilities that—

''(A) can be fielded within a period of two to 24 months;

''(B) do not require substantial development effort;

''(C) are based on technologies that are proven and available; and

''(D) can appropriately be acquired under fixed price contracts.

''(4) INCLUSION IN REPORT.—The Secretary shall include a description of the expedited review process implemented pursuant to paragraph (1) in the report required by subsection (a).''

STANDARDS AND CERTIFICATION FOR PRIVATE SECURITY CONTRACTORS

Pub. L. 111–383, div. A, title VIII, § 833, Jan. 7, 2011, 124 Stat. 4276, provided that:

''(a) REVIEW OF THIRD-PARTY STANDARDS AND CERTIFICATION PROCESSES.—Not later than 90 days after the date of the enactment of this Act [Jan. 7, 2011], the Secretary of Defense shall—

''(1) determine whether the private sector has developed—

''(A) operational and business practice standards applicable to private security contractors; and

''(B) third-party certification processes for determining whether private security contractors adhere to standards described in subparagraph (A); and

''(2) review any standards and processes identified pursuant to paragraph (1) to determine whether the application of such standards and processes will make a substantial contribution to the successful performance of private security functions in areas of combat operations or other significant military operations.

''(b) REVISED REGULATIONS.—Not later than 270 days after the date of the enactment of this Act, the Secretary of Defense shall revise the regulations promulgated under section 862 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110–181; 10 U.S.C. 2302 note) to ensure that such regulations—

''(1) establish criteria for defining standard practices for the performance of private security functions, which shall reflect input from industry representatives as well as the Inspector General of the Department of Defense; and

''(2) establish criteria for weapons training programs for contractors performing private security functions, including minimum requirements for weapons training programs of instruction and minimum qualifications for instructors for such programs.

''(c) INCLUSION OF THIRD-PARTY STANDARDS AND CERTIFICATIONS IN REVISED REGULATIONS.—

''(1) STANDARDS.—If the Secretary determines that the application of operational and business practice standards identified pursuant to subsection (a)(1)(A) will make a substantial contribution to the successful performance of private security functions in areas of combat operations or other significant military operations, the revised regulations promulgated pursuant to subsection (b) shall incorporate a requirement to comply with such standards, subject to such exceptions as the Secretary may determine to be necessary.

''(2) CERTIFICATIONS.—If the Secretary determines that the application of a third-party certification process identified pursuant to subsection (a)(1)(B) will make a substantial contribution to the successful performance of private security functions in areas of combat operations or other significant military operations, the revised regulations promulgated pursuant to subsection (b) may provide for the consideration of such certifications as a factor in the evaluation of proposals for award of a covered contract for the provision of private security functions, subject to such exceptions as the Secretary may determine to be necessary.

''(d) DEFINITIONS.—In this section:

''(1) COVERED CONTRACT.—The term 'covered contract' means—

''(A) a contract of the Department of Defense for the performance of services;

''(B) a subcontract at any tier under such a contract; or

''(C) a task order or delivery order issued under such a contract or subcontract.

''(2) CONTRACTOR.—The term 'contractor' means, with respect to a covered contract, the contractor or subcontractor carrying out the covered contract.

''(3) PRIVATE SECURITY FUNCTIONS.—The term 'private security functions' means activities engaged in by a contractor under a covered contract as follows:

''(A) Guarding of personnel, facilities, or property of a Federal agency, the contractor or subcontractor, or a third party.

''(B) Any other activity for which personnel are required to carry weapons in the performance of their duties.

"(e) EXCEPTION.—The requirements of this section shall not apply to contracts entered into by elements of the intelligence community in support of intelligence activities."

PILOT PROGRAM ON ACQUISITION OF MILITARY PURPOSE NONDEVELOPMENTAL ITEMS

Pub. L. 111–383, div. A, title VIII, § 866(a)–(f), Jan. 7, 2011, 124 Stat. 4296–4298, as amended by Pub. L. 113–66, div. A, title VIII, § 814, Dec. 26, 2013, 127 Stat. 808; Pub. L. 113–291, div. A, title X, § 1071(b)(1)(B), Dec. 19, 2014, 128 Stat. 3505; Pub. L. 114–92, div. A, title VIII, § 892, Nov. 25, 2015, 129 Stat. 952; Pub. L. 115–91, div. A, title X, § 1051(p)(3), Dec. 12, 2017, 131 Stat. 1564; Pub. L. 116–283, div. A, title XVIII, §§ 1806(e)(3)(E), 1831(j)(2), Jan. 1, 2021, 134 Stat. 4156, 4216, provided that:

"(a) PILOT PROGRAM AUTHORIZED.—

"(1) IN GENERAL.—The Secretary of Defense may carry out a pilot program to assess the feasability [sic] and advisability of acquiring military purpose nondevelopmental items in accordance with this section.

"(2) SCOPE OF PROGRAM.—Under the pilot program, the Secretary may enter into contracts for the acquisition of military purpose nondevelopmental items in accordance with the requirements set forth in subsection (b).

"(b) CONTRACT REQUIREMENTS.—Each contract entered into under the pilot program—

"(1) shall be a firm, fixed price contract, or a firm, fixed price contract with an economic price adjustment clause;

"(2) shall be in an amount not in excess of $100,000,000, including all options;

"(3) shall provide—

"(A) for the delivery of an initial lot of production quantities of completed items not later than nine months after the date of the award of such contract; and

"(B) that failure to make delivery as provided for under subparagraph (A) may result in the termination of such contract for default; and

"(4) shall be—

"(A) exempt from the requirement to submit certified cost or pricing data under section 2306a of title 10, United States Code, and the cost accounting standards under chapter 15 of title 41, United States Code; and

"(B) subject to the requirement to provide data other than certified cost or pricing data for the purpose of price reasonableness determinations, as provided in section 2306a(d) of title 10, United States Code.

"(c) REGULATIONS.—If the Secretary establishes the pilot program authorized under subsection (a), the Secretary shall prescribe regulations governing such pilot program. Such regulations shall be included in regulations of the Department of Defense prescribed as part of the Federal Acquisition Regulation and shall include the contract clauses and procedures necessary to implement such program.

"(d) PROGRAM ASSESSMENT.—If the Secretary establishes the pilot program authorized under subsection (a), not later than four years after the date of the enactment of this Act, the Comptroller General of the United States shall submit to the congressional defense committees a report setting forth the assessment of the Comptroller General of the extent to which the pilot program—

"(1) enabled the Department to acquire items that otherwise might not have been available to the Department;

"(2) assisted the Department in the rapid acquisition and fielding of capabilities needed to meet urgent operational needs; and

"(3) protected the interests of the United States in paying fair and reasonable prices for the item or items acquired.

"(e) DEFINITIONS.—In this section:

"(1) The term 'military purpose nondevelopmental item' means a nondevelopmental item that meets a validated military requirement, as determined in writing by the responsible program manager, and has been developed exclusively at private expense. For purposes of this paragraph, an item shall not be considered to be developed exclusively at private expense if development of the item was paid for in whole or in part through—

"(A) independent research and development costs or bid and proposal costs that have been reimbursed directly or indirectly by a Federal agency or have been submitted to a Federal agency for reimbursement; or

"(B) foreign government funding.

"(2) The term 'nondevelopmental item'—

"(A) has the meaning given that term in section 110 of title 41, United States Code; and

"(B) also includes previously developed items of supply that require modifications other than those customarily available in the commercial marketplace if such modifications are consistent with the requirement in subsection (b)(3)(A).

"(3) The term 'nontraditional defense contractor' has the meaning given that term in section 2302(9) of title 10, United States Code (as added by subsection (g)).

"(4) The terms 'independent research and developments costs' and 'bid and proposal costs' have the meaning given such terms in section 31.205–18 of the Federal Acquisition Regulation.

"(f) SUNSET.—

"(1) IN GENERAL.—The authority to carry out the pilot program shall expire on December 31, 2019.

"(2) CONTINUATION OF CURRENT CONTRACTS.—The expiration under paragraph (1) of the authority to carry out the pilot program shall not affect the validity of any contract awarded under the pilot program before the date of the expiration of the pilot program under that paragraph."

[Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1806(e)(3)(E), 1831(j)(2), Jan. 1, 2021, 134 Stat. 4151, 4156, 4216, provided that effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, section 866 of Pub. L. 111–383, set out above, is amended, in subsec. (b)(4)(A), by substituting "chapter 271" for "section 2306a", in subsec. (b)(4)(B), by substituting "section 3705" for "section 2306a(d)", and, in subsec. (e)(3), by substituting "section 3014" for "section 2302(9)".]

CONTRACTOR BUSINESS SYSTEMS

Pub. L. 115–232, div. A, title VIII, § 824(b), Aug. 13, 2018, 132 Stat. 1856, provided that: "Not later than 120 days after the date of the enactment of this Act [Aug. 13, 2018], the Secretary of Defense shall revise the Defense Federal Acquisition Regulation Supplement to conform with the amendments to section 893 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (Public Law 111–383; 10 U.S.C. 2302 note) made by this section."

Pub. L. 111–383, div. A, title VIII, § 893, Jan. 7, 2011, 124 Stat. 4311, as amended by Pub. L. 112–81, div. A, title VIII, § 816, Dec. 31, 2011, 125 Stat. 1493; Pub. L. 113–291, div. A, title X, § 1071(b)(1)(C), Dec. 19, 2014, 128 Stat. 3505; Pub. L. 114–328, div. A, title VIII, § 893, Dec. 23, 2016, 130 Stat. 2324; Pub. L. 115–91, div. A, title X, § 1081(d)(8), Dec. 12, 2017, 131 Stat. 1600; Pub. L. 115–232, div. A, title VIII, § 824(a), Aug. 13, 2018, 132 Stat. 1856; Pub. L. 116–283, div. A, title VIII, § 806, Jan. 1, 2021, 134 Stat. 3742, provided that:

"(a) IMPROVEMENT PROGRAM.—The Secretary of Defense shall develop and initiate a program for the improvement of contractor business systems to ensure that such systems provide timely, reliable information for the management of Department of Defense programs by the contractor and by the Department.

"(b) APPROVAL OR DISAPPROVAL OF BUSINESS SYSTEMS.—The program developed pursuant to subsection (a) shall—

"(1) include clear and specific business system requirements that are identified and made publicly

available for each type of contractor business system covered by the program;

''(2) establish a process for reviewing contractor business systems and identifying material weaknesses in such systems;

''(3) identify officials of the Department of Defense who are responsible for the approval or disapproval of contractor business systems;

''(4) provide for the approval of any contractor business system that does not have a material weakness; and

''(5) provide for—

''(A) the disapproval of any contractor business system that has a material weakness; and

''(B) reduced reliance on, and enhanced scrutiny of, data provided by a contractor business system that has been disapproved.

''(c) REVIEW BY THIRD-PARTY INDEPENDENT AUDITORS.—The review process for contractor business systems pursuant to subsection (b)(2) shall—

''(1) if a registered public accounting firm attests to the internal control assessment of a contractor, pursuant to section 404(b) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7262(b)), allow the contractor, subject to paragraph (3), to submit certified documentation from such registered public accounting firm that the contractor business systems of the contractor meet the business system requirements referred to in subsection (b)(1) and to thereby eliminate the need for further review of the contractor business systems by the Secretary of Defense;

''(2) limit the review, subject to paragraph (3), of the contractor business systems of a contractor that is not a covered contractor to confirming that the contractor uses the same contractor business system for its Government and commercial work and that the outputs of the contractor business system based on statistical sampling are reasonable; and

''(3) allow a milestone decision authority to require a review of a contractor business system of a contractor that submits documentation pursuant to paragraph (1) or that is not a covered contractor after determining in writing that such a review is necessary to appropriately manage contractual risk.

''(d) REMEDIAL ACTIONS.—The program developed pursuant to subsection (a) shall provide the following:

''(1) In the event a contractor business system is disapproved pursuant to subsection (b)(5), appropriate officials of the Department of Defense will be available to work with the contractor to develop a corrective action plan defining specific actions to be taken to address the material weaknesses identified in the system and a schedule for the implementation of such actions.

''(2) An appropriate official of the Department of Defense may withhold up to 10 percent of progress payments, performance-based payments, and interim payments under covered contracts from a covered contractor, as needed to protect the interests of the Department and ensure compliance, if one or more of the contractor business systems of the contractor has been disapproved pursuant to subsection (b)(5) and has not subsequently received approval.

''(3) The amount of funds to be withheld under paragraph (2) shall be reduced if a contractor adopts an effective corrective action plan pursuant to paragraph (1) and is effectively implementing such plan.

''(e) GUIDANCE AND TRAINING.—The program developed pursuant to subsection (a) shall provide guidance and training to appropriate government officials on the data that is produced by contractor business systems and the manner in which such data should be used to effectively manage Department of Defense programs.

''(f) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to prohibit an official of the Department of Defense from reviewing, approving, or disapproving a contractor business system pursuant to any applicable law or regulation in force as of the date of the enactment of this Act during the period between the date of the enactment of this Act and the date on which the Secretary implements the requirements of this section with respect to such system.

''(g) DEFINITIONS.—In this section:

''(1) The term 'contractor business system' means an accounting system, estimating system, purchasing system, earned value management system, material management and accounting system, or property management system of a contractor.

''(2) The term 'covered contractor' means a contractor that has covered contracts with the United States Government accounting for greater than 1 percent of its total gross revenue, except that the term does not include any contractor that is exempt, under section 1502 of title 41, United States Code, or regulations implementing that section, from using full cost accounting standards established in that section.

''(3) The term 'covered contract' means a contract that is subject to the cost accounting standards promulgated pursuant to section 1502 of title 41, United States Code, that could be affected if the data produced by a contractor business system has a material weakness.

''(4) The term 'material weakness' means a deficiency or combination of deficiencies in the internal control over information in contractor business systems, such that there is a reasonable possibility that a material misstatement of such information will not be prevented, or detected and corrected, on a timely basis. For purposes of this paragraph, a reasonable possibility exists when the likelihood of an event occurring—

''(A) is probable; or

''(B) is more than remote but less than likely.

''(5) The term 'approved purchasing system' has the meaning given the term in section 44.101 of the Federal Acquisition Regulation (or any similar regulation).

''(h) DEFENSE CONTRACT AUDIT AGENCY LEGAL RESOURCES AND EXPERTISE.—

''(1) REQUIREMENT.—The Secretary of Defense shall ensure that—

''(A) the Defense Contract Audit Agency has sufficient legal resources and expertise to conduct its work in compliance with applicable Department of Defense policies and procedures; and

''(B) such resources and expertise are provided in a manner that is consistent with the audit independence of the Defense Contract Audit Agency.

''(2) REPORT.—Not later than 180 days after the date of the enactment of this Act, the Secretary shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the steps taken to comply with the requirements of this subsection.

''(i) CONSENT TO SUBCONTRACT.—If the contractor on a Department of Defense contract requiring a contracting officer's written consent prior to the contractor entering into a subcontract has an approved purchasing system, the contracting officer may not withhold such consent without the written approval of the program manager.''

[Pub. L. 115–91, div. A, title X, § 1081(d), Dec. 12, 2017, 131 Stat. 1599, provided that the amendment made by section 1081(d)(8) to section 893(c) of Pub. L. 114–328 (which amended section 893 of Pub. L. 111–383, set out above) is effective as of Dec. 23, 2016, and as if included in Pub. L. 114–328 as enacted.]

LIFE-CYCLE MANAGEMENT AND PRODUCT SUPPORT

Pub. L. 111–84, div. A, title VIII, § 805, Oct. 28, 2009, 123 Stat. 2403, which directed the Secretary of Defense to issue comprehensive guidance on life-cycle management and the development and implementation of product support strategies for major weapon systems and required each major weapon system to be supported by a product support manager, was repealed by Pub. L. 112–239, div. A, title VIII, § 823(b), Jan. 2, 2013, 126 Stat. 1832.

CONTRACT AUTHORITY FOR ADVANCED COMPONENT DEVELOPMENT OR PROTOTYPE UNITS

Pub. L. 111–84, div. A, title VIII, § 819, Oct. 28, 2009, 123 Stat. 2409, as amended by Pub. L. 113–291, div. A, title VIII, § 811, Dec. 19, 2014, 128 Stat. 3428, which authorized certain contracts for advanced component development or prototype units, was repealed by Pub. L. 115–91, div. A, title VIII, § 861(b), Dec. 12, 2017, 131 Stat. 1494.

CONGRESSIONAL EARMARKS

Pub. L. 111–84, div. A, title X, § 1062, Oct. 28, 2009, 123 Stat. 2468, provided that:

''(a) REPORT ON RECURRING EARMARKS.—

''(1) REPORT REQUIRED.—Not later than 90 days after the date of the enactment of this Act [Oct. 28, 2009], the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report regarding covered earmarks.

''(2) ELEMENTS.—The report required by paragraph (1) shall include the following:

''(A) An identification of each covered earmark that has been included in a national defense authorization Act for three or more consecutive fiscal years as of the date of the enactment of this Act.

''(B) A description of the extent to which competitive or merit-based procedures were used to award funding, or to enter into a contract, grant, or other agreement, pursuant to each covered earmark.

''(C) An identification of the specific contracting vehicle used for each covered earmark.

''(D) In the case of any covered earmark for which competitive or merit-based procedures were not used to award funding, or to enter into the contract, grant, or other agreement, a statement of the reasons competitive or merit-based procedures were not used.

''(b) DOD INSPECTOR GENERAL AUDIT OF CONGRESSIONAL EARMARKS.—The Inspector General of the Department of Defense shall conduct an audit of contracts, grants, or other agreements pursuant to congressional earmarks of Department of Defense funds to determine whether or not the recipients of such earmarks are complying with requirements of Federal law on the use of appropriated funds to influence, whether directly or indirectly, congressional action on any legislation or appropriation matter pending before Congress.

''(c) DEFINITIONS.—In this section:

''(1) The term 'congressional earmark' means any congressionally directed spending item (Senate) or congressional earmark (House of Representatives) on a list published in compliance with rule XLIV of the Standing Rules of the Senate or rule XXI of the Rules of the House of Representatives.

''(2) The term 'covered earmark' means any congressional earmark identified in the joint explanatory statement to accompany the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110–417) that was printed in the Congressional Record on September 23, 2008.

''(3) The term 'national defense authorization Act' means an Act authorizing funds for a fiscal year for the military activities of the Department of Defense, and for other purposes.''

CONSIDERATION OF TRADE-OFFS AMONG COST, SCHEDULE, AND PERFORMANCE OBJECTIVES IN DEPARTMENT OF DEFENSE ACQUISITION PROGRAMS

Pub. L. 111–23, title II, § 201(a), May 22, 2009, 123 Stat. 1719, provided that:

''(1) IN GENERAL.—The Secretary of Defense shall ensure that mechanisms are developed and implemented to require consideration of trade-offs among cost, schedule, and performance objectives as part of the process for developing requirements for Department of Defense acquisition programs.

''(2) ELEMENTS.—The mechanisms required under this subsection shall ensure, at a minimum, that—

''(A) Department of Defense officials responsible for acquisition, budget, and cost estimating functions are provided an appropriate opportunity to develop estimates and raise cost and schedule matters before performance objectives are established for capabilities for which the Chairman of the Joint Requirements Oversight Council is the validation authority; and

''(B) the process for developing requirements is structured to enable incremental, evolutionary, or spiral acquisition approaches, including the deferral of technologies that are not yet mature and capabilities that are likely to significantly increase costs or delay production until later increments or spirals.''

AWARDS FOR DEPARTMENT OF DEFENSE PERSONNEL FOR EXCELLENCE IN THE ACQUISITION OF PRODUCTS AND SERVICES

Pub. L. 111–23, title III, § 301, May 22, 2009, 123 Stat. 1730, provided that:

''(a) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act [May 22, 2009], the Secretary of Defense shall commence carrying out a program to recognize excellent performance by individuals and teams of members of the Armed Forces and civilian personnel of the Department of Defense in the acquisition of products and services for the Department of Defense.

''(b) ELEMENTS.—The program required by subsection (a) shall include the following:

''(1) Procedures for the nomination by the personnel of the military departments and the Defense Agencies of individuals and teams of members of the Armed Forces and civilian personnel of the Department of Defense for eligibility for recognition under the program.

''(2) Procedures for the evaluation of nominations for recognition under the program by one or more panels of individuals from the Government, academia, and the private sector who have such expertise, and are appointed in such manner, as the Secretary shall establish for purposes of the program.

''(c) AWARD OF CASH BONUSES.—As part of the program required by subsection (a), the Secretary may award to any individual recognized pursuant to the program a cash bonus authorized by any other provision of law to the extent that the performance of such individual so recognized warrants the award of such bonus under such provision of law.''

TRUSTED DEFENSE SYSTEMS

Pub. L. 110–417, [div. A], title II, § 254, Oct. 14, 2008, 122 Stat. 4402, as amended by Pub. L. 116–92, div. A, title IX, § 902(37), Dec. 20, 2019, 133 Stat. 1547; Pub. L. 116–283, div. A, title XVIII, § 1806(e)(2)(C), Jan. 1, 2021, 134 Stat. 4155, provided that:

''(a) VULNERABILITY ASSESSMENT REQUIRED.—The Secretary of Defense shall conduct an assessment of selected covered acquisition programs to identify vulnerabilities in the supply chain of each program's electronics and information processing systems that potentially compromise the level of trust in the systems. Such assessment shall—

''(1) identify vulnerabilities at multiple levels of the electronics and information processing systems of the selected programs, including microcircuits, software, and firmware;

''(2) prioritize the potential vulnerabilities and effects of the various elements and stages of the system supply chain to identify the most effective balance of investments to minimize the effects of compromise;

''(3) provide recommendations regarding ways of managing supply chain risk for covered acquisition programs; and

''(4) identify the appropriate lead person, and supporting elements, within the Department of Defense for the development of an integrated strategy for

managing risk in the supply chain for covered acquisition programs.

''(b) ASSESSMENT OF METHODS FOR VERIFYING THE TRUST OF SEMICONDUCTORS PROCURED FROM COMMERCIAL SOURCES.—The Under Secretary of Defense for Acquisition and Sustainment, in consultation with appropriate elements of the Department of Defense, the intelligence community, private industry, and academia, shall conduct an assessment of various methods of verifying the trust of semiconductors procured by the Department of Defense from commercial sources for use in mission-critical components of potentially vulnerable defense systems. The assessment shall include the following:

''(1) An identification of various methods of verifying the trust of semiconductors, including methods under development at the Defense Agencies, government laboratories, institutions of higher education, and in the private sector.

''(2) A determination of the methods identified under paragraph (1) that are most suitable for the Department of Defense.

''(3) An assessment of the additional research and technology development needed to develop methods of verifying the trust of semiconductors that meet the needs of the Department of Defense.

''(4) Any other matters that the Under Secretary considers appropriate.

''(c) STRATEGY REQUIRED.—

''(1) IN GENERAL.—The lead person identified under subsection (a)(4), in cooperation with the supporting elements also identified under such subsection, shall develop an integrated strategy—

''(A) for managing risk—

''(i) in the supply chain of electronics and information processing systems for covered acquisition programs; and

''(ii) in the procurement of semiconductors; and

''(B) that ensures dependable, continuous, long-term access and trust for all mission-critical semiconductors procured from both foreign and domestic sources.

''(2) REQUIREMENTS.—At a minimum, the strategy shall—

''(A) address the vulnerabilities identified by the assessment under subsection (a);

''(B) reflect the priorities identified by such assessment;

''(C) provide guidance for the planning, programming, budgeting, and execution process in order to ensure that covered acquisition programs have the necessary resources to implement all appropriate elements of the strategy;

''(D) promote the use of verification tools, as appropriate, for ensuring trust of commercially acquired systems;

''(E) increase use of trusted foundry services, as appropriate; and

''(F) ensure sufficient oversight in implementation of the plan.

''(d) POLICIES AND ACTIONS FOR ASSURING TRUST IN INTEGRATED CIRCUITS.—Not later than 180 days after the date of the enactment of this Act [Oct. 14, 2008], the Secretary of Defense shall—

''(1) develop policy requiring that trust assurance be a high priority for covered acquisition programs in all phases of the electronic component supply chain and integrated circuit development and production process, including design and design tools, fabrication of the semiconductors, packaging, final assembly, and test;

''(2) develop policy requiring that programs whose electronics and information systems are determined to be vital to operational readiness or mission effectiveness are to employ trusted foundry services to fabricate their custom designed integrated circuits, unless the Secretary specifically authorizes otherwise;

''(3) incorporate the strategies and policies of the Department of Defense regarding development and use of trusted integrated circuits into all relevant Department directives and instructions related to the acquisition of integrated circuits and programs that use such circuits; and

''(4) take actions to promote the use and development of tools that verify the trust in all phases of the integrated circuit development and production process of mission-critical parts acquired from non-trusted sources.

''(e) SUBMISSION TO CONGRESS.—Not later than 12 months after the date of the enactment of this Act [Oct. 14, 2008], the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives]—

''(1) the assessments required by subsections (a) and (b);

''(2) the strategy required by subsection (c); and

''(3) a description of the policies developed and actions taken under subsection (d).

''(f) DEFINITIONS.—In this section:

''(1) The term 'covered acquisition programs' means an acquisition program of the Department of Defense that is a major system for purposes of section 2302(5) of title 10, United States Code.

''(2) The terms 'trust' and 'trusted' refer, with respect to electronic and information processing systems, to the ability of the Department of Defense to have confidence that the systems function as intended and are free of exploitable vulnerabilities, either intentionally or unintentionally designed or inserted as part of the system at any time during its life cycle.

''(3) The term 'trusted foundry services' means the program of the National Security Agency and the Department of Defense, or any similar program approved by the Secretary of Defense, for the development and manufacture of integrated circuits for critical defense systems in secure industrial environments.''

[Pub. L. 116–283, div. A, title XVIII, §§1801(d), 1806(e)(2)(C), Jan. 1, 2021, 134 Stat. 4151, 4155, provided that effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, section 254(f)(1) of Pub. L. 110–417, set out above, is amended by substituting ''section 3041'' for ''section 2302(5)''.]

INCREASE OF DOMESTIC BREEDING OF MILITARY WORKING DOGS USED BY THE DEPARTMENT OF DEFENSE

Pub. L. 110–417, [div. A], title III, §358, Oct. 14, 2008, 122 Stat. 4427, as amended by Pub. L. 111–84, div. A, title III, §341, Oct. 28, 2009, 123 Stat. 2260; Pub. L. 111–383, div. A, title X, §1075(e)(6), Jan. 7, 2011, 124 Stat. 4374; Pub. L. 112–81, div. A, title III, §349, Dec. 31, 2011, 125 Stat. 1375; Pub. L. 114–92, div. A, title X, §1073(h), Nov. 25, 2015, 129 Stat. 996, provided that:

''(a) INCREASED CAPACITY.—The Secretary of Defense, acting through the Executive Agent for Military Working Dogs (hereinafter in this section referred to as the 'Executive Agent'), shall—

''(1) identify the number of military working dogs required to fulfill the various missions of the Department of Defense for which such dogs are used, including force protection, facility and check point security, and explosives and drug detection;

''(2) take such steps as are practicable to ensure an adequate number of military working dog teams are available to meet and sustain the mission requirements identified in paragraph (1);

''(3) ensure that the Department's needs and performance standards with respect to military working dogs are readily available to dog breeders and trainers; and

''(4) coordinate with other Federal, State, or local agencies, nonprofit organizations, universities, or private sector entities, as appropriate, to increase the training capacity for military working dog teams.

''(b) MILITARY WORKING DOG PROCUREMENT.—The Secretary, acting through the Executive Agent, shall work to ensure that military working dogs are procured as

efficiently as possible and at the best value to the Government, while maintaining the necessary level of quality and encouraging increased domestic breeding.

''(c) MILITARY WORKING DOG DEFINED.—For purposes of this section, the term 'military working dog' means a dog used in any official military capacity, as defined by the Secretary of Defense.''

COMPREHENSIVE AUDIT OF SPARE PARTS PURCHASES AND DEPOT OVERHAUL AND MAINTENANCE OF EQUIPMENT FOR OPERATIONS IN IRAQ AND AFGHANISTAN

Pub. L. 110–417, [div. A], title VIII, § 852, Oct. 14, 2008, 122 Stat. 4543, provided that:

''(a) AUDITS REQUIRED.—The Army Audit Agency, the Navy Audit Service, and the Air Force Audit Agency shall each conduct thorough audits to identify potential waste, fraud, and abuse in the performance of the following:

''(1) Department of Defense contracts, subcontracts, and task and delivery orders for—

''(A) depot overhaul and maintenance of equipment for the military in Iraq and Afghanistan; and

''(B) spare parts for military equipment used in Iraq and Afghanistan; and

''(2) Department of Defense in-house overhaul and maintenance of military equipment used in Iraq and Afghanistan.

''(b) COMPREHENSIVE AUDIT PLAN.—

''(1) PLANS.—The Army Audit Agency, the Navy Audit Service, and the Air Force Audit Agency shall, in coordination with the Inspector General of the Department of Defense, develop a comprehensive plan for a series of audits to discharge the requirements of subsection (a).

''(2) INCORPORATION INTO REQUIRED AUDIT PLAN.—The plan developed under paragraph (1) shall be submitted to the Inspector General of the Department of Defense for incorporation into the audit plan required by section 842(b)(1) of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110–181; 122 Stat. 234; 10 U.S.C. 2302 note).

''(c) INDEPENDENT CONDUCT OF AUDIT FUNCTIONS.—All audit functions performed under this section, including audit planning and coordination, shall be performed in an independent manner.

''(d) AVAILABILITY OF RESULTS.—All audit reports resulting from audits under this section shall be made available to the Commission on Wartime Contracting in Iraq and Afghanistan established pursuant to section 841 of the National Defense Authorization Act for Fiscal Year 2008 [Pub. L. 110–181] (122 Stat. 230).

''(e) CONSTRUCTION.—Nothing in this section shall be construed to require any agency of the Federal Government to duplicate audit work that an agency of the Federal Government has already performed.''

MOTOR CARRIER FUEL SURCHARGES

Pub. L. 110–417, [div. A], title VIII, § 884, Oct. 14, 2008, 122 Stat. 4560, provided that:

''(a) PASS THROUGH TO COST BEARER.—The Secretary of Defense shall take appropriate actions to ensure that, to the maximum extent practicable, in all carriage contracts in which a fuel-related adjustment is provided for, any fuel-related adjustment is passed through to the person who bears the cost of the fuel that the adjustment relates to.

''(b) USE OF CONTRACT CLAUSE.—The actions taken by the Secretary under subsection (a) shall include the insertion of a contract clause, with appropriate flowdown requirements, into all contracts with motor carriers, brokers, or freight forwarders providing or arranging truck transportation or services in which a fuel-related adjustment is provided for.

''(c) DISCLOSURE.—The Secretary shall publicly disclose any decision by the Department of Defense to pay fuel-related adjustments under contracts (or a category of contracts) covered by this section.

''(d) REPORT.—Not later than 270 days after the date of the enactment of this Act [Oct. 14, 2008], the Secretary shall submit to the committees on Armed Services of the Senate and the House of Representatives a report on the actions taken in accordance with the requirements of subsection (a).''

SALES OF COMMERCIAL ITEMS TO NONGOVERNMENTAL ENTITIES

Pub. L. 110–181, div. A, title VIII, § 815(b), Jan. 28, 2008, 122 Stat. 223, which required modification of commercial item procurement regulations so that the terms ''general public'' and ''nongovernmental entities'' would not include the Federal Government or a State, local, or foreign government, was repealed by Pub. L. 115–232, div. A, title VIII, § 812(b)(6), Aug. 13, 2018, 132 Stat. 1848.

INVESTIGATION OF WASTE, FRAUD, AND ABUSE IN WARTIME CONTRACTS AND CONTRACTING PROCESSES IN IRAQ AND AFGHANISTAN

Pub. L. 110–181, div. A, title VIII, § 842, Jan. 28, 2008, 122 Stat. 234, provided that:

''(a) AUDITS REQUIRED.—Thorough audits shall be performed in accordance with this section to identify potential waste, fraud, and abuse in the performance of—

''(1) Department of Defense contracts, subcontracts, and task and delivery orders for the logistical support of coalition forces in Iraq and Afghanistan; and

''(2) Federal agency contracts, subcontracts, and task and delivery orders for the performance of security and reconstruction functions in Iraq and Afghanistan.

''(b) AUDIT PLANS.—

''(1) The Department of Defense Inspector General shall develop a comprehensive plan for a series of audits of contracts, subcontracts, and task and delivery orders covered by subsection (a)(1), consistent with the requirements of subsection (g), in consultation with other Inspectors General specified in subsection (c) with regard to any contracts, subcontracts, or task or delivery orders over which such Inspectors General have jurisdiction.

''(2) The Special Inspector General for Iraq Reconstruction shall develop a comprehensive plan for a series of audits of contracts, subcontracts, and task and delivery orders covered by subsection (a)(2) relating to Iraq, consistent with the requirements of subsection (h), in consultation with other Inspectors General specified in subsection (c) with regard to any contracts, subcontracts, or task or delivery orders over which such Inspectors General have jurisdiction.

''(3) The Special Inspector General for Afghanistan Reconstruction shall develop a comprehensive plan for a series of audits of contracts, subcontracts, and task and delivery orders covered by subsection (a)(2) relating to Afghanistan, consistent with the requirements of subsection (h), in consultation with other Inspectors General specified in subsection (c) with regard to any contracts, subcontracts, or task or delivery orders over which such Inspectors General have jurisdiction.

''(c) PERFORMANCE OF AUDITS BY CERTAIN INSPECTORS GENERAL.—The Special Inspector General for Iraq Reconstruction, during such period as such office exists, the Special Inspector General for Afghanistan Reconstruction, during such period as such office exists, the Inspector General of the Department of Defense, the Inspector General of the Department of State, and the Inspector General of the United States Agency for International Development shall perform such audits as required by subsection (a) and identified in the audit plans developed pursuant to subsection (b) as fall within the respective scope of their duties as specified in law.

''(d) COORDINATION OF AUDITS.—The Inspectors General specified in subsection (c) shall work to coordinate the performance of the audits required by subsection (a) and identified in the audit plans developed under subsection (b) including through councils and working groups composed of such Inspectors General.

''(e) JOINT AUDITS.—If one or more audits required by subsection (a) and identified in an audit plan developed under subsection (b) falls within the scope of the duties of more than one of the Inspectors General specified in subsection (c), and such Inspectors General agree that such audit or audits are best pursued jointly, such Inspectors General shall enter into a memorandum of understanding relating to the performance of such audit or audits.

''(f) SEPARATE AUDITS.—If one or more audits required by subsection (a) and identified in an audit plan developed under subsection (b) falls within the scope of the duties of more than one of the Inspectors General specified in subsection (c), and such Inspectors General do not agree that such audit or audits are best pursued jointly, such audit or audits shall be separately performed by one or more of the Inspectors General concerned.

''(g) SCOPE OF AUDITS OF CONTRACTS.—Audits conducted pursuant to subsection (a)(1) shall examine, at a minimum, one or more of the following issues:

''(1) The manner in which contract requirements were developed.

''(2) The procedures under which contracts or task or delivery orders were awarded.

''(3) The terms and conditions of contracts or task or delivery orders.

''(4) The staffing and method of performance of contractors, including cost controls.

''(5) The efficacy of Department of Defense management and oversight, including the adequacy of staffing and training of officials responsible for such management and oversight.

''(6) The flow of information from contractors to officials responsible for contract management and oversight.

''(h) SCOPE OF AUDITS OF OTHER CONTRACTS.—Audits conducted pursuant to subsection (a)(2) shall examine, at a minimum, one or more of the following issues:

''(1) The manner in which contract requirements were developed and contracts or task and delivery orders were awarded.

''(2) The manner in which the Federal agency exercised control over the performance of contractors.

''(3) The extent to which operational field commanders were able to coordinate or direct the performance of contractors in an area of combat operations.

''(4) The degree to which contractor employees were properly screened, selected, trained, and equipped for the functions to be performed.

''(5) The nature and extent of any incidents of misconduct or unlawful activity by contractor employees.

''(6) The nature and extent of any activity by contractor employees that was inconsistent with the objectives of operational field commanders.

''(7) The extent to which any incidents of misconduct or unlawful activity were reported, documented, investigated, and (where appropriate) prosecuted.

''(i) INDEPENDENT CONDUCT OF AUDIT FUNCTIONS.—All audit functions under this section, including audit planning and coordination, shall be performed by the relevant Inspectors General in an independent manner, without consultation with the Commission established pursuant to section 841 of this Act [122 Stat. 230]. All audit reports resulting from such audits shall be available to the Commission.''

CONTRACTS IN IRAQ AND AFGHANISTAN AND PRIVATE SECURITY CONTRACTS IN AREAS OF OTHER SIGNIFICANT MILITARY OPERATIONS

Pub. L. 111–383, div. A, title VIII, §831(b), Jan. 7, 2011, 124 Stat. 4274, provided that:

''(1) DEADLINE FOR REGULATIONS.—Not later than 60 days after the date of the enactment of this Act [Jan. 7, 2011], the Secretary of Defense shall revise the regulations prescribed pursuant to section 862 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110–181; 10 U.S.C. 2302 note) to incorporate the requirements of the amendments made by subsection (a).

''(2) COMMENCEMENT OF APPLICABILITY OF REVISIONS.—The revision of regulations under paragraph (1) shall apply to the following:

''(A) Any contract that is awarded on or after the date that is 120 days after the date of the enactment of this Act.

''(B) Any task or delivery order that is issued on or after the date that is 120 days after the date of the enactment of this Act pursuant to a contract that is awarded before, on, or after the date that is 120 days after the date of the enactment of this Act.

''(3) COMMENCEMENT OF INCLUSION OF CONTRACT CLAUSE.—A contract clause that reflects the revision of regulations required by the amendments made by subsection (a) shall be inserted, as required by such section 862, into the following:

''(A) Any contract described in paragraph (2)(A).

''(B) Any task or delivery order described in paragraph (2)(B).''

Pub. L. 111–383, div. A, title VIII, §832(b), Jan. 7, 2011, 124 Stat. 4275, provided that:

''(1) DETERMINATION REQUIRED FOR CERTAIN AREAS.—Not later than 150 days after the date of the enactment of this Act [Jan. 7, 2011], the Secretary of Defense shall make a written determination for each of the following areas regarding whether or not the area constitutes an area of combat operations or an area of other significant military operations for purposes of designation as such an area under section 862 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110–181; 10 U.S.C. 2302 note), as amended by this section:

''(A) The Horn of Africa region.

''(B) Yemen.

''(C) The Philippines.

''(2) SUBMISSION TO CONGRESS.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a copy of each written determination under paragraph (1), together with an explanation of the basis for such determination.''

Pub. L. 110–417, [div. A], title VIII, §854(b), Oct. 14, 2008, 122 Stat. 4545, provided that:

''(1) THROUGH MEMORANDUM OF UNDERSTANDING.—The memorandum of understanding required by section 861(a) of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110–181; 122 Stat. 253; 10 U.S.C. 2302 note) shall be modified to address the requirements under the amendment made by subsection (a) [amending Pub. L. 110–181, §861(b), set out below] not later than 120 days after the date of the enactment of this Act [Oct. 14, 2008].

''(2) AS CONDITION OF CURRENT AND FUTURE CONTRACTS.—The requirements under the amendment made by subsection (a) shall be included in each contract in Iraq or Afghanistan (as defined in section 864(a)(2) of Public Law 110–181; [10 U.S.C.] 2302 note) awarded on or after the date that is 180 days after the date of the enactment of this Act [Oct. 14, 2008]. Federal agencies shall make best efforts to provide for the inclusion of such requirements in covered contracts awarded before such date.''

Pub. L. 110–417, [div. A], title VIII, §854(c), Oct. 14, 2008, 122 Stat. 4545, provided that: ''Beginning not later than 270 days after the date of the enactment of this Act [Oct. 14, 2008], the Secretary of Defense shall make publicly available a numerical accounting of alleged offenses described in section 861(b)(6) of Public Law 110–181 [set out below] that have been reported under that section that occurred after the date of the enactment of this Act. The information shall be updated no less frequently than semi-annually.''

Pub. L. 110–181, div. A, title VIII, subtitle F, Jan. 28, 2008, 122 Stat. 253, as amended by Pub. L. 110–417, [div. A], title VIII, §§853, 854(a), (d), Oct. 14, 2008, 122 Stat. 4544, 4545; Pub. L. 111–84, div. A, title VIII, §813(a)–(c),

Oct. 28, 2009, 123 Stat. 2406, 2407; Pub. L. 111–383, div. A, title VIII, §§ 831(a), 832(a), (c), 835, title X, § 1075(d)(9), Jan. 7, 2011, 124 Stat. 4273, 4275, 4276, 4279, 4373; Pub. L. 112–81, div. A, title VIII, § 844(c), Dec. 31, 2011, 125 Stat. 1515; Pub. L. 112–239, div. A, title VIII, § 847, Jan. 2, 2013, 126 Stat. 1850; Pub. L. 113–291, div. A, title X, § 1071(b)(2)(D), Dec. 19, 2014, 128 Stat. 3506, provided that:

''SEC. 861. MEMORANDUM OF UNDERSTANDING ON MATTERS RELATING TO CONTRACTING.

''(a) MEMORANDUM OF UNDERSTANDING REQUIRED.—The Secretary of Defense, the Secretary of State, and the Administrator of the United States Agency for International Development shall, not later than July 1, 2008, enter into a memorandum of understanding regarding matters relating to contracting for contracts in Iraq or Afghanistan.

''(b) MATTERS COVERED.—The memorandum of understanding required by subsection (a) shall address, at a minimum, the following:

''(1) Identification of the major categories of contracts in Iraq or Afghanistan being awarded by the Department of Defense, the Department of State, or the United States Agency for International Development.

''(2) Identification of the roles and responsibilities of each department or agency for matters relating to contracting for contracts in Iraq or Afghanistan.

''(3) Responsibility for establishing procedures for, and the coordination of, movement of contractor personnel in Iraq or Afghanistan.

''(4) Identification of common databases that will serve as repositories of information on contracts in Iraq or Afghanistan and contractor personnel in Iraq or Afghanistan, including agreement on the elements to be included in the databases, including, at a minimum—

''(A) with respect to each contract—

''(i) a brief description of the contract (to the extent consistent with security considerations);

''(ii) the total value of the contract; and

''(iii) whether the contract was awarded competitively; and

''(B) with respect to contractor personnel—

''(i) the total number of personnel employed on contracts in Iraq or Afghanistan;

''(ii) the total number of personnel performing security functions under contracts in Iraq or Afghanistan; and

''(iii) the total number of personnel working under contracts in Iraq or Afghanistan who have been killed or wounded.

''(5) Responsibility for maintaining and updating information in the common databases identified under paragraph (4).

''(6) Responsibility for the collection and referral to the appropriate Government agency of any information relating to offenses under chapter 47 of title 10, United States Code (the Uniform Code of Military Justice) or chapter 212 of title 18, United States Code (commonly referred to as the Military Extraterritorial Jurisdiction Act), including a clarification of responsibilities under section 802(a)(10) of title 10, United States Code (article 2(a) of the Uniform Code of Military Justice), as amended by section 552 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109–364).

''(7) Mechanisms for ensuring that contractors are required to report offenses described in paragraph (6) that are alleged to have been committed by or against contractor personnel to appropriate investigative authorities.

''(8) Responsibility for providing victim and witness protection and assistance to contractor personnel in connection with alleged offenses described in paragraph (6).

''(9) Development of a requirement that a contractor shall provide to all contractor personnel who will perform work on a contract in Iraq or Afghanistan, before beginning such work, information on the following:

''(A) How and where to report an alleged offense described in paragraph (6).

''(B) Where to seek the assistance required by paragraph (8).

''(c) IMPLEMENTATION OF MEMORANDUM OF UNDERSTANDING.—Not later than 120 days after the memorandum of understanding required by subsection (a) is signed, the Secretary of Defense, the Secretary of State, and the Administrator of the United States Agency for International Development shall issue such policies or guidance and prescribe such regulations as are necessary to implement the memorandum of understanding for the relevant matters pertaining to their respective agencies.

''(d) COPIES PROVIDED TO CONGRESS.—

''(1) MEMORANDUM OF UNDERSTANDING.—Copies of the memorandum of understanding required by subsection (a) shall be provided to the relevant committees of Congress within 30 days after the memorandum is signed.

''(2) REPORT ON IMPLEMENTATION.—Not later than 180 days after the memorandum of understanding required by subsection (a) is signed, the Secretary of Defense, the Secretary of State, and the Administrator of the United States Agency for International Development shall each provide a report to the relevant committees of Congress on the implementation of the memorandum of understanding.

''(3) DATABASES.—The Secretary of Defense, the Secretary of State, or the Administrator of the United States Agency for International Development shall provide access to the common databases identified under subsection (b)(4) to the relevant committees of Congress.

''(4) CONTRACTS.—Effective on the date of the enactment of this Act [Jan. 28, 2008], copies of any contracts in Iraq or Afghanistan awarded after December 1, 2007, shall be provided to any of the relevant committees of Congress within 15 days after the submission of a request for such contract or contracts from such committee to the department or agency managing the contract.

''SEC. 862. CONTRACTORS PERFORMING PRIVATE SECURITY FUNCTIONS IN AREAS OF COMBAT OPERATIONS OR OTHER SIGNIFICANT MILITARY OPERATIONS.

''(a) REGULATIONS ON CONTRACTORS PERFORMING PRIVATE SECURITY FUNCTIONS.—

''(1) IN GENERAL.—Not later than 120 days after the date of the enactment of this Act [Jan. 28, 2008], the Secretary of Defense, in coordination with the Secretary of State, shall prescribe regulations on the selection, training, equipping, and conduct of personnel performing private security functions under a covered contract in an area of combat operations or other significant military operations.

''(2) ELEMENTS.—The regulations prescribed under subsection (a) shall, at a minimum, establish—

''(A) a process for registering, processing, accounting for, and keeping appropriate records of personnel performing private security functions in an area of combat operations or other significant military operations;

''(B) a process for authorizing and accounting for weapons to be carried by, or available to be used by, personnel performing private security functions in an area of combat operations or other significant military operations;

''(C) a process for the registration and identification of armored vehicles, helicopters, and other military vehicles operated by contractors performing private security functions in an area of combat operations or other significant military operations;

''(D) a process under which contractors are required to report all incidents, and persons other than contractors are permitted to report incidents, in which—

''(i) a weapon is discharged by personnel performing private security functions in an area of

combat operations or other significant military operations;

''(ii) personnel performing private security functions in an area of combat operations or other significant military operations are killed or injured;

''(iii) persons are killed or injured, or property is destroyed, as a result of conduct by contractor personnel;

''(iv) a weapon is discharged against personnel performing private security functions in an area of combat operations or other significant military operations or personnel performing such functions believe a weapon was so discharged; or

''(v) active, non-lethal countermeasures (other than the discharge of a weapon) are employed by the personnel performing private security functions in an area of combat operations or other significant military operations in response to a perceived immediate threat to such personnel;

''(E) a process for the independent review and, if practicable, investigation of—

''(i) incidents reported pursuant to subparagraph (D); and

''(ii) incidents of alleged misconduct by personnel performing private security functions in an area of combat operations or other significant military operations;

''(F) requirements for qualification, training, screening (including, if practicable, through background checks), and security for personnel performing private security functions in an area of combat operations or other significant military operations;

''(G) guidance to the commanders of the combatant commands on the issuance of—

''(i) orders, directives, and instructions to contractors performing private security functions relating to equipment, force protection, security, health, safety, or relations and interaction with locals;

''(ii) predeployment training requirements for personnel performing private security functions in an area of combat operations or other significant military operations, addressing the requirements of this section, resources and assistance available to contractor personnel, country information and cultural training, and guidance on working with host country nationals and military; and

''(iii) rules on the use of force for personnel performing private security functions in an area of combat operations or other significant military operations;

''(H) a process by which a commander of a combatant command may request an action described in subsection (b)(3); and

''(I) a process by which the training requirements referred to in subparagraph (G)(ii) shall be implemented.

''(3) AVAILABILITY OF ORDERS, DIRECTIVES, AND INSTRUCTIONS.—The regulations prescribed under subsection (a) shall include mechanisms to ensure the provision and availability of the orders, directives, and instructions referred to in paragraph (2)(G)(i) to contractors referred to in that paragraph, including through the maintenance of a single location (including an Internet website, to the extent consistent with security considerations) at or through which such contractors may access such orders, directives, and instructions.

''(b) CONTRACT CLAUSE ON CONTRACTORS PERFORMING PRIVATE SECURITY FUNCTIONS.—

''(1) REQUIREMENT UNDER FAR.—Not later than 180 days after the date of the enactment of this Act [Jan. 28, 2008], the Federal Acquisition Regulation issued in accordance with section 1303 of title 41, United States Code[,] shall be revised to require the insertion into each covered contract (or, in the case of a task order, the contract under which the task order is issued) of a contract clause addressing the selection, training, equipping, and conduct of personnel performing private security functions under such contract.

''(2) CLAUSE REQUIREMENT.—The contract clause required by paragraph (1) shall require, at a minimum, that the contractor concerned shall—

''(A) ensure that the contractor and all employees of the contractor or any subcontractor who are responsible for performing private security functions under such contract comply with regulations prescribed under subsection (a), including any revisions or updates to such regulations, and follow the procedures established in such regulations for—

''(i) registering, processing, accounting for, and keeping appropriate records of personnel performing private security functions in an area of combat operations or other significant military operations;

''(ii) authorizing and accounting of weapons to be carried by, or available to be used by, personnel performing private security functions in an area of combat operations or other significant military operations;

''(iii) registration and identification of armored vehicles, helicopters, and other military vehicles operated by contractors and subcontractors performing private security functions in an area of combat operations or other significant military operations; and

''(iv) the reporting of incidents in which—

''(I) a weapon is discharged by personnel performing private security functions in an area of combat operations or other significant military operations;

''(II) personnel performing private security functions in an area of combat operations or other significant military operations are killed or injured; or

''(III) persons are killed or injured, or property is destroyed, as a result of conduct by contractor personnel;

''(B) ensure that the contractor and all employees of the contractor or any subcontractor who are responsible for performing private security functions under such contract comply with—

''(i) qualification, training, screening (including, if practicable, through background checks), and security requirements established by the Secretary of Defense for personnel performing private security functions in an area of combat operations or other significant military operations;

''(ii) applicable laws and regulations of the United States and the host country, and applicable treaties and international agreements, regarding the performance of the functions of the contractor;

''(iii) orders, directives, and instructions issued by the applicable commander of a combatant command relating to equipment, force protection, security, health, safety, or relations and interaction with locals; and

''(iv) rules on the use of force issued by the applicable commander of a combatant command for personnel performing private security functions in an area of combat operations or other significant military operations;

''(C) cooperate with any investigation conducted by the Department of Defense pursuant to subsection (a)(2)(E) by providing access to employees of the contractor and relevant information in the possession of the contractor regarding the incident concerned; and

''(D) ensure that the contract clause is included in subcontracts awarded to any subcontractor at any tier who is responsible for performing private security functions under the contract.

''(3) NONCOMPLIANCE OF PERSONNEL WITH CLAUSE.—The contracting officer for a covered contract may direct the contractor, at its own expense, to remove or replace any personnel performing private security

functions in an area of combat operations or other significant military operations who violate or fail to comply with applicable requirements of the clause required by this subsection. If the violation or failure to comply is a gross violation or failure or is repeated, the contract may be terminated for default.

''(4) APPLICABILITY.—The contract clause required by this subsection shall be included in all covered contracts awarded on or after the date that is 180 days after the date of the enactment of this Act [Jan. 28, 2008]. Federal agencies shall make best efforts to provide for the inclusion of the contract clause required by this subsection in covered contracts awarded before such date.

''(5) INSPECTOR GENERAL REPORT ON PILOT PROGRAM ON IMPOSITION OF FINES FOR NONCOMPLIANCE OF PERSONNEL WITH CLAUSE.—Not later than March 30, 2008, the Inspector General of the Department of Defense shall submit to Congress a report assessing the feasibility and advisability of carrying out a pilot program for the imposition of fines on contractors for personnel who violate or fail to comply with applicable requirements of the clause required by this section as a mechanism for enhancing the compliance of such personnel with the clause. The report shall include—

''(A) an assessment of the feasibility and advisability of carrying out the pilot program; and

''(B) if the Inspector General determines that carrying out the pilot program is feasible and advisable—

''(i) recommendations on the range of contracts and subcontracts to which the pilot program should apply; and

''(ii) a schedule of fines to be imposed under the pilot program for various types of personnel actions or failures.

''(c) OVERSIGHT.—It shall be the responsibility of the head of the contracting activity responsible for each covered contract to ensure that the contracting activity takes appropriate steps to assign sufficient oversight personnel to the contract to—

''(1) ensure that the contractor responsible for performing private security functions under such contract comply with the regulatory requirements prescribed pursuant to subsection (a) and the contract requirements established pursuant to subsection (b); and

''(2) make the determinations required by subsection (d).

''(d) REMEDIES.—The failure of a contractor under a covered contract to comply with the requirements of the regulations prescribed under subsection (a) or the contract clause inserted in a covered contract pursuant to subsection (b), as determined by the contracting officer for the covered contract—

''(1) shall be included in appropriate databases of past performance and considered in any responsibility determination or evaluation of the past performance of the contractor for the purpose of a contract award decision, as provided in section 1126 of title 41, United States Code;

''(2) in the case of an award fee contract—

''(A) shall be considered in any evaluation of contract performance by the contractor for the relevant award fee period; and

''(B) may be a basis for reducing or denying award fees for such period, or for recovering all or part of award fees previously paid for such period; and

''(3) in the case of a failure to comply that is severe, prolonged, or repeated—

''(A) shall be referred to the suspension or debarment official for the appropriate agency; and

''(B) may be a basis for suspension or debarment of the contractor.

''(e) RULE OF CONSTRUCTION.—The duty of a contractor under a covered contract to comply with the requirements of the regulations prescribed under subsection (a) and the contract clause inserted into a covered contract pursuant to subsection (b), and the availability of the remedies provided in subsection (d), shall not be reduced or diminished by the failure of a higher or lower tier contractor under such contract to comply with such requirements, or by a failure of the contracting activity to provide the oversight required by subsection (c).

''(f) AREAS OF COMBAT OPERATIONS OR OTHER SIGNIFICANT MILITARY OPERATIONS.—

''(1) DESIGNATION.—The Secretary of Defense shall designate the areas constituting either an area of combat operations or other significant military operations for purposes of this section by not later than 120 days after the date of the enactment of this Act [Jan. 28, 2008]. In making designations under this paragraph, the Secretary shall ensure that an area is not designated in whole or part as both an area of combat operations and an area of other significant military operations.

''(2) OTHER SIGNIFICANT MILITARY OPERATIONS.—For purposes of this section, the term 'other significant military operations' means activities, other than combat operations, as part of an overseas contingency operation that are carried out by United States Armed Forces in an uncontrolled or unpredictable high-threat environment where personnel performing security functions may be called upon to use deadly force.

''(3) PARTICULAR AREAS.—Iraq and Afghanistan shall be included in the areas designated as an area of combat operations or other significant military operations under paragraph (1).

''(4) ADDITIONAL AREAS.—The Secretary may designate any additional area as an area constituting an area of combat operations or other significant military operations for purposes of this section if the Secretary determines that the presence or potential of combat operations or other significant military operations in such area warrants designation of such area as an area of combat operations or other significant military operations for purposes of this section.

''(5) MODIFICATION OR ELIMINATION OF DESIGNATION.—The Secretary may modify or cease the designation of an area under this subsection as an area of combat operations or other significant military operations if the Secretary determines that combat operations or other significant military operations are no longer ongoing in such area.

''(g) LIMITATION.—With respect to an area of other significant military operations, the requirements of this section shall apply only upon agreement of the Secretary of Defense and the Secretary of State. An agreement of the Secretaries under this subsection may be made only on an area-by-area basis. With respect to an area of combat operations, the requirements of this section shall always apply.

''(h) EXCEPTIONS.—

''(1) INTELLIGENCE ACTIVITIES.—The requirements of this section shall not apply to contracts entered into by elements of the intelligence community in support of intelligence activities.

''(2) NONGOVERNMENTAL ORGANIZATIONS.—The requirements of this section shall not apply to a nonprofit nongovernmental organization receiving grants or cooperative agreements for activities conducted within an area of other significant military operations if the Secretary of Defense and the Secretary of State agree that such organization may be exempted. An exemption may be granted by the agreement of the Secretaries under this paragraph on an organization-by-organization or area-by-area basis. Such an exemption may not be granted with respect to an area of combat operations.

''SEC. 863. ANNUAL JOINT REPORT ON CONTRACTING IN IRAQ AND AFGHANISTAN.

''(a) IN GENERAL.—Except as provided in subsection (f), every 12 months, the Secretary of Defense, the Secretary of State, and the Administrator of the United States Agency for International Development shall submit to the relevant committees of Congress a joint report on contracts in Iraq or Afghanistan.

''(b) PRIMARY MATTERS COVERED.—A report under this section shall, at a minimum, cover the following with respect to contracts in Iraq and Afghanistan during the reporting period:

''(1) Total number of contracts awarded.

''(2) Total number of active contracts.

''(3) Total value of all contracts awarded.

''(4) Total value of active contracts.

''(5) The extent to which such contracts have used competitive procedures.

''(6) Percentage of contracts awarded on a competitive basis as compared to established goals for competition in contingency contracting actions.

''(7) Total number of contractor personnel working on contracts at the end of each quarter of the reporting period.

''(8) Total number of contractor personnel who are performing security functions at the end of each quarter of the reporting period.

''(9) Total number of contractor personnel killed or wounded.

''(c) ADDITIONAL MATTERS COVERED.—A report under this section shall also cover the following:

''(1) The sources of information and data used to compile the information required under subsection (b).

''(2) A description of any known limitations of the data reported under subsection (b), including known limitations of the methodology and data sources used to compile the report.

''(3) Any plans for strengthening collection, coordination, and sharing of information on contracts in Iraq and Afghanistan through improvements to the common databases identified under section 861(b)(4).

''(d) REPORTING PERIOD.—A report under this section shall cover a period of not less than 12 months.

''(e) SUBMISSION OF REPORTS.—The Secretaries and the Administrator shall submit an initial report under this section not later than February 1, 2011, and shall submit an updated report by February 1 of every year thereafter until February 1, 2015.

''(f) EXCEPTION.—If the total annual amount of obligations for contracts in Iraq and Afghanistan combined is less than $250,000,000 for the reporting period, for all three agencies combined, the Secretaries and the Administrator may submit, in lieu of a report, a letter stating the applicability of this subsection, with such documentation as the Secretaries and the Administrator consider appropriate.

''(g) ESTIMATES.—In determining the total number of contractor personnel working on contracts under subsection (b)(6), the Secretaries and the Administrator may use estimates for any category of contractor personnel for which they determine it is not feasible to provide an actual count. The report shall fully disclose the extent to which estimates are used in lieu of an actual count.

''SEC. 864. DEFINITIONS AND OTHER GENERAL PROVISIONS.

''(a) DEFINITIONS.—In this subtitle:

''(1) MATTERS RELATING TO CONTRACTING.—The term 'matters relating to contracting', with respect to contracts in Iraq and Afghanistan, means all matters relating to awarding, funding, managing, tracking, monitoring, and providing oversight to contracts and contractor personnel.

''(2) CONTRACT IN IRAQ OR AFGHANISTAN.—The term 'contract in Iraq or Afghanistan' means a contract with the Department of Defense, the Department of State, or the United States Agency for International Development, a subcontract at any tier issued under such a contract, a task order or delivery order at any tier issued under such a contract, a grant, or a cooperative agreement (including a contract, subcontract, task order, delivery order, grant, or cooperative agreement issued by another Government agency for the Department of Defense, the Department of State, or the United States Agency for International Development), if the contract, subcontract, task order, delivery order, grant, or cooperative agreement involves worked [sic] performed in Iraq or Afghanistan for a period longer than 30 days.

''(3) COVERED CONTRACT.—The term 'covered contract' means—

''(A) a contract of a Federal agency for the performance of services in an area of combat operations, as designated by the Secretary of Defense under subsection (c) of section 862;

''(B) a subcontract at any tier under such a contract;

''(C) a task order or delivery order issued under such a contract or subcontract;

''(D) a grant for the performance of services in an area of combat operations, as designated by the Secretary of Defense under subsection (c) of section 862; or

''(E) a cooperative agreement for the performance of services in such an area of combat operations.

''(4) CONTRACTOR.—The term 'contractor', with respect to a covered contract, means—

''(A) in the case of a covered contract that is a contract, subcontract, task order, or delivery order, the contractor or subcontractor carrying out the covered contract;

''(B) in the case of a covered contract that is a grant, the grantee; and

''(C) in the case of a covered contract that is a cooperative agreement, the recipient.

''(5) CONTRACTOR PERSONNEL.—The term 'contractor personnel' means any person performing work under contract for the Department of Defense, the Department of State, or the United States Agency for International Development, in Iraq or Afghanistan, including individuals and subcontractors at any tier.

''(6) PRIVATE SECURITY FUNCTIONS.—The term 'private security functions' means activities engaged in by a contractor under a covered contract as follows:

''(A) Guarding of personnel, facilities, or property of a Federal agency, the contractor or subcontractor, or a third party.

''(B) Any other activity for which personnel are required to carry weapons in the performance of their duties.

''(7) RELEVANT COMMITTEES OF CONGRESS.—The term 'relevant committees of Congress' means each of the following committees:

''(A) The Committees on Armed Services of the Senate and the House of Representatives.

''(B) The Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Oversight and Government Reform of the House of Representatives.

''(C) The Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives.

''(D) For purposes of contracts relating to the National Foreign Intelligence Program, the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives.

''(b) CLASSIFIED INFORMATION.—Nothing in this subtitle shall be interpreted to require the handling of classified information or information relating to intelligence sources and methods in a manner inconsistent with any law, regulation, executive order, or rule of the House of Representatives or of the Senate relating to the handling or protection of such information.''

ENHANCED AUTHORITY TO ACQUIRE PRODUCTS AND SERVICES PRODUCED IN AFGHANISTAN

Pub. L. 110–181, div. A, title VIII, § 886, Jan. 28, 2008, 122 Stat. 266, as amended by Pub. L. 112–239, div. A, title VIII, § 842, Jan. 2, 2013, 126 Stat. 1845; Pub. L. 114–92, div. A, title VIII, § 886(a), Nov. 25, 2015, 129 Stat. 949, provided that:

''(a) IN GENERAL.—In the case of a product or service to be acquired in support of military operations or stability operations in Afghanistan (including security, transition, reconstruction, and humanitarian relief ac-

tivities) for which the Secretary of Defense makes a determination described in subsection (b), and except as provided in subsection (d), the Secretary may conduct a procurement in which—

''(1) competition is limited to products or services that are from Afghanistan;

''(2) procedures other than competitive procedures are used to award a contract to a particular source or sources from Afghanistan; or

''(3) a preference is provided for products or services that are from Afghanistan.

''(b) DETERMINATION.—A determination described in this subsection is a determination by the Secretary that—

''(1) the product or service concerned is to be used only by the military forces, police, or other security personnel of Afghanistan; or

''(2) it is in the national security interest of the United States to limit competition, use procedures other than competitive procedures, or provide a preference as described in subsection (a) because—

''(A) such limitation, procedure, or preference is necessary to provide a stable source of jobs in Afghanistan; and

''(B) such limitation, procedure, or preference will not adversely affect—

''(i) military operations or stability operations in Afghanistan; or

''(ii) the United States industrial base.

''(c) PRODUCTS, SERVICES, AND SOURCES FROM AFGHANISTAN.—For the purposes of this section:

''(1) A product is from Afghanistan if it is mined, produced, or manufactured in Afghanistan.

''(2) A service is from Afghanistan if it is performed in Afghanistan by citizens or permanent resident aliens of Afghanistan.

''(3) A source is from Afghanistan if it—

''(A) is located in Afghanistan; and

''(B) offers products or services that are from Afghanistan.

''(d) EXCLUSION OF ITEMS ON THE ABILITYONE PROCUREMENT CATALOG.—The authority under subsection (a) shall not be available for the procurement of any good that is contained in the procurement catalog described in section 8503(a) of title 41, United States Code, in Afghanistan if such good can be produced and delivered by a qualified nonprofit agency for the blind or a nonprofit agency for other severely disabled [sic] in a timely fashion to support mission requirements.''

[Pub. L. 112–239, div. A, title VIII, §842(1), Jan. 2, 2013, 126 Stat. 1845, which directed amendment of section 886 of Pub. L. 110–181, set out above, by striking ''Iraq or'' in section heading, was executed by striking ''Iraq and'', to reflect the probable intent of Congress.]

PREVENTION OF EXPORT CONTROL VIOLATIONS

Pub. L. 110–181, div. A, title VIII, §890, Jan. 28, 2008, 122 Stat. 269, as amended by Pub. L. 110–417, [div. A], title X, §1061(b)(6), Oct. 14, 2008, 122 Stat. 4613; Pub. L. 111–383, div. A, title X, §1075(f)(6), Jan. 7, 2011, 124 Stat. 4376, provided that:

''(a) PREVENTION OF EXPORT CONTROL VIOLATIONS.—Not later than 180 days after the date of the enactment of this Act [Jan. 28, 2008], the Secretary of Defense shall prescribe regulations requiring any contractor under a contract with the Department of Defense to provide goods or technology that is subject to export controls under the Arms Export Control Act [22 U.S.C. 2751 et seq.] or the Export Administration Act of 1979 [50 U.S.C. 4601 et seq.] (as continued in effect under the International Emergency Economic Powers Act [50 U.S.C. 1701 et seq.]) to comply with those Acts and applicable regulations with respect to such goods and technology, including the International Traffic in Arms Regulations and the Export Administration Regulations. Regulations prescribed under this subsection shall include a contract clause enforcing such requirement.

''(b) TRAINING ON EXPORT CONTROLS.—The Secretary of Defense shall ensure that any contractor under a contract with the Department of Defense to provide goods or technology that is subject to export controls under the Arms Export Control Act or the Export Administration Act of 1979 (as continued in effect under the International Emergency Economic Powers Act) is made aware of any relevant resources made available by the Department of State and the Department of Commerce to assist in compliance with the requirement established by subsection (a) and the need for a corporate compliance plan and periodic internal audits of corporate performance under such plan.

''(c) REPORT.—Not later than 180 days after the date of the enactment of this Act [Jan. 28, 2008], the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report assessing the utility of—

''(1) requiring defense contractors (or subcontractors at any tier) to periodically report on measures taken to ensure compliance with the International Traffic in Arms Regulations and the Export Administration Regulations;

''(2) requiring periodic audits of defense contractors (or subcontractors at any tier) to ensure compliance with all provisions of the International Traffic in Arms Regulations and the Export Administration Regulations;

''(3) requiring defense contractors to maintain a corporate training plan to disseminate information to appropriate contractor personnel regarding the applicability of the Arms Export Control Act and the Export Administration Act of 1979; and

''(4) requiring a designated corporate liaison, available for training provided by the United States Government, whose primary responsibility would be contractor compliance with the Arms Export Control Act and the Export Administration Act of 1979.

''(d) DEFINITIONS.—In this section:

''(1) EXPORT ADMINISTRATION REGULATIONS.—The term 'Export Administration Regulations' means those regulations contained in parts 730 through 774 of title 15, Code of Federal Regulations (or successor regulations).

''(2) INTERNATIONAL TRAFFIC IN ARMS REGULATIONS.—The term 'International Traffic in Arms Regulations' means those regulations contained in parts 120 through 130 of title 22, Code of Federal Regulations (or successor regulations).''

QUALITY CONTROL IN PROCUREMENT OF SHIP CRITICAL SAFETY ITEMS AND RELATED SERVICES

Pub. L. 109–364, div. A, title I, §130(a)–(c), Oct. 17, 2006, 120 Stat. 2110, provided that:

''(a) QUALITY CONTROL POLICY.—The Secretary of Defense shall prescribe in regulations a quality control policy for the procurement of the following:

''(1) Ship critical safety items.

''(2) Modifications, repair, and overhaul of ship critical safety items.

''(b) ELEMENTS.—The policy required under subsection (a) shall include requirements as follows:

''(1) That the head of the design control activity for ship critical safety items establish processes to identify and manage the procurement, modification, repair, and overhaul of such items.

''(2) That the head of the contracting activity for a ship critical safety item enter into a contract for the procurement, modification, repair, or overhaul of such item only with a source on a qualified manufacturers list or a source approved by the design control activity in accordance with section 2319 of title 10, United States Code (as amended by subsection (d)).

''(3) That the ship critical safety items delivered, and the services performed with respect to such items, meet all technical and quality requirements specified by the design control activity.

''(c) DEFINITIONS.—In this section, the terms 'ship critical safety item' and 'design control activity' have the meanings given such terms in subsection (g) of section 2319 of title 10, United States Code (as so amended).''

PILOT PROGRAM ON TIME-CERTAIN DEVELOPMENT IN ACQUISITION OF MAJOR WEAPON SYSTEMS

Pub. L. 109–364, div. A, title VIII, § 812, Oct. 17, 2006, 120 Stat. 2317, as amended by Pub. L. 110–417, [div. A], title VIII, § 813(d)(3), Oct. 14, 2008, 122 Stat. 4527; Pub. L. 111–84, div. A, title X, § 1073(c)(5), Oct. 28, 2009, 123 Stat. 2474; Pub. L. 116–283, div. A, title XVIII, § 1806(e)(2)(D), Jan. 1, 2021, 134 Stat. 4155, provided that:

''(a) PILOT PROGRAM AUTHORIZED.—The Secretary of Defense may carry out a pilot program on the use of time-certain development in the acquisition of major weapon systems.

''(b) PURPOSE OF PILOT PROGRAM.—The purpose of the pilot program authorized by subsection (a) is to assess the feasibility and advisability of utilizing time-certain development in the acquisition of major weapon systems in order to deliver new capabilities to the warfighter more rapidly through—

''(1) disciplined decision-making;

''(2) emphasis on technological maturity; and

''(3) appropriate trade-offs between—

''(A) cost and system performance; and

''(B) program schedule.

''(c) INCLUSION OF SYSTEMS IN PILOT PROGRAM.—

''(1) IN GENERAL.—The Secretary of Defense may include a major weapon system in the pilot program only if—

''(A) the major weapon system meets the criteria under paragraph (2) in accordance with that paragraph; and

''(B) the Milestone Decision Authority nominates such program to the Secretary of Defense for inclusion in the program.

''(2) CRITERIA.—For purposes of paragraph (1) a major weapon system meets the criteria under this paragraph only if the Milestone Decision Authority determines, in consultation with the service acquisition executive for the military department carrying out the acquisition program for the system and one or more combatant commanders responsible for fielding the system, that—

''(A) the certification requirements of section 2366b of title 10, United States Code (as amended by section 805 of this Act), have been met, and no waivers have been granted from such requirements;

''(B) a preliminary design has been reviewed using systems engineering, and the system, as so designed, will meet battlefield needs identified by the relevant combatant commanders after appropriate requirements analysis;

''(C) a representative model or prototype of the system, or key subsystems, has been demonstrated in a relevant environment, such as a well-simulated operational environment;

''(D) an independent cost estimate has been conducted and used as the basis for funding requirements for the acquisition program for the system;

''(E) the budget of the military department responsible for carrying out the acquisition program for the system provides the funding necessary to execute the product development and production plan consistent with the requirements identified pursuant to subparagraph (D);

''(F) an appropriately qualified program manager has entered into a performance agreement with the Milestone Decision Authority that establishes expected parameters for the cost, schedule, and performance of the acquisition program for the system, consistent with a business case for such acquisition program;

''(G) the service acquisition executive and the program manager have developed a strategy to ensure stability in program management until, at a minimum, the delivery of the initial operational capability under the acquisition program for the system has occurred;

''(H) the service acquisition executive, the relevant combatant commanders, and the program manager have agreed that no additional requirements that would be inconsistent with the agreed-upon program schedule will be added during the development phase of the acquisition program for the system; and

''(I) a planned initial operational capability will be delivered to the relevant combatant commanders within a defined period of time as prescribed in regulations by the Secretary of Defense.

''(3) TIMING OF DECISION.—The decision whether to include a major weapon system in the pilot program shall be made at the time of milestone approval for the acquisition program for the system.

''(d) LIMITATION ON NUMBER OF WEAPONS SYSTEMS IN PILOT PROGRAM.—The number of major weapon systems included in the pilot program at any time may not exceed six major weapon systems.

''(e) LIMITATION ON COST OF WEAPONS SYSTEMS IN PILOT PROGRAM.—The Secretary of Defense may include a major weapon system in the pilot program only if, at the time a major weapon system is proposed for inclusion, the total cost for system design and development of the weapon system, as set forth in the cost estimate referred to in subsection (c)(2)(D), does not exceed $1,000,000,000 during the period covered by the current future-years defense program.

''(f) SPECIAL FUNDING AUTHORITY.—

''(1) AUTHORITY FOR RESERVE ACCOUNT.—Notwithstanding any other provision of law, the Secretary of Defense may establish a special reserve account utilizing funds made available for the major weapon systems included in the pilot program.

''(2) ELEMENTS.—The special reserve account may include—

''(A) funds made available for any major weapon system included in the pilot program to cover termination liability;

''(B) funds made available for any major weapon system included in the pilot program for award fees that may be earned by contractors; and

''(C) funds appropriated to the special reserve account.

''(3) AVAILABILITY OF FUNDS.—Funds in the special reserve account may be used, in accordance with guidance issued by the Secretary for purposes of this section, for the following purposes:

''(A) To cover termination liability for any major weapon system included in the pilot program.

''(B) To pay award fees that are earned by any contractor for a major weapon system included in the pilot program.

''(C) To address unforeseen contingencies that could prevent a major weapon system included in the pilot program from meeting critical schedule or performance requirements.

''(4) REPORTS ON USE OF FUNDS.—Not later than 30 days after the use of funds in the special reserve account for the purpose specified in paragraph (3)(C), the Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the use of funds in the account for such purpose. The report shall set forth the purposes for which the funds were used and the reasons for the use of the funds for such purposes.

''(5) RELATIONSHIP TO APPROPRIATIONS.—Nothing in this subsection may be construed as extending any period of time for which appropriated funds are made available.

''(g) ADMINISTRATION OF PILOT PROGRAM.—The Secretary of Defense shall prescribe policies and procedures on the administration of the pilot program. Such policies and procedures shall—

''(1) provide for the use of program status reports based on earned value data to track progress on a major weapon system under the pilot program against baseline estimates applicable to such system at each systems engineering technical review point; and

''(2) grant authority, to the maximum extent practicable, to the program manager for the acquisition

program for a major weapon system to make key program decisions and trade-offs, subject to management reviews only if cost or schedule deviations exceed the baselines for such acquisition program by 10 percent or more.

''(h) REMOVAL OF WEAPONS SYSTEMS FROM PILOT PROGRAM.—The Secretary of Defense shall remove a major weapon system from the pilot program if—

''(1) the weapon system receives Milestone C approval; or

''(2) the Secretary determines that the weapon system is no longer in substantial compliance with the criteria in subsection (c)(2) or is otherwise no longer appropriate for inclusion in the pilot program.

''(i) EXPIRATION OF AUTHORITY TO INCLUDE ADDITIONAL SYSTEMS IN PILOT PROGRAM.—

''(1) EXPIRATION.—A major weapon system may not be included in the pilot program after September 30, 2012.

''(2) RETENTION OF SYSTEMS.—A major weapon system included in the pilot program before the date specified in paragraph (1) in accordance with the requirements of this section may remain in the pilot program after that date.

''(j) ANNUAL REPORT.—

''(1) IN GENERAL.—Not later than one year after including the first major weapon system in the pilot program, and annually thereafter, the Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the pilot program, and the major weapon systems included in the pilot program, during the one-year period ending on the date of such report.

''(2) ELEMENTS.—Each report under this subsection shall include—

''(A) a description of progress under the pilot program, and on each major weapon system included in the pilot program, during the period covered by such report;

''(B) a description of the use of all funds in the special reserve account established under subsection (f); and

''(C) such other matters as the Secretary considers appropriate.

''(k) MAJOR WEAPON SYSTEM DEFINED.—In this section, the term 'major weapon system' means a weapon system that is treatable as a major system under section 2302(5) of title 10, United States Code.''

[Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1806(e)(2)(D), Jan. 1, 2021, 134 Stat. 4151, 4155, provided that effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, section 812(k) of Pub. L. 109–364, set out above, is amended by substituting ''section 3041'' for ''section 2302(5)''.]

[Pub. L. 111–84, div. A, title X, § 1073(c), Oct. 28, 2009, 123 Stat. 2474, provided that the amendment made by section 1073(c)(5) to section 813(d)(3) of Pub. L. 110–417, set out above, is effective as of Oct. 14, 2008, and as if included in Pub. L. 110–417 as enacted.]

LINKING OF AWARD AND INCENTIVE FEES TO ACQUISITION OUTCOMES

Pub. L. 111–84, div. A, title VIII, § 823, Oct. 28, 2009, 123 Stat. 2412, as amended by Pub. L. 111–383, div. A, title VIII, § 834(a)–(c), Jan. 7, 2011, 124 Stat. 4278, 4279, provided that:

''(a) AUTHORITY TO REDUCE OR DENY AWARD FEES.—Not later than 180 days after the date of the enactment of this Act [Oct. 28, 2009], the Secretary of Defense shall revise the guidance issued pursuant to section 814 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109–364; 129 [120] Stat. 2321) [set out below] to ensure that all covered contracts using award fees—

''(1) provide for the consideration of any incident described in subsection (b) in evaluations of contractor performance for the relevant award fee period; and

''(2) authorize the Secretary to reduce or deny award fees for the relevant award fee period, or to recover all or part of award fees previously paid for such period, on the basis of the negative impact of such incident on contractor performance.

''(b) COVERED INCIDENTS.—An incident referred to in subsection (a) is any incident in which the contractor—

''(1) has been determined, through a criminal, civil, or administrative proceeding that results in a disposition listed in subsection (c), in the performance of a covered contract to have caused serious bodily injury or death to any civilian or military personnel of the Government through gross negligence or with reckless disregard for the safety of such personnel; or

''(2) has been determined, through a criminal, civil, or administrative proceeding that results in a disposition listed in subsection (c), to be liable for actions of a subcontractor of the contractor that caused serious bodily injury or death to any civilian or military personnel of the Government, through gross negligence or with reckless disregard for the safety of such personnel.

''(c) LIST OF DISPOSITIONS IN CRIMINAL, CIVIL, OR ADMINISTRATIVE PROCEEDINGS.—For purposes of subsection (b), the dispositions listed in this subsection are as follows:

''(1) In a criminal proceeding, a conviction.

''(2) In a civil proceeding, a finding of fault and liability that results in the payment of a monetary fine, penalty, reimbursement, restitution, or damages of $5,000 or more.

''(3) In an administrative proceeding, a finding of fault and liability that results in—

''(A) the payment of a monetary fine or penalty of $5,000 or more; or

''(B) the payment of a reimbursement, restitution, or damages in excess of $100,000.

''(4) To the maximum extent practicable and consistent with applicable laws and regulations, in a criminal, civil, or administrative proceeding, a disposition of the matter by consent or compromise with an acknowledgment of fault by the person if the proceeding could have led to any of the outcomes specified in paragraph (1), (2), or (3).

''(5) In an administrative proceeding, a final determination of contractor fault by the Secretary of Defense pursuant to subsection (d).

''(d) DETERMINATIONS OF CONTRACTOR FAULT BY SECRETARY OF DEFENSE.—

''(1) IN GENERAL.—In any case described by paragraph (2), the Secretary of Defense shall—

''(A) provide for an expeditious independent investigation of the causes of the serious bodily injury or death alleged to have been caused by the contractor as described in that paragraph; and

''(B) make a final determination, pursuant to procedures established by the Secretary for purposes of this subsection, whether the contractor, in the performance of a covered contract, caused such serious bodily injury or death through gross negligence or with reckless disregard for the safety of civilian or military personnel of the Government.

''(2) COVERED CASES.—A case described in this paragraph is any case in which the Secretary has reason to believe that—

''(A) a contractor, in the performance of a covered contract, may have caused the serious bodily injury or death of any civilian or military personnel of the Government; and

''(B) such contractor is not subject to the jurisdiction of United States courts.

''(3) CONSTRUCTION OF DETERMINATION.—A final determination under this subsection may be used only for the purpose of evaluating contractor performance, and shall not be determinative of fault for any other purpose.

''(e) DEFINITIONS.—In this section:

''(1) The term 'contractor' means a company awarded a covered contract and a subcontractor at any tier under such contract.

''(2) The term 'covered contract' means a contract awarded by the Department of Defense for the procurement of goods or services.

''(3) The term 'serious bodily injury' means a grievous physical harm that results in a permanent disability.

''(f) EFFECTIVE DATE.—This section shall apply with respect to contracts entered into after the date occurring 180 days after the date of the enactment of this Act [Oct. 28, 2009].''

[Pub. L. 111–383, div. A, title VIII, § 834(e), Jan. 7, 2011, 124 Stat. 4279, provided that: ''The requirements of section 823 of the National Defense Authorization Act for Fiscal Year 2010 [Pub. L. 111–84, set out above], as amended by subsections (a) through (c), shall apply with respect to the following:

[''(1) Any contract entered into on or after the date of the enactment of this Act [Jan. 7, 2011].

[''(2) Any task order or delivery order issued on or after the date of the enactment of this Act under a contract entered into before, on, or after that date.'']

Pub. L. 110–329, div. C, title VIII, § 8105, Sept. 30, 2008, 122 Stat. 3644, provided that: ''During the current fiscal year and hereafter, none of the funds appropriated or otherwise available to the Department of Defense may be obligated or expended to provide award fees to any defense contractor contrary to the provisions of section 814 of the National Defense Authorization Act, Fiscal Year 2007 (Public Law 109–364) [set out below].''

Pub. L. 109–364, div. A, title VIII, § 814, Oct. 17, 2006, 120 Stat. 2321, provided that:

''(a) GUIDANCE ON LINKING OF AWARD AND INCENTIVE FEES TO ACQUISITION OUTCOMES.—Not later than 180 days after the date of the enactment of this Act [Oct. 17, 2006], the Secretary of Defense shall issue guidance, with detailed implementation instructions (including definitions), for the Department of Defense on the appropriate use of award and incentive fees in Department of Defense acquisition programs.

''(b) ELEMENTS.—The guidance under subsection (a) shall—

''(1) ensure that all new contracts using award fees link such fees to acquisition outcomes (which shall be defined in terms of program cost, schedule, and performance);

''(2) establish standards for identifying the appropriate level of officials authorized to approve the use of award and incentive fees in new contracts;

''(3) provide guidance on the circumstances in which contractor performance may be judged to be 'excellent' or 'superior' and the percentage of the available award fee which contractors should be paid for such performance;

''(4) establish standards for determining the percentage of the available award fee, if any, which contractors should be paid for performance that is judged to be 'acceptable', 'average', 'expected', 'good', or 'satisfactory';

''(5) ensure that no award fee may be paid for contractor performance that is judged to be below satisfactory performance or performance that does not meet the basic requirements of the contract;

''(6) provide specific direction on the circumstances, if any, in which it may be appropriate to roll over award fees that are not earned in one award fee period to a subsequent award fee period or periods;

''(7) ensure consistent use of guidelines and definitions relating to award and incentive fees across the military departments and Defense Agencies;

''(8) ensure that the Department of Defense—

''(A) collects relevant data on award and incentive fees paid to contractors; and

''(B) has mechanisms in place to evaluate such data on a regular basis;

''(9) include performance measures to evaluate the effectiveness of award and incentive fees as a tool for improving contractor performance and achieving desired program outcomes; and

''(10) provide mechanisms for sharing proven incentive strategies for the acquisition of different types of products and services among contracting and program management officials.

''(c) ASSESSMENT OF INDEPENDENT EVALUATION MECHANISMS.—

''(1) IN GENERAL.—The Secretary of Defense shall select a federally funded research and development center to assess various mechanisms that could be used to ensure an independent evaluation of contractor performance for the purpose of making determinations applicable to the judging and payment of award fees.

''(2) CONSIDERATIONS.—The assessment conducted pursuant to paragraph (1) shall include consideration of the advantages and disadvantages of a system in which award fees are—

''(A) held in a separate fund or funds of the Department of Defense; and

''(B) allocated to a specific program only upon a determination by an independent board, charged with comparing contractor performance across programs, that such fees have been earned by the contractor for such program.

''(3) REPORT.—The Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the assessment conducted pursuant to paragraph (1) not later than one year after the date of the enactment of this Act [Oct. 17, 2006].''

LIMITATION ON CONTRACTS FOR THE ACQUISITION OF CERTAIN SERVICES

Pub. L. 109–364, div. A, title VIII, § 832, Oct. 17, 2006, 120 Stat. 2331, as amended by Pub. L. 110–181, div. A, title VIII, § 883, Jan. 28, 2008, 122 Stat. 264; Pub. L. 110–417, [div. A], title X, § 1061(b)(5), Oct. 14, 2008, 122 Stat. 4613; Pub. L. 113–291, div. A, title X, § 1071(b)(3)(A), Dec. 19, 2014, 128 Stat. 3506, provided that:

''(a) LIMITATION.—Except as provided in subsection (b), the Secretary of Defense may not enter into a service contract to acquire a military flight simulator.

''(b) WAIVER.—The Secretary of Defense may waive subsection (a) with respect to a contract if the Secretary—

''(1) determines that a waiver is in the national interest; and

''(2) provides to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] an economic analysis as described in subsection (c) at least 30 days before the waiver takes effect.

''(c) ECONOMIC ANALYSIS.—The economic analysis provided under subsection (b) shall include, at a minimum, the following:

''(1) A clear explanation of the need for the contract.

''(2) An examination of at least two alternatives for fulfilling the requirements that the contract is meant to fulfill, including the following with respect to each alternative:

''(A) A rationale for including the alternative.

''(B) A cost estimate of the alternative and an analysis of the quality of each cost estimate.

''(C) A discussion of the benefits to be realized from the alternative.

''(D) A best value determination of each alternative and a detailed explanation of the life-cycle cost calculations used in the determination.

''(d) DEFINITIONS.—In this section:

''(1) The term 'military flight simulator' means any major system to simulate the form, fit, and function of a military aircraft that has no commonly available commercial variant.

''(2) The term 'service contract' means any contract entered into by the Department of Defense the principal purpose of which is to furnish services in the United States through the use of service employees.

''(3) The term 'service employees' has the meaning provided in section 6701(3) of title 41, United States Code.

''(e) EFFECT ON EXISTING CONTRACTS.—The limitation in subsection (a) does not apply to any service contract

of a military department to acquire a military flight simulator, or to any renewal or extension of, or follow-on contract to, such a contract, if—

''(1) the contract was in effect as of October 17, 2006;

''(2) the number of flight simulators to be acquired under the contract (or renewal, extension, or follow-on) will not result in the total number of flight simulators acquired by the military department concerned through service contracts to exceed the total number of flight simulators to be acquired under all service contracts of such department for such simulators in effect as of October 17, 2006; and

''(3) in the case of a renewal or extension of, or follow-on contract to, the contract, the Secretary of the military department concerned provides to the congressional defense committees a written notice of the decision to exercise an option to renew or extend the contract, or to issue a solicitation for bids or proposals using competitive procedures for a follow-on contract, and an economic analysis as described in subsection (c) supporting the decision, at least 30 days before carrying out such decision.''

CONGRESSIONAL NOTIFICATION OF CANCELLATION OF MAJOR AUTOMATED INFORMATION SYSTEMS

Pub. L. 109–163, div. A, title VIII, § 806, Jan. 6, 2006, 119 Stat. 3373, provided that:

''(a) REPORT REQUIRED.—The Secretary of Defense shall notify the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] not less than 60 days before cancelling a major automated information system program that has been fielded or approved to be fielded, or making a change that will significantly reduce the scope of such a program, of the proposed cancellation or change.

''(b) CONTENT.—Each notification submitted under subsection (a) with respect to a proposed cancellation or change shall include—

''(1) the specific justification for the proposed cancellation or change;

''(2) a description of the impact of the proposed cancellation or change on the ability of the Department to achieve the objectives of the program proposed for cancellation or change;

''(3) a description of the steps that the Department plans to take to achieve those objectives; and

''(4) other information relevant to the change in acquisition strategy.

''(c) DEFINITIONS.—In this section:

''(1) The term 'major automated information system' has the meaning given that term in Department of Defense directive 5000.1.

''(2) The term 'approved to be fielded' means having received Milestone C approval.''

JOINT POLICY ON CONTINGENCY CONTRACTING

Pub. L. 109–163, div. A, title VIII, § 817, Jan. 6, 2006, 119 Stat. 3382, provided that:

''(a) JOINT POLICY.—

''(1) REQUIREMENT.—Not later than one year after the date of the enactment of this Act [Jan. 6, 2006], the Secretary of Defense, in consultation with the Chairman of the Joint Chiefs of Staff, shall develop a joint policy for contingency contracting during combat operations and post-conflict operations.

''(2) MATTERS COVERED.—The joint policy for contingency contracting required by paragraph (1) shall, at a minimum, provide for—

''(A) the designation of a senior commissioned officer in each military department with the responsibility for administering the policy;

''(B) the assignment of a senior commissioned officer with appropriate acquisition experience and qualifications to act as head of contingency contracting during combat operations, post-conflict operations, and contingency operations, who shall report directly to the commander of the combatant command in whose area of responsibility the operations occur;

''(C) an organizational approach to contingency contracting that is designed to ensure that each military department is prepared to conduct contingency contracting during combat operations and post-conflict operations;

''(D) a requirement to provide training (including training under a program to be created by the Defense Acquisition University) to contingency contracting personnel in—

''(i) the use of law, regulations, policies, and directives related to contingency contracting operations;

''(ii) the appropriate use of rapid acquisition methods, including the use of exceptions to competition requirements under section 2304 of title 10, United States Code, sealed bidding, letter contracts, indefinite delivery indefinite quantity task orders, set asides under section 8(a) of the Small Business Act (15 U.S.C. 637(a)), undefinitized contract actions, and other tools available to expedite the delivery of goods and services during combat operations or post-conflict operations;

''(iii) the appropriate use of rapid acquisition authority, commanders' emergency response program funds, and other tools unique to contingency contracting; and

''(iv) instruction on the necessity for the prompt transition from the use of rapid acquisition authority to the use of full and open competition and other methods of contracting that maximize transparency in the acquisition process;

''(E) appropriate steps to ensure that training is maintained for such personnel even when they are not deployed in a contingency operation; and

''(F) such steps as may be needed to ensure jointness and cross-service coordination in the area of contingency contracting.

''(b) REPORTS.—

''(1) INTERIM REPORT.—

''(A) REQUIREMENT.—Not later than 270 days after the date of the enactment of this Act [Jan. 6, 2006], the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives an interim report on contingency contracting.

''(B) MATTERS COVERED.—The report shall include discussions of the following:

''(i) Progress in the development of the joint policy under subsection (a).

''(ii) The ability of the Armed Forces to support contingency contracting.

''(iii) The ability of commanders of combatant commands to request contingency contracting support and the ability of the military departments and the acquisition support agencies to respond to such requests and provide such support, including the availability of rapid acquisition personnel for such support.

''(iv) The ability of the current civilian and military acquisition workforce to deploy to combat theaters of operations and to conduct contracting activities during combat and during post-conflict, reconstruction, or other contingency operations.

''(v) The effect of different periods of deployment on continuity in the acquisition process.

''(2) FINAL REPORT.—Not later than 18 months after the date of the enactment of this Act [Jan. 6, 2006], the Secretary of Defense shall submit to the committees listed in paragraph (1)(A) a final report on contingency contracting, containing a discussion of the implementation of the joint policy developed under subsection (a), including updated discussions of the matters covered in the interim report.

''(c) DEFINITIONS.—In this section:

''(1) CONTINGENCY CONTRACTING PERSONNEL.—The term 'contingency contracting personnel' means members of the Armed Forces and civilian employees

of the Department of Defense who are members of the defense acquisition workforce and, as part of their duties, are assigned to provide support to contingency operations (whether deployed or not).

''(2) CONTINGENCY CONTRACTING.—The term 'contingency contracting' means all stages of the process of acquiring property or services by the Department of Defense during a contingency operation.

''(3) CONTINGENCY OPERATION.—The term 'contingency operation' has the meaning provided in section 101(13) of title 10, United States Code.

''(4) ACQUISITION SUPPORT AGENCIES.—The term 'acquisition support agencies' means Defense Agencies and Department of Defense Field Activities that carry out and provide support for acquisition-related activities.''

PROHIBITION ON PROCUREMENTS FROM COMMUNIST CHINESE MILITARY COMPANIES

Pub. L. 109–163, div. A, title XII, §1211, Jan. 6, 2006, 119 Stat. 3461, as amended by Pub. L. 112–81, div. A, title XII, §1243(a), (b), Dec. 31, 2011, 125 Stat. 1645; Pub. L. 114–328, div. A, title XII, §1296, Dec. 23, 2016, 130 Stat. 2562, provided that:

''(a) PROHIBITION.—The Secretary of Defense may not procure goods or services described in subsection (b), through a contract or any subcontract (at any tier) under a contract, from any Communist Chinese military company.

''(b) GOODS AND SERVICES COVERED.—For purposes of subsection (a), the goods and services described in this subsection are goods and services on the munitions list of the International Traffic in Arms Regulations or in the 600 series of the control list of the Export Administration Regulations, other than goods or services procured—

''(1) in connection with a visit by a vessel or an aircraft of the United States Armed Forces to the People's Republic of China;

''(2) for testing purposes; or

''(3) for purposes of gathering intelligence.

''(c) WAIVER AUTHORIZED.—The Secretary of Defense may waive the prohibition in subsection (a) if the Secretary determines that such a waiver is necessary for national security purposes and the Secretary submits to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report described in subsection (d) not less than 15 days before issuing the waiver under this subsection.

''(d) REPORT.—The report referred to in subsection (c) is a report that identifies the specific reasons for the waiver issued under subsection (c) and includes recommendations as to what actions may be taken to develop alternative sourcing capabilities in the future.

''(e) DEFINITIONS.—In this section:

''(1) The term 'Communist Chinese military company' has the meaning provided that term by section 1237(b)(4) of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 [Pub. L. 105–261] (50 U.S.C. 1701 note).

''(2) The term 'munitions list of the International Traffic in Arms Regulations' means the United States Munitions List contained in part 121 of subchapter M of title 22 of the Code of Federal Regulations.

''(3) The term '600 series of the control list of the Export Administration Regulations' means the 600 series of the Commerce Control List contained in Supplement No. 1 to part 774 of subtitle B of title 15 of the Code of Federal Regulations.''

[Pub. L. 112–81, div. A, title XII, §1243(c), Dec. 31, 2011, 125 Stat. 1646, provided that: ''The amendments made by this section [amending section 1211 of Pub. L. 109–163, set out above] take effect on the date of the enactment of this Act [Dec. 31, 2011] and apply with respect to contracts and subcontracts of the Department of Defense entered into on or after the date of the enactment of this Act.'']

DEVELOPMENT OF DEPLOYABLE SYSTEMS TO INCLUDE CONSIDERATION OF FORCE PROTECTION IN ASYMMETRIC THREAT ENVIRONMENTS

Pub. L. 108–375, div. A, title I, §141, Oct. 28, 2004, 118 Stat. 1829, which provided that development of deployable systems must include consideration of force protection in asymmetric threat environments, was repealed by Pub. L. 115–232, div. A, title VIII, §812(b)(7), Aug. 13, 2018, 132 Stat. 1848.

INTERNAL CONTROLS FOR DEPARTMENT OF DEFENSE PROCUREMENTS THROUGH GSA CLIENT SUPPORT CENTERS

Pub. L. 108–375, div. A, title VIII, §802, Oct. 28, 2004, 118 Stat. 2004, as amended by Pub. L. 109–313, §2(c)(2), Oct. 6, 2006, 120 Stat. 1735; Pub. L. 116–92, div. A, title IX, §902(38), Dec. 20, 2019, 133 Stat. 1547, provided that:

''(a) INITIAL INSPECTOR GENERAL REVIEW AND DETERMINATION.—(1) Not later than March 15, 2005, the Inspector General of the Department of Defense and the Inspector General of the General Services Administration shall jointly—

''(A) review—

''(i) the policies, procedures, and internal controls of each GSA Client Support Center; and

''(ii) the administration of those policies, procedures, and internal controls; and

''(B) for each such Center, determine in writing whether—

''(i) the Center is compliant with defense procurement requirements;

''(ii) the Center is not compliant with defense procurement requirements, but the Center made significant progress during 2004 toward becoming compliant with defense procurement requirements; or

''(iii) neither of the conclusions stated in clauses (i) and (ii) is correct.

''(2) If the Inspectors General determine under paragraph (1) that the conclusion stated in clause (ii) or (iii) of subparagraph (B) of such paragraph is correct in the case of a GSA Client Support Center, those Inspectors General shall, not later than March 15, 2006, jointly—

''(A) conduct a second review regarding that GSA Client Support Center as described in paragraph (1)(A); and

''(B) determine in writing whether that GSA Client Support Center is or is not compliant with defense procurement requirements.

''(b) COMPLIANCE WITH DEFENSE PROCUREMENT REQUIREMENTS.—For the purposes of this section, a GSA Client Support Center is compliant with defense procurement requirements if the GSA Client Support Center's policies, procedures, and internal controls, and the manner in which they are administered, are adequate to ensure compliance of that Center with the requirements of laws and regulations that apply to procurements of property and services made directly by the Department of Defense.

''(c) LIMITATIONS ON PROCUREMENTS THROUGH GSA CLIENT SUPPORT CENTERS.—(1) After March 15, 2005, and before March 16, 2006, no official of the Department of Defense may, except as provided in subsection (d) or (e), order, purchase, or otherwise procure property or services in an amount in excess of $100,000 through any GSA Client Support Center for which a determination described in paragraph (1)(B)(iii) of subsection (a) has been made under that subsection.

''(2) After March 15, 2006, no official of the Department of Defense may, except as provided in subsection (d) or (e), order, purchase, or otherwise procure property or services in an amount in excess of $100,000 through any GSA Client Support Center that has not been determined under this section as being compliant with defense procurement requirements.

''(d) EXCEPTION FROM APPLICABILITY OF LIMITATIONS.—(1) No limitation applies under subsection (c)

with respect to the procurement of property and services from a particular GSA Client Support Center during any period that there is in effect a determination of the Under Secretary of Defense for Acquisition and Sustainment, made in writing, that it is necessary in the interest of the Department of Defense to continue to procure property and services through that GSA Client Support Center.

''(2) A written determination with respect to a GSA Client Support Center under paragraph (1) is in effect for the period, not in excess of one year, that the Under Secretary of Defense for Acquisition and Sustainment shall specify in the written determination. The Under Secretary may extend from time to time, for up to one year at a time, the period for which the written determination remains in effect.

''(e) TERMINATION OF APPLICABILITY OF LIMITATIONS.—Subsection (c) shall cease to apply to a GSA Client Support Center on the date on which the Inspector General of the Department of Defense and the Inspector General of the General Services Administration jointly determine that such Center is compliant with defense procurement requirements and notify the Secretary of Defense of that determination.

''(f) GSA CLIENT SUPPORT CENTER DEFINED.—In this section, the term 'GSA Client Support Center' means a Client Support Center of the Federal Acquisition Service of the General Services Administration.''

DATA REVIEW

Pub. L. 108–136, div. A, title VIII, § 801(b), Nov. 24, 2003, 117 Stat. 1540, which required revision of Department of Defense data collection systems to ensure their capability to identify each procurement that involved a consolidation of contract requirements with a total value in excess of $5,000,000, was repealed by Pub. L. 115–232, div. A, title VIII, § 812(b)(8), Aug. 13, 2018, 132 Stat. 1848.

QUALITY CONTROL IN PROCUREMENT OF AVIATION CRITICAL SAFETY ITEMS AND RELATED SERVICES

Pub. L. 108–136, div. A, title VIII, § 802(a)–(c), Nov. 24, 2003, 117 Stat. 1540, provided that:

''(a) QUALITY CONTROL POLICY.—The Secretary of Defense shall prescribe in regulations a quality control policy for the procurement of aviation critical safety items and the procurement of modifications, repair, and overhaul of such items.

''(b) CONTENT OF REGULATIONS.—The policy set forth in the regulations shall include the following requirements:

''(1) That the head of the design control activity for aviation critical safety items establish processes to identify and manage the procurement, modification, repair, and overhaul of aviation critical safety items.

''(2) That the head of the contracting activity for an aviation critical safety item enter into a contract for the procurement, modification, repair, or overhaul of such item only with a source approved by the design control activity in accordance with section 2319 of title 10, United States Code.

''(3) That the aviation critical safety items delivered, and the services performed with respect to aviation critical safety items, meet all technical and quality requirements specified by the design control activity.

''(c) DEFINITIONS.—In this section, the terms 'aviation critical safety item' and 'design control activity' have the meanings given such terms in section 2319(g) of title 10, United States Code, as amended by subsection (d).''

COMPETITIVE AWARD OF CONTRACTS FOR RECONSTRUCTION ACTIVITIES IN IRAQ

Pub. L. 108–136, div. A, title VIII, § 805(a), Nov. 24, 2003, 117 Stat. 1542, provided that: ''The Department of Defense shall fully comply with chapter 137 of title 10, United States Code, and other applicable procurement laws and regulations for any contract awarded for reconstruction activities in Iraq, and shall conduct a full and open competition for performing work needed for the reconstruction of the Iraqi oil industry.''

DEMONSTRATION PROJECT FOR CONTRACTORS EMPLOYING PERSONS WITH DISABILITIES

Pub. L. 115–232, div. A, title VIII, § 888, Aug. 13, 2018, 132 Stat. 1916, provided that: ''Not later than 180 days after the date of the enactment of this Act [Aug. 13, 2018], the Secretary of Defense shall update the Defense Federal Acquisition Regulatory Supplement to include an instruction on the pilot program regarding employment of persons with disabilities authorized under section 853 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136; 10 U.S.C. 2302 note).''

Pub. L. 108–136, div. A, title VIII, § 853, Nov. 24, 2003, 117 Stat. 1557, as amended by Pub. L. 108–199, div. H, § 110, Jan. 23, 2004, 118 Stat. 438; Pub. L. 115–232, div. A, title VIII, § 812(a)(2)(C)(i), Aug. 13, 2018, 132 Stat. 1846, provided that:

''(a) AUTHORITY.—The Secretary of Defense may carry out a demonstration project by entering into one or more contracts with an eligible contractor for the purpose of providing defense contracting opportunities for severely disabled individuals.

''(b) EVALUATION FACTOR.—In evaluating an offer for a contract under the demonstration program, the percentage of the total workforce of the offeror consisting of severely disabled individuals employed by the offeror shall be one of the evaluation factors.

''(c) CREDIT TOWARD CERTAIN SMALL BUSINESS CONTRACTING GOALS.—Department of Defense contracts entered into with eligible contractors under the demonstration project under this section, and subcontracts entered into with eligible contractors under such contracts, shall be credited toward the attainment of goals established under section 15(g)(1) of the Small Business Act (15 U.S.C. 644(g)(1)) regarding the extent of the participation of disadvantaged small business concerns in contracts of the Department of Defense and subcontracts under such contracts.

''(d) DEFINITIONS.—In this section:

''(1) ELIGIBLE CONTRACTOR.—The term 'eligible contractor' means a business entity operated on a for-profit or nonprofit basis that—

''(A) employs severely disabled individuals at a rate that averages not less than 33 percent of its total workforce over a period prescribed by the Secretary;

''(B) pays not less than the minimum wage prescribed pursuant to section 6 of the Fair Labor Standards Act of 1938 (29 U.S.C. 206) to the employees who are severely disabled individuals; and

''(C) provides for its employees health insurance and a retirement plan comparable to those provided for employees by business entities of similar size in its industrial sector or geographic region.

''(2) SEVERELY DISABLED INDIVIDUAL.—The term 'severely disabled individual' means an individual with a disability (as defined in section 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102)) who has a severe physical or mental impairment that seriously limits one or more functional capacities.''

PROCUREMENT OF DEFENSE BIOMEDICAL COUNTERMEASURES

Pub. L. 108–136, div. A, title XVI, § 1602, Nov. 24, 2003, 117 Stat. 1682, as amended by Pub. L. 110–181, div. A, title X, § 1063(g)(3), Jan. 28, 2008, 122 Stat. 324, provided that:

''(a) DETERMINATION OF MATERIAL THREATS.—(1) The Secretary of Defense (in this section referred to as the 'Secretary') shall on an ongoing basis—

''(A) assess current and emerging threats of use of biological, chemical, radiological, and nuclear agents; and

''(B) identify, on the basis of such assessment, those agents that present a material risk of use against the Armed Forces.

''(2) The Secretary shall on an ongoing basis—

''(A) assess the potential consequences to the health of members of the Armed Forces of use against the Armed Forces of the agents identified under paragraph (1)(B); and

''(B) identify, on the basis of such assessment, those agents for which countermeasures are necessary to protect the health of members of the Armed Forces.

''(b) ASSESSMENT OF AVAILABILITY AND APPROPRIATENESS OF COUNTERMEASURES.—The Secretary shall on an ongoing basis assess the availability and appropriateness of specific countermeasures to address specific threats identified under subsection (a).

''(c) SECRETARY'S DETERMINATION OF COUNTERMEASURES APPROPRIATE FOR PROCUREMENT.—(1) The Secretary, in accordance with paragraph (2), shall on an ongoing basis identify specific countermeasures that the Secretary determines to be appropriate for procurement for the Department of Defense stockpile of biomedical countermeasures.

''(2) The Secretary may not identify a specific countermeasure under paragraph (1) unless the Secretary determines that—

''(A) the countermeasure is a qualified countermeasure; and

''(B) it is reasonable to expect that producing and delivering, within 5 years, the quantity of that countermeasure required to meet the needs of the Department (as determined by the Secretary) is feasible.

''(d) INTERAGENCY COOPERATION.—(1) Activities of the Secretary under this section shall be carried out in regular, structured, and close consultation and coordination with the Secretaries of Homeland Security and Health and Human Services, including the activities described in subsections (a), (b), and (c) and those activities with respect to interagency agreements described in paragraph (2).

''(2) The Secretary may enter into an interagency agreement with the Secretaries of Homeland Security and Health and Human Services to provide for acquisition by the Secretary of Defense for use by the Armed Forces of biomedical countermeasures procured for the Strategic National Stockpile by the Secretary of Health and Human Services. The Secretary may transfer such funds to the Secretary of Health and Human Services as are necessary to carry out such agreements (including administrative costs of the Secretary of Health and Human Services), and the Secretary of Health and Human Services may expend any such transferred funds to procure such countermeasures for use by the Armed Forces, or to replenish the stockpile. The Secretaries are authorized to establish such terms and conditions for such agreements as the Secretaries determine to be in the public interest. The transfer authority provided under this paragraph is in addition to any other transfer authority available to the Secretary.

''(e) DEFINITIONS.—In this section:

''(1) The term 'qualified countermeasure' means a biomedical countermeasure—

''(A) that is approved under section 505(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) or licensed under section 351 of the Public Health Service Act (42 U.S.C. 262), or that is approved under section 515 or cleared under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360e and 360) for use as such a countermeasure to a biological, chemical, radiological, or nuclear agent identified as a material threat under subsection (a); or

''(B) with respect to which the Secretary of Health and Human Services makes a determination that sufficient and satisfactory clinical experience or research data (including data, if available, from preclinical and clinical trials) exists to support a reasonable conclusion that the product will qualify for such approval or licensing for use as such a countermeasure.

''(2) The term 'biomedical countermeasure' means a drug (as defined in section 201(g)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(g)(1))), device (as defined in section 201(h) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(h))), or biological product (as defined in section 351(i) of the Public Health Service Act (42 U.S.C. 262(i))) that is—

''(A) used to treat, identify, or prevent harm from any biological, chemical, radiological, or nuclear agent that may cause a military health emergency affecting the Armed Forces; or

''(B) used to treat, identify, or prevent harm from a condition that may result in adverse health consequences or death and may be caused by administering a drug or biological product that is used as described in subparagraph (A).

''(3) The term 'Strategic National Stockpile' means the stockpile established under section 121(a) of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (42 U.S.C. 300hh–12(a)).

''(f) FUNDING.—Of the amount authorized to be appropriated for the Department of Defense and available within the transfer authority established under section 1001 of this Act [117 Stat. 1582] for fiscal year 2004 and for each fiscal year thereafter, such sums are authorized as may be necessary for the costs incurred by the Secretary in the procurement of countermeasures under this section.''

ENCOURAGEMENT OF SMALL BUSINESSES AND NONTRADITIONAL DEFENSE CONTRACTORS TO SUBMIT PROPOSALS POTENTIALLY BENEFICIAL FOR COMBATING TERRORISM

Pub. L. 107–314, div. A, title II, § 244, Dec. 2, 2002, 116 Stat. 2498, provided that during fiscal years 2003, 2004, and 2005, the Secretary of Defense, acting through the Under Secretary of Defense for Acquisition, Technology, and Logistics, was to carry out a program of outreach to small businesses and nontraditional defense contractors with the purpose of providing a process for reviewing and evaluating research activities of, and new technologies being developed by, small businesses and nontraditional defense contractors that had the potential for meeting a defense requirement or technology development goal of the Department of Defense that related to the mission of the Department of Defense to combat terrorism.

PROCUREMENT OF ENVIRONMENTALLY PREFERABLE PROCUREMENT ITEMS

Pub. L. 107–314, div. A, title III, § 314, Dec. 2, 2002, 116 Stat. 2508, as amended by Pub. L. 109–163, div. A, title X, § 1056(e)(1), Jan. 6, 2006, 119 Stat. 3440, provided that:

''(a) TRACKING SYSTEM.—The Secretary of Defense shall develop and implement an effective and efficient tracking system to identify the extent to which the Defense Logistics Agency procures environmentally preferable procurement items or procurement items made with recovered material. The system shall provide for the separate tracking, to the maximum extent practicable, of the procurement of each category of procurement items that, as of the date of the enactment of this Act [Dec. 2, 2002], has been determined to be environmentally preferable or made with recovered material.

''(b) ASSESSMENT OF TRAINING AND EDUCATION.—The Secretary of Defense shall assess the need to establish a program, or enhance existing programs, for training and educating Department of Defense procurement officials to ensure that they are aware of any Department requirements, preferences, or goals for the procurement of environmentally preferable procurement items or procurement items made with recovered material.

''(c) REPORTING REQUIREMENT.—Not later than March 1, 2004, and each March 1 thereafter through 2007, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report detailing the results obtained from the tracking system developed under subsection (a).

''(d) RELATION TO OTHER LAWS.—Nothing in this section shall be construed to alter the requirements of the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.).

''(e) DEFINITIONS.—In this section:

''(1) The term 'environmentally preferable', in the case of a procurement item, means that the item has a lesser or reduced effect on human health and the environment when compared with competing products that serve the same purpose. The comparison may consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal of the product.

''(2) The terms 'procurement item' and 'recovered material' have the meanings given such terms in section 1004 of the Solid Waste Disposal Act (42 U.S.C. 6903).''

POLICY REGARDING ACQUISITION OF INFORMATION ASSURANCE AND INFORMATION ASSURANCE-ENABLED INFORMATION TECHNOLOGY PRODUCTS

Pub. L. 107–314, div. A, title III, § 352, Dec. 2, 2002, 116 Stat. 2518, which required the Secretary to establish a policy to limit the acquisition of information assurance and information assurance-enabled information technology products to those products already evaluated and validated in accordance with appropriate criteria, schemes, or programs, was repealed by Pub. L. 115–232, div. A, title VIII, § 812(b)(9), Aug. 13, 2018, 132 Stat. 1848.

LOGISTICS SUPPORT AND SERVICES FOR WEAPON SYSTEMS CONTRACTORS

Pub. L. 107–314, div. A, title III, § 365, Dec. 2, 2002, 116 Stat. 2520, as amended by Pub. L. 109–163, div. A, title III, § 331, Jan. 6, 2006, 119 Stat. 3195, authorized the Secretary of Defense to make certain logistics support and services available to weapon systems contractors and provided for the expiration of such authority on Sept. 30, 2010.

IMPROVEMENT OF SOFTWARE ACQUISITION PROCESSES

Pub. L. 107–314, div. A, title VIII, § 804, Dec. 2, 2002, 116 Stat. 2604, provided that:

''(a) ESTABLISHMENT OF PROGRAMS.—(1) The Secretary of each military department shall establish a program to improve the software acquisition processes of that military department.

''(2) The head of each Defense Agency that manages a major defense acquisition program with a substantial software component shall establish a program to improve the software acquisition processes of that Defense Agency.

''(3) The programs required by this subsection shall be established not later than 120 days after the date of the enactment of this Act [Dec. 2, 2002].

''(b) PROGRAM REQUIREMENTS.—A program to improve software acquisition processes under this section shall, at a minimum, include the following:

''(1) A documented process for software acquisition planning, requirements development and management, project management and oversight, and risk management.

''(2) Efforts to develop appropriate metrics for performance measurement and continual process improvement.

''(3) A process to ensure that key program personnel have an appropriate level of experience or training in software acquisition.

''(4) A process to ensure that each military department and Defense Agency implements and adheres to established processes and requirements relating to the acquisition of software.

''(c) DEPARTMENT OF DEFENSE GUIDANCE.—The Assistant Secretary of Defense for Command, Control, Communications, and Intelligence, in consultation with the Under Secretary of Defense for Acquisition, Technology, and Logistics, shall—

''(1) prescribe uniformly applicable guidance for the administration of all of the programs established under subsection (a) and take such actions as are necessary to ensure that the military departments and Defense Agencies comply with the guidance; and

''(2) assist the Secretaries of the military departments and the heads of the Defense Agencies to carry out such programs effectively by—

''(A) ensuring that the criteria applicable to the selection of sources provides added emphasis on past performance of potential sources, as well as on the maturity of the software products offered by the potential sources; and

''(B) identifying, and serving as a clearinghouse for information regarding, best practices in software development and acquisition in both the public and private sectors.

''(d) DEFINITIONS.—In this section:

''(1) The term 'Defense Agency' has the meaning given the term in section 101(a)(11) of title 10, United States Code.

''(2) The term 'major defense acquisition program' has the meaning given such term in section 139(a)(2)(B) of title 10, United States Code.''

RAPID ACQUISITION AND DEPLOYMENT PROCEDURES

Pub. L. 107–314, div. A, title VIII, § 806, Dec. 2, 2002, 116 Stat. 2607, as amended by Pub. L. 108–136, div. A, title VIII, § 845, Nov. 24, 2003, 117 Stat. 1553; Pub. L. 108–375, div. A, title VIII, § 811, Oct. 28, 2004, 118 Stat. 2012; Pub. L. 109–364, div. A, title X, § 1071(h), Oct. 17, 2006, 120 Stat. 2403; Pub. L. 111–383, div. A, title VIII, § 803, Jan. 7, 2011, 124 Stat. 4255; Pub. L. 112–81, div. A, title VIII, § 845(a), (b), Dec. 31, 2011, 125 Stat. 1515; Pub. L. 114–92, div. A, title VIII, § 803, Nov. 25, 2015, 129 Stat. 880; Pub. L. 114–328, div. A, title VIII, § 801, Dec. 23, 2016, 130 Stat. 2247, provided that:

''(a) REQUIREMENT TO ESTABLISH PROCEDURES.—Not later than 180 days after the date of the enactment of this Act [Dec. 2, 2002], the Secretary of Defense shall prescribe procedures for the rapid acquisition and deployment of supplies and associated support services that are—

''(1)(A) currently under development by the Department of Defense or available from the commercial sector;

''(B) require only minor modifications to supplies described in subparagraph (A); or

''(C) developed or procured under the rapid fielding or rapid prototyping acquisition pathways under section 804 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114–92; 10 U.S.C. 2302 note); and

''(2) urgently needed to react to an enemy threat or to respond to significant and urgent safety situations.

''(b) ISSUES TO BE ADDRESSED.—The procedures prescribed under subsection (a) shall include the following:

''(1) A process for streamlined communications between the Chairman of the Joint Chiefs of Staff, the acquisition community, and the research and development community, including—

''(A) a process for the commanders of the combatant commands and the Joint Chiefs of Staff to communicate their needs to the acquisition community and the research and development community; and

''(B) a process for the acquisition community and the research and development community to propose supplies and associated support services that meet the needs communicated by the combatant commands and the Joint Chiefs of Staff.

''(2) Procedures for demonstrating, rapidly acquiring, and deploying supplies and associated support services proposed pursuant to paragraph (1)(B), including—

''(A) a process for demonstrating performance and evaluating for current operational purposes the existing capability of the supplies and associated support services;

''(B) a process for developing an acquisition and funding strategy for the deployment of the supplies and associated support services; and

''(C) a process for making deployment and utilization determinations based on information obtained pursuant to subparagraphs (A) and (B).

''(3) Specific procedures in accordance with the guidance developed under section 804(a) of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114–92; 10 U.S.C. 2302 note).

''(c) RESPONSE TO COMBAT EMERGENCIES AND CERTAIN URGENT OPERATIONAL NEEDS.—

''(1) DETERMINATION OF NEED FOR RAPID ACQUISITION AND DEPLOYMENT.—(A) In the case of any supplies and associated support services that, as determined in writing by the Secretary of Defense, are urgently needed to eliminate a documented deficiency that has resulted in combat casualties, or is likely to result in combat casualties, the Secretary may use the procedures developed under this section in order to accomplish the rapid acquisition and deployment of the needed supplies and associated support services.

''(B) In the case of any supplies and associated support services that, as determined in writing by the Secretary of Defense, are urgently needed to eliminate a documented deficiency that impacts an ongoing or anticipated contingency operation and that, if left unfulfilled, could potentially result in loss of life or critical mission failure, the Secretary may use the procedures developed under this section in order to accomplish the rapid acquisition and deployment of the needed supplies and associated support services.

''(C)(i) In the case of any supplies and associated support services that, as determined in writing by the Secretary of Defense without delegation, are urgently needed to eliminate a deficiency that as the result of a cyber attack has resulted in critical mission failure, the loss of life, property destruction, or economic effects, or if left unfilled is likely to result in critical mission failure, the loss of life, property destruction, or economic effects, the Secretary may use the procedures developed under this section in order to accomplish the rapid acquisition and deployment of the needed offensive or defensive cyber capabilities, supplies, and associated support services.

''(ii) In this subparagraph, the term 'cyber attack' means a deliberate action to alter, disrupt, deceive, degrade, or destroy computer systems or networks or the information or programs resident in or transiting these systems or networks.

''(2) DESIGNATION OF SENIOR OFFICIAL RESPONSIBLE.—(A)(i) Except as provided under clause (ii), whenever the Secretary makes a determination under subparagraph (A), (B), or (C) of paragraph (1) that certain supplies and associated support services are urgently needed to eliminate a deficiency described in that subparagraph, the Secretary shall designate a senior official of the Department of Defense to ensure that the needed supplies and associated support services are acquired and deployed as quickly as possible, with a goal of awarding a contract for the acquisition of the supplies and associated support services within 15 days.

''(ii) Clause (i) does not apply to acquisitions initiated in the case of a determination by the Secretary that funds are necessary to immediately initiate a project under the rapid fielding or rapid prototyping acquisition pathways under section 804 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114–92; 10 U.S.C. 2302 note) if the designated official for acquisitions using such pathways is the service acquisition executive.

''(B) Upon designation of a senior official under subparagraph (A), the Secretary shall authorize that official to waive any provision of law, policy, directive, or regulation described in subsection (d) that such official determines in writing would unnecessarily impede the rapid acquisition and deployment of the needed supplies and associated support services. In a case in which the needed supplies and associated support services cannot be acquired without an extensive delay, the senior official shall require that an interim solution be implemented and deployed using the procedures developed under this section to minimize adverse consequences resulting from the urgent need.

''(3) USE OF FUNDS.—(A) In any fiscal year in which the Secretary makes a determination described in subparagraph (A), (B), or (C) of paragraph (1), or upon the Secretary making a determination that funds are necessary to immediately initiate a project under the rapid fielding or rapid prototyping acquisition pathways under section 804 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114–92; 10 U.S.C. 2302 note) based on a compelling national security need, the Secretary may use any funds available to the Department of Defense for acquisitions of supplies and associated support services if the determination includes a written finding that the use of such funds is necessary to address the deficiency in a timely manner.

''(B) Except as provided under subparagraph (C), the authority of this section may only be used to acquire supplies and associated support services—

''(i) in the case of determinations by the Secretary under paragraph (1)(A), in an amount aggregating not more than $200,000,000 during any fiscal year;

''(ii) in the case of determinations by the Secretary under paragraph (1)(B), in an amount aggregating not more than $200,000,000 during any fiscal year;

''(iii) in the case of determinations by the Secretary under paragraph (1)(C), in an amount aggregating not more than $200,000,000 during any fiscal year; and

''(iv) in the case of a determination by the Secretary that funds are necessary to immediately initiate a project under the rapid fielding or rapid prototyping acquisition pathways under section 804 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114–92; 10 U.S.C. 2302 note), in an amount not more than $200,000,000 during any fiscal year.

''(C) For each of fiscal years 2017 and 2018, the limits set forth in clauses (i) and (ii) of subparagraph (B) do not apply to the exercise of authority under such clauses provided that the total amount of supplies and associated support services acquired as provided under such subparagraph does not exceed $800,000,000 during such fiscal year.

''(4) NOTIFICATION TO CONGRESSIONAL DEFENSE COMMITTEES.—(A) In the case of a determination by the Secretary under paragraph (1)(A), the Secretary shall notify the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] of the determination within 15 days after the date of the determination.

''(B) In the case of a determination by the Secretary under paragraph (1)(B) the Secretary shall notify the congressional defense committees of the determination at least 10 days before the date on which the determination is effective.

''(C) In the case of a determination by the Secretary under paragraph (3)(A) that funds are necessary to immediately initiate a project under the rapid fielding or rapid prototyping acquisition pathways under section 804 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114–92; 10 U.S.C. 2302 note), the Secretary shall notify the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] of the determination within 10 days after the date of the use of such funds.

''(D) A notice under this paragraph shall include the following:

''(i) The supplies and associated support services to be acquired.

''(ii) The amount anticipated to be expended for the acquisition.

''(iii) The source of funds for the acquisition.

''(E) A notice under this paragraph shall be sufficient to fulfill any requirement to provide notification to Congress for a new start program.

''(F) A notice under this paragraph shall be provided in consultation with the Director of the Office of Management and Budget.

''(5) TIME FOR TRANSITIONING TO NORMAL ACQUISITION SYSTEM.—(A) Any acquisition initiated under this subsection shall transition to the normal acquisition system not later than two years after the date on which the Secretary makes the determination described in paragraph (1) with respect to the supplies and associated support services concerned.

''(B) Subparagraph (A) does not apply to acquisitions initiated in the case of a determination by the Secretary that funds are necessary to immediately initiate a project under the rapid fielding or rapid prototyping acquisition pathways under section 804 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114–92; 10 U.S.C. 2302 note).

''(6) LIMITATION ON OFFICERS WITH AUTHORITY TO MAKE A DETERMINATION.—The authority to make a determination under subparagraph (A), (B), or (C) of paragraph (1) may be exercised only by the Secretary or Deputy Secretary of Defense.

''(d) WAIVER OF CERTAIN STATUTES AND REGULATIONS.—(1) Upon a determination described in subsection (c)(1), the senior official designated in accordance with subsection (c)(2) with respect to that designation is authorized to waive any provision of law, policy, directive or regulation addressing—

''(A) the establishment of the requirement for the supplies and associated support services;

''(B) the research, development, test, and evaluation of the supplies and associated support services; or

''(C) the solicitation and selection of sources, and the award of the contract, for procurement of the supplies and associated support services.

''(2) Nothing in this subsection authorizes the waiver of—

''(A) the requirements of this section or the regulations implementing this section; or

''(B) any provision of law imposing civil or criminal penalties.

''(e) TESTING REQUIREMENT.—(1) The process for demonstrating performance and evaluating for current operational purposes the existing capability of the supplies and associated support services prescribed under subsection (b)(2)(A) shall include—

''(A) an operational assessment in accordance with procedures prescribed by the Director of Operational Test and Evaluation; and

''(B) a requirement to provide information about any deficiency of the supplies and associated support services in meeting the original requirements for the supplies and associated support services (as stated in a statement of the urgent operational need or similar document) to the deployment decisionmaking authority.

''(2) The process may not include a requirement for any deficiency of supplies and associated support services to be the determining factor in deciding whether to deploy the supplies and associated support services.

''(3) If supplies and associated support services are deployed under the rapid acquisition and deployment procedures prescribed pursuant to this section, or under any other authority, before the completion of operational test and evaluation of the supplies and associated support services, the Director of Operational Test and Evaluation shall have access to operational records and data relevant to such supplies and associated support services in accordance with section 139(e)(3) of title 10, United States Code, for the purpose of completing operational test and evaluation of the supplies and associated support services. The access to the operational records and data shall be provided in a time and manner determined by the Secretary of Defense consistent with requirements of operational security and other relevant operational requirements.

''(f) LIMITATION.—In the case of supplies that are part of a major system for which a low-rate initial production quantity determination has been made pursuant to section 2400 of title 10, United States Code, the quantity of such supplies acquired using the procedures prescribed pursuant to this section may not exceed an amount consistent with complying with limitations on the quantity of articles approved for low-rate initial production for such system. Any such supplies shall be included in any relevant calculation of quantities for low-rate initial production for the system concerned.

''(g) ASSOCIATED SUPPORT SERVICES DEFINED.—In this section, the term 'associated support services' means training, operation, maintenance, and support services needed in connection with the deployment of supplies to be acquired pursuant to the authority of this section. The term does not include functions that are inherently governmental or otherwise exempted from private sector performance.''

[Pub. L. 116–260, div. C, title VIII, § 8071, Dec. 27, 2020, 134 Stat. 1322, provided that: ''Any notice that is required to be submitted to the Committees on Appropriations of the House of Representatives and the Senate under section 806(c)(4) of the Bob Stump National Defense Authorization Act for Fiscal Year 2003 [Pub. L. 107–314, set out above] (10 U.S.C. 2302 note) after the date of the enactment of this Act [div. C of Pub. L. 116–260, approved Dec. 27, 2020] shall be submitted pursuant to that requirement concurrently to the Subcommittees on Defense of the Committees on Appropriations of the House of Representatives and the Senate.'']

[Similar provisions were contained in the following prior appropriation acts:

[Pub. L. 116–93, div. A, title VIII, § 8071, Dec. 20, 2019, 133 Stat. 2353.

[Pub. L. 115–245, div. A, title VIII, § 8069, Sept. 28, 2018, 132 Stat. 3017.

[Pub. L. 115–141, div. C, title VIII, § 8070, Mar. 23, 2018, 132 Stat. 480.]

[Pub. L. 112–81, div. A, title VIII, § 845(c), Dec. 31, 2011, 125 Stat. 1515, provided that: ''The authority to acquire associated support services pursuant to section 806 of the Bob Stump National Defense Authorization Act for Fiscal Year 2003 [Pub. L. 107–314, set out above], as amended by this section, shall not take effect until the Secretary of Defense certifies to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] that the Secretary has developed and implemented an expedited review process in compliance with the requirements of section 804 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (Public Law 111–383; 124 Stat. 4256; 10 U.S.C. 2302 note).'']

PROCUREMENT OF ALTERNATIVE FUELED AND HYBRID LIGHT DUTY TRUCKS

Pub. L. 107–107, div. A, title III, § 318, Dec. 28, 2001, 115 Stat. 1055, provided that:

''(a) DEFENSE FLEETS NOT COVERED BY REQUIREMENT IN ENERGY POLICY ACT OF 1992.—(1) The Secretary of Defense shall coordinate with the Administrator of General Services to ensure that only hybrid vehicles are procured by the Administrator for the Department of Defense fleet of light duty trucks that is not in a fleet of vehicles to which section 303 of the Energy Policy Act of 1992 (42 U.S.C. 13212) applies.

''(2) The Secretary, in consultation with the Administrator, may waive the policy regarding the procurement of hybrid vehicles in paragraph (1) to the extent that the Secretary determines necessary—

''(A) in the case of trucks that are exempt from the requirements of section 303 of the Energy Policy Act of 1992 for national security reasons under subsection (b)(3)(E) of such section, to meet specific requirements of the Department of Defense for capabilities of light duty trucks;

''(B) to procure vehicles consistent with the standards applicable to the procurement of fleet vehicles for the Federal Government; or

''(C) to adjust to limitations on the commercial availability of light duty trucks that are hybrid vehicles.

''(3) This subsection applies with respect to procurements of light duty trucks in fiscal year 2005 and subsequent fiscal years.

''(b) REQUIREMENT TO EXCEED REQUIREMENT IN ENERGY POLICY ACT OF 1992.—(1) The Secretary of Defense shall coordinate with the Administrator of General Services to ensure that, of the light duty trucks procured in fiscal years after fiscal year 2004 for the fleets of light duty vehicles of the Department of Defense to which section 303 of the Energy Policy Act of 1992 [42 U.S.C. 13212] applies—

''(A) five percent of the total number of such trucks that are procured in each of fiscal years 2005 and 2006 are alternative fueled vehicles or hybrid vehicles; and

''(B) ten percent of the total number of such trucks that are procured in each fiscal year after fiscal year 2006 are alternative fueled vehicles or hybrid vehicles.

''(2) Light duty trucks acquired for the Department of Defense that are counted to comply with section 303 of the Energy Policy Act of 1992 for a fiscal year shall be counted to determine the total number of light duty trucks procured for the Department of Defense for that fiscal year for the purposes of paragraph (1), but shall not be counted to satisfy the requirement in that paragraph.

''(c) REPORT ON PLANS FOR IMPLEMENTATION.—At the same time that the President submits the budget for fiscal year 2003 to Congress under section 1105(a) of title 31, United States Code, the Secretary shall submit to Congress a report summarizing the plans for carrying out subsections (a) and (b).

''(d) DEFINITIONS.—In this section:

''(1) The term 'hybrid vehicle' means a motor vehicle that draws propulsion energy from onboard sources of stored energy that are both—

''(A) an internal combustion or heat engine using combustible fuel; and

''(B) a rechargeable energy storage system.

''(2) The term 'alternative fueled vehicle' has the meaning given that term in section 301 of the Energy Policy Act of 1992 (42 U.S.C. 13211).''

TEMPORARY EMERGENCY PROCUREMENT AUTHORITY TO FACILITATE THE DEFENSE AGAINST TERRORISM OR BIOLOGICAL OR CHEMICAL ATTACK

Pub. L. 107–107, div. A, title VIII, § 836, Dec. 28, 2001, 115 Stat. 1192, provided special authorities relating to increased flexibility for use of streamlined procedures and commercial item treatment for procurements of biotechnology to facilitate the defense against terrorism or biological or chemical attack which would be applicable to procurements for which funds had been obligated during fiscal years 2002 and 2003, directed the Secretary of Defense to submit to committees of Congress, not later than Mar. 1, 2002, a report containing the Secretary's recommendations for additional emergency procurement authority that the Secretary had determined necessary to support operations carried out to combat terrorism, and provided that no contract could be entered into pursuant to such authority after Sept. 30, 2003.

IMPROVEMENTS IN PROCUREMENTS OF SERVICES

Pub. L. 106–398, § 1 [[div. A], title VIII, § 821], Oct. 30, 2000, 114 Stat. 1654, 1654A–217, as amended by Pub. L. 108–136, div. A, title XIV, § 1431(c), Nov. 24, 2003, 117 Stat. 1672; Pub. L. 115–232, div. A, title VIII, § 836(f)(2), Aug. 13, 2018, 132 Stat. 1871, provided that:

''(a) PREFERENCE FOR PERFORMANCE-BASED SERVICE CONTRACTING.—Not later than 180 days after the date of the enactment of this Act [Oct. 30, 2000], the Federal Acquisition Regulation issued in accordance with sections 6 and 25 of the Office of Federal Procurement Policy Act ([former] 41 U.S.C. 405 and 421) [see 41 U.S.C. 1121 and 1303] shall be revised to establish a preference for use of contracts and task orders for the purchase of services in the following order of precedence:

''(1) A performance-based contract or performance-based task order that contains firm fixed prices for the specific tasks to be performed.

''(2) Any other performance-based contract or performance-based task order.

''(3) Any contract or task order that is not a performance-based contract or a performance-based task order.

''[(b) Repealed. Pub. L. 108–136, div. A, title XIV, § 1431(c), Nov. 24, 2003, 117 Stat. 1672.]

''(c) CENTERS OF EXCELLENCE IN SERVICE CONTRACTING.—Not later than 180 days after the date of the enactment of this Act [Oct. 30, 2000], the Secretary of each military department shall establish at least one center of excellence in contracting for services. Each center of excellence shall assist the acquisition community by identifying, and serving as a clearinghouse for, best practices in contracting for services in the public and private sectors.

''(d) ENHANCED TRAINING IN SERVICE CONTRACTING.—(1) The Secretary of Defense shall ensure that classes focusing specifically on contracting for services are offered by the Defense Acquisition University and the Defense Systems Management College and are otherwise available to contracting personnel throughout the Department of Defense.

''(2) The Secretary of each military department and the head of each Defense Agency shall ensure that the personnel of the department or agency, as the case may be, who are responsible for the awarding and management of contracts for services receive appropriate training that is focused specifically on contracting for services.

''(e) DEFINITIONS.—In this section:

''(1) The term 'performance-based', with respect to a contract, a task order, or contracting, means that the contract, task order, or contracting, respectively, includes the use of performance work statements that set forth contract requirements in clear, specific, and objective terms with measurable outcomes.

''(2) The term 'Defense Agency' has the meaning given the term in section 101(a)(11) of title 10, United States Code.''

PROGRAM TO INCREASE BUSINESS INNOVATION IN DEFENSE ACQUISITION PROGRAMS

Pub. L. 106–65, div. A, title VIII, § 812(a)–(c), (e), Oct. 5, 1999, 113 Stat. 709, 710, provided that:

''(a) REQUIREMENT TO DEVELOP PLAN.—Not later than March 1, 2000, the Secretary of Defense shall publish in the Federal Register for public comment a plan to provide for increased innovative technology for acquisition programs of the Department of Defense from commercial private sector entities, including small-business concerns.

''(b) IMPLEMENTATION OF PLAN.—Not later than March 1, 2001, the Secretary of Defense shall implement the plan required by subsection (a), subject to any modifications the Secretary may choose to make in response to comments received.

''(c) ELEMENTS OF PLAN.—The plan required by subsection (a) shall include, at a minimum, the following elements:

''(1) Procedures through which commercial private sector entities, including small-business concerns, may submit proposals recommending cost-saving and innovative ideas to acquisition program managers.

''(2) A review process designed to make recommendations on the merit and viability of the proposals submitted under paragraph (1) at appropriate times during the acquisition cycle.

''(3) Measures to limit potential disruptions to existing contracts and programs from proposals accepted and incorporated into acquisition programs of the Department of Defense.

''(4) Measures to ensure that research and development efforts of small-business concerns are considered as early as possible in a program's acquisition planning process to accommodate potential technology insertion without disruption to existing contracts and programs.

''(e) SMALL-BUSINESS CONCERN DEFINED.—In this section, the term 'small-business concern' has the same meaning as the meaning of such term as used in the Small Business Act (15 U.S.C. 631 et seq.).''

YEAR 2000 SOFTWARE CONVERSION

Pub. L. 104–201, div. A, title VIII, § 831, Sept. 23, 1996, 110 Stat. 2615, directed the Secretary of Defense to ensure that all information technology acquired by the Department of Defense pursuant to contracts entered into after Sept. 30, 1996, would have the capabilities to process date and date-related data in 2000, and directed the Secretary to assess all information technology within the Department to determine the extent to which such technology would have the capabilities to operate effectively, and to submit to Congress a detailed plan for eliminating any deficiencies not later than Jan. 1, 1997.

DEFENSE FACILITY-WIDE PILOT PROGRAM

Pub. L. 104–106, div. A, title VIII, § 822, Feb. 10, 1996, 110 Stat. 396, as amended by Pub. L. 106–65, div. A, title X, § 1067(6), Oct. 5, 1999, 113 Stat. 774, provided that:

''(a) AUTHORITY TO CONDUCT DEFENSE FACILITY-WIDE PILOT PROGRAM.—The Secretary of Defense may conduct a pilot program, to be known as the 'defense facility-wide pilot program', for the purpose of determining the potential for increasing the efficiency and effectiveness of the acquisition process in facilities by using commercial practices on a facility-wide basis.

''(b) DESIGNATION OF PARTICIPATING FACILITIES.—(1) Subject to paragraph (2), the Secretary may designate up to two facilities as participants in the defense facility-wide pilot program.

''(2) The Secretary may designate for participation in the pilot program only those facilities that are authorized to be so designated in a law authorizing appropriations for national defense programs that is enacted after the date of the enactment of this Act [Feb. 10, 1996].

''(c) SCOPE OF PROGRAM.—At a facility designated as a participant in the pilot program, the pilot program shall consist of the following:

''(1) All contracts and subcontracts for defense supplies and services that are performed at the facility.

''(2) All Department of Defense contracts and all subcontracts under Department of Defense contracts performed elsewhere that the Secretary determines are directly and substantially related to the production of defense supplies and services at the facility and are necessary for the pilot program.

''(d) CRITERIA FOR DESIGNATION OF PARTICIPATING FACILITIES.—The Secretary shall establish criteria for selecting a facility for designation as a participant in the pilot program. In developing such criteria, the Secretary shall consider the following:

''(1) The number of existing and anticipated contracts and subcontracts performed at the facility—

''(A) for which contractors are required to provide certified cost or pricing data pursuant to section 2306a of title 10, United States Code; and

''(B) which are administered with the application of cost accounting standards under section 26(f) of the Office of Federal Procurement Policy Act ([former] 41 U.S.C. 422(f)) [now 41 U.S.C. 1502(a), (b)].

''(2) The relationship of the facility to other organizations and facilities performing under contracts with the Department of Defense and subcontracts under such contracts.

''(3) The impact that the participation of the facility under the pilot program would have on competing domestic manufacturers.

''(4) Such other factors as the Secretary considers appropriate.

''(e) NOTIFICATION.—(1) The Secretary shall transmit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a written notification of each facility proposed to be designated by the Secretary for participation in the pilot program.

''(2) The Secretary shall include in the notification regarding a facility designated for participation in the program a management plan addressing the following:

''(A) The proposed treatment of research and development contracts or subcontracts to be performed at the facility during the pilot program.

''(B) The proposed treatment of the cost impact of the use of commercial practices on the award and administration of contracts and subcontracts performed at the facility.

''(C) The proposed method for reimbursing the contractor for existing and new contracts.

''(D) The proposed method for measuring the performance of the facility for meeting the management goals of the Secretary.

''(E) Estimates of the annual amount and the total amount of the contracts and subcontracts covered under the pilot program.

''(3)(A) The Secretary shall ensure that the management plan for a facility provides for attainment of the following objectives:

''(i) A significant reduction of the cost to the Government for programs carried out at the facility.

''(ii) A reduction of the schedule associated with programs carried out at the facility.

''(iii) An increased use of commercial practices and procedures for programs carried out at the facility.

''(iv) Protection of a domestic manufacturer competing for contracts at such facility from being placed at a significant competitive disadvantage by the participation of the facility in the pilot program.

''(B) The management plan for a facility shall also require that all or substantially all of the contracts to be awarded and performed at the facility after the designation of that facility under subsection (b), and all or substantially all of the subcontracts to be awarded under those contracts and performed at the facility after the designation, be—

''(i) for the production of supplies or services on a firm-fixed price basis;

''(ii) awarded without requiring the contractors or subcontractors to provide certified cost or pricing data pursuant to section 2306a of title 10, United States Code; and

''(iii) awarded and administered without the application of cost accounting standards under section 26(f) of the Office of Federal Procurement Policy Act ([former] 41 U.S.C. 422(f)) [now 41 U.S.C. 1502(a), (b)].

''(f) EXEMPTION FROM CERTAIN REQUIREMENTS.—In the case of a contract or subcontract that is to be performed at a facility designated for participation in the defense facility-wide pilot program and that is subject to section 2306a of title 10, United States Code, or section 26(f) of the Office of Federal Procurement Policy Act ([former] 41 U.S.C. 422(f)) [now 41 U.S.C. 1502(a), (b)], the Secretary of Defense may exempt such contract or subcontract from the requirement to obtain certified cost or pricing data under such section 2306a or the requirement to apply mandatory cost accounting standards under such section 26(f) [now 41 U.S.C. 1502(a), (b)] if the Secretary determines that the contract or subcontract—

''(1) is within the scope of the pilot program (as described in subsection (c)); and

''(2) is fairly and reasonably priced based on information other than certified cost and pricing data.

''(g) SPECIAL AUTHORITY.—The authority provided under subsection (a) includes authority for the Secretary of Defense—

''(1) to apply any amendment or repeal of a provision of law made in this Act [see Tables for classification] to the pilot program before the effective date of such amendment or repeal; and

''(2) to apply to a procurement of items other than commercial items under such program—

''(A) the authority provided in section 34 of the Office of Federal Procurement Policy Act ([former] 41 U.S.C. 430) [now 41 U.S.C. 1906] to waive a provision of law in the case of commercial items, and

''(B) any exception applicable under this Act or the Federal Acquisition Streamlining Act of 1994 (Public Law 103–355) [see Tables for classification] (or an amendment made by a provision of either Act) in the case of commercial items,

before the effective date of such provision (or amendment) to the extent that the Secretary determines

necessary to test the application of such waiver or exception to procurements of items other than commercial items.

''(h) APPLICABILITY.—(1) Subsections (f) and (g) apply to the following contracts, if such contracts are within the scope of the pilot program at a facility designated for the pilot program under subsection (b):

''(A) A contract that is awarded or modified during the period described in paragraph (2).

''(B) A contract that is awarded before the beginning of such period, that is to be performed (or may be performed), in whole or in part, during such period, and that may be modified as appropriate at no cost to the Government.

''(2) The period referred to in paragraph (1), with respect to a facility designated under subsection (b), is the period that—

''(A) begins 45 days after the date of the enactment of the Act authorizing the designation of that facility in accordance with paragraph (2) of such subsection; and

''(B) ends on September 30, 2000.

''(i) COMMERCIAL PRACTICES ENCOURAGED.—With respect to contracts and subcontracts within the scope of the defense facility-wide pilot program, the Secretary of Defense may, to the extent the Secretary determines appropriate and in accordance with applicable law, adopt commercial practices in the administration of contracts and subcontracts. Such commercial practices may include the following:

''(1) Substitution of commercial oversight and inspection procedures for Government audit and access to records.

''(2) Incorporation of commercial oversight, inspection, and acceptance procedures.

''(3) Use of alternative dispute resolution techniques (including arbitration).

''(4) Elimination of contract provisions authorizing the Government to make unilateral changes to contracts.''

ELIMINATION OF USE OF CLASS I OZONE-DEPLETING SUBSTANCES IN CERTAIN MILITARY PROCUREMENT CONTRACTS

Pub. L. 102–484, div. A, title III, § 326, Oct. 23, 1992, 106 Stat. 2368, as amended by Pub. L. 104–106, div. A, title XV, §§ 1502(c)(2)(A), 1504(c)(1), Feb. 10, 1996, 110 Stat. 506, 514; Pub. L. 106–65, div. A, title X, § 1067(8), Oct. 5, 1999, 113 Stat. 774; Pub. L. 113–291, div. A, title X, § 1071(b)(14), Dec. 19, 2014, 128 Stat. 3508, provided that:

''(a) ELIMINATION OF USE OF CLASS I OZONE-DEPLETING SUBSTANCES.—(1) No Department of Defense contract awarded after June 1, 1993, may include a specification or standard that requires the use of a class I ozone-depleting substance or that can be met only through the use of such a substance unless the inclusion of the specification or standard in the contract is approved by the senior acquisition official for the procurement covered by the contract. The senior acquisition official may grant the approval only if the senior acquisition official determines (based upon the certification of an appropriate technical representative of the official) that a suitable substitute for the class I ozone-depleting substance is not currently available.

''(2)(A)(i) Not later than 60 days after the completion of the first modification, amendment, or extension after June 1, 1993, of a contract referred to in clause (ii), the senior acquisition official (or the designee of that official) shall carry out an evaluation of the contract in order to determine—

''(I) whether the contract includes a specification or standard that requires the use of a class I ozone-depleting substance or can be met only through the use of such a substance; and

''(II) in the event of a determination that the contract includes such a specification or standard, whether the contract can be carried out through the use of an economically feasible substitute for the ozone-depleting substance or through the use of an economically feasible alternative technology for a technology involving the use of the ozone-depleting substance.

''(ii) A contract referred to in clause (i) is any contract in an amount in excess of $10,000,000 that—

''(I) was awarded before June 1, 1993; and

''(II) as a result of the modification, amendment, or extension described in clause (i), will expire more than 1 year after the effective date of the modification, amendment, or extension.

''(iii) A contract under evaluation under clause (i) may not be further modified, amended, or extended until the evaluation described in that clause is complete.

''(B) If the acquisition official (or designee) determines that an economically feasible substitute substance or alternative technology is available for use in a contract under evaluation, the appropriate contracting officer shall enter into negotiations to modify the contract to require the use of the substitute substance or alternative technology.

''(C) A determination that a substitute substance or technology is not available for use in a contract under evaluation shall be made in writing by the senior acquisition official (or designee).

''(D) The Secretary of Defense may, consistent with the Federal Acquisition Regulation, adjust the price of a contract modified under subparagraph (B) to take into account the use by the contractor of a substitute substance or alternative technology in the modified contract.

''(3) The senior acquisition official authorized to grant an approval under paragraph (1) and the senior acquisition official and designees authorized to carry out an evaluation and make a determination under paragraph (2) shall be determined under regulations prescribed by the Secretary of Defense. A senior acquisition official may not delegate the authority provided in paragraph (1).

''(4) Each official who grants an approval authorized under paragraph (1) or makes a determination under paragraph (2)(B) shall submit to the Secretary of Defense a report on that approval or determination, as the case may be, as follows:

''(A) Beginning on October 1, 1993, and continuing for 8 calendar quarters thereafter, by submitting a report on the approvals granted or determinations made under such authority during the preceding quarter not later than 30 days after the end of such quarter.

''(B) Beginning on January 1, 1997, and continuing for 4 years thereafter, by submitting a report on the approvals granted or determinations made under such authority during the preceding year not later than 30 days after the end of such year.

''(5) The Secretary shall promptly transmit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives each report submitted to the Secretary under paragraph (4). The Secretary shall transmit the report in classified and unclassified forms.

''(b) COST RECOVERY.—In any case in which a Department of Defense contract is modified or a specification or standard for such a contract is waived at the request of a contractor in order to permit the contractor to use in the performance of the contract a substitute for a class I ozone-depleting substance or an alternative technology for a technology involving the use of a class I ozone-depleting substance, the Secretary of Defense may adjust the price of the contract in a manner consistent with the Federal Acquisition Regulation.

''(c) DEFINITIONS.—In this section:

''(1) The term 'class I ozone-depleting substance' means any substance listed under section 602(a) of the Clean Air Act (42 U.S.C. 7671a(a)).

''(2) The term 'Federal Acquisition Regulation' means the single Government-wide procurement regulation issued under section 1303(a) of title 41, United States Code.''

PAYMENT PROTECTIONS FOR SUBCONTRACTORS AND SUPPLIERS

Pub. L. 102–190, div. A, title VIII, § 806, Dec. 5, 1991, 105 Stat. 1417, as amended by Pub. L. 102–484, div. A, title X, § 1053(5), Oct. 23, 1992, 106 Stat. 2502; Pub. L. 103–355, title II, § 2091, title VIII, § 8105(k), Oct. 13, 1994, 108 Stat. 3306, 3393; Pub. L. 113–291, div. A, title X, § 1071(b)(15), Dec. 19, 2014, 128 Stat. 3508; Pub. L. 115–232, div. A, title VIII, § 836(f)(1), Aug. 13, 2018, 132 Stat. 1870, provided that:

''(a) REGULATIONS.—The Secretary of Defense shall prescribe in regulations the following requirements:

''(1) INFORMATION PROVIDED BY DEPARTMENT OF DEFENSE RELATING TO PAYMENT.—(A) Subject to section 552(b)(1) of title 5, United States Code, upon the request of a subcontractor or supplier of a contractor performing a Department of Defense contract, the Department of Defense shall promptly make available to such subcontractor or supplier the following information:

''(i) Whether requests for progress payments or other payments have been submitted by the contractor to the Department of Defense in connection with that contract.

''(ii) Whether final payment to the contractor has been made by the Department of Defense in connection with that contract.

''(B) This paragraph shall apply with respect to any Department of Defense contract that is in effect on the date which is 270 days after the date of enactment of this Act [Dec. 5, 1991] or that is awarded after such date.

''(2) INFORMATION PROVIDED BY DEPARTMENT OF DEFENSE RELATING TO PAYMENT BONDS.—(A) Upon the request of a subcontractor or supplier described in subparagraph (B), the Department of Defense shall promptly make available to such subcontractor or supplier any of the following:

''(i) The name and address of the surety or sureties on the payment bond.

''(ii) The penal amount of the payment bond.

''(iii) A copy of the payment bond.

''(B) Subparagraph (A) applies to—

''(i) a subcontractor or supplier having a subcontract, purchase order, or other agreement to furnish labor or material for the performance of a Department of Defense contract with respect to which a payment bond has been furnished to the United States pursuant to the Miller Act; and

''(ii) a prospective subcontractor or supplier offering to furnish labor or material for the performance of such a Department of Defense contract.

''(C) With respect to the information referred to in subparagraphs (A)(i) and (A)(ii), the regulations shall include authority for such information to be provided verbally to the subcontractor or supplier.

''(D) With respect to the information referred to in subparagraph (A)(iii), the regulations may impose reasonable fees to cover the cost of copying and providing requested bonds.

''(E) This paragraph shall apply with respect to any Department of Defense contract covered by the Miller Act that is in effect on the date which is 270 days after the date of enactment of this Act [Dec. 5, 1991] or that is awarded after such date.

''(3) INFORMATION PROVIDED BY CONTRACTORS RELATING TO PAYMENT BONDS.—(A) Upon the request of a prospective subcontractor or supplier offering to furnish labor or material for the performance of a Department of Defense contract with respect to which a payment bond has been furnished to the United States pursuant to the Miller Act, the contractor shall promptly make available to such prospective subcontractor or supplier a copy of the payment bond.

''(B) This paragraph shall apply with respect to any Department of Defense contract covered by the Miller Act for which a solicitation is issued after the expiration of the 60-day period beginning on the effective date of the regulations promulgated under this subsection.

''(4) PROCEDURES RELATING TO COMPLIANCE WITH PAYMENT TERMS.—(A) Under procedures established in the regulations, upon the assertion by a subcontractor or supplier of a contractor performing a Department of Defense contract that the subcontractor or supplier has not been paid by the prime contractor in accordance with the payment terms of the subcontract, purchase order, or other agreement with the prime contractor, the contracting officer may determine the following:

''(i) With respect to a construction contract, whether the contractor has made progress payments to the subcontractor or supplier in compliance with chapter 39 of title 31, United States Code.

''(ii) With respect to a contract other than a construction contract, whether the contractor has made progress or other payments to the subcontractor or supplier in compliance with the terms of the subcontract, purchase order, or other agreement with the prime contractor.

''(iii) With respect to either a construction contract or a contract other than a construction contract, whether the contractor has made final payment to the subcontractor or supplier in compliance with the terms of the subcontract, purchase order, or other agreement with the prime contractor.

''(iv) With respect to either a construction contract or a contract other than a construction contract, whether any certification of payment of the subcontractor or supplier accompanying the contractor's payment request to the Government is accurate.

''(B) If the contracting officer determines that the prime contractor is not in compliance with any matter referred to in clause (i), (ii), or (iii) of subparagraph (A), the contracting officer may, under procedures established in the regulations—

''(i) encourage the prime contractor to make timely payment to the subcontractor or supplier; or

''(ii) reduce or suspend progress payments with respect to amounts due to the prime contractor.

''(C) If the contracting officer determines that a certification referred to in clause (iv) of subparagraph (A) is inaccurate in any material respect, the contracting officer shall, under procedures established in the regulations, initiate appropriate administrative or other remedial action.

''(D) This paragraph shall apply with respect to any Department of Defense contract that is in effect on the date of promulgation of the regulations under this subsection or that is awarded after such date.

''(b) INAPPLICABILITY TO CERTAIN CONTRACTS.—Regulations prescribed under this section shall not apply to a contract for the acquisition of commercial products or commercial services (as defined in sections 103 and 103a, respectively, of title 41, United States Code).

''(c) GOVERNMENT-WIDE APPLICABILITY.—The Federal Acquisition Regulatory Council (established by section 1302(a) of title 41, United States Code) shall modify the Federal Acquisition Regulation (issued pursuant to section 1303(a)(1) of such title 41[)] to apply Government-wide the requirements that the Secretary is required under subsection (a) to prescribe in regulations applicable with respect to the Department of Defense contracts.

''(d) ASSISTANCE TO SMALL BUSINESS CONCERNS.—[Amended section 15(k)(5) of the Small Business Act (15 U.S.C. 644(k)(5)).]

''(e) GAO REPORT.—(1) The Comptroller General of the United States shall conduct an assessment of the matters described in paragraph (2) and submit a report pursuant to paragraph (3).

''(2) In addition to such other related matters as the Comptroller General considers appropriate, the matters to be assessed pursuant to paragraph (1) are the following:

''(A) Timely payment of progress or other periodic payments to subcontractors and suppliers by prime contractors on Federal contracts by—

''(i) identifying all existing statutory and regulatory provisions, categorized by types of contracts covered by such provisions;

''(ii) evaluating the feasibility and desirability of requiring that a prime contractor (other than a construction prime contractor subject to the provisions of sections 3903(b) and 3905 of title 31, United States Code) be required to—

''(I) include in its subcontracts a payment term requiring payment within 7 days (or some other fixed term) after receiving payment from the Government; and

''(II) submit with its payment request to the Government a certification that it has timely paid its subcontractors in accordance with their subcontracts from funds previously received as progress payments and will timely make required payments to such subcontractors from the proceeds of the progress payment covered by the certification;

''(iii) evaluating the feasibility and desirability of requiring that all prime contractors (other than a construction prime contractor subject to the provisions of sections 3903(b) and 3905 of title 31, United States Code) furnish with its payment request to the Government proof of payment of the amounts included in such payment request for payments made to subcontractors and suppliers;

''(iv) evaluating the feasibility and desirability of requiring a prime contractor to establish an escrow account at a federally insured financial institution and requiring direct disbursements to subcontractors and suppliers of amounts certified by the prime contractor in its payment request to the Government as being payable to such subcontractors and suppliers in accordance with their subcontracts; and

''(v) evaluating the feasibility and desirability of requiring direct disbursement of amounts certified by a prime contractor as being payable to its subcontractors and suppliers in accordance with their subcontracts (using techniques such as joint payee checks, escrow accounts, or direct payment by the Government), if the contracting officer has determined that the prime contractor is failing to make timely payments to its subcontractors and suppliers.

''(B) Payment protection of subcontractors and suppliers through the use of payment bonds or alternatives methods by—

''(i) evaluating the effectiveness of the modifications to part 28.2 of the Federal Acquisition Regulation Part 28.2 (48 C.F.R. 28.200) relating to the use of individual sureties, which became effective February 26, 1990;

''(ii) evaluating the effectiveness of requiring payment bonds pursuant to the Miller Act as a means of affording protection to construction subcontractors and suppliers relating to receiving—

''(I) timely payment of progress payments due in accordance with their subcontracts; and

''(II) ultimate payment of such amounts due;

''(iii) evaluating the feasibility and desirability of increasing the payment bond amounts required under the Miller Act from the current maximum amounts to an amount equal to 100 percent of the amount of the contract;

''(iv) evaluating the feasibility and desirability of requiring payment bonds for supply and services contracts (other than construction), and, if feasible and desirable, the amounts of such bonds; and

''(v) evaluating the feasibility and desirability of using letters of credit issued by federally insured financial institutions (or other alternatives) as substitutes for payment bonds in providing payment protection to subcontractors and suppliers on construction contracts (and other contracts).

''(C) Any evaluation of feasibility and desirability carried out pursuant to subparagraph (A) or (B) shall include the appropriateness of—

''(i) any differential treatment of, or impact on, small business concerns as opposed to concerns other than small business concerns;

''(ii) any differential treatment of subcontracts relating to commercial products entered into by the contractor in furtherance of its non-Government business, especially those subcontracts entered into prior to the award of a contract by the Government; and

''(iii) extending the protections regarding payment to all tiers of subcontractors or restricting them to first-tier subcontractors and direct suppliers.

''(3) The report required by paragraph (1) shall include a description of the results of the assessment carried out pursuant to paragraph (2) and may include recommendations pertaining to any of the following:

''(A) Statutory and regulatory changes providing payment protections for subcontractors and suppliers (other than a construction prime contractor subject to the provisions of sections 3903(b) and 3905 of title 31, United States Code) that the Comptroller General believes to be desirable and feasible.

''(B) Proposals to assess the desirability and utility of a specific payment protection on a test basis.

''(C) Such other recommendations as the Comptroller General considers appropriate in light of the matters assessed pursuant to paragraph (2).

''(4) The report required by paragraph (1) shall be submitted not later than by February 1, 1993, to the Committees on Armed Services and on Small Business [now the Committee on Small Business and Entrepreneurship of the Senate] of the Senate and House of Representatives.

''(f) INSPECTOR GENERAL REPORT.—(1) The Inspector General of the Department of Defense shall submit to the Secretary of Defense a report on payment protections for subcontractors and suppliers under contracts entered into with the Department of Defense. The report shall include an assessment of the extent to which available judicial and administrative remedies, as well as suspension and debarment procedures, have been used (or recommended for use) by officials of the Department to deter false statements relating to (A) payment bonds provided by individuals pursuant to the Miller Act, and (B) certifications pertaining to payment requests by construction contractors pursuant to section 3903(b) of title 31, United States Code. The assessment shall cover actions taken during the period beginning on October 1, 1989, and ending on September 30, 1992.

''(2) The report required by paragraph (1) shall be submitted to the Secretary of Defense not later than March 1, 1993. The report may include recommendations by the Inspector General on ways to improve the effectiveness of existing methods of preventing false statements.

''(g) MILLER ACT DEFINED.—For purposes of this section, the term 'Miller Act' means the Act of August 24, 1935 (40 U.S.C. 270a–270d) [now 40 U.S.C. 3131, 3133].''

ADVISORY PANEL ON STREAMLINING AND CODIFYING ACQUISITION LAWS

Pub. L. 101–510, div. A, title VIII, § 800, Nov. 5, 1990, 104 Stat. 1587, as amended by Pub. L. 103–160, div. A, title IX, § 904(f), Nov. 30, 1993, 107 Stat. 1729, directed Under Secretary of Defense for Acquisition and Technology, not later than Jan. 15, 1991, to establish under sponsorship of Defense Systems Management College an advisory panel on streamlining and codifying acquisition laws, to review the acquisition laws applicable to Department of Defense with a view toward streamlining the defense acquisition process, to make any recommendations for repeal or amendment of such laws that the panel considers necessary, as a result of such review, and to prepare a proposed code of relevant acquisition laws, directed the advisory panel, not later than Dec. 15, 1992, to transmit a final report on the actions of the panel to the Under Secretary of Defense for Acquisition and Technology, and directed the Sec-

retary of Defense, not later than Jan. 15, 1993, to transmit the final report, together with such comments as he deems appropriate, to Congress.

MENTOR-PROTEGE PILOT PROGRAM

Pub. L. 114–92, div. A, title VIII, § 861(b), Nov. 25, 2015, 129 Stat. 925, provided that:

''(1) IN GENERAL.—The amendments made by subsection (a) [amending section 831 of Pub. L. 101–510, set out below] shall apply to a mentor-protege agreement made pursuant to section 831 of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101–510; 104 Stat. 1607; 10 U.S.C. 2302 note) entered into after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2016 [Nov. 25, 2015].

''(2) RETROACTIVITY OF REPORT AND REVIEW REQUIREMENTS.—The amendments made by subsection (a)(10) [amending section 831 of Pub. L. 101–510, set out below, by adding subsecs. (*l*) and (m)] shall apply to a mentor-protege agreement made pursuant to section 831 of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101–510; 104 Stat. 1607; 10 U.S.C. 2302 note) entered into before, on, or after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2016 [Nov. 25, 2015].''

Pub. L. 106–65, div. A, title VIII, § 811(d)(2), (3), Oct. 5, 1999, 113 Stat. 708, 709, as amended by Pub. L. 107–107, div. A, title X, § 1048(g)(5), Dec. 28, 2001, 115 Stat. 1228, directed the Secretary of Defense to conduct a review of the Mentor-Protege Program established in Pub. L. 101–510, § 831, set out below, to assess the feasibility of transitioning such program to operation without a specific appropriation or authority to provide reimbursement to a mentor firm and to assess additional incentives that could be extended to mentor firms to ensure adequate support and participation in the Program, directed the Secretary to submit to committees of Congress a report on the results of the review and recommendations not later than Sept. 30, 2000, and directed the Comptroller General to conduct a study on the implementation of the Program and the extent to which the Program was achieving its purposes in a cost-effective manner and to submit to committees of Congress a report on the results of the study not later than Jan. 1, 2002.

Pub. L. 102–484, div. A, title VIII, § 807(a), Oct. 23, 1992, 106 Stat. 2448, directed the Secretary of Defense, within 15 days after Oct. 23, 1992, to publish in the Department of Defense Supplement to the Federal Acquisition Regulation the Department of Defense policy for the pilot Mentor-Protege Program and the regulations, directives, and administrative guidance pertaining to such program as such policy, regulations, directives, and administrative guidance had existed on Dec. 6, 1991, and directed that proposed modifications to that policy and any amendments proposed in order to implement any of the amendments made by this section, amending Pub. L. 101–510, § 831, set out below, were to be published in final form within 120 days after Oct. 23, 1992.

Pub. L. 101–510, div. A, title VIII, § 831, Nov. 5, 1990, 104 Stat. 1607, as amended by Pub. L. 102–25, title VII, § 704(c), Apr. 6, 1991, 105 Stat. 119; Pub. L. 102–172, title VIII, § 8064A, Nov. 26, 1991, 105 Stat. 1186; Pub. L. 102–190, div. A, title VIII, § 814(b), Dec. 5, 1991, 105 Stat. 1425; Pub. L. 102–484, div. A, title VIII, §§ 801(h)(4), 807(b)(1), title X, § 1054(d), Oct. 23, 1992, 106 Stat. 2445, 2448, 2503; Pub. L. 103–160, div. A, title VIII, § 813(b)(1), (c), Nov. 30, 1993, 107 Stat. 1703; Pub. L. 104–106, div. A, title VIII, § 824, Feb. 10, 1996, 110 Stat. 399; Pub. L. 104–201, div. A, title VIII, § 802, Sept. 23, 1996, 110 Stat. 2604; Pub. L. 105–85, div. A, title VIII, § 821(a), title X, § 1073(c)(6), Nov. 18, 1997, 111 Stat. 1840, 1904; Pub. L. 106–65, div. A, title VIII, § 811(a)–(d)(1), (e), Oct. 5, 1999, 113 Stat. 706, 707, 709; Pub. L. 106–398, § 1 [[div. A], title VIII, § 807], Oct. 30, 2000, 114 Stat. 1654, 1654A–208; Pub. L. 107–107, div. A, title VIII, § 812, Dec. 28, 2001, 115 Stat. 1181; Pub. L. 108–375, div. A, title VIII, §§ 841(a), (b), 842, Oct. 28, 2004, 118 Stat. 2018, 2019; Pub. L. 112–10, div. A, title VIII, § 8016, Apr. 15, 2011, 125 Stat. 60; Pub. L. 112–81, div. A, title VIII, § 867, title X, § 1062(n), Dec. 31, 2011, 125 Stat. 1526, 1586; Pub. L. 112–239, div. A, title X, § 1076(a)(17), Jan. 2, 2013, 126 Stat. 1948; Pub. L. 113–291, div. A, title X, § 1071(b)(16), Dec. 19, 2014, 128 Stat. 3508; Pub. L. 114–92, div. A, title VIII, § 861(a), Nov. 25, 2015, 129 Stat. 921; Pub. L. 114–328, div. A, title XVIII, §§ 1813(b), 1823, Dec. 23, 2016, 130 Stat. 2652, 2656; Pub. L. 115–91, div. A, title XVII, § 1701(a)(4)(A), Dec. 12, 2017, 131 Stat. 1796, as amended by Pub. L. 116–283, div. A, title X, § 1081(e)(1), Jan. 1, 2021, 134 Stat. 3874; Pub. L. 115–232, div. A, title VIII, § 812(a)(2)(C)(ii), Aug. 13, 2018, 132 Stat. 1846; Pub. L. 116–92, div. A, title VIII, § 872(a)(1), (2), (b), (c), Dec. 20, 2019, 133 Stat. 1526; Pub. L. 116–283, div. A, title XVIII, § 1806(e)(3)(F), Jan. 1, 2021, 134 Stat. 4156, provided that:

''(a) ESTABLISHMENT OF PILOT PROGRAM.—The Secretary of Defense shall establish a pilot program to be known as the 'Mentor-Protege Program'.

''(b) PURPOSE.—The purpose of the program is to provide incentives for major Department of Defense contractors to furnish disadvantaged small business concerns with assistance designed to—

''(1) enhance the capabilities of disadvantaged small business concerns to perform as subcontractors and suppliers under Department of Defense contracts and other contracts and subcontracts; and

''(2) increase the participation of such business concerns as subcontractors and suppliers under Department of Defense contracts, other Federal Government contracts, and commercial contracts.

''(c) PROGRAM PARTICIPANTS.—(1) A business concern meeting the eligibility requirements set out in subsection (d) may enter into agreements under subsection (e) and furnish assistance to disadvantaged small business concerns upon making application to the Secretary of Defense and being approved for participation in the pilot program by the Secretary. A business concern participating in the pilot program pursuant to such an approval shall be known, for the purposes of the program, as a 'mentor firm'.

''(2) A disadvantaged small business concern eligible for the award of Federal contracts may obtain assistance from a mentor firm upon entering into an agreement with the mentor firm as provided in subsection (e). A disadvantaged small business concern may not be a party to more than one agreement concurrently, and the authority to enter into agreements under subsection (e) shall only be available to such concern during the 5-year period beginning on the date such concern enters into the first such agreement. A disadvantaged small business concern receiving such assistance shall be known, for the purposes of the program, as a 'protege firm'.

''(3) In entering into an agreement pursuant to subsection (e), a mentor firm may rely in good faith on a written representation of a business concern that such business concern is a disadvantaged small business concern. The Small Business Administration shall determine the status of such business concern as a disadvantaged small business concern in the event of a protest regarding the status of such business concern. If at any time the business concern is determined by the Small Business Administration not to be a disadvantaged small business concern, assistance furnished such business concern by the mentor firm after the date of the determination may not be considered assistance furnished under the program.

''(d) MENTOR FIRM ELIGIBILITY.—

''(1) Subject to subsection (c)(1), a mentor firm may enter into an agreement with one or more protege firms under subsection (e) and provide assistance under the program pursuant to that agreement if the mentor firm—

''(A) is eligible for award of Federal contracts; and

''(B) demonstrates that it—

''(i) is qualified to provide assistance that will contribute to the purpose of the program;

''(ii) is of good financial health and character and does not appear on a Federal list of debarred or suspended contractors; and

''(iii) can impart value to a protege firm because of experience gained as a Department of Defense contractor or through knowledge of general business operations and government contracting, as demonstrated by evidence that—

''(I) during the fiscal year preceding the fiscal year in which the mentor firm enters into the agreement, the total amount of the Department of Defense contracts awarded such mentor firm and the subcontracts awarded such mentor firm under Department of Defense contracts was equal to or greater than $100,000,000; or

''(II) the mentor firm demonstrates the capability to assist in the development of protege firms, and is approved by the Secretary of Defense pursuant to criteria specified in the regulations prescribed pursuant to subsection (k).

''(2) A mentor firm may not enter into an agreement with a protege firm if the Administrator of the Small Business Administration has made a determination finding affiliation between the mentor firm and the protege firm.

''(3) If the Administrator of the Small Business Administration has not made such a determination and if the Secretary has reason to believe (based on the regulations promulgated by the Administrator regarding affiliation) that the mentor firm is affiliated with the protege firm, the Secretary shall request a determination regarding affiliation from the Administrator of the Small Business Administration.

''(e) MENTOR-PROTEGE AGREEMENT.—Before providing assistance to a protege firm under the program, a mentor firm shall enter into a mentor-protege agreement with the protege firm regarding the assistance to be provided by the mentor firm. The agreement shall include the following:

''(1) A developmental program for the protege firm, in such detail as may be reasonable, including—

''(A) factors to assess the protege firm's developmental progress under the program;

''(B) a description of the quantitative and qualitative benefits to the Department of Defense from the agreement, if applicable;

''(C) goals for additional awards that [the] protege firm can compete for outside the Mentor-Protege Program; and

''(D) the assistance the mentor firm will provide to the protege firm in understanding contract regulations of the Federal Government and the Department of Defense (including the Federal Acquisition Regulation and the Defense Federal Acquisition Regulation Supplement) after award of a subcontract under this section, if applicable.

''(2) A program participation term for any period of not more than two years, except that the term may be a period of up to five years if the Secretary of Defense determines in writing that unusual circumstances justify a program participation term in excess of two years.

''(3) Procedures for the protege firm to terminate the agreement voluntarily and for the mentor firm to terminate the agreement for cause.

''(f) FORMS OF ASSISTANCE.—A mentor firm may provide a protege firm the following:

''(1) Assistance, by using mentor firm personnel, in—

''(A) general business management, including organizational management, financial management, and personnel management, marketing, and overall business planning;

''(B) engineering and technical matters such as production, inventory control, and quality assurance; and

''(C) any other assistance designed to develop the capabilities of the protege firm under the developmental program referred to in subsection (e).

''(2) Award of subcontracts on a noncompetitive basis to the protege firm under the Department of Defense or other contracts.

''(3) Payment of progress payments for performance of the protege firm under such a subcontract in amounts as provided for in the subcontract, but in no event may any such progress payment exceed 100 percent of the costs incurred by the protege firm for the performance.

''(4) Advance payments under such subcontracts.

''(5) Loans.

''(6) Assistance obtained by the mentor firm for the protege firm from one or more of the following—

''(A) small business development centers established pursuant to section 21 of the Small Business Act (15 U.S.C. 648);

''(B) entities providing procurement technical assistance pursuant to chapter 142 of title 10, United States Code;

''(C) a historically Black college or university or a minority institution of higher education; or

''(D) women's business centers described in section 29 of the Small Business Act (15 U.S.C. 656).

''(g) INCENTIVES FOR MENTOR FIRMS.—(1) The Secretary of Defense may provide to a mentor firm reimbursement for the total amount of any progress payment or advance payment made under the program by the mentor firm to a protege firm in connection with a Department of Defense contract awarded the mentor firm.

''(2)(A) The Secretary of Defense may provide to a mentor firm reimbursement for the costs of the assistance furnished to a protege firm pursuant to paragraphs (1) and (6) of subsection (f) (except as provided in subparagraph (D)) as provided for in a line item in a Department of Defense contract under which the mentor firm is furnishing products or services to the Department, subject to a maximum amount of reimbursement specified in such contract, except that this sentence does not apply in a case in which the Secretary of Defense determines in writing that unusual circumstances justify reimbursement using a separate contract.

''(B) The determinations made in annual performance reviews of a mentor firm's mentor-protege agreement shall be a major factor in the determinations of amounts of reimbursement, if any, that the mentor firm is eligible to receive in the remaining years of the program participation term under the agreement.

''(C) The total amount reimbursed under this paragraph to a mentor firm for costs of assistance furnished in a fiscal year to a protege firm may not exceed $1,000,000, except in a case in which the Secretary of Defense determines in writing that unusual circumstances justify a reimbursement of a higher amount.

''(D) The Secretary may not reimburse any fee assessed by the mentor firm for services provided to the protege firm pursuant to subsection (f)(6) or for business development expenses incurred by the mentor firm under a contract awarded to the mentor firm while participating in a joint venture with the protege firm.

''(3)(A) Costs incurred by a mentor firm in providing assistance to a protege firm that are not reimbursed pursuant to paragraph (2) shall be recognized as credit in lieu of subcontract awards for purposes of determining whether the mentor firm attains a subcontracting participation goal applicable to such mentor firm under a Department of Defense contract, under a contract with another executive agency, or under a divisional or company-wide subcontracting plan negotiated with the Department of Defense or another executive agency.

''(B) The amount of the credit given a mentor firm for any such unreimbursed costs shall be equal to—

''(i) four times the total amount of such costs attributable to assistance provided by entities described in subsection (f)(6);

''(ii) three times the total amount of such costs attributable to assistance furnished by the mentor firm's employees; and

''(iii) two times the total amount of any other such costs.

''(C) Under regulations prescribed pursuant to subsection (k), the Secretary of Defense shall adjust the amount of credit given a mentor firm pursuant to sub-

paragraphs (A) and (B) if the Secretary determines that the firm's performance regarding the award of subcontracts to disadvantaged small business concerns has declined without justifiable cause.

''(4) A mentor firm shall receive credit toward the attainment of a subcontracting participation goal applicable to such mentor firm for each subcontract for a product or service awarded under such contract by a mentor firm to a business concern that, except for its size, would be a small business concern owned and controlled by socially and economically disadvantaged individuals, but only if—

''(A) the size of such business concern is not more than two times the maximum size specified by the Administrator of the Small Business Administration for purposes of determining whether a business concern furnishing such product or service is a small business concern; and

''(B) the business concern formerly had a mentor-protege agreement with such mentor firm that was not terminated for cause.

''(h) RELATIONSHIP TO SMALL BUSINESS ACT.—(1) For purposes of the Small Business Act (15 U.S.C. 631 et seq.), no determination of affiliation or control (either direct or indirect) may be found between a protege firm and its mentor firm on the basis that the mentor firm has agreed to furnish (or has furnished) to its protege firm pursuant to a mentor-protege agreement any form of developmental assistance described in subsection (f).

''(2) Notwithstanding section 8 of the Small Business Act (15 U.S.C. 637), the Small Business Administration may not determine a disadvantaged small business concern to be ineligible to receive any assistance authorized under the Small Business Act on the basis that such business concern has participated in the Mentor-Protege Program or has received assistance pursuant to any developmental assistance agreement authorized under such program.

''(3) The Small Business Administration may not require a firm that is entering into, or has entered into, an agreement under subsection (e) as a protege firm to submit the agreement, or any other document required by the Secretary of Defense in the administration of the Mentor-Protege Program, to the Small Business Administration for review, approval, or any other purpose.

''(i) PARTICIPATION IN MENTOR-PROTEGE PROGRAM NOT TO BE A CONDITION FOR AWARD OF A CONTRACT OR SUBCONTRACT.—A mentor firm may not require a business concern to enter into an agreement with the mentor firm pursuant to subsection (e) as a condition for being awarded a contract by the mentor firm, including a subcontract under a contract awarded to the mentor firm.

''(j) EXPIRATION OF AUTHORITY.—(1) No mentor-protege agreement may be entered into under subsection (e) after September 30, 2024.

''(2) No reimbursement may be paid, and no credit toward the attainment of a subcontracting goal may be granted, under subsection (g) for any cost incurred after September 30, 2026.

''(k) REGULATIONS.—The Secretary of Defense shall prescribe regulations to carry out the pilot Mentor-Protege Program. Such regulations shall include the requirements set forth in section 8(d) of the Small Business Act (15 U.S.C. 637(d)) and shall prescribe procedures by which mentor firms may terminate participation in the program. The Secretary shall publish the proposed regulations not later than the date 180 days after the date of the enactment of this Act [Nov. 5, 1990]. The Secretary shall promulgate the final regulations not later than the date 270 days after the date of the enactment of this Act. The Department of Defense policy regarding the pilot Mentor-Protege Program shall be published and maintained as an appendix to the Department of Defense Supplement to the Federal Acquisition Regulation.

''(*l*) REPORT BY MENTOR FIRMS.—To comply with section 8(d)(7) of the Small Business Act (15 U.S.C. 637(d)(7)), each mentor firm shall submit a report to the Secretary not less than once each fiscal year that includes, for the preceding fiscal year—

''(1) all technical or management assistance provided by mentor firm personnel for the purposes described in subsection (f)(1);

''(2) any new awards of subcontracts on a competitive or noncompetitive basis to the protege firm under Department of Defense contracts or other contracts, including the value of such subcontracts;

''(3) any extensions, increases in the scope of work, or additional payments not previously reported for prior awards of subcontracts on a competitive or noncompetitive basis to the protege firm under Department of Defense contracts or other contracts, including the value of such subcontracts;

''(4) the amount of any payment of progress payments or advance payments made to the protege firm for performance under any subcontract made under the Mentor-Protege Program;

''(5) any loans made by [the] mentor firm to the protege firm;

''(6) all Federal contracts awarded to the mentor firm and the protege firm as a joint venture, designating whether the award was a restricted competition or a full and open competition;

''(7) any assistance obtained by the mentor firm for the protege firm from one or more—

''(A) small business development centers established pursuant to section 21 of the Small Business Act (15 U.S.C. 648);

''(B) entities providing procurement technical assistance pursuant to chapter 142 of title 10, United States Code; or

''(C) historically Black colleges or universities or minority institutions of higher education;

''(8) whether there have been any changes to the terms of the mentor-protege agreement; and

''(9) a narrative describing the success assistance provided under subsection (f) has had in addressing the developmental needs of the protege firm, the impact on Department of Defense contracts, and addressing any problems encountered.

''(m) REVIEW OF REPORT BY THE OFFICE OF SMALL BUSINESS PROGRAMS.—The Office of Small Business Programs of the Department of Defense shall review the report required by subsection (*l*) and, if the Office finds that the mentor-protege agreement is not furthering the purpose of the Mentor-Protege Program, decide not to approve any continuation of the agreement.

''(n) ESTABLISHMENT OF PERFORMANCE GOALS AND PERIODIC REVIEWS.—The Office of Small Business Programs of the Department of Defense shall—

''(1) establish performance goals consistent with the stated purpose of the Mentor-Protege Program and outcome-based metrics to measure progress in meeting those goals; and

''(2) submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives], not later than February 1, 2020, a report on progress made toward implementing these performance goals and metrics, based on periodic reviews of the procedures used to approve mentor-protege agreements.

''(*o*) DEFINITIONS.—In this section:

''(1) The term 'small business concern' has the meaning given such term under section 3 of the Small Business Act (15 U.S.C. 632).

''(2) The term 'disadvantaged small business concern' means a firm that is not more than the size standard corresponding to its primary North American Industry Classification System code, is not owned or managed by individuals or entities that directly or indirectly have stock options or convertible securities in the mentor firm, and is—

''(A) a small business concern owned and controlled by socially and economically disadvantaged individuals;

''(B) a business entity owned and controlled by an Indian tribe as defined by section 8(a)(13) of the Small Business Act (15 U.S.C. 637(a)(13));

''(C) a business entity owned and controlled by a Native Hawaiian Organization as defined by section 8(a)(15) of the Small Business Act (15 U.S.C. 637(a)(15));

''(D) a qualified organization employing severely disabled individuals;

''(E) a small business concern owned and controlled by women, as defined in section 8(d)(3)(D) of the Small Business Act (15 U.S.C. 637(d)(3)(D));

''(F) a small business concern owned and controlled by service–disabled veterans (as defined in section 8(d)(3) of the Small Business Act [15 U.S.C. 637(d)(3)]); and [sic]

''(G) a qualified HUBZone small business concern (as defined in section 31(b) of the Small Business Act [15 U.S.C. 657a(b)]); or

''(H) a small business concern that—

''(i) is a nontraditional defense contractor, as such term is defined in section 2302 of title 10, United States Code; or

''(ii) currently provides goods or services in the private sector that are critical to enhancing the capabilities of the defense supplier base and fulfilling key Department of Defense needs.

''(3) The term 'small business concern owned and controlled by socially and economically disadvantaged individuals' has the meaning given such term in section 8(d)(3)(C) of the Small Business Act (15 U.S.C. 637(d)(3)(C)).

''(4) The term 'historically Black college and university' means any of the historically Black colleges and universities referred to in section 2323 of title 10, United States Code, as in effect on March 1, 2018.

''(5) The term 'minority institution of higher education' means an institution of higher education with a student body that reflects the composition specified in section 312(b)(3), (4), and (5) of the Higher Education Act of 1965 (20 U.S.C. 1058(b)(3), (4), and (5)).

''(6) The term 'subcontracting participation goal', with respect to a Department of Defense contract, means a goal for the extent of the participation by disadvantaged small business concerns in the subcontracts awarded under such contract, as established pursuant to section 8(d) of the Small Business Act (15 U.S.C. 637(d)).

''(7) The term 'qualified organization employing the severely disabled' means a business entity operated on a for-profit or nonprofit basis that—

''(A) uses rehabilitative engineering to provide employment opportunities for severely disabled individuals and integrates severely disabled individuals into its workforce;

''(B) employs severely disabled individuals at a rate that averages not less than 20 percent of its total workforce;

''(C) employs each severely disabled individual in its workforce generally on the basis of 40 hours per week; and

''(D) pays not less than the minimum wage prescribed pursuant to section 6 of the Fair Labor Standards Act (29 U.S.C. 206) to those employees who are severely disabled individuals.

''(8) The term 'severely disabled individual' means an individual who is blind (as defined in section 8501 of title 41, United States Code) or a severely disabled individual (as defined in such section).

''(9) The term 'affiliation', with respect to a relationship between a mentor firm and a protege firm, means a relationship described under section 121.103 of title 13, Code of Federal Regulations (or any successor regulation).''

[Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1806(e)(3)(F), Jan. 1, 2021, 134 Stat. 4151, 4156, provided that effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, section 831(o)(2)(H)(i) of Pub. L. 101–510, set out above, is amended by substituting ''section 3014'' for ''section 2302''.]

[Pub. L. 116–283, div. A, title X, §1081(e)(1), Jan. 1, 2021, 134 Stat. 3874, which directed technical amendment of section 1701(a)(4)(A) of Pub. L. 115–91, which amended section 831 of Pub. L. 101–510, set out above, by striking ''Section 831(n)(2)(g)'' and inserting ''Section 831(*o*)(2)(G)'', was executed by making the substitution for ''Section 831(n)(2)(G)'' to reflect the probable intent of Congress.]

[Pub. L. 116–283, div. A, title X, §1081(e), Jan. 1, 2021, 134 Stat. 3874, provided that the amendment made by section 1081(e)(1) of Pub. L. 116–283 to section 1701(a)(4)(A) of Pub. L. 115–91, which amended section 831 of Pub. L. 101–510, set out above, is effective as of Dec. 12, 2017, and as if included in Pub. L. 115–91.]

[Pub. L. 116–92, div. A, title VIII, §872(a)(3), Dec. 20, 2019, 133 Stat. 1526, provided that: ''The amendments made by this subsection [amending section 831 of Pub. L. 101–510, set out above] shall take effect on the date on which the Secretary of Defense submits to Congress the small business strategy required under section 2283 of title 10, United States Code. The Secretary of Defense shall notify the Law Revision Counsel of the House of Representatives of the submission of the strategy so that the Law Revision Counsel may execute the amendments made by this subsection.'' Per notification received by Law Revision Counsel, submission of small business strategy occurred Nov. 2, 2019.]

[Pub. L. 114–92, §861(a)(11)(B)(iii), which directed amendment of section 831(n)(2)(G) of Pub. L. 101–510, set out above, by substituting ''Small Business Act (15 U.S.C. 632(p)); or'' for ''Small Business Act.'', was executed by substituting ''Small Business Act (15 U.S.C. 632(p))); or'' for ''Small Business Act).'' to reflect the probable intent of Congress.]

[Pub. L. 106–65, div. A, title VIII, §811(f), Oct. 5, 1999, 113 Stat. 709, provided that:

[''(1) The amendments made by this section [amending section 831 of Pub. L. 101–510, set out above] shall take effect on October 1, 1999, and shall apply with respect to mentor-protege agreements that are entered into under section 831(e) of the National Defense Authorization Act for Fiscal Year 1991 [Pub. L. 101–510, set out above] on or after that date.

[''(2) Section 831 of the National Defense Authorization Act for Fiscal Year 1991, as in effect on September 30, 1999, shall continue to apply with respect to mentor-protege agreements entered into before October 1, 1999.'']

[Section 807(b)(2) of Pub. L. 102–484 provided that: ''The amendment made by this subsection [amending section 831 of Pub. L. 101–510, set out above] shall take effect as of November 5, 1990.'']

Credit for Indian Contracting in Meeting Certain Minority Subcontracting Goals

Pub. L. 101–189, div. A, title VIII, §832, Nov. 29, 1989, 103 Stat. 1508, which provided credit for Indian contracting in meeting certain minority contracting goals, was repealed and restated in section 2323a of this title by Pub. L. 102–484, §801(g)(1)(B), (h)(5).

Equitable Participation of American Small and Minority-Owned Business in Furnishing of Commodities and Services

Pub. L. 101–165, title IX, §9004, Nov. 21, 1989, 103 Stat. 1129, which related to the equitable participation of American small and minority-owned businesses in furnishing commodities and services, was repealed by Pub. L. 115–232, div. A, title VIII, §812(b)(10), Aug. 13, 2018, 132 Stat. 1848.

Requirement for Substantial Progress on Minority and Small Business Contract Awards

Pub. L. 100–180, div. A, title VIII, §806(a)–(c), Dec. 4, 1987, 101 Stat. 1126, 1127, directed Secretary of Defense to issue regulations to ensure that substantial progress was made in increasing awards of Department of Defense contracts to small business concerns, historically Black colleges and universities, and minority institutions described in section 1207(a) of Pub. L. 99–661 [for-

merly set out below], prior to repeal by Pub. L. 102–484, div. A, title VIII, § 801(h)(7), Oct. 23, 1992, 106 Stat. 2446.

DEFINITIONS; RULE OF CONSTRUCTION FOR DUPLICATE AUTHORIZATION AND APPROPRIATION PROVISIONS OF PUBLIC LAWS 99–500, 99–591, AND 99–661

Pub. L. 100–26, §§ 2, 6, Apr. 21, 1987, 101 Stat. 273, 274, provided that:

''SEC. 2. REFERENCES TO 99TH CONGRESS LAWS

''For purposes of this Act [Pub. L. 100–26, see Short Title of 1987 Amendment note set out under section 101 of this title]:

''(1) The term 'Defense Authorization Act' means the Department of Defense Authorization Act, 1987 (division A of Public Law 99–661; 100 Stat. 3816 et seq.).

''(2) The term 'Defense Appropriations Act' means the Department of Defense Appropriations Act, 1987 (as contained in identical form in section 101(c) of Public Law 99–500 (100 Stat. 1783–82 et seq.) and section 101(c) of Public Law 99–591 (100 Stat. 3341–82 et seq.)).

''(3) The term 'Defense Acquisition Improvement Act' means title X of the Defense Appropriations Act [100 Stat. 1783–130, 3341–130] and title IX of the Defense Authorization Act [100 Stat. 3910] (as designated by the amendment made by section 3(5) [section 3(5) of Pub. L. 100–26]). Any reference in this Act to the Defense Acquisition Improvement Act shall be considered to be a reference to each such title.''

''SEC. 6. CONSTRUCTION OF DUPLICATE AUTHORIZATION AND APPROPRIATION PROVISIONS

''(a) RULE FOR CONSTRUCTION OF DUPLICATE PROVISIONS.—(1) In applying the provisions of Public Laws 99–500, 99–591, and 99–661 described in paragraph (2)—

''(A) the identical provisions of those public laws referred to in such paragraph shall be treated as having been enacted only once, and

''(B) in executing to the United States Code and other statutes of the United States the amendments made by such identical provisions, such amendments shall be executed so as to appear only once in the law as amended.

''(2) Paragraph (1) applies with respect to the provisions of the Defense Appropriations Act and the Defense Authorization Act (as amended by sections 3, 4, 5, and 10(a)) referred to across from each other in the following table:

''Section 101(c) of Public Law 99–500	Section 101(c) of Public Law 99–591	Division A of Public Law 99–661
''Title X	Title X	Title IX
''Sec. 9122	Sec. 9122	Sec. 522
''Sec. 9036(b)	Sec. 9036(b)	Sec. 1203
''Sec. 9115	Sec. 9115	Sec. 1311

''(b) RULE FOR DATE OF ENACTMENT.—(1) The date of the enactment of the provisions of law listed in the middle column, and in the right-hand column, of the table in subsection (a)(2) shall be deemed to be October 18, 1986 (the date of the enactment of Public Law 99–500).

''(2) Any reference in a provision of law referred to in paragraph (1) to 'the date of the enactment of this Act' shall be treated as a reference to October 18, 1986.''

[For classification of provisions listed in the table, see Tables.]

CONTRACT GOAL FOR MINORITIES

Pub. L. 99–661, div. A, title XII, § 1207, Nov. 14, 1986, 100 Stat. 3973, as amended by Pub. L. 100–180, div. A, title VIII, § 806(d), 101 Stat. 1127; Pub. L. 100–456, div. A, title VIII, § 844, Sept. 29, 1988, 102 Stat. 2027; Pub. L. 101–189, div. A, title VIII, § 831, Nov. 29, 1989, 103 Stat. 1507; Pub. L. 101–510, div. A, title VIII, §§ 811, 832, title XIII, §§ 1302(d), 1312(b), Nov. 5, 1990, 104 Stat. 1596, 1612, 1669, 1670; Pub. L. 102–25, title VII, §§ 704(a)(6), 705(e), Apr. 6, 1991, 105 Stat. 118, 120, which set contract goals for small disadvantaged businesses and certain institutions of higher education, was repealed and restated in former section 2323 of this title by Pub. L. 102–484, § 801(a)(1)(B), (h)(1).

MINIMUM PERCENTAGE OF COMPETITIVE PROCUREMENTS

Pub. L. 99–145, title IX, § 913, Nov. 8, 1985, 99 Stat. 687, as amended by Pub. L. 101–510, div. A, title XIII, § 1322(d)(1), Nov. 5, 1990, 104 Stat. 1672, provided that:

''(a) ANNUAL GOAL.—The Secretary of Defense shall establish for each fiscal year a goal for the percentage of defense procurements to be made during that year (expressed in total dollar value of contracts entered into) that are to be competitive procurements.

''(b) DEFINITION.—For the purposes of this section, the term 'competitive procurements' means procurements made by the Department of Defense through the use of competitive procedures, as defined in section 2304 of title 10, United States Code.''

DEFENSE PROCUREMENT REFORM: CONGRESSIONAL FINDINGS AND POLICY

Pub. L. 98–525, title XII, § 1202, Oct. 19, 1984, 98 Stat. 2588, as amended by Pub. L. 99–500, § 101(c) [title X, § 953(c)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–172, and Pub. L. 99–591, § 101(c) [title X, § 953(c)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–172; Pub. L. 99–661, div. A, title IX, formerly title IV, § 953(c), Nov. 14, 1986, 100 Stat. 3952, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273, provided that: ''The Congress finds that recent disclosures of excessive payments by the Department of Defense for replenishment parts have undermined confidence by the public and Congress in the defense procurement system. The Secretary of Defense should make every effort to reform procurement practices relating to replenishment parts. Such efforts should, among other matters, be directed to the elimination of excessive pricing of replenishment spare parts and the recovery of unjustified payments. Specifically, the Secretary should—

''(1) direct that officials in the Department of Defense refuse to enter into contracts unless the proposed prices are fair and reasonable;

''(2) continue and accelerate ongoing efforts to improve defense contracting procedures in order to encourage effective competition and assure fair and reasonable prices;

''(3) direct that replenishment parts be acquired in economic order quantities and on a multiyear basis whenever feasible, practicable, and cost effective;

''(4) direct that standard or commercial parts be used whenever such use is technically acceptable and cost effective; and

''(5) vigorously continue reexamination of policies relating to acquisition, pricing, and management of replenishment parts and of technical data related to such parts.''

MODIFICATION OF REGULATIONS AND DIRECTIVES TO ACCOMMODATE A POLICY OF MULTIYEAR PROCUREMENT

Pub. L. 97–86, title IX, § 909(d), Dec. 1, 1981, 95 Stat. 1120, directed Secretary of Defense, not later than the end of the 90-day period beginning Dec. 1, 1981, to issue such modifications to existing regulations governing defense acquisitions as might be necessary to implement the amendments made by subsections (a), (b), and (c) [amending sections 139, 2301, and 2306 of this title] and directed Director of the Office of Management and Budget to issue such modifications to existing Office of Management and Budget directives as might be necessary to take into account the amendments made by subsections (a) and (b) [amending sections 2301 and 2306 of this title].

PROCUREMENT REQUIREMENTS FOR GOODS WHICH ARE NOT AMERICAN GOODS

Pub. L. 93–365, title VII, § 707, Aug. 5, 1974, 88 Stat. 406, which prohibited contracts by the Department of Defense for other than American goods after Aug. 5, 1974,

unless adequate consideration was first given to bids of firms in labor surplus areas of the United States, of small business firms, and of all other United States firms which had offered to furnish American goods, balance of payments, cost of shipping other than American goods, and any duty, tariff, or surcharge on such goods, was repealed and restated in section 2501 of this title by Pub. L. 100–370, § 3(a), (c). Section 2501 of this title was renumbered section 2506 by Pub. L. 100–456, § 821(b)(1)(A). Section 2506 of this title was renumbered section 2533 by Pub. L. 102–484, § 4202(a).

§ 2302a. Simplified acquisition threshold

(a) SIMPLIFIED ACQUISITION THRESHOLD.—For purposes of acquisitions by agencies named in section 2303 of this title, the simplified acquisition threshold is as specified in section 134 of title 41.

(b) INAPPLICABLE LAWS.—No law properly listed in the Federal Acquisition Regulation pursuant to section 1905 of title 41 shall apply to or with respect to a contract or subcontract that is not greater than the simplified acquisition threshold.

(Added and amended Pub. L. 103–355, title IV, §§ 4002(a), 4102(a), Oct. 13, 1994, 108 Stat. 3338, 3340; Pub. L. 111–350, § 5(b)(9), Jan. 4, 2011, 124 Stat. 3843.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1823(b), Jan. 1, 2021, 134 Stat. 4151, 4205, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 251 of this title, as amended by section 1823(a) of Pub. L. 116–283, inserted after the table of sections, and redesignated as section 3571 of this title. See Effective Date of 2021 Amendment note below.

AMENDMENTS

2011—Subsec. (a). Pub. L. 111–350, § 5(b)(9)(A), substituted "section 134 of title 41" for "section 4(11) of the Office of Federal Procurement Policy Act".

Subsec. (b). Pub. L. 111–350, § 5(b)(9)(B), substituted "section 1905 of title 41" for "section 33 of the Office of Federal Procurement Policy Act".

1994—Subsec. (b). Pub. L. 103–355, § 4102(a), added subsec. (b).

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE

For effective date and applicability of section, see section 10001 of Pub. L. 103–355, set out as an Effective Date of 1994 Amendment note under section 2302 of this title.

§ 2302b. Implementation of simplified acquisition procedures

The simplified acquisition procedures contained in the Federal Acquisition Regulation pursuant to section 1901 of title 41 shall apply as provided in such section to the agencies named in section 2303(a) of this title.

(Added Pub. L. 103–355, title IV, § 4203(a)(1), Oct. 13, 1994, 108 Stat. 3345; amended Pub. L. 111–350, § 5(b)(10), Jan. 4, 2011, 124 Stat. 3843.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1823(b), Jan. 1, 2021, 134 Stat. 4151, 4205, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 251 of this title, inserted after section 3571, and redesignated as section 3572 of this title. See Effective Date of 2021 Amendment note below.

AMENDMENTS

2011—Pub. L. 111–350 substituted "section 1901 of title 41" for "section 31 of the Office of Federal Procurement Policy Act".

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE

For effective date and applicability of section, see section 10001 of Pub. L. 103–355, set out as an Effective Date of 1994 Amendment note under section 2302 of this title.

[§ 2302c. Repealed. Pub. L. 114–328, div. A, title VIII, § 833(b)(5)(A)(i), Dec. 23, 2016, 130 Stat. 2285]

Section, added Pub. L. 103–355, title IX, § 9002(a), Oct. 13, 1994, 108 Stat. 3402; amended Pub. L. 105–85, div. A, title VIII, § 850(f)(3)(A), Nov. 18, 1997, 111 Stat. 1850; Pub. L. 105–129, § 1(a)(1), Dec. 1, 1997, 111 Stat. 2551; Pub. L. 106–65, div. A, title X, § 1066(a)(18), Oct. 5, 1999, 113 Stat. 771; Pub. L. 107–107, div. A, title X, § 1048(b)(2), Dec. 28, 2001, 115 Stat. 1225; Pub. L. 109–364, div. A, title X, § 1071(a)(2), Oct. 17, 2006, 120 Stat. 2398; Pub. L. 111–350, § 5(b)(11), Jan. 4, 2011, 124 Stat. 3843, related to implementation of electronic commerce capability.

§ 2302d. Major system: definitional threshold amounts

(a) DEPARTMENT OF DEFENSE SYSTEMS.—For purposes of section 2302(5) of this title, a system for which the Department of Defense is responsible shall be considered a major system if—

(1) the total expenditures for research, development, test, and evaluation for the system are estimated to be more than $115,000,000 (based on fiscal year 1990 constant dollars); or

(2) the eventual total expenditure for procurement for the system is estimated to be more than $540,000,000 (based on fiscal year 1990 constant dollars).

(b) CIVILIAN AGENCY SYSTEMS.—For purposes of section 2302(5) of this title, a system for which a civilian agency is responsible shall be considered a major system if total expenditures for the system are estimated to exceed the greater of—

(1) $750,000 (based on fiscal year 1980 constant dollars); or

(2) the dollar threshold for a "major system" established by the agency pursuant to Office of Management and Budget (OMB) Circular A–109, entitled "Major Systems Acquisitions".

(c) ADJUSTMENT AUTHORITY.—(1) The Secretary of Defense may adjust the amounts and the base fiscal year provided in subsection (a) on the basis of Department of Defense escalation rates.

(2) An amount, as adjusted under paragraph (1), that is not evenly divisible by $5,000,000 shall be rounded to the nearest multiple of $5,000,000. In the case of an amount that is evenly divisible by $2,500,000 but not evenly divisible by $5,000,000, the amount shall be rounded to the next higher multiple of $5,000,000.

(3) An adjustment under this subsection shall be effective after the Secretary transmits to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a written notification of the adjustment.

(Added Pub. L. 104–201, div. A, title VIII, § 805(a)(2), Sept. 23, 1996, 110 Stat. 2605; amended Pub. L. 105–85, div. A, title X, § 1073(a)(41), Nov. 18, 1997, 111 Stat. 1902; Pub. L. 106–65, div. A, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 116–283, div. A, title XVIII, §§ 1806(c)(3), 1846(e)(1), Jan. 1, 2021, 134 Stat. 4155, 4249.)

AMENDMENT OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1806(c)(3), 1846(e)(1), Jan. 1, 2021, 134 Stat. 4151, 4155, 4249, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is amended as follows:

(1) by transferring subsections (a) and (b) to subsections (c) and (d), respectively, of section 3041 of this title; and

(2) by transferring subsection (c) to section 4202(b) and (c) of this title.

See 2021 Amendment notes below.

REPEAL OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1881(a), Jan. 1, 2021, 134 Stat. 4151, 4293, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is repealed.

AMENDMENTS

2021—Subsecs. (a), (b). Pub. L. 116–283, § 1806(c)(3), redesignated subsecs. (a) and (b) as section 3041(c) and (d), respectively, of this title.

Subsec. (c). Pub. L. 116–283, § 1846(e)(1), redesignated subsec. (c) as section 4202(b) and (c) of this title.

1999—Subsec. (c)(3). Pub. L. 106–65 substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security''.

1997—Subsec. (a)(2). Pub. L. 105–85 substituted ''procurement for the system is estimated to be'' for ''procurement of''.

EFFECTIVE DATE OF REPEAL

Repeal effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 2302e. Contract authority for development and demonstration of initial or additional prototype units

(a) AUTHORITY.—A contract initially awarded from the competitive selection of a proposal resulting from a general solicitation referred to in section 2302(2)(B) of this title may contain a contract line item or contract option for—

(1) the development and demonstration or initial production of technology developed under the contract; or

(2) the delivery of initial or additional items if the item or a prototype thereof is created as the result of work performed under the contract.

(b) LIMITATIONS.—

(1) MINIMAL AMOUNT.—A contract line item or contract option described in subsection (a)(2) shall require the delivery of the minimal amount of initial or additional items to allow for the timely competitive solicitation and award of a follow-on development or production contract for those items.

(2) TERM.—A contract line item or contract option described in subsection (a) shall be for a term of not more than 2 years.

(3) DOLLAR VALUE OF WORK.—The dollar value of the work to be performed pursuant to a contract line item or contract option described in subsection (a) may not exceed $100,000,000, in fiscal year 2017 constant dollars.

(4) APPLICABILITY.—The authority provided in subsection (a) applies only to the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, and the Secretary of the Air Force.

(c) PROCEDURES.—The Secretary of Defense shall establish procedures to collect and analyze information on the use and benefits of the authority under this section and related impacts on performance, affordability, and capability delivery.

(Added Pub. L. 115–91, div. A, title VIII, § 861(a)(1), Dec. 12, 2017, 131 Stat. 1493; amended Pub. L. 116–283, div. A, title VIII, § 831(a), Jan. 1, 2021, 134 Stat. 3753.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1818(c), Jan. 1, 2021, 134 Stat. 4151, 4188, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 243 of this title, inserted after section 3344, and redesignated as section 3345 of this title. See Effective Date of 2021 Amendment note below.

AMENDMENTS

2021—Pub. L. 116–283, § 831(a)(1), substituted ''development and demonstration'' for ''advanced development'' in section catchline.

Subsec. (a)(1). Pub. L. 116–283, § 831(a)(2), substituted ''development and demonstration'' for ''provision of advanced component development, prototype,''.

Subsec. (c). Pub. L. 116–283, § 831(a)(3), added subsec. (c).

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by section 1818(c) of Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 2303. Applicability of chapter

(a) This chapter applies to the procurement by any of the following agencies, for its use or oth-

erwise, of all property (other than land) and all services for which payment is to be made from appropriated funds:

(1) The Department of Defense.

(2) The Department of the Army.

(3) The Department of the Navy.

(4) The Department of the Air Force.

(5) The Coast Guard.

(6) The National Aeronautics and Space Administration.

(b) The provisions of this chapter that apply to the procurement of property apply also to contracts for its installation or alteration.

(Aug. 10, 1956, ch. 1041, 70A Stat. 128; Pub. L. 85–568, title III, § 301(b), July 29, 1958, 72 Stat. 432; Pub. L. 98–369, div. B, title VII, § 2722(b), July 18, 1984, 98 Stat. 1187; Pub. L. 116–283, div. A, title XVIII, § 1807(c)(2), (3), Jan. 1, 2021, 134 Stat. 4157.)

AMENDMENT OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1807(c)(2), (3), Jan. 1, 2021, 134 Stat. 4151, 4157, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is amended as follows:

(1) by transferring introductory provisions of subsection (a) to section 3064(a) of this title;

(2) by transferring paragraphs (1) to (6) of subsection (a) to section 3063 of this title; and

(3) by transferring subsection (b) to section 3064(b) of this title.

See 2021 Amendment notes below.

REPEAL OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1807(c)(4), Jan. 1, 2021, 134 Stat. 4151, 4157, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is repealed.

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2303(a)	41:151(a).	Feb. 19, 1948, ch. 65, §§ 2(a), 9 (clause (b)), 62 Stat. 21, 24.
2303(b)	41:158 (clause (b), less last 5 words).	
2303(c)	41:158 (last 5 words of clause (b)).	

In subsection (a), the words "all property named in subsection (b), and all services" are substituted for the words "for supplies or services". The words "(each being hereinafter called the agency)", are omitted, since the revised sections of this chapter make specific reference to the agencies named in this revised section. The words "United States" before the words "Coast Guard" are omitted, since they are not a part of the official name of the Coast Guard under section 1 of title 14.

In subsection (b), the introductory clause is substituted for the word "supplies". Throughout the revised chapter reference is made to "property or services covered by this chapter", instead of "supplies", since the word "supplies" is defined in section 101(26) of this title in its usual and narrower sense, rather than the sense of the source statute for this revised chapter. It is desirable to avoid a usage which conflicts with the definition in section 101(26) of this title. The word "ships" and the words "of every character, type, and description", after the word "vessels", are omitted as covered by the definition of "vessel" in section 1 of title 1.

AMENDMENTS

2021—Subsec. (a). Pub. L. 116–283, § 1807(c)(3), redesignated introductory provisions as section 3064(a) of this title.

Subsec. (a)(1) to (6). Pub. L. 116–283, § 1807(c)(2), redesignated pars. (1) to (6) as pars. (1) to (6) of section 3063 of this title.

Subsec. (b). Pub. L. 116–283, § 1807(c)(3), redesignated subsec. (b) as section 3064(b) of this title.

1984—Subsec. (a). Pub. L. 98–369, § 2722(b)(1)(A), (B), substituted in provisions preceding cl. (1) "procurement" for "purchase, and contract to purchase," and "(other than land) and all services" for "named in subsection (b), and all services,".

Subsec. (a)(1) to (6). Pub. L. 98–369, § 2722(b)(1)(C), (D), added cl. (1) and redesignated existing cls. (1) to (5) as (2) to (6), respectively.

Subsecs. (b), (c). Pub. L. 98–369, § 2722(b)(2), (3), redesignated subsec. (c) as (b). Former subsec. (b), which had provided that this chapter did not cover land but did cover public works, buildings, facilities, vessels, floating equipment, aircraft, parts, accessories, equipment, and machine tools, was struck out.

1958—Subsec. (a)(5). Pub. L. 85–568 substituted "The National Aeronautics and Space Administration" for "The National Advisory Committee for Aeronautics".

EFFECTIVE DATE OF REPEAL

Repeal effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable with respect to any solicitation for bids or proposals issued after Mar. 31, 1985, see section 2751 of Pub. L. 98–369, set out as a note under section 2302 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–568 effective 90 days after July 29, 1958, or on any earlier date on which the Administrator of the National Aeronautics and Space Administration determines, and announces by proclamation, that the Administration has been organized and is prepared to discharge the duties and exercise the powers conferred upon it, see note set out under section 2302 of this title.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

ACQUISITION, LEASE, OR RENTAL FOR USE BY THE ARMED FORCES OF MOTOR BUSES MANUFACTURED OUTSIDE THE UNITED STATES

Pub. L. 90–500, title IV, § 404, Sept. 20, 1968, 82 Stat. 851, which provided that no funds for the armed forces were to be used to buy or lease buses other than those manufactured in the United States, except as regulation from the Secretary of Defense might authorize solely to avoid uneconomical procurement or one contrary to the national interest, was repealed and restated as section 2400 of this title by Pub. L. 97–295, §§ 1(29)(A), 6(b), Oct. 12, 1982, 96 Stat. 1294, 1314.

[§ 2303a. Repealed. Pub. L. 98–577, title III, § 302(c)(1), Oct. 30, 1984, 98 Stat. 3077]

Section, Pub. L. 98–525, title XII, §1212(a), Oct. 19, 1984, 98 Stat. 2590, related to publication of proposed regulations.

Section, pursuant to section 1212(b) of Pub. L. 98–525, was to have taken effect with respect to procurement policies, regulations, procedures, or forms first proposed to be issued by an agency on or after the date which was 30 days after the date of enactment of Pub. L. 98–525. Pub. L. 98–525 was approved Oct. 19, 1984. However, before that effective date, the section was repealed by Pub. L. 98–577.

§ 2304. Contracts: competition requirements

(a)(1) Except as provided in subsections (b), (c), and (g) and except in the case of procurement procedures otherwise expressly authorized by statute, the head of an agency in conducting a procurement for property or services—

(A) shall obtain full and open competition through the use of competitive procedures in accordance with the requirements of this chapter and the Federal Acquisition Regulation; and

(B) shall use the competitive procedure or combination of competitive procedures that is best suited under the circumstances of the procurement.

(2) In determining the competitive procedure appropriate under the circumstances, the head of an agency—

(A) shall solicit sealed bids if—

(i) time permits the solicitation, submission, and evaluation of sealed bids;

(ii) the award will be made on the basis of price and other price-related factors;

(iii) it is not necessary to conduct discussions with the responding sources about their bids; and

(iv) there is a reasonable expectation of receiving more than one sealed bid; and

(B) shall request competitive proposals if sealed bids are not appropriate under clause (A).

(b)(1) The head of an agency may provide for the procurement of property or services covered by this chapter using competitive procedures but excluding a particular source in order to establish or maintain an alternative source or sources of supply for that property or service if the head of the agency determines that to do so—

(A) would increase or maintain competition and would likely result in reduced overall costs for such procurement, or for any anticipated procurement, of property or services;

(B) would be in the interest of national defense in having a facility (or a producer, manufacturer, or other supplier) available for furnishing the property or service in case of a national emergency or industrial mobilization;

(C) would be in the interest of national defense in establishing or maintaining an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center;

(D) would ensure the continuous availability of a reliable source of supply of such property or service;

(E) would satisfy projected needs for such property or service determined on the basis of a history of high demand for the property or service; or

(F) in the case of medical supplies, safety supplies, or emergency supplies, would satisfy a critical need for such supplies.

(2) The head of an agency may provide for the procurement of property or services covered by this section using competitive procedures, but excluding concerns other than small business concerns in furtherance of sections 9 and 15 of the Small Business Act (15 U.S.C. 638, 644).

(3) A contract awarded pursuant to the competitive procedures referred to in paragraphs (1) and (2) shall not be subject to the justification and approval required by subsection (f)(1).

(4) A determination under paragraph (1) may not be made for a class of purchases or contracts.

(c) The head of an agency may use procedures other than competitive procedures only when—

(1) the property or services needed by the agency are available from only one responsible source or only from a limited number of responsible sources and no other type of property or services will satisfy the needs of the agency;

(2) the agency's need for the property or services is of such an unusual and compelling urgency that the United States would be seriously injured unless the agency is permitted to limit the number of sources from which it solicits bids or proposals;

(3) it is necessary to award the contract to a particular source or sources in order (A) to maintain a facility, producer, manufacturer, or other supplier available for furnishing property or services in case of a national emergency or to achieve industrial mobilization, (B) to establish or maintain an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center, or (C) to procure the services of an expert for use, in any litigation or dispute (including any reasonably foreseeable litigation or dispute) involving the Federal Government, in any trial, hearing, or proceeding before any court, administrative tribunal, or agency, or to procure the services of an expert or neutral for use in any part of an alternative dispute resolution or negotiated rulemaking process, whether or not the expert is expected to testify;

(4) the terms of an international agreement or a treaty between the United States and a foreign government or international organization, or the written directions of a foreign government reimbursing the agency for the cost of the procurement of the property or services for such government, have the effect of requiring the use of procedures other than competitive procedures;

(5) subject to subsection (k), a statute expressly authorizes or requires that the procurement be made through another agency or from a specified source, or the agency's need is for a brand-name commercial product for authorized resale;

(6) the disclosure of the agency's needs would compromise the national security un-

less the agency is permitted to limit the number of sources from which it solicits bids or proposals; or

(7) the head of the agency—

(A) determines that it is necessary in the public interest to use procedures other than competitive procedures in the particular procurement concerned, and

(B) notifies the Congress in writing of such determination not less than 30 days before the award of the contract.

(d)(1) For the purposes of applying subsection (c)(1)—

(A) in the case of a contract for property or services to be awarded on the basis of acceptance of an unsolicited research proposal, the property or services shall be considered to be available from only one source if the source has submitted an unsolicited research proposal that demonstrates a concept—

(i) that is unique and innovative or, in the case of a service, for which the source demonstrates a unique capability of the source to provide the service; and

(ii) the substance of which is not otherwise available to the United States, and does not resemble the substance of a pending competitive procurement; and

(B) in the case of a follow-on contract for the continued development or production of a major system or highly specialized equipment, or the continued provision of highly specialized services, such property or services may be deemed to be available only from the original source and may be procured through procedures other than competitive procedures when it is likely that award to a source other than the original source would result in—

(i) substantial duplication of cost to the United States which is not expected to be recovered through competition; or

(ii) unacceptable delays in fulfilling the agency's needs.

(2) The authority of the head of an agency under subsection (c)(7) may not be delegated.

(3)(A) The contract period of a contract described in subparagraph (B) that is entered into by an agency pursuant to the authority provided under subsection (c)(2)—

(i) may not exceed the time necessary—

(I) to meet the unusual and compelling requirements of the work to be performed under the contract; and

(II) for the agency to enter into another contract for the required goods or services through the use of competitive procedures; and

(ii) may not exceed one year unless the head of the agency entering into such contract determines that exceptional circumstances apply.

(B) This paragraph applies to any contract in an amount greater than the simplified acquisition threshold.

(e) The head of an agency using procedures other than competitive procedures to procure property or services by reason of the application of subsection (c)(2) or (c)(6) shall request offers from as many potential sources as is practicable under the circumstances.

(f)(1) Except as provided in paragraph (2) and paragraph (6), the head of an agency may not award a contract using procedures other than competitive procedures unless—

(A) the contracting officer for the contract justifies the use of such procedures in writing and certifies the accuracy and completeness of the justification;

(B) the justification is approved—

(i) in the case of a contract for an amount exceeding $500,000 (but equal to or less than $10,000,000), by the competition advocate for the procuring activity (without further delegation) or by an official referred to in clause (ii) or (iii);

(ii) in the case of a contract for an amount exceeding $10,000,000 (but equal to or less than $75,000,000), by the head of the procuring activity (or the head of the procuring activity's delegate designated pursuant to paragraph (5)(A)); or

(iii) in the case of a contract for an amount exceeding $75,000,000, by the senior procurement executive of the agency designated pursuant to section 1702(c) of title 41 (without further delegation) or in the case of the Under Secretary of Defense for Acquisition and Sustainment, acting in his capacity as the senior procurement executive for the Department of Defense, the Under Secretary's delegate designated pursuant to paragraph (5)(B); and

(C) any required notice has been published with respect to such contract pursuant to section 1708 of title 41 and all bids or proposals received in response to that notice have been considered by the head of the agency.

(2) In the case of a procurement permitted by subsection (c)(2), the justification and approval required by paragraph (1) may be made after the contract is awarded. The justification and approval required by paragraph (1) is not required—

(A) when a statute expressly requires that the procurement be made from a specified source;

(B) when the agency's need is for a brand-name commercial product for authorized resale;

(C) in the case of a procurement permitted by subsection (c)(7);

(D) in the case of a procurement conducted under (i) chapter 85 of title 41, or (ii) section 8(a) of the Small Business Act (15 U.S.C. 637(a)); or

(E) in the case of a procurement permitted by subsection (c)(4), but only if the head of the contracting activity prepares a document in connection with such procurement that describes the terms of an agreement or treaty, or the written directions, referred to in that subsection that have the effect of requiring the use of procedures other than competitive procedures.

(3) The justification required by paragraph (1)(A) shall include—

(A) a description of the agency's needs;

(B) an identification of the statutory exception from the requirement to use competitive procedures and a demonstration, based on the

proposed contractor's qualifications or the nature of the procurement, of the reasons for using that exception;

(C) a determination that the anticipated cost will be fair and reasonable;

(D) a description of the market survey conducted or a statement of the reasons a market survey was not conducted;

(E) a listing of the sources, if any, that expressed in writing an interest in the procurement; and

(F) a statement of the actions, if any, the agency may take to remove or overcome any barrier to competition before a subsequent procurement for such needs.

(4) In no case may the head of an agency—

(A) enter into a contract for property or services using procedures other than competitive procedures on the basis of the lack of advance planning or concerns related to the amount of funds available to the agency for procurement functions; or

(B) procure property or services from another agency unless such other agency complies fully with the requirements of this chapter in its procurement of such property or services.

The restriction contained in clause (B) is in addition to, and not in lieu of, any other restriction provided by law.

(5)(A) The authority of the head of a procuring activity under paragraph (1)(B)(ii) may be delegated only to an officer or employee who—

(i) if a member of the armed forces, is a general or flag officer; or

(ii) if a civilian, is serving in a position with a grade under the General Schedule (or any other schedule for civilian officers or employees) that is comparable to or higher than the grade of brigadier general or rear admiral (lower half).

(B) The authority of the Under Secretary of Defense for Acquisition and Sustainment under paragraph (1)(B)(iii) may be delegated only to—

(i) an Assistant Secretary of Defense; or

(ii) with respect to the element of the Department of Defense (as specified in section 111(b) of this title), other than a military department, carrying out the procurement action concerned, an officer or employee serving in or assigned or detailed to that element who—

(I) if a member of the armed forces, is serving in a grade above brigadier general or rear admiral (lower half); or

(II) if a civilian, is serving in a position with a grade under the General Schedule (or any other schedule for civilian officers or employees) that is comparable to or higher than the grade of major general or rear admiral.

(6) The justification and approval required by paragraph (1) is not required in the case of a Phase III award made pursuant to section 9(r)(4) of the Small Business Act (15 U.S.C. 638(r)(4)).

(g)(1) In order to promote efficiency and economy in contracting and to avoid unnecessary burdens for agencies and contractors, the Federal Acquisition Regulation shall provide for—

(A) special simplified procedures for purchases of property and services for amounts not greater than the simplified acquisition threshold; and

(B) special simplified procedures for purchases of property and services for amounts greater than the simplified acquisition threshold but not greater than $5,000,000 with respect to which the contracting officer reasonably expects, based on the nature of the property or services sought and on market research, that offers will include only commercial products or commercial services.

(2) A proposed purchase or contract for an amount above the simplified acquisition threshold may not be divided into several purchases or contracts for lesser amounts in order to use the simplified procedures required by paragraph (1).

(3) In using simplified procedures, the head of an agency shall promote competition to the maximum extent practicable.

(4) The head of an agency shall comply with the Federal Acquisition Regulation provisions referred to in section 1901(e) of title 41.

(h) For the purposes of the following, purchases or contracts awarded after using procedures other than sealed-bid procedures shall be treated as if they were made with sealed-bid procedures:

(1) Chapter 65 of title 41.

(2) Sections 3141–3144, 3146, and 3147 of title 40.

(i)(1) The Secretary of Defense shall prescribe by regulation the manner in which the Department of Defense negotiates prices for supplies to be obtained through the use of procedures other than competitive procedures, as defined in section 2302(2) of this title.

(2) The regulations required by paragraph (1) shall—

(A) specify the incurred overhead a contractor may appropriately allocate to supplies referred to in that paragraph; and

(B) require the contractor to identify those supplies which it did not manufacture or to which it did not contribute significant value.

(3) Such regulations shall not apply to an item of supply included in a contract or subcontract for which the price is based on established catalog or market prices of commercial products sold in substantial quantities to the general public.

(j) The Federal Acquisition Regulation shall ensure that the requirement to obtain full and open competition is implemented in a manner that is consistent with the need to efficiently fulfill the Government's requirements.

(k)(1) It is the policy of Congress that an agency named in section 2303(a) of this title should not be required by legislation to award a new contract to a specific non-Federal Government entity. It is further the policy of Congress that any program, project, or technology identified in legislation be procured through merit-based selection procedures.

(2) A provision of law may not be construed as requiring a new contract to be awarded to a specified non-Federal Government entity unless that provision of law—

(A) specifically refers to this subsection;

(B) specifically identifies the particular non-Federal Government entity involved; and

(C) specifically states that the award to that entity is required by such provision of law in contravention of the policy set forth in paragraph (1).

(3) For purposes of this subsection, a contract is a new contract unless the work provided for in the contract is a continuation of the work performed by the specified entity under a preceding contract.

(4) This subsection shall not apply with respect to any contract that calls upon the National Academy of Sciences to investigate, examine, or experiment upon any subject of science or art of significance to an agency named in section 2303(a) of this title and to report on such matters to the Congress or any agency of the Federal Government.

(*l*)(1)(A) Except as provided in subparagraph (B), in the case of a procurement permitted by subsection (c), the head of an agency shall make publicly available, within 14 days after the award of the contract, the documents containing the justification and approval required by subsection (f)(1) with respect to the procurement.

(B) In the case of a procurement permitted by subsection (c)(2), subparagraph (A) shall be applied by substituting "30 days" for "14 days".

(2) The documents shall be made available on the website of the agency and through a government-wide website selected by the Administrator for Federal Procurement Policy.

(3) This subsection does not require the public availability of information that is exempt from public disclosure under section 552(b) of title 5.

(Aug. 10, 1956, ch. 1041, 70A Stat. 128; Pub. L. 85–800, § 8, Aug. 28, 1958, 72 Stat. 967; Pub. L. 85–861, § 33(a)(12), Sept. 2, 1958, 72 Stat. 1565; Pub. L. 87–653, § 1(a)–(c), Sept. 10, 1962, 76 Stat. 528; Pub. L. 90–268, § 5, Mar. 16, 1968, 82 Stat. 50; Pub. L. 90–500, title IV, § 405, Sept. 20, 1968, 82 Stat. 851; Pub. L. 93–356, § 4, July 25, 1974, 88 Stat. 390; Pub. L. 96–513, title V, § 511(76), Dec. 12, 1980, 94 Stat. 2926; Pub. L. 97–86, title IX, § 907(a), Dec. 1, 1981, 95 Stat. 1117; Pub. L. 97–295, § 1(24), Oct. 12, 1982, 96 Stat. 1290; Pub. L. 97–375, title I, § 114, Dec. 21, 1982, 96 Stat. 1821; Pub. L. 98–369, div. B, title VII, §§ 2723(a), 2727(b), July 18, 1984, 98 Stat. 1187, 1194; Pub. L. 98–577, title V, § 504(b)(1), (2), Oct. 30, 1984, 98 Stat. 3086; Pub. L. 99–145, title IX, § 961(a)(1), title XIII, § 1303(a)(13), Nov. 8, 1985, 99 Stat. 703, 739; Pub. L. 99–500, § 101(c) [title X, §§ 923(a)–(c), 927(a)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–152, 1783–155, and Pub. L. 99–591, § 101(c) [title X, §§ 923(a)–(c), 927(a)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–152, 3341–155; Pub. L. 99–661, div. A, title IX, formerly title IV, §§ 923(a)–(c), 927(a), title XIII, § 1343(a)(14), Nov. 14, 1986, 100 Stat. 3932, 3935, 3993, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; Pub. L. 100–26, § 7(d)(3), Apr. 21, 1987, 101 Stat. 281; Pub. L. 100–456, div. A, title VIII, § 803, Sept. 29, 1988, 102 Stat. 2008; Pub. L. 101–189, div. A, title VIII, §§ 812, 817, 818, 853(d), Nov. 29, 1989, 103 Stat. 1493, 1501, 1502, 1519; Pub. L. 101–510, div. A, title VIII, § 806(b), Nov. 5, 1990, 104 Stat. 1592; Pub. L. 102–25, title VII, § 701(d)(2), Apr. 6, 1991, 105 Stat. 114; Pub. L. 102–484, div. A, title VIII, §§ 801(h)(2), 816, title X, § 1052(23), Oct. 23, 1992, 106 Stat. 2445, 2454, 2500; Pub. L. 103–160, div. A, title IX, § 904(d)(1), Nov. 30, 1993, 107 Stat. 1728; Pub. L. 103–355, title I, §§ 1001–1003, 1004(b), 1005, title IV, § 4401(a), title VII, § 7203(a)(1), Oct. 13, 1994, 108 Stat. 3249, 3253, 3254, 3347, 3379; Pub. L. 104–106, div. D, title XLI, §§ 4101(a), 4102(a), title XLII, § 4202(a)(1), title XLIII, § 4321(b)(4), (5), Feb. 10, 1996, 110 Stat. 642, 643, 652, 672; Pub. L. 104–320, §§ 7(a)(1), 11(c)(1), Oct. 19, 1996, 110 Stat. 3871, 3873; Pub. L. 105–85, div. A, title VIII, §§ 841(b), 850(f)(3)(B), title X, § 1073(a)(42), (43), Nov. 18, 1997, 111 Stat. 1843, 1850, 1902; Pub. L. 107–107, div. A, title X, § 1048(b)(2), Dec. 28, 2001, 115 Stat. 1225; Pub. L. 107–217, § 3(b)(3), Aug. 21, 2002, 116 Stat. 1295; Pub. L. 108–375, div. A, title VIII, § 815, Oct. 28, 2004, 118 Stat. 2015; Pub. L. 109–364, div. A, title X, § 1071(a)(2), Oct. 17, 2006, 120 Stat. 2398; Pub. L. 110–181, div. A, title VIII, § 844(b), Jan. 28, 2008, 122 Stat. 239; Pub. L. 110–417, [div. A], title VIII, § 862(b), Oct. 14, 2008, 122 Stat. 4546; Pub. L. 111–350, § 5(b)(12), Jan. 4, 2011, 124 Stat. 3843; Pub. L. 115–91, div. A, title XVII, § 1709(b)(2), Dec. 12, 2017, 131 Stat. 1809; Pub. L. 115–232, div. A, title VIII, §§ 812(a)(2)(C)(v), 836(c)(2), Aug. 13, 2018, 132 Stat. 1847, 1864; Pub. L. 116–92, div. A, title IX, § 902(39), title XVII, § 1731(a)(37), Dec. 20, 2019, 133 Stat. 1547, 1814; Pub. L. 116–283, div. A, title XVIII, § 1811(c)(2)–(5), (d)(2)–(9), Jan. 1, 2021, 134 Stat. 4165–4170.)

AMENDMENT OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1811(c)(2)–(5), (d)(2)–(9), Jan. 1, 2021, 134 Stat. 4151, 4165–4170, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is amended as follows:

(1) by transferring subsection (a) to section 3201 of this title;

(2) by transferring subsection (b) to section 3203(a) of this title;

(3) by transferring subsection (c) to section 3204(a) of this title;

(4) by transferring subsection (d) to section 3204(b) of this title;

(5) by transferring subsection (e) to section 3204(d) of this title;

(6) by transferring subsection (f) to section 3204(e) of this title;

(7) by transferring subsection (g) to section 3205(a) of this title;

(8) by transferring subsection (h) to section 3201(d) of this title;

(9) by transferring subsection (i) to section 3204(g) of this title;

(10) by transferring subsection (j) to section 3201(c) of this title;

(11) by transferring subsection (k) to section 3201(e) of this title; and

(12) by transferring subsection (l) to section 3204(f) of this title.

See 2021 Amendment notes below.

REPEAL OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1881(a), Jan. 1, 2021, 134 Stat. 4151, 4293, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is repealed.

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	Source (U.S. Code)	Source (Statutes at Large)
2304(a)	41:151(c) (less proviso of clause (11) and proviso of clause (16)).	Feb. 19, 1948, ch. 65, §§ 2(b) (less 1st sentence), (c), (e), 7(d), 8, 62 Stat. 21, 22, 24.
2304(b)	41:156(d).	
2304(c)	41:151(e).	
2304(d)	41:151(b) (less 1st sentence).	
2304(e)	41:151(c) (proviso of clause (11) and proviso of clause (16)).	
2304(f)	41:157.	

In subsection (a)(1), the words ''the period of'' are omitted as surplusage.

In subsections (a)(4)–(10), and (12)–(15), the words ''the purchase or contract is'' are inserted for clarity.

In subsection (a)(5), the words ''to be rendered'' are omitted as surplusage.

In subsection (a)(6), the words ''its Territories'' are inserted for clarity. The words ''the limits of'' are omitted as surplusage.

In subsection (a)(14), the words ''and for which'' are substituted for the word ''when''.

In subsection (a)(15), the words ''and for which'' are substituted for 41:151(c)(15) (1st 22 words of proviso).

In subsection (a)(16), the words ''to have'' are substituted for the words ''be made or kept''.

In subsection (a)(17), the first 7 words are inserted for clarity.

In subsection (b), the words ''shall be kept'' are substituted for the words ''shall be preserved in the files''. The words ''six years after the date'' are substituted for the words ''a period of six years following''.

In subsection (c), the words ''but such authorization shall be required in the same manner as heretofore'' and ''continental'', in 41:151(e), are omitted as surplusage.

In subsection (d), the words ''before making'' are substituted for the words ''Whenever it is proposed to make''.

In subsection (e), the words ''beginning six months after the effective date of this chapter'' are omitted as executed. The words ''on May 19 and November 19 of each year'' are substituted for the words ''and at the end of each six-month period thereafter'', since the effective date of the source statute was May 19, 1948, and the first report was made on November 19, 1948. The words ''property and services covered by each contract'' are substituted for the words ''work required to be performed thereunder''.

1958 ACT

The change is necessary to reflect the present Commonwealth status of Puerto Rico.

1982 ACT

Revised section	Source (U.S. Code)	Source (Statutes at Large)
2304(a) (1st sentence).	10:2304 (note).	Mar. 16, 1967, Pub. L. 90–5, § 304, 81 Stat. 6.
2304(f)(1)	10:2304(f)(1).	
2304(i)	10:2304 (note).	Sept. 21, 1977, Pub. L. 95–111, § 836, 91 Stat. 906.

In subsection (a), the words ''The Secretary of Defense is hereby directed that insofar as practicable all contracts shall be formally advertised'' are omitted as unnecessary because of 10:2304(a) (1st sentence).

Subsection (f)(1) is amended to correct a mistake in spelling.

In subsection (i)(1)(B), the words ''or States'' are omitted because of 1:1.

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

AMENDMENTS

2021—Subsec. (a). Pub. L. 116–283, § 1811(c)(2), redesignated subsec. (a) as section 3201 of this title.

Subsec. (b). Pub. L. 116–283, § 1811(d)(2), redesignated subsec. (b) as section 3203(a) of this title.

Subsec. (c). Pub. L. 116–283, § 1811(d)(3), redesignated subsec. (c) as section 3204(a) of this title.

Subsec. (d). Pub. L. 116–283, § 1811(d)(4), redesignated subsec. (d) as section 3204(b) of this title.

Subsec. (e). Pub. L. 116–283, § 1811(d)(5), redesignated subsec. (e) as section 3204(d) of this title.

Subsec. (f). Pub. L. 116–283, § 1811(d)(6), redesignated subsec. (f) as section 3204(e) of this title.

Subsec. (g). Pub. L. 116–283, § 1811(d)(9), redesignated subsec. (g) as section 3205(a) of this title.

Subsec. (h). Pub. L. 116–283, § 1811(c)(4), redesignated subsec. (h) as section 3201(d) of this title.

Subsec. (i). Pub. L. 116–283, § 1811(d)(8), redesignated subsec. (i) as section 3204(g) of this title.

Subsec. (j). Pub. L. 116–283, § 1811(c)(3), redesignated subsec. (j) as section 3201(c) of this title.

Subsec. (k). Pub. L. 116–283, § 1811(c)(5), redesignated subsec. (k) as section 3201(e) of this title.

Subsec. (*l*). Pub. L. 116–283, § 1811(d)(7), redesignated subsec. (*l*) as section 3204(f) of this title.

2019—Subsec. (f)(1)(B)(ii). Pub. L. 116–92, § 1731(a)(37)(A), substituted ''paragraph (5)(A)'' for ''paragraph (6)(A)''.

Subsec. (f)(1)(B)(iii). Pub. L. 116–92, § 1731(a)(37)(B), substituted ''paragraph (5)(B)'' for ''paragraph (6)(B)''.

Pub. L. 116–92, § 902(39), substituted ''Under Secretary of Defense for Acquisition and Sustainment'' for ''Under Secretary of Defense for Acquisition, Technology, and Logistics''.

Subsec. (f)(5)(B). Pub. L. 116–92, § 902(39), substituted ''Under Secretary of Defense for Acquisition and Sustainment'' for ''Under Secretary of Defense for Acquisition, Technology, and Logistics''.

2018—Subsec. (b)(2). Pub. L. 115–232, § 812(a)(2)(C)(v), struck out ''and concerns other than small business concerns, historically Black colleges and universities, and minority institutions in furtherance of section 2323 of this title'' before period at end.

Subsecs. (c)(5), (f)(2)(B). Pub. L. 115–232, § 836(c)(2)(A), substituted ''brand-name commercial product'' for ''brand-name commercial item''.

Subsec. (g)(1)(B). Pub. L. 115–232, § 836(c)(2)(B), substituted ''commercial products or commercial services'' for ''commercial items''.

Subsec. (i)(3). Pub. L. 115–232, § 836(c)(2)(C), substituted ''commercial products'' for ''commercial items''.

2017—Subsec. (f)(1). Pub. L. 115–91, § 1709(b)(2)(A), inserted ''and paragraph (6)'' after ''paragraph (2)'' in introductory provisions.

Subsec. (f)(6). Pub. L. 115–91, § 1709(b)(2)(B), added par. (6).

2011—Subsec. (f)(1)(B)(iii). Pub. L. 111–350, § 5(b)(12)(A), substituted ''section 1702(c) of title 41'' for ''section 16(c) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(c))''.

Subsec. (f)(1)(C). Pub. L. 111–350, § 5(b)(12)(B), substituted ''section 1708 of title 41'' for ''section 18 of the Office of Federal Procurement Policy Act (41 U.S.C. 416)''.

Subsec. (f)(2)(D)(i). Pub. L. 111–350, § 5(b)(12)(C), substituted ''chapter 85 of title 41'' for ''the Javits-Wagner-O'Day Act (41 U.S.C. 46 et seq.)''.

Subsec. (g)(4). Pub. L. 111–350, § 5(b)(12)(D), substituted ''section 1901(e) of title 41'' for ''section 31(f) of the Office of Federal Procurement Policy Act (41 U.S.C. 427)''.

Subsec. (h)(1). Pub. L. 111–350, § 5(b)(12)(E), substituted ''Chapter 65 of title 41'' for ''The Walsh-Healey Act (41 U.S.C. 35 et seq.)''.

2008—Subsec. (d)(3). Pub. L. 110–417 added par. (3).

Subsec. (f)(4) to (6). Pub. L. 110–181, § 844(b)(2), redesignated pars. (5) and (6) as (4) and (5), respectively, and struck out former par. (4) which read as follows: ''The

justification required by paragraph (1)(A) and any related information, and any document prepared pursuant to paragraph (2)(E), shall be made available for inspection by the public consistent with the provisions of section 552 of title 5.''

Subsec. (*l*). Pub. L. 110–181, §844(b)(1), added subsec. (*l*).

2006—Subsec. (f)(1)(B)(iii). Pub. L. 109–364 substituted ''section 16(c) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(c))'' for ''section 16(3) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(3))''.

2004—Subsec. (f)(1)(B)(ii), (iii). Pub. L. 108–375 substituted ''$75,000,000'' for ''$50,000,000''.

2002—Subsec. (h). Pub. L. 107–217, §3(b)(3)(A), struck out ''laws'' after ''following'' in introductory provisions.

Subsec. (h)(2). Pub. L. 107–217, §3(b)(3)(B), substituted ''Sections 3141–3144, 3146, and 3147 of title 40'' for ''The Act entitled 'An Act relating to the rate of wages for laborers and mechanics employed on public buildings of the United States and the District of Columbia by contractors and subcontractors, and for other purposes', approved March 3, 1931 (commonly referred to as the 'Davis-Bacon Act') (40 U.S.C. 276a—276a–5)''.

2001—Subsec. (f)(1)(B)(iii), (6)(B). Pub. L. 107–107 substituted ''Under Secretary of Defense for Acquisition, Technology, and Logistics'' for ''Under Secretary of Defense for Acquisition and Technology''.

1997—Subsec. (c)(5). Pub. L. 105–85, §1073(a)(42), substituted ''subsection (k)'' for ''subsection (j)''.

Subsec. (f)(1)(B)(iii). Pub. L. 105–85, §1073(a)(43)(A), substituted ''(6)(B)'' for ''(6)(C)''.

Subsec. (f)(2)(E). Pub. L. 105–85, §841(b), struck out ''and such document is approved by the competition advocate for the procuring activity'' after ''requiring the use of procedures other than competitive procedures''.

Subsec. (f)(6)(B), (C). Pub. L. 105–85, §1073(a)(43)(B), redesignated subpar. (C) as (B), substituted ''paragraph (1)(B)(iii)'' for ''paragraph (1)(B)(iv)'' in introductory provisions, and struck out former subpar. (B), which read as follows: ''The authority of the senior procurement executive under paragraph (1)(B)(iii) may be delegated only to an officer or employee within the senior procurement executive's organization who—

''(i) if a member of the armed forces, is a general or flag officer; or

''(ii) if a civilian, is serving in a position in grade GS–16 or above (or in a comparable or higher position under any other schedule for civilian officers or employees).''

Subsec. (g)(4). Pub. L. 105–85, §850(f)(3)(B), substituted ''31(f)'' for ''31(g)''.

1996—Subsec. (c)(3)(C). Pub. L. 104–320 substituted ''agency, or to procure the services of an expert or neutral for use'' for ''agency, or'' and inserted ''or negotiated rulemaking'' after ''alternative dispute resolution''.

Subsec. (f)(1)(B)(i). Pub. L. 104–106, §4102(a)(1), substituted ''$500,000 (but equal to or less than $10,000,000)'' for ''$100,000 (but equal to or less than $1,000,000)'' and ''(ii) or (iii)'' for ''(ii), (iii), or (iv)''.

Subsec. (f)(1)(B)(ii). Pub. L. 104–106, §4102(a)(2), substituted ''$10,000,000 (but equal to or less than $50,000,000)'' for ''$1,000,000 (but equal to or less than $10,000,000)'' and inserted ''or'' at end.

Subsec. (f)(1)(B)(iii), (iv). Pub. L. 104–106, §4102(a)(3), (4), redesignated cl. (iv) as (iii) and struck out former cl. (iii) which read as follows: ''in the case of a contract for an amount exceeding $10,000,000 (but equal to or less than $50,000,000), by the senior procurement executive of the agency designated pursuant to section 16(3) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(3)) or the senior procurement executive's delegate designated pursuant to paragraph (6)(B), or in the case of the Under Secretary of Defense for Acquisition and Technology, acting in his capacity as the senior procurement executive for the Department of Defense, the Under Secretary's delegate designated pursuant to paragraph (6)(C); or''.

Subsec. (f)(2)(D). Pub. L. 104–106, §4321(b)(4), substituted ''the Javits-Wagner-O'Day Act (41 U.S.C. 46 et seq.),'' for ''the Act of June 25, 1938 (41 U.S.C. 46 et seq.), popularly referred to as the Wagner-O'Day Act,''.

Subsec. (g)(1). Pub. L. 104–106, §4202(a)(1)(A), substituted ''shall provide for—'' and subpars. (A) and (B) for ''shall provide for special simplified procedures for purchases of property and services for amounts not greater than the simplified acquisition threshold.''

Subsec. (g)(4). Pub. L. 104–106, §4202(a)(1)(B), added par. (4).

Subsec. (h)(1). Pub. L. 104–106, §4321(b)(5), added par. (1) and struck out former par. (1) which read as follows: ''The Act entitled 'An Act to provide conditions for the purchase of supplies and the making of contracts by the United States, and for other purposes', approved June 30, 1936 (commonly referred to as the 'Walsh-Healey Act') (41 U.S.C. 35–45).''

Subsecs. (j), (k). Pub. L. 104–106, §4101(a), added subsec. (j) and redesignated former subsec. (j) as (k).

1994—Subsec. (a)(1)(A). Pub. L. 103–355, §1001(1), substituted ''Federal Acquisition Regulation'' for ''modifications to regulations promulgated pursuant to section 2752 of the Competition in Contracting Act of 1984 (41 U.S.C. 403 note)''.

Subsec. (b)(1)(D) to (F). Pub. L. 103–355, §1002(a), added subpars. (D) to (F).

Subsec. (b)(4). Pub. L. 103–355, §1002(b), added par. (4).

Subsec. (c)(3)(C). Pub. L. 103–355, §1005, added subpar. (C).

Subsec. (c)(5). Pub. L. 103–355, §7203(a)(1)(A), inserted ''subject to subsection (j),'' after ''(5)''.

Subsec. (f)(1)(B)(i). Pub. L. 103–355, §1003, inserted before semicolon at end ''or by an official referred to in clause (ii), (iii), or (iv)''.

Subsec. (g)(1). Pub. L. 103–355, §§1001(2), 4401(a)(1), substituted ''Federal Acquisition Regulation'' for ''regulations modified in accordance with section 2752 of the Competition in Contracting Act of 1984 (41 U.S.C. 403 note)'' and ''purchases of property and services for amounts not greater than the simplified acquisition threshold'' for ''small purchases of property and services''.

Subsec. (g)(2). Pub. L. 103–355, §4401(a)(4), substituted ''simplified acquisition threshold'' for ''small purchase threshold'' and ''simplified procedures'' for ''small purchase procedures''.

Pub. L. 103–355, §4401(a)(2), (3), redesignated par. (3) as (2) and struck out former par. (2) which read as follows: ''For the purposes of this subsection, a small purchase is a purchase or contract for an amount which does not exceed the small purchase threshold.''

Subsec. (g)(3). Pub. L. 103–355, §4401(a)(5), substituted ''simplified procedures'' for ''small purchase procedures''.

Pub. L. 103–355, §4401(a)(3), redesignated par. (4) as (3). Former par. (3) redesignated (2).

Subsec. (g)(4). Pub. L. 103–355, §4401(a)(3), redesignated par. (4) as (3).

Subsec. (j). Pub. L. 103–355, §7203(a)(1)(B), added subsec. (j).

Pub. L. 103–355, §1004(b), struck out subsec. (j) which related to authority of Secretary of Defense to enter into master agreements for advisory and assistance services.

1993—Subsec. (f)(1)(B)(iii), (iv), (6)(C). Pub. L. 103–160 substituted ''Under Secretary of Defense for Acquisition and Technology'' for ''Under Secretary of Defense for Acquisition''.

1992—Subsec. (b)(2). Pub. L. 102–484, §801(h)(2), substituted ''section 2323 of this title'' for ''section 1207 of the National Defense Authorization Act for Fiscal Year 1987 (10 U.S.C. 2301 note)''.

Subsec. (j)(3)(A). Pub. L. 102–484, §1052(23), substituted ''section 8(d) of the Small Business Act (15 U.S.C. 637(d))'' for ''section 8(e) of the Small Business Act (15 U.S.C. 637(e))''.

Subsec. (j)(5). Pub. L. 102–484, §816, substituted ''on September 30, 1994.'' for ''at the end of the three-year period beginning on the date on which final regulations prescribed to carry out this subsection take effect.''

1991—Subsec. (g)(2). Pub. L. 102–25, §701(d)(2)(A)(i), substituted ''subsection'' for ''chapter''.

Subsec. (g)(5). Pub. L. 102–25, § 701(d)(2)(A)(ii), struck out par. (5) which provided that in this subsection, the term ''small purchase threshold'' has the meaning given such term in section 403(11) of title 41. See section 2302(7) of this title.

Subsec. (j)(3)(A). Pub. L. 102–25, § 701(d)(2)(B), substituted ''the small purchase threshold'' for ''$25,000''.

1990—Subsec. (g). Pub. L. 101–510 substituted ''the small purchase threshold'' for ''$25,000'' in pars. (2) and (3) and added par. (5).

1989—Subsec. (b)(2). Pub. L. 101–189, § 853(d), substituted ''The head of an agency'' for ''An executive agency'' and ''concerns other than'' for ''other than'' and inserted before period at end ''and concerns other than small business concerns, historically Black colleges and universities, and minority institutions in furtherance of section 1207 of the National Defense Authorization Act for Fiscal Year 1987 (10 U.S.C. 2301 note)''.

Subsec. (f)(1)(B)(iii). Pub. L. 101–189, § 818(a)(1), (3), added cl. (iii). Former cl. (iii) redesignated (iv).

Subsec. (f)(1)(B)(iv). Pub. L. 101–189, § 818(a)(2), (c)(1), redesignated cl. (iii) as (iv) and substituted ''$50,000,000'' for ''$10,000,000'' and ''paragraph (6)(C)'' for ''paragraph (6)(B)''.

Subsec. (f)(2)(E). Pub. L. 101–189, § 817(a), added subpar. (E).

Subsec. (f)(4). Pub. L. 101–189, § 817(b), inserted '', and any document prepared pursuant to paragraph (2)(E),'' after ''any related information''.

Subsec. (f)(6)(B). Pub. L. 101–189, § 818(b)(2), added subpar. (B). Former subpar. (B) redesignated (C).

Subsec. (f)(6)(C). Pub. L. 101–189, § 818(b)(1), (c)(2), redesignated subpar. (B) as (C) and substituted ''paragraph (1)(B)(iv)'' for ''paragraph (1)(B)(iii)''.

Subsec. (j). Pub. L. 101–189, § 812, added subsec. (j).

1988—Subsec. (f)(1)(B)(ii). Pub. L. 100–456, § 803(1), substituted ''(or the head of the procuring activity's delegate designated pursuant to paragraph (6)(A));'' for ''or a delegate who, if a member of the armed forces, is a general or flag officer or, if a civilian, is serving in a position in grade GS–16 or above under the General Schedule (or in a comparable or higher position under another schedule);''.

Subsec. (f)(1)(B)(iii). Pub. L. 100–456, § 803(2), inserted ''or in the case of the Under Secretary of Defense for Acquisition, acting in his capacity as the senior procurement executive for the Department of Defense, the Under Secretary's delegate designated pursuant to paragraph (6)(B)'' before semicolon at end.

Subsec. (f)(6). Pub. L. 100–456, § 803(3), added par. (6).

1987—Subsec. (a)(1)(A). Pub. L. 100–26, § 7(d)(3)(A), inserted ''(41 U.S.C. 403 note)'' after ''Competition in Contracting Act of 1984''.

Subsec. (f)(1)(C). Pub. L. 100–26, § 7(d)(3)(B), inserted ''(41 U.S.C. 416)'' after ''Policy Act''.

Subsec. (g)(1). Pub. L. 100–26, § 7(d)(3)(A), inserted ''(41 U.S.C. 403 note)'' after ''Act of 1984''.

1986—Subsec. (b)(2). Pub. L. 99–661, § 1343(a)(14), substituted ''15 U.S.C. 638,'' for ''15 U.S.C. 639;''.

Subsec. (c)(1). Pub. L. 99–500 and Pub. L. 99–591, § 101(c) [§ 923(a)], Pub. L. 99–661, § 923(a), amended par. (1) identically, inserting ''or only from a limited number of responsible sources''.

Subsec. (d)(1)(A). Pub. L. 99–500 and Pub. L. 99–591, § 101(c) [§ 923(b)], Pub. L. 99–661, § 923(b), amended subpar. (A) identically, substituting ''a concept—'' for ''a unique and innovative concept'', adding cl. (i), and designating provision relating to nonavailability to the United States and nonresemblance to a pending competitive procurement as cl. (ii).

Subsec. (d)(1)(B). Pub. L. 99–500 and Pub. L. 99–591, § 101(c) [§ 923(c)], Pub. L. 99–661, § 923(c), amended subpar. (B) identically, inserting '', or the continued provision of highly specialized services, such property or services may be deemed to be available only from the original source and may be procured through procedures other than competitive procedures'' after ''highly specialized equipment'', inserted a one-em dash after ''would result in'', paragraphed cls. (i) and (ii), in cl. (i) substituted ''competition;'' for ''competition,'', and in cl. (ii) struck out '', such property may be deemed to be available only from the original source and may be procured through procedures other than competitive procedures'' after ''agency's needs''.

Subsec. (i). Pub. L. 99–500 and Pub. L. 99–591, § 101(c) [§ 927(a)], Pub. L. 99–661, § 927(a), amended section identically, adding subsec. (i).

1985—Subsec. (a)(1)(B). Pub. L. 99–145, § 1303(a)(13), substituted ''procedures'' for ''krocedures''.

Subsec. (f)(2). Pub. L. 99–145, § 961(a)(1), amended second sentence generally. Prior to amendment, second sentence read as follows: ''The justification and approval required by paragraph (1) is not required in the case of a procurement permitted by subsection (c)(7) or in the case of a procurement conducted under—

''(A) the Act of June 25, 1938 (41 U.S.C. 46 et seq.), popularly referred to as the Wagner-O'Day Act; or

''(B) the authority of section 8(a) of the Small Business Act (15 U.S.C. 637).''

1984—Pub. L. 98–369, § 2723(a), substituted ''Contracts: competition requirements'' for ''Purchases and contracts: formal advertising; exceptions'' in section catchline and struck out subsecs. (a) to (e) and (g) to (i), redesignated subsec. (f) as (h), and added new subsecs. (a) through (g), thereby removing the prior statutory preference for formal advertising and installing instead more competitive procurement procedures, including dual sourcing, but with provision for the use of other than competitive procedures in specified situations.

Subsec. (b)(2). Pub. L. 98–577, § 504(b)(1), substituted provisions to the effect that executive agencies may provide for procurement of property or services covered by this section using competitive procedures but excluding other than small business concerns for provisions which provided that executive agencies shall use competitive procedures but may restrict a solicitation to allow only small business concerns to compete.

Subsec. (b)(3). Pub. L. 98–577, § 504(b)(1), added par. (3).

Subsec. (f)(2). Pub. L. 98–577, § 504(b)(2), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (h). Pub. L. 98–369, § 2727(b), substituted ''contracts awarded after using procedures other than sealed-bid procedures shall be treated as if they were made with sealed bid procedures'' for ''contracts negotiated under this section shall be treated as if they were made with formal advertising''.

Pub. L. 98–369, § 2723(a)(1)(B), redesignated subsec. (f) as (h).

1982—Subsec. (a). Pub. L. 97–295, § 1(24)(A), inserted '', and shall be awarded on a competitive bid basis to the lowest responsible bidder,'' after ''formal advertising''.

Subsec. (e). Pub. L. 97–375 repealed subsec. (e) which directed that a report be made on May and November 19 of each year of purchases and contracts under cls. (11) and (16) of subsec. (a) since the last report, and that the report name each contractor, state the amount of each contract, and describe, with consideration of the national security, the property and services covered by each contract.

Subsec. (f)(1). Pub. L. 97–295, § 1(24)(B), substituted ''Healey'' for ''Healy'' after ''Walsh–''.

Subsec. (i). Pub. L. 97–295, § 1(24)(C), added subsec. (i).

1981—Subsecs. (a)(3), (g). Pub. L. 97–86 substituted ''$25,000'' for ''$10,000''.

1980—Subsec. (f). Pub. L. 96–513 substituted ''(1) The Act entitled 'An Act to provide conditions for the purchase of supplies and the making of contracts by the United States, and for other purposes', approved June 30, 1936 (commonly referred to as the 'Walsh-Healy Act') (41 U.S.C. 35–45).'', for ''(1) Sections 35–45 of title 41.'', and ''(2) The Act entitled 'An Act relating to the rate of wages for laborers and mechanics employed on public buildings of the United States and the District of Columbia by contractors and subcontractors, and for other purposes', approved March 3, 1931 (commonly referred to as the 'Davis-Bacon Act') (40 U.S.C. 276a—276a–5).'' for ''(2) Sections 276a—276a–5 of title 40.'', and struck out ''(3) Sections 324 and 325a of title 40''.

1974—Subsec. (a)(3). Pub. L. 93–356, § 4(a), substituted ''$10,000'' for ''$2,500''.

Subsec. (g). Pub. L. 93–356, § 4(b), substituted ''$10,000'' for ''$2,500''.

1968—Subsec. (g). Pub. L. 90–500 required that the proposals solicited from the maximum number of qualified sources, consistent with the nature and requirements of the supplies or services to be procured, include price.

Subsec. (h). Pub. L. 90–268 added subsec. (h).

1962—Subsec. (a). Pub. L. 87–653, § 1(a), (b), provided that formal advertising be used where feasible and practicable under existing conditions and circumstances, subjected the agency head to the requirements of section 2310 of this title before negotiating a contract where formal advertising is not feasible and practicable and, in par. (14), substituted ''would be likely to result in additional cost to the Government by reason of duplication of investment or would result in duplication of necessary preparation which would unduly delay the procurement of the property;'' for ''and competitive bidding might require duplication of investment or preparation already made or would unduly delay the procurement of that property; or''.

Subsec. (g). Pub. L. 87–653, § 1(c), added subsec. (g).

1958—Subsec. (a). Pub. L. 85–861 included Commonwealths in cl. (6).

Pub. L. 85–800 substituted ''$2,500'' for ''$1,000'' in cl. (3) and inserted ''or nonperishable'' in cl. (9).

EFFECTIVE DATE OF REPEAL

Repeal effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by section 836(c)(2) of Pub. L. 115–232 effective Jan. 1, 2020, subject to a savings provision, see section 836(h) of Pub. L. 115–232, set out as an Effective Date of 2018 Amendment; Savings Provision note under section 453b of Title 6, Domestic Security.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–85, div. A, title VIII, § 850(g), Nov. 18, 1997, 111 Stat. 1850, provided that:

''(1) Except as provided in paragraph (2), the amendments made by this section [amending this section, former section 2302c of this title, section 637 of Title 15, Commerce and Trade, section 1501 of former Title 40, Public Buildings, Property, and Works, and sections 252c, 253, 416, 426, and 427 of Title 41, Public Contracts, repealing section 426a of Title 41, amending provisions set out as a note under section 413 of Title 41, and repealing provisions set out as a note under section 426a of Title 41] shall take effect 180 days after the date of the enactment of this Act [Nov. 18, 1997].

''(2) The repeal made by subsection (c) of this section [repealing provisions set out as a note under section 426a of Title 41] shall take effect on the date of the enactment of this Act.''

EFFECTIVE DATE OF 1996 AMENDMENT

For effective date and applicability of amendments by Pub. L. 104–106, see section 4401 of Pub. L. 104–106, set out as a note under section 2302 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 2302 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–500, § 101(c) [title X, § 923(d)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–153, Pub. L. 99–591, § 101(c) [title X, § 923(d)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–153, and Pub. L. 99–661, div. A, title IX, formerly title IV, § 923(d), Nov. 14, 1986, 100 Stat. 3932, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273, provided that:

''(1) The amendment made by subsection (a) [amending this section] shall apply with respect to contracts for which solicitations are issued after the end of the 180-day period beginning on the date of the enactment of this Act [Oct. 18, 1986].

''(2) The amendment made by subsection (b) [amending this section] shall apply with respect to contracts awarded on the basis of unsolicited research proposals after the end of the 180-day period beginning on the date of the enactment of this Act.

''(3) The amendments made by subsection (c) [amending this section] shall apply with respect to follow-on contracts awarded after the end of the 180-day period beginning on the date of the enactment of this Act.''

EFFECTIVE DATE OF 1985 AMENDMENT

Pub. L. 99–145, title IX, § 961(e), Nov. 8, 1985, 99 Stat. 704, provided that: ''The amendments made by subsections (a) [amending this section and section 253 of Title 41, Public Contracts], (b) [amending section 2323 (now section 2343) of this title], and (c) [amending section 759 of former Title 40, Public Buildings, Property, and Works] shall take effect as if included in the enactment of the Competition in Contracting Act of 1984 (title VII of division B of Public Law 98–369) [see Effective Date of 1984 Amendment note set out under section 2302 of this title].''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable with respect to any solicitation for bids or proposals issued after Mar. 31, 1985, see section 2751 of Pub. L. 98–369, set out as a note under section 2302 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Pub. L. 87–653, § 1(h), Sept. 10, 1962, 76 Stat. 529, provided that: ''The amendments made by this Act [amending this section and sections 2306, 2310, and 2311 of this title] shall take effect on the first day of the third calendar month which begins after the date of enactment of this Act [Sept. 10, 1962].''

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–861 effective Aug. 10, 1956, see section 33(g) of Pub. L. 85–861, set out as a note under section 101 of this title.

CONSTRUCTION OF 1994 AMENDMENT

Repeal of prior subsec. (j) of this section by section 1004(b) of Pub. L. 103–355 not to be construed as modifying or superseding, or as intended to impair or restrict, authorities or responsibilities under former section 759 or former subchapter VI (§ 541 et seq.) of chapter 10 of Title 40 [now chapter 11 of Title 40, Public Buildings, Property, and Works], see section 1004(d) of Pub. L. 103–355, set out as a note under section 2304a of this title.

CONSTRUCTION OF 1984 AMENDMENT

Pub. L. 98–369, div. B, title VII, § 2723(c), July 18, 1984, 98 Stat. 1192, provided that: ''The amendments made by this section [amending this section and section 2305 of this title] do not supersede or affect the provisions of section 8(a) of the Small Business Act (15 U.S.C. 637(a)).''

MODIFICATION OF JUSTIFICATION AND APPROVAL REQUIREMENT FOR CERTAIN DEPARTMENT OF DEFENSE CONTRACTS

Pub. L. 116–92, div. A, title VIII, § 823, Dec. 20, 2019, 133 Stat. 1490, provided that:

''(a) MODIFICATION OF JUSTIFICATION AND APPROVAL REQUIREMENT.—Notwithstanding section 811 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84; 123 Stat. 2405) [41 U.S.C. 3304 note]—

''(1) no justification and approval is required under such section for a sole-source contract awarded by the Department of Defense in a covered procurement for an amount not exceeding $100,000,000; and

''(2) for purposes of subsections (a)(2) and (c)(3)(A) of such section, the appropriate official designated to approve the justification for a sole-source contract awarded by the Department of Defense in a covered procurement exceeding $100,000,000 is the official designated in section 2304(f)(1)(B)(ii) of title 10, United States Code.

''(b) GUIDANCE.—Not later than 90 days after the date of the enactment of this Act [Dec. 20, 2019], the Secretary of Defense shall issue guidance to implement the authority under subsection (a).

''(c) COMPTROLLER GENERAL REVIEW.—

''(1) DATA TRACKING AND COLLECTION.—The Department of Defense shall track the use of the authority as modified by subsection (a) and make the data available to the Comptroller General for purposes of the report required under paragraph (2).

''(2) REPORT.—Not later than March 1, 2022, the Comptroller General of the United States shall submit a report to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] on the use of the authority as modified by subsection (a) through the end of fiscal year 2021. The report shall include—

''(A) a review of the financial effect of the change to the justification and approval requirement in subsection (a) on the native corporations and businesses and associated native communities;

''(B) a description of the nature and extent of contracts excluded from the justification and approval requirement by subsection (a); and

''(C) other matters the Comptroller General deems appropriate.''

PILOT PROGRAM ON PAYMENT OF COSTS FOR DENIED GOVERNMENT ACCOUNTABILITY OFFICE BID PROTESTS

Pub. L. 115–91, div. A, title VIII, § 827, Dec. 12, 2017, 131 Stat. 1467, which required the Secretary of Defense to carry out a pilot program to determine effectiveness of requiring contractors to reimburse Department of Defense for costs incurred in processing certain bid protests, was repealed by Pub. L. 116–283, div. A, title VIII, § 886, Jan. 1, 2021, 134 Stat. 3791.

PILOT PROGRAM FOR STREAMLINED TECHNOLOGY TRANSITION FROM THE SBIR AND STTR PROGRAMS OF THE DEPARTMENT OF DEFENSE

Pub. L. 115–91, div. A, title XVII, § 1710, Dec. 12, 2017, 131 Stat. 1810, provided that:

''(a) DEFINITIONS.—In this section—

''(1) the terms 'commercialization', 'Federal agency', 'Phase I', 'Phase II', 'Phase III', 'SBIR', and 'STTR' have the meanings given those terms in section 9(e) of the Small Business Act (15 U.S.C. 638(e));

''(2) the term 'covered small business concern' means—

''(A) a small business concern that completed a Phase II award under the SBIR or STTR program of the Department; or

''(B) a small business concern that—

''(i) completed a Phase I award under the SBIR or STTR program of the Department; and

''(ii) a contracting officer for the Department recommended for inclusion in a multiple award contract described in subsection (b);

''(1) [sic] the term 'Department' means the Department of Defense;

''(2) [sic] the term 'military department' has the meaning given the term in section 101 of title 10, United States Code;

''(3) the term 'multiple award contract' has the meaning given the term in section 3302(a) of title 41, United States Code;

''(4) the term 'pilot program' means the pilot program established under subsection (b); and

''(5) the term 'small business concern' has the meaning given the term in section 3 of the Small Business Act (15 U.S.C. 632).

''(b) ESTABLISHMENT.—Not later than 180 days after the date of enactment of this Act [Dec. 12, 2017], the Secretary of Defense shall establish a pilot program under which the Department shall award multiple award contracts to covered small business concerns for the purchase of technologies, supplies, or services that the covered small business concern has developed through the SBIR or STTR program.

''(c) WAIVER OF COMPETITION IN CONTRACTING ACT REQUIREMENTS.—The Secretary of Defense may establish procedures to waive provisions of section 2304 of title 10, United States Code, for purposes of carrying out the pilot program.

''(d) USE OF CONTRACT VEHICLE.—A multiple award contract described in subsection (b) may be used by any military department or component of the Department.

''(e) TERMINATION.—The pilot program established under this section shall terminate on September 30, 2023.

''(f) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to prevent the commercialization of products and services produced by a small business concern under an SBIR or STTR program of a Federal agency through—

''(1) direct awards for Phase III of an SBIR or STTR program; or

''(2) any other contract vehicle.''

CONTRACTS FOR STUDIES, ANALYSIS, OR CONSULTING SERVICES ENTERED INTO WITHOUT COMPETITION ON THE BASIS OF AN UNSOLICITED PROPOSAL

Pub. L. 114–113, div. C, title VIII, § 8039, Dec. 18, 2015, 129 Stat. 2359, provided that:

''None of the funds appropriated by this Act [div. C of Pub. L. 114–113, see Tables for classification] and hereafter shall be available for a contract for studies, analysis, or consulting services entered into without competition on the basis of an unsolicited proposal unless the head of the activity responsible for the procurement determines—

''(1) as a result of thorough technical evaluation, only one source is found fully qualified to perform the proposed work;

''(2) the purpose of the contract is to explore an unsolicited proposal which offers significant scientific or technological promise, represents the product of original thinking, and was submitted in confidence by one source; or

''(3) the purpose of the contract is to take advantage of unique and significant industrial accomplishment by a specific concern, or to insure that a new product or idea of a specific concern is given financial support: *Provided*, That this limitation shall not apply to contracts in an amount of less than $25,000, contracts related to improvements of equipment that is in development or production, or contracts as to which a civilian official of the Department of Defense, who has been confirmed by the Senate, determines that the award of such contract is in the interest of the national defense.''

MITIGATING POTENTIAL UNFAIR COMPETITIVE ADVANTAGE OF TECHNICAL ADVISORS TO ACQUISITION PROGRAMS

Pub. L. 114–92, div. A, title VIII, § 895, Nov. 25, 2015, 129 Stat. 954, provided that: ''Not later than 180 days after the date of the enactment of this Act [Nov. 25, 2015], the Under Secretary of Defense for Acquisition, Technology, and Logistics shall review, and as necessary revise or issue, policy guidance pertaining to the identification, mitigation, and prevention of potential unfair

competitive advantage conferred to technical advisors to acquisition programs.''

COMPETITION FOR RELIGIOUS SERVICES CONTRACTS

Pub. L. 114–92, div. A, title VIII, § 898, Nov. 25, 2015, 129 Stat. 955, provided that: ''The Department of Defense may not preclude a non-profit organization from competing for a contract for religious related services on a United States military installation.''

MATTERS RELATING TO REVERSE AUCTIONS

Pub. L. 113–291, div. A, title VIII, § 824, Dec. 19, 2014, 128 Stat. 3436, provided that:

''(a) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act [Dec. 19, 2014], the Secretary of Defense shall clarify regulations on reverse auctions, as necessary, to ensure that—

''(1) single bid contracts may not be entered into resulting from reverse auctions unless compliant with existing Federal regulations and Department of Defense memoranda providing guidance on single bid offers;

''(2) all reverse auctions provide offerors with the ability to submit revised bids throughout the course of the auction;

''(3) if a reverse auction is conducted by a third party—

''(A) inherently governmental functions are not performed by private contractors, including by the third party; and

''(B) past performance or financial responsibility information created by the third party is made available to offerors; and

''(4) reverse auctions resulting in design-build military construction contracts specifically authorized in law are prohibited.

''(b) TRAINING.—Not later than 180 days after the date of the enactment of this Act, the President of the Defense Acquisition University shall establish comprehensive training available for contract specialists in the Department of Defense on the use of reverse auctions.

''(c) DESIGN-BUILD DEFINED.—In this section, the term 'design-build' means procedures used for the selection of a contractor on the basis of price and other evaluation criteria to perform, in accordance with the provisions of a firm fixed-price contract, both the design and construction of a facility using performance specifications supplied by the Secretary of Defense.''

REVIEW AND JUSTIFICATION OF PASS-THROUGH CONTRACTS

Pub. L. 112–239, div. A, title VIII, § 802, Jan. 2, 2013, 126 Stat. 1824, provided that: ''Not later than 180 days after the date of the enactment of this Act [Jan. 2, 2013], the Secretary of Defense, the Secretary of State, and the Administrator of the United States Agency for International Development shall issue such guidance and regulations as may be necessary to ensure that in any case in which an offeror for a contract or a task or delivery order informs the agency pursuant to section 52.215-22 of the Federal Acquisition Regulation that the offeror intends to award subcontracts for more than 70 percent of the total cost of work to be performed under the contract, task order, or delivery order, the contracting officer for the contract is required to—

''(1) consider the availability of alternative contract vehicles and the feasibility of contracting directly with a subcontractor or subcontractors that will perform the bulk of the work;

''(2) make a written determination that the contracting approach selected is in the best interest of the Government; and

''(3) document the basis for such determination.''

REQUIREMENTS FOR INFORMATION RELATING TO SUPPLY CHAIN RISK

Pub. L. 111–383, div. A, title VIII, § 806, Jan. 7, 2011, 124 Stat. 4260, as amended by Pub. L. 112–239, div. A, title VIII, § 806, Jan. 2, 2013, 126 Stat. 1827; Pub. L. 115–232, div. A, title VIII, § 881(b), Aug. 13, 2018, 132 Stat. 1913; Pub. L. 116–92, div. A, title IX, § 902(40), Dec. 20, 2019, 133 Stat. 1547, which provided procedures to be followed by head of agency for reducing supply chain risk in acquisition of national security systems and authorized limits to disclosure of information, was repealed by Pub. L. 116–283, div. A, title VIII, § 843(b), Jan. 1, 2021, 134 Stat. 3766.

PUBLICATION OF NOTIFICATION OF BUNDLING OF CONTRACTS OF THE DEPARTMENT OF DEFENSE

Pub. L. 111–84, div. A, title VIII, § 820, Oct. 28, 2009, 123 Stat. 2410, provided that:

''(a) REQUIREMENT TO PUBLISH NOTIFICATION FOR BUNDLING.—A contracting officer of the Department of Defense carrying out a covered acquisition shall publish a notification consistent with the requirements of paragraph (c)(2) of subpart 10.001 of the Federal Acquisition Regulation on the website known as FedBizOpps.gov (or any successor site) at least 30 days prior to the release of a solicitation for such acquisition and, if the agency has determined that measurably substantial benefits are expected to be derived as a result of bundling such acquisition, shall include in the notification a brief description of the benefits.

''(b) COVERED ACQUISITION DEFINED.—In this section, the term 'covered acquisition' means an acquisition that is—

''(1) funded entirely using funds of the Department of Defense; and

''(2) covered by subpart 7.107 of the Federal Acquisition Regulation (relating to acquisitions involving bundling).

''(c) CONSTRUCTION.—

''(1) NOTIFICATION.—Nothing in this section shall be construed to alter the responsibility of a contracting officer to provide the notification referred to in subsection (a) with respect to a covered acquisition, or otherwise provide notification, to any party concerning such acquisition under any other requirement of law or regulation.

''(2) DISCLOSURE.—Nothing in this section shall be construed to require the public availability of information that is exempt from public disclosure under section 552(b) of title 5, United States Code, or is otherwise restricted from public disclosure by law or Executive order.

''(3) ISSUANCE OF SOLICITATION.—Nothing in this section shall be construed to require a contracting officer to delay the issuance of a solicitation in order to meet the requirements of subsection (a) if the expedited issuance of such solicitation is otherwise authorized under any other requirement of law or regulation.''

SMALL ARMS ACQUISITION STRATEGY AND REQUIREMENTS REVIEW

Pub. L. 110–417, [div. A], title I, § 143, Oct. 14, 2008, 122 Stat. 4381, as amended by Pub. L. 111–383, div. A, title X, § 1075(e)(1), Jan. 7, 2011, 124 Stat. 4374, provided that:

''(a) SECRETARY OF DEFENSE REPORT.—Not later than 120 days after the date of the enactment of this Act [Oct. 14, 2008], the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the small arms requirements of the Armed Forces and the industrial base of the United States. The report shall include the following:

''(1) An assessment of Department of Defense-wide small arms requirements in terms of capabilities and quantities, based on an analysis of the small arms capability assessments of each military department.

''(2) An assessment of plans for small arms research, development, and acquisition programs to meet the requirements identified under paragraph (1).

''(3) An assessment of capabilities, capacities, and risks in the small arms industrial base of the United

States to meet the requirements of the Department of Defense for pistols, carbines, rifles, and light, medium, and heavy machine guns during the 20 years following the date of the report.

''(4) An assessment of the costs, benefits, and risks of full and open competition for the procurement of non-developmental pistols and carbines that are not technically compatible with the M9 pistol or M4 carbine to meet the requirements identified under paragraph (1).

''(b) COMPETITION FOR A NEW INDIVIDUAL WEAPON.—

''(1) COMPETITION REQUIRED.—If the small arms capabilities based assessments by the Army identify gaps in small arms capabilities and the Secretary of the Army determines that a new individual weapon is required to address such gaps, the Secretary shall procure the new individual weapon using full and open competition as described in paragraph (2).

''(2) FULL AND OPEN COMPETITION.—The full and open competition described in this paragraph is competition among all responsible manufacturers that—

''(A) is open to all developmental item solutions and non-developmental item solutions; and

''(B) provides for the award of a contract based on selection criteria that reflect the key performance parameters and attributes identified in a service requirements document approved by the Army.

''(c) SMALL ARMS DEFINED.—In this section, the term 'small arms'—

''(1) means man-portable or vehicle-mounted light weapons, designed primarily for use by individual military personnel for anti-personnel use; and

''(2) includes pistols, carbines, rifles, and light, medium, and heavy machine guns.''

IMPLEMENTATION OF STATUTORY REQUIREMENTS REGARDING THE NATIONAL TECHNOLOGY AND INDUSTRIAL BASE

Pub. L. 110–417, [div. A], title VIII, § 802, Oct. 14, 2008, 122 Stat. 4518, which required guidance from the Secretary on certain statutory requirements regarding major defense acquisition programs and the national technology and industrial base, was repealed by Pub. L. 115–232, div. A, title VIII, § 812(b)(11), Aug. 13, 2018, 132 Stat. 1848.

PLAN FOR RESTRICTING GOVERNMENT-UNIQUE CONTRACT CLAUSES ON COMMERCIAL CONTRACTS

Pub. L. 110–181, div. A, title VIII, § 821, Jan. 28, 2008, 122 Stat. 226, as amended by Pub. L. 113–291, div. A, title X, § 1071(b)(2)(B), Dec. 19, 2014, 128 Stat. 3506; Pub. L. 115–232, div. A, title VIII, § 836(f)(3), Aug. 13, 2018, 132 Stat. 1871; Pub. L. 116–92, div. A, title IX, § 902(41), Dec. 20, 2019, 133 Stat. 1547, provided that:

''(a) PLAN.—The Under Secretary of Defense for Acquisition and Sustainment shall develop and implement a plan to minimize the number of government-unique contract clauses used in commercial contracts by restricting the clauses to the following:

''(1) Government-unique clauses authorized by law or regulation.

''(2) Any additional clauses that are relevant and necessary to a specific contract.

''(b) COMMERCIAL CONTRACT.—In this section:

''(1) The term 'commercial contract' means a contract awarded by the Federal Government for the procurement of a commercial product or a commercial service.

''(2) The term 'commercial product' has the meaning provided by section 103 of title 41, United States Code.

''(3) The term 'commercial service' has the meaning provided by section 103a of title 41, United States Code.''

TELEPHONE SERVICES FOR MILITARY PERSONNEL SERVING IN COMBAT ZONES

Pub. L. 110–181, div. A, title VIII, § 885, Jan. 28, 2008, 122 Stat. 265, as amended by Pub. L. 111–383, div. A, title VI, § 641, Jan. 7, 2011, 124 Stat. 4241; Pub. L. 112–81, div. A, title X, § 1062(c), Dec. 31, 2011, 125 Stat. 1585, provided that:

''(a) COMPETITIVE PROCEDURES REQUIRED.—

''(1) REQUIREMENT.—When the Secretary of Defense considers it necessary to provide morale, welfare, and recreation telephone services for military personnel serving in combat zones, the Secretary shall use competitive procedures when entering into a contract to provide those services.

''(2) REVIEW AND DETERMINATION.—Before soliciting bids or proposals for new contracts, or considering extensions to existing contracts, to provide morale, welfare, and recreation telephone services for military personnel serving in combat zones, the Secretary shall review and determine whether it is in the best interest of the Department to require bids or proposals, or adjustments for the purpose of extending a contract, to include options that minimize the cost of the telephone services to individual users while providing individual users the flexibility of using phone cards from other than the prospective contractor.

''(b) EFFECTIVE DATE.—

''(1) REQUIREMENT.—Subsection (a)(1) shall apply to any new contract to provide morale, welfare, and recreation telephone services for military personnel serving in combat zones that is entered into after the date of the enactment of this Act [Jan. 28, 2008].

''(2) REVIEW AND DETERMINATION.—Subsection (a)(2) shall apply to any new contract or extension to an existing contract to provide morale, welfare, and recreation telephone services for military personnel serving in combat zones that is entered into or agreed upon after the date of the enactment of this Act.

''(c) MORALE, WELFARE, AND RECREATION TELEPHONE SERVICES DEFINED.—In this section, the term 'morale, welfare, and recreation telephone services' means unofficial telephone calling center services supporting calling centers provided by the Army and Air Force Exchange Service, Navy Exchange Service Command, Marine Corps exchanges, or any other nonappropriated fund instrumentality of the United States under the jurisdiction of the Armed Forces which is conducted for the comfort, pleasure, contentment, or physical or mental improvement of members of the Armed Forces.''

COMPETITION FOR PROCUREMENT OF SMALL ARMS SUPPLIED TO IRAQ AND AFGHANISTAN

Pub. L. 110–181, div. A, title VIII, § 892, Jan. 28, 2008, 122 Stat. 270, provided that:

''(a) COMPETITION REQUIREMENT.—For the procurement of pistols and other weapons described in subsection (b), the Secretary of Defense shall ensure, consistent with the provisions of section 2304 of title 10, United States Code, that—

''(1) full and open competition is obtained to the maximum extent practicable;

''(2) no responsible United States manufacturer is excluded from competing for such procurements; and

''(3) products manufactured in the United States are not excluded from the competition.

''(b) PROCUREMENTS COVERED.—This section applies to the procurement of the following:

''(1) Pistols and other weapons less than 0.50 caliber for assistance to the Army of Iraq, the Iraqi Police Forces, and other Iraqi security organizations.

''(2) Pistols and other weapons less than 0.50 caliber for assistance to the Army of Afghanistan, the Afghani Police Forces, and other Afghani security organizations.''

INTERNAL CONTROLS FOR PROCUREMENTS ON BEHALF OF THE DEPARTMENT OF DEFENSE

Pub. L. 110–417, [div. A], title VIII, § 804(a)–(c), Oct. 14, 2008, 122 Stat. 4519, provided that:

''(a) INCLUSION OF ADDITIONAL NON-DEFENSE AGENCIES IN REVIEW.—The covered non-defense agencies specified

in subsection (c) of this section shall be considered covered non-defense agencies as defined in subsection (i) of section 817 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109–364; 120 Stat. 2326) [set out below] for purposes of such section.

''(b) DEADLINES AND APPLICABILITY FOR ADDITIONAL NON-DEFENSE AGENCIES.—For each covered non-defense agency specified in subsection (c) of this section, section 817 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109–364; 120 Stat. 2326) shall apply to such agency as follows:

''(1) The review and determination required by subsection (a)(1) of such section shall be completed by not later than March 15, 2009.

''(2) The review and determination required by subsection (a)(2) of such section, if necessary, shall be completed by not later than June 15, 2010, and such review and determination shall be a review and determination of such agency's procurement of property and services on behalf of the Department of Defense in fiscal year 2009.

''(3) The memorandum of understanding required by subsection (c)(1) of such section shall be entered into by not later than 60 days after the date of the enactment of this Act [Oct. 14, 2008].

''(4) The limitation specified in subsection (d)(1) of such section shall apply after March 15, 2009, and before June 16, 2010.

''(5) The limitation specified in subsection (d)(2) of such section shall apply after June 15, 2010.

''(6) The limitation required by subsection (d)(3) of such section shall commence, if necessary, on the date that is 60 days after the date of the enactment of this Act.

''(c) DEFINITION OF COVERED NON-DEFENSE AGENCY.—In this section, the term 'covered non-defense agency' means each of the following:

''(1) The Department of Commerce.

''(2) The Department of Energy.''

Pub. L. 110–181, div. A, title VIII, § 801, Jan. 28, 2008, 122 Stat. 202, as amended by Pub. L. 110–417, [div. A], title VIII, § 804(d), Oct. 14, 2008, 122 Stat. 4519; Pub. L. 111–84, div. A, title VIII, § 806, Oct. 28, 2009, 123 Stat. 2404; Pub. L. 112–81, div. A, title VIII, § 817, Dec. 31, 2011, 125 Stat. 1493; Pub. L. 112–239, div. A, title VIII, §§ 801, 805, Jan. 2, 2013, 126 Stat. 1824, 1826; Pub. L. 113–291, div. A, title X, § 1071(d)(1)(B), Dec. 19, 2014, 128 Stat. 3509; Pub. L. 116–92, div. A, title IX, § 902(42), Dec. 20, 2019, 133 Stat. 1547; Pub. L. 116–283, div. A, title XVIII, § 1806(e)(5), Jan. 1, 2021, 134 Stat. 4156, provided that:

''(a) INSPECTORS GENERAL REVIEWS AND DETERMINATIONS.—

''(1) IN GENERAL.—For each covered non-defense agency, the Inspector General of the Department of Defense and the Inspector General of such covered non-defense agency may jointly—

''(A) review—

''(i) the procurement policies, procedures, and internal controls of such covered non-defense agency that are applicable to the procurement of property and services on behalf of the Department by such covered non-defense agency; and

''(ii) the administration of such policies, procedures, and internal controls; and

''(B) determine in writing whether such covered non-defense agency is or is not compliant with applicable procurement requirements.

''(2) SEPARATE REVIEWS AND DETERMINATIONS.—The Inspector General of the Department of Defense and the Inspector General of a covered non-defense agency may by joint agreement conduct separate reviews of the procurement of property and services on behalf of the Department of Defense that are conducted by separate business units, or under separate government-wide acquisition contracts, of the covered non-defense agency. If such separate reviews are conducted, the Inspectors General shall make a separate determination under paragraph (1)(B) with respect to each such separate review.

''(3) MEMORANDA OF UNDERSTANDING FOR REVIEWS AND DETERMINATIONS.—Not later than one year before a review and determination is to be performed under this subsection with respect to a covered non-defense agency, the Inspector General of the Department of Defense and the Inspector General of the covered non-defense agency may enter into a memorandum of understanding with each other to carry out such review and determination.

''(4) TERMINATION OF NON-COMPLIANCE DETERMINATION.—If the Inspector General of the Department of Defense and the Inspector General of a covered non-defense agency determine, pursuant to paragraph (1)(B), that a covered non-defense agency is not compliant with applicable procurement requirements, the Inspectors General may terminate such a determination effective on the date on which the Inspectors General jointly—

''(A) determine that the non-defense agency is compliant with applicable procurement requirements; and

''(B) notify the Secretary of Defense of that determination.

''(5) RESOLUTION OF DISAGREEMENTS.—If the Inspector General of the Department of Defense and the Inspector General of a covered non-defense agency are unable to agree on a joint determination under this subsection, a determination by the Inspector General of the Department of Defense under this subsection shall be conclusive for the purposes of this section.

''(b) LIMITATION ON PROCUREMENTS ON BEHALF OF DEPARTMENT OF DEFENSE.—

''(1) Except as provided in paragraph (2), an acquisition official of the Department of Defense may place an order, make a purchase, or otherwise procure property or services for the Department of Defense in excess of the simplified acquisition threshold through a non-defense agency only if—

''(A) in the case of a procurement by any non-defense agency in any fiscal year, the head of the non-defense agency has certified that the non-defense agency will comply with applicable procurement requirements for the fiscal year;

''(B) in the case of—

''(i) a procurement by a covered non-defense agency in a fiscal year for which a memorandum of understanding is to be entered into under subsection (a)(3), the Inspector General of the Department of Defense and the Inspector General of the covered non-defense agency have entered into such a memorandum of understanding; or

''(ii) a procurement by a covered non-defense agency in a fiscal year following the Inspectors General review and determination provided for under subsection (a), the Inspectors General have determined that a covered non-defense agency is compliant with applicable procurement requirements or have terminated a prior determination of non-compliance in accordance with subsection (a)(4); and

''(C) the procurement is not otherwise prohibited by section 817 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109–364) or section 811 of the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109–163) [see notes below].

''(2) EXCEPTION FOR PROCUREMENTS OF NECESSARY PROPERTY AND SERVICES.—

''(A) IN GENERAL.—The limitation in paragraph (1) shall not apply to the procurement of property and services on behalf of the Department of Defense by a non-defense agency during any fiscal year for which there is in effect a written determination of the Under Secretary of Defense for Acquisition and Sustainment that it is necessary in the interest of the Department of Defense to procure property and services through the non-defense agency during such fiscal year.

''(B) SCOPE OF PARTICULAR EXCEPTION.—A written determination with respect to a non-defense agency

under subparagraph (A) shall apply to any category of procurements through the non-defense agency that is specified in the determination.

''(3) TREATMENT OF PROCUREMENTS UNDER JOINT PROGRAMS WITH INTELLIGENCE COMMUNITY.—For purposes of this subsection, a contract entered into by a non-defense agency that is an element of the intelligence community (as defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 3003(4))) for the performance of a joint program conducted to meet the needs of the Department of Defense and the non-defense agency shall not be considered a procurement of property or services for the Department of Defense through a non-defense agency.

''(c) GUIDANCE ON INTERAGENCY CONTRACTING.—

''(1) REQUIREMENT.—Not later than 180 days after the date of enactment of this Act [Jan. 28, 2008], the Secretary of Defense shall issue guidance on the use of interagency contracting by the Department of Defense.

''(2) MATTERS COVERED.—The guidance required by paragraph (1) shall address the circumstances in which it is appropriate for Department of Defense acquisition officials to procure goods or services through a contract entered into by an agency outside the Department of Defense. At a minimum, the guidance shall address—

''(A) the circumstances in which it is appropriate for such acquisition officials to use direct acquisitions;

''(B) the circumstances in which it is appropriate for such acquisition officials to use assisted acquisitions;

''(C) the circumstances in which it is appropriate for such acquisition officials to use interagency contracting to acquire items unique to the Department of Defense and the procedures for approving such interagency contracting;

''(D) the circumstances in which it is appropriate for such acquisition officials to use interagency contracting to acquire items that are already being provided under a contract awarded by the Department of Defense;

''(E) tools that should be used by such acquisition officials to determine whether items are already being provided under a contract awarded by the Department of Defense; and

''(F) procedures for ensuring that applicable procurement requirements are identified and communicated to outside agencies involved in interagency contracting.

''(d) COMPLIANCE WITH APPLICABLE PROCUREMENT REQUIREMENTS.—

''(1) Except as provided in paragraph (2), for the purposes of this section, a non-defense agency is compliant with applicable procurement requirements if the procurement policies, procedures, and internal controls of the non-defense agency applicable to the procurement of products and services on behalf of the Department of Defense, and the manner in which they are administered, are adequate to ensure the compliance of the non-defense agency with the following:

''(A) The Federal Acquisition Regulation and other laws and regulations that apply to procurements of property and services by Federal agencies.

''(B) Laws and regulations (including applicable Department of Defense financial management regulations) that apply to procurements of property and services made by the Department of Defense through other Federal agencies.

''(2) In the case of the procurement of property or services on behalf of the Department of Defense through the Work for Others program of the Department of Energy, the laws and regulations applicable under paragraph (1)(B) are the Department of Energy Acquisition Regulations, pertinent interagency agreements, and Department of Defense and Department of Energy policies related to the Work for Others program.

''(e) TREATMENT OF PROCUREMENTS FOR FISCAL YEAR PURPOSES.—For the purposes of this section, a procurement shall be treated as being made during a particular fiscal year to the extent that funds are obligated by the Department of Defense for the procurement in that fiscal year.

''(f) DEFINITIONS.—In this section:

''(1) NON-DEFENSE AGENCY.—The term 'non-defense agency' means any department or agency of the Federal Government other than the Department of Defense. Such term includes a covered non-defense agency.

''(2) COVERED NON-DEFENSE AGENCY.—The term 'covered non-defense agency' means each of the following:

''(A) The General Services Administration.

''(B) The Department of the Interior.

''(C) The Department of Veterans Affairs.

''(D) The National Institutes of Health.

''(E) The Department of Commerce.

''(F) The Department of Energy.

''(3) GOVERNMENT-WIDE ACQUISITION CONTRACT.—The term 'government-wide acquisition contract' means a task or delivery order contract that—

''(A) is entered into by a non-defense agency; and

''(B) may be used as the contract under which property or services are procured for one or more other departments or agencies of the Federal Government.

''(4) SIMPLIFIED ACQUISITION THRESHOLD.—The term 'simplified acquisition threshold' has the meaning provided by section 2302(7) of title 10, United States Code.

''(5) INTERAGENCY CONTRACTING.—The term 'interagency contracting' means the exercise of the authority under section 1535 of title 31, United States Code, or other statutory authority, for Federal agencies to purchase goods and services under contracts entered into or administered by other agencies.

''(6) ACQUISITION OFFICIAL.—The term 'acquisition official', with respect to the Department of Defense, means—

''(A) a contracting officer of the Department of Defense; or

''(B) any other Department of Defense official authorized to approve a direct acquisition or an assisted acquisition on behalf of the Department of Defense.

''(7) DIRECT ACQUISITION.—The term 'direct acquisition', with respect to the Department of Defense, means the type of interagency contracting through which the Department of Defense orders an item or service from a government-wide acquisition contract maintained by a non-defense agency.

''(8) ASSISTED ACQUISITION.—The term 'assisted acquisition', with respect to the Department of Defense, means the type of interagency contracting through which acquisition officials of a non-defense agency award a contract or task or delivery order for the procurement of goods or services on behalf of the Department of Defense.''

[Pub. L. 116–283, div. A, title XVIII, §§1801(d), 1806(e)(5), Jan. 1, 2021, 134 Stat. 4151, 4156, provided that effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, section 801(f)(4) of Pub. L. 110–181, set out above, is amended by substituting ''section 3015(a)'' for ''section 2302(7)''.]

Pub. L. 109–364, div. A, title VIII, §817, Oct. 17, 2006, 120 Stat. 2326, as amended by Pub. L. 116–92, div. A, title IX, §902(43), Dec. 20, 2019, 133 Stat. 1547, provided that:

''(a) INSPECTOR GENERAL REVIEWS AND DETERMINATIONS.—

''(1) IN GENERAL.—For each covered non-defense agency, the Inspector General of the Department of Defense and the Inspector General of such non-defense agency shall, not later than March 15, 2007, jointly—

''(A) review—

''(i) the procurement policies, procedures, and internal controls of such non-defense agency that are applicable to the procurement of property and

services on behalf of the Department by such non-defense agency; and

''(ii) the administration of those policies, procedures, and internal controls; and

''(B) determine in writing whether—

''(i) such non-defense agency is compliant with defense procurement requirements;

''(ii) such non-defense agency is not compliant with defense procurement requirements, but has a program or initiative to significantly improve compliance with defense procurement requirements;

''(iii) neither of the conclusions stated in clauses (i) and (ii) is correct in the case of such non-defense agency; or

''(iv) such non-defense agency is not compliant with defense procurement requirements to such an extent that the interests of the Department of Defense are at risk in procurements conducted by such non-defense agency.

''(2) ACTIONS FOLLOWING CERTAIN DETERMINATIONS.—If the Inspectors General determine under paragraph (1) that a conclusion stated in clause (ii), (iii), or (iv) of subparagraph (B) of that paragraph is correct in the case of a covered non-defense agency, such Inspectors General shall, not later than June 15, 2008, jointly—

''(A) conduct a second review, as described in subparagraph (A) of that paragraph, regarding such non-defense agency's procurement of property or services on behalf of the Department of Defense in fiscal year 2007; and

''(B) determine in writing whether such non-defense agency is or is not compliant with defense procurement requirements.

''(b) COMPLIANCE WITH DEFENSE PROCUREMENT REQUIREMENTS.—For the purposes of this section, a covered non-defense agency is compliant with defense procurement requirements if such non-defense agency's procurement policies, procedures, and internal controls applicable to the procurement of products and services on behalf of the Department of Defense, and the manner in which they are administered, are adequate to ensure such non-defense agency's compliance with the requirements of laws and regulations that apply to procurements of property and services made directly by the Department of Defense.

''(c) MEMORANDA OF UNDERSTANDING BETWEEN INSPECTORS GENERAL.—

''(1) IN GENERAL.—Not later than 60 days after the date of the enactment of this Act [Oct. 17, 2006], the Inspector General of the Department of Defense and the Inspector General of each covered non-defense agency shall enter into a memorandum of understanding with each other to carry out the reviews and make the determinations required by this section.

''(2) SCOPE OF MEMORANDA.—The Inspector General of the Department of Defense and the Inspector General of a covered non-defense agency may by mutual agreement conduct separate reviews of the procurement of property and services on behalf of the Department of Defense that are conducted by separate business units, or under separate governmentwide acquisition contracts, of such non-defense agency. In any case where such separate reviews are conducted, the Inspectors General shall make separate determinations under paragraph (1) or (2) of subsection (a), as applicable, with respect to each such separate review.

''(d) LIMITATIONS ON PROCUREMENTS ON BEHALF OF DEPARTMENT OF DEFENSE.—

''(1) LIMITATION DURING REVIEW PERIOD.—After March 15, 2007, and before June 16, 2008, no official of the Department of Defense may, except as provided in subsection (e) or (f), order, purchase, or otherwise procure property or services in an amount in excess of $100,000 through a covered non-defense agency for which a determination described in clause (iii) or (iv) of paragraph (1)(B) of subsection (a) has been made under subsection (a).

''(2) LIMITATION AFTER REVIEW PERIOD.—After June 15, 2008, no official of the Department of Defense may, except as provided in subsection (e) or (f), order, purchase, or otherwise procure property or services in an amount in excess of $100,000 through a covered non-defense agency that, having been subject to review under this section, has not been determined under this section as being compliant with defense procurement requirements.

''(3) LIMITATION FOLLOWING FAILURE TO REACH MOU.—Commencing on the date that is 60 days after the date of the enactment of this Act [Oct. 17, 2006], if a memorandum of understanding between the Inspector General of the Department of Defense and the Inspector General of a covered non-defense agency cannot be attained causing the review required by this section to not be performed, no official of the Department of Defense, except as provided in subsection (e) or (f), may order, purchase or otherwise procure property or services in an amount in excess of $100,000 through such non-defense agency.

''(e) EXCEPTION FROM APPLICABILITY OF LIMITATIONS.—

''(1) EXCEPTION.—No limitation applies under subsection (d) with respect to the procurement of property and services on behalf of the Department of Defense by a covered non-defense agency during any period that there is in effect a determination of the Under Secretary of Defense for Acquisition and Sustainment, made in writing, that it is necessary in the interest of the Department of Defense to continue to procure property and services through such non-defense agency.

''(2) APPLICABILITY OF DETERMINATION.—A written determination with respect to a covered non-defense agency under paragraph (1) is in effect for the period, not in excess of one year, that the Under Secretary shall specify in the written determination. The Under Secretary may extend from time to time, for up to one year at a time, the period for which the written determination remains in effect.

''(f) TERMINATION OF APPLICABILITY OF LIMITATIONS.—Subsection (d) shall cease to apply to a covered non-defense agency on the date on which the Inspector General of the Department of Defense and the Inspector General of such non-defense agency jointly—

''(1) determine that such non-defense agency is compliant with defense procurement requirements; and

''(2) notify the Secretary of Defense of that determination.

''(g) IDENTIFICATION OF PROCUREMENTS MADE DURING A PARTICULAR FISCAL YEAR.—For the purposes of subsection (a), a procurement shall be treated as being made during a particular fiscal year to the extent that funds are obligated by the Department of Defense for that procurement in that fiscal year.

''(h) RESOLUTION OF DISAGREEMENTS.—If the Inspector General of the Department of Defense and the Inspector General of a covered non-defense agency are unable to agree on a joint determination under subsection (a) or (f), a determination by the Inspector General of the Department of Defense under such subsection shall be conclusive for the purposes of this section.

''(i) DEFINITIONS.—In this section:

''(1) The term 'covered non-defense agency' means each of the following:

''(A) The Department of Veterans Affairs.

''(B) The National Institutes of Health.

''(2) The term 'governmentwide acquisition contract', with respect to a covered non-defense agency, means a task or delivery order contract that—

''(A) is entered into by the non-defense agency; and

''(B) may be used as the contract under which property or services are procured for one or more other departments or agencies of the Federal Government.''

Pub. L. 109–163, div. A, title VIII, § 811, Jan. 6, 2006, 119 Stat. 3374, as amended by Pub. L. 116–92, div. A, title IX, § 902(44), Dec. 20, 2019, 133 Stat. 1547, provided that:

''(a) INSPECTOR GENERAL REVIEWS AND DETERMINATIONS.—

''(1) IN GENERAL.—For each covered non-defense agency, the Inspector General of the Department of Defense and the Inspector General of such non-defense agency shall, not later than March 15, 2006, jointly—

''(A) review—

''(i) the procurement policies, procedures, and internal controls of such non-defense agency that are applicable to the procurement of property and services on behalf of the Department by such non-defense agency; and

''(ii) the administration of those policies, procedures, and internal controls; and

''(B) determine in writing whether—

''(i) such non-defense agency is compliant with defense procurement requirements;

''(ii) such non-defense agency is not compliant with defense procurement requirements, but has a program or initiative to significantly improve compliance with defense procurement requirements; or

''(iii) neither of the conclusions stated in clauses (i) and (ii) is correct in the case of such non-defense agency.

''(2) ACTIONS FOLLOWING CERTAIN DETERMINATIONS.—If the Inspectors General determine under paragraph (1) that the conclusion stated in clause (ii) or (iii) of subparagraph (B) of that paragraph is correct in the case of a covered non-defense agency, such Inspectors General shall, not later than June 15, 2007, jointly—

''(A) conduct a second review, as described in subparagraph (A) of that paragraph, regarding such non-defense agency's procurement of property or services on behalf of the Department of Defense in fiscal year 2006; and

''(B) determine in writing whether such non-defense agency is or is not compliant with defense procurement requirements.

''(b) COMPLIANCE WITH DEFENSE PROCUREMENT REQUIREMENTS.—For the purposes of this section, a covered non-defense agency is compliant with defense procurement requirements if such non-defense agency's procurement policies, procedures, and internal controls applicable to the procurement of products and services on behalf of the Department of Defense, and the manner in which they are administered, are adequate to ensure such non-defense agency's compliance with the requirements of laws and regulations that apply to procurements of property and services made directly by the Department of Defense.

''(c) MEMORANDA OF UNDERSTANDING BETWEEN INSPECTORS GENERAL.—

''(1) IN GENERAL.—Not later than 60 days after the date of the enactment of this Act [Jan. 6, 2006], the Inspector General of the Department of Defense and the Inspector General of each covered non-defense agency shall enter into a memorandum of understanding with each other to carry out the reviews and make the determinations required by this section.

''(2) SCOPE OF MEMORANDA.—The Inspector General of the Department of Defense and the Inspector General of a covered non-defense agency may by mutual agreement conduct separate reviews of the procurement of property and services on behalf of the Department of Defense that are conducted by separate business units, or under separate governmentwide acquisition contracts, of such non-defense agency. In any case where such separate reviews are conducted, the Inspectors General shall make separate determinations under paragraph (1) or (2) of subsection (a), as applicable, with respect to each such separate review.

''(d) LIMITATIONS ON PROCUREMENTS ON BEHALF OF DEPARTMENT OF DEFENSE.—

''(1) LIMITATION DURING REVIEW PERIOD.—After March 15, 2006, and before June 16, 2007, no official of the Department of Defense may, except as provided in subsection (e) or (f), order, purchase, or otherwise procure property or services in an amount in excess of $100,000 through a covered non-defense agency for which a determination described in paragraph (1)(B)(iii) of subsection (a) has been made under that subsection.

''(2) LIMITATION AFTER REVIEW PERIOD.—After June 15, 2007, no official of the Department of Defense may, except as provided in subsection (e) or (f), order, purchase, or otherwise procure property or services in an amount in excess of $100,000 through a covered non-defense agency that, having been subject to review under this section, has not been determined under this section as being compliant with defense procurement requirements.

''(3) LIMITATION FOLLOWING FAILURE TO REACH MOU.—Commencing on the date that is 60 days after the date of the enactment of this Act [Jan. 6, 2006], if a memorandum of understanding between the Inspector General of the Department of Defense and the Inspector General of a covered non-defense agency cannot be attained causing the review required by this section to not be performed, no official of the Department of Defense, except as provided in subsection (e) or (f), may order, purchase or otherwise procure property or services in an amount in excess of $100,000 through such non-defense agency.

''(e) EXCEPTION FROM APPLICABILITY OF LIMITATIONS.—

''(1) EXCEPTION.—No limitation applies under subsection (d) with respect to the procurement of property and services on behalf of the Department of Defense by a covered non-defense agency during any period that there is in effect a determination of the Under Secretary of Defense for Acquisition and Sustainment, made in writing, that it is necessary in the interest of the Department of Defense to continue to procure property and services through such non-defense agency.

''(2) APPLICABILITY OF DETERMINATION.—A written determination with respect to a covered non-defense agency under paragraph (1) is in effect for the period, not in excess of one year, that the Under Secretary shall specify in the written determination. The Under Secretary may extend from time to time, for up to one year at a time, the period for which the written determination remains in effect.

''(f) TERMINATION OF APPLICABILITY OF LIMITATIONS.—Subsection (d) shall cease to apply to a covered non-defense agency on the date on which the Inspector General of the Department of Defense and the Inspector General of such non-defense agency jointly—

''(1) determine that such non-defense agency is compliant with defense procurement requirements; and

''(2) notify the Secretary of Defense of that determination.

''(g) IDENTIFICATION OF PROCUREMENTS MADE DURING A PARTICULAR FISCAL YEAR.—For the purposes of subsection (a), a procurement shall be treated as being made during a particular fiscal year to the extent that funds are obligated by the Department of Defense for that procurement in that fiscal year.

''(h) DEFINITIONS.—In this section:

''(1) The term 'covered non-defense agency' means each of the following:

''(A) The Department of the Treasury.

''(B) The Department of the Interior.

''(C) The National Aeronautics and Space Administration.

''(2) The term 'governmentwide acquisition contract', with respect to a covered non-defense agency, means a task or delivery order contract that—

''(A) is entered into by the non-defense agency; and

''(B) may be used as the contract under which property or services are procured for 1 or more other departments or agencies of the Federal Government.''

PANEL ON CONTRACTING INTEGRITY

Pub. L. 109–364, div. A, title VIII, § 813, Oct. 17, 2006, 120 Stat. 2320, as amended by Pub. L. 111–23, title II,

§ 207(d), May 22, 2009, 123 Stat. 1730, which established the Panel on Contracting Integrity and its composition and duties, was repealed by Pub. L. 115–232, div. A, title VIII, § 812(b)(12), Aug. 13, 2018, 132 Stat. 1848.

EMPLOYMENT OF STATE RESIDENTS IN STATES HAVING UNEMPLOYMENT RATE IN EXCESS OF NATIONAL AVERAGE

Pub. L. 109–289, div. A, title VIII, § 8048, Sept. 29, 2006, 120 Stat. 1284, provided that: ''Notwithstanding any other provision of law, each contract awarded by the Department of Defense during the current fiscal year and hereafter for construction or service performed in whole or in part in a State (as defined in section 381(d) [now 281(d)] of title 10, United States Code) which is not contiguous with another State and has an unemployment rate in excess of the national average rate of unemployment as determined by the Secretary of Labor, shall include a provision requiring the contractor to employ, for the purpose of performing that portion of the contract in such State that is not contiguous with another State, individuals who are residents of such State and who, in the case of any craft or trade, possess or would be able to acquire promptly the necessary skills: *Provided*, That the Secretary of Defense may waive the requirements of this section, on a case-by-case basis, in the interest of national security.''

REVIEW AND DEMONSTRATION PROJECT RELATING TO CONTRACTOR EMPLOYEES

Pub. L. 108–375, div. A, title VIII, § 851, Oct. 28, 2004, 118 Stat. 2019, provided that:

''(a) GENERAL REVIEW.—(1) The Secretary of Defense shall conduct a review of policies, procedures, practices, and penalties of the Department of Defense relating to employees of defense contractors for purposes of ensuring that the Department of Defense is in compliance with Executive Order No. 12989 [8 U.S.C. 1324a note] (relating to a prohibition on entering into contracts with contractors that are not in compliance with the Immigration and Nationality Act [8 U.S.C. 1101 et seq.]).

''(2) In conducting the review, the Secretary shall—

''(A) identify potential weaknesses and areas for improvement in existing policies, procedures, practices, and penalties;

''(B) develop and implement reforms to strengthen, upgrade, and improve policies, procedures, practices, and penalties of the Department of Defense and its contractors; and

''(C) review and analyze reforms developed pursuant to this paragraph to identify for purposes of national implementation those which are most efficient and effective.

''(3) The review under this subsection shall be completed not later than 180 days after the date of the enactment of this Act [Oct. 28, 2004].

''(b) DEMONSTRATION PROJECT.—The Secretary of Defense shall conduct a demonstration project in accordance with this section, in one or more regions selected by the Secretary, for purposes of promoting greater contracting opportunities for contractors offering effective, reliable staffing plans to perform defense contracts that ensure all contract personnel employed for such projects, including management employees, professional employees, craft labor personnel, and administrative personnel, are lawful residents or persons properly authorized to be employed in the United States and properly qualified to perform services required under the contract. The demonstration project shall focus on contracts for construction, renovation, maintenance, and repair services for military installations.

''(c) DEMONSTRATION PROJECT PROCUREMENT PROCEDURES.—As part of the demonstration project under subsection (b), the Secretary of Defense may conduct a competition in which there is a provision in contract solicitations and request for proposal documents to require significant weight or credit be allocated to—

''(1) reliable, effective workforce programs offered by prospective contractors that provide background checks and other measures to ensure the contractor is in compliance with the Immigration and Nationality Act; and

''(2) reliable, effective project staffing plans offered by prospective contractors that specify for all contract employees (including management employees, professionals, and craft labor personnel) the skills, training, and qualifications of such persons and the labor supply sources and hiring plans or procedures used for employing such persons.

''(d) IMPLEMENTATION OF DEMONSTRATION PROJECT.—The Secretary of Defense shall begin operation of the demonstration project required under this section after completion of the review under subsection (a), but in no event later than 270 days after the date of the enactment of this Act.

''(e) REPORT ON DEMONSTRATION PROJECT.—Not later than six months after award of a contract under the demonstration project, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives a report setting forth a review of the demonstration project and recommendations on the actions, if any, that can be implemented to ensure compliance by the Department of Defense with Executive Order No. 12989.

''(f) DEFINITION.—In this section, the term 'military installation' means a base, camp, post, station, yard, center, homeport facility for any ship, or other activity under the jurisdiction of the Department of Defense, including any leased facility, which is located within any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, or Guam. Such term does not include any facility used primarily for civil works, rivers and harbors projects, or flood control projects.''

DEFENSE PROCUREMENTS MADE THROUGH CONTRACTS OF OTHER AGENCIES

Pub. L. 108–375, div. A, title VIII, § 854, Oct. 28, 2004, 118 Stat. 2022, provided that:

''(a) LIMITATION.—The head of an agency may not procure goods or services (under section 1535 of title 31, United States Code, pursuant to a designation under section 11302(e) of title 40, United States Code, or otherwise) through a contract entered into by an agency outside the Department of Defense for an amount greater than the simplified acquisition threshold referred to in section 2304(g) of title 10, United States Code, unless the procurement is done in accordance with procedures prescribed by that head of an agency for reviewing and approving the use of such contracts.

''(b) EFFECTIVE DATE.—The limitation in subsection (a) shall apply only with respect to orders for goods or services that are issued by the head of an agency to an agency outside the Department of Defense on or after the date that is 180 days after the date of the enactment of this Act [Oct. 28, 2004].

''(c) INAPPLICABILITY TO CONTRACTS FOR CERTAIN SERVICES.—This section does not apply to procurements of the following services:

''(1) Printing, binding, or blank-book work to which section 502 of title 44, United States Code, applies.

''(2) Services available under programs pursuant to section 103 of the Library of Congress Fiscal Operations Improvement Act of 2000 (Public Law 106–481; 114 Stat. 2187; 2 U.S.C. 182c).

''(d) ANNUAL REPORT.—(1) For each of fiscal years 2005 and 2006, each head of an agency shall submit to the Secretary of Defense a report on the service charges imposed on purchases made for an amount greater than the simplified acquisition threshold during such fiscal year through a contract entered into by an agency outside the Department of Defense.

''(2) In the case of procurements made on orders issued by the head of a Defense Agency, Department of Defense Field Activity, or any other organization within the Department of Defense (other than a military department) under the authority of the Secretary of De-

fense as the head of an agency, the report under paragraph (1) shall be submitted by the head of that Defense Agency, Department of Defense Field Activity, or other organization, respectively.

''(3) The report for a fiscal year under this subsection shall be submitted not later than December 31 of the calendar year in which such fiscal year ends.

''(e) DEFINITIONS.—In this section:

''(1) The term 'head of an agency' means the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, the Secretary of the Air Force.

''(2) The term 'Defense Agency' has the meaning given such term in section 101(a)(11) of title 10, United States Code.

''(3) The term 'Department of Defense Field Activity' has the meaning given such term in section 101(a)(12) of such title.''

RESOURCES-BASED SCHEDULES FOR COMPLETION OF PUBLIC-PRIVATE COMPETITIONS FOR PERFORMANCE OF DEPARTMENT OF DEFENSE FUNCTIONS

Pub. L. 108–136, div. A, title III, § 334, Nov. 24, 2003, 117 Stat. 1443, provided that:

''(a) APPLICATION OF TIMEFRAMES.—Any interim or final deadline or other schedule-related milestone for the completion of a Department of Defense public-private competition shall be established solely on the basis of considered research and sound analysis regarding the availability of sufficient personnel, training, and technical resources to the Department of Defense to carry out such competition in a timely manner.

''(b) EXTENSION OF TIMEFRAMES.—(1) The Department of Defense official responsible for managing a Department of Defense public-private competition shall extend any interim or final deadline or other schedule-related milestone established (consistent with subsection (a)) for the completion of the competition if the official determines that the personnel, training, or technical resources available to the Department of Defense to carry out the competition in a timely manner are insufficient.

''(2) A determination under this subsection shall be made pursuant to procedures prescribed by the Secretary of Defense.''

COMPETITION REQUIREMENT FOR PURCHASE OF SERVICES PURSUANT TO MULTIPLE AWARD CONTRACTS

Pub. L. 107–107, div. A, title VIII, § 803, Dec. 28, 2001, 115 Stat. 1178, which required the Secretary of Defense to promulgate in the Department of Defense Supplement to the Federal Acquisition Regulation, not later than 180 days after Dec. 28, 2001, regulations requiring competition in the purchase of services by the Department of Defense pursuant to multiple award contracts, was repealed by Pub. L. 110–417, [div. A], title VIII, § 863(f), Oct. 14, 2008, 122 Stat. 4548.

REQUIREMENT TO DISREGARD CERTAIN AGREEMENTS IN AWARDING CONTRACTS FOR PURCHASE OF FIREARMS OR AMMUNITION

Pub. L. 106–398, § 1 [[div. A], title VIII, § 826], Oct. 30, 2000, 114 Stat. 1654, 1654A–220, provided that: ''In accordance with the requirements contained in the amendments enacted in the Competition in Contracting Act of 1984 (title VII of division B of Public Law 98–369; 98 Stat. 1175) [see Tables for classification], the Secretary of Defense may not, in awarding a contract for the purchase of firearms or ammunition, take into account whether a manufacturer or vendor of firearms or ammunition is a party to an agreement under which the manufacturer or vendor agrees to adopt limitations with respect to importing, manufacturing, or dealing in firearms or ammunition in the commercial market.''

GAO REPORT

Pub. L. 106–65, div. A, title VIII, § 806(b), Oct. 5, 1999, 113 Stat. 705, directed the Comptroller General, not later than Mar. 1, 2001, to submit to Congress an evaluation of the test program authorized by the provisions in Pub. L. 104–106, § 4202 (amending this section and section 2305 of this title and sections 253, 253a, 416, and 427 of Title 41, Public Contracts, and enacting provisions set out as a note below), together with any recommendations that the Comptroller General considered appropriate regarding the test program or the use of special simplified procedures for purchases of commercial items in excess of the simplified acquisition threshold.

PROCUREMENT OF CONVENTIONAL AMMUNITION

Pub. L. 105–261, div. A, title VIII, § 806, Oct. 17, 1998, 112 Stat. 2084, provided that:

''(a) AUTHORITY.—The official in the Department of Defense designated as the single manager for conventional ammunition in the Department shall have the authority to restrict the procurement of conventional ammunition to sources within the national technology and industrial base in accordance with the authority in section 2304(c) of title 10, United States Code.

''(b) REQUIREMENT.—The official in the Department of Defense designated as the single manager for conventional ammunition in the Department of Defense shall limit a specific procurement of ammunition to sources within the national technology and industrial base in accordance with section 2304(c)(3) of title 10, United States Code, in any case in which that manager determines that such limitation is necessary to maintain a facility, producer, manufacturer, or other supplier available for furnishing an essential item of ammunition or ammunition component in cases of national emergency or to achieve industrial mobilization.

''(c) CONVENTIONAL AMMUNITION DEFINED.—For purposes of this section, the term 'conventional ammunition' has the meaning given that term in Department of Defense Directive 5160.65, dated March 8, 1995.''

WARRANTY CLAIMS RECOVERY PILOT PROGRAM

Pub. L. 105–85, div. A, title III, § 391, Nov. 18, 1997, 111 Stat. 1716, as amended by Pub. L. 106–65, div. A, title III, § 382, Oct. 5, 1999, 113 Stat. 583; Pub. L. 107–107, div. A, title III, § 364, Dec. 28, 2001, 115 Stat. 1068; Pub. L. 107–314, div. A, title III, § 368, Dec. 2, 2002, 116 Stat. 2524; Pub. L. 108–375, div. A, title III, § 343, Oct. 28, 2004, 118 Stat. 1857, which authorized the Secretary of Defense to carry out a pilot program to use commercial sources of services to improve the collection of Department of Defense claims under aircraft engine warranties, was repealed by Pub. L. 115–232, div. A, title VIII, § 812(b)(13), Aug. 13, 2018, 132 Stat. 1848.

REQUIREMENTS RELATING TO MICRO-PURCHASES

Pub. L. 105–85, div. A, title VIII, § 848, Nov. 18, 1997, 111 Stat. 1846, as amended by Pub. L. 113–291, div. A, title X, § 1071(b)(10), Dec. 19, 2014, 128 Stat. 3507, provided that:

''(a) REQUIREMENT.—(1) Not later than October 1, 1998, at least 60 percent of all eligible purchases made by the Department of Defense for an amount less than the micro-purchase threshold shall be made through streamlined micro-purchase procedures.

''(2) Not later than October 1, 2000, at least 90 percent of all eligible purchases made by the Department of Defense for an amount less than the micro-purchase threshold shall be made through streamlined micro-purchase procedures.

''(b) ELIGIBLE PURCHASES.—The Secretary of Defense shall establish which purchases are eligible for purposes of subsection (a). In establishing which purchases are eligible, the Secretary may exclude those categories of purchases determined not to be appropriate or practicable for streamlined micro-purchase procedures.

''(c) PLAN.—Not later than March 1, 1998, the Secretary of Defense shall provide to the Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives a plan to implement this section.

''(d) REPORT.—Not later than March 1 in each of the years 1999, 2000, and 2001, the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of Senate and House of Representatives] a report on the implementation of this section. Each report shall include—

''(A) the total dollar amount of all Department of Defense purchases for an amount less than the micro-purchase threshold in the fiscal year preceding the year in which the report is submitted;

''(B) the total dollar amount of such purchases that were considered to be eligible purchases;

''(C) the total amount of such eligible purchases that were made through a streamlined micro-purchase method; and

''(D) a description of the categories of purchases excluded from the definition of eligible purchases established under subsection (b).

''(e) DEFINITIONS.—In this section:

''(1) The term 'micro-purchase threshold' has the meaning provided in section 1902 of title 41, United States Code.

''(2) The term 'streamlined micro-purchase procedures' means procedures providing for the use of the Government-wide commercial purchase card or any other method for carrying out micro-purchases that the Secretary of Defense prescribes in the regulations implementing this subsection.''

TERMINATION OF AUTHORITY TO ISSUE SOLICITATIONS FOR PURCHASES OF COMMERCIAL ITEMS IN EXCESS OF SIMPLIFIED ACQUISITION THRESHOLD

Pub. L. 104–106, div. D, title XLII, § 4202(e), Feb. 10, 1996, 110 Stat. 654, as amended by Pub. L. 106–65, div. A, title VIII, § 806(a), Oct. 5, 1999, 113 Stat. 705; Pub. L. 107–107, div. A, title VIII, § 823, Dec. 28, 2001, 115 Stat. 1183; Pub. L. 107–314, div. A, title VIII, § 812(a), Dec. 2, 2002, 116 Stat. 2609; Pub. L. 108–136, div. A, title XIV, § 1443(b), Nov. 24, 2003, 117 Stat. 1676; Pub. L. 108–375, div. A, title VIII, § 817, Oct. 28, 2004, 118 Stat. 2015; Pub. L. 110–181, div. A, title VIII, § 822(a), Jan. 28, 2008, 122 Stat. 226; Pub. L. 111–84, div. A, title VIII, § 816, Oct. 28, 2009, 123 Stat. 2408; Pub. L. 112–239, div. A, title VIII, § 822, Jan. 2, 2013, 126 Stat. 1830; Pub. L. 113–66, div. A, title X, § 1091(b)(4), Dec. 26, 2013, 127 Stat. 876, which related to termination of authority to issue solicitations for purchases of commercial items in excess of simplified acquisition threshold, was repealed by Pub. L. 113–291, div. A, title VIII, § 815, Dec. 19, 2014, 128 Stat. 3430.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

AUTHORITY OF BASE COMMANDERS OVER CONTRACTING FOR COMMERCIAL ACTIVITIES

Pub. L. 100–180, div. A, title XI, § 1111, Dec. 4, 1987, 101 Stat. 1146, directed the Secretary of Defense to authorize the commander of each military installation to (1) prepare an inventory each fiscal year of commercial activities carried out by Government personnel on the military installation, (2) decide which commercial activities were to be reviewed pursuant to Office of Management and Budget Circular A–76 or any successor administrative regulation or policy, (3) conduct a solicitation for contracts for those commercial activities selected for conversion to contractor performance under the Circular A–76 process, and (4) assist in finding suitable employment for any employee of the Department of Defense who had been displaced because of a contract entered into with a contractor for performance of a commercial activity on the military installation; directed the Secretary to prescribe regulations required by the preceding authority no later than 60 days after Dec. 4, 1987; and provided for termination of the authority on Oct. 1, 1989.

EVALUATION OF CONTRACTS FOR PROFESSIONAL AND TECHNICAL SERVICES

Pub. L. 100–456, div. A, title VIII, § 804, Sept. 29, 1988, 102 Stat. 2009, as amended by Pub. L. 103–160, div. A, title IX, § 904(f), Nov. 30, 1993, 107 Stat. 1729, directed Secretary of Defense, within 120 days after Sept. 29, 1988, to establish criteria to ensure that proposals for contracts for professional and technical services be evaluated on a basis which does not encourage contractors to propose mandatory uncompensated overtime for professional and technical employees and, within 30 days after Sept. 29, 1988, to establish an advisory committee to make recommendations on the criteria.

REGULATIONS ON USE OF FIXED-PRICE DEVELOPMENT CONTRACTS

Pub. L. 100–456, div. A, title VIII, § 807, Sept. 29, 1988, 102 Stat. 2011, as amended by Pub. L. 103–160, div. A, title IX, § 904(f), Nov. 30, 1993, 107 Stat. 1729, which provided that not later than 120 days after Sept. 29, 1988, the Secretary of Defense was to make certain revisions to Department of Defense regulations that provide for the use of fixed-price type contracts in a development program, was repealed by Pub. L. 109–364, div. A, title VIII, § 818(a), Oct. 17, 2006, 120 Stat. 2329.

PROHIBITION OF PURCHASE OF ANGOLAN PETROLEUM PRODUCTS FROM COMPANIES PRODUCING OIL IN ANGOLA

Pub. L. 102–484, div. A, title VIII, § 842, Oct. 23, 1992, 106 Stat. 2468, provided that: ''The prohibition in section 316 of the National Defense Authorization Act for Fiscal Year 1987 [Pub. L. 99–661] (100 Stat. 3855; 10 U.S.C. 2304 note) shall cease to be effective on the date on which the President certifies to Congress that free, fair, and democratic elections have taken place in Angola.''

Determination of President of the United States, No. 93–32, July 19, 1993, 58 F.R. 40309, provided:

Pursuant to the authority vested in me by Public Law 102–484, section 842 [set out as a note above], I hereby certify that free, fair, and democratic elections have taken place in Angola.

You are authorized and directed to report this determination to the Congress and publish it in the Federal Register.

WILLIAM J. CLINTON.

Pub. L. 99–661, div. A, title III, § 316, Nov. 14, 1986, 100 Stat. 3855, provided that:

''(a) GENERAL RULE.—The Secretary of Defense may not enter into a contract with a company for the purchase of petroleum products which originated in Angola if the company (or a subsidiary or partnership of the company) is engaged in the production of petroleum products in Angola.

''(b) WAIVER AUTHORITY.—The Secretary of Defense may waive the limitation in subsection (a) if the Secretary determines that such action is in the best interest of the United States.

''(c) PETROLEUM PRODUCT DEFINED.—For purposes of this section, the term 'petroleum product' means—

''(1) natural or synthetic crude;

''(2) blends of natural or synthetic crude; and

''(3) products refined or derived from natural or synthetic crude or from such blends.

''(d) EFFECTIVE DATE.—This section shall take effect six months after the date of the enactment of this Act [Nov. 14, 1986].''

DEADLINE FOR PRESCRIBING REGULATIONS

Pub. L. 99–500, § 101(c) [title X, § 927(b)], Oct. 18, 1986, 100 Stat. 1783–82, 100 Stat. 1783–156, Pub. L. 99–591, § 101(c) [title X, § 927(b)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–156, and Pub. L. 99–661, div. A, title IX, formerly

title IV, § 927(b), Nov. 14, 1986, 100 Stat. 3935, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273, which set a deadline for prescribing the regulations required by subsec. (i) of this section, were repealed by Pub. L. 115–232, div. A, title VIII, § 812(b)(14), Aug. 13, 2018, 132 Stat. 1848.

ONE-YEAR SECURITY-GUARD PROHIBITION

Pub. L. 99–661, div. A, title XII, § 1222(b), Nov. 14, 1986, 100 Stat. 3976, which provided that, with exceptions, funds appropriated to the Department of Defense were not to be obligated or expended before Oct. 1, 1987, for the purpose of entering into a contract for the performance of security-guard functions at any military facility, was repealed by Pub. L. 115–232, div. A, title VIII, § 812(b)(15), Aug. 13, 2018, 132 Stat. 1848.

CONTRACTING OUT PERFORMANCE OF DEPARTMENT OF DEFENSE SUPPLY AND SERVICE FUNCTIONS

Pub. L. 99–661, div. A, title XII, § 1223, Nov. 14, 1986, 100 Stat. 3977, which required Secretary to contract for Department of Defense supplies and services from private sector after a cost comparison demonstrates lower cost than Department of Defense can provide, and to ensure that overhead costs considered are realistic and fair, was repealed and restated in former section 2462 of this title by Pub. L. 100–370, § 2(a)(1), (c)(3), July 19, 1988, 102 Stat. 853, 854.

REPORTS ON SAVINGS OR COSTS FROM INCREASED USE OF CIVILIAN PERSONNEL

Pub. L. 99–661, div. A, title XII, § 1224, Nov. 14, 1986, 100 Stat. 3977, which required Secretary to maintain cost comparison data on performance of a commercial or industrial type activity taken over by Department of Defense comparing performance by employees of private contractor to that of civilian employees of Department of Defense, and to submit semi-annual report on savings or loss to United States, was repealed and restated in section 2463 of this title by Pub. L. 100–370, § 2(a)(1), (c)(3), July 19, 1988, 102 Stat. 853, 854.

LIMITATIONS ON CONTRACTING PERFORMED BY COAST GUARD

Pub. L. 101–225, title II, § 205, Dec. 12, 1989, 103 Stat. 1912, provided that: ''Notwithstanding any other provision of law, an officer or employee of the United States may not enter into a contract for procurement of performance of any function being performed by Coast Guard personnel as of January 1, 1989, before—

''(1) a study has been performed by the Secretary of Transportation under the Office of Management and Budget Circular A–76 with respect to that procurement;

''(2) the Secretary of Transportation has performed a study, in addition to the study required by paragraph (1) of this subsection, to determine the impact of that procurement on the multimission capabilities of the Coast Guard; and

''(3) copies of the studies required by paragraphs (1) and (2) of this subsection are submitted to the Committee on Merchant Marine and Fisheries [now Committee on Transportation and Infrastructure] of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.''

Pub. L. 100–448, § 5, Sept. 28, 1988, 102 Stat. 1837, as amended by Pub. L. 104–66, title I, § 1121(b), Dec. 21, 1995, 109 Stat. 724, provided that:

''(a) MAINTENANCE OF LOGISTICS CAPABILITY.—

''(1) STATEMENT OF NATIONAL INTEREST.—It is in the national interest for the Coast Guard to maintain a logistics capability (including personnel, equipment, and facilities) to provide a ready and controlled source of technical competence and resources necessary to ensure the effective and timely performance of Coast Guard missions in behalf of the security, safety, and economic and environmental well-being of the United States.

''[(2) Repealed. Pub. L. 104–66, title I, § 1121(b), Dec. 21, 1995, 109 Stat. 724.]

''[(b) Repealed. Pub. L. 104–66, title I, § 1121(b), Dec. 21, 1995, 109 Stat. 724.]

''(c) SUBMISISON [sic] OF LIST OF ACTIVITIES CONTRACTED FOR PERFORMANCE.—At least 30 days before the beginning of each fiscal year, the Secretary shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries [now Committee on Transportation and Infrastructure] of the House of Representatives a list of activities that will be contracted for performance by non-Government personnel under the procedures of Office of Management and Budget Circular A–76 during that fiscal year.

''(d) EMPLOYMENT OF LOCAL RESIDENTS TO PERFORM CONTRACTS.—

''(1) IN GENERAL.—Notwithstanding any other provision of law, each contract awarded by the Coast Guard in fiscal years 1988 and 1989 for construction or services to be performed in whole or in part in a State which has an unemployment rate in excess of the national average rate of unemployment (as determined by the Secretary of Labor) shall include a provision requiring the contractor to employ, for the purpose of performing that portion of the contract in that State, individuals who are local residents and who, in the case of any craft or trade, possess or would be able to acquire promptly the necessary skills. The Secretary of the department in which the Coast Guard is operating may waive this subsection in the interest of national security or economic efficiency.

''(2) LOCAL RESIDENT DEFINED.—As used in this subsection, the term 'local resident' means a resident of a State described in paragraph (1), and any individual who commutes daily to a State described in paragraph (1).''

[For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.]

Similar provisions were contained in the following prior authorization act:

Pub. L. 99–640, § 5, Nov. 10, 1986, 100 Stat. 3546.

CONTRACTED ADVISORY AND ASSISTANCE SERVICES

Pub. L. 99–145, title IX, § 918, Nov. 8, 1985, 99 Stat. 690, which provided that Secretary of Defense require each military department to establish accounting procedure to aid in control of expenditures for contracted advisory and assistance services, prescribe regulations to identify such services and which services are in direct support of a weapons system, consider specific list of factors in prescribing regulations, and identify total amount requested and separate category amount requested in budget documents for Department of Defense presented to Congress, was repealed and restated in section 2212 of this title by Pub. L. 100–370, § 1(d)(2), July 19, 1988, 102 Stat. 842.

ASSIGNMENT OF PRINCIPAL CONTRACTING OFFICERS

Pub. L. 99–145, title IX, § 925, Nov. 8, 1985, 99 Stat. 699, required Secretary of Defense to develop a policy regarding mobility and regular rotation of principal administrative and corporate administrative contracting officers in Department of Defense and to report to Committees on Armed Services of Senate and House of Representatives not later than January 1, 1986, on such policy, prior to repeal by Pub. L. 101–510, div. A, title XII, § 1207(a), Nov. 5, 1990, 104 Stat. 1665.

PROHIBITION ON FELONS CONVICTED OF DEFENSE-CONTRACT-RELATED FELONIES AND PENALTY ON EMPLOYMENT OF SUCH PERSONS BY DEFENSE CONTRACTORS

Pub. L. 99–145, title IX, § 932, Nov. 8, 1985, 99 Stat. 699, prohibited certain felons from working on defense con-

tracts and penalized employment of such persons by defense contractors, prior to repeal by Pub. L. 99–500, § 101(c) [title X, § 941(b)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–162, and Pub. L. 99–591, § 101(c) [title X, § 941(b)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–162; Pub. L. 99–661, div. A, title IX, formerly title IV, § 941(b), Nov. 14, 1986, 100 Stat. 3942, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273.

REIMBURSEMENT, INTEREST CHARGES, AND PENALTIES FOR OVERPAYMENTS DUE TO COST AND PRICING DATA

Pub. L. 99–145, title IX, § 934(a), Nov. 8, 1985, 99 Stat. 700, which provided for interest payments and penalties for overpayments due to faulty cost and pricing data, was repealed by Pub. L. 99–500, § 101(c) [title X, § 952(b)(2), (d)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–169, and Pub. L. 99–591, § 101(c) [title X, § 952(b)(2), (d)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–169; Pub. L. 99–661, div. A, title IX, formerly title IV, § 952(b)(2), (d), Nov. 14, 1986, 100 Stat. 3949, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273, effective with respect to contracts or modifications on contracts entered into after the end of the 120-day period beginning on Oct. 18, 1986.

PERSONNEL FOR PERFORMANCE OF SERVICES AND ACTIVITIES

Pub. L. 99–145, title XII, § 1233, Nov. 8, 1985, 99 Stat. 734, related to services and activities to be performed by non-Government personnel, prior to repeal by Pub. L. 99–661, div. A, title XII, § 1222(c), Nov. 14, 1986, 100 Stat. 3977.

LIMITATION ON CONTRACTING-OUT CORE LOGISTICS FUNCTIONS

Pub. L. 99–145, title XII, § 1231(a)–(e), Nov. 8, 1985, 99 Stat. 731–733, declared that certain specifically described functions of the Department of Defense shall be deemed logistics activities necessary to maintain the logistics capability described in section 307(a)(1) of Pub. L. 98–525, formerly set out below; contained a description of the functions, i.e., depot-level maintenance of mission-essential materiel at specifically located activities of the Army, the Navy, the Marine Corps, the Air Force, the Defense Logistics Agency, and the Defense Mapping Agency; included certain matters within the specified functions and excluded certain functions; and defined ''mission-essential materiel'' as related to such functions.

Pub. L. 98–525, title III, § 307, Oct. 19, 1984, 98 Stat. 2514, as amended by Pub. L. 99–145, title XII, § 1231(f), Nov. 8, 1985, 99 Stat. 733, which prohibited contracting to non-Government personnel of logistics activities necessary for effective response to national emergencies unless Secretary waives such prohibition after a determination that Government performance of such activity is no longer required for national defense reasons, and reports to Congress on waiver, was repealed and restated in former section 2464 of this title by Pub. L. 100–370, § 2(a)(1), (c)(2), July 19, 1988, 102 Stat. 853, 854.

SHIPBUILDING CLAIMS FOR CONTRACT PRICE ADJUSTMENTS

Pub. L. 98–473, title I, § 101(h) [title VIII, § 8078], Oct. 12, 1984, 98 Stat. 1904, 1938, prohibited expenditure of funds to adjust any contract price in any shipbuilding claim, request for equitable adjustment, or demand for payment incurred due to the preparation, submission, or adjudication of any such shipbuilding claim, request, or demand under a contract entered into after Oct. 12, 1984, arising out of events occurring more than eighteen months prior to the submission of such shipbuilding claim, request, or demand, prior to repeal by Pub. L. 100–370, § 1(p)(2), July 19, 1988, 102 Stat. 851.

Pub. L. 98–212, title VII, § 787, Dec. 8, 1983, 97 Stat. 1453, which contained similar provisions relating to shipbuilding claims for contract price adjustments, was repealed and restated in section 2405 of this title by Pub. L. 98–525, title XII, § 1234(a), (b)(2), Oct. 19, 1984, 98 Stat. 2604, effective Oct. 19, 1984.

WEAPON SYSTEM GUARANTEES; GOVERNMENT-AS-SOURCE EXCEPTION; WAIVER

Pub. L. 98–212, title VII, § 794, Dec. 8, 1983, 97 Stat. 1454, provided for weapon system guarantees, Government-as-Source exception, and waiver, prior to repeal by Pub. L. 98–525, title XII, § 1234(b)(1), Oct. 19, 1984, 98 Stat. 2604, effective Jan. 1, 1985.

FIGHTER AIRCRAFT ENGINE WARRANTY

Pub. L. 97–377, title I, § 101(c) [title VII, § 797], Dec. 21, 1982, 96 Stat. 1865, provided that: ''None of the funds made available in the Act or any subsequent Act shall be available for the purchase of the alternate or new model fighter aircraft engine that does not have a written warranty or guarantee attesting that it will perform not less than 3,000 tactical cycles. The warranty will provide that the manufacturer must perform the necessary improvements or replace any parts to achieve the required performance at no cost to the Government.''

INSURANCE TO PROTECT GOVERNMENT CONTRACTORS AGAINST COST OF CORRECTING CONTRACTOR'S OWN DEFECTS; REIMBURSEMENT PROHIBITED

Pub. L. 97–12, title I, § 100, June 5, 1981, 95 Stat. 29, and Pub. L. 97–114, title VII, § 770, Dec. 29, 1981, 95 Stat. 1590, which provided that no funds authorized for the Department of Defense in fiscal year 1981 and thereafter would be available to reimburse a contractor for the cost of commercial insurance, except for that normally maintained in the conduct of his business, that would protect against the cost for correction for the contractor's own defects in materials or workmanship such as were not a fortuitous casualty or loss, were repealed and restated in section 2399 of this title by Pub. L. 97–295, §§ 1(29)(A), 6(b), Oct. 12, 1982, 96 Stat. 1293, 1315.

RESTRICTIONS ON CONVERSION OF PERFORMANCE OF COMMERCIAL AND INDUSTRIAL TYPE FUNCTIONS FROM DEPARTMENT OF DEFENSE PERSONNEL TO PRIVATE CONTRACTORS; ANNUAL REPORT TO CONGRESS

Pub. L. 96–342, title V, § 502, Sept. 8, 1980, 94 Stat. 1086, as amended by Pub. L. 97–252, title XI, § 1112(a), Sept. 8, 1982, 96 Stat. 747; Pub. L. 99–145, title XII, § 1234(a), Nov. 8, 1985, 99 Stat. 734; Pub. L. 99–661, div. A, title XII, § 1221, Nov. 14, 1986, 100 Stat. 3976, which provided that no commercial or industrial type function of the Department of Defense that on October 1, 1980, was being performed by Department of Defense civilian employees could be converted to performance by a private contractor to circumvent any civilian personnel ceiling unless Secretary of Defense submitted favorable cost comparisons and certifications, and reported annually to Congress with regard to such conversions, was repealed and restated in section 2461 of this title by Pub. L. 100–370, § 2(a)(1), (c)(1), July 19, 1988, 102 Stat. 851, 854.

Similar provisions for fiscal year 1980 were contained in Pub. L. 96–107, title VIII, § 806, Nov. 9, 1979, 93 Stat. 813.

CONTRACT CLAIMS; REQUEST FOR EQUITABLE ADJUSTMENT; REQUEST FOR RELIEF; CERTIFICATION

Pub. L. 95–485, title VIII, § 813, Oct. 20, 1978, 92 Stat. 1624, which prohibited payment of a contract claim, request for equitable adjustment, or request for relief which exceeded $100,000 unless a senior company official certified that request was made in good faith and that supporting data was accurate and complete, was repealed and restated in section 2410 of this title by Pub. L. 100–370, § 1(h)(2), (p)(4), July 19, 1988, 102 Stat. 847, 851.

REPORT TO CONGRESS BY SECRETARY OF DEFENSE; CHANGES IN POLICY OR REGULATIONS CONCERNING USE OF PRIVATE CONTRACTORS FOR COMMERCIAL OR INDUSTRIAL TYPE FUNCTION AT DEPARTMENT OF DEFENSE INSTALLATIONS; RESTRICTIONS

Pub. L. 95–485, title VIII, § 814, Oct. 20, 1978, 92 Stat. 1625, directed the Secretary of Defense to report to the

House and Senate Committees on Armed Services any proposed change in policy or regulations from those in effect before June 30, 1976, as to whether commercial or industrial functions at Defense Department installations in the United States, Puerto Rico, and Guam should be performed by Department of Defense personnel or by private contractors during the period Oct. 1, 1978 to Sept. 30, 1979; prohibited such functions to be performed privately unless such contractor performance began before Oct. 20, 1978 or performance would have been allowed by policy and regulations in effect before June 30, 1976; and provided that such prohibition would apply until the end of the 60 day period beginning on the date the report by the Secretary of Defense is received by the House and Senate Committees.

REPORTING REQUIREMENTS FOR SECRETARY OF DEFENSE AND PRIME CONTRACTORS CONCERNING PAYMENTS BY PRIME CONTRACTORS FOR WORK PERFORMED BY SUBCONTRACTORS

Pub. L. 95–111, title VIII, § 836, Sept. 21, 1977, 91 Stat. 906, which directed the Secretary of Defense to require all prime contractors with more than $500,000 of defense contract awards to report in dollars at the end of each year the amount of work done in that year and the State where performed, and requiring the Secretary of Defense to report annually to Congress the amount of funds spent for such work in each State, was repealed and restated in subsec. (i) of this section by Pub. L. 97–295, §§ 1(24)(C), 6(b), Oct. 12, 1982, 96 Stat. 1291, 1315.

PERFORMANCE REVIEW OF DEPARTMENT OF DEFENSE COMMERCIAL OR INDUSTRIAL FUNCTIONS

Pub. L. 95–79, title VIII, § 809, July 30, 1977, 91 Stat. 334, directed the Secretary of Defense and the Director of the Office of Management and Budget to review criteria used in determining whether commercial or industrial type functions at Department of Defense installations within the United States, Puerto Rico, and Guam should be performed by Department of Defense personnel or by private contractors and to report to the House and Senate Armed Services Committees before Jan. 1, 1978, the results of the review; prohibited commercial or industrial type functions being performed on July 30, 1977 by Department of Defense personnel from being converted to performance by private contractors before the earlier of Mar. 15, 1978 or the end of the 90-day period beginning on the date the report is received by the House and Senate Committees; exempted from such prohibition the conversion to performance by private contractors of industrial or commercial type functions if the conversion would have been made under policies and regulations in effect before June 30, 1976; and required the Secretary of Defense to report to the House and Senate Committees on Armed Services before Jan. 1, 1978, detailing the Department's rationale for establishing goals for the percentage of work at defense research installations to be performed by private contractors and for any direction in effect on July 30, 1977 establishing a minimum or maximum percentage for the allocation of work at any defense research installation to be performed by private contractors or directing a change in any such allocation in effect on July 30, 1977.

DISCRIMINATION IN PETROLEUM SUPPLIES TO ARMED FORCES PROHIBITED; ENFORCEMENT PROCEDURE; PENALTIES; EXPIRATION

Pub. L. 94–106, title VIII, § 816, Oct. 7, 1975, 89 Stat. 540, as amended by Pub. L. 98–620, title IV, § 402(8), Nov. 8, 1984, 98 Stat. 3357, provided a remedy for discrimination by citizens of nationals of the United States or corporations organized or operating within the United States, and by organizations controlled by them, against the Department of Defense in the supply of petroleum products for two years after Oct. 7, 1975.

ANNOUNCEMENTS OF AWARD OF CONTRACTS BY DEPARTMENT OF DEFENSE; DISCLOSURE OF IDENTITY OF CONTRACTOR PRIOR TO ANNOUNCEMENT PROHIBITED

Pub. L. 91–441, title V, § 507, Oct. 7, 1970, 84 Stat. 913, which had provided that the identity or location of a recipient of a contract from the Department of Defense may not be revealed prior to the public announcement of such identity by the Secretary of Defense, was repealed and restated in section 2316 of this title by Pub. L. 97–295, §§ 1(26)(A), 6(b), Oct. 12, 1982, 96 Stat. 1291, 1314.

AWARD OF CONTRACTS THROUGH FORMAL ADVERTISING AND COMPETITIVE BIDDING WHERE PRACTICABLE

Pub. L. 90–5, title III, § 304, Mar. 16, 1967, 81 Stat. 6, which had provided that the Secretary of Defense was directed, insofar as practicable, that all contracts be formally advertised and awarded on a competitive bid basis to the lowest responsible bidder, was repealed and restated in subsec. (a) of this section by Pub. L. 97–295, §§ 1(24)(A), 6(b), Oct. 12, 1982, 96 Stat. 1290, 1314.

NON-APPLICABILITY OF NATIONAL EMERGENCIES ACT

Provisions of the National Emergencies Act not applicable to the powers and authorities conferred by subsec. (a)(1) of this section and actions taken hereunder, see section 1651(a)(5) of Title 50, War and National Defense.

§ 2304a. Task and delivery order contracts: general authority

(a) AUTHORITY TO AWARD.—Subject to the requirements of this section, section 2304c of this title, and other applicable law, the head of an agency may enter into a task or delivery order contract (as defined in section 2304d of this title) for procurement of services or property.

(b) SOLICITATION.—The solicitation for a task or delivery order contract shall include the following:

(1) The period of the contract, including the number of options to extend the contract and the period for which the contract may be extended under each option, if any.

(2) The maximum quantity or dollar value of the services or property to be procured under the contract.

(3) A statement of work, specifications, or other description that reasonably describes the general scope, nature, complexity, and purposes of the services or property to be procured under the contract.

(c) APPLICABILITY OF RESTRICTION ON USE OF NONCOMPETITIVE PROCEDURES.—The head of an agency may use procedures other than competitive procedures to enter into a task or delivery order contract under this section only if an exception in subsection (c) of section 2304 of this title applies to the contract and the use of such procedures is approved in accordance with subsection (f) of such section.

(d) SINGLE AND MULTIPLE CONTRACT AWARDS.—(1) The head of an agency may exercise the authority provided in this section—

(A) to award a single task or delivery order contract; or

(B) if the solicitation states that the head of the agency has the option to do so, to award separate task or delivery order contracts for the same or similar services or property to two or more sources.

(2) No determination under section 2304(b) of this title is required for award of multiple task or delivery order contracts under paragraph (1)(B).

(3)(A) Except as provided under subparagraph (B), no task or delivery order contract in an amount estimated to exceed $100,000,000 (including all options) may be awarded to a single source unless the head of the agency determines in writing that—

(i) the task or delivery orders expected under the contract are so integrally related that only a single source can efficiently perform the work;

(ii) the contract provides only for firm, fixed price task orders or delivery orders for—

(I) products for which unit prices are established in the contract; or

(II) services for which prices are established in the contract for the specific tasks to be performed;

(iii) only one source is qualified and capable of performing the work at a reasonable price to the government; or

(iv) because of exceptional circumstances, it is necessary in the public interest to award the contract to a single source.

(B) A task or delivery order contract in an amount estimated to exceed $100,000,000 (including all options) may be awarded to a single source without the written determination otherwise required under subparagraph (A) if the head of the agency has made a written determination pursuant to section 2304(c) of this title that procedures other than competitive procedures may be used for the awarding of such contract.

(4) The regulations implementing this subsection shall—

(A) establish a preference for awarding, to the maximum extent practicable, multiple task or delivery order contracts for the same or similar services or property under the authority of paragraph (1)(B); and

(B) establish criteria for determining when award of multiple task or delivery order contracts would not be in the best interest of the Federal Government.

(e) CONTRACT MODIFICATIONS.—A task or delivery order may not increase the scope, period, or maximum value of the task or delivery order contract under which the order is issued. The scope, period, or maximum value of the contract may be increased only by modification of the contract.

(f) CONTRACT PERIOD.—The head of an agency entering into a task or delivery order contract under this section may provide for the contract to cover any period up to five years and may extend the contract period for one or more successive periods pursuant to an option provided in the contract or a modification of the contract. The total contract period as extended may not exceed 10 years unless such head of an agency determines in writing that exceptional circumstances necessitate a longer contract period.

(g) INAPPLICABILITY TO CONTRACTS FOR ADVISORY AND ASSISTANCE SERVICES.—Except as otherwise specifically provided in section 2304b of this title, this section does not apply to a task or delivery order contract for the procurement of advisory and assistance services (as defined in section 1105(g) of title 31).

(h) RELATIONSHIP TO OTHER CONTRACTING AUTHORITY.—Nothing in this section may be construed to limit or expand any authority of the head of an agency or the Administrator of General Services to enter into schedule, multiple award, or task or delivery order contracts under any other provision of law.

(Added Pub. L. 103–355, title I, § 1004(a)(1), Oct. 13, 1994, 108 Stat. 3249; amended Pub. L. 108–136, div. A, title VIII, § 843(b), Nov. 24, 2003, 117 Stat. 1553; Pub. L. 108–375, div. A, title VIII, § 813(a), Oct. 28, 2004, 118 Stat. 2014; Pub. L. 110–181, div. A, title VIII, § 843(a)(1), Jan. 28, 2008, 122 Stat. 236; Pub. L. 111–84, div. A, title VIII, § 814(a), Oct. 28, 2009, 123 Stat. 2407; Pub. L. 112–81, div. A, title VIII, § 809(b), Dec. 31, 2011, 125 Stat. 1490; Pub. L. 115–232, div. A, title VIII, § 816, Aug. 13, 2018, 132 Stat. 1852; Pub. L. 116–92, div. A, title VIII, § 816, Dec. 20, 2019, 133 Stat. 1487.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1820(c)(1), Jan. 1, 2021, 134 Stat. 4151, 4191, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 245 of this title, as amended by section 1820(a) of Pub. L. 116–283, inserted after section 3401, and redesignated as section 3403 of this title. See Effective Date of 2021 Amendment note below.

CODIFICATION

Another section 2304a was renumbered section 2304e of this title.

AMENDMENTS

2019—Subsec. (d)(3). Pub. L. 116–92 designated existing provisions as subpar. (A), substituted ‘‘Except as provided under subparagraph (B), no task or delivery order contract’’ for ‘‘No task or delivery order contract’’, redesignated former subpars. (A) to (D) as cls. (i) to (iv), respectively, of subpar. (A), redesignated cls. (i) and (ii) of former subpar. (B) as subcls. (I) and (II), respectively, of subpar. (A)(ii), and added subpar. (B).

2018—Subsec. (d)(3)(A). Pub. L. 115–232 substituted ‘‘efficiently perform the work’’ for ‘‘reasonably perform the work’’.

2011—Subsec. (d)(3). Pub. L. 112–81 struck out subpar. (A) designation before ‘‘No task’’, redesignated cls. (i) to (iv) of former subpar. (A) as subpars. (A) to (D), respectively, of par. (3), redesignated subcls. (I) and (II) of former cl. (ii) as cls. (i) and (ii), respectively, of subpar. (B), and struck out former subpar. (B) which read as follows: ‘‘The head of the agency shall notify the congressional defense committees within 30 days after any determination under clause (i), (ii), (iii), or (iv) of subparagraph (A).’’

2009—Subsec. (d)(3)(B). Pub. L. 111–84 amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ‘‘The head of the agency shall notify Congress within 30 days after any determination under subparagraph (A)(iv).’’

2008—Subsec. (d)(3), (4). Pub. L. 110–181 added par. (3) and redesignated former par. (3) as (4).

2004—Subsec. (f). Pub. L. 108–375 substituted ‘‘any period up to five years and may extend the contract period for one or more successive periods pursuant to an option provided in the contract or a modification of the contract. The total contract period as extended may not exceed 10 years unless such head of an agency determines in writing that exceptional circumstances necessitate a longer contract period’’ for ‘‘a total period of not more than five years’’.

2003—Subsecs. (f) to (h). Pub. L. 108–136 added subsec. (f) and redesignated former subsecs. (f) and (g) as (g) and (h), respectively.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–181, div. A, title VIII, § 843(a)(3)(A), Jan. 28, 2008, 122 Stat. 237, provided that: ''The amendments made by paragraph (1) [amending this section] shall take effect on the date that is 120 days after the date of the enactment of this Act [Jan. 28, 2008], and shall apply with respect to any contract awarded on or after such date.''

EFFECTIVE DATE

For effective date and applicability of section, see section 10001 of Pub. L. 103–355, set out as an Effective Date of 1994 Amendment note under section 2302 of this title.

CONGRESSIONAL INTELLIGENCE COMMITTEES

Pub. L. 111–84, div. A, title VIII, § 814(b), Oct. 28, 2009, 123 Stat. 2407, which set out an additional congressional notification requirement pursuant to former subsec. (d)(3)(B) of this section, was repealed by Pub. L. 115–232, div. A, title VIII, § 812(b)(16), Aug. 13, 2018, 132 Stat. 1848.

PROVISIONS NOT AFFECTED BY PUB. L. 103–355

Pub. L. 103–355, title I, § 1004(d), Oct. 13, 1994, 108 Stat. 3253, as amended by Pub. L. 108–136, div. A, title X, § 1045(f), Nov. 24, 2003, 117 Stat. 1613, provided that: ''Nothing in section 2304a, 2304b, 2304c, or 2304d of title 10, United States Code, as added by subsection (a), and nothing in the amendments made by subsections (b) and (c) [amending sections 2304 and 2331 of this title], shall be construed as modifying or superseding, or as intended to impair or restrict, authorities or responsibilities under chapter 11 of title 40, United States Code.''

§ 2304b. Task order contracts: advisory and assistance services

(a) AUTHORITY TO AWARD.—(1) Subject to the requirements of this section, section 2304c of this title, and other applicable law, the head of an agency may enter into a task order contract (as defined in section 2304d of this title) for procurement of advisory and assistance services.

(2) The head of an agency may enter into a task order contract for procurement of advisory and assistance services only under the authority of this section.

(b) LIMITATION ON CONTRACT PERIOD.—The period of a task order contract entered into under this section, including all periods of extensions of the contract under options, modifications, or otherwise, may not exceed five years unless a longer period is specifically authorized in a law that is applicable to such contract.

(c) CONTENT OF NOTICE.—The notice required by section 1708 of title 41 and section 8(e) of the Small Business Act (15 U.S.C. 637(e)) shall reasonably and fairly describe the general scope, magnitude, and duration of the proposed task order contract in a manner that would reasonably enable a potential offeror to decide whether to request the solicitation and consider submitting an offer.

(d) REQUIRED CONTENT OF SOLICITATION AND CONTRACT.—(1) The solicitation for the proposed task order contract shall include the information (regarding services) described in section 2304a(b) of this title.

(2) A task order contract entered into under this section shall contain the same information that is required by paragraph (1) to be included in the solicitation of offers for that contract.

(e) MULTIPLE AWARDS.—(1) The head of an agency may, on the basis of one solicitation, award separate task order contracts under this section for the same or similar services to two or more sources if the solicitation states that the head of the agency has the option to do so.

(2) If, in the case of a task order contract for advisory and assistance services to be entered into under this section, the contract period is to exceed three years and the contract amount is estimated to exceed $10,000,000 (including all options), the solicitation shall—

(A) provide for a multiple award authorized under paragraph (1); and

(B) include a statement that the head of the agency may also elect to award only one task order contract if the head of the agency determines in writing that only one of the offerers is capable of providing the services required at the level of quality required.

(3) Paragraph (2) does not apply in the case of a solicitation for which the head of the agency concerned determines in writing that, because the services required under the task order contract are unique or highly specialized, it is not practicable to award more than one contract.

(f) CONTRACT MODIFICATIONS.—(1) A task order may not increase the scope, period, or maximum value of the task order contract under which the order is issued. The scope, period, or maximum value of the contract may be increased only by modification of the contract.

(2) Unless use of procedures other than competitive procedures is authorized by an exception in subsection (c) of section 2304 of this title and approved in accordance with subsection (f) of such section, competitive procedures shall be used for making such a modification.

(3) Notice regarding the modification shall be provided in accordance with section 1708 of title 41 and section 8(e) of the Small Business Act (15 U.S.C. 637(e)).

(g) CONTRACT EXTENSIONS.—(1) Notwithstanding the limitation on the contract period set forth in subsection (b) or in a solicitation or contract pursuant to subsection (e), a task order contract entered into by the head of an agency under this section may be extended on a sole-source basis for a period not exceeding six months if the head of such agency determines that—

(A) the award of a follow-on contract has been delayed by circumstances that were not reasonably foreseeable at the time the initial contract was entered into; and

(B) the extension is necessary in order to ensure continuity of the receipt of services pending the award of, and commencement of performance under, the follow-on contract.

(2) A task order contract may be extended under the authority of paragraph (1) only once and only in accordance with the limitations and requirements of this subsection.

(h) INAPPLICABILITY TO CERTAIN CONTRACTS.—This section does not apply to a contract for the acquisition of property or services that includes acquisition of advisory and assistance services if the head of an agency entering into such contract determines that, under the contract, advisory and assistance services are necessarily incident to, and not a significant component of, the contract.

(i) ADVISORY AND ASSISTANCE SERVICES DEFINED.—In this section, the term ''advisory and assistance services'' has the meaning given such term in section 1105(g) of title 31.

(Added Pub. L. 103–355, title I, § 1004(a)(1), Oct. 13, 1994, 108 Stat. 3251; amended Pub. L. 111–350, § 5(b)(13), Jan. 4, 2011, 124 Stat. 3843.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1820(d)(1), Jan. 1, 2021, 134 Stat. 4151, 4192, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 245 of this title, as amended by section 1820(a) of Pub. L. 116–283, inserted after section 3403, and redesignated as section 3405 of this title. See Effective Date of 2021 Amendment note below.

AMENDMENTS

2011—Subsecs. (c), (f)(3). Pub. L. 111–350 substituted ''section 1708 of title 41'' for ''section 18 of the Office of Federal Procurement Policy Act (41 U.S.C. 416)''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE

For effective date and applicability of section, see section 10001 of Pub. L. 103–355, set out as an Effective Date of 1994 Amendment note under section 2302 of this title.

PROVISIONS NOT AFFECTED BY PUB. L. 103–355

This section not to be construed as modifying or superseding, or as intended to impair or restrict, authorities or responsibilities under former 40 U.S.C. 759 or chapter 11 of Title 40, Public Buildings, Property, and Works, see section 1004(d) of Pub. L. 103–355, set out as a note under section 2304a of this title.

WAIVERS TO EXTEND TASK ORDER CONTRACTS FOR ADVISORY AND ASSISTANCE SERVICES

Pub. L. 109–364, div. A, title VIII, § 834, Oct. 17, 2006, 120 Stat. 2332, which temporarily allowed for waivers to extend certain task order contracts for advisory and assistance services, was repealed by Pub. L. 115–232, div. A, title VIII, § 812(b)(17), Aug. 13, 2018, 132 Stat. 1848.

§ 2304c. Task and delivery order contracts: orders

(a) ISSUANCE OF ORDERS.—The following actions are not required for issuance of a task or delivery order under a task or delivery order contract:

(1) A separate notice for such order under section 1708 of title 41 or section 8(e) of the Small Business Act (15 U.S.C. 637(e)).

(2) Except as provided in subsection (b), a competition (or a waiver of competition approved in accordance with section 2304(f) of this title) that is separate from that used for entering into the contract.

(b) MULTIPLE AWARD CONTRACTS.—When multiple task or delivery order contracts are awarded under section 2304a(d)(1)(B) or 2304b(e) of this title, all contractors awarded such contracts shall be provided a fair opportunity to be considered, pursuant to procedures set forth in the contracts, for each task or delivery order in excess of $2,500 that is to be issued under any of the contracts unless—

(1) the agency's need for the services or property ordered is of such unusual urgency that providing such opportunity to all such contractors would result in unacceptable delays in fulfilling that need;

(2) only one such contractor is capable of providing the services or property required at the level of quality required because the services or property ordered are unique or highly specialized;

(3) the task or delivery order should be issued on a sole-source basis in the interest of economy and efficiency because it is a logical follow-on to a task or delivery order already issued on a competitive basis;

(4) it is necessary to place the order with a particular contractor in order to satisfy a minimum guarantee; or

(5) the task or delivery order satisfies one of the exceptions in section 2304(c) of this title to the requirement to use competitive procedures.

(c) STATEMENT OF WORK.—A task or delivery order shall include a statement of work that clearly specifies all tasks to be performed or property to be delivered under the order.

(d) ENHANCED COMPETITION FOR ORDERS IN EXCESS OF $5,000,000.—In the case of a task or delivery order in excess of $5,000,000, the requirement to provide all contractors a fair opportunity to be considered under subsection (b) is not met unless all such contractors are provided, at a minimum—

(1) a notice of the task or delivery order that includes a clear statement of the agency's requirements;

(2) a reasonable period of time to provide a proposal in response to the notice;

(3) disclosure of the significant factors and subfactors, including cost or price, that the agency expects to consider in evaluating such proposals, and their relative importance;

(4) in the case of an award that is to be made on a best value basis, a written statement documenting the basis for the award and the relative importance of quality and price or cost factors; and

(5) an opportunity for a post-award debriefing consistent with the requirements of section 2305(b)(5) of this title.

(e) PROTESTS.—(1) A protest is not authorized in connection with the issuance or proposed issuance of a task or delivery order except for—

(A) a protest on the ground that the order increases the scope, period, or maximum value of the contract under which the order is issued; or

(B) a protest of an order valued in excess of $25,000,000.

(2) Notwithstanding section 3556 of title 31, the Comptroller General of the United States shall have exclusive jurisdiction of a protest authorized under paragraph (1)(B).

(f) TASK AND DELIVERY ORDER OMBUDSMAN.—Each head of an agency who awards multiple task or delivery order contracts pursuant to section 2304a(d)(1)(B) or 2304b(e) of this title shall appoint or designate a task and delivery order ombudsman who shall be responsible for reviewing complaints from the contractors on such contracts and ensuring that all of the contractors are afforded a fair opportunity to be considered for task or delivery orders when required under subsection (b). The task and delivery order ombudsman shall be a senior agency official who is independent of the contracting officer for the contracts and may be the agency's competition advocate.

(g) APPLICABILITY.—This section applies to task and delivery order contracts entered into under sections 2304a and 2304b of this title.

(Added Pub. L. 103–355, title I, § 1004(a)(1), Oct. 13, 1994, 108 Stat. 3252; amended Pub. L. 110–181, div. A, title VIII, § 843(a)(2), Jan. 28, 2008, 122 Stat. 237; Pub. L. 111–350, § 5(b)(14), Jan. 4, 2011, 124 Stat. 3843; Pub. L. 111–383, div. A, title VIII, § 825, title X, § 1075(f)(5)(A), Jan. 7, 2011, 124 Stat. 4270, 4376; Pub. L. 112–239, div. A, title VIII, § 830, Jan. 2, 2013, 126 Stat. 1842; Pub. L. 114–328, div. A, title VIII, §§ 825(b), 835(a), Dec. 23, 2016, 130 Stat. 2280, 2285.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1820(e)(1), Jan. 1, 2021, 134 Stat. 4151, 4194, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 245 of this title, as amended by section 1820(a) of Pub. L. 116–283, inserted after section 3405, and redesignated as section 3406 of this title. See Effective Date of 2021 Amendment note below.

AMENDMENTS

2016—Subsec. (b)(5). Pub. L. 114–328, § 825(b), added par. (5).

Subsec. (e)(1)(B). Pub. L. 114–328, § 835(a), substituted "$25,000,000" for "$10,000,000".

2013—Subsec. (e)(3). Pub. L. 112–239 struck out par. (3) which read as follows: "Paragraph (1)(B) and paragraph (2) of this subsection shall not be in effect after September 30, 2016."

2011—Subsec. (a)(1). Pub. L. 111–350 substituted "section 1708 of title 41" for "section 18 of the Office of Federal Procurement Policy Act (41 U.S.C. 416)".

Subsec. (e). Pub. L. 111–383, § 1075(f)(5)(A), made technical correction to directory language of Pub. L. 110–181, § 843(a)(2)(C). See 2008 Amendment note below.

Subsec. (e)(3). Pub. L. 111–383, § 825, amended par. (3) generally. Prior to amendment, par. (3) read as follows: "This subsection shall be in effect for three years, beginning on the date that is 120 days after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2008."

2008—Subsec. (d). Pub. L. 110–181, § 843(a)(2), added subsec. (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 110–181, § 843(a)(2)(C), as amended by Pub. L. 111–383, § 1075(f)(5)(A), added subsec. (e) and struck out former subsec. (e). Former text read as follows: "A protest is not authorized in connection with the issuance or proposed issuance of a task or delivery order except for a protest on the ground that the order increases the scope, period, or maximum value of the contract under which the order is issued."

Pub. L. 110–181, § 843(a)(2)(A), redesignated subsec. (d) as (e). Former subsec. (e) redesignated (f).

Subsecs. (f), (g). Pub. L. 110–181, § 843(a)(2)(A), redesignated subsecs. (e) and (f) as (f) and (g), respectively.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–181, div. A, title VIII, § 843(a)(3)(B), Jan. 28, 2008, 122 Stat. 238, provided that: "The amendments made by paragraph (2) [amending this section] shall take effect on the date that is 120 days after the date of the enactment of this Act [Jan. 28, 2008], and shall apply with respect to any task or delivery order awarded on or after such date."

EFFECTIVE DATE

For effective date and applicability of section, see section 10001 of Pub. L. 103–355, set out as an Effective Date of 1994 Amendment note under section 2302 of this title.

PROVISIONS NOT AFFECTED BY PUB. L. 103–355

This section not to be construed as modifying or superseding, or as intended to impair or restrict, authorities or responsibilities under former 40 U.S.C. 759 or chapter 11 of Title 40, Public Buildings, Property, and Works, see section 1004(d) of Pub. L. 103–355, set out as a note under section 2304a of this title.

§ 2304d. Task and delivery order contracts: definitions

In sections 2304a, 2304b, and 2304c of this title:

(1) The term "task order contract" means a contract for services that does not procure or specify a firm quantity of services (other than a minimum or maximum quantity) and that provides for the issuance of orders for the performance of tasks during the period of the contract.

(2) The term "delivery order contract" means a contract for property that does not procure or specify a firm quantity of property (other than a minimum or maximum quantity) and that provides for the issuance of orders for the delivery of property during the period of the contract.

(Added Pub. L. 103–355, title I, § 1004(a)(1), Oct. 13, 1994, 108 Stat. 3253.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1820(b)(1), Jan. 1, 2021, 134 Stat. 4151, 4191, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 245 of this title, as amended by section 1820(a) of Pub. L. 116–283, inserted after the table of sections, and redesignated as section 3401 of this title. See Effective Date of 2021 Amendment note below.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE

For effective date and applicability of section, see section 10001 of Pub. L. 103–355, set out as an Effective Date of 1994 Amendment note under section 2302 of this title.

PROVISIONS NOT AFFECTED BY PUB. L. 103–355

This section not to be construed as modifying or superseding, or as intended to impair or restrict, authorities or responsibilities under former 40 U.S.C. 759 or chapter 11 of Title 40, Public Buildings, Property, and Works, see section 1004(d) of Pub. L. 103–355, set out as a note under section 2304a of this title.

§ 2304e. Contracts: prohibition on competition between Department of Defense and small businesses

(a) EXCLUSION.—In any case in which the Secretary of Defense plans to use competitive procedures for a procurement, if the procurement is to be conducted as described in subsection (b), then the Secretary shall exclude the Department of Defense from competing in the procurement.

(b) PROCUREMENT DESCRIPTION.—The requirement to exclude the Department of Defense under subsection (a) applies in the case of a procurement to be conducted by excluding from competition entities in the private sector other than small business concerns in furtherance of section 8 or 15 of the Small Business Act (15 U.S.C. 637 or 644).

(Added Pub. L. 103–160, div. A, title VIII, § 848(a)(1), Nov. 30, 1993, 107 Stat. 1724, § 2304a; renumbered § 2304e, Pub. L. 104–106, div. D, title XLIII, § 4321(b)(6)(A), Feb. 10, 1996, 110 Stat. 672; amended Pub. L. 115–232, div. A, title VIII, § 812(a)(2)(C)(vi), Aug. 13, 2018, 132 Stat. 1847; Pub. L. 116–92, div. A, title XVII, § 1731(a)(39)(A), Dec. 20, 2019, 133 Stat. 1814.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1838(b), Jan. 1, 2021, 134 Stat. 4151, 4242, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 285 of this title, as added by section 1838(a) of Pub. L. 116–283, inserted after the table of sections, and redesignated as section 3901 of this title. See Effective Date of 2021 Amendment note below.

AMENDMENTS

2019—Pub. L. 116–92 struck out "and certain other entities" after "businesses" in section catchline.

2018—Subsec. (b). Pub. L. 115–232 substituted "other than" for "other than—", struck out par. (1) designation before "small business", and struck out par. (2) which read as follows: "entities described in subsection (a)(1) of section 2323 of this title in furtherance of the goal specified in that subsection."

1996—Pub. L. 104–106 renumbered section 2304a of this title as this section.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE

Pub. L. 103–160, div. A, title VIII, § 848(b), Nov. 30, 1993, 107 Stat. 1725, provided that: "Section 2304a [now 2304e] of title 10, United States Code, as added by subsection (a), shall take effect on the date of the enactment of this Act [Nov. 30, 1993]."

§ 2305. Contracts: planning, solicitation, evaluation, and award procedures

(a)(1)(A) In preparing for the procurement of property or services, the head of an agency shall—

(i) specify the agency's needs and solicit bids or proposals in a manner designed to achieve full and open competition for the procurement;

(ii) use advance procurement planning and market research; and

(iii) develop specifications in such manner as is necessary to obtain full and open competition with due regard to the nature of the property or services to be acquired.

(B) Each solicitation under this chapter shall include specifications which—

(i) consistent with the provisions of this chapter, permit full and open competition; and

(ii) include restrictive provisions or conditions only to the extent necessary to satisfy the needs of the agency or as authorized by law.

(C) For the purposes of subparagraphs (A) and (B), the type of specification included in a solicitation shall depend on the nature of the needs of the agency and the market available to satisfy such needs. Subject to such needs, specifications may be stated in terms of—

(i) function, so that a variety of products or services may qualify;

(ii) performance, including specifications of the range of acceptable characteristics or of the minimum acceptable standards; or

(iii) design requirements.

(2) In addition to the specifications described in paragraph (1), a solicitation for sealed bids or competitive proposals (other than for a procurement for commercial products or commercial services using special simplified procedures or a purchase for an amount not greater than the simplified acquisition threshold) shall at a minimum include—

(A) a statement of—

(i) all significant factors and significant subfactors which the head of the agency reasonably expects to consider in evaluating sealed bids (including price) or competitive proposals (including cost or price, cost-related or price-related factors and subfactors, and noncost-related or nonprice-related factors and subfactors); and

(ii) the relative importance assigned to each of those factors and subfactors; and

(B)(i) in the case of sealed bids—

(I) a statement that sealed bids will be evaluated without discussions with the bidders; and

(II) the time and place for the opening of the sealed bids; or

(ii) in the case of competitive proposals—

(I) either a statement that the proposals are intended to be evaluated with, and award made after, discussions with the offerors, or a statement that the proposals are intended

to be evaluated, and award made, without discussions with the offerors (other than discussions conducted for the purpose of minor clarification) unless discussions are determined to be necessary; and

(II) the time and place for submission of proposals.

(3)(A) In prescribing the evaluation factors to be included in each solicitation for competitive proposals, the head of an agency—

(i) shall (except as provided in subparagraph (C)) clearly establish the relative importance assigned to the evaluation factors and subfactors, including the quality of the product or services to be provided (including technical capability, management capability, prior experience, and past performance of the offeror);

(ii) shall (except as provided in subparagraph (C)) include cost or price to the Federal Government as an evaluation factor that must be considered in the evaluation of proposals; and

(iii) shall disclose to offerors whether all evaluation factors other than cost or price, when combined, are—

(I) significantly more important than cost or price;

(II) approximately equal in importance to cost or price; or

(III) significantly less important than cost or price.

(B) The regulations implementing clause (iii) of subparagraph (A) may not define the terms ''significantly more important'' and ''significantly less important'' as specific numeric weights that would be applied uniformly to all solicitations or a class of solicitations.

(C) If the head of an agency issues a solicitation for multiple task or delivery order contracts under section 2304a(d)(1)(B) of this title for the same or similar services and intends to make a contract award to each qualifying offeror—

(i) cost or price to the Federal Government need not, at the Government's discretion, be considered under clause (ii) of subparagraph (A) as an evaluation factor for the contract award; and

(ii) if, pursuant to clause (i), cost or price to the Federal Government is not considered as an evaluation factor for the contract award—

(I) the disclosure requirement of clause (iii) of subparagraph (A) shall not apply; and

(II) cost or price to the Federal Government shall be considered in conjunction with the issuance pursuant to section 2304c(b) of this title of a task or delivery order under any contract resulting from the solicitation.

(D) In subparagraph (C), the term ''qualifying offeror'' means an offeror that—

(i) is determined to be a responsible source;

(ii) submits a proposal that conforms to the requirements of the solicitation; and

(iii) the contracting officer has no reason to believe would likely offer other than fair and reasonable pricing.

(E) Subparagraph (C) shall not apply to multiple task or delivery order contracts if the solicitation provides for sole source task or delivery order contracts pursuant to section 8(a) of the Small Business Act (15 U.S.C. 637(a)).

(4) Nothing in this subsection prohibits an agency from—

(A) providing additional information in a solicitation, including numeric weights for all evaluation factors and subfactors on a case-by-case basis; or

(B) stating in a solicitation that award will be made to the offeror that meets the solicitation's mandatory requirements at the lowest cost or price.

(5) The head of an agency, in issuing a solicitation for a contract to be awarded using sealed bid procedures, may not include in such solicitation a clause providing for the evaluation of prices for options to purchase additional property or services under the contract unless the head of the agency has determined that there is a reasonable likelihood that the options will be exercised.

(b)(1) The head of an agency shall evaluate sealed bids and competitive proposals and make an award based solely on the factors specified in the solicitation.

(2) All sealed bids or competitive proposals received in response to a solicitation may be rejected if the head of the agency determines that such action is in the public interest.

(3) Sealed bids shall be opened publicly at the time and place stated in the solicitation. The head of the agency shall evaluate the bids in accordance with paragraph (1) without discussions with the bidders and, except as provided in paragraph (2), shall award a contract with reasonable promptness to the responsible bidder whose bid conforms to the solicitation and is most advantageous to the United States, considering only price and the other price-related factors included in the solicitation. The award of a contract shall be made by transmitting, in writing or by electronic means, notice of the award to the successful bidder. Within three days after the date of contract award, the head of the agency shall notify, in writing or by electronic means, each bidder not awarded the contract that the contract has been awarded.

(4)(A) The head of an agency shall evaluate competitive proposals in accordance with paragraph (1) and may award a contract—

(i) after discussions with the offerors, provided that written or oral discussions have been conducted with all responsible offerors who submit proposals within the competitive range; or

(ii) based on the proposals received, without discussions with the offerors (other than discussions conducted for the purpose of minor clarification) provided that the solicitation included a statement that proposals are intended to be evaluated, and award made, without discussions, unless discussions are determined to be necessary.

(B) If the contracting officer determines that the number of offerors that would otherwise be included in the competitive range under subparagraph (A)(i) exceeds the number at which an efficient competition can be conducted, the contracting officer may limit the number of proposals in the competitive range, in accordance with the criteria specified in the solicitation, to the greatest number that will permit an effi-

cient competition among the offerors rated most highly in accordance with such criteria.

(C) Except as provided in paragraph (2), the head of the agency shall award a contract with reasonable promptness to the responsible source whose proposal is most advantageous to the United States, considering only cost or price and the other factors included in the solicitation. The head of the agency shall award the contract by transmitting, in writing or by electronic means, notice of the award to such source and, within three days after the date of contract award, shall notify, in writing or by electronic means, all other offerors of the rejection of their proposals. This subparagraph does not apply with respect to the award of a contract for the acquisition of perishable subsistence items.

(5)(A) When a contract is awarded by the head of an agency on the basis of competitive proposals, an unsuccessful offeror, upon written request received by the agency within 3 days after the date on which the unsuccessful offeror receives the notification of the contract award, shall be debriefed and furnished the basis for the selection decision and contract award. The head of the agency shall debrief the offeror within, to the maximum extent practicable, five days after receipt of the request by the agency.

(B) The debriefing shall include, at a minimum—

(i) the agency's evaluation of the significant weak or deficient factors in the offeror's offer;

(ii) the overall evaluated cost and technical rating of the offer of the contractor awarded the contract and the overall evaluated cost and technical rating of the offer of the debriefed offeror;

(iii) the overall ranking of all offers;

(iv) a summary of the rationale for the award;

(v) in the case of a proposal that includes a commercial product that is an end item under the contract, the make and model of the item being provided in accordance with the offer of the contractor awarded the contract;

(vi) reasonable responses to relevant questions posed by the debriefed offeror as to whether source selection procedures set forth in the solicitation, applicable regulations, and other applicable authorities were followed by the agency; and

(vii) an opportunity for a disappointed offeror to submit, within two business days after receiving a post-award debriefing, additional questions related to the debriefing.

(C) The agency shall respond in writing to any additional question submitted under subparagraph (B)(vii) within five business days after receipt of the question. The agency shall not consider the debriefing to be concluded until the agency delivers its written responses to the disappointed offeror.

(D) The debriefing may not include point-by-point comparisons of the debriefed offeror's offer with other offers and may not disclose any information that is exempt from disclosure under section 552(b) of title 5.

(E) Each solicitation for competitive proposals shall include a statement that information described in subparagraph (B) may be disclosed in post-award debriefings.

(F) If, within one year after the date of the contract award and as a result of a successful procurement protest, the agency seeks to fulfill the requirement under the protested contract either on the basis of a new solicitation of offers or on the basis of new best and final offers requested for that contract, the agency shall make available to all offerors—

(i) the information provided in debriefings under this paragraph regarding the offer of the contractor awarded the contract; and

(ii) the same information that would have been provided to the original offerors.

(6)(A) When the contracting officer excludes an offeror submitting a competitive proposal from the competitive range (or otherwise excludes such an offeror from further consideration prior to the final source selection decision), the excluded offeror may request in writing, within three days after the date on which the excluded offeror receives notice of its exclusion, a debriefing prior to award. The contracting officer shall make every effort to debrief the unsuccessful offeror as soon as practicable but may refuse the request for a debriefing if it is not in the best interests of the Government to conduct a debriefing at that time.

(B) The contracting officer is required to debrief an excluded offeror in accordance with paragraph (5) only if that offeror requested and was refused a preaward debriefing under subparagraph (A).

(C) The debriefing conducted under subparagraph (A) shall include—

(i) the executive agency's evaluation of the significant elements in the offeror's offer;

(ii) a summary of the rationale for the offeror's exclusion; and

(iii) reasonable responses to relevant questions posed by the debriefed offeror as to whether source selection procedures set forth in the solicitation, applicable regulations, and other applicable authorities were followed by the executive agency.

(D) The debriefing conducted under subparagraph (A) may not disclose the number or identity of other offerors and shall not disclose information about the content, ranking, or evaluation of other offerors' proposals.

(7) The contracting officer shall include a summary of any debriefing conducted under paragraph (5) or (6) in the contract file.

(8) The Federal Acquisition Regulation shall include a provision encouraging the use of alternative dispute resolution techniques to provide informal, expeditious, and inexpensive procedures for an offeror to consider using before filing a protest, prior to the award of a contract, of the exclusion of the offeror from the competitive range (or otherwise from further consideration) for that contract.

(9) If the head of an agency considers that a bid or proposal evidences a violation of the antitrust laws, he shall refer the bid or proposal to the Attorney General for appropriate action.

(c) The Secretary of Defense shall ensure that before a contract for the delivery of supplies to the Department of Defense is entered into—

(1) when the appropriate officials of the Department are making an assessment of the

most advantageous source for acquisition of the supplies (considering quality, price, delivery, and other factors), there is a review of the availability and cost of each item of supply—

(A) through the supply system of the Department of Defense; and

(B) under standard Government supply contracts, if the item is in a category of supplies defined under regulations of the Secretary of Defense as being potentially available under a standard Government supply contract; and

(2) there is a review of both the procurement history of the item and a description of the item, including, when necessary for an adequate description of the item, a picture, drawing, diagram, or other graphic representation of the item.

(d)(1)(A) The Secretary of Defense shall ensure that, in preparing a solicitation for the award of a development contract for a major system, the head of an agency consider requiring in the solicitation that an offeror include in its offer proposals described in subparagraph (B). In determining whether to require such proposals, the head of the agency shall give due consideration to the purposes for which the system is being procured and the technology necessary to meet the system's required capabilities. If such proposals are required, the head of the agency shall consider them in evaluating the offeror's price.

(B) Proposals referred to in the first sentence of subparagraph (A) are the following:

(i) Proposals to incorporate in the design of the major system items which are currently available within the supply system of the Federal agency responsible for the major system, available elsewhere in the national supply system, or commercially available from more than one source.

(ii) With respect to items that are likely to be required in substantial quantities during the system's service life, proposals to incorporate in the design of the major system items which the United States will be able to acquire competitively in the future.

(2)(A) The Secretary of Defense shall ensure that, in preparing a solicitation for the award of a production contract for a major system, the head of an agency consider requiring in the solicitation that an offeror include in its offer proposals described in subparagraph (B). In determining whether to require such proposals, the head of the agency shall give due consideration to the purposes for which the system is being procured and the technology necessary to meet the system's required capabilities. If such proposals are required, the head of the agency shall consider them in evaluating the offeror's price.

(B) Proposals referred to in the first sentence of subparagraph (A) are proposals identifying opportunities to ensure that the United States will be able to obtain on a competitive basis items procured in connection with the system that are likely to be reprocured in substantial quantities during the service life of the system. Proposals submitted in response to such requirement may include the following:

(i) Proposals to provide to the United States the right to use technical data to be provided under the contract for competitive reprocurement of the item, together with the cost to the United States, if any, of acquiring such technical data and the right to use such data.

(ii) Proposals for the qualification or development of multiple sources of supply for the item.

(3) If the head of an agency is making a noncompetitive award of a development contract or a production contract for a major system, the factors specified in paragraphs (1) and (2) to be considered in evaluating an offer for a contract may be considered as objectives in negotiating the contract to be awarded. Such objectives may not impair the rights of prospective contractors or subcontractors otherwise provided by law.

(4)(A) Whenever the head of an agency requires that proposals described in paragraph (1)(B) or (2)(B) be submitted by an offeror in its offer, the offeror shall not be required to provide a proposal that enables the United States to acquire competitively in the future an identical item if the item was developed exclusively at private expense unless the head of the agency determines that—

(i) the original supplier of such item will be unable to satisfy program schedule or delivery requirements; or

(ii) proposals by the original supplier of such item to meet the mobilization requirements are insufficient to meet the agency's mobilization needs.

(B) In considering offers in response to a solicitation requiring proposals described in paragraph (1)(B) or (2)(B), the head of an agency shall base any evaluation of items developed exclusively at private expense on an analysis of the total value, in terms of innovative design, life-cycle costs, and other pertinent factors, of incorporating such items in the system.

(e) PROTEST FILE.—(1) If, in the case of a solicitation for a contract issued by, or an award or proposed award of a contract by, the head of an agency, a protest is filed pursuant to the procedures in subchapter V of chapter 35 of title 31 and an actual or prospective offeror so requests, a file of the protest shall be established by the procuring activity and reasonable access shall be provided to actual or prospective offerors.

(2) Information exempt from disclosure under section 552 of title 5 may be redacted in a file established pursuant to paragraph (1) unless an applicable protective order provides otherwise.

(f) AGENCY ACTIONS ON PROTESTS.—If, in connection with a protest, the head of an agency determines that a solicitation, proposed award, or award does not comply with the requirements of law or regulation, the head of the agency—

(1) may take any action set out in subparagraphs (A) through (F) of subsection (b)(1) of section 3554 of title 31; and

(2) may pay costs described in paragraph (1) of section 3554(c) of title 31 within the limits referred to in paragraph (2) of such section.

(g) PROHIBITION ON RELEASE OF CONTRACTOR PROPOSALS.—(1) Except as provided in paragraph (2), a proposal in the possession or control of an agency named in section 2303 of this title may not be made available to any person under section 552 of title 5.

(2) Paragraph (1) does not apply to any proposal that is set forth or incorporated by reference in a contract entered into between the Department and the contractor that submitted the proposal.

(3) In this subsection, the term ''proposal'' means any proposal, including a technical, management, or cost proposal, submitted by a contractor in response to the requirements of a solicitation for a competitive proposal.

(Aug. 10, 1956, ch. 1041, 70A Stat. 130; Pub. L. 85–861, § 1(44), Sept. 2, 1958, 72 Stat. 1457; Pub. L. 90–268, § 3, Mar. 16, 1968, 82 Stat. 49; Pub. L. 98–369, div. B, title VII, § 2723(b), July 18, 1984, 98 Stat. 1191; Pub. L. 98–525, title XII, § 1213(a), Oct. 19, 1984, 98 Stat. 2591; Pub. L. 99–145, title XIII, § 1303(a)(14), Nov. 8, 1985, 99 Stat. 739; Pub. L. 99–500, § 101(c) [title X, § 924(a), (b)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–153, and Pub. L. 99–591, § 101(c) [title X, § 924(a), (b)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–153; Pub. L. 99–661, div. A, title III, § 313(b), title IX, formerly title IV, § 924(a), (b), Nov. 14, 1986, 100 Stat. 3853, 3932, 3933, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; Pub. L. 100–456, div. A, title VIII, § 806, Sept. 29, 1988, 102 Stat. 2010; Pub. L. 101–189, div. A, title VIII, § 853(f), Nov. 29, 1989, 103 Stat. 1519; Pub. L. 101–510, div. A, title VIII, § 802(a)–(d), Nov. 5, 1990, 104 Stat. 1588, 1589; Pub. L. 103–160, div. A, title XI, § 1182(a)(5), Nov. 30, 1993, 107 Stat. 1771; Pub. L. 103–355, title I, §§ 1011–1016, title IV, § 4401(b), Oct. 13, 1994, 108 Stat. 3254–3257, 3347; Pub. L. 104–106, div. D, title XLI, §§ 4103(a), 4104(a), title XLII, § 4202(a)(2), div. E, title LVI, § 5601(a), Feb. 10, 1996, 110 Stat. 643, 644, 653, 699; Pub. L. 104–201, div. A, title VIII, § 821(a), title X, § 1074(a)(11), (b)(4)(A), Sept. 23, 1996, 110 Stat. 2609, 2659, 2660; Pub. L. 106–65, div. A, title VIII, § 821, Oct. 5, 1999, 113 Stat. 714; Pub. L. 114–328, div. A, title VIII, § 825(a), Dec. 23, 2016, 130 Stat. 2279; Pub. L. 115–91, div. A, title VIII, § 818(b), Dec. 12, 2017, 131 Stat. 1463; Pub. L. 115–232, div. A, title VIII, § 836(c)(3), Aug. 13, 2018, 132 Stat. 1864; Pub. L. 116–283, div. A, title XVIII, §§ 1811(e)(2), (f)(2), (g)(2), 1816(c)(1), (2), (e)(1), (f)(1), Jan. 1, 2021, 134 Stat. 4170, 4173, 4182, 4185.)

AMENDMENT OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1811(e)(2), (f)(2), (g)(2), 1816(c)(1), (2), (e)(1), (f)(1), Jan. 1, 2021, 134 Stat. 4151, 4170, 4173, 4182, 4185, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is amended as follows:

(1) by transferring subsection (a) to section 3206 of this title;

(2) by transferring subsection (b) to chapter 241 of this title as follows:

(A) paragraphs (1) and (2) to section 3301 of this title;

(B) paragraph (3) to section 3302 of this title;

(C) paragraph (4) to section 3303 of this title;

(D) paragraph (5) to section 3304 of this title;

(E) paragraphs (6) and (7) to section 3305 of this title;

(F) paragraph (8) to section 3306 of this title; and

(G) paragraph (9) to section 3307 of this title;

(3) by transferring subsection (c) to section 3207 of this title;

(4) by transferring subsection (d) to section 3208 of this title;

(5) by transferring subsections (e) and (f) to subsections (a) and (b), respectively, of section 3308 of this title; and

(6) by transferring subsection (g) to section 3309 of this title.

See 2021 Amendment notes below.

REPEAL OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1881(a), Jan. 1, 2021, 134 Stat. 4151, 4293, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is repealed.

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	Source (U.S. Code)	Source (Statutes at Large)
2305(a)	41:152 (less clause (b)).	Feb. 19, 1948, ch. 65, §§ 2(d), 3, 62 Stat. 22.
2305(b)	41:152 (clause (b)).	
2305(c)	41:151(d).	

In subsection (a), the word ''needed'' is substituted for the words ''necessary to meet the requirements''.

In subsection (b), the words ''United States'' are substituted for the word ''Government''.

1958 ACT

Revised section	Source (U.S. Code)	Source (Statutes at Large)
2305	41:152(c).	Aug. 9, 1955, ch. 628, § 15, 69 Stat. 551.

Reference to bids is omitted as surplusage (see opinion of the Judge Advocate General of the Army (JAGT 1956/9122, 21 Dec. 1956)). The word ''attachments'' is substituted for the words ''material required''. The words ''the specifications in'' are inserted in the second sentence for clarity. The word ''available'' is omitted as covered by the word ''accessible.'' The words ''no award may be made'' are substituted for the words ''and any award or awards made to any bidder in such case shall be invalidated and rejected''.

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

AMENDMENTS

2021—Subsec. (a). Pub. L. 116–283, § 1811(e)(2), redesignated subsec. (a) as section 3206 of this title.

Subsec. (b)(1), (2). Pub. L. 116–283, § 1816(c)(1), (2)(A), redesignated pars. (1) and (2) as section 3301 of this title.

Subsec. (b)(3). Pub. L. 116–283, § 1816(c)(1), (2)(B), redesignated par. (3) as section 3302 of this title.

Subsec. (b)(4). Pub. L. 116–283, § 1816(c)(1), (2)(C), redesignated par. (4) as section 3303 of this title.

Subsec. (b)(5). Pub. L. 116–283, § 1816(c)(1), (2)(D), redesignated par. (5) as section 3304 of this title.

Subsec. (b)(6), (7). Pub. L. 116–283, § 1816(c)(1), (2)(E), redesignated pars. (6) and (7) as section 3305 of this title.

Subsec. (b)(8). Pub. L. 116–283, § 1816(c)(1), (2)(F), redesignated par. (8) as section 3306 of this title.

Subsec. (b)(9). Pub. L. 116–283, § 1816(c)(1), (2)(G), redesignated par. (9) as section 3307 of this title.

Subsec. (c). Pub. L. 116–283, § 1811(f)(2), redesignated subsec. (c) as section 3207 of this title.

Subsec. (d). Pub. L. 116–283, § 1811(g)(2), redesignated subsec. (d) as section 3208 of this title.

Subsecs. (e), (f). Pub. L. 116–283, § 1816(e)(1), redesignated subsecs. (e) and (f) as section 3308(a) and (b), respectively, of this title.

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Subsec. (g). Pub. L. 116–283, § 1816(f)(1), redesignated subsec. (g) as section 3309 of this title.

2018—Subsec. (a)(2). Pub. L. 115–232, § 836(c)(3)(A), substituted ''commercial products or commercial services'' for ''commercial items'' in introductory provisions.

Subsec. (b)(5)(B)(v). Pub. L. 115–232, § 836(c)(3)(B), substituted ''commercial product'' for ''commercial item''.

2017—Subsec. (b)(5)(B)(vii). Pub. L. 115–91, § 818(b)(2), added cl. (vii).

Subsec. (b)(5)(C) to (F). Pub. L. 115–91, § 818(b)(1), (3), added subpar. (C) and redesignated former subpars. (C) to (E) as (D) to (F), respectively.

2016—Subsec. (a)(3)(A)(i), (ii). Pub. L. 114–328, § 825(a)(1), inserted ''(except as provided in subparagraph (C))'' after ''shall''.

Subsec. (a)(3)(C) to (E). Pub. L. 114–328, § 825(a)(2), added subpars. (C) to (E).

1999—Subsec. (g)(1). Pub. L. 106–65 substituted ''an agency named in section 2303 of this title'' for ''the Department of Defense''.

1996—Subsec. (a)(2). Pub. L. 104–106, § 4202(a)(2), inserted ''a procurement for commercial items using special simplified procedures or'' after ''(other than for''.

Subsec. (b)(4)(B). Pub. L. 104–106, § 4103(a)(3), added subpar. (B). Former subpar. (B) redesignated (C).

Pub. L. 104–106, § 4103(a)(1), transferred text of subpar. (C) to end of subpar. (B) and substituted ''This subparagraph'' for ''Subparagraph (B)'' at beginning of that text.

Subsec. (b)(4)(C). Pub. L. 104–106, § 4103(a)(2), redesignated subpar. (B) as (C).

Pub. L. 104–106, § 4103(a)(1), struck out ''(C)'' before ''Subparagraph (B)'' and transferred text of subpar. (C) to end of subpar. (B).

Subsec. (b)(5)(F). Pub. L. 104–106, § 4104(a)(1), struck out subpar. (F) which read as follows: ''The contracting officer shall include a summary of the debriefing in the contract file.''

Subsec. (b)(6). Pub. L. 104–106, § 4104(a)(3), added par. (6). Former par. (6) redesignated (9).

Subsec. (b)(6)(B). Pub. L. 104–201, § 1074(a)(11)(A), struck out ''of this section'' after ''paragraph (5)'' and ''of this paragraph'' after ''subparagraph (A)''.

Subsec. (b)(6)(C). Pub. L. 104–201, § 1074(a)(11)(B), substituted ''subparagraph (A)'' for ''this subsection'' in introductory provisions.

Subsec. (b)(6)(D). Pub. L. 104–201, § 1074(a)(11)(C), substituted ''under subparagraph (A)'' for ''pursuant to this subsection''.

Subsec. (b)(7), (8). Pub. L. 104–106, § 4104(a)(3), added pars. (7) and (8).

Subsec. (b)(9). Pub. L. 104–106, § 4104(a)(2), redesignated par. (6) as (9).

Subsec. (e)(3). Pub. L. 104–106, § 5601(a), as amended by Pub. L. 104–201, § 1074(b)(4)(A), struck out par. (3) which read as follows: ''Regulations implementing this subsection shall be consistent with the regulations regarding the preparation and submission of an agency's protest file (the so-called 'rule 4 file') for protests to the General Services Board of Contract Appeals under section 111 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 759).''

Subsec. (g). Pub. L. 104–201, § 821(a), added subsec. (g).

1994—Subsec. (a)(2). Pub. L. 103–355, § 4401(b), substituted ''a purchase for an amount not greater than the simplified acquisition threshold)'' for ''small purchases)'' in introductory provisions.

Subsec. (a)(2)(A)(i). Pub. L. 103–355, § 1011(a)(1), substituted ''and significant subfactors'' for ''(and significant subfactors)'' and ''cost-related or price-related factors and subfactors, and noncost-related or nonprice-related factors and subfactors'' for ''cost- or price-related factors, and noncost- or nonprice-related factors''.

Subsec. (a)(2)(A)(ii). Pub. L. 103–355, § 1011(a)(2), substituted ''and subfactors'' for ''(and subfactors)''.

Subsec. (a)(2)(B)(ii)(I). Pub. L. 103–355, § 1011(a)(3), amended subcl. (I) generally. Prior to amendment, subcl. (I) read as follows: ''a statement that the proposals are intended to be evaluated with, and award made after, discussions with the offerors, or a statement that the proposals are intended to be evaluated, and award made, without discussions with the offerors (other than discussions conducted for the purpose of minor clarification), unless discussions are determined to be necessary; and''.

Subsec. (a)(3). Pub. L. 103–355, § 1011(b), added par. (3) and struck out former par. (3), which read as follows: ''In prescribing the evaluation factors to be included in each solicitation for competitive proposals, the head of an agency shall clearly establish the relative importance assigned to the evaluation factors and subfactors, including the quality of the product or services to be provided (including technical capability, management capability, and prior experience of the offeror).''

Subsec. (a)(4). Pub. L. 103–355, § 1011(b), added par. (4).

Subsec. (a)(5). Pub. L. 103–355, § 1012, added par. (5).

Subsec. (b)(3). Pub. L. 103–355, § 1013(a), substituted ''transmitting, in writing or by electronic means, notice'' for ''transmitting written notice'' and inserted at end ''Within three days after the date of contract award, the head of the agency shall notify, in writing or by electronic means, each bidder not awarded the contract that the contract has been awarded.''

Subsec. (b)(4)(B). Pub. L. 103–355, § 1013(b), substituted ''transmitting, in writing or by electronic means, notice'' for ''transmitting written notice'' and '', within three days after the date of contract award, shall notify, in writing or by electronic means,'' for ''shall promptly notify''.

Subsec. (b)(5), (6). Pub. L. 103–355, § 1014, added par. (5) and redesignated former par. (5) as (6).

Subsec. (e). Pub. L. 103–355, § 1015, added subsec. (e).

Subsec. (f). Pub. L. 103–355, § 1016, added subsec. (f).

1993—Subsec. (b)(4)(A). Pub. L. 103–160 realigned margins of cls. (i) and (ii).

1990—Subsec. (a)(2)(A)(i). Pub. L. 101–510, § 802(a)(1), inserted ''(and significant subfactors)'' after ''significant factors'' and substituted ''(including cost or price, cost- or price-related factors, and noncost- or nonprice-related factors)'' for ''(including cost or price)''.

Subsec. (a)(2)(A)(ii). Pub. L. 101–510, § 802(a)(2), inserted ''(and subfactors)'' after ''those factors''.

Subsec. (a)(2(B)(ii)(I). Pub. L. 101–510, § 802(b), amended subcl. (I) generally. Prior to amendment, subcl. (I) read as follows: ''a statement that the proposals are intended to be evaluated with, and awards made after, discussions with the offerors, but might be evaluated and awarded without discussions with the offerors; and''.

Subsec. (a)(3). Pub. L. 101–510, § 802(c), substituted ''the evaluation factors and subfactors, including the quality of the product or services'' for ''the quality of the services''.

Subsec. (b)(1). Pub. L. 101–510, § 802(d)(1), inserted ''and make an award'' after ''competitive proposals''.

Subsec. (b)(3). Pub. L. 101–510, § 802(d)(2), inserted ''in accordance with paragraph (1)'' after ''shall evaluate the bids''.

Subsec. (b)(4)(A). Pub. L. 101–510, § 802(d)(3)(A), substituted ''competitive proposals in accordance with paragraph (1)'' for ''competitive proposals'' in introductory provisions, added cls. (i) and (ii), and struck out former cls. (i) and (ii) which read as follows:

''(i) after discussions conducted with the offerors at any time after receipt of the proposals and before the award of the contract; or

''(ii) without discussions with the offerors (other than discussions conducted for the purpose of minor clarification) when it can be clearly demonstrated from the existence of full and open competition or accurate prior cost experience with the product or service that acceptance of an initial proposal without discussions would result in the lowest overall cost to the United States.''

Subsec. (b)(4)(B) to (E). Pub. L. 101–510, § 802(d)(3)(B)–(D), redesignated subpars. (D) and (E) as (B) and (C), respectively, substituted ''Subparagraph (B)'' for ''Subparagraph (D)'' in subpar. (C), and struck out former subpars. (B) and (C) which read as follows:

''(B) In the case of award of a contract under subparagraph (A)(i), the head of the agency shall conduct, be-

fore such award, written or oral discussions with all responsible sources who submit proposals within the competitive range, considering only cost or price and the other factors included in the solicitation.

''(C) In the case of award of a contract under subparagraph (A)(ii), the head of the agency shall award the contract based on the proposals received (and as clarified, if necessary, in discussions conducted for the purpose of minor clarification).''

1989—Subsec. (b)(4)(D). Pub. L. 101–189 inserted ''cost or'' after ''considering only''.

1988—Subsec. (d)(1)(B). Pub. L. 100–456, § 806(b), substituted ''Proposals referred to in the first sentence of subparagraph (A) are'' for ''The proposals that the head of an agency is to consider requiring in a solicitation for the award of a development contract are''.

Subsec. (d)(2)(B). Pub. L. 100–456, § 806(b), substituted ''Proposals referred to in the first sentence of subparagraph (A) are'' for ''The proposals that the head of an agency is to consider requiring in a solicitation for the award of a production contract are''.

Subsec. (d)(3). Pub. L. 100–456, § 806(a)(2), inserted provision that objectives may not impair the rights of prospective contractors or subcontractors otherwise provided by law.

Subsec. (d)(4). Pub. L. 100–456, § 806(a)(1), added par. (4).

1986—Subsec. (a). Pub. L. 99–500 and Pub. L. 99–591, § 101(c) [§ 924(a)], Pub. L. 99–661, § 924(a), amended subsec. (a) identically, in par. (2)(A)(i) striking out ''(including price)'' after ''factors'' and inserting ''(including price)'' and ''(including cost and price)'' and adding par. (3).

Subsec. (b)(4)(B). Pub. L. 99–500 and Pub. L. 99–591, § 101(c) [§ 924(b)], Pub. L. 99–661, § 924(b), amended subpar. (B) identically, inserting ''cost or''.

Subsec. (b)(4)(E). Pub. L. 99–661, § 313(b), added subpar. (E).

1985—Subsec. (b)(5). Pub. L. 99–145 aligned the margin of par. (5).

1984—Subsecs. (c), (d). Pub. L. 98–525 added subsecs. (c) and (d).

Catchline, subsecs. (a) to (d). Pub. L. 98–369 substituted ''Contracts: planning, solicitation, evaluation, and award procedures'' for ''Formal advertisements for bids; time; opening; award; rejection'' and completely revised the text to substitute a program using solicitation requirements covering military procurement for former provisions which had used the approach of utilizing formal advertisements, struck out former provisions which had directed that, except in cases where the Secretary of Defense had determined that military requirements necessitated the specification of container size, no advertisement or invitation to bid for the carriage of government property in other than government-owned cargo containers could specify carriage of such property in cargo containers of any stated length, height, or width, and carried forward into new subsecs. (a)(1)(A)(iii), (B)(i), and (b)(2) and (5) the content of former section.

1968—Subsec. (a). Pub. L. 90–268 inserted provision that, except in cases where the Secretary of Defense determines that military requirements necessitate such specification, no advertisement or invitation to bid for the carriage of Government property in other than Government-owned cargo containers shall specify carriage of such property in cargo containers of any stated length, height, or width.

1958—Subsecs. (b) to (d). Pub. L. 85–861 added subsec. (b) and redesignated former subsecs. (b) and (c) as (c) and (d), respectively.

EFFECTIVE DATE OF REPEAL

Repeal effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115–232 effective Jan. 1, 2020, subject to a savings provision, see section 836(h) of Pub. L. 115–232, set out as an Effective Date of 2018 Amendment; Savings Provision note under section 453b of Title 6, Domestic Security.

EFFECTIVE DATE OF 1996 AMENDMENT

For effective date and applicability of amendment by sections 4103(a), 4104(a), and 4202(a)(2) of Pub. L. 104–106, see section 4401 of Pub. L. 104–106, set out as a note under section 2302 of this title.

Amendment by section 5601(a) of Pub. L. 104–106 effective 180 days after Feb. 10, 1996, see section 5701 of Pub. L. 104–106, Feb. 10, 1996, 110 Stat. 702.

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 2302 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–510, div. A, title VIII, § 802(e), Nov. 5, 1990, 104 Stat. 1589, provided that:

''(1) Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply with respect to solicitations for sealed bids or competitive proposals issued after the end of the 120-day period beginning on the date of the enactment of this Act [Nov. 5, 1990].

''(2) The Secretary of Defense may require the amendments made by this section to apply with respect to solicitations issued before the end of the period referred to in paragraph (1). The Secretary of Defense shall publish in the Federal Register notice of any such earlier effective date.''

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–500, § 101(c) [title X, § 924(c)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–153, Pub. L. 99–591, § 101(c) [title X, § 924(c)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–153, and Pub. L. 99–661, div. A, title IX, formerly title IV, § 924(c), Nov. 14, 1986, 100 Stat. 3933, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273, provided that: ''The amendments made by this section [amending this section] shall apply with respect to solicitations for sealed bids or competitive proposals issued after the end of the 180-day period beginning on the date of the enactment of this Act [Oct. 18, 1986].''

EFFECTIVE DATE OF 1984 AMENDMENTS

Pub. L. 98–525, title XII, § 1213(b), Oct. 19, 1984, 98 Stat. 2592, provided that: ''The amendment made by subsection (a) [amending this section] shall take effect at the end of the 180-day period beginning on the date of the enactment of this Act [Oct. 19, 1984].''

Amendment by Pub. L. 98–369 applicable with respect to any solicitation for bids or proposals issued after Mar. 31, 1985, see section 2751 of Pub. L. 98–369, set out as a note under section 2302 of this title.

PILOT PROGRAM TO USE ALPHA CONTRACTING TEAMS FOR COMPLEX REQUIREMENTS

Pub. L. 116–92, div. A, title VIII, § 802, Dec. 20, 2019, 133 Stat. 1483, provided that:

''(a) IN GENERAL.—(1) The Secretary of Defense shall select at least 2, and up to 5, initiatives to participate in a pilot [program] to use teams that, with the advice of expert third parties, focus on the development of complex contract technical requirements for services, with each team focusing on developing achievable technical requirements that are appropriately valued and identifying the most effective acquisition strategy to achieve those requirements.

''(2) The Secretary shall develop metrics for tracking progress of the program at improving quality and acquisition cycle time.

''(b) DEVELOPMENT OF CRITERIA AND INITIATIVES.—(1) Not later than February 1, 2020, the Secretary of Defense shall establish the pilot program and notify the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] of the criteria used to select initiatives and the metrics used to track progress.

''(2) Not later than May 1, 2020, the Secretary shall notify the congressional defense committees of the initiatives selected for the program.

''(3) Not later than December 1, 2020, the Secretary shall brief the congressional defense committees on the progress of the selected initiatives, including the progress of the initiatives at improving quality and acquisition cycle time according to the metrics developed under subsection (a)(2).''

DEPARTMENT OF DEFENSE CONTRACTING DISPUTE MATTERS

Pub. L. 115–232, div. A, title VIII, § 822, Aug. 13, 2018, 132 Stat. 1853, provided that:

''(a) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act [Aug. 13, 2018], the Secretary of Defense shall carry out a study of the frequency and effects of bid protests involving the same contract award or proposed award that have been filed at both the Government Accountability Office and the United States Court of Federal Claims. The study shall cover Department of Defense contracts and include, at a minimum—

''(1) the number of protests that have been filed with both tribunals and results;

''(2) the number of such protests where the tribunals differed in denying or sustaining the action;

''(3) the length of time, in average time and median time—

''(A) from initial filing at the Government Accountability Office to decision in the United States Court of Federal Claims;

''(B) from filing with each tribunal to decision by such tribunal;

''(C) from the time at which the basis of the protest is known to the time of filing in each tribunal; and

''(D) in the case of an appeal from a decision of the United States Court of Federal Claims, from the date of the initial filing of the appeal to decision in the appeal;

''(4) the number of protests where performance was stayed or enjoined and for how long;

''(5) if performance was stayed or enjoined, whether the requirement was obtained in the interim through another vehicle or in-house, or whether during the period of the stay or enjoining the requirement went unfulfilled;

''(6) separately for each tribunal, the number of protests where performance was stayed or enjoined and monetary damages were awarded, which shall include for how long performance was stayed or enjoined and the amount of monetary damages;

''(7) whether the protestor was a large or small business; and

''(8) whether the protestor was the incumbent in a prior contract for the same or similar product or service.

''(b) REPORT.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives], the Committee on the Judiciary of the Senate, and the Committee on the Judiciary of the House of Representatives a report on the results of the study, along with related recommendations for improving the expediency of the bid protest process. In preparing the report, the Secretary shall consult with the Attorney General of the United States, the Comptroller General of the United States, and the United States Court of Federal Claims.

''(c) ONGOING DATA COLLECTION.—Not later than 270 days after the date of the enactment of this Act, the Secretary of Defense shall establish and continuously maintain a data repository to collect on an ongoing basis the information described in subsection (a) and any additional relevant bid protest data the Secretary determines necessary and appropriate to allow the Department of Defense, the Government Accountability Office, and the United States Court of Federal Claims to assess and review bid protests over time.

''(d) ESTABLISHMENT OF EXPEDITED PROCESS FOR SMALL VALUE CONTRACTS.—

''(1) IN GENERAL.—Not later than December 1, 2019, the Secretary of Defense shall develop a plan and schedule for an expedited bid protest process for Department of Defense contracts with a value of less than $100,000.

''(2) CONSULTATION.—In carrying out paragraph (1), the Secretary of Defense may consult with the Government Accountability Office and the United States Court of Federal Claims to the extent such entities may establish a similar process at their election.

''(3) REPORT.—Not later than May 1, 2019, the Secretary of Defense shall submit to the congressional defense committees a report on the plan and schedule for implementation of the expedited bid protest process, which shall include a request for any additional authorities the Secretary determines appropriate for such efforts.''

INCLUSION OF BEST AVAILABLE INFORMATION REGARDING PAST PERFORMANCE OF SUBCONTRACTORS AND JOINT VENTURE PARTNERS

Pub. L. 115–232, div. A, title VIII, § 823, Aug. 13, 2018, 132 Stat. 1855, provided that: ''Not later than 180 days after the date of the enactment of this Act [Aug. 13, 2018], the Secretary of Defense, in consultation with the Federal Acquisition Regulatory Council and the Administrator for Federal Procurement Policy, shall develop policies for the Department of Defense to ensure the best information regarding past performance of certain subcontractors and joint venture partners is available when awarding Department of Defense contracts. The policies shall include proposed revisions to the Defense Federal Acquisition Regulation Supplement as follows:

''(1) Required performance evaluations, as part of a government-wide evaluation reporting tool, for first-tier subcontractors on construction and architect-engineer contracts performing a portion of the contract valued at the threshold set forth in section 42.1502(e) of the Federal Acquisition Regulation, or 20 percent of the value of the prime contract, whichever is higher, provided—

''(A) the information included in rating the subcontractor is not inconsistent with the information included in the rating for the prime contractor;

''(B) the subcontractor evaluation is conducted consistent with the provisions of section 42.15 of the Federal Acquisition Regulation;

''(C) negative evaluations of a subcontractor in no way obviate the prime contractor's responsibility for successful completion of the contract and management of its subcontractors; and

''(D) that in the judgment of the contracting officer, the overall execution of the work is impacted by the performance of the subcontractor or subcontractors.

''(2) Required performance evaluations, as part of a government-wide evaluation reporting tool, of individual partners of joint venture-awarded construction and architect-engineer contracts valued at the threshold set forth in section 42.1502(e) of the Federal Acquisition Regulation, to ensure that past performance on joint venture projects is considered in future awards to individual joint venture partners, provided—

''(A) at a minimum, the rating for joint ventures includes an identification that allows the evalua-

tion to be retrieved for each partner of the joint venture;

''(B) each partner, through the joint venture, is given the same opportunity to submit comments, rebutting statements, or additional information, consistent with the provisions of section 42.15 of the Federal Acquisition Regulation; and

''(C) the rating clearly identifies the responsibilities of joint venture partners for discrete elements of the work where the partners are not jointly and severally responsible for the project.

''(3) Processes to request exceptions from the annual evaluation requirement under section 42.1502(a) of the Federal Acquisition Regulation for construction and architect-engineer contracts where submission of the annual evaluations would not provide the best representation of the performance of a contractor, including subcontractors and joint venture partners, including—

''(A) where no severable element of the work has been completed;

''(B) where the contracting officer determines that—

''(i) an insubstantial portion of the contract work has been completed in the preceding year; and

''(ii) the lack of performance is at no fault to the contractor; or

''(C) where the contracting officer determines that there is an issue in dispute which, until resolved, would likely cause the annual rating to inaccurately reflect the past performance of the contractor.''

ENHANCED POST-AWARD DEBRIEFING RIGHTS; RELEASE OF CONTRACT AWARD INFORMATION

Pub. L. 115–91, div. A, title VIII, § 818(a), Dec. 12, 2017, 131 Stat. 1463, provided that: ''Not later than 180 days after the date of the enactment of this Act [Dec. 12, 2017], the Secretary of Defense shall revise the Department of Defense Supplement to the Federal Acquisition Regulation to require that all required post-award debriefings, while protecting the confidential and proprietary information of other offerors, include, at a minimum, the following:

''(1) In the case of a contract award in excess of $100,000,000, a requirement for disclosure of the agency's written source selection award determination, redacted to protect the confidential and proprietary information of other offerors for the contract award, and, in the case of a contract award in excess of $10,000,000 and not in excess of $100,000,000 with a small business or nontraditional contractor, an option for the small business or nontraditional contractor to request such disclosure.

''(2) A requirement for a written or oral debriefing for all contract awards and task or delivery orders valued at $10,000,000 or higher.

''(3) Provisions ensuring that both unsuccessful and winning offerors are entitled to the disclosure described in paragraph (1) and the debriefing described in paragraph (2).

''(4) Robust procedures, consistent with section 2305(b)(5)(D) of title 10, United States Code, and provisions implementing that section in the Federal Acquisition Regulation, to protect the confidential and proprietary information of other offerors.''

USE OF LOWEST PRICE TECHNICALLY ACCEPTABLE SOURCE SELECTION PROCESS

Pub. L. 114–328, div. A, title VIII, § 813, Dec. 23, 2016, 130 Stat. 2270, as amended by Pub. L. 115–91, div. A, title VIII, § 822(a), (b)(1), Dec. 12, 2017, 131 Stat. 1465; Pub. L. 116–92, div. A, title VIII, § 806(a)(1), Dec. 20, 2019, 133 Stat. 1485, provided that:

''(a) STATEMENT OF POLICY.—It shall be the policy of the Department of Defense to avoid using lowest price technically acceptable source selection criteria in circumstances that would deny the Department the benefits of cost and technical tradeoffs in the source selection process.

''(b) REVISION OF DEFENSE FEDERAL ACQUISITION REGULATION SUPPLEMENT.—Not later than 120 days after the date of the enactment of this Act [Dec. 23, 2016], the Secretary of Defense shall revise the Defense Federal Acquisition Regulation Supplement to require that, for solicitations issued on or after the date that is 120 days after the date of the enactment of this Act, lowest price technically acceptable source selection criteria are used only in situations in which—

''(1) the Department of Defense is able to comprehensively and clearly describe the minimum requirements expressed in terms of performance objectives, measures, and standards that will be used to determine acceptability of offers;

''(2) the Department of Defense would realize no, or minimal, value from a contract proposal exceeding the minimum technical or performance requirements set forth in the request for proposal;

''(3) the proposed technical approaches will require no, or minimal, subjective judgment by the source selection authority as to the desirability of one offeror's proposal versus a competing proposal;

''(4) the source selection authority has a high degree of confidence that a review of technical proposals of offerors other than the lowest bidder would not result in the identification of factors that could provide value or benefit to the Department;

''(5) the contracting officer has included a justification for the use of a lowest price technically acceptable evaluation methodology in the contract file;

''(6) the Department of Defense has determined that the lowest price reflects full life-cycle costs, including for operations and support;

''(7) the Department of Defense would realize no, or minimal, additional innovation or future technological advantage by using a different methodology; and

''(8) with respect to a contract for procurement of goods, the goods procured are predominantly expendable in nature, nontechnical, or have a short life expectancy or short shelf life.

''(c) AVOIDANCE OF USE OF LOWEST PRICE TECHNICALLY ACCEPTABLE SOURCE SELECTION CRITERIA IN CERTAIN PROCUREMENTS.—To the maximum extent practicable, the use of lowest price technically acceptable source selection criteria shall be avoided in the case of a procurement that is predominately for the acquisition of—

''(1) information technology services, cybersecurity services, systems engineering and technical assistance services, advanced electronic testing, audit or audit readiness services, or other knowledge-based professional services;

''(2) personal protective equipment; or

''(3) knowledge-based training or logistics services in contingency operations or other operations outside the United States, including in Afghanistan or Iraq.''

[Pub. L. 115–91, div. A, title VIII, § 822(b)(2), Dec. 12, 2017, 131 Stat. 1465, provided that: ''The amendment made by this subsection [amending section 813 of Pub. L. 114–328, set out above] shall apply with respect to the second, third, and fourth reports submitted under [former] subsection (d) of section 813 of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114–328; 130 Stat 2271; 10 U.S.C. 2305 note).'']

USE OF COMMERCIAL OR NON-GOVERNMENT STANDARDS IN LIEU OF MILITARY SPECIFICATIONS AND STANDARDS

Pub. L. 114–328, div. A, title VIII, § 875, Dec. 23, 2016, 130 Stat. 2310, as amended by Pub. L. 116–92, div. A, title IX, § 902(45), Dec. 20, 2019, 133 Stat. 1548, provided that:

''(a) IN GENERAL.—The Secretary of Defense shall ensure that the Department of Defense uses commercial or non-Government specifications and standards in lieu of military specifications and standards, including for procuring new systems, major modifications, upgrades to current systems, non-developmental and commercial items, and programs in all acquisition categories, unless no practical alternative exists to meet user needs.

If it is not practicable to use a commercial or non-Government standard, a Government-unique specification may be used.

''(b) LIMITED USE OF MILITARY SPECIFICATIONS.—

''(1) IN GENERAL.—Military specifications shall be used in procurements only to define an exact design solution when there is no acceptable commercial or non-Government standard or when the use of a commercial or non-Government standard is not cost effective.

''(2) WAIVER.—A waiver for the use of military specifications in accordance with paragraph (1) shall be approved by either the appropriate milestone decision authority, the appropriate service acquisition executive, or the Under Secretary of Defense for Acquisition and Sustainment.

''(c) REVISION TO DFARS.—Not later than 180 days after the date of the enactment of this Act [Dec. 23, 2016], the Under Secretary of Defense for Acquisition and Sustainment shall revise the Defense Federal Acquisition Regulation Supplement to encourage contractors to propose commercial or non-Government standards and industry-wide practices that meet the intent of the military specifications and standards.

''(d) DEVELOPMENT OF NON-GOVERNMENT STANDARDS.—The Under Secretary of Defense for Research and Engineering shall form partnerships with appropriate industry associations to develop commercial or non-Government standards for replacement of military specifications and standards where practicable.

''(e) EDUCATION, TRAINING, AND GUIDANCE.—The Under Secretary of Defense for Acquisition and Sustainment shall ensure that training, education, and guidance programs throughout the Department are revised to incorporate specifications and standards reform.

''(f) LICENSES.—The Under Secretary of Defense for Acquisition and Sustainment shall negotiate licenses for standards to be used across the Department of Defense and shall maintain an inventory of such licenses that is accessible to other Department of Defense organizations.''

REQUIREMENT AND REVIEW RELATING TO USE OF BRAND NAMES OR BRAND-NAME OR EQUIVALENT DESCRIPTIONS IN SOLICITATIONS

Pub. L. 114–328, div. A, title VIII, § 888, Dec. 23, 2016, 130 Stat. 2322, as amended by Pub. L. 116–92, div. A, title IX, § 902(46), Dec. 20, 2019, 133 Stat. 1548, provided that:

''(a) REQUIREMENT.—The Secretary of Defense shall ensure that competition in Department of Defense contracts is not limited through the use of specifying brand names or brand-name or equivalent descriptions, or proprietary specifications or standards, in solicitations unless a justification for such specification is provided and approved in accordance with section 2304(f) of title 10, United States Code.

''(b) REVIEW OF ANTI-COMPETITIVE SPECIFICATIONS IN INFORMATION TECHNOLOGY ACQUISITIONS.—

''(1) REVIEW REQUIRED.—Not later than 180 days after the date of the enactment of this Act [Dec. 23, 2016], the Under Secretary of Defense for Acquisition and Sustainment shall conduct a review of the policy, guidance, regulations, and training related to specifications included in information technology acquisitions to ensure current policies eliminate the unjustified use of potentially anti-competitive specifications. In conducting the review, the Under Secretary shall examine the use of brand names or proprietary specifications or standards in solicitations for procurements of goods and services, as well as the current acquisition training curriculum related to those areas.

''(2) BRIEFING REQUIRED.—Not later than 270 days after the date of the enactment of this Act, the Under Secretary shall provide a briefing to the Committees on Armed Services of the Senate and House of Representatives on the results of the review required by paragraph (1).

''(3) ADDITIONAL GUIDANCE.—Not later than one year after the date of the enactment of this Act, the Under Secretary shall revise policies, guidance, and training to incorporate such recommendations as the Under Secretary considers appropriate from the review required by paragraph (1).''

GUIDANCE ON USE OF TIERED EVALUATIONS OF OFFERS FOR CONTRACTS AND TASK ORDERS UNDER CONTRACTS

Pub. L. 109–163, div. A, title VIII, § 816, Jan. 6, 2006, 119 Stat. 3382, provided that:

''(a) GUIDANCE REQUIRED.—The Secretary of Defense shall prescribe guidance for the military departments and the Defense Agencies on the use of tiered evaluations of offers for contracts and for task or delivery orders under contracts.

''(b) ELEMENTS.—The guidance prescribed under subsection (a) shall include a prohibition on the initiation by a contracting officer of a tiered evaluation of an offer for a contract or for a task or delivery order under a contract unless the contracting officer—

''(1) has conducted market research in accordance with part 10 of the Federal Acquisition Regulation in order to determine whether or not a sufficient number of qualified small businesses are available to justify limiting competition for the award of such contract or task or delivery order under applicable law and regulations;

''(2) is unable, after conducting market research under paragraph (1), to make the determination described in that paragraph; and

''(3) includes in the contract file a written explanation of why such contracting officer was unable to make such determination.''

AUTHORIZATION OF EVALUATION FACTOR FOR DEFENSE CONTRACTORS EMPLOYING OR SUBCONTRACTING WITH MEMBERS OF THE SELECTED RESERVE OF THE RESERVE COMPONENTS OF THE ARMED FORCES

Pub. L. 109–163, div. A, title VIII, § 819, Jan. 6, 2006, 119 Stat. 3385, as amended by Pub. L. 116–283, div. A, title VIII, § 821, Jan. 1, 2021, 134 Stat. 3753, provided that:

''(a) DEFENSE CONTRACTS.—In awarding any contract for the procurement of goods or services to an entity, the Secretary of Defense is authorized to use as an evaluation factor whether the entity intends to carry out the contract using employees or individual subcontractors who are members of the Selected Reserve of the reserve components of the Armed Forces.

''(b) REGULATIONS.—The Federal Acquisition Regulation shall be revised as necessary to implement this section.''

CERTIFICATE OF COMPETENCY REQUIREMENTS

Pub. L. 102–484, div. A, title VIII, § 804, Oct. 23, 1992, 106 Stat. 2447, provided that, in case of contract to be entered into pursuant to this chapter, other than pursuant to simplified procedures under section 2304(g) of this title, solicitation was to contain notice of right of bidding small business concern, in case of determination by contracting officer that concern was nonresponsible, to request Small Business Administration to make determination of responsibility under section 637(b)(7) of Title 15, Commerce and Trade, that if contracting officer determined that concern was nonresponsible, such officer was to notify concern in writing, of such determination, that concern had right to request Small Business Administration to make determination, and that, if concern desired to request such determination, concern was to inform officer in writing, within 14 days after receipt of notice, of such desire, and that, after being so informed, officer was to transmit request to Administration, or, if not so informed, officer was to proceed with award of contract, and contained provisions relating to effective and termination dates and report to be submitted to Congress, prior to repeal by Pub. L. 103–355, title VII, § 7101(b), Oct. 13, 1994, 108 Stat. 3367.

CONSTRUCTION OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 as not superseding or affecting the provisions of section 637(a) of Title 15,

Commerce and Trade, see section 2723(c) of Pub. L. 98–369, set out as a note under section 2304 of this title.

§ 2305a. Design-build selection procedures

(a) AUTHORIZATION.—Unless the traditional acquisition approach of design-bid-build established under chapter 11 of title 40 is used or another acquisition procedure authorized by law is used, the head of an agency shall use the two-phase selection procedures authorized in this section for entering into a contract for the design and construction of a public building, facility, or work when a determination is made under subsection (b) that the procedures are appropriate for use.

(b) CRITERIA FOR USE.—A contracting officer shall make a determination whether two-phase selection procedures are appropriate for use for entering into a contract for the design and construction of a public building, facility, or work when the contracting officer anticipates that three or more offers will be received for such contract, design work must be performed before an offeror can develop a price or cost proposal for such contract, the offeror will incur a substantial amount of expense in preparing the offer, and the contracting officer has considered information such as the following:

(1) The extent to which the project requirements have been adequately defined.

(2) The time constraints for delivery of the project.

(3) The capability and experience of potential contractors.

(4) The suitability of the project for use of the two-phase selection procedures.

(5) The capability of the agency to manage the two-phase selection process.

(6) Other criteria established by the agency.

(c) PROCEDURES DESCRIBED.—Two-phase selection procedures consist of the following:

(1) The agency develops, either in-house or by contract, a scope of work statement for inclusion in the solicitation that defines the project and provides prospective offerors with sufficient information regarding the Government's requirements (which may include criteria and preliminary design, budget parameters, and schedule or delivery requirements) to enable the offerors to submit proposals which meet the Government's needs. If the agency contracts for development of the scope of work statement, the agency shall contract for architectural and engineering services as defined by and in accordance with chapter 11 of title 40.

(2) The contracting officer solicits phase-one proposals that—

(A) include information on the offeror's—

(i) technical approach; and

(ii) technical qualifications; and

(B) do not include—

(i) detailed design information; or

(ii) cost or price information.

(3) The evaluation factors to be used in evaluating phase-one proposals are stated in the solicitation and include specialized experience and technical competence, capability to perform, past performance of the offeror's team (including the architect-engineer and construction members of the team) and other appropriate factors, except that cost-related or price-related evaluation factors are not permitted. Each solicitation establishes the relative importance assigned to the evaluation factors and subfactors that must be considered in the evaluation of phase-one proposals. The agency evaluates phase-one proposals on the basis of the phase-one evaluation factors set forth in the solicitation.

(4) The contracting officer selects as the most highly qualified the number of offerors specified in the solicitation to provide the property or services under the contract and requests the selected offerors to submit phase-two competitive proposals that include technical proposals and cost or price information. Each solicitation establishes with respect to phase two—

(A) the technical submission for the proposal, including design concepts or proposed solutions to requirements addressed within the scope of work (or both), and

(B) the evaluation factors and subfactors, including cost or price, that must be considered in the evaluations of proposals in accordance with paragraphs (2), (3), and (4) of section 2305(a) of this title.

The contracting officer separately evaluates the submissions described in subparagraphs (A) and (B).

(5) The agency awards the contract in accordance with section 2305(b)(4) of this title.

(d) SOLICITATION TO STATE NUMBER OF OFFERORS TO BE SELECTED FOR PHASE TWO REQUESTS FOR COMPETITIVE PROPOSALS.—A solicitation issued pursuant to the procedures described in subsection (c) shall state the maximum number of offerors that are to be selected to submit competitive proposals pursuant to subsection (c)(4). If the contract value exceeds $4,000,000, the maximum number specified in the solicitation shall not exceed 5 unless—

(1) the solicitation is issued pursuant to an indefinite delivery-indefinite quantity contract for design-build construction; or

(2)(A) the head of the contracting activity, delegable to a level no lower than the senior contracting official within the contracting activity, approves the contracting officer's justification with respect to an individual solicitation that a maximum number greater than 5 is in the interest of the Federal Government; and

(B) the contracting officer provides written documentation of how a maximum number greater than 5 is consistent with the purposes and objectives of the two-phase selection procedures.

(e) REQUIREMENT FOR GUIDANCE AND REGULATIONS.—The Federal Acquisition Regulation shall include guidance—

(1) regarding the factors that may be considered in determining whether the two-phase contracting procedures authorized by subsection (a) are appropriate for use in individual contracting situations;

(2) regarding the factors that may be used in selecting contractors; and

(3) providing for a uniform approach to be used Government-wide.

(f) SPECIAL AUTHORITY FOR MILITARY CONSTRUCTION PROJECTS.—(1) The Secretary of a military department may use funds available to the Secretary under section 2807(a) or 18233(e) of this title to accelerate the design effort in connection with a military construction project for which the two-phase selection procedures described in subsection (c) are used to select the contractor for both the design and construction portion of the project before the project is specifically authorized by law and before funds are appropriated for the construction portion of the project. Notwithstanding the limitations contained in such sections, use of such funds for the design portion of a military construction project may continue despite the subsequent authorization of the project. The advance notice requirement of section 2807(b) of this title shall continue to apply whenever the estimated cost of the design portion of the project exceeds the amount specified in such section.

(2) Any military construction contract that provides for an accelerated design effort, as authorized by paragraph (1), shall include as a condition of the contract that the liability of the United States in a termination for convenience before funds are first made available for construction may not exceed an amount attributable to the final design of the project.

(3) For each fiscal year during which the authority provided by this subsection is in effect, the Secretary of a military department may select not more than two military construction projects to include the accelerated design effort authorized by paragraph (1) for each armed force under the jurisdiction of the Secretary. To be eligible for selection under this subsection, a request for the authorization of the project, and for the authorization of appropriations for the project, must have been included in the annual budget of the President for a fiscal year submitted to Congress under section 1105(a) of title 31.

(4) Not later than March 1, 2008, the Secretary of Defense shall submit to the congressional defense committees a report evaluating the usefulness of the authority provided by this subsection in expediting the design and construction of military construction projects. The authority provided by this subsection expires September 30, 2008, except that, if the report required by this paragraph is not submitted by March 1, 2008, the authority shall expire on that date.

(Added Pub. L. 104–106, div. D, title XLI, § 4105(a)(1), Feb. 10, 1996, 110 Stat. 645; amended Pub. L. 105–85, div. A, title X, § 1073(a)(44), Nov. 18, 1997, 111 Stat. 1902; Pub. L. 107–217, § 3(b)(4), Aug. 21, 2002, 116 Stat. 1295; Pub. L. 108–178, § 4(b)(3), Dec. 15, 2003, 117 Stat. 2641; Pub. L. 108–375, div. B, title XXVIII, § 2807, Oct. 28, 2004, 118 Stat. 2123; Pub. L. 109–163, div. B, title XXVIII, § 2807, Jan. 6, 2006, 119 Stat. 3508; Pub. L. 113–291, div. A, title VIII, § 814, Dec. 19, 2014, 128 Stat. 3430; Pub. L. 115–91, div. A, title VIII, § 823, Dec. 12, 2017, 131 Stat. 1465; Pub. L. 116–92, div. A, title XVII, § 1731(a)(38), Dec. 20, 2019, 133 Stat. 1814.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1813(b), Jan. 1, 2021, 134 Stat. 4151, 4177, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 223 of this title, as added by section 1813(a) of Pub. L. 116–283,inserted after the table of sections at the beginning, and redesignated as section 3241 of this title. See Effective Date of 2021 Amendment note below.

PRIOR PROVISIONS

A prior section 2305a was renumbered section 2438 of this title.

AMENDMENTS

2019—Subsec. (d)(1). Pub. L. 116–92 substituted "an indefinite" for "a indefinite".

2017—Subsec. (d). Pub. L. 115–91 substituted "If the contract value exceeds $4,000,000, the maximum number specified in the solicitation shall not exceed 5 unless— " and pars. (1) and (2) for "If the contract value exceeds $4,000,000, the maximum number specified in the solicitation shall not exceed 5 unless the head of the contracting activity, delegable to a level no lower than the senior contracting official within the contracting activity, approves the contracting officer's justification with respect to an individual solicitation that a number greater than 5 is in the Federal Government's interest. The contracting officer shall provide written documentation of how a maximum number exceeding 5 is consistent with the purposes and objectives of the two-phase selection procedures."

2014—Subsec. (d). Pub. L. 113–291 substituted "If the contract value exceeds $4,000,000, the maximum number specified in the solicitation shall not exceed 5 unless the head of the contracting activity, delegable to a level no lower than the senior contracting official within the contracting activity, approves the contracting officer's justification with respect to an individual solicitation that a number greater than 5 is in the Federal Government's interest. The contracting officer shall provide written documentation of how a maximum number exceeding 5 is consistent with the purposes and objectives of the two-phase selection procedures." for "The maximum number specified in the solicitation shall not exceed 5 unless the agency determines with respect to an individual solicitation that a specified number greater than 5 is in the Government's interest and is consistent with the purposes and objectives of the two-phase selection process."

2006—Subsec. (f)(2). Pub. L. 109–163, § 2807(a), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "Any military construction contract that provides for an accelerated design effort, as authorized by paragraph (1), shall include as a condition of the contract that the liability of the United States in a termination for convenience may not exceed the actual costs incurred as of the termination date."

Subsec. (f)(4). Pub. L. 109–163, § 2807(b), substituted "2008" for "2007" wherever appearing.

2004—Subsec. (f). Pub. L. 108–375 added subsec. (f).

2003—Subsec. (c)(1). Pub. L. 108–178 substituted "chapter 11 of title 40" for "the Brooks Architect-Engineers Act (40 U.S.C. 541 et seq.)".

2002—Subsec. (a). Pub. L. 107–217 substituted "chapter 11 of title 40" for "the Brooks Architect-Engineers Act (40 U.S.C. 541 et seq.)".

1997—Subsec. (a). Pub. L. 105–85 substituted "(40 U.S.C." for "(41 U.S.C.".

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–178 effective Aug. 21, 2002, see section 5 of Pub. L. 108–178, set out as a note under

section 5334 of Title 5, Government Organization and Employees.

EFFECTIVE DATE

For effective date and applicability of section, see section 4401 of Pub. L. 104–106, set out as an Effective Date of 1996 Amendment note under section 2302 of this title.

§ 2306. Kinds of contracts

(a) The cost-plus-a-percentage-of-cost system of contracting may not be used. Subject to the limitation in the preceding sentence, the other provisions of this section, and other applicable provisions of law, the head of an agency, in awarding contracts under this chapter after using procedures other than sealed-bid procedures, may enter into any kind of contract that he considers will promote the best interests of the United States.

(b) Each contract awarded under this chapter after using procedures other than sealed-bid procedures shall contain a warranty, determined to be suitable by the head of the agency, that the contractor has employed or retained no person or selling agency to solicit or obtain the contract under an understanding or agreement for a commission, percentage, brokerage, or contingent fee, except a bona fide employee or established commercial or selling agency maintained by him to obtain business. If a contractor breaks such a warranty the United States may annul the contract without liability or may deduct the commission, percentage, brokerage, or contingent fee from the contract price or consideration. This subsection does not apply to a contract that is for an amount not greater than the simplified acquisition threshold or to a contract for the acquisition of commercial products or commercial services.

(c) A contract entered into by the United States in connection with a military construction project or a military family housing project may not use any form of cost-plus contracting. This prohibition is in addition to the prohibition specified in subsection (a) on the use of the cost-plus-a-percentage-of-cost system of contracting and applies notwithstanding a declaration of war or the declaration by the President of a national emergency under section 201 of the National Emergencies Act (50 U.S.C. 1621) that includes the use of the armed forces.

(d) The fee for performing a cost-plus-a-fixed-fee contract for experimental, developmental, or research work may not be more than 15 percent of the estimated cost of the contract, not including the fee. The fee for performing a cost-plus-a-fixed-fee contract for architectural or engineering services for a public work or utility plus the cost of those services to the contractor may not be more than 6 percent of the estimated cost of that work or project, not including fees. The fee for performing any other cost-plus-a-fixed-fee contract may not be more than 10 percent of the estimated cost of the contract, not including the fee. Determinations under this subsection of the estimated costs of a contract or project shall be made by the head of the agency at the time the contract is made.

(e)(1) Except as provided in paragraph (2), each cost contract and each cost-plus-a-fixed-fee contract shall provide for notice to the agency by the contractor before the making, under the prime contract, of—

(A) a cost-plus-a-fixed-fee subcontract; or

(B) a fixed-price subcontract or purchase order involving more than the greater of (i) the simplified acquisition threshold, or (ii) 5 percent of the estimated cost of the prime contract.

(2) Paragraph (1) shall not apply to a prime contract with a contractor that maintains a purchasing system approved by the contracting officer for the contract.

(f) So-called ''truth-in-negotiations'' provisions relating to cost or pricing data to be submitted by certain contractors and subcontractors are provided in section 2306a of this title.

(g) Multiyear contracting authority for the acquisition of services is provided in section 2306c of this title.

(h) Multiyear contracting authority for the purchase of property is provided in section 2306b of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 130; Pub. L. 87–653, § 1(d), (e), Sept. 10, 1962, 76 Stat. 528; Pub. L. 90–378, § 1, July 5, 1968, 82 Stat. 289; Pub. L. 90–512, Sept. 25, 1968, 82 Stat. 863; Pub. L. 96–513, title V, § 511(77), Dec. 12, 1980, 94 Stat. 2926; Pub. L. 97–86, title IX, §§ 907(b), 909(b), Dec. 1, 1981, 95 Stat. 1117, 1118; Pub. L. 98–369, div. B, title VII, § 2724, July 18, 1984, 98 Stat. 1192; Pub. L. 99–145, title XIII, § 1303(a)(15), Nov. 8, 1985, 99 Stat. 739; Pub. L. 99–500, § 101(c) [title X, § 952(b)(1), (c)(1)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–169, and Pub. L. 99–591, § 101(c) [title X, § 952(b)(1), (c)(1)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–169; Pub. L. 99–661, div. A, title IX, formerly title IV, § 952(b)(1), (c)(1), Nov. 14, 1986, 100 Stat. 3949, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; Pub. L. 101–189, div. A, title VIII, § 805(a), Nov. 29, 1989, 103 Stat. 1488; Pub. L. 101–510, div. A, title VIII, § 808, Nov. 5, 1990, 104 Stat. 1593; Pub. L. 102–25, title VII, § 701(d)(3), Apr. 6, 1991, 105 Stat. 114; Pub. L. 103–355, title I, §§ 1021, 1022(b), title IV, §§ 4102(b), 4401(c), title VIII, § 8105(a), Oct. 13, 1994, 108 Stat. 3257, 3260, 3340, 3348, 3392; Pub. L. 105–85, div. A, title X, § 1073(a)(45), Nov. 18, 1997, 111 Stat. 1902; Pub. L. 106–398, § 1 [[div. A], title VIII, § 802(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–205; Pub. L. 108–136, div. A, title VIII, § 842, Nov. 24, 2003, 117 Stat. 1552; Pub. L. 112–81, div. B, title XXVIII, § 2801(a), Dec. 31, 2011, 125 Stat. 1684; Pub. L. 115–232, div. A, title VIII, § 836(c)(4), Aug. 13, 2018, 132 Stat. 1865; Pub. L. 116–283, div. A, title XVIII, § 1817(b), (c), (e), (g)(1), Jan. 1, 2021, 134 Stat. 4186, 4187.)

AMENDMENT OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1817(b), (c), (e), (g)(1), Jan. 1, 2021, 134 Stat. 4151, 4186, 4187, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is amended as follows:

(1) by transferring subsection (a) to sections 3321(a) and 3322(a) of this title;

(2) by transferring subsection (b) to section 3321(b) of this title;

(3) by transferring subsection (c) to section 3323 of this title; and

(4) by transferring subsections (d) and (e) to subsections (b) and (c), respectively, of section 3322 of this title.

See 2021 Amendment notes below.

REPEAL OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1881(a), Jan. 1, 2021, 134 Stat. 4151, 4293, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is repealed.

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2306(a)	41:153(a) (1st sentence). 41:153(b) (1st 14 words of 1st sentence).	Feb. 19, 1948, ch. 65, § 4 (less words after semicolon of last sentence of (b), and less (c)), 62 Stat. 23.
2306(b)	41:153(a) (less 1st sentence).	
2306(c)	41:153(b) (2d sentence).	
2306(d)	41:153(b) (1st sentence, less 1st 14 words).	
2306(e)	41:153(b) (less 1st and 2d sentences; and less words after semicolon of last sentence).	

In subsection (a), the words ''subject to subsections (b)–(e)'' are substituted for the words ''Except as provided in subsection (b) of this section''. The words ''United States'' are substituted for the word ''Government''.

In subsection (b), the words ''under section 2304 of this title'' are substituted for the words ''pursuant to section 151(c) of this title''. The words ''full amount of such'' and ''violation'' are omitted as surplusage.

In subsection (c), the words ''under section 2304 of this title'' are inserted for clarity.

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

PRIOR PROVISIONS

Provisions similar to those in subsec. (h)(11) of this section were contained in Pub. L. 100–526, title I, § 104(a), Oct. 24, 1988, 102 Stat. 2624, which was set out below, prior to repeal by Pub. L. 101–189, § 805(b).

AMENDMENTS

2021—Subsec. (a). Pub. L. 116–283, § 1817(c), redesignated first sentence of subsec. (a) as section 3322(a) of this title.

Pub. L. 116–283, § 1817(b), redesignated subsec. (a) as section 3321(a) of this title.

Subsec. (b). Pub. L. 116–283, § 1817(b), redesignated subsec. (b) as section 3321(b) of this title.

Subsec. (c). Pub. L. 116–283, § 1817(g)(1), redesignated subsec. (c) as section 3323 of this title.

Subsecs. (d), (e). Pub. L. 116–283, § 1817(e), redesignated subsecs. (d) and (e) as section 3322(b) and (c), respectively, of this title.

2018—Subsec. (b). Pub. L. 115–232 substituted ''commercial products or commercial services'' for ''commercial items''.

2011—Subsec. (c). Pub. L. 112–81 added subsec. (c).

2003—Subsec. (e). Pub. L. 108–136 substituted ''(1) Except as provided in paragraph (2), each'' for ''Each'', redesignated former pars. (1) and (2) as subpars. (A) and (B) of par. (1), respectively, redesignated cls. (A) and (B) of former par. (2) as cls. (i) and (ii) of subpar. (B) of par. (1), respectively, and added par. (2).

2000—Subsec. (g). Pub. L. 106–398 amended subsec. (g) generally. Prior to amendment, subsec. (g) consisted of pars. (1) to (3) authorizing the head of an agency to enter into contracts for periods of not more than five years for certain types of services.

1997—Subsec. (h). Pub. L. 105–85 inserted ''for the purchase of property'' after ''Multiyear contracting authority''.

1994—Subsec. (b). Pub. L. 103–355, §§ 4102(b), 8105(a), inserted at end ''This subsection does not apply to a contract that is for an amount not greater than the simplified acquisition threshold or to a contract for the acquisition of commercial items.''

Subsec. (c). Pub. L. 103–355, § 1021, struck out subsec. (c) which read as follows: ''No cost contract, cost-plus-a-fixed-fee contract, or incentive contract may be made under this chapter unless the head of the agency determines that such a contract is likely to be less costly to the United States than any other kind of contract or that it is impracticable to obtain property or services of the kind or quality required except under such a contract.''

Subsec. (e)(2)(A). Pub. L. 103–355, § 4401(c), substituted ''simplified acquisition threshold'' for ''small purchase threshold''.

Subsec. (h). Pub. L. 103–355, § 1022(b), amended subsec. (h) generally. Prior to amendment, subsec. (h) related to requirements for multiyear contracts for purchase of property, including weapon systems and items and services associated with weapons systems.

1991—Subsec. (e)(2)(A). Pub. L. 102–25 substituted ''the small purchase threshold'' for ''the small purchase amount under section 2304(g) of this title''.

1990—Subsec. (h)(1). Pub. L. 101–510, § 808(a), struck out ''(other than contracts described in paragraph (6))'' after ''multiyear contracts'' in introductory provisions and substituted ''substantial savings of the total anticipated costs of carrying out the program through annual contracts'' for ''reduced total costs under the contract'' in subpar. (A).

Subsec. (h)(6). Pub. L. 101–510, § 808(b), struck out ''contracts for the construction, alteration, or major repair of improvements to real property or'' after ''not apply to''.

Subsec. (h)(9). Pub. L. 101–510, § 808(c)(1), inserted ''for a defense acquisition program that has been specifically authorized by law to be carried out using multiyear contract authority'' after ''under this subsection'' in introductory provisions.

Subsec. (h)(9)(C). Pub. L. 101–510, § 808(c)(2), struck out subpar. (C) which read as follows: ''The proposed multiyear contract—

''(i) achieves a 10 percent savings as compared to the cost of current negotiated contracts, adjusted for changes in quantity and for inflation; or

''(ii) achieves a 10 percent savings as compared to annual contracts if no recent contract experience exists.''

1989—Subsec. (h)(9) to (11). Pub. L. 101–189 added pars. (9) to (11).

1986—Pub. L. 99–500 and Pub. L. 99–591, § 101(c) [§ 952(c)(1)], Pub. L. 99–661, § 952(c)(1), amended section identically, striking out '': cost or pricing data: truth in negotiation'' after ''contracts'' in section catchline.

Subsec. (f). Pub. L. 99–500 and Pub. L. 99–591, § 101(c) [§ 952(b)(1)], Pub. L. 99–661, § 952(b)(1), amended generally subsec. (f) identically, substituting provision that ''truth-in-negotiations'' provisions relating to cost and pricing data for contractors and subcontractors are provided in section 2306a of this title for provision relating to certification by contractors and subcontractors on cost and pricing data, circumstances under which such certification will be required, circumstances under which such certification, although not required, may be requested, and evaluation of the accuracy of the data submitted.

1985—Subsec. (a). Pub. L. 99–145, § 1303(a)(15)(A), inserted a period at end.

Subsec. (b). Pub. L. 99–145, § 1303(a)(15)(B), struck out ''of this title'' before ''shall contain''.

1984—Pub. L. 98–369, § 2724(f), substituted ''Kinds of contracts; cost or pricing data: truth in negotiation'' for ''Kinds of contracts'' in section catchline.

Subsec. (a). Pub. L. 98–369, § 2724(a), substituted ''the limitation in the preceding sentence, the other provisions of this section, and other applicable provisions of law, the head of an agency, in awarding contracts under this chapter after using procedures other than

sealed-bid procedures, may enter into'' for ''this limitation and subject to subsections (b)–(f), the head of any agency may, in negotiating contracts under section 2304 of this title, make''.

Subsec. (b). Pub. L. 98–369, § 2724(b), substituted ''awarded under this chapter after using procedures other than sealed-bid procedures'' for ''negotiated under section 2304''.

Subsec. (c). Pub. L. 98–369, § 2724(c), substituted ''this chapter'' for ''section 2304 of this title,''.

Subsec. (e)(2). Pub. L. 98–369, § 2724(d), substituted ''the greater of (A) the small purchase amount under section 2304(g) of this title, or (B)'' for ''$25,000 or''.

Subsec. (f)(1). Pub. L. 98–369, § 2724(e)(A)(i), (ii), substituted ''such contractor's or subcontractor's'' for ''his'' and struck out ''he'' before ''submitted was accurate'' in provisions preceding subpar. (A).

Subsec. (f)(1)(A). Pub. L. 98–369, § 2724(3)(A)(iii), (vi), (vii), substituted ''prime contract under this chapter entered into after using procedures other than sealed-bid procedures, if'' for ''negotiated prime contract under this title where'', ''$100,000'' for ''$500,000'', and ''before'' for ''prior to''.

Subsec. (f)(1)(B). Pub. L. 98–369, § 2724(e)(A)(iv), (vi), (vii), substituted ''if'' for ''for which'', ''$100,000'' for ''$500,000'', and ''before'' for ''prior to''.

Subsec. (f)(1)(C). Pub. L. 98–369, § 2724(e)(A)(v)–(vii), substituted ''when'' for ''where'', ''$100,000'' for ''$500,000'', and ''before'' for ''prior to''.

Subsec. (f)(1)(D). Pub. L. 98–369, § 2724(e)(A)(iv), (vi), (vii), substituted ''if'' for ''for which'', ''$100,000'' for ''$500,000'', and ''before'' for ''prior to''.

Subsec. (f)(2). Pub. L. 98–369, § 2724(e)(B), (D), (E), struck out ''negotiated'' before ''price as is practicable'' and before ''is based on adequate price competition'', redesignated as par. (3) the proviso formerly set out in this par., and as part of the redesignation substituted a period for '': *Provided*, That'' after ''or noncurrent''.

Subsec. (f)(3). Pub. L. 98–369, § 2724(e)(E), designated as par. (3) the proviso formerly set out in par. (2). Former par. (3) redesignated (5).

Subsec. (f)(4). Pub. L. 98–369, § 2724(e)(F), added par. (4).

Subsec. (f)(5). Pub. L. 98–369, § 2724(e)(C), redesignated former par. (3) as (5) and substituted ''proposal for the contract, the discussions conducted on the proposal'' for ''negotiation''.

1981—Subsec. (f)(1). Pub. L. 97–86, § 907(b), substituted ''$500,000'' for ''$100,000'' in subpars. (A) to (D).

Subsec. (g)(1). Pub. L 97–86, § 909(b)(1), struck out ''to be performed outside the forty-eight contiguous States and the District of Columbia'' after ''(and items of supply related to such services)'' in provisions preceding subpar. (A).

Subsec. (h). Pub. L. 97–86, § 909(b)(2), added subsec. (h).

1980—Subsec. (f). Pub. L. 96–513, § 511(77)(A), designated existing provisions as pars. (1) to (3) and in par. (1), as so designated, substituted ''(A)'' to ''(D)'' for ''(1)'' to ''(4)'', respectively, ''prior'' for ''Prior'' wherever appearing, and ''clause (C)'' for ''(3) above''.

Subsec. (g). Pub. L. 96–513, § 511(77)(B), in par. (1) substituted ''that—'' for ''that:'', in par. (2) substituted ''(A) The'' for ''(A) the'', ''(B) Consideration'' for ''(B) consideration'', and ''(C) Consideration'' for ''(C) consideration'', and in par. (3) substituted ''from—'' for ''from:''.

1968—Subsec. (f). Pub. L. 90–512 inserted last par.

Subsec. (g). Pub. L. 90–378 added subsec. (g).

1962—Subsec. (a). Pub. L. 87–653, § 1(d), substituted ''subsections (b)–(f)'' for ''subsections (b)–(e)''.

Subsec. (f). Pub. L. 87–653, § 1(e), added subsec. (f).

EFFECTIVE DATE OF REPEAL

Repeal effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115–232 effective Jan. 1, 2020, subject to a savings provision, see section 836(h) of Pub. L. 115–232, set out as an Effective Date of 2018 Amendment; Savings Provision note under section 453b of Title 6, Domestic Security.

EFFECTIVE DATE OF 2011 AMENDMENT

Pub. L. 112–81, div. B, title XXVIII, § 2801(b), Dec. 31, 2011, 125 Stat. 1684, provided that: ''Subsection (c) of section 2306 of title 10, United States Code, as added by subsection (a), shall apply with respect to any contract entered into by the United States in connection with a military construction project or a military family housing project after the date of the enactment of this Act [Dec. 31, 2011].''

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 2302 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 101(c) [title X, § 952(b)(1)] of Pub. L. 99–500 and Pub. L. 99–591, and section 952(b)(1) of Pub. L. 99–661 applicable with respect to contracts or modifications on contracts entered into after end of 120-day period beginning Oct. 18, 1986, see section 101(c) of Pub. L. 99–500 and Pub. L. 99–591, and section 952(d) of Pub. L. 99–661, set out as a note under section 2306a of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable with respect to any solicitation for bids or proposals issued after Mar. 31, 1985, see section 2751 of Pub. L. 98–369, set out as a note under section 2302 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

For effective date of amendment by Pub. L. 87–653 see section 1(h) of Pub. L. 87–653, set out as a note under section 2304 of this title.

TRANSITION PROVISION

Pub. L. 101–189, div. A, title VIII, § 805(c), Nov. 29, 1989, 103 Stat. 1489, provided that: ''Subparagraph (C) of paragraph (9) of section 2306(h) of title 10, United States Code, as added by subsection (a), does not apply to programs that are under a multiyear contract on the date of the enactment of this Act [Nov. 29, 1989].''

PREFERENCE FOR FIXED-PRICE CONTRACTS

Pub. L. 114–328, div. A, title VIII, § 829, Dec. 23, 2016, 130 Stat. 2281, as amended by Pub. L. 116–92, div. A, title IX, § 902(47), Dec. 20, 2019, 133 Stat. 1548, provided that:

''(a) ESTABLISHMENT OF PREFERENCE.—Not later than 180 days after the date of the enactment of this Act [Dec. 23, 2016], the Defense Federal Acquisition Regulation Supplement shall be revised to establish a preference for fixed-price contracts, including fixed-price incentive fee contracts, in the determination of contract type.

''(b) APPROVAL REQUIREMENT FOR CERTAIN COST-TYPE CONTRACTS.—

''(1) IN GENERAL.—A contracting officer of the Department of Defense may not enter into a cost-type contract described in paragraph (2) unless the contract is approved by the service acquisition executive of the military department concerned, the head of the

Defense Agency concerned, the commander of the combatant command concerned, or the Under Secretary of Defense for Acquisition and Sustainment (as applicable).

''(2) COVERED CONTRACTS.—A contract described in this paragraph is—

''(A) a cost-type contract in excess of $50,000,000, in the case of a contract entered into on or after October 1, 2018, and before October 1, 2019; and

''(B) a cost-type contract in excess of $25,000,000, in the case of a contract entered into on or after October 1, 2019.''

DETERMINATION OF CONTRACT TYPE FOR DEVELOPMENT PROGRAMS

Pub. L. 109–364, div. A, title VIII, §818(b)–(e), Oct. 17, 2006, 120 Stat. 2329, 2330, provided that:

''(b) MODIFICATION OF REGULATIONS.—Not later than 120 days after the date of the enactment of this Act [Oct. 17, 2006], the Secretary of Defense shall modify the regulations of the Department of Defense regarding the determination of contract type for development programs.

''(c) ELEMENTS.—As modified under subsection (b), the regulations shall require the Milestone Decision Authority for a major defense acquisition program to select the contract type for a development program at the time of a decision on Milestone B approval (or Key Decision Point B approval in the case of a space program) that is consistent with the level of program risk for the program. The Milestone Decision Authority may select—

''(1) a fixed-price type contract (including a fixed price incentive contract); or

''(2) a cost type contract.

''(d) CONDITIONS WITH RESPECT TO AUTHORIZATION OF COST TYPE CONTRACT.—As modified under subsection (b), the regulations shall provide that the Milestone Decision Authority may authorize the use of a cost type contract under subsection (c) for a development program only upon a written determination that—

''(1) the program is so complex and technically challenging that it would not be practicable to reduce program risk to a level that would permit the use of a fixed-price type contract; and

''(2) the complexity and technical challenge of the program is not the result of a failure to meet the requirements established in section 2366a of title 10, United States Code.

''(e) JUSTIFICATION FOR SELECTION OF CONTRACT TYPE.—As modified under subsection (b), the regulations shall require the Milestone Decision Authority to document the basis for the contract type selected for a program. The documentation shall include an explanation of the level of program risk for the program and, if the Milestone Decision Authority determines that the level of program risk is high, the steps that have been taken to reduce program risk and reasons for proceeding with Milestone B approval despite the high level of program risk.''

MULTIYEAR PROCUREMENT AUTHORITY; REQUESTS FOR RELIEF

Pub. L. 100–526, title I, §104(a), Oct. 24, 1988, 102 Stat. 2624, which provided that if for any fiscal year a multiyear contract was to be entered into under 10 U.S.C. 2306(h) was authorized by law for a particular procurement program and that authorization was subject to certain conditions established by law (including a condition as to cost savings to be achieved under the multiyear contract in comparison to specified other contracts) and if it appeared (after negotiations with contractors) that such savings could not be achieved, but that substantial savings could nevertheless be achieved through the use of a multiyear contract rather than specified other contracts, the President was to submit to Congress a request for relief from the specified cost savings that was to be achieved through multiyear contracting for that program and that any such request by the President was to include details about the request for a multiyear contract, including details about the negotiated contract terms and conditions, was repealed and restated as subsec. (h)(11) of this section by Pub. L. 101–189, §805(b), (c).

TECHNICAL DATA AND COMPUTER SOFTWARE PACKAGES; PROCUREMENT; CONTRACTING PERIOD; DEFERRED ORDERING CLAUSE; EXEMPTIONS; REPORT TO CONGRESSIONAL COMMITTEES; DEFINITIONS

Pub. L. 94–361, title VIII, §805, July 14, 1976, 90 Stat. 932, required that military contracts entered into during Oct. 1, 1976 to Sept. 30, 1978 for development or procurement of a major system include a deferred ordering clause with an option to purchase from the contractor technical data and computer software packages relating to the system, directed that such clause require such packages to be sufficiently detailed so as to enable procurement of such system or subsystem from another contractor, authorized that a particular contract may be exempted from the deferred ordering clause if the procuring authority reports to the House and Senate Committees on Armed Services his intent to so contract with an explanation for the exemption, and set out definitions for ''major system'', ''deferred ordering'', and ''technical data''.

§ 2306a. Cost or pricing data: truth in negotiations

(a) REQUIRED COST OR PRICING DATA AND CERTIFICATION.—(1) The head of an agency shall require offerors, contractors, and subcontractors to make cost or pricing data available as follows:

(A) An offeror for a prime contract under this chapter to be entered into using procedures other than sealed-bid procedures that is only expected to receive one bid shall be required to submit cost or pricing data before the award of a contract if—

(i) in the case of a prime contract entered into after June 30, 2018, the price of the contract to the United States is expected to exceed $2,000,000; and

(ii) in the case of a prime contract entered into on or before June 30, 2018, the price of the contract to the United States is expected to exceed $750,000.

(B) The contractor for a prime contract under this chapter shall be required to submit cost or pricing data before the pricing of a change or modification to the contract if the price adjustment is expected to exceed $2,000,000.

(C) An offeror for a subcontract (at any tier) of a contract under this chapter shall be required to submit cost or pricing data before the award of the subcontract if the prime contractor and each higher-tier subcontractor have been required to make available cost or pricing data under this section and the price of the subcontract is expected to exceed $2,000,000.

(D) The subcontractor for a subcontract covered by subparagraph (C) shall be required to submit cost or pricing data before the pricing of a change or modification to the subcontract if the price adjustment is expected to exceed $2,000,000.

(2) A person required, as an offeror, contractor, or subcontractor, to submit cost or pricing data under paragraph (1) (or required by the

head of the agency concerned to submit such data under subsection (c)) shall be required to certify that, to the best of the person's knowledge and belief, the cost or pricing data submitted are accurate, complete, and current.

(3) Cost or pricing data required to be submitted under paragraph (1) (or under subsection (c)), and a certification required to be submitted under paragraph (2), shall be submitted—

(A) in the case of a submission by a prime contractor (or an offeror for a prime contract), to the contracting officer for the contract (or to a designated representative of the contracting officer); or

(B) in the case of a submission by a subcontractor (or an offeror for a subcontract), to the prime contractor.

(4) Except as provided under subsection (b), this section applies to contracts entered into by the head of an agency on behalf of a foreign government.

(5) A waiver of requirements for submission of certified cost or pricing data that is granted under subsection (b)(1)(C) in the case of a contract or subcontract does not waive the requirement under paragraph (1)(C) for submission of cost or pricing data in the case of subcontracts under that contract or subcontract unless the head of the procuring activity granting the waiver determines that the requirement under that paragraph should be waived in the case of such subcontracts and justifies in writing the reasons for the determination.

(6) Upon the request of a contractor that was required to submit cost or pricing data under paragraph (1) in connection with a prime contract entered into on or before June 30, 2018, the head of the agency that entered into such contract shall modify the contract to reflect subparagraphs (B)(ii) and (C)(ii) of paragraph (1). All such modifications shall be made without requiring consideration.

(7) Effective on October 1 of each year that is divisible by 5, each amount set forth in paragraph (1) shall be adjusted in accordance with section 1908 of title 41.

(b) EXCEPTIONS.—

(1) IN GENERAL.—Submission of certified cost or pricing data shall not be required under subsection (a) in the case of a contract, a subcontract, or modification of a contract or subcontract—

(A) for which the price agreed upon is based on—

(i) adequate competition that results in at least two or more responsive and viable competing bids; or

(ii) prices set by law or regulation;

(B) for the acquisition of a commercial product or a commercial service;

(C) in an exceptional case when the head of the procuring activity, without delegation, determines that the requirements of this section may be waived and justifies in writing the reasons for such determination; or

(D) to the extent such data—

(i) relates to an offset agreement in connection with a contract for the sale of a weapon system or defense-related item to a foreign country or foreign firm; and

(ii) does not relate to a contract or subcontract under the offset agreement for work performed in such foreign country or by such foreign firm that is directly related to the weapon system or defense-related item being purchased under the contract.

(2) MODIFICATIONS OF CONTRACTS AND SUBCONTRACTS FOR COMMERCIAL PRODUCTS OR COMMERCIAL SERVICES.—In the case of a modification of a contract or subcontract for a commercial product or commercial services that is not covered by the exception to the submission of certified cost or pricing data in paragraph (1)(A) or (1)(B), submission of certified cost or pricing data shall not be required under subsection (a) if—

(A) the contract or subcontract being modified is a contract or subcontract for which submission of certified cost or pricing data may not be required by reason of paragraph (1)(A) or (1)(B); and

(B) the modification would not change the contract or subcontract, as the case may be, from a contract or subcontract for the acquisition of a commercial product or commercial services to a contract or subcontract for the acquisition of an item other than a commercial product or commercial services.

(3) NONCOMMERCIAL MODIFICATIONS OF COMMERCIAL PRODUCTS.—(A) The exception in paragraph (1)(B) does not apply to cost or pricing data on noncommercial modifications of a commercial product that are expected to cost, in the aggregate, more than the amount specified in subsection (a)(1)(A)(i), as adjusted from time to time under subsection (a)(7), or 5 percent of the total price of the contract (at the time of contract award), whichever is greater.

(B) In this paragraph, the term ''noncommercial modification'', with respect to a commercial product, means a modification of such product that is not a modification described in section 103(3)(A) of title 41.

(C) Nothing in subparagraph (A) shall be construed—

(i) to limit the applicability of the exception in subparagraph (A) or (C) of paragraph (1) to cost or pricing data on a noncommercial modification of a commercial product; or

(ii) to require the submission of cost or pricing data on any aspect of an acquisition of a commercial product other than the cost and pricing of noncommercial modifications of such product.

(4) COMMERCIAL PRODUCT OR COMMERCIAL SERVICE DETERMINATION.—(A) For purposes of applying the exception under paragraph (1)(B) to the required submission of certified cost or pricing data, the contracting officer may presume that a prior commercial product or commercial service determination made by a military department, a Defense Agency, or another component of the Department of Defense shall serve as a determination for subsequent procurements of such product or service.

(B) If the contracting officer does not make the presumption described in subparagraph (A)

and instead chooses to proceed with a procurement of a product or service previously determined to be a commercial product or a commercial service using procedures other than the procedures authorized for the procurement of a commercial product or a commercial service, as the case may be, the contracting officer shall request a review of the commercial product or commercial service determination by the head of the contracting activity.

(C) Not later than 30 days after receiving a request for review of a determination under subparagraph (B), the head of a contracting activity shall—

(i) confirm that the prior determination was appropriate and still applicable; or

(ii) issue a revised determination with a written explanation of the basis for the revision.

(5) A contracting officer shall consider evidence provided by an offeror of recent purchase prices paid by the Government for the same or similar commercial products or commercial services in establishing price reasonableness on a subsequent purchase if the contracting officer is satisfied that the prices previously paid remain a valid reference for comparison after considering the totality of other relevant factors such as the time elapsed since the prior purchase and any differences in the quantities purchased or applicable terms and conditions.

(6) DETERMINATION BY PRIME CONTRACTOR.—A prime contractor required to submit certified cost or pricing data under subsection (a) with respect to a prime contract shall be responsible for determining whether a subcontract under such contract qualifies for an exception under paragraph (1)(A) from such requirement.

(c) COST OR PRICING DATA ON BELOW-THRESHOLD CONTRACTS.—

(1) AUTHORITY TO REQUIRE SUBMISSION.—Subject to paragraph (2), when certified cost or pricing data are not required to be submitted by subsection (a) for a contract, subcontract, or modification of a contract or subcontract, such data may nevertheless be required to be submitted by the head of the procuring activity, but only if the head of the procuring activity determines that such data are necessary for the evaluation by the agency of the reasonableness of the price of the contract, subcontract, or modification of a contract or subcontract. In any case in which the head of the procuring activity requires such data to be submitted under this subsection, the head of the procuring activity shall justify in writing the reason for such requirement.

(2) EXCEPTION.—The head of the procuring activity may not require certified cost or pricing data to be submitted under this paragraph for any contract or subcontract, or modification of a contract or subcontract, covered by the exceptions in subparagraph (A) or (B) of subsection (b)(1).

(3) DELEGATION OF AUTHORITY PROHIBITED.—The head of a procuring activity may not delegate functions under this paragraph.

(d) SUBMISSION OF OTHER INFORMATION.—

(1) AUTHORITY TO REQUIRE SUBMISSION.—When certified cost or pricing data are not required to be submitted under this section for a contract, subcontract, or modification of a contract or subcontract, the offeror shall be required to submit to the contracting officer data other than certified cost or pricing data (if requested by the contracting officer), to the extent necessary to determine the reasonableness of the price of the contract, subcontract, or modification of the contract or subcontract. Except in the case of a contract or subcontract covered by the exceptions in subsection (b)(1)(A), the contracting officer shall require that the data submitted include, at a minimum, appropriate information on the prices at which the same item or similar items have previously been sold that is adequate for evaluating the reasonableness of the price for the procurement. If the contracting officer determines that the offeror does not have access to and cannot provide sufficient information on prices for the same or similar items to determine the reasonableness of price, the contracting officer shall require the submission of information on prices for similar levels of work or effort on related products or services, prices for alternative solutions or approaches, and other information that is relevant to the determination of a fair and reasonable price. Contracting officers shall not determine the price of a contract or subcontract to be fair and reasonable based solely on historical prices paid by the Government.

(2) INELIGIBILITY FOR AWARD.—(A) In the event the contracting officer is unable to determine proposed prices are fair and reasonable by any other means, an offeror who fails to make a good faith effort to comply with a reasonable request to submit data in accordance with paragraph (1) is ineligible for award unless the head of the contracting activity, or the designee of the head of contracting activity, determines that it is in the best interest of the Government to make the award to that offeror, based on consideration of pertinent factors, including the following:

(i) The effort to obtain the data.

(ii) Availability of other sources of supply of the item or service.

(iii) The urgency or criticality of the Government's need for the item or service.

(iv) Reasonableness of the price of the contract, subcontract, or modification of the contract or subcontract based on information available to the contracting officer.

(v) Rationale or justification made by the offeror for not providing the requested data.

(vi) Risk to the Government if award is not made.

(B)(i) Any new determination made by the head of the contracting activity under subparagraph (A) shall be reported to the Principal Director, Defense Pricing and Contracting on a quarterly basis.

(ii) The Under Secretary of Defense for Acquisition and Sustainment, or a designee, shall produce an annual report identifying offerors that have denied multiple requests for submission of uncertified cost or pricing data over the preceding three-year period, but nevertheless received an award. The report shall identify products or services offered by such

offerors that should undergo should-cost analysis. The Secretary of Defense may include a notation on such offerors in the system used by the Federal Government to monitor or record contractor past performance. The Under Secretary shall assess the extent to which these offerors are sole source providers within the defense industrial base and shall develop strategies to incentivize new entrants into the industrial base to increase the availability of other sources of supply for the product or service.

(3) LIMITATIONS ON AUTHORITY.—The Federal Acquisition Regulation shall include the following provisions regarding the types of information that contracting officers may require under paragraph (1):

(A) Reasonable limitations on requests for sales data relating to commercial products or commercial services.

(B) A requirement that a contracting officer limit, to the maximum extent practicable, the scope of any request for information relating to commercial products or commercial services from an offeror to only that information that is in the form regularly maintained by the offeror in commercial operations.

(C) A statement that any information received relating to commercial products or commercial services that is exempt from disclosure under section 552(b) of title 5 shall not be disclosed by the Federal Government.

(e) PRICE REDUCTIONS FOR DEFECTIVE COST OR PRICING DATA.—(1)(A) A prime contract (or change or modification to a prime contract) under which a certificate under subsection (a)(2) is required shall contain a provision that the price of the contract to the United States, including profit or fee, shall be adjusted to exclude any significant amount by which it may be determined by the head of the agency that such price was increased because the contractor (or any subcontractor required to make available such a certificate) submitted defective cost or pricing data.

(B) For the purposes of this section, defective cost or pricing data are cost or pricing data which, as of the date of agreement on the price of the contract (or another date agreed upon between the parties), were inaccurate, incomplete, or noncurrent. If for purposes of the preceding sentence the parties agree upon a date other than the date of agreement on the price of the contract, the date agreed upon by the parties shall be as close to the date of agreement on the price of the contract as is practicable.

(2) In determining for purposes of a contract price adjustment under a contract provision required by paragraph (1) whether, and to what extent, a contract price was increased because the contractor (or a subcontractor) submitted defective cost or pricing data, it shall be a defense that the United States did not rely on the defective data submitted by the contractor or subcontractor.

(3) It is not a defense to an adjustment of the price of a contract under a contract provision required by paragraph (1) that—

(A) the price of the contract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted by the contractor or subcontractor because the contractor or subcontractor—

(i) was the sole source of the property or services procured; or

(ii) otherwise was in a superior bargaining position with respect to the property or services procured;

(B) the contracting officer should have known that the cost and pricing data in issue were defective even though the contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the contracting officer;

(C) the contract was based on an agreement between the contractor and the United States about the total cost of the contract and there was no agreement about the cost of each item procured under such contract; or

(D) the prime contractor or subcontractor did not submit a certification of cost and pricing data relating to the contract as required under subsection (a)(2).

(4)(A) A contractor shall be allowed to offset an amount against the amount of a contract price adjustment under a contract provision required by paragraph (1) if—

(i) the contractor certifies to the contracting officer (or to a designated representative of the contracting officer) that, to the best of the contractor's knowledge and belief, the contractor is entitled to the offset; and

(ii) the contractor proves that the cost or pricing data were available before the date of agreement on the price of the contract (or price of the modification) or, if applicable consistent with paragraph (1)(B), another date agreed upon between the parties, and that the data were not submitted as specified in subsection (a)(3) before such date.

(B) A contractor shall not be allowed to offset an amount otherwise authorized to be offset under subparagraph (A) if—

(i) the certification under subsection (a)(2) with respect to the cost or pricing data involved was known to be false when signed; or

(ii) the United States proves that, had the cost or pricing data referred to in subparagraph (A)(ii) been submitted to the United States before the date of agreement on the price of the contract (or price of the modification) or, if applicable consistent with paragraph (1)(B), another date agreed upon between the parties, the submission of such cost or pricing data would not have resulted in an increase in that price in the amount to be offset.

(f) INTEREST AND PENALTIES FOR CERTAIN OVERPAYMENTS.—(1) If the United States makes an overpayment to a contractor under a contract subject to this section and the overpayment was due to the submission by the contractor of defective cost or pricing data, the contractor shall be liable to the United States—

(A) for interest on the amount of such overpayment, to be computed—

(i) for the period beginning on the date the overpayment was made to the contractor and ending on the date the contractor repays

the amount of such overpayment to the United States; and

(ii) at the current rate prescribed by the Secretary of the Treasury under section 6621 of the Internal Revenue Code of 1986; and

(B) if the submission of such defective data was a knowing submission, for an additional amount equal to the amount of the overpayment.

(2) Any liability under this subsection of a contractor that submits cost or pricing data but refuses to submit the certification required by subsection (a)(2) with respect to the cost or pricing data shall not be affected by the refusal to submit such certification.

(g) RIGHT OF UNITED STATES TO EXAMINE CONTRACTOR RECORDS.—For the purpose of evaluating the accuracy, completeness, and currency of cost or pricing data required to be submitted by this section, the head of an agency shall have the authority provided by section 2313(a)(2) of this title.

(h) DEFINITIONS.—In this section:

(1) COST OR PRICING DATA.—The term ''cost or pricing data'' means all facts that, as of the date of agreement on the price of a contract (or the price of a contract modification), or, if applicable consistent with subsection (e)(1)(B), another date agreed upon between the parties, a prudent buyer or seller would reasonably expect to affect price negotiations significantly. Such term does not include information that is judgmental, but does include the factual information from which a judgment was derived.

(2) SUBCONTRACT.—The term ''subcontract'' includes a transfer of commercial products or commercial services between divisions, subsidiaries, or affiliates of a contractor or a subcontractor.

(Added Pub. L. 99–500, § 101(c) [title X, § 952(a)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–166, and Pub. L. 99–591, § 101(c) [title X, § 952(a)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–166; Pub. L. 99–661, div. A, title IX, formerly title IV, § 952(a), Nov. 14, 1986, 100 Stat. 3945, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; amended Pub. L. 100–180, div. A, title VIII, § 804(a), (b), Dec. 4, 1987, 101 Stat. 1125; Pub. L. 101–510, div. A, title VIII, § 803(a)(1), (d), Nov. 5, 1990, 104 Stat. 1589, 1590; Pub. L. 102–25, title VII, § 701(b), (f)(8), Apr. 6, 1991, 105 Stat. 113, 115; Pub. L. 102–190, div. A, title VIII, § 804(a)–(c)(1), title X, § 1061(a)(9), Dec. 5, 1991, 105 Stat. 1415, 1416, 1472; Pub. L. 103–355, title I, §§ 1201–1209, Oct. 13, 1994, 108 Stat. 3273–3277; Pub. L. 104–106, div. D, title XLII, § 4201(a), title XLIII, § 4321(a)(2), (b)(7), Feb. 10, 1996, 110 Stat. 649, 671, 672; Pub. L. 104–201, div. A, title X, § 1074(a)(12), Sept. 23, 1996, 110 Stat. 2659; Pub. L. 105–85, div. A, title X, § 1073(a)(46), Nov. 18, 1997, 111 Stat. 1902; Pub. L. 105–261, div. A, title VIII, §§ 805(a), 808(a), Oct. 17, 1998, 112 Stat. 2083, 2085; Pub. L. 108–375, div. A, title VIII, § 818(a), Oct. 28, 2004, 118 Stat. 2015; Pub. L. 110–181, div. A, title VIII, § 814, Jan. 28, 2008, 122 Stat. 222; Pub. L. 111–350, § 5(b)(15), Jan. 4, 2011, 124 Stat. 3843; Pub. L. 113–291, div. A, title X, § 1071(a)(3), Dec. 19, 2014, 128 Stat. 3504; Pub. L. 114–92, div. A, title VIII, §§ 812, 851(b), 852(e), 853, Nov. 25, 2015, 129 Stat. 891, 916, 918, 919; Pub. L. 114–328, div. A, title VIII, § 822, Dec. 23, 2016, 130 Stat. 2276; Pub. L. 115–91, div. A, title VIII, § 811(a)(1), (b), Dec. 12, 2017, 131 Stat. 1459; Pub. L. 115–232, div. A, title VIII, § 836(c)(5), Aug. 13, 2018, 132 Stat. 1865; Pub. L. 116–92, div. A, title VIII, § 803, Dec. 20, 2019, 133 Stat. 1483; Pub. L. 116–283, div. A, title VIII, § 814(a)(1), title X, § 1081(d)(4)(B)(i), title XVIII, § 1831(b), (c)(1), (d)(1), (e)(1), (f)(1), (g)(1), (h)(1), (i), Jan. 1, 2021, 134 Stat. 3749, 3874, 4209, 4211, 4213, 4214, 4216.)

AMENDMENT OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1831(b), (c)(1), (d)(1), (e)(1), (f)(1), (g)(1), (h)(1), (i), Jan. 1, 2021, 134 Stat. 4151, 4209, 4211, 4213, 4214, 4216, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is amended as follows:

(1) by transferring subsection (a) to section 3702 of this title;

(2) by transferring subsection (b) to section 3703 of this title;

(3) by transferring subsection (c) to section 3704 of this title;

(4) by transferring subsection (d) to section 3705 of this title;

(5) by transferring subsection (e) to section 3706 of this title;

(6) by transferring subsection (f) to section 3707 of this title;

(7) by transferring subsection (g) to section 3708 of this title; and

(8) by transferring subsection (h) to section 3701(a) of this title.

See 2021 Amendment notes below.

REPEAL OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1881(a), Jan. 1, 2021, 134 Stat. 4151, 4293, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is repealed.

REFERENCES IN TEXT

Section 6621 of the Internal Revenue Code of 1986, referred to in subsec. (f)(1)(A)(ii), is classified to section 6621 of Title 26, Internal Revenue Code.

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661 added identical sections.

AMENDMENTS

2021—Subsec. (a). Pub. L. 116–283, § 1831(c)(1), redesignated subsec. (a) as section 3702 of this title.

Subsec. (a)(1)(B). Pub. L. 116–283, § 814(a)(1)(A), substituted ''contract if the price adjustment is expected to exceed $2,000,000.'' for ''contract if—

''(i) in the case of a change or modification made to a prime contract referred to in subparagraph (A)(i), the price adjustment is expected to exceed $2,000,000;

''(ii) in the case of a change or modification made after July 1, 2018, to a prime contract that was entered into on or before June 30, 2018, and that has been modified pursuant to paragraph (6), the price adjustment is expected to exceed $750,000; and

''(iii) in the case of a change or modification not covered by clause (i) or (ii), the price adjustment is expected to exceed $750,000.''

Subsec. (a)(1)(C). Pub. L. 116–283, § 814(a)(1)(B), substituted ''section and the price of the subcontract is expected to exceed $2,000,000.'' for ''section and—

''(i) in the case of a subcontract under a prime contract referred to in subparagraph (A)(i), the price of the subcontract is expected to exceed $2,000,000;

''(ii) in the case of a subcontract entered into after July 1, 2018, under a prime contract that was entered into on or before June 30, 2018, and that has been modified pursuant to paragraph (6), the price of the subcontract is expected to exceed $2,000,000; and

''(iii) in the case of a subcontract not covered by clause (i) or (ii), the price of the subcontract is expected to exceed $750,000.''

Subsec. (a)(1)(D). Pub. L. 116–283, § 814(a)(1)(C), substituted ''subcontract if the price adjustment is expected to exceed $2,000,000.'' for ''subcontract if—

''(i) in the case of a change or modification to a subcontract referred to in subparagraph (C)(i) or (C)(ii), the price adjustment is expected to exceed $2,000,000; and

''(ii) in the case of a change or modification to a subcontract referred to in subparagraph (C)(iii), the price adjustment is expected to exceed $750,000.''

Subsec. (b). Pub. L. 116–283, § 1831(d)(1), redesignated subsec. (b) as section 3703 of this title.

Subsec. (c). Pub. L. 116–283, § 1831(e)(1), redesignated subsec. (c) as section 3704 of this title.

Subsec. (d). Pub. L. 116–283, § 1831(f)(1), redesignated subsec. (d) as section 3705 of this title.

Subsec. (d)(3). Pub. L. 116–283, § 1081(d)(4)(B)(i), made technical correction to directory language of Pub. L. 115–232, § 836(c)(5)(B). See 2018 Amendment note below.

Subsec. (e). Pub. L. 116–283, § 1831(g)(1), redesignated subsec. (e) as section 3706 of this title.

Subsec. (f). Pub. L. 116–283, § 1831(h)(1), redesignated subsec. (f) as section 3707 of this title.

Subsec. (g). Pub. L. 116–283, § 1831(i), redesignated subsec. (g) as section 3708 of this title.

Subsec. (h). Pub. L. 116–283, § 1831(b), redesignated subsec. (h) as section 3701(a) of this title.

2019—Subsec. (d)(1). Pub. L. 116–92, § 803(1), inserted at end ''Contracting officers shall not determine the price of a contract or subcontract to be fair and reasonable based solely on historical prices paid by the Government.''

Subsec. (d)(2), (3). Pub. L. 116–92, § 803(2), (3), added par. (2) and redesignated former par. (2) as (3).

2018—Subsec. (b)(1)(B). Pub. L. 115–232, § 836(c)(5)(A)(i), substituted ''a commercial product or a commercial service'' for ''a commercial item''.

Subsec. (b)(2). Pub. L. 115–232, § 836(c)(5)(A)(ii), in heading, substituted ''commercial products or commercial services'' for ''commercial items'' and, in text, substituted ''commercial product or commercial services'' for ''commercial item'' wherever appearing.

Subsec. (b)(3). Pub. L. 115–232, § 836(c)(5)(A)(iii), in heading, substituted ''commercial products'' for ''commercial items'' and, in text, substituted ''product'' for ''item'' wherever appearing.

Subsec. (b)(4). Pub. L. 115–232, § 836(c)(5)(A)(iv)(I), substituted ''Commercial product or commercial service'' for ''Commercial item'' in heading.

Subsec. (b)(4)(A). Pub. L. 115–232, § 836(c)(5)(A)(iv)(II)–(IV), struck out ''commercial item'' after ''applying the'' and substituted ''prior commercial product or commercial service determination'' for ''prior commercial item determination'' and ''of such product or service'' for ''of such item''.

Subsec. (b)(4)(B). Pub. L. 115–232, § 836(c)(5)(A)(iv)(V)–(VII), substituted ''of a product or service previously determined to be a commercial product or a commercial service using procedures other than the procedures authorized for the procurement of a commercial product or a commercial service, as the case may be, the contracting officer shall request a review of the commercial product or commercial service determination'' for ''of an item previously determined to be a commercial item using procedures other than the procedures authorized for the procurement of a commercial item, the contracting officer shall request a review of the commercial item determination''.

Subsec. (b)(4)(C). Pub. L. 115–232, § 836(c)(5)(A)(iv)(VIII), struck out ''commercial item'' before ''determination'' in introductory provisions.

Subsec. (b)(5). Pub. L. 115–232, § 836(c)(5)(A)(v), substituted ''commercial products or commercial services'' for ''commercial items''.

Subsec. (d)(3). Pub. L. 115–232, § 836(c)(5)(B), as amended by Pub. L. 116–283, § 1081(d)(4)(B)(i), substituted ''commercial products or commercial services'' for ''commercial items'' wherever appearing.

Subsec. (h)(2). Pub. L. 115–232, § 836(c)(5)(C)(i), substituted ''commercial products or commercial services'' for ''commercial items''.

Subsec. (h)(3). Pub. L. 115–232, § 836(c)(5)(C)(ii), struck out par. (3) which defined ''commercial item''.

2017—Subsec. (a)(1)(A)(i). Pub. L. 115–91, § 811(a)(1)(A), (D)(i), substituted ''June 30, 2018'' for ''December 5, 1990'' and ''$2,000,000'' for ''$500,000''.

Subsec. (a)(1)(A)(ii). Pub. L. 115–91, § 811(a)(1)(A), (C), substituted ''June 30, 2018'' for ''December 5, 1990'' and ''$750,000'' for ''$100,000''.

Subsec. (a)(1)(B)(i). Pub. L. 115–91, § 811(a)(1)(D)(i), substituted ''$2,000,000'' for ''$500,000''.

Subsec. (a)(1)(B)(ii). Pub. L. 115–91, § 811(a)(1)(A), (B), (D)(ii), substituted ''July 1, 2018'' for ''December 5, 1991'', ''June 30, 2018'' for ''December 5, 1990'', and ''$750,000'' for ''$500,000''.

Subsec. (a)(1)(B)(iii). Pub. L. 115–91, § 811(a)(1)(C), substituted ''$750,000'' for ''$100,000''.

Subsec. (a)(1)(C)(i). Pub. L. 115–91, § 811(a)(1)(D)(i), substituted ''$2,000,000'' for ''$500,000''.

Subsec. (a)(1)(C)(ii). Pub. L. 115–91, § 811(a)(1)(A), (B), (D)(i), substituted ''July 1, 2018'' for ''December 5, 1991'', ''June 30, 2018'' for ''December 5, 1990'', and ''$2,000,000'' for ''$500,000''.

Subsec. (a)(1)(C)(iii). Pub. L. 115–91, § 811(a)(1)(C), substituted ''$750,000'' for ''$100,000''.

Subsec. (a)(1)(D)(i). Pub. L. 115–91, § 811(a)(1)(D)(i), substituted ''$2,000,000'' for ''$500,000''.

Subsec. (a)(1)(D)(ii). Pub. L. 115–91, § 811(a)(1)(C), substituted ''$750,000'' for ''$100,000''.

Subsec. (a)(6). Pub. L. 115–91, § 811(a)(1)(A), (E), amended par. (6) identically, substituting ''June 30, 2018'' for ''December 5, 1990''.

Subsec. (a)(7). Pub. L. 115–91, § 811(a)(1)(F), substituted ''in accordance with section 1908 of title 41.'' for ''to the amount that is equal to the fiscal year 1994 constant dollar value of the amount set forth. Any amount, as so adjusted, that is not evenly divisible by $50,000 shall be rounded to the nearest multiple of $50,000. In the case of an amount that is evenly divisible by $25,000 but not evenly divisible by $50,000, the amount shall be rounded to the next higher multiple of $50,000.''

Subsec. (d)(1). Pub. L. 115–91, § 811(b), substituted ''the offeror shall be required to submit to the contracting officer data other than certified cost or pricing data (if requested by the contracting officer), to the extent necessary'' for ''the contracting officer shall require submission of data other than certified cost or pricing data to the extent necessary''.

2016—Subsec. (a)(1)(A). Pub. L. 114–328, § 822(1), inserted ''that is only expected to receive one bid'' after ''entered into using procedures other than sealed-bid procedures'' in introductory provisions.

Subsec. (b)(1)(A)(i). Pub. L. 114–328, § 822(2)(A), substituted ''competition that results in at least two or more responsive and viable competing bids'' for ''price competition''.

Subsec. (b)(6). Pub. L. 114–328, § 822(2)(B), added par. (6).

2015—Subsec. (b)(1)(D). Pub. L. 114–92, § 812, added subpar. (D).

Subsec. (b)(4). Pub. L. 114–92, § 851(b), added par. (4).

Subsec. (b)(5). Pub. L. 114–92, § 853, added par. (5).

Subsec. (d)(1). Pub. L. 114–92, § 852(e), inserted at end ''If the contracting officer determines that the offeror does not have access to and cannot provide sufficient information on prices for the same or similar items to determine the reasonableness of price, the contracting officer shall require the submission of information on prices for similar levels of work or effort on related products or services, prices for alternative solutions or approaches, and other information that is relevant to the determination of a fair and reasonable price.''

2014—Subsec. (b)(3)(B). Pub. L. 113–291 substituted ''section 103(3)(A) of title 41'' for ''section 4(12)(C)(i) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12)(C)(i))''.

2011—Subsec. (h)(3). Pub. L. 111–350 substituted ''section 103 of title 41'' for ''section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12))''.

2008—Subsec. (b)(3)(A). Pub. L. 110–181 substituted ''the amount specified in subsection (a)(1)(A)(i), as adjusted from time to time under subsection (a)(7),'' for ''$500,000'' and inserted ''(at the time of contract award)'' after ''total price of the contract''.

2004—Subsec. (b)(3). Pub. L. 108–375 added par. (3).

1998—Subsec. (a)(5). Pub. L. 105–261, § 805(a), amended par. (5) generally. Prior to amendment, par. (5) read as follows: ''For purposes of paragraph (1)(C), a contractor or subcontractor granted a waiver under subsection (b)(1)(C) shall be considered as having been required to make available cost or pricing data under this section.''

Subsec. (d)(1). Pub. L. 105–261, § 808(a), substituted ''the contracting officer shall require that the data submitted'' for ''the data submitted shall''.

1997—Subsec. (a)(5). Pub. L. 105–85 substituted ''subsection (b)(1)(C)'' for ''subsection (b)(1)(B)''.

1996—Subsec. (b). Pub. L. 104–106, § 4321(a)(2), made technical correction to directory language of Pub. L. 103–355, § 1202(a). See 1994 Amendment note below.

Pub. L. 104–106, § 4201(a)(1), amended subsec. (b) generally, revising and restating as pars. (1) and (2) the provisions of former pars. (1) and (2) and striking out par. (3).

Subsec. (c). Pub. L. 104–106, § 4201(a)(1), amended subsec. (c) generally, revising and restating as subsec. (c) the provisions of former subsec. (c)(1).

Subsec. (d). Pub. L. 104–106, § 4321(b)(7)(A), which directed amendment of subsec. (d)(2)(A)(ii), by inserting ''to'' after ''The information referred'', could not be executed because subsec. (d)(2)(A) did not contain a cl. (ii) or the language ''The information referred'' subsequent to amendment by Pub. L. 104–106, § 4201(a)(1). See below.

Pub. L. 104–106, § 4201(a)(1), amended subsec. (d) generally, revising and restating as pars. (1) and (2) provisions of former subsecs. (c)(2) and (d)(2), (4) and striking out provisions of former subsec. (d)(1), (3) relating to procurements based on adequate price competition and authority to audit.

Subsec. (e)(4)(B)(ii). Pub. L. 104–106, § 4321(b)(7)(B), struck out second comma after ''parties''.

Subsec. (h). Pub. L. 104–106, § 4201(a)(2), redesignated subsec. (i) as (h) and struck out former subsec. (h) which read as follows: ''REQUIRED REGULATIONS.—The Federal Acquisition Regulation shall contain provisions concerning the types of information that offerors must submit for a contracting officer to consider in determining whether the price of a procurement to the Government is fair and reasonable when certified cost or pricing data are not required to be submitted under this section because the price of the procurement to the United States is not expected to exceed the applicable threshold amount set forth in subsection (a) (as adjusted pursuant to paragraph (7) of such subsection). Such information, at a minimum, shall include appropriate information on the prices at which the same item or similar items have previously been sold that is adequate for evaluating the reasonableness of the price of the proposed contract or subcontract for the procurement.''

Subsec. (h)(3). Pub. L. 104–201 inserted ''(41 U.S.C. 403(12))'' before period at end.

Subsec. (i). Pub. L. 104–106, § 4201(a)(2)(B), redesignated subsec. (i) as (h).

Subsec. (i)(3). Pub. L. 104–106, § 4321(b)(7)(C), which directed amendment of subsec. (i)(3) by inserting ''(41 U.S.C. 403(12))'' before period at end, could not be executed because section did not contain a subsec. (i) subsequent to the amendment by Pub. L. 104–106, § 4201(a)(2)(B), redesignating subsec. (i) as (h). See above.

1994—Subsec. (a)(1)(A)(i). Pub. L. 103–355, § 1201(a)(1), struck out ''and before January 1, 1996,'' after ''December 5, 1990,''.

Subsec. (a)(1)(A)(ii). Pub. L. 103–355, § 1201(a)(2), struck out ''or after December 31, 1995,'' after ''December 5, 1990,''.

Subsec. (a)(5). Pub. L. 103–355, § 1202(b), substituted ''subsection (b)(1)(B)'' for ''subsection (b)(2)''.

Subsec. (a)(6). Pub. L. 103–355, § 1201(c), struck out subpar. (A) designation and subpar. (B) which read as follows: ''The head of an agency is not required to modify a contract under subparagraph (A) if that head of an agency determines that the submission of cost or pricing data with respect to that contract should be required under subsection (c).''

Subsec. (a)(7). Pub. L. 103–355, § 1201(b), added par. (7).

Subsec. (b). Pub. L. 103–355, § 1202(a), as amended by Pub. L. 104–106, § 4321(a)(2), amended heading and text of subsec. (b) generally. Prior to amendment, text read as follows: ''This section need not be applied to a contract or subcontract—

''(1) for which the price agreed upon is based on—

''(A) adequate price competition;

''(B) established catalog or market prices of commercial items sold in substantial quantities to the general public; or

''(C) prices set by law or regulation; or

''(2) in an exceptional case when the head of the agency determines that the requirements of this section may be waived and states in writing his reasons for such determination.''

Subsec. (c). Pub. L. 103–355, § 1203, amended heading and text of subsec. (c) generally. Prior to amendment, text read as follows: ''When cost or pricing data are not required to be submitted by subsection (a), such data may nevertheless be required to be submitted by the head of the agency if the head of the agency determines that such data are necessary for the evaluation by the agency of the reasonableness of the price of the contract or subcontract. In any case in which the head of the agency requires such data to be submitted under this subsection, the head of the agency shall document in writing the reasons for such requirement.''

Subsec. (d). Pub. L. 103–355, § 1204, added subsec. (d) and redesignated former subsec. (d) as (e).

Subsec. (e). Pub. L. 103–355, § 1204(1), redesignated subsec. (d) as (e). Former subsec. (e) redesignated (f).

Subsec. (e)(4)(A)(ii), (B)(ii). Pub. L. 103–355, § 1207, inserted ''or, if applicable consistent with paragraph (1)(B), another date agreed upon between the parties,'' after ''(or price of the modification)''.

Subsec. (f). Pub. L. 103–355, § 1204(1), redesignated subsec. (e) as (f). Former subsec. (f) redesignated (g).

Subsec. (f)(1). Pub. L. 103–355, § 1209, struck out ''with the Department of Defense'' before ''subject to this section'' in introductory provisions.

Subsec. (g). Pub. L. 103–355, § 1205, added subsec. (g) and struck out heading and text of former subsec. (g). Text read as follows:

''(1) For the purpose of evaluating the accuracy, completeness, and currency of cost or pricing data required to be submitted by this section with respect to a contract or subcontract, the head of the agency, acting through any authorized representative of the head of the agency who is an employee of the United States or a member of the armed forces, shall have the right to examine all records of the contractor or subcontractor related to—

''(A) the proposal for the contract or subcontract;

''(B) the discussions conducted on the proposal;

''(C) pricing of the contract or subcontract; or

''(D) performance of the contract or subcontract.

''(2) The right of the head of an agency under paragraph (1) shall expire three years after final payment under the contract or subcontract.

''(3) In this subsection, the term 'records' includes books, documents, and other data.''

Pub. L. 103–355, § 1204(1), redesignated subsec. (f) as (g). Former subsec. (g) redesignated (i).

Subsec. (h). Pub. L. 103–355, § 1206, added subsec. (h).

Subsec. (i). Pub. L. 103–355, § 1208, amended heading and text of subsec. (i) generally. Prior to amendment, text read as follows: ''In this section, the term 'cost or

pricing data' means all facts that, as of the date of agreement on the price of a contract (or the price of a contract modification), a prudent buyer or seller would reasonably expect to affect price negotiations significantly. Such term does not include information that is judgmental, but does include the factual information from which a judgment was derived.''

Pub. L. 103–355, § 1204(1), redesignated subsec. (g) as (i).

1991—Subsec. (a)(1)(A). Pub. L. 102–190, § 804(a), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''An offeror for a prime contract under this chapter to be entered into using procedures other than sealed-bid procedures shall be required to submit cost or pricing data before the award of the contract if the price of the contract to the United States is expected to exceed $500,000 or, in the case of a contract to be awarded after December 31, 1995, $100,000.''

Subsec. (a)(1)(B). Pub. L. 102–190, § 804(a), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''The contractor for a contract under this chapter shall be required to submit cost or pricing data before the pricing of a change or modification to the contract if the price adjustment is expected to exceed the dollar amount applicable under subparagraph (A) to that contract (or such lesser amount as may be prescribed by the head of the agency).''

Pub. L. 102–25, § 701(b)(1), substituted ''the dollar amount applicable under subparagraph (A) to that contract'' for ''$500,000 (or such lesser amount as may be prescribed by the head of the agency) or, in the case of a change or modification to a contract to be made after December 31, 1995, $100,000''.

Subsec. (a)(1)(C). Pub. L. 102–190, § 804(a), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''An offeror for a subcontract (at any tier) of a contract under this chapter shall be required to submit cost or pricing data before the award of the subcontract if—

''(i) the price of the subcontract is expected to exceed the dollar amount applicable under subparagraph (A) to the prime contract of that subcontract; and

''(ii) the prime contractor and each higher-tier subcontractor have been required to make available cost or pricing data under this section.''

Subsec. (a)(1)(C)(i). Pub. L. 102–25, § 701(b)(2), substituted ''the dollar amount applicable under subparagraph (A) to the prime contract of that subcontract'' for ''$500,000 or, in the case of a subcontract to be awarded after December 31, 1995, $100,000''.

Subsec. (a)(1)(D). Pub. L. 102–190, § 804(a), amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: ''The subcontractor for a subcontract covered by subparagraph (C) shall be required to submit cost or pricing data before the pricing of a change or modification to the subcontract if the price adjustment is expected to exceed the dollar amount applicable under subparagraph (A) to the prime contract of that subcontract (or such lesser amount as may be prescribed by the head of the agency).''

Pub. L. 102–25, § 701(b)(3), substituted ''the dollar amount applicable under subparagraph (A) to the prime contract of that subcontract'' for ''$500,000 (or such lesser amount as may be prescribed by the head of the agency) or, in the case of a change or modification to be made after December 31, 1995, $100,000''.

Subsec. (a)(5). Pub. L. 102–190, § 804(c)(1), substituted ''paragraph (1)(C)'' for ''paragraph (1)(C)(ii)''.

Subsec. (a)(6). Pub. L. 102–190, § 804(b), added par. (6).

Subsec. (e)(1)(A)(i). Pub. L. 102–25, § 701(f)(8), which directed the substitution of ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'', could not be executed because ''Internal Revenue Code of 1954'' does not appear.

Subsec. (e)(1)(A)(ii). Pub. L. 102–190, § 1061(a)(9), substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

1990—Subsec. (a)(1)(A). Pub. L. 101–510, § 803(a)(1)(A), substituted ''$500,000 or, in the case of a contract to be awarded after December 31, 1995, $100,000'' for ''$100,000''.

Subsec. (a)(1)(B). Pub. L. 101–510, § 803(a)(1)(B), substituted ''$500,000 (or such lesser amount as may be prescribed by the head of the agency) or, in the case of a change or modification to a contract to be made after December 31, 1995, $100,000'' for ''$100,000''.

Subsec. (a)(1)(C)(i). Pub. L. 101–510, § 803(a)(1)(C), substituted ''$500,000 or, in the case of a subcontract to be awarded after December 31, 1995, $100,000'' for ''$100,000''.

Subsec. (a)(1)(D). Pub. L. 101–510, § 803(a)(1)(D), substituted ''$500,000 (or such lesser amount as may be prescribed by the head of the agency) or, in the case of a change or modification to be made after December 31, 1995, $100,000'' for ''$100,000''.

Subsec. (c). Pub. L. 101–510, § 803(d), inserted at end ''In any case in which the head of the agency requires such data to be submitted under this subsection, the head of the agency shall document in writing the reasons for such requirement.''

1987—Subsec. (a)(5). Pub. L. 100–180, § 804(b)(1), substituted ''a waiver under subsection (b)(2)'' for ''such a waiver'', and struck out first sentence authorizing head of an agency to waive requirement under this subsection for contractor, subcontractor, or offeror to submit cost or pricing data.

Subsec. (e)(2). Pub. L. 100–180, § 804(b)(2), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''Except as provided under subsection (d), the liability of a contractor under this subsection shall not be affected by the contractor's refusal to submit a certification under subsection (a)(2) with respect to the cost or pricing data involved.''

Subsec. (g). Pub. L. 100–180, § 804(a), amended subsec. (g) generally. Prior to amendment, subsec. (g) read as follows: ''In this section, the term 'cost or pricing data' means all information that is verifiable and that, as of the date of agreement on the price of a contract (or the price of a contract modification), a prudent buyer or seller would reasonably expect to affect price negotiations significantly. Such term does not include information that is judgmental, but does include the factual information from which a judgment was derived.''

Effective Date of Repeal

Repeal effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

Effective Date of 2021 Amendment

Pub. L. 116–283, div. A, title VIII, § 814(a)(2), Jan. 1, 2021, 134 Stat. 3750, provided that: ''The amendments made by this subsection [amending this section] shall apply to any contract, or modification or change to a contract, entered into on or after the date of the enactment of this Act [Jan. 1, 2021].''

Pub. L. 116–283, div. A, title X, § 1081(d), Jan. 1, 2021, 134 Stat. 3873, provided that the amendment made by section 1081(d)(4)(B)(i) of Pub. L. 116–283 is effective as of Aug. 13, 2018, and as if included in Pub. L. 115–232 as enacted.

Amendment by section 1831(b), (c)(1), (d)(1), (e)(1), (f)(1), (g)(1), (h)(1), (i) of Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

Effective Date of 2018 Amendment

Amendment by Pub. L. 115–232 effective Jan. 1, 2020, subject to a savings provision, see section 836(h) of Pub. L. 115–232, set out as an Effective Date of 2018 Amendment; Savings Provision note under section 453b of Title 6, Domestic Security.

Effective Date of 2004 Amendment

Pub. L. 108–375, div. A, title VIII, § 818(b), Oct. 28, 2004, 118 Stat. 2016, as amended by Pub. L. 109–364, div. A,

title X, § 1071(g)(11), Oct. 17, 2006, 120 Stat. 2403, provided that: ''Paragraph (3) of subsection (b) of section 2306a of title 10, United States Code (as added by subsection (a)), shall take effect on June 1, 2005, and shall apply with respect to offers submitted, and to modifications of contracts or subcontracts made, on or after that date.''

EFFECTIVE DATE OF 1996 AMENDMENT

For effective date and applicability of amendment by sections 4201(a) and 4321(b)(7) of Pub. L. 104–106, see section 4401 of Pub. L. 104–106, set out as a note under section 2302 of this title.

Pub. L. 104–106, div. D, title XLIII, § 4321(a), Feb. 10, 1996, 110 Stat. 671, provided that the amendment made by that section is effective as of Oct. 13, 1994, and as if included in Pub. L. 103–355 as enacted.

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 2302 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–510, div. A, title VIII, § 803(a)(2), Nov. 5, 1990, 104 Stat. 1590, as amended by Pub. L. 102–25, title VII, § 704(a)(4), Apr. 6, 1991, 105 Stat. 118, provided that the amendments to this section by Pub. L. 101–510 would apply to contracts entered into after Dec. 5, 1990, subcontracts under such contracts, and modifications or changes to such contracts and subcontracts, prior to repeal by Pub. L. 102–190, div. A, title VIII, § 804(c)(2), Dec. 5, 1991, 105 Stat. 1416.

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100–180, div. A, title VIII, § 804(c), Dec. 4, 1987, 101 Stat. 1125, provided that:

''(1) Subsection (a) [amending this section] shall apply to any contract, or modification of a contract, entered into after the end of the 30-day period beginning on the date of the enactment of this Act [Dec. 4, 1987].

''(2) The amendments made by subsection (b) [amending this section] shall apply with respect to contracts, or modifications of contracts, entered into after the end of the 120-day period beginning on October 18, 1986.''

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–500, § 101(c) [title X, § 952(d)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–169, Pub. L. 99–591, § 101(c) [title X, § 952(d)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–169, and Pub. L. 99–661, div. A, title IX, formerly title IV, § 952(d), Nov. 14, 1986, 100 Stat. 3949, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273, provided that:

''(1) Except as provided in paragraph (2), section 2306a of title 10, United States Code (as added by subsection (a)), and the amendment and repeal made by subsection (b) [amending section 2306 of this title and repealing a provision set out as a note under section 2304 of this title], shall apply with respect to contracts or modifications on contracts entered into after the end of the 120-day period beginning on the date of the enactment of this Act [Oct. 18, 1986].

''(2) Subsection (e) of such section shall apply with respect to contracts or modifications on contracts entered into after November 7, 1985.''

REGULATIONS

Pub. L. 114–92, div. A, title VIII, § 851(d), Nov. 25, 2015, 129 Stat. 917, provided that: ''Not later than 180 days after the date of the enactment of this Act [Nov. 25, 2015], the Defense Federal Acquisition Regulation Supplement shall be updated to reflect the requirements of this section [enacting section 2380 of this title, amending this section, and enacting provisions set out as notes under this section] and the amendments made by this section.''

Pub. L. 101–510, div. A, title VIII, § 803(c), Nov. 5, 1990, 104 Stat. 1590, directed Secretary of Defense to prescribe regulations identifying type of procurements for which contracting officers should consider requiring submission of certified cost or pricing data under subsec. (c) of this section, and also directed Secretary to prescribe regulations concerning types of information that offerors had to submit for contracting officer to consider in determining whether price of procurement to Government was fair and reasonable when certified cost or pricing data were not required to be submitted under this section because price of procurement to the United States was not expected to exceed $500,000, such information, at minimum, to include appropriate information on prices at which such offeror had previously sold same or similar products, with such regulations to be prescribed not later than six months after Nov. 5, 1990, prior to repeal by Pub. L. 103–355, title I, § 1210, Oct. 13, 1994, 108 Stat. 3277.

CONSTRUCTION

Pub. L. 114–92, div. A, title VIII, § 851(e), Nov. 25, 2015, 129 Stat. 917, provided that: ''Nothing in this section [enacting section 2380 of this title, amending this section, and enacting provisions set out as notes under this section] or the amendments made by this section shall be construed to preclude the contracting officer for the procurement of a commercial item from requiring the contractor to supply information that is sufficient to determine the reasonableness of price, regardless of whether or not the contractor was required to provide such information in connection with any earlier procurement.''

PILOT PROGRAM TO ACCELERATE CONTRACTING AND PRICING PROCESSES

Pub. L. 115–232, div. A, title VIII, § 890, Aug. 13, 2018, 132 Stat. 1919, as amended by Pub. L. 116–92, div. A, title VIII, § 825, Dec. 20, 2019, 133 Stat. 1491; Pub. L. 116–283, div. A, title XVIII, § 1831(j)(7), Jan. 1, 2021, 134 Stat. 4217, provided that:

''(a) IN GENERAL.—The Secretary of Defense shall establish a pilot program to reform and accelerate the contracting and pricing processes associated with contracts in excess of $50,000,000 by—

''(1) basing price reasonableness determinations on actual cost and pricing data for purchases of the same or similar products for the Department of Defense; and

''(2) reducing the cost and pricing data to be submitted in accordance with section 2306a of title 10, United States Code.

''(b) REPORT.—Not later than January 30, 2021, the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the results of the pilot program authorized under subsection (a).

''(c) SUNSET.—The authority to carry out the pilot program under this section shall expire on January 2, 2023.''

[Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1831(j)(7), Jan. 1, 2021, 134 Stat. 4151, 4217, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, section 890(a)(2) of Pub. L. 115–232, set out above, is amended by substituting ''of chapter 271'' for ''section 2306a''.]

PILOT PROGRAM FOR STREAMLINING AWARDS FOR INNOVATIVE TECHNOLOGY PROJECTS

Pub. L. 114–92, div. A, title VIII, § 873(a)–(g), Nov. 25, 2015, 129 Stat. 939, 940, as amended by Pub. L. 114–328, div. A, title VIII, § 896, Dec. 23, 2016, 130 Stat. 2326; Pub. L. 116–283, div. A, title VIII, § 832, Jan. 1, 2021, 134 Stat. 3753, provided that:

''(a) EXCEPTION FROM CERTIFIED COST AND PRICING DATA REQUIREMENTS.—The requirements under section 2306a(a) of title 10, United States Code, shall not apply to a contract, subcontract, or modification of a con-

tract or subcontract valued at less than $7,500,000 awarded to a small business or nontraditional defense contractor pursuant to—

"(1) a technical, merit-based selection procedure, such as a broad agency announcement, or

"(2) the Small Business Innovation Research Program or Small Business Technology Transfer Program,

unless the head of the agency determines that submission of cost and pricing data should be required based on past performance of the specific small business or nontraditional defense contractor, or based on analysis of other information specific to the award.

"(b) EXCEPTION FROM RECORDS EXAMINATION REQUIREMENT.—The requirements under subparagraphs (A), (B), and (C) of section 2313(a)(2) of title 10, United States Code, and subsection (b) of section 2313 of title 10, United States Code, shall not apply to a contract valued at less than $7,500,000 awarded to a small business or nontraditional defense contractor pursuant to—

"(1) a technical, merit-based selection procedure, such as a broad agency announcement, or

"(2) the Small Business Innovation Research Program,

unless the head of the agency determines that auditing of records should be required based on past performance of the specific small business or nontraditional defense contractor, or based on analysis of other information specific to the award, and if such performance audit is initiated within 18 months of the contract completion.

"(c) TREATMENT AS COMPETITIVE PROCEDURES.—Use of a technical, merit-based selection procedure or the Small Business Innovation Research Program or Small Business Technology Transfer Program for the pilot program under this section shall be considered to be use of competitive procedures for purposes of chapter 137 of title 10, United States Code.

"(d) DISCRETION TO USE NON-CERTIFIED ACCOUNTING SYSTEMS.—In executing programs under this pilot program, the Secretary of Defense shall establish procedures under which a small business or nontraditional contractor may engage an independent certified public accountant for the review and certification of its accounting system for the purposes of any audits required by regulation, unless the head of the agency determines that this is not appropriate based on past performance of the specific small business or nontraditional defense contractor, or based on analysis of other information specific to the award.

"(e) GUIDANCE AND TRAINING.—The Secretary of Defense shall ensure that acquisition and auditing officials are provided guidance and training on the flexible use and tailoring of authorities under the pilot program to maximize efficiency and effectiveness.

"(f) SUNSET.—The exceptions under subsections (a) and (b) shall terminate on October 1, 2022.

"(g) DEFINITIONS.—In this section [enacting this note and amending section 638 of Title 15, Commerce and Trade]:

"(1) SMALL BUSINESS.—The term 'small business' has the meaning given the term 'small business concern' under section 3 of the Small Business Act (15 U.S.C. 632).

"(2) NONTRADITIONAL DEFENSE CONTRACTOR.—The term 'nontraditional defense contractor' has the meaning given that term in section 2302(9) of title 10, United States Code."

[Section 896(2)(B) of Pub. L. 114–328, which directed amendment of par. (2) of subsec. (b) of section 873 of Pub. L. 114–92, set out above, by inserting ", and if such performance audit is initiated within 18 months of the contract completion" before the period at the end, was executed by making the insertion before the period at the end of the concluding provisions of subsec. (b), to reflect the probable intent of Congress.]

PILOT PROGRAM REGARDING RISK-BASED CONTRACTING FOR SMALLER CONTRACT ACTIONS UNDER THE TRUTH IN NEGOTIATIONS ACT

Pub. L. 114–92, div. A, title VIII, § 899, Nov. 25, 2015, 129 Stat. 955, provided that:

"(a) PILOT PROGRAM AUTHORIZED.—The Secretary of Defense may conduct a pilot program to demonstrate the efficacy of using risk-based techniques in requiring submission of data on a sampling basis for purposes of section 2306a of title 10, United States Code (popularly known as the 'Truth in Negotiations Act').

"(b) INCREASE IN THRESHOLDS.—For purposes of a pilot program under subsection (a), $5,000,000 shall be the threshold applicable to requirements under paragraph (1) of section 2306a(a) of such title, as follows:

"(1) The requirement under subparagraph (A) of such paragraph to submit cost or pricing data for a prime contract entered into during the pilot program period.

"(2) The requirement under subparagraph (B) of such paragraph to submit cost or pricing data for the change or modification to a prime contract made during the pilot program period.

"(3) The requirement under subparagraph (C) of such paragraph to submit cost or pricing data for a subcontract entered into during the pilot program period.

"(4) The requirement under subparagraph (D) of such paragraph to submit cost or pricing data for the change or modification to a subcontract made during the pilot program period.

"(c) RISK-BASED CONTRACTING.—

"(1) AUTHORITY TO REQUIRE SUBMISSION OF COST OR PRICING DATA ON BELOW-THRESHOLD CONTRACTS.—Subject to paragraph (4), when certified cost or pricing data are not required to be submitted pursuant to subsection (b) for a contract or subcontract entered into or modified during the pilot program period, such data may nevertheless be required to be submitted by the head of the procuring activity, if the head of the procuring activity—

"(A) determines that such data are necessary for the evaluation by the agency of the reasonableness of the price of the contract, subcontract, or modification of a contract or subcontract; or

"(B) requires the submission of such data in accordance with a risk-based contracting approach established pursuant to paragraph (3).

"(2) WRITTEN DETERMINATION REQUIRED.—In any case in which the head of the procuring activity requires certified cost or pricing data to be submitted under paragraph (1)(A), the head of the procuring activity shall justify in writing the reason for such requirement.

"(3) RISK-BASED CONTRACTING.—The head of an agency shall establish a risk-based sampling approach under which the submission of certified cost or pricing data may be required for a risk-based sample of contracts, the price of which is expected to exceed $750,000 but not $5,000,000. The authority to require certified cost or pricing data under this paragraph shall not apply to any contract of an offeror that has not been awarded, for at least the one-year period preceding the issuance of a solicitation for the contract, any other contract in excess of $5,000,000 under which the offeror was required to submit certified cost or pricing data under section 2306a of title 10, United States Code.

"(4) EXCEPTION.—The head of the procuring activity may not require certified cost or pricing data to be submitted under this subsection for any contract or subcontract, or modification of a contract or subcontract, covered by the exceptions in subparagraph (A) or (B) of section 2306a(b)(1) of title 10, United States Code.

"(5) DELEGATION OF AUTHORITY PROHIBITED.—The head of a procuring activity may not delegate functions under this subsection.

"(d) REPORTS.—Not later than January 1, 2017, and January 1, 2019, the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on activities undertaken under this section.

"(e) DEFINITIONS.—In this section:

"(1) HEAD OF AN AGENCY.—The term 'head of an agency' has the meaning given the term in section 2302 of title 10, United States Code.

"(2) PILOT PROGRAM PERIOD.—The term 'pilot program period' means the period beginning on October 1, 2016, and ending on September 30, 2019."

GUIDANCE AND TRAINING RELATED TO EVALUATING REASONABLENESS OF PRICE

Pub. L. 112–239, div. A, title VIII, § 831, Jan. 2, 2013, 126 Stat. 1842, provided that:

"(a) GUIDANCE.—Not later than 180 days after the date of the enactment of this Act [Jan. 2, 2013], the Under Secretary of Defense for Acquisition, Technology, and Logistics shall issue guidance on the use of the authority provided by sections 2306a(d) and 2379 of title 10, United States Code. The guidance shall—

"(1) include standards for determining whether information on the prices at which the same or similar items have previously been sold is adequate for evaluating the reasonableness of price;

"(2) include standards for determining the extent of uncertified cost information that should be required in cases in which price information is not adequate for evaluating the reasonableness of price;

"(3) ensure that in cases in which such uncertified cost information is required, the information shall be provided in the form in which it is regularly maintained by the offeror in its business operations; and

"(4) provide that no additional cost information may be required by the Department of Defense in any case in which there are sufficient non-Government sales to establish reasonableness of price.

"(b) TRAINING AND EXPERTISE.—Not later than 270 days after the date of the enactment of this Act, the Under Secretary of Defense for Acquisition, Technology, and Logistics shall develop and begin implementation of a plan of action to—

"(1) train the acquisition workforce on the use of the authority provided by sections 2306a(d) and 2379 of title 10, United States Code, in evaluating reasonableness of price in procurements of commercial items; and

"(2) develop a cadre of experts within the Department of Defense to provide expert advice to the acquisition workforce in the use of the authority provided by such sections in accordance with the guidance issued pursuant to subsection (a).

"(c) DOCUMENTATION REQUIREMENTS.—The Under Secretary of Defense for Acquisition, Technology, and Logistics shall ensure that requests for uncertified cost information for the purposes of evaluating reasonableness of price are sufficiently documented. The Under Secretary shall require that the contract file include, at a minimum, the following:

"(1) A justification of the need for additional cost information.

"(2) A copy of any request from the Department of Defense to a contractor for additional cost information.

"(3) Any response received from the contractor to the request, including any rationale or justification provided by the contractor for a failure to provide the requested information.

"(d) COMPTROLLER GENERAL REVIEW AND REPORT.—

"(1) REVIEW REQUIREMENT.—The Comptroller General of the United States shall conduct a review of data collected pursuant to sections 2306a(d) and 2379 of title 10, United States Code, during the two-year period beginning on the date of the enactment of this Act.

"(2) REPORT REQUIREMENT.—Not later than 180 days after the end of the two-year period referred to in paragraph (1), the Comptroller General shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on—

"(A) the extent to which the Department of Defense needed access to additional cost information pursuant to sections 2306a(d) and 2379 of title 10, United States Code, during such two-year period in order to determine price reasonableness;

"(B) the extent to which acquisition officials of the Department of Defense complied with the guidance issued pursuant to subsection (a) during such two-year period;

"(C) the extent to which the Department of Defense needed access to additional cost information during such two-year period to determine reasonableness of price, but was not provided such information by the contractor on request; and

"(D) recommendations for improving evaluations of reasonableness of price by Department of Defense acquisition professionals, including recommendations for any amendments to law, regulations, or guidance."

PRICE TREND ANALYSIS FOR SUPPLIES AND EQUIPMENT PURCHASED BY THE DEPARTMENT OF DEFENSE

Pub. L. 111–383, div. A, title VIII, § 892, Jan. 7, 2011, 124 Stat. 4310, which provided for the analysis of information on price trends for certain supplies and equipment purchased by the Department of Defense, was repealed by Pub. L. 114–92, div. A, title X, § 1073(f), Nov. 25, 2015, 129 Stat. 996.

GRANTS OF EXCEPTIONS TO COST OR PRICING DATA CERTIFICATION REQUIREMENTS AND WAIVERS OF COST ACCOUNTING STANDARDS

Pub. L. 107–314, div. A, title VIII, § 817, Dec. 2, 2002, 116 Stat. 2610, as amended by Pub. L. 112–81, div. A, title VIII, § 809(a), Dec. 31, 2011, 125 Stat. 1490; Pub. L. 113–291, div. A, title X, § 1071(b)(7), Dec. 19, 2014, 128 Stat. 3507; Pub. L. 115–91, div. A, title X, § 1051(j), Dec. 12, 2017, 131 Stat. 1563; Pub. L. 115–232, div. A, title VIII, §§ 825, 836(f)(4), Aug. 13, 2018, 132 Stat. 1856, 1871, provided that:

"(a) GUIDANCE FOR EXCEPTIONS IN EXCEPTIONAL CIRCUMSTANCES.—Not later than 60 days after the date of the enactment of this Act [Dec. 2, 2002], the Secretary of Defense shall issue guidance on the circumstances under which it is appropriate to grant an exceptional case exception or waiver with respect to certified cost and pricing data and cost accounting standards.

"(b) DETERMINATION REQUIRED FOR EXCEPTIONAL CASE EXCEPTION OR WAIVER.—The guidance shall, at a minimum, include a limitation that a grant of an exceptional case exception or waiver is appropriate with respect to a contract, subcontract, or (in the case of submission of certified cost and pricing data) modification only upon a determination that—

"(1) the property or services cannot reasonably be obtained under the contract, subcontract, or modification, as the case may be, without the grant of the exception or waiver;

"(2) the price can be determined to be fair and reasonable without the submission of certified cost and pricing data or the application of cost accounting standards, as the case may be; or

"(3) there are demonstrated benefits to granting the exception or waiver.

"(c) APPLICABILITY OF NEW GUIDANCE.—The guidance issued under subsection (a) shall apply to each exceptional case exception or waiver that is granted on or after the date on which the guidance is issued.

"(d) DEFINITIONS.—In this section:

"(1) The term 'exceptional case exception or waiver' means either of the following:

"(A) An exception pursuant to section 2306a(b)(1)(C) of title 10, United States Code, relating to submission of certified cost and pricing data.

"(B) A waiver pursuant to section 1502(b)(3)(B) of title 41, United States Code, relating to the applicability of cost accounting standards to contracts and subcontracts.

"(2) The term 'commercial product-commercial service exception' means an exception pursuant to section 2306a(b)(1)(B) of title 10, United States Code, relating to submission of certified cost and pricing data."

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[Section 836(f)(4)(A) of Pub. L. 115–232, which directed amendment of section 817(d)(1) of Pub. L. 107–314, set out above, by substituting ''commercial product-commercial service exceptions'' for ''commercial item exceptions'', could not be executed because those words did not appear subsequent to amendment by section 1051(j) of Pub. L. 115–91.]

DEFENSE COMMERCIAL PRICING MANAGEMENT IMPROVEMENT

Pub. L. 105–261, div. A, title VIII, § 803, Oct. 17, 1998, 112 Stat. 2081, as amended by Pub. L. 106–65, div. A, title X, § 1067(3), Oct. 5, 1999, 113 Stat. 774; Pub. L. 107–314, div. A, title VIII, § 823, Dec. 2, 2002, 116 Stat. 2615; Pub. L. 109–364, div. A, title VIII, § 819, Oct. 17, 2006, 120 Stat. 2330; Pub. L. 113–291, div. A, title X, § 1071(b)(9), Dec. 19, 2014, 128 Stat. 3507, which required revision of the Federal Acquisition Regulation to clarify the procedures and methods to be used for determining the reasonableness of prices of certain commercial items, was repealed by Pub. L. 115–232, div. A, title VIII, § 812(b)(18), Aug. 13, 2018, 132 Stat. 1848.

REVIEW BY INSPECTOR GENERAL

Pub. L. 101–510, div. A, title VIII, § 803(b), Nov. 5, 1990, 104 Stat. 1590, provided that (1) after increase in threshold for submission of cost or pricing data under subsec. (a) of this section, as amended by section 803(a) of Pub. L. 101–510, had been in effect for three years, Inspector General of Department of Defense was to conduct review of effects of increase in threshold, (2) that such review was to address whether increasing threshold improved acquisition process in terms of reduced paperwork, financial or other savings to government, an increase in number of contractors participating in defense contracting process, and adequacy of information available to contracting officers in cases in which certified cost or pricing data were not required under this section, (3) that Inspector General was to submit to Secretary of Defense a report on review conducted under paragraph (1), with Secretary of Defense required to submit such report to Congress, along with appropriate comments, upon completion of report (and comments) but not later than date on which President submitted budget to Congress pursuant to section 1105 of Title 31, Money and Finance, for fiscal year 1996, prior to repeal by Pub. L. 103–355, title I, § 1210, Oct. 13, 1994, 108 Stat. 3277.

DEFINITION OF COMMERCIAL ITEM

Pub. L. 114–92, div. A, title VIII, § 851(c), Nov. 25, 2015, 129 Stat. 917, provided that: ''Nothing in this section [enacting section 2380 of this title, amending this section, and enacting provisions set out as notes under this section] or the amendments made by this section shall affect the meaning of the term 'commercial item' under subsection (a)(5) of section 2464 of title 10, United States Code, or any requirement under subsection (a)(3) or subsection (c) of such section.'' [Pub. L. 115–232 amended subsecs. (a)(3), (5) and (c) of section 2464 of title 10 by substituting references to ''commercial products or commercial services'' for references to ''commercial items''. See 2018 Amendment notes set out under that section.]

§ 2306b. Multiyear contracts: acquisition of property

(a) IN GENERAL.—To the extent that funds are otherwise available for obligation, the head of an agency may enter into multiyear contracts for the purchase of property whenever the head of that agency finds each of the following:

(1) That the use of such a contract will result in significant savings of the total anticipated costs of carrying out the program through annual contracts.

(2) That the minimum need for the property to be purchased is expected to remain substantially unchanged during the contemplated contract period in terms of production rate, procurement rate, and total quantities.

(3) That there is a reasonable expectation that throughout the contemplated contract period the head of the agency will request funding for the contract at the level required to avoid contract cancellation.

(4) That there is a stable design for the property to be acquired and that the technical risks associated with such property are not excessive.

(5) That the estimates of both the cost of the contract and the anticipated cost avoidance through the use of a multiyear contract are realistic.

(6) In the case of a purchase by the Department of Defense, that the use of such a contract will promote the national security of the United States.

(7) In the case of a contract in an amount equal to or greater than $500,000,000, that the conditions required by subparagraphs (C) through (F) of subsection (i)(3) will be met, in accordance with the Secretary's certification and determination under such subsection, by such contract.

(b) REGULATIONS.—(1) Each official named in paragraph (2) shall prescribe acquisition regulations for the agency or agencies under the jurisdiction of such official to promote the use of multiyear contracting as authorized by subsection (a) in a manner that will allow the most efficient use of multiyear contracting.

(2)(A) The Secretary of Defense shall prescribe the regulations applicable to the Department of Defense.

(B) The Secretary of Homeland Security shall prescribe the regulations applicable to the Coast Guard, except that the regulations prescribed by the Secretary of Defense shall apply to the Coast Guard when it is operating as a service in the Navy.

(C) The Administrator of the National Aeronautics and Space Administration shall prescribe the regulations applicable to the National Aeronautics and Space Administration.

(c) CONTRACT CANCELLATIONS.—The regulations may provide for cancellation provisions in multiyear contracts to the extent that such provisions are necessary and in the best interests of the United States. The cancellation provisions may include consideration of both recurring and nonrecurring costs of the contractor associated with the production of the items to be delivered under the contract.

(d) PARTICIPATION BY SUBCONTRACTORS, VENDORS, AND SUPPLIERS.—In order to broaden the defense industrial base, the regulations shall provide that, to the extent practicable—

(1) multiyear contracting under subsection (a) shall be used in such a manner as to seek, retain, and promote the use under such contracts of companies that are subcontractors, vendors, or suppliers; and

(2) upon accrual of any payment or other benefit under such a multiyear contract to any subcontractor, vendor, or supplier company participating in such contract, such payment or benefit shall be delivered to such company in the most expeditious manner practicable.

(e) PROTECTION OF EXISTING AUTHORITY.—The regulations shall provide that, to the extent practicable, the administration of this section, and of the regulations prescribed under this section, shall not be carried out in a manner to preclude or curtail the existing ability of an agency—

(1) to provide for competition in the production of items to be delivered under such a contract; or

(2) to provide for termination of a prime contract the performance of which is deficient with respect to cost, quality, or schedule.

(f) CANCELLATION OR TERMINATION FOR INSUFFICIENT FUNDING.—In the event funds are not made available for the continuation of a contract made under this section into a subsequent fiscal year, the contract shall be canceled or terminated. The costs of cancellation or termination may be paid from—

(1) appropriations originally available for the performance of the contract concerned;

(2) appropriations currently available for procurement of the type of property concerned, and not otherwise obligated; or

(3) funds appropriated for those payments.

(g) CONTRACT CANCELLATION CEILINGS EXCEEDING $100,000,000.—(1) Before any contract described in subsection (a) that contains a clause setting forth a cancellation ceiling in excess of $100,000,000 may be awarded, the head of the agency concerned shall give written notification of the proposed contract and of the proposed cancellation ceiling for that contract to the congressional defense committees, and such contract may not then be awarded until the end of a period of 30 days beginning on the date of such notification.

(2) In the case of a contract described in subsection (a) with a cancellation ceiling described in paragraph (1), if the budget for the contract does not include proposed funding for the costs of contract cancellation up to the cancellation ceiling established in the contract, the head of the agency concerned shall, as part of the certification required by subsection (i)(1)(A),[1] give written notification to the congressional defense committees of—

(A) the cancellation ceiling amounts planned for each program year in the proposed multiyear procurement contract, together with the reasons for the amounts planned;

(B) the extent to which costs of contract cancellation are not included in the budget for the contract; and

(C) a financial risk assessment of not including budgeting for costs of contract cancellation.

(h) DEFENSE ACQUISITIONS OF WEAPON SYSTEMS.—In the case of the Department of Defense, the authority under subsection (a) includes authority to enter into the following multiyear contracts in accordance with this section:

(1) A multiyear contract for the purchase of a weapon system, items and services associated with a weapon system, and logistics support for a weapon system.

(2) A multiyear contract for advance procurement of components, parts, and materials necessary to the manufacture of a weapon system, including a multiyear contract for such advance procurement that is entered into in order to achieve economic-lot purchases and more efficient production rates.

(i) DEFENSE ACQUISITIONS SPECIFICALLY AUTHORIZED BY LAW.—(1) In the case of the Department of Defense, a multiyear contract in an amount equal to or greater than $500,000,000 may not be entered into under this section unless the contract is specifically authorized by law in an Act other than an appropriations Act.

(2) In submitting a request for a specific authorization by law to carry out a defense acquisition program using multiyear contract authority under this section, the Secretary of Defense shall include in the request the following:

(A) A report containing preliminary findings of the agency head required in paragraphs (1) through (6) of subsection (a), together with the basis for such findings.

(B) Confirmation that the preliminary findings of the agency head under subparagraph (A) were supported by a preliminary cost analysis performed by the Director of Cost Assessment and Program Evaluation.

(3) A multiyear contract may not be entered into under this section for a defense acquisition program that has been specifically authorized by law to be carried out using multiyear contract authority unless the Secretary of Defense certifies in writing, not later than 30 days before entry into the contract, that each of the following conditions is satisfied:

(A) The Secretary has determined that each of the requirements in paragraphs (1) through (6) of subsection (a) will be met by such contract and has provided the basis for such determination to the congressional defense committees.

(B) The Secretary's determination under subparagraph (A) was made after completion of a cost analysis conducted on the basis of section 2334(e)(2)[1] of this title, and the analysis supports the determination.

(C) The system being acquired pursuant to such contract has not been determined to have experienced cost growth in excess of the critical cost growth threshold pursuant to section 2433(d) of this title within 5 years prior to the date the Secretary anticipates such contract (or a contract for advance procurement entered into consistent with the authorization for such contract) will be awarded.

(D) A sufficient number of end items of the system being acquired under such contract have been delivered at or within the most current estimates of the program acquisition unit cost or procurement unit cost for such system to determine that current estimates of such unit costs are realistic.

(E) During the fiscal year in which such contract is to be awarded, sufficient funds will be available to perform the contract in such fiscal year, and the future-years defense program for such fiscal year will include the funding required to execute the program without cancellation.

[1] See References in Text note below.

(F) The contract is a fixed price type contract.

(G) The proposed multiyear contract provides for production at not less than minimum economic rates given the existing tooling and facilities.

(4) If for any fiscal year a multiyear contract to be entered into under this section is authorized by law for a particular procurement program and that authorization is subject to certain conditions established by law (including a condition as to cost savings to be achieved under the multiyear contract in comparison to specified other contracts) and if it appears (after negotiations with contractors) that such savings cannot be achieved, but that significant savings could nevertheless be achieved through the use of a multiyear contract rather than specified other contracts, the President may submit to Congress a request for relief from the specified cost savings that must be achieved through multiyear contracting for that program. Any such request by the President shall include details about the request for a multiyear contract, including details about the negotiated contract terms and conditions.

(5)(A) The Secretary may obligate funds for procurement of an end item under a multiyear contract for the purchase of property only for procurement of a complete and usable end item.

(B) The Secretary may obligate funds appropriated for any fiscal year for advance procurement under a contract for the purchase of property only for the procurement of those long-lead items necessary in order to meet a planned delivery schedule for complete major end items that are programmed under the contract to be acquired with funds appropriated for a subsequent fiscal year (including an economic order quantity of such long-lead items when authorized by law).

(6) The Secretary may make the certification under paragraph (3) notwithstanding the fact that one or more of the conditions of such certification are not met, if the Secretary determines that, due to exceptional circumstances, proceeding with a multiyear contract under this section is in the best interest of the Department of Defense and the Secretary provides the basis for such determination with the certification.

(7) The Secretary may not delegate the authority to make the certification under paragraph (3) or the determination under paragraph (6) to an official below the level of Under Secretary of Defense for Acquisition and Sustainment.

(j) Defense Contract Options for Varying Quantities.—The Secretary of Defense may instruct the Secretary of the military department concerned to incorporate into a proposed multiyear contract negotiated priced options for varying the quantities of end items to be procured over the period of the contract.

(k) Multiyear Contract Defined.—For the purposes of this section, a multiyear contract is a contract for the purchase of property for more than one, but not more than five, program years. Such a contract may provide that performance under the contract during the second and subsequent years of the contract is contingent upon the appropriation of funds and (if it does so provide) may provide for a cancellation payment to be made to the contractor if such appropriations are not made.

(*l*) Various Additional Requirements With Respect to Multiyear Defense Contracts.—(1)(A) The head of an agency may not initiate a contract described in subparagraph (B) unless the congressional defense committees are notified of the proposed contract at least 30 days in advance of the award of the proposed contract.

(B) Subparagraph (A) applies to the following contracts:

(i) A multiyear contract—

(I) that employs economic order quantity procurement in excess of $20,000,000 in any one year of the contract; or

(II) that includes an unfunded contingent liability in excess of $20,000,000.

(ii) Any contract for advance procurement leading to a multiyear contract that employs economic order quantity procurement in excess of $20,000,000 in any one year.

(2) The head of an agency may not initiate a multiyear contract for which the economic order quantity advance procurement is not funded at least to the limits of the Government's liability.

(3) The head of an agency may not initiate a multiyear procurement contract for any system (or component thereof) if the value of the multiyear contract would exceed $500,000,000 unless authority for the contract is specifically provided in an appropriations Act.

(4) Each report required by paragraph (5) with respect to a contract (or contract extension) shall contain the following:

(A) The amount of total obligational authority under the contract (or contract extension) and the percentage that such amount represents of—

(i) the applicable procurement account; and

(ii) the agency procurement total.

(B) The amount of total obligational authority under all multiyear procurements of the agency concerned (determined without regard to the amount of the multiyear contract (or contract extension)) under multiyear contracts in effect at the time the report is submitted and the percentage that such amount represents of—

(i) the applicable procurement account; and

(ii) the agency procurement total.

(C) The amount equal to the sum of the amounts under subparagraphs (A) and (B), and the percentage that such amount represents of—

(i) the applicable procurement account; and

(ii) the agency procurement total.

(D) The amount of total obligational authority under all Department of Defense multiyear procurements (determined without regard to the amount of the multiyear contract (or contract extension)), including any multiyear contract (or contract extension) that has been authorized by the Congress but not yet entered into, and the percentage that such

amount represents of the procurement accounts of the Department of Defense treated in the aggregate.

(5) The head of an agency may not enter into a multiyear contract (or extend an existing multiyear contract), the value of which would exceed $500,000,000 (when entered into or when extended, as the case may be), until the Secretary of Defense submits to the congressional defense committees a report containing the information described in paragraph (4) with respect to the contract (or contract extension).

(6) The head of an agency may not terminate a multiyear procurement contract until 10 days after the date on which notice of the proposed termination is provided to the congressional defense committees.

(7) The execution of multiyear contracting authority shall require the use of a present value analysis to determine lowest cost compared to an annual procurement.

(8) This subsection does not apply to the National Aeronautics and Space Administration or to the Coast Guard.

(9) In this subsection:

(A) The term ''applicable procurement account'' means, with respect to a multiyear procurement contract (or contract extension), the appropriation account from which payments to execute the contract will be made.

(B) The term ''agency procurement total'' means the procurement accounts of the agency entering into a multiyear procurement contract (or contract extension) treated in the aggregate.

(m) INCREASED FUNDING AND REPROGRAMMING REQUESTS.—Any request for increased funding for the procurement of a major system under a multiyear contract authorized under this section shall be accompanied by an explanation of how the request for increased funding affects the determinations made by the Secretary under subsection (i).

(Added Pub. L. 103–355, title I, § 1022(a)(1), Oct. 13, 1994, 108 Stat. 3257; amended Pub. L. 104–106, div. A, title XV, § 1502(a)(10), div. E, title LVI, § 5601(b), Feb. 10, 1996, 110 Stat. 503, 699; Pub. L. 105–85, div. A, title VIII, § 806(a)(1), (b)(1), (c), title X, § 1073(a)(47), (48)(A), Nov. 18, 1997, 111 Stat. 1834, 1835, 1903; Pub. L. 106–65, div. A, title VIII, § 809, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 705, 774; Pub. L. 106–398, § 1 [[div. A], title VIII, §§ 802(c), 806], Oct. 30, 2000, 114 Stat. 1654, 1654A–205, 1654A–207; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 107–314, div. A, title VIII, § 820(a), Dec. 2, 2002, 116 Stat. 2613; Pub. L. 108–136, div. A, title X, § 1043(b)(10), Nov. 24, 2003, 117 Stat. 1611; Pub. L. 108–375, div. A, title VIII, § 814(a), title X, § 1084(b)(2), Oct. 28, 2004, 118 Stat. 2014, 2060; Pub. L. 110–181, div. A, title VIII, § 811(a), Jan. 28, 2008, 122 Stat. 217; Pub. L. 111–23, title I, § 101(d)(2), May 22, 2009, 123 Stat. 1709; Pub. L. 113–291, div. A, title VIII, § 816(a), (b), Dec. 19, 2014, 128 Stat. 3430, 3432; Pub. L. 114–92, div. A, title VIII, § 811, Nov. 25, 2015, 129 Stat. 891; Pub. L. 115–91, div. A, title X, § 1051(a)(14), Dec. 12, 2017, 131 Stat. 1561; Pub. L. 115–232, div. A, title VIII, § 817, Aug. 13, 2018, 132 Stat. 1852; Pub. L. 116–92, div. A, title IX, § 902(48), Dec. 20, 2019, 133 Stat. 1548; Pub. L. 116–283, div. A, title XVIII, § 1822(b)(1), (c)(1), (d)(1), (e)(1), (f)(1), (g)(1), (h)(1), (i)(1), (j)(1)(A)(i), (iii), (iv), (B), (C), (k), (*l*), Jan. 1, 2021, 134 Stat. 4197–4199, 4201, 4202.)

AMENDMENT OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1822(b)(1), (c)(1), (d)(1), (e)(1), (f)(1), (g)(1), (h)(1), (i)(1), (j)(1)(A)(i), (iii), (iv), (B), (C), (k), (l), Jan. 1, 2021, 134 Stat. 4151, 4197–4199, 4201, 4202, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is amended as follows:

(1) by transferring subsection (a) to section 3501(a) of this title;

(2) by transferring subsection (b) to section 3502 of this title;

(3) by transferring subsection (c) to section 3503(a) of this title;

(4) by transferring subsection (d) to section 3504 of this title;

(5) by transferring subsection (e) to section 3505 of this title;

(6) by transferring subsections (f) and (g) to section 3503(b) and (c), respectively, of this title;

(7) by transferring subsection (h) to section 3506 of this title;

(8) by transferring subsection (i) to section 3507 of this title;

(9) by transferring subsection (j) to section 3510(a) of this title;

(10) by transferring subsection (k) to section 3501(b) of this title;

(11) by transferring subsection (l) as follows:

(A) paragraphs (1), (6), and (8) to section 3508(a), (b), and (c), respectively, of this title;

(B) paragraphs (2) and (7) to section 3510(b) and (c), respectively, of this title;

(C) paragraph (3) to section 3509(a) of this title;

(D) paragraphs (4) and (9) to section 3509(b)(2) and (3), respectively, of this title; and

(E) paragraph (5) to section 3509(b)(1) of this title; and

(12) by transferring subsection (m) to section 3511 of this title.

See 2021 Amendment notes below.

REPEAL OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1881(a), Jan. 1, 2021, 134 Stat. 4151, 4293, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is repealed.

REFERENCES IN TEXT

Subsection (i)(1)(A), referred to in subsec. (g)(2), related to certification of full funding of support costs in multiyear contracts, prior to the general amendment of subsec. (i) by Pub. L. 113–291, div. A, title VIII, § 816(a), Dec. 19, 2014, 128 Stat. 3430. As amended, subsec. (i) no longer contains a par. (1)(A).

Section 2334(e)(2) of this title, referred to in subsec. (i)(3)(B), was redesignated as section 2334(f)(2) of this title by Pub. L. 114–328, div. A, title VIII, § 842(a)(3), Dec. 23, 2016, 130 Stat. 2288.

AMENDMENTS

2021—Subsec. (a). Pub. L. 116–283, § 1822(b)(1), redesignated subsec. (a) as section 3501(a) of this title.

Subsec. (b). Pub. L. 116–283, § 1822(d)(1), redesignated subsec. (b) as section 3502 of this title.

Subsec. (c). Pub. L. 116–283, § 1822(e)(1), redesignated subsec. (c) as section 3503(a) of this title.

Subsec. (d). Pub. L. 116–283, § 1822(f)(1), redesignated subsec. (d) as section 3504 of this title.

Subsec. (e). Pub. L. 116–283, § 1822(g)(1), redesignated subsec. (e) as section 3505 of this title.

Subsecs. (f), (g). Pub. L. 116–283, § 1822(e)(1), redesignated subsecs. (f) and (g) as section 3503(b) and (c), respectively, of this title.

Subsec. (h). Pub. L. 116–283, § 1822(h)(1), redesignated subsec. (h) as section 3506 of this title.

Subsec. (i). Pub. L. 116–283, § 1822(i)(1), redesignated subsec. (i) as section 3507 of this title.

Subsec. (j). Pub. L. 116–283, § 1822(k), redesignated subsec. (j) as section 3510(a) of this title.

Subsec. (k). Pub. L. 116–283, § 1822(c)(1), redesignated subsec. (k) as section 3501(b) of this title.

Subsec. (*l*)(1). Pub. L. 116–283, § 1822(j)(1)(C), redesignated par. (1) as section 3508(a) of this title.

Subsec. (*l*)(2). Pub. L. 116–283, § 1822(j)(1)(B), redesignated par. (2) as section 3510(b) of this title.

Subsec. (*l*)(3). Pub. L. 116–283, § 1822(j)(1)(A)(i), redesignated par. (3) as section 3509(a) of this title.

Subsec. (*l*)(4). Pub. L. 116–283, § 1822(j)(1)(A)(iv), redesignated par. (4) as section 3509(b)(2) of this title.

Subsec. (*l*)(5). Pub. L. 116–283, § 1822(j)(1)(A)(iii), redesignated par. (5) as section 3509(b)(1) of this title.

Subsec. (*l*)(6). Pub. L. 116–283, § 1822(j)(1)(C), redesignated par. (6) as section 3508(b) of this title.

Subsec. (*l*)(7). Pub. L. 116–283, § 1822(j)(1)(B), redesignated par. (7) as section 3510(c) of this title.

Subsec. (*l*)(8). Pub. L. 116–283, § 1822(j)(1)(C), redesignated par. (8) as section 3508(c) of this title.

Subsec. (*l*)(9). Pub. L. 116–283, § 1822(j)(1)(A)(iv), redesignated par. (9) as section 3509(b)(3) of this title.

Subsec. (m). Pub. L. 116–283, § 1822(*l*), redesignated subsec. (m) as section 3511 of this title.

2019—Subsec. (i)(7). Pub. L. 116–92 substituted ‘‘Under Secretary of Defense for Acquisition and Sustainment’’ for ‘‘Under Secretary of Defense for Acquisition, Technology, and Logistics’’.

2018—Subsec. (i)(2)(B). Pub. L. 115–232 substituted ‘‘supported by a preliminary cost analysis’’ for ‘‘made after the completion of a cost analysis’’ and struck out ‘‘for the purpose of section 2334(e)(1) of this title, and that the analysis supports those preliminary findings’’ after ‘‘Evaluation’’.

2017—Subsec. (*l*)(4). Pub. L. 115–91, in introductory provisions, substituted ‘‘Each report required by paragraph (5) with respect to a contract (or contract extension) shall contain the following:’’ for ‘‘Not later than the date of the submission of the President’s budget request under section 1105 of title 31, the Secretary of Defense shall submit a report to the congressional defense committees each year, providing the following information with respect to each multiyear contract (and each extension of an existing multiyear contract) entered into, or planned to be entered into, by the head of an agency during the current or preceding year, shown for each year in the current future-years defense program and in the aggregate over the period of the current future-years defense program:’’.

2015—Subsecs. (a)(1), (i)(4). Pub. L. 114–92 substituted ‘‘significant’’ for ‘‘substantial’’.

2014—Subsec. (a)(7). Pub. L. 113–291, § 816(b), substituted ‘‘subparagraphs (C) through (F) of subsection (i)(3)’’ for ‘‘subparagraphs (C) through (F) of paragraph (1) of subsection (i)’’.

Subsec. (i). Pub. L. 113–291, § 816(a), amended subsec. (i) generally. Prior to amendment, subsec. (i) related to defense acquisitions specifically authorized by law.

2009—Subsec. (i)(1)(B). Pub. L. 111–23 substituted ‘‘Director of Cost Assessment and Program Analysis’’ for ‘‘Cost Analysis Improvement Group of the Department of Defense’’.

2008—Subsec. (a)(7). Pub. L. 110–181, § 811(a)(1), added par. (7).

Subsec. (i)(1). Pub. L. 110–181, § 811(a)(2), (3), inserted ‘‘the Secretary of Defense certifies in writing by no later than March 1 of the year in which the Secretary requests legislative authority to enter into such contract that’’ after ‘‘unless’’ in introductory provisions, added subpars. (A) to (F), redesignated former subpar. (B) as (G), and struck out former subpar. (A) which read as follows: ‘‘The Secretary of Defense certifies to Congress that the current future-years defense program fully funds the support costs associated with the multiyear program.’’

Subsec. (i)(5) to (7). Pub. L. 110–181, § 811(a)(4), added pars. (5) to (7).

Subsec. (m). Pub. L. 110–181, § 811(a)(5), added subsec. (m).

2004—Subsec. (g). Pub. L. 108–375, § 814(a)(1), designated existing provisions as par. (1).

Subsec. (g)(1). Pub. L. 108–375, §§ 814(a)(2), 1084(b)(2), amended par. (1) identically, substituting ‘‘congressional defense committees’’ for ‘‘Committee on Armed Services and the Committee on Appropriations of the Senate and the Committee on Armed Services and the Committee on Appropriations of the House of Representatives’’.

Subsec. (g)(2). Pub. L. 108–375, § 814(a)(3), added par. (2).

2003—Subsec. (*l*)(9), (10). Pub. L. 108–136 redesignated par. (10) as (9) and struck out former par. (9) which read as follows: ‘‘In this subsection, the term ‘congressional defense committees’ means the following:

‘‘(A) The Committee on Armed Services of the Senate and the Subcommittee on Defense of the Committee on Appropriations of the Senate.

‘‘(B) The Committee on Armed Services of the House of Representatives and the Subcommittee on National Security of the Committee on Appropriations of the House of Representatives.’’

2002—Subsec. (b)(2)(B). Pub. L. 107–296 substituted ‘‘of Homeland Security’’ for ‘‘of Transportation’’.

Subsec. (i)(4). Pub. L. 107–314 added par. (4).

2000—Subsec. (k). Pub. L. 106–398, § 1 [[div. A], title VIII, § 802(c)], struck out ‘‘or services’’ after ‘‘purchase of property’’.

Subsec. (*l*)(4). Pub. L. 106–398, § 1 [[div. A], title VIII, § 806(1)(A)], in introductory provisions, substituted ‘‘Not later than the date of the submission of the President’s budget request under section 1105 of title 31, the Secretary of Defense shall submit a report to the congressional defense committees each year, providing the following information with respect to each multiyear contract (and each extension of an existing multiyear contract) entered into, or planned to be entered into, by the head of an agency during the current or preceding year’’ for ‘‘The head of an agency may not enter into a multiyear contract (or extend an existing multiyear contract) until the Secretary of Defense submits to the congressional defense committees a report with respect to that contract (or contract extension) that provides the following information’’.

Subsec. (*l*)(4)(B). Pub. L. 106–398, § 1 [[div. A], title VIII, § 806(1)(B)], substituted ‘‘in effect at the time the report is submitted’’ for ‘‘in effect immediately before the contract (or contract extension) is entered into’’ in introductory provisions.

Subsec. (*l*)(5) to (10). Pub. L. 106–398, § 1 [[div. A], title VIII, § 806(2), (3)], added par. (5) and redesignated former pars. (5) to (9) as (6) to (10), respectively.

1999—Subsec. (g). Pub. L. 106–65, § 1067(1), substituted ‘‘and the Committee on Armed Services’’ for ‘‘and the Committee on National Security’’.

Subsec. (*l*)(4) to (7). Pub. L. 106–65, § 809(1), (2), added par. (4) and redesignated former pars. (4) to (6) as (5) to (7), respectively. Former par. (7) redesignated (8).

Subsec. (*l*)(8). Pub. L. 106–65, § 809(1), redesignated par. (7) as (8).

Subsec. (*l*)(8)(B). Pub. L. 106–65, § 1067(1), substituted ‘‘Committee on Armed Services’’ for ‘‘Committee on National Security’’.

Subsec. (*l*)(9). Pub. L. 106–65, § 809(3), added par. (9).

1997—Pub. L. 105–85, § 1073(a)(48)(A), inserted ‘‘: acquisition of property’’ in section catchline.

Subsec. (a). Pub. L. 105–85, § 806(c)(1), substituted ‘‘finds each of the following:’’ for ‘‘finds—’’ in introduc-

tory provisions, capitalized first letter of first word in pars. (1) to (6), and substituted a period for semicolon at end of pars. (1) to (4) and for ''; and'' at end of par. (5).

Subsec. (d)(1). Pub. L. 105–85, §806(c)(2), substituted ''subsection (a)'' for ''paragraph (1)''.

Subsec. (i)(1)(A). Pub. L. 105–85, §806(c)(3), substituted ''future-years'' for ''five-year''.

Subsec. (i)(3). Pub. L. 105–85, §806(a)(1), added par. (3).

Subsec. (k). Pub. L. 105–85, §1073(a)(47), substituted ''this section'' for ''this subsection''.

Subsec. (*l*). Pub. L. 105–85, §806(b)(1), added subsec. (*l*).

1996—Subsec. (g). Pub. L. 104–106, §1502(a)(10), substituted ''the Committee on Armed Services and the Committee on Appropriations of the Senate and the Committee on National Security and the Committee on Appropriations of the'' for ''the Committees on Armed Services and on Appropriations of the Senate and''.

Subsecs. (k), (*l*). Pub. L. 104–106, §5601(b), redesignated subsec. (*l*) as (k) and struck out former subsec. (k) which read as follows: ''INAPPLICABILITY TO AUTOMATIC DATA PROCESSING CONTRACTS.—This section does not apply to contracts for the purchase of property to which section 111 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759) applies.''

EFFECTIVE DATE OF REPEAL

Repeal effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 2014 AMENDMENT

Pub. L. 113–291, div. A, title VIII, §816(c), Dec. 19, 2014, 128 Stat. 3432, provided that: ''The amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [Dec. 19, 2014], and shall apply with respect to requests for specific authorization by law to carry out defense acquisition programs using multiyear contract authority that are made on or after that date.''

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–181, div. A, title VIII, §811(b), Jan. 28, 2008, 122 Stat. 219, provided that: ''The amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [Jan. 28, 2008] and shall apply with respect to multiyear contracts for the purchase of major systems for which legislative authority is requested on or after that date.''

EFFECTIVE DATE OF 2002 AMENDMENTS

Pub. L. 107–314, div. A, title VIII, §820(b), Dec. 2, 2002, 116 Stat. 2614, provided that:

''(1) Paragraph (4) of section 2306b(i) of title 10, United States Code, as added by subsection (a), shall not apply with respect to any contract awarded before the date of the enactment of this Act [Dec. 2, 2002].

''(2) Nothing in this section [amending this section] shall be construed to authorize the expenditure of funds under any contract awarded before the date of the enactment of this Act for any purpose other than the purpose for which such funds have been authorized and appropriated.''

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–85, div. A, title VIII, §806(a)(2), Nov. 18, 1997, 111 Stat. 1834, provided that: ''Paragraph (3) of section 2306b(i) of title 10, United States Code, as added by paragraph (1), shall not apply with respect to a contract authorized by law before the date of the enactment of this Act [Nov. 18, 1997].''

Pub. L. 105–85, div. A, title VIII, §806(b)(2), Nov. 18, 1997, 111 Stat. 1835, provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect on October 1, 1998.''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 5601(b) of Pub. L. 104–106 effective 180 days after Feb. 10, 1996, see section 5701 of Pub. L. 104–106, Feb. 10, 1996, 110 Stat. 702.

EFFECTIVE DATE

For effective date and applicability of section, see section 10001 of Pub. L. 103–355, set out as an Effective Date of 1994 Amendment note under section 2302 of this title.

MULTIPLE PROGRAM MULTIYEAR CONTRACT PILOT DEMONSTRATION PROGRAM

Pub. L. 114–328, div. A, title VIII, §853, Dec. 23, 2016, 130 Stat. 2296, provided that:

''(a) AUTHORITY.—The Secretary of Defense may conduct a multiyear contract, over a period of up to four years, for the purchase of units for multiple defense programs that are produced at common facilities at a high rate, and which maximize commonality, efficiencies, and quality, in order to provide maximum benefit to the Department of Defense. Contracts awarded under this section should allow for significant savings, as determined consistent with the authority under section 2306b of title 10, United States Code, to be achieved as compared to using separate annual contracts under individual programs to purchase such units, and may include flexible delivery across the overall period of performance.

''(b) SCOPE.—The contracts authorized in subsection (a) shall at a minimum provide for the acquisition of units from three discrete programs from two of the military departments.

''(c) DOCUMENTATION.—Each contract awarded under subsection (a) shall include the documentation required to be provided for a multiyear contract proposal under section 2306b(i) of title 10.

''(d) DEFINITIONS.—In this section:

''(1) The term 'high rate' means total annual production across the multiple defense programs of more than 200 end-items per year.

''(2) The term 'common facilities' means production facilities operating within the same general and allowable rate structure.

''(e) SUNSET.—No new contracts may be awarded under the authority of this section after September 30, 2021.''

MULTIYEAR PROCUREMENT CONTRACTS

Pub. L. 105–56, title VIII, §8008, Oct. 8, 1997, 111 Stat. 1221, provided that:

''(a) None of the funds provided in this Act [see Tables for classification] shall be available to initiate: (1) a multiyear contract that employs economic order quantity procurement in excess of $20,000,000 in any one year of the contract or that includes an unfunded contingent liability in excess of $20,000,000; or (2) a contract for advance procurement leading to a multiyear contract that employs economic order quantity procurement in excess of $20,000,000 in any one year, unless the congressional defense committees [Committee on Armed Services and Subcommittee on National Security of the Committee on Appropriations of the House of Representatives and Committee on Armed Services and Subcommittee on Defense of the Committee on Appropriations of the Senate] have been notified at least 30 days in advance of the proposed contract award: *Provided*, That no part of any appropriation contained in this Act shall be available to initiate a multiyear contract for which the economic order quantity advance

procurement is not funded at least to the limits of the Government's liability: *Provided further*, That no part of any appropriation contained in this Act shall be available to initiate multiyear procurement contracts for any systems or component thereof if the value of the multiyear contract would exceed $500,000,000 unless specifically provided in this Act: *Provided further*, That no multiyear procurement contract can be terminated without 10-day prior notification to the congressional defense committees: *Provided further*, That the execution of multiyear authority shall require the use of a present value analysis to determine lowest cost compared to an annual procurement.

''Funds appropriated in title III of this Act [111 Stat. 1211] may be used for multiyear procurement contracts as follows:

''Apache Longbow radar;

''AV–8B aircraft; and

''Family of Medium Tactical Vehicles.

''(b) None of the funds provided in this Act and hereafter may be used to submit to Congress (or to any committee of Congress) a request for authority to enter into a contract covered by those provisions of subsection (a) that precede the first proviso of that subsection unless—

''(1) such request is made as part of the submission of the President's Budget for the United States Government for any fiscal year and is set forth in the Appendix to that budget as part of proposed legislative language for appropriations bills for the next fiscal year; or

''(2) such request is formally submitted by the President as a budget amendment; or

''(3) the Secretary of Defense makes such request in writing to the congressional defense committees.''

Similar provisions were contained in the following appropriation acts:

Pub. L. 116–260, div. C, title VIII, § 8010, Dec. 27, 2020, 134 Stat. 1304.

Pub. L. 116–93, div. A, title VIII, § 8010, Dec. 20, 2019, 133 Stat. 2337.

Pub. L. 115–245, div. A, title VIII, § 8010, Sept. 28, 2018, 132 Stat. 3000.

Pub. L. 115–141, div. C, title VIII, § 8010, Mar. 23, 2018, 132 Stat. 464.

Pub. L. 115–31, div. C, title VIII, § 8010, May 5, 2017, 131 Stat. 247.

Pub. L. 114–113, div. C, title VIII, § 8010, Dec. 18, 2015, 129 Stat. 2352.

Pub. L. 113–235, div. C, title VIII, § 8010, Dec. 16, 2014, 128 Stat. 2253.

Pub. L. 113–76, div. C, title VIII, § 8010, Jan. 17, 2014, 128 Stat. 105.

Pub. L. 113–6, div. C, title VIII, § 8010, Mar. 26, 2013, 127 Stat. 297.

Pub. L. 112–74, div. A, title VIII, § 8010, Dec. 23, 2011, 125 Stat. 806.

Pub. L. 112–10, div. A, title VIII, § 8010, Apr. 15, 2011, 125 Stat. 57.

Pub. L. 111–118, div. A, title VIII, § 8011, Dec. 19, 2009, 123 Stat. 3428, as amended by Pub. L. 111–212, title I, § 305, July 29, 2010, 124 Stat. 2311.

Pub. L. 110–329, div. C, title VIII, § 8011, Sept. 30, 2008, 122 Stat. 3621.

Pub. L. 110–116, div. A, title VIII, § 8010, Nov. 13, 2007, 121 Stat. 1315.

Pub. L. 109–289, div. A, title VIII, § 8008, Sept. 29, 2006, 120 Stat. 1273.

Pub. L. 109–148, div. A, title VIII, § 8008, Dec. 30, 2005, 119 Stat. 2698.

Pub. L. 108–287, title VIII, § 8008, Aug. 5, 2004, 118 Stat. 970.

Pub. L. 108–87, title VIII, § 8008, Sept. 30, 2003, 117 Stat. 1072.

Pub. L. 107–248, title VIII, § 8008, Oct. 23, 2002, 116 Stat. 1537.

Pub. L. 107–117, div. A, title VIII, § 8008, Jan. 10, 2002, 115 Stat. 2248.

Pub. L. 106–259, title VIII, § 8008, Aug. 9, 2000, 114 Stat. 675.

Pub. L. 106–79, title VIII, § 8008, Oct. 25, 1999, 113 Stat. 1232.

Pub. L. 105–262, title VIII, § 8008, Oct. 17, 1998, 112 Stat. 2298.

Pub. L. 104–208, div. A, title I, § 101(b) [title VIII, § 8009], Sept. 30, 1996, 110 Stat. 3009–71, 3009–89.

Pub. L. 104–61, title VIII, § 8010, Dec. 1, 1995, 109 Stat. 653.

Pub. L. 103–335, title VIII, § 8010, Sept. 30, 1994, 108 Stat. 2618.

Pub. L. 103–139, title VIII, § 8011, Nov. 11, 1993, 107 Stat. 1439.

Pub. L. 102–396, title IX, § 9013, Oct. 6, 1992, 106 Stat. 1903.

Pub. L. 102–172, title VIII, § 8013, Nov. 26, 1991, 105 Stat. 1173.

Pub. L. 101–511, title VIII, § 8014, Nov. 5, 1990, 104 Stat. 1877.

Pub. L. 101–165, title IX, § 9021, Nov. 21, 1989, 103 Stat. 1133.

§ 2306c. Multiyear contracts: acquisition of services

(a) AUTHORITY.—Subject to subsections (d) and (e), the head of an agency may enter into contracts for periods of not more than five years for services described in subsection (b), and for items of supply related to such services, for which funds would otherwise be available for obligation only within the fiscal year for which appropriated whenever the head of the agency finds that—

(1) there will be a continuing requirement for the services consonant with current plans for the proposed contract period;

(2) the furnishing of such services will require a substantial initial investment in plant or equipment, or the incurrence of substantial contingent liabilities for the assembly, training, or transportation of a specialized work force; and

(3) the use of such a contract will promote the best interests of the United States by encouraging effective competition and promoting economies in operation.

(b) COVERED SERVICES.—The authority under subsection (a) applies to the following types of services:

(1) Operation, maintenance, and support of facilities and installations.

(2) Maintenance or modification of aircraft, ships, vehicles, and other highly complex military equipment.

(3) Specialized training necessitating high quality instructor skills (for example, pilot and air crew members; foreign language training).

(4) Base services (for example, ground maintenance; in-plane refueling; bus transportation; refuse collection and disposal).

(5) Environmental remediation services for—

(A) an active military installation;

(B) a military installation being closed or realigned under a base closure law; or

(C) a site formerly used by the Department of Defense.

(c) APPLICABLE PRINCIPLES.—In entering into multiyear contracts for services under the authority of this section, the head of the agency shall be guided by the following principles:

(1) The portion of the cost of any plant or equipment amortized as a cost of contract per-

formance should not exceed the ratio between the period of contract performance and the anticipated useful commercial life of such plant or equipment. Useful commercial life, for this purpose, means the commercial utility of the facilities rather than the physical life thereof, with due consideration given to such factors as location of facilities, specialized nature thereof, and obsolescence.

(2) Consideration shall be given to the desirability of obtaining an option to renew the contract for a reasonable period not to exceed three years, at prices not to include charges for plant, equipment and other nonrecurring costs, already amortized.

(3) Consideration shall be given to the desirability of reserving in the agency the right, upon payment of the unamortized portion of the cost of the plant or equipment, to take title thereto under appropriate circumstances.

(d) RESTRICTIONS APPLICABLE GENERALLY.—(1) The head of an agency may not initiate under this section a contract for services that includes an unfunded contingent liability in excess of $20,000,000 unless the congressional defense committees are notified of the proposed contract at least 30 days in advance of the award of the proposed contract.

(2) The head of an agency may not initiate a multiyear contract for services under this section if the value of the multiyear contract would exceed $500,000,000 unless authority for the contract is specifically provided by law.

(3) The head of an agency may not terminate a multiyear procurement contract for services until 10 days after the date on which notice of the proposed termination is provided to the congressional defense committees.

(4) Before any contract described in subsection (a) that contains a clause setting forth a cancellation ceiling in excess of $100,000,000 may be awarded, the head of the agency concerned shall give written notification of the proposed contract and of the proposed cancellation ceiling for that contract to the congressional defense committees, and such contract may not then be awarded until the end of a period of 30 days beginning on the date of such notification.

(5) In the case of a contract described in subsection (a) with a cancellation ceiling described in paragraph (4), if the budget for the contract does not include proposed funding for the costs of contract cancellation up to the cancellation ceiling established in the contract, the head of the agency concerned shall give written notification to the congressional defense committees of—

(A) the cancellation ceiling amounts planned for each program year in the proposed multiyear procurement contract, together with the reasons for the amounts planned;

(B) the extent to which costs of contract cancellation are not included in the budget for the contract; and

(C) a financial risk assessment of not including budgeting for costs of contract cancellation.

(e) CANCELLATION OR TERMINATION FOR INSUFFICIENT FUNDING AFTER FIRST YEAR.—In the event that funds are not made available for the continuation of a multiyear contract for services into a subsequent fiscal year, the contract shall be canceled or terminated, and the costs of cancellation or termination may be paid from—

(1) appropriations originally available for the performance of the contract concerned;

(2) appropriations currently available for procurement of the type of services concerned, and not otherwise obligated; or

(3) funds appropriated for those payments.

(f) MULTIYEAR CONTRACT DEFINED.—For the purposes of this section, a multiyear contract is a contract for the purchase of services for more than one, but not more than five, program years. Such a contract may provide that performance under the contract during the second and subsequent years of the contract is contingent upon the appropriation of funds and (if it does so provide) may provide for a cancellation payment to be made to the contractor if such appropriations are not made.

[(g) Repealed. Pub. L. 108–136, div. A, title VIII, § 843(a), Nov. 24, 2003, 117 Stat. 1553.]

(h) MILITARY INSTALLATION DEFINED.—In this section, the term ''military installation'' has the meaning given such term in section 2801(c)(4) of this title.

(Added Pub. L. 106–398, § 1 [[div. A], title VIII, § 802(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–203; amended Pub. L. 107–314, div. A, title VIII, §§ 811(a), 827, Dec. 2, 2002, 116 Stat. 2608, 2617; Pub. L. 108–136, div. A, title VIII, § 843(a), title X, § 1043(c)(1), Nov. 24, 2003, 117 Stat. 1553, 1611; Pub. L. 108–375, div. A, title VIII, § 814(b), Oct. 28, 2004, 118 Stat. 2014; Pub. L. 111–84, div. A, title X, § 1073(a)(22), Oct. 28, 2009, 123 Stat. 2473; Pub. L. 116–283, div. A, title XVIII, § 1822(n)(1), (*o*), (p), (q)(2), (r), (s)(1), Jan. 1, 2021, 134 Stat. 4203, 4204.)

AMENDMENT OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1822(n)(1), (o), (p), (q)(2), (r), (s)(1), Jan. 1, 2021, 134 Stat. 4151, 4203, 4204, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is amended as follows:

(1) by transferring subsections (a) and (b) to section 3531(a) and (b), respectively, of this title;

(2) by transferring subsection (c) to section 3532 of this title;

(3) by transferring subsection (d) as follows:

(A) paragraphs (1) and (3) to section 3535(a) and (b), respectively, of this title;

(B) paragraph (2) to section 3534 of this title; and

(C) paragraphs (4) and (5) to section 3533(b)(1) and (2), respectively, of this title;

(4) by transferring subsection (e) to section 3533(a) of this title; and

(5) by transferring subsections (f) and (h) to section 3531(c) and (d), respectively, of this title.

See 2021 Amendment notes below.

REPEAL OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1881(a), Jan. 1, 2021, 134 Stat. 4151, 4293, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is repealed.

AMENDMENTS

2021—Subsecs. (a), (b). Pub. L. 116–283, §1822(n)(1), redesignated subsecs. (a) and (b) as section 3531(a) and (b), respectively, of this title.

Subsec. (c). Pub. L. 116–283, §1822(*o*), redesignated subsec. (c) as section 3532 of this title.

Subsec. (d)(1). Pub. L. 116–283, §1822(s)(1), redesignated par. (1) as section 3535(a) of this title.

Subsec. (d)(2). Pub. L. 116–283, §1822(r), redesignated par. (2) as section 3534 of this title.

Subsec. (d)(3). Pub. L. 116–283, §1822(s)(1), redesignated par. (3) as section 3535(b) of this title.

Subsec. (d)(4), (5). Pub. L. 116–283, §1822(q)(2), redesignated pars. (4) and (5) as section 3533(b)(1) and (2), respectively, of this title.

Subsec. (e). Pub. L. 116–283, §1822(p), redesignated subsec. (e) as section 3533(a) of this title.

Subsecs. (f), (h). Pub. L. 116–283, §1822(n)(1), redesignated subsecs. (f) and (h) as section 3531(c) and (d), respectively, of this title.

2009—Subsec. (h). Pub. L. 111–84 substituted ‘‘section 2801(c)(4)’’ for ‘‘section 2801(c)(2)’’.

2004—Subsec. (d)(1), (3), (4). Pub. L. 108–375, §814(b)(1), substituted ‘‘congressional defense committees’’ for ‘‘committees of Congress named in paragraph (5)’’.

Subsec. (d)(5). Pub. L. 108–375, §814(b)(2), amended par. (5) generally. Prior to amendment, par. (5) read as follows: ‘‘The committees of Congress referred to in paragraphs (1), (3), and (4) are as follows:

‘‘(A) The Committee on Armed Services and the Committee on Appropriations of the Senate.

‘‘(B) The Committee on Armed Services and the Committee on Appropriations of the House of Representatives.’’

2003—Subsec. (g). Pub. L. 108–136, §843(a), struck out heading and text of subsec. (g). Text read as follows:

‘‘(1) The authority and restrictions of this section, including the authority to enter into contracts for periods of not more than five years, shall apply with respect to task order and delivery order contracts entered into under the authority of section 2304a, 2304b, or 2304c of this title.

‘‘(2) The regulations implementing this subsection shall establish a preference that, to the maximum extent practicable, multi-year requirements for task order and delivery order contracts be met with separate awards to two or more sources under the authority of section 2304a(d)(1)(B) of this title.’’

Subsec. (h). Pub. L. 108–136, §1043(c)(1), substituted ‘‘MILITARY INSTALLATION DEFINED.—In this section, the term’’ for ‘‘ADDITIONAL DEFINITIONS.—In this section:

‘‘(1) The term ‘base closure law’ has the meaning given such term in section 2667(h)(2) of this title.

‘‘(2) The term’’.

2002—Subsec. (b)(5). Pub. L. 107–314, §827(a), added par. (5).

Subsec. (g). Pub. L. 107–314, §811(a), added subsec. (g).

Subsec. (h). Pub. L. 107–314, §827(b), added subsec. (h).

EFFECTIVE DATE OF REPEAL

Repeal effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–314, div. A, title VIII, §811(b), Dec. 2, 2002, 116 Stat. 2608, as amended by Pub. L. 108–11, title I, §1315, Apr. 16, 2003, 117 Stat. 570, provided that: ‘‘Subsection (g) of section 2306c of title 10, United States Code, as added by subsection (a), shall apply to all task order and delivery order contracts entered into on or after January 1, 2004.’’

EFFECTIVE DATE

Pub. L. 106–398, §1 [[div. A], title VIII, §802(d)], Oct. 30, 2000, 114 Stat. 1654, 1654A–205, provided that: ‘‘Section 2306c of title 10, United States Code (as added by subsection (a)), shall apply with respect to contracts for which solicitations of offers are issued after the date of the enactment of this Act [Oct. 30, 2000].’’

PILOT PROGRAM FOR LONGER TERM MULTIYEAR SERVICE CONTRACTS

Pub. L. 115–91, div. A, title VIII, §854, Dec. 12, 2017, 131 Stat. 1492, provided that:

‘‘(a) ESTABLISHMENT.—The Secretary of Defense shall carry out a pilot program under which the Secretary may use the authority under subsection (a) of section 2306c of title 10, United States Code, to enter into up to five contracts for periods of not more than 10 years for services described in subsection (b) of such section. Each contract entered into pursuant to this subsection may be extended for up to five additional one-year terms.

‘‘(b) STUDY.—

‘‘(1) IN GENERAL.—Not later than 90 days after the date of the enactment of this Act [Dec. 12, 2017], the Secretary of Defense shall enter into an agreement with an independent organization with relevant expertise to study best practices and lessons learned from using services contracts for periods longer than five years by commercial companies, foreign governments, and State governments, as well as service contracts for periods longer than five years used by the Federal Government, such as energy savings performance contracts (as defined in section to section [sic] 804(3) of the National Energy Conservation Policy Act (42 U.S.C. 8287c(3)).

‘‘(2) REPORT.—Not later than one year after the date of the enactment of this Act, the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the study conducted under paragraph (1).

‘‘(c) COMPTROLLER GENERAL REPORT.—Not later than five years after the date of the enactment of this Act, the Comptroller General of the United States shall submit to the congressional defense committees a report on the pilot program carried out under this section.’’

§ 2307. Contract financing

(a) PAYMENT AUTHORITY.—(1) The head of any agency may—

(A) make advance, partial, progress, or other payments under contracts for property or services made by the agency; and

(B) insert in solicitations for procurement of property or services a provision limiting to small business concerns advance or progress payments.

(2)(A) For a prime contractor (as defined in section 8701 of title 41) that is a small business concern (as defined in section 3 of the Small Business Act (15 U.S.C. 632)), the Secretary of Defense shall, to the fullest extent permitted by law, establish an accelerated payment date with a goal of 15 days after receipt of a proper invoice for the amount due.

(B) For a prime contractor that subcontracts with a small business concern, the Secretary of Defense shall, to the fullest extent permitted by law, establish an accelerated payment date with a goal of 15 days after receipt of a proper invoice for the amount due if the prime contractor agrees or proposes to make payments to the subcontractor in accordance with the accelerated payment date, to the maximum extent prac-

ticable, without any further consideration from or fees charged to the subcontractor.

(b) PREFERENCE FOR PERFORMANCE-BASED PAYMENTS.—(1) Whenever practicable, payments under subsection (a) shall be made using performance-based payments on any of the following bases:

(A) Performance measured by objective, quantifiable methods such as delivery of acceptable items, work measurement, or statistical process controls.

(B) Accomplishment of events defined in the program management plan.

(C) Other quantifiable measures of results.

(2) Performance-based payments shall not be conditioned upon costs incurred in contract performance but on the achievement of performance outcomes listed in paragraph (1).

(3) The Secretary of Defense shall ensure that nontraditional defense contractors and other private sector companies are eligible for performance-based payments, consistent with best commercial practices.

(4)(A) In order to receive performance-based payments, a contractor's accounting system shall be in compliance with Generally Accepted Accounting Principles, and there shall be no requirement for a contractor to develop Government-unique accounting systems or practices as a prerequisite for agreeing to receive performance-based payments.

(B) Nothing in this section shall be construed to grant the Defense Contract Audit Agency the authority to audit compliance with Generally Accepted Accounting Principles.

(c) PAYMENT AMOUNT.—Payments made under subsection (a) may not exceed the unpaid contract price.

(d) SECURITY FOR ADVANCE PAYMENTS.—Advance payments made under subsection (a) may be made only if the contractor gives adequate security and after a determination by the head of the agency that to do so would be in the public interest. Such security may be in the form of a lien in favor of the United States on the property contracted for, on the balance in an account in which such payments are deposited, and on such of the property acquired for performance of the contract as the parties may agree. This lien is paramount to any other liens and is effective immediately upon the first advancement of funds without filing, notice, or any other action by the United States.

(e) CONDITIONS FOR PROGRESS PAYMENTS.—(1) The Secretary of Defense shall ensure that any payment for work in progress (including materials, labor, and other items) under a defense contract that provides for such payments is commensurate with the work accomplished that meets standards established under the contract. The contractor shall provide such information and evidence as the Secretary of Defense determines necessary to permit the Secretary to carry out the preceding sentence.

(2) The Secretary shall ensure that progress payments referred to in paragraph (1) are not made for more than 80 percent of the work accomplished under a defense contract so long as the Secretary has not made the contractual terms, specifications, and price definite.

(3) This subsection applies to any contract in an amount greater than $25,000.

(f) CONDITIONS FOR PAYMENTS FOR COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES.—(1) Payments under subsection (a) for commercial products and commercial services may be made under such terms and conditions as the head of the agency determines are appropriate or customary in the commercial marketplace and are in the best interests of the United States. The head of the agency shall obtain adequate security for such payments. If the security is in the form of a lien in favor of the United States, such lien is paramount to all other liens and is effective immediately upon the first payment, without filing, notice, or other action by the United States.

(2) Advance payments made under subsection (a) for commercial products and commercial services may include payments, in a total amount of not more than 15 percent of the contract price, in advance of any performance of work under the contract.

(3) The conditions of subsections (d) and (e) need not be applied if they would be inconsistent, as determined by the head of the agency, with commercial terms and conditions pursuant to paragraphs (1) and (2).

(g) CERTAIN NAVY CONTRACTS.—(1) The Secretary of the Navy shall provide that the rate for progress payments on any contract awarded by the Secretary for repair, maintenance, or overhaul of a naval vessel shall be not less than—

(A) 95 percent, in the case of a firm considered to be a small business; and

(B) 90 percent, in the case of any other firm.

(2) The Secretary of the Navy may advance to private salvage companies such funds as the Secretary considers necessary to provide for the immediate financing of salvage operations. Advances under this paragraph shall be made on terms that the Secretary considers adequate for the protection of the United States.

(3) The Secretary of the Navy shall provide, in each contract for construction or conversion of a naval vessel, that, when partial, progress, or other payments are made under such contract, the United States is secured by a lien upon work in progress and on property acquired for performance of the contract on account of all payments so made. The lien is paramount to all other liens.

(h) VESTING OF TITLE IN THE UNITED STATES.—If a contract paid by a method authorized under subsection (a)(1) provides for title to property to vest in the United States, the title to the property shall vest in accordance with the terms of the contract, regardless of any security interest in the property that is asserted before or after the contract is entered into.

(i) ACTION IN CASE OF FRAUD.—(1) In any case in which the remedy coordination official of an agency finds that there is substantial evidence that the request of a contractor for advance, partial, or progress payment under a contract awarded by that agency is based on fraud, the remedy coordination official shall recommend that the head of the agency reduce or suspend further payments to such contractor.

(2) The head of an agency receiving a recommendation under paragraph (1) in the case of a contractor's request for payment under a con-

tract shall determine whether there is substantial evidence that the request is based on fraud. Upon making such a determination, the agency head may reduce or suspend further payments to the contractor under such contract.

(3) The extent of any reduction or suspension of payments by the head of an agency under paragraph (2) on the basis of fraud shall be reasonably commensurate with the anticipated loss to the United States resulting from the fraud.

(4) A written justification for each decision of the head of an agency whether to reduce or suspend payments under paragraph (2) and for each recommendation received by such agency head in connection with such decision shall be prepared and be retained in the files of such agency.

(5) The head of an agency shall prescribe procedures to ensure that, before such agency head decides to reduce or suspend payments in the case of a contractor under paragraph (2), the contractor is afforded notice of the proposed reduction or suspension and an opportunity to submit matters to the head of the agency in response to such proposed reduction or suspension.

(6) Not later than 180 days after the date on which the head of an agency reduces or suspends payments to a contractor under paragraph (2), the remedy coordination official of such agency shall—

(A) review the determination of fraud on which the reduction or suspension is based; and

(B) transmit a recommendation to the head of such agency whether the suspension or reduction should continue.

(7) The head of an agency shall prepare for each year a report containing the recommendations made by the remedy coordination official of that agency to reduce or suspend payments under paragraph (2), the actions taken on the recommendations and the reasons for such actions, and an assessment of the effects of such actions on the Federal Government. The Secretary of each military department shall transmit the annual report of such department to the Secretary of Defense. Each such report shall be available to any member of Congress upon request.

(8) This subsection applies to the agencies named in paragraphs (1), (2), (3), (4), and (6) of section 2303(a) of this title.

(9) The head of an agency may not delegate responsibilities under this subsection to any person in a position below level IV of the Executive Schedule.

(10) In this subsection, the term ''remedy coordination official'', with respect to an agency, means the person or entity in that agency who coordinates within that agency the administration of criminal, civil, administrative, and contractual remedies resulting from investigations of fraud or corruption related to procurement activities.

(Aug. 10, 1956, ch. 1041, 70A Stat. 131; Pub. L. 85–800, § 9, Aug. 28, 1958, 72 Stat. 967; Pub. L. 93–155, title VIII, § 807(c), Nov. 16, 1973, 87 Stat. 616; Pub. L. 100–370, § 1(f)(1)(A), July 19, 1988, 102 Stat. 846; Pub. L. 101–510, div. A, title VIII, § 836(a), (b), title XIII, § 1322(a)(4), Nov. 5, 1990, 104 Stat. 1615, 1616, 1671; Pub. L. 102–25, title VII, § 701(d)(4), (j)(2)(A), Apr. 6, 1991, 105 Stat. 114, 116; Pub. L. 102–190, div. A, title X, § 1061(a)(10), Dec. 5, 1991, 105 Stat. 1472; Pub. L. 102–484, div. A, title X, § 1052(24), Oct. 23, 1992, 106 Stat. 2500; Pub. L. 103–355, title II, § 2001(a)–(g), Oct. 13, 1994, 108 Stat. 3301, 3302; Pub. L. 105–85, div. A, title VIII, § 802, Nov. 18, 1997, 111 Stat. 1831; Pub. L. 106–391, title III, § 306, Oct. 30, 2000, 114 Stat. 1592; Pub. L. 114–328, div. A, title VIII, § 831(a), Dec. 23, 2016, 130 Stat. 2282; Pub. L. 115–232, div. A, title VIII, §§ 836(c)(6), 852, Aug. 13, 2018, 132 Stat. 1866, 1884; Pub. L. 116–92, div. A, title XVII, § 1731(a)(40), Dec. 20, 2019, 133 Stat. 1814; Pub. L. 116–283, div. A, title VIII, § 815, title XVIII, §§ 1834(b)(1), (c)(1), (d), (e)(1), (f)(1), (g)(1), (h), 1876(e), Jan. 1, 2021, 134 Stat. 3750, 4234–4237, 4239, 4291.)

AMENDMENT OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1834(b)(1), (c)(1), (d), (e)(1), (f)(1), (g)(1), (h), 1876(e), Jan. 1, 2021, 134 Stat. 4151, 4234–4237, 4239, 4291, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is amended as follows:

(1) by transferring subsection (a) to section 3801 of this title;

(2) by transferring subsections (b) and (c) to section 3802(a) and (d), respectively, of this title;

(3) by transferring subsection (d) to section 3803 of this title;

(4) by transferring subsection (e) to section 3804 of this title;

(5) by transferring subsection (f) to section 3805 of this title;

(6) by striking out subsection (g);

(7) by transferring subsection (h) to section 3807 of this title; and

(8) by transferring subsection (i) to section 3806 of this title.

See 2021 Amendment notes below.

REPEAL OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1881(a), Jan. 1, 2021, 134 Stat. 4151, 4293, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is repealed.

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	Source (U.S. Code)	Source (Statutes at Large)
2307(a)	41:154(a).	Feb. 19, 1948, ch. 65, § 5, 62 Stat. 23.
2307(b)	41:154 (less (a)).	

In subsection (a), the words ''and appropriate'' are omitted as surplusage. The words ''whether or not the contract previously provided for such payments'' are substituted for the words ''heretofore or hereafter executed''.

In subsection (b), the words ''under subsection (a)'' are inserted for clarity. The words ''provide for'' are substituted for the words ''include as security provision for''. The words ''United States'' are substituted for the word ''Government''.

1988 ACT

Subsection (e) is based on Pub. L. 99–145, title IX, § 916, Nov. 8, 1985, 99 Stat. 688.

REFERENCES IN TEXT

Level IV of the Executive Schedule, referred to in subsec. (i)(9), is set out in section 5315 of Title 5, Government Organization and Employees.

PRIOR PROVISIONS

Provisions similar to those in subsec. (g) of this section were contained in sections 7312, 7364, and 7521 of this title prior to repeal by Pub. L. 103–355, § 2001(j)(1).

AMENDMENTS

2021—Subsec. (a). Pub. L. 116–283, § 1834(b)(1), redesignated subsec. (a) as section 3801 of this title.

Subsec. (a)(2)(A). Pub. L. 116–283, § 815(1), struck out "if a specific payment date is not established by contract" after "amount due".

Subsec. (a)(2)(B). Pub. L. 116–283, § 815(2), substituted "if the prime contractor agrees or proposes" for "if—

"(i) a specific payment date is not established by contract; and

"(ii) the prime contractor agrees".

Subsecs. (b), (c). Pub. L. 116–283, § 1834(c)(1), redesignated subsecs. (b) and (c) as section 3802(a) and (d), respectively, of this title.

Subsec. (d). Pub. L. 116–283, § 1834(d), redesignated subsec. (d) as section 3803 of this title.

Subsec. (e). Pub. L. 116–283, § 1834(e)(1), redesignated subsec. (e) as section 3804 of this title.

Subsec. (f). Pub. L. 116–283, § 1834(f)(1), redesignated subsec. (f) as section 3805 of this title.

Subsec. (g). Pub. L. 116–283, § 1876(e), struck out subsec. (g) which related to certain Navy contracts.

Subsec. (h). Pub. L. 116–283, § 1834(h), redesignated subsec. (h) as section 3807 of this title.

Subsec. (i). Pub. L. 116–283, § 1834(g)(1), redesignated subsec. (i) as section 3806 of this title.

2019—Subsec. (a)(1). Pub. L. 116–92 substituted "may—" for "may" in introductory provisions.

2018—Subsec. (a). Pub. L. 115–232, § 852, designated existing provisions as par. (1), redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, of par. (1), and added par. (2).

Subsec. (f). Pub. L. 115–232, § 836(c)(6), substituted "Commercial Products and Commercial Services" for "Commercial Items" in heading and "commercial products and commercial services" for "commercial items" in text of pars. (1) and (2).

2016—Subsec. (b). Pub. L. 114–328, § 831(a)(3), which directed substitution of "(1) Whenever practicable, payments under subsection (a) shall be made using performance-based payments" for "Wherever practicable, payment under subsection (a) shall be made", was executed by making the substitution for "Whenever practicable, payments under subsection (a) shall be made" to reflect the probable intent of Congress.

Pub. L. 114–328, § 831(a)(1), which directed insertion of "PREFERENCE FOR" before "PERFORMANCE-BASED" in heading, was executed by making the insertion before "PERFORMANCE-BASED" to reflect the probable intent of Congress.

Subsec. (b)(1)(A) to (C). Pub. L. 114–328, § 831(a)(2), redesignated pars. (1) to (3) of subsec. (b) as subpars. (A) to (C), respectively, of par. (1). See above.

Subsec. (b)(2) to (4). Pub. L. 114–328, § 831(a)(4), added pars. (2) to (4).

2000—Subsec. (i)(8). Pub. L. 106–391 substituted "(4), and (6)" for "and (4)".

1997—Subsecs. (h), (i). Pub. L. 105–85 added subsec. (h) and redesignated former subsec. (h) as (i).

1994—Pub. L. 103–355, § 2001(a)(1), substituted "Contract financing" for "Advance payments" in section catchline.

Subsec. (a). Pub. L. 103–355, § 2001(a)(2), inserted heading.

Subsec. (a)(2). Pub. L. 103–355, § 2001(c), struck out "bid" before "solicitations".

Subsec. (b). Pub. L. 103–355, § 2001(a)(7), (b), added subsec. (b) and redesignated former subsec. (b) as (c).

Pub. L. 103–355, § 2001(a)(3), inserted heading.

Subsec. (c). Pub. L. 103–355, § 2001(a)(7), redesignated subsec. (b) as (c). Former subsec. (c) redesignated (d).

Pub. L. 103–355, § 2001(a)(4), inserted heading.

Subsec. (d). Pub. L. 103–355, § 2001(d), inserted before period at end "and is effective immediately upon the first advancement of funds without filing, notice, or any other action by the United States".

Pub. L. 103–355, § 2001(a)(7), redesignated former subsec. (c) as (d). Former subsec. (d) redesignated (e).

Pub. L. 103–355, § 2001(a)(5), inserted heading.

Subsec. (e). Pub. L. 103–355, § 2001(a)(7), redesignated subsec. (d) as (e). Former subsec. (e) redesignated (h).

Pub. L. 103–355, § 2001(a)(6), inserted heading.

Subsec. (e)(1). Pub. L. 103–355, § 2001(e)(1), substituted "work accomplished that meets standards established under the contract" for "work, which meets standards of quality established under the contract, that has been accomplished".

Subsec. (e)(3). Pub. L. 103–355, § 2001(e)(2), amended par. (3) generally. Prior to amendment, par. (3) read as follows: "This subsection does not apply to any contract for an amount not in excess of the amount of the small purchase threshold."

Subsecs. (f), (g). Pub. L. 103–355, § 2001(f), (g), added subsecs. (f) and (g).

Subsec. (h). Pub. L. 103–355, § 2001(a)(7), redesignated subsec. (e) as (h).

1992—Subsec. (e)(1). Pub. L. 102–484 substituted "(1)" for "(*l*)" as par. designation after "(e)".

1991—Subsec. (d)(3). Pub. L. 102–25, § 701(d)(4), substituted "any contract for an amount not in excess of the amount of the small purchase threshold" for "contracts for amounts less than the maximum amount for small purchases specified in section 2304(g)(2) of this title".

Subsec. (e). Pub. L. 102–25, § 701(j)(2)(A), redesignated subsec. (f) as (e).

Subsec. (f). Pub. L. 102–190, which directed the substitution of "(1)" for "(*l*)" as par. designation after "(f)", could not be executed because "(*l*)" did not appear after "(f)".

Pub. L. 102–25, § 701(j)(2)(A), redesignated subsec. (f) as (e).

1990—Subsec. (d). Pub. L. 101–510, § 1322(a)(4), redesignated subsec. (e) as (d) and struck out former subsec. (d) which read as follows: "Payments under subsection (a) in the case of any contract, other than partial, progress, or other payments specifically provided for in such contract at the time such contract was initially entered into, may not exceed $25,000,000 unless the Committees on Armed Services of the Senate and the House of Representatives have been notified in writing of such proposed payments and 60 days of continuous session of Congress have expired following the date on which such notice was transmitted to such Committees and neither House of Congress has adopted, within such 60-day period, a resolution disapproving such payments. For purposes of this section, the continuity of a session of Congress is broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of such 60-day period."

Subsec. (e). Pub. L. 101–510, § 1322(a)(4)(B), redesignated subsec. (e) as (d).

Pub. L. 101–510, § 836(b), inserted at end of par. (1) "The contractor shall provide such information and evidence as the Secretary of Defense determines necessary to permit the Secretary to carry out the preceding sentence."

Subsec. (f). Pub. L. 101–510, § 836(a), added subsec. (f).

1988—Subsec. (e). Pub. L. 100–370 added subsec. (e).

1973—Subsec. (d). Pub. L. 93–155 added subsec. (d).

1958—Pub. L. 85–800 authorized advance or other payments under contracts for property or services by agency, authorized insertion in bid solicitations of provision limiting advance or progress payments to small business concerns, restricted payments under subsec. (a) to unpaid contract price, and reworded generally conditions for making advance payments.

EFFECTIVE DATE OF REPEAL

Repeal effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by sections 1834(b)(1), (c)(1), (d), (e)(1), (f)(1), (g)(1), (h) and 1876(e) of Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by section 836(c)(6) of Pub. L. 115–232 effective Jan. 1, 2020, subject to a savings provision, see section 836(h) of Pub. L. 115–232, set out as an Effective Date of 2018 Amendment; Savings Provision note under section 453b of Title 6, Domestic Security.

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 2302 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–510, div. A, title VIII, § 836(c), Nov. 5, 1990, 104 Stat. 1616, as amended by Pub. L. 102–25, title VII, § 701(j)(2)(B), Apr. 6, 1991, 105 Stat. 116, provided that: ''The provisions of section 2307 of title 10, United States Code, that are added by the amendments made by subsections (a) and (b) shall apply with respect to contracts entered into on or after May 6, 1991.''

REGULATIONS

Pub. L. 114–328, div. A, title VIII, § 831(b), Dec. 23, 2016, 130 Stat. 2283, provided that: ''Not later than 120 days after the date of the enactment of this Act [Dec. 23, 2016], the Secretary of Defense shall revise the Department of Defense Federal Acquisition Regulation Supplement to conform with section 2307(b) of title 10, United States Code, as amended by subsection (a).''

RELATIONSHIP OF 1994 AMENDMENT TO PROMPT PAYMENT REQUIREMENTS

Pub. L. 103–355, title II, § 2001(h), Oct. 13, 1994, 108 Stat. 3303, provided that: ''The amendments made by this section [amending this section and section 7522 of this title and repealing sections 7312, 7364, and 7521 of this title] are not intended to impair or modify procedures required by the provisions of chapter 39 of title 31, United States Code, and the regulations issued pursuant to such provisions of law (as such procedures are in effect on the date of the enactment of this Act [Oct. 13, 1994]), except that the Government may accept payment terms offered by a contractor offering a commercial item.''

LIMITATIONS ON PROGRESS PAYMENTS

Pub. L. 99–145, title IX, § 916, Nov. 8, 1985, 99 Stat. 688, which required Secretary of Defense to ensure that any progress payment under a defense contract be commensurate with work accomplished at standard of quality in contract, that such payments be limited to 80 percent of work accomplished so long as contract terms are indefinite, that this provision be waived for small purchases, and that this provision apply only to contracts for which solicitations were issued on or after 150 days after Nov. 8, 1985, was repealed and restated in subsec. (e) of this section by Pub. L. 100–370, § 1(f)(1), July 19, 1988, 102 Stat. 846.

OBLIGATIONS ENTERED INTO BEFORE NOVEMBER 16, 1973

Pub. L. 93–155, title VIII, § 807(e), Nov. 16, 1973, 87 Stat. 616, provided that: ''The amendments made by this section [amending this section and sections 1431, 3816, and 4532 of Title 50, War and National Defense] shall not affect the carrying out of any contract, loan, guarantee, commitment, or other obligation entered into prior to the date of enactment of this section [Nov. 16, 1973].''

§ 2308. Buy-to-budget acquisition: end items

(a) AUTHORITY TO ACQUIRE ADDITIONAL END ITEMS.—Using funds available to the Department of Defense for the acquisition of an end item, the head of an agency making the acquisition may acquire a higher quantity of the end item than the quantity specified for the end item in a law providing for the funding of that acquisition if that head of an agency makes each of the following findings:

(1) The agency has an established requirement for the end item that is expected to remain substantially unchanged throughout the period of the acquisition.

(2) It is possible to acquire the higher quantity of the end item without additional funding because of production efficiencies or other cost reductions.

(3) The amount of the funds used for the acquisition of the higher quantity of the end item will not exceed the amount provided under that law for the acquisition of the end item.

(4) The amount so provided is sufficient to ensure that each unit of the end item acquired within the higher quantity is fully funded as a complete end item.

(b) REGULATIONS.—The Secretary of Defense shall prescribe regulations for the administration of this section. The regulations shall include, at a minimum, the following:

(1) The level of approval within the Department of Defense that is required for a decision to acquire a higher quantity of an end item under subsection (a).

(2) Authority (subject to subsection (a)) to acquire up to 10 percent more than the quantity of an end item approved in a justification and approval of the use of procedures other than competitive procedures for the acquisition of the end item under section 2304 of this title.

(c) NOTIFICATION OF CONGRESS.—(1) The head of an agency is not required to notify Congress in advance regarding a decision under the authority of this section to acquire a higher quantity of an end item than is specified in a law described in subsection (a), but, except as provided in paragraph (2), shall notify the congressional defense committees of the decision not later than 30 days after the date of the decision.

(2) A notification is not required under paragraph (1) if the end item being acquired in a higher quantity is an end item under a tactical missile program or a munitions program.

(d) WAIVER BY OTHER LAW.—A provision of law may not be construed as prohibiting the acquisition of a higher quantity of an end item under this section unless that provision of law—

(1) specifically refers to this section; and

(2) specifically states that the acquisition of the higher quantity of the end item is prohibited notwithstanding the authority provided in this section.

(e) DEFINITIONS.—(1) For the purposes of this section, a quantity of an end item shall be con-

sidered specified in a law if the quantity is specified either in a provision of that law or in any related representation that is set forth separately in a table, chart, or explanatory text included in a joint explanatory statement or governing committee report accompanying the law.

(2) In this section:

(A) The term ''end item'' means a production product assembled, completed, and ready for issue or deployment.

(B) The term ''head of an agency'' means the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, and the Secretary of the Air Force.

(Added Pub. L. 107–314, div. A, title VIII, § 801(a)(1), Dec. 2, 2002, 116 Stat. 2600; amended Pub. L. 108–136, div. A, title X, § 1043(b)(11), Nov. 24, 2003, 117 Stat. 1611; Pub. L. 114–328, div. A, title VIII, § 852, Dec. 23, 2016, 130 Stat. 2296.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1807(f), Jan. 1, 2021, 134 Stat. 4151, 4159, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 203 of this title, inserted after section 3068, and redesignated as section 3069 of this title. See Effective Date of 2021 Amendment note below.

PRIOR PROVISIONS

A prior section 2308, acts Aug. 10, 1956, ch. 1041, 70A Stat. 131; Oct. 23, 1992, Pub. L. 102–484, div. A, title VIII, § 820(a), 106 Stat. 2458; May 31, 1993, Pub. L. 103–35, title II, § 201(e)(2), 107 Stat. 99; Nov. 30, 1993, Pub. L. 103–160, div. A, title IX, § 904(d)(1), 107 Stat. 1728, related to assignment and delegation of procurement functions and responsibilities, prior to repeal by Pub. L. 103–355, title I, § 1503(b)(1), title X, § 10001, Oct. 13, 1994, 108 Stat. 3297, 3404, effective Oct. 13, 1994, except as otherwise provided.

AMENDMENTS

2016—Subsec. (c). Pub. L. 114–328 designated existing provisions as par. (1), inserted '', except as provided in paragraph (2),'' after ''but'', and added par. (2).

2003—Subsec. (e)(2). Pub. L. 108–136 redesignated subpars. (B) and (C) as (A) and (B), respectively, and struck out former subpar. (A) which read as follows: ''The term 'congressional defense committees' means—

''(i) the Committee on Armed Services and the Committee on Appropriations of the Senate; and

''(ii) the Committee on Armed Services and the Committee on Appropriations of the House of Representatives.''

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

TIME FOR ISSUANCE OF FINAL REGULATIONS

Pub. L. 107–314, div. A, title VIII, § 801(b), Dec. 2, 2002, 116 Stat. 2602, provided that: ''The Secretary of Defense shall issue the final regulations under section 2308(b) of title 10, United States Code (as added by subsection (a)), not later than 120 days after the date of the enactment of this Act [Dec. 2, 2002].''

§ 2309. Allocation of appropriations

(a) Appropriations available for procurement by an agency named in section 2303 of this title may, through administrative allotment, be made available for obligation for procurement by any other agency in amounts authorized by the head of the allotting agency and without transfer of funds on the books of the Department of the Treasury.

(b) A disbursing official of the allotting agency may make any disbursement chargeable to an allotment under subsection (a) upon a voucher certified by an officer or civilian employee of the procuring agency.

(Aug. 10, 1956, ch. 1041, 70A Stat. 132; Pub. L. 97–258, § 2(b)(1)(B), Sept. 13, 1982, 96 Stat. 1052.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1809(e)(1), Jan. 1, 2021, 134 Stat. 4151, 4161, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 207 of this title, as amended by section 1809(a) of Pub. L. 116–283, added after section 3133, and redesignated as section 3134 of this title. See Effective Date of 2021 Amendment note below.

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2309(a)	41:159 (2d sentence).	Feb. 19, 1948, ch. 65, § 10 (less 1st sentence), 62 Stat. 25.
2309(b)	41:159 (less 1st and 2d sentences).	

In subsection (a), the words ''an agency named in section 2303 of this title'' are substituted for the words ''any such agency''.

In subsection (b), the words ''an allotment under subsection (a)'' are substituted for the words ''such allotments''.

AMENDMENTS

1982—Subsec. (b). Pub. L. 97–258 substituted ''disbursing official'' for ''disbursing officer''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 2310. Determinations and decisions

(a) INDIVIDUAL OR CLASS DETERMINATIONS AND DECISIONS AUTHORIZED.—Determinations and decisions required to be made under this chapter by the head of an agency may be made for an individual purchase or contract or, except to the extent expressly prohibited by another provision of law, for a class of purchases or contracts. Such determinations and decisions are final.

(b) WRITTEN FINDINGS REQUIRED.—(1) Each determination or decision under section 2306(g)(1), 2307(d), or 2313(c)(2)(B) of this title shall be based on a written finding by the person making the determination or decision. The finding shall set out facts and circumstances that support the determination or decision.

(2) Each finding referred to in paragraph (1) is final. The head of the agency making such finding shall maintain a copy of the finding for not less than 6 years after the date of the determination or decision.

(Aug. 10, 1956, ch. 1041, 70A Stat. 132; Pub. L. 85–800, §10, Aug. 28, 1958, 72 Stat. 967; Pub. L. 87–653, §1(f), Sept. 10, 1962, 76 Stat. 529; Pub. L. 89–607, §1(1), Sept. 27, 1966, 80 Stat. 850; Pub. L. 90–378, §2, July 5, 1968, 82 Stat. 290; Pub. L. 98–369, div. B, title VII, §2725, July 18, 1984, 98 Stat. 1193; Pub. L. 99–145, title XIII, §1303(a)(16), Nov. 8, 1985, 99 Stat. 739; Pub. L. 103–355, title I, §1504, Oct. 13, 1994, 108 Stat. 3297.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§1801(d), 1864(b), Jan. 1, 2021, 134 Stat. 4151, 4279, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 367 of this title, as amended by section 1864(a) of Pub. L. 116–283, inserted after the table of sections, and redesignated as section 4751 of this title. See Effective Date of 2021 Amendment note below.

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2310(a)	41:156(a) (1st sentence).	Feb. 19, 1948, ch. 65, §7(a) (1st sentence), (c), 62 Stat. 24.
2310(b)	41:156(c).	

In subsection (a), the words ''required * * * under'' are substituted for the words ''provided in''.

In subsection (b), the word ''person'' is substituted for the word ''official''. The words ''to which it applies'' are inserted for clarity.

AMENDMENTS

1994—Pub. L. 103–355 amended section generally. Prior to amendment, section read as follows:

''(a) Determinations and decisions required to be made under this chapter by the head of an agency may be made for an individual purchase or contract or, except for determinations and decisions under section 2304 or 2305 of this title, for a class of purchases or contracts. Such a determination or decision, including a determination or decision under section 2304 or 2305 of this title, is final.

''(b) Each determination or decision under section 2306(c), 2306(g)(1), 2307(c), or 2313(c) of this title shall be based on a written finding by the person making the determination or decision, which finding shall set out facts and circumstances that—

''(1) clearly indicate why the type of contract selected under section 2306(c) of this title is likely to be less costly than any other type or that it is impracticable to obtain property or services of the kind or quality required except under such a contract;

''(2) support the findings required by section 2306(g)(1) of this title;

''(3) clearly indicate why advance payments under section 2307(c) of this title would be in the public interest; or

''(4) clearly indicate why the application of section 2313(b) of this title to a contract or subcontract with a foreign contractor or foreign subcontractor would not be in the public interest.

Such a finding is final and shall be kept available in the agency for at least six years after the date of the determination or decision. A copy of the finding shall be submitted to the General Accounting Office with each contract to which it applies.''

1985—Subsec. (a). Pub. L. 99–145 inserted ''this'' after ''2305 of''.

1984—Subsec. (a). Pub. L. 98–369, §2725(1), inserted '', except for determinations and decisions under section 2304 or 2305 of title,'' and '', including a determination or decision under section 2304 or 2305 of this title,''.

Subsec. (b). Pub. L. 98–369, §2725(2), amended subsec. (b) generally, striking out requirement that determinations to negotiate contracts be based on written findings by the contracting officers making the determinations.

1968—Subsec. (b). Pub. L. 90–378 inserted ''section 2306 (g)(1),'' after ''clauses (11)–(16) of section 2304(a), section 2306(c),'', and ''(3) support the findings required by section 2306(g)(1),'' after ''kind or quality required except under such a contract,'', and redesignated former cls. (3) to (5) as (4) to (6), respectively.

1966—Subsec. (b). Pub. L. 89–607 inserted reference to section 2313(c), added cl. (4), and redesignated former cl. (4) as (5).

1962—Subsec. (b). Pub. L. 87–653 substituted ''section 2306(c)'' for ''section 2306'', required decisions to negotiate contracts under section 2304(a)(2), (7), (8), (10) to (12) of this title to be based on a written finding by the person making the decision, which findings shall set out facts and circumstances illustrative of conditions described in section 2304(a)(11) to (16), indicate why the type of contract selected under section 2306(c) is likely to be less costly than any other or that its impracticable to obtain the required property or services except under such contract, indicate why advance payments under section 2307(c) would be in the public interest, or establish with respect to section 2304(a), (2), (7), (8), (10) to (12) that formal advertising would not have been feasible and practicable.

1958—Subsec. (b). Pub. L. 85–800 substituted ''2307(c)'' for ''2307(a)''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 2302 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable with respect to any solicitation for bids or proposals issued after Mar. 31, 1985, see section 2751 of Pub. L. 98–369, set out as a note under section 2302 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

For effective date of amendment by Pub. L. 87–653, see section 1(h) of Pub. L. 87–653, set out as a note under section 2304 of this title.

§2311. Assignment and delegation of procurement functions and responsibilities

(a) IN GENERAL.—Except to the extent expressly prohibited by another provision of law, the head of an agency may delegate, subject to his direction, to any other officer or official of that agency, any power under this chapter.

(b) PROCUREMENTS FOR OR WITH OTHER AGENCIES.—Subject to subsection (a), to facilitate the procurement of property and services covered by this chapter by each agency named in section 2303 of this title for any other agency, and to facilitate joint procurement by those agencies—

(1) the head of an agency may delegate functions and assign responsibilities relating to procurement to any officer or employee within such agency;

(2) the heads of two or more agencies may by agreement delegate procurement functions and assign procurement responsibilities from one agency to another of those agencies or to

an officer or civilian employee of another of those agencies; and

(3) the heads of two or more agencies may create joint or combined offices to exercise procurement functions and responsibilities.

(c) APPROVAL OF TERMINATIONS AND REDUCTIONS OF JOINT ACQUISITION PROGRAMS.—(1) The Secretary of Defense shall prescribe regulations that prohibit each military department participating in a joint acquisition program approved by the Under Secretary of Defense for Acquisition and Sustainment from terminating or substantially reducing its participation in such program without the approval of the Under Secretary.

(2) The regulations shall include the following provisions:

(A) A requirement that, before any such termination or substantial reduction in participation is approved, the proposed termination or reduction be reviewed by the Joint Requirements Oversight Council of the Department of Defense.

(B) A provision that authorizes the Under Secretary of Defense for Acquisition and Sustainment to require a military department whose participation in a joint acquisition program has been approved for termination or substantial reduction to continue to provide some or all of the funding necessary for the acquisition program to be continued in an efficient manner.

(Aug. 10, 1956, ch. 1041, 70A Stat. 132; Pub. L. 85–800, § 11, Aug. 28, 1958, 72 Stat. 967; Pub. L. 87–653, § 1(g), Sept. 10, 1962, 76 Stat. 529; Pub. L. 90–378, § 3, July 5, 1968, 82 Stat. 290; Pub. L. 97–86, title IX, §§ 907(c), 909(f), Dec. 1, 1981, 95 Stat. 1117, 1120; Pub. L. 98–369, div. B, title VII, § 2726, July 18, 1984, 98 Stat. 1194; Pub. L. 98–525, title XII, § 1214, Oct. 19, 1984, 98 Stat. 2592; Pub. L. 98–577, title V, § 505, Oct. 30, 1984, 98 Stat. 3087; Pub. L. 103–355, title I, § 1503(a)(1), Oct. 13, 1994, 108 Stat. 3296; Pub. L. 107–107, div. A, title X, § 1048(b)(2), Dec. 28, 2001, 115 Stat. 1225; Pub. L. 116–92, div. A, title IX, § 902(49), Dec. 20, 2019, 133 Stat. 1548.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1807(d)(1), Jan. 1, 2021, 134 Stat. 4151, 4157, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 203 of this title, inserted after section 3064, and redesignated as section 3065 of this title. See Effective Date of 2021 Amendment note below.

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2311 ………	41:156(a) (less 1st sentence). 41:156(b).	Feb. 19, 1948, ch. 65, § 7(a) (less 1st sentence), (b), 62 Stat. 24.

The words ‘‘in his discretion and’’ and ‘‘including the making of such determinations and decisions’’ are omitted as surplusage. The words ‘‘except the power to make determinations and decisions’’ are substituted for the words ‘‘Except as provided in subsection (b) of this section’’ and ‘‘The power of the agency head to make the determinations or decisions specified in paragraphs (12)–(16) of section 151(c) of this title and in section 154(a) of this title shall not be delegable’’.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 2308 of this title prior to repeal by Pub. L. 103–355, § 1503(b)(1).

AMENDMENTS

2019—Subsec. (c)(1), (2)(B). Pub. L. 116–92 substituted ‘‘Under Secretary of Defense for Acquisition and Sustainment’’ for ‘‘Under Secretary of Defense for Acquisition, Technology, and Logistics’’.

2001—Subsec. (c)(1), (2)(B). Pub. L. 107–107 substituted ‘‘Under Secretary of Defense for Acquisition, Technology, and Logistics’’ for ‘‘Under Secretary of Defense for Acquisition and Technology’’.

1994—Pub. L. 103–355 substituted ‘‘Assignment and delegation of procurement functions and responsibilities’’ for ‘‘Delegation’’ as section catchline and amended text generally. Prior to amendment, text read as follows: ‘‘Except as provided in section 2304(d)(2) of this title, the head of an agency may delegate, subject to his direction, to any other officer or official of that agency, any power under this chapter.’’

1984—Pub. L. 98–577 struck out ‘‘(a)’’ before ‘‘Except as provided in’’ and struck out subsec. (b) which related to delegation of authority by heads of procuring activities of agencies of certain functions.

Pub. L. 98–525 designated existing provisions as subsec. (a) and added subsec. (b).

Pub. L. 98–369 inserted provision relating to the exception provided in section 2304(d)(2) of this title and struck out provision that the power to make determinations and decisions under cls. (11)–(16) of section 2304(a) of this title could not be delegated, but that the power to make a determination or decision under section 2304(a)(11) of this title could be delegated to any other officer of official of that agency who was responsible for procurement, and only for contracts requiring the expenditure of not more than $5,000,000.

1981—Pub. L. 97–86 struck out in first sentence cl. (1) designation and cl. (2) relating to authorizing of contracts in excess of three years under section 2306(g) of this title, and in second sentence substituted ‘‘$5,000,000’’ for ‘‘$100,000’’.

1968—Pub. L. 90–378 designated provisions after ‘‘the power to make determinations and decisions’’ as cl. (1) and added cl. (2).

1962—Pub. L. 87–653 substituted ‘‘delegated to any other officer’’ for ‘‘delegated only to a chief officer’’ and ‘‘$100,000’’ for ‘‘$25,000’’.

1958—Pub. L. 85–800 struck out ‘‘, or section 2307(a)’’ after ‘‘of section 2304(a)’’ in first sentence.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 2302 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable with respect to any solicitation for bids or proposals issued after Mar. 31, 1985, see section 2751 of Pub. L. 98–369, set out as a note under section 2302 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

For effective date of amendment by Pub. L. 87–653, see section 1(h) of Pub. L. 87–653, set out as a note under section 2304 of this title.

§ 2312. Remission of liquidated damages

Upon the recommendation of the head of an agency, the Secretary of the Treasury may

remit all or part, as he considers just and equitable, of any liquidated damages assessed for delay in performing a contract, made by that agency, that provides for such damages.

(Aug. 10, 1956, ch. 1041, 70A Stat. 132; Pub. L. 104–316, title II, § 202(c), Oct. 19, 1996, 110 Stat. 3842.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1864(b), Jan. 1, 2021, 134 Stat. 4151, 4279, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 367 of this title, as amended by section 1864(a) of Pub. L. 116–283, inserted after section 4751, and redesignated as section 4752 of this title. See Effective Date of 2021 Amendment note below.

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2312	41:155.	Feb. 19, 1948, ch. 65, § 6, 62 Stat. 24.

The words ''a contract, made by that agency, that provides for'' are substituted for the words ''any contract made on behalf of the Government by the agency head or by officers authorized by him so to do includes a provision''.

AMENDMENTS

1996—Pub. L. 104–316 substituted ''Secretary of the Treasury'' for ''Comptroller General''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 2313. Examination of records of contractor

(a) AGENCY AUTHORITY.—(1) The head of an agency, acting through an authorized representative, is authorized to inspect the plant and audit the records of—

(A) a contractor performing a cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable contract, or any combination of such contracts, made by that agency under this chapter; and

(B) a subcontractor performing any cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable subcontract or any combination of such subcontracts under a contract referred to in subparagraph (A).

(2) The head of an agency, acting through an authorized representative, is authorized, for the purpose of evaluating the accuracy, completeness, and currency of certified cost or pricing data required to be submitted pursuant to section 2306a of this title with respect to a contract or subcontract, to examine all records of the contractor or subcontractor related to—

(A) the proposal for the contract or subcontract;

(B) the discussions conducted on the proposal;

(C) pricing of the contract or subcontract; or

(D) performance of the contract or subcontract.

(b) DCAA SUBPOENA AUTHORITY.—(1) The Director of the Defense Contract Audit Agency (or any successor agency) may require by subpoena the production of any records of a contractor that the Secretary of Defense is authorized to audit or examine under subsection (a).

(2) Any such subpoena, in the case of contumacy or refusal to obey, shall be enforceable by order of an appropriate United States district court.

(3) The authority provided by paragraph (1) may not be redelegated.

(c) COMPTROLLER GENERAL AUTHORITY.—(1) Except as provided in paragraph (2), each contract awarded after using procedures other than sealed bid procedures shall provide that the Comptroller General and his representatives are authorized to examine any records of the contractor, or any of its subcontractors, that directly pertain to, and involve transactions relating to, the contractor or subcontract and to interview any current employee regarding such transactions.

(2) Paragraph (1) does not apply to a contract or subcontract with a foreign contractor or foreign subcontractor if the head of the agency concerned determines, with the concurrence of the Comptroller General or his designee, that the application of that paragraph to the contract or subcontract would not be in the public interest. However, the concurrence of the Comptroller General or his designee is not required—

(A) where the contractor or subcontractor is a foreign government or agency thereof or is precluded by the laws of the country involved from making its records available for examination; and

(B) where the head of the agency determines, after taking into account the price and availability of the property and services from United States sources, that the public interest would be best served by not applying paragraph (1).

(3) Paragraph (1) may not be construed to require a contractor or subcontractor to create or maintain any record that the contractor or subcontractor does not maintain in the ordinary course of business or pursuant to another provision of law.

(d) LIMITATION ON AUDITS RELATING TO INDIRECT COSTS.—The head of an agency may not perform an audit of indirect costs under a contract, subcontract, or modification before or after entering into the contract, subcontract, or modification in any case in which the contracting officer determines that the objectives of the audit can reasonably be met by accepting the results of an audit that was conducted by any other department or agency of the Federal Government within one year preceding the date of the contracting officer's determination.

(e) LIMITATION.—The authority of the head of an agency under subsection (a), and the authority of the Comptroller General under subsection (c), with respect to a contract or subcontract shall expire three years after final payment under such contract or subcontract.

(f) INAPPLICABILITY TO CERTAIN CONTRACTS.—This section does not apply to the following contracts:

(1) Contracts for utility services at rates not exceeding those established to apply uniformly to the public, plus any applicable reasonable connection charge.

(2) A contract or subcontract that is for an amount not greater than the simplified acquisition threshold.

(g) FORMS OF ORIGINAL RECORD STORAGE.—Nothing in this section shall be construed to preclude a contractor from duplicating or storing original records in electronic form.

(h) USE OF IMAGES OF ORIGINAL RECORDS.—The head of an agency shall not require a contractor or subcontractor to provide original records in an audit carried out pursuant to this section if the contractor or subcontractor provides photographic or electronic images of the original records and meets the following requirements:

(1) The contractor or subcontractor has established procedures to ensure that the imaging process preserves the integrity, reliability, and security of the original records.

(2) The contractor or subcontractor maintains an effective indexing system to permit timely and convenient access to the imaged records.

(3) The contractor or subcontractor retains the original records for a minimum of one year after imaging to permit periodic validation of the imaging systems.

(i) RECORDS DEFINED.—In this section, the term ''records'' includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.

(Aug. 10, 1956, ch. 1041, 70A Stat. 132; Pub. L. 89–607, § 1(2), Sept. 27, 1966, 80 Stat. 850; Pub. L. 98–369, div. B, title VII, § 2727(c), July 18, 1984, 98 Stat. 1195; Pub. L. 99–145, title IX, § 935, Nov. 8, 1985, 99 Stat. 700; Pub. L. 100–26, § 7(g)(1), Apr. 21, 1987, 101 Stat. 282; Pub. L. 101–510, div. A, title XIII, § 1301(9), Nov. 5, 1990, 104 Stat. 1668; Pub. L. 103–355, title II, § 2201(a)(1), title IV, § 4102(c), Oct. 13, 1994, 108 Stat. 3316, 3340; Pub. L. 104–106, div. A, title XV, § 1502(a)(1), Feb. 10, 1996, 110 Stat. 502; Pub. L. 104–201, div. A, title VIII, § 808(a), Sept. 23, 1996, 110 Stat. 2607; Pub. L. 106–65, div. A, title X, § 1032(a)(2), Oct. 5, 1999, 113 Stat. 751; Pub. L. 110–417, [div. A], title VIII, § 871(b), Oct. 14, 2008, 122 Stat. 4555; Pub. L. 116–283, div. A, title XVIII, § 1835(b)(1), (2), Jan. 1, 2021, 134 Stat. 4239.)

AMENDMENT OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1835(b)(1), (2), Jan. 1, 2021, 134 Stat. 4151, 4239, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is amended as follows:

(1) by transferring subsections (a) to (h) to section 3841(b) to (i), respectively, of this title; and

(2) by transferring subsection (i) to section 3841(a) of this title.

See 2021 Amendment notes below.

REPEAL OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1881(a), Jan. 1, 2021, 134 Stat. 4151, 4293, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is repealed.

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
2313(a)	41:153(b) (words after semicolon of last sentence).	Feb. 19, 1948, ch. 65, § 4(b) (words after semicolon of last sentence), 62 Stat. 23.
2313(b)	41:153(c).	Feb. 19, 1948, ch. 65, § 4(c); added Oct. 31, 1951, ch. 652 (as applicable to § 4(c); of the Act of Feb. 19, 1948, ch. 65), 65 Stat. 700.

In subsection (a), the words ''An agency named in section 2303 of this title'' are substituted for the words ''a procuring agency''. The words ''made by that agency under this chapter'' are inserted for clarity.

In subsection (b), the word ''under'' is substituted for the words ''pursuant to authority contained in''. The word ''provide'' is substituted for the words ''include a clause to the effect''. The words ''are entitled'' are substituted for the words ''shall * * * have * * * the right''. The words ''of the United States'', ''duly authorized'', ''have access to and'', and ''engaged in the performance of'' are omitted as surplusage.

AMENDMENTS

2021—Subsecs. (a) to (h). Pub. L. 116–283, § 1835(b)(1), redesignated subsecs. (a) to (h) as section 3841(b) to (i), respectively, of this title.

Subsec. (i). Pub. L. 116–283, § 1835(b)(2), redesignated subsec. (i) as section 3841(a) of this title.

2008—Subsec. (c)(1). Pub. L. 110–417 inserted ''and to interview any current employee regarding such transactions'' before period at end.

1999—Subsec. (b)(4). Pub. L. 106–65 struck out par. (4) which read as follows: ''The Director (or any successor official) shall submit an annual report to the Secretary of Defense on the exercise of such authority during the preceding year and the reasons why such authority was exercised in any instance. The Secretary shall forward a copy of each such report to the Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives.''

1996—Subsec. (b)(4). Pub. L. 104–106 substituted ''Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives'' for ''Committees on Armed Services of the Senate and House of Representatives''.

Subsec. (d). Pub. L. 104–201 amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: ''LIMITATION ON PREAWARD AUDITS RELATING TO INDIRECT COSTS.—The head of an agency may not perform a preaward audit to evaluate proposed indirect costs under any contract, subcontract, or modification to be entered into in accordance with this chapter in any case in which the contracting officer determines that the objectives of the audit can reasonably be met by accepting the results of an audit conducted by any other department or agency of the Federal Government within one year preceding the date of the contracting officer's determination.''

1994—Pub. L. 103–355, § 2201(a)(1), amended section generally, striking out ''of books'' before ''and records'' in section catchline, and substituting subsecs. (a) to (i) for former subsecs. (a) to (d).

Subsec. (f)(2). Pub. L. 103–355, § 4102(c), added par. (2).

1990—Subsec. (c). Pub. L. 101–510 struck out after cl. (2) ''If subsection (b) is not applied to a contract or subcontract based on a determination under clause (2), a written report shall be furnished to the Congress.''

1987—Subsec. (d)(1). Pub. L. 100–26 substituted ''section 2306a'' for ''section 2306(f)''.

1985—Subsec. (d). Pub. L. 99–145 added subsec. (d).

1984—Subsec. (b). Pub. L. 98–369 substituted ''awarded after using procedures other than sealed bid procedures'' for ''negotiated under this chapter''.

1966—Subsec. (b). Pub. L. 89–607, § 1(2)(A), substituted ''Except as provided in subsection (c), each'' for ''Each''.

Subsec. (c). Pub. L. 89–607, § 1(2)(B), added subsec. (c).

EFFECTIVE DATE OF REPEAL

Repeal effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 2302 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable with respect to any solicitation for bids or proposals issued after Mar. 31, 1985, see section 2751 of Pub. L. 98–369, set out as a note under section 2302 of this title.

EXCEPTION FROM RECORDS EXAMINATION REQUIREMENT

Requirements under subsec. (b) of this section not applicable to certain contracts valued at less than $7,500,000 awarded to small business or nontraditional defense contractors, with certain exceptions, see section 873(b) of Pub. L. 114–92, set out as a Pilot Program for Streamlining Awards for Innovative Technology Projects note under section 2306a of this title.

IMPROVED AUDITING OF CONTRACTS

Pub. L. 114–92, div. A, title VIII, § 893, Nov. 25, 2015, 129 Stat. 952, as amended by Pub. L. 114–328, div. A, title VIII, § 891, Dec. 23, 2016, 130 Stat. 2323, provided that:

''(a) PROHIBITION ON PERFORMANCE OF NON-DEFENSE AUDITS BY DCAA.—

''(1) IN GENERAL.—Effective on the date of the enactment of this Act [Nov. 25, 2015], except as provided in paragraph (2), the Defense Contract Audit Agency may not provide audit support for non-Defense Agencies unless the Secretary of Defense certifies that the backlog for incurred cost audits is less than 18 months of incurred cost inventory.

''(2) EXCEPTION FOR NATIONAL NUCLEAR SECURITY ADMINISTRATION.—Notwithstanding paragraph (1), the Defense Contract Audit Agency may provide audit support on a reimbursable basis for the National Nuclear Security Administration.

''(b) AMENDMENTS TO DEFENSE CONTRACT AUDIT AGENCY ANNUAL REPORT.—[Amended section 2313a of this title.]

''(c) REVIEW OF ACQUISITION OVERSIGHT AND AUDITS.—

''(1) REVIEW REQUIRED.—The Secretary of Defense shall review the oversight and audit structure of the Department of Defense with the goals of—

''(A) enhancing the productivity of oversight and program and contract auditing to avoid duplicative audits; and

''(B) streamlining of oversight reviews.

''(2) RECOMMENDATIONS.—The Secretary shall ensure streamlined oversight reviews and avoidance of duplicative audits and make recommendations in the report required under paragraph (3) for any necessary changes in law.

''(3) REPORT.—

''(A) Not later than one year after the date of the enactment of this Act [Nov. 25, 2015], the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on actions taken to avoid duplicative audits and streamline oversight reviews.

''(B) The report required under this paragraph shall include the following elements:

''(i) A description of actions taken to avoid duplicative audits and streamline oversight reviews based on the review conducted under paragraph (1).

''(ii) A comparison of commercial industry accounting practices, including requirements under the Sarbanes-Oxley Act of 2002 (Public Law 107–204; 15 U.S.C. 7201 et seq.), with the cost accounting standards prescribed under chapter 15 of title 41, United States Code, to determine if some portions of cost accounting standards compliance can be met through such practices or requirements.

''(iii) A description of standards of materiality used by the Defense Contract Audit Agency and the Inspector General of the Department of Defense for defense contract audits.

''(iv) An estimate of average delay and range of delays in contract awards due to the time necessary for the Defense Contract Audit Agency to complete pre-award audits.

''(v) The total costs of sustained or recovered costs both as a total number and as a percentage of questioned costs.

''(d) INCURRED COST INVENTORY DEFINED.—In this section, the term 'incurred cost inventory' means the level of contractor incurred cost proposals in inventory from prior fiscal years that are currently being audited by the Defense Contract Audit Agency.''

DEPARTMENT OF DEFENSE ACCESS TO, USE OF, AND SAFEGUARDS AND PROTECTIONS FOR CONTRACTOR INTERNAL AUDIT REPORTS

Pub. L. 112–239, div. A, title VIII, § 832, Jan. 2, 2013, 126 Stat. 1844, provided that:

''(a) REVISED GUIDANCE REQUIRED.—Not later than 180 days after the date of the enactment of this Act [Jan. 2, 2013], the Director of the Defense Contract Audit Agency shall revise guidance on access to defense contractor internal audit reports (including the Contract Audit Manual) to incorporate the requirements of this section.

''(b) DOCUMENTATION REQUIREMENTS.—The revised guidance shall ensure that requests for access to defense contractor internal audit reports are appropriately documented. The required documentation shall include, at a minimum, the following:

''(1) Written determination that access to such reports is necessary to complete required evaluations of contractor business systems.

''(2) A copy of any request from the Defense Contract Audit Agency to a contractor for access to such reports.

''(3) A record of response received from the contractor, including the contractor's rationale or justification if access to requested reports was not granted.

''(b) [sic] SAFEGUARDS AND PROTECTIONS.—The revised guidance shall include appropriate safeguards and protections to ensure that contractor internal audit reports cannot be used by the Defense Contract Audit Agency for any purpose other than evaluating and testing the efficacy of contractor internal controls and the reliability of associated contractor business systems.

''(c) RISK-BASED AUDITING.—A determination by the Defense Contract Audit Agency that a contractor has a sound system of internal controls shall provide the basis for increased reliance on contractor business systems or a reduced level of testing with regard to specific audits, as appropriate. Internal audit reports pro-

vided by a contractor pursuant to this section may be considered in determining whether or not a contractor has a sound system of internal controls, but shall not be the sole basis for such a determination.

''(d) COMPTROLLER GENERAL REVIEW.—Not later than one year after the date of the enactment of this Act, the Comptroller General of the United States shall initiate a review of the documentation required by subsection (a). Not later than 90 days after completion of the review, the Comptroller General shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the results of the review, with findings and recommendations for improving the audit processes of the Defense Contract Audit Agency.''

ADDITIONAL ACCESS TO CONTRACTOR AND SUBCONTRACTOR RECORDS IN THE UNITED STATES CENTRAL COMMAND THEATER OF OPERATIONS

Pub. L. 112–81, div. A, title VIII, § 842, Dec. 31, 2011, 125 Stat. 1513, as amended by Pub. L. 113–291, div. A, title VIII, § 842(c)(2), Dec. 19, 2014, 128 Stat. 3456, provided that:

''(a) DEPARTMENT OF DEFENSE CONTRACTS, GRANTS, AND COOPERATIVE AGREEMENTS.—

''(1) IN GENERAL.—Not later than 30 days after the date of the enactment of this Act [Dec. 31, 2011], the Secretary of Defense shall revise the Department of Defense Supplement to the Federal Acquisition Regulation to require that—

''(A) the clause described in paragraph (2) shall be included in each covered contract, grant, and cooperative agreement of the Department of Defense that is awarded on or after the date of the enactment of this Act; and

''(B) to the maximum extent practicable, each covered contract, grant, and cooperative agreement of the Department that is awarded before the date of the enactment of this Act shall be modified to include the clause described in paragraph (2).

''(2) CLAUSE.—The clause described in this paragraph is a clause authorizing the Secretary, upon a written determination pursuant to paragraph (3), to examine any records of the contractor, the recipient of a grant or cooperative agreement, or any subcontractor or subgrantee under such contract, grant, or cooperative agreement to the extent necessary to ensure that funds available under the contract, grant, or cooperative agreement—

''(A) are not subject to extortion or corruption; and

''(B) are not provided directly or indirectly to persons or entities that are actively supporting an insurgency or otherwise actively opposing United States or coalition forces in a contingency operation.

''(3) WRITTEN DETERMINATION.—The authority to examine records pursuant to the contract clause described in paragraph (2) may be exercised only upon a written determination by the contracting officer or comparable official responsible for a grant or cooperative agreement, upon a finding by the Commander of the United States Central Command, that there is reason to believe that funds available under the contract, grant, or cooperative agreement concerned may have been subject to extortion or corruption or may have been provided directly or indirectly to persons or entities that are actively supporting an insurgency or otherwise actively opposing United States or coalition forces in a contingency operation.

''(4) FLOWDOWN.—A clause described in paragraph (2) shall also be required in any subcontract or subgrant under a covered contract, grant, or cooperative agreement if the subcontract or subgrant has an estimated value in excess of $100,000.

''(b) REPORTS.—Not later than March 1 of each of 2013, 2014, and 2015, the Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the use of the authority provided by this section in the preceding calendar year. Each report shall identify, for the calendar year covered by such report, each instance in which the Department of Defense exercised the authority provided under this section to examine records, explain the basis for the action taken, and summarize the results of any examination of records so undertaken,[.] Any report under this subsection may be submitted in classified form.

''(c) DEFINITIONS.—In this section:

''(1) The term 'contingency operation' has the meaning given that term in section 101(a)(13) of title 10, United States Code.

''(2) The term 'covered contract, grant, or cooperative agreement' means a contract, grant, or cooperative agreement with an estimated value in excess of $100,000 that will be performed in the United States Central Command theater of operations in support of a contingency operation.

''(d) SUNSET.—

''(1) IN GENERAL.—The clause described by subsection (a)(2) shall not be required in any contract, grant, or cooperative agreement that is awarded after the date that is three years after the date of the enactment of the Carl Levin and Howard P. 'Buck' McKeon National Defense Authorization Act for Fiscal Year 2015 [Dec. 19, 2014].

''(2) CONTINUING EFFECT OF CLAUSES INCLUDED BEFORE SUNSET.—Any clause described by subsection (a)(2) that is included in a contract, grant, or cooperative agreement pursuant to this section before the date specified in paragraph (1) shall remain in effect in accordance with its terms.''

EXEMPTION OF FUNCTIONS

Functions with respect to purchases authorized to be made outside limits of United States or District of Columbia under Foreign Assistance Act of 1961, as amended, as exempt, see Ex. Ord. No. 11223, May 12, 1965, 30 F.R. 6635, set out as a note under section 2393 of Title 22, Foreign Relations and Intercourse.

FOREIGN CONTRACTORS

Secretaries of Defense, Army, Navy, or Air Force, or their designees, to determine, prior to exercising authority provided in amendment of this section by Pub. L. 89–607 to exempt certain contracts with foreign contractors from requirement of an examination-of-records clause, that all reasonable efforts have been made to include such examination-of-records clause, as required by par. (11) of Part I of Ex. Ord. No. 10789, and that alternate sources of supply are not reasonably available, see par. (11) of Part I of Ex. Ord. No. 10789, Nov. 14, 1958, 23 F.R. 8897, as amended, set out as a note under section 1431 of Title 50, War and National Defense.

§ 2313a. Defense Contract Audit Agency: annual report

(a) REQUIRED REPORT.—The Director of the Defense Contract Audit Agency shall prepare an annual report of the activities of the Agency during the previous fiscal year. The report shall include, at a minimum—

(1) a description of significant problems, abuses, and deficiencies encountered during the conduct of contractor audits;

(2) statistical tables showing—

(A) the total number and dollar value of audit reports completed and pending, set forth separately by type of audit;

(B) the priority given to each type of audit;

(C) the length of time taken for each type of audit, both from the date of receipt of a qualified incurred cost submission and from the date the audit begins;

(D) the sustained questioned costs, set forth separately by type of audit, both as a total value and as a percentage of the total questioned costs for the audit;

(E) the total number and dollar value of incurred cost audits completed, and the method by which such incurred cost audits were completed;

(F) the aggregate cost of performing audits, set forth separately by type of audit;

(G) the ratio of sustained questioned costs to the aggregate costs of performing audits, set forth separately by type of audit; and

(H) the total number and dollar value of audits that are pending for a period longer than one year as of the end of the fiscal year covered by the report, and the fiscal year in which the qualified submission was received, set forth separately by type of audit;

(3) a summary of any recommendations of actions or resources needed to improve the audit process;

(4) a summary, set forth separately by dollar amount and percentage, of indirect costs for independent research and development incurred by contractors in the previous fiscal year;

(5) a summary, set forth separately by dollar amount and percentage, of indirect costs for bid and proposal costs incurred by contractors in the previous fiscal year;

(6) a description of outreach actions toward industry to promote more effective use of audit resources; and

(7) any other matters the Director considers appropriate.

(b) SUBMISSION OF ANNUAL REPORT.—Not later than March 30 of each year, the Director shall submit to the congressional defense committees the report required by subsection (a).

(c) PUBLIC AVAILABILITY.—Not later than 60 days after the submission of an annual report to the congressional defense committees under subsection (b), the Director shall make the report available on the publicly available website of the Agency or such other publicly available website as the Director considers appropriate.

(d) DEFINITIONS.—

(1) The terms ''incurred cost audit'' and ''qualified incurred cost submission'' have the meaning given those terms in section 2313b of this title.

(2) The term ''sustained questioned costs'' means questioned costs that were recovered by the Federal Government as a result of contract negotiations related to such questioned costs.

(Added Pub. L. 112–81, div. A, title VIII, § 805(a), Dec. 31, 2011, 125 Stat. 1486; amended Pub. L. 114–92, div. A, title VIII, § 893(b), Nov. 25, 2015, 129 Stat. 952; Pub. L. 114–328, div. A, title VIII, § 824(d)(1), Dec. 23, 2016, 130 Stat. 2279; Pub. L. 115–91, div. A, title VIII, § 811(d)(1), title X, § 1081(d)(5), Dec. 12, 2017, 131 Stat. 1460, 1600.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1835(c), Jan. 1, 2021, 134 Stat. 4151, 4240, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 279 of this title, as added by section 1835(a) of Pub. L. 116–283, inserted after section 3845, and redesignated as section 3847 of this title. See Effective Date of 2021 Amendment note below.

AMENDMENTS

2017—Subsec. (a)(2)(A). Pub. L. 115–91, § 811(d)(1)(A)(i), inserted ''and dollar value'' after ''number'' and '', set forth separately by type of audit'' after ''pending''.

Subsec. (a)(2)(C). Pub. L. 115–91, § 811(d)(1)(A)(ii), inserted '', both from the date of receipt of a qualified incurred cost submission and from the date the audit begins'' after ''audit''.

Subsec. (a)(2)(D). Pub. L. 115–91, § 811(d)(1)(A)(iii), amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: ''the total costs of sustained or recovered costs both as a total number and as a percentage of questioned costs; and''.

Subsec. (a)(2)(E) to (H). Pub. L. 115–91, § 811(d)(1)(A)(iv), (v), added subpars. (E) to (H) and struck out former subpar. (E) which read as follows: ''an assessment of the number and types of audits pending for a period longer than allowed pursuant to guidance of the Defense Contract Audit Agency;''.

Subsec. (a)(4), (5). Pub. L. 115–91, § 1081(d)(5), amended Pub. L. 114–328, § 824(d)(1)(B). See 2016 Amendment note below.

Subsec. (d). Pub. L. 115–91, § 811(d)(1)(B), added subsec. (d).

2016—Subsec. (a)(4), (5). Pub. L. 114–328, § 824(d)(1)(B), as amended by Pub. L. 115–91, § 1081(d)(5), added pars. (4) and (5). Former pars. (4) and (5) redesignated (6) and (7), respectively.

Subsec. (a)(6), (7). Pub. L. 114–328, § 824(d)(1)(A), redesignated pars. (4) and (5) as (6) and (7), respectively.

2015—Subsec. (a)(2)(D). Pub. L. 114–92, § 893(b)(1), amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: ''the total dollar value of questioned costs (including a separate category for the dollar value of unsupported costs); and''.

Subsec. (a)(4), (5). Pub. L. 114–92, § 893(b)(2)–(4), added par. (4) and redesignated former par. (4) as (5).

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 2017 AMENDMENT

Pub. L. 115–91, div. A, title X, § 1081(d), Dec. 12, 2017, 131 Stat. 1599, provided that the amendment made by section 1081(d)(5) is effective as of Dec. 23, 2016, and as if included in Pub. L. 114–328 as enacted.

EFFECTIVE DATE OF 2016 AMENDMENT

Pub. L. 114–328, div. A, title VIII, § 824(d)(2), Dec. 23, 2016, 130 Stat. 2279, provided that: ''The amendments made by this subsection [amending this section] shall take effect on October 1, 2018.''

§ 2313b. Performance of incurred cost audits

(a) COMPLIANCE WITH STANDARDS OF RISK AND MATERIALITY.—Not later than October 1, 2020, the Secretary of Defense shall comply with commercially accepted standards of risk and materiality in the performance of each incurred cost audit of costs associated with a contract of the Department of Defense.

(b) CONDITIONS FOR THE USE OF QUALIFIED AUDITORS TO PERFORM INCURRED COST AUDITS.—(1) To support the need of the Department of Defense for timely and effective incurred cost au-

dits, and to ensure that the Defense Contract Audit Agency is able to allocate resources to higher-risk and more complex audits, the Secretary of Defense shall use qualified private auditors to perform a sufficient number of incurred cost audits of contracts of the Department of Defense to—

(A) eliminate, by October 1, 2020, any backlog of incurred cost audits of the Defense Contract Audit Agency;

(B) ensure that incurred cost audits are completed not later than one year after the date of receipt of a qualified incurred cost submission;

(C) maintain an appropriate mix of Government and private sector capacity to meet the current and future needs of the Department of Defense for the performance of incurred cost audits;

(D) ensure that qualified private auditors perform incurred cost audits on an ongoing basis to improve the efficiency and effectiveness of the performance of incurred cost audits; and

(E) limit multiyear auditing to ensure that multiyear auditing is conducted only—

(i) to address outstanding incurred cost audits for which a qualified incurred cost submission was submitted to the Defense Contract Audit Agency more than 12 months before the date of the enactment of this section; or

(ii) when the contractor being audited submits a written request, including a justification for the use of multiyear auditing, to the Under Secretary of Defense (Comptroller).

(2) The Secretary of Defense shall consult with Federal agencies that have awarded contracts or task orders to qualified private auditors to ensure that the Department of Defense is using, as appropriate, best practices relating to contracting with qualified private auditors.

(3) The Secretary of Defense shall ensure that a qualified private auditor performing an incurred cost audit under this section—

(A) has no conflict of interest in performing such an audit, as defined by generally accepted government auditing standards;

(B) possesses the necessary independence to perform such an audit, as defined by generally accepted government auditing standards;

(C) signs a nondisclosure agreement, as appropriate, to protect proprietary or nonpublic data;

(D) accesses and uses proprietary or nonpublic data furnished to the qualified private auditor only for the purposes stated in the contract;

(E) takes all reasonable steps to protect proprietary and nonpublic data furnished during the audit; and

(F) does not use proprietary or nonpublic data provided to the qualified private auditor under the authority of this section to compete for Government or nongovernment contracts.

(c) PROCEDURES FOR THE USE OF QUALIFIED PRIVATE AUDITORS.—(1) Not later than October 1, 2018, the Secretary of Defense shall submit to the congressional defense committees a plan to implement the requirements of subsection (b). Such plan shall include, at a minimum—

(A) a description of the incurred cost audits that the Secretary determines are appropriate to be conducted by qualified private auditors, including the approximate number and dollar value of such incurred cost audits;

(B) an estimate of the number and dollar value of incurred cost audits to be conducted by qualified private auditors for each of the fiscal years 2019 through 2025 necessary to meet the requirements of subsection (b); and

(C) all other elements of an acquisition plan as required by the Federal Acquisition Regulation.

(2) Not later than April 1, 2019, the Secretary of Defense or a Federal department or agency authorized by the Secretary shall award a contract or issue a task order under an existing contract to two or more qualified private auditors to perform incurred cost audits of costs associated with contracts of the Department of Defense. The Defense Contract Management Agency or a contract administration office of a military department shall use a contract or a task order awarded or issued pursuant to this paragraph for the performance of an incurred cost audit, if doing so will assist the Secretary in meeting the requirements in subsection (b).

(3) To improve the quality of incurred cost audits and reduce duplication of performance of such audits, the Secretary of Defense may provide a qualified private auditor with information on past or ongoing audit results or other relevant information on the entities the qualified private auditor is auditing.

(4) The Secretary of Defense shall consider the results of an incurred cost audit performed under this section without regard to whether the Defense Contract Audit Agency or a qualified private auditor performed the audit.

(5) The contracting officer for a contract that is the subject of an incurred cost audit shall have the sole discretion to determine what action should be taken based on an audit finding on direct costs of the contract.

(d) QUALIFIED PRIVATE AUDITOR REQUIREMENTS.—(1) A qualified private auditor awarded a contract or issued a task order under subsection (c)(2) shall conduct an incurred cost audit in accordance with the generally accepted government auditing standards.

(2) A qualified private auditor awarded a contract or issued a task order under subsection (c)(2) shall develop and maintain complete and accurate working papers on each incurred cost audit. All working papers and reports on the incurred cost audit prepared by such qualified private auditor shall be the property of the Department of Defense, except that the qualified private auditor may retain a complete copy of all working papers to support such reports made pursuant to this section.

(3) A breach of contract by a qualified private auditor with respect to use of proprietary or nonpublic data may subject the qualified private auditor to—

(A) criminal, civil, administrative, and contractual actions for penalties, damages, and other appropriate remedies by the United States; and

(B) civil actions for damages and other appropriate remedies by the contractor or sub-

contractor whose data are affected by the breach.

(e) PEER REVIEW.—(1) Effective October 1, 2022, the Defense Contract Audit Agency may issue unqualified audit findings for an incurred cost audit only if the Defense Contract Audit Agency is peer reviewed by a commercial auditor and passes such peer review. Such peer review shall be conducted in accordance with the peer review requirements of generally accepted government auditing standards, including the requirements related to frequency of peer reviews, and shall be deemed to meet the requirements of the Defense Contract Audit Agency for a peer review under such standards.

(2) Not later than October 1, 2019, the Secretary of Defense shall provide to the Committees on Armed Services of the Senate and the House of Representatives an update on the process of securing a commercial auditor to perform the peer review referred to in paragraph (1).

(f) NUMERIC MATERIALITY STANDARDS FOR INCURRED COST AUDITS.—(1) Not later than October 1, 2020, the Department of Defense shall implement numeric materiality standards for incurred cost audits to be used by auditors that are consistent with commercially accepted standards of risk and materiality.

(2) Not later than October 1, 2019, the Secretary of Defense shall submit to the congressional defense committees a report containing proposed numeric materiality standards required under paragraph (1). In developing such standards, the Secretary shall consult with commercial auditors that conduct incurred cost audits, the advisory panel authorized under section 809 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114–92; 129 Stat. 889), and other governmental and nongovernmental entities with relevant expertise.

(g) TIMELINESS OF INCURRED COST AUDITS.—(1) The Secretary of Defense shall ensure that all incurred cost audits performed by qualified private auditors or the Defense Contract Audit Agency are performed in a timely manner.

(2) The Secretary of Defense shall notify a contractor of the Department of Defense within 60 days after receipt of an incurred cost submission from the contractor whether the submission is a qualified incurred cost submission.

(3) With respect to qualified incurred cost submissions received on or after the date of the enactment of this section, audit findings shall be issued for an incurred cost audit not later than one year after the date of receipt of such qualified incurred cost submission.

(4) Not later than October 1, 2020, and subject to paragraph (5), if audit findings are not issued within one year after the date of receipt of a qualified incurred cost submission, the audit shall be considered to be complete and no additional audit work shall be conducted.

(5) The Under Secretary of Defense (Comptroller) may waive the requirements of paragraph (4) on a case-by-case basis if the Director of the Defense Contract Audit Agency submits a written request. The Director of the Defense Contract Audit Agency shall include in the report required under section 2313a of this title the total number of waivers issued and the reasons for issuing each such waiver.

(h) REVIEW OF AUDIT PERFORMANCE.—Not later than April 1, 2025, the Comptroller General of the United States shall submit to the congressional defense committees a report that evaluates for the period beginning on October 1, 2019, and ending on August 31, 2023—

(1) the timeliness, individual cost, and quality of incurred cost audits, set forth separately by incurred cost audits performed by the Defense Contract Audit Agency and by qualified private auditors;

(2) the cost to contractors of the Department of Defense for incurred cost audits, set forth separately by incurred cost audits performed by the Defense Contract Audit Agency and by qualified private auditors;

(3) the effect, if any, on other types of audits conducted by the Defense Contract Audit Agency that results from incurred cost audits conducted by qualified private auditors; and

(4) the capability and capacity of qualified private auditors to conduct incurred cost audits for the Department of Defense.

(i) DEFINITIONS.—In this section:

(1) The term ''commercial auditor'' means a private entity engaged in the business of performing audits.

(2) The term ''incurred cost audit'' means an audit of charges to the Government by a contractor under a flexibly priced contract.

(3) The term ''flexibly priced contract'' has the meaning given the term ''flexibly-priced contracts and subcontracts'' in part 30 of the Federal Acquisition Regulation (section 30.001 of title 48, Code of Federal Regulations).

(4) The term ''generally accepted government auditing standards'' means the generally accepted government auditing standards of the Comptroller General of the United States.

(5) The term ''numeric materiality standard'' means a dollar amount of misstatements, including omissions, contained in an incurred cost audit that would be material if the misstatements, individually or in the aggregate, could reasonably be expected to influence the economic decisions of the Government made on the basis of the incurred cost audit.

(6) The term ''qualified incurred cost submission'' means a submission by a contractor of costs incurred under a flexibly priced contract that has been qualified by the Department of Defense as sufficient to conduct an incurred cost audit.

(7) The term ''qualified private auditor'' means a commercial auditor—

(A) that performs audits in accordance with generally accepted government auditing standards; and

(B) that has received a passing peer review rating, as defined by generally accepted government auditing standards.

(Added Pub. L. 115–91, div. A, title VIII, § 803(a), Dec. 12, 2017, 131 Stat. 1451; amended Pub. L. 115–232, div. A, title X, § 1081(a)(19), Aug. 13, 2018, 132 Stat. 1984; Pub. L. 116–92, div. A, title XVII, § 1731(a)(41), Dec. 20, 2019, 133 Stat. 1814.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1835(c), Jan. 1, 2021, 134 Stat. 4151, 4240, pro-

vided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 279 of this title, as added by section 1835(a) of Pub. L. 116–283, inserted after section 3841, and redesignated as section 3842 of this title. See Effective Date of 2021 Amendment note below.

REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsecs. (b)(1)(E)(i) and (g)(3), is the date of enactment of Pub. L. 115–91, which was approved Dec. 12, 2017.

Section 809 of the National Defense Authorization Act for Fiscal Year 2016, referred to in subsec. (f)(2), is section 809 of Pub. L. 114–92, div. A, title VIII, Nov. 25, 2015, 129 Stat. 889, which relates to the establishment of an advisory panel on streamlining acquisition regulations and is not classified to the Code.

AMENDMENTS

2019—Subsec. (d)(1), (2). Pub. L. 116–92 substituted ''a task order'' for ''an task order''.

2018—Subsec. (b)(1)(E). Pub. L. 115–232 redesignated cls. (A) and (B) as (i) and (ii), respectively.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 2314. Laws inapplicable to agencies named in section 2303 of this title

Sections 6101 and 6304 of title 41 do not apply to the procurement or sale of property or services by the agencies named in section 2303 of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 133; Pub. L. 96–513, title V, § 511(78), Dec. 12, 1980, 94 Stat. 2927; Pub. L. 103–160, div. A, title VIII, § 822(b)(2), Nov. 30, 1993, 107 Stat. 1706; Pub. L. 111–350, § 5(b)(16), Jan. 4, 2011, 124 Stat. 3843; Pub. L. 113–291, div. A, title X, § 1071(a)(4), Dec. 19, 2014, 128 Stat. 3504; Pub. L. 116–283, div. A, title XVIII, § 1807(e)(2), Jan. 1, 2021, 134 Stat. 4158.)

AMENDMENT OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1807(e)(2), Jan. 1, 2021, 134 Stat. 4151, 4158, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is amended by transferring text of section to section 3068(a) of this title. See 2021 Amendment note below.

REPEAL OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1807(e)(4), Jan. 1, 2021, 134 Stat. 4151, 4159, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is repealed.

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
2314 ………	41:160.	Feb. 19, 1948, ch. 65, § 11(b), 62 Stat. 25.

AMENDMENTS

2021—Pub. L. 116–283, § 1807(e)(2), transferred text of section to section 3068(a) of this title.

2014—Pub. L. 113–291 substituted ''Sections 6101'' for ''Sections 6101(b)–(d)''.

2011—Pub. L. 111–350 substituted ''Sections 6101(b)–(d) and 6304 of title 41'' for ''Sections 3709 and 3735 of the Revised Statutes (41 U.S.C. 5 and 13)''.

1993—Pub. L. 103–160 inserted ''or sale'' after ''procurement''.

1980—Pub. L. 96–513 substituted ''Sections 3709 and 3735 of the Revised Statutes (41 U.S.C. 5 and 13)'' for ''Sections 5, 6, 6a, and 13 of title 41''.

EFFECTIVE DATE OF REPEAL

Repeal effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

§ 2315. Law inapplicable to the procurement of automatic data processing equipment and services for certain defense purposes

For purposes of subtitle III of title 40, the term ''national security system'', with respect to a telecommunications and information system operated by the Department of Defense, has the meaning given that term by section 3552(b)(6) of title 44.

(Added Pub. L. 97–86, title IX, § 908(a)(1), Dec. 1, 1981, 95 Stat. 1117; amended Pub. L. 97–295, § 1(25), Oct. 12, 1982, 96 Stat. 1291; Pub. L. 104–106, div. E, title LVI, § 5601(c), Feb. 10, 1996, 110 Stat. 699; Pub. L. 104–201, div. A, title X, § 1074(b)(4)(B), Sept. 23, 1996, 110 Stat. 2660; Pub. L. 105–85, div. A, title X, § 1073(a)(49), Nov. 18, 1997, 111 Stat. 1903; Pub. L. 107–217, § 3(b)(5), Aug. 21, 2002, 116 Stat. 1295; Pub. L. 109–364, div. A, title IX, § 906(c), Oct. 17, 2006, 120 Stat. 2354; Pub. L. 113–283, § 2(e)(5)(C), Dec. 18, 2014, 128 Stat. 3087; Pub. L. 114–92, div. A, title X, § 1081(a)(7), Nov. 25, 2015, 129 Stat. 1001; Pub. L. 116–283, div. A, title XVIII, § 1807(e)(3), Jan. 1, 2021, 134 Stat. 4159.)

AMENDMENT OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1807(e)(3), Jan. 1, 2021, 134 Stat. 4151, 4159, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is amended by transferring text of section to section 3068(b) of this title. See 2021 Amendment note below.

REPEAL OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1807(e)(4), Jan. 1, 2021, 134 Stat. 4151, 4159, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is repealed.

AMENDMENTS

2021—Pub. L. 116–283, § 1807(e)(3), transferred text of section to section 3068(b) of this title.

2015—Pub. L. 114–92 substituted ''section 3552(b)(6)'' for ''section 3552(b)(5)''.

2014—Pub. L. 113–283 substituted ''section 3552(b)(5)'' for ''section 3542(b)(2)''.

2006—Pub. L. 109–364 amended text generally. Prior to amendment, section consisted of subsecs. (a) and (b) defining ''national security systems'' as meaning telecommunications and information systems operated by the Department of Defense, the functions, operation or use of which involves intelligence or cryptologic activities, command and control of military forces, or equipment that is an integral part of a weapons system or is critical to military or intelligence missions but is not equipment or services to be used for routine administrative and business applications.

2002—Subsec. (a). Pub. L. 107–217 substituted ''subtitle III of title 40'' for ''division E of the Clinger-Cohen Act of 1996 (40 U.S.C. 1401 et seq.)'' in introductory provisions.

1997—Subsec. (a). Pub. L. 105–85 substituted ''division E of the Clinger-Cohen Act of 1996 (40 U.S.C. 1401 et seq.)'' for ''the Information Technology Management Reform Act of 1996''.

1996—Subsec. (a). Pub. L. 104–106, as amended by Pub. L. 104–201, substituted ''For the purposes of the Information Technology Management Reform Act of 1996, the term 'national security systems' means those telecommunications and information systems operated by the Department of Defense, the functions, operation or use of which'' for ''Section 111 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759) is not applicable to the procurement by the Department of Defense of automatic data processing equipment or services if the function, operation, or use of the equipment or services''.

1982—Subsec. (a). Pub. L. 97–295 substituted ''(40 U.S.C. 759)'' for ''(40 U.S.C. 795)''.

EFFECTIVE DATE OF REPEAL

Repeal effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–106 effective 180 days after Feb. 10, 1996, see section 5701 of Pub. L. 104–106, Feb. 10, 1996, 110 Stat. 702.

EFFECTIVE DATE

Pub. L. 97–86, title IX, § 908(b), Dec. 1, 1981, 95 Stat. 1118, provided that: ''Section 2315 of title 10, United States Code, as added by subsection (a), does not apply to a contract made before the date of the enactment of this Act [Dec. 1, 1981].''

LIMITATION REGARDING TELECOMMUNICATIONS REQUIREMENTS

Pub. L. 103–337, div. A, title X, § 1075, Oct. 5, 1994, 108 Stat. 2861, which set out conditions for availability of funds to be expended to provide for meeting Department of Defense telecommunications requirements through the telecommunications procurement known as ''FTS–2000'' or through any other Government-wide telecommunications procurement, was repealed by Pub. L. 115–232, div. A, title VIII, § 812(b)(19), Aug. 13, 2018, 132 Stat. 1848.

§ 2316. Disclosure of identity of contractor

The Secretary of Defense may disclose the identity or location of a person awarded a contract by the Department of Defense to any individual, including a Member of Congress, only after the Secretary makes a public announcement identifying the contractor. When the identity of a contractor is to be made public, the Secretary shall announce publicly that the contract has been awarded and the identity of the contractor.

(Added Pub. L. 97–295, § 1(26)(A), Oct. 12, 1982, 96 Stat. 1291.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1818(b), Jan. 1, 2021, 134 Stat. 4151, 4188, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 243 of this title, as added by section 1818(a) of Pub. L. 116–283, inserted after the table of sections, and redesignated as section 3344 of this title. See Effective Date of 2021 Amendment note below.

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2316	10:2304 (note).	Oct. 7, 1970, Pub. L. 91–441, § 507, 84 Stat. 913.

The words ''company, or corporation'' are omitted as included in ''person'' because of section 1:1. The words ''On and after the date of enactment of this Act'' are omitted as executed. The word ''contractor'' is substituted for ''person, company, or corporation to whom such contract has been awarded'' and ''person, company, or corporation to whom any defense contract has been awarded'' to eliminate unnecessary words. The words ''and the identity of the contractor'' are substituted for ''and to whom it was awarded'' for clarity.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

[§ 2317. Repealed. Pub. L. 103–160, div. A, title VIII, § 821(a)(2), Nov. 30, 1993, 107 Stat. 1704]

Section, added Pub. L. 98–525, title XII, § 1215, Oct. 19, 1984, 98 Stat. 2592, related to encouragement of competition and cost savings.

§ 2318. Advocates for competition

Each advocate for competition designated pursuant to section 1705(a) of title 41 for an agency named in section 2303(a) of this title shall be a general or flag officer if a member of the armed forces or in a position classified above GS–15 pursuant to section 5108 of title 5, if a civilian employee and shall be designated to serve for a minimum of two years.

(Added Pub. L. 98–525, title XII, § 1216(a), Oct. 19, 1984, 98 Stat. 2593; amended Pub. L. 100–26, § 7(d)(4), Apr. 21, 1987, 101 Stat. 281; Pub. L. 102–25, title VII, § 701(f)(1), Apr. 6, 1991, 105 Stat. 115; Pub. L. 103–355, title I, § 1031, Oct. 13, 1994, 108 Stat. 3260; Pub. L. 111–350, § 5(b)(17), Jan. 4,

2011, 124 Stat. 3843; Pub. L. 112–239, div. A, title X, § 1076(f)(24), Jan. 2, 2013, 126 Stat. 1953; Pub. L. 115–232, div. A, title VIII, § 811(d), Aug. 13, 2018, 132 Stat. 1845.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1813(f), Jan. 1, 2021, 134 Stat. 4151, 4181, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 223 of this title, as added by section 1813 of Pub. L. 116–283, inserted after section 3247, and redesignated as section 3249 of this title. See Effective Date of 2021 Amendment note below.

AMENDMENTS

2018—Pub. L. 115–232 substituted ''Each advocate for competition designated pursuant to section 1705(a) of title 41 for'' for ''(b) Each advocate for competition of'' and ''in a position classified above GS–15 pursuant to section 5108 of title 5'' for ''a grade GS–16 or above under the General Schedule (or in a comparable or higher position under another schedule)'' and struck out subsec. (a) which related to designation of an officer or employee of the Defense Logistics Agency to serve as the advocate for competition of the agency.

2013—Subsec. (a)(2). Pub. L. 112–239 substituted ''subsections (b) and (c) of section 1705'' for ''section 1705(b) and (c)''.

2011—Subsec. (a)(1). Pub. L. 111–350, § 5(b)(17)(A), substituted ''section 1705(a) of title 41'' for ''section 20(a) of the Office of Federal Procurement Policy Act (41 U.S.C. 418(a))''.

Subsec. (a)(2). Pub. L. 111–350, § 5(b)(17)(B), substituted ''section 1705(b) and (c) of title 41'' for ''sections 20(b) and 20(c) of the Office of Federal Procurement Policy Act (41 U.S.C. 418(b), (c))''.

1994—Subsec. (c). Pub. L. 103–355 struck out subsec. (c) which read as follows: ''Each advocate for competition of an agency of the Department of Defense shall transmit to the Secretary of Defense a report describing his activities during the preceding year. The report of each advocate for competition shall be included in the annual report of the Secretary of Defense required by section 23 of the Office of Federal Procurement Policy Act (41 U.S.C. 419), in the form in which it was submitted to the Secretary.''

1991—Subsec. (c). Pub. L. 102–25 substituted ''section 23'' for ''section 21''.

1987—Subsec. (a)(1). Pub. L. 100–26, § 7(d)(4)(A), inserted ''(41 U.S.C. 418(a))'' after ''Policy Act''.

Subsec. (a)(2). Pub. L. 100–26, § 7(d)(4)(B), inserted ''(41 U.S.C. 418(b), (c))'' after ''Policy Act''.

Subsec. (c). Pub. L. 100–26, § 7(d)(4)(C), inserted ''(41 U.S.C. 419)'' after ''Policy Act''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE

Pub. L. 98–525, title XII, § 1216(c)(1), Oct. 19, 1984, 98 Stat. 2599, provided that: ''Section 2318 of title 10, United States Code (as added by subsection (a)), shall take effect on April 1, 1985.''

§ 2319. Encouragement of new competitors

(a) In this section, the term ''qualification requirement'' means a requirement for testing or other quality assurance demonstration that must be completed by an offeror before award of a contract.

(b) Except as provided in subsection (c), the head of the agency shall, before establishing a qualification requirement—

(1) prepare a written justification stating the necessity for establishing the qualification requirement and specify why the qualification requirement must be demonstrated before contract award;

(2) specify in writing and make available to a potential offeror upon request all requirements which a prospective offeror, or its product, must satisfy in order to become qualified, such requirements to be limited to those least restrictive to meet the purposes necessitating the establishment of the qualification requirement;

(3) specify an estimate of the costs of testing and evaluation likely to be incurred by a potential offeror in order to become qualified;

(4) ensure that a potential offeror is provided, upon request and on a reimbursable basis, a prompt opportunity to demonstrate its ability to meet the standards specified for qualification using qualified personnel and facilities of the agency concerned or of another agency obtained through interagency agreement, or under contract, or other methods approved by the agency (including use of approved testing and evaluation services not provided under contract to the agency);

(5) if testing and evaluation services are provided under contract to the agency for the purposes of clause (4), provide to the extent possible that such services be provided by a contractor who is not expected to benefit from an absence of additional qualified sources and who shall be required in such contract to adhere to any restriction on technical data asserted by the potential offeror seeking qualification; and

(6) ensure that a potential offeror seeking qualification is promptly informed as to whether qualification is attained and, in the event qualification is not attained, is promptly furnished specific information why qualification was not attained.

(c)(1) Subsection (b) of this section does not apply with respect to a qualification requirement established by statute or administrative action before October 19, 1984, unless such requirement is a qualified products list.

(2)(A) Except as provided in subparagraph (B), if it is unreasonable to specify the standards for qualification which a prospective offeror or its product must satisfy, a determination to that effect shall be submitted to the advocate for competition of the procuring activity responsible for the purchase of the item subject to the qualification requirement. After considering any comments of the advocate for competition reviewing such determination, the head of the purchasing office may waive the requirements of clauses (2) through (6) of subsection (b) for up to two years with respect to the item subject to the qualification requirement.

(B) The waiver authority provided in this paragraph does not apply with respect to a qualified products list.

(3) A potential offeror may not be denied the opportunity to submit and have considered an offer for a contract solely because the potential

offeror (A) is not on a qualified bidders list, qualified manufacturers list, or qualified products list, or (B) has not been identified as meeting a qualification requirement established after October 19, 1984, if the potential offeror can demonstrate to the satisfaction of the contracting officer (or, in the case of a contract for the procurement of an aviation critical safety item or ship critical safety item, the head of the design control activity for such item) that the potential offeror or its product meets the standards established for qualification or can meet such standards before the date specified for award of the contract.

(4) Nothing contained in this subsection requires the referral of an offer to the Small Business Administration pursuant to section 8(b)(7) of the Small Business Act (15 U.S.C. 637(b)(7)) if the basis for the referral is a challenge by the offeror to either the validity of the qualification requirement or the offeror's compliance with such requirement.

(5) The head of an agency need not delay a proposed procurement in order to comply with subsection (b) or in order to provide a potential offeror with an opportunity to demonstrate its ability to meet the standards specified for qualification.

(6) The requirements of subsection (b) also apply before enforcement of any qualified products list, qualified manufacturers list, or qualified bidders list.

(d)(1) If the number of qualified sources or qualified products available to compete actively for an anticipated future requirement is fewer than two actual manufacturers or the products of two actual manufacturers, respectively, the head of the agency concerned shall—

(A) periodically publish notice in the Commerce Business Daily soliciting additional sources or products to seek qualification, unless the contracting officer determines that such publication would compromise national security; and

(B) bear the cost of conducting the specified testing and evaluation (excluding the costs associated with producing the item or establishing the production, quality control, or other system to be tested and evaluated) for a small business concern or a product manufactured by a small business concern which has met the standards specified for qualification and which could reasonably be expected to compete for a contract for that requirement, but such costs may be borne only if the head of the agency determines that such additional qualified sources or products are likely to result in cost savings from increased competition for future requirements sufficient to amortize the costs incurred by the agency within a reasonable period of time considering the duration and dollar value of anticipated future requirements.

(2) The head of an agency shall require a prospective contractor requesting the United States to bear testing and evaluation costs under paragraph (1)(B) to certify as to its status as a small business concern under section 3 of the Small Business Act (15 U.S.C. 632).

(e) Within seven years after the establishment of a qualification requirement under subsection (b) or within seven years following an agency's enforcement of a qualified products list, qualified manufacturers list, or qualified bidders list, any such qualification requirement shall be examined and revalidated in accordance with the requirements of subsection (b). The preceding sentence does not apply in the case of a qualification requirement for which a waiver is in effect under subsection (c)(2).

(f) Except in an emergency as determined by the head of the agency, whenever the head of the agency determines not to enforce a qualification requirement for a solicitation, the agency may not thereafter enforce that qualification requirement unless the agency complies with the requirements of subsection (b).

(g) DEFINITIONS.—In this section:

(1) The term ''aviation critical safety item'' means a part, an assembly, installation equipment, launch equipment, recovery equipment, or support equipment for an aircraft or aviation weapon system if the part, assembly, or equipment contains a characteristic any failure, malfunction, or absence of which could cause a catastrophic or critical failure resulting in the loss of or serious damage to the aircraft or weapon system, an unacceptable risk of personal injury or loss of life, or an uncommanded engine shutdown that jeopardizes safety.

(2) The term ''ship critical safety item'' means any ship part, assembly, or support equipment containing a characteristic the failure, malfunction, or absence of which could cause a catastrophic or critical failure resulting in loss of or serious damage to the ship or unacceptable risk of personal injury or loss of life.

(3) The term ''design control activity'', with respect to an aviation critical safety item or ship critical safety item, means the systems command of a military department that is specifically responsible for ensuring the airworthiness of an aviation system or equipment, or the seaworthiness of a ship or ship equipment, in which such item is to be used.

(Added Pub. L. 98–525, title XII, § 1216(a), Oct. 19, 1984, 98 Stat. 2593; amended Pub. L. 100–26, § 7(d)(5), (i)(4), (k)(3), Apr. 21, 1987, 101 Stat. 281, 282, 284; Pub. L. 108–136, div. A, title VIII, § 802(d), Nov. 24, 2003, 117 Stat. 1541; Pub. L. 109–364, div. A, title I, § 130(d), Oct. 17, 2006, 120 Stat. 2110.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1813(d), Jan. 1, 2021, 134 Stat. 4151, 4179, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 223 of this title, inserted after section 3242, and redesignated as section 3243 of this title. See Effective Date of 2021 Amendment note below.

AMENDMENTS

2006—Subsec. (c)(3). Pub. L. 109–364, § 130(d)(1), inserted ''or ship critical safety item'' after ''aviation critical safety item''.

Subsec. (g)(2), (3). Pub. L. 109–364, § 130(d)(2), added par. (2), redesignated former par. (2) as (3), inserted ''or ship critical safety item'' after ''aviation critical safe-

ty item'' and '', or the seaworthiness of a ship or ship equipment,'' after ''or equipment'', and substituted ''such item'' for ''the item''.

2003—Subsec. (c)(3). Pub. L. 108–136, § 802(d)(1), inserted ''(or, in the case of a contract for the procurement of an aviation critical safety item, the head of the design control activity for such item)'' after ''the contracting officer''.

Subsec. (g). Pub. L. 108–136, § 802(d)(2), added subsec. (g).

1987—Subsec. (a). Pub. L. 100–26, § 7(k)(3), inserted ''the term'' after ''In this section,''.

Subsec. (c)(1), (3). Pub. L. 100–26, § 7(i)(4), substituted ''October 19, 1984,'' for ''the date of the enactment of the Defense Procurement Reform Act of 1984''.

Subsec. (c)(4). Pub. L. 100–26, § 7(d)(5)(A), inserted ''(15 U.S.C. 637(b)(7))'' after ''Small Business Act''.

Subsec. (d)(2). Pub. L. 100–26, § 7(d)(5)(B), inserted ''(15 U.S.C. 632)'' after ''Small Business Act''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE

Pub. L. 98–525, title XII, § 1216(c)(2), Oct. 19, 1984, 98 Stat. 2599, provided that: ''Sections 2319, 2320, and 2321 of title 10, United States Code (as added by subsection (a)), shall apply with respect to solicitations issued after the end of the one-year period beginning on the date of the enactment of this Act [Oct. 19, 1984].''

§ 2320. Rights in technical data

(a)(1) The Secretary of Defense shall prescribe regulations to define the legitimate interest of the United States and of a contractor or subcontractor in technical data pertaining to an item or process. Such regulations shall be included in regulations of the Department of Defense prescribed as part of the Federal Acquisition Regulation. Such regulations may not impair any right of the United States or of any contractor or subcontractor with respect to patents or copyrights or any other right in technical data otherwise established by law. Such regulations also may not impair the right of a contractor or subcontractor to receive from a third party a fee or royalty for the use of technical data pertaining to an item or process developed exclusively at private expense by the contractor or subcontractor, except as otherwise specifically provided by law.

(2) Such regulations shall include the following provisions:

(A) DEVELOPMENT EXCLUSIVELY WITH FEDERAL FUNDS.—In the case of an item or process that is developed by a contractor or subcontractor exclusively with Federal funds (other than an item or process developed under a contract or subcontract to which regulations under section 9(j)(2) of the Small Business Act (15 U.S.C. 638(j)(2)) apply), the United States shall have the unlimited right to—

(i) use technical data pertaining to the item or process; or

(ii) release or disclose the technical data to persons outside the government or permit the use of the technical data by such persons.

(B) DEVELOPMENT EXCLUSIVELY AT PRIVATE EXPENSE.—Except as provided in subparagraphs (C), (D), and (G), in the case of an item or process that is developed by a contractor or subcontractor exclusively at private expense, the contractor or subcontractor may restrict the right of the United States to release or disclose technical data pertaining to the item or process to persons outside the government or permit the use of the technical data by such persons.

(C) EXCEPTION TO SUBPARAGRAPH (B).—Subparagraph (B) does not apply to technical data that—

(i) constitutes a correction or change to data furnished by the United States;

(ii) relates to form, fit, or function;

(iii) is necessary for operation, maintenance, installation, or training (other than detailed manufacturing or process data, including such data pertaining to a major system component); or

(iv) is otherwise publicly available or has been released or disclosed by the contractor or subcontractor without restriction on further release or disclosure.

(D) EXCEPTION TO SUBPARAGRAPH (B).—Notwithstanding subparagraph (B), the United States may release or disclose technical data to persons outside the Government, or permit the use of technical data by such persons, if—

(i) such release, disclosure, or use—

(I) is necessary for emergency repair and overhaul;

(II) is a release, disclosure, or use of technical data pertaining to an interface between an item or process and other items or processes necessary for the segregation of an item or process from, or the reintegration of that item or process (or a physically or functionally equivalent item or process) with, other items or processes; or

(III) is a release or disclosure of technical data (other than detailed manufacturing or process data) to, or use of such data by, a foreign government that is in the interest of the United States and is required for evaluational or informational purposes;

(ii) such release, disclosure, or use is made subject to a prohibition that the person to whom the data is released or disclosed may not further release, disclose, or use such data; and

(iii) the contractor or subcontractor asserting the restriction is notified of such release, disclosure, or use.

(E) DEVELOPMENT WITH MIXED FUNDING.—Except as provided in subparagraphs (F) and (G), in the case of an item or process that is developed in part with Federal funds and in part at private expense, the respective rights of the United States and of the contractor or subcontractor in technical data pertaining to such item or process shall be established as early in the acquisition process as practicable (preferably during contract negotiations) and shall be based on negotiations between the United States and the contractor, except in any case in which the Secretary of Defense determines, on the basis of criteria established in the regu-

lations, that negotiations would not be practicable. The establishment of such rights shall be based upon consideration of all of the following factors:

(i) The statement of congressional policy and objectives in section 200 of title 35, the statement of purposes in section 2(b) of the Small Business Innovation Development Act of 1982 (15 U.S.C. 638 note), and the declaration of policy in section 2 of the Small Business Act (15 U.S.C. 631).

(ii) The interest of the United States in increasing competition and lowering costs by developing and locating alternative sources of supply and manufacture.

(iii) The interest of the United States in encouraging contractors to develop at private expense items for use by the Government.

(iv) Such other factors as the Secretary of Defense may prescribe.

(F) INTERFACES DEVELOPED WITH MIXED FUNDING.—Notwithstanding subparagraph (E), the United States shall have government purpose rights in technical data pertaining to an interface between an item or process and other items or processes that was developed in part with Federal funds and in part at private expense, except in any case in which the Secretary of Defense determines, on the basis of criteria established in the regulations, that negotiation of different rights in such technical data would be in the best interest of the United States.

(G) MODULAR SYSTEM INTERFACES DEVELOPED EXCLUSIVELY AT PRIVATE EXPENSE OR WITH MIXED FUNDING.—Notwithstanding subparagraphs (B) and (E), the United States shall have government purpose rights in technical data pertaining to a modular system interface developed exclusively at private expense or in part with Federal funds and in part at private expense and used in a modular open system approach pursuant to section 2446a of this title, except in any case in which the Secretary of Defense determines that negotiation of different rights in such technical data would be in the best interest of the United States. Such modular system interface shall be identified in the contract solicitation and the contract. For technical data pertaining to a modular system interface developed exclusively at private expense for which the United States asserts government purpose rights, the Secretary of Defense shall negotiate with the contractor the appropriate and reasonable compensation for such technical data.

(H) A contractor or subcontractor (or a prospective contractor or subcontractor) may not be required, as a condition of being responsive to a solicitation or as a condition for the award of a contract—

(i) to sell or otherwise relinquish to the United States any rights in technical data except—

(I) rights in technical data described in subparagraph (A) for which a use or release restriction has been erroneously asserted by a contractor or subcontractor;

(II) rights in technical data described in subparagraph (C); or

(III) under the conditions described in subparagraph (D); or

(ii) to refrain from offering to use, or from using, an item or process to which the contractor is entitled to restrict rights in data under subparagraph (B).

(I) The Secretary of Defense may—

(i) negotiate and enter into a contract with a contractor or subcontractor for the acquisition of rights in technical data not otherwise provided under subparagraph (C) or (D), if necessary to develop alternative sources of supply and manufacture;

(ii) agree to restrict rights in technical data otherwise accorded to the United States under this section if the United States receives a royalty-free license to use, release, or disclose the data for purposes of the United States (including purposes of competitive procurement); or

(iii) permit a contractor or subcontractor to license directly to a third party the use of technical data which the contractor is otherwise allowed to restrict, if necessary to develop alternative sources of supply and manufacture.

(3) The Secretary of Defense shall define the terms ''developed'', ''exclusively with Federal funds'', and ''exclusively at private expense'' in regulations prescribed under paragraph (1). In defining such terms, the Secretary shall specify the manner in which indirect costs shall be treated and shall specify that amounts spent for independent research and development and bid and proposal costs shall not be considered to be Federal funds for the purposes of the definitions under this paragraph.

(b) Regulations prescribed under subsection (a) shall require that, whenever practicable, a contract for supplies or services entered into by an agency named in section 2303 of this title contain appropriate provisions relating to technical data, including provisions—

(1) defining the respective rights of the United States and the contractor or subcontractor (at any tier) regarding any technical data to be delivered under the contract and providing that, in the case of a contract for a commercial product, the product shall be presumed to be developed at private expense unless shown otherwise in accordance with section 2321(f);

(2) specifying the technical data, if any, to be delivered under the contract and delivery schedules for such delivery;

(3) establishing or referencing procedures for determining the acceptability of technical data to be delivered under the contract;

(4) establishing separate contract line items for the technical data, if any, to be delivered under the contract;

(5) to the maximum practicable extent, identifying, in advance of delivery, technical data which is to be delivered with restrictions on the right of the United States to use such data;

(6) requiring the contractor to revise any technical data delivered under the contract to reflect engineering design changes made during the performance of the contract and af-

fecting the form, fit, and function of the items specified in the contract and to deliver such revised technical data to an agency within a time specified in the contract;

(7) establishing remedies to be available to the United States when technical data required to be delivered or made available under the contract is found to be incomplete or inadequate or to not satisfy the requirements of the contract concerning technical data;

(8) authorizing the head of the agency to withhold payments under the contract (or exercise such other remedies as the head of the agency considers appropriate) during any period if the contractor does not meet the requirements of the contract pertaining to the delivery of technical data;

(9) providing that, in addition to technical data that is already subject to a contract delivery requirement, the United States may require, until the date occurring six years after acceptance of the last item (other than technical data) under a contract or the date of contract termination, whichever is later, the delivery of technical data that has been generated in the performance of the contract, and compensate the contractor only for reasonable costs incurred for having converted and delivered the data in the required form, upon a determination that—

(A) the technical data is needed for the purpose of reprocurement, sustainment, modification, or upgrade (including through competitive means) of a major system or subsystem thereof, a weapon system or subsystem thereof, or any noncommercial product or process; and

(B) the technical data—

(i) pertains to an item or process developed in whole or in part with Federal funds; or

(ii) is described in subparagraphs (D)(i)(II), (F), and (G) of subsection (a)(2); and

(10) providing that the United States is not foreclosed from requiring the delivery of the technical data by a failure to challenge, in accordance with the requirements of section 2321(d) of this title, the contractor's assertion of a use or release restriction on the technical data.

(c) Nothing in this section or in section 2305(d) of this title prohibits the Secretary of Defense from—

(1) prescribing standards for determining whether a contract entered into by the Department of Defense shall provide for a time to be specified in the contract after which the United States shall have the right to use (or have used) for any purpose of the United States all technical data required to be delivered to the United States under the contract or providing for such a period of time (not to exceed 7 years) as a negotiation objective;

(2) notwithstanding any limitation upon the license rights conveyed under subsection (a), allowing a covered Government support contractor access to and use of any technical data delivered under a contract for the sole purpose of furnishing independent and impartial advice or technical assistance directly to the Government in support of the Government's management and oversight of the program or effort to which such technical data relates; or

(3) prescribing reasonable and flexible guidelines, including negotiation objectives, for the conduct of negotiations regarding the respective rights in technical data of the United States and the contractor.

(d) The Secretary of Defense shall by regulation establish programs which provide domestic business concerns an opportunity to purchase or borrow replenishment parts from the United States for the purpose of design replication or modification, to be used by such concerns in the submission of subsequent offers to sell the same or like parts to the United States. Nothing in this subsection limits the authority of the head of an agency to impose restrictions on such a program related to national security considerations, inventory needs of the United States, the improbability of future purchases of the same or like parts, or any additional restriction otherwise required by law.

(e) The Secretary of Defense shall require program managers for major weapon systems and subsystems of major weapon systems to assess the long-term technical data needs of such systems and subsystems and establish corresponding acquisition strategies that provide for technical data rights needed to sustain such systems and subsystems over their life cycle. Such strategies may include the development of maintenance capabilities within the Department of Defense or competition for contracts for sustainment of such systems or subsystems. Assessments and corresponding acquisition strategies developed under this section with respect to a weapon system or subsystem shall—

(1) be developed before issuance of a contract solicitation for the weapon system or subsystem;

(2) address the merits of including a priced contract option for the future delivery of technical data that were not acquired upon initial contract award;

(3) address the potential for changes in the sustainment plan over the life cycle of the weapon system or subsystem; and

(4) apply to weapon systems and subsystems that are to be supported by performance-based logistics arrangements as well as to weapons systems and subsystems that are to be supported by other sustainment approaches.

(f) PREFERENCE FOR SPECIALLY NEGOTIATED LICENSES.—The Secretary of Defense shall, to the maximum extent practicable, negotiate and enter into a contract with a contractor for a specially negotiated license for technical data to support the product support strategy of a major weapon system or subsystem of a major weapon system. In performing the assessment and developing the corresponding strategy required under subsection (e) for such a system or subsystem, a program manager shall consider the use of specially negotiated licenses to acquire customized technical data appropriate for the particular elements of the product support strategy.

(g) COVERED GOVERNMENT SUPPORT CONTRACTOR DEFINED.—In this section, the term

"covered Government support contractor" means a contractor under a contract the primary purpose of which is to furnish independent and impartial advice or technical assistance directly to the Government in support of the Government's management and oversight of a program or effort (rather than to directly furnish an end item or service to accomplish a program or effort), which contractor—

(1) is not affiliated with the prime contractor or a first-tier subcontractor on the program or effort, or with any direct competitor of such prime contractor or any such first-tier subcontractor in furnishing end items or services of the type developed or produced on the program or effort; and

(2) executes a contract with the Government agreeing to and acknowledging—

(A) that proprietary or nonpublic technical data furnished will be accessed and used only for the purposes stated in that contract;

(B) that the covered Government support contractor will enter into a non-disclosure agreement with the contractor to whom the rights to the technical data belong;

(C) that the covered Government support contractor will take all reasonable steps to protect the proprietary and nonpublic nature of the technical data furnished to the covered Government support contractor during the program or effort for the period of time in which the Government is restricted from disclosing the technical data outside of the Government;

(D) that a breach of that contract by the covered Government support contractor with regard to a third party's ownership or rights in such technical data may subject the covered Government support contractor—

(i) to criminal, civil, administrative, and contractual actions in law and equity for penalties, damages, and other appropriate remedies by the United States; and

(ii) to civil actions for damages and other appropriate remedies by the contractor or subcontractor whose technical data is affected by the breach; and

(E) that such technical data provided to the covered Government support contractor under the authority of this section shall not be used by the covered Government support contractor to compete against the third party for Government or non-Government contracts.

(h) ADDITIONAL DEFINITIONS.—In this section, the terms "major system component", "modular system interface", and "modular open system approach" have the meanings provided in section 2446a of this title.

(Added Pub. L. 98–525, title XII, § 1216(a), Oct. 19, 1984, 98 Stat. 2595; amended Pub. L. 98–577, title III, § 301(b), Oct. 30, 1984, 98 Stat. 3076; Pub. L. 99–145, title IX, § 961(d)(1), Nov. 8, 1985, 99 Stat. 703; Pub. L. 99–500, § 101(c) [title X, § 953(a)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–169, and Pub. L. 99–591, § 101(c) [title X, § 953(a)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–169; Pub. L. 99–661, div. A, title IX, formerly title IV, § 953(a), Nov. 14, 1986, 100 Stat. 3949, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; Pub. L. 100–26, § 7(a)(4), Apr. 21, 1987, 101 Stat. 275; Pub. L. 100–180, div. A, title VIII, § 808(a), (b), Dec. 4, 1987, 101 Stat. 1128, 1130; Pub. L. 101–189, div. A, title VIII, § 853(b)(2), Nov. 29, 1989, 103 Stat. 1518; Pub. L. 103–355, title VIII, § 8106(a), Oct. 13, 1994, 108 Stat. 3393; Pub. L. 108–136, div. A, title VIII, § 844, Nov. 24, 2003, 117 Stat. 1553; Pub. L. 109–364, div. A, title VIII, § 802(a), Oct. 17, 2006, 120 Stat. 2312; Pub. L. 111–84, div. A, title VIII, § 821, Oct. 28, 2009, 123 Stat. 2411; Pub. L. 111–383, div. A, title VIII, §§ 801(a), 824(b), Jan. 7, 2011, 124 Stat. 4253, 4269; Pub. L. 112–81, div. A, title VIII, §§ 802(b), 815(a), Dec. 31, 2011, 125 Stat. 1485, 1491; Pub. L. 114–328, div. A, title VIII, § 809(a)–(e), Dec. 23, 2016, 130 Stat. 2266, 2267; Pub. L. 115–91, div. A, title VIII, § 835(c), Dec. 12, 2017, 131 Stat. 1471; Pub. L. 115–232, div. A, title VIII, § 836(c)(7), Aug. 13, 2018, 132 Stat. 1866; Pub. L. 116–283, div. A, title VIII, § 804(b)(2)(A), title XVIII, § 1833(b)(1), (c)(1), (d), (e)(1), (f)(1), Jan. 1, 2021, 134 Stat. 3738, 4226, 4228–4230.)

AMENDMENT OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1833(b)(1), (c)(1), (d), (e)(1), (f)(1), Jan. 1, 2021, 134 Stat. 4151, 4226, 4228–4230, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is amended as follows:

(1) by transferring subsection (a) to section 3771 of this title;

(2) by transferring subsections (b) and (c) to section 3772(a) and (b), respectively, of this title;

(3) by transferring subsection (d) to section 3773 of this title;

(4) by transferring subsections (e) and (f) to section 3774(a) and (c), respectively, of this title; and

(5) by transferring subsections (g) and (h) to section 3775(a) and (b), respectively, of this title.

See 2021 Amendment notes below.

REPEAL OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1881(a), Jan. 1, 2021, 134 Stat. 4151, 4293, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is repealed.

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

AMENDMENTS

2021—Subsec. (a). Pub. L. 116–283, § 1833(b)(1), redesignated subsec. (a) as section 3771 of this title.

Subsec. (a)(2)(G). Pub. L. 116–283, § 804(b)(2)(A)(i), amended subpar. (G) generally. Prior to amendment, subpar. (G) related to major system interfaces developed exclusively at private expense or with mixed funding.

Subsecs. (b), (c). Pub. L. 116–283, § 1833(c)(1), redesignated subsecs. (b) and (c) as section 3772(a) and (b), respectively, of this title.

Subsec. (d). Pub. L. 116–283, § 1833(d), redesignated subsec. (d) as section 3773 of this title.

Subsecs. (e), (f). Pub. L. 116–283, § 1833(e)(1), redesignated subsecs. (e) and (f) as 3774(a) and (c), respectively, of this title.

Subsec. (g). Pub. L. 116–283, § 1833(f)(1), redesignated subsec. (g) as section 3775(a) of this title.

Subsec. (h). Pub. L. 116–283, § 1833(f)(1), redesignated subsec. (h) as section 3775(b) of this title.

Pub. L. 116–283, § 804(b)(2)(A)(ii), substituted '', 'modular system interface' '' for '', 'major system interface' ''.

2018—Subsec. (b)(1). Pub. L. 115–232, § 836(c)(7)(A), substituted ''a commercial product, the product'' for ''a commercial item, the item''.

Subsec. (b)(9)(A). Pub. L. 115–232, § 836(c)(7)(B), substituted ''any noncommercial product or process'' for ''any noncommercial item or process''.

2017—Subsecs. (f) to (h). Pub. L. 115–91 added subsec. (f) and redesignated former subsecs. (f) and (g) as (g) and (h), respectively.

2016—Subsec. (a)(2)(A). Pub. L. 114–328, § 809(e)(1), inserted heading.

Subsec. (a)(2)(B). Pub. L. 114–328, § 809(b)(2), (e)(2), inserted heading and substituted ''Except as provided in subparagraphs (C), (D), and (G),'' for ''Except as provided in subparagraphs (C) and (D),'' in text.

Subsec. (a)(2)(C). Pub. L. 114–328, § 809(e)(3), inserted heading.

Subsec. (a)(2)(C)(iii). Pub. L. 114–328, § 809(a), inserted '', including such data pertaining to a major system component'' after ''or process data''.

Subsec. (a)(2)(D). Pub. L. 114–328, § 809(e)(4), inserted heading.

Subsec. (a)(2)(D)(i)(II). Pub. L. 114–328, § 809(b)(3), substituted ''is a release, disclosure, or use of technical data pertaining to an interface between an item or process and other items or processes necessary'' for ''is necessary''.

Subsec. (a)(2)(E). Pub. L. 114–328, § 809(b)(4), (e)(5), inserted heading and, in introductory provisions, substituted ''Except as provided in subparagraphs (F) and (G), in the case'' for ''In the case'' and ''negotiations) and shall be based on negotiations between the United States and the contractor, except in any case in which the Secretary of Defense determines, on the basis of criteria established in the regulations, that negotiations would not be practicable. The establishment of such rights shall'' for ''negotiations). The United States shall have government purpose rights in such technical data, except in any case in which the Secretary of Defense determines, on the basis of criteria established in such regulations, that negotiation of different rights in such technical data would be in the best interest of the United States. The establishment of any such negotiated rights shall''.

Subsec. (a)(2)(F) to (I). Pub. L. 114–328, § 809(b)(1), (5), added subpars. (F) and (G) and redesignated former subpars. (F) and (G) as (H) and (I), respectively.

Subsec. (b)(9). Pub. L. 114–328, § 809(c)(1), (2), in introductory provisions, substituted '', until the date occurring six years after acceptance of the last item (other than technical data) under a contract or the date of contract termination, whichever is later,'' for ''at any time'' and ''in the performance of the contract'' for ''or utilized in the performance of a contract''.

Subsec. (b)(9)(B)(ii). Pub. L. 114–328, § 809(c)(3), added cl. (ii) and struck out former cl. (ii) which read as follows: ''is necessary for the segregation of an item or process from, or the reintegration of that item or process (or a physically or functionally equivalent item or process) with, other items or processes; and''.

Subsec. (f). Pub. L. 114–328, § 809(d)(1), inserted heading.

Subsec. (g). Pub. L. 114–328, § 809(d)(2), added subsec. (g).

2011—Subsec. (a)(2)(D)(i)(II), (III). Pub. L. 112–81, § 815(a)(1)(A), added subcl. (II) and redesignated former subcl. (II) as (III).

Subsec. (a)(2)(E). Pub. L. 112–81, § 815(a)(1)(B), substituted ''. The United States shall have government purpose rights in such technical data, except in any case in which the Secretary of Defense determines, on the basis of criteria established in such regulations, that negotiation of different rights in such technical data would be in the best interest of the United States. The establishment of any such negotiated rights shall'' for ''and shall be based upon negotiations between the United States and the contractor, except in any case in which the Secretary of Defense determines, on the basis of criteria established in the regulations, that negotiations would not be practicable. The establishment of such rights shall''.

Subsec. (a)(2)(F)(i). Pub. L. 111–383, § 824(b)(1), added subcl. (I) and redesignated former subcls. (I) and (II) as (II) and (III), respectively.

Subsec. (a)(3). Pub. L. 112–81, § 815(a)(1)(C), substituted ''for the purposes of the definitions under this paragraph'' for ''for the purposes of paragraph (2)(B), but shall be considered to be Federal funds for the purposes of paragraph (2)(A)''.

Pub. L. 111–383, § 824(b)(2), substituted ''for the purposes of paragraph (2)(B), but shall be considered to be Federal funds for the purposes of paragraph (2)(A)'' for ''for the purposes of definitions under this paragraph''.

Subsec. (b)(9), (10). Pub. L. 112–81, § 815(a)(2), added pars. (9) and (10).

Subsec. (c)(2). Pub. L. 112–81, § 802(b)(1), substituted ''subsection (a),'' for ''subsection (a)—'', struck out ''(A)'' before ''allowing'', and struck out subpar. (B) which read as follows: ''allowing a covered litigation support contractor access to and use of any technical, proprietary, or confidential data delivered under a contract for the sole purpose of providing litigation support to the Government in the form of administrative, technical, or professional services during or in anticipation of litigation; or''.

Pub. L. 111–383, § 801(a)(1), substituted ''subsection (a)—'' for ''subsection (a),'', inserted ''(A)'' before ''allowing'', and added subpar. (B).

Subsec. (g). Pub. L. 112–81, § 802(b)(2), struck out subsec. (g) which defined ''covered litigation support contractor'' for purpose of this section.

Pub. L. 111–383, § 801(a)(2), added subsec. (g).

2009—Subsec. (c)(2), (3). Pub. L. 111–84, § 821(a), added par. (2) and redesignated former par. (2) as (3).

Subsec. (f). Pub. L. 111–84, § 821(b), added subsec. (f).

2006—Subsec. (e). Pub. L. 109–364 added subsec. (e).

2003—Subsec. (b)(7) to (9). Pub. L. 108–136 redesignated pars. (8) and (9) as (7) and (8), respectively, and struck out former par. (7) which read as follows: ''requiring the contractor to furnish written assurance at the time the technical data is delivered or is made available that the technical data is complete and accurate and satisfies the requirements of the contract concerning technical data;''.

1994—Subsec. (b)(1). Pub. L. 103–355 inserted before semicolon at end ''and providing that, in the case of a contract for a commercial item, the item shall be presumed to be developed at private expense unless shown otherwise in accordance with section 2321(f)''.

1989—Subsec. (a)(4). Pub. L. 101–189 struck out par. (4) which provided that for purposes of this subsection, the term ''Federal Acquisition Regulation'' means the single system of Government-wide procurement regulations as defined in section 4(4) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(4)).

1987—Subsec. (a)(1). Pub. L. 100–180, § 808(a)(1), inserted at end ''Such regulations also may not impair the right of a contractor or subcontractor to receive from a third party a fee or royalty for the use of technical data pertaining to an item or process developed exclusively at private expense by the contractor or subcontractor, except as otherwise specifically provided by law.''

Subsec. (a)(2)(A). Pub. L. 100–26, § 7(a)(4)(A), inserted ''(other than an item or process developed under a contract or subcontract to which regulations under section 9(j)(2) of the Small Business Act (15 U.S.C. 638(j)(2)) apply)'' after ''Federal funds''.

Subsec. (a)(2)(E). Pub. L. 100–180, § 808(a)(2), in introductory provisions, substituted ''established'' for ''agreed upon'', struck out comma after ''negotiations)'' and inserted in lieu ''and shall be based upon negotiations between the United States and the contractor, except in any case in which the Secretary of Defense determines, on the basis of criteria established

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in the regulations, that negotiations would not be practicable. The establishment of such rights shall be'', and added cl. (iv).

Subsec. (a)(2)(F). Pub. L. 100–180, § 808(a)(3), amended subpar. (F) generally. Prior to amendment, subpar. (F) read as follows: ''A contractor or subcontractor (or a prospective contractor or subcontractor) may not be required, as a condition of being responsive to a solicitation or as a condition for the award of a contract, to sell or otherwise relinquish to the United States any rights in technical data except—

''(i) rights in technical data described in subparagraph (C); or

''(ii) under the conditions described in subparagraph (D).''

Subsec. (a)(2)(G)(i). Pub. L. 100–180, § 808(a)(4)(A), substituted ''not otherwise provided under subparagraph (C) or (D),'' for ''pertaining to an item or process developed by such contractor or subcontractor exclusively at private expense'' and struck out ''or'' at end.

Subsec. (a)(2)(G)(ii). Pub. L. 100–180, § 808(a)(4)(B), substituted ''this section'' for ''such regulations'' and ''; or'' for period at end.

Pub. L. 100–26, § 7(a)(4)(B), substituted ''in technical data otherwise accorded to the United States under such regulations'' for ''of the United States in technical data pertaining to an item or process developed entirely or in part with Federal funds''.

Subsec. (a)(2)(G)(iii). Pub. L. 100–180, § 808(a)(4)(C), added cl. (iii).

Subsec. (a)(3). Pub. L. 100–180, § 808(a)(5), substituted '', 'exclusively with Federal funds', and 'exclusively at private expense' '' for ''and 'private expense' '' and inserted at end ''In defining such terms, the Secretary shall specify the manner in which indirect costs shall be treated and shall specify that amounts spent for independent research and development and bid and proposal costs shall not be considered to be Federal funds for the purposes of definitions under this paragraph.''

Subsec. (c). Pub. L. 100–180, § 808(b), substituted ''from—'' for ''from'', designated existing provisions beginning with ''prescribing standards'' as par. (1), and added par. (2).

1986—Subsec. (a). Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661 amended generally subsec. (a) substantially identically, substituting provision that regulations to define the legitimate interest of the United States and of a contractor or subcontractor in technical data be included in regulations of the Department of Defense prescribed as part of the Federal Acquisition Regulation for provision that such regulations define the legitimate proprietary interest of the United States and a contractor and be part of the single system of Government-wide procurement regulations, detailed what such regulations must contain if the item or process is developed exclusively with Federal funds, exclusively with private funds, or partly with Federal funds and partly with private funds, inserted provision relating to relinquishment of rights in data to the United States, directed the Secretary of Defense to define ''developed'' and ''private expense'', and defined ''Federal Acquisition Regulation''. Text reflects amendment by Pub. L. 99–661, which was executed last.

1985—Subsec. (a)(1). Pub. L. 99–145 substituted ''the item or process to which the technical data pertains'' for ''the technical data''.

1984—Subsec. (a). Pub. L. 98–577 substituted ''in regulations of the Department of Defense prescribed as part'' for ''in regulations prescribed as part'' in text preceding par. (1).

EFFECTIVE DATE OF REPEAL

Repeal effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by section 1833(b)(1), (c)(1), (d), (e)(1), (f)(1) of Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115–232 effective Jan. 1, 2020, subject to a savings provision, see section 836(h) of Pub. L. 115–232, set out as an Effective Date of 2018 Amendment; Savings Provision note under section 453b of Title 6, Domestic Security.

EFFECTIVE DATE OF 2011 AMENDMENT

Pub. L. 112–81, div. A, title VIII, § 815(c), Dec. 31, 2011, 125 Stat. 1493, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and section 2321 of this title] shall take effect on the date of the enactment of this Act [Dec. 31, 2011].

''(2) EXCEPTION.—The amendment made by subsection (a)(1)(C) [amending this section] shall take effect on January 7, 2011, immediately after the enactment of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (Public Law 111–383), to which such amendment relates.''

Pub. L. 111–383, div. A, title VIII, § 801(b), Jan. 7, 2011, 124 Stat. 4254, provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on the date that is 120 days after the date of the enactment of this Act [Jan. 7, 2011].''

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 2302 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100–180, div. A, title VIII, § 808(c), Dec. 4, 1987, 101 Stat. 1130, provided that: ''The amendments made by this section [amending this section] shall take effect on the earlier of—

''(1) the last day of the 120-day period beginning on the date of the enactment of this Act [Dec. 4, 1987]; or

''(2) the date on which regulations are prescribed and made effective to implement such amendments.''

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–500, § 101(c) [title X, § 953(e)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–172, Pub. L. 99–591, § 101(c) [title X, § 953(e)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–172, and Pub. L. 99–661, div. A, title IX, formerly title IV, § 953(e), Nov. 14, 1986, 100 Stat. 3952, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273, provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 2321 of this title] shall apply to contracts for which solicitations are issued after the end of the 210-day period beginning on the date of the enactment of this Act [Oct. 18, 1986].''

EFFECTIVE DATE

Section applicable with respect to solicitations issued after the end of the one-year period beginning Oct. 19, 1984, see section 1216(c)(2) of Pub. L. 98–525, set out as a note under section 2319 of this title.

REGULATIONS

Pub. L. 109–364, div. A, title VIII, § 802(c), Oct. 17, 2006, 120 Stat. 2313, provided that: ''Not later than 180 days after the date of the enactment of this Act [Oct. 17, 2006], the Secretary of Defense shall revise regulations under section 2320 of title 10, United States Code, to implement subsection (e) of such section (as added by this section), including incorporating policy changes developed under such subsection into Department of Defense Directive 5000.1 and Department of Defense Instruction 5000.2.''

Pub. L. 99–500, § 101(c) [title X, § 953(d)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–172, Pub. L. 99–591, § 101(c) [title X,

§ 953(d)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–172, and Pub. L. 99–661, div. A, title IX, formerly title IV, § 953(d), Nov. 14, 1986, 100 Stat. 3952, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273, required that proposed regulations under subsec. (a)(1) of this section be published in Federal Register for comment not later than 90 days after Oct. 18, 1986, and that proposed final regulations be published in Federal Register not later than 180 days after Oct. 18, 1986.

GUIDANCE RELATING TO RIGHTS IN TECHNICAL DATA

Pub. L. 111–383, div. A, title VIII, § 824(a), Jan. 7, 2011, 124 Stat. 4269, provided that: ''Not later than 180 days after the date of the enactment of this Act [Jan. 7, 2011], the Secretary of Defense shall review guidance issued by the military departments on the implementation of section 2320(e) of title 10, United States Code, to ensure that such guidance is consistent with the guidance issued by the Under Secretary of Defense for Acquisition, Technology, and Logistics and the requirements of this section [amending this section and section 2321 of this title]. Such guidance shall be designed to ensure that the United States—

''(1) preserves the option of competition for contracts for the production and sustainment of systems or subsystems that are developed exclusively with Federal funds as defined in accordance with the amendments made by this section; and

''(2) is not required to pay more than once for the same technical data.''

TECHNICAL DATA RIGHTS UNDER NON-FAR AGREEMENTS

Pub. L. 110–417, [div. A], title VIII, § 822, Oct. 14, 2008, 122 Stat. 4532, as amended by Pub. L. 111–383, div. A, title X, § 1075(e)(13), Jan. 7, 2011, 124 Stat. 4375, provided that:

''(a) POLICY GUIDANCE.—Not later than 270 days after the date of the enactment of this Act [Oct. 14, 2008], the Secretary of Defense shall issue policy guidance with respect to rights in technical data under a non-FAR agreement. The guidance shall—

''(1) establish criteria for defining the legitimate interests of the United States and the party concerned in technical data pertaining to an item or process to be developed under the agreement;

''(2) require that specific rights in technical data be established during agreement negotiations and be based upon negotiations between the United States and the potential party to the agreement, except in any case in which the Secretary of Defense determines, on the basis of criteria established in such policy guidance, that the establishment of rights during or through agreement negotiations would not be practicable; and

''(3) require the program manager for a major weapon system or an item of personnel protective equipment that is to be developed using a non-FAR agreement to assess the long-term technical data needs of such system or item.

''(b) REQUIREMENT TO INCLUDE PROVISIONS IN NON-FAR AGREEMENTS.—A non-FAR agreement shall contain appropriate provisions relating to rights in technical data consistent with the policy guidance issued pursuant to subsection (a).

''(c) DEFINITIONS.—In this section:

''(1) The term 'non-FAR agreement' means an agreement that is not subject to laws pursuant to which the Federal Acquisition Regulation is prescribed, including—

''(A) a transaction authorized under section 2371 of title 10, United States Code; and

''(B) a cooperative research and development agreement.

''(2) The term 'party', with respect to a non-FAR agreement, means a non-Federal entity and includes any of the following:

''(A) A contractor and its subcontractors (at any tier).

''(B) A joint venture.

''(C) A consortium.

''(d) REPORT ON LIFE CYCLE PLANNING FOR TECHNICAL DATA NEEDS.—Not later than 270 days after the date of enactment of this Act [Oct. 14, 2008], the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the implementation of the requirements in section 2320(e) of title 10, United States Code, for the assessment of long-term technical data needs to sustain major weapon systems. Such report shall include—

''(1) a description of all relevant guidance or policies issued;

''(2) a description of the extent to which program managers have received training to better assess the long-term technical data needs of major weapon systems and subsystems; and

''(3) a description of one or more examples, if any, where a priced contract option has been used on major weapon systems for the future delivery of technical data and one or more examples, if any, where all relevant technical data were acquired upon contract award.''

GOVERNMENT-INDUSTRY COMMITTEE ON RIGHTS IN TECHNICAL DATA

Pub. L. 102–190, div. A, title VIII, § 807, Dec. 5, 1991, 105 Stat. 1421, as amended by Pub. L. 102–484, div. A, title VIII, § 814, Oct. 23, 1992, 106 Stat. 2454; Pub. L. 105–85, div. A, title X, § 1073(d)(3), Nov. 18, 1997, 111 Stat. 1905, provided that not later than Sept. 15, 1992, the Secretary of Defense was to prescribe final regulations required by subsec. (a) of this section that supersede the interim regulations prescribed before Dec. 5, 1991, for the purposes of this section and contained various provisions relating to a government-industry advisory committee, reports to Congress, publication of the regulations, and application of the regulations.

CONTROL OF GOVERNMENT PERSONNEL WORK PRODUCT

Pub. L. 102–190, div. A, title VIII, § 808, Dec. 5, 1991, 105 Stat. 1423, required Secretary of Defense to prescribe regulations ensuring that any Department of Defense employee or member of the armed forces with an appropriate security clearance who is engaged in oversight of an acquisition program maintains control of the employee's or member's work product, provided that procedures for protecting unauthorized disclosure of classified information by contractors do not require such an employee or member to relinquish control of his or her work product to any such contractor, required implementing regulations not later than 120 days after Dec. 5, 1991, and provided that this section would cease to be effective on Sept. 30, 1992.

§ 2321. Validation of proprietary data restrictions

(a) CONTRACTS COVERED BY SECTION.—This section applies to any contract for supplies or services entered into by the Department of Defense that includes provisions for the delivery of technical data.

(b) CONTRACTOR JUSTIFICATION FOR RESTRICTIONS.—A contract subject to this section shall provide that a contractor under the contract and any subcontractor under the contract at any tier shall be prepared to furnish to the contracting officer a written justification for any use or release restriction (as defined in subsection (i)) asserted by the contractor or subcontractor.

(c) REVIEW OF RESTRICTIONS.—(1) The Secretary of Defense shall ensure that there is a thorough review of the appropriateness of any use or release restriction asserted with respect to technical data by a contractor or subcon-

tractor at any tier under a contract subject to this section.

(2) The review of an asserted use or release restriction under paragraph (1) shall be conducted before the end of the three-year period beginning on the later of—

(A) the date on which final payment is made on the contract under which the technical data is required to be delivered; or

(B) the date on which the technical data is delivered under the contract.

(d) CHALLENGES TO RESTRICTIONS.—(1) The Secretary of Defense may challenge a use or release restriction asserted with respect to technical data by a contractor or subcontractor at any tier under a contract subject to this section if the Secretary finds that—

(A) reasonable grounds exist to question the current validity of the asserted restriction; and

(B) the continued adherence by the United States to the asserted restriction would make it impracticable to procure the item to which the technical data pertain competitively at a later time.

(2)(A) A challenge to a use or release restriction asserted by the contractor in accordance with applicable regulations may not be made under paragraph (1) after the end of the six-year period described in subparagraph (B) unless the technical data involved—

(i) are publicly available;

(ii) have been furnished to the United States without restriction;

(iii) have been otherwise made available without restriction; or

(iv) are the subject of a fraudulently asserted use or release restriction.

(B) The six-year period referred to in subparagraph (A) is the six-year period beginning on the later of—

(i) the date on which final payment is made on the contract under which the technical data are required to be delivered; or

(ii) the date on which the technical data are delivered under the contract.

(3) If the Secretary challenges an asserted use or release restriction under paragraph (1), the Secretary shall provide written notice of the challenge to the contractor or subcontractor asserting the restriction. Any such notice shall—

(A) state the specific grounds for challenging the asserted restriction;

(B) require a response within 60 days justifying the current validity of the asserted restriction; and

(C) state that evidence of a justification described in paragraph (4) may be submitted.

(4) It is a justification of an asserted use or release restriction challenged under paragraph (1) that, within the three-year period preceding the challenge to the restriction, the Department of Defense validated a restriction identical to the asserted restriction if—

(A) such validation occurred after a challenge to the validated restriction under this subsection; and

(B) the validated restriction was asserted by the same contractor or subcontractor (or a licensee of such contractor or subcontractor).

(e) TIME FOR CONTRACTORS TO SUBMIT JUSTIFICATIONS.—If a contractor or subcontractor asserting a use or release restriction submits to the contracting officer a written request, showing the need for additional time to comply with the requirement to justify the current validity of the asserted restriction, additional time to adequately permit the submission of such justification shall be provided by the contracting officer as appropriate. If a party asserting a restriction receives notices of challenges to restrictions on technical data from more than one contracting officer, and notifies each contracting officer of the existence of more than one challenge, the contracting officer initiating the first in time challenge, after consultation with the party asserting the restriction and the other contracting officers, shall formulate a schedule of responses to each of the challenges that will afford the party asserting the restriction with an equitable opportunity to respond to each such challenge.

(f) PRESUMPTION OF DEVELOPMENT EXCLUSIVELY AT PRIVATE EXPENSE.—In the case of a challenge to a use or release restriction that is asserted with respect to technical data of a contractor or subcontractor under a contract for commercial products, the contracting officer shall presume that the contractor or subcontractor has justified the restriction on the basis that the item[1] was developed exclusively at private expense, whether or not the contractor or subcontractor submits a justification in response to the notice provided pursuant to subsection (d)(3). In such a case, the challenge to the use or release restriction may be sustained only if information provided by the Department of Defense demonstrates that the item[1] was not developed exclusively at private expense.

(g) DECISION BY CONTRACTING OFFICER.—(1) Upon a failure by the contractor or subcontractor to submit any response under subsection (d)(3), the contracting officer shall issue a decision pertaining to the validity of the asserted restriction.

(2) After review of any justification submitted in response to the notice provided pursuant to subsection (d)(3), the contracting officer shall, within 60 days of receipt of any justification submitted, issue a decision or notify the party asserting the restriction of the time within which a decision will be issued.

(h) CLAIMS.—If a claim pertaining to the validity of the asserted restriction is submitted in writing to a contracting officer by a contractor or subcontractor at any tier, such claim shall be considered a claim within the meaning of chapter 71 of title 41.

(i) RIGHTS AND LIABILITY UPON FINAL DISPOSITION.—(1) If, upon final disposition, the contracting officer's challenge to the use or release restriction is sustained—

(A) the restriction shall be cancelled; and

(B) if the asserted restriction is found not to be substantially justified, the contractor or subcontractor asserting the restriction shall be liable to the United States for payment of the cost to the United States of reviewing the asserted restriction and the fees and other ex-

[1] So in original. Probably should be "the product".

penses (as defined in section 2412(d)(2)(A) of title 28) incurred by the United States in challenging the asserted restriction, unless special circumstances would make such payment unjust.

(2) If, upon final disposition, the contracting officer's challenge to the use or release restriction is not sustained—

(A) the United States shall continue to be bound by the restriction; and

(B) the United States shall be liable for payment to the party asserting the restriction for fees and other expenses (as defined in section 2412(d)(2)(A) of title 28) incurred by the party asserting the restriction in defending the asserted restriction if the challenge by the United States is found not to be made in good faith.

(j) USE OR RELEASE RESTRICTION DEFINED.—In this section, the term ''use or release restriction'', with respect to technical data delivered to the United States under a contract subject to this section, means a restriction by the contractor or subcontractor on the right of the United States—

(1) to use such technical data; or

(2) to release or disclose such technical data to persons outside the Government or permit the use of such technical data by persons outside the Government.

(Added Pub. L. 98–525, title XII, § 1216(a), Oct. 19, 1984, 98 Stat. 2597; amended Pub. L. 99–500 § 101(c) [title X, § 953(b)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–171, and Pub. L. 99–591, § 101(c) [title X, § 953(b)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–171; Pub. L. 99–661, div. A, title IX, formerly title IV, § 953(b), Nov. 14, 1986, 100 Stat. 3951, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; Pub. L. 100–26, § 7(a)(5), Apr. 21, 1987, 101 Stat. 276; Pub. L. 100–180, div. A, title XII, § 1231(6), Dec. 4, 1987, 101 Stat. 1160; Pub. L. 103–35, title II, § 201(g)(4), May 31, 1993, 107 Stat. 100; Pub. L. 103–355, title VIII, § 8106(b), Oct. 13, 1994, 108 Stat. 3393; Pub. L. 109–364, div. A, title VIII, § 802(b), Oct. 17, 2006, 120 Stat. 2313; Pub. L. 110–181, div. A, title VIII, § 815(a)(2), Jan. 28, 2008, 122 Stat. 223; Pub. L. 111–350, § 5(b)(18), Jan. 4, 2011, 124 Stat. 3844; Pub. L. 111–383, div. A, title VIII, § 824(c), Jan. 7, 2011, 124 Stat. 4269; Pub. L. 112–81, div. A, title VIII, § 815(b), Dec. 31, 2011, 125 Stat. 1492; Pub. L. 113–291, div. A, title X, § 1071(a)(5), Dec. 19, 2014, 128 Stat. 3504; Pub. L. 114–92, div. A, title VIII, § 813(a), Nov. 25, 2015, 129 Stat. 891; Pub. L. 115–232, div. A, title VIII, §§ 836(c)(8), 865, 866(a), Aug. 13, 2018, 132 Stat. 1866, 1901; Pub. L. 116–92, div. A, title VIII, § 808(b), Dec. 20, 2019, 133 Stat. 1486; Pub. L. 116–283, div. A, title X, § 1081(d)(4)(B)(ii), title XVIII, § 1833(h)(1), (i)(1), (j)(1), (k), (*l*)(1), (m), Jan. 1, 2021, 134 Stat. 3874, 4231–4233.)

AMENDMENT OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1833(h)(1), (i)(1), (j)(1), (k), (l)(1), (m), Jan. 1, 2021, 134 Stat. 4151, 4231–4233, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is amended as follows:

(1) by transferring subsections (a) to (c) to section 3781 of this title;

(2) by transferring subsection (d) to section 3782 of this title;

(3) by transferring subsection (e) to section 3783 of this title;

(4) by transferring subsection (f) to section 3784 of this title;

(5) by transferring subsections (g) to (i) to section 3785(a) to (c), respectively, of this title; and

(6) by transferring subsection (j) to section 3786 of this title.

See 2021 Amendment notes below.

REPEAL OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1881(a), Jan. 1, 2021, 134 Stat. 4151, 4293, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is repealed.

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

Another section 2321 of this title was contained in chapter 138 and was renumbered section 2341 of this title.

AMENDMENTS

2021—Subsecs. (a) to (c). Pub. L. 116–283, § 1833(h)(1), redesignated subsecs. (a) to (c) as section 3781 of this title.

Subsec. (d). Pub. L. 116–283, § 1833(i)(1), redesignated subsec. (d) as section 3782 of this title.

Subsec. (e). Pub. L. 116–283, § 1833(j)(1), redesignated subsec. (e) as section 3783 of this title.

Subsec. (f). Pub. L. 116–283, § 1833(k), redesignated subsec. (f) as section 3784 of this title.

Pub. L. 116–283, § 1081(d)(4)(B)(ii), made technical correction to directory language of Pub. L. 115–232, § 836(c)(8). See 2018 Amendment note below.

Subsecs. (g) to (i). Pub. L. 116–283, § 1833(*l*)(1), redesignated subsecs. (g) to (i) as section 3785(a) to (c), respectively, of this title.

Subsec. (j). Pub. L. 116–283, § 1833(m), redesignated subsec. (j) as section 3786 of this title.

2019—Subsec. (i). Pub. L. 116–92 restored text of subsec. (i) resulting in amendment by section 866(a) of Pub. L. 115–232 having no effect. See 2018 Amendment note below.

2018—Subsec. (f). Pub. L. 115–232, § 865, struck out par. (1) designation, substituted ''In'' for ''Except as provided in paragraph (2), in'', and struck out par. (2) which related to a challenge to a use or release restriction regarding technical data for a major weapon system, subsystem, or component developed exclusively at private expense.

Pub. L. 115–232, § 836(c)(8), as amended by Pub. L. 116–283, § 1081(d)(4)(B)(ii), substituted ''commercial products'' for ''commercial items''.

Subsec. (i). Pub. L. 115–232, § 866(a), inserted ''Prior to and'' after ''Rights and Liability'' in heading, added par. (1), and redesignated former pars. (1) and (2) as (2) and (3), respectively.

2015—Subsec. (f)(2). Pub. L. 114–92 amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''In the case of a challenge to a use or release restriction that is asserted with respect to technical data of a contractor or subcontractor (other than technical data for a commercially available off-the-shelf item as defined in section 104 of title 41) for a major system or a subsystem or component thereof on the basis that the major system, subsystem or component was developed exclusively at private expense, the challenge to the use or release restriction shall be sustained unless information provided by the contractor or subcontractor demonstrates that the item was developed exclusively at private expense.''

2014—Subsec. (f)(2). Pub. L. 113–291 substituted ''section 104 of title 41'' for ''section 35(c) of the Office of Federal Procurement Policy Act (41 U.S.C. 431(c))''.

2011—Subsec. (d)(2)(A). Pub. L. 112–81, §815(b)(1)(A), substituted ''A challenge to a use or release restriction asserted by the contractor in accordance with applicable regulations may not be made under paragraph (1) after the end of the six-year period'' for ''Except as provided in subparagraph (C), a challenge to an asserted use or release restriction may not be made under paragraph (1) after the end of the three-year period'' in introductory provisions.

Pub. L. 111–383, §824(c)(1), substituted ''Except as provided in subparagraph (C), a challenge'' for ''A challenge'' in introductory provisions.

Subsec. (d)(2)(A)(iv). Pub. L. 112–81, §815(b)(1)(B)–(D), added cl. (iv).

Subsec. (d)(2)(B). Pub. L. 112–81, §815(b)(2), substituted ''six-year period'' for ''three-year period'' in two places in introductory provisions.

Subsec. (d)(2)(C). Pub. L. 112–81, §815(b)(3), struck out subpar. (C) which read as follows: ''The limitation in this paragraph shall not apply to a case in which the Secretary finds that reasonable grounds exist to believe that a contractor or subcontractor has erroneously asserted a use or release restriction with regard to technical data described in section 2320(a)(2)(A) of this title.''

Pub. L. 111–383, §824(c)(2), added subpar. (C).

Subsec. (h). Pub. L. 111–350 substituted ''chapter 71 of title 41'' for ''the Contract Disputes Act of 1978 (41 U.S.C. 601 et seq.)''.

2008—Subsec. (f)(2). Pub. L. 110–181 substituted ''(other than technical data for a commercially available off-the-shelf item as defined in section 35(c) of the Office of Federal Procurement Policy Act (41 U.S.C. 431(c)))'' for ''(whether or not under a contract for commercial items)''.

2006—Subsec. (f). Pub. L. 109–364 substituted ''Expense'' for ''Expense for Commercial Items Contracts'' in heading, designated existing provisions as par. (1), substituted ''Except as provided in paragraph (2), in'' for ''In'', and added par. (2).

1994—Subsecs. (f) to (j). Pub. L. 103–355 added subsec. (f) and redesignated former subsecs. (f) to (i) as (g) to (j), respectively.

1993—Subsec. (d)(1)(B). Pub. L. 103–35 substituted ''adherence'' for ''adherance''.

1987—Subsec. (a). Pub. L. 100–26, §7(a)(5)(A)(ii), added subsec. (a) and struck out former subsec. (a) which read as follows: ''A contract for supplies or services entered into by the Department of Defense which provides for the delivery of technical data shall provide that a contractor or subcontractor at any tier shall be prepared to furnish to the contracting officer a written justification for any restriction asserted by the contractor or subcontractor on the right of the United States to use such technical data.''

Subsec. (b). Pub. L. 100–26, §7(a)(5)(A)(ii), added subsec. (b) and struck out former subsec. (b) which read as follows:

''(1) The Secretary of Defense shall ensure that there is a thorough review of the appropriateness of any restriction on the right of the United States to release or disclose technical data delivered under a contract to persons outside the Government, or to permit the use of such technical data by such persons. Such review shall be conducted before the end of the three-year period beginning on the date on which final payment is made on a contract under which technical data is required to be delivered, or the date on which the technical data is delivered under such contract, whichever is later.

''(2)(A) If the Secretary determines, at any time before the end of the three-year period beginning on the date on which final payment is made on a contract under which technical data is required to be delivered, or the date on which the technical data is delivered under such contract, whichever is later, that a challenge to a restriction is warranted, the Secretary shall provide written notice to the contractor or subcontractor asserting the restriction. Such a determination shall be based on a finding by the Secretary that reasonable grounds exist to question the current validity of the asserted restriction and that the continued adherence to the asserted restriction by the United States would make it impracticable to procure the item competitively at a later time. Such notice shall—

''(i) state the specific grounds for challenging the asserted restriction;

''(ii) require a response within 60 days justifying the current validity of the asserted restriction; and

''(iii) state that evidence of a validation by the Department of Defense of a restriction identical to the asserted restriction within the three-year period preceding the challenge shall serve as justification for the asserted restriction if—

''(I) the validation occurred after a review of the validated restriction under this subsection; and

''(II) the validated restriction was asserted by the same contractor or subcontractor (or any licensee of such contractor or subcontractor) to which such notice is being provided.

''(B) Notwithstanding subparagraph (A), the United States may challenge a restriction on the release, disclosure, or use of technical data delivered under a contract at any time if such technical data—

''(i) is publicly available;

''(ii) has been furnished to the United States without restriction; or

''(iii) has been otherwise made available without restriction.''

Subsec. (c). Pub. L. 100–26, §7(a)(5)(A)(ii), added subsec. (c). Former subsec. (c) redesignated (e).

Subsec. (d). Pub. L. 100–26, §7(a)(5)(A)(ii), added subsec. (d). Former subsec. (d) redesignated (f).

Subsec. (d)(4)(A). Pub. L. 100–180, §1231(6)(A), substituted ''subsection'' for ''paragraph''.

Subsec. (e). Pub. L. 100–26, §7(a)(5)(A)(i), (B), redesignated former subsec. (c) as (e), inserted heading, and substituted ''If a contractor or subcontractor asserting a use or release restriction'' for ''If a contractor or subcontractor asserting a restriction subject to this section''. Former subsec. (e) redesignated (g).

Subsec. (f). Pub. L. 100–26, §7(a)(5)(A)(i), (C), redesignated former subsec. (d) as (f), inserted heading, and substituted ''subsection (d)(3)'' for ''subsection (b)'' in two places. Former subsec. (f) redesignated (h).

Subsec. (g). Pub. L. 100–26, §7(a)(5)(A)(i), (D), redesignated former subsec. (e) as (g) and inserted heading.

Subsec. (h). Pub. L. 100–26, §7(a)(5)(A)(i), (E)(i), redesignated former subsec. (f) as (h) and inserted heading.

Subsec. (h)(1). Pub. L. 100–26, §7(a)(5)(E)(ii)–(iv), substituted ''the use or release restriction'' for ''the restriction on the right of the United States to use such technical data'' in introductory provisions, struck out ''on the right of the United States to use the technical data'' after ''the restriction'' in subpar. (A), and substituted ''asserting the restriction'' for '', as appropriate,'' in subpar. (B).

Subsec. (h)(2). Pub. L. 100–26, §7(a)(5)(E)(v), substituted ''the use or release restriction'' for ''the restriction on the right of the United States to use such technical data'' in introductory provisions.

Subsec. (i). Pub. L. 100–180, §1231(6)(B), inserted ''or subcontractor'' in introductory provisions.

Pub. L. 100–26, §7(a)(5)(F), added subsec. (i).

1986—Subsecs. (a), (b). Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661 amended generally subsecs. (a) and (b) identically. Prior to amendment, subsecs. (a) and (b) read as follows:

''(a) A contract for supplies or services entered into by the Department of Defense which provides for the delivery of technical data shall provide that—

''(1) a contractor or subcontractor at any tier shall be prepared to furnish to the contracting officer a written justification for any restriction asserted by the contractor or subcontractor on the right of the United States to use such technical data; and

''(2) the contracting officer may review the validity of any restriction asserted by the contractor or by a subcontractor under the contract on the right of the United States to use technical data furnished to the

United States under the contract if the contracting officer determines that reasonable grounds exist to question the current validity of the asserted restriction and that the continued adherence to the asserted restriction by the United States would make it impracticable to procure the item competitively at a later time.

''(b) If after such review the contracting officer determines that a challenge to the asserted restriction is warranted, the contracting officer shall provide written notice to the contractor or subcontractor asserting the restriction. Such notice shall—

''(1) state the grounds for challenging the asserted restriction; and

''(2) require a response within 60 days justifying the current validity of the asserted restriction.''

EFFECTIVE DATE OF REPEAL

Repeal effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by section 1833(h)(1), (i)(1), (j)(1), (k), (*l*)(1), (m) of Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by section 836(c)(8) of Pub. L. 115–232 effective Jan. 1, 2020, subject to a savings provision, see section 836(h) of Pub. L. 115–232, set out as an Effective Date of 2018 Amendment; Savings Provision note under section 453b of Title 6, Domestic Security.

Pub. L. 115–232, div. A, title VIII, § 866(c), Aug. 13, 2018, 132 Stat. 1901, which provided the effective date and applicability for amendments made to this section by section 866(a) of Pub. L. 115–232 and revisions required by section 866(b) of Pub. L. 115–232 (formerly set out below), was repealed by Pub. L. 116–92, div. A, title VIII, § 808(a), Dec. 20, 2019, 133 Stat. 1486.

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 2302 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100–26, § 12(d)(1), Apr. 21, 1987, 101 Stat. 289, provided that: ''The amendments to section 2321 of title 10, United States Code, made by section 7(a)(5) shall apply to contracts for which solicitations are issued after the end of the 210-day period beginning on October 18, 1986.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661 applicable to contracts for which solicitations are issued after end of 210-day period beginning Oct. 18, 1986, see section 101(c) of Pub. L. 99–500 and Pub. L. 99–591, and section 953(e) of Pub. L. 99–661, set out as a note under section 2320 of this title.

EFFECTIVE DATE

Section applicable with respect to solicitations issued after the end of the one-year period beginning Oct. 19, 1984, see section 1216(c)(2) of Pub. L. 98–525, set out as a note under section 2319 of this title.

REVISION OF THE DEFENSE FEDERAL ACQUISITION REGULATION SUPPLEMENT

Pub. L. 115–232, div. A, title VIII, § 866(b), Aug. 13, 2018, 132 Stat. 1901, which required the Secretary of Defense to revise the Defense Federal Acquisition Regulation Supplement to implement amendments to this section made by section 866(a) of Pub. L. 115–232, was repealed by Pub. L. 116–92, div. A, title VIII, § 808(a), Dec. 20, 2019, 133 Stat. 1486.

GUIDANCE ON TECHNICAL DATA RIGHT NEGOTIATION

Pub. L. 115–232, div. A, title VIII, § 866(d), Aug. 13, 2018, 132 Stat. 1901, which required the Secretary of Defense to develop certain policies on the negotiation of technical data rights for noncommercial software, was repealed by Pub. L. 116–92, div. A, title VIII, § 808(a), Dec. 20, 2019, 133 Stat. 1486.

§ 2322. Management of intellectual property matters within the Department of Defense

(a) POLICY REQUIRED.—The Secretary of Defense, acting through the Under Secretary of Defense for Acquisition and Sustainment, shall develop policy on the acquisition or licensing of intellectual property—

(1) to enable coordination and consistency across the military departments and the Department of Defense in strategies for acquiring or licensing intellectual property and communicating with industry;

(2) to ensure that program managers are aware of the rights afforded the Federal Government and contractors in intellectual property and that program managers fully consider and use all available techniques and best practices for acquiring or licensing intellectual property early in the acquisition process; and

(3) to encourage customized intellectual property strategies for each system based on, at a minimum, the unique characteristics of the system and its components, the product support strategy for the system, the organic industrial base strategy of the military department concerned, and the commercial market.

(b) CADRE OF INTELLECTUAL PROPERTY EXPERTS.—(1) The Secretary of Defense, acting through the Under Secretary of Defense for Acquisition and Sustainment, shall establish a cadre of personnel who are experts in intellectual property matters. The purpose of the cadre is to ensure a consistent, strategic, and highly knowledgeable approach to acquiring or licensing intellectual property by providing expert advice, assistance, and resources to the acquisition workforce on intellectual property matters, including acquiring or licensing intellectual property.

(2) The Under Secretary shall establish an appropriate leadership structure and office within which the cadre shall be managed, and shall determine the appropriate official to whom members of the cadre shall report.

(3) The cadre of experts shall be assigned to a program office or an acquisition command within a military department to advise, assist, and provide resources to a program manager or program executive officer on intellectual property matters at various stages of the life cycle of a system. In performing such duties, the experts shall—

(A) interpret and provide counsel on laws, regulations, and policies relating to intellectual property;

(B) advise and assist in the development of an acquisition strategy, product support strat-

egy, and intellectual property strategy for a system;

(C) conduct or assist with financial analysis and valuation of intellectual property;

(D) assist in the drafting of a solicitation, contract, or other transaction;

(E) interact with or assist in interactions with contractors, including communications and negotiations with contractors on solicitations and awards; and

(F) conduct or assist with mediation if technical data delivered pursuant to a contract is incomplete or does not comply with the terms of agreements.

(4)(A) In order to achieve the purpose set forth in paragraph (1), the Under Secretary shall ensure the cadre has the appropriate number of staff and such staff possesses the necessary skills, knowledge, and experience to carry out the duties under paragraph (2), including in relevant areas of law, contracting, acquisition, logistics, engineering, financial analysis, and valuation. The Under Secretary, in coordination with the Defense Acquisition University and in consultation with academia and industry, shall develop a career path, including development opportunities, exchanges, talent management programs, and training, for the cadre. The Under Secretary may use existing authorities to staff the cadre, including those in subparagraphs (B), (C), (D), and (F).

(B) Civilian personnel from within the Office of the Secretary of Defense, Joint Staff, military departments, Defense Agencies, and combatant commands may be assigned to serve as members of the cadre, upon request of the Director.

(C) The Under Secretary may use the authorities for highly qualified experts under section 9903 of title 5, to hire experts as members of the cadre who are skilled professionals in intellectual property and related matters.

(D) The Under Secretary may enter into a contract with a private-sector entity for specialized expertise to support the cadre. Such entity may be considered a covered Government support contractor, as defined in section 2320 of this title.

(E) In establishing the cadre, the Under Secretary shall give preference to civilian employees of the Department of Defense, rather than members of the armed forces, to maintain continuity in the cadre.

(F) The Under Secretary is authorized to use amounts in the Defense Acquisition Workforce Development Fund for the purpose of recruitment, training, and retention of the cadre, including paying salaries of newly hired members of the cadre for up to three years.

(Added Pub. L. 115–91, div. A, title VIII, § 802(a)(1), Dec. 12, 2017, 131 Stat. 1450; amended Pub. L. 116–283, div. A, title XVIII, §§ 1833(*o*)(1), 1877(b), Jan. 1, 2021, 134 Stat. 4234, 4291.)

Amendment of Section

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1833(o)(1), 1877(b), Jan. 1, 2021, 134 Stat. 4151, 4234, 4291, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is amended as follows:

(1) by transferring subsection (a) to section 3791(a) of this title; and

(2) by transferring subsection (b) to section 1707(a) of this title.

See 2021 Amendment notes below.

Repeal of Section

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1881(a), Jan. 1, 2021, 134 Stat. 4151, 4293, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is repealed.

Prior Provisions

A prior section 2322, added Pub. L. 98–525, title XII, § 1216(a), Oct. 19, 1984, 98 Stat. 2598; amended Pub. L. 100–26, § 7(a)(6), Apr. 21, 1987, 101 Stat. 278; Pub. L. 100–180, div. A, title XII, § 1231(7), Dec. 4, 1987, 101 Stat. 1160, limited small business set-asides under the Foreign Military Sales Program and provided that the section expired Jan. 17, 1987, prior to repeal by Pub. L. 102–484, div. A, title X, § 1052(25)(A), Oct. 23, 1992, 106 Stat. 2500.

Another prior section 2322 was contained in chapter 138 and was renumbered section 2342 of this title.

Amendments

2021—Subsec. (a). Pub. L. 116–283, § 1833(*o*)(1), redesignated subsec. (a) as section 3791(a) of this title.

Subsec. (b). Pub. L. 116–283, § 1877(b), redesignated subsec. (b) as section 1707(a) of this title.

Effective Date of Repeal

Repeal effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

Effective Date of 2021 Amendment

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

Pilot Program on Intellectual Property Evaluation for Acquisition Programs

Pub. L. 116–92, div. A, title VIII, § 801, Dec. 20, 2019, 133 Stat. 1481, provided that:

''(a) Pilot Program.—Not later than 180 days after the date of the enactment of this Act [Dec. 20, 2019], the Secretary of Defense and the Secretaries of the military departments may jointly carry out a pilot program to assess mechanisms to evaluate intellectual property (such as technical data deliverables and associated license rights), including commercially available intellectual property valuation analysis and techniques, in acquisition programs for which each such Secretary is responsible to better understand the benefits associated with these mechanisms on—

''(1) the development of cost-effective intellectual property strategies;

''(2) the assessment and management of the value and acquisition costs of intellectual property during acquisition and sustainment activities (including source selection evaluation factors) throughout the acquisition lifecycle for any acquisition program selected by such Secretary; and

''(3) the use of a commercial product (as defined in section 103 of title 41, United States Code, as in effect on January 1, 2020), commercial service (as defined in section 103a of title 41, United States Code, as in effect on January 1, 2020), or nondevelopmental item (as defined in section 110 of title 41, United States Code) as an alternative to a product or service to be specifically developed for a selected acquisition pro-

gram, including evaluation of the benefits of reduced risk regarding cost, schedule, and performance associated with commercial products, commercial services, and nondevelopmental items.

''(b) ACTIVITIES.—Activities carried out under the pilot program may include the following:

''(1) Establishment of a team of Department of Defense and private sector subject matter experts (which may include the cadre of intellectual property experts established under section 2322(b) of title 10, United States Code) to—

''(A) recommend acquisition programs to be selected for the pilot program established under subsection (a);

''(B) recommend criteria for the consideration of types of commercial products, commercial services, or nondevelopmental items that can used as an alternative to a product or service to be specifically developed for a selected acquisition program; or

''(C) identify, to the maximum extent practicable at each milestone established for each selected acquisition program, intellectual property evaluation techniques to obtain quantitative and qualitative analysis of intellectual property during the procurement, production and deployment, and operations and support phases for the each selected acquisition program.

''(2) Assessment of commercial valuation techniques for intellectual property for use by the Department of Defense.

''(3) Assessment of the feasibility of agency-level oversight to standardize intellectual property evaluation practices and procedures.

''(4) Assessment of contracting mechanisms to speed delivery of intellectual property to the Armed Forces or reduce sustainment costs.

''(5) Assessment of agency acquisition planning to ensure procurement of appropriate intellectual property deliverables and intellectual property rights necessary for Government-planned sustainment activities.

''(6) Engagement with the private sector to—

''(A) support the development of strategies and program requirements to aid in acquisition planning for intellectual property;

''(B) support the development and improvement of intellectual property strategies as part of lifecycle sustainment plans; and

''(C) propose and implement alternative and innovative methods of intellectual property valuation, prioritization, and evaluation techniques for intellectual property.

''(7) Recommendations to the relevant program manager of an acquisition program selected under subsection (a), including evaluation techniques and contracting mechanisms for acquisition and sustainment activities.

''(c) REPORT.—Not later than November 1, 2020, and annually thereafter through November 1, 2023, the Secretary of Defense, in coordination with the Secretaries concerned, shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a joint report on the pilot program conducted under this section. The report shall, at a minimum, include—

''(1) a description of the acquisition programs selected by the Secretary concerned;

''(2) a description of the specific activities in subsection (c) that were performed under each program;

''(3) an assessment of the effectiveness of the activities;

''(4) an assessment of improvements to acquisition or sustainment activities related to the pilot program; and

''(5) an assessment of the results related to the pilot program, including any cost savings and improvement to mission success during the operations and support phase of the selected acquisition program.''

§ 2322a. Requirement for consideration of certain matters during acquisition of noncommercial computer software

(a) CONSIDERATION REQUIRED.—As part of any negotiation for the acquisition of noncommercial computer software, the Secretary of Defense shall ensure that such negotiations consider, to the maximum extent practicable, acquisition, at the appropriate time in the life cycle of the noncommercial computer software, of all software and related materials necessary—

(1) to reproduce, build, or recompile the software from original source code and required libraries;

(2) to conduct required computer software testing; and

(3) to deploy working computer software system binary files on relevant system hardware.

(b) DELIVERY OF SOFTWARE AND RELATED MATERIALS.—Any noncommercial computer software or related materials required to be delivered as a result of considerations in subsection (a) shall, to the extent appropriate as determined by the Secretary—

(1) include computer software delivered in a useable, digital format;

(2) not rely on external or additional software code or data, unless such software code or data is included in the items to be delivered; and

(3) in the case of negotiated terms that do not allow for the inclusion of dependent software code or data, sufficient documentation to support maintenance and understanding of interfaces and software revision history.

(Added Pub. L. 115–91, div. A, title VIII, § 871(a)(1), Dec. 12, 2017, 131 Stat. 1496.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1857(c), Jan. 1, 2021, 134 Stat. 4151, 4276, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 345 of this title, as amended by section 1857(a) of Pub. L. 116–283, inserted after section 4571, and redesignated as section 4576 of this title. See Effective Date of 2021 Amendment note below.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

GUIDANCE

Pub. L. 115–91, div. A, title VIII, § 871(b), Dec. 12, 2017, 131 Stat. 1497, provided that: ''Not later than 180 days after the date of the enactment of this Act [Dec. 12, 2017], the Secretary of Defense shall issue updated guidance to implement section 2322a of title 10, United States Code, as added by subsection (a).''

[§ 2323. Repealed. Pub. L. 115–232, div. A, title VIII, § 812(a)(2)(A), Aug. 13, 2018, 132 Stat. 1846]

Section, added and amended Pub. L. 102–484, div. A, title VIII, §§ 801(a)(1), (b)–(f), 802, Oct. 23, 1992, 106 Stat. 2442–2444, 2446; Pub. L. 103–35, title II, § 202(a)(6), May 31,

1993, 107 Stat. 101; Pub. L. 103–160, div. A, title VIII, § 811(a)–(c), (e), Nov. 30, 1993, 107 Stat. 1702; Pub. L. 103–355, title VII, § 7105, Oct. 13, 1994, 108 Stat. 3369; Pub. L. 104–106, div. D, title XLIII, § 4321(b)(8), Feb. 10, 1996, 110 Stat. 672; Pub. L. 105–135, title VI, § 604(a), Dec. 2, 1997, 111 Stat. 2632; Pub. L. 105–261, div. A, title VIII, § 801, Oct. 17, 1998, 112 Stat. 2080; Pub. L. 106–65, div. A, title VIII, § 808, Oct. 5, 1999, 113 Stat. 705; Pub. L. 107–107, div. A, title X, § 1048(a)(17), Dec. 28, 2001, 115 Stat. 1223; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 107–314, div. A, title VIII, § 816, Dec. 2, 2002, 116 Stat. 2610; Pub. L. 108–136, div. A, title X, § 1031(a)(15), Nov. 24, 2003, 117 Stat. 1597; Pub. L. 109–163, div. A, title VIII, § 842, Jan. 6, 2006, 119 Stat. 3389; Pub. L. 109–364, div. A, title VIII, § 858, Oct. 17, 2006, 120 Stat. 2349; Pub. L. 110–181, div. A, title VIII, § 891, Jan. 28, 2008, 122 Stat. 270; Pub. L. 111–383, div. A, title X, § 1075(b)(31), Jan. 7, 2011, 124 Stat. 4370; Pub. L. 115–91, div. A, title XVII, § 1701(a)(4)(B), Dec. 12, 2017, 131 Stat. 1796, related to contract goals for small disadvantaged businesses and certain institutions of higher education.

A prior section 2323, added Pub. L. 98–525, title XII, § 1216(a), Oct. 19, 1984, 98 Stat. 2598; amended Pub. L. 99–500, § 101(c) [title X, § 926(a)(1)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–153, and Pub. L. 99–591, § 101(c) [title X, § 926(a)(1)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–153; Pub. L. 99–661, div. A, title IX, formerly title IV, § 926(a)(1), Nov. 14, 1986, 100 Stat. 3933, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273, related to commercial pricing for spare or repair parts, prior to repeal by Pub. L. 101–510, div. A, title VIII, § 804(a), Nov. 5, 1990, 104 Stat. 1591.

§ 2323a. Credit for Indian contracting in meeting certain subcontracting goals for small disadvantaged businesses

(a) REGULATIONS.—Subject to subsections (b) and (c), in any case in which a subcontracting goal is specified in a Department of Defense contract in the implementation of section 8(d) of the Small Business Act (15 U.S.C. 637(d)), credit toward meeting that subcontracting goal shall be given for—

(1) work performed in connection with that Department of Defense contract, and work performed in connection with any subcontract awarded under that Department of Defense contract, if such work is performed on any Indian lands and meets the requirements of paragraph (1) of subsection (b); or

(2) work performed in connection with that Department of Defense contract, and work performed in connection with any subcontract awarded under that Department of Defense contract, if the performance of such contract or subcontract is undertaken as a joint venture that meets the requirements of paragraph (2) of that subsection.

(b) ELIGIBLE WORK.—(1) Work performed on Indian lands meets the requirements of this paragraph if—

(A) not less than 40 percent of the workers directly engaged in the performance of the work are Indians; or

(B) the contractor or subcontractor has an agreement with the tribal government having jurisdiction over such Indian lands that provides goals for training and development of the Indian workforce and Indian management.

(2) A joint venture undertaking to perform a contract or subcontract meets the requirements of this paragraph if—

(A) an Indian tribe or tribally owned corporation owns at least 50 percent of the joint venture;

(B) the activities of the joint venture under the contract or subcontract provide employment opportunities for Indians either directly or through the purchase of products or services for the performance of such contract or subcontract; and

(C) the Indian tribe or tribally owned corporation manages the performance of such contract or subcontract.

(c) EXTENT OF CREDIT.—The amount of the credit given toward the attainment of any subcontracting goal under subsection (a) shall be—

(1) in the case of work performed as described in subsection (a)(1), the value of the work performed; and

(2) in the case of a contract or subcontract undertaken to be performed by a joint venture as described in subsection (a)(2), an amount equal to the amount of the contract or subcontract multiplied by the percentage of the tribe's or tribally owned corporation's ownership interest in the joint venture.

(d) REGULATIONS.—The Secretary of Defense shall prescribe regulations for the implementation of this section.

(e) DEFINITIONS.—In this section:

(1) The term ''Indian lands'' has the meaning given that term by section 4(4) of the Indian Gaming Regulatory Act (25 U.S.C. 2703(4)).

(2) The term ''Indian'' has the meaning given that term by section 4(d) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304(d)).

(3) The term ''Indian tribe'' has the meaning given that term by section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304(e)).

(4) The term ''tribally owned corporation'' means a corporation owned entirely by an Indian tribe.

(Added Pub. L. 102–484, div. A, title VIII, § 801(g)(1), Oct. 23, 1992, 106 Stat. 2445; amended Pub. L. 104–201, div. A, title X, § 1074(a)(13), Sept. 23, 1996, 110 Stat. 2659; Pub. L. 115–232, div. A, title VIII, § 812(a)(2)(C)(vii), Aug. 13, 2018, 132 Stat. 1847; Pub. L. 116–92, div. A, title XVII, § 1731(a)(39)(B), Dec. 20, 2019, 133 Stat. 1814.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1838(b), Jan. 1, 2021, 134 Stat. 4151, 4242, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 285 of this title, as added by section 1838(a) of Pub. L. 116–283, inserted after section 3901, and redesignated as section 3902 of this title. See Effective Date of 2021 Amendment note below.

CODIFICATION

Section, as added by Pub. L. 102–484, consists of text of Pub. L. 101–189, div. A, title VIII, § 832, Nov. 29, 1989, 103 Stat. 1508, revised by Pub. L. 102–484 by substituting ''section 2323 of this title'' for ''section 1207 of the National Defense Authorization Act for Fiscal Year 1987 (10 U.S.C. 2301 note)'' in subsec. (a). Section 832 of Pub. L. 101–189, which was formerly set out as a note under section 2301 of this title, was repealed by Pub. L. 102–484, div. A, title VIII, § 801(h)(5), Oct. 23, 1992, 106 Stat. 2445.

AMENDMENTS

2019—Pub. L. 116–92, §1731(a)(39)(B)(i), struck out "and certain institutions of higher education" after "businesses" in section catchline.

Subsec. (e)(1). Pub. L. 116–92, §1731(a)(39)(B)(ii)(I), struck out "102 Stat. 2468;" before "25 U.S.C. 2703(4))."

Subsec. (e)(2). Pub. L. 116–92, §1731(a)(39)(B)(ii)(II), substituted "(25 U.S.C. 5304(d))" for "(25 U.S.C. 450b(d))".

Subsec. (e)(3). Pub. L. 116–92, §1731(a)(39)(B)(ii)(III), substituted "(25 U.S.C. 5304(e))" for "(25 U.S.C. 450b(e))".

2018—Subsec. (a). Pub. L. 115–232 struck out "section 2323 of this title and" after "implementation of".

1996—Subsec. (a). Pub. L. 104–201, which directed amendment of subsec. (a) by substituting "section 2323 of this title" for "section 1207 of the National Defense Authorization Act for Fiscal Year 1987 (10 U.S.C. 2301 note)", could not be executed because the language "section 1207 of the National Defense Authorization Act for Fiscal Year 1987 (10 U.S.C. 2301 note)" did not appear. See Codification note above.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 2324. Allowable costs under defense contracts

(a) INDIRECT COST THAT VIOLATES A FAR COST PRINCIPLE.—The head of an agency shall require that a covered contract provide that if the contractor submits to the agency a proposal for settlement of indirect costs incurred by the contractor for any period after such costs have been accrued and if that proposal includes the submission of a cost which is unallowable because the cost violates a cost principle in the Federal Acquisition Regulation or applicable agency supplement to the Federal Acquisition Regulation, the cost shall be disallowed.

(b) PENALTY FOR VIOLATION OF COST PRINCIPLE.—(1) If the head of the agency determines that a cost submitted by a contractor in its proposal for settlement is expressly unallowable under a cost principle referred to in subsection (a) that defines the allowability of specific selected costs, the head of the agency shall assess a penalty against the contractor in an amount equal to—

(A) the amount of the disallowed cost allocated to covered contracts for which a proposal for settlement of indirect costs has been submitted; plus

(B) interest (to be computed based on provisions in the Federal Acquisition Regulation) to compensate the United States for the use of any funds which a contractor has been paid in excess of the amount to which the contractor was entitled.

(2) If the head of the agency determines that a proposal for settlement of indirect costs submitted by a contractor includes a cost determined to be unallowable in the case of such contractor before the submission of such proposal, the head of the agency shall assess a penalty against the contractor in an amount equal to two times the amount of the disallowed cost allocated to covered contracts for which a proposal for settlement of indirect costs has been submitted.

(c) WAIVER OF PENALTY.—The Federal Acquisition Regulation shall provide for a penalty under subsection (b) to be waived in the case of a contractor's proposal for settlement of indirect costs when—

(1) the contractor withdraws the proposal before the formal initiation of an audit of the proposal by the Federal Government and resubmits a revised proposal;

(2) the amount of unallowable costs subject to the penalty is insignificant; or

(3) the contractor demonstrates, to the contracting officer's satisfaction, that—

(A) it has established appropriate policies and personnel training and an internal control and review system that provide assurances that unallowable costs subject to penalties are precluded from being included in the contractor's proposal for settlement of indirect costs; and

(B) the unallowable costs subject to the penalty were inadvertently incorporated into the proposal.

(d) APPLICABILITY OF CONTRACT DISPUTES PROCEDURE TO DISALLOWANCE OF COST AND ASSESSMENT OF PENALTY.—An action of the head of an agency under subsection (a) or (b)—

(1) shall be considered a final decision for the purposes of section 7103 of title 41; and

(2) is appealable in the manner provided in section 7104(a) of title 41.

(e) SPECIFIC COSTS NOT ALLOWABLE.—(1) The following costs are not allowable under a covered contract:

(A) Costs of entertainment, including amusement, diversion, and social activities and any costs directly associated with such costs (such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities).

(B) Costs incurred to influence (directly or indirectly) legislative action on any matter pending before Congress, a State legislature, or a legislative body of a political subdivision of a State.

(C) Costs incurred in defense of any civil or criminal fraud proceeding or similar proceeding (including filing of any false certification) brought by the United States where the contractor is found liable or has pleaded nolo contendere to a charge of fraud or similar proceeding (including filing of a false certification).

(D) Payments of fines and penalties resulting from violations of, or failure to comply with, Federal, State, local, or foreign laws and regulations, except when incurred as a result of compliance with specific terms and conditions of the contract or specific written instructions from the contracting officer authorizing in advance such payments in accordance with applicable provisions of the Federal Acquisition Regulation.

(E) Costs of membership in any social, dining, or country club or organization.

(F) Costs of alcoholic beverages.

(G) Contributions or donations, regardless of the recipient.

(H) Costs of advertising designed to promote the contractor or its products.

(I) Costs of promotional items and memorabilia, including models, gifts, and souvenirs.

(J) Costs for travel by commercial aircraft which exceed the amount of the standard commercial fare.

(K) Costs incurred in making any payment (commonly known as a ''golden parachute payment'') which is—

(i) in an amount in excess of the normal severance pay paid by the contractor to an employee upon termination of employment; and

(ii) is paid to the employee contingent upon, and following, a change in management control over, or ownership of, the contractor or a substantial portion of the contractor's assets.

(L) Costs of commercial insurance that protects against the costs of the contractor for correction of the contractor's own defects in materials or workmanship.

(M) Costs of severance pay paid by the contractor to foreign nationals employed by the contractor under a service contract performed outside the United States, to the extent that the amount of severance pay paid in any case exceeds the amount paid in the industry involved under the customary or prevailing practice for firms in that industry providing similar services in the United States, as determined under the Federal Acquisition Regulation.

(N) Costs of severance pay paid by the contractor to a foreign national employed by the contractor under a service contract performed in a foreign country if the termination of the employment of the foreign national is the result of the closing of, or the curtailment of activities at, a United States military facility in that country at the request of the government of that country.

(O) Costs incurred by a contractor in connection with any criminal, civil, or administrative proceeding commenced by the United States or a State, to the extent provided in subsection (k).

(P)[1] Costs of compensation of any contractor employee for a fiscal year, regardless of the contract funding source, to the extent that such compensation exceeds $625,000 adjusted annually for the U.S. Bureau of Labor Statistics Employment Cost Index for total compensation for private industry workers, by occupational and industry group not seasonally adjusted, except that the Secretary of Defense may establish exceptions for positions in the science, technology, engineering, mathematics, medical, and cybersecurity fields and other fields requiring unique areas of expertise upon a determination that such exceptions are needed to ensure that the Department of Defense has continued access to needed skills and capabilities.

(P)[1] Costs of compensation of contractor and subcontractor employees for a fiscal year, regardless of the contract funding source, to the extent that such compensation exceeds $487,000 per year, adjusted annually to reflect the change in the Employment Cost Index for all workers, as calculated by the Bureau of Labor Statistics, except that the head of an executive agency may establish one or more narrowly targeted exceptions for scientists, engineers, or other specialists upon a determination that such exceptions are needed to ensure that the executive agency has continued access to needed skills and capabilities.

(Q) Costs incurred by a contractor in connection with a congressional investigation or inquiry into an issue that is the subject matter of a proceeding resulting in a disposition as described in subsection (k)(2).

(2)(A) The Secretary of Defense may provide in a military banking contract that the provisions of paragraphs (1)(M) and (1)(N) shall not apply to costs incurred under the contract by the contractor for payment of mandated foreign national severance pay. The Secretary may include such a provision in a military banking contract only if the Secretary determines, with respect to that contract, that the contractor has taken (or has established plans to take) appropriate actions within the contractor's control to minimize the amount and number of incidents of the payment of severance pay by the contractor to employees under the contract who are foreign nationals.

(B) In subparagraph (A):

(i) The term ''military banking contract'' means a contract between the Secretary and a financial institution under which the financial institution operates a military banking facility outside the United States for use by members of the armed forces stationed or deployed outside the United States and other authorized personnel.

(ii) The term ''mandated foreign national severance pay'' means severance pay paid by a contractor to a foreign national employee the payment of which by the contractor is required in order to comply with a law that is generally applicable to a significant number of businesses in the country in which the foreign national receiving the payment performed services under the contract.

(C) Subparagraph (A) does not apply to a contract with a financial institution that is owned or controlled by citizens or nationals of a foreign country, as determined by the Secretary of Defense. Such a determination shall be made in accordance with the criteria set out in paragraph (1) of section 4(g) of the Buy American Act (as added by section 7002(2) of the Omnibus Trade and Competitiveness Act of 1988) and the policy guidance referred to in paragraph (2)(A) of that section.

(3)(A) Pursuant to the Federal Acquisition Regulation and subject to the availability of appropriations, the head of an agency awarding a covered contract (other than a contract to which paragraph (2) applies) may waive the application of the provisions of paragraphs (1)(M) and (1)(N) to that contract if the head of the agency determines that—

(i) the application of such provisions to the contract would adversely affect the continuation of a program, project, or activity that provides significant support services for mem-

[1] So in original. Two subpars. (P) have been enacted.

bers of the armed forces stationed or deployed outside the United States;

(ii) the contractor has taken (or has established plans to take) appropriate actions within the contractor's control to minimize the amount and number of incidents of the payment of severance pay by the contractor to employees under the contract who are foreign nationals; and

(iii) the payment of severance pay is necessary in order to comply with a law that is generally applicable to a significant number of businesses in the country in which the foreign national receiving the payment performed services under the contract or is necessary to comply with a collective bargaining agreement.

(B) The head of an agency shall include in the solicitation for a covered contract a statement indicating—

(i) that a waiver has been granted under subparagraph (A) for the contract; or

(ii) whether the head of the agency will consider granting such a waiver, and, if the agency head will consider granting a waiver, the criteria to be used in granting the waiver.

(C) The head of an agency shall make the final determination regarding whether to grant a waiver under subparagraph (A) with respect to a covered contract before award of the contract.

(4) The provisions of the Federal Acquisition Regulation implementing this section may establish appropriate definitions, exclusions, limitations, and qualifications.

(f) REQUIRED REGULATIONS.—(1) The Federal Acquisition Regulation shall contain provisions on the allowability of contractor costs. Such provisions shall define in detail and in specific terms those costs which are unallowable, in whole or in part, under covered contracts. The regulations shall, at a minimum, clarify the cost principles applicable to contractor costs of the following:

(A) Air shows.

(B) Membership in civic, community, and professional organizations.

(C) Recruitment.

(D) Employee morale and welfare.

(E) Actions to influence (directly or indirectly) executive branch action on regulatory and contract matters (other than costs incurred in regard to contract proposals pursuant to solicited or unsolicited bids).

(F) Community relations.

(G) Dining facilities.

(H) Professional and consulting services, including legal services.

(I) Compensation.

(J) Selling and marketing.

(K) Travel.

(L) Public relations.

(M) Hotel and meal expenses.

(N) Expense of corporate aircraft.

(O) Company-furnished automobiles.

(P) Advertising.

(Q) Conventions.

(2) The Federal Acquisition Regulation shall require that a contracting officer not resolve any questioned costs until he has obtained—

(A) adequate documentation with respect to such costs; and

(B) the opinion of the contract auditor on the allowability of such costs.

(3) The Federal Acquisition Regulation shall provide that, to the maximum extent practicable, the contract auditor be present at any negotiation or meeting with the contractor regarding a determination of the allowability of indirect costs of the contractor.

(4) The Federal Acquisition Regulation shall require that all categories of costs designated in the report of the contract auditor as questioned with respect to a proposal for settlement be resolved in such a manner that the amount of the individual questioned costs that are paid will be reflected in the settlement.

(g) APPLICABILITY OF REGULATIONS TO SUBCONTRACTORS.—The regulations referred to in subsections (e) and (f)(1) shall require prime contractors of a covered contract, to the maximum extent practicable, to apply the provisions of such regulations to all subcontractors of the covered contract.

(h) CONTRACTOR CERTIFICATION REQUIRED.—(1) A proposal for settlement of indirect costs applicable to a covered contract shall include a certification by an official of the contractor that, to the best of the certifying official's knowledge and belief, all indirect costs included in the proposal are allowable. Any such certification shall be in a form prescribed in the Federal Acquisition Regulation.

(2) The head of the agency or the Secretary of the military department concerned may, in an exceptional case, waive the requirement for certification under paragraph (1) in the case of any contract if the head of the agency or the Secretary—

(A) determines in such case that it would be in the interest of the United States to waive such certification; and

(B) states in writing the reasons for that determination and makes such determination available to the public.

(i) PENALTIES FOR SUBMISSION OF COST KNOWN AS NOT ALLOWABLE.—The submission to an agency of a proposal for settlement of costs for any period after such costs have been accrued that includes a cost that is expressly specified by statute or regulation as being unallowable, with the knowledge that such cost is unallowable, shall be subject to the provisions of section 287 of title 18 and section 3729 of title 31.

(j) CONTRACTOR TO HAVE BURDEN OF PROOF.—In a proceeding before the Armed Services Board of Contract Appeals, the United States Court of Federal Claims, or any other Federal court in which the reasonableness of indirect costs for which a contractor seeks reimbursement from the Department of Defense is in issue, the burden of proof shall be upon the contractor to establish that those costs are reasonable.

(k) PROCEEDING COSTS NOT ALLOWABLE.—(1) Except as otherwise provided in this subsection, costs incurred by a contractor or subcontractor, or personal services contractor in connection with any criminal, civil, or administrative proceeding commenced by the United States, by a State, or by a contractor or subcontractor, or personal services contractor employee submitting a complaint under section 2409 of this title

are not allowable as reimbursable costs under a covered contract, subcontract, or personal services contract if the proceeding (A) relates to a violation of, or failure to comply with, a Federal or State statute or regulation or to any other activity described in subparagraphs (A) through (C) of section 2409(a)(1) of this title, and (B) results in a disposition described in paragraph (2).

(2) A disposition referred to in paragraph (1)(B) is any of the following:

(A) In the case of a criminal proceeding, a conviction (including a conviction pursuant to a plea of nolo contendere) by reason of the violation or failure referred to in paragraph (1).

(B) In the case of a civil or administrative proceeding involving an allegation of fraud or similar misconduct, a determination of contractor or subcontractor, or personal services contractor liability on the basis of the violation or failure referred to in paragraph (1).

(C) In the case of any civil or administrative proceeding, the imposition of a monetary penalty or an order to take corrective action under section 2409 of this title by reason of the violation or failure referred to in paragraph (1).

(D) A final decision—

(i) to debar or suspend the contractor or subcontractor, or personal services contractor;

(ii) to rescind or void the contract, subcontract, or personal services contract; or

(iii) to terminate the contract, subcontract, or personal services contract for default;

by reason of the violation or failure referred to in paragraph (1).

(E) A disposition of the proceeding by consent or compromise if such action could have resulted in a disposition described in subparagraph (A), (B), (C), or (D).

(3) In the case of a proceeding referred to in paragraph (1) that is commenced by the United States and is resolved by consent or compromise pursuant to an agreement entered into by a contractor or subcontractor, or personal services contractor and the United States, the costs incurred by the contractor or subcontractor, or personal services contractor in connection with such proceeding that are otherwise not allowable as reimbursable costs under such paragraph may be allowed to the extent specifically provided in such agreement.

(4) In the case of a proceeding referred to in paragraph (1) that is commenced by a State, the head of the agency or Secretary of the military department concerned that awarded the covered contract, subcontract, or personal services contract involved in the proceeding may allow the costs incurred by the contractor or subcontractor, or personal services contractor in connection with such proceeding as reimbursable costs if the agency head or Secretary determines, in accordance with the Federal Acquisition Regulation, that the costs were incurred as a result of (A) a specific term or condition of the contract, subcontract, or personal services contract, or (B) specific written instructions of the agency or military department.

(5)(A) Except as provided in subparagraph (C), costs incurred by a contractor or subcontractor, or personal services contractor in connection with a criminal, civil, or administrative proceeding commenced by the United States or a State in connection with a covered contract, subcontract, or personal services contract may be allowed as reimbursable costs under the contract, subcontract, or personal services contract if such costs are not disallowable under paragraph (1), but only to the extent provided in subparagraph (B).

(B)(i) The amount of the costs allowable under subparagraph (A) in any case may not exceed the amount equal to 80 percent of the amount of the costs incurred, to the extent that such costs are determined to be otherwise allowable and allocable under the Federal Acquisition Regulation.

(ii) Regulations issued for the purpose of clause (i) shall provide for appropriate consideration of the complexity of procurement litigation, generally accepted principles governing the award of legal fees in civil actions involving the United States as a party, and such other factors as may be appropriate.

(C) In the case of a proceeding referred to in subparagraph (A), contractor or subcontractor, or personal services contractor costs otherwise allowable as reimbursable costs under this paragraph are not allowable if (i) such proceeding involves the same contractor or subcontractor, or personal services contractor misconduct alleged as the basis of another criminal, civil, or administrative proceeding, and (ii) the costs of such other proceeding are not allowable under paragraph (1).

(6) In this subsection:

(A) The term ''proceeding'' includes an investigation.

(B) The term ''costs'', with respect to a proceeding—

(i) means all costs incurred by a contractor or subcontractor, or personal services contractor, whether before or after the commencement of any such proceeding; and

(ii) includes—

(I) administrative and clerical expenses;

(II) the cost of legal services, including legal services performed by an employee of the contractor or subcontractor, or personal services contractor;

(III) the cost of the services of accountants and consultants retained by the contractor or subcontractor, or personal services contractor; and

(IV) the pay of directors, officers, and employees of the contractor or subcontractor, or personal services contractor for time devoted by such directors, officers, and employees to such proceeding.

(C) The term ''penalty'' does not include restitution, reimbursement, or compensatory damages.

(*l*) DEFINITIONS.—In this section:

(1)(A) The term ''covered contract'' means a contract for an amount in excess of $500,000 that is entered into by the head of an agency, except that such term does not include a fixed-price contract without cost incentives or any firm fixed-price contract for the purchase of commercial products or commercial services.

(B) Effective on October 1 of each year that is divisible by five, the amount set forth in subparagraph (A) shall be adjusted in accordance with section 1908 of title 41.

(2) The term ''head of the agency'' or ''agency head'' does not include the Secretary of a military department.

(3) The term ''agency'' means the Department of Defense, the Coast Guard, and the National Aeronautics and Space Administration.

(4) The term ''compensation'', for a year, means the total amount of wages, salary, bonuses and deferred compensation for the year, whether paid, earned, or otherwise accruing, as recorded in an employer's cost accounting records for the year.

[(5) Repealed. Pub. L. 112–81, div. A, title VIII, § 803(b), Dec. 31, 2011, 125 Stat. 1485.]

(6) The term ''fiscal year'' means a fiscal year established by a contractor for accounting purposes.

(Added Pub. L. 99–145, title IX, § 911(a)(1), Nov. 8, 1985, 99 Stat. 682; amended Pub. L. 99–190, § 101(b) [title VIII, § 8112(a)], Dec. 19, 1985, 99 Stat. 1185, 1223; Pub. L. 100–26, § 7(k)(3), Apr. 21, 1987, 101 Stat. 284; Pub. L. 100–180, div. A, title VIII, § 805(a), Dec. 4, 1987, 101 Stat. 1126; Pub. L. 100–370, § 1(f)(2)(A), (3)(A), July 19, 1988, 102 Stat. 846; Pub. L. 100–456, div. A, title III, § 322(a), title VIII, §§ 826(a), 832(a), Sept. 29, 1988, 102 Stat. 1952, 2022, 2023; Pub. L. 100–463, title VIII, § 8105(a), Oct. 1, 1988, 102 Stat. 2270–36; Pub. L. 100–526, title I, § 106(a)(2), Oct. 24, 1988, 102 Stat. 2625; Pub. L. 100–700, § 8(b), Nov. 19, 1988, 102 Stat. 4636; Pub. L. 101–189, div. A, title III, § 311(a)(1), title VIII, § 853(a)(1), (b)(3), Nov. 29, 1989, 103 Stat. 1411, 1518; Pub. L. 101–510, div. A, title XIII, § 1301(10), Nov. 5, 1990, 104 Stat. 1668; Pub. L. 102–190, div. A, title III, § 346(a), Dec. 5, 1991, 105 Stat. 1346; Pub. L. 102–484, div. A, title VIII, § 818(a), title X, § 1052(26), title XIII, § 1352(b), Oct. 23, 1992, 106 Stat. 2457, 2500, 2559; Pub. L. 103–355, title II, § 2101(a)–(d), Oct. 13, 1994, 108 Stat. 3306–3308; Pub. L. 104–106, div. D, title XLIII, § 4321(a)(5), (b)(9), Feb. 10, 1996, 110 Stat. 671, 672; Pub. L. 105–85, div. A, title VIII, § 808(a), Nov. 18, 1997, 111 Stat. 1836; Pub. L. 105–261, div. A, title VIII, § 804(a), Oct. 17, 1998, 112 Stat. 2083; Pub. L. 111–350, § 5(b)(19), Jan. 4, 2011, 124 Stat. 3844; Pub. L. 112–81, div. A, title VIII, § 803(a), (b), Dec. 31, 2011, 125 Stat. 1485; Pub. L. 112–239, div. A, title VIII, § 827(g), Jan. 2, 2013, 126 Stat. 1836; Pub. L. 113–66, div. A, title VIII, § 811(a), Dec. 26, 2013, 127 Stat. 806; Pub. L. 113–67, div. A, title VII, § 702(a)(2), Dec. 26, 2013, 127 Stat. 1189; Pub. L. 113–291, div. A, title VIII, § 857, Dec. 19, 2014, 128 Stat. 3460; Pub. L. 114–261, § 1(b)(1), Dec. 14, 2016, 130 Stat. 1362; Pub. L. 115–91, div. A, title VIII, § 811(e), Dec. 12, 2017, 131 Stat. 1460; Pub. L. 115–232, div. A, title VIII, § 836(c)(9), Aug. 13, 2018, 132 Stat. 1866; Pub. L. 116–283, div. A, title XVIII, § 1832(b)(1)–(3)(A), (4), (c)(1), (d)(1), (e)(1), (e), (f)(1), (g), (h), (i)(1)(A), (2), Jan. 1, 2021, 134 Stat. 4218, 4219, 4221, 4222.)

AMENDMENT OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1832(b)(1)–(3)(A), (4), (c)(1), (d)(1), (e)(1), (e), (f)(1), (g), (h), (i)(1)(A), (2), Jan. 1, 2021, 134 Stat. 4151, 4218, 4219, 4221, 4222, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is amended as follows:

(1) by transferring subsecs. (a) to (d) to section 3743 of this title;

(2) by transferring subsec. (e) to section 3744 of this title;

(3) by transferring subsec. (f) to section 3745 of this title;

(4) by transferring subsec. (g) to section 3746 of this title;

(5) by transferring subsec. (h) to section 3747 of this title;

(6) by transferring subsec. (i) to section 3748 of this title;

(7) by transferring subsec. (j) to section 3749 of this title;

(8) by transferring subsec. (k) to section 3750 of this title; and

(9) by transferring subsec. (l) as follows:

(A) paragraph (1)(A) to section 3741(2) of this title;

(B) paragraph (1)(B) to section 3742 of this title;

(C) paragraphs (2) and (3) to section 3741(4) and (5), respectively, of this title;

(D) paragraph (4) to section 3741(1) of this title; and

(E) paragraph (6) to section 3741(3) of this title.

See 2021 Amendment notes below.

REPEAL OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1881(a), Jan. 1, 2021, 134 Stat. 4151, 4293, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is repealed.

HISTORICAL AND REVISION NOTES

Subsection (e)(1)(L) is based on section 2399 of this title as enacted by Pub. L. 97–295, § 1(29)(A), Oct. 12, 1982, 96 Stat. 1293.

Section 1(f)(2) of the bill would transfer the provisions of existing 10 U.S.C. 2399 to a new subparagraph (L) of 10 U.S.C. 2324(e)(1). The existing section 2399 prohibits the use of appropriated funds to reimburse a defense contractor for insurance against the contractor's costs of correcting defects in the contractor's materials or workmanship. The transfer would add the provision to the list of contractor costs which are not allowable as expenses which may be paid by the Department of Defense under a contract. This allowable cost limitation applies only to contracts for more than $100,000 other than fixed price contracts without cost incentives (see 10 U.S.C. 2324(k)). The committee determined that it is appropriate to treat the subject matter of section 2399 in the same manner as other provisions relating to allowable costs of defense contractors and notes that section 2324, providing a more comprehensive treatment of allowable costs, was enacted after section 2399. The committee recognizes that contracts for amounts less than $100,000 and fixed price contracts without cost incentives are covered by the existing section 2399 and would not be covered by the provision as transferred. The committee determined that in practice the existing section 2399 would not have significant applicability to such contracts and that the transfer is appropriate as part of this bill.

Subsection (j) is based on Pub. L. 99–145, title IX, § 933, Nov. 8, 1985, 99 Stat. 700.

REFERENCES IN TEXT

Section 4 of the Buy American Act (as added by section 7002(2) of the Omnibus Trade and Competitiveness

Act of 1988), referred to in subsec. (e)(2)(C), was section 4 of act Mar. 3, 1933, ch. 212, title III, as added Pub. L. 100–418, title VII, §7002(2), Aug. 23, 1988, 102 Stat. 1545. Section 4, which was classified to section 10b–1 of former Title 41, Public Contracts, was omitted from the Code in view of section 7004 of Pub. L. 100–418 which provided that the amendment by Pub. L. 100–418 which enacted section 4 ceased to be effective on Apr. 30, 1996. Section 4 was subsequently repealed by Pub. L. 111–350, §7(b), Jan. 4, 2011, 124 Stat. 3855, which Act enacted Title 41, Public Contracts.

CODIFICATION

Another section 2324 of this title was contained in chapter 138 and was renumbered section 2344 of this title.

AMENDMENTS

2021—Subsecs. (a) to (d). Pub. L. 116–283, §1832(c)(1), redesignated subsecs. (a) to (d) as section 3743 of this title.

Subsec. (e). Pub. L. 116–283, §1832(d)(1), redesignated subsec. (e) as section 3744 of this title.

Subsec. (f). Pub. L. 116–283, §1832(e)(1), redesignated subsec. (f) as section 3745 of this title.

Subsec. (g). Pub. L. 116–283, §1832(e), redesignated subsec. (g) as section 3746 of this title.

Subsec. (h). Pub. L. 116–283, §1832(f)(1), redesignated subsec. (h) as section 3747 of this title.

Subsec. (i). Pub. L. 116–283, §1832(g), redesignated subsec. (i) as section 3748 of this title.

Subsec. (j). Pub. L. 116–283, §1832(h), redesignated subsec. (j) as section 3749 of this title.

Subsec. (k)(1) to (5). Pub. L. 116–283, §1832(i)(2), redesignated pars. (1) to (5) as section 3750(b) to (f), respectively, of this title.

Subsec. (k)(6). Pub. L. 116–283, §1832(i)(1)(A), redesignated par. (6) as section 3750(a) of this title.

Subsec. (*l*)(1)(A). Pub. L. 116–283, §1832(b)(2), redesignated subpar. (A) as section 3741(2) of this title.

Subsec. (*l*)(1)(B). Pub. L. 116–283, §1832(b)(4), redesignated subpar. (B) as section 3742 of this title.

Subsec. (*l*)(2), (3). Pub. L. 116–283, §1832(b)(3)(A), redesignated pars. (2) and (3) as section 3741(4) and (5), respectively, of this title.

Subsec. (*l*)(4). Pub. L. 116–283, §1832(b)(1), redesignated par. (4) as section 3741(1) of this title.

Subsec. (*l*)(6). Pub. L. 116–283, §1832(b)(3)(A), redesignated par. (6) as section 3741(3) of this title.

2018—Subsec. (*l*)(1)(A). Pub. L. 115–232 substituted ''commercial products or commercial services'' for ''commercial items''.

2017—Subsec. (*l*)(1)(B). Pub. L. 115–91 substituted ''in accordance with section 1908 of title 41.'' for ''to the equivalent amount in constant fiscal year 1994 dollars. An amount, as so adjusted, that is not evenly divisible by $50,000 shall be rounded to the nearest multiple of $50,000. In the case of an amount that is evenly divisible by $25,000 but is not evenly divisible by $50,000, the amount shall be rounded to the next higher multiple of $50,000.''

2016—Subsec. (k). Pub. L. 114–261, §1(b)(1)(A), (B), inserted ''or subcontractor, or personal services contractor'' after ''contractor'' and '', subcontract, or personal services contract'' after ''contract'' wherever appearing.

Subsec. (k)(1). Pub. L. 114–261, §1(b)(1)(C), in subpar. (A), inserted ''or to any other activity described in subparagraphs (A) through (C) of section 2409(a)(1) of this title'' after ''statute or regulation''.

2014—Subsec. (e)(1)(Q). Pub. L. 113–291 added subpar. (Q).

2013—Subsec. (e)(1)(P). Pub. L. 113–66 and Pub. L. 113–67 amended subpar. (P) generally. Prior to amendment, subpar. (P) read as follows: ''Costs of compensation of any contractor employee for a fiscal year, regardless of the contract funding source, to the extent that such compensation exceeds the benchmark compensation amount determined applicable for the fiscal year by the Administrator for Federal Procurement Policy under section 1127 of title 41, except that the Secretary of Defense may establish one or more narrowly targeted exceptions for scientists and engineers upon a determination that such exceptions are needed to ensure that the Department of Defense has continued access to needed skills and capabilities.'' See Effective Date of 2013 Amendment notes below.

Subsec. (k)(1). Pub. L. 112–239, §827(g)(1), substituted ''commenced by the United States, by a State, or by a contractor employee submitting a complaint under section 2409 of this title'' for ''commenced by the United States or a State''.

Subsec. (k)(2)(C). Pub. L. 112–239, §827(g)(2), substituted ''the imposition of a monetary penalty or an order to take corrective action under section 2409 of this title'' for ''the imposition of a monetary penalty''.

2011—Subsec. (d)(1). Pub. L. 111–350, §5(b)(19)(A), substituted ''section 7103 of title 41'' for ''section 6 of the Contract Disputes Act of 1978 (41 U.S.C. 605)''.

Subsec. (d)(2). Pub. L. 111–350, §5(b)(19)(B), substituted ''section 7104(a) of title 41'' for ''section 7 of such Act (41 U.S.C. 606)''.

Subsec. (e)(1)(P). Pub. L. 112–81, §803(a), substituted ''any contractor employee'' for ''senior executives of contractors'' and inserted'', except that the Secretary of Defense may establish one or more narrowly targeted exceptions for scientists and engineers upon a determination that such exceptions are needed to ensure that the Department of Defense has continued access to needed skills and capabilities'' before period at end.

Pub. L. 111–350, §5(b)(19)(C), substituted ''section 1127 of title 41'' for ''section 39 of the Office of Federal Procurement Policy Act (41 U.S.C. 435)''.

Subsec. (e)(2)(C). Pub. L. 111–350, §5(b)(19)(D), substituted ''(as added by section 7002(2) of the Omnibus Trade and Competitiveness Act of 1988)'' for ''(41 U.S.C. 10b–1)''.

Subsec. (*l*)(5). Pub. L. 112–81, §803(b), struck out par. (5) which read as follows: ''The term 'senior executives', with respect to a contractor, means the five most highly compensated employees in management positions at each home office and each segment of the contractor.''

1998—Subsec. (*l*)(5). Pub. L. 105–261 amended par. (5) generally. Prior to amendment, par. (5) read as follows: ''The term 'senior executive', with respect to a contractor, means—

''(A) the chief executive officer of the contractor or any individual acting in a similar capacity for the contractor;

''(B) the four most highly compensated employees in management positions of the contractor other than the chief executive officer; and

''(C) in the case of a contractor that has components which report directly to the contractor's headquarters, the five most highly compensated employees in management positions at each such component.''

1997—Subsec. (e)(1)(P). Pub. L. 105–85, §808(a)(1), added subpar. (P).

Subsec. (*l*)(4) to (6). Pub. L. 105–85, §808(a)(2), added pars. (4) to (6).

1996—Subsec. (e)(2)(C). Pub. L. 104–106, §4321(b)(9)(A), struck out ''awarding the contract'' after ''Secretary of Defense'' and substituted ''the Buy American Act (41 U.S.C. 10b–1)'' for ''title III of the Act of March 3, 1933 (41 U.S.C. 10b–1) (commonly referred to as the Buy American Act)''.

Subsec. (f)(2) to (4). Pub. L. 104–106, §4321(a)(5), made technical correction to directory language of Pub. L. 103–355, §2101(a)(6)(B)(ii). See 1994 Amendment notes below.

Subsec. (h)(2). Pub. L. 104–106, §4321(b)(9)(B), inserted ''the head of the agency or'' after ''in the case of any contract if''.

1994—Subsec. (a). Pub. L. 103–355, §2101(a), inserted heading and substituted ''head of an agency'' for ''Secretary of Defense'', ''agency'' for ''Department of Defense'', and ''applicable agency supplement'' for ''the Department of Defense Supplement''.

Subsec. (b). Pub. L. 103–355, § 2101(a)(2)(A), inserted heading.

Subsec. (b)(1). Pub. L. 103–355, § 2101(a)(2)(C), substituted ''head of the agency'' for ''Secretary'' in two places in introductory provisions.

Subsec. (b)(1)(B). Pub. L. 103–355, § 2101(a)(2)(B), substituted ''provisions in the Federal Acquisition Regulation'' for ''regulations issued by the Secretary''.

Subsec. (b)(2). Pub. L. 103–355, § 2101(a)(2)(C), substituted ''head of the agency'' for ''Secretary'' in two places.

Subsec. (c). Pub. L. 103–355, § 2101(a)(3), inserted heading and substituted ''The Federal Acquisition Regulation shall provide'' for ''The Secretary shall prescribe regulations providing''.

Subsec. (d). Pub. L. 103–355, § 2101(a)(4), inserted heading and substituted ''the head of an agency'' for ''the Secretary'' in introductory provisions.

Subsec. (e). Pub. L. 103–355, § 2101(a)(5)(A), inserted heading.

Subsec. (e)(1)(B). Pub. L. 103–355, § 2101(b), substituted '', a State legislature, or a legislative body of a political subdivision of a State'' for ''or a State legislature''.

Subsec. (e)(1)(D). Pub. L. 103–355, § 2101(a)(5)(B), substituted ''provisions of the Federal Acquisition Regulation'' for ''regulations of the Secretary of Defense''.

Subsec. (e)(1)(M). Pub. L. 103–355, § 2101(a)(5)(C), substituted ''the Federal Acquisition Regulation'' for ''regulations prescribed by the Secretary of Defense''.

Subsec. (e)(2)(A). Pub. L. 103–355, § 2101(a)(5)(D), substituted ''the Secretary of Defense may provide'' for ''the Secretary may provide''.

Subsec. (e)(2)(C). Pub. L. 103–355, § 2101(a)(5)(E), substituted ''Secretary of Defense'' for ''head of the agency''.

Subsec. (e)(3)(A). Pub. L. 103–355, § 2101(a)(5)(F), substituted ''the Federal Acquisition Regulation'' for ''regulations prescribed by the Secretary''.

Subsec. (e)(4). Pub. L. 103–355, § 2101(a)(5)(G), amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''The Secretary shall prescribe regulations to implement this section. Such regulations may establish appropriate definitions, exclusions, limitations, and qualifications.''

Subsec. (f)(1). Pub. L. 103–355, § 2101(a)(6)(A), inserted heading and substituted ''(1) The Federal Acquisition Regulation shall contain provisions on the allowability of contractor costs. Such provisions'' for ''(1) The Secretary shall prescribe proposed regulations to amend those provisions of the Department of Defense Supplement to the Federal Acquisition Regulation dealing with the allowability of contractor costs. The amendments'' and ''The regulations'' for ''These regulations''.

Subsec. (f)(1)(Q). Pub. L. 103–355, § 2101(c), added subpar. (Q).

Subsec. (f)(2). Pub. L. 103–355, § 2101(a)(6)(B)(ii), as amended by Pub. L. 104–106, § 4321(a)(5), substituted ''Federal Acquisition Regulation'' for ''regulations''.

Subsec. (f)(2)(B). Pub. L. 103–355, § 2101(a)(6)(B)(i), struck out ''defense'' before ''contract auditor''.

Subsec. (f)(3). Pub. L. 103–355, § 2101(a)(6)(B)(ii), as amended by Pub. L. 104–106, § 4321(a)(5), substituted ''Federal Acquisition Regulation'' for ''regulations''.

Pub. L. 103–355, § 2101(a)(6)(B)(i), struck out ''defense'' before ''contract auditor''.

Subsec. (f)(4). Pub. L. 103–355, § 2101(a)(6)(B)(ii), as amended by Pub. L. 104–106, § 4321(a)(5), substituted ''Federal Acquisition Regulation'' for ''regulations''.

Pub. L. 103–355, § 2101(a)(6)(B)(i), struck out ''defense'' before ''contract auditor''.

Subsec. (g). Pub. L. 103–355, § 2101(a)(7), amended subsec. (g) generally. Prior to amendment, subsec. (g) read as follows: ''The regulations of the Secretary required to be prescribed under subsections (e) and (f)(1) shall require, to the maximum extent practicable, that such regulations apply to all subcontractors of a covered contract.''

Subsec. (h). Pub. L. 103–355, § 2101(a)(8), inserted heading and substituted ''in the Federal Acquisition Regulation'' for ''by the Secretary'' in par. (1) and ''head of the agency'' for ''Secretary of Defense'' in introductory provisions of par. (2).

Subsec. (i). Pub. L. 103–355, § 2101(a)(9), inserted heading and substituted ''The submission to an agency'' for ''The submission to the Department of Defense''.

Subsec. (j). Pub. L. 103–355, § 2101(a)(10), inserted heading and substituted ''United States Court of Federal Claims'' for ''United States Claims Court''.

Subsec. (k). Pub. L. 103–355, § 2101(a)(11)(A), inserted heading.

Subsec. (k)(2)(D). Pub. L. 103–355, § 2101(a)(11)(B), struck out ''by the Department of Defense'' after ''decision'' in introductory provisions.

Subsec. (k)(4). Pub. L. 103–355, § 2101(a)(11)(C), inserted ''or Secretary of the military department concerned'' after ''head of the agency'', ''or Secretary'' after ''agency head'', and ''or military department'' before period at end and substituted ''in accordance with the Federal Acquisition Regulation'' for ''under regulations prescribed by such agency head''.

Subsec. (*l*). Pub. L. 103–355, § 2101(d), added subsec. (*l*) and struck out former subsec. (*l*) which related to periodic evaluation by Comptroller General of implementation of this section by Secretary of Defense.

Subsec. (m). Pub. L. 103–355, § 2101(d), struck out subsec. (m) which read as follows: ''In this section, the term 'covered contract' means a contract for an amount more than $100,000 entered into by the Department of Defense other than a fixed-price contract without cost incentives.''

1992—Subsec. (a). Pub. L. 102–484, § 818(a)(1)(A), redesignated subsec. (a)(1) as entire subsection. Former subsec. (a)(2) redesignated subsec. (b)(1).

Subsec. (b)(1). Pub. L. 102–484, § 818(a)(1)(B), redesignated subsec. (a)(2) as subsec. (b)(1), in introductory provisions struck out ''by clear and convincing evidence'' after ''Secretary determines'' and substituted ''expressly unallowable under a cost principle referred to in subsection (a) that defines the allowability of specific selected costs'' for ''unallowable under paragraph (1)'', and in subpar. (A), substituted ''cost allocated to covered contracts for which a proposal for settlement of indirect costs has been submitted'' for ''costs''. Former subsec. (b) redesignated subsec. (b)(2).

Subsec. (b)(2). Pub. L. 102–484, § 818(a)(2), redesignated subsec. (b) as subsec. (b)(2), struck out '', in addition to the penalty assessed under subsection (a),'' after ''against the contractor'', and substituted ''the amount of the disallowed cost allocated to covered contracts for which a proposal for settlement of indirect costs has been submitted'' for ''the amount of such cost''.

Subsec. (c). Pub. L. 102–484, § 818(a)(5), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 102–484, § 818(a)(3), (4), redesignated subsec. (c) as (d) and struck out former subsec. (d) which read as follows: ''If any penalty is assessed under subsection (a) or (b) with respect to a proposal for settlement of indirect costs, the Secretary may assess an additional penalty of not more than $10,000 per proposal.''

Subsec. (e)(3), (4). Pub. L. 102–484, § 1352(b), added par. (3) and redesignated former par. (3) as (4).

Subsec. (f)(5). Pub. L. 102–484, § 1052(26)(A), struck out par. (5) which read as follows: ''The regulations shall provide that costs to promote the export of products of the United States defense industry, including costs of exhibiting or demonstrating products, shall be allowable to the extent that such costs—

''(A) are allocable, reasonable, and not otherwise unallowable;

''(B) with respect to the activities of the business segment to which such costs are being allocated, are determined by the Secretary of Defense to be likely to result in future cost advantages to the United States; and

''(C) with respect to a business segment which allocates to Department of Defense contracts $2,500,000 or more of such costs in any fiscal year of such business segment, are not in excess of the amount equal to 110

percent of such costs incurred by such business segment in the previous fiscal year.''

Subsec. (*l*)(2). Pub. L. 102–484, §1052(26)(B)(i), substituted ''paragraph (3)'' for ''subsection (e)(2)(C)''.

Subsec. (*l*)(3). Pub. L. 102–484, §1052(26)(B)(ii), added par. (3).

1991—Subsec. (e)(2), (3). Pub. L. 102–190 added par. (2) and redesignated former par. (2) as (3).

1990—Subsec. (e)(2). Pub. L. 101–510 struck out ''(A)'' before ''The Secretary'' and struck out subpars. (B) and (C) which read as follows:

''(B) The Secretary shall submit to the committees named in subparagraph (C) any proposed regulations that would make substantive changes to regulations prescribed under the second sentence of subparagraph (A) before the publication of such proposed regulations in accordance with section 22 of the Office of Federal Procurement Policy Act (41 U.S.C. 418b).

''(C) The committees named in this subparagraph are—

''(i) the Committees on Armed Services and on Government Operations of the House of Representatives; and

''(ii) the Committees on Armed Services and on Governmental Affairs of the Senate.''

1989—Subsec. (e)(1)(N), (O). Pub. L. 101–189, §311(a)(1), added subpar. (N) and redesignated former subpar. (N) as (O).

Subsec. (k)(5)(B)(i). Pub. L. 101–189, §853(b)(3), substituted ''the Federal Acquisition Regulation'' for ''the single Government-wide procurement regulation issued pursuant to section 4(4)(A) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(4)(A))''.

Subsec. (k)(6). Pub. L. 101–189, §853(a)(1)(A), designated par. (2) of subsec. (*l*), set out first, as subsec. (k)(6) and substituted ''In this subsection:'' for ''In subsection (k):'' in introductory provisions.

Subsec. (*l*). Pub. L. 101–189, §853(a)(1)(A), (C), restored the text of subsec. (k) as in effect prior to being struck out by Pub. L. 100–700, §8(b)(2) (see 1988 Amendment note below), designated such text as subsec. (*l*), and struck out former subsec. (*l*)(1), set out first, which defined ''covered contract''. Former subsec. (*l*)(2), set out first, was redesignated subsec. (k)(6). Former subsec. (*l*), set out second, was redesignated (m).

Subsec. (m). Pub. L. 101–189, §853(a)(1)(B), redesignated subsec. (*l*), set out second, as (m).

1988—Subsec. (e)(1)(L). Pub. L. 100–370, §1(f)(2)(A), added subpar. (L).

Subsec. (e)(1)(M). Pub. L. 100–456, §322(a), added subpar. (M).

Subsec. (e)(1)(N). Pub. L. 100–700, §8(b)(1)(A), which directed amendment of subsec. (e) by striking out subpar. (N) and inserting in lieu thereof a new subpar. (N), was executed to subsec. (e)(1)(N) of this section as the probable intent of Congress. Former subpar. (N) read as follows: ''Except as provided in paragraph (2), costs incurred in connection with any civil, criminal, or administrative action brought by the United States that results in a determination that a contractor has violated or failed to comply with any Federal law or regulation if the action results in any of the following:

''(i) In the case of a criminal action, a conviction (including a conviction pursuant to a plea of nolo contendere).

''(ii) In the case of a civil or administrative action, (I) a determination by the Secretary of Defense that the violation or failure to comply was knowing or willful, and (II) the imposition of a monetary penalty.

''(iii) A final decision by an appropriate official of the Department of Defense to debar or suspend the contractor or to rescind, void, or terminate a contract awarded to such contractor if such decision is based on a determination by the Secretary of Defense that the violation or failure to comply was knowing or willful.''

Pub. L. 100–456, §832(a)(1), added subpar. (N).

Subsec. (e)(2), (3). Pub. L. 100–700, §8(b)(1)(B), (C), redesignated par. (3) as (2) and struck out former par. (2) which read as follows: ''If a civil, criminal, or administrative action referred to in paragraph (1)(N) is resolved by consent or compromise pursuant to an agreement entered into by a contractor and the United States, the contractor's costs that are otherwise not allowable under paragraph (1)(N) may be allowed to the extent provided in such agreement.''

Pub. L. 100–456, §832(a)(2), (3), added par. (2) and redesignated former par. (2) as (3).

Subsec. (f)(5). Pub. L. 100–463, §8105(a), and Pub. L. 100–456, §826(a), amended section identically, temporarily adding par. (5). Pub. L. 100–526 provided that Pub. L. 100–463, §8105, and amendment made by that section shall cease to be effective. See Effective and Termination Dates of 1988 Amendment note below.

Subsec. (j). Pub. L. 100–370, §1(f)(3)(A)(ii), added subsec. (j). Former subsec. (j) redesignated (k).

Subsec. (k). Pub. L. 100–700, §8(b)(2), added subsec. (k), and struck out former subsec. (k), the text of which was restored and redesignated subsec. (*l*) by Pub. L. 101–189, §853(a)(1)(C). See 1989 Amendment note above.

Pub. L. 100–370, §1(f)(3)(A)(i), redesignated subsec. (j) as (k). Former subsec. (k) redesignated (*l*).

Subsec. (*l*). Pub. L. 100–700, §8(b)(2), added subsec. (*l*) defining terms ''covered contract'', ''proceeding'', ''costs'', and ''penalty''.

Pub. L. 100–370, §1(f)(3)(A)(i), redesignated subsec. (k) as (*l*).

1987—Subsec. (e)(1)(K). Pub. L. 100–180 added subpar. (K).

Subsec. (k). Pub. L. 100–26 inserted ''the term'' after ''In this section,''.

1985—Subsec. (e)(2). Pub. L. 99–190, §101(b) [§8112(a)(1)], designated existing provisions as subpar. (A) and added subpars. (B) and (C).

Subsec. (h)(2). Pub. L. 99–190, §101(b) [§8112(a)(2)], inserted '', in an exceptional case,'' in provisions preceding subpar. (A).

Subsecs. (j), (k). Pub. L. 99–190, §101(b) [§8112(a)(3)], added subsec. (j) and redesignated former subsec. (j) as (k).

EFFECTIVE DATE OF REPEAL

Repeal effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115–232 effective Jan. 1, 2020, subject to a savings provision, see section 836(h) of Pub. L. 115–232, set out as an Effective Date of 2018 Amendment; Savings Provision note under section 453b of Title 6, Domestic Security.

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 113–67, div. A, title VII, §702(c), Dec. 26, 2013, 127 Stat. 1189, provided that: ''This section [amending this section and section 4304 of Title 41, Public Contracts, repealing section 1127 of Title 41, and enacting provisions set out as a note under section 4304 of Title 41] and the amendments made by this section shall apply only with respect to costs of compensation incurred under contracts entered into on or after the date that is 180 days after the date of the enactment of this Act [Dec. 26, 2013].''

Pub. L. 113–66, div. A, title VIII, §811(d), Dec. 26, 2013, 127 Stat. 806, provided that: ''The amendments made by this section [amending this section and section 4304 of Title 41, Public Contracts, and repealing section 1127 of Title 41] shall apply with respect to costs of compensation incurred under contracts entered into on or after the date that is 180 days after the date of the enactment of this Act [Dec. 26, 2013].''

Pub. L. 112–239, div. A, title VIII, § 827(i), Jan. 2, 2013, 126 Stat. 1836, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and section 2409 of this title] shall take effect on the date that is 180 days after the date of the enactment of this Act [Jan. 2, 2013], and shall apply to—

''(A) all contracts awarded on or after such date;

''(B) all task orders entered on or after such date pursuant to contracts awarded before, on, or after such date; and

''(C) all contracts awarded before such date that are modified to include a contract clause providing for the applicability of such amendments.

''(2) REVISION OF SUPPLEMENTS TO THE FAR.—Not later than 180 days after the date of the enactment of this Act, the Department of Defense Supplement to the Federal Acquisition Regulation and the National Aeronautics and Space Administration Supplement to the Federal Acquisition Regulation shall each be revised to implement the requirements arising under the amendments made by this section.

''(3) INCLUSION OF CONTRACT CLAUSE IN CONTRACTS AWARDED BEFORE EFFECTIVE DATE.—At the time of any major modification to a contract that was awarded before the date that is 180 days after the date of the enactment of this Act, the head of the contracting agency shall make best efforts to include in the contract a contract clause providing for the applicability of the amendments made by this section to the contract.''

EFFECTIVE DATE OF 2011 AMENDMENT

Pub. L. 112–81, div. A, title VIII, § 803(c), Dec. 31, 2011, 125 Stat. 1485, as amended by Pub. L. 114–328, div. A, title VIII, § 823(a), Dec. 23, 2016, 130 Stat. 2276, provided that: ''The amendments made by this section shall apply with respect to costs of compensation incurred after January 1, 2012, under contracts entered into on or after December 31, 2011.''

[Pub. L. 114–328, div. A, title VIII, § 823(b), Dec. 23, 2016, 130 Stat. 2277, provided that: ''The amendment made by subsection (a) [amending section 803(c) of Pub. L. 112–81, set out above] shall take effect as of December 31, 2011, and shall apply as if included in the National Defense Authorization Act for Fiscal Year 2012 [Pub. L. 112–81] as enacted.'']

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–261, div. A, title VIII, § 804(d), Oct. 17, 1998, 112 Stat. 2083, provided that: ''The amendments made by this section [amending this section, sections 256 and 435 of Title 41, Public Contracts, and provisions set out as a note under section 435 of Title 41] shall apply with respect to costs of compensation of senior executives incurred after January 1, 1999, under covered contracts (as defined in section 2324(*l*) of title 10, United States Code, and section 306(*l*) of the Federal Property and Administrative Services Act of 1949 ([former] 41 U.S.C.256(*l*))[)] [now 41 U.S.C. 4301(2), 4302] entered into before, on, or after the date of the enactment of this Act [Oct. 17, 1998].''

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–85, div. A, title VIII, § 808(e), Nov. 18, 1997, 111 Stat. 1838, provided that: ''The amendments made by this section [see Tables for classification] shall—

''(1) take effect on the date that is 90 days after the date of the enactment of this Act [Nov. 18, 1997]; and

''(2) apply with respect to costs of compensation incurred after January 1, 1998, under covered contracts entered into before, on, or after the date of the enactment of this Act.''

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–106, div. D, title XLIII, § 4321(a), Feb. 10, 1996, 110 Stat. 671, provided that the amendment made by that section is effective as of Oct. 13, 1994, and as if included in Pub. L. 103–355 as enacted.

For effective date and applicability of amendment by section 4321(b)(9) of Pub. L. 104–106, see section 4401 of Pub. L. 104–106, set out as a note under section 2302 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 2302 of this title.

EFFECTIVE DATE OF 1992 AMENDMENTS

Amendment by Pub. L. 102–572 effective Oct. 29, 1992, see section 911 of Pub. L. 102–572, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

Pub. L. 102–484, div. A, title VIII, § 818(b), Oct. 23, 1992, 106 Stat. 2458, provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Oct. 23, 1992] and shall apply, as provided in regulations prescribed by the Secretary of Defense, with respect to proposals for settlement of indirect costs for which the Federal Government has not formally initiated an audit before that date.''

Pub. L. 102–484, div. A, title XIII, § 1352(c), Oct. 23, 1992, 106 Stat. 2559, provided that: ''The amendments made by subsection (b) [amending this section] apply to covered contracts (as defined in section 2324 of title 10, United States Code) that are in effect or are entered into on or after October 1, 1991, for costs incurred on or after October 1, 1991.''

EFFECTIVE DATE OF 1991 AMENDMENT

Pub. L. 102–190, div. A, title III, § 346(b), Dec. 5, 1991, 105 Stat. 1347, provided that: ''The amendments made by subsection (a) [amending this section] shall not apply with respect to a foreign national whose employment under a military banking contract (defined in section 2324(e)(2)(B) of title 10, United States Code, as added by subsection (a)) was terminated before the date of the enactment of this Act [Dec. 5, 1991].''

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–189, div. A, title III, § 311(a)(2), Nov. 29, 1989, 103 Stat. 1411, provided that: ''Subparagraph (N) of such subsection [10 U.S.C. 2324(e)(1)(N)], as added by paragraph (1), shall not apply with respect to the termination of the employment of a foreign national employed under any covered contract (as defined in subsection (*l*) of such section [10 U.S.C. 2324(*l*)]) if such termination is the result of the closing of, or the curtailment of activities at, a United States military facility in a foreign country pursuant to an agreement entered into with the government of that country before the date of the enactment of this Act [Nov. 29, 1989].''

Pub. L. 101–189, div. A, title III, § 853(a)(3), Nov. 29, 1989, 103 Stat. 1518, provided that: ''The amendments made by this subsection [amending this section and provisions set out as a note below] shall take effect as of November 19, 1988.''

EFFECTIVE AND TERMINATION DATES OF 1988 AMENDMENTS

Pub. L. 100–700, § 8(e), Nov. 19, 1988, 102 Stat. 4638, provided that: ''The amendments made by subsections (a) and (b) [enacting section 256 of Title 41, Public Contracts, and amending this section] shall take effect with respect to contracts awarded after the date of the enactment of this Act [Nov. 19, 1988].''

Pub. L. 100–463, title VIII, § 8105(d), Oct. 1, 1988, 102 Stat. 2270–37, provided that subsec. (f)(5) of this section, as enacted by section 8105(a) of Pub. L. 100–463, would cease to be effective three years after Oct. 1, 1988. Section 106(a)(2) of Pub. L. 100–526 provided that section 8105 of Pub. L. 100–463 ''and the amendment made by that section shall cease to be effective''.

Pub. L. 100–456, div. A, title III, § 322(b), Sept. 29, 1988, 102 Stat. 1953, provided that: ''Subparagraph (M) of section 2324(e)(1) of title 10, United States Code, as added by subsection (a), shall apply with respect to any contract entered into after the end of the 180-day period

beginning on the date of the enactment of this Act [Sept. 29, 1988].''

Pub. L. 100–456, div. A, title VIII, § 826(d), Sept. 29, 1988, 102 Stat. 2023, as amended by Pub. L. 100–526, title I, § 106(a)(1)(B), Oct. 24, 1988, 102 Stat. 2625, provided that: ''Section 2324(f)(5) of title 10, United States Code (as added by subsection (a)), shall cease to be effective on September 30, 1991.''

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100–180, div. A, title VIII, § 805(b), Dec. 4, 1987, 101 Stat. 1126, provided that: ''Subparagraph (K) of section 2324(e)(1) of title 10, United States Code, as added by subsection (a), shall apply to any contract entered into after the end of the 120-day period beginning on the date of the enactment of this Act [Dec. 4, 1987].''

EFFECTIVE DATE

Pub. L. 99–145, title IX, § 911(c), Nov. 8, 1985, 99 Stat. 685, provided that: ''Section 2324 of title 10, United States Code, as added by subsection (a), shall apply only to contracts for which solicitations are issued on or after the date on which such regulations are prescribed.''

REGULATIONS

Pub. L. 103–355, title II, § 2101(e), Oct. 13, 1994, 108 Stat. 3309, provided that: ''The regulations of the Secretary of Defense implementing section 2324 of title 10, United States Code, shall remain in effect until the Federal Acquisition Regulation is revised to implement the amendments made by this section [amending this section].''

Pub. L. 100–700, § 8(d), Nov. 19, 1988, 102 Stat. 4638, provided that: ''The regulations necessary for the implementation of section 306(e) of the Federal Property and Administrative Services Act of 1949 [now 41 U.S.C. 4304] (as added by subsection (a)) and section 2324(k)(5) of title 10, United States Code (as added by subsection (b))—

''(1) shall be prescribed not later than 120 days after the date of the enactment of this Act [Nov. 19, 1988]; and

''(2) shall apply to contracts entered into more than 30 days after the date on which such regulations are issued.''

Pub. L. 100–463, title VIII, § 8105(b), (c), Oct. 1, 1988, 102 Stat. 2270–37, provided for the promulgation of regulations and the preparation of a report in connection with the operation of subsec. (f)(5), as enacted by section 8105(a) of Pub. L. 100–463. Section 106(a)(2) of Pub. L. 100–526 provided that section 8105 of Pub. L. 100–463 ''and the amendment made by that section shall cease to be effective''.

Pub. L. 100–456, div. A, title VIII, § 826(b), Sept. 29, 1988, 102 Stat. 2022, provided that: ''The Secretary of Defense shall prescribe final regulations under paragraph (5) of section 2324(f) of title 10, United States Code (as added by subsection (a)), not later than 90 days after the date of the enactment of this Act [Sept. 29, 1988]. Such regulations shall apply with respect to costs referred to in such paragraph that are incurred by a Department of Defense contractor (or a subcontractor of such a contractor) on or after the first day of the contractor's (or subcontractor's) first fiscal year that begins on or after the date on which such final regulations are prescribed.''

Pub. L. 100–456, div. A, title VIII, § 832(b), Sept. 29, 1988, 102 Stat. 2024, related to regulations for the implementation of subsec. (e)(1)(N) of this section, prior to repeal by Pub. L. 100–700, § 8(c), Nov. 19, 1988, 102 Stat. 4638.

Pub. L. 99–190, 101(b) [title VIII, § 8112(b), (c)], Dec. 19, 1985, 99 Stat. 1185, 1223, required the regulations required under section 911(b) of Pub. L. 99–145, set out below, to be submitted to Congress before the publication of such regulations in accordance with former 41 U.S.C. 418b (now 41 U.S.C. 1707) and directed the Comptroller General, within 180 days of publication of the regulations, to submit to Congress a report on the Comptroller General's initial evaluation under subsection (j)(1) of this section.

Pub. L. 99–145, title IX, § 911(b), Nov. 8, 1985, 99 Stat. 685, provided that:

''(1) Not later than 150 days after the date of the enactment of this Act [Nov. 8, 1985], the Secretary of Defense shall prescribe the regulations required by subsections (e) and (f) of section 2324 of title 10, United States Code, as added by subsection (a). Such regulations shall be published in accordance with section 22 of the Office of Federal Procurement Policy Act ([former] 41 U.S.C. 418b) [now 41 U.S.C. 1707].

''(2) The Secretary shall review such regulations at least once every five years. The results of each such review shall be made public.''

CONSTRUCTION

Pub. L. 112–239, div. A, title VIII, § 827(h), Jan. 2, 2013, 126 Stat. 1836, provided that: ''Nothing in this section, or the amendments made by this section [amending this section and section 2409 of this title and enacting provisions set out as a note under this section], shall be construed to provide any rights to disclose classified information not otherwise provided by law.''

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

INCLUSION OF CONTRACT CLAUSE IN CONTRACTS AWARDED BEFORE EFFECTIVE DATE

Pub. L. 114–261, § 1(c), Dec. 14, 2016, 130 Stat. 1363, provided that: ''At the time of any major modification to a contract that was awarded before the date of the enactment of this Act [Dec. 14, 2016], the head of the contracting agency shall make best efforts to include in the contract a contract clause providing for the applicability of the amendments made by this section [amending this section, section 2409 of this title, and sections 4304, 4310, and 4712 of Title 41, Public Contracts] and section 827 of the National Defense Authorization Act for Fiscal Year 2013 (Public Law 112–239; 126 Stat. 1833) [amending this section and section 2409 of this title].''

REPORT AND REGULATIONS ON EXCESSIVE PASS-THROUGH CHARGES

Pub. L. 109–364, div. A, title VIII, § 852, Oct. 17, 2006, 120 Stat. 2340, as amended by Pub. L. 113–291, div. A, title X, § 1071(b)(3)(B), Dec. 19, 2014, 128 Stat. 3506; Pub. L. 115–232, div. A, title VIII, § 836(f)(5), Aug. 13, 2018, 132 Stat. 1871, provided that:

''(a) COMPTROLLER GENERAL REPORT ON EXCESSIVE PASS-THROUGH CHARGES.—

''(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act [Oct. 17, 2006], the Comptroller General shall issue a report on pass-through charges on contracts or subcontracts (or task or delivery orders) that are entered into for or on behalf of the Department of Defense.

''(2) MATTERS COVERED.—The report issued under this subsection—

''(A) shall assess the extent to which the Department of Defense has paid excessive pass-through charges to contractors who provided little or no value to the performance of the contract;

''(B) shall assess the extent to which the Department has been particularly vulnerable to excessive pass-through charges on any specific category of contracts or by any specific category of contractors (including any category of small business); and

''(C) shall determine the extent to which any prohibition on excessive pass-through charges would be inconsistent with existing commercial practices for any specific category of contracts or have an unjustified adverse effect on any specific category of contractors (including any category of small business).

''(b) REGULATIONS REQUIRED.—

''(1) IN GENERAL.—Not later than May 1, 2007, the Secretary of Defense shall prescribe regulations to ensure that pass-through charges on contracts or subcontracts (or task or delivery orders) that are entered into for or on behalf of the Department of Defense are not excessive in relation to the cost of work performed by the relevant contractor or subcontractor.

''(2) SCOPE OF REGULATIONS.—The regulations prescribed under this subsection—

''(A) shall not apply to any firm, fixed-price contract or subcontract (or task or delivery order) that is—

''(i) awarded on the basis of adequate price competition; or

''(ii) for the acquisition of a commercial product or a commercial service, as defined in sections 103 and 103a, respectively, of title 41, United States Code; and

''(B) may include such additional exceptions as the Secretary determines to be necessary in the interest of the national defense.

''(3) DEFINITION.—In this section, the term 'excessive pass-through charge', with respect to a contractor or subcontractor that adds no, or negligible, value to a contract or subcontract, means a charge to the Government by the contractor or subcontractor that is for overhead or profit on work performed by a lower-tier contractor or subcontractor (other than charges for the direct costs of managing lower-tier contracts and subcontracts and overhead and profit based on such direct costs).

''(4) REPORT.—Not later than one year after the date of the enactment of this Act [Oct. 17, 2006], the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the steps taken to implement the requirements of this subsection, including—

''(A) any standards for determining when no, or negligible, value has been added to a contract by a contractor or subcontractor;

''(B) any procedures established for preventing excessive pass-through charges; and

''(C) any exceptions determined by the Secretary to be necessary in the interest of the national defense.

''(5) EFFECTIVE DATE.—The regulations prescribed under this subsection shall apply to contracts awarded for or on behalf of the Department of Defense on or after May 1, 2007.''

PAYMENT OF RESTRUCTURING COSTS UNDER DEFENSE CONTRACTS

Pub. L. 103–337, div. A, title VIII, § 818, Oct. 5, 1994, 108 Stat. 2821, as amended by Pub. L. 105–85, div. A, title VIII, § 804(d), Nov. 18, 1997, 111 Stat. 1834, which related to regulations concerning allowability of restructuring costs associated with business combinations under defense contracts, was repealed by Pub. L. 115–232, div. A, title VIII, § 812(b)(20), Aug. 13, 2018, 132 Stat. 1848.

REIMBURSEMENT OF INDIRECT COSTS OF INSTITUTIONS OF HIGHER EDUCATION UNDER DEPARTMENT OF DEFENSE CONTRACTS

Pub. L. 103–160, div. A, title VIII, § 841, Nov. 30, 1993, 107 Stat. 1719, as amended by Pub. L. 105–244, title I, § 102(a)(2)(C), Oct. 7, 1998, 112 Stat. 1617, provided that:

''(a) PROHIBITION.—The Secretary of Defense may not by regulation place a limitation on the amount that the Department of Defense may reimburse an institution of higher education for allowable indirect costs incurred by the institution for work performed for the Department of Defense under a Department of Defense contract unless that same limitation is applied uniformly to all other organizations performing similar work for the Department of Defense under Department of Defense contracts.

''(b) WAIVER.—The Secretary of Defense may waive the application of the prohibition in subsection (a) in the case of a particular institution of higher education if the governing body of the institution requests the waiver in order to simplify the overall management by that institution of cost reimbursements by the Department of Defense for contracts awarded by the Department to the institution.

''(c) DEFINITIONS.—In this section:

''(1) The term 'allowable indirect costs' means costs that are generally considered allowable as indirect costs under regulations that establish the cost reimbursement principles applicable to an institution of higher education for purposes of Department of Defense contracts.

''(2) The term 'institution of higher education' has the meaning given such term in section 101 of the Higher Education Act of 1965 [20 U.S.C. 1001].''

ASSESSMENT OF REGULATIONS RELATING TO ALLOWABILITY OF COSTS TO PROMOTE EXPORT OF DEFENSE PRODUCTS; REPORT TO CONGRESS

Pub. L. 100–456, div. A, title VIII, § 826(c), Sept. 29, 1988, 102 Stat. 2022, as amended by Pub. L. 100–526, title I, § 106(a)(1)(A), Oct. 24, 1988, 102 Stat. 2625, directed Comptroller General of United States and Inspector General of Department of Defense, not later than 2 years after Sept. 29, 1988, to submit to Congress a report including an assessment of whether the regulations required by subsec. (f)(5) of this section provide the appropriate incentives to stimulate exports by the United States defense industry and provide cost savings to the United States and whether such regulations provide appropriate criteria to ensure that costs allowed are reasonably likely to provide future cost savings to the United States.

AIR TRAVEL EXPENSES OF DEFENSE CONTRACTOR PERSONNEL

Pub. L. 100–456, div. A, title VIII, § 833, Sept. 29, 1988, 102 Stat. 2024, as amended by Pub. L. 101–189, div. A, title VIII, § 853(a)(2), Nov. 29, 1989, 103 Stat. 1518, directed the Administrator of General Services to enter into negotiations with commercial air carriers for agreements that would permit personnel of contractors who were traveling solely in the performance of covered contracts to be transported by such carriers at the same discount rates as such carriers charged for travel by Federal Government employees traveling at Government expense, directed the Secretary of Defense, not later than 120 days after the first such agreement would go into effect, to prescribe regulations that would provide that costs in excess of the rates established under the agreement were not allowable if the rate had been available and travel could have reasonably been performed under the conditions required by the air carrier to qualify for such rate, and provided that section 833 of Pub. L. 100–456 would cease to be effective three years after Sept. 29, 1988.

BURDEN OF PROOF IN GOVERNMENT CONTRACT DISPUTE RESOLUTION

Pub. L. 99–145, title IX, § 933, Nov. 8, 1985, 99 Stat. 700, which provided that in proceeding before the Armed Services Board of Contract Appeals, United States Claims Court, or any other Federal court in which reasonableness of indirect costs for which a contractor seeks reimbursement from Department of Defense is in issue, the burden of proof is upon the contractor to establish that such costs are reasonable, was repealed and restated in subsec. (j) of this section by Pub. L. 100–370, § 1(f)(3)(A)(ii), (B), July 19, 1988, 102 Stat. 846.

§ 2325. Restructuring costs

(a) LIMITATION ON PAYMENT OF RESTRUCTURING COSTS.—(1) The Secretary of Defense may not pay, under section 2324 of this title, a defense contractor for restructuring costs associated with a business combination of the contractor that occurs after November 18, 1997, unless the Secretary determines in writing either—

(A) that the amount of projected savings for the Department of Defense associated with the restructuring will be at least twice the amount of the costs allowed; or

(B) that the amount of projected savings for the Department of Defense associated with the restructuring will exceed the amount of the costs allowed and that the business combination will result in the preservation of a critical capability that otherwise might be lost to the Department.

(2) The Secretary may not delegate the authority to make a determination under paragraph (1), with respect to a business combination, to an official of the Department of Defense—

(A) below the level of an Assistant Secretary of Defense for cases in which the amount of restructuring costs is expected to exceed $25,000,000 over a 5-year period; or

(B) below the level of the Director of the Defense Contract Management Agency for all other cases.

(b) DEFINITION.—In this section, the term ''business combination'' includes a merger or acquisition.

(Added Pub. L. 105–85, div. A, title VIII, § 804(a)(1), Nov. 18, 1997, 111 Stat. 1832; amended Pub. L. 106–65, div. A, title X, § 1066(a)(19), Oct. 5, 1999, 113 Stat. 771; Pub. L. 108–375, div. A, title VIII, § 819, Oct. 28, 2004, 118 Stat. 2016; Pub. L. 112–239, div. A, title X, § 1076(g)(2), Jan. 2, 2013, 126 Stat. 1955.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1832(j)(2), Jan. 1, 2021, 134 Stat. 4151, 4225, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to subchapter II of chapter 273 of this title, as added by section 1832(j)(1) of Pub. L. 116–283, inserted after the table of sections, and redesignated as section 3761 of this title. See Effective Date of 2021 Amendment note below.

PRIOR PROVISIONS

A prior section 2325, added Pub. L. 99–500, § 101(c) [title X, § 907(a)(1)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–137, and Pub. L. 99–591, § 101(c) [title X, § 907(a)(1)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–137; Pub. L. 99–661, div. A, title IX, formerly title IV, § 907(a)(1), Nov. 14, 1986, 100 Stat. 3917, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; amended Pub. L. 101–189, div. A, title XVI, § 1622(c)(5), Nov. 29, 1989, 103 Stat. 1604; Pub. L. 101–510, div. A, title VIII, § 810, Nov. 5, 1990, 104 Stat. 1595; Pub. L. 103–160, div. A, title IX, § 904(d)(1), Nov. 30, 1993, 107 Stat. 1728, directed Secretary of Defense to ensure that requirements of Department of Defense with respect to procurement of supplies be stated in terms of functions to be performed, performance required, or essential physical characteristics, and related to preference for nondevelopmental items in procurement of supplies, prior to repeal by Pub. L. 103–355, title VIII, § 8104(b)(1), Oct. 13, 1994, 108 Stat. 3391. See sections 2376 and 2377 of this title.

Another prior section 2325 was renumbered section 2345 of this title.

AMENDMENTS

2013—Subsec. (b). Pub. L. 112–239 redesignated subsec. (c) as (b) and struck out former subsec. (b) which required reports relating to business combinations occurring on or after August 15, 1994.

2004—Subsec. (a)(2). Pub. L. 108–375 substituted ''paragraph (1), with respect to a business combination, to an official of the Department of Defense—'' for ''paragraph (1) to an official of the Department of Defense below the level of an Assistant Secretary of Defense.'' and added subpars. (A) and (B).

1999—Subsec. (a)(1). Pub. L. 106–65 inserted ''that occurs after November 18, 1997,'' after ''of the contractor'' in introductory provisions.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE

Pub. L. 105–85, div. A, title VIII, § 804(c), Nov. 18, 1997, 111 Stat. 1834, provided that: ''Section 2325(a) of title 10, United States Code, as added by subsection (a), shall apply with respect to business combinations that occur after the date of the enactment of this Act [Nov. 18, 1997].''

GAO REPORTS

Pub. L. 105–85, div. A, title VIII, § 804(b), Nov. 18, 1997, 111 Stat. 1832, directed the Comptroller General, not later than Apr. 1, 1998, to identify major market areas affected by business combinations of defense contractors since Jan. 1, 1990, and develop a methodology for determining the savings from business combinations of defense contractors on the prices paid on particular defense contracts, and to submit to committees of Congress a report describing the changes in numbers of businesses competing for major defense contracts since Jan. 1, 1990; and directed the Comptroller General, not later than Dec. 1, 1998, to submit to committees of Congress a report containing updated information on restructuring costs of business combinations paid by the Department of Defense pursuant to certifications under Pub. L. 103–337, § 818 (set out as a note under section 2324 of this title), savings realized by the Department of Defense as a result of the business combinations for which the payment of restructuring costs was so certified, and an assessment of the savings on the prices paid on a meaningful sample of defense contracts.

§ 2326. Undefinitized contractual actions: restrictions

(a) IN GENERAL.—The head of an agency may not enter into an undefinitized contractual action unless the request to the head of the agency for authorization of the contractual action includes a description of the anticipated effect on requirements of the military department concerned if a delay is incurred for purposes of determining contractual terms, specifications, and price before performance is begun under the contractual action.

(b) LIMITATIONS ON OBLIGATION OF FUNDS.—(1) A contracting officer of the Department of Defense may not enter into an undefinitized con-

tractual action unless the contractual action provides for agreement upon contractual terms, specifications, and price by the earlier of—

(A) the end of the 180-day period beginning on the date on which the contractor submits a qualifying proposal to definitize the contractual terms, specifications, and price; or

(B) the date on which the amount of funds obligated under the contractual action is equal to more than 50 percent of the negotiated overall ceiling price for the contractual action.

(2) Except as provided in paragraph (3), the contracting officer for an undefinitized contractual action may not obligate with respect to such contractual action an amount that is equal to more than 50 percent of the negotiated overall ceiling price until the contractual terms, specifications, and price are definitized for such contractual action.

(3) If a contractor submits a qualifying proposal (as defined in subsection (h))[1] to definitize an undefinitized contractual action before an amount equal to more than 50 percent of the negotiated overall ceiling price is obligated on such action, the contracting officer for such action may not obligate with respect to such contractual action an amount that is equal to more than 75 percent of the negotiated overall ceiling price until the contractual terms, specifications, and price are definitized for such contractual action.

(4) The head of an agency may waive the provisions of this subsection with respect to a contract of that agency if that head of an agency determines that the waiver is necessary in order to support any of the following operations:

(A) A contingency operation.

(B) A humanitarian or peacekeeping operation.

(5) This subsection does not apply to an undefinitized contractual action for the purchase of initial spares.

(c) LIMITATION ON UNILATERAL DEFINITIZATION BY CONTRACTING OFFICER.—With respect to any undefinitized contractual action with a value greater than $50,000,000, if agreement is not reached on contractual terms, specifications, and price within the period or by the date provided in subsection (b)(1), the contracting officer may not unilaterally definitize those terms, specifications, or price over the objection of the contractor until—

(1) the service acquisition executive for the military department that awarded the contract, or the Under Secretary of Defense for Acquisition and Sustainment if the contract was awarded by a Defense Agency or other component of the Department of Defense, approves the definitization in writing;

(2) the contracting officer provides a copy of the written approval to the contractor; and

(3) a period of 30 calendar days has elapsed after the written approval is provided to the contractor.

(d) INCLUSION OF NON-URGENT REQUIREMENTS.—Requirements for spare parts and support equipment that are not needed on an urgent basis may not be included in an undefinitized contractual action for spare parts and support equipment that are needed on an urgent basis unless the head of the agency approves such inclusion as being—

(1) good business practice; and

(2) in the best interests of the United States.

(e) MODIFICATION OF SCOPE.—The scope of an undefinitized contractual action under which performance has begun may not be modified unless the head of the agency approves such modification as being—

(1) good business practice; and

(2) in the best interests of the United States.

(f) ALLOWABLE PROFIT.—(1) The head of an agency shall ensure that the profit allowed on an undefinitized contractual action for which the final price is negotiated after a substantial portion of the performance required is completed reflects—

(A) the possible reduced cost risk of the contractor with respect to costs incurred during performance of the contract before the final price is negotiated; and

(B) the reduced cost risk of the contractor with respect to costs incurred during performance of the remaining portion of the contract.

(2) If a contractor submits a qualifying proposal to definitize an undefinitized contractual action and the contracting officer for such action definitizes the contract after the end of the 180-day period beginning on the date on which the contractor submitted the qualifying proposal, the head of the agency concerned shall ensure that the profit allowed on the contract accurately reflects the cost risk of the contractor as such risk existed on the date the contractor submitted the qualifying proposal.

(g) TIME LIMIT.—No undefinitized contractual action may extend beyond 90 days without a written determination by the Secretary of the military department concerned, the head of the Defense Agency concerned, the commander of the combatant command concerned, or the Under Secretary of Defense for Acquisition and Sustainment (as applicable) that it is in the best interests of the military department, the Defense Agency, the combatant command, or the Department of Defense, respectively, to continue the action.

(h) FOREIGN MILITARY CONTRACTS.—(1) Except as provided in paragraph (2), a contracting officer of the Department of Defense may not enter into an undefinitized contractual action for a foreign military sale unless the contractual action provides for agreement upon contractual terms, specifications, and price by the end of the 180-day period described in subsection (b)(1)(A).

(2) The requirement under paragraph (1) may be waived in accordance with subsection (b)(4).

(i) APPLICABILITY.—This section does not apply to the Coast Guard or the National Aeronautics and Space Administration.

(j) DEFINITIONS.—In this section:

(1) The term ''undefinitized contractual action'' means a new procurement action entered into by the head of an agency for which the contractual terms, specifications, or price are not agreed upon before performance is begun under the action. Such term does not

[1] See References in Text note below.

include contractual actions with respect to the following:

(A) Purchases in an amount not in excess of the amount of the simplified acquisition threshold.

(B) Special access programs.

(C) Congressionally mandated long-lead procurement contracts.

(2) The term ''qualifying proposal'' means a proposal that contains sufficient information to enable the Department of Defense to conduct a meaningful audit of the information contained in the proposal.

(Added Pub. L. 99–500, § 101(c) [title X, § 908(d)(1)(A)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–140, and Pub. L. 99–591, § 101(c) [title X, § 908(d)(1)(A)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–140; Pub. L. 99–661, div. A, title IX, formerly title IV, § 908(d)(1)(A), Nov. 14, 1986, 100 Stat. 3920, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; amended Pub. L. 101–189, div. A, title XVI, § 1622(c)(6), Nov. 29, 1989, 103 Stat. 1604; Pub. L. 102–25, title VII, § 701(d)(5), Apr. 6, 1991, 105 Stat. 114; Pub. L. 103–355, title I, § 1505, Oct. 13, 1994, 108 Stat. 3298; Pub. L. 105–85, div. A, title VIII, § 803(a), Nov. 18, 1997, 111 Stat. 1831; Pub. L. 114–328, div. A, title VIII, § 811, Dec. 23, 2016, 130 Stat. 2268; Pub. L. 115–91, div. A, title VIII, § 815(a), (b), Dec. 12, 2017, 131 Stat. 1462; Pub. L. 116–92, div. A, title IX, § 902(50), Dec. 20, 2019, 133 Stat. 1548; Pub. L. 116–283, div. A, title XVIII, § 1819(b), (c)(1), (d), (e)(1), (f), (g), Jan. 1, 2021, 134 Stat. 4189–4191.)

Amendment of Section

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1819(b), (c)(1), (d), (e)(1), (f), (g), Jan. 1, 2021, 134 Stat. 4151, 4189–4191, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is amended as follows:

(1) by transferring subsection (a) to section 3371 of this title;

(2) by transferring subsections (b) and (c) to section 3372(a) and (b), respectively, of this title;

(3) by transferring subsections (d) and (e) to section 3373(a) and (b), respectively, of this title;

(4) by transferring subsection (f) to section 3374 of this title;

(5) by transferring subsection (g) to section 3375 of this title;

(6) by transferring subsection (h) to section 3372(c) of this title; and

(7) by transferring subsections (i) and (j) to section 3377(a) and (b), respectively, of this title.

See 2021 Amendment notes below.

Repeal of Section

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1881(a), Jan. 1, 2021, 134 Stat. 4151, 4293, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is repealed.

References in Text

Subsection (h), referred to in subsec. (b)(3), probably should be a reference to subsec. (j) of this section. When enacted, such reference was to subsec. (g) of this section, which was first redesignated as subsec. (i) by Pub. L. 114–328, § 811(2), and then as subsec. (j) by Pub. L. 115–91, § 815(a)(1).

Codification

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661 added identical sections.

Prior Provisions

A prior section 2326 was renumbered section 2346 of this title.

Amendments

2021—Subsec. (a). Pub. L. 116–283, § 1819(b), redesignated subsec. (a) as section 3371 of this title.

Subsecs. (b), (c). Pub. L. 116–283, § 1819(c)(1), redesignated subsecs. (b) and (c) as section 3372(a) and (b), respectively, of this title.

Subsecs. (d), (e). Pub. L. 116–283, § 1819(d), redesignated subsecs. (d) and (e) as section 3373(a) and (b), respectively, of this title.

Subsec. (f). Pub. L. 116–283, § 1819(e)(1), redesignated subsec. (f) as section 3374 of this title.

Subsec. (g). Pub. L. 116–283, § 1819(f), redesignated subsec. (g) as section 3375 of this title.

Subsec. (h). Pub. L. 116–283, § 1819(c)(1), redesignated subsec. (h) as section 3372(c) of this title.

Subsecs. (i), (j). Pub. L. 116–283, § 1819(g), redesignated subsecs. (i) and (j) as section 3377(a) and (b), respectively, of this title.

2019—Subsec. (g). Pub. L. 116–92 substituted ''Under Secretary of Defense for Acquisition and Sustainment'' for ''Under Secretary of Defense for Acquisition, Technology, and Logistics''.

2017—Subsec. (b)(3). Pub. L. 115–91, § 815(b), substituted ''subsection (h)'' for ''subsection (g)''.

Subsecs. (c) to (j). Pub. L. 115–91, § 815(a), added subsec. (c) and redesignated former subsecs. (c) to (i) as (d) to (j), respectively.

2016—Subsec. (e). Pub. L. 114–328, § 811(1), designated existing provisions as par. (1), redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, of par. (1), and added par. (2).

Subsecs. (f) to (i). Pub. L. 114–328, § 811(2), (3), added subsecs. (f) and (g) and redesignated former subsecs. (f) and (g) as (h) and (i), respectively.

Subsec. (i)(1). Pub. L. 114–328, § 811(4)(A), redesignated subpars. (B) to (D) as (A) to (C), respectively, and struck out former subpar. (A) which read as follows: ''Foreign military sales.''

Subsec. (i)(2). Pub. L. 114–328, § 811(4)(B), substituted ''a meaningful audit of the information contained in the proposal.'' for ''complete and meaningful audits of the information contained in the proposal and of any other information that the Department is entitled to review in connection with the contract, as determined by the contracting officer.''

1997—Subsec. (b)(4). Pub. L. 105–85 amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''The head of an agency may waive the provisions of this subsection with respect to a contract of that agency if such head of an agency determines that the waiver is necessary in order to support a contingency operation.''

1994—Subsec. (b). Pub. L. 103–355, § 1505(a)(1), struck out ''and expenditure'' after ''obligation'' in heading.

Subsec. (b)(1)(B). Pub. L. 103–355, § 1505(a)(2), struck out ''or expended'' after ''obligated''.

Subsec. (b)(2). Pub. L. 103–355, § 1505(a)(3), substituted ''obligate'' for ''expend''.

Subsec. (b)(3). Pub. L. 103–355, § 1505(a)(4), substituted ''obligated'' for ''expended'' and ''obligate'' for ''expend''.

Subsec. (b)(4), (5). Pub. L. 103–355, § 1505(b), added par. (4) and redesignated former par. (4) as (5).

Subsec. (g)(1)(B). Pub. L. 103–355, § 1505(c), substituted ''simplified acquisition threshold'' for ''small purchase threshold''.

1991—Subsec. (g)(1)(B). Pub. L. 102–25 substituted ''in an amount not in excess of the amount of the small purchase threshold'' for ''of less than $25,000''.

1989—Subsec. (g)(1)(D). Pub. L. 101–189 substituted ''Congressionally mandated'' for ''Congressionally-mandated''.

EFFECTIVE DATE OF REPEAL

Repeal effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 2302 of this title.

EFFECTIVE DATE

Pub. L. 99–500, § 101(c) [title X, § 908(d)(2)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–142, Pub. L. 99–591, § 101(c) [title X, § 908(d)(2)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–142, and Pub. L. 99–661, div. A, title IX, formerly title IV, § 908(d)(2), Nov. 14, 1986, 100 Stat. 3921, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273, provided that: ''Section 2326 of title 10, United States Code (as added by subsection (d)(1)), applies to undefinitized contractual actions that are entered into after the end of the 180-day period beginning on the date of the enactment of this Act [Oct. 18, 1986].''

REGULATIONS

Pub. L. 115–91, div. A, title VIII, § 815(c), Dec. 12, 2017, 131 Stat. 1462, provided that: ''Not later than 120 days after the date of the enactment of this Act [Dec. 12, 2017], the Secretary of Defense shall revise the Department of Defense Supplement to the Federal Acquisition Regulation to implement section 2326 of title 10, United States Code, as amended by this section.''

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

RELAXATION OF UNDEFINITIZED CONTRACT ACTION LIMITATIONS AND RESTRICTIONS RELATED TO NATIONAL EMERGENCY FOR CORONAVIRUS DISEASE 2019

Pub. L. 116–136, div. B, title III, § 13004, Mar. 27, 2020, 134 Stat. 522, provided that:

''(a) Section 2326(b)(3) of title 10, United States Code, shall not apply to any undefinitized contract action of the Department of Defense related to the national emergency for the Coronavirus Disease 2019 (COVID–19).

''(b) In this section, the term 'undefinitized contract action' has the meaning given that term in section 2326(j)(6) of title 10, United States Code [probably means section 2326(j)(1) of title 10, United States Code, which defines ''undefinitized contractual action''].''

Pub. L. 116–136, div. B, title III, § 13005, Mar. 27, 2020, 134 Stat. 522, provided that:

''(a) The head of an agency may waive the provisions of section 2326(b) of title 10, United States Code, with respect to a contract of such agency if the head of the agency determines that the waiver is necessary due to the national emergency for the Coronavirus Disease 2019 (COVID–19).

''(b) In this section, the term 'head of an agency' has the meaning given that term in section 2302(2) [probably means section 2302(1)] of title 10, United States Code.''

REVISION OF DEFENSE SUPPLEMENT RELATING TO PAYMENT OF COSTS PRIOR TO DEFINITIZATION

Pub. L. 111–84, div. A, title VIII, § 812, Oct. 28, 2009, 123 Stat. 2406, provided that:

''(a) REVISION REQUIRED.—Not later than 180 days after the date of the enactment of this Act [Oct. 28, 2009], the Secretary of Defense shall revise the Defense Supplement to the Federal Acquisition Regulation to ensure that any limitations described in subsection (b) are applicable to all categories of undefinitized contractual actions (including undefinitized task orders and delivery orders).

''(b) LIMITATIONS.—The limitations referred to in subsection (a) are any limitations on the reimbursement of costs and the payment of profits or fees with respect to costs incurred before the definitization of an undefinitized contractual action of the Department of Defense, including—

''(1) such limitations as described in part 52.216-26 of the Federal Acquisition Regulation; and

''(2) any such limitations implementing the requirements of section 809 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110–181; 10 U.S.C. 2326 note).''

IMPLEMENTATION AND ENFORCEMENT OF REQUIREMENTS APPLICABLE TO UNDEFINITIZED CONTRACTUAL ACTIONS

Pub. L. 110–181, div. A, title VIII, § 809, Jan. 28, 2008, 122 Stat. 216, provided that:

''(a) GUIDANCE AND INSTRUCTIONS.—Not later than 180 days after the date of the enactment of this Act [Jan. 28, 2008], the Secretary of Defense shall issue guidance, with detailed implementation instructions, for the Department of Defense to ensure the implementation and enforcement of requirements applicable to undefinitized contractual actions.

''(b) ELEMENTS.—The guidance and instructions issued pursuant to subsection (a) shall address, at a minimum—

''(1) the circumstances in which it is, and is not, appropriate for Department of Defense officials to use undefinitized contractual actions;

''(2) approval requirements (including thresholds) for the use of undefinitized contractual actions;

''(3) procedures for ensuring that timelines for the definitization of undefinitized contractual actions are met;

''(4) procedures for ensuring compliance with regulatory limitations on the obligation of funds pursuant to undefinitized contractual actions;

''(5) procedures for ensuring compliance with regulatory limitations on profit or fee with respect to costs incurred before the definitization of an undefinitized contractual action; and

''(6) reporting requirements for undefinitized contractual actions that fail to meet required timelines for definitization or fail to comply with regulatory limitations on the obligation of funds or on profit or fee.

''(c) REPORTS.—

''(1) REPORT ON GUIDANCE AND INSTRUCTIONS.—Not later than 210 days after the date of the enactment of this Act [Jan. 28, 2008], the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report setting forth the guidance and instructions issued pursuant to subsection (a).

''(2) GAO REPORT.—Not later than two years after the date of the enactment of this Act, the Comptroller General of the United States shall submit to the congressional defense committees a report on the extent to which the guidance and instructions issued pursuant to subsection (a) have resulted in improvements to—

''(A) the level of insight that senior Department of Defense officials have into the use of undefinitized contractual actions;

''(B) the appropriate use of undefinitized contractual actions;

"(C) the timely definitization of undefinitized contractual actions; and

"(D) the negotiation of appropriate profits and fees for undefinitized contractual actions."

LIMITATION ON USE OF FUNDS FOR UNDEFINITIZED CONTRACTUAL ACTIONS; OVERSIGHT BY INSPECTOR GENERAL; WAIVER AUTHORITY

Pub. L. 99–500, § 101(c) [title X, § 908(a)–(c), (e)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–139, 1783–140, 1783–142, Pub. L. 99–591, § 101(c) [title X, § 908(a)–(c), (e)], Oct. 18, 1986, 100 Stat. 3341–82, 3341–139, 3341–140, 3341–142, and Pub. L. 99–661, div. A, title IX, formerly title IV, § 908(a)–(c), (e), Nov. 14, 1986, 100 Stat. 3918, 3919, 3921, renumbered title IX and amended by Pub. L. 100–26, §§ 3(5), 5(2), Apr. 21, 1987, 101 Stat. 273, 274; Pub. L. 104–106, div. D, title XLIII, § 4322(b)(2), Feb. 10, 1996, 110 Stat. 677, which related to limitations on funding for undefinitized contractual actions, Inspector General audits and oversight, and waiver authority, were repealed by Pub. L. 115–232, div. A, title VIII, § 812(b)(21), Aug. 13, 2018, 132 Stat. 1848.

§ 2327. Contracts: consideration of national security objectives

(a) DISCLOSURE OF OWNERSHIP OR CONTROL BY A FOREIGN GOVERNMENT.—The head of an agency shall require a firm or a subsidiary of a firm that submits a bid or proposal in response to a solicitation issued by the Department of Defense to disclose in that bid or proposal any significant interest in such firm or subsidiary (or, in the case of a subsidiary, in the firm that owns the subsidiary) that is owned or controlled (whether directly or indirectly) by a foreign government or an agent or instrumentality of a foreign government, if such foreign government is the government of a country that the Secretary of State determines under section 6(j)(1)(A)[1] of the Export Administration Act of 1979 (50 U.S.C. 4605(j)(1)(A)) has repeatedly provided support for acts of international terrorism.

(b) PROHIBITION ON ENTERING INTO CONTRACTS AGAINST THE INTERESTS OF THE UNITED STATES.—Except as provided in subsection (c), the head of an agency may not enter into a contract with a firm or a subsidiary of a firm if—

(1) a foreign government owns or controls (whether directly or indirectly) a significant interest in such firm or subsidiary (or, in the case of a subsidiary, in the firm that owns the subsidiary); and

(2) such foreign government is the government of a country that the Secretary of State determines under section 6(j)(1)(A)[1] of the Export Administration Act of 1979 (50 U.S.C. 4605(j)(1)(A)) has repeatedly provided support for acts of international terrorism.

(c) WAIVER.—(1)(A) If the Secretary of Defense determines under paragraph (2) that entering into a contract with a firm or a subsidiary of a firm described in subsection (b) is not inconsistent with the national security objectives of the United States, the head of an agency may enter into a contract with such firm or subsidiary if in the best interests of the Government.

(B) The Secretary shall maintain records of each contract entered into by reason of subparagraph (A). Such records shall include the following:

(i) The identity of the foreign government concerned.

(ii) The nature of the contract.

(iii) The extent of ownership or control of the firm or subsidiary concerned (or, if appropriate in the case of a subsidiary, of the firm that owns the subsidiary) by the foreign government concerned or the agency or instrumentality of such foreign government.

(iv) The reasons for entering into the contract.

(2) Upon the request of the head of an agency, the Secretary of Defense shall determine whether entering into a contract with a firm or subsidiary described in subsection (b) is inconsistent with the national security objectives of the United States. In making such a determination, the Secretary of Defense shall consider the following:

(A) The relationship of the United States with the foreign government concerned.

(B) The obligations of the United States under international agreements.

(C) The extent of the ownership or control of the firm or subsidiary (or, if appropriate in the case of a subsidiary, of the firm that owns the subsidiary) by the foreign government or an agent or instrumentality of the foreign government.

(D) Whether payments made, or information made available, to the firm or subsidiary under the contract could be used for purposes hostile to the interests of the United States.

(d) LIST OF FIRMS SUBJECT TO PROHIBITION.—(1) The Secretary of Defense shall develop and maintain a list of all firms and subsidiaries of firms that the Secretary has identified as being subject to the prohibition in subsection (b).

(2)(A) A person may request the Secretary to include on the list maintained under paragraph (1) any firm or subsidiary of a firm that the person believes to be owned or controlled by a foreign government described in subsection (b)(2). Upon receipt of such a request, the Secretary shall determine whether the conditions in paragraphs (1) and (2) of subsection (b) exist in the case of that firm or subsidiary. If the Secretary determines that such conditions do exist, the Secretary shall include the firm or subsidiary on the list.

(B) A firm or subsidiary of a firm included on the list may request the Secretary to remove such firm or subsidiary from the list on the basis that it has been erroneously included on the list or its ownership circumstances have significantly changed. Upon receipt of such a request, the Secretary shall determine whether the conditions in paragraphs (1) and (2) of subsection (b) exist in the case of that firm or subsidiary. If the Secretary determines that such conditions do not exist, the Secretary shall remove the firm or subsidiary from the list.

(C) The Secretary shall establish procedures to carry out this paragraph.

(3) The head of an agency shall prohibit each firm or subsidiary of a firm awarded a contract by the agency from entering into a subcontract under that contract in an amount in excess of $25,000 with a firm or subsidiary included on the list maintained under paragraph (1) unless there

[1] See References in Text note below.

is a compelling reason to do so. In the case of any subcontract requiring consent by the head of an agency, the head of the agency shall not consent to the award of the subcontract to a firm or subsidiary included on such list unless there is a compelling reason for such approval.

(e) DISTRIBUTION OF LIST.—The Administrator of General Services shall ensure that the list developed and maintained under subsection (d) is made available to Federal agencies and the public in the same manner and to the same extent as the list of suspended and debarred contractors compiled pursuant to subpart 9.4 of the Federal Acquisition Regulation.

(f) APPLICABILITY.—(1) This section does not apply to a contract for an amount less than $100,000.

(2) This section does not apply to the Coast Guard or the National Aeronautics and Space Administration.

(g) REGULATIONS.—The Secretary of Defense, after consultation with the Secretary of State, shall prescribe regulations to carry out this section. Such regulations shall include a definition of the term ''significant interest''.

(Added Pub. L. 99–500, § 101(c) [title X, § 951(a)(1)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–164, and Pub. L. 99–591, § 101(c) [title X, § 951(a)(1)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–164; Pub. L. 99–661, div. A, title IX, formerly title IV, § 951(a)(1), Nov. 14, 1986, 100 Stat. 3944, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; amended Pub. L. 100–180, div. A, title XII, § 1231(8), Dec. 4, 1987, 101 Stat. 1160; Pub. L. 100–224, § 5(b)(2), Dec. 30, 1987, 101 Stat. 1538; Pub. L. 105–85, div. A, title VIII, § 843, Nov. 18, 1997, 111 Stat. 1844; Pub. L. 108–136, div. A, title X, § 1031(a)(16), Nov. 24, 2003, 117 Stat. 1597; Pub. L. 114–328, div. A, title X, § 1081(b)(3)(C), Dec. 23, 2016, 130 Stat. 2418.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1837(b)(1), Jan. 1, 2021, 134 Stat. 4151, 4241, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 283 of this title, as added by section 1837(a) of Pub. L. 116–283, inserted after the table of sections at the beginning of subchapter I, and redesignated as section 3881 of this title. See Effective Date of 2021 Amendment note below.

REFERENCES IN TEXT

Section 6(j)(1)(A) of the Export Administration Act of 1979 (50 U.S.C. 4605(j)(1)(A)), referred to in subsecs. (a) and (b)(2), was repealed by Pub. L. 115–232, div. A, title XVII, § 1766(a), Aug. 13, 2018, 132 Stat. 2232. For similar provisions, see section 4813(c)(1)(A)(i) of Title 50, War and National Defense, as enacted by Pub. L. 115–232.

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661 added identical sections.

PRIOR PROVISIONS

A prior section 2327 was renumbered section 2347 of this title.

AMENDMENTS

2016—Subsecs. (a), (b)(2). Pub. L. 114–328 substituted ''(50 U.S.C. 4605(j)(1)(A))'' for ''(50 U.S.C. App. 2405(j)(1)(A))''.

2003—Subsec. (c)(1)(A). Pub. L. 108–136, § 1031(a)(16)(A), substituted ''if in the best interests of the Government'' for ''after the date on which such head of an agency submits to Congress a report on the contract''.

Subsec. (c)(1)(B). Pub. L. 108–136, § 1031(a)(16)(B), substituted ''The Secretary shall maintain records of each contract entered into by reason of subparagraph (A). Such records'' for ''A report under subparagraph (A)''.

Subsec. (c)(1)(C). Pub. L. 108–136, § 1031(a)(16)(C), struck out subpar. (C) which read as follows: ''After the head of an agency submits a report to Congress under subparagraph (A) with respect to a firm or a subsidiary, such head of an agency is not required to submit a report before entering into any subsequent contract with such firm or subsidiary unless the information required to be included in such report under subparagraph (B) has materially changed since the submission of the previous report.''

1997—Subsecs. (d) to (g). Pub. L. 105–85 added subsecs. (d) and (e) and redesignated former subsecs. (d) and (e) as (f) and (g), respectively.

1987—Subsecs. (a), (b)(2). Pub. L. 100–224 substituted ''50 U.S.C. App.'' for ''50 U.S.C.'' in parenthetical after ''Export Administration Act of 1979''.

Subsec. (d)(1). Pub. L. 100–180 inserted par. (1) designation.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE

Pub. L. 99–500, § 101(c) [title X, § 951(c)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–165, Pub. L. 99–591, § 101(c) [title X, § 951(c)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–165, and Pub. L. 99–661, div. A, title IX, formerly title IV, § 951(c), Nov. 14, 1986, 100 Stat. 3945, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273, provided that: ''Section 2327 of title 10, United States Code (as added by subsection (a)(1)), shall apply to contracts entered into by the Secretary of Defense after the end of the 90-day period beginning on the date of the enactment of this Act [Oct. 18, 1986].''

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

REPORTS BY DEFENSE CONTRACTORS OF DEALINGS WITH TERRORIST COUNTRIES

Pub. L. 103–160, div. A, title VIII, § 843, Nov. 30, 1993, 107 Stat. 1720, as amended by Pub. L. 103–355, title VIII, § 8105(j), Oct. 13, 1994, 108 Stat. 3393, directed the Secretary of Defense to require any person with whom the Secretary proposed to enter into a contract for the provision of goods or services in an amount in excess of $5,000,000, to report to the Secretary each commercial transaction which that person had conducted with the government of any terrorist country during the preceding three years and during the course of the contract, required the Secretary to prescribe regulations and to submit an annual report to Congress setting forth those commercial transactions with terrorist countries that had been included in the reports made during the preceding fiscal year, and provided that section 843 of Pub. L. 103–160 would expire on Sept. 30, 1996.

§ 2328. Release of technical data under Freedom of Information Act: recovery of costs

(a) IN GENERAL.—(1) The Secretary of Defense shall, if required to release technical data under section 552 of title 5 (relating to the Freedom of Information Act), release such technical data to the person requesting the release if the person pays all reasonable costs attributable to search, duplication, and review.

(2) The Secretary of Defense shall prescribe regulations, pursuant to notice and receipt of public comment, specifying a uniform schedule of fees under this section.

(b) CREDITING OF RECEIPTS.—An amount received under this section—

(1) shall be retained by the Department of Defense or the element of the Department of Defense receiving the amount; and

(2) shall be merged with and available for the same purpose and the same time period as the appropriation from which the costs incurred in complying with requests for technical data were paid.

(c) WAIVER.—The Secretary of Defense shall waive the payment of costs required by subsection (a) which are in an amount greater than the costs that would be required for such a release of information under section 552 of title 5 if—

(1) the request is made by a citizen of the United States or a United States corporation, and such citizen or corporation certifies that the technical data requested is required to enable such citizen or corporation to submit an offer or determine whether it is capable of submitting an offer to provide the product to which the technical data relates to the United States or a contractor with the United States (except that the Secretary may require the citizen or corporation to pay a deposit in an amount equal to not more than the cost of complying with the request, to be refunded upon submission of an offer by the citizen or corporation);

(2) the release of technical data is requested in order to comply with the terms of an international agreement; or

(3) the Secretary determines, in accordance with section 552(a)(4)(A)(iii) of title 5, that such a waiver is in the interests of the United States.

(Added Pub. L. 99–500, §101(c) [title X, §954(a)(1)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–172, and Pub. L. 99–591, §101(c) [title X, §954(a)(1)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–172; Pub. L. 99–661, div. A, title IX, formerly title IV, §954(a)(1), Nov. 14, 1986, 100 Stat. 3952, renumbered title IX, Pub. L. 100–26, §3(5), Apr. 21, 1987, 101 Stat. 273; amended Pub. L. 100–26, §7(a)(7)(A), (B)(i), Apr. 21, 1987, 101 Stat. 278.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§1801(d), 1833(o)(2), Jan. 1, 2021, 134 Stat. 4151, 4234, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to subchapter III of chapter 275 of this title, as added by section 1833(n) of Pub. L. 116–283, inserted after section 3793, and redesignated as section 3794 of this title. See Effective Date of 2021 Amendment note below.

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661 added identical sections.

PRIOR PROVISIONS

A prior section 2328 was renumbered section 2348 of this title.

AMENDMENTS

1987—Pub. L. 100–26, §7(a)(7)(B)(i), substituted "Release of technical data under Freedom of Information Act: recovery of costs" for "Release of technical data" in section catchline.

Subsec. (a)(1). Pub. L. 100–26, §7(a)(7)(A)(i)(I), substituted "such technical data to the person requesting the" for "technical data to a person requesting such a".

Pub. L. 100–26, §7(a)(7)(A)(i)(II), substituted "search, duplication, and review" for "search and duplication".

Subsec. (b). Pub. L. 100–26, §7(a)(7)(A)(ii), substituted "Crediting of receipts" for "Disposition of costs" in heading.

Subsec. (c)(3). Pub. L. 100–26, §7(a)(7)(A)(iii), substituted "section 552(a)(4)(A)(iii)" for "section 552(a)(4)(A)".

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100–26, §12(d)(2), Apr. 21, 1987, 101 Stat. 289, provided that: "The amendment to section 2328 of such title made by section 7(a)(7)(A)(i)(II) shall take effect on the same date and in the same manner as provided in section 1804(b) of Public Law 99–570 [set out as an Effective Date of 1986 Amendment note under section 552 of Title 5, Government Organization and Employees] for the amendment made by section 1803 of that Public Law to section 552a of title 5, United States Code [probably means amendment by section 1803 of Pub. L. 99–570 to section 552(a) of Title 5]."

EFFECTIVE DATE

Pub. L. 99–500, §101(c) [title X, §954(b)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–173, Pub. L. 99–591, §101(c) [title X, §954(b)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–173, and Pub. L. 99–661, div. A, title IX, formerly title IV, §954(b), Nov. 14, 1986, 100 Stat. 3953, renumbered title IX by Pub. L. 100–26, §3(5), Apr. 21, 1987, 101 Stat. 273, provided that: "The amendments made by this section [enacting this section] shall take effect at the end of the 90-day period beginning on the date of the enactment of this Act [Oct. 18, 1986]."

§ 2329. Procurement of services: data analysis and requirements validation

(a) IN GENERAL.—The Secretary of Defense, acting through the Under Secretary of Defense (Comptroller) and Director of Cost Assessment and Program Evaluation, shall ensure that—

(1) appropriate and sufficiently detailed data are collected and analyzed to support the validation of requirements for services contracts and inform the planning, programming, budgeting, and execution process of the Department of Defense;

(2) requirements for services contracts are evaluated appropriately and in a timely man-

ner to inform decisions regarding the procurement of services; and

(3) decisions regarding the procurement of services consider available resources and total force management policies and procedures.

(b) SPECIFICATION OF AMOUNTS REQUESTED IN BUDGET.—Effective October 1, 2021, the Secretary of Defense, acting through the Under Secretary of Defense (Comptroller) and Director of Cost Assessment and Program Evaluation, shall annually submit to Congress information on services contracts that clearly and separately identifies the amount requested for each category of services to be procured for each Defense Agency, Department of Defense Field Activity, command, or military installation. Such information shall—

(1) be submitted at or before the time of the budget submission by the President under section 1105(a) of title 31 or on the date on which the future-years defense program is submitted to Congress under section 221 of this title;

(2) cover the fiscal year covered by such budget submission by the President;

(3) be consistent with total amounts of estimated expenditures and proposed appropriations necessary to support the programs, projects, and activities of the Department of Defense included in such budget submission by the President for that fiscal year;

(4) be organized using a common enterprise data structure developed under section 2222 of this title; and

(5) be included in the future-years defense program submitted to Congress under section 221 of this title.

(c) DATA ANALYSIS.—(1) Each Secretary of a military department shall regularly analyze past spending patterns and anticipated future requirements with respect to the procurement of services within such military department.

(2)(A) The Secretary of Defense, acting through the Under Secretary of Defense (Comptroller) and Director of Cost Assessment and Program Evaluation, shall regularly analyze past spending patterns and anticipated future requirements with respect to the procurement of services—

(i) within each Defense Agency and Department of Defense Field Activity; and

(ii) across military departments, Defense Agencies, and Department of Defense Field Activities.

(B) The Secretaries of the military departments shall make data on services contracts available to the Secretary of Defense for purposes of conducting the analysis required under subparagraph (A).

(3) The analyses conducted under this subsection shall—

(A) identify contracts for similar services that are procured for three or more consecutive years at each Defense Agency, Department of Defense Field Activity, command, or military installation;

(B) evaluate patterns in the procurement of services, to the extent practicable, at each Defense Agency, Department of Defense Field Activity, command, or military installation and by category of services procured;

(C) be used to validate requirements for services contracts entered into after the date of the enactment of this subsection; and

(D) be used to inform decisions on the award of and funding for such services contracts.

(d) REQUIREMENTS EVALUATION.—Each Services Requirements Review Board shall evaluate each requirement for a services contract, taking into consideration total force management policies and procedures, available resources, the analyses conducted under subsection (c), and contracting efficacy and efficiency. An evaluation of a services contract for compliance with contracting policies and procedures may not be considered to be an evaluation of a requirement for such services contract.

(e) TIMELY PLANNING TO AVOID BRIDGE CONTRACTS.—(1) Effective October 1, 2018, the Secretary of Defense shall ensure that a requirements owner shall, to the extent practicable, plan appropriately before the date of need of a service at a Defense Agency, Department of Defense Field Activity, command, or military installation to avoid the use of a bridge contract to provide for continuation of a service to be performed through a services contract. Such planning shall include allowing time for a requirement to be validated, a services contract to be entered into, and funding for the services contract to be secured.

(2)(A) Upon the first use, due to inadequate planning (as determined by the Secretary of Defense), of a bridge contract to provide for continuation of a service to be performed through a services contract, the requirements owner, along with the contracting officer or a designee of the contracting officer for the contract, shall—

(i) for a services contract in an amount less than $10,000,000, provide an update on the status of the bridge contract (including the rationale for using the bridge contract) to the commander or the senior civilian official of the Defense Agency concerned, Department of Defense Field Activity concerned, command concerned, or military installation concerned, as applicable; or

(ii) for a services contract in an amount equal to or greater than $10,000,000, provide an update on the status of the bridge contract (including the rationale for using the bridge contract) to the service acquisition executive for the military department concerned, the head of the Defense Agency concerned, the combatant commander concerned, or the Under Secretary of Defense for Acquisition and Sustainment, as applicable.

(B) Upon the second use, due to inadequate planning (as determined by the Secretary of Defense), of a bridge contract to provide for continuation of a service to be performed through a services contract in an amount less than $10,000,000, the commander or senior civilian official referred to in subparagraph (A)(i) shall provide notification of such second use to the Vice Chief of Staff of the armed force concerned and the service acquisition executive of the military department concerned, the head of the Defense Agency concerned, the combatant commander concerned, or the Under Secretary of

Defense for Acquisition and Sustainment, as applicable.

(f) EXCEPTION.—Except with respect to the analyses required under subsection (c), this section shall not apply to—

(1) services contracts in support of contingency operations, humanitarian assistance, or disaster relief;

(2) services contracts in support of a national security emergency declared with respect to a named operation; or

(3) services contracts entered into pursuant to an international agreement.

(g) DEFINITIONS.—In this section:

(1) The term ''bridge contract'' means—

(A) an extension to an existing contract beyond the period of performance to avoid a lapse in service caused by a delay in awarding a subsequent contract; or

(B) a new short-term contract awarded on a sole-source basis to avoid a lapse in service caused by a delay in awarding a subsequent contract.

(2) The term ''requirements owner'' means a member of the armed forces (other than the Coast Guard) or a civilian employee of the Department of Defense responsible for a requirement for a service to be performed through a services contract.

(3) The term ''Services Requirements Review Board'' has the meaning given in Department of Defense Instruction 5000.74, titled ''Defense Acquisition of Services'' and dated January 5, 2016, or a successor instruction.

(Added Pub. L. 115–91, div. A, title VIII, § 851(a)(1), Dec. 12, 2017, 131 Stat. 1489; amended Pub. L. 115–232, div. A, title VIII, § 818(a), Aug. 13, 2018, 132 Stat. 1852; Pub. L. 116–92, div. A, title VIII, § 817(a), title XVII, § 1731(a)(42), Dec. 20, 2019, 133 Stat. 1488, 1814.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1856(g), Jan. 1, 2021, 134 Stat. 4151, 4275, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 341 of this title, inserted after section 4505, and redesignated as section 4506 of this title. See Effective Date of 2021 Amendment note below.

REFERENCES IN TEXT

The date of the enactment of this subsection, referred to in subsec. (c)(3)(C), is the date of enactment of Pub. L. 115–91, which was approved Dec. 12, 2017.

PRIOR PROVISIONS

A prior section 2329, added Pub. L. 100–180, div. A, title VIII, § 810(a)(1), Dec. 4, 1987, 101 Stat. 1130; amended Pub. L. 100–456, div. A, title XII, § 1233(j), Sept. 29, 1988, 102 Stat. 2058; Pub. L. 103–160, div. A, title IX, § 904(d)(1), Nov. 30, 1993, 107 Stat. 1728, related to contract terms and conditions for production special tooling and production special test equipment, prior to repeal by Pub. L. 103–355, title I, § 1506(a), Oct. 13, 1994, 108 Stat. 3298.

AMENDMENTS

2019—Subsec. (a). Pub. L. 116–92, § 817(a)(1), inserted '', acting through the Under Secretary of Defense (Comptroller) and Director of Cost Assessment and Program Evaluation,'' after ''Secretary of Defense'' in introductory provisions.

Subsec. (b). Pub. L. 116–92, § 817(a)(2), inserted '', acting through the Under Secretary of Defense (Comptroller) and Director of Cost Assessment and Program Evaluation,'' after ''Secretary of Defense'' in introductory provisions.

Subsec. (c)(2)(A). Pub. L. 116–92, § 817(a)(3), inserted '', acting through the Under Secretary of Defense (Comptroller) and Director of Cost Assessment and Program Evaluation,'' after ''Secretary of Defense'' in introductory provisions.

Subsec. (g)(1). Pub. L. 116–92, § 1731(a)(42), substituted ''term 'bridge contract' '' for ''term 'bridge contact' '' in introductory provisions.

2018—Subsec. (b). Pub. L. 115–232, § 818(a)(1), substituted ''October 1, 2021'' for ''October 1, 2022'' in introductory provisions.

Subsec. (b)(1). Pub. L. 115–232, § 818(a)(2), substituted ''at or before'' for ''at or about'' and inserted ''or on the date on which the future-years defense program is submitted to Congress under section 221 of this title'' after ''title 31''.

Subsec. (b)(5). Pub. L. 115–232, § 818(a)(3)–(5), added par. (5).

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

STANDARD GUIDELINES FOR EVALUATION OF REQUIREMENTS FOR SERVICES CONTRACTS

Pub. L. 115–91, div. A, title VIII, § 852, Dec. 12, 2017, 131 Stat. 1492, provided that:

''(a) IN GENERAL.—The Secretary of Defense shall encourage the use of standard guidelines within the Department of Defense for the evaluation of requirements for services contracts. Such guidelines shall be available to the Services Requirements Review Boards (established under Department of Defense Instruction 5000.74, titled 'Defense Acquisition of Services' and dated January 5, 2016, or a successor instruction) within each Defense Agency, each Department of Defense Field Activity, and each military department for the purpose of standardizing the requirements evaluation required under section 2329 of title 10, United States Code, as added by this Act.

''(b) DEFINITIONS.—In this section—

''(1) the terms 'Defense Agency', 'Department of Defense Field Activity', and 'military department' have the meanings given those terms in section 101 of title 10, United States Code; and

''(2) the term 'total force management policies and procedures' means the policies and procedures established under section 129a of such title.''

§ 2330. Procurement of contract services: management structure

(a) REQUIREMENT FOR MANAGEMENT STRUCTURE.—The Secretary of Defense shall establish and implement a management structure for the procurement of contract services for the Department of Defense. The management structure shall provide, at a minimum, for the following:

(1) The Under Secretary of Defense for Acquisition and Sustainment shall—

(A) develop and maintain (in consultation with the service acquisition executives) policies, procedures, and best practices guidelines addressing the procurement of contract services, including policies, procedures, and best practices guidelines for—

(i) acquisition planning;

(ii) solicitation and contract award;

(iii) requirements development and management;

(iv) contract tracking and oversight;

(v) performance evaluation; and

(vi) risk management;

(B) work with the service acquisition executives and other appropriate officials of the Department of Defense—

(i) to identify the critical skills and competencies needed to carry out the procurement of contract services on behalf of the Department of Defense;

(ii) to develop a comprehensive strategy for recruiting, training, and deploying employees to meet the requirements for such skills and competencies; and

(iii) to ensure that the military departments and Defense Agencies have staff and administrative support that are adequate to effectively perform their duties under this section;

(C) establish contract services acquisition categories, based on dollar thresholds, for the purpose of establishing the level of review, decision authority, and applicable procedures in such categories; and

(D) oversee the implementation of the requirements of this section and the policies, procedures, and best practices guidelines established pursuant to subparagraph (A).

(2) The service acquisition executive of each military department shall be the senior official responsible for the management of acquisition of contract services for or on behalf of the military department.

(3) The Under Secretary of Defense for Acquisition and Sustainment shall be the senior official responsible for the management of acquisition of contract services for or on behalf of the Defense Agencies and other components of the Department of Defense outside the military departments.

(b) Duties and Responsibilities of Senior Officials Responsible for the Management of Acquisition of Contract Services.—(1) Except as provided in paragraph (2), the senior officials responsible for the management of acquisition of contract services shall assign responsibility for the review and approval of procurements in each contract services acquisition category established under subsection (a)(1)(C) to specific Department of Defense officials, subject to the direction, supervision, and oversight of such senior officials.

(2) With respect to the acquisition of contract services by a component or command of the Department of Defense the primary mission of which is the acquisition of products and services, such acquisition shall be conducted in accordance with policies, procedures, and best practices guidelines developed and maintained by the Under Secretary of Defense for Acquisition and Sustainment pursuant to subsection (a)(1), subject to oversight by the senior officials referred to in paragraph (1).

(3) In carrying out paragraph (1), each senior official responsible for the management of acquisition of contract services shall—

(A) implement the requirements of this section and the policies, procedures, and best practices guidelines developed by the Under Secretary of Defense for Acquisition and Sustainment pursuant to subsection (a)(1)(A);

(B) authorize the procurement of contract services through contracts entered into by agencies outside the Department of Defense in appropriate circumstances, in accordance with the requirements of section 854 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (10 U.S.C. 2304 note), section 814 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (31 U.S.C. 1535 note), and the regulations implementing such sections;

(C) dedicate full-time commodity managers to coordinate the procurement of key categories of services;

(D) ensure that contract services are procured by means of procurement actions that are in the best interests of the Department of Defense and are entered into and managed in compliance with applicable laws, regulations, directives, and requirements;

(E) ensure that competitive procedures and performance-based contracting are used to the maximum extent practicable for the procurement of contract services; and

(F) monitor data collection under section 2330a of this title, and periodically conduct spending analyses, to ensure that funds expended for the procurement of contract services are being expended in the most rational and economical manner practicable.

(c) Definitions.—In this section:

(1) The term ''procurement action'' includes the following actions:

(A) Entry into a contract or any other form of agreement.

(B) Issuance of a task order, delivery order, or military interdepartmental purchase request.

(2) The term ''contract services'' includes all services acquired from private sector entities by or for the Department of Defense, including services in support of contingency operations. The term does not include services relating to research and development or military construction.

(Added Pub. L. 107–107, div. A, title VIII, § 801(b)(1), Dec. 28, 2001, 115 Stat. 1174; amended Pub. L. 107–314, div. A, title X, § 1062(a)(8), Dec. 2, 2002, 116 Stat. 2650; Pub. L. 109–163, div. A, title VIII, § 812(a)(1), Jan. 6, 2006, 119 Stat. 3376; Pub. L. 112–239, div. A, title VIII, § 845(d), Jan. 2, 2013, 126 Stat. 1848; Pub. L. 116–92, div. A, title IX, § 902(51), Dec. 20, 2019, 133 Stat. 1548.)

Transfer of Section

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1856(c), Jan. 1, 2021, 134 Stat. 4151, 4274, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 341 of this title, as amended by section 1856(b) of Pub. L. 116–283, inserted after the table of sections, and redesignated as section 4501 of this title. See Effective Date of 2021 Amendment note below.

References in Text

Section 854 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, referred

to in subsec. (b)(3)(B), is section 854 of div. A of Pub. L. 108–375, which is set out as a note under section 2304 of this title.

Section 814 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999, referred to in subsec. (b)(3)(B), is section 814 of div. A of Pub. L. 105–261, which was formerly set out as a note under section 1535 of Title 31, Money and Finance.

PRIOR PROVISIONS

A prior section 2330, added Pub. L. 100–456, div. A, title VIII, § 801(a)(1), Sept. 29, 1988, 102 Stat. 2007; amended Pub. L. 101–510, div. A, title XIV, § 1484(h)(2), Nov. 5, 1990, 104 Stat. 1717; Pub. L. 102–190, div. A, title VIII, § 802(d), Dec. 5, 1991, 105 Stat. 1414, related to integrated financing policy, prior to repeal by Pub. L. 102–484, div. D, title XLII, § 4271(a)(1), Oct. 23, 1992, 106 Stat. 2695.

Another prior section 2330 was renumbered section 2349 of this title.

AMENDMENTS

2019—Subsecs. (a)(1), (3), (b)(2), (3)(A). Pub. L. 116–92 substituted ''Under Secretary of Defense for Acquisition and Sustainment'' for ''Under Secretary of Defense for Acquisition, Technology, and Logistics''.

2013—Subsec. (c)(2). Pub. L. 112–239 substituted ''including services in support of contingency operations. The term does not include services relating to research and development or military construction.'' for ''other than services relating to research and development or military construction.''

2006—Pub. L. 109–163 amended section generally. Prior to amendment, section consisted of subsecs. (a) to (c) relating to requirement for management structure, contracting responsibilities of designated officials, and definitions.

2002—Subsec. (c). Pub. L. 107–314 inserted comma after ''a task order''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

MODERNIZATION OF SERVICES ACQUISITION

Pub. L. 114–328, div. A, title VIII, § 803(a), Dec. 23, 2016, 130 Stat. 2249, provided that:

''(a) REVIEW OF SERVICES ACQUISITION CATEGORIES.—Not later than 180 days after the date of the enactment of this Act [Dec. 23, 2016], the Secretary of Defense shall review and, if necessary, revise Department of Defense Instruction 5000.74, dated January 5, 2016 (in this section referred to as the 'Acquisition of Services Instruction'), and other guidance pertaining to the acquisition of services. In conducting the review, the Secretary shall examine—

''(1) how the acquisition community should consider the changing nature of the technology and professional services markets, particularly the convergence of hardware and services; and

''(2) the services acquisition portfolio groups referenced in the Acquisition of Services Instruction and other guidance in order to ensure the portfolio groups are fully reflective of changes to the technology and professional services market.''

EXAMINATION AND GUIDANCE RELATING TO OVERSIGHT AND APPROVAL OF SERVICES CONTRACTS

Pub. L. 114–92, div. A, title VIII, § 882, Nov. 25, 2015, 129 Stat. 942, as amended by Pub. L. 116–92, div. A, title IX, § 902(52), Dec. 20, 2019, 133 Stat. 1549, provided that: ''Not later than March 1, 2016, the Under Secretary of Defense for Acquisition and Sustainment shall—

''(1) complete an examination of the decision authority related to acquisition of services; and

''(2) develop and issue guidance to improve capabilities and processes related to requirements development and source selection for, and oversight and management of, services contracts.''

IMPLEMENTATION OF RECOMMENDATIONS OF DEFENSE SCIENCE BOARD TASK FORCE ON IMPROVEMENTS TO SERVICE CONTRACTING

Pub. L. 112–81, div. A, title VIII, § 807, Dec. 31, 2011, 125 Stat. 1488, which required the implementation of recommendations of the Defense Science Board Task Force on improvements to service contracting, including standards and reporting, was repealed by Pub. L. 115–232, div. A, title VIII, § 812(b)(22), Aug. 13, 2018, 132 Stat. 1849.

REQUIREMENTS FOR THE ACQUISITION OF SERVICES

Pub. L. 111–383, div. A, title VIII, § 863(a)–(h), Jan. 7, 2011, 124 Stat. 4293, 4294, as amended by Pub. L. 112–81, div. A, title IX, § 933(c), Dec. 31, 2011, 125 Stat. 1544; Pub. L. 112–239, div. A, title X, § 1076(a)(18), Jan. 2, 2013, 126 Stat. 1949, provided that:

''(a) ESTABLISHMENT OF REQUIREMENTS PROCESSES FOR THE ACQUISITION OF SERVICES.—The Secretary of Defense shall ensure that the military departments and Defense Agencies each establish a process for identifying, assessing, reviewing, and validating requirements for the acquisition of services.

''(b) OPERATIONAL REQUIREMENTS.—With regard to requirements for the acquisition of services in support of combatant commands and military operations, the Secretary shall ensure—

''(1) that the Chief of Staff of the Army, the Chief of Naval Operations, the Chief of Staff of the Air Force, and the Commandant of the Marine Corps implement and bear chief responsibility for carrying out, within the Armed Force concerned, the process established pursuant to subsection (a) for such Armed Force; and

''(2) that commanders of unified combatant commands and other officers identified or designated as joint qualified officers have an opportunity to participate in the process of each military department to provide input on joint requirements for the acquisition of services.

''(c) SUPPORTING REQUIREMENTS.—With regard to requirements for the acquisition of services not covered by subsection (b), the Secretary shall ensure that the secretaries of the military departments and the heads of the Defense Agencies implement and bear chief responsibility for carrying out, within the military department or Defense Agency concerned, the process established pursuant to subsection (a) for such military department or Defense Agency.

''(d) IMPLEMENTATION PLANS REQUIRED.—The Secretary shall ensure that an implementation plan is developed for each process established pursuant to subsection (a) that addresses, at a minimum, the following:

''(1) The organization of such process.

''(2) The level of command responsibility required for identifying, assessing, reviewing, and validating requirements for the acquisition of services in accordance with the requirements of this section and the categories established under section 2330(a)(1)(C) of title 10, United States Code.

''(3) The composition of positions necessary to operate such process.

''(4) The training required for personnel engaged in such process.

''(5) The relationship between doctrine and such process.

''(6) Methods of obtaining input on joint requirements for the acquisition of services.

''(7) Procedures for coordinating with the acquisition process.

''(8) Considerations relating to opportunities for strategic sourcing.

''(9) Considerations relating to total force management policies and procedures established under section 129a of title 10, United States Code.

''(e) MATTERS REQUIRED IN IMPLEMENTATION PLAN.—Each plan required under subsection (d) shall provide for initial implementation of a process for identifying, assessing, reviewing, and validating requirements for the acquisition of services not later than one year after the date of the enactment of this Act [Jan. 7, 2011] and shall provide for full implementation of such process at the earliest date practicable.

''(f) CONSISTENCY WITH JOINT GUIDANCE.—Whenever, at any time, guidance is issued by the Chairman of the Joint Chiefs of Staff relating to requirements for the acquisition of services in support of combatant commands and military operations, each process established pursuant to subsection (a) shall be revised in accordance with such joint guidance.

''(g) DEFINITION.—The term 'requirements for the acquisition of services' means objectives to be achieved through acquisitions primarily involving the procurement of services.

''(h) REVIEW OF SUPPORTING REQUIREMENTS TO IDENTIFY SAVINGS.—The secretaries of the military departments and the heads of the Defense Agencies shall review and validate each requirement described in subsection (c) with an anticipated cost in excess of $10,000,000 with the objective of identifying unneeded or low priority requirements that can be reduced or eliminated, with the savings transferred to higher priority objectives. Savings identified and transferred to higher priority objectives through review and revalidation under this subsection shall count toward the savings objectives established in the June 4, 2010, guidance of the Secretary of Defense on improved operational efficiencies and the annual reduction in funding for service support contractors required by the August 16, 2010, guidance of the Secretary of Defense on efficiency initiatives. As provided by the Secretary, cost avoidance shall not count toward these objectives.''

PROCUREMENT OF COMMERCIAL SERVICES

Pub. L. 110–181, div. A, title VIII, § 805, Jan. 28, 2008, 122 Stat. 212, as amended by Pub. L. 110–417, [div. A], title X, § 1061(b)(4), Oct. 14, 2008, 122 Stat. 4613; Pub. L. 113–291, div. A, title X, § 1071(b)(2)(A), Dec. 19, 2014, 128 Stat. 3506; Pub. L. 115–232, div. A, title VIII, § 836(f)(6), Aug. 13, 2018, 132 Stat. 1871, provided that:

''(a) REGULATIONS REQUIRED.—Not later than 180 days after the date of the enactment of this Act [Jan. 28, 2008], the Secretary of Defense shall modify the regulations of the Department of Defense for the procurement of commercial services for or on behalf of the Department of Defense.

''(b) APPLICABILITY OF COMMERCIAL PROCEDURES.—

''(1) SERVICES OF A TYPE SOLD IN MARKETPLACE.—The regulations modified pursuant to subsection (a) shall ensure that services that are not offered and sold competitively in substantial quantities in the commercial marketplace, but are of a type offered and sold competitively in substantial quantities in the commercial marketplace, may be treated as commercial services for purposes of section 2306a of title 10, United States Code (relating to truth in negotiations), only if the contracting officer determines in writing that the offeror has submitted sufficient information to evaluate, through price analysis, the reasonableness of the price for such services.

''(2) INFORMATION SUBMITTED.—To the extent necessary to make a determination under paragraph (1), the contracting officer may request the offeror to submit—

''(A) prices paid for the same or similar commercial services under comparable terms and conditions by both government and commercial customers; and

''(B) if the contracting officer determines that the information described in subparagraph (A) is not sufficient to determine the reasonableness of price, other relevant information regarding the basis for price or cost, including information on labor costs, material costs, and overhead rates.

''(c) TIME-AND-MATERIALS CONTRACTS.—

''(1) COMMERCIAL SERVICES ACQUISITIONS.—The regulations modified pursuant to subsection (a) shall ensure that procedures applicable to time-and-materials contracts and labor-hour contracts for commercial service acquisitions may be used only for the following:

''(A) Services procured for support of a service, as described in section 103a(1) of title 41, United States Code.

''(B) Emergency repair services.

''(C) Any other commercial services only to the extent that the head of the agency concerned approves a determination in writing by the contracting officer that—

''(i) the services to be acquired are commercial services as defined in section 103a(2) of title 41, United States Code;

''(ii) if the services to be acquired are subject to subsection (b), the offeror of the services has submitted sufficient information in accordance with that subsection;

''(iii) such services are commonly sold to the general public through use of time-and-materials or labor-hour contracts; and

''(iv) the use of a time-and-materials or labor-hour contract type is in the best interest of the Government.

''(2) NON-COMMERCIAL SERVICES ACQUISITIONS.—Nothing in this subsection shall be construed to preclude the use of procedures applicable to time-and-materials contracts and labor-hour contracts for non-commercial service acquisitions for the acquisition of any category of services.''

INDEPENDENT MANAGEMENT REVIEWS OF CONTRACTS FOR SERVICES

Pub. L. 110–181, div. A, title VIII, § 808, Jan. 28, 2008, 122 Stat. 215, as amended by Pub. L. 111–383, div. A, title X, § 1075(f)(3), Jan. 7, 2011, 124 Stat. 4376; Pub. L. 115–232, div. A, title VIII, § 812(b)(23), Aug. 13, 2018, 132 Stat. 1849, provided that:

''(a) GUIDANCE AND INSTRUCTIONS.—Not later than 180 days after the date of the enactment of this Act [Jan. 28, 2008], the Secretary of Defense shall issue guidance, with detailed implementation instructions, for the Department of Defense to provide for periodic independent management reviews of contracts for services. The independent management review guidance and instructions issued pursuant to this subsection shall be designed to evaluate, at a minimum—

''(1) contract performance in terms of cost, schedule, and requirements;

''(2) the use of contracting mechanisms, including the use of competition, the contract structure and type, the definition of contract requirements, cost or pricing methods, the award and negotiation of task orders, and management and oversight mechanisms;

''(3) the contractor's use, management, and oversight of subcontractors;

''(4) the staffing of contract management and oversight functions; and

''(5) the extent of any pass-throughs, and excessive pass-through charges (as defined in section 852 of the John Warner National Defense Authorization Act for Fiscal Year 2007 [Pub. L. 109–364, 10 U.S.C. 2324 note]), by the contractor.

''(b) ADDITIONAL SUBJECT OF REVIEW.—In addition to the matters required by subsection (a), the guidance and instructions issued pursuant to subsection (a) shall provide for procedures for the periodic review of contracts under which one contractor provides oversight for services performed by other contractors. In particular, the procedures shall be designed to evaluate, at a minimum—

''(1) the extent of the agency's reliance on the contractor to perform acquisition functions closely associated with inherently governmental functions as defined in section 2383(b)(3) of title 10, United States Code; and

''(2) the financial interest of any prime contractor performing acquisition functions described in para-

graph (1) in any contract or subcontract with regard to which the contractor provided advice or recommendations to the agency.

''(c) ELEMENTS.—The guidance and instructions issued pursuant to subsection (a) shall address, at a minimum—

''(1) the contracts subject to independent management reviews, including any applicable thresholds and exceptions;

''(2) the frequency with which independent management reviews shall be conducted;

''(3) the composition of teams designated to perform independent management reviews;

''(4) any phase-in requirements needed to ensure that qualified staff are available to perform independent management reviews;

''(5) procedures for tracking the implementation of recommendations made by independent management review teams; and

''(6) procedures for developing and disseminating lessons learned from independent management reviews.''

[(d) Repealed. Pub. L. 115–232, div. A, title VIII, § 812(b)(23), Aug. 13, 2018, 132 Stat. 1849.]

ESTABLISHMENT AND IMPLEMENTATION OF MANAGEMENT STRUCTURE

Pub. L. 107–107, div. A, title VIII, § 801(b)(2), Dec. 28, 2001, 115 Stat. 1176, directed the Secretary of Defense to establish and implement the management structure required under this section and the Under Secretary of Defense for Acquisition, Technology, and Logistics to issue guidance for officials in such management structure not later than 180 days after Dec. 28, 2001.

PHASED IMPLEMENTATION; REPORT

Pub. L. 109–163, div. A, title VIII, § 812(b), (c), Jan. 6, 2006, 119 Stat. 3378, 3379, which related to the phased implementation of the requirements of section 2330 of this title, was repealed by Pub. L. 115–232, div. A, title VIII, § 812(b)(24), Aug. 13, 2018, 132 Stat. 1849.

PROCUREMENT PROGRAM REVIEW STRUCTURE; COMPTROLLER GENERAL REVIEW

Pub. L. 107–107, div. A, title VIII, § 801(d)–(f), Dec. 28, 2001, 115 Stat. 1177, as amended by Pub. L. 113–291, div. A, title X, § 1071(b)(8), Dec. 19, 2014, 128 Stat. 3507, which provided for a program review structure applicable to the procurement of services similar to the one applicable to the procurement of weapon systems by the Department of Defense, and a Comptroller General assessment thereof, was repealed by Pub. L. 115–232, div. A, title VIII, § 812(b)(25), Aug. 13, 2018, 132 Stat. 1849.

PERFORMANCE GOALS FOR PROCUREMENTS OF SERVICES

Pub. L. 107–107, div. A, title VIII, § 802, Dec. 28, 2001, 115 Stat. 1178, as amended by Pub. L. 107–314, div. A, title VIII, § 805, Dec. 2, 2002, 116 Stat. 2605, which established performance goals for procurements of services pursuant to multiple award contracts, was repealed by Pub. L. 115–232, div. A, title VIII, § 812(b)(26), Aug. 13, 2018, 132 Stat. 1849.

§ 2330a. Procurement of services: tracking of purchases

(a) DATA COLLECTION REQUIRED.—The Secretary of Defense shall establish a data collection system to provide management information with regard to each purchase of services by a military department or Defense Agency in excess of $3,000,000, regardless of whether such a purchase is made in the form of a contract, task order, delivery order, military interdepartmental purchase request, or any other form of interagency agreement, for services in the following service acquisition portfolio groups:

(1) Logistics management services.

(2) Equipment related services.

(3) Knowledge-based services.

(4) Electronics and communications services.

(b) DATA TO BE COLLECTED.—The data required to be collected under subsection (a) includes the following:

(1) The services purchased.

(2) The total dollar amount of the purchase.

(3) The form of contracting action used to make the purchase.

(4) Whether the purchase was made through—

(A) a performance-based contract, performance-based task order, or other performance-based arrangement that contains firm fixed prices for the specific tasks to be performed;

(B) any other performance-based contract, performance-based task order, or performance-based arrangement; or

(C) any contract, task order, or other arrangement that is not performance based.

(5) In the case of a purchase made through an agency other than the Department of Defense, the agency through which the purchase is made.

(6) The extent of competition provided in making the purchase and whether there was more than one offer.

(7) Whether the purchase was made from—

(A) a small business concern;

(B) a small business concern owned and controlled by socially and economically disadvantaged individuals; or

(C) a small business concern owned and controlled by women.

(c) INVENTORY SUMMARY.—(1) Not later than the end of the third quarter of each fiscal year, the Secretary of Defense shall prepare an annual inventory, and submit to Congress a summary of the inventory, of activities performed during the preceding fiscal year pursuant to staff augmentation contracts and contracts closely associated with inherently governmental functions on behalf of the Department of Defense. The guidance for compiling the inventory shall be issued by the Under Secretary of Defense for Personnel and Readiness, the Under Secretary of Defense (Comptroller), and the Under Secretary of Defense for Acquisition and Sustainment, as follows:

(A) The Under Secretary of Defense for Personnel and Readiness, as supported by the Under Secretary of Defense (Comptroller), shall be responsible for developing guidance for—

(i) the collection of data regarding functions and missions performed by contractors in a manner that is comparable to the manpower data elements used in inventories of functions performed by Department of Defense employees;

(ii) the calculation of contractor full-time equivalents for direct labor, using direct labor hours in a manner that is comparable to the calculation of Department of Defense civilian full-time employees; and

(iii) the conduct and completion of the annual review required under subsection (e)(1).

(B) The Under Secretary of Defense for Acquisition and Sustainment shall be responsible

for developing guidance on other data elements and implementing procedures for requirements relating to acquisition.

(2) The entry for an activity on an inventory under this subsection shall include, for the fiscal year covered by such entry, the following:

(A) The functions and missions performed by the contractor.

(B) The contracting organization, the component of the Department of Defense administering the contract, and the organization whose requirements are being met through contractor performance of the function.

(C) The funding source for the contract under which the function is performed by appropriation and operating agency.

(D) The fiscal year for which the activity first appeared on an inventory under this section.

(E) The number of contractor employees, expressed as full-time equivalents for direct labor, using direct labor hours and associated cost data collected from contractors (except that estimates may be used where such data is not available and cannot reasonably be made available in a timely manner for the purpose of the inventory).

(F) A determination whether the contract pursuant to which the activity is performed is a personal services contract.

(G) A summary of the data required to be collected for the activity under subsection (a).

(3) The inventory required under this subsection shall be submitted in unclassified form, but may include a classified annex.

(d) REVIEW AND PLANNING REQUIREMENTS.—Within 90 days after the date on which an inventory is submitted under subsection (c), the Secretary of the military department or head of the Defense Agency responsible for activities in the inventory shall—

(1) review the contracts and activities in the inventory for which such Secretary or agency head is responsible, with particular focus and attention on the following categories of high-risk product service codes (also referred to as Federal supply codes):

(A) Special studies or analysis that is not research and development.

(B) Information technology and telecommunications.

(C) Support, including professional, administrative, and management;

(2) ensure that—

(A) each contract on the list that is a personal services contract has been entered into, and is being performed, in accordance with applicable statutory and regulatory requirements;

(B) the activities on the list do not include any inherently governmental functions; and

(C) to the maximum extent practicable, the activities on the list do not include any functions closely associated with inherently governmental functions; and

(3) identify activities that should be considered for conversion—

(A) to performance by civilian employees of the Department of Defense pursuant to section 2463 of this title; or

(B) to an acquisition approach that would be more advantageous to the Department of Defense.

(e) DEVELOPMENT OF PLAN AND ENFORCEMENT AND APPROVAL MECHANISMS.—The Secretary of the military department or head of the Defense Agency responsible for activities in the inventory shall develop a plan, including an enforcement mechanism and approval process, to—

(1) provide for the use of the inventory by the military department or Defense Agency to implement the requirements of section 129a of this title;

(2) ensure the inventory is used to inform strategic workforce planning;

(3) facilitate use of the inventory for compliance with section 235 of this title; and

(4) provide for appropriate consideration of the conversion of activities identified under subsection (e)(3) within a reasonable period of time.

(f) COMPTROLLER GENERAL REPORT.—Not later than March 31, 2018, the Comptroller General of the United States shall submit to the congressional defense committees a report on the status of the data collection required in subsection (a) and an assessment of the efforts by the Department of Defense to implement subsection (e).

(g) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to authorize the performance of personal services by a contractor except where expressly authorized by a provision of law other than this section.

(h) DEFINITIONS.—In this section:

(1) PERFORMANCE-BASED.—The term ''performance-based'', with respect to a contract, task order, or arrangement, means that the contract, task order, or arrangement, respectively, includes the use of performance work statements that set forth contract requirements in clear, specific, and objective terms with measurable outcomes.

(2) FUNCTION CLOSELY ASSOCIATED WITH INHERENTLY GOVERNMENTAL FUNCTIONS.—The term ''function closely associated with inherently governmental functions'' has the meaning given that term in section 2383(b)(3) of this title.

(3) INHERENTLY GOVERNMENTAL FUNCTIONS.—The term ''inherently governmental functions'' has the meaning given that term in section 2383(b)(2) of this title.

(4) PERSONAL SERVICES CONTRACT.—The term ''personal services contract'' means a contract under which, as a result of its terms or conditions or the manner of its administration during performance, contractor personnel are subject to the relatively continuous supervision and control of one or more Government officers or employees, except that the giving of an order for a specific article or service, with the right to reject the finished product or result, is not the type of supervision or control that makes a contract a personal services contract.

(5) SERVICE ACQUISITION PORTFOLIO GROUPS.—The term ''service acquisition portfolio groups'' means the groups identified in Department of Defense Instruction 5000.74, Defense Acquisition of Services (January 5, 2016) or successor guidance.

(6) STAFF AUGMENTATION CONTRACTS.—The term ''staff augmentation contracts'' means services contracts for personnel who are physically present in a Government work space on a full-time or permanent part-time basis, for the purpose of advising on, providing support to, or assisting a Government agency in the performance of the agency's missions, including authorized personal services contracts (as that term is defined in section 2330a(g)(5) of this title).[1]

(7) SIMPLIFIED ACQUISITION THRESHOLD.—The term ''simplified acquisition threshold'' has the meaning given the term in section 134 of title 41.

(8) SMALL BUSINESS ACT DEFINITIONS.—

(A) The term ''small business concern'' has the meaning given such term under section 3 of the Small Business Act (15 U.S.C. 632).

(B) The terms ''small business concern owned and controlled by socially and economically disadvantaged individuals'' and ''small business concern owned and controlled by women'' have the meanings given such terms, respectively, in section 8(d)(3) of the Small Business Act (15 U.S.C. 637(d)(3)).

(Added Pub. L. 107–107, div. A, title VIII, § 801(c), Dec. 28, 2001, 115 Stat. 1176; amended Pub. L. 110–181, div. A, title VIII, § 807(a), Jan. 28, 2008, 122 Stat. 213; Pub. L. 111–84, div. A, title VIII, § 803(b), Oct. 28, 2009, 123 Stat. 2402; Pub. L. 111–383, div. A, title III, § 321, Jan. 7, 2011, 124 Stat. 4183; Pub. L. 112–81, div. A, title IX, § 936, Dec. 31, 2011, 125 Stat. 1545; Pub. L. 113–66, div. A, title IX, § 951(a), Dec. 26, 2013, 127 Stat. 839; Pub. L. 114–328, div. A, title VIII, §§ 812, 833(b)(2)(C)(ii), Dec. 23, 2016, 130 Stat. 2269, 2284; Pub. L. 115–91, div. A, title X, § 1081(a)(30), (d)(6)(A), Dec. 12, 2017, 131 Stat. 1595, 1600; Pub. L. 115–232, div. A, title VIII, § 819, Aug. 13, 2018, 132 Stat. 1853.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1856(g), Jan. 1, 2021, 134 Stat. 4151, 4275, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 341 of this title, inserted after section 4502, and redesignated as section 4505 of this title. See Effective Date of 2021 Amendment note below.

REFERENCES IN TEXT

Section 2330a(g)(5) of this title, referred to in subsec. (h)(6), meaning subsec. (g)(5) of this section, was redesignated through a series of amendments as subsec. (h)(4) of this section.

AMENDMENTS

2018—Subsec. (c)(1). Pub. L. 115–232, in introductory provisions, inserted ''and contracts closely associated with inherently governmental functions'' after ''staff augmentation contracts'' and substituted ''Under Secretary of Defense for Acquisition and Sustainment'' for ''Under Secretary of Defense for Acquisition, Technology, and Logistics''.

Subsec. (c)(1)(B). Pub. L. 115–232, § 819(2), substituted ''Under Secretary of Defense for Acquisition and Sustainment'' for ''Under Secretary of Defense for Acquisition, Technology, and Logistics''.

2017—Subsec. (d)(1)(C). Pub. L. 115–91, § 1081(a)(30)(A), struck out period before semicolon at end.

Subsec. (h)(1). Pub. L. 115–91, § 1081(a)(30)(B)(i), inserted heading.

Subsec. (h)(2) to (4). Pub. L. 115–91, § 1081(d)(6)(A), amended directory language of Pub. L. 114–328, § 833(b)(2)(C)(ii). See 2016 Amendment notes below.

Subsec. (h)(5). Pub. L. 115–91, § 1081(a)(30)(B)(iii), inserted heading.

Pub. L. 115–91, § 1081(a)(30)(B)(ii), redesignated par. (6) defining ''service acquisition portfolio groups'' as (5). Former par. (5) redesignated (7).

Pub. L. 115–91, § 1081(d)(6)(A), amended directory language of Pub. L. 114–328, § 833(b)(2)(C)(ii). See 2016 Amendment note below.

Subsec. (h)(6). Pub. L. 115–91, § 1081(a)(30)(B)(iv), inserted heading.

Pub. L. 115–91, § 1081(a)(30)(B)(ii), redesignated par. (7) as (6). Former par. (6) defining ''service acquisition portfolio groups'' redesignated (5) and former par. (6) relating to Small Business Act definitions redesignated (8).

Pub. L. 115–91, § 1081(d)(6)(A), amended directory language of Pub. L. 114–328, § 833(b)(2)(C)(ii). See 2016 Amendment note below.

Subsec. (h)(7). Pub. L. 115–91, § 1081(a)(30)(B)(ii), redesignated par. (5) as (7). Former par. (7) redesignated (6).

Subsec. (h)(8). Pub. L. 115–91, § 1081(a)(30)(B)(ii), redesignated par. (6) relating to Small Business Act definitions as (8).

2016—Subsec. (a). Pub. L. 114–328, § 812(a), (b), substituted ''in excess of $3,000,000'' for ''in excess of the simplified acquisition threshold'' and '', for services in the following service acquisition portfolio groups:'' for period at end and added pars. (1) to (4).

Subsec. (c). Pub. L. 114–328, § 812(c)(1), substituted ''Inventory Summary'' for ''Inventory'' in heading.

Subsec. (c)(1). Pub. L. 114–328, § 812(c)(2), substituted ''prepare an annual inventory, and submit to Congress a summary of the inventory, of activities performed during the preceding fiscal year pursuant to staff augmentation contracts on behalf'' for ''submit to Congress an annual inventory of the activities performed during the preceding fiscal year pursuant to contracts for services (and pursuant to contracts for goods to the extent services are a significant component of performance as identified in a separate line item of a contract) for or on behalf''.

Subsec. (d). Pub. L. 114–328, § 812(d), redesignated subsec. (e) as (d) and struck out former subsec. (d). Prior to amendment, text of subsec. (d) read as follows: ''Not later than 30 days after the date on which an inventory under subsection (c) is required to be submitted to Congress, the Secretary shall—

''(1) make the inventory available to the public; and

''(2) publish in the Federal Register a notice that the inventory is available to the public.''

Subsec. (d)(1). Pub. L. 114–328, § 812(e), inserted '', with particular focus and attention on the following categories of high-risk product service codes (also referred to as Federal supply codes):'' after ''responsible'' and added subpars. (A) to (C).

Subsec. (e). Pub. L. 114–328, § 812(d)(2), redesignated subsec. (f) as (e). Former subsec. (e) redesignated (d).

Subsec. (f). Pub. L. 114–328, § 812(f), added subsec. (f). Former subsec. (f) redesignated (e).

Subsecs. (g), (h). Pub. L. 114–328, § 812(d), redesignated subsecs. (i) and (j) as (g) and (h), respectively, and struck out former subsecs. (g) and (h) which related to Inspector General reports and Comptroller General reports, respectively.

Subsec. (h)(2). Pub. L. 114–328, § 833(b)(2)(C)(ii)(I), (II), as amended by Pub. L. 115–91, § 1081(d)(6)(A), redesignated par. (3) as (2) and struck out former par. (2). Prior to amendment, par. (2) read as follows: ''The definitions set forth in section 2225(f) of this title for the terms 'simplified acquisition threshold', 'small business concern', 'small business concern owned and controlled by socially and economically disadvantaged individuals', and 'small business concern owned and controlled by women' shall apply.''

[1] See References in Text note below.

Subsec. (h)(3), (4). Pub. L. 114–328, § 833(b)(2)(C)(ii)(II), as amended by Pub. L. 115–91, § 1081(d)(6)(A), redesignated pars. (4) and (5) as (3) and (4), respectively. Former par. (3) redesignated (2).

Subsec. (h)(5). Pub. L. 114–328, § 833(b)(2)(C)(ii)(III), as amended by Pub. L. 115–91, § 1081(d)(6)(A), added par. (5). Former par. (5) redesignated (4).

Subsec. (h)(6). Pub. L. 114–328, § 833(b)(2)(C)(ii)(III), as amended by Pub. L. 115–91, § 1081(d)(6)(A), added par. (6) relating to Small Business Act definitions.

Pub. L. 114–328, § 812(g), added par. (6) defining ''service acquisition portfolio groups''.

Subsec. (h)(7). Pub. L. 114–328, § 812(g), added par. (7).

Subsecs. (i), (j). Pub. L. 114–328, § 812(d)(2), redesignated subsecs. (i) and (j) as (g) and (h), respectively.

2013—Subsecs. (g) to (j). Pub. L. 113–66 added subsecs. (g) and (h) and redesignated former subsecs. (g) and (h) as (i) and (j), respectively.

2011—Subsec. (c). Pub. L. 111–383, § 321(2) to (4), substituted ''The guidance for compiling the inventory shall be issued by the Under Secretary of Defense for Personnel and Readiness, the Under Secretary of Defense (Comptroller), and the Under Secretary of Defense for Acquisition, Technology, and Logistics, as follows:'' for ''The entry for an activity on an inventory under this subsection shall include, for the fiscal year covered by such entry, the following:'' in par. (1), added new subpars. (A) and (B) to par. (1), inserted par. (2) designation and introductory provisions before former subpars. (A) to (G) of par. (1) thereby making them part of par. (2), added subpar. (E), and struck out former subpar. (E) which read as follows: ''The number of full-time contractor employees (or its equivalent) paid for the performance of the activity.''

Subsec. (c)(1). Pub. L. 112–81, § 936(a)(1), inserted ''(and pursuant to contracts for goods to the extent services are a significant component of performance as identified in a separate line item of a contract)'' after ''pursuant to contracts for services'' in introductory provisions.

Subsec. (c)(1)(A)(ii), (iii). Pub. L. 112–81, § 936(a)(2), added cls. (ii) and (iii) and struck out former cl. (ii) which read as follows: ''the calculation of contractor manpower equivalents in a manner that is comparable to the calculation of full-time equivalents for use in inventories of functions performed by Department of Defense employees.''

Subsec. (c)(1)(B). Pub. L. 112–81, § 936(a)(3), inserted ''for requirements relating to acquisition'' before period at end.

Subsec. (c)(2), (3). Pub. L. 111–383, § 321(1), redesignated par. (2) as (3).

Subsec. (e)(2) to (4). Pub. L. 112–81, § 936(b), inserted ''and'' at end of par. (2), substituted period for ''; and'' at end of par. (3), and struck out par. (4) which read as follows: ''develop a plan, including an enforcement mechanism and approval process, to provide for appropriate consideration of the conversion of activities identified under paragraph (3) within a reasonable period of time.''

Subsec. (f) to (h). Pub. L. 112–81, § 936(c), added subsec. (f) and redesignated former subsecs. (f) and (g) as (g) and (h), respectively.

2009—Subsec. (e)(4). Pub. L. 111–84 inserted '', including an enforcement mechanism and approval process,'' after ''plan''.

2008—Subsecs. (c) to (g). Pub. L. 110–181, § 807(a)(1), (2), added subsecs. (c) to (f), redesignated former subsec. (d) as (g), and struck out heading and text of former subsec. (c). Former text read as follows: ''To the maximum extent practicable, a single data collection system shall be used to collect data under this section and information under section 2225 of this title.''

Subsec. (g)(3) to (5). Pub. L. 110–181, § 807(a)(3), added pars. (3) to (5).

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 2017 AMENDMENT

Pub. L. 115–91, div. A, title X, § 1081(d), Dec. 12, 2017, 131 Stat. 1599, provided that the amendment made by section 1081(d)(6)(A) is effective as of Dec. 23, 2016, and as if included in Pub. L. 114–328 as enacted.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–181, div. A, title VIII, § 807(b), Jan. 28, 2008, 122 Stat. 215, provided that:

''(1) The amendments made by subsection (a) [amending this section] shall be effective upon the date of the enactment of this Act [Jan. 28, 2008].

''(2) The first inventory required by section 2330a(c) of title 10, United States Code, as added by subsection (a), shall be submitted not later than the end of the third quarter of fiscal year 2008.''

DEVELOPMENT OF GUIDANCE ON PERSONAL SERVICES CONTRACTS

Pub. L. 110–417, [div. A], title VIII, § 831, Oct. 14, 2008, 122 Stat. 4534, which required the Secretary of Defense to develop certain guidance related to personal services contracts, was repealed by Pub. L. 115–232, div. A, title VIII, § 812(b)(27), Aug. 13, 2018, 132 Stat. 1849.

§ 2331. Procurement of services: contracts for professional and technical services

(a) IN GENERAL.—The Secretary of Defense shall prescribe regulations to ensure, to the maximum extent practicable, that professional and technical services are acquired on the basis of the task to be performed rather than on the basis of the number of hours of services provided.

(b) CONTENT OF REGULATIONS.—With respect to contracts to acquire services on the basis of the number of hours of services provided, the regulations described in subsection (a) shall—

(1) include standards and approval procedures to minimize the use of such contracts;

(2) establish criteria to ensure that proposals for contracts for technical and professional services are evaluated on a basis which does not encourage contractors to propose uncompensated overtime;

(3) ensure appropriate emphasis on technical and quality factors in the source selection process;

(4) require identification of any hours in excess of 40-hour weeks included in a proposal;

(5) ensure that offerors are notified that proposals which include unrealistically low labor rates or which do not otherwise demonstrate cost realism will be considered in a risk assessment and evaluated appropriately; and

(6) provide guidance to contracting officers to ensure that any use of uncompensated overtime will not degrade the level of technical expertise required to perform the contract.

(Added Pub. L. 101–510, div. A, title VIII, § 834(a)(1), Nov. 5, 1990, 104 Stat. 1613; amended Pub. L. 102–25, title VII, § 701(a), Apr. 6, 1991, 105 Stat. 113; Pub. L. 103–355, title I, § 1004(c), Oct. 13, 1994, 108 Stat. 3253; Pub. L. 107–107, div. A, title VIII, § 801(g)(1), Dec. 28, 2001, 115 Stat. 1177.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1856(g), Jan. 1, 2021, 134 Stat. 4151, 4275, provided that, effective Jan. 1, 2022, with addi-

tional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 341 of this title, inserted after section 4506, and redesignated as section 4507 of this title. See Effective Date of 2021 Amendment note below.

PRIOR PROVISIONS

A prior section 2331 was renumbered section 2350 of this title.

AMENDMENTS

2001—Pub. L. 107–107 substituted "Procurement of services: contracts" for "Contracts" in section catchline.

1994—Subsec. (c). Pub. L. 103–355 struck out text and heading of subsec. (c). Text read as follows:

"(1) The Secretary of Defense may waive the limitation in section 2304(j)(4) of this title on the total value of task orders for specific contracting activities to the extent the Secretary considers the use of master agreements necessary in order to further the policy set forth in subsection (a).

"(2) During any fiscal year, such a waiver may not increase the total value of task orders under master agreements of a contracting activity by more than 20 percent of the value of all contracts for advisory and assistance services awarded by that contracting activity during fiscal year 1989.

"(3) Such a waiver shall not become effective until 60 days after the Secretary of Defense has published notice thereof in the Federal Register."

1991—Subsec. (c)(1). Pub. L. 102–25 struck out "on a case-by-case basis" after "value of task orders", substituted "considers the use of master agreements necessary" for "considers necessary the use of master agreements", and struck out "of this section" before period at end.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 2302 of this title.

REGULATIONS

Pub. L. 101–510, div. A, title VIII, §834(b), Nov. 5, 1990, 104 Stat. 1614, provided that: "Not later than 180 days after the date of the enactment of this Act [Nov. 5, 1990], the Secretary of Defense shall publish for public comment new regulations to carry out the requirements in this section [enacting this section]. The Secretary shall promulgate final regulations to carry out such requirements not later than 270 days after the date of the enactment of this Act."

SELECTION OF SERVICE PROVIDERS FOR AUDITING SERVICES AND AUDIT READINESS SERVICES

Pub. L. 114–328, div. A, title VIII, §892, Dec. 23, 2016, 130 Stat. 2324, which required that the Department of Defense select service providers for auditing services and audit readiness services based on the best value to the Department, was repealed by Pub. L. 115–91, div. A, title X, §1002(g)(3), Dec. 12, 2017, 131 Stat. 1542. See section 240f of this title.

PROVISIONS NOT AFFECTED BY PUB. L. 103–355

Repeal of subsec. (c) of this section by Pub. L. 103–355 not to be construed as modifying or superseding, or as intended to impair or restrict, authorities or responsibilities under former 40 U.S.C. 759 or chapter 11 of Title 40, Public Buildings, Property, and Works, see section 1004(d) of Pub. L. 103–355, set out as a note under section 2304a of this title.

[§2332. Repealed. Pub. L. 115–232, div. A, title VIII, §812(a)(3)(A), Aug. 13, 2018, 132 Stat. 1847]

Section, added Pub. L. 107–347, title II, §210(a)(1), Dec. 17, 2002, 116 Stat. 2932, related to the authority of a agency head to enter into share-in-savings contracts for information technology.

§2333. Joint policies on requirements definition, contingency program management, and contingency contracting

(a) JOINT POLICY REQUIREMENT.—The Secretary of Defense, in consultation with the Chairman of the Joint Chiefs of Staff, shall develop joint policies for requirements definition, contingency program management, and contingency contracting during combat operations and post-conflict operations.

(b) REQUIREMENTS DEFINITION MATTERS COVERED.—The joint policy for requirements definition required by subsection (a) shall, at a minimum, provide for the following:

(1) The assignment of a senior commissioned officer or civilian member of the senior executive service, with appropriate experience and qualifications related to the definition of requirements to be satisfied through acquisition contracts (such as for delivery of products or services, performance of work, or accomplishment of a project), to act as head of requirements definition and coordination during combat operations, post-conflict operations, and contingency operations, if required, including leading a requirements review board involving all organizations concerned.

(2) An organizational approach to requirements definition and coordination during combat operations, post-conflict operations, and contingency operations that is designed to ensure that requirements are defined in a way that effectively implements United States Government and Department of Defense objectives, policies, and decisions regarding the allocation of resources, coordination of interagency efforts in the theater of operations, and alignment of requirements with the proper use of funds.

(c) CONTINGENCY PROGRAM MANAGEMENT MATTERS COVERED.—The joint policy for contingency program management required by subsection (a) shall, at a minimum, provide for the following:

(1) The assignment of a senior commissioned officer or civilian member of the senior executive service, with appropriate program management experience and qualifications, to act as head of program management during combat operations, post-conflict operations, and contingency operations, including stabilization and reconstruction operations involving multiple United States Government agencies and international organizations, if required.

(2) A preplanned organizational approach to program management during combat operations, post-conflict operations, and contingency operations that is designed to ensure that the Department of Defense is prepared to conduct such program management.

(3) Identification of a deployable cadre of experts, with the appropriate tools and authority, and trained in processes under paragraph (6).

(4) Utilization of the hiring and appointment authorities necessary for the rapid deployment of personnel to ensure the availability of key personnel for sufficient lengths of time to provide for continuing program and project management.

(5) A requirement to provide training (including training under a program to be created by the Defense Acquisition University) to program management personnel in—

(A) the use of laws, regulations, policies, and directives related to program management in combat or contingency environments;

(B) the integration of cost, schedule, and performance objectives into practical acquisition strategies aligned with available resources and subject to effective oversight; and

(C) procedures of the Department of Defense related to funding mechanisms and contingency contract management.

(6) Appropriate steps to ensure that training is maintained for such personnel even when they are not deployed in a contingency operation.

(7) Such steps as may be needed to ensure jointness and cross-service coordination in the area of program management during contingency operations.

(d) CONTINGENCY CONTRACTING MATTERS COVERED.—(1) The joint policy for contingency contracting required by subsection (a) shall, at a minimum, provide for the following:

(A) The designation of a senior commissioned officer or civilian member of the senior executive service in each military department with the responsibility for administering the policy.

(B) The assignment of a senior commissioned officer with appropriate acquisition experience and qualifications to act as head of contingency contracting during combat operations, post-conflict operations, and contingency operations, who shall report directly to the commander of the combatant command in whose area of responsibility the operations occur.

(C) A sourcing approach to contingency contracting that is designed to ensure that each military department is prepared to conduct contingency contracting during combat operations, post-conflict operations, and contingency operations, including stabilization and reconstruction operations involving interagency organizations, if required.

(D) A requirement to provide training (including training under a program to be created by the Defense Acquisition University) to contingency contracting personnel in—

(i) the use of law, regulations, policies, and directives related to contingency contracting operations;

(ii) the appropriate use of rapid acquisition methods, including the use of exceptions to competition requirements under section 2304 of this title, sealed bidding, letter contracts, indefinite delivery-indefinite quantity task orders, set asides under section 8(a) of the Small Business Act (15 U.S.C. 637(a)), undefinitized contract actions, and other tools available to expedite the delivery of goods and services during combat operations or post-conflict operations;

(iii) the appropriate use of rapid acquisition authority, commanders' emergency response program funds, and other tools unique to contingency contracting; and

(iv) instruction on the necessity for the prompt transition from the use of rapid acquisition authority to the use of full and open competition and other methods of contracting that maximize transparency in the acquisition process.

(E) Appropriate steps to ensure that training is maintained for such personnel even when they are not deployed in a contingency operation.

(F) Such steps as may be needed to ensure jointness and cross-service coordination in the area of contingency contracting.

(2) To the extent practicable, the joint policy for contingency contracting required by subsection (a) should be taken into account in the development of interagency plans for stabilization and reconstruction operations, consistent with the report submitted by the President under section 1035 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109–364; 120 Stat. 2388) on interagency operating procedures for the planning and conduct of stabilization and reconstruction operations.

(e) TRAINING FOR PERSONNEL OUTSIDE ACQUISITION WORKFORCE.—(1) The joint policy for requirements definition, contingency program management, and contingency contracting required by subsection (a) shall provide for training of military personnel outside the acquisition workforce (including operational field commanders and officers performing key staff functions for operational field commanders) who are expected to have acquisition responsibility, including oversight duties associated with contracts or contractors, during combat operations, post-conflict operations, and contingency operations.

(2) Training under paragraph (1) shall be sufficient to ensure that the military personnel referred to in that paragraph understand the scope and scale of contractor support they will experience in contingency operations and are prepared for their roles and responsibilities with regard to requirements definition, program management (including contractor oversight), and contingency contracting.

(3) The joint policy shall also provide for the incorporation of contractors and contract operations in mission readiness exercises for operations that will include contracting and contractor support.

(f) DEFINITIONS.—In this section:

(1) CONTINGENCY CONTRACTING PERSONNEL.—The term ''contingency contracting personnel'' means members of the armed forces and civilian employees of the Department of

Defense who are members of the defense acquisition workforce and, as part of their duties, are assigned to provide support to contingency operations (whether deployed or not).

(2) CONTINGENCY CONTRACTING.—The term ''contingency contracting'' means all stages of the process of acquiring property or services by the Department of Defense during a contingency operation.

(3) CONTINGENCY OPERATION.—The term ''contingency operation'' has the meaning provided in section 101(a)(13) of this title.

(4) ACQUISITION SUPPORT AGENCIES.—The term ''acquisition support agencies'' means Defense Agencies and Department of Defense Field Activities that carry out and provide support for acquisition-related activities.

(5) CONTINGENCY PROGRAM MANAGEMENT.—The term ''contingency program management'' means the process of planning, organizing, staffing, controlling, and leading the combined efforts of participating civilian and military personnel and organizations for the management of a specific defense acquisition program or programs during combat operations, post-conflict operations, and contingency operations.

(6) REQUIREMENTS DEFINITION.—The term ''requirements definition'' means the process of translating policy objectives and mission needs into specific requirements, the description of which will be the basis for awarding acquisition contracts for projects to be accomplished, work to be performed, or products to be delivered.

(Added Pub. L. 109–364, div. A, title VIII, § 854(a)(1), Oct. 17, 2006, 120 Stat. 2343; amended Pub. L. 110–181, div. A, title VIII, § 849(a), Jan. 28, 2008, 122 Stat. 245; Pub. L. 111–84, div. A, title X, § 1073(a)(23), Oct. 28, 2009, 123 Stat. 2473; Pub. L. 116–283, div. A, title XVIII, § 1810(b), Jan. 1, 2021, 134 Stat. 4162.)

AMENDMENT OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1810(b), Jan. 1, 2021, 134 Stat. 4151, 4162, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is amended as follows:

(1) by transferring subsection (a) to section 3151 of this title;

(2) by transferring subsection (b) to section 3152 of this title;

(3) by transferring subsection (c) to section 3153 of this title;

(4) by transferring subsection (d) to section 3154(a) of this title;

(5) by transferring subsection (e) as follows:

(A) paragraphs (1) and (2) to section 3155(a) of this title; and

(B) paragraph (3) to section 3156 of this title; and

(6) by transferring subsection (f)(1), (2), (5), and (6) to section 3157(4), (3), (2), and (1), respectively, of this title.

See 2021 Amendment notes below.

REPEAL OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1881(a), Jan. 1, 2021, 134 Stat. 4151, 4293, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is repealed.

REFERENCES IN TEXT

Section 1035 of the John Warner National Defense Authorization Act for Fiscal Year 2007, referred to in subsec. (d)(2), is section 1035 of Pub. L. 109–364, div. A, title X, Oct. 17, 2006, 120 Stat. 2388, which is not classified to the Code.

AMENDMENTS

2021—Subsec. (a). Pub. L. 116–283, § 1810(b)(1), redesignated subsec. (a) as section 3151 of this title.

Subsec. (b). Pub. L. 116–283, § 1810(b)(2), redesignated subsec. (b) as section 3152 of this title.

Subsec. (c). Pub. L. 116–283, § 1810(b)(3), redesignated subsec. (c) as section 3153 of this title.

Subsec. (d). Pub. L. 116–283, § 1810(b)(4), redesignated subsec. (d) as section 3154(a) of this title.

Subsec. (e)(1), (2). Pub. L. 116–283, § 1810(b)(5), redesignated pars. (1) and (2) as section 3155(a) of this title.

Subsec. (e)(3). Pub. L. 116–283, § 1810(b)(6), redesignated par. (3) as section 3156 of this title.

Subsec. (f)(1), (2). Pub. L. 116–283, § 1810(b)(7), redesignated pars. (1) and (2) as section 3157(4) and (3), respectively, of this title.

Subsec. (f)(5), (6). Pub. L. 116–283, § 1810(b)(7), redesignated pars. (5) and (6) as section 3157(2) and (1), respectively, of this title.

2009—Subsec. (d)(1)(D)(ii). Pub. L. 111–84, § 1073(a)(23)(A), substituted ''indefinite delivery-indefinite quantity'' for ''indefinite delivery indefinite quantity''.

Subsec. (d)(2). Pub. L. 111–84, § 1073(a)(23)(B), substituted ''the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109–364; 120 Stat. 2388)'' for ''this Act''.

Subsec. (f)(3). Pub. L. 111–84, § 1073(a)(23)(C), substituted ''section 101(a)(13)'' for ''section 101(13)''.

2008—Subsecs. (e), (f). Pub. L. 110–181 added subsec. (e) and redesignated former subsec. (e) as (f).

EFFECTIVE DATE OF REPEAL

Repeal effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

ENHANCEMENT OF INTERAGENCY SUPPORT DURING CONTINGENCY OPERATIONS AND TRANSITION PERIODS

Pub. L. 114–328, div. A, title XII, § 1281, Dec. 23, 2016, 130 Stat. 2541, provided that:

''(a) AUTHORITY.—The Secretary of Defense and the Secretary of State may enter into an agreement under which each Secretary may provide covered support, supplies, and services on a reimbursement basis, or by exchange of covered support, supplies, and services, to the other Secretary during a contingency operation and related transition period for up to 2 years following the end of such contingency operation.

''(b) AGREEMENT.—An agreement entered into under this section shall be in writing and shall include the following terms:

''(1) The price charged by a supplying agency shall be the direct costs that such agency incurred by providing the covered support, supplies, or services to the requesting agency under this section.

''(2) Credits and liabilities of the agencies accrued as a result of acquisitions and transfers of covered

support, supplies, and services under this section shall be liquidated not less often than once every 3 months by direct payment to the agency supplying such support, supplies, or services by the agency receiving such support, supplies, or services.

''(3) Exchange entitlements accrued as a result of acquisitions and transfers of covered support, supplies, and services under this section shall be satisfied within 12 months after the date of the delivery of the covered support, supplies, or services. Exchange entitlements not so satisfied shall be immediately liquidated by direct payment to the agency supplying such covered support, supplies, or services.

''(c) EFFECT OF OBLIGATION AND AVAILABILITY OF FUNDS.—An order placed by an agency pursuant to an agreement under this section is deemed to be an obligation in the same manner that a similar order placed under a contract with, or a contract for similar goods or services awarded to, a private contractor is an obligation. Appropriations remain available to pay an obligation to the servicing agency in the same manner as appropriations remain available to pay an obligation to a private contractor.

''(d) DEFINITIONS.—In this section:

''(1) COVERED SUPPORT, SUPPLIES, AND SERVICES.—The term 'covered support, supplies, and services' means food, billeting, transportation (including airlift), petroleum, oils, lubricants, communications services, medical services, ammunition, base operations support, use of facilities, spare parts and components, repair and maintenance services, and calibration services.

''(2) CONTINGENCY OPERATION.—The term 'contingency operation' has the meaning given that term in section 101(a)(13) of title 10, United States Code.

''(e) CREDITING OF RECEIPTS.—Any receipt as a result of an agreement entered into under this section shall be credited, at the option of the Secretary of Defense with respect to the Department of Defense and the Secretary of State with respect to the Department of State, to—

''(1) the appropriation, fund, or account used in incurring the obligation; or

''(2) an appropriate appropriation, fund, or account currently available for the purposes for which the expenditures were made.

''(f) NOTIFICATION.—Not later than 30 days after the end of a fiscal year in which covered support, supplies, and services are provided or exchanged pursuant to an agreement under this section, the Secretary of Defense and the Secretary of State shall jointly submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives], the Committee on Foreign Relations of the Senate, and the Committee on Foreign Affairs of the House of Representatives a notification that contains a copy of such agreement and a description of such covered support, supplies, and services.''

AGREEMENTS WITH FOREIGN GOVERNMENTS TO DEVELOP LAND-BASED WATER RESOURCES IN SUPPORT OF AND IN PREPARATION FOR CONTINGENCY OPERATIONS

Pub. L. 114–328, div. A, title XII, §1291, Dec. 23, 2016, 130 Stat. 2558, provided that:

''(a) AGREEMENTS AUTHORIZED.—The Secretary of Defense, with the concurrence of the Secretary of State, is authorized to enter into agreements with the governments of foreign countries to develop land-based water resources in support of and in preparation for contingency operations, including water selection, pumping, purification, storage, distribution, cooling, consumption, water reuse, water source intelligence, research and development, training, acquisition of water support equipment, and water support operations.

''(b) NOTIFICATION REQUIRED.—Not later than 30 days after entering into an agreement under subsection (a), the Secretary of Defense shall notify the appropriate congressional committees of the existence of the agreement and provide a summary of the terms of the agreement.

''(c) DEFINITION.—In this section, the term 'appropriate congressional committees' means—

''(1) the Committee on Armed Services and the Committee on Foreign Relations of the Senate; and

''(2) the Committee on Armed Services and the Committee on Foreign Affairs of the House of Representatives.''

DEADLINE FOR DEVELOPMENT OF JOINT POLICIES

Pub. L. 109–364, div. A, title VIII, §854(b), Oct. 17, 2006, 120 Stat. 2346, provided that: ''The Secretary of Defense shall develop the joint policies required under section 2333 of title 10, United States Code, as added by subsection (a), not later than 18 months after the date of enactment of this Act [Oct. 17, 2006].''

§ 2334. Independent cost estimation and cost analysis

(a) IN GENERAL.—The Director of Cost Assessment and Program Evaluation shall ensure that the cost estimation and cost analysis processes of the Department of Defense provide accurate information and realistic estimates of cost for the acquisition programs of the Department of Defense. In carrying out that responsibility, the Director shall—

(1) prescribe, by authority of the Secretary of Defense, policies and procedures for the conduct of cost estimation and cost analysis for the acquisition programs of the Department of Defense;

(2) provide guidance to and consult with the Secretary of Defense, the Under Secretary of Defense for Acquisition and Sustainment, the Under Secretary of Defense (Comptroller), the Secretaries of the military departments, and the heads of the Defense Agencies with respect to cost estimation in the Department of Defense in general and with respect to specific cost estimates and cost analyses to be conducted in connection with a major defense acquisition program or major subprogram under chapter 144 of this title;

(3) issue guidance relating to the proper discussion of risk in cost estimates generally, and specifically, for the proper discussion of risk in cost estimates for major defense acquisition programs and major subprograms;

(4) issue guidance relating to full consideration of life-cycle management and sustainability costs in major defense acquisition programs and major subprograms;

(5) review all cost estimates and cost analyses conducted in connection with major defense acquisition programs and major subprograms;

(6) conduct or approve independent cost estimates and cost analyses for all major defense acquisition programs and major subprograms—

(A) in advance of—

(i) any decision to grant milestone approval pursuant to section 2366a or 2366b of this title;

(ii) any decision to enter into low-rate initial production or full-rate production;

(iii) any certification under section 2433a of this title; and

(iv) any report under section 2445c(f) of this title; and

(B) at any other time considered appropriate by the Director, upon the request of the Under Secretary of Defense for Acquisition and Sustainment, or upon the request of the milestone decision authority;

(7) periodically assess and update the cost indexes used by the Department to ensure that such indexes have a sound basis and meet the Department's needs for realistic cost estimation; and

(8) annually review the cost and associated information required to be included, by section 2432(c)(1) of this title, in the Selected Acquisition Reports required by that section.

(b) INDEPENDENT COST ESTIMATE REQUIRED BEFORE APPROVAL.—(1) A milestone decision authority may not approve entering a milestone phase of a major defense acquisition program or major subprogram unless an independent cost estimate has been conducted or approved by the Director of Cost Assessment and Program Evaluation and considered by the milestone decision authority that—

(A) for the technology maturation and risk reduction phase, includes the identification and sensitivity analysis of key cost drivers that may affect life-cycle costs of the program or subprogram; and

(B) for the engineering and manufacturing development phase, or production and deployment phase, includes a cost estimate of the full life-cycle cost of the program or subprogram.

(2) The regulations governing the content and submission of independent cost estimates required by subsection (a) shall require that the independent cost estimate of the full life-cycle cost of a program or subprogram include—

(A) all costs of development, procurement, military construction, operations and support, and trained manpower to operate, maintain, and support the program or subprogram upon full operational deployment, without regard to funding source or management control; and

(B) an analysis to support decisionmaking that identifies and evaluates alternative courses of action that may reduce cost and risk, and result in more affordable programs and less costly systems.

(c) REVIEW OF COST ESTIMATES, COST ANALYSES, AND RECORDS OF THE MILITARY DEPARTMENTS AND DEFENSE AGENCIES.—The Secretary of Defense shall ensure that the Director of Cost Assessment and Program Evaluation—

(1) promptly receives the results of all cost estimates and cost analyses conducted by the military departments and Defense Agencies, and all studies conducted by the military departments and Defense Agencies in connection with such cost estimates and cost analyses, for major defense acquisition programs and major subprograms of the military departments and Defense Agencies; and

(2) has timely access to any records and data in the Department of Defense (including the records and data of each military department and Defense Agency and including classified and proprietary information) that the Director considers necessary to review in order to carry out any duties under this section.

(d) PARTICIPATION, CONCURRENCE, AND APPROVAL IN COST ESTIMATION.—The Director of Cost Assessment and Program Evaluation may—

(1) participate in the discussion of any discrepancies between an independent cost estimate and the cost estimate of a military department or Defense Agency for a major defense acquisition program or major subprogram of the Department of Defense;

(2) comment on deficiencies in the methodology or execution of any cost estimate or cost analysis developed by a military department or Defense Agency for a major defense acquisition program or major subprogram;

(3) concur in the choice of a cost estimate within the baseline description or any other cost estimate (including the discussion of risk for any such cost estimate) for use at any event specified in subsection (a)(6); and

(4) participate in the consideration of any decision to request authorization of a multiyear procurement contract for a major defense acquisition program or major subprogram.

(e) DISCUSSION OF RISK IN COST ESTIMATES.—The Director of Cost Assessment and Program Evaluation, and the Secretary of the military department concerned or the head of the Defense Agency concerned (as applicable), shall each—

(1) issue guidance requiring a discussion of risk, the potential impacts of risk on program costs, and approaches to mitigate risk in cost estimates for major defense acquisition programs and major subprograms;

(2) ensure that cost estimates are developed, to the extent practicable, based on historical actual cost information that is based on demonstrated contractor and Government performance and that such estimates provide a high degree of confidence that the program or subprogram can be completed without the need for significant adjustment to program budgets; and

(3) include the information required in the guidance under paragraph (1)—

(A) in any decision documentation approving a cost estimate within the baseline description or any other cost estimate for use at any event specified in subsection (a)(6); and

(B) in the next Selected Acquisition Report pursuant to section 2432 of this title in the case of a major defense acquisition program or major subprogram, or the next quarterly report pursuant to section 2445c of this title in the case of a major automated information system program.

(f) ESTIMATES FOR PROGRAM BASELINE AND ANALYSES AND TARGETS FOR CONTRACT NEGOTIATION PURPOSES.—(1) The policies, procedures, and guidance issued by the Director of Cost Assessment and Program Evaluation in accordance with the requirements of subsection (a) shall provide that cost estimates developed for baseline descriptions and other program purposes conducted pursuant to subsection (a)(6) are not to be used for the purpose of contract negotiations or the obligation of funds.

(2) The Under Secretary of Defense for Acquisition and Sustainment shall, in consultation

with the Director of Cost Assessment and Program Evaluation, develop policies, procedures, and guidance to ensure that cost analyses and targets developed for the purpose of contract negotiations and the obligation of funds are based on the Government's reasonable expectation of successful contractor performance in accordance with the contractor's proposal and previous experience.

(3) The Program Manager and contracting officer for each major defense acquisition program and major subprogram shall ensure that cost analyses and targets developed for the purpose of contract negotiations and the obligation of funds are carried out in accordance with the requirements of paragraph (1) and the policies, procedures, and guidance issued by the Under Secretary of Defense for Acquisition and Sustainment under paragraph (2).

(4) Funds that are made available for a major defense acquisition program or major subprogram in accordance with a cost estimate conducted pursuant to subsection (a)(6), but are excess to a cost analysis or target developed pursuant to paragraph (2), shall remain available for obligation in accordance with the terms of applicable authorization and appropriations Acts.

(5) Funds described in paragraph (4)—

(A) may be used—

(i) to cover any increased program costs identified by a revised cost analysis or target developed pursuant to paragraph (2);

(ii) to acquire additional end items in accordance with the requirements of section 2308 of this title; or

(iii) to cover the cost of risk reduction and process improvements; and

(B) may be reprogrammed, in accordance with established procedures, only if determined to be excess to program needs on the basis of a cost estimate developed with the concurrence of the Director of Cost Assessment and Program Evaluation.

(g) GUIDELINES AND COLLECTION OF COST DATA.—(1) The Director of Cost Assessment and Program Evaluation shall, in consultation with the Under Secretary of Defense for Acquisition and Sustainment, develop policies, procedures, guidance, and a collection method to ensure that quality acquisition cost data are collected to facilitate cost estimation and comparison across acquisition programs.

(2) The program manager and contracting officer for each acquisition program in an amount greater than $100,000,000, in consultation with the cost estimating component of the relevant military department or Defense Agency, shall ensure that cost data are collected in accordance with the requirements of paragraph (1).

(3) The requirement under paragraph (1) may be waived only by the Director of Cost Assessment and Program Evaluation.

(h) STAFF.—The Secretary of Defense shall ensure that the Director of Cost Assessment and Program Evaluation has sufficient professional staff of military and civilian personnel to enable the Director to carry out the duties and responsibilities of the Director under this section.

(Added Pub. L. 111–23, title I, § 101(b)(1), May 22, 2009, 123 Stat. 1706; amended Pub. L. 111–383, div. A, title VIII, § 811, Jan. 7, 2011, 124 Stat. 4263; Pub. L. 112–81, div. A, title VIII, § 833, Dec. 31, 2011, 125 Stat. 1506; Pub. L. 113–66, div. A, title VIII, § 812(c), Dec. 26, 2013, 127 Stat. 808; Pub. L. 114–92, div. A, title VIII, § 824(b), title X, § 1077(a), Nov. 25, 2015, 129 Stat. 907, 998; Pub. L. 114–328, div. A, title VIII, §§ 842(a), (b), 846(3), Dec. 23, 2016, 130 Stat. 2288, 2289, 2292; Pub. L. 115–91, div. A, title X, § 1081(a)(31), Dec. 12, 2017, 131 Stat. 1596; Pub. L. 116–92, div. A, title IX, § 902(53), Dec. 20, 2019, 133 Stat. 1549; Pub. L. 116–283, div. A, title XVIII, § 1812(b)(1), (3), (c)(1), (d), (e)(1), (f)(1), (g)(1), (h)(1), Jan. 1, 2021, 134 Stat. 4174–4177.)

AMENDMENT OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1812(b)(1), (3), (c)(1), (d), (e)(1), (f)(1), (g)(1), (h)(1), Jan. 1, 2021, 134 Stat. 4151, 4174–4177, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is amended as follows:

(1) by transferring subsection (a) to section 3221(a) and (b) of this title;

(2) by transferring subsection (b) to section 3222(a) of this title;

(3) by transferring subsection (c) to section 3223 of this title;

(4) by transferring subsection (d) to section 3224 of this title;

(5) by transferring subsection (e) to section 3225 of this title;

(6) by transferring subsection (f) to section 3226(a) of this title;

(7) by transferring subsection (g) to section 3227(a) of this title; and

(8) by transferring subsection (h) to section 3221(c) of this title.

See 2021 Amendment notes below.

REPEAL OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1881(a), Jan. 1, 2021, 134 Stat. 4151, 4293, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is repealed.

AMENDMENTS

2021—Subsec. (a). Pub. L. 116–283, § 1812(b)(1), redesignated subsec. (a) as section 3221(a) and (b) of this title.

Subsec. (b). Pub. L. 116–283, § 1812(c)(1), redesignated subsec. (b) as section 3222(a) of this title.

Subsec. (c). Pub. L. 116–283, § 1812(d), redesignated subsec. (c) as section 3223 of this title.

Subsec. (d). Pub. L. 116–283, § 1812(e)(1), redesignated subsec. (d) as section 3224 of this title.

Subsec. (e). Pub. L. 116–283, § 1812(f)(1), redesignated subsec. (e) as section 3225 of this title.

Subsec. (f). Pub. L. 116–283, § 1812(g)(1), redesignated subsec. (f) as section 3226(a) of this title.

Subsec. (g). Pub. L. 116–283, § 1812(h)(1), redesignated subsec. (g) as section 3227(a) of this title.

Subsec. (h). Pub. L. 116–283, § 1812(b)(3), redesignated subsec. (h) as section 3221(c) of this title.

2019—Pub. L. 116–92 substituted "Under Secretary of Defense for Acquisition and Sustainment" for "Under Secretary of Defense for Acquisition, Technology, and Logistics" wherever appearing.

2017—Subsec. (a)(6)(B). Pub. L. 115–91 inserted semicolon at end.

2016—Subsec. (a)(2). Pub. L. 114–328, § 846(3), which directed striking out "or a major automated information system under chapter 144A of this title", was executed

by striking out ''or a major automated information system program under chapter 144A of this title'' before semicolon at end, to reflect the probable intent of Congress.

Pub. L. 114–328, § 842(b)(1), inserted ''or major subprogram'' before ''under chapter 144''.

Subsec. (a)(3). Pub. L. 114–328, § 842(a)(1), (b)(2), substituted ''discussion of risk'' for ''selection of confidence levels'' in two places and ''major defense acquisition programs and major subprograms'' for ''major defense acquisition programs and major automated information system programs''.

Subsec. (a)(4), (5). Pub. L. 114–328, § 842(b)(2), substituted ''major defense acquisition programs and major subprograms'' for ''major defense acquisition programs and major automated information system programs''.

Subsec. (a)(6). Pub. L. 114–328, § 842(a)(2)(A), (B), in introductory provisions, inserted ''or approve'' after ''conduct'' and substituted ''all major defense acquisition programs and major subprograms—'' for ''major defense acquisition programs and major automated information system programs for which the Under Secretary of Defense for Acquisition, Technology, and Logistics is the Milestone Decision Authority—''.

Subsec. (a)(6)(B). Pub. L. 114–328, § 842(a)(2)(C), substituted '', upon the request of the Under Secretary of Defense for Acquisition, Technology, and Logistics, or upon the request of the milestone decision authority'' for ''or upon the request of the Under Secretary of Defense for Acquisition, Technology, and Logistics;''.

Subsec. (b). Pub. L. 114–328, § 842(a)(4), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 114–328, § 842(a)(3), redesignated subsec. (b) as (c). Former subsec. (c) redesignated (d).

Subsec. (c)(1). Pub. L. 114–328, § 842(b)(2), substituted ''major defense acquisition programs and major subprograms'' for ''major defense acquisition programs and major automated information system programs''.

Subsec. (d). Pub. L. 114–328, § 842(a)(3), redesignated subsec. (c) as (d). Former subsec. (d) redesignated (e).

Subsec. (d)(1), (2). Pub. L. 114–328, § 842(b)(3), substituted ''major defense acquisition program or major subprogram'' for ''major defense acquisition program or major automated information system program''.

Subsec. (d)(3). Pub. L. 114–328, § 842(a)(5), substituted ''discussion of risk'' for ''confidence level''.

Subsec. (d)(4). Pub. L. 114–328, § 842(b)(4), inserted ''or major subprogram'' before period at end.

Subsec. (e). Pub. L. 114–328, § 842(a)(3), (6)(A), redesignated subsec. (d) as (e) and substituted ''Discussion of Risk in Cost Estimates'' for ''Disclosure of Confidence Levels for Baseline Estimates of Major Defense Acquisition Programs'' in heading. Former subsec. (e) redesignated (f).

Subsec. (e)(1). Pub. L. 114–328, § 842(a)(6)(B), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''disclose in accordance with paragraph (3) the confidence level used in establishing a cost estimate for a major defense acquisition program or major automated information system program and the rationale for selecting such confidence level;''.

Subsec. (e)(2). Pub. L. 114–328, § 842(a)(6)(C), substituted ''cost estimates are developed, to the extent practicable, based on historical actual cost information that is based on demonstrated contractor and Government performance and that such estimates provide'' for ''such confidence level provides'' and inserted ''or subprogram'' after ''the program''.

Subsec. (e)(3). Pub. L. 114–328, § 842(a)(6)(D), substituted ''information required in the guidance under paragraph (1)'' for ''disclosure required by paragraph (1)'' in introductory provisions.

Subsec. (e)(3)(B). Pub. L. 114–328, § 842(b)(5), inserted ''or major subprogram'' after ''major defense acquisition program''.

Subsec. (f). Pub. L. 114–328, § 842(a)(3), redesignated subec. (e) as (f). Former subsec. (f) redesignated (h).

Subsec. (f)(3). Pub. L. 114–328, § 842(b)(6), substituted ''major defense acquisition program and major subprogram'' for ''major defense acquisition program and major automated information system program''.

Subsec. (f)(4). Pub. L. 114–328, § 842(b)(3), substituted ''major defense acquisition program or major subprogram'' for ''major defense acquisition program or major automated information system program''.

Subsec. (g). Pub. L. 114–328, § 842(a)(7), added subsec. (g).

Subsec. (h). Pub. L. 114–328, § 842(a)(3), redesignated subsec. (f) as (h).

2015—Subsec. (a)(6)(A)(i). Pub. L. 114–92, § 824(b), substituted ''any decision to grant milestone approval pursuant to'' for ''any certification under''.

Subsecs. (f), (g). Pub. L. 114–92, § 1077(a), redesignated subsec. (g) as (f) and struck out former subsec. (f) which related to annual report on cost assessment activities.

2013—Subsec. (a)(8). Pub. L. 113–66, § 812(c)(1), added par. (8).

Subsec. (f)(1). Pub. L. 113–66, § 812(c)(2)(A), substituted ''report—'' for ''report, an assessment of—'' in introductory provisions.

Subsec. (f)(1)(A) to (C). Pub. L. 113–66, § 812(c)(2)(B), inserted ''an assessment of'' at beginning of subpars. (A) to (C).

Subsec. (f)(1)(D). Pub. L. 113–66, § 812(c)(2)(C)–(E), added subpar. (D).

2011—Subsec. (d)(1). Pub. L. 111–383, § 811(1)(A), substituted ''paragraph (3)'' for ''paragraph (2)'' and ''and the rationale for selecting such confidence level;'' for '', the rationale for selecting such confidence level, and, if such confidence level is less than 80 percent, the justification for selecting a confidence level of less than 80 percent; and''.

Subsec. (d)(2), (3). Pub. L. 111–383, § 811(1)(B), (C), added par. (2) and redesignated former par. (2) as (3).

Subsec. (e). Pub. L. 111–383, § 811(3), added subsec. (e). Former subsec. (e) redesignated (f).

Subsec. (e)(1). Pub. L. 112–81, § 833(2)(A), (B), substituted ''shall provide that'' for ''shall provide that—'', struck out subpar. (A) designation before ''cost estimates'', and substituted period at end for ''; and''.

Subsec. (e)(2). Pub. L. 112–81, § 833(3), substituted ''The Under Secretary of Defense for Acquisition, Technology, and Logistics shall, in consultation with the Director of Cost Assessment and Program Evaluation, develop policies, procedures, and guidance to ensure that cost analyses and targets'' for ''cost analyses and targets''.

Pub. L. 112–81, § 833(2)(C), redesignated par. (1)(B) as (2) and realigned margin. Former par. (2) redesignated (3).

Subsec. (e)(3). Pub. L. 112–81, § 833(4), substituted ''issued by the Under Secretary of Defense for Acquisition, Technology, and Logistics under paragraph (2)'' for ''issued by the Director of Cost Assessment and Program Evaluation''.

Pub. L. 112–81, § 833(1), redesignated par. (2) as (3). Former par. (3) redesignated (4).

Subsec. (e)(4). Pub. L. 112–81, § 833(1), redesignated par. (3) as (4). Former par. (4) redesignated (5).

Subsec. (e)(5). Pub. L. 112–81, § 833(5), substituted ''paragraph (4)'' for ''paragraph (3)'' in introductory provisions.

Pub. L. 112–81, § 833(1), redesignated par. (4) as (5).

Subsecs. (f), (g). Pub. L. 111–383, § 811(2), redesignated subsecs. (e) and (f) as (f) and (g), respectively.

Effective Date of Repeal

Repeal effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

Effective Date of 2021 Amendment

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 2016 AMENDMENT

Pub. L. 114–328, div. A, title VIII, § 846, Dec. 23, 2016, 130 Stat. 2292, provided that the amendment made by section 846(3) is effective Sept. 30, 2017.

§ 2335. Prohibition on collection of political information

(a) PROHIBITION ON REQUIRING SUBMISSION OF POLITICAL INFORMATION.—The head of an agency may not require a contractor to submit political information related to the contractor or a subcontractor at any tier, or any partner, officer, director, or employee of the contractor or subcontractor—

(1) as part of a solicitation, request for bid, request for proposal, or any other form of communication designed to solicit offers in connection with the award of a contract for procurement of property or services; or

(2) during the course of contract performance as part of the process associated with modifying a contract or exercising a contract option.

(b) SCOPE.—The prohibition under this section applies to the procurement of commercial products and commercial services, the procurement of commercial-off-the-shelf-items, and the noncommercial procurement of supplies, property, services, and manufactured items, irrespective of contract vehicle, including contracts, purchase orders, task or deliver orders under indefinite delivery/indefinite quantity contracts, blanket purchase agreements, and basic ordering agreements.

(c) RULE OF CONSTRUCTION.—Nothing in this section shall be construed as—

(1) waiving, superseding, restricting, or limiting the application of the Federal Election Campaign Act of 1971 (52 U.S.C. 30101 et seq.) or preventing Federal regulatory or law enforcement agencies from collecting or receiving information authorized by law; or

(2) precluding the Defense Contract Audit Agency from accessing and reviewing certain information, including political information, for the purpose of identifying unallowable costs and administering cost principles established pursuant to section 2324 of this title.

(d) DEFINITIONS.—In this section:

(1) CONTRACTOR.—The term ''contractor'' includes contractors, bidders, and offerors, and individuals and legal entities who would reasonably be expected to submit offers or bids for Federal Government contracts.

(2) POLITICAL INFORMATION.—The term ''political information'' means information relating to political spending, including any payment consisting of a contribution, expenditure, independent expenditure, or disbursement for an electioneering communication that is made by the contractor, any of its partners, officers, directors or employees, or any of its affiliates or subsidiaries to a candidate or on behalf of a candidate for election for Federal office, to a political committee, to a political party, to a third party entity with the intention or reasonable expectation that it would use the payment to make independent expenditures or electioneering communications, or that is otherwise made with respect to any election for Federal office, party affiliation, and voting history.

(3) OTHER TERMS.—Each of the terms ''contribution'', ''expenditure'', ''independent expenditure'', ''candidate'', ''election'', ''electioneering communication'', and ''Federal office'' has the meaning given that term in the Federal Election Campaign Act of 1971 (52 U.S.C. 30101 et seq.).

(Added Pub. L. 112–81, div. A, title VIII, § 823(a), Dec. 31, 2011, 125 Stat. 1502; amended Pub. L. 113–291, div. A, title X, § 1071(f)(17), Dec. 19, 2014, 128 Stat. 3511; Pub. L. 115–91, div. A, title X, § 1081(a)(32), Dec. 12, 2017, 131 Stat. 1596; Pub. L. 115–232, div. A, title VIII, § 836(c)(10), Aug. 13, 2018, 132 Stat. 1866.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1862(b), Jan. 1, 2021, 134 Stat. 4151, 4277, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 363 of this title, as amended by section 1862(a) of Pub. L. 116–283, inserted after section 4659, and redesignated as section 4660 of this title. See Effective Date of 2021 Amendment note below.

REFERENCES IN TEXT

The Federal Election Campaign Act of 1971, referred to in subsecs. (c)(1) and (d)(3), is Pub. L. 92–225, Feb. 7, 1972, 86 Stat. 3, which is classified principally to chapter 301 (§ 30101 et seq.) of Title 52, Voting and Elections. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

2018—Subsec. (b). Pub. L. 115–232 substituted ''commercial products and commercial services'' for ''commercial items''.

2017—Subsecs. (c)(1), (d)(3). Pub. L. 115–91 substituted ''(52 U.S.C. 30101 et seq.)'' for ''(2 U.S.C. 431 et seq.)''.

2014—Subsec. (d)(2). Pub. L. 113–291, § 1071(f)(17)(A), redesignated last sentence as par. (3).

Subsec. (d)(3). Pub. L. 113–291, § 1071(f)(17)(B)(ii), (iii), substituted ''that term'' for ''the term'' and ''Federal Election Campaign'' for ''Federal Campaign''.

Pub. L. 113–291, § 1071(f)(17)(B)(i), which directed amendment of par. (3) by inserting ''OTHER TERMS.—'' before ''each of'', was executed by making the insertion before ''Each of'' to reflect the probable intent of Congress.

Pub. L. 113–291, § 1071(f)(17)(A), redesignated last sentence of par. (2) as (3).

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115–232 effective Jan. 1, 2020, subject to a savings provision, see section 836(h) of Pub. L. 115–232, set out as an Effective Date of 2018 Amendment; Savings Provision note under section 453b of Title 6, Domestic Security.

[§ 2336. Renumbered § 2679]

§ 2337. Life-cycle management and product support

(a) GUIDANCE ON LIFE-CYCLE MANAGEMENT.—The Secretary of Defense shall issue and main-

tain comprehensive guidance on life-cycle management and the development and implementation of product support strategies for covered systems. The guidance issued pursuant to this subsection shall—

(1) maximize competition and make the best possible use of available Department of Defense and industry resources at the system, subsystem, and component levels; and

(2) maximize value to the Department of Defense by providing the best possible product support outcomes at the lowest operations and support cost.

(b) LIFE CYCLE SUSTAINMENT PLAN.—Before granting Milestone B approval (or the equivalent), the milestone decision authority shall ensure that each covered system has an approved life cycle sustainment plan. The life cycle sustainment plan shall include—

(1) a comprehensive product support strategy;

(2) performance goals, including key performance parameters for sustainment, key system attributes of the covered system, and other appropriate metrics;

(3) an approved life-cycle cost estimate for the covered system;

(4) affordability constraints and key cost factors that could affect the operating and support costs of the covered system;

(5) sustainment risks and proposed mitigation plans for such risks;

(6) engineering and design considerations that support cost-effective sustainment of the covered system;

(7) a technical data and intellectual property management plan for product support; and

(8) major maintenance and overhaul requirements that will be required during the life cycle of the covered system.

(c) PRODUCT SUPPORT MANAGERS.—

(1) REQUIREMENT.—The Secretary of Defense shall require that each covered system be supported by a product support manager in accordance with this subsection.

(2) RESPONSIBILITIES.—A product support manager for a covered system shall—

(A) develop, update, and implement a life cycle sustainment plan described in subsection (b);

(B) ensure the life cycle sustainment plan is informed by appropriate predictive analysis and modeling tools that can improve material availability and reliability, increase operational availability rates, and reduce operation and sustainment costs;

(C) conduct appropriate cost analyses to validate the product support strategy and life cycle sustainment plan, including cost-benefit analyses as outlined in Office of Management and Budget Circular A–94;

(D) ensure achievement of desired product support outcomes through development and implementation of appropriate product support arrangements;

(E) adjust performance requirements and resource allocations across product support integrators and product support providers as necessary to optimize implementation of the product support strategy;

(F) periodically review product support arrangements between the product support integrators and product support providers to ensure the arrangements are consistent with the overall product support strategy;

(G) prior to each change in the product support strategy or every five years, whichever occurs first, revalidate any business-case analysis performed in support of the product support strategy;

(H) ensure that the product support strategy maximizes small business participation at the appropriate tiers; and

(I) ensure that product support arrangements for the covered system describe how such arrangements will ensure efficient procurement, management, and allocation of Government-owned parts inventories in order to prevent unnecessary procurements of such parts.

(d) DEFINITIONS.—In this section:

(1) PRODUCT SUPPORT.—The term ''product support'' means the package of support functions required to field and maintain the readiness and operational capability of covered systems, subsystems, and components, including all functions related to covered system readiness.

(2) PRODUCT SUPPORT ARRANGEMENT.—The term ''product support arrangement'' means a contract, task order, or any type of other contractual arrangement, or any type of agreement or non-contractual arrangement within the Federal Government, for the performance of sustainment or logistics support required for covered systems, subsystems, or components. The term includes arrangements for any of the following:

(A) Performance-based logistics.

(B) Sustainment support.

(C) Contractor logistics support.

(D) Life-cycle product support.

(E) Weapon systems product support.

(3) PRODUCT SUPPORT INTEGRATOR.—The term ''product support integrator'' means an entity within the Federal Government or outside the Federal Government charged with integrating all sources of product support, both private and public, defined within the scope of a product support arrangement.

(4) PRODUCT SUPPORT PROVIDER.—The term ''product support provider'' means an entity that provides product support functions. The term includes an entity within the Department of Defense, an entity within the private sector, or a partnership between such entities.

(5) COVERED SYSTEM.—The term ''covered system'' means—

(A) a major defense acquisition program as defined in section 2430 of this title; or

(B) an acquisition program or project that is carried out using the rapid fielding or rapid prototyping acquisition pathway under section 804 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114–92; 10 U.S.C. 2302 note) that is estimated by the Secretary of Defense to require an eventual total expenditure described in section 2430(a)(1)(B).

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(6) MILESTONE B APPROVAL.—The term ''Milestone B approval'' has the meaning given that term in section 2366(e)(7) of this title.

(7) MILESTONE DECISION AUTHORITY.—The term ''milestone decision authority'' has the meaning given in section 2431a(e)(5) of this title.

(Added Pub. L. 112–239, div. A, title VIII, § 823(a)(1), Jan. 2, 2013, 126 Stat. 1830; amended Pub. L. 113–66, div. A, title VIII, § 823, Dec. 26, 2013, 127 Stat. 809; Pub. L. 116–283, div. A, title VIII, § 802(a), Jan. 1, 2021, 134 Stat. 3731.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1848(d)(1), Jan. 1, 2021, 134 Stat. 4151, 4258, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 323 of this title, as added by section 1848(a) of Pub. L. 116–283, inserted after section 4323, and redesignated as section 4324 of this title. See Effective Date of 2021 Amendment note below.

AMENDMENTS

2021—Pub. L. 116–283, § 802(a)(1)–(3), substituted ''covered system'' for ''major weapon system'' in subsec. (c)(1) and introductory provisions of subsec. (c)(2) and for ''weapon system'' in subsecs. (c)(2)(I) and (d)(1) and substituted ''covered systems'' for ''major weapon systems'' wherever appearing.

Subsec. (b). Pub. L. 116–283, § 802(a)(5), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 116–283, § 802(a)(4), redesignated subsec. (b) as (c). Former subsec. (c) redesignated (d).

Subsec. (c)(2)(A). Pub. L. 116–283, § 802(a)(6)(A), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''develop and implement a comprehensive product support strategy for the weapon system;''.

Subsec. (c)(2)(B). Pub. L. 116–283, § 802(a)(6)(B), substituted ''ensure the life cycle sustainment plan is informed by'' for ''use''.

Subsec. (c)(2)(C). Pub. L. 116–283, § 802(a)(6)(C), inserted ''and life cycle sustainment plan'' after ''product support strategy''.

Subsec. (d). Pub. L. 116–283, § 802(a)(4), redesignated subsec. (c) as (d).

Subsec. (d)(5). Pub. L. 116–283, § 802(a)(7)(A), amended par. (5) generally. Prior to amendment, par. (5) defined ''major weapon system''.

Subsec. (d)(6), (7). Pub. L. 116–283, § 802(a)(7)(B), added pars. (6) and (7).

2013—Subsec. (b)(2)(I). Pub. L. 113–66 added subpar. (I).

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by section 1848(d)(1) of Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

SIMILAR PROVISIONS

Provisions similar to this section were contained in section 805 of Pub. L. 111–84, which was set out as a note under section 2302 of this title prior to repeal by Pub. L. 112–239, div. A, title VIII, § 823(b), Jan. 2, 2013, 126 Stat. 1832.

§ 2337a. Assessment, management, and control of operating and support costs for major weapon systems

(a) GUIDANCE REQUIRED.—The Secretary of Defense shall issue and maintain guidance on actions to be taken to assess, manage, and control Department of Defense costs for the operation and support of major weapon systems.

(b) ELEMENTS.—The guidance required by subsection (a) shall, at a minimum—

(1) be issued in conjunction with the comprehensive guidance on life-cycle management and the development and implementation of product support strategies for major weapon systems required by section 2337 of this title;

(2) require the military departments to retain each estimate of operating and support costs that is developed at any time during the life cycle of a major weapon system, together with supporting documentation used to develop the estimate;

(3) require the military departments to update estimates of operating and support costs periodically throughout the life cycle of a major weapon system, to determine whether preliminary information and assumptions remain relevant and accurate, and identify and record reasons for variances;

(4) establish policies and procedures for the collection, organization, maintenance, and availability of standardized data on operating and support costs for major weapon systems in accordance with section 2222 of this title;

(5) establish standard requirements for the collection and reporting of data on operating and support costs for major weapon systems by contractors performing weapon system sustainment functions in an appropriate format, and develop contract clauses to ensure that contractors comply with such requirements;

(6) require the military departments—

(A) to collect and retain data from operational and developmental testing and evaluation on the reliability and maintainability of major weapon systems; and

(B) to use such data to inform system design decisions, provide insight into sustainment costs, and inform estimates of operating and support costs for such systems;

(7) require the military departments to ensure that sustainment factors are fully considered at key life-cycle management decision points and that appropriate measures are taken to reduce operating and support costs by influencing system design early in development, developing sound sustainment strategies, and addressing key drivers of costs;

(8) require the military departments to conduct an independent logistics assessment of each major weapon system prior to key acquisition decision points (including milestone decisions) to identify features that are likely to drive future operating and support costs, changes to system design that could reduce such costs, and effective strategies for managing such costs;

(9) include—

(A) reliability metrics for major weapon systems; and

(B) requirements on the use of metrics under subparagraph (A) as triggers—

(i) to conduct further investigation and analysis into drivers of those metrics; and

(ii) to develop strategies for improving reliability, availability, and maintain-

ability of such systems at an affordable cost; and

(10) require the military departments to conduct periodic reviews of operating and support costs of major weapon systems after such systems achieve initial operational capability to identify and address factors resulting in growth in operating and support costs and adapt support strategies to reduce such costs.

(c) RETENTION OF DATA ON OPERATING AND SUPPORT COSTS.—

(1) IN GENERAL.—The Director of Cost Assessment and Program Evaluation shall be responsible for developing and maintaining a database on operating and support estimates, supporting documentation, and actual operating and support costs for major weapon systems.

(2) SUPPORT.—The Secretary of Defense shall ensure that the Director, in carrying out such responsibility—

(A) promptly receives the results of all cost estimates and cost analyses conducted by the military departments with regard to operating and support costs of major weapon systems;

(B) has timely access to any records and data of the military departments (including classified and proprietary information) that the Director considers necessary to carry out such responsibility; and

(C) with the concurrence of the Under Secretary of Defense for Acquisition and Sustainment, may direct the military departments to collect and retain information necessary to support the database.

(d) MAJOR WEAPON SYSTEM DEFINED.—In this section, the term ''major weapon system'' has the meaning given that term in section 2379(f) of this title.

(Added Pub. L. 115–91, div. A, title VIII, §836(a)(1), Dec. 12, 2017, 131 Stat. 1472; amended Pub. L. 115–232, div. A, title X, §1081(a)(20), Aug. 13, 2018, 132 Stat. 1984.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§1801(d), 1848(d)(1), Jan. 1, 2021, 134 Stat. 4151, 4258, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 323 of this title, as added by section 1848(a) of Pub. L. 116–283, inserted after section 4324, and redesignated as section 4325 of this title. See Effective Date of 2021 Amendment note below.

SIMILAR PROVISIONS

Provisions similar to this section were contained in section 832 of Pub. L. 112–81, which was set out as a note under section 2430 of this title, prior to repeal by Pub. L. 115–91, div. A, title VIII, §836(b)(1), Dec. 12, 2017, 131 Stat. 1473.

AMENDMENTS

2018—Subsec. (d). Pub. L. 115–232 substituted ''this title'' for ''title 10, United States Code''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

STANDARDIZED POLICY GUIDANCE FOR CALCULATING AIRCRAFT OPERATION AND SUSTAINMENT COSTS

Pub. L. 116–92, div. A, title XVII, §1747, Dec. 20, 2019, 133 Stat. 1847, provided that: ''Not later than 270 days after the date of the enactment of this Act [Dec. 20, 2019], the Under Secretary of Defense for Acquisition and Sustainment, in coordination with the Director of Cost Analysis and Program Evaluation and in consultation with the Secretary of each of the military services, shall develop and implement standardized policy guidance for calculating aircraft operation and sustainment costs for the Department of Defense. Such guidance shall provide for a standardized calculation of—

''(1) aircraft cost per flying hour;

''(2) aircraft cost per aircraft tail per year;

''(3) total cost of ownership per flying hour for aircraft systems;

''(4) average annual operation and sustainment cost per aircraft; and

''(5) any other cost metrics the Under Secretary of Defense determines appropriate.''

SHOULD-COST MANAGEMENT

Pub. L. 115–91, div. A, title VIII, §837, Dec. 12, 2017, 131 Stat. 1474, provided that:

''(a) REQUIREMENT FOR REGULATIONS.—Not later than 180 days after the date of the enactment of this Act [Dec. 12, 2017], the Secretary of Defense shall amend the Defense Supplement to the Federal Acquisition Regulation to provide for the appropriate use of the should-cost review process of a major weapon system in a manner that is transparent, objective, and provides for the efficiency of the systems acquisition process in the Department of the Defense.

''(b) REQUIRED ELEMENTS.—The regulations required under subsection (a) shall incorporate, at a minimum, the following elements:

''(1) A description of the features of the should-cost review process.

''(2) Establishment of a process for communicating with the prime contractor on the program the elements of a proposed should-cost review.

''(3) A method for ensuring that identified should-cost savings opportunities are based on accurate, complete, and current information and can be quantified and tracked.

''(4) A description of the training, skills, and experience that Department of Defense and contractor officials carrying out a should-cost review in subsection (a) should possess.

''(5) A method for ensuring appropriate collaboration with the contractor throughout the review process.

''(6) Establishment of review process requirements that provide for sufficient analysis and minimize any impact on program schedule.''

§ 2338. Micro-purchase threshold

The micro-purchase threshold for the Department of Defense is $10,000.

(Added Pub. L. 114–328, div. A, title VIII, §821(a), Dec. 23, 2016, 130 Stat. 2276; amended Pub. L. 115–232, div. A, title VIII, §821(a), Aug. 13, 2018, 132 Stat. 1853.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§1801(d), 1823(b), Jan. 1, 2021, 134 Stat. 4151, 4205, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 251 of this title, as

amended by section 1823(a) of Pub. L. 116–283, inserted after section 3572, and redesignated as section 3573 of this title. See Effective Date of 2021 Amendment note below.

AMENDMENTS

2018—Pub. L. 115–232 substituted ''The micro-purchase threshold for the Department of Defense is $10,000'' for ''Notwithstanding subsection (a) of section 1902 of title 41, the micro-purchase threshold for the Department of Defense for purposes of such section is $5,000''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 2339. Prohibition on criminal history inquiries by contractors prior to conditional offer

(a) LIMITATION ON CRIMINAL HISTORY INQUIRIES.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the head of an agency—

(A) may not require that an individual or sole proprietor who submits a bid for a contract to disclose criminal history record information regarding that individual or sole proprietor before determining the apparent awardee; and

(B) shall require as a condition of receiving a Federal contract and receiving payments under such contract that the contractor may not verbally or through written form request the disclosure of criminal history record information regarding an applicant for a position related to work under such contract before such contractor extends a conditional offer to the applicant.

(2) OTHERWISE REQUIRED BY LAW.—The prohibition under paragraph (1) does not apply with respect to a contract if consideration of criminal history record information prior to a conditional offer with respect to the position is otherwise required by law.

(3) EXCEPTION FOR CERTAIN POSITIONS.—

(A) IN GENERAL.—The prohibition under paragraph (1) does not apply with respect to—

(i) a contract that requires an individual hired under the contract to access classified information or to have sensitive law enforcement or national security duties; or

(ii) a position that the Secretary of Defense identifies under the regulations issued under subparagraph (B).

(B) REGULATIONS.—

(i) ISSUANCE.—Not later than 16 months after the date of enactment of the Fair Chance to Compete for Jobs Act of 2019, the Secretary of Defense, in consultation with the Administrator of General Services, shall issue regulations identifying additional positions with respect to which the prohibition under paragraph (1) shall not apply, giving due consideration to positions that involve interaction with minors, access to sensitive information, or managing financial transactions.

(ii) COMPLIANCE WITH CIVIL RIGHTS LAWS.—The regulations issued under clause (i) shall—

(I) be consistent with, and in no way supersede, restrict, or limit the application of title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.) or other relevant Federal civil rights laws; and

(II) ensure that all hiring activities conducted pursuant to the regulations are conducted in a manner consistent with relevant Federal civil rights laws.

(b) COMPLAINT PROCEDURES.—The Secretary of Defense shall establish and publish procedures under which an applicant for a position with a Department of Defense contractor may submit a complaint, or any other information, relating to compliance by the contractor with subsection (a)(1)(B).

(c) ACTION FOR VIOLATIONS OF PROHIBITION ON CRIMINAL HISTORY INQUIRIES.—

(1) FIRST VIOLATION.—If the Secretary of Defense determines that a contractor has violated subsection (a)(1)(B), the Secretary shall—

(A) notify the contractor;

(B) provide 30 days after such notification for the contractor to appeal the determination; and

(C) issue a written warning to the contractor that includes a description of the violation and the additional remedies that may apply for subsequent violations.

(2) SUBSEQUENT VIOLATIONS.—If the Secretary of Defense determines that a contractor that was subject to paragraph (1) has committed a subsequent violation of subsection (a)(1)(B), the Secretary shall notify the contractor, shall provide 30 days after such notification for the contractor to appeal the determination, and, in consultation with the relevant Federal agencies, may take actions, depending on the severity of the infraction and the contractor's history of violations, including—

(A) providing written guidance to the contractor that the contractor's eligibility for contracts requires compliance with this section;

(B) requiring that the contractor respond within 30 days affirming that the contractor is taking steps to comply with this section; and

(C) suspending payment under the contract for which the applicant was being considered until the contractor demonstrates compliance with this section.

(d) DEFINITIONS.—In this section:

(1) CONDITIONAL OFFER.—The term ''conditional offer'' means an offer of employment for a position related to work under a contract that is conditioned upon the results of a criminal history inquiry.

(2) CRIMINAL HISTORY RECORD INFORMATION.—The term ''criminal history record information'' has the meaning given that term in section 9201 of title 5.

(Added Pub. L. 116–92, div. A, title XI, § 1123(b)(1), Dec. 20, 2019, 133 Stat. 1612.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1862(b), Jan. 1, 2021, 134 Stat. 4151, 4277, pro-

vided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 363 of this title, as amended by section 1862(a) of Pub. L. 116–283, inserted after section 4656, and redesignated as section 4657 of this title. See Effective Date of 2021 Amendment note below.

REFERENCES IN TEXT

The date of enactment of the Fair Chance to Compete for Jobs Act of 2019, referred to in subsec. (a)(3)(B)(i), is the date of enactment of subtitle B of title XI of div. A of Pub. L. 116–92, which was approved Dec. 20, 2019.

The Civil Rights Act of 1964, referred to in subsec. (a)(3)(B)(ii)(I), is Pub. L. 88–352, July 2, 1964, 78 Stat. 241. Title VII of the Act is classified generally to subchapter VI (§ 2000e et seq.) of chapter 21 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of Title 42 and Tables.

PRIOR PROVISIONS

A prior section 2339, added Pub. L. 114–328, div. A, title II, § 217(a)(1), Dec. 23, 2016, 130 Stat. 2051, set the micro-purchase threshold for basic research programs and activities of the Department of Defense science and technology reinvention laboratories, prior to repeal by Pub. L. 115–232, div. A, title VIII, § 821(c)(1), Aug. 13, 2018, 132 Stat. 1853.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE

Pub. L. 116–92, div. A, title XI, § 1123(b)(2), Dec. 20, 2019, 133 Stat. 1614, as amended by Pub. L. 116–283, div. A, title XVIII, § 1862(c)(3)(A), Jan. 1, 2021, 134 Stat. 4278, provided that: ''Section 2339(a) of title 10, United States Code, as added by paragraph (1), shall apply with respect to contracts awarded pursuant to solicitations issued after the effective date described in section 1122(b)(2) of this subtitle [2 years after Dec. 20, 2019, see Effective Date note set out under section 9202 of Title 5, Government Organization and Employees].''

[Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1862(c)(3)(A), Jan. 1, 2021, 134 Stat. 4151, 4278, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, section 1123(b)(2) of Pub. L. 116–92, set out above, is amended by substituting ''Section 4657(a)'' for ''Section 2339(a)''.]

REVISIONS TO FEDERAL ACQUISITION REGULATION

Pub. L. 116–92, div. A, title XI, § 1123(c), Dec. 20, 2019, 133 Stat. 1614, as amended by Pub. L. 116–283, div. A, title XVIII, § 1862(c)(3)(B), Jan. 1, 2021, 134 Stat. 4278, provided that:

''(1) IN GENERAL.—Not later than 18 months after the date of enactment of this subtitle [Dec. 20, 2019], the Federal Acquisition Regulatory Council shall revise the Federal Acquisition Regulation to implement section 4714 of title 41, United States Code, and section 2339 of title 10, United States Code, as added by this section.

''(2) CONSISTENCY WITH OFFICE OF PERSONNEL MANAGEMENT REGULATIONS.—The Federal Acquisition Regulatory Council shall revise the Federal Acquisition Regulation under paragraph (1) to be consistent with the regulations issued by the Director of the Office of Personnel Management under section 1122(b)(1) [5 U.S.C. 9201 note] to the maximum extent practicable. The Council shall include together with such revision an explanation of any substantive modification of the Office of Personnel Management regulations, including an explanation of how such modification will more effectively implement the rights and protections under this section.''

[Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1862(c)(3)(B), Jan. 1, 2021, 134 Stat. 4151, 4278, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, section 1123(c)(1) of Pub. L. 116–92, set out above, is amended by substituting ''section 4657'' for ''section 2339''.]

§ 2339a. Requirements for information relating to supply chain risk

(a) AUTHORITY.—Subject to subsection (b), the head of a covered agency may—

(1) carry out a covered procurement action; and

(2) limit, notwithstanding any other provision of law, in whole or in part, the disclosure of information relating to the basis for carrying out a covered procurement action.

(b) DETERMINATION AND NOTIFICATION.—The head of a covered agency may exercise the authority provided in subsection (a) only after—

(1) obtaining a joint recommendation by the Under Secretary of Defense for Acquisition and Sustainment and the Chief Information Officer of the Department of Defense, on the basis of a risk assessment by the Under Secretary of Defense for Intelligence and Security, that there is a significant supply chain risk to a covered system;

(2) making a determination in writing, in unclassified or classified form, with the concurrence of the Under Secretary of Defense for Acquisition and Sustainment, that—

(A) use of the authority in subsection (a)(1) is necessary to protect national security by reducing supply chain risk;

(B) less intrusive measures are not reasonably available to reduce such supply chain risk; and

(C) in a case where the head of the covered agency plans to limit disclosure of information under subsection (a)(2), the risk to national security due to the disclosure of such information outweighs the risk due to not disclosing such information; and

(3) providing a classified or unclassified notice of the determination made under paragraph (2) to the appropriate congressional committees, which notice shall include—

(A) the information required by section 2304(f)(3) of this title;

(B) the joint recommendation by the Under Secretary of Defense for Acquisition and Sustainment and the Chief Information Officer of the Department of Defense as specified in paragraph (1);

(C) a summary of the risk assessment by the Under Secretary of Defense for Intelligence[1] that serves as the basis for the joint recommendation specified in paragraph (1); and

(D) a summary of the basis for the determination, including a discussion of less intrusive measures that were considered and why they were not reasonably available to reduce supply chain risk.

(c) DELEGATION.—The head of a covered agency may not delegate the authority provided in sub-

section (a) or the responsibility to make a determination under subsection (b) to an official below the level of the service acquisition executive for the agency concerned.

(d) LIMITATION ON DISCLOSURE.—If the head of a covered agency has exercised the authority provided in subsection (a)(2) to limit disclosure of information—

(1) no action undertaken by the agency head under such authority shall be subject to review in a bid protest before the Government Accountability Office or in any Federal court; and

(2) the agency head shall—

(A) notify appropriate parties of a covered procurement action and the basis for such action only to the extent necessary to effectuate the covered procurement action;

(B) notify other Department of Defense components or other Federal agencies responsible for procurements that may be subject to the same or similar supply chain risk, in a manner and to the extent consistent with the requirements of national security; and

(C) ensure the confidentiality of any such notifications.

(e) DEFINITIONS.—In this section:

(1) HEAD OF A COVERED AGENCY.—The term ''head of a covered agency'' means each of the following:

(A) The Secretary of Defense.

(B) The Secretary of the Army.

(C) The Secretary of the Navy.

(D) The Secretary of the Air Force.

(2) COVERED PROCUREMENT ACTION.—The term ''covered procurement action'' means any of the following actions, if the action takes place in the course of conducting a covered procurement:

(A) The exclusion of a source that fails to meet qualification standards established in accordance with the requirements of section 2319 of this title for the purpose of reducing supply chain risk in the acquisition of covered systems.

(B) The exclusion of a source that fails to achieve an acceptable rating with regard to an evaluation factor providing for the consideration of supply chain risk in the evaluation of proposals for the award of a contract or the issuance of a task or delivery order.

(C) The decision to withhold consent for a contractor to subcontract with a particular source or to direct a contractor for a covered system to exclude a particular source from consideration for a subcontract under the contract.

(3) COVERED PROCUREMENT.—The term ''covered procurement'' means—

(A) a source selection for a covered system or a covered item of supply involving either a performance specification, as provided in section 2305(a)(1)(C)(ii) of this title, or an evaluation factor, as provided in section 2305(a)(2)(A) of this title, relating to supply chain risk;

(B) the consideration of proposals for and issuance of a task or delivery order for a covered system or a covered item of supply, as provided in section 2304c(d)(3) of this title, where the task or delivery order contract concerned includes a contract clause establishing a requirement relating to supply chain risk; or

(C) any contract action involving a contract for a covered system or a covered item of supply where such contract includes a clause establishing requirements relating to supply chain risk.

(4) SUPPLY CHAIN RISK.—The term ''supply chain risk'' means the risk that an adversary may sabotage, maliciously introduce unwanted function, or otherwise subvert the design, integrity, manufacturing, production, distribution, installation, operation, or maintenance of a covered system so as to surveil, deny, disrupt, or otherwise degrade the function, use, or operation of such system.

(5) COVERED SYSTEM.—The term ''covered system'' means a national security system, as that term is defined in section 3552(b)(6) of title 44.

(6) COVERED ITEM OF SUPPLY.—The term ''covered item of supply'' means an item of information technology (as that term is defined in section 11101 of title 40) that is purchased for inclusion in a covered system, and the loss of integrity of which could result in a supply chain risk for a covered system.

(7) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term ''appropriate congressional committees'' means—

(A) in the case of a covered system included in the National Intelligence Program or the Military Intelligence Program, the Select Committee on Intelligence of the Senate, the Permanent Select Committee on Intelligence of the House of Representatives, and the congressional defense committees; and

(B) in the case of a covered system not otherwise included in subparagraph (A), the congressional defense committees.

(Added Pub. L. 115–232, div. A, title VIII, §881(a)(1), Aug. 13, 2018, 132 Stat. 1910; amended Pub. L. 116–92, div. A, title XVII, §1731(a)(43), Dec. 20, 2019, 133 Stat. 1814; Pub. L. 116–283, div. A, title X, §1081(a)(36), Jan. 1, 2021, 134 Stat. 3872.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§1801(d), 1813(g), Jan. 1, 2021, 134 Stat. 4151, 4181, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 223 of this title, inserted after section 3249, and redesignated as section 3252 of this title. See Effective Date of 2021 Amendment note below.

AMENDMENTS

2021—Subsec. (b)(1). Pub. L. 116–283 inserted ''and Security'' after ''for Intelligence''.

2019—Subsec. (e)(5). Pub. L. 116–92 substituted ''section 3552(b)(6)'' for ''section 3542(b)''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by section 1813(g) of Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed

implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 2339b. Notification of Navy procurement production disruptions

(a) REQUIREMENT FOR CONTRACTOR TO PROVIDE NOTICE OF DELAYS.—The Secretary of the Navy shall require prime contractors of any Navy procurement program funded under either the Shipbuilding and Conversion, Navy account or the Other Procurement, Navy account to report within 15 calendar days any stop work order or other manufacturing disruption of 15 calendar days or more, by the prime contractor or any subcontractor, to the respective program manager and Navy technical authority.

(b) QUARTERLY REPORTS.—The Secretary of the Navy shall submit to the congressional defense committees not later than 15 calendar days after the end of each quarter of a fiscal year a report listing all notifications made pursuant to subsection (a) during the preceding quarter.

(Added Pub. L. 116–92, div. A, title VIII, § 820(a), Dec. 20, 2019, 133 Stat. 1489.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1878(a), Jan. 1, 2021, 134 Stat. 4151, 4292, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 873 of this title, inserted before section 8752, and redesignated as section 8751 of this title. See Effective Date of 2021 Amendment note below.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 2339c. Disclosures for offerors for certain shipbuilding major defense acquisition program contracts

(a) IN GENERAL.—Any covered offeror seeking to be awarded a shipbuilding construction contract as part of a major defense acquisition program with funds from the Shipbuilding and Conversion, Navy account shall disclose along with the offer and any subsequent revisions of the offer (including the final proposal revision offer) if any part of the planned contract performance will or is expected to include foreign government subsidized performance, foreign financing, foreign financial guarantees, or foreign tax concessions.

(b) REQUIREMENTS.—A disclosure required under subsection (a) shall be made in a form prescribed by the Secretary of the Navy and shall include a specific description of the extent to which the planned contract performance will include, with or without contingencies, any foreign government subsidized performance, foreign financing, foreign financial guarantees, or foreign tax concessions.

(c) CONGRESSIONAL NOTIFICATION.—Not later than 5 days after awarding a contract described under subsection (a), the Secretary of the Navy shall notify the congressional defense committees and summarize the disclosure provided under such subsection.

(d) DEFINITIONS.—In this section:

(1) COVERED OFFEROR.—The term ''covered offeror'' means any offeror that requires or may reasonably be expected to require, during the period of performance on a shipbuilding construction contract described in subsection (a), a method to mitigate or negate foreign ownership under section 2004.34(f)(6) of title 32, Code of Federal Regulations.

(2) FOREIGN GOVERNMENT SUBSIDIZED PERFORMANCE.—The term ''foreign government subsidized performance'' means any financial support, materiel, services, or guarantees of support, services, supply, performance, or intellectual property concessions, that may be provided to or for the covered offeror or the customer of the offeror by a foreign government or entity effectively owned or controlled by a foreign government, which may have the effect of supplementing, supplying, servicing, or reducing the cost or price of an end item, or supporting, financing in whole or in part, or guaranteeing contract performance by the offeror.

(3) MAJOR DEFENSE ACQUISITION PROGRAM.—The term ''major defense acquisition program'' has the meaning given the term in section 2430 of this title.

(Added Pub. L. 116–283, div. A, title VIII, § 803(a), Jan. 1, 2021, 134 Stat. 3734.)

REPEAL OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1881(a), Jan. 1, 2021, 134 Stat. 4151, 4293, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is repealed.

EFFECTIVE DATE OF REPEAL

Repeal effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

CHAPTER 138—COOPERATIVE AGREEMENTS WITH NATO ALLIES AND OTHER COUNTRIES

Subchapter		Sec.
I.	Acquisition and Cross-Servicing Agreements	2341
II.	Other Cooperative Agreements	2350a

AMENDMENTS

1990—Pub. L. 101–510, div. A, title XIV, § 1484(i)(7), Nov. 5, 1990, 104 Stat. 1718, inserted ''Sec.'' above ''2341''.

1989—Pub. L. 101–189, div. A, title IX, § 931(a)(1), Nov. 29, 1989, 103 Stat. 1531, substituted ''COOPERATIVE AGREEMENTS WITH NATO ALLIES AND OTHER COUNTRIES'' for ''ACQUISITION AND CROSS-SERVICING AGREEMENTS WITH NATO ALLIES AND OTHER COUNTRIES'' in chapter heading, and added subchapter analysis, consisting of subchapters I and II.

1987—Pub. L. 100–26, § 7(a)(8), Apr. 21, 1987, 101 Stat. 278, substituted ''ACQUISITION AND CROSS-SERVICING AGREEMENTS WITH NATO ALLIES AND OTHER COUNTRIES'' for ''NORTH ATLANTIC TREATY ORGANIZATION ACQUISITION AND CROSS-SERVICING AGREEMENTS'' in chapter heading.

PRIOR PROVISIONS

Chapter 138 was originally comprised of sections 2321 to 2331. Sections 2321 to 2328, 2330, and 2331, were renumbered sections 2341 to 2348, 2349, and 2350, respectively, of this title, by Pub. L. 99–145, title XIII, § 1304(a)(1), (3), Nov. 8, 1985, 99 Stat. 741.

Section 2329, added Pub. L. 96–323, § 2(a), Aug. 4, 1980, 94 Stat. 1018, required the Secretary of Defense to prescribe regulations to implement this chapter, prior to repeal by Pub. L. 99–145, title XIII, § 1304(a)(2), Nov. 8, 1985, 99 Stat. 741.

SUBCHAPTER I—ACQUISITION AND CROSS-SERVICING AGREEMENTS

Sec.
2341. Authority to acquire logistic support, supplies, and services for elements of the armed forces deployed outside the United States.
2342. Cross-servicing agreements.
2343. Waiver of applicability of certain laws.
2344. Methods of payment for acquisitions and transfers by the United States.
2345. Liquidation of accrued credits and liabilities.
2346. Crediting of receipts.
2347. Limitation on amounts that may be obligated or accrued by the United States.
2348. Inventories of supplies not to be increased.
2349. Overseas Workload Program.
[2349a. Repealed.]
2350. Definitions.

AMENDMENTS

2013—Pub. L. 112–239, div. A, title X, § 1076(g)(3), Jan. 2, 2013, 126 Stat. 1955, struck out item 2349a ''Annual report on non-NATO agreements''.

1994—Pub. L. 103–337, div. A, title XIII, § 1317(c)(2)(B), (i)(2), Oct. 5, 1994, 108 Stat. 2900, 2902, substituted ''Waiver of applicability of certain laws'' for ''Law applicable to acquisition and cross-servicing agreements'' in item 2343 and added item 2349a.

1993—Pub. L. 103–160, div. A, title XIV, § 1431(a)(2), Nov. 30, 1993, 107 Stat. 1833, added item 2349.

1990—Pub. L. 101–510, div. A, title XIII, § 1331(3), Nov. 5, 1990, 104 Stat. 1673, struck out item 2349 ''Annual reports''.

1989—Pub. L. 101–189, div. A, title IX, § 931(a)(1), Nov. 29, 1989, 103 Stat. 1531, added subchapter heading.

1986—Pub. L. 99–661, div. A, title XI, § 1104(g), Nov. 14, 1986, 100 Stat. 3965, substituted ''elements of the armed forces deployed outside the United States'' for ''United States armed forces in Europe'' in item 2341.

1985—Pub. L. 99–145, title XIII, § 1304(a)(6), Nov. 8, 1985, 99 Stat. 742, renumbered items 2321 to 2328 as 2341 to 2348, respectively, and items 2330 and 2331 as 2349 and 2350, respectively, and struck out item 2329 ''Regulations''.

§ 2341. Authority to acquire logistic support, supplies, and services for elements of the armed forces deployed outside the United States

Subject to section 2343 of this title and subject to the availability of appropriations, the Secretary of Defense may—

(1) acquire from the Governments of North Atlantic Treaty Organization countries, from North Atlantic Treaty Organization subsidiary bodies, and from the United Nations Organization or any regional international organization logistic support, supplies, and services for elements of the armed forces deployed outside the United States; and

(2) acquire from any government not a member of the North Atlantic Treaty Organization logistic support, supplies, and services for elements of the armed forces deployed (or to be deployed) outside the United States if that country—

(A) has a defense alliance with the United States;

(B) permits the stationing of members of the armed forces in such country or the homeporting of naval vessels of the United States in such country;

(C) has agreed to preposition materiel of the United States in such country; or

(D) serves as the host country to military exercises which include elements of the armed forces or permits other military operations by the armed forces in such country.

(Added Pub. L. 96–323, § 2(a), Aug. 4, 1980, 94 Stat. 1016, § 2321; renumbered § 2341 and amended Pub. L. 99–145, title XIII, § 1304(a)(1), (4), Nov. 8, 1985, 99 Stat. 741; Pub. L. 99–661, div. A, title XI, § 1104(a), Nov. 14, 1986, 100 Stat. 3963; Pub. L. 102–484, div. A, title XIII, § 1312(a), Oct. 23, 1992, 106 Stat. 2547; Pub. L. 103–337, div. A, title XIII, § 1317(a), Oct. 5, 1994, 108 Stat. 2899; Pub. L. 109–163, div. A, title XII, § 1204, Jan. 6, 2006, 119 Stat. 3456.)

AMENDMENTS

2006—Par. (1). Pub. L. 109–163 struck out ''of which the United States is a member'' before ''logistic support''.

1994—Par. (1). Pub. L. 103–337 substituted a comma for ''and'' after ''countries'' and inserted '', and from the United Nations Organization or any regional international organization of which the United States is a member'' after ''subsidiary bodies''.

1992—Par. (1). Pub. L. 102–484, § 1312(a)(1), substituted ''outside the United States'' for ''in Europe and adjacent waters''.

Par. (2). Pub. L. 102–484, § 1312(a)(2), in introductory provisions, struck out ''in which elements of the armed forces are deployed (or are to be deployed)'' after ''North Atlantic Treaty Organization'' and substituted ''outside the United States'' for ''in such country or in the military region in which such country is located''.

1986—Pub. L. 99–661 substituted ''elements of the armed forces deployed outside the United States'' for ''United States armed forces in Europe'' in section catchline.

Pub. L. 99–661 amended section generally, restating existing provisions into introductory text and par. (1) and adding par. (2).

1985—Pub. L. 99–145 renumbered section 2321 of this title as this section and substituted ''section 2343'' for ''section 2323''.

EFFECTIVE DATE OF 1994 AMENDMENT

Pub. L. 103–337, div. A, title XIII, § 1317(j), Oct. 5, 1994, 108 Stat. 2902, provided that: ''The amendments made by this section [enacting section 2349a of this title and amending this section and sections 2342 to 2347 and 2350 of this title] shall apply with regard to any acquisition or transfer of logistic support, supplies, and services under the authority of subchapter I of chapter 138 of title 10, United States Code, that is initiated after the date of the enactment of this Act [Oct. 5, 1994].''

EFFECTIVE DATE OF 1992 AMENDMENT

Pub. L. 102–484, div. A, title XIII, § 1312(c), Oct. 23, 1992, 106 Stat. 2548, provided that: ''The amendments made by this section [amending this section and section 2347 of this title] shall take effect on the date of enactment of this Act [Oct. 23, 1992] and shall apply to acquisitions of logistics support, supplies, and services under chapter 138 of title 10, United States Code, that are initiated on or after the date of enactment of this Act.''

SHORT TITLE

Pub. L. 96–323, §1, Aug. 4, 1980, 94 Stat. 1016, provided: ''That this Act [enacting this chapter] may be cited as the 'North Atlantic Treaty Organization Mutual Support Act of 1979'.''

ACCEPTANCE OF REAL PROPERTY, SERVICES, AND COMMODITIES FROM FOREIGN COUNTRIES BY AGENCIES OF DEPARTMENT OF DEFENSE

Pub. L. 101–165, title IX, §9008, Nov. 21, 1989, 103 Stat. 1130, which authorized agencies of Department of Defense to accept use of real property from foreign countries for United States in accordance with mutual defense agreements or occupational arrangements and to accept services furnished by foreign countries as reciprocal international courtesies or as services customarily made available without charge and to use same for support of United States forces in such areas without specific appropriation therefor, was repealed and restated in section 2350g of this title by Pub. L. 101–510, div. A, title XIV, §1451(b)(1), (c), Nov. 5, 1990, 104 Stat. 1692, 1693.

OVERSEAS WORKLOAD PROGRAM

Pub. L. 101–510, div. A, title XIV, §1465, Nov. 5, 1990, 104 Stat. 1700, as amended by Pub. L. 102–190, div. A, title X, §1085, Dec. 5, 1991, 105 Stat. 1483; Pub. L. 102–484, div. A, title XIII, §1353, Oct. 23, 1992, 106 Stat. 2559, which related to eligibility of a firm of any member nation of North Atlantic Treaty Organization (NATO) or of any major non-NATO ally to bid on any contract for maintenance, repair, or overhaul of equipment of the Department of Defense to be awarded under competitive procedures as part of the Overseas Workload Program, was repealed and restated in section 2349 of this title by Pub. L. 103–160, div. A, title XIV, §1431(a)(1), (b)(1), Nov. 30, 1993, 107 Stat. 1832, 1833. Similar provisions were contained in the following authorization or appropriation acts:

Pub. L. 102–396, title IX, §9130, Oct. 6, 1992, 106 Stat. 1935, as amended by Pub. L. 103–160, div. A, title XIV, §1431(b)(2), Nov. 30, 1993, 107 Stat. 1833.

Pub. L. 102–172, title VIII, §8122, Nov. 26, 1991, 105 Stat. 1205.

Pub. L. 101–511, title VIII, §8003, Nov. 5, 1990, 104 Stat. 1873.

Pub. L. 100–180, div. A, title X, §1021, Dec. 4, 1987, 101 Stat. 1143.

§ 2342. Cross-servicing agreements

(a)(1) Subject to section 2343 of this title and to the availability of appropriations, and after consultation with the Secretary of State, the Secretary of Defense may enter into an agreement described in paragraph (2) with any of the following:

(A) The government of a North Atlantic Treaty Organization country.

(B) A subsidiary body of the North Atlantic Treaty Organization.

(C) The United Nations Organization or any regional international organization.

(D) The government of a country not a member of the North Atlantic Treaty Organization but which is designated by the Secretary of Defense, subject to the limitations prescribed in subsection (b), as a government with which the Secretary may enter into agreements under this section.

(2) An agreement referred to in paragraph (1) is an agreement under which the United States agrees to provide logistic support, supplies, and services to military forces of a country or organization referred to in paragraph (1) in return for the reciprocal provisions of logistic support, supplies, and services by such government or organization to elements of the armed forces.

(b)(1) The Secretary of Defense may not designate a country for an agreement under this section unless—

(A) the Secretary, after consultation with the Secretary of State, determines that the designation of such country for such purpose is in the interest of the national security of the United States; and

(B) in the case of a country that is not a member of the North Atlantic Treaty Organization, the Secretary submits to the appropriate committees of Congress notice of the intended designation not less than 30 days before the date on which such country is designated by the Secretary under subsection (a).

(2) In the case of a country that is not a member of the North Atlantic Treaty Organization, the Secretary of Defense may not enter into an agreement under this section unless the Secretary submits to the appropriate committees of Congress a notice of intent to enter into such an agreement not less than 30 days before the date on which the Secretary enters into the agreement.

(c) The Secretary of Defense may not use the authority of this subchapter to procure from any foreign government or international organization any goods or services reasonably available from United States commercial sources.

(d) The Secretary of Defense may not use an agreement with any government or an organization described in subsection (a)(1) to facilitate the transfer of logistic support, supplies, and services to any country or organization with which the Secretary has not signed an agreement described in subsection (a)(2).

(e) An agreement described in subsection (a)(2) may not provide or otherwise constitute a commitment for the introduction of the armed forces into hostilities.

(f) Not later than 30 days after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2020, the Secretary of Defense shall designate an existing senior civilian or military official who shall have primary responsibility for—

(1) accounting for logistic support, supplies, and services received or provided under acquisition and cross-servicing agreements;

(2) ensuring consistent standards and guidance to the armed forces and combatant commands in executing acquisition and cross-servicing agreements;

(3) overseeing and monitoring the implementation of acquisition and cross-servicing agreements in coordination with the Under Secretary of Defense for Policy; and

(4) such other responsibilities as may be prescribed by the Secretary.

(g)(1) Not later than 90 days after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2020, the Secretary of Defense shall prescribe regulations to ensure that—

(A) contracts entered into under this subchapter are free from self-dealing, bribery, and conflict of interests;

(B) adequate processes and controls are in place to provide for the accurate accounting of

logistic support, supplies, and services received or provided under the authority of this subchapter; and

(C) personnel responsible for accounting for logistic support, supplies, and services received or provided under such authority are fully trained and aware of such responsibilities.

(2)(A) Not later than 270 days after the issuance of the regulations under paragraph (1), the Comptroller General of the United States shall conduct a review of the implementation by the Secretary of such regulations.

(B) The review conducted under subparagraph (A) shall—

(i) assess the effectiveness of such regulations and the implementation of such regulations to ensure the effective management and oversight of an agreement under subsection (a)(1); and

(ii) include any other matter the Comptroller General considers relevant.

(h) Not later than January 15 each year, the Secretary of Defense shall submit to the appropriate committees of Congress a report on acquisition and cross-servicing activities that sets forth, in detail, the following:

(1) A list of agreements that have entered into force or were applied provisionally pursuant to subsection (a)(1) during the preceding fiscal year.

(2) The date on which each agreement listed under paragraph (1) was signed, and, in the case of an agreement with a country that is not a member of the North Atlantic Treaty Organization, the dates on which the Secretary notified Congress—

(A) pursuant to subsection (b)(1)(B) of the designation of such country under subsection (a); and

(B) pursuant to subsection (b)(2) of the intent of the Secretary to enter into the agreement.

(3) The class of supply, total dollar amount, the amount collected, and the outstanding balance of logistic support, supplies, and services provided during the preceding fiscal year under each such agreement.

(4) The class of supply, total dollar amount, the amount collected, and the outstanding balance of logistic support, supplies, and services received during the preceding fiscal year under each such agreement.

(5) With respect to any transaction for logistic support, supplies, and services that has not been reconciled more than one year after the date on which the transaction occurred, a description of the transaction that includes the following:

(A) The date on which the transaction occurred.

(B) The country or organization to which logistic support, supplies, and services were provided.

(C) The value of the transaction.

(6) An explanation of any waiver granted under section 2347(c) during the preceding fiscal year, including an identification of the relevant contingency operation or non-combat operation.

(i) In this section, the term ''appropriate committees of Congress'' means—

(1) the Committee on Armed Services and the Committee on Foreign Relations of the Senate; and

(2) the Committee on Armed Services and the Committee on Foreign Affairs of the House of Representatives.

(Added Pub. L. 96–323, § 2(a), Aug. 4, 1980, 94 Stat. 1016, § 2322; renumbered § 2342 and amended Pub. L. 99–145, title XIII, § 1304(a)(1), (4), Nov. 8, 1985, 99 Stat. 741; Pub. L. 99–661, div. A, title XI, § 1104(a), Nov. 14, 1986, 100 Stat. 3963; Pub. L. 100–180, div. A, title XII, § 1231(9), Dec. 4, 1987, 101 Stat. 1160; Pub. L. 101–189, div. A, title IX, § 931(e)(1), Nov. 29, 1989, 103 Stat. 1535; Pub. L. 101–510, div. A, title XIV, § 1451(a), Nov. 5, 1990, 104 Stat. 1692; Pub. L. 103–337, div. A, title XIII, § 1317(b), Oct. 5, 1994, 108 Stat. 2900; Pub. L. 104–106, div. A, title XV, § 1502(a)(16), Feb. 10, 1996, 110 Stat. 504; Pub. L. 106–65, div. A, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 109–163, div. A, title XII, § 1204, Jan. 6, 2006, 119 Stat. 3456; Pub. L. 115–232, div. A, title XII, § 1271, Aug. 13, 2018, 132 Stat. 2065; Pub. L. 116–92, div. A, title XII, § 1203, Dec. 20, 2019, 133 Stat. 1620.)

References in Text

The date of the enactment of the National Defense Authorization Act for Fiscal Year 2020, referred to in subsecs. (f) and (g)(1), is the date of enactment of Pub. L. 116–92, which was approved Dec. 20, 2019.

Amendments

2019—Subsec. (b). Pub. L. 116–92, § 1203(a), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''The Secretary of Defense may not designate a country for an agreement under this section unless—

''(1) the Secretary, after consultation with the Secretary of State, determines that the designation of such country for such purpose is in the interest of the national security of the United States; and

''(2) in the case of a country which is not a member of the North Atlantic Treaty Organization, the Secretary submits to the appropriate committees of Congress notice of the intended designation at least 30 days before the date on which such country is designated by the Secretary under subsection (a).''

Subsec. (f). Pub. L. 116–92, § 1203(b)(2), added subsec. (f). Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 116–92, § 1203(b)(1), (c), redesignated subsec. (f) as (g) and amended it generally. Prior to amendment, subsec. read as follows: ''The Secretary shall prescribe regulations to ensure that contracts entered into under this subchapter are free from self-dealing, bribery, and conflict of interests.''

Subsec. (h). Pub. L. 116–92, § 1203(b)(1), redesignated subsec. (g) as (h). Former subsec. (h) redesignated (i).

Subsec. (h)(1). Pub. L. 116–92, § 1203(d)(1), substituted ''that have entered into force or were applied provisionally'' for ''in effect''.

Subsec. (h)(2). Pub. L. 116–92, § 1203(d)(2), substituted ''dates on which the Secretary notified Congress—'' and subpars. (A) and (B) for ''date on which the Secretary notified Congress pursuant to subsection (b)(2) of the designation of such country under subsection (a).''

Subsec. (h)(3). Pub. L. 116–92, § 1203(d)(3), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''The total dollar amount and major categories of logistic support, supplies, and services provided during the preceding fiscal year under each such agreement.''

Subsec. (h)(4). Pub. L. 116–92, § 1203(d)(4), amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''The total dollar amount and major categories of reciprocal provisions of logistic support, supplies, and services received under each such agreement.''

Subsec. (h)(5), (6). Pub. L. 116–92, § 1203(d)(5), (6), added pars. (5) and (6) and struck out former par. (5) which read as follows: ''With respect to the calendar year during which the report is submitted, an assessment of the following:

''(A) The anticipated logistic support, supplies, and services requirements of the United States.

''(B) The anticipated requirements of other countries for United States logistic support, supplies, and services.''

Subsec. (i). Pub. L. 116–92, § 1203(b)(1), redesignated subsec. (h) as (i).

2018—Subsec. (b)(2). Pub. L. 115–232, § 1271(c)(1), substituted ''the appropriate committees of Congress'' for ''the Committee on Armed Services and the Committee on Foreign Relations of the Senate and the Committee on Armed Services and the Committee on International Relations of the House of Representatives''.

Subsecs. (d) to (f). Pub. L. 115–232, § 1271(a), added subsecs. (d) and (e) and redesignated former subsec. (d) as (f).

Subsec. (g). Pub. L. 115–232, § 1271(b), added subsec. (g).

Subsec. (h). Pub. L. 115–232, § 1271(c)(2), added subsec. (h).

2006—Subsec. (a)(1)(C). Pub. L. 109–163 struck out ''of which the United States is a member'' before period at end.

1999—Subsec. (b)(2). Pub. L. 106–65 substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security''.

1996—Subsec. (b). Pub. L. 104–106 inserted ''unless'' after ''section'' in introductory provisions, struck out ''unless'' after ''(1)'' in par. (1), and substituted ''the Secretary submits to the Committee on Armed Services and the Committee on Foreign Relations of the Senate and the Committee on National Security and the Committee on International Relations of the House of Representatives notice of the intended designation'' for ''notifies the Committees on Armed Services and Foreign Relations of the Senate and the Committees on Armed Services and Foreign Affairs of the House of Representatives'' in par. (2).

1994—Subsec. (a)(1). Pub. L. 103–337, § 1317(b)(1), substituted ''with any of the following:'' for ''with—'' in introductory provisions, substituted ''The government'' for ''the government'' and a period for the semicolon in subpar. (A), substituted ''A subsidiary'' for ''a subsidiary'' and ''Organization.'' for ''Organization; or'' in subpar. (B), added subpar. (C), redesignated former subpar. (C) as (D) and substituted ''The government'' for ''the government''.

Subsec. (a)(2). Pub. L. 103–337, § 1317(b)(2), substituted ''organization'' for ''subsidiary body'' in two places.

Subsec. (c). Pub. L. 103–337, § 1317(b)(3), substituted ''or international organization'' for ''as a routine or normal source''.

1990—Subsec. (a). Pub. L. 101–510 amended subsec. (a) generally, revising and restating former pars. (1) to (3) relating to reciprocal logistical support agreements as pars. (1) and (2).

1989—Subsecs. (c), (d). Pub. L. 101–189 substituted ''this subchapter'' for ''this chapter''.

1987—Pub. L. 100–180 substituted ''Cross-servicing'' for ''Cross servicing'' in section catchline.

1986—Pub. L. 99–661 amended section generally, restating existing provisions in introductory text and par. (1) of subsec. (a), adding pars. (2) and (3) of subsec. (a), and adding subsecs. (b) to (d).

1985—Pub. L. 99–145 renumbered section 2322 of this title as this section and substituted ''section 2343'' for ''section 2323''.

CHANGE OF NAME

Committee on International Relations of House of Representatives changed to Committee on Foreign Affairs of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 applicable with regard to any acquisition or transfer of logistic support, supplies, and services under authority of this subchapter that is initiated after Oct. 5, 1994, see section 1317(j) of Pub. L. 103–337, set out as a note under section 2341 of this title.

CROSS SERVICING AGREEMENTS FOR LOAN OF PERSONNEL PROTECTION AND PERSONNEL SURVIVABILITY EQUIPMENT IN COALITION OPERATIONS

Pub. L. 113–291, div. A, title XII, § 1207, Dec. 19, 2014, 128 Stat. 3539, as amended by Pub. L. 115–91, div. A, title X, § 1051(t)(4), Dec. 12, 2017, 131 Stat. 1566; Pub. L. 116–92, div. A, title XII, § 1202, Dec. 20, 2019, 133 Stat. 1620, provided that:

''(a) IN GENERAL.—The Secretary of Defense may, with the concurrence of the Secretary of State, enter into an arrangement, under an agreement concluded pursuant to section 2342 of title 10, United States Code, under which the United States agrees to loan personnel protection and personnel survivability equipment for the use of such equipment by military forces of a nation participating in the following:

''(1) A coalition operation with the United States as part of a contingency operation.

''(2) A coalition operation with the United States as part of a peacekeeping operation under the Charter of the United Nations or another international agreement.

''(3) Training of such forces in connection with the deployment of such forces to be deployed to an operation described in paragraph (1) or (2).

''(b) LIMITATIONS.—

''(1) LOAN ONLY OF EQUIPMENT FOR WHICH U.S. FORCES HAVE NO UNFULFILLED REQUIREMENTS.—Equipment may be loaned to the military forces of a nation under the authority of this section only upon a determination by the Secretary of Defense that the United States forces in the coalition operation concerned have no unfulfilled requirements for such equipment.

''(2) SCOPE OF USE OF LOANED EQUIPMENT.—Equipment loaned to the military forces of a nation under the authority of this section may be used by those forces only for personnel protection or to aid in the personnel survivability of those forces and only in—

''(A) a coalition operation with the United States described in paragraph (1) or (2) of subsection (a); or

''(B) training described in paragraph (3) of subsection (a).

''(3) DURATION OF USE OF LOANED EQUIPMENT.—Equipment loaned to the military forces of a nation under the authority of this section may be used by the military forces of that nation not longer than the duration of that country's participation in the coalition operation concerned.

''(4) NOTICE AND WAIT ON LOAN OF EQUIPMENT FOR TRAINING.—Equipment may not be loaned under subsection (a) in connection with training described in paragraph (3) of that subsection until 15 days after the date on which the Secretary of Defense submits to the appropriate committees of Congress written notice on the loan of such equipment for such purpose.

''(c) WAIVER OF REIMBURSEMENT IN CASE OF LOSS OF EQUIPMENT IN COMBAT.—

''(1) IN GENERAL.—In the case of equipment loaned under the authority of this section that is damaged or destroyed as a result of combat operations during coalition operations while held by forces to which loaned under this section, the Secretary of Defense may, with respect to such equipment, waive any other requirement under applicable law for—

''(A) reimbursement;

''(B) replacement-in-kind; or

''(C) exchange of supplies or services of an equal value.

''(2) BASIS FOR WAIVER.—Any waiver under this subsection may be made only if the Secretary determines that the waiver is in the national security interest of the United States.

''(3) WAIVER ON A CASE-BY-CASE BASIS.—Any waiver under this subsection may be made only on a case-by-case basis.

“(d) REPORTS TO CONGRESS.—If the authority provided under this section is exercised during a fiscal year, the Secretary of Defense shall, with the concurrence of the Secretary of State, submit to the appropriate committees of Congress a report on the exercise of such authority by not later than October 30 of the year in which such fiscal year ends. Each report on the exercise of such authority shall specify the recipient country of the equipment loaned, the type of equipment loaned, and the duration of the loan of such equipment.

“(e) DEFINITIONS.—In this section:

“(1) The term ‘appropriate committees of Congress’ means—

“(A) the Committee on Armed Services and the Committee on Foreign Relations of the Senate; and

“(B) the Committee on Armed Services and the Committee on Foreign Affairs of the House of Representatives.

“(2) The term ‘personnel protection and personnel survivability equipment’ means items enumerated in categories I, II, III, VII, X, XI, and XIII of the United States Munitions List under section 38(a)(1) of the Arms Export Control Act (22 U.S.C. 2778(a)(1)[)] that the Secretary of Defense designates as available for loan under this section.

“(f) EXPIRATION OF AUTHORITY.—The authority in subsection (a) shall expire on December 31, 2024.”

§ 2343. Waiver of applicability of certain laws

Sections 2207, 2304(a), 2306(a), 2306(b), 2306(e), 2306a, and 2313 of this title and section 6306 of title 41 shall not apply to acquisitions made under the authority of section 2341 of this title or to agreements entered into under section 2342 of this title.

(Added Pub. L. 96–323, § 2(a), Aug. 4, 1980, 94 Stat. 1017, § 2323; renumbered § 2343 and amended Pub. L. 99–145, title IX, § 961(b), title XIII, § 1304(a)(1), (5), Nov. 8, 1985, 99 Stat. 703, 741; Pub. L. 100–26, § 7(g)(2), Apr. 21, 1987, 101 Stat. 282; Pub. L. 100–456, div. A, title XII, § 1233(d), Sept. 29, 1988, 102 Stat. 2057; Pub. L. 101–189, div. A, title IX, § 931(e)(1), Nov. 29, 1989, 103 Stat. 1535; Pub. L. 102–190, div. A, title X, § 1061(a)(12), Dec. 5, 1991, 105 Stat. 1473; Pub. L. 103–337, div. A, title XIII, § 1317(c)(1), (2)(A), Oct. 5, 1994, 108 Stat. 2900; Pub. L. 111–350, § 5(b)(20), Jan. 4, 2011, 124 Stat. 3844; Pub. L. 116–283, div. A, title XVIII, §§ 1817(h), 1831(j)(3), 1862(c)(1), 1883(b)(2), Jan. 1, 2021, 134 Stat. 4188, 4216, 4278, 4294.)

AMENDMENT OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1817(h), 1831(j)(3), 1862(c)(1), Jan. 1, 2021, 134 Stat. 4151, 4188, 4216, 4278, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is amended as follows:

(1) by striking “Sections 2207,” and inserting “Sections 4651,”; and

(2) by striking “2306(a), 2306(b), 2306(e), 2306a, and 2313” and inserting “3351, 3352(a), 3352(c), 3701–3708, and 3841”.

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1883(b)(2), Jan. 1, 2021, 134 Stat. 4151, 4294, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, except as otherwise provided in title XVIII of Pub. L. 116–283, in title 10, United States Code, each reference in the text of such title to a source section that is redesignated by title XVIII of Pub. L. 116–283, is amended by striking such reference and inserting a reference to the appropriate section as so redesignated.

See 2021 Amendment notes below.

AMENDMENTS

2021—Pub. L. 116–283, § 1883(b)(2), substituted “3201” for “2304(a)”.

Pub. L. 116–283, § 1862(c)(1), substituted “Sections 4651,” for “Sections 2207,”.

Pub. L. 116–283, § 1831(j)(3), substituted “3701–3708, and 3841” for “2306a, and 2313”.

Pub. L. 116–283, § 1817(h), substituted “3351, 3352(a), 3352(c)” for “2306(a), 2306(b), 2306(e)”.

2011—Pub. L. 111–350 substituted “section 6306 of title 41” for “section 3741 of the Revised Statutes (41 U.S.C. 22)”.

1994—Pub. L. 103–337, § 1317(c)(2)(A), substituted “Waiver of applicability of certain laws” for “Law applicable to acquisition and cross-servicing agreements” as section catchline.

Pub. L. 103–337, § 1317(c)(1), designated subsec. (b) as entire section and struck out former subsec. (a) which read as follows: “Except as provided in subsection (b), acquisition of logistic support, supplies, and services under section 2341 of this title and agreements entered into under section 2342 of this title shall be made in accordance with chapter 137 of this title and the provisions of this subchapter.”

1991—Subsec. (b). Pub. L. 102–190 substituted “this title and” for “this title,” and struck out “, and section 719 of the Defense Production Act of 1950 (50 U.S.C. App. 2168)” before “shall not apply”.

1989—Subsec. (a). Pub. L. 101–189 substituted “this subchapter” for “this chapter”.

1988—Subsec. (b). Pub. L. 100–456 struck out “section” before “2306a”.

1987—Subsec. (b). Pub. L. 100–26 substituted “section 2306a,” for “2306(f),”.

1985—Pub. L. 99–145, § 1304(a)(1), renumbered section 2323 of this title as this section.

Subsec. (a). Pub. L. 99–145, § 1304(a)(5), substituted “section 2341” for “section 2321” and “section 2342” for “section 2322”.

Subsec. (b). Pub. L. 99–145, § 1304(a)(5), substituted “section 2341” for “section 2321” and “section 2342” for “section 2322”.

Pub. L. 99–145, § 961(b), substituted “section 2304(a)” for “section 2304(g)”.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 applicable with regard to any acquisition or transfer of logistic support, supplies, and services under authority of this subchapter that is initiated after Oct. 5, 1994, see section 1317(j) of Pub. L. 103–337, set out as a note under section 2341 of this title.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by section 961(b) of Pub. L. 99–145 effective as if included in enactment of Competition in Contracting Act of 1984, Pub. L. 98–369, div. B, title VII, making amendment applicable with respect to any solicitation for bids or proposals issued after Mar. 31, 1985, see section 961(e) of Pub. L. 99–145, set out as a note under section 2304 of this title.

§ 2344. Methods of payment for acquisitions and transfers by the United States

(a) Logistics support, supplies, and services may be acquired or transferred by the United

States under the authority of this subchapter on a reimbursement basis or by replacement-in-kind or exchange of supplies or services of an equal value.

(b)(1) In entering into agreements with the Government of another North Atlantic Treaty Organization country or other foreign country for the acquisition or transfer of logistic support, supplies, and services on a reimbursement basis, the Secretary of Defense shall negotiate for adoption of the following pricing principles for reciprocal application:

(A) The price charged by a supplying country for logistics support, supplies, and services specifically procured by the supplying country from its contractors for a recipient country shall be no less favorable than the price for identical items or services charged by such contractors to the armed forces of the supplying country, taking into account price differentials due to delivery schedules, points of delivery, and other similar considerations.

(B) The price charged a recipient country for supplies furnished by a supplying country from its inventory, and the price charged a recipient country for logistics support and services furnished by the officers, employees, or governmental agencies of a supplying country, shall be the same as the price charged for identical supplies, support, or services acquired by an armed force of the supplying country from such governmental sources.

(2) To the extent that the Secretary of Defense is unable to obtain mutual acceptance by the other country involved of the reciprocal pricing principles for reimbursable transactions set forth in paragraph (1)—

(A) the United States may not acquire from such country any logistic support, supply, or service not governed by such reciprocal pricing principles unless the United States forces commander acquiring such support, supply, or service determines (after price analysis) that the price thereof is fair and reasonable; and

(B) transfers by the United States to such country under this subchapter of any logistic support, supply, or service that is not governed by such reciprocal pricing principles shall be subject to the pricing provisions of the Arms Export Control Act (22 U.S.C. 2751 et seq.).

(3) To the extent that indirect costs (including charges for plant and production equipment), administrative surcharges, and contract administration costs with respect to any North Atlantic Treaty Organization country or other foreign country are not waived by operation of the reciprocal pricing principles of paragraph (1), the Secretary of Defense may, on a reciprocal basis, agree to waive such costs.

(4) The pricing principles set forth in paragraph (2) and the waiver authority provided in paragraph (3) shall also apply to agreements with North Atlantic Treaty Organization subsidiary bodies and the United Nations Organization or any regional international organization under this subchapter.

(c) In acquiring or transferring logistics support, supplies, or services under the authority of this subchapter by exchange of supplies or services, the Secretary of Defense may not agree to or carry out the following:

(1) Transfers in exchange for property the acquisition of which by the Department of Defense is prohibited by law.

(2) Transfers of source, byproduct, or special nuclear materials or any other material, article, data, or thing of value the transfer of which is subject to the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.).

(3) Transfers of chemical munitions.

(Added Pub. L. 96–323, § 2(a), Aug. 4, 1980, 94 Stat. 1017, § 2324; amended Pub. L. 97–22, § 11(a)(8), July 10, 1981, 95 Stat. 138; renumbered § 2344, Pub. L. 99–145, title XIII, § 1304(a)(1), Nov. 8, 1985, 99 Stat. 741; Pub. L. 99–661, div. A, title XI, § 1104(b), Nov. 14, 1986, 100 Stat. 3964; Pub. L. 101–189, div. A, title IX, §§ 931(e)(1), 938(a), (b), Nov. 29, 1989, 103 Stat. 1535, 1539; Pub. L. 102–25, title VII, § 701(f)(2), Apr. 6, 1991, 105 Stat. 115; Pub. L. 103–337, div. A, title XIII, § 1317(d), Oct. 5, 1994, 108 Stat. 2900; Pub. L. 109–163, div. A, title XII, § 1204, Jan. 6, 2006, 119 Stat. 3456.)

REFERENCES IN TEXT

The Arms Export Control Act, referred to in subsec. (b)(2)(B), is Pub. L. 90–629, Oct. 22, 1968, 82 Stat. 1320, as amended, which is classified principally to chapter 39 (§ 2751 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 2751 of Title 22 and Tables.

The Atomic Energy Act of 1954, referred to in subsec. (c)(2), is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 919, which is classified principally to chapter 23 (§ 2011 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of Title 42 and Tables.

AMENDMENTS

2006—Subsec. (b)(4). Pub. L. 109–163 struck out ''of which the United States is a member'' before ''under this subchapter''.

1994—Subsec. (b)(4). Pub. L. 103–337 inserted ''and the United Nations Organization or any regional international organization of which the United States is a member'' after ''subsidiary bodies''.

1991—Subsec. (c). Pub. L. 102–25 substituted ''subchapter'' for ''chapter'' in introductory provisions.

1989—Subsec. (a). Pub. L. 101–189, §§ 931(e)(1), 938(a), substituted ''equal value'' for ''identical or substantially identical nature'' and ''this subchapter'' for ''this chapter''.

Subsec. (b)(2)(B), (4). Pub. L. 101–189, § 931(e)(1), substituted ''this subchapter'' for ''this chapter''.

Subsec. (c). Pub. L. 101–189, § 938(b), added subsec. (c).

1986—Subsec. (b)(1), (3). Pub. L. 99–661 inserted ''or other foreign country'' after ''country''.

1985—Pub. L. 99–145 renumbered section 2324 of this title as this section.

1981—Subsec. (b)(2)(B). Pub. L. 97–22 substituted ''this chapter'' for ''this Act''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 applicable with regard to any acquisition or transfer of logistic support, supplies, and services under authority of this subchapter that is initiated after Oct. 5, 1994, see section 1317(j) of Pub. L. 103–337, set out as a note under section 2341 of this title.

§ 2345. Liquidation of accrued credits and liabilities

(a) Credits and liabilities of the United States accrued as a result of acquisitions and transfers

of logistic support, supplies, and services under the authority of this subchapter shall be liquidated not less often than once every 12 months by direct payment to the entity supplying such support, supplies, or services by the entity receiving such support, supplies, or services.

(b) Payment-in-kind or exchange entitlements accrued as a result of acquisitions and transfers of logistic support, supplies, and services under authority of this subchapter shall be satisfied within 12 months after the date of the delivery of the logistic support, supplies, or services.

(c)(1) Any credits of the United States accrued as a result of the provision of logistic support, supplies, and services under the authority of this subchapter that remain unliquidated more than 18 months after the date of delivery of the logistic support, supplies, or services may, at the option of the Secretary of Defense, with the concurrence of the Secretary of State, be liquidated by offsetting the credits against any amount owed by the Department of Defense, pursuant to a transaction or transactions concluded under the authority of this subchapter, to the government or international organization to which the logistic support, supplies, or services were provided by the United States.

(2) The amount of any credits offset pursuant to paragraph (1) shall be credited as specified in section 2346 of this title as if it were a receipt of the United States.

(Added Pub. L. 96–323, § 2(a), Aug. 4, 1980, 94 Stat. 1018, § 2325; renumbered § 2345, Pub. L. 99–145, title XIII, § 1304(a)(1), Nov. 8, 1985, 99 Stat. 741; amended Pub. L. 99–661, div. A, title XI, § 1104(c), Nov. 14, 1986, 100 Stat. 3965; Pub. L. 101–189, div. A, title IX, § 931(e)(1), Nov. 29, 1989, 103 Stat. 1535; Pub. L. 103–337, div. A, title XIII, § 1317(e), Oct. 5, 1994, 108 Stat. 2900; Pub. L. 114–328, div. A, title X, § 1083(a), Dec. 23, 2016, 130 Stat. 2420.)

AMENDMENTS

2016—Subsec. (c). Pub. L. 114–328 added subsec. (c).

1994—Subsec. (a). Pub. L. 103–337 substituted ''12 months'' for ''three months''.

1989—Subsecs. (a), (b). Pub. L. 101–189 substituted ''this subchapter'' for ''this chapter''.

1986—Pub. L. 99–661 designated existing provisions as subsec. (a) and added subsec. (b).

1985—Pub. L. 99–145 renumbered section 2325 of this title as this section.

EFFECTIVE DATE OF 2016 AMENDMENT

Pub. L. 114–328, div. A, title X, § 1083(b), Dec. 23, 2016, 130 Stat. 2420, provided that: ''Subsection (c) of section 2345 of title 10, United States Code, as added by subsection (a), shall apply with respect to credits accrued by the United States that—

''(1) were accrued prior to, and remain unpaid as of, the date of the enactment of this Act [Dec. 23, 2016]; or

''(2) are accrued after the date of the enactment of this Act.''

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 applicable with regard to any acquisition or transfer of logistic support, supplies, and services under authority of this subchapter that is initiated after Oct. 5, 1994, see section 1317(j) of Pub. L. 103–337, set out as a note under section 2341 of this title.

§ 2346. Crediting of receipts

Any receipt of the United States as a result of an agreement entered into under this subchapter shall be credited, at the option of the Secretary of Defense, to (1) the appropriation, fund, or account used in incurring the obligation, or (2) an appropriate appropriation, fund, or account currently available for the purposes for which the expenditures were made.

(Added Pub. L. 96–323, § 2(a), Aug. 4, 1980, 94 Stat. 1018, § 2326; renumbered § 2346, Pub. L. 99–145, title XIII, § 1304(a)(1), Nov. 8, 1985, 99 Stat. 741; amended Pub. L. 101–189, div. A, title IX, § 931(e)(1), Nov. 29, 1989, 103 Stat. 1535; Pub. L. 103–337, div. A, title XIII, § 1317(f), Oct. 5, 1994, 108 Stat. 2900.)

AMENDMENTS

1994—Pub. L. 103–337 substituted ''shall be credited, at the option of the Secretary of Defense, to (1) the appropriation, fund, or account used in incurring the obligation, or (2) an appropriate appropriation, fund, or account currently available for the purposes for which the expenditures were made'' for ''shall be credited to applicable appropriations, accounts, and funds of the Department of Defense''.

1989—Pub. L. 101–189 substituted ''this subchapter'' for ''this chapter''.

1985—Pub. L. 99–145 renumbered section 2326 of this title as this section.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 applicable with regard to any acquisition or transfer of logistic support, supplies, and services under authority of this subchapter that is initiated after Oct. 5, 1994, see section 1317(j) of Pub. L. 103–337, set out as a note under section 2341 of this title.

§ 2347. Limitation on amounts that may be obligated or accrued by the United States

(a)(1) Except during a period of active hostilities involving the armed forces, the total amount of reimbursable liabilities that the United States may accrue under this subchapter (before the computation of offsetting balances) with other member countries of the North Atlantic Treaty Organization, subsidiary bodies of the North Atlantic Treaty Organization, or from the United Nations Organization or any regional international organization of which the United States is a member may not exceed $200,000,000 in any fiscal year, and of such amount not more than $50,000,000 in liabilities may be accrued for the acquisition of supplies.

(2) Except during a period of active hostilities involving the armed forces, the total amount of reimbursable liabilities that the United States may accrue under this subchapter (before the computation of offsetting balances) with a country which is not a member of the North Atlantic Treaty Organization, but with which the United States has one or more acquisition or cross-servicing agreements, may not exceed $60,000,000 in any fiscal year, and of such amount not more than $20,000,000 in liabilities may be accrued for the acquisition of supplies. The $60,000,000 limitation specified in this paragraph is in addition to the limitation specified in paragraph (1).

(b)(1) Except during a period of active hostilities involving the armed forces, the total amount of reimbursable credits that the United States may accrue under this subchapter (before the computation of offsetting balances) with other member countries of the North Atlantic

Treaty Organization, subsidiary bodies of the North Atlantic Treaty Organization, or from the United Nations Organization or any regional international organization of which the United States is a member may not exceed $150,000,000 in any fiscal year.

(2) Except during a period of active hostilities involving the armed forces, the total amount of reimbursable credits that the United States may accrue under this subchapter (before the computation of offsetting balances) with a country which is not a member of the North Atlantic Treaty Organization, but with which the United States has one or more acquisition or cross-servicing agreements may not exceed $75,000,000 in any fiscal year. Such limitation specified in this paragraph is in addition to the limitation specified in paragraph (1).

(c) When the armed forces are involved in a contingency operation or in a non-combat operation (including an operation in support of the provision of humanitarian or foreign disaster assistance or in support of peacekeeping operations under chapter VI or VII of the Charter of the United Nations), the restrictions in subsections (a) and (b) are waived for the purposes and duration of that operation.

(d) The amount of any sale, purchase, or exchange of petroleum, oils, or lubricants by the United States under this subchapter in any fiscal year shall be excluded in any computation for the purposes of subsection (a) or (b) of the amount of reimbursable liabilities or reimbursable credits that the United States accrues under this subchapter in that fiscal year.

(Added Pub. L. 96–323, § 2(a), Aug. 4, 1980, 94 Stat. 1018, § 2327; renumbered § 2347, Pub. L. 99–145, title XIII, § 1304(a)(1), Nov. 8, 1985, 99 Stat. 741; amended Pub. L. 99–661, div. A, title XI, § 1104(d), Nov. 14, 1986, 100 Stat. 3965; Pub. L. 100–456, div. A, title X, § 1001, Sept. 29, 1988, 102 Stat. 2037; Pub. L. 101–189, div. A, title IX, § 931(e)(1), Nov. 29, 1989, 103 Stat. 1535; Pub. L. 102–484, div. A, title XIII, § 1312(b), Oct. 23, 1992, 106 Stat. 2547; Pub. L. 103–35, title II, § 202(a)(10), May 31, 1993, 107 Stat. 101; Pub. L. 103–337, div. A, title XIII, § 1317(g), Oct. 5, 1994, 108 Stat. 2901; Pub. L. 109–364, div. A, title XII, § 1221(a), Oct. 17, 2006, 120 Stat. 2423.)

AMENDMENTS

2006—Subsec. (a)(1), (2). Pub. L. 109–364, § 1221(a)(1), struck out "(other than petroleum, oils, and lubricants)" after "supplies".

Subsec. (d). Pub. L. 109–364, § 1221(a)(2), added subsec. (d).

1994—Subsec. (a)(1). Pub. L. 103–337, § 1317(g)(1), substituted "Organization, subsidiary" for "Organization and subsidiary", inserted ", or from the United Nations Organization or any regional international organization of which the United States is a member" after "Treaty Organization", and substituted "$200,000,000" for "$150,000,000" and "$50,000,000" for "$25,000,000".

Subsec. (a)(2). Pub. L. 103–337, § 1317(g)(2), substituted "$60,000,000" for "$10,000,000" in two places and "$20,000,000" for "$2,500,000".

Subsec. (b)(1). Pub. L. 103–337, § 1317(g)(3), substituted "Organization, subsidiary" for "Organization and subsidiary", inserted ", or from the United Nations Organization or any regional international organization of which the United States is a member" after "Treaty Organization", and substituted "$150,000,000" for "$100,000,000".

Subsec. (b)(2). Pub. L. 103–337, § 1317(g)(4), substituted "$75,000,000" for "$10,000,000".

Subsec. (c). Pub. L. 103–337, § 1317(g)(5), added subsec. (c).

1993—Subsec. (b)(2). Pub. L. 103–35 made technical amendment to directory language of Pub. L. 102–484, § 1312(b)(4)(B). See 1992 Amendment note below.

1992—Subsec. (a)(1). Pub. L. 102–484, § 1312(b)(1), substituted "armed forces" for "North Atlantic Treaty Organization" and inserted "with other member countries of the North Atlantic Treaty Organization and subsidiary bodies of the North Atlantic Treaty Organization" after "(before the computation of offsetting balances)".

Subsec. (a)(2). Pub. L. 102–484, § 1312(b)(2), substituted "involving the armed forces, the total amount of reimbursable liabilities that the United States may accrue under this subchapter (before the computation of offsetting balances) with" for "in the military region affecting" and struck out "the total amount of reimbursable liabilities that the United States may accrue under this subchapter (before the computation of offsetting balances) with such country" after "cross-servicing agreements,".

Subsec. (b)(1). Pub. L. 102–484, § 1312(b)(3), substituted "armed forces" for "North Atlantic Treaty Organization" and inserted "with other member countries of the North Atlantic Treaty Organization and subsidiary bodies of the North Atlantic Treaty Organization" after "(before the computation of offsetting balances)".

Subsec. (b)(2). Pub. L. 102–484, § 1312(b)(4)(A), substituted "involving the armed forces" for "in the military region affecting a country referred to in paragraph (1)".

Pub. L. 102–484, § 1312(b)(4)(B), as amended by Pub. L. 103–35, substituted "(before the computation of offsetting balances) with a country which is not a member of the North Atlantic Treaty Organization, but with which the United States has one or more acquisition or cross-servicing agreements" for "from such country (before computation of offsetting balances)".

1989—Pub. L. 101–189 substituted "this subchapter" for "this chapter" wherever appearing.

1988—Subsec. (a)(1). Pub. L. 100–456 substituted "$150,000,000" for "$100,000,000".

1986—Subsec. (a). Pub. L. 99–661, § 1104(d)(1), designated existing provisions as par. (1) and added par. (2).

Subsec. (b). Pub. L. 99–661, § 1104(d)(2), designated existing provisions as par. (1) and added par. (2).

1985—Pub. L. 99–145 renumbered section 2327 of this title as this section.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–364, div. A, title XII, § 1221(b), Oct. 17, 2006, 120 Stat. 2423, provided that: "The amendments made by subsection (a) [amending this section] shall take effect beginning with fiscal year 2007."

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 applicable with regard to any acquisition or transfer of logistic support, supplies, and services under authority of this subchapter that is initiated after Oct. 5, 1994, see section 1317(j) of Pub. L. 103–337, set out as a note under section 2341 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–35 applicable as if included in the enactment of Pub. L. 102–484, see section 202(b) of Pub. L. 103–35, set out as a note under section 155 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–484 effective Oct. 23, 1992, and applicable to acquisitions of logistics support, supplies, and services under this chapter that are initiated on or after Oct. 23, 1992, see section 1312(c) of Pub. L. 102–484, set out as a note under section 2341 of this title.

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§ 2348. Inventories of supplies not to be increased

Inventories of supplies for elements of the armed forces may not be increased for the purpose of transferring supplies under the authority of this subchapter.

(Added Pub. L. 96–323, § 2(a), Aug. 4, 1980, 94 Stat. 1018, § 2328; amended Pub. L. 97–22, § 11(a)(8), July 10, 1981, 95 Stat. 138; renumbered § 2348, Pub. L. 99–145, title XIII, § 1304(a)(1), Nov. 8, 1985, 99 Stat. 741; Pub. L. 99–661, div. A, title XI, § 1104(e), Nov. 14, 1986, 100 Stat. 3965; Pub. L. 101–189, div. A, title IX, § 931(e)(1), Nov. 29, 1989, 103 Stat. 1535.)

AMENDMENTS

1989—Pub. L. 101–189 substituted ''this subchapter'' for ''this chapter''.

1986—Pub. L. 99–661 struck out ''to military forces of any North Atlantic Treaty Organization country or any North Atlantic Treaty Organization subsidiary body'' after ''chapter''.

1985—Pub. L. 99–145 renumbered section 2328 of this title as this section.

1981—Pub. L. 97–22 substituted ''this chapter'' for ''this Act''.

§ 2349. Overseas Workload Program

(a) IN GENERAL.—A firm of any member nation of the North Atlantic Treaty Organization or of any major non-NATO ally shall be eligible to bid on any contract for the maintenance, repair, or overhaul of equipment of the Department of Defense located outside the United States to be awarded under competitive procedures as part of the program of the Department of Defense known as the Overseas Workload Program.

(b) SITE OF PERFORMANCE.—A contract awarded to a firm described in subsection (a) may be performed in the theater in which the equipment is normally located or in the country in which the firm is located.

(c) EXCEPTIONS.—The Secretary of a military department may restrict the geographic region in which a contract referred to in subsection (a) may be performed if the Secretary determines that performance of the contract outside that specific region—

(1) could adversely affect the military preparedness of the armed forces; or

(2) would violate the terms of an international agreement to which the United States is a party.

(d) DEFINITION.—In this section, the term ''major non-NATO ally'' has the meaning given that term in section 2350a(i)(2) of this title.

(Added Pub. L. 103–160, div. A, title XIV, § 1431(a)(1), Nov. 30, 1993, 107 Stat. 1832; amended Pub. L. 108–375, div. A, title X, § 1084(d)(18), Oct. 28, 2004, 118 Stat. 2062.)

PRIOR PROVISIONS

A prior section 2349, added Pub. L. 96–323, § 2(a), Aug. 4, 1980, 94 Stat. 1018, § 2330; renumbered § 2349, Pub. L. 99–145, title XIII, § 1304(a)(3), Nov. 8, 1985, 99 Stat. 741; Pub. L. 101–189, div. A, title IX, § 931(e)(1), Nov. 29, 1989, 103 Stat. 1535, directed Secretary of Defense to submit a report to Congress annually relating to agreements under this chapter, prior to repeal by Pub. L. 101–510, § 1301(11).

Provisions similar to those in this section were contained in Pub. L. 101–510, div. A, title XIV, § 1465, Nov. 5, 1990, 104 Stat. 1700, as amended, which was set out as a note under section 2341 of this title, prior to repeal by Pub. L. 103–160, § 1431(b)(1). Other prior similar provisions, formerly set out under section 2341 of this title, were contained in the following authorization or appropriation acts:

Pub. L. 102–396, title IX, § 9130, Oct. 6, 1992, 106 Stat. 1935, as amended by Pub. L. 103–160, div. A, title XIV, § 1431(b)(2), Nov. 30, 1993, 107 Stat. 1833.

Pub. L. 102–172, title VIII, § 8122, Nov. 26, 1991, 105 Stat. 1205.

Pub. L. 101–511, title VIII, § 8003, Nov. 5, 1990, 104 Stat. 1873.

Pub. L. 100–180, div. A, title X, § 1021, Dec. 4, 1987, 101 Stat. 1143.

AMENDMENTS

2004—Subsec. (d). Pub. L. 108–375 substituted ''section 2350a(i)(2)'' for ''section 2350a(i)(3)''.

[§ 2349a. Repealed. Pub. L. 112–239, div. A, title X, § 1076(g)(3), Jan. 2, 2013, 126 Stat. 1955]

Section, added Pub. L. 103–337, div. A, title XIII, § 1317(i)(1), Oct. 5, 1994, 108 Stat. 2902, required annual report from 1996 to 2000 regarding non-NATO cross-servicing and acquisition actions.

§ 2350. Definitions

In this subchapter:

(1) The term ''logistic support, supplies, and services'' means food, billeting, transportation (including airlift), petroleum, oils, lubricants, clothing, communications services, medical services, ammunition, base operations support (and construction incident to base operations support), storage services, use of facilities, training services, spare parts and components, repair and maintenance services, calibration services, and port services. Such term includes temporary use of general purpose vehicles and other nonlethal items of military equipment which are not designated as significant military equipment on the United States Munitions List promulgated pursuant to section 38(a)(1) of the Arms Export Control Act.

(2) The term ''North Atlantic Treaty Organization subsidiary bodies'' means—

(A) any organization within the meaning of the term ''subsidiary bodies'' in article I of the multilateral treaty on the Status of the North Atlantic Treaty Organisation, National Representatives and International Staff, signed at Ottawa on September 20, 1951 (TIAS 2992; 5 UST 1087); and

(B) any international military headquarters or organization to which the Protocol on the Status of International Military Headquarters Set Up Pursuant to the North Atlantic Treaty, signed at Paris on August 28, 1952 (TIAS 2978; 5 UST 870), applies.

(3) The term ''military region'' means the geographical area of responsibility assigned to the commander of a unified combatant command (excluding Europe and adjacent waters).

(4) The term ''transfer'' means selling (whether for payment in currency, replacement-in-kind, or exchange of supplies or services of equal value), leasing, loaning, or otherwise temporarily providing logistic support, supplies, and services under the terms of a cross-servicing agreement.

(Added Pub. L. 96–323, § 2(a), Aug. 4, 1980, 94 Stat. 1019, § 2331; renumbered § 2350, Pub. L. 99–145,

title XIII, § 1304(a)(3), Nov. 8, 1985, 99 Stat. 741; amended Pub. L. 99–661, div. A, title XI, § 1104(f), Nov. 14, 1986, 100 Stat. 3965; Pub. L. 100–26, § 7(k)(2), Apr. 21, 1987, 101 Stat. 284; Pub. L. 101–189, div. A, title IX, § 931(e)(1), Nov. 29, 1989, 103 Stat. 1535; Pub. L. 103–337, div. A, title XIII, § 1317(h), Oct. 5, 1994, 108 Stat. 2901; Pub. L. 105–85, div. A, title XII, § 1222, Nov. 18, 1997, 111 Stat. 1937.)

References in Text

Section 38(a)(1) of the Arms Export Control Act, referred to in par. (1), is classified to section 2778(a)(1) of Title 22, Foreign Relations and Intercourse.

Amendments

1997—Par. (1). Pub. L. 105–85, in second sentence, substituted ''other nonlethal items of military equipment which are not designated as significant military equipment on the United States Munitions List promulgated'' for ''other items of military equipment not designated as part of the United States Munitions List''.

1994—Par. (1). Pub. L. 103–337, § 1317(h)(1), inserted ''(including airlift)'' after ''transportation'', ''calibration services,'' after ''maintenance services,'', and ''Such term includes temporary use of general purpose vehicles and other items of military equipment not designated as part of the United States Munitions List pursuant to section 38(a)(1) of the Arms Export Control Act.'' at end.

Par. (4). Pub. L. 103–337, § 1317(h)(2), added par. (4).

1989—Pub. L. 101–189 substituted ''this subchapter'' for ''this chapter'' in introductory provisions.

1987—Pub. L. 100–26 inserted ''The term'' after each par. designation and struck out uppercase letter of first word after first quotation marks in pars. (1) and (3) and substituted lowercase letter.

1986—Par. (3). Pub. L. 99–661 added par. (3).

1985—Pub. L. 99–145 renumbered section 2331 of this title as this section.

Effective Date of 1994 Amendment

Amendment by Pub. L. 103–337 applicable with regard to any acquisition or transfer of logistic support, supplies, and services under authority of this subchapter that is initiated after Oct. 5, 1994, see section 1317(j) of Pub. L. 103–337, set out as a note under section 2341 of this title.

SUBCHAPTER II—OTHER COOPERATIVE AGREEMENTS

Sec.
2350a. Cooperative research and development agreements: NATO organizations; allied and friendly foreign countries.
2350b. Cooperative projects under Arms Export Control Act: acquisition of defense equipment.
2350c. Cooperative military airlift agreements: allied countries.
2350d. Cooperative logistic support agreements: NATO countries.
2350e. NATO Airborne Warning and Control System (AWACS) program: authority of Secretary of Defense.
2350f. Procurement of communications support and related supplies and services.
2350g. Authority to accept use of real property, services, and supplies from foreign countries in connection with mutual defense agreements and occupational arrangements.
2350h. Memorandums of agreement: Department of Defense ombudsman for foreign signatories.
2350i. Foreign contributions for cooperative projects.
2350j. Burden sharing contributions by designated countries and regional organizations.
2350k. Relocation within host nation of elements of armed forces overseas.
2350*l*. Cooperative agreements for reciprocal use of test facilities: foreign countries and international organizations.
2350m.[1]
Participation in European program on multilateral exchange of surface transportation services.
2350n. North Atlantic Treaty Organization Joint Force Command.
2350*o*. Participation in programs relating to coordination or exchange of air refueling and air transportation services.
2350p. Reciprocal patient movement agreements.
2350m.[1] Execution of projects under the North Atlantic Treaty Organization Security Investment Program.

Amendment of Analysis

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1844(b)(2)(A), Jan. 1, 2021, 134 Stat. 4151, 4246, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this analysis is amended by striking item 2350l. See 2021 Amendment note below.

Amendments

2021—Pub. L. 116–283, div. A, title XII, §§ 1202(b), 1203(b), 1204(b), title XVIII, § 1844(b)(2)(A), div. B, title XXV, § 2503(b), Jan. 1, 2021, 134 Stat. 3910–3912, 4246, 4310, added items 2350m ''Participation in European program on multilateral exchange of surface transportation services'', 2350*o*, 2350p, and 2350m ''Execution of projects under the North Atlantic Treaty Organization Security Investment Program'', and struck out item 2350*l* ''Cooperative agreements for reciprocal use of test facilities: foreign countries and international organizations''.

2019—Pub. L. 116–92, div. A, title XII, § 1249(b), Dec. 20, 2019, 133 Stat. 1664, added item 2350n.

2016—Pub. L. 114–328, div. A, title XII, § 1241(*o*)(7), Dec. 23, 2016, 130 Stat. 2512, struck out item 2350m ''Participation in multinational military centers of excellence''.

2008—Pub. L. 110–417, [div. A], title XII, § 1232(a)(2), Oct. 14, 2008, 122 Stat. 4639, added item 2350m.

2001—Pub. L. 107–107, div. A, title XII, §§ 1212(e)(2), 1213(b), Dec. 28, 2001, 115 Stat. 1250, 1251, substituted ''Cooperative research and development agreements: NATO organizations; allied and friendly foreign countries'' for ''Cooperative research and development projects: allied countries'' in item 2350a and added item 2350*l*.

1996—Pub. L. 104–106, div. A, title XIII, § 1332(a)(2), Feb. 10, 1996, 110 Stat. 484, added item 2350k.

1993—Pub. L. 103–160, div. A, title XIV, § 1402(b), Nov. 30, 1993, 107 Stat. 1826, added item 2350j.

1991—Pub. L. 102–190, div. A, title X, § 1047(b), Dec. 5, 1991, 105 Stat. 1468, added item 2350i.

Pub. L. 102–25, title VII, § 704(a)(9), Apr. 6, 1991, 105 Stat. 119, made clarifying amendment to directory language of Pub. L. 101–510, div. A, title XIV, § 1451(b)(2), Nov. 5, 1990, 104 Stat. 1693. See 1990 Amendment note below.

1990—Pub. L. 101–510, div. A, title XIV, § 1452(a)(2), Nov. 5, 1990, 104 Stat. 1694, added item 2350h.

Pub. L. 101–510, div. A, title XIV, § 1451(b)(2), Nov. 5, 1990, 104 Stat. 1693, as amended by Pub. L. 102–25, title VII, § 704(a)(9), Apr. 6, 1991, 105 Stat. 119, added item 2350g.

Effective Date of 2021 Amendment

Amendment by section 1844(b)(2)(A) of Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for de-

[1] So in original. There are two sections 2350m.

layed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 2350a. Cooperative research and development agreements: NATO organizations; allied and friendly foreign countries

(a) AUTHORITY TO ENGAGE IN COOPERATIVE R&D PROJECTS.—(1) The Secretary of Defense may enter into a memorandum of understanding (or other formal agreement) with one or more countries or organizations referred to in paragraph (2) for the purpose of conducting cooperative research and development projects on defense equipment and munitions.

(2) The countries and organizations with which the Secretary may enter into a memorandum of agreement (or other formal agreement) under paragraph (1) are as follows:

(A) The North Atlantic Treaty Organization.

(B) A NATO organization.

(C) A member nation of the North Atlantic Treaty Organization.

(D) A major non-NATO ally.

(E) Any other friendly foreign country.

(3) If such a memorandum of understanding (or other formal agreement) is with a country referred to in subparagraph (E) of paragraph (2), such memorandum (or agreement) may go into effect only after the Secretary submits to the Committees on Armed Services and on Foreign Relations of the Senate and to the Committees on Armed Services and on International Relations of the House of Representatives a report with respect to the proposed memorandum (or agreement) and a period of 30 days has passed after the report has been submitted.

(b) REQUIREMENT THAT PROJECTS IMPROVE CONVENTIONAL DEFENSE CAPABILITIES.—(1) The Secretary of Defense may not enter into a memorandum of understanding (or other formal agreement) to conduct a cooperative research and development project under this section unless the Secretary determines that the proposed project will improve, through the application of emerging technology, the conventional defense capabilities of the North Atlantic Treaty Organization or the common conventional defense capabilities of the United States and a country or organization referred to in subsection (a)(2).

(2) The authority of the Secretary to make a determination under paragraph (1) may only be delegated to the Deputy Secretary of Defense, the Under Secretary of Defense for Acquisition and Sustainment, or the Under Secretary of Defense for Research and Engineering.

(c) COST SHARING.—

(1) Except as provided in paragraph (2), each cooperative research and development project entered into under this section shall require sharing of the costs of the project (including the costs of claims) between the participants on an equitable basis.

(2) A cooperative research and development project may be entered into under this section under which costs are shared between the participants on an unequal basis if the Secretary of Defense, or an official specified in subsection (b)(2) to whom the Secretary delegates authority under this paragraph, makes a written determination that unequal cost sharing provides strategic value to the United States or another participant in the project.

(3) For purposes of this subsection, the term ''cost'' means the total value of cash and noncash contributions.

(d) RESTRICTIONS ON PROCUREMENT OF EQUIPMENT AND SERVICES.—(1) In order to assure substantial participation on the part of countries and organizations referred to in subsection (a)(2) in cooperative research and development projects, funds made available for such projects may not be used to procure equipment or services from any foreign government, foreign research organization, or other foreign entity.

(2) A country or organization referred to in subsection (a)(2) may not use any military or economic assistance grant, loan, or other funds provided by the United States for the purpose of making the contribution of that country or organization to a cooperative research and development program entered into with the United States under this section.

(e) COOPERATIVE OPPORTUNITIES.—(1) In order to ensure that opportunities to conduct cooperative research and development projects are considered at an early point during the formal development review process of the Department of Defense in connection with any planned project of the Department, opportunities for such cooperative research and development shall be addressed in the acquisition strategy for the project.

(2) A cooperative opportunities discussion referred to in paragraph (1) shall consider the following:

(A) Whether or not a project similar to the one under consideration by the Department of Defense is in development or production by any country or organization referred to in subsection (a)(2) or NATO organizations.

(B) If a project similar to the one under consideration by the Department of Defense is in development or production by one or more countries and organizations referred to in subsection (a)(2), an assessment as to whether that project could satisfy, or could be modified in scope so as to satisfy, the military requirements of the project.

(C) An assessment of the advantages and disadvantages with regard to program timing, developmental and life cycle costs, technology sharing, and Rationalization, Standardization, and Interoperability (RSI) of seeking to structure a cooperative development program with one or more countries and organizations referred to in subsection (a)(2) or NATO organizations.

(D) A recommendation to the milestone decision authority as to whether the Department of Defense should explore the feasibility and desirability of a cooperative development program with one or more countries and organizations referred to in subsection (a)(2) or NATO organizations.

[(f) Repealed. Pub. L. 108–136, div. A, title X, § 1031(a)(17), Nov. 24, 2003, 117 Stat. 1597.]

(g) SIDE-BY-SIDE TESTING.—(1) It is the sense of Congress—

(A) that the Secretary of Defense should test covered equipment, munitions, and tech-

nologies to determine the ability of such covered equipment, munitions, and technologies to satisfy United States military requirements or to correct operational deficiencies; and

(B) that while the testing of nondevelopmental items and items in the late state of the development process are preferred, the testing of such covered equipment, munitions, and technologies may be conducted to determine procurement alternatives.

(2) The Secretary of Defense may acquire covered equipment, munitions, and technologies for the purpose of conducting the testing described in that paragraph.

(3) The use of side-by-side testing under this subsection may be considered to be the use of competitive procedures for purposes of chapter 137 of this title, when procuring items within 5 years after an initial determination that the items have been successfully tested and found to satisfy United States military requirements or to correct operational deficiencies.

(4) COVERED EQUIPMENT, MUNITIONS, AND TECHNOLOGIES DEFINED.—In this subsection, the term ''covered equipment, munitions, and technologies'' means—

(A) conventional defense equipment, munitions, and technologies manufactured and developed by countries referred to in subsection (a)(2); and

(B) conventional defense equipment, munitions, and technologies manufactured and developed domestically.

(h) SECRETARY TO ENCOURAGE SIMILAR PROGRAMS.—The Secretary of Defense shall encourage member nations of the North Atlantic Treaty Organization, major non-NATO allies, and other friendly foreign countries to establish programs similar to the one provided for in this section.

(i) DEFINITIONS.—In this section:

(1) The term ''cooperative research and development project'' means a project involving joint participation by the United States and one or more countries and organizations referred to in subsection (a)(2) under a memorandum of understanding (or other formal agreement) to carry out a joint research and development program—

(A) to develop new conventional defense equipment and munitions; or

(B) to modify existing military equipment to meet United States military requirements.

(2) The term ''major non-NATO ally'' means a country (other than a member nation of the North Atlantic Treaty Organization) that is designated as a major non-NATO ally for purposes of this section by the Secretary of Defense with the concurrence of the Secretary of State.

(3) The term ''NATO organization'' means any North Atlantic Treaty Organization subsidiary body referred to in section 2350(2) of this title and any other organization of the North Atlantic Treaty Organization.

(Added Pub. L. 101–189, div. A, title IX, § 931(a)(2), Nov. 29, 1989, 103 Stat. 1531; amended Pub. L. 101–510, div. A, title XIII, § 1331(4), Nov. 5, 1990, 104 Stat. 1673; Pub. L. 102–190, div. A, title X, § 1053, Dec. 5, 1991, 105 Stat. 1471; Pub. L. 102–484, div. A, title VIII, § 843(b)(1), Oct. 23, 1992, 106 Stat. 2469; Pub. L. 103–160, div. A, title IX, § 904(d)(1), Nov. 30, 1993, 107 Stat. 1728; Pub. L. 103–337, div. A, title XIII, § 1301, Oct. 5, 1994, 108 Stat. 2888; Pub. L. 104–106, div. A, title XV, § 1502(a)(17), Feb. 10, 1996, 110 Stat. 504; Pub. L. 106–65, div. A, title IX, § 911(a)(1), title X, § 1067(1), Oct. 5, 1999, 113 Stat. 717, 774; Pub. L. 107–107, div. A, title X, § 1048(b)(2), title XII, § 1212(a)–(e)(1), Dec. 28, 2001, 115 Stat. 1225, 1248–1250; Pub. L. 107–314, div. A, title X, §§ 1041(a)(9), 1062(f)(2), Dec. 2, 2002, 116 Stat. 2645, 2651; Pub. L. 108–136, div. A, title X, § 1031(a)(17), Nov. 24, 2003, 117 Stat. 1597; Pub. L. 110–181, div. A, title II, § 237, title XII, § 1251, Jan. 28, 2008, 122 Stat. 48, 401; Pub. L. 111–383, div. A, title IX, § 901(j)(4), Jan. 7, 2011, 124 Stat. 4324; Pub. L. 112–81, div. A, title VIII, § 865, title X, § 1061(14), Dec. 31, 2011, 125 Stat. 1526, 1583; Pub. L. 114–92, div. A, title VIII, § 821(b)(1), Nov. 25, 2015, 129 Stat. 900; Pub. L. 114–328, div. A, title VIII, § 827, Dec. 23, 2016, 130 Stat. 2280; Pub. L. 116–92, div. A, title IX, § 902(54), Dec. 20, 2019, 133 Stat. 1549; Pub. L. 116–283, div. A, title II, § 211, title VIII, § 882, Jan. 1, 2021, 134 Stat. 3455, 3790.)

PRIOR PROVISIONS

Provisions relating to NATO countries were contained in Pub. L. 99–145, title XI, § 1103, Nov. 8, 1985, 99 Stat. 712, which was set out as a note under section 2407 of this title, prior to repeal by Pub. L. 101–189, § 931(d)(1).

Provisions relating to major non-NATO allies were contained in section 2767a of Title 22, Foreign Relations and Intercourse, prior to repeal by Pub. L. 101–189, § 931(d)(2).

AMENDMENTS

2021—Subsec. (b)(2). Pub. L. 116–283, § 211(1), substituted ''or the Under Secretary'' for ''and the Under Secretary''.

Subsec. (c). Pub. L. 116–283, § 211(2), designated existing provisions as par. (1), substituted ''Except as provided in paragraph (2), each cooperative'' for ''Each cooperative'', and added pars. (2) and (3).

Subsec. (g)(1)(A). Pub. L. 116–283, § 882(1)(A), substituted ''covered equipment, munitions, and technologies'' for ''conventional defense equipment, munitions, and technologies manufactured and developed by countries referred to in subsection (a)(2)'' and ''such covered equipment, munitions, and technologies'' for ''such equipment, munitions, and technologies''.

Subsec. (g)(1)(B). Pub. L. 116–283, § 882(1)(B), inserted ''such covered'' before ''equipment, munitions, and technologies''.

Subsec. (g)(2). Pub. L. 116–283, § 882(2), substituted ''covered equipment, munitions, and technologies'' for ''equipment, munitions, and technologies of the type described in paragraph (1)''.

Subsec. (g)(4). Pub. L. 116–283, § 882(3), added par. (4).

2019—Subsec. (b)(2). Pub. L. 116–92 substituted ''Under Secretary of Defense for Acquisition and Sustainment, and the Under Secretary of Defense for Research and Engineering'' for ''Under Secretary of Defense for Acquisition, Technology, and Logistics, and the Assistant Secretary of Defense for Research and Engineering''.

2016—Subsec. (g)(3). Pub. L. 114–328 added par. (3).

2015—Subsec. (e). Pub. L. 114–92, § 821(b)(1)(A), struck out ''Document'' after ''Cooperative Opportunities'' in heading.

Subsec. (e)(1). Pub. L. 114–92, § 821(b)(1)(B), substituted ''opportunities for such cooperative research and development shall be addressed in the acquisition strategy for the project'' for ''the Under Secretary of Defense for

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Acquisition, Technology, and Logistics shall prepare a cooperative opportunities document before the first milestone or decision point with respect to that project for review by the Defense Acquisition Board at formal meetings of the Board''.

Subsec. (e)(2). Pub. L. 114–92, §821(b)(1)(C)(i), substituted ''discussion'' for ''document'' and ''consider'' for ''include'' in introductory provisions.

Subsec. (e)(2)(A). Pub. L. 114–92, §821(b)(1)(C)(ii), substituted ''Whether'' for ''A statement indicating whether''.

Subsec. (e)(2)(B). Pub. L. 114–92, §821(b)(1)(C)(iii), struck out ''by the Under Secretary of Defense for Acquisition, Technology, and Logistics'' after ''an assessment'' and ''of the United States under consideration by the Department of Defense'' after ''of the project''.

Subsec. (e)(2)(D). Pub. L. 114–92, §821(b)(1)(C)(iv), substituted ''A recommendation to the milestone decision authority'' for ''The recommendation of the Under Secretary''.

2011—Subsec. (b)(2). Pub. L. 112–81, §865, substituted '', the Under Secretary of Defense for Acquisition, Technology, and Logistics, and the Assistant Secretary of Defense for Research and Engineering'' for ''and to one other official of the Department of Defense''.

Subsec. (g)(3). Pub. L. 112–81, §1061(14), struck out par. (3) which read as follows: ''The Assistant Secretary of Defense for Research and Engineering shall notify the congressional defense committees of the intent to obligate funds made available to carry out this subsection not less than 7 days before such funds are obligated.''

Pub. L. 111–383 substituted ''Assistant Secretary of Defense for Research and Engineering'' for ''Director of Defense Research and Engineering''.

2008—Subsec. (e)(1). Pub. L. 110–181, §1251(1), struck out subpar. (A) designation before ''In order to ensure'', substituted ''a cooperative opportunities document before the first milestone or decision point'' for ''an arms cooperation opportunities document'', and struck out subpar. (B) which read as follows: ''The Under Secretary shall also prepare an arms cooperation opportunities document for review of each new project for which a document known as a Mission Need Statement is prepared.''

Subsec. (e)(2). Pub. L. 110–181, §1251(2), substituted ''A cooperative opportunities document'' for ''An arms cooperation opportunities document'' in introductory provisions.

Subsec. (g)(3). Pub. L. 110–181, §237, amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''The Deputy Director, Defense Research and Engineering (Test and Evaluation) shall notify the Speaker of the House of Representatives and the Committees on Armed Services and on Appropriations of the Senate of the Deputy Director's intent to obligate funds made available to carry out this subsection not less than 30 days before such funds are obligated.''

2003—Subsec. (f). Pub. L. 108–136 struck out subsec. (f) which required that, not later than Mar. 1 of each year, the Under Secretary of Defense for Acquisition, Technology, and Logistics was to submit to the Speaker of the House and the Committees on Armed Services and Appropriations of the Senate a report on cooperative research and development projects under this section, and that, not later than Jan. 1 of each year, the Secretary of Defense was to submit to the Committees on Armed Services and Foreign Relations of the Senate and Committees on Armed Services and International Relations of the House a report specifying the countries eligible to participate in a cooperative project agreement under this section and the criteria used to determine the eligibility of such countries.

2002—Subsec. (g)(1)(A). Pub. L. 107–314, §1062(f)(2), amended directory language of Pub. L. 107–107, §1212(a)(5). See 2001 Amendment note below.

Subsec. (g)(4). Pub. L. 107–314, §1041(a)(9), struck out par. (4) which read as follows: ''The Secretary of Defense shall submit to Congress each year, not later than March 1, a report containing information on—

''(A) the equipment, munitions, and technologies manufactured and developed by countries referred to in subsection (a)(2) that were evaluated under this subsection during the previous fiscal year;

''(B) the obligation of any funds under this subsection during the previous fiscal year; and

''(C) the equipment, munitions, and technologies that were tested under this subsection and procured during the previous fiscal year.''

Subsec. (g)(4)(A). Pub. L. 107–314, §1062(f)(2), amended directory language of Pub. L. 107–107, §1212(a)(5). See 2001 Amendment note below.

2001—Pub. L. 107–107, §1212(e)(1), substituted ''Cooperative research and development agreements: NATO organizations; allied and friendly foreign countries'' for ''Cooperative research and development projects: allied countries'' in section catchline.

Subsec. (a)(1). Pub. L. 107–107, §1212(a)(1)(A), (B), designated existing provisions of subsec. (a) as par. (1) and substituted ''countries or organizations referred to in paragraph (2)'' for ''major allies of the United States or NATO organizations''.

Subsec. (a)(2). Pub. L. 107–107, §1212(a)(1)(C), added par. (2).

Subsec. (a)(3). Pub. L. 107–107, §1212(b), added par. (3).

Subsec. (b)(1). Pub. L. 107–107, §1212(a)(2), struck out ''(NATO)'' after ''North Atlantic Treaty Organization'' and substituted ''a country or organization referred to in subsection (a)(2)'' for ''its major non-NATO allies''.

Subsec. (b)(2). Pub. L. 107–107, §1212(c), substituted ''Deputy Secretary of Defense and to one other official of the Department of Defense'' for ''Deputy Secretary of Defense or the Under Secretary of Defense for Acquisition, Technology, and Logistics''.

Subsec. (d)(1). Pub. L. 107–107, §1212(a)(3)(A), substituted ''countries and organizations referred to in subsection (a)(2)'' for ''the major allies of the United States''.

Subsec. (d)(2). Pub. L. 107–107, §1212(a)(3)(B), substituted ''country or organization referred to in subsection (a)(2)'' for ''major ally of the United States'' and ''the contribution of that country or organization'' for ''that ally's contribution''.

Subsec. (e)(1)(A). Pub. L. 107–107, §1048(b)(2), substituted ''Under Secretary of Defense for Acquisition, Technology, and Logistics'' for ''Under Secretary of Defense for Acquisition and Technology''.

Subsec. (e)(2)(A). Pub. L. 107–107, §1212(a)(4)(A), substituted ''any country or organization referred to in subsection (a)(2)'' for ''one or more of the major allies of the United States''.

Subsec. (e)(2)(B). Pub. L. 107–107, §§1048(b)(2), 1212(a)(4)(B), substituted ''countries and organizations referred to in subsection (a)(2)'' for ''major allies of the United States or NATO organizations'' and ''Under Secretary of Defense for Acquisition, Technology, and Logistics'' for ''Under Secretary of Defense for Acquisition and Technology''.

Subsec. (e)(2)(C). Pub. L. 107–107, §1212(a)(4)(C), substituted ''countries and organizations referred to in subsection (a)(2)'' for ''major allies of the United States''.

Subsec. (e)(2)(D). Pub. L. 107–107, §1212(a)(4)(D), substituted ''countries and organizations referred to in subsection (a)(2)'' for ''major allies of the United States''.

Subsec. (f)(1). Pub. L. 107–107, §1048(b)(2), substituted ''Under Secretary of Defense for Acquisition, Technology, and Logistics'' for ''Under Secretary of Defense for Acquisition and Technology''.

Subsec. (f)(2). Pub. L. 107–107, §1212(d), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''The Secretary of Defense and the Secretary of State, whenever they consider such action to be warranted, shall jointly submit to the Committee on Armed Services and the Committee on Foreign Relations of the Senate and the Committee on Armed Services and the Committee on International Relations of the House of Representatives a report—

''(A) enumerating those countries to be added to or deleted from the existing designation of countries designated as major non-NATO allies for purposes of this section; and

''(B) specifying the criteria used in determining the eligibility of a country to be designated as a major non-NATO ally for purposes of this section.''

Subsec. (g)(1)(A), (4)(A). Pub. L. 107–107, § 1212(a)(5), as amended by Pub. L. 107–314, § 1062(f)(2), substituted ''countries referred to in subsection (a)(2)'' for ''major allies of the United States and other friendly foreign countries''.

Subsec. (h). Pub. L. 107–107, § 1212(a)(6), substituted ''member nations of the North Atlantic Treaty Organization, major non-NATO allies, and other friendly foreign countries'' for ''major allies of the United States''.

Subsec. (i)(1). Pub. L. 107–107, § 1212(a)(7)(A), substituted ''countries and organizations referred to in subsection (a)(2)'' for ''major allies of the United States or NATO organizations''.

Subsec. (i)(2) to (4). Pub. L. 107–107, § 1212(a)(7)(B), (C), redesignated pars. (3) and (4) as (2) and (3), respectively, and struck out former par. (2) which read as follows: ''The term 'major ally of the United States' means—

''(A) a member nation of the North Atlantic Treaty Organization (other than the United States); or

''(B) a major non-NATO ally.''

1999—Subsec. (b)(2). Pub. L. 106–65, § 911(a)(1), substituted ''Under Secretary of Defense for Acquisition, Technology, and Logistics'' for ''Under Secretary of Defense for Acquisition and Technology''.

Subsec. (f)(2). Pub. L. 106–65, § 1067(1), substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security''.

1996—Subsec. (f)(2). Pub. L. 104–106 substituted ''submit to the Committee on Armed Services and the Committee on Foreign Relations of the Senate and the Committee on National Security and the Committee on International Relations of the House of Representatives'' for ''submit to the Committees on Armed Services and Foreign Relations of the Senate and to the Committees on Armed Services and Foreign Affairs of the House of Representatives''.

1994—Subsecs. (a), (e)(2)(A) to (D), (i)(1). Pub. L. 103–337, § 1301(a), inserted ''or NATO organizations'' after ''major allies of the United States''.

Subsec. (i)(4). Pub. L. 103–337, § 1301(b), added par. (4).

1993—Subsecs. (b)(2), (e)(1)(A), (2)(B), (f)(1). Pub. L. 103–160 substituted ''Under Secretary of Defense for Acquisition and Technology'' for ''Under Secretary of Defense for Acquisition''.

1992—Subsec. (c). Pub. L. 102–484 inserted ''(including the costs of claims)'' after ''the project''.

1991—Subsec. (g)(1)(A), (4)(A). Pub. L. 102–190 inserted ''and other friendly foreign countries'' after ''major allies of the United States''.

1990—Subsec. (g)(4). Pub. L. 101–510 amended introductory provisions generally, substituting ''submit to Congress each year, not later than March 1, a report containing'' for ''include in the annual report to Congress required by section 2457(d) of this title''.

Change of Name

Committee on International Relations of House of Representatives changed to Committee on Foreign Affairs of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007.

Effective Date of 2011 Amendment

Amendment by Pub. L. 111–383 effective Jan. 1, 2011, see section 901(p) of Pub. L. 111–383, set out as a note under section 131 of this title.

Effective Date of 2002 Amendment

Pub. L. 107–314, div. A, title X, § 1062(f), Dec. 2, 2002, 116 Stat. 2651, provided that the amendment made by section 1062(f)(2) is effective as of Dec. 28, 2001, and as if included in Pub. L. 107–107 as enacted.

Termination Date of 1992 Amendment

Pub. L. 102–484, div. A, title VIII, § 843(c), Oct. 23, 1992, 106 Stat. 2469, as amended by Pub. L. 103–35, title II, § 202(a)(7), May 31, 1993, 107 Stat. 101, provided that, effective Oct. 23, 1994, subsections (a) and (b) of section 843 of Pub. L. 102–484 (amending sections 2350a and 2350d of this title and section 2767 of Title 22, Foreign Relations and Intercourse) were to cease to be in effect, and section 27(c) of the Arms Export Control Act (22 U.S.C. 2767(c)) and sections 2350a(c) and 2350d(c) of this title were to read as if such subsections had not been enacted, prior to repeal by Pub. L. 103–337, div. A, title XIII, § 1318, Oct. 5, 1994, 108 Stat. 2902.

Administration of the American, British, Canadian, and Australian Armies' Program

Pub. L. 112–239, div. A, title XII, § 1274, Jan. 2, 2013, 126 Stat. 2026, as amended by Pub. L. 115–91, div. A, title XII, § 1274, Dec. 12, 2017, 131 Stat. 1697, provided that:

''(a) Authority.—As part of the participation by the United States in the land-force program known as the American, British, Canadian, and Australian Armies' Program (in this section referred to as the 'Program'), the Secretary of Defense may, with the concurrence of the Secretary of State, enter into agreements with the other participating countries in accordance with this section, and the Program shall be managed pursuant to a joint agreement among the participating countries.

''(b) Participating Countries.—In addition to the United States, the countries participating in the Program are the following:

''(1) Australia.

''(2) Canada.

''(3) New Zealand.

''(4) The United Kingdom.

''(c) Contributions by Participants.—

''(1) In general.—An agreement under subsection (a) shall provide that each participating country shall contribute to the Program—

''(A) its equitable share of the full cost for the Program, including the full cost of overhead and administrative costs related to the Program; and

''(B) any amount allocated to it in accordance with the agreement for the cost for monetary claims asserted against any participating country as a result of participation in the Program.

''(2) Additional authorized contribution.—Such an agreement shall also provide that each participating country (including the United States) may provide its contribution for its equitable share under the agreement in funds, in personal property, or in services required for the Program (or in any combination thereof).

''(3) Funding for united states contribution.—Any contribution by the United States to the Program that is provided in funds shall be made from funds available to the Department of Defense for operation and maintenance.

''(4) Treatment of contributions received from other countries.—Any contribution received by the United States from another participating country to meet that country's share of the costs of the Program shall be credited to appropriations available to the Department of Defense, as determined by the Secretary of Defense. The amount of a contribution credited to an appropriation account in connection with the Program shall be available only for payment of the share of the Program expenses allocated to the participating country making the contribution. Amounts so credited shall be available for the following purposes:

''(A) Payments to contractors and other suppliers (including the Department of Defense and participating countries acting as suppliers) for necessary goods and services of the Program.

''(B) Payments for any damages and costs resulting from the performance or cancellation of any contract or other obligation in support of the Program.

''(C) Payments for any monetary claim against a participating country as a result of the participation of that country in the Program.

''(D) Payments or reimbursements of other Program expenses, including overhead and administra-

tive costs for any administrative office for the Program.

''(E) Refunds to other participating countries.

''(5) COSTS OF OPERATION OF OFFICES ESTABLISHED FOR PROGRAM.—Costs for the operation of any office established to carry out the Program shall be borne jointly by the participating countries as provided for in an agreement referred to in subsection (a).

''(d) AUTHORITY TO CONTRACT FOR PROGRAM ACTIVITIES.—As part of the participation by the United States in the Program, the Secretary of Defense may enter into contracts or incur other obligations on behalf of the other participating countries for activities under the Program. Any payment for such a contract or other obligation under this subsection may be paid only from contributions credited to an appropriation under subsection (c)(4).

''(e) DISPOSAL OF PROPERTY.—As part of the participation by the United States in the Program, the Secretary of Defense may, with respect to any property that is jointly acquired by the countries participating in the Program, agree to the disposal of the property without regard to any law of the United States that is otherwise applicable to the disposal of property owned by the United States. Such disposal may include the transfer of the interest of the United States in the property to one or more of the other participating countries or the sale of the property. Reimbursement for the value of the property disposed of (including the value of the interest of the United States in the property) shall be made in accordance with an agreement under subsection (a).

''(f) REPORTS.—Not later than 60 days before the expiration date of any agreement under subsection (a), the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the activities, costs, and accomplishments of the Program during the five-year period ending on the date of such report.

''(g) SUNSET.—Any agreement entered into by the United States with another country under subsection (a), and United States participation in the joint agreement described in that subsection, shall expire not later than ten years after the date of the enactment of this Act [Jan. 2, 2013].''

§ 2350b. Cooperative projects under Arms Export Control Act: acquisition of defense equipment

(a)(1) If the President delegates to the Secretary of Defense the authority to carry out section 27(d) of the Arms Export Control Act (22 U.S.C. 2767(d)), relating to cooperative projects (as defined in such section), the Secretary may utilize his authority under this title in carrying out contracts or obligations incurred under such section.

(2) Except as provided in subsection (c), chapter 137 of this title shall apply to such contracts (referred to in paragraph (1)) entered into by the Secretary of Defense. Except to the extent waived under subsection (c) or some other provision of law, all other provisions of law relating to procurement, if otherwise applicable, shall apply to such contracts entered into by the Secretary of Defense.

(b) When contracting or incurring obligations under section 27(d) of the Arms Export Control Act for cooperative projects, the Secretary of Defense may require subcontracts to be awarded to particular subcontractors in furtherance of the cooperative project.

(c)(1) Subject to paragraph (2), when entering into contracts or incurring obligations under section 27(d) of the Arms Export Control Act outside the United States, the Secretary of Defense may waive with respect to any such contract or subcontract the application of any provision of law, other than a provision of the Arms Export Control Act or section 2304 of this title, that specifically prescribes—

(A) procedures to be followed in the formation of contracts;

(B) terms and conditions to be included in contracts;

(C) requirements for or preferences to be given to goods grown, produced, or manufactured in the United States or in United States Government-owned facilities or for services to be performed in the United States; or

(D) requirements regulating the performance of contracts.

(2) A waiver may not be made under paragraph (1) unless the Secretary determines that the waiver is necessary to ensure that the cooperative project will significantly further standardization, rationalization, and interoperability.

(3) The authority of the Secretary to make waivers under this subsection may be delegated only to the Deputy Secretary of Defense or the Acquisition Executive designated for the Office of the Secretary of Defense.

(d)(1) The Secretary of Defense shall notify the Congress each time he requires that a prime contract be awarded to a particular prime contractor or that a subcontract be awarded to a particular subcontractor to comply with a cooperative agreement. The Secretary shall include in each such notice the reason for exercising his authority to designate a particular contractor or subcontractor, as the case may be.

(2) The Secretary shall also notify the Congress each time he exercises a waiver under subsection (c) and shall include in such notice the particular provision or provisions of law that were waived.

(3) A report under this subsection shall be required only to the extent that the information required by this subsection has not been provided in a report made by the President under section 27(e) of the Arms Export Control Act (22 U.S.C. 2767(e)).

(e)(1) In carrying out a cooperative project under section 27 of the Arms Export Control Act, the Secretary of Defense may agree that a participant (other than the United States) or a NATO organization may make a contract for requirements of the United States under the project if the Secretary determines that such a contract will significantly further standardization, rationalization, and interoperability. Except to the extent waived under this section or under any other provision of law, the Secretary shall ensure that such contract will be made on a competitive basis and that United States sources will not be precluded from competing under the contract.

(2) If a participant (other than the United States) in such a cooperative project or a NATO organization makes a contract on behalf of such project to meet the requirements of the United States, the contract may permit the contracting party to follow its own procedures relating to contracting.

(f) In carrying out a cooperative project, the Secretary of Defense may also agree to the disposal of property that is jointly acquired by the

members of the project without regard to any laws of the United States applicable to the disposal of property owned by the United States. Disposal of such property may include a transfer of the interest of the United States in such property to one of the other governments participating in the cooperative agreement or the sale of such property. Payment for the transfer or sale of any interest of the United States in any such property shall be made in accordance with the terms of the cooperative agreement.

(g) Nothing in this section shall be construed as authorizing the Secretary of Defense—

(1) to waive any of the financial management responsibilities administered by the Secretary of the Treasury; or

(2) to waive the cargo preference laws of the United States, including section 2631 of this title and section 55305 of title 46.

(Added Pub. L. 99–145, title XI, § 1102(b)(1), Nov. 8, 1985, 99 Stat. 710, § 2407; amended Pub. L. 99–661, div. A, title XI, § 1103(b)(1), (2)(A), title XIII, § 1343(a)(15), Nov. 14, 1986, 100 Stat. 3963, 3993; renumbered § 2350b and amended Pub. L. 101–189, div. A, title IX, § 931(b)(1), (e)(3), Nov. 29, 1989, 103 Stat. 1534, 1535; Pub. L. 104–106, div. A, title XIII, § 1335, div. D, title XLIII, § 4321(b)(10), Feb. 10, 1996, 110 Stat. 484, 672; Pub. L. 108–375, div. A, title X, § 1084(d)(19), Oct. 28, 2004, 118 Stat. 2062; Pub. L. 109–304, § 17(a)(3), Oct. 6, 2006, 120 Stat. 1706; Pub. L. 116–283, div. A, title XVIII, § 1883(b)(2), Jan. 1, 2021, 134 Stat. 4294.)

AMENDMENT OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1883(b)(2), Jan. 1, 2021, 134 Stat. 4151, 4294, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, except as otherwise provided in title XVIII of Pub. L. 116–283, in title 10, United States Code, each reference in the text of such title to a source section that is redesignated by title XVIII of Pub. L. 116–283, is amended by striking such reference and inserting a reference to the appropriate section as so redesignated. See 2021 Amendment note below.

REFERENCES IN TEXT

The Arms Export Control Act, referred to in subsec. (c)(1), is Pub. L. 90–629, Oct. 22, 1968, 82 Stat. 1320, as amended, which is classified principally to chapter 39 (§ 2751 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 2751 of Title 22 and Tables.

AMENDMENTS

2021—Subsec. (c)(1). Pub. L. 116–283, which directed that each reference in the text of title 10 to a section that was redesignated by title XVIII of Pub. L. 116–283, as such section was in effect before the redesignation, be amended by striking such reference and inserting a reference to the appropriate redesignated section, was not executed in introductory provisions with respect to ''section 2304'', which was redesignated as multiple sections.

2006—Subsec. (g)(2). Pub. L. 109–304 substituted ''section 55305 of title 46'' for ''section 901(b) of the Merchant Marine Act, 1936 (46 U.S.C. App. 1241(b))''.

2004—Subsec. (g). Pub. L. 108–375, § 1084(d)(19)(A), inserted ''the Secretary of Defense'' after ''authorizing'' in introductory provisions.

Subsec. (g)(1). Pub. L. 108–375, § 1084(d)(19)(B), struck out ''the Secretary of Defense'' before ''to waive''.

1996—Subsec. (c)(1). Pub. L. 104–106, § 4321(b)(10)(A), inserted ''prescribes'' after ''specifically'' in introductory provisions and struck out ''prescribe'' before ''procedures'' in subpar. (A), before ''terms'' in subpar. (B), and before ''requirements'' in subpars. (C) and (D).

Subsec. (d)(1). Pub. L. 104–106, § 4321(b)(10)(B), struck out ''to'' after ''subcontract''.

Subsec. (e)(1). Pub. L. 104–106, § 1335(1), inserted ''or a NATO organization'' after ''United States)''.

Subsec. (e)(2). Pub. L. 104–106, § 1335(2), substituted ''such a cooperative project or a NATO organization'' for ''a cooperative project''.

1989—Pub. L. 101–189 renumbered section 2407 of this title as this section and substituted ''Cooperative projects under Arms Export Control Act: acquisition of defense equipment'' for ''Acquisition of defense equipment under cooperative projects'' as section catchline.

1986—Pub. L. 99–661, § 1103(b)(2)(A), struck out ''North Atlantic Treaty Organization'' before ''cooperative projects'' in section catchline.

Subsec. (a)(1). Pub. L. 99–661, § 1103(b)(1)(A), struck out ''North Atlantic Treaty Organization (NATO)'' before ''cooperative projects''.

Subsec. (c)(2). Pub. L. 99–661, § 1103(b)(1)(B), struck out ''NATO'' after ''will significantly further''.

Subsec. (e). Pub. L. 99–661, § 1103(b)(1)(C), struck out ''NATO'' after ''will significantly further'' in par. (1) and after ''United States) in a'' in par. (2).

Subsec. (g)(2). Pub. L. 99–661, § 1343(a)(15), substituted ''section 2631 of this title and section 901(b) of the Merchant Marine Act, 1936 (46 U.S.C. App. 1241(b))'' for ''the Military Cargo Preference Act of 1904 (10 U.S.C. 2631) and the Cargo Preference Act of 1954 (46 U.S.C. 1241(b))''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

For effective date and applicability of amendment by section 4321(b)(10) of Pub. L. 104–106, see section 4401 of Pub. L. 104–106, set out as a note under section 2302 of this title.

§ 2350c. Cooperative military airlift agreements: allied countries

(a) Subject to the availability of appropriations, and after consultation with the Secretary of State, the Secretary of Defense may enter into cooperative military airlift agreements with the government of any allied country for the transportation of the personnel and cargo of the military forces of that country on aircraft operated by or for the military forces of the United States in return for the reciprocal transportation of the personnel and cargo of the military forces of the United States on aircraft operated by or for the military forces of that allied country. Any such agreement shall include the following terms:

(1) The rate of reimbursement for transportation provided shall be the same for each party and shall be not less than the rate charged to military forces of the United States, as determined by the Secretary of Defense under section 2208(h) of this title.

(2) Credits and liabilities accrued as a result of providing or receiving transportation shall be liquidated as agreed upon by the parties. Liquidation shall be either by direct payment

to the country that has provided the greater amount of transportation or by the providing of in-kind transportation services to that country. The liquidation shall occur on a regular basis, but not less often than once every 12 months.

(3) During peacetime, the only military airlift capacity that may be used to provide transportation is that capacity that (A) is not needed to meet the transportation requirements of the military forces of the country providing the transportation, and (B) was not created solely to accommodate the requirements of the military forces of the country receiving the transportation.

(4) Defense articles purchased by an allied country from the United States under the Arms Export Control Act (22 U.S.C. 2751 et seq.) or from a commercial source under the export controls of the Arms Export Control Act may not be transported (for the purpose of delivery incident to the purchase of the defense articles) to the purchasing allied country on aircraft operated by or for the military forces of the United States except at a rate of reimbursement that is equal to the full cost of transportation of the defense articles, as required by section 21(a)(3) of the Arms Export Control Act (22 U.S.C. 2761(a)(3)).

(b) Subject to the availability of appropriations, and after consultation with the Secretary of State, the Secretary of Defense may enter into nonreciprocal military airlift agreements with North Atlantic Treaty Organization subsidiary bodies for the transportation of the personnel and cargo of such subsidiary bodies on aircraft operated by or for the military forces of the United States. Any such agreement shall be subject to such terms as the Secretary of Defense considers appropriate.

(c) Any amount received by the United States as a result of an agreement entered into under this section shall be credited to applicable appropriations, accounts, and funds of the Department of Defense.

(d) In this section:

(1) The term ''allied country'' means any of the following:

(A) A country that is a member of the North Atlantic Treaty Organization.

(B) Australia, New Zealand, Japan, and the Republic of Korea.

(C) Any other country designated as an allied country for the purposes of this section by the Secretary of Defense with the concurrence of the Secretary of State.

(2) The term ''North Atlantic Treaty Organization subsidiary bodies'' has the meaning given to it by section 2350 of this title.

(Added Pub. L. 97–252, title XI, § 1125(a), Sept. 8, 1982, 96 Stat. 757, § 2213; amended Pub. L. 99–145, title XIII, § 1304(b), Nov. 8, 1985, 99 Stat. 742; Pub. L. 100–26, § 7(k)(2), Apr. 21, 1987, 101 Stat. 284; renumbered § 2350c and amended Pub. L. 101–189, div. A, title IX, § 931(b)(2), (e)(4), Nov. 29, 1989, 103 Stat. 1534, 1535; Pub. L. 102–484, div. A, title XIII, § 1311, Oct. 23, 1992, 106 Stat. 2547; Pub. L. 106–398, § 1 [[div. A], title XII, § 1222], Oct. 30, 2000, 114 Stat. 1654, 1654A–328.)

REFERENCES IN TEXT

The Arms Export Control Act (22 U.S.C. 2751 et seq.), referred to in subsec. (a)(4), is Pub. L. 90–629, Oct. 22, 1968, 82 Stat. 1320, as amended, which is classified principally to chapter 39 (§ 2751 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 2751 of Title 22 and Tables.

AMENDMENTS

2000—Subsecs. (d), (e). Pub. L. 106–398 redesignated subsec. (e) as (d) and struck out former subsec. (d) which read as follows: ''Notwithstanding subchapter I, the Secretary of Defense may enter into military airlift agreements with allied countries only under the authority of this section.''

1992—Subsec. (a)(2). Pub. L. 102–484, § 1311(a), substituted ''as agreed upon by the parties. Liquidation shall be either by direct payment to the country that has provided the greater amount of transportation or by the providing of in-kind transportation services to that country. The liquidation shall occur on a regular basis, but not less often than once every 12 months.'' for ''not less often than once every 3 months by direct payment to the country that has provided the greater amount of transportation.''

Subsec. (e)(1)(B). Pub. L. 102–484, § 1311(b), substituted '', New Zealand, Japan, and the Republic of Korea'' for ''or New Zealand''.

1989—Pub. L. 101–189 renumbered section 2213 of this title as this section and inserted '': allied countries'' after ''airlift agreements'' in section catchline.

Subsec. (d). Pub. L. 101–189, § 931(b)(2), substituted ''subchapter I'' for ''chapter 138 of this title''.

1987—Subsec. (e). Pub. L. 100–26 inserted ''The term'' after each par. designation and substituted ''allied'' for ''Allied'' in par. (1).

1985—Subsec. (e)(2). Pub. L. 99–145 substituted ''section 2350'' for ''section 2331''.

DEPARTMENT OF DEFENSE PARTICIPATION IN EUROPEAN PROGRAM ON MULTILATERAL EXCHANGE OF AIR TRANSPORTATION AND AIR REFUELING SERVICES

Pub. L. 112–239, div. A, title XII, § 1276, Jan. 2, 2013, 126 Stat. 2029, as amended by Pub. L. 115–91, div. A, title X, § 1051(r)(9), Dec. 12, 2017, 131 Stat. 1565, which related to participation of the United States in the Air Transport, Air-to-Air Refueling and other Exchanges of Services (ATARES) program of the Movement Coordination Centre Europe, was repealed by Pub. L. 116–283, div. A, title XII, § 1203(c), Jan. 1, 2021, 134 Stat. 3911. See section 2350*o* of this title.

DEPARTMENT OF DEFENSE PARTICIPATION IN STRATEGIC AIRLIFT CAPABILITY PARTNERSHIP

Pub. L. 110–181, div. A, title X, § 1032, Jan. 28, 2008, 122 Stat. 306, provided that:

''(a) AUTHORITY TO PARTICIPATE IN PARTNERSHIP.—

''(1) MEMORANDUM OF UNDERSTANDING.—The Secretary of Defense may enter into a multilateral memorandum of understanding authorizing the Strategic Airlift Capability Partnership to conduct activities necessary to accomplish its purpose, including—

''(A) the acquisition, equipping, ownership, and operation of strategic airlift aircraft; and

''(B) the acquisition or transfer of airlift and airlift-related services and supplies among members of the Strategic Airlift Capability Partnership, or between the Partnership and non-member countries or international organizations, on a reimbursable basis or by replacement-in-kind or exchange of airlift or airlift-related services of an equal value.

''(2) PAYMENTS.—From funds available to the Department of Defense for such purpose, the Secretary of Defense may pay the United States equitable share of the recurring and non-recurring costs of the activities and operations of the Strategic Airlift Capability Partnership, including costs associated with procure-

ment of aircraft components and spare parts, maintenance, facilities, and training, and the costs of claims.

"(b) AUTHORITIES UNDER PARTNERSHIP.—In carrying out the memorandum of understanding entered into under subsection (a), the Secretary of Defense may do the following:

"(1) Waive reimbursement of the United States for the cost of the following functions performed by Department of Defense personnel with respect to the Strategic Airlift Capability Partnership:

"(A) Auditing.

"(B) Quality assurance.

"(C) Inspection.

"(D) Contract administration.

"(E) Acceptance testing.

"(F) Certification services.

"(G) Planning, programming, and management services.

"(2) Waive the imposition of any surcharge for administrative services provided by the United States that would otherwise be chargeable against the Strategic Airlift Capability Partnership.

"(3) Pay the salaries, travel, lodging, and subsistence expenses of Department of Defense personnel assigned for duty to the Strategic Airlift Capability Partnership without seeking reimbursement or cost-sharing for such expenses.

"(c) CREDITING OF RECEIPTS.—Any amount received by the United States in carrying out the memorandum of understanding entered into under subsection (a) shall be credited, as elected by the Secretary of Defense, to the following:

"(1) The appropriation, fund, or account used in incurring the obligation for which such amount is received.

"(2) An appropriation, fund, or account currently providing funds for the purposes for which such obligation was made.

"(d) AUTHORITY TO TRANSFER AIRCRAFT.—

"(1) TRANSFER AUTHORITY.—The Secretary of Defense may transfer one strategic airlift aircraft to the Strategic Airlift Capability Partnership in accordance with the terms and conditions of the memorandum of understanding entered into under subsection (a).

"(2) REPORT.—Not later than 30 days before the date on which the Secretary transfers a strategic airlift aircraft under paragraph (1), the Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the strategic airlift aircraft to be transferred, including the type of strategic airlift aircraft to be transferred and the tail registration or serial number of such aircraft.

"(e) STRATEGIC AIRLIFT CAPABILITY PARTNERSHIP DEFINED.—In this section the term 'Strategic Airlift Capability Partnership' means the strategic airlift capability consortium established by the United States and other participating countries."

§ 2350d. Cooperative logistic support agreements: NATO countries

(a) GENERAL AUTHORITY.—(1) The Secretary of Defense may enter into bilateral or multilateral agreements known as Support or Procurement Partnership Agreements with one or more governments of other member countries of the North Atlantic Treaty Organization (NATO) participating in the operation of the NATO Support and Procurement Organization and its executive agencies. Any such agreement shall be for the purpose of providing cooperative logistics support for the armed forces of the countries which are parties to the agreement. Any such agreement—

(A) shall be entered into pursuant to the terms of the charter of the NATO Support and Procurement Organization and its executive agencies; and

(B) shall provide for the common logistic support of activities common to the participating countries.

(2) Such an agreement may provide for—

(A) the transfer of logistics support, supplies, and services by the United States to the NATO Support and Procurement Organization and its executive agencies; and

(B) the acquisition of logistics support, supplies, and services by the United States from that Organization.

(b) AUTHORITY OF SECRETARY.—Under the terms of a Support or Procurement Partnership Agreement, the Secretary of Defense—

(1) may agree that the NATO Support and Procurement Organization and its executive agencies may enter into contracts for supply and acquisition of logistics support in Europe for requirements of the United States, to the extent the Secretary determines that the procedures of such Organization governing such supply and acquisition are appropriate; and

(2) may share the costs of set-up charges of facilities for use by the NATO Support and Procurement Organization and its executive agencies to provide cooperative logistics support and in the costs of establishing a revolving fund for initial acquisition and replenishment of supply stocks to be used by the NATO Support and Procurement Organization and its executive agencies to provide cooperative logistics support.

(c) SHARING OF ADMINISTRATIVE EXPENSES.—Each Support or Procurement Partnership Agreement shall provide for joint management by the participating countries and for the equitable sharing of the administrative costs and costs of claims incident to the agreement.

(d) APPLICATION OF CHAPTER 137.—Except as otherwise provided in this section, the provisions of chapter 137 of this title apply to a contract entered into by the Secretary of Defense for the acquisition of logistics support under a Support or Procurement Partnership Agreement.

(e) APPLICATION OF ARMS EXPORT CONTROL ACT.—Any transfer of defense articles or defense services to a member country of the North Atlantic Treaty Organization or to the NATO Support and Procurement Organization and its executive agencies for the purposes of a Support or Procurement Partnership Agreement shall be carried out in accordance with this chapter and the Arms Export Control Act (22 U.S.C. 2751 et seq.).

(f) SUPPLEMENTAL AUTHORITY.—The authority of the Secretary of Defense under this section is in addition to the authority of the Secretary under subchapter I and any other provision of law.

(Added and amended Pub. L. 101–189, div. A, title IX, §§ 931(c), 938(c), Nov. 29, 1989, 103 Stat. 1534, 1539; Pub. L. 102–484, div. A, title VIII, § 843(b)(2), Oct. 23, 1992, 106 Stat. 2469; Pub. L. 113–66, div. A, title XII, § 1250(a), Dec. 26, 2013, 127 Stat. 926;

Pub. L. 115–232, div. A, title XII, § 1279(a), Aug. 13, 2018, 132 Stat. 2072.)

REFERENCES IN TEXT

The Arms Export Control Act, referred to in subsec. (e), is Pub. L. 90–629, Oct. 22, 1968, 82 Stat. 1320, as amended, which is classified principally to chapter 39 (§ 2751 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 2751 of Title 22 and Tables.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in Pub. L. 99–661, div. A, title XI, § 1102, Nov. 14, 1986, 100 Stat. 3961, which was set out as a note under section 2407 of this title, prior to repeal by Pub. L. 101–189, § 931(d)(2).

AMENDMENTS

2018—Subsec. (a). Pub. L. 115–232, § 1279(a)(1), substituted ''NATO Support and Procurement Organization'' for ''NATO Support Organization'' wherever appearing.

Subsec. (a)(1). Pub. L. 115–232, § 1279(a)(3), substituted ''Support or Procurement Partnership Agreements'' for ''Support Partnership Agreements'' in introductory provisions.

Subsec. (b). Pub. L. 115–232, § 1279(a)(1), (2), substituted ''Support or Procurement Partnership Agreement'' for ''Support Partnership Agreement'' in introductory provisions and ''NATO Support and Procurement Organization'' for ''NATO Support Organization'' wherever appearing.

Subsecs. (c), (d). Pub. L. 115–232, § 1279(a)(2), substituted ''Support or Procurement Partnership Agreement'' for ''Support Partnership Agreement''.

Subsec. (e). Pub. L. 115–232, § 1279(a)(1), (2), substituted ''NATO Support and Procurement Organization'' for ''NATO Support Organization'' and ''Support or Procurement Partnership Agreement'' for ''Support Partnership Agreement''.

2013—Subsec. (a)(1). Pub. L. 113–66, § 1250(a)(1), (2)(A), in introductory provisions, substituted ''Support Partnership Agreements'' for ''Weapon System Partnership Agreements'' and ''NATO Support Organization and its executive agencies'' for ''NATO Maintenance and Supply Organization''.

Subsec. (a)(1)(A). Pub. L. 113–66, § 1250(a)(1), substituted ''NATO Support Organization and its executive agencies'' for ''NATO Maintenance and Supply Organization''.

Subsec. (a)(1)(B). Pub. L. 113–66, § 1250(a)(2)(B), substituted ''activities'' for ''a specific weapon system''.

Subsec. (a)(2)(A). Pub. L. 113–66, § 1250(a)(1), substituted ''NATO Support Organization and its executive agencies'' for ''NATO Maintenance and Supply Organization''.

Subsec. (b). Pub. L. 113–66, § 1250(a)(3), substituted ''Support Partnership Agreement'' for ''Weapon System Partnership Agreement'' in introductory provisions.

Pub. L. 113–66, § 1250(a)(1), substituted ''NATO Support Organization and its executive agencies'' for ''NATO Maintenance and Supply Organization'' wherever appearing.

Subsecs. (c), (d). Pub. L. 113–66, § 1250(a)(3), substituted ''Support Partnership Agreement'' for ''Weapon System Partnership Agreement''.

Subsec. (e). Pub. L. 113–66, § 1250(a)(1), (3), substituted ''NATO Support Organization and its executive agencies'' for ''NATO Maintenance and Supply Organization'' and ''Support Partnership Agreement'' for ''Weapon System Partnership Agreement''.

1992—Subsec. (c). Pub. L. 102–484 inserted ''and costs of claims'' after ''administrative costs''.

1989—Subsec. (e). Pub. L. 101–189, § 938(c), inserted ''this chapter and'' after ''in accordance with''.

§ 2350e. NATO Airborne Warning and Control System (AWACS) program: authority of Secretary of Defense

(a) AUTHORITY UNDER AWACS PROGRAM.—The Secretary of Defense, in carrying out an AWACS memorandum of understanding, may do the following:

(1) Waive reimbursement for the cost of the following functions performed by personnel other than personnel employed in the United States Air Force Airborne Warning and Control System (AWACS) program office:

(A) Auditing.

(B) Quality assurance.

(C) Codification.

(D) Inspection.

(E) Contract administration.

(F) Acceptance testing.

(G) Certification services.

(H) Planning, programming, and management services.

(2) Waive any surcharge for administrative services otherwise chargeable.

(3) In connection with that Program, assume contingent liability for—

(A) program losses resulting from the gross negligence of any contracting officer of the United States;

(B) identifiable taxes, customs duties, and other charges levied within the United States on the program; and

(C) the United States share of the unfunded termination liability.

(b) CONTRACT AUTHORITY LIMITATION.—Authority under this section to enter into contracts shall be effective for any fiscal year only to such extent or in such amounts as are provided in appropriation Acts.

(c) DEFINITION.—In this section, the term ''AWACS memorandum of understanding'' means—

(1) the Multilateral Memorandum of Understanding Between the North Atlantic Treaty Organization (NATO) Ministers of Defence on the NATO E–3A Cooperative Programme, signed by the Secretary of Defense on December 6, 1978;

(2) the Memorandum of Understanding for Operations and Support of the NATO Airborne Early Warning and Control Force, signed by the United States Ambassador to NATO on September 26, 1984;

(3) the Addendum to the Multilateral Memorandum of Understanding Between the North Atlantic Treaty Organization (NATO) Ministers of Defence on the NATO E–3A Cooperative Programme (dated December 6, 1978) relating to the modernization of the NATO Airborne Early Warning and Control (NAEW&C) System, dated December 7, 1990; and

(4) any other follow-on support agreement for the NATO E–3A Cooperative Programme.

(Added Pub. L. 101–189, div. A, title IX, § 932(a)(1), Nov. 29, 1989, 103 Stat. 1536; amended Pub. L. 102–190, div. A, title X, § 1051, Dec. 5, 1991, 105 Stat. 1470; Pub. L. 103–160, div. A, title XIV, § 1413, Nov. 30, 1993, 107 Stat. 1829.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in Pub. L. 97–86, title I, § 103, Dec. 1, 1981, 95 Stat.

1100, as amended, which was set out as a note under section 2407 of this title, prior to repeal by Pub. L. 101–189, § 932(b).

AMENDMENTS

1993—Subsec. (d). Pub. L. 103–160 struck out subsec. (d) which read as follows: ''EXPIRATION.—The authority provided by this section expires on September 30, 1993.''

1991—Subsec. (c)(3), (4). Pub. L. 102–190, § 1051(1), added par. (3) and redesignated former par. (3) as (4).

Subsec. (d). Pub. L. 102–190, § 1051(2), substituted ''1993'' for ''1991''.

§ 2350f. Procurement of communications support and related supplies and services

(a) As an alternative means of obtaining communications support and related supplies and services, the Secretary of Defense, subject to the approval of the Secretary of State, may enter into a bilateral arrangement with any allied country or allied international organization or may enter into a multilateral arrangement with allied countries and allied international organizations, under which, in return for being provided communications support and related supplies and services, the United States would agree to provide to the allied country or countries or allied international organization or allied international organizations, as the case may be, an equivalent value of communications support and related supplies and services. The term of an arrangement entered into under this subsection may not exceed five years.

(b)(1) Any arrangement entered into under this section shall require that any accrued credits and liabilities resulting from an unequal exchange of communications support and related supplies and services during the term of such arrangement would be liquidated by direct payment to the party having provided the greater amount of communications support and related supplies and services. Liquidations may be made at such times as the parties in an arrangement may agree upon, but in no case may final liquidation in the case of an arrangement be made later than 30 days after the end of the term for which the arrangement was entered into.

(2) Parties to an arrangement entered into under this section shall annually reconcile accrued credits and liabilities accruing under such agreement. Any liability of the United States resulting from a reconciliation shall be charged against the applicable appropriation available to the Department of Defense (at the time of the reconciliation) for obligation for communications support and related supplies and services.

(3) Payments received by the United States shall be credited to the appropriation from which such communications support and related supplies and services have been provided.

[(c) Repealed. Pub. L. 107–314, div. A, title X, § 1041(a)(10), Dec. 2, 2002, 116 Stat. 2645.]

(d) In this section:

(1) The term ''allied country'' means—

(A) a country that is a member of the North Atlantic Treaty Organization;

(B) Australia, New Zealand, Japan, or the Republic of Korea; or

(C) any other country designated as an allied country for purposes of this section by the Secretary of Defense with the concurrence of the Secretary of State.

(2) The term ''allied international organization'' means the North Atlantic Treaty Organization (NATO) or any other international organization designated as an allied international organization for the purposes of this section by the Secretary of Defense with the concurrence of the Secretary of State.

(Added Pub. L. 98–525, title X, § 1005(a), Oct. 19, 1984, 98 Stat. 2578, § 2401a; amended Pub. L. 100–26, § 7(k)(3), Apr. 21, 1987, 101 Stat. 284; renumbered § 2350f and amended Pub. L. 101–189, div. A, title IX, § 933(a)–(d), Nov. 29, 1989, 103 Stat. 1537; Pub. L. 101–510, div. A, title XIV, § 1484(k)(8), Nov. 5, 1990, 104 Stat. 1719; Pub. L. 104–106, div. A, title XV, § 1502(a)(2), Feb. 10, 1996, 110 Stat. 502; Pub. L. 106–65, div. A, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 107–314, div. A, title X, § 1041(a)(10), Dec. 2, 2002, 116 Stat. 2645.)

AMENDMENTS

2002—Subsec. (c). Pub. L. 107–314 struck out subsec. (c) which read as follows: ''The Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives copies of all documents evidencing an arrangement entered into under subsection (a) not later than 45 days after entering into such an arrangement.''

1999—Subsec. (c). Pub. L. 106–65 substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security''.

1996—Subsec. (c). Pub. L. 104–106 substituted ''Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives'' for ''Committees on Armed Services of the Senate and the House of Representatives''.

1990—Subsec. (d)(1)(A). Pub. L. 101–510 substituted a semicolon for '', or'' at end.

1989—Pub. L. 101–189, § 933(a), renumbered section 2401a of this title as this section.

Subsec. (a). Pub. L. 101–189, § 933(b), substituted ''a bilateral arrangement with any allied country or allied international organization or may enter into a multilateral arrangement with allied countries and allied international organizations'' for ''an arrangement with the Minister of Defense or other appropriate official of any allied country or with the North Atlantic Treaty Organization (NATO),'' and ''the allied country or countries or allied international organization or allied international organizations, as the case may be,'' for ''such country or NATO'' and inserted ''The term of an arrangement entered into under this subsection may not exceed five years.''

Subsec. (b). Pub. L. 101–189, § 933(c), designated first sentence as par. (1), inserted ''Liquidations may be made at such times as the parties in an arrangement may agree upon, but in no case may final liquidation in the case of an arrangement be made later than 30 days after the end of the term for which the arrangement was entered into.'' after ''supplies and services.'', added par. (2), and designated second sentence as par. (3).

Subsec. (d). Pub. L. 101–189, § 933(d)(1), (2), substituted ''In this section:'' and par. (1) for ''In this section, the term 'allied country' means—'' and redesignated former cls. (1) and (2) as cls. (A) and (B).

Subsec. (d)(1)(A). Pub. L. 101–189, § 933(d)(3), which directed amendment of cl. (A) by substituting a semicolon for ''; or'' at end, could not be executed because ''; or'' did not appear.

Subsec. (d)(1)(B). Pub. L. 101–189, § 933(d)(4), substituted ''; or'' for period at end.

Subsec. (d)(1)(C), (2). Pub. L. 101–189, § 933(d)(5), added cl. (C) and par. (2).

1987—Subsec. (d). Pub. L. 100–26 inserted ''the term'' after ''In this section,''.

§ 2350g. Authority to accept use of real property, services, and supplies from foreign countries in connection with mutual defense agreements and occupational arrangements

(a) AUTHORITY TO ACCEPT.—The Secretary of Defense may accept from a foreign country, for the support of any element of the armed forces in an area of that country—

(1) real property or the use of real property and services and supplies for the United States or for the use of the United States in accordance with a mutual defense agreement or occupational arrangement; and

(2) services furnished as reciprocal international courtesies or as services customarily made available without charge.

(b) AUTHORITY TO USE PROPERTY, SERVICES, AND SUPPLIES.—Property, services, or supplies referred to in subsection (a) may be used by the Secretary of Defense without specific authorization, except that such property, services, and supplies may not be used in connection with any program, project, or activity if the use of such property, services, or supplies would result in the violation of any prohibition or limitation otherwise applicable to that program, project, or activity.

(c) PERIODIC AUDITS BY GAO.—The Comptroller General of the United States shall make periodic audits of money and property accepted under this section, at such intervals as the Comptroller General determines to be warranted. The Comptroller General shall submit to Congress a report on the results of each such audit.

(Added Pub. L. 101–510, div. A, title XIV, § 1451(b)(1), Nov. 5, 1990, 104 Stat. 1692; amended Pub. L. 103–160, div. A, title XI, § 1105(a), Nov. 30, 1993, 107 Stat. 1749; Pub. L. 106–65, div. A, title X, § 1032(a)(3), Oct. 5, 1999, 113 Stat. 751.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in Pub. L. 101–165, title IX, § 9008, Nov. 21, 1989, 103 Stat. 1130, which was set out as a note under section 2341 of this title, prior to repeal by Pub. L. 101–510, § 1451(c).

AMENDMENTS

1999—Subsecs. (b) to (d). Pub. L. 106–65 redesignated subsecs. (c) and (d) as (b) and (c), respectively, and struck out heading and text of former subsec. (b). Text read as follows:

''(1) Not later than 30 days after the end of each quarter of each fiscal year, the Secretary of Defense shall submit to Congress a report on property, services, and supplies accepted by the Secretary under this section during the preceding quarter. The Secretary shall include in each such report a description of all property, services, and supplies having a value of more than $1,000,000.

''(2) In computing the value of any property, services, and supplies referred to in paragraph (1), the Secretary shall aggregate the value of—

''(A) similar items of property, services, and supplies accepted by the Secretary during the quarter concerned; and

''(B) components which, if assembled, would comprise all or a substantial part of an item of equipment or a facility.''

1993—Subsec. (d). Pub. L. 103–160 substituted ''Periodic Audits'' for ''Annual Audit'' in heading and amended text generally. Prior to amendment, text read as follows: ''The Comptroller General of the United States shall conduct an annual audit of property, services, and supplies accepted by the Secretary of Defense under this section and shall submit a copy of the results of each such audit to Congress.''

§ 2350h. Memorandums of agreement: Department of Defense ombudsman for foreign signatories

The Secretary of Defense shall designate an official to act as ombudsman within the Department of Defense on behalf of foreign governments who are parties to memorandums of agreement with the United States concerning acquisition matters under the jurisdiction of the Secretary of Defense. The official so designated shall assist officials of those foreign governments in understanding and complying with procedures and requirements of the Department of Defense (and, as appropriate, other departments and agencies of the United States) insofar as they relate to any such memorandum of agreement.

(Added Pub. L. 101–510, div. A, title XIV, § 1452(a)(1), Nov. 5, 1990, 104 Stat. 1693.)

DEADLINE FOR DESIGNATION OF OMBUDSMAN

Pub. L. 101–510, div. A, title XIV, § 1452(b), Nov. 5, 1990, 104 Stat. 1694, provided that the official required to be designated under this section was to be designated by the Secretary of Defense not later than 90 days after Nov. 5, 1990.

§ 2350i. Foreign contributions for cooperative projects

(a) CREDITING OF CONTRIBUTIONS.—Whenever the United States participates in a cooperative project with a friendly foreign country or the North Atlantic Treaty Organization (NATO) on a cost-sharing basis, any contribution received by the United States from that foreign country or NATO to meet its share of the costs of the project may be credited to appropriations available to an appropriate military department or another appropriate organization within the Department of Defense, as determined by the Secretary of Defense.

(b) USE OF AMOUNTS CREDITED.—The amount of a contribution credited pursuant to subsection (a) to an appropriation account in connection with a cooperative project referred to in that subsection shall be available only for payment of the share of the project expenses allocated to the foreign country or NATO making the contribution. Payments for which such amount is available include the following:

(1) Payments to contractors and other suppliers (including the Department of Defense and other participants acting as suppliers) for necessary articles and services.

(2) Payments for any damages and costs resulting from the performance or cancellation of any contract or other obligation.

(3) Payments or reimbursements of other program expenses, including program office overhead and administrative costs.

(4) Refunds to other participants.

(c) DEFINITIONS.—In this section:

(1) The term ''cooperative project'' means a jointly managed arrangement, described in a written cooperative agreement entered into by the participants, that—

(A) is undertaken by the participants in order to improve the conventional defense capabilities of the participants; and

(B) provides for—

(i) one or more participants (other than the United States) to share with the United States the cost of research and development, testing, evaluation, or joint production (including follow-on support) of defense articles;

(ii) the United States and another participant concurrently to produce in the United States and the country of such other participant a defense article jointly developed in a cooperative project described in clause (i); or

(iii) the United States to procure a defense article or a defense service from another participant in the cooperative project.

(2) The term ''defense article'' has the meaning given such term in section 47(3) of the Arms Export Control Act (22 U.S.C. 2794(3)).

(3) The term ''defense service'' has the meaning given such term in section 47(4) of the Arms Export Control Act (22 U.S.C. 2794(4)).

(Added Pub. L. 102–190, div. A, title X, § 1047(a), Dec. 5, 1991, 105 Stat. 1467.)

§ 2350j. Burden sharing contributions by designated countries and regional organizations

(a) AUTHORITY TO ACCEPT CONTRIBUTIONS.—The Secretary of Defense, after consultation with the Secretary of State, may accept cash contributions from any country or regional organization designated for purposes of this section by the Secretary of Defense, in consultation with the Secretary of State, for the purposes specified in subsection (c).

(b) ACCOUNTING.—Contributions accepted under subsection (a) which are not related to security assistance may be accepted, managed, and expended in dollars or in the currency of the host nation (or, in the case of a contribution from a regional organization, in the currency in which the contribution was provided). Any such contribution shall be placed in an account established for such purpose and shall remain available until expended for the purposes specified in subsection (c). The Secretary of Defense shall establish a separate account for such purpose for each country or regional organization from which such contributions are accepted under subsection (a).

(c) AVAILABILITY OF CONTRIBUTIONS.—Contributions accepted under subsection (a) shall be available only for the payment of the following costs:

(1) Compensation for local national employees of the Department of Defense.

(2) Military construction projects of the Department of Defense.

(3) Supplies and services of the Department of Defense.

(d) AUTHORIZATION OF MILITARY CONSTRUCTION.—Contributions placed in an account established under subsection (b) may be used—

(1) by the Secretary of Defense to carry out a military construction project that is consistent with the purposes for which the contributions were made and is not otherwise authorized by law; or

(2) by the Secretary of a military department, with the approval of the Secretary of Defense, to carry out such a project.

(e) NOTICE AND WAIT REQUIREMENTS.—(1) When a decision is made to carry out a military construction project under subsection (d), the Secretary of Defense shall submit to the congressional defense committees a report containing—

(A) an explanation of the need for the project;

(B) the then current estimate of the cost of the project; and

(C) a justification for carrying out the project under that subsection.

(2) The Secretary of Defense or the Secretary of a military department may not commence a military construction project under subsection (d) until the end of the 14-day period beginning on the date on which the Secretary of Defense submits the report under paragraph (1) regarding the project in an electronic medium pursuant to section 480 of this title.

(3)(A) A military construction project under subsection (d) may be carried out without regard to the requirement in paragraph (1) and the limitation in paragraph (2) if the project is necessary to support the armed forces in the country or region in which the project is carried out by reason of a declaration of war, or a declaration by the President of a national emergency pursuant to the National Emergencies Act (50 U.S.C. 1601 et seq.), that is in force at the time of the commencement of the project.

(B) When a decision is made to carry out a military construction project under subparagraph (A), the Secretary of Defense shall submit to the congressional defense committees—

(i) a notice of the decision; and

(ii) a statement of the current estimated cost of the project, including the cost of any real property transaction in connection with the project.

(f) REPORT ON CONTRIBUTIONS RECEIVED FROM DESIGNATED COUNTRIES.—

(1) IN GENERAL.—Not later than January 15 each year, the Secretary of Defense shall submit to the appropriate committees of Congress a report on the burden sharing contributions received under this section from designated countries.

(2) ELEMENTS.—Each report required by paragraph (1) shall include the following for the preceding fiscal year:

(A) A list of all designated countries from which burden sharing contributions were received.

(B) An explanation of the purpose for which each such burden sharing contribution was provided.

(C) A description of any written agreement entered into with a designated country under this section, including the date on which the agreement was signed.

(D) For each designated country—

(i) the amount provided by the designated country; and

(ii) the amount of any remaining unobligated balance.

(E) The amount of such burden sharing contributions expended, by eligible category, including compensation for local national employees, military construction projects, and supplies and services of the Department of Defense.

(F) Any other matter the Secretary of Defense considers relevant.

(3) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this subsection, the term ''appropriate committees of Congress'' means—

(A) the Committee on Armed Services, the Committee on Foreign Relations, and the Committee on Appropriations of the Senate; and

(B) the Committee on Armed Services, the Committee on Foreign Affairs, and the Committee on Appropriations of the House of Representatives.

(Added Pub. L. 103–160, div. A, title XIV, § 1402(a), Nov. 30, 1993, 107 Stat. 1825; amended Pub. L. 103–337, div. A, title X, § 1070(a)(10), Oct. 5, 1994, 108 Stat. 2856; Pub. L. 104–106, div. A, title XIII, § 1331, Feb. 10, 1996, 110 Stat. 482; Pub. L. 106–65, div. A, title X, § 1067(1), div. B, title XXVIII, § 2801, Oct. 5, 1999, 113 Stat. 774, 845; Pub. L. 108–136, div. A, title X, §§ 1031(a)(18), 1043(b)(12), Nov. 24, 2003, 117 Stat. 1597, 1611; Pub. L. 115–91, div. A, title X, § 1051(a)(15), div. B, title XXVIII, § 2801(f), Dec. 12, 2017, 131 Stat. 1561, 1845; Pub. L. 116–283, div. A, title XII, § 1299B, Jan. 1, 2021, 134 Stat. 3998.)

REFERENCES IN TEXT

The National Emergencies Act, referred to in subsec. (e)(3), is Pub. L. 94–412, Sept. 14, 1976, 90 Stat. 1255, as amended, which is classified principally to chapter 34 (§ 1601 et seq.) of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 50 and Tables.

CODIFICATION

Section, as added by Pub. L. 103–160, consists of text of Pub. L. 102–190, div. A, title X, § 1045, Dec. 5, 1991, 105 Stat. 1465, as amended by Pub. L. 102–484, div. A, title XIII, § 1305(a), (b), Oct. 23, 1992, 106 Stat. 2546, and revised by Pub. L. 103–160, in subsec. (a), by substituting ''The Secretary'' for ''During fiscal years 1992 and 1993, the Secretary'', inserting '', after consultation with the Secretary of State,'' after ''Secretary of Defense'', and substituting ''from any country or regional organization designated for purposes of this section by the Secretary of Defense, in consultation with the Secretary of State'' for ''from Japan, Kuwait, and the Republic of Korea'', and in former subsec. (f), by substituting ''each fiscal year'' for ''each quarter of fiscal years 1992 and 1993'', ''Congress'' for ''congressional defense committees'', ''each country and regional organization from which contributions have been accepted by the Secretary under subsection (a)'' for ''Japan, Kuwait, and the Republic of Korea'', and ''the preceding fiscal year'' for ''the preceding quarter'' in pars. (1) and (2).

AMENDMENTS

2021—Subsec. (f). Pub. L. 116–283 added subsec. (f).

2017—Subsec. (e)(2). Pub. L. 115–91, § 2801(f)(2), which directed striking out ''or, if earlier, the end of the 14-day period beginning on the date on which a copy of the report is provided'', was executed by striking out ''or, if earlier, the end of the 14-day period beginning on the date on which a copy of that report is provided'' after ''regarding the project'', to reflect the probable intent of Congress.

Pub. L. 115–91, § 2801(f)(1), substituted ''14-day period'' for ''21-day period''.

Subsec. (f). Pub. L. 115–91, § 1051(a)(15), struck out subsec. (f). Text read as follows: ''Not later than 30 days after the end of each fiscal year, the Secretary of Defense shall submit to Congress a report specifying separately for each country and regional organization from which contributions have been accepted by the Secretary under subsection (a)—

''(1) the amount of the contributions accepted by the Secretary during the preceding fiscal year under subsection (a) and the purposes for which the contributions were made; and

''(2) the amount of the contributions expended by the Secretary during the preceding fiscal year and the purposes for which the contributions were expended.''

2003—Subsec. (e)(1). Pub. L. 108–136, § 1043(b)(12)(A), substituted ''congressional defense committees'' for ''congressional committees specified in subsection (g)'' in introductory provisions.

Subsec. (e)(2). Pub. L. 108–136, § 1031(a)(18), inserted before period at end ''or, if earlier, the end of the 14-day period beginning on the date on which a copy of that report is provided in an electronic medium pursuant to section 480 of this title''.

Subsec. (e)(3)(B). Pub. L. 108–136, § 1043(b)(12)(A), substituted ''congressional defense committees'' for ''congressional committees specified in subsection (g)'' in introductory provisions.

Subsec. (g). Pub. L. 108–136, § 1043(b)(12)(B), struck out subsec. (g) which listed the congressional committees referred to in subsec. (e).

1999—Subsec. (e)(3). Pub. L. 106–65, § 2801(a), added par. (3).

Subsec. (g). Pub. L. 106–65, § 2801(b), substituted ''subsection (e)'' for ''subsection (e)(1)'' in introductory provisions.

Subsec. (g)(2). Pub. L. 106–65, § 1067(1), substituted ''Committee on Armed Services'' for ''Committee on National Security''.

1996—Subsec. (b). Pub. L. 104–106, § 1331(a), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''CREDIT TO APPROPRIATIONS.—Contributions accepted in a fiscal year under subsection (a) shall be credited to appropriations of the Department of Defense that are available for that fiscal year for the purposes for which the contributions are made. The contributions so credited shall be—

''(1) merged with the appropriations to which they are credited; and

''(2) available for the same time period as those appropriations.''

Subsec. (d). Pub. L. 104–106, § 1331(b), substituted ''placed in an account established under subsection (b)'' for ''credited under subsection (b) to an appropriation account of the Department of Defense''.

Subsec. (e)(1). Pub. L. 104–106, § 1331(c)(1), substituted ''to the congressional committees specified in subsection (g) a report'' for ''a report to the congressional defense committees''.

Subsec. (g). Pub. L. 104–106, § 1331(c)(2), added subsec. (g).

1994—Subsec. (a). Pub. L. 103–337, § 1070(a)(10)(A), inserted a comma after second reference to ''Secretary of State''.

Subsec. (f). Pub. L. 103–337, § 1070(a)(10)(B), struck out ''the'' before ''Congress'' in introductory provisions.

TEMPORARY AUTHORITY FOR ACCEPTANCE AND USE OF CONTRIBUTIONS FOR CERTAIN CONSTRUCTION, MAINTENANCE, AND REPAIR PROJECTS MUTUALLY BENEFICIAL TO THE DEPARTMENT OF DEFENSE AND KUWAIT MILITARY FORCES

Pub. L. 114–92, div. B, title XXVIII, § 2804, Nov. 25, 2015, 129 Stat. 1170, as amended by Pub. L. 114–328, div. B, title XXVIII, § 2807, Dec. 23, 2016, 130 Stat. 2715, provided that:

''(a) AUTHORITY TO ACCEPT CONTRIBUTIONS.—The Secretary of Defense, after consultation with the Sec-

retary of State, may accept cash contributions from the government of Kuwait for the purpose of paying for the costs of construction (including military construction not otherwise authorized by law), maintenance, and repair projects mutually beneficial to the Department of Defense and Kuwait military forces.

''(b) ACCOUNTING.—Contributions accepted under subsection (a) shall be placed in an account established by the Secretary of Defense and shall remain available until expended as provided in such subsection.

''(c) PROHIBITION ON USE OF CONTRIBUTIONS TO OFFSET BURDEN SHARING CONTRIBUTIONS.—Contributions accepted under subsection (a) may not be used to offset any burden sharing contributions made by the government of Kuwait.

''(d) NOTICE.—When a decision is made to carry out a project using contributions accepted under subsection (a) and the estimated cost of the project will exceed the thresholds prescribed by section 2805 of title 10, United States Code, the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives], the Committee on Foreign Relations of the Senate, and the Committee on Foreign Affairs of the House of Representatives written notice of decision, the justification for the project, and the estimated cost of the project.

''(e) MUTUALLY BENEFICIAL DEFINED.—A project described in subsection (a) shall be considered to be 'mutually beneficial' if—

''(1) the project is in support of a bilateral defense cooperation agreement between the United States and the government of Kuwait; or

''(2) the Secretary of Defense determines that the United States may derive a benefit from the project, including—

''(A) access to and use of facilities of the Kuwait military forces;

''(B) ability or capacity for future force posture; and

''(C) increased interoperability between the Department of Defense and Kuwait military forces.

''(f) EXPIRATION OF PROJECT AUTHORITY.—The authority to carry out projects under this section expires on September 30, 2030. The expiration of the authority does not prevent the continuation of any project commenced before that date.''

§ 2350k. Relocation within host nation of elements of armed forces overseas

(a) AUTHORITY TO ACCEPT CONTRIBUTIONS.—The Secretary of Defense may accept contributions from any nation because of or in support of the relocation of elements of the armed forces from or to any location within that nation. Such contributions may be accepted in dollars or in the currency of the host nation. Any such contribution shall be placed in an account established for such purpose and shall remain available until expended for the purposes specified in subsection (b). The Secretary shall establish a separate account for such purpose for each country from which such contributions are accepted.

(b) USE OF CONTRIBUTIONS.—The Secretary may use a contribution accepted under subsection (a) only for payment of costs incurred in connection with the relocation concerning which the contribution was made. Those costs include the following:

(1) Design and construction services, including development and review of statements of work, master plans and designs, acquisition of construction, and supervision and administration of contracts relating thereto.

(2) Transportation and movement services, including packing, unpacking, storage, and transportation.

(3) Communications services, including installation and deinstallation of communications equipment, transmission of messages and data, and rental of transmission capability.

(4) Supply and administration, including acquisition of expendable office supplies, rental of office space, budgeting and accounting services, auditing services, secretarial services, and translation services.

(5) Personnel costs, including salary, allowances and overhead of employees whether full-time or part-time, temporary or permanent (except for military personnel), and travel and temporary duty costs.

(6) All other clearly identifiable expenses directly related to relocation.

(c) METHOD OF CONTRIBUTION.—Contributions may be accepted in any of the following forms:

(1) Irrevocable letter of credit issued by a financial institution acceptable to the Treasurer of the United States.

(2) Drawing rights on a commercial bank account established and funded by the host nation, which account is blocked such that funds deposited cannot be withdrawn except by or with the approval of the United States.

(3) Cash, which shall be deposited in a separate trust fund in the United States Treasury pending expenditure and which shall accrue interest in accordance with section 9702 of title 31.

(Added Pub. L. 104–106, div. A, title XIII, §1332(a)(1), Feb. 10, 1996, 110 Stat. 482; amended Pub. L. 107–314, div. A, title X, §1041(a)(11), Dec. 2, 2002, 116 Stat. 2645.)

AMENDMENTS

2002—Subsec. (d). Pub. L. 107–314 struck out heading and text of subsec. (d). Text read as follows: ''Not later than 30 days after the end of each fiscal year, the Secretary shall submit to Congress a report specifying—

''(1) the amount of the contributions accepted by the Secretary during the preceding fiscal year under subsection (a) and the purposes for which the contributions were made; and

''(2) the amount of the contributions expended by the Secretary during the preceding fiscal year and the purposes for which the contributions were expended.''

EFFECTIVE DATE

Pub. L. 104–106, div. A, title XIII, §1332(b), Feb. 10, 1996, 110 Stat. 484, provided that: ''Section 2350k of title 10, United States Code, as added by subsection (a), shall take effect on the date of the enactment of this Act [Feb. 10, 1996] and shall apply to contributions for relocation of elements of the Armed Forces in or to any nation received on or after such date.''

§ 2350*l*. Cooperative agreements for reciprocal use of test facilities: foreign countries and international organizations

(a) AUTHORITY.—The Secretary of Defense, with the concurrence of the Secretary of State, may enter into a memorandum of understanding (or other formal agreement) with a foreign country or international organization to provide for the testing, on a reciprocal basis, of defense equipment (1) by the United States using test facilities of that country or organization, and (2) by that country or organization using test facilities of the United States.

(b) PAYMENT OF COSTS.—A memorandum or other agreement under subsection (a) shall provide that, when a party to the agreement uses a test facility of another party to the agreement, the party using the test facility is charged by the party providing the test facility in accordance with the following principles:

(1) The user party shall be charged the amount equal to the direct costs incurred by the provider party in furnishing test and evaluation services by the providing party's officers, employees, or governmental agencies.

(2) The user party may also be charged indirect costs relating to the use of the test facility, but only to the extent specified in the memorandum or other agreement.

(c) DETERMINATION OF INDIRECT COSTS; DELEGATION OF AUTHORITY.—(1) The Secretary of Defense shall determine the appropriateness of the amount of indirect costs charged by the United States pursuant to subsection (b)(2).

(2) The Secretary may delegate the authority under paragraph (1) only to the Deputy Secretary of Defense and to one other official of the Department of Defense.

(d) RETENTION OF FUNDS COLLECTED BY THE UNITED STATES.—Amounts collected by the United States from a party using a test facility of the United States pursuant to a memorandum or other agreement under this section shall be credited to the appropriation accounts from which the costs incurred by the United States in providing such test facility were paid.

(e) DEFINITIONS.—In this section:

(1) The term ''direct cost'', with respect to the use of a test facility pursuant to a memorandum or other agreement under subsection (a)—

(A) means any item of cost that is easily and readily identified to a specific unit of work or output within the test facility where the use occurred, that would not have been incurred if such use had not occurred; and

(B) may include costs of labor, materials, facilities, utilities, equipment, supplies, and any other resources of the test facility that are consumed or damaged in connection with—

(i) the use; or

(ii) the maintenance of the test facility for purposes of the use.

(2) The term ''indirect cost'', with respect to the use of a test facility pursuant to a memorandum or other agreement under subsection (a)—

(A) means any item of cost that is not easily and readily identified to a specific unit of work or output within the test facility where the use occurred; and

(B) may include general and administrative expenses for such activities as supporting base operations, manufacturing, supervision, procurement of office supplies, and utilities that are accumulated costs allocated among several users.

(3) The term ''test facility'' means a range or other facility at which testing of defense equipment may be carried out.

(Added Pub. L. 107–107, div. A, title XII, §1213(a), Dec. 28, 2001, 115 Stat. 1250.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§1801(d), 1844(b)(1), Jan. 1, 2021, 134 Stat. 4151, 4245, provided in part that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 307 of this title, as added by section 1844(a) of Pub. L. 116–283, inserted after section 4144, and redesignated as section 4145 of this title. See Effective Date of 2021 Amendment note below.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 2350m.[1] Participation in European program on multilateral exchange of surface transportation services

(a) PARTICIPATION AUTHORIZED.—

(1) IN GENERAL.—The Secretary of Defense, with the concurrence of the Secretary of State, may authorize the participation of the Department of Defense in the Surface Exchange of Services program (in this section referred to as the ''SEOS program'') of the Movement Coordination Centre Europe.

(2) SCOPE OF PARTICIPATION.—Participation of the Department of Defense in the SEOS program under paragraph (1) may include—

(A) the reciprocal exchange or transfer of surface transportation on a reimbursable basis or by replacement-in-kind; and

(B) the exchange of surface transportation services of an equal value.

(b) WRITTEN ARRANGEMENT OR AGREEMENT.—

(1) IN GENERAL.—Participation of the Department of Defense in the SEOS program shall be in accordance with a written arrangement or agreement entered into by the Secretary of Defense, with the concurrence of the Secretary of State, and the Movement Coordination Centre Europe.

(2) NOTIFICATION.—The Secretary of Defense shall provide to the congressional defense committees notification of any arrangement or agreement entered into under paragraph (1).

(3) FUNDING ARRANGEMENTS.—If Department of Defense facilities, equipment, or funds are used to support the SEOS program, the written arrangement or agreement under paragraph (1) shall specify the details of any equitable cost-sharing or other funding arrangement.

(4) OTHER ELEMENTS.—Any written arrangement or agreement entered into under paragraph (1) shall require that any accrued credits or liability resulting from an unequal exchange or transfer of surface transportation services shall be liquidated through the SEOS program not less than once every five years.

(c) IMPLEMENTATION.—In carrying out any arrangement or agreement entered into under subsection (b), the Secretary of Defense may—

[1] Another section 2350m is set out after section 2350p of this title.

(1) pay the equitable share of the Department of Defense for the operating expenses of the Movement Coordination Centre Europe and the SEOS program from funds available to the Department of Defense for operation and maintenance; and

(2) assign members of the armed forces or Department of Defense civilian personnel, within billets authorized for the United States European Command, to duty at the Movement Coordination Centre Europe as necessary to fulfill Department of Defense obligations under that arrangement or agreement.

(d) CREDITING OF RECEIPTS.—Any amount received by the Department of Defense as part of the SEOS program shall be credited, at the option of the Secretary of Defense, to—

(1) the appropriation, fund, or account used in incurring the obligation for which such amount is received; or

(2) an appropriate appropriation, fund, or account currently available for the purposes for which the expenditures were made.

(e) ANNUAL REPORT.—

(1) IN GENERAL.—Not later than 30 days after the end of each fiscal year in which the authority under this section is in effect, the Secretary of Defense shall submit to the congressional defense committees a report on Department of Defense participation in the SEOS program during such fiscal year.

(2) ELEMENTS.—Each report required by paragraph (1) shall include the following:

(A) A description of the equitable share of the costs and activities of the SEOS program paid by the Department of Defense.

(B) A description of any amount received by the Department of Defense as part of such program, including the country from which the amount was received.

(f) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this section may be construed to authorize the use of foreign sealift in violation of section 2631.

(Added Pub. L. 116–283, div. A, title XII, § 1202(a), Jan. 1, 2021, 134 Stat. 3908.)

PRIOR PROVISIONS

A prior section 2350m was renumbered section 344 of this title.

§ 2350n. North Atlantic Treaty Organization Joint Force Command

(a) AUTHORIZATION.—The Secretary of Defense shall authorize the establishment of, and the participation by members of the armed forces in, the North Atlantic Treaty Organization Joint Force Command (in this section referred to as the ''Joint Force Command''), to be established in the United States.

(b) USE OF DEPARTMENT OF DEFENSE FACILITIES AND EQUIPMENT.—The Secretary may use facilities and equipment of the Department of Defense to support the Joint Force Command.

(c) AVAILABILITY OF FUNDS.—Amounts authorized to be appropriated to the Department of Defense shall be available to carry out the purposes of this section.

(Added Pub. L. 116–92, div. A, title XII, § 1249(a), Dec. 20, 2019, 133 Stat. 1664.)

§ 2350*o*. Participation in programs relating to coordination or exchange of air refueling and air transportation services

(a) PARTICIPATION AUTHORIZED.—

(1) IN GENERAL.—The Secretary of Defense, with the concurrence of the Secretary of State, may authorize the participation of the Department of Defense in programs relating to the coordination or exchange of air refueling and air transportation services, including in the arrangement known as the Air Transport and Air-to-Air Refueling and other Exchanges of Services program (in this section referred to as the ''ATARES program'').

(2) SCOPE OF PARTICIPATION.—Participation of the Department of Defense in programs referred to in paragraph (1) may include—

(A) the reciprocal exchange or transfer of air refueling and air transportation services on a reimbursable basis or by replacement-in-kind; and

(B) the exchange of air refueling and air transportation services of an equal value.

(3) LIMITATIONS WITH RESPECT TO PARTICIPATION IN ATARES PROGRAM.—

(A) IN GENERAL.—The Department of Defense balance of executed flight hours in participation in the ATARES program under paragraph (1), whether as credits or debits, may not exceed a total of 500 hours.

(B) AIR REFUELING.—The Department of Defense balance of executed flight hours for air refueling in participation in the ATARES program under paragraph (1) may not exceed 200 hours.

(b) WRITTEN ARRANGEMENT OR AGREEMENT.—Participation of the Department of Defense in a program referred to in subsection (a)(1) shall be in accordance with a written arrangement or agreement entered into by the Secretary of Defense, with the concurrence of the Secretary of State.

(c) IMPLEMENTATION.—In carrying out any arrangement or agreement entered into under subsection (b), the Secretary of Defense may—

(1) pay the equitable share of the Department of Defense for the recurring and nonrecurring costs of the applicable program referred to in subsection (a)(1) from funds available to the Department for operation and maintenance; and

(2) assign members of the armed forces or Department of Defense civilian personnel to fulfill Department obligations under that arrangement or agreement.

(Added Pub. L. 116–283, div. A, title XII, § 1203(a), Jan. 1, 2021, 134 Stat. 3910.)

AUTHORITY TO ESTABLISH A MOVEMENT COORDINATION CENTER PACIFIC IN THE INDO-PACIFIC REGION

Pub. L. 116–283, div. A, title X, § 1061, Jan. 1, 2021, 134 Stat. 3858, provided that:

''(a) AUTHORITY TO ESTABLISH.—

''(1) IN GENERAL.—The Secretary of Defense, with the concurrence of the Secretary of State, may authorize—

''(A) the establishment of a Movement Coordination Center Pacific (in this section referred to as the 'Center'); and

''(B) the participation of the Department of Defense in an Air Transport and Air-to-Air refueling

and other Exchanges of Services program (in this section referred to as the 'ATARES program') of the Center.

''(2) SCOPE OF PARTICIPATION.—Participation in the ATARES program under paragraph (1)(B) shall be limited to the reciprocal exchange or transfer of air transportation and air refueling services on a reimbursable basis or by replacement-in-kind or the exchange of air transportation or air refueling services of an equal value with foreign militaries.

''(3) LIMITATIONS.—The Department of Defense's balance of executed transportation hours, whether as credits or debits, in participation in the ATARES program under paragraph (1)(B) may not exceed 500 hours. The Department of Defense's balance of executed flight hours for air refueling in the ATARES program under paragraph (1)(B) may not exceed 200 hours.

''(b) WRITTEN ARRANGEMENT OR AGREEMENT.—

''(1) ARRANGEMENT OR AGREEMENT REQUIRED.—The participation of the Department of Defense in the ATARES program under subsection (a) shall be in accordance with a written arrangement or agreement entered into by the Secretary of Defense, with the concurrence of the Secretary of State.

''(2) FUNDING ARRANGEMENTS.—If Department of Defense facilities, equipment, or funds are used to support the ATARES program, the written arrangement or agreement under paragraph (1) shall specify the details of any equitable cost-sharing or other funding arrangement.

''(3) OTHER ELEMENTS.—Any written arrangement or agreement entered into under paragraph (1) shall require that any accrued credits and liabilities resulting from an unequal exchange or transfer of air transportation or air refueling services shall be liquidated, not less than once every 5 years, through the ATARES program.

''(c) IMPLEMENTATION.—In carrying out any written arrangement or agreement entered into under subsection (b), the Secretary of Defense may—

''(1) pay the Department of Defense's equitable share of the operating expenses of the Center and the ATARES program from funds available to the Department of Defense for operation and maintenance; and

''(2) assign members of the Armed Forces or Department of Defense civilian personnel, within billets authorized for the United States Indo-Pacific Command, to duty at the Center as necessary to fulfill the obligations of the Department of Defense under that arrangement or agreement.''

§ 2350p. Reciprocal patient movement agreements

(a) AUTHORITY.—Subject to the availability of appropriations, the Secretary of Defense, with the concurrence of the Secretary of State, may enter into a bilateral or multilateral memorandum of understanding or other formal agreement with one or more governments of partner countries that provides for—

(1) the interchangeable, nonreimbursable use of patient movement personnel, either individually or as members of a patient movement crew or team, and equipment, belonging to one partner country to perform patient movement services aboard the aircraft, vessels, or vehicles of another partner country;

(2) the reciprocal recognition and acceptance of —

(A) national professional credentials, certifications, and licenses of patient movement personnel; and

(B) national certifications, approvals, and licenses of equipment used in the provision of patient movement services; and

(3) the acceptance of agreed-upon standards for the provision of patient movement services by aircraft, vessel, or vehicle, including, as determined to be beneficial and otherwise permitted by law, the harmonization of patient treatment standards and procedures.

(b) CERTIFICATION.—(1) Before entering into a memorandum of understanding or other formal agreement with the government of a partner country under this section, the Secretary of Defense shall certify in writing that the professional credentials, certifications, licenses, and approvals for patient movement personnel and patient movement equipment of the partner country—

(A) meet or exceed the equivalent standards of the United States for similar personnel and equipment; and

(B) will provide for a level of care comparable to, or better than, the level of care provided by the Department of Defense.

(2) A certification under paragraph (1) shall be—

(A) submitted to the appropriate committees of Congress not later than 15 days after the date on which the Secretary of Defense makes the certification; and

(B) reviewed and recertified by the Secretary of Defense not less frequently than annually.

(c) SUSPENSION.—If the Secretary of Defense is unable to recertify a partner country as required by subsection (b)(2)(B), use of the personnel or equipment of the partner country by the Department of Defense under a memorandum of understanding or other formal agreement concluded pursuant to subsection (a) shall be suspended until the date on which the Secretary of Defense is able to recertify the partner country.

(d) DEFINITIONS.—In this section:

(1) APPROPRIATE COMMITTEES OF CONGRESS.—The term ''appropriate committees of Congress'' means—

(A) the congressional defense committees; and

(B) the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives.

(2) PARTNER COUNTRY.—The term ''partner country'' means any of the following:

(A) A member country of the North Atlantic Treaty Organization.

(B) Australia.

(C) Japan.

(D) New Zealand.

(E) The Republic of Korea.

(F) Any other country designated as a partner country by the Secretary of Defense, with the concurrence of the Secretary of State, for purposes of this section.

(3) PATIENT MOVEMENT.—The term ''patient movement'' means the act or process of moving wounded, ill, injured, or other persons (including contaminated, contagious, and potentially exposed patients) to obtain medical, surgical, mental health, or dental care or treatment.

(Added Pub. L. 116–283, div. A, title XII, § 1204(a), Jan. 1, 2021, 134 Stat. 3911.)

§ 2350m.[1] Execution of projects under the North Atlantic Treaty Organization Security Investment Program

(a) AUTHORITY TO EXECUTE PROJECTS.—When the United States is designated as the Host Nation for purposes of executing a project under the North Atlantic Treaty Organization Security Investment Program (in this section referred to as the ''Program''), the Secretary of Defense may accept such designation and carry out such project consistent with the requirements of this section.

(b) PROJECT FUNDING.—The Secretary of Defense may fund authorized expenditures of projects accepted under subsection (a) with—

(1) contributions under subsection (c);

(2) appropriations of the Department of Defense for the Program when directed by the North Atlantic Treaty Organization to apply amounts of such appropriations as part of the share of contributions of the United States for the Program; or

(3) any combination of amounts described in paragraphs (1) and (2).

(c) AUTHORITY TO ACCEPT CONTRIBUTIONS.—(1) The Secretary of Defense may accept contributions from the North Atlantic Treaty Organization and member nations of the North Atlantic Treaty Organization for the purpose of carrying out a project under subsection (a).

(2) Contributions accepted under paragraph (1) shall be placed in an account established for the purpose of carrying out the project for which the funds were provided and shall remain available until expended.

(3)(A) If contributions are made under paragraph (1) as reimbursement for a project or portion of a project previously completed by the Department of Defense, such contributions shall be credited to—

(i) the appropriations used for the project or portion thereof, if such appropriations have not yet expired; or

(ii) the appropriations for the Program, if the appropriations described in clause (i) have expired.

(B) Funding credited under subparagraph (A) shall merge with and remain available for the same purposes and duration as the appropriations to which credited.

(d) OBLIGATION AUTHORITY.—The construction agent of the Department of Defense designated by the Secretary of Defense to execute a project under subsection (a) may recognize the North Atlantic Treaty Organization project authorization amounts as budgetary resources to incur obligations against for the purposes of executing the project.

(e) INSUFFICIENT CONTRIBUTIONS.—(1) In the event that the North Atlantic Treaty Organization does not agree to contribute funding for all costs necessary for the Department of Defense to carry out a project under subsection (a), including necessary personnel costs of the construction agent designated by the Department of Defense, contract claims, and any conjunctive funding requirements that exceed the project authorization or standards of the North Atlantic Treaty Organization, the Secretary of Defense, upon determination that completion of the project is in the national interest of the United States, may fund such costs, and undertake such conjunctively funded requirements not otherwise authorized by law, using any unobligated funds available among funds appropriated for the Program for military construction.

(2) The use of funds under paragraph (1) from appropriations for the Program may be in addition to or in place of any other funding sources otherwise available for the purposes for which those funds are used.

(f) AUTHORIZED EXPENDITURES DEFINED.—In this section, the term ''authorized expenditures'' means project expenses for which the North Atlantic Treaty Organization has agreed to contribute funding.

(Added Pub. L. 116–283, div. B, title XXV, § 2503(a), Jan. 1, 2021, 134 Stat. 4309.)

PRIOR PROVISIONS

A prior section 2350m was renumbered section 344 of this title.

EFFECTIVE DATE

Pub. L. 116–283, div. B, § 2003, Jan. 1, 2021, 134 Stat. 4295, provided that: ''Titles XXI through XXVII and title XXIX [see Tables for classification] shall take effect on the later of—

''(1) October 1, 2020; or

''(2) the date of the enactment of this Act [Jan. 1, 2021].''

CHAPTER 139—RESEARCH AND DEVELOPMENT

Sec.
2351. Availability of appropriations.
[2352. Repealed.]
2353. Contracts: acquisition, construction, or furnishing of test facilities and equipment.
2354. Contracts: indemnification provisions.
[2355, 2356. Repealed.]
2357. Technology protection features activities.
2358. Research and development projects.
2358a. Authorities for certain positions at science and technology reinvention laboratories.
2358b. Joint reserve detachment of the Defense Innovation Unit.
2358c. Enhanced pay authority for certain research and technology positions in science and technology reinvention laboratories.
2359. Science and technology programs to be conducted so as to foster the transition of science and technology to higher levels of research, development, test, and evaluation.
2359a. Defense Research and Development Rapid Innovation Program.
2359b. Defense Acquisition Challenge Program.
2360. Research and development laboratories: contracts for services of university students.
2361. Award of grants and contracts to colleges and universities: requirement of competition.
2361a. Extramural acquisition innovation and research activities.
2362. Research and educational programs and activities: historically black colleges and universities and minority-serving institutions of higher education.
2363. Mechanisms to provide funds for defense laboratories for research and development of technologies for military missions.
2364. Coordination and communication of defense research activities and technology domain awareness.

[1] Another section 2350m is set out after section 2350*l* of this title.

Sec.
2365. Global Research Watch Program.
2366. Major systems and munitions programs: survivability testing and lethality testing required before full-scale production.
2366a. Major defense acquisition programs: determination required before Milestone A approval.
2366b. Major defense acquisition programs: certification required before Milestone B approval.
2366c. Major defense acquisition programs: submissions to Congress on Milestone C.
2367. Use of federally funded research and development centers.
2368. Centers for Science, Technology, and Engineering Partnership.
[2369 to 2370a. Repealed.]
2371. Research projects: transactions other than contracts and grants.
2371a. Cooperative research and development agreements under Stevenson-Wydler Technology Innovation Act of 1980.
2371b. Authority of the Department of Defense to carry out certain prototype projects.
2372. Independent research and development costs: allowable costs.
2372a. Bid and proposal costs: allowable costs.
2373. Procurement for experimental purposes.
2374. Merit-based award of grants for research and development.
2374a. Prizes for advanced technology achievements.
2374b. Disclosure requirements for recipients of research and development funds.

REPEAL OF CHAPTER

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1881(a), Jan. 1, 2021, 134 Stat. 4151, 4293, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this chapter is repealed. See Effective Date of Repeal note below.

AMENDMENTS

2021—Pub. L. 116–283, div. A, title II, § 212(a)(2), title XI, § 1115(b), Jan. 1, 2021, 134 Stat. 3456, 3896, added items 2358c and 2374b.

2019—Pub. L. 116–92, div. A, title II, § 213(a)(2), title VIII, § 835(a)(2), Dec. 20, 2019, 133 Stat. 1257, 1496, added items 2361a and 2358b.

2018—Pub. L. 115–232, div. A, title II, §§ 223(b), 224(a)(2), Aug. 13, 2018, 132 Stat. 1683, 1684, added items 2357 and 2359a.

2017—Pub. L. 115–91, div. A, title II, § 220(b), title X, § 1081(a)(33), Dec. 12, 2017, 131 Stat. 1333, 1596, added item 2363 and inserted a period at end of items 2372 and 2372a.

2016—Pub. L. 114–328, div. A, title VIII, §§ 808(c)(2), 824(a)(2), (b)(2), title XI, § 1122(a)(2), Dec. 23, 2016, 130 Stat. 2266, 2277, 2279, 2455, added items 2358a, 2366c, 2372, and 2372a and struck out former item 2372 ''Independent research and development and bid and proposal costs: payments to contractors''.

2015—Pub. L. 114–92, div. A, title II, §§ 211(b), 214(b), title VIII, §§ 815(a)(2), 823(b), title X, § 1078(c)(2), Nov. 25, 2015, 129 Stat. 767, 769, 896, 903, 999, added items 2368 and 2371b, substituted ''Coordination and communication of defense research activities and technology domain awareness'' for ''Coordination and communication of defense research activities'' in item 2364 and ''Major defense acquisition programs: determination required before Milestone A approval'' for ''Major defense acquisition programs: certification required before Milestone A approval'' in item 2366a, and struck out item 2352 ''Defense Advanced Research Projects Agency: biennial strategic plan''.

2013—Pub. L. 112–239, div. A, title X, § 1076(g)(4), Jan. 2, 2013, 126 Stat. 1955, struck out item 2374b ''Prizes for achievements in promoting science, mathematics, engineering, or technology education''.

2011—Pub. L. 112–81, div. A, title VIII, § 801(e)(3), Dec. 31, 2011, 125 Stat. 1484, substituted ''Major defense acquisition programs: certification required before Milestone A approval'' for ''Major defense acquisition programs: certification required before Milestone A or Key Decision Point A approval'' in item 2366a and ''Major defense acquisition programs: certification required before Milestone B approval'' for ''Major defense acquisition programs: certification required before Milestone B or Key Decision Point B approval'' in item 2366b.

Pub. L. 112–81, div. A, title II, § 251(a)(2), (b), Dec. 31, 2011, 125 Stat. 1347, effective Oct. 1, 2013, struck out item 2359a ''Technology Transition Initiative''.

2009—Pub. L. 111–84, div. A, title II, § 252(b), Oct. 28, 2009, 123 Stat. 2243, added item 2362.

2008—Pub. L. 110–417, [div. A], title VIII, § 813(c), Oct. 14, 2008, 122 Stat. 4527, added items 2366a and 2366b and struck out former items 2366a ''Major defense acquisition programs: certification required before Milestone B approval or Key Decision Point B approval'' and 2366b ''Major defense acquisition programs: certification required before Milestone A or Key Decision Point A approval''.

Pub. L. 110–181, div. A, title IX, § 943(a)(2), Jan. 28, 2008, 122 Stat. 289, added item 2366b.

2006—Pub. L. 109–163, div. A, title VIII, § 801(b), Jan. 6, 2006, 119 Stat. 3367, added item 2366a.

2004—Pub. L. 108–375, div. A, title X, § 1005(b), Oct. 28, 2004, 118 Stat. 2036, struck out item 2370a ''Medical countermeasures against biowarfare threats: allocation of funding between near-term and other threats''.

2003—Pub. L. 108–136, div. A, title II, §§ 231(b), 232(b), Nov. 24, 2003, 117 Stat. 1422, 1423, added items 2352 and 2365.

2002—Pub. L. 107–314, div. A, title II, §§ 242(a)(2), 243(b), 248(c)(2), Dec. 2, 2002, 116 Stat. 2495, 2498, 2503, added items 2359a, 2359b, and 2374b.

2000—Pub. L. 106–398, § 1 [[div. A], title IX, § 904(a)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–225, added item 2359.

1999—Pub. L. 106–65, div. A, title II, § 244(b), Oct. 5, 1999, 113 Stat. 552, added item 2374a.

1996—Pub. L. 104–201, div. A, title II, § 267(c)(1)(C), Sept. 23, 1996, 110 Stat. 2468, added item 2371a.

Pub. L. 104–106, div. A, title VIII, § 802(b), title X, §§ 1061(j)(2), 1062(c)(2), Feb. 10, 1996, 110 Stat. 390, 443, 444, struck out items 2352 ''Contracts: notice to Congress required for contracts performed over period exceeding 10 years'', 2356 ''Contracts: delegations'', and 2370 ''Biological Defense Research Program''.

1994—Pub. L. 103–355, title I, § 1301(c), title II, § 2002(b), title III, § 3062(b), title VII, § 7203(a)(3), Oct. 13, 1994, 108 Stat. 3287, 3303, 3337, 3380, added item 2374, substituted in item 2358 ''Research and development projects'' for ''Research projects'' and in item 2371 ''Research projects: transactions other than contracts and grants'' for ''Advanced research projects: cooperative agreements and other transactions'', and struck out item 2355 ''Contracts: vouchering procedures'' and item 2369 ''Product evaluation activity''.

1993—Pub. L. 103–160, div. A, title II, § 214(b), title VIII, § 828(a)(2), (c)(2), Nov. 30, 1993, 107 Stat. 1586, 1713, 1714, struck out item 2362 ''Testing requirements: wheeled or tracked armored vehicles'' and added items 2370a and 2373.

1992—Pub. L. 102–484, div. A, title VIII, § 821(c)(2), div. D, title XLII, § 4271(b)(3), Oct. 23, 1992, 106 Stat. 2460, 2696, struck out items 2363 ''Encouragement of technology transfer'' and 2365 ''Competitive prototype strategy requirement: major defense acquisition programs''.

1991—Pub. L. 102–190, div. A, title VIII, §§ 802(a)(2), 803(a)(2), 821(c)(2), Dec. 5, 1991, 105 Stat. 1414, 1415, 1431, substituted item 2352 for former item 2352 ''Contracts: limited to five-year terms'', struck out item 2368 ''Critical technologies research'', and substituted item 2372 for former item 2372 ''Independent research and development''.

Pub. L. 102–25, title VII, § 701(e)(5), Apr. 6, 1991, 105 Stat. 114, inserted period at end of item 2366.

1990—Pub. L. 101–510, div. A, title II, § 241(b), title VIII, § 824(a)(2), title XIII, § 1331(5), Nov. 5, 1990, 104 Stat.

1517, 1604, 1673, struck out items 2357 ''Contracts: reports to Congress'' and 2359 ''Salaries of officers of Federal contract research centers: reports to Congress'' and added items 2370 and 2372.

1989—Pub. L. 101–189, div. A, title II, § 251(a)(2), title VIII, §§ 802(c)(4)(B), 841(c)(2), Nov. 29, 1989, 103 Stat. 1404, 1486, 1514, substituted ''testing and lethality testing required before full-scale production'' for ''and lethality testing; operational testing'' in item 2366, substituted ''research'' for ''plan'' in item 2368, and added item 2371.

1988—Pub. L. 100–456, div. A, title II, § 220(b), title VIII, §§ 823(a)(2), 842(b), Sept. 29, 1988, 102 Stat. 1941, 2018, 2026, added items 2361, 2368, and 2369.

Pub. L. 100–370, § 1(g)(4), July 19, 1988, 102 Stat. 847, added item 2351, and struck out item 2361 ''Availability of appropriations''.

1987—Pub. L. 100–180, div. A, title XII, § 1231(10)(C), (12), Dec. 4, 1987, 101 Stat. 1160, substituted ''defense'' for ''Defense'' in item 2364 and ''federally'' for ''Federally'' in item 2367.

Pub. L. 100–26, § 5(3)(B), Apr. 21, 1987, 101 Stat. 274, made technical amendment to directory language of section 909(a)(2) of Pub. L. 99–500, Pub. L. 99–591, and 99–661. See 1986 Amendment note below.

Pub. L. 100–26, § 3(1)(B), Apr. 21, 1987, 101 Stat. 273, made technical amendment to directory language of section 234(c)(2) of Pub. L. 99–661. See 1986 Amendment note below.

1986—Pub. L. 99–661, div. A, title II, § 234(c)(2), Nov. 14, 1986, 100 Stat. 3849, as amended by Pub. L. 100–26, § 3(1)(B), Apr. 21, 1987, 101 Stat. 273, added item 2364.

Pub. L. 99–500, § 101(c) [title X, §§ 909(a)(2), 910(a)(2), 912(a)(2)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–143, 1783–144, 1783–146, and Pub. L. 99–591, § 101(c) [title X, §§ 909(a)(2), 910(a)(2), 912(a)(2)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–143, 3341–144, 3341–146; Pub. L. 99–661, div. A, title IX, formerly title IV, §§ 909(a)(2), 910(a)(2), 912(a)(2), Nov. 14, 1986, 100 Stat. 3849, 3922, 3924, 3926, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; as amended by Pub. L. 100–26, § 5(3)(B), Apr. 21, 1987, 101 Stat. 274, amended analysis identically, adding items 2365, 2366, and 2367.

1985—Pub. L. 99–145, title I, § 123(a)(2), title XIV, § 1457(b), Nov. 8, 1985, 99 Stat. 601, 763, added items 2362 and 2363.

1982—Pub. L. 97–258, § 2(b)(3)(A), Sept. 13, 1982, 96 Stat. 1052, added item 2361.

1981—Pub. L. 97–86, title VI, § 603(b), Dec. 1, 1981, 95 Stat. 1110, added item 2360.

1979—Pub. L. 96–107, title VIII, 819(a)(2), Nov. 9, 1979, 93 Stat. 819, added item 2359.

1962—Pub. L. 87–651, title II, § 208(b), Sept. 7, 1962, 76 Stat. 523, added item 2358.

1958—Pub. L. 85–599, § 3(d), Aug. 6, 1958, 72 Stat. 516, struck out item 2351 ''Policy, plans, and coordination''.

EFFECTIVE DATE OF REPEAL

Repeal effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 2351. Availability of appropriations

(a) Funds appropriated to the Department of Defense for research and development remain available for obligation for a period of two consecutive years.

(b) Funds appropriated to the Department of Defense for research and development may be used—

(1) for the purposes of section 2353 of this title; and

(2) for purposes related to research and development for which expenditures are specifically authorized in other appropriations of the Department of Defense.

(Added Pub. L. 97–258, § 2(b)(3)(B), Sept. 13, 1982, 96 Stat. 1052, § 2361; renumbered § 2351 and amended Pub. L. 100–370, § 1(g)(1), July 19, 1988, 102 Stat. 846.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1809(b), Jan. 1, 2021, 134 Stat. 4151, 4161, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 207 of this title, as amended by section 1809(a) of Pub. L. 116–283, inserted after the table of sections, and redesignated as section 3131 of this title. See Effective Date of 2021 Amendment note below.

HISTORICAL AND REVISION NOTES

1982 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2361	31:649c(2).	Aug. 10, 1956, ch. 1041, § 40(2), 70A Stat. 636; Nov. 17, 1971, Pub. L. 92–156, § 201(b), 85 Stat. 424.

The words ''Unless otherwise provided in the appropriation Act concerned'' are omitted as unnecessary and for consistency. The word ''Funds'' is substituted for ''moneys'' for consistency in title 10.

1988 ACT

Subsection (a) is based on section 2361 of this title.

Subsection (b) is based on Pub. L. 99–190, § 101(b) [title VIII, § 8015], Dec. 19, 1985, 99 Stat. 1185, 1205.

PRIOR PROVISIONS

A prior section 2351, act Aug. 10, 1956, ch. 1041, 70A Stat. 133, related to policy, plans, and coordination relative to research and development on scientific problems relating to the national security, prior to repeal by Pub. L. 85–599, § 3(d).

AMENDMENTS

1988—Pub. L. 100–370 renumbered section 2361 of this title as this section, designated such provisions as subsec. (a), and added subsec. (b).

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

[§ 2352. Repealed. Pub. L. 114–92, div. A, title X, § 1078(c)(1), Nov. 25, 2015, 129 Stat. 999]

Section, added Pub. L. 108–136, div. A, title II, § 232(a), Nov. 24, 2003, 117 Stat. 1422; amended Pub. L. 113–66, div. A, title II, § 211(a), (b), Dec. 26, 2013, 127 Stat. 703, related to the biennial strategic plan of the Defense Advanced Research Projects Agency.

A prior section 2352, acts Aug. 10, 1956, ch. 1041, 70A Stat. 133; Dec. 5, 1991, Pub. L. 102–190, div. A, title VIII, § 803(a)(1), 105 Stat. 1414; Pub. L. 102–484, div. A, title X, § 1053(4), Oct. 23, 1992, 106 Stat. 2501, required Secretary of military department to give notice to Congress of contracts performed over a period exceeding 10 years, prior to repeal by Pub. L. 104–106, div. A, title X, § 1062(c)(1), Feb. 10, 1996, 110 Stat. 444.

§ 2353. Contracts: acquisition, construction, or furnishing of test facilities and equipment

(a) A contract of a military department for research or development, or both, may provide for

the acquisition or construction by, or furnishing to, the contractor, of research, developmental, or test facilities and equipment that the Secretary of the military department concerned determines to be necessary for the performance of the contract. The acquisition or construction of these research, developmental, or test facilities shall be subject to the cost principles applicable to allowable contract expenses. The facilities and equipment, and specialized housing for them, may be acquired or constructed at the expense of the United States, and may be lent or leased to the contractor with or without reimbursement, or may be sold to him at fair value. This subsection does not authorize new construction or improvements having general utility. The Secretary of Defense and the Secretaries of the military departments shall promulgate regulations necessary to give full force and effect to this section.

(b) Facilities that would not be readily removable or separable without unreasonable expense or unreasonable loss of value may not be installed or constructed under this section on property not owned by the United States, unless the contract contains—

(1) a provision for reimbursing the United States for the fair value of the facilities at the completion or termination of the contract or within a reasonable time thereafter;

(2) an option in the United States to acquire the underlying land; or

(3) an alternative provision that the Secretary concerned considers to be adequate to protect the interests of the United States in the facilities.

(c) Proceeds of sales or reimbursements under this section shall be paid into the Treasury as miscellaneous receipts, except to the extent otherwise authorized by law with respect to property acquired by the contractor.

(Aug. 10, 1956, ch. 1041, 70A Stat. 134; Pub. L. 115–232, div. B, title XXVIII, § 2801, Aug. 13, 2018, 132 Stat. 2260.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1844(b)(1), Jan. 1, 2021, 134 Stat. 4151, 4245, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 307 of this title, as added by section 1844(a) of Pub. L. 116–283, inserted after the table of sections, and redesignated as section 4141 of this title. See Effective Date of 2021 Amendment note below.

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2353(a)	5:235e (1st sentence; and 2d sentence, less 2d and last provisos). 5:475j (1st sentence; and 2d sentence, less 2d and last provisos). 5:628e (1st sentence; and 2d sentence, less 2d and last provisos).	July 16, 1952, ch. 882, § 4 (less 3d and last sentences), 66 Stat. 725.
2353(b)	5:235e (2d proviso of 2d sentence). 5:475j (2d proviso of 2d sentence). 5:628e (2d proviso of 2d sentence).	
2353(c)	5:235e (last proviso of 2d sentence). 5:475j (last proviso of 2d sentence). 5:628e (last proviso of 2d sentence).	

In subsection (a), the words ''furnished to'' and ''for the use thereof'' are omitted as surplusage.

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

In subsection (b), the introductory clause is substituted for 5:235e (words of 2d proviso before clause (1)), 475j, and 628e. The words ''that * * * considers'' are substituted for the words ''as will in the opinion''. The words ''an alternative'' are substituted for the words ''such other''.

In subsection (c), the words ''Proceeds of'' are substituted for the words ''That all moneys arising from''.

AMENDMENTS

2018—Subsec. (a). Pub. L. 115–232 inserted after first sentence ''The acquisition or construction of these research, developmental, or test facilities shall be subject to the cost principles applicable to allowable contract expenses.'' and at end ''The Secretary of Defense and the Secretaries of the military departments shall promulgate regulations necessary to give full force and effect to this section.''

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

LIMITATIONS ON MODIFICATIONS OF CERTAIN GOVERNMENT-FURNISHED EQUIPMENT; ONE-TIME AUTHORITY TO TRANSFER A CERTAIN MILITARY PROTOTYPE

Pub. L. 111–84, div. A, title X, § 1043, Oct. 28, 2009, 123 Stat. 2456, as amended by Pub. L. 111–383, div. A, title X, § 1075(d)(12), Jan. 7, 2011, 124 Stat. 4373, provided that:

''(a) LIMITATION.—An article of military equipment that is an end item of a major weapon system may not be furnished or transferred to a private entity for the conduct of research, development, test and evaluation under contractual agreement with the Department of Defense, if such research, development, test, and evaluation necessitates significantly modifying the military equipment, until the senior acquisition official of a military department, or his designee, submits to the congressional defense committees certification in writing—

''(1) that the modification of such article of military equipment is necessary to execute the contractual scope of work and there is no suitable alternative to modifying such article;

''(2) that the research, development, test, and evaluation effort is of sufficient interest to the military department to warrant the modification of such article of military equipment;

''(3) that—

''(A) prior to the end of the period of performance of such a contractual agreement, the article of military equipment will be restored to its original condition; or

''(B) it is not necessary to restore the article of military equipment to its original condition because the military department intends to dispose of the equipment or operate the equipment in its modified form.

''(4) that the private entity has sufficient resources and capability to fully perform the contractual research, development, test, and evaluation; and

''(5) that the military department has—

''(A) identified the scope of future test and evaluation likely to be required prior to transition of the associated technology to a program of record; and

''(B) a plan for the conduct of such future test and evaluation, including the anticipated roles and responsibilities of government and the private entity, as applicable.

''(b) CERTIFICATION.—No military equipment that is an end item of a major weapons system may be transferred or furnished to a private entity for purposes of research and development as authorized under subsection (a) unless the senior officer of the military service concerned certifies to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] that such equipment is not essential to the defense of the United States.

''(c) ONE-TIME AUTHORITY TO TRANSFER.—The Secretary of the Navy may transfer, to Piasecki Aircraft Corporation of Essington, Pennsylvania (in this section referred to as 'transferee'), all right, title, and interest of the United States, except as otherwise provided in this subsection, in and to Navy aircraft N40VT (Bureau Number 163283), also known as the X–49A aircraft, and associated components and test equipment, previously specified as Government-furnished equipment in contract N00019–00–C–0284. The transferee shall provide consideration for the transfer of such military equipment to the transferor of an amount not to exceed fair value, as determined, on a non-delegable basis, by the Secretary.

''(d) APPLICABLE LAW.—The transfer or use of military equipment is subject to all applicable Federal and State laws and regulations, including, but not limited to, the Arms Export Control Act [22 U.S.C. 2751 et seq.], the Export Administration Act of 1979 [50 U.S.C. 4601 et seq.], continued under Executive Order 12924 [listed in a table under 50 U.S.C. 1701], International Traffic in Arms Regulations (22 C.F.R. 120 et seq.), Export Administration Regulations (15 C.F.R. 730 et seq.), Foreign Assets Control Regulations (31 C.F.R. 500 et seq.), and the Espionage Act [act June 15, 1917, ch. 30, 40 Stat. 217, see Tables for classification].

''(e) CONDITION OF EQUIPMENT TO BE TRANSFERRED.—

''(1) AS-IS CONDITION.—The military equipment transferred under subsection (c) shall be transferred in its current 'as-is' condition. The Secretary is not required to repair or alter the condition of any military equipment before transferring any interest in such equipment under subsection (c).

''(2) SPARE PARTS OR EQUIPMENT.—The Secretary of the Navy is not required to provide spare parts or equipment as a result of the transfer authorized under subsection (c).

''(f) TRANSFER AT NO COST TO THE UNITED STATES.—The transfer of military equipment under subsection (c) shall be made at no cost to the United States. Any costs associated with the transfer shall be borne by the transferee.

''(g) ADDITIONAL TERMS AND CONDITIONS.—The Secretary shall require that the transfer authorized by section (c) be carried out by means of a written agreement and shall require, at a minimum, the following conditions to the transfer:

''(1) A condition stipulating that the transfer of the X-49A aircraft is for the sole purpose of further development, test, and evaluation of vectored thrust ducted propeller (hereinafter in this section referred to as 'VTDP') technology.

''(2) A condition providing the Government the right to procure the VTDP technology demonstrated under this program at a discounted cost based on the value of the X-49A aircraft and associated equipment at the time of transfer, with such valuation and terms determined by the Secretary.

''(3) A condition that the transferee not transfer any interest in, or transfer possession of, the military equipment transferred under subsection (b) to any other party without the prior written approval of the Secretary.

''(4) A condition that if the Secretary determines at any time that the transferee has failed to comply with a condition set forth in paragraphs (1) through (3), all items referred to in subsection (b) shall be transferred back to the Navy, at no cost to the United States.

''(5) A condition that the transferee acknowledges sole responsibility of the X-49A aircraft and associated equipment and assumes all liability for operation of the X-49A aircraft and associated equipment.

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

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

''(j) DEFINITIONS.—In this subsection:

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

''(2) The term 'contractual agreement' includes contracts, grants, cooperative agreements, and other transactions.''

USE OF RESEARCH AND DEVELOPMENT FUNDS FOR TEST FACILITIES AND EQUIPMENT

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

§ 2354. Contracts: indemnification provisions

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

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

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

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

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

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

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

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

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

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

(3) funds appropriated for those payments.

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

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1836(b), Jan. 1, 2021, 134 Stat. 4151, 4241, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 281 of this title, as added by section 1836(a) of Pub. L. 116–283, inserted after the table of sections, and redesignated as section 3861 of this title. See Effective Date of 2021 Amendment note below.

HISTORICAL AND REVISION NOTES

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

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

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

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

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

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

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

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

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

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

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

§ 2357. Technology protection features activities

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

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

(c) DEFINITIONS.—In this section:

(1) The term ''designated system'' means any system (including a major system, as defined in section 2302(5) of title 10, United States Code) that the Under Secretary of Defense for Acquisition and Sustainment designates for purposes of this section.

(2) The term ''technology protection features'' means the technical modifications necessary to protect critical program information, including anti-tamper technologies and other systems engineering activities intended to prevent or delay exploitation of critical technologies in a designated system.

(Added Pub. L. 115–232, div. A, title II, § 223(a), Aug. 13, 2018, 132 Stat. 1682.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1841(c), Jan. 1, 2021, 134 Stat. 4151, 4243, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 301 of this title, as added by section 1841(a) of Pub. L. 116–283, added after section 4007 of this title, as transferred and redesignated by section 1841(b) of Pub. L. 116–283, and redesignated as section 4009 of this title. See Effective Date of 2021 Amendment note below.

PRIOR PROVISIONS

A prior section 2357, act Aug. 10, 1956, ch. 1041, 70A Stat. 135, required Secretary of each military department to report to Congress on contracts for research and development, prior to repeal by Pub. L. 101–510, div. A, title XIII, § 1301(11), Nov. 5, 1990, 104 Stat. 1668.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

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§ 2358. Research and development projects

(a) AUTHORITY.—The Secretary of Defense or the Secretary of a military department may engage in basic research, applied research, advanced research, and development projects that—

(1) are necessary to the responsibilities of such Secretary's department in the field of research and development; and

(2) either—

(A) relate to weapon systems and other military needs; or

(B) are of potential interest to the Department of Defense.

(b) AUTHORIZED MEANS.—The Secretary of Defense or the Secretary of a military department may perform research and development projects—

(1) by contract, cooperative agreement, or grant, in accordance with chapter 63 of title 31;

(2) through one or more military departments;

(3) by using employees and consultants of the Department of Defense;

(4) by mutual agreement with the head of any other department or agency of the Federal Government;

(5) by transactions (other than contracts, cooperative agreements, and grants) entered into pursuant to section 2371 or 2371b of this title; or

(6) by purchases through procurement for experimental purposes pursuant to section 2373 of this title.

(c) REQUIREMENT OF POTENTIAL DEPARTMENT OF DEFENSE INTEREST.—Funds appropriated to the Department of Defense or to a military department may not be used to finance any research project or study unless the project or study is, in the opinion of the Secretary of Defense or the Secretary of that military department, respectively, of potential interest to the Department of Defense or to such military department, respectively.

(d) ADDITIONAL PROVISIONS APPLICABLE TO COOPERATIVE AGREEMENTS.—Additional authorities, conditions, and requirements relating to certain cooperative agreements authorized by this section are provided in sections 2371 and 2371a of this title.

(Added Pub. L. 87–651, title II, § 208(a), Sept. 7, 1962, 76 Stat. 523; amended Pub. L. 97–86, title IX, § 910, Dec. 1, 1981, 95 Stat. 1120; Pub. L. 100–370, § 1(g)(3), July 19, 1988, 102 Stat. 846; Pub. L. 103–160, div. A, title VIII, § 827(a), Nov. 30, 1993, 107 Stat. 1712; Pub. L. 103–355, title I, § 1301(a), Oct. 13, 1994, 108 Stat. 3284; Pub. L. 104–201, div. A, title II, § 267(c)(2), Sept. 23, 1996, 110 Stat. 2468; Pub. L. 115–91, div. A, title VIII, § 862, Dec. 12, 2017, 131 Stat. 1494.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1841(b)(1), Jan. 1, 2021, 134 Stat. 4151, 4243, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 301 of this title, as added by section 1841(a) of Pub. L. 116–283, inserted after the table of sections, and redesignated as section 4001 of this title. See Effective Date of 2021 Amendment note below.

HISTORICAL AND REVISION NOTES

1962 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2358	5:171c(b)(2), (3).	July 26, 1947, ch. 343, § 203(b)(2), (3); added Aug. 6, 1958, Pub. L. 85–599, § 9(a) (3d and 4th pars.), 72 Stat. 520.

5 U.S.C. 171c(b)(3) is omitted as unnecessary since the authorization for appropriations is implied in 5 U.S.C. 171c(b)(2).

1988 ACT

In the existing text of 10 U.S.C. 2358, the bill would in two instances strike the phrase ''or his designee'' appearing after ''Secretary of Defense'' (section 1(g)(3)). The change is made for consistency in the Code, and no substantive change is intended. The committee notes that the Secretary of Defense has general authority to delegate functions under 10 U.S.C. 113(d).

Subsection (b) is based on Pub. L. 91–441, title II, § 204, Oct. 7, 1970, 84 Stat. 908.

AMENDMENTS

2017—Subsec. (b)(5), (6). Pub. L. 115–91 added pars. (5) and (6).

1996—Subsec. (d). Pub. L. 104–201 substituted ''sections 2371 and 2371a'' for ''section 2371''.

1994—Pub. L. 103–355 amended section generally, inserting reference to development projects in section catchline, and in text specifying that relevant Secretary may perform research and development projects in accordance with chapter 63 of title 31, and adding subsec. (d) relating to additional provisions applicable to cooperative agreements.

1993—Pub. L. 103–160 amended section generally. Prior to amendment, section read as follows:

''(a) IN GENERAL.—Subject to approval by the President, the Secretary of Defense may engage in basic and applied research projects that are necessary to the responsibilities of the Department of Defense in the field of basic and applied research and development and that relate to weapons systems and other military needs. Subject to approval by the President, the Secretary may perform assigned research and development projects—

''(1) by contract with, or by grant to, educational or research institutions, private businesses, or other agencies of the United States;

''(2) through one or more of the military departments; or

''(3) by using employees and consultants of the Department of Defense.

''(b) REQUIREMENT OF POTENTIAL MILITARY RELATIONSHIP.—Funds appropriated to the Department of Defense may not be used to finance any research project or study unless the project or study has, in the opinion of the Secretary of Defense, a potential relationship to a military function or operation.''

1988—Pub. L. 100–370 designated existing provisions as subsec. (a), inserted heading, struck out ''or his designee'' after ''Secretary of Defense'' and ''President, the Secretary'', and added subsec. (b).

1981—Par. (1). Pub. L. 97–86 substituted ''by contract with, or by grant to,'' for ''by contract with''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 2302 of this title.

CHANGE OF NAME

Pub. L. 115–91, div. A, title II, §214(a), Dec. 12, 2017, 131 Stat. 1325, provided that: ''The joint technology office on hypersonics in the Office of the Secretary of Defense is redesignated as the 'Joint Hypersonics Transition Office'. Any reference in a law (other than this section), map, regulation, document, paper, or other record of the United States to the joint technology office on hypersonics shall be deemed to be a reference to the Joint Hypersonics Transition Office.''

DIRECT AIR CAPTURE AND BLUE CARBON REMOVAL TECHNOLOGY PROGRAM

Pub. L. 116–92, div. A, title II, §223, Dec. 20, 2019, 133 Stat. 1264, provided that:

''(a) PROGRAM REQUIRED.—

''(1) IN GENERAL.—The Secretary of Defense, in coordination with the Secretary of Homeland Security, the Secretary of Energy, and the heads of such other Federal agencies as the Secretary of Defense considers appropriate, shall carry out a program on research, development, testing, evaluation, study, and demonstration of technologies related to blue carbon capture and direct air capture.

''(2) PROGRAM GOALS.—The goals of the program established under paragraph (1) are as follows:

''(A) To develop technologies that capture carbon dioxide from seawater and the air to turn such carbon dioxide into clean fuels to enhance fuel and energy security.

''(B) To develop and demonstrate technologies that capture carbon dioxide from seawater and the air to reuse such carbon dioxide to create products for military uses.

''(C) To develop direct air capture technologies for use—

''(i) at military installations or facilities of the Department of Defense; or

''(ii) in modes of transportation by the Navy or the Coast Guard.

''(3) PHASES.—The program established under paragraph (1) shall be carried out in two phases as follows:

''(A) The first phase shall consist of research and development and shall be carried out as described in subsection (b).

''(B) The second phase shall consist of testing and evaluation and shall be carried out as described in subsection (c), if the Secretary determines that the results of the research and development phase justify implementing the testing and evaluation phase.

''(4) DESIGNATION.—The program established under paragraph (1) shall be known as the 'Direct Air Capture and Blue Carbon Removal Technology Program' (in this section referred to as the 'Program').

''(b) RESEARCH AND DEVELOPMENT PHASE.—

''(1) IN GENERAL.—During the research and development phase of the Program, the Secretary of Defense shall conduct research and development in pursuit of the goals set forth in subsection (a)(2).

''(2) DIRECT AIR CAPTURE.—The research and development phase of the Program may include, with respect to direct air capture, a front end engineering and design study that includes an evaluation of direct air capture designs to produce fuel for use—

''(A) at military installations or facilities of the Department of Defense; or

''(B) in modes of transportation by the Navy or the Coast Guard.

''(3) COMMENCEMENT.—The Secretary shall commence carrying out the research and development phase of the Program not later than 90 days after the date of the enactment of this Act [Dec. 20, 2019].

''(4) GRANTS AUTHORIZED.—The Secretary may carry out the research and development phase of the Program through the award of grants to private persons and eligible laboratories.

''(5) REPORT REQUIRED.—Not later than 180 days after the date of the completion of the research and development phase of the Program, the Secretary shall submit to Congress a report on the research and development carried out under the Program.

''(c) TESTING AND EVALUATION PHASE.—

''(1) IN GENERAL.—During the testing and evaluation phase of the Program, the Secretary shall, in pursuit of the goals set forth in subsection (a)(2), conduct tests and evaluations of the technologies researched and developed during the research and development phase of the Program.

''(2) DIRECT AIR CAPTURE.—The testing and evaluation phase of the Program may include demonstration projects for direct air capture to produce fuels for use—

''(A) at military installations or facilities of the Department of Defense; or

''(B) in modes of transportation by the Navy or the Coast Guard.

''(3) COMMENCEMENT.—Subject to subsection (a)(3)(B), the Secretary shall commence carrying out the testing and evaluation phase of the Program on the date of the completion of the research and development phase described in subsection (b), except that the testing and evaluation phase of the Program with respect to direct air capture may commence at such time after a front end engineering and design study demonstrates to the Secretary that commencement of such phase is appropriate.

''(4) GRANTS AUTHORIZED.—The Secretary may carry out the testing and evaluation phase of the Program through the award of grants to private persons and eligible laboratories.

''(5) LOCATIONS.—The Secretary shall carry out the testing and evaluation phase of the Program at military installations or facilities of the Department of Defense.

''(6) REPORT REQUIRED.—Not later than September 30, 2026, the Secretary shall submit to Congress a report on the findings of the Secretary with respect to the effectiveness of the technologies tested and evaluated under the Program.

''(d) DEFINITIONS.—In this section:

''(1) The term 'blue carbon capture' means the removal of dissolved carbon dioxide from seawater through engineered or inorganic processes, including filters, membranes, or phase change systems.

''(2)(A) The term 'direct air capture', with respect to a facility, technology, or system, means that the facility, technology, or system uses carbon capture equipment to capture carbon dioxide directly from the air.

''(B) The term 'direct air capture' does not include any facility, technology, or system that captures carbon dioxide—

''(i) that is deliberately released from a naturally occurring subsurface spring; or

''(ii) using natural photosynthesis.

''(3) The term 'eligible laboratory' means—

''(A) a National Laboratory (as defined in section 2 of the Energy Policy Act of 2005 (42 U.S.C. 15801));

''(B) a science and technology reinvention laboratory designated under section 1105 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84; 10 U.S.C. 2358 note);

''(C) the Major Range and Test Facility Base (as defined in section 2358a(f) of title 10, United States Code); or

''(D) any other facility that supports the research, development, test, and evaluation activities of the Department of Defense or the Department of Energy.''

RESEARCH PROGRAM ON FOREIGN MALIGN INFLUENCE OPERATIONS

Pub. L. 116–92, div. A, title II, §228, Dec. 20, 2019, 133 Stat. 1271, provided that:

''(a) PROGRAM AUTHORIZED.—The Secretary of Defense, acting through the Under Secretary of Defense for Research and Engineering, may carry out a research program on foreign malign influence operations as part of the university research programs of the Department of Defense.

''(b) PROGRAM OBJECTIVES.—The objectives of a research program carried out under subsection (a) should include the following:

''(1) Enhance the understanding of foreign malign influence operations, including activities conducted on social media platforms.

''(2) Facilitate the analysis of publicly available or voluntarily provided indicators of foreign malign influence operations.

''(3) Promote collaborative research and information exchange with relevant entities within the Department of Defense and with other agencies or nongovernmental organizations relating to foreign malign influence operations, as appropriate.

''(c) NOTICE TO CONGRESS.—Not later than 30 days before initiating a research program under subsection (a), the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] notice of the intent of the Secretary to initiate such a program, which shall include—

''(1) a detailed description of the program and any related research activities;

''(2) the estimated cost and duration of the program; and

''(3) any other matters the Secretary determines to be relevant.''

DIVERSIFICATION OF THE RESEARCH AND ENGINEERING WORKFORCE OF THE DEPARTMENT OF DEFENSE

Pub. L. 116–92, div. A, title II, § 229, Dec. 20, 2019, 133 Stat. 1271, provided that:

''(a) ASSESSMENT REQUIRED.—

''(1) IN GENERAL.—The Secretary of Defense, acting through the Under Secretary of Defense for Research and Engineering and in consultation with the Under Secretary of Defense for Personnel and Readiness, shall conduct an assessment of critical skillsets required across, and the diversity of, the research and engineering workforce of the Department of Defense, including the science and technology reinvention laboratories, to support emerging and future warfighter technologies.

''(2) ELEMENTS.—The assessment required by paragraph (1) shall include analysis of the following:

''(A) The percentage of women and minorities employed in the research and engineering workforce of the Department of Defense as of the date of the assessment.

''(B) Of the individuals hired into the research and engineering workforce of the Department in the five years preceding the date of the assessment, the percentage of such individuals who are women and minorities.

''(C) The effectiveness of existing hiring, recruitment, and retention incentives for women and minorities in the research and engineering workforce of the Department.

''(D) The effectiveness of the Department in recruiting women and minorities into the laboratory workforce after such individuals complete work on Department-funded research, projects, grant projects, fellowships, and STEM programs.

''(E) The geographical diversity of the workforce across various geographic regions.

''(b) PLAN REQUIRED.—

''(1) IN GENERAL.—Based on the results of the assessment conducted under subsection (a), the Secretary of Defense, acting through the Under Secretary of Defense for Research and Engineering and in consultation with the Secretaries of the military departments, shall develop and implement a plan to diversify and strengthen the research and engineering workforce of the Department of Defense.

''(2) ELEMENTS.—The plan required by paragraph (1) shall—

''(A) align with science and technology strategy priorities of the Department of Defense, including the emerging and future warfighter technology requirements identified by the Department;

''(B) except as provided in subsection (c)(2), set forth steps for the implementation of each recommendation included in the 2013 report of the RAND corporation titled 'First Steps Toward Improving DoD STEM Workforce Diversity';

''(C) harness the full range of the Department's STEM programs and other Department sponsored programs to develop and attract top talent;

''(D) use existing authorities to attract and retain students, academics, and other talent;

''(E) establish and use contracts, agreements, or other arrangements with institutions of higher education (as defined in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001)), including historically black colleges and universities and other minority-serving institutions (as described in section 371(a) of such Act (20 U.S.C. 1067q(a)) to enable easy and efficient access to research and researchers for Government sponsored basic and applied research and studies at each institution, including contracts, agreements, and other authorized arrangements such as those authorized under—

''(i) section 217 of the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115–91; 10 U.S.C. 2358 note); and

''(ii) such other authorities as the Secretary determines to be appropriate; and

''(F) include recommendations for changes in authorities, regulations, policies, or any other relevant areas that would support the achievement of the goals set forth in the plan.

''(3) SUBMITTAL TO CONGRESS.—Not later than one year after the date of the enactment of this Act [Dec. 20, 2019], the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report that includes—

''(A) the plan developed under paragraph (1); and

''(B) with respect to each recommendation described in paragraph (2)(B) that the Secretary has implemented or expects to implement—

''(i) a summary of actions that have been taken to implement the recommendation; and

''(ii) a schedule, with specific milestones, for completing the implementation of the recommendation.

''(c) DEADLINE FOR IMPLEMENTATION.—

''(1) IN GENERAL.—Except as provided in paragraph (2), not later than 18 months after the date of the enactment of this Act the Secretary of Defense shall carry out activities to implement the plan developed under subsection (b).

''(2) EXCEPTION FOR IMPLEMENTATION OF CERTAIN RECOMMENDATIONS.—

''(A) DELAYED IMPLEMENTATION.—The Secretary of Defense may commence implementation of a recommendation described in subsection (b)(2)(B) after the date specified in paragraph (1) if the Secretary provides the congressional defense committees with a specific justification for the delay in implementation of such recommendation on or before such date.

''(B) NONIMPLEMENTATION.—The Secretary of Defense may opt not to implement a recommendation described in subsection (b)(2)(B) if the Secretary provides to the congressional defense committees, on or before the date specified in paragraph (1)—

''(i) a specific justification for the decision not to implement the recommendation; and

''(ii) a summary of the alternative actions the Secretary plans to take to address the issues underlying the recommendation.

''(d) STEM DEFINED.—In this section, the term 'STEM' means science, technology, engineering, and mathematics.''

PROCESS TO ALIGN POLICY FORMULATION AND EMERGING TECHNOLOGY DEVELOPMENT

Pub. L. 116–92, div. A, title II, § 232, Dec. 20, 2019, 133 Stat. 1277, provided that:

''(a) ALIGNMENT OF POLICY AND TECHNOLOGICAL DEVELOPMENT.—Not later than 180 days after the date of the enactment of this Act [Dec. 20, 2019], the Secretary of Defense shall establish a process to ensure that the policies of the Department of Defense relating to emerging technology are formulated and updated continuously as such technology is developed by the Department.

''(b) ELEMENTS.—As part of the process established under subsection (a), the Secretary shall—

''(1) specify the role of each covered official in ensuring that the formulation of policies relating to emerging technology is carried out concurrently with the development of such technology; and

''(2) incorporate procedures for the continuous legal review of—

''(A) weapons and other defense systems that incorporate or use emerging technology; and

''(B) treaties that may be affected by such technology.

''(c) BRIEFING REQUIRED.—Not later than 30 days after the date on which the Secretary of Defense establishes the process required under subsection (a), the Secretary shall provide to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a briefing on such process.

''(d) DEFINITIONS.—In this section:

''(1) The term 'covered official' means the following:

''(A) The Chairman of the Joint Chiefs of Staff.

''(B) The Under Secretary of Defense for Research and Engineering.

''(C) The Under Secretary of Defense for Acquisition and Sustainment.

''(D) The Under Secretary of Defense for Policy.

''(E) The commanders of combatant commands with responsibilities involving the use of weapons or other defense systems that incorporate or use emerging technology, as determined by the Secretary of Defense.

''(F) The Secretaries of the military departments.

''(2) The term 'emerging technology' means technology determined to be in an emerging phase of development by the Secretary of Defense, including quantum computing, technology for the analysis of large and diverse sets of data (commonly known as 'big data analytics'), artificial intelligence, autonomous technology, robotics, directed energy, hypersonics, biotechnology, and such other technology as may be identified by the Secretary.''

INFRASTRUCTURE TO SUPPORT RESEARCH, DEVELOPMENT, TEST, AND EVALUATION MISSIONS

Pub. L. 116–92, div. A, title II, § 252, Dec. 20, 2019, 133 Stat. 1285, provided that:

''(a) MASTER PLAN REQUIRED.—The Secretary of Defense, acting through the Under Secretary of Defense for Research and Engineering and in coordination with the Secretaries of the military departments, shall develop and implement a master plan that addresses the research, development, test, and evaluation infrastructure and modernization requirements of the Department of Defense, including the science and technology reinvention laboratories and the facilities of the Major Range and Test Facility Base.

''(b) ELEMENTS.—The master plan required under subsection (a) shall include, with respect to the research, development, test, and evaluation infrastructure of the Department of Defense, the following:

''(1) A summary of deficiencies in the infrastructure, by location, and the effect of the deficiencies on the ability of the Department—

''(A) to meet current and future military requirements identified in the National Defense Strategy;

''(B) to support science and technology development and acquisition programs; and

''(C) to recruit and train qualified personnel.

''(2) A summary of existing and emerging military research, development, test, and evaluation mission areas, by location, that require modernization investments in the infrastructure—

''(A) to improve operations in a manner that may benefit all users;

''(B) to enhance the overall capabilities of the research, development, test, and evaluation infrastructure, including facilities and resources;

''(C) to improve safety for personnel and facilities; and

''(D) to reduce the long-term cost of operation and maintenance.

''(3) Identification of specific infrastructure projects that are required to address the infrastructure deficiencies identified under paragraph (1) or to support the existing and emerging mission areas identified under paragraph (2).

''(4) For each project identified under paragraph (3)—

''(A) a description of the scope of work;

''(B) a cost estimate;

''(C) a summary of the plan for the project;

''(D) an explanation of the level of priority that will be given to the project; and

''(E) a schedule of required infrastructure investments.

''(5) A description of how the Department, including each military department concerned, will carry out the infrastructure projects identified in paragraph (3) using the range of authorities and methods available to the Department, including—

''(A) military construction authority under section 2802 of title 10, United States Code;

''(B) unspecified minor military construction authority under section 2805(a) of such title;

''(C) laboratory revitalization authority under section 2805(d) of such title;

''(D) the authority to carry out facility repair projects, including the conversion of existing facilities, under section 2811 of such title;

''(E) the authority provided under the Defense Laboratory Modernization Pilot Program under section 2803 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114–92; 10 U.S.C. 2358 note);

''(F) methods that leverage funding from entities outside the Department, including public-private partnerships, enhanced use leases and real property exchanges;

''(G) the authority to conduct commercial test and evaluation activities at a Major Range and Test Facility Installation, under section 2681 of title 10, United States Code; and

''(H) any other authorities and methods determined to be appropriate by the Secretary of Defense.

''(6) Identification of any regulatory or policy barriers to the effective and efficient implementation of the master plan.

''(c) CONSULTATION AND COORDINATION.—In developing and implementing the plan required under subsection (a), the Secretary of Defense shall—

''(1) consult with existing and anticipated customers and users of the capabilities of the Major Range and Test Facility Base and science and technology reinvention laboratories;

''(2) ensure consistency with the science and technology roadmaps and strategies of the Department of Defense and the Armed Forces; and

''(3) ensure consistency with the strategic plan for test and evaluation resources required by section 196(d) of title 10, United States Code.

''(d) SUBMITTAL TO CONGRESS.—Not later than January 1, 2021, the Secretary of Defense, in coordination with the Secretaries of the military departments, shall submit to the congressional defense committees [Com-

mittees on Armed Services and Appropriations of the Senate and the House of Representatives] the master plan developed under subsection (a).

''(e) RESEARCH, DEVELOPMENT, TEST, AND EVALUATION INFRASTRUCTURE DEFINED.—In this section, the term 'research, development, test, and evaluation infrastructure' means the infrastructure of—

''(1) the science and technology reinvention laboratories (as designated under section 1105 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84; 10 U.S.C. 2358 note));

''(2) the Major Range and Test Facility Base (as defined in section 2358a(f)(3) of title 10, United States Code); and

''(3) other facilities that support the research development, test, and evaluation activities of the Department.''

PROCEDURES FOR RAPID REACTION TO EMERGING TECHNOLOGY

Pub. L. 115–232, div. A, title II, § 225, Aug. 13, 2018, 132 Stat. 1684, provided that:

''(a) REQUIREMENT TO ESTABLISH PROCEDURES.—Not later than 180 days after the date of the enactment of this Act [Aug. 13, 2018], the Under Secretary of Defense for Research and Engineering shall prescribe procedures for the designation and development of technologies that are—

''(1) urgently needed—

''(A) to react to a technological development of an adversary of the United States; or

''(B) to respond to a significant and urgent emerging technology; and

''(2) not receiving appropriate research funding or attention from the Department of Defense.

''(b) ELEMENTS.—The procedures prescribed under subsection (a) shall include the following:

''(1) A process for streamlined communications between the Under Secretary, the Joint Chiefs of Staff, the commanders of the combatant commands, the science and technology executives within each military department, and the science and technology community, including—

''(A) a process for the commanders of the combatant commands and the Joint Chiefs of Staff to communicate their needs to the science and technology community; and

''(B) a process for the science and technology community to propose technologies that meet the needs communicated by the combatant commands and the Joint Chiefs of Staff.

''(2) Procedures for the development of technologies proposed pursuant to paragraph (1)(B), including—

''(A) a process for demonstrating performance of the proposed technologies on a short timeline;

''(B) a process for developing a development strategy for a technology, including integration into future budget years; and

''(C) a process for making investment determinations based on information obtained pursuant to subparagraphs (A) and (B).

''(c) BRIEFING.—Not later than 180 days after the date of the enactment of this Act, the Under Secretary shall provide to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a briefing on the procedures required by subsection (a).''

HUMAN FACTORS MODELING AND SIMULATION ACTIVITIES

Pub. L. 115–232, div. A, title II, § 227, Aug. 13, 2018, 132 Stat. 1687, provided that:

''(a) ACTIVITIES REQUIRED.—The Secretary of Defense shall develop and provide for the carrying out of human factors modeling and simulation activities designed to do the following:

''(1) Provide warfighters and civilians with personalized assessment, education, and training tools.

''(2) Identify and implement effective ways to interface and team warfighters with machines.

''(3) Result in the use of intelligent, adaptive augmentation to enhance decision making.

''(4) Result in the development of techniques, technologies, and practices to mitigate critical stressors that impede warfighter and civilian protection, sustainment, and performance.

''(b) PURPOSE.—The overall purpose of the activities shall be to accelerate research and development that enhances capabilities for human performance, human-systems integration, and training for the warfighter.

''(c) PARTICIPANTS IN ACTIVITIES.—Participants in the activities may include the following:

''(1) Elements of the Department of Defense engaged in science and technology activities.

''(2) Program Executive Offices of the Department.

''(3) Academia.

''(4) The private sector.

''(5) Such other participants as the Secretary considers appropriate.''

NATIONAL SECURITY INNOVATION ACTIVITIES

Pub. L. 115–232, div. A, title II, § 230, Aug. 13, 2018, 132 Stat. 1689, as amended by Pub. L. 116–283, div. A, title II, § 213(a), Jan. 1, 2021, 134 Stat. 3456, provided that:

''(a) ESTABLISHMENT.—The Under Secretary of Defense for Research and Engineering shall establish activities to develop interaction between the Department of Defense and the commercial technology industry and academia with regard to emerging hardware products and technologies with national security applications.

''(b) ELEMENTS.—The activities required by subsection (a) shall include the following:

''(1) Informing and encouraging private investment in specific hardware technologies of interest to future defense technology needs with unique national security applications.

''(2) Funding research and technology development in hardware-intensive capabilities that private industry has not sufficiently supported to meet rapidly emerging defense and national security needs.

''(3) Contributing to the development of policies, policy implementation, and actions to deter strategic acquisition of industrial and technical capabilities in the private sector by foreign entities that could potentially exclude companies from participating in the Department of Defense technology and industrial base.

''(4) Identifying promising emerging technology in industry and academia for the Department of Defense for potential support or research and development cooperation.

''(c) TRANSFER OF PERSONNEL AND RESOURCES.—

''(1) IN GENERAL.—Subject to paragraph (2), the Under Secretary may transfer such personnel, resources, and authorities that are under the control of the Under Secretary as the Under Secretary considers appropriate to carry out the activities established under subsection (a) from other elements of the Department under the control of the Under Secretary or upon approval of the Secretary of Defense.

''(2) CERTIFICATION.—The Under Secretary may only make a transfer of personnel, resources, or authorities under paragraph (1) upon certification by the Under Secretary that the activities established under paragraph (a) can attract sufficient private sector investment, has personnel with sufficient technical and management expertise, and has identified relevant technologies and systems for potential investment in order to carry out the activities established under subsection (a), independent of further government funding beyond this authorization.

''(d) ESTABLISHMENT OF NONPROFIT ENTITY.—The Under Secretary may establish or fund a nonprofit entity to carry out the program activities under subsection (a).

''(e) ADVISORY ASSISTANCE.—

''(1) IN GENERAL.—The Under Secretary shall establish a mechanism to seek advice from existing Federal advisory committees on matters relating to—

''(A) the implementation and prioritization of activities established under subsection (a); and

''(B) determining how such activities may be used to support the overall technology strategy of the Department of Defense.

''(2) EXISTING FEDERAL ADVISORY COMMITTEES DEFINED.—In this subsection, the term 'existing Federal advisory committee' means an advisory committee that—

''(A) is established pursuant to a provision of Federal law other than this section; and

''(B) has responsibilities relevant to the activities established under subsection (a), as determined by the Under Secretary.

''(f) PLAN.—

''(1) IN GENERAL.—Not later than one year after the date of the enactment of this Act [Aug. 13, 2018], the Under Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a detailed plan to carry out this section.

''(2) ELEMENTS.—The plan required by paragraph (1) shall include the following:

''(A) A description of the additional authorities needed to carry out the activities set forth in subsection (b).

''(B) Plans for transfers under subsection (c), including plans for private fund-matching and investment mechanisms, oversight, treatment of rights relating to technical data developed, and relevant dates and goals of such transfers.

''(C) Plans for attracting the participation of the commercial technology industry and academia and how those plans fit into the current Department of Defense research and engineering enterprise.

''(g) AUTHORITIES.—In carrying out this section, the Under Secretary may use the following authorities:

''(1) Section 1711 of the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115–91) [10 U.S.C. 2505 note], relating to a pilot program on strengthening the defense industrial and innovation base.

''(2) Section 1599g of title 10 of the United States Code, relating to public-private talent exchanges.

''(3) Section 2368 of such title, relating to Centers for Science, Technology, and Engineering Partnerships.

''(4) Section 2374a of such title, relating to prizes for advanced technology achievements.

''(5) Section 2474 of such title, relating to Centers of Industrial and Technical Excellence.

''(6) Section 2521 of such title, relating to the Manufacturing Technology Program.

''(7) Subchapter VI of chapter 33 of title 5, United States Code, relating to assignments to and from States.

''(8) Chapter 47 of such title, relating to personnel research programs and demonstration projects.

''(9) Section 12 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a) and section 6305 of title 31, United States Code, relating to cooperative research and development agreements.

''(10) Such other authorities as the Under Secretary considers appropriate.

''(h) NOTICE REQUIRED.—Not later than 15 days before the date on which the Under Secretary first exercises the authority granted under subsection (d) and not later than 15 days before the date on which the Under Secretary first obligates or expends any amount authorized under subsection (h), the Under Secretary shall notify the congressional defense committees of such exercise, obligation, or expenditure, as the case may be.''

DEFENSE QUANTUM INFORMATION SCIENCE AND TECHNOLOGY RESEARCH AND DEVELOPMENT PROGRAM

Pub. L. 115–232, div. A, title II, § 234, Aug. 13, 2018, 132 Stat. 1692, as amended by Pub. L. 116–92, div. A, title II, § 220, Dec. 20, 2019, 133 Stat. 1260; Pub. L. 116–283, div. A, title II, § 214, Jan. 1, 2021, 134 Stat. 3458, provided that:

''(a) ESTABLISHMENT.—The Secretary of Defense shall carry out a quantum information science and technology research and development program.

''(b) PURPOSES.—The purposes of the program required by subsection (a) are as follows:

''(1) To ensure global superiority of the United States in quantum information science necessary for meeting national security requirements.

''(2) To coordinate all quantum information science and technology research and development within the Department of Defense and to provide for interagency cooperation and collaboration on quantum information science and technology research and development between the Department of Defense and other departments and agencies of the United States and appropriate private sector and international entities that are involved in quantum information science and technology research and development.

''(3) To develop and manage a portfolio of fundamental and applied quantum information science and technology and engineering research initiatives that is stable, consistent, and balanced across scientific disciplines.

''(4) To accelerate the transition and deployment of technologies and concepts derived from quantum information science and technology research and development into the Armed Forces, and to establish policies, procedures, and standards for measuring the success of such efforts.

''(5) To collect, synthesize, and disseminate critical information on quantum information science and technology research and development.

''(6) To establish and support appropriate research, innovation, and industrial base, including facilities, workforce, and infrastructure, to support the needs of Department of Defense missions and systems related to quantum information science and technology.

''(c) ADMINISTRATION.—In carrying out the program required by subsection (a), the Secretary shall act through the Under Secretary of Defense for Research and Engineering, who shall supervise the planning, management, and coordination of the program. The Under Secretary, in consultation with the Secretaries of the military departments and the heads of participating Defense Agencies and other departments and agencies of the United States, shall—

''(1) prescribe a set of long-term challenges and a set of specific technical goals for the program, including—

''(A) optimization of analysis of national security data sets;

''(B) development of defense related quantum computing algorithms;

''(C) design of new materials and molecular functions;

''(D) secure communications and cryptography, including development of quantum communications protocols;

''(E) quantum sensing and metrology;

''(F) development of mathematics relating to quantum enhancements to sensing, communications, and computing; and

''(G) processing and manufacturing of low-cost, robust, and reliable quantum information science and technology-enabled devices and systems;

''(2) develop a coordinated and integrated research and investment plan for meeting the near-, mid-, and long-term challenges with definitive milestones while achieving the specific technical goals that builds upon the Department's increased investment in quantum information science and technology research and development, commercial sector and global investments, and other United States Government investments in the quantum information sciences, including through consultation with—

''(A) the National Quantum Coordination Office;

''(B) the subcommittee on Quantum Information Science of the National Science and Technology Council;

''(C) other organizations and elements of the Department of Defense;

''(D) other Federal agencies; and

''(E) appropriate private sector organizations;

''(3) in consultation with the entities listed in paragraph (2), develop plans for—

''(A) the development of the quantum information science and technology workforce;

''(B) enhancing awareness of quantum information science and technology;

''(C) reducing the risk of cybersecurity threats posed by quantum information science technology; and

''(D) development of ethical guidelines for the use of quantum information science technology;

''(4) in consultation with the National Institute of Standards and Technology and other appropriate Federal entities, develop a quantum information science taxonomy and standards and requirements for quantum information technology;

''(5) support efforts to increase the technology readiness level of quantum information science technologies under development in the United States;

''(6) not later than 180 days after the date of the enactment of this Act [Aug. 13, 2018], develop and continuously update guidance, including classification and data management plans for defense-related quantum information science and technology activities, and policies for control of personnel participating on such activities to minimize the effects of loss of intellectual property in basic and applied quantum information science and information considered sensitive to the leadership of the United States in the field of quantum information science and technology; and

''(7) develop memoranda of agreement, joint funding agreements, and other cooperative arrangements necessary for carrying out the program under subsection (a).

''(d) QUANTUM INFORMATION SCIENCE RESEARCH CENTERS.—The Secretary of each military department may establish or designate a defense laboratory or establish activities to engage with appropriate public and private sector organizations, including academic organizations, to enhance and accelerate the research, development, and deployment of quantum information sciences and quantum information science-enabled technologies and systems. The Secretary of Defense shall ensure that not less than one such laboratory or center is established or designated.

''(e) USE OF QUANTUM COMPUTING CAPABILITIES.—The Secretary of each military department shall—

''(1) develop and annually update a list of technical problems and research challenges which are likely to be addressable by quantum computers available for use within in the next one to three years, with a priority for technical problems and challenges where quantum computing systems have performance advantages over traditional computing systems, in order to enhance the capabilities of such quantum computers and support the addressing of relevant technical problems and research challenges; and

''(2) establish programs and enter into agreements with appropriate medium and small businesses with functional quantum computing capabilities to provide such private sector capabilities to government, industry, and academic researchers working on relevant technical problems and research activities.

''(f) REPORT.—

''(1) IN GENERAL.—Not later than December 31, 2020, the Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the program, in both classified and unclassified format.

''(2) ELEMENTS.—The report required by paragraph (1) shall include the following:

''(A) A description of the knowledge-base of the Department with respect to quantum information sciences, plans to defend against quantum based attacks, and any plans of the Secretary to enhance such knowledge-base.

''(B) A plan that describes how the Secretary intends to use quantum information sciences for military applications and to meet other needs of the Department, including a discussion of likely impacts of quantum information science and technology on military capabilities.

''(C) An assessment of the efforts of foreign powers to use quantum information sciences for military applications and other purposes.

''(D) A description of the activities carried out in accordance with this section, including, for each such activity—

''(i) a roadmap for the activity;

''(ii) a summary of the funding provided for the activity; and

''(iii) an estimated timeline for the development and military deployment of quantum technologies supported through the activity.

''(E) A description of the efforts of the Department of Defense to update classification and cybersecurity practices relating to quantum technology, including—

''(i) security processes and requirements for engagement with allied countries; and

''(ii) a plan for security-cleared government and contractor workforce development.

''(F) Such other matters as the Secretary considers appropriate.''

JOINT ARTIFICIAL INTELLIGENCE RESEARCH, DEVELOPMENT, AND TRANSITION ACTIVITIES

Pub. L. 115–232, div. A, title II, § 238, Aug. 13, 2018, 132 Stat. 1695, as amended by Pub. L. 116–92, div. A, title II, § 221, Dec. 20, 2019, 133 Stat. 1261; Pub. L. 116–283, div. A, title II, § 232, Jan. 1, 2021, 134 Stat. 3480, provided that:

''(a) ESTABLISHMENT.—

''(1) IN GENERAL.—The Secretary of Defense shall establish a set of activities within the Department of Defense to coordinate the efforts of the Department to acquire, develop, mature, and transition artificial intelligence technologies into operational use.

''(2) EMPHASIS.—The set of activities established under paragraph (1) shall include—

''(A) acquisition and development of mature artificial intelligence technologies in support of defense missions;

''(B) applying artificial intelligence and machine learning solutions to operational problems by directly delivering artificial intelligence capabilities to the Armed Forces and other organizations and elements of the Department of Defense;

''(C) accelerating the development, testing, and fielding of new artificial intelligence and artificial intelligence-enabling capabilities; and

''(D) coordinating and deconflicting activities involving artificial intelligence and artificial intelligence-enabled capabilities within the Department.

''(b) DESIGNATION.—Not later than one year after the date of the enactment of this Act [Aug. 13, 2018], the Secretary shall designate a senior official of the Department with principal responsibility for the coordination of activities relating to the development and demonstration of artificial intelligence and machine learning for the Department.

''(c) ORGANIZATION AND ROLES.—

''(1) ASSIGNMENT OF ROLES AND RESPONSIBILITIES.—

''(A) IN GENERAL.—In addition to designating an official under subsection (b), the Secretary of Defense shall assign to appropriate officials within the Department of Defense roles and responsibilities relating to the research, development, prototyping, testing, procurement of, requirements for, and operational use of artificial intelligence technologies.

''(B) APPROPRIATE OFFICIALS.—The officials assigned roles and responsibilities under subparagraph (A) shall include—

''(i) the Under Secretary of Defense for Research and Engineering;

''(ii) the Under Secretary of Defense for Acquisition and Sustainment;

''(iii) the Director of the Joint Artificial Intelligence Center;

''(iv) one or more officials in each military department;

''(v) officials of appropriate Defense Agencies; and

''(vi) such other officials as the Secretary of Defense determines appropriate.

''(2) ROLE OF DIRECTOR OF THE JOINT ARTIFICIAL INTELLIGENCE CENTER.—

''(A) DIRECT REPORT TO DEPUTY SECRETARY OF DEFENSE.—During the covered period, the Director of the Joint Artificial Intelligence Center shall report directly to the Deputy Secretary of Defense without intervening authority.

''(B) CONTINUATION.—The Director of the Joint Artificial Intelligence Center shall continue to report to the Deputy Secretary of Defense as described in subparagraph (A) after the expiration of the covered period if, not later than 30 days before such period expires, the Deputy Secretary—

''(i) determines that the Director should continue to report to Deputy Secretary without intervening authority; and

''(ii) transmits notice of such determination to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives].

''(C) COVERED PERIOD DEFINED.—In this paragraph, the term 'covered period' means the period of two years beginning on the date of the enactment of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 [Pub. L. 116–283; approved Jan. 1, 2021].

''(d) DUTIES.—The duties of the official designated under subsection (b) shall include the following:

''(1) STRATEGIC PLAN.—Developing a detailed strategic plan to acquire, develop, mature, adopt, and transition artificial intelligence technologies into operational use. Such plan shall include the following:

''(A) A strategic roadmap for the identification and coordination of the development and fielding of artificial intelligence technologies and key enabling capabilities.

''(B) The continuous evaluation and adaptation of relevant artificial intelligence capabilities developed both inside the Department and in other organizations for military missions and business operations.

''(2) ACCELERATION OF ACQUISITION, DEVELOPMENT AND FIELDING OF ARTIFICIAL INTELLIGENCE.—The official designated under subsection (b) shall—

''(A) use the flexibility of regulations, personnel, acquisition, partnerships with industry and academia, or other relevant policies of the Department to accelerate the acquisition and fielding of artificial intelligence capabilities;

''(B) ensure engagement with defense and private industries, research universities, and unaffiliated, nonprofit research institutions;

''(C) provide technical advice and support to entities in the Department and the military departments to optimize the use of artificial intelligence and machine learning technologies to meet Department missions;

''(D) support the development of requirements for artificial intelligence capabilities that address the highest priority capability gaps of the Department and technical feasibility;

''(E) develop and support capabilities for technical analysis and assessment of threat capabilities based on artificial intelligence;

''(F) ensure that the Department has appropriate workforce and capabilities at laboratories, test ranges, and within the organic defense industrial base to support the artificial intelligence capabilities and requirements of the Department;

''(G) develop classification guidance for all artificial intelligence related activities of the Department;

''(H) develop standard data formats for the Department that—

''(i) aid in defining the relative maturity of datasets; and

''(ii) inform best practices for cost and schedule computation, data collection strategies aligned to mission outcomes, and dataset maintenance practices;

''(I) establish data and model usage agreements and collaborative partnership agreements for artificial intelligence product development with each organization and element of the Department, including each of the Armed Forces;

''(J) work with appropriate officials to develop appropriate ethical, legal, and other policies for the Department governing the development and use of artificial intelligence enabled systems and technologies in operational situations; and

''(K) ensure—

''(i) that artificial intelligence programs of each military department and of the Defense Agencies are consistent with the priorities identified under this section;

''(ii) appropriate coordination of artificial intelligence activities of the Department with interagency, industry, and international efforts relating to artificial intelligence, including relevant participation in standards setting bodies; and

''(iii) that appropriate entities in the Department are reviewing all open source publications from both the United States and outside the United States that contribute to, affect, or advance—

''(I) artificial intelligence research and development; or

''(II) the understanding of the Secretary concerning the investments by adversaries of the United States in artificial intelligence and the development by such adversaries of capabilities relating to artificial intelligence.

''(3) GOVERNANCE AND OVERSIGHT OF ARTIFICIAL INTELLIGENCE AND MACHINE LEARNING POLICY.—Regularly convening appropriate officials across the Department—

''(A) to integrate the functional activities of the organizations and elements of the Department with respect to artificial intelligence and machine learning;

''(B) to ensure there are efficient and effective artificial intelligence and machine learning capabilities throughout the Department; and

''(C) to develop and continuously improve research, innovation, policy, joint processes, and procedures to facilitate the development, acquisition, integration, advancement, oversight, and sustainment of artificial intelligence and machine learning throughout the Department.

''(e) ACCESS TO INFORMATION.—Not later than 180 days after the date of the enactment of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 [Jan. 1, 2021], the Secretary of Defense shall issue regulations to ensure that the official designated under subsection (b) has access to such information on programs and activities of the military departments and other Defense Agencies as the Secretary considers appropriate to carry out the duties set forth in subsection (d). At a minimum, such access shall ensure that the Director of the Joint Artificial Intelligence Center has the ability to discover, access, share, and appropriately reuse data and models of the Armed Forces and other organizations and elements of the Department of Defense, build and maintain artificial intelligence capabilities for the Department, and execute the duties assigned to the Director by the Secretary.

''(f) DELINEATION OF DEFINITION OF ARTIFICIAL INTELLIGENCE.—Not later than one year after the date of the enactment of this Act [Aug. 13, 2018], the Secretary shall delineate a definition of the term 'artificial intelligence' for use within the Department.

''(g) ARTIFICIAL INTELLIGENCE DEFINED.—In this section, the term 'artificial intelligence' includes the following:

''(1) Any artificial system that performs tasks under varying and unpredictable circumstances without significant human oversight, or that can learn from experience and improve performance when exposed to data sets.

''(2) An artificial system developed in computer software, physical hardware, or other context that solves tasks requiring human-like perception, cognition, planning, learning, communication, or physical action.

''(3) An artificial system designed to think or act like a human, including cognitive architectures and neural networks.

''(4) A set of techniques, including machine learning, that is designed to approximate a cognitive task.

''(5) An artificial system designed to act rationally, including an intelligent software agent or embodied robot that achieves goals using perception, planning, reasoning, learning, communicating, decision making, and acting.

''(h) JOINT ARTIFICIAL INTELLIGENCE CENTER DEFINED.—In this section, term 'Joint Artificial Intelligence Center' means the Joint Artificial Intelligence Center of the Department of Defense established pursuant to the memorandum of the Secretary of Defense dated June 27, 2018, and titled 'Establishment of the Joint Artificial Intelligence Center', or any successor to such Center.''

INITIATIVE TO SUPPORT PROTECTION OF NATIONAL SECURITY ACADEMIC RESEARCHERS FROM UNDUE INFLUENCE AND OTHER SECURITY THREATS

Pub. L. 115–232, div. A, title XII, §1286, Aug. 13, 2018, 132 Stat. 2078, as amended by Pub. L. 116–92, div. A, title XII, §1281, Dec. 20, 2019, 133 Stat. 1704; Pub. L. 116–283, div. A, title X, §1081(d)(6), title XII, §1299C, Jan. 1, 2021, 134 Stat. 3874, 3999, provided that:

''(a) INITIATIVE REQUIRED.—The Secretary of Defense shall, in consultation with other appropriate government organizations, establish an initiative to work with institutions of higher education who perform defense research and engineering activities—

''(1) to support protection of intellectual property, controlled information, key personnel, and information about critical technologies relevant to national security;

''(2) to limit undue influence, including through foreign talent programs, by countries to exploit United States technology within the Department of Defense research, science and technology, and innovation enterprise; and

''(3) to support efforts toward development of domestic talent in relevant scientific and engineering fields.

''(b) INSTITUTIONS AND ORGANIZATIONS.—The initiative required by subsection (a) shall be developed and executed to the maximum extent practicable with academic research institutions and other educational and research organizations.

''(c) REQUIREMENTS.—The initiative required by subsection (a) shall include development of the following:

''(1) Information exchange forum and information repositories to enable awareness of security threats and influence operations being executed against the United States research, technology, and innovation enterprise.

''(2) Training developed and delivered in consultation with institutions of higher education and appropriate Government agencies, and other support to institutions of higher education, to promote security and limit undue influence on institutions of higher education and personnel, including Department of Defense financial support to carry out such activities, that—

''(A) emphasizes best practices for protection of sensitive national security information;

''(B) includes the dissemination of unclassified materials and resources for identifying and protecting against emerging threats to institutions of higher education, including specific counterintelligence information and advice developed specifically for faculty and academic researchers based on actual identified threats; and

''(C) includes requirements for appropriate senior officials of institutions of higher education to receive from appropriate Government agencies updated and periodic briefings that describe the espionage risks to academic institutions and associated personnel posed by technical intelligence gathering activities of near-peer strategic competitors.

''(3) The capacity of Government agencies and institutions of higher education to assess whether individuals affiliated with Department of Defense programs have participated in or are currently participating in foreign talent programs or expert recruitment programs.

''(4) Opportunities to collaborate with defense researchers and research organizations in secure facilities to promote protection of critical information and strengthen defense against foreign intelligence services.

''(5) Regulations and procedures—

''(A) for Government agencies and academic organizations and personnel to support the goals of the initiative; and

''(B) that are consistent with policies that protect open and scientific exchange in fundamental research.

''(6) Policies to limit or prohibit funding provided by the Department of Defense for institutions or individual researchers who knowingly violate regulations developed under the initiative, including regulations relating to foreign talent programs.

''(7) Initiatives to support the transition of the results of institution of higher education research programs into defense capabilities.

''(8)(A) A list of academic institutions of the People's Republic of China, the Russian Federation, and other countries that—

''(i) have a history of improper technology transfer, intellectual property theft, or cyber or human espionage;

''(ii) operate under the direction of the military forces or intelligence agency of the applicable country;

''(iii) are known—

''(I) to recruit foreign individuals for the purpose of transferring knowledge to advance military or intelligence efforts; or

''(II) to provide misleading information or otherwise attempt to conceal the connections of an individual or institution to a defense or an intelligence agency of the applicable country; or

''(iv) pose a serious risk of improper technology transfer of data, technology, or research that is not published or publicly available.

''(B) The list described in subparagraph (A) shall be developed and continuously updated in consultation with the Bureau of Industry and Security of the Department of Commerce, the Director of National Intelligence, United States institutions of higher education that conduct significant Department of Defense research or engineering activities, and other appropriate individuals and organizations.

''(9)(A) A list, developed and continuously updated in consultation with the National Academies of Science, Engineering, and Medicine and the appropriate Government agencies, of foreign talent programs that pose a threat to the national security interests of the United States, as determined by the Secretary.

''(B) In developing and updating such list, the Secretary shall consider—

''(i) the extent to which a foreign talent program—

''(I) poses a threat to research funded by the Department of Defense; and

''(II) engages in, or facilitates, cyber attacks, theft, espionage, attempts to gain ownership of or influence over companies, or otherwise interferes in the affairs of the United States; and

''(ii) any other factor the Secretary considers appropriate.

''(d) PROCEDURES FOR ENHANCED INFORMATION SHARING.—

''(1) COLLECTION OF INFORMATION.—

''(A) DEFENSE RESEARCH AND DEVELOPMENT ACTIVITIES.—Not later than October 1, 2020, for the purpose of maintaining appropriate security controls over research activities, technical information, and intellectual property, the Secretary, in conjunction with appropriate public and private entities, shall establish streamlined procedures to collect appropriate information relating to individuals, including United States citizens and foreign nationals, who participate in defense research and development activities.

''(B) FUNDAMENTAL RESEARCH PROGRAMS.—With respect to fundamental research programs, the academic liaison designated under subsection (g) shall establish policies and procedures to collect, consistent with the best practices of Government agencies that fund academic research, appropriate information relating to individuals who participate in fundamental research programs.

''(2) PROTECTION FROM RELEASE.—The procedures required by paragraph (1) shall include procedures to protect such information from release, consistent with applicable regulations.

''(3) REPORTING TO GOVERNMENT INFORMATION SYSTEMS AND REPOSITORIES.—The procedures required by paragraph (1) may include procedures developed, in coordination with appropriate public and private entities, to report such information to existing Government information systems and repositories.

''(e) ANNUAL REPORT.—

''(1) IN GENERAL.—Not later than April 30, 2020, and annually thereafter, the Secretary, acting through appropriate Government officials (including the Under Secretary for Research and Engineering), shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the activities carried out under the initiative required by subsection (a).

''(2) CONTENTS.—The report required by paragraph (1) shall include the following:

''(A) A description of the activities conducted and the progress made under the initiative.

''(B) The findings of the Secretary with respect to the initiative.

''(C) Such recommendations as the Secretary may have for legislative or administrative action relating to the matters described in subsection (a), including actions related to foreign talent programs.

''(D) Identification and discussion of the gaps in legal authorities that need to be improved to enhance the security of research institutions of higher education performing defense research.

''(E) A description of the actions taken by such institutions to comply with such best practices and guidelines as may be established by under the initiative.

''(F) Identification of any incident relating to undue influence to security threats to academic research activities funded by the Department of Defense, including theft of property or intellectual property relating to a project funded by the Department at an institution of higher education.

''(3) FORM.—The report submitted under paragraph (1) shall be submitted in both unclassified and classified formats, as appropriate.

''(f) PUBLICATION OF UPDATED LISTS.—

''(1) SUBMITTAL TO CONGRESS.—Not later than January 1, 2021, and annually thereafter, the Secretary shall submit to the congressional defense committees the most recently updated lists described in paragraphs (8) and (9) of subsection (c).

''(2) FORM.—Each list submitted under paragraph (1) shall be submitted in unclassified form but may include a classified annex.

''(3) PUBLIC AVAILABILITY.—Each list submitted under paragraph (1) shall be published on a publicly accessible internet website of the Department of Defense in a searchable format.

''(4) INTERVENING SUBMITTAL AND PUBLICATION.—The Secretary may submit and publish an updated list described in paragraph (1) more frequently than required by that paragraph, as the Secretary considers necessary.

''(g) DESIGNATION OF ACADEMIC LIAISON.—

''(1) IN GENERAL.—Not later than 180 days after the date of the enactment of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 [Pub. L. 116–283; approved Jan. 1, 2021], the Secretary, acting through the Under Secretary of Defense for Research and Engineering, shall designate an academic liaison with principal responsibility for working with the academic and research communities to protect Department-sponsored academic research of concern from undue foreign influence and threats.

''(2) QUALIFICATION.—The Secretary shall designate an individual under paragraph (1) who is an official of the Office of the Under Secretary of Defense for Research and Engineering.

''(3) DUTIES.—The duties of the academic liaison designated under paragraph (1) shall be as follows:

''(A) To serve as the liaison of the Department with the academic and research communities.

''(B) To execute initiatives of the Department related to the protection of Department-sponsored academic research of concern from undue foreign influence and threats, including the initiative required by subsection (a).

''(C) To conduct outreach and education activities for the academic and research communities on undue foreign influence and threats to Department-sponsored academic research of concern.

''(D) To coordinate and align academic security policies with Department component agencies, the Office of Science and Technology Policy, the intelligence community, and appropriate Federal agencies.

''(E) To the extent practicable, to coordinate with the intelligence community to share, not less frequently than annually, with the academic and research communities unclassified information, including counterintelligence information, on threats from undue foreign influence.

''(F) Any other related responsibility, as determined by the Secretary in consultation with the Under Secretary of Defense for Research and Engineering.

''(h) INSTITUTION OF HIGHER EDUCATION DEFINED.—The term 'institution of higher education' has the meaning given such term in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001).''

MECHANISMS FOR EXPEDITED ACCESS TO TECHNICAL TALENT AND EXPERTISE AT ACADEMIC INSTITUTIONS TO SUPPORT DEPARTMENT OF DEFENSE MISSIONS

Pub. L. 115–91, div. A, title II, § 217, Dec. 12, 2017, 131 Stat. 1328, as amended by Pub. L. 115–232, div. A, title II, §§ 228, 236, Aug. 13, 2018, 132 Stat. 1687, 1694; Pub. L. 116–92, div. A, title II, § 218, Dec. 20, 2019, 133 Stat. 1259; Pub. L. 116–283, div. A, title II, § 244, Jan. 1, 2021, 134 Stat. 3488, provided that:

''(a) ARRANGEMENTS AUTHORIZED.—

''(1) IN GENERAL.—Not later than 180 days after the date of the enactment of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 [Pub. L. 116–283; approved Jan. 1, 2021], the Secretary of Defense shall direct the secretaries of the military departments to establish not fewer than four multi-institution task order contracts, consortia, cooperative agreements, or other arrangements to facilitate expedited access to university technical expertise, including faculty, staff, and students, in support of Department of Defense missions in the areas specified in subsection (e).

''(2) COORDINATION.—In carrying out paragraph (1), the Secretary of Defense may act through the Defense Advanced Research Projects Agency or any other organization or element of the Department of Defense the Secretary considers appropriate.

''(3) USE FOR TECHNICAL ANALYSES AND ENGINEERING SUPPORT.—The Secretary may use an arrangement under paragraph (1) to fund technical analyses and other engineering support as required to address acquisition, management, training, and operational challenges, including support for classified programs and activities.

''(b) LIMITATION.—An arrangement established under subsection (a)(1) may not be used to fund research programs that can be executed through other Department of Defense basic research activities.

''(c) CONSULTATION WITH OTHER DEPARTMENT OF DEFENSE ACTIVITIES.—An arrangement established under subsection (a)(1) shall, to the degree practicable, be made in consultation with other Department of Defense activities, including federally funded research and development centers (FFRDCs), university affiliated research centers (UARCs), and Defense laboratories and test centers, for purposes of providing technical expertise and reducing costs and duplicative efforts.

''(d) POLICIES AND PROCEDURES.—If the Secretary of Defense or a secretary of a military department establishes one or more arrangements under subsection (a)(1), the Secretary of Defense shall establish and implement policies and procedures to govern—

''(1) selection of participants in the arrangement or arrangements;

''(2) the awarding of task orders under the arrangement or arrangements;

''(3) maximum award size for tasks under the arrangement or arrangements;

''(4) the appropriate use of competitive awards and sole source awards under the arrangement or arrangements; and

''(5) technical areas under the arrangement or arrangements.

''(e) MISSION AREAS.—The areas specified in this subsection are as follows:

''(1) Cybersecurity.

''(2) Air and ground vehicles.

''(3) Shipbuilding.

''(4) Explosives detection and defeat.

''(5) Undersea warfare.

''(6) Trusted electronics.

''(7) Unmanned systems.

''(8) Directed energy.

''(9) Energy, power, and propulsion.

''(10) Management science and operations research.

''(11) Artificial intelligence.

''(12) Data analytics.

''(13) Business systems.

''(14) Technology transfer and transition.

''(15) Biological engineering and genetic enhancement.

''(16) High performance computing.

''(17) Materials science and engineering.

''(18) Quantum information sciences.

''(19) Special operations activities.

''(20) Modeling and simulation.

''(21) Autonomous systems.

''(22) Model based engineering.

''(23) Space.

''(24) Infrastructure resilience.

''(25) Photonics.

''(26) Autonomy.

''(27) Rapid prototyping.

''(28) Additive manufacturing.

''(29) Hypersonics.

''(30) 3D and virtual technology training platforms.

''(31) Such other areas as the Secretary considers appropriate.

''(f) REQUIREMENT TO ESTABLISH CONSORTIA.—

''(1) IN GENERAL.—In carrying out subsection (a)(1)—

''(A) the Secretary of Defense shall seek to establish at least one multi-institution consortium through the Office of the Secretary of Defense;

''(B) the Secretary of the Army shall seek to establish at least one multi-institution consortium through the Army;

''(C) the Secretary of the Navy shall seek to establish at least one multi-institution consortium through the Navy; and

''(D) the Secretary of the Air Force shall seek to establish at least one multi-institution consortium through the Air Force.

''(2) REPORT REQUIRED.—Not later than September 30, 2022, the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the status of the efforts to establish consortia under paragraph (1).

''(g) SUNSET.—No new arrangements may be entered into under subsection (a)(1) after September 30, 2026.

''(h) ARRANGEMENTS ESTABLISHED UNDER SUBSECTION (A)(1) DEFINED.—In this section, the term 'arrangement established under subsection (a)(1)' means a multi-institution task order contract, consortia, cooperative agreement, or other arrangement established under subsection (a)(1).''

LABORATORY QUALITY ENHANCEMENT PROGRAM

Pub. L. 114–328, div. A, title II, § 211, Dec. 23, 2016, 130 Stat. 2046, as amended by Pub. L. 115–91, div. A, title II, § 218(a), (b)(1), Dec. 12, 2017, 131 Stat. 1329, 1330, provided that:

''(a) IN GENERAL.—The Secretary of Defense, acting through the Under Secretary of Defense for Research and Engineering, shall carry out a program to be known as the 'Laboratory Quality Enhancement Program' under which the Secretary shall establish the panels described in subsection (b) and direct such panels—

''(1) to review and make recommendations to the Secretary with respect to—

''(A) existing policies and practices affecting the science and technology reinvention laboratories to improve the mission effectiveness of such laboratories;

''(B) new initiatives proposed by the science and technology reinvention laboratories; and

''(C) new interpretations of existing statutes and regulations that would enhance the ability of a director of a science and technology reinvention laboratory to manage the facility and discharge the mission of the laboratory;

''(2) to support implementation of current and future initiatives affecting the science and technology reinvention laboratories; and

''(3) to conduct assessments or data analysis on such other issues as the Secretary determines to be appropriate.

''(b) PANELS.—The panels described in this subsection are:

''(1) A panel on personnel, workforce development, and talent management.

''(2) A panel on facilities, equipment, and infrastructure.

''(3) A panel on research strategy, technology transfer, and industry and university partnerships.

''(4) A panel on governance and oversight processes.

''(c) COMPOSITION OF PANELS.—(1) Each panel described in paragraphs (1) through (3) of subsection (b) may be composed of subject matter and technical management experts from—

''(A) laboratories and research centers of the Army, Navy, and Air Force;

''(B) appropriate Defense Agencies;

''(C) the Office of the Under Secretary of Defense for Research and Engineering; and

''(D) such other entities as the Secretary determines to be appropriate.

''(2) The panel described in subsection (b)(4) shall be composed of—

''(A) the Director of the Army Research Laboratory;

''(B) the Director of the Air Force Research Laboratory;

''(C) the Director of the Naval Research Laboratory;

''(D) the Director of the Engineer Research and Development Center of the Army Corps of Engineers; and

''(E) such other members as the Secretary determines to be appropriate.

''(d) GOVERNANCE OF PANELS.—(1) The chairperson of each panel shall be selected by its members.

''(2) Each panel, in coordination with the Under Secretary of Defense for Research and Engineering, shall transmit to the Science and Technology Executive Committee of the Department of Defense such information or findings on topics requiring decision or approval as the panel considers appropriate.

''(3)(A) Each panel described in paragraph (1), (2), or (3) of subsection (b) shall submit to the panel described in paragraph (4) of such subsection (relating to governance and oversight processes) the following:

''(i) The findings of the panel with respect to the review conducted by the panel under subsection (a)(1)(C).

''(ii) The recommendations made by the panel under such subsection.

''(iii) Such comments, findings, and recommendations as the panel may have received by a science and technology reinvention laboratory with respect to—

''(I) the review conducted by the panel under such subsection; or

''(II) recommendations made by the panel under such subsection.

''(B)(i) The panel described in subsection (b)(4) shall review and refashion such recommendations as the panel may receive under subparagraph (A).

''(ii) In reviewing and refashioning recommendations under clause (i), the panel may, as the panel considers appropriate, consult with the science and technology executive of the affected service.

''(C) The panel described in subsection (b)(4) shall submit to the Under Secretary of Defense for Research and Engineering the recommendations made by the panel under subsection (a)(1)(C) and the recommendations refashioned by the panel under subparagraph (B) of this paragraph.

''(e) INTERPRETATION OF PROVISIONS OF LAW.—(1) The Under Secretary of Defense for Research and Engineering, acting under the guidance of the Secretary, shall issue regulations regarding the meaning, scope, implementation, and applicability of any provision of a statute relating to a science and technology reinvention laboratory.

''(2) In interpreting or defining under paragraph (1), the Under Secretary shall, to the degree practicable, emphasize providing the maximum operational flexibility to the directors of the science and technology reinvention laboratories to discharge the missions of their laboratories.

''(3) In interpreting or defining under paragraph (1), the Under Secretary shall, to the extent practicable, consult and coordinate with the secretaries of the military departments and such other agencies or entities as the Under Secretary considers relevant, on any proposed revision to regulations under paragraph (1).

''(4) In interpreting or defining under paragraph (1), the Under Secretary shall seek recommendations from the panel described in subsection (b)(4).

''(f) DISCHARGE OF CERTAIN AUTHORITIES TO CONDUCT PERSONNEL DEMONSTRATION PROJECTS.—[Amended section 342(b) of Pub. L. 103–337, set out as a note below.]

''(g) SCIENCE AND TECHNOLOGY REINVENTION LABORATORY DEFINED.—In this section, the term 'science and technology reinvention laboratory' means a science and technology reinvention laboratory designated under section 1105 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84; 10 U.S.C. 2358 note [set out below]), as amended.''

PILOT PROGRAM FOR THE ENHANCEMENT OF THE RESEARCH, DEVELOPMENT, TEST, AND EVALUATION CENTERS OF THE DEPARTMENT OF DEFENSE

Pub. L. 114–328, div. A, title II, § 233, Dec. 23, 2016, 130 Stat. 2061, as amended by Pub. L. 115–91, div. A, title II, § 235, title X, § 1081(d)(2), Dec. 12, 2017, 131 Stat. 1341, 1600; Pub. L. 116–92, div. A, title XVII, § 1731(d), Dec. 20, 2019, 133 Stat. 1816; Pub. L. 116–283, div. A, title II, § 216(a), (b), Jan. 1, 2021, 134 Stat. 3460, provided that:

''(a) PILOT PROGRAM REQUIRED.—

''(1) IN GENERAL.—The Secretary of Defense and the Secretaries of the military departments shall jointly carry out a pilot program to demonstrate methods for the more effective development of technology and management of functions at eligible centers.

''(2) ELIGIBLE CENTERS.—For purposes of the pilot program, the eligible centers are—

''(A) the science and technology reinvention laboratories, as specified in section 1105(a) of the National Defense Authorization Act for Fiscal Year 2010 [Pub. L. 111–84] (10 U.S.C. 2358 note [set out below]);

''(B) the test and evaluation centers which are activities specified as part of the Major Range and Test Facility Base in Department of Defense Directive 3200.11; and

''(C) the Defense Advanced Research Projects Agency.

''(b) SELECTION.—

''(1) IN GENERAL.—The Secretaries described in subsection (a) shall ensure that participation in the pilot program includes—

''(A) the Defense Advanced Research Projects Agency; and

''(B) in accordance with paragraph (2)—

''(i) five additional eligible centers described in subparagraph (A) of subsection (a)(2) from each of the military departments; and

''(ii) five additional eligible centers described in subparagraph (B) of such subsection from each of the military departments.

''(2) SELECTION PROCEDURES.—(A) The head of an eligible center described in subparagraph (A) or (B) of subsection (a)(2) seeking to participate in the pilot program shall submit to the appropriate reviewer an application therefor at such time, in such manner, and containing such information as the appropriate reviewer shall specify.

''(B) Not later than 120 days after the date of such submittal, each appropriate reviewer shall—

''(i) evaluate each application received under subparagraph (A); and

''(ii) approve or disapprove of the application.

''(C) If the head of an eligible center submits an application under subparagraph (A) in accordance with the requirements specified by the appropriate reviewer for purposes of such subparagraph and the appropriate reviewer neither approves nor disapproves such application pursuant to subparagraph (B)(ii) on or before the date that is 120 days after the date of such submittal, such eligible center shall be considered a participant in the pilot program.

''(D) For purposes of this paragraph, the appropriate reviewer is—

''(i) in the case of an eligible center described in subparagraph (A) of subsection (a)(2), the Laboratory Quality Enhancement Program; and

''(ii) in the case of an eligible center described in subparagraph (B) of such subsection, the Director of the Test Resource Management Center.

''(c) PARTICIPATION IN PROGRAM.—

''(1) IN GENERAL.—Subject to paragraph (2), the head of each eligible center selected under subsection (b)(1) shall submit to the Assistant Secretary concerned a proposal on, and implement, alternative and innovative methods of effective management and operations of eligible centers, rapid project delivery, support, ex-

perimentation, prototyping, and partnership with universities and private sector entities to—

''(A) generate greater value and efficiencies in research and development activities;

''(B) enable more efficient and effective operations of supporting activities, such as—

''(i) facility management, construction, and repair;

''(ii) business operations;

''(iii) personnel management policies and practices; and

''(iv) intramural and public outreach; and

''(C) enable more rapid deployment of warfighter capabilities.

''(2) IMPLEMENTATION.—(A) The head of an eligible center described in subparagraph (A) or (B) of subsection (a)(2) shall implement each method proposed under paragraph (1) unless such method is disapproved in writing by the Assistant Secretary concerned within 60 days of receiving a proposal from an eligible center selected under subsection (b)(1) by such Assistant Secretary.

''(B) The Director of the Defense Advanced Research Projects Agency shall implement each method proposed under paragraph (1) unless such method is disapproved in writing by the Chief Management Officer within 60 days of receiving a proposal from the Director.

''(C) In this paragraph, the term 'Assistant Secretary concerned' means—

''(i) the Assistant Secretary of the Air Force for Acquisition [now Assistant Secretary of the Air Force for Acquisition, Technology, and Logistics], with respect to matters concerning the Air Force;

''(ii) the Assistant Secretary of the Army for Acquisition, Logistics, and Technology, with respect to matters concerning the Army; and

''(iii) the Assistant Secretary of the Navy for Research, Development, and Acquisition, with respect to matters concerning the Navy.

''(d) WAIVER AUTHORITY FOR DEMONSTRATION AND IMPLEMENTATION.—Until the termination of the pilot program under subsection (e), the head of an eligible center selected under subsection (b)(1) may waive any regulation, restriction, requirement, guidance, policy, procedure, or departmental instruction that would affect the implementation of a method proposed under subsection (c)(1), unless such implementation would be prohibited by a provision of a Federal statute or common law.

''(e) TERMINATION.—The pilot program shall terminate on September 30, 2027.

''(f) REPORT.—

''(1) IN GENERAL.—Not later than one year after the date of the enactment of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 [Pub. L. 116–283; approved Jan. 1, 2021], the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the status of the pilot program.

''(2) CONTENTS.—The report required by paragraph (1) shall include the following:

''(A) Identification of the eligible centers participating in the pilot program.

''(B) Identification of the eligible centers whose applications to participate in the pilot program were disapproved under subsection (b), including justifications for such disapprovals.

''(C) A description of the methods implemented pursuant to subsection (c).

''(D) A description of the methods that were proposed pursuant to paragraph (1) of subsection (c) but disapproved under paragraph (2) of such subsection.

''(E) An assessment of how methods implemented pursuant to subsection (c) have contributed to the objectives identified in subparagraphs (A), (B), and (C) of paragraph (1) of such subsection.

''(F) With respect to any military department not participating in the pilot program, an explanation for such nonparticipation, including identification of—

''(i) any issues that may be preventing such participation; and

''(ii) any offices or other elements of the Department of Defense that may be responsible for the delay in participation.''

[Pub. L. 116–283, div. A, title II, § 216(b), Jan. 1, 2021, 134 Stat. 3460, provided in part that the amendment made to section 233(c)(2)(C)(ii) of Pub. L. 114–328, set out above, by section 216(b) of Pub. L. 116–283 is effective as of Dec. 23, 2016, and as if included in such section 233(c)(2)(C)(ii) as enacted.]

[Pub. L. 116–92, § 1731(d), and Pub. L. 116–283, § 216(b), made identical amendments to section 233(c)(2)(C)(ii) of Pub. L. 114–328, set out above, by substituting ''Assistant Secretary of the Army for Acquisition, Logistics, and Technology'' for ''Assistant Secretary of the Army for Acquisition, Technology, and Logistics'', both effective as of Dec. 23, 2016, and as if included in such section as enacted. However, the substitution reflects execution of the amendment made by Pub. L. 116–283 and not by Pub. L. 116–92, as the latter directed amendment of the ''National Defense Authorization Act for Fiscal Year 2018'', and Pub. L. 114–328 is known as the ''National Defense Authorization Act for Fiscal Year 2017''.]

PILOT PROGRAM ON ENHANCED INTERACTION BETWEEN THE DEFENSE ADVANCED RESEARCH PROJECTS AGENCY AND THE SERVICE ACADEMIES

Pub. L. 114–328, div. A, title II, § 236, Dec. 23, 2016, 130 Stat. 2066, authorized pilot program to enhance interaction between Defense Advanced Research Projects Agency and service academies to promote technology transition, education, and training in science, technology, engineering, and mathematics fields that are relevant to the Department of Defense and terminated authority for program on Sept. 30, 2020.

MISSION INTEGRATION MANAGEMENT

Pub. L. 114–328, div. A, title VIII, § 855, Dec. 23, 2016, 130 Stat. 2297, directed the Secretary of Defense to establish mission integration management activities for certain mission areas that involve multiple Armed Forces and multiple programs and to submit to the congressional defense committees, at the same time the fiscal year 2018 budget is submitted to Congress, a strategy for mission integration management.

PILOT PROGRAM ON ENHANCED PAY AUTHORITY FOR CERTAIN RESEARCH AND TECHNOLOGY POSITIONS IN THE SCIENCE AND TECHNOLOGY REINVENTION LABORATORIES OF THE DEPARTMENT OF DEFENSE

Pub. L. 114–328, div. A, title XI, § 1124, Dec. 23, 2016, 130 Stat. 2456, which established a pilot program relating to attracting and retaining high quality acquisition and technology experts in positions responsible for managing and performing complex, high-cost research and technology development efforts in the science and technology reinvention laboratories of the Department of Defense, was repealed by Pub. L. 116–283, div. A, title XI, § 1115(c)(1), Jan. 1, 2021, 134 Stat. 3896. See section 2358c of this title.

[Pub. L. 116–283, div. A, title XI, § 1115(c)(2), Jan. 1, 2021, 134 Stat. 3896, provided that: ''The repeal in paragraph (1) [repealing section 1124 of Pub. L. 114–328, formerly set out above] shall not be interpreted to prohibit the payment of basic pay at rates fixed under such section 1124 before the date of the enactment of this Act [Jan. 1, 2021] for positions having terms that continue after that date.'']

PLAN FOR ADVANCED WEAPONS TECHNOLOGY WAR GAMES

Pub. L. 114–92, div. A, title II, § 240, Nov. 25, 2015, 129 Stat. 784, directed the Secretary of Defense to develop,

in coordination with the Chairman of the Joint Chiefs of Staff, a plan for integrating advanced weapons and offset technologies into exercises carried out by the military to improve the development and experimentation of various concepts for employment by the Armed Forces and to submit to the Committees on Armed Services of the House of Representatives and the Senate, not later than one year after Nov. 25, 2015, a report on the plan and its implementation.

INFORMATION OPERATIONS AND ENGAGEMENT TECHNOLOGY DEMONSTRATIONS

Pub. L. 114–92, div. A, title X, §1056, Nov. 25, 2015, 129 Stat. 984, provided that:

''(a) SENSE OF CONGRESS.—It is the sense of Congress that—

''(1) military information support operations are a critical component of the efforts of the Department of Defense to provide commanders with capabilities to shape the operational environment;

''(2) military information support operations are integral to armed conflict and therefore the Secretary of Defense has broad latitude to conduct military information support operations;

''(3) the Secretary of Defense should develop creative and agile concepts, technologies, and strategies across all available media to most effectively reach target audiences, to counter and degrade the ability of adversaries and potential adversaries to persuade, inspire, and recruit inside areas of hostilities or in other areas in direct support of the objectives of commanders; and

''(4) the Secretary of Defense should request additional funds in future budgets to carry out military information support operations to support the broader efforts of the Government to counter violent extremism.

''(b) TECHNOLOGY DEMONSTRATIONS REQUIRED.—To support the ability of the Department of Defense to provide innovative operational concepts and technologies to shape the informational environment, the Secretary of Defense shall carry out a series of technology demonstrations, subject to the availability of funds for such purpose or to a prior approval reprogramming, to assess innovative new technologies for information operations and information engagement to support the operational and strategic requirements of the commanders of the geographic and functional combatant commands, including the urgent and emergent operational needs and the operational and theater campaign plans of such combatant commanders to further the national security objectives and strategic communications requirements of the United States.

''(c) PLAN.—By not later than 180 days after the date of the enactment of this Act [Nov. 25, 2015], the Secretary of Defense shall provide to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a plan describing how the Department of Defense will execute the technology demonstrations required under subsection (b). Such plan shall include each of the following elements:

''(1) A general timeline for conducting the technology demonstrations.

''(2) Clearly defined goals and endstate objectives for the demonstrations, including traceability of such goals to the tactical, operational, or strategic requirements of the combatant commanders.

''(3) A process for measuring the performance and effectiveness of the demonstrations.

''(4) A coordination structure to include participation between the technology development and the operational communities, including potentially joint, interagency, intergovernmental, and multinational partners.

''(5) The identification of potential technologies to support the tactical, operational, or strategic needs of the combatant commanders.

''(6) An explanation of how such technologies will support and coordinate with elements of joint, interagency, intergovernmental, and multinational partners.

''(d) CONGRESSIONAL NOTICE.—Upon initiating a technology demonstration under subsection (b), the Secretary of Defense shall submit to the congressional defense committees written notice of the demonstration that includes a detailed description of the demonstration, including its purpose, cost, engagement medium, targeted audience, and any other details the Secretary of Defense believes will assist the committees in evaluating the demonstration.

''(e) TERMINATION.—The authority to carry out a technology demonstration under this section shall terminate on September 30, 2022.

''(f) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to limit or alter any authority under which the Department of Defense supports information operations activities within the Department.''

PILOT PROGRAM ON DYNAMIC SHAPING OF THE WORKFORCE TO IMPROVE THE TECHNICAL SKILLS AND EXPERTISE AT CERTAIN DEPARTMENT OF DEFENSE LABORATORIES

Pub. L. 114–92, div. A, title XI, §1109, Nov. 25, 2015, 129 Stat. 1028, as amended by Pub. L. 115–232, div. A, title XI, §1112(b), Aug. 13, 2018, 132 Stat. 2012, provided that:

''(a) PILOT PROGRAM REQUIRED.—The Secretary of Defense shall establish a pilot program to utilize the authorities specified in subsection (b) at the Department of Defense laboratories specified in subsection (c) to provide the directors of such laboratories the authority to dynamically shape the mix of technical skills and expertise in the workforces of such laboratories in order to achieve one or more of the following:

''(1) To meet organizational and Department-designated missions in the most cost-effective and efficient manner.

''(2) To upgrade and enhance the scientific quality of the workforces of such laboratories.

''(3) To shape such workforces to better respond to such missions.

''(4) To reduce the average unit cost of such workforces.

''(b) WORKFORCE SHAPING AUTHORITIES.—The authorities that shall be available for use by the director of a Department of Defense laboratory under the pilot program are the following:

''(1) FLEXIBLE LENGTH AND RENEWABLE TERM TECHNICAL APPOINTMENTS.—

''(A) IN GENERAL.—Subject to the provisions of this paragraph, authority otherwise available to the director by law (and within the available budgetary resources of the laboratory) to make appointments as follows:

''(i) Appointment of qualified scientific and technical personnel who are not current Department of Defense civilian employees into any scientific or technical position in the laboratory for a period of more than one year but not more than six years.

''(ii) Appointment of qualified scientific and technical personnel who are Department civilian employees in term appointments into any scientific or technical position in the laboratory for a period of more than one year but not more than six years.

''(B) BENEFITS.—Personnel appointed under this paragraph shall be provided with benefits comparable to those provided to similar employees at the laboratory concerned, including professional development opportunities, eligibility for all laboratory awards programs, and designation as 'status applicants' for the purposes of eligibility for positions in the Federal service.

''(C) EXTENSION OF APPOINTMENTS.—The appointment of any individual under this paragraph may be extended without limit in up to six year increments at any time during any term of service under such conditions as the director concerned shall establish for purposes of this paragraph.

''(D) CONSTRUCTION WITH CERTAIN LIMITATION.—For purposes of determining the workforce size of a laboratory in connection with compliance with section 955 of the National Defense Authorization Act for Fiscal Year 2013 (Public Law 112–239; 126 Stat. 1896; 10 U.S.C. 129a note), any individual serving in an appointment under this paragraph shall be treated as a fractional employee of the laboratory, which fraction is—

''(i) the current term of appointment of the individual under this paragraph; divided by

''(ii) the average length of tenure of a career employee at the laboratory, as calculated at the end of the last fiscal year ending before the date of the most recent appointment or extension of the individual under this paragraph.

''(2) REEMPLOYMENT OF ANNUITANTS.—Authorities to authorize the director of any science and technology reinvention laboratory (in this section referred to as 'STRL') to reemploy annuitants in accordance with section 9902(g) of title 5, United States Code, except that as a condition for reemployment the director may authorize the deduction from the pay of any annuitant so reemployed of an amount up to the amount of the annuity otherwise payable to such annuitant allocable to the period of actual employment of such annuitant, which amount shall be determined in a manner specified by the director for purposes of this paragraph to ensure the most cost effective execution of designated missions by the laboratory while retaining critical technical skills.

''(3) EARLY RETIREMENT INCENTIVES.—Authorities to authorize the director of any STRL to authorize voluntary early retirement of employees in accordance with section 8336 of title 5, United States Code, without regard to section 8336(d)(2)(D) or 3522 of such title, and with employees so separated voluntarily from service.

''(4) SEPARATION INCENTIVE PAY.—Authorities to authorize the director of any STRL to pay voluntary separation pay to employees in accordance with section 8414(b)(1)(B) of title 5, United States Code, without regard to clause (iv) or (v) of such section or section 3522 of such title, and with—

''(A) employees so separated voluntarily from service under regulations prescribed by the Secretary of Defense for purposes of the pilot program; and

''(B) payments to employees so separated authorized under section 3523 of such title without regard to—

''(i) the plan otherwise required by section 3522 of such title; and

''(ii) paragraph (1) or (3) of section 3523(b) of such title.

''(c) LABORATORIES.—The Department of Defense laboratories specified in this subsection are the laboratories specified in section 1105(a) of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84; 123 Stat. 2486; 10 U.S.C. 2358 note).

''(d) EXPIRATION.—

''(1) IN GENERAL.—The authority in this section shall expire on December 31, 2023.

''(2) CONTINUATION OF AUTHORITIES EXERCISED BEFORE TERMINATION.—The expiration in paragraph (1) shall not be construed to effect the continuation after the date specified in paragraph (1) of any term of employment or other benefit authorized under this section before that date in accordance with the terms of such authorization.''

DEFENSE LABORATORY MODERNIZATION PILOT PROGRAM

Pub. L. 114–92, div. B, title XXVIII, §2803, Nov. 25, 2015, 129 Stat. 1169, as amended by Pub. L. 114–328, div. B, title XXVIII, §2806, Dec. 23, 2016, 130 Stat. 2715; Pub. L. 115–232, div. B, title XXVIII, §2808(a)–(c), Aug. 13, 2018, 132 Stat. 2265, 2266, provided that:

''(a) AUTHORITY TO USE RESEARCH, DEVELOPMENT, TEST, AND EVALUATION FUNDS.—Using amounts appropriated or otherwise made available to the Department of Defense for research, development, test, and evaluation, the Secretary of Defense may fund a military construction project described in subsection (d) at any of the following:

''(1) A Department of Defense Science and Technology Reinvention Laboratory (as designated by section 1105(a) of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84; 10 U.S.C. 2358 note)[)].

''(2) A Department of Defense Federally Funded Research and Development Center that functions primarily as a research laboratory.

''(3) A Department of Defense facility in support of a technology development program that is consistent with the fielding of offset technologies as described in section 218 of this Act [set out as a note under section 2501 of this title].

''(4) A Department of Defense research, development, test, and evaluation facility that is not designated as a Science and Technology Reinvention Laboratory, but nonetheless is involved with developmental test and evaluation.

''(b) CONDITION ON AND SCOPE OF PROJECT AUTHORITY.—Subject to the condition that a military construction project under subsection (a) be authorized in a Military Construction Authorization Act, the authority to carry out the military construction project includes authority for—

''(1) surveys, site preparation, and advanced planning and design;

''(2) acquisition, conversion, rehabilitation, and installation of facilities;

''(3) acquisition and installation of equipment and appurtenances integral to the project; acquisition and installation of supporting facilities (including utilities) and appurtenances incident to the project; and

''(4) planning, supervision, administration, and overhead expenses incident to the project.

''(c) CONGRESSIONAL NOTIFICATION REQUIREMENTS.—

''(1) SUBMISSION OF PROJECT REQUESTS.—The Secretary of Defense shall include military construction projects proposed to be carried out under subsection (a) in the budget justification documents for the Department of Defense submitted to Congress in connection with the budget for a fiscal year submitted under 1105 of title 31, United States Code.

''(2) NOTIFICATION OF IMPLEMENTATION.—Not less than 14 days prior to the first obligation of funds described in subsection (a) for a military construction project to be carried out under subsection (a), the Secretary of Defense shall submit a notification to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] providing an updated construction description, cost, and schedule for the project and any other matters regarding the project as the Secretary considers appropriate.

''(d) AUTHORIZED PROJECTS DESCRIBED.—The authority provided by subsection (a) to fund military construction projects using amounts appropriated or otherwise made available for research, development, test, and evaluation is limited to military construction projects that the Secretary of Defense, in the budget justification documents exhibits submitted pursuant to subsection (c)(1), determines—

''(1) will support research and development activities at laboratories described in subsection (a);

''(2) will establish facilities that will have significant potential for use by entities outside the Department of Defense, including universities, industrial partners, and other Federal agencies;

''(3) are endorsed for funding by more than one military department or Defense Agency; and

''(4) cannot be fully funded within the thresholds specified in section 2805 of title 10, United States Code.

''(e) FUNDING LIMITATION.—The maximum amount of funds appropriated or otherwise made available for research, development, test, and evaluation that may be

obligated in any fiscal year for military construction projects under subsection (a) is $150,000,000.

''(f) ADDITIONAL AUTHORITY TO USE FUNDS FOR RELATED ARCHITECTURAL AND ENGINEERING SERVICES AND CONTRACT DESIGN.—

''(1) AUTHORITY.—In addition to the authority provided to the Secretary of Defense under subsection (a) to use amounts appropriated or otherwise made available for research, development, test, and evaluation for a military construction project referred to in such subsection, the Secretary of the military department concerned may use amounts appropriated or otherwise made available for research, development, test, and evaluation to obtain architectural and engineering services and to carry out construction design in connection with such a project.

''(2) NOTICE REQUIREMENT.—In the case of architectural and engineering services and construction design to be undertaken under this subsection for which the estimated cost exceeds $1,000,000, the Secretary concerned shall notify the appropriate committees of Congress of the scope of the proposed project and the estimated cost of such services before the initial obligation of funds for such services. The Secretary may then obligate funds for such services only after the end of the 14-day period beginning on the date on which the notification is received by the committees in an electronic medium pursuant to section 480 of this title [sic; probably means section 480 of title 10, United States Code].

''(g) TERMINATION OF AUTHORITY.—The authority provided by this section to fund military construction projects using funds appropriated or otherwise made available for research, development, test, and evaluation shall terminate on October 1, 2025.''

[Pub. L. 115–232, div. B, title XXVIII, § 2808(d), Aug. 13, 2018, 132 Stat. 2266, provided that: ''The amendments made by this section [amending section 2803 of Pub. L. 114–92, set out above] shall take effect as if included in the enactment of section 2803 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114–92; 129 Stat. 1169; 10 U.S.C. 2358 note).'']

PILOT PROGRAM ON ASSIGNMENT TO DEFENSE ADVANCED RESEARCH PROJECTS AGENCY OF PRIVATE SECTOR PERSONNEL WITH CRITICAL RESEARCH AND DEVELOPMENT EXPERTISE

Pub. L. 113–291, div. A, title II, § 232, Dec. 19, 2014, 128 Stat. 3332, as amended by Pub. L. 115–91, div. A, title X, § 1051(t)(1), Dec. 12, 2017, 131 Stat. 1566, provided that:

''(a) PILOT PROGRAM AUTHORIZED.—In accordance with the provisions of this section, the Director of the Defense Advanced Research Projects Agency may carry out a pilot program to assess the feasibility and advisability of temporarily assigning covered individuals with significant technical expertise in research and development areas of critical importance to defense missions to the Defense Advanced Research Projects Agency to lead research or development projects of the Agency.

''(b) ASSIGNMENT OF COVERED INDIVIDUALS.—

''(1) NUMBER OF INDIVIDUALS ASSIGNED.—Under the pilot program, the Director may assign covered individuals to the Agency as described in subsection (a), but may not have more than five covered individuals so assigned at any given time.

''(2) PERIOD OF ASSIGNMENT.—

''(A) Except as provided in subparagraph (B), the Director may, under the pilot program, assign a covered individual described in subsection (a) to lead research and development projects of the Agency for a period of not more than two years.

''(B) The Director may extend the assignment of a covered individual for one additional period of not more than two years as the Director considers appropriate.

''(3) APPLICATION OF CERTAIN PROVISIONS OF LAW.—

''(A) Except as otherwise provided in this section, the Director shall carry out the pilot program in accordance with the provisions of subchapter VI of chapter 33 of title 5, United States Code, except that, for purposes of the pilot program, the term 'other organization', as used in such subchapter, shall be deemed to include a covered entity.

''(B) A covered individual employed by a covered entity who is assigned to the Agency under the pilot program is deemed to be an employee of the Department of Defense for purposes of the following provisions of law:

''(i) Chapter 73 of title 5, United States Code.

''(ii) Sections 201, 203, 205, 207, 208, 209, 603, 606, 607, 643, 654, 1905, and 1913 of title 18, United States Code.

''(iii) Sections 1343, 1344, and 1349(b) of title 31, United States Code.

''(iv) Chapter 171 of title 28, United States Code (commonly known as the 'Federal Tort Claims Act'), and any other Federal tort liability statute.

''(v) The Ethics in Government Act of 1978 (5 U.S.C. App.).

''(vi) Section 1043 of the Internal Revenue Code of 1986 [26 U.S.C. 1043].

''(vii) Chapter 21 of title 41, United States Code.

''(4) PAY AND SUPERVISION.—A covered individual employed by a covered entity who is assigned to the Agency under the pilot program—

''(A) may continue to receive pay and benefits from such covered entity with or without reimbursement by the Agency;

''(B) is not entitled to pay from the Agency; and

''(C) shall be subject to supervision by the Director in all duties performed for the Agency under the pilot program.

''(c) CONFLICTS OF INTEREST.—

''(1) PRACTICES AND PROCEDURES REQUIRED.—The Director shall develop practices and procedures to manage conflicts of interest and the appearance of conflicts of interest that could arise through assignments under the pilot program.

''(2) ELEMENTS.—The practices and procedures required by paragraph (1) shall include, at a minimum, the requirement that each covered individual assigned to the Agency under the pilot program shall sign an agreement that provides for the following:

''(A) The nondisclosure of any trade secrets or other nonpublic or proprietary information which is of commercial value to the covered entity from which such covered individual is assigned.

''(B) The assignment of rights to intellectual property developed in the course of any research or development project under the pilot program—

''(i) to the Agency and its contracting partners in accordance with applicable provisions of law regarding intellectual property rights; and

''(ii) not to the covered individual or the covered entity from which such covered individual is assigned.

''(C) Such additional measures as the Director considers necessary to carry out the program in accordance with Federal law.

''(d) PROHIBITION ON CHARGES BY COVERED ENTITIES.—A covered entity may not charge the Federal Government, as direct or indirect costs under a Federal contract, the costs of pay or benefits paid by the covered entity to a covered individual assigned to the Agency under the pilot program.

''(e) TERMINATION OF AUTHORITY.—The authority provided in this section shall expire on September 30, 2025, except that any covered individual assigned to the Agency under the pilot program shall continue in such assignment until the terms of such assignment have been satisfied.

''(f) DEFINITIONS.—In this section:

''(1) The term 'covered individual' means any individual who is employed by a covered entity.

''(2) The term 'covered entity' means any non-Federal, nongovernmental entity that, as of the date on which a covered individual employed by the entity is assigned to the Agency under the pilot program, is a

nontraditional defense contractor (as defined in section 2302 of title 10, United States Code).''

TEMPORARY AUTHORITIES FOR CERTAIN POSITIONS AT DEPARTMENT OF DEFENSE RESEARCH AND ENGINEERING FACILITIES

Pub. L. 113–66, div. A, title XI, § 1107, Dec. 26, 2013, 127 Stat. 887, as amended by Pub. L. 113–291, div. A, title XI, § 1105, Dec. 19, 2014, 128 Stat. 3526; Pub. L. 114–92, div. A, title XI, § 1104, Nov. 25, 2015, 129 Stat. 1023, authorized director of any Science and Technology Reinvention Laboratory, until Dec. 31, 2019, to appoint qualified candidates possessing a bachelor's degree or enrolled in undergraduate or graduate scientific, technical, engineering or mathematical programs or to appoint qualified veteran candidates to certain laboratory positions, prior to repeal by Pub. L. 114–328, div. A, title XI, § 1122(b), Dec. 23, 2016, 130 Stat. 2455. See section 2358a of this title.

REGIONAL ADVANCED TECHNOLOGY CLUSTERS

Pub. L. 112–239, div. A, title II, § 252, Jan. 2, 2013, 126 Stat. 1688, authorized the Secretary of Defense to use the research and engineering network of the Department of Defense to support regional advanced technology clusters established by the Secretary of Commerce to encourage the development of innovative advanced technologies to address national security and homeland defense challenges and directed the Under Secretary of Defense for Acquisition, Technology, and Logistics to submit a report to Congress, not later than 180 days after Jan. 2, 2013, on the participation of the Department of Defense in the regional advanced technology clusters.

ADVANCED ROTORCRAFT FLIGHT RESEARCH AND DEVELOPMENT

Pub. L. 112–81, div. A, title II, § 222, Dec. 31, 2011, 125 Stat. 1336, as amended by Pub. L. 114–328, div. A, title VIII, § 833(b)(2)(C)(iii), Dec. 23, 2016, 130 Stat. 2284; Pub. L. 115–91, div. A, title X, § 1081(d)(6)(B), Dec. 12, 2017, 131 Stat. 1600, authorized the Secretary of the Army to conduct a program for flight research and demonstration of advanced rotorcraft technology and directed the Secretary to use competitive procedures in accordance with section 2304 of this title in awarding contracts under the program.

PROGRAM FOR RESEARCH, DEVELOPMENT, AND DEPLOYMENT OF ADVANCED GROUND VEHICLES, GROUND VEHICLE SYSTEMS, AND COMPONENTS

Pub. L. 111–383, div. A, title II, § 214, Jan. 7, 2011, 124 Stat. 4164, provided for a program for research and development on, and deployment of, advanced technology ground vehicles, ground vehicle systems, and components within the Department of Defense.

PILOT PROGRAM TO INCLUDE TECHNOLOGY PROTECTION FEATURES DURING RESEARCH AND DEVELOPMENT OF DEFENSE SYSTEMS

Pub. L. 111–383, div. A, title II, § 243, Jan. 7, 2011, 124 Stat. 4178, as amended by Pub. L. 112–81, div. A, title II, § 252, Dec. 31, 2011, 125 Stat. 1347; Pub. L. 113–66, div. A, title II, § 264, Dec. 26, 2013, 127 Stat. 726; Pub. L. 113–291, div. A, title II, § 231, Dec. 19, 2014, 128 Stat. 3332; Pub. L. 115–91, div. A, title X, § 1051(p)(2), Dec. 12, 2017, 131 Stat. 1564, which related to a pilot program to develop and incorporate technology protection features during the research and development phase of a system, was repealed by Pub. L. 115–232, div. A, title II, § 223(c), Aug. 13, 2018, 132 Stat. 1683. See section 2357 of this title.

PROGRAM TO ASSESS THE UTILITY OF NON-LETHAL WEAPONS

Pub. L. 111–383, div. A, title X, § 1078, Jan. 7, 2011, 124 Stat. 4380, directed the Secretary of Defense to carry out a program to demonstrate and assess the utility and effectiveness of non-lethal weapons, including non-lethal weapons designed for counter-personal and counter-material missions, to provide escalation of force options in counter-insurgency operations and directed the Secretary of Defense to submit a report to the congressional defense committees no later than Oct. 1, 2011.

MECHANISMS TO PROVIDE FUNDS FOR DEFENSE LABORATORIES FOR RESEARCH AND DEVELOPMENT OF TECHNOLOGIES FOR MILITARY MISSIONS

Pub. L. 110–417, [div. A], title II, § 219, Oct. 14, 2008, 122 Stat. 4389, as amended by Pub. L. 111–84, div. B, title XXVIII, § 2801(c), Oct. 28, 2009, 123 Stat. 2660; Pub. L. 112–81, div. A, title II, § 253, Dec. 31, 2011, 125 Stat. 1347; Pub. L. 113–66, div. A, title II, § 262(a), (b), Dec. 26, 2013, 127 Stat. 725, 726; Pub. L. 114–328, div. A, title II, § 212, Dec. 23, 2016, 130 Stat. 2047, which related to funding mechanisms, availability of funds for infrastructure projects, and annual reports, was repealed by Pub. L. 115–91, div. A, title II, § 220(c)(1), Dec. 12, 2017, 131 Stat. 1333.

SCIENCE AND TECHNOLOGY INVESTMENT STRATEGY TO DEFEAT OR COUNTER IMPROVISED EXPLOSIVE DEVICES

Pub. L. 110–417, [div. A], title XV, § 1504, Oct. 14, 2008, 122 Stat. 4650, as amended by Pub. L. 112–81, div. A, title X, § 1062(b), Dec. 31, 2011, 125 Stat. 1585; Pub. L. 112–239, div. A, title X, § 1076(c)(2)(D), Jan. 2, 2013, 126 Stat. 1950, directed the Director of the Joint Improvised Explosive Device Defeat Organization to develop, jointly with the Assistant Secretary of Defense for Research and Engineering, a comprehensive science and technology investment strategy for countering the threat of improvised explosive devices.

HYPERSONICS DEVELOPMENT

Pub. L. 109–364, div. A, title II, § 218, Oct. 17, 2006, 120 Stat. 2126, as amended by Pub. L. 112–81, div. A, title II, § 241, Dec. 31, 2011, 125 Stat. 1343; Pub. L. 114–92, div. A, title X, § 1079(f), Nov. 25, 2015, 129 Stat. 999; Pub. L. 115–91, div. A, title II, § 214(b), Dec. 12, 2017, 131 Stat. 1325; Pub. L. 116–92, div. A, title II, § 216, Dec. 20, 2019, 133 Stat. 1257; Pub. L. 116–283, div. A, title II, § 217(e), Jan. 1, 2021, 134 Stat. 3462, provided that:

''(a) ESTABLISHMENT OF JOINT HYPERSONICS TRANSITION OFFICE.—The Secretary of Defense shall establish within the Office of the Secretary of Defense a Joint Hypersonics Transition Office (in this section referred to as the 'Office'). The Office shall carry out the program and activities described in subsections (b) and (c) and shall have such other responsibilities relating to hypersonics as the Secretary shall specify[.]

''(b) UNIVERSITY EXPERTISE.—

''(1) ARRANGEMENT WITH INSTITUTIONS OF HIGHER EDUCATION.—Using the authority specified in section 217 of the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115–91; 10 U.S.C. 2358 note) or another similar authority, the Office shall seek to enter into an arrangement with one or more institutions of higher education (as defined in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001)) under which such institutions may provide the Office with foundational and applied hypersonic research, development, and workforce support in areas that the Office determines to be relevant for the Department of Defense.

''(2) AVAILABILITY OF INFORMATION.—The Office shall ensure that the results of any research and reports produced pursuant to an arrangement under paragraph (1) are made available to the Federal Government, the private sector, academia, and international partners consistent with appropriate security classification guidance.

''(c) RESPONSIBILITIES.—The Office shall do the following:

''(1) Expedite testing, evaluation, and acquisition of hypersonic technologies to meet the stated needs of the warfighter, including flight testing, ground-based-testing, and underwater launch testing.

''(2) Ensure prototyping demonstration programs on hypersonic systems integrate advanced technologies to speed the maturation and deployment of future hypersonic systems.

''(3) Ensure that any demonstration program on hypersonic systems is carried out only if determined to be consistent with the roadmap for the relevant critical technology area supportive of the National Defense Strategy, as developed by the senior official with responsibility for such area under section 217 of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 [Pub. L. 116–283; 10 U.S.C. 4001 note].

''(4) Develop strategies and roadmaps for hypersonic technologies to enable the transition of such technologies to future operational capabilities for the warfighter.

''(5) Develop and implement a strategy for enhancing the current and future hypersonics workforce.

''(6) Coordinate with relevant stakeholders and agencies to support the technological advantage of the United States in developing hypersonic systems.''

COLLABORATIVE PROGRAM FOR RESEARCH AND DEVELOPMENT OF VACUUM ELECTRONICS TECHNOLOGIES

Pub. L. 108–375, div. A, title II, § 212, Oct. 28, 2004, 118 Stat. 1832, as amended by Pub. L. 112–239, div. A, title X, § 1076(c)(2)(A)(iii), Jan. 2, 2013, 126 Stat. 1950, directed the Secretary of Defense to establish a program for research and development in advanced vacuum electronics to meet the requirements of Department of Defense systems, to be carried out collaboratively by the Assistant Secretary of Defense for Research and Engineering, the Secretary of the Navy, the Secretary of the Air Force, the Secretary of the Army, and other appropriate elements of the Department of Defense, and directed the Assistant Secretary of Defense for Research and Engineering to submit to the congressional defense committees, no later than Jan. 31, 2005, a report on the implementation of the program.

DEPARTMENT OF DEFENSE PROGRAM TO EXPAND HIGH-SPEED, HIGH-BANDWIDTH CAPABILITIES FOR NETWORK-CENTRIC OPERATIONS

Pub. L. 108–136, div. A, title II, § 234, Nov. 24, 2003, 117 Stat. 1423, directed the Secretary of Defense to carry out a program of research and development to promote the development of high-speed, high-bandwidth communications capabilities for support of network-centric operations by the Armed Forces and to submit to the congressional defense committees, together with the budget justification materials submitted to Congress for fiscal year 2006, a report on the program.

RESEARCH AND DEVELOPMENT OF DEFENSE BIOMEDICAL COUNTERMEASURES

Pub. L. 108–136, div. A, title XVI, § 1601, Nov. 24, 2003, 117 Stat. 1680, as amended by Pub. L. 112–81, div. A, title X, § 1062(g)(3), Dec. 31, 2011, 125 Stat. 1585; Pub. L. 113–291, div. A, title X, § 1071(b)(5)(B), Dec. 19, 2014, 128 Stat. 3507; Pub. L. 114–92, div. A, title VIII, § 815(d), Nov. 25, 2015, 129 Stat. 896, provided that:

''(a) IN GENERAL.—The Secretary of Defense (in this section referred to as the 'Secretary') shall carry out a program to accelerate the research, development and procurement of biomedical countermeasures, including but not limited to therapeutics and vaccines, for the protection of the Armed Forces from attack by one or more biological, chemical, radiological, or nuclear agents.

''(b) INTERAGENCY COOPERATION.—(1) In carrying out the program under subsection (a), the Secretary may enter into interagency agreements and other collaborative undertakings with other Federal agencies.

''(2) The Secretary, through regular, structured, and close consultation with the Secretary of Health and Human Services and the Secretary of Homeland Security, shall ensure that the activities of the Department of Defense in carrying out the program are coordinated with, complement, and do not unnecessarily duplicate activities of the Department of Health and Human Services or the Department of Homeland Security.

''(c) EXPEDITED PROCUREMENT AUTHORITY.—(1) For any procurement of property or services for use (as determined by the Secretary) in performing, administering, or supporting biomedical countermeasures research and development, the Secretary may, when appropriate, use streamlined acquisition procedures and other expedited procurement procedures authorized in—

''(A) section 1903 of title 41, United States Code; and

''(B) sections 2371 and 2371b of title 10, United States Code.

''(2) Notwithstanding paragraph (1) and the provisions of law referred to in such paragraph, each of the following provisions shall apply to the procurements described in this subsection to the same extent that such provisions would apply to such procurements in the absence of paragraph (1):

''(A) Chapter 37 of title 40, United States Code (relating to contract work hours and safety standards).

''(B) Section 8703(a) of title 41, United States Code.

''(C) Section 2313 of title 10, United States Code (relating to the examination of contractor records).

''(3) The Secretary shall institute appropriate internal controls for use of the authority under paragraph (1), including requirements for documenting the justification for each use of such authority.

''(d) DEPARTMENT OF DEFENSE FACILITIES AUTHORITY.—(1) If the Secretary determines that it is necessary to acquire, lease, construct, or improve laboratories, research facilities, and other real property of the Department of Defense in order to carry out the program under this section, the Secretary may do so using the procedures set forth in paragraphs (2), (3), (4), and (5).

''(2) The Secretary shall use existing construction authorities provided by subchapter I of chapter 169 of title 10, United States Code, to the maximum extent possible.

''(3)(A) If the Secretary determines that use of authorities in paragraph (2) would prevent the Department from meeting a specific facility requirement for the program, the Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of Senate and House of Representatives] advance notification, which shall include the following:

''(i) Certification by the Secretary that use of existing construction authorities would prevent the Department from meeting the specific facility requirement.

''(ii) A detailed explanation of the reasons why existing authorities cannot be used.

''(iii) A justification of the facility requirement.

''(iv) Construction project data and estimated cost.

''(v) Identification of the source or sources of the funds proposed to be expended.

''(B) The facility project may be carried out only after the end of the 21-day period beginning on the date the notification is received by the congressional defense committees.

''(4) If the Secretary determines: (A) that the facility is vital to national security or to the protection of health, safety, or the quality of the environment; and (B) the requirement for the facility is so urgent that the advance notification in paragraph (3) and the subsequent 21-day deferral of the facility project would threaten the life, health, or safety of personnel, or would otherwise jeopardize national security, the Secretary may obligate funds for the facility and notify the congressional defense committees within seven days after the date on which appropriated funds are obligated with the information required in paragraph (3).

''(5) Nothing in this section shall be construed to authorize the Secretary to acquire, construct, lease, or improve a facility having general utility beyond the specific purposes of the program.

''(6) In this subsection, the term 'facility' has the meaning given the term in section 2801(c) of title 10, United States Code.

''(e) AUTHORITY FOR PERSONAL SERVICES CONTRACTS.—(1) Subject to paragraph (2), the authority provided by section 1091 of title 10, United States Code, for personal services contracts to carry out health care responsibilities in medical treatment facilities of the Department of Defense shall also be available, subject to the same terms and conditions, for personal services contracts to carry out research and development activities under this section. The number of individuals whose personal services are obtained under this subsection may not exceed 30 at any time.

''(2) The authority provided by such section 1091 may not be used for a personal services contract unless the contracting officer for the contract ensures that—

''(A) the services to be procured are urgent or unique; and

''(B) it would not be practicable for the Department of Defense to obtain such services by other measures.

''(f) STREAMLINED PERSONNEL AUTHORITY.—(1) The Secretary may appoint highly qualified experts, including scientific and technical personnel, to carry out research and development under this section in accordance with the authorities provided in section 342 of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337; 108 Stat. 2721), [former] section 1101 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public Law 105–261 [5 U.S.C. 3104 note]), and section 1101 of this Act [enacting chapter 99 of Title 5, Government Organization and Employees, and provisions set out as a note under section 9901 of Title 5].

''(2) The Secretary may use the authority under paragraph (1) only upon a determination by the Secretary that use of such authority is necessary to accelerate the research and development under the program.

''(3) The Secretary shall institute appropriate internal controls for each use of the authority under paragraph (1).''

Pub. L. 107–107, div. A, title X, §1044(a), Dec. 28, 2001, 115 Stat. 1219, directed the Secretary of Defense to carry out a program to aggressively accelerate the research, development, testing, and licensure of new medical countermeasures for defense against biological warfare agents, including for the prevention and treatment of anthrax.

VEHICLE FUEL CELL PROGRAM

Pub. L. 107–314, div. A, title II, §245, Dec. 2, 2002, 116 Stat. 2500, directed the Secretary of Defense to carry out a program for the development of vehicle fuel cell technology in cooperation with companies selected by the Secretary and appropriated $10,000,000 for the program from funds authorized for Department of Defense research, development, test, and evaluation for fiscal year 2003.

DEFENSE NANOTECHNOLOGY RESEARCH AND DEVELOPMENT PROGRAM

Pub. L. 107–314, div. A, title II, §246, Dec. 2, 2002, 116 Stat. 2500, as amended by Pub. L. 110–181, div. A, title II, §240, Jan. 28, 2008, 122 Stat. 48; Pub. L. 111–84, div. A, title II, §242, Oct. 28, 2009, 123 Stat. 2237; Pub. L. 112–239, div. A, title X, §1076(c)(2)(A)(iv), Jan. 2, 2013, 126 Stat. 1950, provided that:

''(a) ESTABLISHMENT.—The Secretary of Defense shall carry out a defense nanotechnology research and development program.

''(b) PURPOSES.—The purposes of the program are as follows:

''(1) To ensure United States global superiority in nanotechnology necessary for meeting national security requirements.

''(2) To coordinate all nanoscale research and development within the Department of Defense, and to provide for interagency cooperation and collaboration on nanoscale research and development between the Department of Defense and other departments and agencies of the United States that are involved in the National Nanotechnology Initiative and with the National Nanotechnology Coordination Office under section 3 of the 21st Century Nanotechnology Research and Development Act (15 U.S.C. 7502).

''(3) To develop and manage a portfolio of nanotechnology research and development initiatives that is stable, consistent, and balanced across scientific disciplines.

''(4) To accelerate the transition and deployment of technologies and concepts derived from nanoscale research and development into the Armed Forces, and to establish policies, procedures, and standards for measuring the success of such efforts.

''(5) To collect, synthesize, and disseminate critical information on nanoscale research and development.

''(c) ADMINISTRATION.—In carrying out the program, the Secretary shall act through the Under Secretary of Defense for Acquisition, Technology, and Logistics, who shall supervise the planning, management, and coordination of the program. The Under Secretary, in consultation with the Secretaries of the military departments and the heads of participating Defense Agencies and other departments and agencies of the United States, shall—

''(1) prescribe a set of long-term challenges and a set of specific technical goals for the program;

''(2) develop a coordinated and integrated research and investment plan for meeting the long-term challenges and achieving the specific technical goals that builds upon investments by the Department and other departments and agencies participating in the National Nanotechnology Initiative in nanotechnology research and development;

''(3) develop memoranda of agreement, joint funding agreements, and other cooperative arrangements necessary for meeting the long-term challenges and achieving the specific technical goals; and

''(4) oversee Department of Defense participation in interagency coordination of the program with other departments and agencies participating in the National Nanotechnology Initiative.

''(d) STRATEGIC PLAN.—The Under Secretary shall develop and maintain a strategic plan for defense nanotechnology research and development that—

''(1) is integrated with the strategic plan for the National Nanotechnology Initiative and the strategic plans of the Assistant Secretary of Defense for Research and Engineering, the military departments, and the Defense Agencies; and

''(2) includes a clear strategy for transitioning the research into products needed by the Department.

''(e) REPORTS.—The Under Secretary of Defense for Acquisition, Technology, and Logistics shall submit to the National Science and Technology Council information on the program that covers the information described in paragraphs (1) through (5) of section 2(d) of the 21st Century Nanotechnology Research and Development Act (15 U.S.C. 7501(d)) to be included in the annual report submitted by the Council under that section.''

REPORT ON WEAPONS AND CAPABILITIES TO DEFEAT HARDENED AND DEEPLY BURIED TARGETS

Pub. L. 107–314, div. A, title X, §1032, Dec. 2, 2002, 116 Stat. 2643, as amended by Pub. L. 108–136, div. C, title XXXI, §3135, Nov. 24, 2003, 117 Stat. 1752, as amended by Pub. L. 110–181, div. A, title X, §1041, Jan. 28, 2008, 122 Stat. 310; Pub. L. 111–383, div. A, title X, §1075(j), Jan. 7, 2011, 124 Stat. 4378, which required biennial reports on the development of weapons and capabilities to defeat hardened and deeply buried targets, was repealed by Pub. L. 115–232, div. A, title VIII, §812(b)(28), Aug. 13, 2018, 132 Stat. 1849.

PILOT PROGRAMS FOR REVITALIZING LABORATORIES AND TEST AND EVALUATION CENTERS OF DEPARTMENT OF DEFENSE

Pub. L. 107–314, div. A, title II, §241, Dec. 2, 2002, 116 Stat. 2492, which authorized the Secretary of Defense to carry out an additional pilot program to demonstrate

improved efficiency in the performance of research, development, test, and evaluation functions of the Department of Defense, was repealed by Pub. L. 115–232, div. A, title VIII, § 812(b)(29), Aug. 13, 2018, 132 Stat. 1849.

Pub. L. 106–65, div. A, title II, § 245, Oct. 5, 1999, 113 Stat. 552, as amended by Pub. L. 107–314, div. A, title II, § 241(d)(2), Dec. 2, 2002, 116 Stat. 2493, authorized the Secretary of Defense to carry out a pilot program for up to five years beginning not later than Mar. 1, 2000, to demonstrate improved efficiency in the performance of research, development, test, and evaluation functions of the Department of Defense, and directed the Secretary to submit to Congress a report on the implementation of the program not later than Mar. 1, 2000, and a final report promptly after the expiration of the period for participation in the program.

Pub. L. 105–261, div. A, title II, § 246, Oct. 17, 1998, 112 Stat. 1955, as amended by Pub. L. 107–314, div. A, title II, § 241(d)(1), Dec. 2, 2002, 116 Stat. 2493, authorized the Secretary of Defense to carry out a pilot program for up to six years beginning not later than Mar. 1, 1999, to demonstrate improved cooperative relationships with universities and other private sector entities for the performance of research and development functions, and directed the Secretary to submit a report on the implementation of the program to Congress not later than Mar. 1, 1999, and a final report on participation in the program promptly after the expiration of the period for participation.

Defense Established Program To Stimulate Competitive Research

Pub. L. 105–18, title I, § 307, June 12, 1997, 111 Stat. 169, as amended by Pub. L. 115–91, div. A, title II, § 219(e)(3), Dec. 12, 2017, 131 Stat. 1331, provided that: ''For the purposes of implementing the 1997 Defense Established Program to Stimulate Competitive Research (DEPSCoR), the term 'State' means a State of the United States, the District of Columbia, Puerto Rico, Guam and the Virgin Islands of the United States, American Samoa and the Commonwealth of the Northern Mariana Islands.''

Pub. L. 103–337, div. A, title II, § 257, Oct. 5, 1994, 108 Stat. 2705, as amended by Pub. L. 104–106, div. A, title II, § 273, Feb. 10, 1996, 110 Stat. 239; Pub. L. 104–201, div. A, title II, § 264, Sept. 23, 1996, 110 Stat. 2465; Pub. L. 105–85, div. A, title II, § 243, Nov. 18, 1997, 111 Stat. 1667; Pub. L. 106–65, div. A, title IX, § 911(a)(1), Oct. 5, 1999, 113 Stat. 717; Pub. L. 107–314, div. A, title II, § 247, Dec. 2, 2002, 116 Stat. 2502; Pub. L. 110–181, div. A, title II, § 239, Jan. 28, 2008, 122 Stat. 48; Pub. L. 112–239, div. A, title X, § 1076(c)(2)(A)(v), Jan. 2, 2013, 126 Stat. 1950; Pub. L. 115–91, div. A, title II, § 219(a)–(e)(1), Dec. 12, 2017, 131 Stat. 1330, 1331, provided that:

''(a) Program Required.—The Secretary of Defense, acting through the Assistant Secretary of Defense for Research and Engineering, shall carry out a Defense Established Program to Stimulate Competitive Research (DEPSCoR) as part of the university research programs of the Department of Defense.

''(b) Program Objectives.—The objectives of the program are as follows:

''(1) To increase the number of university researchers in eligible States capable of performing science and engineering research responsive to the needs of the Department of Defense.

''(2) To enhance the capabilities of institutions of higher education in eligible States to develop, plan, and execute science and engineering research that is relevant to the mission of the Department of Defense and competitive under the peer-review systems used for awarding Federal research assistance.

''(3) To increase the probability of long-term growth in the competitively awarded financial assistance that institutions of higher education in eligible States receive from the Federal Government for science and engineering research.

''(c) Program Activities.—In order to achieve the program objectives, the following activities are authorized under the program:

''(1) Competitive award of grants for research and instrumentation to support such research.

''(2) Competitive award of financial assistance for graduate students.

''(3) To provide assistance to science and engineering researchers at institutions of higher education in eligible States through collaboration between Department of Defense laboratories and such researchers.

''(4) Any other activities that are determined necessary to further the achievement of the objectives of the program.

''(d) Eligible States.—(1) The Under Secretary of Defense for Acquisition, Technology, and Logistics shall designate which States are eligible States for the purposes of this section.

''(2) The Under Secretary of Defense for Acquisition, Technology, and Logistics shall designate a State as an eligible State if, as determined by the Under Secretary—

''(A) the average annual amount of all Department of Defense obligations for science and engineering research and development that were in effect with institutions of higher education in the State for the three fiscal years preceding the fiscal year for which the designation is effective or for the last three fiscal years for which statistics are available is less than the amount determined by multiplying 60 percent times the amount equal to 1⁄50 of the total average annual amount of all Department of Defense obligations for science and engineering research and development that were in effect with institutions of higher education in the United States for such three preceding or last fiscal years, as the case may be; and

''(B) the State has demonstrated a commitment to developing research bases in the State and to improving science and engineering research and education programs in areas relevant to the mission of the Department of Defense at institutions of higher education in the State.

''(3) The Under Secretary shall not remove a designation of a State under paragraph (2) because the State exceeds the funding levels specified under subparagraph (A) of such paragraph unless the State has exceeded such funding levels for at least two consecutive years.

''(e) Coordination With Similar Federal Programs.—(1) The Secretary may consult with the Director of the National Science Foundation and the Director of the Office of Science and Technology Policy in the planning, development, and execution of the program and may coordinate the program with the Established Program to Stimulate Competitive Research conducted by the National Science Foundation and with similar programs sponsored by other departments and agencies of the Federal Government.

''(2) All solicitations under the Defense Established Program to Stimulate Competitive Research may be made to, and all awards may be made through, the State committees established for purposes of the Established Program to Stimulate Competitive Research conducted by the National Science Foundation.

''(3) A State committee referred to in paragraph (2) shall ensure that activities carried out in the State of that committee under the Defense Established Program to Stimulate Competitive Research are relevant to the mission of the Department of Defense and coordinated with the activities carried out in the State under other similar initiatives of the Federal Government to stimulate competitive research.

''(f) State Defined.—In this section, the term 'State' means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands.''

Defense Laboratories Personnel Demonstration Projects

Pub. L. 111–84, div. A, title XI, § 1105, Oct. 28, 2009, 123 Stat. 2486, as amended by Pub. L. 113–291, div. A, title XI, § 1103, Dec. 19, 2014, 128 Stat. 3525; Pub. L. 115–91, div.

A, title XI, §1104, Dec. 12, 2017, 131 Stat. 1629, provided that:

''(a) DESIGNATION OF LABORATORIES.—Each of the following is hereby designated as a Department of Defense science and technology reinvention laboratory (as described in section 342(b) of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337; 108 Stat. 2721) [set out below], as amended by section 1114 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001):

''(1) The Aviation and Missile Research Development and Engineering Center.

''(2) The Army Research Laboratory.

''(3) The Medical Research and Materiel Command.

''(4) The Engineer Research and Development Command.

''(5) The Communications-Electronics Command.

''(6) The Soldier and Biological Chemical Command.

''(7) The Naval Sea Systems Command Centers.

''(8) The Naval Research Laboratory.

''(9) The Office of Naval Research.

''(10) The Air Force Research Laboratory.

''(11) The Tank and Automotive Research Development and Engineering Center.

''(12) The Armament Research Development and Engineering Center.

''(13) The Naval Air Warfare Center, Weapons Division.

''(14) The Naval Air Warfare Center, Aircraft Division.

''(15) The Space and Naval Warfare Systems Center, Pacific.

''(16) The Space and Naval Warfare Systems Center, Atlantic.

''(17) The laboratories within the Army Research Development and Engineering Command.

''(18) The Army Research Institute for the Behavioral and Social Sciences.

''(19) The Space and Missile Defense Command Technical Center.

''(20) The Naval Medical Research Center.

''(21) The Joint Warfighting Analysis Center.

''(22) The Naval Facilities Engineering and Expeditionary Warfare Center.

''(b) CONVERSION PROCEDURES.—The Secretary of Defense shall implement procedures to convert the civilian personnel of each Department of Defense science and technology reinvention laboratory, as so designated by subsection (a), from the personnel system which applies as of the date of the enactment of this Act [Oct. 28, 2009] to the personnel system under an appropriate demonstration project (as referred to in such section 342(b)). Any conversion under this subsection—

''(1) shall not adversely affect any employee with respect to pay or any other term or condition of employment;

''(2) shall be consistent with section 4703(f) of title 5, United States Code;

''(3) shall be completed within 18 months after the date of the enactment of this Act; and

''(4) shall not apply to prevailing rate employees (as defined by section 5342(a)(2) of title 5, United States Code) or senior executives (as defined by section 3132(a)(3) of such title).

''(c) LIMITATION.—The science and technology reinvention laboratories, as so designated by subsection (a), may not implement any personnel system, other than a personnel system under an appropriate demonstration project (as referred to in such section 342(b) [set out below]), without prior congressional authorization.''

Pub. L. 110–181, div. A, title XI, §1107, Jan. 28, 2008, 122 Stat. 357, as amended by Pub. L. 110–417, [div. A], title XI, §1109, Oct. 14, 2008, 122 Stat. 4618; Pub. L. 111–84, div. A, title X, §1073(d), Oct. 28, 2009, 123 Stat. 2475; Pub. L. 111–383, div. A, title XI, §1101(b), Jan. 7, 2011, 124 Stat. 4382; Pub. L. 112–81, div. A, title X, §1066(b)(2), Dec. 31, 2011, 125 Stat. 1588, provided that:

''(a) REQUIREMENT.—The Secretary of Defense shall take all necessary actions to fully implement and use the authorities provided to the Secretary under section 342(b) of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337; 108 Stat. 2721) [set out below], as amended by section 1114 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted into law by Public Law 106–398; 114 Stat. 1654A–315), to carry out personnel management demonstration projects at Department of Defense laboratories designated by section 1105(a) of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84; 123 Stat. 2486; 10 U.S.C. 2358 note) as Department of Defense science and technology reinvention laboratories.

''(b) PROCESS FOR FULL IMPLEMENTATION.—The Secretary of Defense shall also implement a process and implementation plan to fully utilize the authorities described in subsection (a) to enhance the performance of the missions of the laboratories.

''(c) OTHER LABORATORIES.—Any flexibility available to any demonstration laboratory shall be available for use at any other laboratory designated by section 1105(a) of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84; 123 Stat. 2486) as a Department of Defense science and technology reinvention laboratory.

''(d) SUBMISSION OF LIST AND DESCRIPTION.—Not later than March 1 of each year, the Secretary of Defense shall submit to Congress a report containing a list and description of the demonstration project notices, amendments, and changes requested by the laboratories during the preceding calendar year. The list shall include all approved and disapproved notices, amendments, and changes, and the reasons for disapproval or delay in approval.

''(e) STATUS REPORTS.—

''(1) IN GENERAL.—The Secretary shall include in each report under subsection (d) the information described in paragraph (2).

''(2) INFORMATION REQUIRED.—Each report under subsection (d) shall describe the following:

''(A) The actions taken by the Secretary of Defense under subsection (a) during the year covered by the report.

''(B) The progress made by the Secretary of Defense during such year in developing and implementing the plan required by subsection (b), including the anticipated date for completion of such plan and a list and description of any issues relating to the development or implementation of such plan.

''(C) With respect to any applications by any Department of Defense laboratories seeking to be designated as a demonstration laboratory or to otherwise obtain any of the personnel flexibilities available to a demonstration laboratory—

''(i) the number of applications that were received, pending, or acted on during such year;

''(ii) the status or disposition of any applications under clause (i), including, in the case of any application on which a final decision was rendered, the laboratory involved, what the laboratory had requested, the decision reached, and the reasons for the decision; and

''(iii) in the case of any applications under clause (i) on which a final decision was not rendered, the date by which a final decision is anticipated.

''(3) DEFINITION.—For purposes of this subsection, the term 'demonstration laboratory' means a laboratory designated by the Secretary of Defense under the provisions of section 342(b) of the National Defense Authorization Act for Fiscal Year 1995 [Pub. L. 103–337, set out below] (as cited in subsection (a)).''

[For termination, effective Dec. 31, 2021, of annual reporting provisions in section 1107(d) of Pub. L. 110–181, set out above, see section 1061 of Pub. L. 114–328, set out as a note under section 111 of this title.]

Pub. L. 103–337, div. A, title III, §342(b), Oct. 5, 1994, 108 Stat. 2721, as amended by Pub. L. 106–65, div. A, title XI, §1109, Oct. 5, 1999, 113 Stat. 779; Pub. L. 106–398, §1 [[div. A], title XI, §1114], Oct. 30, 2000, 114 Stat. 1654,

1654A–315; Pub. L. 114–328, div. A, title II, § 211(f), formerly § 211(e), Dec. 23, 2016, 130 Stat. 2047, redesignated § 211(f), Pub. L. 115–91, div. A, title II, § 218(a)(3), Dec. 12, 2017, 131 Stat. 1330; Pub. L. 115–91, div. A, title II, § 218(b)(2), Dec. 12, 2017, 131 Stat. 1330, provided that:

''(1) The Secretary of Defense may carry out personnel demonstration projects at Department of Defense laboratories designated by the Secretary as Department of Defense science and technology reinvention laboratories.

''(2)(A) Each personnel demonstration project carried out under the authority of paragraph (1) shall be generally similar in nature to the China Lake demonstration project.

''(B) For purposes of subparagraph (A), the China Lake demonstration project is the demonstration project that is authorized by section 6 of the Civil Service Miscellaneous Amendments Act of 1983 [Pub. L. 98–224, 98 Stat. 49] to be continued at the Naval Weapons Center, China Lake, California, and at the Naval Ocean Systems Center, San Diego, California.

''(3) If the Secretary carries out a demonstration project at a laboratory pursuant to paragraph (1), section 4703 of title 5, United States Code, shall apply to the demonstration project, except that—

''(A) subsection (d) of such section 4703 shall not apply to the demonstration project;

''(B) the authority of the Secretary to carry out the demonstration project is that which is provided in paragraph (1) rather than the authority which is provided in such section 4703; and

''(C) the Secretary shall exercise the authorities granted to the Office of Personnel Management under such section 4703 through the Under Secretary of Defense for Research and Engineering (who shall place an emphasis in the exercise of such authorities on enhancing efficient operations of the laboratory and who may, in exercising such authorities, request administrative support from science and technology reinvention laboratories to review, research, and adjudicate personnel demonstration project proposals).

''(4) The employees of a laboratory covered by a personnel demonstration project carried out under this section [enacting this note] shall be exempt from, and may not be counted for the purposes of, any constraint or limitation in a statute or regulation in terms of supervisory ratios or maximum number of employees in any specific category or categories of employment that may otherwise be applicable to the employees. The employees shall be managed by the director of the laboratory subject to the supervision of the Under Secretary of Defense for Acquisition, Technology, and Logistics.

''(5) The limitations in section 5373 of title 5, United States Code, do not apply to the authority of the Secretary under this section to prescribe salary schedules and other related benefits.''

Inclusion of Women and Minorities in Clinical Research Projects

Pub. L. 103–160, div. A, title II, § 252, Nov. 30, 1993, 107 Stat. 1607, provided that:

''(a) General Rule.—In conducting or supporting clinical research, the Secretary of Defense shall ensure that—

''(1) women who are members of the Armed Forces are included as subjects in each project of such research; and

''(2) members of minority groups who are members of the Armed Forces are included as subjects of such research.

''(b) Waiver Authority.—The requirement in subsection (a) regarding women and members of minority groups who are members of the Armed Forces may be waived by the Secretary of Defense with respect to a project of clinical research if the Secretary determines that the inclusion, as subjects in the project, of women and members of minority groups, respectively—

''(1) is inappropriate with respect to the health of the subjects;

''(2) is inappropriate with respect to the purpose of the research; or

''(3) is inappropriate under such other circumstances as the Secretary of Defense may designate.

''(c) Requirement for Analysis of Research.—In the case of a project of clinical research in which women or members of minority groups will under subsection (a) be included as subjects of the research, the Secretary of Defense shall ensure that the project is designed and carried out so as to provide for a valid analysis of whether the variables being tested in the research affect women or members of minority groups, as the case may be, differently than other persons who are subjects of the research.''

University Research Initiative Support Program

Pub. L. 103–160, div. A, title VIII, § 802, Nov. 30, 1993, 107 Stat. 1701, as amended by Pub. L. 104–106, div. A, title II, § 275, Feb. 10, 1996, 110 Stat. 241; Pub. L. 104–201, div. A, title II, § 263, Sept. 23, 1996, 110 Stat. 2465; Pub. L. 112–239, div. A, title X, § 1076(c)(2)(E), Jan. 2, 2013, 126 Stat. 1950, provided that:

''(a) Establishment.—The Secretary of Defense, through the Assistant Secretary of Defense for Research and Engineering, may establish a University Research Initiative Support Program.

''(b) Purpose.—Under the program, the Assistant Secretary may award grants and contracts to eligible institutions of higher education to support the conduct of research and development relevant to requirements of the Department of Defense.

''(c) Eligibility.—An institution of higher education is eligible for a grant or contract under the program if the institution has received less than a total of $2,000,000 in grants and contracts from the Department of Defense in the two most recent fiscal years for which complete statistics are available when proposals are requested for such grant or contract.

''(d) Competition Required.—The Assistant Secretary shall use competitive procedures in awarding grants and contracts under the program.

''(e) Selection Process.—In awarding grants and contracts under the program, the Assistant Secretary shall use a merit-based selection process that is consistent with the provisions of section 2361(a) of title 10, United States Code.

''(f) Regulations.—The Assistant Secretary shall prescribe regulations for carrying out the program.

''(g) Funding.—Of the amounts authorized to be appropriated under section 201 [107 Stat. 1583], $20,000,000 shall be available for the University Research Initiative Support Program.''

Independent Research and Development; Bid and Proposal Costs; Negotiation of Advance Agreements With Contractors; Annual Report to Congress

Pub. L. 91–441, title II, § 203, Oct. 7, 1970, 84 Stat. 906, as amended by Pub. L. 96–342, title II, § 208, Sept. 8, 1980, 94 Stat. 1081, provided that no funds authorized to be appropriated to Department of Defense by this or any other Act were to be used to finance independent research and development or bid and proposal costs unless such work had, in opinion of Secretary of Defense, potential relationship to military functions or operations, and advance agreements regarding payment for such work had been negotiated, prior to repeal by Pub. L. 101–510, div. A, title VIII, § 824(b), Nov. 5, 1990, 104 Stat. 1604.

Relationship of Research Projects or Studies to Military Function or Operation

Pub. L. 91–441, title II, § 204, Oct. 7, 1970, 84 Stat. 908, which provided that no funds authorized to be appropriated to the Department of Defense by this or any other Act may be used to finance any research project or study unless such project or study has, in the opinion of the Secretary of Defense, a potential relationship to a military function or operation, was repealed

and restated in subsec. (b) of this section by Pub. L. 100–370, § 1(g)(3)(C), (5), July 19, 1988, 102 Stat. 847.

HERBICIDES AND DEFOLIATION PROGRAM; COMPREHENSIVE STUDY AND INVESTIGATION; REPORT BY JANUARY 31, 1972; TRANSMITTAL TO PRESIDENT AND CONGRESS BY MARCH 1, 1972

Pub. L. 91–441, title V, § 506(c), Oct. 7, 1970, 84 Stat. 913, directed Secretary of Defense to enter into appropriate arrangements with National Academy of Sciences to conduct a comprehensive study and investigation to determine (A) ecological and physiological dangers inherent in use of herbicides, and (B) ecological and physiological effects of defoliation program carried out by Department of Defense in South Vietnam, with a report on the study to be transmitted to President and Congress by Mar. 1, 1972.

CAMPUSES BARRING MILITARY RECRUITERS; CESSATION OF PAYMENTS; NOTIFICATION OF SECRETARY OF DEFENSE

Pub. L. 92–436, title VI, § 606, Sept. 29, 1972, 86 Stat. 740, provided that:

''(a) No part of the funds appropriated pursuant to this or any other Act for the Department of Defense or any of the Armed Forces may be used at any institution of higher learning if the Secretary of Defense or his designee determines that recruiting personnel of any of the Armed Forces of the United States are being barred by the policy of such institution from the premises of the institution: except in a case where the Secretary of the service concerned certifies to the Congress in writing that a specific course of instruction is not available at any other institution of higher learning and furnishes to the Congress the reasons why such course of instruction is of vital importance to the security of the United States.

''(b) The prohibition made by subsection (a) of this section as it applies to research and development funds shall not apply if the Secretary of Defense or his designee determines that the expenditure is a continuation or a renewal of a previous program with such institution which is likely to make a significant contribution to the defense effort.

''(c) The Secretaries of the military departments shall furnish to the Secretary of Defense or his designee within 60 days after the date of enactment of this Act [Sept. 29, 1972] and each January 31 and June 30 thereafter the names of any institution of higher learning which the Secretaries determine on such dates are affected by the prohibitions contained in this section.''

Similar provisions were contained in the following prior authorization acts:

Pub. L. 92–156, title V, § 502, Nov. 17, 1971, 85 Stat. 427.

Pub. L. 91–441, title V, § 510, Oct. 7, 1970, 84 Stat. 914.

FEDERAL CONTRACT RESEARCH CENTERS; OFFICERS' COMPENSATION; NOTIFICATION TO CONGRESS

Pub. L. 91–121, title IV, § 407, Nov. 19, 1969, 83 Stat. 208, related to restrictions on use of appropriations for compensation of officers and employees of Federal contract research centers, and notice requirements respecting such payments, prior to repeal by Pub. L. 96–107, title VIII, § 819(c), Nov. 9, 1979, 93 Stat. 819. See section 2359 of this title.

§ 2358a. Authorities for certain positions at science and technology reinvention laboratories

(a) AUTHORITY TO MAKE DIRECT APPOINTMENTS.—

(1) CANDIDATES FOR SCIENTIFIC AND ENGINEERING POSITIONS AT SCIENCE AND TECHNOLOGY REINVENTION LABORATORIES.—The director of any Science and Technology Reinvention Laboratory (hereinafter in this section referred to as an ''STRL'') may appoint qualified candidates possessing a bachelor's degree to positions described in paragraph (1) of subsection (b) as an employee in a laboratory described in that paragraph without regard to the provisions of subchapter I of chapter 33 of title 5 (other than sections 3303 and 3328 of such title).

(2) VETERAN CANDIDATES FOR SIMILAR POSITIONS AT RESEARCH AND ENGINEERING FACILITIES.—The director of any STRL may appoint qualified veteran candidates to positions described in paragraph (2) of subsection (b) as an employee at a laboratory, agency, or organization specified in that paragraph without regard to the provisions of subchapter I of chapter 33 of title 5.

(3) STUDENTS ENROLLED IN SCIENTIFIC AND ENGINEERING PROGRAMS.—The director of any STRL may appoint qualified candidates enrolled in a program of undergraduate or graduate instruction leading to a bachelor's or an advanced degree in a scientific, technical, engineering or mathematical course of study at an institution of higher education (as that term is defined in sections 101 and 102 of the Higher Education Act of 1965 (20 U.S.C. 1001, 1002)) to positions described in paragraph (3) of subsection (b) as an employee in a laboratory described in that paragraph without regard to the provisions of subchapter I of chapter 33 of title 5 (other than sections 3303 and 3328 of such title).

(4) NONCOMPETITIVE CONVERSION OF APPOINTMENTS.—With respect to any student appointed by the director of an STRL under paragraph (3) to a temporary or term appointment, upon graduation from the applicable institution of higher education (as defined in such paragraph), the director may noncompetitively convert such student to another temporary appointment or to a term or permanent appointment within the STRL without regard to the provisions of subchapter I of chapter 33 of title 5 (other than sections 3303 and 3328 of such title), provided the student meets all eligibility and Office of Personnel Management qualification requirements for the position.

(b) COVERED POSITIONS.—

(1) CANDIDATES FOR SCIENTIFIC AND ENGINEERING POSITIONS.—The positions described in this paragraph are scientific and engineering positions that may be temporary, term, or permanent in any laboratory designated by section 1105(a) of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84; 10 U.S.C. 2358 note) as a Department of Defense science and technology reinvention laboratory.

(2) QUALIFIED VETERAN CANDIDATES.—The positions described in this paragraph are scientific, technical, engineering, and mathematics positions, including technicians, in the following:

(A) Any laboratory referred to in paragraph (1).

(B) Any other Department of Defense research and engineering agency or organization designated by the Secretary for purposes of subsection (a)(2).

(3) CANDIDATES ENROLLED IN SCIENTIFIC AND ENGINEERING PROGRAMS.—The positions de-

scribed in this paragraph are scientific and engineering positions that may be temporary or term in any laboratory designated by section 1105(a) of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84; 10 U.S.C. 2358 note) as a Department of Defense science and technology reinvention laboratory.

(c) LIMITATION ON NUMBER OF APPOINTMENTS ALLOWABLE IN A CALENDAR YEAR.—The authority under subsection (a) may not, in any calendar year and with respect to any laboratory, agency, or organization described in subsection (b), be exercised with respect to a number of candidates greater than the following:

(1) In the case of a laboratory described in subsection (b)(1), with respect to appointment authority under subsection (a)(1), the number equal to 6 percent of the total number of scientific and engineering positions in such laboratory that are filled as of the close of the fiscal year last ending before the start of such calendar year.

(2) In the case of a laboratory, agency, or organization described in subsection (b)(2), with respect to appointment authority under subsection (a)(2), the number equal to 3 percent of the total number of scientific, technical, engineering, mathematics, and technician positions in such laboratory, agency, or organization that are filled as of the close of the fiscal year last ending before the start of such calendar year.

(3) In the case of a laboratory described in subsection (b)(3), with respect to appointment authority under subsection (a)(3), the number equal to 10 percent of the total number of scientific and engineering positions in such laboratory that are filled as of the close of the fiscal year last ending before the start of such calendar year.

(d) SENIOR SCIENTIFIC TECHNICAL MANAGERS.—

(1) ESTABLISHMENT.—There is hereby established in each STRL, each facility of the Major Range and Test Facility Base, and the Defense Test Resource Management Center a category of senior professional scientific and technical positions, the incumbents of which shall be designated as ''senior scientific technical managers'' and which shall be positions classified above GS–15 of the General Schedule, notwithstanding section 5108(a) of title 5. The primary functions of such positions shall be—

(A) to engage in research and development in the physical, biological, medical, or engineering sciences, or another field closely related to the mission of such STRL, of such facility of the Major Range and Test Facility Base, or the Defense Test Resource Management Center; and

(B) to carry out technical supervisory responsibilities.

(2) APPOINTMENTS.—(A) The laboratory positions described in paragraph (1) may be filled, and shall be managed, by the director of the STRL involved, under criteria established pursuant to section 342(b) of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337; 10 U.S.C. 2358 note), relating to personnel demonstration projects at laboratories of the Department of Defense, except that the director of the laboratory involved shall determine the number of such positions at such laboratory, not to exceed 2 percent of the number of scientists and engineers employed at such laboratory as of the close of the last fiscal year before the fiscal year in which any appointments subject to that numerical limitation are made.

(B) The test and evaluation positions described in paragraph (1) may be filled, and shall be managed, by the director of the Major Range and Test Facility Base, in the case of a position at a facility of the Major Range and Test Facility Base, and the director of the Defense Test Resource Management Center, in the case of a position at such center, under criteria established pursuant to section 342(b) of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337; 10 U.S.C. 2358 note), relating to personnel demonstration projects at laboratories of the Department of Defense, except that the director involved shall determine the number of such positions at each facility of the Major Range and Test Facility Base and the Defense Test Resource Management Center, not to exceed two percent of the number of scientists and engineers, but at least one position, employed at the Major Range and Test Facility Base or the Defense Test Resource Management Center, as the case may be, as of the close of the last fiscal year before the fiscal year in which any appointments subject to those numerical limitations are made.

(e) EXCLUSION FROM PERSONNEL LIMITATIONS.—

(1) IN GENERAL.—The director of an STRL shall manage the workforce strength, structure, positions, and compensation of such STRL—

(A) without regard to any limitation on appointments, positions, or funding with respect to such STRL, subject to subparagraph (B); and

(B) in a manner consistent with the budget available with respect to such STRL.

(2) EXCEPTIONS.—Paragraph (1) shall not apply to Senior Executive Service positions (as defined in section 3132(a) of title 5) or scientific and professional positions authorized under section 3104 of such title.

(f) DEFINITIONS.—In this section:

(1) The term ''Defense Test Resource Management Center'' means the Department of Defense Test Resource Management Center established under section 196 of this title.

(2) The term ''employee'' has the meaning given that term in section 2105 of title 5.

(3) The term ''Major Range and Test Facility Base'' means the test and evaluation facilities and resources that are designated by the Secretary of Defense as facilities and resources comprising the Major Range and Test Facility Base.

(4) The term ''veteran'' has the meaning given that term in section 101 of title 38.

(Added Pub. L. 114–328, div. A, title XI, §1122(a)(1), Dec. 23, 2016, 130 Stat. 2453; amended

Pub. L. 115–91, div. A, title XI, §1111, Dec. 12, 2017, 131 Stat. 1636; Pub. L. 115–232, div. A, title XI, §1112(a), Aug. 13, 2018, 132 Stat. 2012.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§1801(d), 1843(b)(2), Jan. 1, 2021, 134 Stat. 4151, 4245, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to subchapter II of chapter 305 of this title, as added by section 1843(a) of Pub. L. 116–283, inserted after the table of sections at the beginning of such subchapter, and redesignated as section 4111 of this title. See Effective Date of 2021 Amendment note below.

AMENDMENTS

2018—Subsec. (a)(4). Pub. L. 115–232 substituted ''of appointments'' for ''to permanent appointment'' in heading and ''to another temporary appointment or to a term or permanent appointment'' for ''to a permanent appointment'' in text.

2017—Subsec. (d)(1). Pub. L. 115–91, §1111(1)(A)(i), inserted '', each facility of the Major Range and Test Facility Base, and the Defense Test Resource Management Center'' after ''each STRL'' in introductory provisions.

Subsec. (d)(1)(A). Pub. L. 115–91, §1111(1)(A)(ii), which directed insertion of '', of such facility of the Major Range and Test Facility Base, or the Defense Test Resource Management Center'', was executed by making the insertion after ''such STRL'', to reflect the probable intent of Congress.

Subsec. (d)(2). Pub. L. 115–91, §1111(1)(B), designated existing provisions as subpar. (A), substituted ''The laboratory positions'' for ''The positions'', and added subpar. (B).

Subsec. (f). Pub. L. 115–91, §1111(2), added pars. (1) and (3) and redesignated former pars. (1) and (2) as (2) and (4), respectively.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§2358b. Joint reserve detachment of the Defense Innovation Unit

(a) ESTABLISHMENT.—The Secretary of Defense, in consultation with the Secretaries of the military departments, may establish a joint reserve detachment (referred to in this section as the ''Detachment'') composed of members of the reserve components described in subsection (b) to be assigned to each office of the Defense Innovation Unit to—

(1) support engagement and collaboration with private-sector industry and the community surrounding the location of such office; and

(2) accelerate the use and adoption of commercially-developed technologies for national security purposes.

(b) MEMBERS.—Each Secretary of a military department shall select for the Detachment, and make efforts to retain, members of the reserve components who possess relevant private-sector experience in the fields of business, acquisition, intelligence, engineering, technology transfer, science, mathematics, program management, logistics, cybersecurity, or such other fields as determined by the Under Secretary of Defense for Research and Engineering.

(c) DUTIES.—The Detachment shall have the following duties:

(1) Providing the Department of Defense with—

(A) expertise on and analysis of commercially-developed technologies;

(B) commercially-developed technologies to be used as alternatives for technologies in use by the Department; and

(C) opportunities for greater engagement and collaboration between the Department and private-sector industry on innovative technologies.

(2) On an ongoing basis—

(A) partnering with the military departments, the combatant commands, and other Department of Defense organizations to—

(i) identify and rapidly prototype commercially-developed technologies; and

(ii) use alternative contracting mechanisms to procure such technologies;

(B) increasing awareness of—

(i) the work of the Defense Innovation Unit; and

(ii) the technology requirements of the Department of Defense as identified in the National Defense Science and Technology Strategy developed under section 218 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232; 132 Stat. 1679); and

(C) using the investment in research and development made by private-sector industry in assessing and developing dual-use technologies.

(3) Carrying out other activities as directed by the Under Secretary of Defense for Research and Engineering.

(d) JOINT DUTY.—Assignment to a Detachment shall not qualify as a joint duty assignment, as defined in section 668(b)(1) of title 10, United States Code, unless approved by the Secretary of Defense.

(Added Pub. L. 116–92, div. A, title II, §213(a)(1), Dec. 20, 2019, 133 Stat. 1256; amended Pub. L. 116–283, div. A, title X, §1081(a)(37), Jan. 1, 2021, 134 Stat. 3872.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§1801(d), 1842(b), Jan. 1, 2021, 134 Stat. 4151, 4244, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 303 of this title, as added by section 1842(a) of Pub. L. 116–283, inserted after section 4063, and redesignated as section 4064 of this title. See Effective Date of 2021 Amendment note below.

REFERENCES IN TEXT

Section 218 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, referred to in subsec. (c)(2)(B)(ii), is section 218 of Pub. L. 115–232, div. A, title II, Aug. 13, 2018, 132 Stat. 1679, which is not classified to the Code.

AMENDMENTS

2021—Subsec. (a)(2). Pub. L. 116–283 substituted ''accelerate'' for ''to accelerate''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by section 1842(b) of Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 2358c. Enhanced pay authority for certain research and technology positions in science and technology reinvention laboratories

(a) IN GENERAL.—The Secretary of Defense may carry out a program using the pay authority specified in subsection (d) to fix the rate of basic pay for positions described in subsection (c) in order to assist the military departments in attracting and retaining high quality acquisition and technology experts in positions responsible for managing and performing complex, high-cost research and technology development efforts in the science and technology reinvention laboratories of the Department of Defense.

(b) APPROVAL REQUIRED.—The program may be carried out in a military department only with the approval of the service acquisition executive of the military department concerned.

(c) POSITIONS.—The positions described in this subsection are positions in the science and technology reinvention laboratories of the Department of Defense that—

(1) require expertise of an extremely high level in a scientific, technical, professional, or acquisition management field; and

(2) are critical to the successful accomplishment of an important research or technology development mission.

(d) RATE OF BASIC PAY.—The pay authority specified in this subsection is authority as follows:

(1) Authority to fix the rate of basic pay for a position at a rate not to exceed 150 percent of the rate of basic pay payable for level I of the Executive Schedule, upon the approval of the service acquisition executive concerned.

(2) Authority to fix the rate of basic pay for a position at a rate in excess of 150 percent of the rate of basic pay payable for level I of the Executive Schedule, upon the approval of the Secretary of the military department concerned.

(e) LIMITATIONS.—

(1) IN GENERAL.—The authority in subsection (a) may be used only to the extent necessary to competitively recruit or retain individuals exceptionally well qualified for positions described in subsection (c).

(2) NUMBER OF POSITIONS.—The authority in subsection (a) may not be used with respect to more than five positions in each military department at any one time.

(3) TERM OF POSITIONS.—The authority in subsection (a) may be used only for positions having a term of less than five years.

(f) SCIENCE AND TECHNOLOGY REINVENTION LABORATORIES OF THE DEPARTMENT OF DEFENSE DEFINED.—In this section, the term ''science and technology reinvention laboratories of the Department of Defense'' means the laboratories designated as science and technology reinvention laboratories by section 1105(a) of the National Defense Authorization Act for Fiscal Year 2010 (10 U.S.C. 2358 note).

(Added Pub. L. 116–283, div. A, title XI, § 1115(a), Jan. 1, 2021, 134 Stat. 3895.)

REPEAL OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1881(a), Jan. 1, 2021, 134 Stat. 4151, 4293, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, chapter 139 of this title, and therefore this section, is repealed.

REFERENCES IN TEXT

Section 1105(a) of the National Defense Authorization Act for Fiscal Year 2010, referred to in subsec. (f), is section 1105(a) of Pub. L. 111–84, div. A, title XI, Oct. 28, 2009, 123 Stat. 2486, which is set out in a note under section 2358 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 2359. Science and technology programs to be conducted so as to foster the transition of science and technology to higher levels of research, development, test, and evaluation

(a) POLICY.—Each official specified in subsection (b) shall ensure that the management and conduct of the science and technology programs under the authority of that official are carried out in a manner that will foster the transition of science and technology to higher levels of research, development, test, and evaluation.

(b) COVERED OFFICIALS.—Subsection (a) applies to the following officials of the Department of Defense:

(1) The Under Secretary of Defense for Research and Engineering.

(2) The Secretary of each military department.

(3) The Director of the Defense Advanced Research Projects Agency.

(4) The directors and heads of other offices and agencies of the Department of Defense with assigned research, development, test, and evaluation responsibilities.

(Added Pub. L. 106–398, § 1 [[div. A], title IX, § 904(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–225; amended Pub. L. 116–92, div. A, title IX, § 902(55), Dec. 20, 2019, 133 Stat. 1549.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1841(c), Jan. 1, 2021, 134 Stat. 4151, 4243, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 301 of this title, as added by section 1841(a) of Pub. L. 116—283, added after section 4004 of this title, as transferred and redesignated by section 1841(b) of Pub. L. 116—283, and redesignated as section 4007 of

this title. See Effective Date of 2021 Amendment note below.

PRIOR PROVISIONS

A prior section 2359, added Pub. L. 96–107, title VIII, § 819(a)(1), Nov. 9, 1979, 93 Stat. 818, related to reports on salaries of officers of Federal contract research centers, prior to repeal by Pub. L. 101–510, div. A, title XIII, § 1322(a)(5), Nov. 5, 1990, 104 Stat. 1671.

AMENDMENTS

2019—Subsec. (b)(1). Pub. L. 116–92 substituted ''Under Secretary of Defense for Research and Engineering'' for ''Under Secretary of Defense for Acquisition, Technology, and Logistics''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

SUPPORT FOR NATIONAL SECURITY INNOVATION AND ENTREPRENEURIAL EDUCATION

Pub. L. 115–91, div. A, title II, § 225, Dec. 12, 2017, 131 Stat. 1334, as amended by Pub. L. 115–232, div. A, title II, § 233, Aug. 13, 2018, 132 Stat. 1692; Pub. L. 116–92, div. A, title II, § 219, Dec. 20, 2019, 133 Stat. 1260, provided that:

''(a) SUPPORT AUTHORIZED.—

''(1) IN GENERAL.—The Secretary of Defense may, acting through the Under Secretary of Defense for Research and Engineering, support national security innovation and entrepreneurial education programs.

''(2) ELEMENTS.—Support under paragraph (1) may include the following:

''(A) Materials to recruit participants, including veterans, for programs described in paragraph (1).

''(B) Model curriculum for such programs.

''(C) Training materials for such programs.

''(D) Best practices for the conduct of such programs.

''(E) Experimental learning opportunities for program participants to interact with operational forces and better understand national security challenges.

''(F) Exchanges and partnerships with Department of Defense science and technology activities.

''(G) Activities consistent with the Proof of Concept Commercialization Pilot Program established under section 1603 of the National Defense Authorization Act for Fiscal Year 2014 (Public Law 113–66; 10 U.S.C. 2359 note).

''(b) CONSULTATION.—In carrying out subsection (a), the Secretary may consult with the heads of such Federal agencies, universities, and public and private entities engaged in the development of advanced technologies as the Secretary determines to be appropriate.

''(c) AUTHORITIES.—The Secretary may—

''(1) develop and maintain metrics to assess national security innovation and entrepreneurial education activities to ensure standards for programs supported under subsection (b) are consistent and being met; and

''(2) ensure that any recipient of an award under the Small Business Technology Transfer program, the Small Business Innovation Research program, and science and technology programs of the Department of Defense has the option to participate in training under a national security innovation and entrepreneurial education program supported under subsection (b).

''(d) PARTICIPATION BY FEDERAL EMPLOYEES AND MEMBERS OF THE ARMED FORCES.—The Secretary may encourage Federal employees and members of the Armed Forces to participate in a national security innovation and entrepreneurial education program supported under subsection (a) in order to gain exposure to modern innovation and entrepreneurial methodologies.

''(e) COORDINATION.—In carrying out this section, the Secretary shall consider coordinating and partnering with activities and organizations involved in the following:

''(1) Hack the Army.

''(2) Hack the Air Force.

''(3) Hack the Pentagon.

''(4) The Army Digital Service.

''(5) The Defense Digital Service.

''(6) The Air Force Digital Service.

''(7) Challenge and prize competitions of the Defense Advanced Research Projects Agency (DARPA).

''(8) The Defense Science Study Group.

''(9) The Small Business Innovation Research Program (SBIR).

''(10) The Small Business Technology Transfer Program (STTR).

''(11) War colleges of the military departments.

''(12) Hacking for Defense.

''(13) The National Security Science and Engineering Faculty Fellowship (NSSEFF) program.

''(14) The Science, Mathematics and Research for Transformation (SMART) scholarship program.

''(15) The young faculty award program of the Defense Advanced Research Projects Agency.

''(16) The National Security Technology Accelerator.

''(17) The I-Corps Program.

''(18) The Lab-Embedded Entrepreneurship Programs of the Department of Energy.''

PROOF OF CONCEPT COMMERCIALIZATION OF DUAL-USE TECHNOLOGY PILOT PROGRAM

Pub. L. 113–66, div. A, title XVI, § 1603, Dec. 26, 2013, 127 Stat. 944, as amended by Pub. L. 113–291, div. A, title VIII, § 818, Dec. 19, 2014, 128 Stat. 3432; Pub. L. 116–92, div. A, title II, § 217, Dec. 20, 2019, 133 Stat. 1258, provided that:

''(a) PILOT PROGRAM.—The Secretary of Defense, acting through the Assistant Secretary of Defense for Research and Engineering and the Secretary of each military department, may establish and implement a pilot program, to be known as the 'Proof of Concept Commercialization of Dual-Use Technology Pilot Program', with a focus on priority defense technology areas that attract public and private sector funding, as well as private sector investment capital, including from venture capital firms in the United States, in accordance with this section.

''(b) PURPOSE.—The purpose of the pilot program is to accelerate the commercialization of basic research innovations from qualifying institutions.

''(c) AWARDS.—

''(1) IN GENERAL.—Under the pilot program, the Secretary shall make financial awards to qualifying institutions in accordance with this subsection.

''(2) COMPETITIVE, MERIT-BASED PROCESS.—An award under the pilot program shall be made using a competitive, merit-based process.

''(3) ELIGIBILITY.—A qualifying institution shall be eligible for an award under the pilot program if the institution agrees to—

''(A) use funds from the award for the uses specified in paragraph (5); and

''(B) oversee the use of the funds through—

''(i) rigorous review of commercialization potential or military utility of technologies, including through use of outside expertise;

''(ii) technology validation milestones focused on market feasibility;

''(iii) simple reporting on program progress; and

''(iv) a process to reallocate funding from poor performing projects to those with more potential.

''(4) CRITERIA.—An award may be made under the pilot program to a qualifying institution in accordance with the following criteria:

''(A) The extent to which a qualifying institution—

''(i) has an established and proven technology transfer or commercialization office and has a

plan for engaging that office in the program's implementation or has outlined an innovative approach to technology transfer that has the potential to increase or accelerate technology transfer outcomes and can be adopted by other qualifying institutions;

''(ii) can assemble a project management board comprised of industry, start-up, venture capital, technical, financial, and business experts;

''(iii) has an intellectual property rights strategy or office; and

''(iv) demonstrates a plan for sustainability beyond the duration of the funding from the award, which may include access to venture capital.

''(B) Such other criteria as the Secretary determines necessary.

''(5) USE OF AWARD.—

''(A) IN GENERAL.—Subject to subparagraph (B), the funds from an award may be used to evaluate the commercial potential of existing discoveries, including activities that contribute to determining a project's commercialization path, including technical validations, market research, clarifying intellectual property rights, and investigating commercial and business opportunities.

''(B) LIMITATIONS.—

''(i) The amount of an award may not exceed $1,000,000 a year.

''(ii) Funds from an award may not be used for basic research, or to fund the acquisition of research equipment or supplies unrelated to commercialization activities.

''(d) QUALIFYING INSTITUTION DEFINED.—In this section, the term 'qualifying institution' means a nonprofit institution, as defined in section 4(3) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3703(3)), or a Federal laboratory, as defined in section 4(4) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3703(4)).

''(e) AUTHORITIES.—In carrying out this section, the Secretary may use the following authorities:

''(1) Section 1599g of title 10 of the United States Code, relating to public-private talent exchanges.

''(2) Section 2368 of such title, relating to Centers for Science, Technology, and Engineering Partnerships.

''(3) Section 2374a of such title, relating to prizes for advanced technology achievements.

''(4) Section 2474 of such title, relating to Centers of Industrial and Technical Excellence.

''(5) Section 2521 of such title, relating to the Manufacturing Technology Program.

''(6) Section 225 of the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115–91; 10 U.S.C. 2359 note).

''(7) Section 1711 of such Act (Public Law 115–91; 10 U.S.C. 2505 note), relating to a pilot program on strengthening manufacturing in the defense industrial base.

''(8) Section 12 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a) and section 6305 of title 31, United States Code, relating to cooperative research and development agreements.

''(f) TERMINATION.—The pilot program conducted under this section shall terminate on September 30, 2024.''

DEFENSE RESEARCH AND DEVELOPMENT RAPID INNOVATION PROGRAM

Pub. L. 111–383, div. A, title X, § 1073, Jan. 7, 2011, 124 Stat. 4366, as amended by Pub. L. 114–92, div. A, title II, § 216, Nov. 25, 2015, 129 Stat. 769; Pub. L. 114–328, div. A, title II, § 213, Dec. 23, 2016, 130 Stat. 2048, which related to the establishment of a competitive, merit-based program to accelerate the fielding of technologies developed pursuant to phase II Small Business Innovation Research Program projects, technologies developed by the defense laboratories, and other innovative technologies (including dual use technologies), was repealed by Pub. L. 115–232, div. A, title II, § 224(b)(1), Aug. 13, 2018, 132 Stat. 1684. See section 2359a of this title.

§ 2359a. Defense Research and Development Rapid Innovation Program

(a) PROGRAM ESTABLISHED.—(1) The Secretary of Defense shall establish a competitive, merit-based program to accelerate the fielding of technologies developed pursuant to phase II Small Business Innovation Research Program projects, phase II Small Business Technology Transfer Program projects, technologies developed by the defense laboratories, and other innovative technologies (including dual use technologies).

(2) The purpose of this program is to stimulate innovative technologies and reduce acquisition or lifecycle costs, address technical risks, improve the timeliness and thoroughness of test and evaluation outcomes, and rapidly insert such products directly in support of primarily major defense acquisition programs, but also other defense acquisition programs that meet critical national security needs.

(b) GUIDELINES.—The Secretary shall issue guidelines for the operation of the program. At a minimum such guidance shall provide for the following:

(1) The issuance of one or more broad agency announcements or the use of any other competitive or merit-based processes by the Department of Defense for candidate proposals in support of defense acquisition programs as described in subsection (a).

(2) The review of candidate proposals by the Department of Defense and by each military department and the merit-based selection of the most promising cost-effective proposals for funding through contracts, cooperative agreements, and other transactions for the purposes of carrying out the program.

(3) The total amount of funding provided to any project under the program from funding provided under subsection (d) shall not exceed $6,000,000.

(4) No project shall receive more than a total of two years of funding under the program from funding provided under subsection (d), unless the Secretary, or the Secretary's designee, approves funding for any additional year.

(5) Mechanisms to facilitate transition of follow-on or current projects carried out under the program into defense acquisition programs, through the use of the authorities of section 2302e of this title or such other authorities as may be appropriate to conduct further testing, low rate production, or full rate production of technologies developed under the program.

(6) Projects are selected using merit-based selection procedures and the selection of projects is not subject to undue influence by Congress or other Federal agencies.

(7) A preference under the program for funding small business concerns.

(c) TREATMENT PURSUANT TO CERTAIN CONGRESSIONAL RULES.—Nothing in this section shall be interpreted to require or enable any official of the Department of Defense to provide funding under this section to any earmark as defined pursuant to House Rule XXI, clause 9, or any congressionally directed spending item as defined pursuant to Senate Rule XLIV, paragraph 5.

(d) FUNDING.—(1) Subject to the availability of appropriations for such purpose and to the limitation under paragraph (2), the amounts authorized to be appropriated for research, development, test, and evaluation for a fiscal year may be used for such fiscal year for the program established under subsection (a).

(2) During any fiscal year, the total amount of awards in an amount greater than $3,000,000 made under the program established under subsection (a) may not exceed 25 percent of the amount made available to carry out such program during such fiscal year.

(e) TRANSFER AUTHORITY.—(1) The Secretary may transfer funds available for the program to the research, development, test, and evaluation accounts of a military department, defense agency, or the unified combatant command for special operations forces pursuant to a proposal, or any part of a proposal, that the Secretary determines would directly support the purposes of the program.

(2) The transfer authority provided in this subsection is in addition to any other transfer authority available to the Department of Defense.

(Added Pub. L. 115–232, div. A, title II, § 224(a)(1), Aug. 13, 2018, 132 Stat. 1683; amended Pub. L. 116–92, div. A, title VIII, § 878(a), Dec. 20, 2019, 133 Stat. 1530.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1842(b), Jan. 1, 2021, 134 Stat. 4151, 4244, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 303 of this title, as added by section 1842(a) of Pub. L. 116–283, inserted after the table of sections, and redesignated as section 4061 of this title. See Effective Date of 2021 Amendment note below.

PRIOR PROVISIONS

A prior section 2359a, added Pub. L. 107–314, div. A, title II, § 242(a)(1), Dec. 2, 2002, 116 Stat. 2494; amended Pub. L. 109–163, div. A, title II, § 255(a), Jan. 6, 2006, 119 Stat. 3180; Pub. L. 109–364, div. A, title X, § 1071(a)(2), Oct. 17, 2006, 120 Stat. 2398; Pub. L. 110–181, div. A, title II, § 233, Jan. 28, 2008, 122 Stat. 46; Pub. L. 110–417, [div. A], title II, § 253(b), Oct. 14, 2008, 122 Stat. 4402, related to Technology Transition Initiative, prior to repeal by Pub. L. 112–81, div. A, title II, § 251(a)(1), Dec. 31, 2011, 125 Stat. 1347.

AMENDMENTS

2019—Subsec. (a)(1). Pub. L. 116–92, § 878(a)(1), inserted ''phase II Small Business Technology Transfer Program projects,'' after ''projects,''.

Subsec. (b)(3). Pub. L. 116–92, § 878(a)(2)(A), substituted ''$6,000,000.'' for ''$3,000,000, unless the Secretary, or the Secretary's designee, approves a larger amount of funding for the project.''

Subsec. (b)(7). Pub. L. 116–92, § 878(a)(2)(B), added par. (7).

Subsec. (d). Pub. L. 116–92, § 878(a)(3), designated existing provisions as par. (1), inserted ''and to the limitation under paragraph (2)'' after ''for such purpose'', and added par. (2).

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 2359b. Defense Acquisition Challenge Program

(a) PROGRAM REQUIRED.—(1) The Secretary of Defense, acting through the Under Secretary of Defense for Research and Engineering, shall carry out a program to provide opportunities for the increased introduction of innovative and cost-saving technology in acquisition programs of the Department of Defense.

(2) The program, to be known as the Defense Acquisition Challenge Program (hereinafter in this section referred to as the ''Challenge Program''), shall provide any person or activity within or outside the Department of Defense with the opportunity to propose alternatives, to be known as challenge proposals, at the component, subsystem, system, or system-of-systems level of an existing Department of Defense acquisition program, or to address any broader functional challenge to Department of Defense missions that may not fall within an acquisition program, that would result in improvements in performance, affordability, manufacturability, or operational capability of that acquisition program or function.

(b) PANELS.—The Under Secretary shall establish one or more panels of highly qualified scientists and engineers (hereinafter in this section referred to as ''Panels'') to provide preliminary evaluations of challenge proposals under subsection (c).

(c) PRELIMINARY EVALUATION BY PANELS.—(1) Under procedures prescribed by the Under Secretary, a person or activity within or outside the Department of Defense may submit challenge proposals to a Panel, through the unsolicited proposal process or in response to a broad agency announcement.

(2) The Under Secretary shall establish procedures pursuant to which appropriate officials of the Department of Defense may identify proposals submitted through the unsolicited proposal process as challenge proposals. The procedures shall provide for the expeditious referral of such proposals to a Panel for preliminary evaluation under this subsection.

(3) The Under Secretary shall issue on an annual basis not less than one such broad agency announcement inviting interested parties to submit challenge proposals. Such announcements may also identify particular technology areas and acquisition programs or functions that will be given priority in the evaluation of challenge proposals.

(4)(A) The Under Secretary shall establish procedures for the prompt issuance of a solicitation for challenge proposals addressing—

(i) any acquisition program for which, since the last such announcement, the Secretary concerned has determined under section 2433(d) of this title that the program's acquisition unit cost or procurement unit cost has increased by a percentage equal to or greater than the critical cost growth threshold for the program (in this section referred to as a ''critical cost growth threshold breach'');

(ii) any design, engineering, manufacturing, or technology integration issues, in accordance with the assessment required by section 2433(e)(2)(A) of this title, that have contributed significantly to the cost growth of such program; and

(iii) any functional challenges of importance to Department of Defense missions.

(B) A solicitation under this paragraph may be included in a broad agency announcement issued pursuant to paragraph (3) as long as the broad agency announcement is released in an expeditious manner following the determination of the Secretary concerned that a critical cost growth threshold breach has occurred with respect to a major defense acquisition program.

(5) Under procedures established by the Under Secretary, a Panel shall carry out a preliminary evaluation of each challenge proposal submitted in response to a broad agency announcement, or submitted through the unsolicited proposal process and identified as a challenge proposal in accordance with paragraph (2), to determine each of the following:

(A) Whether the challenge proposal has merit.

(B) Whether the challenge proposal is likely to result in improvements in performance, affordability, manufacturability, or operational capability at the component, subsystem, system, or system-of-systems level of an acquisition program.

(C) Whether the challenge proposal could be implemented in the acquisition program rapidly, at an acceptable cost, and without unacceptable disruption to the acquisition program.

(D) Whether the challenge proposal is likely to result in improvements to any functional challenges of importance to Department of Defense missions, and whether the proposal could be implemented rapidly, at an acceptable cost, and without unacceptable disruption to such missions.

(6) The Under Secretary—

(A) may establish procedures to ensure that the Challenge Program does not become an avenue for the repetitive submission of proposals that have been previously reviewed and found not to have merit; and

(B) may establish procedures to ensure that the Challenge Program establishes appropriate priorities for proposals from businesses that are not major contractors with the Department of Defense.

(7) If a Panel determines that a challenge proposal satisfies each of the criteria specified in paragraph (5), the person or activity submitting that challenge proposal shall be provided an opportunity to submit such challenge proposal for a full review and evaluation under subsection (d).

(d) FULL REVIEW AND EVALUATION.—(1) Under procedures prescribed by the Under Secretary, for each challenge proposal submitted for a full review and evaluation as provided in subsection (c)(7), the office carrying out the acquisition program to which the proposal relates shall, in consultation with the prime system contractor carrying out such program, conduct a full review and evaluation of the proposal.

(2) The full review and evaluation shall, independent of the determination of a Panel under subsection (c)(5), determine each of the matters specified in subparagraphs (A), (B), and (C) of such subsection. The full review and evaluation shall also include—

(A) an assessment of the cost of adopting the challenge proposal and implementing it in the acquisition program; and

(B) consideration of any intellectual property issues associated with the challenge proposal.

(e) ACTION UPON FAVORABLE FULL REVIEW AND EVALUATION.—(1) Under procedures prescribed by the Under Secretary, each challenge proposal determined under a full review and evaluation to satisfy each of the criteria specified in subsection (c)(5) with respect to an acquisition program shall be considered by the office carrying out the applicable acquisition program and the prime system contractor for incorporation into the acquisition program as a new technology insertion at the component, subsystem, system, or system-of-systems level.

(2) The Under Secretary shall encourage the adoption of each challenge proposal referred to in paragraph (1) by providing suitable incentives to the office carrying out the acquisition program and the prime system contractor carrying out such program.

(3) In the case of a challenge proposal submitted in response to a solicitation issued as a result of a critical cost growth threshold breach that is determined under full review and evaluation to satisfy each of the criteria specified in subsection (c)(5), the Under Secretary shall establish guidelines for covering the costs of the challenge proposal. If appropriate, such guidelines shall not be restricted to funding provided by the Defense Acquisition Challenge Program, but shall also consider alternative funding sources, such as the acquisition program with respect to which the breach occurred.

(f) ACTION UPON UNFAVORABLE FULL REVIEW AND EVALUATION.—Under procedures prescribed by the Under Secretary, if a challenge proposal is determined by a Panel to satisfy each of the criteria specified in subsection (c)(5), but is not determined under a full review and evaluation to satisfy such criteria, the following provisions apply:

(1) The office carrying out the full review and evaluation shall provide to the Panel that conducted the preliminary evaluation a statement containing a summary of the rationale for the unfavorable evaluation.

(2) If the Panel disagrees with the rationale provided under paragraph (1), the Panel may return the challenge proposal to the office for further consideration.

(g) ACCESS TO TECHNICAL RESOURCES.—(1) Under procedures established by the Under Secretary, the technical resources of the laboratories, research, development, and engineering centers, test and evaluation activities, and other elements of the Department may be called upon to support the activities of the Challenge Program.

(2) Funds available to carry out this program may be used to compensate such laboratories, centers, activities, and elements for technical assistance provided to a Panel pursuant to paragraph (1).

(h) CONFLICTS OF INTEREST AND CONFIDENTIALITY.—In carrying out each preliminary evaluation under subsection (c) and full review

under subsection (d), the Under Secretary shall ensure the elimination of conflicts of interest and that the identity of any person or activity submitting a challenge proposal is not disclosed outside the Federal Government, prior to contract award, without the consent of the person or activity. For purposes of the proceeding sentence, the term ''Federal Government'' includes both employees of the Federal Government and employees of Federal Government contractors providing advisory and assistance services as described in part 37 of the Federal Acquisition Regulation.

(i) LIMITATION ON USE OF FUNDS.—Funds made available for the Challenge Program may be used only for activities authorized by this section, and not for implementation of challenge proposals.

(j) TREATMENT OF USE OF CERTAIN PROCEDURES AS USE OF COMPETITIVE PROCEDURES.—The use of general solicitation competitive procedures established under subsection (c) shall be considered to be the use of competitive procedures for purposes of chapter 137 of this title.

(k) SYSTEM DEFINED.—In this section, the term ''system''—

(1) means—

(A) the organization of hardware, software, material, facilities, personnel, data, and services needed to perform a designated function with specified results (such as the gathering of specified data, its processing, and its delivery to users); or

(B) a combination of two or more interrelated pieces (or sets) of equipment arranged in a functional package to perform an operational function or to satisfy a requirement; and

(2) includes a major system (as defined in section 2302(5) of this title).

(*l*) PILOT PROGRAM FOR PROGRAMS OTHER THAN MAJOR DEFENSE ACQUISITION PROGRAMS.—

(1) IN GENERAL.—The Under Secretary of Defense for Research and Engineering shall carry out a pilot program to expand the use of the authority provided in this section to provide opportunities for the introduction of innovative and cost-saving approaches to programs other than major defense acquisition programs through the submission, review, and implementation, where appropriate, of qualifying proposals.

(2) QUALIFYING PROPOSALS.—For purposes of this subsection, a qualifying proposal is an offer to supply a nondevelopmental item that—

(A) is evaluated as achieving a level of performance that is at least equal to the level of performance of an item being procured under a covered acquisition program and as providing savings in excess of 15 percent after considering all costs to the Government of implementing such proposal; or

(B) is evaluated as achieving a level of performance that is significantly better than the level of performance of an item being procured under a covered acquisition program without any increase in cost to the Government.

(3) REVIEW PROCEDURES.—The Under Secretary shall adopt modifications as may be needed to the procedures applicable to the Challenge Program to provide for Department of Defense review of, and action on, qualifying proposals. Such procedures shall include, at a minimum, the issuance of a broad agency announcement inviting interested parties to submit qualifying proposals in areas of interest to the Department.

(4) DEFINITIONS.—In this subsection:

(A) NONDEVELOPMENTAL ITEM.—The term ''nondevelopmental item'' has the meaning given that term in section 110 of title 41.

(B) COVERED ACQUISITION PROGRAM.—The term ''covered acquisition program'' means any acquisition program of the Department of Defense other than a major defense acquisition program, but does not include any contract awarded under an exception to competitive acquisition authorized by the Small Business Act (15 U.S.C. 631 et seq.).

(C) LEVEL OF PERFORMANCE.—The term ''level of performance'', with respect to a nondevelopmental item, means the extent to which the item demonstrates required item functional characteristics.

(5) SUNSET.—The authority to carry out the pilot program under this subsection shall terminate on January 7, 2021.

(Added Pub. L. 107–314, div. A, title II, § 243(a), Dec. 2, 2002, 116 Stat. 2495; amended Pub. L. 109–364, div. A, title II, § 213(b), (d)–(g), Oct. 17, 2006, 120 Stat. 2121–2123; Pub. L. 110–417, [div. A], title VIII, § 821, Oct. 14, 2008, 122 Stat. 4531; Pub. L. 111–383, div. A, title VIII, § 827, Jan. 7, 2011, 124 Stat. 4270; Pub. L. 112–239, div. A, title X, § 1076(e)(3), Jan. 2, 2013, 126 Stat. 1951; Pub. L. 113–66, div. A, title X, § 1091(a)(10), Dec. 26, 2013, 127 Stat. 876; Pub. L. 113–291, div. A, title X, § 1071(a)(6), Dec. 19, 2014, 128 Stat. 3504; Pub. L. 114–328, div. A, title VIII, § 828, Dec. 23, 2016, 130 Stat. 2281; Pub. L. 116–92, div. A, title IX, § 902(56), Dec. 20, 2019, 133 Stat. 1549.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1842(b), Jan. 1, 2021, 134 Stat. 4151, 4244, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 303 of this title, as added by section 1842(a) of Pub. L. 116–283, inserted after section 4061, and redesignated as section 4062 of this title. See Effective Date of 2021 Amendment note below.

REFERENCES IN TEXT

The Small Business Act, referred to in subsec. (k)(4)(B), is Pub. L. 85–536, § 2(1 et seq.), July 18, 1958, 72 Stat. 384, which is classified generally to chapter 14A (§ 631 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 631 of Title 15 and Tables.

AMENDMENTS

2019—Subsecs. (a)(1), (*l*)(1). Pub. L. 116–92 substituted ''Under Secretary of Defense for Research and Engineering'' for ''Under Secretary of Defense for Acquisition, Technology, and Logistics''.

2016—Subsec. (a)(2). Pub. L. 114–328, § 828(a), substituted ''system, or system-of-systems level of an existing Department of Defense acquisition program, or

to address any broader functional challenge to Department of Defense missions that may not fall within an acquisition program, that would result in improvements in performance, affordability, manufacturability, or operational capability of that acquisition program or function.'' for ''or system level of an existing Department of Defense acquisition program that would result in improvements in performance, affordability, manufacturability, or operational capability of that acquisition program.''

Subsec. (c)(3). Pub. L. 114–328, § 828(d)(1), inserted ''or functions'' after ''acquisition programs''.

Subsec. (c)(4)(A)(iii). Pub. L. 114–328, § 828(d)(2), added cl. (iii).

Subsec. (c)(5)(B). Pub. L. 114–328, § 828(d)(4), substituted ''system, or system-of-systems'' for ''or system''.

Subsec. (c)(5)(D). Pub. L. 114–328, § 828(d)(3), added subpar. (D).

Subsec. (e)(1). Pub. L. 114–328, § 828(d)(4), substituted ''system, or system-of-systems'' for ''or system''.

Subsec. (j). Pub. L. 114–328, § 828(b)(2), added subsec. (j). Former subsec. (j) redesignated (k).

Subsecs. (k), (*l*). Pub. L. 114–328, § 828(b)(1), redesignated subsecs. (j) and (k) as (k) and (*l*), respectively.

Subsec. (*l*)(5). Pub. L. 114–328, § 828(c), substituted ''2021'' for ''2016''.

2014—Subsec. (k)(4)(A). Pub. L. 113–291 substituted ''section 110 of title 41'' for ''section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403)''.

2013—Subsec. (k)(4)(B). Pub. L. 113–66 inserted period at end.

Subsec. (k)(5). Pub. L. 112–239 substituted ''January 7, 2016'' for ''the date that is five years after the date of the enactment of this Act''.

2011—Subsecs. (j) to (*l*). Pub. L. 111–383 redesignated subsec. (*l*) as (j), added subsec. (k), and struck out former subsecs. (j) and (k) which related to annual report and termination of authority, respectively.

2008—Subsec. (*l*). Pub. L. 110–417 added subsec. (*l*).

2006—Subsec. (c)(4), (5). Pub. L. 109–364, § 213(b)(1), added par. (4) and redesignated former par. (4) as (5). Former par. (5) redesignated (6).

Subsec. (c)(6). Pub. L. 109–364, § 213(b)(1)(A), (d), redesignated par. (5) as (6) and amended it generally. Prior to amendment, par. (6) read as follows: ''The Under Secretary may establish procedures to ensure that the Challenge Program does not become an avenue for the repetitive submission of proposals that have been previously reviewed and found not to have merit.'' Former par. (6) redesignated (7).

Subsec. (c)(7). Pub. L. 109–364, § 213(b)(1)(A), (g)(1), redesignated par. (6) as (7) and substituted ''paragraph (5)'' for ''paragraph (4)''.

Subsec. (d)(1). Pub. L. 109–364, § 213(g)(2), substituted ''subsection (c)(7)'' for ''subsection (c)(6)''.

Subsec. (d)(2). Pub. L. 109–364, § 213(g)(3), substituted ''subsection (c)(5)'' for ''subsection (c)(4)'' in introductory provisions.

Subsec. (e)(1). Pub. L. 109–364, § 213(g)(4), substituted ''subsection (c)(5)'' for ''subsection (c)(4)''.

Subsec. (e)(3). Pub. L. 109–364, § 213(b)(2), added par. (3).

Subsecs. (f), (g). Pub. L. 109–364, § 213(b)(3), added subsec. (f) and redesignated former subsec. (f) as (g). Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 109–364, § 213(b)(3)(A), (e), redesignated subsec. (g) as (h), substituted ''Conflicts of Interest and Confidentiality'' for ''Elimination of Conflicts of Interest'' in heading, substituted ''conflicts of interest and that the identity of any person or activity submitting a challenge proposal is not disclosed outside the Federal Government, prior to contract award, without the consent of the person or activity'' for ''conflicts of interest'', and inserted at end ''For purposes of the proceeding sentence, the term 'Federal Government' includes both employees of the Federal Government and employees of Federal Government contractors providing advisory and assistance services as described in part 37 of the Federal Acquisition Regulation.'' Former subsec. (h) redesignated (i).

Subsec. (i). Pub. L. 109–364, § 213(b)(3)(A), redesignated subsec. (h) as (i). Former subsec. (i) redesignated (j).

Subsec. (j). Pub. L. 109–364, § 213(b)(3)(A), (4), redesignated subsec. (i) as (j) and substituted ''The report shall also include a list of each challenge proposal that was determined by a Panel to satisfy each of the criteria specified in subsection (c)(5), but was not determined under a full review and evaluation to satisfy such criteria, together with a detailed rationale for the Department's determination that such criteria were not satisfied'' for ''No report is required for a fiscal year in which the Challenge Program is not carried out''. Former subsec. (j) redesignated (k).

Subsec. (k). Pub. L. 109–364, § 213(b)(3)(A), (f), redesignated subsec. (j) as (k) and substituted ''2012'' for ''2007''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 2360. Research and development laboratories: contracts for services of university students

(a) Subject to the availability of appropriations for such purpose, the Secretary of Defense may procure by contract under the authority of this section the temporary or intermittent services of students at institutions of higher learning for the purpose of providing technical support at defense research and development laboratories. Such contracts may be made directly with such students or with nonprofit organizations employing such students.

(b) Students providing services pursuant to a contract made under subsection (a) shall be considered to be employees for the purposes of chapter 81 of title 5, relating to compensation for work injuries, and to be employees of the government for the purposes of chapter 171 of title 28, relating to tort claims. Such students who are not otherwise employed by the Federal Government shall not be considered to be Federal employees for any other purpose.

(c) The Secretary of Defense shall prescribe regulations to carry out this section. Such regulations shall include definitions for the purposes of this section of the terms ''student'', ''institution of higher learning'', and ''nonprofit organization''.

(Added Pub. L. 97–86, title VI, § 603(a), Dec. 1, 1981, 95 Stat. 1110.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1843(b)(2), Jan. 1, 2021, 134 Stat. 4151, 4245, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to subchapter II of chapter 305 of this title, as added by section 1843(a) of Pub. L. 116–283, inserted after the table of sections and section 4111 at the beginning of such subchapter, and redesignated as section 4112 of this title. See Effective Date of 2021 Amendment note below.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of

Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 2361. Award of grants and contracts to colleges and universities: requirement of competition

(a) The Secretary of Defense may not make a grant or award a contract to a college or university for the performance of research and development, or for the construction of any research or other facility, unless—

(1) in the case of a grant, the grant is made using competitive procedures; and

(2) in the case of a contract, the contract is awarded in accordance with section 2304 of this title (other than pursuant to subsection (c)(5) of that section).

(b)(1) A provision of law may not be construed as modifying or superseding the provisions of subsection (a), or as requiring funds to be made available by the Secretary of Defense to a particular college or university by grant or contract, unless that provision of law—

(A) specifically refers to this section;

(B) specifically states that such provision of law modifies or supersedes the provisions of this section; and

(C) specifically identifies the particular college or university involved and states that the grant to be made or the contract to be awarded, as the case may be, pursuant to such provision of law is being made or awarded in contravention of subsection (a).

(2) A grant may not be made, or a contract awarded, pursuant to a provision of law that authorizes or requires the making of the grant, or the awarding of the contract, in a manner that is inconsistent with subsection (a) until—

(A) the Secretary of Defense submits to Congress a notice in writing of the intent to make the grant or award the contract; and

(B) a period of 180 days has elapsed after the date on which the notice is received by Congress.

(Added Pub. L. 100–456, div. A, title II, § 220(a), Sept. 29, 1988, 102 Stat. 1940; amended Pub. L. 101–189, div. A, title II, § 252(a), (b)(1), (c)(1), Nov. 29, 1989, 103 Stat. 1404, 1405; Pub. L. 101–510, div. A, title XIII, § 1311(4), Nov. 5, 1990, 104 Stat. 1669; Pub. L. 103–35, title II, § 201(g)(5), May 31, 1993, 107 Stat. 100; Pub. L. 103–160, div. A, title VIII, § 821(b), Nov. 30, 1993, 107 Stat. 1704; Pub. L. 103–337, div. A, title VIII, § 813, Oct. 5, 1994, 108 Stat. 2816; Pub. L. 104–106, div. A, title II, § 264, title XV, § 1502(a)(1), Feb. 10, 1996, 110 Stat. 237, 502; Pub. L. 104–201, div. A, title II, § 265, Sept. 23, 1996, 110 Stat. 2466.)

Transfer of Section

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1841(c), Jan. 1, 2021, 134 Stat. 4151, 4243, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 301 of this title, as added by section 1841(a) of Pub. L. 116–283, added after section 4009, and redesignated as section 4015 of this title. See Effective Date of 2021 Amendment note below.

Prior Provisions

A prior section 2361 was renumbered section 2351 of this title.

Amendments

1996—Subsec. (c). Pub. L. 104–201 struck out subsec. (c) which read as follows:

"(1) The Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives an annual report on the use of competitive procedures for the award of research and development contracts, and the award of construction contracts, to colleges and universities. Each such report shall include—

"(A) a list of each college and university that, during the period covered by the report, received more than $1,000,000 in such contracts through the use of procedures other than competitive procedures; and

"(B) the cumulative amount of such contracts received during that period by each such college and university.

"(2) Each report under paragraph (1) shall cover the preceding fiscal year and shall be submitted not later than February 1 of the fiscal year after the fiscal year covered by the report."

Subsec. (c)(1). Pub. L. 104–106, § 1502(a)(1), substituted "Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives" for "Committees on Armed Services of the Senate and House of Representatives".

Subsec. (c)(2). Pub. L. 104–106, § 264, substituted "preceding fiscal year" for "preceding calendar year" and "the fiscal year after the fiscal year" for "the year after the year".

1994—Subsec. (c). Pub. L. 103–337 added subsec. (c).

1993—Subsec. (b)(2). Pub. L. 103–35 substituted "inconsistent" for "inconsisent".

Subsec. (c). Pub. L. 103–160 struck out subsec. (c) which read as follows:

"(1) The Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives an annual report on the use of competitive procedures for the award of research and development contracts, and the award of construction contracts, to colleges and universities. Each such report shall include—

"(A) a list of each college and university that, during the period covered by the report, received more than $1,000,000 in such contracts through the use of procedures other than competitive procedures; and

"(B) the cumulative amount of such contracts received during that period by each such college and university.

"(2) The reports under paragraph (1) shall cover the preceding calendar year and shall be submitted not later than February 1 of the year after the year covered by the report.

"(3) A report is not required under paragraph (1) for any period beginning after December 31, 1993."

1990—Subsec. (c)(1). Pub. L. 101–510, § 1311(4)(A), substituted "an annual report" for "a semiannual report" in introductory provisions.

Subsec. (c)(2). Pub. L. 101–510, § 1311(4)(B), substituted "the preceding calendar year and shall be submitted not later than February 1 of the year after the year covered by the report" for "the six-month periods ending on June 30 and December 31 of each year. Each such report shall be submitted within 30 days after the end of the period covered by the report".

1989—Subsec. (a). Pub. L. 101–189, § 252(a), substituted "unless—" for "unless" and pars. (1) and (2) for "the grant or contract is made or awarded using competitive procedures."

Subsec. (b). Pub. L. 101–189, § 252(b)(1), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: "A provision of law enacted after the date of the enactment of this section may not be construed as modifying or superseding the provisions of subsection (a) unless that provision of law specifically refers to this section and specifically states that such provision of law modifies or supersedes the provisions of this section."

Subsec. (c). Pub. L. 101–189, § 252(c)(1), added subsec. (c).

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103–160, div. A, title VIII, § 821(b), Nov. 30, 1993, 107 Stat. 1704, provided that the amendment made by that section is effective Feb. 1, 1994.

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–189, div. A, title II, § 252(b)(2), Nov. 29, 1989, 103 Stat. 1405, provided that: ''Subsection (b) of section 2361 of title 10, United States Code, as amended by paragraph (1), applies with respect to any provision of law enacted after September 30, 1989.''

EFFECTIVE DATE

Pub. L. 100–456, div. A, title II, § 220(c), Sept. 29, 1988, 102 Stat. 1941, provided that: ''The limitation specified in section 2361(a) of title 10, United States Code (as added by subsection (a)), on the authority of the Secretary of Defense to make grants and award contracts shall take effect on October 1, 1989.''

INITIAL REPORT ON USE OF COMPETITIVE PROCEDURES IN AWARDING CONTRACTS

Pub. L. 101–189, div. A, title II, § 252(c)(2), Nov. 29, 1989, 103 Stat. 1405, required that first report under subsec. (c) of this section cover last six months of 1989 and be submitted not later than Feb. 1, 1990.

§ 2361a. Extramural acquisition innovation and research activities

(a) ESTABLISHMENT.—The Secretary of Defense, acting through the Under Secretary of Defense for Acquisition and Sustainment and in coordination with the Under Secretary of Defense for Research and Engineering, shall establish and maintain extramural acquisition innovation and research activities as described in subsection (d), which shall include an acquisition research organization within a civilian college or university that is not owned or operated by the Federal Government that is established to provide and maintain essential research and development capabilities through a long-term strategic relationship with the Department of Defense.

(b) GOALS.—The goal of any activity conducted pursuant to this section shall be to provide academic analyses and policy alternatives for innovation in defense acquisition policies and practices to policymakers in the Federal Government by using a variety of means intended to widely disseminate research findings from such an activity, in addition to executing demonstration and pilot programs of innovative acquisition policies and practices.

(c) DIRECTOR.—

(1) APPOINTMENT.—Not later than June 1, 2020, the Secretary of Defense shall appoint an individual from civilian life to serve as the director for the extramural acquisition innovation and research activities required by this section (referred to in this section as the ''Director'').

(2) TERM.—The Director shall serve a term of five years.

(d) ACTIVITIES.—The activities described in this subsection are as follows:

(1) Research on past and current defense acquisition policies and practices, commercial and international best practices, and the application of new technologies and analytical capabilities to improve acquisition policies and practices.

(2) Pilot programs to prototype and demonstrate new acquisition practices for potential transition to wider use in the Department of Defense.

(3) Establishment of data repositories and development of analytical capabilities, in coordination with the Chief Data Officer of the Department of Defense, to enable researchers and acquisition professionals to access and analyze historical data sets to support research and new policy and practice development.

(4) Executive education to—

(A) support acquisition workforce development, including for early career, mid-career, and senior leaders; and

(B) provide appropriate education on acquisition issues to non-acquisition professionals.

(5) On an ongoing basis, a review of the implementation of recommendations contained in relevant Department of Defense and private sector studies on acquisition policies and practices, including—

(A) for recommendations for the enactment of legislation, identify the extent to which the recommendations have been enacted into law by Congress;

(B) for recommendations for the issuance of regulations, identify the extent to which the recommendations have been adopted through the issuance or revision of regulations;

(C) for recommendations for revisions to policies and procedures in the executive branch, identify the extent to which the recommendations have been adopted through issuance of an appropriate implementing directive or other form of guidance; and

(D) for recommendations for the resources required to implement recommendations contained in relevant Department of Defense and private sector studies on acquisition policies and practices.

(6) Engagement with researchers and acquisition professionals in the Department of Defense, as appropriate.

(e) FUNDING.—Subject to the availability of appropriations, the Secretary may use amounts available in the Defense Acquisition Workforce and Development Account to carry out the requirements of this section.

(f) ANNUAL REPORT.—Not later than September 30, 2021, and annually thereafter, the Director shall submit to the Secretary of Defense and the congressional defense committees a report describing the activities conducted under this section during the previous year.

(Added Pub. L. 116–92, div. A, title VIII, § 835(a)(1), Dec. 20, 2019, 133 Stat. 1494.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§1801(d), 1842(b), Jan. 1, 2021, 134 Stat. 4151, 4244, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 303 of this title, as added by section 1842(a) of Pub. L. 116–283, inserted after section 4062, and redesignated as section 4063 of this title. See Effective Date of 2021 Amendment note below.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

IMPLEMENTATION OF SECTION

Pub. L. 116–92, div. A, title VIII, §835(a)(3), Dec. 20, 2019, 133 Stat. 1496, provided that:

''(A) DEADLINE.—Not later than March 1, 2020, the Secretary of Defense shall establish the extramural acquisition innovation and research activities required by section 2361a of title 10, United States Code (as added by this subsection).

''(B) REPORT.—

''(i) IN GENERAL.—Not later than January 1, 2021, the Director of the extramural acquisition innovation and research activities appointed under such section shall submit to the Secretary of Defense a report setting forth a plan, proposed budget, and schedule for execution of such activities.

''(ii) TRANSMITTAL.—Not later than February 1, 2021, the Secretary of Defense shall transmit the report required under clause (i), together with whatever comments the Secretary considers appropriate, to the Committees on Armed Services of the Senate and the House of Representatives.''

RECORDS OF THE SECTION 809 PANEL

Pub. L. 116–92, div. A, title VIII, §835(b), Dec. 20, 2019, 133 Stat. 1496, provided that:

''(1) TRANSFER AND MAINTENANCE OF RECORDS.—Not later than March 1, 2020, the records of the Section 809 Panel shall be transferred to, and shall be maintained by, the Defense Technical Information Center.

''(2) STATUS OF RECORDS.—Working papers, records of interview, and any other draft work products generated for any purpose by the Section 809 Panel shall be covered by the deliberative process privilege exemption under paragraph (5) of section 552(b) of title 5, United States Code.

''(3) AVAILABILITY.—To the maximum extent practicable, the Secretary shall make the records available to support activities conducted by the research organization described under section 2361a of title 10, United States Code (as added by subsection (a)).

''(4) SECTION 809 PANEL DEFINED.—In this subsection, the term 'Section 809 Panel' means the panel established by the Secretary of Defense pursuant to section 809 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114–92) [129 Stat. 889].''

§ 2362. Research and educational programs and activities: historically black colleges and universities and minority-serving institutions of higher education

(a) PROGRAM ESTABLISHED.—(1) The Secretary of Defense, acting through the Assistant Secretary of Defense for Research and Engineering and the Secretary of each military department, shall carry out a program to provide assistance to covered educational institutions to assist the Department in defense-related research, development, testing, and evaluation activities.

(2) The Secretary of Defense may not delegate or transfer to an individual outside the Office of the Secretary of Defense the authority regarding the programming or budgeting of the program established by this section that is carried out by the Assistant Secretary of Defense for Research and Engineering.

(b) PROGRAM OBJECTIVE.—The objective of the program established by subsection (a)(1) is to enhance defense-related research and education at covered educational institutions. Such objective shall be accomplished through initiatives designed to—

(1) enhance the research and educational capabilities of such institutions in areas of importance to national defense, as determined by the Secretary;

(2) encourage the participation of such institutions in the research, development, testing, and evaluation programs and activities of the Department of Defense;

(3) increase the number of graduates from such institutions engaged in disciplines important to the national security functions of the Department of Defense, as determined by the Secretary; and

(4) encourage research and educational collaborations between such institutions and other institutions of higher education, Government defense organizations, and the defense industry.

(c) ASSISTANCE PROVIDED.—Under the program established by subsection (a)(1), the Secretary of Defense may provide covered educational institutions with funding or technical assistance, including any of the following:

(1) Support for research, development, testing, evaluation, or educational enhancements in areas important to national defense through the competitive awarding of grants, cooperative agreements, contracts, scholarships, fellowships, or the acquisition of research equipment or instrumentation.

(2) Support to assist in the attraction and retention of faculty in scientific disciplines important to the national security functions of the Department of Defense.

(3) Establishing partnerships between such institutions and defense laboratories, Government defense organizations, the defense industry, and other institutions of higher education in research, development, testing, and evaluation in areas important to the national security functions of the Department of Defense.

(4) Other such non-monetary assistance as the Secretary finds appropriate to enhance defense-related research, development, testing, and evaluation activities at such institutions.

(d) INCENTIVES.—The Secretary of Defense may develop incentives to encourage research and educational collaborations between covered educational institutions and other institutions of higher education.

(e) CRITERIA FOR FUNDING.—The Secretary of Defense may establish procedures under which the Secretary may limit funding under this section to institutions that have not otherwise received a significant amount of funding from the Department of Defense for research, development, testing, and evaluation programs sup-

porting the national security functions of the Department.

(f) DEFINITION OF COVERED EDUCATIONAL INSTITUTION.—In this section the term ''covered educational institution'' means—

(1) an institution of higher education eligible for assistance under title III or V of the Higher Education Act of 1965 (20 U.S.C. 1051 et seq.); or

(2) an accredited postsecondary minority institution.

(Added Pub. L. 111–84, div. A, title II, § 252(a), Oct. 28, 2009, 123 Stat. 2242; amended Pub. L. 111–383, div. A, title X, § 1075(b)(32), Jan. 7, 2011, 124 Stat. 4370; Pub. L. 112–81, div. A, title II, § 219, Dec. 31, 2011, 125 Stat. 1335; Pub. L. 112–239, div. A, title X, § 1076(c)(2)(A)(i), Jan. 2, 2013, 126 Stat. 1949; Pub. L. 115–232, div. A, title II, § 245, Aug. 13, 2018, 132 Stat. 1700; Pub. L. 116–92, div. A, title II, § 214, Dec. 20, 2019, 133 Stat. 1257.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1838(b), Jan. 1, 2021, 134 Stat. 4151, 4242, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 285 of this title, as added by section 1838(a) of Pub. L. 116–283, inserted after section 3903, and redesignated as section 3904 of this title. See Effective Date of 2021 Amendment note below.

REFERENCES IN TEXT

The Higher Education Act of 1965, referred to in subsec. (f)(1), is Pub. L. 89–329, Nov. 8, 1965, 79 Stat. 1219. Titles III and V of the Act are classified generally to subchapters III (§ 1051 et seq.) and V (§ 1101 et seq.), respectively, of chapter 28 of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20 and Tables.

PRIOR PROVISIONS

A prior section 2362, added Pub. L. 99–145, title I, § 123(a)(1), Nov. 8, 1985, 99 Stat. 599; amended Pub. L. 99–433, title I, § 110(g)(4), Oct. 1, 1986, 100 Stat. 1004; Pub. L. 100–26, § 7(k)(2), Apr. 21, 1987, 101 Stat. 284, which related to testing requirements for wheeled or tracked armored vehicles, was repealed by Pub. L. 103–160, div. A, title VIII, § 821(a)(3), Nov. 30, 1993, 107 Stat. 1704.

AMENDMENTS

2019—Subsecs. (d) to (f). Pub. L. 116–92 added subsec. (d) and redesignated former subsecs. (d) and (e) as (e) and (f), respectively.

2018—Subsec. (d). Pub. L. 115–232 substituted ''Criteria'' for ''Priority'' in heading and ''limit'' for ''give priority in providing'' in text.

2013—Subsec. (a)(1). Pub L. 112–239 substituted ''Assistant Secretary of Defense for Research and Engineering'' for ''Director of Defense Research and Engineering''.

2011—Subsec. (a). Pub. L. 112–81, § 219(a), designated existing provisions as par. (1) and added par. (2).

Subsec. (b). Pub. L. 112–81, § 219(b)(1), substituted ''established by subsection (a)(1)'' for ''established under subsection (a)'' in introductory provisions.

Subsec. (c). Pub. L. 112–81, § 219(b)(2), substituted ''subsection (a)(1)'' for ''subsection (a)'' in introductory provisions.

Subsec. (e)(1). Pub. L. 111–383, § 1075(b)(32), substituted ''title III or V'' for ''title III or IV''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

NATIONAL STUDY ON DEFENSE RESEARCH AT HISTORICALLY BLACK COLLEGES AND UNIVERSITIES AND OTHER MINORITY INSTITUTIONS

Pub. L. 116–92, div. A, title II, § 262, Dec. 20, 2019, 133 Stat. 1295, provided that:

''(a) STUDY REQUIRED.—The Secretary of Defense shall seek to enter into an agreement with the National Academies of Sciences, Engineering, and Medicine (referred to in this section as the 'National Academies') under which the National Academies will conduct a study on the status of defense research at covered institutions and the methods and means necessary to advance research capacity at covered institutions to comprehensively address the national security and defense needs of the United States.

''(b) DESIGNATION.—The study conducted under subsection (a) shall be known as the 'National Study on Defense Research At Historically Black Colleges and Universities and Other Minority Institutions'.

''(c) ELEMENTS.—The study conducted under subsection (a) shall include an examination of each of the following:

''(1) The degree to which covered institutions are successful in competing for and executing Department of Defense contracts and grants for defense research.

''(2) Best practices for advancing the capacity of covered institutions to compete for and conduct research programs related to national security and defense.

''(3) The advancements and investments necessary to elevate covered institutions to R2 status or R1 status on the Carnegie Classification of Institutions of Higher Education, consistent with the criteria of the classification system.

''(4) The facilities and infrastructure for defense-related research at covered institutions as compared to the facilities and infrastructure at institutions classified as R1 status on the Carnegie Classification of Institutions of Higher Education.

''(5) Incentives to attract, recruit, and retain leading research faculty to covered institutions.

''(6) Best practices of institutions classified as R1 status on the Carnegie Classification of Institutions of Higher Education, including best practices with respect to—

''(A) the establishment of a distinct legal entity to—

''(i) enter into contracts or receive grants from the Department;

''(ii) lay the groundwork for future research opportunities;

''(iii) develop research proposals;

''(iv) engage with defense research funding organizations; and

''(v) execute the administration of grants; and

''(B) determining the type of legal entity, if any, to establish for the purposes described in subparagraph (A).

''(7) The ability of covered institutions to develop, protect, and commercialize intellectual property created through defense-related research.

''(8) The total amount of defense research funding awarded to all institutions of higher education, including covered institutions, through contracts and grants for each of fiscal years 2010 through 2019 and, with respect to each such institution—

''(A) whether the institution established a distinct legal entity to enter into contracts or receive grants from the Department and, if so, the type of legal entity that was established;

''(B) the total value of contracts and grants awarded to the institution of higher education for each of fiscal years 2010 through 2019;

''(C) the overhead rate of the institution of higher education for fiscal year 2019;

''(D) the institution's classification on the Carnegie Classification of Institutions of Higher Education; and

''(E) whether the institution qualifies as a covered institution.

''(9) Recommendations for strengthening and enhancing the programs executed under section 2362 of title 10, United States Code.

''(10) Recommendations to enhance the capacity of covered institutions to transition research products into defense acquisition programs or commercialization.

''(11) Previous executive or legislative actions by the Federal Government to address imbalances in Federal research funding, including such programs as the Defense Established Program to Stimulate Competitive Research (commonly known as 'DEPSCoR').

''(12) The effectiveness of the Department in attracting and retaining students specializing in science, technology, engineering, and mathematics fields from covered institutions for the Department's programs on emerging capabilities and technologies.

''(13) Recommendations for the development of incentives to encourage research and educational collaborations between covered institutions and other institutions of higher education.

''(14) Any other matters the Secretary of Defense determines to be relevant to advancing the defense research capacity of covered institutions.

''(d) REPORTS.—

''(1) INITIAL REPORT.—Not later than 180 days after the date of the enactment of this Act [Dec. 20, 2019], the Secretary of Defense shall submit to the President and the appropriate congressional committees an initial report that includes—

''(A) the findings of the study conducted under subsection (a); and

''(B) any recommendations that the National Academies may have for action by the executive branch and Congress to improve the participation of covered institutions in Department of Defense research and any actions that may be carried out to expand the research capacity of such institutions.

''(2) FINAL REPORT.—Not later than December 31, 2021, the Secretary of Defense shall submit to the President and the appropriate congressional committees a comprehensive report on the results of the study required under subsection (a).

''(3) FORM OF REPORTS.—Each report submitted under this subsection shall be made publicly available.

''(e) IMPLEMENTATION REQUIRED.—

''(1) IN GENERAL.—Except as provided in paragraph (2), not later than March 1, 2022, the Secretary of Defense shall commence implementation of each recommendation included in the final report submitted under subsection (d)(2).

''(2) EXCEPTIONS.—

''(A) DELAYED IMPLEMENTATION.—The Secretary of Defense may commence implementation of a recommendation described paragraph (1) later than March 1, 2022, if—

''(i) the Secretary submits to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] written notice of the intent of the Secretary to delay implementation of the recommendation; and

''(ii) includes, as part of such notice, a specific justification for the delay in implementing the recommendation.

''(B) NONIMPLEMENTATION.—The Secretary of Defense may elect not to implement a recommendation described in paragraph (1), if—

''(i) the Secretary submits to the congressional defense committees written notice of the intent of the Secretary not to implement the recommendation; and

''(ii) includes, as part of such notice—

''(I) the reasons for the Secretary's decision not to implement the recommendation; and

''(II) a summary of alternative actions the Secretary will carry out to address the purposes underlying the recommendation.

''(3) IMPLEMENTATION PLAN.—For each recommendation that the Secretary implements under this subsection, the Secretary shall submit to the congressional defense committees an implementation plan that includes—

''(A) a summary of actions that have been, or will be, carried out to implement the recommendation; and

''(B) a schedule, with specific milestones, for completing the implementation of the recommendation.

''(f) LIST OF COVERED INSTITUTIONS.—The Secretary of Defense, in consultation with the Secretary of Education and the Presidents of the National Academies, shall make available a list identifying each covered institution examined as part of the study under subsection (a). The list shall be made available on a publicly accessible website and shall be updated not less frequently than once annually until the date on which the final report is submitted under subsection (d)(2).

''(g) DEFINITIONS.—In this section:

''(1) The term 'appropriate congressional committees' means—

''(A) the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives];

''(B) the Committee on Health, Education, Labor, and Pensions of the Senate; and

''(C) the Committee on Education and Labor of the House of Representatives.

''(2) The term 'covered institution' means—

''(A) a part B institution (as that term is defined in section 322(2) of the Higher Education Act of 1965 (20 U.S.C. 1061(2))[)]; or

''(B) any other institution of higher education (as that term is defined in section 101 of such Act (20 U.S.C. 1001)) at which not less than 50 percent of the total student enrollment consists of students from ethnic groups that are underrepresented in the fields of science and engineering.''

STRATEGIES FOR ENGAGEMENT WITH HISTORICALLY BLACK COLLEGES AND UNIVERSITIES AND MINORITY-SERVING INSTITUTIONS OF HIGHER EDUCATION

Pub. L. 114–92, div. A, title II, § 233, Nov. 25, 2015, 129 Stat. 779, provided that:

''(a) BASIC RESEARCH ENTITIES.—

''(1) STRATEGY.—The heads of each basic research entity shall each develop a strategy for how to engage with and support the development of scientific, technical, engineering, and mathematics capabilities of covered educational institutions in carrying out section 2362 of title 10, United States Code.

''(2) ELEMENTS.—Each strategy under paragraph (1) shall include the following:

''(A) Goals and vision for maintaining a credible and sustainable program relating to the engagement and support under the strategy.

''(B) Metrics to enhance scientific, technical, engineering, and mathematics capabilities at covered educational institutions, including with respect to measuring progress toward increasing the success of such institutions to compete for broader research funding sources other than set-aside funds.

''(C) Promotion of mentoring opportunities between covered educational institutions and other research institutions.

''(D) Regular assessment of activities that are used to develop, maintain, and grow scientific, technical, engineering, and mathematics capabilities.

''(E) Inclusion of faculty of covered educational institutions into program reviews, peer reviews, and other similar activities.

''(F) Targeting of undergraduate, graduate, and postgraduate students at covered educational institutions for inclusion into research or internship opportunities within the military department.

''(b) OFFICE OF THE SECRETARY.—The Secretary of Defense shall develop and implement a strategy for how to engage with and support the development of scientific, technical, engineering, and mathematics capabilities of covered educational institutions pursuant to the strategies developed under subsection (a).

''(c) Submission.—

''(1) BASIC RESEARCH ENTITIES.—Not later than 180 days after the date of the enactment of this Act [Nov. 25, 2015], the heads of each basic research entity shall each submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] the strategy developed by the head under subsection (a)(1).

''(2) OFFICE OF THE SECRETARY.—Not later than one year after the date of the enactment of this Act, the Secretary of Defense shall submit to the congressional defense committees the strategy developed under subsection (b).

''(d) COVERED INSTITUTION DEFINED.—In this section:

''(1) The term 'basic research entity' means an entity of the Department of Defense that executes research, development, test, and evaluation budget activity 1 funding, as described in the Department of Defense Financial Management Regulation.

''(2) The term 'covered educational institution' has the meaning given that term in section 2362(e) [now 2362(f)] of title 10, United States Code.''

§ 2363. Mechanisms to provide funds for defense laboratories for research and development of technologies for military missions

(a) MECHANISMS TO PROVIDE FUNDS.—(1) The Secretary of Defense, in consultation with the Secretaries of the military departments, shall establish mechanisms under which the director of a defense laboratory may use an amount of funds equal to not less than two percent and not more than four percent of all funds available to the defense laboratory for the following purposes:

(A) To fund innovative basic and applied research that is conducted at the defense laboratory and supports military missions.

(B) To fund development programs that support the transition of technologies developed by the defense laboratory into operational use.

(C) To fund workforce development activities that improve the capacity of the defense laboratory to recruit and retain personnel with necessary scientific and engineering expertise that support military missions.

(D) To fund the repair or minor military construction of the laboratory infrastructure and equipment, in accordance with subsection (b).

(2) The mechanisms established under paragraph (1) shall provide that funding shall be used under paragraph (1) at the discretion of the director of a defense laboratory in consultation with the science and technology executive of the military department concerned.

(3) The science and technology executive of a military department may develop policies and guidance to leverage funding and promote cross-laboratory collaboration, including with laboratories of other military departments.

(4) After consultation with the science and technology executive of the military department concerned, the director of a defense laboratory may charge customer activities a fixed percentage fee, in addition to normal costs of performance, in order to obtain funds to carry out activities authorized by this subsection. The fixed fee may not exceed four percent of costs.

(b) AVAILABILITY OF FUNDS FOR INFRASTRUCTURE PROJECTS.—Funds shall be available in accordance with subsection (a)(1)(D) only if—

(1) the Secretary notifies the congressional defense committees of the total cost of the project before the date on which the Secretary uses the mechanism under such subsection for such project; and

(2) the Secretary ensures that the project complies with the applicable cost limitations in—

(A) section 2805(d) of this title, with respect to revitalization and recapitalization projects; and

(B) section 2811 of this title, with respect to repair projects.

(c) RELEASE AND DISSEMINATION OF INFORMATION ON CONTRIBUTIONS FROM USE OF AUTHORITY TO MILITARY MISSIONS.—

(1) COLLECTION OF INFORMATION.—The Secretary shall establish and maintain mechanisms for the continuous collection of information on achievements, best practices identified, lessons learned, and challenges arising in the exercise of the authority in this section.

(2) RELEASE OF INFORMATION.—The Secretary shall establish and maintain mechanisms as follows:

(A) Mechanisms for the release to the public of information on achievements and best practices described in paragraph (1) in unclassified form.

(B) Mechanisms for dissemination to appropriate civilian and military officials of information on achievements and best practices described in paragraph (1) in classified form.

(Added Pub. L. 115–91, div. A, title II, §220(a), Dec. 12, 2017, 131 Stat. 1332; amended Pub. L. 115–232, div. A, title II, §250, Aug. 13, 2018, 132 Stat. 1702.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§1801(d), 1843(b)(1), Jan. 1, 2021, 134 Stat. 4151, 4245, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to subchapter I of chapter 305 of this title, as added by section 1843(a) of Pub. L. 116–283, inserted after the table of sections at the beginning of such subchapter, and redesignated as section 4103 of this title. See Effective Date of 2021 Amendment note below.

PRIOR PROVISIONS

A prior section 2363, added Pub. L. 99–145, title XIV, §1457(a), Nov. 8, 1985, 99 Stat. 762, related to encouragement of technology transfer, prior to repeal by Pub. L. 102–484, div. D, title XLII, §§4224(c), 4271(a)(2), Oct. 23, 1992, 106 Stat. 2683, 2695. See section 2514 of this title.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

AMENDMENTS

2018—Subsec. (c). Pub. L. 115–232 amended subsec. (c) generally. Prior to amendment, subsec. (c) related to annual reports on the use of the authority under subsec. (a).

§ 2364. Coordination and communication of defense research activities and technology domain awareness

(a) COORDINATION OF DEPARTMENT OF DEFENSE RESEARCH, DEVELOPMENT, AND TECHNOLOGICAL DATA.—The Secretary of Defense shall promote, monitor, and evaluate programs for the communication and exchange of research, development, and technological data—

(1) among the Defense research facilities, combatant commands, and other organizations that are involved in developing for the Department of Defense the technological requirements for new items for use by combat forces;

(2) among Defense research facilities and other offices, agencies, and bureaus in the Department that are engaged in related technological matters;

(3) among other research facilities and other departments or agencies of the Federal Government that are engaged in research, development, and technological matters;

(4) among private commercial, research institution, and university entities engaged in research, development, and technological matters potentially relevant to defense on a voluntary basis;

(5) to the extent practicable, to achieve full awareness of scientific and technological advancement and innovation wherever it may occur, whether funded by the Department of Defense, another element of the Federal Government, or other entities; and

(6) through development and distribution of clear technical communications to the public, military operators, acquisition organizations, and civilian and military decision-makers that convey successes of research and engineering activities supported by the Department and the contributions of such activities to support national needs.

(b) FUNCTIONS OF DEFENSE RESEARCH FACILITIES.—The Secretary of Defense shall ensure, to the maximum extent practicable—

(1) that Defense research facilities are assigned broad mission requirements rather than specific hardware needs;

(2) that appropriate personnel of such facilities are assigned to serve as consultants on component and support system standardization;

(3) that the managers of such facilities have broad latitude to choose research and development projects based on awareness of activities throughout the technology domain, including within the Federal Government, the Department of Defense, public and private research institutions and universities, and the global commercial marketplace;

(4) that technology position and issue papers prepared by Defense research facilities are readily available to all components of the Department of Defense and to contractors who submit bids or proposals for Department of Defense contracts;

(5) that, in order to promote increased consideration of technological issues early in the development process, any technological assessment made by a Defense research facility shall be provided to the Defense Technical Information Center repository to support acquisition decisions; and

(6) that, in light of Defense research facilities being funded by the public, Defense research facilities are broadly authorized and encouraged to support national technological development goals and support technological missions of other departments and agencies of the Federal Government, when such support is determined by the Secretary of Defense to be in the best interests of the Federal Government.

(c) DEFINITIONS.—In this section, the term ''Defense research facility'' means a Department of Defense facility which performs or contracts for the performance of—

(1) basic research; or

(2) applied research known as exploratory development.

(Added Pub. L. 99–661, div. A, title II, § 234(c)(1), Nov. 14, 1986, 100 Stat. 3848; amended Pub. L. 100–26, §§ 3(1)(A), 7(a)(9), Apr. 21, 1987, 101 Stat. 273, 278; Pub. L. 100–180, div. A, title XII, § 1231(10)(A), (B), Dec. 4, 1987, 101 Stat. 1160; Pub. L. 104–106, div. A, title VIII, § 805, Feb. 10, 1996, 110 Stat. 390; Pub. L. 113–291, div. A, title II, § 213, Dec. 19, 2014, 128 Stat. 3325; Pub. L. 114–92, div. A, title II, § 214(a), Nov. 25, 2015, 129 Stat. 767; Pub. L. 115–91, div. A, title X, § 1081(a)(34), Dec. 12, 2017, 131 Stat. 1596; Pub. L. 116–283, div. A, title XVIII, §§ 1841(d)(1), 1844(d)(2), Jan. 1, 2021, 134 Stat. 4243, 4246.)

AMENDMENT OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1841(d)(1), 1844(d)(2), Jan. 1, 2021, 134 Stat. 4151, 4243, 4246, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is amended as follows:

(1) the section catchline and subsection (a) of this section are transferred to chapter 301 of this title, inserted after section 4009, as transferred and redesignated by section 1841(c) of Pub. L. 116–283, and redesignated as section 4014 of this title; and

(2) subsections (b) and (c) of this section are transferred to chapter 307 of this title, inserted after the section heading for section 4142 as added by section 1844(d)(1) of Pub. L. 116–283, and redesignated as subsections (a) and (b), respectively, of section 4142 of this title.

See Effective Date of 2021 Amendment note below.

AMENDMENTS

2021—Pub. L. 116–283, § 1841(d)(1), redesignated section catchline and subsec. (a) as section 4009 of this title.

Subsecs. (b), (c). Pub. L. 116–283, § 1844(d)(2), redesignated subsecs. (b) and (c) as subsecs. (a) and (b), respectively, of section 4142 of this title.

2017—Subsec. (a)(6). Pub. L. 115–91 substituted ''convey'' for ''conveys''.

2015—Pub. L. 114–92, § 214(a)(3), inserted ''and technology domain awareness'' after ''activities'' in section catchline.

Subsec. (a). Pub. L. 114–92, § 214(a)(1), added subsec. (a) and struck out former subsec. (a). Prior to amendment, text read as follows: ''The Secretary of Defense shall promote, monitor, and evaluate programs for the communication and exchange of technological data—

''(1) among the Defense research facilities, combatant commands, and other organizations that are involved in developing for the Department of Defense the technological requirements for new items for use by combat forces; and

''(2) among Defense research facilities and other offices, agencies, and bureaus in the Department that are engaged in related technological matters.''

Subsec. (b)(3). Pub. L. 114–92, § 214(a)(2)(A), added par. (3) and struck out former par. (3) which read as follows: ''that the managers of such facilities have broad latitude to choose research and development projects;''.

Subsec. (b)(6). Pub. L. 114–92, § 214(a)(2)(B)–(D), added par. (6).

2014—Subsec. (b)(4). Pub. L. 113–291, § 213(1)(A), inserted ''and issue'' after ''technology position'' and substituted ''components of the Department of Defense'' for ''combatant commands''.

Subsec. (b)(5). Pub. L. 113–291, § 213(1)(B), substituted ''any technological assessment made by a Defense research facility shall be provided to the Defense Technical Information Center repository to support acquisition decisions.'' for ''any position paper prepared by a Defense research facility on a technological issue relating to a major weapon system, and any technological assessment made by such facility in the case of such component, is made a part of the records considered for the purpose of making acquisition program decisions.''

Subsec. (c). Pub. L. 113–291, § 213(2), struck out ''this section:'' after ''In'', substituted ''this section, the term'' for ''(1) The term'', redesignated subpars. (A) and (B) of former par. (1) as pars. (1) and (2), respectively, and realigned margins, and struck out par. (2) which read as follows: ''The term 'acquisition program decision' has the meaning prescribed by the Secretary of Defense in regulations.''

1996—Subsec. (b)(5). Pub. L. 104–106, § 805(1), substituted ''acquisition program'' for ''milestone O, milestone I, and milestone II''.

Subsec. (c)(2) to (4). Pub. L. 104–106, § 805(2), added par. (2) and struck out former pars. (2) to (4) which read as follows:

''(2) The term 'milestone O decision' means the decision made within the Department of Defense that there is a mission need for a new major weapon system and that research and development is to begin to meet such need.

''(3) The term 'milestone I decision' means the decision by an appropriate official of the Department of Defense selecting a new major weapon system concept and a program for demonstration and validation of such concept.

''(4) The term 'milestone II decision' means the decision by an appropriate official of the Department of Defense approving the full-scale development of a new major weapon system.''

1987—Pub. L. 100–26, § 3(1)(A), made technical amendment to directory language of section 234(c)(1) of Pub. L. 99–661, which enacted this section.

Pub. L. 100–180, § 1231(10)(B), substituted ''defense'' for ''Defense'' in section catchline.

Subsec. (b)(5). Pub. L. 100–180, § 1231(10)(A), substituted ''milestone O, milestone I, and milestone II decisions'' for ''milestone O, I, and II decisions''.

Subsec. (c)(2). Pub. L. 100–26, § 7(a)(9)(A), substituted ''the decision'' for ''a decision''.

Subsec. (c)(3). Pub. L. 100–26, § 7(a)(9)(B), substituted ''the decision by an appropriate official of the Department of Defense selecting'' for ''[a]/[the] selection by an appropriate official of the Department of Defense of''.

Subsec. (c)(4). Pub. L. 100–26, § 7(a)(9)(C), substituted ''the decision by an appropriate official of the Department of Defense approving'' for ''approval by an appropriate official of the Department of Defense for''.

Effective Date of 2021 Amendment

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

Effective Date of 1987 Amendment

Amendment by section 3(1)(A) of Pub. L. 100–26 applicable as if included in Pub. L. 99–661 when enacted on Nov. 14, 1986, see section 12(a) of Pub. L. 100–26, set out as a note under section 776 of this title.

Establishment of Innovators Information Repository in the Department of Defense

Pub. L. 115–232, div. A, title II, § 220, Aug. 13, 2018, 132 Stat. 1681, provided that:

''(a) In General.—Not later than one year after the date of the enactment of this Act [Aug. 13, 2018], the Secretary of Defense shall, acting through the Defense Technical Information Center, establish an innovators information repository within the Department of Defense in accordance with this section.

''(b) Maintenance of Information Repository.—The Under Secretary of Defense for Research and Engineering shall maintain the information repository and ensure that it is periodically updated.

''(c) Elements of Information Repository.—The information repository established under subsection (a) shall—

''(1) be coordinated across the Department of Defense enterprise to focus on small business innovators that are small, independent United States businesses, including those participating in the Small Business Innovation Research program or the Small Business Technology Transfer program;

''(2) include appropriate information about each participant, including a description of—

''(A) the need or requirement applicable to the participant;

''(B) the participant's technology with appropriate technical detail and appropriate protections of proprietary information or data;

''(C) any prior business of the participant with the Department; and

''(D) whether the participant's technology was incorporated into a program of record; and

''(3) incorporate the appropriate classification due to compilation of information.

''(d) Use of Information Repository.—After the information repository is established under subsection (a), the Secretary shall encourage use of the information repository by Department organizations involved in technology development and protection, including program offices, before initiating a Request for Information or a Request for Proposal to determine whether an organic technology exists or is being developed currently by a an [sic] entity supported by the Department (which may include a company, academic consortium, or other entity).''

Collaboration Between Defense Laboratories, Industry, and Academia; Open Campus Program

Pub. L. 115–232, div. A, title II, § 222, Aug. 13, 2018, 132 Stat. 1682, provided that:

''(a) Collaboration.—The Secretary of Defense may carry out activities to prioritize innovative collaboration between Department of Defense science and technology reinvention laboratories, industry, and academia.

''(b) Open Campus Program.—In carrying out subsection (a), the Secretary, acting through the Commander of the Air Force Research Laboratory, the Commander of the Army Research, Development and Engineering Command, and the Chief of Naval Research, or such other officials of the Department as the Secretary considers appropriate, may develop and implement an open campus program for the Department science and technology reinvention laboratories which

shall be modeled after the open campus program of the Army Research Laboratory.''

SPECIFICATION OF CERTAIN DUTIES OF THE DEFENSE TECHNICAL INFORMATION CENTER

Pub. L. 115–232, div. A, title IX, § 905, Aug. 13, 2018, 132 Stat. 1922, as amended by Pub. L. 116–283, div. A, title XVIII, § 1842(c)(2), Jan. 1, 2021, 134 Stat. 4244, provided that:

''(a) IN GENERAL.—In addition to any other duties specified for the Defense Technical Information Center by law, regulation, or Department of Defense directive or instruction, the duties of the Center shall include the following:

''(1) To execute the Global Research Watch Program under section 2365 of title 10, United States Code.

''(2) To develop and maintain datasets and other data repositories on research and engineering activities being conducted within the Department.

''(b) ACTION PLAN.—Not later than 90 days after the date of the enactment of this Act [Aug. 13, 2018], the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a plan of action for the commencement by the Defense Technical Information Center of the duties specified in subsection (a).''

[Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1842(c)(2), Jan. 1, 2021, 134 Stat. 4151, 4244, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, section 905(a)(1) of Pub. L. 115–232, set out above, is amended by striking ''section 2365'' and inserting ''section 4066''.]

PERFORMANCE REVIEW PROCESS

Pub. L. 106–65, div. A, title IX, § 913(b), Oct. 5, 1999, 113 Stat. 720, which required the Secretary of Defense to develop an appropriate performance review process for rating the quality and relevance of work performed by the Department of Defense laboratories, was repealed by Pub. L. 115–232, div. A, title VIII, § 812(b)(30), Aug. 13, 2018, 132 Stat. 1849.

COORDINATION OF HIGH-TEMPERATURE SUPERCONDUCTIVITY RESEARCH AND DEVELOPMENT

Pub. L. 100–180, div. A, title II, § 218(b)(2), Dec. 4, 1987, 101 Stat. 1053, as amended by Pub. L. 100–418, title V, § 5115(c), Aug. 23, 1988, 102 Stat. 1433; Pub. L. 103–160, div. A, title IX, § 904(f), Nov. 30, 1993, 107 Stat. 1729; Pub. L. 106–65, div. A, title IX, § 911(a)(1), Oct. 5, 1999, 113 Stat. 717, provided that: ''The Secretary of Defense, acting through the Under Secretary of Defense for Acquisition, Technology, and Logistics, shall—

''(A) coordinate the research and development activities of the Department of Defense relating to high-temperature superconductivity; and

''(B) ensure that such research and development—

''(i) is carried out in coordination with the high-temperature superconductivity research and development activities of the Department of Energy (including the national laboratories of the Department of Energy), the National Science Foundation, the National Institute of Standards and Technology, and the National Aeronautics and Space Administration; and

''(ii) complements rather than duplicates such activities.''

COORDINATION OF RESEARCH ACTIVITIES OF DEPARTMENT OF DEFENSE

Pub. L. 99–661, div. A, title II, § 234(a), (b), Nov. 14, 1986, 100 Stat. 3848, which aimed to strengthen and centralize coordination among Department of Defense research facilities and other Department organizations, was repealed by Pub. L. 115–232, div. A, title VIII, § 812(b)(31), Aug. 13, 2018, 132 Stat. 1849.

§ 2365. Global Research Watch Program

(a) PROGRAM.—The Under Secretary of Defense for Research and Engineering shall carry out a Global Research Watch program in accordance with this section.

(b) PROGRAM GOALS.—The goals of the program are as follows:

(1) To monitor and analyze the basic and applied research activities and capabilities of foreign nations and private sector persons in areas of military interest, including allies and competitors.

(2) To provide standards for comparison and comparative analysis of research capabilities of foreign nations and private sector persons in relation to the research capabilities of the United States.

(3) To assist Congress and Department of Defense officials in making investment decisions for research in technical areas where the United States may not be the global leader.

(4) To identify areas where significant opportunities for cooperative research may exist.

(5) To coordinate and promote the international cooperative research and analysis activities of each of the armed forces and Defense Agencies.

(6) To establish and maintain an electronic database on international research capabilities, comparative assessments of capabilities, cooperative research opportunities, and ongoing cooperative programs.

(c) FOCUS OF PROGRAM.—The program shall be focused on research and technologies at a technical maturity level equivalent to Department of Defense basic and applied research programs.

(d) COORDINATION.—(1) The Under Secretary shall coordinate the program with the international cooperation and analysis activities of the military departments and Defense Agencies.

(2) The Secretaries of the military departments and the directors of the Defense Agencies shall provide the Under Secretary of Defense for Research and Engineering such assistance as the Under Secretary may require for purposes of the program.

(3)(A) Funds available to a military department for a fiscal year for monitoring or analyzing the research activities and capabilities of foreign nations may not be obligated or expended until the Under Secretary of Defense for Research and Engineering certifies to the Under Secretary of Defense for Acquisition, Technology, and Logistics that the Secretary of such military department has provided the assistance required under paragraph (2).

(B) The limitation in subparagraph (A) shall not be construed to alter or effect the availability to a military department of funds for intelligence activities.

(e) CLASSIFICATION OF DATABASE INFORMATION.—Information in electronic databases of the Global Research Watch program shall be maintained in unclassified form and, as determined necessary by the Under Secretary of Defense for Research and Engineering, in classified form in such databases.

(f) TERMINATION.—The requirement to carry out the program under this section shall terminate on September 30, 2025.

(Added Pub. L. 108–136, div. A, title II, § 231(a), Nov. 24, 2003, 117 Stat. 1421; amended Pub. L. 109–364, div. A, title II, § 232, Oct. 17, 2006, 120

Stat. 2134; Pub. L. 111–84, div. A, title II, § 211, Oct. 28, 2009, 123 Stat. 2225; Pub. L. 111–383, div. A, title IX, § 901(j)(3), Jan. 7, 2011, 124 Stat. 4324; Pub. L. 112–239, div. A, title X, § 1076(c)(2)(B), Jan. 2, 2013, 126 Stat. 1950; Pub. L. 114–92, div. A, title II, § 215, Nov. 25, 2015, 129 Stat. 769; Pub. L. 116–92, div. A, title II, § 266, Dec. 20, 2019, 133 Stat. 1301.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1842(b), Jan. 1, 2021, 134 Stat. 4151, 4244, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 303 of this title, as added by section 1842(a) of Pub. L. 116–283, inserted after section 4065, and redesignated as section 4066 of this title. See Effective Date of 2021 Amendment note below.

PRIOR PROVISIONS

A prior section 2365, added Pub. L. 99–500, § 101(c) [title X, § 909(a)(1), formerly § 909(a)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–142, and Pub. L. 99–591, § 101(c) [title X, § 909(a)(1), formerly § 909(a)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–142, redesignated § 909(a)(1), Pub. L. 100–26, § 4(b), Apr. 21, 1987, 101 Stat. 274; Pub. L. 99–661, div. A, title IX, formerly title IV, § 909(a)(1), Nov. 14, 1986, 100 Stat. 3921, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; Pub. L. 100–26, § 5(3)(A), Apr. 21, 1987, 101 Stat. 274; Pub. L. 100–456, div. A, title VIII, § 802, Sept. 29, 1988, 102 Stat. 2008, required use of competitive prototype program strategy in development of major weapons systems, prior to repeal by Pub. L. 102–484, div. A, title VIII, § 821(c)(1), Oct. 23, 1992, 106 Stat. 2460.

AMENDMENTS

2019—Subsec. (a). Pub. L. 116–92, § 266(1), substituted ''Under Secretary of Defense for Research and Engineering'' for ''Assistant Secretary of Defense for Research and Engineering''.

Subsec. (d)(1). Pub. L. 116–92, § 266(3), substituted ''Under Secretary'' for ''Assistant Secretary''.

Subsec. (d)(2). Pub. L. 116–92, § 266(1), (3), substituted ''Under Secretary of Defense for Research and Engineering'' for ''Assistant Secretary of Defense for Research and Engineering'' and ''Under Secretary'' for ''Assistant Secretary''.

Subsec. (d)(3)(A). Pub. L. 116–92, § 266(2), substituted ''Under Secretary of Defense for Research and Engineering'' for ''Assistant Secretary''.

Subsec. (e). Pub. L. 116–92, § 266(2), substituted ''Under Secretary of Defense for Research and Engineering'' for ''Assistant Secretary''.

2015—Subsec. (b)(1), (2). Pub. L. 114–92, § 215(1), inserted ''and private sector persons'' after ''foreign nations''.

Subsec. (f). Pub. L. 114–92, § 215(2), substituted ''September 30, 2025'' for ''September 30, 2015''.

2013—Subsec. (a). Pub. L. 112–239, § 1076(c)(2)(B)(i), inserted ''of Defense for Research and Engineering'' after ''The Assistant Secretary''.

Subsec. (d)(3)(A). Pub. L. 112–239, § 1076(c)(2)(B)(ii), substituted ''Assistant Secretary'' for ''Director''.

2011—Subsec. (a). Pub. L. 111–383, § 901(j)(3)(A), substituted ''Assistant Secretary'' for ''Director of Defense Research and Engineering''.

Subsec. (d)(1). Pub. L. 111–383, § 901(j)(3)(B), substituted ''Assistant Secretary'' for ''Director''.

Subsec. (d)(2). Pub. L. 111–383, § 901(j)(3)(C), substituted ''Assistant Secretary of Defense for Research and Engineering'' for ''Director of Defense Research and Engineering'' and ''Assistant Secretary may'' for ''Director may''.

Subsec. (e). Pub. L. 111–383, § 901(j)(3)(D), substituted ''Assistant Secretary'' for ''Director''.

2009—Subsec. (d)(3). Pub. L. 111–84, § 211(a), added par. (3).

Subsec. (f). Pub. L. 111–84, § 211(b), substituted ''2015'' for ''2011''.

2006—Subsec. (f). Pub. L. 109–364 substituted ''2011'' for ''2006''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by Pub. L. 111–383 effective Jan. 1, 2011, see section 901(p) of Pub. L. 111–383, set out as a note under section 131 of this title.

§ 2366. Major systems and munitions programs: survivability testing and lethality testing required before full-scale production

(a) REQUIREMENTS.—(1) The Secretary of Defense shall provide that—

(A) a covered system may not proceed beyond low-rate initial production until realistic survivability testing of the system is completed in accordance with this section and the report required by subsection (d) with respect to that testing is submitted in accordance with that subsection; and

(B) a major munition program or a missile program may not proceed beyond low-rate initial production until realistic lethality testing of the program is completed in accordance with this section and the report required by subsection (d) with respect to that testing is submitted in accordance with that subsection.

(2) The Secretary of Defense shall provide that a covered product improvement program may not proceed beyond low-rate initial production until—

(A) in the case of a product improvement to a covered system, realistic survivability testing is completed in accordance with this section; and

(B) in the case of a product improvement to a major munitions program or a missile program, realistic lethality testing is completed in accordance with this section.

(b) TEST GUIDELINES.—(1) Survivability and lethality tests required under subsection (a) shall be carried out sufficiently early in the development phase of the system or program (including a covered product improvement program) to allow any design deficiency demonstrated by the testing to be corrected in the design of the system, munition, or missile (or in the product modification or upgrade to the system, munition, or missile) before proceeding beyond low-rate initial production.

(2) The costs of all tests required under that subsection shall be paid from funds available for the system being tested.

(c) WAIVER AUTHORITY.—(1) The Secretary of Defense may waive the application of the survivability and lethality tests of this section to a covered system, munitions program, missile program, or covered product improvement program if the Secretary determines that live-fire testing of such system or program would be unreason-

ably expensive and impractical and submits a certification of that determination to Congress—

(A) before Milestone B approval for the system or program; or

(B) in the case of a system or program initiated at—

(i) Milestone B, as soon as is practicable after the Milestone B approval; or

(ii) Milestone C, as soon as is practicable after the Milestone C approval.

(2) In the case of a covered system (or covered product improvement program for a covered system), the Secretary may waive the application of the survivability and lethality tests of this section to such system or program and instead allow testing of the system or program in combat by firing munitions likely to be encountered in combat at components, subsystems, and subassemblies, together with performing design analyses, modeling and simulation, and analysis of combat data. Such alternative testing may not be carried out in the case of any covered system (or covered product improvement program for a covered system) unless the Secretary certifies to Congress, before the system or program enters system development and demonstration, that the survivability and lethality testing of such system or program otherwise required by this section would be unreasonably expensive and impracticable.

(3) The Secretary shall include with any certification under paragraph (1) or (2) a report explaining how the Secretary plans to evaluate the survivability or the lethality of the system or program and assessing possible alternatives to realistic survivability testing of the system or program.

(4) In time of war or mobilization, the President may suspend the operation of any provision of this section.

(d) REPORTING TO CONGRESS.—(1) At the conclusion of survivability or lethality testing under subsection (a), the Secretary of Defense shall submit a report on the testing to the congressional defense committees. Each such report shall describe the results of the survivability or lethality testing and shall give the Secretary's overall assessment of the testing.

(2) If a decision is made within the Department of Defense to proceed to operational use of a system, or to make procurement funds available for a system, before Milestone C approval of that system, the Secretary of Defense shall submit to the congressional defense committees, as soon as practicable after such decision, the following:

(A) A report describing the status of survivability and live fire testing of that system.

(B) The report required under paragraph (1).

(e) DEFINITIONS.—In this section:

(1) The term ''covered system'' means—

(A) a vehicle, weapon platform, or conventional weapon system that—

(i) includes features designed to provide some degree of protection to users in combat; and

(ii) is a major system as defined in section 2302(5) of this title; or

(B) any other system or program designated by the Secretary of Defense for purposes of this section.

(2) The term ''major munitions program'' means—

(A) a munition program for which more than 1,000,000 rounds are planned to be acquired; or

(B) a conventional munitions program that is a major system within the meaning of that term in section 2302(5) of this title.

(3) The term ''realistic survivability testing'' means, in the case of a covered system (or a covered product improvement program for a covered system), testing for vulnerability of the system in combat by firing munitions likely to be encountered in combat (or munitions with a capability similar to such munitions) at the system configured for combat, with the primary emphasis on testing vulnerability with respect to potential user casualties and taking into equal consideration the susceptibility to attack and combat performance of the system.

(4) The term ''realistic lethality testing'' means, in the case of a major munitions program or a missile program (or a covered product improvement program for such a program), testing for lethality by firing the munition or missile concerned at appropriate targets configured for combat.

(5) The term ''configured for combat'', with respect to a weapon system, platform, or vehicle, means loaded or equipped with all dangerous materials (including all flammables and explosives) that would normally be on board in combat.

(6) The term ''covered product improvement program'' means a program under which—

(A) a modification or upgrade will be made to a covered system which (as determined by the Secretary of Defense) is likely to affect significantly the survivability of such system; or

(B) a modification or upgrade will be made to a major munitions program or a missile program which (as determined by the Secretary of Defense) is likely to affect significantly the lethality of the munition or missile produced under the program.

(7) The term ''Milestone B approval'' means a decision to enter into system development and demonstration pursuant to guidance prescribed by the Secretary of Defense for the management of Department of Defense acquisition programs.

(8) The term ''Milestone C approval'' means a decision to enter into production and deployment pursuant to guidance prescribed by the Secretary of Defense for the management of Department of Defense acquisition programs.

(Added Pub. L. 99–500, § 101(c) [title X, § 910(a)(1)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–143, and Pub. L. 99–591, § 101(c) [title X, § 910(a)(1)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–143; Pub. L. 99–661, div. A, title IX, formerly title IV, § 910(a)(1), Nov. 14, 1986, 100 Stat. 3923, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; amended Pub. L. 100–180, div. A, title VIII, § 802, title XII,

§ 1231(11), Dec. 4, 1987, 101 Stat. 1123, 1160; Pub. L. 100–456, div. A, title XII, § 1233(*l*)(3), Sept. 29, 1988, 102 Stat. 2058; Pub. L. 101–189, div. A, title VIII, §§ 802(c)(1)–(4)(A), 804, Nov. 29, 1989, 103 Stat. 1486, 1488; Pub. L. 101–510, div. A, title XIV, § 1484(h)(7), Nov. 5, 1990, 104 Stat. 1718; Pub. L. 103–160, div. A, title VIII, § 828(d)(2), Nov. 30, 1993, 107 Stat. 1715; Pub. L. 103–355, title III, § 3014, Oct. 13, 1994, 108 Stat. 3332; Pub. L. 104–106, div. A, title XV, § 1502(a)(18), Feb. 10, 1996, 110 Stat. 504; Pub. L. 106–65, div. A, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 107–107, div. A, title VIII, § 821(a), Dec. 28, 2001, 115 Stat. 1181; Pub. L. 107–314, div. A, title VIII, § 818, Dec. 2, 2002, 116 Stat. 2611; Pub. L. 108–136, div. A, title X, § 1043(b)(13), Nov. 24, 2003, 117 Stat. 1611; Pub. L. 110–417, [div. A], title II, § 251(a), (b), Oct. 14, 2008, 122 Stat. 4400.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1845(b), Jan. 1, 2021, 134 Stat. 4151, 4247, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 309 of this title, as amended by section 1845(a) of Pub. L. 116–283, inserted after section 4171, and redesignated as section 4172 of this title. See Effective Date of 2021 Amendment note below.

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661 added identical sections.

AMENDMENTS

2008—Subsec. (d). Pub. L. 110–417, § 251(b), designated existing provisions as par. (1) and added par. (2).

Subsec. (e)(1). Pub. L. 110–417, § 251(a), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''The term 'covered system' means a vehicle, weapon platform, or conventional weapon system—

''(A) that includes features designed to provide some degree of protection to users in combat; and

''(B) that is a major system within the meaning of that term in section 2302(5) of this title.''

2003—Subsec. (e)(7) to (9). Pub. L. 108–136 redesignated pars. (8) and (9) as (7) and (8), respectively, and struck out former par. (7) which read as follows: ''The term 'congressional defense committees' means—

''(A) the Committee on Armed Services and the Committee on Appropriations of the Senate; and

''(B) the Committee on Armed Services and the Committee on Appropriations of the House of Representatives.''

2002—Subsec. (c)(1). Pub. L. 107–314, § 818(a), amended par. (1) generally. Prior to amendment par. (1) read as follows: ''The Secretary of Defense may waive the application of the survivability and lethality tests of this section to a covered system, munitions program, missile program, or covered product improvement program if the Secretary, before the system or program enters system development and demonstration, certifies to Congress that live-fire testing of such system or program would be unreasonably expensive and impractical.''

Subsec. (e)(8), (9). Pub. L. 107–314, § 818(b), added pars. (8) and (9).

2001—Subsec. (c)(1), (2). Pub. L. 107–107 substituted ''system development and demonstration'' for ''engineering and manufacturing development''.

1999—Subsec. (e)(7)(B). Pub. L. 106–65 substituted ''Committee on Armed Services'' for ''Committee on National Security''.

1996—Subsec. (d). Pub. L. 104–106, § 1502(a)(18)(A), substituted ''the congressional defense committees'' for ''the Committees on Armed Services and on Appropriations of the Senate and House of Representatives''.

Subsec. (e)(7). Pub. L. 104–106, § 1502(a)(18)(B), added par. (7).

1994—Subsec. (c)(1). Pub. L. 103–355, § 3014(a)(2), (b), substituted ''engineering and manufacturing development'' for ''full-scale engineering development'' in first sentence and redesignated second sentence as par. (3).

Subsec. (c)(2). Pub. L. 103–355, § 3014(a)(1), (3), added par. (2) and redesignated former par. (2) as (4).

Subsec. (c)(3). Pub. L. 103–355, § 3014(a)(2), redesignated second sentence of par. (1) as par. (3) and substituted ''certification under paragraph (1) or (2)'' for ''such certification''.

Subsec. (c)(4). Pub. L. 103–355, § 3014(a)(1), redesignated par. (2) as (4).

1993—Subsec. (d). Pub. L. 103–160 substituted ''to the Committees on Armed Services and on Appropriations of the Senate and House of Representatives'' for ''to the defense committees of Congress (as defined in section 2362(e)(3) of this title)''.

1990—Subsec. (a)(1)(A), (B). Pub. L. 101–510 made technical correction to directory language of Pub. L. 101–189, § 804(a), see 1989 Amendment note below.

1989—Pub. L. 101–189, § 802(c)(4)(A), substituted ''testing and lethality testing required before full-scale production'' for ''and lethality testing; operational testing'' in section catchline.

Subsec. (a)(1)(A). Pub. L. 101–189, §§ 802(c)(1)(A), 804(a), as amended by Pub. L. 101–510, substituted ''this section and the report required by subsection (d) with respect to that testing is submitted in accordance with that subsection; and'' for ''this section;''.

Subsec. (a)(1)(B). Pub. L. 101–189, §§ 802(c)(1)(B), 804(a), as amended by Pub. L. 101–510, substituted ''this section and the report required by subsection (d) with respect to that testing is submitted in accordance with that subsection.'' for ''this section; and''.

Subsec. (a)(1)(C). Pub. L. 101–189, § 802(c)(1)(C), struck out subpar. (C) which read as follows: ''a major defense acquisition program may not proceed beyond low-rate initial production until initial operational test and evaluation of the program is completed in accordance with this section.''

Subsec. (b)(2), (3). Pub. L. 101–189, § 802(c)(2), redesignated par. (3) as (2) and struck out former par. (2) which read as follows: ''In the case of a major defense acquisition program, no person employed by the contractor for the system being tested may be involved in the conduct of the operational test and evaluation required under subsection (a). The limitation in the preceding sentence does not apply to the extent that the Secretary of Defense plans for persons employed by that contractor to be involved in the operation, maintenance, and support of the system being tested when the system is deployed in combat.''

Subsec. (d). Pub. L. 101–189, § 804(b), inserted at end ''Each such report shall describe the results of the survivability or lethality testing and shall give the Secretary's overall assessment of the testing.''

Subsec. (e)(3) to (8). Pub. L. 101–189, § 802(c)(3), redesignated pars. (4), (5), (6), and (8) as (3), (4), (5), and (6), respectively, and struck out former par. (3) which defined ''major defense acquisition program'' and former par. (7) which defined ''operational test and evaluation''.

1988—Subsec. (a)(2). Pub. L. 100–456 made technical correction to directory language of Pub. L. 100–180, § 802(a)(1)(C). See 1987 Amendment note below.

1987—Subsec. (a). Pub. L. 100–180, § 802(a)(1), as amended by Pub. L. 100–456, designated existing provisions as par. (1), redesignated former pars. (1) to (3) as subpars. (A) to (C), and added par. (2).

Subsec. (b)(1). Pub. L. 100–180, § 802(a)(2), inserted ''(including a covered product improvement program)'' after ''system or program'' and ''(or in the product modification or upgrade to the system, munition, or missile)'' after ''or missile''.

Subsec. (b)(2). Pub. L. 100–180, § 802(b), inserted at end ''The limitation in the preceding sentence does not apply to the extent that the Secretary of Defense plans

for persons employed by that contractor to be involved in the operation, maintenance, and support of the system being tested when the system is deployed in combat.''

Subsec. (c). Pub. L. 100–180, § 802(a)(3), (c), (d)(1), designated existing provisions as par. (1), substituted ''missile program, or covered product improvement program'' for ''or missile program'', and inserted at end ''The Secretary shall include with any such certification a report explaining how the Secretary plans to evaluate the survivability or the lethality of the system or program and assessing possible alternatives to realistic survivability testing of the system or program.''

Pub. L. 100–180, § 802(d)(2), designated existing provisions of former subsec. (d) as par. (2) of subsec. (c) and struck out heading of former subsec. (d) ''Waiver in time of war or mobilization''.

Subsec. (d). Pub. L. 100–180, § 802(d)(3), added subsec. (d). Former subsec. (d) redesignated subsec. (c)(2).

Subsec. (e)(1)(B). Pub. L. 100–180, § 1231(11), substituted ''section 2302(5)'' for ''section 2303(5)''.

Subsec. (e)(4). Pub. L. 100–180, § 802(a)(4)(A), (e), inserted ''(or a covered product improvement program for a covered system)'' after ''covered system'', struck out ''and survivability'' after ''for vulnerability'', and substituted ''susceptibility to attack'' for ''operational requirements''.

Subsec. (e)(5). Pub. L. 100–180, § 802(a)(4)(B), inserted ''(or a covered product improvement program for such a program)'' after ''missile program''.

Subsec. (e)(8). Pub. L. 100–180, § 802(a)(4)(C), added par. (8).

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–456, div. A, title XII, § 1233(*l*)(5), Sept. 29, 1988, 102 Stat. 2058, provided that: ''The amendments made by this subsection [amending this section and sections 2435 and 8855 of this title and section 301c of Title 37, Pay and Allowances of the Uniformed Services] shall apply as if included in the enactment of Public Law 100–180.''

EFFECTIVE DATE

Pub. L. 99–500, § 101(c) [title X, § 910(b)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–145, Pub. L. 99–591, § 101(c) [title X, § 910(b)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–145, and Pub. L. 99–661, div. A, title IX, formerly title IV, § 910(b), Nov. 14, 1986, 100 Stat. 3924, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273, provided that: ''Section 2366 of title 10, United States Code (as added by subsection (a)), shall apply with respect to any decision to proceed with a program beyond low-rate initial production that is made—

''(1) after May 31, 1987, in the case of a decision referred to in subsection (a)(1) or (a)(2) of such section; or

''(2) after the date of the enactment of this Act [Oct. 18, 1986], in the case of a decision referred to in subsection (a)(3) of such section.''

§ 2366a. Major defense acquisition programs: determination required before Milestone A approval

(a) RESPONSIBILITIES.—Before granting Milestone A approval for a major defense acquisition program or a major subprogram, the milestone decision authority for the program or subprogram shall ensure that—

(1) information about the program or subprogram is sufficient to warrant entry of the program or subprogram into the risk reduction phase;

(2) the Secretary of the military department concerned and the Chief of the armed force concerned concur in the cost, schedule, technical feasibility, and performance trade-offs that have been made with regard to the program; and

(3) there are sound plans for progression of the program or subprogram to the development phase.

(b) WRITTEN DETERMINATION REQUIRED.—A major defense acquisition program or subprogram may not receive Milestone A approval or otherwise be initiated prior to Milestone B approval until the milestone decision authority determines in writing, after consultation with the Joint Requirements Oversight Council on matters related to program requirements and military needs—

(1) that the program fulfills an approved initial capabilities document;

(2) that the program has been developed in light of appropriate market research;

(3) if the program duplicates a capability already provided by an existing system, the duplication provided by such program is necessary and appropriate;

(4) that, with respect to any identified areas of risk, including risks determined by the identification of critical technologies required under section 2448b(a)(1) of this title or any other risk assessment, there is a plan to reduce the risk;

(5) that planning for sustainment has been addressed and that a determination of applicability of core logistics capabilities requirements has been made;

(6) that an analysis of alternatives has been performed consistent with study guidance developed by the Director of Cost Assessment and Program Evaluation;

(7) that a cost estimate for the program has been submitted, with the concurrence of the Director of Cost Assessment and Program Evaluation, and that the level of resources required to develop, procure, and sustain the program is sufficient for successful program execution;

(8) that, with respect to a program initiated after January 1, 2019, technology shall be developed in the program (after Milestone A approval) only if the milestone decision authority determines with a high degree of confidence that such development will not delay the fielding target of the program, or, if the milestone decision authority does not make such determination for a major system component being developed under the program, the milestone decision authority ensures that the technology related to the major system component shall be sufficiently matured and demonstrated in a relevant environment (after Milestone A approval) separate from the program using the prototyping authorities in subchapter II of chapter 144B of this title or other authorities, as appropriate, and have an effective plan for adoption or insertion by the relevant program; and

(9) that the program or subprogram meets any other considerations the milestone decision authority considers relevant.

(c) SUBMISSIONS TO CONGRESS ON MILESTONE A.—

(1) BRIEF SUMMARY REPORT.—Not later than 15 days after granting Milestone A approval for a major defense acquisition program, the milestone decision authority for the program shall provide to the congressional defense committees and, in the case of intelligence or intelligence-related activities, the congressional intelligence committees a brief summary report that contains the following elements:

(A) The program cost and fielding targets established under section 2448a(a) of this title.

(B) The estimated cost and schedule for the program established by the military department concerned, including—

(i) the dollar values estimated for the program acquisition unit cost and total life-cycle cost; and

(ii) the planned dates for each program milestone and initial operational capability.

(C) The independent estimated cost for the program established pursuant to section 2334(a)(6) of this title, and any independent estimated schedule for the program, including—

(i) as assessment of the major contributors to the program acquisition unit cost and total life-cycle cost; and

(ii) the planned dates for each program milestone and initial operational capability.

(D) A summary of the technical or manufacturing risks associated with the program, as determined by the military department concerned, including identification of any critical technologies or manufacturing processes that need to be matured.

(E) A summary of the independent technical risk assessment conducted or approved under section 2448b of this title, including identification of any critical technologies or manufacturing processes that need to be matured.

(F) A summary of any sufficiency review conducted by the Director of Cost Assessment and Program Evaluation of the analysis of alternatives performed for the program (as referred to in subsection (b)(6)).

(G) Any other information the milestone decision authority considers relevant.

(2) ADDITIONAL INFORMATION.—(A) At the request of any of the congressional defense committees or, in the case of intelligence or intelligence-related activities, the congressional intelligence committees, the milestone decision authority shall submit to the committee an explanation of the basis for a determination made under subsection (b) with respect to a major defense acquisition program, together with a copy of the written determination, or further information or underlying documentation for the information in a brief summary report submitted under paragraph (1), including the independent cost and schedule estimates and the independent technical risk assessments referred to in that paragraph.

(B) The explanation or information shall be submitted in unclassified form, but may include a classified annex.

(d) DEFINITIONS.—In this section:

(1) The term ''major defense acquisition program'' has the meaning provided in section 2430 of this title.

(2) The term ''initial capabilities document'' means any capabilities requirement document approved by the Joint Requirements Oversight Council that establishes the need for a materiel approach to resolve a capability gap.

(3) The term ''Milestone A approval'' means a decision to enter into technology maturation and risk reduction pursuant to guidance prescribed by the Secretary of Defense for the management of Department of Defense acquisition programs.

(4) The term ''Milestone B approval'' has the meaning provided that term in section 2366(e)(7) of this title.

(5) The term ''core logistics capabilities'' means the core logistics capabilities identified under section 2464(a) of this title.

(6) the term ''major subprogram'' means a major subprogram of a major defense acquisition program designated under section 2430a(a)(1) of this title.

(7) The term ''milestone decision authority'', with respect to a major defense acquisition program or a major subprogram, means the official within the Department of Defense designated with the overall responsibility and authority for acquisition decisions for the program or subprogram, including authority to approve entry of the program or subprogram into the next phase of the acquisition process.

(8) The term ''fielding target'' has the meaning given that term in section 2448a(a) of this title.

(9) The term ''major system component'' has the meaning given that term in section 2446a(b)(3) of this title.

(10) The term ''congressional intelligence committees'' has the meaning given that term in section 437(c) of this title.

(Added Pub. L. 110–181, div. A, title IX, § 943(a)(1), Jan. 28, 2008, 122 Stat. 288, § 2366b; renumbered § 2366a and amended Pub. L. 110–417, [div. A], title VIII, § 813(b), (e)(1), Oct. 14, 2008, 122 Stat. 4527; Pub. L. 111–23, title I, § 101(d)(3), title II, §§ 201(e), 204(a), (b), May 22, 2009, 123 Stat. 1710, 1720, 1723; Pub. L. 111–383, div. A, title VIII, § 814(b), title X, § 1075(b)(33), Jan. 7, 2011, 124 Stat. 4266, 4370; Pub. L. 112–81, div. A, title VIII, § 801(a), (e)(1), Dec. 31, 2011, 125 Stat. 1482, 1483; Pub. L. 112–239, div. A, title III, § 322(e)(1), title X, § 1076(a)(10), Jan. 2, 2013, 126 Stat. 1695, 1948; Pub. L. 114–92, div. A, title VIII, § 823(a), Nov. 25, 2015, 129 Stat. 902; Pub. L. 114–328, div. A, title VIII, §§ 806(b), 807(d), 808(a), Dec. 23, 2016, 130 Stat. 2259, 2262; Pub. L. 115–232, div. A, title VIII, § 831(b)(2), Aug. 13, 2018, 132 Stat. 1857; Pub. L. 116–92, div. A, title XVII, § 1731(a)(44), Dec. 20, 2019, 133 Stat. 1814.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1847(d)(1)(A), Jan. 1, 2021, 134 Stat. 4151, 4255, provided that, effective Jan. 1, 2022, with addi-

tional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 322 of this title, as added by section 1847(a) of Pub. L. 116–283, inserted after the table of sections at the beginning of subchapter III, and redesignated as section 4251 of this title. See Effective Date of 2021 Amendment note below.

PRIOR PROVISIONS

A prior section 2366a was renumbered section 2366b of this title.

AMENDMENTS

2019—Subsec. (c)(1)(F). Pub. L. 116–92 substituted ''subsection (b)(6)'' for ''section 2366a(b)(6) of this title''.

2018—Subsec. (c)(1)(A). Pub. L. 115–232 struck out ''by the Secretary of Defense'' after ''established''.

2016—Subsec. (b)(4). Pub. L. 114–328, § 807(d), inserted '', including risks determined by the identification of critical technologies required under section 2448b(a)(1) of this title or any other risk assessment'' after ''areas of risk''.

Subsec. (b)(8), (9). Pub. L. 114–328, § 806(b), added par. (8) and redesignated former par. (8) as (9).

Subsec. (c). Pub. L. 114–328, § 808(a)(1), amended subsec. (c) generally. Prior to amendment, text of subsec. (c) read as follows: ''At the request of any of the congressional defense committees, the Secretary of Defense shall submit to the committee an explanation of the basis for a determination made under subsection (b) with respect to a major defense acquisition program, together with a copy of the written determination. The explanation shall be submitted in unclassified form, but may include a classified annex.''

Subsec. (d)(8) to (10). Pub. L. 114–328, § 808(a)(2), added pars. (8) to (10).

2015—Pub. L. 114–92 amended section generally. Prior to amendment, section related to certification required before Milestone A approval of major defense acquisition programs.

2013—Pub. L. 112–239, § 1076(a)(10)(C), made technical amendment to directory language of Pub. L. 112–81, § 801(e)(1)(A). See 2011 Amendment note below.

Subsec. (a)(4). Pub. L. 112–239, § 322(e)(1), substituted ''core logistics capabilities'' for ''core depot-level maintenance and repair capabilities''.

Subsec. (a)(5), (6). Pub. L. 112–239, § 1076(a)(10)(A), made technical amendment to directory language of Pub. L. 112–81, § 801(a)(1)(B). See 2011 Amendment notes below.

Subsec. (c)(7). Pub. L. 112–239, § 1076(a)(10)(B), made technical amendment to directory language of Pub. L. 112–81, § 801(a)(2). See 2011 Amendment note below.

Pub. L. 112–239, § 322(e)(1), substituted ''core logistics capabilities'' for ''core depot-level maintenance and repair capabilities'' in two places.

2011—Pub. L. 112–81, § 801(e)(1)(A), as amended by Pub. L. 112–239, § 1076(a)(10)(C), struck out ''or Key Decision Point A'' after ''Milestone A'' in section catchline.

Subsec. (a). Pub. L. 112–81, § 801(e)(1)(B), struck out '', or Key Decision Point A approval in the case of a space program,'' after ''Milestone A approval'' and '', or Key Decision Point B approval in the case of a space program,'' after ''Milestone B approval'' in introductory provisions.

Subsec. (a)(2). Pub. L. 112–81, § 801(a)(1)(A), substituted ''function'' for ''core competency''.

Subsec. (a)(4). Pub. L. 112–81, § 801(a)(1)(C), added par. (4). Former par. (4) redesignated (5).

Subsec. (a)(5). Pub. L. 112–81, § 801(a)(1)(B), as amended by Pub. L. 112–239, § 1076(a)(10)(A), redesignated par. (4) as (5). Former par. (5) redesignated (6).

Subsec. (a)(6). Pub. L. 112–81, § 801(a)(1)(D), substituted ''develop, procure, and sustain'' for ''develop and procure''.

Pub. L. 112–81, § 801(a)(1)(B), as amended by Pub. L. 112–239, § 1076(a)(10)(A), redesignated par. (5) as (6).

Subsec. (b)(1). Pub. L. 112–81, § 801(e)(1)(C)(i), struck out ''(or Key Decision Point A approval in the case of a space program)'' after ''Milestone A approval''.

Pub. L. 111–383, § 814(b)(1)(A), substituted ''a major defense acquisition program certified by the Milestone Decision Authority under subsection (a) or a designated major subprogram of such program, if the projected cost of the program or subprogram'' for ''a major defense acquisition program certified by the Milestone Decision Authority under subsection (a), if the projected cost of the program''.

Subsec. (b)(2). Pub. L. 111–383, § 814(b)(1)(B), inserted ''or designated major subprogram'' after ''major defense acquisition program''.

Subsec. (b)(2)(C)(ii). Pub. L. 112–81, § 801(e)(1)(C)(ii), struck out '', or Key Decision Point A approval in the case of a space program,'' after ''Milestone A approval''.

Subsec. (c). Pub. L. 111–383, § 1075(b)(33)(A), inserted a space after ''(c)''.

Subsec. (c)(2) to (5). Pub. L. 111–383, § 814(b)(2), added par. (2) and redesignated former pars. (2) to (4) as (3) to (5), respectively. Former par. (5) redesignated (6).

Pub. L. 111–383, § 1075(b)(33)(B), which directed substitution of ''section 118b(c)(3) of this title'' for ''section 125a(a) of this title'' in par. (4), was executed by making the substitution in par. (5) to reflect the probable intent of Congress and the amendment by Pub. L. 111–383, § 814(b)(2)(A). See above.

Subsec. (c)(6). Pub. L. 111–383, § 814(b)(2)(A), redesignated par. (5) as (6).

Subsec. (c)(7). Pub. L. 112–81, § 801(a)(2), as amended by Pub. L. 112–239, § 1076(a)(10)(B), added par. (7).

2009—Subsec. (a). Pub. L. 111–23, § 204(a), substituted ''may not receive Milestone A approval, or Key Decision Point A approval in the case of a space program, or otherwise be initiated prior to Milestone B approval, or Key Decision Point B approval in the case of a space program,'' for ''may not receive Milestone A approval, or Key Decision Point A approval in the case of a space program,'' in introductory provisions.

Subsec. (a)(3). Pub. L. 111–23, § 201(e)(1), struck out ''and'' at end.

Subsec. (a)(4). Pub. L. 111–23, § 201(e)(3), added par. (4). Former par. (4) redesignated (5).

Pub. L. 111–23, § 101(d)(3), inserted '', with the concurrence of the Director of Cost Assessment and Program Evaluation,'' after ''has been submitted''.

Subsec. (a)(5). Pub. L. 111–23, § 201(e)(2), redesignated par. (4) as (5).

Subsec. (b). Pub. L. 111–23, § 204(b), designated existing provisions as par. (1), substituted ''by at least 25 percent, or the program manager determines that the period of time required for the delivery of an initial operational capability is likely to exceed the schedule objective established pursuant to section 181(b)(5) of this title by more than 25 percent,'' for ''by at least 25 percent,'', and added par. (2).

2008—Pub. L. 110–417, § 813(b), renumbered section 2366b of this title as this section.

Subsec. (a)(1), (2). Pub. L. 110–417, § 813(e)(1)(A), substituted ''program'' for ''system''.

Subsec. (a)(3). Pub. L. 110–417, § 813(e)(1)(B), substituted ''if the program'' for ''if the system'' and ''such program'' for ''such system''.

Subsec. (a)(4). Pub. L. 110–417, § 813(e)(1)(A), substituted ''program'' for ''system'' in two places.

Subsec. (b). Pub. L. 110–417, § 813(e)(1)(C), substituted ''major defense acquisition program'' for ''major system'', ''cost of the program'' for ''cost of the system'', ''estimate for the program'' for ''estimate for the system'', ''the program concerned'' for ''the system concerned'', and ''procure the program'' for ''procure the system''.

Subsec. (c)(1). Pub. L. 110–417, § 813(e)(1)(D), substituted '' 'major defense acquisition program' '' for '' 'major system' '' and ''2430'' for ''2302(5)''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation

and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112–239, div. A, title III, § 322(f), Jan. 2, 2013, 126 Stat. 1695, provided that: ''This section [enacting sections 2460 and 2464 of this title, amending this section and sections 2366b, 2460, and 2464 of this title, repealing sections 2460 and 2464 of this title, and amending provisions set out as a note under this section] and the amendments made by this section shall take effect on December 31, 2011, the date of the enactment of the National Defense Authorization Act for Fiscal Year 2012 [Pub. L. 112–81], immediately after the enactment of that Act.''

Pub. L. 112–239, div. A, title X, § 1076(a), Jan. 2, 2013, 126 Stat. 1947, provided that the amendment made by section 1076(a)(10) is effective Dec. 31, 2011, and as if included in Pub. L. 112–81 as enacted.

EFFECTIVE DATE

Pub. L. 110–181, div. A, title IX, § 943(c), Jan. 28, 2008, 122 Stat. 289, as amended by Pub. L. 110–417, [div. A], title VIII, § 813(e)(2)(B), Oct. 14, 2008, 122 Stat. 4528, provided that: ''Section 2366b [now 2366a] of title 10, United States Code, as added by subsection (a), shall apply to major defense acquisition programs on and after March 1, 2008. In the case of the certification required by [former] paragraph (2) of subsection (a) of such section, during the period prior to the completion of the first quadrennial roles and missions review required by [former] section 118b of title 10, United States Code, the certification required by that paragraph shall be that the system is being executed by an entity with a relevant core competency as identified by the Secretary of Defense.''

ANALYSIS OF ALTERNATIVES PURSUANT TO MATERIEL DEVELOPMENT DECISIONS

Pub. L. 116–92, div. A, title VIII, § 832, Dec. 20, 2019, 133 Stat. 1493, provided that:

''(a) TIMELINE.—Not later than 180 days after the date of the enactment of this Act [Dec. 20, 2019], the Secretary of Defense shall update existing guidance for analyses of alternatives conducted pursuant to a materiel development decision for a major defense acquisition program to incorporate the following:

''(1) Study completion within nine months.

''(2) Study guidance issued by the Director, Cost Assessment and Program Evaluation of a scope designed to provide for reasonable completion of the study within the nine-month period.

''(3) Procedures for waiver of the timeline requirements of this subsection on a case-by-case basis if—

''(A) the subject of the analysis is of extreme technical complexity;

''(B) collection of additional intelligence is required to inform the analysis;

''(C) insufficient technical expertise is available to complete the analysis; or

''(D) the Secretary determines that there [are] other sufficient reasons for delay of the analysis.

''(b) REPORTING.—If an analysis of alternatives cannot be completed within the allotted time, or a waiver is used, the Secretary shall report to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] the following information:

''(1) For a waiver, the basis for use of the waivers, including the reasons why the study cannot be completed within the allotted time.

''(2) For a study estimated to take more than nine months—

''(A) an estimate of when the analysis will be completed;

''(B) an estimate of any additional costs to complete the analysis; and

''(C) other relevant information pertaining to the analysis and its completion.

''(c) REPORT ON ANALYSES OF ALTERNATIVES.—

''(1) ASSESSMENT.—

''(A) IN GENERAL.—The Under Secretary of Defense for Acquisition and Sustainment shall engage with an independent entity, including under the Program for Acquisition Innovation Research, to assess the conduct of analyses of alternatives.

''(B) ELEMENTS.—The assessment required under subparagraph (A) shall—

''(i) assess the time required to complete analyses of alternatives within the Department of Defense completed over the last five fiscal years, as compared with best practices;

''(ii) provide recommendations and policy options to improve analyses of alternatives; and

''(iii) discuss any other matters as identified by the Under Secretary.

''(C) ACCESS TO DATA.—The Under Secretary shall ensure that the independent entity is provided access to the data, information, and resources necessary to complete the required analyses and assessment.

''(2) REPORT.—Not later than one year after the date of the enactment of this Act, the Under Secretary shall submit to the congressional defense committees a report including the assessment required under paragraph (1) and a review and assessment by the Under Secretary of the findings made in the assessment.''

MILESTONE A DECISIONS

Pub. L. 114–92, div. A, title VIII, § 802(d)(2), Nov. 25, 2015, 129 Stat. 880, provided that: ''The Chief of the Armed Force concerned shall advise the milestone decision authority for a major defense acquisition program of the Chief's views on cost, schedule, technical feasibility, and performance trade-offs that have been made with regard to the program, as provided in section 2366a(a)(2) of title 10, United States Code, as amended by section 823 of this Act, prior to a Milestone A decision on the program.''

REQUIREMENTS PRIOR TO LOW-RATE INITIAL PRODUCTION

Pub. L. 112–81, div. A, title VIII, § 801(c), Dec. 31, 2011, 125 Stat. 1483, as amended by Pub. L. 112–239, div. A, title III, § 322(e)(3), Jan. 2, 2013, 126 Stat. 1695, provided that: ''Prior to entering into a contract for low-rate initial production of a major defense acquisition program, the Secretary of Defense shall ensure that the detailed requirements for core logistics capabilities and the associated sustaining workloads required to support such requirements, have been defined.''

GUIDANCE

Pub. L. 112–81, div. A, title VIII, § 801(d), Dec. 31, 2011, 125 Stat. 1483, provided that: ''Not later than 120 days after the date of the enactment of this Act [Dec. 31, 2011], the Secretary of Defense shall issue guidance implementing the amendments made by subsections (a) and (b) [amending this section and section 2366b of this title], and subsection (c) [set out above], in a manner that is consistent across the Department of Defense.''

APPLICATION TO ONGOING PROGRAMS

Pub. L. 111–23, title II, § 204(c), May 22, 2009, 123 Stat. 1723, as amended by Pub. L. 111–383, div. A, title VIII, § 813(c), Jan. 7, 2011, 124 Stat. 4265, which related to application of the requirements of this section to certain major defense acquisition programs initiated before May 22, 2009, was repealed by Pub. L. 112–81, div. A, title VIII, § 819(a), Dec. 31, 2011, 125 Stat. 1501.

REVIEW OF DEPARTMENT OF DEFENSE ACQUISITION DIRECTIVES

Pub. L. 110–181, div. A, title IX, § 943(b), Jan. 28, 2008, 122 Stat. 289, as amended by Pub. L. 110–417, [div. A], title VIII, § 813(e)(2)(A), Oct. 14, 2008, 122 Stat. 4528, which provided for review of Department of Defense Di-

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rective 5000.1 and associated guidance, was repealed by Pub. L. 115–232, div. A, title VIII, §812(b)(32), Aug. 13, 2018, 132 Stat. 1849.

§2366b. Major defense acquisition programs: certification required before Milestone B approval

(a) CERTIFICATIONS AND DETERMINATION REQUIRED.—A major defense acquisition program may not receive Milestone B approval until the milestone decision authority—

(1) has received a preliminary design review and conducted a formal post-preliminary design review assessment, and certifies on the basis of such assessment that the program demonstrates a high likelihood of accomplishing its intended mission;

(2) further certifies that the technology in the program has been demonstrated in a relevant environment, as determined by the milestone decision authority on the basis of an independent review and technical risk assessment conducted under section 2448b of this title;

(3) determines in writing that—

(A) the program is affordable when considering the ability of the Department of Defense to accomplish the program's mission using alternative systems;

(B) appropriate trade-offs among cost, schedule, technical feasibility, and performance objectives have been made to ensure that the program is affordable when considering the per unit cost and the total life-cycle cost;

(C) reasonable cost and schedule estimates have been developed to execute, with the concurrence of the Director of Cost Assessment and Program Evaluation, the product development and production plan under the program;

(D) the estimated procurement unit cost for the program and the estimated date for initial operational capability for the baseline description for the program (established under section 2435) do not exceed the program cost and fielding targets established under section 2448a(a) of this title, or, if such estimated cost is higher than the program cost targets or if such estimated date is later than the fielding target, the program cost targets have been increased or the fielding target has been delayed by the milestone decision authority;

(E) funding is expected to be available to execute the product development and production plan for the program, consistent with the estimates described in subparagraph (C) for the program;

(F) appropriate market research has been conducted prior to technology development to reduce duplication of existing technology and products;

(G) the Department of Defense has completed an analysis of alternatives with respect to the program;

(H) the Joint Requirements Oversight Council has accomplished its duties with respect to the program pursuant to section 181(b) of this title, including an analysis of the operational requirements for the program;

(I) life-cycle sustainment planning, including corrosion prevention and mitigation planning, has identified and evaluated relevant sustainment costs throughout development, production, operation, sustainment, and disposal of the program, and any alternatives, and that such costs are reasonable and have been accurately estimated;

(J) an estimate has been made of the requirements for core logistics capabilities and the associated sustaining workloads required to support such requirements;

(K) there is a plan to mitigate and account for any costs in connection with any anticipated de-certification of cryptographic systems and components during the production and procurement of the major defense acquisition program to be acquired;

(L) the program complies with all relevant policies, regulations, and directives of the Department of Defense;

(M) the Secretary of the military department concerned and the Chief of the armed force concerned concur in the trade-offs made in accordance with subparagraph (B);

(N) the requirements of section 2446b(e) of this title are met;

(O) appropriate actions have been taken to negotiate and enter into a contract or contract options for the technical data required to support the program; and

(P) has approved the life cycle sustainment plan required under section 2337(b) of this title.[1]

(4) in the case of a space system, performs a cost benefit analysis for any new or follow-on satellite system using a dedicated ground control system instead of a shared ground control system, except that no cost benefit analysis is required to be performed under this paragraph for any Milestone B approval of a space system after December 31, 2019; and

(5) in the case of a naval vessel program, certifies compliance with the requirements of section 8669b of this title.

(b) CHANGES TO CERTIFICATIONS OR DETERMINATION.—(1) The program manager for a major defense acquisition program that has received certifications or a determination under subsection (a) shall immediately notify the milestone decision authority of any changes to the program or a designated major subprogram of such program that—

(A) alter the substantive basis for the certifications or determination of the milestone decision authority relating to any component of such certifications or determination specified in paragraph (1), (2), or (3) of subsection (a); or

(B) otherwise cause the program or subprogram to deviate significantly from the material provided to the milestone decision authority in support of such certifications or determination.

(2) Upon receipt of information under paragraph (1), the milestone decision authority may

[1] So in original. Subpar. (P) does not follow the pattern of other subpars. in this par. and the period at end probably should be a semicolon.

withdraw the certifications or determination concerned or rescind Milestone B approval if the milestone decision authority determines that such certifications, determination, or approval are no longer valid.

(c) SUBMISSIONS TO CONGRESS ON MILESTONE B.—

(1) BRIEF SUMMARY REPORT.—Not later than 15 days after granting Milestone B approval for a major defense acquisition program, the milestone decision authority for the program shall provide to the congressional defense committees and, in the case of intelligence or intelligence-related activities, the congressional intelligence committees a brief summary report that contains the following elements:

(A) The program cost and fielding targets established under section 2448a(a) of this title.

(B) The estimated cost and schedule for the program established by the military department concerned, including—

(i) the dollar values estimated for the program acquisition unit cost, average procurement unit cost, and total life-cycle cost; and

(ii) the planned dates for each program milestone, initial operational test and evaluation, and initial operational capability.

(C) The independent estimated cost for the program established pursuant to section 2334(a)(6) of this title, and any independent estimated schedule for the program, including—

(i) the dollar values and ranges estimated for the program acquisition unit cost, average procurement unit cost, and total life-cycle cost; and

(ii) the planned dates for each program milestone, initial operational test and evaluation, and initial operational capability.

(D) A summary of the technical and manufacturing risks associated with the program, as determined by the military department concerned, including identification of any critical technologies or manufacturing processes that have not been successfully demonstrated in a relevant environment.

(E) A summary of the independent technical risk assessment conducted or approved under section 2448b of this title, including identification of any critical technologies or manufacturing processes that have not been successfully demonstrated in a relevant environment.

(F) A statement of whether a modular open system approach is being used for the program.

(G) An assessment of the sufficiency of developmental test and evaluation plans, including the use of automated data analytics or modeling and simulation tools and methodologies.

(H) A summary of the life cycle sustainment plan required under section 2337 of this title.

(I) Any other information the milestone decision authority considers relevant.

(2) CERTIFICATIONS AND DETERMINATIONS.—(A) The certifications and determination under subsection (a) with respect to a major defense acquisition program shall be submitted to the congressional defense committees with the first Selected Acquisition Report submitted under section 2432 of this title after completion of the certification.

(B) The milestone decision authority shall retain records of the basis for the certifications and determination under paragraphs (1), (2), and (3) of subsection (a).

(3) ADDITIONAL INFORMATION.—(A) At the request of any of the congressional defense committees or, in the case of intelligence or intelligence-related activities, the congressional intelligence committees, the milestone decision authority shall submit to the committee an explanation of the basis for the certifications and determination under paragraphs (1), (2), and (3) of subsection (a) with respect to a major defense acquisition program or further information or underlying documentation for the information in a brief summary report submitted under paragraph (1), including the independent cost and schedule estimates and the independent technical risk assessments referred to in that paragraph.

(B) The explanation or information shall be submitted in unclassified form, but may include a classified annex.

(d) WAIVER FOR NATIONAL SECURITY.—(1) The milestone decision authority may, at the time of Milestone B approval or at the time that such milestone decision authority withdraws a certification or rescinds Milestone B approval pursuant to subsection (b)(2), waive the applicability to a major defense acquisition program of one or more components (as specified in paragraph (1), (2), or (3) of subsection (a)) of the certification and determination requirements if the milestone decision authority determines that, but for such a waiver, the Department would be unable to meet critical national security objectives.

(2) Whenever the milestone decision authority makes such a determination and authorizes such a waiver—

(A) the waiver, the waiver determination, and the reasons for the waiver determination shall be submitted in writing to the congressional defense committees within 30 days after the waiver is authorized; and

(B) the milestone decision authority shall review the program not less often than annually to determine the extent to which such program currently satisfies the certification and determination components specified in paragraphs (1), (2), and (3) of subsection (a) until such time as the milestone decision authority determines that the program satisfies all such certification and determination components.

(3) The requirement in paragraph (2)(B) shall not apply to a program for which a certification was required pursuant to section 2433a(c) of this title if the milestone decision authority—

(A) determines in writing that—

(i) the program has reached a stage in the acquisition process at which it would not be

practicable to meet the certification component that was waived; and

(ii) the milestone decision authority has taken appropriate alternative actions to address the underlying purposes of such certification component; and

(B) submits the written determination, and an explanation of the basis for the determination, to the congressional defense committees.

(e) DESIGNATION OF CERTIFICATION STATUS IN BUDGET DOCUMENTATION.—Any budget request, budget justification material, budget display, reprogramming request, Selected Acquisition Report, or other budget documentation or performance report submitted by the Secretary of Defense to the President regarding a major defense acquisition program receiving a waiver pursuant to subsection (d) shall prominently and clearly indicate that such program has not fully satisfied the certification requirements of this section until such time as the milestone decision authority makes the determination that such program has satisfied all such certification requirements.

(f) NONDELEGATION.—The milestone decision authority may not delegate the certification requirement under subsection (a) or the authority to waive any component of such requirement under subsection (d).

(g) DEFINITIONS.—In this section:

(1) The term ''major defense acquisition program'' means a Department of Defense acquisition program that is a major defense acquisition program for purposes of section 2430 of this title.

(2) The term ''designated major subprogram'' means a major subprogram of a major defense acquisition program designated under section 2430a(a)(1) of this title.

(3) The term ''milestone decision authority'', with respect to a major defense acquisition program, means the official within the Department of Defense designated with the overall responsibility and authority for acquisition decisions for the program, including authority to approve entry of the program into the next phase of the acquisition process.

(4) The term ''Milestone B approval'' has the meaning provided that term in section 2366(e)(7) of this title.

(5) The term ''core logistics capabilities'' means the core logistics capabilities identified under section 2464(a) of this title.

(6) The term ''fielding target'' has the meaning given that term in section 2448a(a) of this title.

(7) The term ''major system component'' has the meaning given that term in section 2446a(b)(3) of this title.

(8) The term ''congressional intelligence committees'' has the meaning given that term in section 437(c) of this title.

(Added Pub. L. 109–163, div. A, title VIII, § 801(a), Jan. 6, 2006, 119 Stat. 3366, § 2366a; amended Pub. L. 109–364, div. A, title VIII, § 805, Oct. 17, 2006, 120 Stat. 2314; Pub. L. 110–181, div. A, title VIII, § 812, Jan. 28, 2008, 122 Stat. 219; renumbered § 2366b, Pub. L. 110–417, [div. A], title VIII, § 813(a), (b), Oct. 14, 2008, 122 Stat. 4527; Pub. L. 111–23, title I, § 101(d)(4), title II, §§ 201(f), 205(a), May 22, 2009, 123 Stat. 1710, 1720, 1724; Pub. L. 111–383, div. A, title VIII, §§ 813(d)(1), 814(c), title IX, § 901(j)(4), title X, § 1075(k)(1), Jan. 7, 2011, 124 Stat. 4265, 4266, 4324, 4378; Pub. L. 112–81, div. A, title VIII, §§ 801(b), (e)(2), 819(b), Dec. 31, 2011, 125 Stat. 1483, 1484, 1501; Pub. L. 112–239, div. A, title III, § 322(e)(2), title IX, § 904(e)(2), Jan. 2, 2013, 126 Stat. 1695, 1867; Pub. L. 113–66, div. A, title VIII, §§ 821(a), 822(a), title X, § 1091(b)(1), Dec. 26, 2013, 127 Stat. 809, 876; Pub. L. 114–92, div. A, title VIII, § 824(a), Nov. 25, 2015, 129 Stat. 903; Pub. L. 114–328, div. A, title VIII, §§ 805(a)(3), 807(e), 808(b), 843, Dec. 23, 2016, 130 Stat. 2255, 2262, 2263, 2290; Pub. L. 115–91, div. A, title VIII, §§ 835(b)(1), 838(a)(1), Dec. 12, 2017, 131 Stat. 1471, 1474; Pub. L. 115–232, div. A, title VIII, § 831(b)(3), Aug. 13, 2018, 132 Stat. 1857; Pub. L. 116–92, div. A, title VIII, § 833, Dec. 20, 2019, 133 Stat. 1494; Pub. L. 116–283, div. A, title VIII, § 802(b), Jan. 1, 2021, 134 Stat. 3732.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1847(d)(2)(A), Jan. 1, 2021, 134 Stat. 4151, 4255, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 322 of this title, inserted after section 4251, as transferred and redesignated by section 1847(d)(1) of Pub. L. 116–283, and redesignated as section 4252 of this title. See Effective Date of 2021 Amendment note below.

PRIOR PROVISIONS

A prior section 2366b was renumbered section 2366a of this title.

AMENDMENTS

2021—Subsec. (a)(3)(N). Pub. L. 116–283, § 802(b)(1)(A), struck out ''and'' after ''met;''.

Subsec. (a)(3)(O). Pub. L. 116–283, § 802(b)(1)(B), which directed amendment of subpar. (O) by substituting ''; and'' for period at end, was executed by making the substitution for semicolon at end to reflect the probable intent of Congress.

Subsec. (a)(3)(P). Pub. L. 116–283, § 802(b)(1)(C), added subpar. (P).

Subsec. (c)(1)(H), (I). Pub. L. 116–283, § 802(b)(2), added subpar. (H) and redesignated former subpar. (H) as (I).

2019—Subsec. (a)(5). Pub. L. 116–92 added par. (5).

2018—Subsec. (a)(3)(D). Pub. L. 115–232, § 831(b)(3)(A), struck out ''Secretary of Defense after a request for such increase or delay by the'' before ''milestone decision authority''.

Subsec. (c)(1)(A). Pub. L. 115–232, § 831(b)(3)(B), struck out ''by the Secretary of Defense'' after ''established''.

2017—Subsec. (a)(3)(O). Pub. L. 115–91, § 835(b)(1), added subpar. (O).

Subsec. (c)(1)(G), (H). Pub. L. 115–91, § 838(a)(1), added subpar. (G) and redesignated former subpar. (G) as (H).

2016—Subsec. (a)(2). Pub. L. 114–328, § 807(e)(1), substituted ''technical risk assessment conducted under section 2448b of this title'' for ''assessment by the Assistant Secretary of Defense for Research and Engineering, in consultation with the Deputy Assistant Secretary of Defense for Developmental Test and Evaluation''.

Subsec. (a)(3)(B). Pub. L. 114–328, § 843(1), substituted ''life-cycle cost;'' for ''acquisition cost in the context of the total resources available during the period covered by the future-years defense program submitted during the fiscal year in which the certification is made;''.

Subsec. (a)(3)(C). Pub. L. 114–328, § 807(e)(2)(A), struck out ''and'' at end.

Subsec. (a)(3)(D). Pub. L. 114–328, § 807(e)(2)(C), added subpar. (D). Former subpar. (D) redesignated (E).

Subsec. (a)(3)(E). Pub. L. 114–328, § 843(2), which directed amendment of subpar. (D) by substituting ''funding is expected to be available to execute the product development and production plan for the program,'' for ''funding is'' and all that followed through ''made,'', was executed by making the substitution for ''funding is available to execute the product development and production plan under the program, through the period covered by the future-years defense program submitted during the fiscal year in which the certification is made,'' in subpar. (E), to reflect the probable intent of Congress and the amendment by Pub. L. 114–328, § 807(e)(2)(B). See below.

Pub. L. 114–328, § 807(e)(2)(B), redesignated subpar. (D) as (E). Former subpar. (E) redesignated (F).

Subsec. (a)(3)(F) to (L). Pub. L. 114–328, § 807(e)(2)(B), redesignated subpars. (E) to (K) as (F) to (L), respectively. Former subpar. (L) redesignated (M).

Subsec. (a)(3)(M). Pub. L. 114–328, § 807(e)(2)(B), redesignated subpar. (L) as (M). Former subpar. (M) redesignated (N).

Pub. L. 114–328, § 805(a)(3), added subpar. (M).

Subsec. (a)(3)(N). Pub. L. 114–328, § 807(e)(2)(B), redesignated subpar. (M) as (N).

Subsec. (c). Pub. L. 114–328, § 808(b)(1), amended subsec. (c) generally. Prior to amendment, text read as follows:

''(1) The certifications and determination under subsection (a) with respect to a major defense acquisition program shall be submitted to the congressional defense committees with the first Selected Acquisition Report submitted under section 2432 of this title after completion of the certification.

''(2) The milestone decision authority shall retain records of the basis for the certifications and determination under paragraphs (1), (2), and (3) of subsection (a).

''(3) At the request of any of the congressional defense committees, the Secretary of Defense shall submit to the committee an explanation of the basis for the certifications and determination under paragraphs (1), (2), and (3) of subsection (a) with respect to a major defense acquisition program. The explanation shall be submitted in unclassified form, but may include a classified annex.''

Subsec. (g)(6) to (8). Pub. L. 114–328, § 808(b)(2), added pars. (6) to (8).

2015—Pub. L. 114–92 amended section generally. Prior to amendment, section related to certification required before Milestone B approval of major defense acquisition programs.

2013—Subsec. (a)(3)(D). Pub. L. 112–239, § 904(e)(2), substituted ''the Assistant Secretary of Defense for Research and Engineering, in consultation with the Deputy Assistant Secretary of Defense for Developmental Test and Evaluation'' for ''the Assistant Secretary of Defense for Research and Engineering''.

Subsec. (a)(3)(F). Pub. L. 112–239, § 322(e)(2), as amended by Pub. L. 113–66, § 1091(b)(1), substituted ''core logistics capabilities'' for ''core depot-level maintenance and repair capabilities, as well as the associated logistics capabilities''.

Subsec. (a)(3)(G), (H). Pub. L. 113–66, § 821(a), added subpar. (G) and redesignated former subpar. (G) as (H).

Subsec. (a)(4). Pub. L. 113–66, § 822(a), added par. (4).

2011—Pub. L. 112–81, § 801(e)(2)(A), struck out ''or Key Decision Point B'' after ''Milestone B'' in section catchline.

Subsec. (a). Pub. L. 112–81, § 801(e)(2)(B), struck out '', or Key Decision Point B approval in the case of a space program,'' after ''Milestone B approval'' in introductory provisions.

Subsec. (a)(3)(D). Pub. L. 111–383, § 901(j)(4), substituted ''Assistant Secretary of Defense for Research and Engineering'' for ''Director of Defense Research and Engineering''.

Subsec. (a)(3)(E) to (G). Pub. L. 112–81, § 801(b)(1), added subpars. (E) and (F) and redesignated former subpar. (E) as (G).

Subsec. (b)(1). Pub. L. 111–383, § 814(c)(1)(A), substituted ''any changes to the program or a designated major subprogram of such program'' for ''any changes to the program'' in introductory provisions.

Subsec. (b)(1)(B). Pub. L. 111–383, § 814(c)(1)(B), substituted ''otherwise cause the program or subprogram'' for ''otherwise cause the program''.

Subsec. (b)(2). Pub. L. 112–81, § 801(e)(2)(C), struck out ''(or Key Decision Point B approval in the case of a space program)'' after ''Milestone B approval''.

Subsec. (d)(1). Pub. L. 112–81, § 801(e)(2)(C), struck out ''(or Key Decision Point B approval in the case of a space program)'' after ''Milestone B approval'' in two places.

Pub. L. 111–383, § 813(d)(1)(A), substituted ''(as specified in paragraph (1), (2), or (3) of subsection (a))'' for ''(as specified in paragraph (1) or (2) of subsection (a))''.

Subsec. (d)(2)(B). Pub. L. 111–383, § 1075(k)(1), which directed amendment of directory language of Pub. L. 111–23, § 205(a)(1)(B), resulting in substitution of ''paragraphs (1), (2), and (3)'' for ''paragraphs (1) and (2)'' in text, was not executed because of the prior identical amendment by Pub. L. 111–383, § 813(d)(1)(B). See below.

Pub. L. 111–383, § 813(d)(1)(B), substituted ''specified in paragraphs (1), (2), and (3) of subsection (a)'' for ''specified in paragraphs (1) and (2) of subsection (a)''.

Subsec. (d)(3). Pub. L. 112–81, § 819(b), added par. (3).

Subsec. (g)(2) to (4). Pub. L. 111–383, § 814(c)(2), added par. (2) and redesignated former pars. (2) and (3) as (3) and (4), respectively. Former par. (4) redesignated (5).

Subsec. (g)(5). Pub. L. 112–81, § 801(b)(2), added par. (5) and struck out former par. (5) which read as follows: ''The term 'Key Decision Point B' means the official program initiation of a National Security Space program of the Department of Defense, which triggers a formal review to determine maturity of technology and the program's readiness to begin the preliminary system design.''

Pub. L. 111–383, § 814(c)(2)(A), redesignated par. (4) as (5).

2009—Subsec. (a)(1)(B). Pub. L. 111–23, § 201(f), inserted ''appropriate trade-offs among cost, schedule, and performance objectives have been made to ensure that'' before ''the program is affordable''.

Subsec. (a)(1)(C). Pub. L. 111–23, § 101(d)(4), inserted '', with the concurrence of the Director of Cost Assessment and Program Evaluation,'' before ''the product''.

Subsec. (a)(1)(D). Pub. L. 111–23, § 205(a)(3)(A), struck out ''and'' at end.

Subsec. (a)(2), (3). Pub. L. 111–23, § 205(a)(3)(B), (C), added par. (2) and redesignated former par. (2) as (3).

Subsec. (a)(3)(D). Pub. L. 111–23, § 205(a)(3)(D)(i), substituted '', as determined by the Milestone Decision Authority on the basis of an independent review and assessment by the Director of Defense Research and Engineering; and'' for semicolon.

Subsec. (a)(3)(E), (F). Pub. L. 111–23, § 205(a)(3)(D)(ii), (iii), redesignated subpar. (F) as (E) and struck out former subpar. (E) which read as follows: ''the program demonstrates a high likelihood of accomplishing its intended mission; and''.

Subsec. (d). Pub. L. 111–23, § 205(a)(1), designated existing provisions as par. (1) and substituted par. (2) for ''Whenever the milestone decision authority makes such a determination and authorizes such a waiver, the waiver, the determination, and the reasons for the determination shall be submitted in writing to the congressional defense committees within 30 days after the waiver is authorized.''

Subsecs. (e) to (g). Pub. L. 111–23, § 205(a)(2), added subsec. (e) and redesignated former subsecs. (e) and (f) as (f) and (g), respectively.

2008—Pub. L. 110–417, § 813(a), (b), renumbered section 2366a of this title as this section.

Subsec. (a). Pub. L. 110–181, § 812(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) consisted of pars. (1) to (10) relating to required certifications by milestone decision authority for major defense acquisition program to receive Milestone B approval, or Key Decision Point B approval in the case of a space program.

Subsec. (b). Pub. L. 110–181, § 812(3), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 110–181, § 812(4), designated existing provisions as par. (1) and added par. (2).

Pub. L. 110–181, § 812(2), redesignated subsec. (b) as (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 110–181, § 812(5), substituted ''authority may, at the time of Milestone B approval (or Key Decision Point B approval in the case of a space program) or at the time that such milestone decision authority withdraws a certification or rescinds Milestone B approval (or Key Decision Point B approval in the case of a space program) pursuant to subsection (b)(2), waive'' for ''authority may waive'' and ''paragraph (1) or (2)'' for ''paragraph (1), (2), (3), (4), (5), (6), (7), (8), or (9)''.

Pub. L. 110–181, § 812(2), redesignated subsec. (c) as (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 110–181, § 812(6), substituted ''subsection (d)'' for ''subsection (c)''.

Pub. L. 110–181, § 812(2), redesignated subsec. (d) as (e). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 110–181, § 812(2), redesignated subsec. (e) as (f).

2006—Subsec. (a)(1) to (7). Pub. L. 109–364, § 805(a)(1)–(3), added par. (1) and redesignated former pars. (1) to (6) as (2) to (7), respectively. Former par. (7) redesignated (10).

Subsec. (a)(8), (9). Pub. L. 109–364, § 805(a)(4), (5), added pars. (8) and (9).

Subsec. (a)(10). Pub. L. 109–364, § 805(a)(1), redesignated par. (7) as (10).

Subsec. (c). Pub. L. 109–364, § 805(b), substituted ''(5), (6), (7), (8), or (9)'' for ''(5), or (6)''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by section 1847(d)(2)(A) of Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 2017 AMENDMENT

Pub. L. 115–91, div. A, title VIII, § 835(b)(2), Dec. 12, 2017, 131 Stat. 1471, provided that: ''Section 2366b(a)(3)(O) of title 10, United States Code, as added by paragraph (1), shall apply with respect to any major defense acquisition program receiving Milestone B approval on or after the date occurring one year after the date of the enactment of this Act [Dec. 12, 2017].''

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 113–66, div. A, title VIII, § 821(b), Dec. 26, 2013, 127 Stat. 809, provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Dec. 26, 2013], and shall apply with respect to major defense acquisition programs which are subject to Milestone B approval on or after the date occurring six months after the date of the enactment of this Act.''

Pub. L. 113–66, div. A, title X, § 1091(b), Dec. 26, 2013, 127 Stat. 876, provided in part that the amendment made by section 1091(b)(1) is effective as of Jan. 2, 2013, and as if included in Pub. L. 112–239 as enacted.

Amendment by section 322(e)(2) of Pub. L. 112–239 effective Dec. 31, 2011, immediately after enactment of Pub. L. 112–81, see section 322(f) of Pub. L. 112–239, set out as an note under section 2366a of this title.

EFFECTIVE DATE OF 2011 AMENDMENT

Pub. L. 111–383, div. A, title VIII, § 813(d)(1), Jan. 7, 2011, 124 Stat. 4265, provided that the amendment made by section 813(d)(1) is effective as of May 22, 2009.

Amendment by section 901(j)(4) of Pub. L. 111–383 effective Jan. 1, 2011, see section 901(p) of Pub. L. 111–383, set out as a note under section 131 of this title.

Pub. L. 111–383, div. A, title X, § 1075(k), Jan. 7, 2011, 124 Stat. 4378, provided that the amendment made by section 1075(k)(1) is effective as of May 22, 2009, and as if included in Pub. L. 111–23 as enacted.

RESPONSIBILITY FOR CONDUCTING ASSESSMENTS

Pub. L. 115–91, div. A, title VIII, § 838(a)(3), Dec. 12, 2017, 131 Stat. 1474, provided that: ''For purposes of the sufficiency assessments required by section 2366b(c)(1) and section 2366c(a)(4) of such title [meaning title 10, United States Code], as added by paragraphs (1) and (2), with respect to a major defense acquisition program—

''(A) if the milestone decision authority for the program is the service acquisition executive of the military department that is managing the program, the sufficiency assessment shall be conducted by the senior official within the military department with responsibility for developmental testing; and

''(B) if the milestone decision authority for the program is the Under Secretary of Defense for Acquisition and Sustainment, the sufficiency assessment shall be conducted by the senior Department of Defense official with responsibility for developmental testing.''

GUIDANCE

Pub. L. 115–91, div. A, title VIII, § 838(a)(4), Dec. 12, 2017, 131 Stat. 1475, provided that: ''Within one year after the date of the enactment of this Act [Dec. 12, 2017], the senior Department of Defense official with responsibility for developmental testing shall develop guidance for the sufficiency assessments required by section 2366b(c)(1) and section 2366c(a)(4) of title 10, United States Code, as added by paragraphs (1) and (2). At a minimum, the guidance shall require—

''(A) for the sufficiency assessment required by section 2366b(c)(1) of such title, that the assessment address the sufficiency of—

''(i) the developmental test and evaluation plan;

''(ii) the developmental test and evaluation schedule, including a comparison to historic analogous systems;

''(iii) the developmental test and evaluation resources (facilities, personnel, test assets, data analytics tools, and modeling and simulation capabilities);

''(iv) the risks of developmental test and production concurrency; and

''(v) the developmental test criteria for entering the production phase; and

''(B) for the sufficiency assessment required by section 2366c(a)(4) of such title, that the assessment address—

''(i) the sufficiency of the developmental test and evaluation completed;

''(ii) the sufficiency of the plans and resources available for remaining developmental test and evaluation;

''(iii) the risks identified during developmental testing to the production and deployment phase;

''(iv) the sufficiency of the plans and resources for remaining developmental test and evaluation; and

''(v) the readiness of the system to perform scheduled initial operational test and evaluation.''

MILESTONE B DECISIONS

Pub. L. 114–92, div. A, title VIII, § 802(d)(3), Nov. 25, 2015, 129 Stat. 880, provided that: ''The Chief of the Armed Force concerned shall advise the milestone decision authority for a major defense acquisition program of the Chief's views on cost, schedule, technical feasibility, and performance trade-offs that have been made with regard to the program, as provided in section 2366b(b)(3) of title 10, United States Code, as amended by section 824 of this Act, prior to a Milestone B decision on the program.''

CERTIFICATION AND REVIEW OF PROGRAMS ENTERING DEVELOPMENT PRIOR TO ENACTMENT OF SECTION 2366B OF TITLE 10

Pub. L. 111–23, title II, § 205(b), May 22, 2009, 123 Stat. 1725, as amended by Pub. L. 111–383, div. A, title VIII, § 813(d)(2), Jan. 7, 2011, 124 Stat. 4266, which related to certification and review of programs entering develop-

ment prior to enactment of section 2366b of this title, was repealed by Pub. L. 112–239, div. A, title VIII, § 814, Jan. 2, 2013, 126 Stat. 1830.

FORMAL REVIEW PROCESS FOR BANDWIDTH REQUIREMENTS

Pub. L. 110–417, [div. A], title X, § 1047(d), Oct. 14, 2008, 122 Stat. 4603, as amended by Pub. L. 111–84, div. A, title X, § 1033, Oct. 28, 2009, 123 Stat. 2449; Pub. L. 115–232, div. A, title VIII, § 813(c), Aug. 13, 2018, 132 Stat. 1851, provided that: ''The Secretary of Defense and the Director of National Intelligence shall, as part of the Milestone B or Key Decision Point B approval process for any major defense acquisition program or major system acquisition program, establish a formal review process to ensure that—

''(A) the bandwidth requirements needed to support such program are or will be met; and

''(B) a determination will be made with respect to how to meet the bandwidth requirements for such program.''

§ 2366c. Major defense acquisition programs: submissions to Congress on Milestone C

(a) BRIEF SUMMARY REPORT.—Not later than 15 days after granting Milestone C approval for a major defense acquisition program, the milestone decision authority for the program shall provide to the congressional defense committees and, in the case of intelligence or intelligence-related activities, the congressional intelligence committees a brief summary report that contains the following:

(1) The estimated cost and schedule for the program established by the military department concerned, including—

(A) the dollar values estimated for the program acquisition unit cost, average procurement unit cost, and total life-cycle cost; and

(B) the planned dates for initial operational test and evaluation and initial operational capability.

(2) The independent estimated cost for the program established pursuant to section 2334(a)(6) of this title, and any independent estimated schedule for the program, including—

(A) the dollar values estimated for the program acquisition unit cost, average procurement unit cost, and total life-cycle cost; and

(B) the planned dates for initial operational test and evaluation and initial operational capability.

(3) A summary of any production, manufacturing, and fielding risks associated with the program.

(4) An assessment of the sufficiency of the developmental test and evaluation completed, including the use of automated data analytics or modeling and simulation tools and methodologies.

(b) ADDITIONAL INFORMATION.—At the request of any of the congressional defense committees or, in the case of intelligence or intelligence-related activities, the congressional intelligence committees, the milestone decision authority shall submit to the committee further information or underlying documentation for the information in a brief summary report submitted under subsection (a), including the independent cost and schedule estimates and the independent technical risk assessments referred to in that subsection.

(c) CONGRESSIONAL INTELLIGENCE COMMITTEES DEFINED.—In this section, the term ''congressional intelligence committees'' has the meaning given that term in section 437(c) of this title.

(Added Pub. L. 114–328, div. A, title VIII, § 808(c)(1), Dec. 23, 2016, 130 Stat. 2265; amended Pub. L. 115–91, div. A, title VIII, § 838(a)(2), Dec. 12, 2017, 131 Stat. 1474.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1847(d)(3), Jan. 1, 2021, 134 Stat. 4151, 4256, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 322 of this title, inserted after section 4252, as transferred and redesignated by section 1847(d)(3) of Pub. L. 116–283, and redesignated as section 4253 of this title. See Effective Date of 2021 Amendment note below.

AMENDMENTS

2017—Subsec. (a)(4). Pub. L. 115–91 added par. (4).

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

RESPONSIBILITY FOR CONDUCTING ASSESSMENTS; GUIDANCE

For provisions designating officials responsible for conducting assessments and provisions requiring guidance for assessments under subsec. (a)(4) of this section, see section 838(a)(3), (4) of Pub. L. 115–91, set out as notes under section 2366b of this title.

§ 2367. Use of federally funded research and development centers

(a) LIMITATION ON USE OF CENTERS.—Except as provided in subsection (b), the Secretary of Defense may not place work with a federally funded research and development center unless such work is within the purpose, mission, and general scope of effort of such center as established in the sponsoring agreement of the Department of Defense with such center.

(b) EXCEPTION FOR APPLIED SCIENTIFIC RESEARCH.—This section does not apply to a federally funded research and development center that performs applied scientific research under laboratory conditions.

(c) LIMITATION ON CREATION OF NEW CENTERS.—(1) The head of an agency may not obligate or expend amounts appropriated to the Department of Defense for purposes of operating a federally funded research center that was not in existence before June 2, 1986, until—

(A) the head of the agency submits to Congress a report with respect to such center that describes the purpose, mission, and general scope of effort of the center; and

(B) a period of 60 days beginning on the date such report is received by Congress has elapsed.

(2) In this subsection, the term ''head of an agency'' has the meaning given such term in section 2302(1) of this title.

(d) IDENTIFICATION TO CONGRESS OF FFRDC WORKLOAD EFFORT.—After the close of a fiscal year, and not later than January 1 of the next year, the Secretary shall submit to the Committee on Armed Services and the Committee on Appropriations of the Senate and the Committee on Armed Services and the Committee on Appropriations of the House of Representatives a report setting forth the actual obligations and the actual man-years of effort expended at each federally funded research and development center during that fiscal year.

(Added Pub. L. 99–500, §101(c) [title X, §912(a)(1)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–146, and Pub. L. 99–591, §101(c) [title X, §912(a)(1)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–146; Pub. L. 99–661, div. A, title IX, formerly title IV, §912(a)(1), Nov. 14, 1986, 100 Stat. 3925, renumbered title IX, Pub. L. 100–26, §3(5), Apr. 21, 1987, 101 Stat. 273; amended Pub. L. 102–190, div. A, title II, §256(a)(1), Dec. 5, 1991, 105 Stat. 1330; Pub. L. 104–106, div. A, title XV, §1502(a)(9), Feb. 10, 1996, 110 Stat. 503; Pub. L. 106–65, div. A, title X, §1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 107–314, div. A, title X, §1041(a)(12), Dec. 2, 2002, 116 Stat. 2645.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§1801(d), 1844(b)(1), Jan. 1, 2021, 134 Stat. 4151, 4245, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 307 of this title, as added by section 1844(a) of Pub. L. 116–283, inserted after section 4146, and redesignated as section 4147 of this title. See Effective Date of 2021 Amendment note below.

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661 added identical sections.

AMENDMENTS

2002—Subsec. (d). Pub. L. 107–314, §1041(a)(12), struck out designations for pars. (1) and (2) and text of par. (1). Prior to amendment par. (1) read as follows: ''In the documents provided to Congress by the Secretary of Defense in support of the budget submitted by the President under section 1105 of title 31 for any fiscal year, the Secretary shall set forth the proposed amount of the man-years of effort to be funded by the Department of Defense for each federally funded research and development center for the fiscal year covered by that budget.''

1999—Subsec. (d)(2). Pub. L. 106–65 substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security''.

1996—Subsec. (d)(2). Pub. L. 104–106 substituted ''the Committee on Armed Services and the Committee on Appropriations of the Senate and the Committee on National Security and the Committee on Appropriations of the'' for ''the Committees on Armed Services and the Committees on Appropriations of the Senate and''.

1991—Subsec. (d). Pub. L. 102–190 added subsec. (d).

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 1991 AMENDMENT

Pub. L. 102–190, div. A, title II, §256(a)(2), Dec. 5, 1991, 105 Stat. 1330, provided that:

''(A) Paragraph (1) of subsection (d) of section 2367 of title 10, United States Code, as added by paragraph (1), shall take effect with respect to the budget submitted for fiscal year 1994.

''(B) Paragraph (2) of such subsection shall take effect with respect to fiscal year 1992.''

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective Dec. 31, 2021, of provisions in subsec. (d) of this section requiring submittal of annual report to Congress, see section 1061 of Pub. L. 114–328, set out as a note under section 111 of this title.

PILOT PROGRAM ON DISCLOSURE OF CERTAIN SENSITIVE INFORMATION TO FEDERALLY FUNDED RESEARCH AND DEVELOPMENT CENTERS

Pub. L. 114–328, div. A, title II, §235, Dec. 23, 2016, 130 Stat. 2064, provided that:

''(a) IN GENERAL.—The Secretary of Defense shall carry out a pilot program on—

''(1) permitting officers and employees of the Department of Defense to disclose sensitive information to federally funded research and development centers of the Department for the sole purpose of the performance of administrative, technical, or professional services under and within the scope of the contracts with the parent organizations of such federally funded research and development centers; and

''(2) appropriately protecting proprietary information from unauthorized disclosure or use by such centers.

''(b) FFRDCS.—The pilot program shall be carried out with one or more federally funded research and development centers of the Department selected by the Secretary for participation in the pilot program.

''(c) FFRDC PERSONNEL.—Sensitive information may be disclosed to personnel of a federally funded research and development center under the pilot program only if such personnel and contractors agree to be subject to, and comply with, appropriate ethics standards and requirements applicable to Government personnel, including the Ethics in Government Act of 1978 [5 U.S.C. App.], section 1905 of title 18, United States Code, and chapter 21 of title 41, United States Code.

''(d) CONDITIONS ON DISCLOSURE.—Sensitive information may be disclosed under the pilot program only if the federally funded research and development center concerned and its parent organization agree to and acknowledge in the parent organization's contract with the Department of Defense that—

''(1) sensitive information furnished to the federally funded research and development center will be accessed and used only for the purposes stated in the contract between the parent organization of the federally funded research and development center and the Department of Defense;

''(2) the federally funded research and development center will take all precautions necessary to prevent disclosure of the sensitive information furnished to anyone not authorized access to the information in order to perform the applicable contract;

''(3) sensitive information furnished under the pilot program shall not be used by the federally funded research and development center or parent organization to compete against a third party for a Government or non-Government contract or funding, or to support other current or future research or technology development activities performed by the federally funded research and development center; and

''(4) any personnel of a federally funded research and development center participating in the pilot program may not disclose or use any trade secrets or any nonpublic information accessed under the pilot program, unless specifically authorized by this section.

''(e) DURATION.—(1) The pilot program may commence at any time after the review and issuance of policy

guidance, updated appropriately, pertaining to the identification, mitigation, and prevention of potentially unfair competitive advantage conferred to federally funded research and development center personnel with access to sensitive information who serve as technical advisors to acquisition programs.

''(2) The pilot program shall terminate on the date that is three years after the date of the commencement of the pilot program.

''(f) ASSESSMENT.—Not later than two years after the commencement of the pilot program, the Comptroller General of the United States shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the pilot program, including an assessment of the effectiveness of activities under the pilot program in improving acquisition processes and the effectiveness of protections of private-sector intellectual property in the course of such activities.

''(g) SENSITIVE INFORMATION DEFINED.—In this section, the term 'sensitive information' means confidential commercial, financial, or proprietary information, technical data, contract performance, contract performance evaluation, management, and administration data, or other privileged information owned by other contractors of the Department of Defense that is exempt from public disclosure under section 552(b)(4) of title 5, United States Code, or which would otherwise be prohibited from disclosure under section 1832 or 1905 of title 18, United States Code.''

GAO STUDY; REPORT

Pub. L. 99–500, §101(c) [title X, §912(b), (c)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–146, Pub. L. 99–591, §101(c) [title X, §912(b), (c)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–146, and Pub. L. 99–661, div. A, title IX, formerly title IV, §912(b), (c), Nov. 14, 1986, 100 Stat. 3926, renumbered title IX, Pub. L. 100–26, §3(5), Apr. 21, 1987, 101 Stat. 273, directed Comptroller General to conduct a study of national defense role of federally funded research and development centers and submit a report to Congress not later than one year after Oct. 18, 1986.

§ 2368. Centers for Science, Technology, and Engineering Partnership

(a) DESIGNATION.—(1) The Secretary of Defense, in coordination with the Secretaries of the military departments, shall designate each science and technology reinvention laboratory as a Center for Science, Technology, and Engineering Partnership (in this section referred to as ''Centers'') in the recognized core competencies of the designee.

(2) The Secretary of Defense shall establish a policy to encourage the Secretary of each military department to reengineer management and business processes and adopt best-business and personnel practices at the Centers of the Secretary concerned in connection with the capability requirements of the Centers, so as to serve as recognized leaders in such capabilities throughout the Department of Defense and in the national technology and industrial base.

(3) The Secretary of Defense, acting through the directors of the Centers, may conduct one or more pilot programs, consistent with applicable requirements of law, to test any practices referred to in paragraph (2) that the Directors determine could—

(A) improve the efficiency and effectiveness of operations at Centers;

(B) improve the support provided by the Centers for the elements of the Department of Defense who use the services of the Centers; and

(C) enhance capabilities by reducing the cost and improving the performance and efficiency of executing laboratory missions.

(b) PUBLIC-PRIVATE PARTNERSHIPS.—(1) To achieve one or more objectives set forth in paragraph (2), the Secretary may authorize and establish incentives for the Director of a Center to enter into public-private cooperative arrangements (in this section referred to as a ''public-private partnership'') to provide for any of the following:

(A) For employees of the Center, academia, private industry, State and local governments, or other entities outside the Department of Defense to perform (under contract, subcontract, or otherwise) work related to the capabilities of the Center, including any work that—

(i) involves one or more capabilities of the Center; and

(ii) may be applicable to both the Department and commercial entities.

(B) For private industry or other entities outside the Department of Defense to use for either Government or commercial purposes any capabilities of the Center that are not fully used for Department of Defense activities for any period determined to be consistent with the needs of the Department of Defense.

(2) The objectives for exercising the authority provided in paragraph (1) are as follows:

(A) To maximize the use of the capacity of a Center.

(B) To reduce or eliminate the cost of ownership of a Center by the Department of Defense.

(C) To reduce the cost of science, technology, and engineering activities of the Department of Defense.

(D) To leverage private sector investment in—

(i) such efforts as research and equipment recapitalization for a Center; and

(ii) the promotion of the undertaking of commercial business ventures based on the capabilities of a Center, as determined by the director of the Center.

(E) To foster cooperation and technology transfer between the armed forces, academia, private industry, and State and local governments.

(F) To increase access by a Center to a skilled technical workforce that can contribute to the effective and efficient execution of the missions of the Department of Defense.

(G) To increase the ability of a Center to access and use non-Department of Defense methods to develop and innovate and access capabilities that contribute to the effective and efficient execution of the missions of the Department of Defense.

(3)(A) Public-private partnerships entered into under paragraph (1) may be used for purposes relating to technology transfer and other authorities described in subparagraph (B).

(B) The authorities described in this subparagraph are provisions of law that provide for cooperation and partnership by the Department of Defense with academia, private industry, and State and local governments, including the following:

(i) Sections 3371 through 3375 of title 5.

(ii) Sections 2194, 2358, 2371, 2511, 2539b, and 2563 of this title.

(iii) Section 209 of title 35.

(iv) Sections 8, 12, and 23 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3706, 3710a, and 3715).

(c) PRIVATE SECTOR USE OF EXCESS CAPACITY.—Any capability of a Center made available to the private sector may be used to perform research and testing activities in order to make more efficient and economical use of Government-owned capabilities and encourage the creation and preservation of jobs to ensure the availability of a workforce with the necessary research and technical skills to meet the needs of the armed forces.

(d) CREDITING OF AMOUNTS FOR PERFORMANCE.—Amounts received by a Center for work performed under a public-private partnership may—

(1) be credited to the appropriation or fund, including a working-capital or revolving fund, that incurs the cost of performing the work; or

(2) be used by the Director of the Center as the Director considers appropriate and consistent with section 219 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110–417; 10 U.S.C. 2358 note).

(e) AVAILABILITY OF EXCESS CAPACITIES TO PRIVATE-SECTOR PARTNERS.—Capacities of a Center may be made available for use by a private-sector entity under this section only if—

(1) the use of the capacities will not have a significant adverse effect on the performance of the Center or the ability of the Center to achieve the mission of the Center, as determined by the Director of the Center; and

(2) the private-sector entity agrees—

(A) to reimburse the Department of Defense when required in accordance with the guidance of the Department for the direct and indirect costs (including any rental costs) that are attributable to the use of the capabilities by the private-sector entity, as determined by the Secretary of the military departments; and

(B) to hold harmless and indemnify the United States from—

(i) any claim for damages or injury to any person or property arising out of the use of the capabilities, except under the circumstances described in section 2563(c)(3) of this title; and

(ii) any liability or claim for damages or injury to any person or property arising out of a decision by the Secretary to suspend or terminate that use of capabilities during a war or national emergency.

(f) USE OF PARTNERSHIP INTERMEDIARIES TO PROMOTE DEFENSE RESEARCH AND EDUCATION.—(1) Subject to the approval of the Secretary or the head of the another department or agency of the Federal Government concerned, the Director of a Center may enter into a contract, memorandum of understanding or other transaction with a partnership intermediary that provides for the partnership intermediary to perform services for the Department of Defense that increase the likelihood of success in the conduct of cooperative or joint activities of the Center with industry or academic institutions.

(2) In this subsection, the term ''partnership intermediary'' means an agency of a State or local government, or a nonprofit entity owned in whole or in part by, chartered by, funded in whole or in part by, or operated in whole or in part by or on behalf of a State or local government, that assists, counsels, advises, evaluates, or otherwise cooperates with industry or academic institutions that need or can make demonstrably productive use of technology-related assistance from a Center.

(g) CONSTRUCTION OF PROVISION.—Nothing in this section may be construed to authorize a change, otherwise prohibited by law, from the performance of work at a Center by personnel of the Department of Defense to performance by a contractor.

(h) DEFINITIONS.—In this section:

(1) The term ''capabilities'', with respect to a Center for Science, Technology, and Engineering Partnership, means the facilities, equipment, personnel, intellectual property, and other assets that support the core competencies of the Center.

(2) The term ''national technology and industrial base'' has the meaning given that term in section 2500 of this title.

(3) The term ''science and technology reinvention laboratory'' means a science and technology reinvention laboratory designated under section 1105 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84; 10 U.S.C. 2358 note).

(Added Pub. L. 114–92, div. A, title II, § 211(a), Nov. 25, 2015, 129 Stat. 764; amended Pub. L. 115–232, div. A, title II, § 231, Aug. 13, 2018, 132 Stat. 1690; Pub. L. 116–92, div. A, title XVII, § 1731(a)(45), Dec. 20, 2019, 133 Stat. 1814.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1844(b)(1), Jan. 1, 2021, 134 Stat. 4151, 4245, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 307 of this title, as added by section 1844(a) of Pub. L. 116–283, inserted after section 4145, and redesignated as section 4146 of this title. See Effective Date of 2021 Amendment note below.

PRIOR PROVISIONS

A prior section 2368, added Pub. L. 100–456, div. A, title VIII, § 823(a)(1), Sept. 29, 1988, 102 Stat. 2018; amended Pub. L. 101–189, div. A, title VIII, § 841(c)(1), Nov. 29, 1989, 103 Stat. 1514; Pub. L. 102–25, title VII, § 701(g)(1), Apr. 6, 1991, 105 Stat. 115, which authorized studies in fields of research and development essential to development of critical technologies, was repealed by Pub. L. 102–190, div. A, title VIII, § 821(c)(1), Dec. 5, 1991, 105 Stat. 1431.

AMENDMENTS

2019—Subsec. (f)(1). Pub. L. 116–92 substituted ''transaction'' for ''transition''.

2018—Subsecs. (f) to (h). Pub. L. 115–232 added subsec. (f) and redesignated former subsecs. (f) and (g) as (g) and (h), respectively.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation

and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

[§ 2369. Repealed. Pub. L. 103–355, title III, § 3062(a), Oct. 13, 1994, 108 Stat. 3336]

Section, added Pub. L. 100–456, div. A, title VIII, § 842(a), Sept. 29, 1988, 102 Stat. 2026; amended Pub. L. 103–160, div. A, title IX, § 904(d)(1), Nov. 30, 1993, 107 Stat. 1728, related to program for supervision and coordination of product evaluation activities within the Department of Defense.

[§ 2370. Repealed. Pub. L. 104–106, div. A, title X, § 1061(j)(1), Feb. 10, 1996, 110 Stat. 443]

Section, added Pub. L. 101–510, div. A, title II, § 241(a), Nov. 5, 1990, 104 Stat. 1516, required annual report to Congress on Biological Defense Research Program.

[§ 2370a. Repealed. Pub. L. 108–375, div. A, title X, § 1005(a), Oct. 28, 2004, 118 Stat. 2036]

Section, added Pub. L. 103–160, div. A, title II, § 214(a), Nov. 30, 1993, 107 Stat. 1586, related to medical countermeasures against biowarfare threats and allocation of funding between near-term and other threats.

§ 2371. Research projects: transactions other than contracts and grants

(a) ADDITIONAL FORMS OF TRANSACTIONS AUTHORIZED.—The Secretary of Defense and the Secretary of each military department may enter into transactions (other than contracts, cooperative agreements, and grants) under the authority of this subsection in carrying out basic, applied, and advanced research projects. The authority under this subsection is in addition to the authority provided in section 2358 of this title to use contracts, cooperative agreements, and grants in carrying out such projects.

(b) EXERCISE OF AUTHORITY BY SECRETARY OF DEFENSE.—In any exercise of the authority in subsection (a), the Secretary of Defense shall act through the Defense Advanced Research Projects Agency or any other element of the Department of Defense that the Secretary may designate.

(c) ADVANCE PAYMENTS.—The authority provided under subsection (a) may be exercised without regard to section 3324 of title 31.

(d) RECOVERY OF FUNDS.—(1) A cooperative agreement for performance of basic, applied, or advanced research authorized by section 2358 of this title and a transaction authorized by subsection (a) may include a clause that requires a person or other entity to make payments to the Department of Defense or any other department or agency of the Federal Government as a condition for receiving support under the agreement or other transaction.

(2) The amount of any payment received by the Federal Government pursuant to a requirement imposed under paragraph (1) may be credited, to the extent authorized by the Secretary of Defense, to the appropriate account established under subsection (f). Amounts so credited shall be merged with other funds in the account and shall be available for the same purposes and the same period for which other funds in such account are available.

(e) CONDITIONS.—(1) The Secretary of Defense shall ensure that—

(A) to the maximum extent practicable, no cooperative agreement containing a clause under subsection (d) and no transaction entered into under subsection (a) provides for research that duplicates research being conducted under existing programs carried out by the Department of Defense; and

(B) to the extent that the Secretary determines practicable, the funds provided by the Government under a cooperative agreement containing a clause under subsection (d) or a transaction authorized by subsection (a) do not exceed the total amount provided by other parties to the cooperative agreement or other transaction.

(2) A cooperative agreement containing a clause under subsection (d) or a transaction authorized by subsection (a) may be used for a research project when the use of a standard contract, grant, or cooperative agreement for such project is not feasible or appropriate.

(f) SUPPORT ACCOUNTS.—There is hereby established on the books of the Treasury separate accounts for each of the military departments and the Defense Advanced Research Projects Agency for support of research projects and development projects provided for in cooperative agreements containing a clause under subsection (d) and research projects provided for in transactions entered into under subsection (a). Funds in those accounts shall be available for the payment of such support.

(g) EDUCATION AND TRAINING.—The Secretary of Defense shall—

(1) ensure that management, technical, and contracting personnel of the Department of Defense involved in the award or administration of transactions under this section or other innovative forms of contracting are afforded opportunities for adequate education and training; and

(2) establish minimum levels and requirements for continuous and experiential learning for such personnel, including levels and requirements for acquisition certification programs.

(h) REGULATIONS.—The Secretary of Defense shall prescribe regulations to carry out this section.

(i) PROTECTION OF CERTAIN INFORMATION FROM DISCLOSURE.—(1) Disclosure of information described in paragraph (2) is not required, and may not be compelled, under section 552 of title 5 for five years after the date on which the information is received by the Department of Defense.

(2)(A) Paragraph (1) applies to information described in subparagraph (B) that is in the records of the Department of Defense if the information was submitted to the Department in a competitive or noncompetitive process having the potential for resulting in an award, to the party submitting the information, of a cooperative agreement for performance of basic, applied, or advanced research authorized by section 2358 of this title or another transaction authorized by subsection (a).

(B) The information referred to in subparagraph (A) is the following:

(i) A proposal, proposal abstract, and supporting documents.

(ii) A business plan submitted on a confidential basis.

(iii) Technical information submitted on a confidential basis.

(Added Pub. L. 101–189, div. A, title II, § 251(a)(1), Nov. 29, 1989, 103 Stat. 1403; amended Pub. L. 101–510, div. A, title XIV, § 1484(k)(9), Nov. 5, 1990, 104 Stat. 1719; Pub. L. 102–190, div. A, title VIII, § 826, Dec. 5, 1991, 105 Stat. 1442; Pub. L. 102–484, div. A, title II, § 217, Oct. 23, 1992, 106 Stat. 2352; Pub. L. 103–35, title II, § 201(c)(4), May 31, 1993, 107 Stat. 98; Pub. L. 103–160, div. A, title VIII, § 827(b), title XI, § 1182(a)(6), Nov. 30, 1993, 107 Stat. 1712, 1771; Pub. L. 103–355, title I, § 1301(b), Oct. 13, 1994, 108 Stat. 3285; Pub. L. 104–106, div. A, title XV, § 1502(a)(1), Feb. 10, 1996, 110 Stat. 502; Pub. L. 104–201, div. A, title II, § 267(a)–(c)(1)(A), title X, § 1073(e)(1)(B), Sept. 23, 1996, 110 Stat. 2467, 2468, 2658; Pub. L. 105–85, div. A, title VIII, § 832, Nov. 18, 1997, 111 Stat. 1842; Pub. L. 105–261, div. A, title VIII, § 817, Oct. 17, 1998, 112 Stat. 2089; Pub. L. 106–65, div. A, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 108–136, div. A, title X, § 1031(a)(19), Nov. 24, 2003, 117 Stat. 1597; Pub. L. 113–291, div. A, title X, § 1071(f)(20), Dec. 19, 2014, 128 Stat. 3511; Pub. L. 115–91, div. A, title VIII, § 863, Dec. 12, 2017, 131 Stat. 1494.)

Transfer of Section

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1841(b)(1), Jan. 1, 2021, 134 Stat. 4151, 4243, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 301 of this title, as added by section 1841(a) of Pub. L. 116–283, inserted after section 4001, and redesignated as section 4002 of this title. See Effective Date of 2021 Amendment note below.

Amendments

2017—Subsecs. (g), (h). Pub. L. 115–91 added subsec. (g) and redesignated former subsec. (g) as (h).

2014—Subsec. (h). Pub. L. 113–291 struck out subsec. (h) which related to annual report on use of certain cooperative agreements and transactions.

2003—Subsec. (h)(3). Pub. L. 108–136 added par. (3).

1999—Subsec. (h)(1). Pub. L. 106–65 substituted ‘‘and the Committee on Armed Services’’ for ‘‘and the Committee on National Security’’ in introductory provisions.

1998—Subsec. (i)(2)(A). Pub. L. 105–261 substituted ‘‘cooperative agreement for performance of basic, applied, or advanced research authorized by section 2358 of this title’’ for ‘‘cooperative agreement that includes a clause described in subsection (d)’’.

1997—Subsec. (i). Pub. L. 105–85 added subsec. (i).

1996—Subsec. (b). Pub. L. 104–201, § 1073(e)(1)(B), inserted ‘‘Defense’’ before ‘‘Advanced Research Projects Agency’’.

Subsec. (e). Pub. L. 104–201, § 267(a), inserted ‘‘(1)’’ before ‘‘The Secretary of Defense’’, redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, inserted ‘‘and’’ after semicolon at end of subpar. (A), substituted a period for ‘‘; and’’ at end of subpar. (B), added par. (2), and struck out par. (3) which read as follows: ‘‘a cooperative agreement containing a clause under subsection (d) or a transaction authorized under subsection (a) is used for a research project only when the use of a standard contract, grant, or cooperative agreement for such project is not feasible or appropriate.’’

Subsec. (f). Pub. L. 104–201, § 1073(e)(1)(B), inserted ‘‘Defense’’ before ‘‘Advanced Research Projects Agency’’.

Subsec. (h). Pub. L. 104–201, § 267(b), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ‘‘Not later than 60 days after the end of each fiscal year, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives a report on all cooperative agreements entered into under section 2358 of this title during such fiscal year that contain a clause authorized by subsection (d) and on all transactions entered into under subsection (a) during such fiscal year. The report shall contain, with respect to each such cooperative agreement and transaction, the following:

‘‘(1) A general description of the cooperative agreement or other transaction (as the case may be), including the technologies for which research is provided for under such agreement or transaction.

‘‘(2) The potential military and, if any, commercial utility of such technologies.

‘‘(3) The reasons for not using a contract or grant to provide support for such research.

‘‘(4) The amount of the payments, if any, that were received by the Federal Government during the fiscal year covered by the report pursuant to a clause included in such cooperative agreement or other transaction pursuant to subsection (d).

‘‘(5) The amount of the payments reported under paragraph (4), if any, that were credited to each account established under subsection (f).’’

Pub. L. 104–106 substituted ‘‘Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives’’ for ‘‘Committees on Armed Services of the Senate and House of Representatives’’.

Subsec. (i). Pub. L. 104–201, § 1073(e)(1)(B), which directed amendment of subsec. (i) by inserting ‘‘Defense’’ before ‘‘Advanced Research Projects Agency’’, could not be executed because of the renumbering of subsec. (i) as section 2371a of this title by Pub. L. 104–201, § 267(c)(1)(A). See below.

Pub. L. 104–201, § 267(c)(1)(A), renumbered subsec. (i) of this section as section 2371a of this title.

1994—Pub. L. 103–355 amended section generally. Prior to amendment section related to cooperative agreements and other transactions for advanced research projects.

1993—Subsec. (a). Pub. L. 103–160, § 827(b)(1)(C), substituted ‘‘section 2358 of this title’’ for ‘‘subsection (a)’’ in par. (1) and ‘‘subsection (d)’’ for ‘‘subsection (e)’’ in par. (2).

Pub. L. 103–160, § 827(b)(1)(A), (B), redesignated subsec. (b) as (a) and struck out former subsec. (a), as amended by Pub. L. 103–160, § 1182(a)(6), (h), which read as follows: ‘‘The Secretary of Defense, in carrying out advanced research projects through the Advanced Research Projects Agency, and the Secretary of each military department, in carrying out advanced research projects, may enter into cooperative agreements and other transactions with any person, any agency or instrumentality of the United States, any unit of State or local government, any educational institution, and any other entity.’’

Pub. L. 103–160, § 1182(a)(6), substituted ‘‘Advanced Research Projects Agency’’ for ‘‘Defense Advanced Research Projects Agency’’.

Subsec. (b). Pub. L. 103–160, § 827(b)(1)(B), redesignated subsec. (c) as (b). Former subsec. (b) redesignated (a).

Subsec. (c). Pub. L. 103–160, § 827(b)(1)(B), (2)(A), redesignated subsec. (d) as (c) and inserted ‘‘and development’’ after ‘‘research’’ in two places in par. (1). Former subsec. (c) redesignated (b).

Subsec. (d). Pub. L. 103–160, § 827(b)(1)(B), (D), (2)(B), redesignated subsec. (e), as amended by Pub. L. 103–160, § 1182(a)(6), (h), as (d) and substituted ‘‘section 2358 of this title’’ for ‘‘subsection (a)’’ and ‘‘research and development’’ for ‘‘advanced research’’. Former subsec. (d) redesignated (c).

Subsec. (e). Pub. L. 103–160, § 827(b)(1)(B), (E), (2)(B), (C), redesignated subsec. (f) as (e), in par. (1) sub-

stituted ''research and development are'' for ''advanced research is'', in par. (3) substituted ''research and development'' for ''advanced research'', in par. (4) substituted ''subsection (a)'' for ''subsection (b)'', and in par. (5) substituted ''subsection (d)'' for ''subsection (e)''. Former subsec. (e) redesignated (d).

Pub. L. 103–160, § 1182(a)(6), substituted ''Advanced Research Projects Agency'' for ''Defense Advanced Research Projects Agency''.

Subsec. (f). Pub. L. 103–160, § 827(b)(1)(B), redesignated subsec. (g), as amended by Pub. L. 103–160, § 1182(a)(6), (h), as (f). Former subsec. (f) redesignated (e).

Subsec. (g). Pub. L. 103–160, § 827(b)(1)(B), redesignated subsec. (g), as amended by Pub. L. 103–160, § 1182(a)(6), (h), as (f).

Pub. L. 103–160, § 1182(a)(6), substituted ''Advanced Research Projects Agency'' for ''Defense Advanced Research Projects Agency''.

Pub. L. 103–35 substituted ''granted by section 12'' for ''granted by section 11'' and ''provisions of sections 11 and 12'' for ''provisions of sections 10 and 11''.

1992—Subsec. (g). Pub. L. 102–484 added subsec. (g).

1991—Subsec. (a). Pub. L. 102–190, § 826(a), inserted ''and the Secretary of each military department, in carrying out advanced research projects,''.

Subsec. (b)(1). Pub. L. 102–190, § 826(b)(1)(A), struck out ''by the Secretary'' after ''transactions entered into''.

Subsec. (b)(2). Pub. L. 102–190, § 826(b)(1)(B), substituted ''to the appropriate account'' for ''to the account''.

Subsec. (d). Pub. L. 102–190, § 826(b)(2), substituted ''The Secretary of Defense'' for ''The Secretary'' in introductory provisions.

Subsec. (e). Pub. L. 102–190, § 826(b)(3), substituted ''separate accounts for each of the military departments and the Defense Advanced Research Projects Agency'' for ''an account'' and ''those accounts'' for ''such account''.

Subsec. (f)(5). Pub. L. 102–190, § 826(b)(4), substituted ''each account'' for ''the account''.

Subsec. (g). Pub. L. 102–190, § 826(c), struck out subsec. (g) which read as follows: ''The authority of the Secretary to enter into cooperative agreements and other transactions under this section expires at the close of September 30, 1991.''

1990—Subsec. (f). Pub. L. 101–510 substituted ''Committees on'' for ''Committees of'' in introductory provisions.

Effective Date of 2021 Amendment

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

Effective Date of 1994 Amendment

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 2302 of this title.

Data, Policy, and Reporting on the Use of Other Transactions

Pub. L. 115–232, div. A, title VIII, § 873, Aug. 13, 2018, 132 Stat. 1905, as amended by Pub. L. 116–92, div. A, title VIII, § 819, Dec. 20, 2019, 133 Stat. 1488, provided that:

''(a) Collection and Storage.—The Service Acquisition Executives of the military departments shall collect data on the use of other transactions by their respective departments, and the Under Secretary of Defense for Research and Engineering and the Under Secretary of Defense for Acquisition and Sustainment shall collect data on all other use by the Department of Defense of other transactions, including use by the Defense Agencies. The data shall be stored in a manner that allows the Assistant Secretary of Defense for Acquisition and other appropriate officials access at any time.

''(b) Use of Data.—The Assistant Secretary of Defense for Acquisition shall—

''(1) analyze and leverage the data collected under subsection (a) to update policy and guidance related to the use of other transactions; and

''(2) make the data collected under subsection (a) accessible to any official designated by the Secretary of Defense for inclusion by such official in relevant reports made by such official.

''(c) Report Required.—

''(1) In general.—Not later than December 31, 2019, and annually thereafter through December 31, 2023, the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the use of other transaction authority to carry out prototype projects during the preceding fiscal year. Each report shall summarize the data collected under subsection (a) on the nature and extent of each such use of the authority, including a description—

''(A) of the participants to an agreement entered into pursuant to the authority of subsection (a) of section 2371b of title 10, United States Code, or a follow-on contract or transaction entered into pursuant to the authority of subsection (f) of such section;

''(B) of the quantity of prototype projects to be produced pursuant to such an agreement, follow-on contract, or transaction;

''(C) of the amount of payments made pursuant to each such agreement, follow-on contract, or transaction;

''(D) of the purpose, description, and status of prototype projects carried out pursuant to each such agreement, follow-on contract, or transaction; and

''(E) including case examples, of the successes and challenges with using the authority of such subsection (a) or (f).

''(2) Form of report.—A report required under this subsection shall be submitted in unclassified form without any designation relating to dissemination control, but may contain a classified annex.''

Preference for Use of Other Transactions and Experimental Authority

Pub. L. 115–91, div. A, title VIII, § 867, Dec. 12, 2017, 131 Stat. 1495, provided that: ''In the execution of science and technology and prototyping programs, the Secretary of Defense shall establish a preference, to be applied in circumstances determined appropriate by the Secretary, for using transactions other than contracts, cooperative agreements, and grants entered into pursuant to sections 2371 and 2371b of title 10, United States Code, and authority for procurement for experimental purposes pursuant to section 2373 of title 10, United States Code.''

Authority of Defense Advanced Research Projects Agency To Carry Out Certain Prototype Projects

Pub. L. 103–160, div. A, title VIII, § 845, Nov. 30, 1993, 107 Stat. 1721, as amended by Pub. L. 104–201, div. A, title VIII, § 804, title X, § 1073(e)(1)(D), (2)(A), Sept. 23, 1996, 110 Stat. 2605, 2658; Pub. L. 105–261, div. A, title II, § 241, Oct. 17, 1998, 112 Stat. 1954; Pub. L. 106–65, div. A, title VIII, § 801, title X, § 1066(d)(6), Oct. 5, 1999, 113 Stat. 700, 773; Pub. L. 106–398, § 1 [[div. A], title VIII, §§ 803, 804(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–205, 1654A–206; Pub. L. 107–107, div. A, title VIII, § 822, title X, § 1048(i)(2), Dec. 28, 2001, 115 Stat. 1182, 1229; Pub. L. 108–136, div. A, title VIII, § 847, Nov. 24, 2003, 117 Stat. 1554; Pub. L. 109–163, div. A, title VIII, § 823, Jan. 6, 2006, 119 Stat. 3387; Pub. L. 109–364, div. A, title VIII, § 855, Oct. 17, 2006, 120 Stat. 2347; Pub. L. 110–181, div. A, title VIII, § 823, title X, § 1063(h), Jan. 28, 2008, 122 Stat. 226, 324; Pub. L. 110–417, [div. A], title VIII, § 824, Oct. 14, 2008, 122 Stat. 4533; Pub. L. 111–383, div. A, title VIII,

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§§ 826, 866(g)(2), Jan. 7, 2011, 124 Stat. 4270, 4298; Pub. L. 112–239, div. A, title VIII, § 863, Jan. 2, 2013, 126 Stat. 1860; Pub. L. 113–291, div. A, title VIII, § 812, title X, § 1071(b)(13), Dec. 19, 2014, 128 Stat. 3429, 3507, which authorized certain officials, as designated by the Secretary of Defense, to carry out prototype projects directly relevant to enhancing the mission effectiveness of military personnel and the supporting platforms, systems, components, or materials proposed to be acquired or developed by or in use by the Department of Defense, was repealed by Pub. L. 114–92, div. A, title VIII, § 815(c), Nov. 25, 2015, 129 Stat. 896.

[Pub. L. 114–92, div. A, title VIII, § 815(c), Nov. 25, 2015, 129 Stat. 896, provided that: ''Section 845 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160; 10 U.S.C. 2371 note) [formerly set out above] is hereby repealed. Transactions entered into under the authority of such section 845 shall remain in force and effect and shall be modified as appropriate to reflect the amendments made by this section [enacting section 2371b of this title, amending section 2302 of this title, and amending provisions set out as a note under section 2358 of this title].'']

§ 2371a. Cooperative research and development agreements under Stevenson-Wydler Technology Innovation Act of 1980

The Secretary of Defense, in carrying out research projects through the Defense Advanced Research Projects Agency, and the Secretary of each military department, in carrying out research projects, may permit the director of any federally funded research and development center to enter into cooperative research and development agreements with any person, any agency or instrumentality of the United States, any unit of State or local government, and any other entity under the authority granted by section 12 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a). Technology may be transferred to a non-Federal party to such an agreement consistent with the provisions of sections 11 and 12 of such Act (15 U.S.C. 3710, 3710a).

(Added and amended Pub. L. 104–201, div. A, title II, § 267(c)(1)(A), (B), Sept. 23, 1996, 110 Stat. 2468; Pub. L. 105–85, div. A, title X, § 1073(a)(50), Nov. 18, 1997, 111 Stat. 1903.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1844(b)(1), Jan. 1, 2021, 134 Stat. 4151, 4245, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 307 of this title, as added by section 1844(a) of Pub. L. 116–283, inserted after section 4141, and redesignated as section 4143 of this title. See Effective Date of 2021 Amendment note below.

CODIFICATION

The text of section 2371(i) of this title, which was transferred to this section, redesignated as text of section, and amended by Pub. L. 104–201, § 267(c)(1)(A), (B), was based on Pub. L. 103–355, title I, § 1301(b), Oct. 13, 1994, 108 Stat. 3286.

AMENDMENTS

1997—Pub. L. 105–85 inserted ''Defense'' before ''Advanced Research Projects Agency''.

1996—Pub. L. 104–201 transferred section 2371(i) of this title to this section, added section catchline, and struck out subsec. (i) designation and heading which read as follows: ''Cooperative Research and Development Agreements Under Stevenson-Wydler Technology Innovation Act of 1980''. See Codification note above.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 2371b. Authority of the Department of Defense to carry out certain prototype projects

(a) AUTHORITY.—(1) Subject to paragraph (2), the Director of the Defense Advanced Research Projects Agency, the Secretary of a military department, or any other official designated by the Secretary of Defense may, under the authority of section 2371 of this title, carry out prototype projects that are directly relevant to enhancing the mission effectiveness of military personnel and the supporting platforms, systems, components, or materials proposed to be acquired or developed by the Department of Defense, or to improvement of platforms, systems, components, or materials in use by the armed forces.

(2) The authority of this section—

(A) may be exercised for a transaction for a prototype project, and any follow-on production contract or transaction that is awarded pursuant to subsection (f), that is expected to cost the Department of Defense in excess of $100,000,000 but not in excess of $500,000,000 (including all options) only upon a written determination by the senior procurement executive for the agency as designated for the purpose of section 1702(c) of title 41, or, for the Defense Advanced Research Projects Agency or the Missile Defense Agency, the director of the agency that—

(i) the requirements of subsection (d) will be met; and

(ii) the use of the authority of this section is essential to promoting the success of the prototype project; and

(B) may be exercised for a transaction for a prototype project, and any follow-on production contract or transaction that is awarded pursuant to subsection (f), that is expected to cost the Department of Defense in excess of $500,000,000 (including all options) only if—

(i) the Under Secretary of Defense for Research and Engineering or the Under Secretary of Defense for Acquisition and Sustainment determines in writing that—

(I) the requirements of subsection (d) will be met; and

(II) the use of the authority of this section is essential to meet critical national security objectives; and

(ii) the congressional defense committees are notified in writing at least 30 days before such authority is exercised.

(3) The authority of a senior procurement executive or director of the Defense Advanced Research Projects Agency or Missile Defense Agency under paragraph (2)(A), and the authority of the Under Secretaries of Defense under paragraph (2)(B), may not be delegated.

(b) EXERCISE OF AUTHORITY.—

(1) Subsections (e)(1)(B) and (e)(2) of such section 2371 shall not apply to projects carried out under subsection (a).

(2) To the maximum extent practicable, competitive procedures shall be used when entering into agreements to carry out the prototype projects under subsection (a).

(c) COMPTROLLER GENERAL ACCESS TO INFORMATION.—(1) Each agreement entered into by an official referred to in subsection (a) to carry out a project under that subsection that provides for payments in a total amount in excess of $5,000,000 shall include a clause that provides for the Comptroller General, in the discretion of the Comptroller General, to examine the records of any party to the agreement or any entity that participates in the performance of the agreement.

(2) The requirement in paragraph (1) shall not apply with respect to a party or entity, or a subordinate element of a party or entity, that has not entered into any other agreement that provides for audit access by a Government entity in the year prior to the date of the agreement.

(3)(A) The right provided to the Comptroller General in a clause of an agreement under paragraph (1) is limited as provided in subparagraph (B) in the case of a party to the agreement, an entity that participates in the performance of the agreement, or a subordinate element of that party or entity if the only agreements or other transactions that the party, entity, or subordinate element entered into with Government entities in the year prior to the date of that agreement are cooperative agreements or transactions that were entered into under this section or section 2371 of this title.

(B) The only records of a party, other entity, or subordinate element referred to in subparagraph (A) that the Comptroller General may examine in the exercise of the right referred to in that subparagraph are records of the same type as the records that the Government has had the right to examine under the audit access clauses of the previous agreements or transactions referred to in such subparagraph that were entered into by that particular party, entity, or subordinate element.

(4) The head of the contracting activity that is carrying out the agreement may waive the applicability of the requirement in paragraph (1) to the agreement if the head of the contracting activity determines that it would not be in the public interest to apply the requirement to the agreement. The waiver shall be effective with respect to the agreement only if the head of the contracting activity transmits a notification of the waiver to Congress and the Comptroller General before entering into the agreement. The notification shall include the rationale for the determination.

(5) The Comptroller General may not examine records pursuant to a clause included in an agreement under paragraph (1) more than three years after the final payment is made by the United States under the agreement.

(d) APPROPRIATE USE OF AUTHORITY.—(1) The Secretary of Defense shall ensure that no official of an agency enters into a transaction (other than a contract, grant, or cooperative agreement) for a prototype project under the authority of this section unless one of the following conditions is met:

(A) There is at least one nontraditional defense contractor or nonprofit research institution participating to a significant extent in the prototype project.

(B) All significant participants in the transaction other than the Federal Government are small businesses (including small businesses participating in a program described under section 9 of the Small Business Act (15 U.S.C. 638)) or nontraditional defense contractors.

(C) At least one third of the total cost of the prototype project is to be paid out of funds provided by sources other than the Federal Government.

(D) The senior procurement executive for the agency determines in writing that exceptional circumstances justify the use of a transaction that provides for innovative business arrangements or structures that would not be feasible or appropriate under a contract, or would provide an opportunity to expand the defense supply base in a manner that would not be practical or feasible under a contract.

(2)(A) Except as provided in subparagraph (B), the amounts counted for the purposes of this subsection as being provided, or to be provided, by a party to a transaction with respect to a prototype project that is entered into under this section other than the Federal Government do not include costs that were incurred before the date on which the transaction becomes effective.

(B) Costs that were incurred for a prototype project by a party after the beginning of negotiations resulting in a transaction (other than a contract, grant, or cooperative agreement) with respect to the project before the date on which the transaction becomes effective may be counted for purposes of this subsection as being provided, or to be provided, by the party to the transaction if and to the extent that the official responsible for entering into the transaction determines in writing that—

(i) the party incurred the costs in anticipation of entering into the transaction; and

(ii) it was appropriate for the party to incur the costs before the transaction became effective in order to ensure the successful implementation of the transaction.

(e) DEFINITIONS.—In this section:

(1) The term ''nontraditional defense contractor'' has the meaning given the term under section 2302(9) of this title.

(2) The term ''small business'' means a small business concern as defined under section 3 of the Small Business Act (15 U.S.C. 632).

(f) FOLLOW-ON PRODUCTION CONTRACTS OR TRANSACTIONS.—(1) A transaction entered into under this section for a prototype project may provide for the award of a follow-on production contract or transaction to the participants in the transaction. A transaction includes all individual prototype subprojects awarded under the transaction to a consortium of United States industry and academic institutions.

(2) A follow-on production contract or transaction provided for in a transaction under paragraph (1) may be awarded to the participants in

the transaction without the use of competitive procedures, notwithstanding the requirements of section 2304 of this title, if—

(A) competitive procedures were used for the selection of parties for participation in the transaction; and

(B) the participants in the transaction successfully completed the prototype project provided for in the transaction.

(3) A follow-on production contract or transaction may be awarded, pursuant to this subsection, when the Department determines that an individual prototype or prototype subproject as part of a consortium is successfully completed by the participants.

(4) Award of a follow-on production contract or transaction pursuant to the terms under this subsection is not contingent upon the successful completion of all activities within a consortium as a condition for an award for follow-on production of a successfully completed prototype or prototype subproject within that consortium.

(5) Contracts and transactions entered into pursuant to this subsection may be awarded using the authority in subsection (a), under the authority of chapter 137 of this title, or under such procedures, terms, and conditions as the Secretary of Defense may establish by regulation.

(g) AUTHORITY TO PROVIDE PROTOTYPES AND FOLLOW-ON PRODUCTION ITEMS AS GOVERNMENT-FURNISHED EQUIPMENT.—An agreement entered into pursuant to the authority of subsection (a) or a follow-on contract or transaction entered into pursuant to the authority of subsection (f) may provide for prototypes or follow-on production items to be provided to another contractor as Government-furnished equipment.

(h) APPLICABILITY OF PROCUREMENT ETHICS REQUIREMENTS.—An agreement entered into under the authority of this section shall be treated as a Federal agency procurement for the purposes of chapter 21 of title 41.

(Added Pub. L. 114–92, div. A, title VIII, §815(a)(1), Nov. 25, 2015, 129 Stat. 893; amended Pub. L. 115–91, div. A, title II, §216, title VIII, §864, Dec. 12, 2017, 131 Stat. 1328, 1494; Pub. L. 115–232, div. A, title II, §211, Aug. 13, 2018, 132 Stat. 1674; Pub. L. 116–92, div. A, title XVII, §1731(a)(46), Dec. 20, 2019, 133 Stat. 1814.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§1801(d), 1841(b)(1), Jan. 1, 2021, 134 Stat. 4151, 4243, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 301 of this title, as added by section 1841(a) of Pub. L. 116–283, inserted after section 4002, and redesignated as section 4003 of this title. See Effective Date of 2021 Amendment note below.

AMENDMENTS

2019—Subsec. (d)(1)(C). Pub. L. 116–92 substituted ''sources other than'' for ''sources other than other than''.

2018—Subsec. (a)(2)(A). Pub. L. 115–232, §211(1)(A), substituted ''for a prototype project, and any follow-on production contract or transaction that is awarded pursuant to subsection (f),'' for ''(for a prototype project)'' in introductory provisions.

Subsec. (a)(2)(B). Pub. L. 115–232, §211(1)(B)(i), substituted ''for a prototype project, and any follow-on production contract or transaction that is awarded pursuant to subsection (f),'' for ''(for a prototype project)'' in introductory provisions.

Subsec. (a)(2)(B)(i). Pub. L. 115–232, §211(1)(B)(ii), substituted ''Under Secretary of Defense for Research and Engineering or the Under Secretary of Defense for Acquisition and Sustainment'' for ''Under Secretary of Defense for Acquisition, Technology, and Logistics'' in introductory provisions.

Subsec. (a)(3). Pub. L. 115–232, §211(1)(C), which directed substitution of ''Under Secretaries of Defense'' for ''Under Secretary of Defense for Acquisition, Technology, and Logistics'' in par. (3) of subsec. (a)(2), was executed by making the substitution in par. (3) of subsec. (a), to reflect the probable intent of Congress.

Subsec. (b)(2). Pub. L. 115–232, §211(2), inserted ''the prototype'' after ''carry out''.

Subsec. (f)(3) to (5). Pub. L. 115–232, §211(3), added pars. (3) and (4) and redesignated former par. (3) as (5).

2017—Subsec. (a)(2)(A). Pub. L. 115–91, §864(a)(1), (2), in introductory provisions, substituted ''for a transaction (for a prototype project)'' for ''for a prototype project'', ''$100,000,000'' for ''$50,000,000'', and ''$500,000,000'' for ''$250,000,000''.

Subsec. (a)(2)(B). Pub. L. 115–91, §864(a)(1), (3), in introductory provisions, substituted ''for a transaction (for a prototype project)'' for ''for a prototype project'' and ''$500,000,000'' for ''$250,000,000''.

Subsec. (d)(1)(A). Pub. L. 115–91, §216, inserted ''or nonprofit research institution'' after ''defense contractor''.

Subsec. (d)(1)(B). Pub. L. 115–91, §864(b), inserted ''(including small businesses participating in a program described under section 9 of the Small Business Act (15 U.S.C. 638))'' after ''small businesses''.

Subsec. (d)(1)(C). Pub. L. 115–91, §864(c), substituted ''provided by sources other than'' for ''provided by parties to the transaction''.

Subsec. (f)(1). Pub. L. 115–91, §864(d), inserted at end ''A transaction includes all individual prototype subprojects awarded under the transaction to a consortium of United States industry and academic institutions.''

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

RELAXATION OF DEPARTMENT OF DEFENSE OTHER TRANSACTION AUTHORITY REQUIREMENTS RELATED TO THE NATIONAL EMERGENCY FOR THE CORONAVIRUS DISEASE 2019

Pub. L. 116–136, div. B, title III, §13006, Mar. 27, 2020, 134 Stat. 522, provided that:

''(a) Notwithstanding paragraph (3) of section 2371b(a) of title 10, United States Code, the authority of a senior procurement executive or director of the Defense Advanced Research Projects Agency or Missile Defense Agency under paragraph (2)(A) of such section [probably should be ''subsection''], and the authority of the Under Secretaries of Defense under paragraph (2)(B) of such section [probably should be ''subsection''], for any transaction related to the national emergency for the Coronavirus Disease 2019 (COVID–19) may be delegated to such officials in the Department of Defense as the Secretary of Defense shall specify for purposes of this section.

''(b)(1) Notwithstanding clause (ii) of section 2371b(a)(2)(B) of title 10, United States Code, no advance notice to Congress is required under that clause for transitions described in that section that are related to the national emergency for the Coronavirus Disease 2019 (COVID–19).

''(2) In the event a transaction covered by paragraph (1) is carried out, the Under Secretary of Defense for

Research and Engineering or the Under Secretary of Defense for Acquisition and Sustainment, as applicable, shall submit to the congressional defense committees a notice on the carrying out of such transaction as soon as is practicable after the commencement of the carrying out of such transaction.

"(3) In this subsection, the term 'congressional defense committees' has the meaning given such term in section 101(a)(16) of title 10, United States Code."

UPDATED GUIDANCE

Pub. L. 114–92, div. A, title VIII, § 815(e), Nov. 25, 2015, 129 Stat. 896, provided that: "Not later than 180 days after the date of the enactment of this Act [Nov. 25, 2015], the Secretary of Defense shall issue updated guidance to implement the amendments made by this section [enacting this section, amending section 2302 of this title, amending provisions set out as a note under section 2358 of this title, and repealing provisions set out as a note under section 2371 of this title]."

§ 2372. Independent research and development costs: allowable costs

(a) REGULATIONS.—The Secretary of Defense shall prescribe regulations governing the payment by the Department of Defense of expenses incurred by contractors for independent research and development costs. Such regulations shall provide that expenses incurred for independent research and development shall be reported independently from other allowable indirect costs.

(b) COSTS TREATED AS FAIR AND REASONABLE, AND ALLOWABLE, EXPENSES.—The regulations prescribed under subsection (a) shall provide that independent research and development costs shall be considered a fair and reasonable, and allowable, indirect expense on Department of Defense contracts.

(c) ADDITIONAL CONTROLS.—Subject to subsection (d), the regulations prescribed under subsection (a) may include the following provisions:

(1) Controls on the reimbursement of costs to the contractor for expenses incurred for independent research and development to ensure that such costs were incurred for independent research and development.

(2) Implementation of regular methods for transmission—

(A) from the Department of Defense to contractors, in a reasonable manner, of timely and comprehensive information regarding planned or expected needs of the Department of Defense for future technology and advanced capability; and

(B) from contractors to the Department of Defense, in a reasonable manner, of information regarding progress by the contractor on the independent research and development programs of the contractor.

(d) LIMITATIONS ON REGULATIONS.—Regulations prescribed under subsection (a) may not include provisions that would infringe on the independence of a contractor to choose which technologies to pursue in its independent research and development program if the chief executive officer of the contractor determines that expenditures will advance the needs of the Department of Defense for future technology and advanced capability as transmitted pursuant to subsection (c)(2)(A).

(e) EFFECTIVE DATE.—The regulations prescribed under subsection (a) shall apply to indirect costs incurred on or after October 1, 2017.

(Added Pub. L. 101–510, div. A, title VIII, § 824(a)(1), Nov. 5, 1990, 104 Stat. 1603; amended Pub. L. 102–25, title VII, § 701(c), Apr. 6, 1991, 105 Stat. 113; Pub. L. 102–190, div. A, title VIII, § 802(a)(1), Dec. 5, 1991, 105 Stat. 1412; Pub. L. 102–484, div. A, title X, § 1052(27), Oct. 23, 1992, 106 Stat. 2500; Pub. L. 103–35, title II, § 201(c)(5), May 31, 1993, 107 Stat. 98; Pub. L. 104–106, div. D, title XLIII, § 4321(b)(11), Feb. 10, 1996, 110 Stat. 672; Pub. L. 114–328, div. A, title VIII, § 824(a)(1), Dec. 23, 2016, 130 Stat. 2277; Pub. L. 115–91, div. A, title X, § 1081(a)(35), Dec. 12, 2017, 131 Stat. 1596.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1832(j)(2), Jan. 1, 2021, 134 Stat. 4151, 4225, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to subchapter II of chapter 273 of this title, as added by section 1832(j)(1) of Pub. L. 116–283, inserted after section 3761, and redesignated as section 3762 of this title. See Effective Date of 2021 Amendment note below.

AMENDMENTS

2017—Subsec. (d). Pub. L. 115–91 substituted "subsection (c)(2)(A)" for "subsection (c)(3)(A)".

2016—Pub. L. 114–328 amended section generally. Prior to amendment, section related to payments to contractors for independent research and development and bid and proposal costs.

1996—Subsec. (i)(1). Pub. L. 104–106 substituted "2324(*l*)" for "2324(m)".

1993—Subsec. (g)(5). Pub. L. 103–35 substituted "section 2506" for "section 2522".

1992—Subsec. (e)(1). Pub. L. 102–484 substituted "on December 4, 1991" for "on the day before the date of the enactment of the National Defense Authorization Act for Fiscal Years 1992 and 1993".

1991—Pub. L. 102–190 substituted section catchline for one which read "Independent research and development" and amended text generally, substituting present provisions for provisions authorizing payment of independent research and development or bid and proposal costs, encouraging contractors to engage in research and development activities, and authorizing advance agreements regarding the manner and extent in which the Department of Defense may pay independent research and development costs or bid and proposal costs.

Subsec. (d)(2)(B). Pub. L. 102–25 substituted "subsection (b), including" for "subsection (b) or".

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

For effective date and applicability of amendment by Pub. L. 104–106, see section 4401 of Pub. L. 104–106, set out as a note under section 2302 of this title.

EFFECTIVE DATE OF 1991 AMENDMENT

Pub. L. 102–190, div. A, title VIII, § 802(e), Dec. 5, 1991, 105 Stat. 1414, provided that: "The amendments made by this section [amending this section and section 2330 of this title] shall take effect on October 1, 1992, and shall apply to independent research and development

and bid and proposal costs incurred by a contractor during fiscal years of that contractor that begin on or after that date.''

REGULATIONS

Pub. L. 102–190, div. A, title VIII, § 802(b), Dec. 5, 1991, 105 Stat. 1414, provided that: ''The Secretary of Defense shall prescribe proposed regulations to implement the amendment made by subsection (a)(1) [amending this section] not later than April 1, 1992, and shall prescribe final regulations for that purpose not later than June 1, 1992.''

STUDY BY OFFICE OF TECHNOLOGY ASSESSMENT

Pub. L. 102–190, div. A, title VIII, § 802(c), Dec. 5, 1991, 105 Stat. 1414, directed Director of the Office of Technology Assessment to conduct a study to determine effect of regulations prescribed under this section on the achievement of policy stated in former subsec. (g) of this section and submit a report containing results of such study to Committees on Armed Services of Senate and House of Representatives not later than Dec. 1, 1995, prior to repeal by Pub. L. 103–160, div. A, title II, § 266, Nov. 30, 1993, 107 Stat. 1611.

§ 2372a. Bid and proposal costs: allowable costs

(a) REGULATIONS.—The Secretary of Defense shall prescribe regulations governing the payment by the Department of Defense of expenses incurred by contractors for bid and proposal costs. Such regulations shall provide that expenses incurred for bid and proposal costs shall be reported independently from other allowable indirect costs.

(b) COSTS ALLOWABLE AS INDIRECT EXPENSES.—The regulations prescribed under subsection (a) shall provide that bid and proposal costs shall be allowable as indirect expenses on covered contracts, as defined in section 2324(*l*) of this title, to the extent that those costs are allocable, reasonable, and not otherwise unallowable by law or under the Federal Acquisition Regulation.

(c) GOAL FOR REIMBURSABLE BID AND PROPOSAL COSTS.—The Secretary shall establish a goal each fiscal year limiting the amount of reimbursable bid and proposal costs paid by the Department of Defense to an amount equal to not more than one percent of the total aggregate industry sales to the Department of Defense. To achieve such goal, the Secretary may not limit the payment of allowable bid and proposal costs for the covered year.

(d) PANEL.—(1) If the Department of Defense exceeds the goal established under subsection (c) for a fiscal year, within 180 days after exceeding the goal, the Secretary shall establish an advisory panel. The panel shall be supported by the Defense Acquisition University and the National Defense University, including administrative support.

(2) The panel shall be composed of nine individuals who are recognized experts in acquisition and procurement policy appointed by the Secretary. In making such appointments, the Secretary shall ensure that the members of the panel reflect diverse experiences in the public and private sector.

(3) The panel shall review laws, regulations, and practices that contribute to the expenses incurred by contractors for bids and proposals in the fiscal year concerned and recommend changes to such laws, regulations, and practices that may reduce expenses incurred by contractors for bids and proposals.

(4)(A) Not later than six months after the establishment of the panel, the panel shall submit to the Secretary and the congressional defense committees an interim report on the findings of the panel.

(B) Not later than one year after the establishment of the panel, the panel shall submit to the Secretary and the congressional defense committees a final report on the findings of the panel.

(5) The panel shall terminate on the day the panel submits the final report under paragraph (4)(B).

(6) The Secretary of Defense may use amounts available in the Department of Defense Acquisition Workforce Development Fund established under section 1705 of this title to support the activities of the panel established under this subsection.

(e) EFFECTIVE DATE.—The regulations prescribed under subsection (a) shall apply to indirect costs incurred on or after October 1, 2017.

(Added Pub. L. 114–328, div. A, title VIII, § 824(b)(1), Dec. 23, 2016, 130 Stat. 2278.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1832(j)(2), Jan. 1, 2021, 134 Stat. 4151, 4225, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to subchapter II of chapter 273 of this title, as added by section 1832(j)(1) of Pub. L. 116–283, inserted after section 3762, and redesignated as section 3763 of this title. See Effective Date of 2021 Amendment note below.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 2373. Procurement for experimental purposes

(a) AUTHORITY.—The Secretary of Defense and the Secretaries of the military departments may each buy ordnance, signal, chemical activity, transportation, energy, medical, space-flight, telecommunications, and aeronautical supplies, including parts and accessories, and designs thereof, that the Secretary of Defense or the Secretary concerned considers necessary for experimental or test purposes in the development of the best supplies that are needed for the national defense.

(b) PROCEDURES.—Purchases under this section may be made inside or outside the United States and by contract or otherwise. Chapter 137 of this title applies only when such purchases are made in quantities greater than necessary for experimentation, technical evaluation, assessment of operational utility, or safety or to provide a residual operational capability.

(Added Pub. L. 103–160, div. A, title VIII, § 822(c)(1), Nov. 30, 1993, 107 Stat. 1706; amended Pub. L. 103–337, div. A, title X, § 1070(g), Oct. 5, 1994, 108 Stat. 2859; Pub. L. 104–106, div. A, title VIII, § 812, Feb. 10, 1996, 110 Stat. 395; Pub. L. 114–92, div. A, title VIII, § 814, Nov. 25, 2015, 129

Stat. 893; Pub. L. 115–232, div. A, title VIII, § 886, Aug. 13, 2018, 132 Stat. 1916.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1841(b)(1), Jan. 1, 2021, 134 Stat. 4151, 4243, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 301 of this title, as added by section 1841(a) of Pub. L. 116–283, inserted after section 4003, and redesignated as section 4004 of this title. See Effective Date of 2021 Amendment note below.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 4504 and 9504 of this title, prior to repeal by Pub. L. 103–160, § 822(c)(2).

AMENDMENTS

2018—Subsec. (a). Pub. L. 115–232 inserted ''telecommunications,'' after ''space-flight,''.

2015—Subsec. (a). Pub. L. 114–92, § 814(a), inserted ''transportation, energy, medical, space-flight,'' before ''and aeronautical supplies''.

Subsec. (b). Pub. L. 114–92, § 814(b), substituted ''only when such purchases are made in quantities greater than necessary for experimentation, technical evaluation, assessment of operational utility, or safety or to provide a residual operational capability'' for ''only when such purchases are made in quantity''.

1996—Subsec. (b). Pub. L. 104–106 inserted ''only'' after ''applies'' in second sentence.

1994—Subsec. (a). Pub. L. 103–337 substituted ''chemical activity, and aeronautical supplies,'' for ''and chemical activity supplies,''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 2374. Merit-based award of grants for research and development

(a) It is the policy of Congress that an agency named in section 2303(a) of this title should not be required by legislation to award a new grant for research, development, test, or evaluation to a non-Federal Government entity. It is further the policy of Congress that any program, project, or technology identified in legislation be awarded through merit-based selection procedures.

(b) A provision of law may not be construed as requiring a new grant to be awarded to a specified non-Federal Government entity unless that provision of law—

(1) specifically refers to this subsection;

(2) specifically identifies the particular non-Federal Government entity involved; and

(3) specifically states that the award to that entity is required by such provision of law in contravention of the policy set forth in subsection (a).

(c) For purposes of this section, a grant is a new grant unless the work provided for in the grant is a continuation of the work performed by the specified entity under a preceding grant.

(d) This section shall not apply with respect to any grant that calls upon the National Academy of Sciences to investigate, examine, or experiment upon any subject of science or art of significance to an agency named in section 2303(a) of this title and to report on such matters to the Congress or any agency of the Federal Government.

(Added Pub. L. 103–355, title VII, § 7203(a)(2), Oct. 13, 1994, 108 Stat. 3380.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1841(c), Jan. 1, 2021, 134 Stat. 4151, 4243, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 301 of this title, as added by section 1841(a) of Pub. L. 116–283, added after section 4007, and redesignated as section 4008 of this title. See Effective Date of 2021 Amendment note below.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE

For effective date and applicability of section, see section 10001 of Pub. L. 103–355, set out as an Effective Date of 1994 Amendment note under section 2302 of this title.

§ 2374a. Prizes for advanced technology achievements

(a) AUTHORITY.—The Secretary of Defense, acting through the Under Secretary of Defense for Research and Engineering, the Under Secretary of Defense for Acquisition and Sustainment, and the service acquisition executive for each military department, may carry out programs to award cash prizes and other types of prizes that the Secretary determines are appropriate to recognize outstanding achievements in basic, advanced, and applied research, technology development, and prototype development that have the potential for application to the performance of the military missions of the Department of Defense.

(b) COMPETITION REQUIREMENTS.—Each program under subsection (a) shall use a competitive process for the selection of recipients of cash prizes. The process shall include the widely-advertised solicitation of submissions of research results, technology developments, and prototypes.

(c) LIMITATIONS.—(1) No prize competition may result in the award of a prize with a fair market value of more than $10,000,000.

(2) No prize competition may result in the award of more than $1,000,000 in cash prizes without the approval of the Under Secretary of Defense for Research and Engineering.

(3) No prize competition may result in the award of a solely nonmonetary prize with a fair market value of more than $10,000 without the approval of the Under Secretary of Defense for Research and Engineering.

(d) RELATIONSHIP TO OTHER AUTHORITY.—A program under subsection (a) may be carried out

in conjunction with or in addition to the exercise of any other authority of an official referred to in that subsection to acquire, support, or stimulate basic, advanced and applied research, technology development, or prototype projects.

(e) ACCEPTANCE OF FUNDS.—In addition to such sums as may be appropriated or otherwise made available to the Secretary to award prizes under this section, the Secretary may accept funds or nonmonetary items from other departments and agencies of the Federal Government, from State and local governments, and from the private sector, to award prizes under this section. The Secretary may not give any special consideration to any private sector entity in return for a donation.

(f) USE OF PRIZE AUTHORITY.—Use of prize authority under this section shall be considered the use of competitive procedures for the purposes of section 2304 of this title.

(Added Pub. L. 106–65, div. A, title II, § 244(a), Oct. 5, 1999, 113 Stat. 552; amended Pub. L. 107–314, div. A, title II, § 248(a), Dec. 2, 2002, 116 Stat. 2502; Pub. L. 108–136, div. A, title X, § 1031(a)(20), Nov. 24, 2003, 117 Stat. 1598; Pub. L. 109–163, div. A, title II, § 257, Jan. 6, 2006, 119 Stat. 3184; Pub. L. 109–364, div. A, title II, § 212, Oct. 17, 2006, 120 Stat. 2119; Pub. L. 111–84, div. A, title II, § 253, Oct. 28, 2009, 123 Stat. 2243; Pub. L. 111–383, div. A, title IX, § 901(j)(4), Jan. 7, 2011, 124 Stat. 4324; Pub. L. 113–66, div. A, title II, § 263, Dec. 26, 2013, 127 Stat. 726; Pub. L. 113–291, div. A, title II, § 211, Dec. 19, 2014, 128 Stat. 3324; Pub. L. 114–92, div. A, title X, § 1079(a), Nov. 25, 2015, 129 Stat. 999; Pub. L. 114–328, div. A, title X, § 1081(c)(6), Dec. 23, 2016, 130 Stat. 2420; Pub. L. 115–91, div. A, title II, § 213, Dec. 12, 2017, 131 Stat. 1324; Pub. L. 115–232, div. A, title X, § 1081(a)(21), Aug. 13, 2018, 132 Stat. 1984; Pub. L. 116–92, div. A, title II, § 215, Dec. 20, 2019, 133 Stat. 1257.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1842(b), Jan. 1, 2021, 134 Stat. 4151, 4244, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 303 of this title, as added by section 1842(a) of Pub. L. 116–283, inserted after section 4064, and redesignated as section 4065 of this title. See Effective Date of 2021 Amendment note below.

AMENDMENTS

2019—Subsec. (a). Pub. L. 116–92 substituted ''Under Secretary of Defense for Research and Engineering, the Under Secretary of Defense for Acquisition and Sustainment,'' for ''Assistant Secretary of Defense for Research and Engineering''.

2018—Subsec. (e). Pub. L. 115–232 substituted ''Federal Government,'' for ''Federal Government,,''.

2017—Subsec. (a). Pub. L. 115–91, § 213(1), substituted ''and other types of prizes that the Secretary determines are appropriate to recognize'' for ''in recognition of''.

Subsec. (c)(1). Pub. L. 115–91, § 213(2)(A), substituted ''prize with a fair market value of'' for ''cash prize of''.

Subsec. (c)(2). Pub. L. 115–91, § 213(2)(B), substituted ''Under Secretary of Defense for Research and Engineering'' for ''Under Secretary of Defense for Acquisition, Technology, and Logistics''.

Subsec. (c)(3). Pub. L. 115–91, § 213(2)(C), added par. (3).

Subsec. (e). Pub. L. 115–91, § 213(3), inserted ''or nonmonetary items'' after ''accept funds'', substituted '', from State and local governments, and from the private sector'' for ''and from State and local governments'', and inserted at end ''The Secretary may not give any special consideration to any private sector entity in return for a donation.''

Subsec. (f). Pub. L. 115–91, § 213(4), amended subsec. (f) generally. Prior to amendment, text read as follows: ''The authority to award prizes under subsection (a) shall terminate at the end of September 30, 2018.''

2016—Subsecs. (f), (g). Pub. L. 114–328, § 1081(c)(6), made technical amendment to directory language of Pub. L. 114–92, § 1079(a). See 2015 Amendment note below.

2015—Subsecs. (f), (g). Pub. L. 114–92, § 1079(a), as amended by Pub. L. 114–328, § 1081(c)(6), redesignated subsec. (g) as (f) and struck out former subsec. (f) which related to biennial reports.

2014—Subsec. (c)(1). Pub. L. 113–291, § 211(a), substituted ''No prize competition may result in the award of a cash prize of more than $10,000,000.'' for ''The total amount made available for award of cash prizes in a fiscal year may not exceed $10,000,000.''

Subsec. (e). Pub. L. 113–291, § 211(b)(2), added subsec. (e). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 113–291, § 211(c)(3), substituted ''BIENNIAL'' for ''ANNUAL'' in heading.

Pub. L. 113–291, § 211(b)(1), redesignated subsec. (e) as (f). Former subsec. (f) redesignated (g).

Subsec. (f)(1). Pub. L. 113–291, § 211(c)(1), substituted ''every other year'' for ''each year'' and ''two fiscal years'' for ''fiscal year''.

Subsec. (f)(2). Pub. L. 113–291, § 211(c)(2), substituted ''a period of two fiscal years'' for ''a fiscal year'' in introductory provisions.

Subsec. (g). Pub. L. 113–291, § 211(b)(1), redesignated subsec. (f) as (g).

2013—Subsec. (f). Pub. L. 113–66 substituted ''September 30, 2018'' for ''September 30, 2013''.

2011—Subsec. (a). Pub. L. 111–383 substituted ''Assistant Secretary of Defense for Research and Engineering'' for ''Director of Defense Research and Engineering''.

2009—Subsec. (f). Pub. L. 111–84 substituted ''2013'' for ''2010''.

2006—Subsec. (a). Pub. L. 109–364, § 212(a)(1), substituted ''Director of Defense Research and Engineering and the service acquisition executive for each military department'' for ''Director of the Defense Advanced Research Projects Agency'' and ''programs'' for ''a program''.

Subsec. (b). Pub. L. 109–364, § 212(a)(2)(A), substituted ''Each program'' for ''The program''.

Subsec. (d). Pub. L. 109–364, § 212(a)(2)(B), substituted ''A program'' for ''The program'' and ''an official referred to in that subsection'' for ''the Director''.

Subsec. (e). Pub. L. 109–364, § 212(c), reenacted heading without change and amended text generally. Prior to amendment, subsec. (e) required an annual report, which included the results of consultations between the Director and officials of the military departments, a description of goals, cash prizes, methods used for submissions, a description of resources, and a description of transition plans.

Pub. L. 109–163 reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''Promptly after the end of each fiscal year during which one or more prizes are awarded under the program under subsection (a), the Secretary shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the administration of the program for that fiscal year. The report shall include the following:

''(1) The military applications of the research, technology, or prototypes for which prizes were awarded.

''(2) The total amount of the prizes awarded.

''(3) The methods used for solicitation and evaluation of submissions, together with an assessment of the effectiveness of those methods.''

Subsec. (f). Pub. L. 109–364, § 212(b), substituted ''2010'' for ''2007''.

2003—Subsec. (e). Pub. L. 108–136 inserted ''during which one or more prizes are awarded under the program under subsection (a)'' after ''each fiscal year'' in introductory provisions.

2002—Subsec. (f). Pub. L. 107–314 substituted ''September 30, 2007'' for ''September 30, 2003''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 2016 AMENDMENT

Pub. L. 114–328, div. A, title X, § 1081(c), Dec. 23, 2016, 130 Stat. 2419, provided that the amendment made by section 1081(c)(6) is effective as of Nov. 25, 2015, and as if included in Pub. L. 114–92 as enacted.

EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by Pub. L. 111–383 effective Jan. 1, 2011, see section 901(p) of Pub. L. 111–383, set out as a note under section 131 of this title.

PRIZE COMPETITION TO IDENTIFY ROOT CAUSE OF PHYSIOLOGICAL EPISODES ON NAVY, MARINE CORPS, AND AIR FORCE TRAINING AND OPERATIONAL AIRCRAFT

Pub. L. 115–91, div. A, title X, § 1089, Dec. 12, 2017, 131 Stat. 1605, as amended by Pub. L. 116–283, div. A, title XVIII, § 1842(c)(1), Jan. 1, 2021, 134 Stat. 4244, provided that:

''(a) IN GENERAL.—Under the authority of section 2374a of title 10, United States Code, and section 24 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3719), the Secretary of Defense, in consultation with the Secretary of the Navy, the Secretary of the Air Force, the Commandant of the Marine Corps, and the heads of any other appropriate Federal agencies that have experience in prize competitions, and when appropriate, in coordination with private organizations, may establish a prize competition designed to accelerate identification of the root cause or causes of, or find solutions to, physiological episodes experienced in Navy, Marine Corps, and Air Force training and operational aircraft.

''(b) EVALUATION OF PERSONNEL.—The Secretary of Defense, or the Secretary's designee, shall select the person or persons to conduct the competition authorized in subsection (a) and evaluate any submissions.

''(c) LIMITATION.—The Secretary of Defense may not exercise the authority under subsection (a) before the date that is 15 days after the date on which the Secretary of Defense submits to [the] congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] certification in writing that the use of the authority will not compromise classified information, proprietary information, or intellectual property.''

[Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1842(c)(1), Jan. 1, 2021, 134 Stat. 4151, 4244, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, section 1089(a) of Pub. L. 115–91, set out above, is amended by striking ''section 2374a'' and inserting ''section 4065''.]

§ 2374b. Disclosure requirements for recipients of research and development funds

(a) IN GENERAL.—Except as provided in subsections (b) and (c), an individual or entity (including a State or local government) that uses funds received from the Department of Defense to carry out research or development activities shall include, in any public document pertaining to such activities, a clear statement indicating the dollar amount of the funds received from the Department for such activities.

(b) EXCEPTION.—The disclosure requirement under subsection (a) shall not apply to a public document consisting of fewer than 280 characters.

(c) WAIVER.—The Secretary of Defense may waive the disclosure requirement under subsection (a) on a case-by-case basis.

(d) PUBLIC DOCUMENT DEFINED.—In this section, the term ''public document'' means any document or other written statement made available for public reference or use, regardless of whether such document or statement is made available in hard copy or electronic format.

(Added Pub. L. 116–283, div. A, title II, § 212(a)(1), Jan. 1, 2021, 134 Stat. 3456.)

REPEAL OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1881(a), Jan. 1, 2021, 134 Stat. 4151, 4293, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, chapter 139 of this title, and therefore this section, is repealed.

PRIOR PROVISIONS

A prior section 2374b, added Pub. L. 107–314, div. A, title II, § 248(c)(1), Dec. 2, 2002, 116 Stat. 2502, related to prizes for achievements in promoting science, mathematics, engineering, or technology education, prior to repeal by Pub. L. 112–239, div. A, title X, § 1076(g)(4), Jan. 2, 2013, 126 Stat. 1955.

EFFECTIVE DATE OF REPEAL

Repeal effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

EFFECTIVE DATE

Pub. L. 116–283, div. A, title II, § 212(b), Jan. 1, 2021, 134 Stat. 3456, provided that: ''The amendments made by subsection (a) [enacting this section] shall take effect on October 1, 2021, and shall apply with respect to funds for research and development that are awarded by the Department of Defense on or after that date.''

CHAPTER 140—PROCUREMENT OF COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES

Sec.
2375. Relationship of other provisions of law to procurement of commercial products and commercial services.
2376. Definitions.
2377. Preference for commercial products and commercial services.
[2378. Repealed.]
2379. Procurement of a major weapon system as a commercial product: requirement for prior determination by Secretary of Defense and notification to Congress.
2380. Commercial product and commercial service determinations by Department of Defense.
2380a. Treatment of certain products and services as commercial products and commercial services.
2380b. Treatment of commingled items purchased by contractors as commercial products.

TRANSFER OF CHAPTER

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1821(a)(1), Jan. 1, 2021, 134 Stat. 4151, 4194, pro-

vided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this chapter is transferred to part V of subtitle A of this title, as added by section 801 of Pub. L. 115–232, inserted in place of chapter 247 as enacted by that section, and redesignated as chapter 247 of this title. Except for section 2380b of this title, sections in this chapter, as transferred and redesignated by section 1821(a)(1) of Pub. L. 116–283, were redesignated by section 1821(a)(2) of Pub. L. 116–283. Section 2380b of this title was amended so as to become section 3457(c) of this title by section 1821(b)(7)(A), (B) of Pub. L. 116–283. See Effective Date of 2021 Amendment note below and Renumbering of Section, Renumbering and Amendment of Section, and Amendment of Section notes for the individual sections in this chapter.

AMENDMENTS

2018—Pub. L. 115–232, div. A, title VIII, § 836(d)(8)(A), (H), Aug. 13, 2018, 132 Stat. 1868, 1869, substituted ''PROCUREMENT OF COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES'' for ''PROCUREMENT OF COMMERCIAL ITEMS'' in chapter heading, and amended analysis generally, substituting items 2375 to 2380b for former items 2375 ''Relationship of commercial item provisions to other provisions of law'', 2376 ''Definitions'', 2377 ''Preference for acquisition of commercial items'', 2379 ''Requirement for determination by Secretary of Defense and notification to Congress before procurement of major weapon systems as commercial items'', 2380 ''Commercial item determinations by Department of Defense'', 2380a ''Treatment of certain items as commercial items'', and 2380B ''Treatment of items purchased prior to release of prime contract requests for proposals as commercial items''.

2016—Pub. L. 114–328, div. A, title VIII, §§ 833(b)(3)(B), 877(b), 878(b)(2), Dec. 23, 2016, 130 Stat. 2284, 2312, added items 2380a and 2380B and struck out items 2378 ''Procurement of copier paper containing specified percentages of post-consumer recycled content'' and 2380A ''Treatment of goods and services provided by nontraditional defense contractors as commercial items''.

2015—Pub. L. 114–92, div. A, title VIII, §§ 851(a)(2), 857(b), Nov. 25, 2015, 129 Stat. 916, 921, added items 2380 and 2380A.

2006—Pub. L. 109–163, div. A, title VIII, § 803(a)(2), Jan. 6, 2006, 119 Stat. 3371, added item 2379.

1997—Pub. L. 105–85, div. A, title III, § 350(b), Nov. 18, 1997, 111 Stat. 1692, added item 2378.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 2375. Relationship of other provisions of law to procurement of commercial products and commercial services

(a) APPLICABILITY OF GOVERNMENT-WIDE STATUTES.—(1) No contract for the procurement of a commercial product or commercial service entered into by the head of an agency shall be subject to any law properly listed in the Federal Acquisition Regulation pursuant to section 1906(b) of title 41.

(2) No subcontract under a contract for the procurement of a commercial product or commercial service entered into by the head of an agency shall be subject to any law properly listed in the Federal Acquisition Regulation pursuant to section 1906(c) of title 41.

(3) No contract for the procurement of a commercially available off-the-shelf item entered into by the head of an agency shall be subject to any law properly listed in the Federal Acquisition Regulation pursuant to section 1907 of title 41.

(b) APPLICABILITY OF DEFENSE-UNIQUE STATUTES TO CONTRACTS FOR COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES.—(1) The Defense Federal Acquisition Regulation Supplement shall include a list of defense-unique provisions of law and of contract clause requirements based on government-wide acquisition regulations, policies, or executive orders not expressly authorized in law that are inapplicable to contracts for the procurement of commercial products and commercial services. A provision of law or contract clause requirement properly included on the list pursuant to paragraph (2) does not apply to purchases of commercial products and commercial services by the Department of Defense. This section does not render a provision of law or contract clause requirement not included on the list inapplicable to contracts for the procurement of commercial products and commercial services.

(2) A provision of law or contract clause requirement described in subsection (e) that is enacted after October 13, 1994, shall be included on the list of inapplicable provisions of law and contract clause requirements required by paragraph (1) unless the Under Secretary of Defense for Acquisition and Sustainment makes a written determination that it would not be in the best interest of the Department of Defense to exempt contracts for the procurement of commercial products and commercial services from the applicability of the provision or contract clause requirement.

(c) APPLICABILITY OF DEFENSE-UNIQUE STATUTES TO SUBCONTRACTS FOR COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES.—(1) The Defense Federal Acquisition Regulation Supplement shall include a list of provisions of law and of contract clause requirements based on government-wide acquisition regulations, policies, or executive orders not expressly authorized in law that are inapplicable to subcontracts under a Department of Defense contract or subcontract for the procurement of commercial products and commercial services. A provision of law or contract clause requirement properly included on the list pursuant to paragraph (2) does not apply to those subcontracts. This section does not render a provision of law or contract clause requirement not included on the list inapplicable to subcontracts under a contract for the procurement of commercial products and commercial services.

(2) A provision of law or contract clause requirement described in subsection (e) shall be included on the list of inapplicable provisions of law and contract clause requirements required by paragraph (1) unless the Under Secretary of Defense for Acquisition and Sustainment makes a written determination that it would not be in the best interest of the Department of Defense to exempt subcontracts under a contract for the procurement of commercial products and commercial services from the applicability of the provision or contract clause requirement.

(3) In this subsection, the term ''subcontract'' includes a transfer of commercial products and commercial services between divisions, subsidiaries, or affiliates of a contractor or subcontractor. The term does not include agreements entered into by a contractor for the supply of commodities that are intended for use in the performance of multiple contracts with the Department of Defense and other parties and are not identifiable to any particular contract.

(4) This subsection does not authorize the waiver of the applicability of any provision of law or contract clause requirement with respect to any first-tier subcontract under a contract with a prime contractor reselling or distributing commercial products and commercial services of another contractor without adding value.

(d) APPLICABILITY OF DEFENSE-UNIQUE STATUTES TO CONTRACTS FOR COMMERCIALLY AVAILABLE, OFF-THE-SHELF ITEMS.—(1) The Defense Federal Acquisition Regulation Supplement shall include a list of provisions of law and of contract clause requirements based on government-wide acquisition regulations, policies, or executive orders not expressly authorized in law that are inapplicable to contracts for the procurement of commercially available off-the-shelf items. A provision of law or contract clause requirement properly included on the list pursuant to paragraph (2) does not apply to Department of Defense contracts for the procurement of commercially available off-the-shelf items. This section does not render a provision of law or contract clause requirement not included on the list inapplicable to contracts for the procurement of commercially available off-the-shelf items.

(2) A provision of law or contract clause requirement described in subsection (e) shall be included on the list of inapplicable provisions of law and contract clause requirements required by paragraph (1) unless the Under Secretary of Defense for Acquisition and Sustainment makes a written determination that it would not be in the best interest of the Department of Defense to exempt contracts for the procurement of commercially available off-the-shelf items from the applicability of the provision or contract clause requirement.

(e) COVERED PROVISION OF LAW OR CONTRACT CLAUSE REQUIREMENT.—A provision of law or contract clause requirement referred to in subsections (b)(2), (c)(2), and (d)(2) is a provision of law or contract clause requirement that the Under Secretary of Defense for Acquisition and Sustainment determines sets forth policies, procedures, requirements, or restrictions for the procurement of property or services by the Federal Government, except for a provision of law or contract clause requirement that—

(1) provides for criminal or civil penalties;

(2) requires that certain articles be bought from American sources pursuant to section 2533a of this title, or requires that strategic materials critical to national security be bought from American sources pursuant to section 2533b of this title; or

(3) specifically refers to this section and provides that, notwithstanding this section, it shall be applicable to contracts for the procurement of commercial products and commercial services.

(Added Pub. L. 103–355, title VIII, § 8102, Oct. 13, 1994, 108 Stat. 3390; amended Pub. L. 105–85, div. A, title X, § 1073(a)(51), Nov. 18, 1997, 111 Stat. 1903; Pub. L. 107–107, div. A, title X, § 1048(a)(18), Dec. 28, 2001, 115 Stat. 1223; Pub. L. 111–350, § 5(b)(21), Jan. 4, 2011, 124 Stat. 3844; Pub. L. 114–328, div. A, title VIII, § 874(a), Dec. 23, 2016, 130 Stat. 2308; Pub. L. 115–232, div. A, title VIII, §§ 836(d)(1), (8)(B), 837(a), Aug. 13, 2018, 132 Stat. 1866, 1868, 1875; Pub. L. 116–92, div. A, title IX, § 902(57), Dec. 20, 2019, 133 Stat. 1549; Pub. L. 116–283, div. A, title XVIII, § 1870(c)(6)(A), Jan. 1, 2021, 134 Stat. 4285.)

RENUMBERING AND AMENDMENT OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1821(a)(2), 1870(c)(6)(A), Jan. 1, 2021, 134 Stat. 4151, 4195, 4285, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law—

(1) this section, as part of chapter 247 of this title as transferred and redesignated by section 1821(a)(1) of Pub. L. 116–283, is redesignated as section 3452 of this title; and

(2) subsection (e)(2) of this section is amended by striking ''section 2533a'' and ''section 2533b'' and inserting ''section 4862'' and ''section 4863'', respectively.

See Effective Date of 2021 Amendment note below.

AMENDMENTS

2021—Subsec. (e)(2). Pub. L. 116–283, § 1870(c)(6)(A), substituted ''section 4862'' for ''section 2533a'' and ''section 4863'' for ''section 2533b''.

2019—Subsecs. (b)(2), (c)(2), (d)(2), (e). Pub. L. 116–92 substituted ''Under Secretary of Defense for Acquisition and Sustainment'' for ''Under Secretary of Defense for Acquisition, Technology, and Logistics''.

2018—Pub. L. 115–232, § 836(d)(8)(B), substituted ''Relationship of other provisions of law to procurement of commercial products and commercial services'' for ''Relationship of commercial item provisions to other provisions of law'' in section catchline.

Subsec. (a)(1), (2). Pub. L. 115–232, § 836(d)(1)(A), substituted ''commercial product or commercial service'' for ''commercial item''.

Subsec. (b). Pub. L. 115–232, § 836(d)(1)(B), in heading, substituted ''Commercial Products and Commercial Services'' for ''Commercial Items'' and, in text, substituted ''commercial products and commercial services'' for ''commercial items'' wherever appearing.

Subsec. (b)(2). Pub. L. 115–232, § 837(a), substituted ''October 13, 1994'' for ''January 1, 2015''.

Subsec. (c). Pub. L. 115–232, § 836(d)(1)(B), in heading, substituted ''Commercial Products and Commercial Services'' for ''Commercial Items'' and, in text, substituted ''commercial products and commercial services'' for ''commercial items'' wherever appearing.

Subsec. (e)(3). Pub. L. 115–232, § 836(d)(1)(C), substituted ''commercial products and commercial services'' for ''commercial items''.

2016—Pub. L. 114–328 amended section generally. Prior to amendment, text read as follows:

''(a) APPLICABILITY OF TITLE.—Unless otherwise specifically provided, nothing in this chapter shall be construed as providing that any other provision of this title relating to procurement is inapplicable to the procurement of commercial items.

''(b) LIST OF LAWS INAPPLICABLE TO CONTRACTS FOR THE ACQUISITION OF COMMERCIAL ITEMS.—No contract for the procurement of a commercial item entered into by the head of an agency shall be subject to any law properly listed in the Federal Acquisition Regulation (pursuant to section 1906 of title 41).

''(c) CROSS REFERENCE TO EXCEPTION TO COST OR PRICING DATA REQUIREMENTS FOR COMMERCIAL ITEMS.—For a

provision relating to an exception for requirements for cost or pricing data for contracts for the procurement of commercial items, see section 2306a(b) of this title.''

2011—Subsec. (b). Pub. L. 111–350 substituted ''section 1906 of title 41'' for ''section 34 of the Office of Federal Procurement Policy Act (41 U.S.C. 430)''.

2001—Subsec. (b). Pub. L. 107–107 inserted ''(41 U.S.C. 430)'' after ''section 34 of the Office of Federal Procurement Policy Act''.

1997—Subsec. (c). Pub. L. 105–85 substituted ''a provision relating to an exception'' for ''provisions relating to exceptions'' and ''section 2306a(b)'' for ''section 2306a(d)''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by section 836(d)(1), (8)(B) of Pub. L. 115–232 effective Jan. 1, 2020, subject to a savings provision, see section 836(h) of Pub. L. 115–232, set out as an Effective Date of 2018 Amendment; Savings Provision note under section 453b of Title 6, Domestic Security.

EFFECTIVE DATE

For effective date and applicability of chapter, see section 10001 of Pub. L. 103–355 set out as an Effective Date of 1994 Amendment note under section 2302 of this title.

CHANGES TO DEFENSE FEDERAL ACQUISITION REGULATION SUPPLEMENT

Pub. L. 114–328, div. A, title VIII, § 874(b), Dec. 23, 2016, 130 Stat. 2310, as amended by Pub. L. 116–92, div. A, title IX, § 902(58), Dec. 20, 2019, 133 Stat. 1549, provided that:

''(1) IN GENERAL.—To the maximum extent practicable, the Under Secretary of Defense for Acquisition and Sustainment shall ensure that—

''(A) the Defense Federal Acquisition Regulation Supplement does not require the inclusion of contract clauses in contracts for the procurement of commercial items or contracts for the procurement of commercially available off-the-shelf items, unless such clauses are—

''(i) required to implement provisions of law or executive orders applicable to such contracts; or

''(ii) determined to be consistent with standard commercial practice; and

''(B) the flow-down of contract clauses to subcontracts under contracts for the procurement of commercial items or commercially available off-the-shelf items is prohibited unless such flow-down is required to implement provisions of law or executive orders applicable to such subcontracts.

''(2) SUBCONTRACTS.—In this subsection, the term 'subcontract' includes a transfer of commercial items between divisions, subsidiaries, or affiliates of a contractor or subcontractor. The term does not include agreements entered into by a contractor for the supply of commodities that are intended for use in the performance of multiple contracts with the Department of Defense and other parties and are not identifiable to any particular contract.''

PROVISIONS NOT AFFECTED BY TITLE VIII OF PUB. L. 103–355

Pub. L. 103–355, title VIII, § 8304, Oct. 13, 1994, 108 Stat. 3398, as amended by Pub. L. 115–232, div. A, title VIII, § 812(a)(2)(C)(iii), Aug. 13, 2018, 132 Stat. 1847, provided that: ''Nothing in this title [see Tables for classification] shall be construed as modifying or superseding, or as intended to impair or restrict, authorities or responsibilities under—

''(1) section 7102 of the Federal Acquisition Streamlining Act of 1994 [Pub. L. 103–355, 15 U.S.C. 644 note];

''(2) the Brooks Automatic Data Processing Act (section 111 of the Federal Property and Administrative Services Act of 1949 ([former] 40 U.S.C. 759));

''(3) Brooks Architect-Engineers Act (title IX of the Federal Property and Administrative Services Act of 1949 ([former] 40 U.S.C. 541 et seq.) [now 40 U.S.C. 1101–1104]);

''(4) subsections (a) and (d) of section 8 of the Small Business Act (15 U.S.C. 637(a) and (d)); or

''(5) the Javits-Wagner-O'Day Act ([former] 41 U.S.C. 46–48c) [now 41 U.S.C. 8501 et seq.].''

§ 2376. Definitions

In this chapter:

(1) The terms ''commercial product'', ''commercial service'', ''nondevelopmental item'', ''component'', and ''commercial component'' have the meanings provided in sections 103, 103a, 110, 105, and 102, respectively, of title 41.

(2) The term ''head of an agency'' means the Secretary of Defense, the Secretary of Homeland Security, and the Administrator of the National Aeronautics and Space Administration.

(3) The term ''agency'' means the Department of Defense, the Coast Guard, and the National Aeronautics and Space Administration.

(Added Pub. L. 103–355, title VIII, § 8103, Oct. 13, 1994, 108 Stat. 3390; amended Pub. L. 107–107, div. A, title X, § 1048(a)(19), Dec. 28, 2001, 115 Stat. 1223; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 111–350, § 5(b)(22), Jan. 4, 2011, 124 Stat. 3844; Pub. L. 115–232, div. A, title VIII, § 836(d)(2), Aug. 13, 2018, 132 Stat. 1866.)

RENUMBERING OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1821(a)(2), Jan. 1, 2021, 134 Stat. 4151, 4195, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section, as part of chapter 247 of this title as transferred and redesignated by section 1821(a)(1) of Pub. L. 116–283, is redesignated as section 3451 of this title. See Effective Date of 2021 Amendment note below.

AMENDMENTS

2018—Par. (1). Pub. L. 115–232 substituted ''terms 'commercial product', 'commercial service','' for ''terms 'commercial item','' and ''sections 103, 103a, 110, 105, and 102, respectively, of title 41'' for ''chapter 1 of title 41''.

2011—Par. (1). Pub. L. 111–350 substituted ''chapter 1 of title 41'' for ''section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403)''.

2002—Par. (2). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

2001—Par. (1). Pub. L. 107–107 inserted ''(41 U.S.C. 403)'' after ''section 4 of the Office of Federal Procurement Policy Act''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115–232 effective Jan. 1, 2020, subject to a savings provision, see section 836(h) of Pub. L. 115–232, set out as an Effective Date of 2018 Amendment; Savings Provision note under section 453b of Title 6, Domestic Security.

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EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

§ 2377. Preference for commercial products and commercial services

(a) PREFERENCE.—The head of an agency shall ensure that, to the maximum extent practicable—

(1) requirements of the agency with respect to a procurement of supplies or services are stated in terms of—

(A) functions to be performed;

(B) performance required; or

(C) essential physical characteristics;

(2) such requirements are defined so that commercial services or commercial products or, to the extent that commercial products suitable to meet the agency's needs are not available, nondevelopmental items other than commercial products, may be procured to fulfill such requirements; and

(3) offerors of commercial services, commercial products, and nondevelopmental items other than commercial products are provided an opportunity to compete in any procurement to fill such requirements.

(b) IMPLEMENTATION.—The head of an agency shall ensure that procurement officials in that agency, to the maximum extent practicable—

(1) acquire commercial services, commercial products, or nondevelopmental items other than commercial products to meet the needs of the agency;

(2) require prime contractors and subcontractors at all levels under the agency contracts to incorporate commercial services, commercial products, or nondevelopmental items other than commercial products as components of items supplied to the agency;

(3) modify requirements in appropriate cases to ensure that the requirements can be met by commercial services or commercial products or, to the extent that commercial products suitable to meet the agency's needs are not available, nondevelopmental items other than commercial products;

(4) state specifications in terms that enable and encourage bidders and offerors to supply commercial services or commercial products or, to the extent that commercial products suitable to meet the agency's needs are not available, nondevelopmental items other than commercial products in response to the agency solicitations;

(5) revise the agency's procurement policies, practices, and procedures not required by law to reduce any impediments in those policies, practices, and procedures to the acquisition of commercial products and commercial services; and

(6) require training of appropriate personnel in the acquisition of commercial products and commercial services.

(c) PRELIMINARY MARKET RESEARCH.—(1) The head of an agency shall conduct market research appropriate to the circumstances—

(A) before developing new specifications for a procurement by that agency;

(B) before soliciting bids or proposals for a contract in excess of the simplified acquisition threshold; and

(C) before awarding a task order or delivery order in excess of the simplified acquisition threshold.

(2) The head of an agency shall use the results of market research to determine whether there are commercial services or commercial products or, to the extent that commercial products suitable to meet the agency's needs are not available, nondevelopmental items other than commercial products available that—

(A) meet the agency's requirements;

(B) could be modified to meet the agency's requirements; or

(C) could meet the agency's requirements if those requirements were modified to a reasonable extent.

(3) In conducting market research, the head of an agency should not require potential sources to submit more than the minimum information that is necessary to make the determinations required in paragraph (2).

(4) The head of an agency shall document the results of market research in a manner appropriate to the size and complexity of the acquisition.

(5) The head of an agency shall take appropriate steps to ensure that any prime contractor of a contract (or task order or delivery order) in an amount in excess of $5,000,000 for the procurement of products other than commercial products or services other than commercial services engages in such market research as may be necessary to carry out the requirements of subsection (b)(2) before making purchases for or on behalf of the Department of Defense.

(d) MARKET RESEARCH FOR PRICE ANALYSIS.—The Secretary of Defense shall ensure that procurement officials in the Department of Defense conduct or obtain market research to support the determination of the reasonableness of price for commercial products or commercial services contained in any bid or offer submitted in response to an agency solicitation. To the extent necessary to support such market research, the procurement official for the solicitation—

(1) in the case of products or services acquired under section 2379 of this title, shall use information submitted under subsection (d) of that section; and

(2) in the case of other products or services, may require the offeror to submit relevant information.

(e) MARKET RESEARCH TRAINING REQUIRED.—The Secretary of Defense shall provide mandatory training for members of the armed forces and employees of the Department of Defense responsible for the conduct of market research required under subsections (c) and (d). Such mandatory training shall, at a minimum—

(1) provide comprehensive information on the subject of market research and the function of market research in the acquisition of commercial products and commercial services;

(2) teach best practices for conducting and documenting market research; and

(3) provide methodologies for establishing standard processes and reports for collecting and sharing market research across the Department.

(Added Pub. L. 103–355, title VIII, § 8104(a), Oct. 13, 1994, 108 Stat. 3390; amended Pub. L. 110–181, div. A, title VIII, § 826(a), Jan. 28, 2008, 122 Stat. 227; Pub. L. 114–92, div. A, title VIII, § 844(a), Nov. 25, 2015, 129 Stat. 915; Pub. L. 114–328, div. A, title VIII, § 871, Dec. 23, 2016, 130 Stat. 2307; Pub. L. 115–232, div. A, title VIII, § 836(d)(3), (8)(C), Aug. 13, 2018, 132 Stat. 1866, 1868; Pub. L. 116–92, div. A, title VIII, § 818(a), Dec. 20, 2019, 133 Stat. 1488.)

RENUMBERING OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1821(a)(2), Jan. 1, 2021, 134 Stat. 4151, 4195, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section, as part of chapter 247 of this title as transferred and redesignated by section 1821(a)(1) of Pub. L. 116–283, is redesignated as section 3453 of this title. See Effective Date of 2021 Amendment note below.

AMENDMENTS

2019—Subsec. (c)(4. Pub. L. 116–92, § 818(a)(1)(B), added par. (4). Former par. (4) redesignated (5).

Subsec. (c)(5). Pub. L. 116–92, § 818(a)(2), amended directory language of Pub. L. 115–232, § 836(d)(3)(C)(ii). See 2018 Amendment note below.

Pub. L. 116–92, § 818(a)(1), redesignated par. (4) as (5).

2018—Pub. L. 115–232, § 836(d)(8)(C), substituted ''commercial products and commercial services'' for ''acquisition of commercial items'' in section catchline.

Subsec. (a)(2). Pub. L. 115–232, § 836(d)(3)(A)(i), substituted ''commercial services or commercial products or, to the extent that commercial products suitable to meet the agency's needs are not available, nondevelopmental items other than commercial products'' for ''commercial items or, to the extent that commercial items suitable to meet the agency's needs are not available, nondevelopmental items other than commercial items''.

Subsec. (a)(3). Pub. L. 115–232, § 836(d)(3)(A)(ii), substituted ''commercial services, commercial products, and nondevelopmental items other than commercial products'' for ''commercial items and nondevelopmental items other than commercial items''.

Subsec. (b)(1), (2). Pub. L. 115–232, § 836(d)(3)(B)(i), substituted ''commercial services, commercial products, or nondevelopmental items other than commercial products'' for ''commercial items or nondevelopmental items other than commercial items''.

Subsec. (b)(3), (4). Pub. L. 115–232, § 836(d)(3)(B)(ii), substituted ''commercial services or commercial products or, to the extent that commercial products suitable to meet the agency's needs are not available, nondevelopmental items other than commercial products'' for ''commercial items or, to the extent that commercial items suitable to meet the agency's needs are not available, nondevelopmental items other than commercial items''.

Subsec. (b)(5), (6). Pub. L. 115–232, § 836(d)(3)(B)(iii), substituted ''commercial products and commercial services'' for ''commercial items''.

Subsec. (c)(2). Pub. L. 115–232, § 836(d)(3)(C)(i), in introductory provisions, substituted ''commercial services or commercial products or, to the extent that commercial products suitable to meet the agency's needs are not available, nondevelopmental items other than commercial products'' for ''commercial items or, to the extent that commercial items suitable to meet the agency's needs are not available, nondevelopmental items other than commercial items''.

Subsec. (c)(5). Pub. L. 115–232, § 836(d)(3)(C)(ii), as amended by Pub. L. 116–92, § 818(a)(2), substituted ''products other than commercial products or services other than commercial services'' for ''items other than commercial items''.

Subsec. (d). Pub. L. 115–232, § 836(d)(3)(D)(i), substituted ''commercial products or commercial services'' for ''commercial items'' in introductory provisions.

Subsec. (d)(1), (2). Pub. L. 115–232, § 836(d)(3)(D)(ii), (iii), substituted ''products or services'' for ''items''.

Subsec. (e)(1). Pub. L. 115–232, § 836(d)(3)(E), substituted ''commercial products and commercial services'' for ''commercial items''.

2016—Subsecs. (d), (e). Pub. L. 114–328 added subsec. (d), redesignated former subsec. (d) as (e), and in introductory provisions of subsec. (e), substituted ''subsections (c) and (d)'' for ''subsection (c)''.

2015—Subsec. (d). Pub. L. 114–92 added subsec. (d).

2008—Subsec. (c)(1)(C). Pub. L. 110–181, § 826(a)(1), added subpar. (C).

Subsec. (c)(4). Pub. L. 110–181, § 826(a)(2), added par. (4).

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115–232 effective Jan. 1, 2020, subject to a savings provision, see section 836(h) of Pub. L. 115–232, set out as an Effective Date of 2018 Amendment; Savings Provision note under section 453b of Title 6, Domestic Security.

COMMERCIAL OPERATIONAL AND SUPPORT SAVINGS INITIATIVE

Pub. L. 114–328, div. A, title VIII, § 849(d), Dec. 23, 2016, 130 Stat. 2294, as amended by Pub. L. 115–232, div. A, title VIII, § 836(f)(7), Aug. 13, 2018, 132 Stat. 1871, provided that:

''(1) IN GENERAL.—The Secretary of Defense may establish a commercial operational and support savings initiative to improve readiness and reduce operations and support costs by inserting existing commercial products or technology into military legacy systems through the rapid development of prototypes and fielding of production items based on current commercial technology.

''(2) PROGRAM PRIORITY.—The commercial operational and support savings initiative shall fund programs that—

''(A) reduce the costs of owning and operating a military system, including the costs of personnel, consumables, goods and services, and sustaining the support and investment associated with the peacetime operation of a weapon system;

''(B) take advantage of the commercial sector's technological innovations by inserting commercial technology into fielded weapon systems; and

''(C) emphasize prototyping and experimentation with new technologies and concepts of operations.

''(3) FUNDING PHASES.—

''(A) IN GENERAL.—Projects funded under the commercial operational and support savings initiative shall consist of two phases, Phase I and Phase II.

''(B) PHASE I.—(i) Funds made available during Phase I shall be used to perform the non-recurring engineering, testing, and qualification that are typically needed to adapt a commercial product or technology for use in a military system.

''(ii) Phase I shall include—

''(I) establishment of cost and performance metrics to evaluate project success;

''(II) establishment of a transition plan and agreement with a military department or Defense Agency for adoption and sustainment of the technology or system; and

''(III) the development, fabrication, and delivery of a demonstrated prototype to a military department for installation into a fielded Department of Defense system.

''(iii) Programs shall be terminated if no agreement is established within two years of project initiation.

''(iv) The Office of the Secretary of Defense may provide up to 50 percent of Phase I funding for a project. The military department or Defense Agency concerned may provide the remainder of Phase I funding, which may be provided out of operation and maintenance funding.

''(v) Phase I funding shall not exceed three years.

''(vi) Phase I projects shall be selected based on a merit-based process using criteria to be established by the Secretary of Defense.

''(C) PHASE II.—(i) Phase II shall include the purchase of limited production quantities of the prototype kits and transition to a program of record for continued sustainment.

''(ii) Phase II awards may be made without competition if general solicitation competitive procedures were used for the selection of parties for participation in a Phase I project.

''(iii) Phase II awards may be made as firm fixed-price awards.

''(4) TREATMENT AS COMPETITIVE PROCEDURES.—The use of a merit-based process for selection of projects under the commercial operational and support savings initiative shall be considered to be the use of competitive procedures for purposes of chapter 137 of title 10, United States Code.

''(5) DEFINITION.—In this subsection, the term 'commercial product' has the meaning given that term in section 103 of title 41.''

PREFERENCE FOR COMMERCIAL SERVICES

Pub. L. 114–328, div. A, title VIII, § 876, Dec. 23, 2016, 130 Stat. 2311, as amended by Pub. L. 116–92, div. A, title IX, § 902(59), Dec. 20, 2019, 133 Stat. 1550, provided that: ''Not later than 90 days after the date of the enactment of this Act [Dec. 23, 2016], the Secretary of Defense shall revise the guidance issued pursuant to section 855 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114–92; 10 U.S.C. 2377 note) to provide that—

''(1) the head of an agency may not enter into a contract in excess of $10,000,000 for facilities-related services, knowledge-based services (except engineering services), construction services, medical services, or transportation services that are not commercial services unless the service acquisition executive of the military department concerned, the head of the Defense Agency concerned, the commander of the combatant command concerned, or the Under Secretary of Defense for Acquisition and Sustainment (as applicable) determines in writing that no commercial services are suitable to meet the agency's needs as provided in section 2377(c)(2) of title 10, United States Code; and

''(2) the head of an agency may not enter into a contract in an amount above the simplified acquisition threshold and below $10,000,000 for facilities-related services, knowledge-based services (except engineering services), construction services, medical services, or transportation services that are not commercial services unless the contracting officer determines in writing that no commercial services are suitable to meet the agency's needs as provided in section 2377(c)(2) of such title.''

INCORPORATION INTO MANAGEMENT CERTIFICATION TRAINING MANDATE

Pub. L. 114–92, div. A, title VIII, § 844(b), Nov. 25, 2015, 129 Stat. 915, provided that: ''The Chairman of the Joint Chiefs of Staff shall ensure that the requirements of section 2377(d) [now 2377(e)] of title 10, United States Code, as added by subsection (a), are incorporated into the requirements management certification training mandate of the Joint Capabilities Integration Development System.''

MARKET RESEARCH AND PREFERENCE FOR COMMERCIAL ITEMS

Pub. L. 114–92, div. A, title VIII, § 855, Nov. 25, 2015, 129 Stat. 919, as amended by Pub. L. 116–92, div. A, title IX, § 902(60), Dec. 20, 2019, 133 Stat. 1550, provided that:

''(a) GUIDANCE REQUIRED.—Not later than 90 days after the date of the enactment of this Act [Nov. 25, 2015], the Under Secretary of Defense for Acquisition and Sustainment shall issue guidance to ensure that acquisition officials of the Department of Defense fully comply with the requirements of section 2377 of title 10, United States Code, regarding market research and commercial items. The guidance issued pursuant to this subsection shall, at a minimum—

''(1) provide that the head of an agency may not enter into a contract in excess of the simplified acquisition threshold for information technology products or services that are not commercial items unless the head of the agency determines in writing that no commercial items are suitable to meet the agency's needs as provided in subsection (c)(2) of such section; and

''(2) ensure that market research conducted in accordance with subsection (c) of such section is used, where appropriate, to inform price reasonableness determinations.

''(b) REVIEW REQUIRED.—Not later than 180 days after the date of the enactment of this Act [Nov. 25, 2015], the Chairman and the Vice Chairman of the Joint Chiefs of Staff, in consultation with the Under Secretary of Defense for Acquisition and Sustainment, shall review Chairman of the Joint Chiefs of Staff Instruction 3170.01, the Manual for the Operation of the Joint Capabilities Integration and Development System, and other documents governing the requirements development process and revise these documents as necessary to ensure that the Department of Defense fully complies with the requirement in section 2377(c) of title 10, United States Code, and section 10.001 of the Federal Acquisition Regulation for Federal agencies to conduct appropriate market research before developing new requirements.

''(c) MARKET RESEARCH DEFINED.—For the purposes of this section, the term 'market research' means a review of existing systems, subsystems, capabilities, and technologies that are available or could be made available to meet the needs of the Department of Defense in whole or in part. The review may include any of the techniques for conducting market research provided in section 10.002(b)(2) of the Federal Acquisition Regulation and shall include, at a minimum, contacting knowledgeable individuals in Government and industry regarding existing market capabilities.''

LIMITATION ON CONVERSION OF PROCUREMENTS FROM COMMERCIAL ACQUISITION PROCEDURES

Pub. L. 114–92, div. A, title VIII, § 856, Nov. 25, 2015, 129 Stat. 920, as amended by Pub. L. 115–232, div. A, title VIII, § 836(f)(8), Aug. 13, 2018, 132 Stat. 1872; Pub. L. 116–92, div. A, title IX, § 902(61), Dec. 20, 2019, 133 Stat. 1550; Pub. L. 116–283, div. A, title X, § 1081(f)(2), Jan. 1, 2021, 134 Stat. 3874, provided that:

''(a) LIMITATION.—

''(1) IN GENERAL.—Except as provided in paragraph (2), prior to converting the procurement of a commercial product or a commercial service, as defined in sections 103 and 103a, respectively, of title 41, United States Code, valued at more than $1,000,000 from commercial acquisition procedures under part 12 of the Federal Acquisition Regulation to noncommercial acquisition procedures under part 15 of the Federal Acquisition Regulation, the contracting officer for the procurement shall determine in writing that—

''(A) the earlier use of commercial acquisition procedures under part 12 of the Federal Acquisition Regulation was in error or based on inadequate information; and

''(B) the Department of Defense will realize a cost savings compared to the cost of procuring a similar quantity or level of such item or service using commercial acquisition procedures.

''(2) REQUIREMENT FOR APPROVAL OF DETERMINATION BY HEAD OF CONTRACTING ACTIVITY.—In the case of a procurement valued at more than $100,000,000, a contract may not be awarded pursuant to a conversion of the procurement described in paragraph (1) until—

''(A) the head of the contracting activity approves the determination made under paragraph (1); and

''(B) a copy of the determination so approved is provided to the Office of the Under Secretary of Defense for Acquisition and Sustainment.

''(b) FACTORS TO BE CONSIDERED.—In making a determination under paragraph (1), the determining official shall, at a minimum, consider the following factors:

''(1) The estimated cost of research and development to be performed by the existing contractor to improve future products or services.

''(2) The transaction costs for the Department of Defense and the contractor in assessing and responding to data requests to support a conversion to noncommercial acquisition procedures.

''(3) Changes in purchase quantities.

''(4) Costs associated with potential procurement delays resulting from the conversion.

''(c) PROCEDURES.—Not later than 180 days after the date of the enactment of this Act [Nov. 25, 2015], the Secretary of Defense shall develop procedures to track conversions of future contracts and subcontracts for improved analysis and reporting and shall revise the Defense Federal Acquisition Regulation Supplement to reflect the requirement in subsection (a).

''(d) REPORTING REQUIREMENT.—Not later than one year after the date of the enactment of this Act, the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the implementation of subsection (a), including any procurements converted as described in that subsection.

''(e) SUNSET.—The requirements of this section shall terminate 5 years after the date of the enactment of this Act [Nov. 25, 2015].''

[Pub. L. 116–283, div. A, title X, §1081(f), Jan. 1, 2021, 134 Stat. 3874, provided that the amendment made by section 1081(f)(2) of Pub. L. 116–283 to section 856 of Pub. L. 114–92, set out above, is effective as of Dec. 23, 2016, and as if included in Pub. L. 114–92.]

COMMERCIAL SOFTWARE REUSE PREFERENCE

Pub. L. 110–417, [div. A], title VIII, §803, Oct. 14, 2008, 122 Stat. 4519, provided that:

''(a) IN GENERAL.—The Secretary of Defense shall ensure that contracting officials identify and evaluate, at all stages of the acquisition process (including concept refinement, concept decision, and technology development), opportunities for the use of commercial computer software and other non-developmental software.

''(b) REPORT.—Not later than 270 days after the date of enactment of this Act [Oct. 14, 2008], the Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on actions taken to implement subsection (a), including a description of any relevant regulations and policy guidance.''

REQUIREMENT TO DEVELOP TRAINING AND TOOLS

Pub. L. 110–181, div. A, title VIII, §826(b), Jan. 28, 2008, 122 Stat. 228, provided that: ''The Secretary of Defense shall develop training to assist contracting officers, and market research tools to assist such officers and prime contractors, in performing appropriate market research as required by subsection (c) of section 2377 of title 10, United States Code, as amended by this section.''

[§ 2378. Repealed. Pub. L. 114–328, div. A, title VIII, § 833(b)(3)(A), Dec. 23, 2016, 130 Stat. 2284]

Section, added Pub. L. 105–85, div. A, title III, §350(a), Nov. 18, 1997, 111 Stat. 1691, related to procurement of copier paper containing specified percentages of post-consumer recycled content.

§ 2379. Procurement of a major weapon system as a commercial product: requirement for prior determination by Secretary of Defense and notification to Congress

(a) REQUIREMENT FOR DETERMINATION AND NOTIFICATION.—A major weapon system of the Department of Defense may be treated as a commercial product, or purchased under procedures established for the procurement of commercial products, only if—

(1) the Secretary of Defense determines that—

(A) the major weapon system is a commercial product; and

(B) such treatment is necessary to meet national security objectives; and

(2) the congressional defense committees are notified at least 30 days before such treatment or purchase occurs.

(b) TREATMENT OF SUBSYSTEMS AS COMMERCIAL PRODUCTS.—A subsystem of a major weapon system (other than a commercially available off-the-shelf item as defined in section 104 of title 41) shall be treated as a commercial product and purchased under procedures established for the procurement of commercial products if either—

(1) the subsystem is intended for a major weapon system that is being purchased, or has been purchased, under procedures established for the procurement of commercial products in accordance with the requirements of subsection (a); or

(2) the contracting officer determines in writing that the subsystem is a commercial product.

(c) TREATMENT OF COMPONENTS AND SPARE PARTS AS COMMERCIAL PRODUCTS.—(1) A component or spare part for a major weapon system (other than a commercially available off-the-shelf item as defined in section 104 of title 41) may be treated as a commercial product for the purposes of section 2306a of this title if either—

(A) the component or spare part is intended for—

(i) a major weapon system that is being purchased, or has been purchased, under procedures established for the procurement of commercial products in accordance with the requirements of subsection (a); or

(ii) a subsystem of a major weapon system that is being purchased, or has been purchased, under procedures established for the procurement of commercial products in accordance with the requirements of subsection (b); or

(B) the contracting officer determines in writing that the component or spare part is a commercial product.

(2) This subsection shall apply only to components and spare parts that are acquired by the

Department of Defense through a prime contract or a modification to a prime contract (or through a subcontract under a prime contract or modification to a prime contract on which the prime contractor adds no, or negligible, value).

(d) INFORMATION SUBMITTED.—(1) To the extent necessary to determine the reasonableness of the price for items acquired under this section, the contracting officer shall require the offeror to submit—

(A) prices paid for the same or similar commercial products under comparable terms and conditions by both Government and commercial customers;

(B) if the contracting officer determines that the offeror does not have access to and cannot provide sufficient information described in subparagraph (A) to determine the reasonableness of price, information on—

(i) prices for the same or similar items sold under different terms and conditions;

(ii) prices for similar levels of work or effort on related products or services;

(iii) prices for alternative solutions or approaches; and

(iv) other relevant information that can serve as the basis for a price assessment; and

(C) if the contracting officer determines that the information submitted pursuant to subparagraphs (A) and (B) is not sufficient to determine the reasonableness of price, other relevant information regarding the basis for price or cost, including information on labor costs, material costs, and overhead rates.

(2) An offeror may submit information or analysis relating to the value of a commercial product to aid in the determination of the reasonableness of the price of such item. A contracting officer may consider such information or analysis in addition to the information submitted pursuant to paragraphs (1)(A) and (1)(B).

(3) An offeror may not be required to submit information described in paragraph (1)(C) with regard to a commercially available off-the-shelf item and may be required to submit such information with regard to any other item that was developed exclusively at private expense only after the head of the contracting activity determines in writing that the information submitted pursuant to paragraphs (1)(A) and (1)(B) is not sufficient to determine the reasonableness of price.

(e) DELEGATION.—The authority of the Secretary of Defense to make a determination under subsection (a) may be delegated only to the Deputy Secretary of Defense, without further redelegation.

(f) MAJOR WEAPON SYSTEM DEFINED.—In this section, the term ''major weapon system'' means a weapon system acquired pursuant to a major defense acquisition program (as that term is defined in section 2430 of this title).

(Added Pub. L. 109–163, div. A, title VIII, § 803(a)(1), Jan. 6, 2006, 119 Stat. 3370; amended Pub. L. 110–181, div. A, title VIII, § 815(a)(1), Jan. 28, 2008, 122 Stat. 222; Pub. L. 113–291, div. A, title X, § 1071(a)(7), Dec. 19, 2014, 128 Stat. 3504; Pub. L. 114–92, div. A, title VIII, § 852(a)–(d), Nov. 25, 2015, 129 Stat. 917, 918; Pub. L. 114–328, div. A, title VIII, § 872, Dec. 23, 2016, 130 Stat. 2307; Pub. L. 115–232, div. A, title VIII, § 836(d)(4), (8)(D), Aug. 13, 2018, 132 Stat. 1868, 1869; Pub. L. 116–283, div. A, title XVIII, § 1831(j)(4), Jan. 1, 2021, 134 Stat. 4217.)

RENUMBERING OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1821(a)(2), Jan. 1, 2021, 134 Stat. 4151, 4195, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section, as part of chapter 247 of this title as transferred and redesignated by section 1821(a)(1) of Pub. L. 116–283, is redesignated as section 3455 of this title. See Effective Date of 2021 Amendment note below.

AMENDMENTS

2021—Subsec. (c)(1). Pub. L. 116–283, § 1831(j)(4), which directed amendment of this section, effective Jan. 1, 2022, by substituting ''sections 3701–3708'' for ''section 2306a'', could not be executed in introductory provisions due to the intervening amendment by section 1821(a)(2) of Pub. L. 116–283, which renumbered this section as section 3455 of this title, effective Jan. 1, 2022.

2018—Pub. L. 115–232, § 836(d)(8)(D), substituted ''Procurement of a major weapon system as a commercial product: requirement for prior determination by Secretary of Defense and notification to Congress'' for ''Requirement for determination by Secretary of Defense and notification to Congress before procurement of major weapon systems as commercial items'' in section catchline.

Pub. L. 115–232, § 836(d)(4)(C), substituted ''commercial product'' for ''commercial item'' and ''commercial products'' for ''commercial items'' wherever appearing.

Subsec. (a)(1)(A). Pub. L. 115–232, § 836(d)(4)(B), struck out '', as defined in section 103 of title 41'' before ''; and''.

Subsec. (b). Pub. L. 115–232, § 836(d)(4)(A), substituted ''Commercial Products'' for ''Commercial Items'' in heading.

Subsec. (b)(2). Pub. L. 115–232, § 836(d)(4)(B), struck out '', as defined in section 103 of title 41'' before period.

Subsec. (c). Pub. L. 115–232, § 836(d)(4)(A), substituted ''Commercial Products'' for ''Commercial Items'' in heading.

Subsec. (c)(1)(B). Pub. L. 115–232, § 836(d)(4)(B), struck out '', as defined in section 103 of title 41'' before period.

2016—Subsec. (d)(2), (3). Pub. L. 114–328 added par. (2) and redesignated former par. (2) as (3).

2015—Subsec. (a). Pub. L. 114–92, § 852(a), inserted ''and'' at end of par. (1)(B), redesignated par. (3) as (2), and struck out former par. (2) which read as follows: ''the offeror has submitted sufficient information to evaluate, through price analysis, the reasonableness of the price for such system; and''.

Subsec. (b). Pub. L. 114–92, § 852(b)(1), substituted ''if either'' for ''only if'' in introductory provisions.

Subsec. (b)(2). Pub. L. 114–92, § 852(b)(2), substituted ''writing that'' for ''writing that—'', struck out subpar. (A) designation before ''the subsystem is a'', substituted ''title 41.'' for ''title 41; and'', and struck out subpar. (B) which read as follows: ''the offeror has submitted sufficient information to evaluate, through price analysis, the reasonableness of the price for such subsystem.''

Subsec. (c)(1). Pub. L. 114–92, § 852(c)(1), substituted ''title if either'' for ''title only if'' in introductory provisions.

Subsec. (c)(1)(B). Pub. L. 114–92, § 852(c)(2), substituted ''writing that'' for ''writing that—'', struck out cl. (i) designation before ''the component or'', substituted ''title 41.'' for ''title 41; and'', and struck out cl. (ii) which read as follows: ''the offeror has submitted sufficient information to evaluate, through price analysis,

the reasonableness of the price for such component or spare part.''

Subsec. (d). Pub. L. 114–92, § 852(d), amended subsec. (d) generally. Prior to amendment, text read as follows: ''To the extent necessary to make a determination under subsection (a)(2), (b)(2), or (c)(1)(B), the contracting officer may request the offeror to submit—

''(1) prices paid for the same or similar commercial items under comparable terms and conditions by both government and commercial customers; and

''(2) if the contracting officer determines that the information described in paragraph (1) is not sufficient to determine the reasonableness of price, other relevant information regarding the basis for price or cost, including information on labor costs, material costs, and overhead rates.''

2014—Subsec. (a)(1)(A). Pub. L. 113–291, § 1071(a)(7)(A), substituted ''section 103 of title 41'' for ''section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12))''.

Subsec. (b). Pub. L. 113–291, § 1071(a)(7)(B), substituted ''section 104 of title 41'' for ''section 35(c) of the Office of Federal Procurement Policy Act (41 U.S.C. 431(c))'' in introductory provisions.

Subsec. (b)(2)(A). Pub. L. 113–291, § 1071(a)(7)(A), substituted ''section 103 of title 41'' for ''section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12))''.

Subsec. (c)(1). Pub. L. 113–291, § 1071(a)(7)(B), substituted ''section 104 of title 41'' for ''section 35(c) of the Office of Federal Procurement Policy Act (41 U.S.C. 431(c))'' in introductory provisions.

Subsec. (c)(1)(B)(i). Pub. L. 113–291, § 1071(a)(7)(A), substituted ''section 103 of title 41'' for ''section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12))''.

2008—Subsec. (a)(2), (3). Pub. L. 110–181, § 815(a)(1)(A), added par. (2) and redesignated former par. (2) as (3).

Subsec. (b). Pub. L. 110–181, § 815(a)(1)(B), added subsec. (b) and struck out former subsec. (b). Former text read as follows: ''A subsystem or component of a major weapon system shall be treated as a commercial item and purchased under procedures established for the procurement of commercial items if such subsystem or component otherwise meets the requirements (other than requirements under subsection (a)) for treatment as a commercial item.''

Subsecs. (c) to (f). Pub. L. 110–181, § 815(a)(1)(C), (D), added subsecs. (c) and (d) and redesignated former subsecs. (c) and (d) as (e) and (f), respectively.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115–232 effective Jan. 1, 2020, subject to a savings provision, see section 836(h) of Pub. L. 115–232, set out as an Effective Date of 2018 Amendment; Savings Provision note under section 453b of Title 6, Domestic Security.

EFFECTIVE DATE

Pub. L. 109–163, div. A, title VIII, § 803(b), Jan. 6, 2006, 119 Stat. 3371, provided that: ''The amendments made by subsection (a) [enacting this section] shall take effect on the date of the enactment of this Act [Jan. 6, 2006], and shall apply to contracts entered into on or after such date.''

§ 2380. Commercial product and commercial service determinations by Department of Defense

(a) IN GENERAL.—The Secretary of Defense shall—

(1) establish and maintain a centralized capability with necessary expertise and resources to provide assistance to the military departments and Defense Agencies in making commercial product and commercial service determinations, conducting market research, and performing analysis of price reasonableness for the purposes of procurements by the Department of Defense; and

(2) provide to officials of the Department of Defense access to previous Department of Defense commercial product and commercial service determinations, market research, and analysis used to determine the reasonableness of price for the purposes of procurements by the Department of Defense.

(b) DETERMINATIONS REGARDING THE COMMERCIAL NATURE OF PRODUCTS OR SERVICES.—

(1) IN GENERAL.—In making a determination whether a particular product or service offered by a contractor meets the definition of a commercial product or commercial service, a contracting officer of the Department of Defense may—

(A) request support from the Director of the Defense Contract Management Agency, the Director of the Defense Contract Audit Agency, or other appropriate experts in the Department to make a determination whether a product or service is a commercial product or commercial service; and

(B) consider the views of appropriate public and private sector entities.

(2) MEMORANDUM.—Within 30 days after a contract award, the contracting officer shall, consistent with the policies and regulations of the Department, submit a written memorandum summarizing the determination referred to in paragraph (1), including a detailed justification for such determination.

(c) ITEMS PREVIOUSLY ACQUIRED USING COMMERCIAL ACQUISITION PROCEDURES.—

(1) DETERMINATIONS.—A contract for a product or service acquired using commercial acquisition procedures under part 12 of the Federal Acquisition Regulation shall serve as a prior commercial product or service determination with respect to such product or service for purposes of this chapter unless the senior procurement executive of the military department or the Department of Defense as designated for purposes of section 1702(c) of title 41 determines in writing that it is no longer appropriate to acquire the product or service using commercial acquisition procedures.

(2) LIMITATION.—(A) Except as provided under subparagraph (B), funds appropriated or otherwise made available to the Department of Defense may not be used for the procurement under part 15 of the Federal Acquisition Regulation of a product or service that was previously acquired under a contract using commercial acquisition procedures under part 12 of the Federal Acquisition Regulation.

(B) The limitation under subparagraph (A) does not apply to the procurement of a product or service that was previously acquired using commercial acquisition procedures under part 12 of the Federal Acquisition Regulation following—

(i) a written determination by the head of contracting activity pursuant to section 2306a(b)(4)(B) of this title that the use of such procedures was improper; or

(ii) a written determination by the senior procurement executive of the military department or the Department of Defense as designated for purposes of section 1702(c) of title 41 that it is no longer appropriate to acquire the product or service using such procedures.

(Added Pub. L. 114–92, div. A, title VIII, § 851(a)(1), Nov. 25, 2015, 129 Stat. 916; amended Pub. L. 114–328, div. A, title VIII, § 873, Dec. 23, 2016, 130 Stat. 2307; Pub. L. 115–91, div. A, title VIII, § 848, Dec. 12, 2017, 131 Stat. 1487; Pub. L. 115–232, div. A, title VIII, § 836(d)(5), (8)(E), Aug. 13, 2018, 132 Stat. 1868, 1869; Pub. L. 116–283, div. A, title VIII, § 816, title XVIII, § 1831(j)(5), Jan. 1, 2021, 134 Stat. 3750, 4217.)

RENUMBERING OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1821(a)(2), Jan. 1, 2021, 134 Stat. 4151, 4195, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section, as part of chapter 247 of this title as transferred and redesignated by section 1821(a)(1) of Pub. L. 116–283, is redesignated as section 3456 of this title. See Effective Date of 2021 Amendment note below.

AMENDMENTS

2021—Subsec. (b). Pub. L. 116–283, § 816(2), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 116–283, § 816(1), redesignated subsec. (b) as (c).

Subsec. (c)(2)(B)(i). Pub. L. 116–283, § 1831(j)(5), which directed amendment of section ''2380(b)(2)(B)(i)'' of this title, effective Jan. 1, 2022, by substituting ''section 3703(d)(2)'' for ''section 2306a(b)(4)(B)'', could not be executed in subsec. (b)(2)(B)(i) because ''section 2306a(b)(4)(B)'' did not appear after the redesignation of subsec. (b) of this section as subsec. (c) by Pub. L. 116–283, § 816(1), and also could not be executed in subsec. (c)(2)(B)(i) to reflect the probable intent of Congress, due to the intervening amendment by section 1821(a)(2) of Pub. L. 116–283, which renumbered this section as section 3456 of this title, effective Jan. 1, 2022.

2018—Pub. L. 115–232, § 836(d)(8)(E), substituted ''Commercial product and commercial service'' for ''Commercial item'' in section catchline.

Subsec. (a). Pub. L. 115–232, § 836(d)(5)(A), substituted ''commercial product and commercial service determinations'' for ''commercial item determinations'' in pars. (1) and (2).

Subsec. (b). Pub. L. 115–232, § 836(d)(5)(B)(i)–(iii), in heading, struck out ''Item'' after ''Commercial'' and, in text, substituted ''a product or service'' for ''an item'' and struck out ''item'' after ''using commercial'' wherever appearing.

Subsec. (b)(1). Pub. L. 115–232, § 836(d)(5)(B)(iv)–(vi) substituted ''prior commercial product or service determination'' for ''prior commercial item determination'', ''such product or service'' for ''such item'', and ''the product or service'' for ''the item''.

Subsec. (b)(2)(B)(ii). Pub. L. 115–232, § 836(d)(5)(B)(vi), substituted ''the product or service'' for ''the item''.

2017—Pub. L. 115–91 designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

2016—Pars. (1), (2). Pub. L. 114–328 amended pars. (1) and (2) generally. Prior to amendment, pars. (1) and (2) read as follows:

''(1) establish and maintain a centralized capability with necessary expertise and resources to oversee the making of commercial item determinations for the purposes of procurements by the Department of Defense; and

''(2) provide public access to Department of Defense commercial item determinations for the purposes of procurements by the Department of Defense.''

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by sections 1821(a)(2) and 1831(j)(5) of Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115–232 effective Jan. 1, 2020, subject to a savings provision, see section 836(h) of Pub. L. 115–232, set out as an Effective Date of 2018 Amendment; Savings Provision note under section 453b of Title 6, Domestic Security.

§ 2380a. Treatment of certain products and services as commercial products and commercial services

(a) GOODS AND SERVICES PROVIDED BY NONTRADITIONAL DEFENSE CONTRACTORS.—Notwithstanding section 2376(1) of this title, products and services provided by nontraditional defense contractors (as that term is defined in section 2302(9) of this title) may be treated by the head of an agency as commercial products and commercial services, respectively, for purposes of this chapter.

(b) SERVICES PROVIDED BY CERTAIN NONTRADITIONAL CONTRACTORS.—Notwithstanding section 2376(1) of this title, services provided by a business unit that is a nontraditional defense contractor (as that term is defined in section 2302(9) of this title) shall be treated as commercial services for purposes of this chapter, to the extent that such services use the same pool of employees as used for commercial customers and are priced using methodology similar to methodology used for commercial pricing.

(Added Pub. L. 114–92, div. A, title VIII, § 857(a), Nov. 25, 2015, 129 Stat. 921, § 2380A; renumbered § 2380a and amended Pub. L. 114–328, div. A, title VIII, § 878(a), (b)(1), Dec. 23, 2016, 130 Stat. 2312; Pub. L. 115–232, div. A, title VIII, § 836(d)(6), (8)(F), Aug. 13, 2018, 132 Stat. 1868, 1869.)

RENUMBERING OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1821(a)(2), Jan. 1, 2021, 134 Stat. 4151, 4195, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section, as part of chapter 247 of this title as transferred and redesignated by section 1821(a)(1) of Pub. L. 116–283, is redesignated as section 3457 of this title. See Effective Date of 2021 Amendment note below.

AMENDMENTS

2018—Pub. L. 115–232, § 836(d)(8)(F), substituted ''products and services as commercial products and commercial services'' for ''items as commercial items'' in section catchline.

Subsec. (a). Pub. L. 115–232, § 836(d)(6)(A), substituted ''products and'' for ''items and'' and ''commercial products and commercial services, respectively,'' for ''commercial items''.

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Subsec. (b). Pub. L. 115–232, § 836(d)(6)(B), substituted ''commercial services'' for ''commercial items''.

2016—Pub. L. 114–328, § 878(b)(1), which directed amendment of ''Section 2380A of title 10'' by striking out the section catchline and inserting ''§ 2380a. Treatment of certain items as commercial items'', was executed by redesignating this section as section 2380a and substituting ''Treatment of certain items as commercial items'' for ''Treatment of goods and services provided by nontraditional defense contractors as commercial items'' in section catchline, to reflect the probable intent of Congress.

Pub. L. 114–328, § 878(a), designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115–232 effective Jan. 1, 2020, subject to a savings provision, see section 836(h) of Pub. L. 115–232, set out as an Effective Date of 2018 Amendment; Savings Provision note under section 453b of Title 6, Domestic Security.

§ 2380b. Treatment of commingled items purchased by contractors as commercial products

Notwithstanding section 2376(1) of this title, items valued at less than $10,000 that are purchased by a contractor for use in the performance of multiple contracts with the Department of Defense and other parties and are not identifiable to any particular contract shall be treated as a commercial product for purposes of this chapter.

(Added Pub. L. 114–328, div. A, title VIII, § 877(a), Dec. 23, 2016, 130 Stat. 2311, § 2380B; renumbered § 2380b and amended Pub. L. 115–232, div. A, title VIII, § 836(d)(7), (8)(G), Aug. 13, 2018, 132 Stat. 1868, 1869; Pub. L. 116–92, div. A, title XVII, § 1731(a)(47), Dec. 20, 2019, 133 Stat. 1815; Pub. L. 116–283, div. A, title XVIII, § 1821(b)(7)(A), (B), Jan. 1, 2021, 134 Stat. 4195, 4196.)

AMENDMENT OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1821(b)(7)(A), (B), Jan. 1, 2021, 134 Stat. 4151, 4195, 4196, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, chapter 247 of this title, as transferred and redesignated by section 1821(a)(1) of Pub. L. 116–283, and as reflecting the redesignation of sections within such chapter by section 1821(a)(2) of Pub. L. 116–283, is further amended—

(1) by striking the section catchline of the ''final section of such chapter'', as transferred by section 1821(a) of Pub. L. 116–283, which final section is this section; and

(2) in the text following the section catchline, by striking ''Notwithstanding section 2376(1)'' and inserting ''(c) Commingled Items Purchased by Contractors.—Notwithstanding section 3451(1)''.

As a result, this section becomes subsec. (c) of section 3457 of this title. See Effective Date of 2021 Amendment note below.

AMENDMENTS

2021—Pub. L. 116–283 substituted subsec. (c) designation and heading for section designation and catchline.

2019—Pub. L. 116–92 inserted ''section'' before ''2376(1) of this title'' and substituted ''purposes of'' for ''purposed of''.

2018—Pub. L. 115–232 renumbered section 2380B of this title as this section and substituted ''commercial products'' for ''commercial items'' in section catchline and ''commercial product'' for ''commercial item'' in text.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115–232 effective Jan. 1, 2020, subject to a savings provision, see section 836(h) of Pub. L. 115–232, set out as an Effective Date of 2018 Amendment; Savings Provision note under section 453b of Title 6, Domestic Security.

CHAPTER 141—MISCELLANEOUS PROCUREMENT PROVISIONS

Sec.
2381. Contracts: regulations for bids.
[2382. Repealed.]
2383. Contractor performance of acquisition functions closely associated with inherently governmental functions.
2384. Supplies: identification of supplier and sources.
2384a. Supplies: economic order quantities.
2385. Arms and ammunition: immunity from taxation.
2386. Copyrights, patents, designs, etc.; acquisition.
[2387. Repealed.]
[2388. Renumbered.]
2389. Ensuring safety regarding insensitive munitions.
2390. Prohibition on the sale of certain defense articles from the stocks of the Department of Defense.
2391. Military base reuse studies and community planning assistance.
2392. Prohibition on use of funds to relieve economic dislocations.
2393. Prohibition against doing business with certain offerors or contractors.
[2394, 2394a. Renumbered.]
2395. Availability of appropriations for procurement of technical military equipment and supplies.
2396. Advances for payments for compliance with foreign laws, rent in foreign countries, tuition, public utility services, and pay and supplies of armed forces of friendly foreign countries.
[2397 to 2398a. Repealed or Renumbered.]
2399. Operational test and evaluation of defense acquisition programs.
2400. Low-rate initial production of new systems.
2401. Requirement for authorization by law of certain contracts relating to vessels, aircraft, and combat vehicles.
2401a. Lease of vehicles, equipment, vessels, and aircraft.
2402. Prohibition of contractors limiting subcontractor sales directly to the United States.
[2403 to 2407. Repealed or Renumbered.]
2408. Prohibition on persons convicted of defense-contract related felonies and related criminal penalty on defense contractors.
2409. Contractor employees: protection from reprisal for disclosure of certain information.

Sec.
2409a. Incentives and consideration for qualified training programs.
2410. Requests for equitable adjustment or other relief: certification.
2410a. Contracts for periods crossing fiscal years: severable service contracts; leases of real or personal property.
2410b. Contractor inventory accounting systems: standards.
[2410c. Renumbered.]
2410d. Subcontracting plans: credit for certain purchases.
[2410e. Repealed.]
2410f. Debarment of persons convicted of fraudulent use of ''Made in America'' labels.
2410g. Advance notification of contract performance outside the United States.
[2410h. Renumbered.]
2410i. Prohibition on contracting with entities that comply with the secondary Arab boycott of Israel.
2410j. Displaced contractor employees: assistance to obtain certification and employment as teachers or employment as teachers' aides.
2410k. Defense contractors: listing of suitable employment openings with local employment service office.
2410*l*. Contracts for advisory and assistance services: cost comparison studies.
2410m. Retention of amounts collected from contractor during the pendency of contract dispute.
2410n. Products of Federal Prison Industries: procedural requirements.
2410*o*. Multiyear procurement authority: purchase of dinitrogen tetroxide, hydrazine, and hydrazine-related products.
2410p. Contracts: limitations on lead system integrators.
2410q. Multiyear contracts: purchase of electricity from renewable energy sources.
2410r. Contract working dogs: requirement to transfer animals to 341st Training Squadron after service life.
2410s. Security clearances for facilities of certain companies.

AMENDMENT OF ANALYSIS

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1882(a)(1), (c), Jan. 1, 2021, 134 Stat. 4151, 4293, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this analysis is amended as follows:

(1) The heading is amended to read as follows:

*''**PART 141—MISCELLANEOUS PROVISIONS RELATING TO PROPERTY**'' [probably should be ''CHAPTER 141'']; and*

(2) The table of sections is amended to read as follows:

Sec.

2385. Arms and ammunition: immunity from taxation.

2387. Contract working dogs: requirement to transfer animals to 341st Training Squadron after service life.

2388. Security clearances for facilities of certain companies.

2389. Ensuring safety regarding insensitive munitions.

2390. Prohibition on the sale of certain defense articles from the stocks of the Department of Defense.

2391. Military base reuse studies and community planning assistance.

2396. Advances for payments for compliance with foreign laws, rent in foreign countries, tuition, public utility services, and pay and supplies of armed forces of friendly foreign countries.

See Effective Date of 2021 Amendment note below.

AMENDMENTS

2021—Pub. L. 116–283, div. A, title XVIII, § 1882(a)(1), (c), Jan. 1, 2021, 134 Stat. 4293, amended analysis generally, substituting items 2385 to 2396 for former items 2381 to 2410s, and directed amendment of chapter heading by substituting ''PART 141—MISCELLANEOUS PROVISIONS RELATING TO PROPERTY'' for ''CHAPTER 141—MISCELLANEOUS PROCUREMENT PROVISIONS'' which was executed by substituting ''MISCELLANEOUS PROVISIONS RELATING TO PROPERTY'' for ''MISCELLANEOUS PROCUREMENT PROVISIONS'' to reflect the probable intent of Congress.

2019—Pub. L. 116–92, div. A, title VIII, § 864(b), Dec. 20, 2019, 133 Stat. 1523, added item 2409a.

2018—Pub. L. 115–232, div. A, title X, § 1081(a)(22), Aug. 13, 2018, 132 Stat. 1984, inserted period at end of item 2410s.

2017—Pub. L. 115–91, div. A, title XVI, § 1621(b), Dec. 12, 2017, 131 Stat. 1732, added item 2410s.

2016—Pub. L. 114–328, div. A, title III, § 342(a)(2), title VIII, § 833(b)(4)(B), Dec. 23, 2016, 130 Stat. 2082, 2285, added item 2410r and struck out item 2387 ''Procurement of table and kitchen equipment for officers' quarters: limitation on''.

2013—Pub. L. 112–239, div. A, title XVI, § 1671(c)(1), Jan. 2, 2013, 126 Stat. 2084, struck out item 2382 ''Consolidation of contract requirements: policy and restrictions''.

2008—Pub. L. 110–181, div. A, title VIII, § 828(b), title X, § 1063(a)(11), Jan. 28, 2008, 122 Stat. 229, 322, inserted period at end of item 2410p and added item 2410q.

2006—Pub. L. 109–364, div. A, title VIII, § 807(a)(2), div. B, title XXVIII, § 2851(c)(2), Oct. 17, 2006, 120 Stat. 2315, 2495, added item 2410p and struck out items 2388 ''Liquid fuels and natural gas: contracts for storage, handling, or distribution'', 2394 ''Contracts for energy or fuel for military installations'', 2394a ''Procurement of energy systems using renewable forms of energy'', 2398 ''Procurement of gasohol as motor vehicle fuel'', 2398a ''Procurement of fuel derived from coal, oil shale, and tar sands'', 2404 ''Acquisition of certain fuel sources: authority to waive contract procedures; acquisition by exchange; sales authority'', and 2410c ''Preference for energy efficient electric equipment''.

Pub. L. 109–163, div. A, title VIII, § 815(d)(2), Jan. 6, 2006, 119 Stat. 3382, substituted ''Requirement for authorization by law of certain contracts relating to vessels, aircraft, and combat vehicles'' for ''Requirement for authorization by law of certain contracts relating to vessels and aircraft'' in item 2401.

2005—Pub. L. 109–58, title III, § 369(q)(2), Aug. 8, 2005, 119 Stat. 733, added item 2398a.

2004—Pub. L. 108–375, div. A, title VIII, § 804(a)(2), Oct. 28, 2004, 118 Stat. 2008, added item 2383.

2003—Pub. L. 108–136, div. A, title VIII, § 801(a)(2), title X, § 1005(b)(2), Nov. 24, 2003, 117 Stat. 1540, 1585, added item 2382 and substituted ''Contracts for periods crossing fiscal years: severable service contracts; leases of real or personal property'' for ''Severable service contracts for periods crossing fiscal years'' in item 2410a.

2002—Pub. L. 107–314, div. A, title VIII, § 826(b), title X, § 1062(a)(10)(B), Dec. 2, 2002, 116 Stat. 2617, 2650, transferred item 2410h ''Acquisition fellowship program'' to subchapter IV of chapter 87 as item 1747 and added item 2410*o*.

2001—Pub. L. 107–107, div. A, title VIII, §§ 811(a)(2), 834(a)(2), Dec. 28, 2001, 115 Stat. 1181, 1191, added items 2389 and 2410n.

1999—Pub. L. 106–65, div. A, title VIII, § 803(b)(2), Oct. 5, 1999, 113 Stat. 704, substituted ''Acquisition of certain

fuel sources'' for ''Acquisition of petroleum and natural gas'' in item 2404.

1997—Pub. L. 105–85, div. A, title VIII, §§ 801(b), 810(a)(2), 831(b), 847(b)(1), title X, § 1014(b)(2), Nov. 18, 1997, 111 Stat. 1831, 1839, 1842, 1845, 1875, inserted ''public utility services,'' after ''tuition,'' in item 2396, struck out items 2403 ''Major weapon systems: contractor guarantees'' and 2405 ''Limitation on adjustment of shipbuilding contracts'', substituted ''Severable service contracts for periods crossing fiscal years'' for ''Appropriated funds: availability for certain contracts for 12 months'' in item 2410a, and added item 2410m.

1996—Pub. L. 104–106, div. A, title VIII, §§ 803(b), 807(a)(2), div. D, title XLIII, § 4304(c)(1), Feb. 10, 1996, 110 Stat. 390, 392, 664, struck out items 2383 ''Procurement of critical aircraft and ship spare parts: quality control'', 2397 ''Employees or former employees of defense contractors: reports'', 2397a ''Requirements relating to private employment contacts between certain Department of Defense procurement officials and defense contractors'', 2397b ''Certain former Department of Defense procurement officials: limitations on employment by contractors'', and 2397c ''Defense contractors: requirements concerning former Department of Defense officials'' and substituted ''Lease of vehicles, equipment, vessels, and aircraft'' for ''Lease of vessels, aircraft, and vehicles'' in item 2401a.

1994—Pub. L. 103–355, title II, §§ 2102(b), 2201(b)(2), 2301(c), title III, § 3065(a)(2), title VI, § 6005(b)(2), Oct. 13, 1994, 108 Stat. 3309, 3318, 3321, 3337, 3365, added item 2401a, struck out items 2382 ''Contract profit controls during emergency periods'', 2406 ''Availability of cost and pricing records'', 2409a ''Communicating with Government officials: defense contractor requirement to prohibit retaliatory personnel actions'', and 2410e ''Contract claims: certification regulations'', and substituted in item 2410 ''Requests for equitable adjustment or other relief: certification'' for ''Contract claims: certification''.

Pub. L. 103–337, div. A, title III, § 363(a)(2), Oct. 5, 1994, 108 Stat. 2734, added item 2410*l*.

1993—Pub. L. 103–160, div. A, title VIII, § 828(a)(3), (c)(3), (4), Nov. 30, 1993, 107 Stat. 1713, 1714, substituted ''Liquid fuels and natural gas: contracts for storage, handling, or distribution'' for ''Liquid fuels: contracts for storage, handling, and distribution'' in item 2388, struck out item 2389 ''Contracts for the procurement of milk: price adjustments; purchases from the Commodity Credit Corporation'', and inserted ''and natural gas'' and ''; acquisition by exchange; sales authority'' in item 2404.

Pub. L. 103–35, title II, § 202(a)(18)(B), May 31, 1993, 107 Stat. 102, made technical amendment to directory language of Pub. L. 102–484, § 4470(a)(2). See 1992 Amendment note below.

Pub. L. 103–35, title II, § 201(b)(1)(B), May 31, 1993, 107 Stat. 97, renumbered item 2410c relating to displaced contractor employees as item 2410j and item 2410d relating to defense contractors as item 2410k.

1992—Pub. L. 102–484, div. D, title XLIV, § 4470(a)(2), Oct. 23, 1992, 106 Stat. 2753, as amended by Pub. L. 103–35, title II, § 202(a)(18)(B), May 31, 1993, 107 Stat. 102, added item 2410d relating to defense contractors.

Pub. L. 102–484, div. D, title XLIV, § 4443(b), Oct. 23, 1992, 106 Stat. 2735, 2753, added item 2410c relating to displaced contractor employees.

Pub. L. 102–484, div. A, title III, § 384(a)(1)(B), title VIII, §§ 808(b)(2), 813(a)(2), 834(a)(2), 840(a)(2), 841(b), title XIII, § 1332(b), Oct. 23, 1992, 106 Stat. 2393, 2450, 2453, 2461, 2467, 2468, 2555, added items 2410c to 2410i.

1990—Pub. L. 101–510, div. A, title VIII, § 837(a)(2), title XIV, § 1484(i)(8), Nov. 5, 1990, 104 Stat. 1619, 1718, struck out item 2407 ''Acquisition of defense equipment under cooperative projects'' and added item 2409a.

1989—Pub. L. 101–189, div. A, title VIII, §§ 802(a)(2), 803(b), title IX, § 933(e), title XVI, § 1622(b)(2), Nov. 29, 1989, 103 Stat. 1486, 1488, 1538, 1604, added items 2390, 2399, and 2400 and struck out item 2401a ''Procurement of communications support and related supplies and services''.

1988—Pub. L. 100–456, div. A, title VIII, §§ 805(a)(2), 834(a)(2), Sept. 29, 1988, 102 Stat. 2010, 2025, added items 2383 and 2410b.

Pub. L. 100–370, §§ 1(h)(3), 3(b)(2), July 19, 1988, 102 Stat. 848, 855, in item 2389 substituted ''milk: price adjustments; purchases from the Commodity Credit Corporation'' for ''milk; price adjustment'', struck out items 2399 ''Limitation on availability of appropriations to reimburse a contractor for cost of commercial insurance'', and 2400 ''Miscellaneous procurement limitations'', and added items 2410 and 2410a.

1987—Pub. L. 100–180, div. A, title I, § 124(b)(2), Dec. 4, 1987, 101 Stat. 1043, substituted ''Miscellaneous procurement limitations'' for ''Limitation on procurement of buses'' in item 2400.

1986—Pub. L. 99–661, div. A, title XI, § 1103(b)(2)(B), Nov. 14, 1986, 100 Stat. 3963, struck out ''North Atlantic Treaty Organization'' before ''cooperative projects'' in item 2407.

Pub. L. 99–500, § 101(c) [title X, §§ 931(a)(2), 941(a)(2), 942(a)(2), 943(a)(2)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–160, 1783–162, 1783–164, and Pub. L. 99–591, § 101(c) [title X, §§ 931(a)(2), 941(a)(2), 942(a)(2), 943(a)(2)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–160, 3341–162, 3341–164; Pub. L. 99–661, div. A, title IX, formerly title IV, §§ 931(a)(2), 941(a)(2), 942(a)(2), 943(a)(2), Nov. 14, 1986, 100 Stat. 3939, 3941–3943, 3963, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273, amended analysis identically, substituting ''Availability of cost and pricing records'' for ''Cost and price management'' in item 2406 and adding items 2397b, 2397c, 2408, and 2409.

1985—Pub. L. 99–145, title IX, §§ 917(b), 923(a)(2), title XI, § 1102(b)(2), Nov. 8, 1985, 99 Stat. 690, 697, 712, added items 2397a, 2406, and 2407.

1984—Pub. L. 98–525, title X, § 1005(b), title XII, § 1235(1), (2), Oct. 19, 1984, 98 Stat. 2579, 2604, substituted in item 2384 ''identification of supplier and sources'' for ''marking with name of contractor'' and added items 2401a, 2384a, and 2402 to 2405.

1983—Pub. L. 98–94, title XII, §§ 1202(a)(2), 1259(b), Sept. 24, 1983, 97 Stat. 681, 703, struck out item 2390 ''Suggestions for improving procurement policies'', and added item 2401.

1982—Pub. L. 97–321, title VIII, § 801(a)(2), Oct. 15, 1982, 96 Stat. 1570, added item 2394a.

Pub. L. 97–295, § 1(29)(B), Oct. 12, 1982, 96 Stat. 1294, struck out item 2394 ''Availability of appropriations for procurement of technical military equipment and supplies and the construction of military public works'', added item 2395 ''Availability of appropriations for procurement of technical military equipment and supplies'', redesignated former item 2395 as 2396, and added items 2397, 2398, 2399, and 2400.

Pub. L. 97–258, § 2(b)(4)(A), Sept. 13, 1982, 96 Stat. 1052, added items 2394 and 2395.

Pub. L. 97–214, § 6(a)(2), July 12, 1982, 96 Stat. 172, added item 2394.

1981—Pub. L. 97–86, title IX, §§ 911(a)(2), 912(a)(2), 913(a)(2), 914(b), Dec. 1, 1981, 95 Stat. 1122, 1123, 1125, substituted ''Contract profit controls during emergency periods'' for ''Aircraft: contract requirements'' in item 2382 and added items 2391, 2392, and 2393.

1980—Pub. L. 96–513, title V, § 511(79), Dec. 12, 1980, 94 Stat. 2927, struck out item 2383 ''Emergency purchases: war material abroad''.

1977—Pub. L. 95–79, title VIII, § 815(b), July 30, 1977, 91 Stat. 338, added item 2390.

1966—Pub. L. 89–696, § 1(2), Oct. 19, 1966, 80 Stat. 1057, added item 2389.

1958—Pub. L. 85–861, § 1(47), Sept. 2, 1958, 72 Stat. 1458, added items 2387 and 2388.

Effective Date of 2021 Amendment

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

PROHIBITION ON RELIANCE ON CHINA AND RUSSIA FOR SPACE-BASED WEATHER DATA

Pub. L. 114–92, div. A, title XVI, §1614, Nov. 25, 2015, 129 Stat. 1105, provided that:

''(a) PROHIBITION.—The Secretary of Defense shall ensure that the Department of Defense does not rely on, or in the future plan to rely on, space-based weather data provided by the Government of the People's Republic of China, the Government of the Russian Federation, or an entity owned or controlled by either such government for national security purposes.

''(b) CERTIFICATION.—Not later than 90 days after the date of the enactment of this Act [Nov. 25, 2015], the Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a certification that the Secretary is in compliance with the prohibition under subsection (a).''

§ 2381. Contracts: regulations for bids

(a) The Secretary of Defense may—

(1) prescribe regulations for the preparation, submission, and opening of bids for contracts; and

(2) require that a bid be accompanied by a written guaranty, signed by one or more responsible persons, undertaking that the bidder, if his bid is accepted, will, within the time prescribed by the Secretary or other officer authorized to make the contract, make a contract and furnish a bond with good and sufficient sureties for the performance of the contract.

(b) If a bidder, after being notified of the acceptance of his bid, fails within the time prescribed under subsection (a)(2) to enter into a contract and furnish the prescribed bond, the Secretary concerned or other authorized officer shall—

(1) contract with another person; and

(2) charge against the defaulting bidder and his guarantors the difference between the amount specified by the bidder in his bid and the amount for which a contract is made with the other person, this difference being immediately recoverable by the United States for the use of the military department concerned in an action against the bidder and his guarantors, jointly or severally.

(c) Proceedings under this section are subject to regulations under section 121 of title 40, unless exempted therefrom under section 501(a)(2) of title 40.

(Aug. 10, 1956, ch. 1041, 70A Stat. 136; Pub. L. 98–525, title XIV, §1405(35), Oct. 19, 1984, 98 Stat. 2624; Pub. L. 103–355, title I, §1507, Oct. 13, 1994, 108 Stat. 3298; Pub. L. 107–217, §3(b)(6), Aug. 21, 2002, 116 Stat. 1295.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§1801(d), 1813(e), Jan. 1, 2021, 134 Stat. 4151, 4181, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 223 of this title, as added by section 1813 of Pub. L. 116–283, inserted after section 3243, as transferred and redesignated by section 1813(d) of Pub. L. 116–283, and redesignated as section 3247 of this title. See Effective Date of 2021 Amendment note below.

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
2381(a)	5:218 (1st sentence, less 1st 16 words; and 2d sentence).	Apr. 10, 1878, ch. 58, 20 Stat. 36; Mar. 3, 1883, ch. 120, 22 Stat. 487; Oct. 31, 1951, ch. 654, §2(4), 65 Stat. 706.
2381(b)	5:218 (less 1st and 2d sentences).	
2381(c)	5:218 (1st 16 words of 1st sentence) [applicability of 5:218 extended to Navy by 5:412b and 41:161 (1st sentence)].	Feb. 19, 1948, ch. 65, §12 (1st sentence), 62 Stat. 26.

In subsection (a)(1), the word ''may'' is substituted for the words ''is authorized to''. The words ''rules and * * * to be observed'' are omitted as surplusage.

In subsection (a)(2), the word ''undertaking'' is substituted for the words ''to the effect that he or they undertake''. The words ''make a contract'' are inserted for clarity. The words ''in the premises'' are omitted as surplusage. The words ''for the performance of the contract'' are substituted for the words ''to furnish the supplies proposed or to perform the service required''.

In subsection (b), the word ''duly'' is omitted as surplusage. The words ''with good and sufficient security for the proper fulfillment of its terms'' are omitted as covered by subsection (a)(2). The words ''the prescribed'' are inserted before the word ''bond''.

Subsection (b)(1) is substituted for the words ''proceed to contract with some other person to furnish the supplies or perform the services required''.

In subsection (b)(2) the word ''charge'' is substituted for the words ''forthwith cause * * * to be charged''. The words ''a contract is made with the other person'' are substituted for the words ''he may have contracted with another party to furnish the supplies or perform the service for the whole period of the proposal''. The words ''guarantor or'' are omitted as surplusage. The words ''this difference being'' are substituted for the words ''and the sum may be''. The words ''of debt'' are omitted, since that action no longer exists. The words ''the bidder and his guarantors, jointly or severally'' are substituted for the words ''either or all of such persons''.

In subsection (c), the words ''Proceedings under this section are'' are inserted for clarity. The words ''unless exempted therefrom under section 481(a) of that title'' are inserted to preserve the possibility of exemption of proceedings under the revised section from the provisions of the Federal Property and Administrative Services Act of 1949, as amended.

AMENDMENTS

2002—Subsec. (c). Pub. L. 107–217 substituted ''section 121 of title 40'' for ''section 205 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486)'' and ''section 501(a)(2) of title 40'' for ''section 201(a) of that Act (40 U.S.C. 481(a))''.

1994—Subsec. (a). Pub. L. 103–355 substituted ''The Secretary of Defense may—

''(1) prescribe regulations for the preparation, submission, and opening of bids for contracts; and''

for ''The Secretary of a military department may—

''(1) prescribe regulations for the preparation, submission, and opening of bids for contracts with that department; and''.

1984—Subsec. (c). Pub. L. 98–525 substituted ''section 205 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486)'' for ''section 486 of title 40'' and ''section 201(a) of that Act (40 U.S.C. 481(a))'' for ''section 481(a) of this title''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

[§ 2382. Repealed. Pub. L. 112–239, div. A, title XVI, § 1671(c)(1), Jan. 2, 2013, 126 Stat. 2084]

Section, added Pub. L. 108–136, div. A, title VIII, § 801(a)(1), Nov. 24, 2003, 117 Stat. 1538; amended Pub. L. 109–364, div. A, title X, § 1071(a)(2), Oct. 17, 2006, 120 Stat. 2398; Pub. L. 111–240, title I, § 1313(b), Sept. 27, 2010, 124 Stat. 2539; Pub. L. 112–239, div. A, title X, § 1076(d)(3), Jan. 2, 2013, 126 Stat. 1951, related to policy and restrictions regarding consolidation of contract requirements.

A prior section 2382, acts Aug. 10, 1956, ch. 1041, 70A Stat. 136; Dec. 1, 1981, Pub. L. 97–86, title IX, § 911(a)(1), 95 Stat. 1120; Nov. 5, 1990, Pub. L. 101–510, div. A, title XIV, § 1484(b)(3), (f)(2), (g)(2), (h)(3), 104 Stat. 1716, 1717; Oct. 29, 1992, Pub. L. 102–572, title IX, § 902(b)(1), 106 Stat. 4516, authorized the President, upon declaration of war by Congress or declaration of national emergency by the President or by Congress, to prescribe regulations to control excessive profits on defense contracts during period of such war or national emergency, prior to repeal by Pub. L. 103–355, title II, § 2102(a), Oct. 13, 1994, 108 Stat. 3309.

§ 2383. Contractor performance of acquisition functions closely associated with inherently governmental functions

(a) LIMITATION.—The head of an agency may enter into a contract for the performance of acquisition functions closely associated with inherently governmental functions only if the contracting officer for the contract ensures that—

(1) appropriate military or civilian personnel of the Department of Defense cannot reasonably be made available to perform the functions;

(2) appropriate military or civilian personnel of the Department of Defense are—

(A) to supervise contractor performance of the contract; and

(B) to perform all inherently governmental functions associated with the functions to be performed under the contract; and

(3) the agency addresses any potential organizational conflict of interest of the contractor in the performance of the functions under the contract, consistent with subpart 9.5 of part 9 of the Federal Acquisition Regulation and the best interests of the Department of Defense.

(b) DEFINITIONS.—In this section:

(1) The term ''head of an agency'' has the meaning given such term in section 2302(1) of this title, except that such term does not include the Secretary of Homeland Security or the Administrator of the National Oceanic and Atmospheric Administration.

(2) The term ''inherently governmental functions'' has the meaning given such term in subpart 7.5 of part 7 of the Federal Acquisition Regulation.

(3) The term ''functions closely associated with inherently governmental functions'' means the functions described in section 7.503(d) of the Federal Acquisition Regulation.

(4) The term ''organizational conflict of interest'' has the meaning given such term in subpart 9.5 of part 9 of the Federal Acquisition Regulation.

(Added Pub. L. 108–375, div. A, title VIII, § 804(a)(1), Oct. 28, 2004, 118 Stat. 2007.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1856(g), Jan. 1, 2021, 134 Stat. 4151, 4275, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 341 of this title, inserted after section 4507, and redesignated as section 4508 of this title. See Effective Date of 2021 Amendment note below.

PRIOR PROVISIONS

A prior section 2383, added Pub. L. 100–456, div. A, title VIII, § 805(a)(1), Sept. 29, 1988, 102 Stat. 2010; amended Pub. L. 102–190, div. A, title X, § 1061(a)(13), Dec. 5, 1991, 105 Stat. 1473; Pub. L. 103–355, title II, § 2401, Oct. 13, 1994, 108 Stat. 3324, related to quality control in procurement of critical aircraft and ship spare or repair parts, prior to repeal by Pub. L. 104–106, div. A, title VIII, § 803(a), Feb. 10, 1996, 110 Stat. 390.

Another prior section 2383, act Aug. 10, 1956, ch. 1041, 70A Stat. 137, permitted Secretary of a military department to make emergency purchases of war material abroad, and provided that such material may be admitted free of duty, prior to repeal by Pub. L. 87–456, title III, § 303(c), May 24, 1962, 76 Stat. 78.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE

Pub. L. 108–375, div. A, title VIII, § 804(b), Oct. 28, 2004, 118 Stat. 2008, provided that: ''Section 2383 of title 10, United States Code (as added by subsection (a)), shall apply to contracts entered into on or after the date of the enactment of this Act [Oct. 28, 2004].''

§ 2384. Supplies: identification of supplier and sources

(a) The Secretary of Defense shall require that the contractor under a contract with the Department of Defense for the furnishing of supplies to the United States shall mark or otherwise identify supplies furnished under the contract with the identity of the contractor, the national stock number for the supplies furnished (if there is such a number), and the contractor's identification number for the supplies.

(b)(1) The Secretary of Defense shall prescribe regulations requiring that, whenever practicable, each contract requiring the delivery of supplies (other than a contract described in paragraph (2)) shall require that the contractor identify—

(A) the actual manufacturer or producer of the item or of all sources of supply of the contractor for that item;

(B) the national stock number of the item (if there is such a number) and the identification number of the actual manufacturer or producer of the item or of each source of supply of the contractor for the item; and

(C) the source of any technical data delivered under the contract.

(2) The regulations prescribed pursuant to paragraph (1) do not apply to a contract that requires the delivery of supplies that are commercial products (as defined in section 103 of title 41).

(3) The regulations prescribed pursuant to paragraph (1) do not apply to a contract for an amount not greater than the simplified acquisition threshold (as defined in section 134 of title 41).

(c) Identification of supplies and technical data under this section shall be made in the manner and with respect to the supplies prescribed by the Secretary of Defense.

(Aug. 10, 1956, ch. 1041, 70A Stat. 137; Pub. L. 98–525, title XII, § 1231(a), Oct. 19, 1984, 98 Stat. 2599; Pub. L. 99–500, § 101(c) [title X, § 928(a)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–156, and Pub. L. 99–591, § 101(c) [title X, § 928(a)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–156; Pub. L. 99–661, div. A, title IX, formerly title IV, § 928(a), Nov. 14, 1986, 100 Stat. 3936, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; Pub. L. 103–355, title IV, § 4102(d), title VIII, § 8105(b), Oct. 13, 1994, 108 Stat. 3340, 3392; Pub. L. 104–106, div. D, title XLIII, § 4321(b)(12), Feb. 10, 1996, 110 Stat. 672; Pub. L. 111–350, § 5(b)(23), Jan. 4, 2011, 124 Stat. 3844; Pub. L. 115–232, div. A, title VIII, § 836(e)(2), Aug. 13, 2018, 132 Stat. 1869.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1864(b), Jan. 1, 2021, 134 Stat. 4151, 4279, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 367 of this title, as amended by section 1864(a) of Pub. L. 116–283, inserted after section 4752, and redesignated as section 4753 of this title. See Effective Date of 2021 Amendment note below.

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
2384	10:1207. 34:583.	R.S. 3731.

The words ''Each contractor'' are substituted for the words ''Every person''. The word ''his'' is substituted for the words ''the name of the contractor furnishing such supplies''. The words ''of any kind'' and ''and distinguish [distinguished]'' are omitted as surplusage. The word ''may'' is substituted for the word ''shall''.

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

AMENDMENTS

2018—Subsec. (b)(2). Pub. L. 115–232 substituted ''commercial products'' for ''commercial items''.

2011—Subsec. (b)(2). Pub. L. 111–350, § 5(b)(23)(A), substituted ''section 103 of title 41)'' for ''section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12)))''.

Subsec. (b)(3). Pub. L. 111–350, § 5(b)(23)(B), substituted ''section 134 of title 41)'' for ''section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11)))''.

1996—Subsec. (b)(2). Pub. L. 104–106, § 4321(b)(12)(A), substituted ''items (as'' for ''items, as'' and inserted a closing parenthesis after ''403(12))''.

Subsec. (b)(3). Pub. L. 104–106, § 4321(b)(12)(B), inserted a closing parenthesis after ''403(11))''.

1994—Subsec. (b)(2). Pub. L. 103–355, § 8105(b), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''Paragraph (1) does not apply to a contract that requires the delivery of supplies that are commercial items sold in substantial quantities to the general public if the contract—

''(A) provides for the acquisition of such supplies by the Department of Defense at established catalog or market prices; or

''(B) is awarded through the use of competitive procedures.''

Subsec. (b)(3). Pub. L. 103–355, § 4102(d), added par. (3).

1986—Subsec. (b). Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661, amended subsec. (b) identically, designating existing provision as par. (1), redesignating former pars. (1) to (3) as subpars. (A) to (C), respectively, and inserting in provision preceding subpar. (A) ''(other than a contract described in paragraph (2))'', and adding par. (2).

1984—Pub. L. 98–525 amended section generally, substituting ''identification of supplier and sources'' for ''marking with name of contractor'' in section catchline, and, in text, substituting provisions designated subsec. (a) and relating to the marking of supplies, providing the national stock number for the supplies furnished, and the contractor's identification number for requirement that each contractor furnishing supplies to a military department mark the supplies with his name in the manner directed by the Secretary of the Department and prohibition of receipt of supplies unless so marked and adding subsecs. (b) and (c).

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115–232 effective Jan. 1, 2020, subject to a savings provision, see section 836(h) of Pub. L. 115–232, set out as an Effective Date of 2018 Amendment; Savings Provision note under section 453b of Title 6, Domestic Security.

EFFECTIVE DATE OF 1996 AMENDMENT

For effective date and applicability of amendment by Pub. L. 104–106, see section 4401 of Pub. L. 104–106, set out as a note under section 2302 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 2302 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–500, § 101(c) [title X, § 928(b)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–156, Pub. L. 99–591, § 101(c) [title X, § 928(b)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–156, and Pub. L. 99–661, Pub. L. 99–661, div. A, title IX, formerly title IV, § 928(b), Nov. 14, 1986, 100 Stat. 3936, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273, provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to contracts entered into after the end of the 180-day period beginning on the date of the enactment of this Act [Oct. 18, 1986].''

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–525, title XII, § 1231(b), Oct. 19, 1984, 98 Stat. 2600, provided that: ''The amendment made by subsection (a) [amending this section] shall take effect at the end of the one-year period beginning on the date of the enactment of this Act [Oct. 19, 1984].''

§ 2384a. Supplies: economic order quantities

(a)(1) An agency referred to in section 2303(a) of this title shall procure supplies in such quantity as (A) will result in the total cost and unit cost most advantageous to the United States, where practicable, and (B) does not exceed the quantity reasonably expected to be required by the agency.

(2) The Secretary of Defense shall take paragraph (1) into account in approving rates of obligation of appropriations under section 2204 of this title.

(b) Each solicitation for a contract for supplies shall, if practicable, include a provision inviting each offeror responding to the solicitation to state an opinion on whether the quantity of the supplies proposed to be procured is economically advantageous to the United States and, if applicable, to recommend a quantity or quantities which would be more economically advantageous to the United States. Each such recommendation shall include a quotation of the total price and the unit price for supplies procured in each recommended quantity.

(Added Pub. L. 98–525, title XII, § 1233(a), Oct. 19, 1984, 98 Stat. 2600.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1813(c), Jan. 1, 2021, 134 Stat. 4151, 4179, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 223 of this title, inserted after section 3241, and redesignated as section 3242 of this title. See Effective Date of 2021 Amendment note below.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE

Pub. L. 98–525, title XII, § 1233(b), Oct. 19, 1984, 98 Stat. 2601, provided that: ''The amendment made by subsection (a) [enacting this section] shall take effect at the end of the 180-day period beginning on the date of the enactment of this Act [Oct. 19, 1984].''

§ 2385. Arms and ammunition: immunity from taxation

No tax on the sale or transfer of firearms, pistols, revolvers, shells, or cartridges may be imposed on such articles when bought with funds appropriated for a military department.

(Aug. 10, 1956, ch. 1041, 70A Stat. 137.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2385	5:171w.	Jan. 6, 1951, ch. 1213, subch. VII, § 706, 64 Stat. 1236.

The words ''No * * * may be'' are substituted for the words ''None * * * shall be subject to any''. The words ''by any Act'' are omitted as surplusage.

§ 2386. Copyrights, patents, designs, etc.; acquisition

Funds appropriated for a military department available for making or procuring supplies may be used to acquire any of the following if the acquisition relates to supplies or processes produced or used by or for, or useful to, that department:

(1) Copyrights, patents, and applications for patents.

(2) Licenses under copyrights, patents, and applications for patents.

(3) Design and process data, technical data, and computer software.

(4) Releases for past infringement of patents or copyrights or for unauthorized use of technical data or computer software.

(Aug. 10, 1956, ch. 1041, 70A Stat. 137; Pub. L. 86–726, § 3, Sept. 8, 1960, 74 Stat. 855; Pub. L. 103–355, title III, § 3063, Oct. 13, 1994, 108 Stat. 3337; Pub. L. 104–106, div. A, title VIII, § 813, Feb. 10, 1996, 110 Stat. 395.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1833(o)(2), Jan. 1, 2021, 134 Stat. 4151, 4234, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to subchapter III of chapter 275 of this title, as added by section 1833(n) of Pub. L. 116–283, inserted after section 3791, and redesignated as section 3793 of this title. See Effective Date of 2021 Amendment note below.

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2386	31:649b.	Aug. 1, 1953, ch. 305, § 609, 67 Stat. 350.

The words ''equipment, and materials'' are omitted as covered by the word ''supplies''. The word ''hereafter'' is omitted as executed. The words ''may be used'' are substituted for the words ''shall * * * be available''. The words ''if the acquisition relates to'' are substituted for 31:649b (1st 8 words of last sentence). In clauses (1), (2), and (4), the word ''patents'' is substituted for the words ''letters patent''.

AMENDMENTS

1996—Par. (3). Pub. L. 104–106 amended par. (3) generally, substituting ''Design and process data, technical data, and computer software'' for ''Technical data and computer software''.

1994—Pars. (3), (4). Pub. L. 103–355 added pars. (3) and (4) and struck out former pars. (3) and (4) which read as follows:

''(3) Designs, processes, and manufacturing data.

''(4) Releases, before suit is brought, for past infringement of patents or copyrights.''

1960—Pub. L. 86–726 inserted ''or copyrights'' after ''patents'' in cl. (4).

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 2387. Contract working dogs: requirement to transfer animals to 341st Training Squadron after service life

(a) IN GENERAL.—Each contract entered into by the Secretary of Defense for the provision of a contract working dog shall require, and shall contain a contract term, that the dog be transferred to the 341st Training Squadron and assigned for veterinary screening and care in accordance with section 2583 of this title after the service life of the dog has terminated as described in subsection (b) for reclassification as a

military animal and placement for adoption in accordance with such section.

(b) SERVICE LIFE.—The service life of a contract working dog has terminated and the dog is available for transfer to the 341st Training Squadron pursuant to a contract under subsection (a) only if the contracting officer concerned has determined that—

(1) the final contractual obligation of the dog preceding such transfer is with the Department of Defense; and

(2) the dog cannot be used by another department or agency of the Federal Government due to age, injury, or performance.

(c) CONTRACT WORKING DOG.—In this section, the term ''contract working dog'' means a dog—

(1) that performs a service for the Department of Defense pursuant to a contract; and

(2) that is trained and kenneled by an entity that provides such a dog pursuant to such a contract.

(Added Pub. L. 114–328, div. A, title III, §342(a)(1), Dec. 23, 2016, 130 Stat. 2082, §2410r; amended Pub. L. 116–92, div. A, title III, §372(f), Dec. 20, 2019, 133 Stat. 1331; renumbered §2387, Pub. L. 116–283, div. A, title XVIII, §1882(b), Jan. 1, 2021, 134 Stat. 4293.)

RENUMBERING OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§1801(d), 1882(b), Jan. 1, 2021, 134 Stat. 4151, 4293, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, section 2410r of this title is renumbered as this section. See Effective Date of 2021 Amendment note below.

PRIOR PROVISIONS

A prior section 2387, added Pub. L. 85–861, §1(45), Sept. 2, 1958, 72 Stat. 1458, related to limitation on procurement of table and kitchen equipment for officers' quarters, prior to repeal by Pub. L. 114–328, div. A, title VIII, §833(b)(4)(A), Dec. 23, 2016, 130 Stat. 2285.

AMENDMENTS

2021—Pub. L. 116–283 renumbered section 2410r of this title as this section.

2019—Subsec. (a). Pub. L. 116–92 inserted '', and shall contain a contract term,'' after ''shall require'' and ''and assigned for veterinary screening and care in accordance with section 2583 of this title'' after ''341st Training Squadron'' and substituted ''such section'' for ''section 2583 of this title''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§2388. Security clearances for facilities of certain companies

(a) AUTHORITY.—If the senior management official of a covered company does not have a security clearance, the Secretary of Defense may grant a security clearance to a facility of such company only if the following criteria are met:

(1) The company has appointed a senior officer, director, or employee of the company who has a security clearance at the level of the security clearance of the facility to act as the senior management official of the company with respect to such facility.

(2) Any senior management official, senior officer, or director of the company who does not have such a security clearance will not have access to any classified information, including with respect to such facility.

(3) The company has certified to the Secretary that the senior officer, director, or employee appointed under paragraph (1) has the authority to act on behalf of the company with respect to such facility independent of any senior management official, senior officer, or director described in paragraph (2).

(4) The facility meets all of the requirements to be granted a security clearance other than any requirement relating to the senior management official of the company having an appropriate security clearance.

(b) COVERED COMPANY.—In this section, the term ''covered company'' means a company that has entered into a contract or agreement with the Department of Defense, assists the Department, or requires a facility to process classified information.

(Added Pub. L. 115–91, div. A, title XVI, §1621(a), Dec. 12, 2017, 131 Stat. 1732, §2410s; amended Pub. L. 115–232, div. A, title X, §1081(a)(23), Aug. 13, 2018, 132 Stat. 1984; renumbered §2388, Pub. L. 116–283, div. A, title XVIII, §1882(b), Jan. 1, 2021, 134 Stat. 4293.)

RENUMBERING OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§1801(d), 1882(b), Jan. 1, 2021, 134 Stat. 4151, 4293, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, section 2410s of this title is renumbered as this section. See Effective Date of 2021 Amendment note below.

PRIOR PROVISIONS

A prior section 2388 was renumbered section 2922 of this title.

AMENDMENTS

2021—Pub. L. 116–283 renumbered section 2410s of this title as this section.

2018—Pub. L. 115–232 struck out period at end of section catchline.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§2389. Ensuring safety regarding insensitive munitions

The Secretary of Defense shall ensure, to the extent practicable, that insensitive munitions under development or procurement are safe throughout development and fielding when subject to unplanned stimuli.

(Added Pub. L. 107–107, div. A, title VIII, §834(a)(1), Dec. 28, 2001, 115 Stat. 1191.)

PRIOR PROVISIONS

A prior section 2389, added Pub. L. 89–696, §1(1), Oct. 19, 1966, 80 Stat. 1056; amended Pub. L. 100–370, §1(h)(1),

July 19, 1988, 102 Stat. 847, related to purchases from Commodity Credit Corporation and price adjustments for contracts for procurement of milk, prior to repeal by Pub. L. 103–160, div. A, title VIII, § 821(a)(4), Nov. 30, 1993, 107 Stat. 1704.

REPORT REQUIREMENT

Pub. L. 107–107, div. A, title VIII, § 834(b), Dec. 28, 2001, 115 Stat. 1191, directed the Secretary of Defense to submit to committees of Congress a report on insensitive munitions at the same time that the budgets for fiscal years 2003 through 2005 were submitted.

§ 2390. Prohibition on the sale of certain defense articles from the stocks of the Department of Defense

(a)(1) Except as provided in subsections (b) and (c), the sale outside the Department of Defense of any defense article designated or otherwise classified as Prepositioned Material Configured to Unit Sets, as decrement stock, or as Prepositioned War Reserve Stocks for United States Forces is prohibited.

(2) In this section, the term ''decrement stock'' means such stock as is needed to bring the armed forces from a peacetime level of readiness to a combat level of readiness.

(b) The President may authorize the sale outside the Department of Defense of a defense article described in subsection (a) if—

(1) he determines that there is an international crisis affecting the national security of the United States and the sale of such article is in the best interests of the United States; and

(2) he reports to the Congress not later than 60 days after the transfer of such article a plan for the prompt replenishment of the stocks of such article and the planned budget request to begin implementation of that plan.

(c)(1) Nothing in this section shall preclude the sale of stocks which have been designated for replacement, substitution, or elimination or which have been designated for sale to provide funds to procure higher priority stocks.

(2) Nothing in this section shall preclude the transfer or sale of equipment to other members of the North Atlantic Treaty Organization.

(Added Pub. L. 95–485, title VIII, § 815(a), Oct. 20, 1978, 92 Stat. 1625, § 975; amended Pub. L. 100–26, § 7(k)(3), Apr. 21, 1987, 101 Stat. 284; renumbered § 2390, Pub. L. 101–189, div. A, title XVI, § 1622(b)(1), Nov. 29, 1989, 103 Stat. 1604.)

PRIOR PROVISIONS

A prior section 2390, added Pub. L. 95–79, title VIII, § 815(a), July 30, 1977, 91 Stat. 337; amended Pub. L. 96–470, title I, § 104(a), Oct. 19, 1980, 94 Stat. 2238; Pub. L. 96–513, title V, § 511(80), Dec. 12, 1980, 94 Stat. 2927, directed Secretary of Defense to request each commissioned officer, and each civilian employee above grade GS–12, who was scheduled for retirement and who was or had been at any time within one year prior to such scheduled retirement, assigned to, or employed in, military procurement to submit suggestions for methods to improve procurement policies, prior to repeal by Pub. L. 98–94, title XII, § 1259(a), Sept. 24, 1983, 97 Stat. 703.

AMENDMENTS

1989—Pub. L. 101–189 renumbered section 975 of this title as this section.

1987—Subsec. (a)(2). Pub. L. 100–26 inserted ''the term'' after ''In this section,''.

§ 2391. Military base reuse studies and community planning assistance

(a) REUSE STUDIES.—Whenever the Secretary of Defense or the Secretary of the military department concerned publicly announces that a military installation is a candidate for closure or that a final decision has been made to close a military installation and the Secretary of Defense determines, because of the location, facilities, or other particular characteristics of the installation, that the installation may be suitable for some specific Federal, State, or local use potentially beneficial to the Nation, the Secretary of Defense may conduct such studies, including the preparation of an environmental impact statement in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), in connection with such installation and such potential use as may be necessary to provide information sufficient to make sound conclusions and recommendations regarding the possible use of the installation.

(b) ADJUSTMENT AND DIVERSIFICATION ASSISTANCE.—(1) The Secretary of Defense may make grants, conclude cooperative agreements, and supplement funds available under Federal programs administered by agencies other than the Department of Defense in order to assist State and local governments in planning community adjustments and economic diversification required (A) by the proposed or actual establishment, realignment, or closure of a military installation, (B) by the cancellation or termination of a Department of Defense contract or the failure to proceed with an approved major weapon system program, (C) by a publicly announced planned major reduction in Department of Defense spending that would directly and adversely affect a community, (D) by the encroachment of a civilian community on a military installation, (E) by threats to military installation resilience, or (F) by the closure or the significantly reduced operations of a defense facility as the result of the merger, acquisition, or consolidation of the defense contractor operating the defense facility, if the Secretary determines that an action described in clause (A), (B), (C), or (F) is likely to have a direct and significantly adverse consequence on the affected community or, in the case of an action described in clause (D) or (E), if the Secretary determines that either the encroachment of the civilian community or threats to military installation resilience is likely to impair the continued operational utility of the military installation.

(2) In the case of the establishment or expansion of a military installation, assistance may be made under paragraph (1) only if (A) community impact assistance or special impact assistance is not otherwise available, and (B) the establishment or expansion involves the assignment to the installation of (i) more than 2,000 military, civilian, and contractor Department of Defense personnel, or (ii) more military, civilian, and contractor Department of Defense personnel than the number equal to 10 percent of the number of persons employed in counties or independent municipalities within fifteen miles of the installation, whichever is lesser.

(3) In the case of a publicly announced planned reduction in Department of Defense spending,

the closure or realignment of a military installation, the cancellation or termination of a Department of Defense contract, or the failure to proceed with a previously approved major defense acquisition program, assistance may be made under paragraph (1) only if the reduction, closure or realignment, cancellation or termination, or failure will have a direct and significant adverse impact on a community or its residents.

(4)(A) In the case of a State or local government eligible for assistance under paragraph (1), the Secretary of Defense may also make grants, conclude cooperative agreements, and supplement other Federal funds in order to assist the State or local government to carry out a community adjustment and economic diversification program (including State industrial extension or modernization efforts to facilitate the economic diversification of defense contractors and subcontractors) in addition to planning such a program.

(B) The Secretary shall establish criteria for the selection of community adjustment and economic diversification programs to receive assistance under subparagraph (A). Such criteria shall include a requirement that the State or local government agree—

(i) to provide not less than 10 percent of the funding for the program from non-Federal sources;

(ii) to provide business planning and market exploration services under the program to defense contractors and subcontractors that seek modernization or diversification assistance; and

(iii) to provide training, counseling, and placement services for members of the armed forces and dislocated defense workers.

(C) The Secretary shall carry out this paragraph in coordination with the Secretary of Commerce.

(5)(A) The Secretary of Defense may also make grants, conclude cooperative agreements, and supplement other Federal funds in order to assist a State or local government in planning community adjustments and economic diversification even though the State or local government is not currently eligible for assistance under paragraph (1) if the Secretary determines that a substantial portion of the economic activity or population of the geographic area to be subject to the advance planning is dependent on defense expenditures.

(B) The Secretary of Defense may also make grants, conclude cooperative agreements, and supplement other Federal funds in order to assist a State in enhancing its capacities—

(i) to assist communities, businesses, and workers adversely affected by an action described in paragraph (1);

(ii) to support local adjustment and diversification initiatives; and

(iii) to stimulate cooperation between statewide and local adjustment and diversification efforts.

(C) The Secretary of Defense may also make grants, conclude cooperative agreements, and supplement other Federal funds in order to assist a State or local government in enhancing the capabilities of the government to support efforts of the Department of Defense to privatize, contract for, or diversify the performance of military family support services in cases in which the capability of the Department to provide such services is adversely affected by an action described in paragraph (1).

(6) Funds provided to State and local governments and regional organizations under this section may be used as part or all of any required non-Federal contribution to a Federal grant-in-aid program for the purposes stated in paragraph (1).

(7) To the extent practicable, the Secretary of Defense shall inform a State or local government applying for assistance under this subsection of the approval or rejection by the Secretary of the application for such assistance as follows:

(A) Before the end of the 7-day period beginning on the date on which the Secretary receives the application, in the case of an application for a planning grant.

(B) Before the end of the 30-day period beginning on such date, in the case of an application for assistance to carry out a community adjustments and economic diversifications program.

(8)(A) In attempting to complete consideration of applications within the time period specified in paragraph (7), the Secretary of Defense shall give priority to those applications requesting assistance for a community described in subsection (f)(1).

(B) If an application under paragraph (7) is rejected by the Secretary, the Secretary shall promptly inform the State or local government of the reasons for the rejection of the application.

(c) RESEARCH AND TECHNICAL ASSISTANCE.—The Secretary of Defense may make grants to, or conclude cooperative agreements or enter into contracts with, another Federal agency, a State or local government, or any private entity to conduct research and provide technical assistance in support of activities under this section or Executive Order 12788 (57 Fed. Reg. 2213), as amended by section 33 of Executive Order 13286 (68 Fed. Reg. 10625) and Executive Order 13378 (70 Fed. Reg. 28413).

(d) DEFENSE COMMUNITY INFRASTRUCTURE PILOT PROGRAM.—(1)(A) The Secretary of Defense may make grants, conclude cooperative agreements, and supplement funds available under Federal programs administered by agencies other than the Department of Defense to assist State and local governments to address deficiencies in community infrastructure supportive of a military installation.

(B) The Secretary shall establish criteria for the selection of community infrastructure projects to receive assistance under this subsection, including selection of community infrastructure projects in the following order of priority:

(i) Projects that will enhance military value at a military installation, taking into consideration the military value criteria originally developed by the Secretary in compliance with the amendment made by section 3002 of the Military Construction Authorization Act for

Fiscal Year 2002 (division B of Public Law 107–107; 115 Stat. 1344).

(ii) Projects that will enhance military installation resilience, as defined in section 101(e)(8) of this title.

(iii) Projects that will enhance military family quality of life at a military installation, taking into consideration subsection (e)(4)(C).

(2)(A) The criteria established for the selection of community infrastructure projects to receive assistance under this subsection shall include a requirement that, except as provided in subparagraph (B), the State or local government agree to contribute not less than 30 percent of the funding for the community infrastructure project.

(B) If a proposed community infrastructure project will be carried out in a rural area or the Secretary of Defense determines that a proposed community infrastructure project is advantageous for reasons related to national security, the Secretary—

(i) shall not penalize a State or local government for offering to make a contribution of 30 percent or less of the funding for the community infrastructure project; and

(ii) may reduce the requirement for a State or local government contribution to 30 percent or less or waive the cost-sharing requirement entirely.

(3) Amounts appropriated or otherwise made available for assistance under paragraph (1) may remain available until expended.

(4) The authority under this subsection shall expire on September 30, 2028.

(e) DEFINITIONS.—In this section:

(1) The terms ''military installation'' and ''realignment'' have the meanings given those terms in section 2687 of this title. For purposes of subsection (b)(1)(D), the term ''military installation'' includes a military facility owned and operated by any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, or the Virgin Islands, even though the facility is not under the jurisdiction of the Department of Defense, if the Secretary of Defense determines that the military facility is subject to significant use for training by the armed forces.

(2) The term ''defense facility'' means any private facility producing goods or services pursuant to a defense contract.

(3) The terms ''community adjustment'' and ''economic diversification'' include the development of feasibility studies and business plans for market diversification within a community adversely affected by an action described in clause (A), (B), (C), or (E) of subsection (b)(1) by adversely affected businesses and labor organizations located in the community.

(4)(A) The term ''community infrastructure'' means a project or facility described in subparagraph (B) that—

(i) is located off of a military installation; and

(ii) is—

(I) owned by a State or local government; or

(II) a not-for-profit, member-owned utility service.

(B) A project or facility described in this subparagraph is any of the following:

(i) Any transportation project.

(ii) A school, hospital, police, fire, emergency response, or other community support facility.

(iii) A water, waste-water, telecommunications, electric, gas, or other utility infrastructure project.

(C) For the purposes of determining whether proposed community infrastructure will enhance quality of life, the Secretary of Defense shall consider the impact of the community infrastructure on alleviating installation commuter workforce issues and the benefit of schools or other local infrastructure located off of a military installation that will support members of the armed forces and their dependents residing in the community.

(5) The term ''rural area'' means a city, town, or unincorporated area that has a population of not more than 100,000 inhabitants.

(f) ASSISTANCE SUBJECT TO APPROPRIATIONS.—The authority of the Secretary of Defense to make grants under this section in any fiscal year is subject to the availability of appropriations for that purpose.

(Added Pub. L. 97–86, title IX, § 912(a)(1), Dec. 1, 1981, 95 Stat. 1122; amended Pub. L. 98–115, title VIII, § 808, Oct. 11, 1983, 97 Stat. 789; Pub. L. 100–26, § 7(k)(3), Apr. 21, 1987, 101 Stat. 284; Pub. L. 100–456, div. B, title XXVIII, § 2805, Sept. 29, 1988, 102 Stat. 2116; Pub. L. 101–510, div. D, title XLI, § 4102(b), Nov. 5, 1990, 104 Stat. 1851; Pub. L. 102–25, title VII, § 701(j)(3), Apr. 6, 1991, 105 Stat. 116; Pub. L. 102–484, div. A, title X, § 1052(28), div. D, title XLIII, § 4301(a)–(c), Oct. 23, 1992, 106 Stat. 2500, 2696, 2697; Pub. L. 103–35, title II, § 202(a)(15), May 31, 1993, 107 Stat. 101; Pub. L. 103–160, div. B, title XXIX, § 2913, Nov. 30, 1993, 107 Stat. 1925; Pub. L. 103–337, div. A, title XI, §§ 1122(a), 1123(a), (b), Oct. 5, 1994, 108 Stat. 2870, 2871; Pub. L. 104–106, div. A, title XV, § 1502(a)(1), Feb. 10, 1996, 110 Stat. 502; Pub. L. 104–201, div. B, title XXVIII, § 2814, Sept. 23, 1996, 110 Stat. 2790; Pub. L. 105–85, div. B, title XXVIII, § 2822, Nov. 18, 1997, 111 Stat. 1997; Pub. L. 106–65, div. A, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 107–314, div. A, title X, § 1041(a)(13), Dec. 2, 2002, 116 Stat. 2645; Pub. L. 109–163, div. B, title XXVIII, § 2832, Jan. 6, 2006, 119 Stat. 3520; Pub. L. 109–364, div. B, title XXVIII, §§ 2861, 2862, Oct. 17, 2006, 120 Stat. 2498; Pub. L. 110–417, div. B, title XXVIII, § 2823(b), Oct. 14, 2008, 122 Stat. 4730; Pub. L. 112–239, div. B, title XXVII, § 2712(c)(1), Jan. 2, 2013, 126 Stat. 2145; Pub. L. 115–232, div. B, title XXVIII, §§ 2805(f), 2861, Aug. 13, 2018, 132 Stat. 2263, 2282; Pub. L. 116–92, div. B, title XXVIII, § 2862, Dec. 20, 2019, 133 Stat. 1899; Pub. L. 116–283, div. B, title XXVIII, § 2882, Jan. 1, 2021, 134 Stat. 4369.)

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsec. (a), is Pub. L. 91–190, Jan. 1, 1970, 83

Stat. 852, as amended, which is classified generally to chapter 55 (§ 4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

Executive Order 12788, referred to in subsec. (c), is set out below.

The amendment made by section 3002 of the Military Construction Authorization Act for Fiscal Year 2002, referred to in subsec. (d)(1)(B)(i), is the amendment made by section 3002 of title XXX of div. B of Pub. L. 107–107, Dec. 28, 2001, 115 Stat. 1344, which amended the Defense Base Closure and Realignment Act of 1990 (Pub. L. 101–510, div. B, title XXIX, part A [§ 2901 et seq.], Nov. 5, 1990, 104 Stat. 1808, which is set out as a note under section 2687 of this title) by adding section 2912 of such Act.

AMENDMENTS

2021—Subsec. (d)(1). Pub. L. 116–283, § 2882(a), designated existing provisions as subpar. (A), struck out '', if the Secretary determines that such assistance will enhance the military value, resilience, or military family quality of life at such military installation'' after ''supportive of a military installation'', and added subpar. (B).

Subsec. (d)(2). Pub. L. 116–283, § 2882(b), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''The Secretary shall establish criteria for the selection of community infrastructure projects to receive assistance under paragraph (1). The criteria shall include a requirement that the State or local government agree to contribute not less than 30 percent of the funding for the community infrastructure project, unless the community infrastructure project is located in a rural area, or for reasons related to national security, in which case the Secretary may waive the requirement for a State or local government contribution.''

Subsec. (d)(4). Pub. L. 116–283, § 2882(c), substituted ''on September 30, 2028'' for ''upon the expiration of the 10-year period which begins on the date of the enactment of the National Defense Authorization Act for Fiscal Year 2019''.

Subsec. (e)(4)(C). Pub. L. 116–283, § 2882(d), added subpar. (C).

Subsec. (e)(5). Pub. L. 116–283, § 2882(e), substituted ''100,000 inhabitants'' for ''50,000 inhabitants''.

2019—Subsec. (e)(4). Pub. L. 116–92 amended par. (4) generally. Prior to amendment, text read as follows: ''The term 'community infrastructure' means any transportation project; school, hospital, police, fire, emergency response, or other community support facility; or water, waste-water, telecommunications, electric, gas, or other utility infrastructure project that is located off of a military installation and owned by a State or local government.''

2018—Subsec. (b)(1). Pub. L. 115–232, § 2805(f), substituted '', (E) by threats to military installation resilience, or (F) by the closure'' for '', or (E) by the closure'', ''(A), (B), (C), or (F)'' for ''(A), (B), (C), or (E)'', and ''action described in clause (D) or (E), if the Secretary determines that either the encroachment of the civilian community or threats to military installation resilience'' for ''action described in clause (D), if the Secretary determines that the encroachment of the civilian community''.

Subsecs. (d), (e). Pub. L. 115–232, § 2861(1), (2), added subsec. (d) and redesignated former subsec. (d) as (e). Former subsec. (e) redesignated (f).

Subsec. (e)(4), (5). Pub. L. 115–232, § 2861(3), added pars. (4) and (5).

Subsec. (f). Pub. L. 115–232, § 2861(1), redesignated subsec. (e) as (f).

2013—Subsec. (d)(1). Pub. L. 112–239 substituted ''section 2687'' for ''section 2687(e)''.

2008—Subsec. (d)(1). Pub. L. 110–417 inserted ''the Commonwealth of the Northern Mariana Islands,'' after ''Guam,''.

2006—Subsec. (b)(3). Pub. L. 109–163, § 2832(a), substituted ''realignment of a military installation'' for ''significantly reduced operations of a defense facility'', ''closure or realignment, cancellation or'' for ''cancellation,'', and ''community or its residents.'' for ''community and will result in the loss of—

''(A) 2,500 or more employee positions, in the case of a Metropolitan Statistical Area or similar area (as defined by the Director of the Office of Management and Budget);

''(B) 1,000 or more employee positions, in the case of a labor market area outside of a Metropolitan Statistical Area; or

''(C) one percent of the total number of civilian jobs in that area.''

Subsec. (c). Pub. L. 109–364, § 2861, added subsec. (c).

Subsec. (d)(1). Pub. L. 109–364, § 2862, inserted at end ''For purposes of subsection (b)(1)(D), the term 'military installation' includes a military facility owned and operated by any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, or the Virgin Islands, even though the facility is not under the jurisdiction of the Department of Defense, if the Secretary of Defense determines that the military facility is subject to significant use for training by the armed forces.''

Pub. L. 109–163, § 2832(b), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''The term 'military installation' means any camp, post, station, base, yard, or other installation under the jurisdiction of a military department that is located within any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, or Guam.''

2002—Subsec. (c). Pub. L. 107–314 struck out heading and text of subsec. (c). Text read as follows: ''The Secretary of Defense shall submit a report not later than December 1 of each year to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives concerning the operation of this section during the preceding fiscal year. Each such report shall identify each State, unit of local government, and regional organization that received a grant under this section during such fiscal year and the total amount granted under this section during such year to each such State, unit of local government, and regional organization.''

1999—Subsec. (c). Pub. L. 106–65 substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security''.

1997—Subsec. (b)(5)(C). Pub. L. 105–85 added subpar. (C).

1996—Subsec. (b)(5). Pub. L. 104–201 designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (c). Pub. L. 104–106 substituted ''Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives'' for ''Committees on Armed Services of the Senate and House of Representatives''.

1994—Subsec. (b)(5) to (7). Pub. L. 103–337, § 1123(a), added par. (5) and redesignated former pars. (5) and (6) as (6) and (7), respectively. Former par. (7) redesignated (8).

Subsec. (b)(8). Pub. L. 103–337, § 1123(a)(1), (b), redesignated par. (7) as (8) and substituted ''paragraph (7)'' for ''paragraph (6)'' in subpars. (A) and (B).

Subsec. (d)(3). Pub. L. 103–337, § 1122(a), added par. (3).

1993—Subsec. (b)(1). Pub. L. 103–35 made technical amendment to directory language of Pub. L. 102–484, § 4301(b)(1)(C). See 1992 Amendment note below.

Subsec. (b)(6), (7). Pub. L. 103–160 added pars. (6) and (7).

1992—Subsec. (a). Pub. L. 102–484, § 4301(c)(1), inserted heading.

Subsec. (b). Pub. L. 102–484, § 4301(c)(2), inserted heading.

Subsec. (b)(1). Pub. L. 102–484, § 4301(b)(1), as amended by Pub. L. 103–35, substituted '', (D)'' for '', or (D)'', substituted ''(C), or (E)'' for ''or (C)'', and inserted cl. (E) before first reference to ''if the Secretary''.

Pub. L. 102–484, § 1052(28), substituted ''publicly announced'' for ''publicly-announced''.

Subsec. (b)(3). Pub. L. 102–484, § 4301(b)(2), inserted ''the closure or significantly reduced operations of a

defense facility,'' after ''Defense spending,'' in introductory provisions.

Subsec. (b)(4), (5). Pub. L. 102–484, § 4301(a)(1), (2), added par. (4) and redesignated former par. (4) as (5).

Subsec. (c). Pub. L. 102–484, § 4301(c)(3), inserted heading.

Subsec. (d). Pub. L. 102–484, § 4301(b)(3), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: ''In this section, the term 'military installation' means any camp, post, station, base, yard, or other installation under the jurisdiction of a military department that is located within any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, or Guam.''

Subsec. (e). Pub. L. 102–484, § 4301(c)(4), inserted heading.

1991—Subsec. (b)(3). Pub. L. 102–25 substituted ''publicly announced'' for ''publicly-announced'' and inserted a comma after ''only if the reduction''.

1990—Subsec. (b)(3) to (6). Pub. L. 101–510 added par. (3), redesignated par. (5) as (4), and struck out former pars. (3), (4), and (6), which read as follows:

''(3) In the case of the cancellation or termination of a Department of Defense contract or the failure to proceed with an approved major weapon system program, assistance may be made under paragraph (1) only if the cancellation, termination, or failure to proceed involves the loss of 2,500 or more full-time Department of Defense and contractor employee positions in the locality of the affected community.

''(4) In the case of a publicly-announced planned major reduction in Department of Defense spending that will directly and adversely affect a community, assistance may be made under paragraph (1) only if the publicly-announced planned major reduction will result in the loss of 1,000 or more full-time Department of Defense and contractor employee positions over a five-year period in the locality of the affected community.

''(6) Not more than $2,000,000 in assistance may be provided under this subsection in any fiscal year.''

1988—Subsec. (b)(1). Pub. L. 100–456, § 2805(a), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''The Secretary of Defense may make grants, conclude cooperative agreements, and supplement funds made available under Federal programs administered by agencies other than the Department of Defense in order to assist State and local governments, and regional organizations composed of State and local governments, in planning community adjustments required (A) by the proposed or actual establishment, realignment, or closure of a military installation, or (B) by the cancellation or termination of a Department of Defense contract or the failure to proceed with an approved major weapon system program, if the Secretary of Defense determines that the action is likely to impose a significant impact on the affected community.''

Subsec. (b)(4) to (6). Pub. L. 100–456, § 2805(b), added par. (4) and redesignated former pars. (4) and (5) as (5) and (6), respectively.

1987—Subsec. (d). Pub. L. 100–26 inserted ''the term'' after ''In this section,''.

1983—Subsec. (b)(2). Pub. L. 98–115 substituted ''2,000'' for ''2,500''.

Effective Date of 1993 Amendment

Amendment by Pub. L. 103–35 applicable as if included in the enactment of Pub. L. 102–484, see section 202(b) of Pub. L. 103–35, set out as a note under section 155 of this title.

Effective Date of 1988 Amendment

Pub. L. 100–456, div. B, title XXVII, § 2702, Sept. 29, 1988, 102 Stat. 2115, provided that: ''Except as otherwise specifically provided, this division [amending this section and sections 2662, 2672, 2809, and 2828 of this title and enacting provisions set out as a note under this section] shall take effect on October 1, 1988, or the date of enactment of this Act [Sept. 29, 1988], whichever is later.''

Effective Date of 1983 Amendment

Pub. L. 98–115, title VIII, § 808, Oct. 11, 1983, 97 Stat. 789, provided that the amendment made by that section is effective Oct. 1, 1983.

Restrictions on Use of Funds for Development of Public Infrastructure in Commonwealth of Northern Mariana Islands

Pub. L. 115–232, div. B, title XXVIII, § 2863, Aug. 13, 2018, 132 Stat. 2284, provided that:

''(a) Restriction.—If the Secretary of Defense determines that any grant, cooperative agreement, transfer of funds to another Federal agency, or supplement of funds available under Federal programs administered by agencies other than the Department of Defense will result in the development (including repair, replacement, renovation, conversion, improvement, expansion, acquisition, or construction) of public infrastructure in the Commonwealth of the Northern Mariana Islands (hereafter in this section referred to as the 'Commonwealth'), the Secretary of Defense may not carry out such grant, transfer, cooperative agreement, or supplemental funding unless such grant, transfer, cooperative agreement, or supplemental funding—

''(1) is specifically authorized by law; and

''(2) will be used to carry out a public infrastructure project included in the report submitted under subsection (b).

''(b) Report of Economic Adjustment Committee.—

''(1) Convening of committee.—Not later than 90 days after the date of the enactment of this Act [Aug. 13, 2018], the Secretary of Defense, as the chair of the Economic Adjustment Committee established in Executive Order No. 127887 [probably should be Executive Order No. 12788] (10 U.S.C. 2391 note), shall convene the Economic Adjustment Committee to consider assistance, including assistance to support public infrastructure projects, necessary to support changes in Department of Defense activities in the Commonwealth.

''(2) Report.—Not later than 180 days after convening the Economic Adjustment Committee under paragraph (1), the Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report—

''(A) describing the results of the Economic Adjustment Committee deliberations required by paragraph (1); and

''(B) containing a description of any assistance the Committee determines to be necessary to support changes in Department of Defense activities in the Commonwealth, including any public infrastructure projects the Committee determines should be carried out with such assistance.

''(c) Public Infrastructure Defined.—In this section, the term 'public infrastructure' means any utility, method of transportation, item of equipment, or facility under the control of a public entity or State or local government that is used by, or constructed for the benefit of, the general public.''

Advance Adjustment Planning

Pub. L. 102–484, div. D, title XLIII, § 4301(d), Oct. 23, 1992, 106 Stat. 2697, authorized Secretary of Defense, during fiscal year 1993, to make grants and other assistance available under 10 U.S.C. 2391(b) to assist a State or local government in planning community adjustments and economic diversification even though the State or local government currently failed to meet the criteria for assistance under such section if the Secretary determined that a substantial portion of the economic activity or population of the geographic area to be subjected to the adjustment or diversification planning was dependent on Department of Defense expenditures.

Effect of 1992 Amendments on Efforts of Economic Development Administration

Pub. L. 102–484, div. D, title XLIII, § 4301(f), Oct. 23, 1992, 106 Stat. 2698, provided that: ''Nothing in this sec-

tion [amending this section and enacting provisions set out as a note above] is intended to replace the efforts of the economic development program administered by the Economic Development Administration of the Department of Commerce.''

PILOT PROJECT TO IMPROVE ECONOMIC ADJUSTMENT PLANNING

Pub. L. 102–484, div. D, title XLIII, § 4302, Oct. 23, 1992, 106 Stat. 2698, as amended by Pub. L. 103–160, div. A, title XIII, § 1323(a), Nov. 30, 1993, 107 Stat. 1790, authorized Secretary of Defense, during fiscal years 1993 and 1994, to conduct a pilot project to examine methods to improve the provision of economic adjustment and diversification assistance under 10 U.S.C. 2391(b)(1) to State and local governments adversely affected by the closure of military installations, the cancellation or completion of defense contracts, or reductions in defense spending.

DONATION OF REAL PROPERTY TO NONPROFIT ENTITIES PROVIDING SUPPORT TO CHILDREN WITH LIFE-THREATENING DISEASES

Pub. L. 102–172, title VIII, § 8149, Nov. 26, 1991, 105 Stat. 1214, provided that:

''(a) The Secretary of Defense, during the current fiscal year or at any time thereafter, may make a donation to an entity described in subsection (b) of a parcel of real property (including structures on such property) under the jurisdiction of the Secretary that is not currently required for the needs of the Department and that the Secretary determines is needed and appropriate for the activities of that entity.

''(b) A donation under subsection (a) may be made to a nonprofit entity which provides medical, educational, and emotional support in a recreational setting to children with life-threatening diseases and their families.''

DEFENSE ECONOMIC ADJUSTMENT, DIVERSIFICATION, CONVERSION, AND STABILIZATION

Pub. L. 101–510, div. D, Nov. 5, 1990, 104 Stat. 1848, as amended by Pub. L. 102–190, div. A, title X, § 1062(c), Dec. 5, 1991, 105 Stat. 1475; Pub. L. 102–484, div. D, title XLII, § 4212(b), Oct. 23, 1992, 106 Stat. 2664; Pub. L. 104–201, div. A, title VIII, § 825, Sept. 23, 1996, 110 Stat. 2611; Pub. L. 105–277, div. A, § 101(f) [title VIII, § 405(d)(6)], Oct. 21, 1998, 112 Stat. 2681–337, 2681–419; Pub. L. 108–136, div. A, title IX, § 932, Nov. 24, 2003, 117 Stat. 1581; Pub. L. 113–66, div. B, title XXVIII, § 2841, Dec. 26, 2013, 127 Stat. 1024, provided that:

''SEC. 4001. SHORT TITLE

''This division may be cited as the 'Defense Economic Adjustment, Diversification, Conversion, and Stabilization Act of 1990'.

''SEC. 4002. FINDINGS AND POLICY

''(a) FINDINGS.—Congress makes the following findings:

''(1) There are likely to be significant reductions in the programs, projects, and activities of the Department of Defense during the first several fiscal years following fiscal year 1990.

''(2) Such reductions will adversely affect the economies of many communities in the United States and small businesses and civilian workers throughout the United States.

''(b) POLICY.—In view of the findings expressed in subsection (a), it is the policy of the United States that—

''(1) assistance be provided under existing planning assistance programs and economic adjustment assistance programs of the Federal Government to substantially and seriously affected communities, businesses, and workers to the extent necessary to facilitate an orderly transition for such communities, small businesses, and workers from economic reliance on Department of Defense spending to economic reliance on other sources of business, employment, and revenue; and

''(2) funding for such programs be increased by amounts necessary to meet the needs of such communities, small businesses, and workers without reducing the funding that would otherwise be available under those programs by reason of causes unrelated to the reductions referred to in subsection (a)(1).

''SEC. 4003. DEFINITIONS

''For purposes of this division:

''(1) The term 'major defense contract or subcontract' means—

''(A) any defense contract in an amount not less than $5,000,000 (without regard to the date on which the contract was awarded); and

''(B) any subcontract which—

''(i) is entered into in connection with a contract (without regard to the effective date of the subcontract); and

''(ii) involves not less than $500,000.

''(2) The term 'Economic Adjustment Committee' or 'Committee' means the Economic Adjustment Committee established in Executive Order 12049 (10 U.S.C. 111 note).

''(3) The term 'defense facility' means any private or government facility producing goods or services pursuant to a defense contract.

''(4) The term 'military installation' means a base, camp, post, station, yard, center, or homeport facility for any ship in the United States, or any other facility under the jurisdiction of a military department located in the United States.

''(5) The term 'substantially and seriously affected' means—

''(A) when such term is used in conjunction with the term 'community', a community—

''(i) which has within its administrative and political jurisdiction one or more military installations or defense facilities or which is economically affected by proximity to a military installation or defense facility;

''(ii) in which the actual or threatened curtailment, completion, elimination, or realignment of a defense contract results in a workforce reduction of—

''(I) 2,500 or more employee positions, in the case of a Metropolitan Statistical Area or similar area (as defined by the Director of the Office of Management and Budget);

''(II) 1,000 or more employee positions, in the case of a labor market area outside of a Metropolitan Statistical Area; or

''(III) one percent of the total number of civilian jobs in that area; and

''(iii) which establishes, by evidence, that any workforce reduction referred to in clause (ii) occurred as a direct result of changes in Department of Defense requirements or programs;

''(B) when such term is used in conjunction with the term 'businesses' any business which—

''(i) holds a major defense contract or subcontract (or held such contract or subcontract before a reduction in the defense budget);

''(ii) experiences a reduction, or the threat of a reduction, of—

''(I) 25 percent or more in sales or production; or

''(II) 80 percent or more of the workforce of such business in any division of such business or at any plant or other facility of such business; and

''(iii) establishes, by evidence, that the reductions referred to in clause (ii) occurred as a direct result of a reduction in the defense budget; and

''(C) when such term is used in conjunction with the term 'group of workers', any group of 100 or more workers at a defense facility who are (or who are threatened to be), eligible to participate in the defense conversion adjustment program under section 325 of the Job Training Partnership Act [29 U.S.C. 1662d] (as added by section 4202 of this division), as in effect on the day before the date of enactment of the Workforce Investment Act of 1998 [Aug. 7, 1998].

''SEC. 4004. CONTINUATION OF ECONOMIC ADJUSTMENT COMMITTEE

''(a) TERMINATION OR ALTERATION PROHIBITED.—The Economic Adjustment Committee established in Executive Order 12049 (10 U.S.C. 111 note) may not be terminated and the duties of the Committee may not be significantly altered unless specifically authorized by a law.

''(b) CHAIRMAN.—The Secretary of Defense shall be the chairman of the Committee.

''(c) EXECUTIVE COUNCIL.—Until October 1, 1997, the National Defense Technology and Industrial Base Council shall function as an Executive Council of the Committee. Under the direction of the chairman of the Committee, the Executive Council shall develop policies and procedures to ensure that communities, businesses, and workers substantially and seriously affected by reductions in defense expenditures are advised of the assistance available to such communities, businesses, and workers under programs administered by the departments and agency comprising the Council.

''(d) DUTIES OF COMMITTEE.—The Economic Adjustment Committee shall—

''(1) coordinate and facilitate cooperative efforts among Federal agencies represented on the Committee to implement defense economic adjustment programs; and

''(2) serve as an information clearinghouse for and between Federal, State, and local entities regarding their defense economic adjustment efforts.

''TITLE XLI—ECONOMIC ADJUSTMENT PLANNING

''[SEC. 4101. Repealed. Pub. L. 104–201, div. A, title VIII, § 825, Sept. 23, 1996, 110 Stat. 2611.]

''SEC. 4102. ECONOMIC ADJUSTMENT PLANNING ASSISTANCE THROUGH THE DEPARTMENT OF DEFENSE

''(a) IN GENERAL.—Any substantially and seriously affected community shall be eligible for economic adjustment planning assistance through the Office of Economic Adjustment in the Department of Defense under subsection (b) of section 2391 of title 10, United States Code, subject to subsection (e) of such section. Such assistance shall be provided in accordance with the standards, procedures, and priorities established by the Committee under this division.

''(b) [Amended section 2391(b) of this title.]

''SEC. 4103. COMMUNITY ECONOMIC ADJUSTMENT ASSISTANCE THROUGH THE ECONOMIC DEVELOPMENT ADMINISTRATION

''(a) IN GENERAL.—A community that has been determined by the Economic Development Administration of the Department of Commerce or the Office of Economic Adjustment of the Department of Defense, in accordance with the standards and procedures established by the Economic Adjustment Committee, to be a substantially and seriously affected community shall be eligible for economic adjustment assistance authorized under title IX of the Public Works and Economic Development Act of 1965 [42 U.S.C. 3241 et seq.], subject to the availability of appropriations for such purpose and subject to meeting the eligibility requirements of such title.

''(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Defense for fiscal year 1991 $50,000,000 for purposes of carrying out subsection (a). Any amount appropriated pursuant to this subsection shall remain available until expended.

''TITLE XLII—ADJUSTMENT ASSISTANCE FOR EMPLOYEES

''[SEC. 4201. Repealed. Pub. L. 104–201, div. A, title VIII, § 825, Sept. 23, 1996, 110 Stat. 2611.]

''SEC. 4202. DEFENSE CONVERSION ADJUSTMENT PROGRAM

''[Enacted section 1662d of Title 29, Labor.]

''SEC. 4203. AUTHORIZATION OF APPROPRIATIONS

''(a) AUTHORIZATION.—There are authorized to be appropriated to the Secretary of Defense $150,000,000 for fiscal year 1991 to carry out section 4201 and the amendment made by section 4202. Amounts appropriated pursuant to this subsection shall remain available until expended.

''(b) ADMINISTRATIVE EXPENSES.—Of amounts appropriated pursuant to this section, not more than five percent may be retained by the Secretary of Labor for the administration of the activities authorized by the amendment made by section 4202.

''TITLE XLIII—EXPANSION OF BUSINESS CAPITAL ASSISTANCE PROGRAMS

''SEC. 4301. EXPANSION OF SMALL BUSINESS LOAN PROGRAM

''Not later than 180 days after the date of the enactment of this Act [Nov. 5, 1990], the President, acting with the assistance of the Committee and after consulting experts in government and the private sector, shall transmit to the Congress recommendations regarding ways that assistance provided pursuant to the business loan program under section 7(a) of the Small Business Act of 1958 [15 U.S.C. 636(a)] may be used to respond to the consequences of defense budget reductions.

''SEC. 4302. ECONOMIC PLANNING ASSISTANCE FOR EXCEPTIONAL PROJECTS

''(a) ASSISTANCE AUTHORIZED.—The Economic Development Administration, in the case of assistance under title IX of the Public Works and Economic Development Act of 1965 [42 U.S.C. 3241 et seq.], and the Office of Economic Adjustment, in the case of planning assistance under section 2391(b) of title 10, United States Code, may award planning assistance under those programs to any substantially and seriously affected community, on behalf of a business, group of businesses, or group of workers, if such planning funds are determined by the agency concerned to be necessary and appropriate as a catalyst for projects which the agency determines, on a case-by-case basis, have exceptional promise for achieving the objectives of this division.

''(b) CONDITIONS ON ASSISTANCE.—Awards under this section shall be subject to the availability of appropriations for such purpose and shall be made in accordance with any other applicable provisions of law.

''SEC. 4303. EXPANSION OF EXPORT FINANCING FOR GOODS AND SERVICES PRODUCED BY FIRMS AND EMPLOYEES FORMERLY ENGAGED IN DEFENSE PRODUCTION

''(a) EXPORT-IMPORT BANK.—

''(1) SENSE OF CONGRESS ON PLAN FOR EXPANSION.—It is the sense of Congress that the United States businesses undergoing transition from defense production to nondefense production will need assistance in seizing export markets overseas. Therefore, in order to provide financial support for such businesses, as well as meeting other normal demands on its resources, the annual direct lending authority of the Export-Import Bank of the United States should be increased by at least 150 percent from the fiscal year 1990 level over the five-year period beginning October 1, 1990.

''(2) REPORT OF FEASIBILITY.—Before September 30, 1990, the President, acting with the assistance of the Committee and after consulting the Board of Directors of the Export-Import Bank of the United States and other experts in government and the private sector, shall transmit to the Congress a report assessing the feasibility and desirability of a program for increasing the amount of direct loan authority in the manner described in paragraph (1) and the factors considered in making such assessment.

''(3) TRANSITION TO NONDEFENSE PRODUCTION REQUIRED TO BE CONSIDERED.—In determining whether to provide financial support for an export transaction, the Export-Import Bank of the United States shall take into account, to the extent feasible and in accordance with applicable standards and procedures

established by the bank in consultation with the Committee, the fact that the product or service is produced or provided by any business or group of workers which—

''(A) was substantially and seriously affected by defense budget reductions; and

''(B) is in transition from defense to nondefense production.

''(b) SBA USE OF AUTHORITY FOR EXPORT FINANCING ASSISTANCE.—In determining whether to provide financial or other assistance under the Small Business Act [15 U.S.C. 631 et seq.], title VIII of the Omnibus Trade and Competitiveness Act of 1988 [Pub. L. 100–418, see Short Title of 1988 Amendments note set out under section 631 of Title 15, Commerce and Trade], or any program referred to in section 4301 to any small business involved in, or attempting to become involved in, the export of any product or service, the Administrator of the Small Business Administration shall take into account the fact that such product or service is produced or provided by any business or group of workers which—

''(1) has been substantially and seriously affected by defense budget reductions; and

''(2) is in transition from defense to nondefense production.

''(c) COORDINATION AND INTEGRATION OF ACTIVITIES AND ASSISTANCE WITH OTHER AGENCIES.—In providing additional financial assistance pursuant to any increase in loan authority under this division—

''(1) Federal agencies concerned with international trade shall participate in the process of coordination conducted by the Committee pursuant to section 4004(c)(1); and

''(2) such Federal agencies shall attempt, to the maximum extent practicable, to coordinate and integrate the activities and assistance of the agencies in support of exports, including financial assistance in the form of direct loans, loan guarantees, and insurance, general trade promotion, marketing assistance, and marketing and commercial information, in a manner consistent with the purposes of this division (and the amendments made by this division to other provisions of law).

''(d) REPORTING.—The annual reports made by the Export-Import Bank of the United States and the Administrator of the Small Business Administration and the annual economic stabilization and adjustment report under section 4004(c)(3) of this division shall include a description of the extent to which the bank and the Administrator are—

''(1) providing financing described in subsections (a)(2) and (b), respectively, to businesses or groups of workers which were substantially and seriously affected by defense budget reductions; and

''(2) coordinating and integrating export support and financing activities with other Federal agencies.

''SEC. 4304. BENEFIT INFORMATION FOR BUSINESSES

''(a) INFORMATION REQUIRED TO BE PROVIDED.—The Secretary of Commerce and the Administrator of the Small Business Administration shall provide any business affected by defense budget reductions with a complete description of available programs which provide any business, whether on an industrywide or an individual basis, with any planning assistance, financial, technical, or managerial assistance, worker retraining assistance, or other assistance authorized under this division.

''(b) EFFECTIVE NOTIFICATION SYSTEM.—The Secretary of Commerce and the Administrator of the Small Business Administration shall take such action as may be appropriate to ensure, to the maximum extent practicable, that each business affected by defense budget reductions receives the information required to be provided under subsection (a) on a timely basis.''

COMMISSION ON ALTERNATIVE UTILIZATION OF MILITARY FACILITIES

Section 2819 of Pub. L. 100–456, as amended by Pub. L. 101–510, div. B, title XXIX, §2922(a), Nov. 5, 1990, 104 Stat. 1820, established Commission on Alternative Utilization of Military Facilities and required Commission to submit reports to President and Congress not later than Sept. 1 of every second year through fiscal year 1996, prior to repeal by Pub. L. 105–261, div. A, title X, §1031(b), Oct. 17, 1998, 112 Stat. 2123.

SUBMISSION DATE FOR FIRST REPORT

Pub. L. 97–86, title IX, §912(c), Dec. 1, 1981, 95 Stat. 1123, required the first report under subsec. (c) of this section to be submitted not later than Dec. 1, 1982.

EX. ORD. NO. 12682. COMMISSION ON ALTERNATIVE UTILIZATION OF MILITARY FACILITIES

Ex. Ord. No. 12682, July 7, 1989, 54 F.R. 29315, provided:

By the authority vested in me as President by the Constitution and laws of the United States of America, including section 2819 of the Military Construction Authorization Act, 1989 (Public Law 100–456) [10 U.S.C. 2391 note], it is hereby ordered as follows:

SECTION 1. (a) I hereby establish the Commission on Alternative Utilization of Military Facilities (''Commission'').

(b) The Commission shall consist of a representative of the Department of Defense designated by the Secretary of Defense, a representative of the Federal Bureau of Prisons designated by the Attorney General, a representative of the National Institute on Drug Abuse designated by the Secretary of Health and Human Services, a representative of the General Services Administration designated by the Administrator of General Services, a representative of the Department of Housing and Urban Development designated by the Secretary of Housing and Urban Development, and a representative of the Office of National Drug Control Policy designated by the Director of the Office of National Drug Control Policy. The representative of the Department of Defense shall chair the Commission.

(c) The Secretary of Defense shall provide such personnel and support to the Commission as the Secretary determines is necessary to accomplish its mission.

SEC. 2. (a) Subject to subsection (b), the Secretary of Defense shall prepare and submit to the Commission reports listing active and nonactive military facilities that are underutilized in whole or in part or otherwise excess to the needs of the Department of Defense.

(b) The first such report shall be prepared and submitted as soon as possible for inclusion in the first report of the Commission. The second report shall be prepared and submitted on January 30, 1990, and succeeding reports shall be prepared and submitted every other year commencing on January 30, 1992, and continuing until January 30, 1996.

SEC. 3. (a) Subject to subsection (b), the Commission shall submit a report to the President and then to the Congress that identifies those facilities, or parts of facilities, from the list submitted by the Secretary of Defense under Section 2 that could be effectively utilized or renovated to serve as:

(1) minimum security facilities for nonviolent prisoners,

(2) drug treatment facilities for nonviolent drug abusers, and

(3) facilities to assist the homeless.

(b) The first report of the Commission shall be submitted to the President and then to the Congress by September 1, 1989. The second, and succeeding reports of the Commission, shall be submitted to the President and then to the Congress no later than September 1, 1990, and every second year through September 1, 1996.

GEORGE BUSH.

EX. ORD. NO. 12788. DEFENSE ECONOMIC ADJUSTMENT PROGRAM

Ex. Ord. No. 12788, Jan. 15, 1992, 57 F.R. 2213, as amended by Ex. Ord. No. 13286, §33, Feb. 28, 2003, 68 F.R. 10625; Ex. Ord. No. 13378, May 12, 2005, 70 F.R. 28413, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of

America, including 10 U.S.C. 2391 and the Defense Economic Adjustment, Diversification, Conversion, and Stabilization Act of 1990, enacted as Division D, section 4001 *et seq.*, of the National Defense Authorization Act for Fiscal Year 1991, Public Law 101–510 [set out above], and to provide coordinated Federal economic adjustment assistance necessitated by changes in Department of Defense activities, it is hereby ordered as follows:

SECTION 1. *Function of the Secretary of Defense.* The Secretary of Defense shall, through the Economic Adjustment Committee, design and establish a Defense Economic Adjustment Program.

SEC. 2. *Purpose of the Defense Economic Adjustment Program.* The Defense Economic Adjustment Program shall (1) assist substantially and seriously affected communities, businesses, and workers from the effects of major Defense base closures, realignments, and Defense contract-related adjustments, and (2) assist State and local governments in preventing the encroachment of civilian communities from impairing the operational utility of military installations.

SEC. 3. *Functions of the Defense Economic Adjustment Program.* The Defense Economic Adjustment Program shall:

(a) Identify problems of States, regions, metropolitan areas, or communities that result from major Defense base closures, realignments, and Defense contract-related adjustments, and the encroachment of the civilian community on the mission of military installations and that require Federal assistance;

(b) Use and maintain a uniform socioeconomic impact analysis to justify the use of Federal economic adjustment resources, prior to particular realignments;

(c) Apply consistent policies, practices, and procedures in the administration of Federal programs that are used to assist Defense-affected States, regions, metropolitan areas, communities, and businesses;

(d) Identify and strengthen existing agency mechanisms to coordinate employment opportunities for displaced agency personnel;

(e) Identify and strengthen existing agency mechanisms to improve reemployment opportunities for dislocated Defense industry personnel;

(f) Assure timely consultation and cooperation with Federal, State, regional, metropolitan, and community officials concerning Defense-related impacts on Defense-affected communities' problems;

(g) Assure coordinated interagency and intergovernmental adjustment assistance concerning Defense impact problems;

(h) Prepare, facilitate, and implement cost-effective strategies and action plans to coordinate interagency and intergovernmental economic adjustment efforts;

(i) Encourage effective Federal, State, regional, metropolitan, and community cooperation and concerted involvement of public interest groups and private sector organizations in Defense economic adjustment activities;

(j) Serve as a clearinghouse to exchange information among Federal, State, regional, metropolitan, and community officials involved in the resolution of community economic adjustment problems. Such information may include, for example, previous studies, technical information, and sources of public and private financing;

(k) Assist in the diversification of local economies to lessen dependence on Defense activities;

(*l*) Encourage and facilitate private sector interim use of lands and buildings to generate jobs as military activities diminish;, [sic]

(m) Develop ways to streamline property disposal procedures to enable Defense-impacted communities to acquire base property to generate jobs as military activities diminish; and

(n) Encourage resolution of regulatory issues that impede encroachment prevention and local economic adjustment efforts.

SEC. 4. *Economic Adjustment Committee.*

(a) *Membership.* The Economic Adjustment Committee (''Committee'') shall be composed of the following individuals, or a designated principal deputy of these individuals, and such other individuals from the executive branch as the President may designate. Such individuals shall include the:

(1) Secretary of Agriculture;
(2) Attorney General;
(3) Secretary of Commerce;
(4) Secretary of Defense;
(5) Secretary of Education;
(6) Secretary of Energy;
(7) Secretary of Health and Human Services;
(8) Secretary of Housing and Urban Development;
(9) Secretary of the Interior;
(10) Secretary of Labor;
(11) Secretary of State;
(12) Secretary of Transportation;
(13) Secretary of the Treasury;
(14) Secretary of Veterans Affairs;
(15) Secretary of Homeland Security;
(16) Chairman, Council of Economic Advisers;
(17) Director of the Office of Management and Budget;
(18) Director of the Office of Personnel Management;
(19) Administrator of the Environmental Protection Agency;
(20) Administrator of General Services;
(21) Administrator of the Small Business Administration; and,
(22) Postmaster General.

(b) *Chairman.* The Secretary of Defense, or the Secretary's designee, shall chair the Committee.

(c) *Vice Chairman.* The Secretaries of Labor and Commerce shall serve as Vice Chairmen of the Committee. The Vice Chairmen shall co-chair the Committee in the absence of both the Chairman and the Chairman's designee and may also preside over meetings of designated representatives of the concerned executive agencies.

(d) *Executive Director.* The head of the Department of Defense's Office of Economic Adjustment shall provide all necessary policy and administrative support for the Committee and shall be responsible for coordinating the application of the Defense Economic Adjustment Program to Department of Defense activities.

(e) *Duties.* The Committee shall:

(1) Advise, assist, and support the Defense Economic Adjustment Program;

(2) Develop procedures for ensuring that State, regional, and community officials and representatives of organized labor in those States, municipalities, localities, or labor organizations that are substantially and seriously affected by changes in Defense expenditures, realignments or closures, or cancellation or curtailment of major Defense contracts, are notified of available Federal economic adjustment programs; and,

(3) Report annually to the President and then to the Congress on the work of the Economic Adjustment Committee during the preceding fiscal year.

SEC. 5. *Responsibilities of Executive Agencies.*

(a) The head of each agency represented on the Committee shall designate an agency representative to:

(1) Serve as a liaison with the Secretary of Defense's economic adjustment staff;

(2) Coordinate agency support and participation in economic adjustment assistance projects; and,

(3) Assist in resolving Defense-related impacts on Defense-affected communities.

(b) All executive agencies shall:

(1) Support, to the extent permitted by law, the economic adjustment assistance activities of the Secretary of Defense. Such support may include the use and application of personnel, technical expertise, legal authorities, and available financial resources. This support may be used, to the extent permitted by law, to provide a coordinated Federal response to the needs of individual States, regions, municipalities, and communities adversely affected by necessary Defense changes;

(2) Afford priority consideration to requests from Defense-affected communities for Federal technical assistance, financial resources, excess or surplus property, or other requirements, that are part of a comprehensive plan used by the Committee.

SEC. 6. *Judicial Review*. This order shall not be interpreted to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, its agents, or any person.

SEC. 7. *Construction*. (a) Nothing in this order shall be construed as subjecting any function vested by law in, or assigned pursuant to law to, any agency or head thereof to the authority of any other agency or officer or as abrogating or restricting any such function in any manner.

(b) This order shall be effective immediately and shall supersede Executive Order No. 12049.

[Amendment by Ex. Ord. 13378 directing insertion of ''and'' after ''diminish;'' in section 3(m) of Ex. Ord. 12788, was executed by substituting ''; and'' for the comma after ''diminish''.]

§ 2392. Prohibition on use of funds to relieve economic dislocations

(a) In order to help avoid the uneconomic use of Department of Defense funds in the procurement of goods and services, the Congress finds that it is necessary to prohibit the use of such funds for certain purposes.

(b) No funds appropriated to or for the use of the Department of Defense may be used to pay, in connection with any contract awarded by the Department of Defense, a price differential for the purpose of relieving economic dislocations.

(Added Pub. L. 97–86, title IX, § 913(a)(1), Dec. 1, 1981, 95 Stat. 1123.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1862(b), Jan. 1, 2021, 134 Stat. 4151, 4277, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 363 of this title, as amended by section 1862(a) of Pub. L. 116–283, inserted after section 4652, and redesignated as section 4653 of this title. See Effective Date of 2021 Amendment note below.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

CONTRACTS MADE BY DEFENSE LOGISTICS AGENCY; PAYMENTS OF PRICE DIFFERENTIALS TO RELIEVE ECONOMIC DISLOCATIONS; TEST PROGRAM; INTERIM REPORTS

Pub. L. 97–252, title XI, § 1109, Sept. 8, 1982, 96 Stat. 746, as amended by Pub. L. 98–94, title XII, § 1205, Sept. 24, 1983, 97 Stat. 683; Pub. L. 98–525, title XII, § 1254, Oct. 19, 1984, 98 Stat. 2611, authorized the Secretary of Defense to conduct a test program during fiscal years 1983, 1984, and 1985 to test the effect of exempting certain contracts of the Department of Defense from the provisions of this section and paying a price differential under such contracts for the purpose of relieving economic dislocations, provided that the Secretary could exempt any contract (other than a contract for the purchase of fuel) made by the Defense Logistics Agency during fiscal years 1983, 1984, and 1985 if the contract was to be awarded to an individual or firm located in a Labor Surplus Area, and directed the President to submit a report to Congress not later than Apr. 15, 1983, Apr. 15, 1984, and Apr. 15, 1985, on the implementation and results to that date of the program. Similar provisions were contained in Pub. L. 97–86, title IX, § 913(b), (c), Dec. 1, 1981, 95 Stat. 1124.

§ 2393. Prohibition against doing business with certain offerors or contractors

(a)(1) Except as provided in paragraph (2), the Secretary of a military department may not solicit an offer from, award a contract to, extend an existing contract with, or, when approval by the Secretary of the award of a subcontract is required, approve the award of a subcontract to, an offeror or contractor which to the Secretary's knowledge has been debarred or suspended by another Federal agency unless—

(A) in the case of debarment, the debarment of the offeror or contractor by all other agencies has been terminated or the period of time specified for such debarment has expired; and

(B) in the case of a suspension, the period of time specified by all other agencies for the suspension of the offeror or contractor has expired.

(2) Paragraph (1) does not apply in any case in which the Secretary concerned determines that there is a compelling reason to solicit an offer from, award a contract to, extend a contract with, or approve a subcontract with such offeror or contractor.

(b) Whenever the Secretary concerned makes a determination described in subsection (a)(2), he shall, at the time of the determination, transmit a notice to the Administrator of General Services describing the determination. The Administrator of General Services shall maintain each such notice on a publicly accessible website to the maximum extent practicable.

(c) In this section:

(1) The term ''debar'' means to exclude, pursuant to established administrative procedures, from Government contracting and subcontracting for a specified period of time commensurate with the seriousness of the failure or offense or the inadequacy of performance.

(2) The term ''suspend'' means to disqualify, pursuant to established administrative procedures, from Government contracting and subcontracting for a temporary period of time because a concern or individual is suspected of engaging in criminal, fraudulent, or seriously improper conduct.

(d) The Secretary of Defense shall prescribe in regulations a requirement that each contractor under contract with the Department of Defense shall require each contractor to whom it awards a contract (in this section referred to as a subcontractor) to disclose to the contractor whether the subcontractor is or is not, as of the time of the award of the subcontract, debarred or suspended by the Federal Government from Government contracting or subcontracting. The requirement shall apply to any subcontractor whose subcontract is in an amount greater than the simplified acquisition threshold (as defined in section 134 of title 41). The requirement shall not apply in the case of a subcontract for the acquisition of commercial products or commercial services (as defined in sections 103 and 103a, respectively, of title 41).

(Added Pub. L. 97–86, title IX, § 914(a), Dec. 1, 1981, 95 Stat. 1124; amended Pub. L. 100–180, div. A, title XII, § 1231(17), Dec. 4, 1987, 101 Stat. 1161; Pub. L. 101–510, div. A, title VIII, § 813, Nov. 5,

1990, 104 Stat. 1596; Pub. L. 102–190, div. A, title X, § 1061(a)(11), Dec. 5, 1991, 105 Stat. 1473; Pub. L. 103–355, title IV, § 4102(e), title VIII, § 8105(c), Oct. 13, 1994, 108 Stat. 3340, 3392; Pub. L. 111–350, § 5(b)(24), Jan. 4, 2011, 124 Stat. 3844; Pub. L. 113–66, div. A, title VIII, § 813, Dec. 26, 2013, 127 Stat. 808; Pub. L. 115–232, div. A, title VIII, § 836(e)(3), Aug. 13, 2018, 132 Stat. 1869.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1862(b), Jan. 1, 2021, 134 Stat. 4151, 4277, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 363 of this title, as amended by subsection 1862(a) of Pub. L. 116–283, inserted after section 4653, and redesignated as section 4654 of this title. See Effective Date of 2021 Amendment note below.

AMENDMENTS

2018—Subsec. (d). Pub. L. 115–232 substituted ''commercial products or commercial services (as defined in sections 103 and 103a, respectively, of title 41)'' for ''commercial items (as defined in section 103 of title 41)''.

2013—Subsec. (b). Pub. L. 113–66 substituted ''on a publicly accessible website to the maximum extent practicable'' for ''in a file available for public inspection''.

2011—Subsec. (d). Pub. L. 111–350 substituted ''section 134 of title 41'' for ''section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11)))'' and ''section 103 of title 41)'' for ''section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12)))''.

1994—Subsec. (d). Pub. L. 103–355 substituted ''greater than the simplified acquisition threshold (as defined in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11))).'' for ''above the small purchase amount established in section 2304(g) of this title.'' in second sentence and inserted at end ''The requirement shall not apply in the case of a subcontract for the acquisition of commercial items (as defined in section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12))).''

1991—Subsec. (d). Pub. L. 102–190 substituted ''Federal Government'' for ''Federal government''.

1990—Subsec. (d). Pub. L. 101–510 added subsec. (d).

1987—Subsec. (c). Pub. L. 100–180 inserted ''The term'' after each par. designation and revised first word in quotes in each par. to make initial letter of such word lowercase.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115–232 effective Jan. 1, 2020, subject to a savings provision, see section 836(h) of Pub. L. 115–232, set out as an Effective Date of 2018 Amendment; Savings Provision note under section 453b of Title 6, Domestic Security.

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 2302 of this title.

[§ 2394. Renumbered § 2922a]

CODIFICATION

Another section 2394 was renumbered section 2395 of this title.

[§ 2394a. Renumbered § 2922b]

§ 2395. Availability of appropriations for procurement of technical military equipment and supplies

Funds appropriated to the Department of Defense for the procurement of technical military equipment and supplies remain available until spent.

(Added Pub. L. 97–258, § 2(b)(4)(B), Sept. 13, 1982, 96 Stat. 1052, § 2394; renumbered § 2395 and amended Pub. L. 97–295, § 1(28)(A), Oct. 12, 1982, 96 Stat. 1291.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1809(c), Jan. 1, 2021, 134 Stat. 4151, 4161, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 207 of this title, as amended by section 1809(a) of Pub. L. 116–283, inserted after section 3131, as transferred and redesignated by subsection 1809(b) of Pub. L. 116–283, and redesignated as section 3132 of this title. See Effective Date of 2021 Amendment note below.

HISTORICAL AND REVISION NOTES

1982 ACT (PUB. L. 97–258)

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2394	31:649c(1).	Aug. 10, 1956, ch. 1041, § 40(1), 70A Stat. 636; Nov. 17, 1971, Pub. L. 92–156, § 201(b), 85 Stat. 424.

The words ''Unless otherwise provided in the appropriation Act concerned'' are omitted as unnecessary and for consistency. The word ''Funds'' is substituted for ''moneys'' for consistency in title 10. The word ''military'' is added before ''public'' for clarity. The words ''including moneys appropriated to the Department of the Navy for the procurement and construction of guided missiles'' are omitted as included in ''technical military equipment''.

1982 ACT (PUB. L. 97–295)

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2395	10:2394.	Sept. 13, 1982, Pub. L. 97–258, § 2(b)(4)(B), 96 Stat. 1053.

This redesignates 10:2394 (enacted by Pub. L. 97–258) as 10:2395 because of the enactment of another 10:2394 by Pub. L. 97–214, § 6(a)(1), July 12, 1982, 96 Stat. 171, and amends the section generally to eliminate the words ''and the construction of military public works'' because of section 10(b)(5) of the Military Construction Codification Act (Pub. L. 97–214, July 12, 1982, 96 Stat. 176) which struck corresponding words from the source statute for 10:2394 subsequent to Apr. 15, 1982, the cutoff date prescribed by section 4(a) of Pub. L. 97–258, section 2(b)(4)(B) of which enacted 10:2394.

CODIFICATION

Another section 2395 was renumbered section 2396 of this title.

AMENDMENTS

1982—Pub. L. 97–295 struck out ''and the construction of military public works'' after ''supplies''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 2396. Advances for payments for compliance with foreign laws, rent in foreign countries, tuition, public utility services, and pay and supplies of armed forces of friendly foreign countries

(a) An advance under an appropriation to the Department of Defense may be made to pay for—

(1) compliance with laws and ministerial regulations of a foreign country;

(2) rent in a foreign country for periods of time determined by local custom;

(3) tuition; and

(4) public service utilities.

(b)(1) Under regulations prescribed by the Secretary of Defense, or by the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service of the Navy, an officer of an armed force of the United States accountable for public money may advance amounts to a disbursing official of a friendly foreign country or members of an armed force of a friendly foreign country for—

(A) pay and allowances to members of the armed force of that country; and

(B) necessary supplies and services.

(2) An advance may be made under this subsection only if the President has made an agreement with the foreign country—

(A) requiring reimbursement to the United States for amounts advanced;

(B) requiring the appropriate authority of the country to advance amounts reciprocally to members of the armed forces of the United States; and

(C) containing any other provision the President considers necessary to carry out this subsection and to safeguard the interests of the United States.

(Added Pub. L. 97–258, § 2(b)(4)(B), Sept. 13, 1982, 96 Stat. 1053, § 2395; renumbered § 2396 and amended Pub. L. 97–295, § 1(28)(B), Oct. 12, 1982, 96 Stat. 1291; Pub. L. 105–85, div. A, title X, § 1014(a), (b)(1), Nov. 18, 1997, 111 Stat. 1875; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

HISTORICAL AND REVISION NOTES

1982 ACT (PUB. L. 97–258)

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2395(a)	31:529i.	July 13, 1955, ch. 358, § 602, 69 Stat. 314.
2395(b)	31:529j.	Oct. 19, 1965, Pub. L. 89–265, 79 Stat. 989.

In subsection (a), the words "On and after July 13, 1955" are omitted as executed. The words "An advance" are substituted for "section 529 of this title shall not apply in the case of payments" because of the restatement.

In subsection (b), the words "armed force of the United States" are substituted for "Army, Navy, Air Force, Marine Corps, or Coast Guard" because of 10:101(4) and to avoid confusion with the phrase "armed force of a friendly foreign country".

In subsection (b)(1), before clause (A), the words "the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy" are substituted for "the Secretary of the Treasury in their respective areas of responsibility" because of 14:3 and 49:1655(b)(1) and (2). The words "disbursing official" are substituted for "cashiers, disbursing officers" for consistency with other titles of the United States Code and to eliminate unnecessary words.

1982 ACT (PUB. L. 97–295)

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2396	10:2395.	Sept. 13, 1982, Pub. L. 97–258, § 2(b)(4)(B), 96 Stat. 1053.

This redesignates 10:2395 as 10:2396 because of the redesignation of 10:2394 (enacted by Pub. L. 97–258) as 10:2395, and substitutes "any other" for "another" in subsec. (b)(2)(C).

AMENDMENTS

2002—Subsec. (b)(1). Pub. L. 107–296 substituted "of Homeland Security" for "of Transportation" in introductory provisions.

1997—Pub. L. 105–85, § 1014(b)(1), inserted "public utility services," after "tuition," in section catchline.

Subsec. (a)(4). Pub. L. 105–85, § 1014(a), added par. (4).

1982—Subsec. (b)(2)(C). Pub. L. 97–295 substituted "any other" for "another".

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

[§§ 2397 to 2397c. Repealed. Pub. L. 104–106, div. D, title XLIII, § 4304(b)(1), Feb. 10, 1996, 110 Stat. 664]

Section 2397, added Pub. L. 97–295, § 1(29)(A), Oct. 12, 1982, 96 Stat. 1291; amended Pub. L. 99–145, title IX, § 922, Nov. 8, 1985, 99 Stat. 693; Pub. L. 100–26, § 7(j)(5), (k)(2), Apr. 21, 1987, 101 Stat. 283, 284; Pub. L. 102–25, title VII, § 701(d)(6), Apr. 6, 1991, 105 Stat. 114; Pub. L. 102–484, div. A, title X, § 1052(29), Oct. 23, 1992, 106 Stat. 2500; Pub. L. 103–355, title IV, § 4401(d), title VIII, § 8105(d), Oct. 13, 1994, 108 Stat. 3348, 3392, related to filing of certain reports by employees or former employees of defense contractors.

Section 2397a, added Pub. L. 99–145, title IX, § 923(a)(1), Nov. 8, 1985, 99 Stat. 695; amended Pub. L. 100–26, § 7(k)(2), Apr. 21, 1987, 101 Stat. 284; Pub. L. 101–280, § 10(b), May 4, 1990, 104 Stat. 162, related to requirements relating to private employment contacts between certain Department of Defense procurement officials and defense contractors.

Section 2397b, added Pub. L. 99–500, § 101(c) [title X, § 931(a)(1)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–156, and Pub. L. 99–591, § 101(c) [title X, § 931(a)(1)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–156; Pub. L. 99–661, div. A, title IX, formerly title IV, § 931(a)(1), Nov. 14, 1986, 100 Stat. 3936, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; amended Pub. L. 100–180, div. A, title VIII, § 821, Dec. 4, 1987, 101 Stat. 1132; Pub. L. 103–355, title VIII, § 8105(e), Oct. 13, 1994, 108 Stat. 3392, related to limitations on employment by contractors of certain former Department of Defense procurement officials.

Section 2397c, added Pub. L. 99–500, § 101(c) [title X, § 931(a)(1)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–159, and Pub. L. 99–591, § 101(c) [title X, § 931(a)(1)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–159; Pub. L. 99–661, div. A, title IX, formerly title IV, § 931(a)(1), Nov. 14, 1986, 100 Stat. 3938, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; amended Pub. L. 103–355, title VIII,

§ 8105(f), Oct. 13, 1994, 108 Stat. 3392, related to requirements for defense contractors concerning former Department of Defense officials.

EFFECTIVE DATE OF REPEAL

For effective date and applicability of repeal, see section 4401 of Pub. L. 104–106, set out as an Effective Date of 1996 Amendment note under section 2302 of this title.

[§ 2398. Renumbered § 2922c]

[§ 2398a. Renumbered § 2922d]

§ 2399. Operational test and evaluation of defense acquisition programs

(a) CONDITION FOR PROCEEDING BEYOND LOW-RATE INITIAL PRODUCTION.—(1) The Secretary of Defense shall provide that a covered major defense acquisition program, a covered designated major subprogram, or an element of the ballistic missile defense system may not proceed beyond low-rate initial production until initial operational test and evaluation of the program, subprogram, or element is completed.

(2) In this subsection:

(A) The term ''covered major defense acquisition program'' means a major defense acquisition program that involves the acquisition of a weapon system that is a major system within the meaning of that term in section 2302(5) of this title.

(B) The term ''covered designated major subprogram'' means a major subprogram designated under section 2430a(a)(1) of this title that is a major subprogram of a covered major defense acquisition program.

(b) OPERATIONAL TEST AND EVALUATION.—(1) Operational testing of a major defense acquisition program may not be conducted until the Director of Operational Test and Evaluation of the Department of Defense approves (in writing) the adequacy of the plans (including the projected level of funding) for operational test and evaluation to be conducted in connection with that program.

(2) The Director shall analyze the results of the operational test and evaluation conducted for each major defense acquisition program. At the conclusion of such testing, the Director shall prepare a report stating—

(A) the opinion of the Director as to—

(i) whether the test and evaluation performed were adequate; and

(ii) whether the results of such test and evaluation confirm that the items or components actually tested are effective and suitable for combat; and

(B) additional information on the operational capabilities of the items or components that the Director considers appropriate based on the testing conducted.

(3) The Director shall submit each report under paragraph (2) to the Secretary of Defense, the Under Secretary of Defense for Acquisition and Sustainment, the Under Secretary of Defense for Research and Engineering, and the congressional defense committees. Each such report shall be submitted to those committees in precisely the same form and with precisely the same content as the report originally was submitted to the Secretary and Under Secretary and shall be accompanied by such comments as the Secretary may wish to make on the report.

(4) A final decision within the Department of Defense to proceed with a major defense acquisition program beyond low-rate initial production may not be made until the Director has submitted to the Secretary of Defense the report with respect to that program under paragraph (2) and the congressional defense committees have received that report.

(5) If, before a final decision described in paragraph (4) is made for a major defense acquisition program, a decision is made within the Department of Defense to proceed to operational use of that program or to make procurement funds available for that program, the Director shall submit to the Secretary of Defense and the congressional defense committees the report with respect to that program under paragraph (2) as soon as practicable after the decision described in this paragraph is made.

(6) In this subsection, the term ''major defense acquisition program'' has the meaning given that term in section 139(a)(2)(B) of this title.

(c) DETERMINATION OF QUANTITY OF ARTICLES REQUIRED FOR OPERATIONAL TESTING.—The quantity of articles of a new system that are to be procured for operational testing shall be determined by—

(1) the Director of Operational Test and Evaluation of the Department of Defense, in the case of a new system that is a major defense acquisition program (as defined in section 139(a)(2)(B) of this title); or

(2) the operational test and evaluation agency of the military department concerned, in the case of a new system that is not a major defense acquisition program.

(d) IMPARTIALITY OF CONTRACTOR TESTING PERSONNEL.—In the case of a major defense acquisition program (as defined in subsection (a)(2)), no person employed by the contractor for the system being tested may be involved in the conduct of the operational test and evaluation required under subsection (a). The limitation in the preceding sentence does not apply to the extent that the Secretary of Defense plans for persons employed by that contractor to be involved in the operation, maintenance, and support of the system being tested when the system is deployed in combat.

(e) IMPARTIAL CONTRACTED ADVISORY AND ASSISTANCE SERVICES.—(1) The Director may not contract with any person for advisory and assistance services with regard to the test and evaluation of a system if that person participated in (or is participating in) the development, production, or testing of such system for a military department or Defense Agency (or for another contractor of the Department of Defense).

(2) The Director may waive the limitation under paragraph (1) in any case if the Director determines in writing that sufficient steps have been taken to ensure the impartiality of the contractor in providing the services. The Inspector General of the Department of Defense shall review each such waiver and shall include in the Inspector General's semi-annual report an assessment of those waivers made since the last such report.

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(3)(A) A contractor that has participated in (or is participating in) the development, production, or testing of a system for a military department or Defense Agency (or for another contractor of the Department of Defense) may not be involved (in any way) in the establishment of criteria for data collection, performance assessment, or evaluation activities for the operational test and evaluation.

(B) The limitation in subparagraph (A) does not apply to a contractor that has participated in such development, production, or testing solely in testing for the Federal Government.

(f) SOURCE OF FUNDS FOR TESTING.—The costs for all tests required under subsection (a) shall be paid from funds available for the system being tested.

(g) DIRECTOR'S ANNUAL REPORT.—As part of the annual report of the Director under section 139 of this title, the Director shall describe for each program covered in the report the status of test and evaluation activities in comparison with the test and evaluation master plan for that program, as approved by the Director. The Director shall include in such annual report a description of each waiver granted under subsection (e)(2) since the last such report.

(h) OPERATIONAL TEST AND EVALUATION DEFINED.—In this section, the term ''operational test and evaluation'' has the meaning given that term in section 139(a)(2)(A) of this title. For purposes of subsection (a), that term does not include an operational assessment based exclusively on—

(1) computer modeling;

(2) simulation; or

(3) an analysis of system requirements, engineering proposals, design specifications, or any other information contained in program documents.

(Added Pub. L. 101–189, div. A, title VIII, § 802(a)(1), Nov. 29, 1989, 103 Stat. 1484; amended Pub. L. 102–484, div. A, title VIII, § 819, Oct. 23, 1992, 106 Stat. 2458; Pub. L. 103–160, div. A, title IX, § 904(d)(1), Nov. 30, 1993, 107 Stat. 1728; Pub. L. 103–337, div. A, title X, § 1070(a)(11), (f), Oct. 5, 1994, 108 Stat. 2856, 2859; Pub. L. 104–106, div. A, title XV, § 1502(a)(19), Feb. 10, 1996, 110 Stat. 504; Pub. L. 106–65, div. A, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 107–107, div. A, title X, § 1048(b)(2), Dec. 28, 2001, 115 Stat. 1225; Pub. L. 107–314, div. A, title X, § 1062(a)(9), Dec. 2, 2002, 116 Stat. 2650; Pub. L. 108–136, div. A, title X, § 1043(b)(14), Nov. 24, 2003, 117 Stat. 1611; Pub. L. 109–364, div. A, title II, § 231(a), Oct. 17, 2006, 120 Stat. 2131; Pub. L. 111–383, div. A, title VIII, § 814(d), Jan. 7, 2011, 124 Stat. 4267; Pub. L. 115–91, div. A, title XVI, § 1677(a), Dec. 12, 2017, 131 Stat. 1774; Pub. L. 116–92, div. A, title IX, § 902(62), Dec. 20, 2019, 133 Stat. 1550.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1845(b), Jan. 1, 2021, 134 Stat. 4151, 4247, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 309 of this title, as amended by section 1845(a) of Pub. L. 116–283, inserted after the table of sections, and redesignated as section 4171 of this title. See Effective Date of 2021 Amendment note below.

PRIOR PROVISIONS

A prior section 2399, added Pub. L. 97–295, § 1(29)(A), Oct. 12, 1982, 96 Stat. 1293, which related to limitation on availability of appropriations to reimburse a contractor for the cost of commercial insurance, was repealed by Pub. L. 100–370, § 1(f)(2)(B), July 19, 1988, 102 Stat. 846, and was restated in section 2324(e)(1)(L) of this title by section 1(f)(2)(A) of Pub. L. 100–370.

AMENDMENTS

2019—Subsec. (b)(3). Pub. L. 116–92 substituted ''Under Secretary of Defense for Acquisition and Sustainment, the Under Secretary of Defense for Research and Engineering,'' for ''Under Secretary of Defense for Acquisition, Technology, and Logistics,''.

2017—Subsec. (a)(1). Pub. L. 115–91 substituted '', a covered designated major subprogram, or an element of the ballistic missile defense system'' for ''or a covered designated major subprogram'' and ''program, subprogram, or element'' for ''program or subprogram''.

2011—Subsec. (a). Pub. L. 111–383 amended subsec. (a) generally. Prior to amendment, text read as follows:

''(1) The Secretary of Defense shall provide that a major defense acquisition program may not proceed beyond low-rate initial production until initial operational test and evaluation of the program is completed.

''(2) In this subsection, the term 'major defense acquisition program' means a conventional weapons system that—

''(A) is a major system within the meaning of that term in section 2302(5) of this title; and

''(B) is designed for use in combat.''

2006—Subsec. (b)(2). Pub. L. 109–364, § 231(a)(1), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''The Director shall analyze the results of the operational test and evaluation conducted for each major defense acquisition program. At the conclusion of such testing, the Director shall prepare a report stating the opinion of the Director as to—

''(A) whether the test and evaluation performed were adequate; and

''(B) whether the results of such test and evaluation confirm that the items or components actually tested are effective and suitable for combat.''

Subsec. (b)(5), (6). Pub. L. 109–364, § 231(a)(2), (3), added par. (5) and redesignated former par. (5) as (6).

2003—Subsec. (h). Pub. L. 108–136 substituted ''Operational Test and Evaluation Defined'' for ''Definitions'' in heading, struck out introductory provisions which read ''In this section:'', substituted ''In this section, the term'' for ''(1) The term'', redesignated subpars. (A) to (C) of former par. (1) as pars. (1) to (3), respectively, realigned margins, and struck out former par. (2) which defined ''congressional defense committees'' to mean the Committees on Armed Services and Appropriations of the Senate and the House of Representatives.

2002—Subsec. (a)(2). Pub. L. 107–314 substituted ''means a conventional weapons system that'' for ''means'' in introductory provisions and struck out ''a conventional weapons system that'' before ''is a major system'' in subpar. (A).

2001—Subsec. (b)(3). Pub. L. 107–107 substituted ''Under Secretary of Defense for Acquisition, Technology, and Logistics'' for ''Under Secretary of Defense for Acquisition and Technology''.

1999—Subsec. (h)(2)(B). Pub. L. 106–65 substituted ''Committee on Armed Services'' for ''Committee on National Security''.

1996—Subsec. (h)(2). Pub. L. 104–106 substituted ''means—'' and subpars. (A) and (B) for ''means the Committees on Armed Services and the Committees on Appropriations of the Senate and House of Representatives.''

1994—Subsecs. (b)(5), (c)(1). Pub. L. 103–337, § 1070(a)(11)(A), substituted ''139(a)(2)(B)'' for ''138(a)(2)(B)''.

Subsec. (e)(3)(B). Pub. L. 103–337, § 1070(f), substituted ''solely in testing for'' for ''solely as a representative of''.

Subsec. (g). Pub. L. 103–337, § 1070(a)(11)(B), substituted ''139'' for ''138''.

Subsec. (h)(1). Pub. L. 103–337, § 1070(a)(11)(C), substituted ''139(a)(2)(A)'' for ''138(a)(2)(A)''.

1993—Subsec. (b)(3). Pub. L. 103–160 substituted ''Under Secretary of Defense for Acquisition and Technology'' for ''Under Secretary of Defense for Acquisition''.

1992—Subsec. (e)(3). Pub. L. 102–484 designated existing provisions as subpar. (A) and added subpar. (B).

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective Dec. 31, 2021, of provisions in subsec. (g) of this section requiring submittal of annual report to Congress, see section 1061 of Pub. L. 114–328, set out as a note under section 111 of this title.

ENHANCEMENTS TO TRANSPARENCY IN TEST AND EVALUATION PROCESSES AND DATA

Pub. L. 115–91, div. A, title VIII, § 839, Dec. 12, 2017, 131 Stat. 1475, provided that:

''(a) ADDITIONAL TEST AND EVALUATION DUTIES OF MILITARY SECRETARIES AND DEFENSE AGENCY HEADS.—

''(1) REPORT ON COMPARISON OF OPERATIONAL TEST AND EVALUATION RESULTS TO LEGACY ITEMS OR COMPONENTS.—Concurrent with the submission of a report required under section 2399(b)(2) of title 10, United States Code, the Secretary of a military department or the head of a Defense Agency may provide to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] and the Secretary of Defense a report describing of the performance of the items or components evaluated as part of the operational test and evaluation for each major defense acquisition program conducted under such section by the Director of Operational Test and Evaluation in relation to comparable legacy items or components, if such items or components exist and relevant data are available without requiring additional testing.

''(2) ADDITIONAL REPORT ON OPERATIONAL TEST AND EVALUATION ACTIVITIES.—Within 45 days after the submission of an annual report required by section 139(h) of title 10, United States Code, the Secretaries of the military departments may each submit to the congressional defense committees a report addressing any concerns related to information included in the annual report, or providing updated or additional information, as appropriate.

''(b) REQUIREMENTS FOR COLLECTION OF COST DATA ON TEST AND EVALUATION.—

''(1) IN GENERAL.—Not later than one year after the date of the enactment of this Act [Dec. 12, 2017] and subject to paragraph (2), the Director of Operational Test and Evaluation, the senior official of the Department of Defense with responsibility for developmental testing, and the Director of the Test Resource Management Center shall jointly develop policies, procedures, guidance, and a method to collect data that ensures that consistent and high quality data are collected on the full range of estimated and actual developmental, live fire, and operational testing costs for major defense acquisition programs.

''(2) CONCURRENCE AND COORDINATION REQUIRED.—Before implementing the policies, procedures, guidance, and method developed under paragraph (1), the Director of Operational Test and Evaluation, the senior official of the Department of Defense with responsibility for developmental testing, and the Director of the Test Resource Management Center shall—

''(A) obtain the concurrence of the Director for Cost Assessment and Program Evaluation; and

''(B) coordinate with the Secretaries of the military departments.

''(3) DATA REQUIREMENTS.—

''(A) ELECTRONIC DATABASE.—Data on estimated and actual developmental, live fire, and operational testing costs shall be maintained in an electronic database maintained by the Director for Cost Assessment and Program Evaluation or another appropriate official of the Department of Defense, and shall be made available for analysis by testing, acquisition, and other appropriate officials of the Department of Defense, as determined by the Director of Operational Test and Evaluation, the senior official of the Department of Defense with responsibility for developmental testing, or the Director of the Test Resource Management Center.

''(B) DIAGGREGATION [sic] BY COSTS.—To the maximum extent practicable, data collected under this subsection shall be set forth separately by costs for developmental testing, operational testing, and training.

''(c) MAJOR DEFENSE ACQUISITION PROGRAM DEFINED.—In this section, the term 'major defense acquisition program' has the meaning provided in section 2430 of title 10, United States Code.''

ASSESSMENT OF RISK IN CONCURRENT DEVELOPMENT OF MAJOR DEFENSE ACQUISITION SYSTEMS

Pub. L. 101–189, div. A, title VIII, § 801, Nov. 29, 1989, 103 Stat. 1483, which related to the assessment of risk in concurrent development of major defense acquisition systems and establishment of guidelines, was repealed by Pub. L. 115–232, div. A, title VIII, § 812(b)(33), Aug. 13, 2018, 132 Stat. 1849.

§ 2400. Low-rate initial production of new systems

(a) DETERMINATION OF QUANTITIES TO BE PROCURED FOR LOW-RATE INITIAL PRODUCTION.—(1) In the course of the development of a major system, the determination of what quantity of articles of that system should be procured for low-rate initial production (including the quantity to be procured for preproduction verification articles) shall be made—

(A) when the milestone B decision with respect to that system is made; and

(B) by the official of the Department of Defense who makes that decision.

(2) In this section, the term ''milestone B decision'' means the decision to approve the system development and demonstration of a major system by the official of the Department of Defense designated to have the authority to make that decision.

(3) Any increase from a quantity determined under paragraph (1) may only be made with the approval of the official making the determination.

(4) The quantity of articles of a major system that may be procured for low-rate initial production may not be less than one operationally configured production unit unless another quantity is established at the milestone B decision.

(5) The Secretary of Defense shall include a statement of the quantity determined under paragraph (1) in the first SAR submitted with respect to the program concerned after that quantity is determined. If the quantity exceeds 10 percent of the total number of articles to be produced, as determined at the milestone B decision with respect to that system, the Secretary shall include in the statement the reasons for such quantity. For purposes of this paragraph,

the term ''SAR'' means a Selected Acquisition Report submitted under section 2432 of this title.

(b) LOW-RATE INITIAL PRODUCTION OF WEAPON SYSTEMS.—Except as provided in subsection (c), low-rate initial production with respect to a new system is production of the system in the minimum quantity necessary—

(1) to provide production-configured or representative articles for operational tests pursuant to section 2399 of this title;

(2) to establish an initial production base for the system; and

(3) to permit an orderly increase in the production rate for the system sufficient to lead to full-rate production upon the successful completion of operational testing.

(c) LOW-RATE INITIAL PRODUCTION OF NAVAL VESSEL AND SATELLITE PROGRAMS.—With respect to naval vessel programs and military satellite programs, low-rate initial production is production of items at the minimum quantity and rate that (1) preserves the mobilization production base for that system, and (2) is feasible, as determined pursuant to regulations prescribed by the Secretary of Defense.

(Added Pub. L. 101–189, div. A, title VIII, § 803(a), Nov. 29, 1989, 103 Stat. 1487; amended Pub. L. 103–355, title III, § 3015, Oct. 13, 1994, 108 Stat. 3332; Pub. L. 104–106, div. A, title X, § 1062(d), div. D, title XLIII, § 4321(b)(13), Feb. 10, 1996, 110 Stat. 444, 673; Pub. L. 107–107, div. A, title VIII, § 821(c), Dec. 28, 2001, 115 Stat. 1182.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1847(c)(1)(A), Jan. 1, 2021, 134 Stat. 4151, 4254, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 322 of this title, as added by section 1847(a) of Pub. L. 116–283, inserted after the table of sections at the beginning of subchapter II, and redesignated as section 4231 of this title. See Effective Date of 2021 Amendment note below.

PRIOR PROVISIONS

A prior section 2400 was renumbered section 2534 of this title.

AMENDMENTS

2001—Subsec. (a)(1)(A). Pub. L. 107–107, § 821(c)(1), substituted ''milestone B'' for ''milestone II''.

Subsec. (a)(2). Pub. L. 107–107 substituted ''milestone B'' for ''milestone II'' and ''system development and demonstration'' for ''engineering and manufacturing development''.

Subsec. (a)(4), (5). Pub. L. 107–107, § 821(c)(1), substituted ''milestone B'' for ''milestone II''.

1996—Subsec. (a)(5). Pub. L. 104–106, § 4321(b)(13), substituted ''this paragraph'' for ''the preceding sentence''.

Subsec. (c). Pub. L. 104–106, § 1062(d), struck out ''(1)'' before ''With respect to'', redesignated subpars. (A) and (B) of former par. (1) as pars. (1) and (2), respectively, and struck out former par. (2) which read as follows: ''For each naval vessel program and military satellite program, the Secretary of Defense shall submit to Congress a report providing—

''(A) an explanation of the rate and quantity prescribed for low-rate initial production and the considerations in establishing that rate and quantity;

''(B) a test and evaluation master plan for that program; and

''(C) an acquisition strategy for that program that has been approved by the Secretary, to include the procurement objectives in terms of total quantity of articles to be procured and annual production rates.''

1994—Subsec. (a)(2). Pub. L. 103–355, § 3015(1), substituted ''this section'' for ''paragraph (1)'' and ''engineering and manufacturing development'' for ''full-scale engineering development''.

Subsec. (a)(4). Pub. L. 103–355, § 3015(2), (3), added par. (4) and redesignated former par. (4) as (5).

Subsec. (a)(5). Pub. L. 103–355, § 3015(2), redesignated par. (4) as (5) and inserted after first sentence ''If the quantity exceeds 10 percent of the total number of articles to be produced, as determined at the milestone II decision with respect to that system, the Secretary shall include in the statement the reasons for such quantity.''

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

For effective date and applicability of amendment by section 4321(b)(13) of Pub. L. 104–106, see section 4401 of Pub. L. 104–106, set out as a note under section 2302 of this title.

§ 2401. Requirement for authorization by law of certain contracts relating to vessels, aircraft, and combat vehicles

(a)(1) The Secretary of a military department may make a contract for the lease of a vessel, aircraft, or combat vehicle or for the provision of a service through use by a contractor of a vessel, aircraft, or combat vehicle only as provided in subsection (b) if—

(A) the contract will be a long-term lease or charter; or

(B) the terms of the contract provide for a substantial termination liability on the part of the United States.

(2) The Secretary of a military department may make a contract that is an agreement to lease or charter or an agreement to provide services and that is (or will be) accompanied by a contract for the actual lease, charter, or provision of services only as provided in subsection (b) if the contract for the actual lease, charter, or provision of services is (or will be) a contract described in paragraph (1).

(b)(1) The Secretary may make a contract described in subsection (a)(1) if—

(A) the Secretary has been specifically authorized by law to make the contract;

(B) before a solicitation for proposals for the contract was issued the Secretary notified the congressional defense committees of the Secretary's intention to issue such a solicitation;

(C) the Secretary has notified those committees of the proposed contract and provided a detailed description of the terms of the proposed contract and a justification for entering into the proposed contract rather than providing for the lease, charter, or services involved through purchase of the vessel, aircraft, or combat vehicle to be used under the contract, and a period of 30 days of continuous session of Congress has expired following the date on which notice was received by such committees; and

(D) the Secretary has certified to those committees—

(i) that entering into the proposed contract as a means of obtaining the vessel, aircraft, or combat vehicle is the most cost-effective means of obtaining such vessel, aircraft, or combat vehicle; and

(ii) that the Secretary has determined that the lease complies with all applicable laws, Office of Management and Budget circulars, and Department of Defense regulations.

(2) For purposes of paragraph (1)(C), the continuity of a session of Congress is broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in a computation of such 30-day period.

(3) Upon receipt of a notice under paragraph (1)(C), a committee identified in paragraph (1)(B) may request the Inspector General of the Department of Defense or the Comptroller General of the United States to conduct a review of the proposed contract to determine whether or not such contract meets the requirements of this section.

(4) If a review is requested under paragraph (3), the Inspector General of the Department of Defense or the Comptroller General of the United States, as the case may be, shall submit to the Secretary and the congressional defense committees a report on such review before the expiration of the period specified in paragraph (1)(C).

(5) In the case of a contract described in subsection (a)(1)(B), the commander of the special operations command may make a contract without regard to this subsection if—

(A) funds are available and obligated for the full cost of the contract (including termination costs) on or before the date the contract is awarded;

(B) the Secretary of Defense submits to the congressional defense committees a certification that there is no alternative for meeting urgent operational requirements other than making the contract; and

(C) a period of 30 days of continuous session of Congress has expired following the date on which the certification was received by such committees.

(c)(1) Funds may not be appropriated for any fiscal year to or for any armed force or obligated or expended for—

(A) the long-term lease or charter of any aircraft, naval vessel, or combat vehicle; or

(B) for the lease or charter of any aircraft, naval vessel, or combat vehicle the terms of which provide for a substantial termination liability on the part of the United States,

unless funds for that purpose have been specifically authorized by law.

(2) Funds appropriated to the Department of Defense may not be used to indemnify any person under the terms of a contract entered into under this section—

(A) for any amount paid or due by any person to the United States for any liability arising under the Internal Revenue Code of 1986; or

(B) to pay any attorneys' fees in connection with such contract.

(d)(1)(A) In this section, the term ''long-term lease or charter'' (except as provided in subparagraph (B)) means a lease, charter, service contract, or conditional sale agreement—

(i) the term of which is for a period of five years or longer or more than one-half the useful life of the vessel, aircraft, or combat vehicle; or

(ii) the initial term of which is for a period of less than five years but which contains an option to renew or extend the agreement for a period which, when added to the initial term (or any previous renewal or extension), is five years or longer.

Such term includes the extension or renewal of a lease or charter agreement if the term of the extension or renewal thereof is for a period of five years or longer or if the term of the lease or charter agreement being extended or renewed was for a period of five years or longer.

(B) In the case of an agreement under which the lessor first places the property in service under the agreement or the property has been in service for less than one year and there is allowable to the lessor or charterer an investment tax credit or depreciation for the property leased, chartered, or otherwise provided under the agreement under section 168 of the Internal Revenue Code of 1986 (unless the lessor or charterer has elected depreciation on a straightline method for such property), the term ''long-term lease or charter'' means a lease, charter, service contract, or conditional sale agreement—

(i) the term of which is for a period of three years or longer; or

(ii) the initial term of which is for a period of less than three years but which contains an option to renew or extend the agreement for a period which, when added to the initial term (or any previous renewal or extension), is three years or longer.

Such term includes the extension or renewal of a lease or charter agreement if the term of the extension or renewal thereof is for a period of three years or longer or if the term of the lease or charter agreement being extended or renewed was for a period of three years or longer.

(2) For the purposes of this section, the United States shall be considered to have a substantial termination liability under a contract—

(A) if there is an agreement by the United States under the contract to pay an amount not less than the amount equal to 25 percent of the value of the vessel, aircraft, or combat vehicle under lease or charter, calculated on the basis of the present value of the termination liability of the United States under such charter or lease (as determined under regulations prescribed by the Secretary of Defense); or

(B) if (as determined under regulations prescribed by the Secretary of Defense) the sum of—

(i) the present value of the amount of the termination liability of the United States under the contract as of the end of the term of the contract (exclusive of any option to extend the contract); and

(ii) the present value of the total of the payments to be made by the United States

under the contract (excluding any option to extend the contract) attributable to capital-hire,

is more than one-half the price of the vessel, aircraft, or combat vehicle involved.

(e)(1) Whenever a request is submitted to Congress for the authorization of the long-term lease or charter of aircraft, naval vessels, or combat vehicles or for the authorization of a lease or charter of aircraft, naval vessels, or combat vehicles which provides for a substantial termination liability on the part of the United States, the Secretary of Defense shall submit with that request an analysis of the cost to the United States (including lost tax revenues) of any such lease or charter arrangement compared with the cost to the United States of direct procurement of the aircraft, naval vessels, or combat vehicles by the United States.

(2) Any such analysis shall be reviewed and evaluated by the Director of the Office of Management and Budget and the Secretary of the Treasury within 30 days after the date on which the request and analysis are submitted to Congress. The Director and Secretary shall conduct such review and evaluation on the basis of the guidelines issued pursuant to subsection (g) and shall report to Congress in writing on the results of their review and evaluation at the earliest practicable date, but in no event more than 45 days after the date on which the request and analysis are submitted to the Congress.

(3) Whenever a request is submitted to Congress for the authorization of funds for the Department of Defense for the long-term lease or charter of aircraft, naval vessels, or combat vehicles authorized under this section, the Secretary of Defense—

(A) shall indicate in the request what portion of the requested funds is attributable to capital-hire; and

(B) shall reflect such portion in the appropriate procurement account in the request.

(f)(1) If a lease or charter covered by this section is a capital lease or a lease-purchase—

(A) the lease or charter shall be treated as an acquisition and shall be subject to all applicable statutory and regulatory requirements for the acquisition of aircraft, naval vessels, or combat vehicles; and

(B) funds appropriated to the Department of Defense for operation and maintenance may not be obligated or expended for the lease or charter.

(2) In this subsection, the terms ''capital lease'' and ''lease-purchase'' have the meanings given those terms in Appendix B to Office of Management and Budget Circular A–11, as in effect on January 6, 2006.

(g) The Director of the Office of Management and Budget and the Secretary of the Treasury shall jointly issue guidelines for determining under what circumstances the Department of Defense may use lease or charter arrangements for aircraft, naval vessels, and combat vehicles rather than directly procuring such aircraft, vessels, and combat vehicles.

(h) The Secretary of a military department may make a contract for the lease of a vessel or for the provision of a service through use by a contractor of a vessel, the term of which is for a period of greater than two years, but less than five years, only if—

(1) the Secretary has notified the congressional defense committees of the proposed contract and included in such notification—

(A) a detailed description of the terms of the proposed contract and a justification for entering into the proposed contract rather than obtaining the capability provided for by the lease, charter, or services involved through purchase of the vessel;

(B) a determination that entering into the proposed contract as a means of obtaining the vessel is the most cost-effective means of obtaining such vessel; and

(C) a plan for meeting the requirement provided by the proposed contract upon completion of the term of the lease contract; and

(2) a period of 60 days has expired following the date on which notice was received by such committees.

(Added Pub. L. 98–94, title XII, § 1202(a)(1), Sept. 24, 1983, 97 Stat. 679; amended Pub. L. 98–525, title XII, § 1232(a), Oct. 19, 1984, 98 Stat. 2600; Pub. L. 100–26, § 7(h)(1), Apr. 21, 1987, 101 Stat. 282; Pub. L. 103–35, title II, § 201(c)(6), May 31, 1993, 107 Stat. 98; Pub. L. 104–106, div. A, title XV, §§ 1502(a)(20), 1503(a)(21), Feb. 10, 1996, 110 Stat. 504, 512; Pub. L. 106–65, div. A, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 106–398, § 1 [[div. A], title X, § 1087(a)(13)], Oct. 30, 2000, 114 Stat. 1654, 1654A–291; Pub. L. 109–163, div. A, title VIII, § 815(a)–(d)(1), Jan. 6, 2006, 119 Stat. 3381, 3382; Pub. L. 110–181, div. A, title VIII, § 824, title X, § 1011, Jan. 28, 2008, 122 Stat. 227, 303; Pub. L. 111–84, div. A, title X, § 1073(a)(24), Oct. 28, 2009, 123 Stat. 2473; Pub. L. 112–239, div. A, title VIII, § 821, title X, § 1076(f)(26), Jan. 2, 2013, 126 Stat. 1830, 1953; Pub. L. 116–92, div. A, title XVII, § 1731(a)(48), Dec. 20, 2019, 133 Stat. 1815; Pub. L. 116–283, div. A, title XVIII, § 1825(b)–(e), (f)(1), (g)(1), (h), (i), Jan. 1, 2021, 134 Stat. 4206–4208.)

AMENDMENT OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1825(b)–(e), (f)(1), (g)(1), (h), (i), Jan. 1, 2021, 134 Stat. 4151, 4206–4208, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is amended as follows:

(1) by transferring subsections (a) and (b) to section 3671 of this title;

(2) by transferring subsection (c)(1) to section 3672(a) of this title;

(3) by transferring subsection (c)(2) to section 3673 of this title;

(4) by transferring subsection (d) to section 3674 of this title;

(5) by transferring subsection (e) to section 3672(b) of this title;

(6) by transferring subsection (f) to section 3675 of this title;

(7) by transferring subsection (g) to section 3676 of this title; and

(8) by transferring subsection (h) to section 3677 of this title.

See 2021 Amendment notes below.

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in subsecs. (c)(2)(A) and (d)(1)(B), is classified generally to Title 26, Internal Revenue Code. Section 168 of the Internal Revenue Code of 1986 is classified to section 168 of Title 26.

AMENDMENTS

2021—Subsecs. (a), (b). Pub. L. 116–283, §1825(b), transferred subsecs. (a) and (b) to section 3671 of this title.

Subsec. (c)(1). Pub. L. 116–283, §1825(d), transferred subsec. (c)(1) to section 3672(a) of this title.

Subsec. (c)(2). Pub. L. 116–283, §1825(c), transferred subsec. (c)(2) to section 3673 of this title.

Subsec. (d). Pub. L. 116–283, §1825(f)(1), transferred subsec. (d) to section 3674 of this title.

Subsec. (e). Pub. L. 116–283, §1825(e), transferred subsec. (e) to section 3672(b) of this title.

Subsec. (f). Pub. L. 116–283, §1825(g)(1), transferred subsec. (f) to section 3675 of this title.

Subsec. (g). Pub. L. 116–283, §1825(h), transferred subsec. (g) to section 3676 of this title.

Subsec. (h). Pub. L. 116–283, §1825(i), transferred subsec. (h) to section 3677 of this title.

2019—Subsec. (e)(2). Pub. L. 116–92 substituted "subsection (g)" for "subsection (f)".

2013—Subsecs. (b)(1)(B), (h)(1). Pub. L. 112–239, §1076(f)(26), substituted "the congressional defense committees" for "the Committee on Armed Services and the Committee on Appropriations of the Senate and the Committee on Armed Services and the Committee on Appropriations of the House of Representatives".

Subsec. (h)(2). Pub. L. 112–239, §821, substituted "60 days" for "30 days of continuous session of Congress".

2009—Subsec. (f)(2). Pub. L. 111–84 substituted "January 6, 2006" for "the date of the enactment of the National Defense Authorization Act for Fiscal Year 2006".

2008—Subsec. (b)(5). Pub. L. 110–181, §824, added par. (5).

Subsec. (h). Pub. L. 110–181, §1011, added subsec. (h).

2006—Pub. L. 109–163, §815(d)(1), substituted "Requirement for authorization by law of certain contracts relating to vessels, aircraft, and combat vehicles" for "Requirement for authorization by law of certain contracts relating to vessels and aircraft" in section catchline.

Subsec. (a)(1). Pub. L. 109–163, §815(a)(1), substituted "vessel, aircraft, or combat vehicle" for "vessel or aircraft" in two places in introductory provisions.

Subsec. (b)(1)(C). Pub. L. 109–163, §815(a)(1), substituted "vessel, aircraft, or combat vehicle" for "vessel or aircraft".

Subsec. (b)(1)(D). Pub. L. 109–163, §815(b)(1), added subpar. (D).

Subsec. (b)(3), (4). Pub. L. 109–163, §815(b)(2), added pars. (3) and (4).

Subsec. (c)(1). Pub. L. 109–163, §815(a)(2), substituted "aircraft, naval vessel, or combat vehicle" for "aircraft or naval vessel" in subpars. (A) and (B).

Subsec. (d)(1)(A)(i), (2)(A), (B). Pub. L. 109–163, §815(a)(1), substituted "vessel, aircraft, or combat vehicle" for "vessel or aircraft".

Subsec. (e)(1), (3). Pub. L. 109–163, §815(a)(3), substituted "aircraft, naval vessels, or combat vehicles" for "aircraft or naval vessels" wherever appearing.

Subsec. (f). Pub. L. 109–163, §815(c)(2), added subsec. (f). Former subsec. (f) redesignated (g).

Pub. L. 109–163, §815(a)(4), substituted "aircraft, naval vessels, and combat vehicles" for "aircraft and naval vessels" and "such aircraft, vessels, and combat vehicles" for "such aircraft and vessels".

Subsec. (g). Pub. L. 109–163, §815(c)(1), redesignated subsec. (f) as (g).

2000—Subsec. (b)(1)(B). Pub. L. 106–398 substituted "Committee on Appropriations of the House" for "Committees on Appropriations of the House".

1999—Subsec. (b)(1)(B). Pub. L. 106–65 substituted "and the Committee on Armed Services" for "and the Committee on National Security".

1996—Subsec. (b)(1)(B). Pub. L. 104–106, §1502(a)(20)(A), substituted "the Committee on Armed Services and the Committee on Appropriations of the Senate and the Committee on National Security and the Committees on Appropriations of the" for "the Committees on Armed Services and on Appropriations of the Senate and".

Subsec. (b)(1)(C). Pub. L. 104–106, §1502(a)(20)(B), substituted "those committees" for "the Committees on Armed Services and on Appropriations of the Senate and House of Representatives".

Subsec. (c)(2). Pub. L. 104–106, §1503(a)(21), struck out "pursuant to an authorization contained in the Department of Defense Authorization Act, 1984 (Public Law 98–94), or in any other law enacted after September 24, 1983," before "may not be used".

1993—Subsec. (c)(2)(A). Pub. L. 103–35 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954".

1987—Subsec. (d)(1)(B). Pub. L. 100–26 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954".

1984—Subsec. (c). Pub. L. 98–525, §1232(a)(1), designated existing provisions as par. (1), redesignated as cls. (A) and (B) former cls. (1) and (2), respectively, and added par. (2).

Subsec. (f). Pub. L. 98–525, §1232(a)(2), struck out at end "Such guidelines shall be issued not later than 90 days after the date of enactment of this section [Sept. 24, 1983]."

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2021, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE

Pub. L. 98–94, title XII, §1202(a)(3), Sept. 24, 1983, 97 Stat. 681, provided that: "Section 2401 of title 10, United States Code, as added by paragraph (1), shall not apply in the case of any lease or charter agreement entered into by the Department of Defense before December 1, 1983."

RIDING GANG MEMBER REQUIREMENTS

Pub. L. 109–364, div. A, title X, §1018, Oct. 17, 2006, 120 Stat. 2380, as amended by Pub. L. 110–417, div. C, title XXXV, §3504, Oct. 14, 2008, 122 Stat. 4762, provided that:

"(a) IN GENERAL.—The Secretary of Defense may not award, renew, extend, or exercise an option to extend any charter of a vessel documented under chapter 121 of title 46, United States Code, for the Department of Defense, or any contract for the carriage of cargo by a vessel documented under that chapter for the Department of Defense, unless the charter or contract, respectively, includes provisions that—

"(1) subject to paragraph (2), allow riding gang members to perform work on the vessel during the effective period of the charter or contract only under terms, conditions, restrictions, and requirements as provided in section 8106 of title 46, United States Code; and

"(2) require that riding gang members hold a merchant mariner's document issued under chapter 73 of title 46, United States Code, or a transportation security card issued under section 70105 of such title.

"(b) EXEMPTION.—

"(1) IN GENERAL.—In accordance with regulations issued by the Secretary of Defense, an individual shall not be treated as a riding gang member for the purposes of section 8106 of title 46, United States Code, and this section if—

"(A) the individual is aboard a vessel that is under charter or contract for the carriage of cargo for the Department of Defense, for purposes other than engaging in the operation or maintenance of the vessel; and

''(B) the individual—

''(i) accompanies, supervises, guards, or maintains unit equipment aboard a ship, commonly referred to as supercargo personnel;

''(ii) is one of the force protection personnel of the vessel;

''(iii) is a specialized repair technician; or

''(iv) is otherwise required by the Secretary of Defense to be aboard the vessel.

''(2) BACKGROUND CHECK.—

''(A) IN GENERAL.—This section shall not apply to an individual unless—

''(i) the name and other necessary identifying information for the individual is submitted to the Secretary for a background check; and

''(ii) except as provided in subparagraph (B), the individual successfully passes a background check by the Secretary prior to going aboard the vessel.

''(B) WAIVER.—The Secretary may waive the application of subparagraph (A)(ii) for an individual who holds a merchant mariner's document issued under chapter 73 of title 46, United States Code, or a transportation security card issued under section 70105 of such title.

''(3) EXEMPTED INDIVIDUAL NOT TREATED AS IN ADDITION TO THE CREW.—An individual who, under paragraph (1), is not treated as a riding gang member shall not be counted as an individual in addition to the crew for the purposes of section 3304 of title 46, United States Code.''

LONG-TERM LEASE OR CHARTER AUTHORITY FOR CERTAIN DOUBLE-HULL TANKERS AND OCEANOGRAPHIC VESSELS

Pub. L. 103–160, div. A, title I, §126, Nov. 30, 1993, 107 Stat. 1567, as amended by Pub. L. 104–106, div. D, title XLIII, §4321(i)(1)(A), Feb. 10, 1996, 110 Stat. 676, provided that:

''(a) AUTHORITY.—The Secretary of the Navy may enter into a long-term lease or charter for any double-hull tanker or oceanographic vessel constructed in a United States shipyard after the date of the enactment of this Act [Nov. 30, 1993] using assistance provided under the National Shipbuilding Initiative.

''(b) CONDITIONS ON OBLIGATION OF FUNDS.—Unless budget authority is specifically provided in an appropriations Act for the lease or charter of vessels pursuant to subsection (a), the Secretary may not enter into a contract for a lease or charter pursuant to that subsection unless the contract includes the following provisions:

''(1) A statement that the obligation of the United States to make payments under the contract in any fiscal year is subject to appropriations being provided specifically for that fiscal year and specifically for that lease or charter or that kind of vessel lease or charter.

''(2) A commitment to obligate the necessary amount for each fiscal year covered by the contract when and to the extent that funds are appropriated for that lease or charter, or that kind of lease or charter, for that fiscal year.

''(3) A statement that such a commitment given under paragraph (2) does not constitute an obligation of the United States.

''(c) INAPPLICABILITY OF CERTAIN LAWS.—A long-term lease or charter authorized by subsection (a) may be entered into without regard to the provisions of section 2401 or 2401a of title 10, United States Code.

''(d) DEFINITION.—For purposes of subsection (a), the term 'long-term lease or charter' has the meaning given that term in subparagraph (A) of section 2401(d)(1) of title 10, United States Code.''

LIMITATION ON USE OF FUNDS FOR CONTRACTS FOR LEASE OR CHARTER OF ANY VESSEL, AIRCRAFT, OR VEHICLES

Pub. L. 101–165, title IX, §9081, Nov. 21, 1989, 103 Stat. 1147, directed that no funds available to Department of Defense could be used to enter into any contract with term of eighteen months or more or to extend or renew any contract for term of eighteen months or more, for any vessel, aircraft, or vehicle, through lease, charter, or similar agreement without previously having been submitted to Committees on Appropriations, with further requirement with respect to contractual agreements which imposed certain termination liability on Government, prior to repeal by Pub. L. 103–355, title III, §3065(b), Oct. 13, 1994, 108 Stat. 3337. See section 2401a of this title.

ISSUANCE OF GUIDELINES

Pub. L. 98–525, title XII, §1232(a)(2), Oct. 19, 1984, 98 Stat. 2600, provided in part that guidelines required to be issued under subsec. (f) of this section shall be issued not later than Oct. 31, 1984.

LIMITATION ON FUNDS AVAILABLE TO DEPARTMENT OF DEFENSE TO ENTER INTO CONTRACTS DURING FISCAL YEAR 1984

Pub. L. 98–94, title XII, §1202(d), Sept. 24, 1983, 97 Stat. 682, provided that: ''Funds available to the Department of Defense may not be used to enter into any contract during fiscal year 1984 under section 2401 of title 10, United States Code, as added by subsection (a), the term of which is for 3 years or more, inclusive of any option for contract extension or renewal, for any vessels, aircraft, or vehicles, through a lease, charter, or similar agreement, that imposes an estimated termination liability (excluding the estimated value of the leased item at the time of termination) on the United States exceeding 50 percent of the original purchase value of the vessel, aircraft, or vehicle involved for which the Congress has not specifically provided budget authority for the obligation of 10 percent of such termination liability.''

LIMITATION ON USE OF FUNDS APPROPRIATED PURSUANT TO AUTHORIZATIONS CONTAINED IN DEPARTMENT OF DEFENSE AUTHORIZATION ACT, 1984

Pub. L. 98–94, title XII, §1202(b), Sept. 24, 1983, 97 Stat. 681, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''Funds appropriated pursuant to an authorization contained in this Act may not be used to indemnify any person under the terms of a contract entered into with the United States under section 2401 of title 10, United States Code (as added by subsection (a))—

''(1) for any amount paid or due by any person to the United States for any liability arising under the Internal Revenue Code of 1986 [Title 26, Internal Revenue Code]; or

''(2) to pay any attorneys' fees in connection with such contract.''

§ 2401a. Lease of vehicles, equipment, vessels, and aircraft

(a) LEASING OF COMMERCIAL VEHICLES AND EQUIPMENT.—The Secretary of Defense may use leasing in the acquisition of commercial vehicles and equipment whenever the Secretary determines that such leasing is practicable and efficient.

(b) LIMITATION ON CONTRACTS WITH TERMS OF 18 MONTHS OR MORE.—The Secretary of Defense or the Secretary of a military department may not enter into any contract with a term of 18 months or more, or extend or renew any contract for a term of 18 months or more, for any vessel, aircraft, or vehicle, through a lease, charter, or similar agreement, unless the Secretary has considered all costs of such contract (including estimated termination liability) and has determined in writing that the contract is in the best interest of the Government.

(Added Pub. L. 103–355, title III, § 3065(a)(1), Oct. 13, 1994, 108 Stat. 3337; amended Pub. L. 104–106, div. A, title VIII, § 807(a)(1), Feb. 10, 1996, 110 Stat. 391; Pub. L. 105–85, div. A, title X, § 1073(a)(52), Nov. 18, 1997, 111 Stat. 1903; Pub. L. 116–283, div. A, title XVIII, § 1825(j), (k), Jan. 1, 2021, 134 Stat. 4208.)

AMENDMENT OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1825(j), (k), Jan. 1, 2021, 134 Stat. 4151, 4208, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is amended as follows:

(1) by transferring subsection (a) to section 3681 of this title; and

(2) by transferring subsection (b) to section 3678 of this title.

See 2021 Amendment notes below.

PRIOR PROVISIONS

Provisions similar to those in subsec. (b) were contained in Pub. L. 101–165, title IX, § 9081, Nov. 21, 1989, 103 Stat. 1147, which was set out as a note under section 2401 of this title, prior to repeal by Pub. L. 103–355, § 3065(b).

A prior section 2401a was renumbered section 2350f of this title.

AMENDMENTS

2021—Subsec. (a). Pub. L. 116–283, § 1825(k), transferred subsec. (a) to section 3681 of this title.

Subsec. (b). Pub. L. 116–283, § 1825(j), transferred subsec. (b) to section 3678 of this title.

1997—Subsec. (a). Pub. L. 105–85 substituted ''such leasing'' for ''leasing of such vehicles''.

1996—Pub. L. 104–106 substituted ''Lease of vehicles, equipment, vessels, and aircraft'' for ''Lease of vessels, aircraft, and vehicles'' as section catchline, designated existing text as subsec. (b), inserted subsec. (b) heading, and added subsec. (a).

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

LEASES FOR TANKER AIRCRAFT UNDER MULTIYEAR AIRCRAFT-LEASE PILOT PROGRAM

Pub. L. 107–314, div. A, title I, § 133, Dec. 2, 2002, 116 Stat. 2477, provided that: ''The Secretary of the Air Force may not enter into a lease for the acquisition of tanker aircraft for the Air Force under section 8159 of the Department of Defense Appropriations Act, 2002 (division A of Public Law 107–117; 115 Stat. 2284; 10 U.S.C. 2401a note) until—

''(1) the Secretary submits the report specified in subsection (c)(6) of such section; and

''(2) either—

''(A) authorization and appropriation of funds necessary to enter into such lease are provided by law; or

''(B) a new start reprogramming notification for the funds necessary to enter into such lease has been submitted in accordance with established procedures.''

MULTI-YEAR AIRCRAFT LEASE PILOT PROGRAM

Pub. L. 108–136, div. A, title I, § 135, Nov. 24, 2003, 117 Stat. 1413, as amended by Pub. L. 108–375, div. A, title I, § 133, Oct. 28, 2004, 118 Stat. 1829, which prohibited the leasing of tanker aircraft pursuant to the multiyear aircraft lease pilot program under Pub. L. 107–117, § 8159, set out below, and authorized the Secretary of the Air Force to enter into a multiyear contract for the purchase of such aircraft, was repealed by Pub. L. 110–417, [div. A], title I, § 132, Oct. 14, 2008, 122 Stat. 4377.

Pub. L. 107–206, title I, § 308, Aug. 2, 2002, 116 Stat. 841, provided that: ''During the current fiscal year and hereafter, section 2533a of title 10, United States Code, shall not apply to any transaction entered into to acquire or sustain aircraft under the authority of section 8159 of the Department of Defense Appropriations Act, 2002 (division A of Public Law 107–117; 115 Stat. 2284) [set out below].''

Pub. L. 107–117, div. A, title VIII, § 8159, Jan. 10, 2002, 115 Stat. 2284, as amended by Pub. L. 107–248, title VIII, § 8117, Oct. 23, 2002, 116 Stat. 1564; Pub. L. 113–76, div. C, title VIII, § 8122, Jan. 17, 2014, 128 Stat. 133, provided that:

''(a) The Secretary of the Air Force may, from funds provided in this Act [see Tables for classification] or any future appropriations Act, establish and make payments on a multi-year pilot program for leasing general purpose Boeing 767 aircraft and Boeing 737 aircraft in commercial configuration.

''(b) Sections 2401 and 2401a of title 10, United States Code, shall not apply to any aircraft lease authorized by this section.

''(c) Under the aircraft lease Pilot Program authorized by this section:

''(1) The Secretary may include terms and conditions in lease agreements that are customary in aircraft leases by a non-Government lessor to a non-Government lessee, but only those that are not inconsistent with any of the terms and conditions mandated herein. Notwithstanding the provisions of Section 3324 of Title 31, United States Code, payment for the acquisition of leasehold interests under this section may be made for each annual term up to one year in advance.

''(2) The term of any individual lease agreement into which the Secretary enters under this section shall not exceed 10 years, inclusive of any options to renew or extend the initial lease term.

''(3) The Secretary may provide for special payments in a lessor if the Secretary terminates or cancels the lease prior to the expiration of its term. Such special payments shall not exceed an amount equal to the value of 1 year's lease payment under the lease.

''(4) Subchapter IV of chapter 15 of title 31, United States Code shall apply to the lease transactions under this section, except that the limitation in section 1553(b)(2) shall not apply.

''(5) The Secretary shall lease aircraft under terms and conditions consistent with this section and consistent with the criteria for an operating lease as defined in OMB Circular A–11, as in effect at the time of the lease.

''(6) Lease arrangements authorized by this section may not commence until:

''(A) The Secretary submits a report to the congressional defense committees [Committees on Armed Services of the Senate and House of Representatives and Subcommittees on Defense of the Committees on Appropriations of the Senate and House of Representatives] outlining the plans for implementing the Pilot Program. The report shall describe the terms and conditions of proposed contracts and describe the expected savings, if any, comparing total costs, including operation, support, acquisition, and financing, of the lease, including modification, with the outright purchase of the aircraft as modified.

''(B) A period of not less than 30 calendar days has elapsed after submitting the report.

''[(7) Repealed. Pub. L. 113–76, div. C, title VIII, § 8122, Jan. 17, 2014, 128 Stat. 133.]

''(8) The Air Force shall accept delivery of the aircraft in a general purpose configuration.

''(9) At the conclusion of the lease term, each aircraft obtained under that lease may be returned to the contractor in the same configuration in which the aircraft was delivered.

''(10) The present value of the total payments over the duration of each lease entered into under this authority shall not exceed 90 percent of the fair market value of the aircraft obtained under that lease.

''(d) No lease entered into under this authority shall provide for—

''(1) the modification of the general purpose aircraft from the commercial configuration, unless and until separate authority for such conversion is enacted and only to the extent budget authority is provided in advance in appropriations Acts for that purpose; or

''(2) the purchase of the aircraft by, or the transfer of ownership to, the Air Force.

''(e) The authority granted to the Secretary of the Air Force by this section is separate from and in addition to, and shall not be construed to impair or otherwise affect, the authority of the Secretary to procure transportation or enter into leases under a provision of law other than this section.

''(f) The authority provided under this section may be used to lease not more than a total of 100 Boeing 767 aircraft and 4 Boeing 737 aircraft for the purposes specified herein.

''(g) Notwithstanding any other provision of law, any payments required for a lease entered into under this Section, or any payments made pursuant to subsection (c)(3) above, may be made from appropriations available for operation and maintenance or for lease or procurement of aircraft at the time that the lease takes effect; appropriations available for operation and maintenance or for lease or procurement of aircraft at the time that the payment is due; or funds appropriated for those payments.''

Pub. L. 106–79, title VIII, § 8133, Oct. 25, 1999, 113 Stat. 1267, which authorized the Secretary of the Air Force to establish a multi-year pilot program for leasing aircraft for operational support purposes, was repealed by Pub. L. 115–232, div. A, title VIII, § 812(b)(34), Aug. 13, 2018, 132 Stat. 1849.

LEASE OF FIREFIGHTING, CRASH RESCUE, AND SNOW REMOVAL EQUIPMENT

Pub. L. 105–262, title VIII, § 8126, Oct. 17, 1998, 112 Stat. 2333, provided that:

''(a) The Secretary of the Army and the Secretary of the Air Force may each enter into one or more multiyear leases of nontactical firefighting equipment, nontactical crash rescue equipment, or nontactical snow removal equipment. The period of a lease entered into under this section shall be for any period not in excess of 10 years. Any such lease shall provide that performance under the lease during the second and subsequent years of the contract is contingent upon the appropriation of funds and shall provide for a cancellation payment to be made to the lessor if such appropriations are not made.

''(b) Lease payments made under subsection (a) shall be made from amounts provided in this or future appropriations Acts.

''(c) This section is effective for all fiscal years beginning after September 30, 1998.''

PILOT PROGRAM FOR LEASING COMMERCIAL UTILITY CARGO VEHICLES

Pub. L. 104–106, div. A, title VIII, § 807(c), Feb. 10, 1996, 110 Stat. 392, as amended by Pub. L. 106–65, div. A, title X, § 1067(6), Oct. 5, 1999, 113 Stat. 774, which authorized the Secretary of the Army to conduct a pilot program for leasing commercial utility cargo vehicles, directed the Secretary to submit to committees of Congress a report prior to commencement of the program containing plans for its implementation and setting forth the savings in operating and support costs expected to be derived from retiring older commercial utility cargo vehicles, as compared to the expected costs of leasing newer commercial utility cargo vehicles, directed the Secretary to submit to committees of Congress a report on the status of the program not later than one year after the date on which the first lease under the program had been entered into, and provided that no lease could be entered into under the program after Sept. 30, 2000, was repealed by Pub. L. 115–91, div. A, title VIII, § 884, Dec. 12, 2017, 131 Stat. 1505.

§ 2402. Prohibition of contractors limiting subcontractor sales directly to the United States

(a) Each contract for the purchase of supplies or services made by the Department of Defense shall provide that the contractor will not—

(1) enter into any agreement with a subcontractor under the contract that has the effect of unreasonably restricting sales by the subcontractor directly to the United States of any item or process (including computer software) made or furnished by the subcontractor under the contract (or any follow-on production contract); or

(2) otherwise act to restrict unreasonably the ability of a subcontractor to make sales to the United States described in clause (1).

(b) This section does not prohibit a contractor from asserting rights it otherwise has under law.

(c) This section does not apply to a contract that is for an amount not greater than the simplified acquisition threshold (as defined in section 134 of title 41).

(d)(1) An agreement between the contractor in a contract for the acquisition of commercial products or commercial services and a subcontractor under such contract that restricts sales by such subcontractor directly to persons other than the contractor may not be considered to unreasonably restrict sales by that subcontractor to the United States in violation of the provision included in such contract pursuant to subsection (a) if the agreement does not result in the United States being treated differently with regard to the restriction than any other prospective purchaser of such commercial products or commercial services from that subcontractor.

(2) In paragraph (1), the terms ''commercial product'' and ''commercial service'' have the meanings given those terms in sections 103 and 103a, respectively, of title 41.

(Added Pub. L. 98–525, title XII, § 1234(a), Oct. 19, 1984, 98 Stat. 2601; amended Pub. L. 103–355, title IV, § 4102(f), title VIII, § 8105(g), Oct. 13, 1994, 108 Stat. 3340, 3392; Pub. L. 111–350, § 5(b)(25), Jan. 4, 2011, 124 Stat. 3844; Pub. L. 115–232, div. A, title VIII, § 836(e)(4), Aug. 13, 2018, 132 Stat. 1869.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1862(b), Jan. 1, 2021, 134 Stat. 4151, 4277, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 363 of this title, as amended by section 1862(a) of Pub. L. 116–283, inserted after section 4654, and redesignated as section 4655 of this title. See Effective Date of 2021 Amendment note below.

AMENDMENTS

2018—Subsec. (d)(1). Pub. L. 115–232, § 836(e)(4)(A), substituted ''commercial products or commercial services'' for ''commercial items'' in two places.

Subsec. (d)(2). Pub. L. 115–232, § 836(e)(4)(B), substituted ''the terms 'commercial product' and 'commer-

cial service' have the meanings given those terms in sections 103 and 103a, respectively, of title 41.'' for ''the term 'commercial item' has the meaning given such term in section 103 of title 41.''

2011—Subsec. (c). Pub. L. 111–350, § 5(b)(25)(A), substituted ''section 134 of title 41)'' for ''section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11)))''.

Subsec. (d)(2). Pub. L. 111–350, § 5(b)(25)(B), substituted ''section 103 of title 41'' for ''section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12))''.

1994—Subsecs. (c), (d). Pub. L. 103–355 added subsecs. (c) and (d).

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115–232 effective Jan. 1, 2020, subject to a savings provision, see section 836(h) of Pub. L. 115–232, set out as an Effective Date of 2018 Amendment; Savings Provision note under section 453b of Title 6, Domestic Security.

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 2302 of this title.

EFFECTIVE DATE

Pub. L. 98–525, title XII, § 1234(c), Oct. 19, 1984, 98 Stat. 2604, provided that: ''Section 2402 of title 10, United States Code (as added by subsection (a)), shall take effect at the end of the 180-day period beginning on the date of the enactment of this Act [Oct. 19, 1984].''

[§ 2403. Repealed. Pub. L. 105–85, div. A, title VIII, § 847(a), Nov. 18, 1997, 111 Stat. 1845]

Section, added Pub. L. 98–525, title XII, § 1234(a), Oct. 19, 1984, 98 Stat. 2601; amended Pub. L. 99–433, title I, § 110(g)(5), Oct. 1, 1986, 100 Stat. 1004; Pub. L. 100–26, § 7(k)(2), Apr. 21, 1987, 101 Stat. 284; Pub. L. 103–355, title II, § 2402, Oct. 13, 1994, 108 Stat. 3324; Pub. L. 104–106, div. A, title XV, § 1502(a)(21), Feb. 10, 1996, 110 Stat. 505, related to major weapon systems and contractor guarantees.

[§ 2404. Renumbered § 2922e]

[§ 2405. Repealed. Pub. L. 105–85, div. A, title VIII, § 810(a)(1), Nov. 18, 1997, 111 Stat. 1839]

Section, added Pub. L. 98–525, title XII, § 1234(a), Oct. 19, 1984, 98 Stat. 2604; amended Pub. L. 102–484, div. A, title VIII, § 813(c), Oct. 23, 1992, 106 Stat. 2453; Pub. L. 103–355, title II, § 2302(a), (b), Oct. 13, 1994, 108 Stat. 3321; Pub. L. 104–106, div. D, title XLIII, § 4321(b)(14), Feb. 10, 1996, 110 Stat. 673, related to limitation on adjustment of shipbuilding contracts.

EFFECTIVE DATE OF REPEAL

Pub. L. 105–85, div. A, title VIII, § 810(b), Nov. 18, 1997, 111 Stat. 1839, provided that:

''(1) Except as provided in paragraph (2), the repeal made by subsection (a) [repealing this section] shall be effective with respect to claims, requests for equitable adjustment, and demands for payment under shipbuilding contracts that have been or are submitted before, on, or after the date of the enactment of this Act [Nov. 18, 1997].

''(2) Section 2405 of title 10, United States Code, as in effect immediately before the date of the enactment of this Act, shall continue to apply to a contractor's claim, request for equitable adjustment, or demand for payment under a shipbuilding contract that was submitted before such date if—

''(A) a contracting officer denied the claim, request, or demand, and the period for appealing the decision to a court or board under the Contract Disputes Act of 1978 [see 41 U.S.C. 7101 et seq.] expired before such date;

''(B) a court or board of contract appeals considering the claim, request, or demand (including any appeal of a decision of a contracting officer to deny the claim, request, or demand) denied or dismissed the claim, request, or demand (or the appeal), and the action of the court or board became final and unappealable before such date; or

''(C) the contractor released or releases the claim, request, or demand.''

[§ 2406. Repealed. Pub. L. 103–355, title II, § 2201(b)(1), Oct. 13, 1994, 108 Stat. 3318]

Section, added Pub. L. 99–145, title IX, § 917(a), Nov. 8, 1985, 99 Stat. 689; amended Pub. L. 99–500, § 101(c) [title X, § 943(a)(1)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–162, and Pub. L. 99–591, § 101(c) [title X, § 943(a)(1)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–162; Pub. L. 99–661, div. A, title IX, formerly title IV, § 943(a)(1), Nov. 14, 1986, 100 Stat. 3942, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; Pub. L. 100–180, div. A, title XII, § 1231(13), Dec. 4, 1987, 101 Stat. 1160, required contractor under covered contract with an agency to make cost and pricing data available to agency in timely manner.

EFFECTIVE DATE OF REPEAL

For effective date and applicability of repeal, see section 10001 of Pub. L. 103–355, set out as an Effective Date of 1994 Amendment note under section 2302 of this title.

[§ 2407. Renumbered § 2350b]

NATO COOPERATIVE LOGISTIC SUPPORT AGREEMENTS

Pub. L. 99–661, div. A, title XI, § 1102, Nov. 14, 1986, 100 Stat. 3961, which authorized Secretary of Defense to enter Weapon System Partnership Agreements with one or more governments of other member countries of NATO, was repealed by Pub. L. 101–189, div. A, title IX, § 931(d)(2), Nov. 29, 1989, 103 Stat. 1535. See section 2350d of this title.

NATO COOPERATIVE RESEARCH AND DEVELOPMENT

Pub. L. 99–145, title XI, § 1103, Nov. 8, 1985, 99 Stat. 712, which urged and requested member nations of NATO to cooperate in research and development of defense equipment and munitions and in the production of defense equipment, was repealed by Pub. L. 101–189, div. A, title IX, § 931(d)(1), Nov. 29, 1989, 103 Stat. 1535. See section 2350a of this title.

AUTHORITY OF SECRETARY OF DEFENSE IN CONNECTION WITH NATO AWACS PROGRAM

Pub. L. 97–86, title I, § 103, Dec. 1, 1981, 95 Stat. 1100, as amended by Pub. L. 97–252, title I, § 106, Sept. 8, 1982, 96 Stat. 720; Pub. L. 98–94, title I, § 105, Sept. 24, 1983, 97 Stat. 620; Pub. L. 98–525, title I, § 106, Oct. 19, 1984, 98 Stat. 2503; Pub. L. 99–145, title I, § 106(b), Nov. 8, 1985, 99 Stat. 596; Pub. L. 99–661, title I, § 106, Nov. 14, 1986, 100 Stat. 3827; Pub. L. 100–180, title I, § 109, Dec. 4, 1987, 101 Stat. 1036, which set forth authority of Secretary of Defense in connection with NATO AWACS Program, was repealed by Pub. L. 101–189, div. A, title IX, § 932(b), Nov. 29, 1989, 103 Stat. 1537. See section 2350e of this title. Similar provisions were contained in the following prior authorization acts:

Pub. L. 96–342, title I, § 103, Sept. 8, 1980, 94 Stat. 1078.

Pub. L. 96–107, title I, § 104, Nov. 9, 1979, 93 Stat. 804.

§ 2408. Prohibition on persons convicted of defense-contract related felonies and related criminal penalty on defense contractors

(a) PROHIBITION.—(1) An individual who is convicted of fraud or any other felony arising out of a contract with the Department of Defense shall be prohibited from each of the following:

(A) Working in a management or supervisory capacity on any defense contract or any first tier subcontract of a defense contract.

(B) Serving on the board of directors of any defense contractor or any subcontractor awarded a contract directly by a defense contractor.

(C) Serving as a consultant to any defense contractor or any subcontractor awarded a contract directly by a defense contractor.

(D) Being involved in any other way, as determined under regulations prescribed by the Secretary of Defense, with a defense contract or first tier subcontract of a defense contract.

(2) Except as provided in paragraph (3), the prohibition in paragraph (1) shall apply for a period, as determined by the Secretary of Defense, of not less than five years after the date of the conviction.

(3) The prohibition in paragraph (1) may apply with respect to an individual for a period of less than five years if the Secretary determines that the five-year period should be waived in the interests of national security.

(4) The prohibition in paragraph (1) does not apply with respect to the following:

(A) A contract referred to in subparagraph (A), (B), (C), or (D) of such paragraph that is not greater than the simplified acquisition threshold (as defined in section 134 of title 41).

(B) A contract referred to in such subparagraph that is for the acquisition of commercial products or commercial services (as defined in sections 103 and 103a, respectively, of title 41).

(C) A subcontract referred to in such subparagraph that is under a contract described in subparagraph (A) or (B).

(b) CRIMINAL PENALTY.—A defense contractor or subcontractor shall be subject to a criminal penalty of not more than $500,000 if such contractor or subcontractor is convicted of knowingly—

(1) employing a person under a prohibition under subsection (a); or

(2) allowing such a person to serve on the board of directors of such contractor or subcontractor.

(c) SINGLE POINT OF CONTACT FOR INFORMATION.—(1) The Attorney General shall ensure that a single point of contact is established to enable a defense contractor or subcontractor to promptly obtain information regarding whether a person that the contractor or subcontractor proposes to use for an activity covered by paragraph (1) of subsection (a) is under a prohibition under that subsection.

(2) The procedure for obtaining such information shall be specified in regulations prescribed by the Secretary of Defense under subsection (a).

(Added Pub. L. 99–500, § 101(c) [title X, § 941(a)(1)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–161, and Pub. L. 99–591, § 101(c) [title X, § 941(a)(1)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–161; Pub. L. 99–661, div. A, title IX, formerly title IV, § 941(a)(1), Nov. 14, 1986, 100 Stat. 3941, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; amended Pub. L. 100–456, div. A, title VIII, § 831(a), Sept. 29, 1988, 102 Stat. 2023; Pub. L. 101–510, div. A, title VIII, § 812, Nov. 5, 1990, 104 Stat. 1596; Pub. L. 102–484, div. A, title VIII, § 815(a), Oct. 23, 1992, 106 Stat. 2454; Pub. L. 103–355, title IV, § 4102(g), title VIII, § 8105(h), Oct. 13, 1994, 108 Stat. 3340, 3393; Pub. L. 104–106, div. A, title X, § 1062(e), Feb. 10, 1996, 110 Stat. 444; Pub. L. 111–350, § 5(b)(26), Jan. 4, 2011, 124 Stat. 3844; Pub. L. 115–232, div. A, title VIII, § 836(e)(5), Aug. 13, 2018, 132 Stat. 1870.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1862(b), Jan. 1, 2021, 134 Stat. 4151, 4277, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 363 of this title, as amended by section 1862(a) of Pub. L. 116–283, inserted after section 4655, and redesignated as section 4656 of this title. See Effective Date of 2021 Amendment note below.

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661 added identical sections.

AMENDMENTS

2018—Subsec. (a)(4)(B). Pub. L. 115–232 substituted ''commercial products or commercial services (as defined in sections 103 and 103a, respectively, of title 41)'' for ''commercial items (as defined in section 103 of title 41)''.

2011—Subsec. (a)(4)(A). Pub. L. 111–350, § 5(b)(26)(A), substituted ''section 134 of title 41)'' for ''section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11)))''.

Subsec. (a)(4)(B). Pub. L. 111–350, § 5(b)(26)(B), substituted ''section 103 of title 41)'' for ''section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12)))''.

1996—Subsec. (a)(3). Pub. L. 104–106 struck out at end ''If the five-year period is waived, the Secretary shall submit to Congress a report stating the reasons for the waiver.''

1994—Subsec. (a)(4). Pub. L. 103–355, § 4102(g), added introductory provisions and subpar. (A).

Subsec. (a)(4)(B). Pub. L. 103–355, § 8105(h)(1), added subpar. (B).

Subsec. (a)(4)(C). Pub. L. 103–355, § 8105(h)(2), inserted ''or (B)'' before period at end.

Pub. L. 103–355, § 4102(g), added subpar. (C).

1992—Subsec. (c). Pub. L. 102–484 added subsec. (c).

1990—Subsec. (a)(1)(A). Pub. L. 101–510, § 812(a)(1), inserted before period at end ''or any first tier subcontract of a defense contract''.

Subsec. (a)(1)(B). Pub. L. 101–510, § 812(a)(2), inserted before period at end ''or any subcontractor awarded a contract directly by a defense contractor''.

Subsec. (a)(1)(C). Pub. L. 101–510, § 812(a)(3), inserted before period at end ''or any subcontractor awarded a contract directly by a defense contractor''.

Subsec. (a)(1)(D). Pub. L. 101–510, § 812(a)(4), inserted before period at end ''or first tier subcontract of a defense contract''.

Subsec. (b). Pub. L. 101–510, § 812(b), inserted ''or subcontractor'' after ''contractor'' wherever appearing.

1988—Subsec. (a). Pub. L. 100–456 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''A person who is convicted of fraud or any other

felony arising out of a contract with the Department of Defense shall be prohibited from working in a management or supervisory capacity on any defense contract, or serving on the board of directors of any defense contractor, for a period, as determined by the Secretary of Defense, of not less than one year from the date of the conviction.''

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115–232 effective Jan. 1, 2020, subject to a savings provision, see section 836(h) of Pub. L. 115–232, set out as an Effective Date of 2018 Amendment; Savings Provision note under section 453b of Title 6, Domestic Security.

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 2302 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–456, div. A, title VIII, § 831(b), Sept. 29, 1988, 102 Stat. 2023, provided that: ''Section 2408(a) of title 10, United States Code, as amended by subsection (a), shall apply with respect to individuals convicted after the date of the enactment of this Act [Sept. 29, 1988].''

EFFECTIVE DATE

Pub. L. 99–500, § 101(c) [title X, § 941(c)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–162, Pub. L. 99–591, § 101(c) [title X, § 941(c)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–162, and Pub. L. 99–661, div. A, title IX, formerly title IV, § 941(c), Nov. 14, 1986, 100 Stat. 3942, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273, provided that: ''Section 2408 of title 10, United States Code (as added by subsection (a)(1)), shall apply with respect to employment or service on a board of directors after the date of the enactment of this Act [Oct. 18, 1986].''

DEADLINE FOR SINGLE POINT OF CONTACT

Pub. L. 102–484, div. A, title VIII, § 815(b), Oct. 23, 1992, 106 Stat. 2454, directed that the single point of contact required by subsec. (c) of this section be established not later than 120 days after Oct. 23, 1992.

§ 2409. Contractor employees: protection from reprisal for disclosure of certain information

(a) PROHIBITION OF REPRISALS.—(1) An employee of a contractor, subcontractor, grantee, or subgrantee or personal services contractor may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a person or body described in paragraph (2) information that the employee reasonably believes is evidence of the following:

(A) Gross mismanagement of a Department of Defense contract or grant, a gross waste of Department funds, an abuse of authority relating to a Department contract or grant, or a violation of law, rule, or regulation related to a Department contract (including the competition for or negotiation of a contract) or grant.

(B) Gross mismanagement of a National Aeronautics and Space Administration contract or grant, a gross waste of Administration funds, an abuse of authority relating to an Administration contract or grant, or a violation of law, rule, or regulation related to an Administration contract (including the competition for or negotiation of a contract) or grant.

(C) A substantial and specific danger to public health or safety.

(2) The persons and bodies described in this paragraph are the persons and bodies as follows:

(A) A Member of Congress or a representative of a committee of Congress.

(B) An Inspector General.

(C) The Government Accountability Office.

(D) An employee of the Department of Defense or the National Aeronautics and Space Administration, as applicable, responsible for contract oversight or management.

(E) An authorized official of the Department of Justice or other law enforcement agency.

(F) A court or grand jury.

(G) A management official or other employee of the contractor or subcontractor who has the responsibility to investigate, discover, or address misconduct.

(3) For the purposes of paragraph (1)—

(A) an employee who initiates or provides evidence of contractor or subcontractor misconduct in any judicial or administrative proceeding relating to waste, fraud, or abuse on a Department of Defense or National Aeronautics and Space Administration contract or grant shall be deemed to have made a disclosure covered by such paragraph; and

(B) a reprisal described in paragraph (1) is prohibited even if it is undertaken at the request of a Department or Administration official, unless the request takes the form of a nondiscretionary directive and is within the authority of the Department or Administration official making the request.

(b) INVESTIGATION OF COMPLAINTS.—(1) A person who believes that the person has been subjected to a reprisal prohibited by subsection (a) may submit a complaint to the Inspector General of the Department of Defense, or the Inspector General of the National Aeronautics and Space Administration in the case of a complaint regarding the National Aeronautics and Space Administration. Unless the Inspector General determines that the complaint is frivolous, fails to allege a violation of the prohibition in subsection (a), or has previously been addressed in another Federal or State judicial or administrative proceeding initiated by the complainant, the Inspector General shall investigate the complaint and, upon completion of such investigation, submit a report of the findings of the investigation to the person, the contractor concerned, and the head of the agency.

(2)(A) Except as provided under subparagraph (B), the Inspector General shall make a determination that a complaint is frivolous, fails to allege a violation of the prohibition in subsection (a), or has previously been addressed in another Federal or State judicial or administrative proceeding initiated by the complainant or submit a report under paragraph (1) within 180 days after receiving the complaint.

(B) If the Inspector General is unable to complete an investigation in time to submit a report within the 180-day period specified in subpara-

graph (A) and the person submitting the complaint agrees to an extension of time, the Inspector General shall submit a report under paragraph (1) within such additional period of time, up to 180 days, as shall be agreed upon between the Inspector General and the person submitting the complaint.

(3) The Inspector General may not respond to any inquiry or disclose any information from or about any person alleging the reprisal, except to the extent that such response or disclosure is—

(A) made with the consent of the person alleging the reprisal;

(B) made in accordance with the provisions of section 552a of title 5 or as required by any other applicable Federal law; or

(C) necessary to conduct an investigation of the alleged reprisal.

(4) A complaint may not be brought under this subsection more than three years after the date on which the alleged reprisal took place.

(c) REMEDY AND ENFORCEMENT AUTHORITY.—(1) Not later than 30 days after receiving an Inspector General report pursuant to subsection (b), the head of the agency concerned shall determine whether there is sufficient basis to conclude that the contractor concerned has subjected the complainant to a reprisal prohibited by subsection (a) and shall either issue an order denying relief or shall take one or more of the following actions:

(A) Order the contractor to take affirmative action to abate the reprisal.

(B) Order the contractor to reinstate the person to the position that the person held before the reprisal, together with compensatory damages (including back pay), employment benefits, and other terms and conditions of employment that would apply to the person in that position if the reprisal had not been taken.

(C) Order the contractor to pay the complainant an amount equal to the aggregate amount of all costs and expenses (including attorneys' fees and expert witnesses' fees) that were reasonably incurred by the complainant for, or in connection with, bringing the complaint regarding the reprisal, as determined by the head of the agency.

(2) If the head of an executive agency issues an order denying relief under paragraph (1) or has not issued an order within 210 days after the submission of a complaint under subsection (b), or in the case of an extension of time under paragraph (b)(2)(B), not later than 30 days after the expiration of the extension of time, and there is no showing that such delay is due to the bad faith of the complainant, the complainant shall be deemed to have exhausted all administrative remedies with respect to the complaint, and the complainant may bring a de novo action at law or equity against the contractor to seek compensatory damages and other relief available under this section in the appropriate district court of the United States, which shall have jurisdiction over such an action without regard to the amount in controversy. Such an action shall, at the request of either party to the action, be tried by the court with a jury. An action under this paragraph may not be brought more than two years after the date on which remedies are deemed to have been exhausted.

(3) An Inspector General determination and an agency head order denying relief under paragraph (2) shall be admissible in evidence in any de novo action at law or equity brought pursuant to this subsection.

(4) Whenever a person fails to comply with an order issued under paragraph (1), the head of the agency shall file an action for enforcement of such order in the United States district court for a district in which the reprisal was found to have occurred. In any action brought under this paragraph, the court may grant appropriate relief, including injunctive relief, compensatory and exemplary damages, and reasonable attorney fees and costs. The person upon whose behalf an order was issued may also file such an action or join in an action filed by the head of the agency.

(5) Any person adversely affected or aggrieved by an order issued under paragraph (1) may obtain review of the order's conformance with this subsection, and any regulations issued to carry out this section, in the United States court of appeals for a circuit in which the reprisal is alleged in the order to have occurred. No petition seeking such review may be filed more than 60 days after issuance of the order by the head of the agency. Review shall conform to chapter 7 of title 5. Filing such an appeal shall not act to stay the enforcement of the order of the head of an agency, unless a stay is specifically entered by the court.

(6) The legal burdens of proof specified in section 1221(e) of title 5 shall be controlling for the purposes of any investigation conducted by an Inspector General, decision by the head of an agency, or judicial or administrative proceeding to determine whether discrimination prohibited under this section has occurred.

(7) The rights and remedies provided for in this section may not be waived by any agreement, policy, form, or condition of employment.

(d) NOTIFICATION OF EMPLOYEES.—The Secretary of Defense and the Administrator of the National Aeronautics and Space Administration shall ensure that contractors and subcontractors of the Department of Defense and the National Aeronautics and Space Administration, as applicable, inform their employees in writing of the rights and remedies provided under this section, in the predominant native language of the workforce.

(e) EXCEPTIONS.—(1) This section shall not apply to any element of the intelligence community, as defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 3003(4)).

(2) This section shall not apply to any disclosure made by an employee of a contractor, subcontractor, or grantee of an element of the intelligence community if such disclosure—

(A) relates to an activity of an element of the intelligence community; or

(B) was discovered during contract, subcontract, or grantee services provided to an element of the intelligence community.

(f) CONSTRUCTION.—Nothing in this section may be construed to authorize the discharge of, demotion of, or discrimination against an employee for a disclosure other than a disclosure

protected by subsection (a) or to modify or derogate from a right or remedy otherwise available to the employee.

(g) DEFINITIONS.—In this section:

(1) The term ''agency'' means an agency named in section 2303 of this title.

(2) The term ''head of an agency'' has the meaning provided by section 2302(1) of this title.

(3) The term ''contract'' means a contract awarded by the head of an agency.

(4) The term ''contractor'' means a person awarded a contract with an agency.

(5) The term ''Inspector General'' means an Inspector General appointed under the Inspector General Act of 1978 and any Inspector General that receives funding from, or has oversight over contracts awarded for or on behalf of, the Secretary of Defense.

(6) The term ''abuse of authority'' means the following:

(A) An arbitrary and capricious exercise of authority that is inconsistent with the mission of the Department of Defense or the successful performance of a Department contract or grant.

(B) An arbitrary and capricious exercise of authority that is inconsistent with the mission of the National Aeronautics and Space Administration or the successful performance of an Administration contract or grant.

(7) The term ''grantee'' means a person awarded a grant with an agency.

(Added Pub. L. 99–500, § 101(c) [title X, § 942(a)(1)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–162, and Pub. L. 99–591, § 101(c) [title X, § 942(a)(1)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–162; Pub. L. 99–661, div. A, title IX, formerly title IV, § 942(a)(1), Nov. 14, 1986, 100 Stat. 3942, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; amended Pub. L. 102–25, title VII, § 701(k)(1), Apr. 6, 1991, 105 Stat. 116; Pub. L. 102–484, div. A, title X, § 1052(30)(A), Oct. 23, 1992, 106 Stat. 2500; Pub. L. 103–355, title VI, § 6005(a), Oct. 13, 1994, 108 Stat. 3364; Pub. L. 104–106, div. D, title XLIII, § 4321(a)(10), Feb. 10, 1996, 110 Stat. 671; Pub. L. 110–181, div. A, title VIII, § 846, Jan. 28, 2008, 122 Stat. 241; Pub. L. 112–239, div. A, title VIII, § 827(a)–(f), Jan. 2, 2013, 126 Stat. 1833–1836; Pub. L. 113–291, div. A, title VIII, § 856, title X, § 1071(c)(10), Dec. 19, 2014, 128 Stat. 3460, 3509; Pub. L. 114–261, § 1(a)(1), Dec. 14, 2016, 130 Stat. 1362.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1863(b), Jan. 1, 2021, 134 Stat. 4151, 4278, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 365 of this title, as amended by section 1863(a) of Pub. L. 116–283, inserted after the table of sections, and redesignated as section 4701 of this title. See Effective Date of 2021 Amendment note below.

REFERENCES IN TEXT

The Inspector General Act of 1978, referred to in subsec. (g)(5), is Pub. L. 95–452, Oct. 12, 1978, 92 Stat. 1101, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661 added identical sections.

AMENDMENTS

2016—Subsec. (a)(1). Pub. L. 114–261 inserted ''or personal services contractor'' after ''subgrantee'' in introductory provisions.

2014—Subsec. (a)(1). Pub. L. 113–291, § 856(a), substituted '', subcontractor, grantee, or subgrantee'' for ''or subcontractor'' in introductory provisions.

Subsec. (e)(1). Pub. L. 113–291, § 1071(c)(10), substituted ''(50 U.S.C. 3003(4))'' for ''(50 U.S.C. 401a(4))''.

Subsec. (g)(4). Pub. L. 113–291, § 856(b)(1), struck out ''or a grant'' after ''contract''.

Subsec. (g)(7). Pub. L. 113–291, § 856(b)(2), added par. (7).

2013—Subsec. (a). Pub. L. 112–239, § 827(a)(1), designated existing provisions as par. (1).

Subsec. (a)(1). Pub. L. 112–239, § 827(a)(2), inserted ''or subcontractor'' after ''employee of a contractor'', substituted ''a person or body described in paragraph (2)'' for ''a Member of Congress, a representative of a committee of Congress, an Inspector General, the Government Accountability Office, a Department of Defense employee responsible for contract oversight or management, or an authorized official of an agency or the Department of Justice'' and ''evidence of the following:'' for ''evidence of gross mismanagement of a Department of Defense contract or grant, a gross waste of Department of Defense funds, a substantial and specific danger to public health or safety, or a violation of law related to a Department of Defense contract (including the competition for or negotiation of a contract) or grant.'', and added subpars. (A) to (C).

Subsec. (a)(2), (3). Pub. L. 112–239, § 827(a)(3), added pars. (2) and (3).

Subsec. (b)(1). Pub. L. 112–239, § 827(b)(1), inserted ''fails to allege a violation of the prohibition in subsection (a), or has previously been addressed in another Federal or State judicial or administrative proceeding initiated by the complainant,'' after ''is frivolous,''.

Subsec. (b)(2)(A). Pub. L. 112–239, § 827(b)(2)(A), inserted '', fails to allege a violation of the prohibition in subsection (a), or has previously been addressed in another Federal or State judicial or administrative proceeding initiated by the complainant'' after ''is frivolous''.

Subsec. (b)(2)(B). Pub. L. 112–239, § 827(b)(2)(B), inserted '', up to 180 days,'' after ''such additional period of time''.

Subsec. (b)(3), (4). Pub. L. 112–239, § 827(b)(3), added pars. (3) and (4).

Subsec. (c)(1)(B). Pub. L. 112–239, § 827(c)(1), substituted ''compensatory damages (including back pay)'' for ''the compensation (including back pay)''.

Subsec. (c)(2). Pub. L. 112–239, § 827(c)(2), inserted at end ''An action under this paragraph may not be brought more than two years after the date on which remedies are deemed to have been exhausted.''

Subsec. (c)(4). Pub. L. 112–239, § 827(c)(3), substituted '', compensatory and exemplary damages, and reasonable attorney fees and costs. The person upon whose behalf an order was issued may also file such an action or join in an action filed by the head of the agency.'' for ''and compensatory and exemplary damages.''

Subsec. (c)(5). Pub. L. 112–239, § 827(c)(4), inserted at end ''Filing such an appeal shall not act to stay the enforcement of the order of the head of an agency, unless a stay is specifically entered by the court.''

Subsec. (c)(6), (7). Pub. L. 112–239, § 827(c)(5), added pars. (6) and (7).

Subsec. (d). Pub. L. 112–239, § 827(d)(2), added subsec. (d). Former subsec. (d) redesignated (f).

Subsec. (e). Pub. L. 112–239, § 827(e), added subsec. (e). Former subsec. (e) redesignated (g).

Subsecs. (f), (g). Pub. L. 112–239, § 827(d)(1), redesignated subsecs. (d) and (e) as (f) and (g), respectively.

Subsec. (g)(6). Pub. L. 112–239, § 827(f), added par. (6).

2008—Subsec. (a). Pub. L. 110–181, § 846(a), substituted ''disclosing to a Member of Congress, a representative of a committee of Congress, an Inspector General, the Government Accountability Office, a Department of Defense employee responsible for contract oversight or management,'' for ''disclosing to a Member of Congress'' and ''information that the employee reasonably believes is evidence of gross mismanagement of a Department of Defense contract or grant, a gross waste of Department of Defense funds, a substantial and specific danger to public health or safety, or a violation of law related to a Department of Defense contract (including the competition for or negotiation of a contract) or grant'' for ''information relating to a substantial violation of law related to a contract (including the competition for or negotiation of a contract)''.

Subsec. (b). Pub. L. 110–181, § 846(b), designated existing provisions as par. (1), substituted ''the Department of Defense, or the Inspector General of the National Aeronautics and Space Administration in the case of a complaint regarding the National Aeronautics and Space Administration'' for ''an agency'', and added par. (2).

Subsec. (c)(1). Pub. L. 110–181, § 846(c)(1), in introductory provisions, substituted ''Not later than 30 days after receiving an Inspector General report pursuant to subsection (b), the head of the agency concerned shall determine whether there is sufficient basis to conclude that the contractor concerned has subjected the complainant to a reprisal prohibited by subsection (a) and shall either issue an order denying relief or shall'' for ''If the head of the agency determines that a contractor has subjected a person to a reprisal prohibited by subsection (a), the head of the agency may''.

Subsec. (c)(2) to (5). Pub. L. 110–181, § 846(c)(2), (3), added pars. (2) and (3) and redesignated former pars. (2) and (3) as (4) and (5), respectively.

Subsec. (e)(4). Pub. L. 110–181, § 846(d)(1), inserted ''or a grant'' after ''a contract''.

Subsec. (e)(5). Pub. L. 110–181, § 846(d)(2), inserted ''and any Inspector General that receives funding from, or has oversight over contracts awarded for or on behalf of, the Secretary of Defense'' before period at end.

1996—Pub. L. 104–106 made technical correction to Pub. L. 103–355, § 6005(a). See 1994 Amendment note below.

1994—Pub. L. 103–355, § 6005(a), as amended by Pub. L. 104–106, amended section generally. Prior to amendment, subsec. (a) related to prohibition of reprisals, subsec. (b) to investigation of complaints, subsec. (c) to construction of section, and subsec. (d) to coordination of section with former section 2409a of this title.

1992—Subsec. (d). Pub. L. 102–484 amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: ''EFFECTIVE DATE.—This section shall not be in effect during the period when section 2409a of this title is in effect.''

1991—Subsec. (d). Pub. L. 102–25 added subsec. (d).

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 2013 AMENDMENT

For effective date and applicability of amendments by Pub. L. 112–239, see section 827(i) of Pub. L. 112–239, set out as a note under section 2324 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–106, div. D, title XLIII, § 4321(a), Feb. 10, 1996, 110 Stat. 671, provided that the amendment made by that section is effective as of Oct. 13, 1994, and as if included in Pub. L. 103–355 as enacted.

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 2302 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Pub. L. 102–484, div. A, title X, § 1052(30)(B), Oct. 23, 1992, 106 Stat. 2501, provided that: ''The amendment made by subparagraph (A) [amending this section] shall take effect as if enacted immediately following the enactment of Public Law 102–25 (105 Stat. 75).''

EFFECTIVE DATE

Pub. L. 99–500, § 101(c) [title X, § 942(b)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–162, Pub. L. 99–591, § 101(c) [title X, § 942(b)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–162, and Pub. L. 99–661, div. A, title IX, formerly title IV, § 942(b), Nov. 14, 1986, 100 Stat. 3942, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273, provided that: ''Section 2409 of title 10, United States Code (as added by subsection (a)(1)), shall apply with respect to any reprisal action taken on or after the date of the enactment of this Act [Oct. 18, 1986].''

INFORMATION FOR DEPARTMENT OF DEFENSE CONTRACTOR EMPLOYEES ON THEIR WHISTLEBLOWER RIGHTS

Pub. L. 110–417, [div. A], title VIII, § 842, Oct. 14, 2008, 122 Stat. 4539, provided that:

''(a) IN GENERAL.—The Secretary of Defense shall ensure that contractors of the Department of Defense inform their employees in writing of employee whistleblower rights and protections under section 2409 of title 10, United States Code, as implemented by subpart 3.9 of part I of title 48, Code of Federal Regulations.

''(b) CONTRACTOR DEFINED.—In this section, the term 'contractor' has the meaning given that term in section 2409(e)(4) of title 10, United States Code.''

§ 2409a. Incentives and consideration for qualified training programs

(a) INCENTIVES.—The Secretary of Defense shall develop workforce development investment incentives for a contractor that implements a qualified training program to develop the workforce of the contractor in a manner consistent with the needs of the Department of Defense.

(b) CONSIDERATION OF QUALIFIED TRAINING PROGRAMS.—The Secretary of Defense shall revise the Department of Defense Supplement to the Federal Acquisition Regulation to require that the system used by the Federal Government to monitor or record contractor past performance includes an analysis of the availability, quality, and effectiveness of a qualified training program of an offeror as part of the past performance rating of such offeror.

(c) QUALIFIED TRAINING PROGRAM DEFINED.—The term ''qualified training program'' means any of the following:

(1) A program eligible to receive funds under the Workforce Innovation and Opportunity Act (29 U.S.C. 3101 et seq.).

(2) A program eligible to receive funds under the Carl D. Perkins Career and Technical Education Act of 2006 (20 U.S.C. 2301 et seq.).

(3) A program registered under the Act of August 16, 1937 (commonly known as the ''National Apprenticeship Act''; 50 Stat. 664, chapter 663; 29 U.S.C. 50 et seq.).

(4) Any other program determined to be a qualified training program for purposes of this section, and that meets the workforce needs of the Department of Defense, as determined by the Secretary of Defense.

(Added Pub. L. 116–92, div. A, title VIII, § 864(a), Dec. 20, 2019, 133 Stat. 1522; amended Pub. L.

116–283, div. A, title X, §1081(a)(40), Jan. 1, 2021, 134 Stat. 3873.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§1801(d), 1863(b), Jan. 1, 2021, 134 Stat. 4151, 4278, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 365 of this title, as amended by section 1863(a) of Pub. L. 116–283, inserted after section 4701, and redesignated as section 4702 of this title. See Effective Date of 2021 Amendment note below.

REFERENCES IN TEXT

The Workforce Innovation and Opportunity Act, referred to in subsec. (c)(1), is Pub. L. 113–128, July 22, 2014, 128 Stat. 1425, which enacted chapter 32 (§3101 et seq.) of Title 29, Labor, repealed chapter 30 (§2801 et seq.) of Title 29 and chapter 73 (§9201 et seq.) of Title 20, Education, and made amendments to numerous other sections and notes in the Code. For complete classification of this Act to the Code, see Short Title note set out under section 3101 of Title 29 and Tables.

The Carl D. Perkins Career and Technical Education Act of 2006, referred to in subsec. (c)(2), is Pub. L. 88–210, Dec. 18, 1963, 77 Stat. 403, as amended generally by Pub. L. 109–270, §1(b), Aug. 12, 2006, 120 Stat. 683, which is classified generally to chapter 44 (§2301 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 2301 of Title 20 and Tables.

The Act of August 16, 1937, referred to in subsec. (c)(3), is act Aug. 16, 1937, ch. 663, 50 Stat. 664, popularly known as the National Apprenticeship Act, which is classified generally to chapter 4C (§50 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 50 of Title 29 and Tables.

PRIOR PROVISIONS

A prior section 2409a, added Pub. L. 101–510, div. A, title VIII, §837(a)(1), Nov. 5, 1990, 104 Stat. 1616; amended Pub. L. 102–25, title VII, §701(j)(4), (k)(2), Apr. 6, 1991, 105 Stat. 116, 117, which required promulgation of regulations prohibiting defense contractor from discharging or discriminating against employee for disclosing to Government official information concerning contract between contractor and Department of Defense evidencing violation of Federal law or regulation and providing certain complaint and investigation provisions and provided procedures for review and enforcement, was repealed by Pub. L. 103–355, title VI, §6005(b)(1), Oct. 13, 1994, 108 Stat. 3365. For effective date and applicability of repeal, see section 10001 of Pub. L. 103–355, set out as an Effective Date of 1994 Amendment note under section 2302 of this title.

AMENDMENTS

2021—Subsec. (c)(3). Pub. L. 116–283 substituted ''50 Stat. 664;'' for ''Stat. 664,''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by section 1863(b) of Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§2410. Requests for equitable adjustment or other relief: certification

(a) CERTIFICATION REQUIREMENT.—A request for equitable adjustment to contract terms or request for relief under Public Law 85–804 (50 U.S.C. 1431 et seq.) that exceeds the simplified acquisition threshold may not be paid unless a person authorized to certify the request on behalf of the contractor certifies, at the time the request is submitted, that—

(1) the request is made in good faith, and

(2) the supporting data are accurate and complete to the best of that person's knowledge and belief.

(b) RESTRICTION ON LEGISLATIVE PAYMENT OF CLAIMS.—In the case of a contract of an agency named in section 2303(a) of this title, no provision of a law enacted after September 30, 1994, that directs the payment of a particular claim under such contract, a particular request for equitable adjustment to any term of such contract, or a particular request for relief under Public Law 85–804 (50 U.S.C. 1431 et seq.) regarding such contract may be implemented unless such provision of law—

(1) specifically refers to this subsection; and

(2) specifically states that this subsection does not apply with respect to the payment directed by that provision of law.

(c) DEFINITION.—In this section, the term ''simplified acquisition threshold'' has the meaning given that term in section 134 of title 41.

(Added Pub. L. 103–355, title II, §2301(a), Oct. 13, 1994, 108 Stat. 3320; amended Pub. L. 111–350, §5(b)(27), Jan. 4, 2011, 124 Stat. 3845.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§1801(d), 1836(b), Jan. 1, 2021, 134 Stat. 4151, 4241, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 281 of this title, as added by section 1836(a) of Pub. L. 116–283, inserted after section 3861, and redesignated as section 3862 of this title. See Effective Date of 2021 Amendment note below.

REFERENCES IN TEXT

Public Law 85–804, referred to in subsecs. (a) and (b), is Pub. L. 85–804, Aug. 28, 1958, 72 Stat. 972, which is classified generally to chapter 29 (§1431 et seq.) of Title 50, War and National Defense. For complete classification of this Act to the Code, see Tables.

PRIOR PROVISIONS

A prior section, added Pub. L. 100–370, §1(h)(2), July 19, 1988, 102 Stat. 847, provided that contract claims, requests for equitable adjustments, requests for relief under section 1431 et seq. of Title 50, War and National Defense, and other similar requests by contractors exceeding $100,000 were not to be paid unless senior official of contractor certified that claim or request was made in good faith and that data submitted was accurate and complete to the best of such official's knowledge and belief, prior to repeal by Pub. L. 102–484, div. A, title VIII, §813(b), Oct. 23, 1992, 106 Stat. 2453, effective upon promulgation of regulations pursuant to former section 2410e of this title [Interim rules, effective Apr. 30, 1993, were promulgated and published in the Federal Register, 58 F.R. 28458, May 13, 1993, and final rules, effective May 27, 1994, were promulgated and published in the Federal Register, 59 F.R. 27662, May 27, 1994].

AMENDMENTS

2011—Subsec. (c). Pub. L. 111–350 substituted ''section 134 of title 41'' for ''section 4(11) of the Office of Federal Procurement Policy Act''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE

For effective date and applicability of section, see section 10001 of Pub. L. 103–355, set out as an Effective Date of 1994 Amendment note under section 2302 of this title.

§ 2410a. Contracts for periods crossing fiscal years: severable service contracts; leases of real or personal property

(a) AUTHORITY.—(1) The Secretary of Defense, the Secretary of a military department, or the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, may enter into a contract for a purpose described in paragraph (2) for a period that begins in one fiscal year and ends in the next fiscal year if (without regard to any option to extend the period of the contract) the contract period does not exceed one year.

(2) The purpose of a contract described in this paragraph is as follows:

(A) The procurement of severable services.

(B) The lease of real or personal property, including the maintenance of such property when contracted for as part of the lease agreement.

(b) OBLIGATION OF FUNDS.—Funds made available for a fiscal year may be obligated for the total amount of a contract entered into under the authority of subsection (a).

(Added Pub. L. 100–370, § 1(h)(2), July 19, 1988, 102 Stat. 847; amended Pub. L. 102–190, div. A, title III, § 342, Dec. 5, 1991, 105 Stat. 1343; Pub. L. 104–324, title II, § 214(b), Oct. 19, 1996, 110 Stat. 3915; Pub. L. 105–85, div. A, title VIII, § 801(a), Nov. 18, 1997, 111 Stat. 1831; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 108–136, div. A, title X, § 1005(a), (b)(1), Nov. 24, 2003, 117 Stat. 1584.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1809(d), Jan. 1, 2021, 134 Stat. 4151, 4161, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 207 of this title, as amended by section 1809(a) of this title, inserted after section 3132, and redesignated as section 3133 of this title. See Effective Date of 2021 Amendment note below.

HISTORICAL AND REVISION NOTES

Section is based on Pub. L. 99–190, § 101(b) [title VIII, § 8005(e), (h), (*l*)], Dec. 19, 1985, 99 Stat. 1185, 1202.

AMENDMENTS

2003—Pub. L. 108–136, § 1005(b)(1), amended section catchline generally, substituting ''Contracts for periods crossing fiscal years: severable service contracts; leases of real or personal property'' for ''Severable service contracts for periods crossing fiscal years''.

Subsec. (a). Pub. L. 108–136, § 1005(a), inserted ''(1)'' before ''The Secretary of Defense'', substituted ''for a purpose described in paragraph (2)'' for ''for procurement of severable services'', and added par. (2).

2002—Subsec. (a). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

1997—Pub. L. 105–85 amended section generally. Prior to amendment, section related to availability of appropriated funds for payments under contracts for various types of maintenance, leases, and operations and authorized Secretary of Transportation to enter into contracts for procurement of severable services.

1996—Pub. L. 104–324 designated existing provisions as subsec. (a) and added subsec. (b).

1991—Par. (1). Pub. L. 102–190, § 342(1), inserted '', equipment,'' after ''tools''.

Par. (4). Pub. L. 102–190, § 342(2), added par. (4).

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–136, div. A, title X, § 1005(c), Nov. 24, 2003, 117 Stat. 1585, provided that: ''The amendments made by this section [amending this section] shall not apply to funds appropriated for a fiscal year before fiscal year 2004.''

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

§ 2410b. Contractor inventory accounting systems: standards

(a) The Secretary of Defense shall prescribe in regulations—

(1) standards for inventory accounting systems used by contractors under contract with the Department of Defense; and

(2) appropriate enforcement requirements with respect to such standards.

(b) The regulations prescribed pursuant to subsection (a) shall not apply to a contract that is for an amount not greater than the simplified acquisition threshold.

(c) The regulations prescribed pursuant to subsection (a) shall not apply to a contract for the purchase of commercial products (as defined in section 103 of title 41).

(Added Pub. L. 100–456, div. A, title VIII, § 834(a)(1), Sept. 29, 1988, 102 Stat. 2024; amended Pub. L. 103–355, title IV, § 4102(h), title VIII, § 8105(i), Oct. 13, 1994, 108 Stat. 3341, 3393; Pub. L. 104–106, div. D, title XLIII, § 4301(a)(1), Feb. 10, 1996, 110 Stat. 656; Pub. L. 104–201, div. A, title X, § 1074(b)(3), Sept. 23, 1996, 110 Stat. 2660; Pub. L. 111–350, § 5(b)(28), Jan. 4, 2011, 124 Stat. 3845; Pub. L. 115–232, div. A, title VIII, § 836(e)(6), Aug. 13, 2018, 132 Stat. 1870.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1835(c), Jan. 1, 2021, 134 Stat. 4151, 4240, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 279 of this title, as added by section 1835(a) of Pub. L. 116–283, inserted after section 3842, and redesignated as section 3845 of this title. See Effective Date of 2021 Amendment note below.

AMENDMENTS

2018—Subsec. (c). Pub. L. 115–232 substituted ''commercial products'' for ''commercial items''.

2011—Subsec. (c). Pub. L. 111–350 substituted ''section 103 of title 41)'' for ''section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12)))''.

1996—Subsec. (a)(2). Pub. L. 104–106, as amended by Pub. L. 104–201, struck out ''certification and'' after ''appropriate''.

1994—Subsecs. (a), (b). Pub. L. 103–355, § 4102(h), designated existing provisions as subsec. (a) and added subsec. (b).

Subsec. (c). Pub. L. 103–355, § 8105(i), added subsec. (c).

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115–232 effective Jan. 1, 2020, subject to a savings provision, see section 836(h) of Pub. L. 115–232, set out as an Effective Date of 2018 Amendment; Savings Provision note under section 453b of Title 6, Domestic Security.

EFFECTIVE DATE OF 1996 AMENDMENT

For effective date and applicability of amendment by Pub. L. 104–106, see section 4401 of Pub. L. 104–106, set out as a note under section 2302 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 2302 of this title.

REGULATIONS

Pub. L. 100–456, div. A, title VIII, § 834(b), Sept. 29, 1988, 102 Stat. 2025, provided that:

''(1) The Secretary of Defense shall prescribe the regulations required by paragraph (1) of section 2410b of title 10, United States Code, as added by subsection (a), not later than 30 days after the date of the enactment of this Act [Sept. 29, 1988].

''(2) The Secretary of Defense shall prescribe the regulations required by paragraph (2) of section 2410b of title 10, United States Code, as added by subsection (a), not later than 180 days after the date of the enactment of this Act.''

[§ 2410c. Renumbered § 2922f]

CODIFICATION

Another section 2410c was renumbered section 2410j of this title.

§ 2410d. Subcontracting plans: credit for certain purchases

(a) PURCHASES BENEFITING SEVERELY HANDICAPPED PERSONS.—In the case of a business concern that has negotiated a small business subcontracting plan with a military department or a Defense Agency, purchases made by that business concern from qualified nonprofit agencies for the blind or other severely handicapped shall count toward meeting the subcontracting goal provided in that plan.

(b) DEFINITIONS.—In this section:

(1) The term ''small business subcontracting plan'' means a plan negotiated pursuant to section 8(d) of the Small Business Act (15 U.S.C. 637(d)) that establishes a goal for the participation of small business concerns as subcontractors under a contract.

(2) The term ''qualified nonprofit agency for the blind or other severely handicapped'' means—

(A) a qualified nonprofit agency for the blind, as defined in section 8501(7) of title 41;

(B) a qualified nonprofit agency for other severely disabled, as defined in section 8501(6) of title 41; and

(C) a central nonprofit agency designated by the Committee for Purchase from People Who Are Blind or Severely Disabled under section 8503(c) of title 41.

(Added Pub. L. 102–484, div. A, title VIII, § 808(b)(1), Oct. 23, 1992, 106 Stat. 2449; amended Pub. L. 103–337, div. A, title VIII, § 804, Oct. 5, 1994, 108 Stat. 2815; Pub. L. 104–106, div. D, title XLIII, § 4321(b)(15), Feb. 10, 1996, 110 Stat. 673; Pub. L. 105–85, div. A, title VIII, § 835, Nov. 18, 1997, 111 Stat. 1843; Pub. L. 106–65, div. A, title VIII, § 807, Oct. 5, 1999, 113 Stat. 705; Pub. L. 111–350, § 5(b)(29), Jan. 4, 2011, 124 Stat. 3845.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1838(b), Jan. 1, 2021, 134 Stat. 4151, 4242, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 285 of this title, as added by section 1838(a) of Pub. L. 116–283, inserted after section 3902, and redesignated as section 3903 of this title. See Effective Date of 2021 Amendment note below.

CODIFICATION

Another section 2410d was renumbered section 2410k of this title.

AMENDMENTS

2011—Subsec. (b)(2)(A). Pub. L. 111–350, § 5(b)(29)(A), substituted ''section 8501(7) of title 41'' for ''section 5(3) of the Javits-Wagner-O'Day Act (41 U.S.C. 48b(3))''.

Subsec. (b)(2)(B). Pub. L. 111–350, § 5(b)(29)(B), substituted ''disabled, as defined in section 8501(6) of title 41'' for ''handicapped, as defined in section 5(4) of such Act (41 U.S.C. 48b(4))''.

Subsec. (b)(2)(C). Pub. L. 111–350, § 5(b)(29)(C), substituted ''section 8503(c) of title 41'' for ''section 2(c) of such Act (41 U.S.C. 47(c))''.

1999—Subsec. (c). Pub. L. 106–65 struck out heading and text of subsec. (c). Text read as follows: ''Subsection (a) shall cease to be effective at the end of September 30, 1999.''

1997—Subsec. (c). Pub. L. 105–85 substituted ''September 30, 1999'' for ''September 30, 1997''.

1996—Subsec. (b)(3). Pub. L. 104–106 struck out par. (3) which read as follows: ''The term 'Javits-Wagner-O'Day Act' means the Act entitled 'An Act to create a Committee on Purchases of Blind-made Products, and for other purposes', approved June 25, 1938 (41 U.S.C. 46–48c), commonly referred to as the Wagner-O'Day Act, that was revised and reenacted in the Act of June 23, 1971 (85 Stat. 77), commonly referred to as the Javits-Wagner-O'Day Act.''

1994—Subsec. (b)(2)(C). Pub. L. 103–337, § 804(1)(A), added subpar. (C).

Subsec. (b)(3), (4). Pub. L. 103–337, § 804(1)(B), (C), redesignated par. (4) as (3) and struck out former par. (3) which read as follows: ''The terms 'approved commodity' and 'approved service' mean a commodity and a service, respectively, that has been determined by the Committee for Purchase from the Blind and Other Severely Handicapped under section 2 of such Act (41 U.S.C. 47) to be suitable for procurement by the Federal Government.''

Subsec. (c). Pub. L. 103–337, § 804(2), substituted ''September 30, 1997'' for ''September 30, 1994''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–85, div. A, title VIII, § 835, Nov. 18, 1997, 111 Stat. 1843, provided that the amendment made by that section is effective as of Sept. 30, 1997.

EFFECTIVE DATE OF 1996 AMENDMENT

For effective date and applicability of amendment by Pub. L. 104–106, see section 4401 of Pub. L. 104–106, set out as a note under section 2302 of this title.

EFFECTIVE DATE

Pub. L. 102–484, div. A, title VIII, § 808(c), Oct. 23, 1992, 106 Stat. 2450, provided that: ''Sections 2301(d) and 2410d of title 10, United States Code (as added by subsections (a) and (b), respectively), shall take effect on October 1, 1993.''

CONTRACT PARTICIPATION BY AGENCIES FOR THE BLIND OR OTHER SEVERELY HANDICAPPED

Pub. L. 108–87, title VIII, § 8025, Sept. 30, 2003, 117 Stat. 1077, as amended by Pub. L. 113–291, div. A, title X, § 1071(b)(6), Dec. 19, 2014, 128 Stat. 3507, provided that:

''(a) Of the funds for the procurement of supplies or services appropriated by this Act [see Tables for classification] and hereafter, qualified nonprofit agencies for the blind or other severely handicapped shall be afforded the maximum practicable opportunity to participate as subcontractors and suppliers in the performance of contracts let by the Department of Defense.

''(b) During the current fiscal year and hereafter, a business concern which has negotiated with a military service or defense agency a subcontracting plan for the participation by small business concerns pursuant to section 8(d) of the Small Business Act (15 U.S.C. 637(d)) shall be given credit toward meeting that subcontracting goal for any purchases made from qualified nonprofit agencies for the blind or other severely handicapped.

''(c) For the purpose of this section, the phrase 'qualified nonprofit agency for the blind or other severely handicapped' means a nonprofit agency for the blind or other severely handicapped that has been approved by the Committee for the Purchase from the Blind and Other Severely Handicapped under chapter 85 of title 41, United States Code.''

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 107–248, title VIII, § 8025, Oct. 23, 2002, 116 Stat. 1542.

Pub. L. 107–117, div. A, title VIII, § 8028, Jan. 10, 2002, 115 Stat. 2253.

Pub. L. 106–259, title VIII, § 8028, Aug. 9, 2000, 114 Stat. 680.

Pub. L. 106–79, title VIII, § 8030, Oct. 25, 1999, 113 Stat. 1237.

Pub. L. 105–262, title VIII, § 8030, Oct. 17, 1998, 112 Stat. 2303.

Pub. L. 105–56, title VIII, § 8031, Oct. 8, 1997, 111 Stat. 1226.

Pub. L. 104–208, div. A, title I, § 101(b) [title VIII, § 8033], Sept. 30, 1996, 110 Stat. 3009–71, 3009–95.

Pub. L. 104–61, title VIII, § 8042, Dec. 1, 1995, 109 Stat. 660.

Pub. L. 103–335, title VIII, § 8048, Sept. 30, 1994, 108 Stat. 2628.

Pub. L. 103–139, title VIII, § 8055, Nov. 11, 1993, 107 Stat. 1452.

Pub. L. 102–396, title IX, § 9077, Oct. 6, 1992, 106 Stat. 1918.

Pub. L. 102–172, title VIII, § 8082, Nov. 26, 1991, 105 Stat. 1190.

Pub. L. 101–511, title VIII, § 8117, Nov. 5, 1990, 104 Stat. 1905.

[§ 2410e. Repealed. Pub. L. 103–355, title II, § 2301(b), Oct. 13, 1994, 108 Stat. 3321]

Section, added Pub. L. 102–484, div. A, title VIII, § 813(a)(1), Oct. 23, 1992, 106 Stat. 2452, directed Secretary of Defense to propose, for inclusion in Federal Acquisition Regulation, regulations relating to certification of contract claims, requests for equitable adjustment to contract terms, and requests for relief under section 1431 et seq. of Title 50, War and National Defense, that exceeded $100,000.

EFFECTIVE DATE OF REPEAL

For effective date and applicability of repeal, see section 10001 of Pub. L. 103–355, set out as an Effective Date of 1994 Amendment note under section 2302 of this title.

§ 2410f. Debarment of persons convicted of fraudulent use of "Made in America" labels

(a) If the Secretary of Defense determines that a person has been convicted of intentionally affixing a label bearing a ''Made in America'' inscription, or another inscription with the same meaning, to any product sold in or shipped to the United States that is not made in America, the Secretary shall determine, not later than 90 days after determining that the person has been so convicted, whether the person should be debarred from contracting with the Department of Defense.

(b) In this section, the term ''debar'' has the meaning given that term by section 2393(c) of this title.

(Added Pub. L. 102–484, div. A, title VIII, § 834(a)(1), Oct. 23, 1992, 106 Stat. 2461; amended Pub. L. 104–106, div. A, title X, § 1062(f), title XV, § 1503(a)(22), Feb. 10, 1996, 110 Stat. 444, 512; Pub. L. 107–107, div. A, title X, § 1048(a)(20), Dec. 28, 2001, 115 Stat. 1223.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1862(b), Jan. 1, 2021, 134 Stat. 4151, 4277, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 363 of this title, as amended by section 1862(a) of Pub. L. 116–283, inserted after section 4657, and redesignated as section 4658 of this title. See Effective Date of 2021 Amendment note below.

AMENDMENTS

2001—Subsec. (a). Pub. L. 107–107 inserted '', or another inscription with the same meaning,'' after ''inscription''.

1996—Subsec. (a). Pub. L. 104–106, § 1062(f), struck out at end ''If the Secretary determines that the person should not be debarred, the Secretary shall submit to Congress a report on such determination not later than 30 days after the determination is made.''

Subsec. (b). Pub. L. 104–106, § 1503(a)(22), substituted ''In'' for ''For purposes of''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of

Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Pub. L. 102–484, div. A, title VIII, § 834(b), Oct. 23, 1992, 106 Stat. 2461, provided that: ''Section 2410f of title 10, United States Code, as added by subsection (a), shall take effect 90 days after the date of the enactment of this Act [Oct. 23, 1992].''

PROHIBITION OF CONTRACTS

Pub. L. 106–398, § 1 [[div. A], title VIII, § 825(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–220, provided that: ''If the Secretary of Defense determines that a person has been convicted of intentionally affixing a label bearing a 'Made in America' inscription, or another inscription with the same meaning, to any product sold in or shipped to the United States that is not made in the United States, the Secretary shall determine, in accordance with section 2410f of title 10, United States Code, whether the person should be debarred from contracting with the Department of Defense.''

Similar provisions were contained in the following prior authorization acts:

Pub. L. 106–65, div. A, title VIII, § 816(b), Oct. 5, 1999, 113 Stat. 712.

Pub. L. 103–160, div. A, title VIII, § 849(b), Nov. 30, 1993, 107 Stat. 1725.

§ 2410g. Advance notification of contract performance outside the United States

(a) NOTIFICATION.—(1) A firm that is performing a Department of Defense contract for an amount exceeding $10,000,000, or is submitting a bid or proposal for such a contract, shall notify the Department of Defense in advance of any intention of the firm or any first-tier subcontractor of the firm to perform outside the United States and Canada any part of the contract that exceeds $500,000 in value and could be performed inside the United States or Canada.

(2) If a firm submitting a bid or proposal for a Department of Defense contract is required to submit a notification under this subsection, and the firm is aware, at the time it submits its bid or proposal, that the firm intends to perform outside the United States and Canada any part of the contract that exceeds $500,000 in value and could be performed inside the United States or Canada, the firm shall include the notification in its bid or proposal.

(3) The notification by a firm under paragraph (1) with respect to a first-tier subcontractor shall be made, to the maximum extent practicable, at least 30 days before award of the subcontract.

(b) RECIPIENT OF NOTIFICATION.—The firm shall transmit the notification—

(1) in the case of a contract of a military department, to such officer or employee of that military department as the Secretary of the military department may direct; and

(2) in the case of any other Department of Defense contract, to such officer or employee of the Department of Defense as the Secretary of Defense may direct.

(c) AVAILABILITY OF NOTIFICATIONS.—The Secretary of Defense shall ensure that the notifications (or copies) are maintained in compiled form for a period of 5 years after the date of submission and are available for use in the preparation of the national defense technology and industrial base assessment carried out under section 2505 of this title.

(d) INAPPLICABILITY TO CERTAIN CONTRACTS.—This section shall not apply to contracts for any of the following:

(1) Commercial products or commercial services (as defined in sections 103 and 103a, respectively, of title 41).

(2) Military construction.

(3) Ores.

(4) Natural gas.

(5) Utilities.

(6) Petroleum products and crudes.

(7) Timber.

(8) Subsistence.

(Added Pub. L. 102–484, div. A, title VIII, § 840(a)(1), Oct. 23, 1992, 106 Stat. 2466; amended Pub. L. 104–106, div. D, title XLIII, § 4321(b)(16), Feb. 10, 1996, 110 Stat. 673; Pub. L. 111–350, § 5(b)(30), Jan. 4, 2011, 124 Stat. 3845; Pub. L. 115–232, div. A, title VIII, § 836(e)(7), Aug. 13, 2018, 132 Stat. 1870.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1861(b), Jan. 1, 2021, 134 Stat. 4151, 4277, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 361 of this title, as amended by section 1861(a) of Pub. L. 116–283, inserted after section 4602, and redesignated as section 4603 of this title. See Effective Date of 2021 Amendment note below.

AMENDMENTS

2018—Subsec. (d)(1). Pub. L. 115–232 substituted ''Commercial products or commercial services (as defined in sections 103 and 103a, respectively, of title 41)'' for ''Commercial items (as defined in section 103 of title 41)''.

2011—Subsec. (d)(1). Pub. L. 111–350 substituted ''section 103 of title 41)'' for ''section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12)))''.

1996—Subsec. (d)(1). Pub. L. 104–106 inserted ''(as defined in section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12)))'' before period at end.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115–232 effective Jan. 1, 2020, subject to a savings provision, see section 836(h) of Pub. L. 115–232, set out as an Effective Date of 2018 Amendment; Savings Provision note under section 453b of Title 6, Domestic Security.

EFFECTIVE DATE OF 1996 AMENDMENT

For effective date and applicability of amendment by Pub. L. 104–106, see section 4401 of Pub. L. 104–106, set out as a note under section 2302 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Pub. L. 102–484, div. A, title VIII, § 840(b), Oct. 23, 1992, 106 Stat. 2467, provided that: ''Section 2410g of title 10, United States Code (as added by subsection (a)), shall take effect 90 days after the date of the enactment of this Act [Oct. 23, 1992].''

[§ 2410h. Renumbered § 1747]

§ 2410i. Prohibition on contracting with entities that comply with the secondary Arab boycott of Israel

(a) POLICY.—Under section 3(5)(A)[1] of the Export Administration Act of 1979 (50 U.S.C. 4602(5)(A)), it is the policy of the United States to oppose restrictive trade practices or boycotts fostered or imposed by foreign countries against other countries friendly to the United States or against any other United States person.

(b) PROHIBITION.—(1) Consistent with the policy referred to in subsection (a), the Department of Defense may not award a contract for an amount in excess of the simplified acquisition threshold (as defined in section 134 of title 41) to a foreign entity unless that entity certifies to the Secretary of Defense that it does not comply with the secondary Arab boycott of Israel.

(2) In paragraph (1), the term ''foreign entity'' means a foreign person, a foreign company, or any other foreign entity.

(c) WAIVER AUTHORITY.—The Secretary of Defense may waive the prohibition in subsection (b) in specific instances when the Secretary determines that the waiver is necessary in the national security interests of the United States.

(d) EXCEPTIONS.—Subsection (b) does not apply—

(1) to contracts for consumable supplies, provisions, or services that are intended to be used for the support of United States forces or of allied forces in a foreign country; or

(2) to contracts pertaining to the use of any equipment, technology, data, or services for intelligence or classified purposes by the United States Government in the interests of national security or to the acquisition or lease of any such equipment, technology, data, or services by the United States Government in the interests of national security.

(Added Pub. L. 102–484, div. A, title XIII, § 1332(a), Oct. 23, 1992, 106 Stat. 2555; amended Pub. L. 111–350, §§ 4, 5(b)(31), Jan. 4, 2011, 124 Stat. 3841, 3845; Pub. L. 114–328, div. A, title X, § 1081(b)(3)(D), Dec. 23, 2016, 130 Stat. 2419; Pub. L. 115–91, div. A, title X, § 1051(a)(16), Dec. 12, 2017, 131 Stat. 1561.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1862(b), Jan. 1, 2021, 134 Stat. 4151, 4277, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 363 of this title, as amended by section 1862(a) of Pub. L. 116–283, inserted after section 4658, and redesignated as section 4659 of this title. See Effective Date of 2021 Amendment note below.

REFERENCES IN TEXT

Section 3(5)(A) of the Export Administration Act of 1979 (50 U.S.C. 4602(5)(A)), referred to in subsec. (a), was repealed by Pub. L. 115–232, div. A, title XVII, § 1766(a), Aug. 13, 2018, 132 Stat. 2232.

AMENDMENTS

2017—Subsec. (c). Pub. L. 115–91 struck out at end ''Within 15 days after the end of each fiscal year, the Secretary shall submit to Congress a report identifying each contract for which a waiver was granted under this subsection during that fiscal year.''

2016—Subsec. (a). Pub. L. 114–328 substituted ''(50 U.S.C. 4602(5)(A))'' for ''(50 U.S.C. App. 2402(5)(A))''.

2011—Subsec. (b)(1). Pub. L. 111–350 substituted ''simplified acquisition threshold (as defined in section 134 of title 41)'' for ''small purchase threshold (as defined in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11)))''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 2410j. Displaced contractor employees: assistance to obtain certification and employment as teachers or employment as teachers' aides

(a) ASSISTANCE PROGRAM.—The Secretary of Defense may enter into a cooperative agreement with a defense contractor in order—

(1) to assist an eligible scientist or engineer employed by the contractor whose employment is terminated to obtain—

(A) certification or licensure as an elementary or secondary school teacher; or

(B) the credentials necessary to serve as a teacher's aide; and

(2) to facilitate the employment of the scientist or engineer by a local educational agency that—

(A) is receiving a grant under title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.) as a result of having within its jurisdiction concentrations of children from low-income families; and

(B) is also experiencing a shortage of teachers or teachers' aides.

(b) ELIGIBLE DEFENSE CONTRACTORS.—(1) The Secretary of Defense shall establish an application and selection process for the participation of defense contractors in a cooperative agreement authorized under subsection (a).

(2) The Secretary shall determine which defense contractors are eligible to participate in the placement program on the basis of applications submitted under subsection (c). The Secretary shall limit participation to those defense contractors or subcontractors that—

(A) produce goods or services for the Department of Defense pursuant to a defense contract or operate nuclear weapons manufacturing facilities for the Department of Energy; and

(B) have recently reduced operations, or are likely to reduce operations, due to the completion or termination of a defense contract or program or by reductions in defense spending.

(3) The Secretary shall give special consideration to defense contractors who are located in areas that have been hit particularly hard by reductions in defense spending.

(c) DEFENSE CONTRACTOR APPLICATIONS.—(1) A defense contractor desiring to enter into a cooperative agreement with the Secretary of Defense under subsection (a) shall submit an application to the Secretary containing the following:

(A) Evidence that the contractor has been, or is expected to be, adversely affected by the

[1] See References in Text note below.

completion or termination of a defense contract or program or by reductions in defense spending.

(B) An explanation that scientists and engineers employed by the contractor have been terminated, laid off, or retired, or are likely to be terminated, laid off, or retired, as a result of the completion or termination of a defense contract or program or reductions in defense spending.

(C) A description of programs implemented or proposed by the contractor to assist these scientists and engineers.

(D) A commitment to help fund the costs associated with the placement program by paying 50 percent of the stipend provided under subsection (g) to an employee or former employee of the contractor selected to receive assistance under this section.

(2) Once a cooperative agreement is entered into under subsection (a) between the Secretary and the defense contractor, the contractor shall publicize the program and distribute applications to prospective participants, and assist the prospective participants with the State screening process.

(d) ELIGIBLE SCIENTISTS AND ENGINEERS.—An individual shall be eligible for selection by the Secretary of Defense to receive assistance under this section if the individual—

(1) is employed or has been employed for not less than five years as a scientist or engineer with a private defense contractor that has entered into an agreement under subsection (a);

(2) has received—

(A) in the case of an individual applying for assistance for placement as an elementary or secondary school teacher, a baccalaureate or advanced degree from an accredited institution of higher education; or

(B) in the case of an individual applying for assistance for placement as a teacher's aide in an elementary or secondary school, an associate, baccalaureate, or advanced degree from an accredited institution of higher education or a junior or community college; and

(3) has been terminated or laid off (or received notice of termination or lay off) as a result of the completion or termination of a defense contract or program or reductions in defense spending; and

(4) satisfies such other criteria for selection as the Secretary may prescribe.

(e) SELECTION OF PARTICIPANTS.—(1) In selecting participants to receive assistance for placement as elementary or secondary school teachers, the Secretary shall give priority to individuals who—

(A) have educational, military, or employment experience in science, mathematics, or engineering and agree to seek employment as science, mathematics, or engineering teachers in elementary or secondary schools; or

(B) have educational, military, or employment experience in another subject area identified by the Secretary, in consultation with the Secretary of Education, as important for national educational objectives and agree to seek employment in that subject area in elementary or secondary schools.

(2) The Secretary may not select an individual under this section unless the Secretary has sufficient appropriations to carry out this section available at the time of the selection to satisfy the obligations to be incurred by the United States under this section with respect to that individual.

(f) AGREEMENT.—An individual selected under this section shall be required to enter into an agreement with the Secretary in which the participant agrees—

(1) to obtain, within such time as the Secretary may require, certification or licensure as an elementary or secondary school teacher or the necessary credentials to serve as a teacher's aide in an elementary or secondary school; and

(2) to accept—

(A) in the case of an individual selected for assistance for placement as a teacher, an offer of full-time employment as an elementary or secondary school teacher for not less than two school years with a local educational agency identified under section 1151(b)(2) of this title, as in effect on October 4, 1999, to begin the school year after obtaining that certification or licensure; or

(B) in the case of an individual selected for assistance for placement as a teacher's aide, an offer of full-time employment as a teacher's aide in an elementary or secondary school for not less than two school years with a local educational agency identified under section 1151(b)(3) of this title, as in effect on October 4, 1999, to begin the school year after obtaining the necessary credentials.

(g) STIPEND FOR PARTICIPANTS.—(1) The Secretary of Defense shall pay to each participant in the placement program a stipend in an amount equal to the lesser of—

(A) $5,000; or

(B) the total costs of the type described in paragraphs (1), (2), (3), (8), and (9) of section 472 of the Higher Education Act of 1965 (20 U.S.C. 1087*ll*) incurred by the participant while obtaining teacher certification or licensure or the necessary credentials to serve as a teacher's aide and employment as an elementary or secondary school teacher or teacher aide.

(2) A stipend provided under this section shall be taken into account in determining the eligibility of the participant for Federal student financial assistance provided under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.).

(h) PLACEMENT OF PARTICIPANTS AS TEACHERS AND TEACHERS' AIDES.—Subsections (h) through (k) of section 1151 of this title, as in effect on October 4, 1999, shall apply with respect to the placement as teachers and teachers' aides of individuals selected under this section.

(Added Pub. L. 102–484, div. D, title XLIV, § 4443(a), Oct. 23, 1992, 106 Stat. 2732, § 2410c; renumbered § 2410j and amended Pub. L. 103–35, title II, § 201(b)(1)(A), (g)(6), May 31, 1993, 107 Stat. 97, 100; Pub. L. 103–160, div. A, title XIII, § 1331(c)(3), Nov. 30, 1993, 107 Stat. 1792; Pub. L. 103–382, title III, § 391(b)(5), Oct. 20, 1994, 108 Stat. 4022; Pub. L. 104–106, div. A, title XV,

§ 1503(a)(23), Feb. 10, 1996, 110 Stat. 512; Pub. L. 104–201, div. A, title V, § 576(c), Sept. 23, 1996, 110 Stat. 2535; Pub. L. 106–398, § 1 [[div. A], title X, § 1087(a)(14)], Oct. 30, 2000, 114 Stat. 1654, 1654A–291.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1863(b), Jan. 1, 2021, 134 Stat. 4151, 4278, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 365 of this title, as amended by section 1863(a) of Pub. L. 116–283, inserted after section 4702, and redesignated as section 4703 of this title. See Effective Date of 2021 Amendment note below.

REFERENCES IN TEXT

The Elementary and Secondary Education Act of 1965, referred to in subsec. (a)(2)(A), is Pub. L. 89–10, Apr. 11, 1965, 79 Stat. 27. Title I of the Act is classified generally to subchapter I (§ 6301 et seq.) of chapter 70 of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 6301 of Title 20 and Tables.

Section 1151 of this title, referred to in subsecs. (f)(2)(A), (B) and (h), was repealed by Pub. L. 106–65, div. A, title XVII, § 1707(a)(1), Oct. 5, 1999, 113 Stat. 823, and a new section 1151 of this title was subsequently added by Pub. L. 109–364, § 561(a).

The Higher Education Act of 1965, referred to in subsec. (g)(2), is Pub. L. 89–329, Nov. 8, 1965, 79 Stat. 1219. Title IV of the Act is classified generally to subchapter IV (§ 1070 et seq.) of chapter 28 of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20 and Tables.

AMENDMENTS

2000—Subsec. (f)(2). Pub. L. 106–398, § 1 [[div. A], title X, § 1087(a)(14)(A)], inserted ''as in effect on October 4, 1999,'' after ''of this title,'' in subpars. (A) and (B).

Subsec. (h). Pub. L. 106–398, § 1 [[div. A], title X, § 1087(a)(14)(B)], inserted '', as in effect on October 4, 1999,'' after ''of this title''.

1996—Subsec. (a)(2)(A). Pub. L. 104–106 substituted ''6301'' for ''2701''.

Subsec. (f)(2)(A), (B). Pub. L. 104–201 substituted ''two school years'' for ''five school years''.

1994—Subsec. (a)(2)(A). Pub. L. 103–382 struck out ''chapter 1 of'' after ''grant under''.

1993—Pub. L. 103–35, § 201(b)(1)(A), renumbered section 2410c of this title as this section.

Subsec. (f)(2)(A), (B). Pub. L. 103–160 substituted ''five school years'' for ''two school years''.

Subsec. (f)(2)(B). Pub. L. 103–35, § 201(g)(6), substituted ''aide'' for ''aid'' after ''for placement as a teacher's''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–160 not applicable with respect to persons selected by Secretary of Defense before Nov. 30, 1993, to participate in teacher and teacher's aide placement programs established pursuant to sections 1151, 1598, and 2410j of this title or agreements entered into by Secretary before such date with local educational agencies under such sections, see section 1331(h) of Pub. L. 103–160, set out as a note under section 1598 of this title.

SAVINGS PROVISION

Amendments by section 576 of Pub. L. 104–201 not to affect obligations under agreements entered into in accordance with section 1151, 1598, or 2410j of this title before Sept. 23, 1996, see section 576(d) of Pub. L. 104–201, set out as a note under section 1598 of this title.

§ 2410k. Defense contractors: listing of suitable employment openings with local employment service office

(a) REGULATIONS.—The Secretary of Defense shall promulgate regulations containing the requirement described in subsection (b) and such other provisions as the Secretary considers necessary to administer such requirement. Such regulations shall require that each contract described in subsection (c) shall contain a clause requiring the contractor to comply with such regulations.

(b) REQUIREMENT.—The regulations promulgated under this section shall require each contractor carrying out a contract described in subsection (c) to list immediately with the appropriate local employment service office, and where appropriate the Interstate Job Bank (established by the United States Employment Service), all of its suitable employment openings under such contract.

(c) COVERED CONTRACTS.—The regulations promulgated under this section shall apply to any contract entered into with the Department of Defense in an amount of $500,000 or more.

(Added Pub. L. 102–484, div. D, title XLIV, § 4470(a)(1), Oct. 23, 1992, 106 Stat. 2753, § 2410d; renumbered § 2410k and amended Pub. L. 103–35, title II, §§ 201(b)(1)(A), 202(a)(18)(A), May 31, 1993, 107 Stat. 97, 102.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1863(b), Jan. 1, 2021, 134 Stat. 4151, 4278, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 365 of this title, as amended by section 1863(a) of Pub. L. 116–283, inserted after section 4703, and redesignated as section 4704 of this title. See Effective Date of 2021 Amendment note below.

AMENDMENTS

1993—Pub. L. 103–35, § 201(b)(1)(A), renumbered section 2410d of this title as this section.

Pub. L. 103–35, § 202(a)(18)(A), made technical amendment to directory language of Pub. L. 102–484, which enacted this section.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 202(a)(18)(A) of Pub. L. 103–35 applicable as if included in the enactment of Pub. L. 102–484, see section 202(b) of Pub. L. 103–35, set out as a note under section 155 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Pub. L. 102–484, div. D, title XLIV, § 4470(b), Oct. 23, 1992, 106 Stat. 2753, provided that: ''Section 2410d [now 2410k] of title 10, United States Code, as added by subsection (a), shall apply with respect to contracts entered into beginning 120 days after the date of the enactment of this Act [Oct. 23, 1992].''

§ 2410*l*. Contracts for advisory and assistance services: cost comparison studies

(a) REQUIREMENT.—(1)(A) Before the Secretary of Defense enters into a contract described in subparagraph (B), the Secretary shall determine whether Department of Defense personnel have the capability to perform the services proposed to be covered by the contract.

(B) Subparagraph (A) applies to any contract of the Department of Defense for advisory and assistance services that is expected to have a value in excess of $100,000.

(2) If the Secretary determines that Department of Defense personnel have the capability to perform the services to be covered by the contract, the Secretary shall conduct a study comparing the cost of performing the services with Department of Defense personnel and the cost of performing the services with contractor personnel.

(b) WAIVER.—The Secretary of Defense may, pursuant to guidelines prescribed by the Secretary, waive the requirement to perform a cost comparison study under subsection (a)(2) based on factors that are not related to cost.

(Added Pub. L. 103–337, div. A, title III, § 363(a)(1), Oct. 5, 1994, 108 Stat. 2733.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1856(g), Jan. 1, 2021, 134 Stat. 4151, 4275, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 341 of this title, inserted after section 4508, and redesignated as section 4509 of this title. See Effective Date of 2021 Amendment note below.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE

Pub. L. 103–337, div. A, title III, § 363(c), Oct. 5, 1994, 108 Stat. 2734, provided that: ''Section 2410*l* of title 10, United States Code, as added by subsection (a), shall take effect 180 days after the date of the enactment of this Act [Oct. 5, 1994].''

PROCEDURES FOR CONDUCT OF STUDIES

Pub. L. 103–337, div. A, title III, § 363(b), Oct. 5, 1994, 108 Stat. 2734, provided that: ''The Secretary of Defense shall prescribe the following procedures:

''(1) Procedures for carrying out a cost comparison study under subsection (a)(2) of section 2410*l* of title 10, United States Code, as added by subsection (a), which may contain a requirement that the cost comparison study include consideration of factors that are not related to cost, including the quality of the service required to be performed, the availability of Department of Defense personnel, the duration and recurring nature of the services to be performed, and the consistency of the workload.

''(2) Procedures for reviewing contracts entered into after a waiver under subsection (b) of such section to determine whether the contract is justified and sufficiently documented.''

§ 2410m. Retention of amounts collected from contractor during the pendency of contract dispute

(a) RETENTION OF FUNDS.—Notwithstanding sections 1552(a) and 3302(b) of title 31, any amount, including interest, collected from a contractor as a result of a claim made by a military department or Defense Agency under chapter 71 of title 41, shall remain available in accordance with this section to pay—

(1) any settlement of the claim by the parties;

(2) any judgment rendered in the contractor's favor on an appeal of the decision on that claim to the Armed Services Board of Contract Appeals under section 7104(a) of title 41; or

(3) any judgment rendered in the contractor's favor in an action on that claim in a court of the United States.

(b) PERIOD OF AVAILABILITY.—(1) The period of availability of an amount under subsection (a), in connection with a claim—

(A) expires 180 days after the expiration of the period for bringing an action on that claim in the United States Court of Federal Claims under section 7104(b) of title 41 if, within that 180-day period—

(i) no appeal on the claim is commenced at the Armed Services Board of Contract Appeals under section 7104(a) of such title; and

(ii) no action on the claim is commenced in a court of the United States; or

(B) if not expiring under subparagraph (A), expires—

(i) in the case of a settlement of the claim, 180 days after the date of the settlement; or

(ii) in the case of a judgment rendered on the claim in an appeal to the Armed Services Board of Contract Appeals under section 7104(a) of title 41 or an action in a court of the United States, 180 days after the date on which the judgment becomes final and not appealable.

(2) While available under this section, an amount may be obligated or expended only for a purpose described in subsection (a).

(3) Upon the expiration of the period of availability of an amount under paragraph (1), the amount shall be covered into the Treasury as miscellaneous receipts.

(Added Pub. L. 105–85, div. A, title VIII, § 831(a), Nov. 18, 1997, 111 Stat. 1841; amended Pub. L. 108–136, div. A, title X, § 1031(a)(21), Nov. 24, 2003, 117 Stat. 1598; Pub. L. 111–350, § 5(b)(32), Jan. 4, 2011, 124 Stat. 3845; Pub. L. 112–81, div. A, title X, § 1061(15), Dec. 31, 2011, 125 Stat. 1583; Pub. L. 113–291, div. A, title X, § 1071(a)(8), Dec. 19, 2014, 128 Stat. 3504.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1836(b), Jan. 1, 2021, 134 Stat. 4151, 4241, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 281 of this title, as added by section 1836(a) of Pub. L. 116–283, inserted after section 3862, and redesignated as section

3863 of this title. See Effective Date of 2021 Amendment note below.

AMENDMENTS

2014—Subsec. (b)(1)(A)(i). Pub. L. 113–291, §1071(a)(8)(A), substituted "section 7104(a) of such title" for "section 7 of such Act".

Subsec. (b)(1)(B)(ii). Pub. L. 113–291, §1071(a)(8)(B), substituted "section 7104(a) of title 41" for "section 7 of the Contract Disputes Act of 1978".

2011—Subsec. (a). Pub. L. 111–350, §5(b)(32)(A), substituted "chapter 71 of title 41" for "the Contract Disputes Act of 1978 (41 U.S.C. 601 et seq.)" in introductory provisions.

Subsec. (a)(2). Pub. L. 111–350, §5(b)(32)(B), substituted "section 7104(a) of title 41" for "section 7 of such Act (41 U.S.C. 606)".

Subsec. (b)(1)(A). Pub. L. 111–350, §5(b)(32)(C), substituted "section 7104(b) of title 41" for "section 10(a) of the Contract Disputes Act of 1978 (41 U.S.C. 609(a))" in introductory provisions.

Subsec. (c). Pub. L. 112–81 struck out subsec. (c), which required submission of annual report on amounts available for obligation.

2003—Subsec. (c). Pub. L. 108–136, §1031(a)(21)(A), substituted "Annual Report" for "Reporting Requirement" in heading and "Not later than 60 days after the end of each fiscal year" for "Each year" in introductory provisions.

Subsec. (c)(1). Pub. L. 108–136, §1031(a)(21)(B), inserted "at the end of such fiscal year" before period at end.

Subsec. (c)(2). Pub. L. 108–136, §1031(a)(21)(C), substituted "under this section during that fiscal year" for "during the year preceding the year in which the report is submitted".

Subsec. (c)(3). Pub. L. 108–136, §1031(a)(21)(D), substituted "under this section during that fiscal year" for "in such preceding year".

Subsec. (c)(4). Pub. L. 108–136, §1031(a)(21)(E), substituted "under this section during that fiscal year" for "in such preceding year".

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§2410n. Products of Federal Prison Industries: procedural requirements

(a) PRODUCTS FOR WHICH FEDERAL PRISON INDUSTRIES DOES NOT HAVE SIGNIFICANT MARKET SHARE.—(1) Before purchasing a product listed in the latest edition of the Federal Prison Industries catalog under section 4124(d) of title 18 for which Federal Prison Industries does not have a significant market share, the Secretary of Defense shall conduct market research to determine whether the product is comparable to products available from the private sector that best meet the needs of the Department in terms of price, quality, and time of delivery.

(2) If the Secretary determines that a Federal Prison Industries product described in paragraph (1) is not comparable in price, quality, or time of delivery to products of the private sector that best meets the needs of the Department in terms of price, quality, and time of delivery, the Secretary shall use competitive procedures for the procurement of the product, or shall make an individual purchase under a multiple award contract in accordance with the competition requirements applicable to such contract. In conducting such a competition, the Secretary shall consider a timely offer from Federal Prison Industries.

(b) PRODUCTS FOR WHICH FEDERAL PRISON INDUSTRIES HAS SIGNIFICANT MARKET SHARE.—(1) The Secretary of Defense may purchase a product listed in the latest edition of the Federal Prison Industries catalog for which Federal Prison Industries has a significant market share only if the Secretary uses competitive procedures for the procurement of the product or makes an individual purchase under a multiple award contract in accordance with the competition requirements applicable to such contract. In conducting such a competition, the Secretary shall consider a timely offer from Federal Prison Industries.

(2) For purposes of this subsection, Federal Prison Industries shall be treated as having a significant share of the market for a product if the Secretary, in consultation with the Administrator of Federal Procurement Policy, determines that the Federal Prison Industries share of the Department of Defense market for the category of products including such product is greater than 5 percent.

(c) IMPLEMENTATION BY SECRETARY OF DEFENSE.—The Secretary of Defense shall ensure that—

(1) the Department of Defense does not purchase a Federal Prison Industries product or service unless a contracting officer of the Department determines that the product or service is comparable to products or services available from the private sector that best meet the Department's needs in terms of price, quality, and time of delivery; and

(2) Federal Prison Industries performs its contractual obligations to the same extent as any other contractor for the Department of Defense.

(d) MARKET RESEARCH DETERMINATION NOT SUBJECT TO REVIEW.—A determination by a contracting officer regarding whether a product or service offered by Federal Prison Industries is comparable to products or services available from the private sector that best meet the Department's needs in terms of price, quality, and time of delivery shall not be subject to review pursuant to section 4124(b) of title 18.

(e) PERFORMANCE AS A SUBCONTRACTOR.—(1) A contractor or potential contractor of the Department of Defense may not be required to use Federal Prison Industries as a subcontractor or supplier of products or provider of services for the performance of a Department of Defense contract by any means, including means such as—

(A) a contract solicitation provision requiring a contractor to offer to make use of products or services of Federal Prison Industries in the performance of the contract;

(B) a contract specification requiring the contractor to use specific products or services (or classes of products or services) offered by Federal Prison Industries in the performance of the contract; or

(C) any contract modification directing the use of products or services of Federal Prison Industries in the performance of the contract.

(2) In this subsection, the term ''contractor'', with respect to a contract, includes a subcontractor at any tier under the contract.

(f) PROTECTION OF CLASSIFIED AND SENSITIVE INFORMATION.—The Secretary of Defense may not enter into any contract with Federal Prison Industries under which an inmate worker would have access to—

(1) any data that is classified;

(2) any geographic data regarding the location of—

(A) surface and subsurface infrastructure providing communications or water or electrical power distribution;

(B) pipelines for the distribution of natural gas, bulk petroleum products, or other commodities; or

(C) other utilities; or

(3) any personal or financial information about any individual private citizen, including information relating to such person's real property however described, without the prior consent of the individual.

(g) DEFINITIONS.—In this section:

(1) The term ''competitive procedures'' has the meaning given such term in section 2302(2) of this title.

(2) The term ''market research'' means obtaining specific information about the price, quality, and time of delivery of products available in the private sector through a variety of means, which may include—

(A) contacting knowledgeable individuals in government and industry;

(B) interactive communication among industry, acquisition personnel, and customers; and

(C) interchange meetings or pre-solicitation conferences with potential offerors.

(Added Pub. L. 107–107, div. A, title VIII, § 811(a)(1), Dec. 28, 2001, 115 Stat. 1180; amended Pub. L. 107–314, div. A, title VIII, § 819(a)(1), Dec. 2, 2002, 116 Stat. 2612; Pub. L. 109–163, div. A, title X, § 1056(c)(4), Jan. 6, 2006, 119 Stat. 3439; Pub. L. 110–181, div. A, title VIII, § 827(a)(1), Jan. 28, 2008, 122 Stat. 228.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1838(b), Jan. 1, 2021, 134 Stat. 4151, 4242, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 285 of this title, as added by section 1838(a) of Pub. L. 116–283, inserted after section 3904, and redesignated as section 3905 of this title. See Effective Date of 2021 Amendment note below.

AMENDMENTS

2008—Subsecs. (a), (b). Pub. L. 110–181 added subsecs. (a) and (b) and struck out former subsecs. (a) and (b) which read as follows:

''(a) MARKET RESEARCH.—Before purchasing a product listed in the latest edition of the Federal Prison Industries catalog under section 4124(d) of title 18, the Secretary of Defense shall conduct market research to determine whether the Federal Prison Industries product is comparable to products available from the private sector that best meet the Department's needs in terms of price, quality, and time of delivery.

''(b) COMPETITION REQUIREMENT.—If the Secretary determines that a Federal Prison Industries product is not comparable in price, quality, or time of delivery to products available from the private sector that best meet the Department's needs in terms of price, quality, and time of delivery, the Secretary shall use competitive procedures for the procurement of the product or shall make an individual purchase under a multiple award contract. In conducting such a competition or making such a purchase, the Secretary shall consider a timely offer from Federal Prison Industries.''

2006—Subsec. (b). Pub. L. 109–163 substituted ''competition'' for ''compeititon'' in text.

2002—Subsec. (a). Pub. L. 107–314, § 819(a)(1)(A), substituted ''Market Research'' for ''Market Research Before Purchase'' in heading and ''comparable to products available from the private sector that best meet the Department's needs in terms of price, quality, and time of delivery'' for ''comparable in price, quality, and time of delivery to products available from the private sector''.

Subsec. (b). Pub. L. 107–314, § 819(a)(1)(B), added subsec. (b) and struck out heading and text of former subsec. (b). Text read as follows: ''If the Secretary determines that a Federal Prison Industries product is not comparable in price, quality, and time of delivery to products available from the private sector, the Secretary shall use competitive procedures for the procurement of the product. In conducting such a competition, the Secretary shall consider a timely offer from Federal Prison Industries for award in accordance with the specifications and evaluation factors specified in the solicitation.''

Subsec. (c) to (g). Pub. L. 107–314, § 819(a)(1)(C), added subsecs. (c) to (g).

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–181, div. A, title VIII, § 827(a)(2), Jan. 28, 2008, 122 Stat. 228, as amended by Pub. L. 111–383, div. A, title X, § 1075(f)(4), Jan. 7, 2011, 124 Stat. 4376, provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect 60 days after the date of the enactment of this Act [Jan. 28, 2008].''

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–314, div. A, title VIII, § 819(a)(2), Dec. 2, 2002, 116 Stat. 2613, provided that: ''Paragraph (1) [amending this section] and the amendments made by such paragraph shall take effect as of October 1, 2001.''

EFFECTIVE DATE

Pub. L. 107–107, div. A, title VIII, § 811(b), Dec. 28, 2001, 115 Stat. 1181, provided that: ''Section 2410n of title 10, United States Code (as added by subsection (a)), shall apply to purchases initiated on or after October 1, 2001.''

REGULATORY IMPLEMENTATION

Pub. L. 107–314, div. A, title VIII, § 819(b), Dec. 2, 2002, 116 Stat. 2613, provided that:

''(1) Proposed revisions to the Department of Defense Supplement to the Federal Acquisition Regulation to implement this section shall be published not later than 90 days after the date of the enactment of this Act [Dec. 2, 2002], and not less than 60 days shall be provided for public comment on the proposed revisions.

''(2) Final regulations shall be published not later than 180 days after the date of the enactment of this Act and shall be effective on the date that is 30 days after the date of the publication.''

LIST OF PRODUCTS FOR WHICH FEDERAL PRISON INDUSTRIES HAS SIGNIFICANT MARKET SHARE

Pub. L. 110–181, div. A, title VIII, § 827(b), Jan. 28, 2008, 122 Stat. 228, provided that:

''(1) INITIAL LIST.—Not later than 60 days after the date of the enactment of this Act [Jan. 28, 2008], the Secretary of Defense shall publish a list of product categories for which Federal Prison Industries' share of the Department of Defense market is greater than 5 percent, based on the most recent fiscal year for which data is available.

''(2) MODIFICATION.—The Secretary may modify the list published under paragraph (1) at any time if the Secretary determines that new data require adding a product category to the list or omitting a product category from the list.

''(3) CONSULTATION.—The Secretary shall carry out this subsection in consultation with the Administrator for Federal Procurement Policy.''

§ 2410*o*. Multiyear procurement authority: purchase of dinitrogen tetroxide, hydrazine, and hydrazine-related products

(a) TEN-YEAR CONTRACT PERIOD.—The Secretary of Defense may enter into a contract for a period of up to 10 years for the purchase of dinitrogen tetroxide, hydrazine, and hydrazine-related products for the support of a United States national security program or a United States space program.

(b) EXTENSIONS.—A contract entered into for more than one year under the authority of subsection (a) may be extended for a total of not more than 10 years pursuant to any option or options set forth in the contract.

(Added Pub. L. 107–314, div. A, title VIII, § 826(a), Dec. 2, 2002, 116 Stat. 2617.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1822(t)(2), Jan. 1, 2021, 134 Stat. 4151, 4205, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to subchapter III of chapter 249 of this title, as added by section 1822(t)(1) of Pub. L. 116–283, inserted after the table of sections, and redesignated as section 3551 of this title. See Effective Date of 2021 Amendment note below.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 2410p. Contracts: limitations on lead system integrators

(a) IN GENERAL.—Except as provided in subsection (b), no entity performing lead system integrator functions in the acquisition of a major system by the Department of Defense may have any direct financial interest in the development or construction of any individual system or element of any system of systems.

(b) EXCEPTION.—An entity described in subsection (a) may have a direct financial interest in the development or construction of an individual system or element of a system of systems if—

(1) the Secretary of Defense certifies to the Committees on Armed Services of the Senate and the House of Representatives that—

(A) the entity was selected by the Department of Defense as a contractor to develop or construct the system or element concerned through the use of competitive procedures; and

(B) the Department took appropriate steps to prevent any organizational conflict of interest in the selection process; or

(2) the entity was selected by a subcontractor to serve as a lower-tier subcontractor, through a process over which the entity exercised no control.

(c) CONSTRUCTION.—Nothing in this section shall be construed to preclude an entity described in subsection (a) from performing work necessary to integrate two or more individual systems or elements of a system of systems with each other.

(Added Pub. L. 109–364, div. A, title VIII, § 807(a)(1), Oct. 17, 2006, 120 Stat. 2315.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1847(f)(1), Jan. 1, 2021, 134 Stat. 4151, 4258, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to subchapter V of chapter 322 of this title, as added by section 1847(a) of Pub. L. 116–283, inserted after the table of sections, and redesignated as section 4292 of this title. See Effective Date of 2021 Amendment note below.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE

Pub. L. 109–364, div. A, title VIII, § 807(a)(3), Oct. 17, 2006, 120 Stat. 2316, provided that: ''Section 2410p of title 10, United States Code, as added by paragraph (1), shall apply with respect to contracts entered into after December 31, 2006.''

UPDATE OF REGULATIONS ON LEAD SYSTEM INTEGRATORS

Pub. L. 109–364, div. A, title VIII, § 807(b), Oct. 17, 2006, 120 Stat. 2316, which required the Secretary of Defense to update acquisition regulations regarding lead system integrators, was repealed by Pub. L. 115–232, div. A, title VIII, § 812(b)(35), Aug. 13, 2018, 132 Stat. 1849.

PROHIBITION ON NEW LEAD SYSTEMS INTEGRATORS

Pub. L. 110–181, div. A, title VIII, § 802, Jan. 28, 2008, 122 Stat. 206, as amended by Pub. L. 110–417, [div. A], title I, § 112, Oct. 14, 2008, 122 Stat. 4374; Pub. L. 116–92, div. A, title IX, § 902(100), Dec. 20, 2019, 133 Stat. 1555, provided that:

''(a) PROHIBITIONS ON THE USE OF LEAD SYSTEMS INTEGRATORS.—

''(1) PROHIBITION ON NEW LEAD SYSTEMS INTEGRATORS.—Effective October 1, 2010, the Department of Defense may not award a new contract for lead systems integrator functions in the acquisition of a major system to any entity that was not performing lead systems integrator functions in the acquisition of the major system prior to the date of the enactment of this Act [Jan. 28, 2008].

"(2) PROHIBITION ON LEAD SYSTEMS INTEGRATORS BEYOND LOW-RATE INITIAL PRODUCTION.—Effective on the date of the enactment of this Act, the Department of Defense may award a new contract for lead systems integrator functions in the acquisition of a major system only if—

"(A) the major system has not yet proceeded beyond low-rate initial production; or

"(B) the Secretary of Defense determines in writing that it would not be practicable to carry out the acquisition without continuing to use a contractor to perform lead systems integrator functions and that doing so is in the best interest of the Department.

"(3) REQUIREMENTS RELATING TO DETERMINATIONS.—A determination under paragraph (2)(B)—

"(A) shall specify the reasons why it would not be practicable to carry out the acquisition without continuing to use a contractor to perform lead systems integrator functions (including a discussion of alternatives, such as the use of the Department of Defense workforce, or a system engineering and technical assistance contractor);

"(B) shall include a plan for phasing out the use of contracted lead systems integrator functions over the shortest period of time consistent with the interest of the national defense;

"(C) may not be delegated below the level of the Under Secretary of Defense for Acquisition and Sustainment; and

"(D) shall be provided to the Committees on Armed Services of the Senate and the House of Representatives at least 45 days before the award of a contract pursuant to the determination.

"(b) ACQUISITION WORKFORCE.—

"(1) REQUIREMENT.—The Secretary of Defense shall ensure that the acquisition workforce is of the appropriate size and skill level necessary—

"(A) to accomplish inherently governmental functions related to acquisition of major systems; and

"(B) to effectuate the purpose of subsection (a) to minimize and eventually eliminate the use of contractors to perform lead systems integrator functions.

"(2) REPORT.—The Secretary shall include an update on the progress made in complying with paragraph (1) in the annual report required by section 820 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109–364; 120 Stat. 2330) [10 U.S.C. 1701 note].

"(c) EXCEPTION FOR CONTRACTS FOR OTHER MANAGEMENT SERVICES.—The Department of Defense may continue to award contracts for the procurement of services the primary purpose of which is to perform acquisition support functions with respect to the development or production of a major system, if the following conditions are met with respect to each such contract:

"(1) The contract prohibits the contractor from performing inherently governmental functions.

"(2) The Department of Defense organization responsible for the development or production of the major system ensures that Federal employees are responsible for—

"(A) determining courses of action to be taken in the best interest of the government; and

"(B) determining best technical performance for the warfighter.

"(3) The contract requires that the prime contractor for the contract may not advise or recommend the award of a contract or subcontract for the development or production of the major system to an entity owned in whole or in part by the prime contractor.

"(d) DEFINITIONS.—In this section:

"(1) LEAD SYSTEMS INTEGRATOR.—The term 'lead systems integrator' means—

"(A) a prime contractor for the development or production of a major system, if the prime contractor is not expected at the time of award to perform a substantial portion of the work on the system and the major subsystems; or

"(B) a prime contractor under a contract for the procurement of services the primary purpose of which is to perform acquisition functions closely associated with inherently governmental functions with respect to the development or production of a major system.

"(2) MAJOR SYSTEM.—The term 'major system' has the meaning given such term in section 2302d of title 10, United States Code.

"(3) LOW-RATE INITIAL PRODUCTION.—The term 'low-rate initial production' has the meaning given such term in section 2400 of title 10, United States Code.

"(e) STATUS OF FUTURE COMBAT SYSTEMS PROGRAM LEAD SYSTEM INTEGRATOR.—

"(1) LEAD SYSTEMS INTEGRATOR.—In the case of the Future Combat Systems program, the prime contractor of the program shall be considered to be a lead systems integrator until 45 days after the Secretary of the Army certifies in writing to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] that such contractor is no longer serving as the lead systems integrator.

"(2) NEW CONTRACTS.—In applying subsection (a)(1) or (a)(2), any modification to the existing contract for the Future Combat Systems program, for the purpose of entering into full-rate production of major systems or subsystems, shall be considered a new contract."

§ 2410q. Multiyear contracts: purchase of electricity from renewable energy sources

(a) MULTIYEAR CONTRACTS AUTHORIZED.—Subject to subsection (b), the Secretary of Defense may enter into a contract for a period not to exceed 10 years for the purchase of electricity from sources of renewable energy, as that term is defined in section 203(b)(2) of the Energy Policy Act of 2005 (42 U.S.C. 15852(b)(2)).

(b) LIMITATIONS ON CONTRACTS FOR PERIODS IN EXCESS OF FIVE YEARS.—The Secretary may exercise the authority in subsection (a) to enter into a contract for a period in excess of five years only if the Secretary determines, on the basis of a business case analysis prepared by the Department of Defense, that—

(1) the proposed purchase of electricity under such contract is cost effective for the Department of Defense; and

(2) it would not be possible to purchase electricity from the source in an economical manner without the use of a contract for a period in excess of five years.

(c) RELATIONSHIP TO OTHER MULTIYEAR CONTRACTING AUTHORITY.—Nothing in this section shall be construed to preclude the Department of Defense from using other multiyear contracting authority of the Department to purchase renewable energy.

(Added Pub. L. 110–181, div. A, title VIII, § 828(a), Jan. 28, 2008, 122 Stat. 229.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1879(a), Jan. 1, 2021, 134 Stat. 4151, 4293, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to subchapter II of chapter 173 of this title, inserted after section 2922h, and redesignated as section 2922i of this title. See Effective Date of 2021 Amendment note below.

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EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 2410r. Contract working dogs: requirement to transfer animals to 341st Training Squadron after service life

(a) IN GENERAL.—Each contract entered into by the Secretary of Defense for the provision of a contract working dog shall require, and shall contain a contract term, that the dog be transferred to the 341st Training Squadron and assigned for veterinary screening and care in accordance with section 2583 of this title after the service life of the dog has terminated as described in subsection (b) for reclassification as a military animal and placement for adoption in accordance with such section.

(b) SERVICE LIFE.—The service life of a contract working dog has terminated and the dog is available for transfer to the 341st Training Squadron pursuant to a contract under subsection (a) only if the contracting officer concerned has determined that—

(1) the final contractual obligation of the dog preceding such transfer is with the Department of Defense; and

(2) the dog cannot be used by another department or agency of the Federal Government due to age, injury, or performance.

(c) CONTRACT WORKING DOG.—In this section, the term ''contract working dog'' means a dog—

(1) that performs a service for the Department of Defense pursuant to a contract; and

(2) that is trained and kenneled by an entity that provides such a dog pursuant to such a contract.

(Added Pub. L. 114–328, div. A, title III, § 342(a)(1), Dec. 23, 2016, 130 Stat. 2082; amended Pub. L. 116–92, div. A, title III, § 372(f), Dec. 20, 2019, 133 Stat. 1331.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1882(b), Jan. 1, 2021, 134 Stat. 4151, 4293, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred within this chapter to appear before section 2388 and is redesignated as section 2387 of this title. See Effective Date of 2021 Amendment note below.

AMENDMENTS

2019—Subsec. (a). Pub. L. 116–92 inserted '', and shall contain a contract term,'' after ''shall require'' and ''and assigned for veterinary screening and care in accordance with section 2583 of this title'' after ''341st Training Squadron'' and substituted ''such section'' for ''section 2583 of this title''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 2410s. Security clearances for facilities of certain companies

(a) AUTHORITY.—If the senior management official of a covered company does not have a security clearance, the Secretary of Defense may grant a security clearance to a facility of such company only if the following criteria are met:

(1) The company has appointed a senior officer, director, or employee of the company who has a security clearance at the level of the security clearance of the facility to act as the senior management official of the company with respect to such facility.

(2) Any senior management official, senior officer, or director of the company who does not have such a security clearance will not have access to any classified information, including with respect to such facility.

(3) The company has certified to the Secretary that the senior officer, director, or employee appointed under paragraph (1) has the authority to act on behalf of the company with respect to such facility independent of any senior management official, senior officer, or director described in paragraph (2).

(4) The facility meets all of the requirements to be granted a security clearance other than any requirement relating to the senior management official of the company having an appropriate security clearance.

(b) COVERED COMPANY.—In this section, the term ''covered company'' means a company that has entered into a contract or agreement with the Department of Defense, assists the Department, or requires a facility to process classified information.

(Added Pub. L. 115–91, div. A, title XVI, § 1621(a), Dec. 12, 2017, 131 Stat. 1732; amended Pub. L. 115–232, div. A, title X, § 1081(a)(23), Aug. 13, 2018, 132 Stat. 1984.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1882(b), Jan. 1, 2021, 134 Stat. 4151, 4293, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred within this chapter to appear before section 2389 and is redesignated as section 2388 of this title. See Effective Date of 2021 Amendment note below.

AMENDMENTS

2018—Pub. L. 115–232 struck out period at end of section catchline.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

CHAPTER 142—PROCUREMENT TECHNICAL ASSISTANCE COOPERATIVE AGREEMENT PROGRAM

Sec.
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Sec.
2414. Funding.
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REPEAL OF CHAPTER

Pub. L. 116–283, div. A, title XVIII, §§1801(d), 1872(b)(1), Jan. 1, 2021, 134 Stat. 4151, 4289, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this chapter is repealed.

AMENDMENTS

2021—Pub. L. 116–283, div. A, title X, §1081(a)(38), Jan. 1, 2021, 134 Stat. 3872, added item 2417 and struck out former item 2417 ''Administrative costs''.

2018—Pub. L. 115–232, div. A, title X, §1081(a)(24)(B), Aug. 13, 2018, 132 Stat. 1985, substituted ''Funding'' for ''Limitation'' in item 2414.

2013—Pub. L. 113–66, div. A, title XVI, §1611(a)(2), Dec. 26, 2013, 127 Stat. 947, added item 2419 and redesignated former item 2419 as 2420.

1993—Pub. L. 103–35, title II, §201(d)(2), May 31, 1993, 107 Stat. 99, made technical amendment to items 2418 and 2419.

1992—Pub. L. 102–484, div. D, title XLII, §4236(a)(2), Oct. 23, 1992, 106 Stat. 2691, added item 2418 and redesignated former item 2418 as 2419.

1990—Pub. L. 101–510, div. A, title VIII, §814(a)(2), Nov. 5, 1990, 104 Stat. 1597, added item 2417 and redesignated former item 2417 as 2418.

1986—Pub. L. 99–500, §101(c) [title X, §957(a)(2)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–175, and Pub. L. 99–591, §101(c) [title X, §957(a)(2)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–175; Pub. L. 99–661, div. A, title IX, formerly title IV, §957(a)(2), Nov. 14, 1986, 100 Stat. 3955, renumbered title IX, Pub. L. 100–26, §3(5), Apr. 21, 1987, 101 Stat. 273, amended analysis identically adding item 2416 and redesignating former item 2416 as 2417.

EFFECTIVE DATE OF REPEAL

Repeal effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

NOTICE OF COST-FREE FEDERAL PROCUREMENT TECHNICAL ASSISTANCE IN CONNECTION WITH REGISTRATION OF SMALL BUSINESS CONCERNS ON PROCUREMENT WEBSITES OF THE DEPARTMENT OF DEFENSE

Pub. L. 115–91, div. A, title XVII, §1707, Dec. 12, 2017, 131 Stat. 1809, provided that:

''(a) IN GENERAL.—The Secretary of Defense shall establish procedures to ensure that any notice or direct communication regarding the registration of a small business concern on a website maintained by the Department of Defense relating to contracting opportunities contains information about cost-free Federal procurement technical assistance services that are available through a procurement technical assistance program established under chapter 142 of title 10, United States Code.

''(b) SMALL BUSINESS CONCERN DEFINED.—The term 'small business concern' has the meaning given such term under section 3 of the Small Business Act (15 U.S.C. 632).''

§ 2411. Definitions

In this chapter:

(1) The term ''eligible entity'' means any of the following:

(A) A State.

(B) A local government.

(C) A private, nonprofit organization.

(D) A tribal organization, as defined in section 4(*l*) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304(*l*)), or an economic enterprise, as defined in section 3(e) of the Indian Financing Act of 1974 (Public Law 93–262; 25 U.S.C. 1452(e)), whether or not such economic enterprise is organized for profit purposes or nonprofit purposes.

(2) The term ''distressed area'' means—

(A) the area of a unit of local government (or such area excluding the area of any defined political jurisdiction within the area of such unit of local government) that—

(i) has a per capita income of 80 percent or less of the State average; or

(ii) has an unemployment rate that is one percent greater than the national average for the most recent 24-month period for which statistics are available; or

(B) a reservation, as defined in section 3(d) of the Indian Financing Act of 1974 (Public Law 93–262; 25 U.S.C. 1452(d)).

(3) The term ''Secretary'' means the Secretary of Defense acting through the Director of the Defense Logistics Agency.

(4) The terms ''State'' and ''local government'' have the meaning given those terms in section 6302 of title 31.

(Added Pub. L. 98–525, title XII, §1241(a)(1), Oct. 19, 1984, 98 Stat. 2605; amended Pub. L. 99–145, title IX, §919(a), Nov. 8, 1985, 99 Stat. 691; Pub. L. 99–500, §101(c) [title X, §956(a)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–174, and Pub. L. 99–591, §101(c) [title X, §956(a)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–174; Pub. L. 99–661, div. A, title IX, formerly title IV, §956(a), Nov. 14, 1986, 100 Stat. 3954, renumbered title IX, Pub. L. 100–26, §3(5), Apr. 21, 1987, 101 Stat. 273; Pub. L. 100–180, div. A, title VIII, §807(b), Dec. 4, 1987, 101 Stat. 1128; Pub. L. 100–456, div. A, title VIII, §841(b)(2), Sept. 29, 1988, 102 Stat. 2025; Pub. L. 101–189, div. A, title VIII, §853(e), Nov. 29, 1989, 103 Stat. 1519; Pub. L. 102–25, title VII, §701(j)(5), Apr. 6, 1991, 105 Stat. 116; Pub. L. 102–484, div. A, title X, §1052(31), Oct. 23, 1992, 106 Stat. 2501; Pub. L. 115–91, div. A, title X, §1081(a)(36), Dec. 12, 2017, 131 Stat. 1596; Pub. L. 116–92, div. A, title VIII, §852(a), Dec. 20, 2019, 133 Stat. 1511; Pub. L. 116–283, div. A, title XVIII, §1872(a)(3)(A), Jan. 1, 2021, 134 Stat. 4288.)

AMENDMENT OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§1801(d), 1872(a)(3)(A), Jan. 1, 2021, 134 Stat. 4151, 4288, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is amended by transferring the text of this section to section 4951 of this title, inserting it after subsection (a), and redesignating it as subsection (b). See 2021 Amendment note below.

AMENDMENT OF PARAGRAPH (3)

Pub. L. 116–92, div. A, title VIII, §852(a), Dec. 20, 2019, 133 Stat. 1511, as amended by Pub. L. 116–283, div. A, title XVIII, §1872(a)(3)(B), Jan.

1, 2021, 134 Stat. 4288, provided that, effective Oct. 1, 2021, paragraph (3) of this section is amended by striking ''Director of the Defense Logistics Agency'' and inserting ''Under Secretary of Defense for Acquisition and Sustainment''. See 2019 Amendment note below.

REPEAL OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1872(b)(1), Jan. 1, 2021, 134 Stat. 4151, 4289, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is repealed.

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

AMENDMENTS

2021—Pub. L. 116–283 transferred the text of this section to section 4951 of this title, inserted it after subsec. (a), and redesignated it as subsec. (b).

2019—Par. (3). Pub. L. 116–92 substituted ''Under Secretary of Defense for Acquisition and Sustainment'' for ''Director of the Defense Logistics Agency''.

2017—Par. (1)(D). Pub. L. 115–91 substituted ''(25 U.S.C. 5304(*l*))'' for ''(Public Law 93–638; 25 U.S.C. 450b(*l*))''.

1992—Par. (1)(D). Pub. L. 102–484 substituted ''organized for profit purposes or nonprofit purposes'' for ''organized for-profit, or nonprofit purposes''.

1991—Par. (1)(D). Pub. L. 102–25, which directed the substitution of ''for profit purposes or nonprofit'' for ''for-profit and nonprofit'', could not be executed because the words ''for-profit and nonprofit'' did not appear.

1989—Par. (1)(D). Pub. L. 101–189 substituted ''section 4(*l*)'' for ''section 4(c)'' and ''25 U.S.C. 450b(*l*)'' for ''25 U.S.C. 450(c)''.

1988—Par. (1)(D). Pub. L. 100–456 inserted '', whether or not such economic enterprise is organized for-profit, or nonprofit purposes'' before period at end.

1987—Par. (1)(D). Pub. L. 100–180, § 807(b)(1), added subpar. (D).

Par. (2). Pub. L. 100–180, § 807(b)(2), substituted ''means—'' for ''means'', designated existing text beginning with ''the area of a unit'' as subpar. (A), redesignated former subpars. (A) and (B) as cls. (i) and (ii), respectively, substituted ''are available; or'' for ''are available.'', and added subpar. (B).

1986—Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661 amended section generally identically, striking out in par. (1) reference to section 6302(5) and 6302(2) of title 31, in par. (2) substituting ''The term 'distressed area' means the area of a unit of local government (or such area excluding the area of any defined political jurisdiction within the area of such unit of local government)'' for '''Distressed entity' means an eligible entity (within the meaning of paragraph (1)(B))'', and adding par. (4).

1985—Pub. L. 99–145 amended section generally. Prior to amendment, section read as follows: ''In this chapter:

''(1) 'Eligible entity' means a State (as defined in section 6302(5) of title 31), a local government (as defined in section 6302(2) of that title), or a private, nonprofit organization that enters into a cooperative agreement with the Secretary under this chapter to furnish procurement technical assistance to business entities and to defray at least one-half of the costs of furnishing such assistance.

''(2) 'Secretary' means the Secretary of Defense acting through the Director of the Defense Logistics Agency.''

EFFECTIVE DATE OF REPEAL

Repeal effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 2019 AMENDMENT

Pub. L. 116–92, div. A, title VIII, § 852(a), Dec. 20, 2019, 133 Stat. 1511, as amended by Pub. L. 116–283, div. A, title XVIII, § 1872(a)(3)(B), Jan. 1, 2021, 134 Stat. 4288, provided that the amendment made by section 852(a) is effective on Oct. 1, 2021.

[Pub. L. 116–283, div. A, title XVIII, § 1872(a)(3)(B), Jan. 1, 2021, 134 Stat. 4288, provided in part that the technical amendment made by section 1872(a)(3)(B) to section 852(a) of Pub. L. 116–92, set out above, should not be made if the effective date of such section 1872(a)(3)(B) is after Oct. 1, 2021. Section 1872(a)(3)(B) of Pub. L. 116–283 is effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.]

EFFECTIVE DATE OF 1985 AMENDMENT

Pub. L. 99–145, title IX, § 919(d), Nov. 8, 1985, 99 Stat. 693, provided that: ''The amendments made by subsections (a) and (b) [amending this section and sections 2412 to 2415 of this title] shall take effect on October 1, 1985.''

§ 2412. Purposes

The purposes of the program authorized by this chapter are—

(1) to increase assistance by the Department of Defense to eligible entities furnishing procurement technical assistance to business entities; and

(2) to assist eligible entities in the payment of the costs of establishing and carrying out new procurement technical assistance programs and maintaining existing procurement technical assistance programs.

(Added Pub. L. 98–525, title XII, § 1241(a)(1), Oct. 19, 1984, 98 Stat. 2605; amended Pub. L. 99–145, title IX, § 919(a), Nov. 8, 1985, 99 Stat. 692; Pub. L. 116–283, div. A, title XVIII, § 1872(a)(2), Jan. 1, 2021, 134 Stat. 4287.)

AMENDMENT OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1872(a)(2), Jan. 1, 2021, 134 Stat. 4151, 4287, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is amended by transferring the text of this section to section 4951 of this title and redesignating it as subsection (a). See 2021 Amendment note below.

REPEAL OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1872(b)(1), Jan. 1, 2021, 134 Stat. 4151, 4289, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is repealed.

AMENDMENTS

2021—Pub. L. 116–283 transferred the text of this section to section 4951 of this title and redesignated it as subsec. (a).

1985—Pub. L. 99–145 amended section generally, substituting ''assistance by the Department of Defense to eligible entities'' for ''Department of Defense assistance for eligible entities'' in par. (1).

EFFECTIVE DATE OF REPEAL

Repeal effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–145 effective Oct. 1, 1985, see section 919(d) of Pub. L. 99–145, set out as a note under section 2411 of this title.

§ 2413. Cooperative agreements

(a) The Secretary, in accordance with the provisions of this chapter, may enter into cooperative agreements with eligible entities to carry out the purposes of this chapter.

(b) Under any such cooperative agreement, the eligible entity shall agree to sponsor programs to furnish procurement technical assistance to business entities and the Secretary shall agree to defray not more than 75 percent of the eligible entity's cost of furnishing such assistance under such programs, except that—

(1) in the case of a program sponsored by such an entity that provides services solely in a distressed area, the Secretary may agree to furnish more than 75 percent, but not more than 85 percent, of such cost with respect to such program; and

(2) in the case of a program sponsored by such an entity that provides assistance for covered small businesses pursuant to section 2419(b) of this title, the Secretary may agree to furnish the full cost of such assistance.

(c) In entering into cooperative agreements under subsection (a), the Secretary shall assure that at least one procurement technical assistance program is carried out in each Department of Defense contract administration services district during each fiscal year.

(d) In conducting a competition for the award of a cooperative agreement under subsection (a), the Secretary shall give significant weight to successful past performance of eligible entities under a cooperative agreement under this section.

(e) In determining the level of funding to provide under an agreement under subsection (b), the Secretary shall consider the forecast by the eligible entity of demand for procurement technical assistance, and, in the case of an established program under this chapter, the outlays and receipts of such program during prior years of operation.

(Added Pub. L. 98–525, title XII, § 1241(a)(1), Oct. 19, 1984, 98 Stat. 2605; amended Pub. L. 99–145, title IX, § 919(a), Nov. 8, 1985, 99 Stat. 692; Pub. L. 99–500, § 101(c) [title X, § 956(b)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–174, and Pub. L. 99–591, § 101(c) [title X, § 956(b)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–174; Pub. L. 99–661, div. A, title IX, formerly title IV, § 956(b), Nov. 14, 1986, 100 Stat. 3954, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273, and amended Pub. L. 100–180, div. A, title XII, § 1233(b), Dec. 4, 1987, 101 Stat. 1161; Pub. L. 105–261, div. A, title VIII, § 802(a)(1), Oct. 17, 1998, 112 Stat. 2081; Pub. L. 107–314, div. A, title VIII, § 814, Dec. 2, 2002, 116 Stat. 2610; Pub. L. 113–66, div. A, title XVI, §§ 1611(c), 1612(a), Dec. 26, 2013, 127 Stat. 947, 948; Pub. L. 115–232, div. A, title VIII, § 858(a), Aug. 13, 2018, 132 Stat. 1892.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1872(a)(5), Jan. 1, 2021, 134 Stat. 4151, 4288, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 385 of this title, as amended by section 1872(a)(1) of Pub. L. 116–283, inserted after section 4951, and redesignated as section 4952 of this title. See Effective Date of 2021 Amendment note below.

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

AMENDMENTS

2018—Subsec. (b). Pub. L. 115–232, § 858(a)(1), substituted ''not more than 75 percent'' for ''not more than 65 percent'' in introductory provisions.

Subsec. (b)(1). Pub. L. 115–232, § 858(a)(2), substituted ''more than 75 percent, but not more than 85 percent'' for ''more than 65 percent, but not more than 75 percent''.

2013—Subsec. (b). Pub. L. 113–66, § 1612(a)(1), substituted ''65 percent'' for ''one-half'' in introductory provisions.

Pub. L. 113–66, § 1611(c)(1)(A), (B), substituted ''except that—

''(1) in the case''

for ''except that in the case'' and ''; and'' for period at end.

Subsec. (b)(1). Pub. L. 113–66, § 1612(a), substituted ''65 percent'' for ''one-half'' and ''75 percent'' for ''three-fourths''.

Subsec. (b)(2). Pub. L. 113–66, § 1611(c)(1)(C), added par. (2).

Subsec. (d). Pub. L. 113–66, § 1611(c)(3), struck out ''and in determining the level of funding to provide under an agreement under subsection (b),'' after ''subsection (a),''.

Subsec. (e). Pub. L. 113–66, § 1611(c)(2), added subsec. (e).

2002—Subsec. (d). Pub. L. 107–314 added subsec. (d).

1998—Subsec. (c). Pub. L. 105–261 substituted ''district'' for ''region''.

1987—Subsec. (b). Pub. L. 100–180 made technical amendment to directory language of Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661. See 1986 Amendment note below.

1986—Subsec. (b). Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661, as amended by Pub. L. 100–180, amended subsec. (b) identically, inserting ''sponsor programs to'' after first reference to ''agree to'', ''under such programs'' after ''such assistance'', and ''with respect to such program'' after ''such cost'' and substituting ''a program sponsored by such an entity that provides services solely in a distressed area'' for ''an eligible entity that is a distressed entity''.

1985—Pub. L. 99–145 amended section generally, substituting '', in accordance with the provisions of this chapter, may enter'' for ''may, in accordance with the provisions of this chapter, enter'' in subsec. (a), adding subsec. (b), and redesignating former subsec. (b) as (c).

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100–180, div. A, title XII, § 1233(c)(2), Dec. 4, 1987, 101 Stat. 1161, provided that: ''The amendment made by subsection (b) [amending Public Laws 99–500, 99–591, and 99–661 which amended this section] shall apply as if included in the enactment of Public Laws 99–500, 99–591, and 99–661.''

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–145 effective Oct. 1, 1985, see section 919(d) of Pub. L. 99–145, set out as a note under section 2411 of this title.

§ 2414. Funding

(a) IN GENERAL.—Except as provided in subsection (c), the value of the assistance furnished by the Secretary to any eligible entity to carry out a procurement technical assistance program under a cooperative agreement under this chapter during any fiscal year may not exceed—

(1) in the case of a program operating on a Statewide basis, other than a program referred to in clause (3) or (4), $1,000,000;

(2) in the case of a program operating on less than a Statewide basis, other than a program referred to in clause (3) or (4), $750,000;

(3) in the case of a program operated wholly within one service area of the Bureau of Indian Affairs by an eligible entity referred to in section 2411(1)(D) of this title, $450,000; or

(4) in the case of a program operated wholly within more than one service area of the Bureau of Indian Affairs by an eligible entity referred to in section 2411(1)(D) of this title, $1,000,000.

(b) DETERMINATIONS ON SCOPE OF OPERATIONS.—A determination of whether a procurement technical assistance program is operating on a Statewide basis or on less than a Statewide basis or is operated wholly within one or more service areas of the Bureau of Indian Affairs by an eligible entity referred to in section 2411(1)(D) of this title shall be made in accordance with regulations prescribed by the Secretary of Defense.

(c) EXCEPTION.—The value of the assistance provided in accordance with section 2419(b) of this title is not subject to the limitations in subsection (a).

(d) USE OF PROGRAM INCOME.—

(1) An eligible entity that earned income in a specified fiscal year from activities carried out pursuant to a procurement technical assistance program funded under this chapter may expend an amount of such income, not to exceed 25 percent of the cost of furnishing procurement technical assistance in such specified fiscal year, during the fiscal year following such specified fiscal year, to carry out a procurement technical assistance program funded under this chapter.

(2) An eligible entity that does not enter into a cooperative agreement with the Secretary for a fiscal year—

(A) shall notify the Secretary of the amount of any income the eligible entity carried over from the previous fiscal year; and

(B) may retain an amount of such income equal to 10 percent of the value of assistance furnished by the Secretary under this section during the previous fiscal year.

(3) In determining the value of assistance furnished by the Secretary under this section for any fiscal year, the Secretary shall account for the amount of any income the eligible entity carried over from the previous fiscal year.

(Added Pub. L. 98–525, title XII, § 1241(a)(1), Oct. 19, 1984, 98 Stat. 2606; amended Pub. L. 99–145, title IX, § 919(a), Nov. 8, 1985, 99 Stat. 692; Pub. L. 100–456, div. A, title VIII, § 841(a), Sept. 29, 1988, 102 Stat. 2025; Pub. L. 101–189, div. A, title VIII, § 819(c), Nov. 29, 1989, 103 Stat. 1503; Pub. L. 102–25, title VII, § 701(f)(7), Apr. 6, 1991, 105 Stat. 115; Pub. L. 107–107, div. A, title VIII, § 813, Dec. 28, 2001, 115 Stat. 1181; Pub. L. 107–314, div. A, title VIII, § 815, Dec. 2, 2002, 116 Stat. 2610; Pub. L. 109–163, div. A, title VIII, § 824, Jan. 6, 2006, 119 Stat. 3387; Pub. L. 113–66, div. A, title XVI, §§ 1611(b), § 1612(b), Dec. 26, 2013, 127 Stat. 947, 948; Pub. L. 115–91, div. A, title VIII, § 817, Dec. 12, 2017, 131 Stat. 1462; Pub. L. 115–232, div. A, title VIII, § 858(b), title X, § 1081(a)(24)(A), Aug. 13, 2018, 132 Stat. 1892, 1984.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1872(a)(6), Jan. 1, 2021, 134 Stat. 4151, 4288, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 385 of this title, as amended by section 1872(a)(1) of Pub. L. 116–283, inserted after section 4952, and redesignated as section 4953 of this title. See Effective Date of 2021 Amendment note below.

AMENDMENTS

2018—Pub. L. 115–232, § 1081(a)(24)(A), substituted ''Funding'' for ''FUNDING'' in section catchline.

Subsec. (a)(1). Pub. L. 115–232, § 858(b)(1), substituted ''$1,000,000'' for ''$750,000''.

Subsec. (a)(2). Pub. L. 115–232, § 858(b)(2), substituted ''$750,000'' for ''$450,000''.

Subsec. (a)(3). Pub. L. 115–232, § 858(b)(3), substituted ''$450,000'' for ''$300,000''.

Subsec. (a)(4). Pub. L. 115–232, § 858(b)(4), substituted ''$1,000,000'' for ''$750,000''.

2017—Pub. L. 115–91, § 817(1), which directed substitution of ''FUNDING'' for ''LIMITATION'' in section catchline, was executed by making the substitution for ''Limitation'' in section catchline, to reflect the probable intent of Congress.

Subsec. (d). Pub. L. 115–91, § 817(2), added subsec. (d).

2013—Subsec. (a). Pub. L. 113–66, § 1611(b)(1), substituted ''Except as provided in subsection (c), the value'' for ''The value'' in introductory provisions.

Subsec. (a)(1). Pub. L. 113–66, § 1612(b)(1), substituted ''$750,000'' for ''$600,000''.

Subsec. (a)(2). Pub. L. 113–66, § 1612(b)(2), substituted ''$450,000'' for ''$300,000''.

Subsec. (a)(3). Pub. L. 113–66, § 1612(b)(3), substituted ''$300,000'' for ''$150,000''.

Subsec. (a)(4). Pub. L. 113–66, § 1612(b)(1), substituted ''$750,000'' for ''$600,000''.

Subsec. (c). Pub. L. 113–66, § 1611(b)(2), added subsec. (c).

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2006—Subsec. (a)(2). Pub. L. 109–163 substituted ''$300,000'' for ''$150,000''.

2002—Subsec. (a)(4). Pub. L. 107–314 substituted ''$600,000'' for ''$300,000''.

2001—Subsec. (a)(1). Pub. L. 107–107 substituted ''$600,000'' for ''$300,000''.

1991—Subsec. (b). Pub. L. 102–25 substituted ''section 2411(1)(D)'' for ''section 2411(a)(1)(D)''.

1989—Subsec. (a). Pub. L. 101–189, § 819(c)(1), added pars. (1) to (4) and struck out former pars. (1) and (2) which read as follows:

''(1) in the case of a program operating on a Statewide basis, $300,000; or

''(2) in the case of a program operating on less than a Statewide basis, $150,000.''

Subsec. (b). Pub. L. 101–189, § 819(c)(2), inserted ''or is operated wholly within one or more service areas of the Bureau of Indian Affairs by an eligible entity referred to in section 2411(a)(1)(D) of this title'' after ''or on less than a Statewide basis''.

1988—Pub. L. 100–456 amended section generally. Prior to amendment, section read as follows: ''The value of the assistance furnished by the Secretary to any eligible entity to carry out a procurement technical assistance program under a cooperative agreement under this chapter during any fiscal year may not exceed $150,000.''

1985—Pub. L. 99–145 amended section generally, substituting ''Secretary'' for ''Department of Defense'' and ''program under'' for ''program pursuant to''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–145 effective Oct. 1, 1985, see section 919(d) of Pub. L. 99–145, set out as a note under section 2411 of this title.

§ 2415. Distribution

The Secretary shall allocate funds available for assistance under this chapter equally to each Department of Defense contract administrative services district. If in any such fiscal year there is an insufficient number of satisfactory proposals in a district for cooperative agreements to allow effective use of the funds allocated to that district, the funds remaining with respect to that district shall be reallocated among the remaining districts.

(Added Pub. L. 98–525, title XII, § 1241(a)(1), Oct. 19, 1984, 98 Stat. 2606; amended Pub. L. 99–145, title IX, § 919(b), Nov. 8, 1985, 99 Stat. 692; Pub. L. 100–180, div. A, title VIII, § 807(c), Dec. 4, 1987, 101 Stat. 1128; Pub. L. 105–261, div. A, title VIII, § 802(a)(2), (b), Oct. 17, 1998, 112 Stat. 2081; Pub. L. 106–398, § 1 [[div. A], title X, § 1087(d)(5)], Oct. 30, 2000, 114 Stat. 1654, 1654A–293.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1872(a)(7), Jan. 1, 2021, 134 Stat. 4151, 4288, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 385 of this title, as amended by section 1872(a)(1) of Pub. L. 116–283, inserted after section 4953, and redesignated as section 4954 of this title. See Effective Date of 2021 Amendment note below.

AMENDMENTS

2000—Pub. L. 106–398 made technical amendment to directory language of Pub. L. 105–261, § 802(b). See 1998 Amendment note below.

1998—Pub. L. 105–261, § 802(a)(2), substituted ''district'' for ''region'' wherever appearing and ''districts'' for ''regions''.

Pub. L. 105–261, § 802(b), as amended by Pub. L. 106–398, substituted ''Department of Defense contract administrative services'' for ''Defense Contract Administration Services''.

1987—Pub. L. 100–180, § 807(c), struck out subsecs. (a) and (b) relating to requirement by Secretary of Defense to reserve 75% of first $3,000,000 appropriated to carry out this chapter for purpose of assisting cooperative agreements entered into under section 2413 of this title for fiscal years 1986 and 1987, and for fiscal years after 1987 the authority of Secretary to allocate funds in accordance with such cooperative agreements, and substituted ''The'' for ''(c) For any amount appropriated to carry out this chapter for fiscal year 1986 or 1987 in excess of $3,000,000, the''.

1985—Subsec. (a)(2). Pub. L. 99–145, § 919(b)(1)(A), substituted ''fiscal years 1986 and 1987'' for ''fiscal year 1985 is 50 percent and during fiscal year 1986''.

Subsec. (a)(3). Pub. L. 99–145, § 919(b)(1)(B), added par. (3).

Subsec. (b). Pub. L. 99–145, § 919(b)(2), substituted ''1987'' for ''1986''.

Subsec. (c). Pub. L. 99–145, § 919(b)(3), added subsec. (c).

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–398, § 1 [[div. A], title X, § 1087(d)], Oct. 30, 2000, 114 Stat. 1654, 1654A–292, provided that the amendment made by section 1 [[div. A], title X, § 1087(d)(5)] is effective Oct. 17, 1998, and as if included in the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999, Pub. L. 105–261, as enacted.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–145 effective Oct. 1, 1985, see section 919(d) of Pub. L. 99–145, set out as a note under section 2411 of this title.

§ 2416. Subcontractor information

(a) The Secretary of Defense shall require that any defense contractor in any year shall provide to an eligible entity with which the Secretary has entered into a cooperative agreement under this chapter, on the request of such entity, the information specified in subsection (b).

(b) Information to be provided under subsection (a) is a listing of the name of each appropriate employee of the contractor who has responsibilities with respect to entering into contracts on behalf of such contractor that constitute subcontracts of contracts being performed by such contractor, together with the business address and telephone number and area of responsibility of each such employee.

(c) A defense contractor need not provide information under this section to a particular eligible entity more frequently than once a year.

(d) In this section, the term ''defense contractor'', for any year, means a person awarded a contract with the Department of Defense in that year for an amount in excess of $1,000,000.

(Added Pub. L. 99–500, § 101(c) [title X, § 957(a)(1)(B)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–174, and Pub. L. 99–591, § 101(c) [title X, § 957(a)(1)(B)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–174; Pub. L. 99–661, div. A, title IX, formerly title IV, § 957(a)(1)(B), Nov. 14, 1986, 100 Stat. 3954, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; Pub. L. 108–375, div. A, title VIII, § 816, Oct. 28, 2004, 118 Stat. 2015.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1872(a)(8), Jan. 1, 2021, 134 Stat. 4151, 4289, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 385 of this title, as amended by section 1872(a)(1) of Pub. L. 116–283, inserted after section 4954, and redesignated as section 4955 of this title. See Effective Date of 2021 Amendment note below.

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661 added identical sections.

PRIOR PROVISIONS

A prior section 2416 was renumbered section 2420 of this title.

AMENDMENTS

2004—Subsec. (d). Pub. L. 108–375 substituted ''$1,000,000'' for ''$500,000''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE

Pub. L. 99–500, § 101(c) [title X, § 957(b)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–175, Pub. L. 99–591, § 101(c) [title X, § 957(b)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–175, and Pub. L. 99–661, div. A, title IX, formerly title IV, § 957(b), Nov. 14, 1986, 100 Stat. 3955, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273, provided that: ''Section 2416 of title 10, United States Code, as added by subsection (a), shall take effect on January 1, 1987.''

§ 2417. Administrative and other costs

The Director of the Defense Logistics Agency may use, out of the amount appropriated for a fiscal year for operation and maintenance for the procurement technical assistance program authorized by this chapter—

(1) an amount not exceeding three percent of such amount to defray the expenses of administering the provisions of this chapter during such fiscal year; and

(2) an amount determined appropriate by the Director to assist eligible entities in payment of costs of eligible entities—

(A) for meetings to discuss best practices for the improvement of the operations of procurement technical assistance centers; and

(B) for membership dues for any association of such centers created by eligible entities, training fees and associated travel for training to carry out the purposes of this chapter, and voluntary participation on any committees or board of such an association.

(Added Pub. L. 101–510, div. A, title VIII, § 814(a)(1)(B), Nov. 5, 1990, 104 Stat. 1596; amended Pub. L. 115–232, div. A, title VIII, § 859(a), Aug. 13, 2018, 132 Stat. 1892; Pub. L. 116–283, div. A, title X, § 1081(a)(41), Jan. 1, 2021, 134 Stat. 3873.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1872(a)(11), Jan. 1, 2021, 134 Stat. 4151, 4289, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 385 of this title, as amended by section 1872(a)(1) of Pub. L. 116–283, inserted after section 4957, and redesignated as section 4959 of this title. See Effective Date of 2021 Amendment note below.

PRIOR PROVISIONS

A prior section 2417 was renumbered section 2420 of this title.

AMENDMENTS

2021—Par. (2). Pub. L. 116–283 deleted space between ''entities'' and dash at end of introductory provisions.

2018—Pub. L. 115–232, § 859(a)(2)–(4), substituted ''chapter—'' for ''chapter,'', inserted par. (1) designation before ''an amount'', and added par. (2).

Pub. L. 115–232, § 859(a)(1), inserted ''and other'' after ''Administrative'' in section catchline.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by section 1872(a)(11) of Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE

Pub. L. 101–510, div. A, title VIII, § 814(b), Nov. 5, 1990, 104 Stat. 1597, provided that: ''Section 2417 of title 10, United States Code, as added by subsection (a), shall apply with respect to fiscal year 1991 and each fiscal year thereafter.''

§ 2418. Authority to provide certain types of technical assistance

(a) The procurement technical assistance furnished by eligible entities assisted by the Department of Defense under this chapter may include technical assistance relating to contracts entered into with (1) Federal departments and agencies other than the Department of Defense, and (2) State and local governments.

(b) An eligible entity assisted by the Department of Defense under this chapter also may furnish information relating to assistance and other programs available pursuant to the Defense Conversion, Reinvestment, and Transition Assistance Act of 1992.

(c) An eligible entity assisted by the Department of Defense under this chapter also may furnish education on the requirements applicable to small businesses under the regulations issued—

(1) under section 38 of the Arms Export Control Act (22 U.S.C. 2778), and on compliance with those requirements; and

(2) under section 9 of the Small Business Act (15 U.S.C. 638), and on compliance with those requirements.

(Added Pub. L. 102–484, div. D, title XLII, § 4236(a)(1)(B), Oct. 23, 1992, 106 Stat. 2691; amended Pub. L. 113–291, div. A, title VIII, § 823(b), Dec. 19, 2014, 128 Stat. 3436; Pub. L. 115–91, div. A, title XVII, § 1708, Dec. 12, 2017, 131 Stat. 1809.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1872(a)(9), Jan. 1, 2021, 134 Stat. 4151, 4289, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 385 of this title, as amended by section 1872(a)(1) of Pub. L. 116–283, inserted after section 4955, and redesignated as section 4956 of this title. See Effective Date of 2021 Amendment note below.

REFERENCES IN TEXT

The Defense Conversion, Reinvestment, and Transition Assistance Act of 1992, referred to in subsec. (b), is division D of Pub. L. 102–484, Oct. 23, 1992, 106 Stat. 2658. For complete classification of division D to the Code, see Short Title note set out under section 2500 of this title and Tables.

PRIOR PROVISIONS

A prior section 2418 was renumbered section 2420 of this title.

AMENDMENTS

2017—Subsec. (c). Pub. L. 115–91 substituted ''issued—'' for ''issued'', inserted par. (1) designation before ''under'' and comma before ''and on compliance'', and added par. (2).

2014—Subsec. (c). Pub. L. 113–291 added subsec. (c).

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 2419. Advancing small business growth

(a) CONTRACT CLAUSE REQUIRED.—(1) The Under Secretary of Defense for Acquisition and Sustainment shall require the clause described in paragraph (2) to be included in each covered contract awarded by the Department of Defense.

(2) The clause described in this paragraph is a clause that—

(A) requires the contractor to acknowledge that acceptance of the contract may cause the business to exceed the applicable small business size standards (established pursuant to section 3(a) of the Small Business Act) for the industry concerned and that the contractor may no longer qualify as a small business concern for that industry; and

(B) encourages the contractor to develop capabilities and characteristics typically desired in contractors that are competitive as an other-than-small business in that industry.

(b) AVAILABILITY OF ASSISTANCE.—Covered small businesses may be provided assistance as part of any procurement technical assistance furnished pursuant to this chapter.

(c) DEFINITIONS.—In this section:

(1) The term ''covered contract'' means a contract—

(A) awarded to a qualified small business concern as defined pursuant to section 3(a) of the Small Business Act; and

(B) with an estimated annual value—

(i) that will exceed the applicable receipt-based small business size standard; or

(ii) if the contract is in an industry with an employee-based size standard, that will exceed $70,000,000.

(2) The term ''covered small business'' means a qualified small business concern as defined pursuant to section 3(a) of the Small Business Act that has entered into a contract with the Department of Defense that includes a contract clause described in subsection (a)(2).

(Added Pub. L. 113–66, div. A, title XVI, § 1611(a)(1)(B), Dec. 26, 2013, 127 Stat. 946; amended Pub. L. 116–92, div. A, title IX, § 902(63), Dec. 20, 2019, 133 Stat. 1550.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1872(a)(10), Jan. 1, 2021, 134 Stat. 4151, 4289, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 385 of this title, as amended by section 1872(a)(1) of Pub. L. 116–283, inserted after section 4956, and redesignated as section 4957 of this title. See Effective Date of 2021 Amendment note below.

REFERENCES IN TEXT

Section 3(a) of the Small Business Act, referred to in subsecs. (a)(2)(A) and (c)(1)(A), (2), is classified to section 632(a) of Title 15, Commerce and Trade.

PRIOR PROVISIONS

A prior section 2419 was renumbered section 2420 of this title.

AMENDMENTS

2019—Subsec. (a)(1). Pub. L. 116–92 substituted ''Under Secretary of Defense for Acquisition and Sustainment'' for ''Under Secretary of Defense for Acquisition, Technology, and Logistics''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 2420. Regulations

The Secretary of Defense shall prescribe regulations to carry out this chapter.

(Added Pub. L. 98–525, title XII, § 1241(a)(1), Oct. 19, 1984, 98 Stat. 2606, § 2416; renumbered § 2417, Pub. L. 99–500, § 101(c) [title X, § 957(a)(1)(A)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–174, and Pub. L. 99–591, § 101(c) [title X, § 957(a)(1)(A)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–174, and Pub. L. 99–661, div. A, title IX, formerly title IV, § 957(a)(1)(A), Nov. 14, 1986, 100 Stat. 3954, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; renumbered § 2418, Pub. L. 101–510, div. A, title VIII, § 814(a)(1)(A), Nov. 5, 1990, 104 Stat. 1596; renumbered § 2419, Pub. L. 102–484, div. D, title XLII, § 4236(a)(1)(A), Oct. 23, 1992, 106 Stat. 2691; renumbered § 2420, Pub. L. 113–66, div. A, title XVI, § 1611(a)(1)(A), Dec. 26, 2013, 127

Stat. 946; Pub. L. 116–283, div. A, title XVIII, § 1872(a)(4), Jan. 1, 2021, 134 Stat. 4288.)

AMENDMENT OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1872(a)(4), Jan. 1, 2021, 134 Stat. 4151, 4288, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is amended by transferring the text of this section to section 4951 of this title, inserting it after subsection (b), and redesignating it as subsection (c). See 2021 Amendment note below.

REPEAL OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1872(b)(1), Jan. 1, 2021, 134 Stat. 4151, 4289, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is repealed.

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

AMENDMENTS

2021—Pub. L. 116–283 transferred the text of this section to section 4951 of this title, inserted it after subsec. (b), and redesignated it as subsec. (c).

2013—Pub. L. 113–66 renumbered section 2419 of this title as this section.

1992—Pub. L. 102–484 renumbered section 2418 of this title as this section.

1990—Pub. L. 101–510 renumbered section 2417 of this title as this section.

1986—Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661, renumbered section 2416 of this title as this section.

EFFECTIVE DATE OF REPEAL

Repeal effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

CHAPTER 143—PRODUCTION BY MILITARY AGENCIES

Sec.
2421. Plantations and farms: operation, maintenance, and improvement.
2422. Bakery and dairy products: procurement outside the United States.
2423. Laundry and dry cleaning services: procurement from facilities operated by the Navy Resale and Services Support Office.
2424. Procurement of supplies and services from exchange stores outside the United States.

AMENDMENTS

1989—Pub. L. 101–189, div. A, title III, §§ 323(b), 324(b), Nov. 29, 1989, 103 Stat. 1414, 1415, added items 2423 and 2424.

1986—Pub. L. 99–661, div. A, title III, § 312(b), Nov. 14, 1986, 100 Stat. 3852, added item 2422.

§ 2421. Plantations and farms: operation, maintenance, and improvement

(a) Appropriations for the subsistence of members of the Army, Navy, Air Force, Marine Corps, or Space Force are available for expenditures necessary in the operation, maintenance, and improvement of any plantation or farm, outside the United States and under the jurisdiction of the Army, Navy, Air Force, Marine Corps, or Space Force, as the case may be, for furnishing fresh fruits and vegetables to the armed forces. However, no land may be acquired under this subsection.

(b) Fruits and vegetables produced under subsection (a) that are over the amount furnished or sold to the armed forces or to civilians serving with the armed forces may be sold only outside the United States.

(c) Of the persons employed by the United States under subsection (a), only nationals of the United States are entitled to the benefits provided by laws relating to the employment, work, compensation, or other benefits of civilian employees of the United States.

(d) A plantation or farm covered by subsection (a) shall be operated, maintained, and improved by a private contractor or lessee, so far as practicable. Before using members of the Army, Navy, Air Force, Marine Corps, or Space Force, as the case may be, the Secretary concerned must make a reasonable effort to make a contract or lease with a person in civil life for his services for that operation, maintenance, or improvement, on terms advantageous to the United States. A determination by the Secretary as to the reasonableness of effort to make a contract or lease, and as to the advantageous nature of its terms, is final.

(e) SUNSET.—The authority under this section shall terminate on September 30, 2018.

(Aug. 10, 1956, ch. 1041, 70A Stat. 138; Pub. L. 114–328, div. A, title VIII, § 833(a)(1), Dec. 23, 2016, 130 Stat. 2283; Pub. L. 116–283, div. A, title IX, § 924(b)(3)(FF), Jan. 1, 2021, 134 Stat. 3822.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
2421(a)	10:1213 (less 1st and 2d provisos). 34:555a (less 1st and 2d provisos).	June 28, 1944, ch. 306; restated July 1, 1947, ch. 188, 61 Stat. 234; Oct. 31, 1951, ch. 654, § 3(2), 65 Stat. 708.
2421(b)	10:1213 (2d proviso). 34:555a (2d proviso).	
2421(c)	10:1213 (1st proviso). 34:555a (1st proviso).	
2421(d)	10:1214. 34:555b.	

In subsection (a), the word ''management'', in 10:1213 and 34:555a, is omitted as covered by the word ''operation''. The word ''members'' is substituted for the word ''personnel''. The word ''may'' is substituted for the word ''shall''. The words ''any and all'' and ''the purpose of'' are omitted as surplusage.

In subsections (a) and (b), the word ''continental'' is omitted, since section 101(1) of this title defines the United States to include the States and the District of Columbia.

In subsection (b), the words ''of the United States'' are omitted as surplusage. The words ''Fruits and vegetables produced under subsection (a)'' are substituted for the words ''That surplus production''.

In subsection (c), the words ''nationals of the United States'' are substituted for the words ''American nationals''. The words ''civil-service laws and other * * * of the United States'' and ''rights * * * or obligations'' are omitted as surplusage.

In subsection (d), the words ''after the termination of the present war'' are omitted as executed. The word

''by'' is substituted for the words ''through the instrumentality of''. The words ''partnership, association'' are omitted as covered by the definition of ''person'' in section 1 of title 1. The words ''United States'' are substituted for the word ''Government''. The words ''management'', ''for that purpose'', and ''or agreement'' are omitted as surplusage.

AMENDMENTS

2021—Pub. L. 116–283 substituted ''Marine Corps, or Space Force'' for ''or Marine Corps'' wherever appearing.

2016—Subsec. (e). Pub. L. 114–328 added subsec. (e).

§ 2422. Bakery and dairy products: procurement outside the United States

(a) The Secretary of Defense may authorize any element of the Department of Defense that procures bakery and dairy products for use by the armed forces outside the United States to procure any products described in subsection (b) through the use of procedures other than competitive procedures.

(b) The products referred to in subsection (a) are bakery or dairy products produced by the Army and Air Force Exchange Service in a facility outside the United States that began operating before July 1, 1986.

(Added Pub. L. 99–661, div. A, title III, § 312(a), Nov. 14, 1986, 100 Stat. 3851.)

§ 2423. Laundry and dry cleaning services: procurement from facilities operated by the Navy Resale and Services Support Office

(a) AUTHORITY.—The Secretary of Defense may authorize an element of the Department of Defense to enter into a contract (through the use of procedures other than competitive procedures) with a laundry and dry cleaning facility operated by the Navy Resale and Services Support Office to procure laundry and dry cleaning services for the armed forces outside the United States.

(b) APPLICATION.—Subsection (a) shall apply only with respect to a laundry and dry cleaning facility of the Navy Resale and Services Support Office that began operating before October 1, 1989.

(Added Pub. L. 101–189, div. A, title III, § 323(a), Nov. 29, 1989, 103 Stat. 1414.)

§ 2424. Procurement of supplies and services from exchange stores outside the United States

(a) AUTHORITY.—The Secretary of Defense may authorize an element of the Department of Defense to enter into a contract (through the use of procedures other than competitive procedures) with an exchange store operated under the jurisdiction of the Secretary of a military department outside the United States to procure supplies or services for use by the armed forces outside the United States.

(b) LIMITATIONS.—(1) A contract may not be entered into under subsection (a) in an amount in excess of $100,000.

(2) Supplies provided under a contract entered into under subsection (a) shall be provided from the stocks of the exchange store on hand as of the date the contract is entered into with that exchange store.

(3) A contract entered into with an exchange store under subsection (a) may not provide for the procurement of services not regularly provided by that exchange store.

(c) EXCEPTION.—Paragraphs (1) and (2) of subsection (b) do not apply to contracts for the procurement of soft drinks that are manufactured in the United States. The Secretary of Defense shall prescribe in regulations the standards and procedures for determining whether a particular beverage is a soft drink and whether the beverage was manufactured in the United States.

(Added Pub. L. 101–189, div. A, title III, § 324(a), Nov. 29, 1989, 103 Stat. 1414; amended Pub. L. 103–355, title III, § 3066, Oct. 13, 1994, 108 Stat. 3337; Pub. L. 104–106, div. D, title XLIII, § 4321(b)(17), Feb. 10, 1996, 110 Stat. 673; Pub. L. 109–163, div. A, title VI, § 671, Jan. 6, 2006, 119 Stat. 3319.)

AMENDMENTS

2006—Subsec. (b). Pub. L. 109–163 substituted ''$100,000'' for ''$50,000''.

1996—Subsec. (c). Pub. L. 104–106 inserted heading and substituted ''particular beverage'' for ''particular drink'' and ''beverage was'' for ''drink was''.

1994—Subsec. (c). Pub. L. 103–355 added subsec. (c).

EFFECTIVE DATE OF 1996 AMENDMENT

For effective date and applicability of amendment by Pub. L. 104–106, see section 4401 of Pub. L. 104–106, set out as a note under section 2302 of this title.

OPERATION OF STARS AND STRIPES BOOKSTORES OVERSEAS BY MILITARY EXCHANGES

Pub. L. 103–160, div. A, title III, § 353, Nov. 30, 1993, 107 Stat. 1627, provided that:

''(a) REQUIREMENT.—The Secretary of Defense shall provide for the commencement, not later than October 1, 1994, of the operation of Stars and Stripes bookstores outside of the United States by the military exchanges.

''(b) REGULATIONS.—The Secretary of Defense shall prescribe regulations to carry out subsection (a).''

CHAPTER 144—MAJOR DEFENSE ACQUISITION PROGRAMS

Sec.
2430. Major defense acquisition program defined.
2430a. Major subprograms.
2431. Weapons development and procurement schedules.
2431a. Acquisition strategy.
2431b. Risk management and mitigation in major defense acquisition programs and major systems.
2432. Selected Acquisition Reports.
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2435. Baseline description.
2436. Major defense acquisition programs: incentive program for contractors to purchase capital assets manufactured in United States.
2437. Development of major defense acquisition programs: sustainment of system to be replaced.
2438. Performance assessments and root cause analyses.
2439. Negotiation of price for technical data before development, production, or sustainment of major weapon systems.
2440. National technology and industrial base plans, policy, and guidance.

Sec.
2441. Sustainment reviews.
2442. Prohibition on use of lowest price technically acceptable source selection process.
2443. Sustainment factors in weapon system design.

REPEAL OF CHAPTER

Pub. L. 116–283, div. A, title XVIII, §§1801(d), 1881(a), Jan. 1, 2021, 134 Stat. 4151, 4293, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this chapter is repealed.

AMENDMENTS

2021—Pub. L. 116–283, div. A, title VIII, §846(b)(2), Jan. 1, 2021, 134 Stat. 3768, added item 2440 and struck out former item 2440 ''Technology and industrial base plans''.

2019—Pub. L. 116–92, div. A, title XVII, §1731(a)(49), Dec. 20, 2019, 133 Stat. 1815, amended item 2439 generally. Prior to amendment, item 2439 read as follows: ''Negotiation of price for technical data before development or production of major weapon systems.''.

2018—Pub. L. 115–232, div. A, title X, §1081(c)(1), Aug. 13, 2018, 132 Stat. 1985, made technical amendment to directory language of Pub. L. 115–91, §834(a)(2), effective as of Dec. 12, 2017, and as if included in Pub. L. 115–91 as enacted. See 2017 Amendment note below.

2017—Pub. L. 115–91, div. A, title VIII, §§832(a)(2), 835(a)(2), title X, §1081(a)(37), Dec. 12, 2017, 131 Stat. 1468, 1471, 1596, added items 2439 and 2442 and substituted ''Risk management and mitigation in major defense acquisition programs and major systems'' for ''Risk reduction in major defense acquisition programs and major systems'' in item 2431b.

Pub. L. 115–91, div. A, title VIII, §834(a)(2), Dec. 12, 2017, 131 Stat. 1470, as amended by Pub. L. 115–232, div. A, title X, §1081(c)(1), Aug. 13, 2018, 132 Stat. 1985, added item 2443.

2016—Pub. L. 114–328, div. A, title VIII, §§842(c)(2), 849(c)(2), Dec. 23, 2016, 130 Stat. 2290, 2294, struck out item 2434 ''Independent cost estimates'' and added item 2441.

2015—Pub. L. 114–92, div. A, title VIII, §§821(a)(2), 822(a)(2), 831(c)(2), Nov. 25, 2015, 129 Stat. 900, 901, 912, added items 2431a and 2431b and substituted ''Independent cost estimates'' for ''Independent cost estimates; operational manpower requirements'' in item 2434.

2011—Pub. L. 111–383, div. A, title IX, §901(k)(2)(B), Jan. 7, 2011, 124 Stat. 4326, added item 2438.

2009—Pub. L. 111–23, title II, §206(a)(2), May 22, 2009, 123 Stat. 1728, added item 2433a.

2008—Pub. L. 110–417, [div. A], title VIII, §811(a)(2), Oct. 14, 2008, 122 Stat. 4521, added item 2430a.

2004—Pub. L. 108–375, div. A, title VIII, §805(a)(2), Oct. 28, 2004, 118 Stat. 2009, added item 2437.

2003—Pub. L. 108–136, div. A, title VIII, §822(a)(2), Nov. 24, 2003, 117 Stat. 1547, added item 2436.

1994—Pub. L. 103–355, title III, §§3005(b), 3006(b), 3007(b), Oct. 13, 1994, 108 Stat. 3331, substituted ''Baseline description'' for ''Enhanced program stability'' in item 2435 and struck out items 2438 ''Major programs: competitive phototyping'' and 2439 ''Major programs: competitive alternative sources''.

1993—Pub. L. 103–160, div. A, title VIII, §828(a)(4), Nov. 30, 1993, 107 Stat. 1713, struck out items 2436 ''Defense enterprise programs'' and 2437 ''Defense enterprise programs: milestone authorization''.

1992—Pub. L. 102–484, div. A, title VIII, §821(a)(2), div. D, title XLII, §4216(b)(2), Oct. 23, 1992, 106 Stat. 2460, 2670, added items 2438 and 2440 and redesignated former item 2438 as 2439.

1987—Pub. L. 100–26, §7(b)(1), (2)(B), (9)(B), Apr. 21, 1987, 100 Stat. 279, 280, substituted ''Major Defense Acquisition Programs'' for ''Oversight of Cost Growth in Major Programs'' in chapter heading, added item 2430, and transferred former item 2305a from chapter 137 and redesignated it as item 2438.

1986—Pub. L. 99–661, div. A, title XII, §1208(c)(2), Nov. 14, 1986, 100 Stat. 3976, inserted ''; operational manpower requirements'' in item 2434.

Pub. L. 99–500, §101(c) [title X, §§904(a)(2), 905(a)(2), 906(a)(2)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–134, 1783–135, 1783–137, and Pub. L. 99–591, §101(c) [title X, §§904(a)(2), 905(a)(2), 906(a)(2)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–134, 3341–135, 3341–137; Pub. L. 99–661, div. A, title IX, formerly title IV, §§904(a)(2), 905(a)(2), 906(a)(2), Nov. 14, 1986, 100 Stat. 3914–3916, renumbered title IX, Pub. L. 100–26, §3(5), Apr. 21, 1987, 101 Stat. 273, added items 2435 to 2437.

Pub. L. 99–433, title I, §101(a)(4), Oct. 1, 1986, 100 Stat. 994, added chapter heading and analysis of sections for chapter 144, consisting of sections 2431 to 2434.

EFFECTIVE DATE OF REPEAL

Repeal effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 2430. Major defense acquisition program defined

(a)(1) Except as provided under paragraph (2), in this chapter, the term ''major defense acquisition program'' means a Department of Defense acquisition program that is not a highly sensitive classified program (as determined by the Secretary of Defense) and—

(A) that is designated by the Secretary of Defense as a major defense acquisition program; or

(B) in the case of a program that is not a program for the acquisition of an automated information system (either a product or a service), that is estimated by the Secretary of Defense to require an eventual total expenditure for research, development, test, and evaluation of more than $300,000,000 (based on fiscal year 1990 constant dollars) or an eventual total expenditure for procurement, including all planned increments or spirals, of more than $1,800,000,000 (based on fiscal year 1990 constant dollars).

(2) In this chapter, the term ''major defense acquisition program'' does not include—

(A) an acquisition program or project that is carried out using the rapid fielding or rapid prototyping acquisition pathway under section 804 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114–92; 10 U.S.C. 2302 note); or

(B) an acquisition program for a defense business system (as defined in section 2222(i)(1) of this title) carried out using the acquisition guidance issued pursuant to section 883(e) of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114–92; 10 U.S.C. 2223a note).

(b) The Secretary of Defense may adjust the amounts (and the base fiscal year) provided in subsection (a)(1)(B) on the basis of Department of Defense escalation rates. An adjustment under this subsection shall be effective after the Secretary transmits a written notification of the adjustment to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives.

(c) For purposes of subsection (a)(1)(B), the Secretary shall consider, as applicable, the following:

(1) The estimated level of resources required to fulfill the relevant joint military requirement, as determined by the Joint Requirements Oversight Council pursuant to section 181 of this title.

(2) The cost estimate referred to in section 2366a(a)(6) of this title.

(3) The cost estimate referred to in section 2366b(a)(1)(C) of this title.

(4) The cost estimate within a baseline description as required by section 2435 of this title.

(d)(1) The milestone decision authority for a major defense acquisition program reaching Milestone A after October 1, 2016, shall be the service acquisition executive of the military department that is managing the program, unless the Secretary of Defense designates, under paragraph (2), another official to serve as the milestone decision authority.

(2) The Secretary of Defense may designate an alternate milestone decision authority for a program with respect to which—

(A) subject to paragraph (5), the Secretary determines that the program is addressing a joint requirement;

(B) the Secretary determines that the program is best managed by a Defense Agency;

(C) the program has incurred a unit cost increase greater than the significant cost threshold or critical cost threshold under section 2433 of this title;

(D) the program is critical to a major interagency requirement or technology development effort, or has significant international partner involvement; or

(E) the Secretary determines that an alternate official serving as the milestone decision authority will best provide for the program to achieve desired cost, schedule, and performance outcomes.

(3)(A) After designating an alternate milestone decision authority under paragraph (2) for a program, the Secretary of Defense may revert the position of milestone decision authority for the program back to the service acquisition executive upon request of the Secretary of the military department concerned. A decision on the request shall be made within 180 days after receipt of the request from the Secretary of the military department concerned.

(B) If the Secretary of Defense denies the request for reversion of the milestone decision authority back to the service acquisition executive, the Secretary shall report to the congressional defense committees on the basis of the Secretary's decision that an alternate official serving as milestone decision authority will best provide for the program to achieve desired cost, schedule, and performance outcomes. No such reversion is authorized after a program has incurred a unit cost increase greater than the significant cost threshold or critical cost threshold under section 2433 of this title, except in exceptional circumstances.

(4)(A) For each major defense acquisition program, the Secretary of the military department concerned and the Chief of the armed force concerned shall, in each Selected Acquisition Report required under section 2432 of this title, certify that program requirements are stable and funding is adequate to meet cost, schedule, and performance objectives for the program and identify and report to the congressional defense committees on any increased risk to the program since the last report.

(B) The Secretary of Defense shall review the acquisition oversight process for major defense acquisition programs and shall limit outside requirements for documentation to an absolute minimum on those programs where the service acquisition executive of the military department that is managing the program is the milestone decision authority and ensure that any policies, procedures, and activities related to oversight efforts conducted outside of the military departments with regard to major defense acquisition programs shall be implemented in a manner that does not unnecessarily increase program costs or impede program schedules.

(5) The authority of the Secretary of Defense to designate an alternative milestone decision authority for a program with respect to which the Secretary determines that the program is addressing a joint requirement, as set forth in paragraph (2)(A), shall apply only for a major defense acquisition program that reaches Milestone A after October 1, 2016, and before October 1, 2019.

(Added Pub. L. 100–26, §7(b)(2)(A), Apr. 21, 1987, 101 Stat. 279; amended Pub. L. 102–484, div. A, title VIII, §817(b), Oct. 23, 1992, 106 Stat. 2455; Pub. L. 104–106, div. A, title XV, §1502(a)(1), Feb. 10, 1996, 110 Stat. 502; Pub. L. 106–65, div. A, title X, §1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 111–23, title II, §206(b), May 22, 2009, 123 Stat. 1728; Pub. L. 113–291, div. A, title X, §1071(f)(18), Dec. 19, 2014, 128 Stat. 3511; Pub. L. 114–92, div. A, title VIII, §825(a), Nov. 25, 2015, 129 Stat. 907; Pub. L. 114–328, div. A, title VIII, §§807(b), 847(a), Dec. 23, 2016, 130 Stat. 2261, 2292; Pub. L. 115–91, div. A, title VIII, §831, title X, §1081(a)(38), Dec. 12, 2017, 131 Stat. 1467, 1596; Pub. L. 116–283, div. A, title XVIII, §1846(c)(1), (d)(1), (f)(1), Jan. 1, 2021, 134 Stat. 4248–4250.)

Amendment of Section

Pub. L. 116–283, div. A, title XVIII, §§1801(d), 1846(c)(1), (d)(1), (f)(1), Jan. 1, 2021, 134 Stat. 4151, 4248–4250, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is amended as follows:

(1) by transferring subsection (a) to section 4201 of this title;

(2) by transferring subsections (b) and (c) to section 4202(a) of this title; and

(3) by transferring subsection (d) to section 4204 of this title.

See 2021 Amendment notes below.

Repeal of Section

Pub. L. 116–283, div. A, title XVIII, §§1801(d), 1846(f)(8), Jan. 1, 2021, 134 Stat. 4151, 4251, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is repealed.

Amendments

2021—Subsec. (a). Pub. L. 116–283, §1846(c)(1), transferred subsec. (a) to section 4201 of this title.

Subsecs. (b), (c). Pub. L. 116–283, § 1846(d)(1), transferred subsecs. (b) and (c) to section 4202(a) of this title.

Subsec. (d). Pub. L. 116–283, § 1846(f)(1), transferred subsec. (d) to section 4204 of this title.

2017—Subsec. (a)(1)(B). Pub. L. 115–91, § 831(1), inserted ''in the case of a program that is not a program for the acquisition of an automated information system (either a product or a service),'' after ''(B)''.

Subsec. (a)(2). Pub. L. 115–91, § 831(2), substituted ''include—'' for ''include'', inserted subpar. (A) designation before ''an acquisition program'', and added subpar. (B).

Subsecs. (b), (c). Pub. L. 115–91, § 1081(a)(38), substituted ''subsection (a)(1)(B)'' for ''subsection (a)(2)''.

2016—Subsec. (a). Pub. L. 114–328, § 847(a), designated existing provisions as par. (1), substituted ''Except as provided under paragraph (2), in this chapter'' for ''In this chapter'', redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, of par. (1), and added par. (2).

Subsec. (d)(2)(A). Pub. L. 114–328, § 807(b)(1), inserted ''subject to paragraph (5),'' before ''the Secretary determines''.

Subsec. (d)(5). Pub. L. 114–328, § 807(b)(2), added par. (5).

2015—Subsec. (d). Pub. L. 114–92 added subsec. (d).

2014—Subsec. (c)(2). Pub. L. 113–291 substituted ''section 2366a(a)(6)'' for ''section 2366a(a)(4)''.

2009—Subsec. (a)(2). Pub. L. 111–23, § 206(b)(1), inserted '', including all planned increments or spirals,'' after ''an eventual total expenditure for procurement''.

Subsec. (c). Pub. L. 111–23, § 206(b)(2), added subsec. (c).

1999—Subsec. (b). Pub. L. 106–65 substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security''.

1996—Subsec. (b). Pub. L. 104–106 substituted ''Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives'' for ''Committees on Armed Services of the Senate and House of Representatives''.

1992—Pub. L. 102–484 designated existing provisions as subsec. (a), in par. (2) substituted ''$300,000,000'' for ''$200,000,000'', ''1990'' for ''1980'' in two places, and ''$1,800,000,000'' for ''$1,000,000,000'', and added subsec. (b).

EFFECTIVE DATE OF REPEAL

Repeal effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 2016 AMENDMENT

Pub. L. 114–328, div. A, title VIII, § 807(b), Dec. 23, 2016, 130 Stat. 2261, provided that the amendment made by section 807(b) is effective January 1, 2017.

EFFECTIVE DATE OF 2015 AMENDMENT

Pub. L. 114–92, div. A, title VIII, § 825(c)(3), Nov. 25, 2015, 129 Stat. 908, provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 133 of this title] shall take effect on October 1, 2016.''

FIRE SUPPRESSANT AND FUEL CONTAINMENT STANDARDS FOR CERTAIN VEHICLES

Pub. L. 114–328, div. A, title I, § 142, Dec. 23, 2016, 130 Stat. 2040, directed the Secretary of the Army and the Secretary of the Navy to issue guidance regarding fire suppressant and fuel containment standards for covered vehicles of the Army and of the Marine Corps, respectively, and to submit to the congressional defense committees, no later than 180 days after Dec. 23, 2016, reports on such guidance.

IMPLEMENTATION OF PROCEDURES FOR DESIGNATION OF MILESTONE DECISION AUTHORITIES

Pub. L. 114–92, div. A, title VIII, § 825(c)(1), (2), Nov. 25, 2015, 129 Stat. 908, directed the Secretary of Defense to submit to the congressional defense committees, no later than 180 days after Nov. 25, 2015, a plan for implementing procedures for designation of milestone decision authorities under subsection (d) of this section and directed the Deputy Chief Management Officer of the Department of Defense, in consultation with the Under Secretary of Defense for Acquisition, Technology, and Logistics and the service acquisition executives, to issue guidance to ensure that by no later than Oct. 1, 2016, the acquisition policy, guidance, and practices of the Department of Defense conform to the requirements of subsec. (d) of this section.

TENURE AND ACCOUNTABILITY OF PROGRAM MANAGERS FOR PROGRAM DEFINITION PERIODS

Pub. L. 114–92, div. A, title VIII, § 826, Nov. 25, 2015, 129 Stat. 908, as amended by Pub. L. 114–328, div. A, title VIII, § 862(a), Dec. 23, 2016, 130 Stat. 2302; Pub. L. 116–92, div. A, title IX, § 902(64), Dec. 20, 2019, 133 Stat. 1550, provided that:

''(a) REVISED GUIDANCE REQUIRED.—Not later than 180 days after the date of the enactment of this Act [Nov. 25, 2015], the Secretary of Defense shall revise Department of Defense guidance for major defense acquisition programs to address the tenure and accountability of program managers for the program definition period of major defense acquisition programs.

''(b) PROGRAM DEFINITION PERIOD.—For the purposes of this section, the term 'program definition period', with respect to a major defense acquisition program, means the period beginning with initiation of the program and ending with Milestone B approval (or Key Decision Point B approval in the case of a space program).

''(c) RESPONSIBILITIES.—The revised guidance required by subsection (a) shall provide that the program manager for the program definition period of a major defense acquisition program is responsible for—

''(1) bringing technologies to maturity and identifying the manufacturing processes that will be needed to carry out the program;

''(2) ensuring continuing focus during program development on meeting stated mission requirements and other requirements of the Department of Defense;

''(3) recommending trade-offs between program cost, schedule, and performance for the life-cycle of the program;

''(4) developing a business case for the program; and

''(5) ensuring that appropriate information is available to the milestone decision authority to make a decision on Milestone B approval (or Key Decision Point B approval in the case of a space program), including information necessary to make the certification required by section 2366a of title 10, United States Code.

''(d) QUALIFICATIONS, RESOURCES, AND TENURE.—The Secretary of Defense shall ensure that each program manager for the program definition period of a major defense acquisition program—

''(1) has the appropriate management, engineering, technical, and financial expertise needed to meet the responsibilities assigned pursuant to subsection (c);

''(2) is provided the resources and support (including systems engineering expertise, cost-estimating expertise, and software development expertise) needed to meet such responsibilities; and

''(3) is assigned to the program manager position for such program until such time as such program receives Milestone B approval (or Key Decision Point B approval in the case of a space program), unless removed for cause or due to exceptional circumstances.

''(e) WAIVER AUTHORITY.—The service acquisition executive, in the case of a major defense acquisition pro-

gram of a military department, or the Under Secretary of Defense for Acquisition and Sustainment, in the case of a Defense-wide or Defense Agency major defense acquisition program, may waive the requirement in paragraph (3) of subsection (d) upon a determination that the program definition period will take so long that it would not be appropriate for a single individual to serve as program manager for the entire period covered by such paragraph.''

TENURE AND ACCOUNTABILITY OF PROGRAM MANAGERS FOR PROGRAM EXECUTION PERIODS

Pub. L. 114–92, div. A, title VIII, § 827, Nov. 25, 2015, 129 Stat. 909, as amended by Pub. L. 114–328, div. A, title VIII, § 862(b), Dec. 23, 2016, 130 Stat. 2302; Pub. L. 116–92, div. A, title IX, § 902(65), Dec. 20, 2019, 133 Stat. 1550, provided that:

''(a) REVISED GUIDANCE REQUIRED.—Not later than 180 days after the date of the enactment of this Act [Nov. 25, 2015], the Secretary of Defense shall revise Department of Defense guidance for major defense acquisition programs to address the tenure and accountability of program managers for the program execution period of major defense acquisition programs.

''(b) PROGRAM EXECUTION PERIOD.—For purposes of this section, the term 'program execution period', with respect to a major defense acquisition program, means the period beginning with Milestone B approval (or Key Decision Point B approval in the case of a space program) and ending with declaration of initial operational capability.

''(c) RESPONSIBILITIES.—The revised guidance required by subsection (a) shall—

''(1) require the program manager for the program execution period of a major defense acquisition program to enter into a performance agreement with the manager's immediate supervisor for such program within six months of assignment, that—

''(A) establishes expected parameters for the cost, schedule, and performance of the program consistent with the business case for the program;

''(B) provides the commitment of the supervisor to provide the level of funding and resources required to meet such parameters; and

''(C) provides the assurance of the program manager that such parameters are achievable and that the program manager will be accountable for meeting such parameters; and

''(2) provide the program manager with the authority to—

''(A) consult on the addition of new program requirements that would be inconsistent with the parameters established in the performance agreement entered into pursuant to paragraph (1);

''(B) recommend trade-offs between cost, schedule, and performance, provided that such trade-offs are consistent with the parameters established in the performance agreement entered into pursuant to paragraph (1); and

''(C) develop such interim goals and milestones as may be required to achieve the parameters established in the performance agreement entered into pursuant to paragraph (1).

''(d) QUALIFICATIONS, RESOURCES, AND TENURE.—The Secretary shall ensure that each program manager for the program execution period of a defense acquisition program—

''(1) has the appropriate management, engineering, technical, and financial expertise needed to meet the responsibilities assigned pursuant to subsection (c);

''(2) is provided the resources and support (including systems engineering expertise, cost estimating expertise, and software development expertise) needed to meet such responsibilities; and

''(3) is assigned to the program manager position for such program during the program execution period, unless removed for cause or due to exceptional circumstances.

''(e) WAIVER AUTHORITY.—The service acquisition executive, in the case of a major defense acquisition program of a military department, or the Under Secretary of Defense for Acquisition and Sustainment, in the case of a Defense-wide or Defense Agency major defense acquisition program, may waive the requirement in paragraph (3) of subsection (d) upon a determination that the program execution period will take so long that it would not be appropriate for a single individual to serve as program manager for the entire program execution period.''

PENALTY FOR COST OVERRUNS

Pub. L. 114–92, div. A, title VIII, § 828, Nov. 25, 2015, 129 Stat. 910, as amended by Pub. L. 115–91, div. A, title VIII, § 825, Dec. 12, 2017, 131 Stat. 1466; Pub. L. 115–232, div. A, title X, § 1081(d), Aug. 13, 2018, 132 Stat. 1986; Pub. L. 116–92, div. A, title VIII, § 805(a), (b)(2), Dec. 20, 2019, 133 Stat. 1485, provided that:

''(a) IN GENERAL.—For fiscal years 2018 and 2019, the Secretary of each military department shall pay a penalty for cost overruns on the covered major defense acquisition programs of the military department.

''(b) CALCULATION OF PENALTY.—For the purposes of this section:

''(1) The amount of the cost overrun on any major defense acquisition program or subprogram in a fiscal year is the difference between the current program acquisition unit cost for the program or subprogram and the program acquisition unit cost for the program as shown in the original Baseline Estimate for the program or subprogram, multiplied by the quantity of items to be purchased under the program or subprogram, as reported in the final Selected Acquisition Report for the fiscal year in accordance with section 2432 of title 10, United States Code.

''(2) Cost overruns for covered major defense acquisition programs that are joint programs of more than one military department shall be allocated among the military departments in percentages determined by the Under Secretary of Defense for Acquisition and Sustainment.

''(3) The cumulative amount of cost overruns for a military department in a fiscal year is the sum of the cost overruns for all covered major defense acquisition programs of the department in the fiscal year (including cost overruns allocated to the military department in accordance with paragraph (2)).

''(4) The cost overrun penalty for a military department in a fiscal year is three percent of the cumulative amount of cost overruns of the military department in the fiscal year, as determined pursuant to paragraph (3).

''(c) TOTAL COST OVERRUN PENALTY.—Notwithstanding the amount of a cost overrun penalty determined in subsection (b), the total cost overrun penalty for a military department (including any cost overrun penalty for joint programs of military departments) for a fiscal year may not exceed $50,000,000.

''(d) TRANSFER OF FUNDS.—

''(1) REDUCTION OF RESEARCH, DEVELOPMENT, TEST, AND EVALUATION OR PROCUREMENT ACCOUNTS.—Not later than 60 days after the end of each of fiscal years 2018 through 2022, the Secretary of each military department shall reduce the research, development, test, and evaluation or procurement accounts of the military department by the amount determined under paragraph (2), and remit such amount to the Secretary of Defense.

''(2) DETERMINATION OF AMOUNTS.—The reductions to research, development, test, and evaluation or procurement accounts of a military department referred to in paragraph (1) are the reductions to such accounts necessary to equal, when combined, the cost overrun penalty for the fiscal year for such department determined pursuant to subsection (b)(4).

''(3) CREDITING OF FUNDS.—Any amount remitted under paragraph (1) shall be credited to the Rapid Prototyping Fund established pursuant to section 804 of this Act [set out as a note under section 2302 of this title].

''(e) COVERED PROGRAMS.—A major defense acquisition program is covered under this section if the origi-

nal Baseline Estimate was established for such program under paragraph (1) or (2) of section 2435(d) of title 10, United States Code, on or after May 22, 2009 (which is the date of the enactment of the Weapon Systems Acquisition Reform Act of 2009 (Public Law 111–23)).''

[Pub. L. 115–91, div. A, title VIII, § 825(b), Dec. 12, 2017, 131 Stat. 1466, which provided that the requirements of section 828 of Pub. L. 114–92, as in effect on the day before Dec. 12, 2017, would continue to apply with respect to fiscal years beginning on or before Oct. 1, 2016, was repealed by Pub. L. 116–92, div. A, title VIII, § 805(b)(1), Dec. 20, 2019, 133 Stat. 1485.]

IMPROVING ANALYTIC SUPPORT TO SYSTEMS ACQUISITION AND ALLOCATION OF ACQUISITION, INTELLIGENCE, SURVEILLANCE AND RECONNAISSANCE ASSETS

Pub. L. 113–291, div. A, title X, § 1058, Dec. 19, 2014, 128 Stat. 3501, which required the Secretary to review guidance on improving analytic support to systems acquisition and allocation of acquisition, intelligence, surveillance and reconnaissance assets, was repealed by Pub. L. 115–232, div. A, title VIII, § 812(b)(36), Aug. 13, 2018, 132 Stat. 1849.

LIMITATION ON USE OF COST-TYPE CONTRACTS

Pub. L. 112–239, div. A, title VIII, § 811, Jan. 2, 2013, 126 Stat. 1828, as amended by Pub. L. 116–92, div. A, title IX, § 902(66), Dec. 20, 2019, 133 Stat. 1550, provided that:

''(a) PROHIBITION WITH RESPECT TO PRODUCTION OF MAJOR DEFENSE ACQUISITION PROGRAMS.—Not later than 120 days after the date of the enactment of this Act [Jan. 2, 2013], the Secretary of Defense shall modify the acquisition regulations of the Department of Defense to prohibit the Department from entering into cost-type contracts for the production of major defense acquisition programs.

''(b) EXCEPTION.—

''(1) IN GENERAL.—The prohibition under subsection (a) shall not apply in the case of a particular cost-type contract if the service acquisition executive, in the case of a major defense acquisition program of the military department, or the Under Secretary of Defense for Acquisition and Sustainment, in the case of a Defense-wide or Defense Agency major defense acquisition program, provides written certification to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] that a cost-type contract is needed to provide a required capability in a timely and cost-effective manner.

''(2) SCOPE OF EXCEPTION.—In any case for which the Under Secretary grants an exception under paragraph (1), the Under Secretary shall take affirmative steps to make sure that the use of cost-type pricing is limited to only those line items or portions of the contract where such pricing is needed to achieve the purposes of the exception. A written certification under paragraph (1) shall be accompanied by an explanation of the steps taken under this paragraph.

''(c) DEFINITIONS.—In this section:

''(1) MAJOR DEFENSE ACQUISITION PROGRAM.—The term 'major defense acquisition program' has the meaning given the term in section 2430(a) of title 10, United States Code.

''(2) PRODUCTION OF A MAJOR DEFENSE ACQUISITION PROGRAM.—The term 'production of a major defense acquisition program' means the production and deployment of a major system that is intended to achieve an operational capability that satisfies mission needs, or any activity otherwise defined as Milestone C under Department of Defense Instruction 5000.02 or related authorities.

''(3) CONTRACT FOR THE PRODUCTION OF A MAJOR DEFENSE ACQUISITION PROGRAM.—The term 'contract for the production of a major defense acquisition program'—

''(A) means a prime contract for the production of a major defense acquisition program; and

''(B) does not include individual line items for segregable efforts or contracts for the incremental improvement of systems that are already in production (other than contracts for major upgrades that are themselves major defense acquisition programs).

''(d) APPLICABILITY.—The requirements of this section shall apply to contracts for the production of major defense acquisition programs entered into on or after October 1, 2014.''

ESTIMATES OF POTENTIAL TERMINATION LIABILITY OF CONTRACTS FOR THE DEVELOPMENT OR PRODUCTION OF MAJOR DEFENSE ACQUISITION PROGRAMS

Pub. L. 112–239, div. A, title VIII, § 812, Jan. 2, 2013, 126 Stat. 1829, directed the Under Secretary of Defense for Acquisition, Technology, and Logistics to review, not later than 180 days after Jan. 2, 2013, relevant acquisition guidance and ensure that program managers for major defense acquisition programs are preparing estimates of potential termination liability for certain covered contracts and directed the Comptroller General of the United States to submit to the congressional defense committees, not later than 270 days after Jan. 2, 2013, a report on the extent to which the Department of Defense is considering potential termination liability as a factor in entering into and in terminating covered contracts.

ASSESSMENT, MANAGEMENT, AND CONTROL OF OPERATING AND SUPPORT COSTS FOR MAJOR WEAPON SYSTEMS

Pub. L. 112–81, div. A, title VIII, § 832, Dec. 31, 2011, 125 Stat. 1504, as amended by Pub. L. 112–239, div. A, title X, § 1076(a)(12), Jan. 2, 2013, 126 Stat. 1948, which required guidance and maintenance of a database on operating and support costs for major weapon systems, was repealed by Pub. L. 115–91, div. A, title VIII, § 836(b)(1), Dec. 12, 2017, 131 Stat. 1473. See section 2337a of this title.

MANAGEMENT OF MANUFACTURING RISK IN MAJOR DEFENSE ACQUISITION PROGRAMS

Pub. L. 111–383, div. A, title VIII, § 812, Jan. 7, 2011, 124 Stat. 4264, as amended by Pub. L. 112–81, div. A, title VIII, § 834, Dec. 31, 2011, 125 Stat. 1506, directed the Secretary of Defense to issue, not later than 180 days after Jan. 7, 2011, comprehensive guidance on the management of manufacturing risk in major defense acquisition programs and to ensure that the acquisition workforce chapter of the annual strategic workforce plan required by former section 115b of this title included an assessment of the critical manufacturing readiness knowledge and skills needed in the acquisition workforce and a plan of action for addressing any gaps in such knowledge and skills.

DEVELOPMENTAL TEST AND EVALUATION AND SYSTEMS ENGINEERING IN THE MILITARY DEPARTMENTS AND DEFENSE AGENCIES

Pub. L. 111–23, title I, § 102(b), May 22, 2009, 123 Stat. 1714, as amended by Pub. L. 111–383, div. A, title VIII, § 813(a), title IX, § 901(*l*)(1), Jan. 7, 2011, 124 Stat. 4265, 4326, provided for the development and implementation of plans to ensure the military department or Defense Agency concerned has appropriate resources and adequate numbers of trained personnel for developmental testing organizations and development planning and systems engineering organizations and provided for the submission of an annual report on the implementation of such plans, beginning no later than 180 days after May 22, 2009, and continuing from 2011 to 2014 and required an annual assessment of the reports from 2010 to 2014.

PERFORMANCE ASSESSMENTS AND ROOT CAUSE ANALYSES FOR MAJOR DEFENSE ACQUISITION PROGRAMS

Pub. L. 111–23, title I, § 103, May 22, 2009, 123 Stat. 1715, which authorized the Secretary of Defense to designate a senior official as responsible for performance assessments and root cause analyses for major defense acqui-

sition programs, was transferred to chapter 144 of this title and redesignated as section 2438 by Pub. L. 111–383, div. A, title IX, § 901(d), Jan. 7, 2011, 124 Stat. 4321.

ACQUISITION STRATEGIES TO ENSURE COMPETITION THROUGHOUT THE LIFECYCLE OF MAJOR DEFENSE ACQUISITION PROGRAMS

Pub. L. 111–23, title II, § 202, May 22, 2009, 123 Stat. 1720, as amended by Pub. L. 112–81, div. A, title VIII, § 837, Dec. 31, 2011, 125 Stat. 1509; Pub. L. 112–239, div. A, title VIII, § 825, Jan. 2, 2013, 126 Stat. 1833, provided that:

''(a) ACQUISITION STRATEGIES TO ENSURE COMPETITION.—The Secretary of Defense shall ensure that the acquisition strategy for each major defense acquisition program includes—

''(1) measures to ensure competition, or the option of competition, at both the prime contract level and the subcontract level (at such tier or tiers as are appropriate) of such program throughout the life-cycle of such program as a means to improve contractor performance; and

''(2) adequate documentation of the rationale for the selection of the subcontract tier or tiers under paragraph (1).

''(b) MEASURES TO ENSURE COMPETITION.—The measures to ensure competition, or the option of competition, for purposes of subsection (a)(1) may include measures to achieve the following, in appropriate cases if such measures are cost-effective:

''(1) Competitive prototyping.

''(2) Dual-sourcing.

''(3) Unbundling of contracts.

''(4) Funding of next-generation prototype systems or subsystems.

''(5) Use of modular, open architectures to enable competition for upgrades.

''(6) Use of build-to-print approaches to enable production through multiple sources.

''(7) Acquisition of complete technical data packages.

''(8) Periodic competitions for subsystem upgrades.

''(9) Licensing of additional suppliers.

''(10) Periodic system or program reviews to address long-term competitive effects of program decisions.

''(c) ADDITIONAL MEASURES TO ENSURE COMPETITION AT SUBCONTRACT LEVEL.—The Secretary shall take actions to ensure competition or the option of competition at the subcontract level on major defense acquisition programs by—

''(1) where appropriate, breaking out a major subsystem, conducting a separate competition for the subsystem, and providing the subsystem to the prime contractor as Government-furnished equipment;

''(2) requiring prime contractors to give full and fair consideration to qualified sources other than the prime contractor for the development or construction of major subsystems and components of major weapon systems;

''(3) providing for government surveillance of the process by which prime contractors consider such sources and determine whether to conduct such development or construction in-house or through a subcontract; and

''(4) providing for the assessment of the extent to which a contractor has given full and fair consideration to qualified sources other than the contractor in sourcing decisions as a part of past performance evaluations.

''(d) CONSIDERATION OF COMPETITION THROUGHOUT MAINTENANCE AND SUSTAINMENT OF MAJOR WEAPON SYSTEMS AND SUBSYSTEMS.—Whenever a decision regarding source of repair results in a plan to award a contract for performance of maintenance and sustainment of a major weapon system or subsystem of a major weapon system, the Secretary shall take actions to ensure that, to the maximum extent practicable and consistent with statutory requirements, contracts for such maintenance and sustainment, or for components needed for such maintenance and sustainment, are awarded on a competitive basis and give full consideration to all sources (including sources that partner or subcontract with public or private sector repair activities).

''(e) APPLICABILITY.—

''(1) STRATEGY AND MEASURES TO ENSURE COMPETITION.—The requirements of subsections (a) and (b) shall apply to any acquisition plan for a major defense acquisition program that is developed or revised on or after the date that is 60 days after the date of the enactment of this Act [May 22, 2009].

''(2) ADDITIONAL ACTIONS.—The actions required by subsections (c) and (d) shall be taken within 180 days after the date of the enactment of this Act.''

PROTOTYPING REQUIREMENTS FOR MAJOR DEFENSE ACQUISITION PROGRAMS

Pub. L. 111–23, title II, § 203, May 22, 2009, 123 Stat. 1722, as amended by Pub. L. 111–383, div. A, title VIII, § 813(b), Jan. 7, 2011, 124 Stat. 4265, which directed the Secretary of Defense to make certain modifications to Department of Defense guidelines related to competitive prototyping for major defense acquisition programs and waivers, was repealed by Pub. L. 114–92, div. A, title VIII, § 822(b), Nov. 25, 2015, 129 Stat. 902.

ORGANIZATIONAL CONFLICTS OF INTEREST IN MAJOR DEFENSE ACQUISITION PROGRAMS

Pub. L. 111–23, title II, § 207(a)–(c), May 22, 2009, 123 Stat. 1728, 1729, directed the Secretary of Defense to revise, not later than 270 days after May 22, 2009, the Defense Supplement to the Federal Acquisition Regulation to provide uniform guidance and tighten existing requirements for organizational conflicts of interest by contractors in major defense acquisition programs and directed the Panel on Contracting Integrity established pursuant to former section 813 of Pub. L. 109–364 (10 U.S.C. 2304 note) to present recommendations on measures to eliminate or mitigate organizational conflicts of interest in major defense acquisition programs.

CONFIGURATION STEERING BOARDS FOR COST CONTROL UNDER MAJOR DEFENSE ACQUISITION PROGRAMS

Pub. L. 110–417, [div. A], title VIII, § 814, Oct. 14, 2008, 122 Stat. 4528, as amended by Pub. L. 114–92, div. A, title VIII, § 830, Nov. 25, 2015, 129 Stat. 912; Pub. L. 115–91, div. A, title VIII, § 826, Dec. 12, 2017, 131 Stat. 1467; Pub. L. 116–92, div. A, title IX, § 902(67), Dec. 20, 2019, 133 Stat. 1550, provided that:

''(a) CONFIGURATION STEERING BOARDS.—Each Secretary of a military department shall establish one or more boards (to be known as a 'Configuration Steering Board') for the major defense acquisition programs of such department.

''(b) COMPOSITION.—

''(1) CHAIR.—Each Configuration Steering Board under this section shall be chaired by the service acquisition executive of the military department concerned.

''(2) PARTICULAR MEMBERS.—Each Configuration Steering Board under this section shall include a representative of the following:

''(A) The Office of the Under Secretary of Defense for Research and Engineering.

''(B) The Office of the Under Secretary of Defense for Acquisition and Sustainment.

''(C) The Chief of Staff of the Armed Force concerned.

''(D) Other Armed Forces, as appropriate.

''(E) The Joint Staff.

''(F) The Comptroller of the military department concerned.

''(G) The military deputy to the service acquisition executive concerned.

''(H) The program executive officer for the major defense acquisition program concerned.

''(I) Other senior representatives of the Office of the Secretary of Defense and the military department concerned, as appropriate.

''(c) RESPONSIBILITIES.—

"(1) IN GENERAL.—The Configuration Steering Board for a major defense acquisition program under this section shall be responsible for the following:

"(A) Monitoring changes in program requirements and ensuring the Chief of Staff of the Armed Force concerned, in consultation with the Secretary of the military department concerned, approves of any proposed changes that could have an adverse effect on program cost or schedule.

"(B) Preventing unnecessary changes to program requirements and system configuration that could have an adverse impact on program cost or schedule.

"(C) Mitigating the adverse cost and schedule impact of any changes to program requirements or system configuration that may be required.

"(D) Ensuring that the program delivers as much planned capability as possible, at or below the relevant program baseline.

"(2) DISCHARGE OF RESPONSIBILITIES.—In discharging its responsibilities under this section with respect to a major defense acquisition program, a Configuration Steering Board shall—

"(A) review and approve or disapprove any proposed changes to program requirements or system configuration that have the potential to adversely impact program cost or schedule; and

"(B) review and recommend proposals to reduce program requirements that have the potential to improve program cost or schedule in a manner consistent with program objectives.

"(3) PRESENTATION OF RECOMMENDATIONS ON REDUCTION IN REQUIREMENTS.—Any recommendation for a proposed reduction in requirements that is made by a Configuration Steering Board under paragraph (2)(B) shall be presented to appropriate organizations of the Joint Staff and the military departments responsible for such requirements for review and approval in accordance with applicable procedures.

"(4) ANNUAL CONSIDERATION OF EACH MAJOR DEFENSE ACQUISITION PROGRAM.—

"(A) ANNUAL MEETING.—Except as provided in subparagraph (B), the Secretary of the military department concerned shall ensure that a Configuration Steering Board under this section meets to consider each major defense acquisition program of such military department at least once each year.

"(B) EXCEPTION.—If the service acquisition executive of the military department concerned determines, in writing, that there have been no changes to the program requirements of a major defense acquisition program during the preceding year, the Configuration Steering Board for such major defense acquisition program is not required to meet as described in subparagraph (A).

"(5) CERTIFICATION OF COST AND SCHEDULE DEVIATIONS DURING SYSTEM DESIGN AND DEVELOPMENT.—For a major defense acquisition program that received an initial Milestone B approval during fiscal year 2008, a Configuration Steering Board may not approve any proposed alteration to program requirements or system configuration if such an alteration would—

"(A) increase the cost (including any increase for expected inflation or currency exchange rates) for system development and demonstration by more than 25 percent; or

"(B) extend the schedule for key events by more than 15 percent of the total number of months between the award of the system development and demonstration contract and the scheduled Milestone C approval date,

unless the Under Secretary of Defense for Research and Engineering and the Under Secretary of Defense for Acquisition and Sustainment jointly certify to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives], and include in the certification supporting rationale, that approving such alteration to program requirements or system configuration is in the best interest of the Department of Defense despite the cost and schedule impacts to system development and demonstration of such program.

"(d) APPLICABILITY.—

"(1) IN GENERAL.—The requirements of this section shall apply with respect to any major defense acquisition program that is commenced before, on, or after the date of the enactment of this Act [Oct. 14, 2008].

"(2) CURRENT PROGRAMS.—In the case of any major defense acquisition program that is ongoing as of the date of the enactment of this Act, a Configuration Steering Board under this section shall be established for such program not later than 60 days after the date of the enactment of this Act.

"(e) GUIDANCE ON AUTHORITIES OF PROGRAM MANAGERS AFTER MILESTONE B.—

"(1) [Amended section 853(d)(2) of Pub. L. 109–364, set out below.]

"(2) APPLICABILITY.—The Secretary of Defense shall modify the guidance described in section 853(d) of the John Warner National Defense Authorization Act for Fiscal Year 2007 [Pub. L. 109–364; set out below] in order to take into account the amendment made by paragraph (1) not later than 60 days after the date of the enactment of this Act [Oct. 14, 2008].

"(f) MAJOR DEFENSE ACQUISITION PROGRAM DEFINED.—In this section, the term 'major defense acquisition program' has the meaning given that term in section 2430(a) of title 10, United States Code."

PRESERVATION OF TOOLING FOR MAJOR DEFENSE ACQUISITION PROGRAMS

Pub. L. 110–417, [div. A], title VIII, § 815, Oct. 14, 2008, 122 Stat. 4530, directed the Secretary of Defense to issue, not later than 270 days after Oct. 14, 2008, guidance requiring the preservation and storage of unique tooling associated with the production of hardware for a major defense acquisition program through the end of the service life of the end item associated with such a program.

DUTIES OF PRINCIPAL MILITARY DEPUTIES

Pub. L. 110–181, div. A, title IX, § 908(d), Jan. 28, 2008, 122 Stat. 278, as amended by Pub. L. 114–92, div. A, title VIII, § 802(c), Nov. 25, 2015, 129 Stat. 879, provided that each Principal Military Deputy to a service acquisition executive has the responsibility to keep the Chief of Staff of the Armed Force concerned informed of the progress of and certain developments on major defense acquisition programs and to ensure program managers and program executive officers make certain considerations during the acquisition process.

REQUIREMENTS MANAGEMENT CERTIFICATION TRAINING PROGRAM

Pub. L. 109–364, div. A, title VIII, § 801, Oct. 17, 2006, 120 Stat. 2312, as amended by Pub. L. 116–92, div. A, title IX, § 902(68), Dec. 20, 2019, 133 Stat. 1551, provided that:

"(a) TRAINING PROGRAM.—

"(1) REQUIREMENT.—The Under Secretary of Defense for Acquisition and Sustainment, in consultation with the Defense Acquisition University, shall develop a training program to certify military and civilian personnel of the Department of Defense with responsibility for generating requirements for major defense acquisition programs (as defined in section 2430(a) of title 10, United States Code).

"(2) COMPETENCY AND OTHER REQUIREMENTS.—The Under Secretary shall establish competency requirements for the personnel undergoing the training program. The Under Secretary shall define the target population for such training program by identifying which military and civilian personnel should have responsibility for generating requirements. The Under Secretary also may establish other training programs for personnel not subject to chapter 87 of title 10, United States Code, who contribute significantly to other types of acquisitions by the Department of Defense.

''(b) APPLICABILITY.—Effective on and after September 30, 2008, a member of the Armed Forces or an employee of the Department of Defense with authority to generate requirements for a major defense acquisition program may not continue to participate in the requirements generation process unless the member or employee successfully completes the certification training program developed under this section.

''(c) REPORTS.—The Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives an interim report, not later than March 1, 2007, and a final report, not later than March 1, 2008, on the implementation of the training program required under this section.''

PROGRAM MANAGER EMPOWERMENT AND ACCOUNTABILITY

Pub. L. 109–364, div. A, title VIII, § 853, Oct. 17, 2006, 120 Stat. 2342, as amended by Pub. L. 110–417, [div. A], title VIII, § 814(e)(1), Oct. 14, 2008, 122 Stat. 4530, directed the Secretary of Defense to develop a comprehensive strategy for enhancing the role of Department of Defense program managers in developing and carrying out defense acquisition programs and to revise, not later than 180 days after Oct. 17, 2006, guidance for major defense acquisition programs to address the qualifications, resources, responsibilities, tenure, and accountability of program managers for both the program development period and the program execution period and provided for reports to Congress by the Secretary and the Comptroller General by not later than 270 days after Oct. 17, 2006, and one year after such date, respectively.

MANAGEMENT OF NATIONAL SECURITY AGENCY MODERNIZATION PROGRAM

Pub. L. 108–136, div. A, title IX, § 924, Nov. 24, 2003, 117 Stat. 1576, directed the Secretary of Defense to mandate that, effective Nov. 24, 2003, acquisitions under the National Security Agency Modernization Program be directed and managed by the Under Secretary of Defense for Acquisition, Technology, and Logistics.

SPIRAL DEVELOPMENT UNDER MAJOR DEFENSE ACQUISITION PROGRAMS

Pub. L. 107–314, div. A, title VIII, § 803, Dec. 2, 2002, 116 Stat. 2603, which authorized the Secretary of Defense to conduct major defense acquisition programs as spiral development programs and set out limitations on and requirements for such programs, was repealed by Pub. L. 114–92, div. A, title VIII, § 821(b)(2), Nov. 25, 2015, 129 Stat. 900.

ENVIRONMENTAL CONSEQUENCE ANALYSIS OF MAJOR DEFENSE ACQUISITION PROGRAMS

Pub. L. 103–337, div. A, title VIII, § 815, Oct. 5, 1994, 108 Stat. 2819, directed the Secretary of Defense to issue guidance, before Apr. 1, 1995, on how to achieve the purposes and intent of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) by ensuring timely compliance for major defense acquisition programs and how to analyze, as early in the process as feasible, the life-cycle environmental costs for such major defense acquisition programs, directed the Secretary to analyze, beginning not later than Mar. 31, 1995, the environmental costs of a major defense acquisition process as an integral part of the life-cycle cost analysis of the program, and directed the Secretary to establish a data base for documents prepared by the Department of Defense in complying with the National Environmental Policy Act of 1969 with respect to major defense acquisition programs.

EFFICIENT CONTRACTING PROCESSES

Pub. L. 103–160, div. A, title VIII, § 837, Nov. 30, 1993, 107 Stat. 1718, as amended by Pub. L. 103–355, title V, § 5064(b)(2), Oct. 13, 1994, 108 Stat. 3360, directed the Secretary of Defense to waive regulations not required by statute that affect the efficiency of the contracting process within the Department of Defense.

CONTRACT ADMINISTRATION: PERFORMANCE BASED CONTRACT MANAGEMENT

Pub. L. 103–160, div. A, title VIII, § 838, Nov. 30, 1993, 107 Stat. 1718, as amended by Pub. L. 103–355, title V, § 5064(b)(3), Oct. 13, 1994, 108 Stat. 3360, which required the Secretary of Defense to define payment milestones for certain defense acquisition programs, was repealed by Pub. L. 115–232, div. A, title VIII, § 812(b)(37), Aug. 13, 2018, 132 Stat. 1849.

DEFENSE ACQUISITION PILOT PROGRAM

Pub. L. 104–201, div. A, title VIII, § 803, Sept. 23, 1996, 110 Stat. 2604, as amended by Pub. L. 105–85, div. A, title VIII, § 847(b)(2), Nov. 18, 1997, 111 Stat. 1845, which provided that the Secretary could waive sections 2399, 2432, and 2433 of this title, under certain conditions, for any defense acquisition program designated by the Secretary of Defense for participation in the defense acquisition pilot program, was repealed by Pub. L. 115–232, div. A, title VIII, § 812(b)(43), Aug. 13, 2018, 132 Stat. 1850.

Pub. L. 103–355, title V, § 5064, Oct. 13, 1994, 108 Stat. 3359, as amended by Pub. L. 106–398, § 1 [[div. A], title VIII, § 801(a), (b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–202, 1654A–203, which authorized the Secretary of Defense to designate certain defense acquisition programs for participation in the defense acquisition pilot program, was repealed by Pub. L. 115–232, div. A, title VIII, § 812(b)(42), Aug. 13, 2018, 132 Stat. 1850.

Pub. L. 103–337, div. A, title VIII, § 819, Oct. 5, 1994, 108 Stat. 2822, which authorized the Secretary of Defense to designate certain defense acquisition programs for participation in the defense acquisition pilot program, was repealed by Pub. L. 115–232, div. A, title VIII, § 812(b)(41), Aug. 13, 2018, 132 Stat. 1850.

Pub. L. 103–160, div. A, title VIII, § 833, Nov. 30, 1993, 107 Stat. 1716, as amended by Pub. L. 103–355, title V, § 5064(b)(1), Oct. 13, 1994, 108 Stat. 3360, which related to the use of mission-oriented program management in the Defense Acquisition Pilot Program, was repealed by Pub. L. 115–232, div. A, title VIII, § 812(b)(39), Aug. 13, 2018, 132 Stat. 1849.

Pub. L. 103–160, div. A, title VIII, § 835(b), Nov. 30, 1993, 107 Stat. 1717, which related to funding for Defense Acquisition Pilot Program, and authorized the Secretary of Defense to expend appropriated sums as necessary to carry out next phase of acquisition program cycle after Secretary determined that objective quantifiable performance expectations relating to execution of that phase had been identified, was repealed by Pub. L. 103–355, title V, § 5002(b), Oct. 13, 1994, 108 Stat. 3350.

Pub. L. 103–160, div. A, title VIII, § 839, Nov. 30, 1993, 107 Stat. 1718, which required the Secretary to collect and analyze specified information on contractor performance under the Defense Acquisition Pilot Program, was repealed by Pub. L. 115–232, div. A, title VIII, § 812(b)(40), Aug. 13, 2018, 132 Stat. 1849.

Pub. L. 101–510, div. A, title VIII, § 809, Nov. 5, 1990, 104 Stat. 1593, as amended by Pub. L. 102–484, div. A, title VIII, § 811, Oct. 23, 1992, 106 Stat. 2450; Pub. L. 103–160, div. A, title VIII, § 832, Nov. 30, 1993, 107 Stat. 1715, which related to a pilot program to determine the potential for increasing the efficiency and effectiveness of the acquisition process in defense acquisition programs, was repealed by Pub. L. 115–232, div. A, title VIII, § 812(b)(38), Aug. 13, 2018, 132 Stat. 1849.

DEFINITIONS

Pub. L. 111–23, § 2, May 22, 2009, 123 Stat. 1704, provided that: ''In this Act [see Short Title of 2009 Amendment note set out under section 101 of this title]:

''(1) The term 'congressional defense committees' has the meaning given that term in section 101(a)(16) of title 10, United States Code.

''(2) The term 'major defense acquisition program' has the meaning given that term in section 2430 of title 10, United States Code.

''(3) The term 'major weapon system' has the meaning given that term in section 2379(d) [probably means section 2379(f)] of title 10, United States Code.''

§ 2430a. Major subprograms

(a) AUTHORITY TO DESIGNATE MAJOR SUBPROGRAMS AS SUBJECT TO ACQUISITION REPORTING REQUIREMENTS.—(1)(A) If the Secretary of Defense determines that a major defense acquisition program requires the delivery of two or more categories of end items which differ significantly from each other in form and function, the Secretary may designate each such category of end items as a major subprogram for the purposes of acquisition reporting under this chapter.

(B) If the Secretary of Defense determines that a major defense acquisition program requires the delivery of two or more increments or blocks, the Secretary may designate each such increment or block as a major subprogram for the purposes of acquisition reporting under this chapter.

(2) The Secretary shall notify the congressional defense committees in writing of any proposed designation pursuant to paragraph (1) not less than 30 days before the date such designation takes effect.

(b) REPORTING REQUIREMENTS.—(1) If the Secretary designates a major subprogram of a major defense acquisition program in accordance with subsection (a), Selected Acquisition Reports, unit cost reports, and program baselines under this chapter shall reflect cost, schedule, and performance information—

(A) for the major defense acquisition program as a whole (other than as provided in paragraph (2)); and

(B) for each major subprogram of the major defense acquisition program so designated.

(2) For a major defense acquisition program for which a designation of a major subprogram has been made under subsection (a), unit costs under this chapter shall be submitted in accordance with the definitions in subsection (d).

(c) REQUIREMENT TO COVER ENTIRE MAJOR DEFENSE ACQUISITION PROGRAM.—If a subprogram of a major defense acquisition program is designated as a major subprogram under subsection (a), all other elements of the major defense acquisition program shall be appropriately organized into one or more subprograms under the major defense acquisition program, each of which subprograms, as so organized, shall be treated as a major subprogram under subsection (a).

(d) DEFINITIONS.—Notwithstanding paragraphs (1) and (2) of section 2432(a) of this title, in the case of a major defense acquisition program for which the Secretary has designated one or more major subprograms under this section for the purposes of this chapter—

(1) the term ''program acquisition unit cost'' applies at the level of the subprogram and means the total cost for the development and procurement of, and specific military construction for, the major defense acquisition program that is reasonably allocable to each such major subprogram, divided by the relevant number of fully-configured end items to be produced under such major subprogram;

(2) the term ''procurement unit cost'' applies at the level of the subprogram and means the total of all funds programmed to be available for obligation for procurement for each such major subprogram, divided by the number of fully-configured end items to be procured under such major subprogram;

(3) the term ''major contract'', with respect to a designated major subprogram, means each of the six largest prime, associate, or Government furnished equipment contracts under the subprogram that is in excess of $40,000,000 and that is not a firm-fixed price contract; and

(4) the term ''life cycle cost'', with respect to a designated major subprogram, means all costs of development, procurement, military construction, and operations and support, without regard to funding source or management control.

(Added Pub. L. 110–417, [div. A], title VIII, § 811(a)(1), Oct. 14, 2008, 122 Stat. 4520; amended Pub. L. 111–383, div. A, title VIII, § 814(a), Jan. 7, 2011, 124 Stat. 4266; Pub. L. 112–81, div. A, title IX, § 912, Dec. 31, 2011, 125 Stat. 1536; Pub. L. 114–328, div. A, title VIII, § 850, Dec. 23, 2016, 130 Stat. 2295.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1846(g), Jan. 1, 2021, 134 Stat. 4151, 4251, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 321 of this title, as added by section 1846(b) of Pub. L. 116–283, inserted after section 4202, and redesignated as section 4203 of this title. See Effective Date of 2021 Amendment note below.

AMENDMENTS

2016—Subsec. (a)(1)(B). Pub. L. 114–328, which directed substitution of ''major defense acquisition program requires the delivery of two or more increments or blocks'' for ''major defense acquisition program to purchase satellites requires the delivery of satellites in two or more increments or blocks'' in par. (1)(B), was executed by making the substitution in par. (1)(B) of subsec. (a), to reflect the probable intent of Congress.

2011—Subsec. (a)(1). Pub. L. 112–81 designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (b). Pub. L. 111–383 designated existing provisions as par. (1), redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, of par. (1), inserted ''(other than as provided in paragraph (2))'' before semicolon in subpar. (A), and added par. (2).

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 2431. Weapons development and procurement schedules

(a) The Secretary of Defense shall submit to Congress each calendar year, not later than 45 days after the President submits the budget to Congress under section 1105 of title 31, budget justification documents regarding development and procurement schedules for each weapon system for which fund authorization is required by section 114(a) of this title, and for which any funds for procurement are requested in that budget. The documents shall include data on operational testing and evaluation for each

weapon system for which funds for procurement are requested (other than funds requested only for the procurement of units for operational testing and evaluation, or long lead-time items, or both). A weapon system shall also be included in the annual documents required under this subsection in each year thereafter until procurement of that system has been completed or terminated, or the Secretary of Defense certifies, in writing, that such inclusion would not serve any useful purpose and gives his reasons therefor.

(b) Any documents required to be submitted under subsection (a) shall include detailed and summarized information with respect to each weapon system covered and shall specifically include each of the following:

(1) The development schedule, including estimated annual costs until development is completed.

(2) The planned procurement schedule, including the best estimate of the Secretary of Defense of the annual costs and units to be procured until procurement is completed.

(3) To the extent required by the second sentence of subsection (a), the result of all operational testing and evaluation up to the time of the submission of the documents, or, if operational testing and evaluation has not been conducted, a statement of the reasons therefor and the results of such other testing and evaluation as has been conducted.

(4)(A) The most efficient production rate, the most efficient acquisition rate, and the minimum sustaining rate, consistent with the program priority established for such weapon system by the Secretary concerned.

(B) In this paragraph:

(i) The term ''most efficient production rate'' means the maximum rate for each budget year at which the weapon system can be produced with existing or planned plant capacity and tooling, with one shift a day running for eight hours a day and five days a week.

(ii) The term ''minimum sustaining rate'' means the production rate for each budget year that is necessary to keep production lines open while maintaining a base of responsive vendors and suppliers.

(c) In the case of any weapon system for which procurement funds have not been previously requested and for which funds are first requested by the President in any fiscal year after the Budget for that fiscal year has been submitted to Congress, the same documentation requirements shall be applicable to that system in the same manner and to the same extent as if funds had been requested for that system in that budget.

(Added Pub. L. 93–155, title VIII, § 803(a), Nov. 16, 1973, 87 Stat. 614, § 139; amended Pub. L. 94–106, title VIII, § 805, Oct. 7, 1975, 89 Stat. 538; Pub. L. 96–513, title V, § 511(5), Dec. 12, 1980, 94 Stat. 2920; Pub. L. 97–86, title IX, § 909(c), Dec. 1, 1981, 95 Stat. 1120; Pub. L. 97–258, § 3(b)(1), Sept. 13, 1982, 96 Stat. 1063; Pub. L. 98–525, title XIV, § 1405(3), Oct. 19, 1984, 98 Stat. 2621; renumbered § 2431 and amended Pub. L. 99–433, title I, §§ 101(a)(5), 110(d)(12), (g)(6), Oct. 1, 1986, 100 Stat. 995, 1003, 1004; Pub. L. 100–180, div. A, title XIII, § 1314(a)(1), Dec. 4, 1987, 101 Stat. 1175; Pub. L. 101–510, div. A, title XIII, § 1301(13), title XIV, § 1484(f)(3), Nov. 5, 1990, 104 Stat. 1668, 1717; Pub. L. 103–355, title III, § 3001, Oct. 13, 1994, 108 Stat. 3327; Pub. L. 104–106, div. D, title XLIII, § 4321(b)(18), Feb. 10, 1996, 110 Stat. 673.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1846(h)(1), Jan. 1, 2021, 134 Stat. 4151, 4251, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 321 of this title, as added by section 1846(b) of Pub. L. 116–283, added at the end, and redesignated as section 4205 of this title. See Effective Date of 2021 Amendment note below.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in Pub. L. 92–156, title V, § 506, Nov. 17, 1971, 85 Stat. 429, prior to repeal by Pub. L. 93–155, § 803(b)(2).

AMENDMENTS

1996—Subsec. (b). Pub. L. 104–106, § 4321(b)(18)(A)(i), substituted ''Any documents'' for ''Any report'' in first sentence.

Subsec. (b)(3). Pub. L. 104–106, § 4321(b)(18)(A)(ii), substituted ''the documents'' for ''the report''.

Subsec. (c). Pub. L. 104–106, § 4321(b)(18)(B), substituted ''documentation'' for ''reporting''.

1994—Subsec. (a). Pub. L. 103–355, § 3001(a), substituted ''not later than 45 days after'' for ''at the same time'' and ''budget justification documents'' for ''a written report'' in first sentence and ''documents'' for ''report'' in second and third sentences.

Subsec. (b). Pub. L. 103–355, § 3001(b)(1), substituted ''include each of the following:'' for ''include—'' in introductory provisions.

Subsec. (b)(1) to (3). Pub. L. 103–355, § 3001(b)(2)–(4), capitalized first letter of first word in pars. (1) to (3) and substituted period for semicolon at end of pars. (1) and (2) and period for ''; and'' at end of par. (3).

Subsec. (b)(4). Pub. L. 103–355, § 3001(b)(5) amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''the most efficient production rate and the most efficient acquisition rate consistent with the program priority established for such weapon system by the Secretary concerned.''

1990—Subsec. (b). Pub. L. 101–510, § 1484(f)(3), substituted ''covered and shall specifically include'' for ''covered, and specifically include, but not be limited to'' in introductory provisions.

Pub. L. 101–510, § 1301(13), redesignated subsec. (c) as (b), struck out ''or (b)'' after ''under subsection (a)'', and struck out former subsec. (b) which read as follows: ''The Secretary of Defense shall submit a supplemental report to Congress not less than 30, or more than 90, days before the award of any contract, or the exercise of any option in a contract, for the procurement of any such weapon system (other than procurement of units for operational testing and evaluation, or long lead-time items, or both), unless—

''(1) the contractor or contractors for that system have not yet been selected and the Secretary of Defense determines that the submission of that report would adversely affect the source selection process and notifies Congress in writing, prior to such award, of that determination, stating his reasons therefor; or

''(2) the Secretary of Defense determines that the submission of that report would otherwise adversely affect the vital security interests of the United States and notifies Congress in writing of that determination at least 30 days prior to the award, stating his reasons therefor.''

Subsecs. (c), (d). Pub. L. 101–510, § 1301(13)(C), redesignated subsecs. (c) and (d) as (b) and (c), respectively.

1987—Pub. L. 100–180 made technical amendment to directory language of Pub. L. 99–433, § 101(a)(5). See 1986 Amendment note below.

1986—Pub. L. 99–433, § 101(a)(5), as amended by Pub. L. 100–180, § 1314(a)(1), renumbered section 139 of this title as this section.

Pub. L. 99–433, § 110(d)(12), substituted ''Weapons development and procurement schedules'' for ''Secretary of Defense: weapons development and procurement schedules for armed forces; reports; supplemental reports'' in section catchline.

Subsec. (a). Pub. L. 99–433, § 110(g)(6), substituted ''section 114(a)'' for ''section 138(a)''.

1984—Subsec. (b). Pub. L. 98–525, § 1405(3)(B), substituted ''30'' for ''thirty'' and ''90'' for ''ninety'' in introductory text.

Subsec. (b)(2). Pub. L. 98–525, § 1405(3)(A), substituted ''30'' for ''thirty''.

1982—Subsec. (a). Pub. L. 97–258 substituted ''section 1105 of title 31'' for ''section 201 of the Budget and Accounting Act, 1921 (31 U.S.C. 11)''.

1981—Subsec. (c)(4). Pub. L. 97–86 added par. (4).

1980—Subsec. (a). Pub. L. 96–513 substituted ''section 201 of the Budget and Accounting Act, 1921 (31 U.S.C. 11)'' for ''section 11 of title 31''.

1975—Subsec. (b). Pub. L. 94–106 substituted ''or more than ninety, days before'' for ''or more than sixty, days before''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

For effective date and applicability of amendment by Pub. L. 104–106, see section 4401 of Pub. L. 104–106, set out as a note under section 2302 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–180 applicable as if included in enactment of the Goldwater-Nichols Department of Defense Reorganization Act of 1986, Pub. L. 99–433, see section 1314(e) of Pub. L. 100–180, set out as a note under section 743 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

TRANSITION OF BALLISTIC MISSILE DEFENSE PROGRAMS TO MILITARY DEPARTMENTS

Pub. L. 115–91, div. A, title XVI, § 1676(b), Dec. 12, 2017, 131 Stat. 1772, as amended by Pub. L. 115–232, div. A, title XVI, § 1679, Aug. 13, 2018, 132 Stat. 2161; Pub. L. 116–283, div. A, title XVI, § 1643, Jan. 1, 2021, 134 Stat. 4062, directed the Secretary of Defense to transfer, not later than the date on which the budget for fiscal year 2023 is submitted to Congress, the acquisition authority and the total obligational authority for each missile defense program that has received Milestone C approval or equivalent approval as of such date from the Missile Defense Agency to a military department, and directed the Secretary to submit to the congressional defense committees, not later than one year after Dec. 12, 2017, a report on the plans for such transition of missile defense programs.

DEVELOPMENT OF PERSISTENT SPACE-BASED SENSOR ARCHITECTURE

Pub. L. 115–91, div. A, title XVI, § 1683, Dec. 12, 2017, 131 Stat. 1777, as amended by Pub. L. 115–232, div. A, title XVI, § 1675(a)–(c), (d)(2), Aug. 13, 2018, 132 Stat. 2159, 2160; Pub. L. 116–92, div. A, title XVI, § 1683, Dec. 20, 2019, 133 Stat. 1782; Pub. L. 116–283, div. A, title XVI, § 1645(g), Jan. 1, 2021, 134 Stat. 4064, directed the Director of the Missile Defense Agency, in coordination with the Commander of the Air Force Space Command and the Commander of the United States Strategic Command, beginning fiscal year 2019, to develop and rigorously test a highly reliable and cost-effective persistent space-based sensor architecture capable of supporting the ballistic missile defense system, to ensure that the sensor architecture developed is compatible with efforts of the Defense Advanced Research Projects Agency relating to space-based sensors for missile defense, to submit to Congress a report on the available options not later than January 31, 2019, to submit to Congress a plan not later than one year after December 12, 2017, and to submit to Congress an update to the plan not later than 90 days after December 20, 2019.

BOOST PHASE BALLISTIC MISSILE DEFENSE

Pub. L. 115–91, div. A, title XVI, § 1685, Dec. 12, 2017, 131 Stat. 1781, as amended by Pub. L. 115–232, div. A, title XVI, § 1676, Aug. 13, 2018, 132 Stat. 2160, directed the Secretary of Defense to ensure that an effective interim kinetic or directed energy boost phase ballistic missile defense capability would be available for initial operational deployment as soon as practicable, directed the Secretary to submit to the congressional defense committees, together with the budget submitted to Congress for fiscal year 2019, a plan to achieve such capability, directed the Director of the Missile Defense Agency, beginning fiscal year 2019, to carry out a program to develop kinetic boost phase intercept capabilities, required an independent study on the feasibility of providing an initial or demonstrated boost phase capability using unmanned aerial vehicles and kinetic interceptors, and directed the Secretary of Defense to submit to the congressional defense committees a report on such study not later than July 31, 2019.

GROUND-BASED INTERCEPTOR CAPABILITY, CAPACITY, AND RELIABILITY

Pub. L. 115–91, div. A, title XVI, § 1686, Dec. 12, 2017, 131 Stat. 1781, authorized the Secretary of Defense to increase the number of the ground-based interceptors of the United States and to advance missile defense technologies to improve the capability and reliability of those elements of the ballistic missile defense system, and directed the Director of the Missile Defense Agency to submit to the congressional defense committees, not later than 90 days after the date on which the Ballistic Missile Defense Review commenced in 2017 is published, a report on those efforts.

PLAN FOR DEVELOPMENT OF SPACE-BASED BALLISTIC MISSILE INTERCEPT LAYER

Pub. L. 115–91, div. A, title XVI, § 1688, Dec. 12, 2017, 131 Stat. 1783, as amended by Pub. L. 115–232, div. A, title XVI, § 1680, Aug. 13, 2018, 132 Stat. 2161; Pub. L. 116–92, div. A, title XVI, § 1682, Dec. 20, 2019, 133 Stat. 1782, provided that:

''(a) DEVELOPMENT.—Subject to the availability of appropriations, the Director of the Missile Defense Agency shall develop a space-based ballistic missile intercept layer to the ballistic missile defense system that is—

''(1) regionally focused;

''(2) capable of providing boost-phase defense; and

''(3) achieves an operational capability at the earliest practicable date.

''(b) SPACE-BASED BALLISTIC MISSILE INTERCEPT LAYER PLAN.—Not later than one year after the date of the enactment of this Act [Dec. 12, 2017], the Director shall submit to the appropriate congressional committees a plan to carry out subsection (a) during the 10-year period following the date of the plan. Such plan shall include the following:

''(1) A concept definition phase consisting of multiple awarded contracts to identify feasible solutions

consistent with architectural principles, performance goals, and price points established by the Director, such as contracts relating to—

''(A) refined requirements;

''(B) conceptual designs;

''(C) technology readiness assessments;

''(D) critical technical and operational issues;

''(E) cost, schedule, performance estimates; and

''(F) risk reduction plans.

''(2) A technology risk reduction phase consisting of up to three competitively awarded contracts focused on maturing, integrating, and characterizing key technologies, algorithms, components, and subsystems, such as contracts relating to—

''(A) refined concepts and designs;

''(B) engineering trade studies;

''(C) medium-to-high fidelity digital representations of the space-based ballistic missile intercept weapon system; and

''(D) a proposed integration and test sequence that could potentially lead to a live-fire boost phase intercept during fiscal year 2022, if the technology has reached sufficient maturity and is economically viable.

''(3) During the technology risk reduction phase, contractors will define proposed demonstrations to a preliminary design review level prior to a technology development phase down-select.

''(4) A technology development phase consisting of two competitively awarded contracts to mature the preferred space-based ballistic missile intercept weapon system concepts and to potentially conduct a live-fire boost phase intercept fly-off during fiscal year 2022, if the technology has reached sufficient maturity and is economically viable, with brassboard hardware and prototype software on a path to the operational goal.

''(5) A concurrent space-based ballistic missile intercept weapon system fire control test bed activity that incrementally incorporates modeling and simulation elements, real-world data, hardware, algorithms, and systems to evaluate with increasing confidence the performance of evolving designs and concepts of such weapon system from target detection to intercept.

''(6) Any other matters the Director determines appropriate.

''(c) APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.—In this section, the term 'appropriate congressional committees' means—

''(1) the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives]; and

''(2) the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives.''

DESIGNATION OF DEPARTMENT OF DEFENSE SENIOR OFFICIAL WITH PRINCIPAL RESPONSIBILITY FOR DIRECTED ENERGY WEAPONS

Pub. L. 114–328, div. A, title II, § 219, Dec. 23, 2016, 130 Stat. 2053, as amended by Pub. L. 115–91, div. A, title II, § 215, Dec. 12, 2017, 131 Stat. 1326; Pub. L. 115–232, div. A, title II, §§ 212, 237, Aug. 13, 2018, 132 Stat. 1675, 1695; Pub. L. 116–283, div. A, title II, § 215, Jan. 1, 2021, 134 Stat. 3458, designated the Under Secretary of Defense for Research and Engineering as the official with principal responsibility for the development and demonstration of directed energy weapons for the Department of Defense, redesignated the High Energy Laser Joint Technology Office of the Department of Defense as the Joint Directed Energy Transition Office, which office was to report to the Under Secretary of Defense for Research and Engineering, directed the Secretary of Defense, acting through the Under Secretary, to establish a program on the prototyping and demonstration of directed energy weapon systems to build and maintain the military superiority of the United States, and directed the Secretary of Defense to establish the Directed Energy Working Group, to be terminated 4 years after January 1, 2021, to analyze and evaluate the current and planned directed energy programs of each of the military departments, to make recommendations to the Secretary of Defense, and to provide to the congressional defense committees a briefing on the progress of each directed energy program that is being adopted or fielded by the Department of Defense not later than 180 days after January 1, 2021, and not less frequently than once every 180 days thereafter.

NATIONAL MISSILE DEFENSE POLICY

Pub. L. 116–92, div. A, title XVI, § 1681(b), Dec. 20, 2019, 133 Stat. 1781, provided that: ''Not later than the date on which the President submits to Congress the annual budget request of the President for fiscal year 2021 pursuant to section 1105 of title 31, United States Code, the Secretary of Defense shall, as the Secretary considers appropriate, redesignate all strategies, policies, programs, and systems under the jurisdiction of the Secretary to reflect that missile defense programs of the United States defend against ballistic, cruise, and hypersonic missiles in all phases of flight.''

Pub. L. 114–328, div. A, title XVI, § 1681(a), Dec. 23, 2016, 130 Stat. 2623, as amended by Pub. L. 116–92, div. A, title XVI, § 1681(a), Dec. 20, 2019, 133 Stat. 1781, provided that: ''It is the policy of the United States to—

''(1) maintain and improve, with funding subject to the annual authorization of appropriations and the annual appropriation of funds for National Missile Defense—

''(A) an effective, layered missile defense system capable of defending the territory of the United States against the developing and increasingly complex missile threat posed by rogue states; and

''(B) an effective regional missile defense system capable of defending the allies, partners, and deployed forces of the United States against increasingly complex missile threats; and

''(2) rely on nuclear deterrence to address more sophisticated and larger quantity near-peer intercontinental missile threats to the homeland of the United States.''

Pub. L. 106–38, § 2, July 22, 1999, 113 Stat. 205, which provided that it was the policy of the United States to deploy as soon as technologically possible an effective National Missile Defense system capable of defending the territory of the United States against limited ballistic missile attack with funding subject to the annual authorization of appropriations and the annual appropriation of funds for National Missile Defense, was repealed by Pub. L. 114–328, div. A, title XVI, § 1681(b), Dec. 23, 2016, 130 Stat. 2623.

DESIGNATION OF CERTAIN ACQUISITION AUTHORITY

Pub. L. 114–328, div. A, title XVI, § 1684(e), (f), Dec. 23, 2016, 130 Stat. 2627, provided that:

''(e) DESIGNATION REQUIRED.—

''(1) AUTHORITY.—Not later than March 31, 2018, the Secretary of Defense shall designate a military department or Defense Agency with acquisition authority with respect to—

''(A) the capability to defend the homeland from cruise missiles; and

''(B) left-of-launch ballistic missile defeat capability.

''(2) DISCRETION.—The Secretary may designate a single military department or Defense Agency with the acquisition authority described in paragraph (1) or designate a separate military department or Defense Agency for each function specified in such paragraph.

''(3) VALIDATION.—In making a designation under paragraph (1), the Secretary shall include a description of the manner in which the military requirements for such capabilities will be validated.

''(f) DEFINITIONS.—In this section:

''(1) The term 'Defense Agency' has the meaning given that term in section 101(a)(11) of title 10, United States Code.

"(2) The term 'intelligence community' has the meaning given that term in section 3 of the National Security Act of 1947 (50 U.S.C. 3003)."

TECHNICAL AUTHORITY FOR INTEGRATED AIR AND MISSILE DEFENSE ACTIVITIES AND PROGRAMS

Pub. L. 114–328, div. A, title XVI, § 1686(a), Dec. 23, 2016, 130 Stat. 2628, provided that:

"(1) IN GENERAL.—The Director of the Missile Defense Agency is the technical authority of the Department of Defense for integrated air and missile defense activities and programs, including joint engineering and integration efforts for such activities and programs, including with respect to defining and controlling the interfaces of such activities and programs and the allocation of technical requirements for such activities and programs.

"(2) DETAILEES.—

"(A) In carrying out the technical authority under paragraph (1), the Director may seek to have staff detailed to the Missile Defense Agency from the Joint Functional Component Command for Integrated Missile Defense and the Joint Integrated Air and Missile Defense Organization in a number the Director determines necessary in accordance with subparagraph (B).

"(B) In detailing staff under subparagraph (A) to carry out the technical authority under paragraph (1), the total number of staff, including detailees, of the Missile Defense Agency who carry out such authority may not exceed the number that is twice the number of such staff carrying out such authority as of January 1, 2016."

HYPERSONIC DEFENSE CAPABILITY DEVELOPMENT

Pub. L. 114–328, div. A, title XVI, § 1687, Dec. 23, 2016, 130 Stat. 2629, designated the Director of the Missile Defense Agency as the executive agent for the Department of Defense for the development of a capability by the United States to counter hypersonic boost-glide vehicle capabilities and conventional prompt strike capabilities that may be employed against the United States or its allies and directed the Director to establish a program to develop such hypersonic defense capability by not later than Mar. 31, 2017.

REQUIRED TESTING BY MISSILE DEFENSE AGENCY OF GROUND-BASED MIDCOURSE DEFENSE ELEMENT OF BALLISTIC MISSILE DEFENSE SYSTEM

Pub. L. 114–328, div. A, title XVI, § 1689, Dec. 23, 2016, 130 Stat. 2631, as amended by Pub. L. 116–92, div. A, title IX, § 902(97), title XVI, § 1684, Dec. 20, 2019, 133 Stat. 1555, 1783, provided that:

"(a) TESTING REQUIRED.—Except as provided in subsection (c), not less frequently than once each fiscal year, the Director of the Missile Defense Agency shall administer a flight test of the ground-based midcourse defense element of the ballistic missile defense system.

"(b) REQUIREMENTS.—The Director shall ensure that each test carried out under subsection (a) provides for one or more of the following:

"(1) The validation of technical improvements made to increase system performance and reliability.

"(2) The evaluation of the operational effectiveness of the ground-based midcourse defense element of the ballistic missile defense system.

"(3) The use of threat-representative targets and critical engagement conditions, including the use of threat-representative countermeasures.

"(4) The evaluation of new configurations of interceptors before they are fielded.

"(5) The satisfaction of the 'fly before buy' acquisition approach for new interceptor components or software.

"(6) The evaluation of the interoperability of the ground-based midcourse defense element with other elements of the ballistic missile defense systems.

"(c) EXCEPTIONS.—The Director may forgo a test under subsection (a) in a fiscal year under one or more of the following conditions:

"(1) Such a test would jeopardize national security.

"(2) Insufficient time considerations between post-test analysis and subsequent pre-test design.

"(3) Insufficient funding.

"(4) An interceptor is unavailable.

"(5) A target is unavailable or is insufficiently representative of threats.

"(6) The test range or necessary test assets are unavailable.

"(7) Inclement weather.

"(8) Any other condition the Director considers appropriate.

"(d) CERTIFICATION.—Not later than 45 days after forgoing a test for a condition or conditions under subsection (c)(8), the Under Secretary of Defense for Research and Engineering shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a certification setting forth the condition or conditions that caused the test to be forgone under such subsection.

"(e) REPORT.—Not later than 45 days after forgoing a test for any condition specified in subsection (c), the Director shall submit to the congressional defense committees a report setting forth the rationale for forgoing the test and a plan to restore an intercept flight test in the Integrated Master Test Plan of the Missile Defense Agency. In the case of a test forgone for a condition or conditions under subsection (c)(8), the report required by this subsection is in addition to the certification required by subsection (d)."

PILOT PROGRAM ON LOSS OF UNCLASSIFIED, CONTROLLED TECHNICAL INFORMATION

Pub. L. 114–328, div. A, title XVI, § 1692, Dec. 23, 2016, 130 Stat. 2636, provided that:

"(a) PILOT PROGRAM.—Beginning not later than 90 days after the date of the enactment of this Act [Dec. 23, 2016], the Director of the Missile Defense Agency shall carry out a pilot program to implement improvements to the data protection options in the programs of the Missile Defense Agency (including the contractors of the Agency), particularly with respect to unclassified, controlled technical information and controlled unclassified information.

"(b) PRIORITY.—In carrying out the pilot program under subsection (a), the Director shall give priority to implementing data protection options that are used by the private sector and have been proven successful.

"(c) DURATION.—The Director shall carry out the pilot program under subsection (a) for not more than a 5-year period.

"(d) NOTIFICATION.—Not later than 30 days before the date on which the Director commences the pilot program under subsection (a), the Director shall notify the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives], the Committee on Oversight and Government Reform of the House of Representatives, and the Committee on Homeland Security and Governmental Affairs of the Senate of—

"(1) the data protection options that the Director is considering to implement under the pilot program and the potential costs of such options; and

"(2) such option that is the preferred option of the Director.

"(e) DATA PROTECTION OPTIONS.—In this section, the term 'data protection options' means actions to improve processes, practices, and systems that relate to the safeguarding, hygiene, and data protection of information."

PLAN ON FULL INTEGRATION AND EXPLOITATION OF OVERHEAD PERSISTENT INFRARED CAPABILITY

Pub. L. 114–92, div. A, title XVI, § 1618, Nov. 25, 2015, 129 Stat. 1108, as amended by Pub. L. 116–92, div. A, title XVI, § 1604, Dec. 20, 2019, 133 Stat. 1723, provided that:

"(a) PLAN.—Not later than 180 days after the date of the enactment of this Act [Nov. 25, 2015], the Com-

mander of the United States Strategic Command and the Director of Cost Assessment and Program Evaluation, in coordination with the Director of National Intelligence, shall jointly submit to the appropriate congressional committees a plan for the integration of overhead persistent infrared capabilities to support the missions specified in subsection (b)(1).

''(b) ELEMENTS.—The plan under subsection (a) shall—

''(1) ensure that all overhead persistent infrared capabilities of the United States, including such capabilities that are planned to be developed, are integrated to allow for such capabilities to be exploited to support the requirements of the missions of the Department of Defense relating to—

''(A) strategic and theater missile warning;

''(B) ballistic and cruise missile defense, including with respect to missile tracking, fire control, and kill assessment;

''(C) technical intelligence supporting missile warning;

''(D) battlespace awareness;

''(E) other technical intelligence;

''(F) civil and environmental missions, including with respect to the collection of weather data; and

''(G) battle damage assessments; and

''(2) establish clear benchmarks by which to establish acquisition plans, manning, and budget requirements.

''(c) ANNUAL DETERMINATION.—The Secretary of Defense shall include, together with, or not later than 30 days after, the budget justification materials submitted to Congress in support of the budget of the Department of Defense for each of fiscal years 2021 through 2028 (as submitted with the budget of the President under section 1105(a) of title 31, United States Code), a written determination of how the plan under subsection (a) is being implemented.

''(d) APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.—In this section, the term 'appropriate congressional committees' means—

''(1) the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives]; and

''(2) the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate.''

INTEGRATION AND INTEROPERABILITY OF AIR AND MISSILE DEFENSE CAPABILITIES OF THE UNITED STATES

Pub. L. 114–92, div. A, title XVI, § 1675, Nov. 25, 2015, 129 Stat. 1131, as amended by Pub. L. 116–92, div. A, title IX, § 902(69), Dec. 20, 2019, 133 Stat. 1551; Pub. L. 116–283, div. A, title X, § 1081(f)(3), Jan. 1, 2021, 134 Stat. 3875, provided that:

''(a) INTEROPERABILITY OF MISSILE DEFENSE SYSTEMS.—The Vice Chairman of the Joint Chiefs of Staff and the chairman of the Missile Defense Executive Board (pursuant to section 1681(c) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232; 132 Stat. 2162)), acting through the Missile Defense Executive Board, shall ensure the interoperability and integration of the covered air and missile defense capabilities of the United States, including by carrying out operational testing.

''(b) ANNUAL DEMONSTRATION.—

''(1) REQUIREMENT.—Except as provided by paragraph (2), the Director of the Missile Defense Agency and the Secretary of the Army shall jointly ensure that not less than one intercept or flight test is carried out each year that demonstrates interoperability and integration among the covered air and missile defense capabilities of the United States.

''(2) WAIVER.—The Director and the Secretary may waive the requirement in paragraph (1) with respect to an intercept or flight test carried out during the year covered by the waiver if the chairman of the Missile Defense Executive Board—

''(A) determines that such waiver is necessary for such year; and

''(B) submits to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] notification of such waiver, including an explanation for how such waiver will not negatively affect demonstrating the interoperability and integration among the covered air and missile defense capabilities of the United States.

''(c) DEFINITIONS.—In this section, the term 'covered air and missile defense capabilities' means Patriot air and missile defense batteries and associated interceptors and systems, Aegis ships and associated ballistic missile interceptors (including Aegis Ashore capability), AN/TPY–2 radars, or terminal high altitude area defense batteries and interceptors.''

[Pub. L. 116–283, div. A, title X, § 1081(f), Jan. 1, 2021, 134 Stat. 3874, provided that the amendment made by section 1081(f)(3) of Pub. L. 116–283 to section 1675 of Pub. L. 114–92, set out above, is effective as of Dec. 23, 2016, and as if included in Pub. L. 114–92 as enacted.]

BOOST PHASE DEFENSE SYSTEM

Pub. L. 114–92, div. A, title XVI, § 1680, Nov. 25, 2015, 129 Stat. 1137, directed the Secretary of Defense to develop and field an airborne boost phase defense system by not later than fiscal year 2025, and to submit a report on its efforts to the congressional defense committees not later than 120 days after Nov. 25, 2015.

DEVELOPMENT AND DEPLOYMENT OF MULTIPLE-OBJECT KILL VEHICLE FOR MISSILE DEFENSE OF THE UNITED STATES HOMELAND

Pub. L. 114–92, div. A, title XVI, § 1681, Nov. 25, 2015, 129 Stat. 1138, directed the Director of the Missile Defense Agency to develop a highly reliable multiple-object kill vehicle for the ground-based midcourse defense system using sound acquisition practices, and to include in the budget justification materials submitted to Congress for fiscal year 2017 a report on the funding profile necessary for the program.

REQUIREMENT TO REPLACE CAPABILITY ENHANCEMENT I EXOATMOSPHERIC KILL VEHICLES

Pub. L. 114–92, div. A, title XVI, § 1682, Nov. 25, 2015, 129 Stat. 1139, directed the Director of the Missile Defense Agency to ensure, to the maximum extent practicable, that all remaining ground-based interceptors of the ground-based midcourse defense system that are armed with the capability enhancement I exoatmospheric kill vehicle were replaced with the redesigned exoatmospheric kill vehicle before Sept. 30, 2022.

ADDITIONAL MISSILE DEFENSE SENSOR COVERAGE FOR PROTECTION OF UNITED STATES HOMELAND

Pub. L. 114–92, div. A, title XVI, § 1684, Nov. 25, 2015, 129 Stat. 1140, directed the Director of the Missile Defense Agency to deploy, not later than Dec. 31, 2020, a long-range discrimination radar or other sensor capability to defend the United States from long-range ballistic missile threats from Iran, and to include in the budget justification materials submitted to Congress for fiscal years 2017 to 2020 the plan to carry out such deployment.

CONCEPT DEVELOPMENT OF SPACE-BASED MISSILE DEFENSE LAYER

Pub. L. 114–92, div. A, title XVI, § 1685, Nov. 25, 2015, 129 Stat. 1142, as amended by Pub. L. 114–328, div. A, title XVI, § 1683, Dec. 23, 2016, 130 Stat. 2624, directed the Director of the Missile Defense Agency, in coordination with the Secretary of the Air Force and the Director of the Defense Advanced Research Projects Agency, to commence, not later than 30 days after Nov. 25, 2015, the concept definition of a space-based ballistic missile intercept layer to the ballistic missile defense system, and directed the Director of the Missile Defense Agency to submit to the congressional defense committees, not later than 1 year after Nov. 25, 2015, a plan for devel-

oping one or more programs for a space-based ballistic missile intercept layer, and to commence research and development of such programs not later than 60 days after the submittal of the plan.

DEVELOPMENT OF REQUIREMENTS TO SUPPORT INTEGRATED AIR AND MISSILE DEFENSE CAPABILITIES

Pub. L. 114–92, div. A, title XVI, § 1687, Nov. 25, 2015, 129 Stat. 1143, provided that:

"(a) IN GENERAL.—Consistent with the memorandum of the Chairman of the Joint Chiefs of Staff of January 27, 2014, regarding joint integrated air and missile defense, the Vice Chairman of the Joint Chiefs of Staff shall oversee the development of warfighter requirements for persistent and survivable capabilities to detect, identify, determine the status, track, and support engagement of strategically important mobile or relocatable assets in all phases of conflict in order to achieve the objective of preventing the effective employment of such assets, including through offensive actions against such assets prior to their use.

"(b) PURPOSE OF REQUIREMENTS.—The requirements developed pursuant to subsection (a) shall be used and updated, as appropriate, for the purpose of informing applicable acquisition programs and systems-of-systems architecture planning that are funded through the Military Intelligence Program, the National Intelligence Program, and non-intelligence programs.

"(c) SUPPORTING ACTIVITIES.—The Vice Chairman shall also oversee the development of the enabling framework for intelligence support for integrated air and missile defense, including concepts for the integrated operation of multiple systems, and, as appropriate, the development of requirements for capabilities to be acquired to achieve such integrated operations.

"(d) SENSE OF CONGRESS.—It is the sense of Congress that new acquisition programs for applicable major systems or capabilities, or for upgrades to existing systems, should not be undertaken until the applicable requirements described in subsections (a) and (c) have been developed and incorporated into programmatic decision-making."

TESTING AND ASSESSMENT OF MISSILE DEFENSE SYSTEMS PRIOR TO PRODUCTION AND DEPLOYMENT

Pub. L. 113–291, div. A, title XVI, § 1662, Dec. 19, 2014, 128 Stat. 3657, as amended by Pub. L. 115–91, div. A, title XVI, § 1677(b), Dec. 12, 2017, 131 Stat. 1774, prohibited the Secretary of Defense from making a final production decision for, or from operationally deploying, certain components of the ballistic missile defense system without sufficient and operationally realistic testing.

[For termination, effective Dec. 31, 2021, of reporting provisions in subsecs. (c)(2) and (d)(2) of section 1662 of Pub. L. 113–291, formerly set out above, see section 1061 of Pub. L. 114–328, set out as a note under section 111 of this title.]

ACQUISITION PLAN FOR RE-DESIGNED EXO-ATMOSPHERIC KILL VEHICLE

Pub. L. 113–291, div. A, title XVI, § 1663, Dec. 19, 2014, 128 Stat. 3658, directed the Secretary of Defense to develop an acquisition plan for the re-design of the exo-atmospheric kill vehicle of the ground-based midcourse defense system, and required the Director of the Missile Defense Agency to submit a report to the congressional defense committees on such plan.

ADDITIONAL MISSILE DEFENSE RADAR FOR THE PROTECTION OF THE UNITED STATES HOMELAND

Pub. L. 113–66, div. A, title II, § 235, Dec. 26, 2013, 127 Stat. 714, directed the Director of the Missile Defense Agency to deploy a long-range discriminating radar against long-range ballistic missile threats from the Democratic People's Republic of Korea, directed the Secretary of Defense to ensure that the Secretary was able to deploy additional tracking and discrimination sensor capabilities to defend the United States from future long-range ballistic missile threats from Iran, and required submission to the congressional defense committees of a report on the sensor capabilities of the United States not later than 180 days after Dec. 26, 2013.

PLANS TO IMPROVE THE GROUND-BASED MIDCOURSE DEFENSE SYSTEM

Pub. L. 113–66, div. A, title II, § 237, Dec. 26, 2013, 127 Stat. 717, directed the Director of the Missile Defense Agency to develop options to achieve an improved kill assessment capability for the ground-based midcourse defense system by not later than Dec. 31, 2019, to develop an interim capability for improved hit assessment for the ground-based midcourse defense system that could be integrated into near-term exo-atmospheric kill vehicle upgrades and refurbishment, and to submit a report on such development not later than Apr. 1, 2014, and directed the Director of the Missile Defense Agency to submit a plan to develop and deploy an upgraded enhanced exo-atmospheric kill vehicle not later than 120 days after Dec. 26, 2013.

LIMITATION ON AVAILABILITY OF FUNDS FOR MISSILE DEFENSE INTERCEPTORS IN EUROPE

Pub. L. 111–383, div. A, title II, § 223(a)–(d), Jan. 7, 2011, 124 Stat. 4168, 4169, prohibited the expenditure of Department of Defense funds for the construction or deployment of missile defense interceptors in Europe until the host nation ratified a missile defense basing agreement and a status of forces agreement authorizing such interceptors and the Secretary of Defense submitted to the congressional defense committees the report on the independent assessment of alternative missile defense systems in Europe required by section 235(c)(2) of the National Defense Authorization Act for Fiscal Year 2010 (Pub. L. 111–84, 123 Stat. 2235).

LIMITATION ON AVAILABILITY OF FUNDS FOR PROCUREMENT, CONSTRUCTION, AND DEPLOYMENT OF MISSILE DEFENSES IN EUROPE

Pub. L. 111–84, div. A, title II, § 234, Oct. 28, 2009, 123 Stat. 2234, set forth reporting requirements for the use of Department of Defense funds for the acquisition or deployment of operational missiles of a long-range missile defense system in Europe, prior to repeal by Pub. L. 111–383, div. A, title II, § 223(e), Jan. 7, 2011, 124 Stat. 4169.

Pub. L. 110–417, [div. A], title II, § 233, Oct. 14, 2008, 122 Stat. 4393, as amended by Pub. L. 111–383, div. A, title X, § 1075(e)(3), Jan. 7, 2011, 124 Stat. 4374, prohibited the expenditure of Department of Defense funds for a long-range missile defense system in Europe unless the host nation ratified a missile defense basing agreement, and required a further certification to Congress by the Secretary of Defense.

POLICY OF THE UNITED STATES ON PROTECTION OF THE UNITED STATES AND ITS ALLIES AGAINST IRANIAN BALLISTIC MISSILES

Pub. L. 110–181, div. A, title II, § 229, Jan. 28, 2008, 122 Stat. 45, set forth as the policy of the United States to develop, along with its allies, a defense against Iranian ballistic missiles and to encourge the NATO alliance to accelerate its efforts to protect NATO territory against the threat of Iranian ballistic missiles.

POLICY OF THE UNITED STATES ON PRIORITIES IN THE DEVELOPMENT, TESTING, AND FIELDING OF MISSILE DEFENSE CAPABILITIES

Pub. L. 109–364, div. A, title II, § 223, Oct. 17, 2006, 120 Stat. 2130, set forth as the policy of the United States that the Department of Defense prioritize the development, testing, fielding, and improvement of effective near-term missile defense capabilities.

PLANS FOR TEST AND EVALUATION OF OPERATIONAL CAPABILITY OF THE BALLISTIC MISSILE DEFENSE SYSTEM

Pub. L. 109–163, div. A, title II, § 234, Jan. 6, 2006, 119 Stat. 3174, as amended by Pub. L. 109–364, div. A, title

II, § 225, Oct. 17, 2006, 120 Stat. 2130, directed the operational and test components of the Department of Defense to prepare a plan to test the operational capability of each block of the Ballistic Missile Defense System, and directed the Director of Operational Test and Evaluation to submit a report to the congressional defense committees.

INTEGRATION OF PATRIOT ADVANCED CAPABILITY-3 AND MEDIUM EXTENDED AIR DEFENSE SYSTEM INTO BALLISTIC MISSILE DEFENSE SYSTEM

Pub. L. 108–375, div. A, title II, § 232, Oct. 28, 2004, 118 Stat. 1835, designated the Patriot Advanced Capability-3/Medium Extended Air Defense System air and missile defense program as an element of the Ballistic Missile Defense System, prohibited the Secretary of the Army from making any significant change to the baseline technical specifications or the baseline schedule for the PAC–3/MEADS program without the concurrence of the Director of the Missile Defense Agency, and directed the Secretary of Defense to establish procedures for determining the effect of a proposed change to the procurement quantity for the PAC–3/MEADS program and to submit to Congress a report describing such procedures not later than Feb. 1, 2005.

BASELINES AND OPERATIONAL TEST AND EVALUATION FOR BALLISTIC MISSILE DEFENSE SYSTEM

Pub. L. 108–375, div. A, title II, § 234, Oct. 28, 2004, 118 Stat. 1837, directed the Secretary of Defense, in consultation with the Director of Operational Test and Evaluation, to prescribe, not later than Feb. 1, 2005, criteria for operationally realistic testing of fieldable prototypes developed under the ballistic missile defense spiral development program, and to ensure that, not later than Oct. 1, 2005, any test of the ballistic missile defense system was conducted consistent with such criteria.

REPORT REQUIREMENTS RELATING TO BALLISTIC MISSILE DEFENSE PROGRAMS

Pub. L. 107–314, div. A, title II, § 221, Dec. 2, 2002, 116 Stat. 2484, related to annual submission of current performance goals and development baselines; research, development, test, and evaluation budget justification materials; and review of Missile Defense Agency criteria in relation to military requirements, prior to repeal by Pub. L. 112–81, div. A, title II, § 231(b)(3), Dec. 31, 2011, 125 Stat. 1339.

PROVISION OF INFORMATION ON FLIGHT TESTING OF GROUND-BASED MIDCOURSE NATIONAL MISSILE DEFENSE SYSTEM

Pub. L. 107–314, div. A, title II, § 224, Dec. 2, 2002, 116 Stat. 2485, directed the Director of the Missile Defense Agency to provide to the congressional defense committees information on the results of each flight test of the Ground-based Midcourse national missile defense system.

MISSILE DEFENSE AGENCY TEST PROGRAM

Pub. L. 107–107, div. A, title II, § 232(c)–(h), Dec. 28, 2001, 115 Stat. 1037–1039, as amended by Pub. L. 107–314, div. A, title II, § 225(b)(2)(A), Dec. 2, 2002, 116 Stat. 2486; Pub. L. 108–136, div. A, title II, § 221(b)(2), (c)(2), Nov. 24, 2003, 117 Stat. 1419; Pub. L. 108–375, div. A, title II, § 233, Oct. 28, 2004, 118 Stat. 1836; Pub. L. 109–163, div. A, title II, § 232, Jan. 6, 2006, 119 Stat. 3174; Pub. L. 109–364, div. A, title II, § 224, Oct. 17, 2006, 120 Stat. 2130; Pub. L. 110–181, div. A, title II, § 225, Jan. 28, 2008, 122 Stat. 41; Pub. L. 110–417, [div. A], title II, § 231(a), (b), Oct. 14, 2008, 122 Stat. 4390, 4391; Pub. L. 111–383, div. A, title X, § 1075(e)(2), Jan. 7, 2011, 124 Stat. 4374; Pub. L. 112–81, div. A, title II, § 232(c), title X, § 1062(h), Dec. 31, 2011, 125 Stat. 1340, 1585, directed the Director of the Missile Defense Agency to ensure that critical technology for a missile defense program was successfully demonstrated before it entered into operational service, and directed the Director of Operational Test and Evaluation to conduct annual assessments of, and to report on, the program and the ballistic missile defense system.

[For termination, effective Dec. 31, 2021, of annual reporting provisions in section 232(h) of Pub. L. 107–107, formerly set out above, see section 1061 of Pub. L. 114–328, set out as a note under section 111 of this title.]

MISSILE DEFENSE TESTING INITIATIVE

Pub. L. 107–107, div. A, title II, § 234, Dec. 28, 2001, 115 Stat. 1039, set out requirements for the testing infrastructure of the ballistic missile defense program, including specific requirements for ground-based midcourse interceptor systems for fiscal year 2002.

NATIONAL MISSILE DEFENSE PROGRAM

Pub. L. 105–85, div. A, title II, § 231, Nov. 18, 1997, 111 Stat. 1661, provided that the Secretary of Defense was to ensure that the National Missile Defense Program was structured and programmed for funding so as to support a test, in fiscal year 1999, of an integrated national missile defense system that was representative of the national missile defense system architecture that could achieve initial operational capability in fiscal year 2003, and that not later than Feb. 15, 1998, the Secretary was to submit to the congressional defense committees a plan for the development and deployment of a national missile defense system that could achieve initial operational capability in fiscal year 2003.

ENHANCED COOPERATION BETWEEN NATIONAL NUCLEAR SECURITY ADMINISTRATION AND MISSILE DEFENSE AGENCY

Pub. L. 106–398, § 1 [div. C, title XXXI, § 3132], Oct. 30, 2000, 114 Stat. 1654, 1654A–455, as amended by Pub. L. 107–314, div. A, title II, § 225(b)(3), Dec. 2, 2002, 116 Stat. 2486, directed the Secretary of Energy and the Secretary of Defense to modify the memorandum of understanding entered into under section 3131 of the National Defense Authorization Act for Fiscal Year 1998 (Pub. L. 105–85, formerly set out as a note below) to provide for jointly funded projects.

Pub. L. 105–85, div. C, title XXXI, § 3131, Nov. 18, 1997, 111 Stat. 2034, directed the Secretary of Energy and the Secretary of Defense to enter into a memorandum of understanding to improve and facilitate the use of the expertise of the national laboratories for the ballistic missile defense programs of the Department of Defense.

BALLISTIC MISSILE DEFENSE PROGRAM

Pub. L. 104–106, div. A, title II, subtitle C, Feb. 10, 1996, 110 Stat. 228–233, as amended by Pub. L. 105–85, div. A, title II, § 236, Nov. 18, 1997, 111 Stat. 1665; Pub. L. 106–65, div. A, title X, § 1067(6), Oct. 5, 1999, 113 Stat. 774; Pub. L. 107–314, div. A, title X, § 1041(c), Dec. 2, 2002, 116 Stat. 2646, known as the Ballistic Missile Defense Act of 1995, restructured the core theater missile defense program, directed the Secretary of Defense to prepare a plan to develop theater missile defense systems, prohibited the use of Department of Defense funds to implement an agreement between the United States and any independent state of the former Soviet Union that would establish a demarcation between theater missile defense systems and anti-ballistic missile systems or restrict United States theater missile defense systems, and repealed the Missile Defense Act of 1991 (Pub. L. 102–190, div. A, title II, part C).

COMPLIANCE OF BALLISTIC MISSILE DEFENSE SYSTEMS AND COMPONENTS WITH ABM TREATY

Pub. L. 103–337, div. A, title II, § 231, Oct. 5, 1994, 108 Stat. 2699, prohibited the use of funds appropriated to the Department of Defense for the development or testing of anti-ballisitic missile systems or components except as consistent with the ABM Treaty, limited the use of funds appropriated for the Brilliant Eyes program until the Secretary of Defense submitted a report to Congress on the compliance of that program with the ABM Treaty, and directed the Secretary of Defense to review the Navy Upper Tier program to determine its compliance with the ABM Treaty.

Pub. L. 103–160, div. A, title II, § 234, Nov. 30, 1993, 107 Stat. 1595, contained findings of Congress, required compliance review, and limited funding pending submission of report, prior to repeal by Pub. L. 104–106, div. A, title II, § 253(6), Feb. 10, 1996, 110 Stat. 235.

THEATER MISSILE DEFENSE MASTER PLAN

Pub. L. 103–160, div. A, title II, § 235, Nov. 30, 1993, 107 Stat. 1598, directed the Secretary of Defense to maximize the use of existing systems and technologies and promote joint use by the military departments of ballistic missile defense equipment in carrying out the Theater Missile Defense Initiative, to submit to Congress a TMD Master Plan, and to conduct a review of opportunities to streamline the weapon systems acquisition process applicable to the development, testing, and deployment of theater ballistic missile defenses.

COOPERATION OF UNITED STATES ALLIES ON DEVELOPMENT OF TACTICAL AND THEATER MISSILE DEFENSES

Pub. L. 103–160, div. A, title II, § 242(a)–(e), Nov. 30, 1993, 107 Stat. 1603–1605, stated congressional findings, required Secretary of Defense to develop plan to coordinate development and implementation of Theater Missile Defense programs of United States with theater missile defense programs of allies of United States, specified contents of such plan, required Secretary to submit to Congress report on such plan in both classified and unclassified versions, required Secretary to include in each annual Theater Missile Defense Initiative report to Congress report on actions taken to implement such plan, specified contents of such report, related to restriction on funds, stated sense of Congress that whenever United States deployed theater ballistic missile defenses to protect country that had not provided support for development of such defenses United States was to consider seeking reimbursement from such country to cover at least incremental cost of such deployment, and related to congressional encouragement of allies of United States to participate in cooperative Theater Missile Defense programs of United States and encouragement of participation by United States in cooperative theater missile defense efforts of allied nations, prior to repeal by Pub. L. 104–106, div. A, title II, § 253(7), Feb. 10, 1996, 110 Stat. 235.

TRANSFER OF FOLLOW-ON TECHNOLOGY PROGRAMS

Pub. L. 103–160, div. A, title II, § 243, Nov. 30, 1993, 107 Stat. 1605, as amended by Pub. L. 104–201, div. A, title X, § 1073(e)(1)(E), Sept. 23, 1996, 110 Stat. 2658; Pub. L. 107–314, div. A, title II, § 225(b)(4)(B), Dec. 2, 2002, 116 Stat. 2486, provided that management and budget responsibility for research and development of any program to develop far-term follow-on technology relating to ballistic missile defense was to be provided through the Defense Advanced Research Projects Agency or the appropriate military department, and directed the Secretary of Defense to submit to the congressional defense committees a report identifying each program the Secretary had transferred from the Missile Defense Agency and the the agency or military department to which each such transfer was made.

THEATER MISSILE DEFENSE INITIATIVE

Pub. L. 102–484, div. A, title II, § 231, Oct. 23, 1992, 106 Stat. 2354, established the Theater Missile Defense Initiative to carry out all theater and tactical missile defense activities of the Department of Defense, effective 90 days after Oct. 23, 1992.

MISSILE DEFENSE PROGRAM

Pub. L. 102–190, div. A, title II, part C, Dec. 5, 1991, 105 Stat. 1321, as amended by Pub. L. 102–484, div. A, title II, § 234(a)–(d)(1), (e), (f), title X, § 1053(1), (2), Oct. 23, 1992, 106 Stat. 2356, 2357, 2501; Pub. L. 103–35, title II, §§ 202(a)(2), 203(b)(1), May 31, 1993, 107 Stat. 101, 102; Pub. L. 103–160, div. A, title II, §§ 232, 243(e), Nov. 30, 1993, 107 Stat. 1593, 1606; Pub. L. 103–337, div. A, title II, § 233, Oct. 5, 1994, 108 Stat. 2700, specified that such provisions could be cited as the ''Missile Defense Act of 1991'', and related to missile defense goal of United States, implementation of goal, review of follow-on deployment options, definition of term ''ABM Treaty'', and interpretation of such provisions, prior to repeal by Pub. L. 104–106, div. A, title II, § 238, Feb. 10, 1996, 110 Stat. 233.

Similar provisions were contained in the following prior authorization act:

Pub. L. 101–510, div. A, title II, § 221, Nov. 5, 1990, 104 Stat. 1511.

STRETCHOUT OF MAJOR DEFENSE ACQUISITION PROGRAMS

Pub. L. 100–456, div. A, title I, § 117, Sept. 29, 1988, 102 Stat. 1933, as amended by Pub. L. 104–106, div. D, title XLIII, § 4321(i)(3), Feb. 10, 1996, 110 Stat. 676, required Secretary of Defense to submit a stretchout impact statement for certain major defense acquisition programs at same time the budget for any fiscal year is submitted to Congress and to submit to Committees on Armed Services of Senate and House of Representatives, no later than Mar. 15, 1989, a report on feasibility and effect of establishing maximum production rates by December 1990 for certain major defense acquisition programs, prior to repeal by Pub. L. 105–85, div. A, title X, § 1041(c), Nov. 18, 1997, 111 Stat. 1885.

PROHIBITION OF CERTAIN CONTRACTS WITH FOREIGN ENTITIES

Pub. L. 100–180, div. A, title II, § 222, Dec. 4, 1987, 101 Stat. 1055, prohibited use of appropriated funds for certain Strategic Defense Initiative program contracts with foreign entities, prior to repeal by Pub. L. 111–383, div. A, title II, § 222, Jan. 7, 2011, 124 Stat. 4168.

LIMITATION ON TRANSFER OF CERTAIN MILITARY TECHNOLOGY TO INDEPENDENT STATES OF FORMER SOVIET UNION

Pub. L. 100–180, div. A, title II, § 223, Dec. 4, 1987, 101 Stat. 1056, as amended by Pub. L. 103–199, title II, § 203(a)(1), Dec. 17, 1993, 107 Stat. 2321, prohibited the transfer of technology developed with funds appropriated for the Ballistic Missile Defense Program to Russia or any other independent state of the former Soviet Union unless the President certified to Congress that such transfer was in the national interest and was to be made for the purpose of maintaining peace.

SDI ARCHITECTURE TO REQUIRE HUMAN DECISION MAKING

Pub. L. 100–180, div. A, title II, § 224, Dec. 4, 1987, 101 Stat. 1056, prohibited the Federal Government from funding or otherwise supporting the development of command and control systems for strategic defense in the boost or post-boost phase against ballistic missile threats that would permit such strategic defenses to initiate the directing of damaging or lethal fire except by affirmative human decision at an appropriate level of authority.

PROHIBITION ON DEPLOYMENT OF ANTI-BALLISTIC MISSILE SYSTEM UNLESS AUTHORIZED BY LAW

Pub. L. 100–180, div. A, title II, § 226, Dec. 4, 1987, 101 Stat. 1057, prohibited Secretary of Defense from deploying anti-ballistic missile system unless such deployment was specifically authorized by law after Dec. 4, 1987, prior to repeal by Pub. L. 104–106, div. A, title II, § 253(3), Feb. 10, 1996, 110 Stat. 234.

ESTABLISHMENT OF FEDERALLY FUNDED RESEARCH AND DEVELOPMENT CENTER TO SUPPORT SDI PROGRAM

Pub. L. 100–180, div. A, title II, § 227, Dec. 4, 1987, 101 Stat. 1057, authorized the Secretary of Defense, using funds appropriated to the Department of Defense for the Strategic Defense Initiative program, to enter into a contract not to be awarded before Oct. 1, 1989, to provide for the establishment and operation of a federally funded research and development center (FFRDC) to

provide independent and objective technical support to the Strategic Defense Initiative program, and provided that no Federal funds could be provided to the new FFRDC after the end of the five-year period beginning on the date of the award of the first contract awarded.

LIMITATION ON ESTABLISHMENT OF FEDERALLY FUNDED RESEARCH AND DEVELOPMENT CENTER FOR STRATEGIC DEFENSE INITIATIVE PROGRAM

Pub. L. 99–661, div. A, title II, § 213, Nov. 14, 1986, 100 Stat. 3841, prohibited the Secretary of Defense from obligating or expending any funds for the purpose of operating a Federally funded research and development center that was established for the support of the Strategic Defense Initiative Program after Nov. 14, 1986, unless the Secretary submitted to the Committees on Armed Services of the Senate and House of Representatives a report with respect to such proposed center and funds were specifically authorized to be appropriated for such purpose in an Act other than an appropriations Act or a continuing resolution.

SHOULD-COST ANALYSES

Pub. L. 99–145, title IX, § 915, Nov. 8, 1985, 99 Stat. 688, as amended by Pub. L. 100–26, § 11(a)(2), Apr. 21, 1987, 101 Stat. 288, required Secretary of Defense to submit to Congress an annual report setting forth Secretary's plan for performance during next fiscal year of cost analyses for major defense acquisition programs for purpose of determining how much production of covered systems under such programs should cost, prior to repeal by Pub. L. 101–510, div. A, title XIII, § 1322(d)(2), Nov. 5, 1990, 104 Stat. 1672.

REQUIREMENT FOR SPECIFIC AUTHORIZATION FOR DEPLOYMENT OF STRATEGIC DEFENSE INITIATIVE SYSTEM

Pub. L. 99–145, title II, § 222, Nov. 8, 1985, 99 Stat. 613, provided that strategic defense system developed as consequence of research, development, test, and evaluation conducted on Strategic Defense Initiative program could not be deployed in whole or in part unless President made a certain determination and certification to Congress and funding for deployment of such system was specifically authorized by legislation enacted after date of certification, prior to repeal by Pub. L. 104–106, div. A, title II, § 253(1), Feb. 10, 1996, 110 Stat. 234.

ANNUAL REPORT ON BALLISTIC MISSILE DEFENSE PROGRAM

Pub. L. 101–189, div. A, title II, § 224, Nov. 29, 1989, 103 Stat. 1398, as amended by Pub. L. 103–160, div. A, title II, § 240, Nov. 30, 1993, 107 Stat. 1603; Pub. L. 104–201, div. A, title II, § 244, Sept. 23, 1996, 110 Stat. 2463, provided that not later than March 15 of each year, the Secretary of Defense was to transmit to Congress a report on the programs and projects that constitute the Ballistic Missile Defense program and on any other program or project relating to defense against ballistic missiles, prior to repeal by Pub. L. 106–65, div. A, title X, § 1032(b)(1), Oct. 5, 1999, 113 Stat. 751.

Pub. L. 100–180, div. A, title II, § 231(a), Dec. 4, 1987, 101 Stat. 1059, provided that not later than Mar. 15, 1988 and Mar. 15, 1989, the Secretary of Defense was to transmit to Congress a report on the programs that constitute the Strategic Defense Initiative and on any other program relating to defense against ballistic missiles.

Pub. L. 98–525, title XI, § 1102, Oct. 19, 1984, 98 Stat. 2580, required Secretary of Defense, at time of his annual budget presentation to Congress beginning with fiscal year 1986 and ending with fiscal year 1990, to transmit to Committees on Armed Services and Foreign Affairs of House of Representatives and Committees on Armed Services and Foreign Relations of Senate, a detailed report on programs that constitute SDI, prior to repeal by Pub. L. 100–180, div. A, title II, § 231(b), Dec. 4, 1987, 101 Stat. 1060.

PLANS FOR MANAGEMENT OF TECHNICAL DATA AND COMPUTER CAPABILITY IMPROVEMENTS

Pub. L. 98–525, title XII, § 1252, Oct. 19, 1984, 98 Stat. 2610, directed Secretary of Defense, not later than one year after Oct. 19, 1984, to develop a plan for an improved system for the management of technical data relating to any major system of the Department of Defense and, not later than 5 years after Oct. 19, 1984, to complete implementation of the management plan, directed Comptroller General, not later than 18 months after Oct. 19, 1984, to transmit to Congress a report evaluating the plan developed, and directed Secretary of Defense, not later than 180 days after Oct. 19, 1984, to transmit to Congress a plan to improve substantially the computer capability of each of the military departments and of the Defense Logistics Agency to store and access rapidly data that is needed for the efficient procurement of supplies.

CONSULTATION WITH ALLIES ON STRATEGIC DEFENSE INITIATIVE PROGRAM

Pub. L. 98–473, title I, § 101(h) [title VIII, § 8104], Oct. 12, 1984, 98 Stat. 1904, 1942, conveyed the sense of Congress that the President should consult with other member nations of the North Atlantic Treaty Organization, Japan, and other appropriate allies concerning the research being conducted in the Strategic Defense Initiative program and that the Secretary of Defense should report the status of such consultations at the time of the submission of annual budget presentation materials for each fiscal year beginning after Sept. 30, 1984.

ANTISATELLITE WEAPONS TEST

Pub. L. 100–180, div. A, title II, § 208, Dec. 4, 1986, 101 Stat. 1048, prohibited the Secretary of Defense, until Oct. 1, 1988, from carrying out a test of the Space Defense System (antisatellite weapon) involving the F–15 launched miniature homing vehicle against an object in space until the President certified to Congress that the Soviet Union had conducted, after Dec. 4, 1987, a test against an object in space of a dedicated antisatellite weapon.

Pub. L. 99–661, div. A, title II, § 231, Nov. 14, 1986, 100 Stat. 3847, prohibited the Secretary of Defense, until Oct. 1, 1987, from carrying out a test of the Space Defense System (anti-satellite weapon) against an object in space until the President certified to Congress that the Soviet Union had conducted, after Nov. 14, 1986, a test against an object in space of a dedicated anti-satellite weapon.

Similar provisions were contained in the following prior acts:

Pub. L. 99–500, § 101(c) [title XI, § 1101], Oct. 18, 1986, 100 Stat. 1783–82, 1783–177, and Pub. L. 99–591, § 101(c) [title XI, § 1101], Oct. 30, 1986, 100 Stat. 3341–82, 3341–177.

Pub. L. 99–190, § 101(b) [title VIII, § 8097], Dec. 19, 1985, 99 Stat. 1185, 1219.

Pub. L. 99–145, title II, § 208(a), (b), Nov. 8, 1985, 99 Stat. 610, prohibited the use of funds to test the miniature homing vehicle (MHV) anti-satellite warhead launched from an F–15 aircraft unless the President made a certification to Congress as provided in section 8100 of the Department of Defense Appropriations Act, 1985 (Pub. L. 98–473, title I, § 101(h) [title VIII, § 8100], formerly set out as a note below), and provided that no more than three such tests could be conducted before Oct. 1, 1986.

Pub. L. 98–473, title I, § 101(h) [title VIII, § 8100], Oct. 12, 1984, 98 Stat. 1904, 1941, prohibited the use of funds to test the miniature homing vehicle (MHV) anti-satellite warhead launched from an F–15 aircraft unless the President made a certification to Congress that certain conditions had been satisfied, and provided that no more than three such tests could be conducted during fiscal year 1985.

Similar provisions were contained in the following prior authorization act:

Pub. L. 98–94, title XI, § 1235, Sept. 24, 1983, 97 Stat. 695; as amended by Pub. L. 98–525, title II, § 205, Oct. 19, 1984, 98 Stat. 2509.

EAST COAST TRIDENT BASE AND MX MISSILE SYSTEM SITES; USE OF FUNDS APPROPRIATED TO DEPARTMENT OF DEFENSE; ASSISTANCE TO NEARBY COMMUNITIES TO HELP MEET COSTS OF INCREASED MUNICIPAL SERVICES

Pub. L. 96–418, title VIII, § 802, Oct. 10, 1980, 94 Stat. 1775, as amended by Pub. L. 97–99, title IX, § 904(b), Dec. 23, 1981, 95 Stat. 1382; Pub. L. 98–115, title VIII, § 805, Oct. 11, 1983, 97 Stat. 785; Pub. L. 101–510, div. A, title XIII, § 1322(f), Nov. 5, 1990, 104 Stat. 1672, authorized the Secretary of Defense to assist communities located near MX Missile System sites and the East Coast Trident Base, and the States in which such communities were located, in meeting the increased costs of municipal services and facilities resulting from the construction and operation of the MX Missile System or the East Coast Trident Base.

MX MISSILE AND BASING MODE

Pub. L. 96–342, title II, § 202, Sept. 8, 1980, 94 Stat. 1079, directed the Secretary of Defense to proceed with the development of the MX missile and a Multiple Protective Structure (MPS) basing mode in order to achieve an Initial Operational Capability not later than Dec. 31, 1986.

DEVELOPMENT OF MX MISSILE SYSTEM

Pub. L. 96–29, title II, § 202, June 27, 1979, 93 Stat. 79, directed the Secretary of Defense to proceed with the development of the Multiple Protective Structure (MPS) system concurrently with the development of the MX missile, unless and until the Secretary of Defense certified to the Congress that an alternative basing mode was militarily or technologically superior to, and was more cost effective than, the MPS system or the President informed the Congress that in his view the MPS system was not consistent with United States national security interests.

REPORTS TO CONGRESS OF ACQUISITIONS FOR MAJOR DEFENSE SYSTEMS

Pub. L. 94–106, title VIII, § 811, Oct. 7, 1975, 89 Stat. 539, as amended by Pub. L. 96–107, title VIII, § 809, Nov. 9, 1979, 93 Stat. 815; Pub. L. 97–86, title IX, § 917(e), Dec. 1, 1981, 95 Stat. 1131, which required reports to Congress respecting acquisitions of major defense systems, including total program acquisition unit costs, was repealed by Pub. L. 97–252, title XI, § 1107(b), Sept. 8, 1982, 96 Stat. 746, effective Jan. 1, 1983, as provided in section 1107(c) of Pub. L. 97–252, set out as an Effective Date note under section 2432 of this title. See sections 2432 and 2433 of this title.

TRIDENT SUPPORT SITE, BANGOR, WASHINGTON; FINANCIAL AID TO LOCAL COMMUNITIES; REPORTS

Pub. L. 93–552, title VI, § 608, Dec. 27, 1974, 88 Stat. 1763, authorized the Secretary of Defense to assist communities located near the TRIDENT Support Site in Bangor, Washington, in meeting the increased costs of municipal services and facilities resulting from the construction and operation of the TRIDENT Weapon System, and directed the Secretary to transmit to the Committees on Armed Services of the Senate and the House of Representatives semiannual reports on such assistance provided during the preceding six-month period.

§ 2431a. Acquisition strategy

(a) ACQUISITION STRATEGY REQUIRED.—There shall be an acquisition strategy for each major defense acquisition program, each major automated information system, and each major system approved by a milestone decision authority.

(b) RESPONSIBLE OFFICIAL.—For each acquisition strategy required by subsection (a), the Under Secretary of Defense for Acquisition and Sustainment, or the milestone decision authority, when the milestone decision authority is the service acquisition executive of the military department that is managing the program, is responsible for issuing and maintaining the requirements for—

(1) the content of the strategy; and

(2) the review and approval process for the strategy.

(c) CONSIDERATIONS.—(1) In issuing requirements for the content of an acquisition strategy for a major defense acquisition program, major automated information system, or major system, the Under Secretary, or the milestone decision authority, when the milestone decision authority is the service acquisition executive of the military department that is managing the program, shall ensure that—

(A) the strategy clearly describes the proposed top-level business and technical management approach for the program or system, in sufficient detail to allow the milestone decision authority to assess the viability of the proposed approach, the method of implementing laws and policies, and program objectives;

(B) the strategy contains a clear explanation of how the strategy is designed to be implemented with available resources, such as time, funding, and management capacity;

(C) the strategy is tailored to address program requirements and constraints; and

(D) the strategy considers the items listed in paragraph (2).

(2) Each strategy shall, where appropriate, consider the following:

(A) An approach that delivers required capability in increments, each depending on available mature technology, and that recognizes up front the need for future capability improvements.

(B) Acquisition approach, including industrial base considerations in accordance with section 2440 of this title.

(C) Risk management, including such methods as competitive prototyping at the system, subsystem, or component level.

(D) Business strategy, including measures to ensure competition at the system and subsystem level throughout the life-cycle of the program or system in accordance with section 2337 of this title.

(E) Contracting strategy, including—

(i) contract type and how the type selected relates to level of program risk in each acquisition phase;

(ii) how the plans for the program or system to reduce risk enable the use of fixed-price elements in subsequent contracts and the timing of the use of those fixed price elements;

(iii) market research; and

(iv) consideration of small business participation.

(F) Intellectual property strategy in accordance with section 2320 of this title.

(G) International involvement, including foreign military sales and cooperative oppor-

tunities, in accordance with section 2350a of this title.

(H) Multiyear procurement in accordance with section 2306b of this title.

(I) Integration of current intelligence assessments into the acquisition process.

(J) Requirements related to logistics, maintenance, and sustainment in accordance with sections 2464 and 2466 of this title.

(d) REVIEW.—(1) The milestone decision authority shall review and approve, as appropriate, the acquisition strategy for a major defense acquisition program, major automated information system, or major system at each of the following times:

(A) Milestone A approval.

(B) The decision to release the request for proposals for development of the program or system.

(C) Milestone B approval.

(D) Each subsequent milestone.

(E) Review of any decision to enter into full-rate production.

(F) When there has been—

(i) a significant change to the cost of the program or system;

(ii) a critical change to the cost of the program or system;

(iii) a significant change to the schedule of the program or system; or

(iv) a significant change to the performance of the program or system.

(G) Any other time considered relevant by the milestone decision authority.

(2) If the milestone decision authority revises an acquisition strategy for a program or system because of a change described in paragraph (1)(F), the milestone decision authority shall provide notice of the revision to the congressional defense committees.

(e) DEFINITIONS.—In this section:

(1) The term ''major defense acquisition program'' has the meaning provided in section 2430 of this title.

(2) The term ''major system'' has the meaning provided in section 2302(5) of this title.

(3) The term ''Milestone A approval'' means a decision to enter into technology maturation and risk reduction pursuant to guidance prescribed by the Secretary of Defense for the management of Department of Defense acquisition programs.

(4) The term ''Milestone B approval'' has the meaning provided in section 2366(e)(7) of this title.

(5) The term ''milestone decision authority'', with respect to a major defense acquisition program, major automated information system, or major system, means the official within the Department of Defense designated with the overall responsibility and authority for acquisition decisions for the program or system, including authority to approve entry of the program or system into the next phase of the acquisition process.

(6) The term ''management capacity'', with respect to a major defense acquisition program, major automated information system, or major system, means the capacity to manage the program or system through the use of highly qualified organizations and personnel with appropriate experience, knowledge, and skills.

(7) The term ''significant change to the cost'', with respect to a major defense acquisition program or major system, means a significant cost growth threshold, as that term is defined in section 2433(a)(4) of this title.

(8) The term ''critical change to the cost'', with respect to a major defense acquisition program or major system, means a critical cost growth threshold, as that term is defined in section 2433(a)(5) of this title.

(9) The term ''significant change to the schedule'', with respect to a major defense acquisition program, major automated information system, or major system, means any schedule delay greater than six months in a reported event.

(Added Pub. L. 114–92, div. A, title VIII, § 821(a)(1), Nov. 25, 2015, 129 Stat. 897; amended Pub. L. 114–328, div. A, title VIII, § 848, Dec. 23, 2016, 130 Stat. 2292; Pub. L. 115–91, div. A, title X, § 1081(a)(39), Dec. 12, 2017, 131 Stat. 1596; Pub. L. 116–92, div. A, title IX, § 902(70), Dec. 20, 2019, 133 Stat. 1551.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1847(b)(1)(A), Jan. 1, 2021, 134 Stat. 4151, 4253, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 322 of this title, as added by section 1847(a) of Pub. L. 116–283, inserted after the table of sections at the beginning of subchapter I, and redesignated as section 4211 of this title. See Effective Date of 2021 Amendment note below.

AMENDMENTS

2019—Subsec. (b). Pub. L. 116–92 substituted ''Under Secretary of Defense for Acquisition and Sustainment'' for ''Under Secretary of Defense for Acquisition, Technology, and Logistics'' in introductory provisions.

2017—Subsec. (d)(1). Pub. L. 115–91 inserted ''(1)'' before ''The milestone''.

2016—Subsec. (b). Pub. L. 114–328, § 848(1), in introductory provisions, inserted '', or the milestone decision authority, when the milestone decision authority is the service acquisition executive of the military department that is managing the program,'' after ''the Under Secretary of Defense for Acquisition, Technology, and Logistics''.

Subsec. (c)(1). Pub. L. 114–328, § 848(2)(A), in introductory provisions, inserted '', or the milestone decision authority, when the milestone decision authority is the service acquisition executive of the military department that is managing the program,'' after ''the Under Secretary''.

Subsec. (c)(2)(C). Pub. L. 114–328, § 848(2)(B), struck out '', in accordance with section 2431b of this title'' before period at end.

Subsec. (d). Pub. L. 114–328, § 848(3), substituted ''The'' for ''(1) Subject to the authority, direction, and control of the Under Secretary of Defense for Acquisition, Technology, and Logistics, the'' and, in par. (2), inserted ''because of a change described in paragraph (1)(F)'' after ''for a program or system''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of

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Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 2431b. Risk management and mitigation in major defense acquisition programs and major systems

(a) REQUIREMENT.—The Secretary of Defense shall ensure that the initial acquisition strategy (required under section 2431a of this title) approved by the milestone decision authority and any subsequent revisions include the following:

(1) A comprehensive approach for managing and mitigating risk (including technical, cost, and schedule risk) during each of the following periods or when determined appropriate by the milestone decision authority:

(A) The period preceding engineering manufacturing development, or its equivalent.

(B) The period preceding initial production.

(C) The period preceding full-rate production.

(2) An identification of the major sources of risk in each of the periods listed in paragraph (1) to improve programmatic decisionmaking and appropriately minimize and manage program concurrency.

(b) APPROACH TO MANAGE AND MITIGATE RISKS.—The comprehensive approach to manage and mitigate risk included in the acquisition strategy for purposes of subsection (a)(1) shall, at a minimum, include consideration of risk mitigation techniques such as the following:

(1) Prototyping (including prototyping at the system, subsystem, or component level and competitive prototyping, where appropriate) and, if prototyping at either the system, subsystem, or component level is not used, an explanation of why it is not appropriate.

(2) Modeling and simulation, the areas that modeling and simulation will assess, and identification of the need for development of any new modeling and simulation tools in order to support the comprehensive strategy.

(3) Technology demonstrations and decision points for disciplined transition of planned technologies into programs or the selection of alternative technologies.

(4) Multiple design approaches.

(5) Alternative designs, including any designs that meet requirements but do so with reduced performance.

(6) Phasing of program activities or related technology development efforts in order to address high-risk areas as early as feasible.

(7) Manufacturability and industrial base availability.

(8) Independent risk element assessments by outside subject matter experts.

(9) Schedule and funding margins for identified risks.

(c) PREFERENCE FOR PROTOTYPING.—To the maximum extent practicable and consistent with the economical use of available financial resources, the milestone decision authority for each major defense acquisition program shall ensure that the acquisition strategy for the program provides for—

(1) the production of competitive prototypes at the system or subsystem level before Milestone B approval; or

(2) if the production of competitive prototypes is not practicable, the production of single prototypes at the system or subsystem level.

(d) DEFINITIONS.—

(1) CONCURRENCY.—The term ''concurrency'' means, with respect to an acquisition strategy, the combination or overlap of program phases or activities.

(2) MAJOR DEFENSE ACQUISITION PROGRAM AND MAJOR SYSTEM.—The terms ''major defense acquisition program'' and ''major system'' have the meanings provided in section 2431a of this title.

(Added Pub. L. 114–92, div. A, title VIII, § 822(a)(1), Nov. 25, 2015, 129 Stat. 900; amended Pub. L. 114–328, div. A, title X, § 1081(a)(7), Dec. 23, 2016, 130 Stat. 2417.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1847(b)(3), Jan. 1, 2021, 134 Stat. 4151, 4254, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 322 of this title, as added by section 1847(a) of Pub. L. 116–283, inserted after section 4211, and redesignated as section 4212 of this title. See Effective Date of 2021 Amendment note below.

AMENDMENTS

2016—Subsec. (d). Pub. L. 114–328 amended subsec. (d) generally. Prior to amendment, subsec. (d) defined terms ''major defense acquisition program'' and ''major system''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 2432. Selected Acquisition Reports

(a) In this section:

(1) The term ''program acquisition unit cost'', with respect to a major defense acquisition program, means the amount equal to (A) the total cost for development and procurement of, and system-specific military construction for, the acquisition program, divided by (B) the number of fully-configured end items to be produced for the acquisition program.

(2) The term ''procurement unit cost'', with respect to a major defense acquisition program, means the amount equal to (A) the total of all funds programmed to be available for obligation for procurement for the program, divided by (B) the number of fully-configured end items to be procured.

(3) The term ''major contract'', with respect to a major defense acquisition program, means each of the six largest prime, associate, or Government-furnished equipment contracts under the program that is in excess of $40,000,000 and that is not a firm, fixed price contract.

(4) The term ''full life-cycle cost'', with respect to a major defense acquisition program,

means all costs of development, procurement, military construction, and operations and support, without regard to funding source or management control.

(b)(1) The Secretary of Defense shall submit to Congress at the end of each fiscal-year quarter a report on current major defense acquisition programs and any program that is estimated by the Secretary of Defense to require an eventual total expenditure for research, development, test, and evaluation of more than $300,000,000 (based on fiscal year 1990 constant dollars) or an eventual total expenditure for procurement, including all planned increments or spirals, of more than $1,800,000,000 (based on fiscal year 1990 constant dollars). Except as provided in paragraphs (2) and (3), each such report shall include a status report on each defense acquisition program that at the end of such quarter is a major defense acquisition program. Reports under this section shall be known as Selected Acquisition Reports.

(2) A status report on a major defense acquisition program need not be included in the Selected Acquisition Report for the second, third, or fourth quarter of a fiscal year if such a report was included in a previous Selected Acquisition Report for that fiscal year and during the period since that report there has been—

(A) less than a 15 percent increase in program acquisition unit cost and current procurement unit cost for the program (or for each designated subprogram under the program); and

(B) less than a six-month delay in any program schedule milestone shown in the Selected Acquisition Report.

(3)(A) The Secretary of Defense may waive the requirement for submission of Selected Acquisition Reports for a program for a fiscal year if—

(i) the program has not entered system development and demonstration;

(ii) a reasonable cost estimate has not been established for such program; and

(iii) the system configuration for such program is not well defined.

(B) The Secretary shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a written notification of each waiver under subparagraph (A) for a program for a fiscal year not later than 60 days before the President submits the budget to Congress pursuant to section 1105 of title 31 in that fiscal year.

(c)(1) Each Selected Acquisition Report for the first quarter for a fiscal year shall include—

(A) the same information, in detailed and summarized form, as is provided in reports submitted under section 2431 of this title;

(B) for each major defense acquisition program or designated major subprogram included in the report—

(i) the Baseline Estimate (as that term is defined in section 2433(a)(2) of this title), along with the associated risk and sensitivity analysis of that estimate;

(ii) the original Baseline Estimate (as that term is defined in section 2435(d)(1) of this title), along with the associated risk and sensitivity analysis of that estimate;

(iii) if the original Baseline Estimate was adjusted or revised pursuant to section 2435(d)(2) of this title, such adjusted or revised estimate, along with the associated risk and sensitivity analysis of that estimate; and

(iv) the primary risk parameters associated with the current procurement cost for the program (as that term is used in section 2432(e)(4) of this title);

(C) a summary of the history of significant developments from the date each major defense acquisition program or designated major subprogram included in the report was first included in a Selected Acquisition Report and program highlights since the last Selected Acquisition Report;

(D) the significant schedule and technical risks for each such program or subprogram, identified at each major milestone and as of the quarter for which the current report is submitted;

(E) the current program acquisition cost and program acquisition unit cost for each such program or subprogram included in the report and the history of those costs from the December 2001 reporting period to the end of the quarter for which the current report is submitted;

(F) the current procurement unit cost for each such program or subprogram included in the report and the history of that cost from the December 2001 reporting period to the end of the quarter for which the current report is submitted;

(G) for each major defense acquisition program that receives Milestone B approval after January 1, 2019, a brief summary description of the key elements of the modular open system approach as defined in section 2446a of this title or, if a modular open system approach was not used, the rationale for not using such an approach; and

(H) such other information as the Secretary of Defense considers appropriate.

(2) Each Selected Acquisition Report for the first quarter of a fiscal year shall be designed to provide to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives the information such Committees need to perform their oversight functions. Whenever the Secretary of Defense proposes to make changes in the content of a Selected Acquisition Report, the Secretary shall submit a notice of the proposed changes to such committees. The changes shall be considered approved by the Secretary, and may be incorporated into the report, only after the end of the 60-day period beginning on the date on which the notice is received by those committees.

(3) In addition to the material required by paragraphs (1) and (2), each Selected Acquisition Report for the first quarter of a fiscal year shall include the following:

(A) A full life-cycle cost analysis for each major defense acquisition program and each designated major subprogram included in the report that is in the system development and demonstration stage or has completed that

stage. The Secretary of Defense shall ensure that this subparagraph is implemented in a uniform manner, to the extent practicable, throughout the Department of Defense.

(B) If the system that is included in that major defense acquisition program has an antecedent system, a full life-cycle cost analysis for that system.

(4) Selected Acquisition Reports for the first quarter of a fiscal year shall be known as comprehensive annual Selected Acquisition Reports.

(d)(1) Each Selected Acquisition Report for the second, third, and fourth quarters of a fiscal year shall include—

(A) with respect to each major defense acquisition program that was included in the most recent comprehensive annual Selected Acquisition Report, the information described in subsection (e); and

(B) with respect to each major defense acquisition program that was not included in the most recent comprehensive annual Selected Acquisition Report, the information described in subsection (c).

(2) Selected Acquisition Reports for the second, third, and fourth quarters of a fiscal year shall be known as Quarterly Selected Acquisition Reports.

(e) Information to be included under this subsection in a Quarterly Selected Acquisition Report with respect to a major defense acquisition program is as follows:

(1) The quantity of items to be purchased under the program.

(2) The program acquisition cost.

(3) The program acquisition unit cost for the program (or for each designated major subprogram under the program).

(4) The current procurement cost for the program.

(5) The current procurement unit cost for the program (or for each designated major subprogram under the program).

(6) The reasons for any change in program acquisition cost, program acquisition unit cost, procurement cost, or procurement unit cost or in program schedule from the previous Selected Acquisition Report.

(7) The reasons for any significant changes (from the previous Selected Acquisition Report) in the total program cost for development and procurement of the software component of the program or subprogram, schedule milestones for the software component of the program or subprogram, or expected performance for the software component of the program or subprogram that are known, expected, or anticipated by the program manager.

(8) The major contracts under the program and designated major subprograms under the program and the reasons for any cost or schedule variances under those contracts since the last Selected Acquisition Report.

(9) Program highlights since the last Selected Acquisition Report.

(f) Each comprehensive annual Selected Acquisition Report shall be submitted within 30 days after the date on which the President transmits the Budget to Congress for the following fiscal year, and each Quarterly Selected Acquisition Report shall be submitted within 45 days after the end of the fiscal-year quarter.

(g) The requirements of this section with respect to a major defense acquisition program or designated major subprogram shall cease to apply after 90 percent of the items to be delivered to the United States under the program or subprogram (shown as the total quantity of items to be purchased under the program or subprogram in the most recent Selected Acquisition Report) have been delivered or 90 percent of planned expenditures under the program or subprogram have been made.

(h)(1) Total program reporting under this section shall apply to a major defense acquisition program when funds have been appropriated for such program and the Secretary of Defense has decided to proceed to system development and demonstration of such program. Reporting may be limited to the development program as provided in paragraph (2) before a decision is made by the Secretary of Defense to proceed to system development and demonstration if the Secretary notifies the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives of the intention to submit a limited report under this subsection not less than 15 days before a report is due under this section.

(2) A limited report under this subsection shall include the following:

(A) The same information, in detail and summarized form, as is provided in reports submitted under subsections (b)(1) and (b)(3) of section 2431 of this title.

(B) Reasons for any change in the development cost and schedule.

(C) The major contracts under the development program and designated major subprograms under the program and the reasons for any cost or schedule variances under those contracts since the last Selected Acquisition Report.

(D) Program highlights since the last Selected Acquisition Report.

(E) Other information as the Secretary of Defense considers appropriate.

(3) The submission requirements for a limited report under this subsection shall be the same as for quarterly Selected Acquisition Reports for total program reporting.

(i) FORM OF REPORT.—A Selected Acquisition Report required under this section shall be submitted in unclassified form without any designation relating to dissemination control, but may contain a classified annex.

(j) TERMINATION.—The requirements under this section shall terminate after the final submission covering fiscal year 2021.

(Added Pub. L. 97–252, title XI, § 1107(a)(1), Sept. 8, 1982, 96 Stat. 739, § 139a; amended Pub. L. 98–525, title XII, § 1242(a), Oct. 19, 1984, 98 Stat. 2606; Pub. L. 99–145, title XII, § 1201, Nov. 8, 1985, 99 Stat. 715; renumbered § 2432 and amended Pub. L. 99–433, title I, §§ 101(a)(5), 110(d)(13), (g)(7), Oct. 1, 1986, 100 Stat. 995, 1003, 1004; Pub. L. 99–500, § 101(c) [title X, § 961(a)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–175, and Pub. L. 99–591, § 101(c) [title X, § 961(a)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–175; Pub. L. 99–661, div. A, title IX, formerly

title IV, § 961(a), Nov. 14, 1986, 100 Stat. 3955, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; Pub. L. 100–26, § 7(b)(3), (k)(2), Apr. 21, 1987, 101 Stat. 279, 284; Pub. L. 100–180, div. A, title XII, § 1233(a)(1), title XIII, § 1314(a)(1), Dec. 4, 1987, 101 Stat. 1161, 1175; Pub. L. 101–189, div. A, title VIII, § 811(c), Nov. 29, 1989, 103 Stat. 1493; Pub. L. 101–510, div. A, title XIV, §§ 1407(a)–(c), 1484(f)(4), Nov. 5, 1990, 104 Stat. 1681, 1717; Pub. L. 102–25, title VII, § 701(f)(3), Apr. 6, 1991, 105 Stat. 115; Pub. L. 102–190, div. A, title VIII, § 801(b)(2), title X, § 1061(a)(14), Dec. 5, 1991, 105 Stat. 1412, 1473; Pub. L. 102–484, div. A, title VIII, § 817(c), Oct. 23, 1992, 106 Stat. 2455; Pub. L. 103–355, title III, § 3002(a)(1), (b)–(h), Oct. 13, 1994, 108 Stat. 3328, 3329; Pub. L. 104–106, div. A, title XV, § 1502(a)(1), Feb. 10, 1996, 110 Stat. 502; Pub. L. 104–201, div. A, title VIII, § 806, Sept. 23, 1996, 110 Stat. 2606; Pub. L. 105–85, div. A, title VIII, § 841(c), Nov. 18, 1997, 111 Stat. 1843; Pub. L. 106–65, div. A, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 107–107, div. A, title VIII, § 821(a), Dec. 28, 2001, 115 Stat. 1181; Pub. L. 108–136, div. A, title X, § 1045(a)(6), Nov. 24, 2003, 117 Stat. 1612; Pub. L. 108–375, div. A, title VIII, § 801(b)(2), Oct. 28, 2004, 118 Stat. 2004; Pub. L. 109–364, div. A, title X, § 1071(g)(10), Oct. 17, 2006, 120 Stat. 2402; Pub. L. 110–417, [div. A], title VIII, § 811(b), Oct. 14, 2008, 122 Stat. 4521; Pub. L. 112–81, div. A, title VIII, § 812, Dec. 31, 2011, 125 Stat. 1491; Pub. L. 113–66, div. A, title VIII, § 812(a), Dec. 26, 2013, 127 Stat. 807; Pub. L. 113–291, div. A, title X, § 1071(g)(2), Dec. 19, 2014, 128 Stat. 3511; Pub. L. 114–328, div. A, title VIII, §§ 805(b), 841, Dec. 23, 2016, 130 Stat. 2255, 2288; Pub. L. 116–92, div. A, title VIII, § 830(a), Dec. 20, 2019, 133 Stat. 1492; Pub. L. 116–283, div. A, title XVIII, § 1849(b), (c), (d)(1), (e)(1), (f)(1), (g), (h)(1), (i), (j), (k)(1), Jan. 1, 2021, 134 Stat. 4259–4263.)

Amendment of Section

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1849(b), (c), (d)(1), (e)(1), (f)(1), (g), (h)(1), (i), (j), (k)(1), Jan. 1, 2021, 134 Stat. 4151, 4259–4263, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is amended as follows:

(1) by transferring subsection (a) to section 4351 of this title;

(2) by transferring subsection (b) to section 4352 of this title;

(3) by transferring subsection (c) to section 4353 of this title;

(4) by transferring subsection (d) to section 4354 of this title;

(5) by transferring subsection (e) to section 4355 of this title;

(6) by transferring subsection (f) to section 4356(a) of this title;

(7) by transferring subsection (g) to section 4357 of this title;

(8) by transferring subsection (h) to section 4358 of this title;

(9) by transferring subsection (i) to section 4356(b) of this title; and

(10) by transferring subsection (j) to section 4350 of this title.

See 2021 Amendment notes below.

Repeal of Section

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1849(l), Jan. 1, 2021, 134 Stat. 4151, 4264, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is repealed.

Codification

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

Amendments

2021—Subsec. (a). Pub. L. 116–283, § 1849(c), transferred subsec. (a) to section 4351 of this title.

Subsec. (b). Pub. L. 116–283, § 1849(d)(1), transferred subsec. (b) to section 4352 of this title.

Subsec. (c). Pub. L. 116–283, § 1849(e)(1), transferred subsec. (c) to section 4353 of this title.

Subsec. (d). Pub. L. 116–283, § 1849(f)(1), transferred subsec. (d) to section 4354 of this title.

Subsec. (e). Pub. L. 116–283, § 1849(g), transferred subsec. (e) to section 4355 of this title.

Subsec. (f). Pub. L. 116–283, § 1849(h)(1), transferred subsec. (f) to section 4356(a) of this title.

Subsec. (g). Pub. L. 116–283, § 1849(j), transferred subsec. (g) to section 4357 of this title.

Subsec. (h). Pub. L. 116–283, § 1849(k)(1), transferred subsec. (h) to section 4358 of this title.

Subsec. (i). Pub. L. 116–283, § 1849(i), transferred subsec. (i) to section 4356(b) of this title.

Subsec. (j). Pub. L. 116–283, § 1849(b), transferred subsec. (j) to section 4350 of this title.

2019—Subsec. (b)(1). Pub. L. 116–92, § 830(a)(1), inserted ''and any program that is estimated by the Secretary of Defense to require an eventual total expenditure for research, development, test, and evaluation of more than $300,000,000 (based on fiscal year 1990 constant dollars) or an eventual total expenditure for procurement, including all planned increments or spirals, of more than $1,800,000,000 (based on fiscal year 1990 constant dollars)'' after ''major defense acquisition programs''.

Subsecs. (i), (j). Pub. L. 116–92, § 830(a)(2), added subsecs. (i) and (j).

2016—Subsec. (c)(1)(G), (H). Pub. L. 114–328, § 805(b), added subpar. (G) and redesignated former subpar. (G) as (H).

Subsec. (f). Pub. L. 114–328, § 841, substituted ''30'' for ''45'' before ''days after the date''.

2014—Subsec. (c)(1)(E). Pub. L. 113–291, § 1071(g)(2), amended Pub. L. 113–66, § 812(a)(3)(B). See 2013 Amendment note below.

2013—Subsec. (c)(1)(B) to (D). Pub. L. 113–66, § 812(a)(2), added subpars. (B) to (D). Former subpars. (B) to (D) redesignated (E) to (G), respectively.

Subsec. (c)(1)(E). Pub. L. 113–66, § 812(a)(3)(B), as amended by Pub. L. 113–291, § 1071(g)(2), inserted ''program acquisition cost and'' after ''current'' the first place appearing.

Pub. L. 113–66, § 812(a)(1), (3)(A), (C), (D), redesignated subpar. (B) as (E) and substituted ''such program or subprogram'' for ''major defense acquisition program or designated major subprogram'', ''those costs'' for ''that cost'', and ''December 2001 reporting period'' for ''date the program or subprogram was first included in a Selected Acquisition Report''.

Subsec. (c)(1)(F). Pub. L. 113–66, § 812(a)(1), (4), redesignated subpar. (C) as (F) and substituted ''such program or subprogram'' for ''major defense acquisition program or designated major subprogram'' and ''December 2001 reporting period'' for ''date the program or subprogram was first included in a Selected Acquisition Report''.

Subsec. (c)(1)(G). Pub. L. 113–66, § 812(a)(1), redesignated subpar. (D) as (G).

2011—Subsec. (f). Pub. L. 112–81 substituted ''45 days after the date'' for ''60 days after the date''.

2008—Subsec. (b)(2)(A). Pub. L. 110–417, § 811(b)(1), inserted ''for the program (or for each designated subprogram under the program)'' after ''procurement unit cost''.

Subsec. (c)(1)(B). Pub. L. 110–417, § 811(b)(2)(A), inserted ''or designated major subprogram'' after ''for

each major defense acquisition program'' and ''or subprogram'' after ''the program''.

Subsec. (c)(1)(C). Pub. L. 110–417, § 811(b)(2)(B), inserted ''or designated major subprogram'' after ''major defense acquisition program'' and ''or subprogram'' after ''the program''.

Subsec. (c)(3)(A). Pub. L. 110–417, § 811(b)(2)(C), inserted ''and each designated major subprogram'' after ''for each major defense acquisition program''.

Subsec. (e)(3). Pub. L. 110–417, § 811(b)(3)(A), inserted ''for the program (or for each designated major subprogram under the program)'' before period at end.

Subsec. (e)(5). Pub. L. 110–417, § 811(b)(3)(B), inserted ''(or for each designated major subprogram under the program)'' before period at end.

Subsec. (e)(7). Pub. L. 110–417, § 811(b)(3)(C), inserted ''or subprogram'' after ''of the program'' wherever appearing.

Subsec. (e)(8). Pub. L. 110–417, § 811(b)(3)(D), inserted ''and designated major subprograms under the program'' after ''the program''.

Subsec. (g). Pub. L. 110–417, § 811(b)(4), inserted ''or designated major subprogram'' after ''major defense acquisition program'' and ''or subprogram'' after ''the program'' wherever appearing.

Subsec. (h)(2)(C). Pub. L. 110–417, § 811(b)(5), inserted ''and designated major subprograms under the program'' after ''the development program''.

2006—Subsec. (e)(7) to (9). Pub. L. 109–364 made technical correction to directory language of Pub. L. 108–375, § 801(b)(2). See 2004 Amendment note below.

2004—Subsec. (e)(7) to (9). Pub. L. 108–375, § 801(b)(2), as amended by Pub. L. 109–364, added par. (7) and redesignated former pars. (7) and (8) as (8) and (9), respectively.

2003—Subsec. (h)(1). Pub. L. 108–136 inserted ''program'' after ''for such'' in first sentence.

2001—Subsecs. (b)(3)(A)(i), (c)(3)(A), (h)(1). Pub. L. 107–107 substituted ''system development and demonstration'' for ''engineering and manufacturing development'' wherever appearing.

1999—Subsecs. (b)(3)(B), (c)(2), (h)(1). Pub. L. 106–65 substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security''.

1997—Subsec. (h)(2)(D) to (F). Pub. L. 105–85 redesignated subpars. (E) and (F) as (D) and (E), respectively, and struck out former subpar. (D) which read as follows: ''The completion status of the development program expressed—

''(i) as the percentage that the number of years for which funds have been appropriated for the development program is of the number of years for which it is planned that funds will be appropriated for the program; and

''(ii) as the percentage that the amount of funds that have been appropriated for the development program is of the total amount of funds which it is planned will be appropriated for the program.''

1996—Subsec. (b)(3)(B). Pub. L. 104–106 substituted ''Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives'' for ''Committees on Armed Services of the Senate and House of Representatives''.

Subsec. (c)(1). Pub. L. 104–201, § 806(1), struck out ''and'' at end of subpar. (B), added subpar. (C), and redesignated former subpar. (C) as (D).

Subsec. (c)(2). Pub. L. 104–106 substituted ''Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives'' for ''Committees on Armed Services of the Senate and House of Representatives''.

Subsec. (e)(8), (9). Pub. L. 104–201, § 806(2), redesignated par. (9) as (8) and struck out former par. (8) which read as follows: ''The completion status of the program (A) expressed as the percentage that the number of years for which funds have been appropriated for the program is of the number of years for which it is planned that funds will be appropriated for the program, and (B) expressed as the percentage that the amount of funds that have been appropriated for the program is of the total amount of funds which it is planned will be appropriated for the program.''

Subsec. (h)(1). Pub. L. 104–106 substituted ''Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives'' for ''Committees on Armed Services of the Senate and House of Representatives''.

1994—Subsec. (a)(2). Pub. L. 103–355, § 3002(a)(1), struck out ''for a fiscal year, reduced by the amount of funds programmed to be available for obligation for such fiscal year for advanced procurement for such program in any subsequent year and increased by any amount appropriated in years before such fiscal year for advanced procurement for such program in such fiscal year'' after ''procurement for the program'' in cl. (A), ''with such funds during such fiscal year'' after ''procured'' in cl. (B), and last sentence which read as follows: ''If for any fiscal year the funds appropriated, or the number of fully-configured end items to be purchased, differ from those programmed, the procurement unit cost shall be revised to reflect the appropriated amounts and quantities.''

Subsec. (a)(3). Pub. L. 103–355, § 3002(b), inserted before period at end ''and that is not a firm, fixed price contract''.

Subsec. (a)(4). Pub. L. 103–355, § 3002(c), substituted ''means all costs of development, procurement, military construction, and operations and support, without regard to funding source or management control.'' for ''has the meaning given the term 'cost of the program' in section 2434(b)(2) of this title.''

Subsec. (b)(3)(A)(i). Pub. L. 103–355, § 3002(h)(1), struck out ''full scale development or'' before ''engineering''.

Subsec. (c)(2). Pub. L. 103–355, § 3002(d), substituted second sentence for former second sentence which read as follows: ''The Secretary of Defense may approve changes in the content of the Selected Acquisition Report if the Secretary provides such Committees with written notification of such changes at least 60 days before the date of the report that incorporates the changes.''

Subsec. (c)(3)(A). Pub. L. 103–355, § 3002(f)(2), (h)(2), substituted ''engineering and manufacturing'' for ''full-scale engineering'' and inserted at end ''The Secretary of Defense shall ensure that this subparagraph is implemented in a uniform manner, to the extent practicable, throughout the Department of Defense.''

Subsec. (c)(3)(C). Pub. L. 103–355, § 3002(e), struck out subpar. (C) which required production information for each major defense acquisition program included in report that is produced at rate of six units or more per year.

Subsec. (c)(5). Pub. L. 103–355, § 3002(f)(1), struck out par. (5) which read as follows: ''The Secretary of Defense shall ensure that paragraph (4) of subsection (a) is implemented in a uniform manner, to the extent practicable, throughout the Department of Defense.''

Subsec. (f). Pub. L. 103–355, § 3002(g), struck out last sentence which read as follows: ''A preliminary report shall be submitted for each annual Selected Acquisition Report within 30 days of the date on which the President submits the Budget to Congress.''

Subsec. (h)(1). Pub. L. 103–355, § 3002(h)(3), substituted ''engineering and manufacturing'' for ''full-scale engineering'' in two places.

1992—Subsec. (a)(3). Pub. L. 102–484, § 817(c)(1), added par. (3) and struck out former par. (3) which read as follows: ''The term 'major contract', with respect to a major defense acquisition program, means (A) each prime contract under the program, and (B) each associate or Government-furnished equipment contract under the program that is one of the six largest contracts under the program in dollar amount and that is in excess of $40,000,000.''

Subsec. (b)(3). Pub. L. 102–484, § 817(c)(2), added par. (3) and struck out former par. (3) which read as follows: ''A status report on a particular major defense acquisition program need not be included in any Selected Acquisition Report with the approval of the Committees on Armed Services of the Senate and House of Representatives.''

Subsec. (c)(2). Pub. L. 102–484, §817(c)(3), added sentence at end and struck out former last sentence which read as follows: ''A change in the content of the Selected Acquisition Report for the first quarter of a fiscal year from the content as reported for the first quarter of the previous fiscal year may not be made until appropriate officials of the Department of Defense consult with such Committees regarding the proposed changes.''

Subsec. (c)(3)(C)(i) to (vii). Pub. L. 102–484, §817(c)(4), added cls. (i) to (vii) and struck out former cls. (i) to (vii) which contained similar specification and estimation requirements.

1991—Subsec. (a)(4). Pub. L. 102–190, §801(b)(2), substituted ''2434(b)(2)'' for ''2434(c)(2)''.

Subsec. (c)(5). Pub. L. 102–25 substituted ''subsection (a)'' for ''section 2432(a) of title 10, United States Code, as added by subsection (a)(2),''.

Subsec. (h)(2)(A). Pub. L. 102–190, §1061(a)(14), substituted ''(b)(1) and (b)(3)'' for ''(c)(1) and (c)(3)''.

1990—Subsec. (a)(4). Pub. L. 101–510, §1407(b), added par. (4).

Subsec. (c)(3). Pub. L. 101–510, §1484(f)(4)(A), substituted ''include the following:'' for ''include—'' in introductory provisions.

Subsec. (c)(3)(A). Pub. L. 101–510, §1407(a), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''a full life-cycle cost analysis for each major defense acquisition program included in the report that—

''(i) is in the full-scale engineering development stage or has completed that stage; and

''(ii) was first included in a Selected Acquisition Report for a quarter after the first quarter of fiscal year 1985;''.

Subsec. (c)(3)(B). Pub. L. 101–510, §1484(f)(4)(B), (C), substituted ''If'' for ''if'' and a period for ''; and''.

Subsec. (c)(3)(C). Pub. L. 101–510, §1484(f)(4)(B), (D), substituted ''Production'' for ''production'' and ''program) the following:'' for ''program)—'' in introductory provisions, ''Specification'' for ''specification'' in cls. (i) to (iv), ''Estimation'' for ''estimation'' in cls. (v) to (vii), a period for a semicolon in cls. (i) to (v), and a period for ''; and'' in cl. (vi).

Subsec. (c)(5). Pub. L. 101–510, §1407(c), added par. (5).

1989—Subsec. (b)(2)(A). Pub. L. 101–189 substituted ''15 percent increase in program acquisition unit cost and current procurement unit cost'' for ''5 percent change in total program cost''.

1987—Pub. L. 100–180, §1314(a)(1), made technical amendment to directory language of Pub. L. 99–433, §101(a)(5). See 1986 Amendment note below.

Subsec. (a). Pub. L. 100–26, §7(b)(3)(A), as amended by Pub. L. 100–180, §1233(a)(1), redesignated pars. (2) to (4) as (1) to (3), respectively, and struck out former par. (1) which defined ''major defense acquisition program''.

Pub. L. 100–26, §7(k)(2)(A), inserted ''The term'' after each par. designation and struck out uppercase letter of first word after first quotation marks in each par. and substituted lowercase letter.

Subsec. (a)(2). Pub. L. 100–26, §7(b)(3)(B), substituted ''programmed'' for ''programed'' wherever appearing.

1986—Pub. L. 99–433, §101(a)(5), as amended by Pub. L. 100–180, §1314(a)(1), renumbered section 139a of this title as this section.

Pub. L. 99–433, §110(d)(13), struck out ''Oversight of cost growth in major programs:'' before ''Selected Acquisition Reports'' in section catchline.

Subsec. (a)(3). Pub. L. 99–500 and Pub. L. 99–591, §101(c) [§961(a)(1)], Pub. L. 99–661, §961(a)(1), amended par. (3) identically, inserting provision that if for any fiscal year the funds appropriated, or the number of fully-configured end items to be purchased, differ from those programmed, the procurement unit cost shall be revised to reflect the appropriated amounts and quantities.

Subsec. (a)(4). Pub. L. 99–500 and Pub. L. 99–591, §101(c) [§961(a)(2)], Pub. L. 99–661, §961(a)(2), amended par. (4) identically, substituting ''$40,000,000'' for ''$2,000,000''.

Subsec. (b)(2)(B). Pub. L. 99–500 and Pub. L. 99–591, §101(c) [§961(a)(3)], Pub. L. 99–661, §961(a)(3), amended subpar. (B) identically, substituting ''six-month'' for ''three-month''.

Subsec. (c)(1). Pub. L. 99–433, §110(g)(7), substituted ''section 2431'' for ''section 139''.

Subsec. (c)(2). Pub. L. 99–500 and Pub. L. 99–591, §101(c) [§961(a)(4)], Pub. L. 99–661, §961(a)(4), amended subsec. (c) identically, enacting a new par. (2) and striking out former par. (2) which read as follows: ''Each Selected Acquisition Report for the first quarter of a fiscal year shall be prepared and submitted with the same content as was used for the Selected Acquisition Report for the first quarter of fiscal year 1984.''

Subsec. (c)(3)(C). Pub. L. 99–500 and Pub. L. 99–591, §101(c) [§961(a)(5)], Pub. L. 99–661, §961(a)(5), amended subpar. (C) identically, inserting in provision preceding cl. (i) ''that is produced at a rate of six units or more per year'' after ''report''.

Subsec. (h). Pub. L. 99–500 and Pub. L. 99–591, §101(c) [§961(a)(6)], Pub. L. 99–661, §961(a)(6), amended section identically, adding subsec. (h).

1985—Subsec. (c). Pub. L. 99–145 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''Each Selected Acquisition Report for the first quarter of a fiscal year shall include (1) the same information, in detailed and summarized form, as is provided in reports submitted under section 139 of this title, (2) the current program acquisition unit cost for each major defense acquisition program included in the report and the history of that cost from the date the program was first included in a Selected Acquisition Report to the end of the quarter for which the current report is submitted, and (3) such other information as the Secretary of Defense considers appropriate. Selected Acquisition Reports for the first quarter of a fiscal year shall be known as comprehensive annual Selected Acquisition Reports.''

1984—Subsec. (a)(3). Pub. L. 98–525, §1242(a)(1), substituted ''funds programed to be available for obligation for procurement'' for ''procurement funds appropriated'' and ''of funds programed to be available for obligation'' for ''of funds appropriated''.

Subsec. (a)(4). Pub. L. 98–525, §1242(a)(2), inserted ''and that is in excess of $2,000,000''.

Subsec. (b)(2). Pub. L. 98–525, §1242(a)(3), substituted ''during the period since that report there has been—(A) less than a 5 percent change in total program cost; and (B) less than a three-month delay in any program schedule milestone shown in the Selected Acquisition Report'' for ''there has been no change in program cost, performance, or schedule since the most recent such report''.

Subsec. (f). Pub. L. 98–525, §1242(a)(4), substituted: ''60'' for ''30'', ''45'' for ''30, and ''A preliminary report shall be submitted for each annual Selected Acquisition Report within 30 days of the date on which the President submits the Budget to Congress'' for ''If a preliminary report is submitted for the comprehensive annual Selected Acquisition Report in any year, the final report shall be submitted within 15 days after the submission of the preliminary report''.

Subsec. (g). Pub. L. 98–525, §1242(a)(5), added subsec. (g).

EFFECTIVE DATE OF REPEAL

Repeal effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 2014 AMENDMENT

Pub. L. 113–291, div. A, title X, §1071(g), Dec. 19, 2014, 128 Stat. 3511, provided that the amendment made by

section 1071(g)(2) is effective as of Dec. 26, 2013, and as if included in Pub. L. 113–66 as enacted.

EFFECTIVE DATE OF 2013 AMENDMENT; PHASE-IN OF ADDITIONAL INFORMATION REQUIREMENTS

Pub. L. 113–66, div. A, title VIII, § 812(b), Dec. 26, 2013, 127 Stat. 807, provided that: ''Section 2432(c)(1) of title 10, United States Code, as amended by subsection (a), shall apply to Selected Acquisition Reports after the date of the enactment of this Act [Dec. 26, 2013] as follows:

''(1) For the December 2014 reporting period, to Selected Acquisition Reports for five major defense acquisition programs or designated major subprograms, as determined by the Secretary.

''(2) For the December 2019 reporting period and each reporting period thereafter, to Selected Acquisition Reports for all major defense acquisition programs or designated major subprograms.''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–364, div. A, title X, § 1071(g), Oct. 17, 2006, 120 Stat. 2402, provided that the amendment made by section 1071(g)(10) is effective as of Oct. 28, 2004, and as if included in Pub. L. 108–375 as enacted.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–375, div. A, title VIII, § 801(c), Oct. 28, 2004, 118 Stat. 2004, provided that: ''The amendments made by this section [amending this section and section 2433 of this title] shall take effect on the date occurring 60 days after the date of the enactment of this Act [Oct. 28, 2004], and shall apply with respect to reports due to be submitted to Congress on or after such date.''

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–510, div. A, title XIV, § 1407(d), Nov. 5, 1990, 104 Stat. 1681, as amended by Pub. L. 102–25, title VII, § 704(a)(8), Apr. 6, 1991, 105 Stat. 119, provided that: ''The amendments made by subsection (a) [amending this section] shall take effect with respect to Selected Acquisition Reports submitted under section 2432 of title 10, United States Code, after December 31, 1991.''

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by section 1233(a)(1) of Pub. L. 100–180 applicable as if included in enactment of the Defense Technical Corrections Act of 1987, Pub. L. 100–26, see section 1233(c) of Pub. L. 100–180, set out as a note under section 101 of this title.

Amendment by section 1314(a)(1) of Pub. L. 100–180 applicable as if included in enactment of the Goldwater-Nichols Department of Defense Reorganization Act of 1986, Pub. L. 99–433, see section 1314(e) of Pub. L. 100–180, set out as a note under section 743 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–500, § 101(c) [title X, § 961(c)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–176, Pub. L. 99–591, § 101(c) [title X, § 961(c)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–176, and Pub. L. 99–661, div. A, title IX, formerly title IV, § 961(c), Nov. 14, 1986, 100 Stat. 3956, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273, provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 2433 of this title] shall take effect on January 1, 1987.''

EFFECTIVE DATE

Pub. L. 97–252, title XI, § 1107(c), Sept. 8, 1982, 96 Stat. 746, provided that: ''Sections 139a and 139b [now 2432 and 2433] of title 10, United States Code, as added by subsection (a), shall take effect on January 1, 1983, and shall apply beginning with respect to reports for the first quarter of fiscal year 1983. The repeal made by subsection (b) [repealing section 811 of Pub. L. 94–106, formerly set out as a Reports to Congress of Acquisitions for Major Defense Systems note under section 2431 of this title] shall take effect on January 1, 1983.''

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective Dec. 31, 2021, of provisions in this section requiring submittal of reports to Congress, see section 1051(x) of Pub. L. 115–91, set out as a note under section 111 of this title.

ANNUAL REPORTING

Pub. L. 114–328, div. A, title VIII, § 847(b), Dec. 23, 2016, 130 Stat. 2292, provided that: ''The Secretary of Defense shall include in each comprehensive annual Selected Acquisition Report submitted under section 2432 of title 10, United States Code, a listing of all programs or projects being developed or procured under the exceptions to the definition of major defense acquisition program set forth in paragraph (2) of section 2430(a) of United States Code, as added by subsection (a)(1)(C) of this section.''

SELECTED ACQUISITION REPORTS FOR CERTAIN PROGRAMS

Pub. L. 100–180, div. A, title I, § 127, Dec. 4, 1987, 101 Stat. 1044, as amended by Pub. L. 102–484, div. A, title VIII, § 817(a), Oct. 23, 1992, 106 Stat. 2454, provided that:

''(a) SAR COVERAGE FOR ATB, ACM, AND ATA PROGRAMS.—The Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives, in accordance with the provisions of subsection (b) of section 2432 of title 10, United States Code, a Selected Acquisition Report with respect to each program referred to in subsection (b), notwithstanding that such a report would not otherwise be required under section 2432 of title 10, United States Code.

''(b) COVERED PROGRAMS.—Subsection (a) applies to the Advanced Technology Bomber program, the Advanced Cruise Missile program, and the Advanced Tactical Aircraft program.

''(c) SELECTED ACQUISITION REPORT DEFINED.—As used in subsection (a), the term 'Selected Acquisition Report' means a report containing the information referred to in section 2432 of title 10, United States Code.''

SENSE OF CONGRESS ON PREPARATION OF CERTAIN ECONOMIC IMPACT AND EMPLOYMENT INFORMATION CONCERNING NEW ACQUISITION PROGRAMS

Pub. L. 100–180, div. A, title VIII, § 825, Dec. 4, 1987, 101 Stat. 1134, related to the sense of Congress on preparation of certain economic impact and employment information concerning new acquisition programs, prior to repeal by Pub. L. 104–106, div. D, title XLIII, § 4321(i)(4), Feb. 10, 1996, 110 Stat. 676.

DURATION OF ASSIGNMENT OF PROGRAM MANAGERS FOR MAJOR PROGRAMS

Pub. L. 98–525, title XII, § 1243, Oct. 19, 1984, 98 Stat. 2609, as amended by Pub. L. 100–26, § 11(a)(1), Apr. 21, 1987, 101 Stat. 288, which related to waivable minimum four-year tour of duty of program managers for major defense acquisition programs, was repealed and restated in section 2435(c) of this title by Pub. L. 100–370, § 1(i), July 19, 1988, 102 Stat. 848.

§ 2433. Unit cost reports

(a) In this section:

(1) Except as provided in section 2430a(d) of this title, the terms ''program acquisition unit cost'', ''procurement unit cost'', and ''major contract'' have the same meanings as provided in section 2432(a) of this title.

(2) The term ''Baseline Estimate'', with respect to a unit cost report that is submitted under this section to the service acquisition executive designated by the Secretary concerned on a major defense acquisition program or designated major subprogram, means the

cost estimate included in the baseline description for the program or subprogram under section 2435 of this title.

(3) The term ''procurement program'' means a program for which funds for procurement are authorized to be appropriated in a fiscal year.

(4) The term ''significant cost growth threshold'' means the following:

(A) In the case of a major defense acquisition program or designated major defense subprogram, a percentage increase in the program acquisition unit cost for the program or subprogram of—

(i) at least 15 percent over the program acquisition unit cost for the program or subprogram as shown in the current Baseline Estimate for the program or subprogram; or

(ii) at least 30 percent over the program acquisition unit cost for the program or subprogram as shown in the original Baseline Estimate for the program or subprogram.

(B) In the case of a major defense acquisition program or designated major defense subprogram that is a procurement program, a percentage increase in the procurement unit cost for the program or subprogram of—

(i) at least 15 percent over the procurement unit cost for the program or subprogram as shown in the current Baseline Estimate for the program or subprogram; or

(ii) at least 30 percent over the procurement unit cost for the program or subprogram as shown in the original Baseline Estimate for the program or subprogram.

(5) The term ''critical cost growth threshold'' means the following:

(A) In the case of a major defense acquisition program or designated major defense subprogram, a percentage increase in the program acquisition unit cost for the program or subprogram of—

(i) at least 25 percent over the program acquisition unit cost for the program or subprogram as shown in the current Baseline Estimate for the program or subprogram; or

(ii) at least 50 percent over the program acquisition unit cost for the program or subprogram as shown in the original Baseline Estimate for the program or subprogram.

(B) In the case of a major defense acquisition program or designated major defense subprogram that is a procurement program, a percentage increase in the procurement unit cost for the program or subprogram of—

(i) at least 25 percent over the procurement unit cost for the program or subprogram as shown in the current Baseline Estimate for the program or subprogram; or

(ii) at least 50 percent over the procurement unit cost for the program or subprogram as shown in the original Baseline Estimate for the program or subprogram.

(6) The term ''original Baseline Estimate'' has the same meaning as provided in section 2435(d) of this title.

(b) The program manager for a major defense acquisition program (other than a program not required to be included in the Selected Acquisition Report for that quarter under section 2432(b)(3) of this title) shall, on a quarterly basis, submit to the service acquisition executive designated by the Secretary concerned a written report on the unit costs of the program (or of each designated major subprogram under the program). Each report shall be submitted not more than 30 calendar days after the end of that quarter. The program manager shall include in each such unit cost report the following information with respect to the program (as of the last day of the quarter for which the report is made):

(1) The program acquisition unit cost for the program (or for each designated major subprogram under the program).

(2) In the case of a procurement program, the procurement unit cost for the program (or for each designated major subprogram under the program).

(3) Any cost variance or schedule variance in a major contract under the program since the contract was entered into.

(4) Any changes from program schedule milestones or program performances reflected in the baseline description established under section 2435 of this title that are known, expected, or anticipated by the program manager.

(5) Any significant changes in the total program cost for development and procurement of the software component of the program or subprogram, schedule milestones for the software component of the program or subprogram, or expected performance for the software component of the program or subprogram that are known, expected, or anticipated by the program manager.

(c) If the program manager of a major defense acquisition program for which a unit cost report has previously been submitted under subsection (b) determines at any time during a quarter that there is reasonable cause to believe that the program acquisition unit cost for the program (or for a designated major subprogram under the program) or the procurement unit cost for the program (or for such a subprogram), as applicable, has increased by a percentage equal to or greater than the significant cost growth threshold; and if a unit cost report indicating an increase of such percentage or more has not previously been submitted to the service acquisition executive designated by the Secretary concerned, then the program manager shall immediately submit to such service acquisition executive a unit cost report containing the information, determined as of the date of the report, required under subsection (b).

(d)(1) When a unit cost report is submitted to the service acquisition executive designated by the Secretary concerned under this section with respect to a major defense acquisition program or any designated major subprogram under the program, the service acquisition executive shall determine whether the current program acquisition unit cost for the program or subprogram has increased by a percentage equal to or greater than the significant cost growth threshold, or

the critical cost growth threshold, for the program or subprogram.

(2) When a unit cost report is submitted to the service acquisition executive designated by the Secretary concerned under this section with respect to a major defense acquisition program or any designated major subprogram under the program that is a procurement program, the service acquisition executive, in addition to the determination under paragraph (1), shall determine whether the procurement unit cost for the program or subprogram has increased by a percentage equal to or greater than the significant cost growth threshold, or the critical cost growth threshold, for the program or subprogram.

(3) If, based upon the service acquisition executive's determination, the Secretary concerned determines that the current program acquisition unit cost has increased by a percentage equal to or greater than the significant cost growth threshold or critical cost growth threshold or that the procurement unit cost has increased by a percentage equal to or greater than the significant cost growth threshold or critical cost growth threshold, the Secretary shall notify Congress in writing of such determination and of the increase with respect to the program or subprogram concerned. In the case of a determination based on a quarterly report submitted in accordance with subsection (b), the Secretary shall submit the notification to Congress within 45 days after the end of the quarter. In the case of a determination based on a report submitted in accordance with subsection (c), the Secretary shall submit the notification to Congress within 45 days after the date of that report. The Secretary shall include in the notification the date on which the determination was made.

(e)(1)(A) Except as provided in subparagraph (B), whenever the Secretary concerned determines under subsection (d) that the program acquisition unit cost or the procurement unit cost of a major defense acquisition program or designated major subprogram has increased by a percentage equal to or greater than the significant cost growth threshold for the program or subprogram, a Selected Acquisition Report shall be submitted to Congress for the first fiscal-year quarter ending on or after the date of the determination or for the fiscal-year quarter which immediately precedes the first fiscal-year quarter ending on or after that date. The report shall include the information described in section 2432(e) of this title and shall be submitted in accordance with section 2432(f) of this title.

(B) Whenever the Secretary makes a determination referred to in subparagraph (A) in the case of a major defense acquisition program or designated major subprogram during the second quarter of a fiscal year and before the date on which the President transmits the budget for the following fiscal year to Congress pursuant to section 1105 of title 31, the Secretary is not required to file a Selected Acquisition Report under subparagraph (A) but shall include the information described in subsection (g) regarding that program or subprogram in the comprehensive annual Selected Acquisition Report submitted in that quarter.

(2) If the program acquisition unit cost or procurement unit cost of a major defense acquisition program or designated major subprogram (as determined by the Secretary under subsection (d)) increases by a percentage equal to or greater than the critical cost growth threshold for the program or subprogram, the Secretary of Defense shall take actions consistent with the requirements of section 2433a of this title.

(3) If a determination of an increase by a percentage equal to or greater than the significant cost growth threshold is made by the Secretary under subsection (d) and a Selected Acquisition Report containing the information described in subsection (g) is not submitted to Congress under paragraph (1), or if a determination of an increase by a percentage equal to or greater than the critical cost growth threshold is made by the Secretary under subsection (d) and the certification of the Secretary of Defense is not submitted to Congress under paragraph (2), funds appropriated for military construction, for research, development, test, and evaluation, and for procurement may not be obligated for a major contract under the program. The prohibition on the obligation of funds for a major defense acquisition program shall cease to apply at the end of a period of 30 days of continuous session of Congress (as determined under section 8677(b)(2) of this title) beginning on the date—

(A) on which Congress receives the Selected Acquisition Report under paragraph (1) or (2)(B)[1] with respect to that program, in the case of a determination of an increase by a percentage equal to or greater than the significant cost growth threshold (as determined in subsection (d)); or

(B) on which Congress has received both the Selected Acquisition Report under paragraph (1) or (2)(B)[1] and the certification of the Secretary of Defense under paragraph (2)(A)[1] with respect to that program, in the case of an increase by a percentage equal to or greater than the critical cost growth threshold (as determined under subsection (d)).

(f) Any determination of a percentage increase under this section shall be stated in terms of constant base year dollars (as described in section 2430 of this title).

(g)(1) Except as provided in paragraph (2), each report under subsection (e) with respect to a major defense acquisition program shall include the following:

(A) The name of the major defense acquisition program.

(B) The date of the preparation of the report.

(C) The program phase as of the date of the preparation of the report.

(D) The estimate of the program acquisition cost for the program (and for each designated major subprogram under the program) as shown in the Selected Acquisition Report in which the program or subprogram was first included, expressed in constant base-year dollars and in current dollars.

(E) The current program acquisition cost for the program (and for each designated major subprogram under the program) in constant base-year dollars and in current dollars.

(F) A statement of the reasons for any increase in program acquisition unit cost or pro-

[1] See References in Text note below.

curement unit cost for the program (or for any designated major subprogram under the program).

(G) The completion status of the program and each designated major subprogram under the program (i) expressed as the percentage that the number of years for which funds have been appropriated for the program or subprogram is of the number of years for which it is planned that funds will be appropriated for the program or subprogram, and (ii) expressed as the percentage that the amount of funds that have been appropriated for the program or subprogram is of the total amount of funds which it is planned will be appropriated for the program or subprogram.

(H) The fiscal year in which information on the program and each designated major subprogram under the program was first included in a Selected Acquisition Report (referred to in this paragraph as the ''base year'') and the date of that Selected Acquisition Report in which information on the program or subprogram was first included.

(I) The type of the Baseline Estimate that was included in the baseline description under section 2435 of this title and the date of the Baseline Estimate.

(J) The current change and the total change, in dollars and expressed as a percentage, in the program acquisition unit cost for the program (or for each designated major subprogram under the program), stated both in constant base-year dollars and in current dollars.

(K) The current change and the total change, in dollars and expressed as a percentage, in the procurement unit cost for the program (or for each designated major subprogram under the program), stated both in constant base-year dollars and in current dollars and the procurement unit cost for the program (or for each designated major subprogram under the program) for the succeeding fiscal year expressed in constant base-year dollars and in current year dollars.

(L) The quantity of end items to be acquired under the program and the current change and total change, if any, in that quantity.

(M) The identities of the military and civilian officers responsible for program management and cost control of the program.

(N) The action taken and proposed to be taken to control future cost growth of the program.

(O) Any changes made in the performance or schedule milestones of the program and the extent to which such changes have contributed to the increase in program acquisition unit cost or procurement unit cost for the program (or for any designated major subprogram under the program).

(P) The following contract performance assessment information with respect to each major contract under the program or subprogram:

(i) The name of the contractor.

(ii) The phase that the contract is in at the time of the preparation of the report.

(iii) The percentage of work under the contract that has been completed.

(iv) Any current change and the total change, in dollars and expressed as a percentage, in the contract cost.

(v) The percentage by which the contract is currently ahead of or behind schedule.

(vi) A narrative providing a summary explanation of the most significant occurrences, including cost and schedule variances under major contracts of the program and any designated major subprogram under the program, contributing to the changes identified and a discussion of the effect these occurrences will have on future program costs and the program schedule.

(Q) In any case in which one or more problems with the software component of the program or any designated major subprogram under the program significantly contributed to the increase in program unit costs, the action taken and proposed to be taken to solve such problems.

(2) If a program acquisition unit cost increase or a procurement unit cost increase for a major defense acquisition program or designated major subprogram that results in a report under this subsection is due to termination or cancellation of the entire program or subprogram, only the information specified in clauses (A) through (F) of paragraph (1) and the percentage change in program acquisition unit cost or procurement unit cost that resulted in the report need be included in the report. The certification of the Secretary of Defense under subsection (e) is not required to be submitted for termination or cancellation of a program or subprogram.

(h) Reporting under this section shall not apply if a program has received a limited reporting waiver under section 2432(h) of this title.

(Added Pub. L. 97–252, title XI, § 1107(a)(1), Sept. 8, 1982, 96 Stat. 741, § 139b; amended Pub. L. 98–94, title XII, § 1268(1), Sept. 24, 1983, 97 Stat. 705; Pub. L. 98–525, title XII, § 1242(b), Oct. 19, 1984, 98 Stat. 2607; Pub. L. 99–145, title XIII, § 1303(a)(2), Nov. 8, 1985, 99 Stat. 738; renumbered § 2433 and amended Pub. L. 99–433, title I, §§ 101(a)(5), 110(d)(14), (g)(8), Oct. 1, 1986, 100 Stat. 995, 1003, 1004; Pub. L. 99–500, § 101(c) [title X, § 961(b)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–176, and Pub. L. 99–591, § 101(c) [title X, § 961(b)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–176; Pub. L. 99–661, div. A, title IX, formerly title IV, § 961(b), Nov. 14, 1986, 100 Stat. 3956, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; Pub. L. 100–26, § 7(b)(4), (k)(7), Apr. 21, 1987, 101 Stat. 279, 284; Pub. L. 100–180, div. A, title XIII, § 1314(a)(1), Dec. 4, 1987, 101 Stat. 1175; Pub. L. 101–189, div. A, title VIII, § 811(a), Nov. 29, 1989, 103 Stat. 1490; Pub. L. 101–510, div. A, title XIV, § 1484(k)(10), Nov. 5, 1990, 104 Stat. 1719; Pub. L. 102–484, div. A, title VIII, § 817(d), Oct. 23, 1992, 106 Stat. 2456; Pub. L. 103–35, title II, § 201(i)(2), May 31, 1993, 107 Stat. 100; Pub. L. 103–355, title III, §§ 3002(a)(2), 3003, Oct. 13, 1994, 108 Stat. 3328, 3329; Pub. L. 105–85, div. A, title VIII, § 833, Nov. 18, 1997, 111 Stat. 1842; Pub. L. 108–375, div. A, title VIII, § 801(a), (b)(1), Oct. 28, 2004, 118 Stat. 2004; Pub. L. 109–163, div. A, title VIII, § 802(a)–(c), (d)(2), Jan. 6, 2006, 119 Stat. 3367–3370; Pub. L. 109–364, div. A, title II, § 213(a), Oct. 17, 2006, 120 Stat. 2121; Pub. L. 110–181, div. A, title IX, § 942(e), Jan. 28, 2008, 122 Stat. 288; Pub. L. 110–417, [div. A], title VIII, § 811(c), Oct. 14, 2008, 122 Stat. 4522; Pub. L. 111–23, title II, § 206(a)(3), May 22, 2009, 123 Stat.

1728; Pub. L. 111–84, div. A, title X, § 1073(c)(4), Oct. 28, 2009, 123 Stat. 2474; Pub. L. 111–383, div. A, title X, § 1075(b)(34), Jan. 7, 2011, 124 Stat. 4371; Pub. L. 115–232, div. A, title VIII, § 809(a), Aug. 13, 2018, 132 Stat. 1840; Pub. L. 116–283, div. A, title XVIII, § 1850(b)(1), (c), (d), (e)(1), (f), (g)(1), (h)(1), (i)(1), Jan. 1, 2021, 134 Stat. 4265–4267, 4269.)

AMENDMENT OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1850(b)(1), (c), (d), (e)(1), (f), (g)(1), (h)(1), (i)(1), Jan. 1, 2021, 134 Stat. 4151, 4265–4267, 4269, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is amended as follows:

(1) by transferring subsection (a) to section 4371(a) of this title;

(2) by transferring subsection (b) to section 4372(a) of this title;

(3) by transferring subsection (c) to section 4373 of this title;

(4) by transferring subsection (d) to section 4374 of this title;

(5) by transferring subsection (e) to section 4375(a) to (c) of this title;

(6) by transferring subsection (f) to section 4371(c) of this title;

(7) by transferring subsection (g) to section 4375(d) and (e) of this title; and

(8) by transferring subsection (h) to section 4371(b) of this title.

See 2021 Amendment notes below.

REPEAL OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1850(l), Jan. 1, 2021, 134 Stat. 4151, 4271, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is repealed.

REFERENCES IN TEXT

Par. (2) of subsec. (e) of this section, referred to in subsec. (e)(3), was first amended by Pub. L. 109–163, div. A, title VIII, § 802(c), Jan. 6, 2006, 119 Stat. 3369, by effectively redesignating subpars. (A) and (B) as (B) and (C), respectively, and was subsequently amended generally by Pub. L. 111–23, title II, § 206(a)(3), May 22, 2009, 123 Stat. 1728, after which par. (2) did not contain subparagraphs.

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

AMENDMENTS

2021—Subsec. (a). Pub. L. 116–283, § 1850(b)(1), transferred subsec. (a) to section 4371(a) of this title.

Subsec. (b). Pub. L. 116–283, § 1850(e)(1), transferred subsec. (b) to section 4372(a) of this title.

Subsec. (c). Pub. L. 116–283, § 1850(f), transferred subsec. (c) to section 4373 of this title.

Subsec. (d). Pub. L. 116–283, § 1850(g)(1), transferred subsec. (d) to section 4374 of this title.

Subsec. (e). Pub. L. 116–283, § 1850(h)(1), transferred subsec. (e) to section 4375(a) to (c) of this title.

Subsec. (f). Pub. L. 116–283, § 1850(d), transferred subsec. (f) to section 4371(c) of this title.

Subsec. (g). Pub. L. 116–283, § 1850(i)(1), transferred subsec. (g) to section 4375(d) and (e) of this title.

Subsec. (h). Pub. L. 116–283, § 1850(c), transferred subsec. (h) to section 4371(b) of this title.

2018—Subsec. (e)(3). Pub. L. 115–232 substituted ‘‘section 8677(b)(2)’’ for ‘‘section 7307(b)(2)’’.

2011—Subsec. (a)(1). Pub. L. 111–383 substituted ‘‘section 2430a(d)’’ for ‘‘section 2430a(c)’’.

2009—Subsec. (e)(2). Pub. L. 111–23 amended par. (2) generally. Prior to amendment, par. (2) related to cost growths in major defense acquisition programs or designated major subprograms.

Subsec. (g)(1)(G). Pub. L. 111–84 made technical amendment to directory language of Pub. L. 110–417, § 811(c)(6)(A)(iv)(I). See 2008 Amendment note below.

2008—Subsec. (a)(1). Pub. L. 110–417, § 811(c)(1)(A), substituted ‘‘Except as provided in section 2430a(c) of this title, the terms’’ for ‘‘The terms’’.

Subsec. (a)(2). Pub. L. 110–417, § 811(c)(1)(B), inserted ‘‘or designated major subprogram’’ after ‘‘major defense acquisition program’’ and ‘‘or subprogram’’ after ‘‘the program’’.

Subsec. (a)(4), (5). Pub. L. 110–417, § 811(c)(1)(C), (D), inserted ‘‘or designated major defense subprogram’’ after ‘‘major defense acquisition program’’ wherever appearing and ‘‘or subprogram’’ after ‘‘for the program’’ wherever appearing.

Subsec. (b). Pub. L. 110–417, § 811(c)(2)(A), inserted ‘‘(or of each designated major subprogram under the program)’’ after ‘‘unit costs of the program’’ in introductory provisions.

Subsec. (b)(1), (2). Pub. L. 110–417, § 811(c)(2)(B), (C), inserted ‘‘for the program (or for each designated major subprogram under the program)’’ before period at end.

Subsec. (b)(5). Pub. L. 110–417, § 811(c)(2)(D), inserted ‘‘or subprogram’’ after ‘‘software component of the program’’ wherever appearing.

Subsec. (c). Pub. L. 110–417, § 811(c)(3), substituted ‘‘the program acquisition unit cost for the program (or for a designated major subprogram under the program) or the procurement unit cost for the program (or for such a subprogram)’’ for ‘‘the program acquisition unit cost for the program or the procurement unit cost for the program’’ and struck out ‘‘for the program’’ after ‘‘significant cost growth threshold’’.

Subsec. (d)(1), (2). Pub. L. 110–417, § 811(c)(4)(A), (B), inserted ‘‘or any designated major subprogram under the program’’ after ‘‘major defense acquisition program’’ and ‘‘or subprogram’’ after ‘‘for the program’’ wherever appearing.

Subsec. (d)(3). Pub. L. 110–417, § 811(c)(4)(C), substituted ‘‘the program or subprogram concerned’’ for ‘‘such program’’.

Subsec. (e)(1)(A). Pub. L. 110–417, § 811(c)(5)(A)(i), inserted ‘‘or designated major subprogram’’ after ‘‘major defense acquisition program’’ and ‘‘or subprogram’’ after ‘‘for the program’’.

Subsec. (e)(1)(B). Pub. L. 110–417, § 811(c)(5)(A)(ii), inserted ‘‘or designated major subprogram’’ after ‘‘major defense acquisition program’’ and ‘‘or subprogram’’ after ‘‘that program’’.

Subsec. (e)(2). Pub. L. 110–417, § 811(c)(5)(B), in introductory provisions, inserted ‘‘or designated major subprogram’’ after ‘‘major defense acquisition program’’ and ‘‘or subprogram’’ after ‘‘for the program’’.

Pub. L. 110–181 inserted ‘‘, after consultation with the Joint Requirements Oversight Council regarding program requirements,’’ after ‘‘Secretary of Defense’’ in introductory provisions.

Subsec. (g)(1)(D). Pub. L. 110–417, § 811(c)(6)(A)(i), inserted ‘‘(and for each designated major subprogram under the program)’’ after ‘‘for the program’’ and ‘‘or subprogram’’ after ‘‘in which the program’’.

Subsec. (g)(1)(E). Pub. L. 110–417, § 811(c)(6)(A)(ii), inserted ‘‘for the program (and for each designated major subprogram under the program)’’ after ‘‘program acquisition cost’’.

Subsec. (g)(1)(F). Pub. L. 110–417, § 811(c)(6)(A)(iii), inserted ‘‘for the program (or for any designated major subprogram under the program)’’ before period at end.

Subsec. (g)(1)(G). Pub. L. 110–417, § 811(c)(6)(A)(iv)(I), as amended by Pub. L. 111–84, inserted ‘‘and each designated major subprogram under the program’’ after ‘‘of the program’’.

Subsec. (g)(1)(G)(i), (ii). Pub. L. 110–417, § 811(c)(6)(A)(iv)(II), inserted ‘‘or subprogram’’ after ‘‘for the program’’ in two places.

Subsec. (g)(1)(H). Pub. L. 110–417, § 811(c)(6)(A)(v), inserted ''and each designated major subprogram under the program'' after ''year in which information on the program'' and ''or subprogram'' after ''Report in which information on the program''.

Subsec. (g)(1)(J). Pub. L. 110–417, § 811(c)(6)(A)(vi), inserted ''for the program (or for each designated major subprogram under the program)'' after ''program acquisition unit cost''.

Subsec. (g)(1)(K). Pub. L. 110–417, § 811(c)(6)(A)(vii), inserted ''for the program (or for each designated major subprogram under the program)'' after ''procurement unit cost'' in two places.

Subsec. (g)(1)(O). Pub. L. 110–417, § 811(c)(6)(A)(viii), inserted ''for the program (or for any designated major subprogram under the program)'' before period at end.

Subsec. (g)(1)(P). Pub. L. 110–417, § 811(c)(6)(A)(ix), inserted ''or subprogram'' after ''the program'' in introductory provisions and ''and any designated major subprogram under the program'' after ''major contracts of the program'' in cl. (vi).

Subsec. (g)(1)(Q). Pub. L. 110–417, § 811(c)(6)(A)(x), inserted ''or any designated major subprogram under the program'' after ''the program''.

Subsec. (g)(2). Pub. L. 110–417, § 811(c)(6)(B), inserted ''or designated major subprogram'' after ''major defense acquisition program'' and ''or subprogram'' after ''the entire program'' and after ''cancellation of a program''.

2006—Subsec. (a)(4), (5). Pub. L. 109–163, § 802(a), added pars. (4) and (5).

Subsec. (a)(6). Pub. L. 109–163, § 802(d)(2), added par. (6).

Subsec. (c). Pub. L. 109–163, § 802(b)(1), substituted ''cause to believe that the program acquisition unit cost for the program or the procurement unit cost for the program, as applicable, has increased by a percentage equal to or greater than the significant cost growth threshold for the program'' for ''cause to believe—

''(1) that the program acquisition unit cost for the program has increased by at least 15 percent over the program acquisition unit cost for the program as shown in the Baseline Estimate; or

''(2) in the case of a major defense acquisition program that is a procurement program, that the procurement unit cost for the program has increased by at least 15 percent over the procurement unit cost for the program as reflected in the Baseline Estimate''.

Subsec. (d)(1). Pub. L. 109–163, § 802(b)(2)(A), substituted ''by a percentage equal to or greater than the significant cost growth threshold, or the critical cost growth threshold, for the program'' for ''by at least 15 percent, or by at least 25 percent, over the program acquisition unit cost for the program as shown in the Baseline Estimate''.

Subsec. (d)(2). Pub. L. 109–163, § 802(b)(2)(B), substituted ''by a percentage equal to or greater than the significant cost growth threshold, or the critical cost growth threshold, for the program'' for ''by at least 15 percent, or by at least 25 percent, over the procurement unit cost for the program as reflected in the Baseline Estimate''.

Subsec. (d)(3). Pub. L. 109–163, § 802(b)(2)(C), substituted ''by a percentage equal to or greater than the significant cost growth threshold or critical cost growth threshold or that'' for ''by at least 15 percent, or by at least 25 percent, as determined under paragraph (1) or that'' and ''by a percentage equal to or greater than the significant cost growth threshold or critical cost growth threshold, the Secretary'' for ''by at least 15 percent, or by at least 25 percent, as determined under paragraph (2), the Secretary''.

Subsec. (e)(1)(A). Pub. L. 109–163, § 802(b)(3)(A), substituted ''by a percentage equal to or greater than the significant cost growth threshold for the program'' for ''by at least 15 percent''.

Subsec. (e)(2). Pub. L. 109–163, § 802(c), redesignated subpar. (B) as (C) and substituted ''the Secretary of Defense shall—'', par. (A) and introductory provisions of par. (B) for ''the Secretary of Defense shall submit to Congress, before the end of the 30-day period beginning on the day the Selected Acquisition Report containing the information described in subsection (g) is required to be submitted under section 2432(f) of this title—

''(A) a written certification, stating that—''.

Pub. L. 109–163, § 802(b)(3)(B), in introductory provisions, struck out ''percentage increase in the'' before ''program acquisition'' and substituted ''increases by a percentage equal to or greater than the critical cost growth threshold for the program'' for ''exceeds 25 percent''.

Subsec. (e)(2)(A). Pub. L. 109–364 added cl. (i) and redesignated former cls. (i) to (iii) as (ii) to (iv), respectively.

Subsec. (e)(3). Pub. L. 109–163, § 802(b)(3)(C)(ii), substituted ''by a percentage equal to or greater than the critical cost growth threshold'' for ''of at least 25 percent'' in introductory provisions and subpar. (B).

Pub. L. 109–163, § 802(b)(3)(C)(i), substituted ''by a percentage equal to or greater than the significant cost growth threshold'' for ''of at least 15 percent'' in introductory provisions and subpar. (A).

2004—Subsec. (b)(5). Pub. L. 108–375, § 801(a), added par. (5).

Subsec. (g)(1)(Q). Pub. L. 108–375, § 801(b)(1), added subpar. (Q).

1997—Subsec. (c). Pub. L. 105–85, § 833(a), in concluding provisions, struck out ''during the current fiscal year (other than the last quarterly unit cost report under subsection (b) for the preceding fiscal year)'' after ''designated by the Secretary concerned''.

Subsec. (c)(1) to (3). Pub. L. 105–85, § 833(b), inserted ''or'' at end of par. (1), struck out ''or'' at end of par. (2), and struck out par. (3), which read as follows: ''that cost variances or schedule variances of a major contract under the program have resulted in an increase in the cost of the contract of at least 15 percent over the cost of the contract as of the time the contract was made;''.

Subsec. (d)(3). Pub. L. 105–85, § 833(c), struck out ''(for the first time since the beginning of the current fiscal year)'' after ''the Secretary concerned determines''.

1994—Subsec. (a)(2). Pub. L. 103–355, § 3003(a)(1)(A), substituted ''Baseline Estimate'' for ''Baseline Selected Acquisition Report'' and ''cost estimate included in the baseline description for the program under section 2435 of this title.'' for ''Selected Acquisition Report in which information on the program is first included or the comprehensive annual Selected Acquisition Report for the fiscal year immediately before the fiscal year containing the quarter with respect to which the unit cost report is submitted, whichever is later.''

Subsec. (a)(4). Pub. L. 103–355, § 3003(a)(1)(B), struck out par. (4) which defined ''Baseline Report''.

Subsec. (b)(3). Pub. L. 103–355, § 3003(b), substituted ''contract was entered into'' for ''Baseline Report was submitted''.

Subsec. (c). Pub. L. 103–355, §§ 3002(a)(2)(A), 3003(a)(2)(A), (c), struck out par. (1) designation and par. (2), redesignated subpars. (A) to (C) as pars. (1) to (3), respectively, substituted ''Baseline Estimate'' for ''Baseline Report'' in pars. (1) and (2), and struck out ''current'' before ''procurement unit cost'' in par. (2). Prior to amendment, former par. (2) related to submission of unit cost reports by major defense acquisition program manager to service acquisition executive designated by Secretary of Defense in certain circumstances.

Subsec. (d)(1). Pub. L. 103–355, § 3003(a)(2)(B), substituted ''Baseline Estimate'' for ''Baseline Report''.

Subsec. (d)(2). Pub. L. 103–355, §§ 3002(a)(2)(B), 3003(a)(2)(B), struck out ''current'' before ''procurement unit cost'' and substituted ''Baseline Estimate'' for ''Baseline Report''.

Subsec. (d)(3). Pub. L. 103–355, § 3002(a)(2)(B), struck out ''current'' before ''procurement unit cost''.

Subsec. (e)(1)(A), (2). Pub. L. 103–355, § 3002(a)(2)(C), struck out ''current'' before ''procurement unit cost''.

Subsec. (f). Pub. L. 103–355, § 3003(d), substituted ''be stated in terms of constant base year dollars (as de-

scribed in section 2430 of this title)'' for ''include expected inflation''.

Subsec. (g)(1)(I). Pub. L. 103–355, § 3003(e), amended subpar. (I) generally. Prior to amendment, subpar. (I) read as follows: ''The type of the Baseline Report (under subsection (a)(4)) and the date of the Baseline Report.''

1993—Subsec. (e)(3). Pub. L. 103–35 substituted ''an increase of at least 15 percent'' for ''a at least 15 percent increase'' in introductory provisions and in subpar. (A), and substituted ''an increase of at least 25 percent'' for ''a at least 25 percent increase'' in introductory provisions and in subpar. (B).

1992—Subsec. (a)(4)(C). Pub. L. 102–484, § 817(d)(1), substituted ''(e)(2)(B)'' for ''(e)(2)(B)(ii)''.

Subsec. (b). Pub. L. 102–484, § 817(d)(2), substituted ''30 calendar days'' for ''7 days (excluding Saturdays, Sundays, and legal public holidays)'' in second sentence.

Subsec. (c)(1)(A), (B), (2)(A), (B). Pub. L. 102–484, § 817(d)(3), substituted ''at least'' for ''more than''.

Subsec. (d)(1), (2). Pub. L. 102–484, § 817(d)(4)(A), substituted ''at least'' for ''more than'' wherever appearing.

Subsec. (d)(3). Pub. L. 102–484, § 817(d)(4)(B), substituted ''at least'' for ''more than'' wherever appearing and ''program. In the case of a determination based on a quarterly report submitted in accordance with subsection (b), the Secretary shall submit the notification to Congress within 45 days after the end of the quarter. In the case of a determination based on a report submitted in accordance with subsection (c), the Secretary shall submit the notification to Congress within 45 days after the date of that report. The Secretary shall include in the notification the date on which the determination was made.'' for ''program within 30 days after the date on which the service acquisition executive reports his determination of such increase in such unit cost to the Secretary and shall include in such notification the date on which the determination was made.''

Subsec. (e)(1)(A). Pub. L. 102–484, § 817(d)(5)(A), added subpar. (A) and struck out former subpar. (A) which read as follows: ''Except as provided in subparagraph (B), whenever the Secretary concerned determines under subsection (d) that the current program acquisition cost of a major defense acquisition program has increased by more than 15 percent, a Selected Acquisition Report shall be submitted to Congress for the first fiscal-year quarter ending on or after the date of the determination and such report shall include the information described in section 2432(e) of this title. The report shall be submitted within 45 days after the end of that quarter.''

Subsec. (e)(2). Pub. L. 102–484, § 817(d)(5)(B), substituted ''program acquisition unit cost or current procurement unit cost'' for ''current program acquisition cost''.

Subsec. (e)(3). Pub. L. 102–484, § 817(d)(5)(C), substituted ''at least'' for ''more than'' wherever appearing.

1990—Subsec. (c). Pub. L. 101–510 struck out ''the'' before ''such service acquisition executive'' wherever appearing.

1989—Subsec. (a)(2). Pub. L. 101–189, § 811(a)(1)(A), inserted ''the service acquisition executive designated by'' before ''the Secretary concerned''.

Subsec. (a)(4). Pub. L. 101–189, § 811(a)(1)(B)(i), inserted ''the service acquisition executive designated by'' before ''the Secretary concerned'' in introductory provisions.

Subsec. (a)(4)(A). Pub. L. 101–189, § 811(a)(1)(B)(ii), substituted ''Selected Acquisition Report submitted under subsection (e)(2)(B) that includes information on'' for ''unit cost report submitted under subsection (e)(2)(B)(ii) with respect to''.

Subsec. (a)(4)(B). Pub. L. 101–189, § 811(a)(1)(B)(iii), substituted ''subsection (e)(2)(B) with respect to the program during that three-quarter period, the most recent Selected Acquisition Report submitted under subsection (e)(1) that includes information on the program'' for ''subsection (e)(2)(B)(ii) with respect to the program during that three-quarter period, the most recent unit cost report submitted under subsection (e)(1) with respect to the program''.

Subsec. (b). Pub. L. 101–189, § 811(a)(2)(A), amended introductory provisions generally. Prior to amendment, introductory provisions read as follows: ''The program manager for a defense acquisition program that as of the end of a fiscal-year quarter is a major defense acquisition program (other than a program not required to be included in the Selected Acquisition Report for that quarter under section 2432(b)(3) of this title) shall, after the end of that quarter, submit to the Secretary concerned a written report on the unit costs of the program. Each report for the first quarter of a fiscal year shall be submitted not more than 7 days (excluding Saturdays, Sundays, and legal public holidays) after the date on which the President transmits the Budget to Congress for the following fiscal year, and each report for other quarters shall be submitted not more than 7 days (excluding Saturdays, Sundays, and legal public holidays) after the end of that quarter. The program manager shall include in each such unit cost report the following information with respect to the program (as of the last day of the quarter for which the report is made):''.

Subsec. (b)(4). Pub. L. 101–189, § 811(a)(2)(B), substituted ''description established under section 2435 of this title'' for ''Selected Acquisition Report''.

Subsec. (c)(1). Pub. L. 101–189, § 811(a)(3)(A), in introductory provisions, struck out ''fiscal-year'' after ''time during a'', and in concluding provisions, inserted ''the service acquisition executive designated by'' before ''the Secretary concerned during'' and substituted ''(other than the last quarterly unit cost report under subsection (b) for the preceding fiscal year)'' for ''(other than the unit cost report under subsection (b) for the last quarter of the preceding fiscal year)'' and ''such service acquisition executive a unit'' for ''Secretary concerned a unit''.

Subsec. (c)(2). Pub. L. 101–189, § 811(a)(3)(B), in introductory provisions, inserted ''the service acquisition executive designated by'' before ''the Secretary concerned a unit'' and substituted ''(other than the last quarterly unit cost report under subsection (b) for the preceding fiscal year)'' for ''(other than the unit cost report under subsection (b) for the last quarter of the preceding fiscal year)'', and in cls. (A), (B), and (C), and concluding provisions, substituted ''such service acquisition executive'' for ''Secretary concerned''.

Subsec. (d)(1). Pub. L. 101–189, § 811(a)(4)(A), inserted ''the service acquisition executive designated by'' before ''the Secretary concerned'' and substituted ''service acquisition executive shall determine'' for ''Secretary shall determine''.

Subsec. (d)(2). Pub. L. 101–189, § 811(a)(4)(B), inserted ''the service acquisition executive designated by'' before ''the Secretary concerned under'' and substituted ''service acquisition executive, in addition to the determination under paragraph (1), shall determine'' for ''Secretary concerned shall, in addition to the determination under paragraph (1), determine''.

Subsec. (d)(3). Pub. L. 101–189, § 811(a)(4)(C), substituted par. (3) consisting of a single par., for former par. (3) consisting of subpars. (A) and (B).

Subsec. (e)(1), (2). Pub. L. 101–189, § 811(a)(5)(A), added pars. (1) and (2) and struck out former pars. (1) and (2) which contained exceptions to the prohibitions in subsec. (d)(3)(B)(i) and (ii).

Subsec. (e)(3). Pub. L. 101–189, § 811(a)(5)(B), in introductory provisions, inserted ''If a determination of a more than 15 percent increase is made by the Secretary under subsection (d) and a Selected Acquisition Report containing the information described in subsection (g) is not submitted to Congress under paragraph (1), or if a determination of a more than 25 percent increase is made by the Secretary under subsection (d) and the certification of the Secretary of Defense is not submitted to Congress under paragraph (2), funds appropriated for military construction, for research, development, test, and evaluation, and for procurement may

not be obligated for a major contract under the program.'' and struck out ''in subsection (d)(3)(B)'' after ''prohibition'', in subpar. (A), substituted ''Selected Acquisition Report'' for ''report of the Secretary concerned'' and ''(2)(B)'' for ''(2)(B)(ii)'', and in subpar. (B), substituted ''Selected Acquisition Report'' for ''report of the Secretary concerned'', ''(2)(B)'' for ''(2)(B)(ii)'', and ''(2)(A)'' for ''(2)(B)(i)''.

Subsec. (g)(2). Pub. L. 101–189, § 811(a)(6), inserted at end ''The certification of the Secretary of Defense under subsection (e) is not required to be submitted for termination or cancellation of a program.''

1987—Pub. L. 100–180 made technical amendment to directory language of Pub. L. 99–433, § 101(a)(5). See 1986 Amendment note below.

Subsec. (a)(1). Pub. L. 100–26, § 7(b)(4), substituted ''(1) The terms 'program' '' for ''(1) 'Major defense acquisition program', 'program' ''.

Subsec. (a)(2). Pub. L. 100–26, § 7(k)(7)(A), inserted ''The term'' after par. designation.

Subsec. (a)(3). Pub. L. 100–26, § 7(k)(7)(B), substituted ''The term 'procurement' '' for '' 'Procurement' ''.

Subsec. (a)(4). Pub. L. 100–26, § 7(k)(7)(A), inserted ''The term'' after par. designation.

1986—Pub. L. 99–433, § 101(a)(5), as amended by Pub. L. 100–180, § 1314(a)(1), renumbered section 139b of this title as this section.

Pub. L. 99–433, § 110(d)(14), substituted ''Unit cost reports'' for ''Oversight of cost growth of major programs: unit cost reports'' in section catchline.

Subsec. (a)(1). Pub. L. 99–433, § 110(g)(8)(A), substituted ''section 2432(a)'' for ''section 139a(a)''.

Subsec. (b). Pub. L. 99–500 and Pub. L. 99–591, § 101(c) [§ 961(b)(1)], Pub. L. 99–661, § 961(b)(1), amended subsec. (b) identically, inserting ''(excluding Saturdays, Sundays, and legal public holidays)'' in two places in second sentence.

Pub. L. 99–433, § 110(g)(8)(B), substituted ''section 2432(b)(3)'' for ''section 139a(b)(3)'' in first sentence.

Subsec. (h). Pub. L. 99–500 and Pub. L. 99–591, § 101(c) [§ 961(b)(2)], Pub. L. 99–661, § 961(b)(2), amended section identically, adding subsec. (h).

1985—Subsec. (d)(3)(B)(i). Pub. L. 99–145 inserted ''percent'' after ''15''.

1984—Subsec. (a)(4). Pub. L. 98–525, § 1242(b)(1), added par. (4).

Subsec. (b). Pub. L. 98–525, § 1242(b)(2)(A), (B), struck out ''not more than 7 days'' before ''after the end of that quarter'' and inserted ''Each report for the first quarter of a fiscal year shall be submitted not more than 7 days after the date on which the President transmits the Budget to Congress for the following fiscal year, and each report for other quarters shall be submitted not more than 7 days after the end of that quarter.''

Subsec. (b)(3). Pub. L. 98–525, § 1242(b)(2)(C), substituted ''Baseline Report'' for ''baseline Selected Acquisition Report''.

Subsec. (c)(1)(A), (B). Pub. L. 98–525, § 1242(b)(3), substituted ''Baseline Report'' for ''baseline Selected Acquisition Report''.

Subsec. (d)(1), (2). Pub. L. 98–525, § 1242(b)(4)(A), substituted ''Baseline Report'' for ''baseline Selected Acquisition Report''.

Subsec. (d)(3)(B). Pub. L. 98–525, § 1242(b)(4)(B)(i), substituted ''funds appropriated for military construction, for research, development, test, and evaluation, and for procurement may not be obligated for a major contract under the program'' for ''additional funds may not be obligated in connection with such program''.

Subsec. (d)(3)(B)(i). Pub. L. 98–525, § 1242(b)(4)(B)(ii), struck out ''but less than 25 percent'' after ''more than 15''.

Subsec. (e)(1). Pub. L. 98–525, § 1242(b)(5)(A), substituted ''subsection (d)(3)(B)(i)'' for ''subsection (d)(3)(B)'' and inserted ''more than'' before ''15 percent''.

Subsec. (e)(2). Pub. L. 98–525, § 1242(b)(5)(B), substituted ''subsection (d)(3)(B)(ii)'' for ''subsection (d)(3)(B)'' and inserted ''more than'' before ''25 percent''.

Subsec. (e)(2)(A). Pub. L. 98–525, § 1242(b)(5)(B)(iii), inserted ''and the Secretary concerned submits to Congress, before the end of the 30-day period referred to in subsection (d)(3)(B)(i), a report containing the information described in subsection (g)''.

Subsec. (e)(2)(B). Pub. L. 98–525, § 1242(b)(5)(B)(iv), substituted ''subsection (d)(3)(B)(ii)'' for ''such subsection''.

Subsec. (e)(3). Pub. L. 98–525, § 1242(b)(5)(C), substituted ''at the end of a period of 30 days of continuous session of Congress (as determined under section 7307(b)(2) of this title) beginning on the date—

''(A) on which Congress receives the report of the Secretary concerned under paragraph (1) or (2)(B)(ii) with respect to that program, in the case of a determination of a more than 15 percent increase (as determined in subsection (d)); or

''(B) on which Congress has received both the report of the Secretary concerned under paragraph (1) or (2)(B)(ii) and the certification of the Secretary of Defense under paragraph (2)(B)(i) with respect to that program, in the case of a more than 25 percent increase (as determined under subsection (d)).'',

for ''in the case of a program to which it would otherwise apply if, after such prohibition has taken effect, the Committees on Armed Services of the Senate and House of Representatives waive the prohibition with respect to such program.''

Subsec. (g)(1)(I). Pub. L. 98–525, § 1242(b)(6)(A), substituted ''The type of the Baseline Report (under subsection (a)(4)) and the date of the Baseline Report'' for ''The date of the baseline Selected Acquisition Report''.

Subsec. (g)(1)(K). Pub. L. 98–525, § 1242(b)(6)(B), required the report to include the procurement unit cost for the succeeding fiscal year expressed in constant base-year dollars and in current year dollars.

1983—Subsec. (g)(2). Pub. L. 98–94 substituted ''procurement'' for ''procurment''.

Effective Date of Repeal

Repeal effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

Effective Date of 2021 Amendment

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

Effective Date of 2018 Amendment

Amendment by Pub. L. 115–232 effective Feb. 1, 2019, with provision for the coordination of amendments and special rule for certain redesignations, see section 800 of Pub. L. 115–232, set out as a note preceding section 3001 of this title.

Effective Date of 2009 Amendment

Pub. L. 111–84, div. A, title X, § 1073(c), Oct. 28, 2009, 123 Stat. 2474, provided that the amendment made by section 1073(c)(4) is effective as of Oct. 14, 2008, and as if included in Pub. L. 110–417 as enacted.

Effective Date of 2006 Amendment

Pub. L. 109–163, div. A, title VIII, § 802(e), Jan. 6, 2006, 119 Stat. 3370, provided that:

''(1) In general.—The amendments made by this section [amending this section and section 2435 of this title] shall take effect on the date of the enactment of this Act [Jan. 6, 2006], and shall apply with respect to any major defense acquisition program for which an original Baseline Estimate is first established before, on, or after that date.

''(2) Applicability to current major defense acquisition programs.—In the case of a major defense acquisition program for which the program acquisition unit

cost or procurement unit cost, as applicable, exceeds the original Baseline Estimate for the program by more than 50 percent on the date of the enactment of this Act—

''(A) the current Baseline Estimate for the program as of such date of enactment is deemed to be the original Baseline Estimate for the program for purposes of section 2433 of title 10, United States Code (as amended by this section); and

''(B) each Selected Acquisition Report submitted on the program after the date of the enactment of this Act shall reflect each of the following:

''(i) The original Baseline Estimate, as first established for the program, without adjustment or revision.

''(ii) The Baseline Estimate for the program that is deemed to be the original Baseline Estimate for the program under subparagraph (A).

''(iii) The current original Baseline Estimate for the program as adjusted or revised, if at all, in accordance with subsection (d)(2) of section 2435 of title 10, United States Code (as added by subsection (d) of this section).''

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–375 effective on the date occurring 60 days after Oct. 28, 2004, and applicable with respect to reports due to be submitted to Congress on or after that date, see section 801(c) of Pub. L. 108–375, set out as a note under section 2432 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–180 applicable as if included in enactment of the Goldwater-Nichols Department of Defense Reorganization Act of 1986, Pub. L. 99–433, see section 1314(e) of Pub. L. 100–180, set out as a note under section 743 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661 effective Jan. 1, 1987, see section 101(c) [§ 961(c)] of Pub. L. 99–500 and Pub. L. 99–591, and section 961(c) of Pub. L. 99–661, set out as a note under section 2432 of this title.

EFFECTIVE DATE

Section effective Jan. 1, 1983, and applicable beginning with respect to reports for first quarter of fiscal year 1983, see section 1107(c) of Pub. L. 97–252, set out as a note under section 2432 of this title.

§ 2433a. Critical cost growth in major defense acquisition programs

(a) REASSESSMENT OF PROGRAM.—If the program acquisition unit cost or procurement unit cost of a major defense acquisition program or designated subprogram (as determined by the Secretary under section 2433(d) of this title) increases by a percentage equal to or greater than the critical cost growth threshold for the program or subprogram, the Secretary of Defense, after consultation with the Joint Requirements Oversight Council regarding program requirements, shall—

(1) determine the root cause or causes of the critical cost growth in accordance with applicable statutory requirements and Department of Defense policies, procedures, and guidance; and

(2) in consultation with the Director of Cost Assessment and Program Evaluation, carry out an assessment of—

(A) the projected cost of completing the program if current requirements are not modified;

(B) the projected cost of completing the program based on reasonable modification of such requirements;

(C) the rough order of magnitude of the costs of any reasonable alternative system or capability; and

(D) the need to reduce funding for other programs due to the growth in cost of the program.

(b) PRESUMPTION OF TERMINATION.—(1) After conducting the reassessment required by subsection (a) with respect to a major defense acquisition program, the Secretary shall terminate the program unless the Secretary submits to Congress, before the end of the 60-day period beginning on the day the Selected Acquisition Report containing the information described in section 2433(g) of this title is required to be submitted under section 2432(f) of this title, a written certification in accordance with paragraph (2).

(2) A certification described by this paragraph with respect to a major defense acquisition program is a written certification that—

(A) the continuation of the program is essential to the national security;

(B) there are no alternatives to the program which will provide acceptable capability to meet the joint military requirement (as defined in section 181(g)(1) of this title) at less cost;

(C) the new estimates of the program acquisition unit cost or procurement unit cost have been determined by the Director of Cost Assessment and Program Evaluation to be reasonable;

(D) the program is a higher priority than programs whose funding must be reduced to accommodate the growth in cost of the program; and

(E) the management structure for the program is adequate to manage and control program acquisition unit cost or procurement unit cost.

(3) A written certification under paragraph (2) shall be accompanied by a report presenting the root cause analysis and assessment carried out pursuant to subsection (a) and the basis for each determination made in accordance with subparagraphs (A) through (E) of paragraph (2), together with supporting documentation.

(c) ACTIONS IF PROGRAM NOT TERMINATED.—(1) If the Secretary elects not to terminate a major defense acquisition program pursuant to subsection (b), the Secretary shall—

(A) restructure the program in a manner that addresses the root cause or causes of the critical cost growth, as identified pursuant to subsection (a), and ensures that the program has an appropriate management structure as set forth in the certification submitted pursuant to subsection (b)(2)(E);

(B) rescind the most recent Milestone approval for the program and withdraw any associated certification under section 2366a or 2366b of this title;

(C) require a new Milestone approval for the program before taking any contract action to enter a new contract, exercise an option under an existing contract, or otherwise extend the

scope of an existing contract under the program, except to the extent determined necessary by the Milestone Decision Authority, on a non-delegable basis, to ensure that the program can be restructured as intended by the Secretary without unnecessarily wasting resources;

(D) include in the report specified in paragraph (2) a description of all funding changes made as a result of the growth in cost of the program, including reductions made in funding for other programs to accommodate such cost growth; and

(E) conduct regular reviews of the program in accordance with the requirements of section 205 of the Weapon Systems Acquisition Reform Act of 2009.

(2) For purposes of paragraph (1)(D), the report specified in this paragraph is the first Selected Acquisition Report for the program submitted pursuant to section 2432 of this title after the President submits a budget pursuant to section 1105 of title 31, in the calendar year following the year in which the program was restructured.

(3)(A) The requirements of subparagraphs (B), (C), and (E) of paragraph (1) shall not apply to a program or subprogram if—

(i) the Milestone Decision Authority determines in writing, on the basis of a cost assessment and root cause analysis conducted pursuant to subsection (a), that—

(I) but for a change in the quantity of items to be purchased under the program or subprogram, the program acquisition unit cost or procurement unit cost for the program or subprogram would not have increased by a percentage equal to or greater than the cost growth thresholds for the program or subprogram set forth in subparagraph (B); and

(II) the change in quantity of items described in subclause (I) was not made as a result of an increase in program cost, a delay in the program, or a problem meeting program requirements;

(ii) the Secretary determines in writing that the cost to the Department of Defense of complying with such requirements is likely to exceed the benefits to the Department of complying with such requirements; and

(iii) the Secretary submits to Congress, before the end of the 60-day period beginning on the day the Selected Acquisition Report containing the information described in section 2433(g) of this title is required to be submitted under section 2432(f) of this title—

(I) a copy of the written determination under clause (i) and an explanation of the basis for the determination; and

(II) a copy of the written determination under clause (ii) and an explanation of the basis for the determination.

(B) The cost growth thresholds specified in this subparagraph are as follows:

(i) In the case of a major defense acquisition program or designated major defense subprogram, a percentage increase in the program acquisition unit cost for the program or subprogram of—

(I) 5 percent over the program acquisition unit cost for the program or subprogram as shown in the current Baseline Estimate for the program or subprogram; and

(II) 10 percent over the program acquisition unit cost for the program or subprogram as shown in the original Baseline Estimate for the program or subprogram.

(ii) In the case of a major defense acquisition program or designated major defense subprogram that is a procurement program, a percentage increase in the procurement unit cost for the program or subprogram of—

(I) 5 percent over the procurement unit cost for the program or subprogram as shown in the current Baseline Estimate for the program or subprogram; and

(II) 10 percent over the procurement unit cost for the program or subprogram as shown in the original Baseline Estimate for the program or subprogram.

(d) ACTIONS IF PROGRAM TERMINATED.—If a major defense acquisition program is terminated pursuant to subsection (b), the Secretary shall submit to Congress a written report setting forth—

(1) an explanation of the reasons for terminating the program;

(2) the alternatives considered to address any problems in the program; and

(3) the course the Department plans to pursue to meet any continuing joint military requirements otherwise intended to be met by the program.

(Added Pub. L. 111–23, title II, § 206(a)(1), May 22, 2009, 123 Stat. 1726; amended Pub. L. 111–383, div. A, title X, § 1075(b)(35), Jan. 7, 2011, 124 Stat. 4371; Pub. L. 112–81, div. A, title VIII, §§ 801(e)(4), 831, Dec. 31, 2011, 125 Stat. 1484, 1503; Pub. L. 112–239, div. A, title VIII, § 813, Jan. 2, 2013, 126 Stat. 1829; Pub. L. 116–283, div. A, title XVIII, § 1850(j)(1), (2), (k)(1), Jan. 1, 2021, 134 Stat. 4269, 4270.)

AMENDMENT OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1850(j)(1), (2), (k)(1), Jan. 1, 2021, 134 Stat. 4151, 4269, 4270, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is amended as follows:

(1) by transferring subsections (a) and (b) to section 4376(a) and (b), respectively, of this title;

(2) by transferring subsection (c) to section 4377(a) of this title; and

(3) by transferring subsection (d) to section 4376(c) of this title.

See 2021 Amendment notes below.

REPEAL OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1850(l), Jan. 1, 2021, 134 Stat. 4151, 4271, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is repealed.

REFERENCES IN TEXT

Section 205 of the Weapon Systems Acquisition Reform Act of 2009, referred to in subsec. (c)(1)(E), is section 205 of Pub. L. 111–23, which amended section 2366b of this title and enacted provisions set out as notes under this section and section 2366b of this title.

AMENDMENTS

2021—Subsecs. (a), (b). Pub. L. 116–283, §1850(j)(1), transferred subsecs. (a) and (b) to section 4376(a) and (b), respectively, of this title.

Subsec. (c). Pub. L. 116–283, §1850(k)(1), transferred subsec. (c) to section 4377(a) of this title.

Subsec. (d). Pub. L. 116–283, §1850(j)(2), transferred subsec. (d) to section 4376(c) of this title.

2013—Subsec. (c)(3)(A). Pub. L. 112–239 substituted ''subparagraphs (B), (C), and (E)'' for ''subparagraphs (B) and (C)'' in introductory provisions.

2011—Subsec. (b)(2)(B). Pub. L. 111–383 substituted ''section 181(g)(1)'' for ''section 181(g)((1)''.

Subsec. (c)(1)(B), (C). Pub. L. 112–81, §801(e)(4), struck out '', or Key Decision Point approval in the case of a space program,'' after ''Milestone approval''.

Subsec. (c)(3). Pub. L. 112–81, §831, added par. (3).

EFFECTIVE DATE OF REPEAL

Repeal effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

REVIEWS OF PROGRAMS RESTRUCTURED AFTER EXPERIENCING CRITICAL COST GROWTH

Pub. L. 111–23, title II, §205(c), May 22, 2009, 123 Stat. 1725, as amended by Pub. L. 111–383, div. A, title VIII, §813(e), title X, §1075(k)(2), Jan. 7, 2011, 124 Stat. 4266, 4378, provided that: ''The official designated to perform oversight of performance assessment pursuant to section 103 of this Act [set out as a note under section 2430 of this title], shall assess the performance of each major defense acquisition program that has exceeded critical cost growth thresholds established pursuant to section 2433(e) of title 10, United States Code, but has not been terminated in accordance with section 2433a of such title (as added by section 206(a) of this Act) not less often than semi-annually until one year after the date on which such program receives a new milestone approval, in accordance with section 2433a(c)(1)(C) of such title (as so added). The results of reviews performed under this subsection shall be reported to the Under Secretary of Defense for Acquisition, Technology, and Logistics and summarized in the next annual report of such designated official.''

[Pub. L. 111–383, div. A, title VIII, §813(e), Jan. 7, 2011, 124 Stat. 4266, provided that the amendment made by section 813(e) to section 205(c) of Pub. L. 111–23, set out above, is effective as of May 22, 2009, and as if included in Pub. L. 111–23, as enacted.]

[For definition of ''major defense acquisition program'' as used in section 205(c) of Pub. L. 111–23, set out above, see section 2(2) of Pub. L. 111–23, set out as a note under section 2430 of this title.]

[§ 2434. Repealed. Pub. L. 114–328, div. A, title VIII, § 842(c)(1), Dec. 23, 2016, 130 Stat. 2290]

Section, added Pub. L. 98–94, title XII, §1203(a)(1), Sept. 24, 1983, 97 Stat. 682, §139c; renumbered §2434 and amended Pub. L. 99–433, title I, §§101(a)(5), 110(d)(15), (g)(9), Oct. 1, 1986, 100 Stat. 995, 1003, 1004; Pub. L. 99–661, div. A, title XII, §1208(a)–(c)(1), Nov. 14, 1986, 100 Stat. 3975; Pub. L. 100–26, §7(b)(5), Apr. 21, 1987, 101 Stat. 279; Pub. L. 100–180, div. A, title XIII, §1314(a)(1), Dec. 4, 1987, 101 Stat. 1175; Pub. L. 100–456, div. A, title V, §525, Sept. 29, 1988, 102 Stat. 1975; Pub. L. 102–190, div. A, title VIII, §801(a), (b)(1), Dec. 5, 1991, 105 Stat. 1412; Pub. L. 103–355, title III, §3004, Oct. 13, 1994, 108 Stat. 3330; Pub. L. 104–106, div. A, title VIII, §814, Feb. 10, 1996, 110 Stat. 395; Pub. L. 107–107, div. A, title VIII, §821(a), Dec. 28, 2001, 115 Stat. 1181; Pub. L. 111–23, title I, §101(d)(5), May 22, 2009, 123 Stat. 1710; Pub. L. 111–383, div. A, title VIII, §814(e), Jan. 7, 2011, 124 Stat. 4267; Pub. L. 114–92, div. A, title VIII, §831(a)–(c)(1), Nov. 25, 2015, 129 Stat. 912, related to independent cost estimates.

§ 2435. Baseline description

(a) BASELINE DESCRIPTION REQUIREMENT.—(1) The Secretary of a military department shall establish a baseline description for each major defense acquisition program and for each designated major subprogram under the program under the jurisdiction of such Secretary.

(2) The baseline shall include sufficient parameters to describe the cost estimate (referred to as the ''Baseline Estimate'' in section 2433 of this title), schedule, performance, supportability, and any other factor of such major defense acquisition program or designated major subprogram.

(b) FUNDING LIMIT.—No amount appropriated or otherwise made available to the Department of Defense for carrying out a major defense acquisition program or any designated major subprogram under the program may be obligated after the program or subprogram enters system development and demonstration without an approved baseline description unless such obligation is specifically approved by the Under Secretary of Defense for Acquisition and Sustainment.

(c) SCHEDULE.—A baseline description for a major defense acquisition program or any designated major subprogram under the program shall be prepared under this section—

(1) before the program or subprogram enters system development and demonstration;

(2) before the program or subprogram enters production and deployment; and

(3) before the program or subprogram enters full rate production.

(d) ORIGINAL BASELINE ESTIMATE.—(1) In this chapter, the term ''original Baseline Estimate'', with respect to a major defense acquisition program or any designated major subprogram under the program, means the baseline description established with respect to the program or subprogram under subsection (a) prepared before the program or subprogram enters system development and demonstration, or at program or subprogram initiation, whichever occurs later, without adjustment or revision (except as provided in paragraph (2)).

(2) An adjustment or revision of the original baseline description of a major defense acquisition program or any designated major subprogram under the program may be treated as the original Baseline Estimate for the program or subprogram for purposes of this chapter only if the percentage increase in the program acquisition unit cost or procurement unit cost under such adjustment or revision exceeds the critical cost growth threshold for the program or subprogram under section 2433 of this title, as determined by the Secretary of the military department concerned under subsection (d) of such section.

(3) In the event of an adjustment or revision of the original baseline description of a major defense acquisition program or any designated major subprogram under the program, the Sec-

retary of Defense shall include in the next Selected Acquisition Report to be submitted under section 2432 of this title after such adjustment or revision a notification to the congressional defense committees of such adjustment or revision, together with the reasons for such adjustment or revision.

(e) REGULATIONS.—The Secretary of Defense shall prescribe regulations governing the following:

(1) The content of baseline descriptions under this section.

(2) The submission to the Secretary of the military department concerned and the Under Secretary of Defense for Acquisition and Sustainment by the program manager for a program for which there is an approved baseline description (or in the case of a major defense acquisition program with one or more designated major subprograms, approved baseline descriptions for such subprograms) under this section of reports of deviations from any such baseline description of the cost, schedule, performance, supportability, or any other factor of the program or subprogram.

(3) Procedures for review of such deviation reports within the Department of Defense.

(4) Procedures for submission to, and approval by, the Secretary of Defense of revised baseline descriptions.

(Added Pub. L. 99–500, §101(c) [title X, §904(a)(1)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–133, and Pub. L. 99–591, §101(c) [title X, §904(a)(1)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–133; Pub. L. 99–661, div. A, title IX, formerly title IV, §904(a)(1), Nov. 14, 1986, 100 Stat. 3912, renumbered title IX, Pub. L. 100–26, §3(5), Apr. 21, 1987, 101 Stat. 273; amended Pub. L. 100–26, §7(b)(6), Apr. 21, 1987, 101 Stat. 280; Pub. L. 100–180, div. A, title VIII, §803(a), Dec. 4, 1987, 101 Stat. 1125; Pub. L. 100–370, §1(i)(1), July 19, 1988, 102 Stat. 848; Pub. L. 100–456, div. A, title XII, §1233(*l*)(4), Sept. 29, 1988, 102 Stat. 2058; Pub. L. 101–189, div. A, title VIII, §811(b), Nov. 29, 1989, 103 Stat. 1493; Pub. L. 101–510, div. A, title XII, §1207(b), title XIV, §1484(k)(11), Nov. 5, 1990, 104 Stat. 1665, 1719; Pub. L. 103–160, div. A, title IX, §904(d)(1), Nov. 30, 1993, 107 Stat. 1728; Pub. L. 103–355, title III, §3005(a), Oct. 13, 1994, 108 Stat. 3330; Pub. L. 107–107, div. A, title VIII, §821(d), title X, §1048(b)(2), Dec. 28, 2001, 115 Stat. 1182, 1225; Pub. L. 109–163, div. A, title VIII, §802(d)(1), Jan. 6, 2006, 119 Stat. 3369; Pub. L. 109–364, div. A, title VIII, §806, Oct. 17, 2006, 120 Stat. 2315; Pub. L. 110–417, [div. A], title VIII, §811(d), Oct. 14, 2008, 122 Stat. 4524; Pub. L. 116–92, div. A, title IX, §902(71), Dec. 20, 2019, 133 Stat. 1551.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§1801(d), 1847(b)(4), Jan. 1, 2021, 134 Stat. 4151, 4254, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 322 of this title, as added by section 1847(a) of Pub. L. 116–283, inserted after section 4212, and redesignated as section 4214 of this title. See Effective Date of 2021 Amendment note below.

HISTORICAL AND REVISION NOTES

1988 ACT

Subsection (c) is based on Pub. L. 98–525, title XII, §1243, Oct. 19, 1984, 98 Stat. 2609, as amended by Pub. L. 100–26, §110(a)(1), Apr. 21, 1987, 101 Stat. 288.

CODIFICATION

Pub. L. 110–417, §811(d)(2)(B), (3)(B), (4)(B)(i), which directed amendment of this section by inserting ‘‘or subprogram’’ after ‘‘the program’’ in subsec. (b) and after ‘‘the program’’ each place it appeared in subsecs. (c) and (d), was executed by making the insertions after ‘‘the program’’ each place it appeared in those subsecs. except after ‘‘designated major subprogram under the program’’, to reflect the probable intent of Congress.

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661 added identical sections.

AMENDMENTS

2019—Subsecs. (b), (e)(2). Pub. L. 116–92 substituted ‘‘the Under Secretary of Defense for Acquisition and Sustainment’’ for ‘‘the Under Secretary of Defense for Acquisition, Technology, and Logistics’’.

2008—Subsec. (a). Pub. L. 110–417, §811(d)(1), inserted ‘‘and for each designated major subprogram under the program’’ after ‘‘major defense acquisition program’’ in par. (1) and ‘‘or designated major subprogram’’ after ‘‘major defense acquisition program’’ in par. (2).

Subsec. (b). Pub. L. 110–417, §811(d)(2), inserted ‘‘or any designated major subprogram under the program’’ after ‘‘major defense acquisition program’’ and ‘‘or subprogram’’ after ‘‘after the program’’. See Codification note above.

Subsec. (c). Pub. L. 110–417, §811(d)(3), inserted ‘‘or any designated major subprogram under the program’’ after ‘‘major defense acquisition program’’ in introductory provisions and ‘‘or subprogram’’ after ‘‘the program’’ in pars. (1) to (3). See Codification note above.

Subsec. (d). Pub. L. 110–417, §811(d)(4), inserted ‘‘or any designated major subprogram under the program’’ after ‘‘major defense acquisition program’’ wherever appearing, in par. (1), inserted ‘‘or subprogram’’ after ‘‘to the program’’, ‘‘before the program’’, and ‘‘at program’’, and, in par. (2), inserted ‘‘or subprogram’’ after ‘‘for the program’’ in two places. See Codification note above.

Subsec. (e)(2). Pub. L. 110–417, §811(d)(5), inserted ‘‘(or in the case of a major defense acquisition program with one or more designated major subprograms, approved baseline descriptions for such subprograms)’’ after ‘‘baseline description’’ and ‘‘or subprogram’’ before period at end and substituted ‘‘any such baseline description’’ for ‘‘the baseline’’.

2006—Subsec. (d). Pub. L. 109–163 added subsec. (d). Former subsec. (d) redesignated (e).

Subsec. (d)(1). Pub. L. 109–364 inserted ‘‘prepared before the program enters system development and demonstration, or at program initiation, whichever occurs later’’ after ‘‘program under subsection (a)’’.

Subsec. (e). Pub. L. 109–163 redesignated subsec. (d) as (e).

2001—Subsec. (b). Pub. L. 107–107, §§821(d)(1), 1048(b)(2), substituted ‘‘system development and demonstration’’ for ‘‘engineering and manufacturing development’’ and ‘‘Under Secretary of Defense for Acquisition, Technology, and Logistics’’ for ‘‘Under Secretary of Defense for Acquisition and Technology’’.

Subsec. (c)(1). Pub. L. 107–107, §821(d)(2)(A), substituted ‘‘system development and demonstration’’ for ‘‘demonstration and validation’’.

Subsec. (c)(2). Pub. L. 107–107, §821(d)(2)(B), substituted ‘‘production and deployment’’ for ‘‘engineering and manufacturing development’’.

Subsec. (c)(3). Pub. L. 107–107, §821(d)(2)(C), substituted ‘‘full rate production’’ for ‘‘production and deployment’’.

Subsec. (d)(2). Pub. L. 107–107, §1048(b)(2), substituted ‘‘Under Secretary of Defense for Acquisition, Tech-

nology, and Logistics'' for ''Under Secretary of Defense for Acquisition and Technology''.

1994—Pub. L. 103–355 amended section generally. Prior to amendment, section related to enhanced program stability.

1993—Subsec. (b)(2)(B). Pub. L. 103–160 substituted ''Under Secretary of Defense for Acquisition and Technology'' for ''Under Secretary of Defense for Acquisition''.

1990—Subsec. (b)(1). Pub. L. 101–510, §1484(k)(11), struck out closing parenthesis after ''such Secretary'' in introductory provisions.

Subsec. (c). Pub. L. 101–510, §1207(b), struck out subsec. (c) which read as follows: ''STABILITY OF PROGRAM MANAGERS.—(1) The tour of duty of an officer of the armed forces as a program manager of a major defense acquisition program shall be (A) not less than four years, or (B) until completion of a major program milestone (as defined in regulations prescribed by the Secretary of Defense).

''(2) The Secretary of the military department concerned may waive the length of the tour of duty prescribed in paragraph (1). The authority under the preceding sentence may not be delegated.''

1989—Subsec. (a)(2)(B)(iv). Pub. L. 101–189, §811(b)(1), substituted ''production'' for ''development''.

Subsec. (b)(1). Pub. L. 101–189, §811(b)(2)(A), substituted ''service acquisition executive designated by such Secretary'' for ''senior procurement executive of such military department (designated pursuant to section 16(3) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(3))''.

Subsec. (b)(2). Pub. L. 101–189, §811(b)(2)(B), substituted ''180 days'' for ''90 days'' in introductory provisions.

1988—Subsec. (b)(2). Pub. L. 100–456 clarified amendment by Pub. L. 100–180, §803(a). See 1987 Amendment note below.

Subsec. (c). Pub. L. 100–370 added subsec. (c).

1987—Subsec. (b)(2). Pub. L. 100–180, as amended by Pub. L. 100–456, substituted ''under paragraph (1), and for which the total cost of completion of the stage will exceed by 15 percent or more, in the case of a development stage, or by 5 percent or more, in the case of a production stage, the amount specified in the baseline description established under subsection (a) for such stage; or any milestone specified in such baseline description will be missed by more than 90 days'' for first reference to ''under paragraph (1)''.

Subsec. (c). Pub. L. 100–26, §7(b)(6), struck out subsec. (c) which defined ''major defense acquisition program''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–163 effective on Jan. 6, 2006, and applicable with respect to any major defense acquisition program for which an original Baseline Estimate is first established before, on, or after Jan. 6, 2006, see section 802(e) of Pub. L. 109–163, set out as a note under section 2433 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–510, div. A, title XII, §1207(b), Nov. 5, 1990, 104 Stat. 1665, provided that the amendment made by that section is effective Oct. 1, 1991.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–456 applicable as if included in the enactment of Pub. L. 100–180, see section 1233(*l*)(5) of Pub. L. 100–456 set out as a note under section 2366 of this title.

EFFECTIVE DATE

Pub. L. 99–500, §101(c) [title X, §904(b)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–134, and Pub. L. 99–591, §101(c) [title X, §904(b)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–134, and Pub. L. 99–661, div. A, title IX, formerly title IV, §904(b), Nov. 14, 1986, 100 Stat. 3914, renumbered title IX, Pub. L. 100–26, §3(5), Apr. 21, 1987, 101 Stat. 273, provided that: ''Section 2435 of title 10, United States Code (as added by subsection (a)(1)), shall apply to major defense acquisition programs that enter full-scale engineering development or full-rate production after the date of the enactment of this Act [Oct. 18, 1986].''

REVIEW OF ACQUISITION PROGRAM CYCLE

Pub. L. 103–355, title V, §5002(a), Oct. 13, 1994, 108 Stat. 3350, provided that: ''The Secretary of Defense shall review the regulations of the Department of Defense to ensure that acquisition program cycle procedures are focused on achieving the goals that are consistent with the program baseline description established pursuant to section 2435 of title 10, United States Code.''

§2436. Major defense acquisition programs: incentive program for contractors to purchase capital assets manufactured in United States

(a) ESTABLISHMENT OF INCENTIVE PROGRAM.—The Secretary of Defense shall plan and establish an incentive program in accordance with this section for contractors to purchase capital assets manufactured in the United States in part with funds available to the Department of Defense.

(b) DEFENSE INDUSTRIAL CAPABILITIES FUND MAY BE USED.—The Secretary of Defense may use the Defense Industrial Capabilities Fund, established under section 814 of the National Defense Authorization Act for Fiscal Year 2004, for incentive payments under the program established under this section.

(c) APPLICABILITY TO MAJOR DEFENSE ACQUISITION PROGRAM CONTRACTS.—The incentive program shall apply to contracts for the procurement of a major defense acquisition program.

(d) CONSIDERATION.—The Secretary of Defense shall provide consideration in source selection in any request for proposals for a major defense acquisition program for offerors with eligible capital assets.

(Added Pub. L. 108–136, div. A, title VIII, §822(a)(1), Nov. 24, 2003, 117 Stat. 1546.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§1801(d), 1847(f)(2), Jan. 1, 2021, 134 Stat. 4151, 4258, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 322 of this title, inserted after section 4292, and redesignated as section 4293 of this title. See Effective Date of 2021 Amendment note below.

REFERENCES IN TEXT

Section 814 of the National Defense Authorization Act for Fiscal Year 2004, referred to in subsec. (b), is section 814 of Pub. L. 108–136, which is set out in a note under section 2501 of this title.

PRIOR PROVISIONS

A prior section 2436, added Pub. L. 99–500, §101(c) [title X, §905(a)(1)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–134, and Pub. L. 99–591, §101(c) [title X, §905(a)(1)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–134; Pub. L. 99–661, div. A, title IX, formerly title IV, §905(a)(1), Nov. 14, 1986, 100 Stat. 3914; renumbered title IX, Pub. L. 100–26, §3(5), Apr. 21, 1987, 101 Stat. 273; amended Pub. L. 100–26,

§ 7(b)(7), Apr. 21, 1987, 101 Stat. 280; Pub. L. 100–180, div. A, title VIII, § 803(c), title XII, § 1231(14), Dec. 4, 1987, 101 Stat. 1125, 1160; Pub. L. 101–510, div. A, title XIV, § 1484(h)(4), Nov. 5, 1990, 104 Stat. 1718, related to establishment and conduct of the defense enterprise program, prior to repeal by Pub. L. 103–160, div. A, title VIII, § 821(a)(5), Nov. 30, 1993, 107 Stat. 1704.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE

Pub. L. 108–136, div. A, title VIII, § 822(c), Nov. 24, 2003, 117 Stat. 1547, provided that: ''Section 2436 of title 10, United States Code, as added by subsection (a), shall apply with respect to contracts entered into after the expiration of the 18-month period beginning on the date of the enactment of this Act [Nov. 24, 2003].''

REGULATIONS

Pub. L. 108–136, div. A, title VIII, § 822(b), Nov. 24, 2003, 117 Stat. 1547, provided that:

''(1) The Secretary of Defense shall prescribe regulations as necessary to carry out section 2436 of title 10, United States Code, as added by this section.

''(2) The Secretary may prescribe interim regulations as necessary to carry out such section. For this purpose, the Secretary is excepted from compliance with the notice and comment requirements of section 553 of title 5, United States Code. All interim rules prescribed under the authority of this paragraph that are not earlier superseded by final rules shall expire no later than 270 days after the effective date of section 2436 of title 10, United States Code [see Effective Date note above], as added by this section.''

§ 2437. Development of major defense acquisition programs: sustainment of system to be replaced

(a) REQUIREMENT FOR SUSTAINING EXISTING FORCES.—(1) The Secretary of Defense shall require that, whenever a new major defense acquisition program begins development, the defense acquisition authority responsible for that program shall develop a plan (to be known as a ''sustainment plan'') for the existing system that the system under development is intended to replace. Any such sustainment plan shall provide for an appropriate level of budgeting for sustaining the existing system until the replacement system to be developed under the major defense acquisition program is fielded and assumes the majority of responsibility for the mission of the existing system. This section does not apply to a major defense acquisition that reaches initial operational capability before October 1, 2008.

(2) In this section, the term ''defense acquisition authority'' means the Secretary of a military department or the commander of the United States Special Operations Command.

(b) SUSTAINMENT PLAN.—The Secretary of Defense shall require that each sustainment plan under this section include, at a minimum, the following:

(1) The milestone schedule for the development of the major defense acquisition program, including the scheduled dates for low-rate initial production, initial operational capability, full-rate production, and full operational capability and the date as of when the replacement system is scheduled to assume the majority of responsibility for the mission of the existing system.

(2) An analysis of the existing system to assess the following:

(A) Anticipated funding levels necessary to—

(i) ensure acceptable reliability and availability rates for the existing system; and

(ii) maintain mission capability of the existing system against the relevant threats.

(B) The extent to which it is necessary and appropriate to—

(i) transfer mature technologies from the new system or other systems to enhance the mission capability of the existing system against relevant threats; and

(ii) provide interoperability with the new system during the period from initial fielding until the new system assumes the majority of responsibility for the mission of the existing system.

(c) EXCEPTIONS.—Subsection (a) shall not apply to a major defense acquisition program if the Secretary of Defense determines that—

(1) the existing system is no longer relevant to the mission;

(2) the mission has been eliminated;

(3) the mission has been consolidated with another mission in such a manner that another existing system can adequately meet the mission requirements; or

(4) the duration of time until the new system assumes the majority of responsibility for the existing system's mission is sufficiently short so that mission availability, capability, interoperability, and force protection requirements are maintained.

(d) WAIVER.—The Secretary of Defense may waive the applicability of subsection (a) to a major defense acquisition program if the Secretary determines that, but for such a waiver, the Department would be unable to meet national security objectives. Whenever the Secretary makes such a determination and authorizes such a waiver, the Secretary shall submit notice of such waiver and of the Secretary's determination and the reasons therefor in writing to the congressional defense committees.

(Added Pub. L. 108–375, div. A, title VIII, § 805(a)(1), Oct. 28, 2004, 118 Stat. 2008.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1848(b), Jan. 1, 2021, 134 Stat. 4151, 4258, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 323 of this title, as added by section 1848(a) of Pub. L. 116–283, inserted after the table of sections at the beginning, and redesignated as section 4321 of this title. See Effective Date of 2021 Amendment note below.

PRIOR PROVISIONS

A prior section 2437, added Pub. L. 99–500, § 101(c) [title X, § 906(a)(1)], Oct. 18, 1986, 100 Stat. 1783–82,

1783–135, and Pub. L. 99–591, § 101(c) [title X, § 906(a)(1)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–135; Pub. L. 99–661, div. A, title IX, formerly title IV, § 906(a)(1), Nov. 14, 1986, 100 Stat. 3915; renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; amended Pub. L. 100–26, § 7(b)(8), Apr. 21, 1987, 101 Stat. 280; Pub. L. 100–180, div. A, title VIII, § 803(b), Dec. 4, 1987, 101 Stat. 1125; Pub. L. 100–224, § 5(a)(3), Dec. 30, 1987, 101 Stat. 1538, related to designation of defense enterprise programs for milestone authorization, prior to repeal by Pub. L. 103–160, div. A, title VIII, § 821(a)(5), Nov. 30, 1993, 107 Stat. 1704.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE

Pub. L. 108–375, div. A, title VIII, § 805(b), Oct. 28, 2004, 118 Stat. 2009, provided that: ''Section 2437 of title 10, United States Code, as added by subsection (a), shall apply with respect to a major defense acquisition program for a system that is under development as of the date of the enactment of this Act [Oct. 28, 2004] and is not expected to reach initial operational capability before October 1, 2008. The Secretary of Defense shall require that a sustainment plan under that section be developed not later than one year after the date of the enactment of this Act for the existing system that the system under development is intended to replace.''

§ 2438. Performance assessments and root cause analyses

(a) DESIGNATION OF SENIOR OFFICIAL RESPONSIBILITY FOR PERFORMANCE ASSESSMENTS AND ROOT CAUSE ANALYSES.—

(1) IN GENERAL.—The Secretary of Defense shall designate a senior official in the Office of the Secretary of Defense as the principal official of the Department of Defense responsible for conducting and overseeing performance assessments and root cause analyses for major defense acquisition programs.

(2) NO PROGRAM EXECUTION RESPONSIBILITY.—The Secretary shall ensure that the senior official designated under paragraph (1) is not responsible for program execution.

(3) STAFF AND RESOURCES.—The Secretary shall assign to the senior official designated under paragraph (1) appropriate staff and resources necessary to carry out the senior official's function under this section.

(b) RESPONSIBILITIES.—The senior official designated under subsection (a) shall be responsible for the following:

(1) Carrying out performance assessments of major defense acquisition programs in accordance with the requirements of subsection (c) periodically or when requested by the Secretary of Defense, the Under Secretary of Defense for Acquisition and Sustainment, the Secretary of a military department, or the head of a Defense Agency.

(2) Conducting root cause analyses for major defense acquisition programs in accordance with the requirements of subsection (d) when required by section 2433a(a)(1) of this title, or when requested by the Secretary of Defense, the Under Secretary of Defense for Acquisition and Sustainment, the Secretary of a military department, or the head of a Defense Agency.

(3) Issuing policies, procedures, and guidance governing the conduct of performance assessments and root cause analyses by the military departments and the Defense Agencies.

(4) Evaluating the utility of performance metrics used to measure the cost, schedule, and performance of major defense acquisition programs, and making such recommendations to the Secretary of Defense as the official considers appropriate to improve such metrics.

(5) Advising acquisition officials on performance issues regarding a major defense acquisition program that may arise—

(A) before certification under section 2433a of this title;

(B) before entry into full-rate production; or

(C) in the course of consideration of any decision to request authorization of a multiyear procurement contract for the program.

(c) PERFORMANCE ASSESSMENTS.—For purposes of this section, a performance assessment with respect to a major defense acquisition program is an evaluation of the following:

(1) The cost, schedule, and performance of the program, relative to current metrics, including performance requirements and baseline descriptions.

(2) The extent to which the level of program cost, schedule, and performance predicted relative to such metrics is likely to result in the timely delivery of a level of capability to the warfighter that is consistent with the level of resources to be expended and provides superior value to alternative approaches that may be available to meet the same military requirement.

(d) ROOT CAUSE ANALYSES.—For purposes of this section and section 2433a of this title, a root cause analysis with respect to a major defense acquisition program is an assessment of the underlying cause or causes of shortcomings in cost, schedule, or performance of the program, including the role, if any, of—

(1) unrealistic performance expectations;

(2) unrealistic baseline estimates for cost or schedule;

(3) immature technologies or excessive manufacturing or integration risk;

(4) unanticipated design, engineering, manufacturing, or technology integration issues arising during program performance;

(5) changes in procurement quantities;

(6) inadequate program funding or funding instability;

(7) poor performance by government or contractor personnel responsible for program management; or

(8) any other matters.

(e) SUPPORT OF APPLICABLE CAPABILITIES AND EXPERTISE.—The Secretary of Defense shall ensure that the senior official designated under subsection (a) has the support of other Department of Defense officials with relevant capabilities and expertise needed to carry out the requirements of this section.

(Added and amended Pub. L. 111–383, div. A, title IX, § 901(d), (k)(1)(F), Jan. 7, 2011, 124 Stat. 4321,

4325; Pub. L. 112–239, div. A, title X, § 1076(f)(27), Jan. 2, 2013, 126 Stat. 1953; Pub. L. 114–92, div. A, title X, § 1077(b), Nov. 25, 2015, 129 Stat. 998; Pub. L. 116–92, div. A, title IX, § 902(72), Dec. 20, 2019, 133 Stat. 1551.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1847(e)(3), Jan. 1, 2021, 134 Stat. 4151, 4256, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 322 of this title, inserted after section 4272, and redesignated as section 4273 of this title. See Effective Date of 2021 Amendment note below.

CODIFICATION

Section 103 of Pub. L. 111–23, formerly set out as a note under section 2430 of this title, which was transferred to this chapter, renumbered as this section, and amended by Pub. L. 111–383, § 901(d), (k)(1)(F), was based on Pub. L. 111–23, title I, § 103, May 22, 2009, 123 Stat. 1715.

PRIOR PROVISIONS

A prior section 2438, added Pub. L. 102–484, div. A, title VIII, § 821(a)(1)(B), Oct. 23, 1992, 106 Stat. 2459; amended Pub. L. 103–160, div. A, title IX, § 904(d)(1), Nov. 30, 1993, 107 Stat. 1728, required competitive prototyping of major weapon systems and subsystems prior to development under major defense acquisition program, prior to repeal by Pub. L. 103–355, title III, § 3006(a), Oct. 13, 1994, 108 Stat. 3331.

Another prior section 2438 was renumbered section 2439 of this title.

AMENDMENTS

2019—Subsec. (b)(1), (2). Pub. L. 116–92 substituted ''Under Secretary of Defense for Acquisition and Sustainment'' for ''Under Secretary of Defense for Acquisition, Technology and Logistics''.

2015—Subsec. (f). Pub. L. 114–92 struck out subsec. (f) which related to annual report.

2013—Subsec. (a)(3). Pub. L. 112–239 inserted ''the senior'' before ''official's''.

2011—Pub. L. 111–383, § 901(k)(1)(F), substituted ''Performance assessments and root cause analyses'' for ''PERFORMANCE ASSESSMENTS AND ROOT CAUSE ANALYSES FOR MAJOR DEFENSE ACQUISITION PROGRAMS'' in section catchline.

Pub. L. 111–383, § 901(d), transferred section 103 of Pub. L. 111–23 to this chapter and renumbered it as this section. See Codification note above.

Subsec. (b)(2). Pub. L. 111–383, § 901(d)(1), substituted ''section 2433a(a)(1) of this title'' for ''section 2433a(a)(1) of title 10, United States Code (as added by section 206(a) of this Act)''.

Subsec. (b)(5)(A). Pub. L. 111–383, § 901(d)(2), substituted ''before'' for ''prior to'' and ''section 2433a of this title'' for ''section 2433a of title 10, United States Code (as so added)''.

Subsec. (b)(5)(B). Pub. L. 111–383, § 901(d)(2)(B), substituted ''before'' for ''prior to''.

Subsec. (d). Pub. L. 111–383, § 901(d)(3), substituted ''section 2433a of this title'' for ''section 2433a of title 10, United States Code (as so added)'' in introductory provisions.

Subsec. (f). Pub. L. 111–383, § 901(d)(4), struck out ''beginning in 2010,'' after ''each year,''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE

Amendment by Pub. L. 111–383 effective Jan. 1, 2011, see section 901(p) of Pub. L. 111–383, set out as an Effective Date of 2011 Amendment note under section 131 of this title.

§ 2439. Negotiation of price for technical data before development, production, or sustainment of major weapon systems

The Secretary of Defense shall ensure, to the maximum extent practicable, that the Department of Defense, before selecting a contractor for the engineering and manufacturing development of a major weapon system, production of a major weapon system, or sustainment of a major weapon system, negotiates a price for technical data to be delivered under a contract for such development, production, or sustainment.

(Added Pub. L. 115–91, div. A, title VIII, § 835(a)(1), Dec. 12, 2017, 131 Stat. 1471; amended Pub. L. 115–232, div. A, title VIII, § 867, Aug. 13, 2018, 132 Stat. 1901.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1847(c)(3), Jan. 1, 2021, 134 Stat. 4151, 4254, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 322 of this title, as added by section 1847(a) of Pub. L. 116–283, inserted after section 4232, and redesignated as section 4236 of this title. See Effective Date of 2021 Amendment note below.

PRIOR PROVISIONS

A prior section 2439, added Pub. L. 99–145, title IX, § 912(a)(1), Nov. 8, 1985, 99 Stat. 685, § 2305a; amended Pub. L. 99–433, title I, § 110(g)(3), Oct. 1, 1986, 100 Stat. 1004; renumbered § 2438 and amended Pub. L. 100–26, § 7(b)(9)(A), (k)(2), Apr. 21, 1987, 101 Stat. 280, 284; Pub. L. 101–510, div. A, title VIII, § 805, Nov. 5, 1990, 104 Stat. 1591; renumbered § 2439, Pub. L. 102–484, div. A, title VIII, § 821(a)(1)(A), Oct. 23, 1992, 106 Stat. 2459, related to preparation of acquisition strategy for major programs and use of competitive alternative sources, prior to repeal by Pub. L. 103–355, title III, § 3007(a), Oct. 13, 1994, 108 Stat. 3331.

AMENDMENTS

2018—Pub. L. 115–232, § 867(4), substituted '', production, or sustainment'' for ''or production'' in section catchline.

Pub. L. 115–232, § 867(1)–(3), inserted '', to the maximum extent practicable,'' after ''shall ensure'' and substituted ''production of a major weapon system, or sustainment of a major weapon system'' for ''or for the production of a major weapon system'' and '', production, or sustainment'' for ''or production''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE

Pub. L. 115–91, div. A, title VIII, § 835(a)(3), Dec. 12, 2017, 131 Stat. 1471, provided that: ''Section 2439 of title 10, United States Code, as added by paragraph (1), shall apply with respect to any contract for engineering and manufacturing development of a major weapon system,

or for the production of a major weapon system, for which the contract solicitation is issued on or after the date occurring one year after the date of the enactment of this Act [Dec. 12, 2017].''

§ 2440. National technology and industrial base plans, policy, and guidance

(a) IN GENERAL.—The Secretary of Defense shall prescribe regulations requiring consideration of the national technology and industrial base, in accordance with the strategy required by section 2501 of this title, in the development and implementation of acquisition plans for each major defense acquisition program.

(b) ACQUISITION POLICY AND GUIDANCE.—The Secretary of Defense shall develop and promulgate acquisition policy and guidance to the service acquisition executives, the heads of the appropriate Defense Agencies and Department of Defense Field Activities, and relevant program managers. Such policy and guidance shall be germane to the use of the research and development, manufacturing, and production capabilities identified pursuant to chapter 148 of this title and the technologies, companies, laboratories, and factories in specific Department of Defense research and development, international cooperative research, procurement, and sustainment activities.

(Added Pub. L. 102–484, div. D, title XLII, § 4216(b)(1), Oct. 23, 1992, 106 Stat. 2669; amended Pub. L. 109–364, div. A, title X, § 1071(a)(17), Oct. 17, 2006, 120 Stat. 2399; Pub. L. 112–239, div. A, title XVI, § 1603(c), Jan. 2, 2013, 126 Stat. 2063; Pub. L. 116–283, div. A, title VIII, § 846(b)(1), title XVIII, § 1847(b)(2)(A), Jan. 1, 2021, 134 Stat. 3768, 4253.)

AMENDMENT OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1847(b)(2)(A), Jan. 1, 2021, 134 Stat. 4151, 4253, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is amended by transferring the text of this section to section 4211 of this title, inserting it at the end of subsection (c), and designating it as paragraph (3). See 2021 Amendment note below.

REPEAL OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1881(a), Jan. 1, 2021, 134 Stat. 4151, 4293, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is repealed.

AMENDMENTS

2021—Pub. L. 116–283, § 1847(b)(2)(A), transferred the text of this section to the end of subsec. (c) of section 4211 of this title and redesignated it as par. (3).

Pub. L. 116–283, § 846(b)(1)(A), amended section catchline generally. Prior to amendment, section catchline read as follows: ''Technology and industrial base plans''.

Subsecs. (a), (b). Pub. L. 116–283, § 846(b)(1)(B), (C), designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

2013—Pub. L. 112–239 inserted '', in accordance with the strategy required by section 2501 of this title,'' after ''base''.

2006—Pub. L. 109–364 substituted ''industrial base plans'' for ''Industrial Base Plans'' in section catchline.

EFFECTIVE DATE OF REPEAL

Repeal effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by section 1847(b)(2)(A) of Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 2441. Sustainment reviews

(a) IN GENERAL.—The Secretary of each military department shall conduct a sustainment review of each covered system not later than five years after declaration of initial operational capability of a major defense acquisition program, and every five years thereafter throughout the life cycle of the covered system, to assess the product support strategy, performance, and operation and support costs of the covered system. The results of the sustainment review shall be documented in a memorandum by the relevant decision authority. The Secretary concerned shall make the memorandum and supporting documentation for each sustainment review available to the Under Secretary of Defense for Acquisition and Sustainment within 30 days after the review is completed.

(b) ELEMENTS.—At a minimum, the review required under subsection (a) shall assess execution of the life cycle sustainment plan of the covered system and include the following elements:

(1) An independent cost estimate for the remainder of the life cycle of the program.

(2) A comparison of actual costs to the amount of funds budgeted and appropriated in the previous five years, and if funding shortfalls exist, an explanation of the implications on equipment availability.

(3) A comparison between the assumed and achieved system reliabilities.

(4) An analysis of the most cost-effective source of repairs and maintenance.

(5) An evaluation of the cost of consumables and depot-level repairables.

(6) An evaluation of the costs of information technology, networks, computer hardware, and software maintenance and upgrades.

(7) As applicable, an assessment of the actual fuel efficiencies compared to the projected fuel efficiencies as demonstrated in tests or operations.

(8) As applicable, a comparison of actual manpower requirements to previous estimates.

(9) An analysis of whether accurate and complete data are being reported in the cost systems of the military department concerned, and if deficiencies exist, a plan to update the data and ensure accurate and complete data are submitted in the future.

(10) As applicable, information regarding any decision to restructure the life cycle sustainment plan for a covered system or any other action that will lead to critical operating and support cost growth.

(c) COORDINATION.—The review required under subsection (a) shall be conducted in coordina-

tion with the requirements of sections 2337 and 2337a of this title.

(d) SUBMISSION TO CONGRESS.—(1) Not later than September 30 of each fiscal year, the Secretary of each military department shall annually submit to the congressional defense committees the sustainment reviews required by this section for such fiscal year.

(2) Each submission under paragraph (1) shall be submitted in unclassified form, but may include a classified annex.

(3) For a covered system with critical operating and support cost growth, such submission shall include a remediation plan to reduce operating and support costs or a certification by the Secretary concerned that such critical operating and support cost growth is necessary to meet national security requirements.

(e) DEFINITIONS.—In this section:

(1) COVERED SYSTEM.—The term ''covered system'' shall have the meaning given in section 2337 of this title.

(2) CRITICAL OPERATING AND SUPPORT COST GROWTH.—The term ''critical operating and support cost growth'' means operating and support cost growth—

(A) of at least 25 percent more than the estimate documented in the most recent independent cost estimate for the covered system; or

(B) of at least 50 percent more than the estimate documented in the original Baseline Estimate (as defined in section 2435(d) of this title) for the covered system.

(Added Pub. L. 114–328, div. A, title VIII, § 849(c)(1), Dec. 23, 2016, 130 Stat. 2293; amended Pub. L. 115–91, div. A, title VIII, §§ 816, 836(b)(2), Dec. 12, 2017, 131 Stat. 1462, 1473; Pub. L. 116–283, div. A, title VIII, § 802(c), Jan. 1, 2021, 134 Stat. 3732.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1848(c), Jan. 1, 2021, 134 Stat. 4151, 4258, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 323 of this title, as added by section 1848(a) of Pub. L. 116–283, inserted after section 4321, and redesignated as section 4323 of this title. See Effective Date of 2021 Amendment note below.

AMENDMENTS

2021—Subsec. (a). Pub. L. 116–283, § 802(c)(1), in first sentence, substituted ''covered system'' for ''major weapon system'', '', and every five years thereafter throughout the life cycle of the covered system,'' for ''and throughout the life cycle of the weapon system'', and ''costs of the covered system'' for ''costs of the weapon system'' and struck out second sentence which read as follows: ''For any review after the first one, the Secretary concerned shall use availability and reliability thresholds and cost estimates as the basis for the circumstances that prompt such a review.''

Subsec. (b). Pub. L. 116–283, § 802(c)(2)(A), inserted ''assess execution of the life cycle sustainment plan of the covered system and'' before ''include the following elements:'' in introductory provisions.

Subsec. (b)(10). Pub. L. 116–283, § 802(c)(2)(B), added par. (10).

Subsecs. (d), (e). Pub. L. 116–283, § 802(c)(3), added subsecs. (d) and (e).

2017—Subsec. (a). Pub. L. 115–91, § 816, inserted at end ''The Secretary concerned shall make the memorandum and supporting documentation for each sustainment review available to the Under Secretary of Defense for Acquisition and Sustainment within 30 days after the review is completed.''

Subsec. (c). Pub. L. 115–91, § 836(b)(2), substituted ''sections 2337 and 2337a of this title'' for ''section 2337 of this title and section 832 of the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112–81; 10 U.S.C. 2430 note)''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by section 1848(c) of Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 2442. Prohibition on use of lowest price technically acceptable source selection process

(a) IN GENERAL.—The Department of Defense shall not use a lowest price technically acceptable source selection process for the engineering and manufacturing development contract of a major defense acquisition program.

(b) DEFINITIONS.—In this section:

(1) LOWEST PRICE TECHNICALLY ACCEPTABLE SOURCE SELECTION PROCESS.—The term ''lowest price technically acceptable source selection process'' has the meaning given that term in part 15 of the Federal Acquisition Regulation.

(2) MAJOR DEFENSE ACQUISITION PROGRAM.—The term ''major defense acquisition program'' has the meaning given that term in section 2430 of this title.

(3) ENGINEERING AND MANUFACTURING DEVELOPMENT CONTRACT.—The term ''engineering and manufacturing development contract'' means a prime contract for the engineering and manufacturing development of a major defense acquisition program.

(Added Pub. L. 115–91, div. A, title VIII, § 832(a)(1), Dec. 12, 2017, 131 Stat. 1468.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1847(c)(2), Jan. 1, 2021, 134 Stat. 4151, 4254, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 322 of this title, as added by section 1847(a) of Pub. L. 116–283, inserted after section 4231, and redesignated as section 4232 of this title. See Effective Date of 2021 Amendment note below.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE

Pub. L. 115–91, div. A, title VIII, § 832(b), Dec. 12, 2017, 131 Stat. 1468, provided that: ''The requirements of section 2442 of title 10, United States Code, as added by subsection (a), shall apply to major defense acquisition programs for which budgetary authority is requested for fiscal year 2019 or a subsequent fiscal year.''

§ 2443. Sustainment factors in weapon system design

(a) IN GENERAL.—The Secretary of Defense shall ensure that the defense acquisition system gives ample emphasis to sustainment factors, particularly those factors that are affected principally by the design of a weapon system, in the development of a weapon system.

(b) REQUIREMENTS PROCESS.—The Secretary shall ensure that reliability and maintainability are included in the performance attributes of the key performance parameter on sustainment during the development of capabilities requirements.

(c) SOLICITATION AND AWARD OF CONTRACTS.—

(1) REQUIREMENT.—The program manager of a weapon system shall include in the solicitation for and terms of a covered contract for the weapon system clearly defined and measurable requirements for engineering activities and design specifications for reliability and maintainability.

(2) EXCEPTION.—If the program manager determines that engineering activities and design specifications for reliability or maintainability should not be a requirement in a covered contract or a solicitation for such a contract, the program manager shall document in writing the justification for the decision.

(3) SOURCE SELECTION CRITERIA.—The Secretary shall ensure that sustainment factors, including reliability and maintainability, are given ample emphasis in the process for source selection. The Secretary shall encourage the use of objective reliability and maintainability criteria in the evaluation of competitive proposals.

(d) CONTRACT PERFORMANCE.—

(1) IN GENERAL.—The Secretary shall ensure that the Department of Defense uses best practices for responding to the positive or negative performance of a contractor in meeting the sustainment requirements of a covered contract for a weapon system. The Secretary shall encourage the use of incentive fees and penalties as appropriate and authorized in paragraph (2) in all covered contracts for weapons systems.

(2) AUTHORITY FOR INCENTIVE FEES AND PENALTIES.—The Secretary of Defense is authorized to include in any covered contract provisions for the payment of incentive fees to the contractor based on achievement of design specification requirements for reliability and maintainability of weapons systems under the contract, or the imposition of penalties to be paid by the contractor to the Government for failure to achieve such design specification requirements. Information about such fees or penalties shall be included in the solicitation for any covered contract that includes such fees or penalties.

(3) MEASUREMENT OF RELIABILITY AND MAINTAINABILITY.—In carrying out paragraph (2), the program manager shall base determinations of a contractor's performance on reliability and maintainability data collected during the program. Such data collection and associated evaluation metrics shall be described in detail in the covered contract. To the maximum extent practicable, such data shall be shared with appropriate contractor and government organizations.

(4) NOTIFICATION.—The Secretary of Defense shall notify the congressional defense committees upon entering into a covered contract that includes incentive fees or penalties authorized in paragraph (2).

(e) COVERED CONTRACT DEFINED.—In this section, the term ''covered contract'', with respect to a weapon system, means a contract—

(1) for the engineering and manufacturing development of a weapon system, including embedded software; or

(2) for the production of a weapon system, including embedded software.

(Added Pub. L. 115–91, div. A, title VIII, § 834(a)(1), Dec. 12, 2017, 131 Stat. 1469.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1848(e)(1), Jan. 1, 2021, 134 Stat. 4151, 4259, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 323 of this title, as added by section 1848(a) of Pub. L. 116–283, inserted after section 4235 [sic, probably means section 4325], and redesignated as section 4328 of this title. See Effective Date of 2021 Amendment note below.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE

Pub. L. 115–91, div. A, title VIII, § 834(b), Dec. 12, 2017, 131 Stat. 1470, provided that: ''Subsections (c) and (d) of section 2443 of title 10, United States Code, as added by subsection (a), shall apply with respect to any covered contract (as defined in that section) for which the contract solicitation is issued on or after the date occurring one year after the date of the enactment of this Act [Dec. 12, 2017].''

IMPLEMENTATION OF RECOMMENDATIONS OF THE INDEPENDENT STUDY ON CONSIDERATION OF SUSTAINMENT IN WEAPONS SYSTEMS LIFE CYCLE

Pub. L. 115–232, div. A, title VIII, § 832, Aug. 13, 2018, 132 Stat. 1857, provided that:

''(a) IMPLEMENTATION REQUIRED.—Not later than 18 months after the date of the enactment of this Act [Aug. 13, 2018], the Secretary of Defense shall, except as provided under subsection (b), commence implementation of each recommendation submitted as part of the independent assessment produced under section 844 of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114–328; 130 Stat. 2290).

''(b) EXCEPTIONS.—

''(1) DELAYED IMPLEMENTATION.—The Secretary of Defense may commence implementation of a recommendation described under subsection (a) later than the date required under such subsection if the Secretary provides the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] with a specific justification for the delay in implementation of such recommendation.

''(2) NONIMPLEMENTATION.—The Secretary of Defense may opt not to implement a recommendation

described under subsection (a) if the Secretary provides to the congressional defense committees—

''(A) the reasons for the decision not to implement the recommendation; and

''(B) a summary of the alternative actions the Secretary plans to take to address the purposes underlying the recommendation.

''(c) IMPLEMENTATION PLANS.—For each recommendation that the Secretary is implementing, or that the Secretary plans to implement, the Secretary shall submit to the congressional defense committees—

''(1) a summary of actions that have been taken to implement the recommendation; and

''(2) a schedule, with specific milestones, for completing the implementation of the recommendation.''

ENGINEERING CHANGE AUTHORIZED

Pub. L. 115–91, div. A, title VIII, §834(c), Dec. 12, 2017, 131 Stat. 1470, provided that: ''Subject to the availability of appropriations, the Secretary of Defense may fund engineering changes to the design of a weapon system in the engineering and manufacturing development phase or in the production phase of an acquisition program to improve reliability or maintainability of the weapon system and reduce projected operating and support costs.''

[CHAPTER 144A—REPEALED]

[§§ 2445a to 2445d. Repealed. Pub. L. 114–328, div. A, title VIII, § 846(1), Dec. 23, 2016, 130 Stat. 2292]

Section 2445a, added Pub. L. 109–364, div. A, title VIII, §816(a)(1), Oct. 17, 2006, 120 Stat. 2323; amended Pub. L. 110–417, [div. A], title VIII, §812(a)(1), (2), Oct. 14, 2008, 122 Stat. 4525; Pub. L. 111–84, div. A, title VIII, §841(c), Oct. 28, 2009, 123 Stat. 2418; Pub. L. 113–66, div. A, title X, §1092(a), Dec. 26, 2013, 127 Stat. 877, defined terms for this chapter.

Section 2445b, added Pub. L. 109–364, div. A, title VIII, §816(a)(1), Oct. 17, 2006, 120 Stat. 2323; amended Pub. L. 110–417, [div. A], title VIII, §812(b), Oct. 14, 2008, 122 Stat. 4525; Pub. L. 111–84, div. A, title VIII, §841(a), Oct. 28, 2009, 123 Stat. 2418; Pub. L. 111–383, div. A, title VIII, §805(b), Jan. 7, 2011, 124 Stat. 4259; Pub. L. 113–66, div. A, title X, §1092(d)(1), Dec. 26, 2013, 127 Stat. 877; Pub. L. 114–92, div. A, title VIII, §891(a), Nov. 25, 2015, 129 Stat. 951, related to submittal to Congress of cost, schedule, and performance information.

Section 2445c, added Pub. L. 109–364, div. A, title VIII, §816(a)(1), Oct. 17, 2006, 120 Stat. 2324; amended Pub. L. 110–417, [div. A], title VIII, §812(c), Oct. 14, 2008, 122 Stat. 4526; Pub. L. 111–23, title I, §101(d)(6), May 22, 2009, 123 Stat. 1710; Pub. L. 111–84, div. A, title VIII, §841(b), Oct. 28, 2009, 123 Stat. 2418; Pub. L. 112–81, div. A, title VIII, §811, Dec. 31, 2011, 125 Stat. 1491; Pub. L. 113–66, div. A, title X, §1092(b), (c), (d)(2), (e), Dec. 26, 2013, 127 Stat. 877, 878; Pub. L. 113–291, div. A, title VIII, §802, Dec. 19, 2014, 128 Stat. 3427; Pub. L. 114–92, div. A, title VIII, §891(b), Nov. 25, 2015, 129 Stat. 952, required quarterly reports by program managers and reports on significant changes in programs.

Section 2445d, added Pub. L. 109–364, div. A, title VIII, §816(a)(1), Oct. 17, 2006, 120 Stat. 2326; amended Pub. L. 111–84, div. A, title VIII, §817(a), Oct. 28, 2009, 123 Stat. 2408, provided a rule of construction with other reporting requirements.

EFFECTIVE DATE OF REPEAL

Pub. L. 114–328, div. A, title VIII, §846, Dec. 23, 2016, 130 Stat. 2292, provided in part that the repeal of this chapter is effective Sept. 30, 2017.

CHAPTER 144B—WEAPON SYSTEMS DEVELOPMENT AND RELATED MATTERS

Subchapter		Sec.
I.	Modular Open System Approach in Development of Weapon Systems	2446a
II.	Development, Prototyping, and Deployment of Weapon System Components or Technology	2447a
III.	Cost, Schedule, and Performance of Major Defense Acquisition Programs	2448a

REPEAL OF CHAPTER

Pub. L. 116–283, div. A, title XVIII, §§1801(d), 1851(d)(1), Jan. 1, 2021, 134 Stat. 4151, 4273, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this chapter is repealed. See Effective Date of Repeal note below.

AMENDMENTS

2019—Pub. L. 116–92, div. A, title XVII, §1731(a)(50), Dec. 20, 2019, 133 Stat. 1815, substituted ''or Technology'' for ''and Technology'' in item for subchapter II.

EFFECTIVE DATE OF REPEAL

Repeal effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

SUBCHAPTER I—MODULAR OPEN SYSTEM APPROACH IN DEVELOPMENT OF WEAPON SYSTEMS

Sec.	
2446a.	Requirement for modular open system approach in major defense acquisition programs; definitions.
2446b.	Requirement to address modular open system approach in program capabilities development and acquisition weapon system design.
2446c.	Requirements relating to availability of major system interfaces and support for modular open system approach.

REPEAL OF SUBCHAPTER

Pub. L. 116–283, div. A, title XVIII, §§1801(d), 1851(d)(1), Jan. 1, 2021, 134 Stat. 4151, 4273, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, chapter 144B of this title, and therefore this subchapter, is repealed. See Effective Date of Repeal note below.

EFFECTIVE DATE OF REPEAL

Repeal effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 2446a. Requirement for modular open system approach in major defense acquisition programs; definitions

(a) MODULAR OPEN SYSTEM APPROACH REQUIREMENT.—A major defense acquisition program that receives Milestone A or Milestone B approval after January 1, 2019, shall be designed and developed, to the maximum extent practicable, with a modular open system approach to enable incremental development and enhance competition, innovation, and interoperability. Other defense acquisition programs shall also be designed and developed, to the maximum extent practicable, with a modular open system ap-

proach to enable incremental development and enhance competition, innovation, and interoperability.

(b) DEFINITIONS.—In this chapter:

(1) The term ''modular open system approach'' means, with respect to a major defense acquisition program, an integrated business and technical strategy that—

(A) employs a modular design that uses modular system interfaces between major systems, major system components and modular systems;

(B) is subjected to verification to ensure that relevant modular system interfaces—

(i) comply with, if available and suitable, widely supported and consensus-based standards; or

(ii) are delivered pursuant to the requirements established in subsection (a)(2)(B) of section 804 of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, including the delivery of—

(I) software-defined interface syntax and properties, specifically governing how values are validly passed and received between major subsystems and components, in machine-readable format;

(II) a machine-readable definition of the relationship between the delivered interface and existing common standards or interfaces available in Department interface repositories; and

(III) documentation with functional descriptions of software-defined interfaces, conveying semantic meaning of interface elements, such as the function of a given interface field;

(C) uses a system architecture that allows severable major system components and modular systems at the appropriate level to be incrementally added, removed, or replaced throughout the life cycle of a major system platform to afford opportunities for enhanced competition and innovation while yielding—

(i) significant cost savings or avoidance;

(ii) schedule reduction;

(iii) opportunities for technical upgrades;

(iv) increased interoperability, including system of systems interoperability and mission integration; or

(v) other benefits during the sustainment phase of a major weapon system; and

(D) complies with the technical data rights set forth in section 2320 of this title.

(2) The term ''major system platform'' means the highest level structure of a major weapon system that is not physically mounted or installed onto a higher level structure and on which a major system component can be physically mounted or installed.

(3) The term ''major system component''—

(A) means a high level subsystem or assembly, including hardware, software, or an integrated assembly of both, that can be mounted or installed on a major system platform through modular system interfaces; and

(B) includes a subsystem or assembly that is likely to have additional capability requirements, is likely to change because of evolving technology or threat, is needed for interoperability, facilitates incremental deployment of capabilities, or is expected to be replaced by another major system component.

(4) The term ''modular system interface'' means a shared boundary between major systems, major system components, or modular systems, defined by various physical, logical, and functional characteristics, such as electrical, mechanical, fluidic, optical, radio frequency, data, networking, or software elements.

(5) The term ''modular system'' refers to a weapon system or weapon system component that—

(A) is able to execute without requiring coincident execution of other specific weapon systems or components;

(B) can communicate across component boundaries and through interfaces; and

(C) functions as a module that can be separated, recombined, and connected with other weapon systems or weapon system components in order to achieve various effects, missions, or capabilities.

(6) The term ''program capability document'' means, with respect to a major defense acquisition program, a document that specifies capability requirements for the program, such as a capability development document or a capability production document.

(7) The terms ''program cost targets'' and ''fielding target'' have the meanings provided in section 2448a(a) of this title.

(8) The term ''major defense acquisition program'' has the meaning provided in section 2430 of this title.

(9) The term ''major weapon system'' has the meaning provided in section 2379(f) of this title.

(Added Pub. L. 114–328, div. A, title VIII, § 805(a)(1), Dec. 23, 2016, 130 Stat. 2252; amended Pub. L. 116–283, div. A, title VIII, § 804(b)(1), Jan. 1, 2021, 134 Stat. 3737.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1851(b)(1), Jan. 1, 2021, 134 Stat. 4151, 4272, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 327 of this title, section 1851(a) of Pub. L. 116–283, inserted after the table of sections at the beginning of subchapter I, and redesignated as section 4401 of this title. See Effective Date of 2021 Amendment note below.

REFERENCES IN TEXT

Section 804 of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, referred to in subsec. (b)(1)(B)(ii), is section 804 of Pub. L. 116–283, which is set out as a note under section 4401 of this title.

AMENDMENTS

2021—Subsec. (a). Pub. L. 116–283, § 804(b)(1)(A), inserted at end ''Other defense acquisition programs shall

also be designed and developed, to the maximum extent practicable, with a modular open system approach to enable incremental development and enhance competition, innovation, and interoperability.''

Subsec. (b)(1)(A). Pub. L. 116–283, § 804(b)(1)(B)(i)(I), substituted ''modular system interfaces between major systems, major system components and modular systems;'' for ''major system interfaces between a major system platform and a major system component, between major system components, or between major system platforms;''.

Subsec. (b)(1)(B). Pub. L. 116–283, § 804(b)(1)(B)(i)(II), substituted ''that relevant modular system interfaces— '' for ''major system interfaces comply with, if available and suitable, widely supported and consensus-based standards;'' and added cls. (i) and (ii).

Subsec. (b)(1)(C). Pub. L. 116–283, § 804(b)(1)(B)(i)(III), inserted ''and modular systems'' after ''severable major system components'' in introductory provisions.

Subsec. (b)(3)(A). Pub. L. 116–283, § 804(b)(1)(B)(ii), substituted ''modular system interfaces'' for ''well-defined major system interfaces''.

Subsec. (b)(4). Pub. L. 116–283, § 804(b)(1)(B)(iii), amended par. (4) generally. Prior to amendment, par. (4) defined major system interface.

Subsec. (b)(5) to (9). Pub. L. 116–283, § 804(b)(1)(B)(iv), (v), added par. (5) and redesignated former pars. (5) to (8) as (6) to (9), respectively.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by section 1851(b)(1) of Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE

Pub. L. 114–328, div. A, title VIII, § 805(a)(4), Dec. 23, 2016, 130 Stat. 2255, provided that: ''Subchapter I of chapter 144B of title 10, United States Code, as added by paragraph (1), shall take effect on January 1, 2017.''

§ 2446b. Requirement to address modular open system approach in program capabilities development and acquisition weapon system design

(a) PROGRAM CAPABILITY DOCUMENT.—A program capability document for a major defense acquisition program shall identify and characterize—

(1) the extent to which requirements for system performance are likely to evolve during the life cycle of the system because of evolving technology, threat, or interoperability needs; and

(2) for requirements that are expected to evolve, the minimum acceptable capability that is necessary for initial operating capability of the major defense acquisition program.

(b) ANALYSIS OF ALTERNATIVES.—The Director of Cost Assessment and Performance Evaluation, in formulating study guidance for analyses of alternatives for major defense acquisition programs and performing such analyses under section 139a(d)(4) of this title, shall ensure that any such analysis for a major defense acquisition program includes consideration of evolutionary acquisition, prototyping, and a modular open system approach.

(c) ACQUISITION STRATEGY.—In the case of a major defense acquisition program that uses a modular open system approach, the acquisition strategy required under section 2431a of this title shall—

(1) clearly describe the modular open system approach to be used for the program;

(2) differentiate between the major system platform and major system components being developed under the program, as well as major system components developed outside the program that will be integrated into the major defense acquisition program;

(3) clearly describe the evolution of major system components that are anticipated to be added, removed, or replaced in subsequent increments;

(4) identify additional major system components that may be added later in the life cycle of the major system platform;

(5) clearly describe how intellectual property and related issues, such as technical data deliverables, that are necessary to support a modular open system approach, will be addressed; and

(6) clearly describe the approach to systems integration and systems-level configuration management to ensure mission and information assurance.

(d) REQUEST FOR PROPOSALS.—The milestone decision authority for a major defense acquisition program that uses a modular open system approach shall ensure that a request for proposals for the development or production phases of the program shall describe the modular open system approach and the minimum set of major system components that must be included in the design of the major defense acquisition program.

(e) MILESTONE B.—A major defense acquisition program may not receive Milestone B approval under section 2366b of this title until the milestone decision authority determines in writing—

(1) in the case of a program that uses a modular open system approach, that—

(A) the program incorporates clearly defined major system interfaces between the major system platform and major system components, between major system components, and between major system platforms;

(B) such major system interfaces are consistent with the widely supported and consensus-based standards that exist at the time of the milestone decision, unless such standards are unavailable or unsuitable for particular major system interfaces; and

(C) the Government has arranged to obtain appropriate and necessary intellectual property rights with respect to such major system interfaces upon completion of the development of the major system platform; or

(2) in the case of a program that does not use a modular open system approach, that the use of a modular open system approach is not practicable.

(f) IMPLEMENTATION GUIDANCE.—The Secretaries of the military departments shall issue guidance to implement the requirements of this section.

(Added Pub. L. 114–328, div. A, title VIII, § 805(a)(1), Dec. 23, 2016, 130 Stat. 2253; amended Pub. L. 115–91, div. A, title X, § 1081(a)(40), Dec. 12, 2017, 131 Stat. 1596; Pub. L. 116–92, div. A, title VIII, § 840(a), Dec. 20, 2019, 133 Stat. 1499.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1851(b)(1), Jan. 1, 2021, 134 Stat. 4151, 4272, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 327 of this title, as added by section 1851(a) of Pub. L. 116–283, inserted after section 4401, and redesignated as section 4402 of this title. See Effective Date of 2021 Amendment note below.

AMENDMENTS

2019—Subsec. (f). Pub. L. 116–92 added subsec. (f).

2017—Subsec. (e). Pub. L. 115–91 substituted ''in writing—'' for ''in writing that—'' in introductory provisions and inserted '', that'' after ''open system approach'' in introductory provisions of par. (1).

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE

Section effective Jan. 1, 2017, see section 805(a)(4) of Pub. L. 114–328, set out as a note under section 2446a of this title.

§ 2446c. Requirements relating to availability of major system interfaces and support for modular open system approach

The Secretary of each military department shall—

(1) coordinate with the other military departments, the defense agencies, defense and other private sector entities, national standards-setting organizations, and, when appropriate, with elements of the intelligence community with respect to the specification, identification, development, and maintenance of major system interfaces and standards for use in major system platforms, where practicable;

(2) ensure that major system interfaces incorporate commercial standards and other widely supported consensus-based standards that are validated, published, and maintained by recognized standards organizations to the maximum extent practicable;

(3) ensure that sufficient systems engineering and development expertise and resources are available to support the use of a modular open system approach in requirements development and acquisition program planning;

(4) ensure that necessary planning, programming, and budgeting resources are provided to specify, identify, develop, and sustain the modular open system approach, associated major system interfaces, systems integration, and any additional program activities necessary to sustain innovation and interoperability;

(5) ensure that adequate training in the use of a modular open system approach is provided to members of the requirements and acquisition workforce; and

(6) issue guidance to implement the requirements of this section.

(Added Pub. L. 114–328, div. A, title VIII, § 805(a)(1), Dec. 23, 2016, 130 Stat. 2255; amended Pub. L. 116–92, div. A, title VIII, § 840(b), Dec. 20, 2019, 133 Stat. 1499.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1851(b)(1), Jan. 1, 2021, 134 Stat. 4151, 4272, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 327 of this title, as added by section 1851(a) of Pub. L. 116–283, inserted after section 4402, and redesignated as section 4403 of this title. See Effective Date of 2021 Amendment note below.

AMENDMENTS

2019—Par. (6). Pub. L. 116–92 added par. (6).

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE

Section effective Jan. 1, 2017, see section 805(a)(4) of Pub. L. 114–328, set out as a note under section 2446a of this title.

SUBCHAPTER II—DEVELOPMENT, PROTOTYPING, AND DEPLOYMENT OF WEAPON SYSTEM COMPONENTS OR TECHNOLOGY

Sec.
2447a. Weapon system component or technology prototype projects: display of budget information.
2447b. Weapon system component or technology prototype projects: oversight.
2447c. Requirements and limitations for weapon system component or technology prototype projects.
2447d. Mechanisms to speed deployment of successful weapon system component or technology prototypes.
2447e. Definition of weapon system component.

REPEAL OF SUBCHAPTER

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1851(d)(1), Jan. 1, 2021, 134 Stat. 4151, 4273, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, chapter 144B of this title, and therefore this subchapter, is repealed. See Effective Date of Repeal note below.

EFFECTIVE DATE OF REPEAL

Repeal effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 2447a. Weapon system component or technology prototype projects: display of budget information

(a) REQUIREMENTS FOR BUDGET DISPLAY.—In the defense budget materials for any fiscal year, the Secretary of Defense shall, with respect to advanced component development and prototype activities (within the research, development, test, and evaluation budget), set forth the amounts requested for each of the following:

(1) Acquisition programs of record.

(2) Development, prototyping, and experimentation of weapon system components or other technologies, including those based on commercial products and technologies, separate from acquisition programs of record.

(3) Other budget line items as determined by the Secretary of Defense.

(b) ADDITIONAL REQUIREMENTS.—For purposes of subsection (a)(2), the amounts requested for development, prototyping, and experimentation of weapon system components or other technologies shall be—

(1) structured into either capability, weapon system component, or technology portfolios that reflect the priority areas for prototype projects; and

(2) justified with general descriptions of the types of capability areas and technologies being funded or expected to be funded during the fiscal year concerned.

(c) DEFINITIONS.—In this section, the terms ''budget'' and ''defense budget materials'' have the meaning given those terms in section 234 of this title and the term ''commercial product'' has the meaning given that term in section 103 of title 41.

(Added Pub. L. 114–328, div. A, title VIII, § 806(a)(1), Dec. 23, 2016, 130 Stat. 2256; amended Pub. L. 115–232, div. A, title VIII, § 836(e)(8), Aug. 13, 2018, 132 Stat. 1870; Pub. L. 116–92, div. A, title XVII, § 1731(a)(51), Dec. 20, 2019, 133 Stat. 1815.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1851(c)(1), Jan. 1, 2021, 134 Stat. 4151, 4272, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 327 of this title, as added by section 1851(a) of Pub. L. 116–283, inserted after the table of sections at the beginning of subchapter II, and redesignated as section 4421 of this title. See Effective Date of 2021 Amendment note below.

AMENDMENTS

2019—Subsec. (a). Pub. L. 116–92 struck out ''after fiscal year 2017'' after ''any fiscal year'' in introductory provisions.

2018—Subsec. (a)(2). Pub. L. 115–232, § 836(e)(8)(A), substituted ''commercial products and technologies'' for ''commercial items and technologies''.

Subsec. (c). Pub. L. 115–232, § 836(e)(8)(B), inserted before period at end ''and the term 'commercial product' has the meaning given that term in section 103 of title 41''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115–232 effective Jan. 1, 2020, subject to a savings provision, see section 836(h) of Pub. L. 115–232, set out as an Effective Date of 2018 Amendment; Savings Provision note under section 453b of Title 6, Domestic Security.

EFFECTIVE DATE

Pub. L. 114–328, div. A, title VIII, § 806(a)(2), Dec. 23, 2016, 130 Stat. 2259, provided that: ''Subchapter II of chapter 144B of title 10, United States Code, as added by paragraph (1), shall take effect on January 1, 2017.''

§ 2447b. Weapon system component or technology prototype projects: oversight

(a) ESTABLISHMENT.—The Secretary of each military department shall establish an oversight board or identify a similar existing group of senior advisors for managing prototype projects for weapon system components and other technologies and subsystems, including the use of funds for such projects, within the military department concerned.

(b) MEMBERSHIP.—Each oversight board shall be comprised of senior officials with—

(1) expertise in requirements; research, development, test, and evaluation; acquisition; sustainment; or other relevant areas within the military department concerned;

(2) awareness of technology development activities and opportunities in the Department of Defense, industry, and other sources; and

(3) awareness of the component capability requirements of major weapon systems, including scheduling and fielding goals for such component capabilities.

(c) FUNCTIONS.—The functions of each oversight board are as follows:

(1) To issue a strategic plan every three years that prioritizes the capability and weapon system component portfolio areas for conducting prototype projects, based on assessments of—

(A) high priority warfighter needs;

(B) capability gaps or readiness issues with major weapon systems;

(C) opportunities to incrementally integrate new components into major weapon systems based on commercial technology or science and technology efforts that are expected to be sufficiently mature to prototype within three years; and

(D) opportunities to reduce operation and support costs of major weapon systems.

(2) To annually recommend funding levels for weapon system component or technology development and prototype projects across capability or weapon system component portfolios.

(3) To annually recommend to the service acquisition executive of the military department concerned specific weapon system component or technology development and prototype projects, subject to the requirements and limitations in section 2447c of this title.

(4) To ensure projects are managed by experts within the Department of Defense who are knowledgeable in research, development, test, and evaluation and who are aware of opportunities for incremental deployment of component capabilities and other technologies to major weapon systems or directly to support warfighting capabilities.

(5) To ensure projects are conducted in a manner that allows for appropriate experimentation and technology risk.

(6) To ensure projects have a plan for technology transition of the prototype into a fielded system, program of record, or operational use, as appropriate, upon successful achievement of technical and project goals.

(7) To ensure necessary technical, contracting, and financial management resources are available to support each project.

(8) To submit to the congressional defense committees a semiannual notification that includes the following:

(A) each weapon system component or technology prototype project initiated during the preceding six months, including an explanation of each project and its required funding.

(B) the results achieved from weapon system component prototype and technology projects completed and tested during the preceding six months.

(Added Pub. L. 114–328, div. A, title VIII, § 806(a)(1), Dec. 23, 2016, 130 Stat. 2257.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1851(c)(1), Jan. 1, 2021, 134 Stat. 4151, 4272, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 327 of this title, as added by section 1851(a) of Pub. L. 116–283, inserted after section 4421, and redesignated as section 4422 of this title. See Effective Date of 2021 Amendment note below.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE

Section effective Jan. 1, 2017, see section 806(a)(2) of Pub. L. 114–328, set out as a note under section 2447a of this title.

§ 2447c. Requirements and limitations for weapon system component or technology prototype projects

(a) LIMITATION ON PROTOTYPE PROJECT DURATION.—A prototype project shall be completed within two years of its initiation.

(b) MERIT-BASED SELECTION PROCESS.—A prototype project shall be selected by the service acquisition executive of the military department concerned through a merit-based selection process that identifies the most promising, innovative, and cost-effective prototypes that address one or more of the elements set forth in subsection (c)(1) of section 2447b of this title and are expected to be successfully demonstrated in a relevant environment.

(c) TYPE OF TRANSACTION.—Prototype projects shall be funded through contracts, cooperative agreements, or other transactions.

(d) FUNDING LIMIT.—(1) Each prototype project may not exceed a total amount of $10,000,000 (based on fiscal year 2017 constant dollars), unless—

(A) the Secretary of the military department, or the Secretary's designee, approves a larger amount of funding for the project, not to exceed $50,000,000; and

(B) the Secretary, or the Secretary's designee, submits to the congressional defense committees, within 30 days after approval of such funding for the project, a notification that includes—

(i) the project;

(ii) expected funding for the project; and

(iii) a statement of the anticipated outcome of the project.

(2) The Secretary of Defense may adjust the amounts (and the base fiscal year) provided in paragraph (1) on the basis of Department of Defense escalation rates.

(e) RELATED PROTOTYPE AUTHORITIES.—Prototype projects that exceed the duration and funding limits established in this section shall be pursued under the rapid prototyping process established by section 804 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114–92; 10 U.S.C. 2302 note). In addition, nothing in this subchapter shall affect the authority to carry out prototype projects under section 2371b or any other section of this title related to prototyping.

(Added Pub. L. 114–328, div. A, title VIII, § 806(a)(1), Dec. 23, 2016, 130 Stat. 2258.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1851(c)(1), Jan. 1, 2021, 134 Stat. 4151, 4272, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 327 of this title, as added by section 1851(a) of Pub. L. 116–283, inserted after section 4422, and redesignated as section 4423 of this title. See Effective Date of 2021 Amendment note below.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE

Section effective Jan. 1, 2017, see section 806(a)(2) of Pub. L. 114–328, set out as a note under section 2447a of this title.

§ 2447d. Mechanisms to speed deployment of successful weapon system component or technology prototypes

(a) SELECTION OF PROTOTYPE PROJECT FOR PRODUCTION AND RAPID FIELDING.—A weapon system component or technology prototype project may be selected by the service acquisition executive of the military department concerned for a follow-on production contract or other transaction without the use of competitive procedures, notwithstanding the requirements of section 2304 of this title, if—

(1) the follow-on production project addresses a high priority warfighter need or reduces the costs of a weapon system;

(2) competitive procedures were used for the selection of parties for participation in the original prototype project;

(3) the participants in the original prototype project successfully completed the requirements of the project; and

(4) a prototype of the system to be procured was demonstrated in a relevant environment.

(b) SPECIAL TRANSFER AUTHORITY.—(1) The Secretary of a military department may, as specified in advance by appropriations Acts, transfer funds that remain available for obligation in procurement appropriation accounts of the military department to fund the low-rate initial production of the rapid fielding project until required funding for full-rate production can be submitted and approved through the regular budget process of the Department of Defense.

(2) The funds transferred under this subsection to fund the low-rate initial production of a rapid fielding project shall be for a period not to exceed two years, the amount for such period may not exceed $50,000,000, and the special transfer authority provided in this subsection may not be used more than once to fund procurement of a particular new or upgraded system.

(3) The special transfer authority provided in this subsection is in addition to any other transfer authority available to the Department of Defense.

(c) NOTIFICATION TO CONGRESS.—Within 30 days after the service acquisition executive of a military department selects a weapon system component or technology project for a follow-on production contract or other transaction, the service acquisition executive shall notify the congressional defense committees of the selection and provide a brief description of the rapid fielding project.

(Added Pub. L. 114–328, div. A, title VIII, § 806(a)(1), Dec. 23, 2016, 130 Stat. 2259.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1851(c)(1), Jan. 1, 2021, 134 Stat. 4151, 4272, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 327 of this title, as added by section 1851(a) of Pub. L. 116–283, inserted after section 4423, and redesignated as section 4424 of this title. See Effective Date of 2021 Amendment note below.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE

Section effective Jan. 1, 2017, see section 806(a)(2) of Pub. L. 114–328, set out as a note under section 2447a of this title.

§ 2447e. Definition of weapon system component

In this subchapter, the term ''weapon system component'' has the meaning given the term ''major system component'' in section 2446a of this title.

(Added Pub. L. 114–328, div. A, title VIII, § 806(a)(1), Dec. 23, 2016, 130 Stat. 2259.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1851(c)(1), Jan. 1, 2021, 134 Stat. 4151, 4272, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 327 of this title, as added by section 1851(a) of Pub. L. 116–283, inserted after section 4424, and redesignated as section 4425 of this title. See Effective Date of 2021 Amendment note below.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE

Section effective Jan. 1, 2017, see section 806(a)(2) of Pub. L. 114–328, set out as a note under section 2447a of this title.

SUBCHAPTER III—COST, SCHEDULE, AND PERFORMANCE OF MAJOR DEFENSE ACQUISITION PROGRAMS

Sec.
2448a. Program cost, fielding, and performance goals in planning major defense acquisition programs.
2448b. Independent technical risk assessments.

REPEAL OF SUBCHAPTER

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1851(d)(1), Jan. 1, 2021, 134 Stat. 4151, 4273, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, chapter 144B of this title, and therefore this subchapter, is repealed. See Effective Date of Repeal note below.

EFFECTIVE DATE OF REPEAL

Repeal effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 2448a. Program cost, fielding, and performance goals in planning major defense acquisition programs

(a) PROGRAM COST AND FIELDING TARGETS.—(1) Before funds are obligated for technology development, systems development, or production of a major defense acquisition program, the designated milestone decision authority for the program shall ensure, by establishing the goals described in paragraph (2), that the program will—

(A) be affordable;

(B) incorporate program planning that anticipates the evolution of capabilities to meet changing threats, technology insertion, and interoperability; and

(C) be fielded when needed.

(2) The goals described in this paragraph are goals for—

(A) the procurement unit cost and sustainment cost (referred to in this section as the ''program cost targets'');

(B) the date for initial operational capability (referred to in this section as the ''fielding target''); and

(C) technology maturation, prototyping, and a modular open system approach to evolve

system capabilities and improve interoperability.

(b) DEFINITIONS.—In this section:

(1) The term ''procurement unit cost'' has the meaning provided in section 2432(a)(2) of this title.

(2) The term ''initial capabilities document'' has the meaning provided in section 2366a(d)(2) of this title.

(Added Pub. L. 114–328, div. A, title VIII, § 807(a)(1), Dec. 23, 2016, 130 Stat. 2260; amended Pub. L. 115–232, div. A, title VIII, § 831(a), Aug. 13, 2018, 132 Stat. 1857.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1847(e)(1), Jan. 1, 2021, 134 Stat. 4151, 4256, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 322 of this title, inserted after the table of sections at the beginning of subchapter IV, and redesignated as section 4271 of this title. See Effective Date of 2021 Amendment note below.

AMENDMENTS

2018—Subsec. (a)(1). Pub. L. 115–232, § 831(a)(1), (2), in introductory provisions, substituted ''designated milestone decision authority for the program shall ensure, by establishing the goals described in paragraph (2), that the program'' for ''Secretary of Defense shall ensure, by establishing the goals described in paragraph (2), that the milestone decision authority for the major defense acquisition program approves a program that''.

Subsecs. (b), (c). Pub. L. 115–232, § 831(a)(3), (4), redesignated subsec. (c) as (b) and struck out former subsec. (b). Prior to amendment, text of subsec. (b) read as follows: ''The responsibilities of the Secretary of Defense in subsection (a) may be delegated only to the Deputy Secretary of Defense.''

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE

Pub. L. 114–328, div. A, title VIII, § 807(a)(2), Dec. 23, 2016, 130 Stat. 2261, provided that: ''Subchapter III of chapter 144B of title 10, United States Code, as added by paragraph (1), shall apply with respect to major defense acquisition programs that reach Milestone A after October 1, 2017.''

PROGRAM COST AND FIELD TARGETS

Pub. L. 114–328, div. A, title IX, § 925(b), Dec. 23, 2016, 130 Stat. 2361, as amended by Pub. L. 115–232, div. A, title VIII, § 831(b)(4), Aug. 13, 2018, 132 Stat. 1857, provided that: ''The Secretary of Defense shall establish a process to develop program cost and fielding targets pursuant to section 2448a of title 10, United States Code, that—

''(1) is co-chaired by the designated milestone decision authority for the major defense acquisition program and the Vice Chief of Staff of the armed force concerned or, in the case of a program for which an alternate milestone decision authority is designated under section 2430(d)(2) of such title, the Vice Chairman of the Joint Chiefs of Staff;

''(2) is supported by—

''(A) the Joint Staff, to provide expertise on joint military capabilities, capability gaps, and performance requirements;

''(B) the Office of Cost Assessment and Program Evaluation, to provide expertise in resource allocation, operations research, systems analysis, and cost estimation; and

''(C) other Department of Defense organizations determined appropriate by the Secretary; and

''(3) ensures that appropriate trade-offs are made among life-cycle cost, schedule, and performance objectives and procurement quantity objectives.''

§ 2448b. Independent technical risk assessments

(a) IN GENERAL.—With respect to a major defense acquisition program, the Secretary of Defense shall conduct or approve independent technical risk assessments—

(1) before any decision to grant Milestone A approval for the program pursuant to section 2366a of this title, that identifies critical technologies and manufacturing processes that need to be matured; and

(2) before any decision to grant Milestone B approval for the program pursuant to section 2366b of this title, any decision to enter into low-rate initial production or full-rate production, or at any other time considered appropriate by the Secretary, that includes the identification of any critical technologies or manufacturing processes that have not been successfully demonstrated in a relevant environment.

(b) GUIDANCE.—The Secretary shall issue guidance and a framework for the conduct, execution, and approval of independent technical risk assessments.

(Added Pub. L. 114–328, div. A, title VIII, § 807(a)(1), Dec. 23, 2016, 130 Stat. 2261; amended Pub. L. 116–92, div. A, title IX, § 902(73), Dec. 20, 2019, 133 Stat. 1552.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1847(e)(2), Jan. 1, 2021, 134 Stat. 4151, 4256, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 322 of this title, inserted after section 4271 of this title, and redesignated as section 4272 of this title. See Effective Date of 2021 Amendment note below.

AMENDMENTS

2019—Pub. L. 116–92 added subsecs. (a) and (b) and struck out former subsecs. (a) and (b) which read as follows:

''(a) IN GENERAL.—With respect to a major defense acquisition program, the Secretary of Defense shall ensure that an independent technical risk assessment is conducted—

''(1) before any decision to grant Milestone A approval for the program pursuant to section 2366a of this title, that identifies critical technologies and manufacturing processes that need to be matured; and

''(2) before any decision to grant Milestone B approval for the program pursuant to section 2366b of this title, any decision to enter into low-rate initial production or full-rate production, or at any other time considered appropriate by the Secretary, that includes the identification of any critical technologies or manufacturing processes that have not been successfully demonstrated in a relevant environment.

''(b) CATEGORIZATION OF TECHNICAL RISK LEVELS.—The Secretary shall issue guidance and a framework for

categorizing the degree of technical and manufacturing risk in a major defense acquisition program.''

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE

Section applicable with respect to major defense acquisition programs that reach Milestone A after Oct. 1, 2017, see section 807(a)(2) of Pub. L. 114–328, set out as a note under section 2448a of this title.

CHAPTER 145—CATALOGING AND STANDARDIZATION

Sec.
2451. Defense supply management.
2452. Duties of Secretary of Defense.
2453. Supply catalog: distribution and use.
2454. Supply catalog: new or obsolete items.
[2455. Repealed.]
2456. Coordination with General Services Administration.
2457. Standardization of equipment with North Atlantic Treaty Organization members.
2458. Inventory management policies.

AMENDMENTS

1990—Pub. L. 101–510, div. A, title III, § 323(a)(2), title XIII, § 1331(6), Nov. 5, 1990, 104 Stat. 1530, 1673, struck out item 2455 ''Reports to Congress'' and added item 2458.

1982—Pub. L. 97–295, § 1(30)(B), Oct. 12, 1982, 96 Stat. 1296, added item 2457.

§ 2451. Defense supply management

(a) The Secretary of Defense shall develop a single catalog system and related program of standardizing supplies for the Department of Defense.

(b) In cataloging, the Secretary shall name, describe, classify, and number each item recurrently used, bought, stocked, or distributed by the Department of Defense, so that only one distinctive combination of letters or numerals, or both, identifies the same item throughout the Department of Defense. Only one identification may be used for each item for all supply functions from purchase to final disposal in the field or other area. The catalog may consist of a number of volumes, sections, or supplements. It shall include all items of supply and, for each item, information needed for supply operations, such as descriptive and performance data, size, weight, cubage, packaging and packing data, a standard quantitative unit of measurement, and other related data that the Secretary determines to be desirable.

(c) In standardizing supplies the Secretary shall, to the highest degree practicable—

(1) standardize items used throughout the Department of Defense by developing and using single specifications, eliminating overlapping and duplicate specifications, and reducing the number of sizes and kinds of items that are generally similar;

(2) standardize the methods of packing, packaging, and preserving such items; and

(3) make efficient use of the services and facilities for inspecting, testing, and accepting such items.

(d) The Secretary shall coordinate with the Administrator of General Services to enable the use of commercial identifiers for commercial products (as defined in section 103 of title 41) within the Federal cataloging system.

(Aug. 10, 1956, ch. 1041, 70A Stat. 138; Pub. L. 85–861, § 33(a)(13), Sept. 2, 1958, 72 Stat. 1565; Pub. L. 108–136, div. A, title III, § 341, Nov. 24, 2003, 117 Stat. 1448; Pub. L. 115–232, div. A, title VIII, § 836(e)(9), Aug. 13, 2018, 132 Stat. 1870.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2451(a)	5:173.	July 1, 1952, ch. 539, §§ 2, 4, 66 Stat. 318, 319; 1953 Reorg. Plan No. 6, § 1(a) (as applicable to Defense Supply Management Agency), eff. June 30, 1953, 67 Stat. 638.
2451(b)	5:173b(a).	
2451(c)	5:173b(b).	

In subsection (a), the words ''for the Department of Defense'' are inserted for clarity. 5:173 (1st sentence) is omitted as impliedly repealed by section 2 of 1953 Reorganization Plan No. 6, effective June 30, 1953, 67 Stat. 638.

In subsection (b), the words ''or any of the departments thereof'', ''in such manner'', ''original'', and ''necessary or'' are omitted as surplusage. The words ''throughout the Department of Defense'' are substituted for the words ''either within a bureau or service, between bureaus or services, or between the departments''. The word ''recurrently'' is substituted for the word ''repetitively''. The words ''Only one identification may'' are substituted for the words ''The single item identification shall''.

In subsection (c), the words ''the most'' are omitted as surplusage. The words ''to the highest degree practicable'' are substituted for the words ''achieve the highest practicable degree possible'' and ''The greatest practicable degree of standardization * * * shall be achieved''.

1958 ACT

The change makes clear that clauses (2) and (3) apply to all items, whether or not standardized, used throughout the Department of Defense.

AMENDMENTS

2018—Subsec. (d). Pub. L. 115–232 substituted ''commercial products (as defined in section 103 of title 41)'' for ''commercial items''.

2003—Subsec. (d). Pub. L. 108–136 added subsec. (d).

1958—Subsec. (c). Pub. L. 85–861 substituted ''such'' for ''standardized'' in cl. (2), and ''such'' for ''those'' in cl. (3).

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115–232 effective Jan. 1, 2020, subject to a savings provision, see section 836(h) of Pub. L. 115–232, set out as an Effective Date of 2018 Amendment; Savings Provision note under section 453b of Title 6, Domestic Security.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85–861 effective Aug. 10, 1956, see section 33(g) of Pub. L. 85–861, set out as a note under section 101 of this title.

DEFENSE-WIDE ELECTRONIC MALL SYSTEM FOR SUPPLY PURCHASES

Pub. L. 105–261, div. A, title III, § 332, Oct. 17, 1998, 112 Stat. 1968, provided that:

''(a) ELECTRONIC MALL SYSTEM DEFINED.—In this section, the term 'electronic mall system' means an elec-

tronic system for displaying, ordering, and purchasing supplies and materiel available from sources within the Department of Defense and from the private sector.

''(b) DEVELOPMENT AND MANAGEMENT.—(1) Using systems and technology available in the Department of Defense as of the date of the enactment of this Act [Oct. 17, 1998], the Joint Electronic Commerce Program Office of the Department of Defense shall develop a single, defense-wide electronic mall system, which shall provide a single, defense-wide electronic point of entry and a single view, access, and ordering capability for all Department of Defense electronic catalogs. The Secretary of each military department and the head of each Defense Agency shall provide to the Joint Electronic Commerce Program Office the necessary and requested data to ensure compliance with this paragraph.

''(2) The Defense Logistics Agency, under the direction of the Joint Electronic Commerce Program Office, shall be responsible for maintaining the defense-wide electronic mall system developed under paragraph (1).

''(c) ROLE OF CHIEF INFORMATION OFFICER.—The Chief Information Officer of the Department of Defense shall be responsible for—

''(1) overseeing the elimination of duplication and overlap among Department of Defense electronic catalogs; and

''(2) ensuring that such catalogs utilize technologies and formats compliant with the requirements of subsection (b).

''(d) IMPLEMENTATION.—Within 180 days after the date of the enactment of this Act, the Chief Information Officer shall develop and provide to the congressional defense committees [Committees on Armed Services and Appropriations of Senate and House of Representatives]—

''(1) an inventory of all existing and planned electronic mall systems in the Department of Defense; and

''(2) a schedule for ensuring that each such system is compliant with the requirements of subsection (b).''

STANDARDIZATION AND INTEROPERABILITY OF NATO WEAPONS

Pub. L. 94–361, title VIII, § 803, July 14, 1976, 90 Stat. 930, which expressed the sense of Congress that the weapons systems of the NATO Allies be standardized and interoperable, that this goal would be facilitated by inter-allied procurement of arms and closer intra-European collaboration in arms procurement, and directed the Secretary of Defense to negotiate with the Allies toward these ends and to report to Congress on actions and programs undertaken to achieve them, was repealed and restated in section 2457 of this title by Pub. L. 97–295, §§ 1(30)(A), 6(b), Oct. 12, 1982, 96 Stat. 1294, 1314.

Pub. L. 94–106, title VIII, § 814(a), (b), Oct. 7, 1975, 89 Stat. 540, as amended by Pub. L. 94–361, title VIII, § 802, July 14, 1976, 90 Stat. 930, which had provided that it was the policy of the United States that the equipment of our armed forces in Europe be standardized or at least interoperable with that of our NATO Allies, directed the Secretary of Defense to carry out procurement policies toward this end and to report to Congress on any agreements with the Allies involving exchange of equipment manufactured in the United States for equipment manufactured outside it, authorized the Secretary to find such agreements contrary to the public interest and required him to report on the procurement of any major weapons system not in accord with these policies, was repealed and restated in section 2457 of this title by Pub. L. 97–295, §§ 1(30)(A), 6(b), Oct. 12, 1982, 96 Stat. 1294, 1314.

Pub. L. 93–365, title III, § 302(c), Aug. 5, 1974, 88 Stat. 402, as amended by Pub. L. 94–106, title VIII, § 814(c), Oct. 7, 1975, 89 Stat. 540; Pub. L. 97–252, title XI, § 1121, Sept. 8, 1982, 96 Stat. 754, which had directed the Secretary of Defense to assess the costs and possible loss of effectiveness from the failure of the NATO Allies to standardize equipment, to suggest standardization actions, and to report these matters to the Allies and Congress and to Congress annually on them and results obtained with the Allies, was repealed and restated in section 2457 of this title by Pub. L. 97–295, §§ 1(30)(A), 6(b), Oct. 12, 1982, 96 Stat. 1294, 1314.

§ 2452. Duties of Secretary of Defense

The Secretary of Defense shall—

(1) develop and maintain the supply catalog, and the standardization program, described in section 2451 of this title;

(2) direct and coordinate progressive use of the supply catalog in all supply functions within the Department of Defense from the determination of requirements through final disposal;

(3) direct, review, and approve—

(A) the naming, description, and pattern of description of all items;

(B) the screening, consolidation, classification, and numbering of descriptions of all items; and

(C) the publication and distribution of the supply catalog;

(4) maintain liaison with industry advisory groups to coordinate the development of the supply catalog and the standardization program with the best practices of industry and to obtain the fullest practicable cooperation and participation of industry in developing the supply catalog and the standardization program;

(5) establish, publish, review, and revise, within the Department of Defense, military specifications, standards, and lists of qualified products, and resolve differences between the military departments, bureaus, and services with respect to them;

(6) assign responsibility for parts of the cataloging and the standardization programs to the military departments, bureaus, and services within the Department of Defense, when practical and consistent with their capacity and interest in those supplies;

(7) establish time schedules for assignments made under clause (6); and

(8) make final decisions in all matters concerned with the cataloging and standardization programs.

(Aug. 10, 1956, ch. 1041, 70A Stat. 139.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
2452	5:173c.	July 1, 1952, ch. 539, § 5, 66 Stat. 319; 1953 Reorg. Plan No. 6, § 1(a) (as applicable to Defense Supply Management Agency), eff. June 30, 1953, 67 Stat. 638.

In clause (1), the word ''establish'' is omitted as surplusage.

In clause (2), the words ''provided for herein'' and ''its departments, bureaus, and services'' are omitted as surplusage.

In clauses (2) and (3), the words ''provide for'' are omitted as surplusage.

In clause (4), the words ''establish and'' and ''established by sections 173–173i of this title'' are omitted as surplusage.

In clause (5), the words ''amend'' and ''promulgate'' are omitted as surplusage.

In clause (6), the words ''established by sections 173–173i of this title'' are omitted as surplusage.

Clause (7) is substituted for 5:173c(f) (last 11 words).

In clause (8), the word ''programs'' is substituted for the words ''authority established in sections 173–173i of this title''. The words ''subject to review and modification by the Secretary of Defense'' are omitted as surplusage.

REGULATIONS RELATING TO INCREASES IN PRICES FOR SPARE PARTS AND REPLACEMENT EQUIPMENT

Pub. L. 98–94, title XII, § 1215, Sept. 24, 1983, 97 Stat. 688, as amended by Pub. L. 98–525, title XII, § 1244, Oct. 19, 1984, 98 Stat. 2609; Pub. L. 103–35, title II, § 204(b), May 31, 1993, 107 Stat. 102, provided that:

''(a) Not later than 120 days after the date of the enactment of this Act [Sept. 24, 1983], the Secretary of Defense shall issue regulations which—

''(1) except as provided in clause (2), prohibit the purchase of any spare part or replacement equipment when the price of such part or equipment, since a time in the past specified by the Secretary (in terms of days or months) or since the most recent purchase of such part or equipment by the Department of Defense, has increased in price by a percentage in excess of a percentage threshold specified by the Secretary in such regulations, and

''(2) permit the purchase of such spare part or equipment (notwithstanding the prohibition contained in clause (1)) if the contracting officer for such part or equipment certifies in writing to the head of the procuring activity before the purchase is made that—

''(A) such officer has evaluated the price of such part or equipment and concluded that the increase in the price of such part or equipment is fair and reasonable, or

''(B) the national security interests of the United States require that such part or equipment be purchased despite the increase in price of such part or equipment.

''(b)(1) The Secretary shall publish the regulations issued under this section in the Federal Register.

''(2) The Secretary may provide in such regulations for the waiver of the prohibition in subsection (a)(1) and compliance with the requirements of subsection (a)(2) in the case of a purchase of any spare part or replacement equipment made or to be made through competitive procedures.

''(c) Not less than 30 days before the Secretary publishes such regulations in accordance with subsection (b), the Secretary shall submit the text of the proposed regulations to the Committees on Armed Services of the Senate and House of Representatives.''

REPORT ON MANAGEMENT OF ACQUISITION OF SPARE PARTS

Pub. L. 98–94, title XII, § 1216, Sept. 24, 1983, 97 Stat. 688, directed Secretary of Defense to submit to Congress, by June 1, 1984, a comprehensive report on management by Department of Defense of acquisition of initial and replenishment spare parts and on status of efforts within Department (including particularly the Defense Logistics Agency and the military departments) to correct problems associated with increased costs of such parts, directed Secretary, not later than Dec. 1, 1983, to submit to Congress an interim report stating briefly the actions being taken by the Department to improve acquisition and management of spare parts, and directed Secretary to put into effect at the earliest practicable date policies and procedures to achieve a long-term solution to problems relating to excessive costs of, and long lead times in the acquisition of, initial and replenishment spare parts.

§ 2453. Supply catalog: distribution and use

The Secretary of Defense shall distribute the parts of the supply catalog described in section 2451 of this title as they are completed. Existing catalogs shall be replaced according to schedules established by the Secretary. After replacement no other supply catalog may be used within the Department of Defense with respect to the kinds of items covered by that part. All property reports and records shall use the nomenclature, item numbers, and descriptive data of the supply catalog.

(Aug. 10, 1956, ch. 1041, 70A Stat. 139.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2453	5:173d.	July 1, 1952, ch. 539, § 6, 66 Stat. 320; 1953 Reorg. Plan No. 6, § 1(a) (as applicable to Defense Supply Management Agency), eff. June 30, 1953, 67 Stat. 638.

The words ''and ready for use'' and ''all departments, bureaus, and services'' are omitted as surplusage. The words ''After replacement'' are substituted for the word ''Thereafter''. The words ''with respect to the kinds of items covered by that part'' are inserted for clarity.

§ 2454. Supply catalog: new or obsolete items

(a) After any part of the supply catalog described in section 2451 of this title is distributed, and with respect to the kinds of items covered by that part, only the items listed in it may be procured for recurrent use in the Department of Defense. However, a military department may acquire any new item that is necessary to carry out its mission. As soon as such an item is acquired, it shall be submitted to the Secretary for inclusion in the catalog and the standardization program.

(b) Obsolete items may be deleted from the catalog at any time.

(Aug. 10, 1956, ch. 1041, 70A Stat. 140.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2454(a)	5:173e (less last 5 words of 1st proviso).	July 1, 1952, ch. 539, § 7, 66 Stat. 320; 1953 Reorg. Plan No. 6, § 1(a) (as applicable to Defense Supply Management Agency), eff. June 30, 1953, 67 Stat. 638.
2454(b)	5:173e (last 5 words of 1st proviso).	

In subsection (a), the words ''After any part * * * is distributed'' are substituted for the words ''Following the publication and promulgation * * * or portions thereof''. The words ''and with respect to the kinds of items covered by that part'' are inserted for clarity. The word ''recurrent'' is substituted for the word ''repetitive''. The words ''the departments, bureaus, and services of'' are omitted as surplusage. The second sentence of the revised subsection is substituted for 5:173e (1st proviso, less last 5 words; and 2d proviso).

In subsection (b), the words ''at any time'' are inserted for clarity.

[§ 2455. Repealed. Pub. L. 101–510, div. A, title XIII, § 1322(a)(9), Nov. 5, 1990, 104 Stat. 1671]

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 140; Jan. 2, 1975, Pub. L. 93–608, § 2(2), 88 Stat. 1971; Dec. 21, 1982, Pub. L. 97–375, title II, § 203(c), 96 Stat. 1823, related to reports on cataloging supplies for Department of Defense.

§ 2456. Coordination with General Services Administration

To avoid unnecessary duplication, the Administrator of General Services and the Secretary of Defense shall coordinate the cataloging and standardization activities of the General Services Administration and the Department of Defense.

(Aug. 10, 1956, ch. 1041, 70A Stat. 140.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2456	5:173i.	July 1, 1952, ch. 539, § 11, 66 Stat. 320.

§ 2457. Standardization of equipment with North Atlantic Treaty Organization members

(a) It is the policy of the United States to standardize equipment, including weapons systems, ammunition, and fuel, procured for the use of the armed forces of the United States stationed in Europe under the North Atlantic Treaty or at least to make that equipment interoperable with equipment of other members of the North Atlantic Treaty Organization. To carry out this policy, the Secretary of Defense shall—

(1) assess the costs and possible loss of nonnuclear combat effectiveness of the military forces of the members of the Organization caused by the failure of the members to standardize equipment;

(2) maintain a list of actions to be taken, including an evaluation of the priority and effect of the action, to standardize equipment that may improve the overall nonnuclear defense capability of the Organization or save resources for the Organization; and

(3) initiate and carry out, to the maximum extent feasible, procurement procedures to acquire standardized or interoperable equipment, considering the cost, function, quality, and availability of the equipment.

(b) Progress in realizing the objectives of standardization and interoperability would be enhanced by expanded inter-Allied procurement of arms and equipment within the North Atlantic Treaty Organization. Expanded inter-Allied procurement would be made easier by greater reliance on licensing and coproduction cooperative agreements among the signatories of the North Atlantic Treaty. If constructed to preserve the efficiencies associated with economies of scale, the agreements could minimize potential economic hardship to parties to the agreements and increase the survivability, in time of war, of the North Atlantic Alliance's armaments production base by dispersing manufacturing facilities. In conjunction with other members of the Organization and to the maximum extent feasible, the Secretary shall—

(1) identify areas in which those cooperative agreements may be made with members of the Alliance; and

(2) negotiate those agreements.

(c)(1) It is the sense of Congress that weapons systems being developed wholly or primarily for employment in the North Atlantic Treaty Organization theater should conform to a common Organization requirement in order to proceed toward joint doctrine and planning and to facilitate maximum feasible standardization and interoperability of equipment, and that a common Organization requirement should be understood to include a common definition of the military threat to the members of the Organization.

(2) It is further the sense of Congress that standardization of weapons and equipment within the Organization on the basis of a ''two-way street'' concept of cooperation in defense procurement between Europe and North America can only work in a realistic sense if the European nations operate on a united and collective basis. Therefore, the governments of Europe are encouraged to accelerate their present efforts to achieve European armaments collaboration among all European members of the Organization.

[(d) Repealed. Pub. L. 108–136, div. A, title X, § 1031(a)(22), Nov. 24, 2003, 117 Stat. 1598.]

(e) If the Secretary decides that procurement of equipment manufactured outside the United States is necessary to carry out the policy of subsection (a), the Secretary may determine under section 8302 of title 41 that acquiring that equipment manufactured in the United States is inconsistent with the public interest.

(f) The Secretary shall submit the results of each assessment and evaluation made under subsection (a)(1) and (2) to the appropriate North Atlantic Treaty Organization body to become an integral part of the overall Organization review of force goals and development of force plans.

(Added Pub. L. 97–295, § 1(30)(A), Oct. 12, 1982, 96 Stat. 1294; amended Pub. L. 101–510, div. A, title XIII, § 1311(5), Nov. 5, 1990, 104 Stat. 1670; Pub. L. 104–106, div. A, title XV, § 1503(a)(24), Feb. 10, 1996, 110 Stat. 512; Pub. L. 108–136, div. A, title X, § 1031(a)(22), Nov. 24, 2003, 117 Stat. 1598; Pub. L. 111–350, § 5(b)(33), Jan. 4, 2011, 124 Stat. 3845.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2457(a)	10:2451 (note).	Aug. 5, 1974, Pub. L. 93–365, § 302(c) (1st–3d sentences), 88 Stat. 402. Oct. 7, 1975, Pub. L. 94–106, § 814(a)(1), 89 Stat. 540; restated July 14, 1976, Pub. L. 94–361, § 802, 90 Stat. 930.
2457(b)	10:2451 (note).	July 14, 1976, Pub. L. 94–361, § 803(b) (1st–4th sentences), 90 Stat. 931.
2457(c)	10:2451 (note).	July 14, 1976, Pub. L. 94–361, § 803(a) (1st, 2d sentences), (c), 90 Stat. 930, 931.
2457(d) (words before (1)), (1) (related to (a)(1) and (2)).	10:2451 (note).	Aug. 5, 1974, Pub. L. 93–365, § 302(c) (5th sentence), 88 Stat. 402; Oct. 7, 1975, Pub. L. 94–106, § 814(c), 89 Stat. 540.
2457(d)(1) (related to (a)(3)).	10:2451 (note).	July 14, 1976, Pub. L. 94–361, § 803(b) (last sentence), 90 Stat. 931.
2457(d)(2)	10:2451 (note).	Oct. 7, 1975, Pub. L. 94–106, § 814(b), 89 Stat. 540.
2457(d)(3)	10:2451 (note).	Oct. 7, 1975, Pub. L. 94–106, § 814(a)(3), 89 Stat. 540; restated July 14, 1976, Pub. L. 94–361, § 802, 90 Stat. 930.
2457(d) (4)–(6).	10:2451 (note).	July 14, 1976, Pub. L. 94–361, § 803(a) (3d–last sentences), 90 Stat. 930.

HISTORICAL AND REVISION NOTES—CONTINUED

Revised section	Source (U.S. Code)	Source (Statutes at Large)
2457(d)(7), (8).	10:2451 (note).	Aug. 5, 1974, Pub. L. 93–365, 88 Stat. 399, § 302(c) (6th, last sentences); added Sept. 8, 1982, Pub. L. 97–252, § 1121, 96 Stat. 754.
2457(e) …..	10:2451 (note).	Oct. 7, 1975, Pub. L. 94–106, § 814(a)(2), 89 Stat. 540; restated July 14, 1976, Pub. L. 94–361, § 802, 90 Stat. 930.
2457(f) …..	10:2451 (note).	Aug. 5, 1974, Pub. L. 93–365, § 302(c) (4th sentence), 88 Stat. 402.

In the introductory matter of subsection (a), before clause (1), the word ''equipment'' is substituted for ''impedimenta'' in section 302(c) of the Department of Defense Appropriation Authorization Act, 1975 (Pub. L. 93–365, Aug. 5, 1974, 88 Stat. 402), for clarity and for consistency with section 814(a)(1) of the Department of Defense Appropriation Authorization Act, 1976 (Pub. L. 94–106, Oct. 7, 1975, 89 Stat. 540), which is restated as part of this subsection.

In subsection (a)(1), the word ''undertake'' is omitted as surplus. The word ''members'' is substituted for ''countries'' for consistency. The words ''including the United States'' are omitted as unnecessary.

In subsection (a)(2), the words ''The Secretary of Defense shall also'' are omitted as unnecessary. The word ''maintain'' is substituted for ''develop'' because it is more appropriate.

In subsection (a)(3), the words ''of other members of the North Atlantic Treaty Organization whenever such equipment is to be used by personnel of the Armed Forces of the United States stationed in Europe under the terms of the North Atlantic Treaty'' are omitted as unnecessary because of the restatement. The words ''Such procedures shall also take into . . . to be procured'' are omitted as unnecessary. The text of section 814(a)(1) (4th, last sentences) is omitted as executed.

In subsection (b), the words ''It is the sense of the Congress'', ''It is further the sense of Congress'', ''It is the Congress' considered judgment'', ''properly'', ''Accordingly'', and ''pursuant to these ends'' are omitted as unnecessary.

In subsection (c)(1), the word ''should'' is substituted for ''shall'' for clarity.

In subsection (d)(1), the word ''members'' is substituted for ''allies'' for consistency. The words ''The Secretary of Defense shall include in the report to the Congress required by section 302(c) of Public Law 93–365, as amended'' are omitted as unnecessary because of the restatement.

In subsection (d)(2), the words ''The report required under section 302(c) of Public Law 93–365 shall include'' are omitted as unnecessary because of the restatement.

In subsection (d)(3), the words ''he shall report that fact to the Congress in the annual report required under section 302(c) of Public Law 93–365, as amended'' are omitted as unnecessary because of the restatement.

In subsection (d)(4), the words ''The Secretary of Defense shall, in the reports required by section 302(c) of Public Law 93–365, as amended'' are omitted as unnecessary because of the restatement.

In subsection (d)(5), the words ''if none exist'' are substituted for ''In the absence of such common requirements'' to eliminate unnecessary words. The words ''the Secretary shall include a discussion of the'' are omitted as unnecessary because of the restatement.

In subsection (d)(6), the words ''The Secretary of Defense shall also report on'' are omitted as unnecessary because of the restatement.

In subsection (d)(7), the words ''those programs'' are substituted for ''all such existing and planned programs'' and ''all such programs'' to eliminate unnecessary words.

In subsection (f), the words ''The Secretary shall submit the results of these . . . to Congress'' are omitted as unnecessary because of the source provisions restated in subsection (d)(1). The word ''submit'' is substituted for ''cause to be brought'' to eliminate unnecessary words. The words ''in order that the suggested actions and recommendations can'' are omitted as unnecessary because of the restatement.

AMENDMENTS

2011—Subsec. (e). Pub. L. 111–350 substituted ''section 8302 of title 41'' for ''section 2 of the Buy American Act (41 U.S.C. 10a)''.

2003—Subsec. (d). Pub. L. 108–136 struck out subsec. (d) which related to Secretary's biennial submission of report to Congress.

1996—Subsec. (e). Pub. L. 104–106 substituted ''the Buy American Act (41 U.S.C. 10a)'' for ''title III of the Act of March 3, 1933 (41 U.S.C. 10a),''.

1990—Subsec. (d). Pub. L. 101–510 substituted ''Before February 1, 1989, and biennially thereafter'' for ''Before February 1 of each year''.

§ 2458. Inventory management policies

(a) POLICY REQUIRED.—The Secretary of Defense shall issue a single, uniform policy on the management of inventory items of the Department of Defense. Such policy shall—

(1) establish maximum levels for inventory items sufficient to achieve and maintain only those levels for inventory items necessary for the national defense;

(2) provide guidance to item managers and other appropriate officials on how effectively to eliminate wasteful practices in the acquisition and management of inventory items; and

(3) set forth a uniform system for the valuation of inventory items by the military departments and Defense Agencies.

(b) PERSONNEL EVALUATIONS.—The Secretary of Defense shall establish procedures to ensure that, with regard to item managers and other personnel responsible for the acquisition and management of inventory items of the Department of Defense, personnel appraisal systems for such personnel give appropriate consideration to efforts made by such personnel to eliminate wasteful practices and achieve cost savings in the acquisition and management of inventory items.

(Added Pub. L. 101–510, div. A, title III, § 323(a)(1), Nov. 5, 1990, 104 Stat. 1530; amended Pub. L. 102–190, div. A, title III, § 347(a), Dec. 5, 1991, 105 Stat. 1347.)

AMENDMENTS

1991—Subsec. (a)(3). Pub. L. 102–190 added par. (3).

IMPLEMENTATION OF 1991 AMENDMENT

Secretary of Defense to establish uniform system of valuation described in subsec. (a)(3) of this section not later than 180 days after Dec. 5, 1991, see section 347(c) of Pub. L. 102–190, set out as a note under section 2721 of this title.

MANAGEMENT OF CONVENTIONAL AMMUNITION INVENTORY

Pub. L. 113–291, div. A, title III, § 352(a), (b), Dec. 19, 2014, 128 Stat. 3347, provided that:

''(a) CONSOLIDATION OF DATA.—Not later than 240 days after the date of the enactment of this Act [Dec. 19, 2014], the Under Secretary of Defense for Acquisition, Technology, and Logistics shall issue Department-wide guidance designating an authoritative source of data for conventional ammunition. Not later than 10 days

after issuing the guidance required by this subsection, the Under Secretary shall notify the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] on what source of data has been designated under this subsection.

''(b) ANNUAL REPORT.—The Secretary of the Army shall include in the appropriate annual ammunition inventory reports, as determined by the Secretary, information on all available ammunition for use during the redistribution process, including any ammunition that was unclaimed and categorized for disposal by another military service during a year before the year during which the report is submitted.''

IMPROVEMENT OF INVENTORY MANAGEMENT PRACTICES

Pub. L. 111–84, div. A, title III, § 328, Oct. 28, 2009, 123 Stat. 2255, which required the Secretary to submit to Congress a comprehensive plan for improving the inventory management systems of the military departments and the Defense Logistics Agency to reduce the acquisition and storage of secondary excess inventory, was repealed by Pub. L. 115–232, div. A, title VIII, § 812(b)(44), Aug. 13, 2018, 132 Stat. 1850.

REPORT ON INVENTORY AND CONTROL OF MILITARY EQUIPMENT

Pub. L. 106–65, div. A, title III, § 363, Oct. 5, 1999, 113 Stat. 576, provided that not later than Aug. 31, 2000, the Secretary of Defense was to submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the inventory and control of the military equipment of the Department of Defense as of the end of fiscal year 1999, and that not later than Nov. 30, 2000, the Inspector General of the Department of Defense was to review the report and submit comments to the committees.

BEST COMMERCIAL INVENTORY PRACTICES FOR MANAGEMENT OF SECONDARY SUPPLY ITEMS

Pub. L. 105–261, div. A, title III, § 347, Oct. 17, 1998, 112 Stat. 1980, which related to implementation of the best commercial inventory practices for the acquisition and distribution of secondary supply items, was repealed by Pub. L. 115–232, div. A, title VIII, § 812(b)(45), Aug. 13, 2018, 132 Stat. 1850.

INVENTORY MANAGEMENT OF IN-TRANSIT ITEMS

Pub. L. 105–261, div. A, title III, § 349, Oct. 17, 1998, 112 Stat. 1981, as amended by Pub. L. 106–398, § 1 [[div. A], title III, § 386], Oct. 30, 2000, 114 Stat. 1654, 1654A–88, which required a comprehensive plan to ensure visibility over all in-transit end items and secondary items, was repealed by Pub. L. 115–232, div. A, title VIII, § 812(b)(46), Aug. 13, 2018, 132 Stat. 1850.

INVENTORY MANAGEMENT

Pub. L. 105–85, div. A, title III, § 395, Nov. 18, 1997, 111 Stat. 1718, which required the Director of the Defense Logistics Agency to develop and submit to Congress a schedule for implementing the best commercial inventory practices for the acquisition and distribution of supplies and equipment consistent with military requirements, was repealed by Pub. L. 115–232, div. A, title VIII, § 812(b)(47), Aug. 13, 2018, 132 Stat. 1850.

DIRECT VENDOR DELIVERY SYSTEM FOR CONSUMABLE INVENTORY ITEMS OF DEPARTMENT OF DEFENSE

Pub. L. 104–106, div. A, title III, § 352, Feb. 10, 1996, 110 Stat. 266, provided that:

''(a) IMPLEMENTATION OF DIRECT VENDOR DELIVERY SYSTEM.—Not later than September 30, 1997, the Secretary of Defense shall, to the maximum extent practicable, implement a system under which consumable inventory items referred to in subsection (b) are delivered to military installations throughout the United States directly by the vendors of those items. The purpose for implementing the system is to reduce the expense and necessity of maintaining extensive warehouses for those items within the Department of Defense.

''(b) COVERED ITEMS.—The items referred to in subsection (a) are the following:

''(1) Food and clothing.

''(2) Medical and pharmaceutical supplies.

''(3) Automotive, electrical, fuel, and construction supplies.

''(4) Other consumable inventory items the Secretary considers appropriate.''

DATE OF ISSUANCE OF POLICY

Pub. L. 101–510, div. A, title III, § 323(b), Nov. 5, 1990, 104 Stat. 1530, provided that: ''The policy required by section 2458(a) of title 10, United States Code (as added by subsection (a)), shall be issued not later than 180 days after the date of the enactment of this Act [Nov. 5, 1990].''

CHAPTER 146—CONTRACTING FOR PERFORMANCE OF CIVILIAN COMMERCIAL OR INDUSTRIAL TYPE FUNCTIONS

Sec.
2460. Definition of depot-level maintenance and repair.
2461. Public-private competition required before conversion to contractor performance.
2461a. Development and implementation of system for monitoring cost saving resulting from public-private competitions.
[2462. Repealed.]
2463. Guidelines and procedures for use of civilian employees to perform Department of Defense functions.
2464. Core logistics capabilities.
2465. Prohibition on contracts for performance of firefighting or security-guard functions.
2466. Limitations on the performance of depot-level maintenance of materiel.
[2467, 2468. Repealed.]
2469. Contracts to perform workloads previously performed by depot-level activities of the Department of Defense: requirement of competition.
[2469a. Repealed.]
2470. Depot-level activities of the Department of Defense: authority to compete for maintenance and repair workloads of other Federal agencies.
[2471. Repealed.]
2472. Prohibition on management of depot employees by end strength.
[2473. Repealed.]
2474. Centers of Industrial and Technical Excellence: designation; public-private partnerships.
2475. Consolidation, restructuring, or re-engineering of organizations, functions, or activities: notification requirements.
2476. Minimum capital investment for certain depots.

AMENDMENTS

2014—Pub. L. 113–291, div. A, title X, § 1060(a)(2)(B), Dec. 19, 2014, 128 Stat. 3502, struck out item 2462 ''Reports on public-private competition''.

2013—Pub. L. 112–239, div. A, title III, § 322(b)(2)(B), Jan. 2, 2013, 126 Stat. 1695, substituted ''Core logistics capabilities'' for ''Core depot-level maintenance and repair capabilities'' in item 2464.

2011—Pub. L. 112–81, div. A, title III, § 327(b), Dec. 31, 2011, 125 Stat. 1368, substituted ''Core depot-level maintenance and repair capabilities'' for ''Core logistics capabilities'' in item 2464.

Pub. L. 111–383, div. A, title VIII, § 822(b), Jan. 7, 2011, 124 Stat. 4268, struck out item 2473 ''Procurements from the small arms production industrial base''.

2008—Pub. L. 110–181, div. A, title III, §§ 322(d), 324(a)(2), Jan. 28, 2008, 122 Stat. 60, 61, added item 2463 and struck out item 2467 ''Cost comparisons: inclusion of retirement costs; consultation with employees; waiver of comparison''.

2006—Pub. L. 109–364, div. A, title III, § 332(b), Oct. 17, 2006, 120 Stat. 2150, added item 2476.

Pub. L. 109–163, div. A, title III, § 341(g)(4), Jan. 6, 2006, 119 Stat. 3200, substituted ''Public-private competition required'' for ''Commercial or industrial type functions: required studies and reports'' in item 2461, ''Development and implementation of system for monitoring cost saving resulting from public-private competitions'' for ''Development of system for monitoring cost savings resulting from workforce reductions'' in item 2461a, and ''Reports on public-private competition'' for ''Contracting for certain supplies and services required when cost is lower'' in item 2462 and struck out item 2463 ''Collection and retention of cost information data on converted services and functions''.

2004—Pub. L. 108–375, div. A, title III, § 322(b)(2), Oct. 28, 2004, 118 Stat. 1846, substituted ''Prohibition on management of depot employees by end strength'' for ''Management of depot employees'' in item 2472.

2002—Pub. L. 107–314, div. A, title III, § 333(b), Dec. 2, 2002, 116 Stat. 2514, struck out item 2469a ''Use of competitive procedures in contracting for performance of depot-level maintenance and repair workloads formerly performed at certain military installations''.

2001—Pub. L. 107–107, div. A, title X, § 1048(e)(10)(B), Dec. 28, 2001, 115 Stat. 1228, struck out item 2468 ''Military installations: authority of base commanders over contracting for commercial activities''.

2000—Pub. L. 106–398, § 1 [[div. A], title III, §§ 341(g)(2), 353(b), 354(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–64, 1654A–73, 1654A–75, added items 2461a and 2475 and struck out item 2471 ''Persons outside the Department of Defense: lease of excess depot-level equipment and facilities by''.

1999—Pub. L. 106–65, div. A, title III, § 342(b)(2), Oct. 5, 1999, 113 Stat. 569, added item 2467 and struck former item 2467 ''Cost comparisons: requirements with respect to retirement costs and consultation with employees''.

1997—Pub. L. 105–85, div. A, title III, §§ 355(c)(1), 356(b), 359(a)(2), 361(a)(2), 385(b), Nov. 18, 1997, 111 Stat. 1694, 1695, 1699, 1701, 1712, added item 2460, substituted ''Collection and retention of cost information data on converted services and functions'' for ''Reports on savings or costs from increased use of DOD civilian personnel'' in item 2463 and ''capabilities'' for ''functions'' in item 2464, and added items 2469a and 2474.

1996—Pub. L. 104–201, div. A, title VIII, § 832(b), Sept. 23, 1996, 110 Stat. 2616, added item 2473.

Pub. L. 104–106, div. A, title III, § 312(d), Feb. 10, 1996, 110 Stat. 251, added item 2472.

Pub. L. 104–106, div. A, title III, § 311(f)(2), Feb. 10, 1996, 110 Stat. 248, which directed striking out items 2466 and 2469, was repealed by Pub. L. 105–85, div. A, title III, § 363, Nov. 18, 1997, 111 Stat. 1702.

1994—Pub. L. 103–337, div. A, title III, §§ 335(b), 336(b), Oct. 5, 1994, 108 Stat. 2717, added items 2470 and 2471.

1992—Pub. L. 102–484, div. A, title III, § 353(b), Oct. 23, 1992, 106 Stat. 2379, added item 2469.

1991—Pub. L. 102–190, div. A, title III, § 314(a)(2), Dec. 5, 1991, 105 Stat. 1337, substituted ''Limitations on the performance of depot-level maintenance of materiel'' for ''Prohibition on certain depot maintenance workload competitions'' in item 2466.

1989—Pub. L. 101–189, div. A, title XI, § 1131(a)(2), Nov. 29, 1989, 103 Stat. 1561, added item 2468.

1988—Pub. L. 100–456, div. A, title III, §§ 326(b), 331(b), Sept. 29, 1988, 102 Stat. 1956, 1958, added items 2466 and 2467.

§ 2460. Definition of depot-level maintenance and repair

(a) IN GENERAL.—In this chapter, the term ''depot-level maintenance and repair'' means (except as provided in subsection (b)) material maintenance or repair requiring the overhaul, upgrading, or rebuilding of parts, assemblies, or subassemblies, and the testing and reclamation of equipment as necessary, regardless of the source of funds for the maintenance or repair or the location at which the maintenance or repair is performed. The term includes (1) all aspects of software maintenance classified by the Department of Defense as of July 1, 1995, as depot-level maintenance and repair, and (2) interim contractor support or contractor logistics support (or any similar contractor support), to the extent that such support is for the performance of services described in the preceding sentence.

(b) EXCEPTIONS.—(1) The term does not include the procurement of major modifications or upgrades of weapon systems that are designed to improve program performance or the nuclear refueling or defueling of an aircraft carrier and any concurrent complex overhaul. A major upgrade program covered by this exception could continue to be performed by private or public sector activities.

(2) The term also does not include the procurement of parts for safety modifications. However, the term does include the installation of parts for that purpose.

(Added and amended Pub. L. 112–239, div. A, title III, § 322(b)(1), (c), Jan. 2, 2013, 126 Stat. 1694, 1695.)

CODIFICATION

Section 322(b)(1) of Pub. L. 112–239, cited as a credit to this section, revived section 2460 of this title as in effect the day before the date of the enactment of Pub. L. 112–81, Dec. 31, 2011. See Prior Provisions note below.

PRIOR PROVISIONS

A prior section 2460, added Pub. L. 105–85, div. A, title III, § 355(a), Nov. 18, 1997, 111 Stat. 1693; amended Pub. L. 105–261, div. A, title III, § 341, Oct. 17, 1998, 112 Stat. 1973; Pub. L. 112–81, div. A, title III, § 321, Dec. 31, 2011, 125 Stat. 1361, defined ''depot-level maintenance and repair'' for this chapter prior to repeal by Pub. L. 112–239, div. A, title III, § 322(a)(1), Jan. 2, 2013, 126 Stat. 1694.

AMENDMENTS

2013—Subsec. (b)(1). Pub. L. 112–239, § 322(c), substituted ''or the nuclear refueling or defueling of an aircraft carrier and any concurrent complex overhaul'' for ''or the nuclear refueling of an aircraft carrier''.

EFFECTIVE DATE

Section and amendment by Pub. L. 112–239 effective Dec. 31, 2011, immediately after enactment of Pub. L. 112–81, see section 322(f) of Pub. L. 112–239, set out as an Effective Date of 2013 Amendment note under section 2366a of this title.

REQUIREMENT FOR MILITARY DEPARTMENT INTER-SERVICE DEPOT MAINTENANCE

Pub. L. 116–92, div. A, title III, § 358, Dec. 20, 2019, 133 Stat. 1323, provided that:

''(a) JOINT PROCESS FOR TECHNICAL COMPLIANCE AND QUALITY CONTROL.—If the Secretary of a military department transfers any maintenance action on a platform to a depot under the jurisdiction of the Secretary of another military department, the two Secretaries shall develop and implement a process to ensure the technical compliance and quality control for the work performed.

''(b) REQUIREMENTS.—A process developed under subsection (a) shall include the following requirements—

''(1) The Secretary of the military department with jurisdiction over the depot to which the maintenance action is transferred shall—

''(A) ensure that the technical specifications, requirements, and standards for work to be performed are provided to such action or depot; and

''(B) implement procedures to ensure that completed work complies with such specifications, requirements and standards.

''(2) The Secretary who transfers the maintenance activity or depot shall ensure that—

''(A) the technical specifications and requirements are clearly understood; and

''(B) the work performed is completed to the technical specifications, requirements, and standards prescribed under paragraph (1), and that the Secretary of the military department with jurisdiction over the depot is informed of any shortcoming or discrepancy.

''(c) REPORTS.—Not later than 180 days after the date of the enactment of this Act [Dec. 20, 2019], the Under Secretary of Defense for Acquisition and Sustainment shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report containing a certification that sufficient policy and procedures are in place to ensure quality control when the depot or maintenance activities of one military department support another. The report shall include a description of known shortfalls in existing policies and procedures and actions the Department of Defense is taking to address such shortfalls.''

§ 2461. Public-private competition required before conversion to contractor performance

(a) PUBLIC-PRIVATE COMPETITION.—(1) No function of the Department of Defense performed by Department of Defense civilian employees may be converted, in whole or in part, to performance by a contractor unless the conversion is based on the results of a public-private competition that—

(A) formally compares the cost of performance of the function by Department of Defense civilian employees with the cost of performance by a contractor;

(B) creates an agency tender, including a most efficient organization plan, in accordance with Office of Management and Budget Circular A–76, as implemented on May 29, 2003, or any successor circular;

(C) includes the issuance of a solicitation;

(D) determines whether the submitted offers meet the needs of the Department of Defense with respect to factors other than cost, including quality, reliability, and timeliness;

(E) examines the cost of performance of the function by Department of Defense civilian employees and the cost of performance of the function by one or more contractors to demonstrate whether converting to performance by a contractor will result in savings to the Government over the life of the contract, including—

(i) the estimated cost to the Government (based on offers received) for performance of the function by a contractor;

(ii) the estimated cost to the Government for performance of the function by Department of Defense civilian employees; and

(iii) an estimate of all other costs and expenditures that the Government would incur because of the award of such a contract;

(F) requires continued performance of the function by Department of Defense civilian employees unless the difference in the cost of performance of the function by a contractor compared to the cost of performance of the function by Department of Defense civilian employees would, over all performance periods required by the solicitation, be equal to or exceed the lesser of—

(i) 10 percent of the personnel-related costs for performance of that function in the agency tender; or

(ii) $10,000,000;

(G) requires that the contractor shall not receive an advantage for a proposal that would reduce costs for the Department of Defense by—

(i) not making an employer-sponsored health insurance plan (or payment that could be used in lieu of such a plan), health savings account, or medical savings account available to the workers who are to be employed to perform the function under the contract;

(ii) offering to such workers an employer-sponsored health benefits plan that requires the employer to contribute less towards the premium or subscription share than the amount that is paid by the Department of Defense for health benefits for civilian employees of the Department under chapter 89 of title 5; or

(iii) offering to such workers a retirement benefit that, in any year, costs less than the annual retirement cost factor applicable to civilian employees of the Department of Defense under chapter 84 of title 5; and

(H) examines the effect of performance of the function by a contractor on the military mission associated with the performance of the function.

(2) A function that is performed by the Department of Defense and is reengineered, reorganized, modernized, upgraded, expanded, or changed to become more efficient, but still essentially provides the same service, shall not be considered a new requirement.

(3) In no case may a function being performed by Department of Defense personnel be—

(A) modified, reorganized, divided, or in any way changed for the purpose of exempting the conversion of the function from the requirements of this section; or

(B) converted to performance by a contractor to circumvent a civilian personnel ceiling.

(4) A military department or Defense Agency may not be required to conduct a public-private competition under Office of Management and Budget Circular A–76 or any other provision of law at the end of the performance period specified in a letter of obligation or other agreement entered into with Department of Defense civilian employees pursuant to a public-private competition for any function of the Department of Defense performed by Department of Defense civilian employees.

(5)(A) Except as provided in subparagraph (B), the duration of a public-private competition conducted pursuant to Office of Management and Budget Circular A–76 or any other provision

of law for any function of the Department of Defense performed by Department of Defense civilian employees may not exceed a period of 24 months, commencing on the date on which the preliminary planning for the public-private competition begins and ending on the date on which a performance decision is rendered with respect to the function.

(B)(i) The Secretary of Defense may specify an alternative period of time for a public-private competition, which may not exceed 33 months, if the Secretary—

(I) determines that the competition is of such complexity that it cannot be completed within 24 months; and

(II) submits to Congress, as part of the formal congressional notification of a public-private competition pursuant to subsection (c), written notification that explains the basis of such determination.

(ii) The notification under clause (i)(II) shall also address each of the following:

(I) Any efforts of the Secretary to break up the study geographically or functionally.

(II) The Secretary's justification for undertaking a public-private competition instead of using internal reengineering alternatives.

(III) The cost savings that the Secretary expects to achieve as a result of the public-private competition.

(iii) If the Secretary specifies an alternative time period under this subparagraph, the alternative time period shall be binding on the Department in the same manner and to the same extent as the limitation provided in subparagraph (A).

(C) The time period specified in subparagraph (A) for a public-private competition does not include any day during which the public-private competition is delayed by reason of the filing of a protest before the Government Accountability Office or a complaint in the United States Court of Federal Claims up until the day the decision or recommendation of either authority becomes final. In the case of a protest before the Government Accountability Office, the recommendation becomes final after the period of time for filing a request for reconsideration, or if a request for reconsideration is filed, on the day the Government Accountability Office issues a decision on the reconsideration.

(D) If a protest with respect to a public-private competition before the Government Accountability Office or the United States Court of Federal Claims is sustained, and the recommendation is final as described in subparagraph (C), and if such protest and recommendation result in an unforeseen delay in implementing a final performance decision, the Secretary of Defense may terminate the public-private competition or extend the period of time specified for the public-private competition under subparagraph (A) or subparagraph (B). If the Secretary decides not to terminate a competition, the Secretary shall submit to Congress written notice of such decision. Any such notification shall include a justification for the Secretary's decision and a new time limitation for the competition, which shall not exceed 12 months from the final decision and shall be binding on the Department.

(E) For the purposes of this paragraph, preliminary planning with respect to a public-private competition shall be conducted in accordance with guidance and procedures that shall be issued and maintained by the Under Secretary of Defense for Personnel and Readiness and shall begin on the date on which a component of the Department of Defense first obligates funds specifically for the acquisition of contract support for the preliminary planning effort, or formally assigns Department of Defense personnel, to carry out any of the following activities:

(i) Determining the scope of the public-private competition.

(ii) Conducting research to determine the appropriate grouping of functions for the competition.

(iii) Assessing the availability of workload data, quantifiable outputs of functions, and agency or industry performance standards applicable to the competition.

(iv) Determining the baseline cost of any function for which the competition is conducted.

(F) To effectively establish the date that is the first day of preliminary planning for a public-private competition, the head of a military department or Defense Agency shall submit to Congress written notice of the actions intended to be taken during the preliminary planning process and shall provide public notice of such actions by announcing such date on an appropriate Internet website and through other means as determined necessary. The date of such announcement shall be used for the purpose of computing the duration of the public private competition for purposes of this section.

(G) The Secretary of Defense shall submit to the congressional defense committees an annual report on the use, during the year covered by the report, of alternative time periods for public-private competitions under this section, and the explanations of the Secretary for such alternative time periods.

(b) REQUIREMENT TO CONSULT DOD EMPLOYEES.—(1) Each officer or employee of the Department of Defense responsible for determining under Office of Management and Budget Circular A–76 whether to convert to contractor performance any function of the Department of Defense—

(A) shall, at least monthly during the development and preparation of the performance work statement and the management efficiency study used in making that determination, consult with civilian employees who will be affected by that determination and consider the views of such employees on the development and preparation of that statement and that study; and

(B) may consult with such employees on other matters relating to that determination.

(2)(A) In the case of employees represented by a labor organization accorded exclusive recognition under section 7111 of title 5, consultation with representatives of that labor organization shall satisfy the consultation requirement in paragraph (1).

(B) In the case of employees other than employees referred to in subparagraph (A), con-

sultation with appropriate representatives of those employees shall satisfy the consultation requirement in paragraph (1).

(C) The Secretary of Defense shall prescribe regulations to carry out this subsection. The regulations shall include provisions for the selection or designation of appropriate representatives of employees referred to in subparagraph (B) for purposes of the consultation required by paragraph (1).

(c) CONGRESSIONAL NOTIFICATION.—(1) Before commencing a public-private competition under subsection (a), the Secretary of Defense shall submit to Congress a report containing the following:

(A) The function for which such public-private competition is to be conducted.

(B) The location at which the function is performed by Department of Defense civilian employees.

(C) The number of Department of Defense civilian employee positions potentially affected.

(D) The anticipated length and cost of the public-private competition, and a specific identification of the budgetary line item from which funds will be used to cover the cost of the public-private competition.

(E) A certification that a proposed performance of the function by a contractor is not a result of a decision by an official of a military department or Defense Agency to impose predetermined constraints or limitations on such employees in terms of man years, end strengths, full-time equivalent positions, or maximum number of employees.

(2) The report required under paragraph (1) shall include an examination of the potential economic effect of performance of the function by a contractor on—

(A) Department of Defense civilian employees who would be affected by such a conversion in performance; and

(B) the local community and the Government, if more than 50 Department of Defense civilian employees perform the function.

(3)(A) A representative individual or entity at a facility where a public-private competition is conducted may submit to the Secretary of Defense an objection to the public-private competition on the grounds that the report required by paragraph (1) has not been submitted or that the certification required by paragraph (1)(E) is not included in the report submitted as a condition for the public-private competition. The objection shall be in writing and shall be submitted within 90 days after the following date:

(i) In the case of a failure to submit the report when required, the date on which the representative individual or an official of the representative entity authorized to pose the objection first knew or should have known of that failure.

(ii) In the case of a failure to include the certification in a submitted report, the date on which the report was submitted to Congress.

(B) If the Secretary determines that the report required by paragraph (1) was not submitted or that the required certification was not included in the submitted report, the function for which the public-private competition was conducted for which the objection was submitted may not be the subject of a solicitation of offers for, or award of, a contract until, respectively, the report is submitted or a report containing the certification in full compliance with the certification requirement is submitted.

(d) EXEMPTION FOR THE PURCHASE OF PRODUCTS AND SERVICES OF THE BLIND AND OTHER SEVERELY HANDICAPPED PERSONS.—This section shall not apply to a commercial or industrial type function of the Department of Defense that—

(1) is included on the procurement list established pursuant to section 8503 of title 41; or

(2) is planned to be changed to performance by a qualified nonprofit agency for the blind or by a qualified nonprofit agency for other severely handicapped persons in accordance with such section.

(e) INAPPLICABILITY DURING WAR OR EMERGENCY.—The provisions of this section shall not apply during war or during a period of national emergency declared by the President or Congress.

(Added Pub. L. 100–370, § 2(a)(1), July 19, 1988, 102 Stat. 851; amended Pub. L. 101–189, div. A, title XI, § 1132, Nov. 29, 1989, 103 Stat. 1561; Pub. L. 104–106, div. D, title XLIII, § 4321(b)(19), Feb. 10, 1996, 110 Stat. 673; Pub. L. 105–85, div. A, title III, § 384, Nov. 18, 1997, 111 Stat. 1711; Pub. L. 105–261, div. A, title III, § 342(a)–(c), Oct. 17, 1998, 112 Stat. 1974–1976; Pub. L. 106–65, div. A, title III, § 341, Oct. 5, 1999, 113 Stat. 568; Pub. L. 106–398, § 1 [[div. A], title III, §§ 351, 352], Oct. 30, 2000, 114 Stat. 1654, 1654A–71, 1654A–72; Pub. L. 107–107, div. A, title III, § 344, Dec. 28, 2001, 115 Stat. 1061; Pub. L. 107–314, div. A, title III, § 331, Dec. 2, 2002, 116 Stat. 2512; Pub. L. 109–163, div. A, title III, § 341(a), (b), (c)(2), (3), (g)(1)–(2)(B), Jan. 6, 2006, 119 Stat. 3195, 3196, 3199, 3200; Pub. L. 110–181, div. A, title III, §§ 322(a), (b)(2), (c), 323, Jan. 28, 2008, 122 Stat. 58–60; Pub. L. 111–84, div. A, title III, §§ 321(a), 322(a), title X, § 1073(a)(25), Oct. 28, 2009, 123 Stat. 2250, 2251, 2474; Pub. L. 111–350, § 5(b)(34), Jan. 4, 2011, 124 Stat. 3845; Pub. L. 112–81, div. A, title IX, § 937, Dec. 31, 2011, 125 Stat. 1546; Pub. L. 112–239, div. A, title X, § 1076(f)(28), Jan. 2, 2013, 126 Stat. 1953; Pub. L. 113–66, div. A, title X, § 1091(a)(11), Dec. 26, 2013, 127 Stat. 876.)

HISTORICAL AND REVISION NOTES

Section is based on Pub. L. 96–342, title V, § 502, Sept. 8, 1980, 94 Stat. 1086, as amended by Pub. L. 97–252, title XI, § 1112(a), Sept. 8, 1982, 96 Stat. 747; Pub. L. 99–145, title XII, § 1234(a), Nov. 8, 1985, 99 Stat. 734; Pub. L. 99–661, div. A, title XII, § 1221, Nov. 14, 1986, 100 Stat. 3976.

AMENDMENTS

2013—Subsec. (a)(5)(E)(i). Pub. L. 113–66 struck out ''a'' before ''public-private competition''.

Subsec. (d)(2). Pub. L. 112–239 substituted ''such section'' for ''that Act''.

2011—Subsec. (a)(5)(E). Pub. L. 112–81, § 937(1)(A)–(E), in introductory provisions, substituted ''competition shall be conducted in accordance with guidance and procedures that shall be issued and maintained by the Under Secretary of Defense for Personnel and Readiness and shall begin on the date on which a component of the Department of Defense first obligates funds specifically for the acquisition of contract support for the preliminary planning effort'' for ''competition, begins

on the date on which the Department of Defense obligates funds for the acquisition of contract support''.

Subsec. (a)(5)(E)(i). Pub. L. 112–81, § 937(1)(F), inserted ''a public-private'' before ''competition''.

Subsec. (a)(5)(F). Pub. L. 112–82, § 937(2), substituted ''military department or Defense Agency shall submit to Congress written notice of the actions intended to be taken during the preliminary planning process and shall provide public notice of such actions by announcing such date on an appropriate Internet website and through other means as determined necessary. The date of such announcement shall be used for the purpose'' for ''military department shall submit to Congress written notice of such date and shall provide public notice by announcing such date on an appropriate Internet website. Such date is the first day of preliminary planning for a public-private competition for the purpose''.

Subsec. (d)(1). Pub. L. 111–350, which directed substitution of ''section 8503 of title 41'' for ''section 2 of the Javits-Wagner-O'Day Act (41 U.S.C. 47)'' in subsec. (c)(1), was executed by making the substitution in subsec. (d)(1) to reflect the probable intent of Congress and the amendment by Pub. L. 110–181, § 322(b)(2). See 2008 Amendment note below.

2009—Subsec. (a)(1). Pub. L. 111–84, § 321(a), in introductory provisions, substituted ''No function'' for ''A function'' and ''may be converted'' for ''may not be converted'' and struck out ''10 or more'' before ''Department of Defense civilian employees''.

Subsec. (a)(5). Pub. L. 111–84, § 322(a), added par. (5).

Subsec. (c)(3)(A). Pub. L. 111–84, § 1073(a)(25), substituted ''the public-private competition'' for ''the public private competition'' in two places in introductory provisions.

2008—Subsec. (a)(1)(B). Pub. L. 110–181, § 322(c)(1)(A), inserted '', or any successor circular'' after ''2003''.

Subsec. (a)(1)(D). Pub. L. 110–181, § 322(c)(1)(B), substituted '', reliability, and timeliness'' for ''and reliability''.

Subsec. (a)(1)(G), (H). Pub. L. 110–181, § 322(a), added subpar. (G) and redesignated former subpar. (G) as (H).

Subsec. (a)(4). Pub. L. 110–181, § 323, added par. (4).

Subsecs. (b), (c). Pub. L. 110–181, § 322(b)(2), added subsec. (b) and redesignated former subsec. (b) as (c). Former subsec. (c) redesignated (d).

Subsec. (c)(2). Pub. L. 110–181, § 322(c)(2), inserted ''of'' after ''examination'' in introductory provisions.

Subsecs. (d), (e). Pub. L. 110–181, § 322(b)(2), redesignated subsecs. (c) and (d) as (d) and (e), respectively.

2006—Pub. L. 109–163, § 341(g)(2)(A), substituted ''Public-private competition required'' for ''Commercial or industrial type functions: required studies and reports'' in section catchline.

Subsec. (a). Pub. L. 109–163, § 341(a), amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: ''A commercial or industrial type function of the Department of Defense that, as of October 1, 1980, was being performed by Department of Defense civilian employees may not be changed to performance by the private sector until the Secretary of Defense fully complies with the reporting and analysis requirements specified in subsections (b) and (c).''

Subsec. (b). Pub. L. 109–163, § 341(g)(2)(B), substituted ''Congressional Notification'' for ''Notification and Elements of Analysis'' in heading.

Subsec. (b)(1). Pub. L. 109–163, § 341(b)(1)(A), in introductory provisions, substituted ''a public-private competition under subsection (a)'' for ''to analyze a commercial or industrial type function described in subsection (a) for possible change to performance by the private sector''.

Subsec. (b)(1)(A). Pub. L. 109–163, § 341(b)(1)(B), substituted ''for which such public-private competition is to be conducted'' for ''to be analyzed for possible change''.

Subsec. (b)(1)(C). Pub. L. 109–163, § 341(b)(1)(C), inserted ''Department of Defense'' before ''civilian employee''.

Subsec. (b)(1)(D). Pub. L. 109–163, § 341(b)(1)(D), substituted ''the public-private competition'' for ''the analysis'' in two places.

Subsec. (b)(1)(E). Pub. L. 109–163, § 341(b)(1)(E), struck out ''commercial or industrial type'' before ''function'' and substituted ''a contractor'' for ''persons who are not civilian employees of the Department of Defense''.

Subsec. (b)(2). Pub. L. 109–163, § 341(b)(2), added par. (2) and struck out former par. (2) which read as follows: ''The duty to prepare a report under paragraph (1) may be delegated. A report prepared below the major command or claimant level of a military department, or below the equivalent level in a Defense Agency, pursuant to any such delegation shall be reviewed at the major command, claimant level, or equivalent level, as the case may be, before submission to Congress.''

Subsec. (b)(3). Pub. L. 109–163, § 341(b)(2), (3), redesignated par. (4) as (3) and struck out former par. (3) which related to analysis of a commercial or industrial type function for possible change to performance by the private sector.

Subsec. (b)(3)(A). Pub. L. 109–163, § 341(b)(4)(A), in introductory provisions, substituted ''where a public-private competition is conducted'' for ''where a commercial or industrial type function is analyzed for possible change in performance'' and ''the public private competition'' for ''the analysis'' in two places.

Subsec. (b)(3)(B). Pub. L. 109–163, § 341(b)(4)(B), substituted ''the function for which the public-private competition was conducted for which the objection was submitted'' for ''the commercial or industrial type function covered by the analysis to which objected''.

Subsec. (b)(4). Pub. L. 109–163, § 341(b)(3), redesignated par. (4) as (3).

Subsec. (c). Pub. L. 109–163, § 341(g)(1), substituted ''This section'' for ''Subsections (a) through (c) and subsection (g)''.

Pub. L. 109–163, § 341(c)(3), substituted ''Exemption'' for ''Waiver'' in heading.

Pub. L. 109–163, § 341(c)(2), redesignated subsec. (e) as (c) and struck out former subsec. (c) which related to submission of analysis results by the Secretary of Defense.

Subsecs. (d) to (h). Pub. L. 109–163, § 341(c)(2), redesignated subsecs. (e) and (h) as (c) and (d), respectively, and struck out former subsecs. (d), (f), and (g) which related, respectively, to waiver for small functions, additional limitations, and annual reports.

2002—Subsec. (c). Pub. L. 107–314 amended heading and text of subsec. (c) generally. Prior to amendment, text related to the report to Congress by the Secretary of Defense upon a decision to change the commercial or industrial type function that was the subject of the analysis to performance by the private sector, with requirements for contents of the report and submission of the report prior to the change of the function to contractor performance.

2001—Subsec. (g). Pub. L. 107–107 substituted ''June 30'' for ''February 1''.

2000—Subsec. (b)(1)(D). Pub. L. 106–398, § 1 [[div. A], title III, § 351(a)], inserted before period '', and a specific identification of the budgetary line item from which funds will be used to cover the cost of the analysis''.

Subsec. (c)(1). Pub. L. 106–398, § 1 [[div. A], title III, § 351(b)], added subpars. (A), (D), (E), and (G) and redesignated former subpars. (A), (B), (C), (D), and (E) as (B), (C), (F), (H), and (I), respectively.

Subsec. (c)(2), (3). Pub. L. 106–398, § 1 [[div. A], title III, § 352], added par. (2) and redesignated former par. (2) as (3).

1999—Subsec. (b)(3)(B)(ii). Pub. L. 106–65 substituted ''50 employees'' for ''75 employees''.

1998—Subsec. (a). Pub. L. 105–261, § 342(a)(2), added subsec. (a) and struck out former subsec. (a) which provided that commercial or industrial type functions of the Department of Defense that on Oct. 1, 1980, were being performed by Department of Defense civilian employees could not be converted to performance by private contractors unless the Secretary of Defense provided certain notices, information, certifications, and reports to Congress.

Subsec. (b). Pub. L. 105–261, § 342(a)(2), added subsec. (b) and struck out heading and text of former subsec.

(b). Text read as follows: ''If, after completion of the studies required for completion of the certification and report required by paragraphs (3) and (4) of subsection (a), a decision is made to convert the function to contractor performance, the Secretary of Defense shall notify Congress of such decision. The notification shall include the timetable for completing conversion of the function to contractor performance.''

Subsec. (c). Pub. L. 105–261, § 342(a)(2), added subsec. (c). Former subsec. (c) redesignated (g).

Subsec. (d). Pub. L. 105–261, § 342(b), (c)(1), substituted ''50'' for ''20'' and inserted ''and subsection (g)'' after ''Subsections (a) through (c)''.

Subsec. (e). Pub. L. 105–261, § 342(c)(1), (2), inserted ''and subsection (g)'' after ''Subsections (a) through (c)'' in introductory provisions and substituted ''changed'' for ''converted'' in par. (2).

Subsec. (f). Pub. L. 105–261, § 342(c)(2), (3), substituted ''changed'' for ''converted'' in par. (1) and ''change'' for ''conversion'' in par. (2).

Subsecs. (g), (h). Pub. L. 105–261, § 342(a)(1), redesignated subsecs. (c) and (g) as (g) and (h), respectively.

1997—Subsec. (a)(1). Pub. L. 105–85, § 384(a), inserted ''and the anticipated length and cost of the study'' before semicolon at end.

Subsec. (b). Pub. L. 105–85, § 384(b), inserted at end ''The notification shall include the timetable for completing conversion of the function to contractor performance.''

Subsec. (d). Pub. L. 105–85, § 384(c), substituted ''20 or fewer'' for ''45 or fewer''.

1996—Subsec. (e)(1). Pub. L. 104–106 substituted ''the Javits-Wagner-O'Day Act (41 U.S.C. 47)'' for ''the Act of June 25, 1938 (41 U.S.C. 47), popularly referred to as the Wagner-O'Day Act''.

1989—Subsecs. (e) to (g). Pub. L. 101–189 added subsec. (e) and redesignated former subsecs. (e) and (f) as (f) and (g), respectively.

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–84, div. A, title III, § 321(b), Oct. 28, 2009, 123 Stat. 2250, provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to a function for which a public-private competition is commenced on or after the date of the enactment of this Act [Oct. 28, 2009].''

Pub. L. 111–84, div. A, title III, § 322(b), Oct. 28, 2009, 123 Stat. 2252, provided that: ''Paragraph (5) of section 2461(a) of title 10, United States Code, as added by subsection (a), shall apply with respect to a public-private competition covered by such section that is initiated on or after the date of the enactment of this Act [Oct. 28, 2009].''

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–261, div. A, title III, § 342(d), Oct. 17, 1998, 112 Stat. 1976, provided that: ''The amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [Oct. 17, 1998], but the amendments shall not apply with respect to a conversion of a function of the Department of Defense to performance by a private contractor concerning which the Secretary of Defense provided to Congress, before the date of the enactment of this Act, a notification under paragraph (1) of section 2461(a) of title 10, United States Code, as in effect on the day before the date of the enactment of this Act.''

EFFECTIVE DATE OF 1996 AMENDMENT

For effective date and applicability of amendment by Pub. L. 104–106, see section 4401 of Pub. L. 104–106, set out as a note under section 2302 of this title.

RESTRICTION ON OFFICE OF MANAGEMENT AND BUDGET INFLUENCE OVER DEPARTMENT OF DEFENSE PUBLIC-PRIVATE COMPETITIONS

Pub. L. 110–181, div. A, title III, § 325, Jan. 28, 2008, 122 Stat. 61, provided that:

''(a) RESTRICTION ON OFFICE OF MANAGEMENT AND BUDGET.—The Office of Management and Budget may not direct or require the Secretary of Defense or the Secretary of a military department to prepare for, undertake, continue, or complete a public-private competition or direct conversion of a Department of Defense function to performance by a contractor under Office of Management and Budget Circular A–76, or any other successor regulation, directive, or policy.

''(b) RESTRICTION ON SECRETARY OF DEFENSE.—The Secretary of Defense or the Secretary of a military department may not prepare for, undertake, continue, or complete a public-private competition or direct conversion of a Department of Defense function to performance by a contractor under Office of Management and Budget Circular A–76, or any other successor regulation, directive, or policy by reason of any direction or requirement provided by the Office of Management and Budget.

''(c) INSPECTOR GENERAL REVIEW.—

''(1) COMPREHENSIVE REVIEW REQUIRED.—The Inspector General of the Department of Defense shall conduct a comprehensive review of the compliance of the Secretary of Defense and the Secretaries of the military departments with the requirements of this section during calendar year 2008. The Inspector General shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] the following reports on the comprehensive review:

''(A) An interim report, to be submitted by not later than 90 days after the date of the enactment of this Act [Jan. 28, 2008].

''(B) A final report, to be submitted by not later than December 31, 2008.

''(2) INSPECTOR GENERAL ACCESS.—For the purpose of determining compliance with the requirements of this section, the Secretary of Defense shall ensure that the Inspector General has access to all Department records of relevant communications between Department officials and officials of other departments and agencies of the Federal Government, whether such communications occurred inside or outside of the Department.''

PILOT PROGRAM ON COMMERCIAL FEE-FOR-SERVICE AIR REFUELING SUPPORT FOR THE AIR FORCE

Pub. L. 111–84, div. A, title X, § 1082, Oct. 28, 2009, 123 Stat. 2481, provided that:

''(a) MULTIYEAR CONTRACTS AUTHORIZED.—The Secretary of the Air Force may enter into one or more multiyear contracts, beginning with the fiscal year 2011 program year, for purposes of conducting the pilot program on utilizing commercial fee-for-service air refueling tanker aircraft for Air Force operations required by section 1081 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110–181; 122 Stat. 335) [set out below].

''(b) COMPLIANCE WITH LAW APPLICABLE TO MULTIYEAR CONTRACTS.—Any contract entered into under subsection (a) shall be entered into in accordance with the provisions of section 2306c of title 10, United States Code, except that—

''(1) the term of the contract may not be more than 8 years; and

''(2) notwithstanding section 2306c(b) of such title, the authority under section 2306c(a) of such title shall apply to the fee-for-service air refueling pilot program.

''(c) COMPLIANCE WITH LAW APPLICABLE TO SERVICE CONTRACTS.—A contract entered into under subsection (a) shall be entered into in accordance with the provisions of section 2401 of title 10, United States Code, except that—

''(1) the Secretary shall not be required to certify to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] that the contract is the most cost-effective means of obtaining commercial fee-for-service air refueling tanker aircraft for Air Force operations; and

''(2) the Secretary shall not be required to certify to the congressional defense committees that there is

no alternative for meeting urgent operational requirements other than making the contract.

''(d) LIMITATION ON AMOUNT.—The amount of a contract under subsection (a) may not exceed $999,999,999.

''(e) PROVISION OF GOVERNMENT INSURANCE.—A commercial air operator contracting with the Department of Defense under the pilot program referred to in subsection (a) shall be eligible to receive Government-provided insurance pursuant to chapter 443 of title 49, United States Code, if commercial insurance is unavailable on reasonable terms and conditions.''

Pub. L. 110–181, div. A, title X, § 1081, Jan. 28, 2008, 122 Stat. 335, as amended by Pub. L. 111–84, div. A, title X, § 1081, Oct. 28, 2009, 123 Stat. 2481; Pub. L. 113–291, div. A, title X, § 1061, Dec. 19, 2014, 128 Stat. 3503, provided that:

''(a) PILOT PROGRAM REQUIRED.—The Secretary of the Air Force shall conduct, as soon as practicable after the date of the enactment of this Act [Jan. 28, 2008], a pilot program to assess the feasibility and advisability of utilizing commercial fee-for-service air refueling tanker aircraft for Air Force operations, unless the Secretary of Defense submits notification to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] that pursuing such a program is not in the national interest. The duration of the pilot program shall be at least five years after commencement of the program.

''(b) PURPOSE.—

''(1) IN GENERAL.—The pilot program required by subsection (a) shall evaluate the feasibility of fee-for-service air refueling to support, augment, or enhance the air refueling mission of the Air Force by utilizing commercial air refueling providers on a fee-for-service basis.

''(2) ELEMENTS.—In order to achieve the purpose of the pilot program, the Secretary of the Air Force shall—

''(A) demonstrate and validate a comprehensive strategy for air refueling on a fee-for-service basis by evaluating all mission areas, including testing support, training support to receiving aircraft, homeland defense support, deployment support, air bridge support, aeromedical evacuation, and emergency air refueling; and

''(B) integrate fee-for-service air refueling described in paragraph (1) into Air Mobility Command operations during the evaluation and execution phases of the pilot program.

''(c) ANNUAL REPORT.—The Secretary of the Air Force shall provide to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] an annual report on the fee-for-service air refueling program, which includes—

''(1) information with respect to—

''(A) missions flown;

''(B) mission areas supported;

''(C) aircraft number, type, model series supported;

''(D) fuel dispensed;

''(E) departure reliability rates; and

''(F) the annual and cumulative cost to the Government for the program, including a comparison of costs of the same service provided by the Air Force;

''(2) an assessment of the impact of outsourcing air refueling on the Air Force's flying hour program and aircrew training; and

''(3) any other data that the Secretary determines is appropriate for evaluating the performance of the commercial air refueling providers participating in the pilot program.''

INAPPLICABILITY OF SUBSECTION (a)(1)(E) TO BEST-VALUE SOURCE SELECTION PILOT PROGRAM

Pub. L. 109–163, div. A, title III, § 341(e), Jan. 6, 2006, 119 Stat. 3199, as amended by Pub. L. 109–364, div. A, title X, § 1071(e)(1), Oct. 17, 2006, 120 Stat. 2401, provided that: ''Subsection (a)(1)(F) of section 2461 of title 10, United States Code, as amended by subsection (a), shall not apply with respect to the pilot program for best-value source selection for performance of information technology services authorized by section 336 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136; 117 Stat. 1444; 10 U.S.C. 2461 note).''

PERFORMANCE OF CERTAIN WORK BY FEDERAL GOVERNMENT EMPLOYEES

Pub. L. 109–163, div. A, title III, § 343, Jan. 6, 2006, 119 Stat. 3200, which provided that the Secretary of Defense was to prescribe guidelines and procedures for ensuring that consideration be given to using Federal Government employees for work that was currently performed or would otherwise be performed under Department of Defense contracts, and that the Secretary was to include the use of the flexible hiring authority available through the National Security Personnel System in order to facilitate performance by Federal Government employees of new requirements and work that was performed under Department of Defense contracts, was repealed and restated in section 2463 of this title by Pub. L. 110–181, div. A, title III, § 324(a)(1), (c), Jan. 28, 2008, 122 Stat. 60, 61.

PILOT PROGRAM FOR PURCHASE OF CERTAIN MUNICIPAL SERVICES FOR MILITARY INSTALLATIONS

Pub. L. 108–375, div. A, title III, § 325, Oct. 28, 2004, 118 Stat. 1847, as amended by Pub. L. 110–181, div. B, title XXVIII, § 2826, Jan. 28, 2008, 122 Stat. 546; Pub. L. 110–417, [div. A], title X, § 1061(b)(16), Oct. 14, 2008, 122 Stat. 4613, which authorized a pilot program to procure certain municipal services for a military installation from the county or municipality in which the installation is located, was repealed by Pub. L. 115–232, div. A, title VIII, § 812(b)(48), Aug. 13, 2018, 132 Stat. 1850.

LIMITATIONS ON CONVERSION OF WORK PERFORMED BY DEPARTMENT OF DEFENSE CIVILIAN EMPLOYEES TO CONTRACTOR PERFORMANCE

Pub. L. 108–375, div. A, title III, § 327, Oct. 28, 2004, 118 Stat. 1849, which generally required the Secretary of Defense to maintain the continued performance of certain activities and functions by civilian employees unless the competitive sourcing official determined that the cost of performance of the activity or function by a contractor would be less costly by an amount that equaled or exceeded the lesser of $10,000,000 or 10 percent of the most efficient organization's personnel-related costs for performance of the activity or function by civilian employees, was repealed by Pub. L. 109–163, div. A, title III, § 341(g)(3), Jan. 6, 2006, 119 Stat. 3200.

DELAYED IMPLEMENTATION OF REVISED OFFICE OF MANAGEMENT AND BUDGET CIRCULAR A–76 BY DEPARTMENT OF DEFENSE

Pub. L. 108–136, div. A, title III, § 335, Nov. 24, 2003, 117 Stat. 1443, provided that:

''(a) LIMITATION PENDING REPORT.—No studies or competitions may be conducted under the policies and procedures contained in the revised Office of Management and Budget Circular A–76 dated May 29, 2003 (68 Fed. Reg. 32134), relating to the possible contracting out of commercial activities being performed, as of such date, by employees of the Department of Defense, until the end of the 45-day period beginning on the date on which the Secretary of Defense submits to Congress a report on the effects of the revisions.

''(b) CONTENT OF REPORT.—The report required by subsection (a) shall contain, at a minimum, specific information regarding the following:

''(1) The extent to which the revised circular will ensure that employees of the Department of Defense have the opportunity to compete to retain their jobs.

''(2) The extent to which the revised circular will provide appeal and protest rights to employees of the Department of Defense.

''(3) Identify safeguards in the revised circular to ensure that all public-private competitions are fair, appropriate, and comply with requirements of full and open competition.

"(4) The plans of the Department to ensure an appropriate phase-in period for the revised circular, as recommended by the Commercial Activities Panel of the Government [General] Accounting Office [now Government Accountability Office] in its April 2002 report to Congress, including recommendations for any legislative changes that may be required to ensure a smooth and efficient phase-in period.

"(5) The plans of the Department to provide training to employees of the Department of Defense regarding the revised circular, including how the training will be funded, how employees will be selected to receive the training, and the number of employees likely to receive the training.

"(6) The plans of the Department to collect and analyze data on the costs and quality of work contracted out or retained in-house as a result of a sourcing process conducted under the revised circular."

PILOT PROGRAM FOR BEST-VALUE SOURCE SELECTION FOR PERFORMANCE OF INFORMATION TECHNOLOGY SERVICES

Pub. L. 108–136, div. A, title III, § 336, Nov. 24, 2003, 117 Stat. 1444, which authorized a pilot program for best-value source selection for performance of information technology services, was repealed by Pub. L. 115–232, div. A, title VIII, § 812(b)(49), Aug. 13, 2018, 132 Stat. 1850.

PILOT MANPOWER REPORTING SYSTEM IN DEPARTMENT OF THE ARMY

Pub. L. 107–107, div. A, title III, § 345(a)–(c), Dec. 28, 2001, 115 Stat. 1061, 1062, provided that, not later than Mar. 1 of each of the fiscal years 2002 through 2004, the Secretary of the Army was to submit to Congress a report describing the use during the previous fiscal year of non-Federal entities to provide services to the Department of the Army.

PILOT PROGRAM FOR COMMERCIAL SERVICES

Pub. L. 106–65, div. A, title VIII, § 814, Oct. 5, 1999, 113 Stat. 711, authorized the Secretary of Defense to carry out a pilot program to treat procurements of commercial services as procurements of commercial items, required the Secretary to issue guidance to procurement officials not later than 90 days after Oct. 5, 1999, and provided that the pilot program was to begin on the date that the Secretary issued the guidance and that it could continue for a period, not in excess of five years.

PUBLIC AVAILABILITY OF OPERATING AGREEMENTS BETWEEN MILITARY INSTALLATIONS AND FINANCIAL INSTITUTIONS

Pub. L. 105–261, div. A, title III, § 379, Oct. 17, 1998, 112 Stat. 1995, provided that: "With respect to an agreement between the commander of a military installation in the United States (or the designee of such an installation commander) and a financial institution that permits, allows, or otherwise authorizes the provision of financial services by the financial institution on the military installation, nothing in the terms or nature of such an agreement shall be construed to exempt the agreement from the provisions of sections 552 and 552a of title 5, United States Code."

DEVELOPMENT OF STANDARD FORMS REGARDING PERFORMANCE WORK STATEMENT AND REQUEST FOR PROPOSAL FOR CONVERSION OF CERTAIN OPERATIONAL FUNCTIONS OF MILITARY INSTALLATIONS

Pub. L. 105–85, div. A, title III, § 389, Nov. 18, 1997, 111 Stat. 1714, as amended by Pub. L. 105–261, div. A, title X, § 1069(b)(1), Oct. 17, 1998, 112 Stat. 2136, provided that:

"(a) STANDARDIZATION OF REQUIREMENTS.—The Secretary of Defense is authorized and encouraged to develop standard forms (to be known as a 'standard performance work statement' and a 'standard request for proposal') for use in the consideration for conversion to contractor performance of commercial services and functions at military installations. A separate standard form shall be developed for each service and function.

"(b) RELATIONSHIP TO OMB REQUIREMENTS.—A standard performance work statement or a standard request for proposal developed under subsection (a) must fulfill the basic requirements of the performance work statement or request for proposal otherwise required under the procedures and requirements of Office of Management and Budget Circular A–76 (or any successor administrative regulation or policy) in effect at the time the standard form will be used.

"(c) PRIORITY DEVELOPMENT OF CERTAIN FORMS.—In developing standard performance work statements and standard requests for proposal, the Secretary shall give first priority to those commercial services and functions that the Secretary determines have been successfully converted to contractor performance on a repeated basis.

"(d) INCENTIVE FOR USE.—Beginning not later than October 1, 1998, if a standard performance work statement or a standard request for proposal is developed under subsection (a) for a particular service and function, the standard form may be used in lieu of the performance work statement or request for proposal otherwise required under the procedures and requirements of Office of Management and Budget Circular A–76 in connection with the consideration for conversion to contractor performance of that service or function at a military installation.

"(e) EXCLUSION OF MULTIFUNCTION CONVERSION.—If a commercial service or function for which a standard form is developed under subsection (a) is combined with another service or function (for which such a form has not yet been developed) for purposes of considering the services and functions at the military installation for conversion to contractor performance, a standard performance work statement or a standard request for a proposal developed under subsection (a) may not be used in the conversion process in lieu of the procedures and requirements of Office of Management and Budget Circular A–76.

"(f) EFFECT ON OTHER LAWS.—Nothing in this section shall be construed to supersede any other requirements or limitations, specifically contained in chapter 146 of title 10, United States Code, on the conversion to contractor performance of activities performed by civilian employees of the Department of Defense.

"(g) GAO REPORT.—Not later than June 1, 1999, the Comptroller General shall submit to Congress a report reviewing the implementation of this section.

"(h) MILITARY INSTALLATION DEFINED.—For purposes of this section, the term 'military installation' means a base, camp, post, station, yard, center, homeport facility for any ship, or other activity under the jurisdiction of the Department of Defense, including any leased facility."

[Pub. L. 105–261, div. A, title X, § 1069(b), Oct. 17, 1998, 112 Stat. 2136, provided that the amendment made by section 1069(b)(1) to section 389 of Pub. L. 105–85, set out above, is effective as of Nov. 18, 1997, and as if included in the National Defense Authorization Act for Fiscal Year 1998, Pub. L. 105–85, as enacted.]

PRIVATE-SECTOR OPERATION OF CERTAIN PAYROLL, FINANCE, AND ACCOUNTING FUNCTIONS OF DEPARTMENT OF DEFENSE; PLAN; REPORT

Pub. L. 104–106, div. A, title III, § 353(a), Feb. 10, 1996, 110 Stat. 267, which required the Secretary to submit and conditionally implement a plan for payroll functions for certain civilian employees to be performed by private-sector sources, was repealed by Pub. L. 115–232, div. A, title VIII, § 812(b)(50), Aug. 13, 2018, 132 Stat. 1850.

PILOT PROGRAM FOR PRIVATE-SECTOR OPERATION OF NAFI FUNCTIONS

Pub. L. 104–106, div. A, title III, § 353(b), Feb. 10, 1996, 110 Stat. 267, which required the Secretary to carry out a pilot program to test the performance by private-sector sources of payroll and other accounting and finance functions of nonappropriated fund instrumentalities, was repealed by Pub. L. 115–232, div. A, title VIII, § 812(b)(51), Aug. 13, 2018, 132 Stat. 1850.

DEMONSTRATION PROGRAM TO IDENTIFY OVERPAYMENTS MADE TO VENDORS

Pub. L. 105–85, div. A, title III, § 388(c), Nov. 18, 1997, 111 Stat. 1714, provided that, not later than Dec. 31, 1998, the Comptroller General was to submit to Congress a report containing the results of a review by the Comptroller General of the demonstration program conducted under section 354 of Pub. L. 104–106, set out below.

Pub. L. 104–106, div. A, title III, § 354, Feb. 10, 1996, 110 Stat. 268, as amended by Pub. L. 105–85, div. A, title III, § 388(a), (b), Nov. 18, 1997, 111 Stat. 1713, 1714, provided that:

''(a) IN GENERAL.—The Secretary of Defense shall conduct a demonstration program to evaluate the feasibility of using private contractors to audit accounting and procurement records of the Department of Defense in order to identify overpayments made to vendors by the Department.

''(b) PROGRAM REQUIREMENTS.—(1) Under the demonstration program, the Secretary shall, by contract, provide for one or more persons to audit the accounting and procurement records relating to fiscal years after fiscal year 1993 of the working-capital funds and industrial, commercial, and support type activities managed through the Defense Business Operations Fund, except the Defense Logistics Agency to the extent such records have already been audited. The Secretary may enter into more than one contract under the program.

''(2) A contract under the demonstration program shall require the contractor to use data processing techniques that are generally used in audits of private-sector records similar to the records audited under the contract.

''(c) AUDIT REQUIREMENTS.—In conducting an audit under the demonstration program, a contractor shall compare Department of Defense purchase agreements (and related documents) with invoices submitted by vendors under the purchase agreements. A purpose of the comparison is to identify, in the case of each audited purchase agreement, the following:

''(1) Any payments to the vendor for costs that are not allowable under the terms of the purchase agreement or by law.

''(2) Any amounts not deducted from the total amount paid to the vendor under the purchase agreement that should have been deducted from that amount on account of goods and services provided to the vendor by the Department.

''(3) Duplicate payments.

''(4) Unauthorized charges.

''(5) Other discrepancies between the amount paid to the vendor and the amount actually due the vendor under the purchase agreement.

''(d) COLLECTION METHOD.—(1) In the case of an overpayment to a vendor identified under the demonstration program, the Secretary shall consider the use of the procedures specified in section 32.611 of the Federal Acquisition Regulation, regarding a setoff against existing invoices for payment to the vendor, as the first method by which the Department seeks to recover the amount of the overpayment (and any applicable interest and penalties) from the vendor.

''(2) The Secretary of Defense shall be solely responsible for notifying a vendor of an overpayment made to the vendor and identified under the demonstration program and for recovering the amount of the overpayment (and any applicable interest and penalties) from the vendor.

''(e) FEES FOR CONTRACTOR.—The Secretary shall pay to the contractor under the contract entered into under the demonstration program an amount not to exceed 25 percent of the total amount recovered by the Department (through the collection of overpayments and the use of setoffs) solely on the basis of information obtained as a result of the audits performed by the contractor under the program. When an overpayment is recovered through the use of a setoff, amounts for the required payment to the contractor shall be derived from funds available to the working-capital fund or industrial, commercial, or support type activity for which the overpayment is recovered.''

PROGRAM FOR IMPROVED TRAVEL PROCESS FOR DEPARTMENT OF DEFENSE

Pub. L. 104–106, div. A, title III, § 356, Feb. 10, 1996, 110 Stat. 270, as amended by Pub. L. 105–85, div. A, title X, § 1073(d)(1)(B), Nov. 18, 1997, 111 Stat. 1905, which required the Secretary to evaluate options to improve the Department of Defense travel process and conduct related tests, was repealed by Pub. L. 115–232, div. A, title VIII, § 812(b)(52), Aug. 13, 2018, 132 Stat. 1850.

INCREASED RELIANCE ON PRIVATE-SECTOR SOURCES FOR COMMERCIAL PRODUCTS AND SERVICES

Pub. L. 104–106, div. A, title III, § 357, Feb. 10, 1996, 110 Stat. 271, provided that:

''(a) IN GENERAL.—The Secretary of Defense shall endeavor to carry out through a private-sector source any activity to provide a commercial product or service for the Department of Defense if—

''(1) the product or service can be provided adequately through such a source; and

''(2) an adequate competitive environment exists to provide for economical performance of the activity by such a source.

''(b) APPLICABILITY.—(1) Subsection (a) shall not apply to any commercial product or service with respect to which the Secretary determines that production, manufacture, or provision of that product or service by the Government is necessary for reasons of national security.

''(2) A determination under paragraph (1) shall be made in accordance with regulations prescribed under subsection (c).

''(c) REGULATIONS.—The Secretary shall prescribe regulations to carry out this section. Such regulations shall be prescribed in consultation with the Director of the Office of Management and Budget.

''(d) REPORT.—(1) The Secretary shall identify activities of the Department (other than activities specified by the Secretary pursuant to subsection (b)) that are carried out by employees of the Department to provide commercial-type products or services for the Department.

''(2) Not later than April 15, 1996, the Secretary shall transmit to the congressional defense committees [Committees on Armed Services and on Appropriations of the Senate and Committees on National Security and Appropriations of the House of Representatives] a report on opportunities for increased use of private-sector sources to provide commercial products and services for the Department.

''(3) The report required by paragraph (2) shall include the following:

''(A) A list of activities identified under paragraph (1) indicating, for each activity, whether the Secretary proposes to convert the performance of that activity to performance by private-sector sources and, if not, the reasons why.

''(B) An assessment of the advantages and disadvantages of using private-sector sources, rather than employees of the Department, to provide commercial products and services for the Department that are not essential to the warfighting mission of the Armed Forces.

''(C) A specification of all legislative and regulatory impediments to converting the performance of activities identified under paragraph (1) to performance by private-sector sources.

''(D) The views of the Secretary on the desirability of terminating the applicability of OMB Circular A–76 to the Department.

''(4) The Secretary shall carry out paragraph (1) in consultation with the Director of the Office of Management and Budget and the Comptroller General of the United States. In carrying out that paragraph, the Secretary shall consult with, and seek the views of, rep-

resentatives of the private sector, including organizations representing small businesses.''

§ 2461a. Development and implementation of system for monitoring cost saving resulting from public-private competitions

(a) SYSTEM FOR MONITORING PERFORMANCE.—(1) The Secretary of Defense shall monitor the performance, including the cost of performance, of each function of the Department of Defense that, after October 30, 2000, is the subject of a public-private competition conducted under section 2461 of this title.

(2) In carrying out paragraph (1), the Secretary shall—

(A) compare the cost of performing the function before the public-private competition to the cost of performing the function after the implementation of the results of the public-private competition; and

(B) identify any actual savings of the Department of Defense after the implementation of the results of the public-private competition and compare such savings to the estimated savings identified pursuant to section 2461(a)(1)(E) of this title for that public-private competition;

(3) The monitoring of a function shall continue under this section for at least five years after the conversion, reorganization, or reengineering of the function pursuant to such a public-private competition.

(b) CONSIDERATION IN PREPARATION OF FUTURE-YEARS DEFENSE PROGRAM.—In preparing the future-years defense program under section 221 of this title, the Secretary of Defense shall, for the fiscal years covered by the program, estimate and take into account the costs to be incurred and the savings to be derived from the performance of functions by workforces selected in public-private competitions conducted under section 2461 of this title. The Secretary shall consider the results of the monitoring under this section in making the estimates.

(Added Pub. L. 106–398, §1 [[div. A], title III, §354(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–73; amended Pub. L. 107–107, div. A, title X, §1048(a)(21), (c)(11), Dec. 28, 2001, 115 Stat. 1224, 1226; Pub. L. 109–163, div. A, title III, §341(d), (g)(2)(C), Jan. 6, 2006, 119 Stat. 3199, 3200.)

AMENDMENTS

2006—Pub. L. 109–163, §341(g)(2)(C), substituted ''Development and implementation of system for monitoring cost saving resulting from public-private competitions'' for ''Development of system for monitoring cost savings resulting from workforce reductions'' in section catchline.

Subsec. (a). Pub. L. 109–163, §341(d)(1), (2), redesignated subsec. (b) as (a) and struck out former subsec. (a) which defined ''workforce review''.

Subsec. (a)(1). Pub. L. 109–163, §341(d)(3)(A), substituted ''monitor'' for ''establish a system for monitoring'' and ''a public-private competition conducted under section 2461 of this title'' for ''a workforce review''.

Subsec. (a)(2). Pub. L. 109–163, §341(d)(3)(B), added par. (2) and struck out former par. (2) which established requirements for the monitoring system.

Subsec. (a)(3). Pub. L. 109–163, §341(d)(3)(C), inserted ''pursuant to such a public-private competition'' after ''reengineering of the function''.

Subsec. (b). Pub. L. 109–163, §341(d)(4), substituted ''public-private competitions conducted under section 2461 of this title'' for ''workforce reviews''.

Pub. L. 109–163, §341(d)(2), redesignated subsec. (e) as (b). Former subsec. (b) redesignated (a).

Subsecs. (c) to (e). Pub. L. 109–163, §341(d)(1), (2), redesignated subsec. (e) as (b) and struck out former subsecs. (c) and (d) which related to waiver for certain workforce reviews and annual report, respectively.

2001—Subsec. (a)(2). Pub. L. 107–107, §1048(a)(21), substituted ''efficiency'' for ''effeciency''.

Subsec. (b)(1). Pub. L. 107–107, §1048(c)(11), substituted ''October 30, 2000,'' for ''the date of the enactment of this section,''.

[§ 2462. Repealed. Pub. L. 113–291, div. A, title X, § 1060(a)(2)(A), Dec. 19, 2014, 128 Stat. 3502]

Section, added Pub. L. 100–370, §2(a)(1), July 19, 1988, 102 Stat. 853; amended Pub. L. 109–163, div. A, title III, §341(c)(1), Jan. 6, 2006, 119 Stat. 3197, related to reports on public-private competition.

§ 2463. Guidelines and procedures for use of civilian employees to perform Department of Defense functions

(a) GUIDELINES REQUIRED.—(1) The Under Secretary of Defense for Personnel and Readiness shall devise and implement guidelines and procedures to ensure that consideration is given to using, on a regular basis, Department of Defense civilian employees to perform new functions and functions that are performed by contractors and could be performed by Department of Defense civilian employees. The Secretary of a military department may prescribe supplemental regulations, if the Secretary determines such regulations are necessary for implementing such guidelines within that military department.

(2) The guidelines and procedures required under paragraph (1) may not include any specific limitation or restriction on the number of functions or activities that may be converted to performance by Department of Defense civilian employees.

(b) SPECIAL CONSIDERATION FOR CERTAIN FUNCTIONS.—The guidelines and procedures required under subsection (a) shall provide for special consideration to be given to using Department of Defense civilian employees to perform any function that—

(1) is performed by a contractor and—

(A) is a critical function that—

(i) is necessary to maintain sufficient Government expertise and technical capabilities; or

(ii) entails operational risk associated with contractor performance;

(B) is an acquisition workforce function;

(C) is a function closely associated with the performance of an inherently governmental function;

(D) has been performed by Department of Defense civilian employees at any time during the previous 10-year period;

(E) has been performed pursuant to a contract awarded on a non-competitive basis; or

(F) has been performed poorly, as determined by a contracting officer during the 5-year period preceding the date of such determination, because of excessive costs or inferior quality; or

(2) is a new requirement, with particular emphasis given to a new requirement that is

similar to a function previously performed by Department of Defense civilian employees or is a function closely associated with the performance of an inherently governmental function.

(c) EXCLUSION OF CERTAIN FUNCTIONS FROM COMPETITIONS.—The Secretary of Defense may not conduct a public-private competition under this chapter, Office of Management and Budget Circular A–76, or any other provision of law or regulation before—

(1) in the case of a new Department of Defense function, assigning the performance of the function to Department of Defense civilian employees;

(2) in the case of any Department of Defense function described in subsection (b), converting the function to performance by Department of Defense civilian employees; or

(3) in the case of a Department of Defense function performed by Department of Defense civilian employees, expanding the scope of the function.

(d) USE OF FLEXIBLE HIRING AUTHORITY.—(1) The Secretary of Defense may use the flexible hiring authority available to the Secretary pursuant to section 9902 of title 5, to facilitate the performance by Department of Defense civilian employees of functions described in subsection (b).

(2) The Secretary shall make use of the inventory required by section 2330a(c) of this title for the purpose of identifying functions that should be considered for performance by Department of Defense civilian employees pursuant to subsection (b).

(e) DETERMINATIONS RELATING TO THE CONVERSION OF CERTAIN FUNCTIONS.—(1) Except as provided in paragraph (2), in determining whether a function should be converted to performance by Department of Defense civilian employees, the Secretary of Defense shall—

(A) develop methodology for determining costs based on the guidance outlined in the Directive-Type Memorandum 09–007 entitled ''Estimating and Comparing the Full Costs of Civilian and Military Manpower and Contractor Support'' or any successor guidance for the determination of costs when costs are the sole basis for the determination;

(B) take into consideration any supplemental guidance issued by the Secretary of a military department for determinations affecting functions of that military department; and

(C) ensure that the difference in the cost of performing the function by a contractor compared to the cost of performing the function by Department of Defense civilian employees would be equal to or exceed the lesser of—

(i) 10 percent of the personnel-related costs for performance of that function; or

(ii) $10,000,000.

(2) Paragraph (1) shall not apply to any function that is inherently governmental or any function described in subparagraph (A), (B), or (C) of subsection (b)(1).

(f) NOTIFICATION RELATING TO THE CONVERSION OF CERTAIN FUNCTIONS.—The Secretary of Defense shall establish procedures for the timely notification of any contractor who performs a function that the Secretary plans to convert to performance by Department of Defense civilian employees pursuant to subsection (a). The Secretary shall provide a copy of any such notification to the congressional defense committees.

(g) DEFINITIONS.—In this section:

(1) The term ''functions closely associated with inherently governmental functions'' has the meaning given that term in section 2383(b)(3) of this title.

(2) The term ''acquisition function'' has the meaning given that term under section 1721(a) of this title.

(3) The term ''inherently governmental function'' has the meaning given that term in the Federal Activities Inventory Reform Act of 1998 (Public Law 105–270; 31 U.S.C. 501 note).

(Added Pub. L. 110–181, div. A, title III, § 324(a)(1), Jan. 28, 2008, 122 Stat. 60; amended Pub. L. 111–383, div. A, title III, § 353, Jan. 7, 2011, 124 Stat. 4194; Pub. L. 112–81, div. A, title IX, § 938, Dec. 31, 2011, 125 Stat. 1547; Pub. L. 116–283, div. A, title XVIII, § 1883(b)(2), Jan. 1, 2021, 134 Stat. 4294.)

AMENDMENT OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1883(b)(2), Jan. 1, 2021, 134 Stat. 4151, 4294, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, except as otherwise provided in title XVIII of Pub. L. 116–283, in title 10, United States Code, each reference in the text of such title to a source section that is redesignated by title XVIII of Pub. L. 116–283, is amended by striking such reference and inserting a reference to the appropriate section as so redesignated. See 2021 Amendment notes below.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in Pub. L. 109–163, div. A, title III, § 343, Jan. 6, 2006, 119 Stat. 3200, which was set out as a note under section 2461 of this title, prior to repeal by Pub. L. 110–181, div. A, title III, § 324(c), Jan. 28, 2008, 122 Stat. 61.

A prior section 2463, added Pub. L. 100–370, § 2(a)(1), July 19, 1988, 102 Stat. 853; amended Pub. L. 101–189, div. A, title XVI, § 1622(c)(7), Nov. 29, 1989, 103 Stat. 1604; Pub. L. 101–510, div. A, title XIII, § 1301(14), Nov. 5, 1990, 104 Stat. 1668; Pub. L. 105–85, div. A, title III, § 385(a), Nov. 18, 1997, 111 Stat. 1712, related to collection and retention of cost information data on the conversion of services and functions of the Department of Defense to or from contractor performance, prior to repeal by Pub. L. 109–163, div. A, title III, § 341(f), Jan. 6, 2006, 119 Stat. 3199.

AMENDMENTS

2021—Subsec. (d)(2). Pub. L. 116–283 substituted ''section 4505(c)'' for ''section 2330a(c)''.

Subsec. (g)(1). Pub. L. 116–283 substituted ''section 4508(b)(3)'' for ''section 2383(b)(3)''.

2011—Subsec. (b)(1). Pub. L. 112–81, § 938(1), added subpars. (A), (B), and (D), redesignated former subpars. (B), (C), and (D) as (C), (E), and (F), and struck out former subpar. (A) which read as follows: ''has been performed by Department of Defense civilian employees at any time during the previous 10 years;''.

Subsec. (d)(1). Pub. L. 111–383 struck out ''under the National Security Personnel System, as established'' before ''pursuant to section 9902 of title 5''.

Subsecs. (e), (f). Pub. L. 112–81, § 938(3), added subsecs. (e) and (f). Former subsec. (e) redesignated (g).

Subsec. (g). Pub. L. 112–81, § 938(4), substituted ''this section:'' for ''this section the term 'functions closely associated with inherently governmental functions' has the meaning given that term in section 2383(b)(3) of this title.'' and added pars. (1) to (3).

Pub. L. 112–81, § 938(2), redesignated subsec. (e) as (g).

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

PROHIBITION ON ESTABLISHING GOALS OR QUOTAS FOR CONVERSION OF FUNCTIONS TO PERFORMANCE BY DEPARTMENT OF DEFENSE CIVILIAN EMPLOYEES

Pub. L. 111–383, div. A, title III, § 323, Jan. 7, 2011, 124 Stat. 4184, provided that:

''(a) PROHIBITION.—The Secretary of Defense may not establish, apply, or enforce any numerical goal, target, or quota for the conversion of Department of Defense functions to performance by Department of Defense civilian employees, unless such goal, target, or quota is based on considered research and analysis, as required by section 235, 2330a, or 2463 of title 10, United States Code.

''(b) DECISIONS TO INSOURCE.—In deciding which functions should be converted to performance by Department of Defense civilian employees pursuant to section 2463 of title 10, United States Code, the Secretary of Defense shall use the costing methodology outlined in the Directive-Type Memorandum 09–007 (Estimating and Comparing the Full Costs of Civilian and Military Manpower and Contractor Support) or any successor guidance for the determination of costs when costs are the sole basis for the decision. The Secretary of a military department may issue supplemental guidance to assist in such decisions affecting functions of that military department.

''(c) REPORTS.—

''(1) REPORT TO CONGRESS.—Not later than March 31, 2011, the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the decisions with respect to the conversion of functions to performance by Department of Defense civilian employees made during fiscal year 2010. Such report shall identify, for each such decision—

''(A) the agency or service of the Department involved in the decision;

''(B) the basis and rationale for the decision; and

''(C) the number of contractor employees whose functions were converted to performance by Department of Defense civilian employees.

''(2) COMPTROLLER GENERAL REVIEW.—Not later than 120 days after the submittal of the report under paragraph (1), the Comptroller General of the United States shall submit to the congressional defense committees an assessment of the report.

''(d) CONSTRUCTION.—Nothing in this section shall be construed—

''(1) to preclude the Secretary of Defense from establishing, applying, and enforcing goals for the conversion of acquisition functions and other critical functions to performance by Department of Defense civilian employees, where such goals are based on considered research and analysis; or

''(2) to require the Secretary of Defense to conduct a cost comparison before making a decision to convert any acquisition function or other critical function to performance by Department of Defense civilian employees, where factors other than cost serve as a basis for the Secretary's decision.''

DEADLINE FOR ISSUANCE OF GUIDELINES AND PROCEDURES

Pub. L. 110–181, div. A, title III, § 324(a)(3), Jan. 28, 2008, 122 Stat. 61, provided that: ''The Secretary of Defense shall implement the guidelines and procedures required under section 2463 of title 10, United States Code, as added by paragraph (1), by not later than 60 days after the date of the enactment of this Act [Jan. 28, 2008].''

§ 2464. Core logistics capabilities

(a) NECESSITY FOR CORE LOGISTICS CAPABILITIES.—(1) It is essential for the national defense that the Department of Defense maintain a core logistics capability that is Government-owned and Government-operated (including Government personnel and Government-owned and Government-operated equipment and facilities) to ensure a ready and controlled source of technical competence and resources necessary to ensure effective and timely response to a mobilization, national defense contingency situations, and other emergency requirements.

(2) The Secretary of Defense shall identify the core logistics capabilities described in paragraph (1) and the workload required to maintain those capabilities.

(3) The core logistics capabilities identified under paragraphs (1) and (2) shall include those capabilities that are necessary to maintain and repair the weapon systems and other military equipment (including mission-essential weapon systems or materiel not later than four years after achieving initial operational capability, but excluding systems and equipment under special access programs, nuclear aircraft carriers, and commercial products or commercial services described in paragraph (5)) that are identified by the Secretary, in consultation with the Chairman of the Joint Chiefs of Staff, as necessary to enable the armed forces to fulfill the strategic and contingency plans prepared by the Chairman of the Joint Chiefs of Staff under section 153(a) of this title.

(4) The Secretary of Defense shall require the performance of core logistics workloads necessary to maintain the core logistics capabilities identified under paragraphs (1), (2), and (3) at Government-owned, Government-operated facilities of the Department of Defense (including Government-owned, Government-operated facilities of a military department) and shall assign such facilities sufficient workload to ensure cost efficiency and technical competence in peacetime while preserving the surge capacity and reconstitution capabilities necessary to support fully the strategic and contingency plans referred to in paragraph (3).

(5) The commercial products or commercial services covered by paragraph (3) are commercial products (as defined in section 103 of title 41) or commercial services (as defined in section 103a of such title) that have been sold or leased in substantial quantities to the general public and are purchased without modification in the same form that they are sold in the commercial marketplace, or with minor modifications to meet Federal Government requirements.

(b) LIMITATION ON CONTRACTING.—(1) Except as provided in paragraph (2), performance of workload needed to maintain a logistics capability identified by the Secretary under subsection (a)(2) may not be contracted for performance by non-Government personnel under the procedures and requirements of Office of Management and

Budget Circular A–76 or any successor administrative regulation or policy (hereinafter in this section referred to as OMB Circular A–76).

(2) The Secretary of Defense may waive paragraph (1) in the case of any such logistics capability and provide that performance of the workload needed to maintain that capability shall be considered for conversion to contractor performance in accordance with OMB Circular A–76. Any such waiver shall be made under regulations prescribed by the Secretary and shall be based on a determination by the Secretary that Government performance of the workload is no longer required for national defense reasons. Such regulations shall include criteria for determining whether Government performance of any such workload is no longer required for national defense reasons.

(3)(A) A waiver under paragraph (2) may not take effect until the expiration of the first period of 30 days of continuous session of Congress that begins on or after the date on which the Secretary submits a report on the waiver to the Committee on Armed Services and the Committee on Appropriations of the Senate and the Committee on Armed Services and the Committee on Appropriations of the House of Representatives.

(B) For the purposes of subparagraph (A)—

(i) continuity of session is broken only by an adjournment of Congress sine die; and

(ii) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of any period of time in which Congress is in continuous session.

(c) NOTIFICATION OF DETERMINATIONS REGARDING CERTAIN COMMERCIAL PRODUCTS OR COMMERCIAL SERVICES.—The first time that a weapon system or other item of military equipment described in subsection (a)(3) is determined to be a commercial product or commercial service for the purposes of the exception contained in that subsection, the Secretary of Defense shall submit to Congress a notification of the determination, together with the justification for the determination. The justification for the determination shall include, at a minimum, the following:

(1) The estimated percentage of commonality of parts of the version of the item that is sold or leased in the commercial marketplace and the Government's version of the item.

(2) The value of any unique support and test equipment and tools that are necessary to support the military requirements if the item were maintained by the Government.

(3) A comparison of the estimated life cycle logistics support costs that would be incurred by the Government if the item were maintained by the private sector with the estimated life cycle logistics support costs that would be incurred by the Government if the item were maintained by the Government.

(d) BIENNIAL CORE REPORT.—Not later than April 1 of each even-numbered year, the Secretary of Defense shall submit to Congress a report identifying, for each of the armed forces (except for the Coast Guard), for the fiscal year after the fiscal year during which the report is submitted, each of the following:

(1) The core depot-level maintenance and repair capability requirements and sustaining workloads, organized by work breakdown structure, expressed in direct labor hours.

(2) The corresponding workloads necessary to sustain core depot-level maintenance and repair capability requirements, expressed in direct labor hours and cost.

(3) In any case where core depot-level maintenance and repair capability requirements exceed or are expected to exceed sustaining workloads, a detailed rationale for any and all shortfalls and a plan either to correct or mitigate the effects of the shortfalls.

(4) Any workload shortfalls at any work breakdown structure category designated as a lower-level category pursuant to Department of Defense Instruction 4151.20, or any successor instruction.

(5) A description of any workload executed at a category designated as a first-level category pursuant to such Instruction, or any successor instruction, that could be used to mitigate shortfalls in similar categories.

(6) A description of any progress made on implementing mitigation plans developed pursuant to paragraph (3).

(7) A description of core capability requirements and corresponding workloads at the first level category.

(8) In the case of any shortfall that is identified, a description of the shortfall and an identification of the subcategory of the work breakdown structure in which the shortfall occurred.

(9) In the case of any work breakdown structure category designated as a special interest item or other pursuant to such Instruction, or any successor instruction, an explanation for such designation.

(10) Whether the core depot-level maintenance and repair capability requirements described in the report submitted under this subsection for the preceding fiscal year have been executed.

(e) COMPTROLLER GENERAL REVIEW.—The Comptroller General of the United States shall review each report submitted under subsection (d) for completeness and compliance and shall submit to the congressional defense committees findings and recommendations with respect to the report by not later than 60 days after the date on which the report is submitted to Congress.

(Added and amended Pub. L. 112–239, div. A, title III, § 322(b)(2)(A), (d), Jan. 2, 2013, 126 Stat. 1695; Pub. L. 115–91, div. A, title III, § 332, Dec. 12, 2017, 131 Stat. 1354; Pub. L. 115–232, div. A, title VIII, § 836(e)(10), Aug. 13, 2018, 132 Stat. 1870.)

CODIFICATION

Section 322(b)(2)(A) of Pub. L. 112–239, cited as a credit to this section, revived section 2464 of this title as in effect the day before the date of the enactment of Pub. L. 112–81, Dec. 31, 2011. See Prior Provisions note below.

PRIOR PROVISIONS

A prior section 2464, added Pub. L. 100–370, § 2(a)(1), July 19, 1988, 102 Stat. 853; amended Pub. L. 101–189, div.

A, title XVI, §1622(c)(7), Nov. 29, 1989, 103 Stat. 1604; Pub. L. 104–106, div. A, title III, §314, Feb. 10, 1996, 110 Stat. 251; Pub. L. 105–85, div. A, title III, §356(a), Nov. 18, 1997, 111 Stat. 1694; Pub. L. 105–261, div. A, title III, §343(a), Oct. 17, 1998, 112 Stat. 1976; Pub. L. 106–65, div. A, title X, §1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 112–81, div. A, title III, §327(a), Dec. 31, 2011, 125 Stat. 1366, related to core depot-level maintenance and repair capabilities prior to repeal by Pub. L. 112–239, div. A, title III, §322(a)(2), Jan. 2, 2013, 126 Stat. 1694.

AMENDMENTS

2018—Subsec. (a)(3). Pub. L. 115–232, §836(e)(10)(A)(i), substituted ''commercial products or commercial services'' for ''commercial items''.

Subsec. (a)(5). Pub. L. 115–232, §836(e)(10)(A)(ii), substituted ''The commercial products or commercial services covered by paragraph (3) are commercial products (as defined in section 103 of title 41) or commercial services (as defined in section 103a of such title)'' for ''The commercial items covered by paragraph (3) are commercial items''.

Subsec. (c). Pub. L. 115–232, §836(e)(10)(B), in heading, substituted ''Commercial Products or Commercial Services'' for ''Commercial Items'' and, in introductory provisions, substituted ''commercial product or commercial service'' for ''commercial item''.

2017—Subsec. (d)(4) to (10). Pub. L. 115–91 added pars. (4) to (10).

2013—Subsecs. (d), (e). Pub. L. 112–239, §322(d), added subsecs. (d) and (e).

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115–232 effective Jan. 1, 2020, subject to a savings provision, see section 836(h) of Pub. L. 115–232, set out as an Effective Date of 2018 Amendment; Savings Provision note under section 453b of Title 6, Domestic Security.

EFFECTIVE DATE

Section and amendment by Pub. L. 112–239 effective Dec. 31, 2011, immediately after enactment of Pub. L. 112–81. See section 322(f) of Pub. L. 112–239, set out as an Effective Date of 2013 Amendment note under section 2366a of this title.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective Dec. 31, 2021, of provisions in subsec. (d) of this section requiring submittal of biennial report to Congress, see section 1061 of Pub. L. 114–328, set out as a note under section 111 of this title.

UPDATED GUIDANCE REGARDING BIENNIAL CORE REPORT

Pub. L. 115–91, div. A, title III, §338, Dec. 12, 2017, 131 Stat. 1360, provided that: ''To ensure that the biennial core reporting procedures of the Department of Defense align with the requirements of section 2464 of title 10, United States Code, and that each reporting agency provides accurate and complete information, the Secretary of Defense shall direct the Under Secretary of Defense for Acquisition, Technology and Logistics to update the Department of Defense Guidance, in particular Department of Defense Instruction 4151.20, to require future biennial core reports include instructions to the reporting agencies on how to—

''(1) report additional depot workload performed that has not been identified as a core requirement;

''(2) accurately capture inter-service workload;

''(3) calculate shortfalls; and

''(4) estimate the cost of planned workload.''

§2465. Prohibition on contracts for performance of firefighting or security-guard functions

(a) Except as provided in subsection (b), funds appropriated to the Department of Defense may not be obligated or expended for the purpose of entering into a contract for the performance of firefighting or security-guard functions at any military installation or facility.

(b) The prohibition in subsection (a) does not apply to the following contracts:

(1) A contract to be carried out at a location outside the United States (including its commonwealths, territories, and possessions) at which members of the armed forces would have to be used for the performance of a function described in subsection (a) at the expense of unit readiness.

(2) A contract to be carried out on a Government-owned but privately operated installation.

(3) A contract (or the renewal of a contract) for the performance of a function under contract on September 24, 1983.

(4) A contract for the performance of firefighting functions if the contract is—

(A) for a period of one year or less; and

(B) covers only the performance of firefighting functions that, in the absence of the contract, would have to be performed by members of the armed forces who are not readily available to perform such functions by reason of a deployment.

(Added Pub. L. 99–661, div. A, title XII, §1222(a)(1), Nov. 14, 1986, 100 Stat. 3976, §2693; amended Pub. L. 100–180, div. A, title XI, §1112(a)–(b)(2), Dec. 4, 1987, 101 Stat. 1147; renumbered §2465, Pub. L. 100–370, §2(b)(1), July 19, 1988, 102 Stat. 854; Pub. L. 104–106, div. A, title XV, §1503(a)(25), Feb. 10, 1996, 110 Stat. 512; Pub. L. 108–136, div. A, title III, §331, Nov. 24, 2003, 117 Stat. 1442.)

AMENDMENTS

2003—Subsec. (b). Pub. L. 108–136 substituted ''apply to the following contracts:'' for ''apply—'' in introductory provisions, ''A'' for ''to a'' at beginning of pars. (1) to (3), period for semicolon at end of par. (1), and period for ''; or'' at end of par. (2), and added par. (4).

1996—Subsec. (b)(3). Pub. L. 104–106 substituted ''under contract on September 24, 1983'' for ''under contract or September 24, 1983''.

1988—Pub. L. 100–370 renumbered section 2693 of this title as this section.

1987—Pub. L. 100–180 inserted ''or security-guard'' before ''functions'' in section catchline and subsec. (a), and substituted ''a function'' for ''the function'' in subsec. (b)(1).

TEMPORARY AUTHORITY TO CONTRACT WITH LOCAL AND STATE GOVERNMENTS FOR PERFORMANCE OF SECURITY FUNCTIONS AT UNITED STATES MILITARY INSTALLATIONS

Pub. L. 107–56, title X, §1010, Oct. 26, 2001, 115 Stat. 395, which provided authority, during Operation Enduring Freedom and the subsequent 180 days, to use defense funds to contract with local and state governments to perform security functions at military installations, was repealed by Pub. L. 115–232, div. A, title VIII, §812(b)(53), Aug. 13, 2018, 132 Stat. 1850.

PERFORMANCE OF EMERGENCY RESPONSE FUNCTIONS AT CHEMICAL WEAPONS STORAGE INSTALLATIONS

Pub. L. 106–398, §1 [[div. A], title III, §355], Oct. 30, 2000, 114 Stat. 1654, 1654A–75, provided that:

''(a) RESTRICTION ON CONVERSION.—The Secretary of the Army may not convert to contractor performance the emergency response functions of any chemical weapons storage installation that, as of the date of the enactment of this Act [Oct. 30, 2000], are performed for that installation by employees of the United States

until the certification required by subsection (c) has been submitted in accordance with that subsection.

"(b) COVERED INSTALLATIONS.—For the purposes of this section, a chemical weapons storage installation is any installation of the Department of Defense on which lethal chemical agents or munitions are stored.

"(c) CERTIFICATION REQUIREMENT.—The Secretary of the Army shall certify in writing to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives that, to ensure that there will be no lapse of capability to perform the chemical weapon emergency response mission at a chemical weapons storage installation during any transition to contractor performance of those functions at the installation, the plan for conversion of the performance of those functions—

"(1) is consistent with the recommendation contained in General Accounting Office [now Government Accountability Office] Report NSIAD–00–88, entitled 'DoD Competitive Sourcing', dated March 2000;

"(2) provides for a transition to contractor performance of emergency response functions which ensures an adequate transfer of the relevant knowledge and expertise regarding chemical weapon emergency response to the contractor personnel; and

"(3) complies with section 2465 of title 10, United States Code."

§ 2466. Limitations on the performance of depot-level maintenance of materiel

(a) PERCENTAGE LIMITATION.—Not more than 50 percent of the funds made available in a fiscal year to a military department or a Defense Agency for depot-level maintenance and repair workload may be used to contract for the performance by non-Federal Government personnel of such workload for the military department or the Defense Agency. Any such funds that are not used for such a contract shall be used for the performance of depot-level maintenance and repair workload by employees of the Department of Defense.

(b) WAIVER OF LIMITATION.—The Secretary of Defense may waive the limitation in subsection (a) for a fiscal year if—

(1) the Secretary determines that the waiver is necessary for reasons of national security; and

(2) the Secretary submits to Congress a notification of the waiver together with the reasons for the waiver.

(c) PROHIBITION ON DELEGATION OF WAIVER AUTHORITY.—The authority to grant a waiver under subsection (b) may not be delegated.

(d) ANNUAL REPORT.—(1) Not later than 90 days after the date on which the budget of the President for a fiscal year is submitted to Congress pursuant to section 1105 of title 31, the Secretary of Defense shall submit to Congress a report identifying, for each of the armed forces (other than the Coast Guard) and each Defense Agency, the percentage of the funds referred to in subsection (a) that was expended during the preceding fiscal year, and are projected to be expended during the current fiscal year and the ensuing fiscal year, for performance of depot-level maintenance and repair workloads by the public and private sectors.

(2) Each report required under paragraph (1) shall include as a separate item any expenditure covered by section 2474(f) of this title that was made during the fiscal year covered by the report and shall specify the amount and nature of each such expenditure.

(Added Pub. L. 100–456, div. A, title III, §326(a), Sept. 29, 1988, 102 Stat. 1955; amended Pub. L. 101–189, div. A, title III, §313, Nov. 29, 1989, 103 Stat. 1412; Pub. L. 102–190, div. A, title III, §314(a)(1), Dec. 5, 1991, 105 Stat. 1336; Pub. L. 102–484, div. A, title III, §352(a)–(c), Oct. 23, 1992, 106 Stat. 2378; Pub. L. 103–337, div. A, title III, §332, Oct. 5, 1994, 108 Stat. 2715; Pub. L. 104–106, div. A, title III, §§311(f)(1), 312(b), Feb. 10, 1996, 110 Stat. 248, 250; Pub. L. 105–85, div. A, title III, §§357, 358, 363, Nov. 18, 1997, 111 Stat. 1695, 1702; Pub. L. 106–65, div. A, title III, §333, Oct. 5, 1999, 113 Stat. 567; Pub. L. 107–107, div. A, title III, §341, Dec. 28, 2001, 115 Stat. 1060; Pub. L. 108–136, div. A, title III, §332, Nov. 24, 2003, 117 Stat. 1442; Pub. L. 108–375, div. A, title III, §321, Oct. 28, 2004, 118 Stat. 1845; Pub. L. 109–364, div. A, title III, §331(b), Oct. 17, 2006, 120 Stat. 2149; Pub. L. 111–84, div. A, title III, §329, Oct. 28, 2009, 123 Stat. 2256.)

AMENDMENTS

2009—Subsec. (d)(1). Pub. L. 111–84 substituted "90 days after the date on which the budget of the President for a fiscal year is submitted to Congress pursuant to section 1105 of title 31" for "April 1 of each year".

2006—Subsec. (d). Pub. L. 109–364, §331(b)(2), struck out "and Review" after "Annual Report" in heading.

Subsec. (d)(2). Pub. L. 109–364, §331(b)(1), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "Not later than 90 days after the date on which the Secretary submits a report under paragraph (1), the Comptroller General shall submit to Congress the Comptroller General's views on whether—

"(A) the Department of Defense complied with the requirements of subsection (a) during the preceding fiscal year covered by the report; and

"(B) the expenditure projections for the current fiscal year and the ensuing fiscal year are reasonable."

2004—Subsec. (d). Pub. L. 108–375 amended heading and text of subsec. (d) generally. Prior to amendment, text read as follows:

"(1) Not later than February 1 of each year, the Secretary of Defense shall submit to Congress a report identifying, for each of the armed forces (other than the Coast Guard) and each Defense Agency, the percentage of the funds referred to in subsection (a) that were expended during the preceding two fiscal years for performance of depot-level maintenance and repair workloads by the public and private sectors, as required by this section.

"(2) Not later than April 1 of each year, the Secretary of Defense shall submit to Congress a report identifying, for each of the armed forces (other than the Coast Guard) and each Defense Agency, the percentage of the funds referred to in subsection (a) that are projected to be expended during each of the next five fiscal years for performance of depot-level maintenance and repair workloads by the public and private sectors, as required by this section.

"(3) Not later than 60 days after the date on which the Secretary submits a report under this subsection, the Comptroller General shall submit to Congress the Comptroller General's views on whether—

"(A) in the case of a report under paragraph (1), the Department of Defense has complied with the requirements of subsection (a) for the fiscal years covered by the report; and

"(B) in the case of a report under paragraph (2), the expenditure projections for future fiscal years are reasonable."

2003—Subsecs. (d), (e). Pub. L. 108–136 redesignated subsec. (e) as (d) and struck out heading and text of former subsec. (d). Text read as follows: "Subsection (a) shall not apply with respect to the Sacramento Army Depot, Sacramento, California."

2001—Subsecs. (b), (c). Pub. L. 107–107 added subsecs. (b) and (c) and struck out heading and text of former

subsec. (c). Text read as follows: ''The Secretary of the military department concerned and, with respect to a Defense Agency, the Secretary of Defense may waive the applicability of subsection (a) for a fiscal year, to a particular workload, or to a particular depot-level activity if the Secretary determines that the waiver is necessary for reasons of national security and notifies Congress regarding the reasons for the waiver.''

1999—Subsec. (e). Pub. L. 106–65 amended heading and text of subsec. (e) generally. Text read as follows:

''(1) Not later than February 1 of each year, the Secretary of Defense shall submit to Congress a report identifying, for each military department and Defense Agency, the percentage of the funds referred to in subsection (a) that were expended during the preceding fiscal year for performance of depot-level maintenance and repair workloads by the public and private sectors as required by section 2466 of this title.

''(2) Not later than 90 days after the date on which the Secretary submits the annual report under paragraph (1), the Comptroller General shall submit to Congress the Comptroller General's views on whether the Department of Defense has complied with the requirements of subsection (a) for the fiscal year covered by the report.''

1997—Pub. L. 105–85, § 363, repealed Pub. L. 104–106, § 311(f)(1). See 1996 Amendment note below.

Subsec. (a). Pub. L. 105–85, § 357, substituted ''50 percent'' for ''40 percent''.

Subsec. (e). Pub. L. 105–85, § 358, reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''Not later than January 15, 1995, the Secretary of Defense shall submit to Congress a report identifying, for each military department and Defense Agency, the percentage of funds referred to in subsection (a) that was used during fiscal year 1994 to contract for the performance by non-Federal Government personnel of depot-level maintenance and repair workload.''

1996—Pub. L. 104–106, § 311(f)(1), which directed repeal of this section, was repealed by Pub. L. 105–85, § 363.

Subsec. (b). Pub. L. 104–106, § 312(b), redesignated subsec. (b) as section 2472(a) of this title.

1994—Subsec. (a). Pub. L. 103–337, § 332(a), amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows:

''(1) Except as provided in paragraph (2), the Secretary of a military department and, with respect to a Defense Agency, the Secretary of Defense, may not contract for the performance by non-Federal Government personnel of more than 40 percent of the depot-level maintenance workload for the military department or the Defense Agency.

''(2) The Secretary of the Army shall provide for the performance by employees of the Department of Defense of not less than the following percentages of Army aviation depot-level maintenance workload:

''(A) For fiscal year 1993, 50 percent.

''(B) For fiscal year 1994, 55 percent.

''(C) For fiscal year 1995, 60 percent.''

Subsec. (b). Pub. L. 103–337, § 332(b), inserted ''and repair'' after ''maintenance'' in two places.

Subsec. (e). Pub. L. 103–337, § 332(c), amended heading and text of subsec. (e) generally. Prior to amendment, text read as follows:

''(1) Not later than January 15, 1992, and January 15, 1993, the Secretary of the Army and the Secretary of the Air Force shall jointly submit to Congress a report describing the progress during the preceding fiscal year to achieve and maintain the percentage of depot-level maintenance required to be performed by employees of the Department of Defense pursuant to subsection (a).

''(2) Not later than January 15, 1994, the Secretary of each military department and the Secretary of Defense, with respect to the Defense Agencies, shall jointly submit to Congress a report described in paragraph (1).''

1992—Subsec. (a). Pub. L. 102–484, § 352(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''PERCENTAGE LIMITATION.—Not less than 60 percent of the funds available for each fiscal year for depot-level maintenance of materiel managed for the Department of the Army and the Department of the Air Force shall be used for the performance of such depot-level maintenance by employees of the Department of Defense.''

Subsec. (c). Pub. L. 102–484, § 352(b), substituted ''The Secretary of the military department concerned and, with respect to a Defense Agency, the Secretary of Defense'' for ''The Secretary of the Army, with respect to the Department of the Army, and the Secretary of the Air Force, with respect to the Department of the Air Force,''.

Subsec. (e). Pub. L. 102–484, § 352(c), designated existing provisions as par. (1) and added par. (2).

1991—Pub. L. 102–190 substituted section catchline for one which read ''Prohibition on certain depot maintenance workload competitions'' and amended text generally. Prior to amendment, text read as follows: ''The Secretary of Defense shall prohibit the Secretary of the Army and the Secretary of the Air Force, in selecting an entity to perform any depot maintenance workload, from carrying out a competition for such selection—

''(1) between or among maintenance activities of the Department of the Army and the Department of the Air Force; or

''(2) between a maintenance activity of either such department and a private contractor.''

1989—Pub. L. 101–189, in introductory provisions, substituted ''shall prohibit'' for ''may not require'', ''Army and'' for ''Army or'', and ''from carrying out'' for ''to carry out''.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective Dec. 31, 2021, of provisions in subsec. (d) of this section requiring submittal of annual report to Congress, see section 1061 of Pub. L. 114–328, set out as a note under section 111 of this title.

CONGRESSIONAL FINDINGS

Pub. L. 103–337, div. A, title III, § 331, Oct. 5, 1994, 108 Stat. 2715, provided that: ''Congress makes the following findings:

''(1) By providing the Armed Forces with a critical capacity to respond to the needs of the Armed Forces for depot-level maintenance and repair of weapon systems and equipment, the depot-level maintenance and repair activities of the Department of Defense play an essential role in maintaining the readiness of the Armed Forces.

''(2) It is appropriate for the capability of the depot-level maintenance and repair activities of the Department of Defense to perform maintenance and repair of weapon systems and equipment to be based on policies that take into consideration the readiness, mobilization, and deployment requirements of the military departments.

''(3) It is appropriate for the management of employees of the depot-level maintenance and repair activities of the Department of Defense to be based on the amount of workload necessary to be performed by such activities to maintain the readiness of the weapon systems and equipment of the military departments and on the funds made available for the performance of such workload.''

REUTILIZATION INITIATIVE FOR DEPOT-LEVEL ACTIVITIES

Pub. L. 103–337, div. A, title III, § 337, Oct. 5, 1994, 108 Stat. 2717, provided that:

''(a) PROGRAM AUTHORIZED.—The Secretary of Defense shall conduct activities to encourage commercial firms to enter into partnerships with depot-level activities of the military departments for the purposes of—

''(1) demonstrating commercial uses of the depot-level activities that are related to the principal mission of the depot-level activities;

''(2) preserving employment and skills of employees currently employed by the depot-level activities or providing for the reemployment and retraining of em-

ployees who, as the result of the closure, realignment, or reduced in-house workload of such activities, may become unemployed; and

''(3) supporting the goals of other defense conversion, reinvestment, and transition assistance programs while also allowing the depot-level activities to remain in operation to continue to perform their defense readiness mission.

''(b) CONDITIONS.—The Secretary shall ensure that activities conducted under this section—

''(1) do not interfere with the closure or realignment of a depot-level activity of the military departments under a base closure law; and

''(2) do not adversely affect the readiness or primary mission of a participating depot-level activity.''

CONTINUATION OF PERCENTAGE LIMITATIONS ON PERFORMANCE OF DEPOT-LEVEL MAINTENANCE

Pub. L. 103–160, div. A, title III, § 343, Nov. 30, 1993, 107 Stat. 1624, provided that: ''The Secretary of Defense shall ensure that the percentage limitations applicable to the depot-level maintenance workload performed by non-Federal Government personnel set forth in section 2466 of title 10, United States Code, are adhered to.''

EFFECT OF 1992 AMENDMENTS ON EXISTING CONTRACTS

Pub. L. 102–484, div. A, title III, § 352(d), Oct. 23, 1992, 106 Stat. 2378, provided that: ''The Secretary of a military department and the Secretary of Defense, with respect to the Defense Agencies, may not cancel a depot-level maintenance contract in effect on the date of the enactment of this Act [Oct. 23, 1992] in order to comply with the requirements of section 2466(a) of title 10, United States Code, as amended by subsection (a).''

PROHIBITION ON CANCELLATION OF CONTRACTS IN EFFECT ON DECEMBER 5, 1991

Pub. L. 102–190, div. A, title III, § 314(a)(3), Dec. 5, 1991, 105 Stat. 1337, provided that: ''The Secretary of the Army and the Secretary of the Air Force may not cancel a depot-level maintenance contract in effect on the date of the enactment of this Act [Dec. 5, 1991] in order to comply with the requirements of section 2466(a) of such title, as amended by subsection (a).''

COMPETITION PILOT PROGRAM; REVIEW AND REPORT

Pub. L. 102–190, div. A, title III, § 314(b)–(d), Dec. 5, 1991, 105 Stat. 1337, as amended by Pub. L. 102–484, div. A, title III, § 354, Oct. 23, 1992, 106 Stat. 2379, required the Comptroller General to submit to Congress, not later than Feb. 1, 1994, an evaluation of all depot maintenance workloads of the Department of Defense that were performed by an entity selected pursuant to competitive procedures, and required the Secretary of Defense to submit to Congress, not later than Dec. 1, 1993, a report containing a five-year strategy of the Department of Defense to use competitive procedures for the selection of entities to perform depot maintenance workloads and describing the cost savings anticipated.

PILOT PROGRAM FOR DEPOT MAINTENANCE WORKLOAD COMPETITION

Pub. L. 101–510, div. A, title IX, § 922, Nov. 5, 1990, 104 Stat. 1627, authorized a depot maintenance workload competition pilot program during fiscal year 1991, outlined elements of the program, and provided for a report not later than Mar. 31, 1992, to congressional defense committees, prior to repeal by Pub. L. 102–190, div. A, title III, § 314(b)(2), Dec. 5, 1991, 105 Stat. 1337.

[§ 2467. Repealed. Pub. L. 110–181, div. A, title III, § 322(b)(1), Jan. 28, 2008, 122 Stat. 59]

Section, added Pub. L. 100–456, div. A, title III, § 331(a), Sept. 29, 1988, 102 Stat. 1957; amended Pub. L. 106–65, div. A, title III, § 342(a), (b)(1), Oct. 5, 1999, 113 Stat. 569; Pub. L. 107–107, div. A, title X, § 1048(a)(22), Dec. 28, 2001, 115 Stat. 1224, related to cost comparisons: inclusion of retirement costs; consultation with employees; waiver of comparison.

[§ 2468. Repealed. Pub. L. 107–107, div. A, title X, § 1048(e)(10)(A), Dec. 28, 2001, 115 Stat. 1228]

Section, added Pub. L. 101–189, div. A, title XI, § 1131(a)(1), Nov. 29, 1989, 103 Stat. 1560; amended Pub. L. 101–510, div. A, title IX, § 921, Nov. 5, 1990, 104 Stat. 1627; Pub. L. 102–190, div. A, title III, § 315(a), Dec. 5, 1991, 105 Stat. 1337; Pub. L. 103–160, div. A, title III, § 370(c), Nov. 30, 1993, 107 Stat. 1634; Pub. L. 103–337, div. A, title III, § 386(c), Oct. 5, 1994, 108 Stat. 2742, related to authority of military base commanders over contracting for commercial activities.

§ 2469. Contracts to perform workloads previously performed by depot-level activities of the Department of Defense: requirement of competition

(a) REQUIREMENT FOR COMPETITION.—The Secretary of Defense shall ensure that the performance of a depot-level maintenance and repair workload described in subsection (b) is not changed to performance by a contractor or by another depot-level activity of the Department of Defense unless the change is made using—

(1) merit-based selection procedures for competitions among all depot-level activities of the Department of Defense; or

(2) competitive procedures for competitions among private and public sector entities.

(b) SCOPE.—Except as provided in subsection (c), subsection (a) applies to any depot-level maintenance and repair workload that has a value of not less than $3,000,000 (including the cost of labor and materials) and is being performed by a depot-level activity of the Department of Defense.

(c) EXCEPTION FOR PUBLIC-PRIVATE PARTNERSHIPS.—The requirements of subsection (a) may be waived in the case of a depot-level maintenance and repair workload that is performed at a Center of Industrial and Technical Excellence designated under subsection (a) of section 2474 of this title by a public-private partnership entered into under subsection (b) of such section consisting of a depot-level activity and a private entity.

(d) INAPPLICABILITY OF OMB CIRCULAR A–76.—Office of Management and Budget Circular A–76 (or any successor administrative regulation or policy) does not apply to a performance change to which subsection (a) applies.

(Added Pub. L. 102–484, div. A, title III, § 353(a), Oct. 23, 1992, 106 Stat. 2378; amended Pub. L. 103–160, div. A, title III, § 346, title XI, § 1182(a)(7), Nov. 30, 1993, 107 Stat. 1625, 1771; Pub. L. 103–337, div. A, title III, § 338, Oct. 5, 1994, 108 Stat. 2718; Pub. L. 104–106, div. A, title III, § 311(f)(1), Feb. 10, 1996, 110 Stat. 248; Pub. L. 105–85, div. A, title III, §§ 355(b), 363, Nov. 18, 1997, 111 Stat. 1694, 1702; Pub. L. 106–65, div. A, title III, § 334, Oct. 5, 1999, 113 Stat. 568; Pub. L. 108–136, div. A, title III, § 333, Nov. 24, 2003, 117 Stat. 1442.)

AMENDMENTS

2003—Subsec. (b). Pub. L. 108–136, § 333(1), substituted ''Except as provided in subsection (c), subsection'' for ''Subsection''.

Subsecs. (c), (d). Pub. L. 108–136, § 333(2), (3), added subsec. (c) and redesignated former subsec. (c) as (d).

1999—Subsec. (b). Pub. L. 106–65 inserted ''(including the cost of labor and materials)'' after ''$3,000,000''.

1997—Pub. L. 105–85, § 363, repealed Pub. L. 104–106, § 311(f)(1). See 1996 Amendment note below.

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Subsecs. (a), (b). Pub. L. 105–85, § 355(b), substituted ''maintenance and repair'' for ''maintenance or repair''.

1996—Pub. L. 104–106, § 311(f)(1), which directed repeal of this section, was repealed by Pub. L. 105–85, § 363.

1994—Pub. L. 103–337 amended section generally. Prior to amendment, section read as follows:

''(a) REQUIREMENT FOR COMPETITION.—The Secretary of Defense or the Secretary of a military department may not change the performance of a depot-level maintenance workload that has a value of not less than $3,000,000 and is being performed by a depot-level activity of the Department of Defense to performance by a contractor unless the Secretary uses competitive procedures for the selection of the contractor to perform such workload.

''(b) INAPPLICABILITY OF OMB CIRCULAR A–76.—The use of Office of Management and Budget Circular A–76 shall not apply to a performance change under subsection (a).''

1993—Pub. L. 103–160, § 346, amended section, as amended by Pub. L. 103–160, § 1182(a)(7), (h), by designating existing provisions as subsec. (a), inserting heading, striking out ''threshold'' before ''value'', substituting ''to performance by a contractor unless the Secretary uses competitive procedures for the selection of the contractor to perform such workload'' for ''unless the Secretary uses competitive procedures to make the change'', and adding subsec. (b).

Pub. L. 103–160, § 1182(a)(7), struck out '', prior to any such change,'' after ''Department of Defense unless''.

[§ 2469a. Repealed. Pub. L. 107–314, div. A, title III, § 333(a), Dec. 2, 2002, 116 Stat. 2514]

Section, added Pub. L. 105–85, div. A, title III, § 359(a)(1), Nov. 18, 1997, 111 Stat. 1696; amended Pub. L. 106–65, div. A, title III, § 335, title X, § 1066(a)(20), Oct. 5, 1999, 113 Stat. 568, 771, related to use of competitive procedures in contracting for performance of depot-level maintenance and repair workloads formerly performed at closed or realigned military installations.

§ 2470. Depot-level activities of the Department of Defense: authority to compete for maintenance and repair workloads of other Federal agencies

A depot-level activity of the Department of Defense shall be eligible to compete for the performance of any depot-level maintenance and repair workload of a Federal agency for which competitive procedures are used to select the entity to perform the workload.

(Added Pub. L. 103–337, div. A, title III, § 335(a), Oct. 5, 1994, 108 Stat. 2716.)

[§ 2471. Repealed. Pub. L. 106–398, § 1 [[div. A], title III, § 341(g)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–64]

Section, added Pub. L. 103–337, div. A, title III, § 336(a), Oct. 5, 1994, 108 Stat. 2717; amended Pub. L. 104–106, div. A, title XV, § 1503(a)(26), Feb. 10, 1996, 110 Stat. 512; Pub. L. 105–85, div. A, title III, § 361(b)(1), Nov. 18, 1997, 111 Stat. 1701, related to lease of excess depot-level equipment and facilities by persons outside the Department of Defense.

§ 2472. Prohibition on management of depot employees by end strength

The civilian employees of the Department of Defense, including the civilian employees of the military departments and the Defense Agencies, who perform, or are involved in the performance of, depot-level maintenance and repair workloads may not be managed on the basis of any constraint or limitation in terms of man years, end strength, full-time equivalent positions, or maximum number of employees. Such employees shall be managed solely on the basis of the available workload and the funds made available for such depot-level maintenance and repair.

(Added and amended Pub. L. 104–106, div. A, title III, § 312(a), (b), Feb. 10, 1996, 110 Stat. 250; Pub. L. 105–85, div. A, title III, § 360, Nov. 18, 1997, 111 Stat. 1700; Pub. L. 106–65, div. A, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 108–375, div. A, title III, § 322(a), (b)(1), Oct. 28, 2004, 118 Stat. 1846.)

CODIFICATION

The text of section 2466(b) of this title, which was transferred to this section and redesignated subsec. (a) by Pub. L. 104–106, § 312(b), was based on Pub. L. 102–190, div. A, title III, § 314(a)(1), Dec. 5, 1991, 105 Stat. 1336; Pub. L. 103–337, div. A, title III, § 332(b), Oct. 5, 1994, 108 Stat. 2715.

AMENDMENTS

2004—Pub. L. 108–375 substituted ''Prohibition on management of depot employees by end strength'' for ''Management of depot employees'' in section catchline, struck out subsec. (a) designation and heading before ''The civilian'', and struck out heading and text of subsec. (b). Text read as follows: ''Not later than December 1 of each fiscal year, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the number of employees employed and expected to be employed by the Department of Defense during that fiscal year to perform depot-level maintenance and repair of materiel. The report shall indicate whether that number is sufficient to perform the depot-level maintenance and repair functions for which funds are expected to be provided for that fiscal year for performance by Department of Defense employees.''

1999—Subsec. (b). Pub. L. 106–65 substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security''.

1997—Subsec. (a). Pub. L. 105–85 inserted first sentence and struck out former first sentence which read as follows: ''The civilian employees of the Department of Defense involved in the depot-level maintenance and repair of materiel may not be managed on the basis of any end-strength constraint or limitation on the number of such employees who may be employed on the last day of a fiscal year.''

1996—Subsec. (a). Pub. L. 104–106, § 312(b), renumbered section 2466(b) of this title as subsec. (a) of this section.

SUBMISSION OF INITIAL REPORT

Pub. L. 104–106, div. A, title III, § 312(c), Feb. 10, 1996, 110 Stat. 250, required the report under subsec. (b) of this section for fiscal year 1996 to be submitted not later than Mar. 15, 1996.

[§ 2473. Repealed. Pub. L. 111–383, div. A, title VIII, § 822(a), Jan. 7, 2011, 124 Stat. 4268]

Section, added Pub. L. 104–201, div. A, title VIII, § 832(a), Sept. 23, 1996, 110 Stat. 2616; amended Pub. L. 105–261, div. A, title VIII, § 809(a)–(d), Oct. 17, 1998, 112 Stat. 2085, 2086; Pub. L. 106–65, div. A, title VIII, § 815(b), Oct. 5, 1999, 113 Stat. 712; Pub. L. 111–84, div. A, title VIII, § 818(a), Oct. 28, 2009, 123 Stat. 2408, required the Secretary of Defense to place conditions on the procurement of property or services in order to preserve the small arms production industrial base.

§ 2474. Centers of Industrial and Technical Excellence: designation; public-private partnerships

(a) DESIGNATION.—(1) The Secretary concerned, or the Secretary of Defense in the case of a De-

fense Agency, shall designate each depot-level activity or military arsenal facility of the military departments and the Defense Agencies (other than facilities approved for closure or major realignment under the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note)) as a Center of Industrial and Technical Excellence in the recognized core competencies of the designee.

(2) The Secretary of Defense shall establish a policy to encourage the Secretary of each military department and the head of each Defense Agency to reengineer industrial processes and adopt best-business practices at their Centers of Industrial and Technical Excellence in connection with their core competency requirements, so as to serve as recognized leaders in their core competencies throughout the Department of Defense and in the national technology and industrial base (as defined in section 2500(1) of this title).

(3) The Secretary of a military department may conduct a pilot program, consistent with applicable requirements of law, to test any practices referred to in paragraph (2) that the Secretary determines could improve the efficiency and effectiveness of operations at Centers of Industrial and Technical Excellence, improve the support provided by the Centers for the armed forces user of the services of the Centers, and enhance readiness by reducing the time that it takes to repair equipment.

(b) PUBLIC-PRIVATE PARTNERSHIPS.—(1) To achieve one or more objectives set forth in paragraph (2), the Secretary designating a Center of Industrial and Technical Excellence under subsection (a) may authorize and encourage the head of the Center to enter into public-private cooperative arrangements (in this section referred to as a ''public-private partnership'') to provide for any of the following:

(A) For employees of the Center, private industry, or other entities outside the Department of Defense to perform (under contract, subcontract, or otherwise) work related to the core competencies of the Center, including any depot-level maintenance and repair work that involves one or more core competencies of the Center.

(B) For private industry or other entities outside the Department of Defense to use, for any period of time determined to be consistent with the needs of the Department of Defense, any facilities or equipment of the Center that are not fully utilized for a military department's own production or maintenance requirements.

(2) The objectives for exercising the authority provided in paragraph (1) are as follows:

(A) To maximize the utilization of the capacity of a Center of Industrial and Technical Excellence.

(B) To reduce or eliminate the cost of ownership of a Center by the Department of Defense in such areas of responsibility as operations and maintenance and environmental remediation.

(C) To reduce the cost of products of the Department of Defense produced or maintained at a Center.

(D) To leverage private sector investment in—

(i) such efforts as plant and equipment recapitalization for a Center; and

(ii) the promotion of the undertaking of commercial business ventures at a Center.

(E) To foster cooperation between the armed forces and private industry.

(3) If the Secretary concerned, or the Secretary of Defense in the case of a Defense Agency, authorizes the use of public-private partnerships under this subsection, the Secretary shall submit to Congress a report evaluating the need for loan guarantee authority, similar to the ARMS Initiative loan guarantee program under section 7555 of this title, to facilitate the establishment of public-private partnerships and the achievement of the objectives set forth in paragraph (2).

(c) PRIVATE SECTOR USE OF EXCESS CAPACITY.—Any facilities or equipment of a Center of Industrial and Technical Excellence made available to private industry may be used to perform maintenance or to produce goods in order to make more efficient and economical use of Government-owned industrial plants and encourage the creation and preservation of jobs to ensure the availability of a workforce with the necessary manufacturing and maintenance skills to meet the needs of the armed forces.

(d) CREDITING OF AMOUNTS FOR PERFORMANCE.—Amounts received by a Center for work performed under a public-private partnership shall be credited to the appropriation or fund, including a working-capital fund, that incurs the cost of performing the work. Consideration in the form of rental payments or (notwithstanding section 3302(b) of title 31) in other forms may be accepted for a use of property accountable under a contract performed pursuant to this section. Notwithstanding section 2667(e) of this title, revenues generated pursuant to this section shall be available for facility operations, maintenance, and environmental restoration at the Center where the leased property is located.

(e) AVAILABILITY OF EXCESS EQUIPMENT TO PRIVATE-SECTOR PARTNERS.—Equipment or facilities of a Center of Industrial and Technical Excellence may be made available for use by a private-sector entity under this section only if—

(1) the use of the equipment or facilities will not have a significant adverse effect on the readiness of the armed forces, as determined by the Secretary concerned or, in the case of a Center in a Defense Agency, by the Secretary of Defense; and

(2) the private-sector entity agrees—

(A) to reimburse the Department of Defense for the direct and indirect costs (including any rental costs) that are attributable to the entity's use of the equipment or facilities, as determined by that Secretary; and

(B) to hold harmless and indemnify the United States from—

(i) any claim for damages or injury to any person or property arising out of the use of the equipment or facilities, except under the circumstances described in section 2563(c)(3) of this title; and

(ii) any liability or claim for damages or injury to any person or property arising out of a decision by the Secretary concerned or the Secretary of Defense to suspend or terminate that use of equipment or facilities during a war or national emergency.

(f) EXCLUSION OF CERTAIN EXPENDITURES FROM PERCENTAGE LIMITATION.—Amounts expended for the performance of a depot-level maintenance and repair workload by non-Federal Government personnel at a Center of Industrial and Technical Excellence under any contract shall not be counted for purposes of applying the percentage limitation in section 2466(a) of this title if the personnel are provided by private industry or other entities outside the Department of Defense pursuant to a public-private partnership.

(g) CONSTRUCTION OF PROVISION.—Nothing in this section may be construed to authorize a change, otherwise prohibited by law, from the performance of work at a Center of Industrial and Technical Excellence by Department of Defense personnel to performance by a contractor.

(Added Pub. L. 105–85, div. A, title III, § 361(a)(1), Nov. 18, 1997, 111 Stat. 1700; amended Pub. L. 106–398, § 1 [[div. A], title III, § 341(a)–(e)], Oct. 30, 2000, 114 Stat. 1654, 1654A–61 to 1654A–63; Pub. L. 107–107, div. A, title III, §§ 342, 343(b), Dec. 28, 2001, 115 Stat. 1060, 1061; Pub. L. 107–314, div. A, title III, § 334, Dec. 2, 2002, 116 Stat. 2514; Pub. L. 108–375, div. A, title III, § 323, title X, § 1084(d)(20), Oct. 28, 2004, 118 Stat. 1846, 2062; Pub. L. 109–364, div. A, title III, § 331(a), Oct. 17, 2006, 120 Stat. 2149; Pub. L. 112–81, div. A, title III, § 322, Dec. 31, 2011, 125 Stat. 1362; Pub. L. 112–239, div. A, title X, § 1076(d)(4), Jan. 2, 2013, 126 Stat. 1951; Pub. L. 115–232, div. A, title VIII, § 809(a), Aug. 13, 2018, 132 Stat. 1840; Pub. L. 116–283, div. A, title XVIII, § 1866(d)(2), Jan. 1, 2021, 134 Stat. 4280.)

AMENDMENT OF SUBSECTION (a)(2)

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1866(d)(2), Jan. 1, 2021, 134 Stat. 4151, 4280, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, subsection (a)(2) of this section is amended by substituting ''section 2500(1)'' for ''section 4801(1)''. See 2021 Amendment note below.

AMENDMENTS

2021—Subsec. (a)(2). Pub. L. 116–283 substituted ''section 4801(1)'' for ''section 2500(1)''.

2018—Subsec. (b)(3). Pub. L. 115–232 substituted ''section 7555'' for ''section 4555''.

2013—Subsec. (d). Pub. L. 112–239 substituted ''section 2667(e)'' for ''section 2667(d)''.

2011—Subsec. (a)(1). Pub. L. 112–81 inserted ''or military arsenal facility'' after ''depot-level activity''.

2006—Subsec. (f). Pub. L. 109–364 struck out ''(1)'' before ''Amounts'', ''entered into during fiscal years 2003 through 2009'' before ''shall not be counted'', and par. (2) which read as follows: ''All funds covered by paragraph (1) shall be included as a separate item in the reports required under paragraphs (1), (2), and (3) of section 2466(d) of this title.''

2004—Subsec. (f)(1). Pub. L. 108–375, § 323, substituted ''through 2009'' for ''through 2006''.

Subsec. (f)(2). Pub. L. 108–375, § 1084(d)(20), substituted ''section 2466(d)'' for ''section 2466(e)''.

2002—Subsec. (f)(1). Pub. L. 107–314, § 334(1), substituted ''Amounts expended for the performance of a depot-level maintenance and repair workload by non-Federal Government personnel at a Center of Industrial and Technical Excellence under any contract entered into during fiscal years 2003 through 2006'' for ''Amounts expended out of funds described in paragraph (2) for the performance of a depot-level maintenance and repair workload by non-Federal Government personnel at a Center of Industrial and Technical Excellence''.

Subsec. (f)(2), (3). Pub. L. 107–314, § 334(2), (3), redesignated par. (3) as (2) and struck out former par. (2) which read as follows: ''The funds referred to in paragraph (1) are funds available to the military departments and Defense Agencies for depot-level maintenance and repair workloads for fiscal years 2002 through 2005.''

2001—Subsec. (e)(2)(B)(i). Pub. L. 107–107, § 343(b), substituted ''under the circumstances described in section 2563(c)(3) of this title'' for ''in a case of willful conduct or gross negligence''.

Subsecs. (f), (g). Pub. L. 107–107, § 342, added subsec. (f) and redesignated former subsec. (f) as (g).

2000—Subsec. (a)(1). Pub. L. 106–398, § 1 [[div. A], title III, § 341(a)(1)], substituted ''The Secretary concerned, or the Secretary of Defense in the case of a Defense Agency,'' for ''The Secretary of Defense'' and ''of the designee'' for ''of the activity''.

Subsec. (a)(2). Pub. L. 106–398, § 1 [[div. A], title III, § 341(a)(2)], inserted ''of Defense'' after ''The Secretary'' and substituted ''Centers of Industrial and Technical Excellence'' for ''depot-level activities''.

Subsec. (a)(3). Pub. L. 106–398, § 1 [[div. A], title III, § 341(a)(3)], substituted ''operations at Centers of Industrial and Technical Excellence'' for ''depot-level operations'', ''by the Centers'' for ''by depot-level activities'', and ''of the Centers'' for ''of such activities''.

Subsec. (b). Pub. L. 106–398, § 1 [[div. A], title III, § 341(b)], amended heading and text of subsec. (b) generally. Prior to amendment, text read as follows: ''The Secretary of Defense shall enable Centers of Industrial and Technical Excellence to enter into public-private cooperative arrangements for the performance of depot-level maintenance and repair at such Centers and shall encourage the use of such arrangements to maximize the utilization of the capacity at such Centers. A public-private cooperative arrangement under this subsection shall be known as a 'public-private partnership'.''

Subsec. (c). Pub. L. 106–398, § 1 [[div. A], title III, § 341(c)(3)], added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 106–398, § 1 [[div. A], title III, § 341(d)], inserted at end ''Consideration in the form of rental payments or (notwithstanding section 3302(b) of title 31) in other forms may be accepted for a use of property accountable under a contract performed pursuant to this section. Notwithstanding section 2667(d) of this title, revenues generated pursuant to this section shall be available for facility operations, maintenance, and environmental restoration at the Center where the leased property is located.''

Pub. L. 106–398, § 1 [[div. A], title III, § 341(c)(1), (2)], redesignated subsec. (c) as (d) and struck out heading and text of former subsec. (d). Text read as follows: ''The policy required under subsection (a) shall include measures to enable a private sector entity that enters into a partnership arrangement under subsection (b) or leases excess equipment and facilities at a Center of Industrial and Technical Excellence pursuant to section 2471 of this title to perform additional work at the Center, subject to the limitations outlined in subsection (b) of such section, outside of the types of work normally assigned to the Center.''

Subsecs. (e), (f). Pub. L. 106–398, § 1 [[div. A], title III, § 341(e)], added subsecs. (e) and (f).

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

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EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115–232 effective Feb. 1, 2019, with provision for the coordination of amendments and special rule for certain redesignations, see section 800 of Pub. L. 115–232, set out as a note preceding section 3001 of this title.

REPORTING REQUIREMENT

Pub. L. 105–85, div. A, title III, § 361(c), Nov. 18, 1997, 111 Stat. 1701, provided that, not later than Mar. 1, 1999, the Secretary of Defense was to submit to Congress a report on the policies established by the Secretary pursuant to this section to implement the requirements of this section.

§ 2475. Consolidation, restructuring, or reengineering of organizations, functions, or activities: notification requirements

(a) STRATEGIC SOURCING PLAN OF ACTION DEFINED.—In this section, the term ''Strategic Sourcing Plan of Action'' means a Strategic Sourcing Plan of Action for the Department of Defense (as identified in the Department of Defense Interim Guidance dated February 29, 2000, or any successor Department of Defense guidance or directive) in effect for a fiscal year.

(b) NOTIFICATION OF DECISION TO EXECUTE PLAN.—If a decision is made to consolidate, restructure, or reengineer an organization, function, or activity of the Department of Defense pursuant to a Strategic Sourcing Plan of Action described in subsection (a), and such consolidation, restructuring, or reengineering would result in a manpower reduction affecting 50 or more personnel of the Department of Defense (including military and civilian personnel)—

(1) the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report describing that decision, including—

(A) a projection of the savings that will be realized as a result of the consolidation, restructuring, or reengineering, compared with the cost incurred by the Department of Defense to perform the function or to operate the organization or activity prior to such proposed consolidation, restructuring, or reengineering;

(B) a description of all missions, duties, or military requirements that will be affected as a result of the decision to consolidate, restructure, or reengineer the organization, function, or activity that was analyzed;

(C) the Secretary's certification that the consolidation, restructuring, or reengineering will not result in any diminution of military readiness;

(D) a schedule for performing the consolidation, restructuring, or reengineering; and

(E) the Secretary's certification that the entire analysis for the consolidation, restructuring, or reengineering is available for examination; and

(2) the head of the Defense Agency or the Secretary of the military department concerned may not implement the plan until 30 days after the date that the agency head or Secretary submits notification to the Committees on Armed Services of the Senate and House of Representatives of the intent to carry out such plan.

(Added Pub. L. 106–398, § 1 [[div. A], title III, § 353(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–72; amended Pub. L. 115–91, div. A, title X, § 1051(a)(17), Dec. 12, 2017, 131 Stat. 1561.)

AMENDMENTS

2017—Subsec. (a). Pub. L. 115–91 amended subsec. (a) generally. Prior to amendment, subsec. (a) required the Secretary of Defense to submit the Strategic Sourcing Plan of Action to Congress annually.

§ 2476. Minimum capital investment for certain depots

(a) MINIMUM INVESTMENT.—Each fiscal year, the Secretary of a military department shall invest in the capital budgets of the covered depots of that military department a total amount equal to not less than six percent of the average total combined maintenance, repair, and overhaul workload funded at all the depots of that military department for the preceding three fiscal years.

(b) CAPITAL BUDGET.—For purposes of this section, the capital budget of a depot includes investment funds spent to modernize or improve the efficiency of depot facilities, equipment, work environment, or processes in direct support of depot operations, but does not include funds spent for sustainment of existing facilities, infrastructure, or equipment.

(c) WAIVER.—The Secretary of Defense may waive the requirement under subsection (a) with respect to a military department for a fiscal year if the Secretary determines that the waiver is necessary for reasons of national security. Whenever the Secretary makes such a waiver, the Secretary shall notify the congressional defense committees of the waiver and the reasons for the waiver.

(d) ANNUAL REPORT.—(1) Not later than 45 days after the date on which the President submits to Congress the budget for a fiscal year under section 1105 of title 31, the Secretary of Defense shall submit to the congressional defense committees a report containing budget justification documents summarizing the level of capital investment for each military department as of the end of the preceding fiscal year.

(2) Each report submitted under paragraph (1) shall include the following:

(A) A specification of any statutory, regulatory, or operational impediments to achieving the requirement under subsection (a) with respect to each military department.

(B) A description of the benchmarks for capital investment established for each covered depot and military department and the relationship of the benchmarks to applicable performance measurement methods used in the private sector.

(C) If the requirement under subsection (a) is not met for a military department for the fiscal year covered by the report, a statement of the reasons why the requirement was not met and a plan of actions for meeting the requirement for the fiscal year beginning in the year in which such report is submitted.

(D) Separate consideration and reporting of Navy depots and Marine Corps depots.

(E) A table showing the funded workload performed by each covered depot for the preceding three fiscal years and actual investment funds allocated to each depot for the period covered by the report.

(e) COVERED DEPOT.—In this section, the term ''covered depot'' means any of the following:

(1) With respect to the Department of the Army:

(A) Anniston Army Depot, Alabama.

(B) Letterkenny Army Depot, Pennsylvania.

(C) Tobyhanna Army Depot, Pennsylvania.

(D) Corpus Christi Army Depot, Texas.

(E) Red River Army Depot, Texas.

(F) Watervliet Arsenal, New York.

(G) Rock Island Arsenal, Illinois.

(H) Pine Bluff Arsenal, Arkansas.

(I) Tooele Army Depot, Utah.

(2) With respect to the Department of the Navy:

(A) The following Navy depots:

(i) Fleet Readiness Center East Site, Cherry Point, North Carolina.

(ii) Fleet Readiness Center Southwest Site, North Island, California.

(iii) Fleet Readiness Center Southeast Site, Jacksonville, Florida.

(iv) Portsmouth Naval Shipyard, Maine.

(v) Pearl Harbor Naval Shipyard, Hawaii.

(vi) Puget Sound Naval Shipyard, Washington.

(vii) Norfolk Naval Shipyard, Virginia.

(B) The following Marine Corps depots:

(i) Marine Corps Logistics Base, Albany, Georgia.

(ii) Marine Corps Logistics Base, Barstow, California.

(3) With respect to the Department of the Air Force:

(A) Warner-Robins Air Logistics Center, Georgia.

(B) Ogden Air Logistics Center, Utah.

(C) Oklahoma City Air Logistics Center, Oklahoma.

(Added Pub. L. 109–364, div. A, title III, § 332(a), Oct. 17, 2006, 120 Stat. 2149; amended Pub. L. 110–417, [div. A], title III, § 327, Oct. 14, 2008, 122 Stat. 4418; Pub. L. 111–383, div. A, title X, § 1075(b)(36), Jan. 7, 2011, 124 Stat. 4371; Pub. L. 112–81, div. A, title III, § 325, Dec. 31, 2011, 125 Stat. 1364.)

AMENDMENTS

2011—Subsec. (a). Pub. L. 112–81, § 325(1), inserted ''maintenance, repair, and overhaul'' after ''combined''.

Subsec. (b). Pub. L. 112–81, § 325(2), substituted ''includes investment funds spent to modernize or improve the efficiency of depot facilities, equipment, work environment, or processes in direct support'' for ''includes investment funds spent on depot infrastructure, equipment, and process improvement in direct support'' and inserted '', but does not include funds spent for sustainment of existing facilities, infrastructure, or equipment'' before period at end.

Subsec. (d)(2)(D). Pub. L. 111–383 substituted ''Navy depots'' for ''Navy Depots''.

Subsec. (d)(2)(E). Pub. L. 112–81, § 325(3), which directed addition of subpar. (E) at end of subsec. (d), was executed by adding subpar. (E) at end of par. (2) of subsec. (d) to reflect the probable intent of Congress.

Subsec. (e)(1)(I). Pub. L. 112–81, § 325(4), added subpar. (I).

2008—Subsec. (d)(2)(D). Pub. L. 110–417, § 327(b)(1), added subpar. (D).

Subsec. (e)(1)(F) to (H). Pub. L. 110–417, § 327(a), added subpars. (F) to (H).

Subsec. (e)(2). Pub. L. 110–417, § 327(b)(2), inserted introductory provisions for subpars. (A) and (B), redesignated former subpars. (A) to (G) as cls. (i) to (vii), respectively, of subpar. (A) and realigned margins, and redesignated former subpars. (H) and (I) as cls. (i) and (ii), respectively, of subpar. (B) and realigned margins.

EFFECTIVE DATE

Pub. L. 109–364, div. A, title III, § 332(c), Oct. 17, 2006, 120 Stat. 2150, provided that: ''Section 2476 of title 10,

United States Code, as added by subsection (a), shall take effect on October 1, 2006.''

STRATEGY TO IMPROVE INFRASTRUCTURE OF CERTAIN DEPOTS OF THE DEPARTMENT OF DEFENSE

Pub. L. 116–92, div. A, title III, §359, Dec. 20, 2019, 133 Stat. 1323, provided that:

''(a) STRATEGY REQUIRED.—Not later than October 1, 2020, the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a comprehensive strategy for improving the depot infrastructure of the military departments with the objective of ensuring that all covered depots have the capacity and capability to support the readiness and material availability goals of current and future weapon systems of the Department of Defense.

''(b) ELEMENTS.—The strategy under subsection (a) shall include the following:

''(1) A comprehensive review of the conditions and performance at each covered depot, including the following:

''(A) An assessment of the current status of the following elements:

''(i) Cost and schedule performance of the depot.

''(ii) Material availability of weapon systems supported at the depot and the impact of the performance of the depot on that availability.

''(iii) Work in progress and non-operational items awaiting depot maintenance.

''(iv) The condition of the depot.

''(v) The backlog of restoration and modernization projects at the depot.

''(vi) The condition of equipment at the depot.

''(vii) the vulnerability of the depot to adverse environmental conditions and, if necessary, the investment required to withstand those conditions.

''(B) An identification of analytically based goals relating to the elements identified in subparagraph (A).

''(2) A business-case analysis that assesses investment alternatives comparing cost, performance, risk, and readiness outcomes and recommends an optimal investment approach across the Department of Defense to ensure covered depots efficiently and effectively meet the readiness goals of the Department, including an assessment of the following alternatives:

''(A) The minimum investment necessary to meet investment requirements under section 2476 of title 10, United States Code.

''(B) The investment necessary to ensure the current inventory of facilities at covered depots can meet the mission-capable, readiness, and contingency goals of the Secretary of Defense.

''(C) The investment necessary to execute the depot infrastructure optimization plans of each military department.

''(D) Any other strategies for investment in covered depots, as identified by the Secretary.

''(3) A plan to improve conditions and performance of covered depots that identifies the following:

''(A) The approach of the Secretary of Defense for achieving the goals outlined in paragraph (1)(B).

''(B) The resources and investments required to implement the plan.

''(C) The activities and milestones required to implement the plan.

''(D) A results-oriented approach to assess—

''(i) the progress of each military department in achieving such goals; and

''(ii) the progress of the Department in implementing the plan.

''(E) Organizational roles and responsibilities for implementing the plan.

''(F) A process for conducting regular management review and coordination of the progress of each military department in implementing the plan and achieving such goals.

''(G) The extent to which the Secretary has addressed recommendations made by the Comptroller General of the United States relating to depot operations during the five-year period preceding the date of submittal of the strategy under this section.

''(H) Risks to implementing the plan and mitigation strategies to address those risks.

''(c) ANNUAL REPORT ON PROGRESS.—As part of the annual budget submission of the President under section 1105(a) of title 31, United States Code, the Secretary of Defense shall submit to the congressional defense committees a report describing the progress made in—

''(1) implementing the strategy under subsection (a); and

''(2) achieving the goals outlined in subsection (b)(1)(B).

''(d) COMPTROLLER GENERAL REPORTS.—

''(1) ASSESSMENT OF STRATEGY.—Not later than January 1, 2021, the Comptroller General of the United States shall submit to the congressional defense committees a report assessing the extent to which the strategy under subsection (a) meets the requirements of this section.

''(2) ASSESSMENT OF IMPLEMENTATION.—Not later than April 1, 2022, the Comptroller General shall submit to the congressional defense committees a report setting forth an assessment of the extent to which the strategy under subsection (a) has been effectively implemented by each military department and the Secretary of Defense.

''(e) COVERED DEPOT DEFINED.—In this section, the term 'covered depot' has the meaning given that term in section 2476(e) of title 10, United States Code.''

TWO YEAR PHASE-IN FOR DEPARTMENTS OF THE ARMY AND THE NAVY

Pub. L. 109–364, div. A, title III, §332(d), Oct. 17, 2006, 120 Stat. 2150, provided that:

''(1) REDUCED PERCENTAGE OF REQUIRED INVESTMENT FOR FISCAL YEARS 2007 AND 2008.—The Secretary of the Army shall apply subsection (a) of section 2476 of title 10, United States Code, as added by subsection (a), to the covered depots of the Army, and the Secretary of the Navy shall apply such subsection to the covered depots of the Department of the Navy—

''(A) for fiscal year 2007, by substituting 'four percent' for 'six percent'; and

''(B) for fiscal year 2008, by substituting 'five percent' for 'six percent'.

''(2) COVERED DEPOTS.—In this subsection, the term 'covered depot' has the meaning given that term in subsection (e) of section 2476 of title 10, United States Code, as added by subsection (a).''

CHAPTER 147—COMMISSARIES AND EXCHANGES AND OTHER MORALE, WELFARE, AND RECREATION ACTIVITIES

Subchapter		Sec.
I.	Defense Commissary and Exchange Systems	2481
II.	Relationship, Continuation, and Common Policies of Defense Commissary and Exchange Systems	2487
III.	Morale, Welfare, and Recreation Programs and Nonappropriated Fund Instrumentalities	2491

AMENDMENTS

2004—Pub. L. 108–375, div. A, title VI, §651(a)(1), (3), Oct. 28, 2004, 118 Stat. 1964, added items for subchapters I to III and struck out items 2481 ''Existence of defense commissary system and exchange stores system'', 2482 ''Commissary stores: operation'', 2482a ''Nonappropriated fund instrumentalities: contracts with other agencies and instrumentalities to provide and obtain goods and services'', 2483 ''Commissary stores: reimbursement for use of commissary facilities by military departments'', 2484 ''Commissary stores: use of ap-

propriated funds to cover operating expenses'', 2485 ''Donation of unusable food: commissary stores and other activities'', 2486 ''Commissary stores: merchandise that may be sold; uniform surcharges and pricing'', 2487 ''Commissary stores: release of certain commercially valuable information to the public'', 2488 ''Nonappropriated fund instrumentalities: purchase of alcoholic beverages'', 2489 ''Overseas package stores: treatment of United States wines'', 2489a ''Sale or rental of sexually explicit material prohibited'', 2490a ''Combined exchange and commissary stores'', 2492 ''Overseas commissary and exchange stores: access and purchase restrictions'', 2493 ''Fisher Houses: administration as nonappropriated fund instrumentality'', and 2494 ''Uniform funding and management of morale, welfare, and recreation programs''.

2003—Pub. L. 108–136, div. A, title VI, § 652(b), Nov. 24, 2003, 117 Stat. 1522, added item 2481.

2002—Pub. L. 107–314, div. A, title III, § 323(b), Dec. 2, 2002, 116 Stat. 2511, added item 2494.

2001—Pub. L. 107–107, div. A, title III, §§ 332(b), 333(b), Dec. 28, 2001, 115 Stat. 1058, 1059, added item 2483 and substituted ''Commissary stores: release of certain commercially valuable information to the public'' for ''Commissary stores: limitations on release of sales information'' in item 2487.

2000—Pub. L. 106–398, § 1 [[div. A], title III, § 331(a)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–59, added item 2484 and struck out former item 2484 ''Commissary stores: expenses''.

1998—Pub. L. 105–261, div. A, title III, § 365(b), title IX, § 906(a)(2), Oct. 17, 1998, 112 Stat. 1987, 2095, added items 2492 and 2493.

1997—Pub. L. 105–85, div. A, title III, § 371(a)(1), (c)(1), Nov. 18, 1997, 111 Stat. 1705, substituted ''COMMISSARIES AND EXCHANGES AND OTHER MORALE, WELFARE, AND RECREATION ACTIVITIES'' for ''UTILITIES AND SERVICES'' as chapter heading and struck out items 2481 ''Utilities and services: sale; expansion and extension of systems and facilities'', 2483 ''Sale of electricity from alternate energy and cogeneration production facilities'', and 2490 ''Utility services: furnishing for certain buildings''.

1996—Pub. L. 104–201, div. A, title III, §§ 341(a)(2), 343(a)(2), Sept. 23, 1996, 110 Stat. 2489, 2490, added items 2482a and 2489a.

Pub. L. 104–106, div. A, title III, §§ 331(b), 336(a)(2), Feb. 10, 1996, 110 Stat. 260, 264, substituted ''Commissary stores: operation'' for ''Commissary stores: private operation'' in item 2482 and added item 2490a.

1993—Pub. L. 103–160, div. A, title XI, § 1182(a)(8)(B), Nov. 30, 1993, 107 Stat. 1771, struck out item 2490a ''Nonappropriated fund instrumentalities: financial management and use of nonappropriated funds''.

1992—Pub. L. 102–484, div. A, title III, §§ 362(b), 364(b)(1), Oct. 23, 1992, 106 Stat. 2380, 2382, substituted ''limitations'' for ''limitation'' in item 2487 and added item 2490a.

1990—Pub. L. 101–510, div. A, title III, § 324(b)(2), Nov. 5, 1990, 104 Stat. 1531, amended item 2485 generally, substituting ''Donation of unusable food: commissary stores and other activities'' for ''Commissary stores: donation of unmarketable food''.

1988—Pub. L. 100–370, § 1(j)(2), July 19, 1988, 102 Stat. 848, added item 2490.

1987—Pub. L. 100–180, div. A, title III, §§ 311(a)(2), 313(a)(3), Dec. 4, 1987, 101 Stat. 1073, 1074, inserted ''and pricing'' in item 2486 and added item 2489.

1986—Pub. L. 99–661, div. A, title III, § 313(c), Nov. 14, 1986, 100 Stat. 3853, added items 2486, 2487, and 2488.

1985—Pub. L. 99–145, title XIV, § 1460(b), Nov. 8, 1985, 99 Stat. 765, added item 2485.

1984—Pub. L. 98–525, title XIV, § 1401(i)(2), Oct. 19, 1984, 98 Stat. 2620, added item 2484.

Pub. L. 98–407, title VIII, § 810(b), Aug. 28, 1984, 98 Stat. 1523, added item 2483.

SUBCHAPTER I—DEFENSE COMMISSARY AND EXCHANGE SYSTEMS

Sec.
2481. Defense commissary and exchange systems: existence and purpose.
2482. Commissary stores: criteria for establishment or closure; store size.
2483. Commissary stores: use of appropriated funds to cover operating expenses.
2484. Commissary stores: merchandise that may be sold; uniform surcharges and pricing.
2485. Commissary stores: operation.

AMENDMENTS

2006—Pub. L. 109–364, div. A, title X, § 1071(a)(18), Oct. 17, 2006, 120 Stat. 2399, inserted period at end of item 2481.

2004—Pub. L. 108–375, div. A, title VI, § 651(a)(3), Oct. 28, 2004, 118 Stat. 1964, added subchapter heading and items 2481 to 2485.

§ 2481. Defense commissary and exchange systems: existence and purpose

(a) SEPARATE SYSTEMS.—The Secretary of Defense shall operate, in the manner provided by this chapter and other provisions of law, a world-wide system of commissary stores and a separate world-wide system of exchange stores. The stores of each system may sell, at reduced prices, food and other merchandise to members of the uniformed services on active duty, members of the uniformed services entitled to retired pay, dependents of such members, and persons authorized to use the system under chapter 54 of this title. Any reference in this chapter to ''the exchange system'' shall be treated as referring to each separate administrative entity within the Department of Defense through which the Secretary has implemented the requirement under this subsection for a world-wide system of exchange stores.

(b) PURPOSE OF SYSTEMS.—The defense commissary system and the exchange system are intended to enhance the quality of life of members of the uniformed services, retired members, and dependents of such members, and to support military readiness, recruitment, and retention.

(c) OVERSIGHT.—(1) The Secretary of Defense shall designate a senior official of the Department of Defense to oversee the operation of both the defense commissary system and the exchange system.

(2) The Secretary of Defense shall establish an executive governing body to provide advice to the senior official designated under paragraph (1) regarding the operation of the defense commissary and exchange systems and to ensure the complementary operation of the systems.

(3)(A) The Secretary of Defense shall develop and implement a comprehensive strategy to optimize management practices across the defense commissary system and the exchange system that reduce reliance of those systems on appropriated funding without reducing benefits to the patrons of those systems or the revenue generated by nonappropriated fund entities or instrumentalities of the Department of Defense for the morale, welfare, and recreation of members of the armed forces.

(B) The Secretary shall ensure that savings generated due to such optimization practices are shared by the defense commissary system and the exchange system through contracts or agreements that appropriately reflect the participation of the systems in the development and implementation of such practices.

(C) If the Secretary determines that the reduced reliance on appropriated funding pursuant to subparagraph (A) is insufficient to maintain the benefits to the patrons of the defense commissary system, and if the Secretary converts the defense commissary system to a non-appropriated fund entity or instrumentality pursuant to paragraph (1) of section 2484(j) of this title, the Secretary shall transfer appropriated funds pursuant to paragraph (2) of such section to ensure the maintenance of such benefits.

(4) On not less than a quarterly basis, the Secretary shall provide to the congressional defense committees a briefing on the defense commissary system, including—

(A) an assessment of the savings the system provides patrons;

(B) the status of implementing section 2484(i) of this title;

(C) the status of implementing section 2484(j) of this title, including whether the system requires any appropriated funds pursuant to paragraph (2) of such section;

(D) the status of carrying out a program for such system to sell private label merchandise; and

(E) any other matters the Secretary considers appropriate.

(d) REDUCED PRICES DEFINED.—In this section, the term ''reduced prices'' means prices for food and other merchandise determined using the price setting process specified in section 2484 of this title.

(Added Pub. L. 108–375, div. A, title VI, § 651(a)(3), Oct. 28, 2004, 118 Stat. 1965; amended Pub. L. 114–328, div. A, title VI, § 661(a), (f), Dec. 23, 2016, 130 Stat. 2169, 2172.)

PRIOR PROVISIONS

A prior section 2481, added Pub. L. 108–136, div. A, title VI, § 652(a), Nov. 24, 2003, 117 Stat. 1522, related to the existence of defense commissary system and exchange stores system, prior to repeal by Pub. L. 108–375, div. A, title VI, § 651(a)(1), Oct. 28, 2004, 118 Stat. 1964.

Another prior section 2481 was renumbered section 2686 of this title.

AMENDMENTS

2016—Subsec. (a). Pub. L. 114–328, § 661(f), inserted at end '' Any reference in this chapter to 'the exchange system' shall be treated as referring to each separate administrative entity within the Department of Defense through which the Secretary has implemented the requirement under this subsection for a world-wide system of exchange stores.''

Subsec. (c)(3), (4). Pub. L. 114–328, § 661(a), added pars. (3) and (4).

DEFENSE RESALE SYSTEM MATTERS

Pub. L. 116–92, div. A, title VI, § 631(a)–(c), Dec. 20, 2019, 133 Stat. 1429, provided that:

''(a) IN GENERAL.—The Under Secretary of Defense for Personnel and Readiness shall, in coordination with the Chief Management Officer of the Department of Defense, maintain oversight of business transformation efforts of the defense commissary system and the exchange stores system in order to ensure the following:

''(1) Development of an intercomponent business strategy that maximizes efficiencies and results in a viable defense resale system in the future.

''(2) Preservation of patron savings and satisfaction from and in the defense commissary system and exchange stores system.

''(3) Sustainment of financial support of the defense commissary and exchange systems for morale, welfare, and recreation (MWR) services of the Armed Forces.

''(b) EXECUTIVE RESALE BOARD ADVICE ON OPERATIONS OF SYSTEMS.—The Executive Resale Board of the Department of Defense shall advise the Under Secretary on the implementation of sustainable, complementary operations of the defense commissary system and the exchange stores system.

''(c) INFORMATION TECHNOLOGY MODERNIZATION.—The Secretary of Defense shall, acting through the Under Secretary and with advice from the Executive Resale Board, require the Defense Commissary Agency and the Military Exchange Service to do as follows:

''(1) Field new technologies and best business practices for information technology for the defense resale system.

''(2) Implement cutting-edge marketing opportunities across the defense resale system.''

PLAN TO OBTAIN BUDGET-NEUTRALITY FOR THE DEFENSE COMMISSARY SYSTEM AND THE MILITARY EXCHANGE SYSTEM

Pub. L. 114–92, div. A, title VI, § 651, Nov. 25, 2015, 129 Stat. 854, provided that:

''(a) IN GENERAL.—Not later than March 1, 2016, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report setting forth a comprehensive plan to achieve by October 1, 2018, budget-neutrality in the delivery of commissary and exchange benefits while meeting the benchmarks set forth in subsection (c). In preparing the report, the Secretary shall consider the report required by section 634 of the Carl Levin and Howard P. 'Buck' McKeon National Defense Authorization Act for Fiscal Year 2015 (Public Law 113–291; 128 Stat. 3406) and any other previous reports, studies, and surveys of matters appropriate to the report.

''(b) REPORT ELEMENTS.—The report required by subsection (a) shall include the following:

''(1) A description of any modifications to the commissary and exchange benefit systems the Secretary considers appropriate to obtain budget-neutrality in the delivery of commissary and exchange benefits, including the following:

''(A) The establishment of common business processes, practices, and systems to exploit synergies between the operations of defense commissaries and exchanges and to optimize the operations of the resale system and the benefits provided by the commissaries and exchanges.

''(B) The privatization of the defense commissary system and the military exchange system, in whole or in part.

''(C) Engagement of major commercial grocery retailers or other private sector entities to determine their willingness to provide eligible beneficiaries with discount savings on grocery products and certain household goods.

''(D) The closure of commissaries in locations in close proximity to other commissaries or in locations where commercial alternatives, through major grocery retailers, may be available.

''(2) An analysis of different pricing constructs to improve or enhance the delivery of commissary and exchange benefits.

''(3) A description of the impact of any modifications described pursuant to paragraph (1) on Morale, Welfare and Recreation (MWR) quality-of-life programs.

''(4) Such recommendations for legislative action as the Secretary considers appropriate to achieve by October 1, 2018, budget-neutrality in the delivery of commissary and exchange benefits while meeting the benchmarks set forth in subsection (c).

''(c) BENCHMARKS.—The report required by subsection (a) shall ensure—

''(1) the maintenance of high levels of customer satisfaction in the delivery of commissary and exchange benefits;

''(2) the provision of high quality products; and

''(3) the sustainment of discount savings to eligible beneficiaries.

''(d) COMPTROLLER GENERAL ASSESSMENT OF PLAN.—Not later than 120 days after the submittal of the report required by subsection (a), the Comptroller General of the United States shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report setting forth an assessment by the Comptroller General of the plan to achieve budget-neutrality in the delivery of commissary and exchange benefits while meeting the benchmarks set forth in subsection (c) as set forth in the report required by subsection (a).

''(e) PILOT PROGRAMS.—

''(1) PROGRAMS AUTHORIZED.—After the reports required by subsections (a) and (d) have been submitted as described in such subsections, the Secretary may, notwithstanding any requirement in chapter 147 of title 10, United States Code, conduct one or more pilot programs to evaluate the feasibility and advisability of processes and methods for achieving budget-neutrality in the delivery of commissary and exchange benefits and other applicable benchmarks in accordance with this section. The Secretary may authorize any commissary or exchange, or private sector entity, participating in any such pilot program to establish appropriate prices in response to market conditions and customer demand, provided that the level of savings required by paragraph (3) is maintained.

''(2) BENCHMARKS.—If the Secretary conducts a pilot program under this subsection, the Secretary shall establish specific, measurable benchmarks for measuring success in the provision of high quality grocery goods and products, discount savings to patrons, and high levels of customer satisfaction while achieving budget-neutrality in the delivery of commissary and exchange benefits under the pilot program.

''(3) REQUIRED SAVINGS TO PATRONS.—The Secretary shall ensure that the level of savings to commissary and exchange patrons under any pilot program under this subsection is not less than the level of savings to such patrons before the implementation of such pilot program, as follows:

''(A) Before commencing a pilot program the Secretary shall establish a baseline of savings to patrons achieved for each commissary or exchange to participate in such pilot program by comparing prices charged by such commissary or exchange for a representative market basket of goods to prices charged by local competitors for the same market basket of goods.

''(B) After commencement of such pilot program, the Secretary shall ensure that each commissary or exchange, or private sector entity, participating in such pilot program conducts market-basket price comparisons not less than once a month and adjusts pricing as necessary to ensure that pricing achieves savings to patrons under such pilot program that are reasonably consistent with the baseline savings for the commissary or exchange established pursuant to subparagraph (A).

''(4) DURATION OF AUTHORITY.—The authority of the Secretary to carry out a pilot program under this subsection shall expire on the date that is five years after the date of the enactment of this Act [Nov. 25, 2015]. However, if a pilot program achieves budget-neutrality in the delivery of commissary and exchange benefits and other applicable benchmarks, as measured using the benchmarks required by paragraph (2), the Secretary may continue the pilot program for an additional period of up to five years.

''(5) REPORTS.—

''(A) INITIAL REPORTS.—If the Secretary conducts a pilot program under this subsection, the Secretary shall, not later than 30 days before commencing the pilot program, submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the pilot program, including the following:

''(i) A description of the pilot program.

''(ii) The provisions, if any, of chapter 147 of title 10, United States Code, that will be waived in the conduct of the pilot program.

''(B) FINAL REPORTS.—Not later than 90 days after the date of the completion of any pilot program under this subsection or the date of the commencement of an extension of a pilot program under paragraph (4), the Secretary shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the pilot program, including the following:

''(i) A description and assessment of the pilot program.

''(ii) Such recommendations for administrative or legislative action as the Secretary considers appropriate in light of the pilot program.''

§ 2482. Commissary stores: criteria for establishment or closure; store size

(a) PRIMARY CONSIDERATION FOR ESTABLISHMENT.—The needs of members of the armed forces on active duty and the needs of dependents of such members shall be the primary consideration whenever the Secretary of Defense—

(1) assesses the need to establish a commissary store; and

(2) selects the actual location for the store.

(b) STORE SIZE.—In determining the size of a commissary store, the Secretary of Defense shall take into consideration the number of all authorized patrons of the defense commissary system who are likely to use the store.

(c) CLOSURE CONSIDERATIONS.—(1) Whenever assessing whether to close a commissary store, the effect of the closure on the quality of life of members and dependents referred to in subsection (a) who use the store and on the welfare and security of the military community in which the commissary is located shall be a primary consideration.

(2) Whenever assessing whether to close a commissary store, the Secretary of Defense shall also consider the effect of the closure on the quality of life of members of the reserve components of the armed forces.

(d) CONGRESSIONAL NOTIFICATION.—(1) The closure of a commissary store in the United States shall not take effect until the end of the 90-day period beginning on the date on which the Secretary of Defense submits to Congress written notice of the reasons supporting the closure. The written notice shall include an assessment of the impact closure will have on the quality of life for military patrons and the welfare and security of the military community in which the commissary is located.

(2) Paragraph (1) shall not apply in the case of the closure of a commissary store as part of the closure of a military installation under a base closure law.

(Added Pub. L. 108–375, div. A, title VI, § 651(a)(3), Oct. 28, 2004, 118 Stat. 1965; amended Pub. L. 112–81, div. A, title X, § 1064(6), Dec. 31, 2011, 125 Stat. 1587.)

PRIOR PROVISIONS

A prior section 2482 was renumbered section 2485 of this title.

A prior section 2482a was renumbered section 2492 of this title.

AMENDMENTS

2011—Subsec. (d)(1). Pub. L. 112–81 inserted ''in the United States'' after ''commissary store''.

PROHIBITION ON CONSOLIDATION OR OTHER ORGANIZATIONAL CHANGES OF DEPARTMENT OF DEFENSE RETAIL SYSTEMS

Pub. L. 105–261, div. A, title III, § 367, Oct. 17, 1998, 112 Stat. 1987, which provided that the operation and administration of the defense retail systems could not be consolidated or otherwise merged unless the consolidation or merger was specifically authorized by a law enacted after Oct. 17, 1998, was repealed by Pub. L. 108–375, div. A, title VI, § 651(e)(3), Oct. 28, 2004, 118 Stat. 1972.

§ 2483. Commissary stores: use of appropriated funds to cover operating expenses

(a) OPERATION OF AGENCY AND SYSTEM.—Except as otherwise provided in this title, the operation of the Defense Commissary Agency and the defense commissary system shall be funded using such amounts as are appropriated for such purpose.

(b) OPERATING EXPENSES OF COMMISSARY STORES.—Appropriated funds shall be used to cover the expenses of operating commissary stores and central product processing facilities of the defense commissary system. For purposes of this subsection, operating expenses include the following:

(1) Salaries and wages of employees of the United States, host nations, and contractors supporting commissary store operations.

(2) Utilities.

(3) Communications.

(4) Operating supplies and services.

(5) Second destination transportation costs within or outside the United States.

(6) Any cost associated with above-store-level management or other indirect support of a commissary store or a central product processing facility, including equipment maintenance and information technology costs.

(7) Advertising of commissary sales on materials available within commissary stores and at other on-base locations.

(c) SUPPLEMENTAL FUNDS FOR COMMISSARY OPERATIONS.—Amounts appropriated to cover the expenses of operating the Defense Commissary Agency and the defense commissary system may be supplemented with additional funds from manufacturers' coupon redemption fees, handling fees for tobacco products, and other amounts received as reimbursement for other support activities provided by commissary activities. Such appropriated amounts may also be supplemented with additional funds derived from improved management practices implemented pursuant to sections 2481(c)(3) and 2487(c) of this title and the variable pricing program implemented pursuant to section 2484(i) of this title.

(Added Pub. L. 98–525, title XIV, § 1401(i)(1), Oct. 19, 1984, 98 Stat. 2619, § 2484; amended Pub. L. 106–398, § 1 [[div. A], title III, § 331(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–59; Pub. L. 108–136, div. A, title VI, § 654, Nov. 24, 2003, 117 Stat. 1523; renumbered § 2483, Pub. L. 108–375, div. A, title VI, § 651(a)(2), (4), Oct. 28, 2004, 118 Stat. 1964, 1966; Pub. L. 114–328, div. A, title VI, § 661(b), Dec. 23, 2016, 130 Stat. 2169; Pub. L. 116–92, div. A, title VI, § 631(d), Dec. 20, 2019, 133 Stat. 1429.)

PRIOR PROVISIONS

A prior section 2483, added Pub. L. 107–107, div. A, title III, § 332(a), Dec. 28, 2001, 115 Stat. 1058, related to reimbursement for use of commissary facilities by military departments, prior to repeal by Pub. L. 108–375, div. A, title VI, § 651(a)(1), Oct. 28, 2004, 118 Stat. 1964.

Another prior section 2483 was renumbered section 2916 of this title.

Provisions similar to those in this section were contained in the following appropriation acts:

Oct. 12, 1984, Pub. L. 98–473, title I, § 101(h) [title VIII, § 8010], 98 Stat. 1904, 1924.

Dec. 8, 1983, Pub. L. 98–212, title VII, § 713, 97 Stat. 1440.

Dec. 21, 1982, Pub. L. 97–377, title I, § 101(c) [title VII, § 714], 96 Stat. 1833, 1852.

Dec. 29, 1981, Pub. L. 97–114, title VII, § 714, 95 Stat. 1580.

Dec. 15, 1980, Pub. L. 96–527, title VII, § 715, 94 Stat. 3083.

Dec. 21, 1979, Pub. L. 96–154, title VII, § 715, 93 Stat. 1155.

Oct. 13, 1978, Pub. L. 95–457, title VIII, § 815, 92 Stat. 1246.

Sept. 21, 1977, Pub. L. 95–111, title VIII, § 814, 91 Stat. 902.

Sept. 22, 1976, Pub. L. 94–419, title VII, § 714, 90 Stat. 1293.

Feb. 9, 1976, Pub. L. 94–212, title VII, § 714, 90 Stat. 171.

Oct. 8, 1974, Pub. L. 93–437, title VIII, § 814, 88 Stat. 1227.

Jan. 2, 1974, Pub. L. 93–238, title VII, § 714, 87 Stat. 1040.

Oct. 26, 1972, Pub. L. 92–570, title VII, § 714, 86 Stat. 1198.

Dec. 18, 1971, Pub. L. 92–204, title VII, § 714, 85 Stat. 729.

Jan. 11, 1971, Pub. L. 91–668, title VIII, § 814, 84 Stat. 2032.

Dec. 29, 1969, Pub. L. 91–171, title VI, § 614, 83 Stat. 482.

Oct. 17, 1968, Pub. L. 90–580, title V, § 513, 82 Stat. 1132.

Sept. 29, 1967, Pub. L. 90–96, title VI, § 613, 81 Stat. 244.

Oct. 15, 1966, Pub. L. 89–687, title VI, § 613, 80 Stat. 993.

Sept. 29, 1965, Pub. L. 89–213, title VI, § 613, 79 Stat. 875.

Aug. 19, 1964, Pub. L. 88–446, title V, § 513, 78 Stat. 477.

Oct. 17, 1963, Pub. L. 88–149, title V, § 513, 77 Stat. 266.

Aug. 9, 1962, Pub. L. 87–577, title V, § 513, 76 Stat. 330.

Aug. 17, 1961, Pub. L. 87–144, title VI, § 613, 75 Stat. 377.

July 7, 1960, Pub. L. 86–601, title V, § 513, 74 Stat. 351.

Aug. 18, 1959, Pub. L. 86–166, title V, § 613, 73 Stat. 380.

Aug. 22, 1958, Pub. L. 85–724, title VI, § 613, 72 Stat. 725.

Aug. 2, 1957, Pub. L. 85–117, title VI, § 614, 71 Stat. 325.

July 2, 1956, ch. 488, title VI, § 614, 70 Stat. 469.

July 13, 1955, ch. 358, title VI, § 617, 69 Stat. 317.

June 30, 1954, ch. 432, title VII, § 717, 68 Stat. 353.

Aug. 1, 1953, ch. 305, title VI, § 624, 67 Stat. 353.

July 10, 1952, ch. 630, title VI, § 627, 66 Stat. 535.

Oct. 18, 1951, ch. 512, title VI, § 628, 65 Stat. 449.

AMENDMENTS

2019—Subsec. (b)(7). Pub. L. 116–92 added par. (7).

2016—Subsec. (c). Pub. L. 114–328 inserted at end ''Such appropriated amounts may also be supplemented with additional funds derived from improved management practices implemented pursuant to sections 2481(c)(3) and 2487(c) of this title and the variable pricing program implemented pursuant to section 2484(i) of this title.''

2004—Pub. L. 108–375 renumbered section 2484 of this title as this section.

2003—Subsec. (a). Pub. L. 108–136, § 654(a)(1), substituted ''shall'' for ''may''.

Subsec. (b). Pub. L. 108–136, § 654(a)(2), substituted ''shall'' for ''may'' in introductory provisions.

Subsec. (c). Pub. L. 108–136, § 654(b), added subsec. (c).

2000—Pub. L. 106–398 amended section catchline and text generally. Prior to amendment, text consisted of subsecs. (a) to (d) providing that funds available to the

Department of Defense could be used to pay for certain costs in connection with the operation of commissary stores only on a reimbursable basis and allowed transportation and utilities to be furnished for the operation of those stores outside of the United States or in Alaska and Hawaii.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–398, §1 [[div. A], title III, §331(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–59, provided that: ''The amendments made by this section [amending this section] shall take effect on October 1, 2001.''

EFFECTIVE DATE

Section effective Oct. 1, 1985, see section 1404 of Pub. L. 98–525, set out as a note under section 520b of this title.

§ 2484. Commissary stores: merchandise that may be sold; uniform surcharges and pricing

(a) IN GENERAL.—As provided in section 2481(a) of this title, commissary stores are intended to be similar to commercial grocery stores and may sell merchandise similar to that sold in commercial grocery stores.

(b) AUTHORIZED COMMISSARY MERCHANDISE CATEGORIES.—Merchandise sold in, at, or by commissary stores may include items in the following categories:

(1) Meat, poultry, seafood, and fresh-water fish.

(2) Nonalcoholic beverages.

(3) Produce.

(4) Grocery food, whether stored chilled, frozen, or at room temperature.

(5) Dairy products.

(6) Bakery and delicatessen items.

(7) Nonfood grocery items.

(8) Tobacco products.

(9) Health and beauty aids.

(10) Magazines and periodicals.

(c) INCLUSION OF OTHER MERCHANDISE ITEMS.—(1) The Secretary of Defense may authorize the sale in, at, or by commissary stores of merchandise not covered by a category specified in subsection (b). The Secretary shall notify Congress of all merchandise authorized for sale pursuant to this paragraph, as well as the removal of any such authorization.

(2) Notwithstanding paragraph (1), the Department of Defense military resale system shall continue to maintain the exclusive right to operate convenience stores, shopettes, and troop stores, including such stores established to support contingency operations.

(3)(A) A military exchange shall be the vendor for the sale of tobacco products in commissary stores and may be the vendor for such merchandise as may be authorized for sale in commissary stores under paragraph (1). Except as provided in subparagraph (B), subsections (d) and (e) shall not apply to the pricing of such an item when a military exchange serves as the vendor of the item. Commissary store and exchange prices shall be comparable for such an item.

(B) When a military exchange is the vendor of tobacco products or other merchandise authorized for sale in a commissary store under paragraph (1), any revenue above the cost of procuring the merchandise shall be allocated as if the revenue were a uniform sales price surcharge described in subsection (d).

(d) UNIFORM SALES PRICE SURCHARGE.—The Secretary of Defense shall apply a uniform surcharge equal to five percent on the sales prices established under subsection (e) for each item of merchandise sold in, at, or by commissary stores.

(e) SALES PRICE ESTABLISHMENT.—(1) The Secretary of Defense shall establish the sales price of each item of merchandise sold in, at, or by commissary stores at the level that will recoup the actual product cost of the item.

(2) Any change in the pricing policies for merchandise sold in, at, or by commissary stores shall not take effect until the Secretary of Defense submits written notice of the proposed change to Congress and a period of 90 days of continuous session of Congress expires following the date on which notice was received. For purposes of this paragraph, the continuity of a session of Congress is broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment or recess of more than three days to a day certain are excluded in a computation of such 90-day period.

(3) The sales price of merchandise and services sold in, at, or by commissary stores shall be adjusted to cover the following:

(A) The cost of first destination commercial transportation of the merchandise in the United States to the place of sale.

(B) The actual or estimated cost of shrinkage, spoilage, and pilferage of merchandise under the control of commissary stores.

(f) PROCUREMENT OF COMMERCIAL PRODUCTS USING PROCEDURES OTHER THAN COMPETITIVE PROCEDURES.—The Secretary of Defense may use the exception provided in section 2304(c)(5) of this title for the procurement of any commercial product (including brand-name and generic items) for resale in, at, or by commissary stores.

(g) SPECIAL RULES FOR CERTAIN MERCHANDISE.—(1) Notwithstanding the general requirement that merchandise sold in, at, or by commissary stores be commissary store inventory, the Secretary of Defense may authorize the sale of tobacco products as noncommissary store inventory. Except as provided in paragraph (2), subsections (d) and (e) shall not apply to the pricing of such merchandise items.

(2) When tobacco products are authorized for sale in a commissary store as noncommissary store inventory, any revenue above the cost of procuring the tobacco products shall be allocated as if the revenue were a uniform sales price surcharge described in subsection (d).

(h) USE OF SURCHARGE FOR CONSTRUCTION, REPAIR, IMPROVEMENT, AND MAINTENANCE.—(1)(A) The Secretary of Defense may use the proceeds from the surcharges imposed under subsection (d) only—

(i) to acquire (including acquisition by lease), construct, convert, expand, improve, repair, maintain, and equip the physical infrastructure of commissary stores and central product processing facilities of the defense commissary system; and

(ii) to cover environmental evaluation and construction costs related to activities described in clause (i), including costs for surveys, administration, overhead, planning, and design.

(B) In subparagraph (A), the term ''physical infrastructure'' includes real property, utilities, and equipment (installed and free standing and including computer equipment), necessary to provide a complete and usable commissary store or central product processing facility.

(2)(A) The Secretary of Defense may authorize a nonappropriated fund instrumentality of the United States to enter into a contract for construction of a shopping mall or similar facility for a commissary store and one or more nonappropriated fund instrumentality activities. The Secretary may use the proceeds of surcharges under subsection (d) to reimburse the nonappropriated fund instrumentality for the portion of the cost of the contract that is attributable to construction of the commissary store or to pay the contractor directly for that portion of such cost.

(B) In subparagraph (A), the term ''construction'', with respect to a facility, includes acquisition, conversion, expansion, installation, or other improvement of the facility.

(3)(A) The Secretary of Defense may use the proceeds derived from surcharges imposed under subsection (d) in connection with sales of commissary merchandise through initiatives described in subparagraph (B) to offset the cost of such initiatives.

(B) Subparagraph (A) applies with respect to initiatives, utilizing temporary and mobile equipment, intended to provide members of reserve components, retired members, and other persons eligible for commissary benefits, but without reasonable access to commissary stores, improved access to commissary merchandise.

(4) The Secretary of Defense, with the approval of the Director of the Office of Management and Budget, may obligate anticipated proceeds from the surcharges under subsection (d) for any use specified in paragraph (1), (2), or (3), without regard to fiscal year limitations, if the Secretary determines that such obligation is necessary to carry out any use of such adjustments or surcharges specified in such paragraph.

(5) Revenues received by the Secretary of Defense from the following sources or activities of commissary store facilities shall be available for the purposes set forth in paragraphs (1), (2), and (3):

(A) Sale of recyclable materials.

(B) Sale of excess and surplus property.

(C) License fees.

(D) Royalties.

(E) Fees paid by sources of products in order to obtain favorable display of the products for resale, known as business related management fees.

(i) VARIABLE PRICING PROGRAM.—(1) Notwithstanding subsection (e), and subject to subsection (k), the Secretary of Defense may establish a variable pricing program pursuant to which prices may be established in response to market conditions and customer demand, in accordance with the requirements of this subsection. Notwithstanding the amount of the uniform surcharge assessed in subsection (d), the Secretary may provide for an alternative surcharge of not more than five percent of sales proceeds under the variable pricing program to be made available for the purposes specified in subsection (h).

(2) Subject to subsection (k), before establishing a variable pricing program under this subsection, the Secretary shall establish the following:

(A) Specific, measurable benchmarks for success in the provision of high quality grocery merchandise, discount savings to patrons, and levels of customer satisfaction while achieving savings for the Department of Defense.

(B) A baseline of overall savings to patrons achieved by commissary stores prior to the initiation of the variable pricing program, based on a comparison of prices charged by those stores on a regional basis with prices charged by relevant local competitors for a representative market basket of goods.

(3) The Secretary shall ensure that the defense commissary system implements the variable pricing program by conducting price comparisons using the methodology established for paragraph (2)(B) and adjusting pricing as necessary to ensure that pricing in the variable pricing program achieves overall savings to patrons that are consistent with the baseline savings established for the relevant region pursuant to such paragraph.

(j) CONVERSION TO NONAPPROPRIATED FUND ENTITY OR INSTRUMENTALITY.—(1) Subject to subsection (k), if the Secretary of Defense determines that the variable pricing program has met the benchmarks for success established pursuant to paragraph (2)(A) of subsection (i) and the savings requirements established pursuant to paragraph (3) of such subsection over a period of at least six months, the Secretary may convert the defense commissary system to a nonappropriated fund entity or instrumentality, with operating expenses financed in whole or in part by receipts from the sale of products and the sale of services. Upon such conversion, appropriated funds shall be transferred to the defense commissary system only in accordance with paragraph (2) or section 2491 of this title. The requirements of section 2483 of this title shall not apply to the defense commissary system operating as a nonappropriated fund entity or instrumentality.

(2) If the Secretary determines that the defense commissary system operating as a nonappropriated fund entity or instrumentality is likely to incur a loss in any fiscal year as a result of compliance with the savings requirement established in subsection (i), the Secretary shall authorize a transfer of appropriated funds available for such purpose to the commissary system in an amount sufficient to offset the anticipated loss. Any funds so transferred shall be considered to be nonappropriated funds for such purpose.

(3)(A) The Secretary may identify positions of employees in the defense commissary system who are paid with appropriated funds whose status may be converted to the status of an employee of a nonappropriated fund entity or instrumentality.

(B) The status and conversion of employees in a position identified by the Secretary under subparagraph (A) shall be addressed as provided in section 2491(c) of this title for employees in morale, welfare, and recreation programs, includ-

ing with respect to requiring the consent of such employee to be so converted.

(C) No individual who is an employee of the defense commissary system as of the date of the enactment of this subsection shall suffer any loss of or decrease in pay as a result of a conversion made under this paragraph.

(k) OVERSIGHT REQUIRED TO ENSURE CONTINUED BENEFIT TO PATRONS.—(1) With respect to each action described in paragraph (2), the Secretary of Defense may not carry out such action until—

(A) the Secretary provides to the congressional defense committees a briefing on such action, including a justification for such action; and

(B) a period of 30 days has elapsed following such briefing.

(2) The actions described in this paragraph are the following:

(A) Establishing the representative market basket of goods pursuant to subsection (i)(2)(B).

(B) Establishing the variable pricing program under subsection (i)(1).

(C) Converting the defense commissary system to a nonappropriated fund entity or instrumentality under subsection (j)(1).

(Added Pub. L. 99–661, div. A, title III, § 313(a), Nov. 14, 1986, 100 Stat. 3852, § 2486; amended Pub. L. 100–180, div. A, title III, § 313(a)(1), (2), Dec. 4, 1987, 101 Stat. 1073, 1074; Pub. L. 104–201, div. A, title III, § 342(a), Sept. 23, 1996, 110 Stat. 2489; Pub. L. 105–85, div. A, title III, §§ 372(a)–(e), 373, Nov. 18, 1997, 111 Stat. 1706, 1707; Pub. L. 105–261, div. A, title III, § 364, Oct. 17, 1998, 112 Stat. 1986; Pub. L. 106–65, div. A, title X, § 1066(a)(21), Oct. 5, 1999, 113 Stat. 771; Pub. L. 106–398, § 1 [[div. A], title III, §§ 332(a), 334], Oct. 30, 2000, 114 Stat. 1654, 1654A–59, 1654A–60; Pub. L. 107–314, div. A, title X, § 1041(a)(14), Dec. 2, 2002, 116 Stat. 2645; renumbered § 2484 and amended Pub. L. 108–375, div. A, title VI, § 651(a)(2), (4), (5), Oct. 28, 2004, 118 Stat. 1964, 1966; Pub. L. 109–364, div. A, title VI, § 661, title X, § 1071(g)(6), Oct. 17, 2006, 120 Stat. 2262, 2402; Pub. L. 110–417, [div. A], title VI, § 641, Oct. 14, 2008, 122 Stat. 4493; Pub. L. 113–291, div. A, title VI, § 631, Dec. 19, 2014, 128 Stat. 3405; Pub. L. 114–328, div. A, title VI, § 661(c), Dec. 23, 2016, 130 Stat. 2170; Pub. L. 115–232, div. A, title VIII, § 836(e)(11), Aug. 13, 2018, 132 Stat. 1870; Pub. L. 116–283, div. A, title XVIII, § 1883(b)(2), Jan. 1, 2021, 134 Stat. 4294.)

AMENDMENT OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1883(b)(2), Jan. 1, 2021, 134 Stat. 4151, 4294, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, except as otherwise provided in title XVIII of Pub. L. 116–283, in title 10, United States Code, each reference in the text of such title to a source section that is redesignated by title XVIII of Pub. L. 116–283, is amended by striking such reference and inserting a reference to the appropriate section as so redesignated. See 2021 Amendment note below.

REFERENCES IN TEXT

The date of the enactment of this subsection, referred to in subsec. (j)(3)(C), is the date of enactment of Pub. L. 114–328, which was approved Dec. 23, 2016.

PRIOR PROVISIONS

A prior section 2484 was renumbered section 2483 of this title.

AMENDMENTS

2021—Subsec. (f). Pub. L. 116–283 substituted ''section 3204(a)(5)'' for ''section 2304(c)(5)''.

2018—Subsec. (f). Pub. L. 115–232 substituted ''Commercial Products'' for ''Commercial Items'' in heading and substituted ''commercial product'' for ''commercial item'' in text.

2016—Subsecs. (i) to (k). Pub. L. 114–328 added subsecs. (i) to (k).

2014—Subsec. (f). Pub. L. 113–291 amended subsec. (f) generally. Prior to amendment, text read as follows: ''The Secretary of Defense may not use the exception provided in section 2304(c)(5) of this title regarding the procurement of a brand-name commercial item for resale in, at, or by commissary stores unless the commercial item is regularly sold outside of commissary stores under the same brand name as the name by which the commercial item will be sold in, at, or by commissary stores. In determining whether a brand name commercial item is regularly sold outside of commissary stores, the Secretary shall consider only sales of the item on a regional or national basis by commercial grocery or other retail operations consisting of multiple stores.''

2008—Subsec. (h)(3) to (5). Pub. L. 110–417 added par. (3), redesignated former pars. (3) and (4) as (4) and (5), respectively, and substituted ''paragraph (1), (2), or (3)'' for ''paragraph (1) or (2)'' in par. (4).

2006—Pub. L. 109–364, § 1071(g)(6), made technical correction to directory language of Pub. L. 108–375, § 651(a)(5)(C). See 2004 Amendment notes for subsecs. (a) to (d) below.

Subsec. (c)(3). Pub. L. 109–364, § 661(a), designated existing provisions as subpar. (A), substituted ''Except as provided in subparagraph (B), subsections'' for ''Subsections'', and added subpar. (B).

Subsec. (g). Pub. L. 109–364, § 661(b), designated existing provisions as par. (1), substituted ''Except as provided in paragraph (2), subsections'' for ''Subsections'', and added par. (2).

2004—Pub. L. 108–375, § 651(a)(2), (4), renumbered section 2486 of this title as this section.

Subsecs. (a) to (c). Pub. L. 108–375, § 651(a)(5)(C), as amended by Pub. L. 109–364, § 1071(g)(6), added subsecs. (a) to (c).

Pub. L. 108–375, § 651(a)(5)(A), struck out subsecs. (a) to (c) which related to operation of the Defense Commissary Agency and the defense commissary system, use of funds to cover expenses of operating commissary stores and central product processing facilities, and supplemental funds for commissary operations, respectively.

Subsec. (d). Pub. L. 108–375, § 651(a)(5)(C), as amended by Pub. L. 109–364, § 1071(g)(6), added subsec. (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 108–375, § 651(a)(5)(B), redesignated subsec. (d) as (e). Former subsec. (e) redesignated (f).

Subsec. (e)(1). Pub. L. 108–375, § 651(a)(5)(D), struck out ''(consistent with this section and section 2685 of this title)'' before period at end.

Subsec. (f). Pub. L. 108–375, § 651(a)(5)(B), redesignated subsec. (e) as (f). Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 108–375, § 651(a)(5)(E), substituted ''Subsections (d) and (e)'' for ''Subsections (c) and (d)'' before ''shall not apply to the pricing''.

Pub. L. 108–375, § 651(a)(5)(A), (B), redesignated subsec. (f) as (g) and struck out heading and text of former subsec. (g), which related to the imposition of charges by the Secretary of Defense for the collection of dishonored checks.

Subsec. (h). Pub. L. 108–375, § 651(a)(5)(F), added subsec. (h).

2002—Subsec. (b)(12). Pub. L. 107–314 substituted '', except that the Secretary shall notify Congress of any addition of, or change in, a merchandise category under this paragraph.'' for '', except that the Secretary shall submit to Congress, not later than March 1 of each year, a report describing—

''(A) any addition of, or change in, a merchandise category proposed to be made under this paragraph during the one-year period beginning on that date; and

''(B) those additions and changes in merchandise categories actually made during the preceding one-year period.''

2000—Subsec. (b)(11), (12). Pub. L. 106–398, § 1 [[div. A], title III, § 334(a)], added par. (11) and redesignated former par. (11) as (12).

Subsec. (c). Pub. L. 106–398, § 1 [[div. A], title III, § 332(a)(1)], substituted ''subsection (d) or section'' for ''section 2484(b) or''.

Subsec. (d)(1). Pub. L. 106–398, § 1 [[div. A], title III, § 332(a)(2)(A)], substituted ''section 2685'' for ''sections 2484 and 2685''.

Subsec. (d)(3). Pub. L. 106–398, § 1 [[div. A], title III, § 332(a)(2)(B)], added par. (3).

Subsec. (f). Pub. L. 106–398, § 1 [[div. A], title III, § 334(b)], struck out ''(1)'' before ''Notwithstanding'', substituted ''tobacco products'' for ''items in the merchandise categories specified in paragraph (2)'', and struck out par. (2) which read as follows: ''The merchandise categories referred to in paragraph (1) are as follows:

''(A) Magazines and other periodicals.

''(B) Tobacco products.''

1999—Subsec. (c). Pub. L. 106–65 substituted ''November 18, 1997,'' for ''the date of the enactment of the National Defense Authorization Act for Fiscal Year 1998,'' in second sentence.

1998—Subsec. (g). Pub. L. 105–261 added subsec. (g).

1997—Subsec. (a). Pub. L. 105–85, § 372(e)(1), inserted heading.

Subsec. (b). Pub. L. 105–85, § 372(a)(1), inserted heading and substituted ''Merchandise sold in, at, or by commissary stores may include items only in the following categories:'' for ''Merchandise sold in commissary stores may include items in the following categories:'' in introductory provisions.

Subsec. (b)(11). Pub. L. 105–85, § 372(a)(2), amended par. (11) generally. Prior to amendment, par. (11) read as follows: ''Other categories designated in regulations prescribed by the Secretary of a military department and approved by the Secretary of Defense.''

Subsec. (c). Pub. L. 105–85, § 372(b), inserted heading, substituted ''in, at, or by commissary stores.'' for ''in commissary stores.'', and inserted at end ''Effective on the date of the enactment of the National Defense Authorization Act for Fiscal Year 1998, the uniform percentage shall be equal to five percent and may not be changed except by a law enacted after such date.''

Subsec. (d). Pub. L. 105–85, § 372(c), inserted heading and amended text generally. Prior to amendment, text read as follows: ''The Secretary of Defense shall prescribe regulations establishing uniform pricing policies for merchandise authorized for sale by this section. The policies in the regulations shall—

''(1) require the establishment of a sales price of each item of merchandise at a level which will recoup the actual product cost of the item (consistent with this section and sections 2484 and 2685 of this title); and

''(2) promote the lowest practical price of merchandise sold at commissary stores.''

Subsec. (e). Pub. L. 105–85, § 373, inserted at end ''In determining whether a brand name commercial item is regularly sold outside of commissary stores, the Secretary shall consider only sales of the item on a regional or national basis by commercial grocery or other retail operations consisting of multiple stores.''

Pub. L. 105–85, § 372(e)(2), inserted heading and substituted ''in, at, or by commissary stores'' for ''in commissary stores'' in two places.

Subsec. (f). Pub. L. 105–85, § 372(d), added subsec. (f).

1996—Subsec. (e). Pub. L. 104–201 added subsec. (e).

1987—Pub. L. 100–180, § 313(a)(2), inserted ''and pricing'' in section catchline.

Subsec. (d). Pub. L. 100–180, § 313(a)(1), added subsec. (d).

Effective Date of 2021 Amendment

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

Effective Date of 2018 Amendment

Amendment by Pub. L. 115–232 effective Jan. 1, 2020, subject to a savings provision, see section 836(h) of Pub. L. 115–232, set out as an Effective Date of 2018 Amendment; Savings Provision note under section 453b of Title 6, Domestic Security.

Effective Date of 2006 Amendment

Pub. L. 109–364, div. A, title X, § 1071(g), Oct. 17, 2006, 120 Stat. 2402, provided that the amendment made by section 1071(g)(6) is effective as of Oct. 28, 2004, and as if included in Pub. L. 108–375 as enacted.

Effective Date of 2000 Amendment

Pub. L. 106–398, § 1 [[div. A], title III, § 332(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–60, provided that: ''The amendments made by this section [amending this section] shall take effect on October 1, 2001.''

Regulations

Pub. L. 100–180, div. A, title III, § 313(b), Dec. 4, 1987, 101 Stat. 1074, required Secretary of Defense to prescribe regulations required by subsec. (d) of this section not later than 90 days after Dec. 4, 1987.

Savings Provision

Pub. L. 104–201, div. A, title III, § 342(b), Sept. 23, 1996, 110 Stat. 2489, provided that: ''Section 2486(e) [now 2484(e)] of title 10, United States Code, as added by subsection (a), shall not affect the terms, conditions, or duration of any contract or other agreement entered into by the Secretary of Defense before the date of the enactment of this Act [Sept. 23, 1996] for the procurement of commercial items for resale in commissary stores.''

Procurement by Commissary Stores of Certain Locally Sourced Products

Pub. L. 116–92, div. A, title VI, § 632, Dec. 20, 2019, 133 Stat. 1429, provided that: ''The Secretary of Defense shall ensure that the dairy products and fruits and vegetables procured for commissary stores under the defense commissary system are, to the extent practicable and while maintaining mandated patron savings, locally sourced in order to ensure the availability of the freshest possible dairy products and fruits and vegetables for patrons of the stores.''

Operation of Defense Commissary System as a Nonappropriated Fund Entity

Pub. L. 114–328, div. A, title VI, § 661(g), Dec. 23, 2016, 130 Stat. 2172, provided that: ''In the event that the defense commissary system is converted to a nonappropriated fund entity or instrumentality as authorized by section 2484(j)(1) of title 10, United States Code, as added by subsection (c) of this section, the Secretary of Defense may—

''(1) provide for the transfer of commissary assets, including inventory and available funds, to the nonappropriated fund entity or instrumentality; and

"(2) ensure that revenues accruing to the defense commissary system are appropriately credited to the nonappropriated fund entity or instrumentality."

COMPETITIVE PRICING OF LEGAL CONSUMER TOBACCO PRODUCTS SOLD IN DEPARTMENT OF DEFENSE RETAIL STORES

Pub. L. 116–260, div. C, title VIII, § 8036, Dec. 27, 2020, 134 Stat. 1312, provided that: "The Secretary of Defense shall issue regulations to prohibit the sale of any tobacco or tobacco-related products in military resale outlets in the United States, its territories and possessions at a price below the most competitive price in the local community: *Provided*, That such regulations shall direct that the prices of tobacco or tobacco-related products in overseas military retail outlets shall be within the range of prices established for military retail system stores located in the United States."

Similar provisions were contained in the following appropriation acts:

Pub. L. 116–93, div. A, title VIII, § 8036, Dec. 20, 2019, 133 Stat. 2344.

Pub. L. 115–245, div. A, title VIII, § 8034, Sept. 28, 2018, 132 Stat. 3007.

Pub. L. 115–141, div. C, title VIII, § 8033, Mar. 23, 2018, 132 Stat. 471.

Pub. L. 115–31, div. C, title VIII, § 8034, May 5, 2017, 131 Stat. 254.

Pub. L. 114–113, div. C, title VIII, § 8033, Dec. 18, 2015, 129 Stat. 2358.

Pub. L. 113–235, div. C, title VIII, § 8073, Dec. 16, 2014, 128 Stat. 2271.

Pub. L. 113–291, div. A, title VI, § 633, Dec. 19, 2014, 128 Stat. 3405, provided that:

"(a) PROHIBITION ON BANNING SALE OF LEGAL CONSUMER TOBACCO PRODUCTS.—The Secretary of Defense and the Secretaries of the military departments may not take any action to implement any new policy that would ban the sale of any legal consumer tobacco product category sold as of January 1, 2014, within the defense retail systems or on any Department of Defense vessel at sea.

"(b) USE OF PRICES COMPARABLE TO LOCAL PRICES.—The Secretary of Defense shall issue regulations regarding the pricing of tobacco and tobacco-related products sold in an outlet of the defense retail systems inside the United States, including territories and possessions of the United States, to prohibit the sale of a product at a price below the most competitive price for that product in the local community.

"(c) APPLICATION TO OVERSEAS DEFENSE RETAIL SYSTEMS.—The regulations required by subsection (b) shall direct that the price of a tobacco or tobacco-related product sold in an outlet of the defense retail systems outside of the United States shall be within the range of prices established for that product in outlets of the defense retail systems inside the United States.

"(d) DEFENSE RETAIL SYSTEMS DEFINED.—In this section, the term 'defense retail systems' has the meaning given that term in section 2487(b)(2) of title 10, United States Code."

TEST PROGRAM OF SALE OF CERTAIN ITEMS IN COMMISSARY STORES

Pub. L. 108–375, div. A, title VI, § 651(g), Oct. 28, 2004, 118 Stat. 1972, provided that:

"(1) The Secretary of Defense may conduct a test program involving the sale of telephone cards, film, and one-time use cameras in not less than 10 commissary stores for a period selected by the Secretary, but not less than six months.

"(2) Within 90 days after the completion of the first year of the test program or within 90 days after the completion of the test program, whichever occurs first, the Secretary shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report containing the results of the test program. The report shall include an analysis of the impact of the sale of such items on the exchange dividend and such recommendations as the Secretary considers appropriate regarding legislative changes necessary to expand the sale of such items in commissary stores."

REPORT ON MERCHANDISE CATEGORIES

Pub. L. 105–85, div. A, title III, § 372(f), Nov. 18, 1997, 111 Stat. 1707, provided that, not later than 30 days after Nov. 18, 1997, the Secretary of Defense was to submit to Congress a report specifying the merchandise categories authorized for sale sold in, at, or by commissary stores pursuant to regulations prescribed under subsection (b)(11) of this section, as in effect before Nov. 18, 1997.

§ 2485. Commissary stores: operation

(a) PRIVATE OPERATION.—Under such regulations as the Secretary of Defense may approve, private persons may operate selected commissary store functions, except that such functions may not include functions relating to the procurement of products to be sold in a commissary store or functions relating to the overall management of a commissary system or the management of a commissary store. Such functions shall be carried out by personnel of the Department of Defense under regulations approved by the Secretary of Defense.

(b) CONTRACTS WITH OTHER AGENCIES AND INSTRUMENTALITIES.—(1) The Defense Commissary Agency, and any other agency of the Department of Defense that supports the operation of the commissary system, may enter into a contract or other agreement with another element of the Department of Defense or with another Federal department, agency, or instrumentality to provide or obtain services beneficial to the efficient management and operation of the commissary system. However, the Defense Commissary Agency may not pay for any such service provided by the United States Transportation Command any amount that exceeds the price at which the service could be procured through full and open competition, as such term is defined in section 107 of title 41.

(2) A commissary store operated by a nonappropriated fund instrumentality of the Department of Defense shall be operated in accordance with section 2483 of this title. Subject to such section, the Secretary of Defense may authorize a transfer of goods, supplies, and facilities of, and funds appropriated for, the Defense Commissary Agency or any other agency of the Department of Defense that supports the operation of the commissary system to a nonappropriated fund instrumentality for the operation of a commissary store.

(c) GOVERNING BOARD.—(1) Notwithstanding section 192(d) of this title, the Secretary of Defense shall establish a governing board for the commissary system to provide advice to the Secretary regarding the prudent operation of the commissary system and to assist in the overall supervision of the Defense Commissary Agency. The Secretary may authorize the board to have such supervisory authority as the Secretary considers appropriate to permit the board to carry out its responsibilities.

(2) The Secretary of Defense shall determine the membership of the governing board, which shall include, at a minimum, appropriate representatives from each military department.

The chairman of the governing board shall be a commissioned officer or member of the senior executive service who has demonstrated experience or knowledge relevant to the management of the defense commissary system. In selecting other members of the governing board, the Secretary shall give priority to persons with experience related to logistics, military personnel, military entitlements or other experiences of value of management of commissaries.

(3) The governing board shall be accountable only to the Secretary of Defense and to the civilian officer of the Department of Defense who is assigned the responsibility for the overall supervision of the Defense Commissary Agency pursuant to section 192(a) of this title. The Director of the Defense Commissary Agency shall be accountable to and report to the board.

(d) ASSIGNMENT OF ACTIVE DUTY MEMBERS.—(1) Except as provided in paragraph (2), members of the armed forces on active duty may not be assigned to the operation of a commissary store.

(2)(A) The Secretary of Defense may assign an officer on the active-duty list to serve as the Director of the Defense Commissary Agency.

(B) Not more than 18 members (in addition to the officer referred to in subparagraph (A)) of the armed forces on active duty may be assigned to the Defense Commissary Agency. Members who may be assigned under this subparagraph to regional headquarters of the agency shall be limited to enlisted members assigned to duty as advisers in the regional headquarters responsible for overseas commissaries and to veterinary specialists.

(e) REIMBURSEMENT FOR USE OF COMMISSARY FACILITIES BY MILITARY DEPARTMENTS.—(1) The Secretary of a military department shall pay the Defense Commissary Agency the amount determined under paragraph (2) for any use of a commissary facility by the military department for a purpose other than commissary sales or operations in support of commissary sales.

(2) The amount payable under paragraph (1) for use of a commissary facility by a military department shall be equal to the share of depreciation of the facility that is attributable to that use, as determined under regulations prescribed by the Secretary of Defense.

(3) The Director of the Defense Commissary Agency shall credit amounts paid under paragraph (1) for use of a facility to an appropriate account to which proceeds of a surcharge applied under section 2484(d) of this title are credited.

(4) This subsection applies with respect to a commissary facility that is acquired, constructed, converted, expanded, installed, or otherwise improved (in whole or in part) with the proceeds of a surcharge applied under section 2484(d) of this title.

(f) DONATION OF UNUSABLE FOOD.—(1) The Secretary of Defense may donate food described in paragraph (2) to any of the following entities:

(A) A charitable nonprofit food bank that is designated by the Secretary of Defense or the Secretary of Health and Human Services as authorized to receive such donations.

(B) A State or local agency that is designated by the Secretary of Defense or the Secretary of Health and Human Services as authorized to receive such donations.

(C) A chapter or other local unit of a recognized national veterans organization that provides services to persons without adequate shelter and is designated by the Secretary of Veterans Affairs as authorized to receive such donations.

(D) A not-for-profit organization that provides care for homeless veterans and is designated by the Secretary of Veterans Affairs as authorized to receive such donations.

(2) Food that may be donated under this subsection is commissary store food, mess food, meals ready-to-eat (MREs), rations known as humanitarian daily rations (HDRs), and other food available to the Secretary of Defense that—

(A) is certified as edible by appropriate food inspection technicians;

(B) would otherwise be destroyed as unusable; and

(C) in the case of commissary store food, is unmarketable and unsaleable.

(3) In the case of commissary store food, a donation under this subsection shall take place at the site of the commissary store that is donating the food.

(4) This subsection does not authorize any service (including transportation) to be provided in connection with a donation under this subsection.

(g) COLLECTION OF DISHONORED CHECKS.—(1) The Secretary of Defense may impose a charge for the collection of a check accepted at a commissary store that is not honored by the financial institution on which the check is drawn. The imposition and amounts of charges shall be consistent with practices of commercial grocery stores regarding dishonored checks.

(2)(A) The following persons are liable to the United States for the amount of a check referred to in paragraph (1) that is returned unpaid to the United States, together with any charge imposed under that paragraph:

(i) The person who presented the check.

(ii) Any person whose status and relationship to the person who presented the check provide the basis for that person's eligibility to make purchases at a commissary store.

(B) Any amount for which a person is liable under subparagraph (A) may be collected by deducting and withholding such amount from any amounts payable to that person by the United States.

(3) Amounts collected as charges imposed under paragraph (1) shall be credited to the commissary trust revolving fund.

(4) Appropriated funds may be used to pay any costs incurred in the collection of checks and charges referred to in paragraph (1). An appropriation account charged a cost under the preceding sentence shall be reimbursed the amount of that cost out of funds in the commissary trust revolving fund.

(5) In this subsection, the term ''commissary trust revolving fund'' means the trust revolving fund maintained by the Department of Defense for surcharge collections and proceeds of sales of commissary stores.

(h) RELEASE OF CERTAIN COMMERCIALLY VALUABLE INFORMATION TO PUBLIC.—(1) The Secretary of Defense may limit the release to the public of

any information described in paragraph (2) if the Secretary determines that it is in the best interest of the Department of Defense to limit the release of such information. If the Secretary determines to limit the release of any such information, the Secretary may provide for limited release of such information in accordance with paragraph (3).

(2) Paragraph (1) applies to the following:

(A) Information contained in the computerized business systems of commissary stores or the Defense Commissary Agency that is collected through or in connection with the use of electronic scanners in commissary stores, including the following information:

(i) Data relating to sales of goods or services.

(ii) Demographic information on customers.

(iii) Any other information pertaining to commissary transactions and operations.

(B) Business programs, systems, and applications (including software) relating to commissary operations that were developed with funding derived from commissary surcharges.

(3)(A) The Secretary of Defense may, using competitive procedures, enter into a contract to sell information described in paragraph (2).

(B) The Secretary of Defense may release, without charge, information on an item sold in commissary stores to the manufacturer or producer of that item or an agent of the manufacturer or producer.

(C) The Secretary of Defense shall establish performance benchmarks and shall submit information on customer satisfaction and performance data to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives.

(D) The Secretary of Defense may, by contract entered into with a business, grant to the business a license to use business programs referred to in paragraph (2)(B), including software used in or comprising any such program. The fee charged for the license shall be based on the costs of similar programs developed and marketed by businesses in the private sector, determined by means of surveys.

(E) Each contract entered into under this paragraph shall specify the amount to be paid for information released or a license granted under the contract, as the case may be.

(4) Information described in paragraph (2) may not be released, under paragraph (3) or otherwise, in a form that identifies any customer or that provides information making it possible to identify any customer.

(5) Amounts received by the Secretary under this section shall be credited to funds derived from commissary surcharges applied under section 2484(e) of this title, shall be merged with those funds, and shall be available for the same purposes as the funds with which merged.

(i) Expert Commercial Advice.—The Secretary of Defense may enter into a contract with an entity to obtain expert commercial advice, commercial assistance, or other similar services not otherwise carried out by the Defense Commissary Agency, to implement section 2481(c), subsections (i) and (j) of section 2484, and section 2487(c) of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 141, § 2482; Pub. L. 100–456, div. A, title III, § 321, Sept. 29, 1988, 102 Stat. 1952; Pub. L. 104–106, div. A, title III, § 331(a), Feb. 10, 1996, 110 Stat. 260; Pub. L. 104–201, div. A, title III, § 341(b), Sept. 23, 1996, 110 Stat. 2489; Pub. L. 105–261, div. A, title III, §§ 361(b), 363(a), Oct. 17, 1998, 112 Stat. 1984, 1985; Pub. L. 108–136, div. A, title VI, § 653, Nov. 24, 2003, 117 Stat. 1522; renumbered § 2485 and amended Pub. L. 108–375, div. A, title VI, § 651(a)(2), (6), (7), Oct. 28, 2004, 118 Stat. 1964, 1968; Pub. L. 109–163, div. A, title VI, § 672, Jan. 6, 2006, 119 Stat. 3319; Pub. L. 111–350, § 5(b)(35), Jan. 4, 2011, 124 Stat. 3845; Pub. L. 112–81, div. A, title X, § 1061(16), Dec. 31, 2011, 125 Stat. 1583; Pub. L. 114–328, div. A, title VI, § 661(e), Dec. 23, 2016, 130 Stat. 2172.)

Historical and Revision Notes

Revised section	Source (U.S. Code)	Source (Statutes at Large)
2482	[Uncodified].	Aug. 1, 1953, ch. 305, § 624 (last proviso), 67 Stat. 353.

This section is codified as permanent law on the basis of an opinion of the Assistant General Counsel (Fiscal Matters), Department of Defense, dated September 28, 1954. The words ''and privately owned organizations'' are omitted as surplusage since under 1 U.S.C. 1 ''person'' includes such an organization.

Prior Provisions

A prior section 2485, added Pub. L. 99–145, title XIV, § 1460(a), Nov. 8, 1985, 99 Stat. 764; amended Pub. L. 101–510, div. A, title III, § 324(a), (b)(1), Nov. 5, 1990, 104 Stat. 1530; Pub. L. 104–201, div. A, title III, § 365, Sept. 23, 1996, 110 Stat. 2494, related to donation of unusable food from commissary stores and other activities, prior to repeal by Pub. L. 108–375, div. A, title VI, § 651(a)(1), Oct. 28, 2004, 118 Stat. 1964.

A prior section 2486 was renumbered section 2484 of this title.

Amendments

2016—Subsec. (i). Pub. L. 114–328 added subsec. (i).

2011—Subsec. (a). Pub. L. 112–81 struck out par. (1) designation before ''Under such regulations'' and struck out par. (2) which read as follows: ''Any change to private operation of a commissary store function that is being performed by more than 10 Department of Defense civilian employees shall not take effect until the end of the 75-day period beginning on the date on which the Secretary of Defense submits to Congress written notice of the change. Until December 31, 2008, the Defense Commissary Agency is not required to conduct any cost-comparison study under the policies and procedures of Office of Management and Budget Circular A–76 relating to the possible contracting out of commissary store functions.''

Subsec. (b)(1). Pub. L. 111–350 substituted ''section 107 of title 41'' for ''section 4(6) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(6))''.

2006—Subsec. (a)(2). Pub. L. 109–163 inserted at end ''Until December 31, 2008, the Defense Commissary Agency is not required to conduct any cost-comparison study under the policies and procedures of Office of Management and Budget Circular A–76 relating to the possible contracting out of commissary store functions.''

2004—Pub. L. 108–375, § 651(a)(2), (6), renumbered section 2482 of this title as this section.

Subsec. (b)(2). Pub. L. 108–375, § 651(a)(7)(A), substituted ''section 2483'' for ''section 2484''.

Subsec. (c)(2). Pub. L. 108–375, § 651(a)(7)(B), inserted at end ''The chairman of the governing board shall be a commissioned officer or member of the senior execu-

tive service who has demonstrated experience or knowledge relevant to the management of the defense commissary system. In selecting other members of the governing board, the Secretary shall give priority to persons with experience related to logistics, military personnel, military entitlements or other experiences of value of management of commissaries.''

Subsecs. (d) to (h). Pub. L. 108–375, § 651(a)(7)(C), added subsecs. (d) to (h).

2003—Subsec. (a). Pub. L. 108–136 designated existing provisions as par. (1), inserted first sentence, added par. (2), and struck out former first and second sentences which read as follows: ''Private persons may operate commissary stores under such regulations as the Secretary of Defense may approve. A contract with a private person for the operation of any commissary store may not require or permit the contractor to carry out functions for the procurement of products to be sold in the store or to engage in functions relating to the overall management of a commissary system or the management of any such store.''

1998—Subsec. (b)(1). Pub. L. 105–261, § 363(a), inserted at end ''However, the Defense Commissary Agency may not pay for any such service provided by the United States Transportation Command any amount that exceeds the price at which the service could be procured through full and open competition, as such term is defined in section 4(6) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(6)).''

Subsec. (c). Pub. L. 105–261, § 361(b), added subsec. (c).

1996—Pub. L. 104–106 struck out ''private'' after ''stores:'' in section catchline, designated existing text as subsec. (a), inserted heading, and added subsec. (b).

Subsec. (b)(1). Pub. L. 104–201 substituted ''another element of the Department of Defense or with another Federal department, agency, or instrumentality to provide or obtain services'' for ''another department, agency, or instrumentality of the Department of Defense or another Federal agency to provide services''.

1988—Pub. L. 100–456 inserted at end ''A contract with a private person for the operation of any commissary store may not require or permit the contractor to carry out functions for the procurement of products to be sold in the store or to engage in functions relating to the overall management of a commissary system or the management of any such store. Such functions shall be carried out by personnel of the Department of Defense under regulations approved by the Secretary of Defense.''

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–261, div. A, title III, § 363(b), Oct. 17, 1998, 112 Stat. 1986, provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to services provided or obtained on or after the date of the enactment of this Act [Oct. 17, 1998].''

ACCEPTANCE OF MILITARY STAR CARD AT COMMISSARIES

Pub. L. 114–328, div. A, title VI, § 662, Dec. 23, 2016, 130 Stat. 2172, provided that:

''(a) IN GENERAL.—The Secretary of Defense shall ensure that—

''(1) commissary stores accept as payment the Military Star Card; and

''(2) any financial liability of the United States relating to such acceptance as payment be assumed by the Army and Air Force Exchange Service.

''(b) MILITARY STAR CARD DEFINED.—In this section, the term 'Military Star Card' means a credit card administered under the Exchange Credit Program by the Army and Air Force Exchange Service.''

DEMONSTRATION PROGRAM FOR OPERATION OF CERTAIN COMMISSARY STORES BY NONAPPROPRIATED FUND INSTRUMENTALITIES

Pub. L. 102–484, div. A, title III, § 363, Oct. 23, 1992, 106 Stat. 2380, required the Secretary of Defense to establish a demonstration program to determine the feasibility of having nonappropriated fund instrumentalities operate commissary stores at military installations and provided for termination of the program and submission of a report on its implementation, not later than the expiration of the one-year period beginning on Oct. 23, 1992.

SUBCHAPTER II—RELATIONSHIP, CONTINUATION, AND COMMON POLICIES OF DEFENSE COMMISSARY AND EXCHANGE SYSTEMS

Sec.
2487. Relationship between defense commissary system and exchange stores system.
2488. Combined exchange and commissary stores.
2489. Overseas commissary and exchange stores: access and purchase restrictions.

AMENDMENTS

2004—Pub. L. 108–375, div. A, title VI, § 651(b)(1), Oct. 28, 2004, 118 Stat. 1971, added subchapter heading and items 2487 to 2489.

§ 2487. Relationship between defense commissary system and exchange stores system

(a) SEPARATE OPERATION OF SYSTEMS.—(1) Except as provided in paragraph (2), the defense commissary system and the exchange stores system shall be operated as separate systems of the Department of Defense.

(2) Paragraph (1) does not apply to the following:

(A) Combined exchange and commissary stores operated under the authority provided by section 2489 of this title.

(B) NEXMART stores of the Navy Exchange Service Command established before October 1, 2003.

(b) CONSOLIDATION OR OTHER ORGANIZATIONAL CHANGES OF DEFENSE RETAIL SYSTEMS.—(1) The operation and administration of the defense retail systems may not be consolidated or otherwise merged unless the consolidation or merger is specifically authorized by an Act of Congress.

(2) In this subsection, the term ''defense retail systems'' means the defense commissary system and exchange stores system and other revenue-generating facilities operated by nonappropriated fund instrumentalities of the Department of Defense for the morale, welfare, and recreation of members of the armed forces.

(c) COMMON BUSINESS PRACTICES.—(1) Notwithstanding subsections (a) and (b), the Secretary of Defense may establish common business processes, practices, and systems—

(A) to exploit synergies between the defense commissary system and the exchange system; and

(B) to optimize the operations of the defense retail systems as a whole and the benefits provided by the commissaries and exchanges.

(2) The Secretary may authorize the defense commissary system and the exchange system to enter into contracts or other agreements—

(A) for products and services that are shared by the defense commissary system and the exchange system; and

(B) for the acquisition of supplies, resale goods, and services on behalf of both the defense commissary system and the exchange system.

(3) For the purpose of a contract or agreement authorized under paragraph (2), the Secretary may—

(A) use funds appropriated pursuant to section 2483 of this title to reimburse a nonappropriated fund entity or instrumentality for the portion of the cost of a contract or agreement entered by the nonappropriated fund entity or instrumentality that is attributable to the defense commissary system; and

(B) authorize the defense commissary system to accept reimbursement from a nonappropriated fund entity or instrumentality for the portion of the cost of a contract or agreement entered by the defense commissary system that is attributable to the nonappropriated fund entity or instrumentality.

(d) ACCESS OF EXCHANGE STORES SYSTEM TO FEDERAL FINANCING BANK.—To facilitate the provision of in-store credit to patrons of the exchange stores system while reducing the costs of providing such credit, the Army and Air Force Exchange Service, Navy Exchange Service Command, and Marine Corps exchanges may issue and sell their obligations to the Federal Financing Bank as provided in section 6 of the Federal Financing Bank Act of 1973 (12 U.S.C. 2285).

(Added Pub. L. 108–375, div. A, title VI, § 651(b)(1), Oct. 28, 2004, 118 Stat. 1971; amended Pub. L. 112–81, div. A, title VI, § 642, Dec. 31, 2011, 125 Stat. 1466; Pub. L. 114–328, div. A, title VI, § 661(d), Dec. 23, 2016, 130 Stat. 2171.)

PRIOR PROVISIONS

A prior section 2487, added Pub. L. 99–661, div. A, title III, § 313(a), Nov. 14, 1986, 100 Stat. 3852; amended Pub. L. 102–484, div. A, title III, § 364(a), (b)(2), Oct. 23, 1992, 106 Stat. 2381, 2382; Pub. L. 104–106, div. A, title III, § 332, Feb. 10, 1996, 110 Stat. 260; Pub. L. 107–107, div. A, title III, § 333(a), Dec. 28, 2001, 115 Stat. 1058, related to release of certain commercially valuable information to the public by the Secretary of Defense with respect to commissary stores, prior to repeal by Pub. L. 108–375, div. A, title VI, § 651(a)(1), Oct. 28, 2004, 118 Stat. 1964.

AMENDMENTS

2016—Subsecs. (c), (d). Pub. L. 114–328 added subsec. (c) and redesignated former subsec. (c) as (d).

2011—Subsec. (c). Pub. L. 112–81 added subsec. (c).

§ 2488. Combined exchange and commissary stores

(a) AUTHORITY.—The Secretary of Defense may authorize a nonappropriated fund instrumentality to operate a military exchange and a commissary store as a combined exchange and commissary store on a military installation.

(b) LIMITATIONS.—(1) Not more than ten combined exchange and commissary stores may be operated pursuant to this section.

(2) The Secretary may select a military installation for the operation of a combined exchange and commissary store under this section only if—

(A) the installation is to be closed, or has been or is to be realigned, under a base closure law; or

(B) a military exchange and a commissary store are operated at the installation by separate entities at the time of, or immediately before, such selection and it is not economically feasible to continue that separate operation.

(c) OPERATION AT CARSWELL FIELD.—Combined exchange and commissary stores operated under this section shall include the combined exchange and commissary store that is operated at the Naval Air Station Fort Worth, Joint Reserve Center, Carswell Field, Texas, under the authority provided in section 375 of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337; 108 Stat. 2736).

(d) ADJUSTMENTS AND SURCHARGES.—Adjustments to, and surcharges on, the sales price of a grocery food item sold in a combined exchange and commissary store under this section shall be provided for in accordance with the same laws that govern such adjustments and surcharges for items sold in a commissary store of the Defense Commissary Agency.

(e) USE OF APPROPRIATED FUNDS.—(1) If a nonappropriated fund instrumentality incurs a loss in operating a combined exchange and commissary store at a military installation under this section as a result of the requirement set forth in subsection (d), the Secretary may authorize a transfer of funds available for the Defense Commissary Agency to the nonappropriated fund instrumentality to offset the loss.

(2) The total amount of appropriated funds transferred during a fiscal year to support the operation of a combined exchange and commissary store at a military installation under this section may not exceed an amount that is equal to 25 percent of the amount of appropriated funds that was provided for the operation of the commissary store of the Defense Commissary Agency on that installation during the last full fiscal year of operation of that commissary store.

(f) NONAPPROPRIATED FUND INSTRUMENTALITY DEFINED.—In this section, the term ''nonappropriated fund instrumentality'' means the Army and Air Force Exchange Service, Navy Exchange Service Command, Marine Corps exchanges, or any other instrumentality of the United States under the jurisdiction of the armed forces which is conducted for the comfort, pleasure, contentment, or physical or mental improvement of members of the armed forces.

(Added Pub. L. 104–106, div. A, title III, § 336(a)(1), Feb. 10, 1996, 110 Stat. 263, § 2490a; amended Pub. L. 105–85, div. A, title X, § 1061(d), Nov. 18, 1997, 111 Stat. 1891; Pub. L. 108–136, div. A, title X, § 1043(c)(2), Nov. 24, 2003, 117 Stat. 1611; renumbered § 2488, Pub. L. 108–375, div. A, title VI, § 651(b)(3), Oct. 28, 2004, 118 Stat. 1971; Pub. L. 111–383, div. A, title X, § 1075(b)(37), Jan. 7, 2011, 124 Stat. 4371.)

REFERENCES IN TEXT

Section 375 of the National Defense Authorization Act for Fiscal Year 1995, referred to in subsec. (c), is section 375 of Pub. L. 103–337, div. A, title III, Oct. 5, 1994, 108 Stat. 2736, as amended, which is not classified to the Code.

PRIOR PROVISIONS

A prior section 2488 was renumbered section 2495 of this title.

AMENDMENTS

2011—Subsec. (f). Pub. L. 111–383 substituted ''armed forces'' for ''Armed Forces'' in two places.

2004—Pub. L. 108–375 renumbered section 2490a of this title as this section.

2003—Subsec. (f). Pub. L. 108–136, § 1043(c)(2), substituted ''NONAPPROPRIATED FUND INSTRUMENTALITY DEFINED.—In this section, the term'' for ''DEFINITIONS.—In this section:

''(1) The term''

and struck out par. (2) which read as follows: ''The term 'base closure law' has the meaning given such term by section 2667(h) of this title.''

1997—Subsec. (f)(2). Pub. L. 105–85 substituted ''section 2667(h)'' for ''section 2667(g)''.

§ 2489. Overseas commissary and exchange stores: access and purchase restrictions

(a) AUTHORITY TO ESTABLISH RESTRICTIONS.—The Secretary of Defense may establish restrictions on the ability of eligible patrons of commissary and exchange stores located outside of the United States to purchase certain merchandise items (or the quantity of certain merchandise items) otherwise included within an authorized merchandise category if the Secretary determines that such restrictions are necessary to prevent the resale of such merchandise in violation of treaty obligations of the United States or host nation laws (to the extent such laws are not inconsistent with United States laws).

(b) LIMITATIONS ON USE OF AUTHORITY.—In establishing a quantity or other restriction, the Secretary—

(1) may not discriminate among the various categories of eligible patrons of the commissary and exchange system; and

(2) shall ensure that the restriction is consistent with the purpose of the overseas commissary and exchange system to provide reasonable access for eligible patrons to purchase merchandise items made in the United States.

(Added Pub. L. 105–261, div. A, title III, § 365(a), Oct. 17, 1998, 112 Stat. 1986, § 2492; amended Pub. L. 106–65, div. A, title X, § 1066(a)(22), Oct. 5, 1999, 113 Stat. 771; Pub. L. 107–314, div. A, title X, § 1041(a)(15), Dec. 2, 2002, 116 Stat. 2645; renumbered § 2489, Pub. L. 108–375, div. A, title VI, § 651(b)(3), Oct. 28, 2004, 118 Stat. 1971; Pub. L. 112–239, div. A, title VI, § 651, Jan. 2, 2013, 126 Stat. 1783.)

PRIOR PROVISIONS

A prior section 2489 was renumbered section 2495a of this title.

A prior section 2489a was renumbered section 2495b of this title.

A prior section 2490 was renumbered section 2868 of this title.

A prior section 2490a was renumbered section 2488 of this title.

Another prior section 2490a was renumbered section 2783 of this title.

AMENDMENTS

2013—Subsec. (a). Pub. L. 112–239, § 651(b)(1), redesignated par. (1) as subsec. (a) and added heading.

Subsec. (b). Pub. L. 112–239, § 651(b)(2), (3), redesignated par. (2) of former subsec. (a) as (b), added heading, and redesignated subpars. (A) and (B) of former par. (2) as pars. (1) and (2), respectively.

Pub. L. 112–239, § 651(a), struck out subsec. (b). Text read as follows: ''For each location outside the United States that is served by the commissary system or the exchange system, the Secretary of Defense may maintain a list of controlled merchandise items, except that, after October 17, 1998, the Secretary may not change the list to add a merchandise item unless, before making the change, the Secretary submits to Congress a notice of the proposed addition and the reasons for the addition of the item.''

Subsec. (c). Pub. L. 112–239, § 651(a), struck out subsec. (c). Text read as follows: ''The Secretary of Defense shall notify Congress of any change proposed or made to any of the host nation laws or any of the treaty obligations of the United States, and any changed conditions within host nations, if the change would necessitate the use of quantity or other restrictions on purchases in commissary and exchange stores located outside the United States.''

2004—Pub. L. 108–375 renumbered section 2492 of this title as this section.

2002—Subsec. (c). Pub. L. 107–314 added subsec. (c) and struck out heading and text of former subsec. (c). Text read as follows: ''The Secretary of Defense shall notify Congress of any change proposed or made to any of the host nation laws or any of the treaty obligations of the United States, and any changed conditions within host nations, if the change would necessitate the use of quantity or other restrictions on purchases in commissary and exchange stores located outside the United States.''

1999—Subsec. (b). Pub. L. 106–65 substituted ''October 17, 1998'' for ''the date of the enactment of this section''.

SUBCHAPTER III—MORALE, WELFARE, AND RECREATION PROGRAMS AND NONAPPROPRIATED FUND INSTRUMENTALITIES

Sec.

2491. Uniform funding and management of morale, welfare, and recreation programs.
2491a. Department of Defense golf courses: limitation on use of appropriated funds.
2491b. Use of appropriated funds for operation of Armed Forces Recreation Center, Europe: limitation.
2491c. Retention of morale, welfare, and recreation funds by military installations: limitation.
2492. Nonappropriated fund instrumentalities: contracts with other agencies and instrumentalities to provide and obtain goods and services.
2492a. Limitation on Department of Defense entities competing with private sector in offering personal information services.
2493. Fisher Houses: administration as nonappropriated fund instrumentality.
2494. Nonappropriated fund instrumentalities: furnishing utility services for morale, welfare, and recreation purposes.
2495. Nonappropriated fund instrumentalities: purchase of alcoholic beverages.
2495a. Overseas package stores: treatment of United States wines.
2495b. Sale or rental of sexually explicit material prohibited.

AMENDMENTS

2009—Pub. L. 111–84, div. A, title VI, § 651(b), Oct. 28, 2009, 123 Stat. 2369, added item 2492a.

2004—Pub. L. 108–375, div. A, title VI, § 651(c)(1), Oct. 28, 2004, 118 Stat. 1971, added subchapter heading and items 2491 to 2495b.

§ 2491. Uniform funding and management of morale, welfare, and recreation programs

(a) AUTHORITY FOR UNIFORM FUNDING AND MANAGEMENT.—Under regulations prescribed by the

Secretary of Defense, funds appropriated to the Department of Defense and available for morale, welfare, and recreation programs may be treated as nonappropriated funds and expended in accordance with laws applicable to the expenditures of nonappropriated funds. When made available for morale, welfare, and recreation programs under such regulations, appropriated funds shall be considered to be nonappropriated funds for all purposes and shall remain available until expended.

(b) CONDITIONS ON AVAILABILITY.—Funds appropriated to the Department of Defense may be made available to support a morale, welfare, or recreation program only if the program is authorized to receive appropriated fund support and only in the amounts the program is authorized to receive.

(c) CONVERSION OF EMPLOYMENT POSITIONS.—(1) The Secretary of Defense may identify positions of employees in morale, welfare, and recreation programs within the Department of Defense who are paid with appropriated funds whose status may be converted from the status of an employee paid with appropriated funds to the status of an employee of a nonappropriated fund instrumentality.

(2) The status of an employee in a position identified by the Secretary under paragraph (1) may, with the consent of the employee, be converted to the status of an employee of a nonappropriated fund instrumentality. An employee who does not consent to the conversion may not be removed from the position because of the failure to provide such consent.

(3) The conversion of an employee from the status of an employee paid by appropriated funds to the status of an employee of a nonappropriated fund instrumentality shall be without a break in service for the concerned employee. The conversion shall not entitle an employee to severance pay, back pay or separation pay under subchapter IX of chapter 55 of title 5, or be considered an involuntary separation or other adverse personnel action entitling an employee to any right or benefit under such title or any other provision of law or regulation.

(4) In this subsection, the term ''an employee of a nonappropriated fund instrumentality'' means an employee described in section 2105(c) of title 5.

(Added Pub. L. 107–314, div. A, title III, § 323(a), Dec. 2, 2002, 116 Stat. 2510, § 2494; renumbered § 2491, Pub. L. 108–375, div. A, title VI, § 651(c)(2), Oct. 28, 2004, 118 Stat. 1972.)

PRIOR PROVISIONS

A prior section 2491 was renumbered section 2500 of this title.

AMENDMENTS

2004—Pub. L. 108–375 renumbered section 2494 of this title as this section.

§ 2491a. Department of Defense golf courses: limitation on use of appropriated funds

(a) LIMITATION.—Except as provided in subsection (b), funds appropriated to the Department of Defense may not be used to equip, operate, or maintain a golf course at a facility or installation of the Department of Defense.

(b) EXCEPTIONS.—(1) Subsection (a) does not apply to a golf course at a facility or installation outside the United States or at a facility or installation inside the United States at a location designated by the Secretary of Defense as a remote and isolated location.

(2) The Secretary of Defense shall prescribe regulations governing the use of appropriated funds under this subsection.

(Added Pub. L. 103–160, div. A, title III, § 312(a), Nov. 30, 1993, 107 Stat. 1618, § 2246; renumbered § 2491a, Pub. L. 108–375, div. A, title VI, § 651(d), Oct. 28, 2004, 118 Stat. 1972.)

AMENDMENTS

2004—Pub. L. 108–375 renumbered section 2246 of this title as this section.

§ 2491b. Use of appropriated funds for operation of Armed Forces Recreation Center, Europe: limitation

(a) LIMITATION.—Except as provided in subsection (b), funds appropriated to the Department of Defense may not be used to operate the Armed Forces Recreation Center, Europe.

(b) EXCEPTION.—Subsection (a) does not apply to the use of funds for the payment of utilities, the maintenance, repair, or renovation of real property, and the transportation of products made in the United States.

(Added Pub. L. 103–337, div. A, title III, § 372(a), Oct. 5, 1994, 108 Stat. 2735, § 2247; amended Pub. L. 105–85, div. A, title III, § 375, Nov. 18, 1997, 111 Stat. 1708; renumbered § 2491b, Pub. L. 108–375, div. A, title VI, § 651(d), Oct. 28, 2004, 118 Stat. 1972.)

AMENDMENTS

2004—Pub. L. 108–375 renumbered section 2247 of this title as this section.

1997—Subsec. (b). Pub. L. 105–85 substituted ''the maintenance, repair, or renovation of real property, and the transportation'' for ''real property maintenance, and transportation''.

§ 2491c. Retention of morale, welfare, and recreation funds by military installations: limitation

Amounts may not be retained in a nonappropriated morale, welfare, and recreation account of a military installation of an armed force in excess of the amount necessary to meet cash requirements of that installation. Amounts in excess of that amount shall be transferred to a single nonappropriated morale, welfare, and recreation account for that armed force. This section does not apply to the Coast Guard.

(Added Pub. L. 103–337, div. A, title III, § 373(a), Oct. 5, 1994, 108 Stat. 2736, § 2219; amended Pub. L. 104–106, div. A, title III, § 341, Feb. 10, 1996, 110 Stat. 265; renumbered § 2491c, Pub. L. 108–375, div. A, title VI, § 651(d), Oct. 28, 2004, 118 Stat. 1972.)

AMENDMENTS

2004—Pub. L. 108–375 renumbered section 2219 of this title as this section.

1996—Pub. L. 104–106, in first sentence, substituted ''an armed force'' for ''a military department'', in second sentence, substituted ''a single, nonappropriated

morale, welfare, and recreation account for that armed force'' for ''a single, department-wide nonappropriated morale, welfare, and recreation account of the military department'', and inserted after second sentence ''This section does not apply to the Coast Guard.''

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 2492. Nonappropriated fund instrumentalities: contracts with other agencies and instrumentalities to provide and obtain goods and services

An agency or instrumentality of the Department of Defense that supports the operation of the exchange system, or the operation of a morale, welfare, and recreation system, of the Department of Defense may enter into a contract or other agreement with another element of the Department of Defense or with another Federal department, agency, or instrumentality—

(1) to provide or obtain goods and services beneficial to the efficient management and operation of the exchange system or that morale, welfare, and recreation system; or

(2) to provide or obtain food services beneficial to the efficient management and operation of the dining facilities on military installations offering food services to members of the armed forces.

(Added Pub. L. 104–201, div. A, title III, § 341(a)(1), Sept. 23, 1996, 110 Stat. 2488, § 2482a; renumbered § 2492, Pub. L. 108–375, div. A, title VI, § 651(c)(3), Oct. 28, 2004, 118 Stat. 1972; amended Pub. L. 113–291, div. A, title VI, § 632, Dec. 19, 2014, 128 Stat. 3405.)

PRIOR PROVISIONS

A prior section 2492 was renumbered section 2489 of this title.

AMENDMENTS

2014—Pub. L. 113–291 substituted ''Federal department, agency, or instrumentality—'' for ''Federal department, agency, or instrumentality to provide or obtain goods and services beneficial to the efficient management and operation of the exchange system or that morale, welfare, and recreation system.'' and added pars. (1) and (2).

2004—Pub. L. 108–375 renumbered section 2482a of this title as this section.

§ 2492a. Limitation on Department of Defense entities competing with private sector in offering personal information services

(a) LIMITATION.—(1) Notwithstanding section 2492 of this title, the Secretary of Defense may not authorize a Department of Defense entity to offer or provide personal information services directly to users using Department resources, personnel, or equipment, or compete for contracts to provide such personal information services directly to users, if users will be charged a fee for the personal information services to recover the cost incurred to provide the services or to earn a profit.

(2) The limitation in paragraph (1) shall not be construed to prohibit or preclude the use of Department resources, personnel, or equipment to administer or facilitate personal information services contracts with private contractors.

(b) EXCEPTIONS.—The limitation in subsection (a) shall not apply if the Secretary of Defense determines that—

(1) a private sector vendor is not available to provide the personal information services at specific locations;

(2) the interests of the user population would be best served by allowing the Government to provide such services; or

(3) circumstances (as specified by the Secretary for purposes of this section) are such that the provision of such services by a Department entity is in the best interest of the Government or military users in general.

(c) PERSONAL INFORMATION SERVICES DEFINED.—In this section, the term ''personal information services'' means the provision of Internet, telephone, or television services to consumers.

(Added Pub. L. 111–84, div. A, title VI, § 651(a), Oct. 28, 2009, 123 Stat. 2368.)

SAVINGS PROVISION

Pub. L. 111–84, div. A, title VI, § 651(c), Oct. 28, 2009, 123 Stat. 2369, provided that: ''Section 2492a of title 10, United States Code, as added by subsection (a), does not affect the validity or terms of any contract for the provision of personal information services entered into before the date of the enactment of this Act [Oct. 28, 2009].''

§ 2493. Fisher Houses: administration as nonappropriated fund instrumentality

(a) FISHER HOUSES AND SUITES DEFINED.—In this section:

(1) The term ''Fisher House'' means a housing facility that—

(A) is located in proximity to a health care facility of the Army, the Air Force, or the Navy;

(B) is available for residential use on a temporary basis by authorized Fisher House residents; and

(C) is constructed and donated by—

(i) the Zachary and Elizabeth M. Fisher Armed Services Foundation; or

(ii) another source, if the Secretary of the military department concerned designates the housing facility as a Fisher House.

(2) The term ''Fisher House'' includes the Fisher House for the Families of the Fallen and Meditation Pavilion at Dover Air Force Base, Delaware, so long as such facility is available for residential use on a temporary basis by authorized Fisher House residents.

(3) The term ''Fisher Suite'' means one or more rooms that—

(A) meet the requirements of subparagraphs (A) and (B) of paragraph (1);

(B) are constructed, altered, or repaired and donated by a source described in subparagraph (C) of that paragraph; and

(C) are designated by the Secretary of the military department concerned as a Fisher Suite.

(4) The term ''authorized Fisher House residents'' means the following:

(A) With respect to a Fisher House described in paragraph (1) that is located in proximity to a health care facility of the Army, the Air Force, or the Navy, the following persons:

(i) Patients of that health care facility.

(ii) Members of the families of such patients.

(iii) Other persons providing the equivalent of familial support for such patients.

(B) With respect to the Fisher House described in paragraph (2), the following persons:

(i) The primary next of kin of a member of the armed forces who dies while located or serving overseas.

(ii) Other family members of the deceased member who are eligible for transportation under section 481f(d) of title 37.

(iii) An escort of a family member described in clause (i) or (ii).

(b) NONAPPROPRIATED FUND INSTRUMENTALITY.—The Secretary of each military department shall administer all Fisher Houses and Fisher Suites associated with facilities of that military department as a nonappropriated fund instrumentality of the United States.

(c) GOVERNANCE.—The Secretary of each military department shall establish a system for the governance of the nonappropriated fund instrumentality required by subsection (b) for that military department.

(d) CENTRAL FUND.—The Secretary of each military department shall establish a single fund as the source of funding for the operation, maintenance, and improvement of all Fisher Houses and Fisher Suites of the nonappropriated fund instrumentality required by subsection (b) for that military department.

(e) ACCEPTANCE OF CONTRIBUTIONS; IMPOSITION OF FEES.—(1) The Secretary of a military department may—

(A) accept money, property, and services donated for the support of a Fisher House or Fisher Suite associated with facilities of that military department; and

(B) may impose fees relating to the use of such Fisher Houses and Fisher Suites.

(2) All monetary donations, and the proceeds of the disposal of any other donated property, accepted by the Secretary of a military department under this subsection shall be credited to the fund established under subsection (d) for the Fisher Houses and Fisher Suites associated with facilities of that military department and shall be available to that Secretary to support all such Fisher Houses and Fisher Suites.

(f) BASE OPERATING SUPPORT.—The Secretary of a military department may provide base operating support for Fisher Houses associated with facilities of that military department.

(Added Pub. L. 105–261, div. A, title IX, § 906(a)(1), Oct. 17, 1998, 112 Stat. 2093; amended Pub. L. 106–398, § 1 [[div. A], title IX, § 914(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–230; Pub. L. 107–314, div. A, title III, § 321, Dec. 2, 2002, 116 Stat. 2510; Pub. L. 112–81, div. A, title X, § 1061(17), Dec. 31, 2011, 125 Stat. 1584; Pub. L. 112–239, div. A, title VI, § 652(a), (b), Jan. 2, 2013, 126 Stat. 1784; Pub. L. 114–92, div. A, title VI, § 622(b), Nov. 25, 2015, 129 Stat. 841.)

AMENDMENTS

2015—Subsec. (a)(4)(B)(ii). Pub. L. 114–92 substituted ''section 481f(d)'' for ''section 481f(e)''.

2013—Subsec. (a)(1)(B). Pub. L. 112–239, § 652(a)(1), substituted ''by authorized Fisher House residents;'' for ''by patients of that health care facility, members of the families of such patients, and others providing the equivalent of familial support for such patients;''.

Subsec. (a)(2) to (4). Pub. L. 112–239, § 652(a)(2)–(4), added pars. (2) and (4) and redesignated former par. (2) as (3).

Subsecs. (b), (e), (f). Pub. L. 112–239, § 652(b), struck out ''health care'' before ''facilities'' wherever appearing.

2011—Subsec. (g). Pub. L. 112–81 struck out subsec. (g), which required submission of annual report describing the operation of Fisher Houses and Fisher Suites associated with military department health care facilities.

2002—Subsec. (f). Pub. L. 107–314 amended heading and text of subsec. (f) generally. Prior to amendment text read as follows: ''The Secretary of the Navy shall provide base operating support for Fisher Houses associated with health care facilities of the Navy. The level of the support shall be equivalent to the base operating support that the Secretary provides for morale, welfare, and recreation category B community activities (as defined in regulations, prescribed by the Secretary, that govern morale, welfare, and recreation activities associated with Navy installations).''

2000—Subsecs. (f), (g). Pub. L. 106–398 added subsec. (f) and redesignated former subsec. (f) as (g).

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–398, § 1 [[div. A], title IX, § 914(c)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–230, provided that: ''The amendments made by subsection (a) [amending this section] shall be effective as of October 17, 1998, as if included in section 2493 of title 10, United States Code, as enacted by section 906(a) of Public Law 105–261.''

SAVINGS PROVISIONS FOR CERTAIN NAVY EMPLOYEES

Pub. L. 106–398, § 1 [[div. A], title IX, § 914(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–230, provided that:

''(1) The Secretary of the Navy may continue to employ, and pay out of appropriated funds, any employee of the Navy in the competitive service who, as of October 17, 1998, was employed by the Navy in a position at a Fisher House administered by the Navy, but only for so long as the employee is continuously employed in that position.

''(2) After a person vacates a position in which the person was continued to be employed under the authority of paragraph (1), a person employed in that position shall be employed as an employee of a nonappropriated fund instrumentality of the United States and may not be paid for services in that position out of appropriated funds.

''(3) In this subsection:

''(A) The term 'Fisher House' has the meaning given the term in section 2493(a)(1) of title 10, United States Code.

''(B) The term 'competitive service' has the meaning given the term in section 2102 of title 5, United States Code.''

[Pub. L. 106–398, § 1 [[div. A], title IX, § 914(c)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–230, provided that: ''Subsection (b) [set out above] applies with respect to the pay period that includes October 17, 1998, and subsequent pay periods.'']

ESTABLISHMENT OF FUNDS AND FUNDING TRANSITION

Pub. L. 105–261, div. A, title IX, § 906(b)–(e), Oct. 17, 1998, 112 Stat. 2095, provided that:

''(b) ESTABLISHMENT OF FUNDS.—Not later than 90 days after the date of the enactment of this Act [Oct. 17, 1998], the Secretary of each military department shall—

''(1) establish the fund required under section 2493(d) of title 10, United States Code (as added by subsection (a)); and

''(2) close the Fisher House Trust Fund established for that department under section 2221 of such title and transfer the amounts in the closed fund to the newly established fund.

''(c) FUNDING TRANSITION.—(1) Of the amount authorized to be appropriated pursuant to section 301(2) [112 Stat. 1960] for operation and maintenance for the Navy, the Secretary of the Navy shall transfer to the fund established by that Secretary under section 2493(d) of title 10, United States Code (as added by subsection (a)), such amount as that Secretary considers appropriate for establishing in the fund a corpus sufficient for operating Fisher Houses and Fisher Suites associated with health care facilities of the Department of the Navy.

''(2) Of the amount authorized to be appropriated pursuant to section 301(4) for operation and maintenance for the Air Force, the Secretary of the Air Force shall transfer to the fund established by that Secretary under section 2493(d) of title 10, United States Code (as added by subsection (a)), such amount as that Secretary considers appropriate for establishing in the fund a corpus sufficient for operating Fisher Houses and Fisher Suites associated with health care facilities of the Department of the Air Force.

''(d) REPORTING REQUIREMENTS.—The Secretary of each military department, upon completing the actions required of the Secretary under subsections (b) and (c), shall submit to Congress a report containing—

''(1) the certification of that Secretary that those actions have been completed; and

''(2) a statement of the amount deposited in the fund established by that Secretary under section 2493(d) of title 10, United States Code (as added by subsection (a)).

''(e) AVAILABILITY OF TRANSFERRED AMOUNTS.—Amounts transferred under subsection (b) or (c) to a fund established under section 2493(d) of title 10, United States Code (as added by subsection (a)), shall be available without fiscal year limitation for the purposes for which the fund is established and shall be administered as nonappropriated funds.''

§ 2494. Nonappropriated fund instrumentalities: furnishing utility services for morale, welfare, and recreation purposes

Appropriations for the Department of Defense may be used to provide utility services for—

(1) buildings on military installations authorized by regulation to be used for morale, welfare, and recreation purposes; and

(2) other morale, welfare, and recreation activities for members of the armed forces.

(Added Pub. L. 108–375, div. A, title VI, § 651(c)(4), Oct. 28, 2004, 118 Stat. 1972.)

PRIOR PROVISIONS

A prior section 2494 was renumbered section 2491 of this title.

§ 2495. Nonappropriated fund instrumentalities: purchase of alcoholic beverages

(a) The Secretary of Defense shall provide that—

(1) covered alcoholic beverage purchases made for resale on a military installation located in the United States shall be made from the most competitive source and distributed in the most economical manner, price and other factors considered, except that

(2) in the case of malt beverages and wine, such purchases shall be made from, and delivery shall be accepted from, a source within the State in which the military installation concerned is located.

(b) If a military installation located in the contiguous States is located in more than one State, a source of supply in any State in which the installation is located shall be considered for the purposes of subsection (a)(2) to be a source within the State in which the installation is located.

(c)(1) In the case of covered alcoholic beverage purchases of distilled spirits, to determine whether a nonappropriated fund instrumentality of the Department of Defense provides the most economical method of distribution to package stores, the Secretary of Defense shall consider all components of the distribution costs incurred by the nonappropriated fund instrumentality, such as overhead costs (including costs associated with management, logistics, administration, depreciation, and utilities), the costs of carrying inventory, and handling and distribution costs.

(2) The Secretary shall use the agencies performing audit functions on behalf of the armed forces and the Inspector General of the Department of Defense to make determinations under this subsection.

(d) In this section:

(1) The term ''covered alcoholic beverage purchases'' means purchases of alcoholic beverages by a nonappropriated fund instrumentality of the Department of Defense with nonappropriated funds.

(2) The term ''State'' includes the District of Columbia.

(Added Pub. L. 99–661, div. A, title III, § 313(a), Nov. 14, 1986, 100 Stat. 3853, § 2488; amended Pub. L. 100–180, div. A, title III, § 312(a), Dec. 4, 1987, 101 Stat. 1073; Pub. L. 104–106, div. A, title III, § 333, Feb. 10, 1996, 110 Stat. 261; Pub. L. 106–398, § 1 [[div. A], title III, § 335], Oct. 30, 2000, 114 Stat. 1654, 1654A–61; renumbered § 2495, Pub. L. 108–375, div. A, title VI, § 651(b)(2), (c)(5), Oct. 28, 2004, 118 Stat. 1971, 1972.)

AMENDMENTS

2004—Pub. L. 108–375 renumbered section 2488 of this title as this section.

2000—Subsec. (c)(2), (3). Pub. L. 106–398 redesignated par. (3) as (2) and struck out former par. (2) which read as follows: ''If the use of a private distributor would subject covered alcoholic beverage purchases of distilled spirits to direct or indirect State taxation, a nonappropriated fund instrumentality shall be considered to be the most economical method of distribution regardless of the results of the determination under paragraph (1).''

1996—Subsec. (a)(1). Pub. L. 104–106, § 333(a), inserted ''and distributed in the most economical manner'' after ''most competitive source''.

Subsecs. (c), (d). Pub. L. 104–106, § 333(b), added subsec. (c) and redesignated former subsec. (c) as (d).

1987—Subsec. (a)(2). Pub. L. 100–180 struck out ''purchased for resale on a military installation located in the contiguous States'' after ''malt beverages and wines''.

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100–180, div. A, title III, § 312(b), Dec. 4, 1987, 101 Stat. 1073, provided that: ''The amendment made by

subsection (a) [amending this section] shall apply with respect to purchases of malt beverages and wine after the end of the 60-day period beginning on the date of the enactment of this Act [Dec. 4, 1987].''

PROCUREMENT OF MALT BEVERAGES AND WINE BY NONAPPROPRIATED FUND ACTIVITY

Pub. L. 109–148, div. A, title VIII, § 8080, Dec. 30, 2005, 119 Stat. 2717, which provided that none of the funds appropriated by div. A of Pub. L. 109–148 were to be used for the support of any nonappropriated funds activity of the Department of Defense that procured malt beverages and wine with nonappropriated funds for resale (including such alcoholic beverages sold by the drink) on a military installation located in the United States unless such malt beverages and wine were procured within that State, or in the case of the District of Columbia, within the District of Columbia, in which the military installation was located, was from the Department of Defense Appropriations Act, 2006, and was repeated in provisions of subsequent appropriations acts which are not set out in the Code. Similar provisions were contained in the following prior appropriations acts:

Pub. L. 108–287, title VIII, § 8087, Aug. 5, 2004, 118 Stat. 991.

Pub. L. 108–87, title VIII, § 8088, Sept. 30, 2003, 117 Stat. 1093.

Pub. L. 107–248, title VIII, § 8092, Oct. 23, 2002, 116 Stat. 1558.

Pub. L. 107–117, div. A, title VIII, § 8108, Jan. 10, 2002, 115 Stat. 2271.

Pub. L. 106–259, title VIII, § 8108, Aug. 9, 2000, 114 Stat. 698.

Pub. L. 106–79, title VIII, § 8132, Oct. 25, 1999, 113 Stat. 1266.

Pub. L. 104–61, title VIII, § 8055, Dec. 1, 1995, 109 Stat. 662.

Pub. L. 103–335, title VIII, § 8058A, Sept. 30, 1994, 108 Stat. 2632.

Pub. L. 103–139, title VIII, § 8099A, Nov. 11, 1993, 107 Stat. 1462.

Pub. L. 102–396, title IX, § 9114, Oct. 6, 1992, 106 Stat. 1929.

Pub. L. 102–172, title VIII, § 8111A, Nov. 26, 1991, 105 Stat. 1200.

Pub. L. 101–511, title VIII, § 8068, Nov. 5, 1990, 104 Stat. 1889.

Pub. L. 101–165, title IX, § 9093, Nov. 21, 1989, 103 Stat. 1149.

Pub. L. 100–463, title VIII, § 8122, Oct. 1, 1988, 102 Stat. 2270–40.

Pub. L. 100–202, § 101(b) [title VIII, § 8081], Dec. 22, 1987, 101 Stat. 1329–43, 1329–76.

Pub. L. 99–500, § 101(c) [title IX, § 9090], Oct. 18, 1986, 100 Stat. 1783–82, 1783–116, and Pub. L. 99–591, § 101(c) [title IX, § 9090], Oct. 30, 1986, 100 Stat. 3341–82, 3341–116.

Pub. L. 99–190, § 101(b) [title VIII, § 8099], Dec. 19, 1985, 99 Stat. 1185, 1219.

§ 2495a. Overseas package stores: treatment of United States wines

The Secretary of Defense shall ensure that each nonappropriated-fund activity engaged principally in selling alcoholic beverage products in a packaged form (commonly referred to as a ''package store'') that is located at a military installation outside the United States shall give appropriate treatment with respect to wines produced in the United States to ensure that such wines are given, in general, an equitable distribution, selection, and price when compared with wines produced by the host nation.

(Added Pub. L. 100–180, div. A, title III, § 311(a)(1), Dec. 4, 1987, 101 Stat. 1073, § 2489; renumbered § 2495a, Pub. L. 108–375, div. A, title VI, § 651(b)(2), (c)(5), Oct. 28, 2004, 118 Stat. 1971, 1972.)

AMENDMENTS

2004—Pub. L. 108–375 renumbered section 2489 of this title as this section.

REGULATIONS DEADLINE

Pub. L. 100–180, div. A, title III, § 311(b), Dec. 4, 1987, 101 Stat. 1073, directed Secretary of Defense to prescribe regulations to implement this section not later than 90 days after Dec. 4, 1987.

§ 2495b. Sale or rental of sexually explicit material prohibited

(a) PROHIBITION OF SALE OR RENTAL.—The Secretary of Defense may not permit the sale or rental of sexually explicit material on property under the jurisdiction of the Department of Defense.

(b) PROHIBITION OF OFFICIALLY PROVIDED SEXUALLY EXPLICIT MATERIAL.—A member of the armed forces or a civilian officer or employee of the Department of Defense acting in an official capacity may not provide for sale, remuneration, or rental sexually explicit material to another person.

(c) RESALE ACTIVITIES REVIEW BOARD.—(1) The Secretary of Defense shall establish a nine-member board to make recommendations to the Secretary regarding whether material sold or rented, or proposed for sale or rental, on property under the jurisdiction of the Department of Defense is barred from sale or rental by subsection (a).

(2)(A) The Secretary of Defense shall appoint six members of the board to broadly represent the interests of the patron base served by the defense commissary system and the exchange system. The Secretary shall appoint one of the members to serve as the chairman of the board. At least one member appointed under this subparagraph shall be a person with experience managing or advocating for military family programs and who is also an eligible patron of the defense commissary system and the exchange system.

(B) The Secretary of each of the military departments shall appoint one member of the board.

(C) A vacancy on the board shall be filled in the same manner as the original appointment.

(3) The Secretary of Defense may detail persons to serve as staff for the board. At a minimum, the Secretary shall ensure that the board is assisted at meetings by military resale and legal advisors.

(4) The recommendations made by the board under paragraph (1) shall be made available to the public. The Secretary of Defense shall publicize the availability of such recommendations by such means as the Secretary considers appropriate.

(5) Members of the board shall be allowed travel expense, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5 while away from their homes or regular places of business in the performance of services for the board.

(d) REGULATIONS.—The Secretary of Defense shall prescribe regulations to implement this section.

(e) DEFINITIONS.—In this section:

(1) The term ''sexually explicit material'' means an audio recording, a film or video recording, or a periodical with visual depictions, produced in any medium, the dominant theme of which depicts or describes nudity, including sexual or excretory activities or organs, in a lascivious way.

(2) The term ''property under the jurisdiction of the Department of Defense'' includes commissaries, all facilities operated by the Army and Air Force Exchange Service, the Navy Exchange Service Command, the Navy Resale and Services Support Office, Marine Corps exchanges, and ships' stores.

(Added Pub. L. 104–201, div. A, title III, § 343(a)(1), Sept. 23, 1996, 110 Stat. 2489, § 2489a; renumbered § 2495b, Pub. L. 108–375, div. A, title VI, § 651(b)(2), (c)(5), Oct. 28, 2004, 118 Stat. 1971, 1972; amended Pub. L. 110–417, [div. A], title VI, § 642(a), Oct. 14, 2008, 122 Stat. 4493.)

AMENDMENTS

2008—Subsecs. (c) to (e). Pub. L. 110–417 added subsec. (c) and redesignated former subsecs. (c) and (d) as (d) and (e), respectively.

2004—Pub. L. 108–375 renumbered section 2489a of this title as this section.

EFFECTIVE DATE

Pub. L. 104–201, div. A, title III, § 343(b), Sept. 23, 1996, 110 Stat. 2490, provided that: ''Subsection (a) of section 2489a [now 2495b] of title 10, United States Code, as added by subsection (a) of this section, shall take effect 90 days after the date of the enactment of this Act [Sept. 23, 1996].''

RESALE ACTIVITIES REVIEW BOARD: ESTABLISHMENT AND INITIAL MEETING

Pub. L. 110–417, [div. A], title VI, § 642(b), Oct. 14, 2008, 122 Stat. 4494, provided that:

''(1) ESTABLISHMENT.—The board required by subsection (c) of section 2495b of title 10, United States Code, as added by subsection (a), shall be established, and its initial nine members appointed, not later than 120 days after the date of the enactment of this Act [Oct. 14, 2008].

''(2) MEETINGS.—The board shall conduct an initial meeting within one year after the date of the appointment of the initial members of the board. At the discretion of the board, the board may consider all materials previously reviewed under such section as available for reconsideration for a minimum of 180 days following the initial meeting of the board.''

CHAPTER 148—NATIONAL DEFENSE TECHNOLOGY AND INDUSTRIAL BASE, DEFENSE REINVESTMENT, AND DEFENSE CONVERSION

Subchapter		Sec.
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REPEAL OF CHAPTER

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1881(a), Jan. 1, 2021, 134 Stat. 4151, 4293, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this chapter is repealed. See Effective Date of Repeal note below.

PRIOR PROVISIONS

A prior chapter 148, comprised of section 2501 et seq., relating to defense industrial base, was repealed, except for sections 2504 to 2507, by Pub. L. 102–484, div. D, title XLII, § 4202(a), Oct. 23, 1992, 106 Stat. 2659. Sections 2504 to 2507 of that chapter were renumbered sections 2531 to 2534, respectively, of this chapter by Pub. L. 102–484, § 4202(a).

AMENDMENTS

2000—Pub. L. 106–398, § 1 [[div. A], title X, § 1033(a)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–260, added item for subchapter VII.

1998—Pub. L. 105–261, div. A, title X, § 1069(a)(4), Oct. 17, 1998, 112 Stat. 2136, substituted ''2500'' for ''2491'' in item for subchapter I and struck out ''and Dual-Use Assistance Extension Programs'' after ''Technology'' in item for subchapter IV.

1996—Pub. L. 104–106, div. A, title XIII, § 1321(a)(2), Feb. 10, 1996, 110 Stat. 477, added item for subchapter VI.

EFFECTIVE DATE OF REPEAL

Repeal effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

SUBCHAPTER I—DEFINITIONS

Sec.	
2500.	Definitions.

REPEAL OF SUBCHAPTER

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1881(a), Jan. 1, 2021, 134 Stat. 4151, 4293, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, chapter 148 of this title, and therefore this subchapter, is repealed. See Effective Date of Repeal note below.

AMENDMENTS

1997—Pub. L. 105–85, div. A, title III, § 371(c)(4), Nov. 18, 1997, 111 Stat. 1705, renumbered item 2491 as 2500.

EFFECTIVE DATE OF REPEAL

Repeal effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 2500. Definitions

In this chapter:

(1) The term ''national technology and industrial base'' means the persons and organizations that are engaged in research, development, production, integration, services, or information technology activities conducted within the United States, the United Kingdom of Great Britain and Northern Ireland, Australia, and Canada.

(2) The term ''dual-use'' with respect to products, services, standards, processes, or acquisition practices, means products, services, standards, processes, or acquisition practices, respectively, that are capable of meeting requirements for military and nonmilitary applications.

(3) The term ''dual-use critical technology'' means a critical technology that has military applications and nonmilitary applications.

(4) The term ''technology and industrial base sector'' means a group of public or private persons and organizations that engage in, or are capable of engaging in, similar research, development, production, integration, services, or information technology activities.

(5) The terms ''Federal laboratory'' and ''laboratory'' have the meaning given the term ''laboratory'' in section 12(d)(2) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a(d)(2)), except that such terms include a federally funded research and development center sponsored by a Federal agency.

(6) The term ''critical technology'' means a technology that is—

(A) a national critical technology; or

(B) a defense critical technology.

(7) The term ''national critical technology'' means a technology that appears on the list of national critical technologies contained in the most recent biennial report on national critical technologies submitted to Congress by the President pursuant to section 603(d)[1] of the National Science and Technology Policy, Organization, and Priorities Act of 1976 (42 U.S.C. 6683(d)).

(8) The term ''defense critical technology'' means a technology that is identified under section 2505 of this title as critical for attaining the national security objectives set forth in section 2501(a) of this title.

(9) The term ''eligible firm'' means a company or other business entity that, as determined by the Secretary of Commerce—

(A) conducts a significant level of its research, development, engineering, manufacturing, integration, services, and information technology activities in the United States; and

(B) is a company or other business entity the majority ownership or control of which is by United States citizens or is a company or other business of a parent company that is incorporated in a country the government of which—

(i) encourages the participation of firms so owned or controlled in research and development consortia to which the government of that country provides funding directly or provides funding indirectly through international organizations or agreements; and

(ii) affords adequate and effective protection for the intellectual property rights of companies incorporated in the United States.

Such term includes a consortium of such companies or other business entities, as determined by the Secretary of Commerce.

(10) The term ''manufacturing technology'' means techniques and processes designed to improve manufacturing quality, productivity, and practices, including quality control, shop floor management, inventory management, and worker training, as well as manufacturing equipment and software.

[1] See References in Text note below.

(11) The term ''Small Business Innovation Research Program'' means the program established under the following provisions of section 9 of the Small Business Act (15 U.S.C. 638):

(A) Paragraphs (4) through (7) of subsection (b).

(B) Subsections (e) through (*l*).

(12) The term ''Small Business Technology Transfer Program'' means the program established under the following provisions of such section:

(A) Paragraphs (4) through (7) of subsection (b).

(B) Subsections (e) and (n) through (p).

(13) The term ''significant equity percentage'' means—

(A) a level of contribution and participation sufficient, when compared to the other non-Federal participants in the partnership or other cooperative arrangement involved, to demonstrate a comparable long-term financial commitment to the product or process development involved; and

(B) any other criteria the Secretary may consider necessary to ensure an appropriate equity mix among the participants.

(14) The term ''person of a foreign country'' has the meaning given such term in section 3502(d) of the Primary Dealers Act of 1988 (22 U.S.C. 5342(d)).

(15) The term ''integration'' means the process of providing systems engineering and technical direction for a system for the purpose of achieving capabilities that satisfy program requirements.

(Added Pub. L. 102–484, div. D, title XLII, § 4203(a), Oct. 23, 1992, 106 Stat. 2661, § 2491; amended Pub. L. 103–160, div. A, title XI, § 1182(a)(9), title XIII, § 1315(f), Nov. 30, 1993, 107 Stat. 1771, 1788; Pub. L. 103–337, div. A, title XI, §§ 1113(d), 1115(e), Oct. 5, 1994, 108 Stat. 2866, 2869; Pub. L. 104–106, div. A, title X, § 1081(h), Feb. 10, 1996, 110 Stat. 455; renumbered § 2500 and amended Pub. L. 105–85, div. A, title III, § 371(b)(3), title X, § 1073(a)(53), Nov. 18, 1997, 111 Stat. 1705, 1903; Pub. L. 111–383, div. A, title VIII, § 895(a), Jan. 7, 2011, 124 Stat. 4313; Pub. L. 114–328, div. A, title VIII, § 881(b), Dec. 23, 2016, 130 Stat. 2316.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1866(c), Jan. 1, 2021, 134 Stat. 4151, 4279, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 381 of this title, as amended by section 1866(b) of Pub. L. 116–283, inserted after the table of sections at the beginning, and redesignated as section 4801 of this title. See Effective Date of 2021 Amendment note below.

REFERENCES IN TEXT

Section 603 of the National Science and Technology Policy, Organization, and Priorities Act of 1976, referred to in par. (7), was classified to section 6683 of Title 42, The Public Health and Welfare, and was omitted from the Code.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in former sections 2511 and 2521 of this title prior to repeal by Pub. L. 102–484, § 4202(a).

AMENDMENTS

2016—Par. (1). Pub. L. 114–328 inserted '', the United Kingdom of Great Britain and Northern Ireland, Australia,'' after ''United States''.

2011—Par. (1). Pub. L. 111–383, § 895(a)(1), substituted ''integration, services, or information technology'' for ''or maintenance''.

Par. (4). Pub. L. 111–383, § 895(a)(2), substituted ''production, integration, services, or information technology'' for ''or production''.

Par. (9)(A). Pub. L. 111–383, § 895(a)(3), substituted ''manufacturing, integration, services, and information technology'' for ''and manufacturing''.

Par. (15). Pub. L. 111–383, § 895(a)(4), added par. (15).

1997—Pub. L. 105–85, § 371(b)(3), renumbered section 2491 of this title as this section.

Par. (8). Pub. L. 105–85, § 1073(a)(53), substituted ''that is identified under section 2505 of this title as critical for attaining the national security objectives set forth in section 2501(a) of this title.'' for ''that appears on the list of critical technologies contained, pursuant to subsection (b)(4) of section 2505 of this title, in the most recent national technology and industrial base assessment submitted to Congress by the Secretary of Defense pursuant to section 2506(e) of this title.''

1996—Pars. (11) to (16). Pub. L. 104–106 redesignated pars. (13) to (16) as (11) to (14), respectively, and struck out former pars. (11) and (12) which read as follows:

''(11) The term 'manufacturing extension program' means a public or private, nonprofit program for the improvement of the quality, productivity, and performance of United States-based small manufacturing firms in the United States.

''(12) The term 'United States-based small manufacturing firm' means a company or other business entity that, as determined by the Secretary of Commerce—

''(A) engages in manufacturing;

''(B) has less than 500 employees; and

''(C) is an eligible firm.''

1994—Par. (5). Pub. L. 103–337, § 1113(d), inserted before period at end '', except that such terms include a federally funded research and development center sponsored by a Federal agency''.

Par. (16). Pub. L. 103–337, § 1115(e), added par. (16).

1993—Par. (2). Pub. L. 103–160, § 1182(a)(9)(A), substituted ''nonmilitary applications'' for ''nonmilitary application''.

Par. (8). Pub. L. 103–160, § 1182(a)(9)(B), substituted ''subsection (b)(4)'' for ''subsection (f)''.

Pars. (13) to (15). Pub. L. 103–160, § 1315(f), added pars. (13) to (15).

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

SHORT TITLE OF 1994 AMENDMENT

Pub. L. 103–337, div. A, title XI, § 1101, Oct. 5, 1994, 108 Stat. 2862, provided that: ''This title [enacting sections 2519 and 2520 of this title, amending this section, sections 1151, 1152, 2391, 2511 to 2513, and 2524 of this title, and sections 1662d and 1662d–1 of Title 29, Labor, and enacting and amending provisions set out as notes under section 2501 of this title] may be cited as the 'Defense Conversion, Reinvestment, and Transition Assistance Amendments of 1994'.''

SHORT TITLE OF 1993 AMENDMENT

Pub. L. 103–160, div. A, title XIII, § 1301, Nov. 30, 1993, 107 Stat. 1783, provided that: ''This title [enacting sections 1152 and 1153 of this title and sections 1279d, 1279e, and 1280a of the Appendix to Title 46, Shipping, amending this section, sections 1142, 1151, 1598, 2410j, 2501, 2502, 2511 to 2513, 2523, and 2524 of this title, sections 1551 and 1662d–1 of Title 29, Labor, section 31326 of Title 46, and sections 1271, 1273, 1274, and 1274a of the Appendix to Title 46, repealing section 2504 of this title, enacting provisions set out as notes under sections 1143, 1151, 2501, 2511, 2701, and 5013 of this title, section 1662d–1 of Title 29, and sections 1279b and 1279d of the Appendix to Title 46, amending provisions set out as notes under sections 1143, 2391, and 2501 of this title, and repealing provisions set out as a note under section 2701 of this title] may be cited as the 'Defense Conversion, Reinvestment, and Transition Assistance Amendments of 1993'.''

SHORT TITLE

Pub. L. 102–484, div. D, § 4001, Oct. 23, 1992, 106 Stat. 2658, provided that: ''This division [div. D (§§ 4001–4501) of Pub. L. 102–484, see Tables for classification] may be cited as the 'Defense Conversion, Reinvestment, and Transition Assistance Act of 1992'.''

TREATMENT OF INTERAGENCY AND STATE AND LOCAL PURCHASES WHEN THE DEPARTMENT OF DEFENSE ACTS AS CONTRACT INTERMEDIARY FOR THE GENERAL SERVICES ADMINISTRATION

Pub. L. 114–92, div. A, title VIII, § 897, Nov. 25, 2015, 129 Stat. 954, provided that: ''Contracts executed by the Department of Defense as a result of the transfer of contracts from the General Services Administration or for which the Department serves as an item manager for products on behalf of the General Services Administration shall not be subject to requirements under chapter 148 of title 10, United States Code, to the extent such contracts are for purchases of products by other Federal agencies or State or local governments.''

APPLICATION OF 1993 AMENDMENTS TO EXISTING TECHNOLOGY REINVESTMENT PROJECTS

Amendment by section 1315(f) of Pub. L. 103–160 not to alter financial commitment requirements in effect on the day before Nov. 30, 1993, for non-Federal Government participants in a project funded under section 2511, 2512, 2513, 2523, or 2524 of this title, using funds appropriated for a fiscal year beginning before Oct. 1, 1993, see section 1315(g) of Pub. L. 103–160, set out as a note under section 2511 of this title.

CONGRESSIONAL FINDINGS ON MILITARY SIGNIFICANCE OF COLLAPSE OF COMMUNISM

Pub. L. 102–484, div. D, title XLI, § 4101, Oct. 23, 1992, 106 Stat. 2658, which set out congressional findings concerning the effects the collapse of communism in Eastern Europe and the dissolution of the Soviet Union have had on the military requirements of the United States, was repealed by Pub. L. 115–232, div. A, title VIII, § 812(b)(54), Aug. 13, 2018, 132 Stat. 1850.

PURPOSES OF TITLE XLII OF PUB. L. 102–484

Pub. L. 102–484, div. D, title XLII, § 4201, Oct. 23, 1992, 106 Stat. 2659, provided that: ''The purposes of this title [see Tables for classification] are to consolidate, revise, clarify, and reenact policies and requirements, and to enact additional policies and requirements, relating to the national technology and industrial base, defense reinvestment, and defense conversion programs that further national security objectives.''

TRANSITION PROVISION; ''DEFENSE CRITICAL TECHNOLOGY'' DEFINED

Pub. L. 102–484, div. D, title XLII, § 4203(b), Oct. 23, 1992, 106 Stat. 2662, provided that until first national technology and industrial base assessment was submitted to Congress by Secretary of Defense pursuant to former section 2506(e) of this title, the term ''defense critical technology'' for purposes of this chapter, would

have meaning given such term in section 2521 of this title, as in effect on day before Oct. 23, 1992.

SUBCHAPTER II—POLICIES AND PLANNING

Sec.
2501. National security strategy for national technology and industrial base.
2502. National Defense Technology and Industrial Base Council.
2503. National defense program for analysis of the technology and industrial base.
2504. National technology and industrial base: annual report and quarterly briefings.
2504a. Unfunded priorities of the national technology and industrial base: annual report.
2505. National technology and industrial base: periodic defense capability assessments.
2506. Department of Defense technology and industrial base policy guidance.
2507. Data collection authority of President.
2508. Industrial Base Fund
2509. Modernization of acquisition processes to ensure integrity of industrial base.

REPEAL OF SUBCHAPTER

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1881(a), Jan. 1, 2021, 134 Stat. 4151, 4293, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, chapter 148 of this title, and therefore this subchapter, is repealed. See Effective Date of Repeal note below.

AMENDMENTS

2021—Pub. L. 116–283, div. A, title VIII, § 842(b)(2), Jan. 1, 2021, 134 Stat. 3765, added item 2504 and struck out former item 2504 ''Annual report to Congress''.

2019—Pub. L. 116–92, div. A, title VIII, §§ 845(b), 846(c)(2), Dec. 19, 2019, 133 Stat. 1503, 1505, added items 2504a and 2509.

2017—Pub. L. 115–91, div. A, title X, § 1081(g)(2), Dec. 12, 2017, 131 Stat. 1601, amended directory language of Pub. L. 111–383, § 896(b)(2). See 2011 Amendment note below.

2013—Pub. L. 112–239, div. A, title XVI, § 1603(a)(2), Jan. 2, 2013, 126 Stat. 2063, substituted ''National security strategy for national technology and industrial base'' for ''National security objectives concerning national technology and industrial base'' in item 2501.

2011—Pub. L. 111–383, div. A, title VIII, § 896(b)(2), Jan. 7, 2011, 124 Stat. 4316, as amended by Pub. L. 115–91, div. A, title X, § 1081(g)(2), Dec. 12, 2017, 131 Stat. 1601, added item 2508.

1996—Pub. L. 104–201, div. A, title VIII, § 829(g), Sept. 23, 1996, 110 Stat. 2614, added item 2504 and substituted ''Department of Defense technology and industrial base policy guidance'' for ''National technology and industrial base: periodic defense capability plan'' in item 2506.

Pub. L. 104–106, div. A, title X, § 1081(i)(1), Feb. 10, 1996, 110 Stat. 455, substituted ''National security objectives concerning national technology and industrial base'' for ''Congressional defense policy concerning national technology and industrial base, reinvestment, and conversion'' in item 2501.

1993—Pub. L. 103–160, div. A, title XIII, § 1312(a)(2), Nov. 30, 1993, 107 Stat. 1786, struck out item 2504 ''Center for the Study of Defense Economic Adjustment''.

EFFECTIVE DATE OF REPEAL

Repeal effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 2501. National security strategy for national technology and industrial base

(a) NATIONAL SECURITY STRATEGY FOR NATIONAL TECHNOLOGY AND INDUSTRIAL BASE.—The Secretary of Defense shall develop a national security strategy for the national technology and industrial base. The Secretary shall submit such strategy to Congress not later than 180 days after the date of submission of the national security strategy report required under section 108 of the National Security Act of 1947 (50 U.S.C. 3043). Such strategy shall be based on a prioritized assessment of risks and challenges to the defense supply chain and shall ensure that the national technology and industrial base is capable of achieving the following national security objectives:

(1) Supplying, equipping, and supporting the force structure of the armed forces that is necessary to achieve—

(A) the objectives set forth in the national security strategy report submitted to Congress by the President pursuant to section 108 of the National Security Act of 1947 (50 U.S.C. 3043);

(B) the policy guidance of the Secretary of Defense provided pursuant to section 113(g) of this title; and

(C) the future-years defense program submitted to Congress by the Secretary of Defense pursuant to section 221 of this title.

(2) Sustaining production, maintenance, repair, logistics, and other activities in support of military operations of various durations and intensity.

(3) Maintaining advanced research and development activities to provide the armed forces with systems capable of ensuring technological superiority over potential adversaries.

(4) Reconstituting within a reasonable period the capability to develop, produce, and support supplies and equipment, including technologically advanced systems, in sufficient quantities to prepare fully for a war, national emergency, or mobilization of the armed forces before the commencement of that war, national emergency, or mobilization.

(5) Providing for the development, manufacture, and supply of items and technologies critical to the production and sustainment of advanced military weapon systems within the national technology and industrial base.

(6) Providing for the generation of services capabilities that are not core functions of the armed forces and that are critical to military operations within the national technology and industrial base.

(7) Providing for the development, production, and integration of information technology within the national technology and industrial base.

(8) Maintaining critical design skills to ensure that the armed forces are provided with systems capable of ensuring technological superiority over potential adversaries.

(9) Ensuring reliable sources of materials that are critical to national security, such as specialty metals, essential minerals, armor plate, and rare earth elements.

(10) Reducing, to the maximum extent practicable, the presence of counterfeit parts in the supply chain and the risk associated with such parts.

(11) Providing for the provision of drugs, biological products, vaccines, and critical med-

ical supplies required to enable combat readiness and protect the health of the armed forces.

(b) CIVIL-MILITARY INTEGRATION POLICY.—The Secretary of Defense shall ensure that the United States attains the national technology and industrial base objectives set forth in subsection (a) through acquisition policy reforms that have the following objectives:

(1) Relying, to the maximum extent practicable, upon the commercial national technology and industrial base that is required to meet the national security needs of the United States.

(2) Reducing the reliance of the Department of Defense on technology and industrial base sectors that are economically dependent on Department of Defense business.

(3) Reducing Federal Government barriers to the use of commercial products, processes, and standards.

(Added Pub. L. 102–484, div. D, title XLII, § 4211, Oct. 23, 1992, 106 Stat. 2662; amended Pub. L. 103–35, title II, § 201(c)(7), May 31, 1993, 107 Stat. 98; Pub. L. 103–160, div. A, title XI, § 1182(a)(10), title XIII, § 1313, Nov. 30, 1993, 107 Stat. 1771, 1786; Pub. L. 104–106, div. A, title X, § 1081(a), Feb. 10, 1996, 110 Stat. 452; Pub. L. 104–201, div. A, title VIII, § 829(a), Sept. 23, 1996, 110 Stat. 2612; Pub. L. 111–23, title III, § 303(a), May 22, 2009, 123 Stat. 1731; Pub. L. 111–383, div. A, title VIII, § 895(b), Jan. 7, 2011, 124 Stat. 4314; Pub. L. 112–239, div. A, title XVI, § 1603(a)(1), Jan. 2, 2013, 126 Stat. 2062; Pub. L. 113–291, div. A, title X, § 1071(c)(2), Dec. 19, 2014, 128 Stat. 3508; Pub. L. 114–328, div. A, title VIII, § 882, Dec. 23, 2016, 130 Stat. 2316; Pub. L. 116–92, div. A, title VIII, § 846(a), Dec. 20, 2019, 133 Stat. 1503; Pub. L. 116–283, div. A, title VII, § 713(a), Jan. 1, 2021, 134 Stat. 3692.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1867(b), Jan. 1, 2021, 134 Stat. 4151, 4281, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 382 of this title, as added by section 1867(a) of Pub. L. 116–283, inserted after the table of sections at the beginning of such chapter, and redesignated as section 4811 of this title. See Effective Date of 2021 Amendment note below.

PRIOR PROVISIONS

A prior section 2501, added Pub. L. 100–456, div. A, title VIII, § 821(b)(1)(B), Sept. 29, 1988, 102 Stat. 2014, related to centralized guidance, analysis, and planning, prior to repeal by Pub. L. 102–484, § 4202(a).

Another prior section 2501 was renumbered section 2533 of this title.

AMENDMENTS

2021—Subsec. (a)(11). Pub. L. 116–283 added par. (11).

2019—Subsec. (a). Pub. L. 116–92 inserted "The Secretary shall submit such strategy to Congress not later than 180 days after the date of submission of the national security strategy report required under section 108 of the National Security Act of 1947 (50 U.S.C. 3043)." after first sentence.

2016—Subsec. (b). Pub. L. 114–328, in introductory provisions, substituted "The Secretary of Defense shall ensure that the United States attains" for "It is the policy of Congress that the United States attain".

2014—Subsec. (a)(1)(A). Pub. L. 113–291 substituted "(50 U.S.C. 3043)" for "(50 U.S.C. 404a)".

2013—Pub. L. 112–239, § 1603(a)(1)(A), substituted "strategy for" for "objectives concerning" in section catchline.

Subsec. (a). Pub. L. 112–239, § 1603(a)(1)(B)(i), (ii), substituted "Strategy" for "Objectives" in heading and "The Secretary of Defense shall develop a national security strategy for the national technology and industrial base. Such strategy shall be based on a prioritized assessment of risks and challenges to the defense supply chain and shall ensure that the national technology and industrial base is capable of achieving the following national security objectives:" for "It is the policy of Congress that the national technology and industrial base be capable of meeting the following national security objectives:" in introductory provisions.

Subsec. (a)(9), (10). Pub. L. 112–239, § 1603(a)(1)(B)(iii), added pars. (9) and (10).

2011—Subsec. (a)(1). Pub. L. 111–383, § 895(b)(1), substituted "Supplying, equipping, and supporting" for "Supplying and equipping" in introductory provisions.

Subsec. (a)(2). Pub. L. 111–383, § 895(b)(2), substituted "logistics, and other activities in support of" for "and logistics for".

Subsec. (a)(4). Pub. L. 111–383, § 895(b)(3), substituted ", produce, and support" for "and produce".

Subsec. (a)(6) to (8). Pub. L. 111–383, § 895(b)(4), added pars. (6) and (7) and redesignated former par. (6) as (8).

2009—Subsec. (a)(6). Pub. L. 111–23 added par. (6).

1996—Pub. L. 104–106, § 1081(a)(2), substituted "National security objectives concerning national technology and industrial base" for "Congressional defense policy concerning national technology and industrial base, reinvestment, and conversion" as section catchline.

Subsec. (a). Pub. L. 104–106, § 1081(a)(1)(A)(i), substituted "National Security" for "Defense Policy" in heading.

Subsec. (a)(5). Pub. L. 104–201 added par. (5).

Pub. L. 104–106, § 1081(a)(1)(A)(ii), struck out par. (5) which read as follows: "Furthering the missions of the Department of Defense through the support of policy objectives and programs relating to the defense reinvestment, diversification, and conversion objectives specified in subsection (b)."

Subsecs. (b), (c). Pub. L. 104–106, § 1081(a)(1)(B), (C), redesignated subsec. (c) as (b) and struck out former subsec. (b) which stated policy objectives of Congress relating to defense reinvestment, diversification, and conversion.

1993—Subsec. (a)(1)(A). Pub. L. 103–35 substituted "section 108" for "section 104".

Subsec. (a)(5). Pub. L. 103–160, § 1313, added par. (5).

Subsec. (b)(2). Pub. L. 103–160, § 1182(a)(10), substituted "that, by reducing the public sector demand for capital, increases the amount of capital available" for "and thereby free up capital".

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by section 1867(b) of Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

SUPPORT FOR DEFENSE MANUFACTURING COMMUNITIES TO SUPPORT THE DEFENSE INDUSTRIAL BASE

Pub. L. 115–232, div. A, title VIII, § 846, Aug. 13, 2018, 132 Stat. 1881, provided that:

"(a) PROGRAM AUTHORIZED.—

"(1) IN GENERAL.—The Secretary of Defense may, in coordination with the Secretary of Commerce and working in coordination with the defense manufacturing institutes, establish within the Department of Defense a program to make long-term investments in critical skills, facilities, research and development, and small business support in order to strengthen the national security innovation base by designating and

supporting consortiums as defense manufacturing communities.

"(2) DESIGNATION.—The program authorized by this section shall be known as the 'Defense Manufacturing Community Support Program' (in this section referred to as the 'Program').

"(b) DESIGNATION OF DEFENSE MANUFACTURING COMMUNITIES COMPLEMENTARY TO DEFENSE MANUFACTURING INSTITUTES.—

"(1) IN GENERAL.—The Secretary of Defense may designate eligible consortiums as defense manufacturing communities through a competitive process, and in coordination with the defense manufacturing institutes.

"(2) ELIGIBLE CONSORTIUMS.—The Secretary may establish eligibility criteria for a consortium to participate in the Program. In developing such criteria, the Secretary may consider the merits of—

"(A) including members from academia, defense industry, commercial industry, and State and local government organizations;

"(B) supporting efforts in geographical regions that have capabilities in key technologies or industrial base supply chains that are determined critical to national security;

"(C) optimal consortium composition and size to promote effectiveness, collaboration, and efficiency; and

"(D) complementarity with defense manufacturing institutes.

"(3) DURATION.—Each designation under paragraph (1) shall be for a period of five years.

"(4) RENEWAL.—

"(A) IN GENERAL.—The Secretary may renew a designation made under paragraph (1) for up to two additional two-year periods. Any designation as a defense manufacturing community or renewal of such designation that is in effect before the date of the enactment of this Act [Aug. 13, 2018] shall count toward the limit set forth in this subparagraph.

"(B) EVALUATION FOR RENEWAL.—The Secretary shall establish criteria for the renewal of a consortium. In establishing such criteria, the Secretary may consider—

"(i) the performance of the consortium in meeting the established goals of the Program;

"(ii) the progress the consortium has made with respect to project-specific metrics, particularly with respect to those metrics that were designed to help communities track their own progress;

"(iii) whether any changes to the composition of the eligible consortium or revisions of the plan for the consortium would improve the capabilities of the defense industrial base;

"(iv) the effectiveness of coordination with defense manufacturing institutes; and

"(v) such other criteria as the Secretary considers appropriate.

"(5) APPLICATION FOR DESIGNATION.—An eligible consortium seeking a designation under paragraph (1) shall submit an application to the Secretary at such time and in such manner as the Secretary may require. In developing such procedures, the Secretary may consider the inclusion of—

"(A) a description of the regional boundaries of the consortium, and the defense manufacturing capacity of the region;

"(B) an evidence-based plan for enhancing the defense industrial base through the efforts of the consortium;

"(C) the investments the consortium proposes and the strategy of the consortium to address gaps in the defense industrial base;

"(D) a description of the outcome-based metrics, benchmarks, and milestones that will track and the evaluation methods that will be used to gauge performance of the consortium;

"(E) how the initiatives will complement defense manufacturing institutes; and

"(F) such other matters as the Secretary considers appropriate.

"(c) FINANCIAL AND TECHNICAL ASSISTANCE.—

"(1) IN GENERAL.—Under the Program, the Secretary of Defense may award financial or technical assistance to a member of a consortium designated as a defense manufacturing community under the Program as appropriate for purposes of the Program.

"(2) USE OF FUNDS.—A recipient of financial or technical assistance under the Program may use such financial or technical assistance to support an investment that will improve the defense industrial base.

"(3) INVESTMENTS SUPPORTED.—Investments supported under this subsection may include activities not already provided for by defense manufacturing institutes on—

"(A) equipment or facility upgrades;

"(B) workforce training, retraining, or recruitment and retention, including that of women and underrepresented minorities;

"(C) business incubators;

"(D) advanced research and commercialization, including with Federal laboratories and depots;

"(E) supply chain development; and

"(F) small business assistance.

"(d) RECEIPT OF TRANSFERRED FUNDS.—The Secretary of Defense may accept amounts transferred to the Secretary from the head of another agency or a State or local governmental organization to carry out this section."

ENHANCED ANALYTICAL AND MONITORING CAPABILITY OF THE DEFENSE INDUSTRIAL BASE

Pub. L. 115–91, div. A, title X, § 1071, Dec. 12, 2017, 131 Stat. 1582, provided that:

"(a) PROCESS.—

"(1) IN GENERAL.—Not later than 90 days after the date of enactment of this Act [Dec. 12, 2017], the Secretary of Defense shall establish a process, or designate an existing process, for enhancing the ability of the Department of Defense to analyze, assess, and monitor the vulnerabilities of, and concentration of purchases in, the defense industrial base.

"(2) ELEMENTS.—The process required by subsection (a) shall include the following elements:

"(A) Designation of a senior official responsible for overseeing the development and implementation of the process.

"(B) Development or integration of tools to support commercial due diligence and business intelligence or to otherwise analyze and monitor commercial activity to understand business relationships affecting the defense industrial base.

"(C) Development of risk profiles of products, services, or entities based on business intelligence, commercial due diligence tools and data services.

"(D) As the Secretary determines necessary, integration with intelligence sources to develop threat profiles of entities attempting transactions with a defense industrial base companies [sic].

"(E) Other matters as the Secretary deems necessary.

"(3) NOTIFICATION.—Not later than 90 days after establishing or designating the process required by subsection (a), the Secretary shall submit to the Committees on Armed Services of the Senate and House of Representatives notice in writing that such process has been established or otherwise designated. Such notification shall include the following:

"(A) Identification of the official required to be designated under paragraph (2)(A).

"(B) Identification of the tools described in paragraph (2)(B) that are currently available to [the] Department of Defense and any other tools available commercially or otherwise that might contribute to enhancing the analytic capability of the process.

"(C) Identification of, or recommendations for, any statutory changes needed to improve the effectiveness of the process.

"(D) Projected resources necessary to purchase any commercially available tools identified under

subparagraph (B) and to carry out any statutory changes identified under subparagraph (C).

''(b) REPORTING.—

''(1) CONSOLIDATED REPORT ON VULNERABILITIES OF, AND CONCENTRATION OF PURCHASES IN, THE DEFENSE INDUSTRIAL BASE.—

''(A) REPORT REQUIRED.—For each of fiscal years 2018 through 2023, the Secretary of Defense shall submit to the appropriate congressional committees a consolidated report that combines all of the reports required to be provided to Congress for that fiscal year on the adequacy of, vulnerabilities of, and concentration of purchases in the defense industrial sector. Such consolidated report shall include each of the following:

''(i) The report required under section 721(m) of the Defense Production Act of 1950 (50 U.S.C. 4565(m)) (relating to concentrations of purchases of the defense industrial base).

''(ii) The report required under section 723(a) of the Defense Production Act of 1950 (50 U.S.C. 4568(a)) (relating to offsets in defense production).

''(iii) The report required under section 2504 of title 10, United States Code (relating to annual industrial capabilities).

''(iv) Any other reports the Secretary determines appropriate.

''(B) DEADLINE.—A consolidated report under subparagraph (A) shall be submitted by not later than March 31 of the fiscal year following the fiscal year for which the report is submitted.

''(2) REVIEW OF TECHNOLOGY PROTECTION POLICY.—Not later than 270 days after the date of the enactment of this Act [Dec. 12, 2017], the Secretary of Defense shall submit to the appropriate congressional committees a report describing any need for reforms of policies governing the export of technology or related intellectual property, along with any proposed legislative changes the Secretary believes are necessary.

''(3) FORM OF REPORTS.—Each report submitted under this subsection shall be in unclassified form, but may contain a classified annex.

''(4) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term 'appropriate congressional committees' means—

''(A) the Committee on Armed Services, the Committee on Financial Services, the Committee on Foreign Affairs, and the Permanent Select Committee on Intelligence of the House of Representatives; and

''(B) the Committee on Armed Services, the Committee on Banking, Housing, and Urban Affairs, the Committee on Foreign Relations, and the Select Committee on Intelligence of the Senate.''

[For termination, effective Dec. 30, 2021, of reporting requirements in section 1071(b)(1) of Pub. L. 115–91, set out above, see section 1702(a), (b), of Pub. L. 116–92, set out as a Termination of Reporting Requirements note under section 111 of this title.]

GREATER INTEGRATION OF THE NATIONAL TECHNOLOGY AND INDUSTRIAL BASE

Pub. L. 114–328, div. A, title VIII, §881, Dec. 23, 2016, 130 Stat. 2315, as amended by Pub. L. 116–283, div. A, title XVIII, §1866(d)(3), Jan. 1, 2021, 134 Stat. 4280, provided that:

''(a) PLAN REQUIRED.—Not later than January 1, 2018, the Secretary of Defense shall develop a plan to reduce the barriers to the seamless integration between the persons and organizations that comprise the national technology and industrial base (as defined in section 2500 of title 10, United States Code). The plan shall include at a minimum the following elements:

''(1) A description of the various components of the national technology and industrial base, including government entities, universities, nonprofit research entities, nontraditional and commercial item contractors, and private contractors that conduct commercial and military research, produce commercial items that could be used by the Department of Defense, and produce items designated and controlled under section 38 of the Arms Export Control Act [22 U.S.C. 2778] (also known as the 'United States Munitions List').

''(2) Identification of the barriers to the seamless integration of the transfer of knowledge, goods, and services among the persons and organizations of the national technology and industrial base.

''(3) Identification of current authorities that could contribute to further integration of the persons and organizations of the national technology and industrial base, and a plan to maximize the use of those authorities.

''(4) Identification of changes in export control rules, procedures, and laws that would enhance the civil-military integration policy objectives set forth in section 2501(b) of title 10, United States Code, for the national technology and industrial base to increase the access of the Armed Forces to commercial products, services, and research and create incentives necessary for nontraditional and commercial item contractors, universities, and nonprofit research entities to modify commercial products or services to meet Department of Defense requirements.

''(5) Recommendations for increasing integration of the national technology and industrial base that supplies defense articles to the Armed Forces and enhancing allied interoperability of forces through changes to the text or the implementation of—

''(A) section 126.5 of title 22, Code of Federal Regulations (relating to exemptions that are applicable to Canada under the International Traffic in Arms Regulations);

''(B) the Treaty Between the Government of the United States of America and the Government of Australia Concerning Defense Trade Cooperation, done at Sydney on September 5, 2007;

''(C) the Treaty Between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland Concerning Defense Trade Cooperation, done at Washington and London on June 21 and 26, 2007; and

''(D) any other agreements among the countries comprising the national technology and industrial base.

''(b) AMENDMENT TO DEFINITION OF NATIONAL TECHNOLOGY AND INDUSTRIAL BASE.—[Amended section 2500 of this title.]

''(c) REPORTING REQUIREMENT.—The Secretary of Defense shall report on the progress of implementing the plan in subsection (a) in the report required under section 2504 of title 10, United States Code.''

[Pub. L. 116–283, div. A, title XVIII, §§1801(d), 1866(d)(3), Jan. 1, 2021, 134 Stat. 4151, 4280, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, section 881 of Pub. L. 114–328, set out above, is amended in subsec. (a) by substituting ''section 4801'' for ''section 2500'' in introductory provisions and ''section 4811(b)'' for ''section 2501(b)'' in par. (4), and in subsec. (c) by substituting ''section 4814'' for ''section 2504''.]

DEPARTMENT OF DEFENSE TECHNOLOGY OFFSET PROGRAM TO BUILD AND MAINTAIN THE MILITARY TECHNOLOGICAL SUPERIORITY OF THE UNITED STATES

Pub. L. 114–92, div. A, title II, §218, Nov. 25, 2015, 129 Stat. 772, as amended by Pub. L. 116–283, div. A, title XVIII, §1841(e)(2), Jan. 1, 2021, 134 Stat. 4244, provided that:

''(a) PROGRAM ESTABLISHED.—

''(1) IN GENERAL.—The Secretary of Defense shall establish a technology offset program to build and maintain the military technological superiority of the United States by—

''(A) accelerating the fielding of offset technologies that would help counter technological advantages of potential adversaries of the United States, including directed energy, low-cost, high-speed munitions, autonomous systems, undersea

warfare, cyber technology, and intelligence data analytics, developed using research funding of the Department of Defense and accelerating the commercialization of such technologies; and

''(B) developing and implementing new policies and acquisition and business practices.

''(2) GUIDELINES.—Not later than one year after the date of the enactment of this Act [Nov. 25, 2015], the Secretary shall issue guidelines for the operation of the program established under paragraph (1), including—

''(A) criteria for an application for funding by a military department, Defense Agency, or a combatant command;

''(B) the purposes for which such a department, agency, or command may apply for funds and appropriate requirements for technology development or commercialization to be supported using program funds;

''(C) the priorities, if any, to be provided to field or commercialize offset technologies developed by certain types of research funding of the Department; and

''(D) criteria for evaluation of an application for funding or changes to policies or acquisition and business practices by such a department, agency, or command for purposes of the program.

''(b) APPLICATIONS FOR FUNDING.—

''(1) IN GENERAL.—Under the program established under subsection (a)(1), not less frequently than annually, the Secretary shall solicit from the heads of the military departments, the Defense Agencies, and the combatant commands applications for funding to be used to enter into contracts, cooperative agreements, or other transaction agreements entered into pursuant to section 2371b of title 10, United States Code, as added by section 815, with appropriate entities for the fielding or commercialization of technologies.

''(2) TREATMENT PURSUANT TO CERTAIN CONGRESSIONAL RULES.—Nothing in this section shall be interpreted to require any official of the Department of Defense to provide funding under this section to any Congressional earmark as defined pursuant to clause 9 of rule XXI of the Rules of the House of Representatives or any congressionally directed spending item as defined pursuant to paragraph 5 of rule XLIV of the Standing Rules of the Senate.

''(c) FUNDING.—

''(1) IN GENERAL.—Subject to the availability of appropriations for such purpose, of the funds authorized to be appropriated by this Act [see Tables for classification] or otherwise made available for fiscal year 2016 for research, development, test, and evaluation, Defense-wide, not more than $300,000,000 may be used for each such fiscal year for the program established under subsection (a)(1).

''(2) AMOUNT FOR DIRECTED ENERGY.—Of the funds specified in paragraph (1) for any of fiscal years 2016 through 2020, not more than $150,000,000 may be used for each such fiscal year for activities in the field of directed energy.

''(d) TRANSFER AUTHORITY.—

''(1) IN GENERAL.—The Secretary may transfer funds available for the program established under subsection (a)(1) to the research, development, test, and evaluation accounts of a military department, Defense Agency, or a combatant command pursuant to an application, or any part of an application, that the Secretary determines would support the purposes of the program.

''(2) SUPPLEMENT NOT SUPPLANT.—The transfer authority provided in paragraph (1) is in addition to any other transfer authority available to the Secretary of Defense.

''(e) TERMINATION.—

''(1) IN GENERAL.—The authority to carry out the program under subsection (a)(1) shall terminate on September 30, 2020.

''(2) TRANSFER AFTER TERMINATION.—Any amounts made available for the program that remain available for obligation on the date on which the program terminates may be transferred under subsection (d) during the 180-day period beginning on the date of the termination of the program.''

[Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1841(e)(2), Jan. 1, 2021, 134 Stat. 4151, 4244, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, section 218(b)(1) of Pub. L. 114–92, set out above, is amended by substituting ''section 4003'' for ''section 2371b''.]

EXPANSION OF THE INDUSTRIAL BASE

Pub. L. 111–383, div. A, title VIII, § 891, Jan. 7, 2011, 124 Stat. 4310, provided that:

''(a) PROGRAM TO EXPAND INDUSTRIAL BASE REQUIRED.—The Secretary of Defense shall establish a program to expand the industrial base of the Department of Defense to increase the Department's access to innovation and the benefits of competition.

''(b) IDENTIFYING AND COMMUNICATING WITH FIRMS THAT ARE NOT TRADITIONAL SUPPLIERS.—The program established under subsection (a) shall use tools and resources available within the Federal Government and available from the private sector to provide a capability for identifying and communicating with firms that are not traditional suppliers, including commercial firms and firms of all business sizes, that are engaged in markets of importance to the Department of Defense in which such firms can make a significant contribution.

''(c) OUTREACH TO LOCAL FIRMS NEAR DEFENSE INSTALLATIONS.—The program established under subsection (a) shall include outreach, using procurement technical assistance centers, to firms of all business sizes in the vicinity of Department of Defense installations regarding opportunities to obtain contracts and subcontracts to perform work at such installations.

''(d) INDUSTRIAL BASE REVIEW.—The program established under subsection (a) shall include a continuous effort to review the industrial base supporting the Department of Defense, including the identification of markets of importance to the Department of Defense in which firms that are not traditional suppliers can make a significant contribution.

''(e) FIRMS THAT ARE NOT TRADITIONAL SUPPLIERS.—For purposes of this section, a firm is not a traditional supplier of the Department of Defense if it does not currently have contracts and subcontracts to perform work for the Department of Defense with a total combined value in excess of $500,000.

''(f) PROCUREMENT TECHNICAL ASSISTANCE CENTER.—In this section, the term 'procurement technical assistance center' means a center operating under a cooperative agreement with the Defense Logistics Agency to provide procurement technical assistance pursuant to the authority provided in chapter 142 of title 10, United States Code.''

EXECUTIVE AGENT FOR PRINTED CIRCUIT BOARD TECHNOLOGY

Pub. L. 110–417, [div. A], title II, § 256, Oct. 14, 2008, 122 Stat. 4404, provided that:

''(a) EXECUTIVE AGENT.—Not later than 90 days after the date of the enactment of this Act [Oct. 14, 2008], the Secretary of Defense shall designate a senior official of the Department of Defense to act as the executive agent for printed circuit board technology.

''(b) ROLES, RESPONSIBILITIES, AND AUTHORITIES.—

''(1) ESTABLISHMENT.—Not later than one year after the date of the enactment of this Act [Oct. 14, 2008], and in accordance with Directive 5101.1, the Secretary of Defense shall prescribe the roles, responsibilities, and authorities of the executive agent designated under subsection (a).

''(2) SPECIFICATION.—The roles and responsibilities of the executive agent designated under subsection (a) shall include each of the following:

''(A) Development and maintenance of a printed circuit board and interconnect technology roadmap

that ensures that the Department of Defense has access to the manufacturing capabilities and technical expertise necessary to meet future military requirements regarding such technology.

''(B) Development of recommended funding strategies necessary to meet the requirements of the roadmap developed under subparagraph (A).

''(C) Assessment of the vulnerabilities, trustworthiness, and diversity of the printed circuit board supply chain, including the development of trustworthiness requirements for printed circuit boards used in defense systems, and to develop strategies to address matters that are identified as a result of such assessment.

''(D) Such other roles and responsibilities as the Secretary of Defense considers appropriate.

''(c) SUPPORT WITHIN DEPARTMENT OF DEFENSE.—In accordance with Directive 5101.1, the Secretary of Defense shall ensure that the military departments, Defense Agencies, and other components of the Department of Defense provide the executive agent designated under subsection (a) with the appropriate support and resources needed to perform the roles, responsibilities, and authorities of the executive agent.

''(d) DEFINITIONS.—In this section:

''(1) The term 'Directive 5101.1' means Department of Defense Directive 5101.1, or any successor directive relating to the responsibilities of an executive agent of the Department of Defense.

''(2) The term 'executive agent' has the meaning given the term 'DoD Executive Agent' in Directive 5101.1.''

REQUIREMENT FOR SEPARATE REPORTS ON TECHNOLOGY AREA REVIEW AND ASSESSMENT SUMMARIES

Pub. L. 109–163, div. A, title II, § 253(c), Jan. 6, 2006, 119 Stat. 3180, provided that whenever the Secretary of Defense provided for the conduct of a study referred to as a Technology Area Review and Assessment, the Secretary, not later than March 1 of the year following the year in which that study was conducted, was to submit to the Committees on Armed Services and Appropriations of the Senate and the House of Representatives a report containing a summary of each such Technology Area Review and Assessment conducted during that year, prior to repeal by Pub. L. 110–181, div. A, title II, § 236, Jan. 28, 2008, 122 Stat. 47.

ESSENTIAL ITEMS IDENTIFICATION AND DOMESTIC PRODUCTION CAPABILITIES IMPROVEMENT PROGRAM

Pub. L. 108–136, div. A, title VIII, subtitle B, part I, Nov. 24, 2003, 117 Stat. 1542, as amended by Pub. L. 109–364, div. A, title VIII, § 841, Oct. 17, 2006, 120 Stat. 2335; Pub. L. 111–84, div. A, title VIII, § 846, Oct. 28, 2009, 123 Stat. 2420; Pub. L. 112–81, div. A, title X, § 1062(g)(2), Dec. 31, 2011, 125 Stat. 1585; Pub. L. 113–291, div. A, title X, § 1071(b)(5)(A), (d)(1)(C), Dec. 19, 2014, 128 Stat. 3506, 3509; Pub. L. 116–283, div. A, title XVIII, § 1866(d)(4), Jan. 1, 2021, 134 Stat. 4280, provided that:

''SEC. 811. CONSISTENCY WITH UNITED STATES OBLIGATIONS UNDER INTERNATIONAL AGREEMENTS.

''No provision of this subtitle [subtitle B (§§ 811–828) of title VIII of div. A of Pub. L. 108–136, enacting section 2436 of this title, amending sections 2533a and 2534 of this title, and enacting provisions set out as notes under sections 2436, 2505, 2521, and 2534 of this title] or any amendment made by this subtitle shall apply to the extent the Secretary of Defense, in consultation with the Secretary of Commerce, the United States Trade Representative, and the Secretary of State, determines that it is inconsistent with United States obligations under an international agreement.

''SEC. 812. ASSESSMENT AND ANNUAL REPORT OF UNITED STATES DEFENSE INDUSTRIAL BASE CAPABILITIES AND ACQUISITIONS OF ARTICLES, MATERIALS, AND SUPPLIES MANUFACTURED OUTSIDE THE UNITED STATES.

''(a) ASSESSMENT PROGRAM.—(1) The Secretary of Defense shall establish a program to assess—

''(A) the degree to which the United States is dependent on foreign sources of supply; and

''(B) the capabilities of the United States defense industrial base to produce military systems necessary to support the national security objectives set forth in section 2501 of title 10, United States Code.

''(2) For purposes of the assessment program, the Secretary shall use existing data, as required under subsection (b), and submit an annual report, as required under subsection (c).

''(b) USE OF EXISTING DATA.—(1) At a minimum, with respect to each prime contract with a value greater than $25,000 for the procurement of defense items and components, the following information from existing sources shall be used for purposes of the assessment program:

''(A) Whether the contractor is a United States or foreign contractor.

''(B) The principal place of business of the contractor and the principal place of performance of the contract.

''(C) Whether the contract was awarded on a sole source basis or after receipt of competitive offers.

''(D) The dollar value of the contract.

''(2) The Federal Procurement Data System described in section 1122(a)(4)(A) of title 41, United States Code, or any successor system, shall collect from contracts described in paragraph (1) the information specified in that paragraph.

''(3) Information obtained in the implementation of this section is subject to the same limitations on disclosure, and penalties for violation of such limitations, as is provided under section 2507 of title 10, United States Code. Such information also shall be exempt from release under section 552 of title 5, United States Code.

''(4) For purposes of meeting the requirements set forth in this section, the Secretary of Defense may not require the provision of information beyond the information that is currently provided to the Department of Defense through existing data collection systems by non-Federal entities with respect to contracts and subcontracts with the Department of Defense or any military department.

''[(c) Repealed. Pub. L. 112–81, div. A, title X, § 1062(g)(2), Dec. 31, 2011, 125 Stat. 1585.]

''(d) PUBLIC AVAILABILITY.—The Secretary of Defense shall make the report submitted under subsection (c) publicly available to the maximum extent practicable.

''(e) APPLICABILITY.—This section shall not apply to acquisitions made by an agency, or component thereof, that is an element of the intelligence community as set forth in or designated under section 3(4) of the National Security Act of 1947 (50 U.S.C. 3003(4)).

''[SEC. 813. Repealed. Pub. L. 111–84, div. A, title VIII, § 846, Oct. 28, 2009, 123 Stat. 2420.]

''SEC. 814. PRODUCTION CAPABILITIES IMPROVEMENT FOR CERTAIN ESSENTIAL ITEMS USING DEFENSE INDUSTRIAL BASE CAPABILITIES FUND.

''(a) ESTABLISHMENT OF FUND.—There is established in the Treasury of the United States a separate fund to be known as the Defense Industrial Base Capabilities Fund (hereafter in this section referred to as the 'Fund').

''(b) MONEYS IN FUND.—There shall be credited to the Fund amounts appropriated to it.

''(c) USE OF FUND.—The Secretary of Defense is authorized to use all amounts in the Fund, subject to appropriation, for the purposes of enhancing or reconstituting United States industrial capability to produce items on the military system essential item breakout list (as described in section 812(b)) or items subject to section 2534 of title 10, United States Code, in the quantity and of the quality necessary to achieve national security objectives.

''(d) LIMITATION ON USE OF FUND.—Before the obligation of any amounts in the Fund, the Secretary of Defense shall submit to Congress a report describing the

Secretary's plans for implementing the Fund established in subsection (a), including the priorities for the obligation of amounts in the Fund, the criteria for determining the recipients of such amounts, and the mechanisms through which such amounts may be provided to the recipients.

''(e) AVAILABILITY OF FUNDS.—Amounts in the Fund shall remain available until expended.

''(f) FUND MANAGER.—The Secretary of Defense shall designate a Fund manager. The duties of the Fund manager shall include—

''(1) ensuring the visibility and accountability of transactions engaged in through the Fund; and

''(2) reporting to Congress each year regarding activities of the Fund during the previous fiscal year.''

[Pub. L. 116–283, div. A, title XVIII, §§1801(d), 1866(d)(4), Jan. 1, 2021, 134 Stat. 4151, 4280, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, part I of subtitle B of title VIII of Pub. L. 108–136, set out above, is amended, in section 812(a)(1)(B), by substituting ''section 4811'' for ''section 2501''; in section 812(b)(3), by substituting ''section 4817'' for ''section 2507''; and, in section 814(c), by substituting ''section 4864'' for ''section 2534''.]

AIR FORCE SCIENCE AND TECHNOLOGY PLANNING

Pub. L. 107–107, div. A, title II, subtitle D, Dec. 28, 2001, 115 Stat. 1041, provided that:

''SEC. 251. SHORT TITLE.

''This subtitle may be cited as the 'Air Force Science and Technology for the 21st Century Act'.

''SEC. 252. SCIENCE AND TECHNOLOGY INVESTMENT AND DEVELOPMENT PLANNING.

''(a) SENSE OF CONGRESS.—It is the sense of Congress that the Secretary of the Air Force should carry out each of the following:

''(1) Continue and improve efforts to ensure that—

''(A) the Air Force science and technology community is represented, and the recommendations of that community are considered, at all levels of program planning and budgetary decisionmaking within the Air Force;

''(B) advocacy for science and technology development is institutionalized across all levels of Air Force management in a manner that is not dependent on individuals; and

''(C) the value of Air Force science and technology development is made increasingly apparent to the warfighters, by linking the needs of those warfighters with decisions on science and technology development.

''(2) Complete and adopt a policy directive that provides for changes in how the Air Force makes budgetary and nonbudgetary decisions with respect to its science and technology development programs and how it carries out those programs.

''(3) At least once every five years, conduct a review of the long-term challenges and short-term objectives of the Air Force science and technology programs that is consistent with the review specified in section 252 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted into law by Public Law 106–398; 114 Stat. 1654A–46 [set out as a note below]).

''(4) Ensure that development and science and technology planning and investment activities are carried out for future space warfighting systems and for future nonspace warfighting systems in an integrated manner.

''(5) Elevate the position within the Office of the Secretary of the Air Force that has primary responsibility for budget and policy decisions for science and technology programs.

''(b) REINSTATEMENT OF DEVELOPMENT PLANNING.—(1) The Secretary of the Air Force shall reinstate and implement a revised development planning process that provides for each of the following:

''(A) Coordinating the needs of Air Force warfighters with decisions on science and technology development.

''(B) Giving input into the establishment of priorities among science and technology programs.

''(C) Analyzing Air Force capability options for the allocation of Air Force resources.

''(D) Developing concepts for technology, warfighting systems, and operations with which the Air Force can achieve its critical future goals.

''(E) Evaluating concepts for systems and operations that leverage technology across Air Force organizational boundaries.

''(F) Ensuring that a 'system-of-systems' approach is used in carrying out the various Air Force capability planning exercises.

''(G) Utilizing existing analysis capabilities within the Air Force product centers in a collaborative and integrated manner.

''(2) Not later than one year after the date of the enactment of this Act [Dec. 28, 2001], the Secretary of the Air Force shall submit to Congress a report on the implementation of the planning process required by paragraph (1). The report shall include the annual amount that the Secretary considers necessary to carry out paragraph (1).

''SEC. 253. STUDY AND REPORT ON EFFECTIVENESS OF AIR FORCE SCIENCE AND TECHNOLOGY PROGRAM CHANGES.

''(a) REQUIREMENT.—The Secretary of the Air Force, in cooperation with the National Research Council of the National Academy of Sciences, shall carry out a study to determine how the changes to the Air Force science and technology program implemented during the past two years affect the future capabilities of the Air Force.

''(b) MATTERS STUDIED.—(1) The study shall review and assess whether such changes as a whole are sufficient to ensure the following:

''(A) That the concerns about the management of the science and technology program that have been raised by Congress, the Defense Science Board, the Air Force Science Advisory Board, and the Air Force Association have been adequately addressed.

''(B) That appropriate and sufficient technology is available to ensure the military superiority of the United States and counter future high-risk threats.

''(C) That the science and technology investments are balanced to meet the near-, mid-, and long-term needs of the Air Force.

''(D) That technologies are made available that can be used to respond flexibly and quickly to a wide range of future threats.

''(E) That the Air Force organizational structure provides for a sufficiently senior level advocate of science and technology to ensure an ongoing, effective presence of the science and technology community during the budget and planning process.

''(2) In addition, the study shall assess the specific changes to the Air Force science and technology program as follows:

''(A) Whether the biannual science and technology summits provide sufficient visibility into, and understanding and appreciation of, the value of the science and technology program to the senior level of Air Force budget and policy decisionmakers.

''(B) Whether the applied technology councils are effective in contributing the input of all levels beneath the senior leadership into the coordination, focus, and content of the science and technology program.

''(C) Whether the designation of the commander of the Air Force Materiel Command as the science and technology budget advocate is effective to ensure that an adequate Air Force science and technology budget is requested.

''(D) Whether the revised development planning process is effective to aid in the coordination of the needs of the Air Force warfighters with decisions on science and technology investments and the establishment of priorities among different science and technology programs.

''(E) Whether the implementation of section 252 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted into law by Public Law 106–398; 114 Stat. 1654A–46 [set out as a note below]) is effective to identify the basis for the appropriate science and technology program funding level and investment portfolio.

''(c) REPORT.—Not later than May 1, 2003, the Secretary of the Air Force shall submit to Congress the results of the study.''

Pub. L. 106–398, §1 [[div. A], title II, §252], Oct. 30, 2000, 114 Stat. 1654, 1654A–46, provided that:

''(a) REQUIREMENT FOR REVIEW.—The Secretary of the Air Force shall conduct a review of the long-term challenges and short-term objectives of the Air Force science and technology programs. The Secretary shall complete the review not later than one year after the date of the enactment of this Act [Oct. 30, 2000].

''(b) MATTERS TO BE REVIEWED.—The review shall include the following:

''(1) An assessment of the budgetary resources that are being used for fiscal year 2001 for addressing the long-term challenges and the short-term objectives of the Air Force science and technology programs.

''(2) The budgetary resources that are necessary to address those challenges and objectives adequately.

''(3) A course of action for each projected or ongoing Air Force science and technology program that does not address either the long-term challenges or the short-term objectives.

''(4) The matters required under subsection (c)(5) and (d)(6).

''(c) LONG-TERM CHALLENGES.—(1) The Secretary of the Air Force shall establish an integrated product team to identify high-risk, high-payoff challenges that will provide a long-term focus and motivation for the Air Force science and technology programs over the next 20 to 50 years following the enactment of this Act [Oct. 30, 2000]. The integrated product team shall include representatives of the Office of Scientific Research and personnel from the Air Force Research Laboratory.

''(2) The team shall solicit views from the entire Air Force science and technology community on the matters under consideration by the team.

''(3) The team—

''(A) shall select for consideration science and technology challenges that involve—

''(i) compelling requirements of the Air Force;

''(ii) high-risk, high-payoff areas of exploration; and

''(iii) very difficult, but probably achievable, results; and

''(B) should not select a linear extension of any ongoing Air Force science and technology program for consideration as a science and technology challenge under subparagraph (A).

''(4) The Deputy Assistant Secretary of the Air Force for Science, Technology, and Engineering shall designate a technical coordinator and a management coordinator for each science and technology challenge identified pursuant to this subsection. Each technical coordinator shall have sufficient expertise in fields related to the challenge to be able to identify other experts in such fields and to affirm the credibility of the challenge. The coordinator for a science and technology challenge shall conduct workshops within the relevant scientific and technological community to obtain suggestions for possible approaches to addressing the challenge and to identify ongoing work that addresses the challenge, deficiencies in current work relating to the challenge, and promising areas of research.

''(5) In carrying out subsection (a), the Secretary of the Air Force shall review the science and technology challenges identified pursuant to this subsection and, for each such challenge, at a minimum—

''(A) consider the results of the workshops conducted pursuant to paragraph (4); and

''(B) identify any work not currently funded by the Air Force that should be performed to meet the challenge.

''(d) SHORT-TERM OBJECTIVES.—(1) The Secretary of the Air Force shall establish a task force to identify short-term technological objectives of the Air Force science and technology programs. The task force shall be chaired by the Deputy Assistant Secretary of the Air Force for Science, Technology, and Engineering and shall include representatives of the Chief of Staff of the Air Force and the specified combatant commands of the Air Force.

''(2) The task force shall solicit views from the entire Air Force requirements community, user community, and acquisition community.

''(3) The task force shall select for consideration short-term objectives that involve—

''(A) compelling requirements of the Air Force;

''(B) support in the user community; and

''(C) likely attainment of the desired benefits within a five-year period.

''(4) The Deputy Assistant Secretary of the Air Force for Science, Technology, and Engineering shall establish an integrated product team for each short-term objective identified pursuant to this subsection. Each integrated product team shall include representatives of the requirements community, the user community, and the science and technology community with relevant expertise.

''(5) The integrated product team for a short-term objective shall be responsible for—

''(A) identifying, defining, and prioritizing the enabling capabilities that are necessary for achieving the objective;

''(B) identifying deficiencies in the enabling capabilities that must be addressed if the short-term objective is to be achieved; and

''(C) working with the Air Force science and technology community to identify science and technology projects and programs that should be undertaken to eliminate each deficiency in an enabling capability.

''(6) In carrying out subsection (a), the Secretary of the Air Force shall review the short-term science and technology objectives identified pursuant to this subsection and, for each such objective, at a minimum—

''(A) consider the work of the integrated product team conducted pursuant to paragraph (5); and

''(B) identify the science and technology work of the Air Force that should be undertaken to eliminate each deficiency in enabling capabilities that is identified by the integrated product team pursuant to subparagraph (B) of that paragraph.

''(e) COMPTROLLER GENERAL REVIEW.—(1) Not later than 90 days after the Secretary of the Air Force completes the review required by subsection (a), the Comptroller General shall submit to Congress a report on the results of the review. The report shall include the Comptroller General's assessment regarding the extent to which the review was conducted in compliance with the requirements of this section.

''(2) Immediately upon completing the review required by subsection (a), the Secretary of Defense shall notify the Comptroller General of the completion of the review. For the purposes of paragraph (1), the date of the notification shall be considered the date of the completion of the review.''

REPORT BY UNDER SECRETARY OF DEFENSE FOR ACQUISITION, TECHNOLOGY, AND LOGISTICS

Pub. L. 106–65, div. A, title II, §243, Oct. 5, 1999, 113 Stat. 551, required the Under Secretary of Defense for Acquisition, Technology, and Logistics to submit to the congressional defense committees a report on the actions necessary to promote the research base and technological development needed for ensuring that the Armed Forces had the military capabilities necessary for meeting national security requirements over the next two to three decades.

SENSE OF CONGRESS ON DEFENSE SCIENCE AND TECHNOLOGY PROGRAM

Pub. L. 106–65, div. A, title II, §212, Oct. 5, 1999, 113 Stat. 542, as amended by Pub. L. 108–136, div. A, title X,

§ 1031(h)(1), Nov. 24, 2003, 117 Stat. 1604; Pub. L. 109–364, div. A, title II, § 217, Oct. 17, 2006, 120 Stat. 2125, which provided the sense of Congress as to funding objectives for the Defense Science and Technology Program, was repealed by Pub. L. 111–84, div. A, title II, § 213, Oct. 28, 2009, 123 Stat. 2226.

Pub. L. 105–261, div. A, title II, § 214, Oct. 17, 1998, 112 Stat. 1948, provided that:

''(a) FUNDING REQUIREMENTS FOR THE DEFENSE SCIENCE AND TECHNOLOGY PROGRAM BUDGET.—It is the sense of Congress that, for each of the fiscal years 2000 through 2008, it should be an objective of the Secretary of Defense to increase the budget for the Defense Science and Technology Program for the fiscal year over the budget for that program for the preceding fiscal year by a percent that is at least two percent above the rate of inflation as determined by the Office of Management and Budget.

''(b) GUIDELINES FOR THE DEFENSE SCIENCE AND TECHNOLOGY PROGRAM.—

''(1) RELATIONSHIP OF DEFENSE SCIENCE AND TECHNOLOGY PROGRAM TO UNIVERSITY RESEARCH.—It is the sense of Congress that the following should be key objectives of the Defense Science and Technology Program:

''(A) The sustainment of research capabilities in scientific and engineering disciplines critical to the Department of Defense.

''(B) The education and training of the next generation of scientists and engineers in disciplines that are relevant to future defense systems, particularly through the conduct of basic research.

''(C) The continued support of the Defense Experimental Program to Stimulate Competitive Research and research programs at historically black colleges and universities and minority institutions.

''(2) RELATIONSHIP OF THE DEFENSE SCIENCE AND TECHNOLOGY PROGRAM TO COMMERCIAL RESEARCH AND TECHNOLOGY.—(A) It is the sense of Congress that, in supporting projects within the Defense Science and Technology Program, the Secretary of Defense should attempt to leverage commercial research, technology, products, and processes for the benefit of the Department of Defense.

''(B) It is the sense of Congress that funds made available for projects and programs of the Defense Science and Technology Program should be used only for the benefit of the Department of Defense, which includes—

''(i) the development of technology that has only military applications;

''(ii) the development of militarily useful, commercially viable technology; and

''(iii) the adaptation of commercial technology, products, or processes for military purposes.

''(3) SYNERGISTIC MANAGEMENT OF RESEARCH AND DEVELOPMENT.—It is the sense of Congress that the Secretary of Defense should have the flexibility to allocate a combination of funds available for the Department of Defense for basic and applied research and for advanced development to support any individual project or program within the Defense Science and Technology Program, but such flexibility should not change the allocation of funds in any fiscal year among basic and applied research and advanced development.

''(4) MANAGEMENT OF SCIENCE AND TECHNOLOGY.—It is the sense of Congress that—

''(A) management and funding for the Defense Science and Technology Program for each military department should receive a level of priority and leadership attention equal to the level received by program acquisition, and the Secretary of each military department should ensure that a senior official in the department holds the appropriate title and responsibility to ensure effective oversight and emphasis on science and technology;

''(B) to ensure an appropriate long-term focus for investments, a sufficient percentage of science and technology funds should be directed toward new technology areas, and annual reviews should be conducted for ongoing research areas to ensure that those funded initiatives are either integrated into acquisition programs or discontinued when appropriate;

''(C) the Secretary of each military department should take appropriate steps to ensure that sufficient numbers of officers and civilian employees in the department hold advanced degrees in technical fields; and

''(D) of particular concern, the Secretary of the Air Force should take appropriate measures to ensure that sufficient numbers of scientists and engineers are maintained to address the technological challenges faced in the areas of air, space, and information technology.

''(c) STUDY.—

''(1) REQUIREMENT.—The Secretary of Defense, in cooperation with the National Research Council of the National Academy of Sciences, shall conduct a study on the technology base of the Department of Defense.

''(2) MATTERS COVERED.—The study shall—

''(A) result in recommendations on the minimum requirements for maintaining a technology base that is sufficient, based on both historical developments and future projections, to project superiority in air and space weapons systems and in information technology;

''(B) address the effects on national defense and civilian aerospace industries and information technology of reducing funding below the goal described in subsection (a); and

''(C) result in recommendations on the appropriate levels of staff with baccalaureate, masters, and doctorate degrees, and the optimal ratio of civilian and military staff holding such degrees, to ensure that science and technology functions of the Department of Defense remain vital.

''(3) REPORT.—Not later than 120 days after the date on which the study required under paragraph (1) is completed, the Secretary shall submit to Congress a report on the results of the study.

''(d) DEFINITIONS.—In this section:

''(1) The term 'Defense Science and Technology Program' means basic and applied research and advanced development.

''(2) The term 'basic and applied research' means work funded in program elements for defense research and development under Department of Defense category 6.1 or 6.2.

''(3) The term 'advanced development' means work funded in program elements for defense research and development under Department of Defense category 6.3.''

BIENNIAL JOINT WARFIGHTING SCIENCE AND TECHNOLOGY PLAN

Pub. L. 104–201, div. A, title II, § 270, Sept. 23, 1996, 110 Stat. 2469, as amended by Pub. L. 106–65, div. A, title II, § 242, title X, § 1067(5), Oct. 5, 1999, 113 Stat. 551, 774; Pub. L. 109–163, div. A, title II, § 253(a), (b), Jan. 6, 2006, 119 Stat. 3179, 3180, which required biennial submission to Congress by the Secretary of Defense of a plan for ensuring that the science and technology program of the Department of Defense supported the development of the future joint warfighting capabilities identified as priority requirements for the Armed Forces, was repealed by Pub. L. 111–84, div. A, title II, § 241, Oct 28, 2009, 123 Stat. 2237.

COST REIMBURSEMENT RULES FOR INDIRECT COSTS ATTRIBUTABLE TO PRIVATE SECTOR WORK OF DEFENSE CONTRACTORS

Pub. L. 104–106, div. A, title VIII, § 808, Feb. 10, 1996, 110 Stat. 393, authorized Secretary of Defense to enter into agreements with defense contractors under which certain cost reimbursement rules would be applied and required submission of report to congressional defense

committees not later than one year after Feb. 10, 1996, prior to repeal by Pub. L. 105–85, div. A, title X, §1027(d), Nov. 18, 1997, 111 Stat. 1880. See section 7315 of this title.

DOCUMENTATION FOR AWARDS FOR COOPERATIVE AGREEMENTS OR OTHER TRANSACTIONS UNDER DEFENSE TECHNOLOGY REINVESTMENT PROGRAMS

Pub. L. 103–337, div. A, title XI, §1118, Oct. 5, 1994, 108 Stat. 2870, provided that: ''At the time of the award for a cooperative agreement or other transaction under a program carried out under chapter 148 of title 10, United States Code, the head of the agency concerned shall include in the file pertaining to such agreement or transaction a brief explanation of the manner in which the award advances and enhances a particular national security objective set forth in section 2501(a) of such title or a particular policy objective set forth in [former] section 2501(b) of such title.''

REPORTS ON DEFENSE CONVERSION, REINVESTMENT, AND TRANSITION ASSISTANCE PROGRAMS

Pub. L. 103–160, div. A, title XIII, §1303, Nov. 30, 1993, 107 Stat. 1784, provided that during each of the fiscal years 1994, 1995, and 1996, the Secretary of Defense was to prepare a report that assessed the effectiveness of all defense conversion, reinvestment, and transition assistance programs, as defined in section 1302 of Pub. L. 103–160, 107 Stat. 1783, during the preceding fiscal year.

NATIONAL SHIPBUILDING INITIATIVE

Pub. L. 103–160, div. A, title XIII, §§1351–1354, Nov. 30, 1993, 107 Stat. 1809, 1810, as amended by Pub. L. 104–201, div. A, title X, §1073(e)(1)(F), (2)(B), (3), Sept. 23, 1996, 110 Stat. 2658, provided that:

''SEC. 1351. SHORT TITLE.

''This subtitle [subtitle D, §§1351–1363 of title XIII of div. A of Pub. L. 103–160, enacting sections 1279d, 1279e, and 1280a of the Appendix to Title 46, Shipping, amending section 31326 of Title 46 and sections 1271, 1273, 1274, and 1274a of the Appendix to Title 46, and enacting provisions set out as notes under sections 1279b and 1279d of the Appendix to Title 46] may be cited as the 'National Shipbuilding and Shipyard Conversion Act of 1993'.

''SEC. 1352. NATIONAL SHIPBUILDING INITIATIVE.

''(a) ESTABLISHMENT OF PROGRAM.—There shall be a National Shipbuilding Initiative program, to be carried out to support the industrial base for national security objectives by assisting in the reestablishment of the United States shipbuilding industry as a self-sufficient, internationally competitive industry.

''(b) ADMINISTERING DEPARTMENTS.—The program shall be carried out—

''(1) by the Secretary of Defense, with respect to programs under the jurisdiction of the Secretary of Defense; and

''(2) by the Secretary of Transportation, with respect to programs under the jurisdiction of the Secretary of Transportation.

''(c) PROGRAM ELEMENTS.—The National Shipbuilding Initiative shall consist of the following program elements:

''(1) FINANCIAL INCENTIVES PROGRAM.—A financial incentives program to provide loan guarantees to initiate commercial ship construction for domestic and export sales, encourage shipyard modernization, and support increased productivity.

''(2) TECHNOLOGY DEVELOPMENT PROGRAM.—A technology development program, to be carried out within the Department of Defense by the Defense Advanced Research Projects Agency, to improve the technology base for advanced shipbuilding technologies and related dual-use technologies through activities including a development program for innovative commercial ship design and production processes and technologies.

''(3) NAVY'S AFFORDABILITY THROUGH COMMONALITY PROGRAM.—Enhanced support by the Secretary of Defense for the shipbuilding program of the Department of the Navy known as the Affordability Through Commonality (ATC) program, to include enhanced support (A) for the development of common modules for military and commercial ships, and (B) to foster civil-military integration into the next generation of Naval surface combatants.

''(4) NAVY'S MANUFACTURING TECHNOLOGY AND TECHNOLOGY BASE PROGRAMS.—Enhanced support by the Secretary of Defense for, and strengthened funding for, that portion of the Manufacturing Technology program of the Navy, and that portion of the Technology Base program of the Navy, that are in the areas of shipbuilding technologies and ship repair technologies.

''SEC. 1353. DEPARTMENT OF DEFENSE PROGRAM MANAGEMENT THROUGH DEFENSE ADVANCED RESEARCH PROJECTS AGENCY.

''The Secretary of Defense shall designate the Defense Advanced Research Projects Agency of the Department of Defense as the lead agency of the Department of Defense for activities of the Department of Defense which are part of the National Shipbuilding Initiative program. Those activities shall be carried out as part of defense conversion activities of the Department of Defense.

''SEC. 1354. DEFENSE ADVANCED RESEARCH PROJECTS AGENCY FUNCTIONS AND MINIMUM FINANCIAL COMMITMENT OF NON-FEDERAL GOVERNMENT PARTICIPANTS.

''(a) DARPA FUNCTIONS.—The Secretary of Defense, acting through the Director of the Defense Advanced Research Projects Agency, shall carry out the following functions with respect to the National Shipbuilding Initiative program:

''(1) Consultation with the Maritime Administration, the Office of Economic Adjustment, the National Economic Council, the National Shipbuilding Research Project, the Coast Guard, the National Oceanic and Atmospheric Administration, appropriate naval commands and activities, and other appropriate Federal agencies on—

''(A) development and transfer to the private sector of dual-use shipbuilding technologies, ship repair technologies, and shipbuilding management technologies;

''(B) assessments of potential markets for maritime products; and

''(C) recommendation of industrial entities, partnerships, joint ventures, or consortia for short- and long-term manufacturing technology investment strategies.

''(2) Funding and program management activities to develop innovative design and production processes and the technologies required to implement those processes.

''(3) Facilitation of industry and Government technology development and technology transfer activities (including education and training, market assessments, simulations, hardware models and prototypes, and national and regional industrial base studies).

''(4) Integration of promising technology advances made in the Technology Reinvestment Program of the Defense Advanced Research Projects Agency into the National Shipbuilding Initiative to effect full defense conversion potential.

''(b) FINANCIAL COMMITMENT OF NON-FEDERAL GOVERNMENT PARTICIPANTS.—

''(1) MAXIMUM DEPARTMENT OF DEFENSE SHARE.—The Secretary of Defense shall ensure that the amount of funds provided by the Secretary to a non-Federal government participant does not exceed 50 percent of the total cost of technology development and technology transfer activities.

''(2) REGULATIONS.—The Secretary may prescribe regulations to provide for consideration of in-kind contributions by non-Federal Government participants in a partnership for the purpose of calculating

the share of the partnership costs that has been or is being undertaken by such participants. In prescribing the regulations, the Secretary may determine that a participant that is a small business concern may use funds received under the Small Business Innovation Research Program or the Small Business Technology Transfer Program to help pay the costs of partnership activities. Any such funds so used may be included in calculating the amount of the financial commitment undertaken by the non-Federal Government participants unless the Secretary determines that the small business concern has not made a significant equity contribution in the program from non-Federal sources.''

[For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.]

ARMAMENT RETOOLING AND MANUFACTURING SUPPORT INITIATIVE

Pub. L. 102–484, div. A, title I, §§ 191–195, Oct. 23, 1992, 106 Stat. 2347–2349, as amended by Pub. L. 103–35, title II, § 202(a)(1), May 31, 1993, 107 Stat. 100; Pub. L. 103–337, div. A, title XI, § 1141(a), (b), Oct. 5, 1994, 108 Stat. 2879; Pub. L. 104–201, div. A, title I, § 143, Sept. 23, 1996, 110 Stat. 2449; Pub. L. 105–261, div. A, title I, § 115, Oct. 17, 1998, 112 Stat. 1939; Pub. L. 106–65, div. A, title I, § 116, Oct. 5, 1999, 113 Stat. 533, known as the ''Armament Retooling and Manufacturing Support Act of 1992'', authorized the Secretary of the Army, during fiscal years 1993 through 2001, to carry out the Armament Retooling and Manufacturing Support Initiative, prior to repeal by Pub. L. 106–398, § 1 [[div. A], title III, § 344(d)], Oct. 30, 2000, 114 Stat. 1654, 1654A–71.

IMPLEMENTATION OF REQUIREMENTS FOR ASSESSMENT, PLANNING, AND ANALYSIS

Pub. L. 102–484, div. D, title XLII, § 4218, Oct. 23, 1992, 106 Stat. 2671, related to collection of information, completion of assessments, and issuance of plans required by this subchapter, prior to repeal by Pub. L. 104–201, div. A, title VIII, § 829(h), Sept. 23, 1996, 110 Stat. 2614.

INDUSTRIAL DIVERSIFICATION PLANNING FOR DEFENSE CONTRACTORS

Pub. L. 102–484, div. D, title XLII, § 4239, Oct. 23, 1992, 106 Stat. 2694, provided that: ''Not later than 120 days after the date of enactment of this Act [Oct. 23, 1992], the Secretary of Defense shall prescribe regulations to encourage defense contractors to engage in industrial diversification planning.''

NOTICE TO CONTRACTORS AND EMPLOYEES UPON PROPOSED AND ACTUAL TERMINATION OR SUBSTANTIAL REDUCTION IN MAJOR DEFENSE PROGRAMS

Pub. L. 102–484, div. D, title XLIV, § 4471, Oct. 23, 1992, 106 Stat. 2753, as amended by Pub. L. 103–160, div. A, title XIII, § 1372, Nov. 20, 1993, 107 Stat. 1817; Pub. L. 103–337, div. A, title XI, § 1142, Oct. 5, 1994, 108 Stat. 2881; Pub. L. 104–201, div. A, title VIII, § 824, Sept. 23, 1996, 110 Stat. 2610; Pub. L. 105–85, div. A, title X, § 1073(d)(2)(C), Nov. 18, 1997, 111 Stat. 1905; Pub. L. 105–277, div. A, § 101(f) [title VIII, § 405(d)(7)(C), (f)(6)(C)], Oct. 21, 1998, 112 Stat. 2681–337, 2681–419, 2681–430, as amended by Pub. L. 116–283, div. A, title XVIII, § 1806(e)(2)(E), Jan. 1, 2021, 134 Stat. 4156, provided that:

''(a) NOTICE REQUIREMENT AFTER ENACTMENT OF APPROPRIATIONS ACT.—Each year, not later than 60 days after the date of the enactment of an Act appropriating funds for the military functions of the Department of Defense, the Secretary of Defense, in accordance with regulations prescribed by the Secretary—

''(1) shall identify each contract (if any) under major defense programs of the Department of Defense that will be terminated or substantially reduced as a result of the funding levels provided in that Act; and

''(2) shall ensure that notice of the termination of, or substantial reduction in, the funding of the contract is provided—

''(A) directly to the prime contractor under the contract; and

''(B) directly to the Secretary of Labor.

''(b) NOTICE TO SUBCONTRACTORS.—Not later than 60 days after the date on which the prime contractor for a contract under a major defense program receives notice under subsection (a), the prime contractor shall—

''(1) provide notice of that termination or substantial reduction to each person that is a first-tier subcontractor under that prime contract for subcontracts in an amount not less than $500,000; and

''(2) require that each such subcontractor—

''(A) provide such notice to each of its subcontractors for subcontracts in an amount in excess of $100,000; and

''(B) impose a similar notice and pass through requirement to subcontractors in an amount in excess of $100,000 at all tiers.

''(c) CONTRACTOR NOTICE TO EMPLOYEES AND STATE DISLOCATED WORKER UNIT.—Not later than two weeks after a defense contractor receives notice under subsection (a), the contractor shall provide notice of such termination or substantial reduction to—

''(1)(A) each representative of employees whose work is directly related to the defense contract under such program and who are employed by the defense contractor; or

''(B) if there is no such representative at that time, each such employee; and

''(2) the State or entity designated by the State to carry out rapid response activities under [former] section 134(a)(2)(A) of the Workforce Investment Act of 1998 [former 29 U.S.C. 2864(a)(2)(A)], and the chief elected official of the unit of general local government within which the adverse effect may occur.

''(d) CONSTRUCTIVE NOTICE.—The notice of termination of, or substantial reduction in, a defense contract provided under subsection (c)(1) to an employee of a contractor shall have the same effect as a notice of termination to such employee for the purposes of determining whether such employee is eligible to participate in employment and training activities carried out under title I of the Workforce Investment Act of 1998 [29 U.S.C. 2801 et seq.], except in a case in which the employer has specified that the termination of, or substantial reduction in, the contract is not likely to result in plant closure or mass layoff.

''(e) LOSS OF ELIGIBILITY.—An employee who receives a notice of withdrawal or cancellation of the termination of, or substantial reduction in, contract funding shall not be eligible, on the basis of any related reduction in funding under the contract, to participate in employment and training activities under title I of the Workforce Investment Act of 1998 [29 U.S.C. 2801 et seq.], beginning on the date on which the employee receives the notice.

''(f) DEFINITIONS.—For purposes of this section:

''(1) The term 'major defense program' means a program that is carried out to produce or acquire a major system (as defined in section 2302(5) of title 10, United States Code).

''(2) The terms 'substantial reduction' and 'substantially reduced', with respect to a defense contract under a major defense program, mean a reduction of 25 percent or more in the total dollar value of the funds obligated by the contract.''

[Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1806(e)(2)(E), Jan. 1, 2021, 134 Stat. 4151, 4156, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, section 4471(f)(1) of Pub. L. 102–484, set out above, is amended by substituting ''section 3041'' for ''section 2302(5)''.]

§ 2502. National Defense Technology and Industrial Base Council

(a) ESTABLISHMENT.—There is a National Defense Technology and Industrial Base Council.

(b) COMPOSITION.—The Council is composed of the following members:

(1) The Secretary of Defense, who shall serve as chairman.

(2) The Secretary of Energy.

(3) The Secretary of Commerce.

(4) The Secretary of Labor.

(5) Such other officials as may be determined by the President.

(c) RESPONSIBILITIES.—The Council shall have the responsibility to ensure effective cooperation among departments and agencies of the Federal Government, and to provide advice and recommendations to the President, the Secretary of Defense, the Secretary of Energy, the Secretary of Commerce, and the Secretary of Labor, concerning—

(1) the capabilities of the national technology and industrial base to meet the national security objectives set forth in section 2501(a) of this title;

(2) programs for achieving such national security objectives;

(3) changes in acquisition policy that strengthen the national technology and industrial base; and

(4) collaboration with government officials of member countries of the national technology and industrial base in order to strengthen the national technology and industrial base.

(d) ALTERNATIVE PERFORMANCE OF RESPONSIBILITIES.—Notwithstanding subsection (c), the President may assign the responsibilities of the Council to another interagency organization of the executive branch that includes among its members the officials specified in paragraphs (1) through (4) of subsection (b).

(Added Pub. L. 102–484, div. D, title XLII, § 4212(a), Oct. 23, 1992, 106 Stat. 2664; amended Pub. L. 103–160, div. A, title XIII, § 1312(b), Nov. 30, 1993, 107 Stat. 1786; Pub. L. 103–337, div. A, title X, § 1070(a)(12), Oct. 5, 1994, 108 Stat. 2856; Pub. L. 104–106, div. A, title X, § 1081(b), Feb. 10, 1996, 110 Stat. 452; Pub. L. 104–201, div. A, title VIII, § 829(c)(2), formerly § 829(c)(2), (3), Sept. 23, 1996, 110 Stat. 2613, renumbered Pub. L. 105–85, div. A, title X, § 1073(c)(7)(B), Nov. 18, 1997, 111 Stat. 1904; Pub. L. 105–85, div. A, title X, § 1073(c)(7)(A), Nov. 18, 1997, 111 Stat. 1904; Pub. L. 116–283, div. A, title VIII, § 846(c), Jan. 1, 2021, 134 Stat. 3768.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1867(b), Jan. 1, 2021, 134 Stat. 4151, 4281, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 382 of this title, as added by section 1867(a) of Pub. L. 116–283, inserted after section 4811, and redesignated as section 4812 of this title. See Effective Date of 2021 Amendment note below.

PRIOR PROVISIONS

A prior section 2502, added Pub. L. 100–456, div. A, title VIII, § 821(b)(1)(B), Sept. 29, 1988, 102 Stat. 2015, related to defense industrial base policies, prior to repeal by Pub. L. 102–484, § 4202(a).

Another prior section 2502 was renumbered section 2534 of this title.

AMENDMENTS

2021—Subsec. (c)(4). Pub. L. 116–283 added par. (4).

1997—Subsec. (c). Pub. L. 105–85, § 1073(c)(7)(A), made technical correction to directory language of Pub. L. 104–201, § 829(c)(2). See 1996 Amendment note below.

1996—Subsec. (c). Pub. L. 104–201, § 829(c)(2), formerly § 829(c)(2), (3), as renumbered and amended by Pub. L. 105–85, substituted ''the responsibility to ensure effective cooperation'' for ''the following responsibilities:'', struck out ''(1) To ensure the effective cooperation'' before ''among departments'', struck out par. (2), redesignated subpars. (A), (B), and (C) as pars. (1), (2), and (3), respectively, and adjusted margins of such pars. Prior to repeal, par. (2) read as follows: ''To prepare the periodic assessment and the periodic plan required by sections 2505 and 2506 of this title, respectively.''

Subsec. (c)(1)(B). Pub. L. 104–106, § 1081(b)(1), added subpar. (B) and struck out former subpar. (B) which read as follows: ''programs for achieving, during a period of reduction in defense expenditures, the defense reinvestment, diversification, and conversion objectives set forth in section 2501(b) of this title; and''.

Subsec. (c)(2), (3). Pub. L. 104–106, § 1081(b)(2), (3), redesignated par. (3) as (2) and struck out former par. (2) which read as follows: ''To provide overall policy guidance to ensure effective implementation by agencies of the Federal Government of defense reinvestment and conversion activities during a period of reduction in defense expenditures.''

1994—Subsec. (d). Pub. L. 103–337 substituted ''executive'' for ''Executive''.

1993—Subsec. (d). Pub. L. 103–160 added subsec. (d).

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by section 1867(b) of Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–85, div. A, title X, § 1073(c), Nov. 18, 1997, 111 Stat. 1904, provided that the amendment made by that section is effective as of Sept. 23, 1996, and as if included in the National Defense Authorization Act for Fiscal Year 1997, Pub. L. 104–201, as enacted.

§ 2503. National defense program for analysis of the technology and industrial base

(a) ESTABLISHMENT.—The Secretary of Defense shall establish a program for analysis of the national technology and industrial base.

(b) SUPERVISION OF PROGRAM.—The Secretary of Defense shall carry out the program through the Under Secretary of Defense for Research and Engineering and the Under Secretary of Defense for Acquisition and Sustainment. In carrying out the program, the Under Secretaries shall consult with the Secretary of Energy, the Secretary of Commerce, and the Secretary of Labor.

(c) FUNCTIONS.—The functions of the program shall include, with respect to the national technology and industrial base, the following:

(1) The assembly of timely and authoritative information.

(2) Initiation of studies and analyses.

(3) Provision of technical support and assistance to—

(A) the Secretary of Defense for the preparation of the periodic assessments required by section 2505 of this title;

(B) the defense acquisition university structure and its elements; and

(C) other departments and agencies of the Federal Government in accordance with guidance established by the Council.

(4) Dissemination, through the National Technical Information Service of the Department of Commerce, of unclassified information and assessments for further dissemination within the Federal Government and to the private sector.

(Added Pub. L. 102–484, div. D, title XLII, § 4213(a), Oct. 23, 1992, 106 Stat. 2665; amended Pub. L. 104–201, div. A, title VIII, § 829(b), Sept. 23, 1996, 110 Stat. 2612; Pub. L. 107–107, div. A, title X, § 1048(b)(4), Dec. 28, 2001, 115 Stat. 1225; Pub. L. 116–92, div. A, title IX, § 902(74), Dec. 20, 2019, 133 Stat. 1552.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1867(b), Jan. 1, 2021, 134 Stat. 4151, 4281, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 382 of this title, as added by section 1867(a) of Pub. L. 116–283, inserted after section 4812, and redesignated as section 4813 of this title. See Effective Date of 2021 Amendment note below.

PRIOR PROVISIONS

A prior section 2503, added Pub. L. 100–456, div. A, title VIII, § 821(b)(1)(B), Sept. 29, 1988, 102 Stat. 2016; amended Pub. L. 101–189, div. A, title VIII, § 842(a), (b), Nov. 29, 1989, 103 Stat. 1514, 1515; Pub. L. 102–25, title VII, § 701(f)(4), Apr. 6, 1991, 105 Stat. 115; Pub. L. 102–484, div. A, title X, § 1052(32), Oct. 23, 1992, 106 Stat. 2501, established defense industrial base office, prior to repeal by Pub. L. 102–484, § 4202(a).

AMENDMENTS

2019—Subsec. (b). Pub. L. 116–92 substituted ''the Under Secretary of Defense for Research and Engineering and the Under Secretary of Defense for Acquisition and Sustainment'' for ''the Under Secretary of Defense for Acquisition, Technology, and Logistics'' and ''the Under Secretaries shall'' for ''the Under Secretary shall''.

2001—Subsec. (b). Pub. L. 107–107 substituted ''Under Secretary of Defense for Acquisition, Technology, and Logistics'' for ''Under Secretary of Defense for Acquisition''.

1996—Subsec. (a). Pub. L. 104–201, § 829(b)(1), substituted ''The Secretary of Defense'' for ''(1) The Secretary of Defense, in consultation with the National Defense Technology and Industrial Base Council,'' and struck out pars. (2) to (4) which read as follows:

''(2) As determined by the Secretary of Defense, the program shall be administered by one of the following:

''(A) An existing federally funded research and development center.

''(B) A consortium of existing federally funded research and development centers and other nonprofit entities.

''(C) A private sector entity (other than a federally funded research and development center).

''(D) The National Defense University.

''(3) A contract may be awarded under subparagraph (A), (B), or (C) of paragraph (2) only through the use of competitive procedures.

''(4) The Secretary of Defense shall ensure that there is appropriate coordination between the program and the Critical Technologies Institute.''

Subsec. (c)(3)(A). Pub. L. 104–201, § 829(b)(2), substituted ''the Secretary of Defense for'' for ''the National Defense Technology and Industrial Base Council in'' and struck out ''and the periodic plans required by section 2506 of this title'' after ''section 2505 of this title''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

DEADLINE FOR ESTABLISHING PROGRAM

Pub. L. 102–484, div. D, title XLII, § 4213(b), Oct. 23, 1992, 106 Stat. 2666, required the Secretary of Defense to establish the program required by this section not later than six months after Oct. 23, 1992.

§ 2504. National technology and industrial base: annual report and quarterly briefings

(a) ANNUAL REPORT.—The Secretary of Defense shall transmit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives by March 1 of each year a report which shall include the following information:

(1) A description of the departmental guidance prepared pursuant to section 2506 of this title.

(2) A description of the assessments prepared pursuant to section 2505 of this title and other analyses used in developing the budget submission of the Department of Defense for the next fiscal year.

(3) Based on the strategy required by section 2501 of this title and on the assessments prepared pursuant to Executive order or section 2505 of this title—

(A) a map of the industrial base;

(B) a prioritized list of gaps or vulnerabilities in the national technology and industrial base, including—

(i) a description of mitigation strategies necessary to address such gaps or vulnerabilities;

(ii) the identification of the Secretary concerned or the head of the Defense Agency responsible for addressing such gaps or vulnerabilities; and

(iii) a proposed timeline for action to address such gaps or vulnerabilities; and

(C) any other steps necessary to foster and safeguard the national technology and industrial base.

(4) Identification of each program designed to sustain specific essential technological and industrial capabilities and processes of the national technology and industrial base.

(5) A detailed description of any use by the Secretary of Defense or a Secretary concerned, as applicable, during the prior 12 months of a waiver or exception to the sourcing requirements or prohibitions established by chapter 83 of title 41 or subchapter V of chapter 148 of this title, including—

(A) the type of waiver or exception used; and

(B) the reasoning for the use of each such waiver or exception.

(b) QUARTERLY BRIEFINGS.—(1) The Secretary of Defense shall ensure that the congressional defense committees receive quarterly briefings on the industrial base supporting the Department of Defense, describing challenges, gaps, and vulnerabilities in the defense industrial base and commercial sector relevant to execution of defense missions, and describing initiatives to address such challenges.

(2) Each briefing under paragraph (1) shall include an update on the progress of addressing such gaps or vulnerabilities by the Secretary, the Secretary of the military department concerned, or the appropriate head of a Defense Agency, including an update on—

(A) actions taken to address such gaps or vulnerabilities;

(B) policy changes necessary to address such gaps or vulnerabilities; and

(C) the proposed timeline for action and resources required to address such gaps or vulnerabilities.

(Added Pub. L. 104–201, div. A, title VIII, § 829(e), Sept. 23, 1996, 110 Stat. 2614; amended Pub. L. 106–65, div. A, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 112–239, div. A, title XVI, § 1603(b), Jan. 2, 2013, 126 Stat. 2063; Pub. L. 116–92, div. A, title VIII, § 846(b), Dec. 20, 2019, 133 Stat. 1503; Pub. L. 116–283, div. A, title VIII, § 842(a), (b)(1), Jan. 1, 2021, 134 Stat. 3764, 3765.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1867(b), Jan. 1, 2021, 134 Stat. 4151, 4281, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 382 of this title, as added by section 1867(a) of Pub. L. 116–283, inserted after section 4813, and redesignated as section 4814 of this title. See Effective Date of 2021 Amendment note below.

PRIOR PROVISIONS

A prior section 2504, added Pub. L. 102–484, div. D, title XLII, § 4214(a), Oct. 23, 1992, 106 Stat. 2666, established Center for Study of Defense Economic Adjustment, prior to repeal by Pub. L. 103–160, div. A, title XIII, § 1312(a)(1), Nov. 30, 1993, 107 Stat. 1786.

Another prior section 2504 was renumbered section 2531 of this title.

AMENDMENTS

2021—Pub. L. 116–283, § 842(b)(1), amended section catchline generally, substituting ''National technology and industrial base: annual report and quarterly briefings'' for ''Annual report to Congress''.

Subsec. (a). Pub. L. 116–283, § 842(a)(1), designated existing provisions as subsec. (a) and inserted heading.

Subsec. (a)(5). Pub. L. 116–283, § 842(a)(2), added par. (5).

Subsec. (b). Pub. L. 116–283, § 842(a)(3), added subsec. (b).

2019—Par. (3). Pub. L. 116–92, § 846(b)(1), inserted ''Executive order or'' after ''pursuant to''.

Par. (3)(A). Pub. L. 116–92, § 846(b)(2), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''a description of any mitigation strategies necessary to address any gaps or vulnerabilities in the national technology and industrial base; and''.

Par. (3)(B), (C). Pub. L. 116–92, § 846(b)(3), (4), added subpar. (B) and redesignated former subpar. (B) as (C).

2013—Pars. (2), (3). Pub. L. 112–239 added par. (3), redesignated former par. (3) as (2) and struck out former par. (2) which read as follows: ''A description of the methods and analyses being undertaken by the Department of Defense alone or in cooperation with other Federal agencies, to identify and address concerns regarding technological and industrial capabilities of the national technology and industrial base.''

1999—Pub. L. 106–65 substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security'' in introductory provisions.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by section 1867(b) of Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective Dec. 31, 2021, of provisions of this section requiring submittal of annual report to Congress, see section 1061 of Pub. L. 114–328, set out as a note under section 111 of this title.

STRATEGY FOR SECURING THE DEFENSE SUPPLY CHAIN AND INDUSTRIAL BASE

Pub. L. 112–81, div. A, title VIII, § 852, Dec. 31, 2011, 125 Stat. 1517, as amended by Pub. L. 112–239, div. A, title XVI, § 1603(d), Jan. 2, 2013, 126 Stat. 2063, which required a report on the sector-by-sector, tier-by-tier assessment of the industrial base undertaken by the Department of Defense, was repealed by Pub. L. 115–232, div. A, title VIII, § 812(b)(55), Aug. 13, 2018, 132 Stat. 1850.

§ 2504a. Unfunded priorities of the national technology and industrial base: annual report

(a) ANNUAL REPORT.—Not later than 10 days after the date on which the budget of the President for a fiscal year is submitted to Congress pursuant to section 1105 of title 31, the Under Secretary of Defense for Acquisition and Sustainment shall submit to the Secretary of Defense, the Chairman of the Joint Chiefs of Staff, and the congressional defense committees a report on the unfunded priorities to address gaps or vulnerabilities in the national technology and industrial base.

(b) ELEMENTS.—

(1) IN GENERAL.—Each report under subsection (a) shall specify, for each unfunded priority covered by such report, the following:

(A) A summary description of such priority, including the objectives to be achieved if such priority is funded (whether in whole or in part).

(B) The additional amount of funds recommended in connection with the objectives under subparagraph (A).

(C) Account information with respect to such priority, including the following (as applicable):

(i) Line Item Number (LIN) for applicable procurement accounts.

(ii) Program Element (PE) number for applicable research, development, test, and evaluation accounts.

(iii) Sub-activity group (SAG) for applicable operation and maintenance accounts.

(2) PRIORITIZATION OF PRIORITIES.—Each report shall present the unfunded priorities covered by such report in order of urgency of priority.

(c) UNFUNDED PRIORITY DEFINED.—In this section, the term ''unfunded priority'', in the case of a fiscal year, means a program, activity, or mission requirement of the national technology and industrial base that—

(1) is not funded in the budget of the President for the fiscal year as submitted to Congress pursuant to section 1105 of title 31;

(2) is necessary to address gaps or vulnerabilities in the national technology and industrial base; and

(3) would have been recommended for funding through the budget referred to in paragraph (1) if—

(A) additional resources had been available for the budget to fund the program, activity, or mission requirement; or

(B) the program, activity, or mission requirement had emerged before the budget was formulated.

(Added Pub. L. 116–92, div. A, title VIII, § 846(c)(1), Dec. 20, 2019, 133 Stat. 1504.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1867(b), Jan. 1, 2021, 134 Stat. 4151, 4281, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 382 of this title, as added by section 1867(a) of Pub. L. 116–283, inserted after section 4814, and redesignated as section 4815 of this title. See Effective Date of 2021 Amendment note below.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 2505. National technology and industrial base: periodic defense capability assessments

(a) PERIODIC ASSESSMENT.—Each fiscal year, the Secretary of Defense shall prepare selected assessments of the capability of the national technology and industrial base to attain the national security objectives set forth in section 2501(a) of this title. The Secretary of Defense shall prepare such assessments in consultation with the Secretary of Commerce and the Secretary of Energy.

(b) ASSESSMENT PROCESS.—The Secretary of Defense shall ensure that technology and industrial capability assessments—

(1) describe sectors or capabilities, their underlying infrastructure and processes;

(2) analyze present and projected financial performance of industries supporting the sectors or capabilities in the assessment;

(3) determine the extent to which the requirements associated with defense acquisition programs can be satisfied by the present and projected performance capacities of industries supporting the sectors or capabilities in the assessment, evaluate the reasons for any variance from applicable preceding determinations, and identify the extent to which those industries are comprised of only one potential source in the national technology and industrial base or have multiple potential sources;

(4) determine the extent to which the requirements associated with defense acquisition programs can be satisfied by the present and projected performance capacities of industries that do not actively support Department of Defense acquisition programs and identify the barriers to the participation of those industries;

(5) identify technological and industrial capabilities and processes for which there is potential for the national industrial and technology base not to be able to support the achievement of national security objectives; and

(6) consider the effects of the termination of major defense acquisition programs (as the term is defined in section 2430 of this title) or major automated information system programs (as defined in section 2445a[1] of this title) in the previous fiscal year on the sectors and capabilities in the assessment.

(c) ASSESSMENT OF EXTENT OF DEPENDENCY ON FOREIGN SOURCE ITEMS.—Each assessment under subsection (a) shall include a separate discussion and presentation regarding the extent to which the national technology and industrial base is dependent on items for which the source of supply, manufacture, or technology is outside of the United States and Canada and for which there is no immediately available source in the United States or Canada. The discussion and presentation regarding foreign dependency shall—

(1) identify cases that pose an unacceptable risk of foreign dependency, as determined by the Secretary; and

(2) present actions being taken or proposed to be taken to remedy the risk posed by the cases identified under paragraph (1), including efforts to develop a domestic source for the item in question.

(d) ASSESSMENT OF EXTENT OF EFFECTS OF FOREIGN BOYCOTTS.—Each assessment under subsection (a) shall include an examination of the extent to which the national technology and industrial base is affected by foreign boycotts. If it is determined that a foreign boycott (other than a boycott addressed in a previous assessment) is subjecting the national technology and industrial base to significant harm, the assessment shall include a separate discussion and presentation regarding that foreign boycott that shall, at a minimum—

(1) identify the sectors that are subject to such harm;

(2) describe the harm resulting from such boycott; and

(3) identify actions necessary to minimize the effects of such boycott on the national technology and industrial base.

(e) INTEGRATED PROCESS.—The Secretary of Defense shall ensure that consideration of the technology and industrial base assessments is integrated into the overall budget, acquisition, and logistics support decision processes of the Department of Defense.

(Added Pub. L. 102–484, div. D, title XLII, § 4215, Oct. 23, 1992, 106 Stat. 2667; amended Pub. L.

[1] See References in Text note below.

103–35, title II, § 201(g)(7), May 31, 1993, 107 Stat. 100; Pub. L. 104–201, div. A, title VIII, § 829(c)(1), Sept. 23, 1996, 110 Stat. 2612; Pub. L. 111–23, title III, § 303(b), May 22, 2009, 123 Stat. 1731; Pub. L. 111–383, div. A, title VIII, § 895(c), Jan. 7, 2011, 124 Stat. 4314; Pub. L. 112–239, div. A, title XVI, § 1602, Jan. 2, 2013, 126 Stat. 2062; Pub. L. 114–92, div. A, title VIII, § 876, Nov. 25, 2015, 129 Stat. 941.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1867(b), Jan. 1, 2021, 134 Stat. 4151, 4281, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 382 of this title, as added by section 1867(a) of Pub. L. 116–283, inserted after section 4815, and redesignated as section 4816 of this title. See Effective Date of 2021 Amendment note below.

REFERENCES IN TEXT

Section 2445a of this title, referred to in subsec. (b)(6), was repealed by Pub. L. 114–328, div. A, title VIII, § 846(1), Dec. 23, 2016, 130 Stat. 2292, effective Sept. 30, 2017.

PRIOR PROVISIONS

A prior section 2505 was renumbered section 2532 of this title.

AMENDMENTS

2015—Subsec. (b)(3) to (6). Pub. L. 114–92 added pars. (3) and (4) and redesignated former pars. (3) and (4) as (5) and (6), respectively.

2013—Subsecs. (d), (e). Pub. L. 112–239 added subsec. (d) and redesignated former subsec. (d) as (e).

2011—Subsec. (b)(4). Pub. L. 111–383 inserted ''or major automated information system programs (as defined in section 2445a of this title)'' after ''section 2430 of this title)''.

2009—Subsec. (b)(4). Pub. L. 111–23 added par. (4).

1996—Pub. L. 104–201 reenacted section catchline without change and amended text generally. Prior to amendment, text consisted of subsecs. (a) to (d) providing for National Defense Technology and Industrial Base Council to prepare, at least annually through fiscal year 1997 and biennially thereafter, a comprehensive assessment of capability of the national technology and industrial base to attain national security objectives.

1993—Pub. L. 103–35 substituted ''capability'' for ''capabilty'' in section catchline.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

PILOT PROGRAM ON STRENGTHENING THE DEFENSE INDUSTRIAL AND INNOVATION BASE

Pub. L. 115–91, div. A, title XVII, § 1711, Dec. 12, 2017, 131 Stat. 1811, as amended by Pub. L. 116–283, div. A, title II, § 213(c), Jan. 1, 2021, 134 Stat. 3457, provided that:

''(a) PILOT PROGRAM REQUIRED.—The Secretary of Defense shall carry out a pilot program to assess the feasibility and advisability of increasing the capability of the defense industrial base and the defense innovation base to support—

''(1) development, prototyping, and manufacturing production needs to meet military requirements; and

''(2) development, prototyping, and manufacturing of emerging defense and commercial technologies.

''(b) AUTHORITIES.—The Secretary shall carry out the pilot program under the following:

''(1) Chapters 137 and 139 and sections 2371, 2371b, and 2373 of title 10, United States Code.

''(2) Section 230 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232; 10 U.S.C. 2358 note).

''(3) Such other legal authorities as the Secretary considers applicable to carrying out the pilot program.

''(c) ACTIVITIES.—Activities under the pilot program may include the following:

''(1) Use of contracts, grants, or other transaction authorities to support development, prototyping, and manufacturing capabilities in small- and medium-sized manufacturers.

''(2) Purchases of goods or equipment for testing and certification purposes.

''(3) Incentives, including purchase commitments and cost sharing with nongovernmental sources, for the private sector to develop capabilities in areas of national security interest.

''(4) Issuing loans or providing loan guarantees to small- and medium-sized companies to support manufacturing and production capabilities in areas of national security interest.

''(5) Giving awards to third party entities to support investments in small- and medium-sized companies working in areas of national security interest, including debt and equity investments that would benefit missions of the Department of Defense.

''(6) Such other activities as the Secretary determines necessary.

''(d) TERMINATION.—The pilot program shall terminate on December 31, 2026.

''(e) BRIEFING REQUIRED.—No later than January 31, 2027, the Secretary of Defense shall provide a briefing to the Committees on Armed Services in the Senate and the House of Representatives on the results of the pilot program.''

STUDY OF BERYLLIUM INDUSTRIAL BASE

Pub. L. 108–136, div. A, title VIII, § 824, Nov. 24, 2003, 117 Stat. 1547, required the Secretary of Defense to conduct a study of the adequacy of the industrial base of the United States to meet defense requirements of the United States for beryllium and to submit a report on the results of the study to Congress not later than Mar. 31, 2005.

IMPLEMENTING REGULATIONS CONCERNING NATIONAL TECHNOLOGY AND INDUSTRIAL BASE PERIODIC ASSESSMENT

Pub. L. 102–484, div. D, title XLII, § 4219, Oct. 23, 1992, 106 Stat. 2671, as amended by Pub. L. 103–35, title II, § 202(a)(14), May 31, 1993, 107 Stat. 101, set forth requirements for the initial regulations prescribed to implement this section, prior to repeal by Pub. L. 104–201, div. A, title VIII, § 829(h), Sept. 23, 1996, 110 Stat. 2614.

§ 2506. Department of Defense technology and industrial base policy guidance

(a) DEPARTMENTAL GUIDANCE.—The Secretary of Defense shall prescribe departmental guidance for the attainment of each of the national security objectives set forth in section 2501(a) of this title.

(b) PURPOSE OF GUIDANCE.—The guidance prescribed pursuant to subsection (a) shall provide for technological and industrial capability considerations to be integrated into the strategy, management, budget allocation, acquisition, and logistics support decision processes.

(Added Pub. L. 102–484, div. D, title XLII, § 4216(a), Oct. 23, 1992, 106 Stat. 2668; amended Pub. L. 104–201, div. A, title VIII, § 829(d), Sept.

23, 1996, 110 Stat. 2613; Pub. L. 111–383, div. A, title VIII, § 895(d), Jan. 7, 2011, 124 Stat. 4314; Pub. L. 115–91, div. A, title X, § 1051(a)(18), Dec. 12, 2017, 131 Stat. 1561; Pub. L. 116–283, div. A, title XVIII, § 1867(c)(1)(B), Jan. 1, 2021, 134 Stat. 4281.)

AMENDMENT OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1867(c)(1)(B), Jan. 1, 2021, 134 Stat. 4151, 4281, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is amended by transferring subsections (a) and (b) of this section to the end of section 4811(c) of this title and redesignating them as paragraphs (1) and (2), respectively. See 2021 Amendment note below.

REPEAL OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1867(c)(2), Jan. 1, 2021, 134 Stat. 4151, 4281, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is repealed. See Effective Date of Repeal note below.

PRIOR PROVISIONS

A prior section 2506 was renumbered section 2533 of this title.

AMENDMENTS

2021—Subsecs. (a), (b). Pub. L. 116–283 redesignated subsecs. (a) and (b) as section 4811(c)(1) and (2), respectively, of this title.

2017—Pub. L. 115–91 designated second sentence of subsec. (a) as subsec. (b) and inserted heading, substituted "The guidance prescribed pursuant to subsection (a)" for "Such guidance" in subsec. (b), and struck out former subsec. (b) which required the Secretary of Defense to report on the implementation of the departmental guidance in the annual report to Congress.

2011—Subsec. (a). Pub. L. 111–383 substituted "strategy, management, budget allocation," for "budget allocation, weapons".

1996—Pub. L. 104–201 substituted "Department of Defense technology and industrial base policy guidance" for "National technology and industrial base: periodic defense capability plan" in section catchline and amended text generally. Prior to amendment, text consisted of subsecs. (a) to (e) providing for the National Defense Technology and Industrial Base Council to prepare, at least annually through fiscal year 1997 and biennially thereafter, a multiyear plan for ensuring that the policies and programs of the Department of Defense, the Department of Energy, and other Federal departments and agencies were planned, coordinated, funded, and implemented in a manner designed to attain national security objectives.

EFFECTIVE DATE OF REPEAL

Repeal effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

IMPLEMENTING REGULATIONS CONCERNING NATIONAL TECHNOLOGY AND INDUSTRIAL BASE PERIODIC PLAN

Pub. L. 102–484, div. D, title XLII, § 4220, Oct. 23, 1992, 106 Stat. 2675, set forth requirements for the initial regulations prescribed to implement this section, prior to repeal by Pub. L. 104–201, div. A, title VIII, § 829(h), Sept. 23, 1996, 110 Stat. 2614.

§ 2507. Data collection authority of President

(a) AUTHORITY.—The President shall be entitled, by regulation, subpoena, or otherwise, to obtain such information from, require such reports and the keeping of such records by, make such inspection of the books, records, and other writings, premises or property of, and take the sworn testimony of, and administer oaths and affirmations to, any person as may be necessary or appropriate, in the President's discretion, to the enforcement or the administration of this chapter and the regulations issued under this chapter.

(b) CONDITION FOR USE OF AUTHORITY.—The President shall issue regulations insuring that the authority of this section will be used only after the scope and purpose of the investigation, inspection, or inquiry to be made have been defined by competent authority and it is assured that no adequate and authoritative data are available from any Federal or other responsible agency.

(c) PENALTY FOR NONCOMPLIANCE.—Any person who willfully performs any act prohibited or willfully fails to perform any act required by the provisions of subsection (a), or any rule, regulation, or order thereunder, shall be fined under title 18 or imprisoned not more than one year, or both.

(d) LIMITATIONS ON DISCLOSURE OF INFORMATION.—Information obtained under subsection (a) which the President deems confidential or with reference to which a request for confidential treatment is made by the person furnishing such information shall not be published or disclosed unless the President determines that the withholding thereof is contrary to the interest of the national defense. Any person who willfully violates this subsection shall be fined under title 18 or imprisoned not more than one year, or both.

(e) REGULATIONS.—The President may make such rules, regulations, and orders as he considers necessary or appropriate to carry out the provisions of this section. Any regulation or order under this section may be established in such form and manner, may contain such classification and differentiations, and may provide for such adjustments and reasonable exceptions as in the judgment of the President are necessary or proper to effectuate the purposes of this section, or to prevent circumvention or evasion, or to facilitate enforcement of this section, or any rule, regulation, or order issued under this section.

(f) DEFINITIONS.—In this section:

(1) The term "person" includes an individual, corporation, partnership, association, or any other organized group of persons, or legal successor or representative of the foregoing, and includes the United States or any agency thereof, or any other government, or any of its political subdivisions, or any agency

of any of the foregoing, except that no punishment provided by this section shall apply to the United States, or to any such government, political subdivision, or government agency.

(2) The term ''national defense'' means programs for military and atomic energy production or construction, military assistance to any foreign nation, stockpiling, space, and directly related activity.

(Added Pub. L. 102–484, div. D, title XLII, § 4217, Oct. 23, 1992, 106 Stat. 2670; amended Pub. L. 103–160, div. A, title XI, § 1182(b)(1), Nov. 30, 1993, 107 Stat. 1772; Pub. L. 109–163, div. A, title X, § 1056(c)(5), Jan. 6, 2006, 119 Stat. 3439.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1867(b), Jan. 1, 2021, 134 Stat. 4151, 4281, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 382 of this title, as added by section 1867(a) of Pub. L. 116–283, inserted after section 4817, and redesignated as section 4818 of this title. See Effective Date of 2021 Amendment note below.

PRIOR PROVISIONS

A prior section 2507 was renumbered section 2534 of this title.

AMENDMENTS

2006—Subsec. (d). Pub. L. 109–163 substituted ''subsection (a)'' for ''section (a)''.

1993—Pub. L. 103–160 inserted headings in subsecs. (a) to (f).

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 2508. Industrial Base Fund

(a) ESTABLISHMENT.—The Secretary of Defense shall establish an Industrial Base Fund (in this section referred to as the ''Fund'').

(b) CONTROL OF FUND.—The Fund shall be under the control of the Under Secretary of Defense for Acquisition and Sustainment, acting through the Deputy Assistant Secretary of Defense for Manufacturing and Industrial Base Policy.

(c) AMOUNTS IN FUND.—The Fund shall consist of amounts appropriated or otherwise made available to the Fund.

(d) USE OF FUND.—Subject to subsection (e), the Fund shall be used—

(1) to support the monitoring and assessment of the industrial base required by this chapter;

(2) to address critical issues in the industrial base relating to urgent operational needs;

(3) to support efforts to expand the industrial base; and

(4) to address supply chain vulnerabilities.

(e) USE OF FUND SUBJECT TO APPROPRIATIONS.—The authority of the Secretary of Defense to use the Fund under this section in any fiscal year is subject to the availability of appropriations for that purpose.

(f) EXPENDITURES.—The Secretary shall establish procedures for expending monies in the Fund in support of the uses identified in subsection (d), including the following:

(1) Direct obligations from the Fund.

(2) Transfers of monies from the Fund to relevant appropriations of the Department of Defense.

(Added Pub. L. 111–383, div. A, title VIII, § 896(b)(1), Jan. 7, 2011, 124 Stat. 4315; amended Pub. L. 115–91, div. A, title X, § 1081(g)(1), Dec. 12, 2017, 131 Stat. 1601; Pub. L. 116–92, div. A, title IX, § 902(75), Dec. 20, 2019, 133 Stat. 1552.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1867(b), Jan. 1, 2021, 134 Stat. 4151, 4281, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 382 of this title, as added by section 1867(a) of Pub. L. 116–283, inserted after section 4816, and redesignated as section 4817 of this title. See Effective Date of 2021 Amendment note below.

PRIOR PROVISIONS

A prior section 2508 was renumbered section 2522 of this title and subsequently repealed.

AMENDMENTS

2019—Subsec. (b). Pub. L. 116–92 substituted ''Under Secretary of Defense for Acquisition and Sustainment'' for ''Under Secretary of Defense for Acquisition, Technology, and Logistics''.

2017—Pub. L. 115–91, § 1081(g)(1), made technical amendment to directory language of Pub. L. 111–383, § 896(b)(1), which added this section.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 2017 AMENDMENT

Pub. L. 115–91, div. A, title X, § 1081(g), Dec. 12, 2017, 131 Stat. 1601, provided that the amendment made by section 1081(g)(1) is effective as of Jan. 7, 2011, and as if included in Pub. L. 111–383 as enacted.

§ 2509. Modernization of acquisition processes to ensure integrity of industrial base

(a) DIGITIZATION AND MODERNIZATION.—The Secretary of Defense shall streamline and digitize the existing Department of Defense approach for identifying and mitigating risks to the defense industrial base across the acquisition process, creating a continuous model that uses digital tools, technologies, and approaches designed to ensure the accessibility of data to key decision-makers in the Department.

(b) ANALYTICAL FRAMEWORK.—(1) The Under Secretary of Defense for Acquisition and Sustainment, in coordination with the Director of the Defense Counterintelligence and Security Agency and the heads of other elements of the Department of Defense as appropriate, shall develop an analytical framework for risk mitigation across the acquisition process.

(2) The analytical framework required under paragraph (1) shall include the following elements:

(A) Characterization and monitoring of supply chain risks, such as those identified through the supply chain risk management process of the Department and by the Federal Acquisition Security Council, and including—

(i) material sources and fragility, including the extent to which sources, items, materials, and articles are mined, produced, or manufactured within or outside the United States;

(ii) telecommunications services or equipment;

(iii) counterfeit parts;

(iv) cybersecurity of contractors;

(v) video surveillance services or equipment;

(vi) vendor vetting in contingency or operational environments;

(vii) other electronic or information technology products and services; and

(viii) other risk areas as determined appropriate.

(B) Characterization and monitoring of risks posed by contractor behavior that constitute violations of laws or regulations, including those relating to—

(i) fraud;

(ii) ownership structures;

(iii) trafficking in persons;

(iv) workers' health and safety;

(v) affiliation with the enemy;

(vi) foreign influence; and

(vii) other risk areas as deemed appropriate.

(C) Characterization and assessment of the acquisition processes and procedures of the Department of Defense, including—

(i) market research;

(ii) responsibility determinations, including consideration of the need for special standards of responsibility to address the risks described in subparagraphs (A) and (B);

(iii) facilities clearances;

(iv) the development of contract requirements;

(v) the technical evaluation of offers and contract awards;

(vi) contractor mobilization, including hiring, training, and establishing facilities;

(vii) contract administration, contract management, and oversight;

(viii) contract audit for closeout;

(ix) suspension and debarment activities and administrative appeals activities;

(x) contractor business system reviews;

(xi) processes and procedures related to supply chain risk management and processes and procedures implemented pursuant to section 2339a of this title; and

(xii) other relevant processes and procedures.

(D) Characterization and monitoring of the health and activities of the defense industrial base, including those relating to—

(i) balance sheets, revenues, profitability, and debt;

(ii) investment, innovation, and technological and manufacturing sophistication;

(iii) finances, access to capital markets, and cost of raising capital within those markets;

(iv) corporate governance, leadership, and culture of performance; and

(v) history of performance on past Department of Defense and government contracts.

(E) Characterization and assessment of industrial base support policies, programs, and procedures, including—

(i) limitations and acquisition guidance relevant to the national technology and industrial base (as defined in section 2500(1) of this title);

(ii) limitations and acquisition guidance relevant to section 2533a of this title;

(iii) the Industrial Base Analysis and Sustainment program of the Department, including direct support and common design activities;

(iv) the Small Business Innovation Research Program (as defined in section 9(e) of the Small Business Act (15 U.S.C. 638(e));

(v) the Manufacturing Technology Program established under section 2521 of this title;

(vi) programs relating to the Defense Production Act of 1950 (50 U.S.C. 4511 et seq.);[1] and

(vii) programs operating in each military department.

(c) ROLES AND RESPONSIBILITIES.—The Secretary of Defense shall designate the roles and responsibilities of organizations and individuals to execute activities under this section, including—

(1) the Under Secretary of Defense for Acquisition and Sustainment, including the Office of Defense Pricing and Contracting and the Office of Industrial Policy;

(2) service acquisition executives;

(3) program offices and procuring contracting officers;

(4) administrative contracting officers within the Defense Contract Management Agency and the Supervisor of Shipbuilding;

(5) the Defense Counterintelligence and Security Agency;

(6) the Defense Contract Audit Agency;

(7) each element of the Department of Defense which own or operate systems containing data relevant to contractors of the Department;

(8) the Under Secretary of Defense for Research and Engineering;

(9) the suspension and debarment official of the Department;

(10) the Chief Information Officer; and

(11) other relevant organizations and individuals.

(d) ENABLING DATA, TOOLS, AND SYSTEMS.—(1)(A) The Under Secretary of Defense for Acquisition and Sustainment, in consultation with the Chief Data Officer of the Department of Defense and the Director of the Defense Counterintelligence and Security Agency, shall assess the extent to which existing systems of record relevant to risk assessments and contracting are producing, exposing, and timely maintaining valid and reliable data for the purposes of the Department's continuous assessment and mitigation of risks in the defense industrial base.

[1] See References in Text note below.

(B) The assessment required under subparagraph (A) shall include the following elements:

(i) Identification of the necessary source data, to include data from contractors, intelligence and security activities, program offices, and commercial research entities.

(ii) A description of the modern data infrastructure, tools, and applications and what changes would improve the effectiveness and efficiency of mitigating the risks described in subsection (b)(2).

(iii) An assessment of the following systems owned or operated outside of the Department of Defense that the Department depends upon or to which it provides data:

(I) The Federal Awardee Performance and Integrity Information System (FAPIIS).

(II) The System for Award Management (SAM).

(III) The Federal Procurement Data System–Next Generation (FPDS–NG).

(IV) The Electronic Data Management Information System.

(V) Other systems the Secretary of Defense determines appropriate.

(iv) An assessment of systems owned or operated by the Department of Defense, including the Defense Counterintelligence and Security Agency and other defense agencies and field activities used to capture and analyze the status and performance (including past performance) of vendors and contractors.

(2) Based on the findings pursuant to paragraph (1), the Secretary of Defense shall develop a unified set of activities to modernize the systems of record, data sources and collection methods, and data exposure mechanisms. The unified set of activities should feature—

(A) the ability to continuously collect data on, assess, and mitigate risks;

(B) data analytics and business intelligence tools and methods; and

(C) continuous development and continuous delivery of secure software to implement the activities.

(e) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to limit or modify any other procurement policy, procedure, requirement, or restriction provided by law.

(f) IMPLEMENTATION AND REPORTING REQUIREMENTS.—The Secretary of Defense shall carry out the implementation phases set forth in, and submit to the congressional defense committees the items of information required by, the following paragraphs:

(1) PHASE 1: IMPLEMENTATION PLAN.—Not later than 90 days after the date of the enactment of this section, an implementation plan and schedule for carrying out the framework established pursuant to subsection (b), including—

(A) a discussion and recommendations for any changes to, or exemptions from, laws necessary for effective implementation, including updating the definitions in section 2339a(e) of this title relating to covered procurement, covered system, and covered item of supply, and any similar terms defined in other law or regulation; and

(B) a process for an entity to contact the Department after the entity has taken steps to remediate, mitigate, or otherwise address the risks identified by the Department in conducting activities under subsection (b).

(2) PHASE 2: IMPLEMENTATION OF FRAMEWORK.—Not later than one year after the date of the submission of the implementation plan and schedule required under paragraph (1), a report on the actions taken to implement the framework established pursuant to subsection (b), and supporting policies, procedures, and guidance relating to such actions.

(g) COMPTROLLER GENERAL REVIEWS.—

(1) BRIEFING.—Not later than February 15, 2020, the Comptroller General of the United States shall brief the congressional defense committees on Department of Defense efforts over the previous 5 years to continuously assess and mitigate risks to the defense industrial base across the acquisition process, and a summary of current and planned efforts.

(2) PERIODIC ASSESSMENTS.—The Comptroller General shall submit to the congressional defense committees three periodic assessments of Department of Defense progress in implementing the framework required under subsection (b), to be provided not later than October 15, 2020, March 15, 2022, and March 15, 2024.

(Added Pub. L. 116–92, div. A, title VIII, § 845(a), Dec. 20, 2019, 133 Stat. 1500; amended Pub. L. 116–283, div. A, title VIII, § 843(a), Jan. 1, 2021, 134 Stat. 3765.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1867(b), Jan. 1, 2021, 134 Stat. 4151, 4281, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 382 of this title, as added by section 1867(a) of Pub. L. 116–283, inserted after section 4818, and redesignated as section 4819 of this title. See Effective Date of 2021 Amendment note below.

REFERENCES IN TEXT

The Defense Production Act of 1950 (50 U.S.C. 4511 et seq.), referred to in subsec. (b)(2)(E)(vi), probably means act Sept. 8, 1950, ch. 932, 64 Stat. 798, which is classified principally to chapter 55 (§ 4501 et seq.) of Title 50, War and National Defense. For complete classification of this Act to the Code, see section 4501 of Title 50 and Tables.

The date of the enactment of this section, referred to in subsec. (f)(1), is the date of enactment of Pub. L. 116–92, which was approved Dec. 20, 2019.

PRIOR PROVISIONS

A prior section 2509, added Pub. L. 101–510, div. A, title VIII, § 825(a), Nov. 5, 1990, 104 Stat. 1604; amended Pub. L. 102–484, div. A, title X, § 1052(34), Oct. 23, 1992, 106 Stat. 2501, required submission of defense industrial base annual reports, prior to repeal by Pub. L. 102–484, § 4202(a).

A prior section 2510, added Pub. L. 101–510, div. A, title VIII, § 826(a)(1), Nov. 5, 1990, 104 Stat. 1605, related to defense industrial base for textile and apparel products, prior to repeal by Pub. L. 102–484, § 4202(a).

AMENDMENTS

2021—Subsec. (b)(2)(A). Pub. L. 116–283, § 843(a)(1)(A)(i), inserted ''such as those identified through the supply chain risk management process of the Department and

by the Federal Acquisition Security Council, and'' after ''supply chain risks,'' in introductory provisions.

Subsec. (b)(2)(A)(ii). Pub. L. 116–283, § 843(a)(1)(A)(ii), struck out ''(other than optical transmission components)'' after ''equipment''.

Subsec. (b)(2)(C)(xi), (xii). Pub. L. 116–283, § 843(a)(1)(B), added cl. (xi) and redesignated former cl. (xi) as (xii).

Subsec. (b)(2)(E). Pub. L. 116–283, § 843(a)(1)(C), added subpar. (E).

Subsec. (f)(2). Pub. L. 116–283, § 843(a)(2), inserted '', and supporting policies, procedures, and guidance relating to such actions'' after ''subsection (b)''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by section 1867(b) of Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

MITIGATING RISKS RELATED TO FOREIGN OWNERSHIP, CONTROL, OR INFLUENCE OF DEPARTMENT OF DEFENSE CONTRACTORS OR SUBCONTRACTORS

Pub. L. 116–283, div. A, title VIII, § 819(c), Jan. 1, 2021, 134 Stat. 3752, provided that:

''(1) IMPLEMENTATION PLAN.—Not later than March 1, 2021, the Secretary of Defense shall provide to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a plan and schedule for implementation of the requirements of section 847 of the National Defense Authorization Act for Fiscal Year 2020 (Public Law 116–92; 133 Stat. 1505; 10 U.S.C. 2509 note) [set out below], as amended by this section, including—

''(A) a timeline for issuance of regulations, development of training for appropriate officials, and development of systems for reporting of beneficial ownership and FOCI by covered contractors or subcontractors;

''(B) the designation of officials and organizations responsible for such implementation; and

''(C) interim milestones to be met in implementing the plan and schedule.

''(2) REVISION OF REGULATIONS, DIRECTIVES, GUIDANCE, TRAINING, AND POLICIES.—Not later than July 1, 2021, the Secretary of Defense shall revise relevant directives, guidance, training, and policies, including revising the Department of Defense Supplement to the Federal Acquisition Regulation, to fully implement the requirements of such section 847.

''(3) DEFINITIONS.—In this subsection, the term 'beneficial ownership', 'FOCI', and 'covered contractors or subcontractors' have the meanings given, respectively, in section 847 of the National Defense Authorization Act for Fiscal Year 2020 (Public Law 116–92; 133 Stat. 1505; 10 U.S.C. 2509 note).''

Pub. L. 116–92, div. A, title VIII, § 847, Dec. 20, 2019, 133 Stat. 1505, as amended by Pub. L. 116–283, div. A, title VIII, § 819(a), (b), (d), Jan. 1, 2021, 134 Stat. 3751, 3752, provided that:

''(a) DEFINITIONS.—In this section:

''(1) BENEFICIAL OWNER; BENEFICIAL OWNERSHIP.—The terms 'beneficial owner' and 'beneficial ownership' shall be determined in a manner that is not less stringent than the manner set forth in section 240.13d–3 of title 17, Code of Federal Regulations (as in effect on the date of the enactment of this Act [Dec. 20, 2019]).

''(2) COMPANY.—The term 'company' means any corporation, company, limited liability company, limited partnership, business trust, business association, or other similar entity.

''(3) COVERED CONTRACTOR OR SUBCONTRACTOR.—The term 'covered contractor or subcontractor' means a company that is an existing or prospective contractor or subcontractor of the Department of Defense on a contract or subcontract with a value in excess of $5,000,000, except as provided in subsection (c).

''(4) FOREIGN OWNERSHIP, CONTROL, OR INFLUENCE; FOCI.—The terms 'foreign ownership, control, or influence' and 'FOCI' have the meanings given those terms in the National Industrial Security Program Operating Manual (DOD 5220.22–M), or a successor document.

''(b) IMPROVED ASSESSMENT AND MITIGATION OF RISKS RELATED TO FOREIGN OWNERSHIP, CONTROL, OR INFLUENCE.—

''(1) IN GENERAL.—In developing and implementing the analytical framework for mitigating risk relating to ownership structures, as required by section 2509 of title 10, United States Code, as added by section 845 of this Act, the Secretary of Defense shall improve the process and procedures for the assessment and mitigation of risks related to foreign ownership, control, or influence (FOCI) of covered contractors or subcontractors doing business with the Department of Defense.

''(2) ELEMENTS.—The process and procedures for the assessment and mitigation of risk relating to ownership structures referred to in paragraph (1) shall include the following elements:

''(A) ASSESSMENT OF FOCI.—(i) A requirement for covered contractors or subcontractors to disclose to the Defense Counterintelligence and Security Agency, or its successor organization, their beneficial ownership and whether they are under FOCI.

''(ii) A requirement to update such disclosures when changes occur to information previously provided, consistent with or similar to the procedures for updating FOCI information under the National Industrial Security Program Operating Manual (DOD 5220.22–M), or a successor document.

''(iii) A requirement for covered contractors or subcontractors determined to be under FOCI to disclose contact information for each of its foreign owners that is a beneficial owner.

''(iv) A requirement that, at a minimum, the disclosures required by this paragraph be provided at the time the contract or subcontract is awarded, amended, or renewed, but in no case later than one year after the Secretary prescribes regulations to carry out this subsection.

''(v) A requirement for the Secretary to require reports and conduct examinations on a periodic basis of covered contractors or subcontractors in order to assess compliance with the requirements of this section.

''(B) RESPONSIBILITY DETERMINATION.—Consistent with section 2509 of title 10, United States Code, as added by section 845 of this Act, consideration of FOCI risks as part of responsibility determinations, including—

''(i) whether to establish a special standard of responsibility relating to FOCI risks for covered contractors or subcontractors, and the extent to which the policies and procedures consistent with or similar to those relating to FOCI under the National Industrial Security Program shall be applied to covered contractors or subcontractors;

''(ii) procedures for contracting officers making responsibility determinations regarding whether covered contractors or subcontractors may be under foreign ownership, control, or influence and for determining whether there is reason to believe that such foreign ownership, control, or influence would pose a risk or potential risk to national security or potential compromise because of sensitive data, systems, or processes, such as personally identifiable information, cybersecurity, or national security systems involved with the contract or subcontract; and

''(iii) modification of policies, directives, and practices to provide that an assessment that a covered contractor or subcontractor is under FOCI may be a sufficient basis for a contracting officer to determine that such a covered contractor or subcontractor is not responsible.

''(C) CONTRACT REQUIREMENTS, ADMINISTRATION, AND OVERSIGHT RELATING TO FOCI.—

''(i) Requirements for contract clauses providing for and enforcing disclosures related to changes in FOCI or beneficial ownership during performance of the contract or subcontract, consistent with subparagraph (A), and necessitating the effective mitigation of risks related to FOCI throughout the duration of the contract or subcontract.

''(ii) Pursuant to section 2509(c) of title 10, United States Code, designation of the appropriate Department of Defense official responsible to approve and to take actions relating to award, modification, termination of a contract, or direction to modify or terminate a subcontract due to an assessment by the Defense Counterintelligence and Security Agency, or its successor organization, that a covered contractor or subcontractor under FOCI poses a risk to national security or potential risk of compromise.

''(iii) A requirement for the provision of additional information regarding beneficial ownership and control of any covered contractor or subcontractor on the contract or subcontract.

''(iv) Procedures for appropriately responding to changes in covered contractor or subcontractor beneficial ownership status based on changes in disclosures of their beneficial ownership and whether they are under FOCI and the reports and examinations required by subparagraph (A)(v).

''(v) Other measures as necessary to be consistent with other relevant practices, policies, regulations, and actions, including those under the National Industrial Security Program.

''(c) APPLICABILITY TO CONTRACTS AND SUBCONTRACTS FOR COMMERCIAL PRODUCTS AND SERVICES AND OTHER FORMS OF ACQUISITION AGREEMENTS.—

''(1) COMMERCIAL PRODUCTS AND SERVICES.—The requirements under subsections (b)(2)(A) and (b)(2)(C) shall not apply to a contract or subcontract for commercial products or services, unless a designated senior Department of Defense official specifically requires the applicability of subsections (b)(2)(A) and (b)(2)(C) based on a determination by the designated senior official that the contract or subcontract involves a risk or potential risk to national security or potential compromise because of sensitive data, systems, or processes, such as personally identifiable information, cybersecurity, or national security systems.

''(2) RESEARCH AND DEVELOPMENT AND PROCUREMENT ACTIVITIES.—The Secretary of Defense shall ensure that the requirements of this section are applied to research and development and procurement activities, including for the delivery of services, established through any means including those under section 2358(b) of title 10, United States Code.

''(d) AVAILABILITY OF RESOURCES.—The Secretary shall ensure that sufficient resources, including subject matter expertise, are allocated to execute the functions necessary to carry out this section, including the assessment, mitigation, contract administration, and oversight functions.

''(e) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to limit or modify any other procurement policy, procedure, requirement, or restriction provided by law, including section 721 of the Defense Production Act of 1950 (50 U.S.C. 4565), as amended by the Foreign Interference Risk Review Modernization Act of 2018 (subtitle A of title XVII of Public Law 115–232).

''(f) AVAILABILITY OF BENEFICIAL OWNERSHIP DATA.—

''(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall establish a process to update systems of record to improve the assessment and mitigation of risks associated with FOCI through the inclusion and updating of all appropriate associated uniquely identifying information about the contracts and contractors and subcontracts and subcontractors in the Federal Awardee Performance and Integrity Information System (FAPIIS), administered by the General Services Administration, and the Commercial and Government Entity (CAGE) database, administered by the Defense Logistics Agency.

''(2) LIMITED AVAILABILITY OF INFORMATION.—The Secretary of Defense shall ensure that the information required to be disclosed pursuant to this section is—

''(A) not made public;

''(B) made available via the FAPIIS and CAGE databases; and

''(C) made available to appropriate government departments or agencies.''

SUBCHAPTER III—PROGRAMS FOR DEVELOPMENT, APPLICATION, AND SUPPORT OF DUAL-USE TECHNOLOGIES

Sec.
2511. Defense dual-use critical technology program.
[2512, 2513. Repealed.]
2514. Encouragement of technology transfer.
[2515 to 2517. Repealed.]
2518. Overseas foreign critical technology monitoring and assessment financial assistance program.
2519. Federal Defense Laboratory Diversification Program.
[2520. Repealed.]

REPEAL OF SUBCHAPTER

Pub. L. 116–283, div. A, title XVIII, §§1801(d), 1881(a), Jan. 1, 2021, 134 Stat. 4151, 4293, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, chapter 148 of this title, and therefore this subchapter, is repealed. See Effective Date of Repeal note below.

AMENDMENTS

2018—Pub. L. 115–232, div. A, title VIII, §811(b)(2), (c)(2), Aug. 13, 2018, 132 Stat. 1845, struck out items 2515 ''Office of Technology Transition'' and 2517 ''Office for Foreign Defense Critical Technology Monitoring and Assessment''.

1996—Pub. L. 104–106, div. A, title X, §1081(i)(2), Feb. 10, 1996, 110 Stat. 455, substituted ''program'' for ''partnerships'' in item 2511 and struck out items 2512 ''Commercial-military integration partnerships'', 2513 ''Regional technology alliances assistance program'', 2516 ''Military-Civilian Integration and Technology Transfer Advisory Board'', and 2520 ''Navy Reinvestment Program''.

1994—Pub. L. 103–337, div. A, title XI, §1113(c), Oct. 5, 1994, 108 Stat. 2866, added items 2519 and 2520.

EFFECTIVE DATE OF REPEAL

Repeal effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 2511. Defense dual-use critical technology program

(a) ESTABLISHMENT OF PROGRAM.—The Secretary of Defense shall conduct a program to further the national security objectives set forth in section 2501(a) of this title by encouraging and providing for research, development, and application of dual-use critical technologies. The Secretary may make grants, enter into contracts, or enter into cooperative agreements and other transactions pursuant to section 2371 of this title in furtherance of the program. The Secretary shall identify projects to be conducted as part of the program.

(b) ASSISTANCE AUTHORIZED.—The Secretary of Defense may provide technical and other assistance to facilitate the achievement of the purposes of projects conducted under the program. In providing such assistance, the Secretary shall make available, as appropriate for the work to be performed, equipment and facilities of Department of Defense laboratories (including the scientists and engineers at those laboratories) for purposes of projects selected by the Secretary.

(c) FINANCIAL COMMITMENT OF NON-FEDERAL GOVERNMENT PARTICIPANTS.—(1) The total amount of funds provided by the Federal Government for a project conducted under the program may not exceed 50 percent of the total cost of the project. However, the Secretary of Defense may agree to a project in which the total amount of funds provided by the Federal Government exceeds 50 percent if the Secretary determines the project is particularly meritorious, but the project would not otherwise have sufficient non-Federal funding or in-kind contributions.

(2) The Secretary may prescribe regulations to provide for consideration of in-kind contributions by non-Federal Government participants in a project conducted under the program for the purpose of calculating the share of the project costs that has been or is being undertaken by such participants. In such regulations, the Secretary may authorize a participant that is a small business concern to use funds received under the Small Business Innovation Research Program or the Small Business Technology Transfer Program to help pay the costs of project activities. Any such funds so used may be considered in calculating the amount of the financial commitment undertaken by the non-Federal Government participants unless the Secretary determines that the small business concern has not made a significant equity percentage contribution in the project from non-Federal sources.

(3) The Secretary shall consider a project proposal submitted by a small business concern without regard to the ability of the small business concern to immediately meet its share of the anticipated project costs. Upon the selection of a project proposal submitted by a small business concern, the small business concern shall have a period of not less than 120 days in which to arrange to meet its financial commitment requirements under the project from sources other than a person of a foreign country. If the Secretary determines upon the expiration of that period that the small business concern will be unable to meet its share of the anticipated project costs, the Secretary shall revoke the selection of the project proposal submitted by the small business concern.

(d) SELECTION PROCESS.—Competitive procedures shall be used in the conduct of the program.

(e) SELECTION CRITERIA.—The criteria for the selection of projects under the program shall include the following:

(1) The extent to which the proposed project advances and enhances the national security objectives set forth in section 2501(a) of this title.

(2) The technical excellence of the proposed project.

(3) The qualifications of the personnel proposed to participate in the research activities of the proposed project.

(4) An assessment of timely private sector investment in activities to achieve the goals and objectives of the proposed project other than through the project.

(5) The potential effectiveness of the project in the further development and application of each technology proposed to be developed by the project for the national technology and industrial base.

(6) The extent of the financial commitment of eligible firms to the proposed project.

(7) The extent to which the project does not unnecessarily duplicate projects undertaken by other agencies.

(f) REGULATIONS.—The Secretary of Defense shall prescribe regulations for the purposes of this section.

(Added Pub. L. 102–484, div. D, title XLII, § 4221(a), Oct. 23, 1992, 106 Stat. 2677; amended Pub. L. 103–160, div. A, title XIII, §§ 1315(a), 1317(c), Nov. 30, 1993, 107 Stat. 1787, 1789; Pub. L. 103–337, div. A, title XI, § 1115(a), Oct. 5, 1994, 108 Stat. 2868; Pub. L. 104–106, div. A, title X, § 1081(c), Feb. 10, 1996, 110 Stat. 452.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1868(b), Jan. 1, 2021, 134 Stat. 4151, 4282, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 383 of this title, as added by section 1868(a) of Pub. L. 116–283, inserted after the table of sections at the beginning of such chapter, and redesignated as section 4831 of this title. See Effective Date of 2021 Amendment note below.

PRIOR PROVISIONS

A prior section 2511, added Pub. L. 101–510, div. A, title VIII, § 823(a)(3), Nov. 5, 1990, 104 Stat. 1600; amended Pub. L. 102–190, div. A, title VIII, § 824(b), Dec. 5, 1991, 105 Stat. 1438, defined ‘‘manufacturing technology’’, ‘‘manufacturing extension program’’, and ‘‘United States-based small manufacturing firm’’ for purposes of former chapter 149 of this title, prior to repeal and restatement in section 2491 of this title by Pub. L. 102–484, §§ 4202(a), 4203(a).

Another prior section 2511 was renumbered section 2540 of this title and subsequently repealed.

Provisions similar to those in this section were contained in section 2523 of this title, prior to repeal by Pub. L. 102–484, § 4202(a).

AMENDMENTS

1996—Pub. L. 104–106 substituted ‘‘program’’ for ‘‘partnerships’’ in section catchline and amended text generally. Prior to amendment, text related to program for establishment of cooperative arrangements between Department of Defense and eligible entities.

1994—Subsec. (c)(3). Pub. L. 103–337 added par. (3).

1993—Subsec. (c). Pub. L. 103–160, § 1315(a), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ‘‘The Secretary of Defense shall ensure that, to the maximum extent he determines to be practicable, the amount of the funds provided by the Federal Government under a partnership does not exceed the total amount provided by non-Federal Government participants in that partnership.’’

Subsec. (e). Pub. L. 103–160, § 1317(c), struck out '', except that procedures other than competitive procedures may be used in any case in which an exception set out in section 2304(c) of this title applies'' after ''partnerships''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

DUAL-USE SCIENCE AND TECHNOLOGY PROGRAM

Pub. L. 105–85, div. A, title II, § 203, Nov. 18, 1997, 111 Stat. 1655, as amended by Pub. L. 106–65, div. A, title IX, § 911(a)(1), Oct. 5, 1999, 113 Stat. 717; Pub. L. 115–232, div. A, title VIII, § 811(h), Aug. 13, 2018, 132 Stat. 1846, provided that:

''(a) FUNDING 1998.—Of the amounts authorized to be appropriated by section 201 [111 Stat. 1655], $75,000,000 is authorized for dual-use projects.

''(b) GOALS.—(1) Subject to paragraph (3), it shall be the objective of the Secretary of each military department to obligate for dual-use projects in each fiscal year referred to in paragraph (2), out of the total amount authorized to be appropriated for such fiscal year for the applied research programs of the military department, the percent of such amount that is specified for that fiscal year in paragraph (2).

''(2) The objectives for fiscal years under paragraph (1) are as follows:

''(A) For fiscal year 1998, 5 percent.

''(B) For fiscal year 1999, 7 percent.

''(C) For fiscal year 2000, 10 percent.

''(D) For fiscal year 2001, 15 percent.

''(3) The Secretary of Defense may establish for a military department for a fiscal year an objective different from the objective set forth in paragraph (2) if the Secretary—

''(A) determines that compelling national security considerations require the establishment of the different objective; and

''(B) notifies Congress of the determination and the reasons for the determination.

''[(c) Repealed. Pub. L. 115–232, div. A, title VIII, § 811(h), Aug. 13, 2018, 132 Stat. 1846.]

''(d) FINANCIAL COMMITMENT OF NON-FEDERAL GOVERNMENT PARTICIPANTS.—The total amount of funds provided by a military department for a dual-use project entered into by the Secretary of that department shall not exceed 50 percent of the total cost of the project. In the case of a dual-use project initiated after the date of the enactment of this Act [Nov. 18, 1997], the Secretary may consider in-kind contributions by non-Federal participants only to the extent such contributions constitute 50 percent or less of the share of the project costs by such participants.

''(e) USE OF COMPETITIVE PROCEDURES.—Funds obligated for a dual-use project may be counted toward meeting an objective under subsection (a) only if the funds are obligated for a contract, grant, cooperative agreement, or other transaction that was entered into through the use of competitive procedures.

''(f) REPORT.—(1) Not later than March 1 of each of 1998, 1999, and 2000, the Secretary of Defense shall submit a report to the congressional defense committees [Committees on Armed Services and Appropriations of Senate and House of Representatives] on the progress made by the Department of Defense in meeting the objectives set forth in subsection (b) during the preceding fiscal year.

''(2) The report for a fiscal year shall contain, at a minimum, the following:

''(A) The aggregate value of all contracts, grants, cooperative agreements, or other transactions entered into during the fiscal year for which funding is counted toward meeting an objective under this section, expressed in relationship to the total amount appropriated for the applied research programs in the Department of Defense for that fiscal year.

''(B) For each military department, the value of all contracts, grants, cooperative agreements, or other transactions entered into during the fiscal year for which funding is counted toward meeting an objective under this section, expressed in relationship to the total amount appropriated for the applied research program of the military department for that fiscal year.

''(C) A summary of the cost-sharing arrangements in dual-use projects that were initiated during the fiscal year and are counted toward reaching an objective under this section.

''(D) A description of the regulations, directives, or other procedures that have been issued by the Secretary of Defense or the Secretary of a military department to increase the percentage of the total value of the dual-use projects undertaken to meet or exceed an objective under this section.

''(E) Any recommended legislation to facilitate achievement of objectives under this section.

''(g) COMMERCIAL OPERATIONS AND SUPPORT SAVINGS INITIATIVE.—(1) The Secretary of Defense shall establish a Commercial Operations and Support Savings Initiative (in this subsection referred to as the 'Initiative') to develop commercial products and processes that the military departments can incorporate into operational military systems to reduce costs of operations and support.

''(2) Of the amounts authorized to be appropriated by section 201, $50,000,000 is authorized for the Initiative.

''(3) Projects and participants in the Initiative shall be selected through the use of competitive procedures.

''(4) The budget submitted to Congress by the President for fiscal year 1999 and each fiscal year thereafter pursuant to section 1105(a) of title 31, United States Code, shall set forth separately the funding request for the Initiative.

''(h) REPEAL OF SUPERSEDED AUTHORITY.—[Repealed section 203 of Pub. L. 104–201, 110 Stat. 2451.]

''(i) DEFINITIONS.—In this section:

''(1) The term 'applied research program' means a program of a military department which is funded under the 6.2 Research, Development, Test and Evaluation account of that department.

''(2) The term 'dual-use project' means a project under a program of a military department or a defense agency under which research or development of a dual-use technology is carried out and the costs of which are shared by the Department of Defense and non-Government entities.''

APPLICATION OF 1993 AMENDMENTS TO EXISTING TECHNOLOGY REINVESTMENT PROJECTS

Pub. L. 103–160, div. A, title XIII, § 1315(g), Nov. 30, 1993, 107 Stat. 1789, provided that in the case of projects funded under section 2511, 2512, 2513, 2523, or 2524 of this title with funds appropriated for a fiscal year beginning before Oct. 1, 1993, the amendments made by section 1315 of Pub. L. 103–160 would not alter the financial commitment requirements in effect on Nov. 30, 1993, for the non-Federal Government participants in the project.

[§§ 2512, 2513. Repealed. Pub. L. 104–106, div. A, title X, § 1081(f), Feb. 10, 1996, 110 Stat. 454]

Section 2512, added Pub. L. 102–484, div. D, title XLII, § 4222(a), Oct. 23, 1992, 106 Stat. 2679; amended Pub. L. 103–160, div. A, title XIII, § 1315(b), Nov. 30, 1993, 107 Stat. 1787; Pub. L. 103–337, div. A, title XI, § 1115(b), Oct. 5, 1994, 108 Stat. 2868, related to commercial-military integration partnerships.

A prior section 2512, added Pub. L. 101–510, div. A, title VIII, § 823(a)(3), Nov. 5, 1990, 104 Stat. 1600, related to responsibility of Secretary of Defense to provide management and planning, prior to repeal by Pub. L. 102–484, § 4202(a).

Section 2513, added Pub. L. 102–190, div. A, title VIII, § 821(a), Dec. 5, 1991, 105 Stat. 1428, § 2524; renumbered

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§ 2513 and amended Pub. L. 102–484, div. D, title XLII, § 4223(a)–(f), Oct. 23, 1992, 106 Stat. 2681; Pub. L. 103–35, title II, § 201(d)(3), (e)(1), May 31, 1993, 107 Stat. 99; Pub. L. 103–160, div. A, title XI, § 1182(g)(2), title XIII, §§ 1315(c), 1316, Nov. 30, 1993, 107 Stat. 1774, 1787, 1789; Pub. L. 103–337, div. A, title XI, § 1115(c), Oct. 5, 1994, 108 Stat. 2868, related to regional technology alliances assistance program.

A prior section 2513, added Pub. L. 101–510, div. A, title VIII, § 823(a)(3), Nov. 5, 1990, 104 Stat. 1601; amended Pub. L. 102–190, div. A, title II, § 203(c), Dec. 5, 1991, 105 Stat. 1314, required annual National Defense Manufacturing Technology Plan, prior to repeal by Pub. L. 102–484, § 4202(a).

§ 2514. Encouragement of technology transfer

(a) ENCOURAGEMENT OF TRANSFER REQUIRED.—The Secretary of Defense shall encourage, to the extent consistent with national security objectives, the transfer of technology between laboratories and research centers of the Department of Defense and other Federal agencies, State and local governments, colleges and universities, and private persons in cases that are likely to result in accomplishing the objectives set forth in section 2501(a) of this title.

(b) EXAMINATION AND IMPLEMENTATION OF METHODS TO ENCOURAGE TRANSFER.—The Secretary shall examine and implement methods, in addition to the encouragement referred to in subsection (a) and the program described in subsection (c), that are consistent with national security objectives and will enable Department of Defense personnel to promote technology transfer.

(c) PROGRAM TO ENCOURAGE DIVERSIFICATION OF DEFENSE LABORATORIES.—(1) The Secretary of Defense shall establish and implement a program to be known as the Federal Defense Laboratory Diversification Program (hereinafter in this subsection referred to as the ''Program''). The purpose of the Program shall be to encourage greater cooperation in research and production activities carried out by defense laboratories and by private industry of the United States in order to enhance and improve the products of such research and production activities.

(2) Under the Program, the defense laboratories, in coordination with the Office of Technology Transfer in the Office of the Secretary of Defense, shall carry out cooperative activities with private industry in order to promote (by the use or exchange of patents, licenses, cooperative research and development agreements and other cooperative agreements, and the use of symposia, meetings, and other similar mechanisms) the transfer of defense or dual-use technologies from the defense laboratories to private industry, and the development and application of such technologies by the defense laboratories and private industry, for the purpose of the commercial utilization of such technologies by private industry.

(3) The Secretary of Defense shall develop and annually update a plan for each defense laboratory that participates in the Program under which plan the laboratory shall carry out cooperative activities with private industry to promote the transfers described in subsection (b).

(4) In this subsection, the term ''defense laboratory'' means any laboratory owned or operated by the Department of Defense that carries out research in fiscal year 1993 in an amount in excess of $50,000,000.

(Added Pub. L. 102–484, div. D, title XLII, § 4224(a), Oct. 23, 1992, 106 Stat. 2682; amended Pub. L. 104–201, div. A, title VIII, § 829(f), Sept. 23, 1996, 110 Stat. 2614.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1868(b), Jan. 1, 2021, 134 Stat. 4151, 4282, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 383 of this title, as added by section 1868(a) of Pub. L. 116–283, inserted after section 4831, and redesignated as section 4832 of this title. See Effective Date of 2021 Amendment note below.

PRIOR PROVISIONS

A prior section 2514, added Pub. L. 101–510, div. A, title VIII, § 823(a)(3), Nov. 5, 1990, 104 Stat. 1601, directed Secretary of Defense to enhance research relating to manufacturing technology, prior to repeal by Pub. L. 102–484, § 4202(a).

Provisions similar to those in subsecs. (a) and (b) of this section were contained in section 2363 of this title prior to repeal by Pub. L. 102–484, §§ 4224(c), 4271(a)(2).

AMENDMENTS

1996—Subsec. (c)(5). Pub. L. 104–201 struck out par. (5) which read as follows: ''The Secretary shall coordinate the Program with the National Defense Technology and Industrial Base Council.''

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

NATIONAL ACTION PLAN ON ADVANCED SUPERCONDUCTIVITY RESEARCH AND DEVELOPMENT

Superconductivity research and development activities by Secretary of Defense and by Defense Advanced Research Projects Agency, see section 5207 of Title 15, Commerce and Trade.

PILOT PROGRAM TO IMPROVE INCENTIVES FOR TECHNOLOGY TRANSFER FROM DEPARTMENT OF DEFENSE LABORATORIES

Pub. L. 115–91, div. A, title II, § 233, Dec. 12, 2017, 131 Stat. 1339, as amended by Pub. L. 116–283, div. A, title II, § 216(c), Jan. 1, 2021, 134 Stat. 3460, provided that:

''(a) IN GENERAL.—The Secretary of Defense shall establish a pilot program to assess the feasibility and advisability of distributing royalties and other payments as described in this section. Under the pilot program, except as provided in subsections (b) and (d), any royalties or other payments received by a Federal agency from the licensing and assignment of inventions under agreements entered into by Department of Defense laboratories, and from the licensing of inventions of Department of Defense laboratories, shall be retained by the laboratory which produced the invention and shall be disposed of as follows:

''(1)(A) The laboratory director shall pay each year the first $2,000, and thereafter at least 20 percent, of the royalties or other payments, other than payments of patent costs as delineated by a license or assignment agreement, to the inventor or coinventors, if the inventor's or coinventor's rights are directly assigned to the United States.

''(B) A laboratory director may provide appropriate incentives, from royalties or other payments, to lab-

oratory employees who are not an inventor of such inventions but who substantially increased the technical value of the inventions.

''(C) The laboratory shall retain the royalties and other payments received from an invention until the laboratory makes payments to employees of a laboratory under subparagraph (A) or (B).

''(2) The balance of the royalties or other payments shall be transferred by the agency to its laboratories, with the majority share of the royalties or other payments from any invention going to the laboratory where the invention occurred. The royalties or other payments so transferred to any laboratory may be used or obligated by that laboratory during the fiscal year in which they are received or during the 2 succeeding fiscal years—

''(A) to reward scientific, engineering, and technical employees of the laboratory, including developers of sensitive or classified technology, regardless of whether the technology has commercial applications;

''(B) to further scientific exchange among the laboratories of the agency;

''(C) for education and training of employees consistent with the research and development missions and objectives of the agency or laboratory, and for other activities that increase the potential for transfer of the technology of the laboratories of the agency;

''(D) for payment of expenses incidental to the administration and licensing of intellectual property by the agency or laboratory with respect to inventions made at that laboratory, including the fees or other costs for the services of other agencies, persons, or organizations for intellectual property management and licensing services; or

''(E) for scientific research and development consistent with the research and development missions and objectives of the laboratory.

''(3) All royalties or other payments retained by the laboratory after payments have been made pursuant to paragraphs (1) and (2) that are unobligated and unexpended at the end of the second fiscal year succeeding the fiscal year in which the royalties and other payments were received shall be paid into the Treasury of the United States.

''(b) TREATMENT OF PAYMENTS TO EMPLOYEES.—

''(1) IN GENERAL.—Any payment made to an employee under the pilot program shall be in addition to the regular pay of the employee and to any other awards made to the employee, and shall not affect the entitlement of the employee to any regular pay, annuity, or award to which the employee is otherwise entitled or for which the employee is otherwise eligible or limit the amount thereof. Any payment made to an inventor as such shall continue after the inventor leaves the laboratory.

''(2) CUMULATIVE PAYMENTS.—(A) Cumulative payments made under the pilot program while the inventor is still employed at the laboratory shall not exceed $500,000 per year to any one person, unless the Secretary concerned (as defined in section 101(a) of title 10, United States Code) approves a larger award.

''(B) Cumulative payments made under the pilot program after the inventor leaves the laboratory shall not exceed $150,000 per year to any one person, unless the head of the agency approves a larger award (with the excess over $150,000 being treated as an agency award to a former employee under section 4505 of title 5, United States Code).

''(c) INVENTION MANAGEMENT SERVICES.—Under the pilot program, a laboratory receiving royalties or other payments as a result of invention management services performed for another Federal agency or laboratory under section 207 of title 35, United States Code, may retain such royalties or payments to the extent required to offset payments to inventors under subparagraph (A) of subsection (a)(1), costs and expenses incurred under subparagraph (D) of subsection (a)(2), and the cost of foreign patenting and maintenance for any invention of the other agency. All royalties and other payments remaining after offsetting the payments to inventors, costs, and expenses described in the preceding sentence shall be transferred to the agency for which the services were performed, for distribution in accordance with subsection (a)(2).

''(d) CERTAIN ASSIGNMENTS.—Under the pilot program, if the invention involved was one assigned to the laboratory—

''(1) by a contractor, grantee, or participant, or an employee of a contractor, grantee, or participant, in an agreement or other arrangement with the agency; or

''(2) by an employee of the agency who was not working in the laboratory at the time the invention was made,

the agency unit that was involved in such assignment shall be considered to be a laboratory for purposes of this section.

''(e) SUNSET.—The pilot program under this section shall terminate on September 30, 2025.''

ENHANCED TRANSFER OF TECHNOLOGY DEVELOPED AT DEPARTMENT OF DEFENSE LABORATORIES

Pub. L. 113–66, div. A, title VIII, § 801, Dec. 26, 2013, 127 Stat. 802, as amended by Pub. L. 114–328, div. A, title VIII, § 818, Dec. 23, 2016, 130 Stat. 2273, provided that:

''(a) DEFINITIONS.—As used in this section:

''(1) The term 'military department' has the meaning provided in section 101 of title 10, United States Code.

''(2) The term 'DOD laboratory' or 'laboratory' means any facility or group of facilities that—

''(A) is owned, leased, operated, or otherwise used by the Department of Defense; and

''(B) meets the definition of 'laboratory' as provided in subsection (d)(2) of section 12 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a).

''(b) AUTHORITY.—

''(1) IN GENERAL.—The Secretary of Defense and the Secretary of a military department each may authorize the heads of DOD laboratories to grant nonexclusive, exclusive, or partially exclusive licenses, royalty free or for royalties or for rights to other intellectual property, for computer software and its related documentation developed at a DOD laboratory, but only if—

''(A) the computer software and related documentation would be a trade secret under the meaning of section 552(b)(4) of title 5, United States Code, if the information had been obtained from a non-Federal party;

''(B) the public is notified of the availability of the software and related documentation for licensing and interested parties have a fair opportunity to submit applications for licensing;

''(C) such licensing activities and licenses comply with the requirements under section 209 of title 35, United States Code; and

''(D) the software originally was developed to meet the military needs of the Department of Defense.

''(2) PROTECTIONS AGAINST UNAUTHORIZED DISCLOSURE.—The Secretary of Defense and the Secretary of a military department each shall provide appropriate precautions against the unauthorized disclosure of any computer software or documentation covered by paragraph (1)(A), including exemption from section 552 of title 5, United States Code, for a period of up to 5 years after the development of the computer software by the DOD laboratory.

''(c) ROYALTIES.—

''(1) USE OF ROYALTIES.—Except as provided in paragraph (2), any royalties or other payments received by the Department of Defense or a military department from licensing computer software or documentation under paragraph (b)(1) shall be retained by the Department of Defense or the military department and shall be disposed of as follows:

''(A)(i) The Department of Defense or the military department shall pay each year the first $2,000, and thereafter at least 15 percent, of the royalties or other payments, to be divided among the employees who developed the computer software.

''(ii) The Department of Defense or the military department may provide appropriate lesser incentives, from the royalties or other payments, to laboratory employees who are not developers of such computer software but who substantially increased the technical value of the software.

''(iii) The Department of Defense or the military department shall retain the royalties and other payments received until it makes payments to employees of a DOD laboratory under clause (i) or (ii).

''(iv) The Department of Defense or the military department may retain an amount reasonably necessary to pay expenses incidental to the administration and distribution of royalties or other payments under this section by an organizational unit of the Department of Defense or military department other than its laboratories.

''(B) The balance of the royalties or other payments shall be transferred by the Department of Defense or the military department to its laboratories, with the majority share of the royalties or other payments going to the laboratory where the development occurred. The royalties or other payments so transferred to any DOD laboratory may be used or obligated by that laboratory during the fiscal year in which they are received or during the 2 succeeding fiscal years—

''(i) to reward scientific, engineering, and technical employees of the DOD laboratory, including developers of sensitive or classified technology, regardless of whether the technology has commercial applications;

''(ii) to further scientific exchange among the laboratories of the agency;

''(iii) for education and training of employees consistent with the research and development missions and objectives of the Department of Defense, military department, or DOD laboratory, and for other activities that increase the potential for transfer of the technology of the DOD laboratory;

''(iv) for payment of expenses incidental to the administration and licensing of computer software or other intellectual property made at the DOD laboratory, including the fees or other costs for the services of other agencies, persons, or organizations for intellectual property management and licensing services; or

''(v) for scientific research and development consistent with the research and development missions and objectives of the DOD laboratory.

''(C) All royalties or other payments retained by the Department of Defense, military department, or DOD laboratory after payments have been made pursuant to subparagraphs (A) and (B) that are unobligated and unexpended at the end of the second fiscal year succeeding the fiscal year in which the royalties and other payments were received shall be paid into the Treasury of the United States.

''(2) EXCEPTION.—If, after payments under paragraph (1)(A), the balance of the royalties or other payments received by the Department of Defense or the military department in any fiscal year exceed 5 percent of the funds received for use by the DOD laboratory for research, development, engineering, testing, and evaluation or other related administrative, processing, or value-added activities for that year, 75 percent of such excess shall be paid to the Treasury of the United States and the remaining 25 percent may be used or obligated under paragraph (1)(B). Any funds not so used or obligated shall be paid into the Treasury of the United States.

''(3) STATUS OF PAYMENTS TO EMPLOYEES.—Any payment made to an employee under this section shall be in addition to the regular pay of the employee and to any other awards made to the employee, and shall not affect the entitlement of the employee to any regular pay, annuity, or award to which the employee is otherwise entitled or for which the employee is otherwise eligible or limit the amount thereof except that the monetary value of an award for the same project or effort shall be deducted from the amount otherwise available under this paragraph. Payments, determined under the terms of this paragraph and made to an employee developer as such, may continue after the developer leaves the DOD laboratory or the Department of Defense or military department. Payments made under this section shall not exceed $75,000 per year to any one person, unless the President approves a larger award (with the excess over $75,000 being treated as a Presidential award under section 4504 of title 5, United States Code).

''(d) INFORMATION IN REPORT.—The report required by [former] section 2515(d) of title 10, United States Code, shall include information regarding the implementation and effectiveness of this section.

''(e) EXPIRATION.—The authority provided in this section shall expire on December 31, 2021.''

TECHNOLOGY TRANSFER TO PRIVATE SECTOR

Pub. L. 100–180, div. A, title II, §218(c), Dec. 4, 1987, 101 Stat. 1053, as amended by Pub. L. 103–160, div. A, title IX, §904(f), Nov. 30, 1993, 107 Stat. 1729; Pub. L. 106–65, div. A, title IX, §911(a)(1), Oct. 5, 1999, 113 Stat. 717, provided that:

''(1) The Secretary of Defense, acting through the Under Secretary of Defense for Acquisition, Technology, and Logistics, shall take appropriate action to ensure that high-temperature superconductivity technology resulting from the research activities of the Department of Defense is transferred to the private sector. Such transfer shall be made in accordance with section 10(e) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710(e)), other applicable provisions of law, and Executive Order Number 12591, dated April 10, 1987 [set out as a note under 15 U.S.C. 3710].

''(2) The Secretary of Energy, in consultation with the Under Secretary of Defense for Acquisition, Technology, and Logistics, shall ensure that the national laboratories of the Department of Energy participate, to the maximum appropriate extent, in the transfer to the private sector of technology developed under the Department of Defense superconductivity program in the national laboratories.''

[§ 2515. Repealed. Pub. L. 115–232, div. A, title VIII, § 811(b)(1), Aug. 13, 2018, 132 Stat. 1845]

Section, added Pub. L. 102–484, div. D, title XLII, §4225(a), Oct. 23, 1992, 106 Stat. 2683; amended Pub. L. 104–106, div. A, title XV, §1502(a)(22), Feb. 10, 1996, 110 Stat. 505; Pub. L. 106–65, div. A, title X, §1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 108–136, div. A, title X, §1031(a)(23), Nov. 24, 2003, 117 Stat. 1598; Pub. L. 108–375, div. A, title X, §1084(b)(3), Oct. 28, 2004, 118 Stat. 2060; Pub. L. 112–81, div. A, title X, §1061(18), Dec. 31, 2011, 125 Stat. 1584, established an Office of Technology Transition within the Office of the Secretary of Defense and set out its purpose and duties.

A prior section 2515, added Pub. L. 101–510, div. A, title VIII, §823(a)(3), Nov. 5, 1990, 104 Stat. 1602, related to computer-integrated manufacturing technology, prior to repeal by Pub. L. 102–484, §4202(a).

[§ 2516. Repealed. Pub. L. 104–106, div. A, title X, § 1081(g), Feb. 10, 1996, 110 Stat. 455]

Section, added Pub. L. 102–484, div. D, title XLII, §4226(a), Oct. 23, 1992, 106 Stat. 2684; amended Pub. L. 103–35, title II, §201(g)(8), May 31, 1993, 107 Stat. 100, related to Military-Civilian Integration and Technology Transfer Advisory Board.

A prior section 2516, added Pub. L. 101–510, div. A, title VIII, §823(a)(3), Nov. 5, 1990, 104 Stat. 1602, related

to enhancement of concurrent engineering practices in design and development of weapon systems, prior to repeal by Pub. L. 102–484, § 4202(a).

[§ 2517. Repealed. Pub. L. 115–232, div. A, title VIII, § 811(c)(1), Aug. 13, 2018, 132 Stat. 1845]

Section, added Pub. L. 102–190, div. A, title VIII, § 821(a), Dec. 5, 1991, 105 Stat. 1430, § 2525; renumbered § 2517 and amended Pub. L. 102–484, div. D, title XLII, § 4227, Oct. 23, 1992, 106 Stat. 2685; Pub. L. 111–383, div. A, title IX, § 901(j)(4), Jan. 7, 2011, 124 Stat. 4324, established the Office for Foreign Defense Critical Technology Monitoring and Assessment and set out its responsibilities.

A prior section 2517 was renumbered section 2523 of this title and subsequently repealed.

§ 2518. Overseas foreign critical technology monitoring and assessment financial assistance program

(a) ESTABLISHMENT AND PURPOSE OF PROGRAM.—The Secretary of Defense may establish a foreign critical technology monitoring and assessment program. Under the program, the Secretary may enter into cooperative arrangements with one or more eligible not-for-profit organizations in order to provide financial assistance for the establishment of foreign critical technology monitoring and assessment offices in Europe, Pacific Rim countries, and such other countries as the Secretary considers appropriate.

(b) ELIGIBLE ORGANIZATIONS.—Any not-for-profit industrial or professional organization that has economic and scientific interests in research, development, and applications of dual-use critical technologies is eligible to enter into a cooperative arrangement referred to in subsection (a).

(Added Pub. L. 102–190, div. A, title VIII, § 821(a), Dec. 5, 1991, 105 Stat. 1431, § 2526; renumbered § 2518, Pub. L. 102–484, div. D, title XLII, § 4228, Oct. 23, 1992, 106 Stat. 2685.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1868(b), Jan. 1, 2021, 134 Stat. 4151, 4282, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 383 of this title, as added by section 1868(a) of Pub. L. 116–283, inserted after section 4833, and redesignated as section 4834 of this title. See Effective Date of 2021 Amendment note below.

PRIOR PROVISIONS

A prior section 2518 was renumbered section 2522 of this title and subsequently repealed.

AMENDMENTS

1992—Pub. L. 102–484 renumbered section 2526 of this title as this section.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 2519. Federal Defense Laboratory Diversification Program

(a) ESTABLISHMENT OF PROGRAM.—The Secretary of Defense shall conduct a program in accordance with this section for the purpose of promoting cooperation between Department of Defense laboratories and industry on research and development of dual-use technologies in order to further the national security objectives set forth in section 2501(a) of this title.

(b) PARTNERSHIPS.—(1) The Secretary shall provide for the establishment under the program of cooperative arrangements (hereinafter in this section referred to as ''partnerships'') between a Department of Defense laboratory and eligible firms and nonprofit research corporations. A partnership may also include one or more additional Federal laboratories, institutions of higher education, agencies of State and local governments, and other entities, as determined appropriate by the Secretary.

(2) For purposes of this section, a federally funded research and development center shall be considered a Department of Defense laboratory if the center is sponsored by the Department of Defense.

(c) ASSISTANCE AUTHORIZED.—(1) The Secretary may make grants, enter into contracts, enter into cooperative agreements and other transactions pursuant to section 2371 of this title, and enter into cooperative research and development agreements under section 12 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a) in order to establish partnerships.

(2) Subject to subsection (d), the Secretary may provide a partnership with technical and other assistance in order to facilitate the achievement of the purpose of this section.

(d) FINANCIAL COMMITMENT OF NON-FEDERAL GOVERNMENT PARTICIPANTS.—(1) The Secretary shall ensure that the non-Federal Government participants in a partnership make a substantial contribution to the total cost of partnership activities. The amount of the contribution shall be commensurate with the risk undertaken by such participants and the potential benefits of the activities for such participants.

(2) The regulations prescribed pursuant to section 2511(c)(2) of this title shall apply to in-kind contributions made by non-Federal Government participants in a partnership.

(e) SELECTION PROCESS.—Competitive procedures shall be used in the establishment of partnerships.

(f) SELECTION CRITERIA.—The criteria for the selection of a proposed partnership for establishment under this section shall include the criteria set forth in section 2511(e) of this title.

(g) REGULATIONS.—The Secretary shall prescribe regulations for the purposes of this section.

(Added Pub. L. 103–337, div. A, title XI, § 1113(a), Oct. 5, 1994, 108 Stat. 2864; amended Pub. L. 104–106, div. A, title X, § 1081(d), Feb. 10, 1996, 110 Stat. 454.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1868(b), Jan. 1, 2021, 134 Stat. 4151, 4282, pro-

vided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 383 of this title, as added by section 1868(a) of Pub. L. 116–283, inserted after section 4832, and redesignated as section 4833 of this title. See Effective Date of 2021 Amendment note below.

AMENDMENTS

1996—Subsec. (b). Pub. L. 104–106, §1081(d)(1), struck out ''referred to in section 2511(b) of this title'' after ''corporations''.

Subsec. (f). Pub. L. 104–106, §1081(d)(2), substituted ''section 2511(e)'' for ''section 2511(f)''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

[§ 2520. Repealed. Pub. L. 104–106, div. A, title X, § 1081(f), Feb. 10, 1996, 110 Stat. 454]

Section, added Pub. L. 103–337, div. A, title XI, §1113(b), Oct. 5, 1994, 108 Stat. 2865, related to Navy Reinvestment Program.

SUBCHAPTER IV—MANUFACTURING TECHNOLOGY

Sec.
2521. Manufacturing Technology Program.
2522. Armament retooling and manufacturing.
[2523, 2524. Repealed.]
[2525. Renumbered.]

REPEAL OF SUBCHAPTER

Pub. L. 116–283, div. A, title XVIII, §§1801(d), 1881(a), Jan. 1, 2021, 134 Stat. 4151, 4293, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, chapter 148 of this title, and therefore this subchapter, is repealed. See Effective Date of Repeal note below.

AMENDMENTS

2000—Pub. L. 106–398, §1 [[div. A], title III, §344(c)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–71, redesignated item 2525 as 2521 and added item 2522.

1998—Pub. L. 105–261, div. A, title X, §1069(a)(5), Oct. 17, 1998, 112 Stat. 2136, struck out ''AND DUAL-USE ASSISTANCE EXTENSION PROGRAMS'' after ''TECHNOLOGY'' in subchapter heading.

1996—Pub. L. 104–106, div. A, title II, §276(b), title X, §1081(i)(3), Feb. 10, 1996, 110 Stat. 242, 455, struck out items 2521 ''National Defense Manufacturing Technology Program'', 2522 ''Defense Advanced Manufacturing Technology Partnerships'', 2523 ''Manufacturing extension programs'', and 2524 ''Defense dual-use assistance extension program'' and substituted ''Manufacturing Technology Program'' for ''Manufacturing Science and Technology Program'' in item 2525.

1994—Pub. L. 103–337, div. A, title II, §256(a)(2), Oct. 5, 1994, 108 Stat. 2704, substituted ''Manufacturing Science and'' for ''Industrial Preparedness Manufacturing'' in item 2525.

1993—Pub. L. 103–160, div. A, title VIII, §801(a)(2), Nov. 30, 1993, 107 Stat. 1701, added item 2525.

EFFECTIVE DATE OF REPEAL

Repeal effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 2521. Manufacturing Technology Program

(a) ESTABLISHMENT.—The Secretary of Defense shall establish a Manufacturing Technology Program to further the national security objectives of section 2501(a) of this title through the development and application of advanced manufacturing technologies and processes that will reduce the acquisition and supportability costs of defense weapon systems and reduce manufacturing and repair cycle times across the life cycles of such systems. The Secretary shall use the joint planning process of the directors of the Department of Defense laboratories in establishing the program. The Under Secretary of Defense for Research and Engineering shall administer the program.

(b) PURPOSE OF PROGRAM.—The Secretary of Defense shall use the program—

(1) to provide centralized guidance and direction (including goals, milestones, and priorities) to the military departments and the Defense Agencies on all matters relating to manufacturing technology;

(2) to direct the development and implementation of Department of Defense plans, programs, projects, activities, and policies that promote the development and application of advanced technologies to manufacturing processes, tools, and equipment;

(3) to improve the manufacturing quality, productivity, technology, and practices of businesses and workers providing goods and services to the Department of Defense;

(4) to focus Department of Defense support for the development and application of advanced manufacturing technologies and processes for use to meet manufacturing requirements that are essential to the national defense, as well as for repair and remanufacturing in support of the operations of systems commands, depots, air logistics centers, and shipyards;

(5) to disseminate information concerning improved manufacturing improvement concepts, including information on such matters as best manufacturing practices, product data exchange specifications, computer-aided acquisition and logistics support, and rapid acquisition of manufactured parts;

(6) to sustain and enhance the skills and capabilities of the manufacturing work force;

(7) to promote high-performance work systems (with development and dissemination of production technologies that build upon the skills and capabilities of the work force), high levels of worker education and training; and

(8) to ensure appropriate coordination between the manufacturing technology programs and industrial preparedness programs of the Department of Defense and similar programs undertaken by other departments and agencies of the Federal Government or by the private sector.

(c) EXECUTION.—(1) The Secretary may carry out projects under the program through the Secretaries of the military departments and the heads of the Defense Agencies.

(2) In the establishment and review of requirements for an advanced manufacturing technology or process, the Secretary shall ensure

the participation of those prospective technology users that are expected to be the users of that technology or process.

(3) The Secretary shall ensure that each project under the program for the development of an advanced manufacturing technology or process includes an implementation plan for the transition of that technology or process to the prospective technology users that will be the users of that technology or process.

(4) In the periodic review of a project under the program, the Secretary shall ensure participation by those prospective technology users that are the expected users for the technology or process being developed under the project.

(5) In order to promote increased dissemination and use of manufacturing technology throughout the national defense technology and industrial base, the Secretary shall seek, to the maximum extent practicable, the participation of manufacturers of manufacturing equipment in the projects under the program.

(6) In this subsection, the term ''prospective technology users'' means the following officials and elements of the Department of Defense:

(A) Program and project managers for defense weapon systems.

(B) Systems commands.

(C) Depots.

(D) Air logistics centers.

(E) Shipyards.

(d) COMPETITION AND COST SHARING.—(1) In accordance with the policy stated in section 2374 of this title, competitive procedures shall be used for awarding all grants and entering into all contracts, cooperative agreements, and other transactions under the program.

(2) Under the competitive procedures used, the factors to be considered in the evaluation of each proposed grant, contract, cooperative agreement, or other transaction for a project under the program shall include the extent to which that proposed transaction provides for the proposed recipient to share in the cost of the project. For a project for which the Government receives an offer from only one offeror, the contracting officer shall negotiate the ratio of contract recipient cost to Government cost that represents the best value to the Government.

(e) JOINT DEFENSE MANUFACTURING TECHNOLOGY PANEL.—(1) There is in the Department of Defense the Joint Defense Manufacturing Technology Panel.

(2)(A) The Chair of the Joint Defense Manufacturing Technology Panel shall be the head of the Panel. The Chair shall be appointed, on a rotating basis, from among the appropriate personnel of the military departments and Defense Agencies with manufacturing technology programs.

(B) The Panel shall be composed of at least one individual from among appropriate personnel of each military department and Defense Agency with manufacturing technology programs. The Panel may include as ex-officio members such individuals from other government organizations, academia, and industry as the Chair considers appropriate.

(3) The purposes of the Panel shall be as follows:

(A) To identify and integrate requirements for the program.

(B) To conduct joint planning for the program.

(C) To develop joint strategies for the program.

(4) In carrying out the purposes specified in paragraph (3), the Panel shall perform the functions as follows:

(A) Conduct comprehensive reviews and assessments of defense-related manufacturing issues being addressed by the manufacturing technology programs and related activities of the Department of Defense.

(B) Execute strategic planning to identify joint planning opportunities for increased cooperation in the development and implementation of technological products and the leveraging of funding for such purposes with the private sector and other government agencies.

(C) Ensure the integration and coordination of requirements and programs under the program with the Office of the Secretary of Defense and other national-level initiatives, including the establishment of information exchange processes with other government agencies, private industry, academia, and professional associations.

(D) Conduct such other functions as the Under Secretary of Defense for Research and Engineering shall specify.

(5) The Panel shall report to and receive direction from one or more individuals designated by the Under Secretary of Defense for Research and Engineering for purposes of this paragraph on manufacturing technology issues of multi-service concern and application.

(6) The administrative expenses of the Panel shall be borne by each military department and Defense Agency with manufacturing technology programs in such manner as the Panel shall provide.

(f) FIVE-YEAR STRATEGIC PLAN.—(1) The Secretary shall develop a plan for the program that includes the following:

(A) The overall manufacturing technology goals, milestones, priorities, and investment strategy for the program.

(B) The objectives of, and funding for, the program for each military department and each Defense Agency that shall participate in the program during the period of the plan.

(2) The Secretary shall include in the plan mechanisms for assessing the effectiveness of the program under the plan.

(3) The Secretary shall update the plan not less frequently than once every four years.

(4) Each plan, and each update to the plan, shall cover a period of five fiscal years.

(Added Pub. L. 103–160, div. A, title VIII, § 801(a)(1), Nov. 30, 1993, 107 Stat. 1700, § 2525; amended Pub. L. 103–337, div. A, title II, § 256(a)(1), Oct. 5, 1994, 108 Stat. 2704; Pub. L. 104–106, div. A, title II, § 276(a), title X, § 1081(e), title XV, § 1503(a)(28), Feb. 10, 1996, 110 Stat. 241, 454, 512; Pub. L. 105–85, div. A, title II, § 211(a), (b), Nov. 18, 1997, 111 Stat. 1657; Pub. L. 105–261, div. A, title II, § 213, Oct. 17, 1998, 112 Stat. 1947; Pub. L. 106–65, div. A, title II, § 216, Oct. 5, 1999, 113 Stat. 543; renumbered § 2521, Pub. L. 106–398,

§1 [[div. A], title III, §344(c)(1)(A)], Oct. 30, 2000, 114 Stat. 1654, 1654A–71; Pub. L. 107–107, div. A, title X, §1048(b)(2), Dec. 28, 2001, 115 Stat. 1225; Pub. L. 107–314, div. A, title II, §213, Dec. 2, 2002, 116 Stat. 2481; Pub. L. 108–136, div. A, title X, §1031(a)(24), Nov. 24, 2003, 117 Stat. 1598; Pub. L. 110–181, div. A, title II, §238(a), Jan. 28, 2008, 122 Stat. 48; Pub. L. 111–84, div. A, title II, §212, Oct. 28, 2009, 123 Stat. 2225; Pub. L. 112–239, div. A, title X, §1076(c)(2)(A)(i), Jan. 2, 2013, 126 Stat. 1949; Pub. L. 113–291, div. A, title II, §212, Dec. 19, 2014, 128 Stat. 3325; Pub. L. 116–92, div. A, title IX, §902(76), Dec. 20, 2019, 133 Stat. 1552.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§1801(d), 1869(b)(1), Jan. 1, 2021, 134 Stat. 4151, 4283, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 384 of this title, as added by section 1869(a) of Pub. L. 116–283, inserted after the table of sections at the beginning of such chapter, and redesignated as section 4841 of this title. See Effective Date of 2021 Amendment note below.

PRIOR PROVISIONS

A prior section 2521, added Pub. L. 102–484, div. D, title XLII, §4231(a), Oct. 23, 1992, 106 Stat. 2686, related to National Defense Manufacturing Technology Program, prior to repeal by Pub. L. 104–106, div. A, title X, §1081(f), Feb. 10, 1996, 110 Stat. 454.

Another prior section 2521, added Pub. L. 102–190, div. A, title VIII, §821(a), Dec. 5, 1991, 105 Stat. 1426, defined terms for purposes of former chapter 150 of this title, prior to repeal and restatement in section 2491 [now 2500] of this title by Pub. L. 102–484, §§4202(a), 4203(a).

Another prior section 2521 was renumbered section 2540 of this title and subsequently repealed.

AMENDMENTS

2019—Subsec. (a). Pub. L. 116–92, §902(76)(A), substituted ''The Under Secretary of Defense for Research and Engineering'' for ''The Under Secretary of Defense for Acquisition, Technology, and Logistics''.

Subsec. (e)(4)(D). Pub. L. 116–92, §902(76)(B), substituted ''Under Secretary of Defense for Research and Engineering'' for ''Under Secretary of Defense for Acquisition, Technology, and Logistics''.

Subsec. (e)(5). Pub. L. 116–92, §902(76)(C), substituted ''Under Secretary of Defense for Research and Engineering'' for ''Under Secretary of Defense for Acquisition, Technology, and Logistics''.

2014—Subsec. (e)(5). Pub. L. 113–291, §212(a), substituted ''one or more individuals designated by the Under Secretary of Defense for Acquisition, Technology, and Logistics for purposes of this paragraph'' for ''the Assistant Secretary of Defense for Research and Engineering''.

Subsec. (f)(3). Pub. L. 113–291, §212(b), substituted ''not less frequently than once every four years'' for ''on a biennial basis''.

2013—Subsec. (e)(5). Pub. L. 112–239 substituted ''Assistant Secretary of Defense for Research and Engineering'' for ''Director of Defense Research and Engineering''.

2009—Subsecs. (e), (f). Pub. L. 111–84 added subsec. (e) and redesignated former subsec. (e) as (f).

2008—Subsec. (e). Pub. L. 110–181 added subsec. (e).

2003—Subsec. (e). Pub. L. 108–136 struck out heading and text of subsec. (e) which related to preparation and maintenance of a five-year plan for the Manufacturing Technology Program by the Secretary of Defense.

2002—Subsec. (e)(1). Pub. L. 107–314, §213(a), substituted ''prepare and maintain a five-year plan for the program.'' for ''prepare a five-year plan for the program which establishes—

''(A) the overall manufacturing technology goals, milestones, priorities, and investment strategy for the program; and

''(B) for each of the five fiscal years covered by the plan, the objectives of, and funding for the program by, each military department and each Defense Agency participating in the program.''

Subsec. (e)(2). Pub. L. 107–314, §213(a), substituted ''establish'' for ''include'' in introductory provisions and amended subpars. (A) and (B) generally. Prior to amendment, text read as follows:

''(A) An assessment of the effectiveness of the program, including a description of all completed projects and status of implementation.

''(B) An assessment of the extent to which the costs of projects are being shared by the following:

''(i) Commercial enterprises in the private sector.

''(ii) Department of Defense program offices, including weapon system program offices.

''(iii) Departments and agencies of the Federal Government outside the Department of Defense.

''(iv) Institutions of higher education.

''(v) Other institutions not operated for profit.

''(vi) Other sources.''

Subsec. (e)(3). Pub. L. 107–314, §213(b), substituted ''biennially'' for ''annually'' and ''for each even-numbered fiscal year'' for ''for a fiscal year''.

2001—Subsec. (a). Pub. L. 107–107 substituted ''Under Secretary of Defense for Acquisition, Technology, and Logistics'' for ''Under Secretary of Defense for Acquisition and Technology''.

2000—Pub. L. 106–398 renumbered section 2525 of this title as this section.

1999—Subsec. (a). Pub. L. 106–65, §216(a), in first sentence, inserted ''through the development and application of advanced manufacturing technologies and processes that will reduce the acquisition and supportability costs of defense weapon systems and reduce manufacturing and repair cycle times across the life cycles of such systems'' after ''title''.

Subsec. (b)(4). Pub. L. 106–65, §216(b), amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''to promote dual-use manufacturing processes;''.

Subsec. (c)(2) to (6). Pub. L. 106–65, §216(c), added pars. (2) to (4), redesignated former par. (2) as (5), and added par. (6).

Subsec. (d). Pub. L. 106–65, §216(d), struck out ''(A)'' before ''In accordance with'' in par. (1), redesignated par. (1)(B) as par. (2), substituted ''Under the competitive procedures used, the factors to be considered in the evaluation of each proposed grant, contract, cooperative agreement, or other transaction for a project under the program shall include the extent to which that proposed transaction provides for the proposed recipient to share in the cost of the project.'' for ''For each grant awarded and each contract, cooperative agreement, or other transaction entered into on a cost-share basis under the program, the ratio of contract recipient cost to Government cost shall be determined by competitive procedures.'', and struck out former pars. (2) and (3) which required grants, contracts, cooperative agreements, and other transactions to be awarded or entered into on a cost-sharing basis unless the Secretary of Defense made certain determinations and specified as a goal that at least 25 percent of the funds available for the program for each fiscal year be used for grants, contracts, cooperative agreements, and other transactions on a cost-share basis under which the ratio of recipient cost to Government cost was two to one.

Subsec. (e)(2)(A). Pub. L. 106–65, §216(e)(1), inserted '', including a description of all completed projects and status of implementation'' before period at end.

Subsec. (e)(2)(C). Pub. L. 106–65, §216(e)(2), added subpar. (C).

1998—Subsec. (d)(1). Pub. L. 105–261, §213(a), designated existing provisions as subpar. (A), substituted ''In accordance with the policy stated in section 2374 of

this title, competitive'' for ''Competitive'', and added subpar. (B).

Subsec. (d)(2). Pub. L. 105–261, § 213(b), designated existing provisions as subpar. (A), redesignated former subpars. (A) to (C) as cls. (i) to (iii), respectively, and added subpars. (B) and (C).

Subsec. (d)(3). Pub. L. 105–261, § 213(c)(2), substituted ''As a goal, at least'' for ''At least'' and ''should'' for ''shall'' and inserted at end ''The Secretary of Defense, in coordination with the Secretaries of the military departments and upon recommendation of the Under Secretary of Defense for Acquisition and Technology, shall establish annual objectives to meet such goal.''

Subsec. (d)(4). Pub. L. 105–261, § 213(c)(1), struck out par. (4) which read as follows: ''If the requirement of paragraph (3) cannot be met by July 15 of a fiscal year, the Under Secretary of Defense for Acquisition and Technology may waive the requirement and obligate the balance of the funds available for the program for that fiscal year on a cost-share basis under which the ratio of recipient cost to Government cost is less than two to one. Before implementing any such waiver, the Under Secretary shall submit to the Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives the reasons for the waiver.''

Subsec. (e)(2). Pub. L. 105–261, § 213(d), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''The plan shall include an assessment of the effectiveness of the program.''

1997—Subsec. (c)(2). Pub. L. 105–85, § 211(a), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''The Secretary shall seek, to the extent practicable, the participation of manufacturers of manufacturing equipment in the projects under the program.''

Subsec. (e). Pub. L. 105–85, § 211(b), added subsec. (e).

1996—Pub. L. 104–106, § 276(a)(1), amended section catchline, as amended by Pub. L. 104–106, §§ 1503(a)(28), 1506, by striking out ''Science and'' after ''Manufacturing''.

Pub. L. 104–106, § 1503(a)(28), substituted ''Science and Technology Program'' for ''science and technology program'' in section catchline.

Subsec. (a). Pub. L. 104–106, § 276(a)(2), struck out ''Science and'' after ''Manufacturing'' and inserted after first sentence ''The Secretary shall use the joint planning process of the directors of the Department of Defense laboratories in establishing the program.''

Subsec. (b). Pub. L. 104–106, § 1081(e), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''PURPOSE.—The purpose of the program is to enhance the capability of industry to meet the manufacturing needs of the Department of Defense.''

Subsec. (c). Pub. L. 104–106, § 276(a)(3), designated existing provisions as par. (1) and added par. (2).

Subsec. (d)(2)(C). Pub. L. 104–106, § 276(a)(4)(A), added subpar. (C).

Subsec. (d)(3), (4). Pub. L. 104–106, § 276(a)(4)(B), added pars. (3) and (4).

1994—Pub. L. 103–337 substituted ''Manufacturing science and technology program'' for ''Industrial Preparedness Manufacturing Technology Program'' as section catchline and amended text generally. Prior to amendment, text read as follows: ''The Secretary of Defense shall establish an Industrial Preparedness Manufacturing Technology program to enhance the capability of industry to meet the manufacturing needs of the Department of Defense.''

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

ADMINISTRATION OF MANUFACTURING INNOVATION INSTITUTES FUNDED BY THE DEPARTMENT OF DEFENSE

Pub. L. 116–92, div. A, title II, § 227, Dec. 20, 2019, 133 Stat. 1270, provided that:

''(a) IN GENERAL.—The Secretary of Defense shall make such changes to the administration of covered institutes so as—

''(1) to encourage covered institutes to leverage existing workforce development programs across the Federal Government and State governments in order to build successful workforce development programs;

''(2) to develop metrics to evaluate the workforce development performed by the covered institutes, including metrics on job quality, career pathways, wages and benefits, and efforts to support veterans, and progress in aligning workforce skillsets with the current and long-term needs of the Department of Defense and the defense industrial base;

''(3) to allow metrics to vary between covered institutes and be updated and evaluated continuously in order to more accurately evaluate covered institutes with different goals and missions;

''(4) to encourage covered institutes to consider developing technologies that were previously funded by Federal Government investment for early-stage research and development and expand cross-government coordination and collaboration to achieve this goal;

''(5) to provide an opportunity for increased Department of Defense input and oversight from senior-level military and civilian personnel on future technology roadmaps produced by covered institutes;

''(6) to reduce the barriers to collaboration between and among multiple covered institutes;

''(7) to use contracting vehicles that can increase flexibility, reduce barriers for contracting with subject-matter experts and small and medium enterprises, enhance partnerships between covered institutes, and reduce the time to award contracts at covered institutes; and

''(8) to overcome barriers to the adoption of manufacturing processes and technologies developed by the covered institutes by the defense and commercial industrial base, particularly small and medium enterprises, by engaging with public and private sector partnerships and appropriate government programs and activities, including the Hollings Manufacturing Extension Partnership.

''(b) COORDINATION WITH OTHER ACTIVITIES.—The Secretary shall carry out this section in coordination with activities undertaken under—

''(1) the Manufacturing Technology Program established under section 2521 of title 10, United States Code;

''(2) the Manufacturing Engineering Education Program established under section 2196 of such title;

''(3) the Defense Manufacturing Community Support Program established under section 846 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232) [10 U.S.C. 2501 note];

''(4) manufacturing initiatives of the Secretary of Commerce, the head of the National Office of the Manufacturing USA Network, the Secretary of Energy, and such other government and private sector organizations as the Secretary of Defense considers appropriate; and

''(5) such other activities as the Secretary considers appropriate.

''(c) DEFINITION OF COVERED INSTITUTE.—In this section, the term 'covered institute' means a manufacturing innovation institute that is funded by the Department of Defense.''

ADVANCED MANUFACTURING ACTIVITIES

Pub. L. 115–232, div. A, title II, § 229, Aug. 13, 2018, 132 Stat. 1688, provided that:

''(a) DESIGNATION.—The Under Secretary of Defense for Acquisition and Sustainment and the Under Secretary of Defense for Research and Engineering shall jointly, in coordination with Secretaries of the military departments, establish at least one activity per military service to demonstrate advanced manufacturing techniques and capabilities at depot-level activi-

ties or military arsenal facilities of the military departments.

"(b) PURPOSES.—The activities established pursuant to subsection (a) shall—

"(1) support efforts to implement advanced manufacturing techniques and capabilities;

"(2) identify improvements to sustainment methods for component parts and other logistics needs;

"(3) identify and implement appropriate information security protections to ensure security of advanced manufacturing;

"(4) aid in the procurement of advanced manufacturing equipment and support services;

"(5) enhance partnerships between the defense industrial base and Department of Defense laboratories, academic institutions, and industry; and

"(6) to the degree practicable, include an educational or training component to build an advanced manufacturing workforce.

"(c) COOPERATIVE AGREEMENTS AND PARTNERSHIPS.—

"(1) IN GENERAL.—The Under Secretaries may enter into a cooperative agreement and use public-private and public-public partnerships to facilitate development of advanced manufacturing techniques in support of the defense industrial base.

"(2) REQUIREMENTS.—A cooperative agreement entered into under paragraph (1) and a partnership used under such paragraph shall facilitate—

"(A) development and implementation of advanced manufacturing techniques and capabilities;

"(B) appropriate sharing of information in the adaptation of advanced manufacturing, including technical data rights;

"(C) implementation of appropriate information security protections into advanced manufacturing tools and techniques; and

"(D) support of necessary workforce development.

"(d) AUTHORITIES.—In carrying out this section, the Under Secretaries may use the following authorities:

"(1) Section 2196 of title 10, United States Code, relating to the Manufacturing Engineering Education Program.

"(2) Section 2368 of such title, relating to centers for science, technology, and engineering partnership.

"(3) Section 2374a of such title, relating to prizes for advanced technology achievements.

"(4) Section 2474 of such title, relating to centers of industrial and technical excellence.

"(5) Section 2521 of such title, relating to the Manufacturing Technology Program.

"(6) Section 12 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a) and section 6305 of title 31, United States Code, relating to cooperative research and development agreements.

"(7) Such other authorities as the Under Secretaries considers appropriate."

LIMITATION ON USE OF FUNDS FOR DEFENSE-WIDE MANUFACTURING SCIENCE AND TECHNOLOGY PROGRAM

Pub. L. 110–181, div. A, title II, § 214, Jan. 28, 2008, 122 Stat. 36, as amended by Pub. L. 111–383, div. A, title IX, § 901(*l*)(2), Jan. 7, 2011, 124 Stat. 4326; Pub. L. 112–239, div. A, title X, § 1076(c)(2)(F), Jan. 2, 2013, 126 Stat. 1950, provided that: "No funds available to the Office of the Secretary of Defense for any fiscal year may be obligated or expended for the defense-wide manufacturing science and technology program unless the Assistant Secretary of Defense for Research and Engineering ensures each of the following:

"(1) A component of the Department of Defense has requested and evaluated—

"(A) competitive proposals, for each project under the program that is not a project covered by subparagraph (B); and

"(B) proposals from as many sources as is practicable under the circumstances, for a project under the program if the disclosure of the needs of the Department of Defense with respect to that project would compromise the national security.

"(2) Each project under the program is carried out—

"(A) in accordance with the statutory requirements of the Manufacturing Technology Program established by section 2521 of title 10, United States Code; and

"(B) in compliance with all requirements of any directive that applies to manufacturing technology.

"(3) An implementation plan has been developed."

[Pub. L. 111–383, div. A, title IX, § 901(*l*)(2), Jan. 7, 2011, 124 Stat. 4326, which directed amendment of section 214 of Pub. L. 110–181, set out above, by substituting "Assistant Secretary of Defense for Research and Engineering" for "Director of Defense Research and Engineering", was executed by making the substitution for "Director, Defense Research and Engineering," to reflect the probable intent of Congress.]

INITIAL DEVELOPMENT AND SUBMISSION OF PLAN

Pub. L. 110–181, div. A, title II, § 238(b), Jan. 28, 2008, 122 Stat. 48, provided that:

"(1) DEVELOPMENT.—The Secretary of Defense shall develop the strategic plan required by subsection (e) [now (f)] of section 2521 of title 10, United States Code (as added by subsection (a) of this section), so that the plan goes into effect at the beginning of fiscal year 2009.

"(2) SUBMISSION.—Not later than the date on which the budget of the President for fiscal year 2010 is submitted to Congress under section 1105 of title 31, United States Code, the Secretary shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives the plan specified in paragraph (1)."

HIGH-PERFORMANCE DEFENSE MANUFACTURING TECHNOLOGY RESEARCH AND DEVELOPMENT

Pub. L. 109–163, div. A, title II, subtitle D, Jan. 6, 2006, 119 Stat. 3175, as amended by Pub. L. 112–239, div. A, title X, § 1076(c)(2)(A)(ii), Jan. 2, 2013, 126 Stat. 1949, provided that:

"SEC. 241. PILOT PROGRAM FOR IDENTIFICATION AND TRANSITION OF ADVANCED MANUFACTURING PROCESSES AND TECHNOLOGIES.

"(a) PILOT PROGRAM REQUIRED.—The Under Secretary of Defense for Acquisition, Technology, and Logistics shall conduct a pilot program under the authority of section 2521 of title 10, United States Code, to identify and transition advanced manufacturing processes and technologies the utilization of which would achieve significant productivity and efficiency gains in the defense manufacturing base.

"(b) CONSIDERATION OF DEFENSE PRIORITIES.—In carrying out subsection (a), the Under Secretary shall take into consideration the defense priorities established in the most current Joint Warfighting Science and Technology plan, as required under section 270 of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104–201; 10 U.S.C. 2501 note).

"(c) IDENTIFICATION FOR TRANSITION.—In identifying manufacturing processes and technologies for transition to the defense manufacturing base under the pilot program, the Under Secretary shall select the most promising transformational technologies and manufacturing processes, in consultation with the Assistant Secretary of Defense for Research and Engineering, the Joint Defense Manufacturing Technology Panel, and other such entities as may be appropriate, including the Director of the Small Business Innovation Research Program.

"SEC. 242. TRANSITION OF TRANSFORMATIONAL MANUFACTURING PROCESSES AND TECHNOLOGIES TO DEFENSE MANUFACTURING BASE.

"(a) PROTOTYPES AND TEST BEDS.—The Under Secretary of Defense for Acquisition, Technology, and Logistics shall undertake the development of prototypes and test beds to validate the manufacturing processes and technologies selected for transition under the pilot program under section 241.

''(b) DIFFUSION OF ENHANCEMENTS.—The Under Secretary shall seek the cooperation of industry in adopting such manufacturing processes and technologies through the following:

''(1) The Manufacturing Extension Partnership Program.

''(2) The identification of incentives for industry to incorporate and utilize such manufacturing processes and technologies.

''SEC. 243. MANUFACTURING TECHNOLOGY STRATEGIES.

''(a) IN GENERAL.—The Under Secretary of Defense for Acquisition, Technology, and Logistics may—

''(1) identify an area of technology where the development of an industry-prepared roadmap for new manufacturing and technology processes applicable to defense manufacturing requirements would be beneficial to the Department of Defense; and

''(2) establish a task force, and act in cooperation, with the private sector to map the strategy for the development of manufacturing processes and technologies needed to support technology development in the area identified under paragraph (1).

''(b) COMMENCEMENT OF ROADMAPPING.—The Under Secretary shall commence any roadmapping identified pursuant to subsection (a)(1) not later than January 2007.

''SEC. 244. REPORT.

''(a) IN GENERAL.—Not later than December 31, 2007, the Under Secretary of the Defense for Acquisition, Technology, and Logistics shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the actions undertaken by the Under Secretary under this subtitle during fiscal year 2006.

''(b) ELEMENTS.—The report under subsection (a) shall include—

''(1) a comprehensive description of the actions undertaken under this subtitle during fiscal year 2006;

''(2) an assessment of effectiveness of such actions in enhancing research and development on manufacturing technologies and processes, and the implementation of such within the defense manufacturing base; and

''(3) such recommendations as the Under Secretary considers appropriate for additional actions to be undertaken in order to increase the effectiveness of the actions undertaken under this subtitle in enhancing manufacturing activities within the defense manufacturing base.

''SEC. 245. DEFINITIONS.

''In this subtitle:

''(1) DEFENSE MANUFACTURING BASE.—The term 'defense manufacturing base' includes any supplier of the Department of Defense, including a supplier of raw materials.

''(2) MANUFACTURING EXTENSION PARTNERSHIP PROGRAM.—The term 'Manufacturing Extension Partnership Program' means the Manufacturing Extension Partnership Program of the Department of Commerce.

''(3) SMALL BUSINESS INNOVATION RESEARCH PROGRAM.—The term 'Small Business Innovation Research Program' has the meaning given that term in section 2500(11) of title 10, United States Code.''

TECHNICAL ASSISTANCE RELATING TO MACHINE TOOLS

Pub. L. 108–136, div. A, title VIII, § 823, Nov. 24, 2003, 117 Stat. 1547, which required the Secretary to publish in the Federal Register information on Government contracting for purposes of assisting machine tool companies in the United States and users of machine tools, was repealed by Pub. L. 115–232, div. A, title VIII, § 812(b)(56), Aug. 13, 2018, 132 Stat. 1850.

PARTICIPATION IN MANUFACTURING EXTENSION PROGRAM

Pub. L. 108–87, title VIII, § 8062, Sept. 30, 2003, 117 Stat. 1086, provided that: ''Notwithstanding any other provision of law, the Naval shipyards of the United States shall be eligible to participate in any manufacturing extension program financed by funds appropriated in this or any other Act or hereafter in any other Act.''

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 107–248, title VIII, § 8063, Oct. 23, 2002, 116 Stat. 1550.

Pub. L. 107–117, div. A, title VIII, § 8068, Jan. 10, 2002, 115 Stat. 2262.

Pub. L. 106–259, title VIII, § 8067, Aug. 9, 2000, 114 Stat. 689.

Pub. L. 106–79, title VIII, § 8070, Oct. 25, 1999, 113 Stat. 1245.

Pub. L. 105–262, title VIII, § 8070, Oct. 17, 1998, 112 Stat. 2312.

Pub. L. 105–56, title VIII, § 8076, Oct. 8, 1997, 111 Stat. 1236.

Pub. L. 104–208, div. A, title I, § 101(b) [title VIII, § 8085], Sept. 30, 1996, 110 Stat. 3009–71, 3009–105.

Pub. L. 104–61, title VIII, § 8064, Dec. 1, 1995, 109 Stat. 664.

Pub. L. 103–335, title VIII, § 8071, Sept. 30, 1994, 108 Stat. 2635.

Pub. L. 103–139, title VIII, § 8083A, Nov. 11, 1993, 107 Stat. 1459.

Pub. L. 102–396, title IX, § 9112, Oct. 6, 1992, 106 Stat. 1929.

§ 2522. Armament retooling and manufacturing

The Secretary of the Army is authorized by chapter 764 of this title to carry out programs for the support of armaments retooling and manufacturing in the national defense industrial and technology base.

(Added Pub. L. 106–398, § 1 [[div. A], title III, § 344(c)(1)(B)], Oct. 30, 2000, 114 Stat. 1654, 1654A–71; amended Pub. L. 115–232, div. A, title VIII, § 809(a), Aug. 13, 2018, 132 Stat. 1840.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1869(d), Jan. 1, 2021, 134 Stat. 4151, 4284, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 384 of this title, as added by section 1869(a) of Pub. L. 116–283, inserted after section 4842, and redesignated as section 4843 of this title. See Effective Date of 2021 Amendment note below.

PRIOR PROVISIONS

A prior section 2522, added Pub. L. 102–190, div. A, title VIII, § 823(a)(1), Dec. 5, 1991, 105 Stat. 1435, § 2518; renumbered § 2522 and amended Pub. L. 102–484, div. D, title XLII, § 4232(a), (b), Oct. 23, 1992, 106 Stat. 2687, related to defense advanced manufacturing technology partnerships, prior to repeal by Pub. L. 104–106, div. A, title X, § 1081(f), Feb. 10, 1996, 110 Stat. 454.

Another prior section 2522, added Pub. L. 101–189, div. A, title VIII, § 841(b)(1), Nov. 29, 1989, 103 Stat. 1512, § 2508; amended Pub. L. 101–510, div. A, title VIII, § 821(a), Nov. 5, 1990, 104 Stat. 1597; Pub. L. 102–25, title VII, § 701(g)(3), Apr. 6, 1991, 105 Stat. 115; renumbered § 2522, Pub. L. 102–190, div. A, title VIII, § 821(b)(1), Dec. 5, 1991, 105 Stat. 1431, required an annual defense critical technologies plan, prior to repeal by Pub. L. 102–484, § 4202(a).

AMENDMENTS

2018—Pub. L. 115–232 substituted ''chapter 764'' for ''chapter 434''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation

and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115–232 effective Feb. 1, 2019, with provision for the coordination of amendments and special rule for certain redesignations, see section 800 of Pub. L. 115–232, set out as a note preceding section 3001 of this title.

[§§ 2523, 2524. Repealed. Pub. L. 104–106, div. A, title X, § 1081(f), Feb. 10, 1996, 110 Stat. 454]

Section 2523, added Pub. L. 101–510, div. A, title VIII, § 823(a)(3), Nov. 5, 1990, 104 Stat. 1602, § 2517; amended Pub. L. 102–190, div. A, title VIII, § 824(a), Dec. 5, 1991, 105 Stat. 1436; renumbered § 2523 and amended Pub. L. 102–484, div. D, title XLII, § 4233(a), (b), Oct. 23, 1992, 106 Stat. 2687; Pub. L. 103–160, div. A, title IX, § 904(d)(1), title XI, § 1182(b)(2), title XIII, § 1315(d), Nov. 30, 1993, 107 Stat. 1728, 1772, 1787, related to manufacturing extension programs.

A prior section 2523, added Pub. L. 102–190, div. A, title VIII, § 821(a), Dec. 5, 1991, 105 Stat. 1427, related to defense dual-use critical technology partnerships, prior to repeal and restatement in section 2511 of this title by Pub. L. 102–484, §§ 4202(a), 4221(a).

Section 2524, added Pub. L. 102–484, div. D, title XLII, § 4234(a), Oct. 23, 1992, 106 Stat. 2687; amended Pub. L. 103–35, title II, § 201(g)(9), May 31, 1993, 107 Stat. 100; Pub. L. 103–160, div. A, title XIII, §§ 1314, 1315(e), Nov. 30, 1993, 107 Stat. 1786, 1788; Pub. L. 103–337, div. A, title X, § 1070(b)(10), title XI, §§ 1114(b), (c), 1115(d), Oct. 5, 1994, 108 Stat. 2857, 2867–2869; Pub. L. 104–106, div. A, title XV, § 1503(a)(27), Feb. 10, 1996, 110 Stat. 512, related to defense dual-use assistance extension program.

A prior section 2524 was renumbered section 2513 of this title.

[§ 2525. Renumbered § 2521]

PRIOR PROVISIONS

A prior section 2525 was renumbered section 2517 of this title.

A prior section 2526 was renumbered section 2518 of this title.

SUBCHAPTER V—MISCELLANEOUS TECHNOLOGY BASE POLICIES AND PROGRAMS

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2531. Defense memoranda of understanding and related agreements.
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2539. Industrial mobilization: plants; lists.
2539a. Industrial mobilization: Board on Mobilization of Industries Essential for Military Preparedness.
2539b. Availability of samples, drawings, information, equipment, materials, and certain services.

REPEAL OF SUBCHAPTER

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1881(a), Jan. 1, 2021, 134 Stat. 4151, 4293, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, chapter 148 of this title, and therefore this subchapter, is repealed. See Effective Date of Repeal note below.

AMENDMENTS

2021—Pub. L. 116–283, div. A, title VIII, § 841(b), Jan. 1, 2021, 134 Stat. 3763, added item 2533d.

2018—Pub. L. 115–232, div. A, title VIII, § 871(b), Aug. 13, 2018, 132 Stat. 1905, added item 2533c.

2011—Pub. L. 111–350, § 5(b)(36), Jan. 4, 2011, 124 Stat. 3845, substituted ''chapter 83 of title 41'' for ''the Buy American Act'' in item 2533.

2008—Pub. L. 110–181, div. A, title X, § 1063(c)(8), Jan. 28, 2008, 122 Stat. 323, amended directory language of Pub. L. 109–364, § 842(a)(2). See 2006 Amendment note below.

2006—Pub. L. 109–364, div. A, title VIII, § 842(a)(2), Oct. 17, 2006, 120 Stat. 2337, as amended by Pub. L. 110–181, div. A, title X, § 1063(c)(8), Jan. 28, 2008, 122 Stat. 323, added item 2533b.

2001—Pub. L. 107–107, div. A, title VIII, § 832(a)(2), Dec. 28, 2001, 115 Stat. 1190, added item 2533a.

1994—Pub. L. 103–337, div. A, title VIII, § 812(b)(2), title X, § 1070(a)(13)(B), Oct. 5, 1994, 108 Stat. 2816, 2856, substituted ''Determinations of public interest under the Buy American Act'' for ''Limitation on use of funds: procurement of goods which are other than American goods'' in item 2533 and renumbered items 2540 and 2541 as 2539a and 2539b, respectively.

1993—Pub. L. 103–160, div. A, title VIII, §§ 828(c)(5), 842(c)(2), Nov. 30, 1993, 107 Stat. 1714, 1719, substituted ''Award of certain contracts to entities controlled by a foreign government: prohibition'' for ''Prohibition on award of certain Department of Defense and Department of Energy contracts to companies owned by an entity controlled by a foreign government'' in item 2536 and added items 2538 to 2541.

1992—Pub. L. 102–484, div. A, title VIII, §§ 836(a)(2), 838(b), Oct. 23, 1992, 106 Stat. 2463, 2466, added items 2536 and 2537.

EFFECTIVE DATE OF REPEAL

Repeal effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 2531. Defense memoranda of understanding and related agreements

(a) CONSIDERATIONS IN MAKING AND IMPLEMENTING MOUS AND RELATED AGREEMENTS.—In the negotiation, renegotiation, and implementation of any existing or proposed memorandum of understanding, or any existing or proposed agreement related to a memorandum of understanding, between the Secretary of Defense, acting on behalf of the United States, and one or more foreign countries (or any instrumentality of a foreign country) relating to research, development, or production of defense equipment, or to the reciprocal procurement of defense items, the Secretary of Defense shall—

(1) consider the effects of such existing or proposed memorandum of understanding or related agreement on the defense technology and industrial base of the United States; and

(2) regularly solicit and consider comments and recommendations from the Secretary of Commerce with respect to the commercial implications of such memorandum of understanding or related agreement and the potential effects of such memorandum of understanding or related agreement on the international competitive position of United States industry.

(b) INTER-AGENCY REVIEW OF EFFECTS ON UNITED STATES INDUSTRY.—Whenever the Secretary of Commerce has reason to believe that an existing or proposed memorandum of understanding or related agreement has, or threatens to have, a significant adverse effect on the international competitive position of United States industry, the Secretary may request an inter-agency review of the memorandum of understanding or related agreement. If, as a result of the review, the Secretary determines that the commercial interests of the United States are not being served or would not be served by adhering to the terms of such existing memorandum or related agreement or agreeing to such proposed memorandum or related agreement, as the case may be, the Secretary shall recommend to the President the renegotiation of the existing memorandum or related agreement or any modification to the proposed memorandum of understanding or related agreement that he considers necessary to ensure an appropriate balance of interests.

(c) LIMITATION ON ENTERING INTO MOUS AND RELATED AGREEMENTS.—A memorandum of understanding or related agreement referred to in subsection (a) may not be entered into or implemented if the President, taking into consideration the results of the inter-agency review, determines that such memorandum of understanding or related agreement has or is likely to have a significant adverse effect on United States industry that outweighs the benefits of entering into or implementing such memorandum or agreement.

(Added Pub. L. 100–456, div. A, title VIII, § 824, Sept. 29, 1988, 102 Stat. 2019, § 2504; amended Pub. L. 101–189, div. A, title VIII, § 815(a), Nov. 29, 1989, 103 Stat. 1500; Pub. L. 101–510, div. A, title XIV, § 1453, Nov. 5, 1990, 104 Stat. 1694; renumbered § 2531 and amended Pub. L. 102–484, div. D, title XLII, §§ 4202(a), 4271(c), Oct. 23, 1992, 106 Stat. 2659, 2696.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1870(b), Jan. 1, 2021, 134 Stat. 4151, 4284, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 385 of this title, as added by section 1870(a) of Pub. L. 116–283, inserted after the table of sections at the beginning of subchapter I, and redesignated as section 4851 of this title. See Effective Date of 2021 Amendment note below.

AMENDMENTS

1992—Pub. L. 102–484, § 4202(a), renumbered section 2504 of this title as this section.

Subsec. (a)(1). Pub. L. 102–484, § 4271(c), substituted ‘‘defense technology and industrial base’’ for ‘‘defense industrial base’’.

1990—Subsec. (a). Pub. L. 101–510 inserted ‘‘or to the reciprocal procurement of defense items,’’ after ‘‘defense equipment,’’ in introductory provisions.

1989—Pub. L. 101–189 inserted ‘‘and related agreements’’ after ‘‘understanding’’ in section catchline and amended text generally. Prior to amendment, text read as follows: ‘‘In the negotiation and renegotiation of each memorandum of understanding between the Secretary of Defense, acting on behalf of the United States, and one or more foreign countries (or any instrumentality of a foreign country) relating to research, development, or production of defense equipment, the Secretary of Defense shall—

‘‘(1) consider the effect of such proposed memorandum of understanding on the defense industrial base of the United States; and

‘‘(2) regularly solicit and consider information or recommendations from the Secretary of Commerce with respect to the effect on the United States industrial base of such memorandum of understanding.’’

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

DEFENSE TRADE RECIPROCITY

Pub. L. 108–375, div. A, title VIII, § 831, Oct. 28, 2004, 118 Stat. 2017, provided that:

‘‘(a) POLICY.—It is the policy of Congress that procurement regulations used in the conduct of trade in defense articles and defense services should be based on the principle of fair trade and reciprocity consistent with United States national security, including the need to ensure comprehensive manufacturing capability in the United States defense industrial base.

‘‘(b) REQUIREMENT.—The Secretary of Defense shall make every effort to ensure that the policies and practices of the Department of Defense reflect the goal of establishing an equitable trading relationship between the United States and its foreign defense trade partners, including ensuring that United States firms and United States employment in the defense sector are not disadvantaged by unilateral procurement practices by foreign governments, such as the imposition of offset agreements in a manner that undermines the United States defense industrial base. In pursuing this goal, the Secretary shall—

‘‘(1) develop a comprehensive defense acquisition trade policy that provides the necessary guidance and incentives for the elimination of any adverse effects of offset agreements in defense trade; and

‘‘(2) review and make necessary modifications to existing acquisition policies and strategies, and review and seek to make necessary modifications to existing memoranda of understanding, cooperative project agreements, or related agreements with foreign defense trade partners, to reflect this goal.

‘‘(c) REGULATIONS.—The Secretary shall prescribe regulations to implement this section in the Department of Defense supplement to the Federal Acquisition Regulation.

‘‘(d) DEFINITIONS.—In this section:

‘‘(1) The term ‘foreign defense trade partner’ means a foreign country with respect to which there is—

‘‘(A) a memorandum of understanding or related agreement described in section 2531(a) of title 10, United States Code; or

‘‘(B) a cooperative project agreement described in section 27 of the Arms Export Control Act (22 U.S.C. 2767).

‘‘(2) The term ‘offset agreement’ has the meaning provided that term by section 36(e) of the Arms Export Control Act (22 U.S.C. 2776(e)).

‘‘(3) The terms ‘defense article’ and ‘defense service’ have the meanings provided those terms by section 47(7) of the Arms Export Control Act (22 U.S.C. 2794(7)).’’

§ 2532. Offset policy; notification

(a) ESTABLISHMENT OF OFFSET POLICY.—The President shall establish, consistent with the requirements of this section, a comprehensive policy with respect to contractual offset arrangements in connection with the purchase of defense equipment or supplies which addresses the following:

(1) Transfer of technology in connection with offset arrangements.

(2) Application of offset arrangements, including cases in which United States funds are used to finance the purchase by a foreign government.

(3) Effects of offset arrangements on specific subsectors of the industrial base of the United States and for preventing or ameliorating any serious adverse effects on such subsectors.

(b) TECHNOLOGY TRANSFER.—(1) No official of the United States may enter into a memorandum of understanding or other agreement with a foreign government that would require the transfer of United States defense technology to a foreign country or a foreign firm in connection with a contract that is subject to an offset arrangement if the implementation of such memorandum or agreement would significantly and adversely affect the defense industrial base of the United States and would result in a substantial financial loss to a United States firm.

(2) Paragraph (1) shall not apply in the case of a memorandum of understanding or agreement described in paragraph (1) if the Secretary of Defense, in consultation with the Secretary of Commerce and the Secretary of State, determines that a transfer of United States defense technology pursuant to such understanding or agreement will result in strengthening the national security of the United States and so certifies to Congress.

(3) If a United States firm is required under the terms of a memorandum of understanding, or other agreement entered into by the United States with a foreign country, to transfer defense technology to a foreign country, the United States firm may protest the determination to the Secretary of Defense on the grounds that the transfer of such technology would adversely affect the defense industrial base of the United States and would result in substantial financial loss to the protesting firm. The Secretary of Defense, in consultation with the Secretary of Commerce and the Secretary of State, shall make the final determination of the validity of the protesting firm's claim.

(c) NOTIFICATION REGARDING OFFSETS.—If at any time a United States firm enters into a contract for the sale of a weapon system or defense-related item to a foreign country or foreign firm and such contract is subject to an offset arrangement exceeding $50,000,000 in value, such firm shall notify the Secretary of Defense of the proposed sale. Notification shall be made under this subsection in accordance with regulations prescribed by the Secretary of Defense in consultation with the Secretary of Commerce.

(d) DEFINITIONS.—In this section:

(1) The term ''United States firm'' means a business entity that performs substantially all of its manufacturing, production, and research and development activities in the United States.

(2) The term ''foreign firm'' means a business entity other than a United States firm.

(Added Pub. L. 100–456, div. A, title VIII, § 825(b), Sept. 29, 1988, 102 Stat. 2020, § 2505; renumbered § 2532, Pub. L. 102–484, div. D, title XLII, § 4202(a), Oct. 23, 1992, 106 Stat. 2659.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1870(b), Jan. 1, 2021, 134 Stat. 4151, 4284, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 385 of this title, as added by section 1870(a) of Pub. L. 116–283, inserted after section 4851, and redesignated as section 4852 of this title. See Effective Date of 2021 Amendment note below.

AMENDMENTS

1992—Pub. L. 102–484 renumbered section 2505 of this title as this section.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

REVIEW OF OFFSET ARRANGEMENTS BY SECRETARY OF DEFENSE

Pub. L. 108–87, title VIII, § 8138, Sept. 30, 2003, 117 Stat. 1106, directed the Secretary of Defense to review contractual offset arrangements to which the policy established under this section applied, memoranda of understanding and related agreements to which the limitation in section 2531(c) of this title applied that had been entered into with a country with respect to which such contractual offset arrangements had been entered into, and waivers granted with respect to a foreign country under section 2534(d)(3) of this title; determine the effects of the use of such arrangements, memoranda of understanding, agreements, and waivers on the national technology and industrial base; and submit a report on the results of the review to Congress not later than Mar. 1, 2005.

CONTRACTUAL OFFSET ARRANGEMENTS; CONGRESSIONAL STATEMENT OF FINDINGS

Pub. L. 100–456, div. A, title VIII, § 825(a), Sept. 29, 1988, 102 Stat. 2019, provided that: ''Congress makes the following findings:

''(1) Many contracts entered into by United States firms for the supply of weapon systems or defense-related items to foreign countries and foreign firms are subject to contractual arrangements under which United States firms must agree—

''(A) to have a specified percentage of work under, or monetary amount of, the contract performed by one or more foreign firms;

''(B) to purchase a specified amount or quantity of unrelated goods or services from domestic sources of such foreign countries; or

''(C) to invest a specified amount in domestic businesses of such foreign countries.

Such contractual arrangements, known as 'offsets', are a component of international trade and could have an impact on United States defense industry opportunities in domestic and foreign markets.

''(2) Some United States contractors and subcontractors may be adversely affected by such contractual arrangements.

''(3) Many contracts which provide for or are subject to offset arrangements require, in connection

with such arrangements, the transfer of United States technology to foreign firms.

''(4) The use of such transferred technology by foreign firms in conjunction with foreign trade practices permitted under the trade policies of the countries of such firms can give foreign firms a competitive advantage against United States firms in world markets for products using such technology.

''(5) A purchase of defense equipment pursuant to an offset arrangement may increase the cost of the defense equipment to the purchasing country and may reduce the amount of defense equipment that a country may purchase.

''(6) The exporting of defense equipment produced in the United States is important to maintain the defense industrial base of the United States, lower the unit cost of such equipment to the Department of Defense, and encourage the standardized utilization of United States equipment by the allies of the United States.''

NEGOTIATIONS WITH COUNTRIES REQUIRING OFFSET ARRANGEMENTS

Section 825(c) of Pub. L. 100–456, as amended by Pub. L. 101–189, div. A, title VIII, § 816, Nov. 29, 1989, 103 Stat. 1501, provided that:

''(1) The President shall enter into negotiations with foreign countries that have a policy of requiring an offset arrangement in connection with the purchase of defense equipment or supplies from the United States. The negotiations should be conducted with a view to achieving an agreement with the countries concerned that would limit the adverse effects that such arrangements have on the defense industrial base of each such country. Every effort shall be made to achieve such agreements within two years after September 29, 1988.

''(2) In the negotiation or renegotiation of any memorandum of understanding between the United States and one or more foreign countries relating to the reciprocal procurement of defense equipment and supplies or research and development, the President shall make every effort to achieve an agreement with the country or countries concerned that would limit the adverse effects that offset arrangements have on the defense industrial base of the United States.''

[For delegation of functions of President under section 825(c) of Pub. L. 100–456 to Secretary of Defense and United States Trade Representative, see section 5–201 of Ex. Ord. No. 12661, 54 F.R. 779, set out as a note under section 2901 of Title 19, Customs Duties.]

REPORT TO CONGRESS ON OFFSET ARRANGEMENTS REQUIRED BY FOREIGN COUNTRIES AND FIRMS; DISCUSSION OF POLICY OPTIONS

Pub. L. 100–456, div. A, title VIII, § 825(d), Sept. 29, 1988, 102 Stat. 2021, provided that, not later than Nov. 15, 1988, the President was to submit to Congress a comprehensive report on contractual offset arrangements required of United States firms for the supply of weapon systems or defense-related items to foreign countries or foreign firms, and, not later than Mar. 15, 1990, the President was to transmit to Congress a report containing a discussion of appropriate actions to be taken by the United States with respect to purchases from United States firms by a foreign country (or a firm of that country) when that country or firm required an offset arrangement in connection with the purchase of defense equipment or supplies in favor of such country.

§ 2533. Determinations of public interest under chapter 83 of title 41

(a) In determining under section 8302 of title 41 whether application of chapter 83 of such title is inconsistent with the public interest, the Secretary of Defense shall consider the following:

(1) The bids or proposals of small business firms in the United States which have offered to furnish American goods.

(2) The bids or proposals of all other firms in the United States which have offered to furnish American goods.

(3) The United States balance of payments.

(4) The cost of shipping goods which are other than American goods.

(5) Any duty, tariff, or surcharge which may enter into the cost of using goods which are other than American goods.

(6) A need to ensure that the Department of Defense has access to advanced, state-of-the-art commercial technology.

(7) The need to protect the national technology and industrial base, to preserve and enhance the national technology employment base, and to provide for a defense mobilization base.

(8) A need to ensure that application of different rules of origin for United States end items and foreign end items does not result in an award to a firm other than a firm providing a product produced in the United States.

(9) Any need—

(A) to maintain the same source of supply for spare and replacement parts for an end item that qualifies as an American good; or

(B) to maintain the same source of supply for spare and replacement parts in order not to impair integration of the military and commercial industrial base.

(10) The national security interests of the United States.

(b) In this section, the term ''goods which are other than American goods'' means—

(1) an end product that is not mined, produced, or manufactured in the United States; or

(2) an end product that is manufactured in the United States but which includes components mined, produced, or manufactured outside the United States the aggregate cost of which exceeds the aggregate cost of the components of such end product that are mined, produced, or manufactured in the United States.

(Added Pub. L. 100–370, § 3(a)(1), July 19, 1988, 102 Stat. 855, § 2501; renumbered § 2506, Pub. L. 100–456, div. A, title VIII, § 821(b)(1)(A), Sept. 29, 1988, 102 Stat. 2014; renumbered § 2533, Pub. L. 102–484, div. D, title XLII, § 4202(a), Oct. 23, 1992, 106 Stat. 2659; amended Pub. L. 103–337, div. A, title VIII, § 812(a), (b)(1), Oct. 5, 1994, 108 Stat. 2815, 2816; Pub. L. 104–106, div. D, title XLIII, § 4321(b)(20), Feb. 10, 1996, 110 Stat. 673; Pub. L. 105–85, div. A, title X, § 1073(a)(54), Nov. 18, 1997, 111 Stat. 1903; Pub. L. 111–350, § 5(b)(37), Jan. 4, 2011, 124 Stat. 3845; Pub. L. 113–291, div. A, title X, § 1071(a)(9), Dec. 19, 2014, 128 Stat. 3505.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1870(c)(2), Jan. 1, 2021, 134 Stat. 4151, 4285, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 385 of this title, as added by section 1870(a) of Pub. L. 116–283, inserted after the table of sections at the beginning of subchapter II, and redesignated as section 4861 of this title. See Effective Date of 2021 Amendment note below.

HISTORICAL AND REVISION NOTES

Section is based on Pub. L. 93–365, title VII, § 707, Aug. 5, 1974, 88 Stat. 406.

AMENDMENTS

2014—Subsec. (a). Pub. L. 113–291 substituted ''chapter 83 of such title'' for ''such Act'' in introductory provisions.

2011—Pub. L. 111–350, § 5(b)(37)(A), substituted ''chapter 83 of title 41'' for ''the Buy American Act'' in section catchline.

Subsec. (a). Pub. L. 111–350, § 5(b)(37)(B), substituted ''section 8302 of title 41'' for ''section 2 of the Buy American Act (41 U.S.C. 10a)'' in introductory provisions.

1997—Subsec. (a). Pub. L. 105–85 substituted ''(41 U.S.C. 10a)'' for ''(41 U.S.C. 10a))''.

1996—Subsec. (a). Pub. L. 104–106 substituted ''the Buy American Act (41 U.S.C. 10a)) whether application of such Act'' for ''title III of the Act of March 3, 1993 (41 U.S.C. 10a), popularly known as the 'Buy American Act', whether application of title III of such Act''.

1994—Pub. L. 103–337, § 812(b)(1), substituted ''Determinations of public interest under the Buy American Act'' for ''Limitation on use of funds: procurement of goods which are other than American goods'' as section catchline.

Subsec. (a). Pub. L. 103–337, § 812(a)(1), added subsec. (a) and struck out former subsec. (a) which read as follows: ''Funds appropriated to the Department of Defense may not be obligated under a contract for procurement of goods which are other than American goods (as defined in subsection (c)) unless adequate consideration is given to the following:

''(1) The bids or proposals of firms located in labor surplus areas in the United States (as designated by the Department of Labor) which have offered to furnish American goods.

''(2) The bids or proposals of small business firms in the United States which have offered to furnish American goods.

''(3) The bids or proposals of all other firms in the United States which have offered to furnish American goods.

''(4) The United States balance of payments.

''(5) The cost of shipping goods which are other than American goods.

''(6) Any duty, tariff, or surcharge which may enter into the cost of using goods which are other than American goods.''

Subsecs. (b), (c). Pub. L. 103–337, § 812(a), redesignated subsec. (c) as (b) and struck out former subsec. (b) which read as follows: ''Consideration of the matters referred to in paragraphs (1) through (6) of subsection (a) shall be given under regulations of the Secretary of Defense and subject to the determinations and exceptions contained in title III of the Act of March 3, 1933 (41 U.S.C. 10a, 10b), popularly known as the 'Buy American Act'.''

1992—Pub. L. 102–484 renumbered section 2506 of this title as this section.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

For effective date and applicability of amendment by Pub. L. 104–106, see section 4401 of Pub. L. 104–106, set out as a note under section 2302 of this title.

§ 2533a. Requirement to buy certain articles from American sources; exceptions

(a) REQUIREMENT.—Except as provided in subsections (c) through (h), funds appropriated or otherwise available to the Department of Defense may not be used for the procurement of an item described in subsection (b) if the item is not grown, reprocessed, reused, or produced in the United States.

(b) COVERED ITEMS.—An item referred to in subsection (a) is any of the following:

(1) An article or item of—

(A) food;

(B) clothing and the materials and components thereof, other than sensors, electronics, or other items added to, and not normally associated with, clothing (and the materials and components thereof);

(C) tents (and the structural components thereof), tarpaulins, or covers;

(D) cotton and other natural fiber products, woven silk or woven silk blends, spun silk yarn for cartridge cloth, synthetic fabric or coated synthetic fabric (including all textile fibers and yarns that are for use in such fabrics), canvas products, or wool (whether in the form of fiber or yarn or contained in fabrics, materials, or manufactured articles); or

(E) any item of individual equipment manufactured from or containing such fibers, yarns, fabrics, or materials.

(2) Hand or measuring tools.

(3) Stainless steel flatware.

(4) Dinnerware.

(c) AVAILABILITY EXCEPTION.—Subsection (a) does not apply to the extent that the Secretary of Defense or the Secretary of the military department concerned determines that satisfactory quality and sufficient quantity of any such article or item described in subsection (b) grown, reprocessed, reused, or produced in the United States cannot be procured as and when needed at United States market prices.

(d) EXCEPTION FOR CERTAIN PROCUREMENTS.—Subsection (a) does not apply to the following:

(1) Procurements outside the United States in support of combat operations or procurements of any item listed in subsection (b)(1)(A) or (b)(2) in support of contingency operations.

(2) Procurements by vessels in foreign waters.

(3) Emergency procurements or procurements of perishable foods by, or for, an establishment located outside the United States for the personnel attached to such establishment.

(4) Procurements of any item listed in subsection (b)(1)(A) or (b)(2) for which the use of procedures other than competitive procedures has been approved on the basis of section 2304(c)(2) of this title, relating to unusual and compelling urgency of need.

(e) EXCEPTION FOR CHEMICAL WARFARE PROTECTIVE CLOTHING.—Subsection (a) does not preclude the procurement of chemical warfare protective clothing produced outside the United States if—

(1) such procurement is necessary—

(A) to comply with agreements with foreign governments requiring the United States to purchase supplies from foreign sources for the purposes of offsetting sales made by the United States Government or

United States firms under approved programs serving defense requirements; or

(B) in furtherance of agreements with foreign governments in which both such governments agree to remove barriers to purchases of supplies produced in the other country or services performed by sources of the other country; and

(2) any such agreement with a foreign government complies, where applicable, with the requirements of section 36 of the Arms Export Control Act (22 U.S.C. 2776) and with section 2457 of this title.

(f) EXCEPTIONS FOR CERTAIN OTHER COMMODITIES AND ITEMS.—Subsection (a) does not preclude the procurement of the following:

(1) Foods manufactured or processed in the United States.

(2) Waste and byproducts of cotton and wool fiber for use in the production of propellants and explosives.

(g) EXCEPTION FOR COMMISSARIES, EXCHANGES, AND OTHER NONAPPROPRIATED FUND INSTRUMENTALITIES.—Subsection (a) does not apply to items purchased for resale purposes in commissaries, exchanges, or nonappropriated fund instrumentalities operated by the Department of Defense.

(h) EXCEPTION FOR SMALL PURCHASES.—(1) Subsection (a) does not apply to purchases for amounts not greater than $150,000. A proposed procurement of an item in an amount greater than $150,000 may not be divided into several purchases or contracts for lesser amounts in order to qualify for this exception.

(2) On October 1 of each year that is evenly divisible by five, the Secretary of Defense may adjust the dollar threshold in this subsection based on changes in the Consumer Price Index. Any such adjustment shall take effect on the date on which the Secretary publishes notice of such adjustment in the Federal Register.

(i) APPLICABILITY TO CONTRACTS AND SUBCONTRACTS FOR PROCUREMENT OF COMMERCIAL PRODUCTS.—This section is applicable to contracts and subcontracts for the procurement of commercial products notwithstanding section 1906 of title 41.

(j) GEOGRAPHIC COVERAGE.—In this section, the term ''United States'' includes the possessions of the United States.

(k) NOTIFICATION REQUIRED WITHIN 7 DAYS AFTER CONTRACT AWARD IF CERTAIN EXCEPTIONS APPLIED.—In the case of any contract for the procurement of an item described in subparagraph (B), (C), (D), or (E) of subsection (b)(1), if the Secretary of Defense or of the military department concerned applies an exception set forth in subsection (c) or (e) with respect to that contract, the Secretary shall, not later than 7 days after the award of the contract, post a notification that the exception has been applied on the Internet site maintained by the General Services Administration known as FedBizOpps.gov (or any successor site).

(Added Pub. L. 107–107, div. A, title VIII, § 832(a)(1), Dec. 28, 2001, 115 Stat. 1189; amended Pub. L. 108–136, div. A, title VIII, §§ 826, 827, Nov. 24, 2003, 117 Stat. 1548; Pub. L. 109–163, div. A, title VIII, §§ 831, 833, Jan. 6, 2006, 119 Stat. 3388; Pub. L. 109–364, div. A, title VIII, § 842(a)(3), Oct. 17, 2006, 120 Stat. 2337; Pub. L. 111–350, § 5(b)(38), Jan. 4, 2011, 124 Stat. 3845; Pub. L. 111–383, div. A, title VIII, § 847, title X, § 1075(b)(38), Jan. 7, 2011, 124 Stat. 4286, 4371; Pub. L. 112–81, div. A, title VIII, § 821, Dec. 31, 2011, 125 Stat. 1502; Pub. L. 112–239, div. A, title X, § 1076(f)(29), Jan. 2, 2013, 126 Stat. 1953; Pub. L. 115–232, div. A, title VIII, § 837(b), Aug. 13, 2018, 132 Stat. 1875; Pub. L. 116–92, div. A, title VIII, § 854(a)(1), (3), Dec. 20, 2019, 133 Stat. 1512; Pub. L. 116–283, div. A, title VIII, § 817, Jan. 1, 2021, 134 Stat. 3751.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1870(c)(2), Jan. 1, 2021, 134 Stat. 4151, 4285, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 385 of this title, as added by section 1870(a) of Pub. L. 116–283, inserted after section 4861, and redesignated as section 4862 of this title. See Effective Date of 2021 Amendment note below.

REPEAL OF SUBSECTION (b)(3) AND (4)

Pub. L. 116–92, div. A, title VIII, § 854(a)(3), Dec. 20, 2019, 133 Stat. 1512, provided that, effective Sept. 30, 2023, paragraphs (3) and (4) of subsection (b) of this section are repealed. See 2019 Amendment note below.

AMENDMENTS

2021—Subsec. (h). Pub. L. 116–283 amended subsec. (h) generally. Prior to amendment, text read as follows: ''Subsection (a) does not apply to purchases for amounts not greater than the simplified acquisition threshold referred to in section 2304(g) of this title.''

2019—Subsec. (b)(3), (4). Pub. L. 116–92, § 854(a)(3), struck out pars. (3) and (4) which added stainless steel flatware and dinnerware to the list of covered items.

Pub. L. 116–92, § 854(a)(1), added pars. (3) and (4).

2018—Subsec. (i). Pub. L. 115–232 substituted ''Products'' for ''Items'' in heading and ''commercial products'' for ''commercial items'' in text.

2013—Subsec. (k). Pub. L. 112–239 substituted ''FedBizOpps.gov'' for ''FedBizOps.gov''.

2011—Subsec. (b)(1)(C). Pub. L. 112–81 inserted ''(and the structural components thereof)'' after ''tents''.

Subsec. (c). Pub. L. 111–383, § 847, substituted ''subsection (b)'' for ''subsection (b)(1)''.

Subsec. (d)(1), (4). Pub. L. 111–383, § 1075(b)(38), substituted ''(b)(1)(A) or (b)(2)'' for ''(b)(1)(A), (b)(2), or (b)(3)''.

Subsec. (i). Pub. L. 111–350 substituted ''section 1906 of title 41'' for ''section 34 of the Office of Federal Procurement Policy Act (41 U.S.C. 430)''.

2006—Subsec. (b)(1)(B). Pub. L. 109–163, § 833(b), inserted before semicolon ''and the materials and components thereof, other than sensors, electronics, or other items added to, and not normally associated with, clothing (and the materials and components thereof)''.

Subsec. (b)(2), (3). Pub. L. 109–364, § 842(a)(3)(A), redesignated par. (3) as (2) and struck out former par. (2) which read as follows: ''Specialty metals, including stainless steel flatware.''

Subsec. (c). Pub. L. 109–364, § 842(a)(3)(B), struck out ''or specialty metals (including stainless steel flatware)'' after ''subsection (b)(1)''.

Subsec. (d)(3). Pub. L. 109–163, § 831, inserted '', or for,'' after ''perishable foods by''.

Subsec. (e). Pub. L. 109–364, § 842(a)(3)(C), struck out ''Specialty Metals and'' after ''Exception for'' in heading and ''specialty metals or'' after ''procurement of'' in introductory provisions.

Subsec. (k). Pub. L. 109–163, § 833(a), added subsec. (k).

2003—Subsec. (d). Pub. L. 108–136, § 826(1), struck out ''Outside the United States'' after ''Procurements'' in heading.

Subsec. (d)(1). Pub. L. 108–136, § 826(2), inserted ''or procurements of any item listed in subsection (b)(1)(A), (b)(2), or (b)(3) in support of contingency operations'' after ''combat operations''.

Subsec. (d)(4). Pub. L. 108–136, § 826(3), added par. (4).

Subsec. (f). Pub. L. 108–136, § 827, substituted ''EXCEPTIONS FOR CERTAIN OTHER COMMODITIES AND ITEMS.—Subsection (a) does not preclude the procurement of the following:

''(1) Foods''

for ''EXCEPTION FOR CERTAIN FOODS.—Subsection (a) does not preclude the procurement of foods'', and added par. (2).

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by section 1870(c)(2) of Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 2019 AMENDMENT

Pub. L. 116–92, div. A, title VIII, § 854(a)(2), Dec. 20, 2019, 133 Stat. 1512, as amended by Pub. L. 116–283, div. A, title XVIII, § 1870(c)(5), Jan. 1, 2021, 134 Stat. 4285, provided that: ''Paragraphs (3) and (4) of section 2533a(b) of title 10, United States Code, as added by paragraph (1), shall apply with respect to contracts entered into on or after the date occurring 1 year after the date of the enactment of this Act [Dec. 20, 2019].''

[Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1870(c)(5), Jan. 1, 2021, 134 Stat. 4151, 4285, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, section 854(a)(2) of Pub. L. 116–92, set out above, is amended by substituting ''section 4862(b)'' for ''section 2533a(b)''.]

Pub. L. 116–92, div. A, title VIII, § 854(a)(3), Dec. 20, 2019, 133 Stat. 1512, provided that the amendment made by section 854(a)(3) is effective Sept. 30, 2023.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–364, div. A, title VIII, § 842(a)(4)(B), Oct. 17, 2006, 120 Stat. 2337, provided that: ''The amendments made by paragraph (3) [amending this section] shall take effect on the date occurring 30 days after the date of the enactment of this Act [Oct. 17, 2006].''

SHORT TITLE

This section is popularly known as the ''Berry Amendment''.

PERIODIC AUDITS OF CONTRACTING COMPLIANCE BY INSPECTOR GENERAL OF DEPARTMENT OF DEFENSE

Pub. L. 113–66, div. A, title XVI, § 1601, Dec. 26, 2013, 127 Stat. 941, provided that:

''(a) REQUIREMENT FOR PERIODIC AUDITS OF CONTRACTING COMPLIANCE.—The Inspector General of the Department of Defense shall conduct periodic audits of contracting practices and policies related to procurement under section 2533a of title 10, United States Code.

''(b) REQUIREMENT FOR ADDITIONAL INFORMATION IN SEMIANNUAL REPORTS.—The Inspector General of the Department of Defense shall ensure that findings and other information resulting from audits conducted pursuant to subsection (a) are included in the semiannual report transmitted to congressional committees under section 8(f)(1) of the Inspector General Act of 1978 (5 U.S.C. App.).''

FIRE RESISTANT RAYON FIBER

Pub. L. 111–383, div. A, title VIII, § 821(b), Jan. 7, 2011, 124 Stat. 4268, provided that: ''No solicitation issued before January 1, 2015, by the Department of Defense may include a requirement that proposals submitted pursuant to such solicitation must include the use of fire resistant rayon fiber.''

Pub. L. 110–181, div. A, title VIII, § 829, Jan. 28, 2008, 122 Stat. 229, as amended by Pub. L. 111–383, div. A, title VIII, § 821(a), Jan. 7, 2011, 124 Stat. 4267; Pub. L. 112–81, div. A, title VIII, § 822, Dec. 31, 2011, 125 Stat. 1502, provided that:

''(a) AUTHORITY TO PROCURE.—The Secretary of Defense may procure fire resistant rayon fiber for the production of uniforms that is manufactured in a foreign country referred to in subsection (d) if the Secretary determines either of the following:

''(1) That fire resistant rayon fiber for the production of uniforms is not available from sources within the national technology and industrial base.

''(2) That—

''(A) procuring fire resistant rayon fiber manufactured from suppliers within the national technology and industrial base would result in sole-source contracts or subcontracts for the supply of fire resistant rayon fiber; and

''(B) such sole-source contracts or subcontracts would not be in the best interests of the Government or consistent with the objectives of section 2304 of title 10, United States Code.

''(b) SUBMISSION TO CONGRESS.—Not later than 30 days after making a determination under subsection (a), the Secretary shall submit to Congress a copy of the determination.

''(c) APPLICABILITY TO SUBCONTRACTS.—The authority under subsection (a) applies with respect to subcontracts under Department of Defense contracts as well as to such contracts.

''(d) FOREIGN COUNTRIES COVERED.—The authority under subsection (a) applies with respect to a foreign country that—

''(1) is a party to a defense memorandum of understanding entered into under section 2531 of title 10, United States Code; and

''(2) does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country.

''(e) NATIONAL TECHNOLOGY AND INDUSTRIAL BASE DEFINED.—In this section, the term 'national technology and industrial base' has the meaning given that term in section 2500 of title 10, United States Code.''

TRAINING FOR DEFENSE ACQUISITION WORKFORCE ON THE REQUIREMENTS OF THE BERRY AMENDMENT

Pub. L. 109–163, div. A, title VIII, § 832, Jan. 6, 2006, 119 Stat. 3388, provided that:

''(a) TRAINING DURING FISCAL YEAR 2006.—The Secretary of Defense shall ensure that each member of the defense acquisition workforce who participates personally and substantially in the acquisition of textiles on a regular basis receives training during fiscal year 2006 on the requirements of section 2533a of title 10, United States Code (commonly referred to as the 'Berry Amendment'), and the regulations implementing that section.

''(b) INCLUSION OF INFORMATION IN NEW TRAINING PROGRAMS.—The Secretary shall ensure that any training program developed or implemented after the date of the enactment of this Act [Jan. 6, 2006] for members of the defense acquisition workforce who participate personally and substantially in the acquisition of textiles on a regular basis includes comprehensive information on the requirements described in subsection (a).''

APPLICATION OF EXCEPTION TO SEAFOOD PRODUCTS

Pub. L. 108–287, title VIII, § 8118, Aug. 5, 2004, 118 Stat. 998, as amended by Pub. L. 113–291, div. A, title X, § 1071(b)(4), Dec. 19, 2014, 128 Stat. 3506; Pub. L. 116–283, div. A, title XVIII, § 1870(c)(6)(B), Jan. 1, 2021, 134 Stat. 4285, provided that: ''Notwithstanding any other provision of law, section 2533a(f) of title 10, United States Code, shall hereafter not apply to any fish, shellfish, or

seafood product. This section applies to contracts and subcontracts for the procurement of commercial items notwithstanding section 1906 of title 41, United States Code.''

[Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1870(c)(6)(B), Jan. 1, 2021, 134 Stat. 4151, 4285, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, section 8118 of Pub. L. 108–287, set out above, is amended by substituting ''section 4862(f)'' for ''section 2533a(f)''.]

§ 2533b. Requirement to buy strategic materials critical to national security from American sources; exceptions

(a) REQUIREMENT.—Except as provided in subsections (b) through (m), the acquisition by the Department of Defense of the following items is prohibited:

(1) The following types of end items, or components thereof, containing a specialty metal not melted or produced in the United States: aircraft, missile and space systems, ships, tank and automotive items, weapon systems, or ammunition.

(2) A specialty metal that is not melted or produced in the United States and that is to be purchased directly by the Department of Defense or a prime contractor of the Department.

(b) AVAILABILITY EXCEPTION.—(1) Subsection (a) does not apply to the extent that the Secretary of Defense or the Secretary of the military department concerned determines that compliant specialty metal of satisfactory quality and sufficient quantity, and in the required form, cannot be procured as and when needed. For purposes of the preceding sentence, the term ''compliant specialty metal'' means specialty metal melted or produced in the United States.

(2) This subsection applies to prime contracts and subcontracts at any tier under such contracts.

(c) EXCEPTION FOR CERTAIN ACQUISITIONS.—Subsection (a) does not apply to the following:

(1) Acquisitions outside the United States in support of combat operations or in support of contingency operations.

(2) Acquisitions for which the use of procedures other than competitive procedures has been approved on the basis of section 2304(c)(2) of this title, relating to unusual and compelling urgency of need.

(d) EXCEPTION RELATING TO AGREEMENTS WITH FOREIGN GOVERNMENTS.—Subsection (a)(1) does not preclude the acquisition of a specialty metal if—

(1) the acquisition is necessary—

(A) to comply with agreements with foreign governments requiring the United States to purchase supplies from foreign sources for the purposes of offsetting sales made by the United States Government or United States firms under approved programs serving defense requirements; or

(B) in furtherance of agreements with foreign governments in which both such governments agree to remove barriers to purchases of supplies produced in the other country or services performed by sources of the other country; and

(2) any such agreement with a foreign government complies, where applicable, with the requirements of section 36 of the Arms Export Control Act (22 U.S.C. 2776) and with section 2457 of this title.

(e) EXCEPTION FOR COMMISSARIES, EXCHANGES, AND OTHER NONAPPROPRIATED FUND INSTRUMENTALITIES.—Subsection (a) does not apply to items purchased for resale purposes in commissaries, exchanges, and nonappropriated fund instrumentalities operated by the Department of Defense.

(f) EXCEPTION FOR SMALL PURCHASES.—Subsection (a) does not apply to acquisitions in amounts not greater than the simplified acquisition threshold referred to in section 2304(g) of this title.

(g) EXCEPTION FOR PURCHASES OF ELECTRONIC COMPONENTS.—Subsection (a) does not apply to acquisitions of electronic components, unless the Secretary of Defense, upon the recommendation of the Strategic Materials Protection Board pursuant to section 187 of this title, determines that the domestic availability of a particular electronic component is critical to national security.

(h) APPLICABILITY TO ACQUISITIONS OF COMMERCIAL PRODUCTS.—(1) Except as provided in paragraphs (2) and (3), this section applies to acquisitions of commercial products, notwithstanding sections 1906 and 1907 of title 41.

(2) This section does not apply to contracts or subcontracts for the acquisition of commercially available off-the-shelf items, as defined in section 104 of title 41, other than—

(A) contracts or subcontracts for the acquisition of specialty metals, including mill products, such as bar, billet, slab, wire, plate and sheet, that have not been incorporated into end items, subsystems, assemblies, or components;

(B) contracts or subcontracts for the acquisition of forgings or castings of specialty metals, unless such forgings or castings are incorporated into commercially available off-the-shelf end items, subsystems, or assemblies;

(C) contracts or subcontracts for commercially available high performance magnets unless such high performance magnets are incorporated into commercially available off-the-shelf-end items or subsystems; and

(D) contracts or subcontracts for commercially available off-the-shelf fasteners, unless such fasteners are—

(i) incorporated into commercially available off-the-shelf end items, subsystems, assemblies, or components; or

(ii) purchased as provided in paragraph (3).

(3) This section does not apply to fasteners that are commercial products that are purchased under a contract or subcontract with a manufacturer of such fasteners, if the manufacturer has certified that it will purchase, during the relevant calendar year, an amount of domestically melted specialty metal, in the required form, for use in the production of such fasteners for sale to the Department of Defense and other customers, that is not less than 50 percent of the total amount of the specialty metal that it will purchase to carry out the production of such fasteners.

(i) EXCEPTIONS FOR PURCHASES OF SPECIALTY METALS BELOW MINIMUM THRESHOLD.—(1) Not-

withstanding subsection (a), the Secretary of Defense or the Secretary of a military department may accept delivery of an item containing specialty metals that were not melted in the United States if the total amount of noncompliant specialty metals in the item does not exceed 2 percent of the total weight of specialty metals in the item.

(2) This subsection does not apply to high performance magnets.

(j) STREAMLINED COMPLIANCE FOR COMMERCIAL DERIVATIVE MILITARY ARTICLES.—(1) Subsection (a) shall not apply to an item acquired under a prime contract if the Secretary of Defense or the Secretary of a military department determines that—

(A) the item is a commercial derivative military article; and

(B) the contractor certifies that the contractor and its subcontractors have entered into a contractual agreement, or agreements, to purchase an amount of domestically melted specialty metal in the required form, for use during the period of contract performance in the production of the commercial derivative military article and the related commercial article, that is not less than the greater of—

(i) an amount equivalent to 120 percent of the amount of specialty metal that is required to carry out the production of the commercial derivative military article (including the work performed under each subcontract); or

(ii) an amount equivalent to 50 percent of the amount of specialty metal that is purchased by the contractor and its subcontractors for use during such period in the production of the commercial derivative military article and the related commercial article.

(2) For the purposes of this subsection, the amount of specialty metal that is required to carry out the production of the commercial derivative military article includes specialty metal contained in any item, including commercially available off-the-shelf items, incorporated into such commercial derivative military article.

(k) NATIONAL SECURITY WAIVER.—(1) Notwithstanding subsection (a), the Secretary of Defense may accept the delivery of an end item containing noncompliant materials if the Secretary determines in writing that acceptance of such end item is necessary to the national security interests of the United States.

(2) A written determination under paragraph (1)—

(A) may not be delegated below the level of the Deputy Secretary of Defense or the Under Secretary of Defense for Acquisition and Sustainment;

(B) shall specify the quantity of end items to which the waiver applies and the time period over which the waiver applies; and

(C) shall be provided to the congressional defense committees prior to making such a determination (except that in the case of an urgent national security requirement, such certification may be provided to the defense committees up to 7 days after it is made).

(3)(A) In any case in which the Secretary makes a determination under paragraph (1), the Secretary shall determine whether or not the noncompliance was knowing and willful.

(B) If the Secretary determines that the noncompliance was not knowing or willful, the Secretary shall ensure that the contractor or subcontractor responsible for the noncompliance develops and implements an effective plan to ensure future compliance.

(C) If the Secretary determines that the noncompliance was knowing or willful, the Secretary shall—

(i) require the development and implementation of a plan to ensure future compliance; and

(ii) consider suspending or debarring the contractor or subcontractor until such time as the contractor or subcontractor has effectively addressed the issues that lead to such noncompliance.

(*l*) SPECIALTY METAL DEFINED.—In this section, the term ''specialty metal'' means any of the following:

(1) Steel—

(A) with a maximum alloy content exceeding one or more of the following limits: manganese, 1.65 percent; silicon, 0.60 percent; or copper, 0.60 percent; or

(B) containing more than 0.25 percent of any of the following elements: aluminum, chromium, cobalt, columbium, molybdenum, nickel, titanium, tungsten, or vanadium.

(2) Metal alloys consisting of nickel, iron-nickel, and cobalt base alloys containing a total of other alloying metals (except iron) in excess of 10 percent.

(3) Titanium and titanium alloys.

(4) Zirconium and zirconium base alloys.

(m) ADDITIONAL DEFINITIONS.—In this section:

(1) The term ''United States'' includes possessions of the United States.

(2) The term ''component'' has the meaning provided in section 105 of title 41.

(3) The term ''acquisition'' has the meaning provided in section 131 of title 41.

(4) The term ''required form'' shall not apply to end items or to their components at any tier. The term ''required form'' means in the form of mill product, such as bar, billet, wire, slab, plate or sheet, and in the grade appropriate for the production of—

(A) a finished end item delivered to the Department of Defense; or

(B) a finished component assembled into an end item delivered to the Department of Defense.

(5) The term ''commercially available off-the-shelf'', has the meaning provided in section 104 of title 41.

(6) The term ''assemblies'' means items forming a portion of a system or subsystem that can be provisioned and replaced as an entity and which incorporates multiple, replaceable parts.

(7) The term ''commercial derivative military article'' means an item procured by the Department of Defense that is or will be produced using the same production facilities, a common supply chain, and the same or similar production processes that are used for the production of articles predominantly used by the

general public or by nongovernmental entities for purposes other than governmental purposes.

(8) The term ''subsystem'' means a functional grouping of items that combine to perform a major function within an end item, such as electrical power, attitude control, and propulsion.

(9) The term ''end item'' means the final production product when assembled or completed, and ready for issue, delivery, or deployment.

(10) The term ''subcontract'' includes a subcontract at any tier.

(Added Pub. L. 109–364, div. A, title VIII, § 842(a)(1), Oct. 17, 2006, 120 Stat. 2335; amended Pub. L. 110–181, div. A, title VIII, § 804(a)–(f), Jan. 28, 2008, 122 Stat. 208–211; Pub. L. 111–350, § 5(b)(39), Jan. 4, 2011, 124 Stat. 3845; Pub. L. 111–383, div. A, title X, § 1075(f)(2), Jan. 7, 2011, 124 Stat. 4376; Pub. L. 113–291, div. A, title X, § 1071(a)(10), Dec. 19, 2014, 128 Stat. 3505; Pub. L. 115–232, div. A, title VIII, § 837(c), Aug. 13, 2018, 132 Stat. 1875; Pub. L. 116–92, div. A, title IX, § 902(77), Dec. 20, 2019, 133 Stat. 1552.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1870(c)(2), Jan. 1, 2021, 134 Stat. 4151, 4285, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 385 of this title, as added by section 1870(a) of Pub. L. 116–283, inserted after section 4862, and redesignated as section 4863 of this title. See Effective Date of 2021 Amendment note below.

AMENDMENTS

2019—Subsec. (k)(2)(A). Pub. L. 116–92 substituted ''Under Secretary of Defense for Acquisition and Sustainment'' for ''Under Secretary of Defense for Acquisition, Technology, and Logistics''.

2018—Subsec. (h). Pub. L. 115–232, § 837(c)(1), substituted ''Products'' for ''Items'' in heading.

Subsec. (h)(1), (3). Pub. L. 115–232, § 837(c)(2), substituted ''commercial products'' for ''commercial items''.

2014—Subsec. (h)(1). Pub. L. 113–291, § 1071(a)(10)(A)(i), substituted ''sections 1906 and 1907 of title 41'' for ''sections 34 and 35 of the Office of Federal Procurement Policy Act (41 U.S.C. 430 and 431)''.

Subsec. (h)(2). Pub. L. 113–291, § 1071(a)(10)(A)(ii), substituted ''section 104 of title 41'' for ''section 35(c) of the Office of Federal Procurement Policy Act (41 U.S.C. 431(c))'' in introductory provisions.

Subsec. (m)(2). Pub. L. 113–291, § 1071(a)(10)(B)(i), substituted ''section 105 of title 41'' for ''section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403)''.

Subsec. (m)(3). Pub. L. 113–291, § 1071(a)(10)(B)(ii), substituted ''section 131 of title 41'' for ''section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403)''.

Subsec. (m)(5). Pub. L. 113–291, § 1071(a)(10)(B)(iii), substituted ''section 104 of title 41'' for ''section 35(c) of the Office of Federal Procurement Policy Act (41 U.S.C. 431(c))''.

2011—Subsec. (a)(2). Pub. L. 111–383, § 1075(f)(2)(A), made technical amendment to directory language of Pub. L. 110–181, § 804(a)(3). See 2008 Amendment note below.

Subsec. (h). Pub. L. 111–350, § 5(b)(39)(A), which directed substitution of ''section 1906 of title 41'' for ''section 34 of the Office of Federal Procurement Policy Act (41 U.S.C. 430)'', could not be executed because the words ''section 34 of the Office of Federal Procurement Policy Act (41 U.S.C. 430)'' did not appear in text.

Subsec. (j). Pub. L. 111–350, § 5(b)(39)(B), which directed substitution of ''section 105 of title 41'' for ''section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403)'' in subsec. (j), could not be executed because the words ''section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403)'' did not appear in subsec. (j) after the amendment by Pub. L. 110–181, § 804(d).

Subsec. (m)(3) to (10). Pub. L. 111–383, § 1075(f)(2)(B), made technical amendment to directory language of Pub. L. 110–181, § 804(e). See 2008 Amendment note below.

2008—Subsec. (a). Pub. L. 110–181, § 804(a)(1), substituted ''Except as provided in subsections (b) through (m), the acquisition by the Department of Defense of the following items is prohibited:'' for ''Except as provided in subsections (b) through (j), funds appropriated or otherwise available to the Department of Defense may not be used for procurement of—'' in introductory provisions.

Subsec. (a)(1). Pub. L. 110–181, § 804(a)(2), substituted ''The following'' for ''the following'' and substituted period for ''; or'' at end.

Subsec. (a)(2). Pub. L. 110–181, § 804(a)(3), as amended by Pub. L. 111–383, § 1075(f)(2)(A), substituted ''A specialty'' for ''a specialty''.

Subsec. (c). Pub. L. 110–181, § 804(f)(1), substituted ''Acquisitions'' for ''Procurements'' in heading and pars. (1) and (2).

Subsec. (d). Pub. L. 110–181, § 804(f)(2), substituted ''acquisition'' for ''procurement'' in introductory provisions and par. (1).

Subsec. (f). Pub. L. 110–181, § 804(f)(3), substituted ''acquisitions'' for ''procurements''.

Subsec. (g). Pub. L. 110–181, § 804(c), (f)(3), substituted ''acquisitions'' for ''procurements'' and ''electronic components, unless the Secretary of Defense, upon the recommendation of the Strategic Materials Protection Board pursuant to section 187 of this title, determines that the domestic availability of a particular electronic component is critical to national security.'' for ''commercially available electronic components whose specialty metal content is de minimis in value compared to the overall value of the lowest level electronic component produced that contains such specialty metal.''

Subsec. (h). Pub. L. 110–181, § 804(b), amended heading and text generally. Prior to amendment, text read as follows: ''This section applies to procurements of commercial items notwithstanding section 34 of the Office of Federal Procurement Policy Act (41 U.S.C. 430).''

Subsecs. (i) to (m). Pub. L. 110–181, § 804(d), added subsecs. (i) to (k) and redesignated former subsecs. (i) and (j) as (*l*) and (m), respectively.

Subsec. (m)(3) to (10). Pub. L. 110–181, § 804(e), as amended by Pub. L. 111—383, § 1075(f)(2)(B), added pars. (3) to (10).

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 2011 AMENDMENT

Pub. L. 111–383, div. A, title X, § 1075(f)(2), Jan. 7, 2011, 124 Stat. 4376, provided that amendment by section 1075(f)(2) is effective as of January 28, 2008, and as if included in Public Law 110–181 as enacted.''

EFFECTIVE DATE

Pub. L. 109–364, div. A, title VIII, § 842(a)(4)(A), Oct. 17, 2006, 120 Stat. 2337, provided that: ''Section 2533b of title 10, United States Code, as added by paragraph (1), shall apply with respect to contracts entered into after the date occurring 30 days after the date of the enactment of this Act [Oct. 17, 2006].''

REGULATIONS

Pub. L. 110–181, div. A, title VIII, § 804(g), Jan. 28, 2008, 122 Stat. 211, provided that: ''Not later than 120 days after the date of the enactment of this Act [Jan. 28, 2008], the Secretary of Defense shall prescribe regulations on the implementation of this section [amending this section and enacting provisions set out as a note under this section] and the amendments made by this section, including specific guidance on how thresholds established in subsections (h)(3), (i) and (j) of section 2533b of title 10, United States Code, as amended by this section, should be implemented.''

REVIEW OF REGULATORY DEFINITION RELATING TO PRODUCTION OF SPECIALTY METALS

Pub. L. 111–383, div. A, title VIII, § 823, Jan. 7, 2011, 124 Stat. 4269, which required the Secretary to review the definition of ''produce'' as used within subpart 252.2 of the defense supplement to the Federal Acquisition Regulation, was repealed by Pub. L. 115–232, div. A, title VIII, § 812(b)(57), Aug. 13, 2018, 132 Stat. 1850.

REVISION OF DOMESTIC NONAVAILABILITY DETERMINATIONS AND RULES

Pub. L. 110–181, div. A, title VIII, § 804(h), Jan. 28, 2008, 122 Stat. 211, which provided that, with exceptions, any domestic nonavailability determination under section 2533b of this title would be reviewed and amended to comply with the amendments made by section 804 of Pub. L. 110–181, was repealed by Pub. L. 115–232, div. A, title VIII, § 812(b)(58), Aug. 13, 2018, 132 Stat. 1850.

REQUIREMENTS RELATING TO WAIVERS OF CERTAIN DOMESTIC SOURCE LIMITATIONS RELATING TO SPECIALTY METALS

Pub. L. 110–181, div. A, title VIII, § 884, Jan. 28, 2008, 122 Stat. 264, provided that:

''(a) NOTICE REQUIREMENT.—At least 30 days prior to making a domestic nonavailability determination pursuant to section 2533b(b) of title 10, United States Code, that would apply to more than one contract of the Department of Defense, the Secretary of Defense shall, to the maximum extent practicable and in a manner consistent with the protection of national security information and confidential business information—

''(1) publish a notice on the website maintained by the General Services Administration known as FedBizOpps.gov (or any successor site) of the Secretary's intent to make the domestic nonavailability determination; and

''(2) solicit information relevant to such notice from interested parties, including producers of specialty metal mill products.

''(b) DETERMINATION.—(1) The Secretary shall take into consideration all information submitted pursuant to subsection (a) in making a domestic nonavailability determination pursuant to section 2533b(b) of title 10, United States Code, that would apply to more than one contract of the Department of Defense, and may also consider other relevant information that cannot be made part of the public record consistent with the protection of national security information and confidential business information.

''(2) The Secretary shall ensure that any such determination and the rationale for such determination is made publicly available to the maximum extent consistent with the protection of national security information and confidential business information.''

ONE-TIME WAIVER OF SPECIALTY METALS DOMESTIC SOURCE REQUIREMENT

Pub. L. 109–364, div. A, title VIII, § 842(b), Oct. 17, 2006, 120 Stat. 2337, which provided that the Secretary of Defense or the Secretary of a military department could accept specialty metals in an item produced, manufactured, or assembled in the United States before Oct. 17, 2006, with respect to which the contracting officer for the contract determines that the contractor is not in compliance with section 2533b of this title, subject to certain conditions, was repealed by Pub. L. 115–232, div. A, title VIII, § 812(b)(59), Aug. 13, 2018, 132 Stat. 1850.

§ 2533c. Prohibition on acquisition of sensitive materials from non-allied foreign nations

(a) IN GENERAL.—Except as provided in subsection (c), the Secretary of Defense may not—

(1) procure any covered material melted or produced in any covered nation, or any end item that contains a covered material manufactured in any covered nation, except as provided by subsection (c); or

(2) sell any material from the National Defense Stockpile, if the National Defense Stockpile Manager determines that such a sale is not in the national interests of the United States, to—

(A) any covered nation; or

(B) any third party that the Secretary reasonably believes is acting as a broker or agent for a covered nation or an entity in a covered nation.

(b) APPLICABILITY.—Subsection (a) shall apply to prime contracts and subcontracts at any tier.

(c) EXCEPTIONS.—Subsection (a) does not apply under the following circumstances:

(1) If the Secretary of Defense determines that covered materials of satisfactory quality and quantity, in the required form, cannot be procured as and when needed at a reasonable price.

(2) To the procurement of an end item described in subsection (a)(1) or the sale of any covered material described under subsection (a)(1) by the Secretary outside of the United States for use outside of the United States.

(3) To the purchase by the Secretary of an end item containing a covered material that is—

(A) a commercially available off-the-shelf item (as defined in section 104 of title 41), other than—

(i) a commercially available off-the-shelf item that is 50 percent or more tungsten by weight; or

(ii) a mill product, such as bar, billet, slab, wire, cube, sphere, block, blank, plate, or sheet, that has not been incorporated into an end item, subsystem, assembly, or component;

(B) an electronic device, unless the Secretary of Defense, upon the recommendation of the Strategic Materials Protection Board pursuant to section 187 of this title, determines that the domestic availability of a particular electronic device is critical to national security; or

(C) a neodymium-iron-boron magnet manufactured from recycled material if the milling of the recycled material and sintering of the final magnet takes place in the United States.

(d) DEFINITIONS.—In this section:

(1) COVERED MATERIAL.—The term ''covered material'' means—

(A) samarium-cobalt magnets;

(B) neodymium-iron-boron magnets;

(C) tungsten metal powder;

(D) tungsten heavy alloy or any finished or semi-finished component containing tungsten heavy alloy; and

(E) tantalum metals and alloys.

(2) COVERED NATION.—The term ''covered nation'' means—

(A) the Democratic People's Republic of North Korea;

(B) the People's Republic of China;

(C) the Russian Federation; and

(D) the Islamic Republic of Iran.

(3) END ITEM.—The term ''end item'' has the meaning given in section 2533b(m) of this title.

(Added Pub. L. 115–232, div. A, title VIII, § 871(a), Aug. 13, 2018, 132 Stat. 1904; amended Pub. L. 116–92, div. A, title VIII, § 849, Dec. 20, 2019, 133 Stat. 1508; Pub. L. 116–283, div. A, title VIII, § 844(a), Jan. 1, 2021, 134 Stat. 3766.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1870(d)(2), Jan. 1, 2021, 134 Stat. 4151, 4286, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 385 of this title, as added by section 1870(a) of Pub. L. 116–283, inserted after the table of sections at the beginning of subchapter III, and redesignated as section 4871 of this title. See Effective Date of 2021 Amendment note below.

AMENDMENT OF SUBSECTIONS (a)(1) AND (c)(3)(A)(i)

Pub. L. 116–283, div. A, title VIII, § 844, Jan. 1, 2021, 134 Stat. 3766, provided that, effective 5 years after Jan. 1, 2021, this section is amended as follows:

(1) in subsection (a)(1), by striking ''material melted'' and inserting ''material mined, refined, separated, melted,''; and

(2) in subsection (c)(3)(A)(i), by striking ''tungsten'' and inserting ''covered material''.

See 2021 Amendment notes below.

AMENDMENTS

2021—Subsec. (a)(1). Pub. L. 116–283, § 844(a)(1), substituted ''material mined, refined, separated, melted,'' for ''material melted''.

Subsec. (c)(3)(A)(i). Pub. L. 116–283, § 844(a)(2), substituted ''covered material'' for ''tungsten''.

2019—Subsec. (a)(2). Pub. L. 116–92, § 849(a), substituted ''material'' for ''covered material'' in introductory provisions.

Subsec. (d)(1)(E). Pub. L. 116–92, § 849(b), added subpar. (E).

EFFECTIVE DATE OF 2021 AMENDMENT

Pub. L. 116–283, div. A, title VIII, § 844(b), Jan. 1, 2021, 134 Stat. 3766, provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on the date that is 5 years after the date of the enactment of this Act [Jan. 1, 2021].''

Amendment by section 1870(d)(2) of Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 2533d. Additional requirements pertaining to printed circuit boards

(a) IN GENERAL.—

(1) Beginning on January 1, 2023, the Secretary of Defense may not acquire a covered printed circuit board from a covered nation.

(2) Paragraph (1) shall not apply with respect to any acquisition of supplies or services below the micro-purchase threshold under section 2338 of this title.

(b) WAIVER.—

(1) The Secretary may waive the prohibition under subsection (a) if the Secretary determines in writing that—

(A) there are no significant national security concerns regarding counterfeiting, quality, or unauthorized access created by such waiver;

(B) the waiver is required to support national security; and

(C) a covered printed circuit board of satisfactory quality and sufficient quantity, in the required form, cannot be procured as and when needed from nations other than a covered nation at reasonable cost, excluding comparisons with non-market economies.

(2) Not later than 10 days after the Secretary provides a waiver under paragraph (1), the Secretary shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a written notice setting forth the reasoning for the waiver, together with a copy of the waiver itself.

(c) DEFINITIONS.—In this section:

(1) COVERED NATION.—The term ''covered nation'' means—

(A) the Democratic People's Republic of North Korea;

(B) the People's Republic of China;

(C) the Russian Federation; and

(D) the Islamic Republic of Iran.

(2) COVERED PRINTED CIRCUIT BOARD.—The term ''covered printed circuit board'' means any partially manufactured or complete bare printed circuit board or fully or partially assembled printed circuit board that—

(A) performs a mission critical function in any product or service that is not a commercial product or commercial service (as such terms are defined under sections 103 and 103a of title 41, respectively); or

(B) the Secretary designates as a covered printed circuit board, after reasonable notice, based on a determination that the designation is required to support national security.

(3) SECRETARY.—The term ''Secretary'' means the Secretary of Defense.

(d) RULEMAKING.—Not later than May 1, 2022, the Secretary shall promulgate regulations, after an opportunity for notice and comment, implementing this section.

(e) APPLICABILITY.—This section shall apply only with respect to contracts entered into after the issuance of a final rule implementing this section.

(f) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to prohibit the Department of Defense from entering into a contract with an entity that connects to the facilities of a third party, for the purposes of backhaul, roaming, or interconnection arrangements, on the basis of the noncompliance by the

third party with the provisions of this section or use of equipment or services that do not route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(Added Pub. L. 116–283, div. A, title VIII, § 841(a), Jan. 1, 2021, 134 Stat. 3762.)

REPEAL OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1881(a), Jan. 1, 2021, 134 Stat. 4151, 4293, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, chapter 148 of this title, and therefore this section, is repealed. See Effective Date of Repeal note below.

EFFECTIVE DATE OF REPEAL

Repeal effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

TRUSTED SUPPLY

Pub. L. 116–283, div. A, title VIII, § 841(c), Jan. 1, 2021, 134 Stat. 3764, provided that: ''The Secretary of Defense shall apply the requirements of section 224 of the National Defense Authorization Act for Fiscal Year 2020 (Public Law 116–92; 10 U.S.C. 2302 note) to the acquisition of covered printed circuit boards (as such term is defined under section 2533d(c) of title 10, United States Code, as added by this section).''

§ 2534. Miscellaneous limitations on the procurement of goods other than United States goods

(a) LIMITATION ON CERTAIN PROCUREMENTS.—The Secretary of Defense may procure any of the following items only if the manufacturer of the item satisfies the requirements of subsection (b):

(1) BUSES.—Multipassenger motor vehicles (buses).

(2) Components for naval vessels.—The following components of vessels, to the extent they are unique to marine applications:

(A) Gyrocompasses.

(B) Electronic navigation chart systems.

(C) Steering controls.

(D) Propulsion and machinery control systems.

(E) Totally enclosed lifeboats.

(3) COMPONENTS FOR AUXILIARY SHIPS.—Subject to subsection (j),[1] large medium-speed diesel engines.

(4) COMPONENTS FOR T–AO 205 CLASS VESSELS.—The following components of T–AO 205 class vessels:

(A) Auxiliary equipment, including pumps, for all shipboard services.

(B) Propulsion system components, including engines, reduction gears, and propellers.

(C) Shipboard cranes.

(D) Spreaders for shipboard cranes.

(5) STAR TRACKER.—A star tracker used in a satellite weighing more than 400 pounds whose principle[2] purpose is to support the national security, defense, or intelligence needs of the United States Government.

(b) MANUFACTURER IN THE NATIONAL TECHNOLOGY AND INDUSTRIAL BASE.—A manufacturer meets the requirements of this subsection if the manufacturer is part of the national technology and industrial base.

(c) APPLICABILITY TO CERTAIN ITEMS.—Subsection (a) does not apply to a procurement of spare or repair parts needed to support components for naval vessels produced or manufactured outside the United States.

(d) WAIVER AUTHORITY.—The Secretary of Defense may waive the limitation in subsection (a) with respect to the procurement of an item listed in that subsection if the Secretary determines that any of the following apply:

(1) Application of the limitation would cause unreasonable costs or delays to be incurred.

(2) United States producers of the item would not be jeopardized by competition from a foreign country, and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country.

(3) Application of the limitation would impede cooperative programs entered into between the Department of Defense and a foreign country, or would impede the reciprocal procurement of defense items under a memorandum of understanding providing for reciprocal procurement of defense items that is entered into under section 2531 of this title, and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country.

(4) Satisfactory quality items manufactured by an entity that is part of the national technology and industrial base (as defined in section 2500(1) of this title) are not available.

(5) Application of the limitation would result in the existence of only one source for the item that is an entity that is part of the national technology and industrial base (as defined in section 2500(1) of this title).

(6) The procurement is for an amount less than the simplified acquisition threshold and simplified purchase procedures are being used.

(7) Application of the limitation is not in the national security interests of the United States.

(8) Application of the limitation would adversely affect a United States company.

(e) SONOBUOYS.—

(1) LIMITATION.—The Secretary of Defense may not procure a sonobuoy manufactured in a foreign country if United States firms that manufacture sonobuoys are not permitted to compete on an equal basis with foreign manufacturing firms for the sale of sonobuoys in that foreign country.

(2) WAIVER AUTHORITY.—The Secretary may waive the limitation in paragraph (1) with respect to a particular procurement of sonobuoys if the Secretary determines that such procurement is in the national security interests of the United States.

[1] See References in Text note below.

[2] So in original. Probably should be ''principal''.

(3) DEFINITION.—In this subsection, the term ''United States firm'' has the meaning given such term in section 2532(d)(1) of this title.

(f) PRINCIPLE OF CONSTRUCTION WITH FUTURE LAWS.—A provision of law may not be construed as modifying or superseding the provisions of this section, or as requiring funds to be limited, or made available, by the Secretary of Defense to a particular domestic source by contract, unless that provision of law—

(1) specifically refers to this section;

(2) specifically states that such provision of law modifies or supersedes the provisions of this section; and

(3) specifically identifies the particular domestic source involved and states that the contract to be awarded pursuant to such provision of law is being awarded in contravention of this section.

(g) INAPPLICABILITY TO CONTRACTS UNDER SIMPLIFIED ACQUISITION THRESHOLD.—This section does not apply to a contract or subcontract for an amount that does not exceed the simplified acquisition threshold.

(h) IMPLEMENTATION OF NAVAL VESSEL COMPONENT LIMITATION.—In implementing subsection (a)(2), the Secretary of Defense—

(1) may not use contract clauses or certifications; and

(2) shall use management and oversight techniques that achieve the objective of the subsection without imposing a significant management burden on the Government or the contractor involved.

(i) IMPLEMENTATION OF CERTAIN WAIVER AUTHORITY.—(1) The Secretary of Defense may exercise the waiver authority described in paragraph (2) only if the waiver is made for a particular item listed in subsection (a) and for a particular foreign country.

(2) This subsection applies to the waiver authority provided by subsection (d) on the basis of the applicability of paragraph (2) or (3) of that subsection.

(3) The waiver authority described in paragraph (2) may not be delegated below the Under Secretary of Defense for Acquisition and Sustainment.

(4) At least 15 days before the effective date of any waiver made under the waiver authority described in paragraph (2), the Secretary shall publish in the Federal Register and submit to the congressional defense committees a notice of the determination to exercise the waiver authority.

(5) Any waiver made by the Secretary under the waiver authority described in paragraph (2) shall be in effect for a period not greater than one year, as determined by the Secretary.

(j) LIMITATION ON CERTAIN PROCUREMENTS APPLICATION PROCESS.—

(1) IN GENERAL.—The Secretary of Defense shall administer a process to analyze and assess potential items for consideration to be required to be procured from a manufacturer that is part of the national technology and industrial base.

(2) ELEMENTS.—The application process required under paragraph (1) shall include the following elements:

(A) The Secretary shall designate an official within the Office of the Secretary of Defense responsible for administration of the limitation on certain procurements application process and associated policy.

(B) A person or organization that meets the definition of national technology and industrial base under section 2500(1) of this title shall have the opportunity to apply for status as an item required to be procured from a manufacturer that is part of the national technology and industrial base. The application shall include, at a minimum, the following information:

(i) Information demonstrating the applicant meets the criteria of a manufacturer in the national technology and industrial base under section 2500(1) of this title.

(ii) For each item the applicant seeks to be required to be procured from a manufacturer that is part of the national technology and industrial base, the applicant shall include the following information:

(I) The extent to which such item has commercial applications.

(II) The number of such items to be procured by current programs of record.

(III) The criticality of such item to a military unit's mission accomplishment.

(IV) The estimated cost and other considerations of reconstituting the manufacturing capability of such item, if not maintained in the national technology and industrial base.

(V) National security regulations or restrictions imposed on such item that may not be imposed on a non-national technology and industrial base competitor.

(VI) Non-national security-related Federal, State, and local government regulations imposed on such item that may not be imposed on a non-national technology and industrial base competitor.

(VII) The extent to which such item is fielded in current programs of record.

(VIII) The extent to which cost and pricing data for such item has been deemed fair and reasonable.

(3) CONSIDERATION OF APPLICATIONS.—

(A) RESPONSIBILITY OF DESIGNATED OFFICIAL.—The official designated pursuant to paragraph (2)(A) shall be responsible for providing complete applications submitted pursuant to this subsection to the appropriate component acquisition executive for consideration not later than 15 days after receipt of such application.

(B) REVIEW.—Not later than 120 days after receiving a complete application, the component acquisition executive shall review such application, make a determination, and return the application to the official designated pursuant to paragraph (2)(A).

(C) ELEMENTS OF DETERMINATION.—The determination required under subparagraph (B) shall, for each item proposed pursuant to paragraph (2)(B)(ii)—

(i) recommend inclusion under this section;

(ii) recommend inclusion under this section with further modifications; or

(iii) not recommend inclusion under this section.

(D) JUSTIFICATION.—The determination required under subparagraph (B) shall also include the rationale and justification for the determination.

(4) RECOMMENDATIONS FOR LEGISLATION.—For applications recommended under subsection (3), the official designated pursuant to paragraph (2)(A) shall be responsible for preparing a legislative proposal for consideration by the Secretary.

(k) IMPLEMENTATION OF AUXILIARY SHIP COMPONENT LIMITATION.—Subsection (a)(3) applies only with respect to contracts awarded by the Secretary of a military department for new construction of an auxiliary ship after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2020 using funds available for National Defense Sealift Fund programs or Shipbuilding and Conversion, Navy. For purposes of this subsection, the term ''auxiliary ship'' does not include an icebreaker or a special mission ship.

(Added Pub. L. 97–295, § 1(29)(A), Oct. 12, 1982, 96 Stat. 1294, § 2400; amended Pub. L. 100–180, div. A, title I, § 124(a), (b)(1), title VIII, § 824(a), Dec. 4, 1987, 101 Stat. 1042, 1043, 1134; renumbered § 2502 and amended Pub. L. 100–370, § 3(b)(1), July 19, 1988, 102 Stat. 855; renumbered § 2507 and amended Pub. L. 100–456, div. A, title VIII, §§ 821(b)(1)(A), 822, Sept. 29, 1988, 102 Stat. 2014, 2017; Pub. L. 101–510, div. A, title VIII, § 835(a), title XIV, § 1421, Nov. 5, 1990, 104 Stat. 1614, 1682; Pub. L. 102–190, div. A, title VIII, §§ 834, 835, Dec. 5, 1991, 105 Stat. 1447, 1448; renumbered § 2534 and amended Pub. L. 102–484, div. A, title VIII, §§ 831, 833(a), title X, § 1052(33), div. D, title XLII, §§ 4202(a), 4271(b)(4), Oct. 23, 1992, 106 Stat. 2460, 2461, 2501, 2659, 2696; Pub. L. 103–160, div. A, title IX, § 904(d)(1), Nov. 30, 1993, 107 Stat. 1728; Pub. L. 103–337, div. A, title VIII, § 814, Oct. 5, 1994, 108 Stat. 2817; Pub. L. 103–355, title IV, § 4102(i), Oct. 13, 1994, 108 Stat. 3341; Pub. L. 104–106, div. A, title VIII, § 806(a)(1)–(4), (b)–(d), title XV, § 1503(a)(30), Feb. 10, 1996, 110 Stat. 390, 391, 512; Pub. L. 104–201, div. A, title VIII, § 810, title X, § 1074(a)(14), Sept. 23, 1996, 110 Stat. 2608, 2659; Pub. L. 105–85, div. A, title III, § 371(d)(1), title VIII, § 811(a), title X, § 1073(a)(55), Nov. 18, 1997, 111 Stat. 1706, 1839, 1903; Pub. L. 106–398, § 1 [[div. A], title VIII, § 805], Oct. 30, 2000, 114 Stat. 1654, 1654A–207; Pub. L. 107–107, div. A, title VIII, § 835(a), title X, § 1048(b)(2), Dec. 28, 2001, 115 Stat. 1191, 1225; Pub. L. 108–136, div. A, title VIII, § 828, Nov. 24, 2003, 117 Stat. 1548; Pub. L. 111–350, § 5(b)(40), Jan. 4, 2011, 124 Stat. 3846; Pub. L. 115–91, div. A, title VIII, § 813(a), Dec. 12, 2017, 131 Stat. 1461; Pub. L. 115–232, div. A, title VIII, § 844(a), Aug. 13, 2018, 132 Stat. 1879; Pub. L. 116–92, div. A, title VIII, § 853, Dec. 20, 2019, 133 Stat. 1511; Pub. L. 116–283, div. A, title VIII, § 845(a), title XVI, § 1603(a), Jan. 1, 2021, 134 Stat. 3766, 4043.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1870(c)(2), Jan. 1, 2021, 134 Stat. 4151, 4285, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 385 of this title, as added by section 1870(a) of Pub. L. 116–283, inserted after section 4863, and redesignated as section 4864 of this title. See Effective Date of 2021 Amendment note below.

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
2400	10:2303 (note).	Sept. 20, 1968, Pub. L. 90–500, § 404, 82 Stat. 851.

The words ''of the United States under the provisions of this Act or the provisions of any other law'' are omitted as surplus. The word ''acquisition'' is substituted for ''purchase, lease, rental, or other acquisition'' because it is inclusive. The words ''this section'' are substituted for ''this prohibition'' because of the restatement.

REFERENCES IN TEXT

Subsection (j), referred to in subsec. (a)(3), probably should be a reference to subsec. (k). Prior to amendment by Pub. L. 116–283, such reference was to subsec. (k), and at that time, this section contained two subsecs. (k). Section 845(a)(8) of Pub. L. 116–283 redesignated the subsec. (k) relating to limitation on certain procurements application process as (j), but the reference in subsec. (a)(3) is probably to the subsec. (k) relating to implementation of auxiliary ship component limitation, which was not redesignated.

The date of the enactment of the National Defense Authorization Act for Fiscal Year 2020, referred to in subsec. (k), is the date of enactment of Pub. L. 116–92, which was approved Dec. 20, 2019.

AMENDMENTS

2021—Subsec. (a)(2). Pub. L. 116–283, § 845(a)(1)(A),(B), added par. (2) and struck out former par. (2). Prior to amendment, text read as follows: ''Chemical weapons antidote contained in automatic injectors (and components for such injectors).''

Subsec. (a)(3). Pub. L. 116–283, § 845(a)(1)(A), (C), redesignated par. (6) as (3), substituted ''subsection (j)'' for ''subsection (k)'', and struck out former par. (3) which related to components for naval vessels.

Subsec. (a)(4). Pub. L. 116–283, § 845(a)(1)(A), (D), added par. (4) and struck out former par. (4) which related to valves and machine tools.

Subsec. (a)(5). Pub. L. 116–283, § 1603(a), added par. (5).

Pub. L. 116–283, § 845(a)(1)(A), struck out par. (5). Text read as follows: ''Ball bearings and roller bearings, in accordance with subpart 225.71 of part 225 of the Defense Federal Acquisition Regulation Supplement, as in effect on October 23, 1992, except ball bearings and roller bearings being procured for use in an end product manufactured by a manufacturer that does not satisfy the requirements of subsection (b) or in a component part manufactured by such a manufacturer.''

Subsec. (a)(6). Pub. L. 116–283, § 845(a)(1)(A), redesignated par. (6) as (3).

Subsec. (b). Pub. L. 116–283, § 845(a)(2), amended subsec. (b) generally. Prior to amendment, subsec. (b) related to manufacturer in the national technology and industrial base.

Subsec. (c). Pub. L. 116–283, § 845(a)(3), struck out par. (1) designation and heading and struck out pars. (2) to (5), which related to valves and machine tools, ball bearings and roller bearings, vessel propellers, and chemical weapons antidote, respectively.

Subsec. (g). Pub. L. 116–283, § 845(a)(4), struck out par. (1) designation and par. (2) which read as follows: ''Paragraph (1) does not apply to contracts for items described in subsection (a)(5) (relating to ball bearings

and roller bearings), notwithstanding section 1905 of title 41.''

Subsec. (h). Pub. L. 116–283, § 845(a)(5), substituted ''subsection (a)(2)'' for ''subsection (a)(3)(B)'' in introductory provisions.

Subsec. (i)(3). Pub. L. 116–283, § 845(a)(6), substituted ''Under Secretary of Defense for Acquisition and Sustainment'' for ''Under Secretary of Defense for Acquisition, Technology, and Logistics''.

Subsec. (j). Pub. L. 116–283, § 845(a)(7), (8), redesignated subsec. (k) related to limitation on certain procurements application process as (j) and struck out former subsec. (j) which related to inapplicability to certain contracts to purchase ball bearings or roller bearings.

Subsec. (k). Pub. L. 116–283, § 845(a)(9), substituted ''Subsection (a)(3)'' for ''Subsection (a)(6)'' in subsec. (k) relating to implementation of auxiliary ship component limitation.

Pub. L. 116–283, § 845(a)(8), redesignated subsec. (k) related to limitation on certain procurements application process as (j).

2019—Subsec. (a)(6). Pub. L. 116–92, § 853(a), added par. (6).

Subsec. (k). Pub. L. 116–92, § 853(b), added subsec. (k) related to implementation of auxiliary ship component limitation.

2018—Subsec. (k). Pub. L. 115–232 added subsec. (k) related to limitation on certain procurements application process.

2017—Subsec. (c)(5). Pub. L. 115–91 added par. (5).

2011—Subsec. (g)(2). Pub. L. 111–350 substituted ''section 1905 of title 41'' for ''section 33 of the Office of Federal Procurement Policy Act (41 U.S.C. 429)''.

2003—Subsec. (a)(5). Pub. L. 108–136 inserted before period at end '', except ball bearings and roller bearings being procured for use in an end product manufactured by a manufacturer that does not satisfy the requirements of subsection (b) or in a component part manufactured by such a manufacturer''.

2001—Subsec. (i)(3). Pub. L. 107–107, § 1048(b)(2), substituted ''Under Secretary of Defense for Acquisition, Technology, and Logistics'' for ''Under Secretary of Defense for Acquisition and Technology''.

Subsec. (j). Pub. L. 107–107, § 835(a), added subsec. (j).

2000—Subsec. (c)(3). Pub. L. 106–398 substituted ''October 1, 2005'' for ''October 1, 2000''.

1997—Subsec. (b)(3). Pub. L. 105–85, § 1073(a)(55), substituted ''(a)(3)(A)(iii)'' for ''(a)(3)(A)(ii)''.

Subsec. (d)(4), (5). Pub. L. 105–85, § 371(d)(1), substituted ''section 2500(1)'' for ''section 2491(1)''.

Subsec. (i). Pub. L. 105–85, § 811(a), added subsec. (i).

1996—Subsec. (a)(3). Pub. L. 104–106, § 806(a)(1), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''AIR CIRCUIT BREAKERS.—Air circuit breakers for naval vessels.''

Subsec. (b)(3). Pub. L. 104–106, § 806(a)(2), added par. (3).

Subsec. (c). Pub. L. 104–106, § 1503(a)(30), substituted ''CERTAIN ITEMS'' for ''CERTAIN ITEMS'' in heading.

Subsec. (c)(1). Pub. L. 104–106, § 806(a)(3), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''AIR CIRCUIT BREAKERS.—Subsection (a) does not apply to a procurement of spares or repair parts needed to support air circuit breakers produced or manufactured outside the United States.''

Subsec. (c)(3). Pub. L. 104–106, § 806(b), substituted ''October 1, 2000'' for ''October 1, 1995''.

Subsec. (c)(4). Pub. L. 104–201, § 1074(a)(14), substituted ''February 10, 1998'' for ''the date occurring two years after the date of the enactment of the National Defense Authorization Act for Fiscal Year 1996''.

Pub. L. 104–106, § 806(c), added par. (4).

Subsec. (d)(3). Pub. L. 104–201, § 810, inserted ''or would impede the reciprocal procurement of defense items under a memorandum of understanding providing for reciprocal procurement of defense items that is entered into under section 2531 of this title,'' after ''a foreign country,''.

Subsec. (g). Pub. L. 104–106, § 806(d), designated existing provisions as par. (1) and added par. (2).

Subsec. (h). Pub. L. 104–106, § 806(a)(4), added subsec. (h).

1994—Pub. L. 103–337 amended section generally. Prior to amendment, section consisted of subsecs. (a) to (f) relating to acquisition of multipassenger motor vehicles, chemical weapons antidote, valves and machine tools, carbonyl iron powders, air circuit breakers, and sonobuoys.

Subsec. (g). Pub. L. 103–355 added subsec. (g).

1993—Subsec. (b)(2). Pub. L. 103–160 substituted ''Under Secretary of Defense for Acquisition and Technology'' for ''Under Secretary of Defense for Acquisition''.

1992—Pub. L. 102–484, §§ 4202(a), 4271(b)(4), renumbered section 2507 of this title as this section and substituted ''Miscellaneous limitations on the procurement of goods other than United States goods'' for ''Miscellaneous procurement limitations'' in section catchline.

Subsec. (c). Pub. L. 102–484, § 831, redesignated subsec. (d) as (c) and struck out former subsec. (c) which read as follows: ''MANUAL TYPEWRITERS FROM WARSAW PACT COUNTRIES.—Funds appropriated to or for the use of the Department of Defense may not be used for the procurement of manual typewriters which contain one or more components manufactured in a country which is a member of the Warsaw Pact unless the products of that country are accorded nondiscriminatory treatment (most-favored-nation treatment).''

Subsec. (d). Pub. L. 102–484, § 831(b), redesignated subsec. (e) as (d). Former subsec. (d) redesignated (c).

Subsec. (d)(3)(A). Pub. L. 102–484, § 1052(33), substituted ''Government-owned'' for ''government-owned''.

Subsec. (e). Pub. L. 102–484, § 831(b), redesignated subsec. (f) as (e). Former subsec. (e) redesignated (d).

Subsec. (f). Pub. L. 102–484, § 833(a), added subsec. (f). Former subsec. (f) redesignated (e).

1991—Subsec. (d)(1). Pub. L. 102–190, § 834(a), substituted ''Effective through fiscal year 1996'' for ''During fiscal years 1989, 1990, and 1991''.

Subsec. (d)(3) to (5). Pub. L. 102–190, § 834(b), added pars. (3) and (4), redesignated former par. (3) as (5), and struck out former par. (4) which read as follows: ''The provisions of this section may be renewed with respect to any item by the Secretary of Defense at the end of fiscal year 1991 for an additional two fiscal years if the Secretary determines that a continued restriction on that item is in the national security interest.''

Subsec. (e)(1). Pub. L. 102–190, § 835(1), substituted ''Until January 1, 1993, the Secretary'' for ''The Secretary''.

Subsec. (e)(3). Pub. L. 102–190, § 835(2), (4), redesignated par. (4) as (3) and struck out former par. (3) which read as follows: ''After September 30, 1994, the Secretary may terminate the restriction required under paragraph (1) if the Secretary determines that continuing the restriction is not in the national interest.''

Subsec. (e)(3)(A). Pub. L. 102–190, § 835(3), struck out before period ''by an entity more than 50 percent of which is owned or controlled by citizens of the United States or Canada''.

Subsec. (e)(4). Pub. L. 102–190, § 835(4), redesignated par. (4) as (3).

1990—Subsec. (e). Pub. L. 101–510, § 835(a), added subsec. (e).

Subsec. (f). Pub. L. 101–510, § 1421, added subsec. (f).

1988—Pub. L. 100–370, and Pub. L. 100–456, § 821(b)(1)(A), successively renumbered section 2400 of this title as section 2502 of this title and then as this section.

Subsec. (a). Pub. L. 100–370 substituted ''this subsection'' for ''this section''.

Subsec. (d). Pub. L. 100–456, § 822, added subsec. (d).

1987—Pub. L. 100–180 substituted ''Miscellaneous procurement limitations'' for ''Limitation on procurement of buses'' in section catchline, designated existing provisions as subsec. (a) and added heading, and added subsecs. (b) and (c).

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by section 1870(c)(2) of Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for de-

layed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 2018 AMENDMENT

Pub. L. 115–232, div. A, title VIII, §844(b), Aug. 13, 2018, 132 Stat. 1881, as amended by Pub. L. 116–92, div. A, title XVII, §1731(b)(2), Dec. 20, 2019, 133 Stat. 1816, provided that: ''The amendment made by subsection (a) [amending this section] shall take effect one year after the date of the enactment of this Act [Aug. 13, 2018].''

[Pub. L. 116–92, div. A, title XVII, §1731(b), Dec. 20, 2019, 133 Stat. 1816, provided that the amendment made by section 1731(b)(2) to section 844(b) of Pub. L. 115–232, set out above, is effective Aug. 13, 2018, and as if included in Pub. L. 115–232 as enacted.]

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–107, div. A, title VIII, §835(b), Dec. 28, 2001, 115 Stat. 1192, provided that: ''Subsection (j) of such section 2534 (as added by subsection (a)) shall apply with respect to a contract or subcontract to purchase ball bearings or roller bearings entered into after the date of the enactment of this Act [Dec. 28, 2001].''

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–85, div. A, title VIII, §811(b), Nov. 18, 1997, 111 Stat. 1840, provided that: ''Subsection (i) of section 2534 of such title [10 U.S.C. 2534(i)], as added by subsection (a), shall apply with respect to—

''(1) contracts and subcontracts entered into on or after the date of the enactment of this Act [Nov. 18, 1997]; and

''(2) options for the procurement of items that are exercised after such date under contracts that are entered into before such date if the option prices are adjusted for any reason other than the application of a waiver granted under subsection (d) of such section 2534, on the basis of the applicability of paragraph (2) or (3) of that subsection.''

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–106, div. A, title VIII, §806(a)(5), Feb. 10, 1996, 110 Stat. 391, provided that: ''Subsection (a)(3)(B) of section 2534 of title 10, United States Code, as amended by paragraph (1), shall apply only to contracts entered into after March 31, 1996.''

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 2302 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Pub. L. 102–484, div. A, title VIII, §833(b), Oct. 23, 1992, 106 Stat. 2461, provided that: ''Subsection (f) of section 2534 of title 10, United States Code, as added by subsection (a), shall apply with respect to solicitations for contracts issued after the expiration of the 120-day period beginning on the date of the enactment of this Act [Oct. 23, 1992].''

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–510, div. A, title VIII, §835(b), Nov. 5, 1990, 104 Stat. 1615, provided that subsec. (e) of this section, as added by section 835(a) of Pub. L. 101–510, applied with respect to systems or items procured by or provided to Department of Defense after Nov. 5, 1990.

REVIEW OF SELECT COMPONENTS

Pub. L. 116–283, div. A, title VIII, §845(b), Jan. 1, 2021, 134 Stat. 3767, provided that:

''The Secretary of the Defense shall expedite the review period under paragraph (3)(B) of section 2534(j) of title 10, United States Code, as redesignated by subsection (a), to not more than 60 days for applications submitted pursuant to such section 2534(j) for the following components for auxiliary ships:

''(1) Auxiliary equipment, including pumps, for all shipboard services.

''(2) Propulsion system components, including engines, reduction gears, and propellers.

''(3) Shipboard cranes.

''(4) Spreaders for shipboard cranes.''

CERTAIN EXEMPTION

Pub. L. 116–283, div. A, title XVI, §1603(b), Jan. 1, 2021, 134 Stat. 4043, provided that: ''Paragraph (5) of section 2534(a) of title 10, United States Code, as added by subsection (a) of this section, shall not apply with respect to programs that have received Milestone A approval (as defined in section 2431a of such title) before October 1, 2021.''

CLARIFICATION OF DELEGATION AUTHORITY

Pub. L. 116–283, div. A, title XVI, §1603(c), Jan. 1, 2021, 134 Stat. 4043, provided that: ''Subject to subsection (i) of section 2534 of title 10, United States Code, the Secretary of Defense may delegate to a service acquisition executive the authority to make a waiver under subsection (d) of such section with respect to the limitation under subsection (a)(5) of such section, as added by subsection (a) of this section.''

PROCUREMENT OF PHOTOVOLTAIC DEVICES

Pub. L. 113–291, div. A, title VIII, §858, Dec. 19, 2014, 128 Stat. 3460, which required certain contracts to include a provision relating to the manufacturing of photovoltaic devices in the United States, was repealed by Pub. L. 115–91, div. A, title VIII, §813(b), Dec. 12, 2017, 131 Stat. 1461, effective Oct. 1, 2018.

Pub. L. 111–383, div. A, title VIII, §846, Jan. 7, 2011, 124 Stat. 4285, as amended by Pub. L. 113–291, div. A, title X, §1071(b)(1)(A), Dec. 19, 2014, 128 Stat. 3505, provided that:

''(a) CONTRACT REQUIREMENT.—The Secretary of Defense shall ensure that each contract described in subsection (b) awarded by the Department of Defense includes a provision requiring the photovoltaic devices provided under the contract to comply with chapter 83 of title 41, United States Code, subject to the exceptions to that chapter provided in the Trade Agreements Act of 1979 (19 U.S.C. 2501 et seq.) or otherwise provided by law.

''(b) CONTRACTS DESCRIBED.—The contracts described in this subsection include energy savings performance contracts, utility service contracts, land leases, and private housing contracts, to the extent that such contracts result in ownership of photovoltaic devices by the Department of Defense. For the purposes of this section, the Department of Defense is deemed to own a photovoltaic device if the device is—

''(1) installed on Department of Defense property or in a facility owned by the Department of Defense; and

''(2) reserved for the exclusive use of the Department of Defense for the full economic life of the device.

''(c) DEFINITION OF PHOTOVOLTAIC DEVICES.—In this section, the term 'photovoltaic devices' means devices that convert light directly into electricity through a solid-state, semiconductor process.''

ELIMINATION OF UNRELIABLE SOURCES OF DEFENSE ITEMS AND COMPONENTS

Pub. L. 108–136, div. A, title VIII, §821, Nov. 24, 2003, 117 Stat. 1546, provided that:

''(a) IDENTIFICATION OF CERTAIN COUNTRIES.—The Secretary of Defense, in coordination with the Secretary of State, shall identify and list foreign countries that restrict the provision or sale of military goods or services to the United States because of United States counterterrorism or military operations after the date of the enactment of this Act [Nov. 24, 2003]. The Secretary shall review and update the list as appropriate. The Secretary may remove a country from the list, if the Secretary determines that doing so would be in the interest of national defense.

''(b) PROHIBITION ON PROCUREMENT OF ITEMS FROM IDENTIFIED COUNTRIES.—The Secretary of Defense may not procure any items or components contained in military systems if the items or components, or the systems, are manufactured in any foreign country identified under subsection (a).

''(c) WAIVER AUTHORITY.—The Secretary of Defense may waive the limitation in subsection (b) if the Secretary determines in writing and notifies Congress that the Department of Defense's need for the item is of such an unusual and compelling urgency that the Department would be unable to meet national security objectives.

''(d) EFFECTIVE DATE.—(1) Subject to paragraph (2), subsection (b) applies to contracts in existence on the date of the enactment of this Act [Nov. 24, 2003] or entered into after such date.

''(2) With respect to contracts in existence on the date of the enactment of this Act, the Secretary of Defense shall take such action as is necessary to ensure that such contracts are in compliance with subsection (b) not later than 24 months after such date.''

§ 2535. Defense Industrial Reserve

(a) DECLARATION OF PURPOSE AND POLICY.—It is the intent of Congress—

(1) to provide a comprehensive and continuous program for the future safety and for the defense of the United States by providing adequate measures whereby an essential nucleus of Government-owned industrial plants and an industrial reserve of machine tools and other industrial manufacturing equipment may be assured for immediate use to supply the needs of the armed forces in time of national emergency or in anticipation thereof;

(2) that such Government-owned plants and such reserve shall not exceed in number or kind the minimum requirements for immediate use in time of national emergency, and that any such items which shall become excess to such requirements shall be disposed of as expeditiously as possible;

(3) that to the maximum extent practicable, reliance will be placed upon private industry for support of defense production; and

(4) that machine tools and other industrial manufacturing equipment may be held in plant equipment packages or in a general reserve to maintain a high state of readiness for production of critical items of defense materiel, to provide production capacity not available in private industry for defense materiel, or to assist private industry in time of national disaster.

(b) POWERS AND DUTIES OF THE SECRETARY OF DEFENSE.—(1) To execute the policy set forth in subsection (a), the Secretary of Defense shall—

(A) determine which industrial plants and installations (including machine tools and other industrial manufacturing equipment) should become a part of the Defense Industrial Reserve;

(B) designate what excess industrial property shall be disposed of;

(C) establish general policies and provide for the transportation, handling, care, storage, protection, maintenance, repair, rebuilding, utilization, recording, leasing and security of such property;

(D) direct the transfer without reimbursement of such property to other Government agencies with the consent of such agencies;

(E) direct the leasing of any of such property to designated lessees;

(F) authorize the disposition in accordance with existing law of any of such property when in the opinion of the Secretary such property is no longer needed by the Department of Defense; and

(G) notwithstanding chapter 5 of title 40 and any other provision of law, authorize the transfer to a nonprofit educational institution or training school, on a nonreimbursable basis, of any such property already in the possession of such institution or school whenever the program proposed by such institution or school for the use of such property is in the public interest.

(2)(A) The Secretary of a military department to which equipment or other property is transferred from the Defense Industrial Reserve shall reimburse appropriations available for the purposes of the Defense Industrial Reserve for the full cost (including direct and indirect costs) of—

(i) storage of such property;

(ii) repair and maintenance of such property; and

(iii) overhead allocated to such property.

(B) The Secretary of Defense shall prescribe regulations establishing general policies and fee schedules for reimbursements under subparagraph (A).

(c) DEFINITIONS.—In this section:

(1) The term ''Defense Industrial Reserve'' means—

(A) a general reserve of industrial manufacturing equipment, including machine tools, selected by the Secretary of Defense for retention for national defense or for other emergency use;

(B) those industrial plants and installations held by and under the control of the Department of Defense in active or inactive status, including Government-owned/Government-operated plants and installations and Government-owned/contractor-operated plants and installations which are retained for use in their entirety, or in part, for production of military weapons systems, munitions, components, or supplies; and

(C) those industrial plants and installations under the control of the Secretary which are not required for the immediate need of any department or agency of the Government and which should be sold, leased, or otherwise disposed of.

(2) The term ''plant equipment package'' means a complement of active and idle machine tools and other industrial manufacturing equipment held by and under the control of the Department of Defense and approved by the Secretary for retention to produce particular defense materiel or defense supporting items at a specific level of output in the event of emergency.

(Added and amended Pub. L. 102–484, div. D, title XLII, § 4235, Oct. 23, 1992, 106 Stat. 2690; Pub. L. 103–35, title II, § 201(c)(8), May 31, 1993, 107 Stat. 98; Pub. L. 103–337, div. A, title III, § 379(a), Oct. 5, 1994, 108 Stat. 2737; Pub. L. 107–107, div. A, title

X, § 1048(a)(23), Dec. 28, 2001, 115 Stat. 1224; Pub. L. 107–217, § 3(b)(7), Aug. 21, 2002, 116 Stat. 1295.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1870(e)(2)(A), Jan. 1, 2021, 134 Stat. 4151, 4286, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 385 of this title, as added by section 1870(a) of Pub. L. 116–283, inserted after the table of sections at the beginning of subchapter IV, and redesignated as section 4881 of this title. See Effective Date of 2021 Amendment note below.

CODIFICATION

The text of section 451 of Title 50, War and National Defense, which was transferred to this section, designated subsec. (a), and amended by Pub. L. 102–484, § 4235(a)(2), was based on acts July 2, 1948, ch. 811, § 2, 62 Stat. 1225; Nov. 16, 1973, Pub. L. 93–155, title VIII, § 809, 87 Stat. 617.

The text of section 453 of Title 50 which was transferred to this section, designated subsec. (b), and amended by Pub. L. 102–484, § 4235(a)(3), was based on acts July 2, 1948, ch. 811, § 4, 62 Stat. 1226; Nov. 16, 1973, Pub. L. 93–155, title VIII, § 809, 87 Stat. 617; Nov. 14, 1986, Pub. L. 99–661, div. A, title XIII, § 1359(a), 100 Stat. 3999. For effective date of 1986 amendment, see section 1359(b) of Pub. L. 99–661.

The text of section 452 of Title 50 which was transferred to this section, designated subsec. (c), and amended by Pub. L. 102–484, § 4235(b), was based on acts July 2, 1948, ch. 811, § 3, 62 Stat. 1225; Nov. 16, 1973, Pub. L. 93–155, title VIII, § 809, 87 Stat. 617.

AMENDMENTS

2002—Subsec. (b)(1)(G). Pub. L. 107–217 substituted ''chapter 5 of title 40'' for ''title II of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 481 et seq.)''.

2001—Subsec. (a). Pub. L. 107–107, § 1048(a)(23)(A)(i), substituted ''intent of Congress—'' for ''intent of Congress'' in introductory provisions.

Subsec. (a)(1). Pub. L. 107–107, § 1048(a)(23)(A)(ii), (iii), substituted ''armed forces'' for ''Armed Forces'' and realigned margins.

Subsec. (a)(2) to (4). Pub. L. 107–107, § 1048(a)(23)(A)(ii), realigned margins.

Subsec. (b)(1). Pub. L. 107–107, § 1048(a)(23)(B)(i), substituted ''in subsection (a), the Secretary of Defense shall—'' for ''in this section, the Secretary is authorized and directed to—'' in introductory provisions.

Subsec. (b)(1)(A). Pub. L. 107–107, § 1048(a)(23)(B)(ii), substituted ''Defense Industrial Reserve'' for ''defense industrial reserve''.

Subsec. (c). Pub. L. 107–107, § 1048(a)(23)(C), redesignated par. (2) as (1), substituted ''means—'' for ''means'' in introductory provisions, realigned margins of subpars. (A) to (C) of par. (1) and inserted ''and'' after semicolon in subpar. (B), redesignated par. (3) as (2), and struck out former par. (1) which read as follows: ''The term 'Secretary' means Secretary of Defense.''

1994—Subsec. (b)(1)(G). Pub. L. 103–337 amended subpar. (G) generally. Prior to amendment, subpar. (G) read as follows: ''authorize and regulate the lending of any such property to any nonprofit educational institution or training school whenever (i) the program proposed by such institution or school for the use of such property will contribute materially to national defense, and (ii) such institution or school shall by agreement make such provision as the Secretary shall deem satisfactory for the proper maintenance and care of such property and for its return, without expense to the Government, upon request of the Secretary.''

1993—Subsec. (b)(2)(B). Pub. L. 103–35 substituted ''subparagraph (A)'' for ''paragraph (1)''.

1992—Pub. L. 102–484, § 4235(a), added section number and catchline.

Subsec. (a). Pub. L. 102–484, § 4235(a)(2), transferred the text of section 451 of Title 50, War and National Defense, to this section, designated it subsec. (a), inserted heading, and substituted ''It'' for ''In enacting this chapter it'' in introductory provisions. See Codification note above.

Subsec. (b). Pub. L. 102–484, § 4235(a)(3), transferred the text of section 453 of Title 50, War and National Defense, to the end of this section and designated it subsec. (b), inserted heading, redesignated former subsec. (a) of section 453 as par. (1), substituted ''in this section'' for ''in this chapter'' in introductory provisions, redesignated former pars. (1) to (7) as subpars. (A) to (G), respectively, in subpar. (G) redesignated former subpars. (A) and (B) as cls. (i) and (ii), respectively, redesignated former subsec. (b) of section 453 as par. (2), and in par. (2) redesignated former par. (1) as subpar. (A), former subpars. (A) to (C) as cls. (i) to (iii), and former par. (2) as subpar. (B). See Codification note above.

Subsec. (c). Pub. L. 102–484, § 4235(b), transferred the text of section 452 of Title 50, War and National Defense, to the end of this section, designated it subsec. (c), inserted heading, and substituted ''In this section:'' for ''As used in this chapter—'' in introductory provisions. See Codification note above.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

TREATMENT OF PROPERTY LOANED BEFORE DECEMBER 31, 1993 TO EDUCATIONAL INSTITUTIONS OR TRAINING SCHOOLS

Pub. L. 103–337, div. A, title III, § 379(b), Oct. 5, 1994, 108 Stat. 2737, provided that: ''Except for property determined by the Secretary of Defense to be needed by the Department of Defense, property loaned before December 31, 1993, to an educational institution or training school under section 2535(b) of title 10, United States Code, or section 4(a)(7) of the Defense Industrial Reserve Act (as in effect before October 23, 1992 [former section 453(a)(7) of Title 50, War and National Defense, see Codification and 1992 Amendment notes above]) shall be regarded as surplus property. Upon certification by the Secretary to the Administrator of General Services that the property is being used by the borrowing educational institution or training school for a purpose consistent with that for which the property was loaned, the Administrator may authorize the conveyance of all right, title, and interest of the United States in such property to the borrower if the borrower agrees to accept the property. The Administrator may require any additional terms and conditions in connection with a conveyance so authorized that the Administrator considers appropriate to protect the interests of the United States.''

§ 2536. Award of certain contracts to entities controlled by a foreign government: prohibition

(a) IN GENERAL.—A Department of Defense contract or Department of Energy contract under a national security program may not be awarded to an entity controlled by a foreign government if it is necessary for that entity to be given access to information in a proscribed category of information in order to perform the contract.

(b) WAIVER AUTHORITY.—(1) The Secretary concerned may waive the application of subsection (a) to a contract award if—

(A) the Secretary concerned determines that the waiver is essential to the national security interests of the United States; or

(B) in the case of a contract awarded for environmental restoration, remediation, or waste management at a Department of Defense or Department of Energy facility—

(i) the Secretary concerned determines that the waiver will advance the environmental restoration, remediation, or waste management objectives of the department concerned and will not harm the national security interests of the United States; and

(ii) the entity to which the contract is awarded is controlled by a foreign government with which the Secretary concerned is authorized to exchange Restricted Data under section 144 c. of the Atomic Energy Act of 1954 (42 U.S.C. 2164(c)).

(2) The Secretary concerned shall notify Congress of any decision to grant a waiver under paragraph (1)(B) with respect to a contract. The contract may be awarded only after the end of the 45-day period beginning on the date the notification is received by the committees.

(c) DEFINITIONS.—In this section:

(1) The term ''entity controlled by a foreign government'' includes—

(A) any domestic or foreign organization or corporation that is effectively owned or controlled by a foreign government; and

(B) any individual acting on behalf of a foreign government,

as determined by the Secretary concerned. Such term does not include an organization or corporation that is owned, but is not controlled, either directly or indirectly, by a foreign government if the ownership of that organization or corporation by that foreign government was effective before October 23, 1992.

(2) The term ''proscribed category of information'' means a category of information that—

(A) with respect to Department of Defense contracts—

(i) includes special access information;

(ii) is determined by the Secretary of Defense to include information the disclosure of which to an entity controlled by a foreign government is not in the national security interests of the United States; and

(iii) is defined in regulations prescribed by the Secretary of Defense for the purposes of this section; and

(B) with respect to Department of Energy contracts—

(i) is determined by the Secretary of Energy to include information described in subparagraph (A)(ii); and

(ii) is defined in regulations prescribed by the Secretary of Energy for the purposes of this section.

(3) The term ''Secretary concerned'' means—

(A) the Secretary of Defense, with respect to Department of Defense contracts; and

(B) the Secretary of Energy, with respect to Department of Energy contracts.

(Added Pub. L. 102–484, div. A, title VIII, §836(a)(1), Oct. 23, 1992, 106 Stat. 2462; amended Pub. L. 103–35, title II, §201(d)(4), May 31, 1993, 107 Stat. 99; Pub. L. 103–160, div. A, title VIII, §842(a)–(c)(1), Nov. 30, 1993, 107 Stat. 1719; Pub. L. 104–201, div. A, title VIII, §828, Sept. 23, 1996, 110 Stat. 2611.)

RENUMBERING OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§1801(d), 1870(d)(2), Jan. 1, 2021, 134 Stat. 4151, 4286, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 385 of this title, as added by section 1870(a) of Pub. L. 116–283, inserted after section 4871, and redesignated as section 4872 of this title. See Effective Date of 2021 Amendment note below.

AMENDMENTS

1996—Subsec. (b). Pub. L. 104–201 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''WAIVER AUTHORITY.—The Secretary concerned may waive the application of subsection (a) to a contract award if the Secretary concerned determines that the waiver is essential to the national security interests of the United States.''

1993—Pub. L. 103–160, §842(c)(1), substituted ''Award of certain contracts to entities controlled by a foreign government: prohibition'' for ''Prohibition on award of certain Department of Defense and Department of Energy contracts to companies owned by an entity controlled by a foreign government.'' as section catchline.

Pub. L. 103–35 struck out period at end of section catchline.

Subsec. (a). Pub. L. 103–160, §842(a), struck out ''a company owned by'' after ''awarded to'' and substituted ''that entity'' for ''that company''.

Subsec. (c)(1). Pub. L. 103–160, §842(b), inserted at end ''Such term does not include an organization or corporation that is owned, but is not controlled, either directly or indirectly, by a foreign government if the ownership of that organization or corporation by that foreign government was effective before October 23, 1992.''

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Pub. L. 102–484, div. A, title VIII, §836(b), Oct. 23, 1992, 106 Stat. 2463, provided that: ''Section 2536 of title 10, United States Code, as added by subsection (a), shall apply with respect to contracts entered into after the expiration of the 90-day period beginning on the date of the enactment of this Act [Oct. 23, 1992].''

REMOVAL OF NATIONAL INTEREST DETERMINATION REQUIREMENTS FOR CERTAIN ENTITIES

Pub. L. 115–232, div. A, title VIII, §842, Aug. 13, 2018, 132 Stat. 1878, provided that:

''(a) IN GENERAL.—Effective October 1, 2020, a covered NTIB entity operating under a special security agreement pursuant to the National Industrial Security Program shall not be required to obtain a national interest determination as a condition for access to proscribed information.

''(b) ACCELERATION AUTHORIZED.—Notwithstanding the effective date of this section, the Secretary of Defense, in consultation with the Director of the Information Security Oversight Office, may waive the requirement to obtain a national interest determination for a covered NTIB entity operating under such a special security agreement that has—

''(1) a demonstrated successful record of compliance with the National Industrial Security Program; and

''(2) previously been approved for access to proscribed information.

"(c) DEFINITIONS.—In this section:

"(1) COVERED NTIB ENTITY.—The term 'covered NTIB entity' means a person that is a subsidiary located in the United States—

"(A) for which the ultimate parent company and any intermediate parent companies of such subsidiary are located in a country that is part of the national technology and industrial base (as defined in section 2500 of title 10, United States Code); and

"(B) that is subject to the foreign ownership, control, or influence requirements of the National Industrial Security Program.

"(2) PROSCRIBED INFORMATION.—The term 'proscribed information' means information that is—

"(A) classified at the level of top secret;

"(B) communications security information (excluding controlled cryptographic items when unkeyed or utilized with unclassified keys);

"(C) restricted data (as defined in section 11 of the Atomic Energy Act of 1954 (42 U.S.C. 2014));

"(D) special access program information under section 4.3 of Executive Order No. 13526 (75 Fed. Reg. 707; 50 U.S.C. 3161 note) or successor order; or

"(E) designated as sensitive compartmented information."

REVIEW REGARDING APPLICABILITY OF FOREIGN OWNERSHIP, CONTROL, OR INFLUENCE REQUIREMENTS OF NATIONAL INDUSTRIAL SECURITY PROGRAM TO NATIONAL TECHNOLOGY AND INDUSTRIAL BASE COMPANIES

Pub. L. 115–91, div. A, title XVII, §1712, Dec. 12, 2017, 131 Stat. 1811, as amended by Pub. L. 116–283, div. A, title XVIII, §1866(d)(5), Jan. 1, 2021, 134 Stat. 4280, provided that:

"(a) REVIEW.—The Secretary of Defense, with the concurrence of the Secretary of State and after consultation with the Director of the Information Security Oversight Office, shall review whether organizations whose ownership or majority control is based in a country that is part of the national technology and industrial base should be exempted from one or more of the foreign ownership, control, or influence requirements of the National Industrial Security Program.

"(b) AUTHORITY.—The Secretary of Defense may establish a program to exempt organizations described under subsection (a) from one or more of the foreign ownership, control, or influence requirements of the National Industrial Security Program. Any such program shall comply with the requirements of this subsection.

"(1) IN GENERAL.—Under a program established under this subsection, the Secretary, with the concurrence of the Secretary of State and after consultation with the Director of the Information Security Oversight Office, shall maintain a list of organizations owned or controlled by a country that is part of the national technology and industrial base that are eligible for exemption from the requirements described under such subsection.

"(2) DETERMINATIONS OF ELIGIBILITY.—Under a program established under this subsection, the Secretary of Defense, with the concurrence of the Secretary of State and after consultation with the Director of the Information Security Oversight Office, may (on a case-by-case basis and for the purpose of supporting specific needs of the Department of Defense) designate an organization whose ownership or majority control is based in a country that is part of the national technology and industrial base as exempt from the requirements described under subsection (a) upon a determination that such exemption—

"(A) is beneficial to improving collaboration within countries that are a part of the national technology and industrial base;

"(B) is in the national security interest of the United States; and

"(C) will not result in a greater risk of the disclosure of classified or sensitive information consistent with the National Industrial Security Program.

"(3) EXERCISE OF AUTHORITY.—The authority under this subsection may be exercised beginning on the date that is the later of—

"(A) the date that is 60 days after the Secretary of Defense, in consultation with the Secretary of State and the Director of the Information Security Oversight Office, submits to the appropriate congressional committees a report summarizing the review conducted under subsection (a); and

"(B) the date that is 30 days after the Secretary of Defense, in consultation with the Secretary of State and the Director of the Information Security Oversight Office, submits to the appropriate congressional committees a written notification of a determination made under paragraph (2), including a discussion of the issues related to the foreign ownership or control of the organization that were considered as part of the determination.

"(c) DEFINITIONS.—In this section:

"(1) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term 'appropriate congressional committees' has the meaning given the term in section 301 of title 10, United States Code.

"(2) NATIONAL TECHNOLOGY AND INDUSTRIAL BASE.—the [sic] term 'national technology and industrial base' has the meaning given the term in section 2500 of title 10, United States Code."

[Pub. L. 116–283, div. A, title XVIII, §§1801(d), 1886(d)(5), Jan. 1, 2021, 134 Stat. 4151, 4280, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, section 1712(c)(2) of Pub. L. 115–91, set out above, is amended by substituting "section 4801" for "section 2500".]

§ 2537. Improved national defense control of technology diversions overseas

(a) COLLECTION OF INFORMATION ON FOREIGN-CONTROLLED CONTRACTORS.—The Secretary of Defense and the Secretary of Energy shall each collect and maintain a data base containing a list of, and other pertinent information on, all contractors with the Department of Defense and the Department of Energy, respectively, that are controlled by foreign persons. The data base shall contain information on such contractors for 1988 and thereafter in all cases where they are awarded contracts exceeding $10,000,000 in any single year by the Department of Defense or the Department of Energy.

(b) TECHNOLOGY RISK ASSESSMENT REQUIREMENT.—(1) If the Secretary of Defense is acting as a designee of the President under section 721(a)[1] of the Defense Production Act of 1950 (50 U.S.C. 4565(a)) and if the Secretary determines that a proposed or pending merger, acquisition, or takeover may involve a firm engaged in the development of a defense critical technology or is otherwise important to the defense industrial and technology base, then the Secretary shall require the appropriate entity or entities from the list set forth in paragraph (2) to conduct an assessment of the risk of diversion of defense critical technology posed by such proposed or pending action.

(2) The entities referred to in paragraph (1) are the following:

(A) The Defense Intelligence Agency.

(B) The Army Foreign Technology Science Center.

(C) The Naval Maritime Intelligence Center.

(D) The Air Force Foreign Aerospace Science and Technology Center.

[1] See References in Text note below.

(Added Pub. L. 102–484, div. A, title VIII, § 838(a), Oct. 23, 1992, 106 Stat. 2465; amended Pub. L. 103–35, title II, § 201(d)(5), (h)(2), May 31, 1993, 107 Stat. 99, 100; Pub. L. 107–314, div. A, title X, § 1041(a)(16), Dec. 2, 2002, 116 Stat. 2645; Pub. L. 114–328, div. A, title X, § 1081(b)(4)(B), Dec. 23, 2016, 130 Stat. 2419; Pub. L. 115–91, div. A, title X, § 1051(a)(19), Dec. 12, 2017, 131 Stat. 1561.)

RENUMBERING OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1870(f)(2), Jan. 1, 2021, 134 Stat. 4151, 4287, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 385 of this title, as added by section 1870(a) of Pub. L. 116–283, inserted after the table of sections at the beginning of subchapter V, and redesignated as section 4891 of this title. See Effective Date of 2021 Amendment note below.

REFERENCES IN TEXT

Section 721(a) of the Defense Production Act of 1950, referred to in subsec. (b), is section 721(a) of act Sept. 8, 1950, ch. 932, as added by Pub. L. 100–418, title V, § 5021, Aug. 23, 1988, 102 Stat. 1425, which is classified to section 4565(a) of Title 50, War and National Defense. Section 721(a) of the Act was struck out, and a new section 721(a) was added, by Pub. L. 110–49, § 2, July 26, 2007, 121 Stat. 246. As so added, section 721(a) does not refer to investigations by the President or the President's designee.

AMENDMENTS

2017—Subsecs. (b), (c). Pub. L. 115–91 redesignated subsec. (c) as (b) and struck out former subsec. (b) which required annual reports to Congress regarding the information collected under subsec. (a).

2016—Subsec. (c). Pub. L. 114–328 substituted ''(50 U.S.C. 4565(a))'' for ''(50 U.S.C. App. 2170(a))''.

2002—Subsec. (a). Pub. L. 107–314 substituted ''$10,000,000'' for ''$100,000''.

1993—Subsec. (a). Pub. L. 103–35, § 201(d)(5), substituted ''respectively, that'' for ''respectively, which''.

Subsec. (d). Pub. L. 103–35, § 201(h)(2), struck out subsec. (d) which read as follows: ''In this section, the term 'defense critical technology' has the meaning provided that term by section 2491(8) of this title.''

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 2538. Industrial mobilization: orders; priorities; possession of manufacturing plants; violations

(a) ORDERING AUTHORITY.—In time of war or when war is imminent, the President, through the head of any department, may order from any person or organized manufacturing industry necessary products or materials of the type usually produced or capable of being produced by that person or industry.

(b) COMPLIANCE WITH ORDER REQUIRED.—A person or industry with whom an order is placed under subsection (a), or the responsible head thereof, shall comply with that order and give it precedence over all orders not placed under that subsection.

(c) SEIZURE OF MANUFACTURING PLANTS UPON NONCOMPLIANCE.—In time of war or when war is imminent, the President, through the head of any department, may take immediate possession of any plant that is equipped to manufacture, or that in the opinion of the head of that department is capable of being readily transformed into a plant for manufacturing, arms or ammunition, parts thereof, or necessary supplies for the armed forces if the person or industry owning or operating the plant, or the responsible head thereof, refuses—

(1) to give precedence to the order as prescribed in subsection (b);

(2) to manufacture the kind, quantity, or quality of arms or ammunition, parts thereof, or necessary supplies, as ordered by the head of such department; or

(3) to furnish them at a reasonable price as determined by the head of such department.

(d) USE OF SEIZED PLANT.—The President, through the head of any department, may manufacture products that are needed in time of war or when war is imminent, in any plant that is seized under subsection (c).

(e) COMPENSATION REQUIRED.—Each person or industry from whom products or materials are ordered under subsection (a) is entitled to fair and just compensation. Each person or industry whose plant is seized under subsection (c) is entitled to a fair and just rental.

(f) CRIMINAL PENALTY.—Whoever fails to comply with this section shall be imprisoned for not more than three years and fined under title 18.

(Added Pub. L. 103–160, div. A, title VIII, § 822(a)(1), Nov. 30, 1993, 107 Stat. 1704; amended Pub. L. 103–337, div. A, title VIII, § 811, Oct. 5, 1994, 108 Stat. 2815.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1870(e)(2)(A), Jan. 1, 2021, 134 Stat. 4151, 4286, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 385 of this title, as added by section 1870(a) of Pub. L. 116–283, inserted after section 4881, and redesignated as section 4882 of this title. See Effective Date of 2021 Amendment note below.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 4501 and 9501 of this title, prior to repeal by Pub. L. 103–160, § 822(a)(2).

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–337, § 811(1), substituted ''head of any department'' for ''Secretary of Defense''.

Subsec. (c). Pub. L. 103–337, § 811, substituted ''through the head of any department'' for ''through the Secretary of Defense'' and ''opinion of the head of that department'' for ''opinion of the Secretary of Defense'' in introductory provisions and ''head of such department'' for ''Secretary'' in pars. (2) and (3).

Subsec. (d). Pub. L. 103–337, § 811(1), substituted ''head of any department'' for ''Secretary of Defense''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 2539. Industrial mobilization: plants; lists

(a) LIST OF PLANTS EQUIPPED TO MANUFACTURE ARMS OR AMMUNITION.—The Secretary of Defense may maintain a list of all privately owned plants in the United States, and the territories, Commonwealths, and possessions of the United States, that are equipped to manufacture for the armed forces arms or ammunition, or parts thereof, and may obtain complete information of the kinds of those products manufactured or capable of being manufactured by each of those plants, and of the equipment and capacity of each of those plants.

(b) LIST OF PLANTS CONVERTIBLE INTO AMMUNITION FACTORIES.—The Secretary of Defense may maintain a list of privately owned plants in the United States, and the territories, Commonwealths, and possessions of the United States, that are capable of being readily transformed into factories for the manufacture of ammunition for the armed forces and that have a capacity sufficient to warrant conversion into ammunition plants in time of war or when war is imminent, and may obtain complete information as to the equipment of each of those plants.

(c) CONVERSION PLANS.—The Secretary of Defense may prepare comprehensive plans for converting each plant listed pursuant to subsection (b) into a factory for the manufacture of ammunition or parts thereof.

(Added Pub. L. 103–160, div. A, title VIII, § 822(a)(1), Nov. 30, 1993, 107 Stat. 1705.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1870(e)(2)(A), Jan. 1, 2021, 134 Stat. 4151, 4286, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 385 of this title, as added by section 1870(a) of Pub. L. 116–283, inserted after section 4882, and redesignated as section 4883 of this title. See Effective Date of 2021 Amendment note below.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 4502(a)–(c) and 9502(a)–(c) of this title, prior to repeal by Pub. L. 103–160, § 822(a)(2).

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 2539a. Industrial mobilization: Board on Mobilization of Industries Essential for Military Preparedness

The President may appoint a nonpartisan Board on Mobilization of Industries Essential for Military Preparedness, and may provide necessary clerical assistance, to organize and coordinate operations under sections 2538 and 2539 of this title.

(Added Pub. L. 103–160, div. A, title VIII, § 822(a)(1), Nov. 30, 1993, 107 Stat. 1705, § 2540; renumbered § 2539a, Pub. L. 103–337, div. A, title X, § 1070(a)(13)(A), Oct. 5, 1994, 108 Stat. 2856.)

RENUMBERING OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1870(e)(2)(A), Jan. 1, 2021, 134 Stat. 4151, 4286, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 385 of this title, as added by section 1870(a) of Pub. L. 116–283, inserted after section 4883, and redesignated as section 4884 of this title. See Effective Date of 2021 Amendment note below.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 4502(d) and 9502(d) of this title, prior to repeal by Pub. L. 103–160, § 822(a)(2).

AMENDMENTS

1994—Pub. L. 103–337 renumbered section 2540 of this title as this section.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 2539b. Availability of samples, drawings, information, equipment, materials, and certain services

(a) AUTHORITY.—The Secretary of Defense and the Secretaries of the military departments, under regulations prescribed by the Secretary of Defense and when determined by the Secretary of Defense or the Secretary concerned to be in the interest of national defense, may each—

(1) sell, rent, lend, or give samples, drawings, and manufacturing or other information (subject to the rights of third parties) to any person or entity;

(2) sell, rent, or lend government equipment or materials to any person or entity—

(A) for use in independent research and development programs, subject to the condition that the equipment or material be used exclusively for such research and development; or

(B) for use in demonstrations to a friendly foreign government;

(3) make available to any person or entity, at an appropriate fee, the services of any government laboratory, center, range, or other testing facility for the testing of materials, equipment, models, computer software, and other items; and

(4) make available to any person or entity, through leases, contracts, or other appropriate arrangements, facilities, services, and equipment of any government laboratory, research center, or range, if the facilities, services, and equipment provided will not be in direct competition with the domestic private sector.

(b) CONFIDENTIALITY OF TEST RESULTS.—The results of tests performed with services made available under subsection (a)(3) are confidential and may not be disclosed outside the Federal Government without the consent of the persons for whom the tests are performed.

(c) FEES.—Fees made available under subsections (a)(3) and (a)(4) shall be established in

the regulations prescribed pursuant to subsection (a). Such fees may not exceed the amount necessary to recoup the direct and indirect costs involved, such as direct costs of utilities, contractor support, and salaries of personnel that are incurred by the United States to provide for the testing.

(d) USE OF FEES.—Fees received under subsections (a)(3) and (a)(4) may be credited to the appropriations or other funds of the activity making such services available.

(Added Pub. L. 103–160, div. A, title VIII, § 822(b)(1), Nov. 30, 1993, 107 Stat. 1705, § 2541; renumbered § 2539b, Pub. L. 103–337, div. A, title X, § 1070(a)(13)(A), Oct. 5, 1994, 108 Stat. 2856; amended Pub. L. 103–355, title III, § 3022, Oct. 13, 1994, 108 Stat. 3333; Pub. L. 104–106, div. A, title VIII, § 804, div. D, title XLIII, § 4321(a)(8), Feb. 10, 1996, 110 Stat. 390, 671; Pub. L. 106–65, div. A, title X, § 1066(a)(23), Oct. 5, 1999, 113 Stat. 771; Pub. L. 110–181, div. A, title II, § 232, Jan. 28, 2008, 122 Stat. 46.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1870(f)(2), Jan. 1, 2021, 134 Stat. 4151, 4287, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 385 of this title, as added by section 1870(a) of Pub. L. 116–283, inserted after section 4891, and redesignated as section 4892 of this title. See Effective Date of 2021 Amendment note below.

AMENDMENTS

2008—Subsec. (a)(4). Pub. L. 110–181, § 232(1), added par. (4).

Subsec. (c). Pub. L. 110–181, § 232(2), struck out "for services" before "made available" and substituted "subsections (a)(3) and (a)(4)" for "subsection (a)(3)".

Subsec. (d). Pub. L. 110–181, § 232(3), struck out "for services made available" after "Fees received" and substituted "subsections (a)(3) and (a)(4)" for "subsection (a)(3)".

1999—Subsec. (a). Pub. L. 106–65 substituted "Secretaries of the military departments" for "secretaries of the military departments".

1996—Subsec. (a). Pub. L. 104–106, § 4321(a)(8), made technical correction to Pub. L. 103–355, § 3022. See 1994 Amendment note below.

Subsec. (c). Pub. L. 104–106, § 804, inserted "and indirect" after "recoup the direct".

1994—Pub. L. 103–337 renumbered section 2541 of this title as this section.

Subsec. (a). Pub. L. 103–355, § 3022, as amended by Pub. L. 104–106, § 4321(a)(8), inserted "rent," after "sell," in par. (1) and ", rent," after "sell" in par. (2).

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–106, div. D, title XLIII, § 4321(a), Feb. 10, 1996, 110 Stat. 671, provided that the amendment made by that section is effective as of Oct. 13, 1994, and as if included in Pub. L. 103–355 as enacted.

SUBCHAPTER VI—DEFENSE EXPORT LOAN GUARANTEES

Sec.
2540. Establishment of loan guarantee program.
2540a. Transferability.
2540b. Limitations.
2540c. Fees charged and collected.
2540d. Definitions.

REPEAL OF SUBCHAPTER

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1881(a), Jan. 1, 2021, 134 Stat. 4151, 4293, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, chapter 148 of this title, and therefore this subchapter, is repealed. See Effective Date of Repeal note below.

EFFECTIVE DATE OF REPEAL

Repeal effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 2540. Establishment of loan guarantee program

(a) ESTABLISHMENT.—In order to meet the national security objectives in section 2501(a) of this title, the Secretary of Defense shall establish a program under which the Secretary may issue guarantees assuring a lender against losses of principal or interest, or both principal and interest, arising out of the financing of the sale or long-term lease of defense articles, defense services, or design and construction services to a country referred to in subsection (b).

(b) COVERED COUNTRIES.—The authority under subsection (a) applies with respect to the following countries:

(1) A member nation of the North Atlantic Treaty Organization (NATO).

(2) A country designated as of March 31, 1995, as a major non-NATO ally pursuant to section 2350a(i)(3) of this title, as in effect on that date.

(3) A country in Central Europe that, as determined by the Secretary of State—

(A) has changed its form of national government from a nondemocratic form of government to a democratic form of government since October 1, 1989; or

(B) is in the process of changing its form of national government from a nondemocratic form of government to a democratic form of government.

(4) A noncommunist country that was a member nation of the Asia Pacific Economic Cooperation (APEC) as of October 31, 1993.

(c) AUTHORITY SUBJECT TO PROVISIONS OF APPROPRIATIONS.—The Secretary may guarantee a loan under this subchapter only to such extent or in such amounts as may be provided in advance in appropriations Acts.

(Added Pub. L. 104–106, div. A, title XIII, § 1321(a)(1), Feb. 10, 1996, 110 Stat. 475; amended Pub. L. 108–375, div. A, title X, § 1084(d)(21), Oct. 28, 2004, 118 Stat. 2062.)

TRANSFER OF SUBCHAPTER AND SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1873(b), (c), Jan. 1, 2021, 134 Stat. 4151, 4290, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this sub-

chapter is transferred to chapter 389 of this title, as added by section 1873(a) of Pub. L. 116–283, inserted after the table of subchapters at the beginning of the chapter, and redesignated as subchapter I, and this section is redesignated as section 4971 of this title. See Effective Date of 2021 Amendment note below.

PRIOR PROVISIONS

A prior section 2540, acts Aug. 10, 1956, ch. 1041, 70A Stat. 141, § 2511; renumbered § 2521, Nov. 5, 1990, Pub. L. 101–510, div. A, title VIII, § 823(a)(2), 104 Stat. 1600; renumbered § 2540, Dec. 5, 1991, Pub. L. 102–190, div. A, title VIII, § 821(e)(3), 105 Stat. 1432, related to availability or issuance to reserve components of supplies, services, and facilities of armed forces, prior to repeal by Pub. L. 103–337, div. A, title XVI, §§ 1664(c)(2), 1691, Oct. 5, 1994, 108 Stat. 3012, 3026, effective Dec. 1, 1994. See section 18502 of this title.

Another prior section 2540 was renumbered section 2539a of this title.

AMENDMENTS

2004—Subsec. (b)(2). Pub. L. 108–375 inserted '', as in effect on that date'' before period at end.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

AUTHORITY TO ISSUE LOAN GUARANTEES

Pub. L. 108–287, title VIII, § 8065, Aug. 5, 2004, 118 Stat. 985, as amended by Pub. L. 116–283, div. A, title XVIII, § 1873(d), Jan. 1, 2021, 134 Stat. 4290, provided that: ''To the extent authorized by subchapter VI of chapter 148 of title 10, United States Code, for the current fiscal year and hereafter the Secretary of Defense may issue loan guarantees in support of United States defense exports not otherwise provided for: *Provided*, That the total contingent liability of the United States for guarantees issued under the authority of this section may not exceed $15,000,000,000: *Provided further*, That the exposure fees charged and collected by the Secretary for each guarantee shall be paid by the country involved and shall not be financed as part of a loan guaranteed by the United States: *Provided further*, That the Secretary shall provide quarterly reports to the Committees on Appropriations, Armed Services, and Foreign Relations of the Senate and the Committees on Appropriations, Armed Services, and International Relations [now Committee on Foreign Affairs] in the House of Representatives on the implementation of this program: *Provided further*, That amounts charged for administrative fees and deposited to the special account provided for under section 2540c(d) of title 10, shall be available for paying the costs of administrative expenses of the Department of Defense that are attributable to the loan guarantee program under subchapter VI of chapter 148 of title 10, United States Code.''

[Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1873(d), Jan. 1, 2021, 134 Stat. 4151, 4290, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, section 8065 of Pub. L. 108–287, set out above, is amended by substituting ''subchapter I of chapter 389'' for ''subchapter VI of chapter 148'' in two places and ''section 4974(d)'' for ''section 2540c(d)''.]

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 108–87, title VIII, § 8066, Sept. 30, 2003, 117 Stat. 1087.

Pub. L. 107–248, title VIII, § 8067, Oct. 23, 2002, 116 Stat. 1551.

Pub. L. 107–117, div. A, title VIII, § 8073, Jan. 10, 2002, 115 Stat. 2264.

Pub. L. 106–259, title VIII, § 8071, Aug. 9, 2000, 114 Stat. 690.

Pub. L. 106–79, title VIII, § 8075, Oct. 25, 1999, 113 Stat. 1246.

Pub. L. 105–262, title VIII, § 8075, Oct. 17, 1998, 112 Stat. 2314.

Pub. L. 105–56, title VIII, § 8081, Oct. 8, 1997, 111 Stat. 1237.

Pub. L. 104–208, div. A, title I, § 101(b) [title VIII, § 8093], Sept. 30, 1996, 110 Stat. 3009–71, 3009–107.

Pub. L. 104–61, title VIII, § 8075, Dec. 1, 1995, 109 Stat. 665.

REPORT ON DEFENSE EXPORT LOAN GUARANTEE PROGRAM

Pub. L. 104–106, div. A, title XIII, § 1321(b), Feb. 10, 1996, 110 Stat. 477, provided that, not later than two years after Feb. 10, 1996, the President was to submit to Congress a report on the loan guarantee program established pursuant to this section.

§ 2540a. Transferability

A guarantee issued under this subchapter shall be fully and freely transferable.

(Added Pub. L. 104–106, div. A, title XIII, § 1321(a)(1), Feb. 10, 1996, 110 Stat. 476.)

TRANSFER OF SUBCHAPTER AND SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1873(b), (c), Jan. 1, 2021, 134 Stat. 4151, 4290, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this subchapter is transferred to chapter 389 of this title, as added by section 1873(a) of Pub. L. 116–283, inserted after the table of subchapters at the beginning of the chapter, and redesignated as subchapter I, and this section is redesignated as section 4972 of this title. See Effective Date of 2021 Amendment note below.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 2540b. Limitations

(a) TERMS AND CONDITIONS OF LOAN GUARANTEES.—In issuing a guarantee under this subchapter for a medium-term or long-term loan, the Secretary may not offer terms and conditions more beneficial than those that would be provided to the recipient by the Export-Import Bank of the United States under similar circumstances in conjunction with the provision of guarantees for nondefense articles and services.

(b) LOSSES ARISING FROM FRAUD OR MISREPRESENTATION.—No payment may be made under a guarantee issued under this subchapter for a loss arising out of fraud or misrepresentation for which the party seeking payment is responsible.

(c) NO RIGHT OF ACCELERATION.—The Secretary of Defense may not accelerate any guaranteed loan or increment, and may not pay any amount, in respect of a guarantee issued under this subchapter, other than in accordance with the original payment terms of the loan.

(Added Pub. L. 104–106, div. A, title XIII, § 1321(a)(1), Feb. 10, 1996, 110 Stat. 476.)

RENUMBERING OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1873(b), (c), Jan. 1, 2021, 134 Stat. 4151, 4290,

provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this subchapter is transferred to chapter 389 of this title, as added by section 1873(a) of Pub. L. 116–283, inserted after the table of subchapters at the beginning of the chapter, and redesignated as subchapter I, and this section is redesignated as section 4973 of this title. See Effective Date of 2021 Amendment note below.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 2540c. Fees charged and collected

(a) EXPOSURE FEES.—The Secretary of Defense shall charge a fee (known as ''exposure fee'') for each guarantee issued under this subchapter.

(b) AMOUNT OF EXPOSURE FEE.—To the extent that the cost of the loan guarantees under this subchapter is not otherwise provided for in appropriations Acts, the fee imposed under subsection (a) with respect to a loan guarantee shall be fixed in an amount that is sufficient to meet potential liabilities of the United States under the loan guarantee.

(c) PAYMENT TERMS.—The fee under subsection (a) for each guarantee shall become due as the guarantee is issued. In the case of a guarantee for a loan which is disbursed incrementally, and for which the guarantee is correspondingly issued incrementally as portions of the loan are disbursed, the fee shall be paid incrementally in proportion to the amount of the guarantee that is issued.

(d) ADMINISTRATIVE FEES.—(1) The Secretary of Defense shall charge a fee for each guarantee issued under this subchapter to reflect the additional administrative costs of the Department of Defense that are directly attributable to the administration of the program under this subchapter. Such fees shall be credited to a special account in the Treasury. Amounts in the special account shall be available, to the extent and in amounts provided in appropriations Acts, for paying the costs of administrative expenses of the Department of Defense that are attributable to the loan guarantee program under this subchapter.

(2)(A) If for any fiscal year amounts in the special account established under paragraph (1) are not available (or are not anticipated to be available) in a sufficient amount for administrative expenses of the Department of Defense for that fiscal year that are directly attributable to the administration of the program under this subchapter, the Secretary may use amounts currently available for operations and maintenance for Defense-wide activities, not to exceed $500,000 in any fiscal year, for those expenses.

(B) The Secretary shall, from funds in the special account established under paragraph (1), replenish operations and maintenance accounts for amounts expended under subparagraph (A) as soon as the Secretary determines practicable.

(Added Pub. L. 104–106, div. A, title XIII, §1321(a)(1), Feb. 10, 1996, 110 Stat. 476; amended Pub. L. 106–398, §1 [[div. A], title X, §1081(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–284.)

RENUMBERING OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§1801(d), 1873(b), (c), Jan. 1, 2021, 134 Stat. 4151, 4290, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this subchapter is transferred to chapter 389 of this title, as added by section 1873(a) of Pub. L. 116–283, inserted after the table of subchapters at the beginning of the chapter, and redesignated as subchapter I, and this section is redesignated as section 4974 of this title. See Effective Date of 2021 Amendment note below.

AMENDMENTS

2000—Subsec. (d). Pub. L. 106–398 designated existing provisions as par. (1) and added par. (2).

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–398, §1 [[div. A], title X, §1081(b), (c)], Oct. 30, 2000, 114 Stat. 1654, 1654A–284, provided that:

''(b) EFFECTIVE DATE.—Paragraph (2) of section 2540c(d) of title 10, United States Code, as added by subsection (a), shall take effect on October 1, 2000.

''(c) LIMITATION PENDING SUBMISSION OF REPORT.—The Secretary of Defense may not exercise the authority provided by paragraph (2) of section 2540c(d) of title 10, United States Code, as added by subsection (a), until the Secretary submits to Congress a report on the operation of the Defense Export Loan Guarantee Program under subchapter V of chapter 148 of title 10, United States Code. The report shall include the following:

''(1) A discussion of the effectiveness of the loan guarantee program in furthering the sale of United States defense articles, defense services, and design and construction services to nations that are specified in section 2540(b) of such title, to include a comparison of the loan guarantee program with other United States Government programs that are intended to contribute to the sale of United States defense articles, defense services, and design and construction services and other comparisons the Secretary determines to be appropriate.

''(2) A discussion of the requirements and resources (including personnel and funds) for continued administration of the loan guarantee program by the Defense Department, to include—

''(A) an itemization of the requirements necessary and resources available (or that could be made available) to administer the loan guarantee program for each of the following entities: the Defense Security Cooperation Agency, the Department of Defense International Cooperation Office, and other Defense Department agencies, offices, or activities as the Secretary may specify; and

''(B) for each such activity, agency, or office, a comparison of the use of Defense Department personnel exclusively to administer, manage, and oversee the program with the use of contracted commercial entities to administer and manage the program.

''(3) Any legislative recommendations that the Secretary believes could improve the effectiveness of the program.

''(4) A determination made by the Secretary of Defense indicating which Defense Department agency, office, or other activity should administer, manage,

and oversee the loan guarantee program to increase sales of United States defense articles, defense services, and design and construction services, such determination to be made based on the information and analysis provided in the report.''

§ 2540d. Definitions

In this subchapter:

(1) The terms ''defense article'', ''defense services'', and ''design and construction services'' have the meanings given those terms in section 47 of the Arms Export Control Act (22 U.S.C. 2794).

(2) The term ''cost'', with respect to a loan guarantee, has the meaning given that term in section 502 of the Congressional Budget and Impoundment Control Act of 1974 (2 U.S.C. 661a).

(Added Pub. L. 104–106, div. A, title XIII, § 1321(a)(1), Feb. 10, 1996, 110 Stat. 477.)

RENUMBERING OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1873(b), (c), Jan. 1, 2021, 134 Stat. 4151, 4290, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this subchapter is transferred to chapter 389 of this title, as added by section 1873(a) of Pub. L. 116–283, inserted after the table of subchapters at the beginning of the chapter, and redesignated as subchapter I, and this section is redesignated as section 4975 of this title. See Effective Date of 2021 Amendment note below.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

SUBCHAPTER VII—CRITICAL INFRASTRUCTURE PROTECTION LOAN GUARANTEES

Sec.	
2541.	Establishment of loan guarantee program.
2541a.	Fees charged and collected.
2541b.	Administration.
2541c.	Transferability, additional limitations, and definition.
2541d.	Reports.

REPEAL OF SUBCHAPTER

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1881(a), Jan. 1, 2021, 134 Stat. 4151, 4293, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, chapter 148 of this title, and therefore this subchapter, is repealed. See Effective Date of Repeal note below.

EFFECTIVE DATE OF REPEAL

Repeal effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 2541. Establishment of loan guarantee program

(a) ESTABLISHMENT.—In order to meet the national security objectives in section 2501(a) of this title, the Secretary of Defense shall establish a program under which the Secretary may issue guarantees assuring lenders against losses of principal or interest, or both principal and interest, for loans made to qualified commercial firms to fund, in whole or in part, any of the following activities:

(1) The improvement of the protection of the critical infrastructure of the commercial firms.

(2) The refinancing of improvements previously made to the protection of the critical infrastructure of the commercial firms.

(b) QUALIFIED COMMERCIAL FIRMS.—For purposes of this section, a qualified commercial firm is a company or other business entity (including a consortium of such companies or other business entities, as determined by the Secretary) that the Secretary determines—

(1) conducts a significant level of its research, development, engineering, and manufacturing activities in the United States;

(2) is a company or other business entity the majority ownership or control of which is by United States citizens or is a company or other business of a parent company that is incorporated in a country the government of which—

(A) encourages the participation of firms so owned or controlled in research and development consortia to which the government of that country provides funding directly or provides funding indirectly through international organizations or agreements; and

(B) affords adequate and effective protection for the intellectual property rights of companies incorporated in the United States;

(3) provides technology products or services critical to the operations of the Department of Defense;

(4) meets standards of prevention of cyberterrorism applicable to the Department of Defense; and

(5) agrees to submit the report required under section 2541d of this title.

(c) LOAN LIMITS.—The maximum amount of loan principal guaranteed during a fiscal year under this section may not exceed $10,000,000, with respect to all borrowers.

(d) GOALS AND STANDARDS.—The Secretary shall prescribe regulations setting forth goals for the use of the loan guarantees provided under this section and standards for evaluating whether those goals are met by each entity receiving such loan guarantees.

(e) AUTHORITY SUBJECT TO PROVISIONS OF APPROPRIATIONS.—The Secretary may guarantee a loan under this subchapter only to such extent or in such amounts as may be provided in advance in appropriations Acts.

(Added Pub. L. 106–398, § 1 [[div. A], title X, § 1033(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–258.)

TRANSFER OF SUBCHAPTER AND SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1873(b), (c), Jan. 1, 2021, 134 Stat. 4151, 4290, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation

and applicability of existing law, this subchapter is transferred to chapter 389 of this title, as added by section 1873(a) of Pub. L. 116–283, inserted after subchapter I, and redesignated as subchapter II, and this section is redesignated as section 4981 of this title. See Effective Date of 2021 Amendment note below.

PRIOR PROVISIONS

A prior section 2541 was renumbered section 2551 of this title.

Another prior section 2541 was renumbered section 2539b of this title.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§2541a. Fees charged and collected

(a) FEE REQUIRED.—The Secretary of Defense shall assess a fee for providing a loan guarantee under this subchapter.

(b) AMOUNT OF FEE.—The amount of the fee shall be not less than 75 percent of the amount incurred by the Secretary to provide the loan guarantee.

(c) SPECIAL ACCOUNT.—(1) Such fees shall be credited to a special account in the Treasury.

(2) Amounts in the special account shall be available, to the extent and in amounts provided in appropriations Acts, for paying the costs of administrative expenses of the Department of Defense that are attributable to the loan guarantee program under this subchapter.

(3)(A) If for any fiscal year amounts in the special account established under paragraph (1) are not available (or are not anticipated to be available) in a sufficient amount for administrative expenses of the Department of Defense for that fiscal year that are directly attributable to the administration of the program under this subchapter, the Secretary may use amounts currently available for operations and maintenance for Defense-wide activities, not to exceed $500,000 in any fiscal year, for those expenses.

(B) The Secretary shall, from funds in the special account established under paragraph (1), replenish operations and maintenance accounts for amounts expended under subparagraph (A).

(Added Pub. L. 106–398, §1 [[div. A], title X, §1033(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–259.)

TRANSFER OF SUBCHAPTER AND SECTION

Pub. L. 116–283, div. A, title XVIII, §§1801(d), 1873(b), (c), Jan. 1, 2021, 134 Stat. 4151, 4290, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this subchapter is transferred to chapter 389 of this title, as added by section 1873(a) of Pub. L. 116–283, inserted after subchapter I, and redesignated as subchapter II, and this section is redesignated as section 4982 of this title. See Effective Date of 2021 Amendment note below.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§2541b. Administration

(a) AGREEMENTS REQUIRED.—The Secretary of Defense may enter into one or more agreements, each with an appropriate Federal or private entity, under which such entity may, under this subchapter—

(1) process applications for loan guarantees;

(2) administer repayment of loans; and

(3) provide any other services to the Secretary to administer this subchapter.

(b) TREATMENT OF COSTS.—The costs of such agreements shall be considered, for purposes of the special account established under section 2541a(c), to be costs of administrative expenses of the Department of Defense that are attributable to the loan guarantee program under this subchapter.

(Added Pub. L. 106–398, §1 [[div. A], title X, §1033(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–259.)

TRANSFER OF SUBCHAPTER AND SECTION

Pub. L. 116–283, div. A, title XVIII, §§1801(d), 1873(b), (c), Jan. 1, 2021, 134 Stat. 4151, 4290, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this subchapter is transferred to chapter 389 of this title, as added by section 1873(a) of Pub. L. 116–283, inserted after subchapter I, and redesignated as subchapter II, and this section is redesignated as section 4983 of this title. See Effective Date of 2021 Amendment note below.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§2541c. Transferability, additional limitations, and definition

The following provisions of subchapter VI of this chapter apply to guarantees issued under this subchapter:

(1) Section 2540a, relating to transferability of guarantees.

(2) Subsections (b) and (c) of section 2540b, providing limitations.

(3) Section 2540d(2), providing a definition of the term ''cost''.

(Added Pub. L. 106–398, §1 [[div. A], title X, §1033(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–260; amended Pub. L. 107–107, div. A, title X, §1048(a)(24), Dec. 28, 2001, 115 Stat. 1224.)

RENUMBERING OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§1801(d), 1873(b), (c), Jan. 1, 2021, 134 Stat. 4151, 4290, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this subchapter is transferred to chapter 389 of this title, as added by section 1873(a) of Pub. L. 116–283, inserted after subchapter I, and redes-

ignated as subchapter II, and this section is redesignated as section 4984 of this title. See Effective Date of 2021 Amendment note below.

AMENDMENTS

2001—Pub. L. 107–107 substituted ''subchapter'' for ''subtitle'' in two places in introductory provisions.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 2541d. Reports

The Secretary of Defense shall require each qualified commercial firm for which a loan is guaranteed under this subchapter to submit to the Secretary a report on the improvements financed or refinanced with the loan. The report shall include an assessment of the value of the improvements for the protection of the critical infrastructure of that commercial firm. The Secretary shall prescribe the time for submitting the report.

(Added Pub. L. 106–398, § 1 [[div. A], title X, § 1033(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–260; amended Pub. L. 108–136, div. A, title X, § 1031(a)(25), Nov. 24, 2003, 117 Stat. 1598.)

TRANSFER OF SUBCHAPTER AND SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1873(b), (c), Jan. 1, 2021, 134 Stat. 4151, 4290, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this subchapter is transferred to chapter 389 of this title, as added by section 1873(a) of Pub. L. 116–283, inserted after subchapter I, and redesignated as subchapter II, and this section is redesignated as section 4985 of this title. See Effective Date of 2021 Amendment note below.

PRIOR PROVISIONS

Prior sections 2542 to 2550 were renumbered sections 2552 to 2560 of this title, respectively.

AMENDMENTS

2003—Pub. L. 108–136 struck out subsec. (a) designation and heading and struck out subsec. (b) which directed that the Secretary of Defense annually submit to Congress a report on the loan guarantee program under this subchapter.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

CHAPTER 149—DEFENSE ACQUISITION SYSTEM

Sec.	
2545.	Definitions.
2546.	Civilian management of the defense acquisition system.
2546a.	Customer-oriented acquisition system.
2547.	Acquisition-related functions of chiefs of the armed forces.
2548.	Performance assessments of the defense acquisition system.

TRANSFER OF CHAPTER

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1808(a)(1), Jan. 1, 2021, 134 Stat. 4151, 4159, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this chapter is transferred to part V of subtitle A of this title, as added by section 801 of Pub. L. 115–232, inserted in place of chapter 205 as enacted by that section, and redesignated as chapter 205. See Effective Date of 2021 Amendment note below.

PRIOR PROVISIONS

A prior chapter 149, comprised of sections 2511 to 2518, relating to manufacturing technology, was repealed, except for sections 2517 and 2518, by Pub. L. 102–484, div. D, title XLII, § 4202(a), Oct. 23, 1992, 106 Stat. 2659. Sections 2517 and 2518 of that chapter were renumbered sections 2523 and 2522, respectively, of this chapter by Pub. L. 102–484, div. D, title XLII, §§ 4232(a), 4233(a), Oct. 23, 1992, 106 Stat. 2687, and were subsequently repealed.

Another prior chapter 149, comprised of section 2511, was successively renumbered chapter 150 of this title, comprised of section 2521, then chapter 152 of this title, comprised of section 2540 et seq.

A prior chapter 150, comprised of sections 2521 to 2526, relating to development of dual-use critical technologies, was repealed, except for sections 2524 to 2526, by Pub. L. 102–484, div. D, title XLII, § 4202(a), Oct. 23, 1992, 106 Stat. 2659. Sections 2524, 2525, and 2526 of that chapter were renumbered sections 2513, 2517, and 2518, respectively, of this chapter by Pub. L. 102–484, div. D, title XLII, §§ 4223(a), 4227(a), 4228, Oct. 23, 1992, 106 Stat. 2681, 2685. Section 2513 of this chapter was subsequently repealed.

Another prior chapter 150, comprised of section 2521, was renumbered chapter 152 of this title, comprised of section 2540 et seq.

AMENDMENTS

2015—Pub. L. 114–92, div. A, title VIII, § 802(a)(2), Nov. 25, 2015, 129 Stat. 879, added item 2546a.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 2545. Definitions

In this chapter:

(1) The term ''acquisition'' has the meaning provided in section 131 of title 41.

(2) The term ''defense acquisition system'' means the workforce engaged in carrying out the acquisition of property and services for the Department of Defense; the management structure responsible for directing and overseeing the acquisition of property and services for the Department of Defense; and the statutory, regulatory, and policy framework that guides the acquisition of property and services for the Department of Defense.

(3) The term ''element of the defense acquisition system'' means an organization that employs members of the acquisition workforce, carries out acquisition functions, and focuses primarily on acquisition.

(4) The term ''acquisition workforce'' has the meaning provided in section 101(a)(18) of this title.

(Added Pub. L. 111–383, div. A, title VIII, § 861(a), Jan. 7, 2011, 124 Stat. 4288; amended Pub. L.

113–291, div. A, title X, § 1071(a)(11), Dec. 19, 2014, 128 Stat. 3505; Pub. L. 116–283, div. A, title XVIII, § 1806(a)(2)–(4), Jan. 1, 2021, 134 Stat. 4152.)

AMENDMENT AND TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1806(a)(2)–(4), 1808(a)(2), Jan. 1, 2021, 134 Stat. 4151, 4152, 4159, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is amended and transferred as follows:

(1) paragraphs (1), (2), and (3) of this section are transferred to section 3001 of this title, as added by section 1806(a)(1) of Pub. L. 116–283, and redesignated as subsections (c), (a), and (b), respectively, of that section; and

(2) this section, as part of chapter 205 of this title as transferred and redesignated by section 1808(a)(1) of Pub. L. 116–283, is redesignated as section 3101 of this title.

See 2021 Amendment notes and Effective Date of 2021 Amendment note below.

PRIOR PROVISIONS

A prior section 2545 was renumbered section 2555 of this title.

AMENDMENTS

2021—Par. (1). Pub. L. 116–283, § 1806(a)(4), redesignated par. (1) as section 3001(c) of this title.

Par. (2). Pub. L. 116–283, § 1806(a)(2), redesignated par. (2) as section 3001(a) of this title.

Par. (3). Pub. L. 116–283, § 1806(a)(3), redesignated par. (3) as section 3001(b) of this title.

2014—Par. (1). Pub. L. 113–291 substituted ''section 131 of title 41'' for ''section 4(16) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(16))''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

SHORT TITLE OF 2011 AMENDMENT

Pub. L. 111–383, div. A, title VIII, § 860, Jan. 7, 2011, 124 Stat. 4287, provided that: ''This subtitle [subtitle F (§§ 860–896) of title VIII of div. A of Pub. L. 111–383, enacting this chapter and sections 139e, 1701a, 1722b, 1748, 1762, and 2508 of this title, amending sections 101, 1723, 1746, 2302, 2500, 2501, 2505, and 2506 of this title, enacting provisions set out as notes under sections 1723, 1748, 2222, 2302, 2306a, 2330, and 2501 of this title, amending provisions set out as notes under section 2371 of this title and section 637 of Title 15, Commerce and Trade, and repealing provisions set out as notes under sections 1701 and 1723 of this title] may be cited as the 'Improve Acquisition Act of 2010'.''

REVIEW OF TIME-BASED REQUIREMENTS PROCESS AND BUDGETING AND ACQUISITION SYSTEMS

Pub. L. 114–92, div. A, title VIII, § 810, Nov. 25, 2015, 129 Stat. 890, provided that:

''(a) TIME-BASED REQUIREMENTS PROCESS.—The Secretary of Defense and the Chairman of the Joint Chiefs of Staff shall review the requirements process with the goal of establishing an agile and streamlined system that develops requirements that provide stability and foundational direction for acquisition programs and shall determine the advisability of providing a time-based or phased distinction between capabilities needed to be deployed urgently, within 2 years, within 5 years, and longer than 5 years.

''(b) BUDGETING AND ACQUISITION SYSTEMS.—The Secretary of Defense shall review and ensure that the acquisition and budgeting systems are structured to meet time-based or phased requirements in a manner that is predictable, cost effective, and efficient and takes advantage of emerging technological developments.''

§ 2546. Civilian management of the defense acquisition system

(a) RESPONSIBILITY OF THE UNDER SECRETARY OF DEFENSE FOR ACQUISITION AND SUSTAINMENT.—Subject to the authority, direction and control of the Secretary of Defense, the Under Secretary of Defense for Acquisition and Sustainment shall be responsible for the management of the defense acquisition system and shall exercise such control of the system and perform such duties as are necessary to ensure the successful and efficient operation of the defense acquisition system, including the duties enumerated and assigned to the Under Secretary elsewhere in this title.

(b) RESPONSIBILITY OF THE SERVICE ACQUISITION EXECUTIVES.—Subject to the direction of the Under Secretary of Defense for Acquisition and Sustainment on matters pertaining to acquisition, and subject to the authority, direction, and control of the Secretary of the military department concerned, a service acquisition executive of a military department shall be responsible for the management of elements of the defense acquisition system in that military department and shall exercise such control of the system and perform such duties as are necessary to ensure the successful and efficient operation of such elements of the defense acquisition system.

(Added Pub. L. 111–383, div. A, title VIII, § 861(a), Jan. 7, 2011, 124 Stat. 4288; amended Pub. L. 116–92, div. A, title IX, § 902(78), Dec. 20, 2019, 133 Stat. 1552.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1808(a)(2), Jan. 1, 2021, 134 Stat. 4151, 4159, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section, as part of chapter 205 of this title as transferred and redesignated by section 1808(a)(1) of Pub. L. 116–283, is redesignated as section 3103 of this title. See Effective Date of 2021 Amendment note below.

PRIOR PROVISIONS

A prior section 2546 was renumbered section 2556 of this title.

AMENDMENTS

2019—Subsec. (a). Pub. L. 116–92, § 902(78)(A), (B), substituted ''Under Secretary of Defense for Acquisition and Sustainment'' for ''Under Secretary of Defense for Acquisition, Technology, and Logistics'' in heading and text.

Subsec. (b). Pub. L. 116–92, § 902(78)(C), substituted ''Under Secretary of Defense for Acquisition and Sustainment'' for ''Under Secretary of Defense for Acquisition, Technology, and Logistics''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 2546a. Customer-oriented acquisition system

(a) OBJECTIVE.—It shall be the objective of the defense acquisition system to meet the needs of its customers in the most cost-effective manner practicable. The acquisition policies, directives, and regulations of the Department of Defense shall be modified as necessary to ensure the development and implementation of a customer-oriented acquisition system.

(b) CUSTOMER.—The customer of the defense acquisition system is the armed force that will have primary responsibility for fielding the system or systems acquired. The customer is represented with regard to a major defense acquisition program by the Secretary of the military department concerned and the Chief of the armed force concerned.

(c) ROLE OF CUSTOMER.—The customer of a major defense acquisition program shall be responsible for balancing resources against priorities on the acquisition program and ensuring that appropriate trade-offs are made among cost, schedule, technical feasibility, and performance on a continuing basis throughout the life of the acquisition program.

(Added Pub. L. 114–92, div. A, title VIII, § 802(a)(1), Nov. 25, 2015, 129 Stat. 878.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1808(a)(2), Jan. 1, 2021, 134 Stat. 4151, 4159, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section, as part of chapter 205 of this title as transferred and redesignated by section 1808(a)(1) of Pub. L. 116–283, is redesignated as section 3102 of this title. See Effective Date of 2021 Amendment note below.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 2547. Acquisition-related functions of chiefs of the armed forces

(a) PERFORMANCE OF CERTAIN ACQUISITION-RELATED FUNCTIONS.—The Secretary of Defense shall ensure that the Chief of Staff of the Army, the Chief of Naval Operations, the Chief of Staff of the Air Force, the Commandant of the Marine Corps, and the Chief of Space Operations assist the Secretary of the military department concerned in the performance of the following acquisition-related functions of such department:

(1) The development of requirements for equipping the armed force concerned (subject, where appropriate, to validation by the Joint Requirements Oversight Council pursuant to section 181 of this title).

(2) Decisions regarding the balancing of resources and priorities, and associated trade-offs among cost, schedule, technical feasibility, and performance on major defense acquisition programs.

(3) The coordination of measures to control requirements creep in the defense acquisition system.

(4) The recommendation of trade-offs among life-cycle cost, schedule, and performance objectives, and procurement quantity objectives, to ensure acquisition programs deliver best value in meeting the approved military requirements.

(5) Termination of development or procurement programs for which life-cycle cost, schedule, and performance expectations are no longer consistent with approved military requirements and levels of priority, or which no longer have approved military requirements.

(6) The development and management of career paths in acquisition for military personnel (as required by section 1722a of this title).

(7) The assignment and training of contracting officer representatives when such representatives are required to be members of the armed forces because of the nature of the contract concerned.

(b) ADHERENCE TO REQUIREMENTS IN MAJOR DEFENSE ACQUISITION PROGRAMS.—(1) The Secretary of the military department concerned shall ensure that the program capability document supporting a Milestone B or subsequent decision for a major defense acquisition program may not be approved until the chief of the armed force concerned determines in writing that the requirements in the document are necessary and realistic in relation to the program cost and fielding targets established under section 2448a(a) of this title.

(2) Consistent with the performance of duties under subsection (a), the Chief of the armed force concerned, or in the case of a joint program the chiefs of the armed forces concerned, with respect to major defense acquisition programs, shall—

(A) concur with the need for a materiel solution as identified in the Materiel Development Decision Review prior to entry into the Materiel Solution Analysis Phase under Department of Defense Instruction 5000.02;

(B) concur with the cost, schedule, technical feasibility, and performance trade-offs that have been made with regard to the program before Milestone A approval is granted under section 2366a of this title;

(C) concur that appropriate trade-offs among cost, schedule, technical feasibility, and performance objectives have been made to ensure that the program is affordable when considering the per unit cost and the total life-cycle cost before Milestone B approval is granted under section 2366b of this title; and

(D) concur that the requirements in the program capability document are necessary and realistic in relation to program cost and fielding targets as required by paragraph (1) before Milestone C approval is granted.

(c) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to affect the assignment of functions under section 7014(c)(1)(A), section 8014(c)(1)(A), or section 9014(c)(1)(A) of this title, except as explicitly provided in this section.

(d) DEFINITIONS.—In this section:

(1) The term ''requirements creep'' means the addition of new technical or operational

specifications after a requirements document is approved by the appropriate validation authority for the requirements document.

(2) The term ''requirements document'' means a document produced in the requirements process that is provided for an acquisition program to guide the subsequent development, production, and testing of the program and that—

(A) justifies the need for a materiel approach, or an approach that is a combination of materiel and non-materiel, to satisfy one or more specific capability gaps;

(B) details the information necessary to develop an increment of militarily useful, logistically supportable, and technically mature capability, including key performance parameters; or

(C) identifies production attributes required for a single increment of a program.

(3) The term ''program capability document'' has the meaning provided in section 2446a(b)(5) of this title.

(Added Pub. L. 111–383, div. A, title VIII, § 861(a), Jan. 7, 2011, 124 Stat. 4289; amended Pub. L. 112–239, div. A, title IX, § 951(c), Jan. 2, 2013, 126 Stat. 1891; Pub. L. 114–92, div. A, title VIII, § 802(b), Nov. 25, 2015, 129 Stat. 879; Pub. L. 114–328, div. A, title VIII, § 807(c), Dec. 23, 2016, 130 Stat. 2261; Pub. L. 115–91, div. A, title VIII, § 833, Dec. 12, 2017, 131 Stat. 1468; Pub. L. 115–232, div. A, title VIII, § 809(a), Aug. 13, 2018, 132 Stat. 1840; Pub. L. 116–92, div. A, title XVII, § 1731(a)(52), Dec. 20, 2019, 133 Stat. 1815; Pub. L. 116–283, div. A, title IX, § 924(b)(32), title XVIII, § 1847(e)(4)(B), Jan. 1, 2021, 134 Stat. 3825, 4257.)

TRANSFER AND AMENDMENT OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1808(a)(2), 1847(e)(4)(B), Jan. 1, 2021, 134 Stat. 4151, 4159, 4257, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred and amended as follows:

(1) this section, as part of chapter 205 of this title as transferred and redesignated by section 1808(a)(1) of Pub. L. 116–283, is redesignated as section 3104 of this title; and

(2) subsection (b) of this section is transferred to section 4274(a) and (b) of this title.

See 2021 Amendment note and Effective Date of 2021 Amendment note below.

PRIOR PROVISIONS

A prior section 2547 was renumbered section 2557 of this title.

AMENDMENTS

2021—Subsec. (a). Pub. L. 116–283, § 924(b)(32), substituted ''the Commandant of the Marine Corps, and the Chief of Space Operations'' for ''and the Commandant of the Marine Corps''.

Subsec. (b). Pub. L. 116–283, § 1847(e)(4)(B), transferred subsec. (b) to section 4274(a) and (b) of this title.

2019—Subsec. (b)(2)(A). Pub. L. 116–92 substituted ''materiel'' for ''material'' and ''Materiel'' for ''Material'' in two places.

2018—Subsec. (c). Pub. L. 115–232 substituted ''section 7014(c)(1)(A), section 8014(c)(1)(A), or section 9014(c)(1)(A)'' for ''section 3014(c)(1)(A), section 5014(c)(1)(A), or section 8014(c)(1)(A)''.

2017—Subsec. (b). Pub. L. 115–91 designated existing provisions as par. (1) and added par. (2).

2016—Subsecs. (b), (c). Pub. L. 114–328, § 807(c)(1), (2), added subsec. (b) and redesignated former subsec. (b) as (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 114–328, § 807(c)(1), redesignated subsec. (c) as (d).

Subsec. (d)(3). Pub. L. 114–328, § 807(c)(3), added par. (3).

2015—Subsec. (a)(2) to (5). Pub. L. 114–92, § 802(b)(1), (2), added par. (2) and redesignated former pars. (2) to (4) as (3) to (5), respectively. Former par. (5) redesignated (6).

Subsec. (a)(6). Pub. L. 114–92, § 802(b)(1), (3), redesignated par. (5) as (6) and substituted ''The development and management'' for ''The development''. Former par. (6) redesignated (7).

Subsec. (a)(7). Pub. L. 114–92, § 802(b)(1), redesignated par. (6) as (7).

2013—Subsec. (a)(1). Pub. L. 112–239, § 951(c)(1), substituted ''of requirements for equipping the armed force concerned'' for ''of requirements relating to the defense acquisition system''.

Subsec. (a)(3) to (6). Pub. L. 112–239, § 951(c)(2), (3), added pars. (3) and (4) and redesignated former pars. (3) and (4) as (5) and (6), respectively.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by sections 1808(a)(2) and 1847(e)(4)(B) of Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115–232 effective Feb. 1, 2019, with provision for the coordination of amendments and special rule for certain redesignations, see section 800 of Pub. L. 115–232, set out as a note preceding section 3001 of this title.

§ 2548. Performance assessments of the defense acquisition system

(a) PERFORMANCE ASSESSMENTS REQUIRED.—The Secretary of Defense, acting through the Under Secretary of Defense for Acquisition and Sustainment, the Director of Procurement and Acquisition Policy, and the Director of the Office of Performance Assessment and Root Cause Analysis, shall issue guidance, with detailed implementation instructions, for the Department of Defense to provide for periodic independent performance assessments of elements of the defense acquisition system for the purpose of—

(1) determining the extent to which such elements of the defense acquisition system deliver value to the Department of Defense, taking into consideration the performance elements identified in subsection (b);

(2) assisting senior officials of the Department of Defense in identifying and developing lessons learned from best practices and shortcomings in the performance of such elements of the defense acquisition system; and

(3) assisting senior officials of the Department of Defense in developing acquisition workforce excellence under section 1701a of this title.

(b) AREAS CONSIDERED IN PERFORMANCE ASSESSMENTS.—(1) Each performance assessment conducted pursuant to subsection (a) shall consider, at a minimum—

(A) the extent to which acquisitions conducted by the element of the defense acquisi-

tion system under review meet applicable cost, schedule, and performance objectives; and

(B) the staffing and quality of the acquisition workforce and the effectiveness of the management of the acquisition workforce, including workforce incentives and career paths.

(2) The Secretary of Defense shall ensure that the performance assessments required by this section are appropriately tailored to reflect the diverse nature of the work performed by each element of the defense acquisition system. In addition to the mandatory areas under paragraph (1), a performance assessment may consider, as appropriate, specific areas of acquisition concern, such as—

(A) the selection of contractors, including—

(i) the extent of competition and the use of exceptions to competition requirements;

(ii) compliance with Department of Defense policies regarding the participation of small business concerns and various categories of small business concerns, including the use of contract bundling and the availability of non-bundled contract vehicles;

(iii) the quality of market research;

(iv) the effective consideration of contractor past performance; and

(v) the number of bid protests, the extent to which such bid protests have been successful, and the reasons for such success;

(B) the negotiation of contracts, including—

(i) the appropriate application of section 2306a of this title (relating to truth in negotiations);

(ii) the appropriate use of contract types appropriate to specific procurements;

(iii) the appropriate use of performance requirements;

(iv) the appropriate acquisition of technical data and other rights and assets necessary to support long-term sustainment and follow-on procurement; and

(v) the timely definitization of any undefinitized contract actions; and

(C) the management of contractor performance, including—

(i) the assignment of appropriately qualified contracting officer representatives and other contract management personnel;

(ii) the extent of contract disputes, the reasons for such disputes, and the extent to which they have been successfully addressed;

(iii) the appropriate consideration of long-term sustainment and energy efficiency objectives; and

(iv) the appropriate use of integrated testing.

(c) CONTENTS OF GUIDANCE.—The guidance issued pursuant to subsection (a) shall ensure that each element of the defense acquisition system is subject to a performance assessment under this section not less often than once every four years, and shall address, at a minimum—

(1) the designation of elements of the defense acquisition system that are subject to performance assessment at an organizational level that ensures such assessments can be performed in an efficient and integrated manner;

(2) the frequency with which such performance assessments should be conducted;

(3) goals, standards, tools, and metrics for use in conducting performance assessments;

(4) the composition of the teams designated to perform performance assessments;

(5) any phase-in requirements needed to ensure that qualified staff are available to perform performance assessments;

(6) procedures for tracking the implementation of recommendations made pursuant to performance assessments;

(7) procedures for developing and disseminating lessons learned from performance assessments; and

(8) procedures for ensuring that information from performance assessments are retained electronically and are provided in a timely manner to the Under Secretary of Defense for Acquisition and Sustainment and the Director of the Office of Performance Assessment and Root Cause Analysis as needed to assist them in performing their responsibilities under this section.

(d) PERFORMANCE GOALS UNDER GOVERNMENT PERFORMANCE AND RESULTS ACT OF 1993.—The annual performance plan prepared by the Department of Defense pursuant to section 1115 of title 31 shall include appropriate performance goals for elements of the defense acquisition system.

(e) REPORTING REQUIREMENT.—The annual report prepared by the Secretary of Defense pursuant to section 1116 of title 31 shall address the Department's success in achieving performance goals established pursuant to such section for elements of the defense acquisition system.

(Added Pub. L. 111–383, div. A, title VIII, § 861(a), Jan. 7, 2011, 124 Stat. 4289; amended Pub. L. 112–239, div. A, title X, § 1076(d)(5), (f)(30), Jan. 2, 2013, 126 Stat. 1951, 1953; Pub. L. 115–91, div. A, title X, § 1081(a)(41), Dec. 12, 2017, 131 Stat. 1596; Pub. L. 116–92, div. A, title IX, § 902(79), Dec. 20, 2019, 133 Stat. 1553.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1808(a)(2), Jan. 1, 2021, 134 Stat. 4151, 4159, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section, as part of chapter 205 of this title as transferred and redesignated by section 1808(a)(1) of Pub. L. 116–283, is redesignated as section 3105 of this title. See Effective Date of 2021 Amendment note below.

REFERENCES IN TEXT

The Government Performance and Results Act of 1993, referred to in subsec. (d), is Pub. L. 103–62, Aug. 3, 1993, 107 Stat. 285, which enacted section 306 of Title 5, Government Organization and Employees, sections 1115 to 1119, 9703, and 9704 of Title 31, Money and Finance, and sections 2801 to 2805 of Title 39, Postal Service, amended section 1105 of Title 31, and enacted provisions set out as notes under sections 1101 and 1115 of Title 31. For complete classification of this Act to the Code, see Short Title of 1993 Amendment note set out under section 1101 of Title 31 and Tables.

PRIOR PROVISIONS

A prior section 2548 was renumbered section 2558 of this title.

AMENDMENTS

2019—Subsecs. (a), (c)(8). Pub. L. 116–92 substituted ''Under Secretary of Defense for Acquisition and Sustainment'' for ''Under Secretary of Defense for Acquisition, Technology, and Logistics''.

2017—Subsec. (e). Pub. L. 115–91 substituted ''Requirement'' for ''Requirements'' in heading, struck out introductory provisions ''Beginning with fiscal year 2012—'', substituted ''The annual report prepared by the Secretary'' for ''(1) the annual report prepared by the Secretary'', and struck out par. (2) which read as follows: ''the annual report prepared by the Director of the Office of Performance Assessment and Root Cause Analysis pursuant to section 2438(f) of this title shall include information on the activities undertaken by the Department pursuant to such section, including a summary of significant findings or recommendations arising out of performance assessments.''

2013—Subsec. (a). Pub. L. 112–239, §1076(f)(30)(A)(i), substituted ''The Secretary'' for ''Not later than 180 days after the date of the enactment of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011, the Secretary'' in introductory provisions.

Subsec. (a)(3). Pub. L. 112–239, §1076(f)(30)(A)(ii), inserted period at end.

Subsec. (d). Pub. L. 112–239, §1076(f)(30)(B), inserted ''and'' after ''Government Performance'' in heading and substituted ''The'' for ''Beginning with fiscal year 2012, the'' in text.

Subsec. (e)(1). Pub. L. 112–239, §1076(f)(30)(C), struck out '', United States Code,'' after ''title 31''.

Subsec. (e)(2). Pub. L. 112–239, §1076(d)(5), substituted ''section 2438(f) of this title'' for ''section 103(f) of the Weapon Systems Acquisition Reform Act of 2009 (10 U.S.C. 2430 note),''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

CHAPTER 152—ISSUE OF SUPPLIES, SERVICES, AND FACILITIES

Sec.
2551. Equipment and barracks: national veterans' organizations.
2552. Equipment for instruction and practice: American National Red Cross.
2553. Equipment and services: Presidential inaugural ceremonies.
2554. Equipment and other services: Boy Scout Jamborees.
2555. Transportation services: international Girl Scout events.
2556. Shelter for homeless; incidental services.
2557. Excess nonlethal supplies: availability for humanitarian relief, domestic emergency assistance, and homeless veterans assistance.
2558. National military associations: assistance at national conventions.
2559. Provision of medical care to foreign military and diplomatic personnel: reimbursement required; waiver for provision of reciprocal services.
2560. Aircraft and vehicles: limitation on leasing to non-Federal agencies.
2561. Humanitarian assistance.
[2562. Repealed.]
2563. Articles and services of industrial facilities: sale to persons outside the Department of Defense.
2564. Provision of support for certain sporting events.
2564a. Provision of assistance for adaptive sports programs: members of the armed forces; certain veterans.
Sec.
2565. Nuclear test monitoring equipment: furnishing to foreign governments.
2566. Space and services: provision to military welfare societies.
2567. Space and services: provision to WIC offices.
2568. Retention of combat uniforms by members deployed in support of contingency operations.
2568a. Damaged personal protective equipment: award to members separating from the Armed Forces and veterans.

PRIOR PROVISIONS

Chapter was comprised of subchapter I, former section 2540, and subchapter II, sections 2541 to 2553, prior to amendment by Pub. L. 104–106, div. A, title XV, §1503(a)(29), Feb. 10, 1996, 110 Stat. 512, which struck out headings for subchapters I and II.

AMENDMENTS

2021—Pub. L. 116–283, div. A, title X, §1081(a)(39), Jan. 1, 2021, 134 Stat. 3873, substituted ''Damaged personal protective equipment: award to members separating from the Armed Forces and veterans'' for ''Damaged personal protective equipment: award to members separating from the armed forces and veterans'' in item 2568a.

2019—Pub. L. 116–92, div. A, title V, §592(c)(2), title XVII, §1731(a)(63), Dec. 20, 2019, 133 Stat. 1415, 1816, substituted ''Provision of assistance for adaptive sports programs: members of the armed forces; certain veterans'' for ''Provision of assistance for adaptive sports programs for members of the armed forces'' in item 2564a and amended item 2568a without change.

2018—Pub. L. 115–232, div. A, title VI, §623(b), Aug. 13, 2018, 132 Stat. 1801, added item 2568a.

2017—Pub. L. 115–91, div. A, title X, §1081(a)(42), Dec. 12, 2017, 131 Stat. 1596, inserted period at end of item 2567.

2016—Pub. L. 114–328, div. A, title XII, §1253(a)(2)(C), div. B, title XXVIII, §2812(b), Dec. 23, 2016, 130 Stat. 2532, 2717, struck out item 2562 ''Limitation on use of excess construction or fire equipment from Department of Defense stocks in foreign assistance or military sales programs'' and added item 2567.

2013—Pub. L. 112–239, div. A, title X, §1076(a)(4), Jan. 2, 2013, 126 Stat. 1948, made technical amendment to directory language of Pub. L. 112–81, §589(b). See 2011 Amendment note below.

2011—Pub. L. 112–81, div. A, title V, §589(b), Dec. 31, 2011, 125 Stat. 1438, as amended by Pub. L. 112–239, div. A, title X, §1076(a)(4), Jan. 2, 2013, 126 Stat. 1948, added item 2564a.

Pub. L. 111–383, div. A, title X, §1074(b)(2), Jan. 7, 2011, 124 Stat. 4368, substituted ''Excess nonlethal supplies: availability for humanitarian relief, domestic emergency assistance, and homeless veterans assistance'' for ''Excess nonlethal supplies: availability for homeless veteran initiatives and humanitarian relief'' in item 2557.

2008—Pub. L. 110–181, div. A, title III, §376(b), title X, §§1063(a)(12), 1068(b)(2), Jan. 28, 2008, 122 Stat. 84, 322, 326, inserted period at end of item 2567 and then struck out item 2567 ''Supplies, services, and equipment: provision in major public emergencies'' and added item 2568.

2006—Pub. L. 109–364, div. A, title X, §1076(b)(2), Oct. 17, 2006, 120 Stat. 2406, added item 2567.

2002—Pub. L. 107–314, div. A, title X, §1066(b), Dec. 2, 2002, 116 Stat. 2656, added item 2566.

2001—Pub. L. 107–107, div. A, title III, §361(b)(2), title XII, §1201(a)(2), Dec. 28, 2001, 115 Stat. 1065, 1245, substituted ''Excess nonlethal supplies: availability for homeless veteran initiatives and humanitarian relief'' for ''Excess nonlethal supplies: humanitarian relief'' in item 2557 and substituted ''2565.'' for ''2555.'' in item 2565.

2000—Pub. L. 106–398, §1 [[div. A], title X, §1033(b)(2), title XII, §1203(b)], Oct. 30, 2000, 114 Stat. 1654,

1654A–260, 1654A–325, renumbered items 2541 to 2554 as 2551 to 2564, respectively, and added item 2555 ''Nuclear test monitoring equipment: furnishing to foreign governments'' at end.

1997—Pub. L. 105–85, div. A, title X, § 1073(c)(2)(B), Nov. 18, 1997, 111 Stat. 1904, amended directory language of Pub. L. 104–201, § 367(b). See 1996 Amendment note below.

1996—Pub. L. 104–201, div. A, title III, § 367(b), Sept. 23, 1996, 110 Stat. 2497, as amended by Pub. L. 105–85, div. A, title X, § 1073(c)(2)(B), Nov. 18, 1997, 111 Stat. 1904, added item 2554.

Pub. L. 104–201, div. A, title III, § 366(b), Sept. 23, 1996, 110 Stat. 2496, substituted ''Equipment and services: Presidential inaugural ceremonies'' for ''Equipment: Inaugural Committee'' in item 2543.

Pub. L. 104–106, div. A, title XV, § 1503(a)(29), Feb. 10, 1996, 110 Stat. 512, struck out subchapter analysis consisting of items for subchapters I ''Issue to the Armed Forces'' and II ''Issue of Serviceable Material Other Than to the Armed Forces'' and struck out headings for subchapters I ''ISSUE TO THE ARMED FORCES'' and II ''ISSUE OF SERVICEABLE MATERIAL OTHER THAN TO THE ARMED FORCES''.

1994—Pub. L. 103–337, div. A, title III, § 339(a)(2), title XVI, § 1671(b)(14), Oct. 5, 1994, 108 Stat. 2720, 3014, struck out item 2540 ''Reserve components: supplies, services, and facilities'' and added item 2553.

1992—Pub. L. 102–484, div. A, title III, § 304(c)(2), div. D, title XLIII, § 4304(b), Oct. 23, 1992, 106 Stat. 2362, 2700, added items 2551 and 2552.

1991—Pub. L. 102–190, div. A, title VIII, § 821(e)(1), (2), Dec. 5, 1991, 105 Stat. 1431, substituted ''152'' for ''150'' as chapter number, ''ISSUE OF SUPPLIES, SERVICES, AND FACILITIES'' for ''ISSUE TO ARMED FORCES'' as chapter heading, added subchapter analysis and subchapter I heading, renumbered item 2521 as 2540, and substituted subchapter II heading for former chapter 151 heading ''ISSUE OF SERVICEABLE MATERIAL OTHER THAN TO ARMED FORCES''.

1990—Pub. L. 101–510, div. A, title VIII, § 823(a)(1), (b)(2), title XIV, § 1481(f)(2), (g)(2), Nov. 5, 1990, 104 Stat. 1600, 1602, 1707, substituted ''150'' for ''149'' as chapter number, renumbered item 2511 as 2521, and added items 2549 and 2550.

1989—Pub. L. 101–189, div. A, title III, § 329(a)(2), Nov. 29, 1989, 103 Stat. 1417, added item 2548.

1985—Pub. L. 99–145, title XIV, § 1454(b), Nov. 8, 1985, 99 Stat. 761, added item 2547.

1983—Pub. L. 98–94, title III, § 305(a)(2), Sept. 24, 1983, 97 Stat. 629, added item 2546.

1978—Pub. L. 95–492, § 2, Oct. 20, 1978, 92 Stat. 1642, added item 2545.

1972—Pub. L. 92–249, Mar. 10, 1972, 86 Stat. 62, added item 2544.

1958—Pub. L. 85–861, § 1(48)(B), Sept. 2, 1958, 72 Stat. 1459, added item 2543.

§ 2551. Equipment and barracks: national veterans' organizations

(a) The Secretary of a military department, under conditions prescribed by him, may lend cots, blankets, pillows, mattresses, bed sacks, and other supplies under the jurisdiction of that department to any recognized national veterans' organization for use at its national or state convention or national youth athletic or recreation tournament. He may, under conditions prescribed by him, also permit the organization to use unoccupied barracks under the jurisdiction of that department for such an occasion.

(b) Property lent under subsection (a) may be delivered on terms and at times agreed upon by the Secretary of the military department concerned and representatives of the veterans' organization. However, the veterans' organization must defray any expense incurred by the United States in the delivery, return, rehabilitation, or replacement of that property, as determined by the Secretary.

(c) The Secretary of the military department concerned shall require a good and sufficient bond for the return in good condition of property lent or used under subsection (a).

(Aug. 10, 1956, ch. 1041, 70A Stat. 142, § 2541; renumbered § 2551, Pub. L. 106–398, § 1 [[div. A], title X, § 1033(b)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–260.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2541(a)	5:150m.	Aug. 1, 1949, ch. 372, 63 Stat. 483.
2541(b)	5:150n.	
2541(c)	5:150*o*.	

In subsection (a), the word ''may'' is substituted for the words ''are authorized to * * * at their discretion''. The word ''supplies'' is substituted for the words ''articles or equipment''. The words ''available'' and ''as may be needed'' are omitted as surplusage. The words ''under the jurisdiction of that department'' are substituted for the words ''of the Army, Navy, or Air Force'' and ''under their respective jurisdictions''.

In subsection (b), the words ''prior to any such conventions or national youth athletic or recreation tournaments'' are omitted as surplusage.

In subsection (c), the words ''require of'' are substituted for the words ''take from''.

PRIOR PROVISIONS

A prior section 2551 was renumbered section 2561 of this title.

AMENDMENTS

2000—Pub. L. 106–398 renumbered section 2541 of this title as this section.

§ 2552. Equipment for instruction and practice: American National Red Cross

The Secretary of a military department, under regulations to be prescribed by him, may lend equipment under the jurisdiction of that department that is on hand, and that can be temporarily spared, to any organization formed by the American National Red Cross that needs it for instruction and practice for the purpose of aiding the Army, Navy, or Air Force in time of war. The Secretary shall by regulation require the immediate return, upon request, of equipment lent under this section. The Secretary shall require a bond, in double the value of the property issued under this section, for the care and safekeeping of that property and for its return when required.

(Aug. 10, 1956, ch. 1041, 70A Stat. 142, § 2542; renumbered § 2552, Pub. L. 106–398, § 1 [[div. A], title X, § 1033(b)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–260.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2542	10:1255. 10:1256. 34:549. 34:550.	May 8, 1914, J. Res. 15, 38 Stat. 771.

The word ''may'' is substituted for the words ''is authorized * * * at his discretion'', in 10:1255 and 34:549.

The word ''lend'' is substituted for the word ''issue'', in 10:1255 and 34:549. The words ''proper'', ''to be'', ''out of equipment for medical or other establishments'', and ''belonging to the Government'', in 10:1255 and 34:549, are omitted as surplusage. The words ''that needs it'' are substituted for the words ''as may appear to be required''. The words ''under the jurisdiction of that department'' are inserted for clarity. The words ''upon request'' are substituted for the words ''when called for by the authority which issued them''.

PRIOR PROVISIONS

A prior section 2552 was renumbered section 2562 of this title.

AMENDMENTS

2000—Pub. L. 106–398 renumbered section 2542 of this title as this section.

§ 2553. Equipment and services: Presidential inaugural ceremonies

(a) ASSISTANCE AUTHORIZED.—The Secretary of Defense may, with respect to the ceremonies relating to the inauguration of a President, provide the assistance referred to in subsection (b) to—

(1) the Presidential Inaugural Committee; and

(2) the congressional Joint Inaugural Committee.

(b) ASSISTANCE.—Assistance that may be provided under subsection (a) is the following:

(1) Planning and carrying out activities relating to security and safety.

(2) Planning and carrying out ceremonial activities.

(3) Loan of property.

(4) Any other assistance that the Secretary considers appropriate.

(c) REIMBURSEMENT.—(1) The Presidential Inaugural Committee shall reimburse the Secretary for any costs incurred in connection with the provision to the committee of assistance referred to in subsection (b)(4).

(2) Costs reimbursed under paragraph (1) shall be credited to the appropriations from which the costs were paid. The amount credited to an appropriation shall be proportionate to the amount of the costs charged to that appropriation.

(d) LOANED PROPERTY.—With respect to property loaned for a presidential inauguration under subsection (b)(3), the Presidential Inaugural Committee shall—

(1) return that property within nine days after the date of the ceremony inaugurating the President;

(2) give good and sufficient bond for the return in good order and condition of that property;

(3) indemnify the United States for any loss of, or damage to, that property; and

(4) defray any expense incurred for the delivery, return, rehabilitation, replacement, or operation of that property.

(e) DEFINITIONS.—In this section:

(1) The term ''Presidential Inaugural Committee'' means the committee referred to in section 501 of title 36 that is appointed with respect to the inauguration of a President-elect and Vice President-elect.

(2) The term ''congressional Joint Inaugural Committee'' means the joint committee of the Senate and House of Representatives referred to in section 507 of title 36 that is appointed with respect to the inauguration of a President-elect and Vice President-elect.

(Added Pub. L. 85–861, § 1(48)(A), Sept. 2, 1958, 72 Stat. 1458, § 2543; amended Pub. L. 96–513, title V, § 511(81), Dec. 12, 1980, 94 Stat. 2927; Pub. L. 104–201, div. A, title III, § 366(a), Sept. 23, 1996, 110 Stat. 2495; Pub. L. 105–225, § 4(a)(2), Aug. 12, 1998, 112 Stat. 1498; renumbered § 2553, Pub. L. 106–398, § 1 [[div. A], title X, § 1033(b)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–260.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2543(a)	36:726 (1st sentence).	Aug. 6, 1956, ch. 974, §§ 1(b)(1) (as applicable to § 6), 6, 70 Stat. 1049, 1050.
2543(b)	36:726 (less 1st and 2d sentences).	
2543(c)	36:721(b)(1) (as applicable to 36:726). 36:726 (2d sentence).	

In subsection (a), the words ''under section 721 of title 36'' are inserted for clarity. The words ''ensigns'' and ''Red Cross flags'' are omitted as covered by the word ''flags''.

In subsection (b), the words ''and the whole without expense to the United States'' are omitted as surplusage.

In subsection (c), the words ''nine days after the date of the ceremony inaugurating the President'' are substituted for the words ''five days after the end of the inaugural period'', in 36:726 (2d sentence), and 36:721(b)(1).

PRIOR PROVISIONS

A prior section 2553 was renumbered section 2563 of this title.

AMENDMENTS

2000—Pub. L. 106–398 renumbered section 2543 of this title as this section.

1998—Subsec. (e)(1). Pub. L. 105–225, § 4(a)(2)(A), substituted ''section 501 of title 36'' for ''subsection (b)(2) of the first section of the Presidential Inaugural Ceremonies Act (36 U.S.C. 721)''.

Subsec. (e)(2). Pub. L. 105–225, § 4(a)(2)(B), substituted ''section 507 of title 36'' for ''the proviso in section 9 of the Presidential Inaugural Ceremonies Act (36 U.S.C. 729)''.

1996—Pub. L. 104–201 substituted ''Equipment and services: Presidential inaugural ceremonies'' for ''Equipment: Inaugural Committee'' in section catchline and amended text generally. Prior to amendment, text read as follows:

''(a) The Secretary of Defense, under such conditions as he may prescribe, may lend, to an Inaugural Committee established under the first section of the Presidential Inaugural Ceremonies Act (36 U.S.C. 721), hospital tents, smaller tents, camp appliances, hospital furniture, flags other than battle flags, flagpoles, litters, and ambulances and the services of their drivers, that can be spared without detriment to the public service.

''(b) The Inaugural Committee must give a good and sufficient bond for the return in good order and condition of property lent under subsection (a).

''(c) Property lent under subsection (a) shall be returned within nine days after the date of the ceremony inaugurating the President. The Inaugural Committee shall—

''(1) indemnify the United States for any loss of, or damage to, property lent under subsection (a); and

''(2) defray any expense incurred for the delivery, return, rehabilitation, replacement, or operation of that property.''

1980—Subsec. (a). Pub. L. 96–513 substituted ''the first section of the Presidential Inaugural Ceremonies Act (36 U.S.C. 721)'' for ''section 721 of title 36''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

§ 2554. Equipment and other services: Boy Scout Jamborees

(a) The Secretary of Defense is hereby authorized, under such regulations as he may prescribe, to lend to the Boy Scouts of America, for the use and accommodation of Scouts, Scouters, and officials who attend any national or world Boy Scout Jamboree, such cots, blankets, commissary equipment, flags, refrigerators, and other equipment and without reimbursement, furnish services and expendable medical supplies, as may be necessary or useful to the extent that items are in stock and items or services are available.

(b) Such equipment is authorized to be delivered at such time prior to the holding of any national or world Boy Scout Jamboree, and to be returned at such time after the close of any such jamboree, as may be agreed upon by the Secretary of Defense and the Boy Scouts of America. No expense shall be incurred by the United States Government for the delivery, return, rehabilitation, or replacement of such equipment.

(c) The Secretary of Defense, before delivering such property, shall take from the Boy Scouts of America, good and sufficient bond for the safe return of such property in good order and condition, and the whole without expense to the United States.

(d) The Secretary of Defense is hereby authorized under such regulations as he may prescribe, to provide, without expense to the United States Government, transportation from the United States or military commands overseas, and return, on vessels of the Military Sealift Command or aircraft of the Air Mobility Command for (1) those Boy Scouts, Scouters, and officials certified by the Boy Scouts of America, as representing the Boy Scouts of America at any national or world Boy Scout Jamboree, and (2) the equipment and property of such Boy Scouts, Scouters, and officials and the property loaned to the Boy Scouts of America, by the Secretary of Defense pursuant to this section to the extent that such transportation will not interfere with the requirements of military operations.

(e) Before furnishing any transportation under subsection (d), the Secretary of Defense shall take from the Boy Scouts of America, a good and sufficient bond for the reimbursement to the United States by the Boy Scouts of America, of the actual costs of transportation furnished under this section.

(f) Amounts paid to the United States to reimburse it for expenses incurred under subsection (b) and for the actual costs of transportation furnished under subsection (d) shall be credited to the current applicable appropriations or funds to which such expenses and costs were charged and shall be available for the same purposes as such appropriations or funds.

(g) In the case of a Boy Scout Jamboree held on a military installation, the Secretary of Defense may provide personnel services and logistical support at the military installation in addition to the support authorized under subsections (a) and (d).

(h) Other departments of the Federal Government are authorized, under such regulations as may be prescribed by the Secretary thereof, to provide to the Boy Scouts of America, equipment and other services, under the same conditions and restrictions prescribed in the preceding subsections for the Secretary of Defense.

(i)(1) The Secretary of Defense shall provide at least the same level of support under this section for a national or world Boy Scout Jamboree as was provided under this section for the preceding national or world Boy Scout Jamboree.

(2) The Secretary of Defense may waive paragraph (1), if the Secretary—

(A) determines that providing the support subject to paragraph (1) would be detrimental to the national security of the United States; and

(B) submits to Congress a report containing such determination in a timely manner, and before the waiver takes effect.

(Added Pub. L. 92–249, Mar. 10, 1972, 86 Stat. 62, § 2544; amended Pub. L. 104–106, div. A, title III, § 376, Feb. 10, 1996, 110 Stat. 283; renumbered § 2554, Pub. L. 106–398, § 1 [[div. A], title X, § 1033(b)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–260l; Pub. L. 107–107, div. A, title IX, § 931(a), Dec. 28, 2001, 115 Stat. 1200; Pub. L. 109–148, div. A, title VIII, § 8126(c)(2), Dec. 30, 2005, 119 Stat. 2729; Pub. L. 109–163, div. A, title X, § 1058(c), Jan. 6, 2006, 119 Stat. 3443.)

CODIFICATION

Pub. L. 109–148, § 8126(c)(2), and Pub. L. 109–163, § 1058(c), amended this section by adding substantially identical subsecs. (i). The subsec. (i) added by Pub. L. 109–148, § 8126(c)(2), was subsequently omitted on authority of Pub. L. 109–364, § 1071(f)(1), (3), which repealed Pub. L. 109–148, § 8126(c)(2), and provided that the amendments by Pub. L. 109–148, § 8126(c)(2), and Pub. L. 109–163, § 1058(c), to this section be executed so as to appear only once in the law as amended. See Reconciliation of Duplicate Enactments note and 2005 and 2006 Amendment notes below.

PRIOR PROVISIONS

A prior section 2554 was renumbered section 2564 of this title.

AMENDMENTS

2006—Subsec. (i). Pub. L. 109–163 added subsec. (i). See Codification note above.

2005—Subsec. (i). Pub. L. 109–148 added subsec. (i) which read as follows:

''(i)(1) The Secretary of Defense shall provide at least the same level of support under this section for a national or world Boy Scout Jamboree as was provided under this section for the preceding national or world Boy Scout Jamboree.

''(2) The Secretary of Defense may waive paragraph (1), if the Secretary—

''(A) determines that providing the support subject to paragraph (1) would be detrimental to the national security of the United States; and

''(B) reports such a determination to the Congress in a timely manner, and before such support is not provided.''

See Codification note above.

2001—Subsec. (d). Pub. L. 107–107 substituted ''Air Mobility Command'' for ''Military Airlift Command''.

2000—Pub. L. 106–398 renumbered section 2544 of this title as this section.

1996—Subsecs. (g), (h). Pub. L. 104–106 added subsec. (g) and redesignated former subsec. (g) as (h).

RECONCILIATION OF DUPLICATE ENACTMENTS

Pub. L. 109–364, div. A, title X, § 1071(f)(1), Oct. 17, 2006, 120 Stat. 2402, as amended by Pub. L. 110–181, div. A, title X, § 1063(c)(10), Jan. 28, 2008, 122 Stat. 323, provided that: ''In executing to section 2554 of title 10, United States Code, the amendments made by section 8126(c)(2) of Public Law 109–148 [adding subsec. (i) to this section] (119 Stat. 2729) and section 1058(c) of Public Law 109–163 [adding subsec. (i) to this section] (119 Stat. 3443), such amendments shall be executed so as to appear only once in the law as amended.''

SUPPORT FOR SCOUT JAMBOREES

Pub. L. 109–148, div. A, title VIII, § 8126(c)(1), Dec. 30, 2005, 119 Stat. 2729, which set forth congressional findings in support of youth organization events, such as the Boy Scouts of America's National Scout Jamboree, was repealed by Pub. L. 109–364, div. A, title X, § 1071(f)(3), Oct. 17, 2006, 120 Stat. 2402.

§ 2555. Transportation services: international Girl Scout events

(a) The Secretary of Defense is authorized, under such regulations as he may prescribe, to provide, without expense to the United States Government, transportation from the United States or military commands overseas, and return, on vessels of the Military Sealift Command or aircraft of the Air Mobility Command for (1) those Girl Scouts and officials certified by the Girl Scouts of the United States of America as representing the Girl Scouts of the United States of America at any International World Friendship Event or Troops on Foreign Soil meeting which is endorsed and approved by the National Board of Directors of the Girl Scouts of the United States of America and is conducted outside of the United States, (2) United States citizen delegates coming from outside of the United States to triennial meetings of the National Council of the Girl Scouts of the United States of America, and (3) the equipment and property of such Girl Scouts and officials, to the extent that such transportation will not interfere with the requirements of military operations.

(b) Before furnishing any transportation under subsection (a), the Secretary of Defense shall take from the Girl Scouts of the United States of America a good and sufficient bond for the reimbursement to the United States by the Girl Scouts of the United States of America, of the actual costs of transportation furnished under subsection (a).

(c) Amounts paid to the United States to reimburse it for the actual costs of transportation furnished under subsection (a) shall be credited to the current applicable appropriations or funds to which such costs were charged and shall be available for the same purposes as such appropriations or funds.

(Added Pub. L. 95–492, § 1, Oct. 20, 1978, 92 Stat. 1642, § 2545; renumbered § 2555, Pub. L. 106–398, § 1 [[div. A], title X, § 1033(b)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–260; Pub. L. 107–107, div. A, title IX, § 931(a), Dec. 28, 2001, 115 Stat. 1200.)

CODIFICATION

Another section 2555 was renumbered section 2565 of this title.

AMENDMENTS

2001—Subsec. (a). Pub. L. 107–107 substituted ''Air Mobility Command'' for ''Military Airlift Command''.

2000—Pub. L. 106–398 renumbered section 2545 of this title as this section.

§ 2556. Shelter for homeless; incidental services

(a)(1) The Secretary of a military department may make military installations under his jurisdiction available for the furnishing of shelter to persons without adequate shelter. The Secretary may, incidental to the furnishing of such shelter, provide services as described in subsection (b). Shelter and incidental services provided under this section may be provided without reimbursement.

(2) The Secretary concerned shall carry out this section in cooperation with appropriate State and local governmental entities and charitable organizations. The Secretary shall, to the maximum extent practicable, use the services and personnel of such entities and organizations in determining to whom and the circumstances under which shelter is furnished under this section.

(b) Services that may be provided incident to the furnishing of shelter under this section are the following:

(1) Utilities.

(2) Bedding.

(3) Security.

(4) Transportation.

(5) Renovation of facilities.

(6) Minor repairs undertaken specifically to make suitable space available for shelter to be provided under this section.

(7) Property liability insurance.

(c) Shelter and incidental services may only be provided under this section to the extent that the Secretary concerned determines will not interfere with military preparedness or ongoing military functions.

(d) The Secretary concerned may provide bedding for support of shelters for the homeless that are operated by entities other than the Department of Defense. Bedding may be provided under this subsection without reimbursement, but may only be provided to the extent that the Secretary determines that the provision of such bedding will not interfere with military requirements.

(e) The Secretary of Defense shall prescribe regulations for the administration of this section.

(Added Pub. L. 98–94, title III, § 305(a)(1), Sept. 24, 1983, 97 Stat. 628, § 2546; amended Pub. L. 99–167, title VIII, § 825, Dec. 3, 1985, 99 Stat. 992; renumbered § 2556, Pub. L. 106–398, § 1 [[div. A], title X, § 1033(b)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–260.)

AMENDMENTS

2000—Pub. L. 106–398 renumbered section 2546 of this title as this section.

1985—Subsecs. (d), (e). Pub. L. 99–167 added subsec. (d) and redesignated former subsec. (d) as (e).

EFFECTIVE DATE

Pub. L. 98–94, title III, § 305(b), Sept. 24, 1983, 97 Stat. 629, provided that: ''Section 2546 [now 2556] of title 10, United States Code, as added by subsection (a), shall take effect on October 1, 1983.''

PRIOR CERTIFICATION REQUIRED FOR USE OF DEPARTMENT OF DEFENSE FACILITIES BY OTHER FEDERAL AGENCIES FOR TEMPORARY HOUSING SUPPORT

Pub. L. 114–328, div. B, title XXVIII, § 2815, Dec. 23, 2016, 130 Stat. 2718, provided that: ''The Secretary of Defense shall not sign a memorandum of agreement with another Federal agency to provide the agency with a vacant facility for purposes of temporary housing support unless the Secretary first submits to the Committees on Armed Services of the House of Representatives and Senate a certification that the provision of the facility to the agency for such purpose will not negatively affect military training, operations, readiness, or other military requirements, including National Guard and Reserve readiness.''

§ 2557. Excess nonlethal supplies: availability for humanitarian relief, domestic emergency assistance, and homeless veterans assistance

(a)(1) The Secretary of Defense may make available for humanitarian relief purposes any nonlethal excess supplies of the Department of Defense. In addition, the Secretary may make nonlethal excess supplies of the Department available to support domestic emergency assistance activities.

(2) The Secretary of Defense may make excess clothing, shoes, sleeping bags, and related nonlethal excess supplies available to the Secretary of Veterans Affairs for distribution to homeless veterans and programs assisting homeless veterans. The transfer of nonlethal excess supplies to the Secretary of Veterans Affairs under this paragraph shall be without reimbursement.

(b)(1) Excess supplies made available for humanitarian relief purposes under this section shall be transferred to the Secretary of State, who shall be responsible for the distribution of such supplies.

(2) Excess supplies made available under this section to support domestic emergency assistance activities shall be transferred to the Secretary of Homeland Security. The Secretary of Defense may provide assistance in the distribution of such supplies at the request of the Secretary of Homeland Security.

(c) This section does not constitute authority to conduct any activity which, if carried out as an intelligence activity by the Department of Defense, would require a notice to the intelligence committees under title V of the National Security Act of 1947 (50 U.S.C. 3091 et seq.).

(d) In this section:

(1) The term ''nonlethal excess supplies'' means property, other than real property, of the Department of Defense—

(A) that is excess property, as defined in regulations of the Department of Defense; and

(B) that is not a weapon, ammunition, or other equipment or material that is designed to inflict serious bodily harm or death.

(2) The term ''intelligence committees'' means the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives.

(Added Pub. L. 99–145, title XIV, § 1454(a), Nov. 8, 1985, 99 Stat. 761, § 2547; amended Pub. L. 100–26, § 7(k)(2), Apr. 21, 1987, 101 Stat. 284; Pub. L. 101–510, div. A, title XIII, § 1322(a)(10), Nov. 5, 1990, 104 Stat. 1671; Pub. L. 102–88, title VI, § 602(c)(3), Aug. 14, 1991, 105 Stat. 444; renumbered § 2557, Pub. L. 106–398, § 1 [[div. A], title X, § 1033(b)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–260; Pub. L. 107–107, div. A, title III, § 361(a), (b)(1), Dec. 28, 2001, 115 Stat. 1064, 1065; Pub. L. 111–383, div. A, title X, § 1074(a), (b)(1), Jan. 7, 2011, 124 Stat. 4368; Pub. L. 113–291, div. A, title X, § 1071(c)(3), Dec. 19, 2014, 128 Stat. 3508.)

REFERENCES IN TEXT

The National Security Act of 1947, referred to in subsec. (c), is act July 26, 1947, ch. 343, 61 Stat. 495. Title V of the Act is classified generally to subchapter III (§ 3091 et seq.) of chapter 44 of Title 50, War and National Defense. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

2014—Subsec. (c). Pub. L. 113–291 substituted ''(50 U.S.C. 3091 et seq.)'' for ''(50 U.S.C. 413 et seq.)''.

2011—Pub. L. 111–383, § 1074(b)(1), substituted ''Excess nonlethal supplies: availability for humanitarian relief, domestic emergency assistance, and homeless veterans assistance'' for ''Excess nonlethal supplies: availability for homeless veteran initiatives and humanitarian relief'' in section catchline.

Subsec. (a)(1). Pub. L. 111–383, § 1074(a)(1), inserted at end ''In addition, the Secretary may make nonlethal excess supplies of the Department available to support domestic emergency assistance activities.''

Subsec. (b). Pub. L. 111–383, § 1074(a)(2), designated existing provisions as par. (1) and added par. (2).

2001—Pub. L. 107–107, § 361(b)(1), inserted ''availability for homeless veteran initiatives and'' before ''humanitarian relief'' in section catchline.

Subsec. (a). Pub. L. 107–107, § 361(a), designated existing provisions as par. (1) and added par. (2).

2000—Pub. L. 106–398 renumbered section 2547 of this title as this section.

1991—Subsec. (c). Pub. L. 102–88 struck out par. (1) which read as follows: ''a finding under section 662 of the Foreign Assistance Act of 1961 (22 U.S.C. 2422); or'', struck out par. (2) designation, and substituted ''title V of the National Security Act of 1947 (50 U.S.C. 413 et seq.)'' for ''section 501(a)(1) of the National Security Act of 1947 (50 U.S.C. 413)''.

1990—Subsecs. (d), (e). Pub. L. 101–510 redesignated subsec. (e) as (d) and struck out former subsec. (d) which read as follows:

''(1) The Secretary of State shall submit an annual report on the disposition of all excess supplies transferred by the Secretary of Defense to the Secretary of State under this section during the preceding year.

''(2) Such reports shall be submitted to the Committees on Armed Services and on Foreign Relations of the Senate and the Committees on Armed Services and on Foreign Affairs of the House of Representatives.

''(3) Such reports shall be submitted not later than June 1 of each year.''

1987—Subsec. (e)(1), (2). Pub. L. 100–26 inserted ''The term'' after each par. designation and struck out uppercase letter of first word after first quotation marks in each par. and substituted lowercase letter.

§ 2558. National military associations: assistance at national conventions

(a) AUTHORITY TO PROVIDE SERVICES.—The Secretary of a military department may provide services described in subsection (c) in connection with an annual conference or convention of a national military association.

(b) CONDITIONS FOR PROVIDING SERVICES.—Services may be provided under this section only if—

(1) the provision of the services in any case is approved in advance by the Secretary concerned;

(2) the services can be provided in conjunction with training in appropriate military skills; and

(3) the services can be provided within existing funds otherwise available to the Secretary concerned.

(c) COVERED SERVICES.—Services that may be provided under this section are—

(1) limited air and ground transportation;

(2) communications;

(3) medical assistance;

(4) administrative support; and

(5) security support.

(d) NATIONAL MILITARY ASSOCIATIONS.—The Secretary of Defense shall designate those organizations which are national military associations for purposes of this section.

(e) REGULATIONS.—The Secretary of Defense shall prescribe regulations to carry out this section.

(Added Pub. L. 101–189, div. A, title III, § 329(a)(1), Nov. 29, 1989, 103 Stat. 1417, § 2548; renumbered § 2558, Pub. L. 106–398, § 1 [[div. A], title X, § 1033(b)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–260.)

AMENDMENTS

2000—Pub. L. 106–398 renumbered section 2548 of this title as this section.

EFFECTIVE DATE

Pub. L. 101–189, div. A, title III, § 329(b), Nov. 29, 1989, 103 Stat. 1417, provided that: ''Section 2548 [now 2558] of title 10, United States Code, as added by subsection (a), shall take effect on the date of the enactment of this Act [Nov. 29, 1989].''

§ 2559. Provision of medical care to foreign military and diplomatic personnel: reimbursement required; waiver for provision of reciprocal services

(a) REIMBURSEMENT REQUIRED.—Except as provided in subsection (b), whenever the Secretary of Defense provides medical care in the United States on an inpatient basis to foreign military and diplomatic personnel or their dependents, the Secretary shall require that the United States be reimbursed for the costs of providing such care. Payments received as reimbursement for the provision of such care shall be credited to the appropriations against which charges were made for the provision of such care.

(b) WAIVER WHEN RECIPROCAL SERVICES PROVIDED UNITED STATES MILITARY PERSONNEL.—Notwithstanding subsection (a), the Secretary of Defense may provide inpatient medical care in the United States without cost to military personnel and their dependents from a foreign country if comparable care is made available to a comparable number of United States military personnel and their dependents in that foreign country.

(Added Pub. L. 101–510, div. A, title XIV, § 1481(f)(1), Nov. 5, 1990, 104 Stat. 1707, § 2549; renumbered § 2559, Pub. L. 106–398, § 1 [[div. A], title X, § 1033(b)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–260.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in Pub. L. 101–165, title IX, § 9020, Nov. 21, 1989, 103 Stat. 1133, which was set out as a note under section 2241 of this title, prior to repeal by Pub. L. 101–510, § 1481(f)(3).

AMENDMENTS

2000—Pub. L. 106–398 renumbered section 2549 of this title as this section.

§ 2560. Aircraft and vehicles: limitation on leasing to non-Federal agencies

The Secretary of Defense (or Secretary of a military department) may not lease to a non-Federal agency in the United States any aircraft or vehicle owned or operated by the Department of Defense if suitable aircraft or vehicles are commercially available in the private sector. However, nothing in the preceding sentence shall affect authorized and established procedures for the sale of surplus aircraft or vehicles.

(Added Pub. L. 101–510, div. A, title XIV, § 1481(g)(1), Nov. 5, 1990, 104 Stat. 1707, § 2550; renumbered § 2560, Pub. L. 106–398, § 1 [[div. A], title X, § 1033(b)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–260.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in Pub. L. 101–165, title IX, § 9025, Nov. 21, 1989, 103 Stat. 1134, which was set out as a note under section 2241 of this title, prior to repeal by Pub. L. 101–510, § 1481(g)(4).

AMENDMENTS

2000—Pub. L. 106–398 renumbered section 2550 of this title as this section.

§ 2561. Humanitarian assistance

(a) AUTHORIZED ASSISTANCE.—(1) To the extent provided in defense authorization Acts, funds authorized to be appropriated to the Department of Defense for a fiscal year for humanitarian assistance shall be used for the purpose of providing transportation of humanitarian relief and for other humanitarian purposes worldwide.

(2) The Secretary of Defense may use the authority provided by paragraph (1) to transport supplies intended for use to respond to, or mitigate the effects of, an event or condition, such as an oil spill, that threatens serious harm to the environment, but only if other sources to provide such transportation are not readily available. The Secretary may require reimbursement for costs incurred by the Department of Defense to transport supplies under this paragraph.

(b) AVAILABILITY OF FUNDS.—To the extent provided in appropriation Acts, funds appropriated for humanitarian assistance for the purposes of this section shall remain available until expended.

(c) STATUS REPORTS.—(1) The Secretary of Defense shall submit to the congressional committees specified in subsection (f) an annual report on the provision of humanitarian assistance pur-

suant to this section for the prior fiscal year. The report shall be submitted each year at the time of the budget submission by the President for the next fiscal year.

(2) Each report required by paragraph (1) shall cover all provisions of law that authorize appropriations for humanitarian assistance to be available from the Department of Defense for the purposes of this section.

(3) Each report under this subsection shall set forth the following information regarding activities during the previous fiscal year:

(A) The total amount of funds obligated for humanitarian relief under this section.

(B) The number of scheduled and completed transportation missions for purposes of providing humanitarian assistance under this section.

(C) A description of any transfer of excess nonlethal supplies of the Department of Defense made available for humanitarian relief purposes under section 2557 of this title. The description shall include the date of the transfer, the entity to whom the transfer is made, and the quantity of items transferred.

(d) REPORT REGARDING RELIEF FOR UNAUTHORIZED COUNTRIES.—In any case in which the Secretary of Defense provides for the transportation of humanitarian relief to a country to which the transportation of humanitarian relief has not been specifically authorized by law, the Secretary shall notify the congressional committees specified in subsection (f) and the Committees on Appropriations of the Senate and House of Representatives of the Secretary's intention to provide such transportation. The notification shall be submitted not less than 15 days before the commencement of such transportation.

(e) DEFINITION.—In this section, the term ''defense authorization Act'' means an Act that authorizes appropriations for one or more fiscal years for military activities of the Department of Defense, including authorizations of appropriations for the activities described in paragraph (7) of section 114(a) of this title.

(f) CONGRESSIONAL COMMITTEES.—The congressional committees referred to in subsections (c)(1) and (d) are the following:

(1) The Committee on Armed Services and the Committee on Foreign Relations of the Senate.

(2) The Committee on Armed Services and the Committee on Foreign Affairs of the House of Representatives.

(Added Pub. L. 102–484, div. A, title III, § 304(c)(1), Oct. 23, 1992, 106 Stat. 2361, § 2551; amended Pub. L. 104–106, div. A, title XIII, § 1312, Feb. 10, 1996, 110 Stat. 474; Pub. L. 106–65, div. A, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 774; renumbered § 2561 and amended Pub. L. 106–398, § 1 [[div. A], title X, § 1033(b)(1), (c)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–260; Pub. L. 108–136, div. A, title III, § 312(d), Nov. 24, 2003, 117 Stat. 1430; Pub. L. 112–239, div. A, title X, § 1076(f)(31), Jan. 2, 2013, 126 Stat. 1953.)

AMENDMENTS

2013—Subsec. (f)(2). Pub. L. 112–239 substituted ''Committee on Foreign Affairs'' for ''Committee on International Relations''.

2003—Subsec. (a). Pub. L. 108–136 designated existing provisions as par. (1) and added par. (2).

2000—Pub. L. 106–398, § 1 [[div. A], title X, § 1033(b)(1)], renumbered section 2551 of this title as this section.

Subsec. (c)(3)(C). Pub. L. 106–398, § 1 [[div. A], title X, § 1033(c)(1)], substituted ''section 2557'' for ''section 2547''.

1999—Subsec. (f)(2). Pub. L. 106–65 substituted ''Committee on Armed Services'' for ''Committee on National Security''.

1996—Subsec. (b). Pub. L. 104–106, § 1312(1), (2), redesignated subsec. (d) as (b) and struck out former subsec. (b) which read as follows: ''AUTHORITY TO TRANSFER FUNDS.—To the extent provided in defense authorization Acts for a fiscal year, the Secretary of Defense may transfer to the Secretary of State funds appropriated for the purposes of this section to provide for—

''(1) the payment of administrative costs incurred in providing the transportation described in subsection (a); and

''(2) the purchase or other acquisition of transportation assets for the distribution of humanitarian relief supplies in the country of destination.''

Subsec. (c). Pub. L. 104–106, § 1312(1), (3), added subsec. (c) and struck out former subsec. (c) which read as follows:

''(c) TRANSPORTATION OF HUMANITARIAN RELIEF.—(1) Transportation of humanitarian relief provided with funds appropriated for the purposes of this section shall be provided under the direction of the Secretary of State.

''(2) Such transportation shall be provided by the most economical commercial or military means available, unless the Secretary of State determines that it is in the national interest of the United States to provide such transportation other than by the most economical means available. The means used to provide such transportation may include the use of aircraft and personnel of the reserve components of the Armed Forces.

''(3) Nothing in this subsection shall be construed as waiving the requirements of section 2631 of this title and sections 901(b) and 901b of the Merchant Marine Act, 1936 (46 U.S.C. App. 1241(b) and 1241f).''

Subsec. (d). Pub. L. 104–106, § 1312(4), redesignated subsec. (f) as (d) and substituted ''the congressional committees specified in subsection (f) and the Committees on Appropriations of the Senate and House of Representatives of the'' for ''the Committees on Appropriations and on Armed Services of the Senate and House of Representatives, the Committee on Foreign Relations of the Senate, and the Committee on Foreign Affairs of the House of Representatives of the''. Former subsec. (d) redesignated (b).

Subsec. (e). Pub. L. 104–106, § 1312(3), (5), redesignated subsec. (g) as (e) and struck out former subsec. (e) which required status reports and specified time for submission, coverage, and contents.

Subsec. (f). Pub. L. 104–106, § 1312(6), added subsec. (f). Former subsec. (f) redesignated (d).

Subsec. (g). Pub. L. 104–106, § 1312(5), redesignated subsec. (g) as (e).

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective Dec. 31, 2021, of provisions in subsec. (c) of this section requiring submittal of annual report to Congress, see section 1061 of Pub. L. 114–328, set out as a note under section 111 of this title.

NOTIFICATIONS REGARDING HUMANITARIAN RELIEF

Notification provided to appropriate congressional committees with respect to assistance under this section to include detailed description of items for which transportation is provided that are excess nonlethal supplies of Department of Defense, including quantity, acquisition value, and value at time of transportation of such items, see section 1504(c) of Pub. L. 103–160, set out in a Humanitarian and Civic Assistance note under section 401 of this title.

LAWS COVERED BY INITIAL REPORTS

Pub. L. 102–484, div. A, title III, § 304(d), Oct. 28, 1992, 106 Stat. 2362, provided that for purposes of subsec. (e) of this section, section 304 of Pub. L. 102–190 (105 Stat. 1333) and the humanitarian relief laws referred to in section 304(f)(4) of Pub. L. 102–190 (as in effect on the day before Oct. 23, 1992) were to be considered as provisions of law that authorized appropriations for humanitarian assistance to be available for the purposes of this section.

[§ 2562. Repealed. Pub. L. 114–328, div. A, title XII, § 1253(a)(1)(C), Dec. 23, 2016, 130 Stat. 2532]

Section, added Pub. L. 102–484, div. D, title XLIII, § 4304(a), Oct. 23, 1992, 106 Stat. 2699, § 2552; renumbered § 2562 and amended Pub. L. 106–398, § 1 [[div. A], title X, § 1033(b)(1), (c)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–260; Pub. L. 107–217, § 3(b)(8), Aug. 21, 2002, 116 Stat. 1295; Pub. L. 107–314, div. A, title X, § 1062(e)(1), Dec. 2, 2002, 116 Stat. 2651; Pub. L. 111–350, § 5(b)(41), Jan. 4, 2011, 124 Stat. 3846, related to the limitation on use of excess construction or fire equipment from Department of Defense stocks in foreign assistance or military sales programs.

§ 2563. Articles and services of industrial facilities: sale to persons outside the Department of Defense

(a) AUTHORITY TO SELL OUTSIDE DOD.—(1) The Secretary of Defense may sell in accordance with this section to a person outside the Department of Defense articles and services referred to in paragraph (2) that are not available from any United States commercial source.

(2)(A) Except as provided in subparagraph (B), articles and services referred to in paragraph (1) are articles and services that are manufactured or performed by any working-capital funded industrial facility of the armed forces.

(B) The authority in this section does not apply to sales of articles and services by a working-capital funded Army industrial facility (including a Department of the Army arsenal) that manufactures large caliber cannons, gun mounts, recoil mechanisms, ammunition, munitions, or components thereof, which are governed by regulations required by section 7543 of this title.

(b) DESIGNATION OF PARTICIPATING INDUSTRIAL FACILITIES.—The Secretary may designate facilities referred to in subsection (a) as the facilities from which articles and services manufactured or performed by such facilities may be sold under this section.

(c) CONDITIONS FOR SALES.—(1) A sale of articles or services may be made under this section only if—

(A) the Secretary of Defense determines that the articles or services are not available from a commercial source in the United States;

(B) the purchaser agrees to hold harmless and indemnify the United States, except as provided in paragraph (3), from any claim for damages or injury to any person or property arising out of the articles or services;

(C) the articles or services can be substantially manufactured or performed by the industrial facility concerned with only incidental subcontracting;

(D) it is in the public interest to manufacture the articles or perform the services;

(E) the Secretary determines that the sale of the articles or services will not interfere with the military mission of the industrial facility concerned; and

(F) the sale of the goods and services is made on the basis that it will not interfere with performance of work by the industrial facility concerned for the Department of Defense.

(2) The Secretary of Defense may waive the condition in paragraph (1)(A) and subsection (a)(1) that an article or service must be not available from a United States commercial source in the case of a particular sale if the Secretary determines that the waiver is necessary for reasons of national security and notifies Congress regarding the reasons for the waiver.

(3) Paragraph (1)(B) does not apply in any case of willful misconduct or gross negligence or in the case of a claim by a purchaser of articles or services under this section that damages or injury arose from the failure of the Government to comply with quality, schedule, or cost performance requirements in the contract to provide the articles or services.

(d) METHODS OF SALE.—(1) The Secretary shall permit a purchaser of articles or services under this section to use advance incremental funding to pay for the articles or services.

(2) In the sale of articles and services under this section, the Secretary shall—

(A) charge the purchaser, at a minimum, the variable costs, capital improvement costs, and equipment depreciation costs that are associated with the articles or services sold;

(B) enter into a firm, fixed-price contract or, if agreed by the purchaser, a cost reimbursement contract for the sale; and

(C) develop and maintain (from sources other than appropriated funds) working capital to be available for paying design costs, planning costs, procurement costs, and other costs associated with the articles or services sold.

(e) DEPOSIT OF PROCEEDS.—Proceeds from sales of articles and services under this section shall be credited to the funds, including working capital funds and operation and maintenance funds, incurring the costs of manufacture or performance.

(f) RELATIONSHIP TO ARMS EXPORT CONTROL ACT.—Nothing in this section shall be construed to affect the application of the export controls provided for in section 38 of the Arms Export Control Act (22 U.S.C. 2778) to items which incorporate or are produced through the use of an article sold under this section.

(g) DEFINITIONS.—In this section:

(1) The term ''advance incremental funding'', with respect to a sale of articles or services, means a series of partial payments for the articles or services that includes—

(A) one or more partial payments before the commencement of work or the incurring of costs in connection with the manufacture of the articles or the performance of the services, as the case may be; and

(B) subsequent progress payments that result in full payment being completed as the required work is being completed.

(2) The term ''not available'', with respect to an article or service proposed to be sold under

this section, means that the article or service is unavailable from a commercial source in the required quantity and quality or within the time required.

(3) The term ''variable costs'', with respect to sales of articles or services, means the costs that are expected to fluctuate directly with the volume of sales and—

(A) in the case of articles, the volume of production necessary to satisfy the sales orders; or

(B) in the case of services, the extent of the services sold.

(Added Pub. L. 103–337, div. A, title III, § 339(a)(1), Oct. 5, 1994, 108 Stat. 2718, § 2553; amended Pub. L. 106–65, div. A, title III, § 331(a)(2), (b), Oct. 5, 1999, 113 Stat. 566, 567; renumbered § 2563, Pub. L. 106–398, § 1 [[div. A], title X, § 1033(b)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–260; Pub. L. 107–107, div. A, title III, § 343(a), Dec. 28, 2001, 115 Stat. 1061; Pub. L. 115–232, div. A, title VIII, § 809(a), Aug. 13, 2018, 132 Stat. 1840.)

AMENDMENTS

2018—Subsec. (a)(2)(B). Pub. L. 115–232 substituted ''section 7543'' for ''section 4543''.

2001—Subsec. (c)(1)(B). Pub. L. 107–107, § 343(a)(1), substituted ''as provided in paragraph (3)'' for ''in any case of willful misconduct or gross negligence''.

Subsec. (c)(3). Pub. L. 107–107, § 343(a)(2), added par. (3).

2000—Pub. L. 106–398 renumbered section 2553 of this title as this section.

1999—Subsec. (c). Pub. L. 106–65, § 331(a)(2), designated existing provisions as par. (1), redesignated former pars. (1) to (6) as subpars. (A) to (F), respectively, of par. (1), and added par. (2).

Subsec. (g)(2), (3). Pub. L. 106–65, § 331(b), added par. (2) and redesignated former par. (2) as (3).

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115–232 effective Feb. 1, 2019, with provision for the coordination of amendments and special rule for certain redesignations, see section 800 of Pub. L. 115–232, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE

Pub. L. 103–337, div. A, title III, § 339(b), Oct. 5, 1994, 108 Stat. 2720, provided that: ''Section 2553 [now 2563] of title 10, United States Code, as added by subsection (a), shall take effect on April 1, 1995.''

§ 2564. Provision of support for certain sporting events

(a) SECURITY AND SAFETY ASSISTANCE.—At the request of a Federal, State, or local government agency responsible for providing law enforcement services, security services, or safety services, the Secretary of Defense may authorize the commander of a military installation or other facility of the Department of Defense or the commander of a specified or unified combatant command to provide assistance for the World Cup Soccer Games, the Goodwill Games, the Olympics, and any other civilian sporting event in support of essential security and safety at such event, but only if the Attorney General certifies that such assistance is necessary to meet essential security and safety needs.

(b) OTHER ASSISTANCE.—The Secretary of Defense may authorize a commander referred to in subsection (a) to provide assistance for a sporting event referred to in that subsection in support of other needs relating to such event, but only—

(1) to the extent that such needs cannot reasonably be met by a source other than the Department;

(2) to the extent that the provision of such assistance does not adversely affect the military preparedness of the armed forces; and

(3) if the organization requesting such assistance agrees to reimburse the Department for amounts expended by the Department in providing the assistance in accordance with the provisions of section 277 of this title and other applicable provisions of law.

(c) INAPPLICABILITY TO CERTAIN EVENTS.—Subsections (a) and (b) do not apply to the following sporting events:

(1) Sporting events for which funds have been appropriated before September 23, 1996.

(2) The Special Olympics.

(3) The Paralympics.

(4) A sporting event sanctioned by the United States Olympic Committee through the Paralympic Military Program.

(5) Any national or international paralympic sporting event (other than a sporting event described in paragraphs (1) through (4))—

(A) that—

(i) is held in the United States or any of its territories or commonwealths;

(ii) is governed by the International Paralympic Committee; and

(iii) is sanctioned by the United States Olympic Committee;

(B) for which participation exceeds 100 amateur athletes; and

(C) in which at least 10 percent of the athletes participating in the sporting event are members or former members of the armed forces who are participating in the sporting event based upon an injury or wound incurred in the line of duty in the armed force and veterans who are participating in the sporting event based upon a service-connected disability.

(d) TERMS AND CONDITIONS.—The Secretary of Defense may require such terms and conditions in connection with the provision of assistance under this section as the Secretary considers necessary and appropriate to protect the interests of the United States.

(e) RELATIONSHIP TO OTHER LAWS.—Assistance provided under this section shall be subject to the provisions of sections 275 and 276 of this title.

(f) FUNDING FOR SUPPORT OF CERTAIN EVENTS.—(1) Amounts for the provision of support for a sporting event described in paragraph (4) or (5) of subsection (c) may be derived from the Support for International Sporting Competitions, Defense account established by section 5802 of the Omnibus Consolidated Appropriations Act, 1997 (Public Law 104–208; 10 U.S.C. 2564 note), notwithstanding any limitation under that section relating to the availability of funds in such account for the provision of support for international sporting competitions.

(2) The total amount expended for any fiscal year to provide support for sporting events de-

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scribed in subsection (c)(5) may not exceed $1,000,000.

(Added Pub. L. 104–201, div. A, title III, § 367(a), Sept. 23, 1996, 110 Stat. 2496, § 2554; amended Pub. L. 105–85, div. A, title X, § 1073(a)(56), (c)(2)(A), Nov. 18, 1997, 111 Stat. 1903, 1904; renumbered § 2564, Pub. L. 106–398, § 1 [[div. A], title X, § 1033(b)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–260; Pub. L. 110–181, div. A, title III, § 372(a), Jan. 28, 2008, 122 Stat. 81; Pub. L. 115–91, div. A, title X, § 1051(a)(20), Dec. 12, 2017, 131 Stat. 1561.)

AMENDMENTS

2017—Subsec. (b)(3). Pub. L. 115–91, § 1051(a)(20)(A), substituted ''section 277'' for ''section 377''.

Subsec. (e). Pub. L. 115–91, § 1051(a)(20)(D), substituted ''sections 275 and 276'' for ''sections 375 and 376''. Directory language which read ''by 'striking sections 375 and 376' '' was executed as if it had read ''by striking 'sections 375 and 376' '', to reflect the probable intent of Congress.

Pub. L. 115–91, § 1051(a)(20)(B), (C), redesignated subsec. (f) as (e) and struck out former subsec. (e) which required reports on assistance provided under this section.

Subsecs. (f), (g). Pub. L. 115–91, § 1051(a)(20)(C), redesignated subsecs. (f) and (g) as (e) and (f), respectively.

2008—Subsec. (c)(4), (5). Pub. L. 110–181, § 372(a)(1), added pars. (4) and (5).

Subsec. (g). Pub. L. 110–181, § 372(a)(2), added subsec. (g).

2000—Pub. L. 106–398 renumbered section 2554 of this title as this section.

1997—Pub. L. 105–85, § 1073(c)(2)(A), made technical amendment to directory language of Pub. L. 104–201, § 367(a), which enacted this section.

Subsec. (c)(1). Pub. L. 105–85, § 1073(a)(56), substituted ''September 23, 1996'' for ''the date of the enactment of this Act''.

CHANGE OF NAME

References to the United States Olympic Committee deemed to refer to the United States Olympic and Paralympic Committee, see section 220502(c) of Title 36, Patriotic and National Observances, Ceremonies, and Organizations.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–85, div. A, title X, § 1073(c), Nov. 18, 1997, 111 Stat. 1904, provided that the amendment made by that section is effective as of Sept. 23, 1996, and as if included in the National Defense Authorization Act for Fiscal Year 1997, Pub. L. 104–201, as enacted.

SUPPORT FOR INTERNATIONAL SPORTING COMPETITIONS, DEFENSE, ACCOUNT

Pub. L. 104–208, div. A, title V, § 5802, Sept. 30, 1996, 110 Stat. 3009–522, as amended by Pub. L. 110–181, div. A, title III, § 372(b), Jan. 28, 2008, 122 Stat. 82, provided that: ''There is hereby established on the books of the Treasury an account, 'Support for International Sporting Competitions, Defense' (hereinafter referred to in this section as the 'Account') to be available until expended for logistical and security support for international sporting competitions and for support of sporting competitions authorized under section 2564(c)(4) and (5), of title 10, United States Code, (other than pay and non-travel-related allowances of members of the Armed Forces of the United States, except for members of the reserve components thereof called or ordered to active duty in connection with providing such support): *Provided*, That there shall be credited to the Account: (a) unobligated balances of the funds appropriated in Public Laws 103–335 [108 Stat. 2605] and 104–61 [109 Stat. 642] under the headings 'Summer Olympics'; (b) any reimbursements received by the Department of Defense in connection with support to the 1993 World University Games; the 1994 World Cup Games; and the 1996 Games of the XXVI Olympiad held in Atlanta, Georgia; (c) any reimbursements received by the Department of Defense after the date of enactment of this Act [Sept. 30, 1996] for logistical and security support provided to international sporting competitions; and (d) amounts specifically appropriated to the Account, all to remain available until expended: *Provided further*, That none of the funds made available to the Account may be obligated until 15 days after the congressional defense committees [Committee on Armed Services and Subcommittee on National Security of the Committee on Appropriations of the House of Representatives and Committee on Armed Services and Subcommittee on Defense of the Committee on Appropriations of the Senate] have been notified in writing by the Secretary of Defense as to the purpose for which these funds will be obligated.''

§ 2564a. Provision of assistance for adaptive sports programs: members of the armed forces; certain veterans

(a) PROGRAM AUTHORIZED.—(1) The Secretary of Defense may establish a military adaptive sports program to support the provision of adaptive sports programming for—

(A) any member of the armed forces who is eligible to participate in adaptive sports because of an injury, illness, or wound incurred in the line of duty in the armed forces; and

(B) any veteran (as defined in section 101 of title 38), during the one-year period following the veteran's date of separation, who—

(i) is on the Temporary Disability Retirement List or Permanently Disabled Retirement List;

(ii) is eligible to participate in adaptive sports because of an injury, illness, or wound incurred in the line of duty in the armed forces; and

(iii) was enrolled in the program authorized under this section prior to the veteran's date of separation.

(2) In establishing the military adaptive sports program, the Secretary of Defense shall—

(A) consult with the Secretary of Veterans Affairs; and

(B) avoid duplicating programs conducted by the Secretary of Veterans Affairs under section 521A of title 38.

(b) PROVISION OF ASSISTANCE; PURPOSE.—(1) Under such criteria as the Secretary of Defense may establish under the military adaptive sports program, the Secretary may award grants to, or enter into contracts and cooperative agreements with, entities for the purpose of planning, developing, managing, and implementing adaptive sports programming for members and veterans described in subsection (a).

(2) The Secretary of Defense shall use competitive procedures to award any grant or to enter into any contract or cooperative agreement under this subsection.

(c) USE OF ASSISTANCE.—Assistance provided under the military adaptive sports program shall be used—

(1) for the purposes specified in subsection (b); and

(2) for such related activities and expenses as the Secretary of Defense may authorize.

(Added Pub. L. 112–81, div. A, title V, § 589(a), Dec. 31, 2011, 125 Stat. 1437; amended Pub. L.

116–92, div. A, title V, § 592(a)–(c)(1), Dec. 20, 2019, 133 Stat. 1414, 1415.)

AMENDMENTS

2019—Pub. L. 116–92, § 592(c)(1), amended section catchline generally. Prior to amendment, catchline read as follows: ''Provision of assistance for adaptive sports programs for members of the armed forces''.

Subsec. (a)(1). Pub. L. 116–92, § 592(a), substituted ''for—'' and subpars. (A) and (B) for ''for members of the armed forces who are eligible to participate in adaptive sports because of an injury or wound incurred in the line of duty in the armed forces.''

Subsec. (b). Pub. L. 116–92, § 592(b), inserted ''and veterans'' after ''members''.

§ 2565. Nuclear test monitoring equipment: furnishing to foreign governments

(a) AUTHORITY TO TRANSFER TITLE TO OR OTHERWISE PROVIDE NUCLEAR TEST MONITORING EQUIPMENT.—Subject to subsection (b), the Secretary of Defense may—

(1) transfer title or otherwise provide to a foreign government (A) equipment for the monitoring of nuclear test explosions, and (B) associated equipment;

(2) as part of any such conveyance or provision of equipment, install such equipment on foreign territory or in international waters; and

(3) inspect, test, maintain, repair, or replace any such equipment.

(b) AGREEMENT REQUIRED.—Nuclear test explosion monitoring equipment may be provided to a foreign government under subsection (a) only pursuant to the terms of an agreement between the United States and the foreign government receiving the equipment in which the recipient foreign government agrees—

(1) to provide the United States with timely access to the data produced, collected, or generated by the equipment; and

(2) to permit the Secretary of Defense to take such measures as the Secretary considers necessary to inspect, test, maintain, repair, or replace that equipment, including access for purposes of such measures.

(c) REPORT.—Promptly after entering into any agreement under subsection (b), the Secretary of Defense shall submit to Congress a report on the agreement. The report shall identify the country with which the agreement was made, the anticipated costs to the United States to be incurred under the agreement, and the national interest of the United States that is furthered by the agreement.

(d) LIMITATION ON DELEGATION.—The Secretary of Defense may delegate the authority of the Secretary to carry out this section only to the Secretary of the Air Force. Such a delegation may be redelegated.

(Added Pub. L. 106–398, § 1 [[div. A], title XII, § 1203(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–324, § 2555; renumbered § 2565 and amended Pub. L. 107–107, div. A, title XII, § 1201(a)(1), (b), Dec. 28, 2001, 115 Stat. 1245.)

AMENDMENTS

2001—Pub. L. 107–107, § 1201(a)(1), renumbered section 2555 of this title as this section.

Subsec. (a). Pub. L. 107–107, § 1201(b)(1)(A), substituted ''Transfer Title to or Otherwise'' for ''Convey or'' in heading.

Subsec. (a)(1). Pub. L. 107–107, § 1201(b)(1)(B), substituted ''transfer title'' for ''convey'' and struck out ''and'' after semicolon at end.

Subsec. (a)(3). Pub. L. 107–107, § 1201(b)(1)(C), (D), added par. (3).

Subsec. (b). Pub. L. 107–107, § 1201(b)(2)(A), substituted ''provided to a foreign government'' for ''conveyed or otherwise provided'' in introductory provisions.

Subsec. (b)(1). Pub. L. 107–107, § 1201(b)(2)(B), inserted ''and'' after semicolon at end.

Subsec. (b)(2). Pub. L. 107–107, § 1201(b)(2)(C), substituted a period for ''; and'' at end.

Subsec. (b)(3). Pub. L. 107–107, § 1201(b)(2)(D), struck out par. (3) which read as follows: ''to return such equipment to the United States (or allow the United States to recover such equipment) if either party determines that the agreement no longer serves its interests.''

§ 2566. Space and services: provision to military welfare societies

(a) AUTHORITY TO PROVIDE SPACE AND SERVICES.—The Secretary of a military department may provide, without charge, space and services under the jurisdiction of that Secretary to a military welfare society.

(b) DEFINITIONS.—In this section:

(1) The term ''military welfare society'' means the following:

(A) The Army Emergency Relief Society.

(B) The Navy-Marine Corps Relief Society.

(C) The Air Force Aid Society, Inc.

(2) The term ''services'' includes lighting, heating, cooling, electricity, office furniture, office machines and equipment, telephone and other information technology services (including installation of lines and equipment, connectivity, and other associated services), and security systems (including installation and other associated expenses).

(Added Pub. L. 107–314, div. A, title X, § 1066(a), Dec. 2, 2002, 116 Stat. 2656.)

§ 2567. Space and services: provision to WIC offices

(a) ALLOTMENT OF SPACE AND PROVISION OF SERVICES AUTHORIZED.—Upon application by a WIC office, the Secretary of a military department may allot space on a military installation under the jurisdiction of the Secretary to the WIC office without charge for rent or services if the Secretary determines that—

(1) the WIC office provides or will provide services solely to members of the armed forces assigned to the installation, civilian employees of the Department of Defense employed at the installation, or dependents of such members or employees;

(2) space is available on the installation;

(3) operation of the WIC office will not hinder military mission requirements; and

(4) the security situation at the installation permits the presence of a non-Federal entity on the installation.

(b) DEFINITIONS.—In this section:

(1) The term ''services'' includes the provision of lighting, heating, cooling, and electricity.

(2) The term ''WIC office'' means a local agency (as defined in subsection (b)(6) of section 17 of the Child Nutrition Act of 1966 (42

U.S.C. 1786)) that participates in the special supplemental nutrition program for women, infants, and children under such section.

(Added Pub. L. 114–328, div. B, title XXVIII, § 2812(a), Dec. 23, 2016, 130 Stat. 2716.)

PRIOR PROVISIONS

A prior section 2567, added Pub. L. 109–364, div. A, title X, § 1076(b)(1), Oct. 17, 2006, 120 Stat. 2405, which related to supplies, services, and equipment: provision in major public emergencies, was repealed by Pub. L. 110–181, div. A, title X, § 1068(b)(1), Jan. 28, 2008, 122 Stat. 326.

§ 2568. Retention of combat uniforms by members deployed in support of contingency operations

The Secretary of a military department may authorize a member of the armed forces under the jurisdiction of the Secretary who has been deployed in support of a contingency operation for at least 30 days to retain, after that member is no longer so deployed, the combat uniform issued to that member as organizational clothing and individual equipment.

(Added Pub. L. 110–181, div. A, title III, § 376(a), Jan. 28, 2008, 122 Stat. 84.)

§ 2568a. Damaged personal protective equipment: award to members separating from the Armed Forces and veterans

(a) IN GENERAL.—The Secretary of a military department, acting through a disposition service distribution center of the Defense Logistics Agency, may award to a covered individual the demilitarized PPE of that covered individual. The award of PPE under this section shall be without cost to the covered individual.

(b) DEFINITIONS.—In this section:

(1) The term ''covered individual'' means—

(A) a member of the armed forces—

(i) under the jurisdiction of the Secretary concerned; and

(ii) who is separating from the armed forces; or

(B) a veteran who was under the jurisdiction of the Secretary concerned while a member of the armed forces.

(2) The term ''PPE'' means personal protective equipment that was damaged in combat or otherwise—

(A) during the deployment of a covered individual; and

(B) after September 11, 2001.

(Added Pub. L. 115–232, div. A, title VI, § 623(a), Aug. 13, 2018, 132 Stat. 1800.)

CHAPTER 153—EXCHANGE OF MATERIAL AND DISPOSAL OF OBSOLETE, SURPLUS, OR UNCLAIMED PROPERTY

Sec.
2571. Interchange of supplies and services.
2572. Documents, historical artifacts, and condemned or obsolete combat materiel: loan, gift, or exchange.
[2573. Repealed.]
2574. Armament: sale of individual pieces.
2575. Disposition of unclaimed property.
2576. Surplus military equipment: sale to State and local law enforcement, firefighting, homeland security, and emergency management agencies.
Sec.
2576a. Excess personal property: sale or donation for law enforcement activities.
2576b. Excess personal property: sale or donation to assist firefighting agencies.
2577. Disposal of recyclable materials.
2578. Vessels: transfer between departments.
2579. War booty: procedures for handling and retaining battlefield objects.
2580. Donation of excess chapel property.
2581. Excess UH–1 Huey and AH–1 Cobra helicopters: requirements for transfer to foreign countries.
[2582. Repealed.]
2583. Military animals: transfer and adoption.

AMENDMENTS

2011—Pub. L. 112–81, div. A, title X, § 1061(19)(B), Dec. 31, 2011, 125 Stat. 1584, struck out item 2582 ''Military equipment identified on United States munitions list: annual report of public sales''.

Pub. L. 111–383, div. A, title X, § 1072(c)(2), Jan. 7, 2011, 124 Stat. 4366, substituted ''Surplus military equipment: sale to State and local law enforcement, firefighting, homeland security, and emergency management agencies'' for ''Surplus military equipment: sale to State and local law enforcement and firefighting agencies'' in item 2576.

2006—Pub. L. 109–364, div. A, title III, § 352(b), div. B, title XXVIII, § 2825(d)(1)(B), Oct. 17, 2006, 120 Stat. 2161, 2477, substituted ''supplies'' for ''property'' in item 2571 and ''animals'' for ''working dogs'' in item 2583.

Pub. L. 109–163, div. A, title V, § 599(d), Jan. 6, 2006, 119 Stat. 3284, struck out ''at end of useful working life'' after ''adoption'' in item 2583.

2001—Pub. L. 107–107, div. A, title X, § 1048(a)(25), Dec. 28, 2001, 115 Stat. 1224, redesignated item 2582 relating to military working dogs as item 2583.

2000—Pub. L. 106–446, § 1(b), Nov. 6, 2000, 114 Stat. 1933, added item 2582 relating to military working dogs.

Pub. L. 106–398, § 1 [[div. A], title III, § 381(b), title XVII, § 1706(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–85, 1654A–367, added items 2576b and 2582 relating to military equipment identified on United States munitions list.

1998—Pub. L. 105–261, div. A, title XII, § 1234(b), Oct. 17, 1998, 112 Stat. 2157, added item 2581.

1997—Pub. L. 105–85, div. A, title X, § 1063(b), Nov. 18, 1997, 111 Stat. 1893, added item 2580.

1996—Pub. L. 104–201, div. A, title X, § 1033(a)(2), Sept. 23, 1996, 110 Stat. 2640, added item 2576a.

1993—Pub. L. 103–160, div. A, title XI, § 1171(a)(2), Nov. 30, 1993, 107 Stat. 1766, added item 2579.

1988—Pub. L. 100–456, div. A, title III, § 324(b), Sept. 29, 1988, 102 Stat. 1954, substituted ''Documents, historical artifacts, and condemned or obsolete combat materiel: loan, gift, or exchange'' for ''Condemned or obsolete material: loan or gift to certain organizations'' in item 2572.

Pub. L. 100–370, § 1(k)(2), July 19, 1988, 102 Stat. 848, added item 2578.

1982—Pub. L. 97–214, § 6(b)(2), July 12, 1982, 96 Stat. 172, added item 2577.

1980—Pub. L. 96–513, title V, § 511(83)(B), Dec. 12, 1980, 94 Stat. 2927, struck out item 2573 ''Excess property: transfers to Canal Zone Government''.

1968—Pub. L. 90–500, title IV, § 403(b), Sept. 20, 1968, 82 Stat. 851, added item 2576.

1958—Pub. L. 85–861, § 1(50), Sept. 2, 1958, 72 Stat. 1459, substituted ''property'' for ''supplies'' in item 2571.

IDENTIFICATION AND REPLACEMENT OF OBSOLETE ELECTRONIC PARTS

Pub. L. 113–66, div. A, title VIII, § 803, Dec. 26, 2013, 127 Stat. 805, provided that:

''(a) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act [Dec. 26, 2013], the Secretary of Defense shall implement a process for the expedited identification and replacement of obsolete

electronic parts included in acquisition programs of the Department of Defense.

"(b) ISSUES TO BE ADDRESSED.—At a minimum, the expedited process established pursuant to subsection (a) shall—

"(1) include a mechanism pursuant to which contractors, or other sources of supply, may provide to appropriate Department of Defense officials information that identifies—

"(A) obsolete electronic parts that are included in the specifications for an acquisition program of the Department of Defense; and

"(B) suitable replacements for such electronic parts;

"(2) specify timelines for the expedited review and validation of information submitted by contractors, or other sources of supply, pursuant to paragraph (1);

"(3) specify procedures and timelines for the rapid submission and approval of engineering change proposals needed to accomplish the substitution of replacement parts that have been validated pursuant to paragraph (2);

"(4) provide for any incentives for contractor participation in the expedited process that the Secretary may determine to be appropriate; and

"(5) provide that, in addition to the responsibilities under section 2337 of title 10, United States Code, a product support manager for a major weapon system shall work to identify obsolete electronic parts that are included in the specifications for an aquisition program of the Department of Defense and approve suitable replacements for such electronic parts.

"(c) ADDITIONAL MATTERS.—For the purposes of this section—

"(1) an electronic part is obsolete if—

"(A) the part is no longer in production; and

"(B) the original manufacturer of the part and its authorized dealers do not have sufficient parts in stock to meet the requirements of such an acquisition program; and

"(2) an electronic part is a suitable replacement for an obsolete electronic part if—

"(A) the part could be substituted for an obsolete part without incurring unreasonable expense and without degrading system performance; and

"(B) the part is or will be available in sufficient quantity to meet the requirements of such an acquisition program."

§ 2571. Interchange of supplies and services

(a) If either of the Secretaries concerned requests it and the other approves, supplies may be transferred, without compensation, from one armed force to another.

(b) If its head approves, a department or organization within the Department of Defense may, upon request, perform work and services for, or furnish supplies to, any other of those departments or organizations, without reimbursement or transfer of funds.

(c) If military or civilian personnel of a department or organization within the Department of Defense are assigned or detailed to another of those departments or organizations, and if the head of the department or organization to which they are transferred approves, their pay and allowances and the cost of transporting their dependents and household goods may be charged to an appropriation that is otherwise available for those purposes to that department or organization.

(d) No agency or official of the executive branch of the Federal Government may establish any regulation, program, or policy or take any other action which precludes, directly or indirectly, the Secretaries concerned from exercising the authority provided in this section.

(Aug. 10, 1956, ch. 1041, 70A Stat. 143; Pub. L. 85–861, § 1(49), Sept. 2, 1958, 72 Stat. 1459; Pub. L. 99–167, title VIII, § 821, Dec. 3, 1985, 99 Stat. 991; Pub. L. 109–364, div. B, title XXVIII, § 2825(c)(1), (d)(1)(A), Oct. 17, 2006, 120 Stat. 2477.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2571(a) [now (b)].	5:171t (less clause (2)).	Oct. 29, 1949, ch. 787, § 621, 63 Stat. 1020.
2571(b) [now (c)].	5:171t (clause 2)).	

In subsection (a), the words "After June 30, 1949" are omitted as executed. The words "may perform work and services for, or furnish supplies to" are substituted for the words "services, work, supplies, materials, and equipment may be rendered or supplied", since the word "supplies", as defined in section 101(26) of this title, includes "equipment" and "material". The words "upon request" are inserted for clarity.

In subsection (b), the words "on a reimbursable or other basis as authorized by law", "to duty", and "naval" are omitted as surplusage.

1958 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2571(a)	14:640.	June 15, 1955, ch. 142, 69 Stat. 134.

In subsection (a), the first 12 words are substituted for 14:640 (last 20 words). The words "may be transferred" are substituted for the words "The interchange . . . is authorized", since the words "without compensation" authorize a simple one-way transfer, while the word "interchange" normally means a mutual exchange. The words "military stores . . . and equipment of every character" are omitted as covered by the word "supplies" as defined in section 101(26) of this title. The words "armed force" are substituted for the enumeration of the armed forces.

AMENDMENTS

2006—Pub. L. 109–364, § 2825(d)(1)(A), substituted "supplies" for "property" in section catchline.

Subsec. (a). Pub. L. 109–364, § 2825(c)(1), struck out "and real estate" after "supplies".

1985—Subsec. (d). Pub. L. 99–167 added subsec. (d).

1958—Pub. L. 85–861, § 1(49)(A), substituted "property" for "supplies" in section catchline.

Subsecs. (a) to (c). Pub. L. 85–861, § 1(49)(B), (C), added subsec. (a) and redesignated former subsecs. (a) and (b) as (b) and (c), respectively.

DISTRIBUTION TO INDIAN HEALTH SERVICE FACILITIES AND CERTAIN HEALTH CENTERS; PROPERTY DISPOSAL PRIORITY

Pub. L. 110–329, div. C, title VIII, § 8075, Sept. 30, 2008, 122 Stat. 3638, provided that:

"(a) During the current fiscal year and hereafter, the Secretary of Defense, in coordination with the Secretary of Health and Human Services, may carry out a program to distribute surplus dental and medical equipment of the Department of Defense, at no cost to the Department of Defense, to Indian Health Service facilities and to federally-qualified health centers (within the meaning of section 1905(*l*)(2)(B) of the Social Security Act (42 U.S.C. 1396d(*l*)(2)(B))).

"(b) In carrying out this provision, the Secretary of Defense shall give the Indian Health Service a property disposal priority equal to the priority given to the Department of Defense and its twelve special screening programs in distribution of surplus dental and medical supplies and equipment."

§ 2572. Documents, historical artifacts, and condemned or obsolete combat materiel: loan, gift, or exchange

(a) The Secretary concerned may lend or give items described in subsection (c) that are not needed by the military department concerned (or by the Coast Guard, in the case of the Secretary of Homeland Security), to any of the following:

(1) A municipal corporation, county, or other political subdivision of a State.

(2) A servicemen's monument association.

(3) A museum, historical society, or historical institution of a State or a foreign nation or a nonprofit military aviation heritage foundation or association incorporated in a State.

(4) An incorporated museum or memorial that is operated and maintained for educational purposes only and the charter of which denies it the right to operate for profit.

(5) A post of the Veterans of Foreign Wars of the United States or of the American Legion or a unit of any other recognized war veterans' association.

(6) A local or national unit of any war veterans' association of a foreign nation which is recognized by the national government of that nation (or by the government of one of the principal political subdivisions of that nation).

(7) A post of the Sons of Veterans Reserve.

(b)(1) Subject to paragraph (2), the Secretary concerned may exchange items described in subsection (c) that are not needed by the armed forces for any of the following items or services if such items or services directly benefit the historical collection of the armed forces:

(A) Similar items held by any individual, organization, institution, agency, or nation.

(B) Conservation supplies, equipment, facilities, or systems.

(C) Search, salvage, or transportation services.

(D) Restoration, conservation, or preservation services.

(E) Educational programs.

(2) The Secretary concerned may not make an exchange under paragraph (1) unless the monetary value of property transferred, or services provided, to the United States under the exchange is not less than the value of the property transferred by the United States. The Secretary concerned may waive the limitation in the preceding sentence in the case of an exchange of property for property in any case in which the Secretary determines that the item to be received by the United States in the exchange will significantly enhance the historical collection of the property administered by the Secretary.

(c) This section applies to the following types of property held by a military department or the Coast Guard: books, manuscripts, works of art, historical artifacts, drawings, plans, models, and condemned or obsolete combat materiel.

(d)(1) A loan or gift made under this section shall be subject to regulations prescribed by the Secretary concerned and to regulations under section 121 of title 40. The Secretary concerned shall ensure that an item authorized to be donated under this section is demilitarized in the interest of public safety, as determined necessary by the Secretary or the Secretary's delegee.

(2)(A) Except as provided in subparagraph (B), the United States may not incur any expense in connection with a loan or gift under subsection (a), including any expense associated with demilitarizing an item under paragraph (1), for which the recipient of the item shall be responsible.

(B) The Secretary concerned may, without cost to the recipient, demilitarize, prepare, and transport in the continental United States for donation to a recognized war veterans' association an item authorized to be donated under this section if the Secretary determines the demilitarization, preparation, and transportation can be accomplished as a training mission without additional budgetary requirements for the unit involved.

(e)(1) Except as provided in paragraph (3), and notwithstanding this section or any other provision of law, the President may not transfer a veterans memorial object to a foreign country or an entity controlled by a foreign government, or otherwise transfer or convey such an object to any person or entity for purposes of the ultimate transfer or conveyance of the object to a foreign country or entity controlled by a foreign government.

(2) In this subsection:

(A) The term ''entity controlled by a foreign government'' has the meaning given that term in section 2536(c)(1) of this title.

(B) The term ''veterans memorial object'' means any object, including a physical structure or portion thereof, that—

(i) is located at a cemetery of the National Cemetery System, war memorial, or military installation in the United States;

(ii) is dedicated to, or otherwise memorializes, the death in combat or combat-related duties of members of the armed forces; and

(iii) was brought to the United States from abroad before 1907 as a memorial of combat abroad.

(3) The prohibition imposed by paragraph (1) does not apply to a transfer of a veterans memorial object if—

(A) the transfer of that veterans memorial object is specifically authorized by law; or

(B) the transfer is made after September 30, 2022.

(Aug. 10, 1956, ch. 1041, 70A Stat. 143; Pub. L. 96–513, title V, § 511(82), Dec. 12, 1980, 94 Stat. 2927; Pub. L. 100–456, div. A, title III, § 324(a), Sept. 29, 1988, 102 Stat. 1954; Pub. L. 101–510, div. A, title III, § 325, Nov. 5, 1990, 104 Stat. 1531; Pub. L. 102–484, div. A, title III, § 373, Oct. 23, 1992, 106 Stat. 2385; Pub. L. 103–337, div. A, title X, § 1071, Oct. 5, 1994, 108 Stat. 2859; Pub. L. 104–106, div. A, title III, § 372, Feb. 10, 1996, 110 Stat. 280; Pub. L. 107–107, div. A, title X, § 1043(d), Dec. 28, 2001, 115 Stat. 1219; Pub. L. 107–217, § 3(b)(9), Aug. 21, 2002, 116 Stat. 1296; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 107–314, div. A, title III, § 369, Dec. 2, 2002, 116 Stat. 2524; Pub. L. 110–417, [div. A], title III, § 352, Oct. 14, 2008, 122 Stat. 4425; Pub. L. 112–239, div. A, title III, § 355(a), Jan. 2, 2013, 126 Stat. 1702; Pub. L. 115–91, div. B, title XXVIII, § 2864(a), (b),

Dec. 12, 2017, 131 Stat. 1869; Pub. L. 116–283, div. A, title XVIII, §1870(d)(4), Jan. 1, 2021, 134 Stat. 4286.)

AMENDMENT OF SUBSECTION (e)(2)(A)

Pub. L. 116–283, div. A, title XVIII, §§1801(d), 1870(d)(4), Jan. 1, 2021, 134 Stat. 4151, 4286, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, subsection (e)(2)(A) of this section is amended by striking ''section 2536(c)(1)'' and inserting ''section 4872(c)(1)''. See 2021 Amendment note below.

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
2572	5:150p.	May 22, 1896, ch. 231; restated May 26, 1928, ch. 785; restated Feb. 28, 1933, ch. 137; restated June 19, 1940, ch. 398; July 31, 1947, ch. 421; restated Feb. 27, 1948, ch. 76, §1, 62 Stat. 37; Oct. 31, 1951, ch. 654, §2(2), 65 Stat. 706.

The word ''may'' is substituted for the words ''are each authorized, in their discretion''. The reference to posts of the Grand Army of the Republic is omitted, since that organization disbanded in 1950. The words ''under regulations to be prescribed by him'' are substituted for the words ''subject to rules and regulations covering the same in each department''. The words ''without expense to the United States'' are substituted for the words ''and the Government shall be at no expense in connection with any such loan or gift''. The words ''local unit'' are inserted in clause (7) to conform to clauses (5), (6), and (8).

AMENDMENTS

2021—Subsec. (e)(2)(A). Pub. L. 116–283 substituted ''section 4872(c)(1)'' for ''section 2536(c)(1)''.

2017—Subsec. (e)(2)(B)(iii). Pub. L. 115–91, §2864(a), substituted ''from abroad before 1907'' for ''from abroad''.

Subsec. (e)(3)(B). Pub. L. 115–91, §2864(b), substituted ''September 30, 2022'' for ''September 30, 2017''.

2013—Subsec. (e). Pub. L. 112–239 added subsec. (e).

2008—Subsec. (d)(1). Pub. L. 110–417, §352(1), inserted at end ''The Secretary concerned shall ensure that an item authorized to be donated under this section is demilitarized in the interest of public safety, as determined necessary by the Secretary or the Secretary's delegee.''

Subsec. (d)(2)(A). Pub. L. 110–417, §352(2), inserted '', including any expense associated with demilitarizing an item under paragraph (1), for which the recipient of the item shall be responsible'' before period at end.

2002—Subsec. (a). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation'' in introductory provisions.

Subsec. (a)(3). Pub. L. 107–314 inserted before period at end ''or a nonprofit military aviation heritage foundation or association incorporated in a State''.

Subsec. (d)(1). Pub. L. 107–217 substituted ''section 121 of title 40'' for ''section 205 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486)''.

2001—Subsec. (a)(1). Pub. L. 107–107, §1043(d)(1), inserted '', county, or other political subdivision of a State'' before period at end.

Subsec. (a)(2). Pub. L. 107–107, §1043(d)(2), substituted ''servicemen's monument'' for ''soldiers' monument''.

Subsec. (a)(4). Pub. L. 107–107, §1043(d)(3), inserted ''or memorial'' after ''An incorporated museum''.

1996—Subsec. (b)(1). Pub. L. 104–106 substituted ''not needed by the armed forces for any of the following items or services if such items or services directly benefit the historical collection of the armed forces:'' for ''not needed by the armed forces for similar items held by any individual, organization, institution, agency, or nation or for search, salvage, transportation, and restoration services which directly benefit the historical collection of the armed forces.'' and added subpars. (A) to (E).

1994—Subsec. (b)(1). Pub. L. 103–337 inserted ''transportation,'' after ''salvage,''.

1992—Subsec. (d)(2). Pub. L. 102–484 designated existing provisions as subpar. (A), substituted ''Except as provided in subparagraph (B), the'' for ''The'', and added subpar. (B).

1990—Subsec. (b)(1). Pub. L. 101–510, §325(1), inserted before period at end ''or for search, salvage, and restoration services which directly benefit the historical collection of the armed forces''.

Subsec. (b)(2). Pub. L. 101–510, §325(2), inserted '', or services provided,'' after ''monetary value of property transferred'' in first sentence and ''in the case of an exchange of property for property'' after ''preceding sentence'' in second sentence.

1988—Pub. L. 100–456 substituted ''Documents, historical artifacts, and condemned or obsolete combat materiel: loan, gift, or exchange'' for ''Condemned or obsolete material: loan or gift to certain organizations'' in section catchline, and amended text generally. Prior to amendment, text read as follows: ''Subject to regulations under section 205 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486), the Secretary of a military department, or the Secretary of Transportation, under regulations to be prescribed by him, may lend or give, without expense to the United States, books, manuscripts, works of art, drawings, plans, models, and condemned or obsolete combat material that are not needed by that department to—

''(1) a municipal corporation;

''(2) a soldiers' monument association;

''(3) a State museum;

''(4) an incorporated museum, operated and maintained for educational purposes only, whose charter denies it the right to operate for profit;

''(5) a post of the Veterans of Foreign Wars of the United States;

''(6) a post of the American Legion;

''(7) a local unit of any other recognized war veterans' association; or

''(8) a post of the Sons of Veterans Reserve.''

1980—Pub. L. 96–513 substituted ''section 205 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486), the Secretary of a military department or the Secretary of Transportation'' for ''section 486 of title 40, the Secretary of a military department or the Secretary of the Treasury''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 2017 AMENDMENT

Pub. L. 115–91, div. B, title XXVIII, §2864(d), Dec. 12, 2017, 131 Stat. 1869, provided that: ''The amendments made by this section [amending this section] shall take effect October 1, 2017.''

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

ACQUISITION OF HISTORICAL ARTIFACTS THROUGH EXCHANGE OF OBSOLETE OR SURPLUS PROPERTY

Pub. L. 108–136, div. A, title X, §1052, Nov. 24, 2003, 117 Stat. 1614, provided that, during fiscal years 2004 and 2005, the Secretary of a military department could use the authority provided by this section to acquire an historical artifact that directly benefitted the historical collection of the Armed Forces in exchange for any obsolete or surplus property held by that military department, without regard to whether the property was described in subsec. (c) of this section.

MORATORIUM ON THE RETURN OF VETERANS MEMORIAL OBJECTS TO FOREIGN NATIONS WITHOUT SPECIFIC AUTHORIZATION IN LAW

Pub. L. 106–65, div. A, title X, §1051, Oct. 5, 1999, 113 Stat. 763, as amended by Pub. L. 109–163, div. A, title X, §1061, Jan. 6, 2006, 119 Stat. 3445, established a moratorium period during which the President was prohibited from transferring a veterans memorial object to a foreign country or an entity controlled by a foreign government unless specifically authorized by law, prior to repeal by Pub. L. 112–239, div. A, title III, §355(b), Jan. 2, 2013, 126 Stat. 1702.

[§ 2573. Repealed. Pub. L. 96–513, title V, § 511(83)(A), Dec. 12, 1980, 94 Stat. 2927]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 143, related to transfer of excess property to the Canal Zone Government.

EFFECTIVE DATE OF REPEAL

Repeal effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

§ 2574. Armament: sale of individual pieces

A piece of armament that can be advantageously replaced, and that is not needed for its historical value, may be sold by the military department having jurisdiction over it for not less than cost, if the Secretary concerned considers that there are adequate sentimental reasons for the sale.

(Aug. 10, 1956, ch. 1041, 70A Stat. 144.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2574	10:1262b. 34:545. 50:69.	Mar. 2, 1905, ch. 1307 (last 55 words of last par. under ''Ordnance Department''), 33 Stat. 841.

The words ''by the military department having jurisdiction over it'' are inserted for clarity. The words ''if the Secretary concerned considers'' are substituted for the words ''when there exist * * * in the judgment of the Secretary''.

§ 2575. Disposition of unclaimed property

(a) The Secretary of any military department, and the Secretary of Homeland Security, under such regulations as they may respectively prescribe, may each by public or private sale or otherwise, dispose of all lost, abandoned, or unclaimed personal property that comes into the custody or control of the Secretary's department, other than property subject to section 7712, 8392, or 9712 of this title or subject to subsection (c). However, property may not be disposed of until diligent effort has been made to find the owner (or the heirs, next of kin, or legal representative of the owner). The diligent effort to find the owner (or the heirs, next of kin, or legal representative of the owner) shall begin, to the maximum extent practicable, not later than seven days after the date on which the property comes into the custody or control of the Secretary. The period for which that effort is continued may not exceed 45 days. If the owner (or the heirs, next of kin, or legal representative of the owner) is determined but not found, the property may not be disposed of until the expiration of 45 days after the date when notice, giving the time and place of the intended sale or other disposition, has been sent by certified or registered mail to that person at his last known address. When diligent effort to determine the owner (or heirs, next of kin, or legal representative of the owner) is unsuccessful, the property may be disposed of without delay, except that if it has a fair market value of more than $300, the Secretary may not dispose of the property until 45 days after the date it is received at a storage point designated by the Secretary.

(b)(1) In the case of lost, abandoned, or unclaimed personal property found on a military installation, the proceeds from the sale of the property under this section shall be credited to the operation and maintenance account of that installation and used—

(A) to reimburse the installation for any costs incurred by the installation to collect, transport, store, protect, or sell the property; and

(B) to the extent that the amount of the proceeds exceeds the amount necessary for reimbursing all such costs, to support morale, welfare, and recreation activities under the jurisdiction of the armed forces that are conducted for the comfort, pleasure, contentment, or physical or mental improvement of members of the armed forces at such installation.

(2) The net proceeds from the sale of other property under this section shall be covered into the Treasury as miscellaneous receipts.

(c) No property covered by this section may be delivered to the Armed Forces Retirement Home by the Secretary of a military department, except papers of value, sabers, insignia, decorations, medals, watches, trinkets, manuscripts, and other articles valuable chiefly as keepsakes.

(d)(1) The owner (or heirs, next of kin, or legal representative of the owner) of personal property the proceeds of which are credited to a military installation under subsection (b)(1) may file a claim with the Secretary of Defense for the amount equal to the proceeds (less costs referred to in subparagraph (A) of such subsection). Amounts to pay the claim shall be drawn from the morale, welfare, and recreation account for the installation that received the proceeds.

(2) The owner (or heirs, next of kin, or legal representative of the owner) may file a claim with the Secretary of Defense for proceeds covered into the Treasury under subsection (b)(2).

(3) Unless a claim is filed under this subsection within 5 years after the date of the disposal of the property to which the claim relates, the claim may not be considered by a court, the Secretary of Defense (in the case of a claim filed under paragraph (1)), or the Secretary of Defense (in the case of a claim filed under paragraph (2)).

(Aug. 10, 1956, ch. 1041, 70A Stat. 144; Pub. L. 89–143, Aug. 28, 1965, 79 Stat. 581; Pub. L. 96–513, title V, § 511(84), Dec. 12, 1980, 94 Stat. 2927; Pub. L. 101–189, div. A, title III, § 322(a), (b), title XVI, § 1622(f)(1), Nov. 29, 1989, 103 Stat. 1413, 1605; Pub. L. 101–510, div. A, title XV, § 1533(a)(2), Nov. 5, 1990, 104 Stat. 1733; Pub. L. 104–106, div. A, title III, § 374(a), Feb. 10, 1996, 110 Stat. 281; Pub. L. 104–316, title II, § 202(d), Oct. 19, 1996, 110 Stat. 3842; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 115–232, div. A, title VIII, § 809(a), Aug. 13, 2018, 132 Stat. 1840.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2575(a)	5:150e. 5:150h. [Uncodified: Apr. 14, 1949, ch. 50, § 6, 63 Stat. 45].	Apr. 14, 1949, ch. 50, 63 Stat. 45.
2575(b)	5:150f. 5:150g.	
2575(c)	5:150i.	

In subsection (a), the words ''under such regulations as they may respectively prescribe'' are substituted for 5:150h. The words ''other than property * * * subject to subsection (c)'' of this section are substituted for the words ''subject to the provisions of section 150i of this title''. The words ''other than property subject to sections 4712, 4713, 6522, 9712, or 9713 of this title'' are inserted, since uncodified section 6 of the source statute provided that the source statute for this revised section did not repeal or amend the source statutes for those revised sections. The words ''that comes into'' are substituted for the words ''which is now or may hereafter come into''. The word ''possession'' is omitted as covered by the words ''custody or control''. The words ''However, property may not be disposed of until'' are inserted for clarity. The word ''find'' is substituted for the words ''determine and locate''. The words ''until the expiration'' are substituted for the words ''prior to the expiration of a period''. The words ''determined but not found'' are substituted for the words ''have or has been determined''. The words ''or owners'', ''or representatives'', and ''sold or otherwise'' are omitted as surplusage.

In subsection (b), the words ''may file * * * within five years'' are substituted for the words ''may be filed * * * at any time prior to the expiration of five years'', in 5:150g, since the claim must be disallowed if not filed within that period. The words ''If not filed within that period'' are substituted for the words ''If claims are not filed prior to the expiration of five years from the date of the disposal of the property'', in 5:150g. The words ''such a claim may not be considered'' are substituted for the words ''they shall be barred from being acted on'', in 5:150g.

In subsection (c), the words ''No property * * * may * * * except'' are substituted for the words ''Any property * * * shall be limited''. The last sentence is substituted for 5:150i (proviso).

AMENDMENTS

2018—Subsec. (a). Pub. L. 115–232 substituted ''section 7712, 8392, or 9712'' for ''section 4712, 6522, or 9712''.

2002—Subsec. (a). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

1996—Subsec. (b). Pub. L. 104–106, § 374(a)(1), added subsec. (b) and struck out former subsec. (b) which read as follows: ''The net proceeds from the sale of property under this section shall be covered into the Treasury as miscellaneous receipts. The owner (or the heirs, next of kin, or legal representative of the owner) may file a claim for those proceeds with the General Accounting Office within five years after the date of the disposal of the property. If not filed within that period, such a claim may not be considered by a court or the General Accounting Office.''

Subsec. (d). Pub. L. 104–106, § 374(a)(2), added subsec. (d).

Subsec. (d)(2), (3). Pub. L. 104–316 substituted ''Secretary of Defense'' for ''Comptroller General of the United States''.

1990—Subsec. (a). Pub. L. 101–510, § 1533(a)(2)(A), substituted ''section 4712, 6522, or 9712'' for ''section 4712, 4713, 6522, 9712, or 9713''.

Subsec. (c). Pub. L. 101–510, § 1533(a)(2)(B), substituted ''Armed Forces Retirement Home'' for ''United States Soldiers' and Airmen's Home'' and ''Secretary of a military department'' for ''Secretary of the Army or the Secretary of the Air Force'' and struck out at end ''The Home shall deliver the property to the owner (or the heirs, next of kin, or legal representative of the owner), if that person establishes a right to it within two years after its receipt by the Home.''

1989—Subsec. (a). Pub. L. 101–189, § 1622(f)(1), struck out ''of this section'' after ''subsection (c)''.

Pub. L. 101–189, § 322(b)(2)(A), substituted ''the Secretary's department'' for ''his department''.

Pub. L. 101–189, § 322(b)(1), substituted ''owner (or the heirs, next of kin, or legal representative of the owner)'' for ''owner, his heirs or next of kin, or his legal representative'' in two places.

Pub. L. 101–189, § 322(a)(3), inserted after second sentence: ''The diligent effort to find the owner (or the heirs, next of kin, or legal representative of the owner) shall begin, to the maximum extent practicable, not later than seven days after the date on which the property comes into the custody or control of the Secretary. The period for which that effort is continued may not exceed 45 days.''

Pub. L. 101–189, § 322(a)(1), substituted ''45 days'' for ''120 days''.

Pub. L. 101–189, § 322(b)(2)(B), substituted ''owner (or heirs, next of kin, or legal representative of the owner)'' for ''owner, his heirs or next of kin, or his legal representatives'' after ''When diligent effort to determine the''.

Pub. L. 101–189, § 322(a)(2), substituted ''more than $300, the Secretary may not dispose of the property until 45 days'' for ''$25 or more the property may not be disposed of until three months''.

Subsec. (b). Pub. L. 101–189, § 322(b)(1), substituted ''owner (or the heirs, next of kin, or legal representative of the owner)'' for ''owner, his heirs or next of kin, or his legal representative''.

Subsec. (c). Pub. L. 101–189, § 322(b)(1), (3), substituted ''owner (or the heirs, next of kin, or legal representative of the owner)'' for ''owner, his heirs or next of kin, or his legal representative'', and ''that person'' for ''he'' before ''establishes a right''.

1980—Subsec. (a). Pub. L. 96–513, § 511(84)(A), substituted ''Secretary of Transportation'' for ''Secretary of the Treasury''.

Subsec. (c). Pub. L. 96–513, § 511(84)(B), substituted ''United States Soldiers' and Airmen's Home'' for ''Soldiers' Home''.

1965—Subsec. (a). Pub. L. 89–143 provided for notice by certified mail and substituted provision for disposition of property without delay when diligent effort to determine ownership is unsuccessful and after three months following receipt at designated storage point of property with fair market value of $25 or more, for former provision for disposition of property one year after receipt at designated storage point.

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115–232 effective Feb. 1, 2019, with provision for the coordination of amendments and special rule for certain redesignations, see section 800 of Pub. L. 115–232, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–510 effective one year after Nov. 5, 1990, see section 1541 of Pub. L. 101–510, formerly set out as an Effective Date note under section 401 of Title 24, Hospitals and Asylums.

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–189, div. A, title III, § 322(c), Nov. 29, 1989, 103 Stat. 1414, provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to property that comes into the custody or control of the Secretary of a military department or the Secretary of Transportation after the date of the enactment of this Act [Nov. 29, 1989].''

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

§ 2576. Surplus military equipment: sale to State and local law enforcement, firefighting, homeland security, and emergency management agencies

(a) The Secretary of Defense, under regulations prescribed by him, may sell to State and local law enforcement, firefighting, homeland security, and emergency management agencies, at fair market value, pistols, revolvers, shotguns, rifles of a caliber not exceeding .30, ammunition for such firearms, gas masks, personal protective equipment, and other appropriate equipment which (1) are suitable for use by such agencies in carrying out law enforcement, firefighting, homeland security, and emergency management activities, and (2) have been determined to be surplus property under subtitle I of title 40 and division C (except sections 3302, 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41.

(b) Such surplus military equipment shall not be sold under the provisions of this section to a State or local law enforcement, firefighting, homeland security, or emergency management agency unless request therefor is made by such agency, in such form and manner as the Secretary of Defense shall prescribe, and such request, with respect to the type and amount of equipment so requested, is certified as being necessary and suitable for the operation of such agency by the Governor (or such State official as he may designate) of the State in which such agency is located. Equipment sold to a State or local law enforcement, firefighting, homeland security, or emergency management agency under this section shall not exceed, in quantity, the amount requested and certified for such agency and shall be for the exclusive use of such agency. Such equipment may not be sold, or otherwise transferred, by such agency to any individual or public or private organization or agency.

(Added Pub. L. 90–500, title IV, § 403(a) Sept. 20, 1968, 82 Stat. 851; amended Pub. L. 96–513, title V, § 511(85), Dec. 12, 1980, 94 Stat. 2927; Pub. L. 107–217, § 3(b)(10), Aug. 21, 2002, 116 Stat. 1296; Pub. L. 111–350, § 5(b)(42), Jan. 4, 2011, 124 Stat. 3846; Pub. L. 111–383, div. A, title X, § 1072(a)–(c)(1), Jan. 7, 2011, 124 Stat. 4366.)

AMENDMENTS

2011—Pub. L. 111–383, § 1072(c)(1), substituted ''Surplus military equipment: sale to State and local law enforcement, firefighting, homeland security, and emergency management agencies'' for ''Surplus military equipment: sale to State and local law enforcement and firefighting agencies'' in section catchline.

Subsec. (a). Pub. L. 111–383, § 1072(a)(1), (b), substituted ''State and local law enforcement, firefighting, homeland security, and emergency management agencies'' for ''State and local law enforcement and firefighting agencies'', ''personal protective equipment, and other appropriate equipment'' for ''and protective body armor'', and ''in carrying out law enforcement, firefighting, homeland security, and emergency management activities'' for ''in carrying out law enforcement and firefighting activities''.

Pub. L. 111–350 substituted ''division C (except sections 3302, 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41'' for ''title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)''.

Subsec. (b). Pub. L. 111–383, § 1072(a)(2), substituted ''State or local law enforcement, firefighting, homeland security, or emergency management agency'' for ''State or local law enforcement or firefighting agency'' in two places.

2002—Subsec. (a). Pub. L. 107–217 inserted ''subtitle I of title 40 and title III of'' before ''the Federal Property and Administrative Services Act of 1949'' and substituted ''(41 U.S.C. 251 et seq.)'' for ''(40 U.S.C. 471 et seq.)''.

1980—Subsec. (a). Pub. L. 96–513 substituted ''under'' for ''pursuant to'', and ''(40 U.S.C. 471 et seq.)'' for ''(68 Stat. 377), as amended''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

TRANSFER OF EXCESS AIRCRAFT TO OTHER DEPARTMENTS OF THE FEDERAL GOVERNMENT

Pub. L. 112–239, div. A, title X, § 1091, Jan. 2, 2013, 126 Stat. 1971, provided that:

''(a) TRANSFER.—The Secretary of Defense may transfer excess aircraft specified in subsection (b) to the Secretary of Agriculture and the Secretary of Homeland Security for use by the Forest Service and the United States Coast Guard. The transfer of any excess aircraft under this subsection shall be without reimbursement.

''(b) AIRCRAFT.—The aircraft transferred under subsection (a) are aircraft of the Department of Defense that are—

''(1) identified by the Forest Service or the United States Coast Guard as a suitable platform to carry out their respective missions;

''(2) excess to the needs of the Department of Defense, as determined by the Secretary of Defense;

''(3) in the case of aircraft to be transferred to the Secretary of Agriculture, acceptable for use by the Forest Service, as determined by the Secretary of Agriculture; and

''(4) in the case of aircraft to be transferred to the Secretary of Homeland Security, acceptable for use by the United States Coast Guard, as determined by the Secretary of Homeland Security.

''(c) LIMITATION ON NUMBER.—

''(1) LIMITATION.—Except as provided in paragraph (2), the number of aircraft that may be transferred under subsection (a) to each of the Secretary of Agriculture and the Secretary of Homeland Security may not exceed seven aircraft for each agency.

''(2) TERMINATION OF LIMITATION AFTER OFFICIAL NOTICE OF INTENT TO ACCEPT OR DECLINE SEVEN AIRCRAFT.—The limitation in paragraph (1) on the number of aircraft transferrable under subsection (a) shall cease upon official notice to the Secretary of Defense, from the Secretary of Agriculture, and the Secretary of Homeland Security that the Secretary's respective department will decline or accept seven aircraft.

''(d) ORDER OF TRANSFERS.—

''(1) RIGHTS OF REFUSAL.—In implementing the transfers authorized by subsection (a), the Secretary of Defense shall afford the Secretary of Agriculture the right of first refusal and the Secretary of Homeland Security the second right of refusal in the transfer to each department by the Secretary of Defense of up to seven excess aircraft specified in subsection (b) before the transfer of such excess aircraft is offered to any other department or agency of the Federal Government.

''(2) EXPIRATION OF RIGHT OF FIRST REFUSAL.—The right of first refusal afforded the Secretary of Agriculture by paragraph (1) shall expire upon official notice of the Secretary to the Secretary of Defense under subsection (c)(2).

''(e) CONDITIONS OF CERTAIN TRANSFERS.—Excess aircraft transferred to the Secretary of Agriculture under subsection (a)—

''(1) may be used only for wildfire suppression purposes; and

''(2) may not be flown or otherwise removed from the United States unless dispatched by the National Interagency Fire Center in support of an international agreement to assist in wildfire suppression efforts or for other purposes approved by the Secretary of Agriculture in writing in advance.

''(f) ADDITIONAL LIMITATION.—Excess aircraft transferred under subsection (a) may not be sold by the Secretary of Agriculture or the Secretary of Homeland Security after transfer.

''(g) COSTS AFTER TRANSFER.—Any costs of operation, maintenance, sustainment, and disposal of excess aircraft transferred under subsection (a) after the date of transfer shall be borne by the Secretary of Agriculture and the Secretary of Homeland Security, as applicable.''

COMMERCIAL SALE OF SMALL ARMS AMMUNITION AND SMALL ARMS AMMUNITION COMPONENTS IN EXCESS OF MILITARY REQUIREMENTS, AND FIRED CARTRIDGE CASES

Pub. L. 111–383, div. A, title III, § 346, Jan. 7, 2011, 124 Stat. 4191, as amended by Pub. L. 112–81, div. A, title III, § 361, Dec. 31, 2011, 125 Stat. 1377, provided that:

''(a) COMMERCIAL SALE OF SMALL ARMS AMMUNITION, SMALL [ARMS] AMMUNITION COMPONENTS, AND FIRED CARTRIDGE CASES.—Small arms ammunition and small [arms] ammunition components which are in excess of military requirements, and intact fired small arms cartridge cases shall be made available for commercial sale. Such small arms ammunition, small arms ammunition components, and intact fired cartridge cases shall not be demilitarized, destroyed, or disposed of, unless in excess of commercial demands or certified by the Secretary of Defense as unserviceable or unsafe. This provision shall not apply to ammunition, ammunition components, or fired cartridge cases stored or expended outside the continental United States (OCONUS).

''(b) DEADLINE FOR GUIDANCE.—Not later than 90 days after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2012 [Dec. 31, 2011], the Secretary of Defense shall issue guidance to ensure compliance with subsection (a). Not later than 15 days after issuing such guidance, the Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a letter of compliance providing notice of such guidance.

''(c) PREFERENCE.—No small arms ammunition or small arms ammunition components in excess of military requirements, or fired small arms cartridge cases may be made available for commercial sale under this section before such ammunition and ammunition components are offered for transfer or purchase, as authorized by law, to another Federal department or agency or for sale to State and local law enforcement, firefighting, homeland security, and emergency management agencies pursuant to section 2576 of title 10, United States Code, as amended by this Act.

''(d) SALES CONTROLS.—All small arms ammunition and small arms ammunition components, and fired small arms cartridge cases made available for commercial sale under this section shall be subject to all explosives safety and trade security controls in effect at the time of sale.

''(e) DEFINITIONS.—In this section:

''(1) SMALL ARMS AMMUNITION.—The term 'small arms ammunition' means ammunition or ordnance for firearms up to and including .50 caliber and for shotguns.

''(2) SMALL ARMS AMMUNITION COMPONENTS.—The term 'small arms ammunition components' means components, parts, accessories, and attachments associated with small arms ammunition.

''(3) FIRED CARTRIDGE CASES.—The term 'fired cartridge cases' means expended small arms cartridge cases (ESACC).''

AUTHORITY TO SELL AIRCRAFT AND AIRCRAFT PARTS FOR USE IN RESPONDING TO OIL SPILLS

Pub. L. 106–181, title VII, § 740, Apr. 5, 2000, 114 Stat. 173, as amended by Pub. L. 107–296, title XVII, § 1704(e)(6), Nov. 25, 2002, 116 Stat. 2315; Pub. L. 107–314, div. A, title X, §§ 1051, 1062(i), Dec. 2, 2002, 116 Stat. 2648, 2651, provided that:

''(a) AUTHORITY.—

''(1) SALE OF AIRCRAFT AND AIRCRAFT PARTS.—Notwithstanding subchapter II of chapter 5 of title 40, United States Code, and subject to subsections (b) and (c), the Secretary of Defense may sell aircraft and aircraft parts referred to in paragraph (2) to a person or entity that provides oil spill response services (including the application of oil dispersants by air) pursuant to an oil spill response plan that has been approved by the Secretary of the Department in which the Coast Guard is operating.

''(2) AIRCRAFT AND AIRCRAFT PARTS THAT MAY BE SOLD.—The aircraft and aircraft parts that may be sold under paragraph (1) are aircraft and aircraft parts of the Department of Defense that are determined by the Secretary of Defense to be—

''(A) excess to the needs of the Department; and

''(B) acceptable for commercial sale.

''(b) CONDITIONS OF SALE.—Aircraft and aircraft parts sold under subsection (a)—

''(1) shall have as their primary purpose usage for oil spill spotting, observation, and dispersant delivery and may not have any secondary purpose that would interfere with oil spill response efforts under an oil spill response plan; and

''(2) may not be flown outside of or removed from the United States except for the purpose of fulfilling an international agreement to assist in oil spill dispersing efforts, for immediate response efforts for an oil spill outside United States waters that has the potential to threaten United States waters, or for other purposes that are jointly approved by the Secretary of Defense and the Secretary of Homeland Security.

''(c) CERTIFICATION OF PERSONS AND ENTITIES.—The Secretary of Defense may sell aircraft and aircraft parts to a person or entity under subsection (a) only if the Secretary of Homeland Security certifies to the Secretary of Defense, in writing, before the sale, that the person or entity is capable of meeting the terms and conditions of a contract to deliver oil spill dispersants by air, and that the overall system to be employed by that person or entity for the delivery and application of oil spill dispersants has been sufficiently tested to ensure that the person or entity is capable of being included in an oil spill response plan that has been approved by the Secretary of the Department in which the Coast Guard is operating.

''(d) REGULATIONS.—

''(1) ISSUANCE.—As soon as practicable after the date of the enactment of this Act [Apr. 5, 2000], the Secretary of Defense, in consultation with the Secretary of Homeland Security and the Administrator of General Services, shall prescribe regulations relating to the sale of aircraft and aircraft parts under this section.

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''(2) CONTENTS.—The regulations shall—

''(A) ensure that the sale of the aircraft and aircraft parts is made at a fair market value, as determined by the Secretary of Defense, and, to the extent practicable, on a competitive basis;

''(B) require a certification by the purchaser that the aircraft and aircraft parts will be used only in accordance with the conditions set forth in subsection (b);

''(C) establish appropriate means of verifying and enforcing the use of the aircraft and aircraft parts by the purchaser and other operators in accordance with the conditions set forth in subsection (b) or pursuant to subsection (e); and

''(D) ensure, to the maximum extent practicable, that the Secretary of Defense consults with the Administrator of General Services and with the heads of appropriate departments and agencies of the Federal Government regarding alternative requirements for such aircraft and aircraft parts before the sale of such aircraft and aircraft parts under this section.

''(e) ADDITIONAL TERMS AND CONDITIONS.—The Secretary of Defense may require such other terms and conditions in connection with each sale of aircraft and aircraft parts under this section as the Secretary considers appropriate for such sale. Such terms and conditions shall meet the requirements of regulations prescribed under subsection (d).

''(f) REPORT.—Not later than March 31, 2006, the Secretary of Defense shall transmit to the Committees on Armed Services and Commerce, Science, and Transportation of the Senate and the Committees on National Security and Transportation and Infrastructure of the House of Representatives a report on the Secretary's exercise of authority under this section. The report shall set forth—

''(1) the number and types of aircraft sold under the authority, and the terms and conditions under which the aircraft were sold;

''(2) the persons or entities to which the aircraft were sold; and

''(3) an accounting of the current use of the aircraft sold.

''(g) STATUTORY CONSTRUCTION.—

''(1) AUTHORITY OF ADMINISTRATOR.—Nothing in this section may be construed as affecting the authority of the Administrator under any other provision of law.

''(2) CERTIFICATION REQUIREMENTS.—Nothing in this section may be construed to waive, with respect to an aircraft sold under the authority of this section, any requirement to obtain a certificate from the Administrator to operate the aircraft for any purpose (other than oil spill spotting, observation, and dispersant delivery) for which such a certificate is required.

''(h) PROCEEDS FROM SALE.—The net proceeds of any amounts received by the Secretary of Defense from the sale of aircraft and aircraft parts under this section shall be covered into the general fund of the Treasury as miscellaneous receipts.

''(i) EXPIRATION OF AUTHORITY.—The authority to sell aircraft and aircraft parts under this section expires on September 30, 2006.''

[For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.]

SALE OF AIRCRAFT FOR WILDFIRE SUPPRESSION PURPOSES

Pub. L. 104–307, Oct. 14, 1996, 110 Stat. 3811, as amended by Pub. L. 106–65, div. A, title X, §1067(23), Oct. 5, 1999, 113 Stat. 775; Pub. L. 106–398, §1 [[div. A], title III, §388], Oct. 30, 2000, 114 Stat. 1654, 1654A–89; Pub. L. 107–314, div. A, title X, §1062(k), Dec. 2, 2002, 116 Stat. 2651; Pub. L. 112–239, div. A, title X, §1090, Jan. 2, 2013, 126 Stat. 1971, provided that:

''SECTION 1. SHORT TITLE.

''This Act may be cited as the 'Wildfire Suppression Aircraft Transfer Act of 1996'.

''SEC. 2. AUTHORITY TO SELL AIRCRAFT AND PARTS FOR WILDFIRE SUPPRESSION PURPOSES.

''(a) AUTHORITY.—(1) Notwithstanding subchapter II of chapter 5 of title 40, United States Code, and subject to subsections (b) and (c), the Secretary of Defense may, during a period specified in subsection (g), sell the aircraft and aircraft parts referred to in paragraph (2) to persons or entities that contract with the Federal Government for the delivery of fire retardant by air in order to suppress wildfire.

''(2) Paragraph (1) applies to aircraft and aircraft parts of the Department of Defense that are determined by the Secretary to be—

''(A) excess to the needs of the Department; and

''(B) acceptable for commercial sale.

''(b) CONDITIONS OF SALE.—Aircraft and aircraft parts sold under subsection (a)—

''(1) may be used only for the provision of airtanker services for wildfire suppression purposes; and

''(2) may not be flown or otherwise removed from the United States unless dispatched by the National Interagency Fire Center in support of an international agreement to assist in wildfire suppression efforts or for other purposes jointly approved by the Secretary of Defense and the Secretary of Agriculture in writing in advance.

''(c) CERTIFICATION OF PERSONS AND ENTITIES.—The Secretary of Defense may sell aircraft and aircraft parts to a person or entity under subsection (a) only if the Secretary of Agriculture certifies to the Secretary of Defense, in writing, before the sale that the person or entity is capable of meeting the terms and conditions of a contract to deliver fire retardant by air.

''(d) REGULATIONS.—(1) As soon as practicable after October 14, 1996, the Secretary of Defense shall, in consultation with the Secretary of Agriculture and the Administrator of General Services, prescribe regulations relating to the sale of aircraft and aircraft parts under this section. The regulations prescribed under this paragraph shall be effective until the end of the period specified in subsection (a)(1).

''(2) The regulations shall—

''(A) ensure that the sale of the aircraft and aircraft parts is made at fair market value (as determined by the Secretary of Defense) and, to the extent practicable, on a competitive basis;

''(B) require a certification by the purchaser that the aircraft and aircraft parts will be used only in accordance with the conditions set forth in subsection (b);

''(C) establish appropriate means of verifying and enforcing the use of the aircraft and aircraft parts by the purchaser and other end users in accordance with the conditions set forth in subsections (b) and (e); and

''(D) ensure, to the maximum extent practicable, that the Secretary consults with the Administrator of General Services and with the heads of appropriate departments and agencies of the Federal Government regarding alternative requirements for such aircraft and aircraft parts before the sale of such aircraft and aircraft parts under this section.

''(e) ADDITIONAL TERMS AND CONDITIONS.—The Secretary of Defense may require such other terms and conditions in connection with each sale of aircraft and aircraft parts under this section as the Secretary considers appropriate for such sale. Such terms and conditions shall meet the requirements of the regulations prescribed under subsection (d).

''(f) REPORT.—Not later than March 31, 2005, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a re-

port on the Secretary's exercise of authority under this section. The report shall set forth—

"(1) the number and type of aircraft sold under the authority, and the terms and conditions under which the aircraft were sold;

"(2) the persons or entities to which the aircraft were sold; and

"(3) an accounting of the current use of the aircraft sold.

"(g) PERIODS FOR EXERCISE OF AUTHORITY.—The periods specified in this subsection are the following:

"(1) The period beginning on October 1, 1996, and ending on September 30, 2005.

"(2) The period beginning on October 1, 2012, and ending on September 30, 2017.

"(h) CONSTRUCTION.—Nothing in this section may be construed as affecting the authority of the Administrator of the Federal Aviation Administration under any other provision of law."

§ 2576a. Excess personal property: sale or donation for law enforcement activities

(a) TRANSFER AUTHORIZED.—(1) Notwithstanding any other provision of law and subject to subsection (b), the Secretary of Defense may transfer to Federal and State agencies personal property of the Department of Defense, including small arms and ammunition, that the Secretary determines is—

(A) suitable for use by the agencies in law enforcement activities, including counterdrug, counterterrorism, disaster-related emergency preparedness, and border security activities; and

(B) excess to the needs of the Department of Defense.

(2) The Secretary shall carry out this section in consultation with the Attorney General, the Director of National Drug Control Policy, and the Secretary of Homeland Security, as appropriate.

(b) CONDITIONS FOR TRANSFER.—The Secretary of Defense may transfer personal property under this section only if—

(1) the property is drawn from existing stocks of the Department of Defense;

(2) the recipient accepts the property on an as-is, where-is basis;

(3) the transfer is made without the expenditure of any funds available to the Department of Defense for the procurement of defense equipment;

(4) all costs incurred subsequent to the transfer of the property are borne or reimbursed by the recipient;

(5) the recipient, on an annual basis, and with the authorization of the relevant local governing body or authority, certifies that it has adopted publicly available protocols for the appropriate use of controlled property, the supervision of such use, and the evaluation of the effectiveness of such use, including auditing and accountability policies; and

(6) after the completion of the assessment required by section 1051(e) of the National Defense Authorization Act for Fiscal Year 2016, the recipient, on an annual basis, certifies that it provides annual training to relevant personnel on the maintenance, sustainment, and appropriate use of controlled property, including respect for the rights of citizens under the Constitution of the United States and de-escalation of force.

(c) CONSIDERATION.—Subject to subsection (b)(4), the Secretary may transfer personal property under this section without charge to the recipient agency.

(d) PREFERENCE FOR CERTAIN TRANSFERS.—In considering applications for the transfer of personal property under this section, the Secretary shall give a preference to applications indicating that the transferred property will be used in the counterdrug, counterterrorism, disaster-related emergency preparedness, or border security activities of the recipient agency. Applications that request vehicles used for disaster-related emergency preparedness, such as high-water rescue vehicles, should receive the highest preference.

(e) PROPERTY NOT TRANSFERRABLE.—The Secretary may not transfer to a Tribal, State, or local law enforcement agency under this section the following:

(1) Bayonets.

(2) Grenades (other than stun and flash-bang grenades).

(3) Weaponized tracked combat vehicles.

(4) Weaponized drones.

(f) PUBLICLY ACCESSIBLE WEBSITE.—(1) The Secretary shall create and maintain a publicly available Internet website that provides information on the controlled property transferred under this section and the recipients of such property.

(2) The contents of the Internet website required under paragraph (1) shall include all publicly accessible unclassified information pertaining to the request, transfer, denial, and repossession of controlled property under this section, including—

(A) a current inventory of all controlled property transferred to Federal and State agencies under this section, listed by the name of the recipient and the year of the transfer;

(B) all pending requests for transfers of controlled property under this section, including the information submitted by the Federal and State agencies requesting such transfers; and

(C) all reports required to be submitted to the Secretary under this section by Federal and State agencies that receive controlled property under this section.

(g) CONTROLLED PROPERTY.—In this section, the term "controlled property" means any item assigned a demilitarization code of B, C, D, E, G, or Q under Department of Defense Manual 4160.21–M, "Defense Materiel Disposition Manual", or any successor document.

(Added Pub. L. 104–201, div. A, title X, §1033(a)(1), Sept. 23, 1996, 110 Stat. 2639; amended Pub. L. 114–92, div. A, title X, §§1051(a)–(c), 1052, Nov. 25, 2015, 129 Stat. 979–981; Pub. L. 115–91, div. A, title X, §1081(a)(43), Dec. 12, 2017, 131 Stat. 1596; Pub. L. 116–283, div. A, title X, §1053, Jan. 1, 2021, 134 Stat. 3850.)

REFERENCES IN TEXT

Section 1051(e) of the National Defense Authorization Act for Fiscal Year 2016, referred to in subsec. (b)(6), is section 1051(e) of Pub. L. 114–92, div. A, title X, Nov. 25, 2015, 129 Stat. 980, which is not classified to the Code.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in Pub. L. 101–189, div. A, title XII, §1208, Nov.

29, 1989, 103 Stat. 1566, as amended, which was set out as a note under section 372 of this title, prior to repeal by Pub. L. 104–201, § 1033(b)(1). Section 372 of this title was renumbered section 272 of this title by Pub. L. 114–328, div. A, title XII, § 1241(a)(2), Dec. 23, 2016, 130 Stat. 2497.

AMENDMENTS

2021—Subsec. (a)(1)(A). Pub. L. 116–283, § 1053(a)(1), inserted ''disaster-related emergency preparedness,'' after ''counterterrorism,''.

Subsec. (b)(6). Pub. L. 116–283, § 1053(b)(1), inserted '', including respect for the rights of citizens under the Constitution of the United States and de-escalation of force'' before period at end.

Subsec. (d). Pub. L. 116–283, § 1053(a)(2), amended subsec. (d) generally. Prior to amendment, text read as follows: ''In considering applications for the transfer of personal property under this section, the Secretary shall give a preference to those applications indicating that the transferred property will be used in the counterdrug, counterterrorism, or border security activities of the recipient agency.''

Subsecs. (e) to (g). Pub. L. 116–283, § 1053(b)(2), added subsec. (e) and redesignated former subsecs. (e) and (f) as (f) and (g), respectively.

2017—Subsec. (b)(4). Pub. L. 115–91 struck out ''and'' at end.

2015—Subsec. (a)(1)(A). Pub. L. 114–92, § 1052(1)(A), substituted ''counterdrug, counterterrorism, and border security activities'' for ''counter-drug and counter-terrorism activities''.

Subsec. (a)(2). Pub. L. 114–92, § 1052(1)(B), substituted ''the Attorney General, the Director of National Drug Control Policy, and the Secretary of Homeland Security, as appropriate'' for ''the Attorney General and the Director of National Drug Control Policy''.

Subsec. (b)(5), (6). Pub. L. 114–92, § 1051(b), added pars. (5) and (6).

Subsec. (d). Pub. L. 114–92, § 1052(2), substituted ''counterdrug, counterterrorism, or border security activities'' for ''counter-drug or counter-terrorism activities''.

Subsec. (e). Pub. L. 114–92, § 1051(a), added subsec. (e).

Subsec. (f). Pub. L. 114–92, § 1051(c), added subsec. (f).

PROCESS FOR COMMUNICATING AVAILABILITY OF SURPLUS AMMUNITION

Pub. L. 114–328, div. A, title III, § 344, Dec. 23, 2016, 130 Stat. 2084, provided that:

''(a) IN GENERAL.—The Secretary of Defense shall implement a formal process to provide Federal Government agencies outside the Department of Defense with information on the availability of surplus, serviceable ammunition from the Department of Defense for the purpose of reducing costs relating to the storage and disposal of such ammunition.

''(b) IMPLEMENTATION DEADLINE.—The Secretary shall implement the process described in subsection (a) beginning not later than 180 days after the date of the enactment of this Act [Dec. 23, 2016].''

§ 2576b. Excess personal property: sale or donation to assist firefighting agencies

(a) TRANSFER AUTHORIZED.—Subject to subsection (b), the Secretary of Defense shall transfer to a firefighting agency in a State any personal property of the Department of Defense that the Secretary determines is—

(1) excess to the needs of the Department of Defense; and

(2) suitable for use in providing fire and emergency medical services, including personal protective equipment and equipment for communication and monitoring.

(b) CONDITIONS FOR TRANSFER.—The Secretary of Defense shall transfer personal property under this section only if—

(1) the property is drawn from existing stocks of the Department of Defense;

(2) the recipient firefighting agency accepts the property on an as-is, where-is basis;

(3) the transfer is made without the expenditure of any funds available to the Department of Defense for the procurement of defense equipment; and

(4) all costs incurred subsequent to the transfer of the property are borne or reimbursed by the recipient.

(c) CONSIDERATION.—Subject to subsection (b)(4), the Secretary may transfer personal property under this section without charge to the recipient firefighting agency.

(d) DEFINITIONS.—In this section:

(1) STATE.—The term ''State'' includes the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and any territory or possession of the United States.

(2) FIREFIGHTING AGENCY.—The term ''firefighting agency'' means any volunteer, paid, or combined departments that provide fire and emergency medical services.

(Added Pub. L. 106–398, § 1 [[div. A], title XVII, § 1706(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–367; amended Pub. L. 108–375, div. A, title III, § 354, Oct. 28, 2004, 118 Stat. 1861.)

AMENDMENTS

2004—Subsecs. (a), (b). Pub. L. 108–375 substituted ''shall'' for ''may'' in introductory provisions.

IDENTIFICATION OF DEFENSE TECHNOLOGIES SUITABLE FOR USE, OR CONVERSION FOR USE, IN PROVIDING FIRE AND EMERGENCY MEDICAL SERVICES

Pub. L. 106–398, § 1 [[div. A], title XVII, § 1707], Oct. 30, 2000, 114 Stat. 1654, 1654A–367, provided that:

''(a) APPOINTMENT OF TASK FORCE; PURPOSE.—The Secretary of Defense shall appoint a task force consisting of representatives from the Department of Defense and each of the seven major fire organizations identified in subsection (b) to identify defense technologies and equipment that—

''(1) can be readily put to civilian use by fire service and the emergency response agencies; and

''(2) can be transferred to these agencies using the authority provided by section 2576b of title 10, United States Code, as added by section 1706 of this Act.

''(b) PARTICIPATING MAJOR FIRE ORGANIZATIONS.—Members of the task force shall be appointed from each of the following:

''(1) The International Association of Fire Chiefs.

''(2) The International Association of Fire Fighters.

''(3) The National Volunteer Fire Council.

''(4) The International Association of Arson Investigators.

''(5) The International Society of Fire Service Instructors.

''(6) The National Association of State Fire Marshals.

''(7) The National Fire Protection Association.

''(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Defense for activities of the task force $1,000,000 for fiscal year 2001.''

§ 2577. Disposal of recyclable materials

(a)(1) The Secretary of Defense shall prescribe regulations to provide for the sale of recyclable materials held by a military department or defense agency and for the operation of recycling programs at military installations. Such regula-

tions shall include procedures for the designation by the Secretary of a military department (or by the Secretary of Defense with respect to facilities of a defense agency) of military installations that have established a qualifying recycling program for the purposes of subsection (b)(2).

(2) Any sale of recyclable materials by the Secretary of Defense or Secretary of a military department shall be in accordance with the procedures in sections 541–555 of title 40 for the sale of surplus property.

(3) In this section, the term ''recyclable materials'' may include any quality recyclable material provided to the Department by a State or local government entity, if such material is authorized by the Office of the Secretary of Defense and identified in the regulations prescribed under paragraph (1).

(b)(1) Proceeds from the sale of recyclable materials at an installation shall be credited to funds available for operations and maintenance at that installation in amounts sufficient to cover the costs of operations, maintenance, and overhead for processing recyclable materials at the installation (including the cost of any equipment purchased for recycling purposes).

(2) If after such funds are credited a balance remains available to a military installation and such installation has a qualifying recycling program (as determined by the Secretary of the military department concerned or the Secretary of Defense), not more than 50 percent of that balance may be used at the installation for projects for pollution abatement, energy conservation, and occupational safety and health activities. A project may not be carried out under the preceding sentence for an amount greater than 50 percent of the amount established by law as the maximum amount for a minor construction project.

(3) The remaining balance available to a military installation may be transferred to the nonappropriated morale and welfare account of the installation to be used for any morale or welfare activity.

(c) If the balance available to a military installation under this section at the end of any fiscal year is in excess of $10,000,000, the amount of that excess shall be covered into the Treasury as miscellaneous receipts.

(Added Pub. L. 97–214, § 6(b)(1), July 12, 1982, 96 Stat. 172; amended Pub. L. 98–525, title XIV, § 1405(37), Oct. 19, 1984, 98 Stat. 2624; Pub. L. 107–217, § 3(b)(11), Aug. 21, 2002, 116 Stat. 1296; Pub. L. 116–92, div. A, title III, §§ 313, 314, Dec. 20, 2019, 133 Stat. 1303.)

AMENDMENTS

2019—Subsec. (a)(3). Pub. L. 116–92, § 314, added par. (3).

Subsec. (c). Pub. L. 116–92, § 313, substituted ''$10,000,000'' for ''$2,000,000''.

2002—Subsec. (a)(2). Pub. L. 107–217 substituted ''sections 541–555 of title 40'' for ''section 203 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484)''.

1984—Subsec. (a)(1). Pub. L. 98–525 substituted ''purposes'' for ''puposes''.

EFFECTIVE DATE

Section effective Oct. 1, 1982, and applicable to military construction projects, and to construction and acquisition of military family housing authorized before, on, or after such date, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

§ 2578. Vessels: transfer between departments

A vessel under the jurisdiction of a military department may be transferred or otherwise made available without reimbursement to another military department or to the Department of Homeland Security, and a vessel under the jurisdiction of the Department of Homeland Security may be transferred or otherwise made available without reimbursement to a military department. Any such transfer may be made only upon the request of the Secretary of the military department concerned or the Secretary of Homeland Security, as the case may be, and with the approval of the Secretary of the department having jurisdiction of the vessel.

(Added Pub. L. 100–370, § 1(k)(1), July 19, 1988, 102 Stat. 848; amended Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

HISTORICAL AND REVISION NOTES

Section is based on Pub. L. 99–190, § 101(b) [title VIII, § 8012], Dec. 19, 1985, 99 Stat. 1185, 1204.

AMENDMENTS

2002—Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation'' wherever appearing.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

§ 2579. War booty: procedures for handling and retaining battlefield objects

(a) POLICY.—The United States recognizes that battlefield souvenirs have traditionally provided military personnel with a valued memento of service in a national cause. At the same time, it is the policy and tradition of the United States that the desire for souvenirs in a combat theater not blemish the conduct of combat operations or result in the mistreatment of enemy personnel, the dishonoring of the dead, distraction from the conduct of operations, or other unbecoming activities.

(b) REGULATIONS.—(1) The Secretary of Defense shall prescribe regulations for the handling of battlefield objects that are consistent with the policies expressed in subsection (a) and the requirements of this section.

(2) When forces of the United States are operating in a theater of operations, enemy material captured or found abandoned shall be turned over to appropriate United States or allied military personnel except as otherwise provided in such regulations. A member of the armed forces (or other person under the authority of the armed forces in a theater of operations) may not (except in accordance with such regulations) take from a theater of operations as a souvenir an object formerly in the possession of the enemy.

(3) Such regulations shall provide that a member of the armed forces who wishes to retain as a souvenir an object covered by paragraph (2) may so request at the time the object is turned over pursuant to paragraph (2).

(4) Such regulations shall provide for an officer to be designated to review requests under paragraph (3). If the officer determines that the object may be appropriately retained as a war souvenir, the object shall be turned over to the member who requested the right to retain it.

(5) Such regulations shall provide for captured weaponry to be retained as souvenirs, as follows:

(A) The only weapons that may be retained are those in categories to be agreed upon jointly by the Secretary of Defense and the Secretary of the Treasury.

(B) Before a weapon is turned over to a member, the weapon shall be rendered unserviceable.

(C) A charge may be assessed in connection with each weapon in an amount sufficient to cover the full cost of rendering the weapon unserviceable.

(Added Pub. L. 103–160, div. A, title XI, §1171(a)(1), Nov. 30, 1993, 107 Stat. 1765.)

REGULATIONS

Pub. L. 103–160, div. A, title XI, §1171(b), Nov. 30, 1993, 107 Stat. 1766, provided that: ''The initial regulations required by section 2579 of title 10, United States Code, as added by subsection (a), shall be prescribed not later than 270 days after the date of enactment of this Act [Nov. 30, 1993]. Such regulations shall specifically address the following, consistent with section 2579 of title 10, United States Code, as added by subsection (a):

''(1) The general procedures for collection and disposition of weapons and other enemy material.

''(2) The criteria and procedures for evaluation and disposition of enemy material for intelligence, testing, or other military purposes.

''(3) The criteria and procedures for determining when retention of enemy material by an individual or a unit in the theater of operations may be appropriate.

''(4) The criteria and procedures for disposition of enemy material to a unit or other Department of Defense entity as a souvenir.

''(5) The criteria and procedures for disposition of enemy material to an individual as an individual souvenir.

''(6) The criteria and procedures for determining when demilitarization or the rendering unserviceable of firearms is appropriate.

''(7) The criteria and procedures necessary to ensure that servicemembers who have obtained battlefield souvenirs in a manner consistent with military customs, traditions, and regulations have a reasonable opportunity to obtain possession of such souvenirs, consistent with the needs of the service.''

§ 2580. Donation of excess chapel property

(a) AUTHORITY TO DONATE.—The Secretary of a military department may donate personal property specified in subsection (b) to an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 that is a religious organization in order to assist the organization in restoring or replacing property of the organization that has been damaged or destroyed as a result of an act of arson or terrorism, as determined pursuant to procedures prescribed by the Secretary of Defense.

(b) PROPERTY COVERED.—(1) The property authorized to be donated under subsection (a) is furniture and other personal property that—

(A) is in, or was formerly in, a chapel under the jurisdiction of the Secretary of a military department and closed or being closed; and

(B) is determined by the Secretary to be excess to the requirements of the armed forces.

(2) No real property may be donated under this section.

(c) DONEES NOT TO BE CHARGED.—No charge may be imposed by the Secretary of a military department on a donee of property under this section in connection with the donation. However, the donee shall agree to defray any expense for shipping or other transportation of property donated under this section from the location of the property when donated to any other location.

(Added Pub. L. 105–85, div. A, title X, §1063(a), Nov. 18, 1997, 111 Stat. 1892.)

REFERENCES IN TEXT

Section 501(c)(3) of the Internal Revenue Code of 1986, referred to in subsec. (a), is classified to section 501(c)(3) of Title 26, Internal Revenue Code.

§ 2581. Excess UH–1 Huey and AH–1 Cobra helicopters: requirements for transfer to foreign countries

(a) REQUIREMENTS.—(1) Before an excess UH–1 Huey helicopter or AH–1 Cobra helicopter is transferred on a grant or sales basis to a foreign country for the purpose of flight operations by that country, the Secretary of Defense shall make all reasonable efforts to ensure that the helicopter receives, to the extent necessary, maintenance and repair equivalent to the depot-level maintenance and repair (as defined in section 2460 of this title) that the helicopter would need were the helicopter to remain in operational use with the armed forces. Any such maintenance and repair work shall be performed at no cost to the Department of Defense.

(2) The Secretary shall make all reasonable efforts to ensure that maintenance and repair work described in paragraph (1) is performed in the United States.

(b) EXCEPTION.—Subsection (a) does not apply with respect to salvage helicopters provided to the foreign country solely as a source for spare parts.

(Added Pub. L. 105–261, div. A, title XII, §1234(a), Oct. 17, 1998, 112 Stat. 2156.)

[§ 2582. Repealed. Pub. L. 112–81, div. A, title X, § 1061(19)(A), Dec. 31, 2011, 125 Stat. 1584]

Section, added Pub. L. 106–398, §1 [[div. A], title III, §381(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–84, related to annual report of public sales of military equipment identified on United States munitions list.

CODIFICATION

Another section 2582 was renumbered section 2583 of this title.

§ 2583. Military animals: transfer and adoption

(a) AVAILABILITY FOR TRANSFER OR ADOPTION.—The Secretary of the military department concerned shall make a military animal of such military department available for transfer or adoption by a person or entity referred to in subsection (c), unless the animal has been determined to be unsuitable for transfer or adoption under subsection (b), under circumstances as follows:

(1) At the end of the animal's useful life.

(2) Before the end of the animal's useful life, if such Secretary, in such Secretary's discretion, determines that unusual or extraordinary circumstances, including circumstances under which the handler of a military working dog is killed in action, dies of wounds received in action, or is medically retired as a result of injuries received in action, justify making the animal available for transfer or adoption before that time.

(3) When the animal is otherwise excess to the needs of such military department.

(b) SUITABILITY FOR TRANSFER OR ADOPTION.—The decision whether a particular military animal is suitable or unsuitable for transfer or adoption under this section shall be made by the commander of the last unit to which the animal is assigned before being declared excess. The unit commander shall consider the recommendations of the unit's veterinarian in making the decision regarding the transferability or adoptability of the animal.

(c) AUTHORIZED RECIPIENTS.—(1) A military animal shall be made available for transfer or adoption under this section, in order of recommended priority, by—

(A) adoption by former handlers of the animal;

(B) adoption by other persons or organizations capable of humanely caring for the animal; and

(C) transfer to law enforcement agencies.

(2) If the Secretary of the military department concerned determines that an adoption is justified under subsection (a)(2) under circumstances under which the handler of a military working dog is wounded in action, the dog shall be made available for adoption only by the handler. If the Secretary of the military department concerned determines that such an adoption is justified under circumstances under which the handler of a military working dog is killed in action or dies of wounds received in action, the military working dog shall be made available for adoption only by a parent, child, spouse, or sibling of the deceased handler.

(d) CONSIDERATION.—The transfer of a military animal under this section may be without charge to the recipient.

(e) LIMITATIONS ON LIABILITY FOR TRANSFERRED OR ADOPTED ANIMALS.—(1) Notwithstanding any other provision of law, the United States shall not be subject to any suit, claim, demand or action, liability, judgment, cost, or other fee arising out of any claim for personal injury or property damage (including death, illness, or loss of or damage to property or other economic loss) that results from, or is in any manner predicated upon, the act or omission of a former military animal transferred or adopted under this section, including any training provided to the animal while a military animal.

(2) Notwithstanding any other provision of law, the United States shall not be liable for any veterinary expense associated with a military animal transferred or adopted under this section for a condition of the military animal before transfer or adoption under this section, whether or not such condition is known at the time of transfer or adoption under this section.

(f) VETERINARY SCREENING AND CARE FOR MILITARY WORKING DOGS TO BE RETIRED.—(1)(A) If the Secretary of the military department concerned determines that a military working dog should be retired, such Secretary shall transport the dog to the Veterinary Treatment Facility at Lackland Air Force Base, Texas.

(B) In the case of a contract working dog to be retired, transportation required by subparagraph (A) is satisfied by the transfer of the dog to the 341st Training Squadron at the end of the dog's service life as required by section 2410r of this title and assignment of the dog to the Veterinary Treatment Facility referred to in that subparagraph.

(2)(A) The Secretary of Defense shall ensure that each dog transported as described in paragraph (1) to the Veterinary Treatment Facility referred to in that paragraph is provided with a full veterinary screening, and necessary veterinary care (including surgery for any mental, dental, or stress-related illness), before transportation of the dog in accordance with subsection (g).

(B) For purposes of this paragraph, stress-related illness includes illness in connection with post-traumatic stress, anxiety that manifests in a physical ailment, obsessive compulsive behavior, and any other stress-related ailment.

(3) Transportation is not required under paragraph (1), and screening and care is not required under paragraph (2), for a military working dog located outside the United States if the Secretary of the military department concerned determines that transportation of the dog to the United States would not be in the best interests of the dog for medical reasons.

(g) TRANSPORTATION OF RETIRING MILITARY WORKING DOGS.—Upon completion of veterinary screening and care for a military working dog to be retired pursuant to subsection (f), the Secretary of the military department concerned shall—

(1) if the dog was at a location outside the United States immediately prior to transportation for such screening and care and a United States citizen or member of the armed forces living abroad agrees to adopt the dog, transport the dog to such location for adoption; or

(2) for any other dog, transport the dog—

(A) to the 341st Training Squadron; or

(B) to another location within the United States for transfer or adoption under this section.

(h) PREFERENCE IN ADOPTION OF RETIRED MILITARY WORKING DOGS FOR FORMER HANDLERS.—(1) In providing for the adoption under this section of a retired military working dog described in paragraph (1) or (3) of subsection (a), the Secretary of the military department concerned shall accord a preference to the former handler of the dog unless the Secretary determines that adoption of the dog by the former handler would not be in the best interests of the dog.

(2) In the case of a dog covered by paragraph (1) with more than one former handler seeking adoption of the dog at the time of adoption, the Secretary shall provide for the adoption of the dog by such former handler whose adoption of the dog will best serve the interests of the dog

and such former handlers. The Secretary shall make any determination required by this paragraph with respect to a dog following consultation with the kennel master of the unit at which the dog was last located before adoption under this section.

(3) Nothing in this subsection shall be construed as altering, revising, or overriding any policy of a military department for the transfer of military working dogs to law enforcement agencies before the end of the dogs' useful working lives.

(i) MILITARY ANIMAL DEFINED.—In this section, the term ''military animal'' means the following:

(1) A military working dog, which may include a contract working dog (as such term is defined in section 2410r) that has been transferred to the 341st Training Squadron.

(2) An equid (horse, mule, or donkey) owned by the Department of Defense.

(Added Pub. L. 106–446, § 1(a), Nov. 6, 2000, 114 Stat. 1932, § 2582; renumbered § 2583, Pub. L. 107–107, div. A, title X, § 1048(a)(25), Dec. 28, 2001, 115 Stat. 1224; amended Pub. L. 109–163, div. A, title V, § 599, Jan. 6, 2006, 119 Stat. 3284; Pub. L. 109–364, div. A, title III, § 352(a), Oct. 17, 2006, 120 Stat. 2160; Pub. L. 110–181, div. A, title X, § 1063(a)(13), Jan. 28, 2008, 122 Stat. 322; Pub. L. 112–81, div. A, title III, § 351, title X, § 1061(20), Dec. 31, 2011, 125 Stat. 1375, 1584; Pub. L. 112–239, div. A, title III, § 371(a), Jan. 2, 2013, 126 Stat. 1706; Pub. L. 113–66, div. A, title X, § 1091(b)(2), Dec. 26, 2013, 127 Stat. 876; Pub. L. 114–92, div. A, title III, § 342, Nov. 25, 2015, 129 Stat. 793; Pub. L. 114–328, div. A, title III, § 342(b), Dec. 23, 2016, 130 Stat. 2082; Pub. L. 115–232, div. A, title III, § 352, Aug. 13, 2018, 132 Stat. 1731; Pub. L. 116–92, div. A, title III, § 372(a)–(e), Dec. 20, 2019, 133 Stat. 1330, 1331; Pub. L. 116–283, div. A, title X, § 1081(a)(42), title XVIII, § 1883(b)(2), Jan. 1, 2021, 134 Stat. 3873, 4294.)

AMENDMENT OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1883(b)(2), Jan. 1, 2021, 134 Stat. 4151, 4294, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, except as otherwise provided in title XVIII of Pub. L. 116–283, in title 10, United States Code, each reference in the text of such title to a source section that is redesignated by title XVIII of Pub. L. 116–283, is amended by striking such reference and inserting a reference to the appropriate section as so redesignated. See 2021 Amendment notes below.

AMENDMENTS

2021—Subsec. (f)(1)(B). Pub. L. 116–283, § 1883(b)(2), substituted ''section 2387'' for ''section 2410r''.

Subsec. (g)(2)(A). Pub. L. 116–283, § 1081(a)(42), inserted ''or'' after semicolon at end.

Subsec. (i)(1). Pub. L. 116–283, § 1883(b)(2), substituted ''section 2387'' for ''section 2410r''.

2019—Subsec. (a). Pub. L. 116–92, § 372(a)(1), inserted ''Transfer or'' before ''Adoption'' in heading and substituted ''transfer or adoption'' for ''adoption'' wherever appearing.

Subsec. (b). Pub. L. 116–92, § 372(a)(2), inserted ''Transfer or'' before ''Adoption'' in heading and substituted ''transfer or adoption'' for ''adoption'' in first sentence and ''transferability or adoptability'' for ''adoptability'' in second sentence.

Subsec. (c)(1). Pub. L. 116–92, § 372(a)(3)(A), inserted ''transfer or'' before ''adoption'' and '', by'' after ''recommended priority'' in introductory provisions.

Subsec. (c)(1)(A). Pub. L. 116–92, § 372(a)(3)(B), inserted ''adoption'' before ''by''.

Subsec. (c)(1)(B). Pub. L. 116–92, § 372(a)(3)(B), (C), inserted ''adoption'' before ''by'' and ''or organizations'' after ''persons''.

Subsec. (c)(1)(C). Pub. L. 116–92, § 372(a)(3)(D), substituted ''transfer to'' for ''by''.

Subsec. (e). Pub. L. 116–92, § 372(a)(4), inserted ''or Adopted'' after ''Transferred'' in heading and substituted ''transferred or adopted'' for ''transferred'' in pars. (1) and (2), and ''transfer or adoption'' for ''transfer'' in two places in par. (2).

Subsec. (f). Pub. L. 116–92, § 372(b)(2), added subsec. (f). Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 116–92, § 372(b)(1), (c), redesignated subsec. (f) as (g) and amended it generally. Prior to amendment, subsec. consisted of pars. (1) to (3) relating to transfer of retired military working dogs. Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 116–92, § 372(b)(1), redesignated subsec. (g) as (h). Former subsec. (h) redesignated (i).

Subsec. (h)(3). Pub. L. 116–92, § 372(d), substituted ''transfer of military working dogs to law enforcement agencies before the end of the dogs' useful working lives.'' for ''adoption of military working dogs by law enforcement agencies before the end of the dogs' useful lives.''

Subsec. (i). Pub. L. 116–92, § 372(b)(1), redesignated subsec. (h) as (i).

Subsec. (i)(2). Pub. L. 116–92, § 372(e), added par. (2) and struck out former par. (2) which read as follows: ''A horse owned by the Department of Defense.''

2018—Subsec. (f)(3). Pub. L. 115–232 added par. (3).

2016—Subsec. (h)(1). Pub. L. 114–328 amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''A military working dog.''

2015—Subsec. (a). Pub. L. 114–92, § 342(a), substituted ''shall make'' for ''may make'' in introductory provisions.

Subsec. (c). Pub. L. 114–92, § 342(b), amended subsec. (c) generally. Prior to amendment, text read as follows: ''Military animals may be adopted under this section by law enforcement agencies, former handlers of these animals, and other persons capable of humanely caring for these animals. If the Secretary of the military department concerned determines that an adoption is justified under subsection (a)(2) under circumstances under which the handler of a military working dog is wounded in action, the dog may be made available for adoption only by the handler. If the Secretary of the military department concerned determines that such an adoption is justified under circumstances under which the handler of a military working dog is killed in action or dies of wounds received in action, the military working dog shall be made available for adoption only by a parent, child, spouse, or sibling of the deceased handler.''

Subsec. (f). Pub. L. 114–92, § 342(d)(1), (2), (4), designated existing provisions as par. (1), redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, of par. (1), and added par. (2).

Pub. L. 114–92, § 342(c), substituted ''shall transfer'' for ''may transfer'' in introductory provisions.

Subsec. (f)(1). Pub. L. 114–92, § 342(d)(3)(A), struck out '', and no suitable adoption is available at the military facility where the dog is located,'' after ''should be retired'' in introductory provisions.

Subsec. (f)(1)(B). Pub. L. 114–92, § 342(d)(3)(B), inserted ''within the United States'' after ''to another location''.

Subsecs. (g), (h). Pub. L. 114–92, § 342(e), added subsec. (g) and redesignated former subsec. (g) as (h).

2013—Subsecs. (f), (g). Pub. L. 112–239, § 371(a), as amended by Pub. L. 113–66, § 1091(b)(2), added subsec. (f) and redesignated former subsec. (f) as (g).

2011—Subsec. (a)(2). Pub. L. 112–81, § 351(1), inserted '', including circumstances under which the handler of a military working dog is killed in action, dies of wounds received in action, or is medically retired as a result of injuries received in action,'' after ''extraordinary circumstances''.

Subsec. (c). Pub. L. 112–81, § 351(2), inserted at end ''If the Secretary of the military department concerned determines that an adoption is justified under subsection (a)(2) under circumstances under which the handler of a military working dog is wounded in action, the dog may be made available for adoption only by the handler. If the Secretary of the military department concerned determines that such an adoption is justified under circumstances under which the handler of a military working dog is killed in action or dies of wounds received in action, the military working dog shall be made available for adoption only by a parent, child, spouse, or sibling of the deceased handler.''.

Subsecs. (f), (g). Pub. L. 112–81, § 1061(20), redesignated subsec. (g) as (f) and struck out former subsec. (f). Prior to amendment, text of subsec. (f) read as follows: ''The Secretary of Defense shall submit to Congress an annual report specifying the number of military animals adopted under this section during the preceding year, the number of these animals currently awaiting adoption, and the number of these animals euthanized during the preceding year. With respect to each euthanized military animal, the report shall contain an explanation of the reasons why the animal was euthanized rather than retained for adoption under this section.''

2008—Subsec. (e). Pub. L. 110–181 substituted ''ANIMALS'' for ''DOGS'' in heading.

2006—Pub. L. 109–364, § 352(a)(1), substituted ''animals'' for ''working dogs'' in section catchline.

Pub. L. 109–163, § 599(d), struck out ''at end of useful working life'' after ''adoption'' in section catchline.

Subsec. (a). Pub. L. 109–364, § 352(a)(2)–(4), substituted ''animal's'' for ''dog's'' in pars. (1) and (2) and ''animal'' for ''dog'' wherever appearing, and struck out ''working'' after ''may make a military'' in introductory provisions and after ''useful'' in pars. (1) and (2).

Pub. L. 109–163, § 599(a), (b), substituted ''Secretary of the military department concerned may'' for ''Secretary of Defense may'', ''such military department'' for ''the Department of Defense'', and '', unless the dog has been determined to be unsuitable for adoption under subsection (b), under circumstances as follows:'' and pars. (1) to (3) for ''at the end of the dog's useful working life or when the dog is otherwise excess to the needs of the Department, unless the dog has been determined to be unsuitable for adoption under subsection (b).''

Subsec. (b). Pub. L. 109–364, § 352(a)(2), (3), (5), substituted ''the adoptability of the animal'' for ''a dog's adoptability'' and ''animal'' for ''dog'' in two places and struck out ''working'' after ''military''.

Subsec. (c). Pub. L. 109–364, § 352(a)(2), (3), substituted ''animals'' for ''dogs'' wherever appearing and struck out ''working'' after ''Military''.

Subsec. (d). Pub. L. 109–364, § 352(a)(2), (3), substituted ''animal'' for ''dog'' and struck out ''working'' after ''military''.

2006—Subsec. (e). Pub. L. 109–364, § 352(a)(3), substituted ''animal'' for ''dog'' wherever appearing in text.

Pub. L. 109–364, § 352(a)(2), struck out ''working'' after ''military'' wherever appearing.

Subsec. (f). Pub. L. 109–364, § 352(a)(2), (3), substituted ''animal'' for ''dog'' in two places and ''animals'' for ''dogs'' wherever appearing and struck out ''working'' after ''military'' in two places.

Pub. L. 109–163, § 599(c), inserted ''of Defense'' after ''Secretary''.

Subsec. (g). Pub. L. 109–364, § 352(a)(6), added subsec. (g).

2001—Pub. L. 107–107 renumbered section 2582 of this title as this section.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by section 1883(b)(2) of Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 113–66, div. A, title X, § 1091(b), Dec. 26, 2013, 127 Stat. 876, provided in part that the amendment made by section 1091(b)(2) is effective as of Jan. 2, 2013, and as if included in Pub. L. 112–239 as enacted.

CHAPTER 155—ACCEPTANCE OF GIFTS AND SERVICES

Sec.
2601. General gift funds.
2601a. Direct acceptance of gifts by members of the armed forces and Department of Defense and Coast Guard employees and their families.
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2603. Acceptance of fellowships, scholarships, or grants.
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2607. Acceptance of gifts for the Defense Intelligence College.
2608. Acceptance of contributions for defense programs, projects, and activities; Defense Cooperation Account.
[2609. Repealed.]
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2611. Regional centers for security studies: acceptance of gifts and donations.
2612. National Defense University: acceptance of gifts.
2613. Acceptance of frequent traveler miles, credits, points, and tickets: use to facilitate rest and recuperation travel of deployed members and their families.
2614. Emergency communications equipment: acceptance from local public safety agencies for temporary use related to disasters.
2615. Military museums and military education programs: cooperative agreement authority.

AMENDMENTS

2013—Pub. L. 112–239, div. B, title XXVIII, § 2852(b)(2), Jan. 2, 2013, 126 Stat. 2161, added item 2615.

2011—Pub. L. 112–81, div. A, title V, § 576(d)(2), Dec. 31, 2011, 125 Stat. 1429, substituted ''Acceptance of frequent traveler miles, credits, points, and tickets: use to facilitate rest and recuperation travel of deployed members and their families'' for ''Acceptance of frequent traveler miles, credits, and tickets; use to facilitate rest and recuperation travel of deployed members and their families'' in item 2613.

Pub. L. 111–383, div. A, title V, § 591(b), Jan. 7, 2011, 124 Stat. 4232, added item 2601a.

2006—Pub. L. 109–364, div. A, title X, § 1071(a)(19)(B), Oct. 17, 2006, 120 Stat. 2399, renumbered item 2613 ''Emergency communications equipment: acceptance from local public safety agencies for temporary use related to disasters'' as 2614.

Pub. L. 109–163, div. A, title IX, § 903(a)(2), Jan. 6, 2006, 119 Stat. 3399, substituted ''Regional centers for security studies'' for ''Asia-Pacific Center for Security Studies'' in item 2611.

2004—Pub. L. 108–375, div. A, title V, § 585(a)(2), title X, § 1051(b), Oct. 28, 2004, 118 Stat. 1931, 2054, added two items 2613.

2003—Pub. L. 108–136, div. A, title IX, § 931(c), Nov. 24, 2003, 117 Stat. 1581, struck out ''foreign'' before ''gifts'' in item 2611.

2002—Pub. L. 107–314, div. A, title IX, § 931(b), Dec. 2, 2002, 116 Stat. 2625, added item 2612.

1999—Pub. L. 106–65, div. A, title IX, § 915(b), Oct. 5, 1999, 113 Stat. 722, added item 2611.

1996—Pub. L. 104–201, div. A, title X, § 1074(a)(15), Sept. 23, 1996, 110 Stat. 2659, struck out item 2609 ''Theater Missile Defense: acceptance of contributions from allies; Theater Missile Defense Cooperation Account''.

Pub. L. 104–106, div. A, title III, § 377(b), Feb. 10, 1996, 110 Stat. 284, added item 2610.

1994—Pub. L. 103–337, div. A, title III, § 353(c)(2), Oct. 5, 1994, 108 Stat. 2732, substituted ''schools'' for ''education system'' in item 2605.

1993—Pub. L. 103–160, div. A, title II, § 242(f)(2), title XI, § 1105(b)(3), Nov. 30, 1993, 107 Stat. 1605, 1750, inserted ''; Defense Cooperation Account'' in item 2608 and added item 2609.

1991—Pub. L. 102–190, div. A, title X, § 1061(a)(15), Dec. 5, 1991, 105 Stat. 1473, struck out ''and services'' after ''contributions'' in item 2608.

1990—Pub. L. 101–403, title II, § 202(a)(2), Oct. 1, 1990, 104 Stat. 874, added item 2608.

1989—Pub. L. 101–193, title V, § 502(b), Nov. 30, 1989, 103 Stat. 1708, added item 2607.

1988—Pub. L. 100–456, div. A, title III, § 323(b), Sept. 29, 1988, 102 Stat. 1953, added item 2606.

1986—Pub. L. 99–661, div. A, title III, § 314(b), Nov. 14, 1986, 100 Stat. 3854, added item 2605.

1970—Pub. L. 91–603, § 3(2), Dec. 31, 1970, 84 Stat. 1675, added item 2604.

1962—Pub. L. 87–555, § 1(2), July 27, 1962, 76 Stat. 244, added item 2603.

REGULATIONS TO CLARIFY GIFT ACCEPTANCE POLICY FOR SERVICE MEMBERS AND THEIR FAMILIES

Pub. L. 109–148, div. A, title VIII, § 8127, Dec. 30, 2005, 119 Stat. 2730, provided that:

''(a) REGULATIONS.—The Secretary of Defense shall prescribe regulations to provide that, subject to such limitations as may be specified in such regulations, members of the Armed Forces described in subsection (c), and the family members of such a member, may accept gifts from non-profit organizations, private parties, and other sources outside the Department of Defense, other than foreign governments and their agents. Such regulations shall apply uniformly to the Army, Navy, Air Force, and Marine Corps, and, to the maximum extent feasible, to the Coast Guard, and shall apply uniformly to the active and reserve components.

''(b) AUTHORITY.—A member of the Armed Forces described in subsection (c) may accept gifts as provided in the regulations authorized in subsection (a), notwithstanding section 7353 of title 5, United States Code.

''(c) COVERED MEMBERS.—A member of the Armed Forces is described in this subsection in the case of a member who is on active duty and who on or after September 11, 2001, and while on active duty, incurred an injury or illness—

''(1) as described in section 1413a(e)(2) of title 10, United States Code; or

''(2) in an operation or area designated as a combat operation or a combat zone, respectively, by the Secretary of Defense in accordance with the regulations prescribed under subsection (a).

''(d) DEADLINE FOR REGULATIONS.—Regulations under subsection (a) shall be prescribed not later than 90 days after the date of the enactment of this Act [Dec. 30, 2005].

''(e) RETROACTIVE APPLICABILITY OF REGULATIONS.—Regulations under subsection (a) shall, to the extent provided in such regulations, also apply to the acceptance of gifts during the period beginning on September 11, 2001, and ending on the date on which such regulations go into effect.''

§ 2601. General gift funds

(a) GENERAL AUTHORITY TO ACCEPT GIFTS.—(1) The Secretary concerned may accept, hold, administer, and spend any gift, devise, or bequest of real property, personal property, or money made on the condition that the gift, devise, or bequest be used for the benefit, or in connection with, the establishment, operation, or maintenance, of a school, hospital, library, museum, cemetery, or other institution or organization under the jurisdiction of the Secretary.

(2)(A) Notwithstanding section 1342 of title 31, the Secretary concerned may accept a gift of services for a military museum program from a nonprofit entity established for the purpose of supporting a military museum program. Employees or personnel of a nonprofit entity who provide a gift of services under this subparagraph may not be considered to be employees of the United States.

(B) For the use and benefit of a military museum program, the Secretary concerned may solicit from a bona fide collector a gift of books, manuscripts, works of art, historical artifacts, drawings, plans, models, or condemned or obsolete combat materiel.

(b) ADDITIONAL AUTHORITY TO ACCEPT GIFTS TO BENEFIT CERTAIN MEMBERS, DEPENDENTS, AND CIVILIAN EMPLOYEES.—(1) The Secretary concerned may accept, hold, administer, and spend any gift, devise, or bequest of real property, personal property, money, or services made on the condition that the gift, devise, or bequest be used for the benefit of—

(A) members of the armed forces, including members performing full-time National Guard duty under section 502(f) of title 32, who incur a wound, injury, or illness while in the line of duty;

(B) civilian employees of the Department of Defense who incur a wound, injury, or illness while in the line of duty;

(C) dependents of such members or employees; and

(D) survivors of such members or employees who are killed.

(2) The Secretary concerned may not accept a gift of services from a foreign government or international organization under this subsection. A gift of real property, personal property, or money from a foreign government or international organization may be accepted under this subsection only if the gift is not designated for a specific individual.

(3) The Secretary of Defense shall prescribe regulations specifying the conditions that may be attached to a gift, devise, or bequest accepted under this subsection.

(c) GIFT FUNDS.—Gifts and bequests of money, and the proceeds of the sale of property, received under subsection (a) or (b) shall be deposited in the Treasury in the following accounts:

(1) The Department of the Army General Gift Fund, in the case of deposits made by the Secretary of the Army.

(2) The Department of the Navy General Gift Fund, in the case of deposits made by the Secretary of the Navy.

(3) The Department of the Air Force General Gift Fund, in the case of deposits made by the Secretary of the Air Force.

(4) The Coast Guard General Gift Fund, in the case of deposits made by the Secretary of Homeland Security.

(5) The Department of Defense General Gift Fund, in the case of deposits made by the Secretary of Defense.

(d) USE OF GIFTS; PROHIBITIONS.—(1) Except as provided in paragraph (2), property and money accepted under subsection (a) or (b) may be used by the Secretary concerned, and services accepted under such subsections may be performed, without further specific authorization in law.

(2) Property, money, and services may not be accepted under subsection (a) or (b)—

(A) if the use of the property or money or the performance of the services in connection with any program, project, or activity would result in the violation of any prohibition or limitation otherwise applicable to such program, project, or activity;

(B) if the conditions attached to the property, money, or services are inconsistent with applicable law or regulations;

(C) if the Secretary concerned determines that the use of the property or money or the performance of the services would reflect unfavorably on the ability of the Department of Defense or the Coast Guard, any employee of the Department or Coast Guard, or any member of the armed forces to carry out any responsibility or duty in a fair and objective manner; or

(D) if the Secretary concerned determines that the use of the property or money or the performance of the services would compromise the integrity or appearance of integrity of any program of the Department of Defense or Coast Guard, or any individual involved in such a program.

(3) The Secretary concerned may disburse funds deposited in a gift fund referred to in subsection (c) for the purposes specified in subsections (a) and (b), subject to the terms of the gift, devise, or bequest.

(e) ACCEPTANCE OF PROPERTY GIFTS; NAMING RIGHTS.—(1) The Secretary concerned may accept a gift under subsection (a) or (b) consisting of the provision, acquisition, enhancement, or construction of real or personal property offered to an eligible entity even though the gift will be subject to the condition that the real or personal property, or a portion thereof, bear a specified name.

(2) The authority conferred by this subsection may be delegated by the Secretary concerned only to a civilian official appointed by the President, by and with the advice and consent of the Senate.

(3) A gift may not be accepted under paragraph (1) if—

(A) the acceptance of the gift or the imposition of the naming-rights condition would reflect unfavorably upon the United States, as provided in subsection (d)(2); or

(B) the real or personal property to be subject to the condition, or portion thereof, has been named by an act of Congress.

(4) The Secretaries concerned shall issue uniform regulations governing the circumstances under which gifts conditioned on naming rights may be accepted, appropriate naming conventions, and suitable display standards.

(5) In this subsection, the term ''eligible entity'' means each of the following:

(A) The United States Military Academy, the Naval Academy, the Air Force Academy, and the Coast Guard Academy.

(B) The professional military education schools listed in section 2162(d) of this title and the Defense Acquisition University.

(C) A military museum.

(f) PAYMENT OF EXPENSES.—The Secretary concerned may pay all necessary expenses in connection with the conveyance or transfer of a gift, devise, or bequest accepted under this section.

(g) TREATMENT OF GIFTS.—For the purposes of Federal income, estate, and gift taxes, any property, money, or services accepted under subsection (a) or (b) shall be considered as a gift, devise, or bequest to or for the use of the United States.

(h) MANAGEMENT OF FUNDS.—In the case of each gift fund referred to in subsection (c), the Secretary of the Treasury, upon the request of the Secretary concerned, may retain money, securities, and the proceeds of the sale of securities in the gift fund and may invest money and reinvest the proceeds of the sale of securities in the gift fund in securities of the United States or in securities guaranteed as to principal and interest by the United States. The interest and profits accruing from those securities shall be deposited to the credit of the gift fund and may be disbursed as provided in subsection (d).

(i) COMPTROLLER GENERAL REVIEW.—The Comptroller General shall make periodic audits of gifts, devises, and bequests accepted under subsection (a) or (b) at such intervals as the Comptroller General determines to be warranted. The Comptroller General shall submit to Congress a report on the results of each such audit.

(j) DEFINITIONS.—In this section:

(1) The term ''Secretary concerned'' includes the Secretary of Defense.

(2) The term ''services'' includes activities that benefit the education, morale, welfare, or recreation of members of the armed forces and their dependents or are related or incidental to the conveyance of a gift, devise, or bequest of real property or personal property under subsection (a) or (b).

(Aug. 10, 1956, ch. 1041, 70A Stat. 144; Pub. L. 96–513, title V, § 511(86), Dec. 12, 1980, 94 Stat. 2927; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 109–163, div. A, title III, § 374, Jan. 6, 2006, 119 Stat. 3211; Pub. L. 110–181, div. A, title V, § 593(a), Jan. 28, 2008, 122 Stat. 138; Pub. L. 112–239, div. A, title V, § 587(a), div. B, title XXVIII, § 2852(a), Jan. 2, 2013, 126 Stat. 1768, 2160; Pub. L. 114–92, div. B, title XXVIII, § 2812, Nov. 25, 2015, 129 Stat. 1174; Pub. L. 116–283, div. B, title XXVIII, § 2821, Jan. 1, 2021, 134 Stat. 4330.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
2601(a)	5:150q.	Mar. 11, 1948, ch. 107, 62 Stat. 71.
2601(b)	5:150r.	
2601(c)	5:150s.	
2601(d)	5:150t.	

In subsection (a), the words ''receive'' and ''administration'' are omitted as surplusage.

In subsection (b), the words ''and conditions'' and ''United States'' are omitted as surplusage.

In subsection (c), the words ''any gift, devise, or bequest of'' and ''real or personal'' are omitted as surplusage.

In subsection (d), the words ''or any part thereof deposited in the Treasury pursuant to section 150r of this title'' are omitted as surplusage.

AMENDMENTS

2021—Subsec. (e). Pub. L. 116–283, § 2821(a)(1), struck out ''Real'' before ''Property'' in heading.

Subsec. (e)(1). Pub. L. 116–283, § 2821(b)(1), substituted ''an eligible entity'' for ''the United States Military Academy, the Naval Academy, the Air Force Academy, or the Coast Guard Academy''.

Pub. L. 116–283, § 2821(a)(2), inserted ''or personal'' after ''real'' in two places.

Subsec. (e)(3)(B). Pub. L. 116–283, § 2821(a)(3), inserted ''or personal'' after ''real''.

Subsec. (e)(5). Pub. L. 116–283, § 2821(b)(2), added par. (5).

2015—Subsecs. (e) to (j). Pub. L. 114–92 added subsec. (e) and redesignated former subsecs. (e) to (i) as (f) to (j), respectively.

2013—Subsec. (a). Pub. L. 112–239, § 2852(a)(1), designated existing provisions as par. (1), substituted ''The'' for ''Subject to subsection (d)(2), the'', and added par. (2).

Subsec. (b)(1). Pub. L. 112–239, § 2852(a)(2)(A), substituted ''The'' for ''Subject to subsection (d)(2), the'' in introductory provisions.

Subsec. (d)(1). Pub. L. 112–239, § 2852(a)(2)(B)(i), substituted ''such subsections'' for ''subsection (b)''.

Subsec. (d)(2). Pub. L. 112–239, § 2852(a)(2)(B)(ii), substituted '', money, and services may not be accepted under subsection (a) or'' for ''and money may not be accepted under subsection (a) and property, money, and services may not be accepted under subsection'' in introductory provisions.

Subsec. (f). Pub. L. 112–239, § 2852(a)(2)(C), substituted '', money, or services accepted under subsection (a) or'' for ''or money accepted under subsection (a) and any property, money, or services accepted under subsection''.

Subsec. (i)(2). Pub. L. 112–239, § 587(a), inserted ''education,'' before ''morale,''.

2008—Subsec. (b)(4). Pub. L. 110–181 struck out par. (4) which read as follows: ''The authority to accept gifts, devises, or bequests under this subsection expires on December 31, 2007.''

2006—Pub. L. 109–163 reenacted section catchline without change and amended text generally. Prior to amendment, section consisted of subsecs. (a) to (d) relating to general gift funds.

2002—Subsec. (b)(4). Pub. L. 107–296 substituted ''Secretary of Homeland Security'' for ''Secretary of Transportation''.

1980—Subsec. (b)(4). Pub. L. 96–513 substituted ''Secretary of Transportation'' for ''Secretary of the Treasury''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

LIMITATION ON SOLICITATION OF GIFTS

Pub. L. 110–181, div. A, title V, § 593(b), Jan. 28, 2008, 122 Stat. 138, provided that: ''The Secretary of Defense shall prescribe regulations implementing sections 2601 and 2608 of title 10, United States Code, that prohibit the solicitation of any gift under such sections by any employee of the Department of Defense if the nature or circumstances of such solicitation would compromise the integrity or the appearance of integrity of any program of the Department of Defense or of any individual involved in such program.''

§ 2601a. Direct acceptance of gifts by members of the armed forces and Department of Defense and Coast Guard employees and their families

(a) REGULATIONS GOVERNING ACCEPTANCE OF GIFTS.—(1) The Secretary of Defense (and the Secretary of Homeland Security in the case of the Coast Guard when it is not operating as a service in the Navy) shall prescribe regulations to provide that, subject to such limitations as may be specified in such regulations, the following individuals may accept gifts from nonprofit organizations, private parties, and other sources outside the Department of Defense or the Department of Homeland Security:

(A) A member of the armed forces described in subsection (b).

(B) A civilian employee of the Department of Defense or Coast Guard described in subsection (c).

(C) The family members of such a member or employee.

(D) Survivors of such a member or employee who is killed.

(2) The regulations required by this subsection shall—

(A) apply uniformly to all elements of the Department of Defense and, to the maximum extent feasible, to the Coast Guard; and

(B) require review and approval by a designated agency ethics official before acceptance of a gift to ensure that acceptance of the gift complies with the Joint Ethics Regulation.

(b) COVERED MEMBERS.—This section applies to a member of the armed forces who, while performing active duty, full-time National Guard duty, or inactive-duty training on or after September 11, 2001, incurred an injury or illness—

(1) as described in section 1413a(e)(2) of this title;

(2) in an operation or area designated as a combat operation or a combat zone, respectively, by the Secretary of Defense in accordance with the regulations prescribed under subsection (a); or

(3) under other circumstances determined by the Secretary concerned to warrant treatment analogous to members covered by paragraph (1).

(c) COVERED EMPLOYEES.—This section applies to a civilian employee of the Department of Defense or Coast Guard who, while an employee on or after September 11, 2001, incurred an injury or illness under a circumstance described in paragraph (1), (2) or (3) of subsection (b).

(d) GIFTS FROM CERTAIN SOURCES PROHIBITED.—The regulations prescribed under subsection (a) may not authorize the acceptance of a gift from a foreign government or international organization or their agents.

(e) APPLICATION OF CERTAIN REGULATIONS.—To the extent provided in the regulations issued under subsection (a) to implement subsection

(b)(2), the regulations shall apply to the acceptance of gifts received after December 31, 2011, for injuries or illnesses incurred on or after September 11, 2001.

(Added Pub. L. 111–383, div. A, title V, § 591(a), Jan. 7, 2011, 124 Stat. 4231; amended Pub. L. 112–81, div. A, title V, § 543, Dec. 31, 2011, 125 Stat. 1411; Pub. L. 112–239, div. A, title X, § 1076(f)(32), Jan. 2, 2013, 126 Stat. 1954; Pub. L. 113–291, div. A, title X, § 1071(e)(4), (f)(19), Dec. 19, 2014, 128 Stat. 3510, 3511.)

AMENDMENTS

2014—Subsec. (a)(1). Pub. L. 113–291, § 1071(f)(19)(A), substituted ''prescribe'' for ''issue''.

Subsec. (d). Pub. L. 113–291, § 1071(f)(19)(B), substituted ''prescribed'' for ''issued''.

Subsec. (e). Pub. L. 113–291, § 1071(e)(4), substituted ''after December 31, 2011,'' for ''after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2012''.

2013—Subsec. (a)(1). Pub. L. 112–239 inserted ''when it is not operating as a service in the Navy'' after ''Coast Guard'' in introductory provisions.

2011—Subsec. (b)(2), (3). Pub. L. 112–81, § 543(1), added par. (2) and redesignated former par. (2) as (3).

Subsec. (c). Pub. L. 112–81, § 543(2), substituted ''paragraph (1), (2) or (3) of subsection (b)'' for ''paragraph (1) or (2) of subsection (c)''.

Subsec. (e). Pub. L. 112–81, § 543(3), added subsec. (e).

§ 2602. American National Red Cross: cooperation and assistance

(a) Whenever the President finds it necessary, he may accept the cooperation and assistance of the American National Red Cross, and employ it under the armed forces under regulations to be prescribed by the Secretary of Defense.

(b) Personnel of the American National Red Cross who are performing duties in connection with its cooperation and assistance under subsection (a) may be furnished—

(1) transportation, at the expense of the United States, while traveling to and from, and while performing, those duties, in the same manner as civilian employees of the armed forces;

(2) meals and quarters, at their expense or at the expense of the American National Red Cross, except that where civilian employees of the armed forces are quartered without charge, employees of the American National Red Cross may also be quartered without charge; and

(3) available office space, warehousing, wharfage, and means of communication, without charge.

(c) No fee may be charged for a passport issued to an employee of the American National Red Cross for travel outside the United States to assume or perform duties under this section.

(d) Supplies of the American National Red Cross, including gifts for the use of the armed forces, may be transported at the expense of the United States, if it is determined under regulations prescribed under subsection (a) that they are necessary to the cooperation and assistance accepted under this section.

(e) For the purposes of this section, employees of the American National Red Cross may not be considered as employees of the United States.

(Aug. 10, 1956, ch. 1041, 70A Stat. 145.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2602(a)	36:17.	July 17, 1953, ch. 222, §§ 1, 2, 7, 67 Stat. 178, 179.
2602(b)	36:17a (less provisos).	
2602(c)	36:17a (1st proviso).	
2602(d)	36:17a (last proviso).	
2602(e)	36:17b.	

In subsection (a), the words ''finds it necessary'' are substituted for the words ''shall find the * * * to be necessary''. The words ''cooperation and assistance'' are substituted for the words ''cooperation and use * * * assistance * * * the same''. The words ''under regulations to be prescribed by the Secretary of Defense'' are substituted for 36:17 (last sentence). The words ''tendered by the said Red Cross'' are omitted as surplusage.

In subsection (b), the introductory clause is substituted for 36:17a (1st 33 words). In clause (1), the word ''expense'' is substituted for the words ''cost and charge''. The words ''traveling to and from, and while performing, those duties'' are substituted for the words ''proceeding to their place of duty, while serving thereat, and while returning therefrom''. In clause (2), the words ''at their expense or at the expense of'' are substituted for the words ''providing the cost thereof is borne by such personnel or by''. The words ''quartered without charge'' are substituted for the words ''furnished quarters on the same basis without cost''. In clause (3), the words ''when such facilities are'' are omitted as surplusage.

In subsection (c), the words ''for travel outside the United States to assume or perform'' are substituted for the words ''so serving or proceeding abroad to enter upon such service''.

In subsection (d), the word ''equipment'' is omitted as covered by the word ''supplies''. The words ''gifts for the use of'' are substituted for the words ''Red Cross supplies that may be tendered as a gift and accepted for use by''. The word ''expense'' is substituted for the words ''cost and charge''. The words ''rules and'' are omitted as surplusage.

In subsection (e), the words ''Federal Government of'' are omitted as surplusage.

REPORT ON ASSISTANCE TO RED CROSS FOR EMERGENCY COMMUNICATIONS SERVICES FOR MEMBERS OF ARMED FORCES AND FAMILIES

Pub. L. 103–337, div. A, title III, § 383(b), Oct. 5, 1994, 108 Stat. 2740, provided that, not later than Nov. 30 in each of 1994, 1995, and 1996, the Secretary of Defense was to submit to Congress a report on whether it was necessary for the Department of Defense to support the emergency communications services of the American National Red Cross in order to provide such services for members of the Armed Forces and their families.

§ 2603. Acceptance of fellowships, scholarships, or grants

(a) Notwithstanding any other provision of law, a fellowship, scholarship, or grant may, under regulations to be prescribed by the President or his designee, be made by a corporation, fund, foundation, or educational institution that is organized and operated primarily for scientific, literary, or educational purposes to any member of the armed forces, and the benefits thereof may be accepted by him—

(1) in recognition of outstanding performance in his field;

(2) to undertake a project that may be of value to the United States; or

(3) for development of his recognized potential for future career service.

However, the benefits of such a fellowship, scholarship, or grant may be accepted by the

member in addition to his pay and allowances only to the extent that those benefits would be conferred upon him if the education or training contemplated by that fellowship, scholarship, or grant were provided at the expense of the United States. In addition, if such a benefit, in cash or in kind, is for travel, subsistence, or other expenses, an appropriate reduction shall be made from any payment that is made for the same purpose to the member by the United States incident to his acceptance of the fellowship, scholarship, or grant.

(b) Each member of the armed forces who accepts a fellowship, scholarship, or grant in accordance with subsection (a) shall, before he is permitted to undertake the education or training contemplated by that fellowship, scholarship, or grant, agree in writing that, after he completes the education or training, he will serve on active duty for a period at least three times the length of the period of the education or training.

(Added Pub. L. 87–555, §1(1), July 27, 1962, 76 Stat. 244; amended Pub. L. 111–383, div. A, title X, §1075(b)(39), Jan. 7, 2011, 124 Stat. 4371.)

AMENDMENTS

2011—Pub. L. 111–383 substituted ''armed forces'' for ''Armed Forces'' in two places.

EX. ORD. NO. 11079. REGULATIONS FOR ACCEPTANCE OF FELLOWSHIPS, SCHOLARSHIPS, OR GRANTS

Ex. Ord. No. 11079, Jan. 25, 1963, 28 F.R. 819, as amended by Ex. Ord. No. 11382, Nov. 28, 1967, 32 F.R. 16247; Ex. Ord. No. 12608, Sept. 9, 1987, 52 F.R. 34617; Ex. Ord. No. 13286, §69, Feb. 28, 2003, 68 F.R. 10630, provided:

By virtue of the authority vested in me by section 2603 of Title 10, United States Code [this section], I hereby designate the Secretary of Defense, with respect to members of the Army, Navy, Air Force, and Marine Corps, the Secretary of Homeland Security, with respect to members of the Coast Guard when it is not operating as a service in the Navy, and the Secretary of Health and Human Services, with respect to commissioned officers of the Public Health Service, to prescribe regulations under which members of the Armed Forces and commissioned officers of the Public Health Service may accept fellowships, scholarships, or grants from corporations, funds, foundations, or educational institutions organized and operated primarily for scientific, literary, or educational purposes. To the extent practicable, such regulations shall be uniform.

§ 2604. United Seamen's Service: cooperation and assistance

(a) Whenever the President finds it necessary in the interest of United States commitments abroad to provide facilities and services for United States merchant seamen in foreign areas, he may authorize the Secretary of Defense, under such regulations as the Secretary may prescribe, to cooperate with and assist the United Seamen's Service in establishing and providing those facilities and services.

(b) Personnel of the United Seamen's Service who are performing duties in connection with the cooperation and assistance under subsection (a) may be furnished—

(1) transportation, at the expense of the United States, while traveling to and from, and while performing those duties, in the same manner as civilian employees of the armed forces;

(2) meals and quarters, at their expense or at the expense of the United Seamen's Service, except that where civilian employees of the armed forces are quartered without charge, employees of the United Seamen's Service may also be quartered without charge; and

(3) available office space (including space for recreational activities for seamen), warehousing, wharfage, and means of communication, without charge.

(c) No fee may be charged for a passport issued to an employee of the United Seamen's Service for travel outside the United States to assume or perform duties under this section.

(d) Supplies of the United Seamen's Service, including gifts for the use of merchant seamen, may be transported at the expense of the United States, if it is determined under regulations prescribed under subsection (a) that they are necessary to the cooperation and assistance provided under this section.

(e) Where practicable, the President shall also make arrangements to provide for convertibility of local currencies for the United Seamen's Service, in connection with its activities under subsection (a).

(f) For the purposes of this section, employees of the United Seamen's Service may not be considered as employees of the United States.

(Added Pub. L. 91–603, §3(1), Dec. 31, 1970, 84 Stat. 1674.)

SHORT TITLE

Pub. L. 91–603, §1, Dec. 31, 1970, 84 Stat. 1674, provided: ''That this Act [enacting this section, amending sections 1151, 1152, 1171, and 1223 of Title 46, Appendix, Shipping, and enacting provisions set out as a note under this section] may be cited as the 'Seamen's Service Act'.''

CONGRESSIONAL DECLARATION OF PURPOSE

Pub. L. 91–603, §2, Dec. 31, 1970, 84 Stat. 1674, provided that: ''It is the purpose of this Act [enacting this section and amending sections 1151, 1152, 1171 and 1223 of Title 46, Appendix, Shipping], by authorizing appropriate departments and agencies of the United States Government to cooperate with the United Seamen's Service (a nonprofit, charitable organization incorporated under the laws of the State of New York) in the establishment and operation of facilities for United States merchant seamen in foreign areas, to promote the welfare of such seamen, essential to the overall interests of shipment of United States goods and supplies to such areas.''

§ 2605. Acceptance of gifts for defense dependents' schools

(a) The Secretary of Defense may accept, hold, administer, and spend any gift (including any gift of an interest in real property) made on the condition that it be used in connection with the operation or administration of a defense dependents' school. The Secretary may pay all necessary expenses in connection with the acceptance of a gift under this subsection.

(b) There is established in the Treasury a fund to be known as the ''Department of Defense Dependents' Education Gift Fund''. Gifts of money, and the proceeds of the sale of property, received under subsection (a) shall be deposited in the fund. The Secretary may disburse funds deposited under this subsection for the benefit or

use of defense dependents' schools, subject to the terms of the gift.

(c) Subsection (c) of section 2601 of this title applies to property that is accepted under subsection (a) in the same manner that such subsection applies to property that is accepted under subsection (a) of that section.

(d)(1) Upon request of the Secretary of Defense, the Secretary of the Treasury may—

(A) retain money, securities, and the proceeds of the sale of securities, in the Department of Defense Dependents' Education Gift Fund; and

(B) invest money and reinvest the proceeds of the sale of securities in that fund in securities of the United States or in securities guaranteed as to principal and interest by the United States.

(2) The interest and profits accruing from those securities shall be deposited to the credit of the fund and may be disbursed as provided in subsection (b).

(e) In this section, the term ''gift'' includes a devise of real property or a bequest of personal property.

(f) The Secretary of Defense shall prescribe regulations to carry out this section.

(g) In this section, the term ''defense dependents' school'' means the following:

(1) A school established as part of the defense dependents' education system provided for under the Defense Dependents' Education Act of 1978 (20 U.S.C. 921 et seq.).

(2) An elementary or secondary school established pursuant to section 2164 of this title.

(Added Pub. L. 99–661, div. A, title III, § 314(a), Nov. 14, 1986, 100 Stat. 3853; amended Pub. L. 103–337, div. A, title III, § 353(a)–(c)(1), Oct. 5, 1994, 108 Stat. 2731.)

REFERENCES IN TEXT

The Defense Dependents' Education Act of 1978, referred to in subsec. (g)(1), is title XIV of Pub. L. 95–561, Nov. 1, 1978, 92 Stat. 2365, as amended, which is classified principally to chapter 25A (§ 921 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 921 of Title 20 and Tables.

AMENDMENTS

1994—Pub. L. 103–337, § 353(c)(1), substituted ''schools'' for ''education system'' in section catchline.

Subsec. (a). Pub. L. 103–337, § 353(a)(1), substituted ''a defense dependents' school'' for ''the defense dependents' education system provided for under the Defense Dependents' Education Act of 1978 (20 U.S.C. 921 et seq.)''.

Subsec. (b). Pub. L. 103–337, § 353(a)(2), substituted ''defense dependents' schools'' for ''the defense dependent's education system''.

Subsec. (g). Pub. L. 103–337, § 353(b), added subsec. (g).

§ 2606. Scouting: cooperation and assistance in foreign areas

(a) Subject to subsection (b), the Secretary concerned may cooperate with and assist qualified scouting organizations in establishing and providing facilities and services for members of the armed forces and their dependents, and civilian employees of the Department of Defense and their dependents, at locations outside the United States.

(b) Cooperation and assistance under subsection (a) shall be provided under regulations prescribed by the Secretary of Defense and may be provided only if the President determines that such cooperation and assistance is necessary in the interest of the morale, welfare, and recreation of members of the armed forces.

(c) Personnel of a qualified scouting organization, including officials certified by that organization as representing that organization, who are performing duties in connection with cooperation and assistance provided under subsection (a) may be furnished—

(1) transportation at the expense of the United States while traveling to and from, and while performing, such duties in the same manner as civilian employees of the United States; and

(2) available office space (including space for recreational activities for Boy Scouts and Girl Scouts), warehousing, utilities, and a means of communication, without charge.

(d) Supplies of a qualified scouting organization may be transported at the expense of the United States if the Secretary concerned determines, under regulations prescribed under subsection (b), that the supplies are necessary to the cooperation and assistance provided under this section.

(e) The Secretary concerned may reimburse a qualified scouting organization for all or part of the pay of an employee of that organization for any period during which the employee was performing services under subsection (a). Any such reimbursement may not be made from appropriated funds and shall be made under regulations prescribed under subsection (b).

(f) For the purposes of this section, employees of a qualified scouting organization performing services under subsection (a) may not be considered to be employees of the United States.

(g) In this section, the term ''qualified scouting organization'' means the Girl Scouts of the United States of America and the Boy Scouts of America.

(Added Pub. L. 100–456, div. A, title III, § 323(a), Sept. 29, 1988, 102 Stat. 1953.)

EX. ORD. NO. 12715. DETERMINATION FOR SUPPORT OF SCOUTING ACTIVITIES OVERSEAS

Ex. Ord. No. 12715, May 3, 1990, 55 F.R. 19051, provided:

By the authority vested in me as President by the Constitution and laws of the United States of America, and pursuant to section 2606(b) of title 10, United States Code, with regard to support of scouting activities overseas, I hereby determine that the cooperation and assistance authorized by section 2606(a) of that title is necessary in the interest of the morale, welfare, and recreation of members of the armed forces. The Secretary of Defense, or his designee, shall issue regulations concerning such cooperation and support.

GEORGE BUSH.

§ 2607. Acceptance of gifts for the Defense Intelligence College

(a) The Secretary of Defense may accept, hold, administer, and use any gift (including any gift of an interest in real property) made for the purpose of aiding and facilitating the work of the Defense Intelligence College and may pay all necessary expenses in connection with the acceptance of such a gift.

(b) Money, and proceeds from the sale of property, received as a gift under subsection (a) shall be deposited in the Treasury and shall be available for disbursement upon the order of the Secretary of Defense to the extent provided in annual appropriation Acts.

(c) Subsection (c) of section 2601 of this title applies to property that is accepted under subsection (a) in the same manner that such subsection applies to property that is accepted under subsection (a) of that section.

(d) In this section, the term ''gift'' includes a bequest of personal property or a devise of real property.

(Added Pub. L. 101–193, title V, § 502(a), Nov. 30, 1989, 103 Stat. 1708.)

§ 2608. Acceptance of contributions for defense programs, projects, and activities; Defense Cooperation Account

(a) ACCEPTANCE AUTHORITY.—The Secretary of Defense may accept from any person, foreign government, or international organization any contribution of money or real or personal property made by such person, foreign government, or international organization for use by the Department of Defense and may accept from any foreign government or international organization any contribution of services made by such foreign government or international organization for use by the Department of Defense.

(b) ESTABLISHMENT OF DEFENSE COOPERATION ACCOUNT.—(1) There is established in the Treasury of the United States a special account to be known as the ''Defense Cooperation Account''.

(2) Contributions of money and proceeds from the sale of any property accepted by the Secretary of Defense under subsection (a) shall be credited to the Defense Cooperation Account.

(c) USE OF THE DEFENSE COOPERATION ACCOUNT.—(1) Funds in the Defense Cooperation Account may be appropriated for a function described in section 114 of this title only to the extent that the appropriation of such funds for such purpose is authorized in accordance with that section.

(2) Funds in the Defense Cooperation Account shall not be made available for obligation or expenditure except to the extent and in the manner provided in subsequent appropriations Acts.

(d) USE OF PROPERTY.—Any contribution of property received under this section may be—

(1) retained and used by the Department of Defense in the form in which it was donated;

(2) sold or otherwise disposed of upon such terms and conditions and in accordance with such procedures as the Secretary determines appropriate; or

(3) converted into a form usable by the Department of Defense.

(e) REPORTING REQUIREMENT.—(1) Not later than 30 days after the end of the second quarter and the fourth quarter of each fiscal year, the Secretary of Defense shall submit to Congress a report on contributions of property accepted by the Secretary under this section during the preceding two quarters. The Secretary shall include in each such report a description of all property having a value of more than $1,000,000.

(2) In computing the value of any property referred to in paragraph (1), the Secretary shall aggregate the value of—

(A) similar items of property accepted by the Secretary during the quarter concerned; and

(B) components which, if assembled, would comprise all or a substantial part of an item of equipment or a facility.

(f) AUTHORITY TO USE PROPERTY.—Property accepted under subsection (a) may be used by the Secretary of Defense without specific authorization, except that such property may not be used in connection with any program, project, or activity if the use of such property would result in the violation of any prohibition or limitation otherwise applicable to such program, project, or activity.

(g) INVESTMENT OF MONEY.—(1) Upon request by the Secretary of Defense, the Secretary of the Treasury may invest money in the Defense Cooperation Account in securities of the United States or in securities guaranteed as to principal and interest by the United States.

(2) Any interest or other income that accrues from investment in securities referred to in paragraph (1) shall be deposited to the credit of the Defense Cooperation Account.

(h) NOTIFICATION OF CONDITIONS.—The Secretary of Defense shall notify Congress of any condition imposed by the donor on the use of any contribution accepted by the Secretary under the authority of this section.

(i) PERIODIC AUDITS BY GAO.—The Comptroller General of the United States shall make periodic audits of money and property accepted under this section, at such intervals as the Comptroller General determines to be warranted. The Comptroller General shall submit to Congress a report on the results of each such audit.

(j) ITEMS INCLUDED AS CONTRIBUTIONS.—In this section, the term ''contribution'' includes a devise of real property or a bequest of personal property.

(k) REGULATIONS.—The Secretary of Defense shall prescribe regulations to carry out this section.

(Added Pub. L. 101–403, title II, § 202(a)(1), Oct. 1, 1990, 104 Stat. 872; amended Pub. L. 102–190, div. A, title X, § 1061(a)(16), Dec. 5, 1991, 105 Stat. 1473; Pub. L. 103–160, div. A, title XI, § 1105(b)(1), (2), Nov. 30, 1993, 107 Stat. 1750; Pub. L. 104–201, div. A, title X, § 1063, Sept. 23, 1996, 110 Stat. 2652; Pub. L. 112–81, div. A, title X, § 1064(7), Dec. 31, 2011, 125 Stat. 1587.)

AMENDMENTS

2011—Subsec. (e)(1). Pub. L. 112–81 substituted ''the second quarter and the fourth quarter'' for ''each quarter'' and ''the preceding two quarters'' for ''the preceding quarter''.

1996—Subsec. (a). Pub. L. 104–201 inserted before period at end ''and may accept from any foreign government or international organization any contribution of services made by such foreign government or international organization for use by the Department of Defense''.

1993—Pub. L. 103–160, § 1105(b)(2), inserted ''; Defense Cooperation Account'' in section catchline.

Subsec. (i). Pub. L. 103–160, § 1105(b)(1), substituted ''Periodic Audits'' for ''Annual Audit'' in heading and

amended text generally. Prior to amendment, text read as follows: ''The Comptroller General of the United States shall conduct an annual audit of money and property accepted by the Secretary of Defense under this section and shall submit a copy of the results of each such audit to Congress.''

1991—Subsec. (g)(1). Pub. L. 102–190 inserted ''(1)'' before ''Upon request''.

[§ 2609. Repealed. Pub. L. 104–106, div. A, title II, § 253(9), Feb. 10, 1996, 110 Stat. 235]

Section, added Pub. L. 103–160, div. A, title II, § 242(f)(1), Nov. 30, 1993, 107 Stat. 1605, related to acceptance of contributions from allies for Theater Missile Defense programs and establishment and use of Theater Missile Defense Cooperation Account.

§ 2610. Competitions for excellence: acceptance of monetary awards

(a) ACCEPTANCE AUTHORIZED.—The Secretary of Defense may accept a monetary award given to the Department of Defense by a nongovernmental entity as a result of the participation of the Department in a competition carried out to recognize excellence or innovation in providing services or administering programs.

(b) DISPOSITION OF AWARDS.—A monetary award accepted under subsection (a) shall be credited to one or more nonappropriated fund accounts supporting morale, welfare, and recreation activities for the command, installation, or other activity that is recognized for the award. Amounts so credited may be expended only for such activities.

(c) INCIDENTAL EXPENSES.—Subject to such limitations as may be provided in appropriation Acts, appropriations available to the Department of Defense may be used to pay incidental expenses incurred by the Department to participate in a competition described in subsection (a) or to accept a monetary award under this section.

(d) REGULATIONS AND REPORTING.—(1) The Secretary shall prescribe regulations to determine the disposition of monetary awards accepted under this section and the payment of incidental expenses under subsection (c).

(2) At the end of each year, the Secretary shall submit to Congress a report for that year describing the disposition of monetary awards accepted under this section and the payment of incidental expenses under subsection (c).

(e) TERMINATION.—The authority of the Secretary under this section shall expire on February 10, 1998.

(Added Pub. L. 104–106, div. A, title III, § 377(a), Feb. 10, 1996, 110 Stat. 283; amended Pub. L. 104–201, div. A, title X, § 1074(a)(16), Sept. 23, 1996, 110 Stat. 2659.)

AMENDMENTS

1996—Subsec. (e). Pub. L. 104–201 substituted ''on February 10, 1998'' for ''two years after the date of the enactment of the National Defense Authorization Act for Fiscal Year 1996''.

§ 2611. Regional centers for security studies: acceptance of gifts and donations

(a) AUTHORITY TO ACCEPT GIFTS AND DONATIONS.—(1) Subject to subsection (c), the Secretary of Defense may, on behalf of any Department of Defense regional center for security studies, any combination of such centers, or such centers generally, accept from any source specified in subsection (b) any gift or donation for purposes of defraying the costs or enhancing the operation of such a center, combination of centers, or centers generally, as the case may be.

(2) For purposes of this section, the Department of Defense regional centers for security studies are the following:

(A) The George C. Marshall European Center for Security Studies.

(B) The Daniel K. Inouye Asia-Pacific Center for Security Studies.

(C) The William J. Perry Center for Hemispheric Defense Studies.

(D) The Africa Center for Strategic Studies.

(E) The Near East South Asia Center for Strategic Studies.

(b) SOURCES.—The sources from which gifts and donations may be accepted under subsection (a) are the following:

(1) The government of a State or a political subdivision of a State.

(2) The government of a foreign country.

(3) A foundation or other charitable organization, including a foundation or charitable organization this is organized or operates under the laws of a foreign country.

(4) Any source in the private sector of the United States or a foreign country.

(c) LIMITATION.—The Secretary may not accept a gift or donation under subsection (a) if acceptance of the gift or donation would compromise or appear to compromise—

(1) the ability of the Department of Defense, any employee of the Department, or any member of the armed forces to carry out the responsibility or duty of the Department in a fair and objective manner; or

(2) the integrity of any program of the Department, or of any person involved in such a program.

(d) CRITERIA FOR ACCEPTANCE.—The Secretary shall prescribe written guidance setting forth the criteria to be used in determining whether the acceptance of a gift or donation would have a result described in subsection (c).

(e) CREDITING OF FUNDS.—Funds accepted by the Secretary under section (a) shall be credited to appropriations available to the Department of Defense for the regional center, combination of centers, or centers generally for which accepted. Funds so credited shall be merged with the appropriations to which credited and shall be available for the regional center, combination of centers, or centers generally, as the case may be, for the same purposes as the appropriations with which merged. Any funds accepted under this section shall remain available until expended.

(f) GIFT OR DONATION DEFINED.—In this section, the term ''gift or donation'' means any gift or donation of funds, materials (including research materials), real or personal property, or services (including lecture services and faculty services).

(Added Pub. L. 106–65, div. A, title IX, § 915(a), Oct. 5, 1999, 113 Stat. 721; amended Pub. L.

107–314, div. A, title X, § 1041(a)(17), Dec. 2, 2002, 116 Stat. 2645; Pub. L. 108–136, div. A, title IX, § 931(a), (b)(1), (c), Nov. 24, 2003, 117 Stat. 1580, 1581; Pub. L. 108–375, div. A, title X, § 1084(f)(2), Oct. 28, 2004, 118 Stat. 2064; Pub. L. 109–163, div. A, title IX, § 903(a)(1), Jan. 6, 2006, 119 Stat. 3397; Pub. L. 112–239, div. B, title XXVIII, § 2854(b)(2), Jan. 2, 2013, 126 Stat. 2162; Pub. L. 113–291, div. B, title XXVIII, § 2861(b)(2), Dec. 19, 2014, 128 Stat. 3716.)

AMENDMENTS

2014—Subsec. (a)(2)(B). Pub. L. 113–291 substituted ''Daniel K. Inouye Asia-Pacific Center for Security Studies'' for ''Asia-Pacific Center for Security Studies''.

2013—Subsec. (a)(2)(C). Pub. L. 112–239 substituted ''William J. Perry Center for Hemispheric Defense Studies'' for ''Center for Hemispheric Defense Studies''.

2006—Pub. L. 109–163 amended section catchline and text generally. Prior to amendment, text consisted of subsecs. (a) to (f) relating to acceptance of gifts and donations for the Asia-Pacific Center for Security Studies.

2004—Subsec. (a)(1). Pub. L. 108–375 amended directory language of Pub. L. 108–136, § 931(a)(1). See 2003 Amendment note below.

2003—Pub. L. 108–136, § 931(c), struck out ''foreign'' before ''gifts'' in section catchline.

Subsec. (a). Pub. L. 108–136, § 931(b)(1)(A), struck out ''Foreign'' before ''Gifts'' in heading.

Subsec. (a)(1). Pub. L. 108–136, § 931(a)(1), as amended by Pub. L. 108–375, substituted ''gifts and donations from sources described in paragraph (2)'' for ''foreign gifts or donations''.

Subsec. (a)(2), (3). Pub. L. 108–136, § 931(a)(2), (3), added par. (2) and redesignated former par. (2) as (3).

Subsec. (c). Pub. L. 108–136, § 931(b)(1)(B), struck out ''foreign'' before ''gift''.

Subsec. (f). Pub. L. 108–136, § 931(b)(1)(A), (C), in heading, struck out ''Foreign'' before ''Gift'' and in text, struck out ''foreign'' after ''section, a'' and ''from a foreign government, a foundation or other charitable organization in a foreign country, or an individual in a foreign country'' before period at end.

2002—Subsec. (e). Pub. L. 107–314 struck out heading and text of subsec. (e). Text read as follows: ''If the total amount of funds accepted under subsection (a) in any fiscal year exceeds $2,000,000, the Secretary shall notify Congress of the amount of those donations for that fiscal year. Any such notice shall list each of the contributors of such amounts and the amount of each contribution in that fiscal year.''

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–375, div. A, title X, § 1084(f), Oct. 28, 2004, 118 Stat. 2064, provided that the amendment made by section 1084(f)(2) is effective as of Nov. 24, 2003, and as if included in Pub. L. 108–136 as enacted.

§ 2612. National Defense University: acceptance of gifts

(a) The Secretary of Defense may accept, hold, administer, and spend any gift, including a gift from an international organization and a foreign gift or donation (as defined in section 343(f)(4) of this title), that is made on the condition that it be used in connection with the operation or administration of the National Defense University. The Secretary may pay all necessary expenses in connection with the acceptance of a gift under this subsection.

(b) There is established in the Treasury a fund to be known as the ''National Defense University Gift Fund''. Gifts of money, and the proceeds of the sale of property, received under subsection (a) shall be deposited in the fund. The Secretary may disburse funds deposited under this subsection for the benefit or use of the National Defense University.

(c) Subsection (c) of section 2601 of this title applies to property that is accepted under subsection (a) in the same manner that such subsection applies to property that is accepted under subsection (a) of that section.

(d)(1) Upon request of the Secretary of Defense, the Secretary of the Treasury may—

(A) retain money, securities, and the proceeds of the sale of securities, in the National Defense University Gift Fund; and

(B) invest money and reinvest the proceeds of the sale of securities in that fund in securities of the United States or in securities guaranteed as to principal and interest by the United States.

(2) The interest and profits accruing from those securities shall be deposited to the credit of the fund and may be disbursed as provided in subsection (b).

(e) In this section:

(1) the term ''gift'' includes a devise of real property or a bequest of personal property and any gift of an interest in real property.

(2) The term ''National Defense University'' includes any school or other component of the National Defense University specified under section 2165(b) of this title.

(f) The Secretary of Defense shall prescribe regulations to carry out this section.

(Added Pub. L. 107–314, div. A, title IX, § 931(a), Dec. 2, 2002, 116 Stat. 2624; amended Pub. L. 108–136, div. A, title IX, § 931(d), Nov. 24, 2003, 117 Stat. 1581; Pub. L. 115–91, div. A, title X, § 1081(a)(44), Dec. 12, 2017, 131 Stat. 1596.)

AMENDMENTS

2017—Subsec. (a). Pub. L. 115–91 substituted ''section 343(f)(4)'' for ''section 2166(f)(4)''.

2003—Subsec. (a). Pub. L. 108–136 substituted ''2166(f)(4)'' for ''2611(f)''.

§ 2613. Acceptance of frequent traveler miles, credits, points, and tickets: use to facilitate rest and recuperation travel of deployed members and their families

(a) AUTHORITY TO ACCEPT DONATION OF TRAVEL BENEFITS.—Subject to subsection (c), the Secretary of Defense may accept from any person or government agency the donation of travel benefits for the purposes of use under subsection (d).

(b) TRAVEL BENEFIT DEFINED.—In this section, the term ''travel benefit'' means—

(1) frequent traveler miles, credits for tickets, or tickets for air or surface transportation issued by an air carrier or a surface carrier, respectively, that serves the public; and

(2) points or awards for free or reduced-cost accommodations issued by an inn, hotel, or other commercial establishment that provides lodging to transient guests.

(c) CONDITION ON AUTHORITY TO ACCEPT DONATION.—The Secretary may accept a donation of a travel benefit under this section only if the business entity referred to in subsection (b) that is the source of the benefit consents to such dona-

tion. Any such donation shall be under such terms and conditions as the business entity may specify, and the travel benefit so donated may be used only in accordance with the rules established by the business entity.

(d) USE OF DONATED TRAVEL BENEFITS.—A travel benefit accepted under this section may be used only for the purpose of—

(1) facilitating the travel of a member of the armed forces who—

(A) is deployed on active duty outside the United States away from the permanent duty station of the member in support of a contingency operation; and

(B) is granted, during such deployment, rest and recuperative leave, emergency leave, convalescent leave, or another form of leave authorized for the member; or

(2) in the case of a member of the armed forces recuperating from an injury or illness incurred or aggravated in the line of duty during such a deployment, facilitating the travel of family members of the member in order to be reunited with the member.

(e) ADMINISTRATION.—(1) The Secretary shall designate a single office in the Department of Defense to carry out this section. That office shall develop rules and procedures to facilitate the acceptance and distribution of travel benefits under this section.

(2) For the use of travel benefits under subsection (d)(2) by family members of a member of the armed forces, the Secretary may, as the Secretary determines appropriate, limit—

(A) eligibility to family members who, by reason of affinity, degree of consanguinity, or otherwise, are sufficiently close in relationship to the member of the armed forces to justify the travel assistance;

(B) the number of family members who may travel; and

(C) the number of trips that family members may take.

(3) The Secretary of Defense may, in an exceptional case, authorize a person not described in subsection (d)(2) to use a travel benefit accepted under this subsection to visit a member of the armed forces described in subsection (d)(1) if that person has a notably close relationship with the member. The travel benefit may be used by such person only in accordance with such conditions and restrictions as the Secretary determines appropriate and the rules established by the business entity referred to in subsection (b) that is the source of the travel benefit.

(f) SERVICES OF NONPROFIT ORGANIZATION.—The Secretary of Defense may enter into an agreement with a nonprofit organization to use the services of the organization—

(1) to promote the donation of travel benefits under this section, except that amounts appropriated to the Department of Defense may not be expended for this purpose; and

(2) to assist in administering the collection, distribution, and use of travel benefits under this section.

(g) FAMILY MEMBER DEFINED.—In this section, the term ''family member'' has the meaning given that term in section 481h(b) of title 37.

(Added Pub. L. 108–375, div. A, title V, § 585(a)(1), Oct. 28, 2004, 118 Stat. 1930; amended Pub. L. 109–364, div. A, title X, § 1071(a)(20), Oct. 17, 2006, 120 Stat. 2399; Pub. L. 112–81, div. A, title V, § 576(a)–(d)(1), title VI, § 631(f)(4)(A), Dec. 31, 2011, 125 Stat. 1428, 1429, 1465; Pub. L. 112–239, div. A, title X, § 1076(a)(9), Jan. 2, 2013, 126 Stat. 1948; Pub. L. 115–232, div. A, title X, § 1081(a)(25), Aug. 13, 2018, 132 Stat. 1985.)

CODIFICATION

Another section 2613 was renumbered section 2614 of this title.

AMENDMENTS

2018—Subsec. (g). Pub. L. 115–232 substituted ''481h(b)'' for ''481h(b)(1)''.

2013—Subsec. (g). Pub. L. 112–239, § 1076(a)(9), made technical amendment to directory language of Pub. L. 112–81, § 631(f)(4)(A). See 2011 Amendment note below.

2011—Pub. L. 112–81, § 576(d)(1), substituted ''Acceptance of frequent traveler miles, credits, points, and tickets: use to facilitate rest and recuperation travel of deployed members and their families'' for ''Acceptance of frequent traveler miles, credits, and tickets; use to facilitate rest and recuperation travel of deployed members and their families'' in section catchline.

Subsec. (b). Pub. L. 112–81, § 576(a), amended subsec. (b) generally. Prior to amendment, subsec. (b) defined travel benefit.

Subsec. (c). Pub. L. 112–81, § 576(b), substituted ''the business entity referred to in subsection (b)'' for ''the air or surface carrier'' and substituted ''the business entity'' for ''the surface carrier'' and for ''the carrier''.

Subsec. (e)(3). Pub. L. 112–81, § 576(c), substituted ''the business entity referred to in subsection (b)'' for ''the air carrier or surface carrier''.

Subsec. (g). Pub. L. 112–81, § 631(f)(4)(A), as amended by Pub. L. 112–239, § 1076(a)(9), substituted ''481h(b)(1)'' for ''411h(b)(1)''.

2006—Subsec. (b). Pub. L. 109–364 substituted ''In this'' for ''In the''.

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112–239, div. A, title X, § 1076(a), Jan. 2, 2013, 126 Stat. 1947, provided that the amendment made by section 1076(a)(9) is effective Dec. 31, 2011, and as if included in Pub. L. 112–81 as enacted.

§ 2614. Emergency communications equipment: acceptance from local public safety agencies for temporary use related to disasters

(a) AUTHORITY TO ACCEPT EQUIPMENT.—(1) Subject to subsection (c), the Secretary concerned—

(1) may accept communications equipment for use in coordinating joint response and recovery operations with public safety agencies in the event of a disaster; and

(2) may accept services related to the operation and maintenance of such equipment.

(b) REGULATIONS.—The authority under subsection (a) shall be exercised under regulations prescribed by the Secretary of Defense.

(c) LIMITATIONS.—(1) Equipment may be accepted under subsection (a)(1) only to the extent that communications equipment under the control of the Secretary concerned at the potential disaster response site is inadequate to meet military requirements for communicating with public safety agencies during the period of response to the disaster.

(2) Services may be accepted under subsection (a)(2) related to the operation and maintenance of communications equipment only to the ex-

tent that the necessary capabilities are not available to the military commander having custody of the equipment.

(d) LIABILITY.—A person providing services accepted under this section may not be considered, by reason of the provision of such services, to be an officer, employee, or agent of the United States for any purpose.

(Added Pub. L. 108–375, div. A, title X, §1051(a), Oct. 28, 2004, 118 Stat. 2053, §2613; renumbered §2614 and amended Pub. L. 109–364, div. A, title X, §1071(a)(19)(A), Oct. 17, 2006, 120 Stat. 2399.)

AMENDMENTS

2006—Pub. L. 109–364 renumbered section 2613 of this title as this section and redesignated the second subsec. (c) as (d).

§ 2615. Military museums and military education programs: cooperative agreement authority

(a) USE AUTHORIZED.—The Secretary concerned may enter into a cooperative agreement with a nonprofit entity for purposes related to—

(1) a military museum program; or

(2) the support of a military educational institution program.

(b) COOPERATIVE AGREEMENT DESCRIBED.—For purposes of subsection (a), an authorized cooperative agreement is described in section 6305 of title 31, except that the use of a cooperative agreement by the Secretary concerned is limited to nonprofit entities.

(Added Pub. L. 112–239, div. B, title XXVIII, §2852(b)(1), Jan. 2, 2013, 126 Stat. 2161.)

CHAPTER 157—TRANSPORTATION

Sec.

2631. Preference for United States vessels in transporting supplies by sea.
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Sec.

2643. Commissary and exchange services: transportation overseas.
2644. Control of transportation systems in time of war.
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2646. Travel services: procurement for official and unofficial travel under one contract.
2647. Next-of-kin of persons unaccounted for from conflicts after World War II: transportation to annual meetings.
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2649. Civilian passengers and commercial cargoes: transportation on Department of Defense vessels, vehicles, and aircraft.
2650. Civilian personnel in Alaska.
2651. Passengers and merchandise to Guam: sea transport.
2652. Prohibition on charge of certain tariffs on aircraft traveling through channel routes.

AMENDMENTS

2021—Pub. L. 116–283, div. A, title X, §1024(a)(2), Jan. 1, 2021, 134 Stat. 3842, substituted "Preference for United States vessels in transporting supplies by sea" for "Supplies: preference to United States vessels" in item 2631.

2017—Pub. L. 115–91, div. A, title X, §1044(b), Dec. 12, 2017, 131 Stat. 1555, added item 2652.

2014—Pub. L. 113–291, div. A, title X, §1071(f)(21), Dec. 19, 2014, 128 Stat. 3511, which directed substitution of "rate" for "rates" in item 2642, could not be executed because the word "rates" did not appear after the amendment by Pub. L. 113–291, §1044(c)(2). See below.

Pub. L. 113–291, div. A, title X, §1044(c)(2), Dec. 19, 2014, 128 Stat. 3494, amended item 2642 generally, substituting "Transportation services provided to certain non-Department of Defense agencies and entities: use of Department of Defense reimbursement rate" for "Transportation services provided to certain other agencies: use of Department of Defense reimbursement rates".

2013—Pub. L. 113–66, div. A, title VI, §621(g)(2), title X, §1073(c), Dec. 26, 2013, 127 Stat. 784, 870, struck out item 2634 "Motor vehicles: transportation or storage for members on change of permanent station or extended deployment", added item 2642, and struck out former item 2642 "Airlift services provided to certain other agencies: use of Department of Defense reimbursement rate".

Pub. L. 112–239, div. A, title VI, §622(b), Jan. 2, 2013, 126 Stat. 1781, substituted in item 2641b "Space-available travel on Department of Defense aircraft: program authorized and eligible recipients." for "Space-available travel on Department of Defense aircraft: retired members residing in Commonwealths and possessions of the United States for certain health care services."

2011—Pub. L. 111–383, div. A, title III, §352(f), Jan. 7, 2011, 124 Stat. 4194, added items 2648 and 2649 and struck out former items 2648 "Persons and supplies: sea transportation" and 2649 "Civilian passengers and commercial cargoes: transportation on Department of Defense vessels".

2008—Pub. L. 110–181, div. A, title III, §374(b), Jan. 28, 2008, 122 Stat. 83, added item 2641b.

2004—Pub. L. 108–375, div. A, title X, §1072(d)(1), Oct. 28, 2004, 118 Stat. 2058, added items 2648 to 2651.

2003—Pub. L. 108–136, div. A, title VI, §634(b), title X, §1006(b)(2), Nov. 24, 2003, 117 Stat. 1510, 1585, added item 2636a and amended item 2642 generally, substituting "Airlift services provided to certain other agencies: use of Department of Defense reimbursement rate" for "Reimbursement rate for airlift services provided to Central Intelligence Agency".

2001—Pub. L. 107–107, div. A, title V, §574(b), Dec. 28, 2001, 115 Stat. 1122, added item 2647.

2000—Pub. L. 106–398, §1 [[div. A], title X, §1009(a)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–251, substituted "De-

ductions from amounts due carriers'' for ''Deductions from carriers because of loss or damage to material in transit'' in item 2636.

1998—Pub. L. 105–262, title VIII, § 8121(b), Oct. 17, 1998, 112 Stat. 2332, added item 2641a.

Pub. L. 105–261, div. A, title VIII, § 813(b), Oct. 17, 1998, 112 Stat. 2087, added item 2646.

1996—Pub. L. 104–201, div. A, title III, § 368(a)(2)(B), title IX, § 906(d)(1), title X, § 1079(b)(2), Sept. 23, 1996, 110 Stat. 2498, 2620, 2670, substituted ''Motor vehicles: transportation or storage for members on change of permanent station or extended deployment'' for ''Motor vehicles: for members on change of permanent station'' in item 2634 and added items 2644 and 2645.

Pub. L. 104–106, div. A, title III, § 334(b), Feb. 10, 1996, 110 Stat. 262, added item 2643.

1993—Pub. L. 103–160, div. A, title XI, § 1173(b), Nov. 30, 1993, 107 Stat. 1767, added item 2631a.

1991—Pub. L. 102–88, title V, § 501(b), Aug. 14, 1991, 105 Stat. 435, added item 2642.

1990—Pub. L. 101–510, div. A, title III, § 326(a)(2), Nov. 5, 1990, 104 Stat. 1531, added item 2637.

1987—Pub. L. 100–180, div. A, title XII, § 1250(a)(2), Dec. 4, 1987, 101 Stat. 1168, added item 2641.

1986—Pub. L. 99–661, div. A, title XII, § 1204(a)(2), Nov. 14, 1986, 100 Stat. 3971, added item 2640.

Pub. L. 99–550, § 2(a)(2), Oct. 27, 1986, 100 Stat. 3070, struck out item 2637 ''Transportation between residence and place of work for senior defense officials''.

1984—Pub. L. 98–525, title VI, § 614(b), title XIV, § 1401(j)(2), Oct. 19, 1984, 98 Stat. 2540, 2620, added items 2637 to 2639.

1982—Pub. L. 97–258, § 2(b)(5)(A), Sept. 13, 1982, 96 Stat. 1053, added item 2636.

1979—Pub. L. 96–125, title VIII, § 807(c)(2), Nov. 26, 1979, 93 Stat. 950, inserted ''and on military installations'' after ''places of employment'' in item 2632.

1973—Pub. L. 93–155, title VIII, § 814(b), Nov. 16, 1973, 87 Stat. 621, added item 2635.

1965—Pub. L. 89–101, § 1(2), July 30, 1965, 79 Stat. 425, substituted ''change of permanent station'' for ''permanent change of station'' in item 2634.

1962—Pub. L. 87–651, title I, § 111(c), Sept. 7, 1962, 76 Stat. 511, substituted ''Stevedoring and terminal services: vessels carrying cargo or passengers sponsored by military department'' for ''Terminal Services, furnish to commercial steamship companies'' in item 2633, and added item 2634.

1957—Pub. L. 85–44, § 2, June 1, 1957, 71 Stat. 45, added item 2633.

AIR TRANSPORTATION OF CIVILIAN DEPARTMENT OF DEFENSE PERSONNEL TO AND FROM AFGHANISTAN

Pub. L. 115–91, div. A, title X, § 1098, Dec. 12, 2017, 131 Stat. 1626, provided that:

''(a) POLICY REVIEW.—Not later than 90 days after the date of the enactment of this Act [Dec. 12, 2017], the Secretary of Defense shall conduct a policy review regarding the use of commercial air transportation or alternative forms of air transportation to transport civilian personnel of the Department of Defense to and from Afghanistan.

''(b) REPORT TO CONGRESS.—Not later than 90 days after the completion of the policy review required by subsection (a), the Secretary shall submit to the Committees on Armed Services of the Senate and House of Representatives a report on the results of such review.

''(c) UPDATED GUIDELINES.—Not later than 90 days after the completion of the policy review required by subsection (a), the Secretary shall issue updated guidelines, based on the report submitted under subsection (b), regarding the use of commercial air transportation or alternative forms of air transportation to transport civilian personnel of the Department to and from Afghanistan.''

§ 2631. Preference for United States vessels in transporting supplies by sea

(a) IN GENERAL.—Supplies bought for the Army, Navy, Air Force, Marine Corps, or Space Force, or for a Defense Agency, or otherwise transported by the Department of Defense, may only be transported by sea in—

(1) a vessel belonging to the United States; or

(2) a vessel of the United States (as such term is defined in section 116 of title 46).

(b) WAIVER AND NOTIFICATION.—(1) The Secretary of Defense may waive the requirement under subsection (a) if such a vessel is—

(A) not available at a fair and reasonable rate for commercial vessels of the United States; or

(B) otherwise not available.

(2) At least once each fiscal year, the Secretary of Defense shall submit, in writing, to the appropriate congressional committees a notice of any waiver granted under this subsection and the reasons for such waiver.

(c) REQUIREMENTS FOR REFLAGGING OR REPAIR WORK.—(1) In each request for proposals to enter into a time-charter contract for the use of a vessel for the transportation of supplies under this section, the Secretary of Defense shall require that—

(A) any reflagging or repair work on a vessel for which a proposal is submitted in response to the request for proposals be performed in the United States (including any territory of the United States); and

(B) any corrective and preventive maintenance or repair work on a vessel under contract pursuant to this section relevant to the purpose of such contract be performed in the United States (including any territory of the United States) for the duration of the contract, to the greatest extent practicable.

(2) The Secretary of Defense may waive a requirement under paragraph (1) if the Secretary determines that such waiver is critical to the national security of the United States. The Secretary shall immediately submit, in writing, to the appropriate congressional committees a notice of any waiver granted under this paragraph and the reasons for such waiver.

(3) In this subsection:

(A) The term ''reflagging or repair work'' means work performed on a vessel—

(i) to enable the vessel to meet applicable standards to become a vessel of the United States; or

(ii) to convert the vessel to a more useful military configuration.

(B) The term ''corrective and preventive maintenance or repair'' means—

(i) maintenance or repair actions performed as a result of a failure in order to return or restore equipment to acceptable performance levels; and

(ii) scheduled maintenance or repair actions to prevent or discover functional failures.

(d) COMPLIANCE.—The Secretary of Defense shall ensure that contracting officers of the Department of Defense award contracts under this section to responsible offerors and monitor and ensure compliance with the requirements of this section. The Secretary shall—

(1) ensure that timely, accurate, and complete information on contractor performance

under this section is included in any contractor past performance database used by an executive agency; and

(2) exercise appropriate contractual rights and remedies against contractors who fail to comply with this section, or subchapter I of chapter 553 of title 46, as determined by the Secretary of Transportation under such subchapter, including by—

(A) determining that a contractor is ineligible for an award of such a contract; or

(B) terminating such a contract or suspension or debarment of the contractor for such contract.

(e) APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.—In this section, the term ''appropriate congressional committees'' means—

(1) the Committees on Armed Services of the Senate and the House of Representatives;

(2) the Committee on Transportation and Infrastructure of the House of Representatives; and

(3) the Committee on Commerce, Science, and Transportation of the Senate.

(Aug. 10, 1956, ch. 1041, 70A Stat. 146; Pub. L. 103–160, div. A, title III, § 315(a), Nov. 30, 1993, 107 Stat. 1619; Pub. L. 116–92, div. A, title X, § 1033, Dec. 20, 2019, 133 Stat. 1580; Pub. L. 116–283, div. A, title IX, § 924(b)(3)(GG), title X, § 1024(a)(1), Jan. 1, 2021, 134 Stat. 3822, 3841.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2631	10:1365. 34:528.	Apr. 28, 1904, ch. 1766, 33 Stat. 518.

The word ''supplies'' is substituted for the words ''coal, provisions, fodder, or supplies of any description'', in 10:1365 and 34:528. The words ''pursuant to law'' and ''the use of'', in 10:1365 and 34:528, are omitted as surplusage. The words ''as otherwise provided by law'', in 10:1365 and 34:528, are used rather than the words ''under the law as it now exists'', in section 1 of the Act of April 28, 1904, ch. 1766, 33 Stat. 518. The word ''may'' is substituted for the word ''shall''. The words ''However, if'' are substituted for the words ''unless * * * in which case''. The words ''private persons'' are substituted for the words ''private parties or companies'', in 10:1365 and 34:528. The last sentence is substituted for the proviso of 10:1365 and 34:528.

AMENDMENTS

2021—Pub. L. 116–283, § 1024(a)(1), amended section generally. Prior to amendment, section related to preference to United States vessels for transportation by sea of supplies.

Subsec. (a). Pub. L. 116–283, § 924(b)(3)(GG), which directed amendment of subsec. (a) by substituting ''Marine Corps, or Space Force'' for ''or Marine Corps'', was executed by making the substitution in subsec. (a) as amended by section 1024(a)(1) of Pub. L. 116–283, to reflect the probable intent of Congress.

2019—Subsec. (a). Pub. L. 116–92, § 1033(1), inserted ''or for a Defense Agency'' after ''Marine Corps'' in first sentence.

Subsec. (b)(2) to (4). Pub. L. 116–92, § 1033(2), added par. (2), redesignated former pars. (2) and (3) as (3) and (4), respectively, and in par. (4), substituted ''a requirement under paragraph (1) or (2)'' for ''the requirement described in paragraph (1)''.

1993—Pub. L. 103–160 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103–160, div. A, title III, § 315(b), Nov. 30, 1993, 107 Stat. 1619, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to a vessel for which reflagging or repair work is necessary to be performed after the date of the enactment of this Act [Nov. 30, 1993].''

OBTAINING CARRIAGE BY VESSEL: CRITERION REGARDING OVERHAUL, REPAIR, AND MAINTENANCE OF VESSELS IN THE UNITED STATES

Pub. L. 109–364, div. A, title X, § 1017, Oct. 17, 2006, 120 Stat. 2379, as amended by Pub. L. 110–181, div. A, title X, § 1063(c)(9), div. C, title XXXV, § 3526(a), Jan. 28, 2008, 122 Stat. 323, 601, provided that:

''(a) ACQUISITION POLICY.—In order to maintain the national defense industrial base, the Secretary of Defense shall issue an acquisition policy that establishes, as a criterion required to be considered in obtaining carriage by vessel of cargo for the Department of Defense, the extent to which an offeror of such carriage had overhaul, repair, and maintenance work for covered vessels of the offeror performed in shipyards located in the United States.

''(b) COVERED VESSELS.—A vessel is a covered vessel of an offeror under this section if the vessel is—

''(1) owned, operated, or controlled by the offeror; and

''(2) qualified to engage in the carriage of cargo in the coastwise or non-contiguous trade under sections 12112 and 50501 and chapter 551 of title 46, United States Code.

''(c) APPLICATION OF POLICY.—The acquisition policy shall include rules providing for application of the policy to covered vessels as expeditiously as is practicable based on the nature of carriage obtained, and by no later than June 1, 2007.

''(d) REGULATIONS.—

''(1) IN GENERAL.—The Secretary shall prescribe regulations as necessary to carry out the acquisition policy and submit such regulations to the Committees on Armed Services of the Senate and the House of Representatives, by not later than June 1, 2007.

''(2) INTERIM REGULATIONS.—

''(A) IN GENERAL.—The Secretary may prescribe interim regulations as necessary to carry out the acquisition policy. For this purpose, the Secretary is excepted from compliance with the notice and comment requirements of section 553 of title 5, United States Code.

''(B) SUBMISSION TO CONGRESS.—Upon the issuance of interim regulations under this paragraph, the Secretary shall submit to the Committees on Armed Services of the Senate and the House of Representatives the interim regulations and a description of the acquisition policy developed (or being developed) under subsection (a).

''(C) EXPIRATION.—All interim regulations prescribed under the authority of this paragraph that are not earlier superseded by final regulations shall expire no later than June 1, 2007.

''(e) ANNUAL REPORT.—The Secretary, acting through the United States Transportation Command, shall annually submit to the Committees on Armed Services of the Senate and the House of Representatives a report regarding overhaul, repair, and maintenance performed on covered vessels of each offeror of carriage to which the acquisition policy applies.

''(f) DEFINITIONS.—In this section:

''(1) FOREIGN SHIPYARD.—The term 'foreign shipyard' means a shipyard that is not located in the United States.

''(2) UNITED STATES.—The term 'United States' means—

''(A) any State of the United States; and

''(B) Guam.''

[Pub. L. 110–181, div. C, title XXXV, § 3526(a), Jan. 28, 2008, 122 Stat. 601, which directed amendment of section 1017(b)(2) of Pub. L. 109–364, set out above, by sub-

stituting "sections 12112, 50501, and 55102 of title 46, United States Code" for "section 27 of the Merchant Marine Act, 1920 (46 U.S.C. 883), section 12106 of title 46, United States Code, and section 2 of the Shipping Act, 1916 (46 U.S.C. App. 802)", could not be executed because those words did not appear subsequent to amendment by section 1063(c)(9) of Pub. L. 110–181, which was effective as of Oct. 17, 2006, and as if included in Pub. L. 109–364 as enacted. See Effective Date of 2008 Amendment note under section 624 of this title.]

[For termination, effective Dec. 31, 2021, of annual reporting provisions in section 1017(e) of Pub. L. 109–364, set out above, see section 1061 of Pub. L. 114–328, set out as a note under section 111 of this title.]

DELEGATION OF AUTHORITY UNDER THE CARGO PREFERENCE ACT

Memorandum of the President of the United States, Aug. 7, 1985, 50 F.R. 36565, provided:

Memorandum for the Honorable Caspar W. Weinberger, the Secretary of Defense

By virtue of the authority vested in me as President by the Constitution and statutes of the United States of America, including Section 301 of Title 3 of the United States Code, I hereby delegate to the Secretary of Defense all the functions vested in me by the Cargo preference Act of 1904, 10 U.S.C. 2631. This authority may be redelegated.

This memorandum shall be published in the Federal Register.

RONALD REAGAN.

§ 2631a. Contingency planning: sealift and related intermodal transportation requirements

(a) CONSIDERATION OF PRIVATE CAPABILITIES.—The Secretary of Defense shall ensure that all studies and reports of the Department of Defense, and all actions taken in the Department of Defense, concerning sealift and related intermodal transportation requirements take into consideration the full range of the transportation and distribution capabilities that are available from operators of privately owned United States flag merchant vessels.

(b) PRIVATE CAPACITIES PRESENTATIONS.—The Secretary shall afford each operator of a vessel referred to in subsection (a), not less often than annually, an opportunity to present to the Department of Defense information on its port-to-port and intermodal transportation capacities.

(Added Pub. L. 103–160, div. A, title XI, § 1173(a), Nov. 30, 1993, 107 Stat. 1767.)

§ 2632. Transportation to and from certain places of employment and on military installations

(a)(1) Whenever the Secretary of the military department concerned determines that it is necessary for the effective conduct of the affairs of his department, the Secretary may provide the transportation described in paragraph (2).

(2) Transportation that may be provided under this subsection is assured and adequate transportation by motor vehicle or water carrier as follows:

(A) Transportation among places on a military installation (including any subinstallation of a military installation).

(B) Transportation to and from their places of duty or employment on a military installation for persons covered by this subsection.

(C) Transportation to and from a military installation for persons covered by this subsection and their dependents, in the case of a military installation located in an area determined by the Secretary concerned not to be adequately served by regularly scheduled, and timely, commercial or municipal mass transit services.

(D) Transportation to and from their places of employment for persons attached to, or employed in, a private plant that is manufacturing material for that department, but only during a war or a national emergency declared by Congress or the President.

(3) Except as provided under subsection (b)(3), transportation under this subsection shall be provided at reasonable rates of fare under regulations prescribed by the Secretary of Defense.

(4) Persons covered by this subsection, in the case of any military installation, are members of the armed forces, employees of the military department concerned, and other persons attached to that department who are assigned to or employed at that installation.

(b)(1) Transportation described in subparagraphs (B), (C), and (D) of subsection (a)(2) may not be provided unless the Secretary concerned, or an officer of the department concerned designated by the Secretary, determines that—

(A) other facilities are inadequate and cannot be made adequate;

(B) a reasonable effort has been made to induce operators of private facilities to provide the necessary transportation; and

(C) the service to be furnished will make proper use of transportation facilities and will supply the most efficient transportation to the persons concerned.

(2) The Secretary of Defense shall require that, in determining whether to provide transportation described in subsection (a)(2)(A) at any military installation, the Secretary of the military department concerned shall give careful consideration to the potential for saving energy and reducing air pollution.

(3) In providing transportation described in subsection (a)(2)(A) at any military installation, the Secretary concerned may not require a fare for the transportation of members of the armed forces if the transportation is incident to the performance of duty. In providing transportation described in subsection (a)(2)(C) to and from any military installation, the Secretary concerned (under regulations prescribed under subsection (a)(3)) may waive any requirement for a fare.

(4) The authority under subsection (a) to enter into contracts under which the United States is obligated to make outlays shall be effective for any fiscal year only to the extent that the budget authority for such outlays is provided in advance by appropriation Acts.

(c) To provide transportation under subsection (a), the department may—

(1) buy, lease, or charter motor vehicles or water carriers having a seating capacity of 12 or more passengers;

(2) maintain and operate that equipment by—

(A) enlisted members of the Army, Navy, Air Force, Marine Corps, Space Force, or the Coast Guard, as the case may be;

(B) employees of the department concerned; and

(C) private persons under contract; and

(3) lease or charter the equipment to private or public carriers for operation under terms that are considered necessary by the Secretary or by an officer of the department designated by the Secretary, and that may provide for the pooling of Government-owned and privately owned equipment and facilities and for the reciprocal use of that equipment.

(d) Fares received under subsection (a), and proceeds of the leasing or chartering of equipment under subsection (c)(3), shall be covered into the Treasury as miscellaneous receipts.

(Aug. 10, 1956, ch. 1041, 70A Stat. 146; Pub. L. 95–362, Sept. 11, 1978, 92 Stat. 596; Pub. L. 96–125, title VIII, §807(a)–(c)(1), Nov. 26, 1979, 93 Stat. 949, 950; Pub. L. 100–180, div. A, title III, §318(a)–(c), Dec. 4, 1987, 101 Stat. 1076, 1077; Pub. L. 116–283, div. A, title IX, §924(b)(2)(A)(vii), Jan. 1, 2021, 134 Stat. 3821.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2632(a)	5:189c (introductory clause, words of clause 2 before semicolon, and 17 words before proviso of clause 3). 5:415d (introductory clause, words of clause 2 before semicolon, and 17 words before proviso of clause 3). 5:626n (introductory clause, words of clause 2 before semicolon, and 17 words before proviso of clause 3).	May 28, 1948, ch. 352, §1, 62 Stat. 276.
2632(b)	5:189c (clause 4). 5:415d (clause 4). 5:626n (clause 4).	
2632(c)	5:189c (clause 1; and clause 3, less 17 words before proviso). 5:415d (clause 1; and clause 3, less 17 words before proviso). 5:626n (clause 1; and clause 3, less 17 words before proviso).	
2632(d)	5:189c (clause 2, less words before semicolon). 5:415d (clause 2, less words before semicolon). 5:626n (clause 2, less words before semicolon).	

In subsection (a), the words "it is necessary * * * he may * * * provide assured and adequate transportation" are substituted for the words "requires assured and adequate transportation facilities * * * he is authorized * * * to provide such transportation". The words "in the absence of adequate private or other facilities" are omitted as covered by subsection (b)(2). The words "subject, however, to the following provisions and conditions" are omitted, since the revised section states those conditions positively in the following subsections. The words "at reasonable rates of fare" are substituted for the first 23 words of clause 2 of 5:189c, 415d, and 626n. The words "under regulations to be prescribed by him" are substituted for the words "under such regulations as the Secretary of the Army [Navy, Air Force] shall prescribe" in clause 2, and the 17 words before the proviso of clause 3, of 5:189c, 415d, and 626n.

In subsection (b), the words "Transportation * * * under subsection (a)" are substituted for the words "The authority granted in this section to the Secretary of the Army [Navy, Air Force]". The words "may not be provided" are substituted for the words "shall be exercised". The word "transportation" is substituted for the word "service". The words "in each case", "as the case may be, that existing private and", and "by other means" are omitted as surplusage.

Subsection (b)(3) is substituted for the last 25 words of clause 4 of 5:189c, 415d, and 626n.

In subsection (c), the introductory clause is substituted for the words "The equipment required to provide such transportation facilities may be either". The words "considered necessary" are substituted for the words "shall determine necessary and advisable under the existing circumstances". The proviso of clause 3 of 5:189c, 415d, and 626n is stated as a positive rule in clause (3) of the revised subsection. The words "for operation by the Department of the Army [Navy, Air Force], and when so obtained", "civil", "with such department", "Equipment so obtained", "and conditions", and the first 25 words of clause 3 of 5:189c, 415d, and 626n are omitted as surplusage.

In subsection (d), the words "Treasury as" are substituted for the words "Treasury of the United States to the credit of".

AMENDMENTS

2021—Subsec. (c)(2)(A). Pub. L. 116–283 substituted "Marine Corps, Space Force," for "Marine Corps,".

1987—Subsec. (a). Pub. L. 100–180, §318(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: "Whenever the Secretary of a military department determines that it is necessary for the effective conduct of the affairs of that department, he may, at reasonable rates of fare under regulations to be prescribed by the Secretary of Defense, provide assured and adequate transportation by motor vehicle or water carrier—

"(1) among places on any military installation (including any subinstallation thereof) under the jurisdiction of that department; and

"(2) to and from their places of employment—

"(A) for persons attached to, or employed in, that department; and

"(B) during a war or national emergency declared by the Congress or the President, for persons attached to, or employed in, a private plant that is manufacturing material for that department."

Subsec. (b)(1). Pub. L. 100–180, §318(c)(1), substituted "Transportation described in subparagraphs (B), (C), and (D) of subsection (a)(2) may not be provided" for "Transportation may not be provided under subsection (a)(2)".

Subsec. (b)(2). Pub. L. 100–180, §318(b)(1), (c)(2), redesignated subpar. (A) as par. (2) and substituted "transportation described in subsection (a)(2)(A) at any military installation" for "transportation at any military installation under subsection (a)(1)". Subpar. (B) was struck out and replaced by par. (3) and subpar. (C) was redesignated par. (4).

Subsec. (b)(3). Pub. L. 100–180, §318(b)(2), substituted par. (3) for former subpar. (2)(B) which read as follows: "In providing transportation at any military installation under such subsection, the Secretary of the military department concerned may not require any fare for the transportation of members of the armed forces if the transportation is incident to training or other operational activities on such installation."

Subsec. (b)(4). Pub. L. 100–180, §318(b)(3), (c)(3), redesignated former par. (2)(C) as par. (4) and substituted "subsection (a)" for "subsection (a)(1)".

1979—Pub. L. 96–125, §807(c)(1), inserted "and on military installations" after "places of employment" in section catchline.

Subsec. (a). Pub. L. 96–125, §807(a), substituted reference to Secretary of a military department and to the Secretary of Defense for references to Secretary concerned and inserted reference to any military installation (including any subinstallation thereof) under the jurisdiction of that department.

Subsec. (b). Pub. L. 96–125, §807(b), designated existing provisions as par. (1) and cls. (1) to (3) as cls. (A) to

(C), substituted ''subsection (a)(2)'' for ''subsection (a)'' and added par. (2).

1978—Subsec. (a). Pub. L. 95–362, § 1(1), substituted ''concerned'' for ''of a military department'' and ''of his department'' for ''of that department''.

Subsec. (b). Pub. L. 95–362, § 1(2), struck out ''of the military department'' before ''concerned''.

Subsec. (c)(2)(A). Pub. L. 95–362, § 1(3), inserted reference to the Coast Guard.

REGULATIONS

Pub. L. 100–180, div. A, title III, § 318(d), Dec. 4, 1987, 101 Stat. 1077, required that regulations to implement amendments to this section be prescribed not later than 90 days after Dec. 4, 1987.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 2633. Stevedoring and terminal services: vessels carrying cargo or passengers sponsored by military department

(a) Notwithstanding section 1301(a) of title 31, the Secretary of a military department may, under such regulations as he may prescribe, furnish stevedoring and terminal services and facilities to vessels carrying cargo, or passengers, or both, sponsored by his department.

(b) The furnishing of services and facilities under this section shall be at fair and reasonable rates.

(c) The proceeds from furnishing services and facilities under this section shall be paid to the credit of the appropriation or fund out of which the services or facilities were supplied.

(Added Pub. L. 85–44, § 1, June 1, 1957, 71 Stat. 45; amended Pub. L. 87–651, title I, § 111(a), Sept. 7, 1962, 76 Stat. 510; Pub. L. 96–513, title V, § 511(87), Dec. 12, 1980, 94 Stat. 2927; Pub. L. 97–258, § 3(b)(7), Sept. 13, 1982, 96 Stat. 1063.)

HISTORICAL AND REVISION NOTES

1962 ACT

Section 2633 is restated, without substantive change, to conform to the style adopted for title 10.

AMENDMENTS

1982—Subsec. (a). Pub. L. 97–258 substituted ''section 1301(a) of title 31'' for ''section 3678 of the Revised Statutes (31 U.S.C. 628)''.

1980—Subsec. (a). Pub. L. 96–513 substituted ''section 3678 of the Revised Statutes (31 U.S.C. 628)'' for ''section 628 of title 31''.

1962—Pub. L. 87–651 amended section generally without substantive change to conform to the style adopted for the revision of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

[§ 2634. Repealed. Pub. L. 113–66, div. A, title VI, § 621(g)(1), Dec. 26, 2013, 127 Stat. 784]

Section, added Pub. L. 87–651, title I, § 111(b), Sept. 7, 1962, 76 Stat. 510; amended Pub. L. 88–431, § 1(b), Aug. 14, 1964, 78 Stat. 439; Pub. L. 89–101, § 1(1), July 30, 1965, 79 Stat. 425; Pub. L. 93–548, §§ 1, 2, Dec. 26, 1974, 88 Stat. 1743; Pub. L. 97–60, title II, § 202, Oct. 14, 1981, 95 Stat. 1005; Pub. L. 99–661, div. A, title VI, §§ 611, 620(b)(2), Nov. 14, 1986, 100 Stat. 3878, 3883; Pub. L. 100–26, § 7(j)(6), Apr. 21, 1987, 101 Stat. 283; Pub. L. 100–180, div. A, title VI, § 616(a), Dec. 4, 1987, 101 Stat. 1096; Pub. L. 102–484, div. A, title VI, § 622(b), Oct. 23, 1992, 106 Stat. 2422; Pub. L. 104–106, div. A, title VI, § 642(a)(2), Feb. 10, 1996, 110 Stat. 368; Pub. L. 104–201, div. A, title III, § 368(a)(1), (2)(A), Sept. 23, 1996, 110 Stat. 2497; Pub. L. 105–261, div. A, title VI, §§ 631(b)(2), 653(a), Oct. 17, 1998, 112 Stat. 2044, 2051; Pub. L. 107–107, div. A, title V, § 594(a), (b), Dec. 28, 2001, 115 Stat. 1126; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 107–314, div. A, title V, § 575(a), (b), Dec. 2, 2002, 116 Stat. 2558, 2559; Pub. L. 108–136, div. A, title VI, § 631(a), Nov. 24, 2003, 117 Stat. 1508; Pub. L. 112–81, div. A, title VI, § 631(f)(4)(A), Dec. 31, 2011, 125 Stat. 1465; Pub. L. 112–239, div. A, title X, § 1076(a)(9), Jan. 2, 2013, 126 Stat. 1948, related to transportation or storage of motor vehicles for members on change of permanent station or extended deployment.

§ 2635. Medical emergency helicopter transportation assistance and limitation of individual liability

(a) The Secretary of Defense is authorized to assist the Department of Health and Human Services and the Department of Homeland Security in providing medical emergency helicopter transportation services to civilians. Any resources provided under this section shall be under such terms and conditions, including reimbursement, as the Secretary of Defense deems appropriate and shall be subject to the following specific limitations:

(1) Assistance may be provided only in areas where military units able to provide such assistance are regularly assigned, and military units shall not be transferred from one area to another for the purpose of providing such assistance.

(2) Assistance may be provided only to the extent that it does not interfere with the performance of the military mission.

(3) The provision of assistance shall not cause any increase in funds required for the operation of the Department of Defense.

(b) No individual (or his estate) who is authorized by the Department of Defense to perform services under a program established pursuant to subsection (a), and who is acting within the scope of his duties, shall be liable for injury to, or loss of property or personal injury or death which may be caused incident to providing such services.

(Added Pub. L. 93–155, title VIII, § 814(a), Nov. 16, 1973, 87 Stat. 620; amended Pub. L. 96–513, title V, § 511(88), Dec. 12, 1980, 94 Stat. 2928; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–296 substituted ''Department of Homeland Security'' for ''Department of Transportation'' in introductory provisions.

1980—Subsec. (a). Pub. L. 96–513 substituted ''Department of Health and Human Services'' for ''Department of Health, Education, and Welfare''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of

Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

§ 2636. Deductions from amounts due carriers

(a) AMOUNTS FOR LOSS OR DAMAGE.—An amount deducted from an amount due a carrier shall be credited as follows:

(1) If deducted because of loss of or damage to material in transit for a military department, the amount shall be credited to the proper appropriation, account, or fund from which the same or similar material may be replaced.

(2) If deducted as an administrative offset for an overpayment previously made to the carrier under any Department of Defense contract for transportation services or as liquidated damages due under any such contract, the amount shall be credited to the appropriation or account from which payments for the transportation services were made.

(b) SIMPLIFIED OFFSET FOR COLLECTION OF CLAIMS NOT IN EXCESS OF THE SIMPLIFIED ACQUISITION THRESHOLD.—(1) In any case in which the total amount of a claim for the recovery of overpayments or liquidated damages under a contract described in subsection (a)(2) does not exceed the simplified acquisition threshold, the Secretary of Defense or the Secretary concerned, in exercising the authority to collect the claim by administrative offset under section 3716 of title 31, may apply paragraphs (2) and (3) of subsection (a) of that section with respect to that collection after (rather than before) the claim is so collected.

(2) Regulations prescribed by the Secretary of Defense under subsection (b) of section 3716 of title 31—

(A) shall include provisions to carry out paragraph (1); and

(B) shall provide the carrier for a claim subject to paragraph (1) with an opportunity to offer an alternative method of repaying the claim (rather than by administrative offset) if the collection of the claim by administrative offset has not already been made.

(3) In this subsection, the term ''simplified acquisition threshold'' has the meaning given that term in section 134 of title 41.

(Added Pub. L. 97–258, § 2(b)(5)(B), Sept. 13, 1982, 96 Stat. 1053; amended Pub. L. 106–398, § 1 [[div. A], title X, § 1009(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–250; Pub. L. 111–350, § 5(b)(43), Jan. 4, 2011, 124 Stat. 3846.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2636	31:489a.	June 25, 1956, ch. 442, § 1, 70 Stat. 336.

The words ''An amount deducted from an amount due'' are substituted for ''Moneys arising from deductions made from'' for clarity. The words ''military or naval'' and ''account of'' are omitted as surplus. The words ''a military department'' are substituted for ''the Departments of the Army, Navy, or Air Force'' because of 10:101(7). The Department of War was designated the Department of the Army by section 205(a) of the Act of July 26, 1947 (ch. 343, 61 Stat. 501), and by sections 1 and 53 of the Act of August 10, 1956 (ch. 1041, 70A Stat. 157, 676). The Department of the Air Force is included because of sections 205(a) and 207(a) and (f) of the Act of July 26, 1947 (ch. 343, 61 Stat. 501, 502), and section 1 of the Act of August 10, 1956 (ch. 1041, 70A Stat. 488).

AMENDMENTS

2011—Subsec. (b)(3). Pub. L. 111–350 substituted ''section 134 of title 41'' for ''section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11))''.

2000—Pub. L. 106–398 amended section catchline and text generally. Prior to amendment, text read as follows: ''An amount deducted from an amount due a carrier because of loss of or damage to material in transit for a military department shall be credited to the proper appropriation, account, or fund from which the same or similar material may be replaced.''

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–398, § 1 [[div. A], title X, § 1009(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–251, provided that: ''Subsections (a)(2) and (b) of section 2636 of title 10, United States Code, as added by subsection (a)(1), shall apply with respect to contracts entered into after the date of the enactment of this Act [Oct. 30, 2000].''

§ 2636a. Loss or damage to personal property transported at Government expense: full replacement value; deduction from amounts due carriers

(a) PROCUREMENT OF COVERAGE.—The Secretary of Defense shall include in a contract for the transportation at Government expense of baggage and household effects for members of the armed forces or civilian employees of the Department of Defense (or both) a clause that requires the carrier under the contract to pay the full replacement value for loss or damage to the baggage or household effects transported under the contract.

(b) DEDUCTION UPON FAILURE OF CARRIER TO SETTLE.—In the case of a loss or damage of baggage or household effects transported under a contract with a carrier that includes a clause described in subsection (a), the amount equal to the full replacement value for the baggage or household effects shall be deducted from the amount owed by the United States to the carrier under the contract upon a failure of the carrier to settle a claim for such loss or total damage within a reasonable time. The amount so deducted shall be remitted to the claimant, notwithstanding section 2636 of this title.

(c) INAPPLICABILITY OF RELATED LIMITS.—The limitations on amounts of claims that may be settled under section 3721(b) of title 31 do not apply to a carrier's contractual obligation to pay full replacement value under this section.

(d) REGULATIONS.—The Secretary of Defense shall prescribe regulations for administering this section. The regulations shall include policies and procedures for validating and evaluating claims, validating proper claimants, and determining reasonable time for settlement. The regulations may include a requirement that a member of the armed forces or civilian employee of the Department of Defense comply with reasonable restrictions or conditions prescribed by the Secretary in order to receive the full amount deducted under subsection (b).

(e) TRANSPORTATION DEFINED.—In this section, the terms ''transportation'' and ''transport'', with respect to baggage or household effects, includes packing, crating, drayage, temporary storage, and unpacking of the baggage or household effects.

(Added Pub. L. 108–136, div. A, title VI, § 634(a), Nov. 24, 2003, 117 Stat. 1509; amended Pub. L. 109–364, div. A, title III, § 363(a), (b), Oct. 17, 2006, 120 Stat. 2167; Pub. L. 110–181, div. A, title III, § 373, Jan. 28, 2008, 122 Stat. 82.)

AMENDMENTS

2008—Subsec. (d). Pub. L. 110–181 inserted at end ''The regulations may include a requirement that a member of the armed forces or civilian employee of the Department of Defense comply with reasonable restrictions or conditions prescribed by the Secretary in order to receive the full amount deducted under subsection (b).''

2006—Subsec. (a). Pub. L. 109–364, § 363(b)(1), substituted ''shall include'' for ''may include''.

Pub. L. 109–364, § 363(a), substituted ''at Government expense of baggage and household effects for members of the armed forces or civilian employees of the Department of Defense (or both)'' for ''of baggage and household effects for members of the armed forces at Government expense''.

Subsec. (b). Pub. L. 109–364, § 363(b)(2), substituted ''shall be deducted'' for ''may be deducted''.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–364, div. A, title III, § 363(b), Oct. 17, 2006, 120 Stat. 2167, provided that the amendment made by section 363(b) is effective Mar. 1, 2008.

§ 2637. Transportation in certain areas outside the United States

The Secretary of Defense may authorize the commander of a unified combatant command to use Government owned or leased vehicles to provide transportation in an area outside the United States for members of the uniformed services and Federal civilian employees under the jurisdiction of that commander, and for the dependents of such members and employees, if the commander determines that public or private transportation in such area is unsafe or not available. Such transportation shall be provided in accordance with regulations prescribed by the Secretary of Defense.

(Added Pub. L. 101–510, div. A, title III, § 326(a)(1), Nov. 5, 1990, 104 Stat. 1531.)

PRIOR PROVISIONS

A prior section 2637, added Pub. L. 98–525, title VI, § 614(a), Oct. 19, 1984, 98 Stat. 2540, related to use of passenger motor vehicles of United States for transportation between residences and places of work of senior defense officials, prior to repeal by Pub. L. 99–550, § 2(a)(1), Oct. 27, 1986, 100 Stat. 3070.

§ 2638. Transportation of civilian clothing of enlisted members

The Secretary of the military department concerned may provide for the transportation of the civilian clothing of any person entering the armed forces as an enlisted member to the member's home of record.

(Added Pub. L. 98–525, title XIV, § 1401(j)(1), Oct. 19, 1984, 98 Stat. 2620.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in the following appropriation acts:

Oct. 12, 1984, Pub. L. 98–473, title I, § 101(h) [title VIII, § 8005], 98 Stat. 1904, 1922.

Dec. 8, 1983, Pub. L. 98–212, title VII, § 708, 97 Stat. 1438.

Dec. 21, 1982, Pub. L. 97–377, title I, § 101(c) [title VII, § 708], 96 Stat. 1833, 1850.

Dec. 29, 1981, Pub. L. 97–114, title VII, § 708, 95 Stat. 1579.

Dec. 15, 1980, Pub. L. 96–527, title VII, § 708, 94 Stat. 3081.

Dec. 21, 1979, Pub. L. 96–154, title VII, § 708, 93 Stat. 1152.

Oct. 13, 1978, Pub. L. 95–457, title VIII, § 808, 92 Stat. 1244.

Sept. 21, 1977, Pub. L. 95–111, title VIII, § 807, 91 Stat. 899.

Sept. 22, 1976, Pub. L. 94–419, title VII, § 707, 90 Stat. 1291.

Feb. 9, 1976, Pub. L. 94–212, title VII, § 707, 90 Stat. 168.

Oct. 8, 1974, Pub. L. 93–437, title VIII, § 807, 88 Stat. 1225.

Jan. 2, 1974, Pub. L. 93–238, title VII, § 707, 87 Stat. 1038.

Oct. 26, 1972, Pub. L. 92–570, title VII, § 707, 86 Stat. 1196.

Dec. 18, 1971, Pub. L. 92–204, title VII, § 707, 85 Stat. 727.

Jan. 11, 1971, Pub. L. 91–668, title VIII, § 807, 84 Stat. 2030.

Dec. 29, 1969, Pub. L. 91–171, title VI, § 607, 83 Stat. 480.

Oct. 17, 1968, Pub. L. 90–580, title V, § 506, 82 Stat. 1129.

Sept. 29, 1967, Pub. L. 90–96, title VI, § 606, 81 Stat. 242.

EFFECTIVE DATE

Section effective Oct. 1, 1985, see section 1404 of Pub. L. 98–525, set out as a note under section 520b of this title.

§ 2639. Transportation to and from school for certain minor dependents

Funds appropriated to the Department of Defense may be used to provide minor dependents of members of the armed forces and of civilian officers and employees of the Department of Defense with transportation to and from primary and secondary schools if the schools attended by the dependents are not accessible by regular means of transportation.

(Added Pub. L. 98–525, title XIV, § 1401(j)(1), Oct. 19, 1984, 98 Stat. 2620.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in the following appropriation acts:

Oct. 12, 1984, Pub. L. 98–473, title I, § 101(h) [title VIII, § 8005], 98 Stat. 1904, 1922.

Dec. 8, 1983, Pub. L. 98–212, title VII, § 708, 97 Stat. 1438.

Dec. 21, 1982, Pub. L. 97–377, title I, § 101(c) [title VII, § 708], 96 Stat. 1833, 1850.

Dec. 29, 1981, Pub. L. 97–114, title VII, § 708, 95 Stat. 1579.

Dec. 15, 1980, Pub. L. 96–527, title VII, § 708, 94 Stat. 3081.

Dec. 21, 1979, Pub. L. 96–154, title VII, § 708, 93 Stat. 1152.

Oct. 13, 1978, Pub. L. 95–457, title VIII, § 808, 92 Stat. 1244.

Sept. 21, 1977, Pub. L. 95–111, title VIII, § 807, 91 Stat. 899.

Sept. 22, 1976, Pub. L. 94–419, title VII, § 707, 90 Stat. 1291.

Feb. 9, 1976, Pub. L. 94–212, title VII, § 707, 90 Stat. 168.

Oct. 8, 1974, Pub. L. 93–437, title VIII, § 807, 88 Stat. 1225.

Jan. 2, 1974, Pub. L. 93–238, title VII, § 707, 87 Stat. 1038.

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Oct. 26, 1972, Pub. L. 92–570, title VII, § 707, 86 Stat. 1196.
Dec. 18, 1971, Pub. L. 92–204, title VII, § 707, 85 Stat. 727.
Jan. 11, 1971, Pub. L. 91–668, title VIII, § 807, 84 Stat. 2030.
Dec. 29, 1969, Pub. L. 91–171, title VI, § 607, 83 Stat. 480.
Oct. 17, 1968, Pub. L. 90–580, title V, § 506, 82 Stat. 1129.
Sept. 29, 1967, Pub. L. 90–96, title VI, § 606, 81 Stat. 242.
Oct. 15, 1966, Pub. L. 89–687, title VI, § 606, 80 Stat. 991.
Sept. 29, 1965, Pub. L. 89–213, title VI, § 606, 79 Stat. 873.
Aug. 19, 1964, Pub. L. 88–446, title V, § 506, 78 Stat. 475.
Oct. 17, 1963, Pub. L. 88–149, title V, § 506, 77 Stat. 264.
Aug. 9, 1962, Pub. L. 87–577, title V, § 506, 76 Stat. 328.
Aug. 17, 1961, Pub. L. 87–144, title VI, § 606, 75 Stat. 375.
July 7, 1960, Pub. L. 86–601, title V, § 506, 74 Stat. 350.
Aug. 18, 1959, Pub. L. 86–166, title V, § 606, 73 Stat. 378.
Aug. 22, 1958, Pub. L. 85–724, title VI, § 606, 72 Stat. 724.
Aug. 2, 1957, Pub. L. 85–117, title VI, § 607, 71 Stat. 323.
July 2, 1956, ch. 488, title VI, § 607, 70 Stat. 468.
July 13, 1955, ch. 358, title VI, § 609, 69 Stat. 315.
June 30, 1954, ch. 432, title VII, § 709, 68 Stat. 351.
Aug. 1, 1953, ch. 305, title VI, § 614, 67 Stat. 351.
July 10, 1952, ch. 630, title VI, § 616, 66 Stat. 533.
Oct. 18, 1951, ch. 512, title VI, § 616, 65 Stat. 446.
Sept. 6, 1950, ch. 896, Ch. X, title VI, § 619, 64 Stat. 755.
Oct. 29, 1949, ch. 787, title VI, § 625, 63 Stat. 1021.
June 24, 1948, ch. 632, § 2, 62 Stat. 667.
July 30, 1947, ch. 357, title I, § 2, 61 Stat. 569.

EFFECTIVE DATE

Section effective Oct. 1, 1985, see section 1404 of Pub. L. 98–525, set out as a note under section 520b of this title.

§ 2640. Charter air transportation of members of the armed forces

(a) REQUIREMENTS.—(1) The Secretary of Defense may not enter into a contract with an air carrier for the charter air transportation of members of the armed forces unless the air carrier—

(A) meets, at a minimum, the safety standards established by the Secretary of Transportation under chapter 447 of title 49;

(B) has at least 12 months of experience operating services in air transportation that are substantially equivalent to the service sought by the Department of Defense; and

(C) undergoes a technical safety evaluation.

(2) For purposes of paragraph (1)(C), a technical safety evaluation—

(A) shall include inspection of a representative number of aircraft; and

(B) shall be conducted in accordance with regulations prescribed by the Secretary, after consultation with the Secretary of Transportation.

(b) INSPECTIONS.—The Secretary shall provide for inspections of each air carrier that contracts with the Department of Defense for the charter air transportation of members of the armed forces. The inspections shall be conducted in accordance with standards established by the Secretary, after consultation with the Secretary of Transportation, and shall include, at a minimum, the following:

(1) An on-site capability survey of the air carrier conducted at least once every two years.

(2) A performance evaluation of the air carrier conducted at least once every six months.

(3) A preflight safety inspection of each aircraft conducted at any time during the operation of, but not more than 72 hours before, each internationally scheduled charter mission departing the United States.

(4) A preflight safety inspection of each aircraft used for domestic charter missions conducted to the greatest extent practical.

(5) Operational check-rides on aircraft conducted periodically.

(c) COMMERCIAL AIRLIFT REVIEW BOARD.—The Secretary shall establish a Commercial Airlift Review Board within the Department of Defense. The Board shall consist of personnel from the Department of Defense and other Government personnel as may be appropriate. The duties of the Board shall be—

(1) to make recommendations to the Secretary on suspension and reinstatement of air carriers under subsection (d);

(2) to make recommendations to the Secretary on waivers under subsection (g); and

(3) to carry out such other duties and make recommendations on such other matters as the Secretary considers appropriate.

(d) SUSPENSION AND REINSTATEMENT.—(1) The Secretary shall establish guidelines for the suspension of air carriers under contract with the Department of Defense for the charter air transportation of members of the armed forces and for the reinstatement of air carriers that have been so suspended. The guidelines—

(A) shall require the immediate determination of whether to suspend an air carrier if an aircraft of the air carrier is involved in a fatal accident; and

(B) may require the suspension of an air carrier—

(i) if the carrier is in violation of any order, rule, regulation, or standard prescribed under chapter 447 of title 49; or

(ii) if an aircraft of the air carrier is involved in a serious accident.

(2) The Commercial Airlift Review Board shall make recommendations to the Secretary on suspension and reinstatement under this subsection.

(3) The Secretary shall include in each contract subject to this section the provisions on suspension and reinstatement established under this subsection.

(e) AUTHORITY TO LEAVE UNSAFE AIRCRAFT.—A representative of the Military Airlift Command, the Military Traffic Management Command, or such other agency as may be designated by the Secretary of Defense (or if there is no such representative reasonably available, the senior officer on board a chartered aircraft) may order members of the armed forces to leave a chartered aircraft if the representative (or officer) determines that a condition exists on the aircraft which may endanger the safety of the members.

(f) FAA INFORMATION.—The Secretary shall request the Secretary of Transportation to provide to the Secretary a report on each inspection performed by Federal Aviation Administration personnel, and the status of corrective actions taken, on each aircraft of an air carrier under contract with the Department of Defense

for the charter air transportation of members of the armed forces.

(g) WAIVER.—After considering recommendations by the Commercial Airlift Review Board, the Secretary may waive any provision of this section in an emergency.

(h) AUTHORITY TO PROTECT SAFETY-RELATED INFORMATION VOLUNTARILY PROVIDED BY AN AIR CARRIER.—(1) Subject to paragraph (2), the Secretary of Defense may (notwithstanding any other provision of law) withhold from public disclosure safety-related information that is provided to the Secretary voluntarily by an air carrier for the purposes of this section.

(2) Information may be withheld under paragraph (1) from public disclosure only if the Secretary determines that—

(A) the disclosure of the information would inhibit an air carrier from voluntarily providing, in the future, safety-related information for the purposes of this section or for other air safety purposes involving the Department of Defense or another Federal agency; and

(B) the receipt of such information generally enhances the fulfillment of responsibilities under this section or other air safety responsibilities involving the Department of Defense or another Federal agency.

(3) If the Secretary provides to the head of another agency safety-related information described in paragraph (1) with respect to which the Secretary has made a determination described in paragraph (2), the head of that agency shall (notwithstanding any other provision of law) withhold the information from public disclosure unless the disclosure is specifically authorized by the Secretary.

(i) REGULATIONS.—The Secretary shall prescribe regulations to carry out this section, including requirements and identification of inspecting personnel with respect to preflight safety inspections required by subsection (b)(3).

(j) DEFINITIONS.—In this section:

(1) The terms ''air carrier'', ''aircraft'', ''air transportation'', and ''charter air transportation'' have the meanings given such terms by section 40102(a) of title 49.

(2) The term ''members of the armed forces'' means members of the Army, Navy, Air Force, Marine Corps, and Space Force.

(Added Pub. L. 99–661, div. A, title XII, § 1204(a)(1), Nov. 14, 1986, 100 Stat. 3969; amended Pub. L. 103–272, § 5(b)(1), July 5, 1994, 108 Stat. 1373; Pub. L. 105–85, div. A, title X, § 1075(a), Nov. 18, 1997, 111 Stat. 1911; Pub. L. 116–283, div. A, title IX, § 924(b)(1)(P), Jan. 1, 2021, 134 Stat. 3820.)

AMENDMENTS

2021—Subsec. (j)(2). Pub. L. 116–283 substituted ''Marine Corps, and Space Force'' for ''and Marine Corps''.

1997—Subsecs. (h) to (j). Pub. L. 105–85 added subsec. (h) and redesignated former subsecs. (h) and (i) as (i) and (j), respectively.

1994—Subsecs. (a)(1)(A), (d)(1)(B)(i). Pub. L. 103–272, § 5(b)(1)(A), substituted ''chapter 447 of title 49'' for ''title VI of the Federal Aviation Act of 1958 (49 U.S.C. App. 1421 et seq.)''.

Subsec. (i)(1). Pub. L. 103–272, § 5(b)(1)(B), substituted ''section 40102(a) of title 49'' for ''sections 101(3), 101(5), 101(10), and 101(15), respectively, of the Federal Aviation Act of 1958 (49 U.S.C. App. 1301(3), 1301(5), 1301(10), and 1301(15))''.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–85, div. A, title X, § 1075(b), Nov. 18, 1997, 111 Stat. 1911, provided that: ''Subsection (h) of section 2640 of title 10, United States Code, as added by subsection (a), shall apply with respect to requests for information made on or after the date of the enactment of this Act [Nov. 18, 1997].''

EFFECTIVE DATE

Pub. L. 99–661, div. A, title XII, § 1204(c), Nov. 14, 1986, 100 Stat. 3971, provided that: ''Section 2640 of title 10, United States Code, as added by subsection (a), shall apply only to contracts which are entered into on or after the date on which the regulations required by subsection (b) are prescribed [set out below].''

REGULATIONS

Pub. L. 99–661, div. A, title XII, § 1204(b), Nov. 14, 1986, 100 Stat. 3971, required Secretary of Defense, not later than 120 days after Nov. 14, 1986, to prescribe regulations required by this section.

§ 2641. Transportation of certain veterans on Department of Defense aeromedical evacuation aircraft

(a) The Secretary of Defense may provide transportation on an aircraft operating under the aeromedical evacuation system of the Department of Defense for the purpose of transporting a veteran to or from a Department of Veterans Affairs medical facility or of transporting the remains of a deceased veteran who died at such a facility after being transported to the facility under this subsection. Transportation of the remains of a deceased veteran under this subsection may be provided to the place from which the veteran was transported to the facility or to any other destination which is not farther away from the facility than such place.

(b) Transportation under this section shall be provided in accordance with an agreement entered into between the Secretary of Defense and the Secretary of Veterans Affairs. Such an agreement shall provide that transportation may be furnished to a veteran (or for the remains of a veteran) on an aircraft referred to in subsection (a) only if—

(1) the Secretary of Veterans Affairs notifies the Secretary of Defense that the veteran needs or has been furnished medical care or services in a Department of Veterans Affairs facility and the Secretary of Veterans Affairs requests such transportation in connection with the travel of such veteran (or of the remains of such veteran) to or from the Department of Veterans Affairs facility where the care or services are to be furnished or were furnished to such veteran;

(2) there is space available for the veteran (or the remains of the veteran) on the aircraft; and

(3) there is an adequate number of medical and other service attendants to care for all persons being transported on the aircraft.

(c) A veteran is not eligible for transportation under this section unless the veteran is a primary beneficiary within the meaning of clause (A) of section 8111(g)(5) of title 38.

(d)(1) A charge may not be imposed on a veteran (or on the survivors of a veteran) for transportation provided to the veteran (or for the remains of the veteran) under this section.

(2) An agreement under subsection (b) shall provide that the Department of Veterans Affairs shall reimburse the Department of Defense for any costs incurred in providing transportation to veterans (or for the remains of veterans) under this section that would not otherwise have been incurred by the Department of Defense.

(e) In this section, the term ''veteran'' has the meaning given that term in section 101(2) of title 38.

(Added Pub. L. 100–180, div. A, title XII, § 1250(a)(1), Dec. 4, 1987, 101 Stat. 1167; amended Pub. L. 101–189, div. A, title XVI, § 1621(a)(1), (2), (8), Nov. 29, 1989, 103 Stat. 1602, 1603; Pub. L. 103–337, div. A, title VI, § 652(b), title X, § 1070(e)(8), Oct. 5, 1994, 108 Stat. 2794, 2859.)

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–337, § 652(b)(1), inserted before period ''or of transporting the remains of a deceased veteran who died at such a facility after being transported to the facility under this subsection. Transportation of the remains of a deceased veteran under this subsection may be provided to the place from which the veteran was transported to the facility or to any other destination which is not farther away from the facility than such place''.

Subsec. (b). Pub. L. 103–337, § 652(b)(2)(A)(i), inserted ''(or for the remains of a veteran)'' after ''furnished to a veteran'' in introductory provisions.

Subsec. (b)(1). Pub. L. 103–337, § 652(b)(2)(A)(ii), inserted ''(or of the remains of such veteran)'' after ''of such veteran''.

Subsec. (b)(2). Pub. L. 103–337, § 652(b)(2)(A)(iii), inserted ''(or the remains of the veteran)'' after ''for the veteran''.

Subsec. (c). Pub. L. 103–337, § 1070(e)(8), substituted ''section 8111(g)(5) of title 38'' for ''section 5011(g)(5) of title 38''.

Subsec. (d)(1). Pub. L. 103–337, § 652(b)(2)(B), inserted ''(or on the survivors of a veteran)'' after ''on a veteran'' and ''(or for the remains of the veteran)'' after ''to the veteran''.

Subsec. (d)(2). Pub. L. 103–337, § 652(b)(2)(C), inserted ''(or for the remains of veterans)'' after ''to veterans''.

1989—Subsec. (a). Pub. L. 101–189, § 1621(a)(1), substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

Subsec. (b). Pub. L. 101–189, § 1621(a)(2), substituted ''Secretary of Veterans Affairs'' for ''Administrator of Veterans' Affairs'' in introductory provisions and in par. (1).

Subsec. (b)(1). Pub. L. 101–189, § 1621(a)(8), substituted ''the Secretary of Veterans Affairs requests'' for ''the Administrator requests''.

Pub. L. 101–189, § 1621(a)(1), substituted ''Department of Veterans Affairs'' for ''Veterans' Administration'' in two places.

Subsec. (d)(2). Pub. L. 101–189, § 1621(a)(1), substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

DEADLINE FOR ENTRY INTO TRANSPORTATION AGREEMENT

Pub. L. 100–180, div. A, title XII, § 1250(b), Dec. 4, 1987, 101 Stat. 1168, directed Secretary of Defense and Administrator of Veterans' Affairs to enter into an agreement required by this section not later than 60 days after Dec. 4, 1987.

§ 2641a. Transportation of American Samoa veterans on Department of Defense aircraft for certain medical care in Hawaii

(a) TRANSPORTATION AUTHORIZED.—The Secretary of Defense may provide transportation on Department of Defense aircraft for the purpose of transporting any veteran specified in subsection (b) between American Samoa and the State of Hawaii if such transportation is required in order to provide hospital care to such veteran as described in that subsection.

(b) VETERANS ELIGIBLE FOR TRANSPORT.—A veteran eligible for transport under subsection (a) is any veteran who—

(1) resides in and is located in American Samoa; and

(2) as determined by an official of the Department of Veterans Affairs designated for that purpose by the Secretary of Veterans Affairs, must be transported to the State of Hawaii in order to receive hospital care to which such veteran is entitled under chapter 17 of title 38 in facilities of such Department in the State of Hawaii.

(c) ADMINISTRATION.—(1) Transportation may be provided to veterans under this section only on a space-available basis.

(2) A charge may not be imposed on a veteran for transportation provided to the veteran under this section.

(Added Pub. L. 105–262, title VIII, § 8121(a), Oct. 17, 1998, 112 Stat. 2332; amended Pub. L. 106–65, div. A, title X, § 1066(a)(24), Oct. 5, 1999, 113 Stat. 771.)

AMENDMENTS

1999—Subsec. (b)(2). Pub. L. 106–65, § 1066(a)(24)(A), struck out '', United States Code,'' after ''title 38''.

Subsec. (d). Pub. L. 106–65, § 1066(a)(24)(B), struck out heading and text of subsec. (d). Text read as follows: ''In this section:

''(1) The term 'veteran' has the meaning given that term in section 101(2) of title 38, United States Code.

''(2) The term 'hospital care' has the meaning given that term in section 1701(5) of title 38, United States Code.''

§ 2641b. Space-available travel on Department of Defense aircraft: program authorized and eligible recipients

(a) AUTHORITY TO ESTABLISH PROGRAM.—(1) The Secretary of Defense may establish a program (in this section referred to as the ''travel program'') to provide transportation on Department of Defense aircraft on a space-available basis to the categories of individuals eligible under subsection (c).

(2) If the Secretary makes a determination to establish the travel program, the Secretary shall prescribe regulations for the operation of the travel program not later than one year after the date on which the determination was made. The regulations shall take effect on that date or such earlier date as the Secretary shall specify in the regulations.

(3) Not later than 30 days after making the determination to establish the travel program, the Secretary shall submit to the congressional defense committees an initial implementation report describing—

(A) the basis for the determination;

(B) any additional categories of individuals to be eligible for the travel program under subsection (c)(6);

(C) how the Secretary will ensure that the travel program is established and operated in compliance with the conditions specified in subsection (b); and

(D) the metrics by which the Secretary will monitor the travel program to determine the efficient and effective execution of the travel program.

(b) CONDITIONS ON ESTABLISHMENT AND OPERATION.—(1) The Secretary of Defense shall operate the travel program in a budget-neutral manner.

(2) No additional funds may be used, or flight hours performed, for the purpose of providing transportation under the travel program.

(c) ELIGIBLE INDIVIDUALS.—Subject to subsection (d), the Secretary of Defense shall provide transportation under the travel program (if established) to the following categories of individuals:

(1) Members of the armed forces on active duty.

(2) Members of the Selected Reserve who hold a valid Uniformed Services Identification and Privilege Card.

(3) Retired members of a regular or reserve component of the armed forces, including retired members of reserve components who, but for being under the eligibility age applicable under section 12731 of this title, would be eligible for retired pay under chapter 1223 of this title.

(4) Subject to subsection (f), veterans with a permanent service-connected disability rated as total.

(5) Such categories of dependents of individuals described in paragraphs (1) through (3) as the Secretary shall specify in the regulations under subsection (a), under such conditions and circumstances as the Secretary shall specify in such regulations.

(6) Such other categories of individuals as the Secretary, in the discretion of the Secretary, considers appropriate.

(d) PRIORITIES AND RESTRICTIONS.—In operating the travel program, the Secretary of Defense shall—

(1) in the sole discretion of the Secretary, establish an order of priority for transportation under the travel program for categories of eligible individuals that is based on considerations of military necessity, humanitarian concerns, and enhancement of morale;

(2) give priority in consideration of transportation under the travel program to the demands of members of the armed forces in the regular components and in the reserve components on active duty and to the need to provide such members, and their dependents, a means of respite from such demands; and

(3) implement policies aimed at ensuring cost control (as required by subsection (b)) and the safety, security, and efficient processing of travelers, including limiting the benefit under the travel program to one or more categories of otherwise eligible individuals if considered necessary by the Secretary.

(e) SPECIAL PRIORITY FOR RETIRED MEMBERS RESIDING IN COMMONWEALTHS AND POSSESSIONS OF THE UNITED STATES WHO NEED CERTAIN HEALTH CARE SERVICES.—(1) Notwithstanding subsection (d)(1), in establishing space-available transportation priorities under the travel program, the Secretary of Defense shall provide transportation for an individual described in paragraph (2), and a single dependent of the individual if needed to accompany the individual, at a priority level in the same category as the priority level for an unaccompanied dependent over the age of 18 traveling on environmental and morale leave.

(2) Subject to paragraph (3), paragraph (1) applies with respect to an individual described in subsection (c)(3) who—

(A) resides in or is located in a Commonwealth or possession of the United States; and

(B) is referred by a military or civilian primary care provider located in that Commonwealth or possession to a specialty care provider for services to be provided outside of that Commonwealth or possession.

(3) If an individual described in subsection (c)(3) is a retired member of a reserve component who is ineligible for retired pay under chapter 1223 of this title by reason of being under the eligibility age applicable under section 12731 of this title, paragraph (1) applies to the individual only if the individual is also enrolled in the TRICARE program for certain members of the Retired Reserve authorized under section 1076e of this title.

(4) The priority for space-available transportation required by this subsection applies with respect to both—

(A) the travel from the Commonwealth or possession of the United States to receive the specialty care services; and

(B) the return travel.

(5) The requirement to provide transportation on Department of Defense aircraft on a space-available basis on the priority basis described in paragraph (1) to individuals covered by this subsection applies whether or not the travel program is established under this section.

(6) In this subsection, the terms ‘‘primary care provider’’ and ‘‘specialty care provider’’ refer to a medical or dental professional who provides health care services under chapter 55 of this title.

(f) VETERANS WITH SERVICE-CONNECTED DISABILITIES RATED AS TOTAL.—(1) Travel may not be provided under this section to a veteran eligible for travel pursuant to subsection (c)(4) in priority over any member eligible for travel under subsection (c)(1) or any dependent of such a member eligible for travel under this section.

(2) The authority in subsection (c)(4) may not be construed as affecting or in any way imposing on the Department of Defense, any armed force, or any commercial company with which they contract an obligation or expectation that they will retrofit or alter, in any way, military aircraft or commercial aircraft, or related equipment or facilities, used or leased by the Department or such armed force to accommodate passengers provided travel under such authority on account of disability.

(3) The authority in subsection (c)(4) may not be construed as preempting the authority of a flight commander to determine who boards the aircraft and any other matters in connection with safe operation of the aircraft.

(g) CONSTRUCTION.—The authority to provide transportation under the travel program is in addition to any other authority under law to provide transportation on Department of Defense aircraft on a space-available basis.

(Added Pub. L. 110–181, div. A, title III, § 374(a), Jan. 28, 2008, 122 Stat. 82; amended Pub. L. 112–239, div. A, title VI, § 622(a), Jan. 2, 2013, 126 Stat. 1779; Pub. L. 115–232, div. A, title VI, § 624, Aug. 13, 2018, 132 Stat. 1801; Pub. L. 116–283, div. A, title X, § 1081(a)(43), Jan. 1, 2021, 134 Stat. 3873.)

AMENDMENTS

2021—Subsec. (a)(3)(B). Pub. L. 116–283 substituted ''subsection (c)(6)'' for ''subsection (c)(5)''.

2018—Subsec. (c)(4) to (6). Pub. L. 115–232, § 624(a), added par. (4) and redesignated former pars. (4) and (5) as (5) and (6), respectively.

Subsecs. (f), (g). Pub. L. 115–232, § 624(b), added subsec. (f) and redesignated former subsec. (f) as (g).

2013—Pub. L. 112–239 amended section generally. Prior to amendment, section related to increased priority for space-available transportation on Department of Defense aircraft for certain members and former members of the uniformed services.

STUDY ON SPACE-AVAILABLE TRAVEL SYSTEM OF THE DEPARTMENT OF DEFENSE

Pub. L. 114–328, div. A, title III, § 352, Dec. 23, 2016, 130 Stat. 2089, provided that:

''(a) STUDY REQUIRED.—Not later than 90 days after the date of the enactment of this Act [Dec. 23, 2016], the Secretary of Defense shall seek to enter into a contract with a federally funded research and development center to conduct an independent study on the space-available travel system of the Department of Defense.

''(b) REPORT REQUIRED.—Not later than 180 days after entering into a contract with a federally funded research and development center under subsection (a), the Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report summarizing the results of the study conducted under such subsection.

''(c) ELEMENTS.—The report under subsection (b) shall include, with respect to the space-available travel system, the following:

''(1) A determination of—

''(A) the capacity of the system as of the date of the enactment of this Act [Dec. 23, 2016];

''(B) the projected capacity of the system for the 10-year period following such date of enactment; and

''(C) the projected number of reserve retirees, active duty retirees, and dependents of such retirees that will exist by the end of such 10-year period.

''(2) Estimates of system capacity based [on] the projections described in paragraph (1).

''(3) A discussion of the efficiency of the system and data regarding the use of available space with respect to each category of passengers eligible for space-available travel under existing regulations.

''(4) A description of the effect on system capacity if eligibility for space-available travel is extended to—

''(A) drilling reserve component personnel and dependents of such personnel on international flights;

''(B) dependents of reserve component retirees who are less than 60 years of age;

''(C) retirees who are less than 60 years of age on international flights;

''(D) drilling reserve component personnel traveling to drilling locations; and

''(E) members or former members of the Armed Forces who have a disability rated as total, if space-available travel is provided to such members on the same basis as such travel is provided to members of the Armed Forces entitled to retired or retainer pay.

''(5) A discussion of logistical and management problems, including congestion at terminals, waiting times, lodging availability, and personal hardships experienced by travelers.

''(6) An evaluation of the cost of the system and whether space-available travel is and can remain cost-neutral.

''(7) An evaluation of the feasibility of expanding the categories of passengers eligible for space-available travel to include—

''(A) in the case of overseas travel, retired members of an active or reserve component, including retired members of reserve components, who, but for being under the eligibility age applicable to the member under section 12731 of title 10, United States Code, would be eligible for retired pay under chapter 1223 of such title;

''(B) unremarried widows and widowers of active or reserve component members of the Armed Forces; and

''(C) members or former members of the Armed Forces who have a disability rated as total, if space-available travel is provided to such members on the same basis as such travel is provided to members of the Armed Forces entitled to retired or retainer pay.

''(8) Such other factors relating to the efficiency and cost of the system as the Secretary determines to be appropriate.

''(d) ADDITIONAL RESPONSIBILITIES.—In addition to carrying out subsections (a) through (c), the Secretary of Defense shall—

''(1) analyze the methods used to prioritize among the categories of individuals eligible for space-available travel and make recommendations for—

''(A) re-ordering the priority of such categories; and

''(B) adding additional categories of eligible individuals; and

''(2) collect data on travelers who request but do not obtain available travel spaces under the space-available travel system.

''(e) DISABILITY RATED AS TOTAL DEFINED.—In this section, the term 'disability rated as total' has the meaning given the term in section 1414(e)(3) of title 10, United States Code.''

§ 2642. Transportation services provided to certain non-Department of Defense agencies and entities: use of Department of Defense reimbursement rate

(a) AUTHORITY.—Subject to subsection (b), the Secretary of Defense may authorize the use of the Department of Defense reimbursement rate for military transportation services provided by a component of the Department of Defense as follows:

(1) For military transportation services provided to the Central Intelligence Agency, if the Secretary of Defense determines that those military transportation services are provided for activities related to national security objectives.

(2) For military transportation services provided to the Department of State for the transportation of armored motor vehicles to a foreign country to meet requirements of the Department of State for armored motor vehicles associated with the overseas travel of the Secretary of State in that country.

(3) For military transportation services provided to any element of the Federal Government outside the Department of Defense in circumstances other than those specified in paragraphs (1) and (2), but only if the Secretary of Defense determines that the provision of such services will promote the improved use of transportation capacity without any negative effect on the national security objectives or the national security interests contained within the United States commercial transportation industry.

(4) For military transportation services provided in support of foreign military sales.

(5) For military transportation services provided to a State, local, or tribal agency (including any organization composed of State, local, or tribal agencies).

(6) For military transportation services provided to a Department of Defense contractor when transporting supplies that are for, or destined for, a Department of Defense entity.

(b) TERMINATION OF AUTHORITY FOR CERTAIN CATEGORIES OF TRANSPORTATION.—The provisions of paragraphs (3), (4), (5), and (6) of subsection (a) shall apply only to military transportation services provided before October 1, 2024.

(c) DEFINITION.—In this section, the term ''Department of Defense reimbursement rate'' means the amount charged a component of the Department of Defense by another component of the Department of Defense.

(Added Pub. L. 102–88, title V, § 501(a), Aug. 14, 1991, 105 Stat. 435; amended Pub. L. 108–136, div. A, title X, § 1006(a), (b)(1), Nov. 24, 2003, 117 Stat. 1585; Pub. L. 111–84, div. A, title III, § 351(a), Oct. 28, 2009, 123 Stat. 2262; Pub. L. 111–383, div. A, title X, § 1075(b)(40), Jan. 7, 2011, 124 Stat. 4371; Pub. L. 113–66, div. A, title X, § 1073(a), (b), Dec. 26, 2013, 127 Stat. 869; Pub. L. 113–291, div. A, title X, §§ 1044(a)–(c)(1), 1071(f)(22), (g)(4), Dec. 19, 2014, 128 Stat. 3493, 3494, 3511; Pub. L. 115–91, div. A, title X, § 1081(f), Dec. 12, 2017, 131 Stat. 1601; Pub. L. 116–92, div. A, title III, § 373, Dec. 20, 2019, 133 Stat. 1332.)

AMENDMENTS

2019—Subsec. (b). Pub. L. 116–92 substituted ''October 1, 2024'' for ''October 1, 2019''.

2017—Subsec. (a)(3). Pub. L. 115–91, § 1081(f), which directed substitution of ''September 30'' for ''October 28'' in the amendment made by Pub. L. 113–291, § 1044(a)(2)(A), was executed by making the substitution the second place appearing in the quoted language to be stricken by that amendment, to reflect the probable intent of Congress. See 2014 Amendment note below.

2014—Pub. L. 113–291, § 1044(c)(1), amended section catchline generally, substituting ''Transportation services provided to certain non-Department of Defense agencies and entities: use of Department of Defense reimbursement rate'' for ''Transportation services provided to certain other agencies: use of Department of Defense reimbursement rate''.

Subsec. (a). Pub. L. 113–291, § 1044(a)(1), substituted ''Subject to subsection (b), the Secretary'' for ''The Secretary'' in introductory provisions.

Subsec. (a)(3). Pub. L. 113–291, § 1071(g)(4), amended Pub. L. 113–66, § 1073(a)(2)(B). See 2013 Amendment note below.

Pub. L. 113–291, § 1071(f)(22), inserted ''and'' before ''military transportation services provided in support''. Amendment was executed prior to amendment by Pub. L. 113–291, § 1044(a)(2)(B), see below, pursuant to section 1071(k) of Pub. L. 113–291, set out as a note under section 101 of this title.

Pub. L. 113–291, § 1044(a)(2)(B), substituted ''Department of Defense'' for ''Department of Defense and military transportation services provided in support of foreign military sales''.

Pub. L. 113–291, § 1044(a)(2)(A), as amended by Pub. L. 115–91, § 1081(f), substituted ''For'' for ''During the period beginning on October 28, 2009, and ending on September 30, 2019, for''. See 2017 Amendment note above.

Subsec. (a)(4) to (6). Pub. L. 113–291, § 1044(a)(3), added pars. (4) to (6).

Subsecs. (b), (c). Pub. L. 113–291, § 1044(b), added subsec. (b) and redesignated former subsec. (b) as (c).

2013—Pub. L. 113–66, § 1073(b), substituted ''Transportation'' for ''Airlift'' in section catchline.

Subsec. (a). Pub. L. 113–66, § 1073(a)(1), substituted ''transportation services'' for ''airlift services'' wherever appearing and ''transportation capacity'' for ''airlift capacity'' in par. (3).

Subsec. (a)(3). Pub. L. 113–66, § 1073(a)(2)(B), as amended by Pub. L. 113–291, § 1071(g)(4), inserted ''military transportation services provided in support of foreign military sales'' after ''Department of Defense''.

Pub. L. 113–66, § 1073(a)(2)(A), (C), substituted ''September 30, 2019'' for ''October 28, 2014'' and ''transportation industry'' for ''air industry''.

2011—Subsec. (a)(3). Pub. L. 111–383 substituted ''During the period beginning on October 28, 2009, and ending on October 28, 2014'' for ''During the five-year period beginning on the date of the enactment of the National Defense Authorization Act for Fiscal Year 2010''.

2009—Subsec. (a)(3). Pub. L. 111–84 added par. (3).

2003—Pub. L. 108–136, § 1006(b)(1), substituted ''Airlift services provided to certain other agencies: use of Department of Defense reimbursement rate'' for ''Reimbursement rate for airlift services provided to Central Intelligence Agency'' as section catchline.

Subsec. (a). Pub. L. 108–136, § 1006(a), inserted ''as follows:

''(1) For military airlift services provided''

before ''to the Central Intelligence Agency'', and added par. (2).

EFFECTIVE DATE OF 2017 AMENDMENT

Pub. L. 115–91, div. A, title X, § 1081(f), Dec. 12, 2017, 131 Stat. 1601, provided that the amendment made by section 1081(f) is effective as of Dec. 19, 2014, and as if included in Pub. L. 113–291 as enacted.

EFFECTIVE DATE OF 2014 AMENDMENT

Pub. L. 113–291, div. A, title X, § 1071(g), Dec. 19, 2014, 128 Stat. 3511, provided that the amendment made by section 1071(g)(4) is effective as of Dec. 26, 2013, and as if included in Pub. L. 113–66 as enacted.

§ 2643. Commissary and exchange services: transportation overseas

(a) TRANSPORTATION OPTIONS.—The Secretary of Defense shall authorize the officials responsible for operation of commissaries and military exchanges to negotiate directly with private carriers for the most cost-effective transportation of commissary and exchange supplies to destinations outside the continental United States without relying on the Air Mobility Command, the Military Sealift Command, or the Military Traffic Management Command. Section 2631 of this title, regarding the preference for vessels of the United States or belonging to the United States in the transportation of supplies by sea, shall apply to the negotiation of contracts for sea-borne transportation under the authority of this section.

(b) PAYMENT OF TRANSPORTATION COSTS.—Section 2483(b)(5) of this title, regarding the use of

appropriated funds to cover the expenses of operating commissary stores, shall apply to the transportation of commissary supplies and products. Appropriated funds for the Department of Defense shall also be used to cover the expenses of transporting exchange supplies and products to destinations outside the continental United States. Such appropriated funds may be supplemented with additional funds derived from improved management practices implemented pursuant to sections 2481(c)(3) and 2487(c) of this title.

(Added Pub. L. 104–106, div. A, title III, § 334(a), Feb. 10, 1996, 110 Stat. 261; amended Pub. L. 109–163, div. A, title VI, § 673, Jan. 6, 2006, 119 Stat. 3319; Pub. L. 114–328, div. A, title VI, § 661(h), Dec. 23, 2016, 130 Stat. 2172.)

AMENDMENTS

2016—Subsec. (b). Pub. L. 114–328 inserted at end "Such appropriated funds may be supplemented with additional funds derived from improved management practices implemented pursuant to sections 2481(c)(3) and 2487(c) of this title."

2006—Pub. L. 109–163 designated existing provisions as subsec. (a), inserted heading, substituted "to destinations outside the continental United States without relying on the Air Mobility Command, the Military Sealift Command," for "by sea without relying on the Military Sealift Command" and "contracts for seaborne transportation" for "transportation contracts", and added subsec. (b).

§ 2644. Control of transportation systems in time of war

In time of war, the President, through the Secretary of Defense, may take possession and assume control of all or part of any system of transportation to transport troops, war material, and equipment, or for other purposes related to the emergency. So far as necessary, he may use the system to the exclusion of other traffic.

(Aug. 10, 1956, ch. 1041, 70A Stat. 266, § 4742; renumbered § 2644 and amended Pub. L. 104–201, div. A, title IX, § 906(a), (b), Sept. 23, 1996, 110 Stat. 2620.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4742	10:1361.	Aug. 29, 1916, ch. 418 (last par. under "Ordnance Department"), 39 Stat. 645.

The words "as may be needful or desirable" are omitted as surplusage.

AMENDMENTS

1996—Pub. L. 104–201 renumbered section 4742 of this title as this section and substituted "Secretary of Defense" for "Secretary of the Army".

§ 2645. Indemnification of Department of Transportation for losses covered by vessel war risk insurance

(a) PROMPT INDEMNIFICATION REQUIRED.—(1) In the event of a loss that is covered by vessel war risk insurance, the Secretary of Defense shall promptly indemnify the Secretary of Transportation for the amount of the loss consistent with the indemnification agreement between the two Secretaries that underlies such insurance. The Secretary of Defense shall make such indemnification—

(A) in the case of a claim for the loss of a vessel, not later than 90 days after the date on which the Secretary of Transportation determines the claim to be payable or that amounts are due under the policy that provided the vessel war risk insurance; and

(B) in the case of any other claim, not later than 180 days after the date on which the Secretary of Transportation determines the claim to be payable.

(2) When there is a loss of a vessel that is (or may be) covered by vessel war risk insurance, the Secretary of Transportation may make, during the period when a claim for such loss is pending with the Secretary of Transportation, any required periodic payments owed by the insured party to a lessor or mortgagee of such vessel. Such payments shall commence not later than 30 days following the date of the presentment of the claim for the loss of the vessel to the Secretary of Transportation. If the Secretary of Transportation determines that the claim is payable, any amount paid under this paragraph arising from such claim shall be credited against the amount payable under the vessel war risk insurance. If the Secretary of Transportation determines that the claim is not payable, any amount paid under this paragraph arising from such claim shall constitute a debt to the United States, payable to the insurance fund. Any such amounts so returned to the United States shall be promptly credited to the fund or account from which the payments were made under this paragraph.

(b) SOURCE OF FUNDS FOR PAYMENT OF INDEMNITY.—The Secretary of Defense may pay an indemnity described in subsection (a) from any funds available to the Department of Defense for operation and maintenance, and such sums as may be necessary for payment of such indemnity are hereby authorized to be transferred to the Secretary of Transportation for such purpose.

(c) DEPOSIT OF FUNDS.—Any amount transferred to the Secretary of Transportation under this section shall be deposited in, and merged with amounts in, the Vessel War Risk Insurance Fund as provided in section 53909(b) of title 46.

(d) NOTICE TO CONGRESS.—In the event of a loss that is covered by vessel war risk insurance in the case of an incident in which the covered loss is (or is expected to be) in an amount in excess of $10,000,000, the Secretary of Defense shall submit to Congress notification of the loss as soon after the occurrence of the loss as possible and in no event more than 30 days after the date of the loss.

(e) IMPLEMENTING MATTERS.—(1) Payment of indemnification under this section is not subject to section 2214 or 2215 of this title or any other provision of law requiring notification to Congress before funds may be transferred.

(2) Consolidation of claims arising from the same incident is not required before indemnification of the Secretary of Transportation for payment of a claim may be made under this section.

(f) CONSTRUCTION WITH OTHER TRANSFER AUTHORITY.—Authority to transfer funds under this section is in addition to any other authority provided by law to transfer funds (whether enacted before, on, or after the date of the enactment of this section) and is not subject to any dollar limitation or notification requirement contained in any other such authority to transfer funds.

[(g) Repealed. Pub. L. 108–136, div. A, title X, § 1031(a)(26)(B), Nov. 24, 2003, 117 Stat. 1598.]

(h) DEFINITIONS.—In this section:

(1) VESSEL WAR RISK INSURANCE.—The term ''vessel war risk insurance'' means insurance and reinsurance provided through policies issued by the Secretary of Transportation under chapter 539 of title 46 that is provided by that Secretary without premium at the request of the Secretary of Defense and is covered by an indemnity agreement between the Secretary of Transportation and the Secretary of Defense.

(2) VESSEL WAR RISK INSURANCE FUND.—The term ''Vessel War Risk Insurance Fund'' means the insurance fund referred to in section 53909(a) of title 46.

(3) LOSS.—The term ''loss'' includes damage to or destruction of property, personal injury or death, and other liabilities and expenses covered by the vessel war risk insurance.

(Added Pub. L. 104–201, div. A, title X, § 1079(b)(1), Sept. 23, 1996, 110 Stat. 2669; amended Pub. L. 105–85, div. A, title X, § 1073(a)(57), Nov. 18, 1997, 111 Stat. 1903; Pub. L. 108–136, div. A, title X, § 1031(a)(26), Nov. 24, 2003, 117 Stat. 1598; Pub. L. 109–304, § 17(a)(4), Oct. 6, 2006, 120 Stat. 1706; Pub. L. 112–81, div. A, title X, § 1064(8), Dec. 31, 2011, 125 Stat. 1587.)

REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsec. (f), is the date of enactment of Pub. L. 104–201, which was approved Sept. 23, 1996.

AMENDMENTS

2011—Subsec. (d). Pub. L. 112–81 substituted ''$10,000,000'' for ''$1,000,000''.

2006—Subsec. (c). Pub. L. 109–304, § 17(a)(4)(A), substituted ''section 53909(b) of title 46'' for ''the second sentence of section 1208(a) of the Merchant Marine Act, 1936 (46 U.S.C. App. 1288(a))''.

Subsec. (h)(1). Pub. L. 109–304, § 17(a)(4)(B), substituted ''chapter 539 of title 46'' for ''title XII of the Merchant Marine Act, 1936 (46 U.S.C. App. 1281 et seq.),''.

Subsec. (h)(2). Pub. L. 109–304, § 17(a)(4)(C), substituted ''section 53909(a) of title 46'' for ''the first sentence of section 1208(a) of the Merchant Marine Act, 1936 (46 U.S.C. App. 1288(a))''.

2003—Subsec. (d). Pub. L. 108–136, § 1031(a)(26)(A), substituted ''Congress'' for ''Congress—'', struck out par. (1) designation before ''notification'', substituted a period for ''; and'' after ''date of the loss'', and struck out par. (2) which read as follows: ''semiannual reports thereafter updating the information submitted under paragraph (1) and showing with respect to losses arising from such incident the total amount expended to cover such losses, the source of such funds, pending litigation, and estimated total cost to the Government.''

Subsec. (g). Pub. L. 108–136, § 1031(a)(26)(B), struck out heading and text of subsec. (g). Text read as follows: ''Not later than March 1 of each year, the Secretary of Defense shall submit to Congress a report setting forth the current amount of the contingent outstanding liability of the United States under the vessel war risk insurance program under title XII of the Merchant Marine Act, 1936 (46 U.S.C. App. 1281 et seq.).''

1997—Subsec. (a)(1)(B). Pub. L. 105–85 struck out ''on which'' after ''after the date on which''.

§ 2646. Travel services: procurement for official and unofficial travel under one contract

(a) AUTHORITY.—The head of an agency may enter into a contract for travel-related services that provides for the contractor to furnish services for both official travel and unofficial travel.

(b) CREDITS, DISCOUNTS, COMMISSIONS, FEES.—(1) A contract entered into under this section may provide for credits, discounts, or commissions or other fees to accrue to the Department of Defense. The accrual and amounts of credits, discounts, or commissions or other fees may be determined on the basis of the volume (measured in the number or total amount of transactions or otherwise) of the travel-related sales that are made by the contractor under the contract.

(2) The evaluation factors applicable to offers for a contract under this section may include a factor that relates to the estimated aggregate value of any credits, discounts, commissions, or other fees that would accrue to the Department of Defense for the travel-related sales made under the contract.

(3) Commissions or fees received by the Department of Defense as a result of travel-related sales made under a contract entered into under this section shall be distributed as follows:

(A) For amounts relating to sales for official travel, credit to appropriations available for official travel for the fiscal year in which the amounts were charged.

(B) For amounts relating to sales for unofficial travel, deposit in nonappropriated fund accounts available for morale, welfare, and recreation programs.

(c) DEFINITIONS.—In this section:

(1) The term ''head of an agency'' has the meaning given that term in section 2302(1) of this title.

(2) The term ''official travel'' means travel at the expense of the Federal Government.

(3) The term ''unofficial travel'' means personal travel or other travel that is not paid for or reimbursed by the Federal Government out of appropriated funds.

(d) INAPPLICABILITY TO COAST GUARD AND NASA.—This section does not apply to the Coast Guard when it is not operating as a service in the Navy, nor to the National Aeronautics and Space Administration.

(Added Pub. L. 105–261, div. A, title VIII, § 813(a), Oct. 17, 1998, 112 Stat. 2087; amended Pub. L. 116–283, div. A, title XVIII, § 1806(e)(1)(B), Jan. 1, 2021, 134 Stat. 4155.)

AMENDMENT OF SUBSECTION (c)(1)

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1806(e)(1)(B), Jan. 1, 2021, 134 Stat. 4151, 4155, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, subsection (c)(1) of this section is amended by striking ''section 2302(1)'' and inserting ''section 3004''. See 2021 Amendment note below.

AMENDMENTS

2021—Subsec. (c)(1). Pub. L. 116–283 substituted "section 3004" for "section 2302(1)".

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 2647. Next-of-kin of persons unaccounted for from conflicts after World War II: transportation to annual meetings

The Secretary of Defense may provide transportation for the next-of-kin of persons who are unaccounted for from the Korean conflict, the Cold War, Vietnam War era, or the Persian Gulf War to and from an annual meeting in the United States. Such transportation shall be provided under such regulations as the Secretary of Defense may prescribe.

(Added Pub. L. 107–107, div. A, title V, § 574(a), Dec. 28, 2001, 115 Stat. 1122.)

AVAILABILITY OF FUNDS FOR NEXT-OF-KIN OF VIETNAM ERA INDIVIDUALS

Pub. L. 107–117, div. A, title VIII, § 8018, Jan. 10, 2002, 115 Stat. 2251, provided that: "Funds available in this Act [see Tables for classification] and hereafter may be used to provide transportation for the next-of-kin of individuals who have been prisoners of war or missing in action from the Vietnam era to an annual meeting in the United States, under such regulations as the Secretary of Defense may prescribe."

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 106–259, title VIII, § 8018, Aug. 9, 2000, 114 Stat. 678.

Pub. L. 106–79, title VIII, § 8018, Oct. 25, 1999, 113 Stat. 1235.

Pub. L. 105–262, title VIII, § 8018, Oct. 17, 1998, 112 Stat. 2301.

Pub. L. 105–56, title VIII, § 8018, Oct. 8, 1997, 111 Stat. 1224.

Pub. L. 104–208, div. A, title I, § 101(b) [title VIII, § 8019], Sept. 30, 1996, 110 Stat. 3009–71, 3009–92.

Pub. L. 104–61, title VIII, § 8025, Dec. 1, 1995, 109 Stat. 657.

Pub. L. 103–335, title VIII, § 8031, Sept. 30, 1994, 108 Stat. 2625.

Pub. L. 103–139, title VIII, § 8034, Nov. 11, 1993, 107 Stat. 1447.

Pub. L. 102–396, title IX, § 9046, Oct. 6, 1992, 106 Stat. 1912.

Pub. L. 102–172, title VIII, § 8047, Nov. 26, 1991, 105 Stat. 1182.

Pub. L. 101–511, title VIII, § 8051, Nov. 5, 1990, 104 Stat. 1886.

Pub. L. 101–165, title IX, § 9065, Nov. 21, 1989, 103 Stat. 1143.

§ 2648. Persons and supplies: sea, land, and air transportation

Whenever the Secretary of Defense considers that space is available, the following persons and supplies may be transported on vessels, vehicles, or aircraft operated by the Department of Defense:

(1) Members of Congress.

(2) Other officers of the United States traveling on official business.

(3) Secretaries and supplies of the Armed Services Department of the Young Men's Christian Association.

(4) Officers and employees of the Commonwealth of Puerto Rico on official business.

(5) The families of members of the armed forces, officers and employees of the Department of Defense or the Coast Guard, and persons described in paragraphs (1), (2), and (4).

However, a person described in paragraph (4) or (5) may be so transported only if the transportation is without expense to the United States.

(Aug. 10, 1956, ch. 1041, 70A Stat. 266, § 4744; Pub. L. 86–624, § 4(d), July 12, 1960, 74 Stat. 411; renumbered § 2648 and amended Pub. L. 108–375, div. A, title X, § 1072(a), (b)(1), Oct. 28, 2004, 118 Stat. 2057; Pub. L. 111–383, div. A, title III, § 352(d), (e)(1), Jan. 7, 2011, 124 Stat. 4193.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4744	10:1369. 10:1370. 10:1371 (less last 29 words).	Mar. 2, 1907, ch. 2511 (6th proviso, less last 29 words under "Transportation of the Army and Its Supplies"), 34 Stat. 1170. June 30, 1921, ch. 33 (8th proviso under "Transportation of the Army and Its Supplies"), 42 Stat. 81. Mar. 3, 1911, ch. 209 (3d proviso under "Transportation of the Army and Its Supplies"), 36 Stat. 1051.

Reference to the Philippine government, contained in the source statute for 10:1371, is omitted, since the Philippine Republic now has the status of a foreign country and only possessions of the United States are intended to be covered by the source statute. The words "Armed Services Department" are substituted for the words "Army and Navy Department", in 10:1370, to reflect the present name of that Department of the Young Men's Christian Association. (See also third sentence of revision note for section 4746 of this title, below.)

AMENDMENTS

2011—Pub. L. 111–383 substituted "Persons and supplies: sea, land, and air transportation" for "Persons and supplies: sea transportation" in section catchline and inserted ", vehicles, or aircraft" after "vessels" in introductory provisions.

2004—Pub. L. 108–375, § 1072(b)(1), in introductory provisions, substituted "Secretary of Defense" for "Secretary of the Army" and struck out "Army transport agencies or, within bulk space allocations made to the Department of the Army, on vessels operated by any military transport agency of" before "the Department of Defense", redesignated pars. (4) to (8) as (1) to (5), respectively, in par. (5), substituted "members of the armed forces, officers and employees of the Department of Defense or the Coast Guard, and persons described in paragraphs (1), (2), and (4)" for "persons described in clauses (1), (2), (4), (5), and (7)", in concluding provisions, substituted "paragraph (4) or (5)" for "clause (7) or (8)", and struck out former pars. (1) to (3) which read as follows:

"(1) Members of the Navy, Marine Corps, or Coast Guard.

‘‘(2) Officers and employees of the Department of the Army, the Department of the Navy, the Department of the Air Force, or the Coast Guard.

‘‘(3) Supplies of the Department of the Navy.’’

Pub. L. 108–375, § 1072(a), renumbered section 4744 of this title as this section.

1960—Pub. L. 86–624 struck out cl. (6) which authorized transportation of officers and employees of the Territory of Hawaii, redesignated cls. (7) to (9) as (6) to (8), respectively, and substituted ‘‘clauses (1), (2), (4), (5), and (7)’’ for ‘‘clauses (1), (2), (4), (5), (6), and (8)’’ in redesignated cl. (8), and ‘‘clause (7) or (8)’’ for ‘‘clause (8) or (9)’’ in closing sentence.

§ 2649. Civilian passengers and commercial cargoes: transportation on Department of Defense vessels, vehicles, and aircraft

(a) AUTHORITY.—Whenever space is unavailable on commercial lines and is available on vessels, vehicles, or aircraft operated by the Department of Defense, civilian passengers and commercial cargo may, in the discretion of the Secretary of Defense, be transported on those vessels, vehicles, or aircraft. Rates for transportation under this section may not be less than those charged by commercial lines for the same kinds of service, except that in the case of transportation provided in response to an emergency, a disaster, or a request for humanitarian assistance, any amount charged for such transportation may not exceed the cost of providing the transportation.

(b) CREDITING OF RECEIPTS.—Any amount received under subsection (a) with respect to transportation provided in response to an emergency, a disaster, or a request for humanitarian assistance may be credited to the appropriation, fund, or account used in incurring the obligation for which such amount is received. In all other cases, amounts received under subsection (a) shall be covered into the Treasury as miscellaneous receipts.

(c) TRANSPORTATION OF ALLIED AND CIVILIAN PERSONNEL AND CARGO DURING CONTINGENCIES OR DISASTER RESPONSES.—When space is available on vessels, vehicles, or aircraft operated by the Department of Defense and the Secretary of Defense determines that operations in the area of a contingency operation or disaster response would be facilitated if allied and civilian personnel and cargo were to be transported using such vessels, vehicles, or aircraft, the Secretary may provide such transportation on a noninterference basis, without charge.

(d) COMMERCIAL INSURANCE.—The Secretary may enter into a contract or other arrangement with one or more commercial providers to make insurance products available to non-Department of Defense shippers using the Defense Transportation System to insure against the loss or damage of the shipper’s cargo. Any such contract or arrangement shall provide that—

(1) any insurance premium is collected by the commercial provider;

(2) any claim for loss or damage is processed and paid by the commercial provider;

(3) the commercial provider agrees to hold the United States harmless and waive any recourse against the United States for amounts paid to an insured as a result of a claim; and

(4) the contract between the commercial provider and the insured shall contain a provision whereby the insured waives any claim against the United States for loss or damage that is within the scope of enumerated risks covered by the insurance product.

(Aug. 10, 1956, ch. 1041, 70A Stat. 267, § 4745; Pub. L. 96–513, title V, § 512(22), Dec. 12, 1980, 94 Stat. 2930; Pub. L. 97–31, § 12(3)(C), Aug. 6, 1981, 95 Stat. 154; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; renumbered § 2649 and amended Pub. L. 108–375, div. A, title X, § 1072(a), (b)(2), Oct. 28, 2004, 118 Stat. 2057; Pub. L. 111–383, div. A, title III, § 352(a)–(c), (e)(2), Jan. 7, 2011, 124 Stat. 4193, 4194; Pub. L. 112–239, div. A, title X, § 1076(e)(4), Jan. 2, 2013, 126 Stat. 1951; Pub. L. 114–328, div. A, title X, § 1041, Dec. 23, 2016, 130 Stat. 2392.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4745(a)	10:1367 (less last 20 words).	June 5, 1920, ch. 240 (6th proviso under ‘‘Transportation of the Army and Its Supplies’’), 41 Stat. 960.
4745(b)	10:1367 (last 20 words).	

In subsection (a), the words ‘‘Federal Maritime Board’’ are substituted for the words ‘‘United States Maritime Commission’’, since the functions of the chairman of that commission were transferred to the chairman of the Board by 1950 Reorganization Plan No. 21, effective May 24, 1950, 64 Stat. 1273. The words ‘‘the same kinds of service’’ are substituted for the words ‘‘the same class of accommodations’’. The words ‘‘shipments of’’ and ‘‘between the same ports’’ are omitted as surplusage. (See also third sentence of revision note for section 4746 of this title, below.)

AMENDMENTS

2016—Subsec. (b). Pub. L. 114–328, § 1041(c), substituted ‘‘subsection (a)’’ for ‘‘this section’’ in two places.

Subsec. (c). Pub. L. 114–328, § 1041(a), substituted ‘‘and Civilian Personnel and Cargo’’ for ‘‘Personnel’’ in heading and substituted in text ‘‘When’’ for ‘‘Until January 6, 2016, when’’ and ‘‘allied and civilian personnel and cargo’’ for ‘‘allied forces or civilians’’.

Subsec. (d). Pub. L. 114–328, § 1041(b), added subsec. (d).

2013—Subsec. (c). Pub. L. 112–239 substituted ‘‘Until January 6, 2016’’ for ‘‘During the 5-year period beginning on the date of the enactment of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011’’.

2011—Pub. L. 111–383, § 352(e)(2), substituted ‘‘Civilian passengers and commercial cargoes: transportation on Department of Defense vessels, vehicles, and aircraft’’ for ‘‘Civilian passengers and commercial cargoes: transportation on Department of Defense vessels’’ in section catchline.

Subsec. (a). Pub. L. 111–383, § 352(a), (b)(1), inserted heading, inserted ‘‘, vehicles, or aircraft’’ after ‘‘vessels’’ in two places in first sentence, and inserted ‘‘, except that in the case of transportation provided in response to an emergency, a disaster, or a request for humanitarian assistance, any amount charged for such transportation may not exceed the cost of providing the transportation’’ before period at end of second sentence.

Subsec. (b). Pub. L. 111–383, § 352(b)(2), inserted heading and substituted ‘‘Any amount received under this section with respect to transportation provided in response to an emergency, a disaster, or a request for humanitarian assistance may be credited to the appropriation, fund, or account used in incurring the obligation for which such amount is received. In all other cases, amounts’’ for ‘‘Amounts’’.

Subsec. (c). Pub. L. 111–383, § 352(c), added subsec. (c).

2004—Pub. L. 108–375, § 1072(a), (b)(2)(A), renumbered section 4745 of this title as this section and substituted

''Civilian passengers and commercial cargoes: transportation on Department of Defense vessels'' for ''Civilian passengers and commercial cargoes: transports in trans-Atlantic service'' in section catchline.

Subsec. (a). Pub. L. 108–375, § 1072(b)(2)(B)–(D), struck out ''(1) on vessels operated by Army transport agencies, or (2) within bulk space allocations made to the Department of the Army'' after ''available'' and ''any transport agency of'' before ''the Department of Defense'' and substituted ''Secretary of Defense, be transported'' for ''Secretary of the Army and the Secretary of Homeland Security, be transported''.

2002—Subsec. (a). Pub. L. 107–296 substituted ''Secretary of Homeland Security'' for ''Secretary of Transportation''.

1981—Subsec. (a). Pub. L. 97–31 substituted ''Secretary of Transportation'' for ''Secretary of Commerce''.

1980—Subsec. (a). Pub. L. 96–513 substituted ''Secretary of Commerce'' for ''Chairman of the Federal Maritime Board''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

§ 2650. Civilian personnel in Alaska

Persons residing in Alaska who are and have been employed there by the United States for at least two years, and their families, may be transported on vessels or airplanes operated by the Department of Defense, if—

(1) the Secretary of Defense considers that accommodations are available;

(2) the transportation is without expense to the United States;

(3) the transportation is limited to one round trip between Alaska and the United States during any two-year period, except in an emergency such as sickness or death; and

(4) in case of travel by air, the transportation cannot be reasonably handled by a United States commercial air carrier.

(Aug. 10, 1956, ch. 1041, 70A Stat. 267, § 4746; Pub. L. 98–443, § 9(k), Oct. 4, 1984, 98 Stat. 1708; renumbered § 2650 and amended Pub. L. 108–375, div. A, title X, § 1072(a), (b)(3), Oct. 28, 2004, 118 Stat. 2057, 2058.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4746	10:1371a.	Nov. 21, 1941, ch. 483; restated July 25, 1947, ch. 321, 61 Stat. 423.

Before the enactment of the National Security Act of 1947, the transport functions covered by this section were performed only by the Army. Under section 2(a)(3) of the National Security Act (as it existed before August 10, 1949), the sea and air transportation functions of the Army, Navy, and Air Force were respectively consolidated into the ''Military Sea Transportation Service'', under the Department of the Navy, and the ''Military Air Transport Service'', under the Department of the Air Force. Instead of having space on its own transport vessels and airplanes, the Army is now allotted bulk space on vessels and airplanes operated by those transport services. The words ''or, within bulk space allocations made to the Department of the Army, on vessels or airplanes operated by any military transport agency of the Department of Defense'' are inserted, in accordance with an opinion of the Judge Advocate General of the Army (JAGA 1953/5885, 22 July 1953), to make clear that the rule applicable to Army vessels and airplanes applies to the bulk space allocated to the Army. Since the authority to perform transportation functions could again be transferred as between the military departments, the reference to ''vessels or airplanes of Army transport agencies'' is retained. The word ''considers'' is substituted for the words ''in the opinion of''. The words ''Persons residing in Alaska who are and have been employed there by the United States'' are substituted for the words ''employees of the United States, residing in Alaska, who have been in such employment''. The word ''commercial'' is substituted for the word ''civil'' for clarity. The words ''from and after November 21, 1941'', ''and the carriage of all such air traffic shall be terminated'', ''dire'', ''the privilege herein granted'', and ''as to each eligible individual'' are omitted as surplusage. The words ''the continental'' are omitted, since section 101(1) of this title defines the United States as ''the States and the District of Columbia''.

AMENDMENTS

2004—Pub. L. 108–375, § 1072(a), (b)(3)(A), renumbered section 4746 of this title as this section and, in introductory provisions, struck out ''Army transport agencies or, within bulk space allocations made to the Department of the Army, on vessels or airplanes operated by any military transport agency of'' before ''the Department of Defense''.

Par. (1). Pub. L. 108–375, § 1072(b)(3)(B), substituted ''Secretary of Defense'' for ''Secretary of the Army''.

Par. (4). Pub. L. 108–375, § 1072(b)(3)(C), substituted ''by air, the transportation cannot'' for ''by air—

''(A) the Secretary of Transportation has not certified that commercial air carriers of the United States that can handle the transportation are operating between Alaska and the United States; and

''(B) the transportation cannot''.

1984—Par. (4)(A). Pub. L. 98–443 substituted ''Secretary of Transportation'' for ''Civil Aeronautics Board''.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–443 effective Jan. 1, 1985, see section 9(v) of Pub. L. 98–443, set out as a note under section 5314 of Title 5, Government Organization and Employees.

§ 2651. Passengers and merchandise to Guam: sea transport

Whenever space is available, passengers, and merchandise produced in the United States, or the Commonwealths and possessions, and consigned to residents and mercantile firms of Guam, may be transported to Guam on vessels operated by the Department of Defense, under regulations and at rates to be prescribed by the Secretary of Defense.

(Aug. 10, 1956, ch. 1041, 70A Stat. 267, § 4747; renumbered § 2651 and amended Pub. L. 108–375, div. A, title X, § 1072(a), (b)(4), Oct. 28, 2004, 118 Stat. 2057, 2058; Pub. L. 109–163, div. A, title X, § 1057(a)(6), Jan. 6, 2006, 119 Stat. 3441; Pub. L. 111–383, div. A, title X, § 1075(h)(4)(A)(ii), Jan. 7, 2011, 124 Stat. 4377.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
4747 ………	10:1368. 10:1371 (last 29 words).	Mar. 3, 1911, ch. 209 (4th proviso under ''Transportation of the Army and Its Supplies''), 36 Stat. 1051. Mar. 2, 1907, ch. 2511 (last 29 words of 6th proviso under ''Transportation of the Army and Its Supplies''), 34 Stat. 1171.

The words ''without displacing military supplies'' and ''of the island of'', in 10:1368 and 1371, are omitted as surplusage. The words ''produced in the United States, or the Territories, Commonwealths, and possessions'' are substituted for the words ''of American production''.

AMENDMENTS

2011—Pub. L. 111–383 made technical amendment to directory language of Pub. L. 109–163, §1057(a)(6). See 2006 Amendment note below.

2006—Pub. L. 109–163, §1057(a)(6), as amended by Pub. L. 111–383, substituted ''Commonwealths and possessions'' for ''Territories, Commonwealths, and possessions''.

2004—Pub. L. 108–375, §1072(b)(4), substituted ''the Department of Defense, under regulations and at rates to be prescribed by the Secretary of Defense'' for ''Army transport agencies or, within bulk space allocations made to the Department of the Army, on vessels operated by any transport agency of the Department of Defense, under regulations and at rates to be prescribed by the Secretary of the Army''.

Pub. L. 108–375, §1072(a), renumbered section 4747 of this title as this section.

EFFECTIVE DATE OF 2011 AMENDMENT

Pub. L. 111–383, div. A, title X, §1075(h), Jan. 7, 2011, 124 Stat. 4377, provided that amendment by section 1075(h)(4)(A)(ii) is effective as of Jan. 6, 2006, and as if included in Pub. L. 109–163 as enacted.

§ 2652. Prohibition on charge of certain tariffs on aircraft traveling through channel routes

The United States Transportation Command may not charge a tariff by reason of the use by a military service of an aircraft of that military service on a route designated by the United States Transportation Command as a channel route.

(Added Pub. L. 115–91, div. A, title X, §1044(a), Dec. 12, 2017, 131 Stat. 1555.)

CHAPTER 159—REAL PROPERTY; RELATED PERSONAL PROPERTY; AND LEASE OF NON-EXCESS PROPERTY

Sec.
2661. Miscellaneous administrative provisions relating to real property.
[2661a. Repealed.]
2662. Real property transactions: reports to congressional committees.
2663. Land acquisition authorities.
2664. Limitations on real property acquisition.
2665. Sale of certain interests in land; logs.
[2666. Repealed.]
2667. Leases: non-excess property of military departments and Defense Agencies.
[2667a. Repealed.]
2668. Easements for rights-of-way.
2668a. Easements: granting restrictive easements in connection with land conveyances.
[2669. Repealed.]
2670. Use of facilities by private organizations; use as polling places.
2671. Military reservations and facilities: hunting, fishing, and trapping.
2672. Protection of buildings, grounds, property, and persons.
[2672a, 2673. Repealed.]
2674. Operation and control of Pentagon Reservation and defense facilities in National Capital Region.
2675. Leases: foreign countries.
[2676, 2677. Renumbered or Repealed.]
2678. Feral horses and burros: removal from military installations.
2679. Installation-support services: intergovernmental support agreements.
[2680. Repealed.]
2681. Use of test and evaluation installations by commercial entities.
2682. Facilities for defense agencies.
2683. Relinquishment of legislative jurisdiction; minimum drinking age on military installations.
2684. Cooperative agreements for management of cultural resources.
2684a. Agreements to limit encroachments and other constraints on military training, testing, and operations.
2685. Adjustment of or surcharge on selling prices in commissary stores to provide funds for construction and improvement of commissary store facilities.
2686. Utilities and services: sale; expansion and extension of systems and facilities.
2687. Base closures and realignments.
2687a. Overseas base closures and realignments and status of United States overseas military locations.
2688. Utility systems: conveyance authority.
[2689, 2690. Renumbered.]
2691. Restoration of land used by permit or damaged by mishap; reimbursement of State costs of fighting wildland fires.[1]
2692. Storage, treatment, and disposal of nondefense toxic and hazardous materials.
[2693. Repealed.]
2694. Conservation and cultural activities.
2694a. Conveyance of surplus real property for natural resource conservation.
2694b. Participation in wetland mitigation banks.
2694c. Participation in conservation banking programs.
2695. Acceptance of funds to cover administrative expenses relating to certain real property transactions.
2696. Real property: transfer between armed forces and screening requirements for other Federal use.
2697. Acceptance and use of landing fees charged for use of domestic military airfields by civil aircraft.

AMENDMENT OF ANALYSIS

Pub. L. 116–283, div. A, title XVIII, §§1801(d), 1844(b)(2)(B), Jan. 1, 2021, 134 Stat. 4151, 4246, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this analysis is amended by striking item 2681. See 2021 Amendment note below.

HISTORICAL AND REVISION NOTES

1962 ACT

This section makes necessary clerical amendments to chapter analysis.

[1] Section catchline amended by Pub. L. 115–232 without corresponding amendment of chapter analysis.

AMENDMENTS

2021—Pub. L. 116–283, div. A, title XVIII, §1844(b)(2)(B), title XXVIII, §2822(b)(3), Jan. 1, 2021, 134 Stat. 4246, 4332, struck out item 2681 ''Use of test and evaluation installations by commercial entities'' and substituted ''Overseas base closures and realignments and status of United States overseas military locations'' for ''Overseas base closures and realignments and basing master plans'' in item 2687a.

2017—Pub. L. 115–91, div. B, title XXVIII, §2814(c), Dec. 12, 2017, 131 Stat. 1850, substituted ''Restoration of land used by permit or damaged by mishap; reimbursement of State costs of fighting wildland fires'' for ''Restoration of land used by permit or lease'' in item 2691.

2015—Pub. L. 114–92, div. B, title XXVIII, §2811(b), Nov. 25, 2015, 129 Stat. 1174, added item 2672.

2014—Pub. L. 113–291, div. A, title III, §351(c)(2), Dec. 19, 2014, 128 Stat. 3347, added item 2679.

2011—Pub. L. 111–383, div. A, title III, §341(b), div. B, title XXVIII, §2814(c), Jan. 7, 2011, 124 Stat. 4190, 4464, struck out item 2680 ''Leases: land for special operations activities'' and added item 2697.

2009—Pub. L. 111–84, div. B, title XXVIII, §2822(a)(2), Oct. 28, 2009, 123 Stat. 2666, added item 2687a.

2008—Pub. L. 110–417, [div. A], title III, §311(b), div. B, title XXVIII, §2812(f)(2), Oct. 14, 2008, 122 Stat. 4409, 4728, added items 2667 and 2694c and struck out former items 2667 ''Leases: non-excess property of military departments'' and 2667a ''Leases: non-excess property of Defense agencies''.

Pub. L. 110–181, div. B, title XXVIII, §2822(b)(2), Jan. 28, 2008, 122 Stat. 544, struck out item 2677 ''Options: property required for military construction projects''.

2006—Pub. L. 109–364, div. B, title XXVIII, §§2822(d), 2823(b), 2825(d)(2)(B), 2851(c)(3), Oct. 17, 2006, 120 Stat. 2475–2477, 2495, added item 2668a, substituted ''Real property: transfer between armed forces and screening requirements for other Federal use'' for ''Screening of real property for further Federal use before conveyance'' in item 2696, and struck out items 2669 ''Easements for rights-of-way: gas, water, sewer pipe lines'', 2689 ''Development of geothermal energy on military lands'', 2690 ''Fuel sources for heating systems; prohibition on converting certain heating facilities'', and 2693 ''Conveyance of certain property: Department of Justice correctional options program''.

Pub. L. 109–163, div. B, title XXVIII, §2821(g), Jan. 6, 2006, 119 Stat. 3513, added items 2663 and 2664 and struck out former item 2663 ''Acquisition'' and items 2672 ''Authority to acquire low-cost interests in land'', 2672a ''Acquisition: interests in land when need is urgent'', and 2676 ''Acquisition: limitation''.

2004—Pub. L. 108–375, div. B, title XXVIII, §2821(e)(3), Oct. 28, 2004, 118 Stat. 2130, substituted ''Use of facilities by private organizations; use as polling places'' for ''Military installations: use by American National Red Cross; use as polling places'' in item 2670 and struck out items 2664 ''Acquisition of property for lumber production'', 2666 ''Acquisition: land purchase contracts; limitation on commission'', 2673 ''Acquisition of certain interests in land: availability of funds'', and 2679 ''Representatives of veterans' organizations: use of space and equipment''.

2003—Pub. L. 108–136, div. A, title III, §314(a)(2), div. B, title XXVIII, §2811(b)(3), Nov. 24, 2003, 117 Stat. 1431, 1725, substituted ''Authority to acquire low-cost interests in land'' for ''Acquisition: interests in land when cost is not more than $500,000'' in item 2672 and added item 2694b.

2002—Pub. L. 107–314, div. B, title XXVIII, §§2811(b), 2812(a)(2), Dec. 2, 2002, 116 Stat. 2707, 2709, added items 2684a and 2694a.

2001—Pub. L. 107–107, div. A, title X, §1048(a)(26)(B)(ii), title XVI, §1607(b)(3), Dec. 28, 2001, 115 Stat. 1225, 1280, substituted ''Military installations: use by American National Red Cross; use as polling places'' for ''Licenses: military installations; erection and use of buildings; American National Red Cross'' in item 2670 and ''Conveyance of certain property: Department of Justice correctional options program'' for ''Conveyance of certain property'' in item 2693.

1998—Pub. L. 105–261, div. B, title XXVIII, §2812(b)(2), Oct. 17, 1998, 112 Stat. 2206, struck out ''from other agencies'' after ''lease'' in item 2691.

1997—Pub. L. 105–85, div. A, title III, §§343(g)(3), 371(c)(2), title X, §§1061(c)(2), 1062(b), div. B, title XXVIII, §§2811(b)(2), 2812(b), 2813(b), 2814(a)(2), Nov. 18, 1997, 111 Stat. 1688, 1705, 1891, 1892, 1992–1995, inserted ''of military departments'' after ''property'' in item 2667, added item 2667a, substituted ''$500,000'' for ''$200,000'' in item 2672, added items 2686 and 2688, substituted ''Storage, treatment, and'' for ''Storage and'' in item 2692, and added items 2695 and 2696.

1996—Pub. L. 104–201, div. A, title III, §§332(a)(2), 369(b)(2), div. B, title XXVIII, §2862(b), Sept. 23, 1996, 110 Stat. 2485, 2498, 2805, substituted ''of Pentagon Reservation and defense facilities in National Capital Region'' for ''of the Pentagon Reservation'' in item 2674 and added items 2684 and 2694.

1993—Pub. L. 103–160, div. A, title VIII, §846(b), Nov. 30, 1993, 107 Stat. 1723, added item 2681.

1992—Pub. L. 102–496, title IV, §403(a)(2)(B), Oct. 24, 1992, 106 Stat. 3185, substituted ''reports to congressional committees'' for ''Reports to the Armed Services Committees'' in item 2662.

1991—Pub. L. 102–190, div. B, title XXVIII, §2863(a)(2), Dec. 5, 1991, 105 Stat. 1560, added item 2680.

1990—Pub. L. 101–647, title XVIII, §1802(b), Nov. 29, 1990, 104 Stat. 4850, added item 2693.

Pub. L. 101–510, div. A, title XIV, §1481(h)(2), div. B, title XXVIII, §2804(a)(2), Nov. 5, 1990, 104 Stat. 1708, 1785, added items 2674 and 2678.

1988—Pub. L. 100–370, §§1(*l*)(4), 2(b)(2), July 19, 1988, 102 Stat. 849, 854, added items 2661 and 2673 and struck out item 2693 ''Prohibition on contracts for performance of firefighting or security-guard functions''.

1987—Pub. L. 100–224, §5(b)(3), Dec. 30, 1987, 101 Stat. 1538, inserted ''; prohibition on converting certain heating facilities'' after ''systems'' in item 2690.

Pub. L. 100–180, div. A, title XI, §1112(b)(3), Dec. 4, 1987, 101 Stat. 1147, inserted ''or security-guard'' before ''functions'' in item 2693.

1986—Pub. L. 99–661, div. A, title XII, §§1205(a)(2), 1222(a)(2), Nov. 14, 1986, 100 Stat. 3972, 3976, substituted ''Fuel sources for heating systems'' for ''Restriction on fuel sources for new heating systems'' in item 2690 and added item 2693.

Pub. L. 98–115, title VIII, §807(c)(2), Oct. 11, 1983, 97 Stat. 789; Pub. L. 99–167, title VIII, §806(a), Dec. 3, 1985, 99 Stat. 988, struck out item 2667a ''Sale and replacement of nonexcess real property'', eff. Oct. 1, 1986.

1985—Pub. L. 99–167, title VIII, §810(b)(2), Dec. 3, 1985, 99 Stat. 990, substituted ''$200,000'' for ''$100,000'' in item 2672.

Pub. L. 99–145, title XII, §1224(c)(2), Nov. 8, 1985, 99 Stat. 729, inserted ''; minimum drinking age on military installations'' in item 2683.

1984—Pub. L. 98–407, title VIII, §§804(b), 805(b), Aug. 28, 1984, 98 Stat. 1519, 1521, added items 2691 and 2692.

1983—Pub. L. 98–115, title VIII, §807(a)(2), Oct. 11, 1983, 97 Stat. 788, added item 2667a.

1982—Pub. L. 97–321, title VIII, §805(b)(4), Oct. 15, 1982, 96 Stat. 1573, substituted in item 2689 ''Development of geothermal energy on military lands'' for ''Development of sources of energy on or for military installations''.

Pub. L. 97–295, §1(31)(B), Oct. 12, 1982, 96 Stat. 1296, struck out item 2661a ''Appropriations for advance planning of military public works''.

Pub. L. 97–258, §2(b)(6)(A), Sept. 13, 1982, 96 Stat. 1053, added item 2661a.

Pub. L. 97–214, §§6(c)(2), 10(a)(4), (5)(C), July 12, 1982, 96 Stat. 173, 175, struck out items 2661 ''Planning and construction of public works projects by military departments'', 2673 ''Restoration or replacement of facilities damaged or destroyed'', 2674 ''Minor construction projects'', 2678 ''Acquisition of mortgaged housing units'', 2681 ''Construction or acquisition of family housing and community facilities in foreign coun-

tries'', 2684 ''Construction of family quarters; limitations on space'', 2686 ''Leases: military family housing'', and 2688 ''Use of solar energy systems in new facilities'', substituted ''Options: property required for military construction projects'' for ''Options: property required for public works projects of military departments'' in item 2677, and added items 2689 and 2690.

1980—Pub. L. 96–513, title V, § 511(89), Dec. 12, 1980, 94 Stat. 2928, struck out item 2680 ''Reimbursement of owners of property acquired for public works projects for moving expenses''.

Pub. L. 96–418, title VIII, § 806(b), Oct. 10, 1980, 94 Stat. 1777, as amended by Pub. L. 97–22, § 11(c), July 10, 1981, 95 Stat. 138, substituted ''$100,000'' for ''$50,000'' in item 2762.

1979—Pub. L. 96–125, title VIII, § 804(a)(2), Nov. 26, 1979, 93 Stat. 948, added item 2688.

1977—Pub. L. 95–82, title V, § 504(a)(2), title VI, §§ 608(b), 612(b), Aug. 1, 1977, 91 Stat. 371, 378, 380, substituted ''Minor construction projects'' for ''Establishment and development of military facilities and installations costing less than $400,000'' in item 2674 and added items 2686 and 2687.

1975—Pub. L. 94–107, title VI, § 607(1), (9), (10), Oct. 7, 1975, 89 Stat. 566, 567, substituted ''$400,000'' for ''$300,000'' in item 2674, struck out ''; structures not on a military base'' in item 2675, and added item 2672a.

1974—Pub. L. 93–552, title VI, § 611, Dec. 27, 1974, 88 Stat. 1765, added item 2685.

1973—Pub. L. 93–166, title V, § 509(b), Nov. 29, 1973, 87 Stat. 677, added item 2684.

1971—Pub. L. 92–145, title VII, § 707(2), Oct. 27, 1971, 85 Stat. 411, substituted ''$50,000'' for ''$25,000'' in item 2672.

1970—Pub. L. 91–511, title VI, §§ 607(1), 613(2), Oct. 26, 1970, 84 Stat. 1223, 1226, substituted ''$300,000'' for ''$200,000'' in item 2674, and added item 2683.

1963—Pub. L. 88–174, title VI, § 609(a)(2), Nov. 7, 1963, 77 Stat. 329, added item 2682.

1962—Pub. L. 87–651, title I, § 112(d), title II, § 209(b), Sept. 7, 1962, 76 Stat. 512, 524, substituted ''$25,000'' for ''$5,000'' in item 2672 and added items 2679 to 2681.

1960—Pub. L. 86–500, title V, § 511(2), June 8, 1960, 74 Stat. 187, substituted ''Reports to the Armed Services Committees'' for ''Agreement with Armed Services Committees; reports'' in item 2662.

1958—Pub. L. 85–861, § 1(52), Sept. 2, 1958, 72 Stat. 1461, added items 2672 to 2678.

Pub. L. 85–337, § 4(2), Feb. 28, 1958, 72 Stat. 29, added item 2671.

Prizes for Development of Non-PFAS-Containing Fire-Fighting Agent

Pub. L. 116–283, div. A, title III, § 330, Jan. 1, 2021, 134 Stat. 3528, provided that:

''(a) Authority.—The Secretary of Defense, acting through the Assistant Secretary of Defense for Sustainment and the Strategic Environmental Research and Development Program, may carry out a program to award cash prizes and other types of prizes that the Secretary determines are appropriate to recognize outstanding achievements in the development of a non-PFAS-containing fire-fighting agent to replace aqueous film-forming foam with the potential for application to the performance of the military missions of the Department of Defense.

''(b) Competition Requirements.—A program under subsection (a) shall use a competitive process for the selection of recipients of cash prizes. The process shall include the widely-advertised solicitation of submissions of research results, technology developments, and prototypes.

''(c) Limitations.—The following limitations shall apply to a program under subsection (a):

''(1) No prize competition may result in the award of a prize with a fair market value of more than $5,000,000.

''(2) No prize competition may result in the award of more than $1,000,000 in cash prizes without the approval of the Assistant Secretary of Defense for Sustainment.

''(3) No prize competition may result in the award of a solely nonmonetary prize with a fair market value of more than $10,000 without the approval of the Assistant Secretary of Defense for Sustainment.

''(d) Relationship to Other Authority.—A program under subsection (a) may be carried out in conjunction with or in addition to the exercise of any other authority of the Department of Defense.

''(e) Use of Prize Authority.—Use of prize authority under this section shall be considered the use of competitive procedures for the purposes of section 2304 of title 10, United States Code.

''(f) PFAS Defined.—In this section, the term 'PFAS' means—

''(1) man-made chemicals of which all of the carbon atoms are fully fluorinated carbon atoms; and

''(2) man-made chemicals containing a mix of fully fluorinated carbon atoms, partially fluorinated carbon atoms, and nonfluorinated carbon atoms.

''(g) Termination.—The authority to carry out a program under this section shall terminate on October 1, 2024.''

Research and Development of Alternative to Aqueous Film-Forming Foam

Pub. L. 116–283, div. A, title III, § 334, Jan. 1, 2021, 134 Stat. 3531, provided that:

''(a) In General.—The Secretary of Defense, acting through the National Institute of Standards and Technology and in consultation with appropriate stakeholders and manufactures, research institutions, and other Federal agencies shall award grants and carry out other activities to—

''(1) promote and advance the research and development of additional alternatives to aqueous film-forming foam (in this section referred to as 'AFFF') containing per- and polyfluoroalkyl substances (in this section referred to as 'PFAS') to facilitate the development of a military specification and subsequent fielding of a PFAS-free fire-fighting foam;

''(2) advance the use of green and sustainable chemistry for a fluorine-free alternative to AFFF;

''(3) increase opportunities for sharing best practices within the research and development sector with respect to AFFF;

''(4) assist in the testing of potential alternatives to AFFF; and

''(5) provide guidelines on priorities with respect to an alternative to AFFF.

''(b) Additional Requirements.—In carrying out the program required under subsection (a), the Secretary shall—

''(1) take into consideration the different uses of AFFF and the priorities of the Department of Defense in finding an alternative;

''(2) prioritize green and sustainable chemicals that do not pose a threat to public health or the environment; and

''(3) use and leverage research from existing Department of Defense programs.

''(c) Report.—The Secretary shall submit to Congress a report on—

''(1) the priorities and actions taken with respect to finding an alternative to AFFF and the implementation of such priorities; and

''(2) any alternatives the Secretary has denied, and the reason for any such denial.

''(d) Use of Funds.—This section shall be carried out using amounts authorized to be available for the Strategic Environmental Research and Development Program.''

Replacement of Fluorinated Aqueous Film-Forming Foam

Pub. L. 116–92, div. A, title III, §§ 322–324, Dec. 20, 2019, 133 Stat. 1307–1310, provided that:

''SEC. 322. REPLACEMENT OF FLUORINATED AQUEOUS FILM-FORMING FOAM WITH FLUORINE-FREE FIRE-FIGHTING AGENT.

''(a) Use of Fluorine-free Foam at Military Installations.—

''(1) MILITARY SPECIFICATION.—Not later than January 31, 2023, the Secretary of the Navy shall publish a military specification for a fluorine-free fire-fighting agent for use at all military installations and ensure that such agent is available for use by not later than October 1, 2023.

''(2) REPORT TO CONGRESS.—Concurrent with publication of the military specification under paragraph (1), the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report containing a detailed plan for implementing the transition to a fluorine-free fire-fighting agent by not later than October 1, 2023. The report shall include—

''(A) a detailed description of the progress of the Department of Defense to identify a fluorine-free fire-fighting agent for use as a replacement fire-fighting agent at military installations;

''(B) a description of any technology and equipment required to implement the replacement fire-fighting agent;

''(C) funding requirements, by fiscal year, to implement the replacement fire-fighting agent, including funding for the procurement of a replacement fire-fighting agent, required equipment, and infrastructure improvements;

''(D) a detailed timeline of remaining required actions to implement such replacement.

''(b) LIMITATION.—No amount authorized to be appropriated or otherwise made available for the Department of Defense may be obligated or expended after October 1, 2023, to procure fire-fighting foam that contains in excess of one part per billion of perfluoroalkyl substances and polyfluoroalkyl substances.

''(c) PROHIBITION ON USE.—Fluorinated aqueous film-forming foam may not be used at any military installation on or after the earlier of the following dates:

''(1) October 1, 2024.

''(2) The date on which the Secretary determines that compliance with the prohibition under this subsection is possible.

''(d) EXEMPTION FOR SHIPBOARD USE.—Subsections (b) and (c) shall not apply to firefighting foam for use solely onboard ocean-going vessels.

''(e) WAIVER.—

''(1) IN GENERAL.—Subject to the limitations under paragraph (2), the Secretary of Defense may waive the prohibition under subsection (c) with respect to the use of fluorinated aqueous film-forming foam, if, by not later than 60 days prior to issuing the waiver, the Secretary—

''(A) provides to the congressional defense committees a briefing on the basis for the waiver and the progress to develop and field a fluorine-free fire-fighting agent that meets the military specifications issued pursuant to subsection (a), which includes—

''(i) detailed data on the progress made to identify a replacement fluorine-free fire-fighting agent;

''(ii) a description of the range of technology and equipment-based solutions analyzed to implement replacement;

''(iii) a description of the funding, by fiscal year, applied towards research, development, test, and evaluation of replacement firefighting agents and equipment-based solutions;

''(iv) a description of any completed and projected infrastructure changes;

''(v) a description of acquisition actions made in support of developing and fielding the fluorine-free fire-fighting agent;

''(vi) an updated timeline for the completion of the transition to use of the fluorine-free fire-fighting agent; and

''(vii) a list of the categories of installation infrastructure or specific mobile firefighting equipment sets that require the waiver along with the justification;

''(B) submits to the congressional defense committees certification in writing, that—

''(i) the waiver is necessary for either installation infrastructure, mobile firefighting equipment, or both;

''(ii) the waiver is necessary for the protection of life and safety;

''(iii) no agent or equipment solutions are available that meet the military specific issued pursuant to subsection (a);

''(iv) the military specification issued pursuant to subsection (a) is still valid and does not require revision; and

''(v) includes details of the measures in place to minimize the release of and exposure to fluorinated compounds in fluorinated aqueous film-forming foam; and

''(C) provides for public notice of the waiver.

''(2) LIMITATION.—The following limitations apply to a waiver issued under this subsection:

''(A) Such a waiver shall apply for a period that does not exceed one year.

''(B) The Secretary may extend such a waiver once for an additional period that does not exceed one year, if the requirements under paragraph (1) are met as of the date of the extension of the waiver.

''(C) The authority to grant a waiver under this subsection may not be delegated below the level of the Secretary of Defense.

''(f) DEFINITIONS.—In this section:

''(1) The term 'perfluoroalkyl substances' means aliphatic substances for which all of the H atoms attached to C atoms in the nonfluorinated substance from which they are notionally derived have been replaced by F atoms, except those H atoms whose substitution would modify the nature of any functional groups present.

''(2) The term 'polyfluoroalkyl substances'means aliphatic substances for which all H atoms attached to at least one (but not all) C atoms have been replaced by F atoms, in such a manner that they contain the perfluoroalkyl moiety CnF2n+1__ (for example, C8F17CH2CH2OH).

''SEC. 323. PROHIBITION OF UNCONTROLLED RELEASE OF FLUORINATED AQUEOUS FILM-FORMING FOAM AT MILITARY INSTALLATIONS.

''(a) PROHIBITION.—Except as provided by subsection (b), the Secretary of Defense shall prohibit the uncontrolled release of fluorinated aqueous film-forming foam (hereinafter in this section referred to as 'AFFF') at military installations.

''(b) EXCEPTIONS.—Notwithstanding subsection (a), fluorinated AFFF may be released at military installations as follows:

''(1) AFFF may be released for purposes of an emergency response.

''(2) A non-emergency release of AFFF may be made for the purposes of testing of equipment or training of personnel, if complete containment, capture, and proper disposal mechanisms are in place to ensure no AFFF is released into the environment.

''SEC. 324. PROHIBITION ON USE OF FLUORINATED AQUEOUS FILM FORMING FOAM FOR TRAINING EXERCISES.

''The Secretary of Defense shall prohibit the use of fluorinated aqueous film forming foam for training exercises at military installations.''

§ 2661. Miscellaneous administrative provisions relating to real property

(a) AVAILABILITY OF OPERATION AND MAINTENANCE FUNDS.—Appropriations for operation and maintenance of the active forces shall be available for the following:

(1) The repair of facilities.

(2) The installation of equipment in public and private plants.

(b) LEASING AND ROAD MAINTENANCE AUTHORITY.—The Secretary of Defense and the Secretary of each military department may provide for the following:

(1) The leasing of buildings and facilities (including the payment of rentals for special purpose space at the seat of Government). Rental for such leases may be paid in advance in connection with—

(A) the conduct of field exercises and maneuvers; and

(B) the administration of the Act of July 9, 1942 (43 U.S.C. 315q).

(2) The maintenance of defense access roads which are certified to the Secretary of Transportation as important to the national defense under the provisions of section 210 of title 23.

(c) PROHIBITION ON NAMING DEPARTMENT OF DEFENSE REAL PROPERTY AFTER MEMBER OF CONGRESS.—(1) Real property under the jurisdiction of the Secretary of Defense or the Secretary of a military department may not be named after, or otherwise officially identified by the name of, any individual who is a Member of Congress at the time the property is so named or identified.

(2) In this subsection:

(A) The term ''Member of Congress'' includes a Delegate or Resident Commissioner to the Congress.

(B) The term ''real property'' includes structures, buildings, or other infrastructure of a military installation, roadways and defense access roads, and any other area on the grounds of a military installation.

(d) TREATMENT OF PENTAGON RESERVATION.—In this chapter, the terms ''Secretary concerned'' and ''Secretary of a military department'' include the Secretary of Defense with respect to the Pentagon Reservation.

(Added Pub. L. 100–370, § 1(*l*)(3), July 19, 1988, 102 Stat. 849; amended Pub. L. 108–375, div. B, title XXVIII, § 2821(a)(1), (e)(1), Oct. 28, 2004, 118 Stat. 2129, 2130; Pub. L. 109–163, div. B, title XXVIII, § 2821(d), (e), Jan. 6, 2006, 119 Stat. 3512; Pub. L. 112–81, div. B, title XXVIII, § 2863(a), Dec. 31, 2011, 125 Stat. 1701.)

HISTORICAL AND REVISION NOTES

Subsection (a) of this section and sections 2241(a) and 2253(b) of this title are based on Pub. L. 98–212, title VII, § 735, Dec. 8, 1983, 97 Stat. 1444, as amended by Pub. L. 98–525, title XIV, §§ 1403(a)(2), 1404, Oct. 19, 1984, 98 Stat. 2621.

Subsection (b) is based on Pub. L. 99–190, § 101(b) [title VIII, § 8005(d), (f)], Dec. 19, 1985, 99 Stat. 1185, 1202.

PRIOR PROVISIONS

A prior section 2661, act Aug. 10, 1956, ch. 1041, 70A Stat. 147, related to planning and construction of public works projects by military departments, prior to repeal by Pub. L. 97–214, § 7(1), July 12, 1982, 96 Stat. 173, eff. Oct. 1, 1982, and applicable to military construction projects, and to construction and acquisition of military family housing authorized before, on, or after such date.

AMENDMENTS

2011—Subsec. (c). Pub. L. 112–81 added subsec. (c).

2006—Subsec. (c). Pub. L. 109–163, § 2821(d), redesignated subsec. (c) as section 2664(b) of this title.

Subsec. (d). Pub. L. 109–163, § 2821(e), added subsec. (d).

2004—Subsecs. (a), (b). Pub. L. 108–375, § 2821(e)(1), inserted headings.

Subsec. (c). Pub. L. 108–375, § 2821(a)(1), added subsec. (c).

EFFECTIVE DATE OF 2011 AMENDMENT

Pub. L. 112–81, div. B, title XXVIII, § 2863(b), Dec. 31, 2011, 125 Stat. 1702, provided that: ''The prohibition in subsection (c) of section 2661 of title 10, United States Code, as added by subsection (a), shall apply only with respect to real property of the Department of Defense named after the date of the enactment of this Act [Dec. 31, 2011].''

DEPARTMENT OF DEFENSE POLICY ON LEAD-BASED PAINT TESTING ON MILITARY INSTALLATIONS

Pub. L. 116–92, div. B, title XXX, § 3054, Dec. 20, 2019, 133 Stat. 1943, provided that:

''(a) ACCESS AND TESTING POLICY.—Not later than February 1, 2020, the Secretary of Defense shall establish a policy under which the Secretary of the military department concerned may permit a qualified individual to access a military installation for the purpose of conducting testing for the presence of lead-based paint on the installation.

''(b) TRANSMISSION OF RESULTS.—

''(1) INSTALLATIONS INSIDE THE UNITED STATES.—In the case of military installations located inside the United States, the results of any testing for lead-based paint on a military installation shall be transmitted the following:

''(A) The civil engineer of the installation.

''(B) The housing management office of the installation.

''(C) The public health organization on the installation.

''(D) The major subordinate command of the Armed Force with jurisdiction over the installation.

''(E) If required by law, any relevant Federal, State, and local agencies.

''(2) INSTALLATIONS OUTSIDE THE UNITED STATES.—In the case of military installations located outside the United States, the results of any testing for lead-based paint on a military installation shall be transmitted to the civil engineer or commander of the installation who shall transmit those results to the major subordinate command of the Armed Force with jurisdiction over the installation.

''(c) DEFINITIONS.—In this section:

''(1) The term 'United States' has the meaning given that term in section 101(a)(1) of title 10, United States Code.

''(2) The term 'qualified individual' means an individual who is certified by the Environmental Protection Agency or by a State as—

''(A) a lead-based paint inspector; or

''(B) a lead-based paint risk assessor.''

PRIORITIZATION OF ENVIRONMENTAL IMPACTS FOR FACILITIES SUSTAINMENT, RESTORATION, AND MODERNIZATION DEMOLITION

Pub. L. 115–232, div. A, title III, § 359, Aug. 13, 2018, 132 Stat. 1733, provided that: ''The Secretary of Defense shall establish prioritization metrics for facilities deemed eligible for demolition within the Facilities Sustainment, Restoration, and Modernization (FSRM) process. Those metrics shall include full spectrum readiness and environmental impacts, including the removal of contamination.''

INCREASED PERCENTAGE OF SUSTAINMENT FUNDS AUTHORIZED FOR REALIGNMENT TO RESTORATION AND MODERNIZATION AT EACH INSTALLATION

Pub. L. 115–91, div. A, title III, § 322, Dec. 12, 2017, 131 Stat. 1353, provided that:

''(a) IN GENERAL.—The Secretary of Defense may authorize an installation commander to realign up to 7.5

percent of an installation's sustainment funds to restoration and modernization.

''(b) SUNSET.—The authority under subsection (a) shall expire at the close of September 30, 2022.

''(c) DEFINITIONS.—The terms 'sustainment', 'restoration', and 'modernization' have the meanings given the terms in the Department of Defense Financial Management Regulation.''

DISCLOSURE OF BENEFICIAL OWNERSHIP BY FOREIGN PERSONS OF HIGH SECURITY SPACE LEASED BY THE DEPARTMENT OF DEFENSE

Pub. L. 115–91, div. B, title XXVIII, §2876, Dec. 12, 2017, 131 Stat. 1871, as amended by Pub. L. 115–232, div. A, title X, §1081(c)(7), Aug. 13, 2018, 132 Stat. 1985, provided that:

''(a) IDENTIFICATION OF BENEFICIAL OWNERSHIP.—Before entering into a lease agreement with a covered entity for accommodation of a military department or Defense Agency in a building (or other improvement) that will be used for high-security leased space, the Department of Defense shall require the covered entity to—

''(1) identify each beneficial owner of the covered entity by—

''(A) name;

''(B) current residential or business street address; and

''(C) in the case of a United States person, a unique identifying number from a nonexpired passport issued by the United States or a nonexpired drivers license issued by a State; and

''(2) disclose to the Department of Defense any beneficial owner of the covered entity that is a foreign person.

''(b) REQUIRED DISCLOSURE.—

''(1) INITIAL DISCLOSURE.—The Secretary of Defense shall require a covered entity to provide the information required under subsection (a), when first submitting a proposal in response to a solicitation for offers issued by the Department.

''(2) UPDATES.—The Secretary of Defense shall require a covered entity to update a submission of information required under subsection (a) not later than 60 days after the date of any change in—

''(A) the list of beneficial owners of the covered entity; or

''(B) the information required to be provided relating to each such beneficial owner.

''(c) PRECAUTIONS.—If a covered entity discloses a foreign person as a beneficial owner of a building (or other improvement) from which the Department of Defense is leasing high-security leased space, the Department of Defense shall notify the tenant of the space to take appropriate security precautions.

''(d) DEFINITIONS.—IN THIS SECTION:

''(1) BENEFICIAL OWNER.—

''(A) IN GENERAL.—The term 'beneficial owner'—

''(i) means, with respect to a covered entity, each natural person who, directly or indirectly—

''(I) exercises control over the covered entity through ownership interests, voting rights, agreements, or otherwise; or

''(II) has an interest in or receives substantial economic benefits from the assets of the covered entity; and

''(ii) does not include, with respect to a covered entity—

''(I) a minor child;

''(II) a person acting as a nominee, intermediary, custodian, or agent on behalf of another person;

''(III) a person acting solely as an employee of the covered entity and whose control over or economic benefits from the covered entity derives solely from the employment status of the person;

''(IV) a person whose only interest in the covered entity is through a right of inheritance, unless the person otherwise meets the definition of 'beneficial owner' under this paragraph; and

''(V) a creditor of the covered entity, unless the creditor otherwise meets the requirements of 'beneficial owner' described above.

''(B) ANTI-ABUSE RULE.—The exceptions under subparagraph (A)(ii) shall not apply if used for the purpose of evading, circumventing, or abusing the requirements of this section.

''(2) COVERED ENTITY.—The term 'covered entity' means a person, copartnership, corporation, or other public or private entity.

''(3) FOREIGN PERSON.—The term 'foreign person' means an individual who is not a United States person or an alien lawfully admitted for permanent residence into the United States.

''(4) HIGH-SECURITY LEASED SPACE.—The term 'high-security leased space' means a space leased by the Department of Defense that has a security level of III, IV, or V, as determined in accordance with the Interagency Security Committee Risk Management Process.

''(5) UNITED STATES PERSON.—The term 'United States person' means a natural person who is a citizen of the United States or who owes permanent allegiance to the United States.''

[Pub. L. 115–232, div. A, title X, §1081(c), Aug. 13, 2018, 132 Stat. 1985, provided that the amendment made by section 1081(c)(7) to section 2876 of Pub. L. 115–91, set out above, is effective as of Dec. 12, 2017, and as if included in Pub. L. 115–91 as enacted.]

PILOT PROGRAM TO PROVIDE ADDITIONAL TOOLS FOR EFFICIENT OPERATION OF MILITARY INSTALLATIONS

Pub. L. 107–107, div. B, title XXVIII, §2813, Dec. 28, 2001, 115 Stat. 1308, authorized the Secretary of Defense, until Dec. 31, 2005, to carry out a pilot program, known as the ''Pilot Efficient Facilities Initiative'', for purposes of determining the potential for increasing the efficiency and effectiveness of the operation of military installations.

STUDY OF ESTABLISHMENT OF LAND MANAGEMENT AND TRAINING CENTER

Pub. L. 103–337, div. A, title III, §329, Oct. 5, 1994, 108 Stat. 2715, directed Secretary of the Army to submit to Congress not later than May 1, 1996, a study and report on feasibility and advisability of establishing a center for land management activities and land management training activities of Department of Defense.

[§ 2661a. Repealed. Pub. L. 97–295, § 1(31)(A), Oct. 12, 1982, 96 Stat. 1296]

Section, added Pub. L. 97–258, §2(b)(6)(B), Sept. 13, 1982, 96 Stat. 1054, authorized appropriations for advance design of military public works not otherwise authorized and for construction management of foreign government funded projects used primarily by United States armed forces, and required preliminary reports to Congress on military public works whose projected advance costs exceeded a specified level.

The repeal of this section by Pub. L. 97–295 reflected the effect of section 7(2) and (8) of the Military Construction Codification Act (Pub. L. 97–214, July 12, 1982, 96 Stat. 173), which repealed the source statutes of this section (subsec. (a) was based on acts Sept. 28, 1951, ch. 434, §504, 65 Stat. 364; July 15, 1955, ch. 368, §512, 69 Stat. 352; Dec. 23, 1981, Pub. L. 97–99, §902, 95 Stat. 1381 (31 U.S.C. 723); and subsec. (b) was based on acts Sept. 12, 1966, Pub. L. 89–568, §612, 80 Stat. 756; Dec. 27, 1974, Pub. L. 93–552, §607, 88 Stat. 1763 (31 U.S.C. 723a)) subsequent to Apr. 15, 1982, the cut-off date prescribed by section 4(a) of Pub. L. 97–258, section 2(b)(6)(B) of which enacted this section.

§ 2662. Real property transactions: reports to congressional committees

(a) GENERAL NOTICE AND WAIT REQUIREMENTS.—(1) The Secretary of a military depart-

ment or, with respect to a Defense Agency, the Secretary of Defense may not enter into any of the following listed transactions by or for the use of that department until the Secretary concerned submits a report, subject to paragraph (3), to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives:

(A) An acquisition of fee title to any real property, if the estimated price is more than $750,000.

(B) A lease of any real property to the United States, if the estimated annual rental is more than $750,000.

(C) A lease, license, or easement of real property owned by the United States (other than a lease or license entered into under section 2667(g) of this title), if the estimated annual fair market rental value of the property is more than $750,000.

(D) A transfer of real property owned by the United States to another Federal agency or another military department or to a State, if the estimated value is more than $750,000.

(E) A report of excess real property owned by the United States to a disposal agency, if the estimated value is more than $750,000.

(F) Any termination or modification by either the grantor or grantee of an existing license or permit of real property owned by the United States to a military department, under which substantial investments have been or are proposed to be made in connection with the use of the property by the military department.

(G) Any transaction or contract action that results in, or includes, the acquisition or use by, or the lease or license to, the United States of real property, if the estimated annual rental or cost for the use of the real property is more than $750,000.

(H) Any transaction or contract action for the provision and operation of energy production facilities on real property under the jurisdiction of the Secretary of a military department, as authorized by section 2922a(a)(2) of this title, if the term of the transaction or contract exceeds 20 years.

(2) If a transaction covered by subparagraph (A) or (B) of paragraph (1) is part of a project, the report shall include a summary of the general plan for that project, including an estimate of the total cost of the lands to be acquired or leases to be made, as well as the certification described in paragraph (5). The report required by this subsection concerning any report of excess real property described in subparagraph (E) of paragraph (1) shall contain a certification by the Secretary concerned that he has considered the feasibility of exchanging such property for other real property authorized to be acquired for military purposes and has determined that the property proposed to be declared excess is not suitable for such purpose.

(3) The authority of the Secretary concerned to enter into a transaction described in paragraph (1) commences only after the end of the 14-day period beginning on the first day of the first month beginning on or after the date on which the report containing the facts concerning such transaction, and all other such proposed transactions for that month, is provided in an electronic medium pursuant to section 480 of this title.

(4) The report for a month under this subsection may not be submitted later than the first day of that month.

(5) For purposes of paragraph (2), the certification described in this paragraph with respect to an acquisition or lease of real property is a certification that the Secretary concerned—

(A) evaluated the feasibility of using space in property under the jurisdiction of the Department of Defense to satisfy the purposes of the acquisition or lease; and

(B) determined that—

(i) space in property under the jurisdiction of the Department of Defense is not reasonably available to be used to satisfy the purposes of the acquisition or lease;

(ii) acquiring the property or entering into the lease would be more cost-effective than the use of the Department of Defense property; or

(iii) the use of the Department of Defense property would interfere with the ongoing military mission of the property.

(b) Additional Reporting Requirements Regarding Leases of Real Property Owned by the United States.—(1) In the case of a proposed lease, license, or easement of real property owned by the United States covered by paragraph (1)(C) of subsection (a), the Secretary concerned shall comply with the notice-and-wait requirements of paragraph (3) of such subsection before—

(A) issuing a contract solicitation or other lease offering with regard to the transaction; and

(B) providing public notice regarding any meeting to discuss a proposed contract solicitation with regard to the transaction.

(2) The report under paragraph (3) of subsection (a) shall include the following with regard to a proposed transaction covered by paragraph (1)(C) of such subsection:

(A) A description of the proposed transaction, including the proposed duration of the lease, license, or easement.

(B) A description of the authorities to be used in entering into the transaction.

(C) A statement of the scored cost of the entire transaction, determined using the scoring criteria of the Office of Management and Budget.

(D) A determination that the property involved in the transaction is not excess property, as required by section 2667(a)(3) of this title, including the basis for the determination.

(E) A determination that the proposed transaction is directly compatible with the mission of the military installation or Defense Agency at which the property is located and a description of the anticipated long-term use of the property at the conclusion of the lease or license.

(F) A description of the requirements or conditions within the contract solicitation or other lease offering for the person making the offer to address taxation issues, including pay-

ments-in-lieu-of taxes, and other development issues related to local municipalities.

(G) If the proposed lease involves a project related to energy production, a certification by the Secretary of Defense that the project, as it will be specified in the contract solicitation or other lease offering, is consistent with the Department of Defense performance goals and plan required by section 2911 of this title.

(3) The Secretary concerned may not enter into the actual lease or license with respect to property for which the information required by paragraph (2) was submitted in a report under subsection (a)(3) unless the Secretary again complies with the notice-and-wait requirements of such subsection. The subsequent report shall include the following with regard to the proposed transaction:

(A) A cross reference to the prior report that contained the information submitted under paragraph (2) with respect to the transaction.

(B) A description of the differences between the information submitted under paragraph (2) and the information regarding the transaction being submitted in the subsequent report.

(C) A description of the payment to be required in connection with the lease, license, or easement, including a description of any in-kind consideration that will be accepted.

(D) A description of any community support facility or provision of community support services under the lease, license, or easement, regardless of whether the facility will be operated by a covered entity (as defined in section 2667(d) of this title) or the lessee or the services will be provided by a covered entity or the lessee.

(E) A description of the competitive procedures used to select the lessee or, in the case of a lease involving the public benefit exception authorized by section 2667(h)(2) of this title, a description of the public benefit to be served by the lease.

(c) EXCEPTED PROJECTS.—This section does not apply to real property for water resource development projects of the Corps of Engineers, or to leases of Government-owned real property for agricultural or grazing purposes or to any real property acquisition specifically authorized in a Military Construction Authorization Act.

(d) STATEMENTS OF COMPLIANCE IN TRANSACTION INSTRUMENTS.—A statement in an instrument of conveyance, including a lease, that the requirements of this section have been met, or that the conveyance is not subject to this section, is conclusive.

(e) REPORTS ON TRANSACTIONS INVOLVING INTELLIGENCE COMPONENTS.—Whenever a transaction covered by this section is made by or on behalf of an intelligence component of the Department of Defense or involves real property used by such a component, any report under this section with respect to the transaction that is submitted to the congressional committees named in subsection (a) shall be submitted concurrently to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate.

(f) EXCEPTIONS FOR TRANSACTIONS FOR WAR AND CERTAIN EMERGENCY AND OTHER OPERATIONS.—(1) The reporting requirement set forth in subsection (a) shall not apply with respect to a real property transaction otherwise covered by that subsection if the Secretary concerned determines that the transaction is made as a result of any of the following:

(A) A declaration of war.

(B) A declaration of a national emergency by the President pursuant to the National Emergencies Act (50 U.S.C. 1601 et seq.).

(C) A declaration of an emergency or major disaster pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.).

(D) The use of the militia or the armed forces after a proclamation to disperse under section 254 of this title.

(E) A contingency operation.

(2) The reporting requirement set forth in subsection (a) shall not apply with respect to a real property transaction otherwise covered by that subsection if the Secretary concerned determines that—

(A) an event listed in paragraph (1) is imminent; and

(B) the transaction is necessary for purposes of preparation for such event.

(3) Not later than 30 days after entering into a real property transaction covered by paragraph (1) or (2), the Secretary concerned shall submit to the committees named in subsection (a) a report on the transaction. The report shall set forth any facts or information which would otherwise have been submitted in a report on the transaction under subsection (a), but for the operation of paragraph (1) or (2).

(g) SECRETARY CONCERNED DEFINED.—In this section, the term ''Secretary concerned'' includes, with respect to Defense Agencies, the Secretary of Defense.

(Aug. 10, 1956, ch. 1041, 70A Stat. 147; Pub. L. 86–70, § 6(c), June 25, 1959, 73 Stat. 142; Pub. L. 86–500, title V, § 511(1), June 8, 1960, 74 Stat. 186; Pub. L. 86–624, § 4(c), July 12, 1960, 74 Stat. 411; Pub. L. 92–145, title VII, § 707(5), Oct. 27, 1971, 85 Stat. 412; Pub. L. 92–545, title VII, § 709, Oct. 25, 1972, 86 Stat. 1154; Pub. L. 93–552, title VI, § 610, Dec. 27, 1974, 88 Stat. 1765; Pub. L. 94–107, title VI, § 607(5), (6), Oct. 7, 1975, 89 Stat. 566; Pub. L. 94–431, title VI, § 614, Sept. 30, 1976, 90 Stat. 1367; Pub. L. 96–418, title VIII, § 805, Oct. 10, 1980, 94 Stat. 1777; Pub. L. 100–456, div. B, title XXVIII, § 2803, Sept. 29, 1988, 102 Stat. 2115; Pub. L. 101–510, div. A, title XIII, § 1311(6), Nov. 5, 1990, 104 Stat. 1670; Pub. L. 102–496, title IV, § 403(a)(1), (2)(A), Oct. 24, 1992, 106 Stat. 3185; Pub. L. 104–106, div. A, title XV, § 1502(a)(23), div. D, title XLIII, § 4321(b)(21), Feb. 10, 1996, 110 Stat. 505, 673; Pub. L. 105–261, div. B, title XXVIII, § 2811, Oct. 17, 1998, 112 Stat. 2204; Pub. L. 106–65, div. A, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 106–398, § 1 [div. B, title XXVIII, § 2811], Oct. 30, 2000, 114 Stat. 1654, 1654A–416; Pub. L. 108–136, div. A, title X, § 1031(a)(27), Nov. 24, 2003, 117 Stat. 1598; Pub. L. 108–375, div. A, title X, § 1084(d)(22), Oct. 28, 2004, 118 Stat. 2062; Pub. L. 110–181, div. B, title XXVIII, § 2821, Jan. 28, 2008, 122 Stat. 543; Pub. L. 110–417, div. B, title XXVIII, § 2811, Oct. 14, 2008, 122 Stat. 4725; Pub. L. 111–383, div. B, title XXVIII, § 2811(a)–(f), Jan.

7, 2011, 124 Stat. 4461, 4462; Pub. L. 112–81, div. B, title XXVIII, § 2812, Dec. 31, 2011, 125 Stat. 1686; Pub. L. 112–239, div. B, title XXVIII, § 2821, Jan. 2, 2013, 126 Stat. 2152; Pub. L. 115–91, div. A, title X, § 1081(a)(45), div. B, title XXVIII, §§ 2811(a), 2812, Dec. 12, 2017, 131 Stat. 1596, 1848, 1849.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2662(a)	40:551.	Sept. 28, 1951, ch. 434, §§ 601–604, 65 Stat. 365, 366.
2662(b)	40:552.	
2662(c)	40:553.	
2662(d)	40:554.	

In subsection (a), the words ''must come to an agreement * * * before entering into any of the following transactions by or for the use of that department:'' are substituted for the words ''shall come into agreement * * * with respect to those real-estate actions by or for the use of the military departments * * * that are described in subsection (a)–(e) of this section, and in the manner therein described''. The last sentence is substituted for the last sentence of 40:551(a) and 40:551(b).

In subsection (a)(4), the words ''or another military department'' are substituted for the words ''including transfers between the military departments''. The words ''under the jurisdiction of the military departments'' are omitted as surplusage.

In subsection (b), the words ''more than $5,000 but not more than $25,000'' are substituted for the words ''between $5,000 and $25,000''. The words ''shall report'' are substituted for the words ''will, in addition, furnish * * * reports''.

In subsection (c), the words ''the United States, Alaska, Hawaii'' are substituted for the words ''the continental United States, the Territory of Alaska, the Territory of Hawaii'', since, as defined in section 101(1) of this title, ''United States'' includes the States and the District of Columbia; and ''Territories'' includes Alaska and Hawaii.

In subsection (d), the words ''A statement * * * that the requirements of this section have been met'' are substituted for the words ''A recital of compliance with this chapter * * * to the effect that the requirements of this chapter have been complied with''. The words ''in the alternative'', ''or lease'', and ''evidence thereof'' are omitted as surplusage.

REFERENCES IN TEXT

The National Emergencies Act, referred to in subsec. (f)(1)(B), is Pub. L. 94–412, Sept. 14, 1976, 90 Stat. 1255, which is classified principally to chapter 34 (§ 1601 et seq.) of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 50 and Tables.

The Robert T. Stafford Disaster Relief and Emergency Assistance Act, referred to in subsec. (f)(1)(C), is Pub. L. 93–288, May 22, 1974, 88 Stat. 143, which is classified principally to chapter 68 (§ 5121 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of Title 42 and Tables.

AMENDMENTS

2017—Subsec. (a)(2). Pub. L. 115–91, § 2812(1), inserted '', as well as the certification described in paragraph (5)'' after ''leases to be made''.

Subsec. (a)(3). Pub. L. 115–91, § 2811(a), amended par. (3) generally. Prior to amendment, par. (3) required wait periods following submittal of reports before transactions could be authorized.

Subsec. (a)(5). Pub. L. 115–91, § 2812(2), added par. (5).

Subsec. (f)(1)(D). Pub. L. 115–91, § 1081(a)(45), substituted ''section 254'' for ''section 334''.

2013—Subsec. (a)(1)(H). Pub. L. 112–239 added subpar. (H).

2011—Subsec. (a)(1). Pub. L. 111–383, § 2811(f)(1)(A), substituted ''the Secretary concerned submits'' for ''the Secretary submits'' in introductory provisions.

Subsec. (a)(1)(C). Pub. L. 112–81, § 2812(1), substituted ''lease, license, or easement'' for ''lease or license''.

Pub. L. 111–383, § 2811(a), inserted ''(other than a lease or license entered into under section 2667(g) of this title)'' after ''United States''.

Subsec. (a)(3). Pub. L. 111–383, § 2811(f)(1)(B), substituted ''the Secretary concerned'' for ''the Secretary of a military department or the Secretary of Defense'' in introductory provisions.

Subsec. (b). Pub. L. 111–383, § 2811(b), (e), added subsec. (b) and struck out former subsec. (b). Prior to amendment, text read as follows: ''The Secretary of each military department and, with respect to Defense Agencies, the Secretary of Defense shall submit annually to the congressional committees named in subsection (a) a report on transactions described in subsection (a) that involve an estimated value of more than $250,000, but not more than $750,000.''

Subsec. (b)(1), (2)(A), (3)(C), (D). Pub. L. 112–81, § 2812(2), substituted ''lease, license, or easement'' for ''lease or license''.

Subsec. (c). Pub. L. 111–383, § 2811(c), substituted ''Excepted Projects'' for ''Geographic Scope; Excepted Projects'' in heading and ''This section does not'' for ''This section applies only to real property in the United States, Puerto Rico, Guam, the American Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands. It does not'' in text.

Subsecs. (e), (f). Pub. L. 111–383, § 2811(d), (f)(2), redesignated subsecs. (f) and (g) as (e) and (f), respectively, and struck out former subsec. (e). Prior to amendment, text read as follows: ''No element of the Department of Defense shall occupy any general purpose space leased for it by the General Services Administration at an annual rental in excess of $750,000 (excluding the cost of utilities and other operation and maintenance services), if the effect of such occupancy is to increase the total amount of such leased space occupied by all elements of the Department of Defense, until the end of the 30-day period beginning on the date on which a report of the facts concerning the proposed occupancy is submitted to the congressional committees named in subsection (a) or, if earlier, the end of the 14-day period beginning on the date on which a copy of the report is provided in an electronic medium pursuant to section 480 of this title.''

Subsec. (f)(1). Pub. L. 111–383, § 2811(f)(3)(A), struck out '', and the reporting requirement set forth in subsection (e) shall not apply with respect to a real property transaction otherwise covered by that subsection,'' before ''if the Secretary'' in introductory provisions.

Subsec. (f)(3). Pub. L. 111–383, § 2811(f)(3)(B), struck out ''or (e), as the case may be'' after ''under subsection (a)''.

Subsec. (f)(4). Pub. L. 111–383, § 2811(f)(3)(C), struck out par. (4), which read as follows: ''In this subsection, the term 'Secretary concerned' includes, with respect to Defense Agencies, the Secretary of Defense.''

Subsec. (g). Pub. L. 111–383, § 2811(f)(4), added subsec. (g). Former subsec. (g) redesignated (f).

2008—Subsec. (a)(1). Pub. L. 110–181, § 2821(a)(1)(A), substituted ''or, with respect to a Defense Agency, the Secretary of Defense'' for '', or his designee,'' in introductory provisions.

Subsec. (a)(1)(G). Pub. L. 110–181, § 2821(b), added subpar. (G).

Subsec. (a)(3). Pub. L. 110–181, § 2821(a)(1)(B), inserted ''or the Secretary of Defense'' after ''military department'' in introductory provisions.

Subsec. (b). Pub. L. 110–181, § 2821(a)(2), inserted ''and, with respect to Defense Agencies, the Secretary of Defense'' after ''military department''.

Subsec. (c). Pub. L. 110–417 substituted ''water resource development projects of the Corps of Engineers'' for ''river and harbor projects or flood control projects''.

Subsec. (g)(4). Pub. L. 110–181, § 2821(a)(3), added par. (4).

2004—Subsec. (a)(2). Pub. L. 108–375 substituted ''shall include a summary'' for ''must include a summari-

zation'' and inserted ''of paragraph (1)'' after ''in subparagraph (E)''.

2003—Subsec. (a). Pub. L. 108–136, § 1031(a)(27)(A)(i)–(v), inserted ''(1)'' after subsec. heading, substituted ''the Secretary submits a report, subject to paragraph (3),'' for ''after the expiration of 30 days from the date upon which a report of the facts concerning the proposed transaction is submitted'', redesignated former pars. (1) to (6) as subpars. (A) to (F), respectively, of par. (1), substituted ''$750,000'' for ''$500,000'' in subpars. (A) to (E), designated concluding provisions as par. (2), and substituted ''subparagraph (A) or (B) of paragraph (1)'' for ''clause (1) or (2)'' and ''subparagraph (E)'' for ''clause (5)''.

Subsec. (a)(3), (4). Pub. L. 108–136, § 1031(a)(27)(A)(vi), added pars. (3) and (4).

Subsec. (b). Pub. L. 108–136, § 1031(a)(27)(B), substituted ''more than $250,000, but not more than $750,000'' for ''more than the simplified acquisition threshold specified in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11)), but not more than $500,000''.

Subsec. (e). Pub. L. 108–136, § 1031(a)(27)(C), substituted ''$750,000'' for ''$500,000'' and ''the end of the 30-day period beginning on the date on which a report of the facts concerning the proposed occupancy is submitted to the congressional committees named in subsection (a) or, if earlier, the end of the 14-day period beginning on the date on which a copy of the report is provided in an electronic medium pursuant to section 480 of this title'' for ''the expiration of thirty days from the date upon which a report of the facts concerning the proposed occupancy is submitted to the congressional committees named in subsection (a)''.

2000—Subsec. (a). Pub. L. 106–398, § 1 [div. B, title XXVIII, § 2811(a)], substituted ''$500,000'' for ''$200,000'' wherever appearing.

Subsec. (b). Pub. L. 106–398 substituted ''specified in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11)),'' for ''under section 2304(g) of this title'' and ''$500,000'' for ''$200,000''.

Subsec. (e). Pub. L. 106–398, § 1 [div. B, title XXVIII, § 2811(a)], substituted ''$500,000'' for ''$200,000''.

1999—Subsec. (a). Pub. L. 106–65 substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security'' in introductory provisions.

1998—Subsecs. (a) to (f). Pub. L. 105–261, § 2811(b), inserted subsec. headings.

Subsec. (g). Pub. L. 105–261, § 2811(a), added subsec. (g).

1996—Subsec. (a). Pub. L. 104–106, § 1502(a)(23)(A), substituted ''the Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives'' for ''the Committees on Armed Services of the Senate and House of Representatives'' in introductory provisions and struck out ''to be submitted to the Committees on Armed Services of the Senate and House of Representatives'' after ''The report required by this subsection'' in concluding provisions.

Subsec. (b). Pub. L. 104–106, § 4321(b)(21), substituted ''simplified acquisition threshold'' for ''small purchase threshold''.

Pub. L. 104–106, § 1502(a)(23)(B), substituted ''shall submit annually to the congressional committees named in subsection (a) a report'' for ''shall report annually to the Committees on Armed Services of the Senate and the House of Representatives''.

Subsec. (e). Pub. L. 104–106, § 1502(a)(23)(C), substituted ''the congressional committees named in subsection (a)'' for ''the Committees on Armed Services of the Senate and the House of Representatives''.

Subsec. (f). Pub. L. 104–106, § 1502(a)(23)(D), substituted ''the congressional committees named in subsection (a) shall'' for ''the Committees on Armed Services of the Senate and the House of Representatives shall''.

1992—Pub. L. 102–496, § 403(a)(2)(A), substituted ''reports to congressional committees'' for ''Reports to the Armed Services Committees'' in section catchline.

Subsec. (f). Pub. L. 102–496, § 403(a)(1), added subsec. (f).

1990—Subsec. (b). Pub. L. 101–510 substituted ''the small purchase threshold under section 2304(g) of this title'' for ''$5,000''.

1988—Subsecs. (a), (b), (e). Pub. L. 100–456 substituted ''$200,000'' for ''$100,000'' wherever appearing.

1980—Subsecs. (a), (b), (e). Pub. L. 96–418 substituted ''$100,000'' for ''$50,000'' wherever appearing.

1976—Subsec. (a). Pub. L. 94–431 provided that the report on the excess property owned by the United States contain a certification by the Secretary concerned that he has considered the feasibility of exchanging such excess property for property suitable for military purposes and has determined such excess property not suitable for exchange.

1975—Subsec. (b). Pub. L. 94–107, § 607(5), substituted requirement of annual reports for requirement of quarterly reports.

Subsec. (c). Pub. L. 94–107, § 607(6), inserted provisions extending the applicability of the section to Guam, the American Samoa, and the Trust Territory of the Pacific Islands, and, in provisions relating to the inapplicability of the section, inserted reference to any real property acquisition specifically authorized in a Military Construction Authorization Act.

1974—Subsec. (a)(6). Pub. L. 93–552 added par. (6).

1972—Subsec. (e). Pub. L. 92–545 added subsec. (e).

1971—Subsec. (a)(3). Pub. L. 92–145 made the restriction applicable to a license of real property and substituted ''estimated annual fair market rental value'' for ''estimated annual rental''.

1960—Subsec. (a). Pub. L. 86–500 prohibited the Secretary of a military department, or his designee, from entering into any of the transactions listed in subsec. (a) until after the expiration of 30 days from the date upon which a report of the facts concerning the proposed transaction is submitted to the Committees on Armed Services of the Senate and House of Representatives, and increased the amounts in pars. (1) to (5) from $25,000 to $50,000.

Subsec. (b). Pub. L. 86–500 substituted ''$50,000'' for ''$25,000''.

Subsec. (c). Pub. L. 86–624 and Pub. L. 86–500 struck out reference to Hawaii.

Subsec. (d). Pub. L. 86–500 reenacted subsection without change.

1959—Subsec. (c). Pub. L. 86–70 struck out reference to Alaska.

Effective Date of 1996 Amendment

For effective date and applicability of amendment by section 4321(b)(21) of Pub. L. 104–106, see section 4401 of Pub. L. 104–106, set out as a note under section 2302 of this title.

Effective Date of 1988 Amendment

Amendment by Pub. L. 100–456 effective Oct. 1, 1988, see section 2702 of Pub. L. 100–456, set out as a note under section 2391 of this title.

Termination of Trust Territory of the Pacific Islands

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

Reduction or Realignment of Training Bases

Pub. L. 95–485, title VI, § 602, Oct. 20, 1978, 92 Stat. 1617, prohibited any action to implement any substantial reduction or force structure realignment of the composite of installations, posts, camps, stations, and bases that had as a primary or secondary mission the conduct of formal entry level, advanced individual, or specialty training as a part of the fiscal year 1979 Defense manpower program unless certain criteria were complied with.

Closing of Facilities; Closures or Realignments Publicly Announced After September 30, 1977

Pub. L. 95–82, title VI, § 612(c), Aug. 1, 1977, 91 Stat. 380, provided that: ''Section 611 of the Military Con-

struction Authorization Act, 1966 (Public Law 89–188; 10 U.S.C. 2662 note), and section 612 of the Military Construction Authorization Act, 1977 (Public Law 94–431; 90 Stat. 1366) [which was not classified to the Code], shall be inapplicable in the case of any closure of a military installation, and any realignment with respect to a military installation, which is first publicly announced after September 30, 1977.''

CLOSING OF FACILITIES; REPORTS TO CONGRESS

Pub. L. 89–188, title VI, § 611, Sept. 16, 1965, 79 Stat. 818, as amended by Pub. L. 89–568, title VI, § 613, Sept. 12, 1966, 80 Stat. 757, required a report to Congress and a waiting period in connection with the closing of Defense Department facilities, prior to repeal by Pub. L. 97–214, § 7(7), July 12, 1982, 96 Stat. 173, eff. Oct. 1, 1982.

§ 2663. Land acquisition authorities

(a) ACQUISITION OF LAND BY CONDEMNATION FOR CERTAIN MILITARY PURPOSES.—(1) Subject to subsection (f), the Secretary of a military department may have proceedings brought in the name of the United States, in a court of proper jurisdiction, to acquire by condemnation any interest in land, including temporary use, needed for—

(A) the site, construction, or operation of fortifications, coast defenses, or military training camps;

(B) the construction and operation of plants for the production of nitrate and other compounds, and the manufacture of explosives or other munitions of war; or

(C) the development and transmission of power for the operation of plants under subparagraph (B).

(2) In time of war or when war is imminent, the United States may, immediately upon the filing of a petition for condemnation under paragraph (1), take and use the land to the extent of the interest sought to be acquired.

(b) ACQUISITION BY PURCHASE IN LIEU OF CONDEMNATION.—The Secretary of the military department concerned may contract for or buy any interest in land, including temporary use, needed for any purpose named in subsection (a), as soon as the owner fixes a price for it and the Secretary considers that price to be reasonable.

(c) ACQUISITION OF LOW-COST INTERESTS IN LAND.—(1) The Secretary of a military department may acquire any interest in land that—

(A) the Secretary determines is needed in the interest of national defense; and

(B) does not cost more than $750,000, exclusive of administrative costs and the amounts of any deficiency judgments.

(2) The Secretary of a military department may acquire any interest in land that—

(A) the Secretary determines is needed solely to correct a deficiency that is life-threatening, health-threatening, or safety-threatening; and

(B) does not cost more than $1,500,000, exclusive of administrative costs and the amounts of any deficiency judgments.

(3) This subsection does not apply to the acquisition, as a part of the same project, of more than one parcel of land unless the parcels are noncontiguous, or, if contiguous, unless the total cost is not more than $750,000, in the case of an acquisition under paragraph (1), or $1,500,000, in the case of an acquisition under paragraph (2).

(4) Appropriations available to the Department of Defense for operation and maintenance or construction may be used for the acquisition of land or interests in land under this subsection.

(d) ACQUISITION OF INTERESTS IN LAND WHEN NEED IS URGENT.—(1) The Secretary of a military department may acquire any interest in land in any case in which the Secretary determines that—

(A) the acquisition is needed in the interest of national defense;

(B) the acquisition is required to maintain the operational integrity of a military installation; and

(C) considerations of urgency do not permit the delay necessary to include the required acquisition in an annual Military Construction Authorization Act.

(2) Not later than 10 days after the date on which the Secretary of a military department determines to acquire an interest in land under the authority of this subsection, the Secretary shall submit, in an electronic medium pursuant to section 480 of this title, to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a notice containing a description of the property and interest to be acquired and the reasons for the acquisition.

(3) Appropriations available for military construction may be used for the purposes of this subsection.

(e) SURVEY AUTHORITY; ACQUISITION METHODS.—Authority provided the Secretary of a military department by law to acquire an interest in real property (including a temporary interest) includes authority—

(1) to make surveys; and

(2) to acquire the interest in real property by gift, purchase, exchange of real property owned by the United States, or otherwise.

(f) ADVANCE NOTICE OF USE OF CONDEMNATION.—(1) Before commencing any legal proceeding to acquire any interest in land under subsection (a), including acquisition for temporary use, by condemnation, eminent domain, or seizure, the Secretary of the military department concerned shall—

(A) pursue, to the maximum extent practicable, all other available options for the acquisition or use of the land, such as the purchase of an easement or the execution of a land exchange; and

(B) submit to the congressional defense committees a report containing—

(i) a description of the land to be acquired;

(ii) a certification that negotiations with the owner or owners of the land occurred, and that the Secretary tendered consideration in an amount equal to the fair market value of the land, as determined by the Secretary; and

(iii) an explanation of the other approaches considered for acquiring use of the land, the reasons for the acquisition of the land, and the reasons why alternative acquisition strategies are inadequate.

(2) The Secretary concerned may have proceedings brought in the name of the United States to acquire the land after the end of the 21-day period beginning on the date on which the report is received by the committees in an electronic medium pursuant to section 480 of this title.

(g) EXCEPTION TO ADVANCE NOTICE REQUIREMENT.—If the Secretary of a military department determines that the use of condemnation, eminent domain, or seizure to acquire an interest in land is required under subsection (a) to satisfy a requirement vital to national security, and that any delay would be detrimental to national security or the protection of health, safety, or the environment, the Secretary may have proceedings brought in the name of the United States to acquire the land in advance of submitting the report required by subsection (f)(1)(B). However, the Secretary shall submit the report not later than seven days after commencement of the legal proceedings with respect to the land.

(h) LAND ACQUISITION OPTIONS IN ADVANCE OF MILITARY CONSTRUCTION PROJECTS.—(1) The Secretary of a military department may acquire an option on a parcel of real property before or after its acquisition is authorized by law, if the Secretary considers it suitable and likely to be needed for a military project of the military department under the jurisdiction of the Secretary.

(2) As consideration for an option acquired under paragraph (1), the Secretary may pay, from funds available to the military department under the jurisdiction of the Secretary for real property activities, an amount that is not more than 12 percent of the appraised fair market value of the property.

(Aug. 10, 1956, ch. 1041, 70A Stat. 147; Pub. L. 85–861, § 33(a)(14), Sept. 2, 1958, 72 Stat. 1565; Pub. L. 109–163, div. B, title XXVIII, § 2821(a), Jan. 6, 2006, 119 Stat. 3511; Pub. L. 109–364, div. B, title XXVIII, § 2821(b), Oct. 17, 2006, 120 Stat. 2474; Pub. L. 110–181, div. B, title XXVIII, § 2822(a), Jan. 28, 2008, 122 Stat. 544; Pub. L. 111–383, div. A, title X, § 1075(g)(6), Jan. 7, 2011, 124 Stat. 4377; Pub. L. 115–91, div. B, title XXVIII, § 2811(b), (c), Dec. 12, 2017, 131 Stat. 1848.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2663(a)	50:171 (less provisos).	July 2, 1917, ch. 35; restated Apr. 11, 1918, ch. 51, 40 Stat. 518.
2663(b)	50:171 (last proviso).	Oct. 25, 1951, ch. 563, §101 (less 22d through 43d words), 65 Stat. 641.
2663(c)	50:171 (1st proviso).	
2663(d)	50:171 (2d proviso). [50:171 is made applicable to the Navy by 50:171–1 (less 16th through 21st words)].	

In subsection (a), the words ''brought * * * in a court of proper jurisdiction'' are substituted for the words ''instituted * * * in any court having jurisdiction of such proceedings''. The words ''any interest in land, including temporary use'' are substituted for the words ''any land, temporary use thereof or other interest therein, or right pertaining thereto''. The words ''relating to suits for the condemnation of property'' are omitted as surplusage. The last sentence is substituted for 50:171 (words between semicolon and first proviso). The Act of July 2, 1917, ch. 35, as restated by the Act of April 11, 1918, ch. 51 (last 77 words), are not contained in 50:171. They are also omitted from the revised section as executed.

In subsection (a)(1), the word ''location'' is omitted as surplusage. The words ''operation of'' are substituted for the words ''prosecution of works for''.

In subsection (b), the words ''That when such property is acquired'' are omitted as surplusage. The words ''under subsection (a)'' are substituted for the words ''of any land, temporary use thereof or other use therein or right pertaining thereto to be acquired for any of the purposes aforesaid''. The words ''take and use'' are substituted for the words ''possession thereof may be taken * * * and used for military purposes''.

In subsection (c), the words ''as soon as the owner fixes a price for it'' are substituted for the words ''That when the owner of such land, interest, or rights pertaining thereto shall fix a price for the same''. The word ''considers'' is substituted for the words ''which in the opinion''. The words ''contract for or buy'' are substituted for the words ''purchase or enter into a contract''. The words ''without further delay'' are omitted as surplusage.

In subsection (d), the words ''a gift of any interest in land * * * for any purpose named in subsection (a)'' are substituted for 50:171 (last 15 words of 2d proviso).

1958 ACT

The deletion of the last sentence of section 2663(a) and the last sentence of section 2664(a) reflects their implied repeal by Rule 71A of the Rules of Civil Procedure for the United States District Courts (see 28 U.S.C. 2072). (See letter from Assistant Attorney General (Lands Division), Department of Justice, August 1957, to General Counsel, Department of Defense.) The other changes conform section 2664 to section 2663, both of which were based on the same source statute (sec. 8 of the Act of July 9, 1918, ch. 143, subch. XV, 40 Stat. 888) and both of which include the temporary use of the kinds of property respectively covered.

CODIFICATION

The text of section 2672, part of which was transferred to this section, redesignated subsec. (c), and amended by Pub. L. 109–163, div. B, title XXVIII, § 2821(a)(2)–(5), was based on Pub. L. 85–861, § 1(51), Sept. 2, 1958, 72 Stat. 1459; amended Pub. L. 87–651, title I, § 112(a), Sept. 7, 1962, 76 Stat. 511; Pub. L. 92–145, title VII, § 707(2), (3), Oct. 27, 1971, 85 Stat. 411; Pub. L. 96–418, title VIII, § 806(a), Oct. 10, 1980, 94 Stat. 1777; Pub. L. 99–167, title VIII, § 810(a), (b)(1), Dec. 3, 1985, 99 Stat. 989, 990; Pub. L. 99–661, div. A, title XIII, § 1343(a)(16), Nov. 14, 1986, 100 Stat. 3993; Pub. L. 100–456, div. B, title XXVIII, § 2804, Sept. 29, 1988, 102 Stat. 2115; Pub. L. 105–85, div. B, title XXVIII, § 2811(a), (b)(1), Nov. 18, 1997, 111 Stat. 1991; Pub. L. 108–136, div. B, title XXVIII, § 2811(a)–(b)(2), Nov. 24, 2003, 117 Stat. 1724, 1725; Pub. L. 108–375, div. B, title XXVIII, § 2821(d)(1), Oct. 28, 2004, 118 Stat. 2130.

The text of section 2672a of this title, which was transferred to this section, redesignated subsec. (d), and amended by Pub. L. 109–163, div. B, title XXVIII, § 2821(a)(6)–(9), was based on Pub. L. 94–107, title VI, § 607(8), Oct. 7, 1975, 89 Stat. 566; amended Pub. L. 98–525, title XIV, § 1405(39), Oct. 19, 1984, 98 Stat. 2624; Pub. L. 104–106, div. A, title XV, § 1502(a)(1), Feb. 10, 1996, 110 Stat. 502; Pub. L. 106–65, div. A, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 108–136, div. A, title X, § 1031(a)(29), Nov. 24, 2003, 117 Stat. 1599; Pub. L. 108–375, div. A, title X, § 1084(d)(23), Oct. 28, 2004, 118 Stat. 2062.

The text of section 2676(b) of this title, which was transferred to this section, redesignated subsec. (e), and amended by Pub. L. 109–163, div. B, title XXVIII, § 2821(a)(10), (11), was based on Pub. L. 85–861, § 1(51), Sept. 2, 1958, 72 Stat. 1460; amended Pub. L. 97–214, § 5, July 12, 1982, 96 Stat. 170.

AMENDMENTS

2017—Subsec. (d)(2). Pub. L. 115–91, § 2811(b), inserted '', in an electronic medium pursuant to section 480 of this title,'' after ''submit'' and substituted ''a notice'' for ''written notice''.

Subsec. (f)(2). Pub. L. 115–91, § 2811(c), struck out ''or, if over sooner, the end of the 14-day period beginning on the date on which a copy of the report is provided'' after ''received by the committees''.

2011—Subsec. (a)(1). Pub. L. 111–383 made technical amendment to directory language of Pub. L. 109–364, § 2821(b)(1). See 2006 Amendment note below.

2008—Subsec. (h). Pub. L. 110–181 added subsec. (h).

2006—Pub. L. 109–163, § 2821(a)(1)(A), substituted ''Land acquisition authorities'' for ''Acquisition'' in section catchline.

Subsec. (a). Pub. L. 109–163, § 2821(a)(1)(B), (C), inserted ''ACQUISITION OF LAND BY CONDEMNATION FOR CERTAIN MILITARY PURPOSES.—(1)'' before ''The Secretary'' in introductory provisions, redesignated former pars. (1) to (3) as subpars. (A) to (C), respectively, of par. (1), in subpar. (C), substituted ''subparagraph (B)'' for ''clause (2)'', redesignated subsec. (b) as par. (2) and substituted ''paragraph (1)'' for ''subsection (a)''.

Subsec. (a)(1). Pub. L. 109–364, § 2821(b)(1), as amended by Pub. L. 111–383, substituted ''Subject to subsection (f), the Secretary'' for ''The Secretary'' in introductory provisions.

Subsec. (b). Pub. L. 109–163, § 2821(a)(1)(D), redesignated subsec. (c) as (b) and inserted heading.

Pub. L. 109–163, § 2821(a)(1)(C), redesignated subsec. (b) as subsec. (a)(2).

Subsec. (c). Pub. L. 109–163, § 2821(a)(2)–(5), redesignated pars. (1) and (2) of subsec. (a) and subsecs. (b) and (d) of section 2672 of this title as pars. (1), (2), (3), and (4), respectively, of subsec. (c) of this section, inserted subsec. heading, in par. (3), substituted ''This subsection'' for ''This section'', ''paragraph (1)'' for ''subsection (a)(1)'', and ''paragraph (2)'' for ''subsection (a)(2)'', in par. (4), substituted ''this subsection'' for ''this section'', and struck out headings for former subsecs. (a), (b), and (d) of section 2672.

Pub. L. 109–163, § 2821(a)(1)(D), redesignated subsec. (c) as (b).

Subsec. (d). Pub. L. 109–163, § 2821(a)(6)–(9), redesignated subsecs. (a), (c), and (b) of section 2672a of this title as pars. (1), (2), and (3), respectively, of subsec. (d) of this section, inserted subsec. heading, in par. (1), redesignated former pars. (1) to (3) as subpars. (A) to (C), respectively, in par. (2), substituted ''this subsection'' for ''this section'', and in par. (3), substituted ''this subsection'' for ''this section'' in first sentence and struck out second sentence which read as follows: ''The authority to acquire an interest in land under this section includes authority to make surveys and acquire interests in land (including temporary use), by gift, purchase, exchange of land owned by the United States, or otherwise.''

Pub. L. 109–163, § 2821(a)(1)(E), struck out subsec. (d) which read as follows: ''The Secretary of the military department concerned may accept for the United States a gift of any interest in land, including temporary use, for any purpose named in subsection (a).''

Subsec. (e). Pub. L. 109–163, § 2821(a)(10), (11), redesignated subsec. (b) of section 2676 of this title as subsec. (e) of this section and inserted heading.

Subsecs. (f), (g). Pub. L. 109–364, § 2821(b)(2), added subsecs. (f) and (g).

1958—Subsec. (a). Pub. L. 85–861 struck out provisions requiring proceedings under this subsection to be in accordance with the law of the State in which the suit is brought.

EFFECTIVE DATE OF 2011 AMENDMENT

Pub. L. 111–383, div. A, title X, § 1075(g), Jan. 7, 2011, 124 Stat. 4376, provided that amendment by section 1075(g)(6) is effective as of Oct. 17, 2006, and as if included in Pub. L. 109–364 as enacted.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–861 effective Aug. 10, 1956, see section 33(g) of Pub. L. 85–861, set out as a note under section 101 of this title.

SENSE OF CONGRESS

Pub. L. 109–364, div. B, title XXVIII, § 2821(a), Oct. 17, 2006, 120 Stat. 2473, provided that: ''It is the sense of Congress that the Secretary of Defense, when acquiring land for military purposes, should—

''(1) make every effort to acquire the land by means of purchases from willing sellers; and

''(2) employ condemnation, eminent domain, or seizure procedures only as a measure of last resort in cases of compelling national security requirements or at the request of the seller.''

§ 2664. Limitations on real property acquisition

(a) AUTHORIZATION FOR ACQUISITION REQUIRED.—No military department may acquire real property not owned by the United States unless the acquisition is expressly authorized by law. The foregoing limitation shall not apply to the acceptance by a military department of real property acquired under the authority of the Administrator of General Services to acquire property by the exchange of Government property pursuant to subtitle I of title 40 and division C (except sections 3302, 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41.

(b) COMMISSIONS ON LAND PURCHASE CONTRACTS.—The maximum amount payable as a commission on a contract for the purchase of land from funds appropriated for the Department of Defense is two percent of the purchase price.

(c) COST LIMITATIONS.—(1) Except as provided in paragraph (2), the cost authorized for a land acquisition project may be increased by not more than 25 percent of the amount appropriated for the project by Congress or 200 percent of the amount specified by law as the maximum amount for a minor military construction project, whichever is lesser, if the Secretary concerned determines (A) that such an increase is required for the sole purpose of meeting unusual variations in cost, and (B) that such variations in cost could not have been reasonably anticipated at the time the project was originally approved by Congress.

(2) Until subsection (d) is complied with, a land acquisition project may not be placed under contract if, based upon the agreed price for the land or, in the case of land to be acquired by condemnation, the amount to be deposited with the court as just compensation for the land—

(A) the scope of the acquisition, as approved by Congress, is proposed to be reduced by more than 25 percent; or

(B) the agreed price for the land or, in the case of land to be acquired by condemnation, the amount to be deposited with the court as just compensation for the land, exceeds the amount appropriated for the project by more than (i) 25 percent, or (ii) 200 percent of the amount specified by law as the maximum amount for a minor military construction project, whichever is lesser.

(d) CONGRESSIONAL NOTIFICATION.—The limitations on reduction in scope or increase in cost of a land acquisition in subsection (c) do not apply if the reduction in scope or the increase in cost, as the case may be, is approved by the Secretary concerned and a notification of the facts relating to the proposed reduced scope or increased cost (including a statement of the reasons therefor) is submitted by the Secretary concerned to the congressional defense committees. A con-

tract for the acquisition may then be awarded only after the end of the 14-day period beginning on the date the notification is received by the committees in an electronic medium pursuant to section 480 of this title.

(e) PAYMENT OF JUDGEMENTS AND SETTLEMENTS.—The Secretary concerned shall promptly pay any deficiency judgment against the United States awarded by a court in an action for condemnation of any interest in land or resulting from a final settlement of an action for condemnation of any interest in land. Payments under this subsection may be made from funds available to the Secretary concerned for military construction projects and without regard to the limitations of subsections (c) and (d).

(Added Pub. L. 85–861, § 1(51), Sept. 2, 1958, 72 Stat. 1460, § 2676; amended Pub. L. 93–166, title VI, § 608(2), Nov. 29, 1973, 87 Stat. 682; Pub. L. 97–214, § 5, July 12, 1982, 96 Stat. 170; Pub. L. 98–407, title VIII, § 802, Aug. 28, 1984, 98 Stat. 1519; Pub. L. 99–661, div. A, title XIII, § 1343(a)(17)(A), Nov. 14, 1986, 100 Stat. 3993; Pub. L. 102–190, div. B, title XXVIII, § 2870(1), Dec. 5, 1991, 105 Stat. 1562; Pub. L. 107–217, § 3(b)(14), Aug. 21, 2002, 116 Stat. 1296; Pub. L. 107–314, div. A, title X, § 1062(a)(11), Dec. 2, 2002, 116 Stat. 2650; Pub. L. 108–136, div. A, title X, § 1031(a)(30), Nov. 24, 2003, 117 Stat. 1600; Pub. L. 108–375, div. A, title X, § 1084(b)(4), Oct. 28, 2004, 118 Stat. 2061; renumbered § 2664 and amended Pub. L. 109–163, div. B, title XXVIII, § 2821(a)(10), (b)–(d), Jan. 6, 2006, 119 Stat. 3512; Pub. L. 111–350, § 5(b)(45), Jan. 4, 2011, 124 Stat. 3846; Pub. L. 115–91, div. B, title XXVIII, § 2811(d), Dec. 12, 2017, 131 Stat. 1848.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2676	[Uncodified].	July 27, 1954, ch. 579, § 501(b) (less provisos), 68 Stat. 560.

The word "property" is substituted for the word "estate". The words "not owned by the United States" are substituted for the words "not in Federal ownership". The words "or shall be" are omitted as surplusage.

CODIFICATION

The text of section 2661(c) of this title, which was transferred to this section and redesignated subsec. (b) by Pub. L. 109–163, § 2821(d), was based on Pub. L. 108–375, div. B, title XXVIII, § 2821(a)(1), Oct. 28, 2004, 118 Stat. 2129.

PRIOR PROVISIONS

A prior section 2664, acts Aug. 10, 1956, ch. 1041, 70A Stat. 148; Pub. L. 85–861, § 33(a)(15), Sept. 2, 1958, 72 Stat. 1565; Pub. L. 96–513, title V, § 511(90), Dec. 12, 1980, 94 Stat. 2928; Pub. L. 97–31, § 12(3)(A), Aug. 6, 1981, 95 Stat. 153; Pub. L. 97–295, § 1(32), Oct. 12, 1982, 96 Stat. 1296; Pub. L. 100–26, § 7(d)(6), Apr. 21, 1987, 101 Stat. 281, related to acquisition of property for lumber production, prior to repeal by Pub. L. 108–375, div. B, title XXVIII, § 2821(b), Oct. 28, 2004, 118 Stat. 2129.

AMENDMENTS

2017—Subsec. (d). Pub. L. 115–91 struck out "written" before "notification of the facts" and "or, if over sooner, a period of 14 days elapses from the date on which a copy of that notification is provided" before "in an electronic medium" and substituted "the end of the 14-day period beginning on" for "a period of 21 days elapses from".

2011—Subsec. (a). Pub. L. 111–350, which directed substitution "division C (except sections 3302, 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41" for "title III of the Federal Property and Administrative Services Act of 1949, as amended (41 U.S.C. 251 et seq.)", was executed by making the substitution for "title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)" to reflect the probable intent of Congress.

2006—Pub. L. 109–163, § 2821(c), renumbered section 2676 of this title as this section and substituted "Limitations on real property acquisition" for "Acquisition: limitation" in section catchline.

Subsec. (a). Pub. L. 109–163, § 2821(b)(1), inserted heading and struck out ", as amended" after "Federal Property and Administrative Services Act of 1949" in text.

Subsec. (b). Pub. L. 109–163, § 2821(d), redesignated subsec. (c) of section 2661 of this title as subsec. (b) of this section.

Pub. L. 109–163, § 2821(a)(10), transferred subsec. (b) to section 2663 of this title.

Subsec. (c). Pub. L. 109–163, § 2821(b)(2)(A), inserted heading.

Subsec. (c)(2). Pub. L. 109–163, § 2821(b)(2)(B), substituted "Until subsection (d) is complied with, a land" for "A land" in introductory provisions and "lesser." for "lesser," in subpar. (B) and struck out concluding provisions which read "until subsection (d) is complied with."

Subsec. (d). Pub. L. 109–163, § 2821(b)(3), inserted heading.

Subsec. (e). Pub. L. 109–163, § 2821(b)(4), inserted heading.

2004—Subsec. (d). Pub. L. 108–375 substituted "congressional defense committees" for "appropriate committees of Congress".

2003—Subsec. (d). Pub. L. 108–136 inserted before period at end "or, if over sooner, a period of 14 days elapses from the date on which a copy of that notification is provided in an electronic medium pursuant to section 480 of this title".

2002—Subsec. (a). Pub. L. 107–314 inserted opening parenthesis before "41 U.S.C.".

Pub. L. 107–217 inserted "subtitle I of title 40 and title III of" before "the Federal Property and Administrative Services Act of 1949" and substituted "41 U.S.C. 251 et seq.)" for "(40 U.S.C. 471 et seq.)".

1991—Subsec. (d). Pub. L. 102–190 struck out "(1)" after "be awarded only" and ", or (2) upon the approval of those committees, if before the end of that period each such committee approves the proposed reduced scope or increased cost" before period at end.

1986—Subsec. (c)(2)(B). Pub. L. 99–661 amended generally language of subpar. (B) before "exceeds the amount". See 1984 Amendment note below.

1984—Subsec. (c)(2). Pub. L. 98–407, § 802(1), inserted "or, in the case of land to be acquired by condemnation, the amount to be deposited with the court as just compensation for the land" in provisions preceding subpar. (A).

Subsec. (c)(2)(B). Pub. L. 98–407, § 802(2), inserted "or, in the case of land to be acquired by condemnation, the amount to be deposited with the court as just compensation for the land,". Insertion of new language following "the agreed price for the land" was executed to text notwithstanding directory language of Pub. L. 98–407 that made a reference to a nonexistent comma following "the agreed price for the land". See 1986 Amendment note above.

Subsec. (e). Pub. L. 98–407, § 802(3), added subsec. (e).

1982—Pub. L. 97–214 designated existing provisions as subsec. (a) and added subsecs. (b) to (d).

1973—Pub. L. 93–166 made limitation inapplicable to property acquired under authority of Administrator of General Services to acquire property by exchange of Government property.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–661, div. A, title XIII, § 1343(a)(17)(B), Nov. 14, 1986, 100 Stat. 3993, provided that: "The amendment

made by subparagraph (A) [amending this section] shall take effect as if included in the enactment of section 802(2) of the Military Construction Authorization Act, 1985 (Public Law 98–407; 98 Stat. 1519) [amending this section].''

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–214 effective Oct. 1, 1982, and applicable to military construction projects, and to construction and acquisition of military family housing authorized before, on, or after such date, see section 12(a) of Pub. L. 97–214, set out as an Effective Date note under section 2801 of this title.

§ 2665. Sale of certain interests in land; logs

(a) The President, through an executive department, may sell to any person or foreign government any interest in land that is acquired for the production of lumber or timber products, except land under the control of the Department of the Army or the Department of the Air Force.

(b) The President, through an executive department, may sell to any person or foreign government any forest products produced on land owned or leased by a military department or the Department in which the Coast Guard is operating.

(c) Sales under subsection (a) or (b) shall be at prices determined by the President acting through the selling agency.

(d) Appropriations of the Department of Defense may be reimbursed for all costs of production of forest products pursuant to this section from amounts received as proceeds from the sale of any such property.

(e)(1) Each State in which is located a military installation or facility from which forest products are sold in a fiscal year is entitled at the end of such year to an amount equal to 40 percent of (A) the amount received by the United States during such year as proceeds from the sale of forest products produced on such installation or facility, less (B) the amount of reimbursement of appropriations of the Department of Defense under subsection (d) during such year attributable to such installation or facility.

(2) The amount paid to a State pursuant to paragraph (1) shall be expended as the State legislature may prescribe for the benefit of the public schools and public roads of the county or counties in which the military installation or facility is situated.

(3) In a case in which a military installation or facility is located in more than one State or county, the amount paid pursuant to paragraph (1) shall be distributed in a manner proportional to the area of such installation or facility in each State or county.

(f)(1) There is in the Treasury a reserve account administered by the Secretary of Defense for the purposes of this section. Balances in the account may be used for costs of the military departments—

(A) for improvements of forest lands;

(B) for unanticipated contingencies in the administration of forest lands and the production of forest products for which other sources of funds are not available in a timely manner; and

(C) for natural resources management that implements approved plans and agreements.

(2) There shall be deposited into the reserve account the total amount received by the United States as proceeds from the sale of forest products sold under subsections (a) and (b) less—

(A) reimbursements of appropriations made under subsection (d), and

(B) payments made to States under subsection (e).

(3) The reserve account may not exceed $4,000,000 on December 31 of any calendar year. Unobligated balances exceeding $4,000,000 on that date shall be deposited into the United States Treasury.

(Aug. 10, 1956, ch. 1041, 70A Stat. 149; Pub. L. 95–82, title VI, § 610, Aug. 1, 1977, 91 Stat. 378; Pub. L. 96–513, title V, § 511(91), Dec. 12, 1980, 94 Stat. 2928; Pub. L. 97–31, § 12(3)(B), Aug. 6, 1981, 95 Stat. 153; Pub. L. 97–99, title IX, § 910(a), Dec. 23, 1981, 95 Stat. 1386; Pub. L. 97–295, § 1(33), Oct. 12, 1982, 96 Stat. 1296; Pub. L. 98–407, title VIII, § 809(a), Aug. 28, 1984, 98 Stat. 1522; Pub. L. 99–561, § 4, Oct. 27, 1986, 100 Stat. 3151; Pub. L. 107–296, title XVII, § 1704(b)(4), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 109–163, div. A, title X, § 1056(c)(6), Jan. 6, 2006, 119 Stat. 3439.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2665(a)	50:172 (last par., less 36th through 64th, and 73d through 109th, words).	July 9, 1918, ch. 143, subch. XV, § 8 (last par.), 40 Stat. 888.
2665(b)	50:172 (36th through 64th words of last par.).	
2665(c)	50:172 (73d through 90th words of last par.).	
2665(d)	50:172 (91st through 109th words of last par.).	

In subsection (a), the words ''an executive department or the Federal Maritime Board'' are substituted for the words ''any department or the United States Maritime Commission'' to reflect an opinion of the Judge Advocate General of the Army (JAGA 1954/1723) and to name the successor of the United States Maritime Commission. The last 18 words are inserted to reflect that opinion (see the Act of February 20, 1931 (10 U.S.C. 1354)). The words ''and dispose of'' are omitted as surplusage.

In subsection (b), the words ''an executive department or the Federal Maritime Board'' are inserted for clarity and to name the successor of the United States Maritime Commission.

In subsections (a) and (b), the word ''person'' is substituted for the words ''individuals, corporations,'' since section 1 of title 1 defines the word ''person'' to cover both individuals and corporations. The words ''States or'' are omitted as surplusage.

In subsection (c), the words ''the selling agency'' are substituted for the words ''his above representatives selling or disposing of the same''.

1982 ACT

This corrects an error in an amendment to 10:2665 made by section 12(3)(B) of the Maritime Act of 1981 (Pub. L. 97–31, Aug. 6, 1981, 95 Stat. 153).

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–163 struck out ''under section 2664 of this title'' after ''land that is acquired''.

2002—Subsec. (b). Pub. L. 107–296 substituted ''Department in which the Coast Guard is operating'' for ''Department of Transportation''.

1986—Subsec. (d). Pub. L. 99–561, § 4(1), struck out ''available for operation and maintenance during a fiscal year'' after ''Defense'', substituted ''costs'' for ''expenses'', and struck out ''during such fiscal year'' after ''such property''.

Subsec. (e)(1). Pub. L. 99–561, § 4(2), struck out ''for all expenses of production of forest products'' after ''subsection (d)''.

Subsec. (f)(1). Pub. L. 99–561, § 4(3)(A), (B), substituted ''costs'' for ''expenses'' in provisions preceding subpar. (A) and amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''for expenses to enable operations of forest lands and the production of forest products to continue from the end of one fiscal year through the beginning of the next fiscal year without disruption.''

Subsec. (f)(2), (3). Pub. L. 99–561, § 4(3)(C), amended pars. (2) and (3) generally. Prior to amendment, pars. (2) and (3) read as follows:

''(2) Subject to paragraph (3), there shall be deposited into the reserve account not later than December 31 of each year, for credit to the preceding fiscal year, an amount equal to one-half of the amount (if any) remaining of the total amount received by the United States during that fiscal year as proceeds from the sale of forest products after (A) the reimbursement of appropriations of the Department of Defense under subsection (d) for expenses of production of forest products during that fiscal year, and (B) the payment to States under subsection (e) for that fiscal year.

''(3) The balance in the reserve account may not exceed $4,000,000. If a deposit under paragraph (2) would cause the balance in the account to exceed that amount, the deposit shall be made only to the extent the amount of the deposit would not cause the balance in the account to exceed $4,000,000.''

1984—Subsec. (b). Pub. L. 98–407, § 809(a)(1), substituted ''forest products produced on land owned or leased by a military department or the'' for ''logs wholly or partly manufactured by, or otherwise procured for, the Army, Navy, or Air Force, or''.

Subsec. (d). Pub. L. 98–407, § 809(a)(2), substituted ''forest products'' for ''lumber and timber products''.

Subsec. (e)(1). Pub. L. 98–407, § 809(a)(3), substituted ''forest products'' for ''timber and timber products'' in two places and ''40 percent'' for ''25 percent''.

Subsec. (f). Pub. L. 98–407, § 809(a)(4), added subsec. (f).

1982—Subsecs. (a), (b). Pub. L. 97–295 substituted ''executive department, may sell'' for ''executive department'' and all that followed through ''may sell'' in subsecs. (a) and (b), and substituted ''Air Force, or Department of Transportation.'' for ''Air Force'' and all that followed in subsec. (b), clarifying the ambiguity created by the conflicting language of Pub. L. 96–513 and Pub. L. 97–31.

1981—Subsecs. (a), (b). Pub. L. 97–31 struck out reference to Federal Maritime Commission in subsec. (a), and substituted ''or Department of Transportation'' for ''or Federal Maritime Commission'' and struck out ''or the Federal Maritime Commission'' after ''department'' in subsec. (b). Amendment was executed to text in accordance with the probable intent of Congress, notwithstanding amendment of section by Pub. L. 96–513 which substituted different language than language contained in amendatory provisions of Pub. L. 97–31.

Subsec. (e). Pub. L. 97–99 added subsec. (e).

1980—Subsecs. (a), (b). Pub. L. 96–513 substituted ''Federal Maritime Commission'' for ''Federal Maritime Board''.

1977—Subsec. (d). Pub. L. 95–82 substituted provisions relating to reimbursement of production expenses during any fiscal year from proceeds from sales for property during such fiscal year, for provisions requiring proceeds from sales under subsecs. (a) or (b) of this section to be credited to the appropriations under which the property concerned was procured.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–407, title VIII, § 809(b), Aug. 28, 1984, 98 Stat. 1523, provided that:

''(b)(1) Except as provided in paragraph (2), the amendments made by subsection (a) [amending this section] shall take effect on October 1, 1984.

''(2) The amendment made by subsection (a)(2)(B) [probably should be '(a)(3)(B)', which amended subsec. (e)(1) of this section] shall apply with respect to payments to States for fiscal years beginning after September 30, 1984.''

EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97–99, title IX, § 910(b), Dec. 23, 1981, 95 Stat. 1386, provided that: ''Subsection (e) of section 2665 of title 10, United States Code, as added by subsection (a), shall apply with respect to timber and timber products sold after September 30, 1981.''

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

[§ 2666. Repealed. Pub. L. 108–375, div. B, title XXVIII, § 2821(a)(2), Oct. 28, 2004, 118 Stat. 2129]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 149, related to limitation on commission on a contract for the purchase of land payable from funds appropriated for the Department of Defense.

§ 2667. Leases: non-excess property of military departments and Defense Agencies

(a) LEASE AUTHORITY.—Whenever the Secretary concerned considers it advantageous to the United States, the Secretary concerned may lease to such lessee and upon such terms as the Secretary concerned considers will promote the national defense or to be in the public interest, real or personal property that—

(1) is under the control of the Secretary concerned;

(2) is not for the time needed for public use; and

(3) is not excess property, as defined by section 102 of title 40.

(b) CONDITIONS ON LEASES.—A lease under subsection (a)—

(1) may not be for more than five years, unless the Secretary concerned determines that a lease for a longer period will promote the national defense or be in the public interest;

(2) may give the lessee the first right to buy the property if the lease is revoked to allow the United States to sell the property under any other provision of law;

(3) shall permit the Secretary to revoke the lease at any time, unless he determines that the omission of such a provision will promote the national defense or be in the public interest;

(4) shall provide for the payment (in cash or in kind) by the lessee of consideration in an amount that is not less than the fair market

value of the lease interest, as determined by the Secretary;

(5) may provide, notwithstanding section 1302 of title 40 or any other provision of law, for the alteration, repair, or improvement, by the lessee, of the property leased as the payment of part or all of the consideration for the lease;

(6) except as otherwise provided in subsection (d), shall require the lessee to provide the covered entities specified in paragraph (1) of that subsection the right to establish and operate a community support facility or provide community support services, or seek equitable compensation for morale, welfare, and recreation programs of the Department of Defense in lieu of the operation of such a facility or the provision of such services, if the Secretary determines that the lessee will provide merchandise or services in direct competition with covered entities through the lease;

(7) may not provide for a leaseback by the Secretary concerned with an annual payment in excess of $500,000, or otherwise commit the Secretary concerned or the Department of Defense to annual payments in excess of such amount; and

(8) shall provide that any facilities constructed on the property may be constructed using commercial standards in a manner that provides force protection safeguards appropriate to the activities conducted in, and the location of, such facilities.

(c) TYPES OF IN-KIND CONSIDERATION.—(1) In addition to any in-kind consideration accepted under subsection (b)(5), in-kind consideration accepted with respect to a lease under this section may include the following:

(A) Maintenance, protection, alteration, repair, improvement, or restoration (including environmental restoration) of property or facilities under the control of the Secretary concerned.

(B) Construction of new facilities for the Secretary concerned.

(C) Provision of facilities for use by the Secretary concerned.

(D) Provision or payment of utility services for the Secretary concerned, which shall prioritize energy resilience in the event of commercial grid outages.

(E) Provision of real property maintenance services for the Secretary concerned.

(F) Provision of such other services relating to activities that will occur on the leased property as the Secretary concerned considers appropriate.

(2) In-kind consideration under paragraph (1) may be accepted at any property or facilities under the control of the Secretary concerned that are selected for that purpose by the Secretary concerned.

(3) Sections 2662 and 2802 of this title shall not apply to any new facilities whose construction is accepted as in-kind consideration under this subsection.

(d) COMMUNITY SUPPORT FACILITIES AND COMMUNITY SUPPORT SERVICES UNDER LEASE; WAIVER.—(1) In this subsection and subsection (b)(6), the term ''covered entity'' means each of the following:

(A) The Army and Air Force Exchange Service.

(B) The Navy Exchange Service Command.

(C) The Marine Corps exchanges.

(D) The Defense Commissary Agency.

(E) The revenue-generating nonappropriated fund activities of the Department of Defense conducted for the morale, welfare, and recreation of members of the armed forces.

(2) The Secretary concerned may waive the requirement in subsection (b)(6) with respect to a lease if—

(A) the lease is entered into under subsection (g); or

(B) the Secretary determines that the waiver is in the best interests of the Government.

(3) The Secretary concerned shall submit, in an electronic medium pursuant to section 480 of this title, to the congressional defense committees a notice of each waiver under paragraph (2), including the reasons for the waiver.

(4) The covered entities shall exercise the right provided in subsection (b)(6) with respect to a lease, if at all, not later than 90 days after receiving notice from the Secretary concerned regarding the opportunity to exercise such right with respect to the lease. The Secretary may, at the discretion of the Secretary, extend the period under this paragraph for the exercise of the right with respect to a lease for such additional period as the Secretary considers appropriate.

(5) The Secretary of Defense shall prescribe in regulations uniform procedures and criteria for the evaluation of proposals for enhanced use leases involving the operation of community support facilities or the provision of community support services by either a lessee under this section or a covered entity.

(e) DEPOSIT AND USE OF PROCEEDS.—(1)(A) The Secretary concerned shall deposit in a special account in the Treasury established for that Secretary the following:

(i) All money rentals received pursuant to leases entered into by that Secretary under this section.

(ii) All proceeds received pursuant to the granting of easements by that Secretary under section 2668 of this title.

(iii) All proceeds received by that Secretary from authorizing the temporary use of other property under the control of that Secretary.

(B) Subparagraph (A) does not apply to the following proceeds:

(i) Amounts paid for utilities and services furnished lessees by the Secretary concerned pursuant to leases entered into under this section.

(ii) Money rentals referred to in paragraph (3), (4), or (5).

(C) Subject to subparagraphs (D) and (E), the proceeds deposited in the special account established for the Secretary concerned shall be available to the Secretary, in such amounts as provided in appropriation Acts, for the following:

(i) Maintenance, protection, alteration, repair, improvement, or restoration (including environmental restoration) of property or facilities.

(ii) Construction or acquisition of new facilities.

(iii) Lease of facilities.

(iv) Payment of utility services.

(v) Real property maintenance services.

(vi) Administrative expenses incurred by the Secretary concerned under this section and for easements under section 2668 of this title.

(D) At least 50 percent of the proceeds deposited in the special account established for the Secretary concerned shall be available for activities described in subparagraph (C) only at the military installation or Defense Agency location where the proceeds were derived.

(E) If the proceeds deposited in the special account established for the Secretary concerned are derived from activities associated with a military museum, the proceeds shall be available for activities described in subparagraph (C) only at that museum.

(2) Payments for utilities and services furnished lessees pursuant to leases entered into under this section shall be credited to the appropriation account or working capital fund from which the cost of furnishing the utilities and services was paid.

(3) Money rentals received by the United States directly from a lease under this section for agricultural or grazing purposes of lands under the control of the Secretary concerned (other than lands acquired by the United States for flood control or navigation purposes or any related purpose, including the development of hydroelectric power) may be retained and spent by the Secretary concerned in such amounts as the Secretary considers necessary to cover the administrative expenses of leasing for such purposes and to cover the financing of multiple-land use management programs at any installation under the jurisdiction of the Secretary.

(4) Money rentals received by the United States from a lease under subsection (g) at a military installation approved for closure or realignment under a base closure law shall be deposited into the Department of Defense Base Closure Account established under section 2906(a) of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note).

(f) TREATMENT OF LESSEE INTEREST IN PROPERTY.—The interest of a lessee of property leased under this section may be taxed by State or local governments. A lease under this section shall provide that, if and to the extent that the leased property is later made taxable by State or local governments under an Act of Congress, the lease shall be renegotiated.

(g) SPECIAL RULES FOR BASE CLOSURE AND REALIGNMENT PROPERTY.—(1) Notwithstanding subtitle I of title 40 and division C (except sections 3302, 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41 (to the extent those provisions are inconsistent with this subsection) or subsection (a)(2) of this section, pending the final disposition of real property and personal property located at a military installation to be closed or realigned under a base closure law, the Secretary concerned may lease the property to any individual or entity under this subsection if the Secretary determines that such a lease would facilitate State or local economic adjustment efforts.

(2) Notwithstanding subsection (b)(4), the Secretary concerned may accept consideration in an amount that is less than the fair market value of the lease interest if the Secretary concerned determines that—

(A) a public interest will be served as a result of the lease; and

(B) the fair market value of the lease is (i) unobtainable, or (ii) not compatible with such public benefit.

(3) Before entering into any lease under this subsection, the Secretary shall consult with the Administrator of the Environmental Protection Agency in order to determine whether the environmental condition of the property proposed for leasing is such that the lease of the property is advisable. The Secretary and the Administrator shall enter into a memorandum of understanding setting forth procedures for carrying out the determinations under this paragraph.

(4)(A) Notwithstanding the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the scope of any environmental impact analysis necessary to support an interim lease of property under this subsection shall be limited to the environmental consequences of activities authorized under the proposed lease and the cumulative impacts of other past, present, and reasonably foreseeable future actions during the period of the proposed lease.

(B) Interim leases entered into under this subsection shall be deemed not to prejudice the final disposal decision with respect to the property, even if final disposal of the property is delayed until completion of the term of the interim lease. An interim lease under this subsection shall not be entered into without prior consultation with the redevelopment authority concerned.

(C) Subparagraphs (A) and (B) shall not apply to an interim lease under this subsection if authorized activities under the lease would—

(i) significantly affect the quality of the human environment; or

(ii) irreversibly alter the environment in a way that would preclude any reasonable disposal alternative of the property concerned.

(h) COMPETITIVE PROCEDURES FOR SELECTION OF CERTAIN LESSEES; EXCEPTION.—(1) If a proposed lease under subsection (a) involves only personal property, the lease term exceeds one year, or the fair market value of the lease interest exceeds $100,000, as determined by the Secretary concerned, the Secretary shall use competitive procedures to select the lessee.

(2) Paragraph (1) does not apply if the Secretary concerned determines that—

(A) a public interest will be served as a result of the lease; and

(B) the use of competitive procedures for the selection of certain lessees is unobtainable or not compatible with the public benefit served under subparagraph (A).

(3) Paragraph (1) does not apply to a renewal or extension of a lease by the Secretary of the Navy with a selected institution for operation of a ship within the University National Oceanographic Laboratory System if, under the lease, each of the following applies:

(A) Use of the ship is restricted to federally supported research programs and to non-Fed-

eral uses under specific conditions with approval by the Secretary of the Navy.

(B) Because of the anticipated value to the Navy of the oceanographic research and training that will result from the ship's operation, no monetary lease payments are required from the lessee under the initial lease or under any renewal or extension.

(C) The lessee is required to maintain the ship in a good state of repair, readiness, and efficient operating condition, conform to all applicable regulatory requirements, and assume full responsibility for the safety of the ship, its crew, and scientific personnel aboard.

(4)(A) Paragraph (1) does not apply to a renewal, extension, or succeeding lease by the Secretary concerned with a financial institution selected in accordance with the Department of Defense Financial Management Regulation providing for the selection of financial institutions to operate on military installations if each of the following applies:

(i) The on-base financial institution was selected before the date of the enactment of this paragraph or competitive procedures are used for the selection of any new financial institutions.

(ii) A current and binding operating agreement is in place between the installation commander and the selected on-base financial institution.

(B) The renewal, extension, or succeeding lease shall terminate upon the termination of the operating agreement described in subparagraph (A)(ii) associated with that lease.

(i) DEFINITIONS.—In this section:

(1) The term ''administrative expenses'' means only those expenses related to assessing, negotiating, executing, and managing lease and easement transactions. The term does not include any Government personnel costs.

(2) The term ''community support facility'' includes an ancillary supporting facility (as that term is defined in section 2871(1) of this title).

(3) The term ''community support services'' includes revenue-generating food, recreational, lodging support services, and resale operations and other retail facilities and services intended to support a community.

(4) The term ''military installation'' has the meaning given such term in section 2687 of this title.

(5) The term ''Secretary concerned'' means—

(A) the Secretary of a military department, with respect to matters concerning that military department; and

(B) the Secretary of Defense, with respect to matters concerning the Defense Agencies.

(j) EXCLUSION OF CERTAIN LANDS.—This section does not apply to oil, mineral, or phosphate lands.

(k) LEASES FOR EDUCATION.—Notwithstanding subsection (b)(4), the Secretary concerned may accept consideration in an amount that is less than the fair market value of the lease, if the lease is to a local education agency or an elementary or secondary school (as those terms are defined in section 8101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801)).

(Aug. 10, 1956, ch. 1041, 70A Stat. 150; Pub. L. 94–107, title VI, § 607(7), Oct. 7, 1975, 89 Stat. 566; Pub. L. 94–412, title V, § 501(b), Sept. 14, 1976, 90 Stat. 1258; Pub. L. 96–513, title V, § 511(92), Dec. 12, 1980, 94 Stat. 2928; Pub. L. 97–295, § 1(34), Oct. 12, 1982, 96 Stat. 1296; Pub. L. 97–321, title VIII, § 803, Oct. 15, 1982, 96 Stat. 1572; Pub. L. 101–510, div. B, title XXVIII, § 2806, Nov. 5, 1990, 104 Stat. 1787; Pub. L. 102–190, div. B, title XXVIII, § 2862, Dec. 5, 1991, 105 Stat. 1559; Pub. L. 102–484, div. B, title XXVIII, § 2851, Oct. 23, 1992, 106 Stat. 2625; Pub. L. 103–160, div. B, title XXIX, § 2906, Nov. 30, 1993, 107 Stat. 1920; Pub. L. 104–106, div. A, title XV, § 1502(a)(1), div. B, title XXVIII, §§ 2831(a), 2832, 2833, Feb. 10, 1996, 110 Stat. 502, 558, 559; Pub. L. 105–85, div. A, title III, § 361(b)(2), title X, § 1061(a)–(c)(1), Nov. 18, 1997, 111 Stat. 1701, 1891; Pub. L. 105–261, div. B, title XXVIII, § 2821, Oct. 17, 1998, 112 Stat. 2208; Pub. L. 106–65, div. A, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 106–398, § 1 [div. B, title XXVIII, § 2812(a)–(e)], Oct. 30, 2000, 114 Stat. 1654, 1654A–416 to 1654A–418; Pub. L. 107–107, div. A, title X, § 1013, Dec. 28, 2001, 115 Stat. 1212; Pub. L. 107–217, § 3(b)(12), Aug. 21, 2002, 116 Stat. 1296; Pub. L. 107–314, div. A, title X, § 1041(a)(18), Dec. 2, 2002, 116 Stat. 2645; Pub. L. 108–136, div. A, title X, § 1043(b)(15), (c)(3), Nov. 24, 2003, 117 Stat. 1611, 1612; Pub. L. 108–178, § 4(b)(4), Dec. 15, 2003, 117 Stat. 2641; Pub. L. 109–364, div. A, title VI, § 662, div. B, title XXVIII, § 2831, Oct. 17, 2006, 120 Stat. 2263, 2480; Pub. L. 110–181, div. A, title X, § 1063(c)(13), div. B, title XXVIII, § 2823, Jan. 28, 2008, 122 Stat. 323, 544; Pub. L. 110–417, div. B, title XXVIII, §§ 2812(a)–(d), (f)(1), 2831, Oct. 14, 2008, 122 Stat. 4725, 4726, 4728, 4732; Pub. L. 111–84, div. A, title X, § 1073(a)(26), Oct. 28, 2009, 123 Stat. 2474; Pub. L. 111–350, § 5(b)(44), Jan. 4, 2011, 124 Stat. 3846; Pub. L. 111–383, div. A, title X, § 1075(b)(41), div. B, title XXVIII, §§ 2811(g)–2813(a), Jan. 7, 2011, 124 Stat. 4371, 4463; Pub. L. 112–239, div. B, title XXVII, § 2712(c)(2), Jan. 2, 2013, 126 Stat. 2145; Pub. L. 113–66, div. B, title XXVIII, § 2812, Dec. 26, 2013, 127 Stat. 1014; Pub. L. 113–291, div. B, title XXVIII, § 2811, Dec. 19, 2014, 128 Stat. 3700; Pub. L. 114–92, div. B, title XXVIII, § 2814, Nov. 25, 2015, 129 Stat. 1175; Pub. L. 115–91, div. A, title X, § 1081(a)(46), (47), div. B, title XXVIII, §§ 2811(e), 2835, Dec. 12, 2017, 131 Stat. 1596, 1597, 1848, 1859; Pub. L. 115–232, div. B, title XXVIII, § 2802(a), Aug. 13, 2018, 132 Stat. 2261.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
2667(a)	5:626s–3 (1st sentence). 10:1270 (1st sentence). 34:522a (1st sentence).	Aug. 5, 1947, ch. 493, §§ 1, 6, 61 Stat. 774, 775; Sept. 28, 1951, ch. 434. § 605 (as applicable to Act of Aug. 5, 1947, ch. 493, § 1), 65 Stat. 366.
2667(b)	5:626s–3 (2d through 6th sentences). 10:1270 (2d through 6th sentences). 34:522a (2d through 6th sentences).	
2667(c)	5:626s–3 (last sentence). 10:1270 (last sentence). 34:522a (last sentence).	
2667(d)	5:626s–3 (less 1st 6 sentences). 10:1270 (less 1st 6 sentences). 34:522a (less 1st 6 sentences).	

HISTORICAL AND REVISION NOTES—CONTINUED

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2667(e) …..	5:626s–6. 10:1270d. 34:522e.	

In subsection (a), the words ''considers * * * United States'' are substituted for the words ''shall deem * * * Government''. The words ''and conditions'' are omitted as surplusage. The words ''he considers'' are substituted for the words ''in his judgment''.

In subsection (a)(3), the words ''excess property, as defined by section 472 of title 40'' are substituted for the words ''surplus to the needs of the Department within the meaning of the Surplus Property Act of 1944 [Act of October 3, 1944 (58 Stat. 765)]'', in 5:626s–3, 10:1270, and 34:522a, since the words ''excess property'' are so defined by the Federal Property and Administrative Services Act of 1949.

In subsection (b)(2), the words ''may give'' are substituted for the first 12 words of the third sentence of 5:626s–3, 10:1270, and 34:522a. The words ''if the lease is revoked to allow the United States to sell the property'' are substituted for the words ''in the event of the revocation of the lease in order to permit sale thereof by the Government''. The words ''under any other provision of law'' are inserted for clarity. The words ''the first right to buy'' are substituted for the words ''a right of first refusal''. The words ''but this section shall not be construed as authorizing the sale of any property unless the sale thereof is otherwise authorized by law'' are omitted as surplusage, since the revised section deals only with leases of property.

In subsection (b)(3), the words ''must permit'' are substituted for the words ''Each such lease shall contain a provision permitting''. The words ''from the lease'' are omitted as surplusage.

In subsection (b)(5), the words ''any such lease'' and ''of such property'' are omitted as surplusage.

In subsection (c), the words ''This section does'' are substituted for the words ''The authority herein granted shall''.

In subsection (e), the words ''of property'' are inserted for clarity. The words ''leased under'' are substituted for the words ''made or created pursuant to''. The words ''may be taxed by State or local governments'' are substituted for the words ''shall be made subject to State or local taxation''. The last sentence is substituted for the last sentence of 5:626s–6, 10:1270d, and 34:522e.

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsec. (g)(4)(A), is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, which is classified generally to chapter 55 (§ 4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

The date of the enactment of this paragraph, referred to in subsec. (h)(4)(A)(i), is the date of enactment of Pub. L. 113–291, which was approved Dec. 19, 2014.

AMENDMENTS

2018—Subsec. (b)(8). Pub. L. 115–232 added par. (8).

2017—Subsec. (c)(1)(D). Pub. L. 115–91, § 2835, inserted '', which shall prioritize energy resilience in the event of commercial grid outages'' after ''Secretary concerned''.

Subsec. (d)(3). Pub. L. 115–91, § 2811(e), substituted ''submit, in an electronic medium pursuant to section 480 of this title, to the congressional defense committees a notice'' for ''provide to the congressional defense committees written notice''.

Subsec. (e)(1)(E). Pub. L. 115–91, § 1081(a)(46)(A), substituted ''a military museum'' for ''a military museum described in section 489(a) of this title''.

Subsec. (e)(4). Pub. L. 115–91, § 1081(a)(46)(B), substituted ''shall be deposited into the Department of Defense Base Closure Account'' for ''before January 1, 2005, shall be deposited into the account''.

Subsec. (e)(5). Pub. L. 115–91, § 1081(a)(46)(C), struck out par. (5) which read as follows: ''Money rentals received by the United States from a lease under subsection (g) at a military installation approved for closure or realignment under a base closure law on or after January 1, 2005, shall be deposited into the account established under section 2906A(a) of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note).''

Subsec. (k). Pub. L. 115–91, § 1081(a)(47), substituted ''section 8101'' for ''section 9101''.

2015—Subsec. (k). Pub. L. 114–92 added subsec. (k).

2014—Subsec. (h)(4). Pub. L. 113–291 added par. (4).

2013—Subsec. (e)(1)(C)(vi). Pub. L. 113–66, § 2812(a), added cl. (vi).

Subsec. (i)(1), (2). Pub. L. 113–66, § 2812(b), added par. (1) and redesignated former par. (1) as (2). Former par. (2) redesignated (3).

Subsec. (i)(3). Pub. L. 113–66, § 2812(b), redesignated par. (2) as (3). Former par. (3) redesignated (4).

Pub. L. 112–239 substituted ''section 2687'' for ''section 2687(e)(1)''.

Subsec. (i)(4), (5). Pub. L. 113–66, § 2812(b), redesignated pars. (3) and (4) as (4) and (5), respectively.

2011—Subsec. (b)(7). Pub. L. 111–383, § 2813(a), inserted before period at end '', or otherwise commit the Secretary concerned or the Department of Defense to annual payments in excess of such amount''.

Subsec. (c)(4). Pub. L. 111–383, § 2811(g)(1), struck out par. (4), which set forth reporting requirements for issuance of contract solicitations or other lease offerings with annual payments exceeding $750,000.

Subsec. (d)(6). Pub. L. 111–383, § 2811(g)(2), struck out par. (6), which read as follows: ''The Secretary concerned shall provide written notification to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives regarding all leases under this section that include the operation of a community support facility or the provision of community support services, regardless of whether the facility will be operated by a covered entity or the lessee or the services will be provided by a covered entity or the lessee.''

Subsec. (e)(1)(A)(ii). Pub. L. 111–383, § 1075(b)(41)(A), substituted ''section 2668'' for ''sections 2668 and 2669''.

Subsec. (e)(1)(E). Pub. L. 111–383, §§ 2811(g)(3), 2812, added subpar. (E) and struck out former subpar. (E), which read as follows: ''The Secretary concerned may not expend under subparagraph (C) an amount in excess of $500,000 at a single military installation or Defense Agency location until 30 days after the date on which a report on the facts of the proposed expenditure is submitted to the congressional defense committees.''

Subsec. (e)(5). Pub. L. 111–383, § 1075(b)(41)(B), substituted ''subsection (g)'' for ''subsection (f)''.

Subsec. (g)(1). Pub. L. 111–350, which directed substitution of ''Notwithstanding subtitle I of title 40 and division C (except sections 3302, 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41 (to the extent those provisions are inconsistent with this subsection) or subsection (a)(2) of this section'' for ''Notwithstanding subsection (a)(3) or subtitle I of title 40 and title III of the Federal Property and Administrative Services Act of 1949 (to the extent subtitle I and title III are inconsistent with this subsection)'' in subsec. (f)(1), was executed by making the substitution for ''Notwithstanding subsection (a)(2) or subtitle I of title 40 and title III of the Federal Property and Administrative Services Act of 1949 (to the extent subtitle I and title III are inconsistent with this subsection)'' in subsec. (g)(1), to reflect the probable intent of Congress and the amendment by Pub. L. 109–364, § 662(b)(1), (d)(6). See 2006 Amendment note below.

Subsec. (h)(3) to (5). Pub. L. 111–383, § 2811(g)(4), redesignated par. (4) as (3) and struck out former pars. (3) and (5) which related to written notice to Congress describing competitive procedures for, or public benefit served by, certain proposed leases and certification re-

quirements for energy production leases exceeding 20 years, respectively.

2009—Subsec. (g)(1). Pub. L. 111–84 substituted ''law, the Secretary concerned may'' for ''law, the Secretary of the military department concerned may''.

2008—Pub. L. 110–417, § 2812(f)(1), amended section catchline generally. Prior to amendment, catchline read as follows: ''Leases: non-excess property of military departments''.

Subsec. (a). Pub. L. 110–417, § 2812(a)(1), amended subsec. (a) generally. Prior to amendment, text read as follows: ''Whenever the Secretary of a military department considers it advantageous to the United States, he may lease to such lessee and upon such terms as he considers will promote the national defense or be in the public interest, real or personal property that is—

''(1) under the control of that department; and

''(2) not excess property, as defined by section 102 of title 40.''

Subsec. (b)(7). Pub. L. 110–417, § 2812(b), added par. (7).

Subsec. (c)(1)(D) to (F). Pub. L. 110–181, § 2823(a), added subpars. (D) and (E), redesignated former subpar. (E) as (F), and struck out former subpar. (D) which read as follows: ''Facilities operation support for the Secretary concerned.''

Subsec. (c)(4). Pub. L. 110–417, § 2812(c), amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''In the case of a lease for which all or part of the consideration proposed to be accepted by the Secretary concerned under this subsection is in-kind consideration with a value in excess of $500,000, the Secretary concerned may not enter into the lease until 30 days after the date on which a report on the facts of the lease is submitted to the congressional defense committees.''

Subsec. (d)(2). Pub. L. 110–417, § 2812(d)(1)(A), substituted ''Secretary concerned'' for ''Secretary of a military department'' in introductory provisions.

Subsec. (d)(3), (4), (6). Pub. L. 110–417, § 2812(d)(1)(B), struck out ''of the military department'' after ''Secretary'' in pars. (3) and (6) and after ''from the Secretary'' in par. (4).

Subsec. (e). Pub. L. 110–181, § 1063(c)(13), amended Pub. L. 109–364, § 2831. See 2006 Amendment note below.

Subsec. (e)(1)(A). Pub. L. 110–417, § 2812(d)(2)(A), in introductory provisions, substituted ''Secretary concerned'' for ''Secretary of a military department'' and ''that Secretary'' for ''such military department'' and, in cl. (iii), substituted ''of that Secretary'' for ''of that military department''.

Subsec. (e)(1)(B)(i). Pub. L. 110–417, § 2812(d)(2)(B), substituted ''Secretary concerned'' for ''Secretary of a military department''.

Subsec. (e)(1)(B)(ii). Pub. L. 110–181, § 2823(d)(1), substituted ''paragraph (3), (4), or (5)'' for ''paragraph (4), (5), or (6)''.

Subsec. (e)(1)(C). Pub. L. 110–417, § 2812(d)(2)(C), in introductory provisions, substituted ''established for the Secretary concerned shall be available to the Secretary'' for ''of a military department pursuant to subparagraph (A) shall be available to the Secretary of that military department''.

Subsec. (e)(1)(C)(ii) to (v). Pub. L. 110–181, § 2823(b), realigned margins of cls. (ii) and (iii), added cls. (iv) and (v), and struck out former cl. (iv) which read as follows: ''Facilities operation support.''

Subsec. (e)(1)(D). Pub. L. 110–417, § 2812(d)(2)(D), substituted ''established for the Secretary concerned'' for ''of a military department under subparagraph (A)'' and inserted ''or Defense Agency location'' after ''military installation''.

Subsec. (e)(1)(E). Pub. L. 110–417, § 2812(d)(2)(E), substituted ''military installation or Defense Agency location'' for ''installation''.

Subsec. (e)(3). Pub. L. 110–417, § 2812(d)(2)(F), substituted ''control of the Secretary concerned'' for ''control of the Secretary of a military department''.

Pub. L. 110–181, § 2823(d)(2), redesignated par. (4) as (3).

Subsec. (e)(4) to (6). Pub. L. 110–181, § 2823(d)(2), redesignated pars. (5) and (6) as (4) and (5), respectively.

Subsec. (g)(1). Pub. L. 110–417, § 2812(d)(3), which directed amendment of par. (1) by substituting ''Secretary concerned'' for ''Secretary of a military department'', could not be executed because the phrase ''Secretary of a military department'' did not appear in text.

Subsec. (h)(1). Pub. L. 110–181, § 2823(c)(1), substituted ''exceeds one year, or the fair market value of the lease'' for ''exceeds one year, and the fair market value of the lease''.

Subsec. (h)(2) to (4). Pub. L. 110–181, § 2823(c)(2), (3), added pars. (2) and (3), redesignated former par. (3) as (4), and struck out former par. (2) which read as follows: ''Not later than 45 days before entering into a lease described in paragraph (1), the Secretary concerned shall submit to Congress written notice describing the terms of the proposed lease and the competitive procedures used to select the lessee.''

Subsec. (h)(5). Pub. L. 110–417, § 2831, added par. (5).

Subsec. (i)(4). Pub. L. 110–417, § 2812(a)(2), added par. (4).

2006—Subsec. (a). Pub. L. 109–364, § 662(d)(1), inserted heading.

Subsec. (b). Pub. L. 109–364, § 662(d)(2), inserted heading.

Subsec. (b)(6). Pub. L. 109–364, § 662(a), added par. (6).

Subsec. (c). Pub. L. 109–364, § 662(d)(3), inserted heading.

Subsec. (d). Pub. L. 109–364, § 662(b), added subsec. (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 109–364, § 2831, as amended by Pub. L. 110–181, § 1063(c)(13), substituted ''paragraph (4), (5), or (6)'' for ''paragraph (4) or (5)'' in par. (1)(B)(ii), inserted ''at a military installation approved for closure or realignment under a base closure law before January 1, 2005,'' after ''lease under subsection (f)'' in par. (5), and added par. (6) at the end.

Pub. L. 109–364, § 662(d)(4), inserted heading and substituted ''(g)'' for ''(f)'' in par. (5).

Pub. L. 109–364, § 662(b)(1), redesignated subsec. (d) as (e). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 109–364, § 662(b)(1), (d)(5), redesignated subsec. (e) as (f) and inserted heading. Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 109–364, § 662(b)(1), (d)(6), redesignated subsec. (f) as (g), inserted heading, and substituted ''(a)(2)'' for ''(a)(3)'' in par. (1). Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 109–364, § 662(b)(1), (d)(7), redesignated subsec. (g) as (h) and inserted heading. Former subsec. (h) redesignated (i).

Subsec. (i). Pub. L. 109–364, § 662(b)(1), (c), redesignated subsec. (h) as (i), inserted heading, and amended text of subsec. (i) generally. Prior to amendment, subsec. (i) read as follows: ''In this section, the term 'military installation' has the meaning given such term in section 2687(e)(1) of this title.'' Former subsec. (i) redesignated (j).

Subsec. (j). Pub. L. 109–364, § 662(b)(1), (d)(8), redesignated subsec. (i) as (j) and inserted heading.

2003—Subsec. (b)(5). Pub. L. 108–178 struck out comma after ''of title 40''.

Subsec. (h). Pub. L. 108–136 redesignated introductory provisions and par. (3) as entire subsec., substituted ''section,'' for ''section:'' and ''this term'' for ''The term'', struck out par. (1) which defined ''congressional defense committees'' to mean the Committees on Armed Services and Appropriations of the Senate and House of Representatives, and struck out par. (2) which defined ''base closure law'' to mean section 2687 of this title, the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Pub. L. 101–510), and title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Pub. L. 100–526).

2002—Subsec. (a)(2). Pub. L. 107–217, § 3(b)(12)(A), substituted ''section 102 of title 40'' for ''section 3 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 472)''.

Subsec. (b)(5). Pub. L. 107–217, § 3(b)(12)(B), substituted ''section 1302 of title 40'' for ''section 321 of the Act of June 30, 1932 (40 U.S.C. 303b)''.

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Subsec. (d)(3). Pub. L. 107–314 struck out par. (3) which read as follows: ''Not later than March 15 each year, the Secretary of Defense shall submit to the congressional defense committees a report which shall include—

''(A) an accounting of the receipt and use of all money rentals that were deposited and expended under this subsection during the fiscal year preceding the fiscal year in which the report is made; and

''(B) a detailed explanation of each lease entered into, and of each amendment made to existing leases, during such preceding fiscal year.''

Subsec. (f)(1). Pub. L. 107–217, §3(b)(12)(C), inserted ''subtitle I of title 40 and title III of'' before ''the Federal Property and Administrative Services Act of 1949'' and substituted ''subtitle I and title III are'' for ''such Act is''.

2001—Subsec. (g)(3). Pub. L. 107–107 added par. (3).

2000—Subsec. (a). Pub. L. 106–398, §1 [div. B, title XXVIII, §2812(a)], inserted ''and'' at end of par. (1), redesignated par. (3) as (2), and struck out former par. (2) which read as follows: ''not for the time needed for public use; and''.

Subsec. (b)(5). Pub. L. 106–398, §1 [div. B, title XXVIII, §2812(b)(1)], substituted ''alteration, repair, or improvement,'' for ''improvement, maintenance, protection, repair, or restoration,'' and struck out '', or of the entire unit or installation where a substantial part of it is leased,'' after ''of the property leased''.

Subsec. (c). Pub. L. 106–398, §1 [div. B, title XXVIII, §2812(b)(3)], added subsec. (c). Former subsec. (c) redesignated (i).

Subsec. (d)(1). Pub. L. 106–398, §1 [div. B, title XXVIII, §2812(c)], amended par. (1) generally. Prior to amendment, par. (1) read as follows:

''(1)(A) All money rentals received pursuant to leases entered into by the Secretary of a military department under this section shall be deposited in a special account in the Treasury established for such military department, except—

''(i) amounts paid for utilities and services furnished lessees by the Secretary; and

''(ii) money rentals referred to in paragraph (4) or (5).

''(B) Sums deposited in a military department's special account pursuant to subparagraph (A) shall be available to such military department, as provided in appropriation Acts, as follows:

''(i) 50 percent of such amount shall be available for facility maintenance and repair or environmental restoration at the military installation where the leased property is located.

''(ii) 50 percent of such amount shall be available for facility maintenance and repair and for environmental restoration by the military department concerned.''

Subsec. (d)(3). Pub. L. 106–398, §1 [div. B, title XXVIII, §2812(d)(1)], substituted ''Not later than March 15 each year, the Secretary of Defense shall submit to the congressional defense committees a report which'' for ''As part of the request for authorizations of appropriations submitted to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives for each fiscal year, the Secretary of Defense'' in introductory provisions.

Subsec. (d)(3)(A). Pub. L. 106–398, §1 [div. B, title XXVIII, §2812(d)(2)], substituted ''report'' for ''request''.

Subsec. (f)(4), (5). Pub. L. 106–398, §1 [div. B, title XXVIII, §2812(b)(4)], redesignated par. (5) as (4) and struck out former par. (4) which read as follows: ''The Secretary concerned may accept under subsection (b)(5) services of a lessee for an entire installation to be closed or realigned under a base closure law, or for any part of such installation, without regard to the requirement in subsection (b)(5) that a substantial part of the installation be leased.''

Subsec. (h). Pub. L. 106–398, §1 [div. B, title XXVIII, §2812(e)], amended subsec. (h) generally. Prior to amendment, subsec. (h) read as follows: ''In this section, the term 'base closure law' means each of the following:

''(1) The Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note).

''(2) Title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 10 U.S.C. 2687 note).

''(3) Section 2687 of this title.''

Subsec. (i). Pub. L. 106–398, §1 [div. B, title XXVIII, §2812(b)(2)], redesignated subsec. (c) as (i).

1999—Subsec. (d)(3). Pub. L. 106–65 substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security'' in introductory provisions.

1998—Subsec. (f)(1). Pub. L. 105–261 inserted ''or the Federal Property and Administrative Services Act of 1949 (to the extent such Act is inconsistent with this subsection)''.

1997—Pub. L. 105–85, §1061(c)(1), inserted ''of military departments'' after ''property'' in section catchline.

Subsec. (b)(4). Pub. L. 105–85, §1061(a), struck out '', in the case of the lease of real property,'' after ''shall provide''.

Subsec. (d)(2). Pub. L. 105–85, §361(b)(2), inserted ''or working capital fund'' before ''from which''.

Subsecs. (g), (h). Pub. L. 105–85, §1061(b), added subsec. (g) and redesignated former subsec. (g) as (h).

1996—Subsec. (d)(1)(A)(ii). Pub. L. 104–106, §2831(a)(1), inserted ''or (5)'' after ''paragraph (4)''.

Subsec. (d)(3). Pub. L. 104–106, §1502(a)(1), substituted ''Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives'' for ''Committees on Armed Services of the Senate and House of Representatives''.

Subsec. (d)(5). Pub. L. 104–106, §2831(a)(2), added par. (5).

Subsec. (f)(4). Pub. L. 104–106, §2832, added par. (4).

Subsec. (f)(5). Pub. L. 104–106, §2833, added par. (5).

1993—Subsec. (f). Pub. L. 103–160, §2906(a), amended subsec. (f) generally. Prior to amendment, subsec. (f) read as follows: ''Notwithstanding clause (3) of subsection (a), real property and associated personal property, which have been determined excess as the result of a defense installation realignment or closure, may be leased to State or local governments pending final disposition of such property if—

''(1) the Secretary concerned determines that such action would facilitate State or local economic adjustment efforts, and

''(2) the Administrator of General Services concurs in the action.''

Subsec. (g). Pub. L. 103–160, §2906(b), added subsec. (g).

1992—Subsec. (b)(4). Pub. L. 102–484 inserted '', in the case of the lease of real property,'' after ''shall provide''.

1991—Subsec. (b)(3). Pub. L. 102–190, §2862(a)(1), substituted ''shall permit'' for ''must permit'' and struck out ''and'' at end.

Subsec. (b)(4). Pub. L. 102–190, §2862(a)(2), (3), added par. (4) and redesignated former par. (4) as (5).

Subsec. (b)(5). Pub. L. 102–190, §2862(a)(2), (4), redesignated par. (4) as (5) and inserted ''improvement,'' before ''maintenance'' and ''the payment of'' before ''part or all''.

Subsec. (d)(3). Pub. L. 102–190, §2862(b), redesignated subpar. (B) as par. (3), substituted ''As part of the request for authorizations of appropriations submitted to the Committees on Armed Services of the Senate and House of Representatives for each fiscal year'' for ''As part of the request for authorizations of appropriations to such Committees for each fiscal year after fiscal year 1992'', redesignated cls. (i) and (ii) as subpars. (A) and (B), respectively, and struck out former subpar. (A) which read as follows: ''As part of the request for authorizations of appropriations for fiscal year 1992 to the Committees on Armed Services of the Senate and of the House of Representatives, the Secretary of Defense shall include an explanation of each lease from which money rentals will be received and deposited under this

subsection during fiscal year 1991, together with an estimate of the amount to be received from each such lease and an explanation of the anticipated expenditures of such receipts.''

1990—Subsec. (d). Pub. L. 101–510 added pars. (1) to (3), redesignated former par. (2) as (4), and struck out former par. (1) which read as follows: ''Except as provided in paragraph (2), money rentals received by the United States directly from a lease under this section shall be covered into the Treasury as miscellaneous receipts. Payments for utilities or services furnished to the lessee under such a lease by the department concerned may be covered into the Treasury to the credit of the appropriation from which the cost of furnishing them was paid.''

1982—Subsec. (b)(4). Pub. L. 97–295 substituted ''of'' for ''entitled 'An Act making appropriations for the Legislative Branch of the Government for the fiscal year ending June 30, 1933, and for other purposes', approved'' after ''section 321 of the Act''.

Subsec. (d). Pub. L. 97–321 designated existing provisions as par. (1), substituted ''Except as provided in paragraph (2), money'' for ''Money'', and added par. (2).

1980—Subsec. (a)(3). Pub. L. 96–513, § 511(92)(A), substituted ''section 3 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 472)'' for ''section 472 of title 40''.

Subsec. (b)(4). Pub. L. 96–513, § 511(92)(B), substituted ''section 321 of the Act entitled 'An act making appropriations for the Legislative Branch of the Government for the fiscal year ending June 30, 1933, and for other purposes', approved June 30, 1932 (40 U.S.C. 303b),'' for ''section 303b of title 40''.

Subsec. (e). Pub. L. 96–513, § 511(92)(C), substituted ''Act'' for ''act''.

Subsec. (f). Pub. L. 96–513, § 511(92)(D), substituted ''the Secretary'' for ''The Secretary'', and substituted ''the Administrator of General Services'' for ''The Administrator of the General Services Administration''.

1976—Subsec. (b)(4), (5). Pub. L. 94–412 struck out par. (4) which required leases of nonexcess property of a military department include a provision making the lease revocable during a national emergency declared by the President, and redesignated par. (5) as (4).

1975—Subsec. (f). Pub. L. 94–107 added subsec. (f).

EFFECTIVE DATE OF 2018 AMENDMENT

Pub. L. 115–232, div. B, title XXVIII, § 2802(b), Aug. 13, 2018, 132 Stat. 2261, provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to leases entered into during fiscal year 2019 or any of the four succeeding fiscal years.''

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–181, div. A, title X, § 1063(c), Jan. 28, 2008, 122 Stat. 322, provided that the amendment made by section 1063(c)(13) is effective as of Oct. 17, 2006, and as if included in the John Warner National Defense Authorization Act for Fiscal Year 2007, Pub. L. 109–364, as enacted.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–178 effective Aug. 21, 2002, see section 5 of Pub. L. 108–178, set out as a note under section 5334 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

SAVINGS PROVISION

Amendment by Pub. L. 94–412 not to affect any action taken or proceeding pending at the time of amendment, see section 501(h) of Pub. L. 94–412, set out as a note under section 1601 of Title 50, War and National Defense.

TEMPORARY INSTALLATION REUTILIZATION AUTHORITY FOR ARSENALS, DEPOTS, AND PLANTS

Pub. L. 115–91, div. A, title III, § 345, Dec. 12, 2017, 131 Stat. 1363, as amended by Pub. L. 116–92, div. A, title III, § 354, Dec. 20, 2019, 133 Stat. 1321, provided that:

''(a) MODIFIED AUTHORITY.—In the case of a military manufacturing arsenal, depot, or plant, the Secretary of the Army may authorize up to 10 leases and contracts per fiscal year under section 2667 of title 10, United States Code, for a term of up to 25 years, notwithstanding subsection (b)(1) of such section, if the Secretary determines that a lease or contract of that duration will promote the national defense for the purpose of—

''(1) helping to maintain the viability of the military manufacturing arsenal, depot, or plant and any military installations on which it is located;

''(2) eliminating, or at least reducing, the cost of Government ownership of the military manufacturing arsenal, depot, or plant, including the costs of operations and maintenance, the costs of environmental remediation, and other costs; and

''(3) leveraging private investment at the military manufacturing arsenal, depot, or plant through long-term facility use contracts, property management contracts, leases, or other agreements that support and advance the preceding purposes.

''(b) DELEGATION AND REVIEW PROCESS.—

''(1) IN GENERAL.—The Secretary of the Army may delegate the authority provided by this section to the commander of the major subordinate command of the Army that has responsibility for the military manufacturing arsenal, depot, or plant or, if part of a larger military installation, the installation as a whole. The commander may approve a lease or contract under such authority on a case-by-case basis or a class basis.

''(2) NOTICE OF APPROVAL.—Upon any approval of a lease or contract by a commander pursuant to a delegation of authority under paragraph (1), the commander shall notify the Chief of the Army Corps of Engineers and Congress of the approval.

''(3) REVIEW PERIOD.—Any lease or contract that is approved utilizing the delegation authority under paragraph (1) is subject to a 90-day hold period so that the Chief of the Army Corps of Engineers may review the lease or contract pursuant to paragraph (4).

''(4) DISPOSITION OF REVIEW.—If the Chief of the Army Corps of Engineers disapproves of a contract or lease submitted for review under paragraph (3), the agreement shall be null and void upon transmittal by the Chief of the Army Corps of Engineers to the delegating authority of a written disapproval, including a justification for such disapproval, within the 90-day hold period. If no such disapproval is transmitted within the 90-day hold period, the agreement shall be deemed approved.

''(5) APPROVAL OF REVISED AGREEMENT.—If, not later than 60 days after receiving a disapproval under paragraph (4), the delegating authority submits to the Chief of the Army Corps of Engineers a new contract or lease that addresses the concerns of the Chief of the Army Corps of Engineers outlined in such disapproval, the new contract or lease shall be deemed approved unless the Chief of the Army Corps of Engineers transmits to the delegating authority a disapproval of the new contract or lease within 30 days of such submission.

''(c) MILITARY MANUFACTURING ARSENAL, DEPOT, OR PLANT DEFINED.—In this section, the term 'military manufacturing arsenal, depot, or plant' means a Government-owned, Government-operated defense plant of the Army that manufactures weapons, weapon components, or both.

''(d) SUNSET.—The authority under this section shall terminate at the close of September 30, 2025. Any contracts entered into on or before such date shall continue in effect according to their terms.''

TRANSFERS FROM SPECIAL ACCOUNTS

Pub. L. 108–287, title VIII, § 8034, Aug. 5, 2004, 118 Stat. 978, provided that: ''Amounts deposited during the current fiscal year and hereafter to the special account established under 40 U.S.C. 572(b)(5)(A) and to the special account established under 10 U.S.C. 2667(d)(1) [now 2667(e)(1)] are appropriated and shall be available until transferred by the Secretary of Defense to current applicable appropriations or funds of the Department of Defense under the terms and conditions specified by 40 U.S.C. 572(b)(5)(B) and 10 U.S.C. 2667(d)(1)(B) [now 2667(e)(1)(B)], to be merged with and to be available for the same time period and the same purposes as the appropriation to which transferred.''

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 108–87, title VIII, § 8035, Sept. 30, 2003, 117 Stat. 1080.

Pub. L. 107–248, title VIII, § 8035, Oct. 23, 2002, 116 Stat. 1544.

Pub. L. 107–117, div. A, title VIII, § 8038, Jan. 10, 2002, 115 Stat. 2255.

Pub. L. 106–259, title VIII, § 8038, Aug. 9, 2000, 114 Stat. 682.

Pub. L. 106–79, title VIII, § 8040, Oct. 25, 1999, 113 Stat. 1239.

Pub. L. 105–262, title VIII, § 8040, Oct. 17, 1998, 112 Stat. 2306.

Pub. L. 105–56, title VIII, § 8044, Oct. 8, 1997, 111 Stat. 1230.

Pub. L. 104–61, title VIII, § 8056, Dec. 1, 1995, 109 Stat. 663.

Pub. L. 103–335, title VIII, § 8063, Sept. 30, 1994, 108 Stat. 2634.

Pub. L. 103–139, title VIII, § 8074, Nov. 11, 1993, 107 Stat. 1457.

Pub. L. 102–396, title IX, § 9107, Oct. 6, 1992, 106 Stat. 1927.

LEASING OF DEFENSE PROPERTY; NOTIFICATION OF CONGRESS; WAIVER; REPORT TO CONGRESS; DEFINITION

Pub. L. 96–533, title I, § 109(a)–(e), Dec. 16, 1980, 94 Stat. 3137, provided that before the Secretary of a military department exercised his authority under section 2667 of title 10, United States Code, in order to lease defense property to a foreign government for a period of more than six months, the President had to transmit to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate, a written notification of the particulars of the proposed lease, prior to repeal by Pub. L. 97–113, title I, § 109(d)(1), Dec. 29, 1981, 95 Stat. 1526. See section 2795 et seq. of Title 22, Foreign Relations and Intercourse.

[§ 2667a. Repealed. Pub. L. 110–417, div. B, title XXVIII, § 2812(e)(1), Oct. 14, 2008, 122 Stat. 4727]

Section, added Pub. L. 105–85, div. A, title X, § 1062(a), Nov. 18, 1997, 111 Stat. 1891; amended Pub. L. 107–217, § 3(b)(13), Aug. 21, 2002, 116 Stat. 1296; Pub. L. 108–136, div. A, title X, § 1031(a)(28), Nov. 24, 2003, 117 Stat. 1599, related to leases of non-excess property of Defense agencies.

PRIOR PROVISIONS

A prior section 2667a, added Pub. L. 98–115, title VIII, § 807(a)(1), Oct. 11, 1983, 97 Stat. 786, provided for sale and replacement of nonexcess real property, prior to repeal by Pub. L. 98–115, title VIII, § 807(c), Oct. 11, 1983, 97 Stat. 789, as amended by Pub. L. 99–167, title VIII, § 806(a), Dec. 3, 1985, 99 Stat. 988, effective Oct. 1, 1986.

SAVINGS PROVISION

Pub. L. 110–417, div. B, title XXVIII, § 2812(e)(2), (3), Oct. 14, 2008, 122 Stat. 4727, provided that:

''(2) EFFECT ON EXISTING CONTRACTS.—The repeal of section 2667a of title 10, United States Code, shall not affect the validity or terms of any lease with respect to property of a Defense Agency entered into by the Secretary of Defense under such section before the date of the enactment of this Act [Oct. 14, 2008].

''(3) TREATMENT OF MONEY RENTS.—Amounts in any special account established for a Defense Agency pursuant to subsection (d) of section 2667a of title 10, United States Code, before repeal of such section by paragraph (1), and amounts that would be deposited in such an account in connection with a lease referred to in paragraph (2), shall—

''(A) remain available until expended for the purposes specified in such subsection, notwithstanding the repeal of such section by paragraph (1); or

''(B) to the extent provided in appropriations Acts, be transferred to the special account required for the Secretary of Defense by subsection (e) of section 2667 of such title, as amended by subsection (d)(2) of this section.''

§ 2668. Easements for rights-of-way

(a) AUTHORIZED TYPES OF EASEMENTS.—If the Secretary of a military department finds that it will not be against the public interest, the Secretary may grant, upon such terms as the Secretary considers advisable, easements for rights-of-way over, in, and upon public lands permanently withdrawn or reserved for the use of that department, and other lands under the Secretary's control for—

(1) railroad tracks;

(2) gas, water, sewer, and oil pipe lines;

(3) substations for electric power transmission lines and pumping stations for gas, water, sewer, and oil pipe lines;

(4) canals;

(5) ditches;

(6) flumes;

(7) tunnels;

(8) dams and reservoirs in connection with fish and wildlife programs, fish hatcheries, and other improvements relating to fish-culture;

(9) roads and streets;

(10) poles and lines for the transmission or distribution of electric power;

(11) poles and lines for the transmission or distribution of communications signals (including telephone and telegraph signals);

(12) structures and facilities for the transmission, reception, and relay of such signals; and

(13) any other purpose that the Secretary considers advisable.

(b) LIMITATION ON SIZE OF EASEMENT.—No easement granted under this section may include more land than is necessary for the easement.

(c) TERMINATION.—The Secretary of the military department concerned may terminate all or part of any easement granted under this section for—

(1) failure to comply with the terms of the grant;

(2) nonuse for a two-year period; or

(3) abandonment.

(d) NOTICE TO DEPARTMENT OF THE INTERIOR.—Copies of instruments granting easements over public lands under this section shall be furnished to the Secretary of the Interior.

(e) DISPOSITION OF CONSIDERATION.—Subsections (c) and (e) of section 2667 of this title shall apply with respect to in-kind consideration and proceeds received by the Secretary of a mili-

tary department in connection with an easement granted under this section in the same manner as such subsections apply to in-kind consideration and money rentals received pursuant to leases entered into by that Secretary under such section.

(Aug. 10, 1956, ch. 1041, 70A Stat. 150; Pub. L. 98–525, title XIV, § 1405(38), Oct. 19, 1984, 98 Stat. 2624; Pub. L. 104–201, div. B, title XXVIII, § 2861, Sept. 23, 1996, 110 Stat. 2804; Pub. L. 106–398, § 1 [div. B, title XXVIII, § 2812(f)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–418; Pub. L. 108–136, div. B, title XXVIII, § 2813(a), Nov. 24, 2003, 117 Stat. 1725; Pub. L. 109–163, div. A, title X, § 1057(a)(3), Jan. 6, 2006, 119 Stat. 3440; Pub. L. 109–364, div. B, title XXVIII, § 2822(a), (b), Oct. 17, 2006, 120 Stat. 2474, 2475; Pub. L. 110–181, div. A, title X, § 1063(a)(14), Jan. 28, 2008, 122 Stat. 322.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2668(a)	43:931b (less 2d and 3d provisos of 1st sentence, and less last sentence).	July 24, 1946, ch. 596, § 7, 60 Stat. 643; Oct. 25, 1951, ch. 563, § 101 (31st through 43d words), 65 Stat. 641.
2668(b)	43:931b (2d proviso of 1st sentence).	
2668(c)	43:931b (3d proviso of 1st sentence).	
2668(d)	43:931b (last sentence) [43:931b is made applicable to the Navy by 50:171–1 (16th through 21st words)].	

In subsection (a), the word ''conditions'' is omitted as covered by the word ''terms''. The description of the persons covered in the opening paragraph and the lands covered in clauses (1)–(10) is restated to reflect an opinion of the Judge Advocate General of the Army (JAGR 1952/3179, 27 Mar. 1952). The exceptions to clause (10) make express the fact that the revised section does not cover certain easements authorized by earlier law. The word ''over'' includes the word ''across''. The words ''of the United States'', ''and empowered'', ''acquired lands'', ''jurisdiction and'', and ''municipality'' are omitted as surplusage. The word ''Commonwealth'' is inserted to reflect the present status of Puerto Rico.

In subsection (b), the words ''for the easement'' are substituted for the words ''for the purpose for which granted''.

In subsections (b) and (c), the word ''easement'' is substituted for the word ''rights-of-way''.

In subsection (c), the word ''terminate'' is substituted for the words ''annulled and forfeited''. The words ''and conditions'' are omitted as covered by the word ''terms''. The words ''two-year period'' are substituted for the words ''a period of two consecutive years''. The words ''of rights granted under authority hereof'' are omitted as surplusage.

AMENDMENTS

2008—Subsec. (e). Pub. L. 110–181 substituted ''and (e)'' for ''and (d)''.

2006—Subsec. (a). Pub. L. 109–364, § 2822(a)(1), (b)(1), inserted heading and, in introductory provisions, substituted ''the Secretary may'' for ''he may'', ''the Secretary considers'' for ''he considers'', and ''the Secretary's control'' for ''his control, to a State, Commonwealth, or possession, or political subdivision thereof, or to a citizen, association, partnership, or corporation of a State, Commonwealth, or possession,''.

Pub. L. 109–163 struck out ''Territory,'' after ''a State,'' in two places in introductory provisions.

Subsec. (a)(2). Pub. L. 109–364, § 2822(a)(2), substituted ''gas, water, sewer, and oil pipe lines'' for ''oil pipe lines''.

Subsec. (a)(13). Pub. L. 109–364, § 2822(a)(3), substituted ''the Secretary considers advisable'' for ''he considers advisable, except a purpose covered by section 2669 of this title''.

Subsecs. (b) to (e). Pub. L. 109–364, § 2822(b)(2)–(5), inserted subsec. headings.

2003—Subsec. (e). Pub. L. 108–136 substituted ''Subsections (c) and (d)'' for ''Subsection (d)'' and ''subsections apply to in-kind consideration and'' for ''subsection applies to'' and inserted ''in-kind consideration and'' before ''proceeds''.

2000—Subsec. (e). Pub. L. 106–398 added subsec. (e).

1996—Subsec. (a)(3). Pub. L. 104–201, § 2861(b)(1), struck out '', telephone lines, and telegraph lines,'' after ''transmission lines''.

Subsec. (a)(9). Pub. L. 104–201, § 2861(a)(1), struck out ''and'' at end.

Subsec. (a)(10) to (12). Pub. L. 104–201, § 2861(a)(3), added pars. (10) to (12). Former par. (10) redesignated (13).

Subsec. (a)(13). Pub. L. 104–201, § 2861(a)(2), (b)(2), redesignated par. (10) as (13) and struck out ''or by the Act of March 4, 1911 (43 U.S.C. 961)'' after ''2669 of this title''.

1984—Subsec. (a)(10). Pub. L. 98–525 substituted ''the Act of March 4, 1911 (43 U.S.C. 961)'' for ''section 961 of title 43''.

§ 2668a. Easements: granting restrictive easements in connection with land conveyances

(a) AUTHORITY TO INCLUDE RESTRICTIVE EASEMENT.—In connection with the conveyance of real property by the Secretary concerned under any provision of law, the Secretary concerned may grant an easement to an entity specified in subsection (b) restricting future uses of the conveyed real property for a conservation purpose consistent with section 170(h)(4)(A)(iv) of the Internal Revenue Code of 1986 (26 U.S.C. 170(h)(4)(A)(iv)).

(b) AUTHORIZED RECIPIENTS.—An easement under subsection (a) may be granted only to—

(1) a State or local government; or

(2) a qualified organization, as that term is defined in section 170(h) of the Internal Revenue Code of 1986 (26 U.S.C. 170(h)).

(c) LIMITATIONS ON USE OF EASEMENT AUTHORITY.—An easement under subsection (a) may not be granted unless—

(1) the proposed recipient of the easement consents to the receipt of the easement;

(2) the Secretary concerned determines that the easement is in the public interest and the conservation purpose to be promoted by the easement cannot be effectively achieved through the application of State law by the State or a local government without the grant of restrictive easements;

(3) the jurisdiction that encompasses the property to be subject to the easement authorizes the grant of restrictive easements; and

(4) the Secretary can give or assign to a third party the responsibility for monitoring and enforcing easements granted under this section.

(d) CONSIDERATION.—Easements granted under this section shall be without consideration from the recipient.

(e) ACREAGE LIMITATION.—No easement granted under this section may include more land than is necessary for the easement.

(f) TERMS AND CONDITIONS.—The grant of an easement under this section shall be subject to such additional terms and conditions as the Secretary concerned considers appropriate to protect the interests of the United States.

(Added Pub. L. 109–364, div. B, title XXVIII, § 2823(a), Oct. 17, 2006, 120 Stat. 2475.)

[§ 2669. Repealed. Pub. L. 109–364, div. B, title XXVIII, § 2822(c), Oct. 17, 2006, 120 Stat. 2475]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 151; Pub. L. 106–398, § 1 [div. B, title XXVIII, § 2812(f)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–418; Pub. L. 108–136, div. B, title XXVIII, § 2813(b), Nov. 24, 2003, 117 Stat. 1725; Pub. L. 109–163, div. A, title X, § 1057(a)(3), Jan. 6, 2006, 119 Stat. 3440, related to easements for gas, water, and sewer pipe lines.

§ 2670. Use of facilities by private organizations; use as polling places

(a) USE BY RED CROSS.—Under such conditions as he may prescribe, the Secretary of any military department may issue a revocable license to the American National Red Cross to—

(1) erect and maintain, on any military installation under his jurisdiction, buildings for the storage of supplies; or

(2) use, for the storage of supplies, buildings erected by the United States.

Supplies stored in buildings erected or used under this subsection are available to aid the civilian population in a serious national disaster.

(b) USE OF CERTAIN FACILITIES AS POLLING PLACES.—(1) Notwithstanding chapter 29 of title 18 (including sections 592 and 593 of such title) or any other provision of law, the Secretary of Defense or Secretary of a military department may not (except as provided in paragraph (3)) prohibit the designation or use of a qualifying facility under the jurisdiction of the Secretary as an official polling place for local, State, or Federal elections.

(2) A Department of Defense facility is a qualifying facility for purposes of this subsection if as of December 31, 2000—

(A) the facility is designated as an official polling place by a State or local election official; or

(B) the facility has been used as such an official polling place since January 1, 1996.

(3) The limitation in paragraph (1) may be waived by the Secretary of Defense or Secretary of the military department concerned with respect to a particular Department of Defense facility if the Secretary of Defense or Secretary concerned determines that local security conditions require prohibition of the designation or use of that facility as an official polling place for any election.

(c) USE OF SPACE AND EQUIPMENT BY VETERANS SERVICE ORGANIZATIONS.—(1) Upon certification to the Secretary concerned by the Secretary of Veterans Affairs, the Secretary concerned shall allow accredited, paid, full-time representatives of the organizations named in section 5902 of title 38, or of other organizations recognized by the Secretary of Veterans Affairs, to function on military installations under the jurisdiction of the Secretary concerned that are on land and from which persons are discharged or released from active duty.

(2) The commanding officer of a military installation allowing representatives to function on the installation under paragraph (1) shall allow the representatives to use available space and equipment at the installation.

(3) This subsection does not authorize the violation of measures of military security.

(Aug. 10, 1956, ch. 1041, 70A Stat. 151; Pub. L. 107–107, div. A, title XVI, § 1607(a)–(b)(2), Dec. 28, 2001, 115 Stat. 1279, 1280; Pub. L. 108–375, div. B, title XXVIII, § 2821(c)(1), (e)(2), Oct. 28, 2004, 118 Stat. 2129, 2130.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
2670 ………	36:12.	June 3, 1916, ch. 134, § 127a (5th par.); added June 4, 1920, ch. 227, subch. I, § 51 (5th par.); restated July 17, 1953, ch. 222, § 3, 67 Stat. 178.

The word ''issue'' is substituted for the words ''grant permission''. The word ''use'' is substituted for the words ''occupy for that purpose''.

AMENDMENTS

2004—Pub. L. 108–375, § 2821(e)(2), substituted ''Use of facilities by private organizations; use as polling places'' for ''Military installations: use by American National Red Cross; use as polling places'' in section catchline.

Subsec. (c). Pub. L. 108–375, § 2821(c)(1), added subsec. (c).

2001—Pub. L. 107–107 substituted ''Military installations: use by American National Red Cross; use as polling places'' for ''Licenses: military installations; erection and use of buildings; American National Red Cross'' in section catchline, designated existing provisions as subsec. (a), inserted heading, substituted ''this subsection'' for ''this section'' in concluding provisions, and added subsec. (b).

REGULATIONS

Pub. L. 108–375, div. B, title XXVIII, § 2821(c)(3), Oct. 28, 2004, 118 Stat. 2129, provided that: ''The regulations prescribed to carry out [former] section 2679 of title 10, United States Code, as in effect on the day before the date of the enactment of this Act [Oct. 28, 2004], shall remain in effect with regard to section 2670(c) of such title, as added by paragraph (1), until changed by joint action of the Secretary concerned (as defined in section 101(9) of such title) and the Secretary of Veterans Affairs.''

§ 2671. Military reservations and facilities: hunting, fishing, and trapping

(a) GENERAL REQUIREMENTS FOR HUNTING, FISHING, AND TRAPPING.—The Secretary of Defense shall, with respect to each military installation or facility under the jurisdiction of any military department in a State—

(1) require that all hunting, fishing, and trapping at that installation or facility be in accordance with the fish and game laws of the State in which it is located;

(2) require that an appropriate license for hunting, fishing, or trapping on that installation or facility be obtained, except that with respect to members of the armed forces, such a license may be required only if the State authorizes the issuance of a license to a member on active duty for a period of more than thirty days at an installation or facility within that State, without regard to residence requirements, and upon terms otherwise not less favorable than the terms upon which such a license is issued to residents of that State; and

(3) develop, subject to safety requirements and military security, and in cooperation with

the Governor (or his designee) of the State in which the installation or facility is located, procedures under which designated fish and game or conservation officials of that State may, at such time and under such conditions as may be agreed upon, have full access to that installation or facility to effect measures for the management, conservation, and harvesting of fish and game resources.

(b) WAIVER AUTHORITY.—(1) The Secretary of Defense may waive or otherwise modify the fish and game laws of a State otherwise applicable under subsection (a)(1) to hunting, fishing, or trapping at a military installation or facility if the Secretary determines that the application of such laws to such hunting, fishing, or trapping without modification could result in undesirable consequences for public health or safety at the installation or facility. The authority to waive such laws includes the authority to extend, but not reduce, the specified season for certain hunting, fishing, or trapping. The Secretary may not waive the requirements under subsection (a)(2) regarding a license for such hunting, fishing, or trapping or any fee imposed by a State to obtain such a license.

(2) If the Secretary determines that a waiver of fish and game laws of a State is appropriate under paragraph (1), the Secretary shall provide written notification to the appropriate State officials stating the reasons for, and extent of, the waiver. The notification shall be provided at least 30 days before implementation of the waiver.

(c) VIOLATIONS.—Whoever is guilty of an act or omission which violates a requirement prescribed under subsection (a)(1) or (2), which act or omission would be punishable if committed or omitted within the jurisdiction of the State in which the installation or facility is located, by the laws thereof in effect at the time of that act or omission, is guilty of a like offense and is subject to a like punishment.

(d) RELATION TO TREATY RIGHTS.—This section does not modify any rights granted by the treaty or otherwise to any Indian tribe or to the members thereof.

(e) REGULATIONS.—The Secretary of Defense shall prescribe regulations to carry out this section.

(Added Pub. L. 85–337, § 4(1), Feb. 28, 1958, 72 Stat. 29; amended Pub. L. 107–107, div. B, title XXVIII, § 2811, Dec. 28, 2001, 115 Stat. 1307; Pub. L. 109–163, div. A, title X, § 1057(a)(2), Jan. 6, 2006, 119 Stat. 3440; Pub. L. 111–383, div. A, title X, § 1075(b)(42), Jan. 7, 2011, 124 Stat. 4371.)

AMENDMENTS

2011—Subsec. (a)(2). Pub. L. 111–383 substituted ''armed forces'' for ''Armed Forces''.

2006—Subsecs. (a) to (c). Pub. L. 109–163 struck out ''or Territory'' after ''State'' wherever appearing.

2001—Subsec. (a). Pub. L. 107–107, § 2811(b)(1), inserted heading.

Subsec. (b). Pub. L. 107–107, § 2811(a)(2), added subsec. (b). Former subsec. (b) redesignated (e).

Subsec. (c). Pub. L. 107–107, § 2811(b)(2), inserted heading.

Subsec. (d). Pub. L. 107–107, § 2811(b)(3), inserted heading.

Subsec. (e). Pub. L. 107–107, § 2811(a)(1), redesignated subsec. (b) as (e), inserted heading, and transferred subsec. to end of section.

INCREASED HUNTING AND FISHING OPPORTUNITIES FOR MEMBERS OF THE ARMED FORCES, RETIRED MEMBERS, AND DISABLED VETERANS

Pub. L. 109–364, div. A, title X, § 1077(a), Oct. 17, 2006, 120 Stat. 2406, provided that: ''Consistent with section 2671 of title 10, United States Code, and using such funds as are made available for this purpose, the Secretary of Defense shall ensure that members of the Armed Forces, retired members, disabled veterans, and persons assisting disabled veterans are able to utilize lands under the jurisdiction of the Department of Defense that are available for hunting or fishing.''

§ 2672. Protection of buildings, grounds, property, and persons

(a) SECRETARY OF DEFENSE RESPONSIBILITY.—The Secretary of Defense shall protect the buildings, grounds, and property that are under the jurisdiction, custody, or control of the Department of Defense and the persons on that property.

(b) DESIGNATION OF OFFICERS AND AGENTS.—(1) The Secretary of Defense may designate military or civilian personnel of the Department of Defense as officers and agents to perform the functions of the Secretary under subsection (a), including, with regard to civilian officers and agents, duty in areas outside the property specified in that subsection to the extent necessary to protect that property and persons on that property.

(2) A designation under paragraph (1) may be made by individual, by position, by installation, or by such other category of personnel as the Secretary determines appropriate.

(3) In making a designation under paragraph (1) with respect to any category of personnel, the Secretary shall specify each of the following:

(A) The personnel or positions to be included in the category.

(B) The authorities provided for in subsection (c) that may be exercised by personnel in that category.

(C) In the case of civilian personnel in that category—

(i) the authorities provided for in subsection (c), if any, that are authorized to be exercised outside the property specified in subsection (a); and

(ii) with respect to the exercise of any such authorities outside the property specified in subsection (a), the circumstances under which coordination with law enforcement officials outside of the Department of Defense should be sought in advance.

(4) The Secretary may make a designation under paragraph (1) only if the Secretary determines, with respect to the category of personnel to be covered by that designation, that—

(A) the exercise of each specific authority provided for in subsection (c) to be delegated to that category of personnel is necessary for the performance of the duties of the personnel in that category and such duties cannot be performed as effectively without such authorities; and

(B) the necessary and proper training for the authorities to be exercised is available to the personnel in that category.

(c) AUTHORIZED ACTIVITIES.—Subject to subsection (i) and to the extent specifically authorized by the Secretary of Defense, while engaged in the performance of official duties pursuant to this section, an officer or agent designated under subsection (b) may—

(1) enforce Federal laws and regulations for the protection of persons and property;

(2) carry firearms;

(3) make arrests—

(A) without a warrant for any offense against the United States committed in the presence of the officer or agent; or

(B) for any felony cognizable under the laws of the United States if the officer or agent has reasonable grounds to believe that the person to be arrested has committed or is committing a felony;

(4) serve warrants and subpoenas issued under the authority of the United States; and

(5) conduct investigations, on and off the property in question, of offenses that may have been committed against property under the jurisdiction, custody, or control of the Department of Defense or persons on such property.

(d) REGULATIONS.—(1) The Secretary of Defense may prescribe regulations, including traffic regulations, necessary for the protection and administration of property under the jurisdiction, custody, or control of the Department of Defense and persons on that property. The regulations may include reasonable penalties, within the limits prescribed in paragraph (2), for violations of the regulations. The regulations shall be posted and remain posted in a conspicuous place on the property to which they apply.

(2) A person violating a regulation prescribed under this subsection shall be fined under title 18, imprisoned for not more than 30 days, or both.

(e) LIMITATION ON DELEGATION OF AUTHORITY.—The authority of the Secretary of Defense under subsections (b), (c), and (d) may be exercised only by the Secretary or the Deputy Secretary of Defense.

(f) DISPOSITION OF PERSONS ARRESTED.—A person who is arrested pursuant to authority exercised under subsection (b) may not be held in a military confinement facility, other than in the case of a person who is subject to chapter 47 of this title (the Uniform Code of Military Justice).

(g) FACILITIES AND SERVICES OF OTHER AGENCIES.—In implementing this section, when the Secretary of Defense determines it to be economical and in the public interest, the Secretary may utilize the facilities and services of Federal, State, Indian tribal, and local law enforcement agencies, with the consent of those agencies, and may reimburse those agencies for the use of their facilities and services. Such services of State, Indian tribal, and local law enforcement, including application of their powers of law enforcement, may be provided notwithstanding that the property is subject to the legislative jurisdiction of the United States.

(h) AUTHORITY OUTSIDE FEDERAL PROPERTY.—For the protection of property under the jurisdiction, custody, or control of the Department of Defense and persons on that property, the Secretary of Defense may enter into agreements with Federal agencies and with State, Indian tribal, and local governments to obtain authority for civilian officers and agents designated under this section to enforce Federal laws and State, Indian tribal, and local laws concurrently with other Federal law enforcement officers and with State, Indian tribal, and local law enforcement officers.

(i) ATTORNEY GENERAL APPROVAL.—The powers granted pursuant to subsection (c) to officers and agents designated under subsection (b) shall be exercised in accordance with guidelines approved by the Attorney General. Such guidelines may include specification of the geographical extent of property outside of the property specified in subsection (a) within which those powers may be exercised.

(j) LIMITATION WITH REGARD TO OTHER FEDERAL AGENCIES.—Nothing in this section shall be construed as affecting the authority of the Secretary of Homeland Security to provide for the protection of facilities (including the buildings, grounds, and properties of the General Services Administration) that are under the jurisdiction, custody, or control, in whole or in part, of a Federal agency other than the Department of Defense and that are located off of a military installation.

(k) COOPERATION WITH LOCAL LAW ENFORCEMENT AGENCIES.—Before authorizing civilian officers and agents to perform duty in areas outside the property specified in subsection (a), the Secretary of Defense shall consult with, and is encouraged to enter into agreements with, local law enforcement agencies exercising jurisdiction over such areas for the purposes of avoiding conflicts of jurisdiction, promoting notification of planned law enforcement actions, and otherwise facilitating productive working relationships.

(*l*) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this section shall be construed—

(1) to preclude or limit the authority of any Federal law enforcement agency;

(2) to restrict the authority of the Secretary of Homeland Security under the Homeland Security Act of 2002 or of the Administrator of General Services, including the authority to promulgate regulations affecting property under the custody and control of that Secretary or the Administrator, respectively;

(3) to expand or limit section 21 of the Internal Security Act of 1950 (50 U.S.C. 797);

(4) to affect chapter 47 of this title;

(5) to restrict any other authority of the Secretary of Defense or the Secretary of a military department; or

(6) to restrict the authority of the Director of the National Security Agency under section 11 of the National Security Agency Act of 1959 (50 U.S.C. 3609).

(Added Pub. L. 114–92, div. B, title XXVIII, § 2811(a), Nov. 25, 2015, 129 Stat. 1172.)

REFERENCES IN TEXT

The Homeland Security Act of 2002, referred to in subsec. (*l*)(2), is Pub. L. 107–296, Nov. 25, 2002, 116 Stat. 2135, which is classified principally to chapter 1 (§ 101 et seq.) of Title 6, Domestic Security. For complete classification of this Act to the Code, see Short Title note set out under section 101 of Title 6 and Tables.

PRIOR PROVISIONS

A prior section 2672, added Pub. L. 85–861, § 1(51), Sept. 2, 1958, 72 Stat. 1459; amended Pub. L. 87–651, title I, § 112(a), Sept. 7, 1962, 76 Stat. 511; Pub. L. 92–145, title VII, § 707(2), (3), Oct. 27, 1971, 85 Stat. 411; Pub. L. 96–418, title VIII, § 806(a), Oct. 10, 1980, 94 Stat. 1777; Pub. L. 99–167, title VIII, § 810(a), (b)(1), Dec. 3, 1985, 99 Stat. 989, 990; Pub. L. 99–661, div. A, title XIII, § 1343(a)(16), Nov. 14, 1986, 100 Stat. 3993; Pub. L. 100–456, div. B, title XXVIII, § 2804, Sept. 29, 1988, 102 Stat. 2115; Pub. L. 105–85, div. B, title XXVIII, § 2811(a), (b)(1), Nov. 18, 1997, 111 Stat. 1991; Pub. L. 108–136, div. B, title XXVIII, § 2811(a)–(b)(2), Nov. 24, 2003, 117 Stat. 1724, 1725; Pub. L. 108–375, div. B, title XXVIII, § 2821(d)(1), Oct. 28, 2004, 118 Stat. 2130; Pub. L. 109–163, div. B, title XXVIII, § 2821(a)(2), Jan. 6, 2006, 119 Stat. 3511, related to authority to acquire low-cost interests in land, prior to repeal by Pub. L. 109–163, div. B, title XXVIII, § 2821(f), Jan. 6, 2006, 119 Stat. 3513. See section 2663(c) of this title.

REQUIREMENT THAT SECRETARY OF DEFENSE IMPLEMENT SECURITY AND EMERGENCY RESPONSE RECOMMENDATIONS RELATING TO ACTIVE SHOOTER OR TERRORIST ATTACKS ON INSTALLATIONS OF DEPARTMENT OF DEFENSE

Pub. L. 116–283, div. A, title III, § 368, Jan. 1, 2021, 134 Stat. 3552, provided that:

''(a) REQUIREMENT.—Not later than 90 days after the date of the enactment of this Act [Jan. 1, 2021], the Secretary of Defense shall implement the applicable security and emergency response recommendations relating to active shooter or terrorist attacks on installations of the Department of Defense made in the following reports:

''(1) The report by the Government Accountability Office dated July 2015 entitled, 'Insider Threats: DOD Should Improve Information Sharing and Oversight to Protect U.S. Installations' (GAO–15–543).

''(2) The report prepared by the Department of the Navy relating to the Washington Navy Yard shooting in 2013.

''(3) The report by the Department of the Army dated August 2010 entitled 'Fort Hood, Army Internal Review Team: Final Report'.

''(4) The independent review by the Department of Defense dated January 2010 entitled 'Protecting the Force: Lessons from Fort Hood'.

''(5) The report by the Department of the Air Force dated October 2010 entitled 'Air Force Follow-On Review: Protecting the Force: Lessons from Fort Hood'.

''(b) NOTIFICATION OF INAPPLICABLE RECOMMENDATIONS.—

''(1) IN GENERAL.—If the Secretary determines that a recommendation described in subsection (a) is outdated, is no longer applicable, or has been superseded by more recent separate guidance or recommendations set forth by the Government Accountability Office, the Department of Defense, or another entity in related contracted review, the Secretary shall notify the Committees on Armed Services of the Senate and the House of Representatives not later than 45 days after the date of the enactment of this Act.

''(2) IDENTIFICATION AND JUSTIFICATION.—The notification under paragraph (1) shall include an identification, set forth by report [sic] specified in subsection (a), of each recommendation that the Secretary determines should not be implemented, with a justification for each such determination.''

DEPARTMENT OF DEFENSE POLICY FOR REGULATION IN MILITARY COMMUNITIES OF DANGEROUS DOGS KEPT AS PETS

Pub. L. 116–283, div. B, title XXVIII, § 2884, Jan. 1, 2021, 134 Stat. 4372, provided that:

''(a) POLICY REQUIRED.—Not later than 90 days after the date of the enactment of this Act [Jan. 1, 2021], the Secretary of Defense shall establish a uniform policy for the regulation of dangerous dogs kept as pets in military communities.

''(b) CONSULTATION.—The policy required by subsection (a) shall be developed in consultation with professional veterinary and animal behavior experts in regard to effective regulation of dangerous dogs kept as pets.

''(c) REGULATIONS.—

''(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall prescribe regulations implementing the policy established under subsection (a).

''(2) BEST PRACTICES.—The regulations prescribed under paragraph (1) shall include strategies, for implementation within all military communities, for the prevention of dog bites that are consistent with the following best practices:

''(A) Enforcement of regulations relating to dangerous dogs kept as pets, with emphasis on identification of dangerous dog behavior and chronically irresponsible pet owners.

''(B) Enforcement of animal control regulations, such as leash laws and stray animal control policies.

''(C) Promotion and communication of resources for pet spaying and neutering.

''(D) Investment in community education initiatives, such as teaching criteria for pet selection, pet care best practices, owner responsibilities, and safe and appropriate interaction with dogs.

''(d) EXCLUSIONS.—This section does not apply with respect to military working dogs and any dog certified as a service animal.

''(e) DEFINITIONS.—In this section:

''(1) The term 'dangerous dog' means a dog that—

''(A) has attacked a person or another animal without justification, causing injury or death to the person or animal; or

''(B) exhibits behavior that reasonably suggests the likely risk of such an attack.

''(2) The term 'military communities' means—

''(A) all military installations; and

''(B) all military housing, including privatized military housing under subchapter IV of chapter 169 of title 10, United States Code.''

ESTABLISHMENT OF PROCESS BY WHICH MEMBERS OF THE ARMED FORCES MAY CARRY AN APPROPRIATE FIREARM ON A MILITARY INSTALLATION

Pub. L. 114–92, div. A, title V, § 526, Nov. 25, 2015, 129 Stat. 813, provided that: ''Not later than December 31, 2015, the Secretary of Defense, taking into consideration the views of senior leadership of military installations in the United States, shall establish and implement a process by which the commanders of military installations in the United States, or other military commanders designated by the Secretary of Defense for military reserve centers, Armed Services recruiting centers, and such other defense facilities as the Secretary may prescribe, may authorize a member of the Armed Forces who is assigned to duty at the installation, center or facility to carry an appropriate firearm on the installation, center, or facility if the commander determines that carrying such a firearm is necessary as a personal- or force-protection measure.''

[§ 2672a. Repealed. Pub. L. 109–163, div. B, title XXVIII, § 2821(f), Jan. 6, 2006, 119 Stat. 3513]

Section, added Pub. L. 94–107, title VI, § 607(8), Oct. 7, 1975, 89 Stat. 566; amended Pub. L. 98–525, title XIV, § 1405(39), Oct. 19, 1984, 98 Stat. 2624; Pub. L. 104–106, div. A, title XV, § 1502(a)(1), Feb. 10, 1996, 110 Stat. 502; Pub. L. 106–65, div. A, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 108–136, div. A, title X, § 1031(a)(29), Nov. 24, 2003, 117 Stat. 1599; Pub. L. 108–375, div. A, title X, § 1084(d)(23), Oct. 28, 2004, 118 Stat. 2062; Pub. L. 109–163, div. B, title XXVIII, § 2821(a)(6), Jan. 6, 2006, 119 Stat. 3511, related to acquisition of interests in land when need is urgent. See section 2663(d) of this title.

[§ 2673. Repealed. Pub. L. 108–375, div. B, title XXVIII, § 2821(d)(2), Oct. 28, 2004, 118 Stat. 2130]

Section, added Pub. L. 100–370, § 1(*l*)(1), July 19, 1988, 102 Stat. 849, related to availability of funds for acquisition of certain interests in land.

A prior section 2673, added Pub. L. 85–861, § 1(51), Sept. 2, 1958, 72 Stat. 1459, related to restoration or replacement of facilities damaged or destroyed, prior to repeal by Pub. L. 97–214, § 7(1), July 12, 1982, 96 Stat. 173, eff. Oct. 1, 1982, and applicable to military construction projects, and to construction and acquisition of military family housing authorized before, on, or after such date. See section 2854 of this title.

§ 2674. Operation and control of Pentagon Reservation and defense facilities in National Capital Region

(a) PENTAGON RESERVATION.—The Secretary of Defense has jurisdiction, custody, and control over, and responsibility for, the operation, maintenance, and management of the Pentagon Reservation.

(b) LAW ENFORCEMENT AUTHORITIES AND PERSONNEL.—(1) The Secretary shall protect the buildings, grounds, and property located in the National Capital Region that are occupied by, or under the jurisdiction, custody, or control of, the Department of Defense, and the persons on that property.

(2) The Secretary may designate military or civilian personnel to perform law enforcement functions and military, civilian, or contract personnel to perform security functions for such buildings, grounds, property, and persons, including, with regard to civilian personnel designated under this section, duty in areas outside the property referred to in paragraph (1) to the extent necessary to protect that property and persons on that property. Subject to the authorization of the Secretary, any such military or civilian personnel so designated may exercise the authorities listed in paragraphs (1) through (5) of section 2672(c) of this title.

(3) The powers granted under paragraph (2) to military and civilian personnel designated under that paragraph shall be exercised in accordance with guidelines prescribed by the Secretary and approved by the Attorney General.

(4) Nothing in this subsection shall be construed to—

(A) preclude or limit the authority of any Defense Criminal Investigative Organization or any other Federal law enforcement agency;

(B) restrict the authority of the Secretary of Homeland Security under the Homeland Security Act of 2002 (6 U.S.C. 101 et seq.) or the authority of the Administrator of General Services, including the authority to promulgate regulations affecting property under the custody and control of that Secretary or the Administrator, respectively;

(C) expand or limit section 21 of the Internal Security Act of 1950 (50 U.S.C. 797);

(D) affect chapter 47 of this title (the Uniform Code of Military Justice);

(E) restrict any other authority of the Secretary of Defense or the Secretary of a military department; or

(F) restrict the authority of the Director of the National Security Agency under section 11 of the National Security Agency Act of 1959 (50 U.S.C. 3609).

(5) For positions for which the permanent duty station is the Pentagon Reservation, the Secretary, in his sole and exclusive discretion, may without regard to the pay provisions of title 5, fix the rates of basic pay for such positions occupied by civilian law enforcement and security personnel appointed under the authority of this section so as to place such personnel on a comparable basis with personnel of other similar Federal law enforcement and security organizations within the vicinity of the Pentagon Reservation, not to exceed the basic pay for personnel performing similar duties in the United States Secret Service Uniformed Division or the United States Park Police, whichever is greater.

(c) REGULATIONS AND ENFORCEMENT.—(1) The Secretary may prescribe such rules and regulations as the Secretary considers appropriate to ensure the safe, efficient, and secure operation of the Pentagon Reservation, including rules and regulations necessary to govern the operation and parking of motor vehicles on the Pentagon Reservation.

(2) Any person who violates a rule or regulation prescribed under this subsection is liable to the United States for a civil penalty of not more than $1,000.

(3) Any person who willfully violates any rule or regulation prescribed pursuant to this subsection commits a Class B misdemeanor.

(d) AUTHORITY TO CHARGE FOR PROVISION OF CERTAIN SERVICES AND FACILITIES.— The Secretary of Defense may establish rates and collect charges for space, services, protection, maintenance, construction, repairs, alterations, or facilities provided at the Pentagon Reservation.

(e) PENTAGON RESERVATION MAINTENANCE REVOLVING FUND.—(1) There is established in the Treasury of the United States a revolving fund to be known as the Pentagon Reservation Maintenance Revolving Fund (hereafter in this section referred to as the ''Fund''). There shall be deposited into the Fund funds collected by the Secretary for space and services and other items provided an organization or entity using any facility or land on the Pentagon Reservation pursuant to subsection (d).

(2) Subject to paragraphs (3) and (4), monies deposited into the Fund shall be available, without fiscal year limitation, for expenditure for real property management, operation, protection, construction, repair, alteration and related activities for the Pentagon Reservation.

(3) If the cost of a construction or alteration activity proposed to be financed in whole or in part using monies from the Fund will exceed the limitation specified in section 2805 of this title for a comparable unspecified minor military construction project, the activity shall be subject to authorization as provided by section 2802 of this title before monies from the Fund are obligated for the activity.

(4)(A) Except as provided in subparagraph (B), the authority of the Secretary to use monies from the Fund to support construction or alteration activities at the Pentagon Reservation expires on September 30, 2012.

(B) Notwithstanding the date specified in subparagraph (A), the Secretary may use monies

from the Fund after that date to support construction or alteration activities at the Pentagon Reservation within the limits specified in section 2805 of this title.

(f) DEFINITIONS.— In this section:

(1) The term ''Pentagon Reservation'' means the Pentagon, the Mark Center Campus, and the Raven Rock Mountain Complex.

(2) The term ''National Capital Region'' means the geographic area located within the boundaries of (A) the District of Columbia, (B) Montgomery and Prince Georges Counties in the State of Maryland, (C) Arlington, Fairfax, Loudoun, and Prince William Counties and the City of Alexandria in the Commonwealth of Virginia, and (D) all cities and other units of government within the geographic areas of such District, Counties, and City.

(3) The term ''Pentagon'' means that area of land (consisting of approximately 227 acres) and improvements thereon, including parking areas, located in Arlington County, Virginia, containing the Pentagon Office Building and its supporting facilities.

(4) The term ''Mark Center Campus'' means that area of land (consisting of approximately 16 acres) and improvements thereon, including parking areas, located in Alexandria, Virginia, and known on the day before the date of the enactment of this paragraph as the Fort Belvoir Mark Center Campus.

(5) The term ''Raven Rock Mountain Complex'' means that area of land (consisting of approximately 720 acres) and improvements thereon, including parking areas, at the Raven Rock Mountain Complex and its supporting facilities located in Maryland and Pennsylvania.

(Added Pub. L. 101–510, div. B, title XXVIII, § 2804(a)(1), Nov. 5, 1990, 104 Stat. 1784; amended Pub. L. 102–190, div. A, title X, § 1061(a)(18), div. B, title XXVIII, § 2864, Dec. 5, 1991, 105 Stat. 1473, 1561; Pub. L. 104–106, div. A, title XV, § 1502(a)(24), Feb. 10, 1996, 110 Stat. 505; Pub. L. 104–201, div. A, title III, § 369(a), (b)(1), Sept. 23, 1996, 110 Stat. 2498; Pub. L. 106–65, div. A, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 107–107, div. A, title XI, § 1101, Dec. 28, 2001, 115 Stat. 1234; Pub. L. 108–136, div. A, title IX, § 933, Nov. 24, 2003, 117 Stat. 1581; Pub. L. 111–383, div. B, title XXVIII, § 2802, Jan. 7, 2011, 124 Stat. 4458; Pub. L. 112–81, div. B, title XXVIII, § 2811, Dec. 31, 2011, 125 Stat. 1686; Pub. L. 114–328, div. A, title IX, § 952(a), (b), div. B, title XXVIII, § 2829E, Dec. 23, 2016, 130 Stat. 2374, 2375, 2733; Pub. L. 115–91, div. A, title X, § 1081(d)(16), Dec. 12, 2017, 131 Stat. 1600.)

PRIOR PROVISIONS

A prior section 2674, added Pub. L. 85–861, § 1(51), Sept. 2, 1958, 72 Stat. 1459; amended Pub. L. 87–651, title I, § 112(b), Sept. 7, 1962, 76 Stat. 511; Pub. L. 88–174, title VI, § 608, Nov. 7, 1963, 77 Stat. 328; Pub. L. 89–188, title VI, § 613, Sept. 16, 1965, 79 Stat. 819; Pub. L. 89–568, title VI, § 608, Sept. 12, 1966, 80 Stat. 756; Pub. L. 91–511, title VI, § 607(2)–(4), Oct. 26, 1970, 84 Stat. 1224; Pub. L. 92–145, title VII, § 707(1), Oct. 27, 1971, 85 Stat. 411; Pub. L. 93–166, title VI, § 608(1), Nov. 29, 1973, 87 Stat. 682; Pub. L. 94–107, title VI, § 607(2)–(4), Oct. 7, 1975, 89 Stat. 566; Pub. L. 95–82, title VI, § 608(a), Aug. 1, 1977, 91 Stat. 377; Pub. L. 95–356, title VI, § 603(h)(1), Sept. 8, 1978, 92 Stat. 582; Pub. L. 96–125, title VIII, § 801, Nov. 26, 1979, 93 Stat. 947; Pub. L. 97–99, title IX, § 907, Dec. 23, 1981, 95 Stat. 1385, related to minor construction projects, prior to repeal by Pub. L. 97–214, §§ 7(1), 12(a), July 12, 1982, 96 Stat. 173, 176, effective Oct. 1, 1982, and applicable to military construction projects, and to construction and acquisition of military family housing authorized before, on, or after such date. See section 2805 of this title.

REFERENCES IN TEXT

The Homeland Security Act of 2002, referred to in subsec. (b)(4)(B), is Pub. L. 107–296, Nov. 25, 2002, 116 Stat. 2135, which is classified principally to chapter 1 (§ 101 et seq.) of Title 6, Domestic Security. For complete classification of this Act to the Code, see Short Title note set out under section 101 of Title 6 and Tables.

The date of the enactment of this paragraph, referred to in subsec. (f)(4), is the date of enactment of Pub. L. 114–328, which was approved Dec. 23, 2016.

AMENDMENTS

2017—Subsec. (b)(1). Pub. L. 115–91, § 1081(d)(16), repealed Pub. L. 114–328, § 2829E(a)(3). See 2016 Amendment note below.

2016—Subsec. (a). Pub. L. 114–328, § 2829E(d)(1), inserted heading.

Pub. L. 114–328, § 2829E(c), struck out par. (1) designation after subsec. (a) designation and struck out pars. (2) and (3) which related to annual report on the state of the renovation of the Pentagon Reservation for specified congressional committees.

Pub. L. 114–328, § 2829E(b), substituted ''The Secretary of Defense has jurisdiction'' for ''Jurisdiction'' and struck out ''is transferred to the Secretary of Defense'' after ''management of the Pentagon Reservation''.

Subsec. (b). Pub. L. 114–328, § 2829E(d)(2), inserted heading.

Subsec. (b)(1). Pub. L. 114–328, § 2829E(a)(3), which directed insertion of ''for the Pentagon Reservation and'' after ''law enforcement and security functions'' and could not be executed, was repealed by Pub. L. 115–91, § 1081(d)(16).

Pub. L. 114–328, § 952(a)(2), added par. (1) and struck out former par. (1). Prior to amendment, text read as follows ''The Secretary may appoint military or civilian personnel or contract personnel to perform law enforcement and security functions for property occupied by, or under the jurisdiction, custody, and control of the Department of Defense, and located in the National Capital Region. Such individuals—

''(A) may be armed with appropriate firearms required for personal safety and for the proper execution of their duties, whether on Department of Defense property or in travel status; and

''(B) shall have the same powers (other than the service of civil process) as sheriffs and constables upon the property referred to in the first sentence to enforce the laws enacted for the protection of persons and property, to prevent breaches of the peace and suppress affrays or unlawful assemblies, and to enforce any rules or regulations with respect to such property prescribed by duly authorized officials.''

Subsec. (b)(2). Pub. L. 114–328, § 952(a)(2), added par. (2). Former par. (2) redesignated (5).

Subsec. (b)(3), (4). Pub. L. 114–328, § 952(a)(2), added pars. (3) and (4).

Subsec. (b)(5). Pub. L. 114–328, § 952(a)(1), (b), redesignated par. (2) as (5) and inserted '', whichever is greater'' before period at end.

Subsec. (c). Pub. L. 114–328, § 2829E(d)(3), inserted heading.

Subsec. (d). Pub. L. 114–328, § 2829E(d)(4), inserted heading.

Subsec. (e). Pub. L. 114–328, § 2829E(d)(5), inserted heading.

Subsec. (f). Pub. L. 114–328, § 2829E(d)(6), inserted heading.

Subsec. (f)(1). Pub. L. 114–328, § 2829E(a)(1), amended par. (1) generally. Prior to amendment, par. (1) read as

follows: ''The term 'Pentagon Reservation' means that area of land (consisting of approximately 280 acres) and improvements thereon, located in Arlington, Virginia, on which the Pentagon Office Building, Federal Building Number 2, the Pentagon heating and sewage treatment plants, and other related facilities are located, including various areas designated for the parking of vehicles.''

Subsec. (f)(3) to (5). Pub. L. 114–328, § 2829E(a)(2), added pars. (3) to (5).

Subsec. (g). Pub. L. 114–328, § 2829E(a)(4), struck out subsec. (g) which read as follows: ''For purposes of subsections (b), (c), (d), and (e), the terms 'Pentagon Reservation' and 'National Capital Region' shall be treated as including the land and physical facilities at the Raven Rock Mountain Complex.''

2011—Subsec. (e)(2). Pub. L. 111–383, § 2802(1), substituted ''Subject to paragraphs (3) and (4), monies'' for ''Monies''.

Subsec. (e)(3). Pub. L. 111–383, § 2802(2), added par. (3).

Subsec. (e)(4). Pub. L. 112–81 designated existing provisions as subpar. (A), substituted ''Except as provided in subparagraph (B), the authority'' for ''The authority'', and added subpar. (B).

Pub. L. 111–383, § 2802(2), added par. (4).

2003—Subsec. (g). Pub. L. 108–136 added subsec. (g).

2001—Subsec. (b). Pub. L. 107–107 designated existing provisions as par. (1), redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, of par. (1), and added par. (2).

1999—Subsec. (a)(3)(B). Pub. L. 106–65 substituted ''Committee on Armed Services'' for ''Committee on National Security''.

1996—Pub. L. 104–201, § 369(b)(1), substituted ''of Pentagon Reservation and defense facilities in National Capital Region'' for ''of the Pentagon Reservation'' in section catchline.

Subsec. (a)(2). Pub. L. 104–106, § 1502(a)(24)(A), substituted ''congressional committees specified in paragraph (3)'' for ''Committees on Armed Services of the Senate and the House of Representatives, the Committee on Environment and Public Works of the Senate, and the Committee on Public Works and Transportation of the House of Representatives''.

Subsec. (a)(3). Pub. L. 104–106, § 1502(a)(24)(B), added par. (3).

Subsec. (b). Pub. L. 104–201, § 369(a), substituted ''in the National Capital Region'' for ''at the Pentagon Reservation''.

1991—Subsec. (b)(2). Pub. L. 102–190, § 2864, amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''shall have the same powers as sheriffs and constables to enforce the laws, rules, or regulations enacted for the protection of persons and property.''

Subsec. (c)(3). Pub. L. 102–190, § 1061(a)(18), substituted ''misdemeanor'' for ''misdeameanor''.

Effective Date of 2017 Amendment

Pub. L. 115–91, div. A, title X, § 1081(d), Dec. 12, 2017, 131 Stat. 1599, provided that the amendment made by section 1081(d)(16) is effective as of Dec. 23, 2016, and as if included in Pub. L. 114–328 as enacted.

Transfer of Functions

For transfer of the functions, personnel, assets, and obligations of the United States Secret Service, including the functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 381, 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

Cost of Pentagon Renovation

Pub. L. 108–287, title VIII, § 8055, Aug. 5, 2004, 118 Stat. 982, provided that:

''(a) Limitation on Pentagon Renovation Costs.—Not later than the date each year on which the President submits to Congress the budget under section 1105 of title 31, United States Code, the Secretary of Defense shall submit to Congress a certification that the total cost for the planning, design, construction, and installation of equipment for the renovation of wedges 2 through 5 of the Pentagon Reservation, cumulatively, will not exceed four times the total cost for the planning, design, construction, and installation of equipment for the renovation of wedge 1.

''(b) Annual Adjustment.—For purposes of applying the limitation in subsection (a), the Secretary shall adjust the cost for the renovation of wedge 1 by any increase or decrease in costs attributable to economic inflation, based on the most recent economic assumptions issued by the Office of Management and Budget for use in preparation of the budget of the United States under section 1104 of title 31, United States Code.

''(c) Exclusion of Certain Costs.—For purposes of calculating the limitation in subsection (a), the total cost for wedges 2 through 5 shall not include—

''(1) any repair or reconstruction cost incurred as a result of the terrorist attack on the Pentagon that occurred on September 11, 2001;

''(2) any increase in costs for wedges 2 through 5 attributable to compliance with new requirements of Federal, State, or local laws; and

''(3) any increase in costs attributable to additional security requirements that the Secretary of Defense considers essential to provide a safe and secure working environment.

''(d) Certification Cost Reports.—As part of the annual certification under subsection (a), the Secretary shall report the projected cost (as of the time of the certification) for—

''(1) the renovation of each wedge, including the amount adjusted or otherwise excluded for such wedge under the authority of paragraphs (2) and (3) of subsection (c) for the period covered by the certification; and

''(2) the repair and reconstruction of wedges 1 and 2 in response to the terrorist attack on the Pentagon that occurred on September 11, 2001.

''(e) Duration of Certification Requirement.—The requirement to make an annual certification under subsection (a) shall apply until the Secretary certifies to Congress that the renovation of the Pentagon Reservation is completed.''

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 108–87, title VIII, § 8055, Sept. 30, 2003, 117 Stat. 1084.

Pub. L. 107–248, title VIII, § 8056, Oct. 23, 2002, 116 Stat. 1549.

Pub. L. 107–117, div. A, title VIII, § 8060, Jan. 10, 2002, 115 Stat. 2260.

Establishment of Memorial to Victims of Terrorist Attack on Pentagon Reservation and Authority to Accept Monetary Contributions for Memorial and Repair of Pentagon

Pub. L. 107–107, div. B, title XXVIII, § 2864, Dec. 28, 2001, 115 Stat. 1333, provided that:

''(a) Memorial Authorized.—The Secretary of Defense may establish a memorial at the Pentagon Reservation dedicated to the victims of the terrorist attack on the Pentagon that occurred on September 11, 2001. The Secretary shall use necessary amounts in the Pentagon Reservation Maintenance Revolving Fund established by section 2674(e) of title 10, United States Code, including amounts deposited in the Fund under subsection (c), to plan, design, construct, and maintain the memorial.

''(b) Acceptance of Contributions.—The Secretary of Defense may accept monetary contributions made for the purpose of assisting in—

''(1) the establishment of the memorial to the victims of the terrorist attack; and

''(2) the repair of the damage caused to the Pentagon Reservation by the terrorist attack.

''(c) DEPOSIT OF CONTRIBUTIONS.—The Secretary of Defense shall deposit contributions accepted under subsection (b) in the Pentagon Reservation Maintenance Revolving Fund. The contributions shall be available for expenditure only for the purposes specified in subsection (b).''

§ 2675. Leases: foreign countries

(a) LEASE AUTHORITY; DURATION.—The Secretary of a military department may acquire by lease in foreign countries structures and real property relating to structures that are needed for military purposes other than for military family housing. A lease under this section may be for a period of up to 10 years, or 15 years in the case of a lease in Korea, and the rental for each yearly period may be paid from funds appropriated to that military department for that year.

(b) AVAILABILITY OF FUNDS.—Appropriations available to the Department of Defense for operation and maintenance or construction may be used for the acquisition of interests in land under this section.

(Added Pub. L. 85–861, § 1(51), Sept. 2, 1958, 72 Stat. 1460; amended Pub. L. 91–511, title VI, § 608, Oct. 26, 1970, 84 Stat. 1224; Pub. L. 94–107, title VI, § 607(10), (11), Oct. 7, 1975, 89 Stat. 567; Pub. L. 95–82, title V, § 505(a), Aug. 1, 1977, 91 Stat. 371; Pub. L. 95–356, title V, § 503(b), Sept. 8, 1978, 92 Stat. 579; Pub. L. 96–125, title V, § 502(b), Nov. 26, 1979, 93 Stat. 940; Pub. L. 96–418, title V, § 504(b), Oct. 10, 1980, 94 Stat. 1765; Pub. L. 97–99, title VI, § 604, Dec. 23, 1981, 95 Stat. 1374; Pub. L. 97–214, § 8, July 12, 1982, 96 Stat. 174; Pub. L. 98–525, title XIV, § 1405(40), Oct. 19, 1984, 98 Stat. 2624; Pub. L. 101–510, div. A, title XIII, § 1322(a)(11), Nov. 5, 1990, 104 Stat. 1671; Pub. L. 108–136, div. B, title XXVIII, § 2804(b), Nov. 24, 2003, 117 Stat. 1719; Pub. L. 108–375, div. B, title XXVIII, § 2821(d)(3), Oct. 28, 2004, 118 Stat. 2130; Pub. L. 109–364, div. B, title XXVIII, § 2824, Oct. 17, 2006, 120 Stat. 2476.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2675 ………	5:171z–3.	Aug. 3, 1956, ch. 939, § 417, 70 Stat. 1018.

The words ''that are not located on a military base'' are substituted for the words ''off-base''.

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–364 substituted ''10 years'' for ''five years''.

2004—Pub. L. 108–375 designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

2003—Pub. L. 108–136 inserted ''or 15 years in the case of a lease in Korea,'' after ''five years,''.

1990—Pub. L. 101–510 struck out ''(a)'' before ''The Secretary'' and struck out subsec. (b) which read as follows: ''A lease may not be entered into under this section for structures or related real property in any foreign country if the average estimated annual rental during the term of the lease if more than $250,000 until after the expiration of 30 days from the date upon which a report of the facts concerning the proposed lease is submitted to the Committees on Armed Services of the Senate and House of Representatives.''

1984—Subsec. (b). Pub. L. 98–525 substituted ''30'' for ''thirty''.

1982—Subsec. (a). Pub. L. 97–214, § 8(a), substituted provisions that the Secretary of a military department may acquire by lease in foreign countries, structures and real property needed for military purposes other than for military family housing for up to a period of five years with the rental to be paid from funds appropriated to that military department for that year, for former provisions that had allowed such leases including leases for military family housing and in the latter case for a period of up to 10 years.

Subsec. (b). Pub. L. 97–214, § 8(b), struck out ''or any other provision of law'' after ''into under this section'', and '', family housing facilities,'' after ''for structures''.

Subsecs. (c), (d). Pub. L. 97–214, § 8(c), struck out subsec. (c) which provided that a statement in a lease that the requirements of this section have been met, or that the lease is not subject to this section is conclusive, and subsec. (d) which related to limitations on expenditures for the rental of family housing in foreign countries and limitations on the number of family housing units which may be leased in a foreign country at any one time.

1981—Subsec. (d)(1). Pub. L. 97–99, § 604(1), substituted ''250'' for ''150''.

Subsec. (d)(2). Pub. L. 97–99, § 604(2), substituted ''22,000'' for ''17,000''.

1980—Subsec. (d)(1). Pub. L. 96–418 substituted ''Expenditures for the rental of family housing in foreign countries (including the cost of utilities and maintenance and operation) may not exceed $1,115 per month for any unit'' for ''The average unit rental for Department of Defense family housing acquired by lease in foreign countries may not exceed $550 per month for the Department, and in no event shall the rental for any one unit exceed $970 per month, including the costs of operation, maintenance, and utilities''.

1979—Subsec. (d)(1). Pub. L. 96–125, § 502(b)(1), substituted ''$550'' for ''$485'' and ''$970'' for ''$850''.

Subsec. (d)(2). Pub. L. 96–125, § 502(b)(2), substituted ''17,000'' for ''18,000''.

1978—Subsec. (d)(1). Pub. L. 95–356, § 503(b)(1), substituted ''$485'' for ''$435'' and ''$850'' for ''$760''.

Subsec. (d)(2). Pub. L. 95–356, § 503(b)(2), substituted ''18,000'' for ''15,000''.

1977—Subsec. (a). Pub. L. 95–82, § 505(a)(1), inserted provisions relating to military family housing facilities and real property related thereto.

Subsec. (b). Pub. L. 95–82, § 505(a)(2), inserted ''or any other provision of law for structures, family housing facilities, or related real property in any foreign country,'' after ''section''.

Subsec. (d). Pub. L. 95–82, § 505(a)(3), added subsec. (d).

1975—Pub. L. 94–107 struck out reference to structures not on a military base in section catchline, and struck out ''that are not located on a military base and'' after ''structures and real property relating thereto'' in subsec. (a).

1970—Pub. L. 91–511 designated existing provisions as subsec. (a) and added subsecs. (b) and (c).

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–214 effective Oct. 1, 1982, and applicable to military construction projects, and to construction and acquisition of military family housing authorized before, on, or after such date, see section 12(a) of Pub. L. 97–214, set out as an Effective Date note under section 2801 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Pub. L. 96–418, title VI, § 608, Oct. 10, 1980, 94 Stat. 1774, provided that: ''Titles I, II, III, IV, and V [enacting section 2775 of this title and section 1594h–3 of Title 42, The Public Health and Welfare, amending this section, section 2686 of this title, and sections 1594a–1 and 1594h–2 of Title 42, and repealing provisions set out as a note under section 4593 of this title] shall take effect on October 1, 1980.''

EFFECTIVE DATE OF 1977 AMENDMENT

Pub. L. 95–82, title V, § 505(c), Aug. 1, 1977, 91 Stat. 372, provided that: ''The amendments made by subsection

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(a) [amending this section] and the repeal made by subsection (b) [repealing section 507(b) of Pub. L. 93–166, which was not classified to the Code] shall take effect October 1, 1977.''

[§ 2676. Renumbered § 2664]

[§ 2677. Repealed. Pub. L. 110–181, div. B, title XXVIII, § 2822(b)(1), Jan. 28, 2008, 122 Stat. 544]

Section, added Pub. L. 85–861, § 1(51), Sept. 2, 1958, 72 Stat. 1460; amended Pub. L. 87–554, title VI, § 607, July 27, 1962, 76 Stat. 242; Pub. L. 92–145, title VII, § 707(4), Oct. 27, 1971, 85 Stat. 412; Pub. L. 94–273, § 6(3), Apr. 21, 1976, 90 Stat. 377; Pub. L. 97–214, § 10(a)(5)(A), (B), July 12, 1982, 96 Stat. 175; Pub. L. 97–375, title I, § 104(b), Dec. 21, 1982, 96 Stat. 1819; Pub. L. 98–407, title VIII, § 803, Aug. 28, 1984, 98 Stat. 1519; Pub. L. 102–190, div. B, title XXVIII, § 2861, Dec. 5, 1991, 105 Stat. 1559; Pub. L. 103–35, title II, § 201(c)(9), May 31, 1993, 107 Stat. 98; Pub. L. 107–314, div. A, title X, § 1062(a)(12), Dec. 2, 2002, 116 Stat. 2650, related to options on property required for military construction projects.

§ 2678. Feral horses and burros: removal from military installations

When feral horses or burros are found on an installation under the jurisdiction of the Secretary of a military department, the Secretary may use helicopters and motorized equipment for their removal.

(Added Pub. L. 101–510, div. A, title XIV, § 1481(h)(1), Nov. 5, 1990, 104 Stat. 1708.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in Pub. L. 101–165, title IX, § 9030, Nov. 21, 1989, 103 Stat. 1135, which was set out as a note under section 2241 of this title, prior to repeal by Pub. L. 101–510, § 1481(h)(3).

A prior section 2678, added Pub. L. 85–861, § 1(51), Sept. 2, 1958, 72 Stat. 1460, related to acquisition of mortgaged housing units, prior to repeal by Pub. L. 97–214, §§ 7(1), 12(a), July 12, 1982, 96 Stat. 173, 176, effective Oct. 1, 1982, and applicable to military construction projects, and to construction and acquisition of military family housing authorized before, on, or after such date.

§ 2679. Installation-support services: intergovernmental support agreements

(a) IN GENERAL.—(1) Notwithstanding any other provision of law governing the award of Federal Government contracts for goods and services, the Secretary concerned may enter into an intergovernmental support agreement, on a sole source basis, with a State or local government to provide, receive, or share installation-support services if the Secretary determines that the agreement will serve the best interests of the department by enhancing mission effectiveness or creating efficiencies or economies of scale, including by reducing costs.

(2) An intergovernmental support agreement under paragraph (1)—

(A) may be for a term not to exceed ten years; and

(B) may use, for installation-support services provided by a State or local government, wage grades normally paid by that State or local government.

(3) An intergovernmental support agreement under paragraph (1) may only be used when the Secretary concerned or the State or local government, as the case may be, providing the installation-support services already provides such services for its own use.

(4) Any contract for the provision of installation-support services awarded by the Federal Government or a State or local government pursuant to an intergovernmental support agreement provided in subsection (a) shall be awarded on a competitive basis.

(b) EFFECT ON FIRST RESPONDER ARRANGEMENTS.—The authority provided by this section and limitations on the use of that authority are not intended to revoke, preclude, or otherwise interfere with existing or proposed mutual-aid agreements relating to police or fire protection services or other similar first responder agreements or arrangements.

(c) AVAILABILITY OF FUNDS.—Funds available to the Secretary concerned for operation and maintenance may be used to pay for such installation-support services. The costs of agreements under this section for any fiscal year may be paid using annual appropriations made available for that year. Funds received by the Secretary as reimbursement for providing installation-support services pursuant to such an agreement shall be credited to the appropriation or account charged with providing installation support.

(d) EFFECT ON OMB CIRCULAR A-76.— The Secretary concerned shall ensure that intergovernmental support agreements authorized by this section are not used to circumvent the requirements of Office of Management and Budget Circular A-76 regarding public-private competitions.

(e) PILOT PROGRAM FOR USE OF COST SAVINGS REALIZED.—(1) Each Secretary concerned shall conduct a pilot program under which the Secretary will make available to the commander of each military installation for which cost savings are realized as a result of an intergovernmental support agreement entered into under this section an amount equal to not less than 25 percent of the amount of such cost savings for that military installation for a fiscal year.

(2) Amounts made available to an installation commander under paragraph (1) shall be used solely to address sustainment restoration and modernization requirements that have been approved by the major subordinate command or equivalent component.

(3) With respect to each military installation for which amounts are made available to the installation commander under paragraph (1), the Secretary concerned shall certify, not less frequently than annually for each fiscal year of the pilot program, to the congressional defense committees the following:

(A) The name of the installation and the amount of the cost savings achieved at the installation.

(B) The source and type of intergovernmental support agreement that achieved the cost savings.

(C) The amount of the cost savings made available to the installation commander under paragraph (1).

(D) The sustainment restoration and modernization purposes for which the amount made available under paragraph (1) were used.

(4) The authority to conduct the pilot program shall expire September 30, 2025.

(f) DEFINITIONS.—In this section:

(1) The term ''installation-support services'' means those services, supplies, resources, and support typically provided by a local government for its own needs and without regard to whether such services, supplies, resources, and support are provided to its residents generally, except that the term does not include security guard or fire-fighting functions.

(2) The term ''local government'' includes a county, parish, municipality, city, town, township, local public authority, school district, special district, and any agency or instrumentality of a local government.

(3) The term ''State'' includes the District of Columbia, the Commonwealths of Puerto Rico and the Northern Mariana Islands, American Samoa, Guam, and the United States Virgin Islands, and any agency or instrumentality of a State.

(4) The term ''intergovernmental support agreement'' means a legal instrument reflecting a relationship between the Secretary concerned and a State or local government that contains such terms and conditions as the Secretary concerned considers appropriate for the purposes of this section and necessary to protect the interests of the United States.

(Added Pub. L. 112–239, div. A, title III, § 331(a), Jan. 2, 2013, 126 Stat. 1696, § 2336; renumbered § 2679 and amended Pub. L. 113–291, div. A, title III, § 351(a), (b), Dec. 19, 2014, 128 Stat. 3346; Pub. L. 114–92, div. A, title X, § 1081(a)(9), (b)(1), Nov. 25, 2015, 129 Stat. 1001; Pub. L. 115–91, div. B, title XXVIII, § 2813, Dec. 12, 2017, 131 Stat. 1849; Pub. L. 115–232, div. A, title X, § 1081(a)(26), Aug. 13, 2018, 132 Stat. 1985; Pub. L. 116–283, div. B, title XXVIII, § 2861(a), Jan. 1, 2021, 134 Stat. 4356.)

PRIOR PROVISIONS

A prior section 2679, added Pub. L. 87–651, title I, § 112(c), Sept. 7, 1962, 76 Stat. 511; amended Pub. L. 101–189, div. A, title XVI, § 1621(a)(9), Nov. 29, 1989, 103 Stat. 1603; Pub. L. 103–337, div. A, title X, § 1070(e)(9), Oct. 5, 1994, 108 Stat. 2859, related to use of space and equipment by representatives of veterans' organizations, prior to repeal by Pub. L. 108–375, div. B, title XXVIII, § 2821(c)(2), Oct. 28, 2004, 118 Stat. 2129.

AMENDMENTS

2021—Subsecs. (e), (f). Pub. L. 116–283 added subsec. (e) and redesignated former subsec. (e) as (f).

2018—Subsec. (a)(1). Pub. L. 115–232 substituted ''Federal Government'' for ''Federal government''.

2017—Subsec. (a)(2)(A). Pub. L. 115–91 substituted ''ten years'' for ''five years''.

2015—Subsec. (a)(1). Pub. L. 114–92, § 1081(a)(9), struck out ''with'' before '', on a sole source''.

Subsec. (a)(4). Pub. L. 114–92, § 1081(b)(1), amended directory language of Pub. L. 113–291, § 351(b)(1)(C). See 2014 Amendment note below.

2014—Pub. L. 113–291, § 351(a), renumbered section 2336 of this title as this section and substituted ''Installation-support services: intergovernmental support agreement'' for ''Intergovernmental support agreements with State and local governments'' in section catchline.

Subsec. (a)(1). Pub. L. 113–291, § 351(b)(1)(A), substituted ''Notwithstanding any other provision of law governing the award of Federal government contracts for goods and services, the Secretary concerned'' for ''The Secretary concerned'' and '', on a sole source basis, with a State or local'' for ''a State or local''.

Subsec. (a)(2). Pub. L. 113–291, § 351(b)(1)(B), substituted ''An'' for ''Notwithstanding any other provision of law, an'' in introductory provisions, redesignated subpars. (B) and (C) as (A) and (B), respectively, and struck out former subpar. (A) which read as follows: ''may be entered into on a sole-source basis;''.

Subsec. (a)(4). Pub. L. 113–291, § 351(b)(1)(C), as amended by Pub. L. 114–92, § 1081(b)(1), added par. (4).

Subsec. (e)(4). Pub. L. 113–291, § 351(b)(2), added par. (4).

EFFECTIVE DATE OF 2015 AMENDMENT

Pub. L. 114–92, div. A, title X, § 1081(b), Nov. 25, 2015, 129 Stat. 1001, provided in part that the amendment made by section 1081(b)(1) is effective as of Dec. 19, 2014, and as if included in Pub. L. 113–291 as enacted.

PROMULGATION OF GUIDANCE

Pub. L. 116–283, div. B, title XXVIII, § 2861(b), Jan. 1, 2021, 134 Stat. 4357, provided that: ''Not later than 180 days after the date of the enactment of this Act [Jan. 1, 2021], the Secretary of Defense shall promulgate guidance for the development of the pilot program required by subsection (e) of section 2679 of title 10, United States Code, as added by subsection (a).''

[§ 2680. Repealed. Pub. L. 111–383, div. B, title XXVIII, § 2814(a), Jan. 7, 2011, 124 Stat. 4464]

Section, added Pub. L. 102–190, div. B, title XXVIII, § 2863(a)(1), Dec. 5, 1991, 105 Stat. 1560; amended Pub. L. 103–160, div. B, title XXVIII, § 2807(a), Nov. 30, 1993, 107 Stat. 1887; Pub. L. 104–106, div. B, title XXVIII, § 2820(a), (b), Feb. 10, 1996, 110 Stat. 556; Pub. L. 106–65, div. A, title X, § 1067(1), div. B, title XXVIII, § 2811, Oct. 5, 1999, 113 Stat. 774, 851; Pub. L. 107–314, div. A, title X, § 1062(a)(13), Dec. 2, 2002, 116 Stat. 2650; Pub. L. 108–136, div. A, title X, § 1031(a)(31), Nov. 24, 2003, 117 Stat. 1600, related to leases of land for special operations activities.

PRIOR PROVISIONS

A prior section 2680, added Pub. L. 87–651, title I, § 112(c), Sept. 7, 1962, 76 Stat. 511; amended Pub. L. 89–718, § 20, Nov. 2, 1966, 80 Stat. 1118, authorized reimbursement of moving expenses to owners of property acquired for public works projects, prior to repeal by Pub. L. 91–646, title II, § 220(a)(3), Jan. 2, 1971, 84 Stat. 1903. See section 4601 et seq. of Title 42, The Public Health and Welfare.

EFFECT OF REPEAL

Pub. L. 111–383, div. B, title XXVIII, § 2814(b), Jan. 7, 2011, 124 Stat. 4464, provided that: ''The amendment made by subsection (a) [repealing this section] shall not affect the validity of any contract entered into under section 2680 of title 10, United States Code, on or before September 30, 2005.''

§ 2681. Use of test and evaluation installations by commercial entities

(a) CONTRACT AUTHORITY.—The Secretary of Defense may enter into contracts with commercial entities that desire to conduct commercial test and evaluation activities at a Major Range and Test Facility Installation.

(b) TERMINATION OR LIMITATION OF CONTRACT UNDER CERTAIN CIRCUMSTANCES.—A contract entered into under subsection (a) shall contain a provision that the Secretary of Defense may terminate, prohibit, or suspend immediately any commercial test or evaluation activity to be conducted at the Major Range and Test Facility Installation under the contract if the Secretary of Defense certifies in writing that the test or evaluation activity is or would be detrimental—

(1) to the public health and safety;

(2) to property (either public or private); or

(3) to any national security interest or foreign policy interest of the United States.

(c) CONTRACT PRICE.—A contract entered into under subsection (a) shall include a provision that requires a commercial entity using a Major Range and Test Facility Installation under the contract to reimburse the Department of Defense for all direct costs to the United States that are associated with the test and evaluation activities conducted by the commercial entity under the contract. In addition, the contract may include a provision that requires the commercial entity to reimburse the Department of Defense for such indirect costs related to the use of the installation as the Secretary of Defense considers to be appropriate. The Secretary may delegate to the commander of the Major Range and Test Facility Installation the authority to determine the appropriateness of the amount of indirect costs included in such a contract provision.

(d) RETENTION OF FUNDS COLLECTED FROM COMMERCIAL USERS.—Amounts collected under subsection (c) from a commercial entity conducting test and evaluation activities at a Major Range and Test Facility Installation shall be credited to the appropriation accounts under which the costs associated with the test and evaluation activities of the commercial entity were incurred.

(e) REGULATIONS AND LIMITATIONS.—The Secretary of Defense shall prescribe regulations to carry out this section.

(f) DEFINITIONS.—In this section:

(1) The term ''Major Range and Test Facility Installation'' means a test and evaluation installation under the jurisdiction of the Department of Defense and designated as a Major Range and Test Facility Installation by the Secretary.

(2) The term ''direct costs'' includes the cost of—

(A) labor, material, facilities, utilities, equipment, supplies, and any other resources damaged or consumed during test or evaluation activities or maintained for a particular commercial entity; and

(B) construction specifically performed for a commercial entity to conduct test and evaluation activities.

(Added Pub. L. 103–160, div. A, title VIII, §846(a), Nov. 30, 1993, 107 Stat. 1722; amended Pub. L. 105–85, div. A, title VIII, §842, Nov. 18, 1997, 111 Stat. 1844; Pub. L. 105–261, div. A, title VIII, §820, Oct. 17, 1998, 112 Stat. 2090.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§1801(d), 1844(b)(1), Jan. 1, 2021, 134 Stat. 4151, 4245, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 307 of this title, as added by section 1844(a) of Pub. L. 116–283, inserted after section 4143, and redesignated as section 4144 of this title. See Effective Date of 2021 Amendment note below.

PRIOR PROVISIONS

A prior section, added Pub. L. 87–651, title II, §209(a), Sept. 7, 1962, 76 Stat. 523; amended Pub. L. 88–174, title V, §508, Nov. 7, 1963, 77 Stat. 326; Pub. L. 96–513, title V, §511(93), Dec. 12, 1980, 94 Stat. 2928, related to construction or acquisition of family housing and community facilities in foreign countries, prior to repeal by Pub. L. 97–214, §§7(1), 12(a), July 12, 1982, 96 Stat. 173, 176, effective Oct. 1, 1982, and applicable to military construction projects, and to construction and acquisition of military family housing authorized before, on, or after such date.

AMENDMENTS

1998—Subsec. (g). Pub. L. 105–261, §820(a), struck out heading and text of subsec. (g). Text read as follows: ''The authority provided to the Secretary of Defense by subsection (a) shall terminate on September 30, 2002.''

Subsec. (h). Pub. L. 105–261, §820(b), struck out heading and text of subsec. (h). Text read as follows: ''Not later than March 1, 1998, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives a report identifying existing and proposed procedures to ensure that the use of Major Range and Test Facility Installations by commercial entities does not compete with private sector test and evaluation services.''

1997—Subsec. (g). Pub. L. 105–85, §842(a), substituted ''2002'' for ''1998''.

Subsec. (h). Pub. L. 105–85, §842(b), amended subsec. (h) generally. Prior to amendment, subsec. (h) read as follows:

''(h) REPORT.—Not later than January 1, 1998, the Secretary of Defense shall submit to Congress a report describing the number and purposes of contracts entered into under subsection (a) and evaluating the extent to which the authority under this section is exercised to open Major Range and Test Facility Installations to commercial test and evaluation activities.''

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 2682. Facilities for defense agencies

(a) MAINTENANCE AND REPAIR.—Subject to subsection (c), the maintenance and repair of a real property facility for an activity or agency of the Department of Defense (other than a military department) financed from appropriations for military functions of the Department of Defense will be accomplished by or through a military department designated by the Secretary of Defense.

(b) JURISDICTION.—Subject to subsection (c), a real property facility under the jurisdiction of the Department of Defense which is used by an activity or agency of the Department of Defense (other than a military department) shall be under the jurisdiction of a military department designated by the Secretary of Defense.

(c) FACILITIES FOR INTELLIGENCE COLLECTION OR FOR SPECIAL OPERATIONS ABROAD.—(1) The Secretary of Defense may waive the requirements of subsections (a) and (b) if necessary to provide security for authorized intelligence collection or special operations activities abroad undertaken by the Department of Defense.

(2) Not later than 48 hours after using the waiver authority under paragraph (1) for any facility for intelligence collection conducted under the authorities of the Department of Defense or special operations activity, the Secretary of Defense shall submit, in an electronic

medium pursuant to section 480 of this title, to the appropriate congressional committees a notice of the use of the authority, including the justification for the waiver and the estimated cost of the project for which the waiver applies.

(3) In this subsection, the term ''appropriate congressional committees'' means the following:

(A) With respect to a waiver regarding special operations activities, the congressional defense committees.

(B) With respect to a waiver regarding intelligence collection conducted under the authorities of the Department of Defense—

(i) the congressional defense committees; and

(ii) the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives.

(4) The waiver authority provided by paragraph (1) expires December 31, 2020.

(Added Pub. L. 88–174, title VI, § 609(a)(1), Nov. 7, 1963, 77 Stat. 329; amended Pub. L. 97–214, § 10(a)(7), July 12, 1982, 96 Stat. 175; Pub. L. 112–81, div. A, title IX, § 926, Dec. 31, 2011, 125 Stat. 1541; Pub. L. 114–92, div. A, title XVI, § 1632, Nov. 25, 2015, 129 Stat. 1111; Pub. L. 115–91, div. B, title XXVIII, § 2811(f), Dec. 12, 2017, 131 Stat. 1848.)

AMENDMENTS

2017—Subsec. (c)(2). Pub. L. 115–91 substituted '', in an electronic medium pursuant to section 480 of this title, to the appropriate congressional committees a notice'' for ''to the appropriate congressional committees written notification''.

2015—Subsecs. (a), (b). Pub. L. 114–92, § 1632(b)(2), repealed Pub. L. 112–81, § 926(b). See 2011 Amendment notes below.

Subsec. (c). Pub. L. 114–92, § 1632(b)(2), repealed Pub. L. 112–81, § 926(b). See 2011 Amendment note below.

Pub. L. 114–92, § 1632(a), designated existing provisions as par. (1) and added pars. (2) and (3).

Subsec. (c)(4). Pub. L. 114–92, § 1632(b)(1), added par. (4).

2011—Pub. L. 112–81, § 926(a)(1), (2), designated first and second sentences as subsecs. (a) and (b), respectively, inserted headings, and realigned margins of subsec. (b).

Subsec. (a). Pub. L. 112–81, § 926(b)(1), which directed the substitution of ''The maintenance and repair'' for ''Subject to subsection (c), the maintenance and repair'', subject to effective date set out in Effective Date of 2011 Amendment note below, was repealed by Pub. L. 114–92, § 1632(b)(2).

Pub. L. 112–81, § 926(a)(1), substituted ''Subject to subsection (c), the maintenance and repair'' for ''The maintenance and repair''.

Subsec. (b). Pub. L. 112–81, § 926(b)(2), which directed the substitution of ''A real property'' for ''Subject to subsection (c), a real property'', subject to effective date set out in Effective Date of 2011 Amendment note below, was repealed by Pub. L. 114–92, § 1632(b)(2).

Pub. L. 112–81, § 926(a)(3), substituted ''Subject to subsection (c), a real property'' for ''A real property''.

Subsec. (c). Pub. L. 112–81, § 926(b)(3), which directed the striking out of subsec. (c), subject to effective date set out in Effective Date of 2011 Amendment note below, was repealed by Pub. L. 114–92, § 1632(b)(2).

Pub. L. 112–81, § 926(a)(4), added subsec. (c).

1982—Pub. L. 97–214 substituted ''maintenance and repair'' for ''construction, maintenance, rehabilitation, repair, alteration, addition, expansion, or extension''.

EFFECTIVE DATE OF 2011 AMENDMENT

Pub. L. 112–81, div. A, title IX, § 926(b), Dec. 31, 2011, 125 Stat. 1541, as amended by Pub. L. 113–291, div. A, title XVI, § 1624, Dec. 19, 2014, 128 Stat. 3633, which provided in part that the amendments made to this section by section 926(b) were to be effective on the later of Sept. 30, 2017, or the date of the enactment of an Act authorizing funds for military construction for fiscal year 2018, was repealed by Pub. L. 114–92, div. A, title XVI, § 1632(b)(2), Nov. 25, 2015, 129 Stat. 1112.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–214 effective Oct. 1, 1982, and applicable to military construction projects, and to construction and acquisition of military family housing authorized before, on, or after such date, see section 12(a) of Pub. L. 97–214, set out as an Effective Date note under section 2801 of this title.

§ 2683. Relinquishment of legislative jurisdiction; minimum drinking age on military installations

(a) Notwithstanding any other provision of law, the Secretary concerned may, whenever he considers it desirable, relinquish to a State, or to a Commonwealth, territory, or possession of the United States, all or part of the legislative jurisdiction of the United States over lands or interests under his control in that State, Commonwealth, territory, or possession. Relinquishment of legislative jurisdiction under this section may be accomplished (1) by filing with the Governor (or, if none exists, with the chief executive officer) of the State, Commonwealth, territory, or possession concerned a notice of relinquishment to take effect upon acceptance thereof, or (2) as the laws of the State, Commonwealth, territory, or possession may otherwise provide.

(b) The authority granted by subsection (a) is in addition to and not instead of that granted by any other provision of law.

(c)(1) Except as provided in paragraphs (2) and (3), the Secretary concerned shall establish and enforce as the minimum drinking age on a military installation located in a State the age established by the law of that State as the State minimum drinking age.

(2)(A) In the case of a military installation located—

(i) in more than one State; or

(ii) in one State but within 50 miles of another State or Mexico or Canada,

the Secretary concerned may establish and enforce as the minimum drinking age on that military installation the lowest applicable age.

(B) In subparagraph (A), the term ''lowest applicable age'' means the lowest minimum drinking age established by the law—

(i) of a State in which a military installation is located; or

(ii) of a State or jurisdiction of Mexico or Canada that is within 50 miles of such military installation.

(3)(A) The commanding officer of a military installation may waive the requirement of paragraph (1) if such commanding officer determines that the exemption is justified by special circumstances.

(B) The Secretary of Defense shall define by regulations what constitute special circumstances for the purposes of this paragraph.

(4) In this subsection:

(A) The term ''State'' includes the District of Columbia.

(B) The term ''minimum drinking age'' means the minimum age or ages established for persons who may purchase, possess, or consume alcoholic beverages.

(Added Pub. L. 91–511, title VI, § 613(1), Oct. 26, 1970, 84 Stat. 1226; amended Pub. L. 92–545, title VIII, § 707, Oct. 25, 1972, 86 Stat. 1154; Pub. L. 93–283, § 3, May 14, 1974, 88 Stat. 141; Pub. L. 99–145, title XII, § 1224(a), (b)(1), (c)(1), Nov. 8, 1985, 99 Stat. 728, 729; Pub. L. 99–661, div. A, title XIII, § 1343(a)(18), Nov. 14, 1986, 100 Stat. 3993; Pub. L. 100–526, title I, § 106(b)(2), Oct. 24, 1988, 102 Stat. 2625.)

AMENDMENTS

1988—Subsec. (c)(2)(B). Pub. L. 100–526, § 106(b)(2)(A), substituted ''the term 'lowest applicable age' '' for '' 'lowest age' ''.

Subsec. (c)(4)(A). Pub. L. 100–526, § 106(b)(2)(B)(i), substituted ''The term 'State' '' for '' 'State' ''.

Subsec. (c)(4)(B). Pub. L. 100–526, § 106(b)(2)(B)(ii), substituted ''The term 'minimum' '' for '' 'Minimum' ''.

1986—Subsec. (b). Pub. L. 99–661 struck out ''this'' before ''subsection (a)''.

1985—Pub. L. 99–145, § 1224(c)(1), inserted ''; minimum drinking age on military installations'' in section catchline.

Subsec. (b). Pub. L. 99–145, § 1224(b)(1), substituted ''subsection (a)'' for ''section''.

Subsec. (c). Pub. L. 99–145, § 1224(a), added subsec. (c).

1974—Subsec. (a). Pub. L. 93–283 substituted ''Secretary concerned'' for ''Secretary of a military department''.

1972—Subsec. (a). Pub. L. 92–545 provided for relinquishment of all or part of legislative jurisdiction of the United States over lands or interests to Commonwealths, territories, or possessions of the United States.

EFFECTIVE DATE OF 1985 AMENDMENT

Pub. L. 99–145, title XII, § 1224(d), Nov. 8, 1985, 99 Stat. 729, provided that: ''The amendments made by this section [amending this section and provisions set out as a note under section 113 of this title] shall take effect 90 days after the date of the enactment of this Act [Nov. 8, 1985].''

§ 2684. Cooperative agreements for management of cultural resources

(a) AUTHORITY.—The Secretary of Defense or the Secretary of a military department may enter into a cooperative agreement with a State or local government or other entity for the preservation, management, maintenance, and improvement of cultural resources located on a site authorized by subsection (b) and for the conduct of research regarding the cultural resources. Activities under the cooperative agreement shall be subject to the availability of funds to carry out the cooperative agreement.

(b) AUTHORIZED CULTURAL RESOURCES SITES.—To be covered by a cooperative agreement under subsection (a), cultural resources must be located—

(1) on a military installation; or

(2) on a site outside of a military installation, but only if the cooperative agreement will directly relieve or eliminate current or anticipated restrictions that would or might restrict, impede, or otherwise interfere, whether directly or indirectly, with current or anticipated military training, testing, or operations on a military installation.

(c) APPLICATION OF OTHER LAWS.—Section 1535 and chapter 63 of title 31 shall not apply to a cooperative agreement entered into under this section.

(d) CULTURAL RESOURCE DEFINED.—In this section, the term ''cultural resource'' means any of the following:

(1) A building, structure, site, district, or object eligible for or included in the National Register of Historic Places maintained under section 302101 of title 54.

(2) Cultural items, as that term is defined in section 2(3) of the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001(3)).

(3) An archaeological resource, as that term is defined in section 3(1) of the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470bb(1)).

(4) An archaeological artifact collection and associated records covered by section 79 of title 36, Code of Federal Regulations.

(5) An Indian sacred site, as defined in section 1(b)(iii) of Executive Order No. 13007.

(Added Pub. L. 104–201, div. B, title XXVIII, § 2862(a), Sept. 23, 1996, 110 Stat. 2804; amended Pub. L. 105–85, div. A, title X, § 1073(a)(58), Nov. 18, 1997, 111 Stat. 1903; Pub. L. 110–181, div. B, title XXVIII, § 2824, Jan. 28, 2008, 122 Stat. 545; Pub. L. 113–287, § 5(b), Dec. 19, 2014, 128 Stat. 3264; Pub. L. 114–92, div. A, title X, § 1081(a)(10), Nov. 25, 2015, 129 Stat. 1001.)

REFERENCES IN TEXT

Executive Order No. 13007, referred to in subsec. (d)(5), is set out under section 1996 of Title 42, The Public Health and Welfare.

PRIOR PROVISIONS

A prior section 2684, added Pub. L. 93–166, title V, § 509(a), Nov. 29, 1973, 87 Stat. 677, related to construction of family quarters and limitations on space, prior to repeal by Pub. L. 97–214, §§ 7(1), 12(a), July 12, 1982, 96 Stat. 173, 176, effective Oct. 1, 1982, and applicable to military construction projects, and to construction and acquisition of military family housing authorized before, on, or after such date. See section 2826 of this title.

AMENDMENTS

2015—Subsec. (d)(1). Pub. L. 114–92 substituted ''section 302101 of title 54'' for ''section 2023.01 of title 54''.

2014—Subsec. (d)(1). Pub. L. 113–287, which directed the substitution of ''section 2023.01 of title 54'' for ''section 101(a) of the National Historic Preservation Act (16 U.S.C. 470a(a))'' in subsec. (c)(1), was executed by making the substitution in subsec. (d)(1) to reflect the probable intent of Congress and the prior redesignation of subsec. (c) as (d) by Pub. L. 110–181, § 2824(a)(2). See 2008 Amendment note below.

2008—Subsec. (a). Pub. L. 110–181, § 2824(a)(1), substituted ''located on a site authorized by subsection (b)'' for ''on military installations''.

Subsecs. (b) to (d). Pub. L. 110–181, § 2824(a)(2), (3), added subsec. (b) and redesignated former subsecs. (b) and (c) as (c) and (d), respectively.

Subsec. (d)(5). Pub. L. 110–181, § 2824(b), added par. (5).

1997—Subsec. (b). Pub. L. 105–85 struck out '', United States Code,'' after ''title 31''.

§ 2684a. Agreements to limit encroachments and other constraints on military training, testing, and operations

(a) AGREEMENTS AUTHORIZED.—The Secretary of Defense or the Secretary of a military depart-

ment may enter into an agreement with an eligible entity or entities described in subsection (b) to address the use or development of real property in the vicinity of, or ecologically related to, a military installation, as well as a State-owned National Guard installation, or military airspace for purposes of—

(1) limiting any development or use of the property that would be incompatible with the mission of the installation;

(2) preserving habitat on the property in a manner that—

(A) is compatible with environmental requirements; and

(B) may eliminate or relieve current or anticipated environmental restrictions that would or might otherwise restrict, impede, or otherwise interfere, whether directly or indirectly, with current or anticipated military training, testing, or operations on the installation;

(3) maintaining or improving military installation resilience; or

(4) protecting Clear Zone Areas from use or encroachment that is incompatible with the mission of the installation.

(b) ELIGIBLE ENTITIES.—For purposes of this section, an eligible entity is any of the following:

(1) A State or political subdivision of a State.

(2) A private entity that has as its stated principal organizational purpose or goal the conservation, restoration, or preservation of land and natural resources, or a similar purpose or goal, as determined by the Secretary concerned.

(c) INAPPLICABILITY OF CERTAIN CONTRACT REQUIREMENTS.—Notwithstanding chapter 63 of title 31, an agreement under this section that is a cooperative agreement or a grant may be used to acquire property or services for the direct benefit or use of the United States Government.

(d) ACQUISITION AND ACCEPTANCE OF PROPERTY AND INTERESTS.—(1) An agreement with an eligible entity or entities under this section shall provide for—

(A) the acquisition by an eligible entity or entities of all right, title, and interest in and to any real property, or any lesser interest in the property, as may be appropriate for purposes of this section; and

(B) the sharing by the United States and an eligible entity or entities of the acquisition costs in accordance with paragraph (3).

(2) Property or interests may not be acquired pursuant to the agreement unless the owner of the property or interests consents to the acquisition.

(3) An agreement with an eligible entity under this section may provide for the management of natural resources on, and the monitoring and enforcement of any right, title, real property in which the Secretary concerned acquires any right, title, or interest in accordance with this subsection and for the payment by the United States of all or a portion of the costs of such natural resource management and monitoring and enforcement if the Secretary concerned determines that there is a demonstrated need to preserve or restore habitat for the purpose described in subsection (a)(2). Any such payment by the United States—

(A) may be paid in a lump sum and include an amount intended to cover the future costs of natural resource management and monitoring and enforcement; and

(B) may be placed by the eligible entity in an interest-bearing account, and any interest shall be applied for the same purposes as the principal.

(4)(A) The Secretary concerned shall determine the appropriate portion of the acquisition costs to be borne by the United States in the sharing of acquisition costs of real property, or an interest in real property, under paragraph (1)(B).

(B) In lieu of or in addition to making a monetary contribution toward the cost of acquiring a parcel of real property, or an interest therein, pursuant to an agreement under this section, the Secretary concerned may convey, using the authority provided by section 2869 of this title, real property described in paragraph (2) of subsection (a) of such section, subject to the limitation in paragraph (3) of such subsection.

(C) The portion of acquisition costs borne by the United States under subparagraph (A), either through the contribution of funds or excess real property, or both, may not exceed an amount equal to, at the discretion of the Secretary concerned—

(i) the fair market value of any property or interest in property to be transferred to the United States upon the request of the Secretary concerned under paragraph (5); or

(ii) the cumulative fair market value of all properties or interests to be transferred to the United States under paragraph (5) pursuant to an agreement under subsection (a).

(D) The portion of acquisition costs borne by the United States under subparagraph (A) may exceed the amount determined under subparagraph (C), but only if—

(i) the Secretary concerned submits, in an electronic medium pursuant to section 480 of this title, a notice to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives containing—

(I) a certification by the Secretary that the military value to the United States of the property or interest to be acquired justifies a payment in excess of the fair market value of the property or interest; and

(II) a description of the military value to be obtained; and

(ii) the contribution toward the acquisition costs of the property or interest is not made until at least 10 days after the date on which the notice is submitted under clause (i).

(E) The contribution of an entity or entities to the acquisition costs of real property, or an interest in real property, under paragraph (1)(B) may include, with the approval of the Secretary concerned, the following or any combination of the following:

(i) The provision of funds, including funds received by such entity or entities from a Fed-

eral agency outside the Department of Defense or a State or local government in connection with a Federal, State, or local program.

(ii) The provision of in-kind services, including services related to the acquisition or maintenance of such real property or interest in real property.

(iii) The exchange or donation of real property or any interest in real property.

(5)(A) The agreement shall require the entity or entities to transfer to the United States, upon the request of the Secretary concerned, all or a portion of the property or interest acquired under the agreement or a lesser interest therein. No such requirement need be included in the agreement if the property or interest is being transferred to a State or another Federal agency, or the agreement requires it to be subsequently transferred to a State or another Federal agency, and the Secretary concerned determines that the laws and regulations applicable to the future use of such property or interest provide adequate assurance that the property concerned will be developed and used in a manner appropriate for purposes of this section. The Secretary shall limit such transfer request to the minimum property or interests necessary to ensure that the property concerned is developed and used in a manner appropriate for purposes of this section.

(B) Notwithstanding subparagraph (A), if all or a portion of the property or interest acquired under the agreement is initially or subsequently transferred to a State or another Federal agency, before that State or other Federal agency may declare the property or interest in excess to its needs or propose to exchange the property or interest, the State or other Federal agency shall give the Secretary concerned reasonable advance notice of its intent. If the Secretary concerned determines it necessary to preserve the purposes of this section, the Secretary concerned may request that administrative jurisdiction over the property be transferred to the Secretary concerned at no cost, and, upon such a request being made, the administrative jurisdiction over the property shall be transferred accordingly. If the Secretary concerned does not make such a request within a reasonable time period, all such rights of the Secretary concerned to request transfer of the property or interest shall remain available to the Secretary concerned with respect to future transfers or exchanges of the property or interest and shall bind all subsequent transferees.

(6) The Secretary concerned may accept on behalf of the United States any property or interest to be transferred to the United States under the agreement.

(7) For purposes of the acceptance of property or interests under the agreement, the Secretary concerned may accept an appraisal or title documents prepared or adopted by a non-Federal entity as satisfying the applicable requirements of section 301 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4651) or section 3111 of title 40, if the Secretary concerned finds that the appraisal or title documents substantially comply with the requirements.

(e) ACQUISITION OF WATER RIGHTS.—The authority of the Secretary concerned to enter into an agreement under this section for the acquisition of real property (or an interest therein) includes the authority to support the purchase of water rights from any available source when necessary to support or protect the mission of a military installation.

(f) ADDITIONAL TERMS AND CONDITIONS.—The Secretary concerned may require such additional terms and conditions in an agreement under this section as the Secretary considers appropriate to protect the interests of the United States.

(g) ANNUAL REPORTS.—(1) Not later than March 1 each year, the Secretary of Defense shall, in coordination with the Secretaries of the military departments and the Director of the Department of Defense Test Resource Management Center, submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the projects undertaken under agreements under this section.

(2) Each report under paragraph (1) shall include the following:

(A) A description of the status of the projects undertaken under agreements under this section.

(B) An assessment of the effectiveness of such projects, and other actions taken pursuant to this section, as part of a long-term strategy to ensure the sustainability of military test and training ranges, military installations, and associated airspace.

(C) An evaluation of the methodology and criteria used to select, and to establish priorities, for projects undertaken under agreements under this section.

(D) A description of any sharing of costs by the United States and eligible entities under subsection (d) during the preceding year, including a description of each agreement under this section providing for the sharing of such costs and a statement of the eligible entity or entities with which the United States is sharing such costs.

(E) Such recommendations as the Secretary of Defense considers appropriate for legislative or administrative action in order to improve the efficiency and effectiveness of actions taken pursuant to agreements under this section.

(h) INTERAGENCY COOPERATION IN CONSERVATION AND RESILIENCE PROGRAMS TO AVOID OR REDUCE ADVERSE IMPACTS ON MILITARY INSTALLATION RESILIENCE AND MILITARY READINESS ACTIVITIES.—In order to facilitate interagency cooperation and enhance the effectiveness of actions that will protect the environment, military installation resilience, and military readiness, the recipient of funds provided pursuant to an agreement under this section or under the Sikes Act (16 U.S.C. 670 et seq.) may, with regard to the lands and waters within the scope of the agreement, use such funds to satisfy any matching funds or cost-sharing requirement of any conservation or resilience program of any Federal agency notwithstanding any limitation of such program on the source of matching or cost-sharing funds.

(i) FUNDING.—(1) Except as provided in paragraph (2), funds authorized to be appropriated for operation and maintenance of the Army,

Navy, Marine Corps, Air Force, Space Force, or Defense-wide activities may be used to enter into agreements under this section.

(2) In the case of a military installation operated primarily with funds authorized to be appropriated for research, development, test, and evaluation, funds authorized to be appropriated for the Army, Navy, Marine Corps, Air Force, Space Force, or Defense-wide activities for research, development, test, and evaluation may be used to enter into agreements under this section with respect to the installation.

(3) Funds obligated to carry out an agreement under this section shall be available for use with regard to any property in the geographic scope specified in the agreement—

(A) at the time the funds are obligated; and

(B) in any subsequent modification to the agreement.

(j) DEFINITIONS.—In this section:

(1) The term ''Secretary concerned'' means the Secretary of Defense or the Secretary of a military department.

(2) The term ''State'' includes the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Marianas, and the territories and possessions of the United States.

(3) The term ''Clear Zone Area'' means an area immediately beyond the end of the runway of an airfield that is needed to ensure the safe and unrestricted passage of aircraft in and over the area.

(Added Pub. L. 107–314, div. B, title XXVIII, § 2811(a), Dec. 2, 2002, 116 Stat. 2705; amended Pub. L. 109–163, div. B, title XXVIII, § 2822, Jan. 6, 2006, 119 Stat. 3513; Pub. L. 109–364, div. B, title XXVIII, § 2811(g), Oct. 17, 2006, 120 Stat. 2473; Pub. L. 110–181, div. B, title XXVIII, § 2825, Jan. 28, 2008, 122 Stat. 545; Pub. L. 111–84, div. A, title X, § 1073(a)(27), Oct. 28, 2009, 123 Stat. 2474; Pub. L. 111–383, div. A, title X, § 1075(b)(43), Jan. 7, 2011, 124 Stat. 4371; Pub. L. 112–81, div. B, title XXVIII, § 2813, Dec. 31, 2011, 125 Stat. 1687; Pub. L. 113–66, div. A, title III, § 312(a), Dec. 26, 2013, 127 Stat. 729; Pub. L. 113–291, div. A, title X, § 1071(f)(23), Dec. 19, 2014, 128 Stat. 3511; Pub. L. 115–91, div. B, title XXVIII, § 2811(g), Dec. 12, 2017, 131 Stat. 1848; Pub. L. 115–232, div. A, title III, § 312(i), div. B, title XXVIII, § 2827(b)(1), Aug. 13, 2018, 132 Stat. 1711, 2270; Pub. L. 116–283, div. A, title III, §§ 312(a)–(b)(2), (c), 315(b), title IX, § 924(b)(33), title X, § 1081(d)(12), Jan. 1, 2021, 134 Stat. 3513–3515, 3826, 3874.)

REFERENCES IN TEXT

The Sikes Act, referred to in subsec. (h), is Pub. L. 86–797, Sept. 15, 1960, 74 Stat. 1052, which is classified generally to chapter 5C (§ 670 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 670 of Title 16 and Tables.

AMENDMENTS

2021—Subsec. (a). Pub. L. 116–283, § 1081(d)(12), made technical amendment to directory language of Pub. L. 115–232, § 2827(b)(1). See 2018 Amendment note below.

Subsec. (a)(2)(B). Pub. L. 116–283, § 315(b)(1)(A), struck out cl. (i) designation after ''(B)'' and ''or'' after ''the installation;'' and struck out cl. (ii) which read as follows: ''maintains or improves military installation resilience; or''.

Subsec. (a)(3), (4). Pub. L. 116–283, § 315(b)(1)(B), (C), added par. (3) and redesignated former par. (3) as (4).

Subsec. (b). Pub. L. 116–283, § 312(b)(1), substituted ''For purposes of this section, an eligible entity is'' for ''An agreement under this section may be entered into with'' in introductory provisions.

Subsec. (d)(1). Pub. L. 116–283, § 312(b)(2), substituted ''an eligible entity or entities'' for ''the entity or entities'' in two places.

Subsec. (d)(5)(A). Pub. L. 116–283, § 312(c)(1), inserted ''or another Federal agency'' after ''to a State'' in two places.

Subsec. (d)(5)(B). Pub. L. 116–283, § 312(c)(2), added subpar. (B) and struck out former subpar. (B) which related to property or interest acquired under an agreement transferred to the United States where administrative jurisdiction over the property was under a Federal official other than a Secretary concerned.

Subsec. (h). Pub. L. 116–283, § 315(b)(2), amended subsec. (h) generally. Prior to amendment, subsec. (h) related to interagency cooperation in conservation programs to avoid or reduce adverse impacts on military readiness activities.

Subsec. (i)(1), (2). Pub. L. 116–283, § 924(b)(33), inserted ''Space Force,'' before ''or Defense-wide activities''.

Subsec. (i)(3). Pub. L. 116–283, § 312(a), added par. (3).

2018—Subsec. (a). Pub. L. 115–232, § 2827(b)(1), as amended by Pub. L. 116–283, § 1081(d)(12), inserted '', as well as a State-owned National Guard installation,'' after ''military installation'' in introductory provisions.

Subsec. (a)(2)(B). Pub. L. 115–232, § 312(i), designated existing provisions as cl. (i) and added cl. (ii).

2017—Subsec. (d)(4)(D)(i). Pub. L. 115–91, § 2811(g)(1), substituted ''submits, in an electronic medium pursuant to section 480 of this title, a notice'' for ''provides written notice'' in introductory provisions.

Subsec. (d)(4)(D)(ii). Pub. L. 115–91, § 2811(g)(2), substituted ''10 days after the date on which the notice is submitted under clause (i).'' for ''14 days after the date on which the notice is submitted under clause (i) or, if earlier, at least 10 days after the date on which a copy of the notice is provided in an electronic medium pursuant to section 480 of this title.''

2014—Subsec. (h). Pub. L. 113–291 inserted ''670'' after ''U.S.C.''.

2013—Subsecs. (h) to (j). Pub. L. 113–66 added subsec. (h) and redesignated former subsecs. (h) and (i) as (i) and (j), respectively.

2011—Subsec. (a)(3). Pub. L. 112–81, § 2813(1), added par. (3).

Subsec. (c). Pub. L. 112–81, § 2813(2), amended subsec. (c) generally. Prior to amendment, text read as follows: ''Chapter 63 of title 31 shall not apply to any agreement entered into under this section.''

Subsec. (d)(3). Pub. L. 112–81, § 2813(3)(A), inserted '', and the monitoring and enforcement of any right, title, or interest in,'' after ''resources on'' and ''and monitoring and enforcement'' after ''natural resource management'', and inserted at end ''Any such payment by the United States—

''(A) may be paid in a lump sum and include an amount intended to cover the future costs of natural resource management and monitoring and enforcement; and

''(B) may be placed by the eligible entity in an interest-bearing account, and any interest shall be applied for the same purposes as the principal.''

Subsec. (d)(5). Pub. L. 112–81, § 2813(3)(B), designated existing provisions as subpar. (A), inserted after first sentence ''No such requirement need be included in the agreement if the property or interest is being transferred to a State, or the agreement requires it to be subsequently transferred to a State, and the Secretary concerned determines that the laws and regulations applicable to the future use of such property or interest provide adequate assurance that the property concerned will be developed and used in a manner appropriate for purposes of this section.'', and added subpar. (B).

Subsec. (g)(1). Pub. L. 111–383 substituted ''March 1 each year'' for ''March 1, 2007, and annually thereafter''.

Subsec. (i)(3). Pub. L. 112–81, § 2813(4), added par. (3).

2009—Subsec. (g)(2). Pub. L. 111–84 substituted ''the following'' for ''the following the following'' in introductory provisions.

2008—Subsec. (d)(3), (4). Pub. L. 110–181, § 2825(a), added par. (3) and redesignated former par. (3) as (4). Former par. (4) redesignated (5).

Subsec. (d)(4)(C). Pub. L. 110–181, § 2825(b)(2), substituted ''equal to, at the discretion of the Secretary concerned—'' and cls. (i) and (ii) for ''equal to the fair market value of any property or interest to be transferred to the United States upon the request of the Secretary concerned under paragraph (4).''

Subsec. (d)(4)(D), (E). Pub. L. 110–181, § 2825(b)(1), (3), added subpar. (D) and redesignated former subpar. (D) as (E).

Subsec. (d)(5) to (7). Pub. L. 110–181, § 2825(a)(1), redesignated pars. (4) to (6) as (5) to (7), respectively.

2006—Subsec. (a). Pub. L. 109–163, § 2822(a)(1), in introductory provisions, inserted ''or entities'' after ''entity'' and substituted ''in the vicinity of, or ecologically related to, a military installation or military airspace'' for ''in the vicinity of a military installation''.

Subsec. (d)(1). Pub. L. 109–163, § 2822(a)(2)(A)(i), (b)(1)(A), inserted ''or entities'' after ''eligible entity'' and substituted ''shall provide'' for ''may provide'' in introductory provisions.

Subsec. (d)(1)(A). Pub. L. 109–163, § 2822(a)(2)(A)(ii), inserted ''or entities'' after ''the entity''.

Subsec. (d)(1)(B). Pub. L. 109–163, § 2822(b)(1)(B), added subpar. (B) and struck out former subpar. (B) which read as follows: ''the sharing by the United States and the entity of the acquisition costs.''

Subsec. (d)(3). Pub. L. 109–364 added subpar. (B), redesignated former subpars. (B) and (C) as (C) and (D), respectively, and in subpar. (C) substituted ''under subparagraph (A), either through the contribution of funds or excess real property, or both,'' for ''in the sharing of acquisition costs of real property, or an interest in real property, under paragraph (1)(B)''.

Pub. L. 109–163, § 2822(b)(3), added par. (3). Former par. (3) redesignated (4).

Pub. L. 109–163, § 2822(a)(2)(B), inserted ''or entities'' after ''the entity''.

Subsec. (d)(4) to (6). Pub. L. 109–163, § 2822(b)(2), redesignated pars. (3) to (5) as (4) to (6), respectively.

Subsecs. (g) to (i). Pub. L. 109–163, § 2822(c), added subsec. (g) and redesignated former subsecs. (g) and (h) as (h) and (i), respectively.

EFFECTIVE DATE OF 2021 AMENDMENT

Pub. L. 116–283, div. A, title III, § 312(b)(3), Jan. 1, 2021, 134 Stat. 3513, provided that: ''The amendments made by paragraphs (1) and (2) [amending this section] shall apply to any agreement entered into under section 2684a of title 10, United States Code, on or after December 2, 2002.''

Pub. L. 116–283, div. A, title X, § 1081(d), Jan. 1, 2021, 134 Stat. 3873, provided that the amendment made by section 1081(d)(12) of Pub. L. 116–283 to section 2827(b)(1) of Pub. L. 115–232, which amended this section, is effective as of Aug. 13, 2018, and as if included in Pub. L. 115–232.

EFFECTIVE DATE OF 2018 AMENDMENT

Pub. L. 115–232, div. B, title XXVIII, § 2827(b)(2), Aug. 13, 2018, 132 Stat. 2270, provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect as of December 2, 2002.''

TERMINATION OF 2013 AMENDMENT

Pub. L. 113–66, div. A, title III, § 312(b), Dec. 26, 2013, 127 Stat. 729, which provided that section 312 of Pub. L. 113–66, which amended this section, and subsec. (h) of this section would expire on Oct. 1, 2019, subject to a provision continuing any agreements existing before that date, was repealed by Pub. L. 115–91, div. A, title III, § 317(f), Dec. 12, 2017, 131 Stat. 1352.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective Dec. 31, 2021, of provisions in subsec. (g) of this section requiring submittal of annual report to Congress, see section 1061 of Pub. L. 114–328, set out as a note under section 111 of this title.

SENTINEL LANDSCAPES PARTNERSHIP

Pub. L. 115–91, div. A, title III, § 317(a)–(e), Dec. 12, 2017, 131 Stat. 1351, 1352, provided that:

''(a) ESTABLISHMENT.—The Secretary of Defense, in coordination with the Secretary of Agriculture and the Secretary of the Interior, may establish and carry out a program to preserve sentinel landscapes. The program shall be known as the 'Sentinel Landscapes Partnership'.

''(b) DESIGNATION OF SENTINEL LANDSCAPES.—The Secretary of Defense, the Secretary of Agriculture, and the Secretary of the Interior, may, as the Secretaries determine appropriate, collectively designate one or more sentinel landscapes.

''(c) COORDINATION OF ACTIVITIES.—The Secretaries may coordinate actions between their departments and with other agencies and private organizations to more efficiently work together for the mutual benefit of conservation, working lands, and national defense, and to encourage private landowners to engage in voluntary land management and conservation activities that contribute to the sustainment of military installations, ranges, and airspace.

''(d) PRIORITY CONSIDERATION.—The Secretary of Agriculture and the Secretary of the Interior may give to any eligible landowner or agricultural producer within a designated sentinel landscape priority consideration for participation in any easement, grant, or assistance programs administered by that Secretary's department. Participation in any such program pursuant to this section shall be voluntary.

''(e) DEFINITIONS.—In this section:

''(1) MILITARY INSTALLATION.—The term 'military installation' has the same meaning as provided in section 670(1) of title 16, United States Code.

''(2) STATE-OWNED NATIONAL GUARD INSTALLATION.—The term 'State-owned National Guard installation' has the same meaning as provided in section 670(3) of title 16, United States Code.

''(3) SENTINEL LANDSCAPE.—The term 'sentinel landscape' means a landscape-scale area encompassing—

''(A) one or more military installations or state-owned National Guard installations and associated airspace; and

''(B) the working or natural lands that serve to protect and support the rural economy, the natural environment, outdoor recreation, and the national defense test and training missions of the military- or State-owned National Guard installation or installations.''

§ 2685. Adjustment of or surcharge on selling prices in commissary stores to provide funds for construction and improvement of commissary store facilities

(a) ADJUSTMENT OR SURCHARGE AUTHORIZED.—Notwithstanding any other provision of law, the Secretary of Defense may, for the purposes of this section, provide for an adjustment of, or surcharge on, sales prices of goods and services sold in commissary store facilities.

(b) USE FOR CONSTRUCTION, REPAIR, IMPROVEMENT, AND MAINTENANCE.—(1) The Secretary of Defense may use the proceeds from the adjustments or surcharges authorized by subsection (a) only—

(A) to acquire (including acquisition by lease), construct, convert, expand, improve,

repair, maintain, and equip the physical infrastructure of commissary stores and central product processing facilities of the defense commissary system; and

(B) to cover environmental evaluation and construction costs related to activities described in paragraph (1), including costs for surveys, administration, overhead, planning, and design.

(2) In paragraph (1), the term ''physical infrastructure'' includes real property, utilities, and equipment (installed and free standing and including computer equipment), necessary to provide a complete and usable commissary store or central product processing facility.

(c) ADVANCE OBLIGATION.—The Secretary of Defense, with the approval of the Director of the Office of Management and Budget, may obligate anticipated proceeds from the adjustments or surcharges authorized by subsection (a) for any use specified in subsection (b) or (d), without regard to fiscal year limitations, if the Secretary determines that such obligation is necessary to carry out any use of such adjustments or surcharges specified in subsection (b) or (d).

(d) COOPERATION WITH NONAPPROPRIATED FUND INSTRUMENTALITIES.—(1) The Secretary of Defense may authorize a nonappropriated fund instrumentality of the United States to enter into a contract for construction of a shopping mall or similar facility for a commissary store and one or more nonappropriated fund instrumentality activities. The Secretary may use the proceeds of adjustments or surcharges authorized by subsection (a) to reimburse the nonappropriated fund instrumentality for the portion of the cost of the contract that is attributable to construction of the commissary store or to pay the contractor directly for that portion of such cost.

(2) In paragraph (1), the term ''construction'', with respect to a facility, includes acquisition, conversion, expansion, installation, or other improvement of the facility.

(e) OTHER SOURCES OF FUNDS FOR CONSTRUCTION AND IMPROVEMENTS.—Revenues received by the Secretary of Defense from the following sources or activities of commissary store facilities shall be available for the purposes set forth in subsections (b), (c), and (d):

(1) Sale of recyclable materials.

(2) Sale of excess and surplus property.

(3) License fees.

(4) Royalties.

(5) Fees paid by sources of products in order to obtain favorable display of the products for resale, known as business related management fees.

(Added Pub. L. 93–552, title VI, § 611, Dec. 27, 1974, 88 Stat. 1765; amended Pub. L. 95–82, title VI, § 614, Aug. 1, 1977, 91 Stat. 380; Pub. L. 97–321, title VIII, § 804, Oct. 15, 1982, 96 Stat. 1572; Pub. L. 103–337, div. B, title XXVIII, § 2851, Oct. 5, 1994, 108 Stat. 3072; Pub. L. 105–85, div. A, title III, § 374, Nov. 18, 1997, 111 Stat. 1707; Pub. L. 106–398, § 1 [[div. A], title III, § 333(a), (b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–60.)

AMENDMENTS

2000—Subsec. (a). Pub. L. 106–398, § 1 [[div. A], title III, § 333(b)(1)], substituted ''Secretary of Defense'' for ''Secretary of a military department, under regulations established by him and approved by the Secretary of Defense,''.

Subsec. (b). Pub. L. 106–398, § 1 [[div. A], title III, § 333(a)], amended heading and text of subsec. (b) generally. Prior to amendment, text read as follows: ''The Secretary of a military department, under regulations established by him and approved by the Secretary of Defense, may use the proceeds from the adjustments or surcharges authorized by subsection (a) to acquire, construct, convert, expand, install, or otherwise improve commissary store facilities at defense installations and for related environmental evaluation and construction costs, including surveys, administration, overhead, planning, and design.''

Subsec. (c). Pub. L. 106–398, § 1 [[div. A], title III, § 333(b)(2)], substituted ''Secretary of Defense, with the approval of'' for ''Secretary of a military department, with the approval of the Secretary of Defense and'' and ''Secretary determines'' for ''Secretary of the military department determines''.

Subsec. (d)(1). Pub. L. 106–398, § 1 [[div. A], title III, § 333(b)(3)], substituted ''Secretary of Defense'' for ''Secretary of a military department''.

1997—Subsecs. (a) to (d). Pub. L. 105–85, § 374(b), inserted subsec. headings.

Subsec. (e). Pub. L. 105–85, § 374(a), added subsec. (e).

1994—Subsec. (c). Pub. L. 103–337, § 2851(b), inserted ''or (d)'' after ''subsection (b)'' in two places.

Subsec. (d). Pub. L. 103–337, § 2851(a), added subsec. (d).

1982—Subsec. (c). Pub. L. 97–321 added subsec. (c).

1977—Subsec. (b). Pub. L. 95–82 struck out ''within the United States'' after ''defense installations''.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–398, § 1 [[div. A], title III, § 333(c)], Oct. 30, 2000, 114 Stat. 1654, 1654A–60, provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on October 1, 2001.''

§ 2686. Utilities and services: sale; expansion and extension of systems and facilities

(a) Under such regulations and for such periods and at such prices as he may prescribe, the Secretary concerned or his designee may sell or contract to sell to purchasers within or in the immediate vicinity of an activity of the Army, Navy, Air Force, Marine Corps, Space Force, or Coast Guard, as the case may be, any of the following utilities and related services, if it is determined that they are not available from another local source and that the sale is in the interest of national defense or in the public interest:

(1) Electric power.

(2) Steam.

(3) Compressed air.

(4) Water.

(5) Sewage and garbage disposal.

(6) Natural, manufactured, or mixed gas.

(7) Ice.

(8) Mechanical refrigeration.

(9) Telephone service.

(b) Proceeds of sales under subsection (a) shall be credited to the appropriation currently available for the supply of that utility or service.

(c) To meet local needs the Secretary concerned may make minor expansions and extensions of any distributing system or facility within an activity through which a utility or service is furnished under subsection (a).

(Aug. 10, 1956, ch. 1041, 70A Stat. 141, § 2481; Pub. L. 86–156, Aug. 14, 1959, 73 Stat. 338; renumbered § 2686, Pub. L. 105–85, div. A, title III, § 371(b)(1),

Nov. 18, 1997, 111 Stat. 1705; Pub. L. 116–283, div. A, title IX, § 924(b)(2)(A)(viii), Jan. 1, 2021, 134 Stat. 3821.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2481(a)	5:626s. 5:626s–1 (less words between semicolon and colon). 10:1269. 10:1269a (less words between semicolon and colon). 34:553a. 34:553b (less words between semicolon and colon).	July 30, 1947, ch. 394, 61 Stat. 675; Aug. 8, 1949, ch. 403, § 5, 63 Stat. 576.
2481(b)	5:626s–1 (words between semicolon and colon). 10:1269a (words between semicolon and colon). 34:553b (words between semicolon and colon).	
2481(c)	5:626s–2. 10:1269b. 34:553c.	

In subsection (a), the words ''within his establishment'', ''of time'', and the opening clauses of 5:626s–1, 10:1269a, and 34:553b, are omitted as surplusage. The words ''not available from another local source'' are substituted for the words ''not otherwise available from local private or public sources''.

In subsection (b), the words ''of sales under subsection (a)'' are substituted for the words ''received for any such utilities and related services sold pursuant to the authority of said sections''. The words ''or appropriations'' are omitted as surplusage.

PRIOR PROVISIONS

A prior section 2686, added Pub. L. 95–82, title V, § 504(a)(1), Aug. 1, 1977, 91 Stat. 371; amended Pub. L. 95–356, title V, § 503(a), Sept. 8, 1978, 92 Stat. 579; Pub. L. 96–125, title V, § 502(a), Nov. 26, 1979, 93 Stat. 940; Pub. L. 96–418, title V, § 504(a), Oct. 10, 1980, 94 Stat. 1765, related to military family housing leases, prior to repeal by Pub. L. 97–214, §§ 7(1), 12(a), July 12, 1982, 96 Stat. 173, 176, effective Oct. 1, 1982, and applicable to military construction projects, and to construction and acquisition of military family housing authorized before, on, or after such date. See section 2828(a), (b) of this title.

AMENDMENTS

2021—Subsec. (a). Pub. L. 116–283 substituted ''Marine Corps, Space Force,'' for ''Marine Corps,'' in introductory provisions.

1997—Pub. L. 105–85 renumbered section 2481 of this title as this section.

1959—Subsec. (a). Pub. L. 86–156, § 1(1), substituted ''concerned'' for ''of a military department'' and inserted ''or Coast Guard,'' after ''Marine Corps,''.

Subsec. (c). Pub. L. 86–156, § 1(2), struck out ''of the military department'' after ''Secretary''.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 2687. Base closures and realignments

(a) Notwithstanding any other provision of law, no action may be taken to effect or implement—

(1) the closure of any military installation at which at least 300 civilian personnel are authorized to be employed;

(2) any realignment with respect to any military installation referred to in paragraph (1) involving a reduction by more than 1,000, or by more than 50 percent, in the number of civilian personnel authorized to be employed at such military installation at the time the Secretary of Defense or the Secretary of the military department concerned notifies the Congress under subsection (b) of the Secretary's plan to close or realign such installation; or

(3) any construction, conversion, or rehabilitation at any military facility other than a military installation referred to in clause (1) or (2) which will or may be required as a result of the relocation of civilian personnel to such facility by reason of any closure or realignment to which clause (1) or (2) applies,

unless and until the provisions of subsection (b) are complied with.

(b) No action described in subsection (a) with respect to the closure of, or a realignment with respect to, any military installation referred to in such subsection may be taken unless and until—

(1) the Secretary of Defense or the Secretary of the military department concerned notifies the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives, as part of an annual request for authorization of appropriations to such Committees, of the proposed closing or realignment and submits with the notification—

(A) an evaluation of the fiscal, local economic, budgetary, environmental, strategic, and operational consequences of such closure or realignment; and

(B) the criteria used to consider and recommend military installations for such closure or realignment, which shall include at a minimum consideration of—

(i) the ability of the infrastructure (including transportation infrastructure) of both the existing and receiving communities to support forces, missions, and personnel as a result of such closure or realignment; and

(ii) the costs associated with community transportation infrastructure improvements as part of the evaluation of cost savings or return on investment of such closure or realignment; and

(2) a period of 30 legislative days or 60 calendar days, whichever is longer, expires following the day on which the notice and evaluation referred to in clause (1) have been submitted to such committees, during which period no irrevocable action may be taken to effect or implement the decision.

(c) No action described in subsection (a) with respect to the closure of, or realignment with respect to, any military installation referred to in such subsection may be taken within five years after the date on which a decision is made to reduce the civilian personnel thresholds below the levels prescribed in such subsection.

(d) This section shall not apply to the closure of a military installation, or a realignment with respect to a military installation, if the President certifies to the Congress that such closure

or realignment must be implemented for reasons of national security or a military emergency.

(e)(1) After the expiration of the period of time provided for in subsection (b)(2) with respect to the closure or realignment of a military installation, funds which would otherwise be available to the Secretary to effect the closure or realignment of that installation may be used by him for such purpose.

(2) Nothing in this section restricts the authority of the Secretary to obtain architectural and engineering services under section 2807 of this title.

(f) If the Secretary of Defense or the Secretary of the military department concerned determines, pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), that a significant transportation impact will occur as a result of an action described in subsection (a), the action may not be taken unless and until the Secretary of Defense or the Secretary of the military department concerned—

(1) analyzes the adequacy of transportation infrastructure at and in the vicinity of each military installation that would be impacted by the action;

(2) concludes consultation with the Secretary of Transportation with regard to such impact;

(3) analyzes the impact of the action on local businesses, neighborhoods, and local governments; and

(4) includes in the notification required by subsection (b)(1) a description of how the Secretary intends to remediate the significant transportation impact.

(g) In this section:

(1) The term ''military installation'' means a base, camp, post, station, yard, center, homeport facility for any ship, or other activity under the jurisdiction of the Department of Defense, including any leased facility, which is located within any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, or Guam. Such term does not include any facility used primarily for civil works, rivers and harbors projects, or flood control projects.

(2) The term ''civilian personnel'' means direct-hire, permanent civilian employees of the Department of Defense.

(3) The term ''realignment'' includes any action which both reduces and relocates functions and civilian personnel positions, but does not include a reduction in force resulting from workload adjustments, reduced personnel or funding levels, skill imbalances, or other similar causes.

(4) The term ''legislative day'' means a day on which either House of Congress is in session.

(Added Pub. L. 95–82, title VI, § 612(a), Aug. 1, 1977, 91 Stat. 379; amended Pub. L. 95–356, title VIII, § 805, Sept. 8, 1978, 92 Stat. 586; Pub. L. 97–214, § 10(a)(8), July 12, 1982, 96 Stat. 175; Pub. L. 98–525, title XIV, § 1405(41), Oct. 19, 1984, 98 Stat. 2624; Pub. L. 99–145, title XII, § 1202(a), Nov. 8, 1985, 99 Stat. 716; Pub. L. 100–180, div. A, title XII, § 1231(17), Dec. 4, 1987, 101 Stat. 1161; Pub. L. 101–510, div. B, title XXIX, § 2911, Nov. 5, 1990, 104 Stat. 1819; Pub. L. 104–106, div. A, title XV, § 1502(a)(1), Feb. 10, 1996, 110 Stat. 502; Pub. L. 106–65, div. A, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 110–417, div. B, title XXVIII, § 2823(a), Oct. 14, 2008, 122 Stat. 4730; Pub. L. 112–81, div. B, title XXVII, § 2704, Dec. 31, 2011, 125 Stat. 1682; Pub. L. 112–239, div. A, title X, § 1076(f)(33), div. B, title XXVII, § 2712(a), Jan. 2, 2013, 126 Stat. 1954, 2144.)

References in Text

The National Environmental Policy Act of 1969, referred to in subsec. (f), is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, which is classified generally to chapter 55 (§ 4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

Amendments

2013—Subsecs. (c) to (e). Pub. L. 112–239, § 2712(a)(2), (3), added subsec. (c) and redesignated former subsecs. (c) and (d) as (d) and (e), respectively. Former subsec. (e) redesignated (g).

Subsec. (f). Pub. L. 112–239, § 1076(f)(33), substituted ''as a result'' for ''at a result'' in introductory provisions.

Subsec. (g). Pub. L. 112–239, § 2712(a)(1), redesignated subsec. (e) as (g).

2011—Subsec. (b)(1). Pub. L. 112–81, § 2704(a), substituted ''notification—'' for ''notification'', inserted subpar. (A) designation before ''an evaluation'', and added subpar. (B).

Subsec. (f). Pub. L. 112–81, § 2704(b), added subsec. (f).

2008—Subsec. (e)(1). Pub. L. 110–417 inserted ''the Commonwealth of the Northern Mariana Islands,'' after ''Virgin Islands,''.

1999—Subsec. (b)(1). Pub. L. 106–65 substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security''.

1996—Subsec. (b)(1). Pub. L. 104–106 substituted ''Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives'' for ''Committees on Armed Services of the Senate and House of Representatives''.

1990—Subsec. (e)(1). Pub. L. 101–510 inserted ''homeport facility for any ship,'' after ''center,'' and substituted ''under the jurisdiction of the Department of Defense, including any leased facility,'' for ''under the jurisdiction of the Secretary of a military department''.

1987—Subsec. (e). Pub. L. 100–180 inserted ''The term'' after each par. designation and revised first word in quotes in each par. to make initial letter of such word lowercase.

1985—Pub. L. 99–145 amended section generally, thereby applying the section only to closure of bases with more than 300 civilian personnel authorized to be employed and to realignments involving a reduction by more than 1,000, or by more than 50 percent, in the number of civilian personnel authorized to be employed at bases with more than 300 authorized civilian employees, striking out advance public notice required by the Secretary of Defense or the Secretary of the military department concerned when an installation is a candidate for closure or realignment, requiring that all base closure or realignment proposals be submitted to the Committee on Armed Services of the Senate and of the House of Representatives as part of the annual budget request and that such proposals contain an evaluation of the fiscal, local economic, budgetary, environmental, strategic, and operational consequences of such action, providing that no irrevocable action to implement the closure to realignment could be taken until the expiration of 30 legislative days or 60 calendar days, whichever is longer, and making explicit the au-

thority of the Secretary to obtain architectural and engineering services under section 2807 of this title and to use funds that would otherwise be available to effect the closure or realignment after expiration of the notice period.

1984—Subsec. (a)(2). Pub. L. 98–525, §1405(41)(A), substituted "1,000" for "one thousand".

Subsec. (b)(2). Pub. L. 98–525, §1405(41)(B), inserted "(42 U.S.C. 4321 et seq.)".

Subsec. (b)(4). Pub. L. 98–525, §1405(41)(C), substituted "60" for "sixty".

Subsec. (d)(1)(B). Pub. L. 98–525, §1405(41)(D), substituted "300" for "three hundred".

1982—Subsec. (d)(1). Pub. L. 97–214 substituted "a base, camp, post, station, yard, center, or other activity under the jurisdiction of the Secretary of a military department" for "any camp, post, station, base, yard, or other facility under the authority of the Department of Defense".

1978—Subsec. (d)(1)(B). Pub. L. 95–356 substituted "three hundred" for "five hundred".

EFFECTIVE DATE OF 1985 AMENDMENT

Pub. L. 99–145, title XII, §1202(b), Nov. 8, 1985, 99 Stat. 718, provided that: "The amendment made by subsection (a) [amending this section] shall apply to closures and realignments completed on or after the date of the enactment of this Act [Nov. 8, 1985], except that any action taken to effect or implement any closure or realignment for which a public announcement was made pursuant to section 2687(b)(1) of title 10, United States Code, after April 1, 1985, and before the date of enactment of this Act shall be subject to the provisions of section 2687 of such title as in effect on the day before such date of enactment."

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–214 effective Oct. 1, 1982, and applicable to military construction projects, and to construction and acquisition of military family housing authorized before, on, or after such date, see section 12(a) of Pub. L. 97–214, set out as an Effective Date note under section 2801 of this title.

SHORT TITLE OF 1988 AMENDMENT

Pub. L. 100–526, §1, Oct. 24, 1988, 102 Stat. 2623, provided that: "This Act [amending sections 1095a, 2324, 2683, and 4415 of this title, enacting provisions set out as notes under this section and sections 154 and 2306 of this title, and amending provisions set out as notes under section 2324 of this title] may be cited as the 'Defense Authorization Amendments and Base Closure and Realignment Act'."

EFFECTIVE DATE OF 1994 AMENDMENTS BY SECTION 2813(d)(1) AND (2) OF PUB. L. 103–337

Pub. L. 103–337, div. B, title XXVIII, §2813(d)(3), Oct. 5, 1994, 108 Stat. 3055, provided that: "The amendments made by paragraphs (1) and (2) [amending section 209(10) of Pub. L. 100–526 and section 2910(9) of Pub. L. 101–510, set out below] shall take effect as if included in the amendments made by section 2918 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160; 107 Stat. 1927)."

EFFECTIVE DATE OF 1991 AMENDMENTS BY SECTION 344 OF PUB. L. 102–190

Pub. L. 102–190, div. A, title III, §344(c), Dec. 5, 1991, 105 Stat. 1346, provided that: "The amendments made by this section [amending provisions set out as notes below] shall apply with regard to the transfer or disposal of any real property or facility pursuant to title II of the Defense Authorization Amendments and Base Closure and Realignment Act [Pub. L. 100–526, set out below] or the Defense Base Closure and Realignment Act of 1990 [part A of title XXIX of div. B of Pub. L. 101–510, set out below] occurring on or after the date of the enactment of this Act [Dec. 5, 1991]."

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

BASE REALIGNMENT AND CLOSURE UPON NOTICE FROM GOVERNOR OF STATE

Pub. L. 115–232, div. B, title XXVII, §§2702, 2703, Aug. 13, 2018, 132 Stat. 2257, 2259, provided that:

"SEC. 2702. ADDITIONAL AUTHORITY TO REALIGN OR CLOSE CERTAIN MILITARY INSTALLATIONS.

"(a) AUTHORIZATION.—Notwithstanding sections 993 or 2687 of title 10, United States Code, and subject to subsection (d), the Secretary of Defense may take such actions as may be necessary to carry out the realignment or closure of a military installation in a State during a fiscal year if—

"(1) the military installation is the subject of a notice which is described in subsection (b); and

"(2) the Secretary includes the military installation in the report submitted under paragraph (2) of subsection (c) with respect to the fiscal year.

"(b) NOTICE FROM GOVERNOR OF STATE.—A notice described in this subsection is a notice received by the Secretary of Defense from the Governor of a State (or, in the case of the District of Columbia, the Mayor of the District of Columbia) in which the Governor recommends that the Secretary carry out the realignment or closure of a military installation located in the State, and which includes each of the following elements:

"(1) A specific description of the military installation, or a specific description of the relevant real and personal property.

"(2) Statements of support for the realignment or closure from units of local government in which the installation is located.

"(3) A detailed plan for the reuse or redevelopment of the real and personal property of the installation, together with a description of the local redevelopment authority which will be responsible for the implementation of the plan.

"(c) RESPONSE TO NOTICE.—

"(1) MANDATORY RESPONSE TO GOVERNOR AND CONGRESS.—Not later than 1 year after receiving a notice from the Governor of a State (or, in the case of the District of Columbia, from the Mayor of the District of Columbia), the Secretary of Defense shall submit a response to the notice to the Governor and the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] indicating whether or not the Secretary accepts the recommendation for the realignment or closure of a military installation which is the subject of the notice.

"(2) ACCEPTANCE OF RECOMMENDATION.—If the Secretary of Defense determines that it is in the interests of the United States to accept the recommendation for the realignment or closure of a military installation which is the subject of a notice received under subsection (b) and intends to carry out the realignment or closure of the installation pursuant to the authority of this section during a fiscal year, at the time the budget is submitted under section 1105(a) of title 31, United States Code, for the fiscal year, the Secretary shall submit a report to the congressional defense committees which includes the following:

"(A) The identification of each military installation for which the Secretary intends to carry out a realignment or closure pursuant to the authority of

this section during the fiscal year, together with the reasons the Secretary of Defense believes that it is in the interest of the United States to accept the recommendation of the Governor of the State involved for the realignment or closure of the installation.

''(B) For each military installation identified under subparagraph (A), a master plan describing the required scope of work, cost, and timing for all facility actions needed to carry out the realignment or closure, including the construction of new facilities and the repair or renovation of existing facilities.

''(C) For each military installation identified under subparagraph (A), a certification that, not later than the end of the fifth fiscal year after the completion of the realignment or closure, the savings resulting from the realignment or closure will exceed the costs of carrying out the realignment or closure, together with an estimate of the annual recurring savings that would be achieved by the realignment or closure of the installation and the timeframe required for the financial savings to exceed the costs of carrying out the realignment or closure.

''(d) LIMITATIONS.—

''(1) TIMING.—The Secretary may not initiate the realignment or closure of a military installation pursuant to the authority of this section until the expiration of the 90-day period beginning on the date the Secretary submits the report under paragraph (2) of subsection (c).

''(2) TOTAL COSTS.—Subject to appropriations, the aggregate cost to the government in carrying out the realignment or closure of military installations pursuant to the authority of this section for all fiscal years may not exceed $2,000,000,000. In determining the cost to the government for purposes of this section, there shall be included the costs of planning and design, military construction, operations and maintenance, environmental restoration, information technology, termination of public-private contracts, guarantees, and other factors contributing to the cost of carrying out the realignment or closure, as determined by the Secretary.

''(e) PROCESS FOR IMPLEMENTATION.—The implementation of the realignment or closure of a military installation pursuant to the authority of this section shall be carried out in accordance with section 2905 of the Defense Base Closure and Realignment Act of 1990 (title XXIX of Public Law 101–510; 10 U.S.C. 2687 note) in the same manner as the implementation of a realignment or closure of a military installation pursuant to the authority of such Act.

''(f) STATE DEFINED.—In this section, the term 'State' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

''(g) TERMINATION OF AUTHORITY.—The authority of the Secretary to carry out a realignment or closure pursuant to this section shall terminate at the end of fiscal year 2029.

''SEC. 2703. PROHIBITION ON CONDUCTING ADDITIONAL BASE REALIGNMENT AND CLOSURE (BRAC) ROUND.

''Nothing in this Act [div. B of Pub. L. 115–232, see Tables for classification] shall be construed to authorize an additional Base Realignment and Closure (BRAC) round.''

[Pub. L. 115–232, div. B, § 2003, Aug. 13, 2018, 132 Stat. 2241, provided that: ''Titles XXI through XXVII [enacting sections 2702 and 2703 of title XXVII of div. B of Pub. L. 115–232, set out above] and title XXIX shall take effect on the later of—

[''(1) October 1, 2018; or

[''(2) the date of the enactment of this Act [Aug. 13, 2018].'']

CLOSURE OF EXISTING CURRENT ACCOUNTS; TRANSFER OF FUNDS

Pub. L. 112–239, div. B, title XXVII, § 2711(b), Jan. 2, 2013, 126 Stat. 2143, provided that:

''(1) CLOSURE.—Subject to paragraph (2), the Secretary of the Treasury shall close, pursuant to section 1555 of title 31, United States Code, the following accounts on the books of the Treasury:

''(A) The Department of Defense Base Closure Account 2005 established by section 2906A of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note), as in effect on the effective date of this section.

''(B) The Department of Defense Base Closure Account 1990 established by section 2906 of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note), as in effect on the effective date of this section.

''(C) The Department of Defense Base Closure Account established by section 207 of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 10 U.S.C. 2687 note), as in effect on the effective date of this section.

''(2) TRANSFER OF FUNDS.—All amounts remaining in the three accounts specified in paragraph (1) as of the effective date of this section, shall be transferred, effective on that date, to the Department of Defense Base Closure Account established by section 2906 of the Defense Base Closure and Realignment Act of 1990, as added by subsection (a).

''(3) CROSS REFERENCES.—Except as provided in this subsection or the context requires otherwise, any reference in a law, regulation, document, paper, or other record of the United States to an account specified in paragraph (1) shall be deemed to be a reference to the Department of Defense Base Closure Account established by section 2906 of the Defense Base Closure and Realignment Act of 1990, as added by subsection (a).''

[Section 2711(b) of Pub. L. 112–239, set out above, effective on the later of Oct. 1, 2013, or the date of the enactment of an Act authorizing funds for military construction for fiscal year 2014 (div. J of Pub. L. 113–76, approved Jan. 17, 2014), see section 2711(d) of Pub. L. 112–239, set out as an Effective Date of 2013 Amendment note under section 2701 of this title.]

AUTHORITY TO COMPLETE SPECIFIC BASE CLOSURE AND REALIGNMENT RECOMMENDATIONS

Pub. L. 112–81, div. B, title XXVII, § 2703, Dec. 31, 2011, 125 Stat. 1681, provided that:

''(a) LIMITED AUTHORITY TO EXTEND IMPLEMENTATION PERIOD.—The Secretary of Defense shall—

''(1) complete all closures and realignments recommended in the report of the Base Closure and Realignment Commission transmitted by the President to Congress in accordance with section 2914(e) of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note), as expeditiously as possible; and

''(2) complete the closure of the Umatilla Chemical Depot, Oregon, as recommended in the report of the Base Closure and Realignment Commission transmitted by the President to Congress in accordance with section 2914(e) of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note)—

''(A) without regard to any condition contained in that recommendation; and

''(B) not later than one year after the completion of the chemical demilitarization mission in accordance with the Chemical Weapons Convention Treaty.

''(b) IMPLEMENTATION.—Notwithstanding any other provision of law, the Secretary of Defense shall carry out the authority provided under subsection (a), and any related property management and disposal activities, in accordance with the procedures and authorities under the Defense Base Closure and Realignment Act of

1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note).''

SUPPORT FOR REALIGNMENT OF MILITARY INSTALLATIONS AND RELOCATION OF MILITARY PERSONNEL ON GUAM

Pub. L. 114–92, div. B, title XXVIII, § 2822(a), (b), Nov. 25, 2015, 129 Stat. 1177, 1178, provided that:

''(a) REPORT REQUIRED.—Not later than the date of the submission of the budget of the President for each of fiscal years 2017 through 2026 under section 1105 of title 31, United States Code, the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report that specifies each of the following:

''(1) The total amount contributed by the Government of Japan during the most recently concluded Japanese fiscal year under section 2350k of title 10, United States Code, for deposit in the Support for United States Relocation to Guam Account.

''(2) The anticipated contributions to be made by the Government of Japan under such section during the current and next Japanese fiscal years.

''(3) The projects carried out on Guam or the Commonwealth of the Northern Mariana Islands during the previous fiscal year using amounts in the Support for United States Relocation to Guam Account.

''(4) The anticipated projects that will be carried out on Guam or the Commonwealth of the Northern Mariana Islands during the fiscal year covered by the budget submission using amounts in such Account.

''(b) FORM OF REPORT.—Each report required by subsection (a) shall be submitted in unclassified form, but may contain a classified annex as necessary.''

Pub. L. 113–291, div. B, title XXVIII, § 2821, Dec. 19, 2014, 128 Stat. 3701, provided that:

''(a) LIMITATION BASED ON COST ESTIMATES.—

''(1) LIMITATION AMOUNT.—Pursuant to the Supplemental Environmental Impact Statement for the 'Guam and Commonwealth of the Northern Mariana Islands Military Relocation (2012 Roadmap Adjustments)', the total amount obligated or expended from funds appropriated or otherwise made available for military construction for implementation of the Record of Decision for the relocation of Marine Corps forces to Guam associated with such Supplemental Environmental Impact Statement may not exceed $8,725,000,000, subject to such adjustment as may be made under paragraph (2).

''(2) ADJUSTMENT OF LIMITATION AMOUNT.—The Secretary of the Navy may adjust the amount specified in paragraph (1) by the following:

''(A) The amounts of increases or decreases in costs attributable to economic inflation after September 30, 2014.

''(B) The amounts of increases or decreases in costs attributable to compliance with changes in Federal, Guam or Commonwealth of the Northern Mariana Islands, or local laws enacted after September 30, 2014.

''(3) WRITTEN NOTICE OF ADJUSTMENT.—At the same time that the budget for a fiscal year is submitted to Congress under section 1105(a) of title 31, United States Code, the Secretary of the Navy shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] written notice of any adjustment to the amount specified in paragraph (1) made by the Secretary during the preceding fiscal year pursuant to the authority provided by paragraph (2).

''(b) RESTRICTION ON DEVELOPMENT OF PUBLIC INFRASTRUCTURE.—

''(1) RESTRICTION.—If the Secretary of Defense determines that any grant, cooperative agreement, transfer of funds to another Federal agency, or supplement of funds available under Federal programs administered by agencies other than the Department of Defense will result in the development (including repair, replacement, renovation, conversion, improvement, expansion, acquisition, or construction) of public infrastructure on Guam, the Secretary of Defense may not carry out such grant, transfer, cooperative agreement, or supplemental funding unless such grant, transfer, cooperative agreement, or supplemental funding—

''(A) is specifically authorized by law; and

''(B) will be used to carry out a public infrastructure project included in the report prepared by the Secretary of Defense under section 2822(d)(2) of the Military Construction Authorization Act for Fiscal Year 2014 (division B of Public Law 113–66; 127 Stat. 1017), as in effect on the day before the date of the enactment of this Act [Dec. 19, 2014].

''(2) PUBLIC INFRASTRUCTURE DEFINED.—In this subsection, the term 'public infrastructure' means any utility, method of transportation, item of equipment, or facility under the control of a public entity or State or local government that is used by, or constructed for the benefit of, the general public.

''(c) REPEAL OF SUPERSEDED LAW.—Section 2822 of the Military Construction Authorization Act for Fiscal Year 2014 (division B of Public Law 113–66; 127 Stat. 1016) is repealed. The repeal of such section does not affect the validity of the amendment made by subsection (f) of such section or the responsibilities of the Economic Adjustment Committee and the Secretary of Defense under subsection (d) of such section, as in effect on the day before the date of the enactment of this Act.''

[For termination, effective Dec. 31, 2021, of reporting provisions in section 2821(a)(3) of Pub. L. 113–291, set out above, see section 1061 of Pub. L. 114–328, set out as a note under section 111 of this title.]

Pub. L. 112–81, div. B, title XXVIII, § 2841, Dec. 31, 2011, 125 Stat. 1696, provided that:

''(a) MANAGEMENT OF WORKFORCE HEALTH CARE.—Subject to subsection (b), the Secretary of the Navy may not award any additional Navy or Marine Corps construction project or associated task order on Guam associated with the Record of Decision for the Guam and CNMI Military Relocation dated September 2010 if the aggregate of the number of employees holding a visa described in section 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(b); known as 'H–2B workers') to support such relocation exceeds 2,000 until the Secretary of the Navy certifies to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] that a system of health care for the H–2B workers is available.

''(b) SYSTEM OF HEALTH CARE.—The health care system required to be certified in subsection (a) shall—

''(1) include a comprehensive medical plan for the H–2B workers;

''(2) include comprehensive planning and coordination with contractor-provided healthcare services and with Guam's civilian and military healthcare community; and

''(3) access local healthcare assets to help meet the health care needs of the H–2B workers.

''(c) ELEMENTS OF MEDICAL PLAN.—The comprehensive medical plan referred to in subsection (b)(1) shall—

''(1) address significant health issues, injury, or series of injuries in addition to basic first responder medical services for H–2B workers;

''(2) provide pre-deployment health screening at the country of origin of H–2B workers, ensuring—

''(A) all major or chronic disease conditions of concern are identified;

''(B) proper immunizations are administered;

''(C) screening for tuberculosis and communicable diseases are conducted; and

''(D) all H–2B workers are fit and healthy for work prior to deployment;

''(3) provide that an arrival health screening process is developed to ensure the H–2B workers are fit to work and that the risk of spreading communicable diseases to the resident population is minimized; and

''(4) provide comprehensive on-site medical services, including emergency medical care for the H–2B workers, primary health care to include care for chronic diseases, preventive services and acute care delivery, and accessible prescription services maintaining oversight, authorization access, and delivery of prescription medications to the workforce.

''(d) SAVINGS CLAUSE.—Nothing in this section shall be construed as requiring the Secretary of the Navy to establish a United States Government-sponsored or funded health care system required to be certified in subsection (a) or to be responsible in any way for the administration of a health care system or plan or the provision of health care services for the H–2B workers identified in subsection (a).''

Pub. L. 111–84, div. B, title XXVIII, § 2832(a)–(c), Oct. 28, 2009, 123 Stat. 2669, 2670, provided that:

''(a) SPECIAL PURPOSE ENTITY DEFINED.—In this section, the term 'special purpose entity' means any private person, corporation, firm, partnership, company, State or local government, or authority or instrumentality of a State or local government that the Secretary of Defense determines is capable of producing military family housing or providing utilities to support the realignment of military installations and the relocation of military personnel on Guam.

''(b) REPORT ON INTENDED USE SPECIAL PURPOSE ENTITIES.—

''(1) REPORT REQUIRED.—Not later than 180 days after the date of the enactment of this Act [Oct. 28, 2009], the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report describing the intended use of special purpose entities to provide military family housing or utilities to support the realignment of military installations and the relocation of military personnel on Guam.

''(2) NOTICE AND WAIT.—The Secretary of Defense may not authorize the use of special use entities as described in paragraph (1) until the end of the 30-day period (15-day period if the report is submitted electronically) beginning on the date on which the report required by such paragraph is submitted.

''(c) APPLICABILITY OF UNIFIED FACILITIES CRITERIA.—

''(1) APPLICABILITY TO SECTION 2350K CONTRIBUTIONS.—[Amended section 2824(c)(4) of Pub. L. 110–417, set out as a note below]

''(2) APPLICABILITY TO SPECIAL PURPOSE ENTITY CONTRIBUTIONS.—The unified facilities criteria promulgated by the Under Secretary of Defense for Acquisition, Technology, and Logistics and dated May 29, 2002, and any successor to such criteria shall be the minimum standard applicable to projects funded using contributions provided by a special purpose entity.

''(3) REPORT.—Not later than 180 days after the date of the enactment of this Act [Oct. 28, 2009], the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report containing an evaluation of various options, including a preferred option, that the Secretary could utilize to comply with the unified facilities criteria referred to in paragraph (2) in the acquisition of military housing on Guam in connection with the realignment of military installations and the relocation of military personnel on Guam. In preparing the report, the Secretary shall consider the impact of—

''(A) increasing the overseas housing allowance for members of the Armed Forces serving on Guam; and

''(B) providing a direct Federal subsidy to public-private ventures.''

Pub. L. 111–84, div. B, title XXVIII, § 2835, Oct. 28, 2009, 123 Stat. 2674, as amended by Pub. L. 111–383, div. A, title X, § 1075(d)(24), Jan. 7, 2011, 124 Stat. 4374; Pub. L. 113–66, div. B, title XXVIII, § 2821, Dec. 26, 2013, 127 Stat. 1015; Pub. L. 116–283, div. B, title XXVIII, § 2851, Jan. 1, 2021, 134 Stat. 4354, provided that:

''(a) INTERAGENCY COORDINATION GROUP.—There is hereby established the Interagency Coordination Group of Inspectors General for Guam Realignment (in this section referred to as the 'Interagency Coordination Group')—

''(1) to provide for the objective conduct and supervision of audits and investigations relating to the programs and operations funded with amounts appropriated or otherwise made available for military construction on Guam in connection with the realignment of military installations and the relocation of military personnel on Guam; and

''(2) to provide for coordination of, and recommendations on, policies designed—

''(A) to promote economic efficiency and effectiveness in the administration of the programs and operations described in paragraph (1); and

''(B) to prevent and detect waste, fraud, and abuse in such programs and operations.

''(b) MEMBERSHIP.—

''(1) CHAIRPERSON.—The Inspector General of the Department of Defense shall serve as chairperson of the Interagency Coordination Group.

''(2) ADDITIONAL MEMBERS.—Additional members of the Interagency Coordination Group shall include the Inspector General of the Department of Interior and the Inspector General of such other Federal agencies as the chairperson considers appropriate to carry out the duties of the Interagency Coordination Group.

''(c) DUTIES.—

''(1) OVERSIGHT OF GUAM CONSTRUCTION.—It shall be the duty of the Interagency Coordination Group to conduct, supervise, and coordinate audits and investigations of the treatment, handling, and expenditure of amounts appropriated or otherwise made available for military construction on Guam and of the programs, operations, and contracts carried out utilizing such funds, including—

''(A) the oversight and accounting of the obligation and expenditure of such funds;

''(B) the monitoring and review of construction activities funded by such funds;

''(C) the monitoring and review of contracts funded by such funds;

''(D) the monitoring and review of the transfer of such funds and associated information between and among departments, agencies, and entities of the United States and private and nongovernmental entities;

''(E) the maintenance of records on the use of such funds to facilitate future audits and investigations of the use of such fund; and

''(F) the monitoring and review of the implementation of the Defense Posture Review Initiative relating to the realignment of military installations and the relocation of military personnel on Guam.

''(2) OTHER DUTIES RELATED TO OVERSIGHT.—The Interagency Coordination Group shall establish, maintain, and oversee such systems, procedures, and controls as the Interagency Coordination Group considers appropriate to discharge the duties under paragraph (1).

''(3) OVERSIGHT PLAN.—The chairperson of the Interagency Coordination Group shall prepare an annual oversight plan detailing planned audits and reviews related to the Guam realignment.

''(d) ASSISTANCE FROM FEDERAL AGENCIES.—

''(1) PROVISION OF ASSISTANCE.—Upon request of the Interagency Coordination Group for information or assistance from any department, agency, or other entity of the Federal Government, the head of such entity shall, insofar as is practicable and not in contravention of any existing law, furnish such information or assistance to the Interagency Coordination Group.

''(2) REPORTING OF REFUSED ASSISTANCE.—Whenever information or assistance requested by the Interagency Coordination Group is, in the judgment of the chairperson of the Interagency Coordination Group, unreasonably refused or not provided, the chairperson

shall report the circumstances to the Secretary of Defense and to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] without delay.

''(e) REPORTS.—

''(1) BIENNIAL REPORTS.—Not later than February 1, 2022, and every second February 1 thereafter, the chairperson of the Interagency Coordination Group shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives], the Secretary of Defense, and the Secretary of the Interior a report summarizing, for the preceding two fiscal years, the activities of the Interagency Coordination Group during such years and the activities under programs and operations funded with amounts appropriated or otherwise made available for military construction on Guam. Each report shall include, for the years covered by the report, a detailed statement of all obligations, expenditures, and revenues associated with such construction, including the following:

''(A) Obligations and expenditures of appropriated funds.

''(B) A project-by-project and program-by-program accounting of the costs incurred to date for military construction in connection with the realignment of military installations and the relocation of military personnel on Guam, together with the estimate of the Department of Defense and the Department of the Interior, as applicable, of the costs to complete each project and each program.

''(C) Revenues attributable to or consisting of funds contributed by the Government of Japan in connection with the realignment of military installations and the relocation of military personnel on Guam and any obligations or expenditures of such revenues.

''(D) Operating expenses of agencies or entities receiving amounts appropriated or otherwise made available for military construction on Guam.

''(E) In the case of any contract, grant, agreement, or other funding mechanism described in paragraph (2)—

''(i) the amount of the contract, grant, agreement, or other funding mechanism;

''(ii) a brief discussion of the scope of the contract, grant, agreement, or other funding mechanism;

''(iii) a discussion of how the department or agency of the United States Government involved in the contract, grant, agreement, or other funding mechanism identified, and solicited offers from, potential individuals or entities to perform the contract, grant, agreement, or other funding mechanism, together with a list of the potential individuals or entities that were issued solicitations for the offers; and

''(iv) the justification and approval documents on which was based the determination to use procedures other than procedures that provide for full and open competition.

''(2) COVERED CONTRACTS, GRANTS, AGREEMENTS, AND FUNDING MECHANISMS.—A contract, grant, agreement, or other funding mechanism described in this paragraph is any major contract, grant, agreement, or other funding mechanism that—

''(A) is entered into by any department or agency of the United States Government with any public or private sector entity; and

''(B) involves the use of amounts appropriated or otherwise made available for military construction on Guam.

''(3) FORM.—Each report required under this subsection shall be submitted in unclassified form, but may include a classified annex if the Interagency Coordination Group considers it necessary.

''(4) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to authorize the public disclosure of information that is—

''(A) specifically prohibited from disclosure by any other provision of law;

''(B) specifically required by Executive order to be protected from disclosure in the interest of national defense or national security or in the conduct of foreign affairs; or

''(C) a part of an ongoing criminal investigation.

''(5) SUBMISSION OF COMMENTS.—Not later than 30 days after receipt of a report under paragraph (1), the Secretary of Defense or the Secretary of the Interior may submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] any comments on the matters covered by the report as the Secretary concerned considers appropriate. Any comments on the matters covered by the report shall be submitted in unclassified form, but may include a classified annex if the Secretary concerned considers it necessary.

''(f) PUBLIC AVAILABILITY; WAIVER.—

''(1) PUBLIC AVAILABILITY.—The Interagency Coordination Group shall publish on a publicly available Internet website each report prepared under subsection (e). Any comments on the report submitted under paragraph (5) of such subsection shall also be published on such website.

''(2) WAIVER AUTHORITY.—The President may waive the requirement under paragraph (1) with respect to availability to the public of any element in a report under subsection (e), or any comment with respect to a report, if the President determines that the waiver is justified for national security reasons.

''(3) NOTICE OF WAIVER.—The President shall publish a notice of each waiver made under this subsection in the Federal Register no later than the date on which a report required under subsection (e), or any comment under paragraph (5) of such subsection, is submitted to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives]. The report and comments shall specify whether waivers under this subsection were made and with respect to which elements in the report or which comments, as appropriate.

''(g) DEFINITIONS.—In this section:

''(1) AMOUNTS APPROPRIATED OR OTHERWISE MADE AVAILABLE.—The term 'amounts appropriated or otherwise made available for military construction on Guam' includes amounts derived from the Support for United States Relocation to Guam Account.

''(2) GUAM.—The term 'Guam' includes any island in the Northern Mariana Islands.

''(h) TERMINATION.—

''(1) IN GENERAL.—The Interagency Coordination Group shall terminate upon the expenditure of 90 percent of all funds appropriated or otherwise made available for Guam realignment.

''(2) FINAL REPORT.—Before the termination of the Interagency Coordination Group pursuant to paragraph (1), the chairperson of the Interagency Coordination Group shall prepare and submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a final report containing—

''(A) notice that the termination condition in paragraph (1) has occurred; and

''(B) a final forensic audit on programs and operations funded with amounts appropriated or otherwise made available for military construction on Guam.''

Pub. L. 110–417, div. B, title XXVIII, § 2824, Oct. 14, 2008, 122 Stat. 4730, as amended by Pub. L. 111–84, div. B, title XXVIII, §§ 2832(c)(1), 2833, 2834(a), Oct. 28, 2009, 123 Stat. 2670–2672; Pub. L. 114–92, div. B, title XXVIII, § 2822(c), Nov. 25, 2015, 129 Stat. 1178, provided that:

''(a) ESTABLISHMENT OF ACCOUNT.—There is established on the books of the Treasury an account to be known as the 'Support for United States Relocation to Guam Account' (in this section referred to as the 'Account').

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''(b) CREDITS TO ACCOUNT.—

''(1) AMOUNTS IN FUND.—There shall be credited to the Account all contributions received during fiscal year 2009 and subsequent fiscal years under section 2350k of title 10, United States Code, for the realignment of military installations and the relocation of military personnel on Guam.

''(2) NOTICE OF RECEIPT OF CONTRIBUTIONS.—The Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] written notice of the receipt of contributions referred to in paragraph (1), including the amount of the contributions, not later than 30 days after receiving the contributions.

''(c) USE OF ACCOUNT.—

''(1) AUTHORIZED USES.—Subject to paragraph (2), amounts in the Account may be used as follows:

''(A) To carry out or facilitate the carrying out of a transaction authorized by this section in connection with the realignment of military installations and the relocation of military personnel on Guam, including military construction, military family housing, unaccompanied housing, general facilities constructions for military forces, and utilities improvements.

''(B) To carry out improvements of property or facilities on Guam as part of such a transaction.

''(C) To obtain property support services for property or facilities on Guam resulting from such a transaction.

''(D) To develop military facilities or training ranges in the Commonwealth of the Northern Mariana Islands.

''(2) COMPLIANCE WITH GUAM MASTER PLAN.—Transactions authorized by paragraph (1) shall be consistent with the Guam Master Plan, as incorporated in decisions made in the manner provided in section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332).

''(3) LIMITATION REGARDING MILITARY HOUSING.—To extent that the authorities provided under subchapter IV of chapter 169 of title 10, United States Code, are available to the Secretary of Defense, the Secretary shall use such authorities to acquire, construct, or improve family housing units or ancillary supporting facilities in connection with the relocation of military personnel on Guam.

''(4) SPECIAL REQUIREMENTS REGARDING USE OF CONTRIBUTIONS.—

''(A) TREATMENT OF CONTRIBUTIONS.—Except as provided in subparagraph (C), the use of contributions referred to in subsection (b)(1) shall not be subject to conditions imposed on the use of appropriated funds by chapter 169 of title 10, United States Code, or contained in annual military construction appropriations Acts.

''(B) NOTICE OF OBLIGATION.—Contributions referred to in subsection (b)(1) may not be obligated for a transaction authorized by paragraph (1) until the Secretary of Defense submits to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] notice of the transaction, including a detailed cost estimate, and a period of 21 days has elapsed after the date on which the notification is received by the committees or, if earlier, a period of 14 days has elapsed after the date on which a copy of the notification is provided in an electronic medium.

''(C) COST AND SCOPE OF WORK VARIATIONS.—Section 2853 of title 10, United States Code, shall apply to the use of contributions referred to in subsection (b)(1).

''(D) APPLICABILITY OF UNIFIED FACILITIES CRITERIA.—The unified facilities criteria promulgated by the Under Secretary of Defense for Acquisition, Technology, and Logistics and dated May 29, 2002, and any successor to such criteria shall be the minimum standard applicable to projects funded using contributions referred to in subsection (b)(1) for a transaction authorized by paragraph (1).

''(5) APPLICATION OF PREVAILING WAGE REQUIREMENTS.—

''(A) IN GENERAL.—The requirements of subchapter IV of chapter 31 of title 40, United States Code, shall apply to any military construction project or other transaction authorized by paragraph (1) that is carried out on Guam using contributions referred to in subsection (b)(1) or appropriated funds.

''(B) SECRETARY OF LABOR AUTHORITIES.—In order to carry out the requirements of subparagraph (A) and paragraph (6) (relating to composition of workforce for construction projects), the Secretary of Labor shall have the authority and functions set forth in Reorganization Plan Number 14 of 1950 [set out in Appendix to Title 5, Government Organization and Employees] and section 3145 of title 40, United States Code.

''(C) WAGE RATE DETERMINATION.—In making wage rate determinations pursuant to subparagraph (A), the Secretary of Labor shall not include in the wage survey any persons who hold a visa described in section 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(b)).

''(D) ADDITION TO WEEKLY STATEMENT ON THE WAGES PAID.—In the case of projects and other transactions covered by subparagraph (A), the weekly statement required by section 3145 of title 40, United States Code, shall also identify each employee working on the project or transaction who holds a visa described in section 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(b)).

''(E) DURATION OF REQUIREMENTS.—The Secretary of Labor shall make and issue a wage rate determination for Guam annually until 90 percent of the funds in the Account and other funds made available for the realignment of military installations and the relocation of military personnel on Guam have been expended.

''(6) COMPOSITION OF WORKFORCE FOR CONSTRUCTION PROJECTS.—

''(A) LIMITATION.—With respect to each construction project that is carried out using amounts described in subparagraph (B), no work may be performed by a person holding a visa described in section 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(b)) unless—

''(i) the application for that visa has been approved pursuant to the issuance of a temporary labor certification by the Governor of Guam as provided under section 214.2 of title 8, Code of Federal Regulations; and

''(ii) the Governor of Guam, in consultation with the Secretary of Labor, makes the certification described in subparagraph (C) to the Secretary of Defense.

''(B) SOURCE OF FUNDS.—Subparagraph (A) applies to—

''(i) amounts in the Account used for projects associated with the realignment of military installations and the relocation of military personnel on Guam;

''(ii) funds associated with activities under section 2821 of this Act [amending section 2688 of this title]; and

''(iii) funds for authorized military construction projects.

''(C) CERTIFICATION.—The certification referred to in subparagraph (A) is a certification, in addition to the certifications required by section 214.2 of title 8, Code of Federal Regulations, that—

''(i) there are not sufficient United States workers who are able, willing, qualified, and available at the time of application for a visa and admission to the United States and at the place where the persons holding visas described in section 101(a)(15)(H)(ii)(b) of the Immigration and Nation-

ality Act (8 U.S.C. 1101(a)(15)(H)(ii)(b)) are to perform such skilled or unskilled labor; and

''(ii) the employment of such persons holding visas described in section 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(b)) will not adversely affect the wages and working conditions of workers in Guam similarly employed.

''(D) SOLICITATION OF WORKERS.—In order to ensure compliance with subparagraph (A), as a condition of a contract covered by such subparagraph, the contractor shall be required to advertise and solicit for construction workers in the United States, including Guam, the Commonwealth of the Northern Mariana Islands, American Samoa, the Virgin Islands, and the Commonwealth of Puerto Rico, in accordance with a recruitment plan approved by the Secretary of Labor. The contractor shall submit a copy of the employment offer, including a description of wages and other terms and conditions of employment, to the Secretary of Labor at least 60 days before the start date of the workers under a contract. The contractor shall authorize the Secretary of Labor to post a notice of the employment offer on a website, with State, territorial, and local job banks, with State and territorial workforce agencies, and with any other referral and recruitment sources the Secretary of Labor determines may be pertinent to the employment opportunity.

''(E) RECRUITMENT PERIOD.—The Secretary of Labor shall ensure that a contractor's recruitment of construction workers complies with the recruitment plan required by subparagraph (D) for a period beginning 60 days before the start date of workers under a contract and continuing for the next 28 days. During the recruitment period, the contractor shall interview all qualified and available United States construction workers who have applied for the employment opportunity, and, at the close of the recruitment period, the contractor shall provide the Secretary of Labor with a recruitment report providing any reasons for which the contractor did not hire an applicant who is a qualified United States construction worker. Not later than 21 days before the start date of the workers under a contract, the Secretary of Labor shall certify to the Governor of Guam whether the contractor has satisfied the recruitment plan created under subparagraph (D).

''(F) LIMITATION.—An employer, its attorney or agent, the Secretary of Labor, the Governor of Guam, and any designee thereof, may not seek or receive payment of any kind from any worker for any activity related to obtaining an H-2B labor certification with respect to any construction project that is carried out using amounts described in subparagraph (B).

''(d) TRANSFER AUTHORITY.—

''(1) TRANSFER TO HOUSING FUNDS.—The Secretary of Defense may transfer funds from the Account to the Department of Defense Family Housing Improvement Fund established by section 2883(a)(1) of title 10, United States Code.

''(2) TREATMENT OF TRANSFERRED AMOUNTS.—Amounts transferred under paragraph (1) to a fund referred to in that paragraph shall be available in accordance with the provisions of section 2883 of title 10, United States Code for activities on Guam authorized under subchapter IV of chapter 169 of such title.

''[(e) Repealed. Pub. L. 114–92, div. B, title XXVIII, §2822(c), Nov. 25, 2015, 129 Stat. 1178.]

''(f) SENSE OF CONGRESS.—It is the sense of Congress that the use of the Account to facilitate construction projects associated with the realignment of military installations and the relocation of military personnel on Guam, as authorized by subsection (c)(1), provides a great opportunity for business enterprises of the United States and its territories to contribute to the United States strategic presence in the western Pacific by competing for contracts awarded for such construction. Congress urges the Secretary of Defense to ensure maximum participation by business enterprises of the United States and its territories in such construction.''

REQUIRED CONSULTATION WITH STATE AND LOCAL ENTITIES ON ISSUES RELATED TO INCREASE IN NUMBER OF MILITARY PERSONNEL AT MILITARY INSTALLATIONS

Pub. L. 109–163, div. B, title XXVIII, §2835, Jan. 6, 2006, 119 Stat. 3521, provided that: ''If the base closure and realignment decisions of the 2005 round of base closures and realignments under the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note) or the Integrated Global Presence and Basing Strategy would result in an increase in the number of members of the Armed Forces assigned to a military installation, the Secretary of Defense, during the development of the plans to implement the decisions or strategy with respect to that installation, shall consult with appropriate State and local entities to ensure that matters affecting the local community, including requirements for transportation, utility infrastructure, housing, education, and family support activities, are considered.''

CONSIDERATION OF SURGE REQUIREMENTS IN 2005 ROUND OF BASE REALIGNMENTS AND CLOSURES

Pub. L. 108–136, div. B, title XXVIII, §2822, Nov. 24, 2003, 117 Stat. 1726, directed the Secretary of Defense to assess the probable threats to national security and, as part of such assessment, determine the surge requirements to meet those threats, and to use such surge requirements determination in the base realignment and closure process under the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510, set out below).

REPORT ON CLOSURE AND REALIGNMENT OF MILITARY INSTALLATIONS

Pub. L. 105–85, div. B, title XXVIII, §2824, Nov. 18, 1997, 111 Stat. 1998, as amended by Pub. L. 105–277, div. A, §101(f) [title VIII, §405(d)(9), (f)(8)], Oct. 21, 1998, 112 Stat. 2681–337, 2681–420, 2681–430, required the Secretary of Defense to prepare and submit to the Committees on Armed Services and Appropriations of Senate and House of Representatives, not later than the date on which the President submitted to Congress the budget for fiscal year 2000, a report on the costs and savings attributable to the rounds of base closures and realignments conducted under the base closure laws and on the need, if any, for additional rounds of base closures and realignments.

RETENTION OF CIVILIAN EMPLOYEE POSITIONS AT MILITARY TRAINING BASES TRANSFERRED TO NATIONAL GUARD

Pub. L. 104–201, div. A, title XVI, §1602, Sept. 23, 1996, 110 Stat. 2734, directed the Secretary of Defense to retain civilian employee positions at each military training installation that was approved for closure in 1995 under the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510, set out below), is scheduled for transfer to National Guard operation and control, and will continue to be used to provide training support to active and reserve components of the Armed Forces.

USE OF FUNDS TO IMPROVE LEASED PROPERTY

Pub. L. 104–106, div. B, title XXVIII, §2837(b), Feb. 10, 1996, 110 Stat. 561, authorized any department or agency of the Federal Government that enters into a lease of property under section 2905(b)(4)(E) of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510, set out below), to improve the leased property using funds appropriated or otherwise available to the department or agency for such purpose.

REGULATIONS TO CARRY OUT SECTION 204(e) OF PUB. L. 100–526 AND SECTION 2905(f) OF PUB. L. 101–510

Pub. L. 104–106, div. B, title XXVIII, §2840(c), Feb. 10, 1996, 110 Stat. 566, provided that not later than nine

months after Feb. 10, 1996, the Secretary of Defense was to prescribe any regulations necessary to carry out section 204(e) of the Defense Authorization Amendments and Base Closure and Realignment Act (Pub. L. 100–526) and section 2905(f) of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Pub. L. 101–510), set out in notes below.

PROHIBITION ON OBLIGATION OF FUNDS FOR PROJECTS ON INSTALLATIONS CITED FOR REALIGNMENT

Pub. L. 104–6, title I, § 112, Apr. 10, 1995, 109 Stat. 82, prohibited the use of Department of Defense funds designated for military construction or family housing to initiate construction projects after Apr. 10, 1995, on an installation that was included in the closure and realignment recommendations submitted either to the the Base Closure and Realignment Commission on Feb. 28, 1995, or to Congress in 1995 in accordance with the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of div. B of Pub. L. 101–510, set out below).

APPLICABILITY TO INSTALLATIONS APPROVED FOR CLOSURE BEFORE ENACTMENT OF PUB. L. 103–421

Pub. L. 103–421, § 2(e), Oct. 25, 1994, 108 Stat. 4352, as amended by Pub. L. 104–106, div. A, title XV, § 1505(f), Feb. 10, 1996, 110 Stat. 515; Pub. L. 107–107, div. A, title X, § 1048(d)(5), Dec. 28, 2001, 115 Stat. 1227, set out provisions related to the use of buildings and property at military installations approved for closure under the 1988 or 1990 base closure Act for the assistance of the homeless.

PREFERENCE FOR LOCAL RESIDENTS

Pub. L. 103–337, div. A, title VIII, § 817, Oct. 5, 1994, 108 Stat. 2820, authorized the Secretary of Defense, effective until Sept. 30, 1997, to give preference to entities that plan to hire local residents in awarding contracts for services to be performed at a military installation that is affected by closure or realignment under a base closure law.

GOVERNMENT RENTAL OF FACILITIES LOCATED ON CLOSED MILITARY INSTALLATIONS

Pub. L. 103–337, div. B, title XXVIII, § 2814, Oct. 5, 1994, 108 Stat. 3056, as amended by Pub. L. 107–314, div. A, title X, § 1062(*l*), Dec. 2, 2002, 116 Stat. 2652; Pub. L. 109–163, div. A, title X, § 1056(a)(3), Jan. 6, 2006, 119 Stat. 3439, provided that:

''(a) AUTHORIZATION TO RENT BASE CLOSURE PROPERTIES.—To promote the rapid conversion of military installations that are closed pursuant to a base closure law, the Administrator of the General Services may give priority consideration, when leasing space in accordance with chapter 5 or 33 of title 40, United States Code, to facilities of such an installation that have been acquired by a non-Federal entity.

''(b) BASE CLOSURE LAW DEFINED.—In this section, the term 'base closure law' has the meaning given such term in section 101(a)(17) of title 10, United States Code.''

REPORT OF EFFECT OF BASE CLOSURES ON FUTURE MOBILIZATION OPTIONS

Pub. L. 103–337, div. B, title XXVIII, § 2815, Oct. 5, 1994, 108 Stat. 3056, required the Secretary of Defense to prepare and submit to the congressional defense committees, not later than Jan. 31, 1996, a report evaluating the effect of base closures and realignments conducted since Jan. 1, 1987, on the ability of the Armed Forces to remobilize to the end strength levels authorized for fiscal year 1987 by sections 401, 403, 411, and 421 of the National Defense Authorization Act for Fiscal Year 1987 (Pub. L. 99–661; 100 Stat. 3859).

CONGRESSIONAL FINDINGS WITH RESPECT TO BASE CLOSURE COMMUNITY ASSISTANCE

Pub. L. 103–160, div. B, title XXIX, § 2901, Nov. 30, 1993, 107 Stat. 1909, set out congressional findings related to assistance for local communities in light of the closure and realignment of military installations.

CONSIDERATION OF ECONOMIC NEEDS AND COOPERATION WITH STATE AND LOCAL AUTHORITIES IN DISPOSING OF PROPERTY

Pub. L. 103–160, div. B, title XXIX, § 2903(c), (d), Nov. 30, 1993, 107 Stat. 1915, directed the Secretary of Defense to consider, in disposing of property as part of the closure of a military installation under a base closure law, the local and regional economic development priorities and to cooperate with the State in which the military installation is located, with the redevelopment authority with respect to the installation, and with local government and other interested persons located near the installation.

REGULATIONS TO CARRY OUT SECTION 204 OF PUB. L. 100–526 AND SECTION 2905 OF PUB. L. 101–510

Pub. L. 103–160, div. B, title XXIX, § 2908(c), Nov. 30, 1993, 107 Stat. 1924, directed the Secretary of Defense to prescribe, in consultation with the Administrator of the Environmental Protection Agency, regulations necessary to carry out section 204(d) of the Defense Authorization Amendments and Base Closure and Realignment Act (title II of Public Law 100–526, set out below) and section 2905(e) of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510, set out below) not later than nine months after Nov. 30, 1993.

COMPLIANCE WITH CERTAIN ENVIRONMENTAL REQUIREMENTS

Pub. L. 103–160, div. B, title XXIX, § 2911, Nov. 30, 1993, 107 Stat. 1924, directed the Secretary of Defense to complete any environmental impact anaylses required under a base closure law or pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) with respect to a redevelopment plan for any military installation approved for closure under such base closure law not later than 12 months after the submittal of the redevelopment plan.

PREFERENCE FOR LOCAL AND SMALL BUSINESSES IN CONTRACTING

Pub. L. 103–160, div. B, title XXIX, § 2912, Nov. 30, 1993, 107 Stat. 1925, as amended by Pub. L. 103–337, div. A, title X, § 1070(b)(14), Oct. 5, 1994, 108 Stat. 2857, provided that:

''(a) PREFERENCE REQUIRED.—In entering into contracts with private entities as part of the closure or realignment of a military installation under a base closure law, the Secretary of Defense shall give preference, to the greatest extent practicable, to qualified businesses located in the vicinity of the installation and to small business concerns and small disadvantaged business concerns. Contracts for which this preference shall be given shall include contracts to carry out activities for the environmental restoration and mitigation at military installations to be closed or realigned.

''(b) DEFINITIONS.—In this section:

''(1) The term 'small business concern' means a business concern meeting the requirements of section 3 of the Small Business Act (15 U.S.C. 632).

''(2) The term 'small disadvantaged business concern' means the business concerns referred to in section 8(d)(1) of such Act (15 U.S.C. 637(d)(1)).

''(3) The term 'base closure law' includes section 2687 of title 10, United States Code.''

TRANSITION COORDINATORS FOR ASSISTANCE TO COMMUNITIES AFFECTED BY CLOSURE OF INSTALLATIONS

Pub. L. 103–160, div. B, title XXIX, § 2915, Nov. 30, 1993, 107 Stat. 1926, as amended by Pub. L. 107–107, div. A, title X, § 1048(d)(4), Dec. 28, 2001, 115 Stat. 1227, directed the Secretary of Defense to designate, not later than 15 days after the date of approval of closure of a military installation to be closed under a base closure law, a

transition coordinator for such installation, and set out the responsibilities of the transition coordinator with respect to the closing installation.

DEFINITIONS FOR SUBTITLE A OF TITLE XXIX OF PUB. L. 103–160

Pub. L. 103–160, div. B, title XXIX, § 2918(a), Nov. 30, 1993, 107 Stat. 1927, provided that: ''In this subtitle [subtitle A (§§ 2901 to 2918) of title XXIX of div. B of Pub. L. 103–160, amending sections 2391 and 2667 of this title, enacting provisions set out as notes under this section and section 9620 of Title 42, The Public Health and Welfare, and amending provisions set out as notes under this section]:

''(1) The term 'base closure law' means the following:

''(A) The provisions of title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 10 U.S.C. 2687 note).

''(B) The Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note).

''(2) The term 'date of approval', with respect to a closure or realignment of an installation, means the date on which the authority of Congress to disapprove a recommendation of closure or realignment, as the case may be, of such installation under the applicable base closure law expires.

''(3) The term 'redevelopment authority', in the case of an installation to be closed under a base closure law, means any entity (including an entity established by a State or local government) recognized by the Secretary of Defense as the entity responsible for developing the redevelopment plan with respect to the installation and for directing the implementation of such plan.

''(4) The term 'redevelopment plan', in the case of an installation to be closed under a base closure law, means a plan that—

''(A) is agreed to by the redevelopment authority with respect to the installation; and

''(B) provides for the reuse or redevelopment of the real property and personal property of the installation that is available for such reuse and redevelopment as a result of the closure of the installation.''

LIMITATION ON EXPENDITURES FROM DEFENSE BASE CLOSURE ACCOUNT 1990 FOR MILITARY CONSTRUCTION IN SUPPORT OF TRANSFERS OF FUNCTIONS

Pub. L. 103–160, div. B, title XXIX, § 2922, Nov. 30, 1993, 107 Stat. 1930, as amended by Pub. L. 104–106, div. A, title XV, § 1502(c)(1), Feb. 10, 1996, 110 Stat. 506; Pub. L. 106–65, div. A, title X, § 1067(7), Oct. 5, 1999, 113 Stat. 774, prohibited the expenditure of funds from the Defense Base Closure Account 1990 for military construction in support of the transfer of a function from a military installation recommended for closure or realignment to another installation unless that other installation is identified in the documents submitted to the Defense Base Closure and Realignment Commission in support of such closure or realignment.

SENSE OF CONGRESS ON DEVELOPMENT OF BASE CLOSURE CRITERIA

Pub. L. 103–160, div. B, title XXIX, § 2925, Nov. 30, 1993, 107 Stat. 1932, as amended by Pub. L. 104–106, div. A, title XV, § 1502(c)(1), Feb. 10, 1996, 110 Stat. 506, set out the sense of Congress that the Secretary of Defense include the direct costs of defense base closures and realignments to other Federal departments and agencies in developing amended criteria in accordance with section 2903(b)(2)(B) of the Defense Base Closure and Realignment Act of 1990 (Public Law 101–510, set out below) and directed the Secretary to submit to Congress a report on any amended criteria developed after Nov. 30, 1993.

MILITARY BASE CLOSURE REPORT

Pub. L. 102–581, title I, § 107(d), Oct. 31, 1992, 106 Stat. 4879, provided that within 30 days after the date on which the Secretary of Defense recommended a list of military bases for closure or realignment pursuant to section 2903(c) of the Defense Base Closure and Realignment Act of 1990 (Pub. L. 101–510, set out below), the Administrator of the Federal Aviation Administration was to submit to Congress and the Defense Base Closure and Realignment Commission a report on the effects of all those recommendations involving military airbases, including the effect on civilian airports and airways in the local community and region; potential modifications and costs necessary to convert such bases to civilian aviation use; and in the case of air traffic control or radar coverage currently provided by the Department of Defense, potential installations or adjustments of equipment and costs necessary for the Federal Aviation Administration to maintain existing levels of service for the local community and region.

INDEMNIFICATION OF TRANSFEREES OF CLOSING DEFENSE PROPERTY

Pub. L. 102–484, div. A, title III, § 330, Oct. 23, 1992, 106 Stat. 2371, as amended by Pub. L. 103–160, div. A, title X, § 1002, Nov. 30, 1993, 107 Stat. 1745, provided that:

''(a) IN GENERAL.—(1) Except as provided in paragraph (3) and subject to subsection (b), the Secretary of Defense shall hold harmless, defend, and indemnify in full the persons and entities described in paragraph (2) from and against any suit, claim, demand or action, liability, judgment, cost or other fee arising out of any claim for personal injury or property damage (including death, illness, or loss of or damage to property or economic loss) that results from, or is in any manner predicated upon, the release or threatened release of any hazardous substance, pollutant or contaminant, or petroleum or petroleum derivative as a result of Department of Defense activities at any military installation (or portion thereof) that is closed pursuant to a base closure law.

''(2) The persons and entities described in this paragraph are the following:

''(A) Any State (including any officer, agent, or employee of the State) that acquires ownership or control of any facility at a military installation (or any portion thereof) described in paragraph (1).

''(B) Any political subdivision of a State (including any officer, agent, or employee of the State) that acquires such ownership or control.

''(C) Any other person or entity that acquires such ownership or control.

''(D) Any successor, assignee, transferee, lender, or lessee of a person or entity described in subparagraphs (A) through (C).

''(3) To the extent the persons and entities described in paragraph (2) contributed to any such release or threatened release, paragraph (1) shall not apply.

''(b) CONDITIONS.—No indemnification may be afforded under this section unless the person or entity making a claim for indemnification—

''(1) notifies the Department of Defense in writing within two years after such claim accrues or begins action within six months after the date of mailing, by certified or registered mail, of notice of final denial of the claim by the Department of Defense;

''(2) furnishes to the Department of Defense copies of pertinent papers the entity receives;

''(3) furnishes evidence or proof of any claim, loss, or damage covered by this section; and

''(4) provides, upon request by the Department of Defense, access to the records and personnel of the entity for purposes of defending or settling the claim or action.

''(c) AUTHORITY OF SECRETARY OF DEFENSE.—(1) In any case in which the Secretary of Defense determines that the Department of Defense may be required to make indemnification payments to a person under this section for any suit, claim, demand or action, liability,

judgment, cost or other fee arising out of any claim for personal injury or property damage referred to in subsection (a)(1), the Secretary may settle or defend, on behalf of that person, the claim for personal injury or property damage.

''(2) In any case described in paragraph (1), if the person to whom the Department of Defense may be required to make indemnification payments does not allow the Secretary to settle or defend the claim, the person may not be afforded indemnification with respect to that claim under this section.

''(d) ACCRUAL OF ACTION.—For purposes of subsection (b)(1), the date on which a claim accrues is the date on which the plaintiff knew (or reasonably should have known) that the personal injury or property damage referred to in subsection (a) was caused or contributed to by the release or threatened release of a hazardous substance, pollutant or contaminant, or petroleum or petroleum derivative as a result of Department of Defense activities at any military installation (or portion thereof) described in subsection (a)(1).

''(e) RELATIONSHIP TO OTHER LAW.—Nothing in this section shall be construed as affecting or modifying in any way section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9620(h)).

''(f) DEFINITIONS.—In this section:

''(1) The terms 'facility', 'hazardous substance', 'release', and 'pollutant or contaminant' have the meanings given such terms under paragraphs (9), (14), (22), and (33) of section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, respectively (42 U.S.C. 9601(9), (14), (22), and (33)).

''(2) The term 'military installation' has the meaning given such term under section 2687(e)(1) [now 2687(g)(1)] of title 10, United States Code.

''(3) The term 'base closure law' means the following:

''(A) The Defense Base Closure and Realignment Act of 1990 [part A of title XXIX of div. B of Pub. L. 101–510] (10 U.S.C. 2687 note).

''(B) Title II of the Defense Authorization Amendments and Base Closure and Realignment Act [Pub. L. 100–526] (10 U.S.C. 2687 note).

''(C) Section 2687 of title 10, United States Code.

''(D) Any provision of law authorizing the closure or realignment of a military installation enacted on or after the date of the enactment of this Act [Oct. 23, 1992].''

DEMONSTRATION PROJECT FOR USE OF NATIONAL RELOCATION CONTRACTOR TO ASSIST DEPARTMENT OF DEFENSE

Pub. L. 102–484, div. B, title XXVIII, § 2822, Oct. 23, 1992, 106 Stat. 2608, provided that, subject to the availability of appropriations therefor, the Secretary of Defense was to enter into a one-year contract, not later than 30 days after Oct. 23, 1992, with a private relocation contractor operating on a nationwide basis to test the cost-effectiveness of using national relocation contractors to administer the Homeowners Assistance Program and that, not later than one year after the date on which the Secretary of Defense entered into the contract, the Comptroller General was to submit to Congress a report containing the Comptroller General's evaluation of the effectiveness of using the national contractor for administering the program.

ENVIRONMENTAL RESTORATION REQUIREMENTS AT MILITARY INSTALLATIONS TO BE CLOSED

Pub. L. 102–190, div. A, title III, § 334, Dec. 5, 1991, 105 Stat. 1340, prescribed requirements for certain installations to be closed under 1989 or 1991 base closure lists by requiring that all draft final remedial investigations and feasibility studies related to environmental restoration activities at each such military installation be submitted to Environmental Protection Agency not later than 24 months after Dec. 5, 1991, for bases on 1989 closure list and not later than 36 months after such date for bases on 1991 closure list, prior to repeal by Pub. L. 104–201, div. A, title III, § 328, Sept. 23, 1996, 110 Stat. 2483.

WITHHOLDING INFORMATION FROM CONGRESS OR COMPTROLLER GENERAL

Pub. L. 102–190, div. B, title XXVIII, § 2821(i), Dec. 5, 1991, 105 Stat. 1546, provided that: ''Nothing in this section [enacting and amending provisions set out below] or in the Defense Base Closure and Realignment Act of 1990 [part A of title XXIX of div. B of Pub. L. 101–510, set out below] shall be construed to authorize the withholding of information from Congress, any committee or subcommittee of Congress, or the Comptroller General of the United States.''

CONSISTENCY IN BUDGET DATA

Pub. L. 102–190, div. B, title XXVIII, § 2822, Dec. 5, 1991, 105 Stat. 1546, as amended by Pub. L. 102–484, div. B, title XXVIII, § 2825, Oct. 23, 1992, 106 Stat. 2609, directed the Secretary of Defense to ensure that the amounts of authorizations requested for military construction related to the closure or realignment of military installations in fiscal years 1992 through 1999 do not exceed the estimates of the costs of such construction provided to the Defense Base Closure and Realignment Commission, unless the Secretary submits to Congress an explanation for any request for an authorization that exceeds the cost estimate.

DISPOSITION OF FACILITIES OF DEPOSITORY INSTITUTIONS ON MILITARY INSTALLATIONS TO BE CLOSED

Pub. L. 102–190, div. B, title XXVIII, § 2825, Dec. 5, 1991, 105 Stat. 1549, as amended by Pub. L. 103–160, div. B, title XXIX, § 2928(a), (b)(1), (c), Nov. 30, 1993, 107 Stat. 1934, 1935, provided that:

''(a) AUTHORITY TO CONVEY FACILITIES.—(1) Subject to subsection (c) and notwithstanding any other provision of law, the Secretary of the military department having jurisdiction over a military installation being closed pursuant to a base closure law may convey all right, title, and interest of the United States in a facility located on that installation to a depository institution that—

''(A) conducts business in the facility; and

''(B) constructed or substantially renovated the facility using funds of the depository institution.

''(2) In the case of the conveyance under paragraph (1) of a facility that was not constructed by the depository institution but was substantially renovated by the depository institution, the Secretary shall require the depository institution to pay an amount determined by the Secretary to be equal to the value of the facility in the absence of the renovations.

''(b) AUTHORITY TO CONVEY LAND.—As part of the conveyance of a facility to a depository institution under subsection (a), the Secretary of the military department concerned shall permit the depository institution to purchase the land upon which that facility is located. The Secretary shall offer the land to the depository institution before offering such land for sale or other disposition to any other entity. The purchase price shall be not less than the fair market value of the land, as determined by the Secretary.

''(c) LIMITATION.—The Secretary of a military department may not convey a facility to a depository institution under subsection (a) if the Secretary determines that the operation of a depository institution at such facility is inconsistent with the redevelopment plan with respect to the installation.

''(d) BASE CLOSURE LAW DEFINED.—For purposes of this section, the term 'base closure law' means the following:

''(1) The Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 104 Stat. 1808; 10 U.S.C. 2687 note).

''(2) Title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 102 Stat. 2627; 10 U.S.C. 2687 note).

''(3) Section 2687 of title 10, United States Code.

''(4) Any other similar law enacted after the date of the enactment of this Act [Dec. 5, 1991].

''(e) DEPOSITORY INSTITUTION DEFINED.—For purposes of this section, the term 'depository institution' has the meaning given that term in section 19(b)(1)(A) of the Federal Reserve Act (12 U.S.C. 461(b)(1)(A)).''

REPORT ON ENVIRONMENTAL RESTORATION COSTS FOR INSTALLATIONS TO BE CLOSED UNDER 1990 BASE CLOSURE LAW

Pub. L. 102–190, div. B, title XXVIII, § 2827(b), Dec. 5, 1991, 105 Stat. 1551, directed the Secretary of Defense to submit an annual report to Congress on the funding needed for environmental restoration activities at certain designated military installations for the fiscal year for which a budget was submitted and for each of the four following fiscal years, prior to repeal by Pub. L. 104–106, div. A, title X, § 1061(m), Feb. 10, 1996, 110 Stat. 443.

SENSE OF CONGRESS REGARDING JOINT RESOLUTION OF DISAPPROVAL OF 1991 BASE CLOSURE COMMISSION RECOMMENDATION

Pub. L. 102–172, title VIII, § 8131, Nov. 26, 1991, 105 Stat. 1208, set out the sense of the Congress that in acting on the Joint Resolution of Disapproval of the 1991 Base Closure Commission's recommendation, it took no position on whether there had been compliance by the Commission, and the Department of Defense with the requirements of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of div. B of Pub. L. 101–510, set out below), and that the vote on the resolution should not be interpreted to imply Congressional approval of all actions taken by the Commission and the Department of Defense in fulfillment of their responsibilities and duties under the Defense Base Closure and Realignment Act of 1990, but only the approval of the recommendations issued by the Commission.

REQUIREMENTS FOR BASE CLOSURE AND REALIGNMENT PLANS

Pub. L. 103–335, title VIII, § 8040, Sept. 30, 1994, 108 Stat. 2626, which directed Secretary of Defense to include in any base closure and realignment plan submitted to Congress after Sept. 30, 1994, a complete review of expectations for the five-year period beginning on Oct. 1, 1994, including force structure and levels, installation requirements, a budget plan, cost savings to be realized through realignments and closures of military installations, and the economic impact on local areas affected, was from the Department of Defense Appropriations Act, 1995, and was not repeated in subsequent appropriation acts. Similar provisions were contained in the following prior appropriation acts:

Pub. L. 103–139, title VIII, § 8045, Nov. 11, 1993, 107 Stat. 1450.

Pub. L. 102–396, title IX, § 9060, Oct. 6, 1992, 106 Stat. 1915.

Pub. L. 102–172, title VIII, § 8063, Nov. 26, 1991, 105 Stat. 1185.

Pub. L. 101–511, title VIII, § 8081, Nov. 5, 1990, 104 Stat. 1894.

DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION

Pub. L. 101–510, div. B, title XXIX, part A, Nov. 5, 1990, 104 Stat. 1808, as amended by Pub. L. 102–190, div. A, title III, § 344(b)(1), div. B, title XXVIII, §§ 2821(a)–(h)(1), 2827(a)(1), (2), Dec. 5, 1991, 105 Stat. 1345, 1544–1546, 1551; Pub. L. 102–484, div. A, title X, § 1054(b), div. B, title XXVIII, §§ 2821(b), 2823, Oct. 23, 1992, 106 Stat. 2502, 2607, 2608; Pub. L. 103–160, div. B, title XXIX, §§ 2902(b), 2903(b), 2904(b), 2905(b), 2907(b), 2908(b), 2918(c), 2921(b), (c), 2923, 2926, 2930(a), Nov. 30, 1993, 107 Stat. 1911, 1914, 1916, 1918, 1921, 1923, 1928–1930, 1932, 1935; Pub. L. 103–337, div. A, title X, § 1070(b)(15), (d)(2), div. B, title XXVIII, §§ 2811, 2812(b), 2813(c)(2), (d)(2), (e)(2), Oct. 5, 1994, 108 Stat. 2857, 2858, 3053–3056; Pub. L. 103–421, § 2(a)–(c), (f)(2), Oct. 25, 1994, 108 Stat. 4346–4352, 4354; Pub. L. 104–106, div. A, title XV, §§ 1502(d), 1504(a)(9), 1505(e)(1), div. B, title XXVIII, §§ 2831(b)(2), 2835, 2836, 2837(a), 2838, 2839(b), 2840(b), Feb. 10, 1996, 110 Stat. 508, 513, 514, 558, 560, 561, 564, 565; Pub. L. 104–201, div. B, title XXVIII, §§ 2812(b), 2813(b), Sept. 23, 1996, 110 Stat. 2789; Pub. L. 105–85, div. A, title X, § 1073(d)(4)(B), div. B, title XXVIII, § 2821(b), Nov. 18, 1997, 111 Stat. 1905, 1997; Pub. L. 106–65, div. A, title X, § 1067(10), div. B, title XVIII, §§ 2821(a), 2822, Oct. 5, 1999, 113 Stat. 774, 853, 856; Pub. L. 106–398, § 1 [[div. A], title X, § 1087(g)(2), div. B, title XXVIII, § 2821(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–293, 1654A–419; Pub. L. 107–107, div. A, title X, § 1048(d)(2), div. B, title XXVIII, § 2821(b), title XXX, §§ 3001–3007, Dec. 28, 2001, 115 Stat. 1227, 1312, 1342–1351; Pub. L. 107–314, div. A, title X, § 1062(f)(4), (m)(1)–(3), div. B, title XXVIII, §§ 2814(b), 2854, Dec. 2, 2002, 116 Stat. 2651, 2652, 2710, 2728; Pub. L. 108–136, div. A, title VI, § 655(b), div. B, title XXVIII, §§ 2805(d)(2), 2821, Nov. 24, 2003, 117 Stat. 1523, 1721, 1726; Pub. L. 108–375, div. A, title X, § 1084(i), div. B, title XXVIII, §§ 2831–2834, Oct. 28, 2004, 118 Stat. 2064, 2132–2134; Pub. L. 109–163, div. B, title XXVIII, § 2831, Jan. 6, 2006, 119 Stat. 3518; Pub. L. 110–181, div. B, title XXVII, § 2704(a), Jan. 28, 2008, 122 Stat. 532; Pub. L. 110–417, div. B, title XXVII, §§ 2711, 2712(a)(1)(A), (b), Oct. 14, 2008, 122 Stat. 4715, 4716; Pub. L. 111–84, div. B, title XXVII, § 2715(a), Oct. 28, 2009, 123 Stat. 2658; Pub. L. 112–239, div. B, title XXVII, § 2711(a), (c)(2), (3)(A), Jan. 2, 2013, 126 Stat. 2140, 2143; Pub. L. 113–291, div. B, title XXVII, § 2721, Dec. 19, 2014, 128 Stat. 3693, provided that:

''SEC. 2901. SHORT TITLE AND PURPOSE

''(a) SHORT TITLE.—This part may be cited as the 'Defense Base Closure and Realignment Act of 1990'.

''(b) PURPOSE.—The purpose of this part is to provide a fair process that will result in the timely closure and realignment of military installations inside the United States.

''SEC. 2902. THE COMMISSION

''(a) ESTABLISHMENT.—There is established an independent commission to be known as the 'Defense Base Closure and Realignment Commission'.

''(b) DUTIES.—The Commission shall carry out the duties specified for it in this part.

''(c) APPOINTMENT.—(1)(A) The Commission shall be composed of eight members appointed by the President, by and with the advise [advice] and consent of the Senate.

''(B) The President shall transmit to the Senate the nominations for appointment to the Commission—

''(i) by no later than January 3, 1991, in the case of members of the Commission whose terms will expire at the end of the first session of the 102nd Congress;

''(ii) by no later than January 25, 1993, in the case of members of the Commission whose terms will expire at the end of the first session of the 103rd Congress; and

''(iii) by no later than January 3, 1995, in the case of members of the Commission whose terms will expire at the end of the first session of the 104th Congress.

''(C) If the President does not transmit to Congress the nominations for appointment to the Commission on or before the date specified for 1993 in clause (ii) of subparagraph (B) or for 1995 in clause (iii) of such subparagraph, the process by which military installations may be selected for closure or realignment under this part with respect to that year shall be terminated.

''(2) In selecting individuals for nominations for appointments to the Commission, the President should consult with—

''(A) the Speaker of the House of Representatives concerning the appointment of two members;

''(B) the majority leader of the Senate concerning the appointment of two members;

''(C) the minority leader of the House of Representatives concerning the appointment of one member; and

''(D) the minority leader of the Senate concerning the appointment of one member.

''(3) At the time the President nominates individuals for appointment to the Commission for each session of Congress referred to in paragraph (1)(B), the President shall designate one such individual who shall serve as Chairman of the Commission.

''(d) TERMS.—(1) Except as provided in paragraph (2), each member of the Commission shall serve until the adjournment of Congress sine die for the session during which the member was appointed to the Commission.

''(2) The Chairman of the Commission shall serve until the confirmation of a successor.

''(e) MEETINGS.—(1) The Commission shall meet only during calendar years 1991, 1993, and 1995.

''(2)(A) Each meeting of the Commission, other than meetings in which classified information is to be discussed, shall be open to the public.

''(B) All the proceedings, information, and deliberations of the Commission shall be open, upon request, to the following:

''(i) The Chairman and the ranking minority party member of the Subcommittee on Readiness and Management Support of the Committee on Armed Services of the Senate, or such other members of the Subcommittee designated by such Chairman or ranking minority party member.

''(ii) The Chairman and the ranking minority party member of the Subcommittee on Readiness of the Committee on Armed Services of the House of Representatives, or such other members of the Subcommittee designated by such Chairman or ranking minority party member.

''(iii) The Chairmen and ranking minority party members of the Subcommittees on Military Construction of the Committees on Appropriations of the Senate and of the House of Representatives, or such other members of the Subcommittees designated by such Chairmen or ranking minority party members.

''(f) VACANCIES.—A vacancy in the Commission shall be filled in the same manner as the original appointment, but the individual appointed to fill the vacancy shall serve only for the unexpired portion of the term for which the individual's predecessor was appointed.

''(g) PAY AND TRAVEL EXPENSES.—(1)(A) Each member, other than the Chairman, shall be paid at a rate equal to the daily equivalent of the minimum annual rate of basic pay payable for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which the member is engaged in the actual performance of duties vested in the Commission.

''(B) The Chairman shall be paid for each day referred to in subparagraph (A) at a rate equal to the daily equivalent of the minimum annual rate of basic pay payable for level III of the Executive Schedule under section 5314 of title 5, United States Code.

''(2) Members shall receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5, United States Code.

''(h) DIRECTOR OF STAFF.—(1) The Commission shall, without regard to section 5311(b) of title 5, United States Code, appoint a Director who has not served on active duty in the Armed Forces or as a civilian employee of the Department of Defense during the one-year period preceding the date of such appointment.

''(2) The Director shall be paid at the rate of basic pay payable for level IV of the Executive Schedule under section 5315 of title 5, United States Code.

''(i) STAFF.—(1) Subject to paragraphs (2) and (3), the Director, with the approval of the Commission, may appoint and fix the pay of additional personnel.

''(2) The Director may make such appointments without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and any personnel so appointed may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of that title relating to classification and General Schedule pay rates, except that an individual so appointed may not receive pay in excess of the annual rate of basic pay payable for GS–18 of the General Schedule.

''(3)(A) Not more than one-third of the personnel employed by or detailed to the Commission may be on detail from the Department of Defense.

''(B)(i) Not more than one-fifth of the professional analysts of the Commission staff may be persons detailed from the Department of Defense to the Commission.

''(ii) No person detailed from the Department of Defense to the Commission may be assigned as the lead professional analyst with respect to a military department or defense agency.

''(C) A person may not be detailed from the Department of Defense to the Commission if, within 12 months before the detail is to begin, that person participated personally and substantially in any matter within the Department of Defense concerning the preparation of recommendations for closures or realignments of military installations.

''(D) No member of the Armed Forces, and no officer or employee of the Department of Defense, may—

''(i) prepare any report concerning the effectiveness, fitness, or efficiency of the performance on the staff of the Commission of any person detailed from the Department of Defense to that staff;

''(ii) review the preparation of such a report; or

''(iii) approve or disapprove such a report.

''(4) Upon request of the Director, the head of any Federal department or agency may detail any of the personnel of that department or agency to the Commission to assist the Commission in carrying out its duties under this part.

''(5) The Comptroller General of the United States shall provide assistance, including the detailing of employees, to the Commission in accordance with an agreement entered into with the Commission.

''(6) The following restrictions relating to the personnel of the Commission shall apply during 1992 and 1994:

''(A) There may not be more than 15 persons on the staff at any one time.

''(B) The staff may perform only such functions as are necessary to prepare for the transition to new membership on the Commission in the following year.

''(C) No member of the Armed Forces and no employee of the Department of Defense may serve on the staff.

''(j) OTHER AUTHORITY.—(1) The Commission may procure by contract, to the extent funds are available, the temporary or intermittent services of experts or consultants pursuant to section 3109 of title 5, United States Code.

''(2) The Commission may lease space and acquire personal property to the extent funds are available.

''(k) FUNDING.—(1) There are authorized to be appropriated to the Commission such funds as are necessary to carry out its duties under this part. Such funds shall remain available until expended.

''(2) If no funds are appropriated to the Commission by the end of the second session of the 101st Congress, the Secretary of Defense may transfer, for fiscal year 1991, to the Commission funds from the Department of Defense Base Closure Account established by section 207 of Public Law 100–526 [set out below]. Such funds shall remain available until expended.

''(3)(A) The Secretary may transfer not more than $300,000 from unobligated funds in the account referred to in subparagraph (B) for the purpose of assisting the Commission in carrying out its duties under this part during October, November, and December 1995. Funds transferred under the preceding sentence shall remain available until December 31, 1995.

''(B) The account referred to in subparagraph (A) is the Department of Defense Base Closure Account established under [former] section 207(a) of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 10 U.S.C. 2687 note).

''(*l*) TERMINATION.—The Commission shall terminate on December 31, 1995.

''(m) PROHIBITION AGAINST RESTRICTING COMMUNICATIONS.—Section 1034 of title 10, United States Code,

shall apply with respect to communications with the Commission.

''SEC. 2903. PROCEDURE FOR MAKING RECOMMENDATIONS FOR BASE CLOSURES AND REALIGNMENTS

''(a) FORCE-STRUCTURE PLAN.—(1) As part of the budget justification documents submitted to Congress in support of the budget for the Department of Defense for each of the fiscal years 1992, 1994, and 1996, the Secretary shall include a force-structure plan for the Armed Forces based on an assessment by the Secretary of the probable threats to the national security during the six-year period beginning with the fiscal year for which the budget request is made and of the anticipated levels of funding that will be available for national defense purposes during such period.

''(2) Such plan shall include, without any reference (directly or indirectly) to military installations inside the United States that may be closed or realigned under such plan—

''(A) a description of the assessment referred to in paragraph (1);

''(B) a description (i) of the anticipated force structure during and at the end of each such period for each military department (with specifications of the number and type of units in the active and reserve forces of each such department), and (ii) of the units that will need to be forward based (with a justification thereof) during and at the end of each such period; and

''(C) a description of the anticipated implementation of such force-structure plan.

''(3) The Secretary shall also transmit a copy of each such force-structure plan to the Commission.

''(b) SELECTION CRITERIA.—(1) The Secretary shall, by no later than December 31, 1990, publish in the Federal Register and transmit to the congressional defense committees the criteria proposed to be used by the Department of Defense in making recommendations for the closure or realignment of military installations inside the United States under this part. The Secretary shall provide an opportunity for public comment on the proposed criteria for a period of at least 30 days and shall include notice of that opportunity in the publication required under the preceding sentence.

''(2)(A) The Secretary shall, by no later than February 15, 1991, publish in the Federal Register and transmit to the congressional defense committees the final criteria to be used in making recommendations for the closure or realignment of military installations inside the United States under this part. Except as provided in subparagraph (B), such criteria shall be the final criteria to be used, along with the force-structure plan referred to in subsection (a), in making such recommendations unless disapproved by a joint resolution of Congress enacted on or before March 15, 1991.

''(B) The Secretary may amend such criteria, but such amendments may not become effective until they have been published in the Federal Register, opened to public comment for at least 30 days, and then transmitted to the congressional defense committees in final form by no later than January 15 of the year concerned. Such amended criteria shall be the final criteria to be used, along with the force-structure plan referred to in subsection (a), in making such recommendations unless disapproved by a joint resolution of Congress enacted on or before February 15 of the year concerned.

''(c) DOD RECOMMENDATIONS.—(1) The Secretary may, by no later than April 15, 1991, March 15, 1993, and March 1, 1995, publish in the Federal Register and transmit to the congressional defense committees and to the Commission a list of the military installations inside the United States that the Secretary recommends for closure or realignment on the basis of the force-structure plan and the final criteria referred to in subsection (b)(2) that are applicable to the year concerned.

''(2) The Secretary shall include, with the list of recommendations published and transmitted pursuant to paragraph (1), a summary of the selection process that resulted in the recommendation for each installation, including a justification for each recommendation. The Secretary shall transmit the matters referred to in the preceding sentence not later than 7 days after the date of the transmittal to the congressional defense committees and the Commission of the list referred to in paragraph (1).

''(3)(A) In considering military installations for closure or realignment, the Secretary shall consider all military installations inside the United States equally without regard to whether the installation has been previously considered or proposed for closure or realignment by the Department.

''(B) In considering military installations for closure or realignment, the Secretary may not take into account for any purpose any advance conversion planning undertaken by an affected community with respect to the anticipated closure or realignment of an installation.

''(C) For purposes of subparagraph (B), in the case of a community anticipating the economic effects of a closure or realignment of a military installation, advance conversion planning—

''(i) shall include community adjustment and economic diversification planning undertaken by the community before an anticipated selection of a military installation in or near the community for closure or realignment; and

''(ii) may include the development of contingency redevelopment plans, plans for economic development and diversification, and plans for the joint use (including civilian and military use, public and private use, civilian dual use, and civilian shared use) of the property or facilities of the installation after the anticipated closure or realignment.

''(4) In addition to making all information used by the Secretary to prepare the recommendations under this subsection available to Congress (including any committee or member of Congress), the Secretary shall also make such information available to the Commission and the Comptroller General of the United States.

''(5)(A) Each person referred to in subparagraph (B), when submitting information to the Secretary of Defense or the Commission concerning the closure or realignment of a military installation, shall certify that such information is accurate and complete to the best of that person's knowledge and belief.

''(B) Subparagraph (A) applies to the following persons:

''(i) The Secretaries of the military departments.

''(ii) The heads of the Defense Agencies.

''(iii) Each person who is in a position the duties of which include personal and substantial involvement in the preparation and submission of information and recommendations concerning the closure or realignment of military installations, as designated in regulations which the Secretary of Defense shall prescribe, regulations which the Secretary of each military department shall prescribe for personnel within that military department, or regulations which the head of each Defense Agency shall prescribe for personnel within that Defense Agency.

''(6) Any information provided to the Commission by a person described in paragraph (5)(B) shall also be submitted to the Senate and the House of Representatives to be made available to the Members of the House concerned in accordance with the rules of that House. The information shall be submitted to the Senate and House of Representatives within 24 hours after the submission of the information to the Commission.

''(d) REVIEW AND RECOMMENDATIONS BY THE COMMISSION.—(1) After receiving the recommendations from the Secretary pursuant to subsection (c) for any year, the Commission shall conduct public hearings on the recommendations. All testimony before the Commission at a public hearing conducted under this paragraph shall be presented under oath.

''(2)(A) The Commission shall, by no later than July 1 of each year in which the Secretary transmits rec-

ommendations to it pursuant to subsection (c), transmit to the President a report containing the Commission's findings and conclusions based on a review and analysis of the recommendations made by the Secretary, together with the Commission's recommendations for closures and realignments of military installations inside the United States.

''(B) Subject to subparagraph (C), in making its recommendations, the Commission may make changes in any of the recommendations made by the Secretary if the Commission determines that the Secretary deviated substantially from the force-structure plan and final criteria referred to in subsection (c)(1) in making recommendations.

''(C) In the case of a change described in subparagraph (D) in the recommendations made by the Secretary, the Commission may make the change only if the Commission—

''(i) makes the determination required by subparagraph (B);

''(ii) determines that the change is consistent with the force-structure plan and final criteria referred to in subsection (c)(1);

''(iii) publishes a notice of the proposed change in the Federal Register not less than 45 days before transmitting its recommendations to the President pursuant to paragraph (2); and

''(iv) conducts public hearings on the proposed change.

''(D) Subparagraph (C) shall apply to a change by the Commission in the Secretary's recommendations that would—

''(i) add a military installation to the list of military installations recommended by the Secretary for closure;

''(ii) add a military installation to the list of military installations recommended by the Secretary for realignment; or

''(iii) increase the extent of a realignment of a particular military installation recommended by the Secretary.

''(E) In making recommendations under this paragraph, the Commission may not take into account for any purpose any advance conversion planning undertaken by an affected community with respect to the anticipated closure or realignment of a military installation.

''(3) The Commission shall explain and justify in its report submitted to the President pursuant to paragraph (2) any recommendation made by the Commission that is different from the recommendations made by the Secretary pursuant to subsection (c). The Commission shall transmit a copy of such report to the congressional defense committees on the same date on which it transmits its recommendations to the President under paragraph (2).

''(4) After July 1 of each year in which the Commission transmits recommendations to the President under this subsection, the Commission shall promptly provide, upon request, to any Member of Congress information used by the Commission in making its recommendations.

''(5) The Comptroller General of the United States shall—

''(A) assist the Commission, to the extent requested, in the Commission's review and analysis of the recommendations made by the Secretary pursuant to subsection (c); and

''(B) by no later than April 15 of each year in which the Secretary makes such recommendations, transmit to the Congress and to the Commission a report containing a detailed analysis of the Secretary's recommendations and selection process.

''(e) REVIEW BY THE PRESIDENT.—(1) The President shall, by no later than July 15 of each year in which the Commission makes recommendations under subsection (d), transmit to the Commission and to the Congress a report containing the President's approval or disapproval of the Commission's recommendations.

''(2) If the President approves all the recommendations of the Commission, the President shall transmit a copy of such recommendations to the Congress, together with a certification of such approval.

''(3) If the President disapproves the recommendations of the Commission, in whole or in part, the President shall transmit to the Commission and the Congress the reasons for that disapproval. The Commission shall then transmit to the President, by no later than August 15 of the year concerned, a revised list of recommendations for the closure and realignment of military installations.

''(4) If the President approves all of the revised recommendations of the Commission transmitted to the President under paragraph (3), the President shall transmit a copy of such revised recommendations to the Congress, together with a certification of such approval.

''(5) If the President does not transmit to the Congress an approval and certification described in paragraph (2) or (4) by September 1 of any year in which the Commission has transmitted recommendations to the President under this part, the process by which military installations may be selected for closure or realignment under this part with respect to that year shall be terminated.

''SEC. 2904. CLOSURE AND REALIGNMENT OF MILITARY INSTALLATIONS

''(a) IN GENERAL.—Subject to subsection (b), the Secretary shall—

''(1) close all military installations recommended for closure by the Commission in each report transmitted to the Congress by the President pursuant to section 2903(e);

''(2) realign all military installations recommended for realignment by such Commission in each such report;

''(3) carry out the privatization in place of a military installation recommended for closure or realignment by the Commission in the 2005 report only if privatization in place is a method of closure or realignment of the military installation specified in the recommendations of the Commission in such report and is determined by the Commission to be the most cost-effective method of implementation of the recommendation;

''(4) initiate all such closures and realignments no later than two years after the date on which the President transmits a report to the Congress pursuant to section 2903(e) containing the recommendations for such closures or realignments; and

''(5) complete all such closures and realignments no later than the end of the six-year period beginning on the date on which the President transmits the report pursuant to section 2903(e) containing the recommendations for such closures or realignments.

''(b) CONGRESSIONAL DISAPPROVAL.—(1) The Secretary may not carry out any closure or realignment recommended by the Commission in a report transmitted from the President pursuant to section 2903(e) if a joint resolution is enacted, in accordance with the provisions of section 2908, disapproving such recommendations of the Commission before the earlier of—

''(A) the end of the 45-day period beginning on the date on which the President transmits such report; or

''(B) the adjournment of Congress sine die for the session during which such report is transmitted.

''(2) For purposes of paragraph (1) of this subsection and subsections (a) and (c) of section 2908, the days on which either House of Congress is not in session because of an adjournment of more than three days to a day certain shall be excluded in the computation of a period.

''SEC. 2905. IMPLEMENTATION

''(a) IN GENERAL.—(1) In closing or realigning any military installation under this part, the Secretary may—

''(A) take such actions as may be necessary to close or realign any military installation, including the acquisition of such land, the construction of such replacement facilities, the performance of such activi-

ties, and the conduct of such advance planning and design as may be required to transfer functions from a military installation being closed or realigned to another military installation, and may use for such purpose funds in the Account or funds appropriated to the Department of Defense for use in planning and design, minor construction, or operation and maintenance;

''(B) provide—

''(i) economic adjustment assistance to any community located near a military installation being closed or realigned, and

''(ii) community planning assistance to any community located near a military installation to which functions will be transferred as a result of the closure or realignment of a military installation,

if the Secretary of Defense determines that the financial resources available to the community (by grant or otherwise) for such purposes are inadequate, and may use for such purposes funds in the Account or funds appropriated to the Department of Defense for economic adjustment assistance or community planning assistance;

''(C) carry out activities for the purposes of environmental restoration and mitigation at any such installation, and shall use for such purposes funds in the Account;

''(D) provide outplacement assistance to civilian employees employed by the Department of Defense at military installations being closed or realigned, and may use for such purpose funds in the Account or funds appropriated to the Department of Defense for outplacement assistance to employees; and

''(E) reimburse other Federal agencies for actions performed at the request of the Secretary with respect to any such closure or realignment, and may use for such purpose funds in the Account or funds appropriated to the Department of Defense and available for such purpose.

''(2) In carrying out any closure or realignment under this part, the Secretary shall ensure that environmental restoration of any property made excess to the needs of the Department of Defense as a result of such closure or realignment be carried out as soon as possible with funds available for such purpose.

''(b) MANAGEMENT AND DISPOSAL OF PROPERTY.—(1) The Administrator of General Services shall delegate to the Secretary of Defense, with respect to excess and surplus real property, facilities, and personal property located at a military installation closed or realigned under this part—

''(A) the authority of the Administrator to utilize excess property under subchapter II of chapter 5 of title 40, United States Code;

''(B) the authority of the Administrator to dispose of surplus property under subchapter III of chapter 5 of title 40, United States Code;

''(C) the authority to dispose of surplus property for public airports under sections 47151 through 47153 of title 49, United States Code; and

''(D) the authority of the Administrator to determine the availability of excess or surplus real property for wildlife conservation purposes in accordance with the Act of May 19, 1948 (16 U.S.C. 667b).

''(2)(A) Subject to subparagraph (B) and paragraphs (3), (4), (5), and (6), the Secretary of Defense shall exercise the authority delegated to the Secretary pursuant to paragraph (1) in accordance with—

''(i) all regulations governing the utilization of excess property and the disposal of surplus property under the Federal Property and Administrative Services Act of 1949 [see chapters 1 to 11 of Title 40, Public Buildings, Property, and Works and division C (except sections 3302, 3306(f), 3307(e), 3501(b), 3509, 3906, 4104, 4710, and 4711) of subtitle I of Title 41, Public Contracts]; and

''(ii) all regulations governing the conveyance and disposal of property under section 13(g) of the Surplus Property Act of 1944 (50 U.S.C. App. 1622(g)) [now 40 U.S.C. 545 note].

''(B) The Secretary may, with the concurrence of the Administrator of General Services—

''(i) prescribe general policies and methods for utilizing excess property and disposing of surplus property pursuant to the authority delegated under paragraph (1); and

''(ii) issue regulations relating to such policies and methods, which shall supersede the regulations referred to in subparagraph (A) with respect to that authority.

''(C) The Secretary of Defense may transfer real property or facilities located at a military installation to be closed or realigned under this part, with or without reimbursement, to a military department or other entity (including a nonappropriated fund instrumentality) within the Department of Defense or the Coast Guard.

''(D) Before any action may be taken with respect to the disposal of any surplus real property or facility located at any military installation to be closed or realigned under this part, the Secretary of Defense shall consult with the Governor of the State and the heads of the local governments concerned for the purpose of considering any plan for the use of such property by the local community concerned.

''(E) If a military installation to be closed, realigned, or placed in an inactive status under this part includes a road used for public access through, into, or around the installation, the Secretary of Defense shall consult with the Governor of the State and the heads of the local governments concerned for the purpose of considering the continued availability of the road for public use after the installation is closed, realigned, or placed in an inactive status.

''(3)(A) Not later than 6 months after the date of approval of the closure or realignment of a military installation under this part, the Secretary, in consultation with the redevelopment authority with respect to the installation, shall—

''(i) inventory the personal property located at the installation; and

''(ii) identify the items (or categories of items) of such personal property that the Secretary determines to be related to real property and anticipates will support the implementation of the redevelopment plan with respect to the installation.

''(B) If no redevelopment authority referred to in subparagraph (A) exists with respect to an installation, the Secretary shall consult with—

''(i) the local government in whose jurisdiction the installation is wholly located; or

''(ii) a local government agency or State government agency designated for the purpose of such consultation by the chief executive officer of the State in which the installation is located.

''(C)(i) Except as provided in subparagraphs (E) and (F), the Secretary may not carry out any of the activities referred to in clause (ii) with respect to an installation referred to in that clause until the earlier of—

''(I) one week after the date on which the redevelopment plan for the installation is submitted to the Secretary;

''(II) the date on which the redevelopment authority notifies the Secretary that it will not submit such a plan;

''(III) twenty-four months after the date of approval of the closure or realignment of the installation; or

''(IV) ninety days before the date of the closure or realignment of the installation.

''(ii) The activities referred to in clause (i) are activities relating to the closure or realignment of an installation to be closed or realigned under this part as follows:

''(I) The transfer from the installation of items of personal property at the installation identified in accordance with subparagraph (A).

''(II) The reduction in maintenance and repair of facilities or equipment located at the installation below the minimum levels required to support the use of such facilities or equipment for nonmilitary purposes.

''(D) Except as provided in paragraph (4), the Secretary may not transfer items of personal property located at an installation to be closed or realigned under this part to another installation, or dispose of such items, if such items are identified in the redevelopment plan for the installation as items essential to the reuse or redevelopment of the installation. In connection with the development of the redevelopment plan for the installation, the Secretary shall consult with the entity responsible for developing the redevelopment plan to identify the items of personal property located at the installation, if any, that the entity desires to be retained at the installation for reuse or redevelopment of the installation.

''(E) This paragraph shall not apply to any personal property located at an installation to be closed or realigned under this part if the property—

''(i) is required for the operation of a unit, function, component, weapon, or weapons system at another installation;

''(ii) is uniquely military in character, and is likely to have no civilian use (other than use for its material content or as a source of commonly used components);

''(iii) is not required for the reutilization or redevelopment of the installation (as jointly determined by the Secretary and the redevelopment authority);

''(iv) is stored at the installation for purposes of distribution (including spare parts or stock items); or

''(v)(I) meets known requirements of an authorized program of another Federal department or agency for which expenditures for similar property would be necessary, and (II) is the subject of a written request by the head of the department or agency.

''(F) Notwithstanding subparagraphs (C)(i) and (D), the Secretary may carry out any activity referred to in subparagraph (C)(ii) or (D) if the Secretary determines that the carrying out of such activity is in the national security interest of the United States.

''(4)(A) The Secretary may transfer real property and personal property located at a military installation to be closed or realigned under this part to the redevelopment authority with respect to the installation for purposes of job generation on the installation.

''(B) The transfer of property located at a military installation under subparagraph (A) may be for consideration at or below the estimated fair market value or without consideration. The determination of such consideration may account for the economic conditions of the local affected community and the estimated costs to redevelop the property. The Secretary may accept, as consideration, a share of the revenues that the redevelopment authority receives from third-party buyers or lessees from sales and long-term leases of the conveyed property, consideration in kind (including goods and services), real property and improvements, or such other consideration as the Secretary considers appropriate. The transfer of property located at a military installation under subparagraph (A) may be made for consideration below the estimated fair market value or without consideration only if the redevelopment authority with respect to the installation—

''(i) agrees that the proceeds from any sale or lease of the property (or any portion thereof) received by the redevelopment authority during at least the first seven years after the date of the initial transfer of property under subparagraph (A) shall be used to support the economic redevelopment of, or related to, the installation; and

''(ii) executes the agreement for transfer of the property and accepts control of the property within a reasonable time after the date of the property disposal record of decision or finding of no significant impact under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

''(C) For purposes of subparagraph (B)(i), the use of proceeds from a sale or lease described in such subparagraph to pay for, or offset the costs of, public investment on or related to the installation for any of the following purposes shall be considered a use to support the economic redevelopment of, or related to, the installation:

''(i) Road construction.

''(ii) Transportation management facilities.

''(iii) Storm and sanitary sewer construction.

''(iv) Police and fire protection facilities and other public facilities.

''(v) Utility construction.

''(vi) Building rehabilitation.

''(vii) Historic property preservation.

''(viii) Pollution prevention equipment or facilities.

''(ix) Demolition.

''(x) Disposal of hazardous materials generated by demolition.

''(xi) Landscaping, grading, and other site or public improvements.

''(xii) Planning for or the marketing of the development and reuse of the installation.

''(D) The Secretary may recoup from a redevelopment authority such portion of the proceeds from a sale or lease described in subparagraph (B) as the Secretary determines appropriate if the redevelopment authority does not use the proceeds to support economic redevelopment of, or related to, the installation for the period specified in subparagraph (B).

''(E)(i) The Secretary may transfer real property at an installation approved for closure or realignment under this part (including property at an installation approved for realignment which will be retained by the Department of Defense or another Federal agency after realignment) to the redevelopment authority for the installation if the redevelopment authority agrees to lease, directly upon transfer, one or more portions of the property transferred under this subparagraph to the Secretary or to the head of another department or agency of the Federal Government. Subparagraph (B) shall apply to a transfer under this subparagraph.

''(ii) A lease under clause (i) shall be for a term of not to exceed 50 years, but may provide for options for renewal or extension of the term by the department or agency concerned.

''(iii) A lease under clause (i) may not require rental payments by the United States.

''(iv) A lease under clause (i) shall include a provision specifying that if the department or agency concerned ceases requiring the use of the leased property before the expiration of the term of the lease, the remainder of the lease term may be satisfied by the same or another department or agency of the Federal Government using the property for a use similar to the use under the lease. Exercise of the authority provided by this clause shall be made in consultation with the redevelopment authority concerned.

''(v) Notwithstanding clause (iii), if a lease under clause (i) involves a substantial portion of the installation, the department or agency concerned may obtain facility services for the leased property and common area maintenance from the redevelopment authority or the redevelopment authority's assignee as a provision of the lease. The facility services and common area maintenance shall be provided at a rate no higher than the rate charged to non-Federal tenants of the transferred property. Facility services and common area maintenance covered by the lease shall not include—

''(I) municipal services that a State or local government is required by law to provide to all landowners in its jurisdiction without direct charge; or

''(II) firefighting or security-guard functions.

''(F) The transfer of personal property under subparagraph (A) shall not be subject to the provisions of subchapters II and III of chapter 5 of title 40, United States Code, if the Secretary determines that the transfer of such property is necessary for the effective implementation of a redevelopment plan with respect to the installation at which such property is located.

''(G) The provisions of section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9620(h)) shall apply to any transfer of real property under this paragraph.

''(H)(i) In the case of an agreement for the transfer of property of a military installation under this para-

graph that was entered into before April 21, 1999, the Secretary may modify the agreement, and in so doing compromise, waive, adjust, release, or reduce any right, title, claim, lien, or demand of the United States, if—

''(I) the Secretary determines that as a result of changed economic circumstances, a modification of the agreement is necessary;

''(II) the terms of the modification do not require the return of any payments that have been made to the Secretary;

''(III) the terms of the modification do not compromise, waive, adjust, release, or reduce any right, title, claim, lien, or demand of the United States with respect to in-kind consideration; and

''(IV) the cash consideration to which the United States is entitled under the modified agreement, when combined with the cash consideration to be received by the United States for the disposal of other real property assets on the installation, are as sufficient as they were under the original agreement to fund the reserve account established under section 204(b)(7)(C) of the Defense Authorization Amendments and Base Closure and Realignment Act [Pub. L. 100–526, 10 U.S.C. 2687 note], with the depreciated value of the investment made with commissary store funds or nonappropriated funds in property disposed of pursuant to the agreement being modified, in accordance with section 2906(d).

''(ii) When exercising the authority granted by clause (i), the Secretary may waive some or all future payments if, and to the extent that, the Secretary determines such waiver is necessary.

''(iii) With the exception of the requirement that the transfer be without consideration, the requirements of subparagraphs (B), (C), and (D) shall be applicable to any agreement modified pursuant to clause (i).

''(I) In the case of an agreement for the transfer of property of a military installation under this paragraph that was entered into during the period beginning on April 21, 1999, and ending on the date of enactment of the National Defense Authorization Act for Fiscal Year 2000 [Oct. 5, 1999], at the request of the redevelopment authority concerned, the Secretary shall modify the agreement to conform to all the requirements of subparagraphs (B), (C), and (D). Such a modification may include the compromise, waiver, adjustment, release, or reduction of any right, title, claim, lien, or demand of the United States under the agreement.

''(J) The Secretary may require any additional terms and conditions in connection with a transfer under this paragraph as such Secretary considers appropriate to protect the interests of the United States.

''(5)(A) Except as provided in subparagraphs (B) and (C), the Secretary shall take such actions as the Secretary determines necessary to ensure that final determinations under paragraph (1) regarding whether another department or agency of the Federal Government has identified a use for any portion of a military installation to be closed or realigned under this part, or will accept transfer of any portion of such installation, are made not later than 6 months after the date of approval of closure or realignment of that installation.

''(B) The Secretary may, in consultation with the redevelopment authority with respect to an installation, postpone making the final determinations referred to in subparagraph (A) with respect to the installation for such period as the Secretary determines appropriate if the Secretary determines that such postponement is in the best interests of the communities affected by the closure or realignment of the installation.

''(C)(i) Before acquiring non-Federal real property as the location for a new or replacement Federal facility of any type, the head of the Federal agency acquiring the property shall consult with the Secretary regarding the feasibility and cost advantages of using Federal property or facilities at a military installation closed or realigned or to be closed or realigned under this part as the location for the new or replacement facility. In considering the availability and suitability of a specific military installation, the Secretary and the head of the Federal agency involved shall obtain the concurrence of the redevelopment authority with respect to the installation and comply with the redevelopment plan for the installation.

''(ii) Not later than 30 days after acquiring non-Federal real property as the location for a new or replacement Federal facility, the head of the Federal agency acquiring the property shall submit to Congress a report containing the results of the consultation under clause (i) and the reasons why military installations referred to in such clause that are located within the area to be served by the new or replacement Federal facility or within a 200-mile radius of the new or replacement facility, whichever area is greater, were considered to be unsuitable or unavailable for the site of the new or replacement facility.

''(iii) This subparagraph shall apply during the period beginning on the date of the enactment of the National Defense Authorization Act for Fiscal Year 1998 [Nov. 18, 1997] and ending on July 31, 2001.

''(6)(A) Except as provided in this paragraph, nothing in this section shall limit or otherwise affect the application of the provisions of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11301 et seq.) to military installations closed under this part. For procedures relating to the use to assist the homeless of buildings and property at installations closed under this part after the date of the enactment of this sentence [Oct. 25, 1994], see paragraph (7).

''(B)(i) Not later than the date on which the Secretary of Defense completes the determination under paragraph (5) of the transferability of any portion of an installation to be closed under this part, the Secretary shall—

''(I) complete any determinations or surveys necessary to determine whether any building or property referred to in clause (ii) is excess property, surplus property, or unutilized or underutilized property for the purpose of the information referred to in section 501(a) of such Act (42 U.S.C. 11411(a)); and

''(II) submit to the Secretary of Housing and Urban Development information on any building or property that is so determined.

''(ii) The buildings and property referred to in clause (i) are any buildings or property located at an installation referred to in that clause for which no use is identified, or of which no Federal department or agency will accept transfer, pursuant to the determination of transferability referred to in that clause.

''(C) Not later than 60 days after the date on which the Secretary of Defense submits information to the Secretary of Housing and Urban Development under subparagraph (B)(ii), the Secretary of Housing and Urban Development shall—

''(i) identify the buildings and property described in such information that are suitable for use to assist the homeless;

''(ii) notify the Secretary of Defense of the buildings and property that are so identified;

''(iii) publish in the Federal Register a list of the buildings and property that are so identified, including with respect to each building or property the information referred to in section 501(c)(1)(B) of such Act [42 U.S.C. 11411(c)(1)(B)]; and

''(iv) make available with respect to each building and property the information referred to in section 501(c)(1)(C) of such Act in accordance with such section 501(c)(1)(C).

''(D) Any buildings and property included in a list published under subparagraph (C)(iii) shall be treated as property available for application for use to assist the homeless under section 501(d) of such Act.

''(E) The Secretary of Defense shall make available in accordance with section 501(f) of such Act any buildings or property referred to in subparagraph (D) for which—

''(i) a written notice of an intent to use such buildings or property to assist the homeless is received by the Secretary of Health and Human Services in accordance with section 501(d)(2) of such Act;

''(ii) an application for use of such buildings or property for such purpose is submitted to the Secretary of Health and Human Services in accordance with section 501(e)(2) of such Act; and

''(iii) the Secretary of Health and Human Services—

''(I) completes all actions on the application in accordance with section 501(e)(3) of such Act; and

''(II) approves the application under section 501(e) of such Act.

''(F)(i) Subject to clause (ii), a redevelopment authority may express in writing an interest in using buildings and property referred to subparagraph (D), and buildings and property referred to in subparagraph (B)(ii) which have not been identified as suitable for use to assist the homeless under subparagraph (C), or use such buildings and property, in accordance with the redevelopment plan with respect to the installation at which such buildings and property are located as follows:

''(I) If no written notice of an intent to use such buildings or property to assist the homeless is received by the Secretary of Health and Human Services in accordance with section 501(d)(2) of such Act during the 60-day period beginning on the date of the publication of the buildings and property under subparagraph (C)(iii).

''(II) In the case of buildings and property for which such notice is so received, if no completed application for use of the buildings or property for such purpose is received by the Secretary of Health and Human Services in accordance with section 501(e)(2) of such Act during the 90-day period beginning on the date of the receipt of such notice.

''(III) In the case of buildings and property for which such application is so received, if the Secretary of Health and Human Services rejects the application under section 501(e) of such Act.

''(ii) Buildings and property shall be available only for the purpose of permitting a redevelopment authority to express in writing an interest in the use of such buildings and property, or to use such buildings and property, under clause (i) as follows:

''(I) In the case of buildings and property referred to in clause (i)(I), during the one-year period beginning on the first day after the 60-day period referred to in that clause.

''(II) In the case of buildings and property referred to in clause (i)(II), during the one-year period beginning on the first day after the 90-day period referred to in that clause.

''(III) In the case of buildings and property referred to in clause (i)(III), during the one-year period beginning on the date of the rejection of the application referred to in that clause.

''(iii) A redevelopment authority shall express an interest in the use of buildings and property under this subparagraph by notifying the Secretary of Defense, in writing, of such an interest.

''(G)(i) Buildings and property available for a redevelopment authority under subparagraph (F) shall not be available for use to assist the homeless under section 501 of such Act [42 U.S.C. 11411] while so available for a redevelopment authority.

''(ii) If a redevelopment authority does not express an interest in the use of buildings or property, or commence the use of buildings or property, under subparagraph (F) within the applicable time periods specified in clause (ii) of such subparagraph, such buildings or property shall be treated as property available for use to assist the homeless under section 501(a) of such Act.

''(7)(A) The disposal of buildings and property located at installations approved for closure or realignment under this part after October 25, 1994, shall be carried out in accordance with this paragraph rather than paragraph (6).

''(B)(i) Not later than the date on which the Secretary of Defense completes the final determinations referred to in paragraph (5) relating to the use or transferability of any portion of an installation covered by this paragraph, the Secretary shall—

''(I) identify the buildings and property at the installation for which the Department of Defense has a use, for which another department or agency of the Federal Government has identified a use, or of which another department or agency will accept a transfer;

''(II) take such actions as are necessary to identify any building or property at the installation not identified under subclause (I) that is excess property or surplus property;

''(III) submit to the Secretary of Housing and Urban Development and to the redevelopment authority for the installation (or the chief executive officer of the State in which the installation is located if there is no redevelopment authority for the installation at the completion of the determination described in the stem of this sentence) information on any building or property that is identified under subclause (II); and

''(IV) publish in the Federal Register and in a newspaper of general circulation in the communities in the vicinity of the installation information on the buildings and property identified under subclause (II).

''(ii) Upon the recognition of a redevelopment authority for an installation covered by this paragraph, the Secretary of Defense shall publish in the Federal Register and in a newspaper of general circulation in the communities in the vicinity of the installation information on the redevelopment authority.

''(C)(i) State and local governments, representatives of the homeless, and other interested parties located in the communities in the vicinity of an installation covered by this paragraph shall submit to the redevelopment authority for the installation a notice of the interest, if any, of such governments, representatives, and parties in the buildings or property, or any portion thereof, at the installation that are identified under subparagraph (B)(i)(II). A notice of interest under this clause shall describe the need of the government, representative, or party concerned for the buildings or property covered by the notice.

''(ii) The redevelopment authority for an installation shall assist the governments, representatives, and parties referred to in clause (i) in evaluating buildings and property at the installation for purposes of this subparagraph.

''(iii) In providing assistance under clause (ii), a redevelopment authority shall—

''(I) consult with representatives of the homeless in the communities in the vicinity of the installation concerned; and

''(II) undertake outreach efforts to provide information on the buildings and property to representatives of the homeless, and to other persons or entities interested in assisting the homeless, in such communities.

''(iv) It is the sense of Congress that redevelopment authorities should begin to conduct outreach efforts under clause (iii)(II) with respect to an installation as soon as is practicable after the date of approval of closure or realignment of the installation.

''(D)(i) State and local governments, representatives of the homeless, and other interested parties shall submit a notice of interest to a redevelopment authority under subparagraph (C) not later than the date specified for such notice by the redevelopment authority.

''(ii) The date specified under clause (i) shall be—

''(I) in the case of an installation for which a redevelopment authority has been recognized as of the date of the completion of the determinations referred to in paragraph (5), not earlier than 3 months and not later than 6 months after the date of publication of such determination in a newspaper of general circulation in the communities in the vicinity of the installation under subparagraph (B)(i)(IV); and

''(II) in the case of an installation for which a redevelopment authority is not recognized as of such date, not earlier than 3 months and not later than 6 months after the date of the recognition of a redevelopment authority for the installation.

''(iii) Upon specifying a date for an installation under this subparagraph, the redevelopment authority for the installation shall—

''(I) publish the date specified in a newspaper of general circulation in the communities in the vicinity of the installation concerned; and

''(II) notify the Secretary of Defense of the date.

''(E)(i) In submitting to a redevelopment authority under subparagraph (C) a notice of interest in the use of buildings or property at an installation to assist the homeless, a representative of the homeless shall submit the following:

''(I) A description of the homeless assistance program that the representative proposes to carry out at the installation.

''(II) An assessment of the need for the program.

''(III) A description of the extent to which the program is or will be coordinated with other homeless assistance programs in the communities in the vicinity of the installation.

''(IV) A description of the buildings and property at the installation that are necessary in order to carry out the program.

''(V) A description of the financial plan, the organization, and the organizational capacity of the representative to carry out the program.

''(VI) An assessment of the time required in order to commence carrying out the program.

''(ii) A redevelopment authority may not release to the public any information submitted to the redevelopment authority under clause (i)(V) without the consent of the representative of the homeless concerned unless such release is authorized under Federal law and under the law of the State and communities in which the installation concerned is located.

''(F)(i) The redevelopment authority for each installation covered by this paragraph shall prepare a redevelopment plan for the installation. The redevelopment authority shall, in preparing the plan, consider the interests in the use to assist the homeless of the buildings and property at the installation that are expressed in the notices submitted to the redevelopment authority under subparagraph (C).

''(ii)(I) In connection with a redevelopment plan for an installation, a redevelopment authority and representatives of the homeless shall prepare legally binding agreements that provide for the use to assist the homeless of buildings and property, resources, and assistance on or off the installation. The implementation of such agreements shall be contingent upon the decision regarding the disposal of the buildings and property covered by the agreements by the Secretary of Defense under subparagraph (K) or (L).

''(II) Agreements under this clause shall provide for the reversion to the redevelopment authority concerned, or to such other entity or entities as the agreements shall provide, of buildings and property that are made available under this paragraph for use to assist the homeless in the event that such buildings and property cease being used for that purpose.

''(iii) A redevelopment authority shall provide opportunity for public comment on a redevelopment plan before submission of the plan to the Secretary of Defense and the Secretary of Housing and Urban Development under subparagraph (G).

''(iv) A redevelopment authority shall complete preparation of a redevelopment plan for an installation and submit the plan under subparagraph (G) not later than 9 months after the date specified by the redevelopment authority for the installation under subparagraph (D).

''(G)(i) Upon completion of a redevelopment plan under subparagraph (F), a redevelopment authority shall submit an application containing the plan to the Secretary of Defense and to the Secretary of Housing and Urban Development.

''(ii) A redevelopment authority shall include in an application under clause (i) the following:

''(I) A copy of the redevelopment plan, including a summary of any public comments on the plan received by the redevelopment authority under subparagraph (F)(iii).

''(II) A copy of each notice of interest of use of buildings and property to assist the homeless that was submitted to the redevelopment authority under subparagraph (C), together with a description of the manner, if any, in which the plan addresses the interest expressed in each such notice and, if the plan does not address such an interest, an explanation why the plan does not address the interest.

''(III) A summary of the outreach undertaken by the redevelopment authority under subparagraph (C)(iii)(II) in preparing the plan.

''(IV) A statement identifying the representatives of the homeless and the homeless assistance planning boards, if any, with which the redevelopment authority consulted in preparing the plan, and the results of such consultations.

''(V) An assessment of the manner in which the redevelopment plan balances the expressed needs of the homeless and the need of the communities in the vicinity of the installation for economic redevelopment and other development.

''(VI) Copies of the agreements that the redevelopment authority proposes to enter into under subparagraph (F)(ii).

''(H)(i) Not later than 60 days after receiving a redevelopment plan under subparagraph (G), the Secretary of Housing and Urban Development shall complete a review of the plan. The purpose of the review is to determine whether the plan, with respect to the expressed interest and requests of representatives of the homeless—

''(I) takes into consideration the size and nature of the homeless population in the communities in the vicinity of the installation, the availability of existing services in such communities to meet the needs of the homeless in such communities, and the suitability of the buildings and property covered by the plan for the use and needs of the homeless in such communities;

''(II) takes into consideration any economic impact of the homeless assistance under the plan on the communities in the vicinity of the installation;

''(III) balances in an appropriate manner the needs of the communities in the vicinity of the installation for economic redevelopment and other development with the needs of the homeless in such communities;

''(IV) was developed in consultation with representatives of the homeless and the homeless assistance planning boards, if any, in the communities in the vicinity of the installation; and

''(V) specifies the manner in which buildings and property, resources, and assistance on or off the installation will be made available for homeless assistance purposes.

''(ii) It is the sense of Congress that the Secretary of Housing and Urban Development shall, in completing the review of a plan under this subparagraph, take into consideration and be receptive to the predominant views on the plan of the communities in the vicinity of the installation covered by the plan.

''(iii) The Secretary of Housing and Urban Development may engage in negotiations and consultations with a redevelopment authority before or during the course of a review under clause (i) with a view toward resolving any preliminary determination of the Secretary that a redevelopment plan does not meet a requirement set forth in that clause. The redevelopment authority may modify the redevelopment plan as a result of such negotiations and consultations.

''(iv) Upon completion of a review of a redevelopment plan under clause (i), the Secretary of Housing and Urban Development shall notify the Secretary of Defense and the redevelopment authority concerned of the determination of the Secretary of Housing and Urban Development under that clause.

''(v) If the Secretary of Housing and Urban Development determines as a result of such a review that a redevelopment plan does not meet the requirements set forth in clause (i), a notice under clause (iv) shall include—

''(I) an explanation of that determination; and

''(II) a statement of the actions that the redevelopment authority must undertake in order to address that determination.

''(I)(i) Upon receipt of a notice under subparagraph (H)(iv) of a determination that a redevelopment plan does not meet a requirement set forth in subparagraph (H)(i), a redevelopment authority shall have the opportunity to—

''(I) revise the plan in order to address the determination; and

''(II) submit the revised plan to the Secretary of Defense and the Secretary of Housing and Urban Development.

''(ii) A redevelopment authority shall submit a revised plan under this subparagraph to such Secretaries, if at all, not later than 90 days after the date on which the redevelopment authority receives the notice referred to in clause (i).

''(J)(i) Not later than 30 days after receiving a revised redevelopment plan under subparagraph (I), the Secretary of Housing and Urban Development shall review the revised plan and determine if the plan meets the requirements set forth in subparagraph (H)(i).

''(ii) The Secretary of Housing and Urban Development shall notify the Secretary of Defense and the redevelopment authority concerned of the determination of the Secretary of Housing and Urban Development under this subparagraph.

''(K)(i) Upon receipt of a notice under subparagraph (H)(iv) or (J)(ii) of the determination of the Secretary of Housing and Urban Development that a redevelopment plan for an installation meets the requirements set forth in subparagraph (H)(i), the Secretary of Defense shall dispose of the buildings and property at the installation.

''(ii) For purposes of carrying out an environmental assessment of the closure or realignment of an installation, the Secretary of Defense shall treat the redevelopment plan for the installation (including the aspects of the plan providing for disposal to State or local governments, representatives of the homeless, and other interested parties) as part of the proposed Federal action for the installation.

''(iii) The Secretary of Defense shall dispose of buildings and property under clause (i) in accordance with the record of decision or other decision document prepared by the Secretary in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). In preparing the record of decision or other decision document, the Secretary shall give substantial deference to the redevelopment plan concerned.

''(iv) The disposal under clause (i) of buildings and property to assist the homeless shall be without consideration.

''(v) In the case of a request for a conveyance under clause (i) of buildings and property for public benefit under section 550 of title 40, United States Code, or sections 47151 through 47153 of title 49, United States Code, the sponsoring Federal agency shall use the eligibility criteria set forth in such section or such subchapter [probably means subchapter II (§ 47151 et seq.) of chapter 471 of Title 49, Transportation] (as the case may be) to determine the eligibility of the applicant and use proposed in the request for the public benefit conveyance. The determination of such eligibility should be made before submission of the redevelopment plan concerned under subparagraph (G).

''(L)(i) If the Secretary of Housing and Urban Development determines under subparagraph (J) that a revised redevelopment plan for an installation does not meet the requirements set forth in subparagraph (H)(i), or if no revised plan is so submitted, that Secretary shall—

''(I) review the original redevelopment plan submitted to that Secretary under subparagraph (G), including the notice or notices of representatives of the homeless referred to in clause (ii)(II) of that subparagraph;

''(II) consult with the representatives referred to in subclause (I), if any, for purposes of evaluating the continuing interest of such representatives in the use of buildings or property at the installation to assist the homeless;

''(III) request that each such representative submit to that Secretary the items described in clause (ii); and

''(IV) based on the actions of that Secretary under subclauses (I) and (II), and on any information obtained by that Secretary as a result of such actions, indicate to the Secretary of Defense the buildings and property at the installation that meet the requirements set forth in subparagraph (H)(i).

''(ii) The Secretary of Housing and Urban Development may request under clause (i)(III) that a representative of the homeless submit to that Secretary the following:

''(I) A description of the program of such representative to assist the homeless.

''(II) A description of the manner in which the buildings and property that the representative proposes to use for such purpose will assist the homeless.

''(III) Such information as that Secretary requires in order to determine the financial capacity of the representative to carry out the program and to ensure that the program will be carried out in compliance with Federal environmental law and Federal law against discrimination.

''(IV) A certification that police services, fire protection services, and water and sewer services available in the communities in the vicinity of the installation concerned are adequate for the program.

''(iii) Not later than 90 days after the date of the receipt of a revised plan for an installation under subparagraph (J), the Secretary of Housing and Urban Development shall—

''(I) notify the Secretary of Defense and the redevelopment authority concerned of the buildings and property at an installation under clause (i)(IV) that the Secretary of Housing and Urban Development determines are suitable for use to assist the homeless; and

''(II) notify the Secretary of Defense of the extent to which the revised plan meets the criteria set forth in subparagraph (H)(i).

''(iv)(I) Upon notice from the Secretary of Housing and Urban Development with respect to an installation under clause (iii), the Secretary of Defense shall dispose of buildings and property at the installation in consultation with the Secretary of Housing and Urban Development and the redevelopment authority concerned.

''(II) For purposes of carrying out an environmental assessment of the closure or realignment of an installation, the Secretary of Defense shall treat the redevelopment plan submitted by the redevelopment authority for the installation (including the aspects of the plan providing for disposal to State or local governments, representatives of the homeless, and other interested parties) as part of the proposed Federal action for the installation. The Secretary of Defense shall incorporate the notification of the Secretary of Housing and Urban Development under clause (iii)(I) as part of the proposed Federal action for the installation only to the extent, if any, that the Secretary of Defense considers such incorporation to be appropriate and consistent with the best and highest use of the installation as a whole, taking into consideration the redevelopment plan submitted by the redevelopment authority.

''(III) The Secretary of Defense shall dispose of buildings and property under subclause (I) in accordance with the record of decision or other decision document prepared by the Secretary in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). In preparing the record of decision or other decision document, the Secretary shall give deference to the redevelopment plan submitted by the redevelopment authority for the installation.

''(IV) The disposal under subclause (I) of buildings and property to assist the homeless shall be without consideration.

''(V) In the case of a request for a conveyance under subclause (I) of buildings and property for public benefit under section 550 of title 40, United States Code, or

sections 47151 through 47153 of title 49, United States Code, the sponsoring Federal agency shall use the eligibility criteria set forth in such section or such subchapter [probably means subchapter II (§ 47151 et seq.) of Title 49, Transportation] (as the case may be) to determine the eligibility of the applicant and use proposed in the request for the public benefit conveyance. The determination of such eligibility should be made before submission of the redevelopment plan concerned under subparagraph (G).

''(M)(i) In the event of the disposal of buildings and property of an installation pursuant to subparagraph (K) or (L), the redevelopment authority for the installation shall be responsible for the implementation of and compliance with agreements under the redevelopment plan described in that subparagraph for the installation.

''(ii) If a building or property reverts to a redevelopment authority under such an agreement, the redevelopment authority shall take appropriate actions to secure, to the maximum extent practicable, the utilization of the building or property by other homeless representatives to assist the homeless. A redevelopment authority may not be required to utilize the building or property to assist the homeless.

''(N) The Secretary of Defense may postpone or extend any deadline provided for under this paragraph in the case of an installation covered by this paragraph for such period as the Secretary considers appropriate if the Secretary determines that such postponement is in the interests of the communities affected by the closure or realignment of the installation. The Secretary shall make such determinations in consultation with the redevelopment authority concerned and, in the case of deadlines provided for under this paragraph with respect to the Secretary of Housing and Urban Development, in consultation with the Secretary of Housing and Urban Development.

''(O) For purposes of this paragraph, the term 'communities in the vicinity of the installation', in the case of an installation, means the communities that constitute the political jurisdictions (other than the State in which the installation is located) that comprise the redevelopment authority for the installation.

''(P) For purposes of this paragraph, the term 'other interested parties', in the case of an installation, includes any parties eligible for the conveyance of property of the installation under section 550 of title 40, United States Code, or sections 47151 through 47153 of title 49, United States Code, whether or not the parties assist the homeless.

''(8)(A) Subject to subparagraph (C), the Secretary may enter into agreements (including contracts, cooperative agreements, or other arrangements for reimbursement) with local governments for the provision of police or security services, fire protection services, airfield operation services, or other community services by such governments at military installations to be closed under this part, or at facilities not yet transferred or otherwise disposed of in the case of installations closed under this part, if the Secretary determines that the provision of such services under such agreements is in the best interests of the Department of Defense.

''(B) The Secretary may exercise the authority provided under this paragraph without regard to the provisions of chapter 146 of title 10, United States Code.

''(C) The Secretary may not exercise the authority under subparagraph (A) with respect to an installation earlier than 180 days before the date on which the installation is to be closed.

''(D) The Secretary shall include in a contract for services entered into with a local government under this paragraph a clause that requires the use of professionals to furnish the services to the extent that professionals are available in the area under the jurisdiction of such government.

''(c) APPLICABILITY OF NATIONAL ENVIRONMENTAL POLICY ACT OF 1969.—(1) The provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) shall not apply to the actions of the President, the Commission, and, except as provided in paragraph (2), the Department of Defense in carrying out this part.

''(2)(A) The provisions of the National Environmental Policy Act of 1969 shall apply to actions of the Department of Defense under this part (i) during the process of property disposal, and (ii) during the process of relocating functions from a military installation being closed or realigned to another military installation after the receiving installation has been selected but before the functions are relocated.

''(B) In applying the provisions of the National Environmental Policy Act of 1969 to the processes referred to in subparagraph (A), the Secretary of Defense and the Secretary of the military departments concerned shall not have to consider—

''(i) the need for closing or realigning the military installation which has been recommended for closure or realignment by the Commission;

''(ii) the need for transferring functions to any military installation which has been selected as the receiving installation; or

''(iii) military installations alternative to those recommended or selected.

''(3) A civil action for judicial review, with respect to any requirement of the National Environmental Policy Act of 1969 to the extent such Act is applicable under paragraph (2), of any act or failure to act by the Department of Defense during the closing, realigning, or relocating of functions referred to in clauses (i) and (ii) of paragraph (2)(A), may not be brought more than 60 days after the date of such act or failure to act.

''(d) WAIVER.—The Secretary of Defense may close or realign military installations under this part without regard to—

''(1) any provision of law restricting the use of funds for closing or realigning military installations included in any appropriations or authorization Act; and

''(2) sections 2662 and 2687 of title 10, United States Code.

''(e) TRANSFER AUTHORITY IN CONNECTION WITH PAYMENT OF ENVIRONMENTAL REMEDIATION COSTS.—(1)(A) Subject to paragraph (2) of this subsection and section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9620(h)), the Secretary may enter into an agreement to transfer by deed real property or facilities referred to in subparagraph (B) with any person who agrees to perform all environmental restoration, waste management, and environmental compliance activities that are required for the property or facilities under Federal and State laws, administrative decisions, agreements (including schedules and milestones), and concurrences.

''(B) The real property and facilities referred to in subparagraph (A) are the real property and facilities located at an installation closed or to be closed, or realigned or to be realigned, under this part that are available exclusively for the use, or expression of an interest in a use, of a redevelopment authority under subsection (b)(6)(F) during the period provided for that use, or expression of interest in use, under that subsection. The real property and facilities referred to in subparagraph (A) are also the real property and facilities located at an installation approved for closure or realignment under this part after 2001 that are available for purposes other than to assist the homeless.

''(C) The Secretary may require any additional terms and conditions in connection with an agreement authorized by subparagraph (A) as the Secretary considers appropriate to protect the interests of the United States.

''(2) A transfer of real property or facilities may be made under paragraph (1) only if the Secretary certifies to Congress that—

''(A) the costs of all environmental restoration, waste management, and environmental compliance activities otherwise to be paid by the Secretary with respect to the property or facilities are equal to or greater than the fair market value of the property or

facilities to be transferred, as determined by the Secretary; or

''(B) if such costs are lower than the fair market value of the property or facilities, the recipient of the property or facilities agrees to pay the difference between the fair market value and such costs.

''(3) In the case of property or facilities covered by a certification under paragraph (2)(A), the Secretary may pay the recipient of such property or facilities an amount equal to the lesser of—

''(A) the amount by which the costs incurred by the recipient of such property or facilities for all environmental restoration, waste, management, and environmental compliance activities with respect to such property or facilities exceed the fair market value of such property or facilities as specified in such certification; or

''(B) the amount by which the costs (as determined by the Secretary) that would otherwise have been incurred by the Secretary for such restoration, management, and activities with respect to such property or facilities exceed the fair market value of such property or facilities as so specified.

''(4) As part of an agreement under paragraph (1), the Secretary shall disclose to the person to whom the property or facilities will be transferred any information of the Secretary regarding the environmental restoration, waste management, and environmental compliance activities described in paragraph (1) that relate to the property or facilities. The Secretary shall provide such information before entering into the agreement.

''(5) Nothing in this subsection shall be construed to modify, alter, or amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) or the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.).

''(6) Section 330 of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102–484; 10 U.S.C. 2687 note) shall not apply to any transfer under this subsection to persons or entities described in subsection (a)(2) of such section 330, except in the case of releases or threatened releases not disclosed pursuant to paragraph (4).

''(f) REPORT ON DESIGNATION OF PROPERTY AS EXCESS INSTEAD OF SURPLUS.—(1) Not later than 180 days after the date on which real property located at a military installation closed or realigned under this part is declared excess, but not surplus, the Secretary of Defense shall submit to the congressional defense committees a report identifying the property and including the information required by paragraph (2). The Secretary shall update the report every 180 days thereafter until the property is either declared surplus or transferred to another Federal agency.

''(2) Each report under paragraph (1) shall include the following elements:

''(A) The reason for the excess designation.

''(B) The nature of the contemplated transfer.

''(C) The proposed timeline for the transfer.

''(D) Any impediments to completing the Federal agency screening process.

''(g) ACQUISITION OF MANUFACTURED HOUSING.—(1) In closing or realigning any military installation under this part, the Secretary may purchase any or all right, title, and interest of a member of the Armed Forces and any spouse of the member in manufactured housing located at a manufactured housing park established at an installation closed or realigned under this part, or make a payment to the member to relocate the manufactured housing to a suitable new site, if the Secretary determines that—

''(A) it is in the best interests of the Federal Government to eliminate or relocate the manufactured housing park; and

''(B) the elimination or relocation of the manufactured housing park would result in an unreasonable financial hardship to the owners of the manufactured housing.

''(2) Any payment made under this subsection shall not exceed 90 percent of the purchase price of the manufactured housing, as paid by the member or any spouse of the member, plus the cost of any permanent improvements subsequently made to the manufactured housing by the member or spouse of the member.

''(3) The Secretary shall dispose of manufactured housing acquired under this subsection through resale, donation, trade or otherwise within one year of acquisition.

''SEC. 2906. DEPARTMENT OF DEFENSE BASE CLOSURE ACCOUNT

''(a) ESTABLISHMENT.—There is hereby established on the books of the Treasury an account to be known as the 'Department of Defense Base Closure Account' which shall be administered by the Secretary as a single account.

''(b) CREDITS TO ACCOUNT.—There shall be credited to the Account the following:

''(1) Funds authorized for and appropriated to the Account.

''(2) Funds transferred to the Account pursuant to section 2711(b) of the Military Construction Authorization Act for Fiscal Year 2013 [div. B of Pub. L. 112–239].

''(3) Funds that the Secretary may, subject to approval in an appropriation Act, transfer to the Account from funds appropriated to the Department of Defense for any purpose, except that funds may be transferred under the authority of this paragraph only after the date on which the Secretary transmits written notice of, and justification for, such transfer to the congressional defense committees.

''(4) Proceeds received from the lease, transfer, or disposal of any property at a military installation closed or realigned under this part or the 1988 BRAC law.

''(c) USE OF ACCOUNT.—

''(1) AUTHORIZED PURPOSES.—The Secretary may use the funds in the Account only for the following purposes:

''(A) To carry out the Defense Environmental Restoration Program under section 2701 of title 10, United States Code, and other environmental restoration and mitigation activities at military installations closed or realigned under this part or the 1988 BRAC law.

''(B) To cover property management, disposal, and caretaker costs incurred at military installations closed or realigned under this part or the 1988 BRAC law.

''(C) To cover costs associated with supervision, inspection, overhead, engineering, and design of military construction projects undertaken under this part or the 1988 BRAC law before September 30, 2013, and subsequent claims, if any, related to such activities.

''(D) To record, adjust, and liquidate obligations properly chargeable to the following accounts:

''(i) The Department of Defense Base Closure Account 2005 established by section 2906A of this part, as in effect on September 30, 2013.

''(ii) The Department of Defense Base Closure Account 1990 established by this section, as in effect on September 30, 2013.

''(iii) The Department of Defense Base Closure Account established by section 207 of the 1988 BRAC law, as in effect on September 30, 2013.

''(2) SOLE SOURCE OF FUNDS.—The Account shall be the sole source of Federal funds for the activities specified in paragraph (1) at a military installation closed or realigned under this part or the 1988 BRAC law.

''(3) PROHIBITION ON USE OF ACCOUNT FOR NEW MILITARY CONSTRUCTION.—Except as provided in paragraph (1), funds in the Account may not be used, directly or by transfer to another appropriations account, to carry out a military construction project, including a minor military construction project, under section 2905(a) or any other provision of law at a military installation closed or realigned under this part or the 1988 BRAC law.

"(d) DISPOSAL OR TRANSFER OF COMMISSARY STORES AND PROPERTY PURCHASED WITH NONAPPROPRIATED FUNDS.—

"(1) DEPOSIT OF PROCEEDS IN RESERVE ACCOUNT.—If any real property or facility acquired, constructed, or improved (in whole or in part) with commissary store funds or nonappropriated funds is transferred or disposed of in connection with the closure or realignment of a military installation under this part, a portion of the proceeds of the transfer or other disposal of property on that installation shall be deposited in the reserve account established under section 204(b)(7)(C) of the 1988 BRAC law.

"(2) The amount so deposited under paragraph (1) shall be equal to the depreciated value of the investment made with such funds in the acquisition, construction, or improvement of that particular real property or facility. The depreciated value of the investment shall be computed in accordance with regulations prescribed by the Secretary.

"(3) USE OF RESERVE FUNDS.—Subject to the limitation contained in section 204(b)(7)(C)(iii) of the 1988 BRAC law, amounts in the reserve account are hereby made available to the Secretary, without appropriation and until expended, for the purpose of acquiring, constructing, and improving—

"(A) commissary stores; and

"(B) real property and facilities for nonappropriated fund instrumentalities.

"(e) CONSOLIDATED BUDGET JUSTIFICATION DISPLAY FOR ACCOUNT.—

"(1) CONSOLIDATED BUDGET INFORMATION REQUIRED.—The Secretary shall establish a consolidated budget justification display in support of the Account that for each fiscal year—

"(A) details the amount and nature of credits to, and expenditures from, the Account during the preceding fiscal year;

"(B) separately details the caretaker and environmental remediation costs associated with each military installation for which a budget request is made;

"(C) specifies the transfers into the Account and the purposes for which these transferred funds will be further obligated, to include caretaker and environment remediation costs associated with each military installation;

"(D) specifies the closure or realignment recommendation, and the base closure round in which the recommendation was made, that precipitated the inclusion of the military installation; and

"(E) details any intra-budget activity transfers within the Account that exceeded $1,000,000 during the preceding fiscal year or that are proposed for the next fiscal year and will exceed $1,000,000.

"(2) SUBMISSION.—The Secretary shall include the information required by paragraph (1) in the materials that the Secretary submits to Congress in support of the budget for a fiscal year submitted by the President pursuant to section 1105 of title 31, United States Code.

"(f) CLOSURE OF ACCOUNT; TREATMENT OF REMAINING FUNDS.—

"(1) CLOSURE.—The Account shall be closed at the time and in the manner provided for appropriation accounts under section 1555 of title 31, United States Code, except that unobligated funds which remain in the Account upon closure shall be held by the Secretary of the Treasury until transferred by law after the congressional defense committees receive the final report transmitted under paragraph (2).

"(2) FINAL REPORT.—No later than 60 days after the closure of the Account under paragraph (1), the Secretary shall transmit to the congressional defense committees a report containing an accounting of—

"(A) all the funds credited to and expended from the Account or otherwise expended under this part or the 1988 BRAC law; and

"(B) any funds remaining in the Account.

"(g) DEFINITIONS.—In this section:

"(1) The term 'commissary store funds' means funds received from the adjustment of, or surcharge on, selling prices at commissary stores fixed under section 2685 of title 10, United States Code.

"(2) The term 'nonappropriated funds' means funds received from a nonappropriated fund instrumentality.

"(3) The term 'nonappropriated fund instrumentality' means an instrumentality of the United States under the jurisdiction of the Armed Forces (including the Army and Air Force Exchange Service, the Navy Resale and Services Support Office, and the Marine Corps exchanges) which is conducted for the comfort, pleasure, contentment, or physical or mental improvement of members of the Armed Forces.

"(4) The term '1988 BRAC law' means title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 10 U.S.C. 2687 note).

"[SEC. 2906A. Repealed. Pub. L. 112–239, div. B, title XXVII, § 2711(a), Jan. 2, 2013, 126 Stat. 2140.]

"[SEC. 2907. Repealed. Pub. L. 112–239, div. B, title XXVII, § 2711(c)(2), Jan. 2, 2013, 126 Stat. 2143.]

"SEC. 2908. CONGRESSIONAL CONSIDERATION OF COMMISSION REPORT

"(a) TERMS OF THE RESOLUTION.—For purposes of section 2904(b), the term 'joint resolution' means only a joint resolution which is introduced within the 10-day period beginning on the date on which the President transmits the report to the Congress under section 2903(e), and—

"(1) which does not have a preamble;

"(2) the matter after the resolving clause of which is as follows: 'That Congress disapproves the recommendations of the Defense Base Closure and Realignment Commission as submitted by the President on ———', the blank space being filled in with the appropriate date; and

"(3) the title of which is as follows: 'Joint resolution disapproving the recommendations of the Defense Base Closure and Realignment Commission.'.

"(b) REFERRAL.—A resolution described in subsection (a) that is introduced in the House of Representatives shall be referred to the Committee on Armed Services of the House of Representatives. A resolution described in subsection (a) introduced in the Senate shall be referred to the Committee on Armed Services of the Senate.

"(c) DISCHARGE.—If the committee to which a resolution described in subsection (a) is referred has not reported such resolution (or an identical resolution) by the end of the 20-day period beginning on the date on which the President transmits the report to the Congress under section 2903(e), such committee shall be, at the end of such period, discharged from further consideration of such resolution, and such resolution shall be placed on the appropriate calendar of the House involved.

"(d) CONSIDERATION.—(1) On or after the third day after the date on which the committee to which such a resolution is referred has reported, or has been discharged (under subsection (c)) from further consideration of, such a resolution, it is in order (even though a previous motion to the same effect has been disagreed to) for any Member of the respective House to move to proceed to the consideration of the resolution. A Member may make the motion only on the day after the calendar day on which the Member announces to the House concerned the Member's intention to make the motion, except that, in the case of the House of Representatives, the motion may be made without such prior announcement if the motion is made by direction of the committee to which the resolution was referred. All points of order against the resolution (and against consideration of the resolution) are waived. The motion is highly privileged in the House of Representatives and is privileged in the Senate and is not debatable. The motion is not subject to amendment, or to a motion to

postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the resolution is agreed to, the respective House shall immediately proceed to consideration of the joint resolution without intervening motion, order, or other business, and the resolution shall remain the unfinished business of the respective House until disposed of.

"(2) Debate on the resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than 2 hours, which shall be divided equally between those favoring and those opposing the resolution. An amendment to the resolution is not in order. A motion further to limit debate is in order and not debatable. A motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the resolution is not in order. A motion to reconsider the vote by which the resolution is agreed to or disagreed to is not in order.

"(3) Immediately following the conclusion of the debate on a resolution described in subsection (a) and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the appropriate House, the vote on final passage of the resolution shall occur.

"(4) Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution described in subsection (a) shall be decided without debate.

"(e) CONSIDERATION BY OTHER HOUSE.—(1) If, before the passage by one House of a resolution of that House described in subsection (a), that House receives from the other House a resolution described in subsection (a), then the following procedures shall apply:

"(A) The resolution of the other House shall not be referred to a committee and may not be considered in the House receiving it except in the case of final passage as provided in subparagraph (B)(ii).

"(B) With respect to a resolution described in subsection (a) of the House receiving the resolution—

"(i) the procedure in that House shall be the same as if no resolution had been received from the other House; but

"(ii) the vote on final passage shall be on the resolution of the other House.

"(2) Upon disposition of the resolution received from the other House, it shall no longer be in order to consider the resolution that originated in the receiving House.

"(f) RULES OF THE SENATE AND HOUSE.—This section is enacted by Congress—

"(1) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of a resolution described in subsection (a), and it supersedes other rules only to the extent that it is inconsistent with such rules; and

"(2) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

"SEC. 2909. RESTRICTION ON OTHER BASE CLOSURE AUTHORITY

"(a) IN GENERAL.—Except as provided in subsection (c), during the period beginning on November 5, 1990, and ending on April 15, 2006, this part shall be the exclusive authority for selecting for closure or realignment, or for carrying out any closure or realignment of, a military installation inside the United States.

"(b) RESTRICTION.—Except as provided in subsection (c), none of the funds available to the Department of Defense may be used, other than under this part, during the period specified in subsection (a)—

"(1) to identify, through any transmittal to the Congress or through any other public announcement or notification, any military installation inside the United States as an installation to be closed or realigned or as an installation under consideration for closure or realignment; or

"(2) to carry out any closure or realignment of a military installation inside the United States.

"(c) EXCEPTION.—Nothing in this part affects the authority of the Secretary to carry out—

"(1) closures and realignments under title II of Public Law 100–526 [set out below]; and

"(2) closures and realignments to which section 2687 of title 10, United States Code, is not applicable, including closures and realignments carried out for reasons of national security or a military emergency referred to in subsection (c) of such section.

"SEC. 2910. DEFINITIONS

"As used in this part:

"(1) The term 'Account' means the Department of Defense Base Closure Account established by section 2906(a).

"(2) The term 'congressional defense committees' means the Committee on Armed Services and the Committee on Appropriations of the Senate and the Committee on Armed Services and the Committee on Appropriations of the House of Representatives.

"(3) The term 'Commission' means the Commission established by section 2902.

"(4) The term 'military installation' means a base, camp, post, station, yard, center, homeport facility for any ship, or other activity under the jurisdiction of the Department of Defense, including any leased facility. Such term does not include any facility used primarily for civil works, rivers and harbors projects, flood control, or other projects not under the primary jurisdiction or control of the Department of Defense.

"(5) The term 'realignment' includes any action which both reduces and relocates functions and civilian personnel positions but does not include a reduction in force resulting from workload adjustments, reduced personnel or funding levels, or skill imbalances.

"(6) The term 'Secretary' means the Secretary of Defense.

"(7) The term 'United States' means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, and any other commonwealth, territory, or possession of the United States.

"(8) The term 'date of approval', with respect to a closure or realignment of an installation, means the date on which the authority of Congress to disapprove a recommendation of closure or realignment, as the case may be, of such installation under this part expires.

"(9)(A) The term 'redevelopment authority', in the case of an installation to be closed or realigned under this part, means any entity (including an entity established by a State or local government) recognized by the Secretary of Defense as the entity responsible for developing the redevelopment plan with respect to the installation or for directing the implementation of such plan.

"(B) If no redevelopment authority referred to in subparagraph (A) exists with respect to a military installation, the term shall include the following:

"(i) The local government in whose jurisdiction the military installation is wholly located.

"(ii) A local government agency or State government agency designated by the chief executive officer of the State in which the military installation is located under subparagraph (B) of section 2905(b)(3) for the purpose of the consultation required by subparagraph (A) of such section.

"(10) The term 'redevelopment plan' in the case of an installation to be closed or realigned under this part, means a plan that—

"(A) is agreed to by the local redevelopment authority with respect to the installation; and

''(B) provides for the reuse or redevelopment of the real property and personal property of the installation that is available for such reuse and redevelopment as a result of the closure or realignment of the installation.

''(11) The term 'representative of the homeless' has the meaning given such term in section 501(i)(4) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11411(i)(4)).

''SEC. 2911. CLARIFYING AMENDMENT

''[Amended this section.]

''SEC. 2912. 2005 ROUND OF REALIGNMENTS AND CLOSURES OF MILITARY INSTALLATIONS.

''(a) FORCE-STRUCTURE PLAN AND INFRASTRUCTURE INVENTORY.—

''(1) PREPARATION AND SUBMISSION.—As part of the budget justification documents submitted to Congress in support of the budget for the Department of Defense for fiscal year 2005, the Secretary shall include the following:

''(A) A force-structure plan for the Armed Forces based on an assessment by the Secretary of the probable threats to the national security during the 20-year period beginning with fiscal year 2005, the probable end-strength levels and major military force units (including land force divisions, carrier and other major combatant vessels, air wings, and other comparable units) needed to meet these threats, and the anticipated levels of funding that will be available for national defense purposes during such period.

''(B) A comprehensive inventory of military installations world-wide for each military department, with specifications of the number and type of facilities in the active and reserve forces of each military department.

''(2) RELATIONSHIP OF PLAN AND INVENTORY.—Using the force-structure plan and infrastructure inventory prepared under paragraph (1), the Secretary shall prepare (and include as part of the submission of such plan and inventory) the following:

''(A) A description of the infrastructure necessary to support the force structure described in the force-structure plan.

''(B) A discussion of categories of excess infrastructure and infrastructure capacity.

''(C) An economic analysis of the effect of the closure or realignment of military installations to reduce excess infrastructure.

''(3) SPECIAL CONSIDERATIONS.—In determining the level of necessary versus excess infrastructure under paragraph (2), the Secretary shall consider the following:

''(A) The anticipated continuing need for and availability of military installations outside the United States, taking into account current restrictions on the use of military installations outside the United States and the potential for future prohibitions or restrictions on the use of such military installations.

''(B) Any efficiencies that may be gained from joint tenancy by more than one branch of the Armed Forces at a military installation.

''(4) REVISION.—The Secretary may revise the force-structure plan and infrastructure inventory. If the Secretary makes such a revision, the Secretary shall submit the revised plan or inventory to Congress not later than March 15, 2005. For purposes of selecting military installations for closure or realignment under this part in 2005, no revision of the force-structure plan or infrastructure inventory is authorized after that date.

''(b) CERTIFICATION OF NEED FOR FURTHER CLOSURES AND REALIGNMENTS.—

''(1) CERTIFICATION REQUIRED.—On the basis of the force-structure plan and infrastructure inventory prepared under subsection (a) and the descriptions and economic analysis prepared under such subsection, the Secretary shall include as part of the submission of the plan and inventory—

''(A) a certification regarding whether the need exists for the closure or realignment of additional military installations; and

''(B) if such need exists, a certification that the additional round of closures and realignments would result in annual net savings for each of the military departments beginning not later than fiscal year 2011.

''(2) EFFECT OF FAILURE TO CERTIFY.—If the Secretary does not include the certifications referred to in paragraph (1), the process by which military installations may be selected for closure or realignment under this part in 2005 shall be terminated.

''(c) COMPTROLLER GENERAL EVALUATION.—

''(1) EVALUATION REQUIRED.—If the certification is provided under subsection (b), the Comptroller General shall prepare an evaluation of the following:

''(A) The force-structure plan and infrastructure inventory prepared under subsection (a) and the final selection criteria specified in section 2913, including an evaluation of the accuracy and analytical sufficiency of such plan, inventory, and criteria.

''(B) The need for the closure or realignment of additional military installations.

''(2) SUBMISSION.—The Comptroller General shall submit the evaluation to Congress not later than 60 days after the date on which the force-structure plan and infrastructure inventory are submitted to Congress.

''(d) AUTHORIZATION OF ADDITIONAL ROUND; COMMISSION.—

''(1) APPOINTMENT OF COMMISSION.—Subject to the certifications required under subsection (b), the President may commence an additional round for the selection of military installations for closure and realignment under this part in 2005 by transmitting to the Senate, not later than March 15, 2005, nominations pursuant to section 2902(c) for the appointment of new members to the Defense Base Closure and Realignment Commission.

''(2) EFFECT OF FAILURE TO NOMINATE.—If the President does not transmit to the Senate the nominations for the Commission by March 15, 2005, the process by which military installations may be selected for closure or realignment under this part in 2005 shall be terminated.

''(3) MEMBERS.—Notwithstanding section 2902(c)(1), the Commission appointed under the authority of this subsection shall consist of nine members.

''(4) TERMS; MEETINGS; TERMINATION.—Notwithstanding subsections (d), (e)(1), and (*l*) of section 2902, the Commission appointed under the authority of this subsection shall meet during calendar year 2005 and shall terminate on April 15, 2006.

''(5) FUNDING.—If no funds are appropriated to the Commission by the end of the second session of the 108th Congress for the activities of the Commission in 2005, the Secretary may transfer to the Commission for purposes of its activities under this part in that year such funds as the Commission may require to carry out such activities. The Secretary may transfer funds under the preceding sentence from any funds available to the Secretary. Funds so transferred shall remain available to the Commission for such purposes until expended.

''SEC. 2913. FINAL SELECTION CRITERIA FOR ADDITIONAL ROUND OF BASE CLOSURES AND REALIGNMENTS.

''(a) FINAL SELECTION CRITERIA.—The final criteria to be used by the Secretary in making recommendations for the closure or realignment of military installations inside the United States under this part in 2005 shall be the military value and other criteria specified in subsections (b) and (c).

''(b) MILITARY VALUE CRITERIA.—The military value criteria are as follows:

''(1) The current and future mission capabilities and the impact on operational readiness of the total force

of the Department of Defense, including the impact on joint warfighting, training, and readiness.

''(2) The availability and condition of land, facilities, and associated airspace (including training areas suitable for maneuver by ground, naval, or air forces throughout a diversity of climate and terrain areas and staging areas for the use of the Armed Forces in homeland defense missions) at both existing and potential receiving locations.

''(3) The ability to accommodate contingency, mobilization, surge, and future total force requirements at both existing and potential receiving locations to support operations and training.

''(4) The cost of operations and the manpower implications.

''(c) OTHER CRITERIA.—The other criteria that the Secretary shall use in making recommendations for the closure or realignment of military installations inside the United States under this part in 2005 are as follows:

''(1) The extent and timing of potential costs and savings, including the number of years, beginning with the date of completion of the closure or realignment, for the savings to exceed the costs.

''(2) The economic impact on existing communities in the vicinity of military installations.

''(3) The ability of the infrastructure of both the existing and potential receiving communities to support forces, missions, and personnel.

''(4) The environmental impact, including the impact of costs related to potential environmental restoration, waste management, and environmental compliance activities.

''(d) PRIORITY GIVEN TO MILITARY VALUE.—The Secretary shall give priority consideration to the military value criteria specified in subsection (b) in the making of recommendations for the closure or realignment of military installations.

''(e) EFFECT ON DEPARTMENT AND OTHER AGENCY COSTS.—The selection criteria relating to the cost savings or return on investment from the proposed closure or realignment of military installations shall take into account the effect of the proposed closure or realignment on the costs of any other activity of the Department of Defense or any other Federal agency that may be required to assume responsibility for activities at the military installations.

''(f) RELATION TO OTHER MATERIALS.—The final selection criteria specified in this section shall be the only criteria to be used, along with the force-structure plan and infrastructure inventory referred to in section 2912, in making recommendations for the closure or realignment of military installations inside the United States under this part in 2005.

''(g) RELATION TO CRITERIA FOR EARLIER ROUNDS.—Section 2903(b), and the selection criteria prepared under such section, shall not apply with respect to the process of making recommendations for the closure or realignment of military installations in 2005.

''SEC. 2914. SPECIAL PROCEDURES FOR MAKING RECOMMENDATIONS FOR REALIGNMENTS AND CLOSURES FOR 2005 ROUND; COMMISSION CONSIDERATION OF RECOMMENDATIONS.

''(a) RECOMMENDATIONS REGARDING CLOSURE OR REALIGNMENT OF MILITARY INSTALLATIONS.—If the Secretary makes the certifications required under section 2912(b), the Secretary shall publish in the Federal Register and transmit to the congressional defense committees and the Commission, not later than May 16, 2005, a list of the military installations inside the United States that the Secretary recommends for closure or realignment on the basis of the force-structure plan and infrastructure inventory prepared by the Secretary under section 2912 and the final selection criteria specified in section 2913.

''(b) PREPARATION OF RECOMMENDATIONS.—

''(1) IN GENERAL.—The Secretary shall comply with paragraphs (2) through (6) of section 2903(c) in preparing and transmitting the recommendations under this section. However, paragraph (6) of section 2903(c) relating to submission of information to Congress shall be deemed to require such submission within 48 hours.

''(2) CONSIDERATION OF LOCAL GOVERNMENT VIEWS.—(A) In making recommendations to the Commission in 2005, the Secretary shall consider any notice received from a local government in the vicinity of a military installation that the government would approve of the closure or realignment of the installation.

''(B) Notwithstanding the requirement in subparagraph (A), the Secretary shall make the recommendations referred to in that subparagraph based on the force-structure plan, infrastructure inventory, and final selection criteria otherwise applicable to such recommendations.

''(C) The recommendations shall include a statement of the result of the consideration of any notice described in subparagraph (A) that is received with respect to a military installation covered by such recommendations. The statement shall set forth the reasons for the result.

''[(c) Repealed. Pub. L. 108–375, div. B, title XXVIII, § 2833, Oct. 28, 2004, 118 Stat. 2134.]

''(d) COMMISSION REVIEW AND RECOMMENDATIONS.—

''(1) IN GENERAL.—Except as provided in this subsection, section 2903(d) shall apply to the consideration by the Commission of the recommendations transmitted by the Secretary in 2005. The Commission's report containing its findings and conclusions, based on a review and analysis of the Secretary's recommendations, shall be transmitted to the President not later than September 8, 2005.

''(2) AVAILABILITY OF RECOMMENDATIONS TO CONGRESS.—After September 8, 2005, the Commission shall promptly provide, upon request, to any Member of Congress information used by the Commission in making its recommendations.

''(3) LIMITATIONS ON AUTHORITY TO CONSIDER ADDITIONS TO CLOSURE OR REALIGNMENT LISTS.—The Commission may not consider making a change in the recommendations of the Secretary that would add a military installation to the Secretary's list of installations recommended for closure or realignment unless, in addition to the requirements of section 2903(d)(2)(C)—

''(A) the Commission provides the Secretary with at least a 15-day period, before making the change, in which to submit an explanation of the reasons why the installation was not included on the closure or realignment list by the Secretary; and

''(B) the decision to add the installation for Commission consideration is supported by at least seven members of the Commission.

''(4) TESTIMONY BY SECRETARY.—The Commission shall invite the Secretary to testify at a public hearing, or a closed hearing if classified information is involved, on any proposed change by the Commission to the Secretary's recommendations.

''(5) REQUIREMENTS TO EXPAND CLOSURE OR REALIGNMENT RECOMMENDATIONS.—In the report required under section 2903(d)(2)(A) that is to be transmitted under paragraph (1), the Commission may not make a change in the recommendations of the Secretary that would close a military installation not recommended for closure by the Secretary, would realign a military installation not recommended for closure or realignment by the Secretary, or would expand the extent of the realignment of a military installation recommended for realignment by the Secretary unless—

''(A) at least two members of the Commission visit the military installation before the date of the transmittal of the report; and

''(B) the decision of the Commission to make the change to recommend the closure of the military installation, the realignment of the installation, or the expanded realignment of the installation is supported by at least seven members of the Commission.

''(6) COMPTROLLER GENERAL REPORT.—The Comptroller General report required by section 2903(d)(5)(B) analyzing the recommendations of the Secretary and the selection process in 2005 shall be transmitted to the congressional defense committees not later than July 1, 2005.

''(e) REVIEW BY THE PRESIDENT.—

''(1) IN GENERAL.—Except as provided in this subsection, section 2903(e) shall apply to the review by the President of the recommendations of the Commission under this section, and the actions, if any, of the Commission in response to such review, in 2005. The President shall review the recommendations of the Secretary and the recommendations contained in the report of the Commission under subsection (d) and prepare a report, not later than September 23, 2005, containing the President's approval or disapproval of the Commission's recommendations.

''(2) COMMISSION RECONSIDERATION.—If the Commission prepares a revised list of recommendations under section 2903(e)(3) in 2005 in response to the review of the President in that year under paragraph (1), the Commission shall transmit the revised list to the President not later than October 20, 2005.

''(3) EFFECT OF FAILURE TO TRANSMIT.—If the President does not transmit to Congress an approval and certification described in paragraph (2) or (4) of section 2903(e) by November 7, 2005, the process by which military installations may be selected for closure or realignment under this part in 2005 shall be terminated.

''(4) EFFECT OF TRANSMITTAL.—A report of the President under this subsection containing the President's approval of the Commission's recommendations is deemed to be a report under section 2903(e) for purposes of sections 2904 and 2908.''

[For effective date of amendments by section 2711(a), (c)(2), (3)(A) of Pub. L. 112–239 to sections 2906 to 2907 and 2910 of Pub. L. 101–510, set out above, see section 2711(d) of Pub. L. 112–239, set out as an Effective Date of 2013 Amendment note under section 2701 of this title.]

[Pub. L. 110–417, div. B, title XXVII, §2712(a)(2), Oct. 14, 2008, 122 Stat. 4716, provided that: ''The amendments made by paragraph (1) [amending Pub. L. 110–181, §2704(a), set out above] shall take effect on January 28, 2008, as if included in the enactment of section 2704 of the Military Construction Authorization Act for Fiscal Year 2008 [Pub. L. 110–181].'']

[Pub. L. 110–417, div. B, §2003, Oct. 14, 2008, 122 Stat. 4658, provided that: ''Titles XXI, XXII, XXIII, XXIV, XXV, XXVI [122 Stat. 4658, 4669, 4675, 4687, 4698], XXVII [enacting Pub. L. 110–417, §2712(a)(2), set out above, and amending Pub. L. 110–510, div. B, title XXIX, part A, and Pub. L. 110–181, §2704, which amended Pub. L. 110–510, div. B, title XXIX, part A, set out above], and XXIX [122 Stat. 4741] shall take effect on the later of—

[''(1) October 1, 2008; or

[''(2) the date of the enactment of this Act [Oct. 14, 2008].'']

[Pub. L. 107–314, div. A, title X, §1062(f), Dec. 2, 2002, 116 Stat. 2651, provided that the amendment made by section 1062(f)(4) is effective as of Dec. 28, 2001, and as if included in Pub. L. 107–107 as enacted.]

[For effective date of amendment by section 2813(d)(2) of Pub. L. 103–337 to section 2910 of Pub. L. 101–510, set out above, see Effective Date of 1994 Amendments by Section 2813(d)(1) and (2) of Pub. L. 103–337 note set out above.]

[Pub. L. 103–160, div. B, title XXIX, §2902(c), Nov. 30, 1993, 107 Stat. 1912, provided that: ''For the purposes of section 2905(b)(3) of the Defense Base Closure and Realignment Act of 1990 [Pub. L. 101–510, set out above], as added by subsection (b), the date of approval of closure of any installation approved for closure before the date of the enactment of this Act [Nov. 30, 1993] shall be deemed to be the date of the enactment of this Act.'']

[Pub. L. 103–160, div. B, title XXIX, §2904(c), Nov. 30, 1993, 107 Stat. 1916, provided that: ''The Secretary of Defense shall make the determinations required under section 2905(b)(5) of the Defense Base Closure and Realignment Act of 1990 [Pub. L. 101–510, set out above], as added by subsection (b), in the case of installations approved for closure under such Act [part A of title XXIX of div. B of Pub. L. 101–510, set out above] before the date of the enactment of this Act [Nov. 30, 1993], not later than 6 months after the date of the enactment of this Act.'']

[Pub. L. 103–160, div. B, title XXIX, §2930(b), Nov. 30, 1993, 107 Stat. 1935, provided that: ''The amendment made by this section [amending section 2903(d)(1) of Pub. L. 101–510 set out above] shall apply with respect to all public hearings conducted by the Defense Base Closure and Realignment Commission after the date of the enactment of this Act [Nov. 30, 1993].'']

[For effective date of amendments by section 344(b)(1) of Pub. L. 102–190 to section 2906 of Pub. L. 101–510, set out above, see Effective Date of 1991 Amendments by Section 344 of Pub. L. 102–190 note set out above.]

[Pub. L. 102–190, div. B, title XXVIII, §2821(h)(2), Dec. 5, 1991, 105 Stat. 1546, provided that: ''The amendment made by paragraph (1) [amending section 2910 of Pub. L. 101–510 set out above] shall take effect as of November 5, 1990, and shall apply as if it had been included in section 2910(4) of the Defense Base Closure and Realignment Act of 1990 [section 2910 of Pub. L. 101–510] on that date.'']

[Pub. L. 102–190, div. B, title XXVIII, §2827(a)(3), Dec. 5, 1991, 105 Stat. 1551, provided that: ''The amendments made by this subsection [amending sections 2905 and 2906 of Pub. L. 101–510 set out above] shall take effect on the date of the enactment of this Act [Dec. 5, 1991].'']

[References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, §101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.]

CLOSURE OF FOREIGN MILITARY INSTALLATIONS

Pub. L. 108–287, title VIII, §8018, Aug. 5, 2004, 118 Stat. 974, provided that: ''Notwithstanding any other provision of law, during the current fiscal year and hereafter, the Secretary of Defense may, by executive agreement, establish with host nation governments in NATO member states a separate account into which such residual value amounts negotiated in the return of United States military installations in NATO member states may be deposited, in the currency of the host nation, in lieu of direct monetary transfers to the United States Treasury: *Provided*, That such credits may be utilized only for the construction of facilities to support United States military forces in that host nation, or such real property maintenance and base operating costs that are currently executed through monetary transfers to such host nations: *Provided further*, That the Department of Defense's budget submission for subsequent fiscal years shall identify such sums anticipated in residual value settlements, and identify such construction, real property maintenance or base operating costs that shall be funded by the host nation through such credits: *Provided further*, That all military construction projects to be executed from such accounts must be previously approved in a prior Act of Congress: *Provided further*, That each such executive agreement with a NATO member host nation shall be reported to the congressional defense committees [Committees on Armed Services of the Senate and House of Representatives and Subcommittees on Defense of the Committees on Appropriations of the Senate and House of Representatives], the Committee on International Relations [now Committee on Foreign Affairs] of the House of Representatives and the Committee on Foreign Relations of the Senate 30 days prior to the conclusion and endorsement of any such agreement established under this provision.''

Similar provisions for specified fiscal years were contained in the following appropriation acts:

Pub. L. 108–87, title VIII, § 8018, Sept. 30, 2003, 117 Stat. 1075.
Pub. L. 107–248, title VIII, § 8018, Oct. 23, 2002, 116 Stat. 1540.
Pub. L. 107–117, div. A, title VIII, § 8019, Jan. 10, 2002, 115 Stat. 2251.
Pub. L. 106–259, title VIII, § 8019, Aug. 9, 2000, 114 Stat. 678.
Pub. L. 106–79, title VIII, § 8019, Oct. 25, 1999, 113 Stat. 1235.
Pub. L. 105–262, title VIII, § 8019, Oct. 17, 1998, 112 Stat. 2301.
Pub. L. 105–56, title VIII, § 8019, Oct. 8, 1997, 111 Stat. 1224.
Pub. L. 104–208, div. A, title I, § 101(b) [title VIII, § 8020], Sept. 30, 1996, 110 Stat. 3009–71, 3009–92.
Pub. L. 104–61, title VIII, § 8027, Dec. 1, 1995, 109 Stat. 657.
Pub. L. 103–335, title VIII, § 8033, Sept. 30, 1994, 108 Stat. 2625.
Pub. L. 103–139, title VIII, § 8036, Nov. 11, 1993, 107 Stat. 1448.
Pub. L. 102–396, title IX, § 9047A, Oct. 6, 1992, 106 Stat. 1913, as amended by Pub. L. 104–106, div. A, title XV, § 1502(f)(2), Feb. 10, 1996, 110 Stat. 509.

Pub. L. 101–510, div. B, title XXIX, § 2921, Nov. 5, 1990, 104 Stat. 1819, as amended by Pub. L. 102–190, div. A, title III, § 344(b)(2), Dec. 5, 1991, 105 Stat. 1345; Pub. L. 102–484, div. B, title XXVIII, §§ 2821(c), 2827, Oct. 23, 1992, 106 Stat. 2608, 2609; Pub. L. 103–160, div. B, title XXIX, § 2924(b), Nov. 30, 1993, 107 Stat. 1931; Pub. L. 103–337, div. A, title XIII, § 1305(c), div. B, title XXVIII, § 2817, Oct. 5, 1994, 108 Stat. 2891, 3057; Pub. L. 104–106, div. A, title X, § 1063(b), title XV, §§ 1502(c)(4)(D), 1505(e)(2), Feb. 10, 1996, 110 Stat. 444, 508, 515; Pub. L. 105–85, div. A, title X, § 1073(d)(4)(C), Nov. 18, 1997, 111 Stat. 1905; Pub. L. 106–65, div. A, title X, § 1067(10), Oct. 5, 1999, 113 Stat. 774; Pub. L. 108–136, div. A, title X, § 1031(b), Nov. 24, 2003, 117 Stat. 1603; Pub. L. 113–66, div. B, title XXVIII, § 2807(b)(1), Dec. 26, 2013, 127 Stat. 1011, set forth the sense of Congress that military operations at military installations outside the United States be terminated at the earliest opportunity and that the Secretary of Defense should take steps to ensure that the United States receives fair market value consideration for the improvements made by the United States at facilities that will be released to host countries.

Task Force Report

Pub. L. 102–380, § 125, Oct. 5, 1992, 106 Stat. 1372, reconvened the environmental response task force established in section 2923(c) of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101–510; 104 Stat. 1821; formerly set out below) and directed the task force, until all military base closure and realignment activities were completed, to monitor the progress of relevant Federal and State agencies in implementing the recommendations of the task force contained in the report submitted under such section and to annually submit to Congress a report containing recommendations concerning ways to expedite and improve environmental response actions at military installations and a summary of the progress made by relevant Federal and State agencies in implementing the recommendations of the task force.

Pub. L. 101–510, div. B, title XXIX, § 2923(c), Nov. 5, 1990, 104 Stat. 1821, established an environmental response task force and directed the Secretary of Defense to submit to Congress, not later than 12 months after Nov. 5, 1990, a report containing the findings and recommendations of the task force concerning ways to improve interagency coordination and streamline procedures with respect to environmental response actions at closed or realigned military installations.

Community Preference Consideration in Closure and Realignment of Military Installations

Pub. L. 101–510, div. B, title XXIX, § 2924, Nov. 5, 1990, 104 Stat. 1822, provided that: ''In any process of selecting any military installation inside the United States for closure or realignment, the Secretary of Defense shall take such steps as are necessary to assure that special consideration and emphasis is given to any official statement from a unit of general local government adjacent to or within a military installation requesting the closure or realignment of such installation.''

Contracts for Certain Environmental Restoration Activities

Pub. L. 101–510, div. B, title XXIX, § 2926, Nov. 5, 1990, 104 Stat. 1822, as amended by Pub. L. 103–160, div. A, title IX, § 904(f), Nov. 30, 1993, 107 Stat. 1729; Pub. L. 106–65, div. A, title IX, § 911(a)(1), Oct. 5, 1999, 113 Stat. 717; Pub. L. 107–314, div. A, title X, § 1062(m)(4), Dec. 2, 2002, 116 Stat. 2652, provided for a model program for base closure environmental restoration, prior to repeal by Pub. L. 108–136, div. A, title III, § 316, Nov. 24, 2003, 117 Stat. 1432.

Consideration of Department of Defense Housing for Coast Guard

Pub. L. 101–225, title II, § 216, Dec. 12, 1989, 103 Stat. 1915, deemed the Coast Guard to be an instrumentality within the Department of Defense for certain purposes related to housing under section 204(b) of Pub. L. 100–526 (set out below).

Five-Year Plan for Environmental Restoration at Bases To Be Closed

Pub. L. 101–189, div. A, title III, § 353, Nov. 29, 1989, 103 Stat. 1423, directed Secretary of Defense to develop a comprehensive five-year plan for environmental restoration at military installations that would be closed or realigned during fiscal years 1991 through 1995, pursuant to title II of the Defense Authorization Amendments and Base Closure and Realignment Act, Pub. L. 100–526, set out below, and, at same time President submits to Congress budget for fiscal year 1991 pursuant to 31 U.S.C. 1105, to submit to Congress a report on the five-year plan.

Prohibition on Reducing End Strength Levels for Medical Personnel as a Result of Base Closures and Realignments

Pub. L. 101–189, div. A, title VII, § 723, Nov. 29, 1989, 103 Stat. 1478, provided that:

''(a) Prohibition.—The end strength levels for medical personnel for each component of the Armed Forces, and the number of civilian personnel of the Department of Defense assigned to military medical facilities, may not be reduced as a result of the closure or realignment of a military installation under section 2687 of title 10, United States Code, or title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 10 U.S.C. 2687 note).

''(b) Medical Personnel Defined.—For purposes of subsection (a), the term 'medical personnel' has the meaning given that term in subparagraph (D) of section 115(b)(1) of title 10, United States Code.''

Use of Closed Bases for Prisons and Drug Treatment Facilities

Pub. L. 101–189, div. B, title XXVIII, § 2832, Nov. 29, 1989, 103 Stat. 1660, set forth the sense of Congress that certain real property of the Department of Defense rendered excess or surplus as a result of the recommendations of the Commission on Base Realignment and Closure be made available to another Federal agency or a State or local government for use as a penal or correctional facility or as a drug abuse prevention, treatment, or rehabilitation center.

Notice to Local and State Educational Agencies of Enrollment Changes Due to Base Closures and Realignments

Pub. L. 101–189, div. B, title XXVIII, § 2833, Nov. 29, 1989, 103 Stat. 1661, directed the Secretary of Defense to

identify each local educational agency that will experience a significant increase or decrease in the number of children in its jurisdiction during the next academic year as a result of the closure or realignment of a military installation under the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 102 Stat. 2627; set out below) by not later than January 1 of that year and to provide notice to that local educational agency and to the relevent State government education agency of such identification.

CLOSURE AND REALIGNMENT OF MILITARY INSTALLATIONS

Pub. L. 100–526, title II, Oct. 24, 1988, 102 Stat. 2627, as amended by Pub. L. 101–510, div. B, title XXIX, §2923(b)(1), Nov. 5, 1990, 104 Stat. 1821; Pub. L. 102–190, div. A, title III, §344(a), Dec. 5, 1991, 105 Stat. 1344; Pub. L. 102–484, div. B, title XXVIII, §2821(a), Oct. 23, 1992, 106 Stat. 2606; Pub. L. 103–160, div. B, title XXIX, §§2902(a), 2903(a), 2904(a), 2905(a), 2907(a), 2908(a), 2918(b), 2921(a), Nov. 30, 1993, 107 Stat. 1909, 1912, 1915, 1916, 1921, 1922, 1928, 1929; Pub. L. 103–337, div. A, title X, §1070(b)(13), div. B, title XXVIII, §§2812(a), 2813(a)–(c)(1), (d)(1), (e)(1), Oct. 5, 1994, 108 Stat. 2857, 3054, 3055; Pub. L. 103–421, §2(f)(1), Oct. 25, 1994, 108 Stat. 4354; Pub. L. 104–106, div. A, title XV, §§1504(a)(9), 1505(e)(3), div. B, title XXVIII, §§2831(b)(1), 2839(a), 2840(a), Feb. 10, 1996, 110 Stat. 513, 515, 558, 563, 564; Pub. L. 104–201, div. B, title XXVIII, §§2811, 2812(a), 2813(a), Sept. 23, 1996, 110 Stat. 2788, 2789; Pub. L. 105–85, div. A, title X, §1073(d)(6), div. B, title XXVIII, §2821(a), Nov. 18, 1997, 111 Stat. 1906, 1996; Pub. L. 106–65, div. B, title XXVIII, §2821(b), Oct. 5, 1999, 113 Stat. 855; Pub. L. 106–398, §1 [div. B, title XXVIII, §2821(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–419; Pub. L. 107–107, div. A, title X, §1048(d)(3), div. B, title XXVIII, §2821(a), Dec. 28, 2001, 115 Stat. 1227, 1311; Pub. L. 107–314, div. A, title X, §1062(n), div. B, title XXVIII, §2814(a), Dec. 2, 2002, 116 Stat. 2652, 2710; Pub. L. 108–136, div. A, title VI, §655(a), div. B, title XXVIII, §2805(d)(1), Nov. 24, 2003, 117 Stat. 1523, 1721; Pub. L. 112–239, div. B, title XXVII, §2711(c)(1), (3)(B), Jan. 2, 2013, 126 Stat. 2143, provided that:

''SEC. 201. CLOSURE AND REALIGNMENT OF MILITARY INSTALLATIONS

''The Secretary shall—

''(1) close all military installations recommended for closure by the Commission on Base Realignment and Closure in the report transmitted to the Secretary pursuant to the charter establishing such Commission;

''(2) realign all military installations recommended for realignment by such Commission in such report; and

''(3) initiate all such closures and realignments no later than September 30, 1991, and complete all such closures and realignments no later than September 30, 1995, except that no such closure or realignment may be initiated before January 1, 1990.

''SEC. 202. CONDITIONS

''(a) IN GENERAL.—The Secretary may not carry out any closure or realignment of a military installation under this title unless—

''(1) no later than January 16, 1989, the Secretary transmits to the Committees on Armed Services of the Senate and the House of Representatives a report containing a statement that the Secretary has approved, and the Department of Defense will implement, all of the military installation closures and realignments recommended by the Commission in the report referred to in section 201(1);

''(2) the Commission has recommended, in the report referred to in section 201(1), the closure or realignment, as the case may be, of the installation, and has transmitted to the Committees on Armed Services of the Senate and the House of Representatives a copy of such report and the statement required by section 203(b)(2); and

''(3) the Secretary of Defense has transmitted to the Commission the study required by section 206(b).

''(b) JOINT RESOLUTION.—The Secretary may not carry out any closure or realignment under this title if, within the 45-day period beginning on March 1, 1989, a joint resolution is enacted, in accordance with the provisions of section 208, disapproving the recommendations of the Commission. The days on which either House of Congress is not in session because of an adjournment of more than 3 days to a day certain shall be excluded in the computation of such 45-day period.

''(c) TERMINATION OF AUTHORITY.—(1) Except as provided in paragraph (2), the authority of the Secretary to carry out any closure or realignment under this title shall terminate on October 1, 1995.

''(2) The termination of authority set forth in paragraph (1) shall not apply to the authority of the Secretary to carry out environmental restoration and waste management at, or disposal of property of, military installations closed or realigned under this title.

''SEC. 203. THE COMMISSION

''(a) MEMBERSHIP.—The Commission shall consist of 12 members appointed by the Secretary of Defense.

''(b) DUTIES.—The Commission shall—

''(1) transmit the report referred to in section 201(1) to the Secretary no later than December 31, 1988, and shall include in such report a description of the Commission's recommendations of the military installations to which functions will be transferred as a result of the closures and realignments recommended by the Commission; and

''(2) on the same date on which the Commission transmits such report to the Secretary, transmit to Committees on Armed Services of the Senate and the House of Representatives—

''(A) a copy of such report; and

''(B) a statement certifying that the Commission has identified the military installations to be closed or realigned by reviewing all military installations inside the United States, including all military installations under construction and all those planned for construction.

''(c) STAFF.—Not more than one-half of the professional staff of the Commission shall be individuals who have been employed by the Department of Defense during calendar year 1988 in any capacity other than as an employee of the Commission.

''SEC. 204. IMPLEMENTATION

''(a) IN GENERAL.—In closing or realigning a military installation under this title, the Secretary—

''(1) subject to the availability of funds authorized for and appropriated to the Department of Defense for use in planning and design, minor construction, or operation and maintenance and the availability of funds in the Account, may carry out actions necessary to implement such closure or realignment, including the acquisition of such land, the construction of such replacement facilities, the performance of such activities, and the conduct of such advance planning and design as may be required to transfer functions from such military installation to another military installation;

''(2) subject to the availability of funds authorized for and appropriated to the Department of Defense for economic adjustment assistance or community planning assistance and the availability of funds in the Account, shall provide—

''(A) economic adjustment assistance to any community located near a military installation being closed or realigned; and

''(B) community planning assistance to any community located near a military installation to which functions will be transferred as a result of such closure or realignment,

if the Secretary determines that the financial resources available to the community (by grant or otherwise) for such purposes are inadequate; and

''(3) subject to the availability of funds authorized for and appropriated to the Department of Defense

for environmental restoration and the availability of funds in the Account, may carry out activities for the purpose of environmental restoration, including reducing, removing, and recycling hazardous wastes and removing unsafe buildings and debris.

''(b) MANAGEMENT AND DISPOSAL OF PROPERTY.—(1) The Administrator of General Services shall delegate to the Secretary, with respect to excess and surplus real property, facilities, and personal property located at a military installation closed or realigned under this title—

''(A) the authority of the Administrator to utilize excess property under subchapter II of chapter 5 of title 40, United States Code;

''(B) the authority of the Administrator to dispose of surplus property under subchapter III of chapter 5 of title 40, United States Code; and

''(C) the authority to dispose of surplus property for public airports under sections 47151 through 47153 of title 49, United States Code.

''(2)(A) Subject to subparagraph (B), the Secretary shall exercise authority delegated to the Secretary pursuant to paragraph (1) in accordance with—

''(i) all regulations in effect on the date of the enactment of this title [Oct. 24, 1988] governing utilization of excess property and disposal of surplus property under the Federal Property and Administrative Services Act of 1949 [see chapters 1 to 11 of Title 40, Public Buildings, Property, and Works, and division C (except sections 3302, 3306(f), 3307(e), 3501(b), 3509, 3906, 4104, 4710, and 4711) of subtitle I of Title 41, Public Contracts]; and

''(ii) all regulations in effect on the date of the enactment of this title governing the conveyance and disposal of property under section 13(g) of the Surplus Property Act of 1944 (50 U.S.C. App. 1622(g)).

''(B) The Secretary, after consulting with the Administrator of General Services, may issue regulations that are necessary to carry out the delegation of authority required by paragraph (1).

''(C) The authority required to be delegated by paragraph (1) to the Secretary by the Administrator of General Services shall not include the authority to prescribe general policies and methods for utilizing excess property and disposing of surplus property.

''(D) The Secretary of Defense may transfer real property or facilities located at a military installation to be closed or realigned under this title, with or without reimbursement, to a military department or other entity (including a nonappropriated fund instrumentality) within the Department of Defense or the Coast Guard.

''(E) Before any action may be taken with respect to the disposal of any surplus real property or facility located at any military installation to be closed or realigned under this title, the Secretary shall consult with the Governor of the State and the heads of the local governments concerned for the purpose of considering any plan for the use of such property by the local community concerned.

''(F) The provisions of this paragraph and paragraph (1) are subject to paragraphs (3) through (6).

''(3)(A) Not later than 6 months after the date of the enactment of the National Defense Authorization Act for Fiscal Year 1994 [Nov. 30, 1993], the Secretary, in consultation with the redevelopment authority with respect to each military installation to be closed under this title after such date of enactment, shall—

''(i) inventory the personal property located at the installation; and

''(ii) identify the items (or categories of items) of such personal property that the Secretary determines to be related to real property and anticipates will support the implementation of the redevelopment plan with respect to the installation.

''(B) If no redevelopment authority referred to in subparagraph (A) exists with respect to an installation, the Secretary shall consult with—

''(i) the local government in whose jurisdiction the installation is wholly located; or

''(ii) a local government agency or State government agency designated for the purpose of such consultation by the chief executive officer of the State in which the installation is located.

''(C)(i) Except as provided in subparagraphs (E) and (F), the Secretary may not carry out any of the activities referred to in clause (ii) with respect to an installation referred to in that clause until the earlier of—

''(I) one week after the date on which the redevelopment plan for the installation is submitted to the Secretary;

''(II) the date on which the redevelopment authority notifies the Secretary that it will not submit such a plan;

''(III) twenty-four months after the date referred to in subparagraph (A); or

''(IV) ninety days before the date of the closure of the installation.

''(ii) The activities referred to in clause (i) are activities relating to the closure of an installation to be closed under this title as follows:

''(I) The transfer from the installation of items of personal property at the installation identified in accordance with subparagraph (A).

''(II) The reduction in maintenance and repair of facilities or equipment located at the installation below the minimum levels required to support the use of such facilities or equipment for nonmilitary purposes.

''(D) Except as provided in paragraph (4), the Secretary may not transfer items of personal property located at an installation to be closed under this title to another installation, or dispose of such items, if such items are identified in the redevelopment plan for the installation as items essential to the reuse or redevelopment of the installation. In connection with the development of the redevelopment plan for the installation, the Secretary shall consult with the entity responsible for developing the redevelopment plan to identify the items of personal property located at the installation, if any, that the entity desires to be retained at the installation for reuse or redevelopment of the installation.

''(E) This paragraph shall not apply to any related personal property located at an installation to be closed under this title if the property—

''(i) is required for the operation of a unit, function, component, weapon, or weapons system at another installation;

''(ii) is uniquely military in character, and is likely to have no civilian use (other than use for its material content or as a source of commonly used components);

''(iii) is not required for the reutilization or redevelopment of the installation (as jointly determined by the Secretary and the redevelopment authority);

''(iv) is stored at the installation for purposes of distribution (including spare parts or stock items); or

''(v)(I) meets known requirements of an authorized program of another Federal department or agency for which expenditures for similar property would be necessary, and (II) is the subject of a written request by the head of the department or agency.

''(F) Notwithstanding subparagraphs (C)(i) and (D), the Secretary may carry out any activity referred to in subparagraph (C)(ii) or (D) if the Secretary determines that the carrying out of such activity is in the national security interest of the United States.

''(4)(A) The Secretary may transfer real property and personal property located at a military installation to be closed or realigned under this title to the redevelopment authority with respect to the installation for purposes of job generation on the installation.

''(B) The transfer of property of a military installation under subparagraph (A) shall be without consideration if the redevelopment authority with respect to the installation—

''(i) agrees that the proceeds from any sale or lease of the property (or any portion thereof) received by the redevelopment authority during at least the first seven years after the date of the initial transfer of property under subparagraph (A) shall be used to sup-

port the economic redevelopment of, or related to, the installation; and

''(ii) executes the agreement for transfer of the property and accepts control of the property within a reasonable time after the date of the property disposal record of decision or finding of no significant impact under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

''(C) For purposes of subparagraph (B), the use of proceeds from a sale or lease described in such subparagraph to pay for, or offset the costs of, public investment on or related to the installation for any of the following purposes shall be considered a use to support the economic redevelopment of, or related to, the installation:

''(i) Road construction.

''(ii) Transportation management facilities.

''(iii) Storm and sanitary sewer construction.

''(iv) Police and fire protection facilities and other public facilities.

''(v) Utility construction.

''(vi) Building rehabilitation.

''(vii) Historic property preservation.

''(viii) Pollution prevention equipment or facilities.

''(ix) Demolition.

''(x) Disposal of hazardous materials generated by demolition.

''(xi) Landscaping, grading, and other site or public improvements.

''(xii) Planning for or the marketing of the development and reuse of the installation.

''(D) The Secretary may recoup from a redevelopment authority such portion of the proceeds from a sale or lease described in subparagraph (B) as the Secretary determines appropriate if the redevelopment authority does not use the proceeds to support economic redevelopment of, or related to, the installation for the period specified in subparagraph (B).

''(E)(i) The Secretary may transfer real property at an installation approved for closure or realignment under this title (including property at an installation approved for realignment which will be retained by the Department of Defense or another Federal agency after realignment) to the redevelopment authority for the installation if the redevelopment authority agrees to lease, directly upon transfer, one or more portions of the property transferred under this subparagraph to the Secretary or to the head of another department or agency of the Federal Government. Subparagraph (B) shall apply to a transfer under this subparagraph.

''(ii) A lease under clause (i) shall be for a term of not to exceed 50 years, but may provide for options for renewal or extension of the term by the department or agency concerned.

''(iii) A lease under clause (i) may not require rental payments by the United States.

''(iv) A lease under clause (i) shall include a provision specifying that if the department or agency concerned ceases requiring the use of the leased property before the expiration of the term of the lease, the remainder of the lease term may be satisfied by the same or another department or agency of the Federal Government using the property for a use similar to the use under the lease. Exercise of the authority provided by this clause shall be made in consultation with the redevelopment authority concerned.

''(v) Notwithstanding clause (iii), if a lease under clause (i) involves a substantial portion of the installation, the department or agency concerned may obtain facility services for the leased property and common area maintenance from the redevelopment authority or the redevelopment authority's assignee as a provision of the lease. The facility services and common area maintenance shall be provided at a rate no higher than the rate charged to non-Federal tenants of the transferred property. Facility services and common area maintenance covered by the lease shall not include—

''(I) municipal services that a State or local government is required by law to provide to all landowners in its jurisdiction without direct charge; or

''(II) firefighting or security-guard functions.

''(F) The transfer of personal property under subparagraph (A) shall not be subject to the provisions of subchapters II and III of chapter 5 of title 40, United States Code, if the Secretary determines that the transfer of such property is necessary for the effective implementation of a redevelopment plan with respect to the installation at which such property is located.

''(G) The provisions of section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9620(h)) shall apply to any transfer of real property under this paragraph.

''(H)(i) In the case of an agreement for the transfer of property of a military installation under this paragraph that was entered into before April 21, 1999, the Secretary may modify the agreement, and in so doing compromise, waive, adjust, release, or reduce any right, title, claim, lien, or demand of the United States, if—

''(I) the Secretary determines that as a result of changed economic circumstances, a modification of the agreement is necessary;

''(II) the terms of the modification do not require the return of any payments that have been made to the Secretary;

''(III) the terms of the modification do not compromise, waive, adjust, release, or reduce any right, title, claim, lien, or demand of the United States with respect to in-kind consideration; and

''(IV) the cash consideration to which the United States is entitled under the modified agreement, when combined with the cash consideration to be received by the United States for the disposal of other real property assets on the installation, are as sufficient as they were under the original agreement to fund the reserve account established under paragraph (7)(C), with the depreciated value of the investment made with commissary store funds or nonappropriated funds in property disposed of pursuant to the agreement being modified, in accordance with [former] section 2906(d) of the Defense Base Closure and Realignment Act of 1990 [Pub. L. 101–510, 10 U.S.C. 2687 note].

''(ii) When exercising the authority granted by clause (i), the Secretary may waive some or all future payments if, and to the extent that, the Secretary determines such waiver is necessary.

''(iii) With the exception of the requirement that the transfer be without consideration, the requirements of subparagraphs (B), (C), and (D) shall be applicable to any agreement modified pursuant to clause (i).

''(I) In the case of an agreement for the transfer of property of a military installation under this paragraph that was entered into during the period beginning on April 21, 1999, and ending on the date of enactment of the National Defense Authorization Act for Fiscal Year 2000 [Oct. 5, 1999], at the request of the redevelopment authority concerned, the Secretary shall modify the agreement to conform to all the requirements of subparagraphs (B), (C), and (D). Such a modification may include the compromise, waiver, adjustment, release, or reduction of any right, title, claim, lien, or demand of the United States under the agreement.

''(J) The Secretary may require any additional terms and conditions in connection with a transfer under this paragraph as such Secretary considers appropriate to protect the interests of the United States.

''(5)(A) Except as provided in subparagraphs (B) and (C), the Secretary shall take such actions as the Secretary determines necessary to ensure that final determinations under paragraph (1) regarding whether another department or agency of the Federal Government has identified a use for any portion of a military installation to be closed under this title after the date of the enactment of the National Defense Authorization Act for Fiscal Year 1994 [Nov. 30, 1993], or will accept transfer of any portion of such installation, are made not later than 6 months after such date of enactment.

''(B) The Secretary may, in consultation with the redevelopment authority with respect to an installation,

postpone making the final determinations referred to in subparagraph (A) with respect to the installation for such period as the Secretary determines appropriate if the Secretary determines that such postponement is in the best interests of the communities affected by the closure of the installation.

''(C)(i) Before acquiring non-Federal real property as the location for a new or replacement Federal facility of any type, the head of the Federal agency acquiring the property shall consult with the Secretary regarding the feasibility and cost advantages of using Federal property or facilities at a military installation closed or realigned or to be closed or realigned under this title as the location for the new or replacement facility. In considering the availability and suitability of a specific military installation, the Secretary and the head of the Federal agency involved shall obtain the concurrence of the redevelopment authority with respect to the installation and comply with the redevelopment plan for the installation.

''(ii) Not later than 30 days after acquiring non-Federal real property as the location for a new or replacement Federal facility, the head of the Federal agency acquiring the property shall submit to Congress a report containing the results of the consultation under clause (i) and the reasons why military installations referred to in such clause that are located within the area to be served by the new or replacement Federal facility or within a 200-mile radius of the new or replacement facility, whichever area is greater, were considered to be unsuitable or unavailable for the site of the new or replacement facility.

''(iii) This subparagraph shall apply during the period beginning on the date of the enactment of the National Defense Authorization Act for Fiscal Year 1998 [Nov. 18, 1997] and ending on July 31, 2001.

''(6)(A) Except as provided in this paragraph, nothing in this section shall limit or otherwise affect the application of the provisions of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11301 et seq.) to military installations closed under this title.

''(B)(i) Not later than the date on which the Secretary of Defense completes the determination under paragraph (5) of the transferability of any portion of an installation to be closed under this title, the Secretary shall—

''(I) complete any determinations or surveys necessary to determine whether any building or property referred to in clause (ii) is excess property, surplus property, or unutilized or underutilized property for the purpose of the information referred to in section 501(a) of such Act (42 U.S.C. 11411(a)); and

''(II) submit to the Secretary of Housing and Urban Development information on any building or property that is so determined.

''(ii) The buildings and property referred to in clause (i) are any buildings or property located at an installation referred to in that clause for which no use is identified, or of which no Federal department or agency will accept transfer, pursuant to the determination of transferability referred to in that clause.

''(C) Not later than 60 days after the date on which the Secretary of Defense submits information to the Secretary of Housing and Urban Development under subparagraph (B)(ii), the Secretary of Housing and Urban Development shall—

''(i) identify the buildings and property described in such information that are suitable for use to assist the homeless;

''(ii) notify the Secretary of Defense of the buildings and property that are so identified;

''(iii) publish in the Federal Register a list of the buildings and property that are so identified, including with respect to each building or property the information referred to in section 501(c)(1)(B) of such Act [42 U.S.C. 11411(c)(1)(B)]; and

''(iv) make available with respect to each building and property the information referred to in section 501(c)(1)(C) of such Act in accordance with such section 501(c)(1)(C).

''(D) Any buildings and property included in a list published under subparagraph (C)(iii) shall be treated as property available for application for use to assist the homeless under section 501(d) of such Act.

''(E) The Secretary of Defense shall make available in accordance with section 501(f) of such Act any buildings or property referred to in subparagraph (D) for which—

''(i) a written notice of an intent to use such buildings or property to assist the homeless is received by the Secretary of Health and Human Services in accordance with section 501(d)(2) of such Act;

''(ii) an application for use of such buildings or property for such purpose is submitted to the Secretary of Health and Human Services in accordance with section 501(e)(2) of such Act; and

''(iii) the Secretary of Health and Human Services—

''(I) completes all actions on the application in accordance with section 501(e)(3) of such Act; and

''(II) approves the application under section 501(e) of such Act.

''(F)(i) Subject to clause (ii), a redevelopment authority may express in writing an interest in using buildings and property referred to in subparagraph (D), and buildings and property referred to in subparagraph (B)(ii) which have not been identified as suitable for use to assist the homeless under subparagraph (C), or use such buildings and property, in accordance with the redevelopment plan with respect to the installation at which such buildings and property are located as follows:

''(I) If no written notice of an intent to use such buildings or property to assist the homeless is received by the Secretary of Health and Human Services in accordance with section 501(d)(2) of such Act during the 60-day period beginning on the date of the publication of the buildings and property under subparagraph (C)(iii).

''(II) In the case of buildings and property for which such notice is so received, if no completed application for use of the buildings or property for such purpose is received by the Secretary of Health and Human Services in accordance with section 501(e)(2) of such Act during the 90-day period beginning on the date of the receipt of such notice.

''(III) In the case of building and property for which such application is so received, if the Secretary of Health and Human Services rejects the application under section 501(e) of such Act.

''(ii) Buildings and property shall be available only for the purpose of permitting a redevelopment authority to express in writing an interest in the use of such buildings and property, or to use such buildings and property, under clause (i) as follows:

''(I) In the case of buildings and property referred to in clause (i)(I), during the one-year period beginning on the first day after the 60-day period referred to in that clause.

''(II) In the case of buildings and property referred to in clause (i)(II), during the one-year period beginning on the first day after the 90-day period referred to in that clause.

''(III) In the case of buildings and property referred to in clause (i)(III), during the one-year period beginning on the date of the rejection of the application referred to in that clause.

''(iii) A redevelopment authority shall express an interest in the use of buildings and property under this subparagraph by notifying the Secretary of Defense, in writing, of such an interest.

''(G)(i) Buildings and property available for a redevelopment authority under subparagraph (F) shall not be available for use to assist the homeless under section 501 of such Act [42 U.S.C. 11411] while so available for a redevelopment authority.

''(ii) If a redevelopment authority does not express an interest in the use of buildings or property, or commence the use of buildings or property, under subparagraph (F) within the applicable time periods specified in clause (ii) of such subparagraph, such buildings or property shall be treated as property available for use to assist the homeless under section 501(a) of such Act.

''(7)(A) Except as provided in subparagraph (B) or (C), all proceeds—

''(i) from any transfer under paragraphs (3) through (6); and

''(ii) from the transfer or disposal of any other property or facility made as a result of a closure or realignment under this title,

shall be deposited into the Account.

''(B) In any case in which the General Services Administration is involved in the management or disposal of such property or facility, the Secretary shall reimburse the Administrator of General Services from the proceeds of such disposal, in accordance with section 1535 of title 31, United States Code, for any expenses incurred in such activities.

''(C)(i) If any real property or facility acquired, constructed, or improved (in whole or in part) with commissary store funds or nonappropriated funds is transferred or disposed of in connection with the closure or realignment of a military installation under this title, a portion of the proceeds of the transfer or other disposal of property on that installation shall be deposited in a reserve account established in the Treasury to be administered by the Secretary. Subject to the limitation in clause (iii), amounts in the reserve account are hereby made available to the Secretary, without appropriation and until expended, for the purpose of acquiring, constructing, and improving—

''(I) commissary stores; and

''(II) real property and facilities for nonappropriated fund instrumentalities.

''(ii) The amount deposited under clause (i) shall be equal to the depreciated value of the investment made with such funds in the acquisition, construction, or improvement of that particular real property or facility. The depreciated value of the investment shall be computed in accordance with regulations prescribed by the Secretary of Defense.

''(iii) The aggregate amount obligated from the reserve account established under clause (i) may not exceed the following:

''(I) In fiscal year 2004, $31,000,000.

''(II) In fiscal year 2005, $24,000,000.

''(III) In fiscal year 2006, $15,000,000.

''(iv) As used in this subparagraph:

''(I) The term 'commissary store funds' means funds received from the adjustment of, or surcharge on, selling prices at commissary stores fixed under section 2685 of title 10, United States Code.

''(II) The term 'nonappropriated funds' means funds received from a nonappropriated fund instrumentality.

''(III) The term 'nonappropriated fund instrumentality' means an instrumentality of the United States under the jurisdiction of the Armed Forces (including the Army and Air Force Exchange Service, the Navy Resale and Services Support Office, and the Marine Corps exchanges) which is conducted for the comfort, pleasure, contentment, or physical or mental improvement of members of the Armed Forces.

''(8)(A) Subject to subparagraph (C), the Secretary may enter into agreements (including contracts, cooperative agreements, or other arrangements for reimbursement) with local governments for the provision of police or security services, fire protection services, airfield operation services, or other community services by such governments at military installations to be closed under this title, or at facilities not yet transferred or otherwise disposed of in the case of installations closed under this title, if the Secretary determines that the provision of such services under such agreements is in the best interests of the Department of Defense.

''(B) The Secretary may exercise the authority provided under this paragraph without regard to the provisions of chapter 146 of title 10, United States Code.

''(C) The Secretary may not exercise the authority under subparagraph (A) with respect to an installation earlier than 180 days before the date on which the installation is to be closed.

''(D) The Secretary shall include in a contract for services entered into with a local government under this paragraph a clause that requires the use of professionals to furnish the services to the extent that professionals are available in the area under the jurisdiction of such government.

''(c) APPLICABILITY OF OTHER LAW.—(1) The provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) shall not apply to—

''(A) the actions of the Commission, including selecting the military installations which the Commission recommends for closure or realignment under this title, recommending any military installation to receive functions from an installation to be closed or realigned, and making its report to the Secretary and the committees under section 203(b); and

''(B) the actions of the Secretary in establishing the Commission, in determining whether to accept the recommendations of the Commission, in selecting any military installation to receive functions from an installation to be closed or realigned, and in transmitting the report to the Committees referred to in section 202(a)(1).

''(2) The provisions of the National Environmental Policy Act of 1969 shall apply to the actions of the Secretary (A) during the process of the closing or realigning of a military installation after such military installation has been selected for closure or realignment but before the installation is closed or realigned and the functions relocated, and (B) during the process of the relocating of functions from a military installation being closed or realigned to another military installation after the receiving installation has been selected but before the functions are relocated. In applying the provisions of such Act, the Secretary shall not have to consider—

''(i) the need for closing or realigning a military installation which has been selected for closure or realignment by the Commission;

''(ii) the need for transferring functions to another military installation which has been selected as the receiving installation; or

''(iii) alternative military installations to those selected.

''(3) A civil action for judicial review, with respect to any requirement of the National Environmental Policy Act of 1969 to the extent such Act is applicable under paragraph (2), or with respect to any requirement of the Commission made by this title, of any action or failure to act by the Secretary during the closing, realigning, or relocating referred to in clauses (A) and (B) of paragraph (2), or of any action or failure to act by the Commission under this title, may not be brought later than the 60th day after the date of such action or failure to act.

''(d) TRANSFER AUTHORITY IN CONNECTION WITH PAYMENT OF ENVIRONMENTAL REMEDIATION COSTS.—(1)(A) Subject to paragraph (2) of this subsection and section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9620(h)), the Secretary may enter into an agreement to transfer by deed real property or facilities referred to in subparagraph (B) with any person who agrees to perform all environmental restoration, waste management, and environmental compliance activities that are required for the property or facilities under Federal and State laws, administrative decisions, agreements (including schedules and milestones), and concurrences.

''(B) The real property and facilities referred to in subparagraph (A) are the real property and facilities located at an installation closed or to be closed under this title that are available exclusively for the use, or expression of an interest in a use, of a redevelopment authority under subsection (b)(6)(F) during the period provided for that use, or expression of interest in use, under that subsection.

''(C) The Secretary may require any additional terms and conditions in connection with an agreement authorized by subparagraph (A) as the Secretary considers appropriate to protect the interests of the United States.

''(2) A transfer of real property or facilities may be made under paragraph (1) only if the Secretary certifies to Congress that—

''(A) the costs of all environmental restoration, waste management, and environmental compliance activities to be paid by the recipient of the property or facilities are equal to or greater than the fair market value of the property or facilities to be transferred, as determined by the Secretary; or

''(B) if such costs are lower than the fair market value of the property or facilities, the recipient of the property or facilities agrees to pay the difference between the fair market value and such costs.

''(3) As part of an agreement under paragraph (1), the Secretary shall disclose to the person to whom the property or facilities will be transferred any information of the Secretary regarding the environmental restoration, waste management, and environmental compliance activities described in paragraph (1) that relate to the property or facilities. The Secretary shall provide such information before entering into the agreement.

''(4) Nothing in this subsection shall be construed to modify, alter, or amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) or the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.).

''(5) Section 330 of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102–484; 10 U.S.C. 2687 note) shall not apply to any transfer under this subsection to persons or entities described in subsection (a)(2) of such section 330.

''(6) The Secretary may not enter into an agreement to transfer property or facilities under this subsection after the expiration of the five-year period beginning on the date of the enactment of the National Defense Authorization Act for Fiscal Year 1994 [Nov. 30, 1993].

''[(e) Repealed. Pub. L. 108–136, div. B, title XXVIII, §2805(d)(1), Nov. 24, 2003, 117 Stat. 1721.]

''(f) ACQUISITION OF MANUFACTURED HOUSING.—(1) In closing or realigning any military installation under this title, the Secretary may purchase any or all right, title, and interest of a member of the Armed Forces and any spouse of the member in manufactured housing located at a manufactured housing park established at an installation closed or realigned under this title, or make a payment to the member to relocate the manufactured housing to a suitable new site, if the Secretary determines that—

''(A) it is in the best interests of the Federal Government to eliminate or relocate the manufactured housing park; and

''(B) the elimination or relocation of the manufactured housing park would result in an unreasonable financial hardship to the owners of the manufactured housing.

''(2) Any payment made under this subsection shall not exceed 90 percent of the purchase price of the manufactured housing, as paid by the member or any spouse of the member, plus the cost of any permanent improvements subsequently made to the manufactured housing by the member or spouse of the member.

''(3) The Secretary shall dispose of manufactured housing acquired under this subsection through resale, donation, trade or otherwise within one year of acquisition.

''SEC. 205. WAIVER

''The Secretary may carry out this title without regard to—

''(1) any provision of law restricting the use of funds for closing or realigning military installations included in any appropriation or authorization Act; and

''(2) the procedures set forth in sections 2662 and 2687 of title 10, United States Code.

''SEC. 206. REPORTS

''(a) IN GENERAL.—As part of each annual budget request for the Department of Defense, the Secretary shall transmit to the appropriate committees of Congress—

''(1) a schedule of the closure and realignment actions to be carried out under this title in the fiscal year for which the request is made and an estimate of the total expenditures required and cost savings to be achieved by each such closure and realignment and of the time period in which these savings are to be achieved in each case, together with the Secretary's assessment of the environmental effects of such actions; and

''(2) a description of the military installations, including those under construction and those planned for construction, to which functions are to be transferred as a result of such closures and realignments, together with the Secretary's assessment of the environmental effects of such transfers.

''(b) STUDY.—(1) The Secretary shall conduct a study of the military installations of the United States outside the United States to determine if efficiencies can be realized through closure or realignment of the overseas base structure of the United States. Not later than October 15, 1988, the Secretary shall transmit a report of the findings and conclusions of such study to the Commission and to the Committees on Armed Services of the Senate and the House of Representatives. In developing its recommendations to the Secretary under this title, the Commission shall consider the Secretary's study.

''(2) Upon request of the Commission, the Secretary shall provide the Commission with such information about overseas bases as may be helpful to the Commission in its deliberations.

''(3) The Commission, based on its analysis of military installations in the United States and its review of the Secretary's study of the overseas base structure, may provide the Secretary with such comments and suggestions as it considers appropriate regarding the Secretary's study of the overseas base structure.

''[SEC. 207. Repealed. Pub. L. 112–239, div. B, title XXVII, §2711(c)(1), Jan. 2, 2013, 126 Stat. 2143.]

''SEC. 208. CONGRESSIONAL CONSIDERATION OF COMMISSION REPORT

''(a) TERMS OF THE RESOLUTION.—For purposes of section 202(b), the term 'joint resolution' means only a joint resolution which is introduced before March 15, 1989, and—

''(1) which does not have a preamble;

''(2) the matter after the resolving clause of which is as follows: 'That Congress disapproves the recommendations of the Commission on Base Realignment and Closure established by the Secretary of Defense as submitted to the Secretary of Defense on ________', the blank space being appropriately filled in; and

''(3) the title of which is as follows: 'Joint resolution disapproving the recommendations of the Commission on Base Realignment and Closure.'.

''(b) REFERRAL.—A resolution described in subsection (a), introduced in the House of Representatives shall be referred to the Committee on Armed Services of the House of Representatives. A resolution described in subsection (a) introduced in the Senate shall be referred to the Committee on Armed Services of the Senate.

''(c) DISCHARGE.—If the committee to which a resolution described in subsection (a) is referred has not reported such resolution (or an identical resolution) before March 15, 1989, such committee shall be, as of March 15, 1989, discharged from further consideration of such resolution, and such resolution shall be placed on the appropriate calendar of the House involved.

''(d) CONSIDERATION.—(1) On or after the third day after the date on which the committee to which such a resolution is referred has reported, or has been discharged (under subsection (c)) from further consideration of, such a resolution, it is in order (even though a previous motion to the same effect has been disagreed to) for any Member of the respective House to move to proceed to the consideration of the resolution (but only on the day after the calendar day on which such Mem-

ber announces to the House concerned the Member's intention to do so). All points of order against the resolution (and against consideration of the resolution) are waived. The motion is highly privileged in the House of Representatives and is privileged in the Senate and is not debatable. The motion is not subject to amendment, or to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the resolution is agreed to, the respective House shall immediately proceed to consideration of the joint resolution without intervening motion, order, or other business, and the resolution shall remain the unfinished business of the respective House until disposed of.

''(2) Debate on the resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing the resolution. An amendment to the resolution is not in order. A motion further to limit debate is in order and not debatable. A motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the resolution is not in order. A motion to reconsider the vote by which the resolution is agreed to or disagreed to is not in order.

''(3) Immediately following the conclusion of the debate on a resolution described in subsection (a) and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the appropriate House, the vote on final passage of the resolution shall occur.

''(4) Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution described in subsection (a) shall be decided without debate.

''(e) CONSIDERATION BY OTHER HOUSE.—(1) If, before the passage by one House of a resolution of that House described in subsection (a), that House receives from the other House a resolution described in subsection (a), then the following procedures shall apply:

''(A) The resolution of the other House shall not be referred to a committee and may not be considered in the House receiving it except in the case of final passage as provided in subparagraph (B)(ii).

''(B) With respect to a resolution described in subsection (a) of the House receiving the resolution—

''(i) the procedure in that House shall be the same as if no resolution had been received from the other House; but

''(ii) the vote on final passage shall be on the resolution of the other House.

''(2) Upon disposition of the resolution received from the other House, it shall no longer be in order to consider the resolution that originated in the receiving House.

''(f) RULES OF THE SENATE AND HOUSE.—This section is enacted by Congress—

''(1) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of a resolution described in subsection (a), and it supersedes other rules only to the extent that it is inconsistent with such rules; and

''(2) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

''SEC. 209. DEFINITIONS

''In this title:

''(1) The term 'Account' means the Department of Defense Base Closure Account established by section 2906(a) of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note).

''(2) The term 'appropriate committees of Congress' means the Committees on Armed Services and the Committees on Appropriations of the Senate and the House of Representatives.

''(3) The terms 'Commission on Base Realignment and Closure' and 'Commission' mean the Commission established by the Secretary of Defense in the charter signed by the Secretary on May 3, 1988, and as altered thereafter with respect to the membership and voting.

''(4) The term 'charter establishing such Commission' means the charter referred to in paragraph (3).

''(5) The term 'initiate' includes any action reducing functions or civilian personnel positions but does not include studies, planning, or similar activities carried out before there is a reduction of such functions or positions.

''(6) The term 'military installation' means a base, camp, post, station, yard, center, homeport facility for any ship, or other activity under the jurisdiction of the Secretary of a military department.

''(7) The term 'realignment' includes any action which both reduces and relocates functions and civilian personnel positions.

''(8) The term 'Secretary' means the Secretary of Defense.

''(9) The term 'United States' means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, and any other commonwealth, territory, or possession of the United States.

''(10) The term 'redevelopment authority', in the case of an installation to be closed under this title, means any entity (including an entity established by a State or local government) recognized by the Secretary of Defense as the entity responsible for developing the redevelopment plan with respect to the installation or for directing the implementation of such plan.

''(11) The term 'redevelopment plan' in the case of an installation to be closed under this title, means a plan that—

''(A) is agreed to by the redevelopment authority with respect to the installation; and

''(B) provides for the reuse or redevelopment of the real property and personal property of the installation that is available for such reuse or redevelopment as a result of the closure of the installation.''

[For effective date of amendments by section 2711(c)(1), (3)(B) of Pub. L. 112–239 to sections 204, 207, and 209 of Pub. L. 100–526, set out above, see section 2711(d) of Pub. L. 112–239, set out as an Effective Date of 2013 Amendment note under section 2701 of this title.]

[For effective date of amendment by section 2813(d)(1) of Pub. L. 103–337 to section 209 of Pub. L. 100–526, set out above, see Effective Date of Amendment by Section 2813(d)(1) and (2) of Pub. L. 103–337 note set out above.]

[For effective date of amendment by section 344(a) of Pub. L. 102–190 to sections 204 and 209 of Pub. L. 100–526, set out above, see Effective Date of 1991 Amendments by Section 344 of Pub. L. 102–190 note set out above.]

[Pub. L. 101–510, div. B, title XXIX, § 2923(b)(2), Nov. 5, 1990, 104 Stat. 1821, provided that: ''The amendment made by paragraph (1) [amending section 207 of Pub. L. 100–526 set out above] does not apply with respect to the availability of funds appropriated before the date of the enactment of this Act [Nov. 5, 1990].'']

§ 2687a. Overseas base closures and realignments and status of United States overseas military locations

(a) ANNUAL REPORT ON STATUS OF OVERSEAS CLOSURES AND REALIGNMENTS AND OVERSEAS MILITARY LOCATIONS.—(1) At the same time that the budget is submitted under section 1105(a) of title 31 for a fiscal year, the Secretary of De-

fense shall submit to the congressional defense committees and the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives a report on—

(A) the status of overseas base closure and realignment actions undertaken as part of a global defense posture realignment strategy; and

(B) the status of overseas military locations, whether such a location is designated as an enduring location or contingency location.

(2) To satisfy the reporting requirement specified in paragraph (1)(B), a report under paragraph (1) shall contain the following:

(A) A list of overseas military locations. For any overseas military location established during the previous fiscal year, the reasons for the establishment of the overseas military location.

(B) A description of the strategic goal and operational requirements supported by each overseas military location.

(C) A list of each construction or facility improvement project carried out by the Department of Defense regardless of the funding source, and each construction or facility improvement project accepted as a payment-in-kind, at overseas military locations during the previous fiscal year if the construction or facility improvement project was not specifically authorized in a Military Construction Authorization Act or congressional notice of the construction or facility improvement project was not provided by another means. Each construction or facility improvement project on the list shall be delineated by project location, project title or description, project cost, including costs covered by the host country, and authority used to undertake the project.

(D) For each overseas military location first designated as an enduring location in one of the previous two required reports, a list of required construction and facility improvement projects anticipated to be carried out by the Department of Defense directly or through the acceptance of payments-in-kind during the fiscal year in which the report is submitted and the next four fiscal years. Each construction or facility improvement project on the list shall be delineated by project location, project title or description, estimated project cost, including costs anticipated to be covered by the host country, and authority to be used to undertake the project.

(E) An overview of any annual lease or access costs to the United States for each overseas military location designated as an enduring location.

(F) A description of any plans to transition an existing contingency overseas military location to an enduring overseas military location, or to upgrade or downgrade the designation of an existing enduring or contingency overseas military location, during the fiscal year in which the report is submitted.

(G) A list of any overseas military locations that, during the previous fiscal year, were transferred to the control of security forces of the host country or another military force, closed, or for any other reason no longer used by the armed forces, including a summary of any costs associated with the transfer or closure of the overseas military location.

(H) A summary of any force protection risks identified for cooperative security locations and contingency locations, the actions proposed to mitigate such risks, and the resourcing and implementation plan to implement the mitigation actions.

(I) Such other such matters related to overseas military locations as the Secretary of Defense considers appropriate.

(3) In this subsection:

(A)(i) The term ''overseas military location'' covers both enduring locations and contingency locations established outside the United States.

(ii) An enduring location is primarily characterized either by the presence of permanently assigned United States forces with robust infrastructure and quality of life amenities to support that presence, by the sustained presence of allocated United States forces with infrastructure and quality of life amenities consistent with that presence, or by the periodic presence of allocated United States forces with little or no permanent United States military presence or controlled infrastructure. Enduring locations include main operating bases, forward operating sites, and cooperative security locations.

(iii) A contingency location refers to a location outside of the United States that is not covered by subparagraph (B), but that is used by United States forces to support and sustain operations during named and unnamed contingency operations or other operations as directed by appropriate authority and is categorized by mission life-cycle requirements as initial, temporary, or semi-permanent.

(B)(i) The term ''construction or facility improvement project'' includes any construction, development, conversion, or extension of a building, structure, or other improvement to real property carried out at an overseas military location, whether to satisfy temporary or permanent requirements, and any acquisition of land for an overseas military location.

(ii) The term does not include repairs to a building, structure, or other improvement to real property, unless the building, structure, or other improvement cannot effectively be used for its designated functional purpose in the absence of the repairs.

(4) The Secretary of Defense shall prepare the report under paragraph (1) in coordination with the Under Secretary of Defense for Policy and the Under Secretary of Defense for Acquisition and Sustainment.

(5) A report under paragraph (1) shall be submitted in unclassified form, but may contain a classified annex as necessary.

(b) DEPARTMENT OF DEFENSE OVERSEAS MILITARY FACILITY INVESTMENT RECOVERY ACCOUNT.—(1) Except as provided in subsection (c), amounts paid to the United States, pursuant to any treaty, status of forces agreement, or other international agreement to which the United States is a party, for the residual value of real

property or improvements to real property used by civilian or military personnel of the Department of Defense shall be deposited into the Department of Defense Overseas Military Facility Investment Recovery Account.

(2) Money deposited in the Department of Defense Overseas Military Facility Investment Recovery Account shall be available to the Secretary of Defense for payment, as provided in appropriation Acts, of costs incurred by the Department of Defense in connection with—

(A) military construction, facility maintenance and repair, and environmental restoration at military installations in the United States; and

(B) military construction, facility maintenance and repair, and compliance with applicable environmental laws at military installations outside the United States at which the Secretary anticipates the United States will have an enduring presence.

(3) Funds in the Department of Defense Overseas Facility Investment Recovery Account shall remain available until expended.

(4) Not later than December 1 of each year, the Secretary of Defense shall submit to the congressional defense committees a report detailing all expenditures made from the Department of Defense Overseas Facility Investment Recovery Account during the preceding fiscal year.

(c) TREATMENT OF AMOUNTS CORRESPONDING TO THE VALUE OF PROPERTY PURCHASED WITH NONAPPROPRIATED FUNDS.—In the case of a payment referred to in subsection (b)(1) for the residual value of real property or improvements at an overseas military facility, the portion of the payment that is equal to the depreciated value of the investment made with nonappropriated funds shall be deposited in the reserve account established under section 204(b)(7)(C) of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 10 U.S.C. 2687 note). The Secretary of Defense may use amounts in the account (in such an aggregate amount as is provided in advance by appropriation Acts) for the purpose of acquiring, constructing, or improving commissary stores and nonappropriated fund instrumentalities.

(d) OMB REVIEW OF PROPOSED OVERSEAS BASING SETTLEMENTS.—(1) The Secretary of Defense may not enter into an agreement of settlement with a host country regarding the release to the host country of improvements made by the United States to facilities at an installation located in the host country until 30 days after the date on which the Secretary submits the proposed settlement to the Director of the Office of Management and Budget. The prohibition set forth in the preceding sentence shall apply only to agreements of settlement for improvements having a value in excess of $10,000,000. The Director shall evaluate the overall equity of the proposed settlement. In evaluating the proposed settlement, the Director shall consider such factors as the extent of the United States capital investment in the improvements being released to the host country, the depreciation of the improvements, the condition of the improvements, and any applicable requirements for environmental remediation or restoration at the installation.

(2) Each year, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on each proposed agreement of settlement that was not submitted by the Secretary to the Director of the Office of Management and Budget in the previous year under paragraph (1) because the fair market value of the improvements to be released pursuant to the proposed agreement did not exceed $10,000,000.

(e) CONGRESSIONAL OVERSIGHT OF USE OF PAYMENTS-IN-KIND FOR CONSTRUCTION OR OPERATIONS.—(1) Before concluding an agreement for acceptance of military construction or facility improvements as a payment-in-kind, the Secretary of Defense shall submit to the congressional defense committees a notification on the proposed agreement. Any such notification shall contain the following:

(A) A description of the military construction project or facility improvement project.

(B) An explanation of the military requirement to be satisfied with the project.

(C) A certification that the project is included in the current future-years defense program.

(2) Before concluding an agreement for acceptance of host country support or host country payment of operating costs of United States forces as a payment-in-kind, the Secretary of Defense shall submit to the congressional defense committees a notification on the proposed agreement. Any such notification shall contain the following:

(A) A description of each activity to be covered by the payment-in-kind.

(B) A certification that the costs to be covered by the payment-in-kind are included in the budget of one or more of the military departments or that it will otherwise be necessary to provide for payment of such costs in a budget of one or more of the military departments in the current or the next fiscal year.

(3) When the Secretary of Defense submits a notification of a proposed agreement under paragraph (1) or (2), the Secretary may then enter into the agreement described in the notification only after the end of the 30-day period beginning on the date on which the notification is submitted or, if earlier, the end of the 14-day period beginning on the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this title.

(f) ACCEPTANCE OF MILITARY CONSTRUCTION PROJECTS AS PAYMENTS-IN-KIND AND IN-KIND CONTRIBUTIONS.—(1)(A) Except as provided in subparagraph (B), a military construction project costing more than $6,000,000 may be accepted as payment-in-kind or as an in-kind contribution required by a bilateral agreement with a host country only if that military construction project is authorized by law.

(B) Subparagraph (A) does not apply to a military construction project that—

(i) was specified in a bilateral agreement with a host country that was entered into before December 26, 2013;

(ii) was the subject of negotiation between the United States and a host country as of the date of the enactment of the Military Con-

struction Authorization Act for Fiscal Year 2015; or

(iii) was accepted as payment-in-kind for the residual value of improvements made by the United States at military installations released to the host country under section 2921 of the Military Construction Authorization Act for Fiscal Year 1991 (division B of Public Law 101–510; 10 U.S.C. 2687 note) before December 26, 2013.

(2)(A) If the Secretary of Defense accepts a military construction project to be built for Department of Defense personnel outside the United States as a payment-in-kind or an in-kind contribution required by a bilateral agreement with a host country, the Secretary shall submit to the congressional defense committees a written notification at least 30 days before the initiation date for any such military construction project.

(B) A notification under subparagraph (A) with respect to a proposed military construction project shall include the following:

(i) The requirements for, and purpose and description of, the proposed project.

(ii) The cost of the proposed project.

(iii) The scope of the proposed project.

(iv) The schedule for the proposed project.

(v) Such other details as the Secretary considers relevant.

(C) Subparagraph (A) shall not apply to a military construction project authorized in a Military Construction Authorization Act.

(3) To the extent that a payment-in-kind or an in-kind contribution is provided under a bilateral agreement with a host country with respect to a military construction project for which funds have already been obligated or expended by the Secretary of Defense, the Secretary shall return to the Treasury funds in an amount equal to the value of the funds already obligated or expended for the project.

(4) In this subsection, the term ''military construction project'' has the meaning given such term in section 2801 of this title.

(g) DEFINITIONS.—In this section:

(1) The term ''fair market value of the improvements'' means the value of improvements determined by the Secretary of Defense on the basis of their highest use.

(2) The term ''improvements'' includes new construction of facilities and all additions, improvements, modifications, or renovations made to existing facilities or to real property, without regard to whether they were carried out with appropriated or nonappropriated funds.

(3) The term ''nonappropriated funds'' means funds received from—

(A) the adjustment of, or surcharge on, selling prices at commissary stores fixed under section 2685 of this title; or

(B) a nonappropriated fund instrumentality.

(4) The term ''nonappropriated fund instrumentality'' means an instrumentality of the United States under the jurisdiction of the armed forces (including the Army and Air Force Exchange Service, the Navy Resale and Services Support Office, and the Marine Corps exchanges) which is conducted for the comfort, pleasure, contentment, or physical or mental improvement of members of the armed forces.

(Added Pub. L. 111–84, div. B, title XXVIII, § 2822(a)(1), Oct. 28, 2009, 123 Stat. 2665; amended Pub. L. 111–383, div. A, title X, § 1075(b)(44), Jan. 7, 2011, 124 Stat. 4371; Pub. L. 112–239, div. A, title X, § 1076(f)(34), Jan. 2, 2013, 126 Stat. 1954; Pub. L. 113–66, div. B, title XXVIII, § 2807(a), Dec. 26, 2013, 127 Stat. 1008; Pub. L. 113–291, div. B, title XXVIII, § 2803(a), Dec. 19, 2014, 128 Stat. 3696; Pub. L. 114–92, div. A, title X, § 1081(a)(11), (b)(7), Nov. 25, 2015, 129 Stat. 1001, 1002; Pub. L. 114–328, div. B, title XXVIII, § 2811(a), (c), Dec. 23, 2016, 130 Stat. 2715, 2716; Pub. L. 115–91, div. A, title X, § 1081(d)(15), Dec. 12, 2017, 131 Stat. 1600; Pub. L. 116–283, div. B, title XXVIII, § 2822(a)–(b)(2), Jan. 1, 2021, 134 Stat. 4330–4332.)

REFERENCES IN TEXT

The date of the enactment of the Military Construction Authorization Act for Fiscal Year 2015, referred to in subsec. (f)(1)(B)(ii), is the date of enactment of div. B of Pub. L. 113–291, which was approved Dec. 19, 2014.

AMENDMENTS

2021—Pub. L. 116–283, § 2822(b)(2), amended section catchline generally, substituting ''Overseas base closures and realignments and status of United States overseas military locations'' for ''Overseas base closures and realignments and basing master plans''.

Subsec. (a). Pub. L. 116–283, § 2822(a)(1), substituted ''Overseas Military Locations'' for ''Master Plans'' in heading.

Subsec. (a)(1)(B). Pub. L. 116–283, § 2822(a)(2), added subpar. (B) and struck out former subpar. (B) which read as follows: ''the status of development and execution of comprehensive master plans for overseas military main operating bases, forward operating sites, and cooperative security locations.''

Subsec. (a)(2) to (5). Pub. L. 116–283, § 2822(a)(3), added pars. (2) to (5) and struck out former par. (2) which related to elements of annual status report of overseas closures and realignments and master plans.

Subsec. (e)(2). Pub. L. 116–283, § 2822(b)(1), substituted ''host country'' for ''host nation'' in two places in introductory provisions.

2017—Subsec. (f). Pub. L. 115–91, § 1081(d)(15), amended Pub. L. 114–328, § 2811(c). See 2016 Amendment note below.

2016—Subsec. (f). Pub. L. 114–328, § 2811(a), amended subsec. (f) generally. Prior to amendment, subsec. (f) related to authorized use of payments-in-kind and in-kind contributions.

Pub. L. 114–328, § 2811(c), as amended by Pub. L. 115–91, § 1081(d)(15), repealed Pub. L. 113–291, § 2803(a). See 2014 Amendment note below.

2015—Subsec. (d)(2). Pub. L. 114–92, § 1081(a)(11), inserted ''fair market'' before ''value''.

Subsec. (f). Pub. L. 114–92, § 1081(b)(7), amended Pub. L. 113–291, § 2803(a). See 2014 Amendment note below.

2014—Subsec. (f). Pub. L. 113–291, § 2803(a), as amended by Pub. L. 114–92, § 1081(b)(7), which amended subsec. (f) generally by substituting provisions related to authorized use of payments-in-kind and in-kind contributions for provisions related to authorized use of payments-in-kind, was repealed by Pub. L. 114–328, § 2811(c), as amended by Pub. L. 115–91, § 1081(d)(15).

2013—Pub. L. 113–66, § 2807(a), amended section generally. Prior to amendment, section consisted of subsecs. (a) and (b) which related to an annual status report of overseas base closures, realignments, and basing master plans and required elements of the report, respectively.

Subsec. (a). Pub. L. 112–239, § 1076(f)(34)(A), substituted ''Foreign Relations'' for ''Foreign relations''.

Subsec. (b)(1). Pub. L. 112–239, § 1076(f)(34)(B), struck out comma after ''including'' and substituted ''the Treaty'' for ''The Treaty''.

2011—Subsec. (a). Pub. L. 111–383 substituted ''31 for'' for ''31for'' in introductory provisions.

EFFECTIVE DATE OF 2017 AMENDMENT

Pub. L. 115–91, div. A, title X, § 1081(d), Dec. 12, 2017, 131 Stat. 1599, provided that the amendment made by section 1081(d)(15) is effective as of Dec. 23, 2016, and as if included in Pub. L. 114–328 as enacted.

EFFECTIVE DATE OF 2015 AMENDMENT

Pub. L. 114–92, div. A, title X, § 1081(b), Nov. 25, 2015, 129 Stat. 1001, provided in part that the amendment made by section 1081(b)(7) is effective as of Dec. 19, 2014, and as if included in Pub. L. 113–291 as enacted.

EFFECTIVE DATE OF 2014 AMENDMENT

Pub. L. 113–291, div. B, title XXVIII, § 2803(d), Dec. 19, 2014, 128 Stat. 3697, which provided the effective date for the amendments made by section 2803 of Pub. L. 113–291, was repealed by Pub. L. 114–328, div. B, title XXVIII, § 2811(c), Dec. 23, 2016, 130 Stat. 2716.

REPEAL OF 2014 AMENDMENT

Pub. L. 114–328, div. B, title XXVIII, § 2811(c), Dec. 23, 2016, 130 Stat. 2716, as amended by Pub. L. 115–91, div. A, title X, § 1081(d)(15), Dec. 12, 2017, 131 Stat. 1600, provided that: ''Section 2803 of the Carl Levin and Howard 'Buck' McKeon National Defense Authorization Act for Fiscal Year 2015 (Public Law 113–291; 128 Stat. 3696) [amending this section and section 2802 of this title and enacting provisions set out as a note under this section] is repealed.''

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective Dec. 31, 2021, of provisions of this section requiring submittal of annual report to Congress, see section 1061 of Pub. L. 114–328, set out as a note under section 111 of this title.

PROHIBITION RELATING TO CLOSURE OR RETURN TO HOST NATION OF EXISTING MILITARY INSTALLATIONS, INFRASTRUCTURE, OR REAL PROPERTY IN EUROPE

Pub. L. 116–283, div. B, title XXVIII, § 2828, Jan. 1, 2021, 134 Stat. 4338, provided that:

''(a) PROHIBITION ON CLOSURE OR RETURN.—Except as provided by subsection (b), the Secretary of Defense shall not implement any activity that closes or returns to the host nation any military installation, infrastructure, or real property in Europe that, as of the date of enactment of this Act [Jan. 1, 2021], is under the operational control of the Department of Defense or a military department and is utilized by the United States Armed Forces.

''(b) WAIVER AND EXCEPTION.—The Secretary of Defense may waive the prohibition under subsection (a) if the Secretary certifies to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] that there is no longer a foreseeable need for the military installation, infrastructure, or real property, or a portion of the military installation in the case of a partial closure and return of a military installation, to support a permanent or rotational United States military presence in the European theater.''

§ 2688. Utility systems: conveyance authority

(a) CONVEYANCE AUTHORITY.—The Secretary of a military department may convey a utility system, or part of a utility system, under the jurisdiction of the Secretary to a municipal, private, regional, district, or cooperative utility company or other entity. The conveyance may consist of all right, title, and interest of the United States in the utility system or such lesser estate as the Secretary considers appropriate to serve the interests of the United States.

(b) SELECTION OF CONVEYEE.—(1) If more than one utility or entity referred to in subsection (a) notifies the Secretary concerned of an interest in a conveyance under such subsection, the Secretary shall carry out the conveyance through the use of competitive procedures.

(2) Notwithstanding paragraph (1), the Secretary concerned may use procedures other than competitive procedures, but only in accordance with subsections (c) through (f) of section 2304 of this title, to select the conveyee of a utility system (or part of a utility system) under subsection (a).

(3) With respect to the solicitation process used in connection with the conveyance of a utility system (or part of a utility system) under subsection (a), the Secretary concerned shall ensure that the process is conducted in a manner consistent with the laws and regulations of the State in which the utility system is located to the extent necessary to ensure that all interested regulated and unregulated utility companies and other interested entities receive an opportunity to acquire and operate the utility system to be conveyed.

(c) CONSIDERATION.—(1) The Secretary concerned may require as consideration for a conveyance under subsection (a) an amount equal to the fair market value (as determined by the Secretary) of the right, title, or interest of the United States conveyed. The consideration may take the form of—

(A) a lump sum payment; or

(B) a reduction in charges for utility services provided by the utility or entity concerned to the military installation at which the utility system is located.

(2) If the utility services proposed to be provided as consideration under paragraph (1) are subject to regulation by a Federal or State agency, any reduction in the rate charged for the utility services shall be subject to establishment or approval by that agency.

(d) CONTRACTS FOR UTILITY SERVICES.—(1) Except as provided in paragraph (2), a contract for the receipt of utility services as consideration under subsection (c), or any other contract for utility services entered into by the Secretary concerned in connection with the conveyance of a utility system under this section, may be for a period not to exceed 10 years.

(2) The Secretary concerned may authorize a contract for utility services described in paragraph (1) or the renewal of such a contract to have a term in excess of 10 years, but not to exceed 50 years, if the Secretary concerned determines that a contract for a longer term will be cost effective. The determination of cost effectiveness shall be made using a business case analysis that includes an independent estimate of the level of investment that should be required to maintain adequate operation of the utility system over the proposed term of the contract or contract renewal. The business case analysis must also demonstrate how a privatized system will operate in a manner consistent with subsection (g)(3). A renewal of a contract pursuant to this paragraph may be entered into only within the last five years of the existing contract term.

(e) TREATMENT OF PAYMENTS.—(1) A lump sum payment received under subsection (c) shall be credited, at the election of the Secretary concerned—

(A) to an appropriation of the military department concerned available for the procurement of the same utility services as are provided by the utility system conveyed under this section;

(B) to an appropriation of the military department available for carrying out energy savings projects or water conservation projects; or

(C) to an appropriation of the military department available for improvements to other utility systems.

(2) Amounts so credited shall be merged with funds in the appropriation to which credited and shall be available for the same purposes, and subject to the same conditions and limitations, as the appropriation with which merged.

[(f) Repealed. Pub. L. 112–81, div. A, title X, § 1061(21)(C), Dec. 31, 2011, 125 Stat. 1584.]

(g) ADDITIONAL TERMS AND CONDITIONS.—(1) The Secretary concerned may require such additional terms and conditions in connection with a conveyance under subsection (a) as the Secretary considers appropriate to protect the interests of the United States.

(2) The Secretary concerned shall require in any contract for the conveyance of a utility system (or part of a utility system) under subsection (a) that the conveyee manage and operate the utility system in a manner consistent with applicable Federal and State regulations pertaining to health, safety, fire, and environmental requirements.

(3) The Secretary concerned shall require in any contract for the conveyance of a utility system (or part of a utility system) under subsection (a) that the conveyee manage and operate the utility system in a manner consistent with energy resilience and cybersecurity requirements and associated metrics provided to the conveyee to ensure that the reliability of the utility system meets mission requirements.

(4) The Secretary of Defense, in consultation with the Secretaries of the military departments, shall include in the installation energy report submitted under section 2925(a) of this title a description of progress in meeting energy resilience metrics for all conveyance contracts entered into pursuant to this section.

(h) ASSISTANCE FOR CONSTRUCTION, REPAIR, OR REPLACEMENT OF UTILITY SYSTEMS.—In lieu of carrying out a military construction project to construct, repair, or replace a utility system, the Secretary concerned may use funds authorized and appropriated for the project to facilitate the conveyance of the utility system under this section by making a contribution toward the cost of construction, repair, or replacement of the utility system by the entity to which the utility system is being conveyed.

(i) UTILITY SYSTEM DEFINED.—(1) In this section, the term ''utility system'' means any of the following:

(A) A system for the generation and supply of electric power.

(B) A system for the treatment or supply of water.

(C) A system for the collection or treatment of wastewater.

(D) A system for the generation or supply of steam, hot water, and chilled water.

(E) A system for the supply of natural gas.

(F) A system for the transmission of telecommunications.

(2) The term ''utility system'' includes the following:

(A) Equipment, fixtures, structures, and other improvements utilized in connection with a system referred to in paragraph (1).

(B) Real property, easements, and rights-of-way associated with a system referred to in that paragraph.

(j) CONVEYANCE OF ADDITIONAL UTILITY INFRASTRUCTURE AFTER CONVEYANCE OF A UTILITY SYSTEM.—(1) Upon conveyance of a utility system, the Secretary of a military department may convey additional utility infrastructure under the jurisdiction of the Secretary on a military installation to a utility or entity to which a utility system for the installation has been conveyed under subsection (a) if the Secretary determines that—

(A) the additional utility infrastructure cannot operate without being a part of the conveyed utility system or operation of the additional utility infrastructure by the utility or entity would be in the best interest of the Government; and

(B) the military department receives as consideration an amount for the utility infrastructure determined in the same manner as the consideration the Secretary could require under subsection (c) for a conveyance under subsection (a).

(2) The conveyance under this paragraph may consist of all right, title, and interest of the United States or such lesser estate as the Secretary considers appropriate to serve the interests of the United States.

(k) IMPROVEMENT OF CONVEYED UTILITY SYSTEMS.—In the case of a utility system that is conveyed under this section and that only provides utility services to a military installation, the Secretary concerned may use amounts authorized to be appropriated for military construction to improve the reliability, resilience, efficiency, physical security, or cybersecurity of the utility system.

(*l*) LIMITATION.—This section shall not apply to projects constructed or operated by the Army Corps of Engineers under its civil works authorities.

(Added Pub. L. 105–85, div. B, title XXVIII, § 2812(a), Nov. 18, 1997, 111 Stat. 1992; amended Pub. L. 106–65, div. A, title X, § 1067(1), div. B, title XXVIII, § 2812, Oct. 5, 1999, 113 Stat. 774, 851; Pub. L. 106–398, § 1 [[div. A], title X, § 1087(a)(15), div. B, title XXVIII, § 2813], Oct. 30, 2000, 114 Stat. 1654, 1654A–291, 1654A–418; Pub. L. 108–136, div. A, title X, § 1031(a)(32), Nov. 24, 2003, 117 Stat. 1600; Pub. L. 109–163, div. B, title XXVIII, § 2823(a)–(d), Jan. 6, 2006, 119 Stat. 3514–3516; Pub. L. 110–417, div. B, title XXVIII, § 2813, Oct. 14, 2008, 122 Stat. 4728; Pub. L. 111–84, div. B, title XXVIII, § 2821, Oct. 28, 2009, 123 Stat. 2664; Pub. L. 112–81, div. A, title X, § 1061(21), Dec. 31, 2011,

125 Stat. 1584; Pub. L. 113–66, div. B, title XXVIII, § 2813, Dec. 26, 2013, 127 Stat. 1014; Pub. L. 114–92, div. B, title XXVIII, § 2813, Nov. 25, 2015, 129 Stat. 1175; Pub. L. 115–91, div. B, title XXVIII, § 2834, Dec. 12, 2017, 131 Stat. 1858; Pub. L. 115–232, div. A, title III, § 312(e), Aug. 13, 2018, 132 Stat. 1710; Pub. L. 116–92, div. A, title III, § 315, Dec. 20, 2019, 133 Stat. 1304; Pub. L. 116–283, div. A, title XVIII, § 1883(b)(2), div. B, title XXVIII, §§ 2823(a), 2824, Jan. 1, 2021, 134 Stat. 4294, 4333.)

AMENDMENT OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1883(b)(2), Jan. 1, 2021, 134 Stat. 4151, 4294, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, except as otherwise provided in title XVIII of Pub. L. 116–283, in title 10, United States Code, each reference in the text of such title to a source section that is redesignated by title XVIII of Pub. L. 116–283, is amended by striking such reference and inserting a reference to the appropriate section as so redesignated. See 2021 Amendment note below.

PRIOR PROVISIONS

A prior section 2688, added Pub. L. 96–125, title VIII, § 804(a)(1), Nov. 26, 1979, 93 Stat. 948; amended Pub. L. 96–418, title VIII, § 804, Oct. 10, 1980, 94 Stat. 1777; Pub. L. 97–22, § 11(a)(9), July 10, 1981, 95 Stat. 138; Pub. L. 97–99, title IX, § 901, Dec. 23, 1981, 95 Stat. 1381, related to use of solar energy systems in new facilities, prior to repeal by Pub. L. 97–214, §§ 7(1), 12(a), July 12, 1982, 96 Stat. 173, 176, effective Oct. 1, 1982, and applicable to military construction projects, and to construction and acquisition of military family housing authorized before, on, or after such date. See section 2915 of this title.

AMENDMENTS

2021—Subsec. (b)(2). Pub. L. 116–283, § 1883(b)(2), substituted ''subsections (a), (b), (d), and (e) of section 3204'' for ''subsections (c) through (f) of section 2304''.

Subsec. (d)(2). Pub. L. 116–283, § 2824, substituted ''The Secretary concerned'' for ''The Secretary of Defense, or the designee of the Secretary,'' and ''if the Secretary concerned'' for ''if the Secretary''.

Pub. L. 116–283, § 2823(a), inserted ''or the renewal of such a contract'' after ''paragraph (1)'', substituted ''the contract or contract renewal.'' for ''the contract.'', and inserted at end ''A renewal of a contract pursuant to this paragraph may be entered into only within the last five years of the existing contract term.''

2019—Subsecs. (k), (*l*). Pub. L. 116–92 added subsec. (k) and redesignated former subsec. (k) as (*l*).

2018—Subsec. (d)(2). Pub. L. 115–232, § 312(e)(1), inserted at end ''The business case analysis must also demonstrate how a privatized system will operate in a manner consistent with subsection (g)(3).''

Subsec. (g)(3). Pub. L. 115–232, § 312(e)(2), substituted ''shall require'' for ''may require'' and ''consistent with energy resilience and cybersecurity requirements and associated metrics'' for ''consistent with energy resilience requirements and metrics''.

2017—Subsec. (g)(3), (4). Pub. L. 115–91 added pars. (3) and (4).

2015—Subsec. (j). Pub. L. 114–92, § 2813(1), substituted ''Conveyance of Additional'' for ''Construction of'' in heading.

Subsec. (j)(1). Pub. L. 114–92, § 2813(2), redesignated subpar. (B) as (A) and substituted ''utility system or operation of the additional utility infrastructure by the utility or entity would be in the best interest of the Government; and'' for ''utility system;'', redesignated subpar. (D) as (B) and substituted ''amount for'' for ''amount equal to the fair market value of'', and struck out former subpars. (A) and (C) which read as follows:

''(A) the additional utility infrastructure was constructed or installed after the date of the conveyance of the utility system;

''(C) the additional utility infrastructure was planned and coordinated with the entity operating the conveyed utility system; and''.

2013—Subsec. (d)(2). Pub. L. 113–66 inserted at end ''The determination of cost effectiveness shall be made using a business case analysis that includes an independent estimate of the level of investment that should be required to maintain adequate operation of the utility system over the proposed term of the contract.''

2011—Subsec. (a). Pub. L. 112–81, § 1061(21)(A), struck out par. (1) designation before ''The Secretary of a military department'' and struck out pars. (2) and (3) which related to conditions for entry into a contract to convey all or part of a utility system and conditions under which the Secretary concerned could not reconsider conversion to contractor operation under section 2461 of this title for a five-year period, respectively.

Subsec. (d)(2). Pub. L. 112–81, § 1061(21)(B), struck out at end ''The economic analysis submitted to the congressional defense committees under subsection (a)(2) for the conveyance of the utility system, or part thereof, with regard to which the utility services contract will be entered into by the Secretary concerned shall include the determination required by this paragraph, an explanation of the need for the longer term contract, and a comparison of costs between a 10-year contract and the longer-term contract.''

Subsec. (f). Pub. L. 112–81, § 1061(21)(C), struck out subsec. (f). Prior to amendment, text read as follows: ''Not later than 30 days after the end of each quarter of a fiscal year, the Secretary shall submit to the congressional defense committees a report on the conveyances made under subsection (a) during such fiscal quarter.''

Subsec. (h). Pub. L. 112–81, § 1061(21)(D), struck out at end ''The Secretary concerned shall consider any such contribution in the economic analysis required under subsection (a)(2).''

2009—Subsec. (a)(2)(A)(ii). Pub. L. 111–84, § 2821(a), substituted ''system by 10 percent of the long-term cost for provision of those utility services in the agency tender; and'' for ''system; and''.

Subsec. (a)(3). Pub. L. 111–84, § 2821(b), added par. (3).

2008—Subsecs. (j), (k). Pub. L. 110–417 added subsec. (j) and redesignated former subsec. (j) as (k).

2006—Subsec. (a). Pub. L. 109–163, § 2823(a), designated existing provisions as par. (1) and added par. (2).

Subsec. (c)(1). Pub. L. 109–163, § 2823(b), substituted ''may require'' for ''shall require'' in introductory provisions.

Subsec. (c)(3). Pub. L. 109–163, § 2823(c)(2), redesignated subsec. (c)(3) as (d).

Subsec. (d). Pub. L. 109–163, § 2823(c)(2), redesignated subsec. (c)(3) as (d), substituted ''CONTRACTS FOR UTILITY SERVICES.—(1) Except as provided in paragraph (2), a contract'' for ''A contract'', ''subsection (c)'' for ''paragraph (1)'', and ''10 years'' for ''50 years'', and added par. (2). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 109–163, § 2823(c)(1), redesignated subsec. (d) as (e). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 109–163, § 2823(d)(1), struck out at end ''The report shall include, for each such conveyance, an economic analysis (based upon accepted life-cycle costing procedures approved by the Secretary of Defense) demonstrating that—

''(1) the long-term economic benefit of the conveyance to the United States exceeds the long-term economic cost of the conveyance to the United States; and

''(2) the conveyance will reduce the long-term costs of the United States for utility services provided by the utility system concerned.''

Pub. L. 109–163, § 2823(c)(1), redesignated subsec. (e) as (f). Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 109–163, § 2823(c)(1), redesignated subsec. (f) as (g). Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 109–163, § 2823(d)(2), substituted ''subsection (a)(2)'' for ''subsection (e)''.

Pub. L. 109–163, § 2823(c)(1), redesignated subsec. (g) as (h). Former subsec. (h) redesignated (i).

Subsecs. (i), (j). Pub. L. 109–163, § 2823(c)(1), redesignated subsecs. (h) and (i) as (i) and (j), respectively.

2003—Subsec. (e). Pub. L. 108–136 amended heading and text of subsec. (e) generally. Prior to amendment, text read as follows: ''The Secretary concerned may not make a conveyance under subsection (a) until—

''(1) the Secretary submits to the Committee on Armed Services and the Committee on Appropriations of the Senate and the Committee on Armed Services and the Committee on Appropriations of the House of Representatives an economic analysis (based upon accepted life-cycle costing procedures approved by the Secretary of Defense) demonstrating that—

''(A) the long-term economic benefit of the conveyance to the United States exceeds the long-term economic cost of the conveyance to the United States; and

''(B) the conveyance will reduce the long-term costs of the United States for utility services provided by the utility system concerned; and

''(2) a period of 21 days has elapsed after the date on which the economic analysis is received by the committees.''

2000—Subsec. (b). Pub. L. 106–398, § 1 [div. B, title XXVIII, § 2813(a)], designated existing provisions as par. (1) and added pars. (2) and (3).

Subsec. (f). Pub. L. 106–398, § 1 [div. B, title XXVIII, § 2813(b)], designated existing provisions as par. (1) and added par. (2).

Subsecs. (h) to (j). Pub. L. 106–398, § 1 [[div. A], title X, § 1087(a)(15)], redesignated subsecs. (i) and (j) as (h) and (i), respectively.

1999—Subsec. (c)(3). Pub. L. 106–65, § 2812(a), added par. (3).

Subsec. (e)(1). Pub. L. 106–65, § 1067(1), substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security'' in introductory provisions.

Subsec. (g). Pub. L. 106–65, § 2812(c)(2), added subsec. (g). Former subsec. (g) redesignated (i).

Subsec. (g)(2)(B). Pub. L. 106–65, § 2812(b), substituted ''Real property, easements,'' for ''Easements''.

Subsecs. (h) to (j). Pub. L. 106–65, § 2812(c)(1), redesignated subsecs. (g) and (h) as (i) and (j), respectively.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by section 1883(b)(2) of Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

SENSE OF CONGRESS REGARDING INCLUSION OF STORMWATER SYSTEMS AND COMPONENTS WITHIN THE MEANING OF ''WASTEWATER SYSTEM'' UNDER THE DEPARTMENT OF DEFENSE AUTHORITY FOR CONVEYANCE OF UTILITY SYSTEMS

Pub. L. 114–328, div. B, title XXVIII, § 2813, Dec. 23, 2016, 130 Stat. 2717, provided that: ''It is the sense of Congress that the reference to a system for the collection or treatment of wastewater in the definition of 'utility system' in section 2688 of title 10, United States Code, which authorizes the Department of Defense to convey utility systems, includes stormwater systems and components.''

[§ 2689. Renumbered § 2917]

[§ 2690. Renumbered § 2918]

§ 2691. Restoration of land used by permit or damaged by mishap; reimbursement of state costs of fighting wildland fires

(a) RESTORATION OF OTHER AGENCY LAND USED BY PERMIT.—The Secretary of the military department concerned may remove improvements and take any other action necessary in the judgment of the Secretary to restore land used by that military department by permit from another military department or Federal agency if the restoration is required by the permit making that land available to the military department. The Secretary concerned may carry out this section using funds available for operations and maintenance or for military construction.

(b) SCREENING FOR USE OF IMPROVED LAND.—Unless otherwise prohibited by law or the terms of the permit, before restoration of any land under subsection (a) is begun, the Secretary concerned shall determine, under the provisions of subtitle I of title 40 and division C (except sections 3302, 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41, whether another military department or Federal agency has a use for the land in its existing, improved state. During the period required to make such a determination, the Secretary may provide for maintenance and repair of improvements on the land to the standards established for excess property by the Administrator of General Services.

(c) RESTORATION OF DEPARTMENT OF DEFENSE LAND USED BY OTHER AGENCY.—(1) As a condition of any permit, license, or other grant of access entered into by the Secretary of a military department with another Federal agency authorizing the agency to use lands under the control of the Secretary, the Secretary may require the agency to agree to remove any improvements and to take any other action necessary in the judgment of the Secretary to restore the land used by the agency to its condition before its use by the agency.

(2) In lieu of performing any removal or restoration work under paragraph (1), a Federal agency may elect, with the consent of the Secretary, to reimburse the Secretary for the costs incurred by the military department in performing such removal or restoration work.

(d) WILDLAND FIRES ON STATE LAND.—The Secretary of Defense may, in any lease, permit, license, or other grant of access for use of lands owned by a State, agree to reimburse the State for the reasonable costs of the State in suppressing wildland fires caused by the activities of the Department of Defense under such lease, permit, license, or other grant of access.

(e) RESTORATION OF LAND DAMAGED BY MISHAP.—(1) When land under the administrative jurisdiction of a Federal agency that is not a part of the Department of Defense is damaged as the result of a mishap involving a vessel, aircraft, or vehicle of the Department of Defense, the Secretary of Defense may, with the consent of the Federal agency, restore the land.

(2) When land under the administrative jurisdiction of the Department of Defense or a military department is damaged as the result of a

mishap involving a vessel, aircraft, or vehicle of a Federal agency that is not a part of the Department of Defense, the head of the Federal agency under whose control the vessel, aircraft, or vehicle was operating may, with the consent of the Department of Defense, restore the land.

(3) The authority under paragraphs (1) and (2) includes activities and expenditures necessary to complete restoration to meet the regulations of the Federal department or agency with administrative jurisdiction over the affected land, which may be different than the regulations of the Department of Defense.

(Added Pub. L. 98–407, title VIII, § 804(a), Aug. 28, 1984, 98 Stat. 1519; amended Pub. L. 99–145, title XIII, § 1303(a)(17), Nov. 8, 1985, 99 Stat. 739; Pub. L. 105–261, div. B, title XXVIII, § 2812(a), (b)(1), Oct. 17, 1998, 112 Stat. 2205; Pub. L. 107–217, § 3(b)(15), Aug. 21, 2002, 116 Stat. 1296; Pub. L. 111–350, § 5(b)(46), Jan. 4, 2011, 124 Stat. 3846; Pub. L. 115–91, div. B, title XXVIII, § 2814(a), (b), Dec. 12, 2017, 131 Stat. 1849, 1850; Pub. L. 115–232, div. A, title III, § 353, title X, § 1081(a)(27), Aug. 13, 2018, 132 Stat. 1731, 1985.)

AMENDMENTS

2018—Pub. L. 115–232, § 1081(a)(27), substituted "state" for "State" in section catchline.

Subsec. (e)(3). Pub. L. 115–232, § 353, added par. (3).

2017—Pub. L. 115–91, § 2814(b)(1), substituted "damaged by mishap; reimbursement of State costs of fighting wildland fires" for "lease" in section catchline.

Subsec. (a). Pub. L. 115–91, § 2814(a)(1), (b)(2), inserted heading and struck out "or lease" after "permit" in two places.

Subsec. (b). Pub. L. 115–91, § 2814(a)(2), (b)(3), inserted heading and struck out "or lease" after "permit".

Subsec. (c). Pub. L. 115–91, § 2814(b)(4), inserted heading.

Subsec. (c)(1). Pub. L. 115–91, § 2814(a)(3), struck out "lease," before "permit,".

Subsecs. (d), (e). Pub. L. 115–91, § 2814(a)(4), added subsecs. (d) and (e).

2011—Subsec. (b). Pub. L. 111–350 substituted "division C (except sections 3302, 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41" for "title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)".

2002—Subsec. (b). Pub. L. 107–217 inserted "subtitle I of title 40 and title III of" before "the Federal Property and Administrative Services Act of 1949" and substituted "(41 U.S.C. 251 et seq.)" for "(40 U.S.C. 471 et seq.)".

1998—Pub. L. 105–261, § 2812(b)(1), struck out "from other agencies" after "lease" in section catchline.

Subsec. (c). Pub. L. 105–261, § 2812(a), added subsec. (c).

1985—Pub. L. 99–145 substituted "used by" for "used of" in section catchline.

§ 2692. Storage, treatment, and disposal of nondefense toxic and hazardous materials

(a)(1) Except as otherwise provided in this section, the Secretary of Defense may not permit the use of an installation of the Department of Defense for the storage, treatment, or disposal of any material that is a toxic or hazardous material and that is not owned either by the Department of Defense or by a member of the armed forces (or a dependent of the member) assigned to or provided military housing on the installation.

(2) The Secretary of Defense shall define by regulation what materials are hazardous or toxic materials for the purposes of this section, including specification of the quantity of a material that serves to make it hazardous or toxic for the purposes of this section. The definition shall include materials referred to in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(14)) and materials designated under section 102 of that Act (42 U.S.C. 9602) and shall include materials that are of an explosive, flammable, or pyrotechnic nature.

(b) Subsection (a) does not apply to the following:

(1) The storage, treatment, or disposal of materials that will be or have been used in connection with an activity of the Department of Defense or in connection with a service to be performed on an installation of the Department for the benefit of the Department.

(2) The storage of strategic and critical materials in the National Defense Stockpile under an agreement for such storage with the Administrator of General Services.

(3) The temporary storage or disposal of explosives in order to protect the public or to assist agencies responsible for Federal, State, or local law enforcement in storing or disposing of explosives when no alternative solution is available, if such storage or disposal is made in accordance with an agreement between the Secretary of Defense and the head of the Federal, State, or local agency concerned.

(4) The temporary storage or disposal of explosives in order to provide emergency lifesaving assistance to civil authorities.

(5) The disposal of excess explosives produced under a Department of Defense contract, if the head of the military department concerned determines, in each case, that an alternative feasible means of disposal is not available to the contractor, taking into consideration public safety, available resources of the contractor, and national defense production requirements.

(6) The temporary storage of nuclear materials or nonnuclear classified materials in accordance with an agreement with the Secretary of Energy.

(7) The storage of materials that constitute military resources intended to be used during peacetime civil emergencies in accordance with applicable Department of Defense regulations.

(8) The temporary storage of materials of other Federal agencies in order to provide assistance and refuge for commercial carriers of such material during a transportation emergency.

(9) The storage of any material that is not owned by the Department of Defense if the Secretary of the military department concerned determines that the material is required or generated in connection with the authorized and compatible use of a facility of the Department of Defense, including the use of such a facility for testing material or training personnel.

(10) The treatment and disposal of any material that is not owned by the Department of Defense if the Secretary of the military department concerned determines that the material is required or generated in connection

with the authorized and compatible use of a facility of that military department and the Secretary enters into a contract or agreement with the prospective user that—

(A) is consistent with the best interest of national defense and environmental security; and

(B) provides for the prospective user's continued financial and environmental responsibility and liability with regard to the material.

(11) The storage of any material that is not owned by the Department of Defense if the Secretary of the military department concerned determines that the material is required or generated in connection with the use of a space launch facility located on an installation of the Department of Defense or on other land controlled by the United States.

(c) The Secretary of Defense may grant exceptions to subsection (a) when essential to protect the health and safety of the public from imminent danger if the Secretary otherwise determines the exception is essential and if the storage or disposal authorized does not compete with private enterprise.

(d)(1) The Secretary may assess a charge for any storage or disposal provided under this section. Any such charge shall be on a reimbursable cost basis.

(2) In the case of storage under this section authorized because of an imminent danger, the storage provided shall be temporary and shall cease once the imminent danger no longer exists. In all other cases of storage or disposal authorized under this section, the storage or disposal authorized shall be terminated as determined by the Secretary.

(Added Pub. L. 98–407, title VIII, § 805(a), Aug. 28, 1984, 98 Stat. 1520; amended Pub. L. 102–484, div. B, title XXVIII, § 2852, Oct. 23, 1992, 106 Stat. 2625; Pub. L. 103–337, div. A, title III, § 325, Oct. 5, 1994, 108 Stat. 2711; Pub. L. 105–85, div. A, title III, § 343(a)–(g)(2), Nov. 18, 1997, 111 Stat. 1686, 1687; Pub. L. 106–65, div. A, title X, § 1066(a)(25), Oct. 5, 1999, 113 Stat. 772; Pub. L. 109–364, div. A, title X, § 1071(a)(21), Oct. 17, 2006, 120 Stat. 2399.)

AMENDMENTS

2006—Subsec. (b)(9). Pub. L. 109–364 substituted ''testing material'' for ''testing materiel''.

1999—Subsec. (b). Pub. L. 106–65 substituted ''apply to the following:'' for ''apply to—'' in introductory provisions, ''The'' for ''the'' at the beginning of each of pars. (1) to (11), a period for the semicolon at the end of each of pars. (1) to (9), and a period for ''; and'' at the end of par. (10).

1997—Pub. L. 105–85, § 343(g)(2), substituted ''Storage, treatment, and'' for ''Storage and'' in section catchline.

Subsec. (a)(1). Pub. L. 105–85, § 343(g)(1), substituted ''storage, treatment, or disposal'' for ''storage or disposal''.

Pub. L. 105–85, § 343(a), substituted ''either by the Department of Defense or by a member of the armed forces (or a dependent of the member) assigned to or provided military housing on the installation'' for ''by the Department of Defense''.

Subsec. (b)(1), (2). Pub. L. 105–85, § 343(b), added par. (1) and redesignated former par. (1) as (2). Former par. (2) redesignated (3).

Subsec. (b)(3). Pub. L. 105–85, § 343(b)(1), (c), redesignated par. (2) as (3) and substituted ''Federal, State, or local law enforcement'' for ''Federal law enforcement'' and ''Federal, State, or local agency'' for ''Federal agency''. Former par. (3) redesignated (4).

Subsec. (b)(4) to (8). Pub. L. 105–85, § 343(b)(1), redesignated pars. (3) to (7) as (4) to (8), respectively. Former par. (8) redesignated (9).

Subsec. (b)(9). Pub. L. 105–85, § 343(b)(1), (d), redesignated par. (8) as (9) and substituted ''in connection with the authorized and compatible use of a'' for ''by a private person in connection with the authorized and compatible use by that person of an industrial-type'' and '', including the use of such a facility for testing materiel or training personnel;'' for ''; and''. Former par. (9) redesignated (10).

Subsec. (b)(10). Pub. L. 105–85, § 343(b)(1), (e), redesignated par. (9) as (10) and substituted ''in connection with the authorized and compatible use of a'' for ''by a private person in connection with the authorized and compatible commercial use by that person of an industrial-type'', ''or agreement with the prospective user'' for ''with that person'', ''for the prospective user's'' for ''for that person's'', and ''; and'' for period at end.

Subsec. (b)(11). Pub. L. 105–85, § 343(f), added par. (11).

1994—Subsec. (b)(9). Pub. L. 103–337 added par. (9).

1992—Subsec. (b)(8). Pub. L. 102–484 added par. (8).

SAVINGS PROVISION

Pub. L. 105–85, div. A, title III, § 343(h), Nov. 18, 1997, 111 Stat. 1688, provided that: ''Nothing in the amendments made by this section [amending this section] is intended to modify environmental laws or laws relating to the siting of facilities.''

[§ 2693. Repealed. Pub. L. 109–364, div. B, title XXVIII, § 2825(c)(2), Oct. 17, 2006, 120 Stat. 2477]

Section, added Pub. L. 101–647, title XVIII, § 1802(a), Nov. 29, 1990, 104 Stat. 4849; amended Pub. L. 107–107, div. A, title X, § 1048(a)(26)(A), (B)(i), Dec. 28, 2001, 115 Stat. 1224, 1225; Pub. L. 109–364, div. B, title XXVIII, § 2825(b), Oct. 17, 2006, 120 Stat. 2476, related to conveyance of real property or facility for utilization under the correctional options program. See section 2696(f) of this title.

A prior section 2693 was renumbered section 2465 of this title.

§ 2694. Conservation and cultural activities

(a) ESTABLISHMENT.—The Secretary of Defense may establish and carry out a program to conduct and manage in a coordinated manner the conservation and cultural activities described in subsection (b).

(b) ACTIVITIES.—(1) A conservation or cultural activity eligible for the program that the Secretary establishes under subsection (a) is any activity—

(A) that has regional or Department of Defense-wide significance and that involves more than one military department;

(B) that is necessary to meet legal requirements or to support military operations;

(C) that can be more effectively managed at the Department of Defense level; and

(D) for which no executive agency has been designated responsible by the Secretary.

(2) Such activities include the following:

(A) The development of ecosystem-wide land management plans.

(B) The conduct of wildlife studies to ensure the safety and sustainability of military operations.

(C) The identification and return of Native American human remains and cultural items

in the possession or control of the Department of Defense, or discovered on land under the jurisdiction of the Department, to the appropriate Native American tribes.

(D) The control of invasive species that may hinder military activities or degrade military training ranges.

(E) The establishment of a regional curation system for artifacts found on military installations.

(F) The implementation of ecosystem-wide land management plans—

(i) for a single ecosystem that encompasses at least two non-contiguous military installations, if those military installations are not all under the administrative jurisdiction of the same Secretary of a military department; and

(ii) providing synergistic benefits unavailable if the installations acted separately.

(c) COOPERATIVE AGREEMENTS.—The Secretary may negotiate and enter into cooperative agreements with public and private agencies, organizations, institutions, individuals, or other entities to carry out the program established under subsection (a).

(d) EFFECT ON OTHER LAWS.—Nothing in this section shall be construed or interpreted as preempting any otherwise applicable Federal, State, or local law or regulation relating to the management of natural and cultural resources on military installations.

(Added Pub. L. 104–201, div. A, title III, § 332(a)(1), Sept. 23, 1996, 110 Stat. 2484; amended Pub. L. 105–85, div. A, title X, § 1073(a)(59), Nov. 18, 1997, 111 Stat. 1903; Pub. L. 112–81, div. B, title XXVIII, § 2814, Dec. 31, 2011, 125 Stat. 1688.)

AMENDMENTS

2011—Subsec. (b)(2)(B). Pub. L. 112–81, § 2814(1), inserted ''and sustainability'' after ''safety''.

Subsec. (b)(2)(F). Pub. L. 112–81, § 2814(2), added subpar. (F).

1997—Subsec. (b)(1)(D). Pub. L. 105–85 substituted ''executive agency'' for ''executive ageny''.

EFFECTIVE DATE

Pub. L. 104–201, div. A, title III, § 332(b), Sept. 23, 1996, 110 Stat. 2485, provided that: ''Section 2694 of title 10, United States Code, as added by subsection (a), shall take effect on October 1, 1996.''

§ 2694a. Conveyance of surplus real property for natural resource conservation

(a) AUTHORITY TO CONVEY.—The Secretary of a military department may convey to an eligible entity described in subsection (b) any surplus real property that—

(1) is under the administrative control of the Secretary;

(2) is suitable and desirable for conservation purposes;

(3) has been made available for public benefit transfer for a sufficient period of time to potential claimants; and

(4) is not subject to a pending request for transfer to another Federal agency or for conveyance to any other qualified recipient for public benefit transfer under the real property disposal processes and authorities under subtitle I of title 40.

(b) ELIGIBLE ENTITIES.—The conveyance of surplus real property under this section may be made to any of the following:

(1) A State or political subdivision of a State.

(2) A nonprofit organization that exists for the primary purpose of conservation of natural resources on real property.

(c) REVERSIONARY INTEREST AND OTHER DEED REQUIREMENTS.—(1) The deed of conveyance of any surplus real property conveyed under this section shall require the property to be used and maintained for the conservation of natural resources in perpetuity. If the Secretary concerned determines at any time that the property is not being used or maintained for such purpose, then, at the option of the Secretary, all or any portion of the property shall revert to the United States.

(2) The deed of conveyance may permit the recipient of the property—

(A) to convey the property to another eligible entity, subject to the approval of the Secretary concerned and subject to the same covenants and terms and conditions as provided in the deed from the United States; and

(B) to conduct incidental revenue-producing activities on the property that are compatible with the use of the property for conservation purposes.

(3) The deed of conveyance may contain such additional terms, reservations, restrictions, and conditions as the Secretary concerned considers appropriate to protect the interests of the United States.

(d) RELEASE OF COVENANTS.—With the concurrence of the Secretary of Interior, the Secretary concerned may grant a release from a covenant included in the deed of conveyance of real property conveyed under this section, subject to the condition that the recipient of the property pay the fair market value, as determined by the Secretary concerned, of the property at the time of the release of the covenant. The Secretary concerned may reduce the amount required to be paid under this subsection to account for the value of the natural resource conservation benefit that has accrued to the United States during the period the covenant was in effect, if the benefit was not taken into account in determining the original consideration for the conveyance.

(e) NOTICE AND WAIT REQUIREMENTS.—The Secretary concerned may not approve of the reconveyance of real property under subsection (c) or grant the release of a covenant under subsection (d) until after the end of the 14-day period beginning on the date on which the Secretary submits, in an electronic medium pursuant to section 480 of this title, to the appropriate committees of Congress a notice of the proposed reconveyance or release.

(f) LIMITATIONS.—The conveyance of real property under this section shall not be used as a condition of allowing any defense activity under any Federal, State, or local permitting or review process. The Secretary concerned may make the conveyance, with the restrictions specified in subsection (c), to establish a mitigation bank, but only if the establishment of the

mitigation bank does not occur in order to satisfy any condition for permitting military activity under a Federal, State, or local permitting or review process.

(g) CONSIDERATION.—In fixing the consideration for the conveyance of real property under this section, or in determining the amount of any reduction of the amount to be paid for the release of a covenant under subsection (d), the Secretary concerned shall take into consideration any benefit that has accrued or may accrue to the United States from the use of such property for the conservation of natural resources.

(h) RELATION TO OTHER CONVEYANCE AUTHORITIES.—(1) The Secretary concerned may not make a conveyance under this section of any real property to be disposed of under a base closure law in a manner that is inconsistent with the requirements and conditions of the base closure law.

(2) In the case of real property on Guam, the Secretary concerned may not make a conveyance under this section unless the Government of Guam has been first afforded the opportunity to acquire the real property as authorized by section 1 of Public Law 106–504 (114 Stat. 2309).

(i) DEFINITIONS.—In this section:

(1) The term ''appropriate committees of Congress'' has the meaning given such term in section 2801 of this title.

(2) The term ''Secretary concerned'' means the Secretary of a military department.

(3) The term ''State'' includes the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Marianas, Guam, the Virgin Islands, and American Samoa.

(Added Pub. L. 107–314, div. B, title XXVIII, § 2812(a)(1), Dec. 2, 2002, 116 Stat. 2707; amended Pub. L. 109–163, div. A, title X, § 1056(a)(1), (b), Jan. 6, 2006, 119 Stat. 3438, 3439; Pub. L. 109–364, div. A, title X, § 1071(a)(22), Oct. 17, 2006, 120 Stat. 2399; Pub. L. 111–383, div. B, title XXVIII, § 2803(a), Jan. 7, 2011, 124 Stat. 4458; Pub. L. 115–91, div. B, title XXVIII, § 2811(h), Dec. 12, 2017, 131 Stat. 1849.)

REFERENCES IN TEXT

Section 1 of Public Law 106–504 (114 Stat. 2309), referred to in subsec. (h)(2), is set out as a note under section 521 of Title 40, Public Buildings, Property, and Works.

AMENDMENTS

2017—Subsec. (e). Pub. L. 115–91 added subsec. (e) and struck out former subsec. (e). Prior to amendment, text read as follows: ''The Secretary concerned may not approve of the reconveyance of real property under subsection (c) or grant the release of a covenant under subsection (d) until the Secretary notifies the appropriate committees of Congress of the proposed reconveyance or release and a period of 21 days elapses from the date the notification is received by the committees or, if earlier, a period of 14 days has elapsed from the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this title.''

2011—Subsec. (e). Pub. L. 111–383 inserted before period at end ''or, if earlier, a period of 14 days has elapsed from the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this title''.

2006—Subsec. (c). Pub. L. 109–364 substituted ''Reversionary'' for ''Revisionary'' in heading.

Subsec. (i)(2) to (4). Pub. L. 109–163 struck out par. (2), which defined ''base closure law'', redesignated pars. (3) and (4) as (2) and (3), respectively, and, in par. (3), substituted ''Guam, the Virgin Islands, and American Samoa'' for ''and the territories and possessions of the United States''.

§ 2694b. Participation in wetland mitigation banks

(a) AUTHORITY TO PARTICIPATE.—The Secretary of a military department, and the Secretary of Defense with respect to matters concerning a Defense Agency, when engaged in an authorized activity that may or will result in the destruction of, or an adverse impact to, a wetland, may make payments to a wetland mitigation banking program or ''in-lieu-fee'' mitigation sponsor approved in accordance with the Federal Guidance for the Establishment, Use and Operation of Mitigation Banks (60 Fed. Reg. 58605; November 28, 1995) or the Federal Guidance on the Use of In-Lieu-Fee Arrangements for Compensatory Mitigation Under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act (65 Fed. Reg. 66913; November 7, 2000), or any successor administrative guidance or regulation.

(b) ALTERNATIVE TO CREATION OF WETLAND.—Participation in a wetland mitigation banking program or consolidated user site under subsection (a) shall be in lieu of mitigating wetland impacts through the creation of a wetland on Federal property.

(c) TREATMENT OF PAYMENTS.—Payments made under subsection (a) to a wetland mitigation banking program or consolidated user site may be treated as eligible project costs for military construction.

(Added Pub. L. 108–136, div. A, title III, § 314(a)(1), Nov. 24, 2003, 117 Stat. 1430.)

§ 2694c. Participation in conservation banking programs

(a) AUTHORITY TO PARTICIPATE.—Subject to the availability of appropriated funds, the Secretary concerned, when engaged or proposing to engage in an activity described in subsection (b) that may or will result in an adverse impact to one or more species protected (or pending protection) under any applicable provision of law, or habitat for such species, may make payments to a conservation banking program or ''in-lieu-fee'' mitigation sponsor approved in accordance with—

(1) the Federal Guidance for the Establishment, Use and Operation of Mitigation Banks (60 Fed. Reg. 58605; November 28, 1995);

(2) the Guidance for the Establishment, Use, and Operation of Conservation Banks (68 Fed. Reg. 24753; May 2, 2003);

(3) the Federal Guidance on the Use of In-Lieu-Fee Arrangements for Compensatory Mitigation Under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act (65 Fed. Reg. 66915; November 7, 2000); or

(4) any successor or related administrative guidance or regulation.

(b) COVERED ACTIVITIES.—Payments to a conservation banking program or ''in-lieu-fee'' mitigation sponsor under subsection (a) may be

made only for the purpose of facilitating one or more of the following activities:

(1) Military testing, operations, training, or other military activity.

(2) Military construction.

(c) TREATMENT OF AMOUNTS FOR CONSERVATION BANKING.—Payments made under subsection (a) to a conservation banking program or ''in-lieu-fee'' mitigation sponsor for the purpose of facilitating military construction may be treated as eligible costs of the military construction project.

(d) SOURCE OF FUNDS.—Amounts available from any of the following shall be available for activities under this section:

(1) Operation and maintenance.

(2) Military construction.

(3) Research, development, test, and evaluation.

(4) The Support for United States Relocation to Guam Account established under section 2824 of the Military Construction Authorization Act for Fiscal Year 2009 (division B of Public Law 110–417; 122 Stat. 4730; 10 U.S.C. 2687 note).

(e) SECRETARY CONCERNED DEFINED.—In this section, the term ''Secretary concerned'' means—

(1) the Secretary of a military department; and

(2) the Secretary of Defense with respect to a Defense Agency.

(Added Pub. L. 110–417, [div. A], title III, §311(a), Oct. 14, 2008, 122 Stat. 4408; amended Pub. L. 111–84, div. A, title III, §311, Oct. 28, 2009, 123 Stat. 2247; Pub. L. 111–383, div. A, title X, §1075(b)(45), Jan. 7, 2011, 124 Stat. 4371.)

AMENDMENTS

2011—Subsec. (d)(4). Pub. L. 111–383 inserted ''Authorization'' after ''Military Construction''.

2009—Subsec. (a). Pub. L. 111–84, §311(1), struck out ''to carry out this section'' after ''appropriated funds'' in introductory provisions.

Subsecs. (d), (e). Pub. L. 111–84, §311(2), (3), added subsec. (d) and redesignated former subsec. (d) as (e).

EFFECTIVE DATE

Pub. L. 110–417, [div. A], title III, §311(c), Oct. 14, 2008, 122 Stat. 4409, provided that: ''Section 2694c of title 10, United States Code, as added by subsection (a), shall take effect on October 1, 2008, and only funds appropriated for fiscal years beginning after September 30, 2008, may be used to carry out such section.''

§ 2695. Acceptance of funds to cover administrative expenses relating to certain real property transactions

(a) AUTHORITY TO ACCEPT.—In connection with a real property transaction referred to in subsection (b) with a non-Federal person or entity, the Secretary of a military department may accept amounts provided by the person or entity to cover administrative expenses incurred by the Secretary in entering into the transaction.

(b) COVERED TRANSACTIONS.—Subsection (a) applies to the following transactions involving real property under the control of the Secretary of a military department:

(1) The exchange of real property.

(2) The grant of an easement over, in, or upon real property of the United States.

(3) The lease or license of real property of the United States.

(4) The disposal of real property of the United States for which the Secretary will be the disposal agent.

(5) The conveyance of real property under section 2694a of this title.

(c) USE OF AMOUNTS COLLECTED.—(1) Amounts collected by the Secretary of a military department under subsection (a) for administrative expenses shall be credited, at the option of the Secretary—

(A) to the appropriation, fund, or account from which the expenses were paid; or

(B) to an appropriate appropriation, fund, or account currently available to the Secretary for the purposes for which the expenses were paid.

(2) Amounts credited under paragraph (1) shall be merged with funds in such appropriation, fund, or account and shall be available for the same purposes and subject to the same limitations as the funds with which merged.

(Added Pub. L. 105–85, div. B, title XXVIII, §2813(a), Nov. 18, 1997, 111 Stat. 1993; amended Pub. L. 106–65, div. B, title XXVIII, §2813, Oct. 5, 1999, 113 Stat. 851; Pub. L. 107–314, div. B, title XXVIII, §2812(b), Dec. 2, 2002, 116 Stat. 2709; Pub. L. 113–291, div. B, title XXVIII, §2812(a), Dec. 19, 2014, 128 Stat. 3700.)

AMENDMENTS

2014—Subsec. (c)(1). Pub. L. 113–291, §2812(a)(1), substituted ''(1) Amounts collected by the Secretary of a military department under subsection (a) for administrative expenses shall be credited, at the option of the Secretary—'' and subpars. (A) and (B) for ''Amounts collected under subsection (a) for administrative expenses shall be credited to the appropriation, fund, or account from which the expenses were paid.''

Subsec. (c)(2). Pub. L. 113–291, §2812(a)(2), substituted ''(2) Amounts credited under paragraph (1)'' for ''Amounts so credited''.

2002—Subsec. (b)(5). Pub. L. 107–314 added par. (5).

1999—Subsec. (b). Pub. L. 106–65 inserted ''involving real property under the control of the Secretary of a military department'' after ''transactions'' in introductory provisions and added par. (4).

EFFECTIVE DATE OF 2014 AMENDMENT

Pub. L. 113–291, div. B, title XXVIII, §2812(b), Dec. 19, 2014, 128 Stat. 3700, provided that: ''The amendments made by subsection (a) [amending this section] shall not apply to administrative expenses related to a real property transaction referred to in section 2695(b) of title 10, United States Code, that were covered by the Secretary of a military department using amounts appropriated to the Secretary before the date of the enactment of this Act [Dec. 19, 2014].''

ADMINISTRATIVE COSTS OF LAND CONVEYANCES

Pub. L. 106–541, title II, §226, Dec. 11, 2000, 114 Stat. 2598, provided that: ''Notwithstanding any other provision of law, the administrative costs associated with the conveyance of property by the Secretary to a non-Federal governmental or nonprofit entity shall be limited to the extent that the Secretary determines that such limitation is necessary to complete the conveyance based on the entity's ability to pay.''

§ 2696. Real property: transfer between armed forces and screening requirements for other Federal use

(a) TRANSFERS BETWEEN ARMED FORCES.—If either of the Secretaries concerned requests it and

the other approves, real property may be transferred, without compensation, from one armed force to another. Section 2571(d) of this title shall apply to the transfer of real property under this subsection.

(b) SCREENING REQUIREMENTS FOR ADDITIONAL FEDERAL USE.—The Secretary concerned may not convey real property that is authorized or required to be conveyed, whether for or without consideration, by any provision of law enacted after December 31, 1997, unless the Administrator of General Services has screened the property for further Federal use in accordance with subtitle I of title 40 and division C (except sections 3302, 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41.

(c) TIME FOR SCREENING.—(1) Before the end of the 30-day period beginning on the date of the enactment of a provision of law authorizing or requiring the conveyance of a parcel of real property by the Secretary concerned, the Administrator of General Services shall complete the screening referred to in subsection (b) with regard to the real property and notify the Secretary concerned and Congress of the results of the screening. The notice shall include—

(A) the name of the Federal agency requesting transfer of the property;

(B) the proposed use to be made of the property by the Federal agency; and

(C) the fair market value of the property, including any improvements thereon, as estimated by the Administrator.

(2) If the Administrator fails to complete the screening and notify the Secretary concerned and Congress within such period, the Secretary concerned shall proceed with the conveyance of the real property as provided in the provision of law authorizing or requiring the conveyance.

(d) EFFECT OF SUBMISSION OF NOTICE.—If the Administrator of General Services submits notice under subsection (c)(1) that further Federal use of a parcel of real property is requested by a Federal agency, the Secretary concerned may not proceed with the conveyance of the real property as provided in the provision of law authorizing or requiring the conveyance until the end of the 180-day period beginning on the date on which the notice is submitted to Congress.

(e) EXCEPTED CONVEYANCE AUTHORITIES.—The screening requirements of subsection (b) shall not apply to real property authorized or required to be conveyed under any of the following provisions of law:

(1) A base closure law.

(2) Chapter 5 of title 40.

(3) Any specific provision of law authorizing or requiring the transfer of administrative jurisdiction over a parcel of real property between Federal agencies.

(f) SCREENING AND CONVEYANCE OF PROPERTY FOR CORRECTIONAL FACILITIES PURPOSES.—(1) Except as provided in paragraph (2), before any real property or facility of the United States that is under the jurisdiction of any department, agency, or instrumentality of the Department of Defense is determined to be excess to the needs of such department, agency, or instrumentality, the Secretary of Defense shall—

(A) provide adequate notification of the availability of such real property or facility within the Department of Defense;

(B) if the real property or facility remains available after such notification, notify the Attorney General of its availability; and

(C) if the Attorney General certifies to the Secretary of Defense that a determination has been made by the Director of the Bureau of Justice Assistance within the Department of Justice to utilize the real property or facility under the correctional options program carried out under section 515 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3762a),[1] convey the real property or facility, without reimbursement, to a public agency referred to in paragraph (1) or (3) of subsection (a) of such section for such utilization.

(2) Paragraph (1) shall not apply—

(A) to real property and facilities to which title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526) is applicable; and

(B) during any portion of a fiscal year after four conveyances have been made under paragraph (1) in such fiscal year.

(Added Pub. L. 105–85, div. B, title XXVIII, § 2814(a)(1), Nov. 18, 1997, 111 Stat. 1994; amended Pub. L. 106–65, div. A, title X, § 1066(a)(26), Oct. 5, 1999, 113 Stat. 772; Pub. L. 107–217, § 3(b)(16), Aug. 21, 2002, 116 Stat. 1296; Pub. L. 108–136, div. A, title X, §§ 1031(a)(33), 1043(c)(4), Nov. 24, 2003, 117 Stat. 1600, 1612; Pub. L. 109–364, div. B, title XXVIII, § 2825(a), (b)(5), (c)(3), (d)(2)(A), Oct. 17, 2006, 120 Stat. 2476, 2477; Pub. L. 111–350, § 5(b)(47), Jan. 4, 2011, 124 Stat. 3846.)

REFERENCES IN TEXT

Section 515 of title I of the Omnibus Crime Control and Safe Streets Act of 1968, referred to in subsec. (f)(1)(C), is section 515 of title I of Pub. L. 90–351, which was classified as section 3762a of Title 42, The Public Health and Welfare, prior to editorial reclassification and renumbering as section 10171 of Title 34, Crime Control and Law Enforcement.

The Defense Authorization Amendments and Base Closure and Realignment Act, referred to in subsec. (f)(2)(A), is Pub. L. 100–526, Oct. 24, 1988, 102 Stat. 2623. Title II of the Act is set out as a note under section 2687 of this title. For complete classification of this Act to the Code, see Short Title of 1988 Amendment note set out under section 2687 of this title and Tables.

CODIFICATION

The text of section 2693 of this title, which was transferred to the end of this section and redesignated as subsec. (f), by Pub. L. 109–364, § 2825(b)(5), was based on Pub. L. 101–647, title XVIII, § 1802(a), Nov. 29, 1990, 104 Stat. 4849; amended Pub. L. 107–107, div. A, title X, § 1048(a)(26)(A), (B)(i), Dec. 28, 2001, 115 Stat. 1224, 1225; Pub. L. 109–364, div. B, title XXVIII, § 2825(b), Oct. 17, 2006, 120 Stat. 2476.

AMENDMENTS

2011—Subsec. (b). Pub. L. 111–350, which directed substitution of "division C (except sections 3302, 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41" for "title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)" in subsec. (a), was executed by making the substitution in subsec. (b) to reflect the probable intent of Congress.

2006—Pub. L. 109–364, § 2825(d)(2)(A), substituted "Real property: transfer between armed forces and screening

[1] See References in Text note below.

requirements for other Federal use'' for ''Screening of real property for further Federal use before conveyance'' in section catchline.

Subsec. (a). Pub. L. 109–364, § 2825(a)(2), added subsec. (a). Former subsec. (a) redesignated (b).

Subsec. (b). Pub. L. 109–364, § 2825(c)(3)(A), substituted ''Requirements for Additional Federal Use'' for ''Requirement'' in heading.

Pub. L. 109–364, § 2825(a)(1), redesignated subsec. (a) as (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 109–364, § 2825(a)(1), redesignated subsec. (b) as (c).

Subsec. (c)(1). Pub. L. 109–364, § 2825(c)(3)(B), substituted ''subsection (b)'' for ''subsection (a)'' in introductory provisions.

Subsec. (d). Pub. L. 109–364, § 2825(c)(3)(C), substituted ''subsection (c)(1)'' for ''subsection (b)(1)''.

Subsec. (e). Pub. L. 109–364, § 2825(c)(3)(D), substituted ''subsection (b)'' for ''this section'' in introductory provisions.

Subsec. (f). Pub. L. 109–364, § 2825(b)(5), transferred the text of section 2693 of this title to end of this section and redesignated it as subsec. (f). See Codification note above.

2003—Subsec. (b)(1). Pub. L. 108–136, § 1031(a)(33)(A)(i), inserted ''and Congress'' before ''of the results'' in introductory provisions.

Subsec. (b)(2). Pub. L. 108–136, § 1031(a)(33)(A)(ii), inserted ''and Congress'' before ''within such period''.

Subsec. (c). Pub. L. 108–136, § 1031(a)(33)(B), struck out heading and text of subsec. (c). Text read as follows: ''If the Administrator of General Services notifies the Secretary concerned under subsection (b) that further Federal use of a parcel of real property authorized or required to be conveyed by any provision of law is requested by a Federal agency, the Secretary concerned shall submit a copy of the notice to Congress.''

Subsec. (d). Pub. L. 108–136, § 1031(a)(33)(C), added subsec. (d) and struck out heading and text of former subsec. (d). Text read as follows: ''If the Secretary concerned submits a notice under subsection (c) with regard to a parcel of real property, the Secretary concerned may not proceed with the conveyance of the real property as provided in the provision of law authorizing or requiring the conveyance if Congress enacts a law rescinding the conveyance authority or requirement before the end of the 180-day period beginning on the date on which the Secretary concerned submits the notice.''

Subsec. (e). Pub. L. 108–136, § 1043(c)(4), added par. (1), redesignated pars. (5) and (6) as (2) and (3), respectively, and struck out former pars. (1) to (4) which read as follows:

''(1) Section 2687 of this title.

''(2) Title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 10 U.S.C. 2687 note).

''(3) The Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note).

''(4) Any provision of law authorizing the closure or realignment of a military installation that is enacted after November 18, 1997.''

2002—Subsec. (a). Pub. L. 107–217, § 3(b)(16)(A), inserted ''subtitle I of title 40 and title III of'' before ''the Federal Property and Administrative Services Act of 1949'' and substituted ''(41 U.S.C. 251 et seq.)'' for ''(40 U.S.C. 471 et seq.)''.

Subsec. (e)(5). Pub. L. 107–217, § 3(b)(16)(B), substituted ''Chapter 5 of title 40'' for ''Title II of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 481 et seq.)''.

1999—Subsec. (a). Pub. L. 106–65, § 1066(a)(26)(A), inserted ''enacted after December 31, 1997,'' after ''any provision of law''.

Subsec. (b)(1). Pub. L. 106–65, § 1066(a)(26)(B), substituted ''referred to in subsection (a)'' for ''required by paragraph (1)'' in introductory provisions.

Subsec. (e)(4). Pub. L. 106–65, § 1066(a)(26)(C), substituted ''November 18, 1997'' for ''the date of enactment of the National Defense Authorization Act for Fiscal Year 1998''.

EFFECTIVE DATE

Pub. L. 105–85, div. B, title XXVIII, § 2814(b), Nov. 18, 1997, 111 Stat. 1995, provided that: ''Section 2696 of title 10, United States Code, as added by subsection (a) of this section, shall apply with respect to any real property authorized or required to be conveyed under a provision of law covered by such section that is enacted after December 31, 1997.''

TRANSFER OF FUNCTIONS

Effective Aug. 1, 2000, all functions of Director of Bureau of Justice Assistance, other than those enumerated in section 10142(3) to (6) of Title 34, Crime Control and Law Enforcement, transferred to Assistant Attorney General for Office of Justice Programs, see section 1000(a)(1) [title I, § 108(b)] of Pub. L. 106–113, set out as a note under section 10141 of Title 34.

§ 2697. Acceptance and use of landing fees charged for use of domestic military airfields by civil aircraft

(a) AUTHORITY.—The Secretary of a military department may impose landing fees for the use by civil aircraft of domestic military airfields under the jurisdiction of that Secretary and may use any fees received under this section as a source of funding for the operation and maintenance of airfields of that department.

(b) UNIFORM LANDING FEES.—The Secretary of Defense shall prescribe the amount of the landing fees that may be imposed under this section. Such fees shall be uniform among the military departments.

(c) USE OF PROCEEDS.—Amounts received for a fiscal year in payment of landing fees imposed under this section for the use of a military airfield shall be credited to the appropriation that is available for that fiscal year for the operation and maintenance of that military airfield, shall be merged with amounts in the appropriation to which credited, and shall be available for that military airfield for the same period and purposes as the appropriation is available.

(d) LIMITATION.—The Secretary of a military department shall determine whether consideration for a landing fee has been received in a lease, license, or other real estate agreement for an airfield and shall use such a determination to offset appropriate amounts imposed under subsection (a) for that airfield.

(Added Pub. L. 111–383, div. A, title III, § 341(a), Jan. 7, 2011, 124 Stat. 4189.)

CHAPTER 160—ENVIRONMENTAL RESTORATION

Sec.
2700. Definitions.
2701. Environmental restoration program.
2702. Research, development, and demonstration program.
2703. Environmental restoration accounts.
2704. Commonly found unregulated hazardous substances.
2705. Notice of environmental restoration activities.
[2706. Repealed.]
2707. Environmental restoration projects for environmental responses.
2708. Contracts for handling hazardous waste from defense facilities.

Sec.
2709. Investment control process for environmental technologies.
2710. Inventory of unexploded ordnance, discarded military munitions, and munitions constituents at defense sites (other than operational ranges).
2711. Annual report on defense environmental programs.
2712. Reporting on usage and spills of aqueous film-forming foam.
2713. Native American lands environmental mitigation program.

AMENDMENTS

2021—Pub. L. 116–283, div. A, title III, §§ 318(b), 319(b), Jan. 1, 2021, 134 Stat. 3519, 3521, added items 2712 and 2713.

2011—Pub. L. 112–81, div. A, title III, § 317(b), title X, § 1061(22)(B), Dec. 31, 2011, 125 Stat. 1360, 1584, struck out item 2706 ''Annual reports to Congress'' and added item 2711.

2002—Pub. L. 107–314, div. A, title III, § 313(d)(1), Dec. 2, 2002, 116 Stat. 2508, added items 2700 and 2707 and struck out former item 2707 ''Definitions''.

2001—Pub. L. 107–107, div. A, title III, § 311(a)(2), Dec. 28, 2001, 115 Stat. 1051, added item 2710.

1999—Pub. L. 106–65, div. A, title III, § 323(b)(2), Oct. 5, 1999, 113 Stat. 563, added item 2709.

1996—Pub. L. 104–201, div. A, title III, § 322(a)(2), Sept. 23, 1996, 110 Stat. 2478, substituted ''accounts'' for ''transfer account'' in item 2703.

1991—Pub. L. 102–190, div. A, title III, § 331(a)(2), Dec. 5, 1991, 105 Stat. 1340, added item 2708.

Pub. L. 102–25, title VII, § 701(e)(6), Apr. 6, 1991, 105 Stat. 114, substituted ''Annual reports to Congress'' for ''Annual report to Congress'' in item 2706.

1989—Pub. L. 101–189, div. A, title III, § 357(a)(2)(B), Nov. 29, 1989, 103 Stat. 1427, which directed amendment of the item relating to section 2706 in the table of sections at the beginning of chapter 106 to read ''Annual reports to Congress'', could not be executed because item 2706 is in this chapter and not in chapter 106.

§ 2700. Definitions

In this chapter:

(1) The term ''CERCLA'' means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.).

(2) The term[1] ''environment'', ''facility'', ''hazardous substance'', ''person'', ''pollutant or contaminant'', ''release'', ''removal'', ''response'', ''disposal'', and ''hazardous waste'' have the meanings given those terms in section 101 of CERCLA (42 U.S.C. 9601).

(3) The term ''Administrator'' means the Administrator of the Environmental Protection Agency.

(Added Pub. L. 99–499, title II, § 211(a)(1)(B), Oct. 17, 1986, 100 Stat. 1725, § 2707; renumbered § 2700 and amended Pub. L. 107–314, div. A, title III, § 313(a)(1), (c)(1), Dec. 2, 2002, 116 Stat. 2507; Pub. L. 111–383, div. A, title X, § 1075(b)(46)(A), Jan. 7, 2011, 124 Stat. 4371; Pub. L. 116–92, div. A, title III, § 316(b), Dec. 20, 2019, 133 Stat. 1304; Pub. L. 116–283, div. A, title III, § 314(b), Jan. 1, 2021, 134 Stat. 3514.)

REFERENCES IN TEXT

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, referred to in par. (1), is Pub. L. 96–510, Dec. 11, 1980, 94 Stat. 2767, as amended, which is classified principally to chapter 103 (§ 9601 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 9601 of Title 42 and Tables.

AMENDMENTS

2021—Par. (2). Pub. L. 116–283, § 314(b), which directed amendment of par. (1) by substituting ''The term'' for ''(A) The terms'' and striking subpar. (B), was executed by making the amendment in par. (2) to reflect the probable intent of Congress. Prior to amendment, subpar. (B) of par. (2) read as follows: ''The term 'facility' includes real property that is owned by, leased to, or otherwise possessed by the United States at locations at which military activities are conducted under this title or title 32 (including real property owned or leased by the Federal Government that is licensed to and operated by a State for training for the National Guard).''

2019—Par. (2). Pub. L. 116–92 designated existing provisions as subpar. (A) and added subpar. (B).

2011—Par. (2). Pub. L. 111–383 inserted '' 'pollutant or contaminant','' after '' 'person','',.

2002—Pub. L. 107–314, § 313(c)(1), added par. (1) and redesignated former pars. (1) and (2) as (2) and (3), respectively.

Pub. L. 107–314, § 313(a)(1), renumbered section 2707 of this title as this section.

SAVINGS CLAUSE

Pub. L. 116–92, div. A, title III, § 316(d), Dec. 20, 2019, 133 Stat. 1304, provided that: ''Nothing in this section [amending this section and sections 2701 and 2707 of this title], or the amendments made by this section, shall affect any requirement or authority under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.).''

§ 2701. Environmental restoration program

(a) ENVIRONMENTAL RESTORATION PROGRAM.—

(1) IN GENERAL.—The Secretary of Defense shall carry out a program of environmental restoration at facilities under the jurisdiction of the Secretary. The program shall be known as the ''Defense Environmental Restoration Program''.

(2) APPLICATION OF SECTION 120 OF CERCLA.—Activities of the program described in subsection (b)(1) shall be carried out subject to, and in a manner consistent with, section 120 (relating to Federal facilities) of CERCLA (42 U.S.C. 9620).

(3) CONSULTATION WITH EPA.—The program shall be carried out in consultation with the Administrator of the Environmental Protection Agency.

(4) ADMINISTRATIVE OFFICE WITHIN OSD.—The Secretary shall identify an office within the Office of the Secretary which shall have responsibility for carrying out the program.

(b) PROGRAM GOALS.—Goals of the program shall include the following:

(1) The identification, investigation, research and development, and cleanup of contamination from a hazardous substance or pollutant or contaminant.

(2) Correction of other environmental damage (such as detection and disposal of unexploded ordnance) which creates an imminent and substantial endangerment to the public health or welfare or to the environment.

(3) Demolition and removal of unsafe buildings and structures, including buildings and

[1] So in original. Probably should be ''terms''.

structures of the Department of Defense at sites formerly used by or under the jurisdiction of the Secretary.

(c) RESPONSIBILITY FOR RESPONSE ACTIONS.—

(1) BASIC RESPONSIBILITY.—The Secretary shall carry out (in accordance with the provisions of this chapter and CERCLA) all response actions with respect to releases of hazardous substances or pollutants or contaminants from each of the following:

(A) Each facility or site owned by, leased to, or otherwise possessed by the United States and under the jurisdiction of the Secretary.

(B) Each facility or site which was under the jurisdiction of the Secretary and owned by, leased to, or otherwise possessed by the United States at the time of actions leading to contamination by hazardous substances or pollutants or contaminants.

(C) Each vessel owned or operated by the Department of Defense.

(2) OTHER RESPONSIBLE PARTIES.—Paragraph (1) shall not apply to a removal or remedial action if the Administrator has provided for response action by a potentially responsible person in accordance with section 122 (relating to settlements) of CERCLA (42 U.S.C. 9622).

(3) STATE FEES AND CHARGES.—The Secretary shall pay fees and charges imposed by State authorities for permit services for the disposal of hazardous substances or pollutants or contaminants on lands which are under the jurisdiction of the Secretary to the same extent that nongovernmental entities are required to pay fees and charges imposed by State authorities for permit services. The preceding sentence shall not apply with respect to a payment that is the responsibility of a lessee, contractor, or other private person.

(d) SERVICES OF OTHER ENTITIES.—

(1) IN GENERAL.—Subject to paragraph (3), the Secretary may enter into agreements on a reimbursable or other basis with any other Federal agency, any State or local government agency, any Indian tribe, any owner of covenant property, or any nonprofit conservation organization to obtain the services of the agency, Indian tribe, owner, or organization to assist the Secretary in carrying out any of the Secretary's responsibilities under this section. Services which may be obtained under this subsection include the identification, investigation, and cleanup of any off-site contamination resulting from the release of a hazardous substance or waste at a facility under the Secretary's jurisdiction.

(2) CROSS-FISCAL YEAR AGREEMENTS.—An agreement with an agency under paragraph (1) may be for a period that begins in one fiscal year and ends in another fiscal year so long as the period of the agreement does not exceed two years. This two-year limitation does not apply to an agreement funded using amounts in the Department of Defense Base Closure Account established by section 2906 of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note).

(3) LIMITATION ON REIMBURSABLE AGREEMENTS.—An agreement with an agency under paragraph (1) may not provide for reimbursement of the agency for regulatory enforcement activities. An agreement under such paragraph with respect to a site also may not change the cleanup standards selected for the site pursuant to law.

(4) DEFINITIONS.—In this subsection:

(A) The term ''Indian tribe'' has the meaning given such term in section 101(36) of CERCLA (42 U.S.C. 9601(36)).

(B) The term ''nonprofit conservation organization'' means any non-governmental nonprofit organization whose primary purpose is conservation of open space or natural resources.

(C) The term ''owner of covenant property'' means an owner of property subject to a covenant provided by the United States in accordance with the requirements of paragraphs (3) and (4) of section 120(h) of CERCLA (42 U.S.C. 9620(h)), so long as the covenant property is the site at which the services procured under paragraph (1) are to be performed.

(5) SAVINGS CLAUSE.—Nothing in this subsection affects the applicability of section 120 of CERCLA (42 U.S.C. 9620) to the Department of Defense or the obligations and responsibilities of the Department of Defense under subsection (h) of such section.

(e) RESPONSE ACTION CONTRACTORS.—The provisions of section 119 of CERCLA (42 U.S.C. 9619) apply to response action contractors (as defined in that section) who carry out response actions under this section.

(f) USE OF APPROPRIATED FUNDS AT FORMER DOD SITES.—Appropriations available to the Department of Defense may be used at sites formerly used by the Department of Defense for removal of unsafe buildings or debris of the Department of Defense.

(g) REMOVAL OF UNSAFE BUILDINGS AND DEBRIS BEFORE RELEASE FROM FEDERAL CONTROL.—In the case of property formerly used by the Department of Defense which is to be released from Federal Government control and at which there are unsafe buildings or debris of the Department of Defense, all actions necessary to comply with regulations of the General Services Administration on the transfer of property in a safe condition shall be completed before the property is released from Federal Government control, except in the case of property to be conveyed to an entity of State or local government or to a native corporation.

(h) SURETY-CONTRACTOR RELATIONSHIP.—Any surety which provides a bid, performance, or payment bond in connection with any direct Federal procurement for a response action contract under the Defense Environmental Restoration Program and begins activities to meet its obligations under such bond, shall, in connection with such activities or obligations, be entitled to any indemnification and the same standard of liability to which its principal was entitled under the contract or under any applicable law or regulation.

(i) SURETY BONDS.—

(1) APPLICABILITY OF SECTIONS 3131 AND 3133 OF TITLE 40.—If under sections 3131 and 3133 of

title 40 surety bonds are required for any direct Federal procurement of any response action contract under the Defense Environmental Restoration Program and are not waived pursuant to section 3134 of title 40, the surety bonds shall be issued in accordance with sections 3131 and 3133.

(2) LIMITATION OF ACCRUAL OF RIGHTS OF ACTION UNDER BONDS.—If, under applicable Federal law, surety bonds are required for any direct Federal procurement of any response action contract under the Defense Environmental Restoration Program, no right of action shall accrue on the performance bond issued on such contract to or for the use of any person other than an obligee named in the bond.

(3) LIABILITY OF SURETIES UNDER BONDS.—If, under applicable Federal law, surety bonds are required for any direct Federal procurement of any response action contract under the Defense Environmental Restoration Program, unless otherwise provided for by the Secretary in the bond, in the event of a default, the surety's liability on a performance bond shall be only for the cost of completion of the contract work in accordance with the plans and specifications of the contract less the balance of funds remaining to be paid under the contract, up to the penal sum of the bond. The surety shall in no event be liable on bonds to indemnify or compensate the obligee for loss or liability arising from personal injury or property damage whether or not caused by a breach of the bonded contract.

(4) NONPREEMPTION.—Nothing in this section shall be construed as preempting, limiting, superseding, affecting, applying to, or modifying any State laws, regulations, requirements, rules, practices, or procedures. Nothing in this section shall be construed as affecting, applying to, modifying, limiting, superseding, or preempting any rights, authorities, liabilities, demands, actions, causes of action, losses, judgment, claims, statutes of limitation, or obligations under Federal or State law, which do not arise on or under the bond.

(j) APPLICABILITY.—(1) Subsections (h) and (i) shall not apply to bonds executed before December 5, 1991.

(2) Subsections (h) and (i) shall not apply to bonds to which section 119(g) of CERCLA (42 U.S.C. 9619(g)) applies.

(k) UXO PROGRAM MANAGER.—(1) The Secretary of Defense shall designate a program manager who shall serve as the single point of contact in the Department of Defense for policy and budgeting issues involving the characterization, research, remediation, and management of explosive and related risks with respect to unexploded ordnance, discarded military munitions, and munitions constituents at defense sites (as such terms are defined in section 2710[1] of this title) that pose a threat to human health or safety.

(2) The position of program manager shall be filled by—

(A) an employee in a position that is equivalent to pay grade O–6 or above; or

(B) a member of the armed forces who is serving in the grade of colonel or, in the case of the Navy, captain, or in a higher grade.

(3) The program manager shall report to the Assistant Secretary of Defense for Energy, Installations, and Environment.

(4) The program manager may establish an independent advisory and review panel that may include representatives of the National Academy of Sciences, nongovernmental organizations with expertise regarding unexploded ordnance, discarded military munitions, or munitions constituents, the Environmental Protection Agency, States (as defined in section 2710[1] of this title), and tribal governments. If established, the panel shall report annually to Congress on progress made by the Department of Defense to address unexploded ordnance, discarded military munitions, or munitions constituents at defense sites and make such recommendations as the panel considers appropriate.

(Added Pub. L. 99–499, title II, § 211(a)(1)(B), Oct. 17, 1986, 100 Stat. 1719; amended Pub. L. 101–510, div. A, title XIV, § 1481(i)(1), Nov. 5, 1990, 104 Stat. 1708; Pub. L. 102–190, div. A, title III, § 336(a), Dec. 5, 1991, 105 Stat. 1342; Pub. L. 102–484, div. A, title III, § 331(b), title X, § 1052(35), Oct. 23, 1992, 106 Stat. 2373, 2501; Pub. L. 103–35, title II, § 201(d)(6), May 31, 1993, 107 Stat. 99; Pub. L. 103–337, div. A, title III, §§ 322, 323, Oct. 5, 1994, 108 Stat. 2711; Pub. L. 104–106, div. A, title III, § 321(a)(1), title XV, § 1504(a)(1), div. D, title XLIII, § 4321(b)(22), Feb. 10, 1996, 110 Stat. 251, 513, 673; Pub. L. 104–201, div. A, title III, § 329, Sept. 23, 1996, 110 Stat. 2483; Pub. L. 107–107, div. A, title III, § 314, Dec. 28, 2001, 115 Stat. 1053; Pub. L. 107–217, § 3(b)(17), Aug. 21, 2002, 116 Stat. 1296; Pub. L. 107–314, div. A, title III, §§ 311, 312, 313(c)(2), div. B, title XXVIII, § 2812(c), Dec. 2, 2002, 116 Stat. 2506, 2508, 2709; Pub. L. 108–375, div. A, title X, § 1084(d)(24), Oct. 28, 2004, 118 Stat. 2062; Pub. L. 109–163, div. A, title III, § 312(a), Jan. 6, 2006, 119 Stat. 3190; Pub. L. 109–284, § 2, Sept. 27, 2006, 120 Stat. 1211; Pub. L. 109–364, div. A, title III, §§ 311, 312, Oct. 17, 2006, 120 Stat. 2137; Pub. L. 111–84, div. A, title X, § 1073(a)(28), Oct. 28, 2009, 123 Stat. 2474; Pub. L. 111–383, div. A, title X, § 1075(b)(46)(B), Jan. 7, 2011, 124 Stat. 4371; Pub. L. 112–239, div. B, title XXVII, § 2711(c)(4)(A), Jan. 2, 2013, 126 Stat. 2144; Pub. L. 113–291, div. A, title IX, § 901(n)(2), Dec. 19, 2014, 128 Stat. 3469; Pub. L. 116–92, div. A, title III, § 316(c), Dec. 20, 2019, 133 Stat. 1304.)

REFERENCES IN TEXT

Section 2710 of this title, referred to in subsec. (k), was subsequently amended, and no longer defines the term ''unexploded ordnance''.

PRIOR PROVISIONS

Provisions similar to those in subsecs. (f) and (g) of this section were contained in Pub. L. 101–165, title IX, § 9038, Nov. 21, 1989, 103 Stat. 1137, which was set out below, prior to repeal by Pub. L. 101–510, § 1481(i)(2).

A prior section 2701 was renumbered section 2721 of this title.

AMENDMENTS

2019—Subsec. (c). Pub. L. 116–92 inserted ''or pollutants or contaminants'' after ''hazardous substances'' wherever appearing.

[1] See References in Text note below.

2013—Subsec. (d)(2). Pub. L. 112–239 substituted ''Department of Defense Base Closure Account established by section 2906'' for ''Department of Defense Base Closure Account 1990 or the Department of Defense Base Closure Account 2005 established under sections 2906 and 2906A''.

2011—Subsec. (b)(1). Pub. L. 111–383 substituted ''a hazardous substance or pollutant or contaminant'' for ''hazardous substances, pollutants, and contaminants''.

2009—Subsec. (d)(5). Pub. L. 111–84 substituted ''9620)'' for ''6920)''.

2006—Subsec. (d)(1). Pub. L. 109–163, §312(a)(1), inserted ''any owner of covenant property,'' after ''any Indian tribe,'' and ''owner,'' after '', Indian tribe,''.

Subsec. (d)(2). Pub. L. 109–364, §312, inserted at end ''This two-year limitation does not apply to an agreement funded using amounts in the Department of Defense Base Closure Account 1990 or the Department of Defense Base Closure Account 2005 established under sections 2906 and 2906A of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note).''

Subsec. (d)(3). Pub. L. 109–163, §312(a)(2), inserted ''An agreement under such paragraph with respect to a site also may not change the cleanup standards selected for the site pursuant to law.'' at end.

Subsec. (d)(4)(C). Pub. L. 109–163, §312(a)(3), added subpar. (C).

Subsec. (d)(5). Pub. L. 109–163, §312(a)(4), added par. (5).

Subsec. (i)(1). Pub. L. 109–284 substituted ''sections 3131 and 3133 of title 40'' for ''miller act'' in heading.

Subsec. (k)(1). Pub. L. 109–364, §311(1), substituted ''designate'' for ''establish'' and inserted ''research,'' after ''characterization,''.

Subsec. (k)(2) to (4). Pub. L. 109–364, §311(2), (3), added pars. (2) and (3), redesignated former par. (3) as (4), and struck out former par. (2) which read as follows: ''The authority to establish the program manager may be delegated to the Secretary of a military department, who may delegate the authority to the Under Secretary of that military department. The authority may not be further delegated.''.

2004—Subsec. (a)(2). Pub. L. 108–375, §1084(d)(24)(A), inserted ''(42 U.S.C. 9620)'' before period at end.

Subsec. (c)(2). Pub. L. 108–375, §1084(d)(24)(B), substituted ''(relating to settlements) of CERCLA (42 U.S.C. 9622)'' for ''of CERCLA (relating to settlements)''.

Subsec. (e). Pub. L. 108–375, §1084(d)(24)(C), inserted ''(42 U.S.C. 9619)'' after ''CERCLA''.

Subsec. (j)(2). Pub. L. 108–375, §1084(d)(24)(D), substituted ''CERCLA'' for ''the Comprehensive Environmental Response, Compensation, and Liability Act of 1980''.

2002—Subsec. (a)(2). Pub. L. 107–314, §313(c)(2), substituted ''CERCLA'' for ''the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (hereinafter in this chapter referred to as 'CERCLA') (42 U.S.C. 9601 et seq.)''.

Subsec. (d). Pub. L. 107–314, §2812(c)(1), substituted ''Entities'' for ''Agencies'' in heading.

Subsec. (d)(1). Pub. L. 107–314, §§311(1), 2812(c)(2), substituted ''paragraph (3)'' for ''paragraph (2)'', ''any State or local government agency, any Indian tribe, or any nonprofit conservation organization'' for ''with any State or local government agency, or with any Indian tribe,'', and ''the agency, Indian tribe, or organization'' for ''the agency''.

Subsec. (d)(2), (3). Pub. L. 107–314, §311(2), (3), added par. (2) and redesignated former par. (2) as (3). Former par. (3) redesignated (4).

Subsec. (d)(4). Pub. L. 107–314, §2812(c)(3), added par. (4) and struck out heading and text of former par. (4). Text read as follows: ''In this subsection, the term 'Indian tribe' has the meaning given such term in section 101(36) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(36)).''

Pub. L. 107–314, §311(2), redesignated par. (3) as (4).

Subsec. (i)(1). Pub. L. 107–217 substituted ''sections 3131 and 3133 of title 40'' for ''the Miller Act (40 U.S.C. 270a et seq.)'', ''section 3134 of title 40'' for ''the Act of April 29, 1941 (40 U.S.C. 270e–270f)'', and ''sections 3131 and 3133'' for ''the Miller Act''.

Subsec. (k). Pub. L. 107–314, §312, added subsec. (k).

2001—Subsec. (j)(1). Pub. L. 107–107 struck out '', or after December 31, 1999'' before period at end.

1996—Subsec. (d). Pub. L. 104–201 substituted '', with any State or local government agency, or with any Indian tribe,'' for '', or with any State or local government agency,'' in par. (1) and added par. (3).

Pub. L. 104–106, §1504(a)(1), made technical correction to directory language of Pub. L. 103–337, §322(1). See 1994 Amendment note below.

Pub. L. 104–106, §321(a)(1), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: ''SERVICES OF OTHER AGENCIES.—

''(1) IN GENERAL.—The Secretary may enter into agreements on a reimbursable basis with any other Federal agency, and on a reimbursable or other basis with any State or local government agency or any Indian tribe, to obtain the services of that agency to assist the Secretary in carrying out any of the Secretary's responsibilities under this section. Services which may be obtained under this subsection include the identification, investigation, and cleanup of any off-site contamination possibly resulting from the release of a hazardous substance or waste at a facility under the Secretary's jurisdiction.

''(2) DEFINITION.—In this subsection, the term 'Indian tribe' has the meaning given such term in section 101(36) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(36)).''

Subsec. (i)(1). Pub. L. 104–106, §4321(b)(22), substituted ''Miller Act (40 U.S.C. 270a et seq.)'' for ''Act of August 24, 1935 (40 U.S.C. 270a–270d), commonly referred to as the 'Miller Act','' and ''the Miller Act'' for ''such Act of August 24, 1935''.

1994—Subsec. (d). Pub. L. 103–337, §322(1), as amended by Pub. L. 104–106, §1504(a)(1), designated existing provisions as par. (1) and inserted par. (1) heading.

Subsec. (d)(1). Pub. L. 103–337, §322(2), inserted ''or any Indian tribe'' after ''any State or local government agency''.

Subsec. (d)(2). Pub. L. 103–337, §322(3), added par. (2).

Subsec. (j)(1). Pub. L. 103–337, §323, substituted ''December 31, 1999'' for ''December 31, 1995''.

1993—Subsec. (j)(2). Pub. L. 103–35 substituted ''(42 U.S.C. 9619(g)) applies'' for ''applies (42 U.S.C. 9619(g))''.

1992—Subsec. (j). Pub. L. 102–484, §1052(35), substituted ''December 5, 1991,'' for ''the date of the enactment of the National Defense Authorization Act for Fiscal Years 1992 and 1993'' in par. (1).

Pub. L. 102–484, §331(b), substituted ''December 31, 1995'' for ''December 31, 1992'', designated existing provisions as par. (1), and added par. (2).

1991—Subsecs. (h) to (j). Pub. L. 102–190 added subsecs. (h) to (j).

1990—Subsecs. (f), (g). Pub. L. 101–510 added subsecs. (f) and (g).

CHANGE OF NAME

''Assistant Secretary of Defense for Energy, Installations, and Environment'' substituted for ''Deputy Under Secretary of Defense for Installations and Environment'' in subsec. (k)(3) on authority of section 901(n)(2) of Pub. L. 113–291, set out as a References note under section 131 of this title.

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112–239, div. B, title XXVII, §2711(d), Jan. 2, 2013, 126 Stat. 2144, provided that: ''This section and the amendments made by this section [amending this section and sections 2703, 2705, and 2883 of this title and enacting and amending provisions set out as notes under section 2687 of this title] shall take effect on the later of—

''(1) October 1, 2013; and [sic]

''(2) the date of the enactment of an Act authorizing funds for military construction for fiscal year 2014 [div. J of Pub. L. 113–76, approved Jan. 17, 2014].''

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–106, div. A, title XV, §1504(a), Feb. 10, 1996, 110 Stat. 513, provided that the amendment made by that section is effective as of Oct. 5, 1994, and as if included in Pub. L. 103–337 as enacted.

For effective date and applicability of amendment by section 4321(b)(22) of Pub. L. 104–106, see section 4401 of Pub. L. 104–106, set out as a note under section 2302 of this title.

SAVINGS CLAUSE

Nothing in amendments by section 316 of Pub. L. 116–92 to affect any requirement or authority under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.), see section 316(d) of Pub. L. 116–92, set out as a note under section 2700 of this title.

NOTIFICATION TO AGRICULTURAL OPERATIONS LOCATED IN AREAS EXPOSED TO DEPARTMENT OF DEFENSE PFAS USE

Pub. L. 116–283, div. A, title III, §335, Jan. 1, 2021, 134 Stat. 3532, provided that:

''(a) NOTIFICATION REQUIRED.—Not later than 60 days after the date of the enactment of this Act [Jan. 1, 2021], the Secretary of Defense, in consultation with the Secretary of Agriculture, shall provide a notification described in subsection (b) to any agricultural operation located within one mile down gradient of a military installation or National Guard facility where covered PFAS—

''(1) has been detected in groundwater;

''(2) has been hydrologically linked to a local agricultural or drinking water source, including a water well; and

''(3) is suspected to be, or known to be, the result of the use of PFAS at an installation of the Department of Defense located in the United States or State-owned facility of the National Guard.

''(b) NOTIFICATION REQUIREMENTS.—The notification required under subsection (a) shall include the following information:

''(1) The name of the Department of Defense installation or National Guard facility from which the covered PFAS in groundwater originated.

''(2) The specific covered PFAS detected in groundwater.

''(3) The levels of the covered PFAS detected.

''(4) Relevant governmental information regarding the health and safety of the covered PFAS detected, including relevant Federal or State standards for PFAS in groundwater, livestock, food commodities and drinking water, and any known restrictions for sale of agricultural products that have been irrigated or watered with water containing PFAS.

''(c) ADDITIONAL TESTING RESULTS.—The Secretary of Defense shall provide to an agricultural operation that receives a notice under subsection (a) any pertinent updated information, including any results of new elevated testing, by not later than 15 days after receiving validated test results.

''(d) REPORT TO CONGRESS.—Not later than 90 days after the date of the enactment of this Act, and annually thereafter, the Secretary of Defense shall submit to the Committee on Agriculture, Nutrition, and Forestry of the Senate and the Committee on Agriculture of the House of Representatives a report on the status of providing notice under subsection (a). Such report shall include, for the period covered by the report—

''(1) the approximate locations of such operations relative to installations of the Department of Defense located in the United States and State-owned facilities of the National Guard;

''(2) the covered PFAS detected in groundwater; and

''(3) the levels of covered PFAS detected.

''(e) DEFINITIONS.—In this section:

''(1) The term 'covered PFAS' means each of the following:

''(A) Perfluorooctanoic acid (commonly referred to as 'PFOA') (Chemical Abstracts Service No. 335–67–1) detected in groundwater above 70 parts per trillion, individually or in combination with PFOS.

''(B) Perfluorooctane sulfonic acid (commonly referred to as 'PFOS') (Chemical Abstracts Service No. 1763–23–1) detected in groundwater above 70 parts per trillion, individually or in combination with PFOA.

''(C) Perfluorobutanesulfonic acid (commonly referred to as 'PFBS') (Chemical Abstracts Service No. 375–73–5) detected in groundwater above 40 parts per billion.

''(2) The term 'PFAS' means a perfluoroalkyl or polyfluoroalkyl substance with at least one fully fluorinated carbon atom, including the chemical GenX.''

CONTAMINATION BY PERFLUOROALKYL OR POLYFLUOROALKYL SUBSTANCES

Pub. L. 116–92, div. A, title III, §§329–332, Dec. 20, 2019, 133 Stat. 1312, 1313, provided that:

''SEC. 329. PROHIBITION ON PERFLUOROALKYL SUBSTANCES AND POLYFLUOROALKYL SUBSTANCES IN MEALS READY-TO-EAT FOOD PACKAGING.

''(a) PROHIBITION.—Not later than October 1, 2021, the Director of the Defense Logistics Agency shall ensure that any food contact substances that are used to assemble and package meals ready-to-eat (MREs) procured by the Defense Logistics Agency do not contain any perfluoroalkyl substances or polyfluoroalkyl substances.

''(b) DEFINITIONS.—In this section:

''(1) PERFLUOROALKYL SUBSTANCE.—The term 'perfluoroalkyl substance' means a man-made chemical of which all of the carbon atoms are fully fluorinated carbon atoms.

''(2) POLYFLUOROALKYL SUBSTANCE.—The term 'polyfluoroalkyl substance' means a man-made chemical containing a mix of fully fluorinated carbon atoms, partially fluorinated carbon atoms, and nonfluorinated carbon atoms.

''SEC. 330. DISPOSAL OF MATERIALS CONTAINING PER- AND POLYFLUOROALKYL SUBSTANCES OR AQUEOUS FILM-FORMING FOAM.

''(a) IN GENERAL.—The Secretary of Defense shall ensure that when materials containing per- and polyfluoroalkyl substances (referred to in this section as 'PFAS') or aqueous film forming foam (referred to in this section as 'AFFF') are disposed—

''(1) all incineration is conducted at a temperature range adequate to break down PFAS chemicals while also ensuring the maximum degree of reduction in emission of PFAS, including elimination of such emissions where achievable;

''(2) all incineration is conducted in accordance with the requirements of the Clean Air Act (42 USC 7401 et seq.), including controlling hydrogen fluoride;

''(3) any materials containing PFAS that are designated for disposal are stored in accordance with the requirement under part 264 of title 40, Code of Federal Regulations; and

''(4) all incineration is conducted at a facility that has been permitted to receive waste regulated under subtitle C of the Solid Waste Disposal Act (42 USC 6921 et seq.).

''(b) SCOPE OF APPLICATION.—The requirements in subsection (a) only apply to all legacy AFFF formulations containing PFAS, materials contaminated by AFFF release, and spent filters or other PFAS contaminated materials resulting from site remediation or water filtration that—

''(1) have been used by the Department of Defense or a military department; or

''(2) are being discarded for disposal by means of incineration by the Department of Defense or a military department; or

''(3) are being removed from sites or facilities owned or operated by the Department of Defense.

''SEC. 331. AGREEMENTS TO SHARE MONITORING DATA RELATING TO PERFLUOROALKYL AND POLYFLUOROALKYL SUBSTANCES AND OTHER CONTAMINANTS OF CONCERN.

''(a) IN GENERAL.—The Secretary of Defense shall seek to enter into agreements with municipalities or municipal drinking water utilities located adjacent to military installations under which both the Secretary and the municipalities and utilities would share monitoring data relating to perfluoroalkyl substances, polyfluoroalkyl substances, and other emerging contaminants of concern collected at the military installation.

''(b) PUBLICLY AVAILABLE WEBSITE.—The Secretary of Defense shall maintain a publicly available website that provides a clearinghouse for information about the exposure of members of the Armed Forces, their families, and their communities to per- and polyfluoroalkyl substances. The information provided on the website shall include information on testing, clean-up, and recommended available treatment methodologies.

''(c) PUBLIC COMMUNICATION.—An agreement under subsection (a) does not negate the responsibility of the Secretary to communicate with the public about drinking water contamination from perfluoroalkyl substances, polyfluoroalkyl substances, and other contaminants.

''(d) MILITARY INSTALLATION DEFINED.—In this section, the term 'military installation' has the meaning given that term in section 2801(c) of title 10, United States Code.

''SEC. 332. COOPERATIVE AGREEMENTS WITH STATES TO ADDRESS CONTAMINATION BY PERFLUOROALKYL AND POLYFLUOROALKYL SUBSTANCES.

''(a) COOPERATIVE AGREEMENTS.—

''(1) IN GENERAL.—Upon request from the Governor or chief executive of a State, the Secretary of Defense shall work expeditiously, pursuant to section 2701(d) of title 10, United States Code, to finalize a cooperative agreement, or amend an existing cooperative agreement to address testing, monitoring, removal, and remedial actions relating to the contamination or suspected contamination of drinking, surface, or ground water from PFAS originating from activities of the Department of Defense by providing the mechanism and funding for the expedited review and approval of documents of the Department related to PFAS investigations and remedial actions from an active or decommissioned military installation, including a facility of the National Guard.

''(2) MINIMUM STANDARDS.—A cooperative agreement finalized or amended under paragraph (1) shall meet or exceed the most stringent of the following standards for PFAS in any environmental media:

''(A) An enforceable State standard, in effect in that State, for drinking, surface, or ground water, as described in section 121(d)(2)(A)(ii) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9621(d)(2)(A)(ii)).

''(B) An enforceable Federal standard for drinking, surface, or ground water, as described in section 121(d)(2)(A)(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9621(d)(2)(A)(i)).

''(C) A health advisory under section 1412(b)(1)(F) of the Safe Drinking Water Act (42 U.S.C. 300g–1(b)(1)(F)).

''(3) OTHER AUTHORITY.—In addition to the requirements for a cooperative agreement under paragraph (1), when otherwise authorized to expend funds for the purpose of addressing ground or surface water contaminated by a perfluorinated compound, the Secretary of Defense may, to expend those funds, enter into a grant agreement, cooperative agreement, or contract with—

''(A) the local water authority with jurisdiction over the contamination site, including—

''(i) a public water system (as defined in section 1401 of the Safe Drinking Water Act (42 U.S.C. 300f)); and

''(ii) a publicly owned treatment works (as defined in section 212 of the Federal Water Pollution Control Act (33 U.S.C. 1292)); or

''(B) a State, local, or Tribal government.

''(b) REPORT.—Beginning on February 1, 2020, if a cooperative agreement is not finalized or amended under subsection (a) within one year after the request from the Governor or chief executive under that subsection, and annually thereafter, the Secretary of Defense shall submit to the appropriate committees and Members of Congress a report—

''(1) explaining why the agreement has not been finalized or amended, as the case may be; and

''(2) setting forth a projected timeline for finalizing or amending the agreement.

''(c) DEFINITIONS.—In this section:

''(1) APPROPRIATE COMMITTEES AND MEMBERS OF CONGRESS.—The term 'appropriate committees and Members of Congress' means—

''(A) the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives];

''(B) the Senators who represent a State impacted by PFAS contamination described in subsection (a)(1); and

''(C) the Members of the House of Representatives who represent a district impacted by such contamination.

''(2) FULLY FLUORINATED CARBON ATOM.—The term 'fully fluorinated carbon atom' means a carbon atom on which all the hydrogen substituents have been replaced by fluorine.

''(3) PFAS.—The term 'PFAS' means perfluoroalkyl and polyfluoroalkyl substances that are man-made chemicals with at least one fully fluorinated carbon atom.

''(4) STATE.—The term 'State' has the meaning given the term in section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601).''

TREATMENT OF CONTAMINATED WATER NEAR MILITARY INSTALLATIONS

Pub. L. 116–92, div. A, title III, subtitle C, Dec. 20, 2019, 133 Stat. 1317, provided that:

''SEC. 341. SHORT TITLE.

''This subtitle may be cited as the 'Prompt and Fast Action to Stop Damages Act of 2019'.

''SEC. 342. DEFINITIONS.

''In this subtitle:

''(1) PFOA.—The term 'PFOA' means perfluorooctanoic acid.

''(2) PFOS.—The term 'PFOS' means perfluorooctane sulfonate.

''SEC. 343. PROVISION OF WATER UNCONTAMINATED WITH PERFLUOROOCTANOIC ACID (PFOA) AND PERFLUOROOCTANE SULFONATE (PFOS) FOR AGRICULTURAL PURPOSES.

''(a) AUTHORITY.—

''(1) IN GENERAL.—Using amounts authorized to be appropriated or otherwise made available for operation and maintenance for the military department concerned, or for operation and maintenance Defense-wide in the case of the Secretary of Defense, the Secretary concerned may provide water sources uncontaminated with perfluoroalkyl and polyfluoroalkyl substances, including PFOA and PFOS, or treatment of contaminated waters, for agricultural purposes used to produce products destined

for human consumption in an area in which a water source has been determined pursuant to paragraph (2) to be contaminated with such compounds by reason of activities on a military installation under the jurisdiction of the Secretary concerned.

''(2) APPLICABLE STANDARD.—For purposes of paragraph (1), an area is determined to be contaminated with PFOA or PFOS if—

''(A) the level of contamination is above the Lifetime Health Advisory for contamination with such compounds issued by the Environmental Protection Agency and printed in the Federal Register on May 25, 2016; or

''(B) on or after the date the Food and Drug Administration sets a standard for PFOA and PFOS in raw agricultural commodities and milk, the level of contamination is above such standard.

''(b) SECRETARY CONCERNED DEFINED.—In this section, the term 'Secretary concerned' means the following:

''(1) The Secretary of the Army, with respect to the Army.

''(2) The Secretary of the Navy, with respect to the Navy, the Marine Corps, and the Coast Guard (when it is operating as a service in the Navy).

''(3) The Secretary of the Air Force, with respect to the Air Force.

''(4) The Secretary of Defense, with respect to the Defense Agencies.

''SEC. 344. ACQUISITION OF REAL PROPERTY BY AIR FORCE.

''(a) AUTHORITY.—

''(1) IN GENERAL.—The Secretary of the Air Force may acquire one or more parcels of real property within the vicinity of an Air Force base that has shown signs of contamination from PFOA and PFOS due to activities on the base and which would extend the contiguous geographic footprint of the base and increase the force protection standoff near critical infrastructure and runways.

''(2) IMPROVEMENTS AND PERSONAL PROPERTY.—The authority under paragraph (1) to acquire real property described in that paragraph shall include the authority to purchase improvements and personal property located on that real property.

''(3) RELOCATION EXPENSES.—The authority under paragraph (1) to acquire real property described in that paragraph shall include the authority to provide Federal financial assistance for moving costs, relocation benefits, and other expenses incurred in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.).

''(b) ENVIRONMENTAL ACTIVITIES.—The Air Force shall conduct such activities at a parcel or parcels of real property acquired under subsection (a) as are necessary to remediate contamination from PFOA and PFOS related to activities at the Air Force base.

''(c) FUNDING.—Funds for the land acquisitions authorized under subsection (a) shall be derived from amounts authorized to be appropriated for fiscal year 2020 for military construction or the unobligated balances of appropriations for military construction that are enacted after the date of the enactment of this Act [Dec. 20, 2019].

''(d) RULE OF CONSTRUCTION.—The authority under this section constitutes authority to carry out land acquisitions for purposes of section 2802 of title 10, United States Code.

''SEC. 345. REMEDIATION PLAN.

''(a) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act [Dec. 20, 2019], the Secretary of Defense shall submit to Congress a remediation plan for cleanup of all water at or adjacent to a military installation that is contaminated with PFOA or PFOS.

''(b) STUDY.—In preparing the remediation plan under subsection (a), the Secretary shall conduct a study on the contamination of water at military installations with PFOA or PFOS.

''(c) BUDGET AMOUNT.—The Secretary shall ensure that each budget of the President submitted to Congress under section 1105(a) of title 31, United States Code, requests funding in amounts necessary to address remediation efforts under the remediation plan submitted under subsection (a).''

PLAN, FUNDING DOCUMENTS, AND MANAGEMENT REVIEW RELATING TO EXPLOSIVE ORDNANCE DISPOSAL

Pub. L. 114–328, div. A, title III, § 343, Dec. 23, 2016, 130 Stat. 2082, provided that:

''(a) PLAN REQUIRED.—

''(1) IN GENERAL.—The Secretary of Defense shall develop a plan to establish an explosive ordnance disposal program in the Department of Defense to ensure close and continuous coordination among the military departments on matters relating to explosive ordnance disposal.

''(2) ROLES, RESPONSIBILITIES, AND AUTHORITIES.—The plan under paragraph (1) shall include provisions under which—

''(A) the Secretary of Defense shall—

''(i) assign responsibility for the coordination and integration of explosive ordnance disposal to a joint office or entity in the Office of the Secretary of Defense; and

''(ii) designate the Secretary of the Navy (or a designee of the Secretary of the Navy) as the executive agent for the Department of Defense to coordinate and integrate research, development, test, and evaluation activities and procurement activities of the military departments relating to explosive ordnance disposal; and

''(B) the Secretary of each military department shall assess the needs of the military department concerned with respect to explosive ordnance disposal and may carry out research, development, test, and evaluation activities and procurement activities to address such needs.

''(b) ANNUAL EXPLOSIVE ORDNANCE DISPOSAL FUNDING DOCUMENTS.—

''(1) IN GENERAL.—The Secretary of Defense shall submit to Congress, as a part of the defense budget materials for each fiscal year after fiscal year 2017, a consolidated funding display, in classified and unclassified form, that identifies the funding source for all explosive ordnance disposal activities within the Department of Defense.

''(2) ELEMENTS.—The funding display under paragraph (1) for a fiscal year shall include a single program element from each military department for each of the following:

''(A) Research, development, test, and evaluation.

''(B) Procurement.

''(C) Operation and maintenance.

''(D) Any other program element used to fund explosive ordnance disposal activities (but not including any program element relating to military construction).

''(c) MANAGEMENT REVIEW AND ASSESSMENT.—

''(1) IN GENERAL.—The Secretary of Defense shall review and assess the effectiveness of current management structures in supporting the explosive ordnance disposal needs of the combatant commands and the military departments.

''(2) ELEMENTS.—The review and assessment under paragraph (1) shall include the following:

''(A) A review of the organizational structures and responsibilities within the Office of the Secretary of Defense that provide policy and oversight of the policies, programs, acquisition activities, and personnel of the military departments relating to explosive ordnance disposal.

''(B) A review of the organizational structures and responsibilities within the military departments that—

''(i) man, equip, and train explosive ordnance disposal forces; and

''(ii) support such forces with manpower, technology, equipment, and readiness.

''(C) A review of the organizational structures and responsibilities of the Secretary of the Navy as the executive agent for explosive ordnance disposal technology and training.

''(D) Budget displays for each military department that support research, development, test, and evaluation; procurement; and operation and maintenance, relating to explosive ordnance disposal.

''(E) An assessment of the adequacy of the organizational structures and responsibilities and the alignment of funding within the military departments in supporting the needs of the combatant commands and the military departments with respect to explosive ordnance disposal.

''(d) BRIEFING.—Not later than March 1, 2017, the Secretary shall provide to the Committees on Armed Services of the Senate and the House of Representatives a briefing that includes—

''(1) details of the plan required under subsection (a);

''(2) the results of the review and assessment under subsection (c);

''(3) a description of any measures undertaken to improve joint coordination, oversight, and management of programs relating to explosive ordnance disposal;

''(4) recommendations to the Secretary to improve the capabilities and readiness of explosive ordnance disposal forces; and

''(5) an explanation of the advantages and disadvantages of assigning responsibility for the coordination and integration of explosive ordnance disposal to a single joint office or entity in the Office of the Secretary of Defense.

''(e) DEFINITIONS.—In this section:

''(1) EXPLOSIVE ORDNANCE.—The term 'explosive ordnance' means any munition containing explosives, nuclear fission or fusion materials, or biological or chemical agents, including—

''(A) bombs and warheads;

''(B) guided and ballistic missiles;

''(C) artillery, mortar, rocket, and small arms munitions;

''(D) mines, torpedoes, and depth charges;

''(E) demolition charges;

''(F) pyrotechnics;

''(G) clusters and dispensers;

''(H) cartridge and propellant actuated devices;

''(I) electro-explosive devices; and

''(J) clandestine and improvised explosive devices.

''(2) DISPOSAL.—The term 'disposal' means, with respect to explosive ordnance, the detection, identification, field evaluation, defeat, disablement, or rendering safe, recovery and exploitation, and final disposition of the ordnance.''

PROHIBITION ON DISPOSING OF WASTE IN OPEN-AIR BURN PITS

Pub. L. 111–84, div. A, title III, §317, Oct. 28, 2009, 123 Stat. 2249, as amended by Pub. L. 112–81, div. A, title III, §316, Dec. 31, 2011, 125 Stat. 1358; Pub. L. 113–66, div. A, title III, §314, Dec. 26, 2013, 127 Stat. 729; Pub. L. 113–291, div. A, title X, §1071(g)(1), Dec. 19, 2014, 128 Stat. 3511, provided that:

''(a) REGULATIONS.—

''(1) IN GENERAL.—Not later than 120 days after the date of the enactment of this Act [Oct. 28, 2009], the Secretary of Defense shall prescribe regulations prohibiting the disposal of covered waste in open-air burn pits during contingency operations except in circumstances in which the Secretary determines that no alternative disposal method is feasible. Such regulations shall apply to contingency operations that are ongoing as of the date of the enactment of this Act, including Operation Iraqi Freedom and Operation Enduring Freedom, and to contingency operations that begin after the date of the enactment of this Act.

''(2) NOTIFICATION.—In determining that no alternative disposal method is feasible for an open-air burn pit pursuant to regulations prescribed under paragraph (1), the Secretary shall—

''(A) not later than 30 days after such determination is made, submit to the Committees on Armed Services of the Senate and House of Representatives notice of such determination, including the circumstances, reasoning, and methodology that led to such determination; and

''(B) after notice is given under subparagraph (A), for each subsequent 180-day-period during which covered waste is disposed of in the open-air burn pit covered by such notice, submit to the Committees on Armed Services of the Senate and House of Representatives the justifications of the Secretary for continuing to operate such open-air burn pit.

''(b) REPORT.—Not later than 180 days after the date of the enactment of this Act [Oct. 28, 2009], the Secretary shall submit to the Committees on Armed Services of the Senate and House of Representatives a report on the use of open-air burn pits by the United States Armed Forces. Such report shall include—

''(1) an explanation of the situations and circumstances under which open-air burn pits are used to dispose of waste during military exercises and operations worldwide;

''(2) a detailed description of the types of waste authorized to be burned in open-air burn pits;

''(3) a plan through which the Secretary intends to develop and implement alternatives to the use of open-air burn pits;

''(4) a copy of the regulations required to be prescribed by subsection (a);

''(5) the health and environmental compliance standards the Secretary has established for military and contractor operations in Iraq and Afghanistan with regard to solid waste disposal, including an assessment of whether those standards are being met;

''(6) a description of the environmental, health, and operational impacts of open-pit burning of plastics and the feasibility of including plastics in the regulations prescribed pursuant to subsection (a); and

''(7) an assessment of the ability of existing medical surveillance programs to identify and track exposures to toxic substances that result from open-air burn pits, including recommendations for such changes to such programs as would be required to more accurately identify and track such exposures.

''(c) HEALTH ASSESSMENT REPORTS.—Not later than 180 days after notice is due under subsection (a)(2), the Secretary shall submit to the Committees on Armed Services of the Senate and House of Representatives a health assessment report on each open-air burn pit at a location where at least 100 personnel have been employed for 90 consecutive days or more. Each such report shall include each of the following:

''(1) An epidemiological description of the short-term and long-term health risks posed to personnel in the area where the burn pit is located because of exposure to the open-air burn pit.

''(2) A copy of the methodology used to determine the health risks described in paragraph (1).

''(3) A copy of the assessment of the operational risks and health risks when making the determination pursuant to subsection (a) that no alternative disposal method is feasible for the open-air burn pit.

''(d) DEFINITIONS.—In this section:

''(1) The term 'contingency operation' has the meaning given that term by section 101(a)(13) of title 10, United States Code.

''(2) The term 'covered waste' includes—

''(A) hazardous waste, as defined by section 1004(5) of the Solid Waste Disposal Act (42 U.S.C. 6903(5));

''(B) medical waste;

''(C) tires;

''(D) treated wood;

''(E) batteries;

''(F) plastics, except insignificant amounts of plastic remaining after a good-faith effort to remove or recover plastic materials from the solid waste stream;

''(G) munitions and explosives, except when disposed of in compliance with guidance on the destruction of munitions and explosives contained in the Department of Defense Ammunition and Explosives Safety Standards, DoD Manual 6055.09-M;

''(H) compressed gas cylinders, unless empty with valves removed;

''(I) fuel containers, unless completely evacuated of its contents;

''(J) aerosol cans;

''(K) polychlorinated biphenyls;

''(L) petroleum, oils, and lubricants products (other than waste fuel for initial combustion);

''(M) asbestos;

''(N) mercury;

''(O) foam tent material;

''(P) any item containing any of the materials referred to in a preceding paragraph; and

''(Q) other waste as designated by the Secretary.''

PURPOSE OF PUB. L. 109–284

Pub. L. 109–284, §1, Sept. 27, 2006, 120 Stat. 1211, provided that: ''The purpose of this Act [amending this section, sections 107 and 210 of Title 23, Highways, section 1499 of Title 28, Judiciary and Judicial Procedure, sections 2301, 20908, 40103, 70912, 150511, 151303, 153513, 220104, 220501, 220505, 220506, 220509, 220511, 220512, and 220521 of Title 36, Patriotic and National Observances, Ceremonies, and Organizations, and sections 522, 552, 554, 581, 593, 611, 3131, 3133, 3141, 3142, 3701, 3702, 3704, 6111, 8104, 8105, 8501, 8502, 8711, 8712, 8722, 9302, 14308, and 17504 of Title 40, Public Buildings, Property, and Works] is to make technical corrections to the United States Code relating to cross references, typographical errors, and stylistic matters.''

FORMERLY UTILIZED SITES REMEDIAL ACTION PROGRAM

Pub. L. 106–398, §1 [div. C, title XXXI, §3138], Oct. 30, 2000, 114 Stat. 1654, 1654A–461, provided that:

''(a) CONTINGENT LIMITATION ON AVAILABILITY OF FUNDS FOR CERTAIN TRAVEL EXPENSES.—Effective November 1, 2001, but subject to subsection (b), no funds authorized to be appropriated or otherwise made available by this or any other Act for the Department of Energy or the Department of the Army may be obligated or expended for travel by—

''(1) the Secretary of Energy or any officer or employee of the Office of the Secretary of Energy; or

''(2) the Chief of Engineers.

''(b) EFFECTIVE DATE.—The limitation in subsection (a) shall not take effect if before November 1, 2001, both of the following certifications are submitted to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives]:

''(1) A certification by the Secretary of Energy that the Department of Energy is in compliance with the requirements of section 3131 of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106–65; 113 Stat. 925; 10 U.S.C. 2701 note).

''(2) A certification by the Chief of Engineers that the Corps of Engineers is in compliance with the requirements of that section.

''(c) TERMINATION.—If the limitation in subsection (a) takes effect, the limitation shall cease to be in effect when both certifications referred to in subsection (b) have been submitted to the congressional defense committees.''

Pub. L. 106–65, div. C, title XXXI, §3131, Oct. 5, 1999, 113 Stat. 925, provided that: ''Notwithstanding any other provision of law, no funds authorized to be appropriated or otherwise made available by this Act [see Tables for classification], or by any Act authorizing appropriations for the military activities of the Department of Defense or the defense activities of the Department of Energy for a fiscal year after fiscal year 2000, may be obligated or expended to conduct treatment, storage, or disposal activities at any site designated as a site under the Formerly Utilized Site Remedial Action Program as of the date of the enactment of this Act [Oct. 5, 1999].''

Pub. L. 106–60, title VI, §611, Sept. 29, 1999, 113 Stat. 502, provided that:

''(a) The Secretary of the Army, acting through the Chief of Engineers, in carrying out the program known as the Formerly Utilized Sites Remedial Action Program, shall undertake the following functions and activities to be performed at eligible sites where remediation has not been completed:

''(1) Sampling and assessment of contaminated areas.

''(2) Characterization of site conditions.

''(3) Determination of the nature and extent of contamination.

''(4) Selection of the necessary and appropriate response actions as the lead Federal agency.

''(5) Cleanup and closeout of sites.

''(6) Any other functions and activities determined by the Secretary of the Army, acting through the Chief of Engineers, as necessary for carrying out that program, including the acquisition of real estate interests where necessary, which may be transferred upon completion of remediation to the administrative jurisdiction of the Secretary of Energy.

''(b) Any response action under that program by the Secretary of the Army, acting through the Chief of Engineers, shall be subject to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) (in this section referred to as 'CERCLA'), and the National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR 300).

''(c) Any sums recovered under CERCLA or other authority from a liable party, contractor, insurer, surety, or other person for any expenditures by the Army Corps of Engineers or the Department of Energy for response actions under that program shall be credited to the amounts made available to carry out that program and shall be available until expended for costs of response actions for any eligible site.

''(d) The Secretary of Energy may exercise the authority under section 168 of the Atomic Energy Act of 1954 (42 U.S.C. 2208) to make payments in lieu of taxes for federally owned property at which activities under that program are carried out, regardless of which Federal agency has administrative jurisdiction over the property and notwithstanding any reference to 'the activities of the Commission' in that section.

''(e) This section does not alter, curtail, or limit the authorities, functions, or responsibilities of other agencies under CERCLA or, except as stated in this section, under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.).

''(f) This section shall apply to fiscal year 2000 and each succeeding fiscal year.''

SETTLEMENT OF CLAIMS OF FOREIGN GOVERNMENTS FOR ENVIRONMENTAL CLEANUP OF OVERSEAS SITES FORMERLY USED BY DEPARTMENT OF DEFENSE

Pub. L. 105–261, div. A, title III, §321, Oct. 17, 1998, 112 Stat. 1962, provided that:

''(a) NOTICE OF NEGOTIATIONS.—The President shall notify Congress before entering into any negotiations for the ex-gratia settlement of the claims of a government of another country against the United States for environmental cleanup of sites in that country that were formerly used by the Department of Defense.

''(b) AUTHORIZATION REQUIRED FOR USE OF FUNDS FOR PAYMENT OF SETTLEMENT.—No funds may be used for any payment under an ex-gratia settlement of any claims described in subsection (a) unless the use of the funds for that purpose is specifically authorized by law or international agreement, including a treaty.''

RECOVERY AND SHARING OF COSTS OF ENVIRONMENTAL RESTORATION AT DEPARTMENT OF DEFENSE SITES

Pub. L. 105–85, div. A, title III, §348, Nov. 18, 1997, 111 Stat. 1689, provided that:

''(a) REGULATIONS.—Not later than March 1, 1998, the Secretary of Defense shall prescribe regulations con-

taining the guidelines and requirements described in subsections (b) and (c).

"(b) GUIDELINES.—(1) The regulations prescribed under subsection (a) shall contain uniform guidelines for the military departments and defense agencies concerning the cost-recovery and cost-sharing activities of those departments and agencies.

"(2) The Secretary shall take appropriate actions to ensure the implementation of the guidelines.

"(c) REQUIREMENTS.—The regulations prescribed under subsection (a) shall contain requirements for the Secretaries of the military departments and the heads of defense agencies to—

"(1) obtain all data that is relevant for purposes of cost-recovery and cost-sharing activities; and

"(2) identify any negligence or other misconduct that may preclude indemnification or reimbursement by the Department of Defense for the costs of environmental restoration at a Department site or justify the recovery or sharing of costs associated with such restoration.

"(d) DEFINITION.—In this section, the term 'cost-recovery and cost-sharing activities' means activities concerning—

"(1) the recovery of the costs of environmental restoration at Department of Defense sites from contractors of the Department and other private parties that contribute to environmental contamination at such sites; and

"(2) the sharing of the costs of such restoration with such contractors and parties."

PILOT PROGRAM FOR SALE OF AIR POLLUTION EMISSION REDUCTION INCENTIVES

Pub. L. 107–107, div. A, title III, §316(b), Dec. 28, 2001, 115 Stat. 1053, directed the Secretary of Defense to prepare a report concerning the operation of the pilot program for the sale of economic incentives for the reduction of emission of air pollutants attributable to military facilities, as authorized by section 351 of Pub. L. 105–85, formerly set out below, and to submit the report to the Congress not later than Mar. 1, 2003.

Pub. L. 105–85, div. A, title III, §351, Nov. 18, 1997, 111 Stat. 1692, as amended by Pub. L. 106–65, div. A, title III, §325, Oct. 5, 1999, 113 Stat. 563; Pub. L. 107–107, div. A, title III, §316(a), Dec. 28, 2001, 115 Stat. 1053, authorized the Secretary of Defense, until Sept. 30, 2003, to carry out a pilot program to assess the feasibility and advisability of the sale of economic incentives for the reduction of emission of air pollutants attributable to a facility of a military department.

AUTHORITY TO DEVELOP AND IMPLEMENT LAND USE PLANS FOR DEFENSE ENVIRONMENTAL RESTORATION PROGRAM

Pub. L. 104–201, div. A, title III, §325, Sept. 23, 1996, 110 Stat. 2481, provided that:

"(a) AUTHORITY.—The Secretary of Defense may, to the extent possible and practical, develop and implement, as part of the Defense Environmental Restoration Program provided for in chapter 160 of title 10, United States Code, a land use plan for any defense site selected by the Secretary under subsection (b).

"(b) SELECTION OF SITES.—The Secretary may select up to 10 defense sites, from among sites where the Secretary is planning or implementing environmental restoration activities, for which land use plans may be developed under this section.

"(c) REQUIREMENT TO CONSULT WITH REVIEW COMMITTEE OR ADVISORY BOARD.—In developing a land use plan under this section, the Secretary shall consult with a technical review committee established pursuant to section 2705(c) of title 10, United States Code, a restoration advisory board established pursuant to section 2705(d) of such title, a local land use redevelopment authority, or another appropriate State agency.

"(d) 50-YEAR PLANNING PERIOD.—A land use plan developed under this section shall cover a period of at least 50 years.

"(e) IMPLEMENTATION.—For each defense site for which the Secretary develops a land use plan under this section, the Secretary shall take into account the land use plan in selecting and implementing, in accordance with applicable law, environmental restoration activities at the site.

"(f) DEADLINES.—For each defense site for which the Secretary intends to develop a land use plan under this section, the Secretary shall develop a draft land use plan by October 1, 1997, and a final land use plan by March 15, 1998.

"(g) DEFINITION OF DEFENSE SITE.—For purposes of this section, the term 'defense site' means (A) any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft under the jurisdiction of the Department of Defense, or (B) any site or area under the jurisdiction of the Department of Defense where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located; but does not include any consumer product in consumer use or any vessel.

"(h) REPORT.—In the annual report required under [former] section 2706(a) of title 10, United States Code, the Secretary shall include information on the land use plans developed under this section and the effect such plans have had on environmental restoration activities at the defense sites where they have been implemented. The annual report submitted in 1999 shall include recommendations on whether such land use plans should be developed and implemented throughout the Department of Defense.

"(i) SAVINGS PROVISIONS.—(1) Nothing in this section, or in a land use plan developed under this section with respect to a defense site, shall be construed as requiring any modification to a land use plan that was developed before the date of the enactment of this Act [Sept. 23, 1996].

"(2) Nothing in this section may be construed to affect statutory requirements for an environmental restoration or waste management activity or project or to modify or otherwise affect applicable statutory or regulatory environmental restoration and waste management requirements, including substantive standards intended to protect public health and the environment, nor shall anything in this section be construed to preempt or impair any local land use planning or zoning authority or State authority."

FISCAL YEAR 1996 RESTRICTIONS ON REIMBURSEMENTS UNDER AGREEMENTS FOR SERVICES OF OTHER AGENCIES

Pub. L. 104–106, div. A, title III, §321(a)(2), Feb. 10, 1996, 110 Stat. 251, as amended by Pub. L. 105–85, div. A, title X, §1073(d)(1)(A), Nov. 18, 1997, 111 Stat. 1905, provided that:

"(A) Except as provided in subparagraph (B), the total amount of funds available for reimbursements under agreements entered into under section 2701(d) of title 10, United States Code, as amended by paragraph (1), in fiscal year 1996 may not exceed $10,000,000.

"(B) The Secretary of Defense may pay in fiscal year 1996 an amount for reimbursements under agreements referred to in subparagraph (A) in excess of the amount specified in that subparagraph for that fiscal year if—

"(i) the Secretary certifies to Congress that the payment of the amount under this subparagraph is essential for the management of the Defense Environmental Restoration Program under chapter 160 of title 10, United States Code; and

"(ii) a period of 60 days has expired after the date on which the certification is received by Congress."

ENVIRONMENTAL EDUCATION AND TRAINING PROGRAM FOR DEFENSE PERSONNEL

Pub. L. 103–337, div. A, title III, §328, Oct. 5, 1994, 108 Stat. 2714, provided that:

"(a) ESTABLISHMENT.—The Secretary of Defense shall establish and conduct an education and training pro-

gram for members of the Armed Forces and civilian employees of the Department of Defense whose responsibilities include planning or executing the environmental mission of the Department. The Secretary shall conduct the program to ensure that such members and employees obtain and maintain the knowledge and skill required to comply with existing environmental laws and regulations.

''(b) IDENTIFICATION OF MILITARY FACILITIES WITH ENVIRONMENTAL TRAINING EXPERTISE.—As part of the program, the Secretary may identify military facilities that have existing expertise (or the capacity to develop such expertise) in conducting education and training activities in various environmental disciplines. In the case of a military facility identified under this subsection, the Secretary should encourage the use of the facility by members and employees referred to in subsection (a) who are not under the jurisdiction of the military department operating the facility.''

GRANTS TO INSTITUTIONS OF HIGHER EDUCATION TO PROVIDE EDUCATION AND TRAINING IN ENVIRONMENTAL RESTORATION TO DISLOCATED DEFENSE WORKERS AND YOUNG ADULTS

Pub. L. 103–160, div. A, title XIII, § 1333, Nov. 30, 1993, 107 Stat. 1798, as amended by Pub. L. 103–337, div. A, title X, § 1070(b)(11), Oct. 5, 1994, 108 Stat. 2857; Pub. L. 105–244, title I, § 102(a)(2)(D), Oct. 7, 1998, 112 Stat. 1617; Pub. L. 105–277, div. A, § 101(f) [title VIII, § 405(d)(8), (f)(7)], Oct. 21, 1998, 112 Stat. 2681–337, 2681–420, 2681–430; Pub. L. 109–163, div. A, title X, § 1056(a)(2), Jan. 6, 2006, 119 Stat. 3438, provided that:

''(a) GRANT PROGRAM AUTHORIZED.—(1) The Secretary of Defense may establish a program to provide demonstration grants to institutions of higher education to assist such institutions in providing education and training in environmental restoration and hazardous waste management to eligible dislocated defense workers and young adults described in subsection (d). The Secretary shall award the grants pursuant to a merit-based selection process.

''(2) A grant provided under this subsection may cover a period of not more than three fiscal years, except that the payments under the grant for the second and third fiscal year shall be subject to the approval of the Secretary and to the availability of appropriations to carry out this section in that fiscal year.

''(b) APPLICATION.—To be eligible for a grant under subsection (a), an institution of higher education shall submit an application to the Secretary at such time, in such form, and containing such information as the Secretary may require. The application shall include the following:

''(1) An assurance by the institution of higher education that it will use the grant to supplement and not supplant non-Federal funds that would otherwise be available for the education and training activities funded by the grant.

''(2) A proposal by the institution of higher education to provide expertise, training, and education in hazardous materials and waste management and other environmental fields applicable to defense manufacturing sites and Department of Defense and Department of Energy defense facilities.

''(c) USE OF GRANT FUNDS.—(1) An institution of higher education receiving a grant under subsection (a) shall use the grant to establish a consortium consisting of the institution and one or more of each of the entities described in paragraph (2) for the purpose of establishing and conducting a program to provide education and training in environmental restoration and waste management to eligible individuals described in subsection (d). To the extent practicable, the Secretary shall authorize the consortium to use a military installation closed or selected to be closed under a base closure law in providing on-site basic skills training to participants in the program.

''(2) The entities referred to in paragraph (1) are the following:

''(A) Appropriate State and local agencies.

''(B) local [sic] workforce investment boards established under [former] section 117 of the Workforce Investment Act of 1998 [former 29 U.S.C. 2832].

''(C) Community-based organizations (as defined in section 4(5) of such Act (29 U.S.C. 1503(5)).

''(D) Businesses.

''(E) Organized labor.

''(F) Other appropriate educational institutions.

''(d) ELIGIBLE INDIVIDUALS.—A program established or conducted using funds provided under subsection (a) may provide education and training in environmental restoration and waste management to—

''(1) individuals who have been terminated or laid off from employment (or have received notice of termination or lay off) as a consequence of reductions in expenditures by the United States for defense, the cancellation, termination, or completion of a defense contract, or the closure or realignment of a military installation under a base closure law, as determined in accordance with regulations prescribed by the Secretary; or

''(2) individuals who have attained the age of 16 but not the age of 25.

''(e) ELEMENTS OF EDUCATION AND TRAINING PROGRAM.—In establishing or conducting an education and training program using funds provided under subsection (a), the institution of higher education shall meet the following requirements:

''(1) The institution of higher education shall establish and provide a work-based learning system consisting of education and training in environmental restoration—

''(A) which may include basic educational courses, on-site basic skills training, and mentor assistance to individuals described in subsection (d) who are participating in the program; and

''(B) which may lead to the awarding of a certificate or degree at the institution of higher education.

''(2) The institution of higher education shall undertake outreach and recruitment efforts to encourage participation by eligible individuals in the education and training program.

''(3) The institution of higher education shall select participants for the education and training program from among eligible individuals described in paragraph (1) or (2) of subsection (d).

''(4) To the extent practicable, in the selection of young adults described in subsection (d)(2) to participate in the education and training program, the institution of higher education shall give priority to those young adults who—

''(A) have not attended and are otherwise unlikely to be able to attend an institution of higher education; or

''(B) have, or are members of families who have, received a total family income that, in relation to family size, is not in excess of the higher of—

''(i) the official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981 (42 U.S.C. 9902(2))); or

''(ii) 70 percent of the lower living standard income level.

''(5) To the extent practicable, the institution of higher education shall select instructors for the education and training program from institutions of higher education, appropriate community programs, and industry and labor.

''(6) To the extent practicable, the institution of higher education shall consult with appropriate Federal, State, and local agencies carrying out environmental restoration programs for the purpose of achieving coordination between such programs and the education and training program conducted by the consortium.

''(f) SELECTION OF GRANT RECIPIENTS.—To the extent practicable, the Secretary shall provide grants to institutions of higher education under subsection (a) in a

manner which will equitably distribute such grants among the various regions of the United States.

''(g) LIMITATION ON AMOUNT OF GRANT TO A SINGLE RECIPIENT.—The amount of a grant under subsection (a) that may be made to a single institution of higher education in a fiscal year may not exceed ⅓ of the amount made available to provide grants under such subsection for that fiscal year.

''(h) REPORTING REQUIREMENTS.—(1) The Secretary may provide a grant to an institution of higher education under subsection (a) only if the institution agrees to submit to the Secretary, in each fiscal year in which the Secretary makes payments under the grant to the institution, a report containing—

''(A) a description and evaluation of the education and training program established by the consortium formed by the institution under subsection (c); and

''(B) such other information as the Secretary may reasonably require.

''(2) Not later than 18 months after the date of the enactment of this Act [Nov. 30, 1993], the Secretary shall submit to the President and Congress an interim report containing—

''(A) a compilation of the information contained in the reports received by the Secretary from each institution of higher education under paragraph (1); and

''(B) an evaluation of the effectiveness of the demonstration grant program authorized by this section.

''(3) Not later than January 1, 1997, the Secretary shall submit to the President and Congress a final report containing—

''(A) a compilation of the information described in the interim report; and

''(B) a final evaluation of the effectiveness of the demonstration grant program authorized by this section, including a recommendation as to the feasibility of continuing the program.

''(i) DEFINITIONS.—For purposes of this section:

''(1) BASE CLOSURE LAW.—The term 'base closure law' has the meaning given such term in section 101(a)(17) of title 10, United States Code.

''(2) ENVIRONMENTAL RESTORATION.—The term 'environmental restoration' means actions taken consistent with a permanent remedy to prevent or minimize the release of hazardous substances into the environment so that such substances do not migrate to cause substantial danger to present or future public health or welfare or the environment.

''(3) INSTITUTION OF HIGHER EDUCATION.—The term 'institution of higher education' has the meaning given such term in section 101 of the Higher Education Act of 1965 [20 U.S.C. 1001].

''(4) SECRETARY.—The term 'Secretary' means the Secretary of Defense.

''(j) CONFORMING REPEAL.—Section 4452 of the Defense Conversion, Reinvestment, and Transition Assistance Act of 1992 (division D of Public Law 102–484; 10 U.S.C. 2701 note) is repealed.''

ENVIRONMENTAL EDUCATION OPPORTUNITIES PROGRAM

Pub. L. 103–160, div. A, title XIII, §1334, Nov. 30, 1993, 107 Stat. 1801, as amended by Pub. L. 105–244, title I, §102(a)(2)(E), Oct. 7, 1998, 112 Stat. 1617, provided that:

''(a) AUTHORITY.—The Secretary of Defense, in consultation with the Secretary of Energy and the Administrator of the Environmental Protection Agency, may establish a scholarship program in order to enable eligible individuals described in subsection (d) to undertake the educational training or activities relating to environmental engineering, environmental sciences, or environmental project management in fields related to hazardous waste management and cleanup described in subsection (b) at the institutions of higher education described in subsection (c).

''(b) EDUCATIONAL TRAINING OR ACTIVITIES.—(1) The program established under subsection (a) shall be limited to educational training or activities related to—

''(A) site remediation;

''(B) site characterization;

''(C) hazardous waste management;

''(D) hazardous waste reduction;

''(E) recycling;

''(F) process and materials engineering;

''(G) training for positions related to environmental engineering, environmental sciences, or environmental project management (including training for management positions); and

''(H) environmental engineering with respect to the construction of facilities to address the items described in subparagraphs (A) through (G).

''(2) The program established under subsection (a) shall be limited to educational training or activities designed to enable individuals to achieve specialization in the following fields:

''(A) Earth sciences.

''(B) Chemistry.

''(C) Chemical Engineering.

''(D) Environmental engineering.

''(E) Statistics.

''(F) Toxicology.

''(G) Industrial hygiene.

''(H) Health physics.

''(I) Environmental project management.

''(c) ELIGIBLE INSTITUTIONS OF HIGHER EDUCATION.—Scholarship funds awarded under this section shall be used by individuals awarded scholarships to enable such individuals to attend institutions of higher education associated with hazardous substance research centers to enable such individuals to undertake a program of educational training or activities described in subsection (b) that leads to an undergraduate degree, a graduate degree, or a degree or certificate that is supplemental to an academic degree.

''(d) ELIGIBLE INDIVIDUALS.—Individuals eligible for scholarships under the program established under subsection (a) are the following:

''(1) Any member of the Armed Forces who—

''(A) was on active duty or full-time National Guard duty on September 30, 1990;

''(B) during the 5-year period beginning on that date—

''(i) is involuntarily separated (as defined in section 1141 of title 10, United States Code) from active duty or full-time National Guard duty; or

''(ii) is separated from active duty or full-time National Guard duty pursuant to a special separation benefits program under section 1174a of title 10, United States Code, or the voluntary separation incentive program under section 1175 of that title; and

''(C) is not entitled to retired or retainer pay incident to that separation.

''(2) Any civilian employee of the Department of Energy or the Department of Defense (other than an employee referred to in paragraph (3)) who—

''(A) is terminated or laid off from such employment during the five-year period beginning on September 30, 1990, as a result of reductions in defense-related spending (as determined by the appropriate Secretary); and

''(B) is not entitled to retired or retainer pay incident to that termination or lay off.

''(3) Any civilian employee of the Department of Defense whose employment at a military installation approved for closure or realignment under a base closure law is terminated as a result of such closure or realignment.

''(e) AWARD OF SCHOLARSHIP.—(1)(A) The Secretary of Defense shall award scholarships under this section to such eligible individuals as the Secretary determines appropriate pursuant to regulations or policies promulgated by the Secretary.

''(B) In awarding a scholarship under this section, the Secretary shall—

''(i) take into consideration the extent to which the qualifications and experience of the individual applying for the scholarship prepared such individual for the educational training or activities to be undertaken; and

''(ii) award a scholarship only to an eligible individual who has been accepted for enrollment in the

institution of higher education described in subsection (c) and providing the educational training or activities for which the scholarship assistance is sought.

''(2) The Secretary of Defense shall determine the amount of the scholarships awarded under this section, except that the amount of scholarship assistance awarded to any individual under this section may not exceed—

''(A) $10,000 in any 12-month period; and

''(B) a total of $20,000.

''(f) APPLICATION; PERIOD FOR SUBMISSION.—(1) Each individual desiring a scholarship under this section shall submit an application to the Secretary of Defense in such manner and containing or accompanied by such information as the Secretary may reasonably require.

''(2) A member of the Armed Forces described in subsection (d)(1) who desires to apply for a scholarship under this section shall submit an application under this subsection not later than 180 days after the date of the separation of the member. In the case of members described in subsection (d)(1) who were separated before the date of the enactment of this Act [Nov. 30, 1993], the Secretary shall accept applications from these members submitted during the 180-day period beginning on the date of the enactment of this Act.

''(3) A civilian employee described in paragraph (2) or (3) of subsection (d) who desires to apply for a scholarship under this section, but who receives no prior notice of such termination or lay off, may submit an application under this subsection at any time after such termination or lay off. A civilian employee described in paragraph (1) or (2) of subsection (d) who receives a notice of termination or lay off shall submit an application not later than 180 days before the effective date of the termination or lay off. In the case of employees described in such paragraphs who were terminated or laid off before the date of the enactment of this Act [Nov. 30, 1993], the Secretary shall accept applications from these employees submitted during the 180-day period beginning on the date of the enactment of this Act.

''(g) REPAYMENT.—(1) Any individual receiving scholarship assistance from the Secretary of Defense under this section shall enter into an agreement with the Secretary under which the individual agrees to pay to the United States the total amount of the scholarship assistance provided to the individual by the Secretary under this section, plus interest at the rate prescribed in paragraph (4), if the individual does not complete the educational training or activities for which such assistance is provided.

''(2) If an individual fails to pay to the United States the total amount required pursuant to paragraph (1), including the interest, at the rate prescribed in paragraph (4), the unpaid amount shall be recoverable by the United States from the individual or such individual's estate by—

''(A) in the case of an individual who is an employee of the United States, set off against accrued pay, compensation, amount of retirement credit, or other amount due the employee from the United States; and

''(B) such other method as is provided by law for the recovery of amounts owing to the United States.

''(3) The Secretary of Defense may waive in whole or in part a required repayment under this subsection if the Secretary determines that the recovery would be against equity and good conscience or would be contrary to the best interests of the United States.

''(4) The total amount of scholarship assistance provided to an individual under this section, for purposes of repayment under this subsection, shall bear interest at the applicable rate of interest under section 427A(c) of the Higher Education Act of 1965 (20 U.S.C. 1077a(c)).

''(h) COORDINATION OF BENEFITS.—Any scholarship assistance provided to an individual under this section shall be taken into account in determining the eligibility of the individual for Federal student financial assistance provided under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.).

''(i) REPORT TO CONGRESS.—Not later than January 1, 1995, the Secretary of Defense, in consultation with the Secretary of Energy and the Administrator of the Environmental Protection Agency, shall submit to the Congress a report describing the activities undertaken under the program authorized by subsection (a) and containing recommendations for future activities under the program.

''(j) FUNDING.—(1) To carry out the scholarship program authorized by subsection (a), the Secretary of Defense may use the unobligated balance of funds made available pursuant to section 4451(k) of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102–484; 10 U.S.C. 2701 note) for fiscal year 1993 for environmental scholarship and fellowship programs for the Department of Defense.

''(2) The cost of carrying out the program authorized by subsection (a) may not exceed $8,000,000 in any fiscal year.

''(k) DEFINITIONS.—For purposes of this section:

''(1) The term 'base closure law' means the following:

''(A) Title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 10 U.S.C. 2687 note).

''(B) The Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note).

''(2) The term 'hazardous substance research centers' means the hazardous substance research centers described in section 311(d) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9660(d)). Such term includes the Great Plains and Rocky Mountain Hazardous Substance Research Center, the Northeast Hazardous Substance Research Center, the Great Lakes and Mid-Atlantic Hazardous Substance Research Center, the South and Southwest Hazardous Substance Research Center, and the Western Region Hazardous Substance Research Center.

''(3) The term 'institution of higher education' has the same meaning given such term in section 101 of the Higher Education Act of 1965 [20 U.S.C. 1001].''

TRAINING AND EMPLOYMENT OF DEPARTMENT OF DEFENSE EMPLOYEES TO CARRY OUT ENVIRONMENTAL RESTORATION AT MILITARY INSTALLATIONS TO BE CLOSED

Pub. L. 103–160, div. A, title XIII, § 1335, Nov. 30, 1993, 107 Stat. 1804, provided that:

''(a) TRAINING PROGRAM.—The Secretary of Defense may establish a program to provide such training to eligible civilian employees of the Department of Defense as the Secretary considers to be necessary to qualify such employees to carry out environmental assessment, remediation, and restoration activities (including asbestos abatement) at military installations closed or to be closed.

''(b) EMPLOYMENT OF GRADUATES.—In the case of eligible civilian employees of the Department of Defense who successfully complete the training program established pursuant to subsection (a), the Secretary may—

''(1) employ such employees to carry out environmental assessment, remediation, and restoration activities at military installations referred to in subsection (a); or

''(2) require, as a condition of a contract for the private performance of such activities at such an installation, the contractor to be engaged in carrying out such activities to employ such employees.

''(c) ELIGIBLE EMPLOYEES.—Eligibility for selection to participate in the training program under subsection (a) shall be limited to those civilian employees of the Department of Defense whose employment would be terminated by reason of the closure of a military installation if not for the selection of the employees to participate in the training program.

''(d) PRIORITY IN TRAINING AND EMPLOYMENT.—The Secretary shall give priority in providing training and employment under this section to eligible civilian em-

ployees employed at a military installation the closure of which will directly result in the termination of the employment of at least 1,000 civilian employees of the Department of Defense.

''(e) EFFECT ON OTHER ENVIRONMENTAL REQUIREMENTS.—Nothing in this section shall be construed to revise or modify any requirement established under Federal or State law relating to environmental assessment, remediation, or restoration activities at military installations closed or to be closed.''

COOPERATIVE AGREEMENTS AND GRANTS TO IMPLEMENT LEGACY RESOURCE MANAGEMENT PROGRAM

Pub. L. 103–139, title II, Nov. 11, 1993, 107 Stat. 1422, provided in part: ''That notwithstanding the provisions of the Federal Cooperative Grant and Agreement Act of 1977 (31 U.S.C. 6303–6308), the Department of Defense may hereafter negotiate and enter into cooperative agreements and grants with public and private agencies, organizations, institutions, individuals or other entities to implement the purposes of the Legacy Resource Management Program''.

PILOT PROGRAM FOR EXPEDITED ENVIRONMENTAL RESPONSE ACTIONS

Pub. L. 102–484, div. A, title III, § 323, Oct. 23, 1992, 106 Stat. 2365, provided that:

''(a) ESTABLISHMENT.—The Secretary of Defense shall establish a pilot program to expedite the performance of on-site environmental restoration at—

''(1) military installations scheduled for closure under title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 10 U.S.C. 2687 note);

''(2) military installations scheduled for closure under the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note); and

''(3) facilities for which the Secretary is responsible under the Defense Environmental Restoration Program established under section 2701 of title 10, United States Code.

''(b) SELECTION OF INSTALLATIONS AND FACILITIES.—(1) For participation in the pilot program, the Secretary shall select—

''(A) 2 military installations referred to in subsection (a)(1);

''(B) 4 military installations referred to in subsection (a)(2), consisting of—

''(i) 2 military installations scheduled for closure as of the date of the enactment of this Act [Oct. 23, 1992]; and

''(ii) 2 military installations included in the list transmitted by the Secretary no later than April 15, 1993, pursuant to section 2903(c)(1) of the Defense Base Closure and Realignment Act of 1990 [Pub. L. 101–510] (10 U.S.C. 2687 note) and recommended in a report transmitted by the President in that year pursuant to section 2903(e) of such Act and for which a joint resolution disapproving such recommendations is not enacted by the deadline set forth in section 2904(b) of such Act [10 U.S.C. 2687 note]; and

''(C) not less than 4 facilities referred to in subsection (a)(3) with respect to each military department.

''(2)(A) Except as provided in subparagraph (B), the selections under paragraph (1) shall be made not later than 60 days after the date of the enactment of this Act.

''(B) The selections under paragraph (1) of military installations described in subparagraph (B)(ii) of such paragraph shall be made not later than 60 days after the date on which the deadline (set forth in section 2904(b) of such Act) for enacting a joint resolution of disapproval with respect to the report transmitted by the President has passed.

''(3) The installations and facilities selected under paragraph (1) shall be representative of—

''(A) a variety of the environmental restoration activities required for facilities under the Defense Environmental Restoration Program and for military installations scheduled for closure under the Defense Authorization Amendments and Base Closure and Realignment Act (10 U.S.C. 2687 note) [see Short Title of 1988 Amendment note under 10 U.S.C. 2687] and the Defense Base Closure and Realignment Act of 1990 (10 U.S.C. 2687 note); and

''(B) the different sizes of such environmental restoration activities to provide, to the maximum extent practicable, opportunities for the full range of business sizes to enter into environmental restoration contracts with the Department of Defense and with prime contractors to perform activities under the pilot program.

''(c) EXECUTION OF PROGRAM.—Subject to subsection (d), and to the maximum extent possible, the Secretary shall, in order to eliminate redundant tasks and to accelerate environmental restoration at military installations, use the authorities granted in existing law to carry out the pilot program, including—

''(1) the development and use of innovative contracting techniques;

''(2) the use of all reasonable and appropriate methods to expedite necessary Federal and State administrative decisions, agreements, and concurrences; and

''(3) the use (including any necessary request for the use) of existing authorities to ensure that environmental restoration activities under the pilot program are conducted expeditiously, with particular emphasis on activities that may be conducted in advance of any final plan for environmental restoration.

''(d) PROGRAM PRINCIPLES.—The Secretary shall carry out the pilot program consistent with the following principles:

''(1) Activities of the pilot program shall be carried out subject to and in accordance with all applicable Federal and State laws and regulations.

''(2) Competitive procedures shall be used to select the contractors.

''(3) The experience and ability of the contractors shall be considered, in addition to cost, as a factor to be evaluated in the selection of the contractors.

''(e) PROGRAM RESTRICTIONS.—The pilot program established in this section shall not result in the delay of environmental restoration activities at other military installations and former sites of the Department of Defense.''

OVERSEAS ENVIRONMENTAL RESTORATION

Pub. L. 102–484, div. A, title III, § 324, Oct. 23, 1992, 106 Stat. 2367, as amended by Pub. L. 108–136, div. A, title X, § 1031(d)(1), Nov. 24, 2003, 117 Stat. 1604, provided that:

''It is the sense of the Congress that in carrying out environmental restoration activities at military installations outside the United States, the President should seek to obtain an equitable division of the costs of environmental restoration with the nation in which the installation is located.''

ENVIRONMENTAL SCHOLARSHIP AND FELLOWSHIP PROGRAMS FOR DEPARTMENT OF DEFENSE

Pub. L. 102–484, div. D, title XLIV, § 4451, Oct. 23, 1992, 106 Stat. 2735, as amended by Pub. L. 105–244, title I, § 102(a)(2)(F), Oct. 7, 1998, 112 Stat. 1617, provided that:

''(a) ESTABLISHMENT.—The Secretary of Defense (hereinafter in this section referred to as the 'Secretary') may conduct scholarship and fellowship programs for the purpose of enabling individuals to qualify for employment in the field of environmental restoration or other environmental programs in the Department of Defense.

''(b) ELIGIBILITY.—To be eligible to participate in the scholarship or fellowship program, an individual must—

''(1) be accepted for enrollment or be currently enrolled as a full-time student at an institution of high-

er education (as defined in section 101 of the Higher Education Act of 1965 [20 U.S.C. 1001]);

''(2) be pursuing a program of education that leads to an appropriate higher education degree in engineering, biology, chemistry, or another qualifying field related to environmental activities, as determined by the Secretary;

''(3) sign an agreement described in subsection (c);

''(4) be a citizen or national of the United States or be an alien lawfully admitted to the United States for permanent residence; and

''(5) meet any other requirements prescribed by the Secretary.

''(c) AGREEMENT.—An agreement between the Secretary and an individual participating in a scholarship or fellowship established in subsection (a) shall be in writing, shall be signed by the individual, and shall include the following provisions:

''(1) The agreement of the Secretary to provide the individual with educational assistance for a specified number of school years (not to exceed 5 years) during which the individual is pursuing a course of education in a qualifying field. The assistance may include payment of tuition, fees, books, laboratory expenses, and (in the case of a fellowship) a stipend.

''(2) The agreement of the individual to perform the following:

''(A) Accept such educational assistance.

''(B) Maintain enrollment and attendance in the educational program until completed.

''(C) Maintain, while enrolled in the educational program, satisfactory academic progress as prescribed by the institution of higher education in which the individual is enrolled.

''(D) Serve, upon completion of the educational program and selection by the Secretary under subsection (e), as a full-time employee in an environmental restoration or other environmental position in the Department of Defense for the applicable period of service specified in subsection (d).

''(d) PERIOD OF SERVICE.—The period of service required under subsection (c)(2)(D) is as follows:

''(1) For an individual who completes a bachelor's degree under a scholarship program established under subsection (a), a period of 12 months for each school year or part thereof for which the individual is provided a scholarship under the program.

''(2) For an individual who completes a master's degree or other post-graduate degree under a fellowship program established under subsection (a), a period of 24 months for each school year or part thereof for which the individual is provided a fellowship under the program.

''(e) SELECTION FOR SERVICE.—The Secretary shall annually review the number and performance under the agreement of individuals who complete educational programs during the preceding year under any scholarship and fellowship programs conducted pursuant to subsection (a). From among such individuals, the Secretary shall select individuals for environmental positions in the Department of Defense, based on the type and availability of such positions.

''(f) REPAYMENT.—(1) Any individual participating in a scholarship or fellowship program under this section shall agree to pay to the United States the total amount of educational assistance provided to the individual under the program, plus interest at the rate prescribed in paragraph (4), if—

''(A) the individual does not complete the educational program as agreed to pursuant to subsection (c)(2)(B), or is selected by the Secretary under subsection (e) but declines to serve, or fails to complete the service, in a position in the Department of Defense as agreed to pursuant to subsection (c)(2)(D); or

''(B) the individual is involuntarily separated for cause from the Department of Defense before the end of the period for which the individual has agreed to continue in the service of the Department of Defense.

''(2) If an individual fails to fulfill the agreement of the individual to pay to the United States the total amount of educational assistance provided under a program established under subsection (a), plus interest at the rate prescribed in paragraph (4), a sum equal to the amount of the educational assistance (plus such interest, if applicable) shall be recoverable by the United States from the individual or his estate by—

''(A) in the case of an individual who is an employee of the Department of Defense or other Federal agency, set off against accrued pay, compensation, amount of retirement credit, or other amount due the employee from the United States; and

''(B) such other method provided by law for the recovery of amounts owing to the United States.

''(3) The Secretary may waive in whole or in part a required repayment under this subsection if the Secretary determines the recovery would be against equity and good conscience or would be contrary to the best interests of the United States.

''(4) The total amount of educational assistance provided to an individual under a program established under subsection (a) shall, for purposes of repayment under this section, bear interest at the applicable rate of interest under section 427A(c) of the Higher Education Act of 1965 (20 U.S.C. 1077a(c)).

''(g) PREFERENCE.—In evaluating applicants for the award of a scholarship or fellowship under a program established under subsection (a), the Secretary shall give a preference to—

''(1) individuals who are, or have been, employed by the Department of Defense or its contractors and subcontractors who have been engaged in defense-related activities; and

''(2) individuals who are or have been members of the Armed Forces.

''(h) COORDINATION OF BENEFITS.—A scholarship or fellowship awarded under this section shall be taken into account in determining the eligibility of the individual for Federal student financial assistance provided under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.).

''(i) AWARD OF SCHOLARSHIPS AND FELLOWSHIPS.—The Secretary may award to qualified applicants not more than 100 scholarships (for undergraduate students) and not more than 30 fellowships (for graduate students) in fiscal year 1993.

''(j) REPORT TO CONGRESS.—Not later than January 1, 1994, the Secretary shall submit to the Congress a report on activities undertaken under the programs established under subsection (a) and recommendations for future activities under the programs.

''(k) FUNDING FOR FISCAL YEAR 1993.—Of the amount authorized to be appropriated in section 301(5) [106 Stat. 2360]—

''(1) $7,000,000 shall be available to carry out the scholarship and fellowship programs established in subsection (a); and

''(2) $3,000,000 shall be available to provide training to Department of Defense personnel to obtain the skills required to comply with existing environmental statutory and regulatory requirements.''

GRANTS TO INSTITUTIONS OF HIGHER EDUCATION TO PROVIDE TRAINING IN ENVIRONMENTAL RESTORATION AND HAZARDOUS WASTE MANAGEMENT

Pub. L. 102–484, div. D, title XLIV, § 4452, Oct. 23, 1992, 106 Stat. 2738, authorized the Secretary of Defense to establish a program to assist institutions of higher education, as defined in former section 1141(a) of Title 20, Education, to provide education and training in environmental restoration and hazardous waste management and to award grants to such institutions, prior to repeal by Pub. L. 103–160, div. A, title XIII, § 1333(j), Nov. 30, 1993, 107 Stat. 1800. See section 1333 of Pub. L. 103–160, set out above.

POLICIES AND REPORT ON OVERSEAS ENVIRONMENTAL COMPLIANCE

Pub. L. 101–510, div. A, title III, § 342(b), Nov. 5, 1990, 104 Stat. 1537, provided that:

''(1) The Secretary of Defense shall develop a policy for determining applicable environmental requirements for military installations located outside the United States. In developing the policy, the Secretary shall ensure that the policy gives consideration to adequately protecting the health and safety of military and civilian personnel assigned to such installations.

''(2) The Secretary of Defense shall develop a policy for determining the responsibilities of the Department of Defense with respect to cleaning up environmental contamination that may be present at military installations located outside the United States. In developing the policy, the Secretary shall take into account applicable international agreements (such as Status of Forces agreements), multinational or joint use and operation of such installations, relative share of the collective defense burden, and negotiated accommodations.

''(3) The Secretary of Defense shall develop a policy and strategy to ensure adequate oversight of compliance with applicable environmental requirements and responsibilities of the Department of Defense determined under the policies developed under paragraphs (1) and (2). In developing the policy, the Secretary shall consider using the Inspector General of the Department of Defense to ensure active and forceful oversight.

''(4) At the same time the President submits to Congress his budget for fiscal year 1993 pursuant to section 1105 of title 31, United States Code, the Secretary of Defense shall submit to Congress a report describing the policies developed under paragraphs (1), (2), and (3). The report also shall include a discussion of the role of the Inspector General of the Department of Defense in overseeing environmental compliance at military installations outside the United States.

''(5) For purposes of this subsection, the term 'military installation' means a base, camp, post, station, yard, center, or other activity under the jurisdiction of the Secretary of a military department which is located outside the United States and outside any territory, commonwealth, or possession of the United States.''

ENVIRONMENTAL EDUCATION PROGRAM FOR DEPARTMENT OF DEFENSE PERSONNEL

Pub. L. 101–510, div. A, title III, § 344, Nov. 5, 1990, 104 Stat. 1538, directed Secretary of Defense to establish a program for the purpose of educating Department of Defense personnel in environmental management and, not later than date on which President submits budget for FY 1992 to Congress pursuant to 31 U.S.C. 1105(a), to submit to Congress recommendations regarding whether program should be continued after Sept. 30, 1991.

USE OF OZONE DEPLETING SUBSTANCES WITHIN DEPARTMENT OF DEFENSE

Pub. L. 102–484, div. A, title III, § 325, Oct. 23, 1992, 106 Stat. 2367, required the Director of the Defense Logistics Agency to evaluate the use of class I and class II substances, listed under 42 U.S.C. 7671a, by the military departments and Defense Agencies for the years 1992 to 1995 and to submit to the congressional defense committees a report on the status of the evaluation in 1993.

Pub. L. 101–510, div. A, title III, § 345, Nov. 5, 1990, 104 Stat. 1538, provided that:

''(a) DOD REQUIREMENTS FOR OZONE DEPLETING CHEMICALS OTHER THAN CFCs.—(1) In addition to the functions of the advisory committee established pursuant to section 356(c) of the National Defense Authorization Act for Fiscal Years 1990 and 1991 [Pub. L. 101–189] (10 U.S.C. 2701 note), it shall be the function of the Committee to study (A) the use of methyl chloroform, hydrochlorofluorcarbons (HCFCs), and carbon tetrachloride by the Department of Defense and by contractors in the performance of contracts for the Department of Defense, and (B) the costs and feasibility of using alternative compounds or technologies for methyl chloroform, HCFCs, and carbon tetrachloride.

''(2) Within 120 days after the date of the enactment of this Act [Nov. 5, 1990], the Secretary shall provide the Committee with a list of all military specifications, standards, and other requirements that specify the use of methyl chloroform, HCFCs, or carbon tetrachloride.

''(3) Within 150 days after the date of the enactment of this Act, the Secretary shall provide the Committee with a list of all military specifications, standards, and other requirements that do not specify use of methyl chloroform, HCFCs, or carbon tetrachloride but cannot be met without the use of one or more of such substances.

''(b) REQUIREMENT.—In preparing the report required by section 356(d) of the National Defense Authorization Act for Fiscal Years 1990 and 1991 [Pub. L. 101–189, set out below] and the report required by subsection (d) of this section, the Committee shall work closely with the Strategic Environmental Research and Development Program Council and shall provide to such Council such reports.

''(c) EXTENSION OF REPORTING DEADLINE FOR CFCs.—The deadline for submitting to Congress the report required by section 356(d) of the National Defense Authorization Act for Fiscal Years 1990 and 1991 concerning the uses of CFCs is hereby extended to June 30, 1991.

''(d) REPORTING DEADLINE FOR METHYL CHLOROFORM, HCFCs, AND CARBON TETRACHLORIDE.—Not later than September 30, 1991, the Secretary shall submit to Congress a report containing the results of the study by the Committee required by subsection (a)(1) of this section.''

REQUIREMENT FOR DEVELOPMENT OF ENVIRONMENTAL DATA BASE

Pub. L. 101–189, div. A, title III, § 352, Nov. 29, 1989, 103 Stat. 1423, provided that:

''(a) ENVIRONMENTAL DATA BASE.—The Secretary of Defense shall develop and maintain a comprehensive data base on environmental activities carried out by the Department of Defense pursuant to, and environmental compliance obligations to which the Department is subject under, chapter 160 of title 10, United States Code, and all other applicable Federal and State environmental laws. At a minimum, the information in the data base shall include all the fines and penalties assessed against the Department of Defense pursuant to environmental laws and paid by the Department, all notices of violations of environmental laws received by the Department, and all obligations of the Department for compliance with environmental laws. The Secretary may include any other information he considers appropriate.

''(b) REPORT.—Not later than one year after the date of the enactment of this Act [Nov. 29, 1989], the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives a report on the progress in development of the data base required under subsection (a). The report shall include a summary of the information collected for the data base with respect to environmental activities during 1989.''

FUNDING FOR WASTE MINIMIZATION PROGRAMS FOR CERTAIN INDUSTRIAL-TYPE ACTIVITIES OF DEPARTMENT OF DEFENSE

Pub. L. 101–189, div. A, title III, § 354, Nov. 29, 1989, 103 Stat. 1424, as amended by Pub. L. 102–190, div. A, title III, § 332, Dec. 5, 1991, 105 Stat. 1340, directed the Secretary of Defense to require the Secretary of each military department to establish a program for fiscal years 1992, 1993, and 1994 to reduce the volume of solid and hazardous wastes disposed of, and hazardous materials used by, each industrial-type activity within the department that was a depot maintenance installation and for which a working-capital fund had been established under section 2208 of this title, and to submit to Congress, not later than 90 days after Nov. 29, 1989, the name of each industrial-type or commercial-type activity of each military department which was not covered by the waste minimization program because the activ-

ity did not carry out depot maintenance installation functions.

USE OF CHLOROFLUOROCARBONS AND HALONS IN DEPARTMENT OF DEFENSE

Pub. L. 101–189, div. A, title III, § 356, Nov. 29, 1989, 103 Stat. 1425, as amended by Pub. L. 103–160, div. A, title IX, § 904(f), Nov. 30, 1993, 107 Stat. 1729; Pub. L. 106–65, div. A, title IX, § 911(a)(1), Oct. 5, 1999, 113 Stat. 717, provided that:

''(a) CHLOROFLUOROCARBONS EMISSION REDUCTION.—The Secretary of Defense shall formulate and carry out, through the Under Secretary of Defense for Acquisition, Technology, and Logistics a program to reduce the unnecessary release of chlorofluorocarbons (hereinafter in this section referred to as 'CFCs') and halons into the atmosphere in connection with maintenance operations and training and testing practices of the Department of Defense.

''(b) REPORT.—(1) Not later than 180 days after the date of the enactment of this Act [Nov. 29, 1989], the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives a report describing the program the Secretary proposes to carry out pursuant to subsection (a). The Secretary shall specify in the report the reduction goals that are attainable on the basis of known technology, including the use of refrigerant recovery systems currently available. The Secretary shall include in the report a schedule for meeting those goals. The Secretary shall also include in such report reduction goals that can be achieved only with the use of new technology and assess the technologies and investment that will be required to attain those goals within a five-year period.

''(2) Before the report required under paragraph (1) is submitted to the committees named in such paragraph, the Secretary shall transmit a copy of the report to the Administrator of the Environmental Protection Agency for comment.

''(c) DOD REQUIREMENTS FOR CFCS.—(1) Not later than 30 days after the date of the enactment of this Act [Nov. 29, 1989], the Secretary shall establish an advisory committee to be known as the 'CFC Advisory Committee' (hereinafter in this section referred to as the 'Committee'). The Committee shall be composed of not more than 15 members, with an equal number of representatives from the Department of Defense, the Environmental Protection Agency, and defense contractors. Members representing defense contractors shall be contractors that supply the Department of Defense with products or equipment that require the use of CFCs.

''(2) It shall be the function of the Committee to study (A) the use of CFCs by the Department of Defense and by contractors in the performance of contracts for the Department of Defense, and (B) the cost and feasibility of using alternative compounds for CFCs or using alternative technologies that do not require the use of CFCs.

''(3) Within 120 days after the date of the enactment of this Act, the Secretary shall provide the Committee with a list of all military specifications, standards, and other requirements that specify the use of CFCs.

''(4) Within 150 days after the date of the enactment of this Act, the Secretary shall provide the Committee with a list of all military specifications, standards, and other requirements that do not specify use of CFCs but cannot be met without the use of CFCs.

''(d) REPORT.—Not later than September 30, 1990, the Secretary shall submit to the committees named in subsection (b) a report containing the results of the study by the Committee. The report shall—

''(1) identify cases in which the Committee found that substitutes for CFCs could be made most expeditiously;

''(2) identify the feasibility and cost of substituting compounds or technologies for CFC uses referred to in subsection (c)(3) and estimate the time necessary for completing the substitution;

''(3) identify CFC uses referred to in subsection (c)(4) for which substitutes are not currently available and indicate the reasons substitutes are not available;

''(4) describe the types of research programs that should be undertaken to identify substitute compounds or technologies for CFC uses referred to in paragraphs (3) and (4) of subsection (c) and estimate the cost of the program;

''(5) recommend procedures to expedite the use of substitute compounds and technologies offered by contractors to replace CFC uses;

''(6) estimate the earliest date on which CFCs will no longer be required for military applications; and

''(7) estimate the cost of revising military specifications for the use of substitutes for CFCs, the additional costs resulting from modification of Department of Defense contracts to provide for the use of substitutes for CFCs, and the cost of purchasing new equipment and reverification necessitated by the use of substitutes for CFCs.''

REPORT ON ENVIRONMENTAL REQUIREMENTS AND PRIORITIES

Pub. L. 101–189, div. A, title III, § 358, Nov. 29, 1989, 103 Stat. 1427, directed Secretary of Defense, not later than two years after Nov. 29, 1989, to submit to Congress a comprehensive report on the long-range environmental challenges and goals of the Department of Defense.

STUDY OF WASTE RECYCLING

Pub. L. 101–189, div. A, title III, § 361, Nov. 29, 1989, 103 Stat. 1429, as amended by Pub. L. 101–510, div. A, title III, § 343, Nov. 5, 1990, 104 Stat. 1538, required the Secretary of Defense to conduct a study of current practices and future plans for managing postconsumer waste at facilities of the Department of Defense at which such waste was generated and the feasibility of such Department of Defense facilities participating in programs at military installations or in local communities to recycle the postconsumer waste generated at the facilities, and to submit to Congress a report describing the findings and conclusions of the Secretary resulting from the study not later than Mar. 1, 1991.

USE OF DEPARTMENT OF DEFENSE APPROPRIATIONS FOR REMOVAL OF UNSAFE BUILDINGS OR DEBRIS

Pub. L. 101–165, title IX, § 9038, Nov. 21, 1989, 103 Stat. 1137, which authorized appropriations available to the Department of Defense to be used at sites formerly used by the Department for removal of unsafe buildings or debris of the Department and required that removal be completed before the property is released from Federal Government control, was repealed and restated in subsecs. (f) and (g) of this section by Pub. L. 101–510, div. A, title XIV, § 1481(i), Nov. 5, 1990, 104 Stat. 1708.

§ 2702. Research, development, and demonstration program

(a) PROGRAM.—As part of the Defense Environmental Restoration Program, the Secretary of Defense shall carry out a program of research, development, and demonstration with respect to hazardous wastes. The program shall be carried out in consultation and cooperation with the Administrator and the advisory council established under section 311(a)(5) of CERCLA (42 U.S.C. 9660(a)(5)). The program shall include research, development, and demonstration with respect to each of the following:

(1) Means of reducing the quantities of hazardous waste generated by activities and facilities under the jurisdiction of the Secretary.

(2) Methods of treatment, disposal, and management (including recycling and detoxifying) of hazardous waste of the types and quantities generated by current and former activities of

the Secretary and facilities currently and formerly under the jurisdiction of the Secretary.

(3) Identifying more cost-effective technologies for cleanup of hazardous substances.

(4) Toxicological data collection and methodology on risk of exposure to hazardous waste generated by the Department of Defense.

(5) The testing, evaluation, and field demonstration of any innovative technology, processes, equipment, or related training devices which may contribute to establishment of new methods to control, contain, and treat hazardous substances, to be carried out in consultation and cooperation with, and to the extent possible in the same manner and standards as, testing, evaluation, and field demonstration carried out by the Administrator, acting through the office of technology demonstration of the Environmental Protection Agency.

(b) SPECIAL PERMIT.—The Administrator may use the authorities of section 3005(g) of the Solid Waste Disposal Act (42 U.S.C. 6925(g)) to issue a permit for testing and evaluation which receives support under this section.

(c) CONTRACTS AND GRANTS.—The Secretary may enter into contracts and cooperative agreements with, and make grants to, universities, public and private profit and nonprofit entities, and other persons to carry out the research, development, and demonstration authorized under this section. Such contracts may be entered into only to the extent that appropriated funds are available for that purpose.

(d) INFORMATION COLLECTION AND DISSEMINATION.—

(1) IN GENERAL.—The Secretary shall develop, collect, evaluate, and disseminate information related to the use (or potential use) of the treatment, disposal, and management technologies that are researched, developed, and demonstrated under this section.

(2) ROLE OF EPA.—The functions of the Secretary under paragraph (1) shall be carried out in cooperation and consultation with the Administrator. To the extent appropriate and agreed upon by the Administrator and the Secretary, the Administrator shall evaluate and disseminate such information through the office of technology demonstration of the Environmental Protection Agency.

(Added Pub. L. 99–499, title II, § 211(a)(1)(B), Oct. 17, 1986, 100 Stat. 1721; amended Pub. L. 108–375, div. A, title X, § 1084(d)(25), Oct. 28, 2004, 118 Stat. 2063.)

AMENDMENTS

2004—Subsec. (a). Pub. L. 108–375 inserted ''(42 U.S.C. 9660(a)(5))'' after ''311(a)(5) of CERCLA''.

PARTNERSHIPS FOR INVESTMENT IN INNOVATIVE ENVIRONMENTAL TECHNOLOGIES

Pub. L. 105–85, div. A, title III, § 349, Nov. 18, 1997, 111 Stat. 1690, as amended by Pub. L. 106–65, div. A, title X, § 1067(4), Oct. 5, 1999, 113 Stat. 774; Pub. L. 112–81, div. A, title X, § 1062(k)(1), Dec. 31, 2011, 125 Stat. 1586, authorized the Secretary of Defense, until three years after Nov. 18, 1997, to enter into a partnership with one or more private entities to demonstrate and validate innovative environmental technologies, and to provide funds to the partner or partners from appropriations available to the Department of Defense for environmental activities for a period of up to five years.

AGREEMENTS FOR SERVICES OF OTHER AGENCIES IN SUPPORT OF ENVIRONMENTAL TECHNOLOGY CERTIFICATION

Pub. L. 105–85, div. A, title III, § 342(d), Nov. 18, 1997, 111 Stat. 1686, provided that not later than 90 days after Nov. 18, 1997, the Secretary of Defense was to submit to Congress a report setting forth the guidelines established by the Secretary for reimbursement of State and local governments, and for cost-sharing between the Department of Defense, such governments, and vendors, under cooperative agreements entered into under section 327 of Pub. L. 104–201, formerly set out below.

Pub. L. 104–201, div. A, title III, § 327, Sept. 23, 1996, 110 Stat. 2483, as amended by Pub. L. 105–85, div. A, title III, § 342(a)–(c), Nov. 18, 1997, 111 Stat. 1686, authorized the Secretary of Defense, until five years after Sept. 23, 1996, to enter into a cooperative agreement with an agency of a State or local government, or with an Indian tribe, to obtain assistance in certifying environmental technologies.

§ 2703. Environmental restoration accounts

(a) ESTABLISHMENT OF ACCOUNTS.—There are hereby established in the Department of Defense the following accounts:

(1) An account to be known as the ''Environmental Restoration Account, Defense''.

(2) An account to be known as the ''Environmental Restoration Account, Army''.

(3) An account to be known as the ''Environmental Restoration Account, Navy''.

(4) An account to be known as the ''Environmental Restoration Account, Air Force''.

(5) An account to be known as the ''Environmental Restoration Account, Formerly Used Defense Sites''.

(b) PROGRAM ELEMENTS FOR ORDNANCE REMEDIATION.—The Secretary of Defense shall establish a program element for remediation of unexploded ordnance, discarded military munitions, and munitions constituents within each environmental restoration account established under subsection (a). In this subsection, the terms ''discarded military munitions'' and ''munitions constituents'' have the meanings given such terms in section 2710 of this title.

(c) OBLIGATION OF AUTHORIZED AMOUNTS.—(1) Funds authorized for deposit in an account under subsection (a) may be obligated or expended from the account only to carry out the environmental restoration functions of the Secretary of Defense and the Secretaries of the military departments under this chapter and under any other provision of law.

(2) Funds authorized for deposit in an account under subsection (a) shall remain available until expended.

(d) BUDGET REPORTS.—In proposing the budget for any fiscal year pursuant to section 1105 of title 31, the President shall set forth separately the amounts requested for environmental restoration programs of the Department of Defense and of each of the military departments under this chapter and under any other Act.

(e) CREDIT OF AMOUNTS RECOVERED.—The following amounts shall be credited to the appropriate environmental restoration account:

(1) Amounts recovered under CERCLA for response actions.

(2) Any other amounts recovered from a contractor, insurer, surety, or other person to reimburse the Department of Defense or a military department for any expenditure for environmental response activities.

(f) PAYMENTS OF FINES AND PENALTIES.—None of the funds appropriated to the Environmental Restoration Account, Defense, or to any environmental restoration account of a military department, may be used for the payment of a fine or penalty (including any supplemental environmental project carried out as part of such penalty) imposed against the Department of Defense or a military department unless the act or omission for which the fine or penalty is imposed arises out of an activity funded by the environmental restoration account concerned and the payment of the fine or penalty has been specifically authorized by law.

(g) SOLE SOURCE OF FUNDS FOR OPERATION AND MONITORING OF ENVIRONMENTAL REMEDIES.—(1) Except as provided in subsection (h), the sole source of funds for all phases of an environmental remedy at a site under the jurisdiction of the Department of Defense or a formerly used defense site shall be the applicable environmental restoration account established under subsection (a).

(2) In this subsection, the term ''environmental remedy'' has the meaning given the term ''remedy'' in section 101 of CERCLA (42 U.S.C. 9601).

(h) SOLE SOURCE OF FUNDS FOR ENVIRONMENTAL REMEDIATION AT CERTAIN BASE REALIGNMENT AND CLOSURE SITES.—In the case of property disposed of pursuant to a base closure law and subject to a covenant that was required to be provided by paragraphs (3) and (4) of section 120(h) of CERCLA (42 U.S.C. 9620(h)), the sole source of funds for services procured under section 2701(d)(1) of this title shall be the Department of Defense Base Closure Account established under section 2906 of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note). The limitation in this subsection shall expire upon the closure of such base closure account.

(Added Pub. L. 99–499, title II, § 211(a)(1)(B), Oct. 17, 1986, 100 Stat. 1722; amended Pub. L. 103–337, div. A, title III, § 321, Oct. 5, 1994, 108 Stat. 2710; Pub. L. 104–106, div. A, title III, § 322, Feb. 10, 1996, 110 Stat. 252; Pub. L. 104–201, div. A, title III, § 322(a)(1), Sept. 23, 1996, 110 Stat. 2477; Pub. L. 106–65, div. A, title III, § 321, title X, § 1066(a)(27), Oct. 5, 1999, 113 Stat. 560, 772; Pub. L. 106–398, § 1 [[div. A], title III, §§ 311, 312], Oct. 30, 2000, 114 Stat. 1654, 1654A–53, 1654A–54; Pub. L. 107–107, div. A, title III, § 312, Dec. 28, 2001, 115 Stat. 1051; Pub. L. 108–136, div. A, title III, § 313(a), Nov. 24, 2003, 117 Stat. 1430; Pub. L. 108–375, div. A, title X, § 1084(d)(26), Oct. 28, 2004, 118 Stat. 2063; Pub. L. 109–163, div. A, title III, § 312(b), title X, § 1056(c)(7), Jan. 6, 2006, 119 Stat. 3191, 3439; Pub. L. 109–364, div. A, title X, § 1071(a)(23), Oct. 17, 2006, 120 Stat. 2399; Pub. L. 112–239, div. B, title XXVII, § 2711(c)(4)(B), Jan. 2, 2013, 126 Stat. 2144; Pub. L. 113–291, div. A, title III, § 311, Dec. 19, 2014, 128 Stat. 3336.)

AMENDMENTS

2014—Subsec. (f). Pub. L. 113–291 struck out ''for fiscal years 1995 through 2010,'' before ''or to any environmental'' and ''for fiscal years 1997 through 2010'' before '', may be used''.

2013—Subsec. (h). Pub. L. 112–239 substituted ''the Department of Defense Base Closure Account established under section 2906 of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note)'' for ''the applicable Department of Defense base closure account'' and ''such base closure account'' for ''the applicable base closure account''.

2006—Subsec. (b). Pub. L. 109–163, § 1056(c)(7), substituted ''In this subsection, the terms 'discarded military munitions' and'' for ''For purposes of the preceding sentence, the terms 'unexploded ordnance', 'discarded military munitions', and''.

Subsec. (g)(1). Pub. L. 109–163, § 312(b)(1), substituted ''Except as provided in subsection (h), the sole source'' for ''The sole source''.

Subsec. (h). Pub. L. 109–364 substituted ''section 2701(d)(1)'' for ''subsection 2701(d)(1)''.

Pub. L. 109–163, § 312(b)(2), added subsec. (h).

2004—Subsec. (b). Pub. L. 108–375 substituted ''For purposes of the preceding sentence, the terms'' for ''The terms''.

2003—Subsec. (c)(1). Pub. L. 108–136, § 313(a)(1), substituted ''only to carry out the environmental restoration functions of the Secretary of Defense and the Secretaries of the military departments under this chapter and under any other provision of law.'' for ''only—

''(A) to carry out the environmental restoration functions of the Secretary of Defense and the Secretaries of the military departments under this chapter and under any other provision of law; and

''(B) to pay for the costs of permanently relocating a facility because of a release or threatened release of hazardous substances, pollutants, or contaminants from—

''(i) real property on which the facility is located and that is currently under the jurisdiction of the Secretary of Defense or the Secretary of a military department; or

''(ii) real property on which the facility is located and that was under the jurisdiction of the Secretary of Defense or the Secretary of a military department at the time of the actions leading to the release or threatened release.''

Subsec. (c)(2). Pub. L. 108–136, § 313(a)(3), redesignated par. (4) as (2) and struck out second sentence which read as follows: ''Not more than 5 percent of the funds deposited in an account under subsection (a) for a fiscal year may be used to pay relocation costs under paragraph (1)(B).''

Pub. L. 108–136, § 313(a)(2), struck out par. (2) which read as follows: ''The authority provided by paragraph (1)(B) expires September 30, 2003. The Secretary of Defense or the Secretary of a military department may not pay the costs of permanently relocating a facility under such paragraph unless the Secretary—

''(A) determines that permanent relocation—

''(i) is the most cost effective method of responding to the release or threatened release of hazardous substances, pollutants, or contaminants from the real property on which the facility is located;

''(ii) has the approval of relevant regulatory agencies; and

''(iii) is supported by the affected community; and

''(B) submits to Congress written notice of the determination before undertaking the permanent relocation of the facility, including a description of the response action taken or to be taken in connection with the permanent relocation and a statement of the costs incurred or to be incurred in connection with the permanent relocation.''

Subsec. (c)(3). Pub. L. 108–136, § 313(a)(2), struck out par. (3) which read as follows: ''If relocation costs are

to be paid under paragraph (1)(B) with respect to a facility located on real property described in clause (ii) of such paragraph, the Secretary of Defense or the Secretary of the military department concerned may use only fund transfer mechanisms otherwise available to the Secretary.''

Subsec. (c)(4). Pub. L. 108–136, § 313(a)(3), redesignated par. (4) as (2).

2001—Subsecs. (b) to (g). Pub. L. 107–107 added subsec. (b) and redesignated former subsecs. (b) to (f) as (c) to (g), respectively.

2000—Subsec. (a)(5). Pub. L. 106–398, § 1 [[div. A], title III, § 311(a)], added par. (5).

Subsec. (b). Pub. L. 106–398, § 1 [[div. A], title III, § 312], amended heading and text of subsec. (b) generally. Prior to amendment, text read as follows: ''Funds authorized for deposit in an account under subsection (a) may be obligated or expended from the account only in order to carry out the environmental restoration functions of the Secretary of Defense and the Secretaries of the military departments under this chapter and under any other provision of law. Funds so authorized shall remain available until expended.''

Subsec. (f). Pub. L. 106–398, § 1 [[div. A], title III, § 311(b)], added subsec. (f).

1999—Subsec. (c). Pub. L. 106–65, § 1066(a)(27), struck out ''United States Code,'' after ''title 31,''.

Subsec. (e). Pub. L. 106–65, § 321, substituted ''through 2010,'' for ''through 1999,'' in two places.

1996—Pub. L. 104–201 substituted ''accounts'' for ''transfer account'' in section catchline and amended text generally. Prior to amendment, text consisted of subsecs. (a) to (f) establishing the Defense Environmental Restoration Account and providing for deposits into and withdrawals from the Account.

Subsec. (e). Pub. L. 104–106 amended subsec. (e) generally, substituting

''(e) AMOUNTS RECOVERED.—The following amounts shall be credited to the transfer account:

''(1) Amounts recovered under CERCLA for response actions of the Secretary.

''(2) Any other amounts recovered by the Secretary or the Secretary of the military department concerned from a contractor, insurer, surety, or other person to reimburse the Department of Defense for any expenditure for environmental response activities.'' for

''(e) AMOUNTS RECOVERED UNDER CERCLA.—Amounts recovered under section 107 of CERCLA for response actions of the Secretary shall be credited to the transfer account.''

1994—Subsec. (f). Pub. L. 103–337 added subsec. (f).

EFFECTIVE DATE OF 2013 AMENDMENT

Amendment by Pub. L. 112–239 effective on the later of Oct. 1, 2013, or the date of the enactment of an Act authorizing funds for military construction for fiscal year 2014 (div. J of Pub. L. 113–76, approved Jan. 17, 2014), see section 2711(d) of Pub. L. 112–239, set out as a note under section 2701 of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–136, div. A, title III, § 313(a), Nov. 24, 2003, 117 Stat. 1430, provided that the amendment made by that section is effective Oct. 1, 2003.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–201, div. A, title III, § 322(e), Sept. 23, 1996, 110 Stat. 2479, provided that: ''The amendments made by this section [amending this section and section 2705 of this title] shall take effect on the later of—

''(1) October 1, 1996; or

''(2) the date of the enactment of this Act [Sept. 23, 1996].''

EFFECTIVE DATE

Pub. L. 99–499, title II, § 211(c), Oct. 17, 1986, 100 Stat. 1726, provided that: ''Section 2703(a)(2) of title 10, United States Code, as added by subsection (a), shall apply with respect to funds appropriated for fiscal years beginning after September 30, 1986.''

EFFECT OF AMENDMENT BY PUB. L. 108–136 ON EXISTING AGREEMENTS

Pub. L. 108–136, div. A, title III, § 313(b), Nov. 24, 2003, 117 Stat. 1430, provided that: ''An agreement in effect on September 30, 2003, under section 2703(c)(1)(B) of title 10, United States Code, as in effect on that date, to pay for the costs of permanently relocating a facility because of a release or threatened release of hazardous substances, pollutants, or contaminants shall remain in effect after that date, subject to the terms of the agreement, and costs may be paid in accordance with the terms of the agreement, notwithstanding the amendments made by subsection (a) [amending this section].''

REFERENCES TO DEFENSE ENVIRONMENTAL RESTORATION ACCOUNT

Pub. L. 104–201, div. A, title III, § 322(b), Sept. 23, 1996, 110 Stat. 2478, provided that: ''Any reference to the Defense Environmental Restoration Account in any Federal law, Executive Order, regulation, delegation of authority, or document shall be deemed to refer to the appropriate environmental restoration account established under section 2703(a)(1) of title 10, United States Code (as amended by subsection (a)(1)).''

UNOBLIGATED BALANCES IN DEFENSE ENVIRONMENTAL RESTORATION ACCOUNT

Pub. L. 104–201, div. A, title III, § 322(d), Sept. 23, 1996, 110 Stat. 2479, provided that unobligated balances remaining in the Defense Environmental Restoration Account under this section as of Oct. 1, 1996, would be transferred on such date to the Environmental Restoration Account, Defense, established under this section.

§ 2704. Commonly found unregulated hazardous substances

(a) NOTICE TO HHS.—

(1) IN GENERAL.—The Secretary of Defense shall notify the Secretary of Health and Human Services of the hazardous substances which the Secretary of Defense determines to be the most commonly found unregulated hazardous substances at facilities under the Secretary's jurisdiction. The notification shall be of not less than the 25 most widely used such substances.

(2) DEFINITION.—In this subsection, the term ''unregulated hazardous substance'' means a hazardous substance—

(A) for which no standard, requirement, criteria, or limitation is in effect under the Toxic Substances Control Act, the Safe Drinking Water Act, the Clean Air Act, or the Clean Water Act; and

(B) for which no water quality criteria are in effect under any provision of the Clean Water Act.

(b) TOXICOLOGICAL PROFILES.—The Secretary of Health and Human Services shall take such steps as necessary to ensure the timely preparation of toxicological profiles of each of the substances of which the Secretary is notified under subsection (a). The profiles of such substances shall include each of the following:

(1) The examination, summary, and interpretation of available toxicological information and epidemiologic evaluations on a hazardous substance in order to ascertain the levels of significant human exposure for the substance and the associated acute, subacute, and chronic health effects.

(2) A determination of whether adequate information on the health effects of each substance is available or in the process of development to determine levels of exposure which present a significant risk to human health of acute, subacute, and chronic health effects.

(3) Where appropriate, toxicological testing directed toward determining the maximum exposure level of a hazardous substance that is safe for humans.

(c) DOD SUPPORT.—The Secretary of Defense shall transfer to the Secretary of Health and Human Services such toxicological data, such sums from amounts appropriated to the Department of Defense, and such personnel of the Department of Defense as may be necessary (1) for the preparation of toxicological profiles under subsection (b) or (2) for other health related activities under section 104(i) of CERCLA (42 U.S.C. 9604(i)). The Secretary of Defense and the Secretary of Health and Human Services shall enter into a memorandum of understanding regarding the manner in which this section shall be carried out, including the manner for transferring funds and personnel and for coordination of activities under this section.

(d) EPA HEALTH ADVISORIES.—

(1) PREPARATION.—At the request of the Secretary of Defense, the Administrator shall, in a timely manner, prepare health advisories on hazardous substances. Such an advisory shall be prepared on each hazardous substance—

(A) for which no advisory exists;

(B) which is found to threaten drinking water; and

(C) which is emanating from a facility under the jurisdiction of the Secretary.

(2) CONTENT OF HEALTH ADVISORIES.—Such health advisories shall provide specific advice on the levels of contaminants in drinking water at which adverse health effects would not be anticipated and which include a margin of safety so as to protect the most sensitive members of the population at risk. The advisories shall provide data on one-day, 10-day, and longer-term exposure periods where available toxicological data exist.

(3) DOD SUPPORT FOR HEALTH ADVISORIES.—The Secretary of Defense shall transfer to the Administrator such toxicological data, such sums from amounts appropriated to the Department of Defense, and such personnel of the Department of Defense as may be necessary for the preparation of such health advisories. The Secretary and the Administrator shall enter into a memorandum of understanding regarding the manner in which this subsection shall be carried out, including the manner for transferring funds and personnel and for coordination of activities under this subsection.

(e) CROSS REFERENCE.—Section 104(i) of CERCLA (42 U.S.C. 9604(i)) applies to facilities under the jurisdiction of the Secretary of Defense in the manner prescribed in that section.

(f) FUNCTIONS OF HHS TO BE CARRIED OUT THROUGH ATSDR.—The functions of the Secretary of Health and Human Services under this section shall be carried out through the Administrator of the Agency for Toxic Substances and Disease Registry of the Department of Health and Human Services established under section 104(i) of CERCLA (42 U.S.C. 9604(i)).

(Added Pub. L. 99–499, title II, § 211(a)(1)(B), Oct. 17, 1986, 100 Stat. 1722; amended Pub. L. 102–25, title VII, § 701(j)(10), Apr. 6, 1991, 105 Stat. 116; Pub. L. 108–375, div. A, title X, § 1084(d)(27), Oct. 28, 2004, 118 Stat. 2063.)

REFERENCES IN TEXT

The Toxic Substances Control Act, referred to in subsec. (a)(2)(A), is Pub. L. 94–469, Oct. 11, 1976, 90 Stat. 2003, as amended, which is classified generally to chapter 53 (§ 2601 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 2601 of Title 15 and Tables.

The Safe Drinking Water Act, referred to in subsec. (a)(2)(A), is title XIV of act July 1, 1944, as added Dec. 16, 1974, Pub. L. 93–523, § 2(a), 88 Stat. 1660, as amended, which is classified generally to subchapter XII (§ 300f et seq.) of chapter 6A of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 201 of Title 42 and Tables.

The Clean Air Act, referred to in subsec. (a)(2)(A), is act July 14, 1955, ch. 360, 69 Stat. 322, as amended, which is classified generally to chapter 15B (§ 1857 et seq.) of Title 42. On enactment of Pub. L. 95–95, the Act was reclassified to chapter 85 (§ 7401 et seq.) of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of Title 42 and Tables.

The Clean Water Act, referred to in subsec. (a)(2), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92–500, § 2, Oct. 18, 1972, 86 Stat. 816, also known as the Federal Water Pollution Control Act, which is classified generally to chapter 26 (§ 1251 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

AMENDMENTS

2004—Subsecs. (c), (e), (f). Pub. L. 108–375 inserted ''(42 U.S.C. 9604(i))'' after ''CERCLA''.

1991—Subsec. (f). Pub. L. 102–25 substituted ''Agency for Toxic Substances'' for ''Agency of Toxic Substances''.

§ 2705. Notice of environmental restoration activities

(a) EXPEDITED NOTICE.—The Secretary of Defense shall take such actions as necessary to ensure that the regional offices of the Environmental Protection Agency and appropriate State and local authorities for the State in which a facility under the Secretary's jurisdiction is located receive prompt notice of each of the following:

(1) The discovery of releases or threatened releases of hazardous substances at the facility.

(2) The extent of the threat to public health and the environment which may be associated with any such release or threatened release.

(3) Proposals made by the Secretary to carry out response actions with respect to any such release or threatened release.

(4) The initiation of any response action with respect to such release or threatened release and the commencement of each distinct phase of such activities.

(b) COMMENT BY EPA AND STATE AND LOCAL AUTHORITIES.—

(1) RELEASE NOTICES.—The Secretary shall ensure that the Administrator of the Environ-

mental Protection Agency and appropriate State and local officials have an adequate opportunity to comment on notices under paragraphs (1) and (2) of subsection (a).

(2) PROPOSALS FOR RESPONSE ACTIONS.—The Secretary shall require that an adequate opportunity for timely review and comment be afforded to the Administrator and to appropriate State and local officials after making a proposal referred to in subsection (a)(3) and before undertaking an activity or action referred to in subsection (a)(4). The preceding sentence does not apply if the action is an emergency removal taken because of imminent and substantial endangerment to human health or the environment and consultation would be impractical.

(c) TECHNICAL REVIEW COMMITTEE.—Whenever possible and practical, the Secretary shall establish a technical review committee to review and comment on Department of Defense actions and proposed actions with respect to releases or threatened releases of hazardous substances at installations. Members of any such committee shall include at least one representative of the Secretary, the Administrator, and appropriate State and local authorities and shall include a public representative of the community involved.

(d) RESTORATION ADVISORY BOARD.—(1) In lieu of establishing a technical review committee under subsection (c), the Secretary may permit the establishment of a restoration advisory board in connection with any installation (or group of nearby installations) where the Secretary is planning or implementing environmental restoration activities.

(2)(A) The Secretary shall prescribe regulations regarding the establishment, characteristics, composition, and funding of restoration advisory boards pursuant to this subsection.

(B) The issuance of regulations under subparagraph (A) shall not be a precondition to the establishment of restoration advisory boards under this subsection.

(C) The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to a restoration advisory board established under this subsection.

(3) The Secretary may authorize the commander of an installation (or, if there is no such commander, an appropriate official of the Department of Defense designated by the Secretary) to pay routine administrative expenses of a restoration advisory board established for that installation. Such payments shall be made from funds available under subsection (g).

(e) TECHNICAL ASSISTANCE.—(1) The Secretary may, upon the request of the technical review committee or restoration advisory board for an installation, authorize the commander of the installation (or, if there is no such commander, an appropriate official of the Department of Defense designated by the Secretary) to obtain for the committee or advisory board, as the case may be, from private sector sources technical assistance for interpreting scientific and engineering issues with regard to the nature of environmental hazards at the installation and the restoration activities conducted, or proposed to be conducted, at the installation. The commander of an installation (or, if there is no such commander, an appropriate official of the Department of Defense designated by the Secretary) shall use funds made available under subsection (g) for obtaining assistance under this paragraph.

(2) The commander of an installation (or, if there is no such commander, an appropriate official of the Department of Defense designated by the Secretary) may obtain technical assistance under paragraph (1) for a technical review committee or restoration advisory board only if—

(A) the technical review committee or restoration advisory board demonstrates that the Federal, State, and local agencies responsible for overseeing environmental restoration at the installation, and available Department of Defense personnel, do not have the technical expertise necessary for achieving the objective for which the technical assistance is to be obtained; or

(B) the technical assistance—

(i) is likely to contribute to the efficiency, effectiveness, or timeliness of environmental restoration activities at the installation; and

(ii) is likely to contribute to community acceptance of environmental restoration activities at the installation.

(f) INVOLVEMENT IN DEFENSE ENVIRONMENTAL RESTORATION PROGRAM.—If a technical review committee or restoration advisory board is established with respect to an installation (or group of installations), the Secretary shall consult with and seek the advice of the committee or board on the following issues:

(1) Identifying environmental restoration activities and projects at the installation or installations.

(2) Monitoring progress on these activities and projects.

(3) Collecting information regarding restoration priorities for the installation or installations.

(4) Addressing land use, level of restoration, acceptable risk, and waste management and technology development issues related to environmental restoration at the installation or installations.

(5) Developing environmental restoration strategies for the installation or installations.

(g) FUNDING.—The Secretary shall, to the extent provided in appropriations Acts, make funds available for administrative expenses and technical assistance under this section using funds in the following accounts:

(1) In the case of a military installation not approved for closure pursuant to a base closure law, the environmental restoration account concerned under section 2703(a) of this title.

(2) In the case of an installation approved for closure pursuant to such a law, the Department of Defense Base Closure Account established under section 2906(a) of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note).

(Added Pub. L. 99–499, title II, § 211(a)(1)(B), Oct. 17, 1986, 100 Stat. 1724; amended Pub. L. 103–337, div. A, title III, § 326(a)–(c), Oct. 5, 1994, 108 Stat.

2712, 2713; Pub. L. 104–106, div. A, title III, §324(a)–(d)(1), (e), Feb. 10, 1996, 110 Stat. 252–254; Pub. L. 104–201, div. A, title III, §322(c), Sept. 23, 1996, 110 Stat. 2479; Pub. L. 108–136, div. A, title III, §317(b), title X, §1043(c)(5), Nov. 24, 2003, 117 Stat. 1432, 1612; Pub. L. 112–239, div. B, title XXVII, §2711(c)(4)(C), Jan. 2, 2013, 126 Stat. 2144.)

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (d)(2)(C), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

AMENDMENTS

2013—Subsec. (g)(2). Pub. L. 112–239 substituted ''Closure Account'' for ''Closure Account 1990''.

2003—Subsec. (d)(2)(C). Pub. L. 108–136, §317(b), added subpar. (C).

Subsec. (h). Pub. L. 108–136, §1043(c)(5), struck out heading and text of subsec. (h). Text read as follows: ''In this section, the term 'base closure law' means the following:

''(1) Title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 10 U.S.C. 2687 note).

''(2) The Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note).

''(3) Section 2687 of this title.''

1996—Subsec. (d)(2). Pub. L. 104–106, §324(a), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''The Secretary shall prescribe regulations regarding the characteristics, composition, funding, and establishment of restoration advisory boards pursuant to this subsection. However, the issuance of regulations shall not be a precondition to the establishment of a restoration advisory board or affect the existence or operation of a restoration advisory board established before the date of the enactment of this section.''

Subsec. (d)(3). Pub. L. 104–106, §324(b), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''The Secretary may provide for the payment of routine administrative expenses of a restoration advisory board from funds available for the operation and maintenance of the installation (or installations) for which the board is established or from the funds available under subsection (e)(3).''

Subsec. (e). Pub. L. 104–106, §324(c), added subsec. (e) and struck out former subsec. (e) which authorized Secretary to make technical assistance grants under section 9617(e) of title 42 in connection with installations containing facilities listed on the National Priorities List and to make funds available to facilitate participation on technical review committees and restoration advisory boards relating to environmental restoration activities at other installations.

Subsec. (g). Pub. L. 104–106, §324(d)(1), added subsec. (g).

Subsec. (g)(1). Pub. L. 104–201 substituted ''the environmental restoration account concerned'' for ''the Defense Environmental Restoration Account established''.

Subsec. (h). Pub. L. 104–106, §324(e), added subsec. (h).

1994—Subsecs. (d) to (f). Pub. L. 103–337 added subsecs. (d) to (f).

EFFECTIVE DATE OF 2013 AMENDMENT

Amendment by Pub. L. 112–239 effective on the later of Oct. 1, 2013, or the date of the enactment of an Act authorizing funds for military construction for fiscal year 2014 (div. J of Pub. L. 113–76, approved Jan. 17, 2014), see section 2711(d) of Pub. L. 112–239, set out as a note under section 2701 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–201 effective Oct. 1, 1996, see section 322(e) of Pub. L. 104–201, set out as a note under section 2703 of this title.

REQUIREMENTS FOR RESTORATION ADVISORY BOARDS AND EXEMPTION FROM FEDERAL ADVISORY COMMITTEE ACT

Pub. L. 108–136, div. A, title III, §317(a), Nov. 24, 2003, 117 Stat. 1432, provided that: ''The Secretary of Defense shall amend the regulations required by section 2705(d)(2) of title 10, United States Code, relating to the establishment, characteristics, composition, and funding of restoration advisory boards to ensure that each restoration advisory board complies with the following requirements:

''(1) Each restoration advisory board shall be fairly balanced in its membership in terms of the points of view represented and the functions to be performed.

''(2) Unless a closed or partially closed meeting is determined to be proper in accordance with one or more of the exceptions listed in section 552b(c) of title 5, United States Code, each meeting of a restoration advisory board shall be—

''(A) held at a reasonable time and in a manner or place reasonably accessible to the public, including individuals with disabilities; and

''(B) open to the public.

''(3) Timely notice of each meeting of a restoration advisory board shall be published in a local newspaper of general circulation.

''(4) Interested persons may appear before or file statements with a restoration advisory board, subject to such reasonable restrictions as the Secretary may prescribe.

''(5) Subject to section 552 of title 5, United States Code, the records, reports, minutes, appendixes, working papers, drafts, studies, agenda, or other documents that were made available to, prepared for, or prepared by each restoration advisory board shall be available for public inspection and copying at a single, publicly accessible location, such as a public library or an appropriate office of the military installation for which the restoration advisory board is established, at least until the restoration advisory board is terminated.

''(6) Detailed minutes of each meeting of each restoration advisory board shall be kept and shall contain a record of the persons present, a complete and accurate description of matters discussed and conclusions reached, and copies of all reports received, issued, or approved by the restoration advisory board. The accuracy of the minutes of a restoration advisory board shall be certified by the chairperson of the board.''

IMPLEMENTATION REQUIREMENTS FOR RESTORATION ADVISORY BOARDS

Pub. L. 103–337, div. A, title III, §326(d), Oct. 5, 1994, 108 Stat. 2713, provided that: ''Not later than 180 days after the date on which the Secretary of Defense announces a decision to establish restoration advisory boards, the Secretary shall—

''(1) prescribe the regulations required under subsection (d)(2) of section 2705 of title 10, United States Code, as added by subsection (a); and

''(2) take appropriate actions to notify the public of the availability of funding under subsection (e) of such section, as added by subsection (b).''

REPORT ON RESTORATION ADVISORY BOARDS AND ASSISTANCE FOR CITIZEN PARTICIPATION ON COMMITTEES AND BOARDS

Pub. L. 103–337, div. A, title III, §326(e), Oct. 5, 1994, 108 Stat. 2713, directed Secretary of Defense to submit, not later than May 1, 1996, report regarding establishment of restoration advisory boards under subsections (d) and (e) of this section and the expenditure of funds for assistance for citizen participation on technical review committees under subsection (e) of this section.

RESTRICTIONS ON ADMINISTRATIVE AND TECHNICAL ASSISTANCE FUNDING

Pub. L. 104–106, div. A, title III, §324(d)(2), Feb. 10, 1996, 110 Stat. 254, provided that:

''(2)(A) Subject to subparagraph (B), the total amount of funds made available under section 2705(g) of title 10, United States Code, as added by paragraph (1), for fiscal year 1996 may not exceed $6,000,000.

''(B) Amounts may not be made available under subsection (g) of such section 2705 after September 15, 1996, unless the Secretary of Defense publishes proposed final or interim final regulations required under subsection (d) of such section, as amended by subsection (a).''

[§ 2706. Repealed. Pub. L. 112–81, div. A, title X, § 1061(22)(A), Dec. 31, 2011, 125 Stat. 1584]

Section, added Pub. L. 99–499, title II, §211(a)(1)(B), Oct. 17, 1986, 100 Stat. 1724; amended Pub. L. 101–189, div. A, title III, §357(a)(1), (2)(A), Nov. 29, 1989, 103 Stat. 1426, 1427; Pub. L. 101–510, div. A, title III, §§341, 342(a), Nov. 5, 1990, 104 Stat. 1536, 1537; Pub. L. 103–160, div. A, title X, §1001(a)–(d), Nov. 30, 1993, 107 Stat. 1742–1744; Pub. L. 103–337, div. A, title X, §1070(b)(9), Oct. 5, 1994, 108 Stat. 2857; Pub. L. 104–106, div. A, title III, §324(f), Feb. 10, 1996, 110 Stat. 254; Pub. L. 104–201, div. A, title III, §321, Sept. 23, 1996, 110 Stat. 2477; Pub. L. 105–85, div. A, title III, §§344(a), 345, Nov. 18, 1997, 111 Stat. 1688; Pub. L. 105–261, div. A, title III, §325, Oct. 17, 1998, 112 Stat. 1965; Pub. L. 106–65, div. A, title III, §§322, 323(c)(1), Oct. 5, 1999, 113 Stat. 560, 563; Pub. L. 107–107, div. A, title III, §315, Dec. 28, 2001, 115 Stat. 1053; Pub. L. 109–163, div. A, title III, §311, Jan. 6, 2006, 119 Stat. 3190, related to annual reports by the Secretary of Defense to Congress regarding environmental restoration activities, environmental quality programs and other environmental activities, and the Department of Defense's environmental technology program.

§ 2707. Environmental restoration projects for environmental responses

(a) ENVIRONMENTAL RESTORATION PROJECTS AUTHORIZED.—The Secretary of Defense or the Secretary of a military department may carry out an environmental restoration project if that Secretary determines that the project is necessary to carry out a response under this chapter or CERCLA.

(b) TREATMENT OF PROJECT.—Any construction, development, conversion, or extension of a structure, and any installation of equipment, that is included in an environmental restoration project under this section may not be considered military construction (as that term is defined in section 2801(a) of this title).

(c) SOURCE OF FUNDS.—Funds authorized for deposit in an account established by section 2703(a) of this title shall be the only source of funds to conduct an environmental restoration project under this section.

(d) ENVIRONMENTAL RESTORATION PROJECT DEFINED.—In this section, the term ''environmental restoration project'' includes any construction, development, conversion, or extension of a structure, or installation of equipment, in direct support of a response.

(e) AUTHORITY FOR NATIONAL GUARD PROJECTS.—

(1) Notwithstanding subsection (a) of this section and section 2701(c)(1) of this title, the Secretary concerned may use funds described in subsection (c) to carry out an environmental restoration project at a facility where military activities are conducted by the National Guard of a State under title 32 in response to perfluorooctanoic acid or perfluorooctane sulfonate contamination under this chapter or CERCLA.

(2) The Secretary concerned may use the authority under section 2701(d) of this title to carry out environmental restoration projects under paragraph (1).

(Added Pub. L. 107–314, div. A, title III, §313(a)(2), Dec. 2, 2002, 116 Stat. 2507; amended Pub. L. 116–92, div. A, title III, §316(a), Dec. 20, 2019, 133 Stat. 1304; Pub. L. 116–283, div. A, title III, §314(a), Jan. 1, 2021, 134 Stat. 3514.)

PRIOR PROVISIONS

A prior section 2707 was renumbered section 2700 of this title.

AMENDMENTS

2021—Subsec. (e). Pub. L. 116–283 designated existing provisions as par. (1), inserted ''where military activities are conducted by the National Guard of a State under title 32'' after ''facility'', and added par. (2).

2019—Subsec. (e). Pub. L. 116–92 added subsec. (e).

SAVINGS CLAUSE

Nothing in amendment by section 316 of Pub. L. 116–92 to affect any requirement or authority under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.), see section 316(d) of Pub. L. 116–92, set out as a note under section 2700 of this title.

§ 2708. Contracts for handling hazardous waste from defense facilities

(a) REIMBURSEMENT REQUIREMENT.—(1) Each contract or subcontract to which this section applies shall provide that, upon receipt of hazardous wastes properly characterized pursuant to applicable laws and regulations, the contractor or subcontractor will reimburse the Federal Government for all liabilities incurred by, penalties assessed against, costs incurred by, and damages suffered by, the Government that are caused by—

(A) the contractor's or subcontractor's breach of any term or provision of the contract or subcontract; and

(B) any negligent or willful act or omission of the contractor or subcontractor, or the employees of the contractor or subcontractor, in the performance of the contract or subcontract.

(2) Not later than 30 days after such a contract or subcontract is awarded, the contractor or subcontractor shall demonstrate that the contractor or subcontractor will reimburse the Federal Government as provided in paragraph (1).

(b) APPLICABILITY.—(1) Except as provided in paragraph (2), this section applies to each contract entered into by the Secretary of Defense or the Secretary of a military department, and any subcontract under any such contract, with an owner or operator of a hazardous waste treatment or disposal facility during fiscal years 1992 through 1996 for the offsite treatment or disposal of hazardous wastes from a facility under the jurisdiction of the Secretary of Defense.

(2) This section does not apply to—

(A) any contract or subcontract to perform remedial action or corrective action under the

Defense Environmental Restoration Program, other programs or activities of the Department of Defense, or authorized State hazardous waste programs;

(B) any contract or subcontract under which the generation of the hazardous waste to be disposed of is incidental to the performance of the contract; or

(C) any contract or subcontract to dispose of ammunition or solid rocket motors.

(c) EXCEPTION TO REIMBURSEMENT REQUIREMENT.—Notwithstanding subsection (a), in the case of any contract to which this section applies, if the Secretary of Defense or the Secretary of the military department concerned determines that—

(1) there is only one responsible offeror or there is no responsible offeror willing to provide the reimbursement required by subsection (a) for such contract; or

(2) failure to award the contract would place the facility concerned in violation of any requirement of the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.),

then the contract may be awarded without including the reimbursement provision required by subsection (a).

(d) DEFINITIONS.—In this section:

(1) The term ''hazardous waste'' has the meaning given that term by section 1004(5) of the Solid Waste Disposal Act (42 U.S.C. 6903(5)), except that such term also includes polychlorinated biphenyls.

(2) The term ''remedial action'' has the meaning given that term by section 101(24) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(24)).

(3) The term ''corrective action'' has the meaning given that term under section 3004(u) of the Solid Waste Disposal Act (42 U.S.C. 6924(u)).

(4) The term ''polychlorinated biphenyls'' has the meaning given that term under section 6(e) of the Toxic Substances Control Act (15 U.S.C. 2605(e)).

(e) EFFECT ON LIABILITY.—Nothing in this section shall affect the liability of the Federal Government under any Federal or State law or under common law.

(Added Pub. L. 102–190, div. A, title III, §331(a)(1), Dec. 5, 1991, 105 Stat. 1339; amended Pub. L. 102–484, div. A, title III, §321, title X, §1052(36), Oct. 23, 1992, 106 Stat. 2365, 2501; Pub. L. 103–160, div. A, title X, §1004, Nov. 30, 1993, 107 Stat. 1748.)

REFERENCES IN TEXT

The Solid Waste Disposal Act, referred to in subsec. (c)(2), is title II of Pub. L. 89–272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94–580, §2, Oct. 21, 1976, 90 Stat. 2795, which is classified generally to chapter 82 (§6901 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of Title 42 and Tables.

AMENDMENTS

1993—Subsec. (b)(1). Pub. L. 103–160 substituted ''fiscal years 1992 through 1996'' for ''fiscal years 1992 and 1993''.

1992—Subsec. (b)(1). Pub. L. 102–484, §1052(36)(A), substituted ''each contract'' for ''all contracts'' and ''any subcontract under any such contract'' for ''all subcontracts under such contracts''.

Pub. L. 102–484, §321, substituted ''fiscal years 1992 and 1993'' for ''fiscal year 1992''.

Subsec. (d). Pub. L. 102–484, §1052(36)(B), substituted ''In'' for ''For purposes of'' in introductory provisions.

EFFECTIVE DATE

Pub. L. 102–190, div. A, title III, §331(b), Dec. 5, 1991, 105 Stat. 1340, provided that: ''Section 2708 of title 10, United States Code, shall apply with respect to contracts entered into after the expiration of the 60-day period beginning on the date of the enactment of this Act [Dec. 5, 1991].''

§ 2709. Investment control process for environmental technologies

(a) INVESTMENT CONTROL PROCESS.—The Secretary of Defense shall ensure that the technology planning process developed to implement section 2501 of this title and section 270(b) of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104–201; 110 Stat. 2469) provides for an investment control process for the selection, prioritization, management, and evaluation of environmental technologies by the Department of Defense, the military departments, and the Defense Agencies.

(b) PLANNING AND EVALUATION.—The environmental technology investment control process required by subsection (a) shall provide, at a minimum, for the following:

(1) The active participation by end-users of environmental technology, including the officials responsible for the environmental security programs of the Department of Defense and the military departments, in the selection and prioritization of environmental technologies.

(2) The development of measurable performance goals and objectives for the management and development of environmental technologies and specific mechanisms for assuring the achievement of the goals and objectives.

(3) Annual performance reviews to determine whether the goals and objectives have been achieved and to take appropriate action in the event that they are not achieved.

(Added Pub. L. 106–65, div. A, title III, §323(b)(1), Oct. 5, 1999, 113 Stat. 562; amended Pub. L. 116–283, div. A, title XVIII, §1867(e)(2), Jan. 1, 2021, 134 Stat. 4282.)

AMENDMENT OF SUBSECTION (a)

Pub. L. 116–283, div. A, title XVIII, §§1801(d), 1867(e)(2), Jan. 1, 2021, 134 Stat. 4151, 4282, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, subsection (a) of this section is amended by striking ''section 2501'' and inserting ''section 4811''. See 2021 Amendment note below.

REFERENCES IN TEXT

Section 270(b) of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104–201; 110 Stat. 2469), referred to in subsec. (a), is set out as a note under section 2501 of this title.

AMENDMENTS

2021—Subsec. (a). Pub. L. 116–283 substituted ''section 4811'' for ''section 2501''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

PURPOSES OF SECTION 323 OF PUB. L. 106–65

Pub. L. 106–65, div. A, title III, §323(a), Oct. 5, 1999, 113 Stat. 562, provided that: ''The purposes of this section [enacting this section, amending section 2706 of this title, and enacting provisions set out as a note under section 2706 of this title] are—

''(1) to hold the Department of Defense and the military departments accountable for achieving performance-based results in the management of environmental technology by providing a connection between program direction and the achievement of specific performance-based results;

''(2) to assure the identification of end-user requirements for environmental technology within the military departments;

''(3) to assure results, quality of effort, and appropriate levels of service and support for end-users of environmental technology within the military departments; and

''(4) to promote improvement in the performance of environmental technologies by establishing objectives for environmental technology programs, measuring performance against such objectives, and making public reports on the progress made in such performance.''

§ 2710. Inventory of unexploded ordnance, discarded military munitions, and munitions constituents at defense sites (other than operational ranges)

(a) INVENTORY REQUIRED.—(1) The Secretary of Defense shall develop and maintain an inventory of defense sites that are known or suspected to contain unexploded ordnance, discarded military munitions, or munitions constituents.

(2) The information in the inventory for each defense site shall include, at a minimum, the following:

(A) A unique identifier for the defense site.

(B) An appropriate record showing the location, boundaries, and extent of the defense site, including identification of the State and political subdivisions of the State, including the county, where applicable, in which the defense site is located and any Tribal lands encompassed by the defense site.

(C) Known persons and entities, other than a military department, with any current ownership interest or control of lands encompassed by the defense site.

(D) Any restrictions or other land use controls currently in place at the defense site that might affect the potential for public and environmental exposure to the unexploded ordnance, discarded military munitions, or munitions constituents.

(b) SITE PRIORITIZATION.—(1) The Secretary shall develop, in consultation with representatives of the States and Indian Tribes, a proposed protocol for assigning to each defense site a relative priority for response activities related to unexploded ordnance, discarded military munitions, and munitions constituents based on the overall conditions at the defense site. After public notice and comment on the proposed protocol, the Secretary shall issue a final protocol and shall apply the protocol to defense sites listed on the inventory. The level of response priority assigned the site shall be included with the information required by subsection (a)(2).

(2) In assigning the response priority for a defense site on the inventory, the Secretary shall primarily consider factors relating to safety and environmental hazard potential, such as the following:

(A) Whether there are known, versus suspected, unexploded ordnance, discarded military munitions, or munitions constituents on all or any portion of the defense site and the types of unexploded ordnance, discarded military munitions, or munitions constituents present or suspected to be present.

(B) Whether public access to the defense site is controlled, and the effectiveness of these controls.

(C) The potential for direct human contact with unexploded ordnance, discarded military munitions, or munitions constituents at the defense site and evidence of people entering the site.

(D) Whether a response action has been or is being undertaken at the defense site under the Formerly Used Defense Sites program or other program.

(E) The planned or mandated dates for transfer of the defense site from military control.

(F) The extent of any documented incidents involving unexploded ordnance, discarded military munitions, or munitions constituents at or from the defense site, including incidents involving explosions, discoveries, injuries, reports, and investigations.

(G) The potential for drinking water contamination or the release of munitions constituents into the air.

(H) The potential for destruction of sensitive ecosystems and damage to natural resources.

(3) The priority assigned to a defense site included on the inventory shall not impair, alter, or diminish any applicable Federal or State authority to establish requirements for the investigation of, and response to, environmental problems at the defense site.

(c) UPDATES AND AVAILABILITY.—(1) The Secretary shall annually update the inventory and site prioritization list to reflect new information that becomes available. The inventory shall be available in published and electronic form.

(2) The Secretary shall work with communities adjacent to a defense site to provide information concerning conditions at the site and response activities. At a minimum, the Secretary shall provide the site inventory information and site prioritization list to appropriate Federal, State, tribal, and local officials, and, to the extent the Secretary considers appropriate, to civil defense or emergency management agencies and the public.

(d) EXCEPTIONS.—This section does not apply to the following:

(1) Any locations outside the United States.

(2) The presence of military munitions resulting from combat operations.

(3) Operating storage and manufacturing facilities.

(4) Operational ranges.

(e) DEFINITIONS.—In this section:

(1) The term ''defense site'' applies to locations that are or were owned by, leased to, or otherwise possessed or used by the Department of Defense. The term does not include any operational range, operating storage or manufacturing facility, or facility that is used for or was permitted for the treatment or disposal of military munitions.

(2) The term ''discarded military munitions'' means military munitions that have been abandoned without proper disposal or removed from storage in a military magazine or other storage area for the purpose of disposal. The term does not include unexploded ordnance, military munitions that are being held for future use or planned disposal, or military munitions that have been properly disposed of, consistent with applicable environmental laws and regulations.

(3) The term ''munitions constituents'' means any materials originating from unexploded ordnance, discarded military munitions, or other military munitions, including explosive and nonexplosive materials, and emission, degradation, or breakdown elements of such ordnance or munitions.

(4) The term ''possessions'' includes Johnston Atoll, Kingman Reef, Midway Island, Nassau Island, Palmyra Island, and Wake Island.

(5) The term ''Secretary'' means the Secretary of Defense.

(6) The term ''State'' means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and the territories and possessions.

(7) The term ''United States'', in a geographic sense, means the States, territories, and possessions and associated navigable waters, contiguous zones, and ocean waters of which the natural resources are under the exclusive management authority of the United States.

(Added Pub. L. 107–107, div. A, title III, § 311(a)(1), Dec. 28, 2001, 115 Stat. 1048; amended Pub. L. 108–136, div. A, title X, § 1042(b), Nov. 24, 2003, 117 Stat. 1610; Pub. L. 111–84, div. A, title III, § 318(a), Oct. 28, 2009, 123 Stat. 2250.)

AMENDMENTS

2009—Subsec. (a)(2)(B). Pub. L. 111–84 inserted '', including the county, where applicable,'' after ''political subdivisions of the State''.

2003—Subsec. (e). Pub. L. 108–136 redesignated pars. (4), (6), (7), (8), and (10) as (3) to (7), respectively, and struck out former pars. (3), (5), and (9) which defined terms ''military munitions'', ''operational range'', and ''unexploded ordnance'', respectively.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

EXPEDITED USE OF APPROPRIATE TECHNOLOGY RELATED TO UNEXPLODED ORDNANCE DETECTION

Pub. L. 110–417, [div. A], title III, § 314, Oct. 14, 2008, 122 Stat. 4410, as amended by Pub. L. 111–84, div. A, title X, § 1073(c)(1), Oct. 28, 2009, 123 Stat. 2474, provided that:

''(a) EXPEDITED USE OF APPROPRIATE TECHNOLOGIES.—The Secretary of Defense shall expedite the use of appropriate unexploded ordnance detection instrument technology developed through research funded by the Department of Defense or developed by entities other than the Department of Defense.

''(b) REPORT.—Not later than October 1, 2009, the Secretary shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report describing and evaluating the following:

''(1) The amounts allocated for research, development, test, and evaluation for unexploded ordnance detection technologies.

''(2) The amounts allocated for transition of new unexploded ordnance detection technologies.

''(3) Activities undertaken by the Department to transition such technologies and train operators on emerging detection instrument technologies.

''(4) Any impediments to the transition of new unexploded ordnance detection instrument technologies to regular operation in remediation programs.

''(5) The transfer of such technologies to private sector entities involved in the detection of unexploded ordnance.

''(6) Activities undertaken by the Department to raise public awareness regarding unexploded ordnance.

''(c) UNEXPLODED ORDNANCE DEFINED.—In this section, the term 'unexploded ordnance' has the meaning given such term in section 101(e)(5) of title 10, United States Code.''

[Pub. L. 111–84, div. A, title X, § 1073(c), Oct. 28, 2009, 123 Stat. 2474, provided that the amendment made by section 1073(c)(1) to section 314 of Pub. L. 110–417, set out above, is effective as of Oct. 14, 2008, and as if included in Pub. L. 110–417 therein as enacted.]

RESPONSE PLAN FOR REMEDIATION OF UNEXPLODED ORDNANCE, DISCARDED MILITARY MUNITIONS, AND MUNITIONS CONSTITUENTS

Pub. L. 109–364, div. A, title III, § 313(a)–(d), Oct. 17, 2006, 120 Stat. 2138, 2139, provided that:

''(a) PERFORMANCE GOALS FOR REMEDIATION.—The Secretary of Defense shall set the following remediation goals with regard to unexploded ordnance, discarded military munitions, and munitions constituents:

''(1) To complete, by not later than September 30, 2007, preliminary assessments of unexploded ordnance, discarded military munitions, and munitions constituents at all active installations and formerly used defense sites (other than operational ranges).

''(2) To complete, by not later than September 30, 2010, site inspections of unexploded ordnance, discarded military munitions, and munitions constituents at all active installations and formerly used defense sites (other than operational ranges).

''(3) To achieve, by not later than September 30, 2009, a remedy in place or response complete for unexploded ordnance, discarded military munitions, and munitions constituents at all military installations closed or realigned as part of a round of defense base closure and realignment occurring prior to the 2005 round.

''(4) To achieve, by a date certain established by the Secretary of Defense, a remedy in place or response complete for unexploded ordnance, discarded military munitions, and munitions constituents at all active installations and formerly used defense sites (other than operational ranges) and all military installations realigned or closed under the 2005 round of defense base closure and realignment.

''(b) RESPONSE PLAN REQUIRED.—

''(1) IN GENERAL.—Not later than March 1, 2007, the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a comprehensive plan for

addressing the remediation of unexploded ordnance, discarded military munitions, and munitions constituents at current and former defense sites (other than operational ranges).

''(2) CONTENT.—The plan required by paragraph (1) shall include—

''(A) a schedule, including interim goals, for achieving the goals described in paragraphs (1) through (3) of subsection (a), based upon the Munitions Response Site Prioritization Protocol established by the Department of Defense;

''(B) such interim goals as the Secretary determines feasible for efficiently achieving the goal required under paragraph (4) of such subsection; and

''(C) an estimate of the funding required to achieve the goals established pursuant to such subsection and the interim goals established pursuant to subparagraphs (A) and (B).

''(3) UPDATES.—Not later than March 15 of 2008, 2009, and 2010, the Secretary shall submit to the congressional defense committees an update of the plan required under paragraph (1). The Secretary may include the update in the report on environmental restoration activities that is submitted to Congress under [former] section 2706(a) of title 10, United States Code, in the year in which that update is required and may include in the update any adjustment to the remediation goals established under subsection (a) that the Secretary determines necessary to respond to unforeseen circumstances.

''(c) REPORT ON REUSE STANDARDS AND PRINCIPLES.—Not later than March 1, 2007, the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the status of the efforts of the Department of Defense to achieve agreement with relevant regulatory agencies on appropriate reuse standards or principles, including—

''(1) a description of any standards or principles that have been agreed upon; and

''(2) a discussion of any issues that remain in disagreement, including the impact that any such disagreement is likely to have on the ability of the Department of Defense to carry out the response plan required by subsection (b).

''(d) DEFINITIONS.—In this section:

''(1) The terms 'unexploded ordnance' and 'operational range' have the meanings given such terms in section 101(e) of title 10, United States Code.

''(2) The terms 'discarded military munitions', 'munitions constituents', and 'defense site' have the meanings given such terms in section 2710(e) of such title.''

RESEARCH ON EFFECTS OF OCEAN DISPOSAL OF MUNITIONS

Pub. L. 109–364, div. A, title III, §314, Oct. 17, 2006, 120 Stat. 2139, provided that:

''(a) IDENTIFICATION OF DISPOSAL SITES.—

''(1) HISTORICAL REVIEW.—The Secretary of Defense shall conduct a historical review of available records to determine the number, size, and probable locations of sites where the Armed Forces disposed of military munitions in coastal waters. The historical review shall, to the extent possible, identify the types of munitions at individual sites.

''(2) COOPERATION.—The Secretary shall request the assistance of the Coast Guard, the National Oceanic and Atmospheric Administration, and other relevant Federal agencies in conducting the review required by this subsection.

''(3) INTERIM REPORTS.—The Secretary shall periodically, but no less often than annually, release any new information obtained during the historical review conducted under paragraph (1). The Secretary may withhold from public release the exact nature and locations of munitions the potential unauthorized retrieval of which could pose a significant threat to the national defense or public safety.

''(4) INCLUSION OF INFORMATION IN ANNUAL REPORT ON ENVIRONMENTAL RESTORATION ACTIVITIES.—The Secretary shall include the information obtained pursuant to the review conducted under paragraph (1) in the annual report on environmental restoration activities submitted to Congress under [former] section 2706 of title 10, United States Code.

''(5) FINAL REPORT.—The Secretary shall complete the historical review required under paragraph (1) and submit a final report on the findings of such review in the annual report on environmental restoration activities submitted to Congress for fiscal year 2009.

''(b) IDENTIFICATION OF NAVIGATIONAL AND SAFETY HAZARDS.—

''(1) IDENTIFICATION OF HAZARDS.—The Secretary of Defense shall provide available information to the Secretary of Commerce to assist the National Oceanic and Atmospheric Administration in preparing nautical charts and other navigational materials for coastal waters that identify known or potential hazards posed by disposed military munitions to private activities, including commercial shipping and fishing operations.

''(2) CONTINUATION OF INFORMATION ACTIVITIES.—The Secretary of Defense shall continue activities to inform potentially affected users of the ocean environment, particularly fishing operations, of the possible hazards from contact with disposed military munitions and the proper methods to mitigate such hazards.

''(c) RESEARCH.—

''(1) IN GENERAL.—The Secretary of Defense shall continue to conduct research on the effects on the ocean environment and those who use it of military munitions disposed of in coastal waters.

''(2) SCOPE.—Research under paragraph (1) shall include—

''(A) the sampling and analysis of ocean waters and sea beds at or adjacent to military munitions disposal sites selected pursuant to paragraph (3) to determine whether the disposed military munitions have caused or are causing contamination of such waters or sea beds;

''(B) investigation into the long-term effects of seawater exposure on disposed military munitions, particularly effects on chemical munitions;

''(C) investigation into the impacts any such contamination may have on the ocean environment and those who use it, including public health risks;

''(D) investigation into the feasibility of removing or otherwise remediating the military munitions; and

''(E) the development of effective safety measures for dealing with such military munitions.

''(3) RESEARCH CRITERIA.—In conducting the research required by this subsection, the Secretary shall ensure that the sampling, analysis, and investigations are conducted at representative sites, taking into account factors such as depth, water temperature, nature of the military munitions present, and relative proximity to onshore populations. In conducting such research, the Secretary shall select at least two representative sites each in the areas of the Atlantic coast, the Pacific coast (including Alaska), and the Hawaiian Islands.

''(4) AUTHORITY TO MAKE GRANTS AND ENTER INTO COOPERATIVE AGREEMENTS.—In conducting research under this subsection, the Secretary may make grants to, and enter into cooperative agreements with, qualified research entities.

''(d) MONITORING.—If the historical review required by subsection (a) or the research required by subsection (c) indicates that contamination is being released into the ocean waters from disposed military munitions at a particular site or that the site poses a significant public health or safety risk, the Secretary of Defense shall institute appropriate monitoring mechanisms at that site and report to the congressional defense committees [Committees on Armed Services and Appropria-

tions of the Senate and the House of Representatives] on any additional measures that may be necessary to address the release or risk, as applicable.

''(e) DEFINITIONS.—In this section:

''(1) The term 'coastal waters' means that part of the ocean extending from the coast line of the United States to the outer boundary of the outer Continental Shelf.

''(2) The term 'coast line' has the meaning given that term in section 2(c) of the Submerged Lands Act (43 U.S.C. 1301(c)).

''(3) The term 'military munitions' has the meaning given that term in section 101(e) of title 10, United States Code.

''(4) The term 'outer Continental Shelf' has the meaning given that term in section 2(a) of the Outer Continental Shelf Lands Act (43 U.S.C. 1331(a)).''

INITIAL INVENTORY

Pub. L. 107–107, div. A, title III, §311(b), Dec. 28, 2001, 115 Stat. 1051, provided that: ''The requirements of section 2710 of title 10, United States Code, as added by subsection (a), shall be implemented as follows:

''(1) The initial inventory required by subsection (a) of such section shall be completed not later than May 31, 2003.

''(2) The proposed prioritization protocol required by subsection (b) of such section shall be available for public comment not later than November 30, 2002.''

§ 2711. Annual report on defense environmental programs

(a) REPORT REQUIRED.—The Secretary of Defense shall submit to Congress each year, not later than 45 days after the date on which the President submits to Congress the budget for a fiscal year, a report on defense environmental programs. Each report shall include:

(1) With respect to environmental restoration activities of the Department of Defense, and for each of the military departments, the following elements:

(A) Information on the Environmental Restoration Program, including the following:

(i) The total number of sites in the Environmental Restoration Program.

(ii) The number of sites in the Environmental Restoration Program that have reached the Remedy in Place Stage and the Response Complete Stage, and the change in such numbers in the preceding fiscal year.

(iii) A statement of the amount of funds allocated by the Secretary for, and the anticipated progress in implementing, the Environmental Restoration Program during the fiscal year for which the budget is submitted.

(iv) The Secretary's assessment of the overall progress of the Environmental Restoration Program.

(B) Information on the Military Munitions Restoration Program (MMRP), including the following:

(i) The total number of sites in the MMRP.

(ii) The number of sites that have reached the Remedy in Place Stage and the Response Complete Stage, and the change in such numbers in the preceding fiscal year.

(iii) A statement of the amount of funds allocated by the Secretary for, and the anticipated progress in implementing, the MMRP during the fiscal year for which the budget is submitted.

(iv) The Secretary's assessment of the overall progress of the MMRP.

(2) With respect to each of the major activities under the environmental quality program of the Department of Defense and for each of the military departments—

(A) a statement of the amount expended, or proposed to be expended, during the period consisting of the four fiscal years preceding the fiscal year in which the report is submitted, the current fiscal year, the fiscal year for which the budget is submitted, and the fiscal year following the fiscal year for which the budget is submitted; and

(B) an explanation for any significant change in such amounts during the period covered.

(3) With respect to the environmental technology program of the Department of Defense—

(A) a report on the progress made in achieving the objectives and goals of its environmental technology program during the preceding fiscal year and an overall trend analysis for the program covering the previous four fiscal years; and

(B) a statement of the amount expended, or proposed to be expended, during the period consisting of the four fiscal years preceding the fiscal year in which the report is submitted, the fiscal year for which the budget is submitted, and the fiscal year following the fiscal year for which the budget is submitted.

(b) DEFINITIONS.—For purposes of this section—

(1) the term ''environmental quality program'' means a program of activities relating to environmental compliance, conservation, pollution prevention, and other activities relating to environmental quality as the Secretary may designate; and

(2) the term ''major activities'' with respect to an environmental program means—

(A) environmental compliance activities;

(B) conservation activities; and

(C) pollution prevention activities.

(Added Pub. L. 112–81, div. A, title III, §317(a), Dec. 31, 2011, 125 Stat. 1359.)

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective Dec. 31, 2021, of provisions of this section requiring submittal of annual report to Congress, see section 1061 of Pub. L. 114–328, set out as a note under section 111 of this title.

§ 2712. Reporting on usage and spills of aqueous film-forming foam

(a) IN GENERAL.—Not later than 48 hours after the Deputy Assistant Secretary of Defense for Environment receives notice of the usage or spill of aqueous film forming foam, either as concentrate or mixed foam, at any military installation, the Deputy Assistant Secretary shall submit to the Committees on Armed Services of the Senate and the House of Representatives no-

tice of a usage or spill of greater than 10 gallons of concentrate, or greater than 300 gallons of mixed foam. Each such notice shall include each of the following information:

(1) The name of the installation where the usage or spill occurred.

(2) The date on which the usage or spill occurred.

(3) The amount, type, and specified concentration of aqueous film-forming foam that was used or spilled.

(4) The cause of the usage or spill.

(5) A summary narrative of the usage or spill.

(b) ACTION PLAN.—Not later than 60 days after submitting notice of a usage or spill under subsection (a), the Deputy Assistant Secretary shall submit to the Committees on Armed Services of the Senate and the House of Representatives an action plan for addressing such usage or spill. The action plan shall include the following:

(1) A description of what actions have been taken to arrest and clean up a spill.

(2) A description of any coordination with relevant local and State environmental protection agencies.

(Added Pub. L. 116–283, div. A, title III, § 318(a), Jan. 1, 2021, 134 Stat. 3519.)

§ 2713. Native American lands environmental mitigation program

(a) ESTABLISHMENT.—The Secretary of Defense may establish and carry out a program to mitigate the environmental effects of actions by the Department of Defense on Indian lands and on other locations where the Department, an Indian tribe, and the current land owner agree that such mitigation is appropriate.

(b) PROGRAM ACTIVITIES.—The activities that may be carried out under the program established under subsection (a) are the following:

(1) Identification, investigation, and documentation of suspected environmental effects attributable to past actions by the Department of Defense.

(2) Development of mitigation options for such environmental effects, including development of cost-to-complete estimates and a system for prioritizing mitigation actions.

(3) Direct mitigation actions that the Secretary determines are necessary and appropriate to mitigate the adverse environmental effects of past actions by the Department.

(4) Demolition and removal of unsafe buildings and structures used by, under the jurisdiction of, or formerly used by or under the jurisdiction of the Department.

(5) Training, technical assistance, and administrative support to facilitate the meaningful participation of Indian tribes in mitigation actions under the program.

(6) Development and execution of a policy governing consultation with Indian tribes that have been or may be affected by action by the Department, including training personnel of the Department to ensure compliance with the policy.

(c) COOPERATIVE AGREEMENTS.—(1) In carrying out the program established under subsection (a), the Secretary of Defense may enter into a cooperative agreement with an Indian tribe or an instrumentality of tribal government.

(2) Notwithstanding chapter 63 of title 31, a cooperative agreement under this section may be used to acquire property or services for the direct benefit of the United States Government.

(3) A cooperative agreement under this section for the procurement of severable services may begin in one fiscal year and end in another fiscal year only if the total period of performance does not exceed two calendar years.

(d) DEFINITIONS.—In this section:

(1) The term ''Indian land'' includes—

(A) any land located within the boundaries and a part of an Indian reservation, pueblo, or rancheria;

(B) any land that has been allotted to an individual Indian but has not been conveyed to such Indian with full power of alienation;

(C) Alaska Native village and regional corporation lands; and

(D) lands and waters upon which any federally recognized Indian tribe has rights reserved by treaty, Act of Congress, or action by the President.

(2) The term ''Indian tribe'' means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(e) LIMITATION.—Nothing in this section shall be interpreted to require, compel, or otherwise authorize access to any lands without the landowner's consent.

(Added Pub. L. 116–283, div. A, title III, § 319(a), Jan. 1, 2021, 134 Stat. 3520.)

REFERENCES IN TEXT

The Alaska Native Claims Settlement Act, referred to in subsec. (d)(2), is Pub. L. 92–203, Dec. 18, 1971, 85 Stat. 688, which is classified generally to chapter 33 (§ 1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

CHAPTER 161—PROPERTY RECORDS AND REPORT OF THEFT OR LOSS OF CERTAIN PROPERTY

Sec.
2721. Property records: maintenance on quantitative and monetary basis.
2722. Theft or loss of ammunition, destructive devices, and explosives: report to Secretary of the Treasury.
2723. Notice to congressional committees of certain security and counterintelligence failures within defense programs.

AMENDMENTS

1999—Pub. L. 106–65, div. A, title X, § 1042(b), Oct. 5, 1999, 113 Stat. 760, added item 2723.

1991—Pub. L. 102–190, div. A, title X, § 1061(a)(17)(B), Dec. 5, 1991, 105 Stat. 1473, substituted ''Property records: maintenance on quantitative and monetary basis'' for ''Basis'' in item 2721.

1990—Pub. L. 101–510, div. A, title XIII, § 1331(7), Nov. 5, 1990, 104 Stat. 1673, substituted ''Basis'' for ''Basis: reports'' in item 2721.

1988—Pub. L. 100–456, div. A, title III, § 344(b)(1), Sept. 29, 1988, 102 Stat. 1962, inserted ''AND REPORT OF THEFT OR LOSS OF CERTAIN PROPERTY'' in chapter heading and added item 2722.

1986—Pub. L. 99–499, title II, § 211(a)(3), Oct. 17, 1986, 100 Stat. 1725, redesignated item 2701 as item 2721.

§ 2721. Property records: maintenance on quantitative and monetary basis

(a) Under regulations prescribed by him, the Secretary of Defense shall have the records of the fixed property, installations, major equipment items, and stored supplies of the military departments maintained on both a quantitative and a monetary basis, so far as practicable.

(b) The regulations prescribed pursuant to subsection (a) shall include a requirement that the records maintained under such subsection—

(1) to the extent practicable, provide up-to-date information on all items in the inventory of the Department of Defense;

(2) indicate whether the inventory of each item is sufficient or excessive in relation to the needs of the Department for that item; and

(3) permit the Secretary of Defense to include in the budget submitted to Congress under section 1105 of title 31 for each fiscal year, information relating to—

(A) the amounts proposed for each appropriation account in such budget for inventory purchases of the Department of Defense; and

(B) the amounts obligated for such inventory purchases out of the corresponding appropriations account for the preceding fiscal year.

(Aug. 10, 1956, ch. 1041, 70A Stat. 152, § 2701; renumbered § 2721, Pub. L. 99–499, title II, § 211(a)(1)(A), Oct. 17, 1986, 100 Stat. 1719; amended Pub. L. 101–510, div. A, title XIII, § 1322(a)(12), Nov. 5, 1990, 104 Stat. 1671; Pub. L. 102–190, div. A, title III, § 347(b), title X, § 1061(a)(17)(A), Dec. 5, 1991, 105 Stat. 1347, 1473.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
2701(a)	5:172i (less last sentence).	July 26, 1947, ch. 343, § 410; added Aug. 10, 1949, ch. 412, § 11(410), 63 Stat. 590.
2701(b)	5:172i (last sentence).	

In subsection (a), the words ''equipment'' and ''materials'' are omitted, since the word ''supplies'', as defined in section 101(26) of this title, includes equipment and materials. The word ''stored'' is substituted for the words ''held in store by the armed services''.

In subsection (b), the words ''on property records maintained under this section'' are substituted for the word ''thereon''.

AMENDMENTS

1991—Pub. L. 102–190, § 1061(a)(17)(A), substituted section catchline for one which read ''Basis: reports''.

Pub. L. 102–190, § 347(b), designated existing provisions as subsec. (a) and added subsec. (b).

1990—Pub. L. 101–510 struck out ''(a)'' before ''Under regulations'' and struck out subsec. (b) which read as follows: ''The Secretary shall report once a year to Congress and the President on property records maintained under this section.''

IMPLEMENTATION OF 1991 AMENDMENT

Pub. L. 102–190, div. A, title III, § 347(c), Dec. 5, 1991, 105 Stat. 1347, provided that: ''The Secretary of Defense shall establish the uniform system of valuation described in section 2458(a)(3) of title 10, United States Code (as added by subsection (a)), and prescribe the regulations required by section 2721(b) of such title (as added by subsection (b)), not later than 180 days after the date of the enactment of this Act [Dec. 5, 1991].''

INVENTORY INVESTIGATIONS

Pub. L. 100–456, div. A, title III, § 343, Sept. 29, 1988, 102 Stat. 1961, provided that:

''(a) UNDERCOVER INVESTIGATIONS.—(1) Congress finds that the use of undercover investigative techniques by the Department of Defense enhances the ability of the Department of Defense to detect and investigate theft of Government property (including munitions) from the Department of Defense supply system.

''(2) The Secretary of Defense is urged to continue to conduct undercover investigations to detect and investigate thefts referred to in paragraph (1).

''(b) INVENTORY SECURITY INCIDENT REPOSITORY.—The Secretary of Defense shall establish and maintain a centralized computer system for recording and organizing information on theft, fraud, and breach of security and incidents involving the loss of Department of Defense supplies (including munitions).''

§ 2722. Theft or loss of ammunition, destructive devices, and explosives: report to Secretary of the Treasury

(a) IN GENERAL.—The Secretary of Defense shall report the theft or other loss of any ammunition, destructive device, or explosive material from the stocks of the Department of Defense to the Secretary of the Treasury within 72 hours, if possible, after the discovery of such theft or loss.

(b) EXCLUSION FOR CERTAIN ITEMS.—The Secretary of Defense may exclude from the reporting requirement under subsection (a) any item referred to in that subsection if—

(1) the Secretary determines that the item represents a low risk of danger to the public and would be of minimal utility to any person who may illegally receive such item; and

(2) the exclusion of such item is specified as being excluded from the reporting requirement in a memorandum of agreement between the Secretary of Defense and the Secretary of the Treasury.

(c) DEFINITIONS.—In this section:

(1) The term ''explosive material'' means explosives, blasting agents, and detonators.

(2) The terms ''destructive device'' and ''ammunition'' have the meanings given those terms by paragraphs (4) and (17), respectively, of section 921(a) of title 18.

(Added Pub. L. 100–456, div. A, title III, § 344(a), Sept. 29, 1988, 102 Stat. 1961; amended Pub. L. 109–364, div. A, title X, § 1071(a)(24), Oct. 17, 2006, 120 Stat. 2399.)

AMENDMENTS

2006—Subsec. (c)(2). Pub. L. 109–364 substituted ''921(a)'' for ''921''.

EFFECTIVE DATE

Pub. L. 100–456, div. A, title III, § 344(c), Sept. 29, 1988, 102 Stat. 1962, provided that: ''The amendment made by subsection (a) [enacting this section] shall take effect with respect to thefts and losses discovered more than 180 days after the date of the enactment of this Act [Sept. 29, 1988].''

§2723. Notice to congressional committees of certain security and counterintelligence failures within defense programs

(a) REQUIRED NOTIFICATION.—The Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives a notification of each security or counterintelligence failure or compromise of classified information relating to any defense operation, system, or technology of the United States that the Secretary considers likely to cause significant harm or damage to the national security interests of the United States. The Secretary shall consult with the Director of National Intelligence and the Director of the Federal Bureau of Investigation, as appropriate, before submitting any such notification.

(b) MANNER OF NOTIFICATION.—Notification of a failure or compromise of classified information under subsection (a) shall be provided, in accordance with the procedures established pursuant to subsection (c), not later than 30 days after the date on which the Department of Defense determines that the failure or compromise has taken place.

(c) PROCEDURES.—The Secretary of Defense and the Committees on Armed Services of the Senate and House of Representatives shall each establish such procedures as may be necessary to protect from unauthorized disclosure classified information, information relating to intelligence sources and methods, and sensitive law enforcement information that is submitted to those committees pursuant to this section and that are otherwise necessary to carry out the provisions of this section.

(d) STATUTORY CONSTRUCTION.—(1) Nothing in this section shall be construed as authority to withhold any information from the Committees on Armed Services of the Senate and House of Representatives on the grounds that providing the information to those committees would constitute the unauthorized disclosure of classified information, information relating to intelligence sources and methods, or sensitive law enforcement information.

(2) Nothing in this section shall be construed to modify or supersede any other requirement to report information on intelligence activities to the Congress, including the requirement under section 501 of the National Security Act of 1947 (50 U.S.C. 3091).

(Added Pub. L. 106–65, div. A, title X, §1042(a), Oct. 5, 1999, 113 Stat. 759; amended Pub. L. 110–181, div. A, title IX, §931(a)(13), Jan. 28, 2008, 122 Stat. 285; Pub. L. 110–417, [div. A], title IX, §932(a)(12), Oct. 14, 2008, 122 Stat. 4576; Pub. L. 111–84, div. A, title X, §1073(c)(10), Oct. 28, 2009, 123 Stat. 2475; Pub. L. 113–291, div. A, title X, §1071(c)(12), Dec. 19, 2014, 128 Stat. 3509.)

AMENDMENTS

2014—Subsec. (d)(2). Pub. L. 113–291 substituted ''(50 U.S.C. 3091)'' for ''(50 U.S.C. 413)''.

2009—Subsec. (a). Pub. L. 111–84 repealed Pub. L. 110–417, §932(a)(12). See 2008 Amendment note below.

2008—Subsec. (a). Pub. L. 110–181 and Pub. L. 110–417, §932(a)(12), amended subsec. (a) identically, substituting ''Director of National Intelligence'' for ''Director of Central Intelligence''. Pub. L. 110–417, §932(a)(12), was repealed by Pub. L. 111–84. See 2009 Amendment note above.

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–84, div. A, title X, §1073(c), Oct. 28, 2009, 123 Stat. 2474, provided in part that the amendment made by section 1073(c)(10) is effective as of Oct. 14, 2008, and as if included in Pub. L. 110–417 as enacted.

CHAPTER 163—MILITARY CLAIMS

Sec.
2731. Definition.
2732. Payment of claims: availability of appropriations.
2733. Property loss; personal injury or death: incident to noncombat activities of Department of Army, Navy, or Air Force.
2733a. Medical malpractice claims by members of the uniformed services.
2734. Property loss; personal injury or death: incident to noncombat activities of the armed forces; foreign countries.
2734a. Property loss; personal injury or death: incident to noncombat activities of armed forces in foreign countries; international agreements.
2734b. Property loss; personal injury or death: incident to activities of armed forces of foreign countries in United States; international agreements.
2735. Settlement: final and conclusive.
2736. Property loss; personal injury or death: advance payment.
2737. Property loss; personal injury or death: incident to use of property of the United States and not cognizable under other law.
2738. Property loss: reimbursement of members for certain losses of household effects caused by hostile action.
2739. Amounts recovered from third parties for loss or damage to personal property shipped or stored at Government expense: crediting to appropriations.
2740. Property loss: reimbursement of members and civilian employees for full replacement value of household effects when contractor reimbursement not available.

AMENDMENTS

2019—Pub. L. 116–92, div. A, title VII, §731(a)(2), Dec. 20, 2019, 133 Stat. 1459, added item 2733a.

2011—Pub. L. 111–383, div. A, title III, §354(a)(2), Jan. 7, 2011, 124 Stat. 4195, added item 2740.

1998—Pub. L. 105–261, div. A, title X, §1010(a)(2), Oct. 17, 1998, 112 Stat. 2117, added item 2739.

1994—Pub. L. 103–337, div. A, title V, §557(b), Oct. 5, 1994, 108 Stat. 2776, added item 2738.

1990—Pub. L. 101–510, div. A, title XIV, §1481(j)(2), Nov. 5, 1990, 104 Stat. 1708, added item 2732.

1984—Pub. L. 98–525, title XIV, §1405(42)(B), Oct. 19, 1984, 98 Stat. 2625, substituted ''in foreign countries'' for '': foreign countries'' in item 2734a.

1968—Pub. L. 90–521, §2, Sept. 26, 1968, 82 Stat. 874, substituted ''advance payment'' for ''incident to aircraft or missile operation'' in item 2736.

1966—Pub. L. 89–718, §21(b), Nov. 2, 1966, 80 Stat. 1118, substituted ''2737'' for ''2736'' as item number for ''Property loss; personal injury or death: incident to use of property of the United States and not cognizable under other law''.

1964—Pub. L. 88–558, §5(2), Aug. 31, 1964, 78 Stat. 768, struck out item 2732 ''Property loss: incident to service; members of Army, Navy, Air Force, or Marine Corps and civilian employees'', effective two years after Aug. 31, 1964. Pub. L. 88–558, was itself repealed by Pub. L. 97–258, §5(b), Sept. 13, 1982, 96 Stat. 1068.

1962—Pub. L. 87–769, §1(1)(B), Oct. 9, 1962, 76 Stat. 768, added item 2736 ''Property loss; personal injury or death: incident to use of property of the United States and not cognizable under other law''.

Pub. L. 87–651, title I, §113(b), Sept. 7, 1962, 76 Stat. 513, added items 2734a and 2734b.

1961—Pub. L. 87–212, §1(2), Sept. 8, 1961, 75 Stat. 488, added item 2736 ''Property loss; personal injury or death: incident to aircraft or missile operation''.

1959—Pub. L. 86–223, §1(2), Sept. 1, 1959, 73 Stat. 454, substituted ''armed forces'' for ''Department of Army, Navy, or Air Force'' in item 2734.

§ 2731. Definition

In this chapter, ''settle'' means consider, ascertain, adjust, determine, and dispose of a claim, whether by full or partial allowance or by disallowance.

(Aug. 10, 1956, ch. 1041, 70A Stat. 152.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2731	[No source].	[No source].

The revised section is inserted for clarity and is based on usage in the source laws for this revised chapter.

CONGRESSIONAL DEFENSE COMMITTEES DEFINED

Pub. L. 116–93, div. A, title VIII, §8027, Dec. 20, 2019, 133 Stat. 2342, provided that: ''For the purposes of this Act [div. A of Pub. L. 116–93, see Tables for classification], the term 'congressional defense committees' means the Armed Services Committee of the House of Representatives, the Armed Services Committee of the Senate, the Subcommittee on Defense of the Committee on Appropriations of the Senate, and the Subcommittee on Defense of the Committee on Appropriations of the House of Representatives.''

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 115–245, div. A, title VIII, §8026, Sept. 28, 2018, 132 Stat. 3005.

Pub. L. 115–141, div. C, title VIII, §8026, Mar. 23, 2018, 132 Stat. 469.

Pub. L. 115–31, div. C, title VIII, §8027, May 5, 2017, 131 Stat. 252.

Pub. L. 114–113, div. C, title VIII, §8026, Dec. 18, 2015, 129 Stat. 2356.

Pub. L. 113–235, div. C, title VIII, §8026, Dec. 16, 2014, 128 Stat. 2258.

Pub. L. 113–76, div. C, title VIII, §8025, Jan. 17, 2014, 128 Stat. 109.

EX GRATIA PAYMENTS

Pub. L. 116–93, div. A, title VIII, §8104, Dec. 20, 2019, 133 Stat. 2361, provided that:

''(a) Of the funds appropriated in this Act [div. A of Pub. L. 116–93, see Tables for classification] for the Department of Defense, amounts should be made available, under such regulations as the Secretary of Defense may prescribe, to local military commanders appointed by the Secretary, or by an officer or employee designated by the Secretary, to provide at their discretion ex gratia payments in amounts consistent with subsection (d) of this section for damage, personal injury, or death that is incident to combat operations of the Armed Forces in a foreign country.

''(b) An ex gratia payment under this section may be provided only if—

''(1) the prospective foreign civilian recipient is determined by the local military commander to be friendly to the United States;

''(2) a claim for damages would not be compensable under chapter 163 of title 10, United States Code (commonly known as the 'Foreign Claims Act'); and

''(3) the property damage, personal injury, or death was not caused by action by an enemy.

''(c) Any payments provided under a program under subsection (a) shall not be considered an admission or acknowledgement of any legal obligation to compensate for any damage, personal injury, or death.

''(d) If the Secretary of Defense determines a program under subsection (a) to be appropriate in a particular setting, the amounts of payments, if any, to be provided to civilians determined to have suffered harm incident to combat operations of the Armed Forces under the program should be determined pursuant to regulations prescribed by the Secretary and based on an assessment, which should include such factors as cultural appropriateness and prevailing economic conditions.

''(e) Local military commanders shall receive legal advice before making ex gratia payments under this subsection. The legal advisor, under regulations of the Department of Defense, shall advise on whether an ex gratia payment is proper under this section and applicable Department of Defense regulations.

''(f) A written record of any ex gratia payment offered or denied shall be kept by the local commander and on a timely basis submitted to the appropriate office in the Department of Defense as determined by the Secretary of Defense.

''(g) The Secretary of Defense shall report to the congressional defense committees [Committees on Armed Services and Subcommittees on Defense of the Committees on Appropriations of the Senate and the House of Representatives] on an annual basis the efficacy of the ex gratia payment program including the number of types of cases considered, amounts offered, the response from ex gratia payment recipients, and any recommended modifications to the program.''

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 115–245, div. A, title VIII, §8106, Sept. 28, 2018, 132 Stat. 3025.

Pub. L. 115–141, div. C, title VIII, §8107, Mar. 23, 2018, 132 Stat. 488.

Pub. L. 115–31, div. C, title VIII, §8107, May 5, 2017, 131 Stat. 272.

Pub. L. 114–113, div. C, title VIII, §8111, Dec. 18, 2015, 129 Stat. 2377.

Pub. L. 113–235, div. C, title VIII, §8121, Dec. 16, 2014, 128 Stat. 2281.

Pub. L. 113–76, div. C, title VIII, §8127, Jan. 17, 2014, 128 Stat. 134.

AUTHORITY FOR CERTAIN PAYMENTS TO REDRESS INJURY AND LOSS

Pub. L. 116–92, div. A, title XII, §1213, Dec. 20, 2019, 133 Stat. 1629, provided that:

''(a) AUTHORITY.—During the period beginning on the date of the enactment of this Act [Dec. 20, 2019] and ending on December 31, 2022, not more than $3,000,000 for each calendar year, to be derived from funds authorized to be appropriated to the Office of the Secretary of Defense under the Operation and Maintenance, Defense-wide account, may be made available for ex gratia payments for damage, personal injury, or death that is incident to the use of force by the United States Armed Forces, a coalition that includes the United States, a military organization supporting the United States, or a military organization supporting the United States or such coalition.

''(b) CONDITIONS ON PAYMENT.—An ex gratia payment authorized pursuant to subsection (a) may be provided only if—

''(1) the prospective foreign civilian recipient is determined by the local military commander to be friendly to the United States;

''(2) a claim for damages would not be compensable under chapter 163 of title 10, United States Code (commonly known as the 'Foreign Claims Act');

''(3) the property damage, personal injury, or death was not caused by action by an enemy;

''(4) the claimant suffered property damage, personal injury, or death that was—

''(A) caused by the United States Armed Forces, a coalition that includes the United States, or a military organization supporting the United States or such a coalition; and

''(B) occurred during an operation carried out by the United States, such coalition, or such military organization; and

''(5) the claimant had no involvement in planning or executing an attack or other hostile action that

gave rise to the use of force by the United States, such coalition, or such military organization resulting in such property damage, personal injury, or death.

''(c) NATURE OF PAYMENT.—A payment provided pursuant to the authority under subsection (a) may not be construed or considered as an admission or acknowledgment of any legal obligation to provide compensation for any property damage, personal injury, or death.

''(d) AMOUNT OF PAYMENTS.—If the Secretary of Defense determines a payment under subsection (a) to be appropriate in a particular setting, the amounts of payments, if any, to be provided to civilians determined to have suffered harm incident to the use of force by the United States Armed Forces under the program should be determined pursuant to regulations prescribed by the Secretary and based on an assessment, conducted in consultation with the Secretary of State, that includes such factors as cultural appropriateness and prevailing economic conditions. A copy of any regulations so prescribed shall be provided to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] upon finalization.

''(e) LEGAL ADVICE.—Local military commanders shall receive legal advice before making ex gratia payments under this subsection. The legal advisor, under regulations of the Department of Defense, shall advise on whether an ex gratia payment is proper under this section and applicable Department of Defense regulations.

''(f) WRITTEN RECORD.—A written record of any ex gratia payment offered pursuant to the authority under subsection (a), and whether accepted or denied, shall be kept by the local military commander and on a timely basis submitted to the appropriate office in the Department of Defense as determined by the Secretary of Defense.

''(g) QUARTERLY REPORT.—Not later than 90 days after the date of the enactment of this Act [Dec. 20, 2019], and every 90 days thereafter, the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report including the following:

''(1) With respect to each ex gratia payment made under the authority in this subsection or any other authority during the preceding 90-day period, each of the following:

''(A) The amount used for such payments and the country with respect to which each such payment was made.

''(B) The manner in which claims for such payments were verified.

''(C) The position of the official who approved the payment.

''(D) The manner in which payments are made.

''(2) With respect to a preceding 90-day period in which no ex gratia payments were made—

''(A) whether any such payment was refused, along with the reason for such refusal; or

''(B) any other reason for which no such payments were made.

''(h) RELATION TO OTHER AUTHORITIES.—Notwithstanding any other provision of law, the authority provided by this section shall be construed as the sole authority available to make ex gratia payments for property damage, personal injury, or death that is incident to the use of force by the United States Armed Forces.''

REPORT ON DEPARTMENT POLICY ON PAYMENT OF CLAIMS FOR LOSS OF PERSONAL PROPERTY

Pub. L. 105–85, div. A, title X, §1013(b), Nov. 18, 1997, 111 Stat. 1874, provided that: ''The Secretary of Defense shall submit to Congress a report describing the Department of Defense policy regarding the payment of a claim by a member of the Armed Forces who is not assigned to quarters of the United States for losses and damage to personal property of the member incurred at the member's residence as a result of a natural disaster. The report shall include a description of the number of such claims received over the past 10 years, the number of claims paid, and the number of claims rejected. If the Secretary determines the Department of Defense should modify its policy in order to accept additional claims by members who are not assigned to quarters of the United States for losses and damage to personal property, the Secretary shall also include in the report any legislative changes that the Secretary considers necessary to enable the Secretary to implement the policy change.''

PUBLIC HEALTH SERVICE

Authority vested by this chapter in ''military departments'', ''the Secretary concerned'', or ''the Secretary of Defense'' to be exercised, with respect to commissioned officers of Public Health Service, by Secretary of Health and Human Services or his designee, see section 213a of Title 42, The Public Health and Welfare.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Authority vested by sections 2731, 2732, and 2735 of this title in ''military departments'', ''the Secretary concerned'', or ''the Secretary of Defense'' to be exercised, with respect to commissioned officer corps of National Oceanic and Atmospheric Administration, by Secretary of Commerce or his designee, see section 3071 of Title 33, Navigation and Navigable Waters.

§ 2732. Payment of claims: availability of appropriations

Appropriations available to the Department of Defense for operation and maintenance may be used for payment of claims authorized by law to be paid by the Department of Defense (except for civil functions), including—

(1) claims for damages arising under training contracts with carriers; and

(2) repayment of amounts determined by the Secretary concerned to have been erroneously collected—

(A) from military and civilian personnel of the Department of Defense; or

(B) from States or territories or the District of Columbia (or members of the National Guard units thereof).

(Added Pub. L. 101–510, div. A, title XIV, §1481(j)(1), Nov. 5, 1990, 104 Stat. 1708.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in Pub. L. 100–463, title VIII, §8098, Oct. 1, 1988, 102 Stat. 2270–35, which was set out as a note under section 2241 of this title, prior to repeal by Pub. L. 101–510, §1481(j)(3).

A prior section 2732, acts Aug. 10, 1956, ch. 1041, 70A Stat. 152; Sept. 2, 1958, Pub. L. 85–861, §§1(53), 33(a)(16), 72 Stat. 1461, 1565; Sept. 15, 1965, Pub. L. 89–185, §1, 79 Stat. 789, related to settlement of property loss incident to service, prior to repeal by Pub. L. 88–558, §5(3), Aug. 31, 1964, 78 Stat. 768, effective two years from Aug. 31, 1964. See section 3701 et seq. of Title 31, Money and Finance.

§ 2733. Property loss; personal injury or death: incident to noncombat activities of Department of Army, Navy, or Air Force

(a) Under such regulations as the Secretary concerned may prescribe, he, or, subject to appeal to him, the Judge Advocate General of an armed force under his jurisdiction, or the chief Counsel of the Coast Guard, as appropriate, if designated by him, may settle, and pay in an

amount not more than $100,000, a claim against the United States for—

(1) damage to or loss of real property, including damage or loss incident to use and occupancy;

(2) damage to or loss of personal property, including property bailed to the United States and including registered or insured mail damaged, lost, or destroyed by a criminal act while in the possession of the Army, Navy, Air Force, Marine Corps, Space Force, or Coast Guard, as the case may be; or

(3) personal injury or death;

either caused by a civilian officer or employee of that department, or the Coast Guard, or a member of the Army, Navy, Air Force, Marine Corps, Space Force, or Coast Guard, as the case may be, acting within the scope of his employment, or otherwise incident to noncombat activities of that department, or the Coast Guard.

(b) A claim may be allowed under subsection (a) only if—

(1) it is presented in writing within two years after it accrues, except that if the claim accrues in time of war or armed conflict or if such a war or armed conflict intervenes within two years after it accrues, and if good cause is shown, the claim may be presented not later than two years after the war or armed conflict is terminated;

(2) it is not covered by section 2734 of this title or section 2672 of title 28;

(3) it is not for personal injury or death of such a member or civilian officer or employee whose injury or death is incident to his service;

(4) the damage to, or loss of, property, or the personal injury or death, was not caused wholly or partly by a negligent or wrongful act of the claimant, his agent, or his employee; or, if so caused, allowed only to the extent that the law of the place where the act or omission complained of occurred would permit recovery from a private individual under like circumstances; and

(5) it is substantiated as prescribed in regulations of the Secretary concerned.

For the purposes of clause (1), the dates of the beginning and ending of an armed conflict are the dates established by concurrent resolution of Congress or by a determination of the President.

(c) Payment may not be made under this section for reimbursement for medical, hospital, or burial services furnished at the expense of the United States.

(d) If the Secretary concerned considers that a claim in excess of $100,000 is meritorious, and the claim otherwise is payable under this section, the Secretary may pay the claimant $100,000 and report any meritorious amount in excess of $100,000 to the Secretary of the Treasury for payment under section 1304 of title 31.

(e) Except as provided in subsection (d), no claim may be paid under this section unless the amount tendered is accepted by the claimant in full satisfaction.

(f) For the purposes of this section, a member of the National Oceanic and Atmospheric Administration or of the Public Health Service who is serving with the Navy or Marine Corps shall be treated as if he were a member of that armed force.

(g) Under regulations prescribed by the Secretary concerned, an officer or employee under the jurisdiction of the Secretary may settle a claim that otherwise would be payable under this section in an amount not to exceed $25,000. A decision of the officer or employee who makes a final settlement decision under this section may be appealed by the claimant to the Secretary concerned or an officer or employee designated by the Secretary for that purpose.

(h) Under such regulations as the Secretary of Defense may prescribe, he or his designee has the same authority as the Secretary of a military department under this section with respect to the settlement of claims based on damage, loss, personal injury, or death caused by a civilian officer or employee of the Department of Defense acting within the scope of his employment or otherwise incident to noncombat activities of that department.

(Aug. 10, 1956, ch. 1041, 70A Stat. 153; Pub. L. 85–729, § 1, Aug. 23, 1958, 72 Stat. 813; Pub. L. 85–861, § 1(54), Sept. 2, 1958, 72 Stat. 1461; Pub. L. 89–718, § 8(a), Nov. 2, 1966, 80 Stat. 1117; Pub. L. 90–522, Sept. 26, 1968, 82 Stat. 875; Pub. L. 90–525, §§ 1, 3–5, Sept. 26, 1968, 82 Stat. 877, 878; Pub. L. 91–312, § 2, July 8, 1970, 84 Stat. 412; Pub. L. 93–336, § 1, July 8, 1974, 88 Stat. 291; Pub. L. 96–513, title V, § 511(94), Dec. 12, 1980, 94 Stat. 2928; Pub. L. 98–564, § 1, Oct. 30, 1984, 98 Stat. 2918; Pub. L. 104–316, title II, § 202(e), Oct. 19, 1996, 110 Stat. 3842; Pub. L. 116–283, div. A, title IX, § 924(b)(2)(A)(ix), Jan. 1, 2021, 134 Stat. 3821.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2733(a)	31:223b (1st sentence, less 52d through 62d, and 76th through 93d, words; and less proviso).	July 3, 1943, ch. 189, § 1 (less 4th sentence), 57 Stat. 372; May 29, 1945, ch. 135, § 4, 59 Stat. 225; June 28, 1946, ch. 514, § 1, 60 Stat. 332; July 3, 1952, ch. 570, § 2(c), 66 Stat. 334; Mar. 31, 1953, ch. 13 (as applicable to Act of July 3, 1952, ch. 570, § 2(c)), 67 Stat. 18; June 30, 1953, ch. 172 (as applicable to Act of July 3, 1952, ch. 570, § 2(c)), 67 Stat. 131.
2733(b)	[Uncodified: Aug. 2, 1946, ch. 753, § 424(a) (4th clause), 60 Stat. 847]. 31:223b (76th through 93d words and proviso of 1st sentence; and 2d sentence).	Aug. 2, 1946, ch. 753, § 424(a) (4th clause), 60 Stat. 847.
2733(c)	31:223b (3d sentence).	
2733(d)	31:223b (last sentence).	
2733(e)	31:223b (52d through 62d words of 1st sentence).	
2733(f)	31:222h. [31:223b is made applicable to the Navy by 31:223d and 223e].	Dec. 28, 1945, ch. 597, § 1, 59 Stat. 662; June 28, 1946, ch. 514, § 2, 60 Stat. 333. Dec. 28, 1945, ch. 597, § 6; added Mar. 20, 1946, ch. 104 (last par.), 60 Stat. 56.

In subsection (a), the words ‘‘a civilian officer or employee of that department, or a member of the Army, Navy, Air Force, or Marine Corps, as the case may be’’ are substituted for the words ‘‘military personnel or civilian employees of the Department of the Army or of the Army’’. The words ‘‘whether under a lease, express or implied’’ are omitted as surplusage. The words ‘‘consider, ascertain, adjust, determine’’ are omitted as covered by the word ‘‘settle’’, as defined in section 2731 of this title. The words ‘‘arising on or after May 27, 1941’’ are omitted as executed, since, under revised subsection (b), a claim must be filed within one year after

it accrues, or within one year after the war is terminated, if it accrues in time of war.

In subsection (a)(1), the words ''or loss'' are inserted before the word ''incident'', for clarity.

In subsection (b)(1), the words ''it accrues'' are substituted for the words ''the accident or incident out of which such claim arises shall have occurred'', in 31:223b. The words ''the claim accrues'' are substituted for the words ''That if such accident or incident occurs''. The words ''not later than'' are substituted for the words ''within'' to make it clear that a claim may be presented during a war. The words ''the war is terminated'' are substituted for the words ''after peace is established'', since the other time covered is ''time of war''. 31:223b (last 49 words of proviso of 2d sentence) is omitted as executed.

In subsection (b)(2), the words ''or section 2672 of title 28'' are substituted for the words ''claims cognizable under part 2 of this title'', to reflect the express amendment of 31:223b and 223c by the fourth clause of section 424(a) of the Federal Tort Claims Act, 60 Stat. 847. Section 424(a) of the Federal Tort Claims Act referred to ''claims cognizable under part 2 of this title''. Part 2 of that act consisted of sections 403 and 404 which were repealed by section 39 of the Act of June 25, 1948, ch. 646, 62 Stat. 1008, and replaced by sections 2672 and 2673 of title 28. The words ''or possessions thereof'' are omitted, since possessions of foreign countries are not specifically covered by the section to which the words refer.

In subsection (d), the words ''claim * * * that would otherwise be covered by this section'' are substituted for the words ''such claims''.

In subsection (e), the words ''and final settlement'' are omitted as surplusage.

1958 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2733	31:223b.	Mar. 29, 1956, ch. 103, §§1–3, 70 Stat. 60, 61.

AMENDMENTS

2021—Subsec. (a). Pub. L. 116–283 substituted ''Marine Corps, Space Force,'' for ''Marine Corps,'' in par. (2) and in concluding provisions.

1996—Subsec. (d). Pub. L. 104–316 substituted ''Secretary of the Treasury'' for ''Comptroller General''.

1984—Subsec. (a). Pub. L. 98–564, §1(1), substituted ''Chief Counsel'' for ''chief legal officer'' and ''$100,000'' for ''$25,000'' in provisions preceding par. (1).

Subsec. (d). Pub. L. 98–564, §1(2), amended subsec. (d) generally, substituting ''$100,000'' for ''$25,000'' and provisions requiring Secretary to report excess to the Comptroller General for provisions requiring reporting to Congress.

Subsec. (g). Pub. L. 98–564, §1(3), substituted provisions permitting officers and employees of Secretary concerned to settle claims not otherwise payable under this section in amounts not to exceed $25,000 and providing for an appeal to Secretary concerned or his designee for provisions which provided for delegation of claims settlement authority by Secretary for cases not to exceed $5,000 and for appeal therefrom.

1980—Subsec. (f). Pub. L. 96–513 substituted ''National Oceanic and Atmospheric Administration'' for ''Environmental Science Services Administration''.

1974—Subsec. (a). Pub. L. 93–336, §1(1), substituted ''$25,000'' for ''$15,000''.

Subsec. (d). Pub. L. 93–336, §1(2), substituted ''$25,000'' for ''$15,000'' wherever appearing.

Subsec. (g). Pub. L. 93–336, §1(3), substituted ''$5,000'' for ''$2,500''.

1970—Subsec. (a). Pub. L. 91–312, §2(a), substituted ''$15,000'' for ''$5,000''.

Subsec. (d). Pub. L. 91–312, §2(b), substituted ''$15,000'' for ''$5,000'' wherever appearing.

1968—Subsec. (a). Pub. L. 90–525, §1, substituted ''Secretary concerned'' for ''Secretary of a military department'', and authorized the Chief Legal Officer of the Coast Guard to settle claims, settlement of claims for damage or loss to personal property in possession of the Coast Guard, and settlements when the torts are caused by civilian officers or employees and members of the Coast Guard when acting within scope of employment or otherwise incident to noncombat activities of the Coast Guard.

Subsec. (b)(4). Pub. L. 90–522, §1(1), authorized application of local law in determining effect of claimant's contributory negligence.

Subsec. (d). Pub. L. 90–525, §5, struck out ''of the military department'' after ''Secretary''.

Subsec. (g). Pub. L. 90–525, §3, increased limitation on amount of settlement from $1,000 to $2,500, struck out ''military'' before ''department concerned'', and provided for appeals to Secretary concerned, or his designee, from determinations delegating authority to settle claims to an officer of an armed force. See Pub. L. 90–522, §1(2), hereunder, for identical provision for appeals to Secretary concerned.

Pub. L. 90–522, §1(2), provided for appeals to Secretary concerned, or his designee, from determinations delegating authority to settle claims to an officer of an armed force.

Subsec. (h). Pub. L. 90–525, §4, added subsec. (h).

1966—Subsec. (f). Pub. L. 89–718 substituted ''Environmental Science Services Administration'' for ''Coast and Geodetic Survey''.

1958—Subsec. (a). Pub. L. 85–729, §1(1)(A), substituted ''the Judge Advocate General of an armed force under his jurisdiction, if designated by him, may settle, and pay in an amount not more than $5,000'' for ''any officer designated by him may settle, and pay in an amount not more than $1,000''.

Subsec. (b). Pub. L. 85–861, §1(54)(A), (B), in cl. (1), substituted ''two years'' for ''one year'' in three places and included claims accruing in time of armed conflict, and inserted sentence providing for the determination of dates of the beginning and ending of an armed conflict.

Subsec. (c). Pub. L. 85–861, §1(54)(C), substituted provisions prohibiting payment for reimbursement for medical, hospital, or burial services furnished at the expense of the United States for provisions which prohibited allowance of claims for personal injury or death for more than the cost of reasonable medical, hospital, and burial expenses actually incurred, and not otherwise furnished or paid by the United States.

Subsec. (d). Pub. L. 85–729, §1(1)(B), substituted provisions authorizing partial payments on claims over $5,000 for provisions which authorized the Secretary of the military department concerned to report a claim for more than $1,000 to Congress for its consideration.

Subsec. (e). Pub. L. 85–729, §1(1)(B), substituted ''Except as provided in subsection (d), no claim may be paid under this section'' for ''No claim may be paid under subsection (a)''.

Subsec. (g). Pub. L. 85–729, §1(1)(C), added subsec. (g).

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a Amendment note under section 101 of this title.

REPEALS

The directory language of, but not the amendment made by, Pub. L. 89–718, §8(a), Nov. 2, 1966, 80 Stat. 1117, cited as a credit to this section, was repealed by Pub. L. 97–295, §6(b), Oct. 12, 1982, 96 Stat. 1314.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reor-

ganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

For transfer of functions of Public Health Service, see note set out under section 802 of this title.

CLAIMS FOR INJURY OR DEATH ACCRUED BEFORE MARCH 30, 1956

Pub. L. 85–861, §17, Sept. 2, 1958, 72 Stat. 1558, disallowed claims for personal injury or death under section 2733 of this title, for more than the cost of reasonable medical, hospital, and burial expenses actually incurred if the claim accrued before March 30, 1956.

§ 2733a. Medical malpractice claims by members of the uniformed services

(a) IN GENERAL.—Consistent with this section and under such regulations as the Secretary of Defense shall prescribe under subsection (f), the Secretary may allow, settle, and pay a claim against the United States for personal injury or death incident to the service of a member of the uniformed services that was caused by the medical malpractice of a Department of Defense health care provider.

(b) REQUIREMENT FOR CLAIMS.—A claim may be allowed, settled, and paid under subsection (a) only if—

(1) the claim is filed by the member of the uniformed services who is the subject of the medical malpractice claimed, or by an authorized representative on behalf of such member who is deceased or otherwise unable to file the claim due to incapacitation;

(2) the claim is for personal injury or death caused by the negligent or wrongful act or omission of a Department of Defense health care provider in the performance of medical, dental, or related health care functions while such provider was acting within the scope of employment;

(3) the act or omission constituting medical malpractice occurred in a covered military medical treatment facility;

(4) the claim is presented to the Department in writing within two years after the claim accrues;

(5) the claim is not allowed to be settled and paid under any other provision of law; and

(6) the claim is substantiated as prescribed in regulations prescribed by the Secretary of Defense under subsection (f).

(c) LIABILITY.—(1) The Department of Defense is liable for only the portion of compensable injury, loss, or damages attributable to the medical malpractice of a Department of Defense health care provider.

(2) The Department of Defense shall not be liable for the attorney fees of a claimant under this section.

(d) PAYMENT OF CLAIMS.—(1) If the Secretary of Defense determines, pursuant to regulations prescribed by the Secretary under subsection (f), that a claim under this section in excess of $100,000 is meritorious, and the claim is otherwise payable under this section, the Secretary may pay the claimant $100,000 and report any meritorious amount in excess of $100,000 to the Secretary of the Treasury for payment under section 1304 of title 31.

(2) Except as provided in paragraph (1), no claim may be paid under this section unless the amount tendered is accepted by the claimant in full satisfaction.

(e) REPORTING MEDICAL MALPRACTICE.—Not later than 30 days after a determination of medical malpractice or the payment of all or part of a claim under this section, the Secretary of Defense shall submit to the Director of the Defense Health Agency a report documenting such determination or payment to be used by the Director for all necessary and appropriate purposes, including medical quality assurance.

(f) REGULATIONS.—(1) The Secretary of Defense shall prescribe regulations to implement this section.

(2) Regulations prescribed by the Secretary under paragraph (1) shall include the following:

(A) Policies and procedures to ensure the timely, efficient, and effective processing and administration of claims under this section, including—

(i) the filing, receipt, investigation, and evaluation of a claim;

(ii) the negotiation, settlement, and payment of a claim;

(iii) such other matters relating to the processing and administration of a claim, including an administrative appeals process, as the Secretary considers appropriate.

(B) Uniform standards consistent with generally accepted standards used in a majority of States in adjudicating claims under chapter 171 of title 28 (commonly known as the ''Federal Tort Claims Act'') to be applied to the evaluation, settlement, and payment of claims under this section without regard to the place of occurrence of the medical malpractice giving rise to the claim or the military department or service of the member of the uniformed services, and without regard to foreign law in the case of claims arising in foreign countries, including uniform standards to be applied to determinations with respect to—

(i) whether an act or omission by a Department of Defense health care provider in the context of performing medical, dental, or related health care functions was negligent or wrongful, considering the specific facts and circumstances;

(ii) whether the personal injury or death of the member was caused by a negligent or wrongful act or omission of a Department of Defense health care provider in the context of performing medical, dental, or related health care functions, considering the specific facts and circumstances;

(iii) requirements relating to proof of duty, breach of duty, and causation resulting in compensable injury or loss, subject to such exclusions as may be established by the Secretary of Defense; and

(iv) calculation of damages.

(C) Such other matters as the Secretary considers appropriate.

(3) In order to implement expeditiously the provisions of this section, the Secretary may prescribe the regulations under this subsection—

(A) by prescribing an interim final rule; and

(B) not later than one year after prescribing such interim final rule and considering public

comments with respect to such interim final rule, by prescribing a final rule.

(g) LIMITATION ON ATTORNEY FEES.—(1) No attorney shall charge, demand, receive, or collect for services rendered, fees in excess of 20 percent of any claim paid pursuant to this section.

(2) Any attorney who charges, demands, receives, or collects for services rendered in connection with a claim under this section any amount in excess of the amount allowed under paragraph (1), if recovery be had, shall be fined not more than $2,000, imprisoned not more than one year, or both.

(h) ANNUAL REPORT.—Not less frequently than annually until 2025, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report—

(1) indicating the number of claims processed under this section;

(2) indicating the resolution of each such claim; and

(3) describing any other information that may enhance the effectiveness of the claims process under this section.

(i) DEFINITIONS.—In this section:

(1) COVERED MILITARY MEDICAL TREATMENT FACILITY.—The term ''covered military medical treatment facility'' means a facility described in subsection (b), (c), or (d) of section 1073d of this title.

(2) DEPARTMENT OF DEFENSE HEALTH CARE PROVIDER.—The term ''Department of Defense health care provider'' means a member of the uniformed services, civilian employee of the Department of Defense, or personal services contractor of the Department (under section 1091 of this title) authorized by the Department to provide health care services and acting within the scope of employment of such individual.

(3) MEMBER OF THE UNIFORMED SERVICES.—The term ''member of the uniformed services'' includes a member of a reserve component of the armed forces if the claim by the member under this section is in connection with personal injury or death that occurred while the member was in Federal status.

(Added Pub. L. 116–92, div. A, title VII, § 731(a)(1), Dec. 20, 2019, 133 Stat. 1457.)

EFFECTIVE DATE

Pub. L. 116–92, div. A, title VII, § 731(d), Dec. 20, 2019, 133 Stat. 1460, provided that:

''(1) EFFECTIVE DATE.—The amendments made by this section [enacting this section and amending section 2735 of this title and section 1304 of Title 31, Money and Finance] shall apply to any claim filed under section 2733a of such title, as added by subsection (a)(1), on or after January 1, 2020.

''(2) TRANSITION.—Any claim filed in calendar year 2020 shall be deemed to be filed within the time period specified in section 2733a(b)(4) of such title, as so added, if it is filed within three years after it accrues.''

§ 2734. Property loss; personal injury or death: incident to noncombat activities of the armed forces; foreign countries

(a) To promote and to maintain friendly relations through the prompt settlement of meritorious claims, the Secretary concerned, or an officer or employee designated by the Secretary, may appoint, under such regulations as the Secretary may prescribe, one or more claims commissions, each composed of one or more officers or employees or combination of officers or employees of the armed forces, to settle and pay in an amount not more than $100,000, a claim against the United States for—

(1) damage to, or loss of, real property of any foreign country or of any political subdivision or inhabitant of a foreign country, including damage or loss incident to use and occupancy;

(2) damage to, or loss of, personal property of any foreign country or of any political subdivision or inhabitant of a foreign country, including property bailed to the United States; or

(3) personal injury to, or death of, any inhabitant of a foreign country;

if the damage, loss, personal injury, or death occurs outside the United States, or the Commonwealths or possessions, and is caused by, or is otherwise incident to noncombat activities of, the armed forces under his jurisdiction, or is caused by a member thereof or by a civilian employee of the military department concerned or the Coast Guard, as the case may be. The claim of an insured, but not that of a subrogee, may be considered under this subsection. In this section, ''foreign country'' includes any place under the jurisdiction of the United States in a foreign country. An officer or employee may serve on a claims commission under the jurisdiction of another armed force only with the consent of the Secretary of his department, or his designee, but shall perform his duties under regulations of the department appointing the commission.

(b) A claim may be allowed under subsection (a) only if—

(1) it is presented within two years after it accrues;

(2) in the case of a national of a country at war with the United States, or of any ally of that country, the claimant is determined by the commission or by the local military commander to be friendly to the United States; and

(3) it did not arise from action by an enemy or result directly or indirectly from an act of the armed forces of the United States in combat, except that a claim may be allowed if it arises from an accident or malfunction incident to the operation of an aircraft of the armed forces of the United States, including its airborne ordnance, indirectly related to combat, and occurring while preparing for, going to, or returning from a combat mission.

(c) The Secretary concerned may appoint any officer or employee under the jurisdiction of the Secretary to act as an approval authority for claims determined to be allowable under subsection (a) in an amount in excess of $10,000.

(d) If the Secretary concerned considers that a claim in excess of $100,000 is meritorious, and the claim otherwise is payable under this section, the Secretary may pay the claimant $100,000 and report any meritorious amount in excess of $100,000 to the Secretary of the Treasury for payment under section 1304 of title 31.

(e) Except as provided in subsection (d), no claim may be paid under this section unless the

amount tendered is accepted by the claimant in full satisfaction.

(f) Upon the request of the department concerned, a claim arising in that department and covered by subsection (a) may be settled and paid by a commission appointed under subsection (a) and composed of officers of an armed force under the jurisdiction of another department.

(g) Payment of claims against the Coast Guard arising while it is operating as a service in the Department of Homeland Security shall be made out of the appropriation for the operating expenses of the Coast Guard.

(h) The Secretary of Defense may designate any claims commission appointed under subsection (a) to settle and pay, as provided in this section, claims for damage caused by a civilian employee of the Department of Defense other than an employee of a military department. Payments of claims under this subsection shall be made from appropriations as provided in section 2732 of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 154; Pub. L. 85–861, § 1(55), Sept. 2, 1958, 72 Stat. 1461; Pub. L. 86–223, § 1(1), Sept. 1, 1959, 73 Stat. 453; Pub. L. 86–411, Apr. 8, 1960, 74 Stat. 16; Pub. L. 90–521, §§ 1, 3, Sept. 26, 1968, 82 Stat. 874; Pub. L. 91–312, § 1, July 8, 1970, 84 Stat. 412; Pub. L. 93–336, § 2, July 8, 1974, 88 Stat. 292; Pub. L. 96–513, title V, § 511(95), Dec. 12, 1980, 94 Stat. 2928; Pub. L. 98–564, § 2, Oct. 30, 1984, 98 Stat. 2918; Pub. L. 101–510, div. A, title XIV, § 1481(j)(4)(A), Nov. 5, 1990, 104 Stat. 1709; Pub. L. 104–316, title II, § 202(e), Oct. 19, 1996, 110 Stat. 3842; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 109–163, div. A, title X, § 1057(a)(5), Jan. 6, 2006, 119 Stat. 3440.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	Source (U.S. Code)	Source (Statutes at Large)
2734(a)	31:224d (less 98th through 109th words and provisos).	Jan. 2, 1942, ch. 645, §§ 1 (less last proviso), 6, 7, 55 Stat. 880; restated Apr. 22, 1943, ch. 67, §§ 1 (less last proviso), 6, 7, 57 Stat. 66, 67.
2734(b)	31:224d (1st and 3d provisos).	
2734(c)	31:224d (2d proviso, less words after semicolon).	
2734(d)	31:224d (words of 2d proviso after semicolon).	
2734(e)	31:224d (98th through 109th words).	
2734(f)	31:224i.	
2734(g)	31:224h.	

In subsection (a), the words "for such purposes", "or destruction", "public", "private", "Army * * * forces", and "whether under a lease, express or implied" are omitted as surplusage. The words "armed forces under his jurisdiction" are substituted for the words "Army, Air Force, Navy, or Marine Corps". The same words are substituted for the words "Army, Air Force, Navy, or Marine Corps forces" to reflect the opinion of the Judge Advocate General of the Army (JAGD/D–55–51000, 17 Jan. 55). The word "settle" is substituted for the words "consider, ascertain, adjust, determine", since the word "settle", as defined in section 2731 of this title, includes those actions. The words "a member thereof, or by a civilian employee of the department concerned" are substituted for the words "or individual members thereof, including military personnel and civilian employees". The last sentence is substituted for the words "including places located therein which are under the temporary or permanent jurisdiction of the United States".

In subsection (a)(2), the words "United States" are substituted for the word "Government".

In subsection (b), the word "accident" is omitted as surplusage. The words "except that claims arising out of accidents or incidents occurring after December 6, 1941, but prior to May 1, 1943, may be presented at any time prior to May 1, 1944" are omitted as executed. Clauses (2) and (3) are substituted for 31:224d (3d proviso).

In subsection (c), the first 28 words of the second proviso of 31:224d and the words "but does not exceed $5,000" are omitted as covered by subsection (a). The words "commanding officer or other" are omitted as surplusage. The word "commissioned" is inserted for clarity. The word "designated" is substituted for the words "may prescribe".

In subsection (d), the word "may" is substituted for the words "shall have authority, if he deems". The words "that would otherwise be covered by this section" are inserted for clarity. The words "to be meritorious" and "character of such" are omitted as surplusage.

In subsection (f), the words "a military department" are substituted for the words "service concerned" after the words "the request of the". The words "or Commissions" and "even though not" are omitted as surplusage. The words "an armed force under the jurisdiction of another military department" are substituted for the words "service concerned" after the words "officers of the". 31:224i (last 19 words) is omitted, since all claims are paid from one appropriation made to the Department of Defense.

1958 ACT

Revised section	Source (U.S. Code)	Source (Statutes at Large)
2734(a)	31:224d.	July 28, 1956, ch. 769, § 1, 70 Stat. 703.
2734(d)	31:224d.	
2734(f)	31:224i.	
2734(h)	31:224i–1.	

In subsections (a)(1) and (2), the words "a foreign country" are substituted for the words "that country" to make clear that damage to a political subdivision or an inhabitant of a foreign country need not have occurred in that country.

In subsection (h), the word "settle" is substituted for the words "consider, ascertain, adjust, determine,", since the word "settle", as defined in section 2731 of this title, includes those actions. The words "as provided in this section" are substituted for the words "as described in section 224d of this title" and 31:224i–1 (2d sentence).

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–163 substituted "Commonwealths or possessions" for "Territories, Commonwealths, or possessions" in concluding provisions.

2002—Subsec. (g). Pub. L. 107–296 substituted "Department of Homeland Security" for "Department of Transportation".

1996—Subsec. (d). Pub. L. 104–316 substituted "Secretary of the Treasury" for "Comptroller General".

1990—Subsec. (h). Pub. L. 101–510 substituted "as provided in section 2732 of this title" for "available to the Office of the Secretary of Defense for the payment of claims".

1984—Subsec. (a). Pub. L. 98–564, § 2(1), substituted "$100,000" for "$25,000" and inserted provisions whereby employees as well as officers of the Secretary may settle claims in text preceding par. (1).

Pub. L. 98–564, § 2(2), inserted "or employee" after "An officer" in last sentence.

Subsec. (c). Pub. L. 98–564, § 2(3), substituted provisions whereby the Secretary may appoint officers and employees to act as approval authority for claims in excess of $10,000 for provisions which provided that allowance of a claim for more than $2,500 may be subject to the approval of any commissioned officer designated by the Secretary concerned.

Subsec. (d). Pub. L. 98–564, § 2(4), substituted provisions providing that if the Secretary considers a claim in excess of $100,000 meritorious, the Secretary may pay $100,000 and report any excess amount to the Comptroller General for provisions which provided that for claims in excess of $25,000 the Secretary may pay $25,000 and certify any excess to Congress as a legal claim to be paid from appropriations.

1980—Subsec. (g). Pub. L. 96–513 substituted ''Department of Transportation'' for ''Department of the Treasury''.

1974—Subsec. (a). Pub. L. 93–336 substituted ''$25,000'' for ''$15,000''.

Subsec. (d). Pub. L. 93–336 substituted ''$25,000'' for ''$15,000'' in two places.

1970—Subsec. (d). Pub. L. 91–312 authorized the Secretary to pay, without certification to Congress, up to $15,000 towards the settlement of meritorious claims in excess of $15,000.

Subsec. (e). Pub. L. 91–312 excepted claims under subsec. (d) from requirement that all claims paid be accepted by the claimant in full satisfaction, and struck out provision limiting the application of such requirement to claims payable under subsec. (a) of this section.

1968—Subsec. (a). Pub. L. 90–521, § 1, struck out ''under his jurisdiction'' after ''armed forces'' in text preceding cl. (1) and permitted an officer to serve on a claims commission under the jurisdiction of another armed force only with the consent of the Secretary of his department, or his designee, but required him to perform his duties under regulations of the department appointing the commission, respectively.

Subsec. (b)(3). Pub. L. 90–521, § 3, provided for allowance of claim if it arises from an accident or malfunction incident to the operation of an aircraft of the armed forces of the United States, including the airborne ordnance, indirectly related to combat, and occurring while preparing for, going to, or returning from a combat mission.

1960—Subsec. (b). Pub. L. 86–411 substituted ''two years'' for ''one year'' in cl. (1).

1959—Pub. L. 86–223, § 1(1)(A), substituted ''the armed forces'' for ''Department of Army, Navy, or Air Force'' in section catchline.

Subsec. (a). Pub. L. 86–223, § 1(1)(B), substituted ''concerned'' and ''the military department concerned or the Coast Guard, as the case may be'' for ''of a military department'' and ''the department concerned'', respectively.

Subsecs. (c), (d). Pub. L. 86–223, § 1(1)(C), struck out ''of the military department'' after ''Secretary''.

Subsec. (f). Pub. L. 86–223, § 1(1)(D), substituted ''the department concerned'' for ''a military department'' and deleted ''military'' after ''another''.

Subsec. (g). Pub. L. 86–223, § 1(1)(E), substituted provision for payment of claims against the Coast Guard arising while it is operating as a service in the Department of the Treasury out of the appropriation for the operating expenses of the Coast Guard for provisions excluding such claims unless they arise, are settled and paid while the Coast Guard is operating as a service of the Navy and authorizing Coast Guard officers to serve on claims commissions or to approve settlements, only for claims against the Coast Guard.

1958—Subsec. (a). Pub. L. 85–861, § 1(55)(A)–(D), struck out ''arising in foreign countries'' after ''meritorious claims'', and substituted ''$15,000'' for ''$5,000'', ''outside the United States, or the Territories, Commonwealths, or possessions,'' for ''in that country'', and ''a foreign country'' for ''that country'' in cls. (1) and (2).

Subsec. (d). Pub. L. 85–861, § 1(55)(A), substituted ''$15,000'' for ''$5,000''.

Subsec. (f). Pub. L. 85–861, § 1(55)(E), substituted ''Upon'' for ''In time of war and upon''.

Subsec. (h). Pub. L. 85–861, § 1(55)(F), added subsec. (h).

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

§ 2734a. Property loss; personal injury or death: incident to noncombat activities of armed forces in foreign countries; international agreements

(a) When the United States is a party to an international agreement which provides for the settlement or adjudication and cost sharing of claims against the United States arising out of the acts or omissions of a member or civilian employee of an armed force of the United States done in the performance of official duty, or arising out of any other act, omission, or occurrence for which an armed force of the United States is legally responsible under the law of another party to the international agreement, and causing damage in the territory of such party, the Secretary of Defense or the Secretary of Homeland Security or their designees may—

(1) reimburse the party to the agreement for the agreed pro rata share of amounts, including any authorized arbitration costs, paid by that party in satisfying awards or judgments on claims, in accordance with the agreement; or

(2) pay the party to the agreement the agreed pro rata share of any claim, including any authorized arbitration costs, for damage to property owned by it, in accordance with the agreement.

(b) A claim arising out of an act of an enemy of the United States or arising, directly or indirectly, from an act of the armed forces, or a member thereof, while engaged in combat may not be considered or paid under this section.

(c) A reimbursement or payment under this section shall be made by the Secretary of Defense out of appropriations as provided in section 2732 of this title except that payment of claims against the Coast Guard arising while it is operating as a service of the Department of Homeland Security shall be made out of the appropriations for the operating expenses of the Coast Guard. The appropriations referred to in this subsection may be used to buy foreign currencies required for the reimbursement or payment.

(d) Upon the request of the Secretary of Homeland Security or his designee, any payments made relating to claims arising from the activities of the Coast Guard and covered by subsection (a) may be reimbursed or paid to the foreign country concerned by the authorized representative of the Department of Defense out of appropriations as provided in section 2732 of this title, subject to reimbursement from the Department of Homeland Security.

(Added Pub. L. 87–651, title I, § 113(a), Sept. 7, 1962, 76 Stat. 512; amended Pub. L. 90–521, § 4, Sept. 26, 1968, 82 Stat. 874; Pub. L. 94–390, § 1(1), Aug. 19, 1976, 90 Stat. 1191; Pub. L. 98–525, title XIV, § 1405(42)(A), Oct. 19, 1984, 98 Stat. 2625; Pub. L. 101–510, div. A, title XIV, § 1481(j)(4)(B), Nov. 5,

1990, 104 Stat. 1709; Pub. L. 107–296, title XVII, §1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2734a(a) ...	31:224i–2 (less proviso).	Aug. 31, 1954, ch. 1152, §§1 (less proviso, as applicable to §2), 4 (as applicable to §1), 68 Stat. 1006, 1007.
2734a(b) ...	31:224i–2 (proviso, as applicable to 31:224i–2).	
2734a(c) ...	31:224i–5 (as applicable to 31–224i–2).	

In subsection (a), the following substitutions are made: ''Under'' for ''Pursuant to the terms''; ''country'' for ''government''; ''under its laws and regulations'' for ''in accordance with the laws and regulations of such foreign government''; ''may'' for ''is authorized''; ''amounts'' for ''sums''; and ''spent'' for ''expended''. The words ''now or may hereafter be'' are omitted as surplusage.

In subsection (b), the following substitutions are made: ''act'' for ''action'' and ''may'' for ''shall''.

In subsection (c), the words ''pro rata'' are omitted as surplusage. The following substitutions are made: ''under this section'' for ''by the United States with respect to a settlement, award, or compromise made pursuant to sections 224i–2 to 224i–5 of this title''; ''to buy'' for ''for the purchase of''; and ''needed'' for ''necessary''. The words ''which appropriations are authorized'' are omitted as unnecessary.

AMENDMENTS

2002—Subsecs. (a), (c), (d). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation'' wherever appearing.

1990—Subsec. (c). Pub. L. 101–510, §1481(j)(4)(B)(i), substituted ''as provided in section 2732 of this title'' for ''for that purpose''.

Subsec. (d). Pub. L. 101–510, §1481(j)(4)(B)(ii), substituted ''appropriations as provided in section 2732 of this title'' for ''the appropriation for claims of the Department of Defense''.

1984—Pub. L. 98–525 substituted ''in foreign countries'' for ''; foreign countries'' in section catchline.

1976—Subsec. (a). Pub. L. 94–390 substituted provisions authorizing the Secretary of Defense or the Secretary of Transportation to reimburse or pay, including arbitration costs, claims arising under international agreements to which the United States is a party and providing for settlement or adjudication and cost sharing based on the responsibility of the United States under the law of the other party to the international agreement, for provisions authorizing the Secretary of Defense to reimburse or pay claims arising under international agreements to which the United States is a party and providing for adjudication by the other country under its laws and regulations.

1968—Subsec. (c). Pub. L. 90–521, §4(a), provided for payment of claims against the Coast Guard arising while it is operating as a service of the Department of Transportation out of appropriations for operating expenses of the Coast Guard.

Subsec. (d). Pub. L. 90–521, §4(b), added subsec. (d).

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

§ 2734b. Property loss; personal injury or death: incident to activities of armed forces of foreign countries in United States; international agreements

(a) When the United States is a party to an international agreement which provides for the settlement or adjudication by the United States under its laws and regulations, and subject to agreed pro rata reimbursement, of claims against another party to the agreement arising out of the acts or omissions of a member or civilian employee of an armed force of that party done in the performance of official duty, or arising out of any other act, omission, or occurrence for which that armed force is legally responsible under applicable United States law, and causing damage in the United States, or a territory, Commonwealth, or possession thereof; those claims may be prosecuted against the United States, or settled by the United States, in accordance with the agreement, as if the acts or omissions upon which they are based were the acts or omissions of a member or a civilian employee of an armed force of the United States.

(b) When a dispute arises in the settlement or adjudication of a claim under this section whether an act or omission was in the performance of official duty, or whether the use of a vehicle of the armed forces was authorized, the dispute shall be decided under the international agreement with the foreign country concerned. Such a decision is final and conclusive. The Secretary of Defense may pay that part of the cost of obtaining such a decision that is chargeable to the United States under that agreement.

(c) A claim arising out of an act of an enemy of the United States may not be considered or paid under this section.

(d) A payment under this section shall be made by the Secretary of Defense out of appropriations as provided in section 2732 of this title.

(Added Pub. L. 87–651, title I, §113(a), Sept. 7, 1962, 76 Stat. 512; amended Pub. L. 94–390, §1(2), Aug. 19, 1976, 90 Stat. 1191; Pub. L. 101–510, div. A, title XIV, §1481(j)(4)(C), Nov. 5, 1990, 104 Stat. 1709.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2734b(a) ...	31:224i–3.	Aug. 31, 1954, ch. 1152, §§1 (proviso, less applicability to §1), 2, 3, 4 (less applicability to §1), 68 Stat. 1006, 1007.
2734b(b) ...	31:224i–4.	
2734b(c) ...	31:224i–2 (proviso, less applicability to 31:224i–2).	
2734b(d) ...	31:224i–5 (less applicability to 31:224i–2).	

In subsection (a), the following omissions as surplusage are made: ''the terms of'' and ''now or may hereafter be''. The following substitutions are made: ''country'' for ''government''; ''in the United States, or a Territory, Commonwealth, or possession'' for ''within the territory of the United States''; ''under'' for ''in accordance with''; ''upon which they are based were the acts or omissions of'' for ''were performed''.

In subsection (b), the following substitutions are made: ''under this section'' for ''asserted under section 224i–3 of this title''; ''the dispute'' for ''such disputed question or questions''; ''under'' for ''in accordance with the terms of''; and the last sentence for the last sentence of 31:224i–4. The following omissions as surplusage are made: ''of a civilian employee or military personnel of a foreign country'' and ''of the armed forces for such party''.

In subsection (c), the word ''act'' is substituted for the word ''action''.

In subsection (d), the words ''under this section'' are substituted for the words ''by the United States with respect to a settlement, award, or compromise made pursuant to section 224i–2 to 224i–5 of this title''. The words ''which appropriations are authorized'' are omitted as unnecessary.

AMENDMENTS

1990—Subsec. (d). Pub. L. 101–510 substituted "as provided in section 2732 of this title" for "for that purpose".

1976—Subsec. (a). Pub. L. 94–390 substituted provisions authorizing claims, for which another armed force is legally responsible under applicable United States law, to be prosecuted against the United States or settled by the United States in accordance with an international agreement providing for the settlement or adjudication by the United States under its laws and regulations as if the acts or omissions upon which the claims are based were of a member or a civilian employee of an armed force of the United States, for provisions authorizing claims to be prosecuted against the United States or settled by the United States by adjudication by the United States under its laws and regulations as if the acts or omissions upon which the claims are based were the acts or omissions in the performance of official duty of a civilian employee or a member of an armed force.

§ 2735. Settlement: final and conclusive

Notwithstanding any other provision of law, the settlement of a claim under section 2733, 2733a, 2734, 2734a, 2734b, or 2737 of this title is final and conclusive.

(Aug. 10, 1956, ch. 1041, 70A Stat. 155; Pub. L. 88–558, § 5(1), Aug. 31, 1964, 78 Stat. 768; Pub. L. 92–413, Aug. 29, 1972, 86 Stat. 649; Pub. L. 116–92, div. A, title VII, § 731(c)(1), Dec. 20, 2019, 133 Stat. 1460.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2735	31:222c (1st sentence of (e)). 31:223b (4th sentence). 31:224d (last proviso).	May 29, 1945, ch. 135, § 1 (e) (1st sentence); restated July 3, 1952, ch. 548, § 1 (1st sentence of last par.), 66 Stat. 323. July 3, 1943, ch. 189, § 1 (4th sentence), 57 Stat. 373. Jan. 2, 1942, ch. 645, § 1 (last proviso); restated Apr. 22, 1943, ch. 67, § 1 (last proviso), 57 Stat. 67.

The words "for all purposes" and "to the contrary", in each source credit; "by the Secretary of the Army, the Secretary of the Navy, the Secretary of the Air Force, or the Secretary of Defense, or their designees" and "such regulations as they, respectively, may prescribe hereunder", in 31:222c(e); "by the Secretary of the Army, or his designee" and "such regulations as he may prescribe hereunder", in 31:223b; and "by such Commissions", in 31:224d; are omitted as surplusage.

AMENDMENTS

2019—Pub. L. 116–92 substituted "2733, 2733a," for "2733,".

1972—Pub. L. 92–413 inserted reference to sections 2734a, 2734b, and 2737 of this title.

1964—Pub. L. 88–558 struck out reference to section 2732.

EFFECTIVE DATE OF 2019 AMENDMENT

Amendment by Pub. L. 116–92 applicable to any claim filed under section 2733a of this title, on or after Jan. 1, 2020, and any claim filed in calendar year 2020 deemed to be filed within the time period specified in section 2733a(b)(4) of this title if it is filed within three years after it accrues, see section 731(d) of Pub. L. 116–92, set out as an Effective Date note under section 2733a of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Pub. L. 88–558, § 5, Aug. 31, 1964, 78 Stat. 768, provided that the amendment made by that section is effective two years from Aug. 31, 1964.

REPEALS

The directory language of, but not the amendment made by, Pub. L. 88–558, Aug. 31, 1964, 78 Stat. 767, cited as a credit to this section and in the Effective Date of 1964 Amendment note above, was repealed by Pub. L. 97–258, § 5(b), Sept. 13, 1982, 96 Stat. 1068.

§ 2736. Property loss; personal injury or death: advance payment

(a)(1) In the case of a person who is injured or killed, or whose property is damaged or lost, under circumstances for which the Secretary of a military department is authorized by law to allow a claim, the Secretary of the military department concerned may make a payment to or for the person, or the legal representatives of the person, in advance of the submission of such a claim or, if such a claim is submitted, in advance of the final settlement of the claim. The amount of such a payment may not exceed $100,000.

(2) Payments under this subsection are limited to payments which would otherwise be payable under section 2733 or 2734 of this title or section 715 of title 32.

(3) The Secretary of a military department may delegate the authority to make payments under this subsection to the Judge Advocate General of an armed force under the jurisdiction of the Secretary. The Secretary may delegate such authority to any other officer or employee under the jurisdiction of the Secretary, but only with respect to the payment of amounts of $25,000 or less.

(4) Payments under this subsection shall be made under regulations prescribed by the Secretary of the military department concerned.

(b) Any amount paid under subsection (a) shall be deducted from any amount that may be allowed under any other provision of law to the person, or his legal representative, for injury, death, damage, or loss attributable to the accident concerned.

(c) So far as practicable, regulations prescribed under this section shall be uniform for the military departments.

(d) Payment of an amount under subsection (a) is not an admission by the United States of liability for the accident concerned.

(Added Pub. L. 87–212, § 1(1), Sept. 8, 1961, 75 Stat. 488; amended Pub. L. 90–521, § 2, Sept. 26, 1968, 82 Stat. 874; Pub. L. 98–564, § 3, Oct. 30, 1984, 98 Stat. 2919; Pub. L. 100–456, div. A, title VII, § 735(a), Sept. 29, 1988, 102 Stat. 2005.)

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–456 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: "Under such regulations as the Secretary of a military department may prescribe, payment of an amount not in excess of $10,000 may be made in advance of the submission of a claim to or for any person, or his legal representatives, who was injured or killed, or whose property was damaged or lost, under circumstances for which allowance of a claim is authorized by law. Payments under this subsection are limited to those which would otherwise be payable under

section 2733 or 2734 of this title or section 715 of title 32.''

1984—Subsec. (a). Pub. L. 98–564 substituted ''$10,000'' for ''$1,000''.

1968—Pub. L. 90–521 substituted ''advance payment'' for ''incident to aircraft or missile operation'' in section catchline.

Subsec. (a). Pub. L. 90–521 substituted ''under circumstances'' for ''as the result of an accident involving an aircraft or missile under the control of that department''.

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–456, div. A, title VII, §735(b), Sept. 29, 1988, 102 Stat. 2006, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to any claim which would otherwise be payable under section 2733 or 2734 of title 10, United States Code, or under section 715 of title 32, United States Code, and which has not been finally settled on or before the date of the enactment of this Act [Sept. 29, 1988].''

§ 2737. Property loss; personal injury or death: incident to use of property of the United States and not cognizable under other law

(a) Under such regulations as the Secretary concerned may prescribe, he or his designee may settle and pay, in an amount not more than $1,000, a claim against the United States, not cognizable under any other provision of law, for—

(1) damage to, or loss of, property; or

(2) personal injury or death;

caused by a civilian official or employee of a military department or the Coast Guard, or a member of the armed forces, incident to the use of a vehicle of the United States at any place, or any other property of the United States on a Government installation.

(b) Under such regulations as the Secretary of Defense may prescribe, he or his designee has the same authority as the Secretary of a military department with respect to a claim, not cognizable under any other provision of law, for—

(1) damage to, or loss of, property; or

(2) personal injury or death;

caused by a civilian official or employee of the Department of Defense not covered by subsection (a), incident to the use of a vehicle of the United States at any place, or any other property of the United States on a Government installation.

(c) A claim may not be allowed under subsection (a) or (b) if the damage to, or loss of, property, or the personal injury or death was caused wholly or partly by a negligent or wrongful act of the claimant, his agent, or his employee.

(d) A claim for personal injury or death under this section may not be allowed for more than the cost of reasonable medical, hospital, and burial expenses actually incurred, and not otherwise furnished or paid by the United States.

(e) No claim may be allowed under this section unless it is presented in writing within two years after it accrues.

(f) A claim may not be paid under subsection (a) or (b) unless the amount tendered is accepted by the claimant in full satisfaction.

(g) No claim or any part thereof, the amount of which is legally recoverable by the claimant under an indemnifying law or indemnity contract, may be paid under this section. No subrogated claim may be paid under this section.

(h) So far as practicable, regulations prescribed under this section shall be uniform. Regulations prescribed under this section by the Secretaries of the military departments must be approved by the Secretary of Defense.

(Added Pub. L. 87–769, §1(1)(A), Oct. 9, 1962, 76 Stat. 767, §2736; renumbered §2737, Pub. L. 89–718, §21(a), Nov. 2, 1966, 80 Stat. 1118.)

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 2738. Property loss: reimbursement of members for certain losses of household effects caused by hostile action

(a) AUTHORITY TO REIMBURSE.—The Secretary concerned may reimburse a member of the armed forces in an amount not more than $100,000 for a loss described in subsection (b).

(b) COVERED LOSSES.—This section applies with respect to a loss of household effects sustained during a move made incident to a change of permanent station when, as determined by the Secretary, the loss was caused by a hostile action incident to war or a warlike action by a military force.

(c) LIMITATION.—The Secretary may provide reimbursement under this section for a loss described in subsection (b) only to the extent that the loss is not reimbursed under insurance or under the authority of another provision of law.

(d) APPLICABILITY OF OTHER AUTHORITIES AND REQUIREMENTS.—Subsections (b), (d), (e), (f), and (g) of section 2733 of this title shall apply to a request for a reimbursement under this section as if the request were a claim against the United States.

(Added Pub. L. 103–337, div. A, title V, §557(a), Oct. 5, 1994, 108 Stat. 2775.)

EFFECTIVE DATE

Pub. L. 103–337, div. A, title V, §557(c), Oct. 5, 1994, 108 Stat. 2776, provided that:

''(1) Section 2738 of title 10, United States Code, as added by subsection (a), applies with respect to losses incurred after June 30, 1990.

''(2) In the case of a loss incurred after June 30, 1990, and before the date of the enactment of this Act [Oct. 5, 1994], a request for reimbursement shall be filed with the Secretary of the military department concerned not later than two years after such date of enactment.''

§ 2739. Amounts recovered from third parties for loss or damage to personal property shipped or stored at Government expense: crediting to appropriations

(a) CREDITING OF COLLECTIONS.—Any qualifying military department third-party collection shall be credited to the appropriate current appropriation. Amounts so credited shall be merged with the funds in that appropriation and

shall be available for the same period and purposes as the funds with which merged.

(b) APPROPRIATE CURRENT APPROPRIATION.—For purposes of subsection (a), the appropriate current appropriation with respect to a qualifying military department third-party collection is the appropriation currently available, as of the date of the collection, for the payment of claims by that military department for loss or damage of personal property shipped or stored at Government expense.

(c) QUALIFYING MILITARY DEPARTMENT THIRD-PARTY COLLECTIONS.—For purposes of subsection (a), a qualifying military department third-party collection is any amount that a military department collects under sections 3711, 3716, 3717, and 3721 of title 31 from a third party for a loss or damage to personal property that occurred during shipment or storage of the property at Government expense and for which the Secretary of the military department paid the owner in settlement of a claim.

(Added Pub. L. 105–261, div. A, title X, §1010(a)(1), Oct. 17, 1998, 112 Stat. 2117.)

EFFECTIVE DATE

Pub. L. 105–261, div. A, title X, §1010(b), Oct. 17, 1998, 112 Stat. 2117, provided that: ''Section 2739 of title 10, United States Code, as added by subsection (a), applies with respect to amounts collected by a military department on or after the date of the enactment of this Act [Oct. 17, 1998].''

§ 2740. Property loss: reimbursement of members and civilian employees for full replacement value of household effects when contractor reimbursement not available

The Secretary of Defense and the Secretaries of the military departments, in paying a claim under section 3721 of title 31 arising from loss or damage to household goods stored or transported at the expense of the Department of Defense, may pay the claim on the basis of full replacement value in any of the following cases in which reimbursement for the full replacement value for the loss or damage is not available directly from a carrier under section 2636a of this title:

(1) A case in which—

(A) the lost or damaged goods were stored or transported under a contract, tender, or solicitation in accordance with section 2636a of this title that requires the transportation service provider to settle claims on the basis of full replacement value; and

(B) the loss or damage occurred under circumstances that exclude the transportation service provider from liability.

(2) A case in which—

(A) the loss or damage occurred while the lost or damaged goods were in the possession of an ocean carrier that was transporting, loading, or unloading the goods under a Department of Defense contract for ocean carriage; and

(B) the land-based portions of the transportation were under contracts, in accordance with section 2636a of this title, that require the land carriers to settle claims on the basis of full replacement value.

(3) A case in which—

(A) the lost or damaged goods were transported or stored under a contract or solicitation that requires at least one of the transportation service providers or carriers that handled the shipment to settle claims on the basis of full replacement value pursuant to section 2636a of this title;

(B) the lost or damaged goods have been in the custody of more than one independent contractor or transportation service provider; and

(C) a claim submitted to the delivering transportation service provider or carrier is denied in whole or in part because the loss or damage occurred while the lost or damaged goods were in the custody of a prior transportation service provider or carrier or government entity.

(Added Pub. L. 111–383, div. A, title III, §354(a)(1), Jan. 7, 2011, 124 Stat. 4194.)

EFFECTIVE DATE

Pub. L. 111–383, div. A, title III, §354(b), Jan. 7, 2011, 124 Stat. 4195, provided that: ''Section 2740 of title 10, United States Code, as added by subsection (a), shall apply with respect to losses incurred after the date of the enactment of this Act [Jan. 7, 2011].''

CHAPTER 165—ACCOUNTABILITY AND RESPONSIBILITY

Sec.
2771. Final settlement of accounts: deceased members.
2772. Share of fines and forfeitures to benefit Armed Forces Retirement Home.
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AMENDMENTS

2011—Pub. L. 111–383, div. A, title III, §355(b), Jan. 7, 2011, 124 Stat. 4197, added item 2790.

2008—Pub. L. 110–181, div. A, title III, § 375(b), Jan. 28, 2008, 122 Stat. 83, added items 2788 and 2789.

2006—Pub. L. 109–364, div. A, title X, § 1053(a)(2), Oct. 17, 2006, 120 Stat. 2396, added item 2773b.

2002—Pub. L. 107–314, div. A, title X, §§ 1005(b), 1006(a)(2), 1007(b)(2), 1008(b), Dec. 2, 2002, 116 Stat. 2632–2635, substituted ''purchase'' for ''credit'' in item 2784 and added items 2773a, 2784a, and 2787.

1999—Pub. L. 106–65, div. A, title IX, § 933(a)(2), title X, § 1008(a)(2), Oct. 5, 1999, 113 Stat. 730, 738, added items 2784 to 2786.

1996—Pub. L. 104–316, title I, § 105(d), Oct. 19, 1996, 110 Stat. 3830, struck out item 2778 ''Accounts of the military departments''.

Pub. L. 104–106, div. B, title XXVIII, § 2821(b), Feb. 10, 1996, 110 Stat. 556, added item 2782.

1993—Pub. L. 103–160, div. A, title XI, § 1182(a)(8)(C), Nov. 30, 1993, 107 Stat. 1771, added item 2783.

1990—Pub. L. 101–510, div. A, title XIV, § 1405(c)(2), title XV, § 1533(a)(4)(B), Nov. 5, 1990, 104 Stat. 1680, 1734, substituted ''Retirement Home'' for ''retirement homes'' in item 2772 and struck out item 2782 ''Unobligated balances withdrawn from availability for obligation: limitations on restoration''.

1989—Pub. L. 101–189, div. A, title III, § 342(a)(2), title XVI, § 1603(a)(2), Nov. 29, 1989, 103 Stat. 1420, 1598, added items 2772 and 2782.

1988—Pub. L. 100–370, § 1(m)(2), July 19, 1988, 102 Stat. 850, added item 2781.

1987—Pub. L. 100–26, § 7(j)(7)(C), Apr. 21, 1987, 101 Stat. 283, substituted ''allowances and of'' for ''allowances, and'' in item 2774.

1986—Pub. L. 99–661, div. A, title XIII, § 1309(b), Nov. 14, 1986, 100 Stat. 3983, added item 2780.

1985—Pub. L. 99–224, § 2(b), Dec. 28, 1985, 99 Stat. 1742, substituted ''and'' for ''other than'' in item 2774.

Pub. L. 99–167, title VIII, § 802(d)(2), Dec. 3, 1985, 99 Stat. 987, substituted ''assigned to military housing'' for ''for damage to housing and related equipment and furnishings'' in item 2775.

1984—Pub. L. 98–407, title VIII, § 801(a)(2), Aug. 28, 1984, 98 Stat. 1518, substituted ''members for damage to housing and related equipment and furnishings'' for ''member for damages to family housing, equipment, and furnishings'' in item 2775.

1982—Pub. L. 97–258, § 2(b)(7)(A), (8)(A), Sept. 13, 1982, 96 Stat. 1054, substituted ''Designation, powers, and accountability of deputy disbursing officials'' for ''Accountability for public money: disbursing officers; agent officers'' in item 2773 and added items 2776, 2777, 2778, and 2779.

1980—Pub. L. 96–513, title V, § 511(96), Dec. 12, 1980, 94 Stat. 2928, struck out item 2772 ''Withholding pay of officers''.

Pub. L. 96–418, title V, § 506(b), Oct. 10, 1980, 94 Stat. 1766, added item 2775.

1972—Pub. L. 92–453, § 1(2), Oct. 2, 1972, 86 Stat. 759, added item 2774.

1962—Pub. L. 87–480, § 1(1)(B), June 8, 1962, 76 Stat. 94, added item 2773.

§ 2771. Final settlement of accounts: deceased members

(a) In the settlement of the accounts of a deceased member of the armed forces, an amount due from the armed force of which he was a member shall be paid to the person highest on the following list living on the date of death:

(1) Beneficiary designated by him in writing to receive such an amount, if the designation is received, before the deceased member's death, at the place named in regulations to be prescribed by the Secretary concerned.

(2) Surviving spouse.

(3) Children and their descendants, by representation.

(4) Father and mother in equal parts or, if either is dead, the survivor.

(5) Legal representative.

(6) Person entitled under the law of the domicile of the deceased member.

(b) Designations and changes of designation of beneficiaries under subsection (a)(1) are subject to regulations to be prescribed by the Secretary concerned. So far as practicable, these regulations shall be uniform for the uniformed services.

(c) Payments under subsection (a) shall be made by the Secretary of Defense.

(d) A payment under this section bars recovery by any other person of the amount paid.

(Aug. 10, 1956, ch. 1041, 70A Stat. 155; Pub. L. 85–861, § 1(56), Sept. 2, 1958, 72 Stat. 1461; Pub. L. 86–641, July 12, 1960, 74 Stat. 473; Pub. L. 89–718, § 8(a), Nov. 2, 1966, 80 Stat. 1117; Pub. L. 96–513, title V, § 511(97), Dec. 12, 1980, 94 Stat. 2928; Pub. L. 103–160, div. A, title XI, § 1182(a)(11), Nov. 30, 1993, 107 Stat. 1771; Pub. L. 104–316, title II, § 202(f), Oct. 19, 1996, 110 Stat. 3842.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2771(a)	10:868 (less proviso). 34:941a (less proviso).	June 30, 1906, ch. 3914, § 1 (last par. under ''State or Territorial Homes for Disabled Soldiers and Sailors''); restated Dec. 7, 1944, ch. 519; restated Feb. 25, 1946, ch. 35, § 4, 60 Stat. 30. Feb. 25, 1946, ch. 35, § 1, 60 Stat. 30; Aug. 4, 1949, ch. 393, § 18, 63 Stat. 560.
2771(b)	10:868 (proviso). 34:941a (proviso).	

In subsections (a) and (b), the words ''General Accounting Office'' are substituted for the words ''accounting officers'', for clarity.

In subsection (a), the word ''member'' is substituted for the words ''officers or enlisted persons'', in 10:868 and 34:941a. The words ''his legal representative'' are substituted for the words ''a duly appointed legal representative of the estate'', since an estate, being property and not an entity, has no representative. The words ''duly appointed'' are omitted as surplusage. The words ''highest on the following list'' are substituted for the words ''following order of precedence'', in 10:868 and 34:941a. Clauses (1)–(4) are substituted for the words between the first and second colons of 10:868 and 34:941a. The words ''Surviving spouse'' are substituted for the words ''widow or widower'' after the words ''First, to''.

In subsection (b), the words ''That this section shall not be so construed as to prevent'', ''or persons'', and ''actually'', in 10:868 and 34:941a, are omitted as surplusage.

1958 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2771(a)	37:361. 37:362. 37:365.	July 12, 1955, ch. 328, §§ 1–3, 4 (less proviso), 5 (first sentence), 69 Stat. 295, 296.
2771(b)	37:364 (less proviso).	
2771(c)	37:363 (less last sentence).	
2771(d)	37:363 (last sentence).	

In subsection (a), the definition of the term ''Department'', in 37:361, is omitted as unnecessary, since the particular departments referred to are spelled out in the revised text. The definition of the term ''uniformed services'', in 37:361, is omitted as covered by the word ''member'' in this revised section and by sections 3 and 4 of the Act enacting this revised section. Clauses (1)–(6) are substituted for the last 5 clauses of 37:362.

The words ''regulations to be prescribed by the Secretary concerned'' are substituted for the words ''regulations of the Department concerned'', since the ''Department'', as such, cannot issue regulations.

In subsection (a)(2), the words ''surviving spouse'' are substituted for the words ''widow or widower''. As defined in section 101(32), ''spouse'' includes a widower.

In subsection (b), the words ''are subject to'' are substituted for the words ''shall be made under''.

In subsection (c), the word ''Under'' is substituted for the words ''Subject to''. The words ''rules and'' are omitted as surplusage.

AMENDMENTS

1996—Subsec. (c). Pub. L. 104–316 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''Under such regulations as the Comptroller General may prescribe, payments under subsection (a) shall be made by the military department concerned or the Department of Transportation, as the case may be. Payment under clause (6) of subsection (a) shall be made—

''(1) upon settlement by the General Accounting Office; or

''(2) as otherwise authorized by the Comptroller General.''

1993—Subsec. (a). Pub. L. 103–160, §1182(a)(11)(A), struck out ''who dies after December 31, 1955'' after ''armed forces'' in introductory provisions.

Subsec. (b). Pub. L. 103–160, §1182(a)(11)(B), substituted ''for the uniformed services'' for ''for the armed forces, the National Oceanic and Atmospheric Administration, and the Public Health Service''.

1980—Subsec. (b). Pub. L. 96–513, §511(97)(A), substituted ''National Oceanic and Atmospheric Administration'' for ''Environmental Science Services Administration''.

Subsec. (c). Pub. L. 96–513, §511(97)(B), substituted ''Department of Transportation'' for ''Department of the Treasury''.

1966—Subsec. (b). Pub. L. 89–718 substituted ''Environmental Science Services Administration'' for ''Coast and Geodetic Survey''.

1960—Subsec. (c). Pub. L. 86–641 substituted provisions requiring payment under clause (6) of subsection (a) to be made upon settlement by the General Accounting Office or as otherwise authorized by the Comptroller General for provisions which permitted payments under clauses (2) to (6) of subsection (a) to be made only after settlement by the General Accounting Office.

1958—Subsec. (a). Pub. L. 85–861 amended subsec. (a) generally to restrict application of section to members of the armed forces who die after Dec. 31, 1955, and to permit payment to the designated beneficiaries, surviving spouse, children and their descendants, and to parents before payment to the legal representative.

Subsec. (b). Pub. L. 85–861 substituted provisions relating to designations and changes of designation of beneficiaries for provisions which authorized reimbursement of funeral expenses.

Subsecs. (c), (d). Pub. L. 85–861 added subsecs. (c) and (d).

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

REPEALS

The directory language of, but not the amendment made by, Pub. L. 89–718, §8(a), Nov. 2, 1966, 80 Stat. 1117, cited as a credit to this section, was repealed by Pub. L. 97–295, §6(b), Oct. 12, 1982, 96 Stat. 1314.

TRANSFER OF FUNCTIONS

For transfer of functions of Public Health Service, see note set out under section 802 of this title.

FINAL SETTLEMENT OF ACCOUNTS OF MEMBERS WHO DIED BEFORE JANUARY 1, 1960

Pub. L. 85–861, §29, Sept. 2, 1958, 72 Stat. 1563, authorized the General Accounting Office, in the settlement of the accounts of a member of the Army, Navy, Air Force, or Marine Corps who died before Jan. 1, 1956, to allow any amount due to the person highest on a list of persons living on the date of settlement and to provide reimbursement for funeral expenses from the amount due the decedent's estate.

DESIGNATION OF BENEFICIARY MADE BEFORE JANUARY 1, 1956

Pub. L. 85–861, §31, Sept. 2, 1958, 72 Stat. 1563, provided that: ''The designation of a beneficiary made for the purposes of any six months' death gratuity, including the designation of a person whose right to the gratuity does not depend upon that designation, and received in the military department concerned, the Department of the Treasury, the Department of Commerce, or the Department of Health, Education, and Welfare, as the case may be, before January 1, 1956, is considered as the designation of a beneficiary for the purposes of section 2771 of title 10, United States Code [this section], section 714 of title 32, United States Code, and sections 3 and 4 of this Act [amending section 857a of Title 33, and section 213a of Title 42], in the absence of a designation under one of those sections, unless the member making the designation was missing, missing in action, in the hands of a hostile force, or interned in a foreign country any time after July 11, 1955, and before January 1, 1956.''

§ 2772. Share of fines and forfeitures to benefit Armed Forces Retirement Home

(a) DEPOSIT REQUIRED.—The Secretary of the military department concerned or, in the case of the Coast Guard, the Commandant shall deposit in the Armed Forces Retirement Home Trust Fund a percentage (determined under subsection (b)) of the following amounts:

(1) The amount of forfeitures and fines adjudged against an enlisted member, warrant officer, or limited duty officer of the armed forces by sentence of a court martial or under authority of section 815 of this title (article 15) over and above any amount that may be due from the member, warrant officer, or limited duty officer for the reimbursement of the United States or any individual.

(2) The amount of forfeitures on account of the desertion of an enlisted member, warrant officer, or limited duty officer of the armed forces.

(b) DETERMINATION OF PERCENTAGE.—The Chief Operating Officer of the Armed Forces Retirement Home shall determine, on the basis of the financial needs of the Armed Forces Retirement Home, the percentage of the amounts referred to in subsection (a) to be deposited in the trust fund referred to in such subsection.

(Added Pub. L. 101–189, div. A, title III, §342(a)(1), Nov. 29, 1989, 103 Stat. 1419; amended Pub. L. 101–510, div. A, title XV, §1533(a)(3), (4)(A), Nov. 5, 1990, 104 Stat. 1733; Pub. L. 111–281, title II, §205(b)(1), Oct. 15, 2010, 124 Stat. 2911; Pub. L. 112–81, div. A, title V, §567(b)(2)(B), Dec. 31, 2011, 125 Stat. 1425.)

PRIOR PROVISIONS

A prior section 2772, act Aug. 10, 1956, ch. 1041, 70A Stat. 156, authorized withholding of pay of officers of the Army, Navy, Air Force, or Marine Corps, and is covered by section 1007 of Title 37, Pay and Allowances of the Uniformed Services, prior to repeal by Pub. L. 87–649, §14c(3), Sept. 7, 1962, 76 Stat. 501, effective Nov. 1, 1962.

AMENDMENTS

2011—Subsec. (b). Pub. L. 112–81 substituted ''Chief Operating Officer of the Armed Forces Retirement Home'' for ''Armed Forces Retirement Home Board''.

2010—Subsec. (a). Pub. L. 111–281, § 205(b)(1)(A), inserted ''or, in the case of the Coast Guard, the Commandant'' after ''concerned'' in introductory provisions.

Subsec. (c). Pub. L. 111–281, § 205(b)(1)(B), struck out subsec. (c). Text read as follows: ''In this section, the term 'armed forces' does not include the Coast Guard when it is not operating as a service in the Navy.''

1990—Pub. L. 101–510, § 1533(a)(4)(A), substituted ''Retirement Home'' for ''retirement homes'' in section catchline and amended text generally, substituting subsecs. (a) to (c) relating to shares of fines and forfeitures to benefit the Armed Forces Retirement Home for former subsecs. (a) and (b) relating to shares of fines and forfeitures to benefit the Soldiers' Home and the Naval Home.

Pub. L. 101–510, § 1533(a)(3), inserted ''and forfeitures'' after ''fines'' in subsecs. (a)(1)(A) and (b)(1)(A) and substituted '', warrant officer, or limited duty officer'' for ''or warrant officer'' wherever appearing.

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–510, div. A, title XV, § 1533(a)(3), Nov. 5, 1990, 104 Stat. 1733, provided that the amendment by that section was effective Nov. 5, 1990, prior to repeal by Pub. L. 107–107, div. A, title XIV, § 1409, Dec. 28, 2001, 115 Stat. 1265.

Amendment by section 1533(a)(4)(A) of Pub. L. 101–510 effective one year after Nov. 5, 1990, see section 1541 of Pub. L. 101–510, formerly set out as an Effective Date note under section 401 of Title 24, Hospitals and Asylums.

EFFECTIVE DATE

Pub. L. 101–189, div. A, title III, § 342(b), Nov. 29, 1989, 103 Stat. 1420, provided that:

''(1) Subsection (a) of section 2772 of such title [10 U.S.C. 2772(a)], as added by subsection (a), shall apply with respect to fines and forfeitures adjudged after the date of the enactment of this Act [Nov. 29, 1989].

''(2) Subsection (b) of such section shall apply with respect to fines and forfeitures adjudged after May 31, 1990.''

§ 2773. Designation, powers, and accountability of deputy disbursing officials

(a)(1) Subject to paragraph (3), a disbursing official of the Department of Defense may designate a deputy disbursing official—

(A) to make payments as the agent of the disbursing official;

(B) to sign checks drawn on disbursing accounts of the Secretary of the Treasury; and

(C) to carry out other duties required under law.

(2) The penalties for misconduct that apply to a disbursing official apply to a deputy disbursing official designated under this subsection.

(3) A disbursing official may make a designation under paragraph (1) only with the approval of the Secretary of Defense or, in the case of a disbursing official of a military department, the Secretary of that military department.

(b)(1) If a disbursing official of the Department of Defense dies, becomes disabled, or is separated from office, a deputy disbursing official may continue the accounts and payments in the name of the former disbursing official until the last day of the 2d month after the month in which the death, disability, or separation occurs. The accounts and payments shall be allowed, audited, and settled as provided by law. The Secretary of the Treasury shall honor checks signed in the name of the former disbursing official in the same way as if the former disbursing official had continued in office.

(2) The deputy disbursing official, and not the former disbursing official or the estate of the former disbursing official, is liable for the actions of the deputy disbursing official under this subsection.

(Added Pub. L. 87–480, § 1(1)(A), June 8, 1962, 76 Stat. 94; amended Pub. L. 97–258, § 2(b)(7)(B), Sept. 13, 1982, 96 Stat. 1054; Pub. L. 104–106, div. A, title IX, § 913(a)(2), Feb. 10, 1996, 110 Stat. 410.)

HISTORICAL AND REVISION NOTES

1982 ACT

Revised section	Source (U.S. Code)	Source (Statutes at Large)
2773(a)	10:2773.	
	31:103a.	July 3, 1926, ch. 775, 44 Stat. 888; June 6, 1972, Pub. L. 92–310, § 231(bb), 86 Stat. 212.
2773(b)	31:103b.	July 31, 1953, ch. 300, 67 Stat. 296; June 6, 1972, Pub. L. 92–310, § 231(ff), 86 Stat. 213.

In the section, the words ''disbursing official'' are substituted for ''disbursing officer'' for consistency with other titles of the United States Code. The words ''Secretary of the Treasury'' are substituted for ''Treasurer of the United States'' because of section 1(a) of Reorganization Plan No. 26 of 1950 (eff. July 31, 1950, 64 Stat. 1280), restated as section 321 of the revised title contained in section 1 of the bill. The text of 10:2773 is omitted as being superseded by 31:103a and 103b.

In subsection (a)(1), before clause (A), the words ''With the approval of a Secretary of a military department when the Secretary considers it necessary'' are substituted for ''When, in the opinion of the Secretary of the Army, Navy, or Air Force, the exigencies of the service so require . . . with the approval of the head of their executive department'' in 31:103a because of 10:101(7), to eliminate unnecessary words, and for consistency. The title of Secretary of War was changed to Secretary of the Army by section 205(a) of the Act of July 26, 1947 (ch. 343, 61 Stat. 501), and by sections 1 and 53 of the Act of August 10, 1956 (ch. 1041, 70A Stat. 157, 676). The Secretary of the Air Force is included because of sections 205(a) and 207(a) and (f) of the Act of July 26, 1947 (ch. 343, 61 Stat. 501, 502), and section 1 of the Act of August 10, 1956 (ch. 1041, 70A Stat. 488). The words ''deputy disbursing official'' are substituted for ''deputies'' for clarity. In clause (A), the words ''to make payments'' are substituted for ''for the purpose of having them make disbursements'' to eliminate unnecessary words. In clause (C), the words ''to be performed by such disbursing officers'' are omitted as unnecessary.

In subsection (a)(2), the words ''deputy disbursing official'' are substituted for ''agent officer'' for clarity and consistency.

In subsection (b)(1), the word ''disabled'' is substituted for ''incapacity'' for consistency in the title. The word ''until'' is substituted for ''for a period of time not to extend beyond'' to eliminate unnecessary words.

In subsection (b)(2), the words ''The deputy disbursing official, and not the former disbursing official or the estate of the former disbursing official'' are substituted for ''The former disbursing officer or his estate . . . but the deputy disbursing officer shall be responsible therefor'' for clarity and because of the restatement. The word ''liable'' is substituted for ''subject to any legal liability or penalty'' to eliminate unnecessary words. The word ''actions'' is substituted for ''offi-

cial acts and defaults''. The words ''in the name or in the place of the former disbursing officer'' are omitted as unnecessary.

AMENDMENTS

1996—Subsec. (a)(1). Pub. L. 104–106, § 913(a)(2)(A)(i), substituted ''Subject to paragraph (3), a disbursing official of the Department of Defense'' for ''With the approval of a Secretary of a military department when the Secretary considers it necessary, a disbursing official of the military department''.

Subsec. (a)(3). Pub. L. 104–106, § 913(a)(2)(A)(ii), added par. (3).

Subsec. (b)(1). Pub. L. 104–106, § 913(a)(2)(B), substituted ''the Department of Defense'' for ''any military department''.

1982—Pub. L. 97–258 substituted provisions authorizing a disbursing official of a military department to designate a deputy disbursing official with the same duties and penalties for misconduct as those of the disbursing official and allowing a deputy disbursing official to continue the accounts and payments in the name of a former disbursing official for two months after the death, disability, or separation of the former disbursing official for provisions authorizing any officer of an armed force accountable for public money to entrust it to another officer of an armed force to make disbursement as his agent, with both officers pecuniarily responsible to the United States for that money.

§ 2773a. Departmental accountable officials

(a) DESIGNATION BY SECRETARY OF DEFENSE.—The Secretary of Defense may designate any civilian employee of the Department of Defense or member of the armed forces under the Secretary's jurisdiction who is described in subsection (b) as an employee or member who, in addition to any other potential accountability, may be held accountable through personal monetary liability for an illegal, improper, or incorrect payment made by the Department of Defense described in subsection (c). Any such designation shall be in writing. Any employee or member who is so designated may be referred to as a ''departmental accountable official''.

(b) COVERED EMPLOYEES AND MEMBERS.—An employee or member of the armed forces described in this subsection is an employee or member who—

(1) is responsible in the performance of the employee's or member's duties for providing to a certifying official of the Department of Defense information, data, or services that are directly relied upon by the certifying official in the certification of vouchers for payment; and

(2) is not otherwise accountable under subtitle III of title 31 or any other provision of law for payments made on the basis of such vouchers.

(c) PECUNIARY LIABILITY.—(1) The Secretary of Defense may subject a departmental accountable official to pecuniary liability for an illegal, improper, or incorrect payment made by the Department of Defense if the Secretary determines that such payment—

(A) resulted from information, data, or services that that official provided to a certifying official and upon which that certifying official directly relies in certifying the voucher supporting that payment; and

(B) was the result of fault or negligence on the part of that departmental accountable official.

(2) Pecuniary liability under this subsection shall apply in the same manner and to the same extent as applies to an official accountable under subtitle III of title 31.

(3) Any pecuniary liability of a departmental accountable official under this subsection for a loss to the United States resulting from an illegal, improper, or incorrect payment is joint and several with that of any other officer or employee of the United States or member of the uniformed services who is pecuniarily liable for such loss.

(d) CERTIFYING OFFICIAL DEFINED.—In this section, the term ''certifying official'' means an employee who has the responsibilities specified in section 3528(a) of title 31.

(Added Pub. L. 107–314, div. A, title X, § 1005(a), Dec. 2, 2002, 116 Stat. 2631; amended Pub. L. 109–163, div. A, title X, § 1056(c)(8), Jan. 6, 2006, 119 Stat. 3440.)

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–163 inserted ''by'' after ''incorrect payment made''.

§ 2773b. Parking of funds: prohibition; penalties

(a) PROHIBITION.—An officer or employee of the Department of Defense may not direct the designation of funds for a particular purpose in the budget of the President, as submitted to Congress pursuant to section 1105 of title 31, or the supporting documents of the Department of Defense component of such budget, with the knowledge or intent that such funds, if made available to the Department, will not be used for the purpose for which they are designated.

(b) PENALTIES.—The direction of the designation of funds in violation of the prohibition in subsection (a) shall be treated for purposes of chapter 13 of title 31 as a violation of section 1341(a)(1)(A) of such title.

(Added Pub. L. 109–364, div. A, title X, § 1053(a)(1), Oct. 17, 2006, 120 Stat. 2396.)

EFFECTIVE DATE

Pub. L. 109–364, div. A, title X, § 1053(b), Oct. 17, 2006, 120 Stat. 2396, provided that:

''(1) IN GENERAL.—The amendments made by subsection (a) [enacting this section] shall take effect on the date that is 31 days after the date of the enactment of this Act [Oct. 17, 2006].

''(2) MODIFICATION OF CERTAIN POLICIES AND REGULATIONS.—Not later than 30 days after the date of the enactment of this Act [Oct. 17, 2006], the Secretary of Defense shall modify the policies and regulations of the Department of Defense regarding the preparation and submittal to Congress of budget materials for the Department of Defense to take into account section 2773b of title 10, United States Code, as added by subsection (a).''

§ 2774. Claims for overpayment of pay and allowances and of travel and transportation allowances

(a) A claim of the United States against a person arising out of an erroneous payment of any pay or allowances made before, on, or after October 2, 1972, or arising out of an erroneous payment of travel and transportation allowances, to or on behalf of a member or former member of the uniformed services, the collection of which

would be against equity and good conscience and not in the best interest of the United States, may be waived in whole or in part by—

(1) the Director of the Office of Management and Budget; or

(2) the Secretary concerned, as defined in section 101(5) of title 37, when—

(A) the claim is in an amount aggregating not more than $10,000; and

(B) the waiver is made in accordance with standards which the Director of the Office of Management and Budget shall prescribe.

(b) The Director of the Office of Management and Budget or the Secretary concerned, as the case may be, may not exercise his authority under this section to waive any claim—

(1) if, in his opinion, there exists, in connection with the claim, an indication of fraud, misrepresentation, fault, or lack of good faith on the part of the member or any other person having an interest in obtaining a waiver of the claim; or

(2) if application for waiver is received in his office after the expiration of five years immediately following the date on which the erroneous payment was discovered.

(c) A person who has repaid to the United States all or part of the amount of a claim, with respect to which a waiver is granted under this section, is entitled, to the extent of the waiver, to refund, by the department concerned at the time of the erroneous payment, of the amount repaid to the United States, if he applies to that department for that refund within two years following the effective date of the waiver. The Secretary concerned shall pay from current applicable appropriations that refund in accordance with this section.

(d) In the audit and settlement of accounts of any accountable officer or official, full credit shall be given for any amounts with respect to which collection by the United States is waived under this section.

(e) An erroneous payment, the collection of which is waived under this section, is considered a valid payment for all purposes.

(f) This section does not affect any authority under any other law to litigate, settle, compromise, or waive any claim of the United States.

(Added Pub. L. 92–453, §1(1), Oct. 2, 1972, 86 Stat. 758; amended Pub. L. 96–513, title V, §511(98), Dec. 12, 1980, 94 Stat. 2928; Pub. L. 99–224, §2(a), Dec. 28, 1985, 99 Stat. 1741; Pub. L. 100–26, §7(j)(7)(A), (B), Apr. 21, 1987, 101 Stat. 283; Pub. L. 102–190, div. A, title VI, §657(b), Dec. 5, 1991, 105 Stat. 1393; Pub. L. 104–316, title I, §105(b), Oct. 19, 1996, 110 Stat. 3830; Pub. L. 109–364, div. A, title VI, §671(a), Oct. 17, 2006, 120 Stat. 2270.)

AMENDMENTS

2006—Subsec. (a)(2)(A). Pub. L. 109–364, §671(a)(1), substituted ''$10,000'' for ''$1,500''.

Subsec. (b)(2). Pub. L. 109–364, §671(a)(2), substituted ''five years'' for ''three years''.

1996—Subsec. (a). Pub. L. 104–316, §105(b)(1), substituted ''Director of the Office of Management and Budget'' for ''Comptroller General'' in par. (1), and in par. (2) inserted ''and'' at end of subpar. (A), redesignated subpar. (C) as (B) and substituted ''Director of the Office of Management and Budget'' for ''Comptroller General'', and struck out former subpar. (B) which read as follows ''the claim is not the subject of an exception made by the Comptroller General in the account of any accountable officer or official; and''.

Subsec. (b). Pub. L. 104–316, §105(b)(2), substituted ''Director of the Office of Management and Budget'' for ''Comptroller General''.

1991—Subsec. (a)(2)(A). Pub. L. 102–190 substituted ''$1,500'' for ''$500''.

1987—Pub. L. 100–26, §7(j)(7)(A), substituted ''allowances and of'' for ''allowances, and'' in section catchline.

Subsec. (a). Pub. L. 100–26, §7(j)(7)(B), struck out ''as defined in section 101(3) of title 37,'' after ''uniformed services,''.

1985—Pub. L. 99–224, §2(a)(1), substituted ''and'' for ''other than'' in section catchline.

Subsec. (a). Pub. L. 99–224, §2(a)(2), substituted ''made before, on, or after October 2, 1972, or arising out of an erroneous payment of travel and transportation allowances'' for '', other than travel and transportation allowances, made before or after October 2, 1972''.

Subsec. (b)(2). Pub. L. 99–224, §2(a)(3), struck out ''of pay or allowances, other than travel and transportation allowances,'' after ''payment''.

1980—Subsec. (a). Pub. L. 96–513 substituted ''October 2, 1972'' for ''the effective date of this section''.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–364, div. A, title VI, §671(c), Oct. 17, 2006, 120 Stat. 2270, provided that: ''The amendments made by this section [amending this section and section 716 of Title 32, National Guard] shall take effect on March 1, 2007.''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–316 effective 60 days after Oct. 19, 1996, see section 101(e) of Pub. L. 104–316, set out as a note under section 4593 of Title 2, The Congress.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–224 applicable to any claim arising out of an erroneous payment of travel and transportation allowances made on or after Dec. 28, 1985, see section 4 of Pub. L. 99–224, set out as a note under section 5584 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

CANCELLATION OF DEBTS UP TO $2,500 OF UNIFORMED SERVICE MEMBERS INCURRED IN CONNECTION WITH OPERATION DESERT SHIELD/STORM

Pub. L. 104–61, title VIII, §8052, Dec. 1, 1995, 109 Stat. 662, provided that: ''Notwithstanding any other provision of law, the Secretary of Defense may, when he considers it in the best interest of the United States, cancel any part of an indebtedness, up to $2,500, that is or was owed to the United States by a member or former member of a uniformed service if such indebtedness, as determined by the Secretary, was incurred in connection with Operation Desert Shield/Storm: *Provided*, That the amount of an indebtedness previously paid by a member or former member and cancelled under this section shall be refunded to the member.''

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 103–335, title VIII, §8060, Sept. 30, 1994, 108 Stat. 2633.

Pub. L. 103–139, title VIII, §8071, Nov. 11, 1993, 107 Stat. 1457.

Pub. L. 102–396, title IX, §9100, Oct. 6, 1992, 106 Stat. 1926.

Pub. L. 102–172, title VIII, §8138, Nov. 26, 1991, 105 Stat. 1212.

§2775. Liability of members assigned to military housing

(a)(1) A member of the armed forces shall be liable to the United States for damage to any family housing unit or unaccompanied personnel housing unit, or damage to or loss of any equipment or furnishings of any family housing unit or unaccompanied personnel housing unit, assigned to or provided such member if (as determined under regulations prescribed by the Secretary of Defense or the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy) the damage or loss was caused by the abuse or negligence of the member (or a dependent of the member) or of a guest of the member (or a dependent of the member).

(2) A member of the armed forces—

(A) who is assigned or provided a family housing unit; and

(B) who fails to clean satisfactorily that housing unit (as determined under regulations prescribed by the Secretary of Defense or the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy) upon termination of the assignment or provision of that housing unit,

shall be liable to the United States for the cost of cleaning made necessary as a result of that failure.

(b) The Secretary of Defense, and the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, may establish limitations on liability under this section, including (in the case of liability under subsection (a)(1)) different limitations based upon the degree of abuse or negligence involved, and may compromise or waive a claim of the United States under this section.

(c)(1) The Secretary concerned may deduct from a member's pay an amount sufficient to pay for the cost of any repair or replacement made necessary as the result of any abuse or negligence referred to in subsection (a)(1), or the cost of any cleaning made necessary by a failure to clean satisfactorily a family housing unit referred to in subsection (a)(2), for which the member is liable. Regulations implementing this section may also provide for the collection of amounts owed under this section by any other authorized means.

(2) The final determination of an amount to be deducted from the pay of an officer of an armed force in accordance with regulations prescribed under this section shall be deemed to be a special order authorizing such deduction for the purposes of section 1007 of title 37.

(d) Amounts received under this section shall be credited to the family housing operations and maintenance account, in the case of damage to a family housing unit (or the equipment or furnishings of a family housing unit) or failure to clean satisfactorily a family housing unit, or to the operations and maintenance account, in the case of damage to an unaccompanied personnel housing unit (or the equipment or furnishings of an unaccompanied personnel housing unit), of the military department or defense agency concerned, or the operating expenses account of the Coast Guard, as appropriate. Amounts so credited shall be available for use for the same purposes and under the same circumstances as other funds in those accounts.

(e) The Secretary of Defense, and the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, shall prescribe regulations to carry out this section. Such regulations shall include—

(1) regulations for determining the cost of repairs and replacements made necessary as the result of abuse or negligence for which a member is liable under subsection (a)(1);

(2) regulations for determining the cost of cleaning made necessary as a result of the failure to clean satisfactorily for which a member is liable under subsection (a)(2); and

(3) provisions for limitations of liability, the compromise or waiver of claims, and the collection of amounts owed under this section.

(Added Pub. L. 96–418, title V, §506(a), Oct. 10, 1980, 94 Stat. 1765; amended Pub. L. 97–214, §10(a)(6), July 12, 1982, 96 Stat. 175; Pub. L. 98–407, title VIII, §801(a)(1), Aug. 28, 1984, 98 Stat. 1517; Pub. L. 99–167, title VIII, §802(a)–(d)(1), Dec. 3, 1985, 99 Stat. 986; Pub. L. 99–661, div. A, title XIII, §1343(a)(19), Nov. 14, 1986, 100 Stat. 3993; Pub. L. 107–296, title XVII, §1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

AMENDMENTS

2002—Subsecs. (a)(1), (2)(B), (b), (e). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

1986—Subsec. (a)(1). Pub. L. 99–661, §1343(a)(19)(A), substituted ''(as determined under regulations prescribed by the Secretary of Defense or the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy) the'' for ''it is determined, under regulations prescribed by the Secretary of Defense and the Secretary of Transportation when the Coast Guard is not operating as a service in the Navy, that the''.

Subsec. (b). Pub. L. 99–661, §1343(a)(19)(B), inserted a comma after ''Secretary of Defense'', substituted ''with respect to the Coast Guard when it'' for ''when the Coast Guard'', and inserted a comma after ''Navy''.

Subsec. (e). Pub. L. 99–661, §1343(a)(19)(C), substituted ''with respect to the Coast Guard when it'' for ''when the Coast Guard''.

1985—Pub. L. 99–167, §802(d)(1), substituted ''assigned to military housing'' for ''for damage to housing and related equipment and furnishings'' in section catchline.

Subsec. (a). Pub. L. 99–167, §802(a), (b)(1), designated existing provisions as par. (1), and in par. (1) as so designated, inserted ''and the Secretary of Transportation when the Coast Guard is not operating as a service in the Navy'', and added par. (2).

Subsec. (b). Pub. L. 99–167, §802(b)(1), (c)(1), inserted ''and the Secretary of Transportation when the Coast Guard is not operating as a service in the Navy'' and ''(in the case of liability under subsection (a)(1))''.

Subsec. (c)(1). Pub. L. 99–167, §802(c)(2), substituted ''subsection (a)(1), or the cost of any cleaning made necessary by a failure to clean satisfactorily a family housing unit referred to in subsection (a)(2),'' for ''subsection (a)''.

Subsec. (d). Pub. L. 99–167, §802(b)(2), (c)(3), inserted ''or failure to clean satisfactorily a family housing unit'' and '', or the operating expenses account of the Coast Guard, as appropriate''.

Subsec. (e). Pub. L. 99–167, §802(c)(4), amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: ''The Secretary of Defense shall prescribe regu-

lations to carry out the provisions of this section, including (1) regulations for determining the cost of repairs and replacements made necessary as the result of abuse or negligence referred to in subsection (a), and (2) regulations providing for limitations of liability, the compromise or waiver of claims, and the collection of amounts owed under this section.''

1984—Pub. L. 98–407 substituted ''Liability of members for damage to housing and related equipment and furnishings'' for ''Liability of member for damages to family housing, equipment, and furnishings'' in section catchline.

Subsec. (a). Pub. L. 98–407 amended subsec. (a) generally, inserting references to unaccompanied personnel housing units, and expanding liability of members of the Armed Forces to include damages caused by the abuse or negligence of a guest of the member or of a dependent of the member.

Subsec. (b). Pub. L. 98–407 added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 98–407 redesignated former subsec. (b) as (c), in subsec. (c)(1) as so redesignated substituted reference to any abuse or negligence for which the member is liable for reference to any abuse or negligence on the part of such member or any dependent of such member, inserted provision that regulations implementing this section may also provide for the collection of amounts owed under this section by any other authorized means, and in subsec. (c)(2), as so redesignated, substituted reference to regulations prescribed under this section for reference to regulations issued under this section. Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 98–407 redesignated former subsec. (c) as (d) and substituted provisions requiring that amounts received under this section be credited either to the family housing operations and maintenance account of the department or agency concerned, (in the case of damage to family housing or equipment or furnishings therein) or the operations and maintenance account of the department or agency concerned (in the case of damage to an unaccompanied personnel housing unit or equipment or furnishings therein) for provisions that amounts deducted from members' pay under this section had to be credited to the Department of Defense Military Family Housing Management Account provided for in section 2831 of this title. Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 98–407 redesignated former subsec. (d) as (e)(1), substituted reference to abuse or negligence referred to in subsec. (a) for reference to abuse or negligence on the part of a member or dependent of a member, and added par. (2).

1982—Subsec. (c). Pub. L. 97–214, § 10(a)(6), substituted ''Military Family Housing Management Account provided for in section 2831 of this title'' for ''family housing management account established under section 501 of Public Law 87–554 (76 Stat. 236; 42 U.S.C. 1594a–1)''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–214 effective Oct. 1, 1982, and applicable to military construction projects, and to construction and acquisition of military family housing authorized before, on, or after such date, see section 12(a) of Pub. L. 97–214, set out as an Effective Date note under section 2801 of this title.

EFFECTIVE DATE

Section effective Oct. 1, 1980, see section 608 of title VI of Pub. L. 96–418, set out as an Effective Date of 1980 Amendment note under section 2675 of this title.

PROMULGATION OF REGULATIONS AND APPLICABILITY OF 1984 AMENDMENTS

Pub. L. 98–407, title VIII, § 801(b), Aug. 28, 1984, 98 Stat. 1518, provided that:

''(1) Regulations shall be prescribed under subsection (e) of section 2775 of title 10, United States Code, as amended by subsection (a), not later than 180 days after the date of the enactment of this Act [Aug. 28, 1984]. That section shall apply with respect to the liability of a member under such section for damage or loss to an unaccompanied personnel housing unit (or the equipment or furnishings of an unaccompanied personnel housing unit) or for damage or loss caused by a guest of the member or of a dependent of the member to a family housing unit (or the equipment or furnishings of a family housing unit) only in the case of damage or loss caused on or after the date that such regulations take effect.

''(2) The authority of the Secretary of Defense under subsection (b) of such section is applicable to any claim of the United States under such section, whether such claim arose before, on, or after the date of the enactment of this Act [Aug. 28, 1984].''

§ 2776. Use of receipts of public money for current expenditures

Without deposit to the credit of the Secretary of the Treasury and without withdrawal on money requisitions, a disbursing official of the Department of Defense may use receipts of public money charged in the disbursing official's accounts (except receipts to be credited to river, harbor, and flood control appropriations) for current expenditures, with necessary bookkeeping adjustments being made.

(Added Pub. L. 97–258, § 2(b)(8)(B), Sept. 13, 1982, 96 Stat. 1055.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2776	31:493a.	Aug. 1, 1953, ch. 305, § 611, 67 Stat. 350.

The words ''disbursing official'' are substituted for ''officer . . . on disbursing duty'' for consistency with other titles of the United States Code. The words ''On and after August 1, 1953'' are omitted as executed. The words ''Secretary of the Treasury'' are substituted for ''Treasury of the United States'' because of section 1(a) of Reorganization Plan No. 26 of 1950 (eff. July 31, 1950, 64 Stat. 1280), restated in section 321 of the revised title contained in section 1 of the bill. The words ''from sales or other sources'' are omitted as surplus. The words ''with'' and ''being'' are added because of the restatement. The words ''of appropriations, funds, and accounts to be . . . in the settlement of their disbursing accounts'' are omitted as unnecessary.

PRIOR PROVISIONS

Act Aug. 1, 1953, cited as the source of this section in the Historical and Revision Notes above, is known as the Department of Defense Appropriation Act, 1954. Similar provisions were contained in the following appropriation acts:

July 10, 1952, ch. 630, title VI, § 613, 66 Stat. 532.
Oct. 18, 1951, ch. 512, title VI, § 613, 65 Stat. 446.
Sept. 6, 1950, ch. 896, Ch. X, title VI, § 615, 64 Stat. 753.
Oct. 29, 1949, ch. 787, title VI, § 618, 63 Stat. 1020.
June 24, 1948, ch. 632, 62 Stat. 651.
July 30, 1947, ch. 357, title I, § 1, 61 Stat. 551.
July 16, 1946, ch. 583, § 1, 60 Stat. 543.
July 3, 1945, ch. 265, § 1, 59 Stat. 386.
June 28, 1944, ch. 303, § 1, 58 Stat. 575.
July 1, 1943, ch. 185, § 1, 57 Stat. 349.
July 2, 1942, ch. 477, § 1, 56 Stat. 613.
June 30, 1941, ch. 262, § 1, 55 Stat. 369.
June 13, 1940, ch. 343, § 1, 54 Stat. 355.
Apr. 26, 1939, ch. 88, § 1, 53 Stat. 597.
June 11, 1938, ch. 347, § 1, 52 Stat. 646.

July 1, 1937, ch. 423, §1, 50 Stat. 446.

§ 2777. Requisitions for advances and removal of charges outstanding in accounts of advances

(a) The Secretary of a military department may issue to a disbursing official or agent of the department a requisition for an advance of not more than the total appropriation for the department. The amount advanced shall be—

(1) under an ''account of advances'' for the department;

(2) on a proper voucher;

(3) only for obligations payable under specific appropriations;

(4) charged to, and within the limits of, each specific appropriation; and

(5) returned to the account of advances.

(b) A charge outstanding in an account of advances of a military department shall be removed by crediting the account of advances of the department and deducting the amount of the charge from an appropriation made available for advances to the department when—

(1) relief has been granted or may be granted later to a disbursing official or agent of the department operating under an account of advances and under a law having no provision for removing charges outstanding in an account of advances; or

(2) the charge has been—

(A) outstanding in the account of advances of the department for 2 complete fiscal years; and

(B) certified by the head of the department as uncollectable.

(c) Subsection (b) does not affect the financial liability of a disbursing official or agent.

(Added Pub. L. 97–258, §2(b)(8)(B), Sept. 13, 1982, 96 Stat. 1055; amended Pub. L. 98–525, title XIV, §1405(43), Oct. 19, 1984, 98 Stat. 2625; Pub. L. 104–316, title I, §105(c), Oct. 19, 1996, 110 Stat. 3830.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2777(a)	31:536, 537.	June 5, 1920, ch. 240 (1st, 2d pars. under heading ''Advances to Disbursing Officers''), 41 Stat. 975.
	31:539, 540.	June 19, 1878, ch. 312, §§1, 2, 20 Stat. 167.
2777(b), (c).	31:95b (related to Army, Navy, Air Force).	June 4, 1954, ch. 264, §1 (related to Army, Navy, Air Force), 68 Stat. 175; June 6, 1972, Pub. L. 92–310, §231(gg), 86 Stat. 213.

In the section, the words ''disbursing official'' are substituted for ''disbursing officers'' for consistency with other titles of the United States Code.

In subsection (a), before clause (1), the words ''Secretary of a military department'' are substituted for ''Secretary of the Army'' in 31:536 and for ''Secretary of the Navy'' in 31:539 because of 10:101(7). The title of Secretary of War was changed to Secretary of the Army by section 205(a) of the Act of July 26, 1947 (ch. 343, 61 Stat. 501), and by sections 1 and 53 of the Act of August 10, 1956 (ch. 1041, 70A Stat. 157, 676). The Secretary of the Air Force is included because of sections 205(a) and 207(a) and (f) of the Act of July 26, 1947 (ch. 343, 61 Stat. 501, 502), and section 1 of the Act of August 10, 1956 (ch. 1041, 70A Stat. 488). In clause (1), the word ''General'' in 31:539 is omitted as surplus. In clause (3), the words ''and 'Pay of the Navy' shall be used only for its legitimate purpose, as provided by law'' are omitted as unnecessary. In clause (5), the words ''by pay and counterwarrant'' in 31:537 and 540 are omitted as unnecessary.

In subsection (b), before clause (1), the word ''appropriate'' is omitted as surplus. The words ''deducting the amount of the charge from'' are substituted for ''debiting'' for clarity. In clause (2)(B), the word ''concerned'' is omitted as surplus.

In subsection (c), the words ''in any way'' and ''of the United States'' are omitted as surplus.

AMENDMENTS

1996—Subsec. (b)(2)(B). Pub. L. 104–316 struck out ''to the Comptroller General'' after ''head of the department''.

1984—Subsec. (c). Pub. L. 98–525 struck out ''of this section'' after ''Subsection (b)''.

[§ 2778. Repealed. Pub. L. 104–316, title I, § 105(d), Oct. 19, 1996, 110 Stat. 3830]

Section, added Pub. L. 97–258, §2(b)(8)(B), Sept. 13, 1982, 96 Stat. 1055, related to management of accounts of military departments by Comptroller General.

§ 2779. Use of funds because of fluctuations in currency exchange rates of foreign countries

(a) TRANSFERS BACK TO FOREIGN CURRENCY FLUCTUATIONS APPROPRIATION.—(1) Funds transferred from the appropriation ''Foreign Currency Fluctuations, Defense'' may be transferred back to the appropriation—

(A) when the funds are not needed to pay obligations incurred because of fluctuations in currency exchange rates of foreign countries in the appropriation to which the funds were originally transferred; and

(B) because of subsequent favorable fluctuations in the rates or because other funds are, or become, available to pay the obligations.

(2) A transfer back to the Foreign Currency Fluctuations, Defense appropriation may not be made after the end of the second fiscal year after the fiscal year that the appropriation to which the funds were originally transferred is available for obligation.

(b) FUNDING FOR LOSSES IN MILITARY CONSTRUCTION AND FAMILY HOUSING.—(1) One hundred million dollars, plus $25,000,000 from Family Housing, Defense, are appropriated to the Secretary of Defense, to remain available until spent. The appropriation is available only to provide funds to eliminate losses in military construction or expenses of family housing for the Department of Defense caused by fluctuations in currency exchange rates of foreign countries that changed after a budget request was submitted to Congress.

(2) Funds provided under this subsection are merged with and are available for the same purpose and for the same time period as the appropriation to which they are applied. An authorization or limitation limiting the amount that may be obligated or spent is increased to the extent necessary to reflect fluctuations in exchange rates from those used in preparing the budget submission.

(3) An obligation payable in the currency of a foreign country may be recorded as an obligation based on exchange rates used in preparing a

budget submission. A change reflecting fluctuations in the exchange rate may be recorded as a disbursement is made.

(c) TRANSFERS TO MILITARY PERSONNEL ACCOUNTS.—The Secretary of Defense may transfer funds to military personnel appropriations for a fiscal year out of funds available to the Department of Defense for that fiscal year under the appropriation ''Foreign Currency Fluctuations, Defense''.

(d) TRANSFERS TO FOREIGN CURRENCY FLUCTUATIONS ACCOUNT.—(1) The Secretary of Defense may transfer to the appropriation ''Foreign Currency Fluctuations, Defense'' unobligated amounts of funds appropriated for operation and maintenance and unobligated amounts of funds appropriated for military personnel.

(2) Any transfer from an appropriation under paragraph (1) shall be made not later than the end of the second fiscal year following the fiscal year for which the appropriation is provided.

(3) Any transfer made pursuant to the authority provided in this subsection shall be limited so that the amount in the appropriation ''Foreign Currency Fluctuations, Defense'' does not exceed $970,000,000 at the time the transfer is made.

(e) CONDITIONS OF AVAILABILITY FOR TRANSFERRED FUNDS.—Amounts transferred under subsection (c) or (d) shall be merged with and be available for the same purposes and for the same period as the appropriations to which transferred.

(Added Pub. L. 97–258, § 2(b)(8)(B), Sept. 13, 1982, 96 Stat. 1056; amended Pub. L. 101–510, div. A, title XIII, § 1301(15), Nov. 5, 1990, 104 Stat. 1668; Pub. L. 104–106, div. A, title IX, § 911(a)–(c), (e), Feb. 10, 1996, 110 Stat. 406, 407.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
2779(a)	31:628–2.	July 25, 1979, Pub. L. 96–38, § 100 (last par. under heading ''General Provisions''), 93 Stat. 100.
2779(b)	31:628–3.	Nov. 30, 1979, Pub. L. 96–130, § 100 (par. under heading ''Foreign Currency Fluctuation, Construction, Defense''), 93 Stat. 1019.

In subsection (a)(1), before clause (A), the words ''during the current fiscal year or on and after July 25, 1979'' are omitted as executed. The words ''from an appropriation to which they were transferred'' are omitted as surplus. In clause (A), the words ''of foreign countries'' are added for consistency.

In subsection (a)(2), the words ''back to the Foreign Currency Fluctuations, Defense appropriation'' are substituted for ''authorized by this provision'' for clarity.

In subsection (b)(1), the words ''the sum of'', ''which shall be derived'', and ''to appropriations and funds'' are omitted as surplus. The word ''only'' is added for clarity. The words ''for those appropriations or funds'' are omitted as surplus. The words ''available during fiscal year 1980, or thereafter'' are omitted as executed. The words ''Department of Defense'' are substituted for ''military departments and Defense agencies'' because of 10:101(5).

In subsection (b)(2), the words ''or fund'' are omitted as surplus. The words ''now or on and after November 30, 1979'' are omitted as executed. The words ''contained within appropriations or other provisions of law'', ''hereby'', and ''applicable'' are omitted as surplus.

In subsection (b)(3), the words ''contracts or other . . . entered into'' are omitted as surplus.

PRIOR PROVISIONS

Provisions similar to those in subsec. (d) of this section were contained in Pub. L. 97–377, title I, § 101(c) [title VII, § 791], Dec. 21, 1982, 96 Stat. 1865, which was set out as a note under section 114 of this title, prior to repeal by Pub. L. 104–106, § 911(d)(2).

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–106, § 911(e)(1), inserted heading.

Subsec. (a)(2). Pub. L. 104–106, § 911(e)(2), substituted ''second fiscal year'' for ''2d fiscal year''.

Subsec. (b). Pub. L. 104–106, § 911(e)(3), inserted heading.

Subsec. (c). Pub. L. 104–106, § 911(a), added subsec. (c).

Subsec. (d). Pub. L. 104–106, § 911(b), added subsec. (d).

Subsec. (e). Pub. L. 104–106, § 911(c), added subsec. (e).

1990—Subsec. (b)(4). Pub. L. 101–510 struck out par. (4) which read as follows: ''The Secretary each year shall report to Congress on funds made available under this subsection.''

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–106, div. A, title IX, § 911(f), Feb. 10, 1996, 110 Stat. 407, provided that: ''Subsections (c) and (d) of section 2779 of title 10, United States Code, as added by subsections (a) and (b), and the repeals made by subsection (d) [repealing provisions set out as a note under section 114 of this title], shall apply only with respect to amounts appropriated for a fiscal year after fiscal year 1995.''

§ 2780. Debt collection

(a)(1) Subject to paragraph (2), the Secretary of Defense shall enter into one or more contracts with a person for collection services to recover indebtedness owed to the United States (arising out of activities related to Department of Defense) that is delinquent by more than three months.

(2) The authority of the Secretary to enter into a contract under this section for any fiscal year is subject to the availability of appropriations.

(3) Any such contract shall provide that the person submit to the Secretary a status report on the person's success in collecting such debts at least once each six months. Section 3718 of title 31 shall apply to any such contract, to the extent not inconsistent with this subsection.

(b)(1) Except as provided in paragraph (2), the Secretary of Defense shall disclose to consumer reporting agencies, in accordance with paragraph (1) of section 3711(e) of title 31, information concerning any debt described in subsection (a) of more than $100 that is delinquent by more than 31 days.

(2) No disclosure shall be made under paragraph (1) with respect to an indebtedness while a decision regarding waiver of collection of the indebtedness is pending under section 2774 of this title or section 716 of title 32, or while a decision regarding remission or cancellation of the indebtedness is pending under section 7837, 8271, or 9837 of this title, unless the Secretary concerned (as defined in section 101(5) of title 37) determines that disclosure under that paragraph pending such decision is in the best interests of the United States.

(Added Pub. L. 99–661, div. A, title XIII, § 1309(a), Nov. 14, 1986, 100 Stat. 3982; amended Pub. L.

104–316, title I, § 115(g)(2)(C), Oct. 19, 1996, 110 Stat. 3835; Pub. L. 109–364, div. A, title VI, § 672(a), Oct. 17, 2006, 120 Stat. 2270; Pub. L. 115–232, div. A, title VIII, § 809(a), Aug. 13, 2018, 132 Stat. 1840.)

AMENDMENTS

2018—Subsec. (b)(2). Pub. L. 115–232 substituted ''section 7837, 8271, or 9837'' for ''section 4837, 6161, or 9837''.

2006—Subsec. (b). Pub. L. 109–364 designated existing provisions as par. (1), substituted ''Except as provided in paragraph (2), the Secretary of Defense'' for ''The Secretary'', and added par. (2).

1996—Subsec. (b). Pub. L. 104–316 substituted ''section 3711(e)'' for ''section 3711(f)''.

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115–232 effective Feb. 1, 2019, with provision for the coordination of amendments and special rule for certain redesignations, see section 800 of Pub. L. 115–232, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–364, div. A, title VI, § 672(b), Oct. 17, 2006, 120 Stat. 2270, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section] shall take effect on March 1, 2007.

''(2) APPLICATION TO PRIOR ACTIONS.—Paragraph (2) of section 2780(b) of title 10, United States Code, as added by subsection (a), shall not be construed to apply to or invalidate any action taken under such section before March 1, 2007.''

CONTRACTS FOR RECOVERY OF INDEBTEDNESS

Pub. L. 101–165, title IX, § 9019, Nov. 21, 1989, 103 Stat. 1133, provided that: ''During the current fiscal year and hereafter, the Department of Defense may enter into contracts to recover indebtedness to the United States pursuant to section 3718 of title 31, United States Code.''

§ 2781. Availability of appropriations: exchange fees; losses in accounts

Amounts appropriated to the Department of Defense may be used for—

(1) exchange fees; and

(2) losses in the accounts of disbursing officials and agents in accordance with law.

(Added Pub. L. 100–370, § 1(m)(1), July 19, 1988, 102 Stat. 849.)

HISTORICAL AND REVISION NOTES

Section is based on Pub. L. 99–190, § 101(b) [title VIII, § 8006(c)], Dec. 19, 1985, 99 Stat. 1185, 1203.

§ 2782. Damage to real property: disposition of amounts recovered

Except as provided in section 2775 of this title, amounts recovered for damage caused to real property under the jurisdiction of the Secretary of a military department or, with respect to the Defense Agencies, under the jurisdiction of the Secretary of Defense shall be credited to the account available for the repair or replacement of the real property at the time of recovery. In such amounts as are provided in advance in appropriation Acts, amounts so credited shall be available for use for the same purposes and under the same circumstances as other funds in the account.

(Added Pub. L. 104–106, div. B, title XXVIII, § 2821(a), Feb. 10, 1996, 110 Stat. 556.)

PRIOR PROVISIONS

A prior section 2782, added Pub. L. 101–189, div. A, title XVI, § 1603(a)(1), Nov. 29, 1989, 103 Stat. 1597, related to limits on restoration of unobligated balances withdrawn from availability for obligation, prior to repeal by Pub. L. 101–510, div. A, title XIV, § 1405(c)(1), Nov. 5, 1990, 104 Stat. 1680.

§ 2783. Nonappropriated fund instrumentalities: financial management and use of nonappropriated funds

(a) REGULATION OF MANAGEMENT AND USE OF NONAPPROPRIATED FUNDS.—The Secretary of Defense shall prescribe regulations governing—

(1) the purposes for which nonappropriated funds of a nonappropriated fund instrumentality of the United States within the Department of Defense may be expended; and

(2) the financial management of such funds to prevent waste, loss, or unauthorized use.

(b) PENALTIES FOR VIOLATIONS.—(1) A civilian employee of the Department of Defense who is paid from nonappropriated funds and who commits a substantial violation of the regulations prescribed under subsection (a) shall be subject to the same penalties as are provided by law for misuse of appropriations by a civilian employee of the Department of Defense paid from appropriated funds. The Secretary of Defense shall prescribe regulations to carry out this paragraph.

(2) The Secretary shall provide in regulations that a violation of the regulations prescribed under subsection (a) by a person subject to chapter 47 of this title (the Uniform Code of Military Justice) is punishable as a violation of section 892 of this title (article 92 of the Uniform Code of Military Justice).

(c) NOTIFICATION OF VIOLATIONS.—(1) A civilian employee of the Department of Defense (whether paid from nonappropriated funds or from appropriated funds), and a member of the armed forces, whose duties include the obligation of nonappropriated funds, shall notify the Secretary of Defense of information which the person reasonably believes evidences—

(A) a violation by another person of any law, rule, or regulation regarding the management of such funds; or

(B) other mismanagement or gross waste of such funds.

(2) The Secretary of Defense shall designate civilian employees of the Department of Defense or members of the armed forces to receive a notification described in paragraph (1) and ensure the prompt investigation of the validity of information provided in the notification.

(3) The Secretary shall prescribe regulations to protect the confidentiality of a person making a notification under paragraph (1).

(Added Pub. L. 102–484, div. A, title III, § 362(a), Oct. 23, 1992, 106 Stat. 2379, § 2490a; renumbered § 2783 and amended Pub. L. 103–160, div. A, title XI, § 1182(a)(8)(A), Nov. 30, 1993, 107 Stat. 1771.)

AMENDMENTS

1993—Pub. L. 103–160 renumbered section 2490a of this title as this section.

Subsec. (b)(2). Pub. L. 103–160, § 1182(a)(8)(A)(i), substituted ''chapter 47 of this title'' for ''chapter 47 of

title 10, United States Code'', ''Justice) is'' for ''Justice), is'', and ''section 892 of this title'' for ''section 892 of such title''.

Subsec. (c)(1). Pub. L. 103–160, §1182(a)(8)(A)(ii), substituted ''armed forces'' for ''Armed Forces''.

STANDARDIZATION OF CERTAIN PROGRAMS AND ACTIVITIES OF MILITARY EXCHANGES

Pub. L. 102–484, div. A, title III, §361, Oct. 23, 1992, 106 Stat. 2379, directed the Secretary of Defense to standardize among the military departments the accounting, financial reporting formats, and automatic data processing and telecommunications data transfer of information by no later than Mar. 31, 1994, and report to Congress, no later than Mar. 31, 1993, on other programs and activities that could be standardized or consolidated.

§ 2784. Management of purchase cards

(a) MANAGEMENT OF PURCHASE CARDS.—The Secretary of Defense shall prescribe regulations governing the use and control of all purchase cards and convenience checks that are issued to Department of Defense personnel for official use. Those regulations shall be consistent with regulations that apply Government-wide regarding use of purchase cards by Government personnel for official purposes.

(b) REQUIRED SAFEGUARDS AND INTERNAL CONTROLS.—Regulations under subsection (a) shall include safeguards and internal controls to ensure the following:

(1) That there is a record in the Department of Defense of each holder of a purchase card issued by the Department of Defense for official use, annotated with the limitations on amounts that are applicable to the use of each such card by that purchase card holder.

(2) That each purchase card holder and individual issued a convenience check is assigned an approving official other than the card holder with the authority to approve or disapprove transactions.

(3) That the holder of a purchase card and each official with authority to authorize expenditures charged to the purchase card are responsible for—

(A) reconciling the charges appearing on each statement of account for that purchase card with receipts and other supporting documentation; and

(B) forwarding that statement after being so reconciled to the designated disbursing office in a timely manner.

(4) That any disputed purchase card charge, and any discrepancy between a receipt and other supporting documentation and the purchase card statement of account, is resolved in the manner prescribed in the applicable Government-wide purchase card contract entered into by the Administrator of General Services.

(5) That payments on purchase card accounts are made promptly within prescribed deadlines to avoid interest penalties.

(6) That rebates and refunds based on prompt payment on purchase card accounts are properly recorded.

(7) That records of each purchase card transaction (including records on associated contracts, reports, accounts, and invoices) are retained in accordance with standard Government policies on the disposition of records.

(8) That periodic reviews are performed to determine whether each purchase card holder has a need for the purchase card.

(9) That appropriate training is provided to each purchase card holder and each official with responsibility for overseeing the use of purchase cards issued by the Department of Defense.

(10) That the Department of Defense has specific policies regarding the number of purchase cards issued by various organizations and categories of organizations, the credit limits authorized for various categories of card holders, and categories of employees eligible to be issued purchase cards, and that those policies are designed to minimize the financial risk to the Federal Government of the issuance of the purchase cards and to ensure the integrity of purchase card holders.

(11) That the Department of Defense uses effective systems, techniques, and technologies to prevent or identify potential fraudulent purchases.

(12) That the Department of Defense takes appropriate steps to invalidate the purchase card of each card holder who—

(A) in the case of an employee of the Department—

(i) ceases to be employed by the Department, immediately upon termination of the employment of the employee; or

(ii) transfers to another unit of the Department, immediately upon the transfer of the employee unless the Secretary of Defense determines that the units are covered by the same purchase card authority; and

(B) in the case of a member of the armed forces, is separated or released from active duty or full-time National Guard duty.

(13) That the Department of Defense takes steps to recover the cost of any illegal, improper, or erroneous purchase made with a purchase card or convenience check by an employee or member of the armed forces, including, as necessary, through salary offsets.

(14) That the Inspector General of the Department of Defense, the Inspector General of the Army, the Naval Inspector General, and the Inspector General of the Air Force perform periodic audits to identify—

(A) potentially fraudulent, improper, and abusive uses of purchase cards;

(B) any patterns of improper card holder transactions, such as purchases of prohibited items; and

(C) categories of purchases that should be made by means other than purchase cards in order to better aggregate purchases and obtain lower prices.

(15) That the Inspector General of the Department of Defense conducts periodic audits or reviews of purchase card or convenience check programs to identify and analyze risks of illegal, improper, or erroneous purchases and payments and that the findings of such audits or reviews, along with recommendations to prevent abuse of purchase cards or convenience checks, are reported to the Director of the Office of Management and Budget and Congress.

(c) PENALTIES FOR VIOLATIONS.—The regulations prescribed under subsection (a) shall—

(1) provide—

(A) for the reimbursement of charges for unauthorized or erroneous purchases, in appropriate cases; and

(B) for appropriate adverse personnel actions or other punishment to be imposed in cases in which employees of the Department of Defense violate such regulations or are negligent or engage in misuse, abuse, or fraud with respect to a purchase card, including removal in appropriate cases; and

(2) provide that a violation of such regulations by a person subject to chapter 47 of this title (the Uniform Code of Military Justice) is punishable as a violation of section 892 of this title (article 92 of the Uniform Code of Military Justice).

(Added Pub. L. 106–65, div. A, title IX, § 933(a)(1), Oct. 5, 1999, 113 Stat. 728; amended Pub. L. 107–314, div. A, title X, § 1007(a), (b)(1), Dec. 2, 2002, 116 Stat. 2633, 2634; Pub. L. 110–417, [div. A], title X, § 1003(a), Oct. 14, 2008, 122 Stat. 4582; Pub. L. 112–194, § 2(b), Oct. 5, 2012, 126 Stat. 1447.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1864(b), Jan. 1, 2021, 134 Stat. 4151, 4279, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 367 of this title, as amended by section 1864(a) of Pub. L. 116–283, inserted after section 4753, and redesignated as section 4754 of this title. See Effective Date of 2021 Amendment note below.

AMENDMENTS

2012—Subsec. (b)(2) to (15). Pub. L. 112–194 added pars. (2), (11) to (13), and (15) and redesignated former pars. (2) to (7) and (8) as (3) to (8) and (14), respectively.

2008—Subsec. (c)(1). Pub. L. 110–417 substituted ''provide—'' for ''provide'', added subpar. (A), and substituted ''(B) for'' for ''for''.

2002—Pub. L. 107–314, § 1007(b)(1)(A), substituted ''purchase'' for ''credit'' in section catchline.

Subsec. (a). Pub. L. 107–314, § 1007(a)(1), (b)(1)(B), (C), substituted ''Purchase'' for ''Credit'' in heading and ''purchase'' for ''credit'' in two places in text and struck out '', acting through the Under Secretary of Defense (Comptroller),'' after ''Secretary of Defense''.

Subsec. (b)(1) to (6). Pub. L. 107–314, § 1007(b)(1)(C), substituted ''purchase'' for ''credit'' wherever appearing.

Subsec. (b)(7) to (10). Pub. L. 107–314, § 1007(a)(2), added pars. (7) to (10).

Subsec. (c). Pub. L. 107–314, § 1007(a)(2), added subsec. (c).

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

REGULATIONS

Pub. L. 106–65, div. A, title IX, § 933(b)(1), Oct. 5, 1999, 113 Stat. 730, provided that: ''Regulations under section 2784 of title 10, United States Code, as added by subsection (a), shall be prescribed not later than 180 days after the date of the enactment of this Act [Oct. 5, 1999].''

CREDITING OF REFUNDS

Pub. L. 110–116, div. A, title VIII, § 8067, Nov. 13, 2007, 121 Stat. 1329, provided that: ''Beginning in the current fiscal year and hereafter, refunds attributable to the use of the Government travel card, refunds attributable to the use of the Government Purchase Card and refunds attributable to official Government travel arranged by Government Contracted Travel Management Centers may be credited to operation and maintenance, and research, development, test and evaluation accounts of the Department of Defense which are current when the refunds are received.''

GOVERNMENT CHARGE CARD ACCOUNTS: LIMITATION ON NUMBER; REQUIREMENTS FOR ISSUANCE; DISCIPLINARY ACTION FOR MISUSE; REPORT

Pub. L. 107–248, title VIII, § 8149, Oct. 23, 2002, 116 Stat. 1572, as amended by Pub. L. 108–87, title VIII, § 8144, Sept. 30, 2003, 117 Stat. 1108, provided that:

''(a) LIMITATION ON NUMBER OF GOVERNMENT CHARGE CARD ACCOUNTS DURING FISCAL YEAR 2003.—The total number of accounts for government purchase charge cards and government travel charge cards for Department of Defense personnel during fiscal year 2003 may not exceed 1,500,000 accounts.

''(b) REQUIREMENT FOR CREDITWORTHINESS FOR ISSUANCE OF GOVERNMENT CHARGE CARD.—(1) The Secretary of Defense shall evaluate the creditworthiness of an individual before issuing the individual a government purchase charge card or government travel charge card.

''(2) An individual may not be issued a government purchase charge card or government travel charge card if the individual is found not credit worthy as a result of the evaluation under paragraph (1).

''(3) This subsection shall remain in effect for fiscal year 2004.

''(c) DISCIPLINARY ACTION FOR MISUSE OF GOVERNMENT CHARGE CARD.—(1) The Secretary shall establish guidelines and procedures for disciplinary actions to be taken against Department personnel for improper, fraudulent, or abusive use of government purchase charge cards and government travel charge cards.

''(2) The guidelines and procedures under this subsection shall include appropriate disciplinary actions for use of charge cards for purposes, and at establishments, that are inconsistent with the official business of the Department or with applicable standards of conduct.

''(3) The disciplinary actions under this subsection may include—

''(A) the review of the security clearance of the individual involved; and

''(B) the modification or revocation of such security clearance in light of the review.

''(4) The guidelines and procedures under this subsection shall apply uniformly among the Armed Forces and among the elements of the Department.

''(d) REPORT.—Not later than June 30, 2003, the Secretary shall submit to the congressional defense committees [Committees on Armed Services of the Senate and House of Representatives and Subcommittees on Defense of the Committees on Appropriations of the Senate and House of Representatives] a report on the implementation of the requirements and limitations in this section, including the guidelines and procedures established under subsection (c).''

§ 2784a. Management of travel cards

(a) DISBURSEMENT OF TRAVEL ALLOWANCES DIRECTLY TO CREDITORS.—(1) The Secretary of Defense shall require that any part of a travel or transportation allowance of an employee of the Department of Defense or a member of the armed forces be disbursed directly to the issuer of a Defense travel card if the amount is disbursed to the issuer in payment of amounts of

expenses of official travel that are charged by the employee or member on the Defense travel card.

(2) The Secretary of Defense may waive the requirement for a direct payment to a travel card issuer under paragraph (1) in any case the Secretary determines appropriate.

(3) For the purposes of this subsection, the travel and transportation allowances referred to in paragraph (1) are amounts to which an employee of the Department of Defense is entitled under section 5702 of title 5 or a member of the armed forces is entitled under section 474 of title 37.

(b) OFFSETS FOR DELINQUENT TRAVEL CARD CHARGES.—(1) The Secretary of Defense may require that there be deducted and withheld from any basic pay payable to an employee of the Department of Defense or a member of the armed forces any amount that is owed by the employee or member to a creditor by reason of one or more charges of expenses of official travel of the employee or member on a Defense travel card issued by the creditor if the employee or member—

(A) is delinquent in the payment of such amount under the terms of the contract under which the card is issued; and

(B) does not dispute the amount of the delinquency.

(2) The amount deducted and withheld from pay under paragraph (1) with respect to a debt owed a creditor as described in that paragraph shall be disbursed to the creditor to reduce the amount of the debt.

(3) The amount of pay deducted and withheld from the pay owed to an employee or member with respect to a pay period under paragraph (1) may not exceed 15 percent of the disposable pay of the employee or member for that pay period, except that a higher amount may be deducted and withheld with the written consent of the employee or member.

(4) The Secretary of Defense shall prescribe procedures for deducting and withholding amounts from pay under this subsection. The procedures shall be substantially equivalent to the procedures under section 3716 of title 31.

(c) OFFSETS OF RETIRED PAY.—In the case of a former employee of the Department of Defense or a retired member of the armed forces who is receiving retired pay and who owes an amount to a creditor by reason of one or more charges on a Defense travel card that were made before the retirement of the employee or member, the Secretary may require amounts to be deducted and withheld from any retired pay of the former employee or retired member in the same manner and subject to the same conditions as the Secretary deducts and withholds amounts from basic pay payable to an employee or member under subsection (b).

(d) DETERMINATIONS OF CREDITWORTHINESS FOR ISSUANCE OF DEFENSE TRAVEL CARD.—(1) The Secretary of Defense shall evaluate the creditworthiness of an employee of the Department of Defense or a member of armed forces before issuing a Defense travel card to such an employee or member. The evaluation may include an examination of the individual's credit history in available credit records.

(2) An individual may not be issued a Defense travel card if the individual is found not creditworthy as a result of the evaluation required under paragraph (1).

(e) REGULATIONS ON DISCIPLINARY ACTION.—(1) The Secretary of Defense shall prescribe regulations for making determinations regarding the taking of disciplinary action, including assessment of penalties, against Department of Defense personnel for improper, fraudulent, or abusive use of Defense travel cards by such personnel.

(2) The regulations prescribed under paragraph (1) shall—

(A) provide for appropriate adverse personnel actions or other punishment to be imposed in cases in which employees of the Department of Defense violate such regulations or are negligent or engage in misuse, abuse, or fraud with respect to a Defense travel card, including removal in appropriate cases; and

(B) provide that a violation of such regulations by a person subject to chapter 47 of this title (the Uniform Code of Military Justice) is punishable as a violation of section 892 of this title (article 92 of the Uniform Code of Military Justice).

(f) DEFINITIONS.—In this section:

(1) The term ''Defense travel card'' means a charge or credit card that—

(A) is issued to an employee of the Department of Defense or a member of the armed forces under a contract entered into by the Department of Defense with the issuer of the card; and

(B) is to be used for charging expenses incurred by the employee or member in connection with official travel.

(2) The term ''disposable pay'', with respect to a pay period, means the amount equal to the excess of the amount of basic pay or retired pay, as the case may be, payable for the pay period over the total of the amounts deducted and withheld from such pay.

(3) The term ''retired pay'' means—

(A) in the case of a former employee of the Department of Defense, any retirement benefit payable to that individual, out of the Civil Service Retirement and Disability Fund, based (in whole or in part) on service performed by such individual as a civilian employee of the Department of Defense; and

(B) in the case of a retired member of the armed forces or member of the Fleet Reserve or Fleet Marine Corps Reserve, retired or retainer pay to which the member is entitled.

(g) EXCLUSION OF COAST GUARD.—This section does not apply to the Coast Guard.

(Added Pub. L. 107–314, div. A, title X, § 1008(a), Dec. 2, 2002, 116 Stat. 2634; amended Pub. L. 108–136, div. A, title X, § 1009(a)–(c)(1), Nov. 24, 2003, 117 Stat. 1587, 1588; Pub. L. 109–364, div. A, title X, § 1071(a)(25), Oct. 17, 2006, 120 Stat. 2399; Pub. L. 112–81, div. A, title VI, § 631(f)(4)(A), Dec. 31, 2011, 125 Stat. 1465; Pub. L. 112–239, div. A, title X, § 1076(a)(9), Jan. 2, 2013, 126 Stat. 1948.)

AMENDMENTS

2013—Subsec. (a)(3). Pub. L. 112–239, § 1076(a)(9), made technical amendment to directory language of Pub. L. 112–81, § 631(f)(4)(A). See 2011 Amendment note below.

2011—Subsec. (a)(3). Pub. L. 112–81, § 631(f)(4)(A), as amended by Pub. L. 112–239, § 1076(a)(9), substituted ''474'' for ''404''.

2006—Subsec. (a)(2). Pub. L. 109–364 substituted ''card'' for ''care''.

2003—Subsec. (a)(1). Pub. L. 108–136, § 1009(a)(1), substituted ''The Secretary of Defense shall require'' for ''The Secretary of Defense may require''.

Subsec. (a)(2), (3). Pub. L. 108–136, § 1009(a)(2), (3), added par. (2) and redesignated former par. (2) as (3).

Subsecs. (d) to (g). Pub. L. 108–136, § 1009(b), (c)(1), added subsecs. (d) and (e) and redesignated former subsecs. (d) and (e) as (f) and (g), respectively.

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112–239, div. A, title X, § 1076(a), Jan. 2, 2013, 126 Stat. 1947, provided that the amendment made by section 1076(a)(9) is effective Dec. 31, 2011, and as if included in Pub. L. 112–81 as enacted.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 2785. Remittance addresses: regulation of alterations

The Secretary of Defense, acting through the Under Secretary of Defense (Comptroller), shall prescribe regulations setting forth controls on alteration of remittance addresses. Those regulations shall ensure that—

(1) a remittance address for a disbursement that is provided by an officer or employee of the Department of Defense authorizing or requesting the disbursement is not altered by any officer or employee of the department authorized to prepare the disbursement; and

(2) a remittance address for a disbursement is altered only if the alteration—

(A) is requested by the person to whom the disbursement is authorized to be remitted; and

(B) is made by an officer or employee authorized to do so who is not an officer or employee referred to in paragraph (1).

(Added Pub. L. 106–65, div. A, title IX, § 933(a)(1), Oct. 5, 1999, 113 Stat. 729.)

REGULATIONS

Pub. L. 106–65, div. A, title IX, § 933(b)(2), Oct. 5, 1999, 113 Stat. 730, provided that: ''Regulations under section 2785 of title 10, United States Code, as added by subsection (a), shall be prescribed not later than 180 days after the date of the enactment of this Act [Oct. 5, 1999].''

§ 2786. Department of Defense payments by electronic transfers of funds: exercise of authority for waivers

With respect to any Federal payment of funds covered by section 3332(f) of title 31 (relating to electronic funds transfers) for which payment is made or authorized by the Department of Defense, the waiver authority provided in paragraph (2)(A)(i) of that section shall be exercised by the Secretary of Defense. The Secretary of Defense shall carry out the authority provided under the preceding sentence in consultation with the Secretary of the Treasury.

(Added Pub. L. 106–65, div. A, title X, § 1008(a)(1), Oct. 5, 1999, 113 Stat. 737.)

SAVINGS PROVISION

Pub. L. 106–65, div. A, title X, § 1008(a)(3), Oct. 5, 1999, 113 Stat. 738, provided that: ''Any waiver in effect on the date of the enactment of this Act [Oct. 5, 1999] under paragraph (2)(A)(i) of section 3332(f) of title 31, United States Code, shall remain in effect until otherwise provided by the Secretary of Defense under section 2786 of title 10, United States Code, as added by paragraph (1).''

§ 2787. Reports of survey

(a) ACTION ON REPORTS OF SURVEY.—Under regulations prescribed pursuant to subsection (c), any officer of the Army, Navy, Air Force, Marine Corps, or Space Force or any civilian employee of the Department of Defense designated in accordance with those regulations may act upon reports of surveys and vouchers pertaining to the loss, spoilage, unserviceability, unsuitability, or destruction of, or damage to, property of the United States under the control of the Department of Defense.

(b) FINALITY OF ACTION.—(1) Action taken under subsection (a) is final except as provided in paragraph (2).

(2) An action holding a person pecuniarily liable for loss, spoilage, destruction, or damage is not final until approved by a person designated to do so by the Secretary of a military department, commander of a combatant command, or Director of a Defense Agency, as the case may be, who has jurisdiction of the person held pecuniarily liable. The person designated to provide final approval shall be an officer of an armed force, or a civilian employee, under the jurisdiction of the official making the designation.

(c) REGULATIONS.—The Secretary of Defense shall prescribe regulations to carry out this section.

(Added Pub. L. 107–314, div. A, title X, § 1006(a)(1), Dec. 2, 2002, 116 Stat. 2632; amended Pub. L. 116–283, div. A, title IX, § 924(b)(3)(HH), Jan. 1, 2021, 134 Stat. 3822.)

AMENDMENTS

2021—Subsec. (a). Pub. L. 116–283 substituted ''Marine Corps, or Space Force'' for ''or Marine Corps''.

EFFECTIVE DATE

Pub. L. 107–314, div. A, title X, § 1006(d), Dec. 2, 2002, 116 Stat. 2633, provided that: ''The amendments made by this section [enacting this section, amending section 1007 of Title 37, Pay and Allowances of the Uniformed Services, and repealing sections 4835 and 9835 of this title] shall apply with respect to the loss, spoilage, unserviceability, unsuitability, or destruction of, or damage to, property of the United States under the control of the Department of Defense occurring on or after the effective date of regulations prescribed pursuant to section 2787 of title 10, United States Code, as added by subsection (a).''

§ 2788. Property accountability: regulations

The Secretary of a military department may prescribe regulations for the accounting for the property of that department and the fixing of responsibility for that property.

(Added Pub. L. 110–181, div. A, title III, § 375(a), Jan. 28, 2008, 122 Stat. 83.)

§ 2789. Individual equipment: unauthorized disposition

(a) PROHIBITION.—No member of the armed forces may sell, lend, pledge, barter, or give any clothing, arms, or equipment furnished to such member by the United States to any person other than a member of the armed forces or an officer of the United States who is authorized to receive it.

(b) SEIZURE OF IMPROPERLY DISPOSED PROPERTY.—If a member of the armed forces has disposed of property in violation of subsection (a) and the property is in the possession of a person who is neither a member of the armed forces nor an officer of the United States who is authorized to receive it, that person has no right to or interest in the property, and any civil or military officer of the United States may seize the property, wherever found, subject to applicable regulations. Possession of such property furnished by the United States to a member of the armed forces by a person who is neither a member of the armed forces, nor an officer of the United States, is prima facie evidence that the property has been disposed of in violation of subsection (a).

(c) DELIVERY OF SEIZED PROPERTY.—If an officer who seizes property under subsection (b) is not authorized to retain it for the United States, the officer shall deliver the property to a person who is authorized to retain it.

(Added Pub. L. 110–181, div. A, title III, § 375(a), Jan. 28, 2008, 122 Stat. 83.)

§ 2790. Recovery of improperly disposed of Department of Defense property

(a) PROHIBITION.—No member of the armed forces, civilian employee of the United States Government, contractor personnel, or other person may sell, lend, pledge, barter, or give any clothing, arms, articles, equipment, or other military or Department of Defense property except in accordance with the statutes and regulations governing Government property.

(b) TRANSFER OF TITLE OR INTEREST INEFFECTIVE.—If property has been disposed of in violation of subsection (a), the person holding the property has no right or title to, or interest in, the property.

(c) AUTHORITY FOR SEIZURE OF IMPROPERLY DISPOSED OF PROPERTY.—If any person is in the possession of military or Department of Defense property without right or title to, or interest in, the property because it has been disposed of in material violation of subsection (a), any Federal, State, or local law enforcement official may seize the property wherever found. Unless an exception to the warrant requirement under the fourth amendment to the Constitution applies, seizure may be made only—

(1) pursuant to—

(A) a warrant issued by the district court of the United States for the district in which the property is located, or for the district in which the person in possession of the property resides or is subject to service; or

(B) pursuant to an order by such court, issued after a determination of improper transfer under subsection (e); and

(2) after such a court has issued such a warrant or order.

(d) INAPPLICABILITY TO CERTAIN PROPERTY.—Subsections (b) and (c) shall not apply to—

(1) property on public display by public or private collectors or museums in secured exhibits; or

(2) property in the collection of any museum or veterans organization or held in a private collection for the purpose of public display, provided that any such property, the possession of which could undermine national security or create a hazard to public health or safety, has been fully demilitarized.

(e) DETERMINATIONS OF VIOLATIONS.—(1) The district court of the United States for the district in which the property is located, or the district in which the person in possession of the property resides or is subject to service, shall have jurisdiction, regardless of the current approximated or estimated value of the property, to determine whether property was disposed of in violation of subsection (a). Any such determination shall be by a preponderance of the evidence.

(2) Except as provided in paragraph (3), in the case of property, the possession of which could undermine national security or create a hazard to public health or safety, the determination under paragraph (1) may be made after the seizure of the property, as long as the United States files an action seeking such determination within 90 days after seizure of the property. If the person from whom the property is seized is found to have been lawfully in possession of the property and the return of the property could undermine national security or create a hazard to public health or safety, the Secretary of Defense shall reimburse the person for the market value for the property.

(3) Paragraph (2) shall not apply to any firearm, ammunition, or ammunition component, or firearm part or accessory that is not prohibited for commercial sale.

(f) DELIVERY OF SEIZED PROPERTY.—Any law enforcement official who seizes property under subsection (c) and is not authorized to retain it for the United States shall deliver the property to an authorized member of the armed forces or other authorized official of the Department of Defense or the Department of Justice.

(g) SCOPE OF ENFORCEMENT.—This section shall apply to the following:

(1) Any military or Department of Defense property disposed of after January 6, 2011, in a manner that is not in accordance with statutes and regulations governing Government property in effect at the time of the disposal of such property.

(2) Any significant military equipment disposed of on or after January 1, 2002, in a manner that is not in accordance with statutes and regulations governing Government property in effect at the time of the disposal of such significant military equipment.

(h) RULE OF CONSTRUCTION.—The authority of this section is in addition to any other author-

ity of the United States with respect to property to which the United States may have right or title.

(i) DEFINITIONS.—In this section:

(1) The term ''significant military equipment'' means defense articles on the United States Munitions List for which special export controls are warranted because of their capacity for substantial military utility or capability.

(2) The term ''museum'' has the meaning given that term in section 273(1) of the Museum Services Act (20 U.S.C. 9172(1)).

(3) The term ''fully demilitarized'' means, with respect to equipment or material, the destruction of the military offensive or defensive advantages inherent in the equipment or material, including, at a minimum, the destruction or disabling of key points of such equipment or material, such as the fuselage, tail assembly, wing spar, armor, radar and radomes, armament and armament provisions, operating systems and software, and classified items.

(4) The term ''veterans organization'' means any organization recognized by the Secretary of Veterans Affairs for the representation of veterans under section 5902 of title 38.

(Added Pub. L. 111–383, div. A, title III, § 355(a), Jan. 7, 2011, 124 Stat. 4195; amended Pub. L. 112–239, div. A, title X, § 1076(e)(5), Jan. 2, 2013, 126 Stat. 1951.)

AMENDMENTS

2013—Subsec. (g)(1). Pub. L. 112–239 substituted ''after January 6, 2011,'' for ''on or after the date of the enactment of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011''.

[CHAPTER 167—REPEALED]

[§ 2791. Repealed. Pub. L. 104–201, div. A, title XI, § 1121(b), Sept. 23, 1996, 110 Stat. 2687]

Section, added Pub. L. 97–295, § 1(50)(C), Oct. 12, 1982, 96 Stat. 1299, related to establishment and duties of Defense Mapping Agency.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1996, see section 1124 of Pub. L. 104–201, set out as an Effective Date of 1996 Amendment note under section 193 of this title.

[§ 2792. Renumbered § 451]

[§ 2793. Renumbered § 452]

[§ 2794. Renumbered § 453]

[§ 2795. Renumbered § 454]

[§ 2796. Renumbered § 455]

[§ 2797. Repealed. Pub. L. 104–201, div. A, title XI, § 1121(b), Sept. 23, 1996, 110 Stat. 2687]

Section, added Pub. L. 103–337, div. A, title X, § 1074(a), Oct. 5, 1994, 108 Stat. 2861, related to unauthorized use of Defense Mapping Agency name, initials, or seal.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1996, see section 1124 of Pub. L. 104–201, set out as an Effective Date of 1996 Amendment note under section 193 of this title.

[§ 2798. Renumbered § 456]

CHAPTER 169—MILITARY CONSTRUCTION AND MILITARY FAMILY HOUSING

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AMENDMENTS

2019—Pub. L. 116–92, div. B, title XXX, § 3011(c)(2), Dec. 20, 2019, 133 Stat. 1920, added item for subchapter V.

1996—Pub. L. 104–106, div. B, title XXVIII, § 2801(a)(2), Feb. 10, 1996, 110 Stat. 551, added item for subchapter IV.

SUBCHAPTER I—MILITARY CONSTRUCTION

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AMENDMENTS

2021—Pub. L. 116–283, div. A, title X, § 1081(c)(9), div. B, title XXVIII, § 2804(b), Jan. 1, 2021, 134 Stat. 3873, 4321, added item 2816 and amended directory language of Pub. L. 116–92, § 2801(b)(2). See 2019 Amendment note below.

2019—Pub. L. 116–92, div. B, title XXVIII, § 2801(b)(2), Dec. 20, 2019, 133 Stat. 1881, as amended by Pub. L. 116–283, div. A, title X, § 1081(c)(9), Jan. 1, 2021, 134 Stat. 3873, added item 2815.

2011—Pub. L. 112–81, div. A, title X, § 1061(23)(B), Dec. 31, 2011, 125 Stat. 1584, struck out item 2815 ''Joint use military construction projects: annual evaluation''.

2002—Pub. L. 107–314, div. A, title III, § 313(d)(2), Dec. 2, 2002, 116 Stat. 2508, struck out item 2810 ''Construction projects for environmental response actions''.

2000—Pub. L. 106–398, § 1 [div. B, title XXVIII, § 2801(b)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–412, added item 2815.

1999—Pub. L. 106–65, div. B, title XXVIII, § 2802(a)(2), Oct. 5, 1999, 113 Stat. 848, added item 2814.

1996—Pub. L. 104–201, div. B, title XXVIII, § 2802(c)(2), Sept. 23, 1996, 110 Stat. 2787, substituted ''Organizations Security Investment'' for ''Organization Infrastructure'' in item 2806.

Pub. L. 104–106, div. A, title XV, § 1503(a)(31), Feb. 10, 1996, 110 Stat. 512, inserted period at end of item 2811.

1994—Pub. L. 103–337, div. B, title XXVIII, § 2801(b), Oct. 5, 1994, 108 Stat. 3050, substituted ''Repair'' for ''Renovation'' in item 2811.

1993—Pub. L. 103–160, div. B, title XXVIII, § 2805(a)(2), Nov. 30, 1993, 107 Stat. 1887, added item 2813.

1991—Pub. L. 102–190, div. B, title XXVIII, § 2805(a)(2), Dec. 5, 1991, 105 Stat. 1538, substituted ''Long-term facilities contracts for certain activities and services'' for ''Test of long-term facilities contracts'' in item 2809.

1989—Pub. L. 101–189, div. B, title XXVIII, § 2809(b), Nov. 29, 1989, 103 Stat. 1650, added item 2812.

1987—Pub. L. 100–26, § 7(e)(3), Apr. 21, 1987, 101 Stat. 281, redesignated item 2810 ''Renovation of facilities'' as item 2811.

1986—Pub. L. 99–661, div. A, title III, § 315(b), Nov. 14, 1986, 100 Stat. 3854, added item 2810 ''Renovation of facilities''.

Pub. L. 99–499, title II, § 211(b)(2), Oct. 17, 1986, 100 Stat. 1726, added item 2810 ''Construction projects for environmental response actions''.

1985—Pub. L. 99–167, title VIII, § 811(b), Dec. 3, 1985, 99 Stat. 991, added item 2809.

§ 2801. Scope of chapter; definitions

(a) The term ''military construction'' as used in this chapter or any other provision of law includes any construction, development, conversion, or extension of any kind carried out with respect to a military installation, whether to satisfy temporary or permanent requirements, or any acquisition of land or construction of a defense access road (as described in section 210 of title 23).

(b) A military construction project includes all military construction work, or any contribution authorized by this chapter, necessary to produce a complete and usable facility or a complete and usable improvement to an existing facility (or to produce such portion of a complete and usable facility or improvement as is specifically authorized by law).

(c) In this chapter and chapter 173 of this title:

(1) The term ''appropriate committees of Congress'' means the congressional defense committees and, with respect to any project to be carried out by, or for the use of, an intelligence component of the Department of Defense, the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate.

(2) The term ''facility'' means a building, structure, or other improvement to real property.

(3) The term ''life-cycle cost-effective'', with respect to a project, product, or measure, means that the sum of the present values of investment costs, capital costs, installation costs, energy costs, operating costs, maintenance costs, and replacement costs, as estimated for the lifetime of the project, product, or measure, does not exceed the base case (current or standard) for the practice, product, or measure.

(4) The term ''military installation'' means a base, camp, post, station, yard, center, or other activity under the jurisdiction of the Secretary of a military department or, in the case of an activity in a foreign country, under the operational control of the Secretary of a military department or the Secretary of Defense, without regard to the duration of operational control.

(5) The term ''Secretary concerned'' includes the Secretary of Defense with respect to matters concerning the Defense Agencies.

(d) This chapter (other than sections 2830,[1] 2835, and 2836 of this chapter) does not apply to the Coast Guard or to civil works projects of the Army Corps of Engineers.

(Added Pub. L. 97–214, § 2(a), July 12, 1982, 96 Stat. 153; amended Pub. L. 100–26, § 7(k)(2), Apr. 21, 1987, 101 Stat. 284; Pub. L. 100–180, div. A, title VI, § 632(b)(1), title XII, § 1231(15), div. B, subdiv. 3, title I, § 2306(b), Dec. 4, 1987, 101 Stat. 1105, 1160, 1216; Pub. L. 102–484, div. A, title X, § 1052(37), Oct. 23, 1992, 106 Stat. 2501; Pub. L. 102–496, title IV, § 403(b), Oct. 24, 1992, 106 Stat. 3185; Pub. L. 104–106, div. A, title XV, § 1502(a)(10), Feb. 10, 1996, 110 Stat. 503; Pub. L. 106–65, div. A, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 108–136, div. A, title X, § 1043(b)(16), div. B, title XXVIII, § 2801, Nov. 24, 2003, 117 Stat. 1611, 1719; Pub. L. 109–163, div. A, title X, § 1056(c)(9), Jan. 6, 2006, 119 Stat. 3440; Pub. L. 109–364, div. B, title XXVIII, § 2851(b)(4), Oct. 17, 2006, 120 Stat. 2495; Pub. L. 110–181, div. B, title XXVIII, § 2802(b), Jan. 28, 2008, 122 Stat. 539; Pub. L. 110–417, div. B, title XXVIII, § 2801(a), Oct. 14, 2008, 122 Stat. 4719.)

REFERENCES IN TEXT

Section 2830 of this chapter, referred to in subsec. (d), was repealed by Pub. L. 116–283, div. B, title XXVIII, § 2812(a), Jan. 1, 2021, 134 Stat. 4326.

AMENDMENTS

2008—Subsec. (a). Pub. L. 110–181 inserted '', or any acquisition of land or construction of a defense access road (as described in section 210 of title 23)'' before period at end.

Subsec. (c). Pub. L. 110–417 added par. (3) and redesignated former pars. (4), (1), (2), and (3) as (1), (2), (4), and (5), respectively.

2006—Subsec. (c). Pub. L. 109–364 inserted ''and chapter 173 of this title'' after ''this chapter'' in introductory provisions.

Subsec. (d). Pub. L. 109–163 substituted ''sections 2830, 2835, and 2836 of this chapter'' for ''sections 2830 and 2835''.

2003—Subsec. (a). Pub. L. 108–136, § 2801(a), inserted before period at end '', whether to satisfy temporary or permanent requirements''.

Subsec. (c)(2). Pub. L. 108–136, § 2801(b), inserted before period at end '', without regard to the duration of operational control''.

Subsec. (c)(4). Pub. L. 108–136, § 1043(b)(16), substituted ''the congressional defense committees'' for ''the Committee on Armed Services and the Committee on Appropriations of the Senate and the Committee on Armed Services and the Committee on Appropriations of the House of Representatives''.

1999—Subsec. (c)(4). Pub. L. 106–65 substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security''.

1996—Subsec. (c)(4). Pub. L. 104–106 substituted ''the Committee on Armed Services and the Committee on Appropriations of the Senate and the Committee on National Security and the Committee on Appropriations of the'' for ''the Committees on Armed Services and on Appropriations of the Senate and''.

1992—Subsec. (c)(4). Pub. L. 102–496 inserted before period at end ''and, with respect to any project to be carried out by, or for the use of, an intelligence component of the Department of Defense, the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate''.

Subsec. (d). Pub. L. 102–484 substituted ''sections 2830 and 2835'' for ''sections 2828(g) and 2830''.

[1] See References in Text note below.

1987—Subsec. (c). Pub. L. 100–26 inserted ''The term'' after each par. designation and struck out uppercase letter of first word after first quotation marks in pars. (1), (2), and (4) and substituted lowercase letter.

Subsec. (c)(3). Pub. L. 100–180, §1231(15), substituted ''Defense Agencies'' for ''defense agencies''.

Subsec. (d). Pub. L. 100–180, §2306(b), substituted ''(other than sections 2828(g) and 2830)'' for ''(other than section 2830)''.

Pub. L. 100–180, §632(b)(1), inserted ''(other than section 2830)'' after ''This chapter''.

EFFECTIVE DATE

Pub. L. 97–214, §12, July 12, 1982, 96 Stat. 176, provided:

''(a) Except as provided in subsection (b), the amendments made by this Act [see Short Title of 1982 Amendment note below] shall take effect on October 1, 1982, and shall apply to military construction projects, and to construction and acquisition of military family housing, authorized before, on, or after such date.

''(b) The amendment made by section 4 [amending section 138(f)(1) [now 114(b)] of this title] shall apply with respect to funds appropriated for fiscal years beginning after September 30, 1983.''

SHORT TITLE OF 1982 AMENDMENT

Pub. L. 97–214, §1, July 12, 1982, 96 Stat. 153, provided that: ''This Act [see Tables for classification] may be cited as the 'Military Construction Codification Act'.''

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

PILOT PROGRAM TO SUPPORT COMBATANT COMMAND MILITARY CONSTRUCTION PRIORITIES

Pub. L. 116–283, div. B, title XXVIII, §2863, Jan. 1, 2021, 134 Stat. 4358, provided that:

''(a) PILOT PROGRAM.—The Secretary of Defense shall conduct a pilot program to evaluate the usefulness of reserving a portion of the military construction funds of the military departments to help the combatant commands satisfy their military construction priorities in a timely manner.

''(b) LOCATION.—The Secretary of Defense shall conduct the pilot program for the benefit of the United States Indo-Pacific Command in the area of responsibility of the United States Indo-Pacific Command.

''(c) REQUIRED INVESTMENT.—For each fiscal year during which the pilot program is conducted, the Secretary of Defense shall reserve to carry out military construction projects under the pilot program an amount equal to 10 percent of the total amount authorized to be appropriated for military construction projects by titles XXI, XXII, and XXIII of the Military Construction Authorization Act for that fiscal year.

''(d) COMMENCEMENT AND DURATION.—

''(1) COMMENCEMENT.—The Secretary of Defense shall commence the pilot program no later than October 1, 2023. The Secretary may commence the pilot program as early as October 1, 2022, if the Secretary determines that compliance with the reservation of funds requirement under subsection (c) is practicable beginning with fiscal year 2023.

''(2) DURATION.—The pilot program shall be in effect for the fiscal year in which the Secretary commences the pilot program, as described in paragraph (1), and the subsequent two fiscal years. Any construction commenced under the pilot program before the expiration date may continue to completion.

''(e) PROGRESS REPORT.—Not later than February 15 of the final fiscal year of the pilot program, the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report evaluating the success of the pilot program in improving the timeliness of the United States Indo-Pacific Command in achieving its military construction priorities. The Secretary shall include in the report—

''(1) an evaluation of the likely positive and negative impacts were the pilot program extended or made permanent and, if extended or made permanent, the likely positive and negative impacts of expansion to cover all or additional combatant commands; and

''(2) the recommendations of the Secretary regarding whether the pilot program should be extended or made permanent and expanded.''

PERMITTING MACHINE ROOM-LESS ELEVATORS IN DEPARTMENT OF DEFENSE FACILITIES

Pub. L. 115–91, div. B, title XXVIII, §2875, Dec. 12, 2017, 131 Stat. 1871, provided that:

''(a) IN GENERAL.—The Secretary of Defense shall issue modifications to all relevant construction and facilities specifications to ensure that machine room-less elevators (MRLs) are not prohibited in buildings and facilities throughout the Department of Defense, including modifications to the Unified Facilities Guide Specifications (UFGS), the Naval Facilities Engineering Command Interim Technical Guidance, and the Army Corps of Engineers Engineering and Construction Bulletin.

''(b) CONFORMING TO BEST PRACTICES.—In addition to the modifications required under subsection (a), the Secretary may issue further modifications to conform generally with commercial best practices as reflected in the safety code for elevators and escalators as issued by the American Society of Mechanical Engineers.

''(c) DEADLINES.—The Secretary shall promulgate interim MRL standards not later than 180 days after the date of the enactment of this Act [Dec. 12, 2017], and shall issue final and formal MRL specifications not later than 1 year after the date of the enactment of this Act.

''(d) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Secretary shall issue a report to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] on the integration and utilization of MRLs, including information on quantity, location, problems, and successes.''

§ 2802. Military construction projects

(a) The Secretary of Defense and the Secretaries of the military departments may carry out such military construction projects, land acquisitions, and defense access road projects (as described under section 210 of title 23) as are authorized by law.

(b) Authority provided by law to carry out a military construction project includes authority for—

(1) surveys and site preparation;

(2) acquisition, conversion, rehabilitation, and installation of facilities;

(3) acquisition and installation of equipment and appurtenances integral to the project;

(4) acquisition and installation of supporting facilities (including utilities) and appurtenances incident to the project; and

(5) planning, supervision, administration, and overhead incident to the project.

(c) In determining the scope of a proposed military construction project, the Secretary concerned shall submit to the President such recommendations as the Secretary considers to be appropriate regarding the incorporation and

inclusion of life-cycle cost-effective practices as an element in the project documents submitted to Congress in connection with the budget submitted pursuant to section 1105 of title 31 for the fiscal year in which a contract is proposed to be awarded for the project.

[(d) Repealed. Pub. L. 114–328, div. B, title XXVIII, § 2811(b), Dec. 23, 2016, 130 Stat. 2716.]

(e)(1) If a construction project, land acquisition, or defense access road project described in paragraph (2) will be carried out pursuant to a provision of law other than a Military Construction Authorization Act, the Secretary concerned shall—

(A) comply with the congressional notification requirement contained in the provision of law under which the construction project, land acquisition, or defense access road project will be carried out and submit to the congressional defense committees any materials required to be submitted to Congress or any other congressional committees pursuant to the congressional notification requirement; or

(B) in the absence of such a congressional notification requirement, submit to the congressional defense committees, in an electronic medium pursuant to section 480 of this title, a report describing the construction project, land acquisition, or defense access road project at least 15 days before commencing the construction project, land acquisition, or defense access road project.

(2) Except as provided in paragraph (3), a construction project, land acquisition, or defense access road project subject to the notification requirement imposed by paragraph (1) is a construction project, land acquisition, or defense access road project that—

(A) is not specifically authorized in a Military Construction Authorization Act;

(B) will be carried out by a military department, Defense Agency, or Department of Defense Field Activity; and

(C) will be located on a military installation.

(3) This subsection does not apply to a construction project, land acquisition, or defense access road project described in paragraph (2) whose cost is less than or equal to the threshold amount specified in section 2805(b) of this title.

(f)(1) In addition to any other applicable consultation requirement pursuant to law or Department of Defense policy, if a proposed military construction project is likely to significantly impact tribal lands, known sacred sites, or tribal treaty rights, the Secretary concerned shall initiate consultation with the tribal government of each impacted Indian tribe—

(A) to determine the nature and extent of such impact;

(B) to determine whether such impact can be avoided or mitigated in the design and implementation of the project; and

(C) if such impact cannot be avoided, to develop feasible measures consistent with applicable law to mitigate the impact and estimate the cost of the mitigation measures.

(2) As part of the Department of Defense Form 1391 submitted to the appropriate committees of Congress for a military construction project covered by paragraph (1), the Secretary concerned, to the extent possible at the time of such submission, shall include a description of the current status of the consultation conducted under such paragraph and specifically address each of the items specified in subparagraphs (A), (B), and (C) of such paragraph.

(3) The requirement under paragraph (1) does not affect the obligation of the Secretary concerned to comply with any other applicable consultation requirement pursuant to law or Department of Defense policy.

(4) In this subsection:

(A) The term ''Indian tribe'' has the meaning given that term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304).

(B) The term ''tribal government'' means the recognized governing body of an Indian tribe.

(C) The term ''sacred site'' has the meaning given that term in Executive Order No. 13007, as in effect on the date of the enactment of the National Defense Authorization Act for Fiscal Year 2020.

(Added Pub. L. 97–214, § 2(a), July 12, 1982, 96 Stat. 154; amended Pub. L. 110–181, div. B, title XXVIII, § 2802(a), Jan. 28, 2008, 122 Stat. 539; Pub. L. 110–417, div. B, title XXVIII, § 2801(b), Oct. 14, 2008, 122 Stat. 4719; Pub. L. 113–66, div. B, title XXVIII, § 2807(c), Dec. 26, 2013, 127 Stat. 1012; Pub. L. 113–291, div. B, title XXVIII, §§ 2801, 2803(b), Dec. 19, 2014, 128 Stat. 3695, 3697; Pub. L. 114–328, div. B, title XXVIII, § 2811(b), (c), Dec. 23, 2016, 130 Stat. 2716; Pub. L. 115–91, div. A, title X, § 1081(d)(15), Dec. 12, 2017, 131 Stat. 1600; Pub. L. 115–232, div. B, title XXVIII, § 2803, Aug. 13, 2018, 132 Stat. 2261; Pub. L. 116–92, div. A, title XVII, § 1731(a)(53), div. B, title XXVIII, § 2802, Dec. 20, 2019, 133 Stat. 1815, 1881.)

REFERENCES IN TEXT

Executive Order No. 13007, referred to in subsec. (f)(4)(C), is Ex. Ord. No. 13007, May 24, 1996, 61 F.R. 26771, which is set out as a note under section 1996 of Title 42, The Public Health and Welfare.

The date of the enactment of the National Defense Authorization Act for Fiscal Year 2020, referred to in subsec. (f)(4)(C), is the date of enactment of Pub. L. 116–92, which was approved Dec. 20, 2019.

AMENDMENTS

2019—Subsec. (e)(1). Pub. L. 116–92, § 1731(a)(53), substituted ''shall—'' for ''shall'' and inserted subpar. (A) designation before ''comply with the congressional notification requirement''.

Subsec. (f). Pub. L. 116–92, § 2802, added subsec. (f).

2018—Subsec. (e)(1). Pub. L. 115–232 substituted ''Secretary concerned shall'' for ''Secretary concerned shall—'', struck out subpar. (A) designation before ''comply with the congressional notification requirement'', and inserted ''and submit to the congressional defense committees any materials required to be submitted to Congress or any other congressional committees pursuant to the congressional notification requirement'' after ''road project will be carried out''.

2017—Subsec. (d). Pub. L. 115–91, § 1081(d)(15), amended Pub. L. 114–328, § 2811(c). See 2016 Amendment note below.

2016—Subsec. (d). Pub. L. 114–328, § 2811(b), struck out subsec. (d) which related to requirements for military construction projects funded through payments-in-kind or in-kind contributions, inclusion of such projects in budget justification documents, and exceptions to those requirements.

Pub. L. 114–328, § 2811(c), as amended by Pub. L. 115–91, § 1081(d)(15), repealed Pub. L. 113–291, § 2803(b). See 2014 Amendment note below.

2014—Subsec. (d). Pub. L. 113–291, § 2803(b), which substituted ''payments-in-kind or in-kind contributions'' for ''payment-in-kind contributions'' in par. (1), added par. (3) and struck out former par. (3) which described certain military construction projects to which subsec. (d) did not apply, and substituted ''paragraph (3), by reference to section 2687a(f)(4)(D) of this title,'' for ''paragraph (3)(C)'' in par. (4), was repealed by Pub. L. 114–328, § 2811(c), as amended by Pub. L. 115–91, § 1081(d)(15).

Subsec. (e). Pub. L. 113–291, § 2801, added subsec. (e).

2013—Subsec. (d). Pub. L. 113–66 added subsec. (d).

2008—Subsec. (a). Pub. L. 110–181 inserted '', land acquisitions, and defense access road projects (as described under section 210 of title 23)'' after ''military construction projects''.

Subsec. (c). Pub. L. 110–417 added subsec. (c).

EFFECTIVE DATE OF 2017 AMENDMENT

Pub. L. 115–91, div. A, title X, § 1081(d), Dec. 12, 2017, 131 Stat. 1599, provided that the amendment made by section 1081(d)(15) is effective as of Dec. 23, 2016, and as if included in Pub. L. 114–328 as enacted.

EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

PILOT PROGRAM TO AUTHORIZE ADDITIONAL MILITARY CONSTRUCTION PROJECTS FOR CHILD DEVELOPMENT CENTERS AT MILITARY INSTALLATIONS

Pub. L. 116–283, div. B, title XXVIII, § 2865, Jan. 1, 2021, 134 Stat. 4360, provided that:

''(a) AUTHORIZATION OF ADDITIONAL PROJECTS.—Each Secretary of a military department shall conduct a pilot program under which the Secretary may carry out military construction projects for child development centers at military installations, as specified in the funding table in section 4601 of a National Defense Authorization Act for a fiscal year covered by the pilot program. The military construction projects authorized under the pilot program are in addition to other military construction projects authorized by this Act or other National Defense Authorization Acts for fiscal years covered by the pilot program.

''(b) REPORTING REQUIREMENT AS CONDITION OF AUTHORIZATION.—

''(1) REPORT REQUIRED.—Not later than 90 days after the date of the enactment of a National Defense Authorization Act for a fiscal year covered by the pilot program, the Secretary of the military department concerned shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report that describes the location, title, and cost, together with a Department of Defense Form 1391, for each military construction project the Secretary proposes to carry out under the pilot program pursuant to that National Defense Authorization Act.

''(2) TIMING OF AVAILABILITY OF FUNDS.—No funds may be obligated or expended for a military construction project under the pilot program—

''(A) unless the project is included in a report submitted under paragraph (1); and

''(B) until the expiration of the 30-day period beginning on the date on which the Secretary concerned submits the report under paragraph (1) in which the project is included.

''(c) EXPIRATION OF AUTHORIZATION.—Section 2002 of a National Defense Authorization Act for a fiscal year covered by the pilot program shall apply with respect to the authorization of a military construction project carried out under the pilot program pursuant to that National Defense Authorization Act in the same manner as such section applies to the authorization of military construction projects contained in titles XXI through XXIII of that National Defense Authorization Act.

''(d) COVERED FISCAL YEARS.—The pilot program shall be carried out for each of fiscal years 2021 through 2025, as provided in the National Defense Authorization Act for that fiscal year.''

AMENDMENT OF UNIFIED FACILITIES CRITERIA TO PROMOTE MILITARY INSTALLATION RESILIENCE, ENERGY RESILIENCE, ENERGY AND CLIMATE RESILIENCY, AND CYBER RESILIENCE

Pub. L. 116–92, div. B, title XXVIII, § 2804, Dec. 20, 2019, 133 Stat. 1882, provided that:

''(a) AMENDMENT REQUIRED.—

''(1) IN GENERAL.—Not later than September 1, 2020, the Secretary of Defense shall amend the Unified Facility Criteria relating to military construction planning and design, to ensure that building practices and standards of the Department of Defense promote military installation resilience, energy resilience, energy and climate resiliency, and cyber resilience.

''(2) CONSIDERATIONS AND CONSULTATION.—In preparing amendments pursuant to paragraph (1), the Secretary of Defense—

''(A) shall take into account historical data, current conditions, and sea level rise projections; and

''(B) may consult with the heads of other Federal departments and agencies with expertise regarding military installation resilience, energy resilience, energy and climate resiliency, and cyber resilience.

''(b) CONDITIONAL AVAILABILITY OF FUNDS.—Not more than 25 percent of the funds authorized to be appropriated for fiscal year 2020 for Department of Defense planning and design accounts relating to military construction projects may be obligated until the date on which the Secretary of Defense submits to the Committees on Armed Services of the House of Representatives and the Senate a certification that the Secretary—

''(1) has initiated the amendment process required by subsection (a)(1); and

''(2) intends to complete such process by September 1, 2020.

''(c) UPDATE OF UNIFIED FACILITIES CRITERIA TO INCLUDE CHANGING ENVIRONMENTAL CONDITION PROJECTIONS.—[Amended section 2805(c) of Pub. L. 115–232, set out as a note under section 2864 of this title.]

''(d) IMPLEMENTATION OF UNIFIED FACILITIES CRITERIA AMENDMENTS.—

''(1) IMPLEMENTATION.—Any Department of Defense Form 1391 submitted to Congress after September 1, 2020 shall comply with the Unified Facility Criteria, as amended pursuant to this section.

''(2) CERTIFICATION.—Not later than March 1, 2021, the Secretary of Defense shall certify to the Committees on Armed Services of the House of Representatives and the Senate the completion and full incorporation into military construction planning and design—

''(A) amendments made pursuant to subsection (a); and

''(B) amendments made pursuant to section 2805(c) of the Military Construction Authorization Act for Fiscal Year 2019 (division B of Public Law 115–232; 132 Stat. 2262; 10 U.S.C. 2864 note), as amended by subsection (c).

''(e) ANNUAL REVIEW.—Beginning with fiscal year 2022, and annually thereafter, the Secretary of Defense shall conduct a review comparing the Unified Facility Criteria and industry best practices, for the purpose of ensuring that military construction building practices and standards of the Department of Defense relating to military installation resilience, energy resilience, energy and climate resiliency, and cyber resilience remain up-to-date.

''(f) DEFINITIONS.—In this section:

''(1) The terms 'energy resilience' and 'military installation resilience' have the meanings given those terms in section 101(e) of title 10, United States Code.

"(2) The term 'energy and climate resiliency' has the meaning given that term in section 2864 of title 10, United States Code."

MODIFICATION TO DEPARTMENT OF DEFENSE FORM 1391 REGARDING CONSIDERATION OF POTENTIAL LONG-TERM ADVERSE ENVIRONMENTAL EFFECTS

Pub. L. 116–92, div. B, title XXVIII, § 2805, Dec. 20, 2019, 133 Stat. 1884, provided that:

"(a) MODIFICATION.—

"(1) CERTIFICATION REQUIREMENT.—The Secretary of Defense shall modify Department of Defense Form 1391 to require, with respect to any proposed major or minor military construction project requiring congressional notification or approval, the inclusion of a certification by the Secretary of Defense or the Secretary of the military department concerned that the proposed military construction project takes into consideration—

"(A) the potential adverse consequences of long-term changes in environmental conditions, such as increasingly frequent extreme weather events, that could affect the military installation resilience of the installation for which the military construction project is proposed; and

"(B) building requirements in effect for the locality in which the military construction project is proposed and industry best practices that are developed to withstand extreme weather events and other consequences of changes in environmental conditions.

"(2) ELEMENTS OF CERTIFICATION.—As part of the certification required by paragraph (1) for a proposed military construction project, the Secretary concerned shall identify the potential changes in environmental conditions, such as increasingly frequent extreme weather events, considered and addressed under subparagraphs (A) and (B) of paragraph (1).

"(b) RELATION TO RECENT MODIFICATION REQUIREMENT.—The modification of Department of Defense Form 1391 required by subsection (a) is in addition to, and expands upon, the modification of Department of Defense Form 1391 with respect to flood risk disclosure for military construction required by section 2805(a) of the Military Construction Authorization Act for Fiscal Year 2019 (division B of Public Law 115–232; 132 Stat. 2262; 10 U.S.C. 2802 note).

"(c) MILITARY INSTALLATION RESILIENCE DEFINED.—In this section, the term 'military installation resilience' has the meaning given that term in section 101(e)(8) of title 10, United States Code."

PILOT PROGRAM TO EXTEND SERVICE LIFE OF ROADS AND RUNWAYS UNDER THE JURISDICTION OF THE SECRETARY OF DEFENSE

Pub. L. 116–92, div. B, title XXVIII, § 2865, Dec. 20, 2019, 133 Stat. 1901, provided that:

"(a) PILOT PROGRAM AUTHORIZED.—The Secretary of Defense, in consultation with the Secretary of Transportation, may carry out a pilot program to design, build, and test technologies, techniques, and materials in order to extend the service life of roads and runways under the jurisdiction of the Secretary of Defense.

"(b) SCOPE.—The pilot program under subsection (a) shall include the following:

"(1) The design, testing, and assembly of technologies and systems suitable for pavement applications.

"(2) Research, development, and testing of pavement materials for use in different geographic areas in the United States.

"(3) The design and procurement of platforms and equipment to test the performance, cost, feasibility, and effectiveness of the technologies, systems, and materials described in paragraphs (1) and (2).

"(c) AWARD OF CONTRACTS OR GRANTS.—

"(1) IN GENERAL.—The Secretary of Defense may carry out the pilot program under subsection (a) through the award of contracts or grants for the designing, building, or testing of technologies, techniques, and materials under the pilot program.

"(2) MERIT-BASED SELECTION.—Any award of a contract or grant under the pilot program under subsection (a) shall be made using merit-based selection procedures.

"(d) REPORT.—

"(1) IN GENERAL.—Not later than two years after the commencement of the pilot program under subsection (a), the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the pilot program.

"(2) CONTENTS.—The report under paragraph (1) with respect to the pilot program shall include the following:

"(A) An assessment of the effectiveness of activities under the pilot program in improving the service life of roads and runways under the jurisdiction of the Secretary.

"(B) An analysis of the potential lifetime cost savings and reduction in energy demands associated with the extended service life of such roads and runways.

"(e) TERMINATION OF AUTHORITY.—The pilot program under subsection (a) shall terminate on September 30, 2024."

UPDATES AND MODIFICATIONS TO DEPARTMENT OF DEFENSE FORM 1391, UNIFIED FACILITIES CRITERIA, AND MILITARY INSTALLATION MASTER PLANS

Pub. L. 115–232, div. B, title XXVIII, § 2805(a), (b), Aug. 13, 2018, 132 Stat. 2262, as amended by Pub. L. 116–92, div. B, title XXVIII, § 2806, Dec. 20, 2019, 133 Stat. 1884, provided that:

"(a) FLOOD RISK DISCLOSURE FOR MILITARY CONSTRUCTION.—

"(1) IN GENERAL.—The Secretary of Defense shall modify Department of Defense Form 1391 to require, with respect to any proposed major or minor military construction project requiring congressional notification or approval—

"(A) disclosure whether a proposed project will be sited within or partially within a 100-year floodplain, according to the most recent available Federal Emergency Management Agency flood hazard data, or will be impacted by projected current and future mean sea level fluctuations over the lifetime of the project; and

"(B) if the proposed project will be sited within or partially within a 100-year floodplain or will be impacted by projected current and future mean sea level fluctuations over the lifetime of the project, the specific risk mitigation plan.

"(2) DELINEATION OF FLOODPLAIN.—To the extent that Federal Emergency Management Agency flood hazard data are not available for a proposed major or minor military construction site, the Secretary concerned shall establish a process for delineating the 100-year floodplain using risk analysis that is consistent with the standards used to inform Federal flood risk assessments.

"(3) REPORTING REQUIREMENTS.—For proposed projects that are to be sited within or partially within a 100-year floodplain or are to be impacted by projected current and future mean sea level fluctuations over the lifetime of the project, the Secretary concerned shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report with the following:

"(A) An assessment of flood vulnerability for the proposed project.

"(B) Any information concerning alternative construction sites that were considered, and an explanation of why those sites do not satisfy mission requirements.

"(C) A description of planned flood mitigation measures.

''(D) A description of how the proposed project has taken into account projected current and future mean sea level fluctuations over the lifetime of the project.

''(4) MINIMUM FLOOD MITIGATION REQUIREMENTS.—When mitigating the flood risk of a major or minor military construction project within or partially within the 100-year floodplain or that will be impacted by projected current and future mean sea level fluctuations over the lifetime of the project, the Secretary concerned shall require any mitigation plan to assume—

''(A) an additional 2 feet above the base flood elevation for non-mission critical buildings, as determined by the Secretary;

''(B) an additional 3 feet above the base flood elevation for mission-critical buildings, as determined by the Secretary; and

''(C) any additional flooding that will result from projected current and future mean sea level fluctuations over the lifetime of the project.

''(b) DISCLOSURE REQUIREMENTS FOR DEPARTMENT OF DEFENSE FORM 1391.—Not later than 30 days after the date of the enactment of this Act [Aug. 13, 2018], the Secretary of Defense shall amend Department of Defense Form 1391 to require, for each requested military construction project—

''(1) disclosure whether the project was included in the prior year's future-years defense program submitted to Congress pursuant to section 221 of title 10, United States Code; and

''(2) inclusion of an energy study or life cycle analysis.''

REQUIREMENTS RELATED TO PROVIDING WORLD CLASS MILITARY MEDICAL CENTERS

Pub. L. 111–383, div. B, title XXVIII, § 2852, Jan. 7, 2011, 124 Stat. 4475, provided that:

''(a) UNIFIED CONSTRUCTION STANDARD FOR MILITARY CONSTRUCTION AND REPAIRS TO MILITARY MEDICAL CENTERS.—Not later than 180 days after the date of the enactment of this Act [Jan. 7, 2011], the Secretary of Defense shall establish a unified construction standard for military construction and repairs for military medical centers that provides a single standard of care. This standard shall also include—

''(1) size standards for operating rooms and patient recovery rooms; and

''(2) such other construction standards that the Secretary considers necessary to support military medical centers.

''(b) INDEPENDENT REVIEW PANEL.—

''(1) ESTABLISHMENT; PURPOSE.—The Secretary of Defense shall establish an independent advisory panel for the purpose of—

''(A) reviewing the unified construction standards established pursuant to subsection (a) to determine the standards consistency with industry practices and benchmarks for world class medical construction;

''(B) reviewing ongoing construction programs within the Department of Defense to ensure medical construction standards are uniformly applied across applicable military medical centers;

''(C) assessing the approach of the Department of Defense approach to planning and programming facility improvements with specific emphasis on—

''(i) facility selection criteria and proportional assessment system; and

''(ii) facility programming responsibilities between the Assistant Secretary of Defense for Health Affairs and the Secretaries of the military departments;

''(D) assessing whether the Comprehensive Master Plan for the National Capital Region Medical, dated April 2010, is adequate to fulfill statutory requirements, as required by section 2714 of the Military Construction Authorization Act for Fiscal Year 2010 (division B of Public Law 111–84; 123 Stat. 2656), to ensure that the facilities and organizational structure described in the plan result in world class military medical centers in the National Capital Region; and

''(E) making recommendations regarding any adjustments of the master plan referred to in subparagraph (D) that are needed to ensure the provision of world class military medical centers and delivery system in the National Capital Region.

''(2) MEMBERS.—

''(A) APPOINTMENTS BY SECRETARY.—The panel shall be composed of such members as determined by the Secretary of Defense, except that the Secretary shall include as members—

''(i) medical facility design experts;

''(ii) military healthcare professionals;

''(iii) representatives of premier health care centers in the United States; and

''(iv) former retired senior military officers with joint operational and budgetary experience.

''(B) CONGRESSIONAL APPOINTMENTS.—The chairmen and ranking members of the Committees on the Armed Services of the Senate and House of Representatives may each designate one member of the panel.

''(C) TERM.—Members of the panel may serve on the panel until the termination date specified in paragraph (7).

''(D) COMPENSATION.—While performing duties on behalf of the panel, a member and any adviser referred to in paragraph (4) shall be reimbursed under Government travel regulations for necessary travel expenses.

''(3) MEETINGS.—The panel shall meet not less than quarterly. The panel or its members may make other visits to military treatment centers and military headquarters in connection with the duties of the panel.

''(4) STAFF AND ADVISORS.—The Secretary of Defense shall provide necessary administrative staff support to the panel. The panel may call in advisers for consultation.

''(5) REPORTS.—

''(A) INITIAL REPORT.—Not later than 120 days after the first meeting of the panel, the panel shall submit to the Secretary of Defense a written report containing—

''(i) an assessment of the adequacy of the plan of the Department of Defense to address the items specified in subparagraphs (A) through (E) of paragraph (1) relating to the purposes of the panel; and

''(ii) the recommendations of the panel to improve the plan.

''(B) ADDITIONAL REPORTS.—Not later than February 1, 2011, and each February 1 thereafter until termination of the panel, the panel shall submit to the Secretary of Defense a report on the findings and recommendations of the panel to address any deficiencies identified by the panel.

''(6) ASSESSMENT OF RECOMMENDATIONS.—Not later than 30 days after the date of the submission of each report under paragraph (5), the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report including—

''(A) a copy of the panel's assessment;

''(B) an assessment by the Secretary of the findings and recommendations of the panel; and

''(C) the plans of the Secretary for addressing such findings and recommendations.

''(7) TERMINATION.—The panel shall terminate on September 30, 2015.

''(c) DEFINITIONS.—In this section:

''(1) NATIONAL CAPITAL REGION.—The term 'National Capital Region' has the meaning given the term in section 2674(f) of title 10, United States Code.

''(2) WORLD CLASS MILITARY MEDICAL CENTER.—The term 'world class military medical center' has the meaning given the term 'world class military medical

facility' by the National Capital Region Base Realignment and Closure Health Systems Advisory Subcommittee of the Defense Health Board in appendix B of the report titled 'Achieving World Class—An Independent Review of the Design Plans for the Walter Reed National Military Medical Center and the Fort Belvoir Community Hospital' and published in May 2009, as required by section 2721 of the Military Construction Authorization Act for Fiscal Year 2009 (division B of Public Law 110–417; 122 Stat. 4716).''

DAMAGE TO AVIATION FACILITIES CAUSED BY ALKALI SILICA REACTIVITY

Pub. L. 106–398, §1 [[div. A], title III, §389], Oct. 30, 2000, 114 Stat. 1654, 1654A–89, provided that:

''(a) ASSESSMENT OF DAMAGE AND PREVENTION AND MITIGATION TECHNOLOGY.—The Secretary of Defense shall require the Secretaries of the military departments to assess—

''(1) the damage caused to aviation facilities of the Armed Forces by alkali silica reactivity; and

''(2) the availability of technologies capable of preventing, treating, or mitigating alkali silica reactivity in hardened concrete structures and pavements.

''(b) EVALUATION OF TECHNOLOGIES.—(1) Taking into consideration the assessment under subsection (a), the Secretary of each military department may conduct a demonstration project at a location selected by the Secretary concerned to test and evaluate the effectiveness of technologies intended to prevent, treat, or mitigate alkali silica reactivity in hardened concrete structures and pavements.

''(2) The Secretary of Defense shall ensure that the locations selected for the demonstration projects represent the diverse operating environments of the Armed Forces.

''(c) NEW CONSTRUCTION.—The Secretary of Defense shall develop specific guidelines for appropriate testing and use of lithium salts to prevent alkali silica reactivity in new construction of the Department of Defense.

''(d) COMPLETION OF ASSESSMENT AND DEMONSTRATION.—The assessment conducted under subsection (a) and the demonstration projects, if any, conducted under subsection (b) shall be completed not later than September 30, 2006.

''(e) DELEGATION OF AUTHORITY.—The authority to conduct the assessment under subsection (a) may be delegated only to the Chief of Engineers of the Army, the Commander of the Naval Facilities Engineering Command, and the Civil Engineer of the Air Force.

''(f) LIMITATION ON EXPENDITURES.—The Secretary of Defense and the Secretaries of the military departments may not expend more than a total of $5,000,000 to conduct both the assessment under subsection (a) and all of the demonstration projects under subsection (b).''

REPORTS RELATING TO MILITARY CONSTRUCTION FOR FACILITIES SUPPORTING NEW WEAPON SYSTEMS

Pub. L. 102–190, div. B, title XXVIII, §2868, Dec. 5, 1991, 105 Stat. 1562, as amended by Pub. L. 108–136, div. A, title X, §1031(c)(2), Nov. 24, 2003, 117 Stat. 1604, which required the Secretary of Defense to submit to Congress a report relating to the permanent basing of a new weapon system not later than 30 days after selecting a site or sites for such permanent basing, was repealed by Pub. L. 112–81, div. A, title X, §1062(m), Dec. 31, 2011, 125 Stat. 1586.

§ 2803. Emergency construction

(a) Subject to subsections (b) and (c), the Secretary concerned may carry out a military construction project not otherwise authorized by law if the Secretary determines (1) that the project is vital to the national security or to the protection of health, safety, or the quality of the environment, and (2) that the requirement for the project is so urgent that deferral of the project for inclusion in the next Military Construction Authorization Act would be inconsistent with national security or the protection of health, safety, or environmental quality, as the case may be.

(b) When a decision is made to carry out a military construction project under this section, the Secretary concerned shall submit a report to the appropriate committees of Congress on that decision. Each such report shall include (1) the justification for the project and the current estimate of the cost of the project, (2) the justification for carrying out the project under this section, and (3) a statement of the source of the funds to be used to carry out the project. The project may then be carried out only after the end of the five-day period beginning on the date the notification is received by such committees in an electronic medium pursuant to section 480 of this title.

(c)(1) The maximum amount that the Secretary concerned may obligate in any fiscal year under this section is $50,000,000.

(2) A project carried out under this section shall be carried out within the total amount of funds appropriated for military construction that have not been obligated.

(Added Pub. L. 97–214, §2(a), July 12, 1982, 96 Stat. 154; amended Pub. L. 102–190, div. B, title XXVIII, §§2803, 2870(2), Dec. 5, 1991, 105 Stat. 1537, 1562; Pub. L. 102–484, div. A, title X, §1053(9), Oct. 23, 1992, 106 Stat. 2502; Pub. L. 108–136, div. A, title X, §1031(a)(34), div. B, title XXVIII, §2802, Nov. 24, 2003, 117 Stat. 1600, 1719; Pub. L. 109–364, div. B, title XXVIII, §2801, Oct. 17, 2006, 120 Stat. 2466; Pub. L. 112–81, div. A, title X, §1064(9), Dec. 31, 2011, 125 Stat. 1587; Pub. L. 115–91, div. B, title XXVIII, §2801(a)(1), Dec. 12, 2017, 131 Stat. 1840.)

AMENDMENTS

2017—Subsec. (b). Pub. L. 115–91 struck out ''in writing'' after ''submit a report'' and ''or, if earlier, the end of the seven-day period beginning on the date on which a copy of the notification is provided'' after ''such committees'' and substituted ''five-day period'' for ''seven-day period''.

2011—Subsec. (b). Pub. L. 112–81 substituted ''after the end of the seven-day period'' for ''after the end of the 21-day period''.

2006—Subsec. (c)(1). Pub. L. 109–364 substituted ''$50,000,000'' for ''$45,000,000''.

2003—Subsec. (b). Pub. L. 108–136, §1031(a)(34), inserted before period at end ''or, if earlier, the end of the seven-day period beginning on the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this title''.

Subsec. (c)(1). Pub. L. 108–136, §2802, substituted ''$45,000,000'' for ''$30,000,000''.

1992—Subsec. (b). Pub. L. 102–484 made technical amendment to directory language of Pub. L. 102–190, §2870(2). See 1991 Amendment note below.

1991—Subsec. (a). Pub. L. 102–190, §2803, substituted ''or to the protection of health, safety, or the quality of the environment, and'' for '', and'' in cl. (1) and inserted ''or the protection of health, safety, or environmental quality, as the case may be'' before period at end of cl. (2).

Subsec. (b). Pub. L. 102–190, §2870(2), as amended by Pub. L. 102–484, struck out '', or after each such committee has approved the project, if the committee approves the project before the end of that period'' after ''by such committees''.

EFFECTIVE DATE OF 1992 AMENDMENT

Pub. L. 102–484, div. A, title X, § 1053, Oct. 23, 1992, 106 Stat. 2501, provided that the amendment made by that section is effective Dec. 5, 1991.

EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

§ 2804. Contingency construction

(a) Within the amount appropriated for such purpose, the Secretary of Defense may carry out a military construction project not otherwise authorized by law, or may authorize the Secretary of a military department to carry out such a project, if the Secretary of Defense determines that deferral of the project for inclusion in the next Military Construction Authorization Act would be inconsistent with national security or national interest.

(b) When a decision is made to carry out a military construction project under this section, the Secretary of Defense shall submit a report to the appropriate committees of Congress on that decision. Each such report shall include the justification for the project, the current estimate of the cost of the project, and the justification for carrying out the project under this section. The project may then be carried out only after the end of the seven-day period beginning on the date the notification is received by such committees in an electronic medium pursuant to section 480 of this title.

(Added Pub. L. 97–214, § 2(a), July 12, 1982, 96 Stat. 155; amended Pub. L. 102–190, div. B, title XXVIII, § 2870(3), Dec. 5, 1991, 105 Stat. 1563; Pub. L. 108–136, div. A, title X, § 1031(a)(35), Nov. 24, 2003, 117 Stat. 1600; Pub. L. 109–163, div. B, title XXVIII, § 2801(a), Jan. 6, 2006, 119 Stat. 3504; Pub. L. 115–91, div. B, title XXVIII, § 2801(a)(2), Dec. 12, 2017, 131 Stat. 1840; Pub. L. 116–92, div. A, title XVII, § 1731(a)(54), Dec. 20, 2019, 133 Stat. 1815; Pub. L. 116–283, div. A, title X, § 1081(a)(44), Jan. 1, 2021, 134 Stat. 3873.)

AMENDMENTS

2021—Subsec. (b). Pub. L. 116–283 struck out ''; and'' after ''seven-day period''.

2019—Subsec. (b). Pub. L. 116–92 substituted ''include the justification'' for ''include (1) the justification'', ''project, the current'' for ''project and the current'', and ''and the justification'' for ''and (2) the justification''.

2017—Subsec. (b). Pub. L. 115–91 struck out ''in writing'' after ''submit a report'' and ''or, if earlier, the end of the seven-day period beginning on the date on which a copy of the notification is provided'' after ''such committees'' and substituted ''seven-day period; and'' for ''14-day period''.

2006—Subsec. (b). Pub. L. 109–163 substituted ''14-day period'' for ''21-day period'' and ''seven-day period'' for ''14-day period''.

2003—Subsec. (b). Pub. L. 108–136 inserted before period at end ''or, if earlier, the end of the 14-day period beginning on the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this title''.

1991—Subsec. (b). Pub. L. 102–190 struck out before period at end '', or after each such committee has approved the project, if the committees approve the project before the end of that period''.

EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

§ 2805. Unspecified minor construction

(a) AUTHORITY TO CARRY OUT UNSPECIFIED MINOR MILITARY CONSTRUCTION PROJECTS.—(1) Within an amount equal to 125 percent of the amount authorized by law for such purpose, the Secretary concerned may carry out unspecified minor military construction projects not otherwise authorized by law.

(2) An unspecified minor military construction project is a military construction project that has an approved cost equal to or less than $6,000,000.

(b) APPROVAL AND CONGRESSIONAL NOTIFICATION.—(1) An unspecified minor military construction project costing more than $750,000 may not be carried out under this section unless approved in advance by the Secretary concerned. This paragraph shall apply even though the project is to be carried out using funds made available to enhance the deployment and mobility of military forces and supplies.

(2) When a decision is made to carry out an unspecified minor military construction project to which paragraph (1) is applicable and which costs more than $2,000,000, the Secretary concerned shall notify the appropriate committees of Congress of that decision, of the justification for the project, and of the estimated cost of the project. The project may then be carried out only after the end of the 14-day period beginning on the date the notification is received by the committees in an electronic medium pursuant to section 480 of this title.

(c) USE OF OPERATION AND MAINTENANCE FUNDS.—The Secretary concerned may spend from appropriations available for operation and maintenance amounts necessary to carry out an unspecified minor military construction project costing not more than $2,000,000.

(d) LABORATORY REVITALIZATION.—(1) For the revitalization and recapitalization of laboratories owned by the United States and under the jurisdiction of the Secretary concerned, the Secretary concerned may obligate and expend—

(A) from appropriations available to the Secretary concerned for operation and maintenance, amounts necessary to carry out an unspecified minor military construction project costing not more than $6,000,000, notwithstanding subsection (c); or

(B) from appropriations available to the Secretary concerned for military construction not otherwise authorized by law or from funds authorized to be made available under section 2363(a) of this title, amounts necessary to carry out an unspecified minor military construction project costing not more than $6,000,000.

(2) For purposes of this subsection, an unspecified minor military construction project is a military construction project that (notwithstanding subsection (a)) has an approved cost equal to or less than $6,000,000.

(3) If the Secretary concerned makes a decision to carry out an unspecified minor military

construction project to which this subsection applies, the Secretary concerned shall notify the appropriate committees of Congress of that decision, of the justification for the project, and of the estimated cost of the project. The project may then be carried out only after the end of the 14-day period beginning on the date the notification is received by the committees in an electronic medium pursuant to section 480 of this title.

(4) In this subsection, the term ''laboratory'' includes—

(A) a research, engineering, and development center; and

(B) a test and evaluation activity.

(5) The authority to carry out a project under this subsection expires on September 30, 2025.

(e) PROHIBITION ON USE FOR NEW HOUSING UNITS.—Military family housing projects for construction of new housing units may not be carried out under the authority of this section.

(f) ADJUSTMENT OF DOLLAR LIMITATIONS FOR LOCATION.—

(1) ADJUSTMENT OF LIMITATIONS.—Each fiscal year, the Secretary concerned shall adjust the dollar limitations specified in this section applicable to an unspecified minor military construction project inside the United States to reflect the area construction cost index for military construction projects published by the Department of Defense during the prior fiscal year for the location of the project, except that no limitation specified in this section may exceed $10,000,000 as the result of any adjustment made under this paragraph.

(2) LOCATION OF PROJECTS.—For purposes of paragraph (1), a project shall be considered to be inside the United States if the project is carried out in any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, or the Commonwealth of the Northern Mariana Islands.

(3) SUNSET.—The requirements of this subsection shall not apply with respect to any fiscal year after fiscal year 2027.

(Added Pub. L. 97–214, § 2(a), July 12, 1982, 96 Stat. 155; amended Pub. L. 99–167, title VIII, § 809, Dec. 3, 1985, 99 Stat. 989; Pub. L. 99–661, div. B, title VII, § 2702(a), Nov. 14, 1986, 100 Stat. 4040; Pub. L. 100–180, div. B, subdiv. 3, title I, § 2310, Dec. 4, 1987, 101 Stat. 1217; Pub. L. 101–510, div. A, title XIII, § 1301(16), Nov. 5, 1990, 104 Stat. 1668; Pub. L. 102–190, div. B, title XXVIII, §§ 2807, 2870(4), Dec. 5, 1991, 105 Stat. 1540, 1563; Pub. L. 104–106, div. B, title XXVIII, §§ 2811(a), 2812, Feb. 10, 1996, 110 Stat. 552; Pub. L. 104–201, div. B, title XXVIII, § 2801(a), Sept. 23, 1996, 110 Stat. 2787; Pub. L. 105–85, div. B, title XXVIII, § 2801, Nov. 18, 1997, 111 Stat. 1989; Pub. L. 107–107, div. B, title XXVIII, § 2801, Dec. 28, 2001, 115 Stat. 1305; Pub. L. 108–136, div. A, title X, § 1031(a)(36), Nov. 24, 2003, 117 Stat. 1600; Pub. L. 110–181, div. B, title XXVIII, §§ 2803, 2804, Jan. 28, 2008, 122 Stat. 539; Pub. L. 111–84, div. B, title XXVIII, § 2801(a)(1), (2), (b), Oct. 28, 2009, 123 Stat. 2660; Pub. L. 112–81, div. B, title XXVIII, § 2802(a), (b), Dec. 31, 2011, 125 Stat. 1684; Pub. L. 113–66, div. B, title XXVIII, § 2801(a), Dec. 26, 2013, 127 Stat. 1006; Pub. L. 113–291, div. B, title XXVIII, § 2802, Dec. 19, 2014, 128 Stat. 3695; Pub. L. 114–328, div. B, title XXVIII, § 2801, Dec. 23, 2016, 130 Stat. 2712; Pub. L. 115–91, div. A, title II, § 220(c)(2), div. B, title XXVIII, §§ 2801(a)(3), 2802, 2803, Dec. 12, 2017, 131 Stat. 1333, 1840, 1845, 1846; Pub. L. 116–92, div. A, title XVII, § 1731(a)(55), Dec. 20, 2019, 133 Stat. 1815; Pub. L. 116–283, div. A, title XVIII, § 1843(c), div. B, title XXVIII, § 2802, Jan. 1, 2021, 134 Stat. 4245, 4319.)

AMENDMENT OF SUBSECTION (d)(1)(B)

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1843(c)(2), Jan. 1, 2021, 134 Stat. 4151, 4245, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, subsection (d)(1)(B) of this section is amended by striking ''section 2363(a)'' and inserting ''section 4103(a)''. See 2021 Amendment note below.

AMENDMENTS

2021—Subsec. (d)(1)(B). Pub. L. 116–283, § 1843(c), substituted ''section 4103(a)'' for ''section 2363(a)''.

Subsec. (f)(3). Pub. L. 116–283, § 2802, substituted ''2027'' for ''2022''.

2019—Subsec. (d)(1)(B). Pub. L. 116–92 inserted ''under'' after ''made available''.

2017—Subsec. (a)(2). Pub. L. 115–91, § 2802(a), substituted ''$6,000,000'' for ''$3,000,000'' and struck out at end ''However, if the military construction project is intended solely to correct a deficiency that is life-threatening, health-threatening, or safety-threatening, an unspecified minor military construction project may have an approved cost equal to or less than $4,000,000.''

Subsec. (b)(1). Pub. L. 115–91, § 2802(b), substituted ''$750,000'' for ''$1,000,000''.

Subsec. (b)(2). Pub. L. 115–91, § 2802(c), substituted ''to which paragraph (1) is applicable and which costs more than $2,000,000'' for ''to which paragraph (1) is applicable''.

Pub. L. 115–91, § 2801(a)(3)(A), struck out ''in writing'' after ''shall notify'' and ''or, if earlier, the end of the 14-day period beginning on the date on which a copy of the notification is provided'' after ''received by the committees'' and substituted ''14-day period'' for ''21-day period''.

Subsec. (c). Pub. L. 115–91, § 2802(d), substituted ''$2,000,000'' for ''$1,000,000''.

Subsec. (d)(1)(B). Pub. L. 115–91, § 220(c)(2), substituted ''section 2363(a) of this title'' for ''under section 219(a) of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110–417; 10 U.S.C. 2358 note)''.

Subsec. (d)(3). Pub. L. 115–91, § 2801(a)(3)(B), struck out ''in writing'' after ''shall notify'' and ''or, if earlier, the end of the 14-day period beginning on the date on which a copy of the notification is provided'' after ''received by the committees'' and substituted ''14-day period'' for ''21-day period''.

Subsec. (f). Pub. L. 115–91, § 2803, added subsec. (f).

2016—Subsec. (d)(1). Pub. L. 114–328, § 2801(a), substituted ''$6,000,000'' for ''$4,000,000'' in subpars. (A) and (B).

Subsec. (d)(2). Pub. L. 114–328, § 2801(a), (b)(1), substituted ''$6,000,000'' for ''$4,000,000'' in first sentence and struck out second sentence which read as follows: ''The Secretary of Defense shall establish procedures for the review and approval of requests from the Secretary of a military department to carry out a construction project under this subsection.''

Subsec. (d)(3). Pub. L. 114–328, § 2801(b)(2), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''Not later than February 1, 2014, the Secretary of Defense shall submit to the congressional defense committees a report on the use of the authority provided by this subsection. The report shall include a list

and description of the construction projects carried out under this subsection, including the location and cost of each project.''

Subsec. (d)(5). Pub. L. 114–328, § 2801(c), substituted ''2025'' for ''2018''.

2014—Subsec. (a)(2). Pub. L. 113–291, § 2802(a), substituted ''$3,000,000'' for ''$2,000,000'' in first sentence and ''$4,000,000'' for ''$3,000,000'' in second sentence.

Subsec. (b)(1). Pub. L. 113–291, § 2802(b), substituted ''$1,000,000'' for ''$750,000''.

Subsec. (c). Pub. L. 113–291, § 2802(c), substituted ''$1,000,000'' for ''$750,000''.

2013—Subsec. (d)(1)(A). Pub. L. 113–66, § 2801(a)(1), substituted ''not more than $4,000,000, notwithstanding subsection (c)'' for ''not more than $2,000,000''.

Subsec. (d)(2). Pub. L. 113–66, § 2801(a)(2), substituted ''For purposes of this subsection, an unspecified minor military construction project is a military construction project that (notwithstanding subsection (a)) has an approved cost equal to or less than $4,000,000.'' for ''For an unspecified minor military construction project conducted pursuant to this subsection, $2,000,000 shall be deemed to be the amount specified in subsection (b)(1) regarding when advance approval of the project by the Secretary concerned and congressional notification is required.''

Subsec. (d)(5). Pub. L. 113–66, § 2801(a)(3), substituted ''2018'' for ''2016''.

2011—Subsec. (c). Pub. L. 112–81, § 2802(a), substituted ''The'' for ''(1) Except as provided in paragraph (2), the'' and ''not more than $750,000.'' for ''not more than—

''(A) $1,500,000, in the case of an unspecified minor military construction project intended solely to correct a deficiency that is life-threatening, health-threatening, or safety-threatening; or

''(B) $750,000, in the case of any other unspecified minor military construction project.

''(2) The limitations specified in paragraph (1) shall not apply to an unspecified minor military construction project if the project is to be carried out using funds made available to enhance the deployment and mobility of military forces and supplies.''

Subsec. (d)(3). Pub. L. 112–81, § 2802(b)(1), substituted ''February 1, 2014'' for ''February 1, 2010''.

Subsec. (d)(5). Pub. L. 112–81, § 2802(b)(2), substituted ''September 30, 2016'' for ''September 30, 2012''.

2009—Subsec. (a). Pub. L. 111–84, § 2801(a)(1), substituted ''Within'' for ''Except as provided in paragraph (2), within'' in par. (1), redesignated the second and third sentences of par. (1) as par. (2), and struck out former par. (2) which read as follows: ''A Secretary may not use more than $5,000,000 for exercise-related unspecified minor military construction projects coordinated or directed by the Joint Chiefs of Staff outside the United States during any fiscal year.''

Subsec. (c). Pub. L. 111–84, § 2801(a)(2), substituted ''paragraph (2)'' for ''paragraphs (2) and (3)'' in par. (1), redesignated par. (3) as (2), and struck out former par. (2) which read as follows: ''The authority provided in paragraph (1) may not be used with respect to any exercise-related unspecified minor military construction project coordinated or directed by the Joint Chiefs of Staff outside the United States.''

Subsec. (d)(1)(B). Pub. L. 111–84, § 2801(b)(1), inserted ''or from funds authorized to be made available under section 219(a) of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110–417; 10 U.S.C. 2358 note)'' after ''authorized by law''.

Subsec. (d)(3) to (6). Pub. L. 111–84, § 2801(b)(2), (3), redesignated pars. (4) to (6) as (3) to (5), respectively, and struck out former par. (3) which read as follows: ''For purposes of this subsection, the total amount allowed to be applied in any one fiscal year to projects at any one laboratory shall be limited to the larger of the amounts applicable under paragraph (1).''

2008—Subsec. (a). Pub. L. 110–181, § 2804(b)(1), inserted subsec. heading.

Subsec. (a)(1). Pub. L. 110–181, § 2803, substituted ''$2,000,000'' for ''$1,500,000''.

Subsecs. (b), (c). Pub. L. 110–181, § 2804(b)(2), (3), inserted subsec. headings.

Subsecs. (d), (e). Pub. L. 110–181, § 2804(a), (b)(4), added subsec. (d), redesignated former subsec. (d) as (e), and inserted subsec. (e) heading.

2003—Subsec. (b)(2). Pub. L. 108–136 inserted before period at end ''or, if earlier, the end of the 14-day period beginning on the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this title''.

2001—Subsec. (b)(1). Pub. L. 107–107, § 2801(a), substituted ''$750,000'' for ''$500,000''.

Subsec. (c)(1)(A). Pub. L. 107–107, § 2801(b)(1), substituted ''$1,500,000'' for ''$1,000,000''.

Subsec. (c)(1)(B). Pub. L. 107–107, § 2801(b)(2), substituted ''$750,000'' for ''$500,000''.

1997—Subsec. (a)(1). Pub. L. 105–85, § 2801(c)(1), substituted ''unspecified minor military construction projects'' for ''minor military construction projects'', ''An unspecified minor'' for ''A minor'', and ''an unspecified minor'' for ''a minor''.

Subsec. (b)(1). Pub. L. 105–85, § 2801(c)(2), substituted ''An unspecified minor'' for ''A minor''.

Pub. L. 105–85, § 2801(a), inserted at end ''This paragraph shall apply even though the project is to be carried out using funds made available to enhance the deployment and mobility of military forces and supplies.''

Subsec. (b)(2). Pub. L. 105–85, § 2801(c)(3), substituted ''an unspecified minor'' for ''a minor''.

Subsec. (c)(1). Pub. L. 105–85, § 2801(c)(4), substituted ''unspecified minor military'' for ''unspecified military'' wherever appearing.

Pub. L. 105–85, § 2801(b)(1), substituted ''paragraphs (2) and (3)'' for ''paragraph (2)'' in introductory provisions.

Subsec. (c)(2). Pub. L. 105–85, § 2801(c)(4), substituted ''unspecified minor military'' for ''unspecified military''.

Subsec. (c)(3). Pub. L. 105–85, § 2801(b)(2), added par. (3).

1996—Subsec. (a)(1). Pub. L. 104–106, § 2812, in second sentence, struck out ''(1) that is for a single undertaking at a military installation, and (2)'' after ''is a military construction project''.

Pub. L. 104–106, § 2811(a)(1), inserted at end ''However, if the military construction project is intended solely to correct a deficiency that is life-threatening, health-threatening, or safety-threatening, a minor military construction project may have an approved cost equal to or less than $3,000,000.''

Subsec. (c)(1). Pub. L. 104–106, § 2811(a)(2), substituted ''not more than—'' for ''not more than $300,000.'' and added subpars. (A) and (B).

Subsec. (c)(1)(B). Pub. L. 104–201 substituted ''$500,000'' for ''$300,000''.

1991—Subsec. (a)(1). Pub. L. 102–190, § 2807(a), substituted ''$1,500,000'' for ''$1,000,000''.

Subsec. (b)(2). Pub. L. 102–190, § 2870(4), in second sentence struck out ''(A)'' after ''carried out only'' and '', or (B) after each such committee approves the project, if the committees approve the project before the end of that period'' before period at end.

Subsec. (c)(1). Pub. L. 102–190, § 2807(b), substituted ''$300,000'' for ''$200,000''.

1990—Subsec. (b)(3). Pub. L. 101–510 struck out par. (3) which read as follows: ''A project for the relocation of any activity from one installation to another that involves 25 or more full-time civilian employees of the Department of Defense but that is not subject to paragraph (1) may not be carried out under the authority of this section until the appropriate committees of Congress have been notified by the Secretary concerned of the intent to carry out such relocation under the authority of this section.''

1987—Subsec. (a). Pub. L. 100–180, § 2310(b), designated existing provisions as par. (1), substituted ''Except as provided in paragraph (2), within'' for ''Within'', and added par. (2).

Subsec. (c). Pub. L. 100–180, § 2310(a), designated existing provisions as par. (1), substituted ''Except as provided in paragraph (2), the'' for ''The'', and added par. (2).

1986—Subsec. (a). Pub. L. 99–661, §2702(a)(1), substituted ''$1,000,000'' for ''the amount specified by law as the maximum amount for a minor military construction project''.

Subsec. (b)(1). Pub. L. 99–661, §2702(a)(2), substituted ''$500,000'' for ''50 percent of the amount specified by law as the maximum amount for a minor military construction project''.

Subsec. (c). Pub. L. 99–661, §2702(a)(3), substituted ''$200,000'' for ''20 percent of the amount specified by law as the maximum amount for a minor military construction project''.

1985—Subsec. (a). Pub. L. 99–167, §809(1), inserted ''an amount equal to 125 percent of''.

Subsec. (c). Pub. L. 99–167, §809(2), substituted ''The'' for ''Only funds authorized for minor construction projects may be used to accomplish unspecified minor construction projects, except that the''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by section 1843(c) of Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

NO APPLICATION TO CURRENT PROJECTS

Pub. L. 113–66, div. B, title XXVIII, §2801(b), Dec. 26, 2013, 127 Stat. 1006, provided that: ''The amendments made by subsection (a) [amending this section] do not apply to any laboratory revitalization project for which the design phase has been completed as of the date of the enactment of this Act [Dec. 26, 2013].''

RELATION TO OTHER AUTHORITIES

Pub. L. 108–136, div. B, title XXVIII, §2808(e), Nov. 24, 2003, 117 Stat. 1724, provided that: ''The temporary authority provided by this section [117 Stat. 1723], and the limited authority provided by section 2805(c) of title 10, United States Code, to use appropriated funds available for operation and maintenance to carry out a construction project are the only authorities available to the Secretary of Defense and the Secretaries of the military departments to use appropriated funds available for operation and maintenance to carry out construction projects.''

DEPARTMENT OF DEFENSE LABORATORY REVITALIZATION DEMONSTRATION PROGRAM

Pub. L. 104–106, div. B, title XXVIII, §2892, Feb. 10, 1996, 110 Stat. 590, as amended by Pub. L. 105–261, div. B, title XXVIII, §2871, Oct. 17, 1998, 112 Stat. 2225; Pub. L. 108–375, div. B, title XXVIII, §2891, Oct. 28, 2004, 118 Stat. 2154, provided that:

''(a) PROGRAM AUTHORIZED.—The Secretary of Defense may carry out a program (to be known as the 'Department of Defense Laboratory Revitalization Demonstration Program') for the revitalization of Department of Defense laboratories. Under the program, the Secretary may carry out minor military construction projects in accordance with subsection (b) and other applicable law to improve Department of Defense laboratories covered by the program.

''(b) INCREASED MAXIMUM AMOUNTS APPLICABLE TO MINOR CONSTRUCTION PROJECTS.—For purpose of any military construction project carried out under the program—

''(1) the amount provided in the second sentence of subsection (a)(1) of section 2805 of title 10, United States Code, shall be deemed to be $3,000,000;

''(2) the amount provided in subsection (b)(1) of such section shall be deemed to be $1,500,000; and

''(3) the amount provided in subsection (c)(1)(B) of such section shall be deemed to be $1,000,000.

''(c) PROGRAM REQUIREMENTS.—(1) Not later than 30 days before commencing the program, the Secretary shall establish procedures for the review and approval of requests from Department of Defense laboratories for construction under the program.

''(2) The laboratories at which construction may be carried out under the program may not include Department of Defense laboratories that are contractor-owned.

''(d) REPORT.—Not later than February 1, 2003, the Secretary shall submit to Congress a report on the program. The report shall include the Secretary's conclusions and recommendation regarding the desirability of making the authority set forth under subsection (b) permanent.

''(e) EXCLUSIVITY OF PROGRAM.—Nothing in this section may be construed to limit any other authority provided by law for any military construction project at a Department of Defense laboratory covered by the program.

''(f) DEFINITIONS.—In this section:

''(1) The term 'laboratory' includes—

''(A) a research, engineering, and development center;

''(B) a test and evaluation activity owned, funded, and operated by the Federal Government through the Department of Defense; and

''(C) a supporting facility of a laboratory.

''(2) The term 'supporting facility', with respect to a laboratory, means any building or structure that is used in support of research, development, test, and evaluation at the laboratory.

''(g) EXPIRATION OF AUTHORITY.—The Secretary may not commence a construction project under the program after September 30, 2005.''

INITIAL ESTABLISHMENT OF CERTAIN AMOUNTS REQUIRED TO BE SPECIFIED BY LAW

Maximum amount of $1,000,000 for unspecified minor military construction project under this section during the period beginning Oct. 1, 1982, and ending on the date of the enactment of the Military Construction Authorization Act for fiscal year 1984 or Oct. 1, 1983, whichever is later, see section 11(1) of Pub. L. 97–214, set out as a note under section 2828 of this title.

§ 2806. Contributions for North Atlantic Treaty Organizations Security Investment

(a) Within amounts authorized by law for such purpose, the Secretary of Defense may make contributions for the United States share of the cost of multilateral programs for the acquisition and construction of military facilities and installations (including international military headquarters) and for related expenses for the collective defense of the North Atlantic Treaty Area.

(b) Funds may not be obligated or expended in connection with the North Atlantic Treaty Organization Security Investment program in any year unless such funds have been authorized by law for such program.

(c)(1) The Secretary of Defense may make contributions in excess of the amount appropriated for contribution under subsection (a) if the amount of the contribution in excess of that amount does not exceed 200 percent of the amount specified by section 2805(a) of this title as the maximum amount for a minor military construction project.

(2) If the Secretary determines that the amount appropriated for contribution under subsection (a) in any fiscal year must be exceeded by more than the amount authorized under paragraph (1), the Secretary may make con-

tributions in excess of such amount, but not in excess of 125 percent of the amount appropriated, only after the end of the 14-day period beginning on the date on which the Secretary submits, in an electronic medium pursuant to section 480 of this title, to the appropriate committees of Congress notice of the increase, including the reasons for the increase and the source of the funds to be used for the increase.

(Added Pub. L. 97–214, § 2(a), July 12, 1982, 96 Stat. 156; amended Pub. L. 97–321, title VIII, § 805(b)(1), Oct. 15, 1982, 96 Stat. 1573; Pub. L. 99–661, div. B, title V, § 2503(a), Nov. 14, 1986, 100 Stat. 4039; Pub. L. 100–26, § 7(f)(1), Apr. 21, 1987, 101 Stat. 281; Pub. L. 102–190, div. B, title XXVIII, § 2870(5), Dec. 5, 1991, 105 Stat. 1563; Pub. L. 104–201, div. B, title XXVIII, § 2802(a), (c)(1), Sept. 23, 1996, 110 Stat. 2787; Pub. L. 111–84, div. B, title XXVIII, § 2801(a)(3), Oct. 28, 2009, 123 Stat. 2660; Pub. L. 111–383, div. B, title XXVIII, § 2803(b), Jan. 7, 2011, 124 Stat. 4459; Pub. L. 115–91, div. B, title XXVIII, § 2801(a)(4), Dec. 12, 2017, 131 Stat. 1840.)

AMENDMENTS

2017—Subsec. (c)(1). Pub. L. 115–91, § 2801(a)(4)(A), inserted ''of Defense'' after ''The Secretary''.

Subsec. (c)(2). Pub. L. 115–91, § 2801(a)(4)(B), substituted '', only after the end of the 14-day period beginning on the date on which the Secretary submits, in an electronic medium pursuant to section 480 of this title, to the appropriate committees of Congress notice of the increase, including the reasons for the increase and the source of the funds to be used for the increase.'' for ''(A) after submitting a report in writing to the appropriate committees of Congress on such increase, including a statement of the reasons for the increase and a statement of the source of the funds to be used for the increase, and (B) after a period of 21 days has elapsed from the date of receipt of the report or, if earlier, a period of 14 days has elapsed from the date on which a copy of the report is provided in an electronic medium pursuant to section 480 of this title.''

2011—Subsec. (c)(2)(B). Pub. L. 111–383 inserted before period at end ''or, if earlier, a period of 14 days has elapsed from the date on which a copy of the report is provided in an electronic medium pursuant to section 480 of this title''.

2009—Subsec. (c)(1). Pub. L. 111–84 substituted ''section 2805(a)'' for ''section 2805(a)(2)''.

1996—Pub. L. 104–201, § 2802(c)(1), substituted ''Organizations Security Investment'' for ''Organization Infrastructure'' in section catchline.

Subsec. (b). Pub. L. 104–201, § 2802(a), substituted ''Security Investment program'' for ''Infrastructure program''.

1991—Subsec. (c)(2)(B). Pub. L. 102–190 substituted ''after'' for ''after either'' and struck out before period at end ''or after each such committee has indicated approval of the increased contribution''.

1987—Subsec. (c)(1). Pub. L. 100–26 substituted ''specified by section 2805(a)(2) of this title'' for ''specified by law''.

1986—Subsec. (a). Pub. L. 99–661 inserted ''and for related expenses'' after ''headquarters)''.

1982—Pub. L. 97–321 substituted ''Infrastructure'' for ''infrastructure'' in section catchline.

CHANGE OF NAME

Pub. L. 104–201, div. B, title XXVIII, § 2802(b), Sept. 23, 1996, 110 Stat. 2787, provided that: ''Any reference to the North Atlantic Treaty Organization Infrastructure program in any Federal law, Executive order, regulation, delegation of authority, or document of or pertaining to the Department of Defense shall be deemed to refer to the North Atlantic Treaty Organization Security Investment program.''

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–661, div. B, title V, § 2503(b), Nov. 14, 1986, 100 Stat. 4039, provided that: ''The amendment made by subsection (a) [amending this section] shall apply only with respect to contributions made with funds appropriated for fiscal years after fiscal year 1986.''

EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

RESTRICTION ON CERTAIN FUNDING

Pub. L. 99–661, div. B, title V, § 2504, Nov. 14, 1986, 100 Stat. 4039, prohibited Secretary of Defense from obligating or expending any funds after fiscal year 1987 with respect to NATO infrastructure program under this section until Secretary submitted to Committees on Armed Services of Senate and House (1) a comprehensive master plan for establishing adequate active defenses for air bases in Europe at which operations of United States aircraft are planned, sites in Europe used by United States for logistic support of NATO or for prepositioned overseas matériel configured to unit sets, and (2) a report containing a certification by Secretary that sufficient funds have been budgeted by Department of Defense in fiscal year 1988 five-year defense plan to meet objectives of such comprehensive master plan.

§ 2807. Architectural and engineering services and construction design

(a) Within amounts appropriated for military construction and military family housing, the Secretary concerned may obtain architectural and engineering services and may carry out construction design in connection with military construction projects, family housing projects, and projects undertaken in connection with the authority provided under section 2854 of this title that are not otherwise authorized by law. Amounts available for such purposes may be used for construction management of projects that are funded by foreign governments directly or through international organizations and for which elements of the armed forces of the United States are the primary user.

(b) In the case of architectural and engineering services and construction design to be undertaken under subsection (a) for which the estimated cost exceeds $1,000,000, the Secretary concerned shall notify the appropriate committees of Congress of the scope of the proposed project and the estimated cost of such services before the initial obligation of funds for such services. The Secretary may then obligate funds for such services only after the end of the 14-day period beginning on the date on which the notification is received by the committees in an electronic medium pursuant to section 480 of this title.

(c) If the Secretary concerned determines that the amount authorized for activities under subsection (a) in any fiscal year must be increased the Secretary may proceed with activities at such higher level only after the end of the 14-day period beginning on the date on which the Secretary submits, in an electronic medium pursuant to section 480 of this title, to the appropriate committees of Congress notice of the need for the increase, including the source of funds to be used for the increase.

(d) For architectural and engineering services and construction design related to military con-

struction and family housing projects, the Secretaries of the military departments may incur obligations for contracts or portions of contracts using military construction and family housing appropriations from different fiscal years to the extent that those appropriations are available for obligation.

(Added Pub. L. 97–214, § 2(a), July 12, 1982, 96 Stat. 156; amended Pub. L. 98–115, title VIII, § 804, Oct. 11, 1983, 97 Stat. 785; Pub. L. 99–661, div. B, title VII, §§ 2702(b), 2712(a), Nov. 14, 1986, 100 Stat. 4040, 4041; Pub. L. 102–190, div. B, title XXVIII, § 2870(6), Dec. 5, 1991, 105 Stat. 1563; Pub. L. 105–261, div. B, title XXVIII, § 2801, Oct. 17, 1998, 112 Stat. 2202; Pub. L. 108–136, div. A, title X, § 1031(a)(37), Nov. 24, 2003, 117 Stat. 1601; Pub. L. 115–91, div. B, title XXVIII, § 2801(a)(5), Dec. 12, 2017, 131 Stat. 1841.)

Amendments

2017—Subsec. (b). Pub. L. 115–91, § 2801(a)(5)(A), substituted ''14-day period'' for ''21-day period'' and struck out ''or, if earlier, the end of the 14-day period beginning on the date on which a copy of the report is provided'' after ''received by the committees''.

Subsec. (c). Pub. L. 115–91, § 2801(a)(5)(B), substituted ''only after the end of the 14-day period beginning on the date on which the Secretary submits, in an electronic medium pursuant to section 480 of this title, to the appropriate committees of Congress notice of the need for the increase, including the source of funds to be used for the increase.'' for ''(1) after submitting a report in writing to the appropriate committees of Congress on such increase, including a statement of the reasons for the increase and a statement of the source of funds to be used for the increase, and (2) after a period of 21 days has elapsed from the date of receipt of the report or, if over sooner, a period of 14 days has elapsed from the date on which a copy of the report is provided in an electronic medium pursuant to section 480 of this title.''

2003—Subsec. (b). Pub. L. 108–136, § 1031(a)(37)(A), substituted ''$1,000,000'' for ''$500,000'', struck out ''not less than 21 days'' after ''of such services'', and inserted last sentence.

Subsec. (c)(2). Pub. L. 108–136, § 1031(a)(37)(B), inserted before period at end ''or, if over sooner, a period of 14 days has elapsed from the date on which a copy of the report is provided in an electronic medium pursuant to section 480 of this title''.

1998—Subsec. (b). Pub. L. 105–261, § 2801(a), substituted ''$500,000'' for ''$300,000''.

Subsec. (d). Pub. L. 105–261, § 2801(b), substituted ''architectural and engineering services and construction design'' for ''study, planning, design, architectural, and engineering services''.

1991—Subsec. (c)(2). Pub. L. 102–190 substituted ''after'' for ''after either'' and struck out before period at end ''or after each such committee has indicated approval of the increased level of activity''.

1986—Subsec. (b). Pub. L. 99–661, § 2702(b), substituted ''$300,000'' for ''the maximum amount specified by law for the purposes of this section''.

Subsec. (d). Pub. L. 99–661, § 2712(a), added subsec. (d).

1983—Subsec. (a). Pub. L. 98–115 substituted ''Within amounts appropriated for military construction and military family housing'' for ''Within amounts appropriated for such purposes'' and inserted '', family housing projects, and projects undertaken in connection with the authority provided under section 2854 of this title that are'' after ''in connection with military construction projects''.

Effective Date of 1986 Amendment

Pub. L. 99–661, div. B, title VII, § 2712(b), Nov. 14, 1986, 100 Stat. 4041, provided that: ''The amendment made by subsection (a) [amending this section] shall apply only to funds appropriated for fiscal years after fiscal year 1985.''

Effective Date

For effective date and applicability of section, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

Architectural and Engineering Services and Construction Design Contracts for Military Construction Projects

Pub. L. 98–212, title VII, § 796, Dec. 8, 1983, 97 Stat. 1455, provided that: ''No funds appropriated for the Departments of Defense, Army, Navy, or the Air Force shall be obligated by their respective Secretaries for architectural and engineering services and construction design contracts for Military Construction projects in the amount of $85,000 and over, unless competition for such contracts is open to all firms regardless of size in accordance with 40 U.S.C. § 541, et seq. [now chapter 11 of Title 40, Public Buildings, Property, and Works.]''

Small Business Set-Aside for Architectural and Engineering Services and Construction Design

Pub. L. 98–115, title VIII, § 806, Oct. 11, 1983, 97 Stat. 786, provided that:

''(a) The Secretary of Defense shall conduct a comprehensive review of current policies and practices of the Department of Defense with regard to the award of contracts for architectural and engineering services and construction design for military construction projects. The Secretary shall conduct such review with a view to determining whether current policies and practices of the Department of Defense result in a reasonable distribution of such contracts to firms of all sizes throughout the architect-engineer community.

''(b) Upon the completion of such review, the Secretary shall modify current policies and practices of the Department to the extent necessary to ensure—

''(1) that small business concerns (as defined in section 3 of the Small Business Act [15 U.S.C. 632]) are assured of a reasonable share of such contracts; and

''(2) that large architect-engineer firms are not precluded from competing for such contracts when the estimated amount of such contracts is greater than a reasonable threshold amount prescribed by the Secretary.

''(c) Not later than March 1, 1984, the Secretary shall submit to the appropriate committees of Congress a written report on the results of the review required by subsection (a) and on any changes made to current policies and practices as required by subsection (b).

''(d) For the purposes of this section:

''(1) The term 'reasonable share' means an appropriate percentage share of all contracts referred to in subsection (a) as determined by the Secretary of Defense after consultation with the Admininstrator [sic] of the Small Business Administration and representatives of the architect-engineer community.

''(2) The term 'reasonable threshold amount' means an appropriate estimated contract dollar amount determined by the Secretary of Defense after consultation with the Administrator of the Small Business Administration and representatives of the architect-engineer community.''

Initial Establishment of Certain Amounts Required To Be Specified by Law

Amounts of $300,000 or more for contracts for architectural and engineering services or construction design subject to the reporting requirement under this section during the period beginning on Oct. 1, 1982, and ending on the date of the Military Construction Authorization Act for fiscal year 1984 or Oct. 1, 1983, whichever is later, see section 11(2) of Pub. L. 97–214, set out as a note under section 2828 of this title.

§ 2808. Construction authority in the event of a declaration of war or national emergency

(a) CONSTRUCTION AUTHORIZED.—In the event of a declaration of war or the declaration by the President of a national emergency in accordance with the National Emergencies Act (50 U.S.C. 1601 et seq.) that requires use of the armed forces, the Secretary of Defense, without regard to any other provision of law, may undertake military construction projects, and may authorize the Secretaries of the military departments to undertake military construction projects, not otherwise authorized by law that are necessary to support such use of the armed forces.

(b) CONDITIONS ON SOURCES OF FUNDS.—A military construction project to be undertaken using the construction authority described in subsection (a) may be undertaken only within the total amount of funds that have been appropriated for military construction, excluding funds appropriated for family housing, that—

(1) remain unobligated as of the date on which the first contract would be entered into in support of the national emergency declaration described in subsection (a); and

(2) are available because the military construction project for which the funds were appropriated—

(A) has been canceled; or

(B) has reduced costs as a result of project modifications or other cost savings.

(c) LIMITATION ON AMOUNT OF FUNDS AVAILABLE FOR NATIONAL EMERGENCY.—(1) Except as provided in paragraph (2), in the event of a declaration by the President of a national emergency in which the construction authority described in subsection (a) is used, the total cost of all military construction projects undertaken using that authority during the national emergency may not exceed $500,000,000.

(2) In the event of a national emergency declaration in which the construction authority described in subsection (a) will be used only within the United States, the total cost of all military construction projects undertaken using that authority during the national emergency may not exceed $100,000,000.

(d) WAIVER OF OTHER PROVISIONS OF LAW IN EVENT OF NATIONAL EMERGENCY.—In the event of a declaration by the President of a national emergency in which the construction authority described in subsection (a) is used, the authority provided by such subsection to waive or disregard another provision of law that would otherwise apply to a military construction project authorized by this section may be used only if—

(1) such other provision of law does not provide a means by which compliance with the requirements of the law may be waived, modified, or expedited; and

(2) the Secretary of Defense determines that the nature of the national emergency necessitates the noncompliance with the requirements of the law.

(e) NOTIFICATION REQUIREMENT.—(1)When a decision is made to undertake military construction projects authorized by this section, the Secretary of Defense shall notify, in an electronic medium pursuant to section 480 of this title, the appropriate committees of Congress of the following:

(A) The reasons for the decision to use the construction authority described in subsection (a), including, in the event of a declaration by the President of a national emergency, the reasons why use of the armed forces is required in response to the declared national emergency.

(B) The construction projects to be undertaken using the construction authority described in subsection (a), including, in the event of a declaration by the President of a national emergency, an explanation of how each construction project directly supports the immediate security, logistical, or short-term housing and ancillary supporting facility needs of the members of the armed forces used in the national emergency.

(C) The estimated cost of the construction projects to be undertaken using the construction authority described in subsection (a), including the cost of any real estate action pertaining to the construction projects, and certification of compliance with the funding conditions imposed by subsections (b) and (c).

(D) Any determination made pursuant to subsection (d)(2) to waive or disregard another provision of law to undertake any construction project using the construction authority described in subsection (a).

(E) The military construction projects, including any ancillary supporting facility projects, whose cancellation, modification, or other cost savings result in funds being available to undertake construction projects using the construction authority described in subsection (a) and the possible impact of the cancellation or modification of such military construction projects on military readiness and the quality of life of members of the armed forces and their dependents.

(2) In the event of a declaration by the President of a national emergency in which the construction authority described in subsection (a) is used, a construction project to be undertaken using such construction authority may be carried out only after the end of the five-day period beginning on the date the notification required by paragraph (1) is received by the congressional defense committees.

(f) TERMINATION OF AUTHORITY.—The authority described in subsection (a) shall terminate with respect to any war or national emergency at the end of the war or national emergency.

(Added Pub. L. 97–214, § 2(a), July 12, 1982, 96 Stat. 157; amended Pub. L. 115–91, div. B, title XXVIII, § 2801(a)(6), Dec. 12, 2017, 131 Stat. 1841; Pub. L. 116–283, div. B, title XXVIII, § 2801(a)–(e), Jan. 1, 2021, 134 Stat. 4317–4319.)

REFERENCES IN TEXT

The National Emergencies Act (50 U.S.C. 1601 et seq.), referred to in subsec. (a), is Pub. L. 94–412, Sept. 14, 1976, 90 Stat. 1255, as amended, which is classified principally to chapter 34 (§ 1601 et seq.) of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 50 and Tables.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in Pub. L. 97–99, title IX, § 903, Dec. 23, 1981, 95

Stat. 1382, which was set out as a note under section 140 [now 127] of this title, prior to repeal by Pub. L. 97–214, § 7(18).

AMENDMENTS

2021—Subsec. (a). Pub. L. 116–283, § 2801(b), (e)(1), inserted heading and struck out "Such projects may be undertaken only within the total amount of funds that have been appropriated for military construction, including funds appropriated for family housing, that have not been obligated." at end.

Subsec. (b). Pub. L. 116–283, § 2801(b), added subsec. (b). Former subsec. (b) redesignated (e).

Subsec. (c). Pub. L. 116–283, § 2801(a)(2), added subsec. (c). Former subsec. (c) redesignated (f).

Subsec. (d). Pub. L. 116–283, § 2801(c), added subsec. (d).

Subsec. (e). Pub. L. 116–283, § 2801(a)(1), (d), (e)(2), redesignated subsec. (b) as (e), inserted heading and par. (1) designation before "When a decision", substituted "of the following:" and subpars. (A) to (E) for "of the decision and of the estimated cost of the construction projects, including the cost of any real estate action pertaining to those construction projects.", and added par. (2).

Subsec. (f). Pub. L. 116–283, § 2801(a)(1), (e)(3), redesignated subsec. (c) as (f) and inserted heading.

2017—Subsec. (b). Pub. L. 115–91 inserted ", in an electronic medium pursuant to section 480 of this title," after "shall notify".

EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

EXCEPTION FOR PANDEMIC MITIGATION AND RESPONSE PROJECTS

Pub. L. 116–283, div. B, title XXVIII, § 2801(f), Jan. 1, 2021, 134 Stat. 4319, provided that: "Subsections (b), (c), (d) of section 2808 of title 10, United States Code, as added by this section, shall not apply to a military construction project commenced under the authority of subsection (a) of such section 2808 during the emergency period described in section 1135(g)(1)(B) of the Social Security Act (42 U.S.C. 1320b–5(g)(1)(B)) if the Secretary of Defense determines that the military construction project will directly support pandemic mitigation and response efforts of health care providers or support members of the Armed Forces directly participating in such pandemic mitigation and response efforts. Subsection (e) of section 2808 of title 10, United States Code, as redesignated by subsection (a)(1) and amended by subsection (d) of this section, shall still apply to any such military construction project."

EXECUTIVE ORDER NO. 12734

Ex. Ord. No. 12734, Nov. 14, 1990, 55 F.R. 48099, which related to national emergency construction authority, was revoked by Ex. Ord. No. 13350, July 29, 2004, 69 F.R. 46055, listed in a table under section 1701 of Title 50, War and National Defense.

EX. ORD. NO. 13235. NATIONAL EMERGENCY CONSTRUCTION AUTHORITY

Ex. Ord. No. 13235, Nov. 16, 2001, 66 F.R. 58343, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the National Emergencies Act (50 U.S.C. 1601 *et seq.*), and section 301 of title 3, United States Code, I declared a national emergency that requires the use of the Armed Forces of the United States, by Proclamation 7463 of September 14, 2001 [50 U.S.C. 1621 note], because of the terrorist attacks on the World Trade Center and the Pentagon, and because of the continuing and immediate threat to the national security of the United States of further terrorist attacks. To provide additional authority to the Department of Defense to respond to that threat, and in accordance with section 301 of the National Emergencies Act (50 U.S.C. 1631), I hereby order that the emergency construction authority at 10 U.S.C. 2808 is invoked and made available in accordance with its terms to the Secretary of Defense and, at the discretion of the Secretary of Defense, to the Secretaries of the military departments.

GEORGE W. BUSH.

§ 2809. Long-term facilities contracts for certain activities and services

(a) SUBMISSION AND AUTHORIZATION OF PROPOSED PROJECTS.—The Secretary concerned may enter into a contract for the procurement of services in connection with the construction, management, and operation of a facility on or near a military installation for the provision of an activity or service described in subsection (b) if—

(1) the Secretary concerned has identified the proposed project for that facility in the budget material submitted to Congress by the Secretary of Defense in connection with the budget submitted pursuant to section 1105 of title 31 for the fiscal year in which the contract is proposed to be awarded;

(2) the Secretary concerned has determined that the services to be provided at that facility can be more economically provided through the use of a long-term contract than through the use of conventional means; and

(3) the project has been authorized by law.

(b) AUTHORIZED PURPOSES OF CONTRACT.—The activities and services referred to in subsection (a) are as follows:

(1) Child care services.

(2) Utilities, including potable and waste water treatment services.

(3) Depot supply activities.

(4) Troop housing.

(5) Transient quarters.

(6) Hospital or medical facilities.

(7) Other logistic and administrative services, other than depot maintenance.

(c) CONDITIONS ON OBLIGATION OF FUNDS.—A contract entered into for a project pursuant to subsection (a) shall include the following provisions:

(1) A statement that the obligation of the United States to make payments under the contract in any fiscal year is subject to appropriations being provided specifically for that fiscal year and specifically for that project.

(2) A commitment to obligate the necessary amount for each fiscal year covered by the contract when and to the extent that funds are appropriated for that project for that fiscal year.

(3) A statement that such a commitment given under the authority of this section does not constitute an obligation of the United States.

(d) COMPETITIVE PROCEDURES.—Each contract entered into under this section shall be awarded through the use of competitive procedures as provided in chapter 137 of this title. In accordance with such procedures, the Secretary concerned shall solicit bids or proposals for a contract for each project that has been authorized by law.

(e) TERM OF CONTRACT.—A contract under this section may be for any period not in excess of 32 years, excluding the period for construction.

(f) NOTICE AND WAIT REQUIREMENTS.—The Secretary concerned may enter into a contract under this section only after the end of the 14-day period beginning on the date on which the Secretary submits, in an electronic medium pursuant to section 480 of this title, to the appropriate committees of Congress a justification of the need for the facility covered by the proposed contract, including an economic analysis (based upon accepted life cycle costing procedures) which demonstrates that the proposed contract is cost effective when compared with alternative means of furnishing the same facility.

(Added Pub. L. 99–167, title VIII, §811(a), Dec. 3, 1985, 99 Stat. 990; amended Pub. L. 99–661, div. A, title XIII, §1343(a)(20), div. B, title VII, §2711, Nov. 14, 1986, 100 Stat. 3994, 4041; Pub. L. 100–180, div. B, subdiv. 3, title I, §2302(a), (b), Dec. 4, 1987, 101 Stat. 1215; Pub. L. 100–456, div. B, title XXVIII, §2801, Sept. 29, 1988, 102 Stat. 2115; Pub. L. 101–189, div. B, title XXVIII, §2803, Nov. 29, 1989, 103 Stat. 1647; Pub. L. 102–190, div. B, title XXVIII, §2805(a)(1), Dec. 5, 1991, 105 Stat. 1537; Pub. L. 108–136, div. A, title X, §1031(a)(38), Nov. 24, 2003, 117 Stat. 1601; Pub. L. 115–91, div. B, title XXVIII, §2801(a)(7), Dec. 12, 2017, 131 Stat. 1841.)

AMENDMENTS

2017—Subsec. (f). Pub. L. 115–91 added subsec. (f) and struck out former subsec. (f) which related to written or electronic notice and wait requirements for a contract.

2003—Subsec. (f)(2). Pub. L. 108–136 struck out ‘‘calendar’’ after ‘‘21’’ and inserted before period at end ‘‘or, if over sooner, a period of 14 days has expired following the date on which a copy of the justification and economic analysis are provided in an electronic medium pursuant to section 480 of this title’’.

1991—Pub. L. 102–190 substituted section catchline for one which read ‘‘Test of long-term facilities contracts’’ and amended text generally, substituting present provisions for provisions authorizing contracts for construction, management, and operation of facilities on or near military installations for the provision of certain enumerated activities or services, setting out procedures, terms, and other limits for such contracts, providing that no more than 5 contracts may be entered into under this section other than contracts for child care centers, and providing that authority to enter into such contracts was to expire on Sept. 30, 1991.

1989—Subsec. (a)(1)(B)(ii). Pub. L. 101–189, §2803(1), substituted ‘‘Utilities, including potable’’ for ‘‘Potable’’.

Subsec. (b). Pub. L. 101–189, §2803(2), substituted ‘‘activities and services described in clause (i) or (ii) of subsection (a)(1)(B)’’ for ‘‘child care centers’’.

Subsec. (c). Pub. L. 101–189, §2803(3), substituted ‘‘1991’’ for ‘‘1989’’.

1988—Subsec. (a)(3). Pub. L. 100–456 substituted ‘‘32’’ for ‘‘20’’.

1987—Subsec. (a)(1)(B)(vi), (vii). Pub. L. 100–180, §2302(a), added cl. (vi) and redesignated former cl. (vi) as (vii).

Subsec. (c). Pub. L. 100–180, §2302(b), substituted ‘‘1989’’ for ‘‘1987’’.

1986—Subsec. (a)(1). Pub. L. 99–661, §2711, amended par. (1) generally. Prior to amendment, par. (1) read as follows: ‘‘The Secretary concerned may enter into a contract for the construction, management, and operation of a facility on or near a military installation in the United States for the provision of child care services, waste water treatment, or depot supply activities in a case in which the Secretary concerned determines that the facility can be more efficiently and more economically provided under a long-term contract than by other appropriate means.’’

Pub. L. 99–661, §1343(a)(20)(A), substituted ‘‘a contract’’ for ‘‘contracts’’, ‘‘a facility’’ for ‘‘facilities’’, ‘‘a military installation’’ for ‘‘military installations’’, ‘‘a case’’ for ‘‘cases’’, ‘‘facility’’ for ‘‘facilities’’, and ‘‘a long-term contract’’ for ‘‘long-term contracts’’ and inserted a comma after ‘‘waste water treatment’’.

Subsec. (a)(2). Pub. L. 99–661, §1343(a)(20)(B), substituted ‘‘this section’’ for ‘‘subsection (a)’’.

Subsec. (a)(3). Pub. L. 99–661, §1343(a)(20)(C), substituted ‘‘20’’ for ‘‘twenty’’.

Subsec. (a)(4)(A). Pub. L. 99–661, §1343(a)(20)(D), struck out ‘‘the’’ before ‘‘Congress’’.

Subsec. (b). Pub. L. 99–661, §1343(a)(20)(E), struck out ‘‘the authority of subsection (a) of’’ after ‘‘under’’.

EFFECTIVE DATE OF 1991 AMENDMENT

Pub. L. 102–190, div B, title XXVIII, §2805(b), Dec. 5, 1991, 105 Stat. 1538, provided that: ‘‘Section 2809 of title 10, United States Code, as amended by subsection (a), shall apply with respect to contracts entered into under that section on or after the date of the enactment of this Act [Dec. 5, 1991].’’

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–456 effective Oct. 1, 1988, see section 2702 of Pub. L. 100–456, set out as a note under section 2391 of this title.

DEMONSTRATION PROGRAM ON REDUCTION IN LONG-TERM FACILITY MAINTENANCE COSTS

Pub. L. 107–107, div. B, title XXVIII, §2814, Dec. 28, 2001, 115 Stat. 1310, as amended by Pub. L. 107–314, div. B, title XXVIII, §2813(a)–(d)(1), Dec. 2, 2002, 116 Stat. 2709, 2710, provided that:

‘‘(a) AUTHORITY TO CARRY OUT PROGRAM.—The Secretary of Defense or the Secretary of a military department may conduct a demonstration program to assess the feasibility and desirability of including facility maintenance requirements in construction contracts for military construction projects for the purpose of determining whether such requirements facilitate reductions in the long-term facility maintenance costs of the military departments.

‘‘(b) CONTRACTS.—(1) Not more than 12 contracts per military department may contain requirements referred to in subsection (a) for the purpose of the demonstration program.

‘‘(2) The demonstration program may only cover contracts entered into on or after the date of the enactment of the Bob Stump National Defense Authorization Act for Fiscal Year 2003 [Pub. L. 107–314, approved Dec. 2, 2002], except that the Secretary of the Army shall treat any contract containing requirements referred to in subsection (a) that was entered into under the authority in such subsection between that date and December 28, 2001, as a contract for the purpose of the demonstration program.

‘‘(c) EFFECTIVE PERIOD OF REQUIREMENTS.—The effective period of a requirement referred to in subsection (a) that is included in a contract for the purpose of the demonstration program may not exceed five years.

‘‘(d) REPORTING REQUIREMENTS.—Not later than January 31, 2005, the Secretary of Defense shall submit to Congress a report on the demonstration program, including the following:

‘‘(1) A description of all contracts that contain requirements referred to in subsection (a) for the purpose of the demonstration program.

‘‘(2) An evaluation of the demonstration program and a description of the experience of the Secretary with respect to such contracts.

‘‘(3) Any recommendations, including recommendations for the termination, continuation, or expansion of the demonstration program, that the Secretary considers appropriate.

"(e) EXPIRATION.—The authority under subsection (a) to include requirements referred to in that subsection in contracts under the demonstration program shall expire on September 30, 2006.

"(f) FUNDING.—Amounts authorized to be appropriated for the military departments or defense-wide for a fiscal year for military construction shall be available for the demonstration program under this section in such fiscal year."

[Pub. L. 107–314, div. B, title XXVIII, §2813(d)(2), Dec. 2, 2002, 116 Stat. 2710, provided that: "The amendment made by paragraph (1) [amending section 2814(f) of Pub. L. 107–107, set out above] shall not affect the availability for the purpose of the demonstration program under section 2814 of the Military Construction Authorization Act for Fiscal Year 2002, as amended by this section, of any amounts authorized to be appropriated before the date of the enactment of this Act [Dec. 2, 2002] for the Army for military construction that have been obligated for the demonstration program, but not expended, as of that date."]

REPORT

Pub. L. 100–180, div. B, subdiv. 3, title I, §2302(c), Dec. 4, 1987, 101 Stat. 1215, directed each Secretary who has entered into a contract under this section to submit a report to Committees on Armed Services of Senate and House of Representatives by Feb. 15, 1989, containing date and duration of, other party to, and nature of activities carried out under each such contract, and recommendations, and reasons therefor, concerning whether authority to enter into contracts under this section should be extended.

[§ 2810. Repealed. Pub. L. 107–314, div. A, title III, § 313(b), Dec. 2, 2002, 116 Stat. 2507]

Section, added Pub. L. 99–499, title II, §211(b)(1), Oct. 17, 1986, 100 Stat. 1725, related to military construction projects for environmental response actions.

§ 2811. Repair of facilities

(a) REPAIRS USING OPERATIONS AND MAINTENANCE FUNDS.—Using funds available to the Secretary concerned for operation and maintenance, the Secretary concerned may carry out repair projects for an entire single-purpose facility or one or more functional areas of a multipurpose facility.

(b) APPROVAL REQUIRED FOR MAJOR REPAIRS.—A repair project costing more than $7,500,000 may not be carried out under this section unless approved in advance by the Secretary concerned. In determining the total cost of a repair project, the Secretary shall include all phases of a multi-year repair project to a single facility. In considering a repair project for approval, the Secretary shall ensure that the project is consistent with force structure plans, that repair of the facility is more cost effective than replacement, and that the project is an appropriate use of operation and maintenance funds.

(c) PROHIBITION ON NEW CONSTRUCTION OR ADDITIONS.—Construction of new facilities or additions to existing facilities may not be carried out under the authority of this section.

(d) CONGRESSIONAL NOTIFICATION.—When a decision is made to carry out a repair project under this section with an estimated cost in excess of $7,500,000, the Secretary concerned shall submit, in an electronic medium pursuant to section 480 of this title, to the appropriate committees of Congress a report containing—

(1) the justification for the repair project and the current estimate of the cost of the project, including, in the case of a multi-year repair project to a single facility, the total cost of all phases of the project;

(2) if the current estimate of the cost of the repair project exceeds 75 percent of the estimated cost of a military construction project to replace the facility, an explanation of the reasons why replacement of the facility is not in the best interest of the Government; and

(3) a description of the elements of military construction, including the elements specified in section 2802(b) of this title, incorporated into the repair project.

(e) REPAIR PROJECT DEFINED.—In this section, the term "repair project" means a project—

(1) to restore a real property facility, system, or component to such a condition that it may effectively be used for its designated functional purpose; or

(2) to convert a real property facility, system, or component to a new functional purpose without increasing its external dimensions.

(Added Pub. L. 99–661, div. A, title III, §315(a), Nov. 14, 1986, 100 Stat. 3854, §2810; renumbered §2811, Pub. L. 100–26, §7(e)(3), Apr. 21, 1987, 101 Stat. 281; amended Pub. L. 103–337, div. B, title XXVIII, §2801(a), Oct. 5, 1994, 108 Stat. 3050; Pub. L. 105–85, div. B, title XXVIII, §2802, Nov. 18, 1997, 111 Stat. 1990; Pub. L. 108–375, div. B, title XXVIII, §2801, Oct. 28, 2004, 118 Stat. 2119; Pub. L. 111–84, div. B, title XXVIII, §2802, Oct. 28, 2009, 123 Stat. 2661; Pub. L. 114–328, div. B, title XXVIII, §2802, Dec. 23, 2016, 130 Stat. 2712; Pub. L. 115–91, div. B, title XXVIII, §2801(a)(8), Dec. 12, 2017, 131 Stat. 1841.)

AMENDMENTS

2017—Subsec. (d). Pub. L. 115–91 inserted ", in an electronic medium pursuant to section 480 of this title," after "shall submit" in introductory provisions.

2016—Subsec. (e). Pub. L. 114–328 amended subsec. (e) generally. Prior to amendment, text read as follows: "In this section, the term 'repair project' means a project to restore a real property facility, system, or component to such a condition that it may effectively be used for its designated functional purpose."

2009—Subsec. (d)(2), (3). Pub. L. 111–84 added pars. (2) and (3) and struck out former par. (2) which read as follows: "the justification for carrying out the project under this section."

2004—Subsec. (b). Pub. L. 108–375, §2801(a), substituted "$7,500,000" for "$5,000,000".

Subsec. (d). Pub. L. 108–375, §2801(b), substituted "$7,500,000" for "$10,000,000" in introductory provisions.

Subsec. (d)(1). Pub. L. 108–375, §2801(c), inserted before semicolon ", including, in the case of a multi-year repair project to a single facility, the total cost of all phases of the project".

1997—Subsecs. (d), (e). Pub. L. 105–85 added subsecs. (d) and (e).

1994—Pub. L. 103–337 substituted "Repair" for "Renovation" in section catchline and amended text generally. Prior to amendment, text read as follows:

"(a) The Secretary concerned may carry out renovation projects that combine maintenance, repair, and minor construction projects for an entire single-purpose facility, or one or more functional areas of a multipurpose facility, using funds available for operations and maintenance.

"(b) The amount obligated on such a renovation project may not exceed the maximum amount specified by law for a minor construction project under section 2805 of this title.

''(c) Construction of new facilities or additions to existing facilities may not be carried out under the authority of this section.''

§ 2812. Lease-purchase of facilities

(a)(1) The Secretary concerned may enter into an agreement with a private contractor for the lease of a facility of the kind specified in paragraph (2) if the facility is provided at the expense of the contractor on a military installation under the jurisdiction of the Department of Defense.

(2) The facilities that may be leased pursuant to paragraph (1) are as follows:

(A) Administrative office facilities.

(B) Troop housing facilities.

(C) Energy production facilities.

(D) Utilities, including potable and waste water treatment facilities.

(E) Hospital and medical facilities.

(F) Transient quarters.

(G) Depot or storage facilities.

(H) Child care centers.

(I) Classroom and laboratories.

(b) Leases entered into under subsection (a)—

(1) may not exceed a term of 32 years;

(2) shall provide that, at the end of the term of the lease, title to the leased facility shall vest in the United States; and

(3) shall include such other terms and conditions as the Secretary concerned determines are necessary or desirable to protect the interests of the United States.

(c)(1) The Secretary concerned may enter into a lease under this section only after the end of the 14-day period beginning on the date on which the Secretary submits, in an electronic medium pursuant to section 480 of this title, to the appropriate committees of Congress a justification of the need for the facility covered by the proposed lease, including an economic analysis (based upon accepted life-cycle costing procedures) that demonstrates the cost effectiveness of the proposed lease compared with a military construction project for the same facility.

(2) Each Secretary concerned may, under this section, enter into—

(A) not more than three leases in fiscal year 1990; and

(B) not more than five leases in each of the fiscal years 1991 and 1992.

(d) Each lease entered into under this section shall include a provision that the obligation of the United States to make payments under the lease in any fiscal year is subject to the availability of appropriations for that purpose.

(Added Pub. L. 101–189, div. B, title XXVIII, § 2809(a), Nov. 29, 1989, 103 Stat. 1649; amended Pub. L. 101–510, div. B, title XXVIII, § 2864, Nov. 5, 1990, 104 Stat. 1806; Pub. L. 108–136, div. A, title X, § 1031(a)(39), Nov. 24, 2003, 117 Stat. 1601; Pub. L. 115–91, div. B, title XXVIII, § 2801(a)(9), Dec. 12, 2017, 131 Stat. 1841.)

AMENDMENTS

2017—Subsec. (c)(1). Pub. L. 115–91 added par. (1) and struck out former par. (1) which set out justification, economic analysis, and wait requirements for entering into a lease.

2003—Subsec. (c)(1)(B). Pub. L. 108–136 inserted before period at end ''or, if over sooner, a period of 14 days has expired following the date on which a copy of the justification and economic analysis are provided in an electronic medium pursuant to section 480 of this title''.

1990—Subsec. (a)(2)(I). Pub. L. 101–510 added subpar. (I).

§ 2813. Acquisition of existing facilities in lieu of authorized construction

(a) ACQUISITION AUTHORITY.—Using funds appropriated for a military construction project authorized by law for a military installation, the Secretary of the military department concerned may acquire an existing facility (including the real property on which the facility is located) at or near the military installation instead of carrying out the authorized military construction project if the Secretary determines that—

(1) the acquisition of the facility satisfies the requirements of the military department concerned for the authorized military construction project; and

(2) it is in the best interests of the United States to acquire the facility instead of carrying out the authorized military construction project.

(b) MODIFICATION OR CONVERSION OF ACQUIRED FACILITY.—(1) As part of the acquisition of an existing facility under subsection (a), the Secretary of the military department concerned may carry out such modifications, repairs, or conversions of the facility as the Secretary considers to be necessary so that the facility satisfies the requirements for which the military construction project was authorized.

(2) The costs of anticipated modifications, repairs, or conversions under paragraph (1) are required to remain within the authorized amount of the military construction project. The Secretary concerned shall consider such costs in determining whether the acquisition of an existing facility is—

(A) more cost effective than carrying out the authorized military construction project; and

(B) in the best interests of the United States.

(c) NOTICE AND WAIT REQUIREMENTS.—A contract may not be entered into for the acquisition of a facility under subsection (a) until the Secretary concerned notifies the appropriate committees of Congress of the determination to acquire an existing facility instead of carrying out the authorized military construction project. The notification shall include the reasons for acquiring the facility. After the notification is transmitted, the Secretary may then enter into the contract only after the end of the 14-day period beginning on the date on which the notification is received by the committees in an electronic medium pursuant to section 480 of this title.

(Added Pub. L. 103–160, div. B, title XXVIII, § 2805(a)(1), Nov. 30, 1993, 107 Stat. 1886; amended Pub. L. 104–106, div. A, title XV, § 1502(a)(25), Feb. 10, 1996, 110 Stat. 506; Pub. L. 108–136, div. A, title X, § 1031(a)(40), Nov. 24, 2003, 117 Stat. 1601; Pub. L. 109–163, div. B, title XXVIII, § 2801(b), Jan. 6, 2006, 119 Stat. 3504; Pub. L. 115–91, div. B, title XXVIII, § 2801(a)(10), Dec. 12, 2017, 131 Stat. 1841.)

AMENDMENTS

2017—Subsec. (c). Pub. L. 115–91 substituted ''notifies the appropriate committees of Congress'' for ''transmits to the appropriate committees of Congress a written notification'' and ''14-day period'' for ''21-day period'' and struck out ''or, if earlier, the end of the 14-day period beginning on the date on which a copy of the report is provided'' after ''received by the committees''.

2006—Subsec. (c). Pub. L. 109–163 substituted ''21-day period'' for ''30-day period'' and ''14-day period'' for ''21-day period''.

2003—Subsec. (c). Pub. L. 108–136 struck out ''the end of the 30-day period beginning on the date'' after ''until'' and inserted last sentence.

1996—Subsec. (c). Pub. L. 104–106 substituted ''appropriate committees of Congress'' for ''Committees on Armed Services and the Committees on Appropriations of the Senate and House of Representatives''.

EFFECTIVE DATE

Pub. L. 103–160, div. B, title XXVIII, § 2805(b), Nov. 30, 1993, 107 Stat. 1887, provided that: ''Section 2813 of title 10, United States Code, as added by subsection (a), shall apply with respect to military construction projects authorized on or after the date of the enactment of this Act [Nov. 30, 1993].''

§ 2814. Special authority for development of Ford Island, Hawaii

(a) IN GENERAL.—(1) Subject to paragraph (2), the Secretary of the Navy may exercise any authority or combination of authorities in this section for the purpose of developing or facilitating the development of Ford Island, Hawaii, to the extent that the Secretary determines the development is compatible with the mission of the Navy.

(2) The Secretary of the Navy may not exercise any authority under this section until—

(A) the Secretary submits to the appropriate committees of Congress a master plan for the development of Ford Island, Hawaii; and

(B) a period of 30 calendar days has elapsed following the date on which the notification is received by those committees.

(b) CONVEYANCE AUTHORITY.—(1) The Secretary of the Navy may convey to any public or private person or entity all right, title, and interest of the United States in and to any real property (including any improvements thereon) or personal property under the jurisdiction of the Secretary in the State of Hawaii that the Secretary determines—

(A) is excess to the needs of the Navy and all of the other armed forces; and

(B) will promote the purpose of this section.

(2) A conveyance under this subsection may include such terms and conditions as the Secretary considers appropriate to protect the interests of the United States.

(c) LEASE AUTHORITY.—(1) The Secretary of the Navy may lease to any public or private person or entity any real property or personal property under the jurisdiction of the Secretary in the State of Hawaii that the Secretary determines—

(A) is not needed for current operations of the Navy and all of the other armed forces; and

(B) will promote the purpose of this section.

(2) A lease under this subsection shall be subject to section 2667(b)(1) of this title and may include such other terms as the Secretary considers appropriate to protect the interests of the United States.

(3) A lease of real property under this subsection may provide that, upon termination of the lease term, the lessee shall have the right of first refusal to acquire the real property covered by the lease if the property is then conveyed under subsection (b).

(4)(A) The Secretary may provide property support services to or for real property leased under this subsection.

(B) To the extent provided in appropriations Acts, any payment made to the Secretary for services provided under this paragraph shall be credited to the appropriation, account, or fund from which the cost of providing the services was paid.

(d) ACQUISITION OF LEASEHOLD INTEREST BY SECRETARY.—(1) The Secretary of the Navy may acquire a leasehold interest in any facility constructed under subsection (f) as consideration for a transaction authorized by this section upon such terms as the Secretary considers appropriate to promote the purpose of this section.

(2) The term of a lease under paragraph (1) may not exceed 10 years, unless the Secretary of Defense approves a term in excess of 10 years for purposes of this section.

(3) A lease under this subsection may provide that, upon termination of the lease term, the United States shall have the right of first refusal to acquire the facility covered by the lease.

(e) REQUIREMENT FOR COMPETITION.—The Secretary of the Navy shall use competitive procedures for purposes of selecting the recipient of real or personal property under subsection (b) and the lessee of real or personal property under subsection (c).

(f) CONSIDERATION.—(1) As consideration for the conveyance of real or personal property under subsection (b), or for the lease of real or personal property under subsection (c), the Secretary of the Navy shall accept cash, real property, personal property, or services, or any combination thereof, in an aggregate amount equal to not less than the fair market value of the real or personal property conveyed or leased.

(2) Subject to subsection (i), the services accepted by the Secretary under paragraph (1) may include the following:

(A) The construction or improvement of facilities at Ford Island.

(B) The restoration or rehabilitation of real property at Ford Island.

(C) The provision of property support services for property or facilities at Ford Island.

(g) NOTICE AND WAIT REQUIREMENTS.—The Secretary of the Navy may carry out a transaction authorized by this section only after the end of the 20-day period beginning on the date on which the Secretary submits, in an electronic medium pursuant to section 480 of this title, to the appropriate committees of Congress notice of the transaction, including a detailed description of the transaction and a justification for the transaction specifying the manner in which the transaction will meet the purposes of this section.

(h) FORD ISLAND IMPROVEMENT ACCOUNT.—(1) There is established on the books of the Treas-

ury an account to be known as the ''Ford Island Improvement Account''.

(2) There shall be deposited into the account the following amounts:

(A) Amounts authorized and appropriated to the account.

(B) Except as provided in subsection (c)(4)(B), the amount of any cash payment received by the Secretary for a transaction under this section.

(i) USE OF ACCOUNT.—(1) Subject to paragraph (2), to the extent provided in advance in appropriations Acts, funds in the Ford Island Improvement Account may be used as follows:

(A) To carry out or facilitate the carrying out of a transaction authorized by this section.

(B) To carry out improvements of property or facilities at Ford Island.

(C) To obtain property support services for property or facilities at Ford Island.

(2) To extent that the authorities provided under subchapter IV of this chapter are available to the Secretary of the Navy, the Secretary may not use the authorities in this section to acquire, construct, or improve family housing units, military unaccompanied housing units, or ancillary supporting facilities related to military housing.

(3)(A) The Secretary may transfer funds from the Ford Island Improvement Account to the following funds:

(i) The Department of Defense Family Housing Improvement Fund established by section 2883(a)(1) of this title.

(ii) The Department of Defense Military Unaccompanied Housing Improvement Fund established by section 2883(a)(2) of this title.

(B) Amounts transferred under subparagraph (A) to a fund referred to in that subparagraph shall be available in accordance with the provisions of section 2883 of this title for activities authorized under subchapter IV of this chapter at Ford Island.

(j) INAPPLICABILITY OF CERTAIN PROPERTY MANAGEMENT LAWS.—Except as otherwise provided in this section, transactions under this section shall not be subject to the following:

(1) Sections 2667 and 2696 of this title.

(2) Section 501 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11411).

(3) Subchapter II of chapter 5 and sections 541–555 of title 40.

(k) SCORING.—Nothing in this section shall be construed to waive the applicability to any lease entered into under this section of the budget scorekeeping guidelines used to measure compliance with the Balanced Budget and Emergency Deficit Control Act of 1985.

(*l*) PROPERTY SUPPORT SERVICE DEFINED.—In this section, the term ''property support service'' means the following:

(1) Any utility service or other service listed in section 2686(a) of this title.

(2) Any other service determined by the Secretary to be a service that supports the operation and maintenance of real property, personal property, or facilities.

(Added Pub. L. 106–65, div. B, title XXVIII, § 2802(a)(1), Oct. 5, 1999, 113 Stat. 845; amended Pub. L. 106–398, § 1 [[div. A], title X, § 1087(a)(16)], Oct. 30, 2000, 114 Stat. 1654, 1654A–291; Pub. L. 107–107, div. A, title X, § 1048(d)(1), Dec. 28, 2001, 115 Stat. 1227; Pub. L. 107–217, § 3(b)(18), Aug. 21, 2002, 116 Stat. 1296; Pub. L. 111–383, div. B, title XXVIII, § 2803(c), Jan. 7, 2011, 124 Stat. 4459; Pub. L. 115–91, div. B, title XXVIII, § 2801(a)(11), Dec. 12, 2017, 131 Stat. 1842.)

REFERENCES IN TEXT

The Balanced Budget and Emergency Deficit Control Act of 1985, referred to in subsec. (k), is title II of Pub. L. 99–177, Dec. 12, 1985, 99 Stat. 1038, as amended, which enacted chapter 20 (§ 900 et seq.) and sections 654 to 656 of Title 2, The Congress, amended sections 602, 622, 631 to 642, and 651 to 653 of Title 2, sections 1104 to 1106, and 1109 of Title 31, Money and Finance, and section 911 of Title 42, The Public Health and Welfare, repealed section 661 of Title 2, enacted provisions set out as notes under section 900 of Title 2 and section 911 of Title 42, and amended provisions set out as a note under section 621 of Title 2. For complete classification of this Act to the Code, see Short Title note set out under section 900 of Title 2 and Tables.

AMENDMENTS

2017—Subsec. (g). Pub. L. 115–91 added subsec. (g) and struck out former subsec. (g) which set out notice and wait requirements for a transaction authorized by this section.

2011—Subsec. (g)(2). Pub. L. 111–383 inserted before period at end ''or, if earlier, a period of 20 days has elapsed from the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this title''.

2002—Subsec. (j)(3). Pub. L. 107–217 substituted ''Subchapter II of chapter 5 and sections 541–555 of title 40'' for ''Sections 202 and 203 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 483, 484)''.

2001—Subsec. (j)(2). Pub. L. 107–107 substituted ''McKinney-Vento Homeless Assistance Act'' for ''Stewart B. McKinney Homeless Assistance Act''.

2000—Subsec. (k). Pub. L. 106–398 inserted ''and'' after ''Balanced Budget''.

§ 2815. Military installation resilience projects

(a) PROJECTS REQUIRED.—The Secretary of Defense shall carry out military construction projects for military installation resilience, in accordance with section 2802 of this title (except as provided in subsections (d)(3) and (e)).

(b) CONGRESSIONAL NOTIFICATION.—(1) When a decision is made to carry out a project under this section, the Secretary of Defense shall notify the congressional defense committees of that decision.

(2) The Secretary of Defense shall include in each notification submitted under paragraph (1) the rationale for how the project would—

(A) enhance military installation resilience;

(B) enhance mission assurance;

(C) support mission critical functions; and

(D) address known vulnerabilities.

(c) TIMING OF PROJECTS.—Except as provided in subsection (e)(2), a project may be carried out under this section only after the end of the 14-day period beginning on the date that notification with respect to that project under subsection (b) is received by the congressional defense committees in an electronic medium pursuant to section 480 of this title.

(d) LOCATION OF PROJECTS.—Projects carried out pursuant to this section may be carried out—

(1) on a military installation;

(2) on a facility used by the Department of Defense that is owned and operated by a State, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, or the Virgin Islands, even if the facility is not under the jurisdiction of the Department of Defense, if the Secretary of Defense determines that the facility is subject to significant use by the armed forces for testing or training; or

(3) outside of a military installation or facility described in paragraph (2) if the Secretary concerned determines that the project would preserve or enhance the resilience of—

(A) a military installation;

(B) a facility described in paragraph (2); or

(C) community infrastructure determined by the Secretary concerned to be necessary to maintain, improve, or rapidly reestablish installation mission assurance and mission-essential functions.

(e) ALTERNATIVE FUNDING SOURCE.—(1) In carrying out a project under this section, the Secretary concerned may use amounts available for operation and maintenance for the military department concerned if the Secretary concerned submits a notification to the congressional defense committees of the decision to carry out the project using such amounts and includes in the notification—

(A) the current estimate of the cost of the project;

(B) the source of funds for the project; and

(C) a certification that deferral of the project for inclusion in the next Military Construction Authorization Act would be inconsistent with national security or the protection of health, safety, or environmental quality, as the case may be.

(2) A project carried out under this section using amounts under paragraph (1) may be carried out only after the end of the 7-day period beginning on the date on which a copy of the notification described in paragraph (1) is provided in an electronic medium pursuant to section 480 of this title.

(3) The maximum aggregate amount that the Secretary concerned may obligate from amounts available to the military department concerned for operation and maintenance in any fiscal year for projects under the authority of this subsection is $100,000,000.

(f) ANNUAL REPORT.—Not later than 90 days after the end of each fiscal year until December 31, 2025, the Secretary of Defense shall submit to the congressional defense committees a report on the status of the planned and active projects carried out under this section (including completed projects), and shall include in the report with respect to each such project the following information:

(1) The title, location, a brief description of the scope of work, the original project cost estimate, and the current working cost estimate.

(2) The information provided under subsection (b)(2).

(3) Such other information as the Secretary considers appropriate.

(Added Pub. L. 116–92, div. B, title XXVIII, § 2801(b)(1), Dec. 20, 2019, 133 Stat. 1880; amended Pub. L. 116–283, div. A, title III, § 315(a), Jan. 1, 2021, 134 Stat. 3514.)

PRIOR PROVISIONS

A prior section 2815, added Pub. L. 106–398, § 1 [div. B, title XXVIII, § 2801(b)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–412; amended Pub. L. 107–314, div. A, title X, § 1062(a)(14), Dec. 2, 2002, 116 Stat. 2650, related to annual evaluation of joint use military construction projects, prior to repeal by Pub. L. 112–81, div. A, title X, § 1061(23)(A), Dec. 31, 2011, 125 Stat. 1584.

AMENDMENTS

2021—Subsec. (a). Pub. L. 116–283, § 315(a)(1), inserted ''(except as provided in subsections (d)(3) and (e))'' before period at end.

Subsec. (c). Pub. L. 116–283, § 315(a)(2), substituted ''Except as provided in subsection (e)(2), a project'' for ''A project''.

Subsecs. (d) to (f). Pub. L. 116–283, § 315(a)(3), (4), added subsecs. (d) and (e) and redesignated former subsec. (d) as (f).

§ 2816. Consideration of energy security and energy resilience in life-cycle cost for military construction

(a) IN GENERAL.—(1) The Secretary concerned, when evaluating the life-cycle designed cost of a covered military construction project, shall include as a facility requirement the long-term consideration of energy security and energy resilience that would ensure that the resulting facility is capable of continuing to perform its missions, during the life of the facility, in the event of a natural or human-caused disaster, an attack, or any other unplanned event that would otherwise interfere with the ability of the facility to perform its missions.

(2) A facility requirement under paragraph (1) shall not be weighed, for cost purposes, against other facility requirements in determining the design of the facility.

(b) INCLUSION IN THE BUILDING LIFE-CYCLE COST PROGRAM.—The Secretary shall include the requirements of subsection (a) in applying the latest version of the building life-cycle cost program, as developed by the National Institute of Standards and Technology, to consider on-site distributed energy assets in a building design for a covered military construction project.

(c) COVERED MILITARY CONSTRUCTION PROJECT DEFINED.—(1) In this section, the term ''covered military construction project'' means a military construction project for a facility that is used to perform critical functions during a natural or human-caused disaster, an attack, or any other unplanned event.

(2) For purposes of paragraph (1), the term ''facility'' includes at a minimum any of the following:

(A) Operations centers.

(B) Nuclear command and control facilities.

(C) Integrated strategic and tactical warning and attack assessment facilities.

(D) Continuity of government facilities.

(E) Missile defense facilities.

(F) Air defense facilities.

(G) Hospitals.

(H) Armories and readiness centers of the National Guard.

(I) Communications facilities.

(J) Satellite and missile launch and control facilities.

(Added Pub. L. 116–283, div. B, title XXVIII, § 2804(a), Jan. 1, 2021, 134 Stat. 4320.)

SUBCHAPTER II—MILITARY FAMILY HOUSING

Sec.
2821. Requirement for authorization of appropriations for construction and acquisition of military family housing.
2822. Requirement for authorization of number of family housing units.
[2823. Repealed.]
2824. Authorization for acquisition of existing family housing in lieu of construction.
2825. Improvements to family housing units.
2826. Military family housing: local comparability of room patterns and floor areas.
2827. Relocation of military family housing units.
2828. Leasing of military family housing.
2829. Multi-year contracts for supplies and services.
[2830. Repealed.]
2831. Military family housing management account.
2832. Homeowners assistance program.
2833. Family housing support.
2834. Participation in Department of State housing pools.
2835. Long-term leasing of military family housing to be constructed.
2835a. Use of military family housing constructed under build and lease authority to house other members.
2836. Military housing rental guarantee program.
[2837. Repealed.]
2838. Leasing of military family housing to Secretary of Defense.

AMENDMENTS

2021—Pub. L. 116–283, div. B, title XXVIII, § 2812(b), Jan. 1, 2021, 134 Stat. 4327, struck out item 2830 "Occupancy of substandard family housing units".

2013—Pub. L. 113–66, div. B, title XXVIII, § 2802(a)(2), Dec. 26, 2013, 127 Stat. 1006, struck out item 2837 "Limited partnerships with private developers of housing".

2008—Pub. L. 110–417, div. B, title XXVIII, §§ 2803(b), 2804(b), Oct. 14, 2008, 122 Stat. 4720, 4721, added items 2835a and 2838.

2006—Pub. L. 109–364, div. B, title XXVIII, § 2803(b), Oct. 17, 2006, 120 Stat. 2467, struck out item 2823 "Determination of availability of suitable alternative housing for acquisition in lieu of construction of new family housing".

2000—Pub. L. 106–398, § 1 [div. B, title XXVIII, § 2803(a)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–413, substituted "Military family housing: local comparability of room patterns and floor areas" for "Limitations on space by pay grade" in item 2826.

1994—Pub. L. 103–337, div. B, title XXVIII, § 2803(b), Oct. 5, 1994, 108 Stat. 3053, added item 2837.

1991—Pub. L. 102–190, div. B, title XXVIII, §§ 2806(a)(2), 2809(a)(2), Dec. 5, 1991, 105 Stat. 1540, 1543, added items 2835 and 2836.

1985—Pub. L. 99–167, title VIII, §§ 804(b)(2), 808(b), Dec. 3, 1985, 99 Stat. 987, 989, added items 2833 and 2834.

§ 2821. Requirement for authorization of appropriations for construction and acquisition of military family housing

(a) Except as provided in subsection (b), funds may not be appropriated for the construction, acquisition, leasing, addition, extension, expansion, alteration, relocation, or operation and maintenance of family housing under the jurisdiction of the Department of Defense unless the appropriation of such funds has been authorized by law.

(b) In addition to the funds authorized to be appropriated by law in any fiscal year for the purposes described in subsection (a), there are authorized to be appropriated such additional sums as may be necessary for increases in salary, pay, retirement, and other employee benefits authorized by law for civilian employees of the Department of Defense whose compensation is provided for by funds appropriated for the purposes described in such subsection.

(c) Amounts authorized by law for construction of military family housing units include amounts for (1) site preparation (including demolition), (2) installation of utilities, (3) ancillary supporting facilities, (4) shades, screens, ranges, refrigerators, and all other equipment and fixtures installed in such units, and (5) construction supervision, inspection, and overhead.

(d) Amounts authorized by law for construction and acquisition of military family housing and facilities include amounts for—

(1) minor construction;

(2) improvements to existing military family housing units and facilities;

(3) relocation of military family housing units under section 2827 of this title; and

(4) architectural and engineering services and construction design.

(e) The Secretary concerned shall provide for the installation and maintenance of an appropriate number of carbon monoxide detectors in each unit of military family housing under the jurisdiction of the Secretary.

(Added Pub. L. 97–214, § 2(a), July 12, 1982, 96 Stat. 157; amended Pub. L. 99–145, title XIII, § 1303(a)(18), Nov. 8, 1985, 99 Stat. 739; Pub. L. 99–167, title VIII, § 804(a), Dec. 3, 1985, 99 Stat. 987; Pub. L. 116–92, div. B, title XXX, § 3031, Dec. 20, 2019, 133 Stat. 1936.)

AMENDMENTS

2019—Subsec. (e). Pub. L. 116–92 added subsec. (e).

1985—Subsec. (b). Pub. L. 99–145 substituted "such subsection" for "such paragraph".

Subsec. (d). Pub. L. 99–167 added subsec. (d).

EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

REQUIREMENT THAT SECRETARY OF DEFENSE IMPLEMENT RECOMMENDATIONS RELATING TO MILITARY FAMILY HOUSING CONTAINED IN REPORT BY INSPECTOR GENERAL OF DEPARTMENT OF DEFENSE

Pub. L. 116–283, div. B, title XXVIII, § 2815, Jan. 1, 2021, 134 Stat. 4328, provided that: "Not later than 90 days after the date of the enactment of this Act [Jan. 1, 2021], the Secretary of Defense shall implement the recommendations of the Inspector General of the Department of Defense contained in the report of the Inspector General dated April 30, 2020, and entitled 'Evaluation of the DoD's Management of Health and Safety Hazards in Government-Owned and Government-Controlled Military Family Housing'."

TOOL FOR ASSESSMENT OF HAZARDS IN DEPARTMENT OF DEFENSE HOUSING

Pub. L. 116–92, div. B, title XXX, § 3052, Dec. 20, 2019, 133 Stat. 1942, provided that:

''(a) HAZARD ASSESSMENT TOOL.—

''(1) DEVELOPMENT REQUIRED.—Not later than 180 days after the date of the enactment of this Act [Dec. 20, 2019], the Secretary of Defense shall develop an assessment tool, such as a rating system or similar mechanism, to identify and measure health and safety hazards in housing under the jurisdiction of the Department of Defense (including privatized military housing).

''(2) COMPONENTS.—The assessment tool shall provide for the identification and measurement of the following hazards:

''(A) Physiological hazards, including dampness and mold growth, lead-based paint, asbestos and manmade fibers, radiation, biocides, carbon monoxide, and volatile organic compounds.

''(B) Psychological hazards, including ease of access by unlawful intruders, and lighting issues.

''(C) Infection hazards.

''(D) Safety hazards.

''(3) PUBLIC FORUMS.—In developing the assessment tool, the Secretary of Defense shall provide for multiple public forums at which the Secretary may receive input with respect to such assessment tool from occupants of housing under the jurisdiction of the Department of Defense (including privatized military housing).

''(4) REPORT.—Not later than 210 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the assessment tool.

''(b) HAZARD ASSESSMENTS.—

''(1) ASSESSMENTS REQUIRED.—Not later than one year after the date of the enactment of this Act, the Secretary of Defense, using the assessment tool developed under subsection (a)(1), shall complete a hazard assessment for each housing facility under the jurisdiction of the Department of Defense (including privatized military housing).

''(2) TENANT INFORMATION.—As soon as practicable after the completion of the hazard assessment conducted for a housing facility under paragraph (1), the Secretary of Defense shall provide to each individual who leases or is assigned to a housing unit in the facility a summary of the results of the assessment.''

[For definitions of terms used in section 3052 of Pub. L. 116–92, set out above, see section 3001(a) of Pub. L. 116–92, set out as a note below.]

PROCESS TO IDENTIFY AND ADDRESS ENVIRONMENTAL HEALTH HAZARDS IN DEPARTMENT OF DEFENSE HOUSING

Pub. L. 116–283, div. B, title XXVIII, §2817, Jan. 1, 2021, 134 Stat. 4329, provided that: ''As part of the process developed by the Secretary of Defense pursuant to section 3053 of the Military Construction Authorization Act for Fiscal Year 2020 (division B of Public Law 116–92; 133 Stat. 1943; 10 U.S.C. 2821 note) [set out below] to identify, record, and resolve environmental health hazards in military housing, the Secretary shall promulgate guidance regarding situations in which the presence of mold in a unit of housing under the jurisdiction of the Department of Defense (including privatized military housing) is an emergency situation requiring the relocation of the residents of the unit.''

Pub. L. 116–92, div. B, title XXX, §3053, Dec. 20, 2019, 133 Stat. 1943, provided that:

''(a) PROCESS REQUIRED.—Not later than 180 days after the date of the enactment of this Act [Dec. 20, 2019], the Secretary of Defense, in coordination with the Secretaries of the military departments, shall develop a process to identify, record, and resolve environmental health hazards in housing under the jurisdiction of the Department of Defense (including privatized housing) in a timely manner.

''(b) ELEMENTS OF PROCESS.—The process developed under subsection (a) shall provide for the following with respect to each identified environmental health hazard:

''(1) Categorization of the hazard.

''(2) Identification of health risks posed by the hazard.

''(3) Identification of the number of housing occupants potentially affected by the hazard.

''(4) Recording and maintenance of information regarding the hazard.

''(5) Resolution of the hazard, which shall include—

''(A) the performance by the Secretary of Defense (or in the case of privatized housing, the landlord) of hazard remediation activities at the affected facility; and

''(B) follow-up by the Secretary of Defense to collect information on medical care related to the hazard sought or received by individuals affected by the hazard.

''(c) COORDINATION.—The Secretary of Defense shall ensure coordination between military treatment facilities, appropriate public health officials, and housing managers at military installations with respect to the development and implementation of the process required by subsection (a).

''(d) REPORT.—Not later than 210 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the process required by subsection (a).''

[For definitions of terms used in section 3053 of Pub. L. 116–92, set out above, see section 3001(a) of Pub. L. 116–92, set out as a note below.]

SATISFACTION SURVEY FOR TENANTS OF MILITARY HOUSING

Pub. L. 116–92, div. B, title XXX, §3058, Dec. 20, 2019, 133 Stat. 1945, provided that:

''(a) SURVEY REQUIRED.—Not later than March 1, 2020, the Secretary of Defense shall require that each installation of the Department of Defense use the same satisfaction survey for tenants of military housing, including privatized military housing.

''(b) FORM OF SURVEY.—The satisfaction survey required by subsection (a) shall be an electronic survey with embedded privacy and security mechanisms.

''(c) PRIVACY AND SECURITY MECHANISMS.—The privacy and security mechanisms used in the satisfaction survey required by subsection (a)—

''(1) may include a code unique to the tenant to be surveyed that is sent to the cell phone number of the tenant and required to be entered to access the survey; and

''(2) in the case of privatized military housing, shall ensure the survey is not shared with the landlord providing the privatized military housing until the survey is reviewed and the results are tallied by Department of Defense personnel.''

[For definitions of terms used in section 3058 of Pub. L. 116–92, set out above, see section 3001(a) of Pub. L. 116–92, set out as a note below.]

DEPARTMENT OF THE ARMY PILOT PROGRAM TO BUILD AND MONITOR USE OF SINGLE FAMILY HOMES

Pub. L. 116–92, div. B, title XXX, §3064, Dec. 20, 2019, 133 Stat. 1947, provided that:

''(a) IN GENERAL.—The Secretary of the Army shall carry out a pilot program to build and monitor the use of not fewer than five single family homes for members of the Army and their families.

''(b) LOCATION.—The Secretary of the Army shall carry out the pilot program at no less than two installations of the Army located in different climate regions of the United States as determined by the Secretary.

''(c) DESIGN.—In building homes under the pilot program, the Secretary of the Army shall use the All-American Abode design from the suburban single-family division design by the United States Military Academy.''

MITIGATION OF RISKS POSED BY CERTAIN ITEMS IN MILITARY FAMILY HOUSING UNITS

Pub. L. 116–92, div. B, title XXX, §3062, Dec. 20, 2019, 133 Stat. 1946, provided that:

"(a) ANCHORING OF ITEMS BY RESIDENTS.—The Secretary of Defense shall allow a resident of a military family housing unit to anchor any furniture, television, or large appliance to the wall of the unit for purposes of preventing such item from tipping over without incurring a penalty or obligation to repair the wall upon vacating the unit.

"(b) ANCHORING OF ITEMS FOR ALL UNITS.—

"(1) EXISTING UNITS.—Not later than one year after the date of the enactment of this Act [Dec. 20, 2019], the Secretary of Defense shall ensure that all freestanding chests, door chests, armoires, dressers, entertainment centers, bookcases taller than 27 inches, televisions, and large appliances provided by the Department of Defense are securely anchored in each furnished military family housing unit under the jurisdiction of the Department as of the date of the enactment of this Act.

"(2) NEW UNITS.—The Secretary of Defense shall ensure that all freestanding chests, door chests, armoires, dressers, entertainment centers, bookcases taller than 27 inches, televisions, and large appliances provided by the Department of Defense are securely anchored in each furnished military family housing unit made available after the date of the enactment of this Act."

Pub. L. 114–328, div. A, title III, § 345, Dec. 23, 2016, 130 Stat. 2085, provided that:

"(a) REMOVAL OF CERTAIN WINDOW COVERINGS.—Not later than three years after the date of enactment of this Act [Dec. 23, 2016], the Secretary of Defense shall remove and replace disqualified window coverings from—

"(1) military housing units owned by the Department of Defense in which children under the age of 9 may reside; and

"(2) military housing units leased by the Department of Defense in which children under the age of 9 may reside if the lease for such units requires the Department to provide window coverings.

"(b) PROHIBITION ON DISQUALIFIED WINDOW COVERINGS IN MILITARY HOUSING UNITS ACQUIRED OR CONSTRUCTED BY CONTRACT.—All contracts entered into by the Secretary of Defense after September 30, 2017, for the acquisition or construction of military family housing, including military family housing acquired or constructed pursuant to subchapter IV of chapter 169 of title 10, United States Code, shall prohibit the use of disqualified window coverings in such housing.

"(c) DISQUALIFIED WINDOW COVERING DEFINED.—In this section, the term 'disqualified window covering' means—

"(1) a window covering with an accessible cord that exceeds 8 inches in length; or

"(2) a window covering with an accessible continuous loop cord that does not have a cord tension device that prevents operation when the cord is not anchored to the wall."

REPAIR AND MAINTENANCE OF FAMILY HOUSING UNITS

Pub. L. 116–260, div. J, title I, § 119, Dec. 27, 2020, 134 Stat. 1661, provided that: "Notwithstanding any other provision of law, funds made available in this title [see Tables for classification] for operation and maintenance of family housing shall be the exclusive source of funds for repair and maintenance of all family housing units, including general or flag officer quarters: *Provided*, That not more than $35,000 per unit may be spent annually for the maintenance and repair of any general or flag officer quarters without 30 days prior notification, or 14 days for a notification provided in an electronic medium pursuant to sections 480 and 2883 of title 10, United States Code, to the Committees on Appropriations of both Houses of Congress, except that an after-the-fact notification shall be submitted if the limitation is exceeded solely due to costs associated with environmental remediation that could not be reasonably anticipated at the time of the budget submission: *Provided further*, That the Under Secretary of Defense (Comptroller) is to report annually to the Committees on Appropriations of both Houses of Congress all operation and maintenance expenditures for each individual general or flag officer quarters for the prior fiscal year."

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 116–94, div. F, title I, § 119, Dec. 20, 2019, 133 Stat. 2785.

Pub. L. 115–244, div. C, title I, § 119, Sept. 21, 2018, 132 Stat. 2952.

Pub. L. 115–141, div. J, title I, § 119, Mar. 23, 2018, 132 Stat. 802.

Pub. L. 114–223, div. A, title I, § 119, Sept. 29, 2016, 130 Stat. 864.

Pub. L. 114–113, div. J, title I, § 119, Dec. 18, 2015, 129 Stat. 2681.

Pub. L. 113–235, div. I, title I, § 121, Dec. 16, 2014, 128 Stat. 2550.

Pub. L. 113–76, div. J, title I, § 121, Jan. 17, 2014, 128 Stat. 445.

Pub. L. 113–6, div. E, title I, § 121, Mar. 26, 2013, 127 Stat. 391.

Pub. L. 112–74, div. H, title I, § 121, Dec. 23, 2011, 125 Stat. 1144.

Pub. L. 111–117, div. E, title I, § 123, Dec. 16, 2009, 123 Stat. 3295.

Pub. L. 110–329, div. E, title I, § 123, Sept. 30, 2008, 122 Stat. 3700.

Pub. L. 110–161, div. I, title I, § 123, Dec. 26, 2007, 121 Stat. 2261.

Pub. L. 109–114, title I, § 124, Nov. 30, 2005, 119 Stat. 2380, as amended by Pub. L. 109–148, div. B, title V, § 5013, Dec. 30, 2005, 119 Stat. 2815.

Pub. L. 108–324, div. A, § 124, Oct. 13, 2004, 118 Stat. 1228.

Pub. L. 108–132, § 125, Nov. 22, 2003, 117 Stat. 1382.

Pub. L. 107–249, § 127, Oct. 23, 2002, 116 Stat. 1586.

Pub. L. 107–64, § 127, Nov. 5, 2001, 115 Stat. 482.

Pub. L. 106–246, div. A, § 127, July 13, 2000, 114 Stat. 518.

Pub. L. 106–52, § 128, Aug. 17, 1999, 113 Stat. 267.

PILOT PROGRAM FOR MILITARY FAMILY HOUSING

Pub. L. 100–180, div. B, subdiv. 3, title II, § 2321, Dec. 4, 1987, 101 Stat. 1218, required Secretary of Defense, using $1,000,000 of funds appropriated pursuant to authorization in subsection (a)(10)(B) of section 2145 of Pub. L. 100–180, to establish and carry out, during fiscal years 1988, 1989, and 1990, a pilot program for purpose of assisting units of general local government to increase amount of affordable family housing available to military personnel; required Secretary, establishing and carrying out such programs, to select at least five units of general local government severely impacted by presence of military bases and personnel; set forth criteria for selection of units of general local government, authority to make grants, cooperative agreements, etc., and uses of available funds; and required Secretary to report to Committees on Armed Services of Senate and House no later than Mar. 15 of 1988, 1989, 1990, and 1991 with respect to activities carried out under this section.

MILITARY HOUSING RENTAL GUARANTEE PROGRAM

Pub. L. 98–115, title VIII, § 802, Oct. 11, 1983, 97 Stat. 783, as amended by Pub. L. 98–407, title VIII, § 806(b), Aug. 28, 1984, 98 Stat. 1521; Pub. L. 99–167, title VIII, § 801(a), Dec. 3, 1985, 99 Stat. 985; Pub. L. 99–661, div. B, title VII, § 2713(a), Nov. 14, 1986, 100 Stat. 4042; Pub. L. 100–180, div. B, subdiv. 3, title I, § 2307, Dec. 4, 1987, 101 Stat. 1216; Pub. L. 101–189, div. B, title XXVIII, § 2801, Nov. 29, 1989, 103 Stat. 1646; Pub. L. 101–510, div. B, title XXVIII, § 2811, Nov. 5, 1990, 104 Stat. 1788, provided for agreements and contracts relating to military housing rental guarantee program, prior to repeal by Pub. L. 102–190, div. B, title XXVIII, § 2809(b), (c), Dec. 5, 1991, 105 Stat. 1543, such repeal not to affect the validity of any contract entered into before Dec. 5, 1991, under section 802 of Pub. L. 98–115 as in effect on Dec. 4, 1991. See section 2836 of this title.

FAMILY HOUSING CONSTRUCTED OVERSEAS

Pub. L. 98–115, title VIII, § 803, Oct. 11, 1983, 97 Stat. 784, as amended by Pub. L. 98–407, title VIII, § 812, Aug. 28, 1984, 98 Stat. 1524; Pub. L. 101–510, div. A, title XIII, § 1302(f), Nov. 5, 1990, 104 Stat. 1669, provided that any contract entered into for the construction of military family housing for the Department of Defense in a foreign country was to require the use of housing fabricated in the United States by a United States contractor or, in the case of concrete housing, the use of housing produced in a plant that was fabricated in the United States by a United States company, and for which the materials, fixtures, and equipment used in the construction (other than cement, sand, and aggregates) were manufactured in the United States, prior to repeal by Pub. L. 107–314, div. B, title XXVIII, § 2804, Dec. 2, 2002, 116 Stat. 2705.

DEFINITIONS

Pub. L. 116–92, div. B, title XXX, § 3001(a), Dec. 20, 2019, 133 Stat. 1916, provided that: ''In this title [see Tables for classification]:

''(1) The term 'landlord' means an eligible entity that enters into, or has entered into, a contract as a partner with the Secretary concerned for the acquisition or construction of a housing unit under subchapter IV of chapter 169 of title 10, United States Code. The term includes any agent of the eligible entity or any subsequent lessor who owns, manages, or is otherwise responsible for a housing unit. The term does not include an entity of the Federal Government.

''(2) The term 'privatized military housing' means military housing provided under subchapter IV of chapter 169 of title 10, United States Code.

''(3) The term 'tenant' means a member of the armed forces, including a reserve component thereof in an active status, or a dependent of a member of the armed forces who resides at a housing unit, is a party to a lease for a housing unit, or is authorized to act on behalf of the member under subchapters IV and V of chapter 169 of title 10, United States Code, in the event of the assignment or deployment of a member.''

§ 2822. Requirement for authorization of number of family housing units

(a) Except as otherwise provided in subsection (b) or as otherwise authorized by law, the Secretary concerned may not construct or acquire military family housing units unless the number of units to be constructed or acquired has been specifically authorized by law.

(b) Subsection (a) does not apply to the following:

(1) Housing units acquired under section 404 of the Housing Amendments of 1955 (42 U.S.C. 1594a).

(2) Housing units leased under section 2828 of this title.

(3) Housing units acquired under the Homeowners Assistance Program referred to in section 2832 of this title.

(4) Housing units acquired without consideration.

(5) Replacement housing units constructed under section 2825(c) of this title.

(6) Housing units constructed or provided under section 2869 of this title.

(Added Pub. L. 97–214, § 2(a), July 12, 1982, 96 Stat. 158; amended Pub. L. 98–525, title XIV, § 1405(44), Oct. 19, 1984, 98 Stat. 2625; Pub. L. 100–180, div. B, subdiv. 3, title I, § 2308, Dec. 4, 1987, 101 Stat. 1216; Pub. L. 101–510, div. A, title XIII, § 1301(17), Nov. 5, 1990, 104 Stat. 1668; Pub. L. 102–25, title VII, § 701(j)(9), Apr. 6, 1991, 105 Stat. 116; Pub. L. 102–484, div. B, title XXVIII, § 2802(b), Oct. 23, 1992, 106 Stat. 2606; Pub. L. 108–136, div. B, title XXVIII, § 2805(b), Nov. 24, 2003, 117 Stat. 1721.)

AMENDMENTS

2003—Subsec. (b)(6). Pub. L. 108–136 added par. (6).

1992—Subsec. (b)(5). Pub. L. 102–484 added par. (5).

1991—Subsec. (b)(4). Pub. L. 102–25 realigned margin of par. (4).

1990—Subsec. (b)(4). Pub. L. 101–510 amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''Housing units acquired without consideration, if—

''(A) the Secretary concerned provides to the appropriate committees of Congress written notification of the facts concerning the proposed acquisition; and

''(B) a period of 21 days elapses after the notification is received by those committees.''

1987—Subsec. (b)(4). Pub. L. 100–180 added par. (4).

1984—Subsec. (b)(3). Pub. L. 98–525 substituted ''section 2832'' for ''section 2833''.

EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

[§ 2823. Repealed. Pub. L. 109–364, div. B, title XXVIII, § 2803(a), Oct. 17, 2006, 120 Stat. 2467]

Section, added Pub. L. 97–214, § 2(a), July 12, 1982, 96 Stat. 158; amended Pub. L. 105–85, div. A, title X, § 1041(b), Nov. 18, 1997, 111 Stat. 1885, related to determination of availability of suitable alternative housing for acquisition in lieu of construction of new family housing.

§ 2824. Authorization for acquisition of existing family housing in lieu of construction

(a) In lieu of constructing any family housing units authorized by law to be constructed, the Secretary concerned may acquire sole interest in existing family housing units that are privately owned or that are held by the Department of Housing and Urban Development, except that in foreign countries the Secretary concerned may acquire less than sole interest in existing family housing units.

(b) When authority provided by law to construct military family housing units is used to acquire existing family housing units under subsection (a), the authority includes authority to acquire interests in land.

(c) The net floor area of a family housing unit acquired under the authority of this section may not exceed the applicable limitation specified in section 2826 of this title. The Secretary concerned may waive the limitation set forth in the preceding sentence to family housing units acquired under this section during the five-year period beginning on February 10, 1996.

(d) Family housing units may not be acquired under this section through the exercise of eminent domain authority.

(Added Pub. L. 97–214, § 2(a), July 12, 1982, 96 Stat. 159; amended Pub. L. 104–106, div. B, title XXVIII, § 2813, Feb. 10, 1996, 110 Stat. 553; Pub. L. 104–201, div. A, title X, § 1074(a)(17), Sept. 23, 1996, 110 Stat. 2659.)

AMENDMENTS

1996—Subsec. (c). Pub. L. 104–201 substituted ''February 10, 1996'' for ''the date of the enactment of the

National Defense Authorization Act for Fiscal Year 1996''.

Pub. L. 104–106 inserted at end ''The Secretary concerned may waive the limitation set forth in the preceding sentence to family housing units acquired under this section during the five-year period beginning on the date of the enactment of the National Defense Authorization Act for Fiscal Year 1996.''

EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

§ 2825. Improvements to family housing units

(a)(1) Authority provided by law to improve existing military family housing units and ancillary family housing support facilities is authority to make alterations, additions, expansions, and extensions.

(2) In this section, the term ''improvement'' includes rehabilitation of a housing unit and major maintenance or repair work to be accomplished concurrently with an improvement project. Such term does not include day-to-day maintenance and repair work.

(b)(1) Funds may not be expended for the improvement of any single family housing unit, or for the improvement of two or more housing units that are to be converted into or are to be used as a single family housing unit, if the cost per unit of such improvement will exceed (A) $50,000 multiplied by the area construction cost index as developed by the Department of Defense for the location concerned at the time of contract award, or (B) in the case of improvements necessary to make the unit suitable for habitation by a handicapped person, $60,000 multiplied by such index.

(2) The Secretary concerned may waive the limitations contained in paragraph (1) if such Secretary determines that, considering the useful life of the structure to be improved and the useful life of a newly constructed unit and the cost of construction and of operation and maintenance of each kind of unit over its useful life, the improvement will be cost-effective. If the Secretary concerned makes a determination under the preceding sentence with respect to an improvement, the waiver under that sentence with respect to that improvement may take effect only after the end of the 14-day period beginning on the date on which the Secretary submits, in an electronic medium pursuant to section 480 of this title, to the appropriate committees of Congress notice of the proposed waiver, together with an economic analysis demonstrating that the improvement will be cost effective.

(3) In determining the applicability of the limitation contained in paragraph (1), the Secretary concerned shall include as part of the cost of the improvement of the unit or units concerned the following:

(A) The cost of major maintenance or repair work undertaken in connection with the improvement.

(B) Any cost, other than the cost of activities undertaken beyond a distance of five feet from the unit or units concerned, in connection with—

(i) the furnishing of electricity, gas, water, and sewage disposal;

(ii) the construction or repair of roads, drives, and walks; and

(iii) grading and drainage work.

(4) In determining the applicability of the limitation contained in paragraph (1), the Secretary concerned shall not include as part of the cost of the improvement of the unit or units concerned the following:

(A) The cost of the installation of communications, security, or antiterrorism equipment required by an occupant of the unit or units to perform duties assigned to the occupant as a member of the armed forces.

(B) The cost of the maintenance or repair of equipment described in subparagraph (A) installed for the purpose specified in such subparagraph.

(5) The limitation contained in paragraph (1) does not apply to a project for the improvement of a family housing unit or units referred to in that paragraph if the project (including the amount requested for the project) is identified in the budget materials submitted to Congress by the Secretary of Defense in connection with the submission to Congress of the budget for a fiscal year pursuant to section 1105 of title 31.

(c)(1) The Secretary concerned may construct replacement military family housing units in lieu of improving existing military family housing units if—

(A) the improvement of the existing housing units has been authorized by law; and

(B) the Secretary determines that the improvement project is no longer cost-effective after a review of post-design or bid cost estimates.

(2) The amount that may be expended to construct replacement military family housing units under this subsection may not exceed the amount that is otherwise available to carry out the previously authorized improvement project.

(d) This section does not apply to projects authorized for restoration or replacement of housing units that have been damaged or destroyed.

(Added Pub. L. 97–214, § 2(a), July 12, 1982, 96 Stat. 159; amended Pub. L. 99–661, div. B, title VII, § 2702(c), Nov. 14, 1986, 100 Stat. 4040; Pub. L. 100–26, § 7(k)(3), Apr. 21, 1987, 101 Stat. 284; Pub. L. 100–180, div. B, subdiv. 3, title I, § 2305, Dec. 4, 1987, 101 Stat. 1215; Pub. L. 101–189, div. B, title XXVIII, § 2804, Nov. 29, 1989, 103 Stat. 1647; Pub. L. 101–510, div. B, title XXVIII, § 2812, Nov. 5, 1990, 104 Stat. 1788; Pub. L. 102–484, div. B, title XXVIII, § 2802(a), Oct. 23, 1992, 106 Stat. 2605; Pub. L. 103–337, div. B, title XXVIII, § 2802, Oct. 5, 1994, 108 Stat. 3050; Pub. L. 104–106, div. A, title XV, § 1502(a)(26), Feb. 10, 1996, 110 Stat. 506; Pub. L. 104–201, div. B, title XXVIII, § 2803, Sept. 23, 1996, 110 Stat. 2788; Pub. L. 106–398, § 1 [div. B, title XXVIII, § 2802], Oct. 30, 2000, 114 Stat. 1654, 1654A–413; Pub. L. 108–136, div. A, title X, § 1031(a)(41), Nov. 24, 2003, 117 Stat. 1601; Pub. L. 112–81, div. A, title X, § 1061(24), Dec. 31, 2011, 125 Stat. 1584; Pub. L. 115–91, div. B, title XXVIII, § 2801(b)(1), Dec. 12, 2017, 131 Stat. 1842.)

AMENDMENTS

2017—Subsec. (b)(1), (2). Pub. L. 115–91, § 2801(b)(1)(C), redesignated second and third sentences of par. (1) as

par. (2) and, in par. (2), substituted ''contained in paragraph (1)'' for ''contained in the preceding sentence'' and ''the end of the 14-day period beginning on the date on which the Secretary submits, in an electronic medium pursuant to section 480 of this title, to the appropriate committees of Congress notice of the proposed waiver, together with an economic analysis demonstrating that the improvement will be cost effective.'' for ''the Secretary transmits a notice of the proposed waiver, together with an economic analysis demonstrating that the improvement will be cost effective, to the appropriate committees of Congress and a period of 21 days has elapsed after the date on which the notification is received by those committees or, if over sooner, a period of 14 days has elapsed after the date on which a copy of the notice is provided in an electronic medium pursuant to section 480 of this title.'' Former par. (2) redesignated (3).

Subsec. (b)(3), (4). Pub. L. 115–91, § 2801(b)(1)(A), redesignated pars. (2) and (3) as (3) and (4), respectively. Former par. (4) redesignated (5).

Subsec. (b)(5). Pub. L. 115–91, § 2801(b)(1)(A), (B), redesignated par. (4) as (5), struck out ''the first sentence of'' before ''paragraph (1)'', and substituted ''in that paragraph'' for ''in that sentence''.

2011—Subsec. (c)(1). Pub. L. 112–81 inserted ''and'' at end of subpar. (A), substituted period for semicolon at end of subpar. (B), and struck out subpars. (C) and (D), which read as follows:

''(C) the Secretary submits to the committees referred to in subsection (b)(1) a notice containing—

''(i) an economic analysis demonstrating that the improvement project would exceed 70 percent of the cost of constructing replacement housing units intended for members of the armed forces in the same pay grade or grades as those members who occupy the existing housing units; and

''(ii) if the replacement housing units are intended for members of the armed forces in a different pay grade or grades, a justification of the need for the replacement housing units based upon the long-term requirements of the armed forces in the location concerned; and

''(D) a period of 21 days elapses after the date on which the Secretary submits the notice required by subparagraph (C) or, if over sooner, a period of 14 days elapses after the date on which a copy of the notice is provided in an electronic medium pursuant to section 480 of this title.''

2003—Subsec. (b)(1). Pub. L. 108–136, § 1031(a)(41)(A), struck out ''(i)'' before ''such Secretary determines'' and substituted period and last sentence for '', and (ii) a period of 21 days elapses after the date on which the appropriate committees of Congress receive a notice from such Secretary of the proposed waiver, together with an economic analysis demonstrating that the improvement will be cost effective.''.

Subsec. (c)(1)(D). Pub. L. 108–136, § 1031(a)(41)(B), inserted before period at end ''or, if over sooner, a period of 14 days elapses after the date on which a copy of the notice is provided in an electronic medium pursuant to section 480 of this title''.

2000—Subsec. (b)(3), (4). Pub. L. 106–398 added par. (3) and redesignated former par. (3) as (4).

1996—Subsec. (a)(2). Pub. L. 104–201, § 2803(a), inserted ''major'' before ''maintenance or repair'' and ''Such term does not include day-to-day maintenance and repair work.'' at end.

Subsec. (b)(1). Pub. L. 104–106 substituted ''appropriate committees of Congress'' for ''Committees on Armed Services and the Committees on Appropriations of the Senate and of the House of Representatives''.

Subsec. (b)(2). Pub. L. 104–201, § 2803(b), added par. (2) and struck out former par. (2) which read as follows: ''In determining the applicability of the limitation contained in paragraph (1), there shall be included as part of the cost of the improvement the cost of repairs undertaken in connection with the improvement and any cost in connection with (A) the furnishing of electricity, gas, water and sewage disposal, (B) the construction or repair of roads and walks, and (C) grading and drainage work.''

1994—Subsec. (b)(3). Pub. L. 103–337 added par. (3).

1992—Subsecs. (c), (d). Pub. L. 102–484 added subsec. (c) and redesignated former subsec. (c) as (d).

1990—Subsec. (b)(1). Pub. L. 101–510 substituted ''$50,000'' for ''$40,000'' in cl. (A) and inserted at end sentence authorizing Secretary concerned to waive limitations contained in preceding sentence.

1989—Subsec. (b)(1). Pub. L. 101–189 inserted ''(A)'' after ''will exceed'' and added cl. (B).

1987—Subsec. (a)(2). Pub. L. 100–26 inserted ''the term'' after ''In this section,''.

Subsec. (b)(1). Pub. L. 100–180 substituted ''$40,000'' for ''$30,000''.

1986—Subsec. (b)(1). Pub. L. 99–661 substituted ''$30,000'' for ''an amount specified by law for such purpose''.

EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

PROVISION OF ADEQUATE STORAGE SPACE TO SECURE PERSONAL PROPERTY OUTSIDE OF ASSIGNED MILITARY FAMILY HOUSING UNIT

Pub. L. 109–364, div. A, title III, § 362, Oct. 17, 2006, 120 Stat. 2167, as amended by Pub. L. 114–328, div. A, title VI, § 618(d), Dec. 23, 2016, 130 Stat. 2160, provided that: ''The Secretary of a military department shall ensure that a member of the Armed Forces under the jurisdiction of the Secretary who occupies a unit of military family housing is provided with adequate storage space to secure personal property that the member is unable to secure within the unit whenever—

''(1) the member is assigned to duty in an area for which special pay under section 310, or paragraph (1) or (3) of section 351(a), of title 37, United States Code, is available and the assignment is pursuant to orders specifying an assignment of 180 days or more; and

''(2) the dependents of the member who otherwise occupy the unit of military family housing are absent from the unit for more than 30 consecutive days during the period of the assignment of the member.''

INITIAL ESTABLISHMENT OF CERTAIN AMOUNTS REQUIRED TO BE SPECIFIED BY LAW

Maximum amount of $30,000 per unit for an improvement project for family housing units under this section during the period beginning Oct. 1, 1982, and ending on the date of the enactment of the Military Construction Authorization Act for fiscal year 1984 or Oct. 1, 1983, whichever is later, see section 11(3) of Pub. L. 97–214, set out as a note under section 2828 of this title.

§ 2826. Military family housing: local comparability of room patterns and floor areas

(a) LOCAL COMPARABILITY.—In the construction, acquisition, and improvement of military family housing, the Secretary concerned shall ensure that the room patterns and floor areas of military family housing in a particular locality (as designated by the Secretary concerned for purposes of this section) are similar to room patterns and floor areas of similar housing in the private sector in that locality.

(b) REQUESTS FOR AUTHORITY FOR MILITARY FAMILY HOUSING.—(1) In submitting to Congress a request for authority to carry out the construction, acquisition, or improvement of military family housing, the Secretary concerned shall include in the request information on the net floor area of each unit of military family housing to be constructed, acquired, or improved under the authority.

(2) In this subsection, the term ''net floor area'', in the case of a military family housing unit, means the total number of square feet of the floor space inside the exterior walls of the unit, excluding the floor area of an unfinished basement, an unfinished attic, a utility space, a garage, a carport, an open or insect-screened porch, a stairwell, and any space used for a solar-energy system.

(Added Pub. L. 97–214, § 2(a), July 12, 1982, 96 Stat. 159; amended Pub. L. 100–26, § 7(k)(3), Apr. 21, 1987, 101 Stat. 284; Pub. L. 102–190, div. B, title XXVIII, § 2808, Dec. 5, 1991, 105 Stat. 1540; Pub. L. 104–106, div. B, title XXVIII, §§ 2814, 2815, Feb. 10, 1996, 110 Stat. 553; Pub. L. 104–201, div. A, title X, § 1074(a)(17), Sept. 23, 1996, 110 Stat. 2659; Pub. L. 106–398, § 1 [div. B, title XXVIII, § 2803(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–413.)

AMENDMENTS

2000—Pub. L. 106–398 amended section catchline and text generally. Prior to amendment, section consisted of subsecs. (a) to (i) which limited the net floor area allowed in the construction, acquisition, and improvement of military family housing units.

1996—Subsec. (e). Pub. L. 104–106, § 2814, struck out at end ''The authority provided by this subsection shall expire on September 30, 1994.''

Subsec. (i). Pub. L. 104–106, § 2815, added subsec. (i).

Subsec. (i)(1). Pub. L. 104–201 substituted ''February 10, 1996'' for ''the date of the enactment of the National Defense Authorization Act for Fiscal Year 1996''.

1991—Subsecs. (d) to (h). Pub. L. 102–190 added subsecs. (d) and (e) and redesignated former subsecs. (d) to (f) as (f) to (h), respectively.

1987—Subsec. (f). Pub. L. 100–26 inserted ''the term'' after ''In this section,''.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–398, § 1 [div. B, title XXVIII, § 2803(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–413, provided that:

''(1) The amendments made by subsection (a) [amending this section] shall take effect on October 1, 2001, but the Secretary of Defense shall anticipate the requirements of section 2826 of title 10, United States Code, as added by such subsection, when preparing the budget request for new construction, acquisition, or improvement of military family housing for fiscal year 2002.

''(2) Section 2826 of title 10, United States Code, as in effect on September 30, 2001, shall continue to apply with respect to the construction, acquisition, or improvement of military family housing commenced on or before that date.''

EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

§ 2827. Relocation of military family housing units

(a) RELOCATION AUTHORITY.—Subject to subsection (b), the Secretary concerned may relocate existing military family housing units from any location where the number of such units exceeds requirements for military family housing to any military installation where there is a housing shortage.

(b) NOTICE AND WAIT REQUIREMENTS.—A contract to carry out a relocation of military family housing units under subsection (a) may be awarded only after the end of the 14-day period beginning on the date on which the Secretary concerned submits, in an electronic medium pursuant to section 480 of this title, to the appropriate committees of Congress notice of the proposed new locations of the housing units to be relocated and the estimated cost of and source of funds for the relocation.

(Added Pub. L. 97–214, § 2(a), July 12, 1982, 96 Stat. 160; amended Pub. L. 108–136, div. A, title X, § 1031(a)(42), Nov. 24, 2003, 117 Stat. 1602; Pub. L. 115–91, div. B, title XXVIII, § 2801(b)(2), Dec. 12, 2017, 131 Stat. 1842.)

AMENDMENTS

2017—Subsec. (a). Pub. L. 115–91, § 2801(b)(2)(A), inserted heading.

Subsec. (b). Pub. L. 115–91, § 2801(b)(2)(B), added subsec. (b) and struck out former subsec. (b) which read as follows: ''A contract to carry out a relocation of military family housing units under subsection (a) may not be awarded until (1) the Secretary concerned has notified the appropriate committees of Congress of the proposed new locations of the housing units to be relocated and the estimated cost of and source of funds for the relocation, and (2) a period of 21 days has elapsed after the notification has been received by those committees or, if over sooner, a period of 14 days has elapsed after the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this title.''

2003—Subsec. (b)(2). Pub. L. 108–136 inserted before period at end ''or, if over sooner, a period of 14 days has elapsed after the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this title''.

EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

CONVEYANCE TO INDIAN TRIBES OF RELOCATABLE MILITARY HOUSING UNITS AT MILITARY INSTALLATIONS IN THE UNITED STATES

Pub. L. 114–92, div. B, title XXVIII, § 2805, Nov. 25, 2015, 129 Stat. 1171, provided that:

''(a) DEFINITIONS.—In this section:

''(1) EXECUTIVE DIRECTOR.—The term 'Executive Director' means the Executive Director of Walking Shield, Inc.

''(2) INDIAN TRIBE.—The term 'Indian tribe' means any Indian tribe included on the list published by the Secretary of the Interior under section 104 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a–1) [now 25 U.S.C. 5131].

''(b) REQUESTS FOR CONVEYANCE.—

''(1) IN GENERAL.—The Executive Director may submit to the Secretary of the military department concerned, on behalf of any Indian tribe, a request for conveyance of any relocatable military housing unit located at a military installation in the United States.

''(2) CONFLICTS.—The Executive Director shall resolve any conflict among requests of Indian tribes for housing units described in paragraph (1) before submitting a request to the Secretary of the military department concerned under this subsection.

''(c) CONVEYANCE BY A SECRETARY.—Notwithstanding any other provision of law, on receipt of a request under subsection (b)(1), the Secretary of the military department concerned may convey to the Indian tribe that is the subject of the request, at no cost to such military department and without consideration, any relocatable military housing unit described in subsection (b)(1) that, as determined by such Secretary, is in excess of the needs of the military.''

§ 2828. Leasing of military family housing

(a)(1) Subject to paragraph (2), the Secretary of the military department concerned may lease

housing facilities at or near a military installation in the United States, Puerto Rico, or Guam for assignment, without rental charge, as family housing to members of the armed forces and for assignment, with fair market rental charge, as family housing to civilian employees of the Department of Defense stationed at such installation.

(2) A lease may only be made under paragraph (1) if the Secretary concerned finds that there is a shortage of adequate housing at or near such military installation and that—

(A) the requirement for such housing is temporary;

(B) leasing would be more cost effective than construction or acquisition of new housing;

(C) family housing is required for personnel attending service school academic courses on permanent change of station orders;

(D) construction of family housing at such installation has been authorized by law but is not yet completed; or

(E) a military construction authorization bill pending in Congress includes a request for authorization of construction of family housing at such installation.

(b)(1) Not more than 10,000 family housing units may be leased at any one time under subsection (a).

(2) Except as provided in paragraphs (3), (4), and (7), expenditures for the rental of housing units under subsection (a) (including the cost of utilities, maintenance, and operation) may not exceed $12,000 per unit per year, as adjusted from time to time under paragraph (5).

(3) Not more than 500 housing units may be leased under subsection (a) for which the expenditure for the rental of such units (including the cost of utilities, maintenance, and operation) exceeds the maximum amount per unit per year in effect under paragraph (2) but does not exceed $14,000 per unit per year, as adjusted from time to time under paragraph (5).

(4)(A) The Secretary of the Army may lease not more than eight housing units in the vicinity of Miami, Florida, for key and essential personnel, as designated by the Secretary, for the United States Southern Command for which the expenditure for the rental of such units (including the cost of utilities, maintenance, and operation, including security enhancements) exceeds the expenditure limitations in paragraphs (2) and (3).

(B) The amount of all leases under this paragraph may not exceed $280,000 per year, as adjusted from time to time under paragraph (6).

(C) The term of any lease under this paragraph may not exceed 5 years.

(D) Until September 30, 2008, the Secretary of the Army may authorize family members of a member of the armed forces on active duty who is assigned to a family-member-restricted area and who, before such assignment, was occupying a housing unit leased under this paragraph, to remain in the leased housing unit until the member completes the assignment. Costs incurred for the leased housing unit during the assignment shall be included in the costs subject to the limitation under subparagraph (B).

(5) At the beginning of each fiscal year, the Secretary concerned shall adjust the maximum lease amount provided for leases under paragraphs (2), (3), and (7) for the previous fiscal year by the percentage (if any) by which the national average monthly cost of housing (as calculated for purposes of determining rates of basic allowance for housing under section 403 of title 37) for the preceding fiscal year exceeds the national average monthly cost of housing (as so calculated) for the fiscal year before such preceding fiscal year.

(6) At the beginning of each fiscal year, the Secretary of the Army shall adjust the maximum aggregate amount for leases under paragraph (4) for the previous fiscal year by the percentage (if any) by which the annual average cost of housing for the Miami Military Housing Area (as calculated for purposes of determining rates of basic allowance for housing under section 403 of title 37) for the preceding fiscal year exceeds the annual average cost of housing for the Miami Military Housing Area (as so calculated) for the fiscal year before such preceding fiscal year.

(7)(A) Not more than 600 housing units may be leased by the Secretary of the Army under subsection (a) for which the expenditure for the rental of such units (including the cost of utilities, maintenance, and operation) exceeds the maximum amount per unit per year in effect under paragraph (2) but does not exceed $35,000 per unit per year, as adjusted from time to time under paragraph (5).

(B) The maximum lease amount provided in subparagraph (A) shall apply only to Army family housing in areas designated by the Secretary of the Army.

(C) The term of a lease under subparagraph (A) may not exceed 2 years.

(c) The Secretary concerned may lease housing facilities in foreign countries for assignment, without rental charge, as family housing to members of the armed forces and for assignment, with or without rental charge, as family housing to civilian employees of the Department of Defense—

(1) under circumstances specified in clause (A), (B), (D), or (E) of subsection (a)(2);

(2) for incumbents of special command positions (as determined by the Secretary of Defense);

(3) in countries where excessive costs of housing or other lease terms would cause undue hardship on Department of Defense personnel; and

(4) in countries that prohibit leases by individual military or civilian personnel of the United States.

(d)(1) Leases of housing units in foreign countries under subsection (c) for assignment as family housing may be for any period not in excess of 10 years, or 15 years in the case of leases in Korea, and the costs of such leases for any year may be paid out of annual appropriations for that year.

(2) The Secretary may enter into an agreement under this paragraph in connection with a lease entered into under subsection (c). Such an agreement—

(A) shall be for the purpose of compensating a developer for any costs resulting from the termination of the lease during the construc-

tion of the housing units that are to be occupied pursuant to the lease;

(B) may be for a period not in excess of three years; and

(C) shall include a provision that the obligation of the United States to make payments under the agreement in any fiscal year is subject to the availability of appropriations.

(e)(1) Expenditures for the rental of family housing in foreign countries (including the costs of utilities, maintenance, and operation) may not exceed $20,000 per unit per year, except that 450 units may be leased in foreign countries for not more than $25,000 per unit per year. These maximum lease amounts may be waived by the Secretary concerned with respect to not more than a total of 350 such units that are leased for incumbents of special positions or for personnel assigned to Defense Attache Offices or that are leased in countries where excessive costs of housing would cause undue hardship on Department of Defense personnel.

(2) In addition to the 450 units of family housing referred to in paragraph (1) for which the maximum lease amount is $25,000 per unit per year, the Secretaries of the military departments may lease not more than 3,300 units of family housing in Italy, subject to that maximum lease amount.

(3) In addition to the 450 units of family housing referred to in paragraph (1) for which the maximum lease amount is $25,000 per unit per year, the Secretary of the Army may lease not more than 1,175 units of family housing in Korea subject to that maximum lease amount.

(4) In addition to the units of family housing referred to in paragraph (1) for which the maximum lease amount is $25,000 per unit per year, the Secretary of the Army may lease not more than 2,800 units of family housing in Korea subject to a maximum lease amount of $35,000 per unit per year.

(5) The Secretary concerned shall adjust the maximum lease amounts provided for under paragraphs (1), (2), (3), and (4) for the previous fiscal year—

(A) for foreign currency fluctuations from October 1, 1987; and

(B) at the beginning of each fiscal year, by the percentage (if any) by which the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics, during the preceding fiscal year exceeds such Consumer Price Index for the fiscal year before such preceding fiscal year.

(6) The maximum number of family housing units that may be leased in foreign countries under this section at any one time is 55,775.

(f) A lease for family housing facilities, or for real property related to family housing facilities, in a foreign country for which the average estimated annual rental during the term of the lease exceeds $1,000,000 may be made under this section only after the end of the 14-day period beginning on the date on which the Secretary concerned submits, in an electronic medium pursuant to section 480 of this title, to the appropriate committees of Congress notice of the facts concerning the proposed lease.

(g) Appropriations available to the Department of Defense for maintenance or construction may be used for the acquisition of interests in land under this section.

(Added Pub. L. 97–214, §2(a), July 12, 1982, 96 Stat. 161; amended Pub. L. 97–321, title VIII, §805(b)(2), Oct. 15, 1982, 96 Stat. 1573; Pub. L. 98–115, title VIII, §801, Oct. 11, 1983, 97 Stat. 782; Pub. L. 98–407, title VIII, §806(a), Aug. 28, 1984, 98 Stat. 1521; Pub. L. 99–167, title VIII, §§801(b), 803, 805, Dec. 3, 1985, 99 Stat. 985, 987, 988; Pub. L. 99–661, div. B, title VII, §§2702(d)–(g), 2713(b), 2714, Nov. 14, 1986, 100 Stat. 4040–4042; Pub. L. 100–26, §7(j)(8), Apr. 21, 1987, 101 Stat. 283; Pub. L. 100–180, div. B, subdiv. 3, title I, §§2306(a), 2309, 2311, Dec. 4, 1987, 101 Stat. 1216, 1217; Pub. L. 100–370, §1(*l*)(2), July 19, 1988, 102 Stat. 849; Pub. L. 100–456, div. B, title XXVIII, §2802, Sept. 29, 1988, 102 Stat. 2115; Pub. L. 101–189, div. B, title XXVIII, §§2802, 2805, Nov. 29, 1989, 103 Stat. 1646, 1647; Pub. L. 102–190, div. B, title XXVIII, §2806(b), Dec. 5, 1991, 105 Stat. 1540; Pub. L. 103–35, title II, §201(d)(7), May 31, 1993, 107 Stat. 99; Pub. L. 103–160, div. B, title XXVIII, §2801, Nov. 30, 1993, 107 Stat. 1883; Pub. L. 104–106, div. B, title XXVIII, §2816, Feb. 10, 1996, 110 Stat. 553; Pub. L. 105–85, div. B, title XXVIII, §2803, Nov. 18, 1997, 111 Stat. 1990; Pub. L. 105–261, div. B, title XXVIII, §2802, Oct. 17, 1998, 112 Stat. 2202; Pub. L. 106–398, §1 [div. B, title XXVIII, §2804], Oct. 30, 2000, 114 Stat. 1654, 1654A–414; Pub. L. 107–314, div. A, title X, §1062(a)(15), div. B, title XXVIII, §2801, Dec. 2, 2002, 116 Stat. 2650, 2702; Pub. L. 108–136, div. B, title XXVIII, §§2803, 2804(a), Nov. 24, 2003, 117 Stat. 1719; Pub. L. 109–163, div. B, title XXVIII, §2802, Jan. 6, 2006, 119 Stat. 3505; Pub. L. 109–364, div. B, title XXVIII, §2804, Oct. 17, 2006, 120 Stat. 2467; Pub. L. 110–181, div. B, title XXVIII, §2806(a)–(c), Jan. 28, 2008, 122 Stat. 540, 541; Pub. L. 110–417, div. B, title XXVIII, §2802, Oct. 14, 2008, 122 Stat. 4719; Pub. L. 111–383, div. B, title XXVIII, §2803(d), Jan. 7, 2011, 124 Stat. 4459; Pub. L. 115–91, div. B, title XXVIII, §2801(b)(3), Dec. 12, 2017, 131 Stat. 1842.)

HISTORICAL AND REVISION NOTES

1988 ACT

Subsection (h) of this section and section 2673 of this title are based on Pub. L. 98–212, title VII, §707, Dec. 8, 1983, 97 Stat. 1438.

AMENDMENTS

2017—Subsec. (f). Pub. L. 115–91 substituted "may be made under this section only after the end of the 14-day period beginning on the date on which the Secretary concerned submits, in an electronic medium pursuant to section 480 of this title, to the appropriate committees of Congress notice of the facts concerning the proposed lease." for "may not be made under this section until (1) the Secretary concerned provides to the appropriate committees of Congress written notification of the facts concerning the proposed lease, and (2) a period of 21 days elapses after the notification is received by those committees or, if earlier, a period of 14 days has elapsed from the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this title."

2011—Subsec. (f)(2). Pub. L. 111–383 inserted before period at end "or, if earlier, a period of 14 days has elapsed from the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this title".

2008—Subsec. (b)(2). Pub. L. 110–181, §2806(a)(1), substituted "paragraphs (3), (4), and (7)" for "paragraphs (3) and (4)".

Subsec. (b)(5). Pub. L. 110–181, § 2806(a)(2), substituted ''paragraphs (2), (3), and (7)'' for ''paragraphs (2) and (3)''.

Subsec. (b)(7). Pub. L. 110–181, § 2806(a)(3), added par. (7).

Subsec. (b)(7)(A). Pub. L. 110–417 substituted ''$35,000 per unit'' for ''$18,620 per unit''.

Subsec. (e)(2). Pub. L. 110–181, § 2806(b), substituted ''the Secretaries of the military departments may lease not more than 3,300 units of family housing in Italy'' for ''the Secretary of the Navy may lease not more than 2,800 units of family housing in Italy, and the Secretary of the Army may lease not more than 500 units of family housing in Italy''.

Subsec. (f). Pub. L. 110–181, § 2806(c), substituted ''$1,000,000'' for ''$500,000''.

2006—Subsec. (b)(4)(D). Pub. L. 109–364 added subpar. (D).

Subsec. (e)(4). Pub. L. 109–163 substituted ''2,800'' for ''2,400''.

2003—Subsec. (d)(1). Pub. L. 108–136, § 2804(a), substituted ''10 years, or 15 years in the case of leases in Korea,'' for ''ten years,''.

Subsec. (e)(2). Pub. L. 108–136, § 2803, substituted ''2,800'' for ''2,000''.

2002—Subsec. (b)(2). Pub. L. 107–314, § 1062(a)(15), inserted ''time'' after ''from time to''.

Subsec. (e)(3). Pub. L. 107–314, § 2801(a), substituted ''1,175 units'' for ''800 units''.

Subsec. (e)(4). Pub. L. 107–314, § 2801(b)(2), added par. (4). Former par. (4) redesignated (5).

Subsec. (e)(5). Pub. L. 107–314, § 2801(b)(1), (3), redesignated par. (4) as (5) and substituted ''(3), and (4)'' for ''and (3)'' in introductory provisions. Former par. (5) redesignated (6).

Subsec. (e)(6). Pub. L. 107–314, § 2801(b)(1), (4), redesignated par. (5) as (6) and substituted ''55,775'' for ''53,000''.

2000—Subsec. (b)(2). Pub. L. 106–398, § 1 [div. B, title XXVIII, § 2804(c)(1)], inserted '', as adjusted from time to under paragraph (5)'' after ''per year''.

Subsec. (b)(3). Pub. L. 106–398, § 1 [div. B, title XXVIII, § 2804(c)(2)], substituted ''the maximum amount per unit per year in effect under paragraph (2) but does not exceed $14,000 per unit per year, as adjusted from time to time under paragraph (5)'' for ''$12,000 per unit per year but does not exceed $14,000 per unit per year''.

Subsec. (b)(4). Pub. L. 106–398, § 1 [div. B, title XXVIII, § 2804(a)], designated existing provisions as subpar. (A), struck out last sentence which read as follows: ''The total amount for all leases under this paragraph may not exceed $280,000 per year, and no lease on any individual housing unit may exceed $60,000 per year.'', and added subpars. (B) and (C).

Subsec. (b)(5), (6). Pub. L. 106–398, § 1 [div. B, title XXVIII, § 2804(b)], added pars. (5) and (6) and struck out former par. (5) which read as follows: ''At the beginning of each fiscal year, the Secretary concerned shall adjust the maximum lease amount provided for under paragraphs (2), (3), and (4) for the previous fiscal year by the percentage (if any) by which the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics, during the preceding fiscal year exceeds such Consumer Price Index for the fiscal year before such preceding fiscal year.''

1998—Subsec. (e)(2). Pub. L. 105–261, § 2802(a)(1), inserted '', and the Secretary of the Army may lease not more than 500 units of family housing in Italy,'' after ''family housing in Italy''.

Subsec. (e)(3). Pub. L. 105–261, § 2802(a)(3), added par. (3). Former par. (3) redesignated (4).

Subsec. (e)(4). Pub. L. 105–261, § 2802(b), substituted '', (2), and (3)'' for ''and (2)''.

Pub. L. 105–261, § 2802(a)(2), redesignated par. (3) as (4). Former par. (4) redesignated (5).

Subsec. (e)(5). Pub. L. 105–261, § 2802(a)(2), redesignated par. (4) as (5).

1997—Subsec. (b)(2). Pub. L. 105–85, § 2803(a)(1), substituted ''paragraphs (3) and (4)'' for ''paragraph (3)''.

Subsec. (b)(4). Pub. L. 105–85, § 2803(a)(3), added par. (4). Former par. (4) redesignated (5).

Subsec. (b)(5). Pub. L. 105–85, § 2803(b), substituted ''paragraphs (2), (3), and (4)'' for ''paragraphs (2) and (3)''.

Pub. L. 105–85, § 2803(a)(2), redesignated par. (4) as (5).

1996—Subsec. (e)(1). Pub. L. 104–106, § 2816(1), substituted ''450 units'' for ''300 units'' in first sentence and ''350 such units'' for ''220 such units'' in second sentence.

Subsec. (e)(2). Pub. L. 104–106, § 2816(2), substituted ''450 units'' for ''300 units''.

1993—Subsec. (b)(2), (3). Pub. L. 103–35 substituted ''per year'' for ''per annum'' in par. (2) and in two places in par. (3).

Subsec. (b)(4). Pub. L. 103–160, § 2801(a), added par. (4).

Subsec. (e)(1). Pub. L. 103–160, § 2801(b)(1), (2), substituted '', except that 300 units may be leased in foreign countries for not more than $25,000 per unit per year'' for ''as adjusted for foreign currency fluctuation from October 1, 1987'' in first sentence and ''These maximum lease amounts'' for ''That maximum lease amount'' in second sentence.

Pub. L. 103–35 substituted ''per year'' for ''per annum''.

Subsec. (e)(2) to (4). Pub. L. 103–160, § 2801(b)(3), (4), added pars. (2) and (3) and redesignated former par. (2) as (4).

1991—Subsecs. (g), (h). Pub. L. 102–190 redesignated subsec. (h) as (g) and struck out former subsec. (g) which authorized contracts for lease of family housing units on or near military installations at which there is a validated deficit in family housing. See section 2835 of this title.

1989—Subsec. (b)(2). Pub. L. 101–189, § 2802(1), substituted ''$12,000'' for ''$10,000''.

Subsec. (b)(3). Pub. L. 101–189, § 2802(2), substituted ''Not'' for ''(A) Except as provided in subparagraph (B), not'', ''$12,000'' for ''$10,000'', and ''$14,000'' for ''$12,000'' and struck out subpar. (B) which read as follows: ''During fiscal years 1986 and 1987, the number of housing units that may be leased pursuant to the provisions of subparagraph (A) may be increased by 500 units for each such fiscal year. The Secretary concerned shall provide written notification to the Committees on Armed Services of the Senate and House of Representatives concerning the location, purpose, and cost of the additional units permitted by this subparagraph. Such notification shall be made periodically as the leases are entered into.''

Subsec. (e)(1). Pub. L. 101–189, § 2802(3), inserted ''as adjusted for foreign currency fluctuation from October 1, 1987'' after ''$20,000 per unit per annum''.

Subsec. (e)(2). Pub. L. 101–189, § 2802(4), substituted ''53,000'' for ''38,000''.

Subsec. (g)(7). Pub. L. 101–189, § 2805(1), added par. (7) and struck out former par. (7) which provided that this subsection could only be implemented by a pilot program, and that in carrying out such program, the Secretary of each military department or the Secretary of Transportation with respect to the Coast Guard, could not enter into more than two contracts under this subsection, and any such contract could not be for more than 300 family housing units.

Subsec. (g)(8). Pub. L. 101–189, § 2805, redesignated par. (9) as (8), substituted ''1991'' for ''1989'', and struck out former par. (8) which authorized the Secretaries of the military departments and the Secretary of Transportation to enter into contracts for family housing units in addition to those authorized in par. (7).

Subsec. (g)(9), (10). Pub. L. 101–189, § 2805(2), redesignated par. (10) as (9). Former par. (9) redesignated (8).

1988—Subsec. (e)(2). Pub. L. 100–456 substituted ''38,000'' for ''36,000''.

Subsec. (h). Pub. L. 100–370 added subsec. (h).

1987—Subsec. (a)(1). Pub. L. 100–26 substituted ''armed forces'' for ''Armed Forces''.

Subsec. (b)(2). Pub. L. 100–180, § 2309(b)(1), inserted ''per unit per annum'' after ''$10,000''.

Subsec. (b)(3)(A). Pub. L. 100–180, § 2309(b)(2), substituted ''$10,000 per unit per annum but does not exceed $12,000 per unit per annum'' for ''$10,000 but does not exceed $12,000''.

Subsec. (c). Pub. L. 100–26 substituted ''armed forces'' for ''Armed Forces''.

Subsec. (e)(1). Pub. L. 100–180, §2309(a)(1), substituted ''$20,000 per unit per annum'' for ''$16,800''.

Subsec. (e)(2). Pub. L. 100–180, §2309(a)(2), substituted ''36,000'' for ''32,000''.

Subsec. (f). Pub. L. 100–180, §2311, substituted ''$500,000'' for ''$250,000''.

Subsec. (g)(1). Pub. L. 100–180, §2306(a)(1), inserted '', or the Secretary of Transportation with respect to the Coast Guard,'' after ''military department'' and ''or rehabilitated to residential use'' after ''constructed''.

Subsec. (g)(7)(A). Pub. L. 100–180, §2306(a)(2), inserted '', or the Secretary of Transportation with respect to the Coast Guard,'' after ''military department''.

Subsec. (g)(8)(C). Pub. L. 100–180, §2306(a)(3), added subpar. (C).

Subsec. (g)(9). Pub. L. 100–180, §2306(a)(4), substituted ''1989'' for ''1988''.

1986—Subsec. (b)(2). Pub. L. 99–661, §2702(d)(1), substituted ''$10,000'' for ''the amount specified by law as the maximum annual domestic family housing unit lease amount''.

Subsec. (b)(3)(A). Pub. L. 99–661, §2702(d)(2), substituted ''$10,000 but does not exceed $12,000'' for ''the maximum annual domestic family housing unit lease amount but does not exceed 120 percent of that amount''.

Subsec. (e)(1). Pub. L. 99–661, §2714, substituted ''220'' for ''200''.

Pub. L. 99–661, §2702(e), substituted ''$16,800'' for ''the amount specified by law as the maximum annual foreign family housing unit lease amount''.

Subsec. (e)(2). Pub. L. 99–661, §2702(f), substituted ''is 32,000'' for ''shall be specified by law''.

Subsec. (f). Pub. L. 99–661, §2702(g), substituted ''$250,000'' for ''the amount specified by law for such purpose''.

Subsec. (g)(8)(B). Pub. L. 99–661, §2713(b)(1), substituted ''1,600'' for ''600''.

Subsec. (g)(9). Pub. L. 99–661, §2713(b)(2), substituted ''September 30, 1988'' for ''September 30, 1986''.

Subsec. (g)(10). Pub. L. 99–661, §2713(b)(3), added par. (10).

1985—Subsec. (b)(3). Pub. L. 99–167, §805, designated existing provisions as subpar. (A), substituted ''Except as provided in subparagraph (B), not'' for ''Not'', and added subpar. (B).

Subsec. (d). Pub. L. 99–167, §803, designated existing provisions as par. (1) and added par. (2).

Subsec. (g)(8). Pub. L. 99–167, §801(b)(2), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (g)(9). Pub. L. 99–167, §801(b)(1), substituted ''September 30, 1986'' for ''October 1, 1985''.

1984—Subsec. (g)(8), (9). Pub. L. 98–407 added par. (8) and redesignated former par. (8) as (9).

1983—Subsec. (g). Pub. L. 98–115 added subsec. (g).

1982—Subsec. (e)(1). Pub. L. 97–321 inserted ''the'' after ''may be waived by'' in second sentence.

EFFECTIVE DATE OF 1991 AMENDMENT

Pub. L. 102–190, div. B, title XXVIII, §2806(c), Dec. 5, 1991, 105 Stat. 1540, provided that: ''Section 2835 of title 10, United States Code, as added by subsection (a), shall apply with respect to contracts entered into under that section on or after the date of the enactment of this Act [Dec. 5, 1991]. The amendment made by subsection (b)(1) [amending this section] shall not affect the validity of any contract entered into before that date under section 2828(g) of such title, as in effect on the day before that date.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–456 effective Oct. 1, 1988, see section 2702 of Pub. L. 100–456, set out as a note under section 2391 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–407, title VIII, §806(c), Aug. 28, 1984, 98 Stat. 1521, provided that: ''The amendments made by this section [amending this section and provisions set out as a note under section 2821 of this title] shall take effect on October 1, 1984.''

EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

§2829. Multi-year contracts for supplies and services

The Secretary concerned may make contracts for periods of up to four years for supplies and services for the management, maintenance, and operation of military family housing and may pay the costs of such contracts for each year out of annual appropriations for that year.

(Added Pub. L. 97–214, §2(a), July 12, 1982, 96 Stat. 162.)

EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

[§2830. Repealed. Pub. L. 116–283, div. B, title XXVIII, §2812(a), Jan. 1, 2021, 134 Stat. 4326]

Section, added Pub. L. 97–214, §2(a), July 12, 1982, 96 Stat. 162; amended Pub. L. 99–348, title III, §304(a)(4), July 1, 1986, 100 Stat. 703; Pub. L. 100–180, div. A, title VI, §632(a), Dec. 4, 1987, 101 Stat. 1105; Pub. L. 105–85, div. A, title VI, §603(d)(2)(B), Nov. 18, 1997, 111 Stat. 1782; Pub. L. 107–296, title XVII, §1704(b)(1), Nov. 25, 2002, 116 Stat. 2314, related to occupancy of substandard family housing units.

§2831. Military family housing management account

(a) ESTABLISHMENT.—There is on the books of the Treasury an account known as the Department of Defense Military Family Housing Management Account (hereinafter in this section referred to as the ''account''). The account shall be used for the management and administration of funds appropriated or otherwise made available to the Department of Defense for military family housing programs.

(b) CREDITS TO ACCOUNT.—The account shall be administered as a single account. There shall be transferred into the account—

(1) appropriations made for the purpose of, or which are available for, the payment of costs arising in connection with the construction, acquisition, leasing, relocation, operation and maintenance, and disposal of military family housing, including the cost of principal and interest charges, and insurance premiums, arising in connection with the acquisition of such housing, and mortgage insurance premiums payable under section 222(c)[1] of the National Housing Act (12 U.S.C. 1715m(c));

(2) proceeds from the rental of family housing and mobile home facilities under the control of a military department, reimbursements from the occupants of such facilities for services rendered (including utility costs), funds obtained from individuals as a result of losses, damages, or destruction to such facilities

[1] See References in Text note below.

caused by the abuse or negligence of such individuals, and reimbursements from other Government agencies for expenditures from the account; and

(3) proceeds of the handling and the disposal of family housing of a military department (including related land and improvements), whether carried out by a military department or any other Federal agency, but less those expenses payable pursuant to section 572(a) of title 40.

(c) AVAILABILITY OF AMOUNTS IN ACCOUNT.—Amounts in the account shall remain available until spent.

(d) USE OF ACCOUNT.—The Secretary concerned may make obligations against the account, in such amounts as may be specified from time to time in appropriation Acts, for the purpose of defraying, in the manner and to the extent authorized by law, the costs referred to in subsection (b).

(e) NOTICE AND WAIT REQUIREMENT.—The Secretary concerned may not carry out a maintenance or repair project for a family housing unit used, or intended for use, as quarters for a general officer or flag officer if the project will or may result in the total operation, maintenance, and repair costs for the unit for the fiscal year to exceed $35,000, until after the end of the 14-day period beginning on the date on which the Secretary submits, in an electronic medium pursuant to section 480 of this title, to the appropriate committees of Congress a justification of the need for the maintenance or repair project, including an estimate of the cost of the project.

(Added Pub. L. 97–214, § 2(a), July 12, 1982, 96 Stat. 162; amended Pub. L. 107–217, § 3(b)(19), Aug. 21, 2002, 116 Stat. 1297; Pub. L. 108–375, div. B, title XXVIII, § 2802(a), (b), Oct. 28, 2004, 118 Stat. 2119, 2120; Pub. L. 109–364, div. A, title X, § 1071(a)(26), div. B, title XXVIII, § 2805, Oct. 17, 2006, 120 Stat. 2399, 2467; Pub. L. 115–91, div. A, title X, § 1051(a)(21), div. B, title XXVIII, § 2801(b)(4), Dec. 12, 2017, 131 Stat. 1561, 1843.)

REFERENCES IN TEXT

Section 222(c) of the National Housing Act (12 U.S.C. 1715m(c)), referred to in subsec. (b)(1), was repealed by Pub. L. 110–289, div. B, title I, § 2120(a)(5), July 30, 2008, 122 Stat. 2835.

AMENDMENTS

2017—Subsec. (e). Pub. L. 115–91, § 2801(b)(4), substituted ''until after the end of the 14-day period beginning on the date on which the Secretary submits, in an electronic medium pursuant to section 480 of this title, to the appropriate committees of Congress a justification of the need for the maintenance or repair project, including an estimate of the cost of the project.'' for ''until—

''(1) the Secretary concerned submits to the congressional defense committees, in writing, a justification of the need for the maintenance or repair project and an estimate of the cost of the project; and

''(2) a period of 21 days has expired following the date on which the justification and estimate are received by the committees or, if over sooner, a period of 14 days has expired following the date on which a copy of the justification and estimate are provided in an electronic medium pursuant to section 480 of this title.''

Pub. L. 115–91, § 1051(a)(21)(C), substituted ''The Secretary'' for ''(1) Except as provided in paragraphs (2) and (3), the Secretary'', redesignated subpars. (A) and (B) of par. (1) as pars. (1) and (2), respectively, and struck out former pars. (2) and (3) which read as follows:

''(2) The project justification and cost estimate required by paragraph (1)(A) may be submitted after the commencement of a maintenance or repair project for a family housing unit used, or intended for use, as quarters for a general officer or flag officer if the project is a necessary environmental remediation project for the unit or is necessary for occupant safety or security, and the need for the project arose after the submission of the most recent report under subsection (e).

''(3) Paragraph (1) shall not apply in the case of a family housing unit used, or intended for use, as quarters for a general officer or flag officer if the unit was identified in the most recent report submitted under subsection (e) and the cost of the maintenance or repair project was included in the total of anticipated operation, maintenance, and repair costs for the unit specified in the report.''

Pub. L. 115–91, § 1051(a)(21)(A), (B), redesignated subsec. (f) as (e) and struck out former subsec. (e) which required reports on general officers and flag officers quarters.

Subsec. (f). Pub. L. 115–91, § 1051(a)(21)(B), redesignated subsec. (f) as (e).

2006—Subsecs. (a) to (d). Pub. L. 109–364, § 2805(b)(1)–(4), inserted subsec. headings.

Subsec. (e). Pub. L. 109–364, § 2805(b)(5), struck out ''Cost of'' before ''General Officers'' in heading.

Subsec. (e)(1)(B). Pub. L. 109–364, § 2805(a)(2)(A), substituted ''identified under subparagraph (A)'' for ''so identified''.

Subsec. (e)(1)(C) to (E). Pub. L. 109–364, § 2805(a)(1), (2)(B), (3), added subpars. (C) to (E).

Subsec. (f)(2). Pub. L. 109–364, § 1071(a)(26), substituted ''environmental'' for ''enviromental''.

2004—Subsecs. (e), (f). Pub. L. 108–375 added subsecs. (e) and (f).

2002—Subsec. (b)(3). Pub. L. 107–217 substituted ''section 572(a) of title 40'' for ''section 204(b) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 485(b))''.

EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

§ 2832. Homeowners assistance program

The Secretary of Defense may exercise the authority provided in section 1013 of the Demonstration Cities and Metropolitan Development Act of 1966 (42 U.S.C. 3374).

(Added Pub. L. 97–214, § 2(a), July 12, 1982, 96 Stat. 163; amended Pub. L. 101–189, div. B, title XXVIII, § 2831(a), Nov. 29, 1989, 103 Stat. 1660; Pub. L. 104–106, div. A, title XV, § 1502(a)(26), Feb. 10, 1996, 110 Stat. 506; Pub. L. 107–107, div. A, title X, § 1048(e)(11), Dec. 28, 2001, 115 Stat. 1228.)

AMENDMENTS

2001—Pub. L. 107–107 struck out ''(a)'' before ''The Secretary of Defense'' and struck out subsec. (b) which read as follows:

''(b)(1) Subject to paragraph (2) and notwithstanding subsection (i) of section 1013 of the Act referred to in subsection (a)—

''(A) the Secretary of Defense may transfer not more than $31,000,000 from the Department of Defense Base Closure Account, established by section 207 of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 102 Stat. 2627), to the fund established pursuant to subsection (d) of such section 1013 for use as part of such fund; and

''(B) any funds so transferred shall be available for obligation and expenditure for the same purposes that funds appropriated to such fund are available, except that such funds may not be obligated after September 30, 1991.

''(2) Amounts may be transferred under paragraph (1) only after the date on which the appropriate committees of Congress receive from the Secretary written notice of, and justification for, the transfer.''

1996—Subsec. (b)(2). Pub. L. 104–106 substituted ''appropriate committees of Congress'' for ''Committees on Armed Services and the Committees on Appropriations of the Senate and of the House of Representatives''.

1989—Pub. L. 101–189 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–189, div. B, title XXVIII, § 2831(b), Nov. 29, 1989, 103 Stat. 1660, provided that: ''The amendments made by subsection (a) [amending this section] shall apply only to funds appropriated or transferred to, or otherwise deposited in, the Department of Defense Base Closure Account for, or during, fiscal years beginning after September 30, 1989.''

EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

§ 2833. Family housing support

Amounts authorized by law for support of military family housing include amounts for—

(1) operating expenses;

(2) leasing expenses;

(3) maintenance of real property expenses;

(4) payments of principal and interest on mortgage debts incurred; and

(5) payments of mortgage insurance premiums authorized under section 222[1] of the National Housing Act (12 U.S.C. 1715m).

(Added Pub. L. 99–167, title VIII, § 804(b)(1), Dec. 3, 1985, 99 Stat. 987.)

REFERENCES IN TEXT

Section 222 of the National Housing Act (12 U.S.C. 1715m), referred to in par. (5), was repealed by Pub. L. 110–289, div. B, title I, § 2120(a)(5), July 30, 2008, 122 Stat. 2835.

§ 2834. Participation in Department of State housing pools

(a) The Secretary concerned may enter into an agreement with the Secretary of State under which the Secretary of State agrees to provide housing and related services for personnel under the jurisdiction of the Secretary concerned who are assigned to duty in a foreign country if the Secretary concerned determines—

(1) that there is a shortage of adequate housing in the area of the foreign country in which such personnel are assigned to duty; and

(2) that participation in the Department of State housing pool is the most cost-effective means of providing housing for such personnel.

The Secretary concerned shall reimburse the Secretary of State, as provided in the agreement, for housing and related services furnished personnel under the jurisdiction of the Secretary concerned.

(b) The maximum lease amounts specified in section 2828(e)(1) of this title for the rental of family housing in foreign countries shall not apply to housing made available to the Department of Defense under this section. To the extent that the lease amount for units of housing made available under this subsection exceeds such maximum lease amounts, such units shall not be counted in applying the limitation contained in such section on the number of units of family housing for which the Secretary concerned may waive such maximum lease amounts.

(Added Pub. L. 99–167, title VIII, § 808(a), Dec. 3, 1985, 99 Stat. 989; amended Pub. L. 101–510, div. A, title XIII, § 1301(18), Nov. 5, 1990, 104 Stat. 1668; Pub. L. 103–160, div. B, title XXVIII, § 2806, Nov. 30, 1993, 107 Stat. 1887.)

AMENDMENTS

1993—Subsec. (b). Pub. L. 103–160 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''In computing the number of leases for which the maximum lease amount may be waived by the Secretary concerned under the second sentence of section 2828(e)(1) of this title, housing made available to the Department of Defense under this section shall be included.''

1990—Subsecs. (b), (c). Pub. L. 101–510 redesignated subsec. (c) as (b) and struck out former subsec. (b) which read as follows: ''Agreements entered into with the Secretary of State under this section may not be executed until (1) the Secretary concerned provides to the appropriate committees of Congress written notification of the facts concerning the proposed agreement, and (2) a period of 21 days has elapsed after the day on which the notification is received by the committees.''

§ 2835. Long-term leasing of military family housing to be constructed

(a) BUILD AND LEASE AUTHORIZED.—Subject to subsection (b), the Secretary of a military department, or the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, may enter into a contract for the lease of family housing units to be constructed or rehabilitated to residential use near a military installation within the United States under the Secretary's jurisdiction at which there is a shortage of family housing. Housing units leased under this section shall be assigned, without rental charge, as family housing to members of the armed forces who are eligible for assignment to military family housing.

(b) SUBMISSION AND AUTHORIZATION OF PROPOSED LEASE CONTRACTS.—(1) The Secretary of a military department, or the Secretary of Homeland Security with respect to the Coast Guard, may enter into a lease contract under subsection (a) for such military housing as is authorized by law for the purposes of this section.

(2) The budget material submitted to Congress by the Secretary of Defense, and the Secretary of Homeland Security with respect to the Coast Guard, in connection with the budget submitted pursuant to section 1105 of title 31 for each fiscal year shall include materials that identify the military housing projects for which lease contracts are proposed to be entered into under subsection (a) in such fiscal year.

(c) COMPETITIVE PROCESS.—Each contract under subsection (a) shall be awarded through the use of publicly advertised, competitively

[1] See References in Text note below.

bid, or competitively negotiated, contracting procedures as provided in chapter 137 of this title. In accordance with such procedures, the Secretary of a military department, or the Secretary of Homeland Security, as the case may be, shall solicit bids or proposals for a contract for the lease of military housing authorized in accordance with subsection (b)(1). Such a contract may provide for the contractor of the housing facilities to operate and maintain such housing facilities during the term of the lease.

(d) CONDITIONS ON OBLIGATION OF FUNDS.—A lease contract entered into for a military housing project under subsection (a) shall include the following provisions:

(1) A statement that the obligation of the United States to make payments under the contract in any fiscal year is subject to appropriations being provided specifically for that fiscal year and specifically for that project.

(2) A commitment to obligate the necessary amount for each fiscal year covered by the contract when and to the extent that funds are appropriated for that project for that fiscal year.

(3) A statement that such a commitment entered into under the authority of this section does not constitute an obligation of the United States.

(4) A requirement that housing units constructed pursuant to the contract shall be constructed—

(A) to Department of Defense specifications, in the case of a Department of Defense contract; and

(B) to Department of Homeland Security specifications, in the case of a contract for the Coast Guard.

(e) LEASE TERM.—A contract under this section may be for any period not in excess of 20 years (excluding the period required for construction of the housing facilities).

(f) RIGHT OF FIRST REFUSAL TO ACQUIRE.—A contract under this section shall provide that, upon the termination of the lease period, the United States shall have the right of first refusal to acquire all right, title, and interest to the housing facilities constructed and leased under the contract.

(g) NOTICE AND WAIT REQUIREMENTS.—A contract may be entered into for the lease of housing facilities under this section only after the end of the 14-day period beginning on the date on which the Secretary of Defense, or the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, submits, in an electronic medium pursuant to section 480 of this title, to the appropriate committees of Congress an economic analysis (based upon accepted life cycle costing procedures) which demonstrates that the proposed contract is cost-effective when compared with alternative means of furnishing the same housing facilities.

(h) SUPPORT BUILDINGS.—A contract for the lease of family housing under this section may include provision for the lease of a child care center, civic center building, and similar type buildings constructed for the support of family housing.

(Added Pub. L. 102–190, div. B, title XXVIII, § 2806(a)(1), Dec. 5, 1991, 105 Stat. 1539; amended Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 111–383, div. B, title XXVIII, § 2803(e), Jan. 7, 2011, 124 Stat. 4459; Pub. L. 112–239, div. A, title X, § 1076(f)(35), Jan. 2, 2013, 126 Stat. 1954; Pub. L. 115–91, div. B, title XXVIII, § 2801(b)(5), Dec. 12, 2017, 131 Stat. 1843.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in subsec. (g) of section 2828 of this title, prior to repeal by Pub. L. 102–190, § 2806(b)(1).

AMENDMENTS

2017—Subsec. (g). Pub. L. 115–91 added subsec. (g) and struck out former subsec. (g) which set out written notice and wait requirements.

2013—Subsec. (a), (g)(1). Pub. L. 112–239 inserted ''when it is not operating as a service in the Navy'' after ''Coast Guard''.

2011—Subsec. (g)(2). Pub. L. 111–383 struck out ''calendar'' after ''21'' and inserted before period at end ''or, if earlier, a period of 14 days has elapsed from the date on which a copy of the analysis is provided in an electronic medium pursuant to section 480 of this title''.

2002—Subsecs. (a) to (c), (d)(4)(B), (g)(1). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation'' wherever appearing.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE

Section applicable with respect to contracts entered into under this section on or after Dec. 5, 1991, see section 2806(c) of Pub. L. 102–190, set out as an Effective Date of 1991 Amendment note under section 2828 of this title.

§ 2835a. Use of military family housing constructed under build and lease authority to house other members

(a) INDIVIDUAL ASSIGNMENT OF MEMBERS WITHOUT DEPENDENTS.—(1) To the extent that the Secretary concerned determines that military family housing constructed and leased under section 2835 of this title is not needed to house members of the armed forces eligible for assignment to military family housing, the Secretary may assign, without rental charge, members without dependents to the housing.

(2) A member without dependents who is assigned to housing pursuant to paragraph (1) shall be considered to be assigned to quarters pursuant to section 403(e) of title 37.

(b) CONVERSION TO LONG-TERM LEASING OF MILITARY UNACCOMPANIED HOUSING.—(1) If the Secretary concerned determines that military family housing constructed and leased under section 2835 of this title is excess to the long-term needs of the family housing program of the Secretary, the Secretary may convert the lease contract entered into under subsection (a) of such section into a long-term lease of military unaccompanied housing.

(2) The term of the lease contract for military unaccompanied housing converted from military family housing under paragraph (1) may not exceed the remaining term of the lease contract for the family housing so converted.

(c) NOTICE AND WAIT REQUIREMENTS.—The Secretary concerned may not convert military fam-

ily housing to military unaccompanied housing under subsection (b) until after the end of the 14-day period beginning on the date on which the Secretary submits, in an electronic medium pursuant to section 480 of this title, to the appropriate committees of Congress a notice of the intent to undertake the conversion.

(d) APPLICATION TO HOUSING LEASED UNDER FORMER AUTHORITY.—This section also shall apply to housing initially acquired or constructed under the former section 2828(g) of this title (commonly known as the ''Build to Lease program''), as added by section 801 of the Military Construction Authorization Act, 1984 (Public Law 98–115; 97 Stat 782).

(Added Pub. L. 110–417, div. B, title XXVIII, §2803(a), Oct. 14, 2008, 122 Stat. 4719; amended Pub. L. 115–91, div. B, title XXVIII, §2801(b)(6), Dec. 12, 2017, 131 Stat. 1843; Pub. L. 116–92, div. A, title XVII, §1731(a)(56), Dec. 20, 2019, 133 Stat. 1815.)

REFERENCES IN TEXT

Section 2828(g) of this title (commonly known as the ''Build to Lease program''), as added by section 801 of the Military Construction Authorization Act, 1984, referred to in subsec. (d), means the subsection (g) added to section 2828 of this title by section 801 of Pub. L. 98–115, which was repealed by Pub. L. 102–190, div. B, title XXVIII, §2806(b), Dec. 5, 1991, 105 Stat. 1540.

AMENDMENTS

2019—Subsec. (c). Pub. L. 116–92 struck out par. (1) designation before ''The Secretary''.

2017—Subsec. (c). Pub. L. 115–91 substituted ''until after the end of the 14-day period beginning on the date on which the Secretary submits, in an electronic medium pursuant to section 480 of this title, to the appropriate committees of Congress a notice of the intent to undertake the conversion.'' for ''until—'' and struck out subpars. (A) and (B) which required a notice of intent and a wait period and par. (2) which read as follows: ''The notice required by paragraph (1) shall include—

''(A) an explanation of the reasons for the conversion of the military family housing to military unaccompanied housing;

''(B) a description of the long-term lease to be converted;

''(C) amounts to be paid under the lease; and

''(D) the expiration date of the lease.''

§ 2836. Military housing rental guarantee program

(a) AUTHORITY.—Subject to subsection (b), the Secretary of a military department, or the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, may enter into an agreement to assure the occupancy of rental housing to be constructed or rehabilitated to residential use by a private developer or by a State or local housing authority on private land, on land owned by a State or local government, or on land owned by the United States, if the housing is to be located on or near a new military installation or an existing military installation that has a shortage of housing to meet the requirements of eligible members of the armed forces (with or without accompanying dependents). The authority provided under this subsection shall be exercised under uniform regulations prescribed by the Secretary of Defense.

(b) SUBMISSION AND AUTHORIZATION OF PROPOSED AGREEMENTS.—The Secretary of a military department, or the Secretary of Homeland Security with respect to the Coast Guard, may enter into agreements pursuant to subsection (a) for such military housing rental guaranty projects as are authorized by law.

(c) CONTENT OF AGREEMENT.—An agreement under subsection (a)—

(1) may not assure the occupancy of more than 97 percent of the units constructed under the agreement;

(2) shall establish initial rental rates that are not more than rates for comparable rental dwelling units in the same general market area and may include an escalation clause;

(3) may apply to existing housing;

(4) shall require that the housing units be constructed—

(A) in the case of a Department of Defense agreement, to Department of Defense specifications or, at the discretion of the Secretary of the military department concerned, in compliance with the local building codes; and

(B) in the case of an agreement for the Coast Guard when it is not operating as a service in the Navy, to Department of Homeland Security specifications;

(5) may not be for a term in excess of 25 years;

(6) may not be renewed unless the project is located on government owned land, in which case the renewal period may not exceed the original contract term;

(7) may not assure more than an amount equivalent to the shelter rent of the housing units, determined on the basis of amortizing initial construction costs;

(8) may only be entered into to the extent that there is a shortage in military family housing;

(9) may only be entered into if existing military-controlled housing at all installations in the commuting area (except for a new installation or an installation for which there is projected a significant increase in the number of families due to an increase in the number of authorized personnel) has exceeded 97 percent use for a period of not less than 18 consecutive months immediately preceding the date on which the agreement is entered into, excluding units temporarily inactivated for major repair or improvements;

(10) shall provide for priority of occupancy for military families;

(11) shall include a provision authorizing the Secretary of the military department concerned, or the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, to take such action as the Secretary considers appropriate to protect the interests of the United States, including rendering the agreement null and void if, in the opinion of the Secretary, the owner of the housing fails to maintain a satisfactory level of operation and maintenance;

(12) may provide in the agreement for the rental of a child care center, civic center building, and similar type buildings constructed for the support of family housing;

(13) may provide that utilities, trash collection, snow removal, and entomological services will be furnished by the Federal Government at no cost to the occupant to the same extent that these items are provided to occupants of housing owned by the Federal Government; and

(14) may require that rent collection and operation and maintenance services in connection with the housing be under the terms of a separate agreement or be carried out by personnel of the Federal Government.

(d) CONDITIONS ON OBLIGATION OF FUNDS.—An agreement entered into for a project pursuant to subsection (a) shall include the following provisions:

(1) A statement that the obligation of the United States to make payments under the agreement in any fiscal year is subject to appropriations being provided specifically for that fiscal year and specifically for that project.

(2) A commitment to obligate the necessary amount for each fiscal year covered by the agreement when and to the extent that funds are appropriated for such project for such fiscal year.

(3) A statement that such a commitment entered into under the authority of this section does not constitute an obligation of the United States.

(e) COMPETITIVE PROCESS.—An agreement under subsection (a) shall be made through the use of publicly advertised, competitively bid, or competitively negotiated, contracting procedures as provided in chapter 137 of this title. In accordance with such procedures, the Secretary of a military department, or the Secretary of Homeland Security, as the case may be, shall solicit bids or proposals for a guaranty agreement for each military housing rental guaranty project authorized in accordance with subsection (b).

(f) DISPUTES.—The Secretary concerned may require that disputes arising under an agreement entered into under subsection (a) be decided in accordance with the procedures provided for by chapter 71 of title 41.

(Added Pub. L. 102–190, div. B, title XXVIII, § 2809(a)(1), Dec. 5, 1991, 105 Stat. 1541; amended Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 108–136, div. A, title X, § 1031(a)(43), Nov. 24, 2003, 117 Stat. 1602; Pub. L. 111–350, § 5(b)(48), Jan. 4, 2011, 124 Stat. 3846; Pub. L. 112–81, div. A, title X, § 1061(25), Dec. 31, 2011, 125 Stat. 1584; Pub. L. 112–239, div. A, title X, § 1076(f)(36), Jan. 2, 2013, 126 Stat. 1954.)

PRIOR PROVISIONS

Similar provisions were contained in Pub. L. 98–115, title VIII, § 802, Oct. 11, 1983, 97 Stat. 783, as amended, which was set out as a note under section 2821 of this title, prior to repeal by Pub. L. 102–190, § 2809(b).

AMENDMENTS

2013—Subsecs. (a), (c)(4)(B), (11). Pub. L. 112–239 inserted ''when it is not operating as a service in the Navy'' after ''Coast Guard''.

2011—Subsec. (b). Pub. L. 112–81, § 1061(25)(A), struck out par. (1) designation before ''The Secretary of a military department'' and struck out par. (2) which read as follows: ''The budget material submitted to Congress by the Secretary of Defense, and the Secretary of Homeland Security with respect to the Coast Guard, in connection with the budget submitted pursuant to section 1105 of title 31 for each fiscal year shall include materials that identify the military housing rental guaranty projects for which agreements are proposed to be entered into under subsection (a) in that fiscal year.''

Subsec. (f). Pub. L. 112–81, § 1061(25)(B), (C), redesignated subsec. (g) as (f) and struck out former subsec. (f). Prior to amendment, text of subsec. (f) read as follows: ''An agreement may not be entered into under subsection (a) until—

''(1) the Secretary of Defense, or the Secretary of Homeland Security with respect to the Coast Guard, submits to the appropriate committees of Congress, in writing, an economic analysis (based upon accepted life cycle costing procedures) which demonstrates that the proposed agreement is cost effective when compared with alternative means of furnishing the same housing facilities; and

''(2) a period of 21 days has expired following the date on which the economic analysis is received by those committees or, if over sooner, a period of 14 days has expired following the date on which a copy of the economic analysis is provided in an electronic medium pursuant to section 480 of this title.''

Subsec. (g). Pub. L. 112–81, § 1061(25)(C), redesignated subsec. (g) as (f).

Pub. L. 111–350 substituted ''chapter 71 of title 41'' for ''the Contract Disputes Act of 1978 (41 U.S.C. 601 et seq.)''.

2003—Subsec. (f)(2). Pub. L. 108–136 substituted ''21 days'' for ''21 calendar days'' and inserted before period at end ''or, if over sooner, a period of 14 days has expired following the date on which a copy of the economic analysis is provided in an electronic medium pursuant to section 480 of this title''.

2002—Subsecs. (a), (b), (c)(4)(B), (11), (e), (f)(1). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation'' wherever appearing.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE

Pub. L. 102–190, div. B, title XXVII, § 2809(c), Dec. 5. 1991, 105 Stat. 1543, provided that: ''Section 2836 of title 10, United States Code, as added by subsection (a), shall apply with respect to contracts entered into under that section on or after the date of the enactment of this Act [Dec. 5, 1991]. The amendment made by subsection (b) [repealing provisions set out as a note under section 2821 of this title] shall not affect the validity of any contract entered into before that date under section 802 of the Military Construction Authorization Act, 1984 (10 U.S.C. 2821 note), as in effect on the day before that date.''

[§ 2837. Repealed. Pub. L. 113–66, div. B, title XXVIII, § 2802(a)(1), Dec. 26, 2013, 127 Stat. 1006]

Section, added Pub. L. 103–337, div. B, title XXVIII, § 2803(a), Oct. 5, 1994, 108 Stat. 3051; amended Pub. L. 104–106, div. B, title XXVIII, § 2802, Feb. 10, 1996, 110 Stat. 551; Pub. L. 106–65, div. A, title X, § 1066(a)(28), Oct. 5, 1999, 113 Stat. 772; Pub. L. 108–136, div. A, title X, § 1031(a)(44), Nov. 24, 2003, 117 Stat. 1602, authorized the Secretary of a military department to enter into limited partnerships with private developers of housing through Sept. 30, 2000, further authorized such Secretary to enter into collateral incentive agreements with those private developers, and established the Defense Housing Investment Account.

EFFECT ON EXISTING CONTRACTS

Pub. L. 113–66, div. B, title XXVIII, § 2802(b), Dec. 26, 2013, 127 Stat. 1006, provided that: ''The repeal of section 2837 of title 10, United States Code, shall not affect the validity or terms of any contract in connection with a limited partnership under subsection (a) or a collateral incentive agreement under subsection (b) of such section entered into before the date of the enactment of this Act [Dec. 26, 2013].''

EFFECT ON DEFENSE HOUSING INVESTMENT ACCOUNT

Pub. L. 113–66, div. B, title XXVIII, § 2802(c), Dec. 26, 2013, 127 Stat. 1006, provided that: ''Any unobligated amounts remaining in the Defense Housing Investment Account on the date of the enactment of this Act [Dec. 26, 2013] shall be transferred to the Department of Defense Family Housing Improvement Fund. Amounts transferred shall be merged with amounts in such fund and shall be available for the same purposes, and subject to the same conditions and limitations, as amounts in such fund.''

§ 2838. Leasing of military family housing to Secretary of Defense

(a) AUTHORITY.—(1) The Secretary of a military department may lease to the Secretary of Defense military family housing in the National Capital Region (as defined in section 2674(f) of this title).

(2) In determining the military housing unit to lease under this section, the Secretary of Defense should first consider any available military housing units that are already substantially equipped for executive communications and security.

(b) RENTAL RATE.—A lease under subsection (a) shall provide for the payment by the Secretary of Defense of consideration in an amount equal to 105 percent of the monthly rate of basic allowance for housing prescribed under section 403(b) of title 37 for a member of the uniformed services in the pay grade of O–10 with dependents assigned to duty at the military installation on which the leased housing unit is located. A rate so established shall be considered the fair market value of the lease interest.

(c) TREATMENT OF PROCEEDS.—(1) The Secretary of a military department shall deposit all amounts received pursuant to leases entered into by the Secretary under this section into a special account in the Treasury established for such military department.

(2) The proceeds deposited into the special account of a military department pursuant to paragraph (1) shall be available to the Secretary of that military department, without further appropriation, for the maintenance, protection, alteration, repair, improvement, or restoration of military housing on the military installation at which the housing leased pursuant to subsection (a) is located.

(Added Pub. L. 110–417, div. B, title XXVIII, § 2804(a), Oct. 14, 2008, 122 Stat. 4720.)

SUBCHAPTER III—ADMINISTRATION OF MILITARY CONSTRUCTION AND MILITARY FAMILY HOUSING

Sec.
2851. Supervision of military construction projects.
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2869. Exchange of property at military installations.
[2870. Repealed.]

AMENDMENTS

2021—Pub. L. 116–283, div. A, title VIII, § 818(b)(1), div. B, title XXVIII, § 2811(k)(1)(A), Jan. 1, 2021, 134 Stat. 3751, 4326, added item 2851a and struck out item 2870 ''Use of qualified apprentices by military construction contractors''.

2019—Pub. L. 116–92, div. A, title VIII, § 865(a)(2), Dec. 20, 2019, 133 Stat. 1524, added item 2870.

2018—Pub. L. 115–232, div. B, title XXVIII, § 2806(a)(2), Aug. 13, 2018, 132 Stat. 2264, added item 2865.

2013—Pub. L. 112–239, div. B, title XXVIII, § 2802(b), Jan. 2, 2013, 126 Stat. 2147, added item 2864.

Pub. L. 112–239, div. A, title X, § 1076(a)(22), Jan. 2, 2013, 126 Stat. 1949, made technical amendment to directory language of Pub. L. 112–81, § 2815(c). See 2011 Amendment note below.

2011—Pub. L. 112–81, div. B, title XXVIII, § 2815(c), Dec. 31, 2011, 125 Stat. 1689, as amended by Pub. L. 112–239, div. A, title X, § 1076(a)(22), Jan. 2, 2013, 126 Stat. 1949, substituted ''Exchange of property at military installations'' for ''Conveyance of property at military installations to limit encroachment'' in item 2869.

Pub. L. 111–383, div. A, title X, § 1075(d)(23), Jan. 7, 2011, 124 Stat. 4374, made technical amendment to directory language of Pub. L. 111–84, § 2804(d)(2). See 2009 Amendment note below.

2009—Pub. L. 111–84, div. B, title XXVIII, § 2841(a)(2), Oct. 28, 2009, 123 Stat. 2680, added item 2867.

Pub. L. 111–84, div. B, title XXVIII, § 2804(d)(2), Oct. 28, 2009, 123 Stat. 2662, as amended by Pub. L. 111–383, div. A, title X, § 1075(d)(23), Jan. 7, 2011, 124 Stat. 4374, substituted ''Conveyance of property at military installations to limit encroachment'' for ''Conveyance of property at military installations to support military construction or limit encroachment'' in item 2869.

2006—Pub. L. 109–364, div. B, title XXVIII, §§ 2807(a)(2), 2808(b)(2), 2809(b), 2810(b), 2811(f)(2), 2851(c)(4), Oct. 17, 2006, 120 Stat. 2468–2471, 2473, 2495, added item 2861, inserted ''or urban-training operations'' after ''force protection'' in item 2859, substituted ''Military unaccompanied housing: local comparability of floor areas'' for ''Limitations on barracks space by pay grade'' in item 2856 and ''to support military construction or limit encroachment'' for ''closed or realigned to support mili-

tary construction'' in item 2869, and struck out items 2857 ''Use of renewable forms of energy in new facilities'', 2864 ''Military construction contracts on Guam'', 2865 ''Energy savings at military installations'', and 2867 ''Sale of electricity from alternate energy and cogeneration production facilities''.

Pub. L. 109–163, div. B, title XXVIII, § 2804(c)(2), Jan. 6, 2006, 119 Stat. 3507, substituted ''Authorized cost and scope of work variations'' for ''Authorized cost variations'' in item 2853.

Pub. L. 108–375, div. B, title XXVIII, § 2804(a)(2), Oct. 28, 2004, 118 Stat. 2122, added item 2859.

2003—Pub. L. 108–136, div. A, title X, § 1044(b)(2), div. B, title XXVIII, § 2805(a)(2), Nov. 24, 2003, 117 Stat. 1612, 1721, struck out item 2859 ''Transmission of annual military construction authorization request'' and added item 2869.

2001—Pub. L. 107–107, div. B, title XXVIII, § 2803(b), Dec. 28, 2001, 115 Stat. 1305, struck out item 2861 ''Annual report to Congress''.

1997—Pub. L. 105–85, div. A, title III, § 371(c)(3), Nov. 18, 1997, 111 Stat. 1705, added items 2867 and 2868.

1996—Pub. L. 104–106, div. B, title XXVIII, § 2818(a)(2), Feb. 10, 1996, 110 Stat. 555, added item 2854a.

1993—Pub. L. 103–160, div. B, title XXVIII, § 2803(b), Nov. 30, 1993, 107 Stat. 1885, added item 2866.

1990—Pub. L. 101–510, div. B, title XXVIII, § 2851(b), Nov. 5, 1990, 104 Stat. 1804, added item 2865.

1989—Pub. L. 101–189, div. B, title XXVIII, § 2807(b), Nov. 29, 1989, 103 Stat. 1648, added item 2864.

1987—Pub. L. 100–180, div. B, subdiv. 3, title I, § 2303(b), Dec. 4, 1987, 101 Stat. 1215, added item 2863.

1986—Pub. L. 99–661, div. A, title XIII, § 1343(a)(21)(B), Nov. 14, 1986, 100 Stat. 3994, struck out ''for five years'' after ''Availability of appropriations'' in item 2860.

1985—Pub. L. 99–167, title VIII, § 807(b), Dec. 3, 1985, 99 Stat. 988, added item 2862.

1982—Pub. L. 97–321, title VIII, § 801(b)(3), Oct. 15, 1982, 96 Stat. 1571, substituted ''renewable forms of energy in new facilities'' for ''solar energy systems'' in item 2857.

§ 2851. Supervision of military construction projects

(a) SUPERVISION OF MILITARY DEPARTMENT PROJECTS.—Each contract entered into by the United States in connection with a military construction project or a military family housing project shall be carried out under the direction and supervision of the Secretary of the Army (acting through the Chief of Engineers), the Secretary of the Navy (acting through the Commander of the Naval Facilities Engineering Command), or such other department or Government agency as the Secretary of Defense approves to assure the most efficient, expeditious, and cost-effective completion of the project.

(b) SUPERVISION OF DEFENSE AGENCY PROJECTS.—A military construction project for an activity or agency of the Department of Defense (other than a military department) financed from appropriations for military functions of the Department of Defense shall be accomplished by or through a military department designated by the Secretary of Defense.

(c) MAINTENANCE OF MILITARY CONSTRUCTION INFORMATION ON INTERNET; ACCESS.—(1) The Secretary of Defense shall maintain an Internet site that will permit a person to access and view on a separate page of the Internet site a document or other file containing the information required by paragraph (2) for the following:

(A) Each military construction project or military family housing project that has been specifically authorized by Act of Congress.

(B) Each project carried out with funds authorized for the operation and maintenance of military family housing.

(C) Each project carried out with funds authorized for the improvement of military family housing units.

(D) Each unspecified minor construction project carried out under the authority of section 2805(a) of this title.

(E) Each military construction project or military family housing project regarding which a statutory requirement exists to notify Congress.

(2) The information to be provided via the Internet site required by paragraph (1) for each project described in such paragraph shall include the following:

(A) The solicitation date and award date (or anticipated dates) for each contract entered into (or to be entered into) by the United States in connection with the project.

(B) The contract recipient, contract award amount, construction milestone schedule proposed by the contractor, and construction completion date stipulated in the awarded contract.

(C) The most current Department of Defense Form 1391, Military Construction Project Data, for the project.

(D) The progress of the project, including the percentage of construction currently completed and the current estimated construction completion date.

(E) The current contract obligation of funds for the project, including any changes to the original contract award amount.

(F) If funds appropriated for the project have been diverted for use in another project, the project to which the funds were diverted and the amount so diverted.

(G) For accounts such as planning and design, unspecified minor construction, and family housing operation and maintenance, detailed information regarding expenditures and anticipated expenditures under these accounts and the purposes for which the expenditures are made.

(3) The information required to be provided for each project described in paragraph (1) shall be made available on the Internet site required by such paragraph not later than 90 days after the award of a contract or delivery order for the project. The Secretary of Defense shall update the required information as promptly as practicable, but not less frequently than once a month, to ensure that the information is available in a timely manner.

(d) ANNUAL REPORT ON SCHEDULE DELAYS.—Not later than March 1 of each year (beginning with 2018), the Secretary of Defense shall submit to the Committees on Armed Services of the House of Representatives and Senate a report on each military construction project or military family housing project for which, as of the end of the most recent fiscal year, the estimated completion date is more than 1 year later than the completion date proposed at the time the contract for the project was awarded.

(Added Pub. L. 97–214, § 2(a), July 12, 1982, 96 Stat. 163; amended Pub. L. 109–163, div. B, title XXVIII, § 2803(a), (c), Jan. 6, 2006, 119 Stat. 3505, 3506; Pub. L. 111–383, div. B, title XXVIII, § 2801, Jan. 7, 2011, 124 Stat. 4458; Pub. L. 115–91, div. B, title XXVIII, § 2822, Dec. 12, 2017, 131 Stat. 1855.)

AMENDMENTS

2017—Subsec. (d). Pub. L. 115–91 added subsec. (d).

2011—Subsec. (c)(1). Pub. L. 111–383, § 2801(c)(1), substituted ''that will permit a person'' for ''that, when activated by a person authorized under paragraph (3), will permit the person''.

Subsec. (c)(2)(F) to (H). Pub. L. 111–383, § 2801(a), redesignated subpars. (G) and (H) as (F) and (G), respectively, and struck out former subpar. (F) which read as follows: ''The estimated final cost of the project and, if the estimated final cost of the project exceeds the amount appropriated for the project and funds have been provided from another source to meet the increased cost, the source of the funds and the amount provided.''

Subsec. (c)(3), (4). Pub. L. 111–383, § 2801(b), (c)(2), redesignated par. (4) as (3), substituted ''on the Internet site required by such paragraph'' for ''to the persons referred to in paragraph (3)'' and struck out ''to such persons'' before ''in a timely manner'', and struck out former par. (3) which read as follows: ''Access to the Internet site required by paragraph (1) shall be restricted to the following persons:

''(A) Members of the congressional defense committees and their staff.

''(B) Staff of the congressional defense committees.''

2006—Subsecs. (a), (b). Pub. L. 109–163, § 2803(c), inserted headings.

Subsec. (c). Pub. L. 109–163, § 2803(a), added subsec. (c).

EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

IMPLEMENTATION OF INTERNET SITE

Pub. L. 109–163, div. B, title XXVIII, § 2803(b), Jan. 6, 2006, 119 Stat. 3506, provided that: ''The Internet site required by subsection (c) of section 2851 of title 10, United States Code, as added by subsection (a), shall be available to the persons referred to in paragraph (3) of such subsection not later than July 15, 2006.''

IDENTIFICATION OF REQUIREMENTS TO REDUCE BACKLOG IN MAINTENANCE AND REPAIR OF DEFENSE FACILITIES

Pub. L. 106–398, § 1 [[div. A], title III, § 374], Oct. 30, 2000, 114 Stat. 1654, 1654A–81, which required the Secretary of Defense to submit to Congress, not later than March 15, 2001, a report identifying a list of requirements to reduce the backlog in maintenance and repair needs of facilities and infrastructure under the jurisdiction of the Department of Defense or a military department, which report was to be updated annually, was repealed by Pub. L. 112–81, div. A, title X, § 1062(i)(1), Dec. 31, 2011, 125 Stat. 1585.

§ 2851a. Supervision of military housing by Chief Housing Officer

(a) DESIGNATION.—(1) The Secretary of Defense shall designate, from among officials of the Department of Defense who are appointed by the President with the advice and consent of the Senate, a Chief Housing Officer who shall oversee family housing and military unaccompanied housing under the jurisdiction of the Department of Defense or acquired or constructed under subchapter IV of this chapter (in this section referred to as ''covered housing units'').

(2) The official of the Department of Defense designated as Chief Housing Officer may be assigned duties in addition to the duties as Chief Housing Officer under subsection (b).

(b) PRINCIPAL DUTIES.—(1) The Chief Housing Officer shall oversee all aspects of the provision of covered housing units, including the following:

(A) Creation and standardization of policies and processes regarding covered housing units.

(B) Oversight of the administration of any Department of Defense-wide policies regarding covered housing units, to include, in coordination with the Secretaries of the military departments, the housing documents developed pursuant to section 2890 of this title entitled Military Housing Privatization Initiative Tenant Bill of Rights and Military Housing Privatization Initiative Tenant Responsibilities.

(2) The duties specified in paragraph (1) may not be further delegated.

(Added Pub. L. 116–92, div. B, title XXX, § 3012(a), Dec. 20, 2019, 133 Stat. 1921, § 2890a; renumbered § 2851a and amended Pub. L. 116–283, div. B, title XXVIII, § 2811(a), Jan. 1, 2021, 134 Stat. 4323.)

AMENDMENTS

2021—Pub. L. 116–283, § 2811(a)(3), renumbered section 2890a of this title as this section.

Pub. L. 116–283, § 2811(a)(2), inserted ''Supervision of military housing by'' before ''Chief'' in section catchline.

Subsec. (a)(1). Pub. L. 116–283, § 2811(a)(1)(A), substituted ''family housing and military unaccompanied housing under the jurisdiction of the Department of Defense or acquired or constructed under subchapter IV of this chapter (in this section referred to as 'covered housing units')'' for ''housing units''.

Subsec. (b)(1). Pub. L. 116–283, § 2811(a)(1)(B)(ii), inserted ''covered'' before ''housing units'' in subpars. (A) and (B).

Pub. L. 116–283, § 2811(a)(1)(B)(i), substituted ''covered housing units'' for ''housing under subchapter IV and this subchapter'' in introductory provisions.

NOTIFICATION OF DESIGNATION

Pub. L. 116–92, div. B, title XXX, § 3012(b), Dec. 20, 2019, 133 Stat. 1921, provided that: ''Not later than 60 days after the date of the enactment of this Act [Dec. 20, 2019], the Secretary of Defense shall notify the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] of the official of the Department of Defense designated as Chief Housing Officer under section 2890a [now 2851a] of title 10, United States Code, as added by subsection (a). Any time the designation of Chief Housing Officer changes, the Secretary of Defense shall update the notification of the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] within 30 days after the new designation.''

§ 2852. Military construction projects: waiver of certain restrictions

(a) The Secretary of Defense and the Secretaries of the military departments may carry out authorized military construction projects and authorized military family housing projects without regard to subsections (a) and (b) of section 3324 of title 31.

(b) Authority to carry out a military construction project or a military family housing project may be exercised on land not owned by the United States—

(1) before title to the land on which the project is to be carried out is approved under section 3111 of title 40; and

(2) even though the land will be held in other than a fee simple interest in a case in which the Secretary of the military department con-

cerned determines that the interest to be acquired in the land is sufficient for the purposes of the project.

(c) In the case of a military construction project or a military family housing project, the contract amount thresholds specified in subchapter III of chapter 31 of title 40 (commonly referred to as the Miller Act) shall be applied by substituting ''$150,000'' for ''$100,000'' for purposes of determining when a performance bond and payment bond are required under section 3131 of such title and when alternatives to payment bonds as payment protections for suppliers of labor and materials are required under section 3132 of such title.

(Added Pub. L. 97–214, § 2(a), July 12, 1982, 96 Stat. 164; amended Pub. L. 97–295, § 1(35), Oct. 12, 1982, 96 Stat. 1296; Pub. L. 97–321, title VIII, § 805(a)(1), Oct. 15, 1982, 96 Stat. 1573; Pub. L. 99–145, title XIII, § 1303(a)(19), Nov. 8, 1985, 99 Stat. 739; Pub. L. 107–217, § 3(b)(20), Aug. 21, 2002, 116 Stat. 1297; Pub. L. 112–81, div. B, title XXVIII, § 2803, Dec. 31, 2011, 125 Stat. 1685.)

HISTORICAL AND REVISION NOTES

In 10:2852(a), the title 31 citation is substituted on authority of Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted title 31.

AMENDMENTS

2011—Subsec. (c). Pub. L. 112–81 added subsec. (c).

2002—Subsec. (b)(1). Pub. L. 107–217 substituted ''section 3111 of title 40'' for ''section 355 of the Revised Statutes (40 U.S.C. 255)''.

1985—Subsec. (a). Pub. L. 99–145 substituted ''subsections (a) and (b) of section 3324'' for ''section 3324(a) and (b)''.

1982—Subsec. (a). Pub. L. 97–295 substituted ''section 3324(a) and (b) of title 31'' for ''section 3648 of the Revised Statutes (31 U.S.C. 529)''.

Subsec. (b). Pub. L. 97–321 substituted ''may be exercised on land not owned by the United States'' for ''on land not owned by the United States may be exercised'' in introductory text, redesignated former cl. (1) as par. (1), added par. (2), and struck out former cl. (2) which read as follows: ''even though the land is held temporarily''.

EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

§ 2853. Authorized cost and scope of work variations

(a) Except as provided in subsection (c), (d), or (e), the cost authorized for a military construction project or for the construction, improvement, and acquisition of a military family housing project may be increased or decreased by not more than 25 percent of the amount appropriated for such project or 200 percent of the minor construction project ceiling specified in section 2805(a) of this title, whichever is less, if the Secretary concerned determines that such revised cost is required for the sole purpose of meeting unusual variations in cost and that such variations in cost could not have reasonably been anticipated at the time the project was authorized by Congress.

(b)(1) Except as provided in subsection (c), the scope of work for a military construction project or for the construction, improvement, and acquisition of a military family housing project may be reduced by not more than 25 percent from the amount specified for that project, construction, improvement, or acquisition in the justification data provided to Congress as part of the request for authorization of the project, construction, improvement, or acquisition. Any reduction in scope of work for a military construction project shall not result in a facility or item of infrastructure that is not complete and useable or does not fully meet the mission requirement contained in the justification data provided to Congress as part of the request for authorization of the project, construction, improvement, or acquisition.

(2) Except as provided in subsection (d), the scope of work for a military construction project or for the construction, improvement, and acquisition of a military family housing project may not be increased above the amount specified for that project, construction, improvement, or acquisition in the justification data provided to Congress as part of the request for authorization of the project, construction, improvement, or acquisition.

(3) In this subsection, the term ''scope of work'' refers to the function, size, or quantity of a facility or item of complete and useable infrastructure contained in the justification data provided to Congress as part of the request for authorization of the project, construction, improvement, or acquisition.

(c) The limitation on cost variations in subsection (a) or the limitation on scope reduction in subsection (b)(1) does not apply if the variation in cost or reduction in the scope of work is approved by the Secretary concerned and—

(1) in the case of a cost increase (subject to subsection (f)) or a reduction in the scope of work—

(A) the Secretary concerned notifies the appropriate committees of Congress of the cost increase or reduction in scope, the reasons therefor, a certification that the mission requirement identified in the justification data provided to Congress can still be met with the reduced scope, and a description of the funds proposed to be used to finance any increased costs; and

(B) a 14-day period has elapsed after the date on which the notification is received by the committees in an electronic medium pursuant to section 480 of this title; or

(2) in the case of a cost decrease, the Secretary concerned notifies, using an electronic medium pursuant to section 480 of this title, the appropriate committees of Congress not later than 14 days after the date funds are obligated in connection with the military construction project or military family housing project.

(d) The limitation in subsection (b)(2) on an increase in the scope of work does not apply if—

(1) the increase in the scope of work is not more than 10 percent of the amount specified for that project, construction, improvement, or acquisition in the justification data provided to Congress as part of the request for authorization of the project, construction, improvement, or acquisition;

(2) the increase is approved by the Secretary concerned;

(3) the Secretary concerned notifies the congressional defense committees in writing of the increase in scope and the reasons therefor; and

(4) a period of 21 days has elapsed after the date on which the notification is received by the committees or, if over sooner, a period of 14 days has elapsed after the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this title.

(e) The limitation on cost variations in subsection (a) does not apply to the following:

(1) The settlement of a contractor claim under a contract.

(2) The costs associated with the required remediation of an environmental hazard in connection with a military construction project or military family housing project, such as asbestos removal, radon abatement, lead-based paint removal or abatement, or any other legally required environmental hazard remediation, if the required remediation could not have reasonably been anticipated at the time the project was approved originally by Congress.

(f)(1) In addition to the notification sent under paragraph (1) of subsection (c) of a cost increase with respect to a project, the Secretary concerned shall provide an additional report notifying the congressional defense committees of any military construction project or military family housing project with a total authorized cost greater than $40,000,000 that has a cost increase of 25 percent or more.

(2) The report under paragraph (1) shall include the following—

(A) A description of the specific reasons for the cost increase and the specific organizations and individuals responsible.

(B) A description of any ongoing or completed proceedings or investigation into a government employee, prime contractor, subcontractor, or non-governmental organization that may be responsible for the cost increase, and the status of such proceeding or investigation.

(C) If any proceeding or investigation identified in subparagraph (B) resulted in final judicial or administrative action, the following:

(i) In the case of a judicial or administrative action taken against a government employee, the report shall identify the individual's organization, position within the organization, and the action taken against the individual, but shall exclude personally identifiable information about the individual.

(ii) In the case of a judicial or administrative action taken against a prime contractor, subcontractor, or non-governmental organization, the report shall identify the prime contractor, subcontractor, or non-governmental organization and the action taken against the prime contractor, subcontractor, or non-governmental organization.

(D) A summary of any changes the Secretary concerned believes may be required to the organizational structure, project management and oversight practices, policy, or authorities of a government organization involved in military construction projects as a result of problems identified and lessons learned from the project.

(3) If any proceeding or investigation described in paragraph (2)(C) is still ongoing at the time the Secretary concerned submits the report under paragraph (1), the Secretary shall provide a supplemental report to the congressional defense committees not later than 30 days after such proceeding or investigation has been completed. If such proceeding or investigation resulted in final judicial or administrative action against a government employee, prime contractor, subcontractor, or non-governmental organization, the Secretary shall include in the supplemental report the information required by paragraph (2)(C).

(4) Each report under this subsection shall be cosigned by the senior engineer authorized to supervise military construction projects and military family housing projects under section 2851(a).

(5) The Secretary shall send the report required under paragraph (1) with respect to a project not later than 180 days after the Secretary sends to the appropriate committees of Congress the notification under paragraph (1) of subsection (c) of a cost increase with respect to the project.

(g) Notwithstanding the authority under subsections (a) through (f), the Secretary concerned shall ensure compliance of contracts for military construction projects and for the construction, improvement, and acquisition of military family housing projects with section 1341 of title 31 (commonly referred to as the ''Anti-Deficiency Act'').

(Added Pub. L. 97–214, § 2(a), July 12, 1982, 96 Stat. 164; amended Pub. L. 98–407, title VIII, § 807, Aug. 28, 1984, 98 Stat. 1521; Pub. L. 100–26, § 7(f)(2), Apr. 21, 1987, 101 Stat. 281; Pub. L. 100–180, div. B, subdiv. 3, title I, §§ 2312, 2313, Dec. 4, 1987, 101 Stat. 1217, 1218; Pub. L. 101–189, div. B, title XXVIII, § 2808, Nov. 29, 1989, 103 Stat. 1648; Pub. L. 104–106, div. B, title XXVIII, § 2817, Feb. 10, 1996, 110 Stat. 553; Pub. L. 107–107, div. B, title XXVIII, § 2802, Dec. 28, 2001, 115 Stat. 1305; Pub. L. 108–375, div. B, title XXVIII, § 2803, Oct. 28, 2004, 118 Stat. 2121; Pub. L. 109–163, div. B, title XXVIII, § 2804(a)–(c)(1), Jan. 6, 2006, 119 Stat. 3506; Pub. L. 109–364, div. B, title XXVIII, § 2806, Oct. 17, 2006, 120 Stat. 2468; Pub. L. 111–84, div. B, title XXVIII, § 2803, Oct. 28, 2009, 123 Stat. 2661; Pub. L. 112–81, div. B, title XXVIII, § 2802(c)(2), Dec. 31, 2011, 125 Stat. 1685; Pub. L. 112–239, div. B, title XXVIII, § 2801, Jan. 2, 2013, 126 Stat. 2146; Pub. L. 113–291, div. A, title X, § 1071(f)(24), Dec. 19, 2014, 128 Stat. 3511; Pub. L. 114–328, div. B, title XXVIII, § 2803, Dec. 23, 2016, 130 Stat. 2712; Pub. L. 115–91, div. B, title XXVIII, §§ 2801(c)(1), 2821, Dec. 12, 2017, 131 Stat. 1843, 1853; Pub. L. 116–283, div. B, title XXVIII, § 2803(a), (b), Jan. 1, 2021, 134 Stat. 4319, 4320.)

AMENDMENTS

2021—Subsec. (c)(1). Pub. L. 116–283, § 2803(b), inserted ''(subject to subsection (f))'' after ''cost increase'' in introductory provisions.

Subsec. (f)(1), (3). Pub. L. 116–283, § 2803(a)(1), struck out ''and the Comptroller General of the United States'' after ''congressional defense committees''.

Subsec. (f)(6). Pub. L. 116–283, § 2803(a)(2), struck out par. (6) which read as follows: ''The Comptroller General of the United States shall review each report submitted under this subsection and validate or correct as necessary the information provided.''

2017—Subsec. (c)(1)(A). Pub. L. 115–91, § 2801(c)(1)(A), struck out ''in writing'' after ''committees of Congress''.

Subsec. (c)(1)(B). Pub. L. 115–91, § 2801(c)(1)(B), substituted ''14-day period'' for ''period of 21 days'' and struck out ''or, if over sooner, a period of 14 days has elapsed after the date on which a copy of the notification is provided'' after ''received by the committees''.

Subsec. (c)(2). Pub. L. 115–91, § 2801(c)(1)(A), (C), inserted '', using an electronic medium pursuant to section 480 of this title,'' after ''notifies'' and struck out ''in writing'' after ''committees of Congress''.

Subsec. (f). Pub. L. 115–91, § 2821(2), added subsec. (f). Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 115–91, § 2821(1), (3), redesignated subsec. (f) as (g) and substituted ''subsections (a) through (f)'' for ''subsections (a) through (e)''.

2016—Subsec. (a). Pub. L. 114–328, § 2803(c), inserted ''of this title'' after ''section 2805(a)''.

Pub. L. 114–328, § 2803(b)(1), substituted ''subsection (c), (d), or (e)'' for ''subsection (c) or (d)''.

Subsec. (b)(2). Pub. L. 114–328, § 2803(a)(1), substituted ''Except as provided in subsection (d), the scope of work'' for ''The scope of work''.

Subsec. (d). Pub. L. 114–328, § 2803(a)(3), added subsec. (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 114–328, § 2803(a)(2), redesignated subsec. (d) as (e). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 114–328, § 2803(a)(2), (b)(2), redesignated subsec. (e) as (f) and substituted ''through (e)'' for ''through (d)''.

2014—Subsec. (c)(1)(A). Pub. L. 113–291 substituted ''can still be'' for ''can be still be''.

2013—Subsec. (a). Pub. L. 112–239, § 2801(1), substituted ''was authorized'' for ''was approved originally''.

Subsec. (b)(1). Pub. L. 112–239, § 2801(2)(A), inserted at end ''Any reduction in scope of work for a military construction project shall not result in a facility or item of infrastructure that is not complete and useable or does not fully meet the mission requirement contained in the justification data provided to Congress as part of the request for authorization of the project, construction, improvement, or acquisition.''

Subsec. (b)(3). Pub. L. 112–239, § 2801(2)(B), added par. (3).

Subsec. (c)(1)(A). Pub. L. 112–239, § 2801(3), substituted '', the reasons therefor, a certification that the mission requirement identified in the justification data provided to Congress can be still be met with the reduced scope, and a description'' for ''and the reasons therefor, including a description''.

Subsec. (e). Pub. L. 112–239, § 2801(4), added subsec. (e).

2011—Subsec. (a). Pub. L. 112–81 substituted ''section 2805(a)'' for ''section 2805(a)(1)''.

2009—Subsec. (b). Pub. L. 111–84, § 2803(1), designated existing provisions as par. (1), substituted ''may be reduced by not more than 25 percent from the amount specified for that project, construction, improvement, or acquisition in the justification data provided to Congress as part of the request for authorization of the project, construction, improvement, or acquisition.'' for ''may be reduced by not more than 25 percent from the amount approved for that project, construction, improvement, or acquisition by Congress.'', and added par. (2).

Subsec. (c). Pub. L. 111–84, § 2803(2), substituted ''subsection (b)(1)'' for ''subsection (b)'' in introductory provisions.

2006—Pub. L. 109–163, § 2804(c)(1), substituted ''Authorized cost and scope of work variations'' for ''Authorized cost variations'' in section catchline.

Subsec. (a). Pub. L. 109–163, § 2804(a)(1), substituted ''may be increased or decreased by not more than 25 percent'' for ''may be increased by not more than 25 percent'' and ''if the Secretary concerned determines that such revised cost is required'' for ''if the Secretary concerned determines that such an increase in cost is required''.

Subsec. (c). Pub. L. 109–364 substituted ''if the variation in cost or reduction in the scope of work is approved by the Secretary concerned and—'' for ''if—'' in introductory provisions, added pars. (1) and (2), and struck out former pars. (1) to (3) which read as follows:

''(1) the variation in cost or reduction in scope is approved by the Secretary concerned;

''(2) the Secretary concerned notifies the appropriate committees of Congress in writing of the variation or reduction and the reasons therefor, including a description of the funds proposed to be used to finance any increased costs; and

''(3) a period of 21 days has elapsed after the date on which the notification is received by the committees or, if over sooner, a period of 14 days has elapsed after the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this title.''

Pub. L. 109–163, § 2804(a)(2), (b), substituted ''limitation on cost variations'' for ''limitation on cost increase'' in introductory provisions, ''the variation'' for ''the increase'' in pars. (1) and (2), and inserted '', including a description of the funds proposed to be used to finance any increased costs'' after ''the reasons therefor'' in par. (2).

Subsec. (d). Pub. L. 109–163, § 2804(a)(3), substituted ''limitation on cost variations'' for ''limitation on cost increases'' in introductory provisions.

2004—Subsec. (c)(3). Pub. L. 108–375 inserted before period at end ''or, if over sooner, a period of 14 days has elapsed after the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this title''.

2001—Subsec. (d). Pub. L. 107–107 amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: ''The limitation on cost increases in subsection (a) does not apply to the settlement of a contractor claim under a contract.''

1996—Subsec. (d). Pub. L. 104–106 amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: ''The limitation on cost increases in subsection (a) does not apply to a within-scope modification to a contract or to the settlement of a contractor claim under a contract if the increase in cost is approved by the Secretary concerned, and the Secretary concerned promptly submits written notification of the facts relating to the proposed increase in cost to the appropriate committees of Congress.''

1989—Pub. L. 101–189 amended section generally, substituting subsecs. (a) to (d) for former subsecs. (a) to (f).

1987—Subsec. (a)(1). Pub. L. 100–180, § 2312, substituted ''Except as provided in paragraph (2), the total cost authorized for military construction projects at an installation (including each project the cost of which is included in such total authorized cost and is less than the minor project ceiling) may be increased by not more than 25 percent of the total amount appropriated for such projects'' for ''Except as provided in paragraph (2), the cost authorized for a military construction project (other than a project for which the approved amount is less than the minor project ceiling (as defined in subsection (f))) may be increased by not more than 25 percent of the amount appropriated for the project''.

Pub. L. 100–26, § 7(f)(2)(A), substituted ''the minor project ceiling (as defined in subsection (f))'' for ''the amount specified by law as the maximum amount for a minor military construction project''.

Pub. L. 100–26, § 7(f)(2)(B), substituted ''the minor project ceiling'' for ''the amount specified by law as the maximum amount for a minor military construction project''.

Subsec. (a)(2). Pub. L. 100–26, § 7(f)(2)(B), substituted ''the minor project ceiling'' for ''the amount specified by law as the maximum amount for a minor military construction project'' in two places.

Subsec. (b). Pub. L. 100–26, § 7(f)(2)(B), (C), substituted ''the minor project ceiling'' for ''the amount specified by law as the maximum amount for a minor military construction project'' and ''the amount of such ceiling'' for ''such maximum amount'' in two places.

Subsec. (c). Pub. L. 100–180, § 2313, substituted ''construction, improvement,'' for ''construction''.

Subsec. (e). Pub. L. 100–26, § 7(f)(2)(B), substituted ''the minor project ceiling'' for ''the amount specified by law as the maximum amount for a minor military construction project''.

Subsec. (f). Pub. L. 100–26, § 7(f)(2)(D), added subsec. (f).

1984—Subsec. (e). Pub. L. 98–407 inserted ''is more than the amount specified by law as the maximum amount for a minor military construction project and''.

EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

§ 2854. Restoration or replacement of damaged or destroyed facilities

(a) Subject to subsection (b), the Secretary concerned may repair, restore, or replace a facility under his jurisdiction, including a family housing facility, that has been damaged or destroyed.

(b) When a decision is made to carry out construction under subsection (a) and the cost of the repair, restoration, or replacement is greater than the maximum amount for a minor construction project, the Secretary concerned shall notify the appropriate committees of Congress of that decision, of the justification for the project, of the current estimate of the cost of the project, of the source of funds for the project, and of the justification for carrying out the project under this section. The project may then be carried out only after the end of the 14-day period beginning on the date the notification is received by such committees in an electronic medium pursuant to section 480 of this title.

(c)(1) In using the authority described in subsection (a) to carry out a military construction project to replace a facility, including a family housing facility, that has been damaged or destroyed, the Secretary concerned may use appropriations available for operation and maintenance if—

(A) the damage or destruction to the facility was the result of a natural disaster or a terrorism incident; and

(B) the Secretary submits a notification to the appropriate committees of Congress of the decision to carry out the replacement project, and includes in the notification—

(i) the current estimate of the cost of the replacement project;

(ii) the source of funds for the replacement project;

(iii) in the case of damage to a facility rather than destruction, a certification that the replacement project is more cost-effective than repair or restoration; and

(iv) a certification that deferral of the replacement project for inclusion in the next Military Construction Authorization Act would be inconsistent with national security or the protection of health, safety, or environmental quality, as the case may be.

(2) A replacement project under this subsection may be carried out only after the end of the 7-day period beginning on the date on which a copy of the notification described in paragraph (1) is provided in an electronic medium pursuant to section 480 of this title.

(3) The maximum aggregate amount that the Secretary concerned may obligate from appropriations available for operation and maintenance in any fiscal year for replacement projects under the authority of this subsection is $100,000,000.

(Added Pub. L. 97–214, § 2(a), July 12, 1982, 96 Stat. 165; amended Pub. L. 102–190, div. B, title XXVIII, § 2870(7), Dec. 5, 1991, 105 Stat. 1563; Pub. L. 108–136, div. A, title X, § 1031(a)(45), Nov. 24, 2003, 117 Stat. 1602; Pub. L. 115–91, div. B, title XXVIII, §§ 2801(c)(2), 2805, Dec. 12, 2017, 131 Stat. 1843, 1846; Pub. L. 116–92, div. B, title XXVIII, § 2803, Dec. 20, 2019, 133 Stat. 1882.)

AMENDMENTS

2019—Subsec. (c)(3). Pub. L. 116–92 substituted ''$100,000,000'' for ''$50,000,000''.

2017—Subsec. (b). Pub. L. 115–91, § 2805(b), substituted ''under subsection (a)'' for ''under this section''.

Pub. L. 115–91, § 2801(c)(2), struck out ''in writing'' after ''shall notify'' and ''or, if earlier, the end of the seven-day period beginning on the date on which a copy of the notification is provided'' after ''received by such committees'' and substituted ''14-day period'' for ''21-day period''.

Subsec. (c). Pub. L. 115–91, § 2805(a), added subsec. (c).

2003—Subsec. (b). Pub. L. 108–136 inserted before period at end ''or, if earlier, the end of the seven-day period beginning on the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this title''.

1991—Subsec. (b). Pub. L. 102–190 struck out ''(1)'' after ''carried out only'' and '', or (2) after each such committee has approved the project, if the committees approve the project before the end of that period'' before period at end.

EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

§ 2854a. Conveyance of damaged or deteriorated military family housing; use of proceeds

(a) AUTHORITY TO CONVEY.—(1) The Secretary concerned may convey any family housing facility that, due to damage or deterioration, is in a condition that is uneconomical to repair. Any conveyance of a family housing facility under this section may include a conveyance of the real property associated with the facility conveyed.

(2) The authority of this section does not apply to family housing facilities located at military installations approved for closure under a base closure law or family housing facilities located at an installation outside the United States at which the Secretary of Defense terminates operations.

(3) The aggregate total value of the family housing facilities conveyed by the Department of Defense under the authority in this subsection in any fiscal year may not exceed $5,000,000.

(4) For purposes of this subsection, a family housing facility is in a condition that is uneco-

nomical to repair if the cost of the necessary repairs for the facility would exceed the amount equal to 70 percent of the cost of constructing a family housing facility to replace such facility.

(b) CONSIDERATION.—(1) As consideration for the conveyance of a family housing facility under subsection (a), the person to whom the facility is conveyed shall pay the United States an amount equal to the fair market value of the facility conveyed, including any real property conveyed along with the facility.

(2) The Secretary concerned shall determine the fair market value of any family housing facility and associated real property that is conveyed under subsection (a). Such determination shall be final.

(c) NOTICE AND WAIT REQUIREMENTS.—(1) The Secretary concerned may enter into an agreement to convey a family housing facility under this section only after the end of the 14-day period beginning on the date on which the Secretary submits, in an electronic medium pursuant to section 480 of this title, to the appropriate committees of Congress a notice containing a justification for the conveyance under the agreement.

(2) A notice under paragraph (1) shall include—

(A) an estimate of the consideration to be provided the United States under the agreement;

(B) an estimate of the cost of repairing the family housing facility to be conveyed; and

(C) an estimate of the cost of replacing the family housing facility to be conveyed.

(d) INAPPLICABILITY OF CERTAIN PROPERTY DISPOSAL LAWS.—The following provisions of law do not apply to the conveyance of a family housing facility under this section:

(1) Subtitle I of title 40 and division C (except sections 3302, 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41.

(2) Title V of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11411 et seq.).

(e) USE OF PROCEEDS.—(1) The proceeds of any conveyance of a family housing facility under this section shall be credited to the appropriate fund established under section 2883 of this title and shall be available—

(A) to construct family housing units to replace the family housing facility conveyed under this section, but only to the extent that the number of units constructed with such proceeds does not exceed the number of units of military family housing of the facility conveyed;

(B) to repair or restore existing military family housing; and

(C) to reimburse the Secretary concerned for the costs incurred by the Secretary in conveying the family housing facility.

(2) Notwithstanding section 2883(d) of this title, proceeds derived from a conveyance of a family housing facility under this section shall be available under paragraph (1) without any further appropriation.

(f) DESCRIPTION OF PROPERTY.—The exact acreage and legal description of any family housing facility conveyed under this section, including any real property associated with such facility, shall be determined by such means as the Secretary concerned considers satisfactory, including by survey in the case of real property.

(g) ADDITIONAL TERMS AND CONDITIONS.—The Secretary concerned may require such additional terms and conditions in connection with the conveyance of family housing facilities under this section as the Secretary considers appropriate to protect the interests of the United States.

(Added Pub. L. 104–106, div. B, title XXVIII, § 2818(a)(1), Feb. 10, 1996, 110 Stat. 553; amended Pub. L. 107–107, div. A, title X, § 1048(d)(1), Dec. 28, 2001, 115 Stat. 1227; Pub. L. 107–217, § 3(b)(21), Aug. 21, 2002, 116 Stat. 1297; Pub. L. 108–136, div. A, title X, § 1031(a)(46), Nov. 24, 2003, 117 Stat. 1602; Pub. L. 111–350, § 5(b)(49), Jan. 4, 2011, 124 Stat. 3846; Pub. L. 115–91, div. B, title XXVIII, § 2801(c)(3), Dec. 12, 2017, 131 Stat. 1843.)

REFERENCES IN TEXT

The McKinney-Vento Homeless Assistance Act, referred to in subsec. (d)(2), is Pub. L. 100–77, July 22, 1987, 101 Stat. 482. Title V of the Act is classified generally to subchapter V (§ 11411 et seq.) of chapter 119 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 11301 of Title 42 and Tables.

AMENDMENTS

2017—Subsec. (c). Pub. L. 115–91 added subsec. (c) and struck out former subsec. (c) which set out written notice and wait requirements.

2011—Subsec. (d)(1). Pub. L. 111–350 substituted "division C (except sections 3302, 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41" for "title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)".

2003—Subsec. (c)(2). Pub. L. 108–136 struck out "calendar" after "21" and inserted before period at end "or, if over sooner, a period of 14 days has elapsed after the date on which a copy of the justification is provided in an electronic medium pursuant to section 480 of this title".

2002—Subsec. (d)(1). Pub. L. 107–217 substituted "Subtitle I of title 40 and title III of the" for "The" and "(41 U.S.C. 251 et seq.)" for "(40 U.S.C. 471 et seq.)".

2001—Subsec. (d)(2). Pub. L. 107–107 substituted "McKinney-Vento Homeless Assistance Act" for "Stewart B. McKinney Homeless Assistance Act".

§ 2855. Law applicable to contracts for architectural and engineering services and construction design

(a) Contracts for architectural and engineering services and construction design in connection with a military construction project or a military family housing project shall be awarded in accordance with chapter 11 of title 40.

(b)(1) In the case of a contract referred to in subsection (a), if the Secretary concerned estimates that the initial award of the contract will be in an amount less than the threshold amount determined under paragraph (2), the contract shall be awarded in accordance with the set aside provisions of the Small Business Act (15 U.S.C. 631 et seq.).

(2) The threshold amount under paragraph (1) is $1,000,000.

(3) This subsection does not restrict the award of contracts to small business concerns under section 8(a) of the Small Business Act (15 U.S.C. 637(a)).

(Added Pub. L. 97–214, § 2(a), July 12, 1982, 96 Stat. 166; amended Pub. L. 98–407, title VIII,

§ 808(a), Aug. 28, 1984, 98 Stat. 1521; Pub. L. 107–217, § 3(b)(22), Aug. 21, 2002, 116 Stat. 1297; Pub. L. 108–136, div. A, title XIV, § 1427(a), Nov. 24, 2003, 117 Stat. 1670; Pub. L. 115–232, div. B, title XXVIII, § 2804(a), (b), Aug. 13, 2018, 132 Stat. 2261.)

REFERENCES IN TEXT

The Small Business Act, referred to in subsec. (b)(1), is Pub. L. 85–536, § 2(1 et seq.), July 18, 1958, 72 Stat. 384, which is classified generally to chapter 14A (§ 631 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 631 of Title 15 and Tables.

AMENDMENTS

2018—Subsec. (b)(1). Pub. L. 115–232, § 2804(a), substituted ''subsection (a),'' for ''subsection (a)—'', struck out subpar. (B) designation before ''if the Secretary'', and struck out subpar. (A) which read as follows: ''if the Secretary concerned estimates that the initial award of the contract will be in an amount greater than or equal to the threshold amount determined under paragraph (2), the contract may not be set aside exclusively for award to small business concerns; and''.

Subsec. (b)(2). Pub. L. 115–232, § 2804(b), substituted ''threshold'' for ''initial threshold'' and ''$1,000,000'' for ''$300,000'' and struck out last sentence which read as follows: ''The Secretary of Defense may revise that amount in order to ensure that small business concerns receive a reasonable share of contracts referred to in subsection (a).''

2003—Subsec. (b)(2). Pub. L. 108–136 substituted ''$300,000'' for ''$85,000''.

2002—Subsec. (a). Pub. L. 107–217 substituted ''chapter 11 of title 40'' for ''title IX of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 541 et seq.)''.

1984—Pub. L. 98–407 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 2018 AMENDMENT

Pub. L. 115–232, div. B, title XXVIII, § 2804(c), Aug. 13, 2018, 132 Stat. 2262, provided that: ''The amendments made by this section [amending this section] shall apply with respect to fiscal year 2019 and each succeeding fiscal year.''

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–407, title VIII, § 808(b), Aug. 28, 1984, 98 Stat. 1522, provided that: ''Subsection (b) of section 2855 of title 10, United States Code, as added by subsection (a), shall apply with respect to contracts awarded after September 30, 1984, except that the authority of the Secretary of Defense under paragraph (2) of that subsection shall apply only with respect to contracts awarded after September 30, 1985.''

EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

§ 2856. Military unaccompanied housing: local comparability of floor areas

In the construction, acquisition, and improvement of military unaccompanied housing, the Secretary concerned shall ensure that the floor areas of such housing in a particular locality (as designated by the Secretary concerned for purposes of this section) do not exceed the floor areas of similar housing in the private sector in that locality.

(Added Pub. L. 97–214, § 2(a), July 12, 1982, 96 Stat. 166; amended Pub. L. 101–510, div. A, title XIII, § 1301(19), Nov. 5, 1990, 104 Stat. 1668; Pub. L. 109–364, div. B, title XXVIII, § 2807(a)(1), Oct. 17, 2006, 120 Stat. 2468.)

AMENDMENTS

2006—Pub. L. 109–364 amended section catchline and text generally. Prior to amendment, text read as follows: ''The Secretary of Defense shall prescribe regulations establishing the maximum allowable net square feet per occupant for new permanent barracks construction. Such regulations shall be uniform for the armed forces under the jurisdiction of the Secretary of a military department.''

1990—Pub. L. 101–510 struck out ''(a)'' before ''The Secretary of Defense'' and struck out subsec. (b) which read as follows: ''Before taking effect, any regulations under this section, and any modifications to such regulations, shall be submitted to the appropriate committees of Congress. Such regulations (including any modifications to such regulations) may not then take effect until 21 days after being received by such committees.''

EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

[§ 2857. Renumbered § 2915]

§ 2858. Limitation on the use of funds for expediting a construction project

Funds appropriated for military construction (including military family housing) may not be expended for additional costs involved in expediting a construction project unless the Secretary concerned (1) certifies that expenditures for such costs are necessary to protect the national interest, and (2) establishes a reasonable completion date for the project. In establishing such a completion date, the Secretary shall take into consideration the urgency of the requirement for completion of the project, the type and location of the project, the climatic and seasonal conditions affecting the construction involved, and the application of economical construction practices.

(Added Pub. L. 97–214, § 2(a), July 12, 1982, 96 Stat. 167.)

EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

§ 2859. Construction requirements related to antiterrorism and force protection or urban-training operations

(a) ANTITERRORISM AND FORCE PROTECTION GUIDANCE AND CRITERIA.—The Secretary of Defense shall develop common guidance and criteria to be used by each Secretary concerned—

(1) to assess the vulnerability of military installations located inside and outside of the United States to terrorist attack;

(2) to develop construction standards that, taking into consideration other security or force-protection measures available for the facility or military installation concerned, are designed to reduce the vulnerability of structures to terrorist attack and improve the security of the occupants of such structures;

(3) to prepare and carry out military construction projects, such as gate and fenceline

construction, to improve the physical security of military installations; and

(4) to assist in prioritizing such projects within the military construction budget of each of the armed forces.

(b) VULNERABILITY ASSESSMENTS.—The Secretary of Defense shall require vulnerability assessments of military installations to be conducted, at regular intervals, using the criteria developed under subsection (a).

(c) CERTIFICATION REQUIRED FOR MILITARY CONSTRUCTION PROJECTS DESIGNED TO PROVIDE TRAINING IN URBAN OPERATIONS.—(1) Except as provided in paragraph (3), the Secretary concerned may not carry out a military construction project to construct a facility designed to provide training in urban operations for members of the armed forces or personnel of the Department of Defense or other Federal agencies until—

(A) the Secretary of Defense approves a strategy for training and facility construction for operations in urban terrain; and

(B) the Under Secretary of Defense for Personnel and Readiness evaluates the project and certifies to the appropriate committees of Congress that the project—

(i) is consistent with the strategy; and

(ii) incorporates the appropriate capabilities for joint and interagency use in accordance with the strategy.

(2) This subsection shall not apply with respect to a military construction project carried out under the authority of section 2803, 2804, or 2808 of this title or section 2808 of the Military Construction Authorization Act for Fiscal Year 2004 (division B of Public Law 108–136; 117 Stat. 1723).

(Added Pub. L. 108–375, div. B, title XXVIII, §2804(a)(1), Oct. 28, 2004, 118 Stat. 2121; amended Pub. L. 109–364, div. B, title XXVIII, §2808(a), (b)(1), Oct. 17, 2006, 120 Stat. 2469; Pub. L. 112–239, div. A, title X, §1081(2), Jan. 2, 2013, 126 Stat. 1960; Pub. L. 113–66, div. B, title XXVIII, §2803(a), Dec. 26, 2013, 127 Stat. 1006; Pub. L. 115–91, div. A, title X, §1051(a)(22), Dec. 12, 2017, 131 Stat. 1562.)

REFERENCES IN TEXT

Section 2808 of the Military Construction Authorization Act for Fiscal Year 2004, referred to in subsec. (c)(2), is section 2808 of title XXVIII of div. B of Pub. L. 108–136, Nov. 24, 2003, 117 Stat. 1723, which is not classified to the Code except for section 2808(e), which is set out as a note under section 2805 of this title.

PRIOR PROVISIONS

A prior section 2859, added Pub. L. 97–214, §2(a), July 12, 1982, 96 Stat. 167; amended Pub. L. 97–295, §1(36), Oct. 12, 1982, 96 Stat. 1296, provided for transmission of annual military construction authorization request, prior to repeal by Pub. L. 108–136, div. A, title X, §1044(b)(1), Nov. 24, 2003, 117 Stat. 1612.

AMENDMENTS

2017—Subsecs. (c), (d). Pub. L. 115–91 redesignated subsec. (d) as (c) and struck out former subsec. (c) which required annual reports describing vulnerability assessments and military construction requirements.

2013—Subsec. (a)(2). Pub. L. 113–66 substituted "develop construction standards that, taking into consideration other security or force-protection measures available for the facility or military installation concerned, are designed" for "develop construction standards designed".

Subsec. (d)(2), (3). Pub. L. 112–239 redesignated par. (3) as (2) and struck out former par. (2) which read as follows: "The Under Secretary of Defense for Personnel and Readiness shall conduct the evaluation required by paragraph (1)(B) in consultation with the Commander of the United States Joint Forces Command."

2006—Pub. L. 109–364, §2808(b)(1), inserted "or urban-training operations" after "force protection" in section catchline.

Subsec. (d). Pub. L. 109–364, §2808(a), added subsec. (d).

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–364, div. B, title XXVIII, §2808(c), Oct. 17, 2006, 120 Stat. 2470, provided that: "Subsection (d) [now (c)] of section 2859 of title 10, United States Code, as added by subsection (a), shall apply with respect to military construction projects described in such subsection (d) [(c)] for which funds are first provided for fiscal year 2007 or thereafter."

JOINT STRATEGY FOR AIR BASE DEFENSE AGAINST MISSILE THREATS

Pub. L. 116–283, div. A, title I, §156, Jan. 1, 2021, 134 Stat. 3447, provided that:

"(a) STRATEGY REQUIRED.—The Chief of Staff of the Air Force and the Chief of Staff of the Army shall jointly develop and carry out a strategy to address the defense of air bases and prepositioned sites outside the continental United States against current and emerging missile threats, as validated by the Defense Intelligence Agency.

"(b) CERTIFICATION AND STRATEGY.—Not later than June 1, 2021, the Chief of Staff of the Air Force and the Chief of Staff of the Army shall jointly submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] the following:

"(1) A certification that the defense of air bases and prepositioned sites outside the continental United States against threats described in subsection (a) is being addressed jointly.

"(2) The strategy developed pursuant to subsection (a)."

SPECIAL REQUIREMENT FOR 2006 REPORT

Pub. L. 108–375, div. B, title XXVIII, §2804(b), Oct. 28, 2004, 118 Stat. 2122, required the 2006 report under former subsec. (c) of this section to include a certification that since Sept. 11, 2001, terrorist attack vulnerability assessments had been undertaken for all major military installations.

§ 2860. Availability of appropriations

Funds appropriated to a military department or to the Secretary of Defense for a fiscal year for military construction or military family housing purposes may remain available for obligation beyond such fiscal year to the extent provided in appropriation Acts.

(Added Pub. L. 97–214, §2(a), July 12, 1982, 96 Stat. 167; amended Pub. L. 99–167, title VIII, §812(a), Dec. 3, 1985, 99 Stat. 991; Pub. L. 99–173, §121(b), Dec. 10, 1985, 99 Stat. 1029; Pub. L. 99–661, div. A, title XIII, §1343(a)(21)(A), Nov. 14, 1986, 100 Stat. 3994.)

AMENDMENTS

1986—Pub. L. 99–661 substituted "to the Secretary of Defense" for "defense agency", inserted "for obligation" after "remains available", and struck out "the" before "appropriation Acts".

1985—Pub. L. 99–173 substituted "Availability of appropriations" for "Availability of appropriations for five years" as section catchline, and amended text gen-

erally. Prior to amendment, text read as follows: ''Subject to the provisions of appropriation Acts, any funds appropriated to a military department or defense agency for the construction of military projects may be obligated for a military construction project or contract, or for any portion of such a project or contract, at any time before the end of the fourth fiscal year after the fiscal year for which funds for such project were appropriated if the funds obligated for such project (1) are obligated from funds available for military construction projects, and (2) do not exceed the amount appropriated for such project, plus any amount by which the cost of such project is increased pursuant to law.''

Pub. L. 99–167 struck out subsection designation ''(a)'' and ''and except as otherwise provided under subsection (b)'' after ''provisions of appropriation Acts'', and struck out subsec. (b) which provided: ''Should a requirement develop to obligate funds for a military construction project after the end of the fourth fiscal year after the fiscal year for which such funds were appropriated, such obligation may be made after the end of the 21-day period beginning on the date on which the appropriate committees of Congress receive notification of the need for such obligation and the reasons therefor.''

EFFECTIVE DATE OF 1985 AMENDMENTS

Pub. L. 99–173, § 121(c), Dec. 10, 1985, 99 Stat. 1029, provided that: ''The amendment made by subsection (b) [amending this section] shall apply to funds appropriated after the date of the enactment of Public Law 99–103 [Sept. 30, 1985].''

Pub. L. 99–167, title VIII, § 812(b), Dec. 3, 1985, 99 Stat. 991, provided that: ''The amendments made by subsection (a) [amending this section] shall apply to funds appropriated after September 30, 1985.''

EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

AVAILABILITY OF APPROPRIATIONS FOR FIVE YEARS

Pub. L. 109–114, title I, § 117, Nov. 30, 2005, 119 Stat. 2378, which provided that any funds made available to a military department or defense agency for the construction of military projects could be obligated for a military construction project or contract, or for any portion of such a project or contract, at any time before the end of the fourth fiscal year after the fiscal year for which funds for such project were made available, if the funds obligated for such project: (1) were obligated from funds available for military construction projects; and (2) did not exceed the amount appropriated for such project, plus any amount by which the cost of such project is increased pursuant to law, was from the Military Construction, Military Quality of Life and Veterans Affairs Appropriations Act, 2006 and was repeated in provisions of subsequent appropriations acts which are not set out in the Code. Similar provisions were also contained in the following prior appropriations acts:

Pub. L. 108–324, div. A, § 117, Oct. 13, 2004, 118 Stat. 1227.

Pub. L. 108–132, § 117, Nov. 22, 2003, 117 Stat. 1380.

Pub. L. 107–249, § 117, Oct. 23, 2002, 116 Stat. 1583.

Pub. L. 107–64, § 117, Nov. 5, 2001, 115 Stat. 479.

Pub. L. 106–246, div. A, § 117, July 13, 2000, 114 Stat. 516.

Pub. L. 106–52, § 117, Aug. 17, 1999, 113 Stat. 264.

Pub. L. 105–237, § 117, Sept. 20, 1998, 112 Stat. 1558.

Pub. L. 105–45, § 117, Sept. 30, 1997, 111 Stat. 1147.

Pub. L. 104–196, § 117, Sept. 16, 1996, 110 Stat. 2391.

Pub. L. 104–32, § 117, Oct. 3, 1995, 109 Stat. 289.

Pub. L. 103–307, § 118, Aug. 23, 1994, 108 Stat. 1664.

Pub. L. 103–110, § 118, Oct. 21, 1993, 107 Stat. 1043.

Pub. L. 102–380, § 119, Oct. 5, 1992, 106 Stat. 1371.

Pub. L. 102–136, § 119, Oct. 25, 1991, 105 Stat. 643.

Pub. L. 101–519, § 119, Nov. 5, 1990, 104 Stat. 2246.

Pub. L. 101–148, § 121, Nov. 10, 1989, 103 Stat. 925.

Pub. L. 100–447, § 124, Sept. 27, 1988, 102 Stat. 1835.

TRANSFER OF FUNDS FOR FOREIGN CURRENCY FLUCTUATIONS

Pub. L. 108–132, § 118, Nov. 22, 2003, 117 Stat. 1380, which provided that during the 5-year period after appropriations available to the Department of Defense for military construction and family housing operation and maintenance and construction have expired for obligation, upon a determination that such appropriations would not be necessary for the liquidation of obligations or for making authorized adjustments to such appropriations for obligations incurred during the period of availability of such appropriations, unobligated balances of such appropriations could be transferred into the appropriation ''Foreign Currency Fluctuations, Construction, Defense'' to be merged with and to be available for the same time period and for the same purposes as the appropriation to which transferred, was from the Military Construction Appropriations Act, 2005 and was repeated in provisions of subsequent appropriations acts which are not set out in the Code. Similar provisions were also contained in the following prior appropriations acts:

Pub. L. 107–249, § 118, Oct. 23, 2002, 116 Stat. 1584.

Pub. L. 107–64, § 118, Nov. 5, 2001, 115 Stat. 480.

Pub. L. 106–246, div. A, § 118, July 13, 2000, 114 Stat. 516.

Pub. L. 106–52, § 118, Aug. 17, 1999, 113 Stat. 264.

Pub. L. 105–237, § 118, Sept. 20, 1998, 112 Stat. 1559.

Pub. L. 105–45, § 118, Sept. 30, 1997, 111 Stat. 1147.

Pub. L. 104–196, § 118, Sept. 16, 1996, 110 Stat. 2392.

Pub. L. 104–32, § 118, Oct. 3, 1995, 109 Stat. 289.

Pub. L. 103–307, § 119, Aug. 23, 1994, 108 Stat. 1665.

Pub. L. 103–110, § 120, Oct. 21, 1993, 107 Stat. 1043.

Pub. L. 102–380, § 121, Oct. 5, 1992, 106 Stat. 1372.

Pub. L. 102–136, § 122, Oct. 25, 1991, 105 Stat. 643.

Pub. L. 99–500, § 101(k) [title I, § 121], Oct. 18, 1986, 100 Stat. 1783–287, 1783–293, and Pub. L. 99–591, § 101(k) [title I, § 121], Oct. 30, 1986, 100 Stat. 3341–287, 3341–293, as amended by Pub. L. 102–136, § 122, Oct. 25, 1991, 105 Stat. 643, provided that: ''For Transfer by the Secretary of Defense to and from appropriations and funds not merged pursuant to subsection 1552(a)(1) of title 31 of the United States Code and available for obligation or expenditure during fiscal year 1987 or thereafter, for military construction or expenses of family housing for the military departments and Defense agencies, in order to maintain the budgeted level of operations for such appropriations and thereby eliminate substantial gains and losses to such appropriations caused by fluctuations in foreign currency exchange rates that vary substantially from those used in preparing budget submissions, an appropriation, to remain available until expended: *Provided*, That funds transferred from this appropriation shall be merged with and be available for the same purpose, and for the same time period, as the appropriation or fund to which transferred, and funds transferred to this appropriation shall be merged with, and available for the purpose of this appropriation until expended: *Provided further*, That transfers may be made from time to time from this appropriation to the extent the Secretary of Defense determines it may be necessary to do so to reflect downward fluctuations in the currency exchange rates from those used in preparing the budget submissions for such appropriations, but transfers shall be made from such appropriations to this appropriation to reflect upward fluctuations in currency exchange rates to prevent substantial net gains in such appropriations: *Provided further*, That authorizations or limitations now or hereafter contained within appropriations or other provisions of law limiting the amounts that may be obligated or expended for military construction and family housing expenses are hereby increased to the extent necessary to reflect downward fluctuations in foreign currency exchange rates from those used in preparing the applicable budget submission: *Provided further*, That for the purposes of

the appropriation 'Foreign Currency Fluctuations, Construction, Defense' the foreign currency rates used in preparing budget submissions shall be the foreign currency exchange rates as adjusted or modified, as reflected in applicable Committee reports on the Acts making appropriations for military construction for the Department of Defense: *Provided further*, That the Secretary of Defense shall provide an annual report to the Congress on all transfers made to or made from this appropriation: *Provided further*, That contracts or other obligations entered into payable in foreign currencies may be recorded as obligations based on the currency exchange rates used in preparing budget submissions and adjustments to reflect fluctuations in such rates may be recorded as disbursements are made: *Provided further*, That, at the discretion of the Secretary of Defense, any savings generated in the military construction and family housing programs may be transferred to this appropriation.''

§ 2861. Military construction projects in connection with industrial facility investment program

(a) AUTHORITY.—The Secretary of Defense may carry out a military construction project, not previously authorized, for the purpose of carrying out activities under section 2474(a)(2) of this title, using funds appropriated or otherwise made available for that purpose in military construction accounts.

(b) CREDITING OF FUNDS TO CAPITAL BUDGET.—Funds appropriated or otherwise made available in a fiscal year for the purpose of carrying out a military construction project with respect to a covered depot (as defined in subsection (e) of section 2476 of this title) may be credited to the amount required by subsection (a) of such section to be invested in the capital budgets of the covered depots in that fiscal year.

(c) NOTICE AND WAIT REQUIREMENT.—When a decision is made to carry out a project under subsection (a), the Secretary of Defense shall notify the appropriate committees of Congress of that decision and the savings estimated to be realized from the project. The project may then be carried out only after the end of the 14-day period beginning on the date the notification is received by such committees in an electronic medium pursuant to section 480 of this title.

(Added Pub. L. 109–364, div. B, title XXVIII, § 2809(a), Oct. 17, 2006, 120 Stat. 2470; amended Pub. L. 115–91, div. A, title X, § 1051(a)(23), div. B, title XXVIII, § 2801(c)(4), Dec. 12, 2017, 131 Stat. 1562, 1844.)

PRIOR PROVISIONS

A prior section 2861, added Pub. L. 97–214, § 2(a), July 12, 1982, 96 Stat. 167; amended Pub. L. 100–26, § 7(f)(1), (j)(9), Apr. 21, 1987, 101 Stat. 281, 283; Pub. L. 104–106, div. B, title XXVIII, § 2811(b), Feb. 10, 1996, 110 Stat. 552; Pub. L. 104–201, div. B, title XXVIII, § 2802(d)(1), Sept. 23, 1996, 110 Stat. 2787, required the Secretary of Defense to submit an annual report to the appropriate committees of Congress with respect to military construction activities and military family housing activities, prior to repeal by Pub. L. 107–107, div. B, title XXVIII, § 2803(a), Dec. 28, 2001, 115 Stat. 1305.

AMENDMENTS

2017—Subsec. (c). Pub. L. 115–91, § 2801(c)(4), struck out ''in writing'' after ''shall notify'' and ''or, if earlier, the end of the 14-day period beginning on the date on which a copy of the notification is provided'' after ''received by such committees'' and substituted ''14-day period'' for ''21-day period''.

Subsec. (d). Pub. L. 115–91, § 1051(a)(23), struck out subsec. (d). Text read as follows: ''Not later than December 31 of each year, the Secretary shall submit to Congress a report describing actions taken under this section and the savings realized from such actions during the fiscal year ending in the year in which the report is submitted.''

§ 2862. Turn-key selection procedures

(a) AUTHORITY TO USE FOR CERTAIN PURPOSES.—The Secretary concerned may use one-step turn-key selection procedures for the purpose of entering into a contract for any of the following purposes:

(1) The construction of an authorized military construction project.

(2) A repair project (as defined in section 2811(e) of this title) with an approved cost equal to or less than $4,000,000.

(3) The construction of a facility as part of an authorized security assistance activity.

(b) DEFINITIONS.—In this section:

(1) The term ''one-step turn-key selection procedures'' means procedures used for the selection of a contractor on the basis of price and other evaluation criteria to perform, in accordance with the provisions of a firm fixed-price contract, both the design and construction of a facility using performance specifications supplied by the Secretary concerned.

(2) The term ''security assistance activity'' means—

(A) humanitarian and civic assistance authorized by sections 401 and 2561 of this title;

(B) foreign disaster assistance authorized by section 404 of this title;

(C) foreign military construction sales authorized by section 29 of the Arms Export Control Act (22 U.S.C. 2769);

(D) foreign assistance authorized under sections 607 and 632 of the Foreign Assistance Act of 1961 (22 U.S.C. 2357, 2392); and

(E) other international security assistance specifically authorized by law.

(Added Pub. L. 99–167, title VIII, § 807(a), Dec. 3, 1985, 99 Stat. 988; amended Pub. L. 100–26, § 7(k)(3), Apr. 21, 1987, 101 Stat. 284; Pub. L. 100–180, div. B, subdiv. 3, title I, § 2301, Dec. 4, 1987, 101 Stat. 1214; Pub. L. 101–189, div. B, title XXVIII, § 2806, Nov. 29, 1989, 103 Stat. 1647; Pub. L. 102–190, div. B, title XXVIII, § 2802, Dec. 5, 1991, 105 Stat. 1537; Pub. L. 113–291, div. B, title XXVIII, § 2804, Dec. 19, 2014, 128 Stat. 3697.)

AMENDMENTS

2014—Pub. L. 113–291 amended section generally. Prior to amendment, text read as follows:

''(a) AUTHORITY TO USE.—The Secretary concerned may use one-step turn-key selection procedures for the purpose of entering into contracts for the construction of authorized military construction projects.

''(b) DEFINITION.—In this section, the term 'one-step turn-key selection procedures' means procedures used for the selection of a contractor on the basis of price and other evaluation criteria to perform, in accordance with the provisions of a firm fixed-price contract, both the design and construction of a facility using performance specifications supplied by the Secretary concerned.''

1991—Pub. L. 102–190 redesignated par. (1) of subsec. (a) as entire subsec. (a) and inserted heading, redesignated par. (2) of subsec. (a) as (b), inserted heading, and

struck out former subsecs. (b) and (c) which read as follows:

"(b) The Secretary of Defense, with respect to any Defense Agency, or the Secretary of a military department may not, during any fiscal year, enter into more than three contracts for military construction projects using procedures authorized by this section.

"(c) The authority under this section shall expire on October 1, 1991."

1989—Subsec. (a)(1). Pub. L. 101–189, § 2806(1), struck out at end "Such procedures may be used by the Secretary of a military department only with the approval of the Secretary of Defense."

Subsec. (c). Pub. L. 101–189, § 2806(2), substituted "1991" for "1990".

1987—Subsec. (a)(1). Pub. L. 100–180, § 2301(1), substituted "The Secretary concerned" for "The Secretaries of the military departments, with the approval of the Secretary of Defense," and inserted provision at end that such procedures may be used by the Secretary of a military department only with the approval of the Secretary of Defense.

Subsec. (a)(2). Pub. L. 100–26 inserted "the term" after "In this section,".

Subsec. (b). Pub. L. 100–180, § 2301(2), inserted "Secretary of Defense, with respect to any Defense Agency, or the" after "The".

EFFECTIVE DATE

Pub. L. 99–167, title VIII, § 807(c), Dec. 3, 1985, 99 Stat. 989, provided that: "The amendments made by this section [enacting this section] shall take effect on October 1, 1986."

§ 2863. Payment of contractor claims

Notwithstanding any other provision of law, the Secretary concerned may pay meritorious contractor claims that arise under military construction contracts or family housing contracts. The Secretary of Defense, with respect to a Defense Agency, or the Secretary of a military department may use for such purpose any unobligated funds appropriated to such department and available for military construction or family housing construction, as the case may be.

(Added Pub. L. 100–180, div. B, subdiv. 3, title I, § 2303(a), Dec. 4, 1987, 101 Stat. 1215.)

§ 2864. Master plans for major military installations

(a) PLANS REQUIRED.—(1) At a time interval prescribed by the Secretary concerned (but not less frequently than once every 10 years), the commander of each major military installation under the jurisdiction of the Secretary shall ensure that an installation master plan is developed to address environmental planning, sustainable design and development, sustainable range planning, real property master planning, military installation resilience, and transportation planning.

(2) To address the requirements under paragraph (1), each installation master plan shall include consideration of—

(A) planning for compact and infill development;

(B) horizontal and vertical mixed-use development;

(C) the full lifecycle costs of real property planning decisions;

(D) capacity planning through the establishment of growth boundaries around cantonment areas to focus development towards the core and preserve range and training space; and

(E) energy and climate resiliency efforts.

(b) TRANSPORTATION COMPONENT.—(1) The transportation component of the master plan for a major military installation shall be developed and updated in consultation with the metropolitan planning organization designated for the metropolitan planning area in which the military installation is located.

(2) To address the requirements under subsection (a) and paragraph (1), each installation master plan shall include consideration of ways to diversify and connect transit systems.

(c) MILITARY INSTALLATION RESILIENCE COMPONENT.—To address military installation resilience under subsection (a)(1), each installation master plan shall discuss the following:

(1) Risks and threats to military installation resilience that exist at the time of the development of the plan and that are projected for the future, including from extreme weather events, mean sea level fluctuation, wildfires, flooding, and other changes in environmental conditions.

(2) Assets or infrastructure located on the military installation vulnerable to the risks and threats described in paragraph (1), with a special emphasis on assets or infrastructure critical to the mission of the installation and the mission of members of the armed forces.

(3) Lessons learned from the impacts of extreme weather events, including changes made to the military installation to address such impacts, since the prior master plan developed under this section.

(4) Ongoing or planned infrastructure projects or other measures, as of the time of the development of the plan, to mitigate the impacts of the risks and threats described in paragraph (1).

(5) Community infrastructure and resources located outside the installation (such as medical facilities, transportation systems, and energy infrastructure) that are—

(A) necessary to maintain mission capability or that impact the resilience of the military installation; and

(B) vulnerable to the risks and threats described in paragraph (1).

(6) Agreements in effect or planned, as of the time of the development of the plan, with public or private entities for the purpose of maintaining or enhancing military installation resilience or resilience of the community infrastructure and resources described in paragraph (5).

(7) Projections from recognized governmental and scientific entities such as the Census Bureau, the National Academies of Sciences, the United States Geological Survey, and the United States Global Change Research Office (or any similar successor entities) with respect to future risks and threats (including the risks and threats described in paragraph (1)) to the resilience of any project considered in the installation master plan during the 50-year lifespan of the installation.

(d) REPORT.—Not later than March 1 of each year, the Secretary of Defense shall submit to

the congressional defense committees a report listing all master plans completed pursuant to this section in the prior calendar year.

(e) SAVINGS CLAUSE.—Nothing in this section shall supersede the requirements of section 2859(a) of this title.

(f) DEFINITIONS.—In this section:

(1) The term ''major military installation'' has the meaning given to the term ''large site'' in the most recent version of the Department of Defense Base Structure Report issued before the time interval prescribed for development of installation master plans arises under subsection (a).

(2) The terms ''metropolitan planning area'' and ''metropolitan planning organization'' have the meanings given those terms in section 134(b) of title 23 and section 5303(b) of title 49.

(3) The term ''energy and climate resiliency'' means anticipation, preparation for, and adaptation to utility disruptions and changing environmental conditions and the ability to withstand, respond to, and recover rapidly from utility disruptions while ensuring the sustainment of mission-critical operations.

(Added Pub. L. 112–239, div. B, title XXVIII, § 2802(a), Jan. 2, 2013, 126 Stat. 2147; amended Pub. L. 113–66, div. B, title XXVIII, § 2811, Dec. 26, 2013, 127 Stat. 1013; Pub. L. 115–232, div. B, title XXVIII, § 2805(d), Aug. 13, 2018, 132 Stat. 2263; Pub. L. 116–92, div. B, title XXVIII, § 2801(a), Dec. 20, 2019, 133 Stat. 1879.)

PRIOR PROVISIONS

A prior section 2864, added Pub. L. 101–189, div. B, title XXVIII, § 2807(a), Nov. 29, 1989, 103 Stat. 1648; amended Pub. L. 104–106, div. A, title X, § 1062(g), Feb. 10, 1996, 110 Stat. 444, related to military construction contracts on Guam, prior to repeal by Pub. L. 109–364, div. B, title XXVIII, § 2810(a), Oct. 17, 2006, 120 Stat. 2470.

AMENDMENTS

2019—Subsec. (a)(1). Pub. L. 116–92, § 2801(a)(1)(A), inserted ''military installation resilience,'' after ''master planning,''.

Subsec. (c). Pub. L. 116–92, § 2801(a)(1)(C), added subsec. (c). Former subsec. (c) redesignated (e).

Subsec. (d). Pub. L. 116–92, § 2801(a)(2), added subsec. (d). Former subsec. (d) redesignated (f).

Subsecs. (e), (f). Pub. L. 116–92, § 2801(a)(1)(B), redesignated subsecs. (c) and (d) as (e) and (f), respectively.

2018—Subsec. (a)(2)(E). Pub. L. 115–232, § 2805(d)(1), added subpar. (E).

Subsec. (d)(3). Pub. L. 115–232, § 2805(d)(2), added par. (3).

2013—Subsec. (a). Pub. L. 113–66, § 2811(1), designated existing provisions as par. (1) and added par. (2).

Subsec. (b). Pub. L. 113–66, § 2811(2), designated existing provisions as par. (1) and added par. (2).

Subsecs. (c), (d). Pub. L. 113–66, § 2811(3), (4), added subsec. (c) and redesignated former subsec. (c) as (d).

REMOVAL OF BARRIERS THAT DISCOURAGE INVESTMENTS TO INCREASE MILITARY INSTALLATION RESILIENCE

Pub. L. 116–92, div. A, title III, § 327, Dec. 20, 2019, 133 Stat. 1311, provided that:

''(a) IN GENERAL.—The Secretary of Defense shall—

''(1) identify and seek to remove barriers that discourage investments to increase military installation resilience;

''(2) reform policies and programs that unintentionally increased the vulnerability of systems to related extreme weather events; and

''(3) develop, and update at least once every four years, an adaptation plan to assess how climate impacts affected the ability of the Department of Defense to accomplish its mission, and the short-and long- term actions the Department can take to ensure military installation resilience.

''(b) MILITARY INSTALLATION RESILIENCE.—In this section, the term 'military installation resilience' has the meaning given such term in section 101(e)(8) of title 10, United States Code.''

INCORPORATION OF CHANGING ENVIRONMENTAL CONDITION PROJECTIONS IN MILITARY CONSTRUCTION DESIGNS AND MODIFICATIONS

Pub. L. 115–232, div. B, title XXVIII, § 2805(c), Aug. 13, 2018, 132 Stat. 2262, as amended by Pub. L. 116–92, div. A, title XVII, § 1731(b)(4), div. B, title XXVII, § 2804(c), Dec. 20, 2019, 133 Stat. 1816, 1882, provided that:

''(1) FISCAL YEAR 2019.—Not later than 30 days after the date of the enactment of this Act [Aug. 13, 2018], the Secretary of Defense shall amend section 3–5.6.2.3 of Unified Facilities Criteria (UFC) 1-200-01 and UFC 1-200-02 (or any similar successor regulations) to provide that in order to anticipate changing environmental conditions during the design life of existing or planned new facilities and infrastructure, projections from reliable and authorized sources such as the Census Bureau (for population projections), the National Academies of Sciences (for land use change projections and climate projections), the U.S. Geological Survey (for land use change projections), and the U.S. Global Change Research Office and National Climate Assessment (for climate projections) shall be considered and incorporated into military construction designs and modifications.

''(2) FISCAL YEAR 2020.—

''(A) AMENDMENTS REQUIRED.—Not later than 30 days after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2020 [Dec. 20, 2019], the Secretary of Defense shall amend the Unified Facilities Criteria as follows:

''(i) To require that installations of the Department of Defense assess the risks from extreme weather and related effects, and develop plans to address such risks.

''(ii) To require in the development of such Criteria the use of—

''(I) land use change projections through the use of land use and land cover modeling by the United States Geological Survey; and

''(II) weather projections—

''(aa) from the United States Global Change Research Program, including in the National Climate Assessment; or

''(bb) from the National Oceanic and Atmospheric Administration, if such projections are more up-to-date than projections under item (aa).

''(iii) To require the Secretary of Defense to provide guidance to project designers and master planners on how to use weather projections.

''(iv) To require the use throughout the Department of the Naval Facilities Engineering Command Climate Change Installation Adaptation and Resilience planning handbook, as amended (or similar publication of the Army Corps of Engineers).

''(B) NOTIFICATION.—If the Secretary of Defense determines that a projection other than a projection described in subparagraph (A)(ii) is more appropriate for use in amending the Unified Facilities Criteria, the Secretary shall notify the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] of such determination, which shall include the rationale underlying such determination and a description of such other projection.''

[Section 1731(b)(4) of Pub. L. 116–92, which directed amendment of section 2805(c) of Pub. L. 115–232, set out above, by substituting ''Unified Facilities Criteria'' for ''United Facilities Criteria'', was not executed in light of the amendment by section 2804(c)(2) of Pub. L. 116–92,

which substituted ''Unified Facilities Criteria (UFC) 1-200-01 and UFC 1-200-02'' for ''United Facilities Criteria (UFC) 2–100–01 and UFC 2–100–02''.]

§ 2865. Work in Process Curve charts and outlay tables for military construction projects

Along with the budget for each fiscal year submitted by the President pursuant to section 1105(a) of title 31, United States Code, the Secretary of Defense and the Secretaries of the military departments shall include for any military construction project over $90,000,000, as an addendum to be included within the same document as the 1391s for the Military Construction Program budget documentation, a Project Spending Plan that includes—

(1) a Work in Process Curve chart to identify funding, obligations, and outlay figures; and

(2) a monthly outlay table for funding, obligations, and outlay figures.

(Added Pub. L. 115–232, div. B, title XXVIII, § 2806(a)(1), Aug. 13, 2018, 132 Stat. 2264.)

PRIOR PROVISIONS

A prior section 2865, added Pub. L. 101–510, div. B, title XXVIII, § 2851(a), Nov. 5, 1990, 104 Stat. 1803; amended Pub. L. 102–484, div. B, title XXVIII, § 2801, Oct. 23, 1992, 106 Stat. 2604; Pub. L. 103–160, div. B, title XXVIII, § 2804, Nov. 30, 1993, 107 Stat. 1885; Pub. L. 103–337, div. A, title X, § 1070(a)(14), Oct. 5, 1994, 108 Stat. 2856; Pub. L. 104–106, div. A, title XV, § 1502(a)(27), div. B, title XXVIII, § 2819, Feb. 10, 1996, 110 Stat. 506, 555; Pub. L. 105–85, div. A, title III, § 371(d)(2), div. B, title XXVIII, § 2804(a), Nov. 18, 1997, 111 Stat. 1706, 1990; Pub. L. 107–314, div. B, title XXVIII, § 2805, Dec. 2, 2002, 116 Stat. 2705; Pub. L. 108–136, div. A, title X, § 1031(a)(47), div. B, title XXVIII, § 2812(a), Nov. 24, 2003, 117 Stat. 1602, 1725, related to energy savings at military installations, prior to repeal by Pub. L. 109–364, div. B, title XXVIII, § 2851(a)(2), Oct. 17, 2006, 120 Stat. 2494.

DEPARTMENT OF DEFENSE GUIDANCE

Pub. L. 115–232, div. B, title XXVIII, § 2806(b), Aug. 13, 2018, 132 Stat. 2264, provided that: ''The Secretary of Defense shall, in coordination with the Under Secretary of Defense (Comptroller), update Department of Defense Financial Management Regulation 7000.14–R, and any other appropriate instructions and guidance, to ensure that the Department of Defense takes appropriate actions to comply with section 2865 of title 10, United States Code, as added by this section.''

§ 2866. Water conservation at military installations

(a) WATER CONSERVATION ACTIVITIES.—(1) The Secretary of Defense shall permit and encourage each military department, Defense Agency, and other instrumentality of the Department of Defense to participate in programs conducted by a utility for the management of water demand or for water conservation.

(2) The Secretary of Defense may authorize a military installation to accept a financial incentive (including an agreement to reduce the amount of a future water bill), goods, or services generally available from a utility, for the purpose of adopting technologies and practices that—

(A) relate to the management of water demand or to water conservation; and

(B) as determined by the Secretary, are cost effective for the Federal Government.

(3) Subject to paragraph (4), the Secretary of Defense may authorize the Secretary of a military department having jurisdiction over a military installation to enter into an agreement with a utility to design and implement a cost-effective program that provides incentives for the management of water demand and for water conservation and that addresses the requirements and circumstances of the installation. Activities under the program may include the provision of water management services, the alteration of a facility, and the installation and maintenance by the utility of a water-saving device or technology.

(4)(A) If an agreement under paragraph (3) provides for a utility to pay in advance the financing costs for the design or implementation of a program referred to in that paragraph and for such advance payment to be repaid by the United States, the cost of such advance payment may be recovered by the utility under terms that are not less favorable than the terms applicable to the most favored customer of the utility.

(B) Subject to the availability of appropriations, a repayment of an advance payment under subparagraph (A) shall be made from funds available to a military department for the purchase of utility services.

(C) An agreement under paragraph (3) shall provide that title to a water-saving device or technology installed at a military installation pursuant to the agreement shall vest in the United States. Such title may vest at such time during the term of the agreement, or upon expiration of the agreement, as determined to be in the best interests of the United States.

(b) USE OF FINANCIAL INCENTIVES AND WATER COST SAVINGS.—(1) Financial incentives received from utilities for management of water demand or water conservation under subsection (a)(2) shall be credited to an appropriation designated by the Secretary of Defense. Amounts so credited shall be merged with the appropriation to which credited and shall be available for the same purposes and the same period as the appropriation with which merged.

(2) Water cost savings realized under subsection (a)(3) shall be used as follows:

(A) One-half of the amount shall be used for water conservation activities at such buildings, facilities, or installations of the Department of Defense as may be designated (in accordance with regulations prescribed by the Secretary of Defense) by the head of the department, agency, or instrumentality that realized the water cost savings.

(B) One-half of the amount shall be used at the installation at which the savings were realized, as determined by the commanding officer of such installation consistent with applicable law and regulations, for—

(i) improvements to existing military family housing units;

(ii) any unspecified minor construction project that will enhance the quality of life of personnel; or

(iii) any morale, welfare, or recreation facility or service.

(c) WATER CONSERVATION CONSTRUCTION PROJECTS.—(1) The Secretary of Defense may carry out a military construction project for water conservation, not previously authorized,

using funds appropriated or otherwise made available to the Secretary for water conservation.

(2) When a decision is made to carry out a project under paragraph (1), the Secretary of Defense shall notify the appropriate committees of Congress of that decision. Such project may be carried out only after the end of the 14-day period beginning on the date the notification is received by such committees in an electronic medium pursuant to section 480 of this title.

(Added Pub. L. 103–160, div. B, title XXVIII, § 2803(a), Nov. 30, 1993, 107 Stat. 1884; amended Pub. L. 104–106, div. A, title XV, § 1502(a)(27), Feb. 10, 1996, 110 Stat. 506; Pub. L. 105–85, div. B, title XXVIII, § 2804(b), Nov. 18, 1997, 111 Stat. 1991; Pub. L. 108–136, div. A, title X, § 1031(a)(48), Nov. 24, 2003, 117 Stat. 1602; Pub. L. 109–364, div. B, title XXVIII, § 2851(d), Oct. 17, 2006, 120 Stat. 2495; Pub. L. 113–291, div. A, title X, § 1071(f)(25), Dec. 19, 2014, 128 Stat. 3511; Pub. L. 115–91, div. A, title X, § 1051(a)(24), div. B, title XXVIII, § 2801(c)(5), Dec. 12, 2017, 131 Stat. 1562, 1844.)

AMENDMENTS

2017—Subsec. (b)(3). Pub. L. 115–91, § 1051(a)(24), struck out par. (3) which read as follows: ''The Secretary of Defense shall include in the budget material submitted to Congress in connection with the submission of the budget for a fiscal year pursuant to section 1105 of title 31 a separate statement of the amounts available for obligation under this subsection in that fiscal year.''

Subsec. (c)(2). Pub. L. 115–91, § 2801(c)(5), substituted ''14-day period'' for ''21-day period'' and struck out ''or, if earlier, the end of the 14-day period beginning on the date on which a copy of the notification is provided'' after ''received by such committees''.

2014—Subsec. (a)(4)(A). Pub. L. 113–291 substituted ''repaid'' for ''repayed''.

2006—Subsec. (b). Pub. L. 109–364 reenacted heading without change and amended text generally. Prior to amendment, text read as follows:

''(1) Financial incentives received under subsection (a)(2) shall be used as provided in section 2865(b)(3) of this title.

''(2) Water cost savings realized under subsection (a)(3) shall be used as provided in section 2865(b)(2) of this title.''

2003—Subsec. (c)(2). Pub. L. 108–136 inserted before period at end ''or, if earlier, the end of the 14-day period beginning on the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this title''.

1997—Subsec. (b). Pub. L. 105–85 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows:

''(b) USE OF WATER COST SAVINGS.—Water cost savings realized under this section shall be used as provided in section 2865(b)(2) of this title.''

1996—Subsec. (c)(2). Pub. L. 104–106 substituted ''appropriate committees of Congress'' for ''Committees on Armed Services and Appropriations of the Senate and House of Representatives''.

IMPROVING WATER MANAGEMENT AND SECURITY ON MILITARY INSTALLATIONS.

Pub. L. 116–283, div. B, title XXVIII, § 2827, Jan. 1, 2021, 134 Stat. 4336, provided that:

''(a) RISK-BASED APPROACH TO INSTALLATION WATER MANAGEMENT AND SECURITY.—

''(1) GENERAL REQUIREMENT.—The Secretary concerned shall adopt a risk-based approach to water management and security for each military installation under the jurisdiction of the Secretary.

''(2) IMPLEMENTATION PRIORITIES.—The Secretary concerned shall begin implementation of paragraph (1) by prioritizing those military installations under the jurisdiction of the Secretary that the Secretary determines—

''(A) are experiencing the greatest risks to sustainable water management and security; and

''(B) face the most severe existing or potential adverse impacts to mission assurance as a result of such risks.

''(3) DETERMINATION METHOD.—Determinations under paragraph (2) shall be made on the basis of the water management and security assessments made by the Secretary concerned under subsection (b).

''(b) WATER MANAGEMENT AND SECURITY ASSESSMENTS.—

''(1) ASSESSMENT METHODOLOGY.—The Secretaries concerned, acting jointly, shall develop a methodology to assess risks to sustainable water management and security and mission assurance.

''(2) ELEMENTS.—Required elements of the assessment methodology shall include the following:

''(A) An evaluation of the water sources and supply connections for a military installation, including water flow rate and extent of competition for the water sources.

''(B) An evaluation of the age, condition, and jurisdictional control of water infrastructure serving the military installation.

''(C) An evaluation of the military installation's water-security risks related to drought-prone climates, impacts of defense water usage on regional water demands, water quality, and legal issues, such as water rights disputes.

''(D) An evaluation of the resiliency of the military installation's water supply and the overall health of the aquifer basin of which the water supply is a part, including the robustness of the resource, redundancy, and ability to recover from disruption.

''(E) An evaluation of existing water metering and consumption at the military installation, considered at a minimum—

''(i) by type of installation activity, such as training, maintenance, medical, housing, and grounds maintenance and landscaping; and

''(ii) by fluctuations in consumption, including peak consumption by quarter.

''(c) EVALUATION OF INSTALLATIONS FOR POTENTIAL NET ZERO WATER USAGE.—

''(1) EVALUATION REQUIRED.—The Secretary concerned shall conduct an evaluation of each military installation under the jurisdiction of the Secretary to determine the potential for the military installation, or at a minimum certain installation activities, to achieve net zero water usage.

''(2) ELEMENTS.—Required elements of each evaluation shall include the following:

''(A) An evaluation of alternative water sources to offset use of freshwater, including water recycling and harvested rainwater for use as non-potable water.

''(B) An evaluation of the feasibility of implementing Department of Energy guidelines for net zero water usage, when practicable, to minimize water consumption and wastewater discharge in buildings scheduled for renovation.

''(C) An evaluation of the practicality of implementing net zero water usage technology into new construction in water-constrained areas, as determined by water management and security assessments conducted under subsection (b).

''(d) IMPROVED LANDSCAPING MANAGEMENT PRACTICES.—

''(1) LANDSCAPING MANAGEMENT.—The Secretary concerned shall implement, to the maximum extent practicable, at each military installation under the jurisdiction of the Secretary landscaping management practices to increase water resilience and ensure greater quantities of water availability for operational, training, and maintenance requirements.

''(2) ARID OR SEMI-ARID CLIMATES.—For military installations located in arid or semi-arid climates,

landscaping management practices shall include the use of xeriscaping.

''(3) NON-ARID CLIMATES.—For military installations located in non-arid climates, landscaping management practices shall include the use of plants common to the region in which the installation is located and native grasses and plants.

''(4) POLLINATOR CONSERVATION REFERENCE GUIDE.—The Secretary concerned shall follow the recommendations of the Department of Defense Pollinator Conservation Reference Guide (September 2018) to the maximum extent practicable in order to reduce operation and maintenance costs related to landscaping management, while improving area management. Consistent with such guide, in the preparation of a military installation landscaping plan, the Secretary concerned should consider the following:

''(A) Adding native flowering plants to sunny open areas and removing overhanging tree limbs above open patches within forested areas or dense shrub.

''(B) Removing or controlling invasive plants to improve pollinator habitat.

''(C) Preserving known and potential pollinator nesting and overwintering sites.

''(D) Eliminating or minimizing pesticide use in pollinator habitat areas.

''(E) Mowing in late fall or winter after plants have bloomed and set seed, adjusting timing to avoid vulnerable life stages of special status pollinators.

''(F) Mowing mid-day when adult pollinators can avoid mowing equipment.

''(e) IMPLEMENTATION REPORT.—

''(1) REPORT REQUIRED.—Not later than one year after the date of the enactment of this Act [Jan. 1, 2021], the Secretary of Defense, in coordination with the other Secretaries concerned, shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the progress made in implementing this section.

''(2) REPORT ELEMENTS.—The report shall include the following:

''(A) The methodology developed under subsection (b) to conduct water management and security assessments.

''(B) A list of the military installations that have been assessed using such methodology and a description of the findings.

''(C) A list of planned assessments for the one-year period beginning on the date of the submission of the report.

''(D) An evaluation of the progress made on implementation of xeriscaping and other regionally appropriate landscaping practices at military installations.

''(f) DEFINITIONS.—In this section:

''(1) The term 'net zero water usage', with respect to a military installation or installation activity, means a situation in which the combination of limitations on the consumption of water resources and the return of water to an original water source by the installation or activity is sufficient to prevent any reduction in the water resources of the area in both quantity and quality over a reasonable period of time.

''(2) The terms 'Secretary concerned' and 'Secretary' mean the Secretary of a military department and the Secretary of Defense with respect to the Pentagon Reservation.

''(3) The term 'xeriscaping' means landscape design that emphasizes low water use and drought-tolerant plants that require little or no supplemental irrigation.''

ESTABLISHMENT OF TARGETS FOR WATER USE

Pub. L. 116–92, div. A, title III, §319(c), Dec. 20, 2019, 133 Stat. 1306, provided that: ''The Secretary of Defense shall, where life-cycle cost-effective, improve water use efficiency and management by the Department of Defense, including storm water management, by—

''(1) installing water meters and collecting and using water balance data of buildings and facilities to improve water conservation and management;

''(2) reducing industrial, landscaping, and agricultural water consumption in gallons by two percent annually through fiscal year 2030 relative to a baseline of such consumption by the Department in fiscal year 2010; and

''(3) installing appropriate sustainable infrastructure features on installations of the Department to help with storm water and wastewater management.''

§ 2867. Energy monitoring and utility control system specification for military construction and military family housing activities

(a) ADOPTION OF DEPARTMENT-WIDE, OPEN PROTOCOL, ENERGY MONITORING AND UTILITY CONTROL SYSTEM SPECIFICATION.—(1) The Secretary of Defense shall adopt an open protocol energy monitoring and utility control system specification for use throughout the Department of Defense in connection with a military construction project, military family housing activity, or other activity under this chapter for the purpose of monitoring and controlling, with respect to the project or activity, the items specified in paragraph (2) with the goal of establishing installation-wide energy monitoring and utility control systems.

(2) The energy monitoring and utility control system specification required by paragraph (1) shall cover the following:

(A) Utilities and energy usage, including electricity, gas, steam, and water usage.

(B) Indoor environments, including temperature and humidity levels.

(C) Heating, ventilation, and cooling components.

(D) Central plant equipment.

(E) Renewable energy generation systems.

(F) Lighting systems.

(G) Power distribution networks.

(b) EXCLUSION.—(1) The energy monitoring and utility control system specification required by subsection (a) is not required to apply to projects carried out under the authority provided in subchapter IV of chapter 169 of this title.

(2) The Secretary concerned may waive the application of the energy monitoring and utility control system specification required by subsection (a) with respect to a specific military construction project, military family housing activity, or other activity under this chapter if the Secretary determines that the application of the specification to the project or activity is not life cycle cost-effective. The Secretary concerned shall notify the congressional defense committees of any waiver granted under this paragraph.

(Added Pub. L. 111–84, div. B, title XXVIII, §2841(a)(1), Oct. 28, 2009, 123 Stat. 2679.)

PRIOR PROVISIONS

A prior section 2867 was renumbered section 2916 of this title.

SUSPENSION OF RESIDENT ENERGY CONSERVATION PROGRAM AND RELATED PROGRAMS FOR PRIVATIZED MILITARY HOUSING

Pub. L. 116–92, div. B, title XXX, §3063, Dec. 20, 2019, 133 Stat. 1947, as amended by Pub. L. 116–283, div. B,

title XXVIII, § 2811(j), Jan. 1, 2021, 134 Stat. 4326, provided that:

''(a) SUSPENSION REQUIRED.—The Secretary of Defense shall suspend the initiative of the Department of Defense known as the Resident Energy Conservation Program and instruct the Secretary of each military department to suspend any program carried out by such Secretary that measures the energy usage for individual units of privatized military housing on installations of the Department of Defense.

''(b) TERM OF SUSPENSION.—Subject to subsection (c), the suspension required by subsection (a) shall remain in effect for an installation of the Department of Defense until the Secretary of Defense certifies to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] that 100 percent of the privatized military housing covered by a program suspended under subsection (a) on the installation is individually metered to each respective unit of privatized military housing and the meter accurately measures the energy usage of the unit.

''(c) TERMINATION.—If the Secretary of Defense is unable to make the certification required by subsection (b) for an installation of the Department of Defense before the end of the two-year period beginning on the date of the enactment of this Act [Dec. 20, 2019], each program suspended pursuant to subsection (a) at that installation shall terminate at the end of such period.''

[For definition of ''privatized military housing'' as used in section 3063 of Pub. L. 116–92, set out above, see section 3001(a) of Pub. L. 116–92, set out as a note under section 2821 of this title.]

DEADLINE FOR ADOPTION

Pub. L. 111–84, div. B, title XXVIII, § 2841(a)(3), Oct. 28, 2009, 123 Stat. 2680, provided that: ''The Secretary of Defense shall adopt the open protocol energy monitoring and utility control system specification required by section 2867 of title 10, United States Code, as added by paragraph (1), not later than 180 days after the date of the enactment of this Act [Oct. 28, 2009].''

§ 2868. Utility services: furnishing for certain buildings

Appropriations for the Department of Defense may be used for utility services for buildings constructed at private cost, as authorized by law.

(Added Pub. L. 100–370, § 1(j)(1), July 19, 1988, 102 Stat. 848, § 2490; renumbered § 2868, Pub. L. 105–85, div. A, title III, § 371(b)(2), Nov. 18, 1997, 111 Stat. 1705; amended Pub. L. 108–375, div. A, title VI, § 651(e)(2), Oct. 28, 2004, 118 Stat. 1972.)

HISTORICAL AND REVISION NOTES

Section is based on Pub. L. 99–190, § 101(b) [title VIII, § 8006(b)], Dec. 19, 1985, 99 Stat. 1185.

In two instances, the source section for provisions to be codified provides that defense appropriations may be used for ''welfare and recreation'' or ''welfare and recreational'' purposes. (Section 735 of Public Law 98–212 and section 8006(b) of Public Law 99–190, to be codified as 10 U.S.C. 2241(a)(1) and 2490(2), respectively). The committee added the term ''morale'' in both of these two instances to conform to the usual ''MWR'' usage for morale, welfare, and recreation activities.

AMENDMENTS

2004—Pub. L. 108–375 substituted ''for buildings constructed at private cost, as authorized by law.'' for ''for—

''(1) buildings constructed at private cost, as authorized by law; and

''(2) buildings on military reservations authorized by regulation to be used for morale, welfare, and recreational purposes.''

1997—Pub. L. 105–85 renumbered section 2490 of this title as this section.

§ 2869. Exchange of property at military installations

(a) EXCHANGE AUTHORIZED.—(1) The Secretary concerned may enter into an agreement to convey real property, including any improvements thereon, described in paragraph (2) to any person who agrees, in exchange for the real property, to transfer to the United States all right, title, and interest of the person in and to a parcel of real property, including any improvements thereon under the person's control, or to carry out a land acquisition, including the acquisition of all right, title, and interest or a lesser interest in real property under an agreement entered into under section 2684a of this title to limit encroachments and other constraints on military training, testing, and operations.

(2) Paragraph (1) applies with respect to real property under the jurisdiction of the Secretary concerned—

(A) that is located on a military installation that is closed or realigned under a base closure law; or

(B) that is located on a military installation not covered by subparagraph (A) and for which the Secretary concerned makes a determination that the conveyance under paragraph (1) is advantageous to the United States.

(3)(A) The Secretary of Defense shall establish a pilot program under which the Secretary concerned, during the term of the pilot program, may use the authority provided by paragraph (1) to also convey real property, including any improvements thereon, described in paragraph (2) to any person who agrees, in exchange for the real property, to provide—

(i) installation-support services (as defined in 2679(e)[1] of this title); or

(ii) a new facility or improvements to an existing facility.

(B) The acquisition of a facility or improvements to an existing facility using the authority provided by subparagraph (A) shall not be treated as a military construction project for which an authorization is required by section 2802 of this title.

(C) The expanded conveyance authority provided by subparagraph (A) applies only during the five-year period beginning on the date on which the Secretary of Defense issues guidance regarding the use by the Secretaries concerned of such authority.

(b) CONDITIONS ON CONVEYANCE AUTHORITY.—(1) The fair market value of the real property, installation-support services, or facility or improvements to an existing facility obtained by the Secretary concerned under subsection (a) in exchange for the conveyance of real property by the Secretary under such subsection shall be at least equal to the fair market value of the conveyed real property, as determined by the Secretary. If the fair market value of the real property conveyed by the Secretary concerned exceeds the fair market value of the real property,

[1] See References in Text note below.

installation-support services, or facility or improvements received by the Secretary, the recipient of the property shall pay to the United States an amount equal to the difference in the fair market values.

(2) In the case of a conveyance of real property to a political subdivision of a State, the value of the real property to be conveyed by the Secretary concerned under subsection (a) may exceed the fair market value of the land to be obtained, as determined under paragraph (1), by an amount not to exceed the reduction in value of the land which is attributable to voluntary zoning actions taken by such political subdivision to limit encroachment on a military installation, but only if the notice required by subsection (d)(2) contains—

(A) a certification by the Secretary concerned that the military value to the United States of the land to be acquired justifies a payment in excess of the fair market value; and

(B) a description of the military value to be obtained.

(3) The Secretary concerned may agree to accept a facility or improvements to an existing facility under subsection (a)(3) only if the Secretary concerned determines that the facility or improvements—

(A) are completed and usable, fully functional, and ready for occupancy;

(B) satisfy all operational requirements; and

(C) meet all Federal, State, and local requirements applicable to the facility relating to health, safety, and the environment.

(c) LIMITATION ON USE OF CONVEYANCE AUTHORITY AT INSTALLATIONS CLOSED UNDER BASE CLOSURE LAWS.—The authority under subsection (a)(2)(A) to convey property located on a military installation may only be used to the extent the conveyance is consistent with an approved redevelopment plan for such installation.

(d) ADVANCE NOTICE OF USE OF AUTHORITY.—(1) Notice of the proposed use of the conveyance authority provided by subsection (a) shall be provided in such manner as the Secretary of Defense may prescribe, including publication in the Federal Register and otherwise. When real property located at a military installation is proposed for conveyance by means of a public sale, the Secretary concerned may notify prospective purchasers that consideration for the property may be provided in the manner authorized by such subsection.

(2) The Secretary concerned may not enter into an agreement under subsection (a) for the conveyance of real property until—

(A) the Secretary submits to Congress notice of the conveyance, including—

(i) a description of the real property to be conveyed by the Secretary under the agreement;

(ii) a description of the land acquisition to be carried out under the agreement in exchange for the conveyance of the property; and

(iii) the amount of any payment to be made under subsection (b) or under section 2684a(d) of this title to equalize the fair market values of the property to be conveyed and the land acquisition to be carried out under the agreement in exchange for the conveyance of the property; and

(B) the waiting period applicable to that notice under paragraph (3) expires.

(3) If the notice submitted under paragraph (2) deals with the conveyance of real property located on a military installation that is closed or realigned under a base closure law or the conveyance of real property under an agreement entered into under section 2684a of this title, the Secretary concerned may enter into the agreement under subsection (a) for the conveyance of the property after the end of the 14-day period beginning on the date of the submission of the notice in an electronic medium pursuant to section 480 of this title. In the case of other real property to be conveyed under subsection (a), the Secretary concerned may enter into the agreement only after the end of the 45-day period beginning on the date of the submission of the notice in an electronic medium pursuant to section 480 of this title.

(e) DEPOSIT AND USE OF FUNDS.—The Secretary concerned shall deposit funds received under subsection (b) in the appropriation ''Foreign Currency Fluctuations, Construction, Defense''. The funds deposited shall be available, in such amounts as provided in appropriation Acts, for the purpose of paying increased costs of overseas military construction and family housing construction or improvement associated with unfavorable fluctuations in currency exchange rates. The use of such funds for this purpose does not relieve the Secretary concerned from the duty to provide advance notice to Congress under section 2853(c) of this title whenever the Secretary approves an increase in the cost of an overseas project under such section.

(f) DESCRIPTION OF PROPERTY.—The exact acreage and legal description of real property conveyed under subsection (a) shall be determined by surveys satisfactory to the Secretary concerned.

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

(Added Pub. L. 108–136, div. B, title XXVIII, § 2805(a)(1), Nov. 24, 2003, 117 Stat. 1719; amended Pub. L. 109–364, div. B, title XXVIII, § 2811(a)–(f)(1), Oct. 17, 2006, 120 Stat. 2471–2473; Pub. L. 111–84, div. B, title XXVIII, § 2804(a)–(d)(1), Oct. 28, 2009, 123 Stat. 2661, 2662; Pub. L. 112–81, div. B, title XXVIII, § 2815(a), (b), Dec. 31, 2011, 125 Stat. 1688, 1689; Pub. L. 112–239, div. B, title XXVIII, § 2811, Jan. 2, 2013, 126 Stat. 2150; Pub. L. 115–91, div. B, title XXVIII, §§ 2801(c)(6), 2815, 2816, Dec. 12, 2017, 131 Stat. 1844, 1850; Pub. L. 116–283, div. B, title XXVIII, § 2862(a), (b), Jan. 1, 2021, 134 Stat. 4357.)

REFERENCES IN TEXT

The reference to ''2679(e) of this title'', referred to in subsec. (a)(3)(A)(i), probably should be to ''section 2679(f) of this title''. Subsec. (e) of section 2679 of this title was redesignated as subsec. (f) by Pub. L. 116–283, div. B, title XXVIII, § 2861(a)(1), Jan. 1, 2021, 134 Stat. 4356.

AMENDMENTS

2021—Subsec. (a)(3). Pub. L. 116–283, § 2862(a), added par. (3).

Subsec. (b)(1). Pub. L. 116–283, § 2862(b)(1), substituted ''of the real property, installation-support services, or facility or improvements to an existing facility'' for ''of the land to be'' and ''of the real property conveyed by the Secretary concerned exceeds the fair market value of the real property, installation-support services, or facility or improvements received by the Secretary'' for ''of the land is less than the fair market value of the real property to be conveyed''.

Subsec. (b)(3). Pub. L. 116–283, § 2862(b)(2), added par. (3).

2017—Subsec. (a)(2). Pub. L. 115–91, § 2815, amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''Paragraph (1) applies with respect to real property under the jurisdiction of the Secretary concerned that—

''(A) is located on a military installation that is closed or realigned under a base closure law; or

''(B) is located on a military installation not covered by subparagraph (A) and is determined to be excess to the needs of the Department of Defense.''

Subsec. (b). Pub. L. 115–91, § 2816, amended subsec. (b) generally. Prior to amendment, text read as follows: ''The fair market value of the land to be obtained by the Secretary concerned under subsection (a) in exchange for the conveyance of real property by the Secretary under such subsection shall be at least equal to the fair market value of the conveyed real property, as determined by the Secretary. If the fair market value of the land is less than the fair market value of the real property to be conveyed, the recipient of the property shall pay to the United States an amount equal to the difference in the fair market values.''

Subsec. (d)(3). Pub. L. 115–91, § 2801(c)(6), substituted ''after the end of the 14-day period beginning on the date of the submission of the notice in an electronic medium pursuant to section 480 of this title.'' for ''after a period of 21 days has elapsed from the date of receipt of the notice or, if over sooner, a period of 14 days has elapsed from the date on which a copy of the notice is provided in an electronic medium pursuant to section 480 of this title.'' and ''only after the end of the 45-day period beginning on the date of the submission of the notice in an electronic medium pursuant to section 480 of this title.'' for ''only after a period of 60 days has elapsed from the date of receipt of the notice or, if over sooner, a period of 45 days has elapsed from the date on which the electronic copy is provided.''

2013—Subsec. (a)(1). Pub. L. 112–239 substituted ''any person'' for ''any eligible entity'', ''the person'' for ''the entity'', and ''the person's control'' for ''their control''.

2011—Pub. L. 112–81, § 2815(a)(1), substituted ''Exchange of property at military installations'' for ''Conveyance of property at military installations to limit encroachment'' in section catchline.

Subsec. (a). Pub. L. 112–81, § 2815(a)(2)(A), substituted ''Exchange Authorized'' for ''Conveyance Authorized; Consideration'' in heading.

Subsec. (a)(1). Pub. L. 112–81, § 2815(a)(2)(B), substituted ''to any eligible entity who agrees, in exchange for the real property, to transfer to the United States all right, title, and interest of the entity in and to a parcel of real property, including any improvements thereon under their control, or to carry out a land acquisition'' for ''to any person who agrees, in exchange for the real property, to carry out a land acquisition''.

Subsecs. (f) to (h). Pub. L. 112–81, § 2815(b), redesignated subsecs. (g) and (h) as (f) and (g), respectively, and struck out former subsec. (f), which provided that authority to enter into an agreement under this section would expire on September 30, 2013.

2009—Pub. L. 111–84, § 2804(d)(1), amended section catchline generally. Prior to amendment, catchline read as follows: ''Conveyance of property at military installations to support military construction or limit encroachment''.

Subsec. (a)(1). Pub. L. 111–84, § 2804(a)(1)(A), struck out subpar. (A) designation before ''to carry out'', substituted ''real property,'' for ''real property—'', '' to carry out a land acquisition'' for ''to carry out a military construction project or land acquisition'', and a period for ''; or'', and struck out subpar. (B) which read as follows: ''to transfer to the Secretary concerned housing that is constructed or provided by the person and located at or near a military installation at which there is a shortage of suitable military family housing, military unaccompanied housing, or both.''

Subsec. (a)(3). Pub. L. 111–84, § 2804(a)(1)(B), struck out par. (3) which read as follows: ''Subparagraph (B) of paragraph (2) shall apply only during the period beginning on the date of the enactment of the John Warner National Defense Authorization Act for Fiscal Year 2007 and ending on September 30, 2008. Any conveyance of real property described in such subparagraph for which the Secretary concerned has provided the advance public notice required by subsection (d)(1) before the expiration date may be completed after that date.''

Subsec. (b). Pub. L. 111–84, § 2804(a)(2), substituted ''fair market value of the land'' for ''fair market value of the military construction, military family housing, or military unaccompanied housing'' in two places.

Subsec. (c). Pub. L. 111–84, § 2804(a)(3), added subsec. (c) and struck out former subsec. (c) which related to pilot program for use of conveyance authority.

Subsec. (d)(2)(A)(ii), (iii). Pub. L. 111–84, § 2804(a)(4), substituted ''land acquisition'' for ''military construction project, land acquisition, military family housing, or military unaccompanied housing''.

Subsec. (e). Pub. L. 111–84, § 2804(b), designated par. (3) as entire subsec., substituted ''The Secretary concerned shall deposit funds received under subsection (b) in the appropriation 'Foreign Currency Fluctuations, Construction, Defense'. The funds deposited shall be available'' for ''The funds deposited under paragraph (2) shall be available'', and struck out pars. (1) and (2), which read as follows:

''(1) Except as provided in paragraph (2), the Secretary concerned may deposit funds received under subsection (b) in the Department of Defense housing funds established under section 2883(a) of this title.

''(2) During the period specified in paragraph (3) of subsection (a), the Secretary concerned shall deposit funds received under subsection (b) in the appropriation 'Foreign Currency Fluctuations, Construction, Defense'.''

Subsec. (f). Pub. L. 111–84, § 2804(c), amended subsec. (f) generally. Prior to amendment, subsec. (f) related to annual reports on conveyances and effect of failure to submit report.

2006—Pub. L. 109–364, § 2811(f)(1), substituted ''to support military construction or limit encroachment'' for ''closed or realigned to support military construction'' in section catchline.

Subsec. (a). Pub. L. 109–364, § 2811(a), (b), designated existing provisions as par. (1), in introductory provisions substituted ''described in paragraph (2)'' for ''located on a military installation that is closed or realigned under a base closure law'', redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, in subpar. (A) substituted ''land acquisition, including the acquisition of all right, title, and interest or a lesser interest in real property under an agreement entered into under section 2684a of this title to limit encroachments and other constraints on military training, testing, and operations'' for ''land acquisition'', and added pars. (2) and (3).

Subsec. (d)(1). Pub. L. 109–364, § 2811(c)(1), substituted ''is proposed for conveyance'' for ''closed or realigned under the base closure laws is to be conveyed''.

Subsec. (d)(2), (3). Pub. L. 109–364, § 2811(c)(2), added pars. (2) and (3) and struck out former par. (2) which read as follows: ''The Secretary concerned may not enter into an agreement under subsection (a) for the conveyance of real property until—

''(A) the Secretary submits to Congress notice of the conveyance, including the military construction

activities, military family housing, or military unaccompanied housing to be obtained in exchange for the conveyance; and

''(B) a period of 14 days expires beginning on the date on which the notice is submitted.''

Subsec. (e). Pub. L. 109–364, § 2811(d), amended heading and text of subsec. (e) generally. Prior to amendment, text read as follows: ''The Secretary concerned may deposit funds received under subsection (b) in the Department of Defense housing funds established under section 2883(a) of this title.''

Subsec. (f). Pub. L. 109–364, § 2811(e), in heading substituted ''Annual Reports; Effect of Failure to Submit'' for ''Annual Report'', designated existing provisions as par. (1), in introductory provisions substituted ''Not later than March 15 of each year, the Secretary of Defense shall submit to Congress a report detailing the following:'' for ''In the budget materials submitted to Congress in connection with the submission of the budget for a fiscal year pursuant to section 1105 of title 31, the Secretary of Defense shall include a report detailing the following:'', redesignated former pars. (1) to (3) as subpars. (A) to (C), respectively, in subpar. (C) inserted ''and of excess real property at military installations'' before period at end, and added par. (2).

ISSUANCE OF GUIDANCE

Pub. L. 116–283, div. B, title XXVIII, § 2862(c), Jan. 1, 2021, 134 Stat. 4358, provided that: ''Not later than 180 days after the date of the enactment of this Act [Jan. 1, 2021], the Secretary of Defense shall issue guidance providing for the implementation of the pilot program required by section 2869(a)(3) of title 10, United States Code, as added by this section.''

[§ 2870. Repealed. Pub. L. 116–283, div. A, title VIII, § 818(a), Jan. 1, 2021, 134 Stat. 3751]

Section, added Pub. L. 116–92, div. A, title VIII, § 865(a)(1), Dec. 20, 2019, 133 Stat. 1523, related to use of qualified apprentices by military construction contractors.

EFFECTIVE DATE OF 2019 AMENDMENT

Pub. L. 116–92, div. A, title VIII, § 865(b), Dec. 20, 2019, 133 Stat. 1524, which provided that the amendments made by section 865 of Pub. L. 116–92 (enacting this section) would apply with respect to contracts awarded on or after 180 days after Dec. 20, 2019, was repealed by Pub. L. 116–283, div. A, title VIII, § 818(b)(2), Jan. 1, 2021, 134 Stat. 3751.

SUBCHAPTER IV—ALTERNATIVE AUTHORITY FOR ACQUISITION AND IMPROVEMENT OF MILITARY HOUSING

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2884. Reports.
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[2886. Repealed.]

AMENDMENTS

2019—Pub. L. 116–92, div. B, title XXX, §§ 3014(d)(2), 3033(b), Dec. 20, 2019, 133 Stat. 1926, 1936, added item 2872b and struck out item 2886 ''Prohibiting collection of amounts in addition to rent from members assigned to units''.

2018—Pub. L. 115–232, div. A, title X, § 1081(c)(5), Aug. 13, 2018, 132 Stat. 1985, made technical amendment to directory language of Pub. L. 115–91, § 2817(a)(2), effective as of Dec. 12, 2017, and as if included in Pub. L. 115–91 as enacted. See 2017 Amendment note below.

2017—Pub. L. 115–91, div. B, title XXVIII, § 2817(a)(2), Dec. 12, 2017, 131 Stat. 1852, as amended by Pub. L. 115–232, div. A, title X, § 1081(c)(5), Aug. 13, 2018, 132 Stat. 1985, added item 2879.

Pub. L. 115–91, div. A, title VI, § 602(b), Dec. 12, 2017, 131 Stat. 1418, added item 2886.

2008—Pub. L. 110–417, div. B, title XXVIII, § 2805(a)(2), (e)(2), Oct. 14, 2008, 122 Stat. 4722, 4724, added items 2882 and 2885 and struck out former item 2882 ''Assignment of members of the armed forces to housing units''.

2004—Pub. L. 108–375, div. B, title XXVIII, § 2805(b)(2), Oct. 28, 2004, 118 Stat. 2122, struck out item 2885 ''Expiration of authority''.

2002—Pub. L. 107–314, div. B, title XXVIII, §§ 2802(b)(3), (c)(2), 2803(a)(2), Dec. 2, 2002, 116 Stat. 2703, 2705, struck out ''to be constructed'' after ''Leasing of housing'' in item 2874, struck out item 2879 ''Interim leases'', and added item 2881a.

2001—Pub. L. 107–107, div. B, title XXVIII, § 2804(b), Dec. 28, 2001, 115 Stat. 1306, added item 2883a.

2000—Pub. L. 106–398, § 1 [div. B, title XXVIII, § 2805(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–415, added item 2872a.

1999—Pub. L. 106–65, div. B, title XXVIII, § 2803(h)(2), Oct. 5, 1999, 113 Stat. 849, added item 2875 and struck out former item 2875 ''Investments in nongovernmental entities''.

§ 2871. Definitions

In this subchapter and subchapter V of this chapter:

(1) The term ''ancillary supporting facilities'' means facilities related to housing units, including facilities to provide or support elementary or secondary education, child care centers, day care centers, child development centers, tot lots, community centers, housing offices, dining facilities, unit offices, and other similar facilities for the support of military housing.

(2) The term ''child development center'' includes a facility, and the utilities to support such facility, the function of which is to support the daily care of children aged six weeks old through five years old for full-day, part-day, and hourly service.

(3) The term ''construction'' means the construction of housing units and ancillary supporting facilities or the improvement or rehabilitation of existing units or ancillary supporting facilities.

(4) The term ''contract'' includes any contract, lease, or other agreement entered into under the authority of this subchapter. The fact that an agreement between an eligible entity and the Secretary concerned is designated as an agreement rather than a contract shall not be construed to exclude the agreement

from the term ''contract'' for purposes of this subchapter and subchapter V.

(5) The term ''eligible entity'' means any private person, corporation, firm, partnership, company, State or local government, or housing authority of a State or local government that is prepared to enter into a contract as a partner with the Secretary concerned for the construction of housing units and ancillary supporting facilities.

(6) The term ''Fund'' means the Department of Defense Family Housing Improvement Fund or the Department of Defense Military Unaccompanied Housing Improvement Fund established under section 2883(a) of this title.

(7) The term ''housing document'' means a document developed by the Secretary of Defense under section 2890 of this title and known as the Military Housing Privatization Initiative Tenant Bill of Rights or the Military Housing Privatization Initiative Tenant Responsibilities.

(8) The term ''housing unit'' means a unit of family housing or military unaccompanied housing acquired or constructed under this subchapter.

(9) The term ''incentive fees'' means any amounts payable to a landlord for meeting or exceeding performance metrics as specified in a contract with the Department of Defense.

(10) The term ''landlord'' means an eligible entity that enters into, or has entered into, a contract as a partner with the Secretary concerned for the acquisition or construction of a housing unit under this subchapter. The term includes any agent of the eligible entity or any subsequent lessor who owns, manages, or is otherwise responsible for a housing unit. The term does not include an entity of the Federal Government.

(11) The term ''military unaccompanied housing'' means military housing intended to be occupied by members of the armed forces serving a tour of duty unaccompanied by dependents and transient housing intended to be occupied by members of the armed forces on temporary duty.

(12) The term ''tenant'' means a member of the armed forces, including a reserve component thereof in an active status, or a dependent of a member of the armed forces who resides at a housing unit, is a party to a lease for a housing unit, or is authorized to act on behalf of the member under this subchapter and subchapter V of this chapter in the event of the assignment or deployment of a member.

(13) The term ''United States'' includes the Commonwealth of Puerto Rico.

(Added Pub. L. 104–106, div. B, title XXVIII, § 2801(a)(1), Feb. 10, 1996, 110 Stat. 544; amended Pub. L. 105–261, div. B, title XXVIII, § 2803, Oct. 17, 1998, 112 Stat. 2202; Pub. L. 106–65, div. B, title XXVIII, § 2803(a), Oct. 5, 1999, 113 Stat. 848; Pub. L. 107–314, div. B, title XXVIII, § 2803(b), Dec. 2, 2002, 116 Stat. 2705; Pub. L. 108–136, div. A, title X, § 1043(c)(6), Nov. 24, 2003, 117 Stat. 1612; Pub. L. 109–163, div. B, title XXVIII, § 2805(b), Jan. 6, 2006, 119 Stat. 3507; Pub. L. 110–417, div. B, title XXVIII, § 2805(c), Oct. 14, 2008, 122 Stat. 4723; Pub. L. 116–92, div. B, title XXX, §§ 3001(b)–3011(a), Dec. 20, 2019, 133 Stat. 1916, 1917.)

AMENDMENTS

2019—Pub. L. 116–92, § 3011(a), inserted ''and subchapter V of this chapter'' after ''this subchapter'' in introductory provisions.

Pars. (1), (3). Pub. L. 116–92, § 3001(c), struck out ''military'' before ''housing units''.

Par. (4). Pub. L. 116–92, § 3001(b)(1), inserted at end ''The fact that an agreement between an eligible entity and the Secretary concerned is designated as an agreement rather than a contract shall not be construed to exclude the agreement from the term 'contract' for purposes of this subchapter and subchapter V.''

Par. (5). Pub. L. 116–92, § 3001(c), struck out ''military'' before ''housing units''.

Pars. (7) to (10). Pub. L. 116–92, § 3001(b)(3), added pars. (7) to (10). Former pars. (7) and (8) redesignated (11) and (13), respectively.

Par. (11). Pub. L. 116–92, § 3001(b)(2), redesignated par. (7) as (11).

Par. (12). Pub. L. 116–92, § 3001(b)(4), added par. (12).

Par. (13). Pub. L. 116–92, § 3001(b)(2), redesignated par. (8) as (13).

2008—Par. (5). Pub. L. 110–417 inserted before period at end ''that is prepared to enter into a contract as a partner with the Secretary concerned for the construction of military housing units and ancillary supporting facilities''.

2006—Par. (1). Pub. L. 109–163, § 2805(b)(1), inserted ''child development centers,'' after ''day care centers,''.

Par. (2). Pub. L. 109–163, § 2805(b)(2), added par. (2).

2003—Par. (2). Pub. L. 108–136 struck out par. (2) which read as follows: ''The term 'base closure law' means the following:

''(A) Section 2687 of this title.

''(B) Title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 10 U.S.C. 2687 note).

''(C) The Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note).''

2002—Par. (7). Pub. L. 107–314 inserted ''and transient housing intended to be occupied by members of the armed forces on temporary duty'' before period at end.

1999—Pars. (5) to (8). Pub. L. 106–65 added par. (5) and redesignated former pars. (5) to (7) as (6) to (8), respectively.

1998—Par. (1). Pub. L. 105–261 inserted ''facilities to provide or support elementary or secondary education,'' after ''including''.

PROMULGATION OF GUIDANCE TO FACILITATE RETURN OF MILITARY FAMILIES DISPLACED FROM PRIVATIZED MILITARY HOUSING

Pub. L. 116–283, div. B, title XXVIII, § 2816, Jan. 1, 2021, 134 Stat. 4328, provided that:

''(a) GUIDANCE REQUIRED.—The Secretary of Defense shall promulgate guidance for commanders of military installations and installation housing management offices to assist such commanders and offices in facilitating and managing the relocation and return of tenants of privatized military housing when tenants are displaced from such housing—

''(1) as a result of an environmental hazard or other damage adversely affecting the habitability of the privatized military housing; or

''(2) during remediation or repair activities in response to the hazard or damages.

''(b) FINANCIAL IMPACT OF DISPLACEMENT.—As part of the promulgation of the guidance, the Secretary of Defense shall consider—

''(1) the extent to which displaced tenants of privatized military housing under the circumstances described in subsection (a) incur relocation, per diem, or similar expenses as a direct result of such displacement that are not covered by a landlord, insurance, or claims process; and

''(2) the feasibility of providing reimbursement for uncovered expenses.

''(c) CONSULTATION.—The Secretary of Defense shall promulgate the guidance in consultation with the Sec-

retaries of the military departments, the Chief Housing Officer, landlords, and other interested persons.

''(d) IMPLEMENTATION.—The Secretaries of the military departments shall be responsible for implementation of the guidance at military installations under the jurisdiction of the Secretary concerned, while recognizing that the guidance cannot anticipate every situation in which tenants of privatized military housing must be displaced from such housing under the circumstances described in subsection (a).

''(e) DEFINITIONS.—In this section, the terms 'landlord', 'privatized military housing', and 'tenant' have the meanings given those terms in section 3001(a) of the Military Construction Authorization Act for Fiscal Year 2020 (division B of Public Law 116–92; 133 Stat. 1916; 10 U.S.C. 2821 note).''

UNIFORM CODE OF BASIC STANDARDS FOR PRIVATIZED MILITARY HOUSING AND PLAN TO CONDUCT INSPECTIONS AND ASSESSMENTS

Pub. L. 116–283, div. B, title XXVIII, § 2818, Jan. 1, 2021, 134 Stat. 4329, provided that:

''(a) UNIFORM CODE OF BASIC STANDARDS FOR MILITARY HOUSING.—The Secretary of Defense shall expand the uniform code of basic housing standards for safety, comfort, and habitability for privatized military housing established pursuant to section 3051(a) of the Military Construction Authorization Act for Fiscal Year 2020 (division B of Public Law 116–92; 133 Stat. 1941; 10 U.S.C. 2871 note) [set out below] to include Government-owned and Government-controlled military family housing located inside or outside the United States and occupied by members of the Armed Forces.

''(b) INSPECTION AND ASSESSMENT PLAN.—The Secretary of Defense shall expand the Department of Defense housing inspection and assessment plan prepared pursuant to section 3051(b) of the Military Construction Authorization Act for Fiscal Year 2020 (division B of Public Law 116–92; 133 Stat. 1941; 10 U.S.C. 2871 note) [set out below] to include Government-owned and Government-controlled military family housing located inside or outside the United States and occupied by members of the Armed Forces and commence inspections and assessments of such military family housing pursuant to the plan.''

Pub. L. 116–92, div. B, title XXX, § 3051, Dec. 20, 2019, 133 Stat. 1941, provided that:

''(a) UNIFORM CODE.—Not later than February 1, 2021, the Secretary of Defense shall establish and implement a uniform code of basic housing standards for safety, comfort, and habitability for privatized military housing, which shall meet or exceed requirements informed by a nationally recognized, consensus-based, model property maintenance code.

''(b) INSPECTION AND ASSESSMENT PLAN.—Not later than February 1, 2020, the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a Department of Defense plan to contract with qualified home inspectors to conduct a thorough inspection and assessment of the structural integrity and habitability of each unit of privatized military housing. The plan shall include the implementation plan for the uniform code to be established under subsection (a).

''(c) IMPLEMENTATION OF INSPECTIONS AND ASSESSMENTS.—

''(1) IMPLEMENTATION.—Not later than February 1, 2021, the Secretary of the military department concerned shall commence conducting inspections and assessments of units of privatized military housing pursuant to the plan submitted under subsection (b) to identify issues and ensure compliance with applicable housing codes, including the uniform code established under subsection (a).

''(2) REPORT.—Not later than March 1, 2021, the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the findings of the inspections and assessments conducted under paragraph (1).

''(d) QUALIFIED HOME INSPECTORS DESCRIBED.—For purposes of this section, a qualified home inspector must possess the appropriate credentials for the work the inspector will perform, as defined by the respective State in which the work will be performed. A qualified home inspector may not be an employee or in a fiduciary relationship with—

''(1) the Federal Government; or

''(2) an individual or entity who owns or manages privatized military housing.''

[For definition of ''privatized military housing'' as used in section 3051 of Pub. L. 116–92, set out above, see section 3001(a) of Pub. L. 116–92, set out as a note under section 2821 of this title.]

RADON TESTING OF PRIVATIZED MILITARY HOUSING

Pub. L. 116–92, div. B, title XXX, § 3061, Dec. 20, 2019, 133 Stat. 1946, provided that:

''(a) REPORT.—Not later than March 1, 2020, the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report identifying the installations of the Department of Defense that have privatized military housing that should be monitored for levels of radon at or above the action level.

''(b) TESTING PROCEDURES AND STANDARDS.—The Secretaries of the military departments shall ensure that landlords providing privatized military housing at installations identified under subsection (a) establish testing procedures that are consistent with then current national consensus standards and are in compliance with applicable Federal, State, and local radon regulations in order to ensure radon levels are below recommended levels established by the Environmental Protection Agency, whether through—

''(1) regular testing of privatized military housing by persons who possess certification pursuant to the proficiency program operated under section 305(a)(2) of the Toxic Substances Control Act (15 U.S.C. 2665(a)(2)); or

''(2) the installation of monitoring equipment in privatized military housing.

''(c) NOTIFICATION REGARDING NEED FOR MITIGATION.—If, as a result of testing described in subsection (b), a unit of privatized military housing needs radon mitigation to ensure radon levels are below recommended levels, the landlord providing the housing unit shall submit to the Secretary of the military department concerned, not later than seven days after the determination of the need for radon mitigation, the mitigation plan for the housing unit.''

[For definitions of ''landlord'' and ''privatized military housing'' as used in section 3061 of Pub. L. 116–92, set out above, see section 3001(a) of Pub. L. 116–92, set out as a note under section 2821 of this title.]

MILITARY HOUSING PRIVATIZATION INITIATIVE

Pub. L. 115–232, div. A, title VI, § 606, Aug. 13, 2018, 132 Stat. 1795, as amended by Pub. L. 116–92, div. B, title XXX, §§ 3036(a), 3037, Dec. 20, 2019, 133 Stat. 1938, 1939; Pub. L. 116–283, div. B, title XXVIII, § 2811(i), Jan. 1, 2021, 134 Stat. 4326, provided that:

''(a) USE OF FUNDS IN CONNECTION WITH MHPI.—

''(1) PAYMENTS TO LESSORS GENERALLY.—

''(A) PAYMENT AUTHORITY.—Each month beginning with the first month after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2020 [Dec. 20, 2019], each Secretary of a military department shall use funds, in an amount determined under subparagraph (B), to make monthly payments to lessors of covered housing in the manner provided by this subsection, as in effect on the day before the date of the enactment of the National Defense Authorization Act for Fiscal Year 2020.

''(B) CALCULATION OF MONTHLY PAYMENTS.—For purposes of making payments under subparagraph

(A) for a month, the Secretary of the military department concerned shall determine the amount equal to 2.5 percent of the aggregate of the amounts calculated under section 403(b)(3)(A)(i) of title 37, United States Code, for covered housing under the jurisdiction of the Secretary for that month.

''(2) ADDITIONAL PAYMENTS TO LESSORS RESPONSIBLE FOR UNDERFUNDED PROJECTS.—

''(A) PAYMENT AUTHORITY.—Each month beginning with the first month after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2020, each Secretary of a military department shall use funds, in an amount determined under subparagraph (B), to make additional monthly payments, under such terms and in such amounts as determined by the Secretary, to one of [sic] more lessors responsible for underfunded MHPI housing projects identified pursuant to subparagraph (C) under the jurisdiction of the Secretary for the purposes of future sustainment, recapitalization, and financial sustainability of the projects.

''(B) CALCULATION OF MONTHLY PAYMENTS.—For purposes of making payments under subparagraph (A) for a month, the Secretary of the military department concerned shall determine the amount equal to 2.5 percent of the aggregate of the amounts calculated under section 403(b)(3)(A)(i) of title 37, United States Code, for covered housing under the jurisdiction of the Secretary for that month.

''(C) IDENTIFICATION OF UNDERFUNDED PROJECTS.—The Chief Housing Officer of the Department of Defense, in conjunction with the Secretaries of the military departments, shall assess MHPI housing projects for the purpose of identifying all MHPI housing projects that are underfunded. Once identified, the Chief Housing Officer shall prioritize for payments under subparagraph (A) those MHPI housing projects most in need of funding to rectify such underfunding.

''(3) ALTERNATIVE AUTHORITY IN EVENT OF LACK OF UNDERFUNDED PROJECTS.—

''(A) IN GENERAL.—Subject to subparagraph (B), if the Chief Housing Officer determines that no MHPI housing projects for a military department require additional funding under paragraph (2) for a month, the Secretary of the military department concerned, in consultation with the Chief Housing Officer, may allocate the funds otherwise available to the Secretary under such paragraph for that month to support improvements designed to enhance the quality of life of members of the uniformed services and their families who reside in MHPI housing.

''(B) CONDITIONS.—Before the Secretary of a military department may allocate funds as authorized by subparagraph (A), the Chief Housing Officer shall certify to the Committees on Armed Services of the Senate and the House of Representatives that there are no MHPI housing projects for the military department that require additional funding under paragraph (2). The certification shall include sufficient details to show why no projects are determined to need the additional funds.

''(4) BRIEFING REQUIRED.—Not later than March 1, 2020, and each year thereafter, the Secretary of Defense shall provide a briefing to the Committee on Armed Services of the Senate and the House of Representatives detailing the expenditure of funds under paragraphs (2) and (3), the MHPI housing projects receiving funds under such paragraphs, and any other information the Secretary considers relevant.

''(b) PLAN FOR MHPI HOUSING.—Not later than December 1, 2018, the Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a long-range plan to develop measures to consistently address the future sustainment, recapitalization, and financial condition of MHPI housing. The plan shall include—

''(1) efforts to mitigate the losses incurred by MHPI housing projects because of the reductions to BAH under section 603 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114-92; [which amended] 37 U.S.C. 403(b)(3)(B)); and

''(2) a full assessment of the effects of such reductions (in relation to calculations of market rates for rent and utilities) on the financial condition of MHPI housing.

''(c) REPORTING.—The Secretary shall direct the Assistant Secretary of Defense for Energy, Installations, and Environment to take the following steps regarding reports under section 2884(c) of title 10, United States Code:

''(1) Provide additional contextual information on MHPI housing to identify any differences in the calculation of debt coverage ratios and any effect of such differences on their comparability.

''(2) Immediately resume issuing such reports on the financial condition of MHPI housing.

''(3) Revise Department of Defense guidance on MHPI housing—

''(A) to ensure that relevant financial data (such as debt coverage ratios) in such reports are consistent and comparable in terms of the time periods of the data collected;

''(B) to include a requirement that the secretary of each military department includes measures of future sustainment into each assessments of MHPI housing projects; and

''(C) to require the secretary of each military department to define risk tolerance regarding the future sustainability of MHPI housing projects.

''(4) Report financial information on future sustainment of each MHPI housing project in such reports.

''(5) Provide Department of Defense guidance to the secretaries of the military departments to—

''(A) assess the significance of the specific risks to individual MHPI housing projects from the reduction in BAH; and

''(B) identify methods to mitigate such risks based on their significance.

''(6) Not later than December 1, 2018, finalize Department of Defense guidance that clearly defines—

''(A) the circumstances in which the military departments shall provide notification of housing project changes to the congressional defense committees; and

''(B) which types of such changes require prior notification to or prior approval from the congressional defense committees.

''(d) DEFINITIONS.—In this section:

''(1) The term 'BAH' means the basic allowance for housing under section 403 of title 37, United States Code.

''(2) The term 'covered housing' means a unit of MHPI housing that is leased to a member of a uniformed service who resides in such unit.

''(3) The term 'MHPI housing' means housing procured, acquired, constructed, or for which any phase or portion of a project agreement was first finalized and signed, under the alternative authority of subchapter IV of chapter 169 of title 10, United States Code (known as the Military Housing Privatization Initiative), on or before September 30, 2014.''

[Pub. L. 116–92, div. B, title XXX, § 3036(b), Dec. 20, 2019, 133 Stat. 1939, provided that: ''The amendment made by this section [amending section 606 of Pub. L. 115–232, set out above] shall take effect on the date of the enactment of this Act [Dec. 20, 2019] and shall apply with respect to months beginning after that date.'']

§ 2872. General authority

In addition to any other authority provided under this chapter for the acquisition or construction of military family housing or military unaccompanied housing, the Secretary concerned may exercise any authority or any combination of authorities provided under this sub-

chapter in order to provide for the acquisition or construction by eligible entities of the following:

(1) Family housing units on or near military installations within the United States and its territories and possessions.

(2) Military unaccompanied housing units on or near such military installations.

(Added Pub. L. 104–106, div. B, title XXVIII, § 2801(a)(1), Feb. 10, 1996, 110 Stat. 545; amended Pub. L. 106–65, div. B, title XXVIII, § 2803(b), Oct. 5, 1999, 113 Stat. 849.)

AMENDMENTS

1999—Pub. L. 106–65 substituted ''eligible entities'' for ''private persons'' in introductory provisions.

§ 2872a. Utilities and services

(a) AUTHORITY TO FURNISH.—The Secretary concerned may furnish utilities and services referred to in subsection (b) in connection with any military housing acquired or constructed pursuant to the exercise of any authority or combination of authorities under this subchapter if the military housing is located on a military installation.

(b) COVERED UTILITIES AND SERVICES.—The utilities and services that may be furnished under subsection (a) are the following:

(1) Electric power.
(2) Steam.
(3) Compressed air.
(4) Water.
(5) Sewage and garbage disposal.
(6) Natural gas.
(7) Pest control.
(8) Snow and ice removal.
(9) Mechanical refrigeration.
(10) Telecommunications service.
(11) Firefighting and fire protection services.
(12) Police protection services.
(13) Street sweeping.
(14) Tree trimming and removal.

(c) REIMBURSEMENT.—(1) The Secretary concerned shall be reimbursed for any utilities or services furnished under subsection (a).

(2) The amount of any cash payment received under paragraph (1) as reimbursement for the cost of furnishing utilities or services shall—

(A) in the case of a cost paid using funds appropriated or otherwise made available before October 1, 2014, be credited to the appropriation or working capital account from which the cost of furnishing utilities or services concerned was paid; or

(B) in the case of a cost paid using funds appropriated or otherwise made available on or after October 1, 2014, be credited to the appropriation or working capital account currently available for the purpose of furnishing utilities or services under subsection (a).

(3) Amounts credited under paragraph (2) to an appropriation or account shall be merged with funds in such appropriation or account, and shall be available to the same extent, and subject to the same terms and conditions, as such funds.

(Added Pub. L. 106–398, §1 [div. B, title XXVIII, § 2805(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–414; amended Pub. L. 107–314, div. B, title XXVIII, § 2802(a), Dec. 2, 2002, 116 Stat. 2703; Pub. L. 113–66, div. B, title XXVIII, § 2804, Dec. 26, 2013, 127 Stat. 1007; Pub. L. 116–92, div. B, title XXX, § 3032, Dec. 20, 2019, 133 Stat. 1936.)

AMENDMENTS

2019—Subsec. (b)(13), (14). Pub. L. 116–92 added pars. (13) and (14).

2013—Subsec. (c)(2), (3). Pub. L. 113–66 substituted ''under paragraph (1) as reimbursement for the cost of furnishing utilities or services shall—'' for ''under paragraph (1) shall be credited to the appropriation or working capital account from which the cost of furnishing the utilities or services concerned was paid.'', added subpars. (A) and (B), designated second sentence of par. (2) as par. (3), and substituted ''Amounts credited under paragraph (2)'' for ''Amounts so credited''.

2002—Subsec. (b)(11), (12). Pub. L. 107–314 added pars. (11) and (12).

§ 2872b. Treatment of breach of contract

(a) RESPONSE TO MATERIAL BREACH.—In the case of a material breach of contract under this subchapter by a party to the contract, the Secretary concerned shall use the authorities available to the Secretary, including withholding amounts to be paid under the contract, to encourage the party to cure the breach.

(b) RESCINDING OF CONTRACT.—If a material breach of the contract is not cured in a timely manner, as determined by the Secretary concerned, the Secretary may—

(1) rescind the contract pursuant to the terms of the contract; and

(2) prohibit the offending party from entering into a new contract or undertaking expansions of other existing contracts, or both, with the Secretary under this subchapter.

(Added Pub. L. 116–92, div. B, title XXX, § 3033(a), Dec. 20, 2019, 133 Stat. 1936.)

§ 2873. Direct loans and loan guarantees

(a) DIRECT LOANS.—(1) Subject to subsection (c), the Secretary concerned may make direct loans to an eligible entity in order to provide funds to the eligible entity for the acquisition or construction of housing units that the Secretary determines are suitable for use as military family housing or as military unaccompanied housing.

(2) The Secretary concerned shall establish such terms and conditions with respect to loans made under this subsection as the Secretary considers appropriate to protect the interests of the United States, including the period and frequency for repayment of such loans and the obligations of the obligors on such loans upon default.

(b) LOAN GUARANTEES.—(1) Subject to subsection (c), the Secretary concerned may guarantee a loan made to an eligible entity if the proceeds of the loan are to be used by the eligible entity to acquire, or construct housing units that the Secretary determines are suitable for use as military family housing or as military unaccompanied housing.

(2) The amount of a guarantee on a loan that may be provided under paragraph (1) may not exceed the amount equal to the lesser of—

(A) the amount equal to 80 percent of the value of the project; or

(B) the amount of the outstanding principal of the loan.

(3) The Secretary concerned shall establish such terms and conditions with respect to guarantees of loans under this subsection as the Secretary considers appropriate to protect the interests of the United States, including the rights and obligations of obligors of such loans and the rights and obligations of the United States with respect to such guarantees.

(c) LIMITATION ON DIRECT LOAN AND GUARANTEE AUTHORITY.—Direct loans and loan guarantees may be made under this section only to the extent that appropriations of budget authority to cover their cost (as defined in section 502(5) of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a(5))) are made in advance, or authority is otherwise provided in appropriation Acts. If such appropriation or other authority is provided, there may be established a financing account (as defined in section 502(7) of such Act (2 U.S.C. 661a(7))), which shall be available for the disbursement of direct loans or payment of claims for payment on loan guarantees under this section and for all other cash flows to and from the Government as a result of direct loans and guarantees made under this section.

(Added Pub. L. 104–106, div. B, title XXVIII, § 2801(a)(1), Feb. 10, 1996, 110 Stat. 545; amended Pub. L. 106–65, div. B, title XXVIII, § 2803(c), Oct. 5, 1999, 113 Stat. 849.)

AMENDMENTS

1999—Subsec. (a)(1). Pub. L. 106–65, § 2803(c)(1), substituted ''an eligible entity'' for ''persons in the private sector'' and ''the eligible entity'' for ''such persons''.

Subsec. (b)(1). Pub. L. 106–65, § 2803(c)(2), substituted ''an eligible entity'' for ''any person in the private sector'' and ''the eligible entity'' for ''the person''.

§ 2874. Leasing of housing

(a) LEASE AUTHORIZED.—The Secretary concerned may enter into contracts for the lease of housing units that the Secretary determines are suitable for use as military family housing or military unaccompanied housing.

(b) USE OF LEASED UNITS.—The Secretary concerned shall utilize housing units leased under this section as military family housing or military unaccompanied housing, as appropriate.

(c) LEASE TERMS.—A contract under this section may be for any period that the Secretary concerned determines appropriate and may provide for the owner of the leased property to operate and maintain the property.

(Added Pub. L. 104–106, div. B, title XXVIII, § 2801(a)(1), Feb. 10, 1996, 110 Stat. 546; amended Pub. L. 107–314, div. B, title XXVIII, § 2802(b)(1), (2), Dec. 2, 2002, 116 Stat. 2703.)

AMENDMENTS

2002—Pub. L. 107–314, § 2802(b)(2), in section catchline struck out ''to be constructed'' after ''Leasing of housing''.

Subsec. (a). Pub. L. 107–314, § 2802(b)(1)(B), added subsec. (a) and struck out heading and text of former subsec. (a). Text read as follows: ''The Secretary concerned may enter into contracts for the lease of military family housing units or military unaccompanied housing units to be constructed under this subchapter.''

Subsecs. (b), (c). Pub. L. 107–314, § 2802(b)(1), added subsec. (b) and redesignated former subsec. (b) as (c).

§ 2875. Investments

(a) INVESTMENTS AUTHORIZED.—The Secretary concerned may make investments in an eligible entity carrying out projects for the acquisition or construction of housing units suitable for use as military family housing or as military unaccompanied housing.

(b) FORMS OF INVESTMENT.—An investment under this section may take the form of an acquisition of a limited partnership interest by the United States, a purchase of stock or other equity instruments by the United States, a purchase of bonds or other debt instruments by the United States, or any combination of such forms of investment.

(c) LIMITATION ON VALUE OF INVESTMENT.—(1) The cash amount of an investment under this section in an eligible entity may not exceed an amount equal to 33⅓ percent of the capital cost (as determined by the Secretary concerned) of the project or projects that the eligible entity proposes to carry out under this section with the investment.

(2) If the Secretary concerned conveys land or facilities to an eligible entity as all or part of an investment in the eligible entity under this section, the total value of the investment by the Secretary under this section may not exceed an amount equal to 45 percent of the capital cost (as determined by the Secretary) of the project or projects that the eligible entity proposes to carry out under this section with the investment.

(3) In this subsection, the term ''capital cost'', with respect to a project for the acquisition or construction of housing, means the total amount of the costs included in the basis of the housing for Federal income tax purposes.

(d) COLLATERAL INCENTIVE AGREEMENTS.—The Secretary concerned shall enter into collateral incentive agreements with eligible entities in which the Secretary makes an investment under this section to ensure that a suitable preference will be afforded members of the armed forces and their dependents in the lease or purchase, as the case may be, of a reasonable number of the housing units covered by the investment.

(Added Pub. L. 104–106, div. B, title XXVIII, § 2801(a)(1), Feb. 10, 1996, 110 Stat. 546; amended Pub. L. 105–85, div. B, title XXVIII, § 2805, Nov. 18, 1997, 111 Stat. 1991; Pub. L. 106–65, div. B, title XXVIII, § 2803(d), (h)(1), Oct. 5, 1999, 113 Stat. 849; Pub. L. 108–136, div. A, title X, § 1031(a)(50), Nov. 24, 2003, 117 Stat. 1602; Pub. L. 113–66, div. B, title XXVIII, § 2805, Dec. 26, 2013, 127 Stat. 1008.)

AMENDMENTS

2013—Subsec. (e). Pub. L. 113–66 struck out subsec. (e). Text read as follows: ''Amounts in the Department of Defense Family Housing Improvement Fund or the Department of Defense Military Unaccompanied Housing Improvement Fund may be used to make a cash investment under this section in an eligible entity only after the end of the 30-day period beginning on the date the Secretary of Defense submits written notice of, and justification for, the investment to the appropriate committees of Congress or, if earlier, the end of the 14-day period beginning on the date on which a copy of the notice and justification is provided in an electronic medium pursuant to section 480 of this title.''

2003—Subsec. (e). Pub. L. 108–136 inserted before period at end ''or, if earlier, the end of the 14-day period

beginning on the date on which a copy of the notice and justification is provided in an electronic medium pursuant to section 480 of this title''.

1999—Pub. L. 106–65, § 2803(h)(1), struck out ''in nongovernmental entities'' after ''Investments'' in section catchline.

Subsec. (a). Pub. L. 106–65, § 2803(d)(1), substituted ''an eligible entity'' for ''nongovernmental entities''.

Subsec. (c). Pub. L. 106–65, § 2803(d)(2), substituted ''an eligible entity'' for ''a nongovernmental entity'' in pars. (1) and (2) and ''the eligible entity'' for ''the entity'' wherever appearing in pars. (1) and (2).

Subsec. (d). Pub. L. 106–65, § 2803(d)(3), substituted ''eligible'' for ''nongovernmental''.

Subsec. (e). Pub. L. 106–65, § 2803(d)(4), substituted ''an eligible entity'' for ''a nongovernmental entity''.

1997—Subsec. (e). Pub. L. 105–85 added subsec. (e).

§ 2876. Rental guarantees

The Secretary concerned may enter into agreements with eligible entities that acquire or construct military family housing units or military unaccompanied housing units under this subchapter in order to assure—

(1) the occupancy of such units at levels specified in the agreements; or

(2) rental income derived from rental of such units at levels specified in the agreements.

(Added Pub. L. 104–106, div. B, title XXVIII, § 2801(a)(1), Feb. 10, 1996, 110 Stat. 546; amended Pub. L. 106–65, div. B, title XXVIII, § 2803(e), Oct. 5, 1999, 113 Stat. 849.)

AMENDMENTS

1999—Pub. L. 106–65 substituted ''eligible entities'' for ''private persons'' in introductory provisions.

§ 2877. Differential lease payments

Pursuant to an agreement entered into by the Secretary concerned and a lessor of military family housing or military unaccompanied housing to members of the armed forces, the Secretary may pay the lessor an amount in addition to the rental payments for the housing made by the members as the Secretary determines appropriate to encourage the lessor to make the housing available to members of the armed forces as military family housing or as military unaccompanied housing.

(Added Pub. L. 104–106, div. B, title XXVIII, § 2801(a)(1), Feb. 10, 1996, 110 Stat. 547; amended Pub. L. 106–65, div. B, title XXVIII, § 2803(f), Oct. 5, 1999, 113 Stat. 849.)

AMENDMENTS

1999—Pub. L. 106–65 substituted ''a lessor'' for ''a private lessor''.

§ 2878. Conveyance or lease of existing property and facilities

(a) CONVEYANCE OR LEASE AUTHORIZED.—The Secretary concerned may convey or lease property or facilities (including ancillary supporting facilities) to eligible entities for purposes of using the proceeds of such conveyance or lease to carry out activities under this subchapter.

(b) INAPPLICABILITY TO PROPERTY AT INSTALLATION APPROVED FOR CLOSURE.—The authority of this section does not apply to property or facilities located on or near a military installation approved for closure under a base closure law.

(c) COMPETITIVE PROCESS.—The Secretary concerned shall ensure that the time, method, and terms and conditions of the reconveyance or lease of property or facilities under this section from the eligible entity permit full and free competition consistent with the value and nature of the property or facilities involved.

(d) TERMS AND CONDITIONS.—(1) The conveyance or lease of property or facilities under this section shall be for such consideration and upon such terms and conditions as the Secretary concerned considers appropriate for the purposes of this subchapter and to protect the interests of the United States.

(2) As part or all of the consideration for a conveyance or lease under this section, the purchaser or lessor (as the case may be) shall enter into an agreement with the Secretary to ensure that a suitable preference will be afforded members of the armed forces and their dependents in the lease or sublease of a reasonable number of the housing units covered by the conveyance or lease, as the case may be, or in the lease of other suitable housing units made available by the purchaser or lessee.

(e) INAPPLICABILITY OF CERTAIN PROPERTY MANAGEMENT LAWS.—The conveyance or lease of property or facilities under this section shall not be subject to the following provisions of law:

(1) Section 2667 of this title.

(2) Subtitle I of title 40 and division C (except sections 3302, 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41.

(3) Section 1302 of title 40.

(4) Section 501 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11411).

(Added Pub. L. 104–106, div. B, title XXVIII, § 2801(a)(1), Feb. 10, 1996, 110 Stat. 547; amended Pub. L. 105–85, div. A, title X, § 1073(a)(60), Nov. 18, 1997, 111 Stat. 1903; Pub. L. 106–65, div. B, title XXVIII, § 2803(g), Oct. 5, 1999, 113 Stat. 849; Pub. L. 107–107, div. A, title X, § 1048(d)(1), Dec. 28, 2001, 115 Stat. 1227; Pub. L. 107–217, § 3(b)(23), Aug. 21, 2002, 116 Stat. 1297; Pub. L. 110–417, div. B, title XXVIII, § 2805(d), Oct. 14, 2008, 122 Stat. 4723; Pub. L. 111–350, § 5(b)(50), Jan. 4, 2011, 124 Stat. 3846.)

AMENDMENTS

2011—Subsec. (e)(2). Pub. L. 111–350, which directed substitution of ''division C (except sections 3302, 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41'' for ''title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)'' in subsec. (d)(2), was executed by making the substitution in subsec. (e)(2) to reflect the probable intent of Congress and the amendment by Pub. L. 110–417. See 2008 Amendment note below.

2008—Subsecs. (c) to (e). Pub. L. 110–417 added subsec. (c) and redesignated former subsecs. (c) and (d) as (d) and (e), respectively.

2002—Subsec. (d)(2). Pub. L. 107–217, § 3(b)(23)(A), substituted ''Subtitle I of title 40 and title III of the'' for ''The'' and ''(41 U.S.C. 251 et seq.)'' for ''(40 U.S.C. 471 et seq.)''.

Subsec. (d)(3). Pub. L. 107–217, § 3(b)(23)(B), substituted ''Section 1302 of title 40'' for ''Section 321 of the Act of June 30, 1932 (commonly known as the Economy Act) (40 U.S.C. 303b)''.

2001—Subsec. (d)(4). Pub. L. 107–107 substituted ''McKinney-Vento Homeless Assistance Act'' for ''Stewart B. McKinney Homeless Assistance Act''.

1999—Subsec. (a). Pub. L. 106–65 substituted ''eligible entities'' for ''private persons''.

1997—Subsec. (d)(4). Pub. L. 105–85 substituted ''11411'' for ''11401''.

§ 2879. Window fall prevention devices in military family housing units

(a) REQUIRING USE OF DEVICES ON CERTAIN WINDOWS.—

(1) REQUIREMENT.—The Secretary concerned shall ensure that if a window in any military family housing unit acquired or constructed under this chapter is described in subsection (c), including a window designed for emergency escape or rescue, the window is equipped with fall prevention devices described in paragraph (3).

(2) EFFECTIVE DATE.—Paragraph (1) shall apply with respect to the following military family housing units:

(A) A unit for which the contract for the construction of the unit is first entered into after October 1, 2019.

(B) Any other unit which is subject to a whole-house renovation project for which the contract is entered into on or after October 1, 2019.

(3) FALL PREVENTION DEVICE DESCRIBED.—A fall prevention device is a window screen or guard that complies with applicable standards in ASTM standard F2090–13 (or any successor standard).

(b) RETROFITTING OR REPLACING EXISTING WINDOWS.—

(1) PROGRAM TO RETROFIT EXISTING WINDOWS.—The Secretary concerned shall carry out a program under which, in military family housing units acquired or constructed under this chapter which are not subject to the requirements of subsection (a), windows which are described in subsection (c), including windows designed for emergency escape or rescue, are retrofitted to be equipped with fall prevention devices described in paragraph (3) of subsection (a) or are replaced with windows which are equipped with fall prevention devices described in such paragraph.

(2) GRANTS.—The Secretary concerned may carry out the program under this subsection by making grants to private entities to retrofit or replace existing windows, in accordance with such criteria as the Secretary may establish by regulation.

(3) USE OF OPERATIONS FUNDING.—The Secretary may carry out the program under this subsection during a fiscal year with amounts made available to the Secretary for family housing operations for such fiscal year.

(c) WINDOWS DESCRIBED.—A window is described in this subsection if the bottom sill of the window is within 42 inches of the floor, as measured in the interior of the unit, and is more than 72 inches above the ground, as measured on the exterior grade of the building.

(d) RECORD OF INCIDENTS; ANNUAL REPORT.—The Secretary concerned shall keep a record of each incident (as defined in Department of Defense Instruction 6055.7 series) in which a minor child is injured or killed as the result of an unintentional window fall in a military family housing unit. Not later than 90 days after the end of each calendar year (beginning with 2017), the Secretary of Defense shall submit a report to the Committees on Armed Services of the House of Representatives and Senate on all such window falls occurring in the previous year.

(Added Pub. L. 115–91, div. B, title XXVIII, § 2817(a)(1), Dec. 12, 2017, 131 Stat. 1851; amended Pub. L. 115–232, div. A, title X, § 1081(a)(28), div. B, title XXVIII, § 2823(a), Aug. 13, 2018, 132 Stat. 1985, 2269; Pub. L. 116–92, div. A, title XVII, § 1731(a)(57), div. B, title XXX, § 3034, Dec. 20, 2019, 133 Stat. 1815, 1936.)

PRIOR PROVISIONS

A prior section 2879, added Pub. L. 104–106, div. B, title XXVIII, § 2801(a)(1), Feb. 10, 1996, 110 Stat. 547, related to interim leases of completed units pending completion of a project to acquire or construct military family housing units or military unaccompanied housing units, prior to repeal by Pub. L. 107–314, div. B, title XXVIII, § 2802(c)(1), Dec. 2, 2002, 116 Stat. 2703.

AMENDMENTS

2019—Subsec. (a)(1). Pub. L. 116–92, § 3034(a)(1), substituted ''described in paragraph (3)'' for ''that protect against unintentional window falls by young children and that are in compliance with applicable International Building Code (IBC) standards''.

Subsec. (a)(2)(A). Pub. L. 116–92, § 3034(a)(2)(A), substituted ''October 1, 2019'' for ''December 11, 2017''.

Pub. L. 116–92, § 1731(a)(57), struck out comma before period at end.

Subsec. (a)(2)(B). Pub. L. 116–92, § 3034(a)(2)(B), substituted ''October 1, 2019'' for ''September 1, 2018''.

Subsec. (a)(3). Pub. L. 116–92, § 3034(a)(3), added par. (3).

Subsec. (b)(1). Pub. L. 116–92, § 3034(c), substituted ''paragraph (3)'' for ''paragraph (1)''.

Subsec. (c). Pub. L. 116–92, § 3034(b), substituted ''42 inches'' for ''24 inches''.

2018—Subsec. (a)(1). Pub. L. 115–232, § 2823(a)(1), substituted ''subsection (c)'' for ''subsection (b)''.

Subsec. (a)(2)(A). Pub. L. 115–232, § 1081(a)(28), substituted ''after December 11, 2017,'' for ''on or after the date of the enactment of this section''.

Subsecs. (b) to (d). Pub. L. 115–232, § 2823(a)(2), (3), added subsec. (b) and redesignated former subsecs. (b) and (c) as (c) and (d), respectively.

EFFECTIVE DATE OF 2018 AMENDMENT

Pub. L. 115–232, div. B, title XXVIII, § 2823(b), Aug. 13, 2018, 132 Stat. 2269, provided that: ''The amendments made by this section [amending this section] shall apply with respect to fiscal year 2019 and each succeeding fiscal year.''

§ 2880. Unit size and type

(a) CONFORMITY WITH SIMILAR HOUSING UNITS IN LOCALE.—The Secretary concerned shall ensure that the room patterns and floor areas of military family housing units and military unaccompanied housing units acquired or constructed under this subchapter are generally comparable to the room patterns and floor areas of similar housing units in the locality concerned.

(b) INAPPLICABILITY OF LIMITATIONS ON SPACE BY PAY GRADE.—Sections 2826 and 2856 of this title shall not apply to military family housing or military unaccompanied housing units acquired or constructed under this subchapter.

(Added Pub. L. 104–106, div. B, title XXVIII, § 2801(a)(1), Feb. 10, 1996, 110 Stat. 548; amended Pub. L. 108–136, div. B, title XXVIII, § 2806, Nov. 24, 2003, 117 Stat. 1722; Pub. L. 109–364, div. B,

title XXVIII, § 2807(b), Oct. 17, 2006, 120 Stat. 2469.)

AMENDMENTS

2006—Subsec. (b). Pub. L. 109–364 substituted ''Sections 2826 and 2856'' for ''(1) Section 2826'', inserted ''or military unaccompanied housing'' after ''military family housing'', and struck out par. (2) which read as follows: ''The regulations prescribed under section 2856 of this title shall not apply to any military unaccompanied housing unit acquired or constructed under this subchapter.''

2003—Subsec. (b)(2). Pub. L. 108–136 struck out ''unless the unit is located on a military installation'' before period at end.

§ 2881. Ancillary supporting facilities

(a) AUTHORITY TO ACQUIRE OR CONSTRUCT.—Any project for the acquisition or construction of military family housing units or military unaccompanied housing units under this subchapter may include the acquisition or construction of ancillary supporting facilities for the housing units concerned.

(b) RESTRICTION.—A project referred to in subsection (a) may not include the acquisition or construction of an ancillary supporting facility (other than a child development center) if, as determined by the Secretary concerned, the facility is to be used for providing merchandise or services in direct competition with—

(1) the Army and Air Force Exchange Service;

(2) the Navy Exchange Service Command;

(3) a Marine Corps exchange;

(4) the Defense Commissary Agency; or

(5) any nonappropriated fund activity of the Department of Defense for the morale, welfare, and recreation of members of the armed forces.

(Added Pub. L. 104–106, div. B, title XXVIII, § 2801(a)(1), Feb. 10, 1996, 110 Stat. 548; amended Pub. L. 106–65, div. B, title XXVIII, § 2804, Oct. 5, 1999, 113 Stat. 849; Pub. L. 109–163, div. B, title XXVIII, § 2805(a), Jan. 6, 2006, 119 Stat. 3507.)

AMENDMENTS

2006—Subsec. (b). Pub. L. 109–163 inserted ''(other than a child development center)'' after ''ancillary supporting facility'' in introductory provisions.

1999—Pub. L. 106–65 designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

CONSTRUCTION OF 2006 AMENDMENT

Pub. L. 109–163, div. B, title XXVIII, § 2805(c), Jan. 6, 2006, 119 Stat. 3507, provided that: ''Nothing in the amendment made by subsection (a) [amending this section] may be construed to alter any law and regulation applicable to the operation of a child development center, as defined in section 2871(2) of title 10, United States Code.''

§ 2881a. Pilot projects for acquisition or construction of military unaccompanied housing

(a) PILOT PROJECTS AUTHORIZED.—The Secretary of the Navy may carry out not more than three pilot projects under the authority of this section or another provision of this subchapter to use the private sector for the acquisition or construction of military unaccompanied housing in the United States, including any territory or possession of the United States.

(b) TREATMENT OF HOUSING; ASSIGNMENT OF MEMBERS.—The Secretary of the Navy may assign members of the armed forces without dependents to housing units acquired or constructed under the pilot projects, and such housing units shall be considered as quarters of the United States or a housing facility under the jurisdiction of the Secretary for purposes of section 403 of title 37.

(c) BASIC ALLOWANCE FOR HOUSING.—(1) The Secretary of Defense may prescribe and, under section 403(n) of title 37, pay for members of the armed forces without dependents in privatized housing acquired or constructed under the pilot projects higher rates of partial basic allowance for housing than the rates authorized under paragraph (2) of such section.

(2) The partial basic allowance for housing paid for a member at a higher rate under this subsection may be paid directly to the private sector source of the housing to whom the member is obligated to pay rent or other charge for residing in such housing if the private sector source credits the amount so paid against the amount owed by the member for the rent or other charge.

(d) FUNDING.—(1) The Secretary of the Navy shall use the Department of Defense Military Unaccompanied Housing Improvement Fund to carry out activities under the pilot projects.

(2) Subject to 30 days prior notification to the appropriate committees of Congress in an electronic medium pursuant to section 480 of this title, such additional amounts as the Secretary of Defense considers necessary may be transferred to the Department of Defense Military Unaccompanied Housing Improvement Fund from amounts appropriated for construction of military unaccompanied housing in military construction accounts. The amounts so transferred shall be merged with and be available for the same purposes and for the same period of time as amounts appropriated directly to the Fund.

[(e) Repealed. Pub. L. 115–91, div. A, title X, § 1051(a)(25), Dec. 12, 2017, 131 Stat. 1562.]

(f) EXPIRATION.—The authority of the Secretary of the Navy to enter into a contract under the pilot programs shall expire September 30, 2009.

(Added Pub. L. 107–314, div. B, title XXVIII, § 2803(a)(1), Dec. 2, 2002, 116 Stat. 2703; amended Pub. L. 109–163, div. A, title X, § 1056(c)(10), Jan. 6, 2006, 119 Stat. 3440; Pub. L. 109–364, div. B, title XXVIII, § 2812, Oct. 17, 2006, 120 Stat. 2473; Pub. L. 111–383, div. B, title XXVIII, § 2803(f), Jan. 7, 2011, 124 Stat. 4459; Pub. L. 115–91, div. A, title X, § 1051(a)(25), div. B, title XXVIII, § 2801(d)(1), Dec. 12, 2017, 131 Stat. 1562, 1844.)

AMENDMENTS

2017—Subsec. (d)(2). Pub. L. 115–91, § 2801(d)(1), inserted ''in an electronic medium pursuant to section 480 of this title'' after ''Congress''.

Subsec. (e). Pub. L. 115–91, § 1051(a)(25), struck out subsec. (e) which required reports describing certain proposed contracts, conveyances, or leases.

2011—Subsec. (e)(2). Pub. L. 111–383 inserted before period at end ''or, if earlier, a period of 20 days has elapsed from the date on which a copy of the report is provided in an electronic medium pursuant to section 480 of this title''.

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2006—Subsecs. (d)(2), (e)(2). Pub. L. 109–364, § 2812(a), substituted ''30 days'' for ''90 days''.

Subsec. (f). Pub. L. 109–364, § 2812(b), substituted ''2009'' for ''2007''.

Pub. L. 109–163 substituted ''The'' for ''Notwithstanding section 2885 of this title, the''.

§ 2882. Effect of assignment of members to housing units acquired or constructed under alternative authority

(a) TREATMENT AS QUARTERS OF THE UNITED STATES.—Except as provided in subsection (b), housing units acquired or constructed under this subchapter shall be considered as quarters of the United States or a housing facility under the jurisdiction of a uniformed service for purposes of section 403 of title 37.

(b) AVAILABILITY OF BASIC ALLOWANCE FOR HOUSING.—A member of the armed forces who is assigned to a housing unit acquired or constructed under this subchapter that is not owned or leased by the United States shall be entitled to a basic allowance for housing under section 403 of title 37.

(c) LEASE PAYMENTS THROUGH PAY ALLOTMENTS.—The Secretary concerned may require members of the armed forces who lease housing in housing units acquired or constructed under this subchapter to make lease payments for such housing pursuant to allotments of the pay of such members under section 701 of title 37.

(Added Pub. L. 104–106, div. B, title XXVIII, § 2801(a)(1), Feb. 10, 1996, 110 Stat. 548; amended Pub. L. 105–85, div. A, title VI, § 603(d)(2)(C), Nov. 18, 1997, 111 Stat. 1783; Pub. L. 110–417, div. B, title XXVIII, § 2805(e)(1), Oct. 14, 2008, 122 Stat. 4723.)

AMENDMENTS

2008—Pub. L. 110–417 amended section generally. Prior to amendment, section related to assignment of members of the armed forces to housing units by the Secretary concerned, treatment of such housing as quarters of the United States, entitlement to a basic allowance for housing, and making of lease payments through pay allotments.

1997—Subsec. (b)(1). Pub. L. 105–85, § 603(d)(2)(C)(i), substituted ''section 403'' for ''section 403(b)''.

Subsec. (b)(2). Pub. L. 105–85, § 603(d)(2)(C)(ii), substituted ''basic allowance for housing under section 403 of title 37'' for ''basic allowance for quarters under section 403 of title 37 and, if in a high housing cost area, a variable housing allowance under section 403a of that title''.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–85 effective Jan. 1, 1998, see section 603(e) of Pub. L. 105–85, set out as a note under section 5561 of Title 5, Government Organization and Employees.

§ 2883. Department of Defense Housing Funds

(a) ESTABLISHMENT.—There are hereby established on the books of the Treasury the following accounts:

(1) The Department of Defense Family Housing Improvement Fund.

(2) The Department of Defense Military Unaccompanied Housing Improvement Fund.

(b) COMMINGLING OF FUNDS PROHIBITED.—(1) The Secretary of Defense shall administer each Fund separately.

(2) Amounts in the Department of Defense Family Housing Improvement Fund may be used only to carry out activities under this subchapter with respect to military family housing.

(3) Amounts in the Department of Defense Military Unaccompanied Housing Improvement Fund may be used only to carry out activities under this subchapter with respect to military unaccompanied housing.

(c) CREDITS TO FUNDS.—(1) There shall be credited to the Department of Defense Family Housing Improvement Fund the following:

(A) Amounts authorized for and appropriated to that Fund.

(B) Subject to subsection (f), any amounts that the Secretary of Defense transfers, in such amounts as provided in appropriation Acts, to that Fund from amounts authorized and appropriated to the Department of Defense for the acquisition, improvement, or construction of military family housing.

(C) Proceeds from the conveyance or lease of property or facilities under section 2878 of this title for the purpose of carrying out activities under this subchapter with respect to military family housing.

(D) Income derived from any activities under this subchapter with respect to military family housing, including interest on loans made under section 2873 of this title, income and gains realized from investments under section 2875 of this title, and any return of capital invested as part of such investments.

(E) Any amounts that the Secretary of the Navy transfers to that Fund pursuant to section 2814(i)(3) of this title, subject to the restrictions on the use of the transferred amounts specified in that section.

(F) Any amounts that the Secretary concerned transfers to that Fund pursuant to section 2869 of this title.

(2) There shall be credited to the Department of Defense Military Unaccompanied Housing Improvement Fund the following:

(A) Amounts authorized for and appropriated to that Fund.

(B) Subject to subsection (f), any amounts that the Secretary of Defense transfers, in such amounts as provided in appropriation Acts, to that Fund from amounts authorized and appropriated to the Department of Defense for the acquisition or construction of military unaccompanied housing.

(C) Proceeds from the conveyance or lease of property or facilities under section 2878 of this title for the purpose of carrying out activities under this subchapter with respect to military unaccompanied housing.

(D) Income derived from any activities under this subchapter with respect to military unaccompanied housing, including interest on loans made under section 2873 of this title, income and gains realized from investments under section 2875 of this title, and any return of capital invested as part of such investments.

(E) Any amounts that the Secretary of the Navy transfers to that Fund pursuant to section 2814(i)(3) of this title, subject to the restrictions on the use of the transferred amounts specified in that section.

(F) Any amounts that the Secretary concerned transfers to that Fund pursuant to section 2869 of this title.

(d) USE OF AMOUNTS IN FUNDS.—(1)(A) In such amounts as provided in appropriation Acts and except as provided in subsection (e), the Secretary of Defense may use amounts in the Department of Defense Family Housing Improvement Fund to carry out activities under this subchapter with respect to military family housing, including activities required in connection with the planning, execution, and administration of contracts entered into under the authority of this subchapter. The Secretary may also use for expenses of activities required in connection with the planning, execution, and administration of such contracts funds that are otherwise available to the Department of Defense for such types of expenses.

(B) The Secretary of Defense shall require that eligible entities receiving amounts from the Department of Defense Family Housing Improvement Fund prioritize the use of such amounts for expenditures related to asset recapitalization, operating expenses, and debt payments before other program management-incentive fee expenditures. In the case of asset recapitalization, the primary purpose of the expenditures must be to sustain existing housing units owned or managed by the eligible entity or for which the eligible entity is otherwise responsible.

(2) In such amounts as provided in appropriation Acts and except as provided in subsection (e), the Secretary of Defense may use amounts in the Department of Defense Military Unaccompanied Housing Improvement Fund to carry out activities under this subchapter with respect to military unaccompanied housing, including activities required in connection with the planning, execution, and administration of contracts entered into under the authority of this subchapter. The Secretary may also use for expenses of activities required in connection with the planning, execution, and administration of such contracts funds that are otherwise available to the Department of Defense for such types of expenses.

(3) Amounts made available under this subsection shall remain available until expended. The Secretary of Defense may transfer amounts made available under this subsection to the Secretaries of the military departments to permit such Secretaries to carry out the activities for which such amounts may be used.

(e) LIMITATION ON OBLIGATIONS.—(1) The Secretary may not incur an obligation under a contract or other agreement entered into under this subchapter in excess of the unobligated balance, at the time the contract is entered into, of the Fund required to be used to satisfy the obligation.

(2) The Funds established under subsection (a) shall be the sole source of funds for activities carried out under this subchapter.

(f) NOTIFICATION REQUIRED FOR TRANSFERS.—A transfer of appropriated amounts to a Fund under subparagraph (B) of paragraph (1) or subparagraph (B) of paragraph (2) of subsection (c) may be made only after the end of the 14-day period beginning on the date the Secretary of Defense submits notice of, and justification for, the transfer to the appropriate committees of Congress in an electronic medium pursuant to section 480 of this title.

(Added Pub. L. 104–106, div. B, title XXVIII, § 2801(a)(1), Feb. 10, 1996, 110 Stat. 548; amended Pub. L. 104–201, div. B, title XXVIII, § 2804, Sept. 23, 1996, 110 Stat. 2788; Pub. L. 106–65, div. B, title XXVIII, § 2802(b), Oct. 5, 1999, 113 Stat. 848; Pub. L. 108–136, div. A, title X, § 1031(a)(51), div. B, title XXVIII, § 2805(c), Nov. 24, 2003, 117 Stat. 1603, 1721; Pub. L. 108–375, div. B, title XXVIII, § 2805(a), Oct. 28, 2004, 118 Stat. 2122; Pub. L. 109–163, div. B, title XXVIII, § 2806(a), (b), Jan. 6, 2006, 119 Stat. 3507; Pub. L. 110–181, div. B, title XXVII, § 2705, Jan. 28, 2008, 122 Stat. 533; Pub. L. 112–239, div. B, title XXVII, § 2711(c)(5), Jan. 2, 2013, 126 Stat. 2144; Pub. L. 115–91, div. B, title XXVIII, § 2801(d)(2), Dec. 12, 2017, 131 Stat. 1844; Pub. L. 116–283, div. B, title XXVIII, § 2813(a), Jan. 1, 2021, 134 Stat. 4327.)

AMENDMENTS

2021—Subsec. (d)(1). Pub. L. 116–283 designated existing provisions as subpar. (A) and added subpar. (B).

2017—Subsec. (f). Pub. L. 115–91 substituted ''14-day period'' for ''30-day period'' and struck out ''written'' before ''notice'' and ''or, if earlier, the end of the 14-day period beginning on the date on which a copy of the notice and justification is provided'' before ''in an electronic medium''.

2013—Subsec. (c)(1)(G). Pub. L. 112–239, § 2711(c)(5)(A)(i), struck out subpar. (G), which read as follows: ''Subject to subsection (f), any amounts that the Secretary of Defense transfers to that Fund from amounts in the Department of Defense Base Closure Account 2005.''

Subsec. (c)(2)(G). Pub. L. 112–239, § 2711(c)(5)(A)(ii), struck out subpar. (G), which read as follows: ''Subject to subsection (f), any amounts that the Secretary of Defense transfers to that Fund from amounts in the Department of Defense Base Closure Account 2005.''

Subsec. (f). Pub. L. 112–239, § 2711(c)(5)(B), struck out ''or (G)'' after ''subparagraph (B)'' in two places in first sentence, and struck out second sentence which read: ''In addition, the notice required in connection with a transfer under subparagraph (G) of paragraph (1) or subparagraph (G) of paragraph (2) shall include a certification that the amounts to be transferred from the Department of Defense Base Closure Account 2005 were specified in the conference report to accompany the most recent Military Construction Authorization Act.''

2008—Subsec. (c)(1)(G). Pub. L. 110–181, § 2705(a)(1), added subpar. (G).

Subsec. (c)(2)(G). Pub. L. 110–181, § 2705(a)(2), added subpar. (G).

Subsec. (f). Pub. L. 110–181, § 2705(b), substituted ''subparagraph (B) or (G) of paragraph (1) or subparagraph (B) or (G) of paragraph (2)'' for ''paragraph (1)(B) or (2)(B)'' and inserted at end ''In addition, the notice required in connection with a transfer under subparagraph (G) of paragraph (1) or subparagraph (G) of paragraph (2) shall include a certification that the amounts to be transferred from the Department of Defense Base Closure Account 2005 were specified in the conference report to accompany the most recent Military Construction Authorization Act.''

2006—Subsec. (c)(1)(B). Pub. L. 109–163, § 2806(b), substituted ''acquisition, improvement, or construction'' for ''acquisition or construction''.

Subsec. (e). Pub. L. 109–163, § 2806(a), designated existing provisions as par. (1) and added par. (2).

2004—Subsec. (g). Pub. L. 108–375 struck out heading and text of subsec. (g). Text read as follows: ''The total value in budget authority of all contracts and investments undertaken using the authorities provided in this subchapter shall not exceed—

''(1) $850,000,000 for the acquisition or construction of military family housing; and

''(2) $150,000,000 for the acquisition or construction of military unaccompanied housing.''

2003—Subsec. (c)(1)(F). Pub. L. 108–136, § 2805(c)(1), added subpar. (F).

Subsec. (c)(2)(F). Pub. L. 108–136, § 2805(c)(2), added subpar. (F).

Subsec. (f). Pub. L. 108–136, § 1031(a)(51), inserted before period at end ''or, if earlier, the end of the 14-day period beginning on the date on which a copy of the notice and justification is provided in an electronic medium pursuant to section 480 of this title''.

1999—Subsec. (c)(1)(E). Pub. L. 106–65, § 2802(b)(1), added subpar. (E).

Subsec. (c)(2)(E). Pub. L. 106–65, § 2802(b)(2), added subpar. (E).

1996—Subsec. (d)(1), (2). Pub. L. 104–201 inserted at end ''The Secretary may also use for expenses of activities required in connection with the planning, execution, and administration of such contracts funds that are otherwise available to the Department of Defense for such types of expenses.''

EFFECTIVE DATE OF 2021 AMENDMENT

Pub. L. 116–283, div. B, title XXVIII, § 2813(b), Jan. 1, 2021, 134 Stat. 4327, provided that: ''The requirements set forth in subparagraph (B) of section 2883(d)(1) of title 10, United States Code, as added by subsection (a), shall apply to appropriate legal documents entered into or renewed on or after the date of the enactment of this Act [Jan. 1, 2021] between the Secretary of a military department and a landlord regarding privatized military housing. In this subsection, the terms 'landlord' and 'privatized military housing' have the meanings given those terms in section 3001(a) of the Military Construction Authorization Act for Fiscal Year 2020 (division B of Public Law 116–92; 133 Stat. 1916; 10 U.S.C. 2821 note).''

EFFECTIVE DATE OF 2013 AMENDMENT

Amendment by Pub. L. 112–239 effective on the later of Oct. 1, 2013, or the date of the enactment of an Act authorizing funds for military construction for fiscal year 2014 (div. J of Pub. L. 113–76, approved Jan. 17, 2014), see section 2711(d) of Pub. L. 112–239, set out as a note under section 2701 of this title.

§ 2883a. Funds for housing allowances of members of the armed forces assigned to certain military family housing units

(a) AUTHORITY TO TRANSFER FUNDS TO COVER HOUSING ALLOWANCES.—During the fiscal year in which a contract is awarded for the acquisition or construction of military family housing units under this subchapter that are not to be owned by the United States, the Secretary of Defense may transfer the amount determined under subsection (b) with respect to such housing from appropriations available for support of military housing for the armed force concerned for that fiscal year to appropriations available for pay and allowances of military personnel of that same armed force for that same fiscal year.

(b) AMOUNT TRANSFERRED.—The total amount authorized to be transferred under subsection (a) in connection with a contract under this subchapter may not exceed an amount equal to any additional amounts payable during the fiscal year in which the contract is awarded to members of the armed forces assigned to the acquired or constructed housing units as basic allowance for housing under section 403 of title 37 that would not otherwise have been payable to such members if not for assignment to such housing units.

(c) TRANSFERS SUBJECT TO APPROPRIATIONS.—The transfer of funds under the authority of subsection (a) is limited to such amounts as may be provided in advance in appropriations Acts.

(Added Pub. L. 107–107, div. B, title XXVIII, § 2804(a), Dec. 28, 2001, 115 Stat. 1305.)

§ 2884. Reports

(a) PROJECT REPORTS.—(1) The Secretary concerned shall transmit to the appropriate committees of Congress a report describing—

(A) each contract or agreement for the acquisition or construction of family housing units or unaccompanied housing units under this subchapter; and

(B) each conveyance or lease proposed under section 2878 of this title.

(2) A report required by paragraph (1) shall include the following:

(A) A description of the contract, agreement, conveyance, or lease, including a summary of the terms of the contract, agreement, conveyance, or lease.

(B) A description of the authorities to be utilized in entering into the contract, agreement, conveyance, or lease and the intended method of participation of the United States in the contract, agreement, conveyance, or lease, including a justification of the intended method of participation.

(C) A statement of the scored cost of the contract, agreement, conveyance, or lease, as determined by the Office of Management and Budget.

(D) A statement of the United States funds required for the contract, agreement, conveyance, or lease and a description of the source of such funds, including a description of the specific construction, acquisition, or improvement projects from which funds were transferred to the Funds established under section 2883 of this title in order to finance the contract, agreement, conveyance, or lease.

(E) An economic assessment of the life cycle costs of the contract, agreement, conveyance, or lease, including an estimate of the amount of United States funds that would be paid over the life of the contract, agreement, conveyance, or lease from amounts derived from payments of government allowances, including the basic allowance for housing under section 403 of title 37, if the housing affected by the project were fully occupied by military personnel over the life of the contract, agreement, conveyance, or lease.

(3)(A) In the case of a contract or agreement described in paragraph (1) proposed to be entered into with a private party, the report shall specify whether the contract or agreement will or may include a guarantee (including the making of mortgage or rental payments) by the Secretary to the private party in the event of—

(i) the closure or realignment of the installation for which housing will be provided under the contract or agreement;

(ii) a reduction in force of units stationed at such installation; or

(iii) the extended deployment of units stationed at such installation.

(B) If the contract or agreement will or may include such a guarantee, the report shall also—

(i) describe the nature of the guarantee; and

(ii) assess the extent and likelihood, if any, of the liability of the United States with respect to the guarantee.

(4) The report shall be submitted in an electronic medium pursuant to section 480 of this title not later than 21 days before the date on which the Secretary issues the contract solicitation or offers the conveyance or lease.

(b) ANNUAL REPORTS TO ACCOMPANY BUDGET MATERIALS.—The Secretary of Defense shall include each year in the materials that the Secretary submits to Congress in support of the budget submitted by the President pursuant to section 1105 of title 31 the following:

(1) A separate report on the expenditures and receipts during the preceding fiscal year covering each of the Funds established under section 2883 of this title, including a description of the specific construction, acquisition, or improvement projects from which funds were transferred and the privatization projects or contracts to which those funds were transferred. Each report shall also include, for each military department or defense agency, a description of all funds to be transferred to such Funds for the current fiscal year and the next fiscal year.

(2) A report setting forth, by armed force, the following:

(A) An estimate of the amounts of basic allowance for housing under section 403 of title 37 that will be paid, during the current fiscal year and the fiscal year for which the budget is submitted, to members of the armed forces living in housing provided under the authorities in this subchapter.

(B) The number of units of military family housing and military unaccompanied housing upon which the estimate under subparagraph (A) for the current fiscal year and the next fiscal year is based.

(3) A description of the plans for housing privatization activities to be carried out under this subchapter—

(A) during the fiscal year for which the budget is submitted; and

(B) during the period covered by the then-current future-years defense plan under section 221 of this title.

(4) A report identifying each family housing unit acquired or constructed under this subchapter that is used, or intended to be used, as quarters for a general officer or flag officer and for which the total operation, maintenance, and repair costs for the unit exceeded $50,000. For each housing unit so identified, the report shall also include the total of such operation, maintenance, and repair costs.

(c) ANNUAL REPORT ON PRIVATIZATION PROJECTS.—The Secretary of Defense shall submit to the congressional defense committees a semi-annual report containing an evaluation of the status of oversight and accountability measures under section 2885 of this title for military housing privatization projects. To the extent each Secretary concerned has the right to attain the information described in this subsection, each report shall include, at a minimum, the following:

(1) An assessment of the backlog of maintenance and repair at each military housing privatization project where a significant backlog exists, including an estimation of the cost of eliminating the maintenance and repair backlog.

(2) If the debt associated with a privatization project exceeds net operating income or the occupancy rates for the housing units are below 75 percent for more than one year, the plan developed to mitigate the financial risk of the project.

(3) An assessment of any significant project variances between the actual and pro forma deposits in the recapitalization account, to specifically include any unique variances associated with litigation costs.

(4) The details of any significant withdrawals from a recapitalization account, including the purpose and rationale of the withdrawal and, if the withdrawal occurs before the normal recapitalization period, the impact of the early withdrawal on the financial health of the project.

(5) An assessment of the extent to which the information required to comply with paragraphs (1) through (4) has been requested by the Secretaries, but has not been made available.

(6) An assessment of cost assessed to members of the armed forces for utilities compared to utility rates in the local area.

(7) An assessment of the condition of housing units based on the average age of those units and the estimated time until recapitalization.

(8) An assessment of tenant complaints.

(9) An assessment of maintenance response times and completion of maintenance requests.

(10) An assessment of the dispute resolution process under section 2894(c) of this title, which shall include a list of dispute resolution cases by installation and the final outcome of each case.

(11) An assessment of overall customer service for tenants.

(12) A description of the results of any no-notice housing inspections conducted.

(13) The results of any resident surveys conducted.

(14) With regard to issues of lead-based paint in housing units, a summary of data relating to the presence of lead-based paint in such housing units, including the following by military department:

(A) The total number of housing units containing lead-based paint.

(B) A description of the reasons for the failure to inspect any housing unit that contains lead-based paint.

(C) A description of all abatement or mitigation efforts completed or underway in housing units containing lead-based paint.

(D) A certification as to whether military housing under the jurisdiction of the Secretary concerned complies with requirements relating to lead-based paint, lead-based paint activities, and lead-based paint hazards, as described in section 408 of the Toxic Substances Control Act (15 U.S.C. 2688).

(Added Pub. L. 104–106, div. B, title XXVIII, § 2801(a)(1), Feb. 10, 1996, 110 Stat. 550; amended Pub. L. 108–136, div. B, title XXVIII, § 2807, Nov. 24, 2003, 117 Stat. 1722; Pub. L. 108–375, div. B, title XXVIII, § 2806, Oct. 28, 2004, 118 Stat. 2122; Pub. L. 109–163, div. B, title XXVIII, § 2806(c), Jan. 6, 2006, 119 Stat. 3507; Pub. L. 110–417, div. B, title XXVIII, § 2805(b), (f), Oct. 14, 2008, 122 Stat. 4723, 4724; Pub. L. 111–383, div. A, title X, § 1075(h)(6), div. B, title XXVIII, § 2803(g), Jan. 7, 2011, 124 Stat. 4377, 4459; Pub. L. 112–239, div. B, title XXVIII, § 2803(b), Jan. 2, 2013, 126 Stat. 2148; Pub. L. 113–66, div. B, title XXVIII, § 2806, Dec. 26, 2013, 127 Stat. 1008; Pub. L. 113–291, div. A, title X, § 1071(f)(26), Dec. 19, 2014, 128 Stat. 3511; Pub. L. 115–91, div. B, title XXVIII, § 2801(d)(3), Dec. 12, 2017, 131 Stat. 1844; Pub. L. 116–92, div. B, title XXX, § 3016(d), Dec. 20, 2019, 133 Stat. 1929; Pub. L. 116–283, div. B, title XXVIII, §§ 2803(c), 2811(h), Jan. 1, 2021, 134 Stat. 4320, 4326.)

AMENDMENTS

2021—Subsec. (a)(1). Pub. L. 116–283, § 2803(c)(1)(A), substituted ''The Secretary concerned'' for ''The Secretary of Defense'' in introductory provisions.

Subsec. (a)(1)(A). Pub. L. 116–283, § 2803(c)(1)(B), inserted ''or agreement'' after ''each contract'' and struck out ''that the Secretary proposes to solicit'' after ''unaccompanied housing units''.

Subsec. (a)(2). Pub. L. 116–283, § 2803(c)(2), substituted ''A report required by paragraph (1)'' for ''For each proposed contract, conveyance, or lease described in paragraph (1), the report required by such paragraph'' in introductory provisions and inserted ''agreement,'' after ''contract,'' wherever appearing.

Subsec. (a)(3). Pub. L. 116–283, § 2803(c)(3), inserted ''or agreement'' after ''contract'' wherever appearing.

Subsec. (c)(10). Pub. L. 116–283, § 2811(h), amended par. (10) generally. Prior to amendment, par. (10) read as follows: ''An assessment of the dispute resolution process, which shall include a specific analysis of each denied tenant request to withhold rent payments and each instance in which the dispute resolution process resulted in a favorable outcome for the landlord.''

2019—Subsec. (c)(7) to (14). Pub. L. 116–92 added pars. (7) to (14).

2017—Subsec. (a)(4). Pub. L. 115–91 added par. (4) and struck out former par. (4) which read as follows: ''The report shall be submitted not later than 30 days before the date on which the Secretary issues the contract solicitation or offers the conveyance or lease or, if earlier, a period of 20 days has elapsed from the date on which a copy of the report is provided in an electronic medium pursuant to section 480 of this title.''

2014—Subsec. (c). Pub. L. 113–291 substituted ''an evaluation'' for ''on evaluation'' in introductory provisions.

2013—Subsecs. (b), (c). Pub. L. 112–239 added subsecs. (b) and (c) and struck out former subsec. (b) which required the Secretary of Defense to provide annual reports to Congress.

Subsec. (c)(3). Pub. L. 113–66 inserted '', to specifically include any unique variances associated with litigation costs'' before period at end.

2011—Subsec. (a)(4). Pub. L. 111–383, § 2803(g), inserted before period at end ''or, if earlier, a period of 20 days has elapsed from the date on which a copy of the report is provided in an electronic medium pursuant to section 480 of this title''.

Subsec. (b)(1). Pub. L. 111–383, § 1075(h)(6), made technical correction to directory language of Pub. L. 109–163, § 2806(c)(2)(A). See 2006 Amendment note below.

2008—Subsec. (b)(7). Pub. L. 110–417, § 2805(b), added par. (7).

Subsec. (b)(8). Pub. L. 110–417, § 2805(f), added par. (8).

2006—Subsec. (a)(2)(D). Pub. L. 109–163, § 2806(c)(1), inserted before period '', including a description of the specific construction, acquisition, or improvement projects from which funds were transferred to the Funds established under section 2883 of this title in order to finance the contract, conveyance, or lease''.

Subsec. (b)(1). Pub. L. 109–163, § 2806(c)(2)(B), (C), substituted ''covering each of the Funds'' for ''covering the Funds'' and inserted before period at end '', including a description of the specific construction, acquisition, or improvement projects from which funds were transferred and the privatization projects or contracts to which those funds were transferred. Each report shall also include, for each military department or defense agency, a description of all funds to be transferred to such Funds for the current fiscal year and the next fiscal year''.

Pub. L. 109–163, § 2806(c)(2)(A), as amended by Pub. L. 111–383, § 1075(h)(6), substituted ''A separate report'' for ''A report''.

2004—Subsec. (a)(2). Pub. L. 108–375, § 2806(a), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''The report shall describe the proposed contract, conveyance, or lease and the intended method of participation of the United States in the contract, conveyance, or lease and provide a justification of such method of participation.''

Subsec. (b)(5), (6). Pub. L. 108–375, § 2806(b), added par. (5) and redesignated former par. (5) as (6).

2003—Subsec. (a)(2) to (4). Pub. L. 108–136, § 2807(a), designated second sentence of par. (2) as par. (4) and added par. (3).

Subsec. (b)(2). Pub. L. 108–136, § 2807(b)(1), inserted before period at end '', and such recommendations as the Secretary considers necessary for improving the extent and effectiveness of the use of such authorities in the future''.

Subsec. (b)(3) to (5). Pub. L. 108–136, § 2807(b)(2), added pars. (3) to (5) and struck out former par. (3) which read as follows: ''A description of the objectives of the Department of Defense for providing military family housing and military unaccompanied housing for members of the armed forces.''

EFFECTIVE DATE OF 2011 AMENDMENT

Pub. L. 111–383, div. A, title X, § 1075(h), Jan. 7, 2011, 124 Stat. 4377, provided that amendment by section 1075(h)(6) is effective as of Jan. 6, 2006, and as if included in Pub. L. 109–163 as enacted.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective Dec. 31, 2021, of provisions in subsecs. (b) and (c) of this section requiring submittal of reports to Congress, see section 1061 of Pub. L. 114–328, set out as a note under section 111 of this title.

FINAL REPORT

Pub. L. 104–106, div. B, title XXVIII, § 2801(b), Feb. 10, 1996, 110 Stat. 551, provided that, not later than Mar. 1, 2000, the Secretary of Defense was to submit to the congressional defense committees a report on the use by the Secretary of Defense and the Secretaries of the military departments of the authorities provided by subchapter IV of chapter 169 of this title.

§ 2885. Oversight and accountability for privatization projects

(a) OVERSIGHT AND ACCOUNTABILITY MEASURES.—Each Secretary concerned shall prescribe regulations to effectively oversee and manage military housing privatization projects carried out under this subchapter during the course of the construction or renovation of the housing units. The regulations shall include the following requirements for each privatization project:

(1) The installation asset manager shall conduct monthly site visits and provide quarterly reports on the progress of the construction or

renovation of the housing units. The reports shall be submitted quarterly to the assistant secretary for installations and environment of the respective military department.

(2) The installation asset manager, and, as applicable, the resident construction manager, privatization asset manager, bondholder representative, project owner, developer, general contractor, and construction consultant for the project shall conduct meetings to ensure that the construction or renovation of the units meets performance and schedule requirements and that appropriate operating and ground lease agreements are in place and adhered to.

(3) In the case of a project for new construction, if the project is 90 days or more behind schedule or otherwise appears to be substantially failing to adhere to the obligations or milestones under the contract, the assistant secretary for installations and environment of the respective military department shall submit a notice of deficiency to the Assistant Secretary of Defense for Energy, Installations, and Environment, the Secretary concerned, the managing member, and the trustee for the project.

(4)(A) Not later than 15 days after the submittal of a notice of deficiency under paragraph (3), the Secretary concerned or designated representative shall submit to the project owner, developer, or general contractor responsible for the project a summary of deficiencies related to the project.

(B) If the project owner, developer, or general contractor responsible for the privatization project is unable, within 60 days after receiving a notice of deficiency under subparagraph (A), to make progress on the issues outlined in such notice, the Secretary concerned shall notify, in an electronic medium pursuant to section 480 of this title, the congressional defense committees of the status of the project and include a recommended course of action to correct the problems.

(b) REQUIRED QUALIFICATIONS.—The Secretary concerned or designated representative shall ensure that the project owner, developer, or general contractor that is selected for each military housing privatization initiative project has construction experience commensurate with that required to complete the project.

(c) BONDING LEVELS.—The Secretary concerned shall ensure that the project owner, developer, or general contractor responsible for a military housing privatization initiative project has sufficient payment and performance bonds or suitable instruments in place for each phase of a construction or renovation portion of the project to ensure successful completion of the work in amounts as agreed to in the project's legal documents, but in no case less than 50 percent of the total value of the active phases of the project, prior to the commencement of work for that phase.

(d) REPORTING OF EFFORTS TO SELECT SUCCESSOR IN EVENT OF DEFAULT.—In the event a military housing privatization initiative project enters into default, the assistant secretary for installations and environment of the respective military department shall submit, in an electronic medium pursuant to section 480 of this title, a report to the congressional defense committees every 90 days detailing the status of negotiations to award the project to a new project owner, developer, or general contractor.

(e) EFFECT OF NOTICES OF DEFICIENCY ON CONTRACTORS AND AFFILIATED ENTITIES.—(1) The Secretary concerned shall keep a record of all plans of action or notices of deficiency issued to a project owner, developer, or general contractor under subsection (a)(4), including the identity of each parent, subsidiary, affiliate, or other controlling entity of such owner, developer, or contractor.

(2) Each military department shall consult all records maintained under paragraph (1) when reviewing the past performance of owners, developers, and contractors in the bidding process for a contract or other agreement for a military housing privatization initiative project.

(f) FINANCIAL INTEGRITY AND ACCOUNTABILITY MEASURES.—(1) The regulations required by subsection (a) shall address the following requirements for each military housing privatization project upon the completion of the construction or renovation of the housing units:

(A) The financial health and performance of the privatization project, including the debt-coverage ratio of the project and occupancy rates for the housing units.

(B) An assessment of the backlog of maintenance and repair of the housing units.

(2) If the debt service coverage for a military housing privatization project falls below 1.0 or the occupancy rates for the housing units of the project are below 75 percent for more than one year, the Secretary concerned shall require the development of a plan to address the financial risk of the project.

(Added Pub. L. 110–417, div. B, title XXVIII, § 2805(a)(1), Oct. 14, 2008, 122 Stat. 4721; amended Pub. L. 112–239, div. B, title XXVIII, § 2803(a), Jan. 2, 2013, 126 Stat. 2147; Pub. L. 113–66, div. A, title X, § 1084(a)(3), Dec. 26, 2013, 127 Stat. 871; Pub. L. 113–291, div. A, title IX, § 901(n)(2), Dec. 19, 2014, 128 Stat. 3469; Pub. L. 115–91, div. B, title XXVIII, § 2801(d)(4), Dec. 12, 2017, 131 Stat. 1844.)

PRIOR PROVISIONS

A prior section 2885, added Pub. L. 104–106, div. B, title XXVIII, § 2801(a)(1), Feb. 10, 1996, 110 Stat. 551; amended Pub. L. 105–85, div. A, title X, § 1073(a)(61), Nov. 18, 1997, 111 Stat. 1903; Pub. L. 106–398, § 1 [div. B, title XXVIII, § 2806], Oct. 30, 2000, 114 Stat. 1654, 1654A–415; Pub. L. 107–107, div. B, title XXVIII, § 2805, Dec. 28, 2001, 115 Stat. 1306, related to expiration of authority to enter into a contract under this subchapter, prior to repeal by Pub. L. 108–375, div. B, title XXVIII, § 2805(b)(1), Oct. 28, 2004, 118 Stat. 2122.

AMENDMENTS

2017—Subsec. (a)(4)(B). Pub. L. 115–91, § 2801(d)(4)(A), inserted '', in an electronic medium pursuant to section 480 of this title,'' after ''notify'' and substituted ''and include'' for '', and shall provide''.

Subsec. (d). Pub. L. 115–91, § 2801(d)(4)(B), inserted '', in an electronic medium pursuant to section 480 of this title,'' after ''submit''.

2013—Subsec. (a). Pub. L. 112–239, § 2803(a)(2), in introductory provisions, inserted ''during the course of the construction or renovation of the housing units'' before period at end of first sentence.

Subsec. (a)(3). Pub. L. 113–66 substituted ''In the case of a project for new construction, if the project'' for ''If a project''.

Subsec. (f). Pub. L. 112–239, § 2803(a)(1), added subsec. (f).

CHANGE OF NAME

''Assistant Secretary of Defense for Energy, Installations, and Environment'' substituted for ''Deputy Under Secretary of Defense (Installations and Environment)'' in subsec. (a)(3) on authority of section 901(n)(2) of Pub. L. 113–291, set out as a References note under section 131 of this title.

[§ 2886. Repealed. Pub. L. 116–92, div. B, title XXX, § 3014(d)(1), Dec. 20, 2019, 133 Stat. 1926]

Section, added Pub. L. 115–91, div. A, title VI, § 602(a), Dec. 12, 2017, 131 Stat. 1417, prohibited collection of amounts in addition to rent from members assigned to military family housing units or military unaccompanied housing units. See section 2891a(e) of this title.

SUBCHAPTER V—OVERSIGHT OF LANDLORDS AND PROTECTIONS AND RESPONSIBILITIES FOR TENANTS OF PRIVATIZED MILITARY HOUSING

Sec.
2890. Rights and responsibilities of tenants of housing units.
[2890a. Renumbered.]
2891. Requirements relating to contracts for provision of housing units.
2891a. Requirements relating to management of housing units.
2891b. Considerations of eligible entity housing history in contracts for privatized military housing.
2891c. Transparency regarding finances and performance metrics.
2892. Maintenance work order system for housing units.
2892a. Access by tenants to historical maintenance information.
2892b. Prohibition on requirement to disclose personally identifiable information in requests for certain maintenance.
2893. Treatment of incentive fees for landlords of housing units for failure to remedy health or environmental hazards.
2894. Landlord-tenant dispute resolution process and treatment of certain payments during process.
2894a. Complaint database.

AMENDMENTS

2021—Pub. L. 116–283, div. B, title XXVIII, §§ 2811(k)(1)(B), (2), 2814(d)(2), Jan. 1, 2021, 134 Stat. 4326, 4328, added items 2891c and 2892b and struck out former items 2890a ''Chief Housing Officer'', 2891c ''Financial transparency'', and 2892b ''Prohibition on requirement to disclose personally identifiable information in electronic requests for maintenance''.

§ 2890. Rights and responsibilities of tenants of housing units

(a) DEVELOPMENT OF TENANT BILL OF RIGHTS AND TENANT RESPONSIBILITIES DOCUMENTS.—(1) The Secretary of Defense shall develop two separate documents, to be known as the Military Housing Privatization Initiative Tenant Bill of Rights and the Military Housing Privatization Initiative Tenant Responsibilities, for tenants of housing units.

(2) The Secretary of each military department shall ensure that the housing documents are attached to each lease agreement for a housing unit.

(3) The rights and responsibilities contained in the housing documents are not intended to be exclusive. The omission of a tenant right or responsibility shall not be construed to deny the existence of such a right or responsibility for tenants.

(4) Each contract between the Secretary concerned and a landlord shall incorporate the housing documents and guarantee the rights and responsibilities of tenants who reside in housing units covered by the contract.

(5) The Secretary of Defense shall develop the housing documents in coordination with the Secretaries of the military departments.

(b) ELEMENTS OF TENANT BILL OF RIGHTS.—At a minimum, the Military Housing Privatization Initiative Tenant Bill of Rights shall address the following rights of tenants of housing units:

(1) The right to reside in a housing unit and community that meets applicable health and environmental standards.

(2) The right to reside in a housing unit that has working fixtures, appliances, and utilities and to reside in a community with well-maintained common areas and amenity spaces.

(3) The right to be provided with a maintenance history of the prospective housing unit before signing a lease, as provided in section 2892a of this title.

(4) The right to a written lease with clearly defined rental terms to establish tenancy in a housing unit, including any addendums and other regulations imposed by the landlord regarding occupancy of the housing unit and use of common areas.

(5) The right to a plain-language briefing, before signing a lease and 30 days after move-in, by the installation housing office on all rights and responsibilities associated with tenancy of the housing unit, including information regarding the existence of any additional fees authorized by the lease, any utilities payments, the procedures for submitting and tracking work orders, the identity of the military tenant advocate, and the dispute resolution process.

(6) The right to have sufficient time and opportunity to prepare and be present for move-in and move-out inspections, including an opportunity to obtain and complete necessary paperwork.

(7) The right to report inadequate housing standards or deficits in habitability of the housing unit to the landlord, the chain of command, and housing management office without fear of reprisal or retaliation, as provided in subsection (e), including reprisal or retaliation in the following forms:

(A) Unlawful recovery of, or attempt to recover, possession of the housing unit.

(B) Unlawfully increasing the rent, decreasing services, or increasing the obligations of a tenant.

(C) Interference with a tenant's right to privacy.

(D) Harassment of a tenant.

(E) Refusal to honor the terms of the lease.

(F) Interference with the career of a tenant.

(8) The right of access to a military tenant advocate, as provided in section 2894(b)(4) of this title, through the housing management office of the installation of the Department at which the housing unit is located.

(9) The right to receive property management services provided by a landlord that meet or exceed industry standards and that are performed by professionally and appropriately trained, responsive, and courteous customer service and maintenance staff.

(10) The right to have multiple, convenient methods to communicate directly with the landlord maintenance staff, and to receive consistently honest, accurate, straightforward, and responsive communications.

(11) The right to have access to an electronic work order system through which a tenant may request maintenance or repairs of a housing unit and track the progress of the work.

(12) With respect to maintenance and repairs to a housing unit, the right to the following:

(A) Prompt and professional maintenance and repair.

(B) To be informed of the required time frame for maintenance or repairs when a maintenance request is submitted.

(C) In the case of maintenance or repairs necessary to ensure habitability of a housing unit, to prompt relocation into suitable lodging or other housing at no cost to the tenant until the maintenance or repairs are completed.

(13) The right to receive advice from military legal assistance on procedures involving mechanisms for resolving disputes with the property management company or property manager to include mediation, arbitration, and filing claims against a landlord.

(14) The right to enter into a dispute resolution process, as provided in section 2894 of this title, should all other methods be exhausted and, in which case, a decision in favor of the tenant may include a reduction in rent or an amount to be reimbursed or credited to the tenant.

(15) The right to have the tenant's basic allowance housing payments segregated, with approval of a designated commander, and not used by the property owner, property manager, or landlord pending completion of the dispute resolution process.

(16) The right to have reasonable, advance notice of any entrance by a landlord, installation housing staff, or chain of command into the housing unit, except in the case of an emergency or abandonment of the housing unit.

(17) The right to not pay non-refundable fees or have application of rent credits arbitrarily held.

(18) The right to expect common documents, forms, and processes for housing units will be the same for all installations of the Department, to the maximum extent applicable without violating local, State, and Federal regulations.

(c) ELEMENTS OF TENANT RESPONSIBILITIES.—At a minimum, the Military Housing Privatization Initiative Tenant Responsibilities shall address the following responsibilities of tenants of housing units:

(1) The responsibility to report in a timely manner any apparent environmental, safety, or health hazards of the housing unit to the landlord and any defective, broken, damaged, or malfunctioning building systems, fixtures, appliances, or other parts of the housing unit, the common areas, or related facilities.

(2) The responsibility to maintain standard upkeep of the housing unit as instructed by the housing management office.

(3) The responsibility to conduct oneself as a tenant in a manner that will not disturb neighbors, and to assume responsibility for one's actions and those of a family member or guest in the housing unit or common areas.

(4) The responsibility not to engage in any inappropriate, unauthorized, or criminal activity in the housing unit or common areas.

(5) The responsibility to allow the landlord reasonable access to the rental home in accordance with the terms of the tenant lease agreement to allow the landlord to make necessary repairs in a timely manner.

(6) The responsibility to read all lease-related materials provided by the landlord and to comply with the terms of the lease agreement, lease addenda, and any associated rules and guidelines.

(d) SUBMISSION TO CONGRESS AND PUBLIC AVAILABILITY.—(1) As part of the budget submission for fiscal year 2021, and biennially thereafter, the Secretary of Defense shall submit the then-current housing documents to the congressional defense committees.

(2) Any change made to a housing document must be submitted to Congress at least 30 days before the change takes effect.

(3) Upon submission of a housing document under paragraph (1) or (2), the Secretary of Defense shall publish the housing document on a publicly available Internet website of the Department of Defense.

(e) INVESTIGATION OF REPORTS OF REPRISALS.—(1) The Assistant Secretary of Defense for Sustainment shall investigate all reports of reprisal against a member of the armed forces for reporting an issue relating to a housing unit.

(2) If the Assistant Secretary of Defense for Sustainment determines under paragraph (1) that a landlord has retaliated against a member of the armed forces for reporting an issue relating to a housing unit, the Assistant Secretary shall—

(A) provide initial notice to the Committees on Armed Services of the Senate and the House of Representatives as soon as practicable after making that determination; and

(B) following that initial notice, provide an update to such committees every 30 days thereafter until such time as the Assistant Secretary has taken final action with respect to the retaliation.

(3) The Assistant Secretary of Defense for Sustainment shall carry out this subsection in coordination with the Secretary of the military department concerned.

(f) PROHIBITION ON USE OF NONDISCLOSURE AGREEMENTS.—(1) A tenant or prospective ten-

ant of a housing unit may not be required to sign a nondisclosure agreement in connection with entering into, continuing, or terminating a lease for the housing unit. Any such agreement against the interests of the tenant is invalid.

(2) Paragraph (1) shall not apply to a nondisclosure agreement executed—

(A) as part of the settlement of litigation; or

(B) to avoid litigation if the tenant has retained legal counsel or has sought military legal assistance under section 1044 of this title.

(Added and amended Pub. L. 116–92, div. B, title XXX, §§ 3011(b), 3023, 3024(a), Dec. 20, 2019, 133 Stat. 1917, 1935; Pub. L. 116–283, div. B, title XXVIII, § 2811(b), Jan. 1, 2021, 134 Stat. 4323.)

AMENDMENTS

2021—Subsec. (b)(15). Pub. L. 116–283, § 2811(b)(1), struck out ''and held in escrow'' after ''payments segregated''.

Subsec. (e)(2). Pub. L. 116–283, § 2811(b)(2), inserted ''a'' before ''landlord'' in introductory provisions.

Subsec. (f)(2). Pub. L. 116–283, § 2811(b)(3), added par. (2) and struck out former par. (2) which read as follows: ''Paragraph (1) shall not apply to a nondisclosure agreement executed as part of the settlement of litigation.''

2019—Subsec. (e). Pub. L. 116–92, § 3023, added subsec. (e).

Subsec. (f). Pub. L. 116–92, § 3024(a), added subsec. (f).

EFFECTIVE DATE OF 2019 AMENDMENT

Pub. L. 116–92, div. B, title XXX, § 3024(c), Dec. 20, 2019, 133 Stat. 1935, provided that: ''Subsection (f) of section 2890 of title 10, United States Code, as added by subsection (a), shall apply with respect to any nondisclosure agreement covered by the terms of such subsection (f) regardless of the date on which the agreement was executed.''

REGULATIONS

Pub. L. 116–92, div. B, title XXX, § 3024(b), Dec. 20, 2019, 133 Stat. 1935, provided that: ''The Secretary of Defense and the Secretaries of the military departments shall promulgate such regulations as may be necessary to give full force and effect to subsection (f) of section 2890 of title 10, United States Code, as added by subsection (a).''

REQUIREMENTS RELATING TO MOVE-IN, MOVE-OUT, AND MAINTENANCE OF PRIVATIZED MILITARY HOUSING

Pub. L. 116–92, div. B, title XXX, § 3056, Dec. 20, 2019, 133 Stat. 1944, provided that:

''(a) MOVE-IN AND MOVE-OUT CHECKLIST.—

''(1) CHECKLIST REQUIRED.—The Secretary of Defense shall develop a uniform move-in and move-out checklist for use by landlords providing privatized military housing and by tenants of such housing.

''(2) REQUIRED MOVE-IN ELEMENT.—A tenant who will occupy a unit of privatized military housing is entitled to be present for an inspection of the housing unit before accepting occupancy of the housing unit to ensure that the unit is habitable and that facilities and common areas of the building are in good repair.

''(3) REQUIRED MOVE-OUT ELEMENT.—A tenant of a unit of privatized military housing is entitled to be present for the move-out inspection of the housing unit and must be given sufficient time to address any concerns related to the tenant's occupancy of the housing unit.

''(b) MAINTENANCE CHECKLIST.—The Secretary of Defense shall—

''(1) develop a uniform checklist to be used by housing management offices to validate the completion of all maintenance work related to health and safety issues at privatized military housing; and

''(2) require that all maintenance issues and work orders related to health and safety issues at privatized military housing be reported to the commander of the installation for which the housing is provided.

''(c) CONSULTATION.—The Secretary of Defense shall carry out this section in consultation with the Secretaries of the military departments.

''(d) DEADLINE.—The uniform checklists required by this section shall be completed not later than 60 days after the date of the enactment of this Act [Dec. 20, 2019].''

[For definitions of ''landlord'', ''privatized military housing'', and ''tenant'' as used in section 3056 of Pub. L. 116–92, set out above, see section 3001(a) of Pub. L. 116–92, set out as a note under section 2821 of this title.]

STANDARDIZED DOCUMENTATION, TEMPLATES, AND FORMS FOR PRIVATIZED MILITARY HOUSING

Pub. L. 116–92, div. B, title XXX, § 3057, Dec. 20, 2019, 133 Stat. 1945, provided that:

''(a) DEVELOPMENT REQUIRED.—

''(1) IN GENERAL.—The Secretary of Defense shall develop standardized documentation, templates, and forms for use throughout the Department of Defense with respect to privatized military housing. In developing such documentation, templates, and forms, the Secretary shall ensure that, to the maximum extent practicable, the documentation, templates, and forms do not conflict with applicable State and local housing regulations.

''(2) INITIAL GUIDANCE.—Not later than 30 days after the date of the enactment of this Act [Dec. 20, 2019], the Secretary of Defense shall issue guidance for the development of the following:

''(A) Policies and standard operating procedures of the Department for privatized military housing.

''(B) A universal lease agreement for privatized military housing that includes—

''(i) the documents developed pursuant to section 2890 of title 10, United States Code, as added by section 3011, entitled Military Housing Privatization Initiative Tenant Bill of Rights and Military Housing Privatization Initiative Tenant Responsibilities; and

''(ii) any lease addendum required by the law of the State in which the unit of privatized military housing is located.

''(3) CONSULTATION.—The Secretary of Defense shall carry out this subsection in consultation with the Secretaries of the military departments.

''(b) MILITARY DEPARTMENT PLANS.—Not later than February 1, 2020, the Secretary of each military department shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a plan for the implementation of this section by that military department.''

[For definition of ''privatized military housing'' as used in section 3057 of Pub. L. 116–92, set out above, see section 3001(a) of Pub. L. 116–92, set out as a note under section 2821 of this title.]

[§ 2890a. Renumbered § 2851a]

§ 2891. Requirements relating to contracts for provision of housing units

(a) IN GENERAL.—The requirements of this section condition contracts entered into using the authorities provided to the Secretary concerned under section 2872 of this title and other authorities provided under subchapter IV of this chapter and this subchapter.

(b) EXCLUSION OF CERTAIN EMPLOYEES.—A landlord providing a housing unit shall prohibit any employee of the landlord who commits work-order fraud under the contract from doing any work under the contract.

(c) DISPUTE RESOLUTION PROCESS.—Any decision the commander renders in favor of the tenant in the formal dispute resolution process established pursuant to section 2894 of this title will be taken into consideration in determining whether to pay or withhold all or part of any incentive fees for which a landlord may otherwise be eligible under the contract.

(d) RESPONSIBILITY FOR CERTAIN MEDICAL COSTS.—

(1) REIMBURSEMENT REQUIRED UNDER CERTAIN CIRCUMSTANCES.—If the Secretary concerned finds that a landlord fails to maintain safe and sanitary conditions for a housing unit under the contract and that, subject to paragraph (2), these conditions result in a tenant of the housing unit receiving medical evaluations and treatment, the landlord shall be responsible for reimbursing the Department of Defense for any costs incurred by the Department to provide the medical evaluations and treatment to the tenant, whether such evaluations and treatment are provided in a military medical treatment facility or through the TRICARE provider network.

(2) REVIEW PROCESS.—Before the Secretary concerned may submit a claim under paragraph (1) to a landlord for reimbursement of Department medical evaluation and treatment costs—

(A) a military medical professional must determine that the tenant's medical conditions were caused by unsafe and unsanitary conditions of the housing unit; and

(B) the documentation of the medical evaluation showing causation must be sent to the Director of the Defense Health Agency for review and approval.

(3) UNIFORM PROCESSES AND PROCEDURES.—Not later than 180 days after the date of the enactment of this section, the Director of the Defense Health Agency shall develop and publish uniform processes and procedures to be used by medical providers in military medical treatment facilities to make determinations regarding whether environmental hazards within housing units serve as causative factors for medical conditions being evaluated and treated in military medical treatment facilities or through the TRICARE provider network.

(e) RESPONSIBILITY FOR RELOCATION COSTS.—

(1) PERMANENT RELOCATION.—A landlord providing a housing unit shall pay reasonable relocation costs associated with the permanent relocation of a tenant from the housing unit to a different housing unit due to health or environmental hazards—

(A) present in the housing unit being vacated through no fault of the tenant; and

(B) confirmed by the housing management office of the installation for which the housing unit is provided as making the unit uninhabitable or unable to be remediated safely while the tenant occupies the housing unit.

(2) TEMPORARY RELOCATION.—The landlord shall pay reasonable relocation costs and actual costs of living, including per diem, associated with the temporary relocation of a tenant to a different housing unit due to health or environmental hazards—

(A) present in the housing unit being vacated through no fault of the tenant; and

(B) confirmed by the housing management office of the installation as making the unit uninhabitable or unable to be remediated safely while the tenant occupies the housing unit.

(f) MAINTENANCE WORK ORDER SYSTEM.—A landlord providing a housing unit shall ensure that the maintenance work order system of the landlord (hardware and software) is up to date, including—

(1) by providing a reliable mechanism through which a tenant may submit work order requests through an Internet portal and mobile application, which shall incorporate the ability to upload photos, communicate with maintenance personnel, and rate individual service calls;

(2) by allowing real-time access to such system by officials of the Department at the installation, major subordinate command, and service-wide levels; and

(3) by allowing the work order or maintenance ticket to be closed only once the tenant and the head of the housing management office of the installation sign off.

(g) IMPLEMENTATION.—The Secretary concerned shall create such legal documents as may be necessary to carry out this section.

(Added Pub. L. 116–92, div. B, title XXX, § 3013(a), Dec. 20, 2019, 133 Stat. 1921; amended Pub. L. 116–283, div. B, title XXVIII, § 2811(c), Jan. 1, 2021, 134 Stat. 4323.)

REFERENCES IN TEXT

The date of enactment of this section, referred to in subsec. (d)(3), is the date of enactment of Pub. L. 116–92, which was approved Dec. 20, 2019.

PRIOR PROVISIONS

A prior section 2891, added Pub. L. 100–456, div. A, title III, § 342(a)(1), Sept. 29, 1988, 102 Stat. 1959; amended Pub. L. 102–484, div. A, title III, § 372, Oct. 23, 1992, 106 Stat. 2384, required Secretary of Defense to submit to Congress for each of fiscal years 1992, 1993, and 1994, a report regarding security and control of Department of Defense supplies, prior to repeal by Pub. L. 104–106, div. A, title X, § 1061(b)(1), Feb. 10, 1996, 110 Stat. 442.

AMENDMENTS

2021—Subsec. (e)(1). Pub. L. 116–283, § 2811(c)(1)(A), inserted ''unit'' after ''different housing'' in introductory provisions.

Subsec. (e)(1)(B). Pub. L. 116–283, § 2811(c)(1)(B), inserted ''the'' before ''tenant''.

Subsec. (e)(2)(B). Pub. L. 116–283, § 2811(c)(2), inserted ''the'' before ''tenant''.

EFFECTIVE DATE OF 2019 AMENDMENT

Pub. L. 116–92, div. B, title XXX, § 3013(b), Dec. 20, 2019, 133 Stat. 1923, provided that: ''The requirements set forth in section 2891 of title 10, United States Code, as added by subsection (a), shall apply to appropriate legal documents entered into or renewed on or after the date of the enactment of this Act [Dec. 20, 2019] between the Secretary of a military department and a landlord regarding privatized military housing.''

[For definitions of ''landlord'' and ''privatized military housing'' as used in section 3013(b) of Pub. L. 116–92, set out above, see section 3001(a) of Pub. L. 116–92, set out as a note under section 2821 of this title.]

RETROACTIVE LANDLORD AGREEMENTS

Pub. L. 116–92, div. B, title XXX, § 3013(c), Dec. 20, 2019, 133 Stat. 1923, provided that:

''(1) IN GENERAL.—Not later than February 1, 2020, the Secretary of Defense shall seek agreement from all landlords to accept the application of the requirements set forth in section 2891 of title 10, United States Code, as added by subsection (a), to appropriate legal documents entered into or renewed before the date of the enactment of this Act [Dec. 20, 2019] between the Secretary of a military department and a landlord regarding privatized military housing [sic]

''(2) SUBMITTAL OF LIST TO CONGRESS.—Not later than March 1, 2020, the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a list of any landlords that did not agree under paragraph (1) to accept the requirements set forth in section 2891 of title 10, United States Code, as added by subsection (a).

''(3) CONSIDERATION OF LACK OF AGREEMENT IN FUTURE CONTRACTS.—The Secretary of Defense and the Secretaries of the military departments shall include any lack of agreement under paragraph (1) as past performance considered under section 2891b of title 10, United States Code, as added by section 3015, with respect to entering into or renewing any future contracts regarding privatized military housing.''

[For definitions of ''landlord'' and ''privatized military housing'' as used in section 3013(c) of Pub. L. 116–92, set out above, see section 3001(a) of Pub. L. 116–92, set out as a note under section 2821 of this title.]

§ 2891a. Requirements relating to management of housing units

(a) IN GENERAL.—The Secretary of Defense shall ensure that each contract between the Secretary concerned and a landlord regarding the management of housing units for an installation of the Department of Defense includes the requirements set forth in this section.

(b) REQUIREMENTS FOR INSTALLATION COMMANDERS.—(1) The installation commander shall be responsible for—

(A) reviewing, on an annual basis, the mold mitigation plan and pest control plan of each landlord managing housing units for the installation; and

(B) notifying the landlord and the major subordinate command of any deficiencies found in either plan.

(2) In response to a request by the head of the housing management office of an installation, the installation commander shall use the assigned bio-environmental personnel or contractor equivalent at the installation to test housing units for mold, unsafe water conditions, and other health and safety conditions.

(c) REQUIREMENTS FOR HOUSING MANAGEMENT OFFICE.—(1) The head of the housing management office of an installation shall be responsible for—

(A) conducting a physical inspection of, and approving the habitability of, a vacant housing unit for the installation before the landlord managing the housing unit is authorized to offer the housing unit available for occupancy;

(B) conducting a physical inspection of the housing unit upon tenant move-out; and

(C) maintaining all test results relating to the health, environmental, and safety condition of the housing unit and the results of any inspection conducted by the housing management office, landlord, or third-party contractor for the life of the contract relating to that housing unit.

(2) The head of the installation housing management office shall be provided a list of any move-out charges that a landlord seeks to collect from an outgoing tenant.

(3) The head of the installation housing management office shall initiate contact with a tenant regarding the satisfaction of the tenant with the housing unit of the tenant not later than—

(A) 15 days after move-in; and

(B) 60 days after move-in.

(d) REQUIREMENTS FOR LANDLORDS.—(1) The landlord providing a housing unit shall disclose to the Secretary of Defense any bonus structures offered for community managers and regional executives and any bonus structures relating to maintenance of housing units, in order to minimize the impact of those incentives on the operating budget of the installation for which the housing units are provided.

(2) With respect to test results relating to the health and safety condition of a housing unit, the landlord providing the housing unit shall—

(A) not later than three days after receiving the test results, share the results with the tenant of the housing unit and submit the results to the head of the installation housing management office; and

(B) include with any environmental hazard test results a simple guide explaining those results, preferably citing standards set forth by the Federal Government relating to environmental hazards.

(3) Before a prospective tenant signs a lease to occupy a housing unit, the landlord providing the housing unit shall conduct a walkthrough inspection of the housing unit—

(A) for the prospective tenant; or

(B) if the prospective tenant is not able to be present for the inspection, with an official of the housing management office designated by the prospective tenant to conduct the inspection on the tenant's behalf.

(4) In the event that the installation housing management office determines that a housing unit does not meet minimum health, safety, and welfare standards set forth in Federal, State, and local law as a result of a walkthrough inspection or an inspection conducted under subsection (c), the landlord providing the housing unit shall remediate any issues and make any appropriate repairs to the satisfaction of the housing management office and subject to another inspection by the housing management office.

(5) A landlord providing a housing unit may not conduct any promotional events to encourage tenants to fill out maintenance comment cards or satisfaction surveys of any kind, without the approval of the chief of the housing management office.

(6) A landlord providing a housing unit may not award an installation of the Department of Defense or an officer or employee of the Department a ''Partner of the Year award'' or similar award.

(7) A landlord providing a housing unit may not enter into any form of settlement, nondisclosure, or release of liability agreement with a tenant without—

(A) first notifying the tenant of the tenant's right to assistance from the legal assistance office at the installation; and

(B) not later than five days before entering into such settlement, nondisclosure, or release of liability agreement, providing a copy of the agreement and terms to the Assistant Secretary of Defense for Sustainment.

(8) A landlord providing a housing unit may not change the position of a prospective tenant on a waiting list for a housing unit or remove a prospective tenant from the waiting list in response to the prospective tenant turning down an offer for a housing unit, if the housing unit is determined unsatisfactory by the prospective tenant and the determination is confirmed by the housing management office and the installation commander.

(9) A landlord providing a housing unit shall allow employees of the housing management office and other officers and employees of the Department to conduct—

(A) with the permission of the tenant of the housing unit as appropriate, physical inspections of the housing unit; and

(B) physical inspections of any common areas maintained by the landlord.

(10) A landlord providing a housing unit shall agree to participate in the dispute resolution and payment-withholding processes established pursuant to section 2894 of this title.

(11) Upon request by a prospective tenant, a landlord providing a housing unit shall ensure that the needs of enrollees in the Exceptional Family Member Program, or any successor program, are considered in assigning the prospective tenant to a housing unit provided by the landlord.

(12) A landlord providing a housing unit shall maintain an electronic work order system that enables access by the tenant to view work order history, status, and other relevant information, as required by section 2892 of this title.

(13) A landlord providing a housing unit shall agree to have any agreements or forms to be used by the landlord approved by the Assistant Secretary of Defense for Sustainment, including the following:

(A) A common lease agreement.

(B) Any disclosure or nondisclosure forms that could be given to a tenant.

(e) PROHIBITION AGAINST COLLECTION OF AMOUNTS IN ADDITION TO RENT.—(1) A landlord providing a housing unit may not impose on a tenant of the housing unit a supplemental payment, such as an out-of-pocket fee, in addition to the amount of rent the landlord charges for a unit of similar size and composition to the housing unit, without regard to whether or not the amount of the any[1] basic allowance for housing under section 403 of title 37 the tenant may receive as a member of the armed forces is less than the amount of the rent.

(2) Nothing in paragraph (1) shall be construed—

(A) to prohibit a landlord from imposing an additional payment—

(i) for optional services provided to military tenants, such as access to a gym or a parking space;

(ii) for non-essential utility services, as determined in accordance with regulations promulgated by the Secretary concerned; or

(iii) to recover damages associated with tenant negligence, consistent with subsection (c)(2); or

(B) to limit or otherwise affect the authority of the Secretary concerned to enter into rental guarantee agreements under section 2876 of this title or to make differential lease payments under section 2877 of this title, so long as such agreements or payments do not require a tenant to pay an out-of-pocket fee or payment in addition to the amount of any basic allowance for housing under section 403 of title 37 the tenant may receive as a member of the armed forces.

(Added Pub. L. 116–92, div. B, title XXX, § 3014(a), Dec. 20, 2019, 133 Stat. 1924; amended Pub. L. 116–283, div. B, title XXVIII, § 2811(d), Jan. 1, 2021, 134 Stat. 4324.)

[1] So in original.

AMENDMENTS

2021—Subsec. (b)(2). Pub. L. 116–283, § 2811(d)(1), inserted period at end.

Subsec. (d)(11). Pub. L. 116–283, § 2811(d)(2), added par. (11) and struck out former par. (11) which read as follows: ''A landlord providing a housing unit shall ensure that the needs of enrollees in the Exceptional Family Member Program, or any successor program, are considered in assigning prospective tenants to housing units provided by the landlord.''

Subsec. (e)(2)(B). Pub. L. 116–283, § 2811(d)(3), substituted ''any'' for ''the any''.

EFFECTIVE DATE OF 2019 AMENDMENT

Pub. L. 116–92, div. B, title XXX, § 3014(c), Dec. 20, 2019, 133 Stat. 1926, provided that: ''The requirements set forth in section 2891a of title 10, United States Code, as added by subsection (a), shall apply to appropriate legal documents entered into or renewed on or after the date of the enactment of this Act [Dec. 20, 2019] between the Secretary of a military department and a landlord regarding privatized military housing.''

[For definitions of ''landlord'' and ''privatized military housing'' as used in section 3014(c) of Pub. L. 116–92, set out above, see section 3001(a) of Pub. L. 116–92, set out as a note under section 2821 of this title.]

MILITARY DEPARTMENT IMPLEMENTATION PLANS

Pub. L. 116–92, div. B, title XXX, § 3014(b), Dec. 20, 2019, 133 Stat. 1926, provided that: ''Not later than February 1, 2020, the Secretary of each military department shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a plan for the implementation by that military department of section 2891a of title 10, United States Code, as added by subsection (a).''

RETROACTIVE LANDLORD AGREEMENTS

Pub. L. 116–92, div. B, title XXX, § 3014(e), Dec. 20, 2019, 133 Stat. 1926, provided that:

''(1) IN GENERAL.—Not later than February 1, 2020, the Secretary of Defense shall seek agreement from all landlords to accept the application of the requirements set forth in section 2891a of title 10, United States Code, as added by subsection (a), to appropriate legal documents entered into or renewed before the date of the enactment of this Act [Dec. 20, 2019] between the Sec-

retary of a military department and a landlord regarding privatized military housing [sic]

''(2) SUBMITTAL OF LIST TO CONGRESS.—Not later than March 1, 2020, the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a list of any landlords that did not agree under paragraph (1) to accept the requirements set forth in section 2891a of title 10, United States Code, as added by subsection (a).

''(3) CONSIDERATION OF LACK OF AGREEMENT IN FUTURE CONTRACTS.—The Secretary of Defense and the Secretaries of the military departments shall include any lack of agreement under paragraph (1) as past performance considered under section 2891b of title 10, United States Code, as added by section 3015, with respect to entering into or renewing any future contracts regarding privatized military housing.''

[For definitions of ''landlord'' and ''privatized military housing'' as used in section 3014(e) of Pub. L. 116–92, set out above, see section 3001(a) of Pub. L. 116–92, set out as a note under section 2821 of this title.]

§ 2891b. Considerations of eligible entity housing history in contracts for privatized military housing

(a) CONSIDERATION REQUIRED.—To assist in making a determination whether to enter into a new contract, or renew an existing contract, with an eligible entity, the Secretary of Defense shall develop a standard process by which the Secretary concerned may evaluate the past performance of the eligible entity for purposes of informing future decisions regarding the award of such a contract.

(b) ELEMENTS OF PROCESS.—The process developed under subsection (a) shall include, at a minimum, consideration of the following:

(1) Any history of the eligible entity of providing substandard housing.

(2) The recommendation of the commander of the installation for which housing units will be provided under the contract.

(3) The recommendation of the commander of any other installation for which the eligible entity has provided housing units.

(Added Pub. L. 116–92, div. B, title XXX, § 3015, Dec. 20, 2019, 133 Stat. 1927.)

§ 2891c. Transparency regarding finances and performance metrics

(a) SUBMISSION OF LANDLORD FINANCIAL INFORMATION.—(1) Not less frequently than annually, the Secretary of Defense shall require that each landlord submit to the Secretary a report providing information regarding all housing units provided by the landlord.

(2) Information provided under paragraph (1) by a landlord shall include the following:

(A) A comprehensive summary of the landlord's financial performance.

(B) The amount of base management fees relating to all housing units provided by the landlord.

(C) The amount of asset management fees relating to such housing units.

(D) The amount of preferred return fees relating to such housing units.

(E) The residual cashflow distributions relating to such housing units.

(F) The amount of deferred fees or other fees relating to such housing units.

(3) In this subsection:

(A) The term ''base management fees'' means the monthly management fees collected for services associated with accepting and processing rent payments, ensuring tenant rent payments, property inspections, maintenance management, and emergency maintenance calls.

(B) the term ''asset management fees'' means fees paid to manage a housing unit for the purpose of ensuring the housing unit is maintained in good condition and making repairs over the lifecycle of the housing unit.

(C) the term ''preferred return fees'' means fees associated with any claims on profits furnished to preferred investors with an interest in the housing unit.

(D) the term ''residual cashflow distribution'' means the steps a specific housing project takes to restructure after it is determined that the project is in an unacceptable financial condition.

(E) the term ''deferred fee'' means any fee that was not paid to a person in a calendar year in order to meet other financial obligations of the landlord.

(b) AVAILABILITY OF INFORMATION ON PERFORMANCE METRICS AND USE OF INCENTIVE FEES.—(1) Not less frequently than annually, the Secretary of Defense shall make available, upon request of a tenant, at the applicable installation housing office the following:

(A) An assessment of the indicators underlying the performance metrics for each contract for the provision or management of housing units to ensure such indicators adequately measure the condition and quality of each housing unit covered by the contract.

(B) Information regarding the use by the Secretary concerned of incentive fees to support contracts for the provision or management of housing units.

(2)(A) For purposes of paragraph (1)(A), the indicators underlying the performance metrics for a contract for the provision or management of housing units shall measure at a minimum the following:

(i) Tenant satisfaction.

(ii) Maintenance management.

(iii) Safety.

(iv) Financial management.

(B) An assessment required to be made available under paragraph (1)(A) shall include a detailed description of each indicator underlying the performance metrics, including the following information:

(i) The limitations of available survey data.

(ii) How tenant satisfaction and maintenance management is calculated.

(iii) Whether any relevant data is missing.

(3) The information provided under paragraph (1)(B) shall include, with respect to each contract for the provision or management of housing units, the following:

(A) The applicable incentive fees.

(B) The metrics used to determine the incentive fees.

(C) Whether incentive fees were paid in full, or were withheld in part or in full, during the period covered by the release of information.

(D) If any incentive fees were withheld, the reasons for such withholding.

(Added Pub. L. 116–92, div. B, title XXX, § 3016(a), Dec. 20, 2019, 133 Stat. 1927; amended Pub. L. 116–283, div. B, title XXVIII, § 2814(a)–(d)(1), Jan. 1, 2021, 134 Stat. 4327, 4328.)

AMENDMENTS

2021—Pub. L. 116–283, § 2814(d)(1), amended section catchline generally. Prior to amendment, catchline read as follows: ''Financial transparency''.

Subsec. (b). Pub. L. 116–283, § 2814(a)(1), inserted ''Performance Metrics and'' before ''Use of Incentive Fees'' in heading.

Subsec. (b)(1). Pub. L. 116–283, § 2814(a)(2), substituted ''shall make available, upon request of a tenant, at the applicable installation housing office the following:

(A) An assessment of the indicators underlying the performance metrics for each contract for the provision or management of housing units to ensure such indicators adequately measure the condition and quality of each housing unit covered by the contract.

(B) Information''

for ''shall publish, on a publicly accessible website, information''.

Subsec. (b)(2). Pub. L. 116–283, § 2814(b)(2), added par. (2). Former par. (2) redesignated (3).

Subsec. (b)(3). Pub. L. 116–283, § 2814(b)(1), (c), redesignated par. (2) as (3) and substituted ''paragraph (1)(B)'' for ''paragraph (1)'' and ''each contract for the provision or management of housing units'' for ''each contract'' in introductory provisions.

§ 2892. Maintenance work order system for housing units

(a) ELECTRONIC WORK ORDER SYSTEM REQUIRED.—The Secretary of Defense shall require that each landlord of a housing unit have an electronic work order system to track all maintenance requests relating to the housing unit.

(b) ACCESS BY DEPARTMENT PERSONNEL.—The Secretary of Defense shall require each landlord of a housing unit to provide access to the maintenance work order system of the landlord relating to the housing unit to the following persons:

(1) Personnel of the housing management office at the installation for which the housing unit is provided.

(2) Personnel of the installation and engineer command or center of the military department concerned.

(3) Such other personnel of the Department of Defense as the Secretary determines necessary.

(c) ACCESS BY TENANTS.—The Secretary of Defense shall require each landlord of a housing unit to provide access to the maintenance work order system of the landlord relating to the housing unit to the tenant of the housing unit to permit the tenant, at a minimum, to track the status and progress of work orders for maintenance requests relating to the housing unit.

(Added and amended Pub. L. 116–92, div. B, title XXX, §§ 3017, 3018, Dec. 20, 2019, 133 Stat. 1930.)

AMENDMENTS

2019—Subsec. (c). Pub. L. 116–92, § 3018, added subsec. (c).

§ 2892a. Access by tenants to historical maintenance information

(a) MAINTENANCE INFORMATION FOR PROSPECTIVE TENANTS.—The Secretary concerned shall require each eligible entity or subsequent landlord that offers for lease a housing unit to provide to a prospective tenant of the housing unit—

(1) not later than five business days before the prospective tenant is asked to sign the lease, a summary of maintenance conducted with respect to that housing unit for the previous seven years; and

(2) not later than two business days after the prospective tenant requests additional information regarding maintenance conducted with respect to that housing unit during such period, all information possessed by the eligible entity or subsequent landlord regarding such maintenance conducted during such period.

(b) MAINTENANCE INFORMATION FOR EXISTING TENANTS.—A tenant of a housing unit who did not receive maintenance information described in subsection (a) regarding that housing unit while a prospective tenant may request such maintenance information and shall receive such maintenance information not later than five business days after the making the request.

(c) MAINTENANCE DEFINED.—In the section, the term ''maintenance'' includes any renovations of the housing unit during the period specified in subsection (a)(1).

(Added Pub. L. 116–92, div. B, title XXX, § 3019, Dec. 20, 2019, 133 Stat. 1931; amended Pub. L. 116–283, div. B, title XXVIII, § 2811(e), Jan. 1, 2021, 134 Stat. 4324.)

AMENDMENTS

2021—Pub. L. 116–283 added section text and struck out former text which read as follows: ''The Secretary concerned shall require each eligible entity or subsequent landlord that offers for lease a housing unit to provide to a prospective tenant of the housing unit, before the prospective tenant moves into the housing unit as a tenant, all information regarding maintenance conducted with respect to that housing unit for the previous seven years. In this section, the term 'maintenance' includes any renovations of the housing unit during such period.''

§ 2892b. Prohibition on requirement to disclose personally identifiable information in requests for certain maintenance

A landlord responsible for a housing unit may not require the disclosure of personally identifiable information as a part of the submission of a request for maintenance regarding a housing unit or common area when the disclosure of personally identifiable information is not needed to identify the location at which such maintenance will be performed.

(Added Pub. L. 116–92, div. B, title XXX, § 3020(a), Dec. 20, 2019, 133 Stat. 1931.)

EFFECTIVE DATE OF 2019 AMENDMENT

Pub. L. 116–92, div. B, title XXX, § 3020(b), Dec. 20, 2019, 133 Stat. 1931, provided that: ''The prohibition in section 2892b of title 10, United States Code, as added by subsection (a), shall take effect on the date that is one year after the date of the enactment of this Act [Dec. 20, 2019].''

§ 2893. Treatment of incentive fees for landlords of housing units for failure to remedy health or environmental hazards

The Secretary concerned shall not approve the payment of incentive fees otherwise authorized

to be paid to a landlord that the Secretary determines has demonstrated a pattern of failing to remedy, or failing to remedy in a timely manner, a health or environmental hazard at a housing unit provided by the landlord.

(Added Pub. L. 116–92, div. B, title XXX, § 3021, Dec. 20, 2019, 133 Stat. 1931; amended Pub. L. 116–283, div. B, title XXVIII, § 2811(f), Jan. 1, 2021, 134 Stat. 4324.)

AMENDMENTS

2021—Pub. L. 116–283 substituted "pattern of" for "propensity for".

§ 2894. Landlord-tenant dispute resolution process and treatment of certain payments during process

(a) PROCESS REQUIRED; PURPOSE.—The Secretary concerned shall implement a standardized formal dispute resolution process to ensure the prompt and fair resolution of disputes that arise between landlords providing housing units and tenants residing in housing units concerning maintenance and repairs, damage claims, rental payments, move-out charges, and such other issues relating to housing units as the Secretary determines appropriate.

(b) PROCESS ELEMENTS.—(1) The dispute resolution process shall include the process by which a tenant may request that certain payments otherwise authorized to be paid to a landlord are withheld, as provided in subsection (e).

(2) The process shall designate the installation or regional commander in charge of oversight of housing units as the deciding authority under the dispute resolution process.

(3) The Secretary concerned shall establish a standardized mechanism and forms by which a tenant of a housing unit may submit, through online or other means, a request for resolution of a landlord-tenant dispute through the dispute resolution process.

(4) The Secretary shall ensure that, in preparing a request described in paragraph (3), a tenant has access to advice and assistance from a military housing advocate employed by the military department concerned or a military legal assistance attorney under section 1044 of this title.

(5) The Secretary concerned shall minimize costs to tenants for participation in the dispute resolution process.

(6) The dispute resolution process shall require the installation or regional commander (as the case may be) to record each dispute in the complaint database established under section 2894a of this title.

(c) RESOLUTION PROCESS.—(1) Not later than two business days after receiving a request from a tenant for resolution of a landlord-tenant dispute through the dispute resolution process, the Secretary concerned shall—

(A) notify the tenant that the request has been received;

(B) transmit a copy of the request to the installation or regional commander (as the case may be), housing management office responsible for the housing unit, and the landlord of the housing unit; and

(C) if the request includes a request to withhold payments under subsection (e), initiate the process under such subsection.

(2) For purposes of conducting an assessment necessary to render a decision under the dispute resolution process, both the landlord and representatives of the installation housing management office may access the housing unit at a time and for a duration mutually agreed upon amongst the parties.

(3) Not later than seven business days after the date on which the request was received by the installation housing management office, such office shall complete an investigation that includes a physical inspection and transmit the results of the investigation to the installation or regional commander (as the case may be).

(4) Before making any decision with respect to a dispute under the dispute resolution process, the commander shall certify that the commander has solicited recommendations or information relating to the dispute from, at a minimum, the following persons:

(A) The chief of the installation housing management office.

(B) A representative of the landlord for the housing unit.

(C) The tenant submitting the request for dispute resolution.

(D) A qualified judge advocate or civilian attorney who is a Federal employee.

(E) If the dispute involves maintenance or another facilities-related matter, a civil engineer.

(5)(A) The commander shall make a decision with respect to a request under the dispute resolution process not later than 30 calendar days after the request was submitted.

(B) The commander may take longer than such 30-day period in limited circumstances as determined by the Secretary of Defense, but in no case shall such a decision be made more than 60 calendar days after the request was submitted.

(6) Except as provided in paragraph (5)(B), a final decision shall be transmitted to the tenant, landlord, and the installation or regional commander (as the case may be) not later than 30 calendar days after the request was submitted.

(7) The decision shall include instructions for distribution of any funds that were withheld under subsection (e) and such instructions for the landlord for further remediation as the commander considers necessary.

(8) The decision by the commander under this subsection shall be final.

(d) EFFECT OF FAILURE TO COMPLY WITH DECISION.—(1) If the final decision rendered under subsection (c) for resolution of a landlord-tenant dispute includes instructions for the landlord responsible for the housing unit to further remediate the housing unit, the decision shall specify a reasonable period of time, but not less than 10 business days, for the landlord to complete the remediation.

(2) If the landlord does not remediate the issues before the end of the time period specified in the final decision in a manner consistent with the instructions contained in the decision, any amounts payable to the landlord for the housing unit shall be reduced by 10 percent for each period of five calendar days during which the issues remain unremediated.

(e) REQUEST TO WITHHOLD PAYMENTS DURING RESOLUTION PROCESS.—(1) As part of the submission of a request for resolution of a landlord-tenant dispute through the dispute resolution process regarding maintenance guidelines or procedures or habitability, the tenant may request that all or part of the payments described in paragraph (3) for lease of the housing unit be segregated and not used by the property owner, property manager, or landlord pending completion of the dispute resolution process.

(2) The amount allowed to be withheld under paragraph (1) shall be limited to amounts associated with the period during which—

(A) the landlord has not met maintenance guidelines and procedures established by the Department of Defense, either through contract or otherwise; or

(B) the housing unit is uninhabitable according to State and local law for the jurisdiction in which the housing unit is located.

(3) This subsection applies to the following:

(A) Any basic allowance for housing payable to the tenant (including for any dependents of the tenant in the tenant's household) under section 403 of title 37.

(B) All or part of any pay of a tenant subject to allotment as described in section 2882(c) of this title.

(f) DISCLOSURE OF RIGHTS.—(1) Each housing management office of the Department of Defense shall disclose in writing to each new tenant of a housing unit, upon the signing of the lease for the housing unit, the tenant's rights under this section and the procedures under this section for submitting a request for resolution of a landlord-tenant dispute through the dispute resolution process, including the ability to submit a request to withhold payments during the resolution process.

(2) The Secretary of Defense shall ensure that each lease entered into with a tenant for a housing unit clearly expresses, in a separate addendum, the dispute resolution procedures.

(g) RULE OF CONSTRUCTION ON USE OF OTHER ADJUDICATIVE BODIES.—Nothing in this section or any other provision of law shall be construed to prohibit a tenant of a housing unit from pursuing a claim against a landlord in any adjudicative body with jurisdiction over the housing unit or the claim.

(Added Pub. L. 116–92, div. B, title XXX, § 3022(a), Dec. 20, 2019, 133 Stat. 1932; amended Pub. L. 116–283, div. B, title XXVIII, § 2811(g), Jan. 1, 2021, 134 Stat. 4324.)

AMENDMENTS

2021—Subsec. (b)(6). Pub. L. 116–283, § 2811(g)(1), added par. (6).

Subsec. (c)(1). Pub. L. 116–283, § 2811(g)(2)(A), substituted ''two business days'' for ''24 hours'' in introductory provisions.

Subsec. (c)(3). Pub. L. 116–283, § 2811(g)(2)(B), inserted ''business'' before ''days'' and '', such office'' before ''shall complete''.

Subsec. (c)(4). Pub. L. 116–283, § 2811(g)(2)(C), inserted '', at a minimum,'' before ''the following persons'' in introductory provisions.

Subsec. (c)(5). Pub. L. 116–283, § 2811(g)(2)(D), inserted ''calendar'' before ''days'' in subpars. (A) and (B).

Subsec. (c)(6). Pub. L. 116–283, § 2811(g)(2)(E), added par. (6) and struck out former par. (6) which read as follows: ''A final decision will be transmitted to the tenant and landlord no later than 30 days from initial receipt by the office of the commander, except as provided in paragraph (5)(B).''

Subsecs. (d), (e). Pub. L. 116–283, § 2811(g)(3), added subsecs. (d) and (e) and struck out former subsecs. (d) and (e) which related to effect of failure to comply with decision and request to withhold payments during resolution process, respectively.

TIMING OF ESTABLISHMENT OF DISPUTE RESOLUTION PROCESS

Pub. L. 116–92, div. B, title XXX, § 3022(c), Dec. 20, 2019, 133 Stat. 1934, provided that: ''Not later than 180 days after the date of the enactment of this Act [Dec. 20, 2019], the Secretary of Defense shall establish the dispute resolution process required under section 2894 of title 10, United States Code, as added by subsection (a).''

LANDLORD AGREEMENTS

Pub. L. 116–92, div. B, title XXX, § 3022(d), Dec. 20, 2019, 133 Stat. 1934, provided that:

''(1) IN GENERAL.—Not later than February 1, 2020, the Secretary of Defense shall seek agreement from all landlords to participate in the dispute resolution and payment-withholding processes required under section 2894 of title 10, United States Code, as added by subsection (a).

''(2) SUBMITTAL OF LIST TO CONGRESS.—Not later than March 1, 2020, the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a list of any landlords that did not agree under paragraph (1) to participate in the dispute resolution and payment-withholding processes.

''(3) CONSIDERATION OF LACK OF AGREEMENT IN FUTURE CONTRACTS.—The Secretary of Defense and the Secretaries of the military departments shall include any lack of agreement under paragraph (1) as past performance considered under section 2891b of title 10, United States Code, as added by section 3015, with respect to entering into or renewing any future contracts regarding privatized military housing.''

[For definitions of ''landlord'' and ''privatized military housing'' as used in section 3022(d) of Pub. L. 116–92, set out above, see section 3001(a) of Pub. L. 116–92, set out as a note under section 2821 of this title.]

§ 2894a. Complaint database

(a) DATABASE REQUIRED.—The Secretary of Defense shall establish a database of complaints made regarding housing units.

(b) PUBLIC AVAILABILITY.—The database shall be available to the public.

(c) INCLUSION OF TENANT COMPLAINTS.—The Secretary of Defense shall permit a tenant of a housing unit to file a complaint regarding the housing unit for inclusion in the database.

(d) INCLUSION OF CERTAIN INFORMATION.—(1) Information accessible in the database regarding a complaint shall include the following:

(A) The name of the installation for which the housing unit is provided.

(B) The name of the landlord responsible for the housing unit.

(C) A description of the nature of the complaint.

(2) The Secretary of Defense may not disclose personally identifiable information through the database.

(e) RESPONSE BY LANDLORDS.—(1) The Secretary of Defense shall include in any contract with a landlord responsible for a housing unit a

requirement that the landlord respond in a timely manner to any complaints included in the database that relate to the housing unit.

(2) The Secretary shall include landlord responses in the database.

(Added Pub. L. 116–92, div. B, title XXX, § 3016(b), Dec. 20, 2019, 133 Stat. 1929.)

[CHAPTER 171—REPEALED]

[§§ 2891, 2892. Repealed. Pub. L. 104–106, div. A, title X, § 1061(b)(1), Feb. 10, 1996, 110 Stat. 442]

Section 2891, added Pub. L. 100–456, div. A, title III, § 342(a)(1), Sept. 29, 1988, 102 Stat. 1959; amended Pub. L. 102–484, div. A, title III, § 372, Oct. 23, 1992, 106 Stat. 2384, required Secretary of Defense to submit to Congress for each of fiscal years 1992, 1993, and 1994, a report regarding security and control of Department of Defense supplies.

Section 2892, added Pub. L. 100–456, div. A, title III, § 342(a)(1), Sept. 29, 1988, 102 Stat. 1960, directed Secretary of Defense to require investigations of discrepancies in accounting for Department supplies and to separate offices ordering supplies from offices receiving supplies.

CHAPTER 172—STRATEGIC ENVIRONMENTAL RESEARCH AND DEVELOPMENT PROGRAM

Sec.
2901. Strategic Environmental Research and Development Program.
2902. Strategic Environmental Research and Development Program Council.
2903. Executive Director.
2904. Strategic Environmental Research and Development Program Scientific Advisory Board.

§ 2901. Strategic Environmental Research and Development Program

(a) The Secretary of Defense shall establish a program to be known as the ‘‘Strategic Environmental Research and Development Program’’.

(b) The purposes of the program are as follows:

(1) To address environmental matters of concern to the Department of Defense and the Department of Energy through support for basic and applied research and development of technologies that can enhance the capabilities of the departments to meet their environmental obligations.

(2) To identify research, technologies, and other information developed by the Department of Defense and the Department of Energy for national defense purposes that would be useful to governmental and private organizations involved in the development of energy technologies and of technologies to address environmental restoration, waste minimization, hazardous waste substitution, and other environmental concerns, and to share such research, technologies, and other information with such governmental and private organizations.

(3) To furnish other governmental organizations and private organizations with data, enhanced data collection capabilities, and enhanced analytical capabilities for use by such organizations in the conduct of environmental research, including research concerning global environmental change.

(4) To identify technologies developed by the private sector that are useful for Department of Defense and Department of Energy defense activities concerning environmental restoration, hazardous and solid waste minimization and prevention, hazardous material substitution, and provide for the use of such technologies in the conduct of such activities.

(Added Pub. L. 101–510, div. A, title XVIII, § 1801(a)(1), Nov. 5, 1990, 104 Stat. 1751.)

§ 2902. Strategic Environmental Research and Development Program Council

(a) There is a Strategic Environmental Research and Development Program Council (hereinafter in this chapter referred to as the ‘‘Council’’).

(b) The Council is composed of 12 members as follows:

(1) The official within the Office of the Under Secretary of Defense for Research and Engineering who is responsible for science and technology.

(2) The Vice Chairman of the Joint Chiefs of Staff.

(3) The official within the Office of the Under Secretary of Defense for Acquisition and Sustainment who is responsible for environmental security.

(4) The Assistant Secretary of Energy for Defense programs.

(5) The Assistant Secretary of Energy responsible for environmental restoration and waste management.

(6) The Director of the Department of Energy Office of Science.

(7) The Administrator of the Environmental Protection Agency.

(8) One representative from each of the Army, Navy, Air Force, and Coast Guard.

(9) The Executive Director of the Council (appointed pursuant to section 2903 of this title), who shall be a nonvoting member.

(c) The Secretary of Defense shall designate a member of the Council as chairman for each odd numbered fiscal year. The Secretary of Energy shall designate a member of the Council as chairman for each even-numbered fiscal year.

(d) The Council shall have the following responsibilities:

(1) To prescribe policies and procedures to implement the Strategic Environmental Research and Development Program.

(2) To enter into contracts, grants, and other financial arrangements, in accordance with other applicable law, to carry out the purposes of the Strategic Environmental Research and Development Program.

(3) To prepare an annual report that contains the following:

(A) A description of activities of the strategic environmental research and development program carried out during the fiscal year before the fiscal year in which the report is prepared.

(B) A general outline of the activities planned for the program during the fiscal year in which the report is prepared.

(C) A summary of projects continued from the fiscal year before the fiscal year in which the report is prepared and projects expected to be started during the fiscal year in

which the report is prepared and during the following fiscal year.

(D) A summary of the actions of the Strategic Environmental Research and Development Program Scientific Advisory Board during the year preceding the year in which the report is submitted and any recommendations, including recommendations on program direction and legislation, that the Advisory Board considers appropriate regarding the program.

(4) To promote the maximum exchange of information, and to minimize duplication, regarding environmentally related research, development, and demonstration activities through close coordination with the military departments and Defense Agencies, the Department of Energy, the Environmental Protection Agency, the National Oceanic and Atmospheric Administration, the National Aeronautics and Space Administration, other departments and agencies of the Federal Government or any State and local governments, including the National Science and Technology Council, and other organizations engaged in such activities.

(5) To ensure that research and development activities under the Strategic Environmental Research and Development Program do not duplicate other ongoing activities sponsored by the Department of Defense, the Department of Energy, the Environmental Protection Agency, the National Oceanic and Atmospheric Administration, the National Aeronautics and Space Administration, or any other department or agency of the Federal Government.

(6) To ensure that the research and development programs identified for support pursuant to policies and procedures prescribed by the council utilize, to the maximum extent possible, the talents, skills, and abilities residing at the Federal laboratories, including the Department of Energy multiprogram and defense laboratories, the Department of Defense laboratories, and Federal contract research centers. To utilize the research capabilities of institutions of higher education and private industry to the extent practicable.

(e) In carrying out subsection (d)(1), the Council shall prescribe policies and procedures that—

(1) provide for appropriate access by Federal Government personnel, State and local government personnel, college and university personnel, industry personnel, and the general public to data under the control of, or otherwise available to, the Department of Defense that is relevant to environmental matters by—

(A) identifying the sources of such data;

(B) publicizing the availability and sources of such data by appropriately-targeted dissemination of information to such personnel and the general public, and by other means; and

(C) providing for review of classified data relevant to environmental matters with a view to declassifying or preparing unclassified summaries of such data;

(2) provide governmental and nongovernmental entities with analytic assistance, consistent with national defense missions, including access to military platforms for sensor deployment and access to computer capabilities, in order to facilitate environmental research;

(3) provide for the identification of energy technologies developed for national defense purposes (including electricity generation systems, energy storage systems, alternative fuels, biomass energy technology, and applied materials technology) that might have environmentally sound, energy efficient applications for other programs of the Department of Defense and the Department of Energy national security programs;

(4) provide for the identification and support of programs of basic and applied research, development, and demonstration in technologies useful—

(A) to facilitate environmental compliance, remediation, and restoration activities of the Department of Defense and at Department of Energy defense facilities;

(B) to minimize waste generation, including reduction at the source, by such departments; or

(C) to substitute use of nonhazardous, nontoxic, nonpolluting, and other environmentally sound materials and substances for use of hazardous, toxic, and polluting materials and substances by such departments;

(5) provide for the identification and support of research, development, and application of other technologies developed for national defense purposes which not only are directly useful for programs, projects, and activities of such departments, but also have useful applications for solutions to such national and international environmental problems as climate change and ozone depletion;

(6) provide for the Secretary of Defense, the Secretary of Energy, and the Administrator of the Environmental Protection Agency, in cooperation with other Federal and State agencies, as appropriate, to conduct joint research, development, and demonstration projects relating to innovative technologies, management practices, and other approaches for purposes of—

(A) preventing pollution from all sources;

(B) minimizing hazardous and solid waste, including recycling; and

(C) treating hazardous and solid waste, including the use of thermal, chemical, and biological treatment technologies;

(7) encourage transfer of technologies referred to in clauses (2) through (6) to the private sector under the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3701 et seq.) and other applicable laws;

(8) provide for the identification of, and planning for the demonstration and use of, existing environmentally sound, energy-efficient technologies developed by the private sector that could be used directly by the Department of Defense;

(9) provide for the identification of military specifications that prevent or limit the use of environmentally beneficial technologies, materials, and substances in the performance of Department of Defense contracts and recommend changes to such specifications; and

(10) to ensure that the research and development programs identified for support pursuant to the policies and procedures prescribed by the Council are closely coordinated with, and do not duplicate, ongoing activities sponsored by the Department of Defense, the Department of Energy, the Environmental Protection Agency, the National Aeronautics and Space Administration, the National Oceanic and Atmospheric Administration, or other Federal agencies.

(f) The Council shall be subject to the authority, direction, and control of the Secretary of Defense in prescribing policies and procedures under subsection (d)(1).

(g) Not later than February 1 of each year, the Council shall submit to the Secretary of Defense the annual report prepared pursuant to subsection (d)(3).

(Added Pub. L. 101–510, div. A, title XVIII, §1801(a)(1), Nov. 5, 1990, 104 Stat. 1751; amended Pub. L. 102–190, div. A, title II, §257(a), title X, §1061(a)(19), Dec. 5, 1991, 105 Stat. 1331, 1473; Pub. L. 102–484, div. A, title X, §1052(38), Oct. 23, 1992, 106 Stat. 2501; Pub. L. 103–160, div. A, title II, §265(a), Nov. 30, 1993, 107 Stat. 1611; Pub. L. 104–106, div. A, title II, §203(a)–(b)(2), (c), Feb. 10, 1996, 110 Stat. 217, 218; Pub. L. 105–245, title III, §309(b)(2)(B), Oct. 7, 1998, 112 Stat. 1853; Pub. L. 106–65, div. A, title III, §324, Oct. 5, 1999, 113 Stat. 563; Pub. L. 106–398, §1 [[div. A], title III, §313(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–55; Pub. L. 108–136, div. A, title X, §1031(a)(52), Nov. 24, 2003, 117 Stat. 1603; Pub. L. 111–383, div. A, title IX, §901(j)(5), Jan. 7, 2011, 124 Stat. 4324; Pub. L. 116–92, div. A, title IX, §902(80), Dec. 20, 2019, 133 Stat. 1553.)

References in Text

The Stevenson-Wydler Technology Innovation Act of 1980, referred to in subsec. (e)(7), is Pub. L. 96–480, Oct. 21, 1980, 94 Stat. 2311, as amended, which is classified generally to chapter 63 (§3701 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 3701 of Title 15 and Tables.

Amendments

2019—Subsec. (b)(1). Pub. L. 116–92, §902(80)(A), substituted ''Office of the Under Secretary of Defense for Research and Engineering'' for ''Office of the Assistant Secretary of Defense for Research and Engineering''.

Subsec. (b)(3). Pub. L. 116–92, §902(80)(B), substituted ''Office of the Under Secretary of Defense for Acquisition and Sustainment'' for ''Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics''.

2011—Subsec. (b)(1). Pub. L. 111–383, §901(j)(5)(A), substituted ''official within the Office of the Assistant Secretary of Defense for Research and Engineering who is responsible for science and technology'' for ''Deputy Under Secretary of Defense for Science and Technology''.

Subsec. (b)(3). Pub. L. 111–383, §901(j)(5)(B), substituted ''official within the Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics who is'' for ''Deputy Under Secretary of Defense''.

2003—Subsec. (g). Pub. L. 108–136 struck out designation for par. (1) before ''Not later than February'' and struck out par. (2) which read as follows: ''Not later than March 15 of each year, the Secretary of Defense shall submit such annual report to Congress, along with such comments as the Secretary considers appropriate.''

2000—Subsec. (d)(3)(D). Pub. L. 106–398 added subpar. (D).

1999—Subsec. (b)(1). Pub. L. 106–65 substituted ''Deputy Under Secretary of Defense for Science and Technology'' for ''Director of Defense Research and Engineering''.

1998—Subsec. (b)(6). Pub. L. 105–245 substituted ''Science'' for ''Energy Research''.

1996—Subsec. (b). Pub. L. 104–106, §203(a)(1), substituted ''12'' for ''thirteen'' in introductory provisions.

Subsec. (b)(3) to (7). Pub. L. 104–106, §203(a)(2), (3), redesignated pars. (4) to (8) as (3) to (7), respectively, and struck out former par. (3) which read as follows: ''The Assistant Secretary of the Air Force responsible for matters relating to space.''

Subsec. (b)(8). Pub. L. 104–106, §203(a)(3), (4), redesignated par. (9) as (8) and struck out '', who shall be nonvoting members'' after ''Coast Guard''. Former par. (8) redesignated (7).

Subsec. (b)(9), (10). Pub. L. 104–106, §203(a)(3), redesignated pars. (9) and (10) as (8) and (9), respectively.

Subsec. (d)(3). Pub. L. 104–106, §203(b)(1)(A), added par. (3) and struck out former par. (3) which read as follows: ''To prepare an annual five-year strategic environmental research and development plan that shall cover the fiscal year in which the plan is prepared and the four fiscal years following such fiscal year.''

Subsec. (d)(4). Pub. L. 104–106, §203(b)(1)(B), substituted ''National Science and Technology Council'' for ''Federal Coordinating Council on Science, Engineering, and Technology''.

Subsec. (e)(3). Pub. L. 104–106, §203(c), substituted ''national security programs'' for ''national security programs, particularly technologies that have the potential for industrial, commercial, and other governmental applications, and to support programs of research in and development of such applications''.

Subsecs. (f), (g). Pub. L. 104–106, §203(b)(2), added subsec. (g), redesignated former subsec. (g) as (f), and struck out former subsec. (f) which authorized Secretaries of Defense and Energy to submit to the Council proposals for conducting environmental research under this chapter.

Subsec. (h). Pub. L. 104–106, §203(b)(2)(A), struck out subsec. (h) which required Council to submit to Secretary of Defense and to Congress an annual report on annual five-year strategic environmental research and development plan.

1993—Subsec. (b)(1) to (4). Pub. L. 103–160, §265(a)(1)–(3), redesignated pars. (2) to (4) as (1) to (3), respectively, added par. (4), and struck out former par. (1) which read as follows: ''The Assistant Secretary of Defense responsible for matters relating to production and logistics.''

Subsec. (b)(6). Pub. L. 103–160, §265(a)(4), added par. (6) and struck out former par. (6) which read as follows: ''The Director of the Department of Energy Office of Environmental Restoration and Waste Management.''

1992—Subsec. (b)(9). Pub. L. 102–484 substituted ''nonvoting'' for ''non-voting''.

1991—Subsec. (b). Pub. L. 102–190, §257(a)(1), substituted ''thirteen'' for ''nine'' in introductory provisions.

Subsec. (b)(9), (10). Pub. L. 102–190, §257(a)(2), (3), added par. (9) and redesignated former par. (9) as (10).

Subsec. (f)(2)(A). Pub. L. 102–190, §1061(a)(19), substituted ''department's'' for ''Department's''.

Effective Date of 2011 Amendment

Amendment by Pub. L. 111–383 effective Jan. 1, 2011, see section 901(p) of Pub. L. 111–383, set out as a note under section 131 of this title.

Effective Date of 1996 Amendment

Pub. L. 104–106, div. A, title II, §203(b)(3), Feb. 10, 1996, 110 Stat. 218, provided that: ''The amendments made by this subsection [amending this section] shall apply with respect to the annual report prepared during fiscal year 1997 and each fiscal year thereafter.''

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

FIRST ANNUAL REPORT OF STRATEGIC ENVIRONMENTAL RESEARCH AND DEVELOPMENT PROGRAM COUNCIL

Pub. L. 101–510, div. A, title XVIII, § 1801(c), Nov. 5, 1990, 104 Stat. 1758, provided that the first annual report required by former subsec. (h) of this section be submitted to Secretary of Defense, Secretary of Energy, and Administrator of the Environmental Protection Agency not later than Feb. 1, 1992, that the Strategic Environmental Research and Development Program Council conduct and include as part of report an assessment of advisability of, and various alternatives to, charging fees for information released, as required pursuant to section 2901(b)(3) of this title and subsecs. (e)(1), (2), and (g)(2)(I) [now (f)(2)(I)] of this section, to private sector entities operating for a profit, and that Secretary of Defense, Secretary of Energy, and Administrator of the Environmental Protection Agency submit to Congress any recommendations for changes in structure or personnel of Council that Secretaries and Administrator consider necessary to carry out environmental activities of strategic environmental research and development program.

§ 2903. Executive Director

(a) There shall be an Executive Director of the Council appointed by the Secretary of Defense after consultation with the Secretary of Energy.

(b) Subject to the authority, direction, and control of the Secretary of Defense, the Executive Director is responsible for the management of the Strategic Environmental Research and Development Program in accordance with the policies established by the Council.

(c) The Executive Director may enter into contracts using competitive procedures. The Executive Director may enter into other agreements in accordance with applicable law. In either case, the Executive Director shall first obtain the approval of the Council for any contract or agreement in an amount equal to or in excess of $500,000 or such lesser amount as the Council may prescribe.

(d)(1) The Executive Director, with the concurrence of the Council, may appoint such professional and clerical staff as may be necessary to carry out the responsibilities and policies of the Council.

(2) The Executive Director, with the concurrence of the Council and without regard to the provisions of chapter 51 of title 5 and subchapter III of chapter 53 of such title, may establish the rates of basic pay for professional, scientific, and technical employees appointed pursuant to paragraph (1).

(Added Pub. L. 101–510, div. A, title XVIII, § 1801(a)(1), Nov. 5, 1990, 104 Stat. 1755; amended Pub. L. 102–25, title VII, § 701(h)(2), Apr. 6, 1991, 105 Stat. 115; Pub. L. 103–160, div. A, title II, § 265(b), Nov. 30, 1993, 107 Stat. 1611; Pub. L. 104–106, div. A, title II, § 203(d), (e)(1), Feb. 10, 1996, 110 Stat. 218.)

AMENDMENTS

1996—Subsec. (c). Pub. L. 104–106, § 203(d), substituted ''contracts using competitive procedures. The Executive Director may enter into'' for ''contracts or'' and ''law. In either case,'' for ''law, except that''.

Subsec. (d)(2). Pub. L. 104–106, § 203(e)(1), struck out at end ''The authority provided in the preceding sentence shall expire on September 30, 1995.''

1993—Subsec. (d)(2). Pub. L. 103–160 substituted ''September 30, 1995'' for ''November 5, 1992''.

1991—Subsec. (d)(2). Pub. L. 102–25 substituted ''on November 5, 1992'' for ''two years after the date of the enactment of the National Defense Authorization Act for Fiscal Year 1991''.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–106, div. A, title II, § 203(e)(2), Feb. 10, 1996, 110 Stat. 218, provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect as of September 29, 1995.''

§ 2904. Strategic Environmental Research and Development Program Scientific Advisory Board

(a) The Secretary of Defense and the Secretary of Energy, in consultation with the Administrator of the Environmental Protection Agency, shall jointly appoint a Strategic Environmental Research and Development Program Scientific Advisory Board (hereafter in this section referred to as the ''Advisory Board'') consisting of not less than six and not more than 14 members.

(b)(1) The following persons shall be permanent members of the Advisory Board:

(A) The Science Advisor to the President, or his designee.

(B) The Administrator of the National Oceanic and Atmospheric Administration, or his designee.

(2) Other members of the Advisory Board shall be appointed from among persons eminent in the fields of basic sciences, engineering, ocean and environmental sciences, education, research management, international and security affairs, health physics, health sciences, or social sciences, with due regard given to the equitable representation of scientists and engineers who are women or who represent minority groups. At least one member of the Advisory Board shall be a representative of environmental public interest groups and one member shall be a representative of the interests of State governments.

(3) The Secretary of Defense and the Secretary of Energy, in consultation with the Administrator of the Environmental Protection Agency, shall request—

(A) that the head of the National Academy of Sciences, in consultation with the head of the National Academy of Engineering and the head of the Institutes of Medicine of the National Academy of Sciences, nominate persons for appointment to the Advisory Board;

(B) that the Council on Environmental Quality nominate for appointment to the Advisory Board at least one person who is a representative of environmental public interest groups; and

(C) that the National Association of Governors nominate for appointment to the Advisory Board at least one person who is representative of the interests of State governments.

(4) Members of the Advisory Board shall be appointed for terms of not less than two and not more than four years.

(c) A member of the Advisory Board who is not otherwise employed by the Federal Government shall not be considered to be a Federal employee, except for the purposes of chapter 81 of title 5 (relating to compensation for work-related injuries) and chapter 171 of title 28 (relating to tort claims).

(d) The Advisory Board shall prescribe procedures for carrying out its responsibilities. Such procedures shall define a quorum as a majority of the members, provide for annual election of the Chairman by the members of the Advisory Board, and require at least four meetings of the Advisory Board each year.

(e) The Council shall refer to the Advisory Board, and the Advisory Board shall review, each proposed research project including its estimated cost, for research in and development of technologies related to environmental activities in excess of $1,000,000. The Advisory Board shall make any recommendations to the Council that the Advisory Board considers appropriate regarding such project or proposal.

(f) The Advisory Board may make recommendations to the Council regarding technologies, research, projects, programs, activities, and, if appropriate, funding within the scope of the Strategic Environmental Research and Development Program.

(g) The Advisory Board shall assist and advise the Council in identifying the environmental data and analytical assistance activities that should be covered by the policies and procedures prescribed pursuant to section 2902(d)(1) of this title.

(h) Each member of the Advisory Board shall be required to file a financial disclosure report under title I of the Ethics in Government Act of 1978 (5 U.S.C. App.).

(Added Pub. L. 101–510, div. A, title XVIII, § 1801(a)(1), Nov. 5, 1990, 104 Stat. 1756; amended Pub. L. 102–190, div. A, title II, § 257(b), Dec. 5, 1991, 105 Stat. 1331; Pub. L. 105–85, div. A, title III, § 341, Nov. 18, 1997, 111 Stat. 1686; Pub. L. 106–398, § 1 [[div. A], title III, § 313(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–55.)

REFERENCES IN TEXT

The Ethics in Government Act of 1978, referred to in subsec. (h), is Pub. L. 95–521, Oct. 26, 1978, 92 Stat. 1824, as amended. Title I of the Act is set out in the Appendix to Title 5, Government Organization and Employees. For complete classification of this Act to the Code, see Short Title note set out under section 101 of Pub. L. 95–521 in the Appendix to Title 5 and Tables.

AMENDMENTS

2000—Subsecs. (h), (i). Pub. L. 106–398 redesignated subsec. (i) as (h) and struck out former subsec. (h) which read as follows: ''Not later than March 15 of each year, the Advisory Board shall submit to the Congress an annual report setting forth its actions during the year preceding the year in which the report is submitted and any recommendations, including recommendations on projects, programs, and information exchange and recommendations for legislation, that the Advisory Board considers appropriate regarding the Strategic Environmental Research and Development Program.''

1997—Subsec. (b)(4). Pub. L. 105–85 substituted ''not less than two and not more than four'' for ''three years''.

1991—Subsec. (a). Pub. L. 102–190, § 257(b)(1), substituted ''14 members'' for ''13 members''.

Subsec. (b)(1). Pub. L. 102–190, § 257(b)(2), added par. (1) and struck out former par. (1) which read as follows: ''The Science Advisor to the President, or his designee, shall be a permanent member of the Advisory Board.''

INITIAL APPOINTMENTS OF ADVISORY BOARD MEMBERS

Pub. L. 101–510, div. A, title XVIII, § 1801(b), Nov. 5, 1990, 104 Stat. 1757, directed Secretary of Defense and Secretary of Energy to make the appointments required by 10 U.S.C. 2904(a) not later than 60 days after Nov. 5, 1990, and provided that up to one-half of the members originally appointed to the Strategic Environmental Research and Development Program Scientific Advisory Board could be appointed for terms of not more than six and not less than two years in order to provide for staggered expiration of the terms of members.

FIRST ANNUAL REPORT OF ADVISORY BOARD

Pub. L. 101–510, div. A, title XVIII, § 1801(d), Nov. 5, 1990, 104 Stat. 1758, directed that first annual report of the Strategic Environmental Research and Development Program Scientific Advisory Board be submitted not later than Mar. 15, 1992.

TERMINATION OF ADVISORY BOARDS

Advisory boards established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a board established by the President or an officer of the Federal Government, such board is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a board established by the Congress, its duration is otherwise provided for by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

CHAPTER 173—ENERGY SECURITY

Subchapter		Sec.
I.	Energy Security Activities	2911
II.	Energy-Related Procurement	2922
III.	General Provisions	2924

AMENDMENTS

2011—Pub. L. 112–81, div. B, title XXVIII, § 2821(a)(2)(A), Dec. 31, 2011, 125 Stat. 1691, substituted ''2924'' for ''2925'' in item III.

2011—Pub. L. 111–383, div. A, title X, § 1075(b)(47), Jan. 7, 2011, 124 Stat. 4371, inserted ''Sec.'' above ''2911''.

SUBCHAPTER I—ENERGY SECURITY ACTIVITIES

Sec.
2911. Energy policy of the Department of Defense.
2912. Availability and use of energy cost savings.
2913. Energy savings contracts and activities.
2914. Military construction projects for energy resilience, energy security, and energy conservation.
2915. Facilities: use of renewable forms of energy and energy efficient products.
2916. Sale of electricity from alternate energy and cogeneration production facilities.
2917. Development of geothermal energy on military lands.
2918. Fuel sources for heating systems; prohibition on converting certain heating facilities.
2919. Department of Defense participation in programs for management of energy demand or reduction of energy usage during peak periods.
2920. Energy resilience and energy security measures on military installations.

Sec.

AMENDMENTS

2021—Pub. L. 116–283, div. A, title III, § 316(b), div. B, title XXVIII, § 2805(b), Jan. 1, 2021, 134 Stat. 3519, 4322, added items 2914 and 2920 and struck out former item 2914 "Energy resilience and conservation construction projects".

2019—Pub. L. 116–92, div. A, title XVII, § 1731(a)(59), Dec. 20, 2019, 133 Stat. 1815, which directed amendment of the analysis at the beginning of this chapter by substituting "Energy resilience and conservation construction projects" for "Energy resiliency and conservation construction projects"in item 2914, was executed in the analysis for this subchapter to reflect the probable intent of Congress.

2018—Pub. L. 115–232, div. A, title X, § 1081(c)(6), Aug. 13, 2018, 132 Stat. 1985, made technical amendment to directory language of Pub. L. 115–91, § 2831(b), effective as of Dec. 12, 2017, and as if included in Pub. L. 115–91 as enacted. See 2017 Amendment note below.

2017—Pub. L. 115–91, div. B, title XXVIII, § 2831(b), Dec. 12, 2017, 131 Stat. 1857, as amended by Pub. L. 115–232, div. A, title X, § 1081(c)(6), Aug. 13, 2018, 132 Stat. 1985, which directed amendment of the analysis at the beginning of this chapter by adding item 2911 and striking out former item 2911 "Energy performance goals and master plan for the Department of Defense", was executed in the analysis for this subchapter to reflect the probable intent of Congress.

2016—Pub. L. 114–328, div. B, title XXVIII, § 2805(a)(2), Dec. 23, 2016, 130 Stat. 2714, which directed amendment of the analysis at the beginning of this chapter by adding item 2914 and striking out former item 2914 "Energy conservation construction projects", was executed in the analysis for this subchapter to reflect the probable intent of Congress.

2011—Pub. L. 111–383, div. B, title XXVIII, § 2832(c)(2), Jan. 7, 2011, 124 Stat. 4470, added items 2911 and 2915 and struck out former items 2911 "Energy performance goals and plan for Department of Defense" and 2915 "New construction: use of renewable forms of energy and energy efficient products".

2009—Pub. L. 111–84, div. B, title XXVIII, § 2843(b), Oct. 28, 2009, 123 Stat. 2682, added item 2919.

§ 2911. Energy policy of the Department of Defense

(a) GENERAL ENERGY POLICY.—The Secretary of Defense shall ensure the readiness of the armed forces for their military missions by pursuing energy security and energy resilience.

(b) AUTHORITIES.—In order to achieve the policy set forth in subsection (a), the Secretary of Defense may—

(1) establish metrics and standards for the assessment of energy resilience;

(2) require the Secretary of a military department to perform mission assurance and readiness assessments of energy power systems for mission critical assets and supporting infrastructure, applying uniform mission standards established by the Secretary of Defense;

(3) require the Secretary of a military department to establish and maintain an energy resilience master plan for an installation;

(4) authorize the use of energy security and energy resilience, including the benefits of onsite generation resources that reduce or avoid the cost of backup power, as factors in the cost-benefit analysis for procurement of energy; and

(5) in selecting facility energy projects that will use renewable energy sources, pursue energy security and energy resilience by giving favorable consideration to projects that provide power directly to a military facility or into the installation electrical distribution network.

(c) ENERGY PERFORMANCE GOALS.—(1) The Secretary of Defense shall submit to the congressional defense committees the energy performance goals for the Department of Defense regarding transportation systems, support systems, utilities, and infrastructure and facilities.

(2) The energy performance goals shall be submitted annually not later than the date on which the President submits to Congress the budget for the next fiscal year under section 1105 of title 31 and cover that fiscal year as well as the next five, 10, and 20 years. The Secretary shall identify changes to the energy performance goals since the previous submission.

(3) The Secretary of Defense shall include the energy security and resilience goals of the Department of Defense in the installation energy report submitted under section 2925(a) of this title for fiscal year 2018 and every fiscal year thereafter. In the development of energy security and resilience goals, the Department of Defense shall conform with the definitions of energy security and resilience under this title. The report shall include the amount of critical energy load, together with the level of availability and reliability by fiscal year the Department of Defense deems necessary to achieve energy security and resilience.

(d) ENERGY PERFORMANCE MASTER PLAN.—(1) The Secretary of Defense shall develop a comprehensive master plan for the achievement of the energy performance goals of the Department of Defense, as set forth in laws, executive orders, and Department of Defense policies.

(2) The master plan shall include the following:

(A) A separate master plan, developed by each military department and Defense Agency, for the achievement of energy performance goals.

(B) The use of a baseline standard for the measurement of energy consumption by transportation systems, support systems, utilities, and facilities and infrastructure that is consistent for all of the military departments.

(C) A method of measurement of reductions or conservation in energy consumption that provides for the taking into account of changes in the current size of fleets, number of facilities, and overall square footage of facility plants.

(D) Metrics to track annual progress in meeting energy performance goals.

(E) A description of specific requirements, and proposed investments, in connection with the achievement of energy performance goals reflected in the budget of the President for each fiscal year (as submitted to Congress under section 1105(a) of title 31).

(F) The up-to date list of energy-efficient products maintained under section 2915(e)(2) of this title.

(3) Not later than 30 days after the date on which the budget of the President is submitted to Congress for a fiscal year under section 1105(a) of title 31, the Secretary shall submit the current version of the master plan to Congress.

(e) SPECIAL CONSIDERATIONS.—For the purpose of developing and implementing the energy performance goals and energy performance master plan, the Secretary of Defense shall consider at a minimum the following:

(1) Opportunities to reduce the current rate of consumption of energy, the future demand for energy, and the requirement for the use of energy.

(2) Opportunities to enhance energy resilience to ensure the Department of Defense has the ability to prepare for and recover from energy disruptions that affect mission assurance on military installations.

(3) Opportunities to implement conservation measures to improve the efficient use of energy.

(4) Opportunities to pursue alternative energy initiatives, including the use of alternative fuels and hybrid-electric drive in military vehicles and equipment.

(5) Opportunities for the high-performance construction, lease, operation, and maintenance of buildings.

(6) Cost effectiveness, cost savings, and net present value of alternatives.

(7) The value of diversification of types and sources of energy used.

(8) The value of economies-of-scale associated with fewer energy types used.

(9) The value of the use of renewable energy sources.

(10) The value of incorporating electric, hybrid-electric, and high efficiency vehicles into vehicle fleets.

(11) The potential for an action to serve as an incentive for members of the armed forces and civilian personnel to reduce energy consumption or adopt an improved energy performance measure.

(12) Opportunities for improving energy security for facility energy projects that will use renewable energy sources.

(13) Opportunities to leverage financing provided by a non-Department entity to address installation energy needs.

(f) SELECTION OF ENERGY CONSERVATION MEASURES.—For the purpose of implementing the energy performance master plan, the Secretary of Defense shall provide that the selection of energy conservation measures, including energy efficient maintenance, shall be limited to those measures that—

(1) are readily available;

(2) demonstrate an economic return on the investment;

(3) are consistent with the energy performance goals and energy performance master plan for the Department; and

(4) are supported by the special considerations specified in subsection (c).

(g) GOAL REGARDING USE OF RENEWABLE ENERGY TO MEET FACILITY ENERGY NEEDS.—(1) It shall be the goal of the Department of Defense—

(A) to produce or procure not less than 25 percent of the total quantity of facility energy it consumes within its facilities during fiscal year 2025 and each fiscal year thereafter from renewable energy sources; and

(B) to produce or procure facility energy from renewable energy sources whenever the use of such renewable energy sources is consistent with the energy performance goals and energy performance master plan for the Department and supported by the special considerations specified in subsection (c).

(2) To help ensure that the goal specified in paragraph (1)(A) regarding the use of renewable energy by the Department of Defense is achieved, the Secretary of Defense shall establish an interim goal for fiscal year 2018 for the production or procurement of facility energy from renewable energy sources.

(3)(A) The Secretary of Defense shall establish a policy to maximize savings for the bulk purchase of replacement renewable energy certificates in connection with the development of facility energy projects using renewable energy sources.

(B) Under the policy required by subparagraph (A), the Secretary of a military department shall submit requests for the purchase of replacement renewable energy certificates to a centralized purchasing authority maintained by such department or the Defense Logistics Agency with expertise regarding—

(i) the market for renewable energy certificates;

(ii) the procurement of renewable energy certificates; and

(iii) obtaining the best value for the military department by maximizing the purchase of renewable energy certificates from projects placed into service before January 1, 1999.

(C) The centralized purchasing authority shall solicit industry for the most competitive offer for replacement renewable energy certificates, to include a combination of renewable energy certificates from new projects and projects placed into service before January 1, 1999.

(D) Subparagraph (B) does not prohibit the Secretary of a military department from entering into an agreement outside of the centralized purchasing authority if the Secretary will obtain the best value by bundling the renewable energy certificates with the facility energy project through a power purchase agreement or other contractual mechanism at the installation.

(E) Nothing in this paragraph shall be construed to authorize the purchase of renewable energy certificates to meet Federal goals or mandates in the absence of the development of a facility energy project using renewable energy sources.

(F) This policy does not make the purchase of renewable energy certificates mandatory, but the policy shall apply whenever original renewable energy certificates are proposed to be swapped for replacement renewable energy certificates.

(h) PROMOTION OF ON-SITE ENERGY SECURITY AND ENERGY RESILIENCE.—(1) Consistent with the energy security and resilience goals of the Department of Defense and the energy performance master plan referred to in this section, the Secretary concerned shall consider, when feasible, projects for the production of installation energy that benefits military readiness and promotes installation energy security and energy resilience in the following manner:

(A) Location of the energy-production infrastructure on the military installation that will consume the energy.

(B) Incorporation of energy resilience features, such as microgrids, to ensure that energy remains available to the installation even when the installation is not connected to energy sources located off the installation.

(C) Reduction in periodic refueling needs from sources off the installation to not more than once every two years.

(2)(A) Using amounts made available for military construction projects under section 2914 of this title, the Secretary of Defense shall carry out at least four projects to promote installation energy security and energy resilience in the manner described in paragraph (1).

(B) At least one project shall be designed to develop technology that demonstrates the ability to connect an existing on-site energy generation facility that uses solar power with one or more installation facilities performing critical missions in a manner that allows the generation facility to continue to provide electrical power to these facilities even if the installation is disconnected from the commercial power supply.

(C) At least one project shall be designed to develop technology that demonstrates that one or more installation facilities performing critical missions can be isolated, for purposes of electrical power supply, from the remainder of the installation and from the commercial power supply in a manner that allows an on-site energy generation facility that uses a renewable energy source, other than solar energy, to provide the necessary power exclusively to these facilities.

(D) At least two projects shall be designed to develop technology that demonstrates the ability to store sufficient electrical energy from an on-site energy generation facility that uses a renewable energy source to provide the electrical energy required to continue operation of installation facilities performing critical missions during nighttime operations.

(E) The authority of the Secretary of Defense to commence a project under this paragraph expires on September 30, 2025.

(3) In this subsection, the term ''microgrid'' means an integrated energy system consisting of interconnected loads and energy resources that, if necessary, can be removed from the local utility grid and function as an integrated, standalone system.

(Added and amended Pub. L. 109–364, div. B, title XXVIII, §§ 2851(a)(1), 2852, Oct. 17, 2006, 120 Stat. 2489, 2496; Pub. L. 111–84, div. B, title XXVIII, § 2842, Oct. 28, 2009, 123 Stat. 2680; Pub. L. 111–383, div. B, title XXVIII, §§ 2831, 2832(a), Jan. 7, 2011, 124 Stat. 4467, 4468; Pub. L. 112–81, div. B, title XXVIII, §§ 2821(b)(1), 2822(b), 2823(a), 2824(a), 2825(b), Dec. 31, 2011, 125 Stat. 1691, 1692, 1694; Pub. L. 115–91, div. A, title III, § 312, div. B, title XXVIII, § 2831(a), Dec. 12, 2017, 131 Stat. 1348, 1857; Pub. L. 115–232, div. A, title III, § 312(a), (b), Aug. 13, 2018, 132 Stat. 1709, 1710; Pub. L. 116–92, div. A, title III, § 320(b), Dec. 20, 2019, 133 Stat. 1307; Pub. L. 116–283, div. B, title XXVIII, § 2825(a), (b)(1), Jan. 1, 2021, 134 Stat. 4333, 4334.)

CODIFICATION

Section 312 of Pub. L. 115–91 amended subsec. (c) of this section, and section 2831(a)(2) and (4) of Pub. L. 115–91 respectively redesignated subsec. (c) as (e) and made amendments substantially identical to those made by section 312. Pub. L. 116–92 subsequently amended subsec. (e) to address the duplicate amendments. See 2019 and 2017 Amendment notes below.

AMENDMENTS

2021—Subsec. (h). Pub. L. 116–283, § 2825(a), added subsec. (h) containing pars. (1) and (3).

Subsec. (h)(2). Pub. L. 116–283, § 2825(b)(1), added par. (2).

2019—Subsec. (e)(1), (2). Pub. L. 116–92, § 320(b)(1), added pars. (1) and (2) and struck out former pars. (1) and (2) which read as follows:

''(1) Opportunities to reduce the current rate of consumption of energy, the future demand for energy, and the requirement for the use of energy.

''(2) Opportunities to enhance energy resilience to ensure the Department of Defense has the ability to prepare for and recover from energy disruptions that impact mission assurance on military installations.''

Subsec. (e)(13). Pub. L. 116–92, § 320(b)(2), which directed striking out ''the second paragraph (13)'', was executed by striking out the par. (13) added by Pub. L. 115–91, § 2831(a)(4)(C), which read as follows: ''Opportunities to leverage third-party financing to address installation energy needs.'' See 2017 Amendment note below.

2018—Subsec. (b). Pub. L. 115–232, § 312(a), added pars. (1) and (2) and redesignated former pars. (1) to (3) as (3) to (5), respectively.

Subsec. (c)(3). Pub. L. 115–232, § 312(b), added par. (3).

2017—Pub. L. 115–91, § 2831(a)(1), substituted ''policy of'' for ''performance goals and master plan for'' in section catchline.

Subsecs. (a) to (d). Pub. L. 115–91, § 2831(a)(2), (3), added subsecs. (a) and (b) and redesignated former subsecs. (a) and (b) as (c) and (d), respectively. Former subsecs. (c) and (d) redesignated (e) and (f), respectively.

Subsec. (e). Pub. L. 115–91, § 2831(a)(2), redesignated subsec. (c) as (e). Former subsec. (e) redesignated (g).

Subsec. (e)(1). Pub. L. 115–91, §§ 312(1), 2831(a)(4)(A), amended par. (1) identically, inserting '', the future demand for energy, and the requirement for the use of energy'' after ''consumption of energy''. See Codification note above.

Subsec. (e)(2). Pub. L. 115–91, §§ 312(2), 2831(a)(4)(B), made similar amendments to par. (2), resulting in substitution of ''enhance energy resilience to ensure the Department of Defense has the ability to prepare for and recover from energy disruptions that impact mission assurance on military installations'' for ''reduce the future demand and the requirements for the use of energy''. See Codification note above.

Subsec. (e)(13). Pub. L. 115–91, § 2831(a)(4)(C), added par. (13) which read ''Opportunities to leverage third-party financing to address installation energy needs.'' See Codification note above.

Pub. L. 115–91, § 312(3), added par. (13) which read ''Opportunities to leverage financing provided by a non-Department entity to address installation energy needs.'' See Codification note above.

Subsecs. (f), (g). Pub. L. 115–91, § 2831(a)(2), redesignated subsecs. (d) and (e) as (f) and (g), respectively.

2011—Pub. L. 111–383, § 2832(a)(3), substituted ''Energy performance goals and master plan for the Department of Defense'' for ''Energy performance goals and plan for Department of Defense'' in section catchline.

Pub. L. 111–383, § 2832(a)(2), substituted ''master plan'' for ''plan'' wherever appearing in subsecs. (c) to (e).

Subsec. (b). Pub. L. 111–383, § 2832(a)(1), amended subsec. (b) generally. Prior to amendment, text read as follows: ''The Secretary of Defense shall develop, and update as necessary, a comprehensive plan to help achieve the energy performance goals for the Department of Defense.''

Subsec. (b)(2)(F). Pub. L. 112–81, § 2825(b), added subpar. (F).

Subsec. (c)(4). Pub. L. 111–383, § 2831(1), inserted ''and hybrid-electric drive'' after ''alternative fuels''.

Subsec. (c)(5) to (11). Pub. L. 111–383, § 2831(2)–(5), added pars. (5) and (10) and redesignated former pars. (5) to (8) and (9) as (6) to (9) and (11), respectively.

Subsec. (c)(12). Pub. L. 112–81, § 2822(b), added par. (12).

Subsec. (d). Pub. L. 112–81, § 2821(b)(1)(A), struck out par. (1) designation, redesignated subpars. (A) to (D) as pars. (1) to (4), respectively, and struck out former par. (2), which defined ''energy efficient maintenance''.

Subsec. (e)(2). Pub. L. 112–81, § 2823(a), added par. (2). Pub. L. 112–81, § 2821(b)(1)(B), struck out par. (2), which defined ''renewable energy source''.

Subsec. (e)(3). Pub. L. 112–81, § 2824(a), added par. (3).

2009—Subsec. (e). Pub. L. 111–84, § 2842(c), substituted ''Facility Energy Needs'' for ''Electricity Needs'' in heading.

Pub. L. 111–84, § 2842(a), (b), designated existing provisions as par. (1), redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, of par. (1), in par. (1)(A), substituted ''facility energy'' for ''electric energy'' and struck out ''and in its activities'' after ''facilities'' and ''(as defined in section 203(b) of the Energy Policy Act of 2005 (42 U.S.C. 15852(b)))'' after ''sources'', in par. (1)(B), substituted ''facility energy'' for ''electric energy'', and added par. (2).

2006—Subsec. (e). Pub. L. 109–364, § 2852, added subsec. (e).

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective Dec. 31, 2021, of provisions in subsecs. (a) and (b)(3) of this section requiring submittal of annual reports to Congress, see section 1061 of Pub. L. 114–328, set out as a note under section 111 of this title.

IMPROVEMENT OF THE OPERATIONAL ENERGY CAPABILITY IMPROVEMENT FUND OF THE DEPARTMENT OF DEFENSE

Pub. L. 116–283, div. A, title III, § 324, Jan. 1, 2021, 134 Stat. 3523, provided that:

''(a) MANAGEMENT OF THE OPERATIONAL ENERGY CAPABILITY IMPROVEMENT FUND.—The Assistant Secretary of Defense for Energy, Installations, and Environment shall exercise authority, direction, and control over the Operational Energy Capability Improvement Fund of the Department of Defense (in this section referred to as the 'OECIF').

''(b) ALIGNMENT AND COORDINATION WITH RELATED PROGRAMS.—

''(1) REALIGNMENT OF OECIF.—Not later than 60 days after the date of the enactment of this Act [Jan. 1, 2021], the Secretary of Defense shall realign the OECIF under the Assistant Secretary of Defense for Energy, Installations, and Environment, with such realignment to include personnel positions adequate for the mission of the OECIF.

''(2) BETTER COORDINATION WITH RELATED PROGRAMS.—The Assistant Secretary shall ensure that the placement under the authority of the Assistant Secretary of the OECIF along with the Strategic Environmental Research Program, the Environmental Security Technology Certification Program, and the Operational Energy Prototyping Program is utilized to advance common goals of the Department, promote organizational synergies, and avoid unnecessary duplication of effort.

''(c) PROGRAM FOR OPERATIONAL ENERGY PROTOTYPING.—

''(1) IN GENERAL.—Commencing not later than 90 days after the date of the enactment of this Act, the Secretary of Defense, through the Assistant Secretary of Defense for Energy, Installations, and Environment, shall carry out a program for the demonstration of technologies related to operational energy prototyping, including demonstration of operational energy technology and validation prototyping.

''(2) OPERATION OF PROGRAM.—The Secretary shall ensure that the program under paragraph (1) operates in conjunction with the OECIF to promote the transfer of innovative technologies that have successfully established proof of concept for use in production or in the field.

''(3) PROGRAM ELEMENTS.—In carrying out the program under paragraph (1) the Secretary shall—

''(A) identify and demonstrate the most promising, innovative, and cost-effective technologies and methods that address high-priority operational energy requirements of the Department of Defense;

''(B) in conducting demonstrations under subparagraph (A)—

''(i) collect cost and performance data to overcome barriers against employing an innovative technology because of concerns regarding technical or programmatic risk; and

''(ii) ensure that components of the Department have time to establish new requirements where necessary and plan, program, and budget for technology transition to programs of record;

''(C) utilize project structures similar to those of the OECIF to ensure transparency and accountability throughout the efforts conducted under the program; and

''(D) give priority, in conjunction with the OECIF, to the development and fielding of clean technologies that reduce reliance on fossil fuels.

''(4) TOOL FOR ACCOUNTABILITY AND TRANSITION.—

''(A) IN GENERAL.—In carrying out the program under paragraph (1) the Secretary shall develop and utilize a tool to track relevant investments in operational energy from applied research to transition to use to ensure user organizations have the full picture of technology maturation and development.

''(B) TRANSITION.—The tool developed and utilized under subparagraph (A) shall be designed to overcome transition challenges with rigorous and well-documented demonstrations that provide the information needed by all stakeholders for acceptance of the technology.

''(5) LOCATIONS.—

''(A) IN GENERAL.—The Secretary shall carry out the testing and evaluation phase of the program under paragraph (1) at installations of the Department of Defense or in conjunction with exercises conducted by the Joint Staff, a combatant command, or a military department.

''(B) FORMAL DEMONSTRATIONS.—The Secretary shall carry out any formal demonstrations under the program under paragraph (1) at installations of the Department or in operational settings to document and validate improved warfighting performance and cost savings.''

IMPROVED ELECTRICAL METERING OF DEPARTMENT OF DEFENSE INFRASTRUCTURE SUPPORTING CRITICAL MISSIONS

Pub. L. 116–283, div. B, title XXVIII, § 2826, Jan. 1, 2021, 134 Stat. 4334, provided that:

''(a) OPTIONS TO IMPROVE ELECTRICAL METERING.—The Secretary of Defense and the Secretaries of the military departments shall improve the metering of electrical energy usage of covered defense structures to accurately determine energy consumption by such a structure to increase energy efficiency and improve energy resilience, using any combination of the options specified in subsection (b) or such other methods as the Secretary concerned considers practicable.

''(b) METERING OPTIONS.—Electrical energy usage options to be considered for a covered defense structure include the following:

''(1) Installation of a smart meter at the electric power supply cable entry point of the covered defense structure, with remote data storage and retrieval capability using cellular communication, to provide historical energy usage data on an hourly basis to accurately determine the optimum cost effective energy efficiency and energy resilience measures for the covered defense structure.

''(2) Use of an energy usage audit firm to individually meter the covered defense structure using

clamp-on meters and data storage to provide year–long electric energy load profile data, particularly in the case of a covered defense structure located in climates with highly variable use based on weather or temperature changes, to accurately identify electric energy usage demand for both peak and off peak periods for a covered defense structure.

''(3) Manual collection and calculation of the connected load via nameplate data survey of all the connected electrical devices for the covered defense structure and comparison of such data to the designed maximum rating of the incoming electric supply to determine the maximum electrical load for the covered defense structure.

''(c) CYBERSECURITY.—The Secretary of Defense and the Secretaries of the military departments shall consult with the Chief Information Officer of the Department of Defense to ensure that the electrical energy metering options considered under subsection (b) do not compromise the cybersecurity of Department of Defense networks.

''(d) CONSIDERATION OF PARTNERSHIPS.—The Secretary of Defense and the Secretaries of the military departments shall consider the use of arrangements (known as public-private partnerships) with appropriate entities outside the Government to reduce the cost of carrying out this section.

''(e) DEFINITIONS.—In this section:

''(1) The term 'covered defense structure' means any infrastructure under the jurisdiction of the Department of Defense inside the United States that the Secretary of Defense or the Secretary of the military department concerned determines—

''(A) is used to support a critical mission of the Department; and

''(B) is located at a military installation with base-wide resilient power.

''(2) The term 'energy resilience' has the meaning given that term in section 101(e)(6) of title 10, United States Code.

''(f) IMPLEMENTATION REPORT.—As part of the Department of Defense energy management report to be submitted under section 2925 of title 10, United States Code, during fiscal year 2022, the Secretary of Defense shall include information on the progress being made to comply with the requirements of this section.''

PILOT PROGRAM TO TEST USE OF EMERGENCY DIESEL GENERATORS IN A MICROGRID CONFIGURATION AT CERTAIN MILITARY INSTALLATIONS

Pub. L. 116–283, div. B, title XXVIII, § 2864, Jan. 1, 2021, 134 Stat. 4359, provided that:

''(a) PILOT PROGRAM AUTHORIZED.—The Secretary of Defense may conduct a pilot program (to be known as the 'Emergency Diesel Generator Microgrid Program') to evaluate the feasibility and cost effectiveness of connecting existing diesel generators at a military installation selected pursuant to subsection (c) to create and support one or more microgrid configurations at the installation capable of providing full-scale electrical power for the defense critical facilities located at the installation during an emergency involving the loss of external electric power supply caused by an extreme weather condition, manmade intentional infrastructure damage, or other circumstance.

''(b) GOALS OF PILOT PROGRAM.—The goals of the Emergency Diesel Generator Microgrid Program are—

''(1) to test assumptions about lower operating and maintenance costs, parts interchangeability, lower emissions, lower fuel usage, increased resiliency, increased reliability, and reduced need for emergency diesel generators; and

''(2) to establish design criteria that could be used to build and sustain emergency diesel generator microgrids at other military installations.

''(c) PILOT PROGRAM LOCATIONS.—As the locations to conduct the Emergency Diesel Generator Microgrid Program, the Secretary of Defense shall select two major military installations located in different geographical regions of the United States that the Secretary determines—

''(1) are defense critical electric infrastructure sites or contain, or are served by, defense critical electric infrastructure;

''(2) contain more than one defense critical function for national defense purposes and the mission assurance of such critical defense facilities are paramount to maintaining national defense and force projection capabilities at all times; and

''(3) face unique electric energy supply, delivery, and distribution challenges that, based on the geographic location of the installations and the overall physical size of the installations, adversely impact rapid electric infrastructure restoration after an interruption.

''(d) SPECIFICATIONS OF DIESEL GENERATORS AND MICROGRID.—

''(1) GENERATOR SPECIFICATIONS.—The Secretary of Defense shall use existing diesel generators that are sized †/= 750kW output.

''(2) MICROGRID SPECIFICATIONS.—The Secretary of Defense shall create the microgrid using commercially available and proven designs and technologies. The existing diesel generators used for the microgrid should be spaced within 1.0 to 1.5 mile of each other and, using a dedicated underground electric cable network, be tied into a microgrid configuration sufficient to supply mission critical facilities within the service area of the microgrid. A selected military installation may contain more than one such microgrid under the Emergency Diesel Generator Microgrid Program.

''(e) PROGRAM AUTHORITIES.—The Secretary of Defense may use the authority under section 2914 of title 10, United States Code (known as the Energy Resilience and Conservation Investment Program), and energy savings performance contracts to conduct the Emergency Diesel Generator Microgrid Program.

''(f) DEFINITIONS.—For purposes of the Emergency Diesel Generator Microgrid Program:

''(1) The term 'defense critical electric infrastructure' has the meaning given that term in section 215A of the Federal Power Act (16 U.S.C. 824*o*–1).

''(2) The term 'energy savings performance contract' has the meaning given that term in section 804(3) of the National Energy Conservation Policy Act (42 U.S.C. 8287c(3)).

''(3) The term 'existing diesel generators' means diesel generators located, as of the date of the enactment of this Act [Jan. 1, 2021], at a major military installation selected as a location for the Emergency Diesel Generator Microgrid Program and intended for emergency use.

''(4) The term 'major military installation' has the meaning given that term in section 2864 of title 10, United States Code.''

PILOT PROGRAM FOR AVAILABILITY OF WORKING-CAPITAL FUNDS FOR INCREASED COMBAT CAPABILITY THROUGH ENERGY OPTIMIZATION

Pub. L. 116–92, div. A, title III, § 337, Dec. 20, 2019, 133 Stat. 1316, provided that:

''(a) IN GENERAL.—Notwithstanding section 2208 of title 10, United States Code, the Secretary of Defense and the military departments may use a working capital fund established pursuant to that section for expenses directly related to conducting a pilot program for energy optimization initiatives described in subsection (b).

''(b) ENERGY OPTIMIZATION INITIATIVES.—Energy optimization initiatives covered by the pilot program include the research, development, procurement, installation, and sustainment of technologies or weapons system platforms, and the manpower required to do so, that would improve the efficiency and maintainability, extend the useful life, lower maintenance costs, or provide performance enhancement of the weapon system platform or major end item.

''(c) LIMITATION ON CERTAIN PROJECTS.—Funds may not be used pursuant to subsection (a) for—

''(1) any product improvement that significantly changes the performance envelope of an end item; or

''(2) any single component with an estimated total cost in excess of $10,000,000.

''(d) LIMITATION IN FISCAL YEAR PENDING TIMELY REPORT.—If during any fiscal year the report required by paragraph (1) of subsection (e) is not submitted by the date specified in paragraph (2) of that subsection, funds may not be used pursuant to subsection (a) during the period—

''(1) beginning on the date specified in such paragraph (2); and

''(2) ending on the date of the submittal of the report.

''(e) ANNUAL REPORT.—

''(1) IN GENERAL.—The Secretary of Defense shall submit an annual report to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] on the use of the authority under subsection (a) during the preceding fiscal year.

''(2) DEADLINE FOR SUBMITTAL.—The report required by paragraph (1) in a fiscal year shall be submitted not later than 60 days after the date of the submittal to Congress of the budget of the President for the succeeding fiscal year pursuant to section 1105 of title 31, United States Code.

''(3) RECOMMENDATION.—In the case of the report required to be submitted under paragraph (1) during fiscal year 2020, the report shall include the recommendation of the Secretary of Defense and the military departments regarding whether the authority under subsection (a) should be made permanent.

''(f) SUNSET.—The authority under subsection (a) shall expire on October 1, 2024.''

AGGREGATION OF ENERGY EFFICIENCY AND ENERGY RESILIENCE PROJECTS IN LIFE CYCLE COST ANALYSES

Pub. L. 115–91, div. B, title XXVIII, § 2837, Dec. 12, 2017, 131 Stat. 1859, provided that: ''The Secretary of Defense or the Secretary of a military department, when conducting life cycle cost analyses with respect to investments designed to lower costs and reduce energy and water consumption, shall aggregate energy efficiency projects and energy resilience improvements as appropriate.''

ENERGY SECURITY FOR MILITARY INSTALLATIONS IN EUROPE

Pub. L. 116–92, div. B, title XXVIII, § 2821(a)–(c), Dec. 20, 2019, 133 Stat. 1888, provided that:

''(a) PROHIBITION ON USE OF CERTAIN ENERGY SOURCE.—The Secretary of Defense shall ensure that each contract for the acquisition of furnished energy for a covered military installation in Europe does not use any energy sourced from inside the Russian Federation as a means of generating the furnished energy for the covered military installation.

''(b) WAIVER FOR NATIONAL SECURITY INTERESTS.—

''(1) WAIVER AUTHORITY; CERTIFICATION.—The Secretary of Defense may waive application of subsection (a) to a specific contract for the acquisition of furnished energy for a covered military installation if the Secretary certifies to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] that—

''(A) the waiver of such subsection is necessary to ensure an adequate supply of furnished energy for the covered military installation; and

''(B) the Secretary has balanced these national security requirements against the potential risk associated with reliance upon the Russian Federation for furnished energy.

''(2) SUBMISSION OF WAIVER NOTICE.—Not later than 14 days before the execution of any energy contract for which a waiver is granted under paragraph (1), the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] notice of the waiver. The waiver notice shall include the following:

''(A) The rationale for the waiver, including the basis for the certifications required by subparagraphs (A) and (B) of paragraph (1).

''(B) An assessment of how the waiver may impact the European energy resiliency strategy.

''(C) An explanation of the measures the Department of Defense is taking to mitigate the risk of using Russian Federation furnished energy.

''(c) DEFINITIONS.—In this section:

''(1) The term 'covered military installation' means a military installation in Europe identified by the Department of Defense as a main operating base.

''(2) The term 'furnished energy' means energy furnished to a covered military installation in any form and for any purpose, including heating, cooling, and electricity.''

Pub. L. 115–91, div. B, title XXVIII, § 2880, Dec. 12, 2017, 131 Stat. 1875, provided that:

''(a) AUTHORITY.—The Secretary of Defense shall take appropriate measures, to the extent practicable, to—

''(1) reduce the dependency of all United States military installations in Europe on energy sourced inside Russia; and

''(2) ensure that all United States military installations in Europe are able to sustain operations in the event of a supply disruption.

''(b) CERTIFICATION REQUIREMENT.—Not later than December 31, 2021, the Secretary of Defense shall certify to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] whether or not at United States military installations in Europe the Department of Defense—

''(1) has taken significant steps to minimize to the extent practicable the dependency on energy sourced inside the Russian Federation at such installations; and

''(2) has the ability to sustain mission critical operations during an energy supply disruption.

''(c) DEFINITION OF ENERGY SOURCES INSIDE RUSSIA.—In this section, the term 'energy sourced inside Russia' means energy that is produced, owned, or facilitated by companies that are located in the Russian Federation or owned or controlled by the Government of the Russian Federation.''

BUSINESS CASE ANALYSIS OF ANY PLAN TO DESIGN, REFURBISH, OR CONSTRUCT A BIOFUEL REFINERY

Pub. L. 113–291, div. A, title III, § 314, Dec. 19, 2014, 128 Stat. 3338, provided that: ''Not later than 30 days before entering into a contract for the planning, design, refurbishing, or construction of a biofuel refinery, or of any other facility or infrastructure used to refine biofuels, the Secretary of Defense or the Secretary of the military department concerned shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a business case analysis for such planning, design, refurbishing, or construction.''

GUIDANCE ON FINANCING FOR RENEWABLE ENERGY PROJECTS

Pub. L. 112–239, div. B, title XXVIII, § 2824, Jan. 2, 2013, 126 Stat. 2153, as amended by Pub. L. 113–291, div. A, title IX, § 901(n)(2), Dec. 19, 2014, 128 Stat. 3469; Pub. L. 116–92, div. A, title IX, § 902(81), Dec. 20, 2019, 133 Stat. 1553, provided that:

''(a) GUIDANCE ON USE OF AVAILABLE FINANCING APPROACHES.—

''(1) ISSUANCE.—Not later than 180 days after the date of the enactment of this Act [Jan. 2, 2013], the Secretary of Defense shall—

''(A) issue guidance about the use of available financing approaches for financing renewable energy projects; and

''(B) direct the Secretaries of the military departments to update their military department-wide guidance accordingly.

''(2) ELEMENTS.—The guidance issued pursuant to paragraph (1) should describe the requirements and

restrictions applicable to the underlying authorities and any Department of Defense-specific guidelines for using appropriated funds and alternative-financing approaches for renewable energy projects to maximize cost savings and energy efficiency for the Department of Defense.

''(b) GUIDANCE ON USE OF BUSINESS CASE ANALYSES.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall issue guidance that establishes and clearly describes the processes used by the military departments to select financing approaches for renewable energy projects to ensure that business case analyses are completed to maximize cost savings and energy efficiency and mitigate drawbacks and risks associated with different financing approaches.

''(c) INFORMATION SHARING.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall develop a formalized communications process, such as a shared Internet website, that will enable officials at military installations to have timely access on an ongoing basis to information related to financing renewable energy projects on other installations, including best practices and lessons that officials at other installations have learned from their experiences in financing renewable energy projects.

''(d) CONSULTATION.—The Secretary of Defense shall issue the guidance under subsections (a) and (b) and develop the communications process under subsection (c) in consultation with the Under Secretary of Defense for Acquisition and Sustainment. The Secretary of Defense shall also issue the guidance under subsection (b) in consultation with the Secretaries of the military departments.''

ENERGY-EFFICIENT TECHNOLOGIES IN CONTRACTS FOR LOGISTICS SUPPORT OF CONTINGENCY OPERATIONS

Pub. L. 112–81, div. A, title III, § 315, Dec. 31, 2011, 125 Stat. 1357, as amended by Pub. L. 116–92, div. A, title IX, § 902(82), title XVII, § 1731(e), Dec. 20, 2019, 133 Stat. 1553, 1816, provided that:

''(a) ENERGY PERFORMANCE MASTER PLAN.—The energy performance master plan for the Department of Defense developed under section 2911 of title 10, United States Code, shall specifically address the application of energy-efficient or energy reduction technologies or processes meeting the requirements of subsection (b) in logistics support contracts for contingency operations. In accordance with the requirements of such section, the plan shall include goals, metrics, and incentives for achieving energy efficiency in such contracts.

''(b) REQUIREMENTS FOR ENERGY TECHNOLOGIES AND PROCESSES.—Energy-efficient and energy reduction technologies or processes described in subsection (a) are technologies or processes that meet the following criteria:

''(1) The technology or process achieves long-term savings for the Government by reducing overall demand for fuel and other sources of energy in contingency operations.

''(2) The technology or process does not disrupt the mission, the logistics, or the core requirements in the contingency operation concerned.

''(3) The technology or process is able to integrate seamlessly into the existing infrastructure in the contingency operation concerned.

''(c) REGULATIONS AND GUIDANCE.—The Under Secretary of Defense for Acquisition and Sustainment shall issue such regulations and guidance as may be needed to implement the requirements of this section and ensure that goals established pursuant to subsection (a) are met. Such regulations or guidance shall consider the lifecycle cost savings associated with the energy technology or process being offered by a vendor for defense logistics support and oblige the offeror to demonstrate the savings achieved over traditional technologies.

''(d) REPORT.—The annual report required by section 2925(b) of title 10, United States Code, shall include information on the progress in the implementation of this section, including savings achieved by the Department resulting from such implementation.

''(e) DEFINITIONS.—In this section:

''(1) The term 'defense logistics support contract' means a contract for services, or a task order under such a contract, awarded by the Department of Defense to provide logistics support during times of military mobilizations, including contingency operations, in any amount greater than the simplified acquisition threshold.

''(2) The term 'contingency operation' has the meaning provided in section 101(a)(13) of title 10, United States Code.''

[Pub. L. 116–92, div. A, title XVII, § 1731(e), Dec. 20, 2019, 133 Stat. 1816, provided that the amendment made by section 1731(e) to section 315 of Pub. L. 112–81, set out above, is effective as of Dec. 31, 2011, and as if included in Pub. L. 112–81 as enacted. Consequently, the amendment made by section 902(82) of Pub. L. 116–92, which was directed to subsec. (d), was executed to subsec. (c) as redesignated by section 1731(e), to reflect the probable intent of Congress.]

POLICY OF PURSUING ENERGY SECURITY

Pub. L. 112–81, div. B, title XXVIII, § 2822(a), Dec. 31, 2011, 125 Stat. 1691, provided that:

''(1) POLICY REQUIRED.—Not later than 180 days after the date of enactment of this Act [Dec. 31, 2011], the Secretary of Defense shall establish a policy for military installations that includes the following:

''(A) Favorable consideration for energy security in the design and development of energy projects on the military installation that will use renewable energy sources.

''(B) Guidance for commanders of military installations inside the United States on planning measures to minimize the effects of a disruption of services by a utility that sells natural gas, water, or electric energy to those installations in the event that a disruption occurs.

''(2) NOTIFICATION.—The Secretary of Defense shall provide notification to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] within 30 days after entering into any agreement for a facility energy project described in paragraph (1)(A) that excludes pursuit of energy security on the grounds that inclusion of energy security is cost prohibitive. The Secretary shall also provide a cost-benefit-analysis of the decision.

''(3) ENERGY SECURITY DEFINED.—In this subsection, the term 'energy security' has the meaning given that term in paragraph (3) of section 2924 of title 10, United States Code, as added by section 2821(a).''

DEADLINE FOR CONGRESSIONAL NOTIFICATION

Pub. L. 112–81, div. B, title XXVIII, § 2823(b), Dec. 31, 2011, 125 Stat. 1692, provided that: ''Not later than 180 days after the date of the enactment of this Act [Dec. 31, 2011], the Secretary of Defense shall notify the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] of the interim renewable energy goal established pursuant to the amendment made by subsection (a) [amending this section].''

DEPARTMENT OF DEFENSE TO CAPTURE AND TRACK DATA GENERATED IN METERING DEPARTMENT FACILITIES

Pub. L. 112–81, div. B, title XXVIII, § 2827, Dec. 31, 2011, 125 Stat. 1694, provided that: ''The Secretary of Defense shall require that the information generated by the installation energy meters be captured and tracked to determine baseline energy consumption and facilitate efforts to reduce energy consumption.''

TRAINING POLICY FOR DEPARTMENT OF DEFENSE ENERGY MANAGERS

Pub. L. 112–81, div. B, title XXVIII, § 2829, Dec. 31, 2011, 125 Stat. 1694, provided that:

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''(a) ESTABLISHMENT OF TRAINING POLICY.—The Secretary of Defense shall establish a training policy for Department of Defense energy managers designated for military installations in order to—

''(1) improve the knowledge, skills, and abilities of energy managers by ensuring understanding of existing energy laws, regulations, mandates, contracting options, local renewable portfolio standards, current renewable energy technology options, energy auditing, and options to reduce energy consumption;

''(2) improve consistency among energy managers throughout the Department in the performance of their responsibilities;

''(3) create opportunities and forums for energy managers to exchange ideas and lessons learned within each military department, as well as across the Department of Defense; and

''(4) collaborate with the Department of Energy regarding energy manager training.

''(b) ISSUANCE OF POLICY.—Not later than 180 days after the date of the enactment of this Act [Dec. 31, 2011], the Secretary of Defense shall issue the training policy for Department of Defense energy managers. In creating the policy, the Secretary shall consider the best practices and certifications available in either the military services or in the private sector.

''(c) BRIEFING REQUIREMENT.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense, or designated representatives of the Secretary, shall brief the Committees on Armed Services of the Senate and House of Representatives regarding the details of the energy manager policy.''

PILOT PROGRAM ON COLLABORATIVE ENERGY SECURITY

Pub. L. 111–383, div. A, title II, § 242, Jan. 7, 2011, 124 Stat. 4176, provided that:

''(a) PILOT PROGRAM.—The Secretary of Defense, in coordination with the Secretary of Energy, may carry out a collaborative energy security pilot program involving one or more partnerships between one military installation and one national laboratory, for the purpose of evaluating and validating secure, salable microgrid components and systems for deployment.

''(b) SELECTION OF MILITARY INSTALLATION AND NATIONAL LABORATORY.—If the Secretary of Defense carries out a pilot program under this section, the Secretary of Defense and the Secretary of Energy shall jointly select a military installation and a national laboratory for the purpose of carrying out the pilot program. In making such selections, the Secretaries shall consider each of the following:

''(1) A commitment to participate made by a military installation being considered for selection.

''(2) The findings and recommendations of relevant energy security assessments of military installations being considered for selection.

''(3) The availability of renewable energy sources at a military installation being considered for selection.

''(4) Potential synergies between the expertise and capabilities of a national laboratory being considered for selection and the infrastructure, interests, or other energy security needs of a military installation being considered for selection.

''(5) The effects of any utility tariffs, surcharges, or other considerations on the feasibility of enabling any excess electricity generated on a military installation being considered for selection to be sold or otherwise made available to the local community near the installation.

''(c) PROGRAM ELEMENTS.—A pilot program under this section shall be carried out as follows:

''(1) Under the pilot program, the Secretaries shall evaluate and validate the performance of new energy technologies that may be incorporated into operating environments.

''(2) The pilot program shall involve collaboration with the Office of Electricity Delivery and Energy Reliability of the Department of Energy and other offices and agencies within the Department of Energy, as appropriate, and the Environmental Security Technical Certification Program of the Department of Defense.

''(3) Under the pilot program, the Secretary of Defense shall investigate opportunities for any excess electricity created for the military installation to be sold or otherwise made available to the local community near the installation.

''(4) The Secretary of Defense shall use the results of the pilot program as the basis for informing key performance parameters and validating energy components and designs that could be implemented in various military installations across the country and at forward operating bases.

''(5) The pilot program shall support the effort of the Secretary of Defense to use the military as a test bed to demonstrate innovative energy technologies.

''(d) IMPLEMENTATION AND DURATION.—If the Secretary of Defense carries out a pilot program under this section, such pilot program shall begin by not later than July 1, 2011, and shall be not less than three years in duration.

''(e) REPORTS.—

''(1) INITIAL REPORT.—If the Secretary of Defense carries out a pilot program under this section, the Secretary shall submit to the appropriate congressional committees by not later than October 1, 2011, an initial report that provides an update on the implementation of the pilot program, including an identification of the selected military installation and national laboratory partner and a description of technologies under evaluation.

''(2) FINAL REPORT.—Not later than 90 days after completion of a pilot program under this section, the Secretary shall submit to the appropriate congressional committees a report on the pilot program, including any findings and recommendations of the Secretary.

''(f) DEFINITIONS.—For purposes of this section:

''(1) The term 'appropriate congressional committees' means—

''(A) the Committee on Armed Services, the Committee on Energy and Commerce, and the Committee on Science and Technology [now Committee on Science, Space, and Technology] of the House of Representatives; and

''(B) the Committee on Armed Services, the Committee on Energy and Natural Resources, and the Committee on Commerce, Science, and Transportation of the Senate.

''(2) The term 'microgrid' means an integrated energy system consisting of interconnected loads and distributed energy resources (including generators, energy storage devices, and smart controls) that can operate with the utility grid or in an intentional islanding mode.

''(3) The term 'national laboratory' means—

''(A) a national laboratory (as defined in section 2 of the Energy Policy Act of 2005 (42 U.S.C. 15801)); or

''(B) a national security laboratory (as defined in section 3281 of the National Nuclear Security Administration Act (50 U.S.C. 2471)).''

ENERGY SECURITY ON DEPARTMENT OF DEFENSE INSTALLATIONS

Pub. L. 111–84, div. A, title III, § 335, Oct. 28, 2009, 123 Stat. 2259, provided that:

''(a) PLAN FOR ENERGY SECURITY REQUIRED.—

''(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act [Oct. 28, 2009], the Secretary of Defense shall develop a plan for identifying and addressing areas in which the electricity needed to carry out critical military missions on Department of Defense installations is vulnerable to disruption.

''(2) ELEMENTS.—The plan developed under paragraph (1) shall include, at a minimum, the following:

''(A) An identification of the areas of vulnerability as described in paragraph (1), and an identification of priorities in addressing such areas of vulnerability.

''(B) A schedule for the actions to be taken by the Department to address such areas of vulnerability.

''(C) A strategy for working with other public or private sector entities to address such areas of vulnerability that are beyond the control of the Department.

''(D) An estimate of and consideration for the costs to the Department associated with implementation of the strategy.

''(b) WORK WITH NON-DEPARTMENT OF DEFENSE ENTITIES.—The Secretary of Defense shall work with other Federal entities, and with State and local government entities, to develop any regulations or other mechanisms needed to require or encourage actions to address areas of vulnerability identified pursuant to the plan developed under subsection (a) that are beyond the control of the Department of Defense.''

CONSIDERATION OF FUEL LOGISTICS SUPPORT REQUIREMENTS IN PLANNING, REQUIREMENTS DEVELOPMENT, AND ACQUISITION PROCESSES

Pub. L. 110–417, [div. A], title III, § 332, Oct. 14, 2008, 122 Stat. 4420, as amended by Pub. L. 111–383, div. A, title X, § 1075(e)(5), Jan. 7, 2011, 124 Stat. 4374, provided that:

''(a) PLANNING.—In the case of analyses and force planning processes that are used to establish capability requirements and inform acquisition decisions, the Secretary of Defense shall require that analyses and force planning processes consider the requirements for, and vulnerability of, fuel logistics.

''(b) CAPABILITY REQUIREMENTS DEVELOPMENT PROCESS.—The Secretary of Defense shall develop and implement a methodology to enable the implementation of a fuel efficiency key performance parameter in the requirements development process for the modification of existing or development of new fuel consuming systems.

''(c) ACQUISITION PROCESS.—The Secretary of Defense shall require that the life-cycle cost analysis for new capabilities include the fully burdened cost of fuel during analysis of alternatives and evaluation of alternatives and acquisition program design trades.

''(d) IMPLEMENTATION PLAN.—The Secretary of Defense shall prepare a plan for implementing the requirements of this section. The plan shall be completed not later than 180 days after the date of the enactment of this Act [Oct. 14, 2008] and provide for the implementation of the requirements by not later than three years after the date of the enactment of this Act.

''(e) PROGRESS REPORT.—Not later than two years after the date of the enactment of this Act [Oct. 14, 2008], the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report describing progress made to implement the requirements of this section, including an assessment of whether the implementation plan required by subsection (d) is being carried out on schedule.

''(f) NOTIFICATION OF COMPLIANCE.—As soon as practicable during the three-year period beginning on the date of the enactment of this Act [Oct. 14, 2008], the Secretary of Defense shall notify the congressional defense committees that the Secretary has complied with the requirements of this section. If the Secretary is unable to provide the notification, the Secretary shall submit to the congressional defense committees at the end of the three-year period a report containing—

''(1) an explanation of the reasons why the requirements, or portions of the requirements, have not been implemented; and

''(2) a revised plan under subsection (d) to complete implementation or a rationale regarding why portions of the requirements cannot or should not be implemented.

''(g) FULLY BURDENED COST OF FUEL DEFINED.—In this section, the term 'fully burdened cost of fuel' means the commodity price for fuel plus the total cost of all personnel and assets required to move and, when necessary, protect the fuel from the point at which the fuel is received from the commercial supplier to the point of use.''

MITIGATION OF POWER OUTAGE RISKS FOR DEPARTMENT OF DEFENSE FACILITIES AND ACTIVITIES

Pub. L. 110–417, [div. A], title III, § 335, Oct. 14, 2008, 122 Stat. 4422, as amended by Pub. L. 114–92, div. A, title X, § 1079(d)(1), Nov. 25, 2015, 129 Stat. 999, provided that:

''(a) RISK ASSESSMENT.—The Secretary of Defense shall conduct a comprehensive technical and operational risk assessment of the risks posed to mission critical installations, facilities, and activities of the Department of Defense by extended power outages resulting from failure of the commercial electricity supply or grid and related infrastructure.

''(b) RISK MITIGATION PLANS.—

''(1) IN GENERAL.—The Secretary of Defense shall develop integrated prioritized plans to eliminate, reduce, or mitigate significant risks identified in the risk assessment under subsection (a).

''(2) ADDITIONAL CONSIDERATIONS.—In developing the risk mitigation plans under paragraph (1), the Secretary of Defense shall—

''(A) prioritize the mission critical installations, facilities, and activities that are subject to the greatest and most urgent risks; and

''(B) consider the cost effectiveness of risk mitigation options.''

USE OF ENERGY EFFICIENT LIGHTING FIXTURES AND BULBS IN DEPARTMENT OF DEFENSE FACILITIES

Pub. L. 110–181, div. B, title XXVIII, § 2863, Jan. 28, 2008, 122 Stat. 560, provided that:

''(a) CONSTRUCTION AND ALTERATION OF BUILDINGS.—Each building constructed or significantly altered by the Secretary of Defense or the Secretary of a military department shall be equipped, to the maximum extent feasible as determined by the Secretary concerned, with lighting fixtures and bulbs that are energy efficient.

''(b) MAINTENANCE OF BUILDINGS.—Each lighting fixture or bulb that is replaced in the normal course of maintenance of buildings under the jurisdiction of the Secretary of Defense or the Secretary of a military department shall be replaced, to the maximum extent feasible as determined by the Secretary concerned, with a lighting fixture or bulb that is energy efficient.

''(c) CONSIDERATIONS.—In making a determination under this section concerning the feasibility of installing a lighting fixture or bulb that is energy efficient, the Secretary of Defense or the Secretary of a military department shall consider—

''(1) the life cycle cost effectiveness of the fixture or bulb;

''(2) the compatibility of the fixture or bulb with existing equipment;

''(3) whether use of the fixture or bulb could result in interference with productivity;

''(4) the aesthetics relating to use of the fixture or bulb; and

''(5) such other factors as the Secretary concerned determines appropriate.

''(d) ENERGY STAR.—A lighting fixture or bulb shall be treated as being energy efficient for purposes of this section if—

''(1) the fixture or bulb is certified under the Energy Star program established by section 324A of the Energy Policy and Conservation Act (42 U.S.C. 6294a); or

''(2) the Secretary of Defense or the Secretary of a military department has otherwise determined that the fixture or bulb is energy efficient.

''(e) SIGNIFICANT ALTERATIONS.—A building shall be treated as being significantly altered for purposes of subsection (a) if the alteration is subject to congressional authorization under section 2802 of title 10, United States Code.

''(f) WAIVER AUTHORITY.—The Secretary of Defense may waive the requirements of this section if the Sec-

retary determines that such a waiver is necessary to protect the national security interests of the United States.

"(g) EFFECTIVE DATE.—The requirements of subsections (a) and (b) shall take effect one year after the date of the enactment of this Act [Jan. 28, 2008]."

REPORTING REQUIREMENTS RELATING TO RENEWABLE ENERGY USE BY DEPARTMENT OF DEFENSE TO MEET DEPARTMENT ELECTRICITY NEEDS

Pub. L. 110–181, div. B, title XXVIII, §2864, Jan. 28, 2008, 122 Stat. 561, related to reporting requirements relating to renewable energy use by Department of Defense to meet Department electricity needs, prior to repeal by Pub. L. 113–66, div. A, title X, §1084(b)(2)(B), Dec. 26, 2013, 127 Stat. 872.

UTILIZATION OF FUEL CELLS AS BACK-UP POWER SYSTEMS IN DEPARTMENT OF DEFENSE OPERATIONS

Pub. L. 109–364, div. A, title III, §358, Oct. 17, 2006, 120 Stat. 2164, provided that: "The Secretary of Defense shall consider the utilization of fuel cells as replacements for current back-up power systems in a variety of Department of Defense operations and activities, including in telecommunications networks, perimeter security, individual equipment items, and remote facilities, in order to increase the operational longevity of back-up power systems and stand-by power systems in such operations and activities."

ENERGY EFFICIENCY IN WEAPONS PLATFORMS

Pub. L. 109–364, div. A, title III, §360(a), Oct. 17, 2006, 120 Stat. 2164, provided that: "It shall be the policy of the Department of Defense to improve the fuel efficiency of weapons platforms, consistent with mission requirements, in order to—

"(1) enhance platform performance;

"(2) reduce the size of the fuel logistics systems;

"(3) reduce the burden high fuel consumption places on agility;

"(4) reduce operating costs; and

"(5) dampen the financial impact of volatile oil prices."

DEPARTMENT OF DEFENSE ENERGY EFFICIENCY PROGRAM

Pub. L. 107–107, div. A, title III, §317, Dec. 28, 2001, 115 Stat. 1054, directed the Secretary of Defense to carry out a program to significantly improve the energy efficiency of facilities of the Department of Defense through 2010 and to submit annual reports to the congressional defense committees through 2010 regarding the progress made toward achieving the energy efficiency goals.

§2912. Availability and use of energy cost savings

(a) AVAILABILITY.—An amount of the funds appropriated to the Department of Defense for a fiscal year that is equal to the amount of energy cost savings realized by the Department, including financial benefits resulting from shared energy savings contracts entered into under section 2913 of this title, and, in the case of operational energy, from both training and operational missions, shall remain available for obligation under subsection (b) or (c), as the case may be, until expended, without additional authorization or appropriation.

(b) USE.—Except as provided in subsection (c) with respect to operational energy cost savings, the Secretary of Defense shall provide that the amount that remains available for obligation under subsection (a) and the funds made available under section 2916(b)(2) of this title shall be used as follows:

(1) One-half of the amount shall be used for the implementation of additional energy resilience, mission assurance, weather damage repair and prevention, energy conservation, and energy security measures, including energy resilience and energy conservation construction projects, at buildings, facilities, or installations of the Department of Defense or related to vehicles and equipment of the Department, which are designated, in accordance with regulations prescribed by the Secretary of Defense, by the head of the department, agency, or instrumentality that realized the savings referred to in subsection (a).

(2) One-half of the amount shall be used at the installation at which the savings were realized, as determined by the commanding officer of such installation consistent with applicable law and regulations, for—

(A) improvements to existing military family housing units;

(B) any unspecified minor construction project that will enhance the quality of life of personnel; or

(C) any morale, welfare, or recreation facility or service.

(c) USE OF OPERATIONAL ENERGY COST SAVINGS.—The amount that remains available for obligation under subsection (a) that relates to operational energy cost savings realized by the Department shall be used for the implementation of additional operational energy resilience, efficiencies, mission assurance, energy conservation, or energy security within the department, agency, or instrumentality that realized that savings.

(d) TREATMENT OF CERTAIN FINANCIAL INCENTIVES.—Financial incentives received from gas or electric utilities under section 2913 of this title shall be credited to an appropriation designated by the Secretary of Defense. Amounts so credited shall be merged with the appropriation to which credited and shall be available for the same purposes and the same period as the appropriation with which merged.

(Added Pub. L. 109–364, div. B, title XXVIII, §2851(a)(1), Oct. 17, 2006, 120 Stat. 2491; amended Pub. L. 112–239, div. B, title XXVIII, §2822, Jan. 2, 2013, 126 Stat. 2152; Pub. L. 115–91, div. A, title X, §1051(a)(26), div. B, title XXVIII, §2832, Dec. 12, 2017, 131 Stat. 1562, 1858; Pub. L. 115–232, div. A, title III, §312(h), Aug. 13, 2018, 132 Stat. 1711; Pub. L. 116–92, div. A, title III, §317, Dec. 20, 2019, 133 Stat. 1304; Pub. L. 116–283, div. A, title III, §317, Jan. 1, 2021, 134 Stat. 3519.)

AMENDMENTS

2021—Subsec. (a). Pub. L. 116–283 inserted "and, in the case of operational energy, from both training and operational missions," after "under section 2913 of this title,".

2019—Subsec. (a). Pub. L. 116–92, §317(1), substituted "subsection (b) or (c), as the case may be," for "subsection (b)".

Subsec. (b). Pub. L. 116–92, §317(2), substituted "Except as provided in subsection (c) with respect to operational energy cost savings, the Secretary of Defense" for "The Secretary of Defense" in introductory provisions.

Subsecs. (c), (d). Pub. L. 116–92, §317(3), (4), added subsec. (c) and redesignated former subsec. (c) as (d).

2018—Subsec. (b)(1). Pub. L. 115–232 inserted ", including energy resilience and energy conservation

construction projects,'' after ''energy security measures''.

2017—Subsec. (b)(1). Pub. L. 115–91, § 2832, substituted ''energy resilience, mission assurance, weather damage repair and prevention, energy conservation, and'' for ''energy conservation and''.

Subsec. (d). Pub. L. 115–91, § 1051(a)(26), struck out subsec. (d). Text read as follows: ''The Secretary of Defense shall include in the budget material submitted to Congress in connection with the submission of the budget for a fiscal year pursuant to section 1105 of title 31 a separate statement of the amounts available for obligation under this section in that fiscal year.''

2013—Subsec. (b)(1). Pub. L. 112–239 inserted ''and energy security'' after ''additional energy conservation''.

TRANSFER OF FUNDS FOR ENERGY AND WATER EFFICIENCY IN FEDERAL BUILDINGS

Pub. L. 109–148, div. A, title VIII, § 8054, Dec. 30, 2005, 119 Stat. 2710, provided that: ''Appropriations available under the heading 'Operation and Maintenance, Defense-Wide' for the current fiscal year and hereafter for increasing energy and water efficiency in Federal buildings may, during their period of availability, be transferred to other appropriations or funds of the Department of Defense for projects related to increasing energy and water efficiency, to be merged with and to be available for the same general purposes, and for the same time period, as the appropriation or fund to which transferred.''

Similar provisions for specified fiscal years were contained in the following prior appropriation acts:

Pub. L. 108–287, title VIII, § 8058, Aug. 5, 2004, 118 Stat. 983.

Pub. L. 108–87, title VIII, § 8058, Sept. 30, 2003, 117 Stat. 1085.

Pub. L. 107–248, title VIII, § 8059, Oct. 23, 2002, 116 Stat. 1550.

Pub. L. 107–117, div. A, title VIII, § 8064, Jan. 10, 2002, 115 Stat. 2261.

Pub. L. 106–259, title VIII, § 8063, Aug. 9, 2000, 114 Stat. 688.

Pub. L. 106–79, title VIII, § 8066, Oct. 25, 1999, 113 Stat. 1245.

Pub. L. 105–262, title VIII, § 8066, Oct. 17, 1998, 112 Stat. 2312.

Pub. L. 105–56, title VIII, § 8072, Oct. 8, 1997, 111 Stat. 1235.

Pub. L. 104–208, div. A, title I, § 101(b) [title VIII, § 8081], Sept. 30, 1996, 110 Stat. 3009–71, 3009–104.

Pub. L. 104–61, title VIII, § 8097, Dec. 1, 1995, 109 Stat. 671.

Pub. L. 103–139, title VIII, § 8149, Nov. 11, 1993, 107 Stat. 1475.

§ 2913. Energy savings contracts and activities

(a) SHARED ENERGY SAVINGS CONTRACTS.—(1) The Secretary of Defense shall develop a simplified method of contracting for shared energy savings contract services that will accelerate the use of these contracts with respect to military installations and will reduce the administrative effort and cost on the part of the Department of Defense as well as the private sector.

(2) In carrying out paragraph (1), the Secretary of Defense may—

(A) request statements of qualifications (as prescribed by the Secretary of Defense), including financial and performance information, from firms engaged in providing shared energy savings contracting;

(B) designate from the statements received, with an update at least annually, those firms that are presumptively qualified to provide shared energy savings services;

(C) select at least three firms from the qualifying list to conduct discussions concerning a particular proposed project, including requesting a technical and price proposal from such selected firms for such project; and

(D) select from such firms the most qualified firm to provide shared energy savings services pursuant to a contractual arrangement that the Secretary determines is fair and reasonable, taking into account the estimated value of the services to be rendered and the scope and nature of the project.

(3) In carrying out paragraph (1), the Secretary may also provide for the direct negotiation, by departments, agencies, and instrumentalities of the Department of Defense, of contracts with shared energy savings contractors that have been selected competitively and approved by any gas or electric utility serving the department, agency, or instrumentality concerned.

(b) PARTICIPATION IN GAS OR ELECTRIC UTILITY PROGRAMS.—The Secretary of Defense shall permit and encourage each military department, Defense Agency, and other instrumentality of the Department of Defense to participate in programs conducted by any gas or electric utility for the management of energy demand or for energy conservation.

(c) ACCEPTANCE OF FINANCIAL INCENTIVE, GOODS, OR SERVICES.—The Secretary of Defense may authorize any military installation to accept any financial incentive, goods, or services generally available from a State or local government or gas or electric utility, to adopt technologies and practices that the Secretary determines are in the interests of the United States and consistent with the energy performance goals for the Department of Defense.

(d) AGREEMENTS WITH GAS OR ELECTRIC UTILITIES.—(1) The Secretary of Defense may authorize the Secretary of a military department having jurisdiction over a military installation to enter into agreements with gas or electric utilities to design and implement cost-effective demand and conservation incentive programs (including energy management services, facilities alterations, and the installation and maintenance of energy saving devices and technologies by the utilities) to address the requirements and circumstances of the installation.

(2) If an agreement under this subsection provides for a utility to advance financing costs for the design or implementation of a program referred to in that paragraph to be repaid by the United States, the cost of such advance may be recovered by the utility under terms no less favorable than those applicable to its most favored customer.

(3) Subject to the availability of appropriations, repayment of costs advanced under paragraph (2) shall be made from funds available to a military department for the purchase of utility services.

(4) An agreement under this subsection shall provide that title to any energy-saving device or technology installed at a military installation pursuant to the agreement vest in the United States. Such title may vest at such time during the term of the agreement, or upon expiration of the agreement, as determined to be in the best interests of the United States.

(Added and amended Pub. L. 109–364, div. B, title XXVIII, §§ 2851(a)(1), 2853, Oct. 17, 2006, 120 Stat. 2491, 2496; Pub. L. 110–140, title V, § 511(c), Dec. 19, 2007, 121 Stat. 1658; Pub. L. 110–181, div. B, title XXVIII, § 2861, Jan. 28, 2008, 122 Stat. 559; Pub. L. 115–232, div. A, title III, § 312(g), Aug. 13, 2018, 132 Stat. 1711; Pub. L. 116–92, div. A, title III, § 320(a)(1)(A), title XVII, § 1731(a)(58), Dec. 20, 2019, 133 Stat. 1306, 1815.)

AMENDMENTS

2019—Subsec. (c). Pub. L. 116–92, § 320(a)(1)(A), substituted ''government or'' for ''government''.

Pub. L. 116–92, § 1731(a)(58), substituted ''government gas or electric utility'' for ''government a gas or electric utility''. Amendment executed before amendment by section 320(a)(1)(A) of Pub. L. 116–92, see above, pursuant to section 1731(f) of Pub. L. 116–92, set out as a Coordination of Certain Sections of an Act With Other Provisions of That Act note under section 101 of this title.

2018—Subsec. (c). Pub. L. 115–232 inserted ''a State or local government'' after ''generally available from''.

2008—Subsec. (e). Pub. L. 110–181, which directed the amendment of this section by striking out subsec. (e), could not be executed because subsec. (e) was previously repealed by Pub. L. 110–140, § 511(c). See 2007 Amendment note below.

2007—Subsec. (e). Pub. L. 110–140 struck out heading and text of subsec. (e). Text read as follows: ''When a decision is made to award an energy savings performance contract that contains a clause setting forth a cancellation ceiling in excess of $7,000,000, the Secretary of Defense shall submit to the appropriate committees of Congress written notification of the proposed contract and of the proposed cancellation ceiling for the contract. The notification shall include the justification for the proposed cancellation ceiling. The contract may then be awarded only after the end of the 30-day period beginning on the date the notification is received by such committees or, if earlier, the end of the 15-day period beginning on the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this title.''

2006—Subsec. (e). Pub. L. 109–364, § 2853, added subsec. (e).

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110–140 effective on the date that is 1 day after Dec. 19, 2007, see section 1601 of Pub. L. 110–140, set out as an Effective Date note under section 1824 of Title 2, The Congress.

§ 2914. Military construction projects for energy resilience, energy security, and energy conservation

(a) PROJECT AUTHORIZATION REQUIRED.—The Secretary of Defense may carry out such military construction projects for energy resilience, energy security, and energy conservation as are authorized by law, using funds appropriated or otherwise made available for that purpose.

(b) SUBMISSION OF PROJECT PROPOSALS.—(1) As part of the Department of Defense Form 1391 submitted to the appropriate committees of Congress for a military construction project covered by subsection (a), the Secretary of Defense shall include the following information:

(A) The project title.

(B) The location of the project.

(C) A brief description of the scope of work.

(D) The original project cost estimate and the current working cost estimate, if different.

(E) Such other information as the Secretary considers appropriate.

(2) In the case of a military construction project for energy conservation, the Secretary also shall include the following information:

(A) The original expected savings-to-investment ratio and simple payback estimates and measurement and verification cost estimate.

(B) The most current expected savings-to-investment ratio and simple payback estimates and measurement and verification plan and costs.

(C) A brief description of the measurement and verification plan and planned funding source.

(3) In the case of a military construction project for energy resilience or energy security, the Secretary also shall include the rationale for how the project would enhance mission assurance, support mission critical functions, and address known vulnerabilities.

(c) RELATION TO CERTAIN OTHER AUTHORITIES.—A project under this section may include—

(1) activities related to a utility system authorized under subsections (h), (j), and (k) of section 2688 or section 2913 of this title, notwithstanding that the United States does not own the utility system covered by the project; and

(2) energy-related activities included as a separate requirement in an energy savings performance contract (as defined in section 804(3) of the National Energy Conservation Policy Act (42 U.S.C. 8287c(3))).

(d) APPLICATION TO MILITARY CONSTRUCTION PROJECTS.—This section shall apply to military construction projects covered by subsection (a) for which a Department of Defense Form 1391 is submitted to the appropriate committees of Congress in connection with the budget of the Department of Defense for fiscal year 2023 and thereafter.

(Added Pub. L. 109–364, div. B, title XXVIII, § 2851(a)(1), Oct. 17, 2006, 120 Stat. 2493; amended Pub. L. 114–328, div. B, title XXVIII, § 2805(a)(1), (b)(1)(A), (2), Dec. 23, 2016, 130 Stat. 2713, 2714; Pub. L. 115–91, div. B, title XXVIII, §§ 2801(e)(1), 2831(c)(1), Dec. 12, 2017, 131 Stat. 1845, 1857; Pub. L. 115–232, div. A, title X, § 1081(a)(29), Aug. 13, 2018, 132 Stat. 1985; Pub. L. 116–283, div. B, title XXVIII, §§ 2805(a), 2823(b), Jan. 1, 2021, 134 Stat. 4321, 4333.)

AMENDMENTS

2021—Pub. L. 116–283, § 2805(a), amended section generally. Prior to amendment, section related to energy resilience and conservation construction projects.

Subsecs. (c), (d). Pub. L. 116–283, § 2823(b), added subsec. (c) and redesignated former subsec. (c) as (d).

2018—Pub. L. 115–232 substituted ''resilience'' for ''resiliency'' in section catchline.

2017—Pub. L. 115–91, § 2831(c)(1), substituted ''energy resilience'' for ''energy resiliency'' wherever appearing in text.

Subsec. (b)(1). Pub. L. 115–91, § 2801(e)(1), struck out ''in writing'' after ''shall notify'' and ''or, if earlier, the end of the 14-day period beginning on the date on which a copy of the notification is provided'' after ''received by such committees'' and substituted ''14-day period'' for ''21-day period''.

2016—Pub. L. 114–328, § 2805(a)(1)(A), inserted ''resiliency and'' before ''conservation construction projects'' in section catchline. Text quoted in directory language

of amendment was editorially conformed to the style of the catchline.

Subsec. (a). Pub. L. 114–328, § 2805(a)(1)(B), substituted ''military construction project for energy resiliency, energy security, or energy conservation'' for ''military construction project for energy conservation''.

Subsec. (b). Pub. L. 114–328, § 2805(b)(1)(A), designated existing provisions as par. (1) and added par. (2).

Subsec. (c). Pub. L. 114–328, § 2805(b)(2), added subsec. (c).

EFFECTIVE DATE OF 2016 AMENDMENT

Pub. L. 114–328, div. B, title XXVIII, § 2805(b)(1)(B), Dec. 23, 2016, 130 Stat. 2714, provided that: ''The amendment made by subparagraph (A) [amending this section] shall apply with respect to notifications provided during fiscal year 2017 or any succeeding fiscal year.''

§ 2915. Facilities: use of renewable forms of energy and energy efficient products

(a) USE OF RENEWABLE FORMS OF ENERGY ENCOURAGED.—The Secretary of Defense shall encourage the use of energy systems using solar energy or other renewable forms of energy as a source of energy for military construction projects (including military family housing projects) and facility repairs and renovations where use of such form of energy is consistent with the energy performance goals and energy performance master plan for the Department of Defense developed under section 2911 of this title and supported by the special considerations specified in subsection (e) of such section.

(b) CONSIDERATION DURING DESIGN PHASE OF PROJECTS.—(1) The Secretary concerned shall require that the design for the construction, repair, or renovation of facilities (including family housing and back-up power generation facilities) requires consideration of energy systems using solar energy or other renewable forms of energy when use of a renewable form of energy—

(A) is consistent with the energy performance goals and energy performance master plan for the Department of Defense developed under section 2911 of this title; and

(B) supported by the special considerations specified in subsection (e) of such section.

(2) The Secretary concerned shall require that contracts for construction resulting from such design include a requirement that energy systems using solar energy or other renewable forms of energy be installed if such systems can be shown to be cost effective.

(c) DETERMINATION OF COST EFFECTIVENESS.—(1) For the purposes of this section, an energy system using solar energy or other renewable forms of energy for a facility shall be considered to be cost effective if the difference between (A) the original investment cost of the energy system for the facility with such a system, and (B) the original investment cost of the energy system for the facility without such a system can be recovered over the expected life of the facility.

(2) A determination under paragraph (1) concerning whether a cost-differential can be recovered over the expected life of a facility shall be made using the life-cycle cost methods and procedures established pursuant to section 544(a) of the National Energy Conservation Policy Act (42 U.S.C. 8254(a)).

(d) EXCEPTION TO SQUARE FEET AND COST PER SQUARE FOOT LIMITATIONS.—In order to equip a military construction project (including a military family housing project) with heating equipment, cooling equipment, or both heating and cooling equipment using solar energy or other renewable forms of energy or with a passive energy system using solar energy or other renewable forms of energy, the Secretary concerned may authorize an increase in any otherwise applicable limitation with respect to the number of square feet or the cost per square foot of the project by such amount as may be necessary for such purpose. Any such increase under this subsection shall be in addition to any other administrative increase in cost per square foot or variation in floor area authorized by law.

(e) USE OF ENERGY EFFICIENT PRODUCTS IN FACILITIES.—(1) The Secretary of Defense shall ensure, to the maximum extent practicable, that energy efficient products meeting the requirements of the Department of Defense are used in construction, repair, or renovation of facilities by or for the Department carried out under chapter 169 of this title if such products are readily available and their use is consistent with the energy performance goals and energy performance master plan for the Department developed under section 2911 of this title and supported by the special considerations specified in subsection (e) of such section.

(2)(A) The Secretary of Defense shall prescribe a definition of the term ''energy-efficient product'' for purposes of this subsection and establish and maintain a list of products satisfying the definition. The definition and list shall be developed in consultation with the Secretary of Energy to ensure, to the maximum extent practicable, consistency with definitions of the term used by other Federal agencies.

(B) The Secretary shall modify the definition and list of energy-efficient products as necessary to account for emerging or changing technologies.

(C) The list of energy-efficient products shall be included as part of the energy performance master plan developed pursuant to section 2911(d)(2) of this title.

(3) In determining the energy efficiency of products, the Secretary shall consider products that—

(A) meet or exceed Energy Star specifications; or

(B) are listed on the Federal Energy Management Program Product Energy Efficiency Recommendations product list of the Department of Energy.

(Added Pub. L. 97–214, § 2(a), July 12, 1982, 96 Stat. 166, § 2857; amended Pub. L. 97–321, title VIII, § 801(b)(1), (2), Oct. 15, 1982, 96 Stat. 1571; Pub. L. 98–525, title XIV, § 1405(45)(A), Oct. 19, 1984, 98 Stat. 2625; Pub. L. 101–218, § 8(b), Dec. 11, 1989, 103 Stat. 1868; Pub. L. 101–510, div. B, title XXVIII, § 2852(b), Nov. 5, 1990, 104 Stat. 1804; Pub. L. 102–25, title VII, § 701(g)(2), Apr. 6, 1991, 105 Stat. 115; renumbered § 2915 and amended Pub. L. 109–364, div. B, title XXVIII, §§ 2851(b)(1), (3)(A), 2854, Oct. 17, 2006, 120 Stat. 2494, 2497; Pub. L. 111–383, div. B, title XXVIII, § 2832(b), Jan. 7, 2011, 124 Stat. 4468; Pub. L. 112–81, div. B, title XXVIII, § 2825(a), Dec. 31, 2011, 125 Stat. 1693; Pub. L. 115–91, div. B, title XXVIII, § 2831(c)(2), Dec. 12, 2017, 131 Stat. 1857.)

AMENDMENTS

2017—Subsecs. (a), (b)(1)(B), (e)(1). Pub. L. 115–91, § 2831(c)(2)(A), substituted ''subsection (e)'' for ''subsection (c)''.

Subsec. (e)(2)(C). Pub. L. 115–91, § 2831(c)(2)(B), substituted ''2911(d)(2)'' for ''2911(b)(2)''.

2011—Pub. L. 111–383, § 2832(b)(4), substituted ''Facilities: use of renewable forms of energy and energy efficient products'' for ''New construction: use of renewable forms of energy and energy efficient products'' in section catchline.

Subsec. (a). Pub. L. 111–383, § 2832(b)(1), inserted ''and facility repairs and renovations'' after ''military family housing projects)'' and substituted ''energy performance master plan'' for ''energy performance plan''.

Subsec. (b)(1). Pub. L. 111–383, § 2832(b)(2), substituted ''the design for the construction, repair, or renovation of facilities (including family housing and back-up power generation facilities) requires consideration of energy systems using solar energy or other renewable forms of energy when use of a renewable form of energy—'' for ''the design of all new facilities (including family housing) shall include consideration of energy systems using solar energy or other renewable forms of energy.'' and added subpars. (A) and (B).

Subsec. (e). Pub. L. 111–383, § 2832(b)(3)(A), substituted ''Use of Energy Efficient Products in Facilities'' for ''Use of Energy Efficiency Products in New Construction'' in heading.

Subsec. (e)(1). Pub. L. 111–383, § 2832(b)(3)(B), substituted ''construction, repair, or renovation of facilities'' for ''new facility construction'' and ''energy performance master plan'' for ''energy performance plan''.

Subsec. (e)(2). Pub. L. 112–81 added par. (2) and struck out former par. (2), which related to energy efficient products and provided examples of technologies, consistent with the products specified in paragraph (3).

Pub. L. 111–383, § 2832(b)(3)(D), added par. (2). Former par. (2) redesignated (3).

Subsec. (e)(3). Pub. L. 111–383, § 2832(b)(3)(C), redesignated par. (2) as (3).

2006—Pub. L. 109–364, § 2854(b)(1), substituted ''New construction: use of renewable forms of energy and energy efficient products'' for ''Use of renewable forms of energy in new facilities'' in section catchline.

Pub. L. 109–364, § 2851(b)(1), renumbered section 2857 of this title as this section.

Subsec. (a). Pub. L. 109–364, § 2854(b)(2),(3)(A)(i), inserted heading and substituted ''is consistent with the energy performance goals and energy performance plan for the Department of Defense developed under section 2911 of this title and supported by the special considerations specified in subsection (c) of such section'' for ''would be practical and economically feasible''.

Subsec. (b). Pub. L. 109–364, § 2854(b)(3), inserted heading.

Subsec. (b)(1). Pub. L. 109–364, § 2851(b)(3)(A)(ii), struck out ''in those cases in which use of such forms of energy has the potential for reduced energy costs'' before period at end.

Subsecs. (c), (d). Pub. L. 109–364, § 2854(b)(4), (5) inserted headings.

Subsec. (e). Pub. L. 109–364, § 2854(a), added subsec. (e).

1991—Subsec. (c)(2). Pub. L. 102–25 inserted ''(42 U.S.C. 8254(a))'' after ''Policy Act''.

1990—Subsec. (c)(2), (3). Pub. L. 101–510 added par. (2) and struck out former pars. (2) and (3) which read as follows:

''(2) A determination under paragraph (1) of whether a cost-differential can be recovered over the expected life of a facility shall be made using accepted life-cycle costing procedures and shall include—

''(A) the use of all capital expenses and all operating and maintenance expenses associated with the energy system with and without an energy system using solar energy or other renewable forms of energy over the expected life of the facility or during a period of 25 years, whichever is shorter;

''(B) the use of fossil fuel costs (and a rate of cost growth for fossil fuel costs) as determined by the Secretary of Defense; and

''(C) the use of a discount rate of 7 percent per year for all expenses of the energy system.

''(3) For the purpose of any life-cycle cost analysis under this subsection, the original investment cost of the energy system using solar energy or other renewable forms of energy shall be reduced by 10 percent to reflect an allowance for an investment cost credit.''

1989—Subsec. (b)(1). Pub. L. 101–218 substituted ''reduced energy costs'' for ''significant savings of fossil-fuel-derived energy''.

1984—Subsec. (b)(1). Pub. L. 98–525 substituted ''use of such forms of energy has the potential for'' for ''use of solar energy has the potential for''.

1982—Pub. L. 97–321, § 801(b)(2), substituted ''renewable forms of energy in new facilities'' for ''solar energy systems'' in section catchline.

Subsec. (a). Pub. L. 97–321, § 801(b)(1)(A), substituted ''energy systems using solar energy or other renewable forms of energy'' and ''such form of energy would'' for ''solar energy systems'' and ''solar energy would'', respectively.

Subsec. (b)(1). Pub. L. 97–321, § 801(b)(1)(B), substituted ''energy systems using solar energy or other renewable forms of energy'' for ''solar energy systems'' and directed that ''such form of energy has'' be substituted for ''a solar energy has'', but ''a solar energy has'' did not appear in par. (1). See 1984 Amendment note above.

Subsec. (b)(2). Pub. L. 97–321, § 801(b)(1)(B)(i), substituted ''energy systems using solar energy or other renewable forms of energy'' for ''solar energy systems''.

Subsec. (c). Pub. L. 97–321, § 801(b)(1)(C)–(E), substituted: in par. (1) ''an energy system using solar energy or other renewable forms of energy'' for ''a solar energy system'' before ''for a facility'' and in items (A) and (B) ''such a system'' for ''a solar energy system''; in par. (2)(A) ''an energy system using solar energy or other renewable forms of energy'' for ''a solar energy system''; and in par. (3) ''energy system using solar energy or other renewable forms of energy'' for ''solar energy system'', respectively.

Subsec. (d). Pub. L. 97–321, § 801(b)(1)(F), substituted ''heating equipment, cooling equipment, or both heating and cooling equipment using solar energy or other renewable forms of energy or with a passive energy energy system using solar energy or other renewable forms of energy'' for ''solar heating equipment, solar cooling equipment, or both solar heating and solar cooling equipment, or with a passive solar energy system''.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–525, title XIV, § 1405(45)(B), Oct. 19, 1984, 98 Stat. 2625, provided that: ''The amendment made by subparagraph (A) [amending this section] shall take effect as if it had been included in the amendments made by section 801 of Public Law 97–321.''

EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

§ 2916. Sale of electricity from alternate energy and cogeneration production facilities

(a) The Secretary of a military department may sell, contract to sell, or authorize the sale by a contractor to a public or private utility company of electrical energy generated from alternate energy or cogeneration type production facilities which are under the jurisdiction (or produced on land which is under the jurisdiction) of the Secretary concerned. The sale of such energy shall be made under such regulations, for such periods, and at such prices as the Secretary concerned prescribes consistent with the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2601 et seq.).

(b)(1) Except as provided in paragraph (3), proceeds from sales under subsection (a) shall be credited to the appropriation account currently available to the military department concerned for the supply of electrical energy.

(2) Subject to the availability of appropriations for this purpose, proceeds credited under paragraph (1) may be used to carry out military construction projects under the energy performance plan developed by the Secretary of Defense under section 2911(c)[1] of this title, including minor military construction projects authorized under section 2805 of this title that are designed to increase energy conservation.

(3) In the case of proceeds from a sale of electrical energy generated from any geothermal energy resource—

(A) 50 percent shall be credited to the appropriation account described in paragraph (1); and

(B) 50 percent shall be deposited in a special account in the Treasury established by the Secretary concerned which shall be provided directly to the commander of the military installation in which the geothermal energy resource is located to be used for—

(i) military construction projects described in paragraph (2) that benefit the military installation where the geothermal energy resource is located; or

(ii) energy or water security projects that—

(I) benefit the military installation where the geothermal energy resource is located;

(II) the commander of the military installation determines are necessary; and

(III) are directly coordinated with local area energy or groundwater governing authorities.

(c) Before carrying out a military construction project described in subsection (b) using proceeds from sales under subsection (a), the Secretary concerned shall notify Congress of the project, the justification for the project, and the estimated cost of the project. The project may be carried out only after the end of the 14-day period beginning on the date the notification is received by Congress in an electronic medium pursuant to section 480 of this title.

(Added Pub. L. 98–407, title VIII, § 810(a), Aug. 28, 1984, 98 Stat. 1523, § 2483; amended Pub. L. 103–160, div. B, title XXVIII, § 2802, Nov. 30, 1993, 107 Stat. 1884; renumbered § 2867, Pub. L. 105–85, div. A, title III, § 371(b)(2), Nov. 18, 1997, 111 Stat. 1705; Pub. L. 108–136, div. A, title X, § 1031(a)(49), Nov. 24, 2003, 117 Stat. 1602; renumbered § 2916 and amended Pub. L. 109–364, div. B, title XXVIII, § 2851(b)(1), (3)(B), Oct. 17, 2006, 120 Stat. 2494; Pub. L. 115–91, div. B, title XXVIII, §§ 2801(e)(2), 2831(c)(3), Dec. 12, 2017, 131 Stat. 1845, 1858; Pub. L. 115–232, div. A, title III, § 313, Aug. 13, 2018, 132 Stat. 1711; Pub. L. 116–92, div. A, title III, § 318, Dec. 20, 2019, 133 Stat. 1305.)

REFERENCES IN TEXT

The Public Utility Regulatory Policies Act of 1978, referred to in subsec. (a), is Pub. L. 95–617, Nov. 9, 1978, 92 Stat. 3117, as amended. For complete classification of this Act to the Code, see Short Title note set out under section 2601 of Title 16, Conservation, and Tables.

Section 2911(c) of this title, referred to in subsec. (b)(2), was, prior to amendment by Pub. L. 115–91, a reference to section 2911(b) of this title. Pub. L. 115–91 redesignated subsec. (b) of section 2911, relating to the development of an energy performance master plan, as (d), not (c).

AMENDMENTS

2019—Subsec. (b)(3)(B). Pub. L. 116–92 substituted ‘‘shall be provided directly to the commander of the military installation in which the geothermal energy resource is located to be used for—’’ for ‘‘shall be available, for military construction projects described in paragraph (2) or for installation energy or water security projects directly coordinated with local area energy or groundwater governing authorities, for the military installation in which the geothermal energy resource is located.’’ and added cls. (i) and (ii).

2018—Subsec. (b)(1). Pub. L. 115–232, § 313(1), substituted ‘‘Except as provided in paragraph (3), proceeds’’ for ‘‘Proceeds’’.

Subsec. (b)(3). Pub. L. 115–232, § 313(2), added par. (3).

2017—Subsec. (b)(2). Pub. L. 115–91, § 2831(c)(3), substituted ‘‘2911(c)’’ for ‘‘2911(b)’’.

Subsec. (c). Pub. L. 115–91, § 2801(e)(2), struck out ‘‘in writing’’ after ‘‘notify Congress’’ and ‘‘or, if earlier, the end of the 14-day period beginning on the date on which a copy of the notification is provided’’ after ‘‘received by Congress’’ and substituted ‘‘14-day period’’ for ‘‘21-day period’’.

2006—Pub. L. 109–364, § 2851(b)(1), renumbered section 2867 of this title as this section.

Subsec. (b)(2). Pub. L. 109–364, § 2851(b)(3)(B), substituted ‘‘2911(b)’’ for ‘‘2865(a)’’.

2003—Subsec. (c). Pub. L. 108–136 inserted before period at end ‘‘or, if earlier, the end of the 14-day period beginning on the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this title’’.

1997—Pub. L. 105–85 renumbered section 2483 of this title as this section.

1993—Subsec. (b). Pub. L. 103–160, § 2802(a), designated existing provisions as par. (1) and added par. (2).

Subsec. (c). Pub. L. 103–160, § 2802(b), added subsec. (c).

§ 2917. Development of geothermal energy on military lands

(a) DEVELOPMENT AUTHORIZED.—The Secretary of a military department may develop, or authorize the development of, any geothermal energy resource within lands under the Secretary's jurisdiction, including public lands, for the use or benefit of the Department of Defense if that development is in the public interest, as determined by the Secretary concerned, and will not deter commercial development and use of other portions of such resource if offered for leasing.

(b) CONSIDERATION OF ENERGY SECURITY.—The development of a geothermal energy project under subsection (a) should include consideration of energy security in the design and development of the project.

(Added Pub. L. 97–214, § 6(c)(1), July 12, 1982, 96 Stat. 172, § 2689; renumbered § 2917, Pub. L. 109–364, div. B, title XXVIII, § 2851(b)(1), Oct. 17, 2006, 120 Stat. 2494; amended Pub. L. 112–81, div. B, title XXVIII, § 2822(c), Dec. 31, 2011, 125 Stat. 1692.)

AMENDMENTS

2011—Pub. L. 112–81 designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

[1] See References in Text note below.

2006—Pub. L. 109–364 renumbered section 2689 of this title as this section.

EFFECTIVE DATE

Section effective Oct. 1, 1982, and applicable to military construction projects, and to construction and acquisition of military family housing authorized before, on, or after such date, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

§2918. Fuel sources for heating systems; prohibition on converting certain heating facilities

(a)(1) The Secretary of the military department concerned shall provide that the primary fuel source to be used in any new heating system constructed on lands under the jurisdiction of the military department is the most cost effective fuel for that heating system over the life cycle of the system.

(2) The Secretary of Defense shall prescribe regulations for the determination of the life-cycle cost effectiveness of a fuel for the purposes of paragraph (1).

(b) The Secretary of a military department may not convert a heating facility at a United States military installation in Europe from a coal-fired facility to an oil-fired facility, or to any other energy source facility, unless the Secretary determines that the conversion—

(1) is required by the government of the country in which the facility is located; or

(2) is cost-effective over the life cycle of the facility.

(Added Pub. L. 97–214, §6(c)(1), July 12, 1982, 96 Stat. 173, §2690; amended Pub. L. 99–661, div. A, title XII, §1205(a)(1), Nov. 14, 1986, 100 Stat. 3971; Pub. L. 105–85, div. A, title X, §1041(a), Nov. 18, 1997, 111 Stat. 1885; renumbered §2918, Pub. L. 109–364, div. B, title XXVIII, §2851(b)(1), Oct. 17, 2006, 120 Stat. 2494.)

AMENDMENTS

2006—Pub. L. 109–364 renumbered section 2690 of this title as this section.

1997—Subsec. (b). Pub. L. 105–85 substituted ''unless the Secretary determines that the conversion—'' for ''unless the Secretary—'' in introductory provisions, added pars. (1) and (2), and struck out former pars. (1) and (2) which read as follows:

''(1) determines that the conversion (A) is required by the government of the country in which the facility is located, or (B) is cost effective over the life cycle of the facility; and

''(2) submits to Congress notification of the proposed conversion and a period of 30 days has elapsed following the date on which Congress receives the notice.''

1986—Pub. L. 99–661 substituted ''Fuel sources for heating systems; prohibition on converting certain heating facilities'' for ''Restriction on fuel sources for new heating systems'' in section catchline and amended text generally. Prior to amendment, text read as follows:

''(a) Except as provided in subsection (b), a new heating system that requires a heat input rate of fifty million British thermal units per hour or more and that uses oil or gas (or a derivative of oil or gas) as fuel may not be constructed on lands under the jurisdiction of a military department.

''(b) The Secretary of the military department concerned may waive the provisions of subsection (a) in rare and unusual cases, but such a waiver may not become effective until after the Secretary has notified the appropriate committees of Congress in writing of the waiver.

''(c) The Secretary of the military department concerned may not provide service for a new heating system in increments in order to avoid the prohibition contained in subsection (a).''

EFFECTIVE DATE

Section effective Oct. 1, 1982, and applicable to military construction projects, and to construction and acquisition of military family housing authorized before, on, or after such date, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

§2919. Department of Defense participation in programs for management of energy demand or reduction of energy usage during peak periods

(a) PARTICIPATION IN DEMAND RESPONSE OR LOAD MANAGEMENT PROGRAMS.—The Secretary of Defense, the Secretaries of the military departments, the heads of the Defense Agencies, and the heads of other instrumentalities of the Department of Defense are authorized to participate in demand response programs for the management of energy demand or the reduction of energy usage during peak periods conducted by any of the following parties:

(1) An electric utility.

(2) An independent system operator.

(3) A State agency.

(4) A third party entity (such as a demand response aggregator or curtailment service provider) implementing demand response programs on behalf of an electric utility, independent system operator, or State agency.

(b) TREATMENT OF CERTAIN FINANCIAL INCENTIVES.—Financial incentives received from an entity specified in subsection (a) shall be—

(1) received as a cost reduction in the utility bill for a facility; or

(2) deposited into the fund established under subsection (c) for use, to the extent provided for in an appropriations Act, by the military department, Defense Agency, or instrumentality receiving such financial incentive for energy management initiatives.

(c) ENERGY SAVINGS FINANCIAL INCENTIVES FUND.—There is established in the Treasury a fund to be known as the ''Energy Savings Financial Incentives Fund''. The Fund shall consist of any amount deposited in the Fund pursuant to subsection (b)(2) and amounts appropriated or otherwise made available to the Fund by law.

(Added Pub. L. 111–84, div. B, title XXVIII, §2843(a), Oct. 28, 2009, 123 Stat. 2681.)

§2920. Energy resilience and energy security measures on military installations

(a) ENERGY RESILIENCE MEASURES.—(1) The Secretary of Defense shall, by the end of fiscal year 2030, provide that 100 percent of the energy load required to maintain the critical missions of each installation have a minimum level of availability of 99.9 percent per fiscal year.

(2) The Secretary of Defense shall issue standards establishing levels of availability relative to specific critical missions, with such standards providing a range of not less than 99.9 percent availability per fiscal year and not more than 99.9999 percent availability per fiscal year, depending on the criticality of the mission.

(3) The Secretary may establish interim goals to take effect prior to fiscal year 2025 to ensure the requirements under this subsection are met.

(4) The Secretary of each military department and the head of each Defense Agency shall ensure that their organizations meet the requirements of this subsection.

(b) PLANNING.—(1) The Secretary of Defense shall require the Secretary of each military department and the head of each Defense Agency to plan for the provision of energy resilience and energy security for installations.

(2) Planning under paragraph (1) shall—

(A) promote the use of multiple and diverse sources of energy, with an emphasis favoring energy resources originating on the installation such as modular generation;

(B) promote installing microgrids to ensure the energy security and energy resilience of critical missions; and

(C) favor the use of full-time, installed energy sources rather than emergency generation.

(c) DEVELOPMENT OF INFORMATION.—The planning required by subsection (b) shall identify each of the following for each installation:

(1) The critical missions of the installation.

(2) The energy requirements of those critical missions.

(3) The duration that those energy requirements are likely to be needed in the event of a disruption or emergency.

(4) The current source of energy provided to those critical missions.

(5) The duration that the currently provided energy would likely be available in the event of a disruption or emergency.

(6) Any currently available sources of energy that would provide uninterrupted energy to critical missions in the event of a disruption or emergency.

(7) Alternative sources of energy that could be developed to provide uninterrupted energy to critical missions in the event of a disruption or emergency.

(d) TESTING AND MEASURING.—(1)(A) The Secretary of Defense shall require the Secretary of each military department and head of each Defense Agency to conduct monitoring, measuring, and testing to provide the data necessary to comply with this section.

(B) Any data provided under subparagraph (A) shall be made available to the Assistant Secretary of Defense for Sustainment upon request.

(2)(A) The Secretary of Defense shall require that black start exercises be conducted to assess the energy resilience and energy security of installations for periods established to evaluate the ability of the installation to perform critical missions without access to off-installation energy resources.

(B) A black start exercise conducted under subparagraph (A) may exclude, if technically feasible, housing areas, commissaries, exchanges, and morale, welfare, and recreation facilities.

(C) The Secretary of Defense shall—

(i) provide uniform policy for the military departments and the Defense Agencies with respect to conducting black start exercises; and

(ii) establish a schedule of black start exercises for the military departments and the Defense Agencies, with each military department and Defense Agency scheduled to conduct such an exercise on a number of installations each year sufficient to allow that military department or Defense Agency to meet the goals of this section, but in any event not fewer than five installations each year for each military department through fiscal year 2027.

(D)(i) Except as provided in clause (ii), the Secretary of each military department shall, notwithstanding any other provision of law, conduct black start exercises in accordance with the schedule provided for in subparagraph (C)(ii), with any such exercise not to last longer than five days.

(ii) The Secretary of a military department may conduct more black start exercises than those identified in the schedule provided for in subparagraph (C)(ii).

(e) CONTRACT REQUIREMENTS.—For contracts for energy and utility services, the Secretary of Defense shall—

(1) specify methods and processes to measure, manage, and verify compliance with subsection (a); and

(2) ensure that such contracts include requirements appropriate to ensure energy resilience and energy security, including requirements for metering to measure, manage, and verify energy consumption, availability, and reliability consistent with this section and the energy resilience metrics and standards under section 2911(b) of this title.

(f) EXCEPTION.—This section does not apply to fuels used in aircraft, vessels, or motor vehicles.

(g) REPORT.—If by the end of fiscal year 2029, the Secretary determines that the Department will be unable to meet the requirements under subsection (a), not later than 90 days after the end of such fiscal year, the Secretary shall submit to the Committees on Armed Services of the Senate and House of Representatives a report detailing—

(1) the projected shortfall;

(2) reasons for the projected shortfall;

(3) any statutory, technological, or monetary impediments to achieving such requirements;

(4) any impact to readiness or ability to meet the national defense posture; and

(5) any other relevant information as the Secretary considers appropriate.

(h) DEFINITIONS.—In this section:

(1) The term ''availability'' means the availability of required energy at a stated instant of time or over a stated period of time for a specific purpose.

(2) The term ''black start exercise'' means an exercise in which delivery of energy provided from off an installation is terminated before backup generation assets on the installation are turned on. Such an exercise shall—

(A) determine the ability of the backup systems to start independently, transfer the load, and carry the load until energy from off the installation is restored;

(B) align organizations with critical missions to coordinate in meeting critical mission requirements;

(C) validate mission operation plans, such as continuity of operations plans;

(D) identify infrastructure interdependencies; and

(E) verify backup electric power system performance.

(3) The term ''critical mission''—

(A) means those aspects of the missions of an installation, including mission essential operations, that are critical to successful performance of the strategic national defense mission;

(B) may include operational headquarters facilities, airfields and supporting infrastructure, harbor facilities supporting naval vessels, munitions production and storage facilities, missile fields, radars, satellite control facilities, cyber operations facilities, space launch facilities, operational communications facilities, and biological defense facilities; and

(C) does not include military housing (including privatized military housing), morale, welfare, and recreation facilities, exchanges, commissaries, or privately owned facilities.

(4) The term ''energy'' means electricity, natural gas, steam, chilled water, and heated water.

(5) The term ''installation'' has the meaning given the term ''military installation'' in section 2801(c)(4) of this title.

(Added Pub. L. 116–283, div. A, title III, § 316(a), Jan. 1, 2021, 134 Stat. 3516.)

SUBCHAPTER II—ENERGY-RELATED PROCUREMENT

Sec.

2922. Liquid fuels and natural gas: contracts for storage, handling, or distribution.

2922a. Contracts for energy or fuel for military installations.

2922b. Procurement of energy systems using renewable forms of energy.

2922c. Procurement of gasohol as motor vehicle fuel.

2922d. Procurement of fuel derived from coal, oil shale, and tar sands.

2922e. Acquisition of certain fuel sources: authority to waive contract procedures; acquisition by exchange; sales authority.

2922f. Preference for energy efficient electric equipment.

2922g. Preference for motor vehicles using electric or hybrid propulsion systems.

2922h. Limitation on procurement of drop-in fuels.

AMENDMENT OF ANALYSIS

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1879(b), Jan. 1, 2021, 134 Stat. 4151, 4293, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this analysis is amended by adding at the end item 2922i ''Multiyear contracts: purchase of electricity from renewable energy sources.'' See 2021 Amendment note below.

AMENDMENTS

2021—Pub. L. 116–283, div. A, title XVIII, § 1879(b), Jan. 1, 2021, 134 Stat. 4293, added item 2922i.

2015—Pub. L. 114–92, div. A, title III, § 311(b), Nov. 25, 2015, 129 Stat. 787, added item 2922h.

2009—Pub. L. 111–84, div. B, title XXVIII, § 2844(b), Oct. 28, 2009, 123 Stat. 2682, added item 2922g.

PILOT PROGRAM ON ALTERNATIVE FUEL VEHICLE PURCHASING

Pub. L. 116–283, div. A, title III, § 321, Jan. 1, 2021, 134 Stat. 3521, provided that:

''(a) IN GENERAL.—The Secretary of Defense, in coordination with the Secretary of Energy and the Administrator of the General Services Administration, shall carry out a pilot program under which the Secretary of Defense may, notwithstanding section 400AA of the Energy Policy and Conservation Act (42 U.S.C. 6374), purchase new alternative fuel vehicles for which the initial cost of such vehicles exceeds the initial cost of a comparable gasoline or diesel fueled vehicle by not more than 10 percent.

''(b) LOCATIONS.—

''(1) IN GENERAL.—The Secretary of Defense shall carry out the pilot program under subsection (a) at not fewer than 2 facilities or installations of each military department in the continental United States that—

''(A) have the largest total number of attached noncombat vehicles as compared to other facilities or installations of the Department of Defense; and

''(B) are located within 20 miles of public or private refueling or recharging stations.

''(2) AIR FORCE LOGISTICS CENTER.—One of the facilities or installations selected under paragraph (1) shall be an Air Force Logistics Center.

''(c) ALTERNATIVE FUEL VEHICLE DEFINED.—In this section, the term 'alternative fuel vehicle' includes a vehicle that uses—

''(1) a fuel or power source described in the first sentence of section 241(2)of the Clean Air Act (42 U.S.C. 7581(2)); or

''(2) propane.''

§ 2922. Liquid fuels and natural gas: contracts for storage, handling, or distribution

(a) AUTHORITY TO CONTRACT.—The Secretary of Defense and the Secretary of a military department may each contract for storage facilities for, or the storage, handling, or distribution of, liquid fuels or natural gas.

(b) PERIOD OF CONTRACT.—The period of a contract entered into under subsection (a) may not exceed 5 years. However, the contract may provide options for the Secretary to renew the contract for additional periods of not more than 5 years each, but not for more than a total of 30 years.

(c) OPTION TO PURCHASE FACILITY.—A contract under this section may contain an option for the purchase by the United States of the facility covered by the contract at the expiration or termination of the contract, without regard to subsections (a) and (b) of section 3324 of title 31, and before approval of title to the underlying land by the Attorney General.

(Added Pub. L. 85–861, § 1(46), Sept. 2, 1958, 72 Stat. 1457, § 2388; amended Pub. L. 97–214, § 10(a)(3), July 12, 1982, 96 Stat. 175; Pub. L. 97–258, § 3(b)(6), Sept. 13, 1982, 96 Stat. 1063; Pub. L. 97–295, § 1(27), Oct. 12, 1982, 96 Stat. 1291; Pub. L. 98–525, title XIV, § 1405(56)(A), Oct. 19, 1984, 98 Stat. 2626; Pub. L. 101–510, div. A, title XIII, § 1322(a)(6), Nov. 5, 1990, 104 Stat. 1671; Pub. L. 103–160, div. A, title VIII, § 825, Nov. 30, 1993, 107 Stat. 1711; Pub. L. 103–355, title III, § 3064, Oct. 13, 1994, 108 Stat. 3337; renumbered § 2922, Pub. L. 109–364, div. B, title XXVIII, § 2851(b)(2), Oct. 17, 2006, 120 Stat. 2494; Pub. L. 115–91, div. A, title VIII, § 881(a), Dec. 12, 2017, 131 Stat. 1504.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2388(a)	50:98i (1st sentence).	Aug. 3, 1956, ch. 939, §416, 70 Stat. 1018.
2388(b)	50:98i (2d sentence).	
2388(c)	50:98i (less 1st and 2d sentences and proviso of last sentence).	
2388(d)	50:98i (proviso of last sentence).	

In subsection (b), the words "section applies only" are substituted for the words "authority is limited". The word "standards" is substituted for the word "criteria".

In subsection (c), the words "A contract under this section" are substituted for the words "Such contracts". The last 33 words are substituted for 50:98i (28 words before proviso of last sentence).

1982 ACT

In 10:2388(c), the title 31 citation is substituted on authority of Pub. L. 97–258, §4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted title 31.

AMENDMENTS

2017—Subsec. (b). Pub. L. 115–91 substituted "30 years" for "20 years".

2006—Pub. L. 109–364 renumbered section 2388 of this title as this section.

1994—Subsec. (a). Pub. L. 103–355 substituted "liquid fuels or natural gas" for "liquid fuels and natural gas".

1993—Pub. L. 103–160, §825(b), substituted "Liquid fuels and natural gas: contracts for storage, handling, or distribution" for "Liquid fuels: contracts for storage, handling, and distribution" as section catchline.

Subsecs. (a), (b). Pub. L. 103–160, §825(a)(1), added subsecs. (a) and (b) and struck out former subsecs. (a) and (b) which read as follows:

"(a) The Secretary of a military department may contract for the storage, handling, and distribution of liquid fuels for periods of not more than five years, with options to renew for additional periods of not more than five years each, but not for more than a total of 20 years.

"(b) This section applies only to facilities that conform to standards prescribed by the Secretary of Defense for protection, including dispersal, and that are in a program approved by the Secretary of Defense for the protection of petroleum facilities."

Subsec. (c). Pub. L. 103–160, §825(a)(2), inserted heading.

1990—Subsec. (d). Pub. L. 101–510 struck out subsec. (d) which read as follows: "The Secretary concerned shall report to the Committees on Armed Services of the Senate and the House of Representatives the terms of the contracts made under this section and the names of the contractors. The reports shall be made at such times and in such form as may be agreed upon by the Secretary and those Committees."

1984—Subsec. (c). Pub. L. 98–525 substituted "subsections (a) and (b) of section 3324" for "section 3324(a) and (b)".

1982—Subsec. (c). Pub. L. 97–295, §1(27), substituted "section 3324(a) and (b) of title 31" for "section 3648 of the Revised Statutes (31 U.S.C. 529)", clarifying the ambiguity created by previous amendments by Pub. L. 97–214 and Pub. L. 97–258.

Pub. L. 97–258, §3(b)(6), directed the substitution of "section 3324(a) and (b) of title 31" for "section 529 of title 31", which could not be executed in view of prior substitution of language by Pub. L. 97–214.

Pub. L. 97–214, §10(a)(3), substituted "section 3648 of the Revised Statutes (31 U.S.C. 529)" for "section 4774(d) or 9774(d) of this title, section 529 of title 31, or section 259 or 267 of title 40,".

EFFECTIVE DATE OF 2017 AMENDMENT

Pub. L. 115–91, div. A, title VIII, §881(b), Dec. 12, 2017, 131 Stat. 1504, provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to contracts entered into on or after the date of the enactment of this Act [Dec. 12, 2017], and may be applied to a contract entered into before that date if the total contract period under the contract (including options) has not expired as of the date of any extension of such contract period by reason of such amendment."

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–214 effective Oct. 1, 1982, and applicable to military construction projects, and to construction and acquisition of military family housing authorized before, on, or after such date, see section 12(a) of Pub. L. 97–214, set out as an Effective Date note under section 2801 of this title.

BULK FUEL MANAGEMENT IN UNITED STATES INDO-PACIFIC COMMAND AREA OF RESPONSIBILITY

Pub. L. 116–283, div. B, title XXVIII, §2854, Jan. 1, 2021, 134 Stat. 4355, provided that:

"(a) DESIGNATION OF RESPONSIBLE ORGANIZATIONAL ELEMENT.—

"(1) DESIGNATION REQUIRED.—The Secretary of Defense shall designate a single organizational element of the Department of Defense to be responsible for bulk fuel management and delivery throughout the United States Indo-Pacific Command Area of Responsibility.

"(2) DEADLINE FOR DESIGNATION; NOTICE.—Not later than 30 days after the date of the enactment of this Act [Jan. 1, 2021], the Secretary of Defense shall make the designation required by paragraph (1) and notify the Committees on Armed Services of the Senate and the House of Representatives of the organizational element so designated.

"(b) BULK FUEL MANAGEMENT STRATEGY.—

"(1) STRATEGY REQUIRED.—The organizational element designated pursuant to subsection (a) shall prepare a bulk fuel management strategy for the United States Indo-Pacific Command Area of Responsibility designed to develop the required bulk fuel management infrastructure and programs to optimally support bulk fuel management in the United States Indo-Pacific Command Area of Responsibility.

"(2) ADDITIONAL ELEMENTS.—The strategy shall include the following additional elements:

"(A) A description of current organizational responsibility of bulk fuel management in the United States Indo-Pacific Command Area of Responsibility from ordering, storage, strategic transportation, and tactical transportation to the last tactical mile.

"(B) A description of legacy bulk fuel management assets that can be used to support the United States Indo-Pacific Command.

"(C) A description of current programs for platforms and weapon systems and research and development aimed at managing fuel constraints through decreasing demand.

"(c) COORDINATION.—The bulk fuel management strategy required by subsection (b) shall be prepared in coordination with subject-matter experts of the United States Indo-Pacific Command, the United States Transportation Command, the Defense Logistics Agency, and the military departments.

"(d) PROHIBITION ON CERTAIN CONSTRUCTION PENDING NOTICE.—Of the funds authorized to be appropriated by this Act [see Tables for classification] or otherwise made available for fiscal year 2021 for the Navy for construction related to additional bulk fuel storage in the United States Indo-Pacific Command Area of Responsibility, not more than 50 percent may be obligated or expended before the date on which the notice required by subsection (a)(2) is submitted."

NOTICE OF PURCHASE OF DROP-IN FUEL

Pub. L. 113–291, div. A, title III, §316(c), (d), Dec. 19, 2014, 128 Stat. 3339, 3340, provided that:

"(c) NOTICE OF PURCHASE REQUIRED.—If the Secretary of Defense intends to purchase a drop-in fuel intended

for operational use with a fully burdened cost in excess of 10 percent more than the fully burdened cost of a traditional fuel available for the same purpose, the Secretary shall provide notice of such intended purchase to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] by not later than 30 days before the date on which such purchase is intended to be made.

''(d) DEFINITIONS.—In this section [this note]:

''(1) The term 'drop-in fuel' means a neat or blended liquid hydrocarbon fuel designed as a direct replacement for a traditional fuel with comparable performance characteristics and compatible with existing infrastructure and equipment.

''(2) The term 'traditional fuel' means a liquid hydrocarbon fuel derived or refined from petroleum.

''(3) The term 'operational purposes' means for the purposes of conducting military operations, including training, exercises, large scale demonstrations, and moving and sustaining military forces and military platforms. The term does not include research, development, testing, evaluation, fuel certification, or other demonstrations.

''(4) The term 'fully burdened cost' means the commodity price of the fuel plus the total cost of all personnel and assets required to move and, when necessary, protect the fuel from the point at which the fuel is received from the commercial supplier to the point of use.''

PURCHASES OF GASOHOL AS FUEL FOR MOTOR VEHICLES

Pub. L. 96–107, title VIII, § 815, Nov. 9, 1979, 93 Stat. 817, which had authorized the Secretary of Defense to buy domestically produced alcohol and gasohol for use as fuel in Department of Defense motor vehicles, was repealed and reenacted as section 2398 (now 2922c) of this title by Pub. L. 97–295, §§ 1(29)(A), 6(b), Oct. 12, 1982, 96 Stat. 1293, 1315.

§ 2922a. Contracts for energy or fuel for military installations

(a) Subject to subsection (b), the Secretary of a military department may enter into contracts for periods of up to 30 years—

(1) under section 2917 of this title; and

(2) for the provision and operation of energy production facilities on real property under the Secretary's jurisdiction or on private property and the purchase of energy produced from such facilities.

(b) A contract may be made under subsection (a) only after the approval of the proposed contract by the Secretary of Defense.

(c) The costs of contracts under this section for any year may be paid from annual appropriations for that year.

(d) The Secretary concerned shall ensure energy security and energy resilience are included as critical factors in the provision and operation of energy production facilities under this section.

(Added Pub. L. 97–214, § 6(a)(1), July 12, 1982, 96 Stat. 171, § 2394; amended Pub. L. 97–321, title VIII, § 805(b)(3), Oct. 15, 1982, 96 Stat. 1573; Pub. L. 100–26, § 7(k)(2), Apr. 21, 1987, 101 Stat. 284; Pub. L. 101–510, div. A, title XIII, § 1301(12), Nov. 5, 1990, 104 Stat. 1668; renumbered § 2922a and amended Pub. L. 109–364, div. B, title XXVIII, § 2851(b)(2), (3)(C), Oct. 17, 2006, 120 Stat. 2494; Pub. L. 115–91, div. B, title XXVIII, § 2833, Dec. 12, 2017, 131 Stat. 1858; Pub. L. 115–232, div. A, title III, § 312(d), Aug. 13, 2018, 132 Stat. 1710; Pub. L. 116–92, div. A, title III, § 320(a)(2)(A), Dec. 20, 2019, 133 Stat. 1306.)

AMENDMENTS

2019—Subsec. (d). Pub. L. 116–92 substituted ''energy resilience are included as critical factors'' for ''resilience are prioritized and included''.

2018—Subsec. (d). Pub. L. 115–232 amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: ''The Secretary concerned shall prioritize energy security and resilience.''

2017—Subsec. (d). Pub. L. 115–91 added subsec. (d).

2006—Pub. L. 109–364, § 2851(b)(2), renumbered section 2394 of this title as this section.

Subsec. (a)(1). Pub. L. 109–364, § 2851(b)(3)(C), substituted ''section 2917'' for ''section 2689''.

1990—Subsec. (b). Pub. L. 101–510 substituted ''only after the approval of the proposed contract by the Secretary of Defense'' for ''only—

''(1) after the approval of the proposed contract by the Secretary of Defense; and

''(2) after the Committees on Armed Services and on Appropriations of the Senate and House of Representatives have been notified of the terms of the proposed contract, including the dollar amount of the contract and the amount of energy or fuel to be delivered to the Government under the contract''.

1987—Subsec. (c). Pub. L. 100–26, which directed that ''The term'' be inserted in each paragraph after the paragraph designation and the first word after the first quotation marks in each paragraph be revised so that the initial letter of such word is lowercase, could not be executed because subsec. (c) contained no paragraphs and no quoted words. The probable intent of Congress was to amend section 2393(c) of this title.

1982—Subsec. (a). Pub. L. 97–321, § 805(b)(3)(A), substituted ''subsection (b)'' for ''subsection (c)''.

Subsecs. (c), (d). Pub. L. 97–321, § 805(b)(3)(B), redesignated subsec. (d) as (c).

EFFECTIVE DATE

Section effective Oct. 1, 1982, and applicable to military construction projects, and to construction and acquisition of military family housing authorized before, on, or after such date, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

§ 2922b. Procurement of energy systems using renewable forms of energy

(a) In procuring energy systems the Secretary of a military department shall procure systems that use solar energy or other renewable forms of energy whenever the Secretary determines that such procurement is possible, suited to supplying the energy needs of the military department under the jurisdiction of the Secretary, consistent with the energy performance goals and energy performance plan for the Department of Defense developed under section 2911 of this title, and supported by the special considerations specified in subsection (e) of such section.

(b) The Secretary of Defense shall from time to time study uses for solar energy and other renewable forms of energy to determine what uses of such forms of energy may be reliable in supplying the energy needs of the Department of Defense. The Secretary of Defense, based upon the results of such studies, shall from time to time issue policy guidelines to be followed by the Secretaries of the military departments in carrying out subsection (a) and section 2915 of this title.

(Added Pub. L. 97–321, title VIII, § 801(a)(1), Oct. 15, 1982, 96 Stat. 1569, § 2394a; amended Pub. L. 98–525, title XIV, § 1405(36), Oct. 19, 1984, 98 Stat. 2624; Pub. L. 101–510, div. A, title XIII, § 1322(a)(7), div. B, title XXVIII, § 2852(a), Nov. 5,

1990, 104 Stat. 1671, 1804; Pub. L. 102–25, title VII, § 701(g)(2), Apr. 6, 1991, 105 Stat. 115; renumbered § 2922b and amended Pub. L. 109–364, div. B, title XXVIII, § 2851(b)(2), (3)(D), Oct. 17, 2006, 120 Stat. 2494, 2495; Pub. L. 115–91, div. B, title XXVIII, § 2831(c)(4), Dec. 12, 2017, 131 Stat. 1858.)

AMENDMENTS

2017—Subsec. (a). Pub. L. 115–91 substituted ''subsection (e)'' for ''subsection (c)''.

2006—Pub. L. 109–364, § 2851(b)(2), renumbered section 2394a of this title as this section.

Subsec. (a). Pub. L. 109–364, § 2851(b)(3)(D)(i), substituted ''possible, suited'' for ''possible and will be cost effective, reliable, and otherwise suited'' and ''the jurisdiction of the Secretary, consistent with the energy performance goals and energy performance plan for the Department of Defense developed under section 2911 of this title, and supported by the special considerations specified in subsection (c) of such section'' for ''his jurisdiction''.

Subsec. (b). Pub. L. 109–364, § 2851(b)(3)(D)(ii), struck out ''cost effective and'' before ''reliable'' and substituted ''2915'' for ''2857''.

Subsec. (c). Pub. L. 109–364, § 2851(b)(3)(D)(iii), struck out subsec. (c) which read as follows:

''(c)(1) For the purposes of this section, an energy system using solar energy or other renewable forms of energy shall be considered to be cost effective if the difference between (A) the original investment cost of the energy system using such a form of energy, and (B) the original investment cost of the energy system not using such a form of energy can be recovered over the expected life of the system.

''(2) A determination under paragraph (1) concerning whether a cost-differential can be recovered over the expected life of a system shall be made using the life-cycle cost methods and procedures established pursuant to section 544(a) of the National Energy Conservation Policy Act (42 U.S.C. 8254(a)).''

1991—Subsec. (c)(2). Pub. L. 102–25 inserted ''(42 U.S.C. 8254(a))'' after ''Policy Act''.

1990—Subsec. (b). Pub. L. 101–510, § 1322(a)(7), struck out ''(1)'' after ''(b)'' and struck out par. (2) which read as follows: ''The Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives not less often than every two years a report on the studies conducted pursuant to paragraph (1). Each such report shall include any findings of the Secretary with respect to the use of solar energy and other renewable forms of energy in supplying the energy needs of the Department of Defense and any recommendations of the Secretary for changes in law that may be appropriate in light of such studies.''

Subsec. (c)(2), (3). Pub. L. 101–510, § 2852(a), added par. (2) and struck out former pars. (2) and (3) which read as follows:

''(2) A determination under paragraph (1) of whether a cost-differential can be recovered over the expected life of a system shall be made using accepted life-cycle costing procedures and shall include—

''(A) the use of all capital expenses and all operating and maintenance expenses associated with the energy system using solar energy or other renewable forms of energy, and not using such a form of energy, over the expected life of the system or during a period of 25 years, whichever is shorter;

''(B) the use of fossil fuel costs (and a rate of cost growth for fossil fuel costs) as determined by the Secretary of Defense; and

''(C) the use of a discount rate of 7 percent per year for all expenses of the energy system.

''(3) For the purpose of any life-cycle cost analysis under this subsection, the original investment cost of the energy system using solar energy or other renewable forms of energy shall be reduced by 10 percent to reflect an allowance for an investment cost credit.''

1984—Pub. L. 98–525 substituted ''using'' for ''powered by'' in section catchline.

SUBMISSION DATE FOR FIRST REPORT

Pub. L. 97–321, title VIII, § 801(a)(3), Oct. 15, 1982, 96 Stat. 1571, required the first report under subsec. (b)(2) of this section to be submitted not later than two years after Oct. 15, 1982.

§ 2922c. Procurement of gasohol as motor vehicle fuel

(a) OTHER FEDERAL FUEL PROCUREMENTS.—Consistent with the vehicle management practices prescribed by the heads of affected departments and agencies of the Federal Government and consistent with Executive Order Number 12261, whenever the Secretary of Defense enters into a contract for the procurement of unleaded gasoline that is subject to tax under section 4081 of the Internal Revenue Code of 1986 for motor vehicles of a department or agency of the Federal Government other than the Department of Defense, the Secretary shall buy alcohol-gasoline blends containing at least 10 percent domestically produced alcohol in any case in which the price of such fuel is the same as, or lower than, the price of unleaded gasoline.

(b) SOLICITATIONS.—Whenever the Secretary issues a solicitation for bids to procure unleaded gasoline under subsection (a), the Secretary shall expressly include in such solicitation a request for bids on alcohol-gasoline blends containing at least 10 percent domestically produced alcohol.

(Added Pub. L. 97–295, § 1(29)(A), Oct. 12, 1982, 96 Stat. 1293, § 2398; amended Pub. L. 102–190, div. A, title VIII, § 841(a), Dec. 5, 1991, 105 Stat. 1448; Pub. L. 104–106, div. A, title X, § 1061(h), Feb. 10, 1996, 110 Stat. 443; renumbered § 2922c, Pub. L. 109–364, div. B, title XXVIII, § 2851(b)(2), Oct. 17, 2006, 120 Stat. 2494.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2398	10:2388 (note).	Nov. 9, 1979, Pub. L. 96–107, § 815, 93 Stat. 817.

The word ''prescribed'' is substituted for ''determined'' because it is more appropriate. The word ''Secretary'' is substituted for ''Department of Defense'' because the responsibility is in the head of the agency. The word ''shall'' is substituted for ''is authorized and directed'' for clarity.

REFERENCES IN TEXT

Executive Order Number 12661, referred to in subsec. (a), is set out under section 8871 of Title 42, The Public Health and Welfare.

Section 4081 of the Internal Revenue Code of 1986, referred to in subsec. (a), is classified to section 4081 of Title 26, Internal Revenue Code.

AMENDMENTS

2006—Pub. L. 109–364 renumbered section 2398 of this title as this section.

1996—Subsec. (a). Pub. L. 104–106, § 1061(h)(1), (2)(A), redesignated subsec. (b) as (a) and struck out former subsec. (a) which read as follows: ''DOD MOTOR VEHICLES.—To the maximum extent feasible and consistent with overall defense needs and vehicle management practices prescribed by the Secretary of Defense, the Secretary shall make contracts, by competitive bid and subject to appropriations, to purchase domestically produced alcohol or alcohol-gasoline blends containing at least 10 percent domestically produced alcohol for

use in motor vehicles owned or operated by the Department of Defense.''

Subsec. (b). Pub. L. 104–106, § 1061(h)(2), redesignated subsec. (c) as (b) and substituted ''subsection (a)'' for ''subsection (b)''. Former subsec. (b) redesignated (a).

Subsec. (c). Pub. L. 104–106, § 1061(h)(2)(A), redesignated subsec. (c) as (b).

1991—Pub. L. 102–190 designated existing provisions as subsec. (a), inserted heading, and added subsecs. (b) and (c).

EFFECTIVE DATE OF 1991 AMENDMENT

Pub. L. 102–190, div. A, title VIII, § 841(b), Dec. 5, 1991, 105 Stat. 1448, provided that: ''Section 2398(b) [now 2922c(a)] of title 10, United States Code, as added by subsection (a), shall apply with respect to contracts awarded pursuant to solicitations issued after the expiration of the 180-day period beginning on the date of the enactment of this Act [Dec. 5, 1991].''

§ 2922d. Procurement of fuel derived from coal, oil shale, and tar sands

(a) USE OF FUEL TO MEET DEPARTMENT OF DEFENSE NEEDS.—The Secretary of Defense shall develop a strategy to use fuel produced, in whole or in part, from coal, oil shale, and tar sands (referred to in this section as a ''covered fuel'') that are extracted by either mining or in-situ methods and refined or otherwise processed in the United States in order to assist in meeting the fuel requirements of the Department of Defense when the Secretary determines that it is in the national interest.

(b) AUTHORITY TO PROCURE.—The Secretary of Defense may enter into one or more contracts or other agreements (that meet the requirements of this section) to procure a covered fuel to meet one or more fuel requirements of the Department of Defense.

(c) CLEAN FUEL REQUIREMENTS.—A covered fuel may be procured under subsection (b) only if the covered fuel meets such standards for clean fuel produced from domestic sources as the Secretary of Defense shall establish for purposes of this section in consultation with the Department of Energy.

(d) MULTIYEAR CONTRACT AUTHORITY.—Subject to applicable provisions of law, any contract or other agreement for the procurement of covered fuel under subsection (b) may be for one or more years at the election of the Secretary of Defense.

(e) FUEL SOURCE ANALYSIS.—In order to facilitate the procurement by the Department of Defense of covered fuel under subsection (b), the Secretary of Defense may carry out a comprehensive assessment of current and potential locations in the United States for the supply of covered fuel to the Department.

(Added Pub. L. 109–58, title III, § 369(q)(1), Aug. 8, 2005, 119 Stat. 733, § 2398a; renumbered § 2922d, Pub. L. 109–364, div. B, title XXVIII, § 2851(b)(2), Oct. 17, 2006, 120 Stat. 2494; Pub. L. 111–383, div. A, title X, § 1075(b)(48), Jan. 7, 2011, 124 Stat. 4371.)

AMENDMENTS

2011—Subsecs. (b), (d). Pub. L. 111–383 substituted ''one or more'' for ''1 or more'' wherever appearing.

2006—Pub. L. 109–364 renumbered section 2398a of this title as this section.

§ 2922e. Acquisition of certain fuel sources: authority to waive contract procedures; acquisition by exchange; sales authority

(a) WAIVER AUTHORITY.—The Secretary of Defense may, for any purchase of a defined fuel source, waive the application of any provision of law prescribing procedures to be followed in the formation of contracts, prescribing terms and conditions to be included in contracts, or regulating the performance of contracts if the Secretary determines—

(1) that market conditions for the defined fuel source have adversely affected (or will in the near future adversely affect) the acquisition of that defined fuel source by the Department of Defense; and

(2) the waiver will expedite or facilitate the acquisition of that defined fuel source for Government needs.

(b) SCOPE OF WAIVER.—A waiver under subsection (a) may be made with respect to a particular contract or with respect to classes of contracts. Such a waiver that is applicable to a contract for the purchase of a defined fuel source may also be made applicable to a subcontract under that contract.

(c) EXCHANGE AUTHORITY.—The Secretary of Defense may acquire a defined fuel source or services related to a defined fuel source by exchange of a defined fuel source or services related to a defined fuel source.

(d) AUTHORITY TO SELL.—The Secretary of Defense may sell a defined fuel source of the Department of Defense if the Secretary determines that the sale would be in the public interest. The proceeds of such a sale shall be credited to appropriations of the Department of Defense for the acquisition of a defined fuel source or services related to a defined fuel source. Amounts so credited shall be available for obligation for the same period as the appropriations to which the amounts are credited.

(Added Pub. L. 98–525, title XII, § 1234(a), Oct. 19, 1984, 98 Stat. 2604, § 2404; amended Pub. L. 100–26, § 7(k)(3), Apr. 21, 1987, 101 Stat. 284; Pub. L. 101–510, div. A, title XIII, § 1322(a)(8), Nov. 5, 1990, 104 Stat. 1671; Pub. L. 103–160, div. A, title VIII, § 826, Nov. 30, 1993, 107 Stat. 1711; Pub. L. 106–65, div. A, title VIII, § 803(a), (b)(1), Oct. 5, 1999, 113 Stat. 703; renumbered § 2922e, Pub. L. 109–364, div. B, title XXVIII, § 2851(b)(2), Oct. 17, 2006, 120 Stat. 2494; Pub. L. 112–81, div. B, title XXVIII, § 2821(b)(2), Dec. 31, 2011, 125 Stat. 1691.)

AMENDMENTS

2011—Subsecs. (e), (f). Pub. L. 112–81 struck out subsecs. (e) and (f), which, respectively, defined ''petroleum'' and ''defined fuel source''.

2006—Pub. L. 109–364 renumbered section 2404 of this title as this section.

1999—Pub. L. 106–65, § 803(b)(1), substituted ''Acquisition of certain fuel sources'' for ''Acquisition of petroleum and natural gas'' in section catchline.

Subsec. (a). Pub. L. 106–65, § 803(a)(1), substituted ''a defined fuel source'' for ''petroleum or natural gas'' in introductory provisions, ''market conditions for the defined fuel source'' for ''petroleum market conditions or natural gas market conditions, as the case may be,'' and ''acquisition of that defined fuel source'' for ''acquisition of petroleum or acquisition of natural gas, respectively,'' in par. (1), and ''that defined fuel source''

for ''petroleum or natural gas, as the case may be,'' in par. (2).

Subsec. (b). Pub. L. 106–65, § 803(a)(2), substituted ''a defined fuel source'' for ''petroleum or natural gas'' in second sentence.

Subsec. (c). Pub. L. 106–65, § 803(a)(3), which directed the substitution of ''a defined fuel source or services related to a defined fuel source by exchange of a defined fuel source or services related to a defined fuel source.'' for '' 'petroleum' and all that follows through the period'', was executed by substituting the material for ''petroleum, petroleum-related services, natural gas, or natural gas-related services by exchange of petroleum, petroleum-related services, natural gas, or natural gas-related services.'' to reflect the probable intent of Congress.

Subsec. (d). Pub. L. 106–65, § 803(a)(4), substituted ''a defined fuel source'' for ''petroleum or natural gas'' in first sentence and ''a defined fuel source or services related to a defined fuel source.'' for ''petroleum, petroleum-related services, natural gas, or natural gas-related services.'' in second sentence.

Subsec. (f). Pub. L. 106–65, § 803(a)(5), added subsec. (f).

1993—Pub. L. 103–160, § 826(d)(2), substituted ''petroleum and natural gas: authority to waive contract procedures; acquisition by exchange; sales authority'' for ''petroleum: authority to waive contract procedures'' as section catchline.

Subsec. (a). Pub. L. 103–160, § 826(a)(1), (d)(1)(A), inserted heading, inserted ''or natural gas'' after ''petroleum'' in introductory provisions, inserted ''or natural gas market conditions, as the case may be,'' after ''petroleum market conditions'' and ''or acquisition of natural gas, respectively,'' after ''acquisition of petroleum'' in par. (1), and inserted ''or natural gas, as the case may be,'' after ''petroleum'' in par. (2).

Subsec. (b). Pub. L. 103–160, § 826(a)(2), (d)(1)(B), inserted heading and inserted ''or natural gas'' after ''petroleum'' in second sentence.

Subsec. (c). Pub. L. 103–160, § 826(b), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''The Secretary of Defense may acquire petroleum by exchange of petroleum or petroleum derivatives.''

Subsec. (d). Pub. L. 103–160, § 826(c)(2), added subsec. (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 103–160, § 826(c)(1), (d)(1)(C), redesignated subsec. (d) as (e) and inserted heading.

1990—Subsecs. (d), (e). Pub. L. 101–510 redesignated subsec. (e) as (d) and struck out former subsec. (d) which read as follows: ''The Secretary of Defense shall notify the Congress within 10 days of the date on which any waiver is made under this section and of the reasons for the necessity of exercising such waiver.''

1987—Subsec. (e). Pub. L. 100–26 inserted ''the term'' after ''In this section,''.

§ 2922f. Preference for energy efficient electric equipment

(a) In establishing a new requirement for electric equipment referred to in subsection (b) and in procuring electric equipment referred to in that subsection, the Secretary of a military department or the head of a Defense Agency, as the case may be, shall provide a preference for the procurement of the most energy efficient electric equipment available that meets the requirement or the need for the procurement, if providing such a preference is consistent with the energy performance goals and energy performance plan for the Department of Defense developed under section 2911 of this title and supported by the special considerations specified in subsection (e) of such section.

(b) Subsection (a) applies to the following electric equipment:

(1) Electric lamps.

(2) Electric ballasts.

(3) Electric motors.

(4) Electric refrigeration equipment.

(Added Pub. L. 102–484, div. A, title III, § 384(a)(1)(A), Oct. 23, 1992, 106 Stat. 2392, § 2410c; renumbered § 2922f and amended Pub. L. 109–364, div. B, title XXVIII, § 2851(b)(2), (3)(E), Oct. 17, 2006, 120 Stat. 2494, 2495; Pub. L. 115–91, div. B, title XXVIII, § 2831(c)(5), Dec. 12, 2017, 131 Stat. 1858.)

Amendments

2017—Subsec. (a). Pub. L. 115–91 substituted ''subsection (e)'' for ''subsection (c)''.

2006—Pub. L. 109–364, § 2851(b)(2), renumbered section 2410c of this title as this section.

Subsec. (a). Pub. L. 109–364, § 2851(b)(3)(E), substituted ''In'' for ''When cost effective, in'' and ''if providing such a preference is consistent with the energy performance goals and energy performance plan for the Department of Defense developed under section 2911 of this title and supported by the special considerations specified in subsection (c) of such section'' for ''as the case may be''.

Effective Date of 1992 Amendment

Pub. L. 102–484, div. A, title III, § 384(a)(2), Oct. 23, 1992, 106 Stat. 2393, provided that: ''The amendments made by paragraph (1) [enacting this section] shall apply to procurements for which solicitations are issued on or after the date that is 120 days after the date of the enactment of this Act [Oct. 23, 1992].''

Electric Lighting and Refrigeration Equipment Demonstration Programs

Pub. L. 102–484, div. A, title III, § 384(b)–(d), Oct. 23, 1992, 106 Stat. 2393, provided that:

''(b) Electric Lighting Demonstration Program.—(1) The Secretary of Defense shall conduct a demonstration program for using energy efficient electric lighting equipment.

''(2) The Secretary shall designate 50 facilities owned or leased by the Department of Defense for participation in the demonstration program under this subsection.

''(3) The head of each facility designated pursuant to paragraph (2) and the Director of the Defense Logistics Agency shall jointly audit the electric lighting equipment at the facility in order—

''(A) to identify any potential improvements that would increase the energy efficiency of electric lighting at that facility; and

''(B) to determine the costs of, and the savings that would result from, such improvements.

''(4) Except as provided in subsection (d)(4), on the basis of the results of the audit the head of the facility shall promptly convert to the use of electric lighting equipment at the facility that is more energy efficient than the existing electric lighting equipment to the extent that the conversion is cost effective.

''(5) Energy efficient electric lighting equipment used under the demonstration program may include compact fluorescent lamps, energy efficient electric ballasts and fixtures, and other energy efficient electric lighting equipment.

''(c) Refrigeration Equipment Demonstration Program.—(1) The Secretary of Defense shall conduct a demonstration program for using energy efficient refrigeration equipment.

''(2) The Secretary shall designate 50 facilities owned or operated by the Department of Defense for participation in the demonstration program under this subsection.

''(3) The head of each facility designated pursuant to paragraph (2) and the Director of the Defense Logistics Agency shall jointly audit the refrigeration equipment at the facility in order—

"(A) to identify any potential improvements that would increase the energy efficiency of the refrigeration equipment at that facility; and

"(B) to determine the costs of, and the savings that would result from, such improvements.

"(4) Except as provided in subsection (d)(4), on the basis of the results of the audit the head of the facility shall promptly convert to the use of refrigeration equipment at the facility that is more energy efficient than the existing refrigeration equipment to the extent that the conversion is cost effective.

"(d) GENERAL PROVISIONS FOR DEMONSTRATION PROGRAMS.—(1) The Secretary of Defense shall make the designations under subsections (b)(2) and (c)(2) not later than 180 days after the date of the enactment of this Act [Oct. 23, 1992].

"(2) The Secretary of Defense may designate a facility described in subsections (b)(2) and (c)(2) for participation in the demonstration program under subsection (b) and the demonstration program under subsection (c).

"(3) The audits required by subsections (b)(3) and (c)(3) shall be completed not later than January 1, 1994.

"(4) The head of a facility may not carry out a conversion described in subsection (b)(4) or (c)(4) if the conversion prevents the head of the facility from carrying out other improvements relating to energy efficiency that are more cost effective than that conversion."

§ 2922g. Preference for motor vehicles using electric or hybrid propulsion systems

(a) PREFERENCE.—In leasing or procuring motor vehicles for use by a military department or Defense Agency, the Secretary of the military department or the head of the Defense Agency shall provide a preference for the lease or procurement of motor vehicles using electric or hybrid propulsion systems, including plug-in hybrid systems, if the electric or hybrid vehicles—

(1) will meet the requirements or needs of the Department of Defense; and

(2) are commercially available at a cost, including operating cost, reasonably comparable to motor vehicles containing only an internal combustion or heat engine using combustible fuel.

(b) EXCEPTION.—Subsection (a) does not apply with respect to tactical vehicles designed for use in combat.

(c) RELATION TO OTHER VEHICLE TECHNOLOGIES THAT REDUCE CONSUMPTION OF FOSSIL FUELS.—The preference required by subsection (a) does not preclude the Secretary of Defense from authorizing the Secretary of a military department or head of a Defense Agency to provide a preference for another vehicle technology that reduces the consumption of fossil fuels if the Secretary of Defense determines that the technology is consistent with the energy performance goals and plan of the Department required by section 2911 of this title.

(Added Pub. L. 111–84, div. B, title XXVIII, § 2844(a), Oct. 28, 2009, 123 Stat. 2682; amended Pub. L. 112–81, div. B, title XXVIII, § 2821(b)(3), Dec. 31, 2011, 125 Stat. 1691.)

AMENDMENTS

2011—Subsec. (d). Pub. L. 112–81 struck out subsec. (d), which defined "hybrid".

REGULATIONS

Pub. L. 111–84, div. B, title XXVIII, § 2844(c), Oct. 28, 2009, 123 Stat. 2682, provided that: "The Secretary of Defense shall prescribe regulations to implement section 2922g of title 10, United States Code, as added by subsection (a), within one year after the date of the enactment of this Act [Oct. 28, 2009]."

§ 2922h. Limitation on procurement of drop-in fuels

(a) LIMITATION.—Except as provided in subsection (b), the Secretary of Defense may not make a bulk purchase of a drop-in fuel for operational purposes unless the fully burdened cost of that drop-in fuel is cost-competitive with the fully burdened cost of a traditional fuel available for the same purpose.

(b) WAIVER.—(1) Subject to the requirements of paragraph (2), the Secretary of Defense may waive the limitation under subsection (a) with respect to a purchase.

(2) Not later than 30 days after issuing a waiver under this subsection, the Secretary shall submit to the congressional defense committees notice of the waiver. Any such notice shall include each of the following:

(A) The rationale of the Secretary for issuing the waiver.

(B) A certification that the waiver is in the national security interest of the United States.

(C) The expected fully burdened cost of the purchase for which the waiver is issued.

(c) DEFINITIONS.—In this section:

(1) The term "drop-in fuel" means a neat or blended liquid hydrocarbon fuel designed as a direct replacement for a traditional fuel with comparable performance characteristics and compatible with existing infrastructure and equipment.

(2) The term "traditional fuel" means a liquid hydrocarbon fuel derived or refined from petroleum.

(3) The term "operational purposes"—

(A) means for the purposes of conducting military operations, including training, exercises, large scale demonstrations, and moving and sustaining military forces and military platforms; and

(B) does not include research, development, testing, evaluation, fuel certification, or other demonstrations.

(4) The term "fully burdened cost" means the commodity price of the fuel plus the total cost of all personnel and assets required to move and, when necessary, protect the fuel from the point at which the fuel is received from the commercial supplier to the point of use.

(Added Pub. L. 114–92, div. A, title III, § 311(a), Nov. 25, 2015, 129 Stat. 787.)

§ 2922i. Multiyear contracts: purchase of electricity from renewable energy sources

(a) MULTIYEAR CONTRACTS AUTHORIZED.—Subject to subsection (b), the Secretary of Defense may enter into a contract for a period not to exceed 10 years for the purchase of electricity from sources of renewable energy, as that term is defined in section 203(b)(2) of the Energy Policy Act of 2005 (42 U.S.C. 15852(b)(2)).

(b) LIMITATIONS ON CONTRACTS FOR PERIODS IN EXCESS OF FIVE YEARS.—The Secretary may ex-

ercise the authority in subsection (a) to enter into a contract for a period in excess of five years only if the Secretary determines, on the basis of a business case analysis prepared by the Department of Defense, that—

(1) the proposed purchase of electricity under such contract is cost effective for the Department of Defense; and

(2) it would not be possible to purchase electricity from the source in an economical manner without the use of a contract for a period in excess of five years.

(c) RELATIONSHIP TO OTHER MULTIYEAR CONTRACTING AUTHORITY.—Nothing in this section shall be construed to preclude the Department of Defense from using other multiyear contracting authority of the Department to purchase renewable energy.

(Added Pub. L. 110–181, div. A, title VIII, § 828(a), Jan. 28, 2008, 122 Stat. 229, § 2410q; renumbered § 2922i, Pub. L. 116–283, div. A, title XVIII, § 1879(a), Jan. 1, 2021, 134 Stat. 4293.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§ 1801(d), 1879(a), Jan. 1, 2021, 134 Stat. 4151, 4293, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, section 2410q of this title is transferred to this subchapter, inserted after section 2922h, and redesignated as this section. See Effective Date of 2021 Amendment note below.

AMENDMENTS

2021—Pub. L. 116–283 renumbered section 2410q of this title as this section.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

SUBCHAPTER III—GENERAL PROVISIONS

Sec.
2924. Definitions.
2925. Annual Department of Defense energy management reports.
2926. Operational energy.

AMENDMENTS

2019—Pub. L. 116–92, div. A, title III, § 320(c)(2), Dec. 20, 2019, 133 Stat. 1307, which directed amendment of the analysis at the beginning of this chapter by substituting ''Operational energy'' for ''Operational energy activities'' in item 2926, was executed in the analysis for this subchapter to reflect the probable intent of Congress.

2014—Pub. L. 113–291, div. A, title IX, § 901(*l*)(3), Dec. 19, 2014, 128 Stat. 3468, added item 2926.

2011—Pub. L. 112–81, div. B, title XXVIII, § 2821(a)(2)(B), Dec. 31, 2011, 125 Stat. 1691, added item 2924.

2008—Pub. L. 110–417, [div. A], title III, § 331(b)(2), Oct. 14, 2008, 122 Stat. 4420, added item 2925 and struck out former item 2925 ''Annual report''.

§ 2924. Definitions

In this chapter:

(1) The term ''defined fuel source'' means any of the following:

(A) Petroleum.

(B) Natural gas.

(C) Coal.

(D) Coke.

(2) The term ''energy-efficient maintenance'' includes—

(A) the repair of military vehicles, equipment, or facility and infrastructure systems, such as lighting, heating, or cooling equipment or systems, or industrial processes, by replacement with technology that—

(i) will achieve energy savings over the life-cycle of the equipment or system being repaired; and

(ii) will meet the same end needs as the equipment or system being repaired; and

(B) improvements in an operation or maintenance process, such as improved training or improved controls, that result in energy savings.

(3) The term ''hybrid'', with respect to a motor vehicle, means a motor vehicle that draws propulsion energy from onboard sources of stored energy that are both—

(A) an internal combustion or heat engine using combustible fuel; and

(B) a rechargeable energy storage system.

(4) The term ''operational energy'' means the energy required for training, moving, and sustaining military forces and weapons platforms for military operations. The term includes energy used by tactical power systems and generators and weapons platforms.

(5) The term ''petroleum'' means natural or synthetic crude, blends of natural or synthetic crude, and products refined or derived from natural or synthetic crude or from such blends.

(6) The term ''renewable energy source'' means energy generated from renewable sources, including the following:

(A) Solar, including electricity.

(B) Wind.

(C) Biomass.

(D) Landfill gas.

(E) Ocean, including tidal, wave, current, and thermal.

(F) Geothermal, including electricity and heat pumps.

(G) Municipal solid waste.

(H) New hydroelectric generation capacity achieved from increased efficiency or additions of new capacity at an existing hydroelectric project. For purposes of this subparagraph, hydroelectric generation capacity is ''new'' if it was placed in service on or after January 1, 1999.

(I) Thermal energy generated by any of the preceding sources.

(Added Pub. L. 112–81, div. B, title XXVIII, § 2821(a)(1), Dec. 31, 2011, 125 Stat. 1689; amended Pub. L. 115–91, div. B, title XXVIII, § 2831(c)(6), Dec. 12, 2017, 131 Stat. 1858.)

AMENDMENTS

2017—Pars. (3) to (7). Pub. L. 115–91 redesignated pars. (4) to (7) as (3) to (6), respectively, and struck out former par. (3) which defined ''energy security''.

§ 2925. Annual Department of Defense energy management reports

(a) ANNUAL REPORT RELATED TO INSTALLATIONS ENERGY MANAGEMENT, ENERGY RESILIENCE, AND MISSION ASSURANCE AND READINESS.—Not later than 120 days after the end of each fiscal year, the Secretary of Defense shall submit to the congressional defense committees an installation energy report detailing the fulfillment during that fiscal year of the energy performance goals for the Department of Defense under section 2911 of this title, including progress on energy resilience at military installations according to metrics developed by the Secretary. The Secretary shall ensure that mission operators of critical facilities provide to personnel of military installations any information necessary for the completion of such report. Each report shall contain the following:

(1) A description of the progress made to achieve the goals of the Energy Policy Act of 2005 (Public Law 109–58), section 2911(g) of this title, section 553 of the National Energy Conservation Policy Act (42 U.S.C. 8259b), the Energy Independence and Security Act of 2007 (Public Law 110–140), and the energy performance goals for the Department of Defense during the preceding fiscal year, including progress on energy resilience at military installations according to metrics developed by the Secretary.

(2) A description of the energy savings, return on investment, and enhancements to installation mission assurance realized by the fulfillment of the goals described in paragraph (1).

(3) Details of all utility outages degrading energy resilience at military installations (excluding planned outages for maintenance reasons), whether caused by on- or off-installation disruptions, including the total number of outages and their locations, the duration of each outage, the financial effect of each outage, whether or not the mission was affected, the downtimes (in minutes or hours) the mission can afford based on mission requirements and risk tolerances, the responsible authority managing the utility, and measures taken to mitigate the outage by the responsible authority.

(4) Details of a military installation's total energy requirements and critical energy requirements (including critical energy loads in electric and thermal loads and the associated downtime tolerances for critical energy loads), and the current energy resilience and emergency backup systems servicing critical energy requirements, including, at a minimum—

(A) energy resilience and emergency backup system power requirements;

(B) the critical missions, facility, or facilities serviced;

(C) system service life;

(D) capital, operations, maintenance, and testing costs; and

(E) other information the Secretary determines necessary.

(5) A list of energy resilience projects awarded by the Department of Defense by military department and military installation, whether appropriated or alternative financed for the reporting fiscal year, including project description, award date, the critical energy requirements serviced (including critical energy loads in electric and thermal loads), expected reliability of the project (as indicated in the awarded contract), life cycle costs, savings to investment, fuel type, and the type of appropriation or alternative financing used.

(6) A list of energy resilience projects planned by the Department of Defense by military department and military installation, whether appropriated or alternative financed for the next two fiscal years, including project description, fuel type, expected award date, and the type of appropriation or alternative financing expected for use.

(7) A description of the use of energy savings performance contracts (in this paragraph referred to as "ESPCs") by the Department of Defense, including—

(A) the total investment value of the total number of ESPCs per service for the previous five fiscal years;

(B) the location of facilities with ESPCs for the previous five fiscal years;

(C) any limitations on expanding ESPCs throughout the Department of Defense;

(D) the effect ESPCs have on military readiness; and

(E) any additional information the Secretary determines relevant.

(8) At the discretion of the Secretary of Defense, a classified annex, as appropriate.

(b) ANNUAL REPORT RELATED TO OPERATIONAL ENERGY.—(1) Simultaneous with the annual report required by subsection (a), the Secretary of Defense, acting through the Assistant Secretary of Defense for Energy, Installations, and Environment, shall submit to the congressional defense committees a report on operational energy management and the implementation of the operational energy strategy established pursuant to section 2926(d) of this title.

(2) The annual report under this subsection shall address and include the following:

(A) Statistical information on operational energy demands, in terms of expenditures and consumption, for the preceding five fiscal years, including funding made available in regular defense appropriations Acts and any supplemental appropriation Acts.

(B) An estimate of operational energy demands for the current fiscal year and next fiscal year, including funding requested to meet operational energy demands in the budget submitted to Congress under section 1105 of title 31 and in any supplemental requests.

(C) A description of each initiative related to the operational energy strategy and a summary of funds appropriated for each initiative in the previous fiscal year and current fiscal year and requested for each initiative for the next five fiscal years.

(D) An evaluation of progress made by the Department of Defense—

(i) in implementing the operational energy strategy, including the progress of key initiatives and technology investments related to operational energy demand and management; and

(ii) in meeting the operational energy goals set forth in the strategy.

(E) A description of the alternative fuel initiatives of the Department of Defense, including funding and expenditures by account and activity for the preceding fiscal year, including funding made available in regular defense appropriations Acts and any supplemental appropriation Acts.

(F) An evaluation of practices used in contingency operations during the previous fiscal year and potential improvements to such practices to reduce vulnerabilities associated with fuel convoys, including improvements in tent and structure efficiency, improvements in generator efficiency, and displacement of liquid fuels with on-site renewable energy generation. Such evaluation should identify challenges associated with the deployment of more efficient structures and equipment and renewable energy generation, and recommendations for overcoming such challenges.

(G) Such recommendations as the Assistant Secretary considers appropriate for additional changes in organization or authority within the Department of Defense to enable further implementation of the energy strategy and such other comments and recommendations as the Assistant Secretary considers appropriate.

(3) If a report under this subsection is submitted in a classified form, the Secretary shall concurrently submit to the congressional defense committees an unclassified version of the information required by this subsection.

(Added Pub. L. 109–364, div. B, title XXVIII, § 2851(a)(1), Oct. 17, 2006, 120 Stat. 2493; amended Pub. L. 110–417, [div. A], title III, § 331(a), (b)(1), div. B, title XXVIII, § 2832, Oct. 14, 2008, 122 Stat. 4419, 4420, 4732; Pub. L. 111–84, div. A, title III, § 332(a), Oct. 28, 2009, 123 Stat. 2257; Pub. L. 111–383, div. B, title XXVIII, § 2832(c)(1), Jan. 7, 2011, 124 Stat. 4469; Pub. L. 112–81, div. A, title III, §§ 314(b), 342, div. B, title XXVIII, §§ 2821(b)(4), 2822(d), 2824(b), 2826, Dec. 31, 2011, 125 Stat. 1357, 1370, 1691–1694; Pub. L. 112–239, div. A, title X, § 1076(c)(3), (d)(6), Jan. 2, 2013, 126 Stat. 1950, 1951; Pub. L. 113–291, div. A, title IX, § 901(k)(4), Dec. 19, 2014, 128 Stat. 3468; Pub. L. 114–92, div. A, title III, § 313, Nov. 25, 2015, 129 Stat. 789; Pub. L. 114–328, div. A, title III, § 311, Dec. 23, 2016, 130 Stat. 2072; Pub. L. 115–91, div. A, title X, § 1081(a)(48), div. B, title XXVIII, §§ 2831(c)(7), 2836, Dec. 12, 2017, 131 Stat. 1597, 1858, 1859; Pub. L. 115–232, div. A, title III, §§ 312(c), 314(b)(1), Aug. 13, 2018, 132 Stat. 1710, 1712; Pub. L. 116–92, div. A, title III, §§ 319(a), 320(a)(2)(B), Dec. 20, 2019, 133 Stat. 1305, 1306; Pub. L. 116–283, div. A, title III, § 336(a), Jan. 1, 2021, 134 Stat. 3533.)

References in Text

The Energy Policy Act of 2005, referred to in subsec. (a)(1), is Pub. L. 109–58, Aug. 8, 2005, 119 Stat. 594, which enacted chapter 149 of Title 42, The Public Health and Welfare, and enacted, amended, and repealed numerous other sections and notes in the Code. For complete classification of this Act to the Code, see Short Title note set out under section 15801 of Title 42 and Tables.

The Energy Independence and Security Act of 2007, referred to in subsec. (a)(1), is Pub. L. 110–140, Dec. 19, 2007, 121 Stat. 1492, which enacted chapter 152 of Title 42, The Public Health and Welfare, and enacted and amended numerous other sections and notes in the Code. Section 433 of the Act amended sections 6832 and 6834 of Title 42 and enacted provisions set out as a note under section 6834 of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 17001 of Title 42 and Tables.

Amendments

2021—Subsec. (a)(7), (8). Pub. L. 116–283 added par. (7) and redesignated former par. (7) as (8).

2019—Subsec. (a). Pub. L. 116–92, § 319(a)(1), (2), inserted ''and Readiness'' after ''Mission Assurance'' in heading and ''The Secretary shall ensure that mission operators of critical facilities provide to personnel of military installations any information necessary for the completion of such report.'' after ''by the Secretary.'' in introductory provisions.

Subsec. (a)(3). Pub. L. 116–92, § 320(a)(2)(B), substituted ''degrading energy resilience at military installations (excluding planned outages for maintenance reasons), whether caused by on- or off-installation disruptions, including the total number of outages and their locations, the duration of each outage, the financial effect of each outage, whether or not the mission was affected, the downtimes (in minutes or hours) the mission can afford based on mission requirements and risk tolerances, the responsible authority managing the utility, and measures taken to mitigate the outage by the responsible authority.'' for ''impacting energy resilience at military installations (excluding planned outages for maintenance reasons), whether caused by on- or off-installation disruptions, including the total number and location of outage, the duration of the outage, the financial impact of the outage, whether or not the mission was impacted, the downtimes (in minutes or hours) these missions can afford based on their mission requirements and risk tolerances, the responsible authority managing the utility, and measure taken to mitigate the outage by the responsible authority.''

Subsec. (a)(4). Pub. L. 116–92, § 319(a)(3), substituted ''electric and thermal loads'' for ''megawatts'' in introductory provisions.

Subsec. (a)(5). Pub. L. 116–92, § 319(a)(4), substituted ''electric and thermal loads'' for ''megawatts''.

2018—Subsec. (a). Pub. L. 115–232, § 312(c)(1), inserted '', including progress on energy resilience at military installations according to metrics developed by the Secretary'' after ''under section 2911 of this title'' in introductory provisions.

Subsec. (a)(3). Pub. L. 115–232, § 312(c)(2), substituted ''the downtimes (in minutes or hours) these missions can afford based on their mission requirements and risk tolerances'' for ''the mission requirements associated with disruption tolerances based on risk to mission''.

Subsec. (a)(4). Pub. L. 115–232, § 312(c)(3), inserted ''(including critical energy loads in megawatts and the associated downtime tolerances for critical energy loads)'' after ''energy requirements and critical energy requirements'' in introductory provisions.

Subsec. (a)(5) to (7). Pub. L. 115–232, § 312(c)(4), (5), added pars. (5) and (6) and redesignated former par. (5) as (7).

Subsec. (b)(1). Pub. L. 115–232, § 314(b)(1), substituted ''section 2926(d)'' for ''section 2926(b)''.

2017—Subsec. (a). Pub. L. 115–91, § 2831(c)(7)(A), substituted ''Energy Resilience'' for ''Resiliency'' in heading.

Subsec. (a)(1). Pub. L. 115–91, § 2836(1), inserted '', including progress on energy resilience at military installations according to metrics developed by the Secretary'' before period at end.

Pub. L. 115–91, § 2831(c)(7)(B), substituted ''2911(g)'' for ''2911(e)''.

Subsec. (a)(3). Pub. L. 115–91, § 2836(2), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''Details of all commercial utility outages caused by threats and those caused by hazards at military installations that last eight hours or longer, whether or not the outage was mitigated by backup power, including non-commercial utility outages and Department of

Defense-owned infrastructure, including the total number and location of outages, the financial impact of the outages, and measure taken to mitigate outages in the future at the affected locations and across the Department of Defense.''

Subsec. (a)(4), (5). Pub. L. 115–91, § 2836(3), (4), added par. (4) and redesignated former par. (4) as (5).

Subsec. (b)(1). Pub. L. 115–91, § 1081(a)(48), substituted ''section 2926(b)'' for ''section 138c''.

2016—Subsec. (a). Pub. L. 114–328, § 311(1), inserted '', Resiliency, and Mission Assurance'' after ''Annual Report Related to Installations Energy Management'' in heading.

Subsec. (a)(2) to (11). Pub. L. 114–328, § 311(2)–(4), added par. (2), redesignated pars. (9) and (11) as pars. (3) and (4), respectively, and struck out former pars. (2) to (8) and (10), which required various tables and descriptions in reports.

2015—Subsec. (a)(4). Pub. L. 114–92, § 313(1), (2), redesignated par. (5) as (4) and struck out former par. (4) which read as follows: ''In addition to the information contained in the table listing energy projects financed through third party financing mechanisms, as required by paragraph (3), the table also shall list any renewable energy certificates associated with each project, including information regarding whether the renewable energy certificates were bundled or unbundled, the purchasing authority for the renewable energy certificates, and the price of the associated renewable energy certificates.''

Subsec. (a)(5), (6). Pub. L. 114–92, § 313(2), redesignated pars. (6) and (8) as (5) and (6), respectively. Former par. (5) redesignated (4).

Subsec. (a)(7). Pub. L. 114–92, § 313(3), amended par. (7) generally. Prior to amendment, par. (7) read as follows: ''A description and estimate of the progress made by the military departments to meet the certification requirements for sustainable green-building standards in construction and major renovations as required by section 433 of the Energy Independence and Security Act of 2007 (Public Law 110–140; 121 Stat. 1612).''

Pub. L. 114–92, § 313(1), (2), redesignated par. (9) as (7) and struck out former par. (7) which read as follows: ''An estimate of the types and quantities of energy consumed by the Department of Defense and members of the armed forces and civilian personnel residing or working on military installations during the preceding fiscal year, including a breakdown of energy consumption by user groups and types of energy, energy costs, and the quantities of renewable energy produced or procured by the Department.''

Subsec. (a)(8). Pub. L. 114–92, § 313(2), redesignated par. (10) as (8). Former par. (8) redesignated (6).

Subsec. (a)(9). Pub. L. 114–92, § 313(4), amended par. (9) generally. Prior to amendment, par. (9) read as follows: ''Details of utility outages at military installations including the total number and locations of outages, the financial impact of the outage, and measures taken to mitigate outages in the future at the affected location and across the Department of Defense.''

Pub. L. 114–92, § 313(2) redesignated par. (11) as (9). Former par. (9) redesignated (7).

Subsec. (a)(10). Pub. L. 114–92, § 313(2), redesignated par. (12) as (10). Former par. (10) redesignated (8).

Subsec. (a)(11). Pub. L. 114–92, § 313(5) added par. (11). Former par. (11) redesignated (9).

Subsec. (a)(12). Pub. L. 114–92, § 313(2), redesignated par. (12) as (10).

2014—Subsec. (b)(1). Pub. L. 113–291 substituted ''Energy, Installations, and Environment'' for ''Operational Energy Plans and Programs''.

2013—Subsec. (a)(1). Pub. L. 112–239, § 1076(d)(6)(A), substituted ''section 553'' for ''section 533''.

Subsec. (b)(1). Pub. L. 112–239, § 1076(c)(3)(A), (d)(6)(B), substituted ''Assistant Secretary of Defense for'' for ''Director of'' and ''section 138c'' for ''section 139b''.

Subsec. (b)(2)(G). Pub. L. 112–239, § 1076(c)(3)(B), substituted ''Assistant Secretary'' for ''Director'' in two places.

2011—Subsec. (a). Pub. L. 112–81, § 2826, in introductory provisions, substituted ''Not later than 120 days after the end of each fiscal year, the Secretary of Defense shall submit to the congressional defense committees an installation energy report detailing the fulfillment during that fiscal year of the energy performance goals for the Department of Defense under section 2911 of this title. Each report shall contain the following:'' for ''As part of the annual submission of the energy performance goals for the Department of Defense under section 2911 of this title, the Secretary of Defense shall submit a report containing the following:''.

Subsec. (a)(3). Pub. L. 112–81, § 2822(d)(1), inserted ''whether the project incorporates energy security into its design,'' after ''through the duration of each such mechanism,''.

Subsec. (a)(4). Pub. L. 112–81, § 2824(b)(2), added par. (4). Former par. (4) redesignated (5).

Pub. L. 111–383, § 2832(c)(1), substituted ''energy performance master plan'' for ''energy performance plan''.

Subsec. (a)(5) to (9). Pub. L. 112–81, § 2824(b)(1), redesignated pars. (4) to (8) as (5) to (9), respectively.

Subsec. (a)(10). Pub. L. 112–81, § 2824(b)(1), redesignated par. (9) as (10). Former par. (10) redesignated (11).

Pub. L. 112–81, § 2822(d)(3), added par. (10). Former par. (10) redesignated (11).

Subsec. (a)(11). Pub. L. 112–81, § 2824(b)(1), redesignated par. (10) as (11). Former par. (11) redesignated (12).

Pub. L. 112–81, § 2822(d)(2), redesignated par. (10) as (11).

Subsec. (a)(12). Pub. L. 112–81, § 2824(b)(1), redesignated par. (11) as (12).

Subsec. (b)(2)(E). Pub. L. 112–81, § 314(b)(2), added subpar. (E). Former subpar. (E) redesignated (F).

Subsec. (b)(2)(F). Pub. L. 112–81, § 342(2), added subpar. (F). Former subpar. (F) redesignated (G).

Pub. L. 112–81, § 314(b)(1), redesignated subpar. (E) as (F).

Subsec. (b)(2)(G). Pub. L. 112–81, § 342(1), redesignated subpar. (F) as (G).

Subsec. (b)(4). Pub. L. 112–81, § 2821(b)(4), struck out par. (4) which read as follows: ''In this subsection, the term 'operational energy' means the energy required for training, moving, and sustaining military forces and weapons platforms for military operations. The term includes energy used by tactical power systems and generators and weapons platforms.''

2009—Subsec. (a). Pub. L. 111–84, in par. (1), inserted ''section 2911(e) of this title, section 533 of the National Energy Conservation Policy Act (42 U.S.C. 8259b),'' after ''(Public Law 109–58),'', added pars. (2), (3), (9), and (10), and redesignated former pars. (2) to (6) as (4) to (8), respectively.

2008—Pub. L. 110–417, § 331(b)(1), amended section catchline generally. Prior to amendment, catchline read as follows: ''Annual report''.

Subsec. (a). Pub. L. 110–417, § 2832, in heading substituted ''Annual Report Related to Installations Energy Management'' for ''Report Required'', in par. (1) inserted '', the Energy Independence and Security Act of 2007 (Public Law 110–140),'' after ''(Public Law 109–58)'', and added par. (6).

Subsec. (b). Pub. L. 110–417, § 331(a), added subsec. (b) and struck out former subsec. (b) which related to requirements for the initial report to be submitted by the Secretary of Defense.

EFFECTIVE DATE OF 2021 AMENDMENT

Pub. L. 116–283, div. A, title III, § 336(b), Jan. 1, 2021, 134 Stat. 3533, provided that: ''The reporting requirement under paragraph (7) of section 2925(a) of title 10, United States Code, as added by subsection (a) of this section, applies to reports submitted under such section 2925 for fiscal year 2021 and thereafter.''

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective Dec. 31, 2021, of provisions of this section requiring submittal of annual reports to Congress, see section 1061 of Pub. L. 114–328, set out as a note under section 111 of this title.

§ 2926. Operational energy

(a) OPERATIONAL ENERGY POLICY.—In carrying out section 2911(a) of this title, the Secretary of Defense shall ensure the types, availability, and use of operational energy promote the readiness of the armed forces for their military missions.

(b) AUTHORITIES.—The Secretary of Defense may—

(1) require the Secretary of a military department or the commander of a combatant command to assess the energy supportability of systems, capabilities, and plans;

(2) authorize the use of energy security, cost of backup power, and energy resilience as factors in the cost-benefit analysis for procurement of operational equipment; and

(3) in selecting equipment that will use operational energy, give favorable consideration to the acquisition of equipment that enhances energy security, energy resilience, energy conservation, and reduces logistical vulnerabilities.

(c) FUNCTIONS OF THE ASSISTANT SECRETARY OF DEFENSE FOR ENERGY, INSTALLATIONS, AND ENVIRONMENT.—The Assistant Secretary of Defense for Energy, Installations, and Environment, in consultation with the heads of the appropriate Department of Defense components, shall—

(1) oversee the operational energy activities of the Department of Defense and oversee the investments of the Department in such activities;

(2) make recommendations to the Secretary regarding the policies and investments that affect the use of operational energy across the Department of Defense;

(3) establish guidelines and recommend to the Secretary policy to improve warfighting capability through energy security and energy resilience;

(4) encourage collaboration with and leveraging of investments made by the Department of Energy, the Department of Agriculture, and other relevant Federal agencies to advance alternative fuel development to the benefit of the Department of Defense; and

(5) certify the budget associated with the investment of the Department of Defense in alternative fuel activities in accordance with subsection (e)(4).

(d) OPERATIONAL ENERGY STRATEGY.—(1) The Assistant Secretary of Defense for Energy, Installations, and Environment shall be responsible for the establishment and maintenance of a department-wide transformational strategy for operational energy. The strategy shall establish near-term, mid-term, and long-term goals, performance metrics to measure progress in meeting the goals, and a plan for implementation of the strategy within the military departments, the Office of the Secretary of Defense, and the Defense Agencies.

(2) The Secretary of each military department shall designate a senior official within each armed force under the jurisdiction of the Secretary who shall be responsible for operational energy plans and programs for that armed force. The officials so designated shall be responsible for coordinating with the Assistant Secretary and implementing initiatives pursuant to the strategy with regard to that official's armed force.

(3) The Chairman of the Joint Chiefs of Staff shall designate a senior official under the jurisdiction of the Chairman who shall be responsible for operational energy plans and programs for the Joint Chiefs of Staff and the Joint Staff. The official so designated shall be responsible for coordinating with the Assistant Secretary and implementing initiatives pursuant to the strategy with regard to the Joint Chiefs of Staff and the Joint Staff.

(4) By authority of the Secretary of Defense, the Assistant Secretary shall prescribe policies and procedures for the implementation of the strategy. The Assistant Secretary shall make recommendations to the Secretary of Defense and Deputy Secretary of Defense and provide guidance to the Secretaries of the military departments and the officials designated under paragraph (2) with respect to specific operational energy plans and programs to be carried out pursuant to the strategy.

(5) Updates to the strategy required by paragraph (1) shall be submitted to the congressional defense committees as soon as practicable after the modifications to the strategy are made.

(e) BUDGETARY AND FINANCIAL MATTERS.—(1) The Assistant Secretary of Defense for Energy, Installations, and Environment shall review and make recommendations to the Secretary of Defense regarding all budgetary and financial matters relating to the operational energy strategy.

(2) The Secretary of Defense shall require that the Secretary of each military department and the head of each Defense Agency with responsibility for executing activities associated with the strategy transmit their proposed budget for those activities for a fiscal year to the Assistant Secretary for review before submission of the proposed budget to the Under Secretary of Defense (Comptroller).

(3) The Assistant Secretary shall review a proposed budget transmitted under paragraph (2) for a fiscal year and, not later than January 31 of the preceding fiscal year, shall submit to the Secretary of Defense a report containing the comments of the Assistant Secretary with respect to the proposed budget, together with the certification of the Assistant Secretary regarding whether the proposed budget is adequate for implementation of the strategy.

(4) Not later than 30 days after the date on which the budget for a fiscal year is submitted to Congress pursuant to section 1105 of title 31, the Secretary of Defense shall submit to Congress a report on the proposed budgets for that fiscal year that were reviewed by the Assistant Secretary under paragraph (3).

(5) For each proposed budget covered by a report under paragraph (4) for which the certification of the Assistant Secretary under paragraph (3) is that the budget is not adequate for implementation of the strategy, the report shall include the following:

(A) A copy of the report set forth in paragraph (3).

(B) A discussion of the actions that the Secretary proposes to take, together with any recommended legislation that the Secretary considers appropriate, to address the inadequacy of the proposed budget.

(C) An appendix prepared by the Chairman of the Joint Chiefs of Staff describing—

(i) the progress made by the Joint Requirements Oversight Council in implementing the energy Key Performance Parameter; and

(ii) details regarding how operational energy is being addressed in defense planning, scenarios, support to strategic analysis, and resulting policy to improve combat capability.

(D) An appendix prepared by the Under Secretary for Defense for Acquisition and Sustainment certifying that and describing how the acquisition system is addressing operational energy in the procurement process, including long-term sustainment considerations, and how programs are extending combat capability as a result of these considerations.

(E) A separate statement of estimated expenditures and requested appropriations for that fiscal year for the activities of the Assistant Secretary in carrying out the duties of the Assistant Secretary.

(F) Any additional comments that the Secretary considers appropriate regarding the inadequacy of the proposed budgets.

(6) For each proposed budget covered by a report under paragraph (4) for which the certification of the Assistant Secretary under paragraph (3) is that the budget is adequate for implementation of the strategy, the report shall include the items set forth in subparagraphs (C), (D), and (E) of paragraph (5).

(f) ACCESS TO INITIATIVE RESULTS AND RECORDS.—(1) The Secretary of a military department shall submit to the Assistant Secretary of Defense for Energy, Installations, and Environment the results of all studies and initiatives conducted by the military department in connection with the operational energy strategy.

(2) The Assistant Secretary shall have access to all records and data in the Department of Defense (including the records and data of each military department) necessary in order to permit the Assistant Secretary to carry out the duties of the Assistant Secretary.

(Added and amended Pub. L. 113–291, div. A, title IX, § 901(g)(1), Dec. 19, 2014, 128 Stat. 3464; Pub. L. 114–92, div. A, title X, § 1081(a)(12), (b)(2), Nov. 25, 2015, 129 Stat. 1001; Pub. L. 115–232, div. A, title III, § 314(a), Aug. 13, 2018, 132 Stat. 1711; Pub. L. 116–92, div. A, title III, § 320(a)(1)(B), (c)(1), title IX, § 902(83), Dec. 20, 2019, 133 Stat. 1306, 1307, 1553.)

CODIFICATION

Subsec. (c)(3) of section 138c of this title, which was transferred to subsec. (a) (now (c)) of this section by Pub. L. 113–291, § 901(g)(1)(B), was based on Pub. L. 112–81, div. A, title III, § 314(a), Dec. 31, 2011, 125 Stat. 1357. Subsecs. (d) to (f) of section 138c of this title, which were transferred to subsecs. (b) to (d) (now (d) to (f)), respectively, of this section by Pub. L. 113–291, § 901(g)(1)(D), were based on Pub. L. 110–417, [div. A], title IX, § 902(a), Oct. 14, 2008, 122 Stat. 4564; amended Pub. L. 111–383, div. A, title IX, § 901(b)(7)(B)–(D), Jan. 7, 2011, 124 Stat. 4320; Pub. L. 112–81, div. A, title III, § 311, Dec. 31, 2011, 125 Stat. 1351; Pub. L. 113–66, div. A, title III, § 311, Dec. 26, 2013, 127 Stat. 728.

AMENDMENTS

2019—Pub. L. 116–92, § 320(c)(1), substituted ''Operational energy'' for ''Operational energy activities'' in section catchline.

Subsec. (d)(1). Pub. L. 116–92, § 320(a)(1)(B), substituted ''the Defense Agencies'' for ''Defense Agencies''.

Subsec. (e)(5)(D). Pub. L. 116–92, § 902(83), substituted ''Under Secretary for Defense for Acquisition and Sustainment'' for ''Under Secretary of Defense for Acquisition, Technology, and Logistics''.

2018—Subsecs. (a), (b). Pub. L. 115–232, § 314(a)(2), added subsecs. (a) and (b). Former subsecs. (a) and (b) redesignated (c) and (d), respectively.

Subsec. (c). Pub. L. 115–232, § 314(a)(3)(A), (B), substituted ''Functions of the Assistant Secretary of Defense for Energy, Installations, and Environment'' for ''Alternative Fuel Activities'' in heading and ''heads of the appropriate Department of Defense components'' for ''heads of the military departments and the Assistant Secretary of Defense for Research and Engineering'' in introductory provisions.

Pub. L. 115–232, § 314(a)(1), redesignated subsec. (a) as (c). Former subsec. (c) redesignated (e).

Subsec. (c)(1). Pub. L. 115–232, § 314(a)(3)(C), substituted ''oversee the operational energy activities'' for ''lead the alternative fuel activities''.

Subsec. (c)(2). Pub. L. 115–232, § 314(a)(3)(D), substituted ''regarding the policies and investments that affect the use of operational energy across the Department of Defense'' for ''regarding the development of alternative fuels by the military departments and the Office of the Secretary of Defense''.

Subsec. (c)(3). Pub. L. 115–232, § 314(a)(3)(E), substituted ''recommend to the Secretary policy to improve warfighting capability through energy security and energy resilience'' for ''prescribe policy to streamline the investments in alternative fuel activities across the Department of Defense''.

Subsec. (c)(5). Pub. L. 115–232, § 314(a)(3)(F), substituted ''subsection (e)(4)'' for ''subsection (c)(4)''.

Subsecs. (d) to (f). Pub. L. 115–232, § 314(a)(1), redesignated subsecs. (b) to (d) as (d) to (f), respectively.

2015—Pub. L. 114–92, § 1081(a)(12), substituted ''for Energy, Installations, and Environment'' for ''for Installations, Energy, and Environment'' in subsecs. (a) to (d).

Subsec. (b)(4). Pub. L. 114–92, § 1081(b)(2), amended directory language of Pub. L. 113–291, § 901(g)(1)(F). See 2014 Amendment note below.

2014—Subsec. (a). Pub. L. 113–291, § 901(g)(1)(E), inserted ''of Defense for Installations, Energy, and Environment'' after ''The Assistant Secretary'' in introductory provisions.

Pub. L. 113–291, § 901(g)(1)(B)–(C)(ii), transferred subsec. (c)(3) of section 138c of this title to subsec. (a) of this section, inserted heading, and redesignated subpars. (A) to (E) as pars. (1) to (5), respectively. See Codification note above.

Subsec. (a)(5). Pub. L. 113–291, § 901(g)(1)(C)(iii), substituted ''subsection (c)(4)'' for ''subsection (e)(4)''.

Subsec. (b). Pub. L. 113–291, § 901(g)(1)(D), transferred subsec. (d) of section 138c of this title to subsec. (b) of this section. See Codification note above.

Subsec. (b)(1). Pub. L. 113–291, § 901(g)(1)(E), inserted ''of Defense for Installations, Energy, and Environment'' after ''The Assistant Secretary''.

Subsec. (b)(4). Pub. L. 113–291, § 901(g)(1)(F), as amended by Pub. L. 114–92, § 1081(b)(2), substituted ''make recommendations to the Secretary of Defense and Deputy Secretary of Defense and provide guidance to the Secretaries of the military departments'' for ''provide guidance to, and consult with, the Secretary of Defense, the Deputy Secretary of Defense, the Secretaries of the military departments,''.

Subsec. (c). Pub. L. 113–291, § 901(g)(1)(D), transferred subsec. (e) of section 138c of this title to subsec. (c) of this section. See Codification note above.

Subsec. (c)(1). Pub. L. 113–291, § 901(g)(1)(E), inserted ''of Defense for Installations, Energy, and Environment'' after ''The Assistant Secretary''.

Subsec. (c)(4) to (6). Pub. L. 113–291, § 901(g)(1)(G), amended pars. (4) to (6) generally. Prior to amendment, pars. (4) to (6) required the Secretary of Defense to report to Congress, by a certain date, on proposed budgets not certified by the Assistant Secretary under par. (3), including a separate statement of certain estimated expenditures and requested appropriations.

Subsec. (d). Pub. L. 113–291, § 901(g)(1)(D), transferred subsec. (f) of section 138c of this title to subsec. (d) of this section. See Codification note above.

Subsec. (d)(1). Pub. L. 113–291, § 901(g)(1)(E), inserted ''of Defense for Installations, Energy, and Environment'' after ''the Assistant Secretary''.

EFFECTIVE DATE OF 2015 AMENDMENT

Pub. L. 114–92, div. A, title X, § 1081(b), Nov. 25, 2015, 129 Stat. 1001, provided in part that the amendment made by section 1081(b) is effective as of Dec. 19, 2014, and as if included in Pub. L. 113–291 as enacted.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective Dec. 31, 2021, of provisions in subsec. (c)(4) of this section requiring submittal of annual report to Congress, see section 1061 of Pub. L. 114–328, set out as a note under section 111 of this title.

PART V—ACQUISITION

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203.	General Matters	3021
205.	Defense Acquisition System	3051
207.	Budgeting and Appropriations Matters	3101
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	SUBPART B—ACQUISITION PLANNING	
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222.	Independent Cost Estimation and Cost Analysis	3221
223.	Other Provisions Relating to Planning and Solicitation Generally	3241
225.	Planning and Solicitation Relating to Particular Items or Services	3271
	SUBPART C—CONTRACTING METHODS AND CONTRACT TYPES	
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242.	Specific Types of Contracts	3321
243.	Other Matters Relating to Awarding and Types of Contracts [1]	3341
244.	Undefinitized Contractual Actions	3371
245.	Task and Delivery Order Contracts (Multiple Award Contracts)	3401
247.	Acquisition of Commercial Items	3451
249.	Multiyear Contracts	3501
251.	Simplified Acquisition Procedures	3551
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255.	Contracting With or Through Other Agencies	3651
257.	Contracts for Long-Term Lease or Charter of Vessels, Aircraft, and Combat [1]	3671 [2]
258.	Other Types of Contracts Used for Procurements for Particular Purposes [3]	3681
	SUBPART D—GENERAL CONTRACTING REQUIREMENTS	
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272.	Other Provisions Relating to Cost or Pricing Data	3721
273.	Allowable Costs	3741
275.	Proprietary Contractor Data and Rights in Technical Data	3771
277.	Contract Financing	3801
279.	Contractor Audits and Accounting	3841
281.	Claims and Disputes	3861
283.	Foreign Acquisitions	3881
287.	Socioeconomic Programs	3961
	Subpart E—Research and Engineering	
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303.	Innovation	4061 [2]
305.	Department of Defense Laboratories	4101 [2]
307.	Research and Development Centers and Facilities	4141 [2]
309.	Test and Evaluation	4171 [2]
	Subpart F—Major Systems, Major Defense Acquisition Programs, and Weapon Systems Development	
321.	General Matters	4201 [2]
322.	Major Systems and Major Defense Acquisition Programs Generally	4211 [2]
323.	Life-Cycle And Sustainment	4321 [2]
324.	Program Status—Selected Acquisition Reports	4350 [2]
325.	Cost Growth—Unit Cost Reports (Nunn-McCurdy)	4371 [2]
327.	Weapon Systems Development and Related Matters	4401 [2]
	SUBPART G—OTHER SPECIAL CATEGORIES OF CONTRACTING	
341.	Acquisition of Services Generally	4501
343.	Acquisition of Services of Contractors Performing Private Security Functions	4541
345.	Acquisition of Information Technology	4571
	SUBPART H—CONTRACT MANAGEMENT	
361.	Contract Administration	4601
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365.	Contractor Workforce	4701
367.	Other Administrative and Miscellaneous Provisions [1]	4751
	SUBPART I—DEFENSE INDUSTRIAL BASE	
381.	Defense Industrial Base Generally	4801
382.	Policies and Planning	4811
383.	Development, Application, & Support of Dual-Use Technologies [1]	4831
384.	Manufacturing Technology	4841
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387.	Small Business Programs	4901
388.	Procurement Technical Assistance Cooperative Agreement Program	4951
389.	Loan Guarantee Programs	4971

[1] So in original. Does not conform to chapter heading.

[2] Editorially supplied.

[3] Editorially supplied. Chapter 258 added by Pub. L. 116–283 without corresponding amendment of part analysis.

AMENDMENTS

2021—Pub. L. 116–283, div. A, title XVIII, §§ 1811(a), 1816(a), 1824(b), 1825(*l*), 1831(*l*), 1833(a)(2), 1841(a)(2), 1846(a), 1856(a), 1866(a), 1873(f), Jan. 1, 2021, 134 Stat. 4164, 4181, 4205, 4208, 4217, 4226, 4243, 4247, 4273, 4279, 4290, added items for chapters 221 to 225, 241 to 244, 253, 257, 271, 272, and 275, items for subpart E and chapters 301 to 309 and for subpart F and chapters 321 to 327, and items for chapters 341, 343, 381 to 385, and 387 to 389 and struck out former items for chapters 221 ''Planning and Solicitation Generally'', 223 ''Planning and Solicitation Relating to Particular Items or Services'', 241 ''Awarding of Contracts'', 243 ''Specific Types of Contracts'', 253 ''Emergency and Rapid Acquisitions'', 271 ''Truthful Cost or Pricing Data'', 275 ''Proprietary Contractor Data and Technical Data'', and 285 ''Small Business Programs'', items for subpart E ''special categories of contracting: major defense acquisition programs and major systems'' and chapters 301 ''Major Defense Acquisition Programs'', 303 ''Weapon Systems Development and Related Matters'', and 305 ''Other Matters Relating to Major Systems'' and for subpart F ''special categories of contracting: research, development, test, and evaluation'' and for chapters 321 ''Research and Development Generally'', 323 ''Innovation'', 325 ''Department of Defense Laboratories'', 327 ''Research and De-

velopment Centers and Facilities'', and 329 ''Operational Test and Evaluation; Developmental Test and Evaluation'', and former items for chapters 341 ''Contracting for Performance of Civilian Commercial or Industrial Type Functions'', 343 ''Acquisition of Services'', 381 ''Defense Industrial Base Generally'', 383 ''Loan Guarantee Programs'', and 385 ''Procurement Technical Assistance Cooperative Agreement Program''.

2018—Pub. L. 115–232, div. A, title VIII, § 801(a), Aug. 13, 2018, 132 Stat. 1825, added analysis for part V consisting of items for subparts A to I and chapters 201 to 385. Capitalization in subpart headings is as it appears in the original.

REDESIGNATIONS BY PUB. L. 115–232 OF CHAPTERS AND SECTIONS IN FORMER SUBTITLES B TO D

Chapters 301 to 953 and sections 3001 to 9448 of this title, which formerly comprised subtitles B to D, were significantly redesignated by Pub. L. 115–232, div. A, title VIII, §§ 806–808, Aug. 13, 2018, 132 Stat. 1832–1839. The chapter and section redesignations made by Pub. L. 115–232 throughout subtitles B to D of this title are shown in the following table:

TABLE SHOWING REDESIGNATIONS MADE BY PUB. L. 115–232

Title 10 Chapter or Section Before Redesignation	*Title 10 Chapter or Section After Redesignation*
Ch. 301	10 U.S.C. Ch. 701
3001	10 U.S.C. 7001
Ch. 303	10 U.S.C. Ch. 703
3011	10 U.S.C. 7011
3012	10 U.S.C. 7012
3013	10 U.S.C. 7013
3014	10 U.S.C. 7014
3015	10 U.S.C. 7015
3016	10 U.S.C. 7016
3017	10 U.S.C. 7017
3018	10 U.S.C. 7018
3019	10 U.S.C. 7019
3020	10 U.S.C. 7020
3021	10 U.S.C. 7021
3022	10 U.S.C. 7022
3023	10 U.S.C. 7023
3024	10 U.S.C. 7024
Ch. 305	10 U.S.C. Ch. 705
3031	10 U.S.C. 7031
3032	10 U.S.C. 7032
3033	10 U.S.C. 7033
3034	10 U.S.C. 7034
3035	10 U.S.C. 7035
3036	10 U.S.C. 7036
3037	10 U.S.C. 7037
3038	10 U.S.C. 7038
Ch. 307	10 U.S.C. Ch. 707
3061	10 U.S.C. 7061
3062	10 U.S.C. 7062
3063	10 U.S.C. 7063
3064	10 U.S.C. 7064
3065	10 U.S.C. 7065
3067	10 U.S.C. 7067
3068	10 U.S.C. 7068
3069	10 U.S.C. 7069
3070	10 U.S.C. 7070
3072	10 U.S.C. 7072
3073	10 U.S.C. 7073
3074	10 U.S.C. 7074
3075	10 U.S.C. 7075
3081	10 U.S.C. 7081
3083	10 U.S.C. 7083
3084	10 U.S.C. 7084
Ch. 331	10 U.S.C. Ch. 711
3201	10 U.S.C. 7101
3210	10 U.S.C. 7110
Ch. 333	10 U.S.C. Ch. 713
3251	10 U.S.C. 7131
3258	10 U.S.C. 7138
3262	10 U.S.C. 7142
Ch. 335	10 U.S.C. Ch. 715
3281	10 U.S.C. 7151
3282	10 U.S.C. 7152
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3446	10 U.S.C. 7176
Ch. 341	10 U.S.C. Ch. 721
3491	10 U.S.C. 7191
3503	10 U.S.C. 7203
Ch. 343	10 U.S.C. Ch. 723
3533	10 U.S.C. 7213
3534	10 U.S.C. 7214
3536	10 U.S.C. 7216
3547	10 U.S.C. 7217
3548	10 U.S.C. 7218

TABLE SHOWING REDESIGNATIONS MADE BY PUB. L. 115–232—Continued

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Ch. 345	10 U.S.C. Ch. 725
3572	10 U.S.C. 7222
3575	10 U.S.C. 7225
3579	10 U.S.C. 7229
3581	10 U.S.C. 7231
3583	10 U.S.C. 7233
Ch. 349	10 U.S.C. Ch. 729
3639	10 U.S.C. 7239
Ch. 353	10 U.S.C. Ch. 733
3681	10 U.S.C. 7251
3384	10 U.S.C. 7252
3691	10 U.S.C. 7253
Ch. 355	10 U.S.C. Ch. 735
3723	10 U.S.C. 7263
Ch. 357	10 U.S.C. Ch. 737
3741	10 U.S.C. 7271
3742	10 U.S.C. 7272
3743	10 U.S.C. 7273
3744	10 U.S.C. 7274
3745	10 U.S.C. 7275
3746	10 U.S.C. 7276
3747	10 U.S.C. 7277
3748	10 U.S.C. 7278
3749	10 U.S.C. 7279
3750	10 U.S.C. 7280
3751	10 U.S.C. 7281
3752	10 U.S.C. 7282
3753	10 U.S.C. 7283
3754	10 U.S.C. 7284
3755	10 U.S.C. 7285
3756	10 U.S.C. 7286
Ch. 367	10 U.S.C. Ch. 741
3911	10 U.S.C. 7311
3914	10 U.S.C. 7314
3917	10 U.S.C. 7317
3918	10 U.S.C. 7318
3920	10 U.S.C. 7320
3921	10 U.S.C. 7321
3924	10 U.S.C. 7324
3925	10 U.S.C. 7325
3926	10 U.S.C. 7326
3929	10 U.S.C. 7329
Ch. 369	10 U.S.C. Ch. 743
3961	10 U.S.C. 7341
3962	10 U.S.C. 7342
3963	10 U.S.C. 7343
3964	10 U.S.C. 7344
3965	10 U.S.C. 7345
3966	10 U.S.C. 7346
Ch. 371	10 U.S.C. Ch. 745
3991	10 U.S.C. 7361
3992	10 U.S.C. 7362
Ch. 373	10 U.S.C. Ch. 747
4021	10 U.S.C. 7371
4024	10 U.S.C. 7374
4025	10 U.S.C. 7375
4027	10 U.S.C. 7377
Ch. 375	10 U.S.C. Ch. 749
4061	10 U.S.C. 7381
Ch. 401	10 U.S.C. Ch. 751
4301	10 U.S.C. 7401
4302	10 U.S.C. 7402
4303	10 U.S.C. 7403
4306	10 U.S.C. 7406
4309	10 U.S.C. 7409
4314	10 U.S.C. 7414
4315	10 U.S.C. 7415
4317	10 U.S.C. 7417
4318	10 U.S.C. 7418
4319	10 U.S.C. 7419
4320	10 U.S.C. 7420
4321	10 U.S.C. 7421
Ch. 403	10 U.S.C. Ch. 753
4331	10 U.S.C. 7431
4332	10 U.S.C. 7432
4333	10 U.S.C. 7433
4333a	10 U.S.C. 7433a
4334	10 U.S.C. 7434
4335	10 U.S.C. 7435
4336	10 U.S.C. 7436
4337	10 U.S.C. 7437
4338	10 U.S.C. 7438
4340	10 U.S.C. 7440
4341	10 U.S.C. 7441
4341a	10 U.S.C. 7441a
4342	10 U.S.C. 7442
4343	10 U.S.C. 7443
4346	10 U.S.C. 7446
4347	10 U.S.C. 7447
4348	10 U.S.C. 7448
4349	10 U.S.C. 7449
4350	10 U.S.C. 7450
4351	10 U.S.C. 7451
4352	10 U.S.C. 7452
4353	10 U.S.C. 7453
4354	10 U.S.C. 7454
4355	10 U.S.C. 7455
4356	10 U.S.C. 7456

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4357	10 U.S.C. 7457
4358	10 U.S.C. 7458
4359	10 U.S.C. 7459
4360	10 U.S.C. 7460
4361	10 U.S.C. 7461
4362	10 U.S.C. 7462
Ch. 407	10 U.S.C. Ch. 757
4411	10 U.S.C. 7481
4412	10 U.S.C. 7482
4413	10 U.S.C. 7483
4414	10 U.S.C. 7484
4416	10 U.S.C. 7486
4417	10 U.S.C. 7487
Ch. 433	10 U.S.C. Ch. 763
4532	10 U.S.C. 7532
4536	10 U.S.C. 7536
4540	10 U.S.C. 7540
4541	10 U.S.C. 7541
4542	10 U.S.C. 7542
4543	10 U.S.C. 7543
4544	10 U.S.C. 7544
Ch. 434	10 U.S.C. Ch. 764
4551	10 U.S.C. 7551
4552	10 U.S.C. 7552
4553	10 U.S.C. 7553
4554	10 U.S.C. 7554
4555	10 U.S.C. 7555
Ch. 435	10 U.S.C. Ch. 765
4561	10 U.S.C. 7561
4562	10 U.S.C. 7562
4563	10 U.S.C. 7563
4564	10 U.S.C. 7564
4565	10 U.S.C. 7565
Ch. 437	10 U.S.C. Ch. 767
4591	10 U.S.C. 7591
4592	10 U.S.C. 7592
4593	10 U.S.C. 7593
4594	10 U.S.C. 7594
4595	10 U.S.C. 7595
Ch. 439	10 U.S.C. Ch. 769
4621	10 U.S.C. 7621
4622	10 U.S.C. 7622
4624	10 U.S.C. 7624
4625	10 U.S.C. 7625
4626	10 U.S.C. 7626
4627	10 U.S.C. 7627
4628	10 U.S.C. 7628
4629	10 U.S.C. 7629
Ch. 441	10 U.S.C. Ch. 771
4652	10 U.S.C. 7652
4653	10 U.S.C. 7653
4654	10 U.S.C. 7654
4655	10 U.S.C. 7655
4656	10 U.S.C. 7656
4657	10 U.S.C. 7657
Ch. 443	10 U.S.C. Ch. 773
4682	10 U.S.C. 7682
4683	10 U.S.C. 7683
4684	10 U.S.C. 7684
4685	10 U.S.C. 7685
4686	10 U.S.C. 7686
4687	10 U.S.C. 7687
4688	10 U.S.C. 7688
4689	10 U.S.C. 7689
4690	10 U.S.C. 7690
Ch. 445	10 U.S.C. Ch. 775
4712	10 U.S.C. 7712
4714	10 U.S.C. 7714
Ch. 446	10 U.S.C. Ch. 776
4721	10 U.S.C. 7721
4722	10 U.S.C. 7722
4723	10 U.S.C. 7723
4724	10 U.S.C. 7724
4725	10 U.S.C. 7725
4726	10 U.S.C. 7726
4727	10 U.S.C. 7727
Ch. 447	10 U.S.C. Ch. 777
4749	10 U.S.C. 7749
Ch. 449	10 U.S.C. Ch. 779
4771	10 U.S.C. 7771
4772	10 U.S.C. 7772
4776	10 U.S.C. 7776
4777	10 U.S.C. 7777
4778	10 U.S.C. 7778
4779	10 U.S.C. 7779
4780	10 U.S.C. 7780
4781	10 U.S.C. 7781
Ch. 451	10 U.S.C. Ch. 781
4801	10 U.S.C. 7801
4802	10 U.S.C. 7802
4803	10 U.S.C. 7803
4804	10 U.S.C. 7804
4806	10 U.S.C. 7806
Ch. 453	10 U.S.C. Ch. 783
4831	10 U.S.C. 7831
4837	10 U.S.C. 7837
4838	10 U.S.C. 7838
4839	10 U.S.C. 7839
4840	10 U.S.C. 7840
4841	10 U.S.C. 7841
4842	10 U.S.C. 7842
Ch. 501	10 U.S.C. Ch. 801
5001	10 U.S.C. 8001
Ch. 503	10 U.S.C. Ch. 803
5011	10 U.S.C. 8011
5012	10 U.S.C. 8012
5013	10 U.S.C. 8013
5013a	10 U.S.C. 8013a
5014	10 U.S.C. 8014
5015	10 U.S.C. 8015
5016	10 U.S.C. 8016
5017	10 U.S.C. 8017
5018	10 U.S.C. 8018
5019	10 U.S.C. 8019
5020	10 U.S.C. 8020
5022	10 U.S.C. 8022
5023	10 U.S.C. 8023
5024	10 U.S.C. 8024
5025	10 U.S.C. 8025
5026	10 U.S.C. 8026
5027	10 U.S.C. 8027
5028	10 U.S.C. 8028
Ch. 505	10 U.S.C. Ch. 805
5031	10 U.S.C. 8031
5032	10 U.S.C. 8032
5033	10 U.S.C. 8033
5035	10 U.S.C. 8035
5036	10 U.S.C. 8036
5037	10 U.S.C. 8037
5038	10 U.S.C. 8038
Ch. 506	10 U.S.C. Ch. 806
5041	10 U.S.C. 8041
5042	10 U.S.C. 8042
5043	10 U.S.C. 8043
5044	10 U.S.C. 8044
5045	10 U.S.C. 8045
5046	10 U.S.C. 8046
5047	10 U.S.C. 8047
Ch. 507	10 U.S.C. Ch. 807
5061	10 U.S.C. 8061
5062	10 U.S.C. 8062
5063	10 U.S.C. 8063
Ch. 513	10 U.S.C. Ch. 809
5131	10 U.S.C. 8071
5132	10 U.S.C. 8072
5135	10 U.S.C. 8075
5137	10 U.S.C. 8077
5138	10 U.S.C. 8078
5139	10 U.S.C. 8079
5141	10 U.S.C. 8081
5142	10 U.S.C. 8082
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5143	10 U.S.C. 8083
5144	10 U.S.C. 8084
5148	10 U.S.C. 8088
5149	10 U.S.C. 8089
5150	10 U.S.C. 8090
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5441	10 U.S.C. 8101
5450	10 U.S.C. 8102
5451	10 U.S.C. 8103
Ch. 535	10 U.S.C. Ch. 812
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5502	10 U.S.C. 8112
5503	10 U.S.C. 8113
5508	10 U.S.C. 8118
Ch. 537	10 U.S.C. Ch. 813
5540	10 U.S.C. 8120
Ch. 539	10 U.S.C. Ch. 815
5582	10 U.S.C. 8132
5585	10 U.S.C. 8135
5587	10 U.S.C. 8137
5587a	10 U.S.C. 8138
5589	10 U.S.C. 8139
5596	10 U.S.C. 8146
Ch. 551	10 U.S.C. Ch. 821
5942	10 U.S.C. 8162
5943	10 U.S.C. 8163
5944	10 U.S.C. 8164
5945	10 U.S.C. 8165
5946	10 U.S.C. 8166
5947	10 U.S.C. 8167
5948	10 U.S.C. 8168
5949	10 U.S.C. 8169
5951	10 U.S.C. 8171
5952	10 U.S.C. 8172
Ch. 553	10 U.S.C. Ch. 823
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5985	10 U.S.C. 8185
5986	10 U.S.C. 8186
Ch. 555	10 U.S.C. Ch. 825
6011	10 U.S.C. 8211
6012	10 U.S.C. 8212
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6014	10 U.S.C. 8214
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6029	10 U.S.C. 8220
6031	10 U.S.C. 8221
6032	10 U.S.C. 8222
6035	10 U.S.C. 8225
6036	10 U.S.C. 8226
Ch. 557	10 U.S.C. Ch. 827
6081	10 U.S.C. 8241
6082	10 U.S.C. 8242
6083	10 U.S.C. 8243
6084	10 U.S.C. 8244
6085	10 U.S.C. 8245
6086	10 U.S.C. 8246
6087	10 U.S.C. 8247
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6113	10 U.S.C. 8253
Ch. 561	10 U.S.C. Ch. 831
6141	10 U.S.C. 8261
6151	10 U.S.C. 8262
6152	10 U.S.C. 8263
6153	10 U.S.C. 8264
6154	10 U.S.C. 8265
6155	10 U.S.C. 8266
6156	10 U.S.C. 8267
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6161	10 U.S.C. 8271
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6203	10 U.S.C. 8283
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6221	10 U.S.C. 8286
6222	10 U.S.C. 8287
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6241	10 U.S.C. 8291
6242	10 U.S.C. 8292
6243	10 U.S.C. 8293
6244	10 U.S.C. 8294
6245	10 U.S.C. 8295
6246	10 U.S.C. 8296
6247	10 U.S.C. 8297
6248	10 U.S.C. 8298
6249	10 U.S.C. 8299
6250	10 U.S.C. 8300
6251	10 U.S.C. 8301
6252	10 U.S.C. 8302
6253	10 U.S.C. 8303
6254	10 U.S.C. 8304
6255	10 U.S.C. 8305
6256	10 U.S.C. 8306
6257	10 U.S.C. 8307
6258	10 U.S.C. 8308
Ch. 569	10 U.S.C. Ch. 839
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6321	10 U.S.C. 8321
6322	10 U.S.C. 8322
6323	10 U.S.C. 8323
6324	10 U.S.C. 8324
6325	10 U.S.C. 8325
6326	10 U.S.C. 8326
6327	10 U.S.C. 8327
6328	10 U.S.C. 8328
6329	10 U.S.C. 8329
6330	10 U.S.C. 8330
6331	10 U.S.C. 8331
6332	10 U.S.C. 8332
6333	10 U.S.C. 8333
6334	10 U.S.C. 8334
6335	10 U.S.C. 8335
6336	10 U.S.C. 8336
Ch. 573	10 U.S.C. Ch. 843
6371	10 U.S.C. 8371
6383	10 U.S.C. 8372
6389	10 U.S.C. 8373
6404	10 U.S.C. 8374
6408	10 U.S.C. 8375
Ch. 575	10 U.S.C. Ch. 845
6483	10 U.S.C. 8383
6484	10 U.S.C. 8384
6485	10 U.S.C. 8385
6486	10 U.S.C. 8386
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6522	10 U.S.C. 8392
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6912	10 U.S.C. 8412
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6915	10 U.S.C. 8415
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6931	10 U.S.C. 8431
6932	10 U.S.C. 8432
Ch. 603	10 U.S.C. Ch. 853
6951	10 U.S.C. 8451
6951a	10 U.S.C. 8451a
6952	10 U.S.C. 8452
6953	10 U.S.C. 8453
6954	10 U.S.C. 8454
6955	10 U.S.C. 8455
6956	10 U.S.C. 8456
6958	10 U.S.C. 8458
6959	10 U.S.C. 8459
6960	10 U.S.C. 8460
6961	10 U.S.C. 8461
6962	10 U.S.C. 8462
6963	10 U.S.C. 8463
6964	10 U.S.C. 8464
6965	10 U.S.C. 8465
6966	10 U.S.C. 8466
6967	10 U.S.C. 8467
6968	10 U.S.C. 8468
6969	10 U.S.C. 8469
6970	10 U.S.C. 8470
6970a	10 U.S.C. 8470a
6971	10 U.S.C. 8471
6972	10 U.S.C. 8472
6973	10 U.S.C. 8473
6974	10 U.S.C. 8474
6975	10 U.S.C. 8475
6976	10 U.S.C. 8476
6977	10 U.S.C. 8477
6978	10 U.S.C. 8478
6979	10 U.S.C. 8479
6980	10 U.S.C. 8480
6981	10 U.S.C. 8481
Ch. 605	10 U.S.C. Ch. 855
7041	10 U.S.C. 8541
7042	10 U.S.C. 8542
7043	10 U.S.C. 8543
7044	10 U.S.C. 8544
7045	10 U.S.C. 8545
7046	10 U.S.C. 8546
7047	10 U.S.C. 8547
7048	10 U.S.C. 8548
7049	10 U.S.C. 8549
7050	10 U.S.C. 8550
Ch. 607	10 U.S.C. Ch. 857
7081	10 U.S.C. 8581
7082	10 U.S.C. 8582
7083	10 U.S.C. 8583
7084	10 U.S.C. 8584
7085	10 U.S.C. 8585
7086	10 U.S.C. 8586
7087	10 U.S.C. 8587
7088	10 U.S.C. 8588
Ch. 609	10 U.S.C. Ch. 859
7101	10 U.S.C. 8591
7102	10 U.S.C. 8592
7103	10 U.S.C. 8593
7104	10 U.S.C. 8594
Ch. 631	10 U.S.C. Ch. 861
7204	10 U.S.C. 8604
7205	10 U.S.C. 8605
7207	10 U.S.C. 8607
7211	10 U.S.C. 8611
7212	10 U.S.C. 8612
7214	10 U.S.C. 8614
7216	10 U.S.C. 8616
7219	10 U.S.C. 8619
7220	10 U.S.C. 8620
7221	10 U.S.C. 8621
7222	10 U.S.C. 8622
7223	10 U.S.C. 8623
7224	10 U.S.C. 8624
7225	10 U.S.C. 8625
7226	10 U.S.C. 8626
7227	10 U.S.C. 8627
7228	10 U.S.C. 8628
7229	10 U.S.C. 8629
7231	10 U.S.C. 8631
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7234	10 U.S.C. 8634
7235	10 U.S.C. 8635
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7291	10 U.S.C. 8661
7292	10 U.S.C. 8662
7293	10 U.S.C. 8663
7294	10 U.S.C. 8664
7297	10 U.S.C. 8667
7299	10 U.S.C. 8669
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7300	10 U.S.C. 8670
7301	10 U.S.C. 8671
7303	10 U.S.C. 8673
7304	10 U.S.C. 8674
7305	10 U.S.C. 8675
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7306	10 U.S.C. 8676
7306a	10 U.S.C. 8676a
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7307	10 U.S.C. 8677
7308	10 U.S.C. 8678
7309	10 U.S.C. 8679

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7311	10 U.S.C. 8681
7312	10 U.S.C. 8682
7313	10 U.S.C. 8683
7314	10 U.S.C. 8684
7315	10 U.S.C. 8685
7316	10 U.S.C. 8686
7317	10 U.S.C. 8687
7318	10 U.S.C. 8688
7319	10 U.S.C. 8689
7320	10 U.S.C. 8690
7321	10 U.S.C. 8691
Ch. 637	10 U.S.C. Ch. 865
7361	10 U.S.C. 8701
7362	10 U.S.C. 8702
7363	10 U.S.C. 8703
7364	10 U.S.C. 8704
Ch. 639	10 U.S.C. Ch. 867
7395	10 U.S.C. 8715
7396	10 U.S.C. 8716
Ch. 641	10 U.S.C. Ch. 869
7420	10 U.S.C. 8720
7421	10 U.S.C. 8721
7422	10 U.S.C. 8722
7423	10 U.S.C. 8723
7424	10 U.S.C. 8724
7425	10 U.S.C. 8725
7427	10 U.S.C. 8727
7428	10 U.S.C. 8728
7429	10 U.S.C. 8729
7430	10 U.S.C. 8730
7431	10 U.S.C. 8731
7432	10 U.S.C. 8732
7433	10 U.S.C. 8733
7435	10 U.S.C. 8735
7436	10 U.S.C. 8736
7437	10 U.S.C. 8737
7438	10 U.S.C. 8738
7439	10 U.S.C. 8739
Ch. 643	10 U.S.C. Ch. 871
7472	10 U.S.C. 8742
7473	10 U.S.C. 8743
7476	10 U.S.C. 8746
7477	10 U.S.C. 8747
7478	10 U.S.C. 8748
7479	10 U.S.C. 8749
7479a	10 U.S.C. 8749a
7480	10 U.S.C. 8750
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7522	10 U.S.C. 8752
7523	10 U.S.C. 8753
7524	10 U.S.C. 8754
Ch. 647	10 U.S.C. Ch. 875
7541	10 U.S.C. 8761
7541a	10 U.S.C. 8761a
7541b	10 U.S.C. 8761b
7542	10 U.S.C. 8762
7543	10 U.S.C. 8763
7544	10 U.S.C. 8764
7545	10 U.S.C. 8765
7546	10 U.S.C. 8766
7547	10 U.S.C. 8767
Ch. 649	10 U.S.C. Ch. 877
7571	10 U.S.C. 8771
7572	10 U.S.C. 8772
7573	10 U.S.C. 8773
7576	10 U.S.C. 8776
7577	10 U.S.C. 8777
7579	10 U.S.C. 8779
7580	10 U.S.C. 8780
7581	10 U.S.C. 8781
7582	10 U.S.C. 8782
Ch. 651	10 U.S.C. Ch. 879
7601	10 U.S.C. 8801
7602	10 U.S.C. 8802
7603	10 U.S.C. 8803
7604	10 U.S.C. 8804
7605	10 U.S.C. 8805
7606	10 U.S.C. 8806
Ch. 653	10 U.S.C. Ch. 881
7621	10 U.S.C. 8821
7622	10 U.S.C. 8822
7623	10 U.S.C. 8823
Ch. 655	10 U.S.C. Ch. 883
7651	10 U.S.C. 8851
7652	10 U.S.C. 8852
7653	10 U.S.C. 8853
7654	10 U.S.C. 8854
7655	10 U.S.C. 8855
7656	10 U.S.C. 8856
7657	10 U.S.C. 8857
7658	10 U.S.C. 8858
7659	10 U.S.C. 8859
7660	10 U.S.C. 8860
7661	10 U.S.C. 8861
7662	10 U.S.C. 8862
7663	10 U.S.C. 8863
7664	10 U.S.C. 8864
7665	10 U.S.C. 8865
7666	10 U.S.C. 8866
7667	10 U.S.C. 8867
7668	10 U.S.C. 8868
7669	10 U.S.C. 8869
7670	10 U.S.C. 8870
7671	10 U.S.C. 8871
7672	10 U.S.C. 8872
7673	10 U.S.C. 8873
7674	10 U.S.C. 8874
7675	10 U.S.C. 8875
7676	10 U.S.C. 8876
7677	10 U.S.C. 8877
7678	10 U.S.C. 8878
7679	10 U.S.C. 8879
7680	10 U.S.C. 8880
7681	10 U.S.C. 8881
Ch. 657	10 U.S.C. Ch. 885
7721	10 U.S.C. 8891
7722	10 U.S.C. 8892
7723	10 U.S.C. 8893
7724	10 U.S.C. 8894
7725	10 U.S.C. 8895
7726	10 U.S.C. 8896
7727	10 U.S.C. 8897
7728	10 U.S.C. 8898
7729	10 U.S.C. 8899
7730	10 U.S.C. 8900
Ch. 659	10 U.S.C. Ch. 887
7851	10 U.S.C. 8901
7852	10 U.S.C. 8902
7853	10 U.S.C. 8903
7854	10 U.S.C. 8904
Ch. 661	10 U.S.C. Ch. 889
7861	10 U.S.C. 8911
7862	10 U.S.C. 8912
7863	10 U.S.C. 8913
Ch. 663	10 U.S.C. Ch. 891
7881	10 U.S.C. 8921
Ch. 665	10 U.S.C. Ch. 893
7901	10 U.S.C. 8931
7902	10 U.S.C. 8932
7903	10 U.S.C. 8933
Ch. 667	10 U.S.C. Ch. 895
7912	10 U.S.C. 8942
7913	10 U.S.C. 8943
Ch. 669	10 U.S.C. Ch. 897
7921	10 U.S.C. 8951
Ch. 801	10 U.S.C. Ch. 901
Ch. 803	10 U.S.C. Ch. 903
8011	10 U.S.C. 9011
8012	10 U.S.C. 9012
8013	10 U.S.C. 9013
8014	10 U.S.C. 9014
8015	10 U.S.C. 9015
8016	10 U.S.C. 9016
8017	10 U.S.C. 9017
8018	10 U.S.C. 9018
8019	10 U.S.C. 9019
8020	10 U.S.C. 9020
8021	10 U.S.C. 9021
8022	10 U.S.C. 9022
8023	10 U.S.C. 9023
8024	10 U.S.C. 9024
Ch. 805	10 U.S.C. Ch. 905
8031	10 U.S.C. 9031
8032	10 U.S.C. 9032
8033	10 U.S.C. 9033
8034	10 U.S.C. 9034
8035	10 U.S.C. 9035
8036	10 U.S.C. 9036
8037	10 U.S.C. 9037
8038	10 U.S.C. 9038
8039	10 U.S.C. 9039
8040	10 U.S.C. 9040
Ch. 807	10 U.S.C. Ch. 907
8061	10 U.S.C. 9061
8062	10 U.S.C. 9062
8067	10 U.S.C. 9067
8069	10 U.S.C. 9069
8074	10 U.S.C. 9074
8075	10 U.S.C. 9075
8081	10 U.S.C. 9081
8084	10 U.S.C. 9084
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8210	10 U.S.C. 9110
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8252	10 U.S.C. 9132
8257	10 U.S.C. 9137
8258	10 U.S.C. 9138
Ch. 835	10 U.S.C. Ch. 915
8281	10 U.S.C. 9151
8310	10 U.S.C. 9160
Ch. 839	10 U.S.C. Ch. 919
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Ch. 845	10 U.S.C. Ch. 925
8572	10 U.S.C. 9222
8575	10 U.S.C. 9225
8579	10 U.S.C. 9229
8581	10 U.S.C. 9231
8583	10 U.S.C. 9233
Ch. 849	10 U.S.C. Ch. 929
8639	10 U.S.C. 9239
Ch. 853	10 U.S.C. Ch. 933
8681	10 U.S.C. 9251
8684	10 U.S.C. 9252
8691	10 U.S.C. 9253
Ch. 855	10 U.S.C. Ch. 935
8723	10 U.S.C. 9263
Ch. 857	10 U.S.C. Ch. 937
8741	10 U.S.C. 9271
8742	10 U.S.C. 9272
8743	10 U.S.C. 9273
8744	10 U.S.C. 9274
8745	10 U.S.C. 9275
8746	10 U.S.C. 9276
8747	10 U.S.C. 9277
8748	10 U.S.C. 9278
8749	10 U.S.C. 9279
8750	10 U.S.C. 9280
8751	10 U.S.C. 9281
8752	10 U.S.C. 9282
8754	10 U.S.C. 9284
8755	10 U.S.C. 9285
8756	10 U.S.C. 9286
Ch. 861	10 U.S.C. Ch. 939
8817	10 U.S.C. 9307
Ch. 867	10 U.S.C. Ch. 941
8911	10 U.S.C. 9311
8914	10 U.S.C. 9314
8917	10 U.S.C. 9317
8918	10 U.S.C. 9318
8920	10 U.S.C. 9320
8921	10 U.S.C. 9321
8924	10 U.S.C. 9324
8925	10 U.S.C. 9325
8926	10 U.S.C. 9326
8929	10 U.S.C. 9329
Ch. 869	10 U.S.C. Ch. 943
8961	10 U.S.C. 9341
8962	10 U.S.C. 9342
8963	10 U.S.C. 9343
8964	10 U.S.C. 9344
8965	10 U.S.C. 9345
8966	10 U.S.C. 9346
Ch. 871	10 U.S.C. Ch. 945
8991	10 U.S.C. 9361
8992	10 U.S.C. 9362
Ch. 873	10 U.S.C. Ch. 947
9021	10 U.S.C. 9371
9025	10 U.S.C. 9375
9027	10 U.S.C. 9377
Ch. 875	10 U.S.C. Ch. 949
9061	10 U.S.C. 9381
Ch. 901	10 U.S.C. Ch. 951
9301	10 U.S.C. 9401
9302	10 U.S.C. 9402
9303	10 U.S.C. 9403
9304	10 U.S.C. 9404
9305	10 U.S.C. 9405
9306	10 U.S.C. 9406
9314	10 U.S.C. 9414
9314a	10 U.S.C. 9414a
9314b	10 U.S.C. 9414b
9315	10 U.S.C. 9415
9317	10 U.S.C. 9417
9319	10 U.S.C. 9419
9320	10 U.S.C. 9420
Ch. 903	10 U.S.C. Ch. 953
9331	10 U.S.C. 9431
9332	10 U.S.C. 9432
9333	10 U.S.C. 9433
9333a	10 U.S.C. 9433a
9334	10 U.S.C. 9434
9335	10 U.S.C. 9435
9336	10 U.S.C. 9436
9338	10 U.S.C. 9438
9341	10 U.S.C. 9441
9341a	10 U.S.C. 9441a
9342	10 U.S.C. 9442
9343	10 U.S.C. 9443
9346	10 U.S.C. 9446
9347	10 U.S.C. 9447
9348	10 U.S.C. 9448
9349	10 U.S.C. 9449
9350	10 U.S.C. 9450
9351	10 U.S.C. 9451
9352	10 U.S.C. 9452
9353	10 U.S.C. 9453

TABLE SHOWING REDESIGNATIONS MADE BY PUB. L. 115–232—Continued

Title 10 Chapter or Section Before Redesignation	*Title 10 Chapter or Section After Redesignation*
9354	10 U.S.C. 9454
9355	10 U.S.C. 9455
9356	10 U.S.C. 9456
9357	10 U.S.C. 9457
9359	10 U.S.C. 9459
9360	10 U.S.C. 9460
9361	10 U.S.C. 9461
9362	10 U.S.C. 9462
Ch. 907	10 U.S.C. Ch. 957
9411	10 U.S.C. 9481
9412	10 U.S.C. 9482
9413	10 U.S.C. 9483
9414	10 U.S.C. 9484
9417	10 U.S.C. 9487
Ch. 909	10 U.S.C. Ch. 959
9441	10 U.S.C. 9491
9442	10 U.S.C. 9492
9443	10 U.S.C. 9493
9444	10 U.S.C. 9494
9445	10 U.S.C. 9495
9446	10 U.S.C. 9496
9447	10 U.S.C. 9497
9448	10 U.S.C. 9498
Ch. 931	10 U.S.C. Ch. 961
Ch. 933	10 U.S.C. Ch. 963
Ch. 935	10 U.S.C. Ch. 965
Ch. 937	10 U.S.C. Ch. 967
Ch. 939	10 U.S.C. Ch. 969
Ch. 941	10 U.S.C. Ch. 971
Ch. 943	10 U.S.C. Ch. 973
Ch. 945	10 U.S.C. Ch. 975
Ch. 947	10 U.S.C. Ch. 977
Ch. 949	10 U.S.C. Ch. 979
Ch. 951	10 U.S.C. Ch. 981
Ch. 953	10 U.S.C. Ch. 983

EFFECTIVE DATE OF 2021 AMENDMENT

Pub. L. 116–283, div. A, title XVIII, §1801(d), Jan. 1, 2021, 134 Stat. 4151, provided that:

''(1) DELAYED ENACTMENT.—Except as specifically provided, this title [see Tables for classification] and the amendments made by this title shall take effect on January 1, 2022.

''(2) DELAYED IMPLEMENTATION.—Not later than January 1, 2023, the Secretary of Defense shall take such action as necessary to revise or modify the Department of Defense Supplement to the Federal Acquisition Regulation and other existing authorities affected by the enactment of this title and the amendments made by this title.

''(3) APPLICABILITY.—

''(A) IN GENERAL.—The Secretary of Defense shall apply the law as in effect on December 31, 2021, with respect to contracts entered into during the covered period.

''(B) COVERED PERIOD DEFINED.—In this paragraph, the term 'covered period' means the period beginning on January 1, 2022, and ending on the earlier of—

''(i) the date on which the Secretary of Defense revises or modifies authorities pursuant to paragraph (2); or

''(ii) January 1, 2023.''

EFFECTIVE DATE OF 2018 AMENDMENT; COORDINATION OF AMENDMENTS

Pub. L. 115–232, div. A, title VIII, §800, Aug. 13, 2018, 132 Stat. 1825, provided that:

''(a) EFFECTIVE DATES.—

''(1) PARTS I AND II.—Parts I and II of this subtitle [probably means parts I (§801) and II (§§806–809) of subtitle A of title VIII of div. A of Pub. L. 115–232, see Tables for classification], and the redesignations and amendments made by such parts, shall take effect on February 1, 2019.

''(2) PART III.—Part III of this subtitle [probably means part III (§§811–813) of subtitle A of title VIII of div. A of Pub. L. 115–232, see Tables for classification] shall take effect on the date of the enactment of this Act [Aug. 13, 2018].

''(b) COORDINATION OF AMENDMENTS.—The redesignations and amendments made by part II of this subtitle shall be executed before the amendments made by part I of this subtitle.

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''(c) RULE FOR CERTAIN REDESIGNATIONS.—In the case of a redesignation specified in part II of this subtitle (1) that is to be made to a section of subtitle B, C, or D of title 10, United States Code, for which the current section designation consists of a four-digit number and a letter, and (2) that is directed to be made by the addition of a specified number to the current section designation, the new section designation shall consist of a new four-digit number and the same letter, with the new four-digit number being the number that is the sum of the specified number and the four-digit number in the current section designation.''

RULE OF CONSTRUCTION

Pub. L. 116–283, div. A, title XVIII, §1885, Jan. 1, 2021, 134 Stat. 4294, provided that: ''This title [see Tables for classification], including the amendments made by this title, is intended only to reorganize title 10, United States Code, and may not be construed to alter—

''(1) the effect of a provision of title 10, United States Code, including any authority or requirement therein;

''(2) a department or agency interpretation with respect to title 10, United States Code; or

''(3) a judicial interpretation with respect to title 10, United States Code.''

SAVINGS PROVISIONS

Pub. L. 116–283, div. A, title XVIII, §1884, Jan. 1, 2021, 134 Stat. 4294, provided that:

''(a) REGULATIONS, ORDERS, AND OTHER ADMINISTRATIVE ACTIONS.—A regulation, order, or other administrative action in effect under a provision of title 10, United States Code, redesignated by this title [see Tables for classification] continues in effect under the provision as so redesignated.

''(b) ACTIONS TAKEN AND OFFENSES COMMITTED.—An action taken or an offense committed under a provision of title 10, United States Code, redesignated by this title is deemed to have been taken or committed under the provision as so redesignated.''

TRANSFER AND REORGANIZATION OF DEFENSE ACQUISITION STATUTES

Pub. L. 116–283, div. A, title XVIII, §1801(a), (b), Jan. 1, 2021, 134 Stat. 4150, provided that:

''(a) ACTIVITIES.—Not later than February 1, 2021, the Secretary of Defense shall establish a process to engage interested parties and experts from the public and private sectors, as determined appropriate by the Secretary, in a comprehensive review of this title [see Tables for classification] and the amendments made by this title.

''(b) ASSESSMENT AND REPORT.—Not later than March 15, 2021, the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report evaluating this title and the amendments made by this title that shall include the following elements:

''(1) Specific recommendations for modifications to the legislative text of this title and the amendments made by this title, along with a list of conforming amendments to law required by this title and the amendments made by this title.

''(2) A summary of activities conducted pursuant to the process established under subsection (a), including an assessment of the effect of this title and the amendments made by this title on related Department of Defense activities, guidance, and interagency coordination.

''(3) An implementation plan for updating the regulations and guidance relating to this title and the amendments made by this title that contains the following elements:

''(A) A description of how the plan will be implemented.

''(B) A schedule with milestones for the implementation of the plan.

''(C) A description of the assignment of roles and responsibilities for the implementation of the plan.

''(D) A description of the resources required to implement the plan.

''(E) A description of how the plan will be reviewed and assessed to monitor progress.

''(4) Such other items as the Secretary considers appropriate.''

REFERENCES TO SECTIONS REDESIGNATED BY TITLE XVIII OF PUB. L. 116–283

Pub. L. 116–283, div. A, title XVIII, §1883, Jan. 1, 2021, 134 Stat. 4294, provided that:

''(a) DEFINITIONS.—In this section:

''(1) REDESIGNATED SECTION.—The term 'redesignated section' means a section of title 10, United States Code, that is redesignated by this title [see Tables for classification], as that section is so redesignated.

''(2) SOURCE SECTION.—The term 'source section' means a section of title 10, United States Code, that is redesignated by this title, as that section was in effect before the redesignation.

''(b) REFERENCE TO SOURCE SECTION.—

''(1) TREATMENT OF REFERENCE.—Except as otherwise provided in this title, a reference to a source section, including a reference in a regulation, order, or other law, is deemed to refer to the corresponding redesignated section.

''(2) TITLE 10.—Except as otherwise provided in this title, in title 10, United States Code, each reference in the text of such title to a source section is amended by striking such reference and inserting a reference to the appropriate redesignated section.''

Subpart A—General

AMENDMENTS

2018—Pub. L. 115–232, div. A, title VIII, §801(a), Aug. 13, 2018, 132 Stat. 1826, added subpart heading.

CHAPTER 201—DEFINITIONS

Subchapter		Sec.
I.	Definitions Relating to Defense Acquisition System Generally	3001
II.	Definitions Applicable to Procurement Generally	3011
III.	Definitions Relating to Major Systems and Major Defense Acquisition Programs	3041

PRIOR PROVISIONS

A prior chapter 201 ''DEFINITIONS'', as added by Pub. L. 115–232, div. A, title VIII, §801(a), Aug. 13, 2018, 132 Stat. 1826, and consisting of reserved section 3001, was repealed by Pub. L. 116–283, div. A, title XVIII, §1806(a)(1), Jan. 1, 2021, 134 Stat. 4151.

SUBCHAPTER I—DEFINITIONS RELATING TO DEFENSE ACQUISITION SYSTEM GENERALLY

Sec.	
3001.	Defense acquisition system; element of the defense acquisition system.
3002.	Federal Acquisition Regulation.
3003.	Defense Federal Acquisition Regulation Supplement.
3004.	Head of an agency.
3005.	Service chief concerned.
3006.	Acquisition workforce.

§ 3001. Defense acquisition system; element of the defense acquisition system

(a) DEFENSE ACQUISITION SYSTEM.—In this part, the term ''defense acquisition system'' means—

(1) the workforce engaged in carrying out the acquisition of property and services for the Department of Defense;

(2) the management structure responsible for directing and overseeing the acquisition of property and services for the Department of Defense; and

(3) the statutory, regulatory, and policy framework that guides the acquisition of property and services for the Department of Defense.

(b) ELEMENT OF THE DEFENSE ACQUISITION SYSTEM.—In this part, the term ''element of the defense acquisition system'' means an organization that—

(1) employs members of the acquisition workforce;

(2) carries out acquisition functions; and

(3) focuses primarily on acquisition.

(c) ACQUISITION.—In this section, the term ''acquisition'' has the meaning provided in section 131 of title 41.

(Added and amended Pub. L. 116–283, div. A, title XVIII, §1806(a)(1)–(4), Jan. 1, 2021, 134 Stat. 4152.)

CODIFICATION

The text of pars. (2), (3), and (1) of section 2545 of this title, which were transferred to this section, redesignated as subsecs. (a), (b), and (c), respectively, and amended by Pub. L. 116–283, §1806(a)(2)–(4), was based on Pub. L. 111–383, div. A, title VIII, §861(a), Jan. 7, 2011, 124 Stat. 4288; Pub. L. 113–291, div. A, title X, §1071(a)(11), Dec. 19, 2014, 128 Stat. 3505.

Section 2545 of this title, which was transferred in large part to this section by Pub. L. 116–283, §1806(a)(2)–(4), was also transferred to section 3101 of this title by Pub. L. 116–283, §1808(a)(2).

PRIOR PROVISIONS

A prior section 3001 was renumbered section 7001 of this title.

AMENDMENTS

2021—Subsec. (a). Pub. L. 116–283, §1806(a)(2), redesignated par. (2) of section 2545 of this title as subsec. (a) of this section, inserted heading and realigned margin, substituted ''In this part, the term'' for ''The term'', and inserted dash after ''means'', par. (1) designation before ''the workforce'', par. (2) designation before ''the management'', and par. (3) designation before ''the statutory,''.

Subsec. (b). Pub. L. 116–283, §1806(a)(3), redesignated par. (3) of section 2545 of this title as subsec. (b) of this section, inserted heading and realigned margin, substituted ''In this part, the term'' for ''The term'', ''workforce;'' for ''workforce,'', and ''functions;'' for ''functions,'', and inserted dash after ''organization that'', par. (1) designation before ''employs'', par. (2) designation before ''carries out'', and par. (3) designation before ''focuses''.

Subsec. (c). Pub. L. 116–283, §1806(a)(4), redesignated par. (1) of section 2545 of this title as subsec. (c) of this section, inserted heading and realigned margin, and substituted ''In this section, the term'' for ''The term''.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding this section.

§3002. Federal Acquisition Regulation

In this part, the term ''Federal Acquisition Regulation'' means the Federal Acquisition Regulation issued pursuant to section 1303(a)(1) of title 41.

(Added and amended Pub. L. 116–283, div. A, title XVIII, §1806(a)(1), (5), Jan. 1, 2021, 134 Stat. 4152.)

CODIFICATION

The text of par. (6) of section 2302 of this title, which was transferred to this section and amended by Pub. L. 116–283, §1806(a)(5), was based on Pub. L. 101–189, div. A, title VIII, §853(b)(1), Nov. 29, 1989, 103 Stat. 1518; Pub. L. 111–350, §5(b)(8)(B), Jan. 4, 2011, 124 Stat. 3843.

AMENDMENTS

2021—Pub. L. 116–283, §1806(a)(5), transferred par. (6) of section 2302 of this title to this section, realigned margin, struck out par. (6) designation at beginning, and substituted ''In this part, the term'' for ''The term''.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§3003. Defense Federal Acquisition Regulation Supplement

[Reserved].

(Added Pub. L. 116–283, div. A, title XVIII, §1806(a)(1), Jan. 1, 2021, 134 Stat. 4152.)

EFFECTIVE DATE

Section effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§3004. Head of an agency

In this part, the term ''head of an agency'' means the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, the Secretary of the Air Force, the Secretary of Homeland Security, and the Administrator of the National Aeronautics and Space Administration.

(Added and amended Pub. L. 116–283, div. A, title XVIII, §1806(a)(1), (6), Jan. 1, 2021, 134 Stat. 4152, 4153.)

CODIFICATION

The text of par. (1) of section 2302 of this title, which was transferred to this section and amended by Pub. L. 116–283, §1806(a)(6), was based on act Aug. 10, 1956, ch. 1041, 70A Stat. 127; Pub. L. 85–568, title III, §301(b), July 29, 1958, 72 Stat. 432; 96–513, title V, §511(74), Dec. 12, 1980, 94 Stat. 2926; Pub. L. 98–369, div. B, title VII, §2722(a), July 18, 1984, 98 Stat. 1186; Pub. L. 100–26, §7(k)(2), Apr. 21, 1987, 101 Stat. 284; Pub. L. 107–296, title XVII, §1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.

AMENDMENTS

2021—Pub. L. 116–283, §1806(a)(6), transferred par. (1) of section 2302 of this title to this section, realigned margin, struck out par. (1) designation at beginning, and substituted ''In this part, the term'' for ''The term''.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 3005. Service chief concerned

[Reserved].

(Added Pub. L. 116–283, div. A, title XVIII, § 1806(a)(1), Jan. 1, 2021, 134 Stat. 4152.)

EFFECTIVE DATE

Section effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 3006. Acquisition workforce

For the definition of the term ''acquisition workforce'' for the purposes of this part, see section 101(a)(18) of this title.

(Added Pub. L. 116–283, div. A, title XVIII, § 1806(a)(1), Jan. 1, 2021, 134 Stat. 4152.)

PRIOR PROVISIONS

A prior section 3010 was renumbered section 7011 of this title.

EFFECTIVE DATE

Section effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

SUBCHAPTER II—DEFINITIONS APPLICABLE TO PROCUREMENT GENERALLY

Sec.
3011. Definitions incorporated from title 41.
3012. Competitive procedures.
3013. Technical data.
3014. Nontraditional defense contractor.
3015. Simplified acquisition threshold.
3016. Chapter 137 legacy provisions.

§ 3011. Definitions incorporated from title 41

In any chapter 137 legacy provision, the following terms have the meanings provided such terms in chapter 1 of title 41:

(1) The term ''procurement''.
(2) The term ''procurement system''.
(3) The term ''standards''.
(4) The term ''full and open competition''.
(5) The term ''responsible source''.
(6) The term ''item''.
(7) The term ''item of supply''.
(8) The term ''supplies''.
(9) The term ''commercial product''.
(10) The term ''commercial service''.
(11) The term ''nondevelopmental item''.
(12) The term ''commercial component''.
(13) The term ''component''.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1806(b)(1), (2), Jan. 1, 2021, 134 Stat. 4153.)

CODIFICATION

The text of par. (3) of section 2302 of this title, which was transferred to this section and amended by Pub. L. 116–283, § 1806(b)(2), was based on Pub. L. 103–355, title I, § 1502(1), Oct. 13, 1994, 108 Stat. 3296; Pub. L. 104–106, div. D, title XLIII, § 4321(b)(3), Feb. 10, 1996, 110 Stat. 672; Pub. L. 111–350, § 5(b)(8), Jan. 4, 2011, 124 Stat. 3842; Pub. L. 115–232, div. A, title VIII, § 836(c)(1), Aug. 13, 2018, 132 Stat. 1864.

PRIOR PROVISIONS

A prior section 3011 was renumbered section 7011 of this title.

Another prior section 3011 was renumbered section 7012 of this title.

AMENDMENTS

2021—Pub. L. 116–283, § 1806(b)(2), transferred par. (3) of section 2302 of this title to this section, realigned margin, struck out par. (3) designation at beginning, substituted ''In any chapter 137 legacy provision, the following'' for ''The following'' in introductory provisions, and redesignated subpars. (A) to (M) as pars. (1) to (13), respectively.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 3012. Competitive procedures

In this part, the term ''competitive procedures'' means procedures under which the head of an agency enters into a contract pursuant to full and open competition. Such term also includes—

(1) procurement of architectural or engineering services conducted in accordance with chapter 11 of title 40;

(2) the competitive selection for award of science and technology proposals resulting from a general solicitation and the peer review or scientific review (as appropriate) of such proposals;

(3) the procedures established by the Administrator of General Services for the multiple award schedule program of the General Services Administration if—

(A) participation in the program has been open to all responsible sources; and

(B) orders and contracts under such program result in the lowest overall cost alternative to meet the needs of the United States;

(4) procurements conducted in furtherance of section 15 of the Small Business Act (15 U.S.C. 644) as long as all responsible business concerns that are entitled to submit offers for such procurements are permitted to compete; and

(5) a competitive selection of research proposals resulting from a general solicitation and peer review or scientific review (as appropriate) solicited pursuant to section 9 of the Small Business Act (15 U.S.C. 638).

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1806(b)(1), (3), Jan. 1, 2021, 134 Stat. 4153.)

CODIFICATION

The text of par. (2) of section 2302 of this title, which was transferred to this section and amended by Pub. L. 116–283, § 1806(b)(3), was based on act Aug. 10, 1956, ch. 1041, 70A Stat. 127; Pub. L. 98–369, div. B, title VII, § 2722(a), July 18, 1984, 98 Stat. 1186; Pub. L. 98–577, title V, § 504(b)(3), Oct. 30, 1984, 98 Stat. 3087; Pub. L. 99–661, div. A, title XIII, § 1343(a)(13), Nov. 14, 1986, 100 Stat. 3993; Pub. L. 100–26, § 7(k)(2), Apr. 21, 1987, 101 Stat. 284; Pub. L. 107–217, § 3(b)(2), Aug. 21, 2002, 116 Stat. 1295; Pub. L. 115–91, div. A, title II, § 221, Dec. 12, 2017, 131 Stat. 1333.

PRIOR PROVISIONS

A prior section 3012 was renumbered section 7012 of this title.

Another prior section 3012 was renumbered section 3013 of this title and subsequently repealed.

AMENDMENTS

2021—Pub. L. 116–283, § 1806(b)(3), transferred par. (2) of section 2302 of this title to this section, realigned margin, struck out par. (2) designation at beginning, substituted ''In this part, the term'' for ''The term'' in introductory provisions, redesignated subpars. (A) to (E) as pars. (1) to (5), respectively, and, in par. (3), redesignated cls. (i) and (ii) as subpars. (A) and (B), respectively.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 3013. Technical data

In any chapter 137 legacy provision, the term ''technical data'' means recorded information (regardless of the form or method of the recording) of a scientific or technical nature (including computer software documentation) relating to supplies procured by an agency. Such term does not include computer software or financial, administrative, cost or pricing, or management data or other information incidental to contract administration.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1806(b)(1), (4), Jan. 1, 2021, 134 Stat. 4153.)

CODIFICATION

The text of par. (4) of section 2302 of this title, which was transferred to this section and amended by Pub. L. 116–283, § 1806(b)(4), was based on Pub. L. 98–525, title XII, § 1211, Oct. 19, 1984, 98 Stat. 2589; Pub. L. 100–26, § 7(k)(2), Apr. 21, 1987, 101 Stat. 284.

PRIOR PROVISIONS

A prior section 3013 was renumbered section 7013 of this title.

Another prior section 3013, acts Aug. 10, 1956, ch. 1041, 70A Stat. 157, § 3012; Sept. 2, 1958, Pub. L. 85–861, § 1(57), 72 Stat. 1462; Sept. 7, 1962, Pub. L. 87–651, title II, § 211, 76 Stat. 524; Aug. 14, 1964, Pub. L. 88–426, title III, §§ 305(2), 306(j)(1), 78 Stat. 422, 431; Nov. 2, 1966, Pub. L. 89–718, § 22, 80 Stat. 1118; renumbered § 3013, Oct. 1, 1986, Pub. L. 99–433, title V, § 501(a)(2), 100 Stat. 1034, related to Secretary of the Army, powers and duties, and delegations, prior to repeal by Pub. L. 99–433, § 501(a)(5).

Another prior section 3013 was renumbered section 3014 of this title and subsequently repealed.

AMENDMENTS

2021—Pub. L. 116–283, § 1806(b)(4), transferred par. (4) of section 2302 of this title to this section, realigned margin, struck out par. (4) designation at beginning, and substituted ''In any chapter 137 legacy provision, the term'' for ''The term''.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 3014. Nontraditional defense contractor

In this part, the term ''nontraditional defense contractor'', with respect to a procurement or with respect to a transaction authorized under section 4002(a) or 4003 of this title, means an entity that is not currently performing and has not performed, for at least the one-year period preceding the solicitation of sources by the Department of Defense for the procurement or transaction, any contract or subcontract for the Department of Defense that is subject to full coverage under the cost accounting standards prescribed pursuant to section 1502 of title 41 and the regulations implementing such section.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1806(b)(1), (5), Jan. 1, 2021, 134 Stat. 4153, 4154.)

CODIFICATION

The text of par. (9) of section 2302 of this title, which was transferred to this section and amended by Pub. L. 116–283, § 1806(b)(5), was based on Pub. L. 111–383, div. A, title VIII, § 866(g)(1), Jan. 7, 2011, 124 Stat. 4298; Pub. L. 113–291, div. A, title X, § 1071(a)(2)(B), Dec. 19, 2014, 128 Stat. 3504; Pub. L. 114–92, div. A, title VIII, § 815(b), Nov. 25, 2015, 129 Stat. 896.

PRIOR PROVISIONS

A prior section 3014 was renumbered section 7014 of this title.

Another prior section 3014, acts Aug. 10, 1956, ch. 1041, 70A Stat. 158, § 3013; Aug. 6, 1958, Pub. L. 85–599, § 8(a), 72 Stat. 519; Sept. 2, 1958, Pub. L. 85–861, § 1(58), 72 Stat. 1462; Aug. 14, 1964, Pub. L. 88–426, title III, § 305(3), 78 Stat. 422; Dec. 1, 1967, Pub. L. 90–168, § 2(12), 81 Stat. 523; Dec. 31, 1970, Pub. L. 91–611, title II, § 211(a), 84 Stat. 1829; Nov. 9, 1979, Pub. L. 96–107, title VIII, § 820(b), 93 Stat. 819; Sept. 24, 1983, Pub. L. 98–94, title XII, § 1212(c)(1), 97 Stat. 687; renumbered § 3014, Oct. 1, 1986, Pub. L. 99–433, title V, § 501(a)(2), 100 Stat. 1034, related to Under Secretary and Assistant Secretaries of the Army, appointment, and duties, prior to repeal by Pub. L. 99–433, § 501(a)(5).

Another prior section 3014 was renumbered section 3015 of this title and subsequently repealed.

AMENDMENTS

2021—Pub. L. 116–283, § 1806(b)(5), transferred par. (9) of section 2302 of this title to this section, realigned margin, struck out par. (9) designation at beginning, and substituted ''In this part, the term'' for ''The term'' and ''section 4002(a) or 4003'' for ''section 2371(a) or 2371b''.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 3015. Simplified acquisition threshold

In this part:

(1) The term ''simplified acquisition threshold'' has the meaning provided that term in section 134 of title 41, except that, in the case of any contract to be awarded and performed, or purchase to be made, outside the United States in support of a contingency operation or a humanitarian or peacekeeping operation, the term means an amount equal to two times the amount specified for that term in such section.

(2) The term ''humanitarian or peacekeeping operation'' means a military operation in support of the provision of humanitarian or for-

eign disaster assistance or in support of a peacekeeping operation under chapter VI or VII of the Charter of the United Nations. The term does not include routine training, force rotation, or stationing.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1806(b)(1), (6), Jan. 1, 2021, 134 Stat. 4153, 4154.)

CODIFICATION

The text of pars. (7) and (8) of section 2302 of this title, which were transferred to this section, redesignated as pars. (1) and (2), respectively, and amended by Pub. L. 116–283, § 1806(b)(6), was based on Pub. L. 103–355, title I, § 1502, Oct. 13, 1994, 108 Stat. 3296; Pub. L. 104–201, div. A, title VIII, § 807(a), Sept. 23, 1996, 110 Stat. 2606; Pub. L. 105–85, div. A, title VIII, § 803(b), Nov. 18, 1997, 111 Stat. 1832; Pub. L. 111–350, § 5(b)(8)(C), Jan. 4, 2011, 124 Stat. 3843; Pub. L. 113–291, div. A, title X, § 1071(a)(2)(A), Dec. 19, 2014, 128 Stat. 3504.

PRIOR PROVISIONS

A prior section 3015 was renumbered section 7015 of this title.

Another prior section 3015, acts Aug. 10, 1956, ch. 1041, 70A Stat. 158, § 3014; renumbered § 3015, Oct. 1, 1986, Pub. L. 99–433, title V, § 501(a)(2), 100 Stat. 1034, related to Comptroller and Deputy Comptroller of the Army, powers and duties, and appointment, prior to repeal by Pub. L. 99–433, § 501(a)(5).

Another prior section 3015 was renumbered section 3040 of this title and subsequently repealed.

AMENDMENTS

2021—Pub. L. 116–283, § 1806(b)(6), redesignated pars. (7) and (8) of section 2302 of this title as pars. (1) and (2), respectively, of this section and inserted introductory provisions.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 3016. Chapter 137 legacy provisions

In this part, the term ''chapter 137 legacy provisions'' means the following sections of this title: sections 3002, 3004, 3011–3015, 3041, 3063–3069, 3134, 3151–3157, 3201–3208, 3221–3227, 3241, 3243, 3249, 3252, 3301–3309, 3321–3323, 3344, 3345, 3371–3375, 3377, 3401, 3403, 3405, 3406, 3501–3511, 3531–3535, 3571, 3572, 3573, 3701–3708, 3741–3750, 3761, 3771–3775, 3781–3786, 3791, 3794, 3801–3807, 3841, 3842, 3847, 3881, 3901, 3902, 4202(b), 4324, 4325, 4501, 4502, 4505, 4506, 4507, 4576, 4657, 4660, 4751, 4752, and 8751.

(Added Pub. L. 116–283, div. A, title XVIII, § 1806(b)(7), Jan. 1, 2021, 134 Stat. 4154.)

PRIOR PROVISIONS

A prior section 3016 was renumbered section 7016 of this title.

Another prior section 3016 was renumbered section 7018 of this title.

Prior sections 3017 and 3018 were renumbered sections 7017 and 7018 of this title, respectively.

Another prior section 3018, added Pub. L. 85–861, § 1(59)(A), Sept. 2, 1958, 72 Stat. 1462, prescribed compensation of General Counsel of Department of the Army, prior to repeal by Pub. L. 88–426, title III, § 305(40)(A), Aug. 14, 1964, 78 Stat. 427, eff. first day of first pay period beginning on or after July 1, 1964.

A prior section 3019 was renumbered section 7019 of this title.

Another prior section 3019 was renumbered section 7038 of this title.

A prior section 3020 was renumbered section 7020 of this title.

A prior section 3021 was renumbered section 7021 of this title.

Another prior section 3021 was renumbered section 10302 of this title.

Prior sections 3022 to 3024, 3031, and 3032 were renumbered sections 7022 to 7024, 7031, and 7032 of this title, respectively.

A prior section 3033 was renumbered section 7033 of this title.

Another prior section 3033 was renumbered section 10302 of this title.

A prior section 3034 was renumbered section 7034 of this title.

Another prior section 3034 was renumbered section 7033 of this title.

A prior section 3035 was renumbered section 7035 of this title.

Another prior section 3035 was renumbered section 7034 of this title.

Prior sections 3036 and 3037 were renumbered sections 7036 and 7037 of this title, respectively.

A prior section 3038 was renumbered section 7038 of this title.

Another prior section 3038, act Aug. 10, 1956, ch. 1041, 70A Stat. 164, charged Chief of Engineers with responsibility for Army construction, real estate acquisition and management, and the operation of water, gas, electric, and sewer utilities, prior to repeal by Pub. L. 89–718, § 25(a), Nov. 2, 1966, 80 Stat. 1119.

A prior section 3039, act Aug. 10, 1956, ch. 1041, 70A Stat. 165, § 3040; Pub. L. 95–485, title VIII, § 805(a), Oct. 20, 1978, 92 Stat. 1621; renumbered § 3039 and amended Pub. L. 99–433, title V, § 502(f)(2), Oct. 1, 1986, 100 Stat. 1042, related to deputy and assistant chiefs of branches, prior to repeal by Pub. L. 114–328, div. A, title V, § 502(n)(1), Dec. 23, 2016, 130 Stat. 2103.

Another prior section 3039, act Aug. 10, 1956, ch. 1041, 70A Stat. 164, related to Inspector General and Provost Marshal General, prior to repeal by Pub. L. 99–433, § 502(f)(1). See section 7020 of this title.

A prior section 3040, acts Aug. 10, 1956, ch. 1041, 70A Stat. 159, § 3015; Aug. 6, 1958, Pub. L. 85–599, § 12, 72 Stat. 521; renumbered § 3040, Oct. 1, 1986, Pub. L. 99–433, title V, § 501(a)(1), 100 Stat. 1034; Sept. 29, 1988, Pub. L. 100–456, div. A, title XII, § 1234(a)(1), 102 Stat. 2059, related to National Guard Bureau, Chief of Bureau, appointment and acting Chief, prior to repeal by Pub. L. 103–337, div. A, title IX, § 904(b)(1), (d), Oct. 5, 1994, 108 Stat. 2827, effective at the end of the 90-day period beginning on Oct. 5, 1994. See sections 10501, 10502, and 10505 of this title.

EFFECTIVE DATE

Section effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

SUBCHAPTER III—DEFINITIONS RELATING TO MAJOR SYSTEMS AND MAJOR DEFENSE ACQUISITION PROGRAMS

Sec.
3041. Major system.
3042. Major defense acquisition program.

§ 3041. Major system

(a) IN GENERAL.—In this part (other than in sections 4292(e) and 4321), the term ''major system'' means a combination of elements that will function together to produce the capabilities re-

quired to fulfill a mission need. The elements may include hardware, equipment, software or any combination thereof, but excludes construction or other improvements to real property.

(b) SYSTEM CONSIDERED TO BE A MAJOR SYSTEM.—A system shall be considered a major system if—

(1) the conditions of subsection (c) or (d), as applicable, are satisfied; or

(2) the system is designated a ''major system'' by the head of the agency responsible for the system.

(c) DEPARTMENT OF DEFENSE SYSTEMS.—

(1) IN GENERAL.—For purposes of subsection (b), a system for which the Department of Defense is responsible shall be considered a major system if—

(A) the total expenditures for research, development, test, and evaluation for the system are estimated to be more than $115,000,000 (based on fiscal year 1990 constant dollars); or

(B) the eventual total expenditure for procurement for the system is estimated to be more than $540,000,000 (based on fiscal year 1990 constant dollars).

(2) ADJUSTMENT AUTHORITY.—Authority for the Secretary of Defense to adjust amounts and the base fiscal year in effect under this subsection is provided in section 4202(b) of this title.

(d) CIVILIAN AGENCY SYSTEMS.—For purposes of subsection (b), a system for which a civilian agency is responsible shall be considered a major system if total expenditures for the system are estimated to exceed the greater of—

(1) $750,000 (based on fiscal year 1980 constant dollars); or

(2) the dollar threshold for a ''major system'' established by the agency pursuant to Office of Management and Budget (OMB) Circular A–109, entitled ''Major Systems Acquisitions''.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1806(c), Jan. 1, 2021, 134 Stat. 4154.)

CODIFICATION

The text of par. (5) of section 2302 of this title, which was transferred to this section, redesignated as subsecs. (a) and (b), and amended by Pub. L. 116–283, § 1806(c)(2), was based on Pub. L. 98–525, title XII, § 1211, Oct. 19, 1984, 98 Stat. 2589; Pub. L. 100–26, § 7(k)(2), Apr. 21, 1987, 101 Stat. 284; Pub. L. 104–201, div. A, title VIII, § 805(a)(1), Sept. 23, 1996, 110 Stat. 2605.

The text of subsecs. (a) and (b) of section 2302d of this title, which were transferred to this section, redesignated as subsecs. (c) and (d), respectively, and amended by Pub. L. 116–283, § 1806(c)(3), was based on Pub. L. 104–201, div. A, title VIII, § 805(a)(2), Sept. 23, 1996, 110 Stat. 2605; Pub. L. 105–85, div. A, title X, § 1073(a)(41), Nov. 18, 1997, 111 Stat. 1902.

AMENDMENTS

2021—Subsec. (a). Pub. L. 116–283, § 1806(c)(2)(A), redesignated par. (5) of section 2302 of this title as subsec. (a) of this section, realigned margin, inserted heading, and substituted ''In this part (other than in sections 4292(e) and 4321), the term'' for ''The term''. Former third sentence of subsec. (a) designated (b).

Subsec. (b). Pub. L. 116–283, § 1806(c)(2)(B), (C), after transfer of section 2302(5) of this title to subsec. (a) of this section, designated third sentence of subsec. (a) as (b), inserted heading, and substituted ''system if—'' and pars. (1) and (2) for ''system if (A) the conditions of section 2302d of this title are satisfied, or (B) the system is designated a 'major system' by the head of the agency responsible for the system.''

Subsec. (c). Pub. L. 116–283, § 1806(c)(3), redesignated subsec. (a) of section 2302d of this title as subsec. (c) of this section, substituted ''subsection (b)'' for ''section 2302(5) of this title'' in introductory provisions, designated existing provisions as par. (1) and inserted heading, redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, and added par. (2).

Subsec. (d). Pub. L. 116–283, § 1806(c)(3), redesignated subsec. (b) of section 2302d of this title as subsec. (d) of this section and substituted ''subsection (b)'' for ''section 2302(5) of this title'' in introductory provisions.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 3042. Major defense acquisition program

For the definition of the term ''major defense acquisition program'' for purposes of this part, see section 4201 of this title.

(Added Pub. L. 116–283, div. A, title XVIII, § 1806(c)(1), Jan. 1, 2021, 134 Stat. 4154.)

PRIOR PROVISIONS

A prior section 3061 was renumbered section 7061 of this title.

EFFECTIVE DATE

Section effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

CHAPTER 203—GENERAL MATTERS

Sec.
3061. [Reserved].
3062. Regulations.
3063. Covered agencies.
3064. Applicability chapter 137 legacy provisions.[1]
3065. Assignment and delegation of procurement functions and responsibilities: delegation within agency.
3066. Assignment and delegation of procurement functions and responsibilities: procurements for or with other agencies.
3067. Approval required for military department termination or reduction in participation in joint acquisition programs.
3068. Inapplicability of certain laws.
3069. Buy-to-budget acquisition: end items.
3070. Limitation on acquisition of excess supplies.
3071. [Reserved].
3072. Comptroller General assessment of acquisition programs and initiatives.

PRIOR PROVISIONS

A prior chapter 203 ''GENERAL MATTERS'', as added by Pub. L. 115–232, div. A, title VIII, § 801(a), Aug. 13, 2018, 132 Stat. 1826, and consisting of reserved section 3021, was repealed by Pub. L. 116–283, div. A, title XVIII, § 1807(a), Jan. 1, 2021, 134 Stat. 4156.

§ 3062. Regulations

The Secretary of Defense shall prescribe regulations governing the performance within the

[1] So in original. Does not conform to section catchline.

Department of Defense of the procurement functions, and related functions, of the Department of Defense.

(Added Pub. L. 116–283, div. A, title XVIII, § 1807(b)(1), Jan. 1, 2021, 134 Stat. 4157.)

PRIOR PROVISIONS

A prior section 3062 was renumbered section 7062 of this title.

EFFECTIVE DATE

Section effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

RESTRICTION ON DEPARTMENT OF DEFENSE PROCUREMENT OF CERTAIN ITEMS CONTAINING PERFLUOROOCTANE SULFONATE OR PERFLUOROOCTANOIC ACID

Pub. L. 116–283, div. A, title III, § 333, Jan. 1, 2021, 134 Stat. 3531, provided that:

''(a) PROHIBITION.—The Department of Defense may not procure any covered item that contains perfluorooctane sulfonate (PFOS) or perfluorooctanoic acid (PFOA).

''(b) DEFINITIONS.—In this section, the term 'covered item' means—

''(1) nonstick cookware or cooking utensils for use in galleys or dining facilities; and

''(2) upholstered furniture, carpets, and rugs that have been treated with stain-resistant coatings.

''(c) EFFECTIVE DATE.—This section shall take effect on April 1, 2023.''

§ 3063. Covered agencies

For purposes of any provision of law referring to this section, the agencies named in this section are the following:

(1) The Department of Defense.

(2) The Department of the Army.

(3) The Department of the Navy.

(4) The Department of the Air Force.

(5) The Coast Guard.

(6) The National Aeronautics and Space Administration.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1807(c)(1), (2), Jan. 1, 2021, 134 Stat. 4157.)

CODIFICATION

The text of pars. (1) to (6) of section 2303(a) of this title, which were transferred to this section by Pub. L. 116–283, § 1807(c)(2), was based on act Aug. 10, 1956, ch. 1041, 70A Stat. 128; Pub. L. 85–568, title III, § 301(b), July 29, 1958, 72 Stat. 432; Pub. L. 98–369, div. B, title VII, § 2722(b)(1)(C), (D), July 18, 1984, 98 Stat. 1187.

PRIOR PROVISIONS

A prior section 3063 was renumbered section 7063 of this title.

AMENDMENTS

2021—Pars. (1) to (6). Pub. L. 116–283, § 1807(c)(2), transferred pars. (1) to (6) of section 2303(a) of this title to this section.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 3064. Applicability of chapter 137 legacy provisions

(a) GENERAL APPLICABILITY.—Any provision of this part that is a chapter 137 legacy provision;[1] applies to the procurement by any by any[2] of the agencies named in section 3063 of this title, for its use or otherwise, of all property (other than land) and all services for which payment is to be made from appropriated funds.

(b) APPLICABILITY TO CONTRACTS FOR INSTALLATION OR ALTERATION.—The provisions of this part that are chapter 137 legacy provisions that apply to the procurement of property apply also to contracts for its installation or alteration.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1807(c)(1), (3), Jan. 1, 2021, 134 Stat. 4157.)

CODIFICATION

The text of subsec. (a) introductory provisions and subsec. (b) of section 2303 of this title, which were transferred to this section and amended by Pub. L. 116–283, § 1807(c)(3), was based on act Aug. 10, 1956, ch. 1041, 70A Stat. 128; Pub. L. 98–369, div. B, title VII, § 2722(b)(1)(A), (B), (3), July 18, 1984, 98 Stat. 1187.

PRIOR PROVISIONS

A prior section 3064 was renumbered section 7064 of this title.

AMENDMENTS

2021—Pub. L. 116–283, § 1807(c)(3), transferred introductory provisions of subsec. (a) and subsec. (b) of section 2303 of this title to this section.

Subsec. (a). Pub. L. 116–283, § 1807(c)(3)(A), inserted heading and substituted ''Any provision of this part that is a chapter 137 legacy provision;'' for ''This chapter'', ''by any of the agencies named in section 3063 of this title'' for ''of the following agencies'', and period for colon at end.

Subsec. (b). Pub. L. 116–283, § 1807(c)(3)(B), inserted heading and substituted ''The provisions of this part that are chapter 137 legacy provisions'' for ''The provisions of this chapter''.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 3065. Assignment and delegation of procurement functions and responsibilities: delegation within agency

Except to the extent expressly prohibited by another provision of law, the head of an agency may delegate, subject to his direction, to any other officer or official of that agency, any power under any provision of this part that is a chapter 137 legacy provision.

(Aug. 10, 1956, ch. 1041, 70A Stat. 132, § 2311; Pub. L. 85–800, § 11, Aug. 28, 1958, 72 Stat. 967; Pub. L. 87–653, § 1(g), Sept. 10, 1962, 76 Stat. 529; Pub. L. 90–378, § 3, July 5, 1968, 82 Stat. 290; Pub. L. 97–86, title IX, §§ 907(c), 909(f), Dec. 1, 1981, 95 Stat. 1117, 1120; Pub. L. 98–369, div. B, title VII, § 2726, July 18, 1984, 98 Stat. 1194; Pub. L. 98–525, title XII, § 1214, Oct. 19, 1984, 98 Stat. 2592; Pub. L. 98–577,

[1] So in original. The semicolon probably should not appear.

[2] So in original.

title V, §505, Oct. 30, 1984, 98 Stat. 3087; Pub. L. 103–355, title I, §1503(a)(1), Oct. 13, 1994, 108 Stat. 3296; Pub. L. 107–107, div. A, title X, §1048(b)(2), Dec. 28, 2001, 115 Stat. 1225; Pub. L. 116–92, div. A, title IX, §902(49), Dec. 20, 2019, 133 Stat. 1548; renumbered §3065 and amended Pub. L. 116–283, div. A, title XVIII, §1807(d)(1), (2)(A)–(C), (3), Jan. 1, 2021, 134 Stat. 4157, 4158.)

PRIOR PROVISIONS

A prior section 3065 was renumbered section 7065 of this title.

AMENDMENTS

2021—Pub. L. 116–283, §1807(d)(2)(C), (3), in section catchline, substituted "Assignment and delegation of procurement functions and responsibilities: delegation within agency" for "Emergency situations involving weapons of mass destruction" and, in text, struck out subsec. (a) designation and heading "In General" at beginning, and substituted "under any provision of this part that is a chapter 137 legacy provision" for "under this chapter".

Pub. L. 116–283, §1807(d)(1), renumbered section 2311 of this title as this section.

Subsecs. (b), (c). Pub. L. 116–283, §1807(d)(2)(A), (B), transferred subsecs. (b) and (c) of this section to sections 3066 and 3067 of this title, respectively.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§3066. Assignment and delegation of procurement functions and responsibilities: procurements for or with other agencies

Subject to section 3065 of this title, to facilitate the procurement of property and services covered by any provision of this part that is a chapter 137 legacy provision by each agency named in section 3063 of this title for any other agency, and to facilitate joint procurement by those agencies—

(1) the head of an agency may delegate functions and assign responsibilities relating to procurement to any officer or employee within such agency;

(2) the heads of two or more agencies may by agreement delegate procurement functions and assign procurement responsibilities from one agency to another of those agencies or to an officer or civilian employee of another of those agencies; and

(3) the heads of two or more agencies may create joint or combined offices to exercise procurement functions and responsibilities.

(Added and amended Pub. L. 116–283, div. A, title XVIII, §1807(d)(2)(A), (D), Jan. 1, 2021, 134 Stat. 4158.)

CODIFICATION

The text of subsec. (b) of section 2311 of this title, which was transferred first to section 3065(b) of this title and then to this section and amended by Pub. L. 116–283, §1807(d)(1), (2)(A), (D), was based on Pub. L. 103–355, title I, §1503(a)(1), Oct. 13, 1994, 108 Stat. 3296.

PRIOR PROVISIONS

A prior section 3066, acts Aug. 10, 1956, ch. 1041, 70A Stat. 167; Sept. 2, 1958, Pub. L. 85–861, §33(a)(19), 72 Stat. 1565, authorized President, by and with consent of Senate, to make temporary appointments in grades of general and lieutenant general from officers of Army on active duty in any grade above brigadier general and specified number of positions in each such grade, prior to repeal by Pub. L. 96–513, title II, §201, title VII, §701, Dec. 12, 1980, 94 Stat. 2878, 2955, effective Sept. 15, 1981. See section 601 of this title.

AMENDMENTS

2021—Pub. L. 116–283, §1807(d)(2)(D), transferred subsec. (b) of section 3065 of this title to this section, and, in introductory provisions, struck out subsec. (b) designation and heading "Procurements For or With Other Agencies" at beginning and substituted "Subject to section 3065 of this title" for "Subject to subsection (a)", "covered by any provision of this part that is a chapter 137 legacy provision" for "covered by this chapter", and "section 3063" for "section 2303".

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§3067. Approval required for military department termination or reduction in participation in joint acquisition programs

(a) APPROVAL OF TERMINATIONS AND REDUCTIONS OF JOINT ACQUISITION PROGRAMS.—The Secretary of Defense shall prescribe regulations that prohibit each military department participating in a joint acquisition program approved by the Under Secretary of Defense for Acquisition and Sustainment from terminating or substantially reducing its participation in such program without the approval of the Under Secretary.

(b) REQUIRED CONTENT OF REGULATIONS.—The regulations shall include the following provisions:

(1) A requirement that, before any such termination or substantial reduction in participation is approved, the proposed termination or reduction be reviewed by the Joint Requirements Oversight Council of the Department of Defense.

(2) A provision that authorizes the Under Secretary of Defense for Acquisition and Sustainment to require a military department whose participation in a joint acquisition program has been approved for termination or substantial reduction to continue to provide some or all of the funding necessary for the acquisition program to be continued in an efficient manner.

(Added and amended Pub. L. 116–283, div. A, title XVIII, §1807(d)(2)(B), (E), Jan. 1, 2021, 134 Stat. 4158.)

CODIFICATION

The text of subsec. (c) of section 2311 of this title, which was transferred first to section 3065(c) of this title and then to this section and amended by Pub. L. 116–283, §1807(d)(1), (2)(B), (E), was based on Pub. L. 103–355, title I, §1503(a)(1), Oct. 13, 1994, 108 Stat. 3296; Pub. L. 107–107, div. A, title X, §1048(b)(2), Dec. 28, 2001, 115 Stat. 1225; Pub. L. 116–92, div. A, title IX, §902(49), Dec. 20, 2019, 133 Stat. 1548.

PRIOR PROVISIONS

A prior section 3067 was renumbered section 7067 of this title.

AMENDMENTS

2021—Pub. L. 116–283, § 1807(d)(2)(E), redesignated subsec. (c) of section 3065 of this title as subsec. (a) of this section, struck out par. (1) designation before ''The Secretary of Defense shall'', redesignated par. (2) and its subpars. (A) and (B) as subsec. (b) and pars. (1) and (2), respectively, and inserted subsec. (b) heading.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 3068. Inapplicability of certain laws

(a) LAWS INAPPLICABLE TO AGENCIES NAMED IN SECTION 3063.—Sections 6101 and 6304 of title 41 do not apply to the procurement or sale of property or services by the agencies named in section 3063 of this title of this title.[1]

(b) LAWS INAPPLICABLE TO PROCUREMENT OF AUTOMATIC DATA PROCESSING EQUIPMENT AND SERVICES FOR CERTAIN DEFENSE PURPOSES.—For purposes of subtitle III of title 40, the term ''national security system'', with respect to a telecommunications and information system operated by the Department of Defense, has the meaning given that term by section 3552(b)(6) of title 44.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1807(e)(1)–(3), Jan. 1, 2021, 134 Stat. 4158, 4159.)

CODIFICATION

The text of section 2314 of this title, which was transferred to this section, designated as subsec. (a), and amended by Pub. L. 116–283, § 1807(e)(2), was based on act Aug. 10, 1956, ch. 1041, 70A Stat. 133; Pub. L. 96–513, title V, § 511(78), Dec. 12, 1980, 94 Stat. 2927; Pub. L. 103–160, div. A, title VIII, § 822(b)(2), Nov. 30, 1993, 107 Stat. 1706; Pub. L. 111–350, § 5(b)(16), Jan. 4, 2011, 124 Stat. 3843; Pub. L. 113–291, div. A, title X, § 1071(a)(4), Dec. 19, 2014, 128 Stat. 3504.

The text of section 2315 of this title, which was transferred to this section, designated as subsec. (b), and amended by Pub. L. 116–283, § 1807(e)(3), was based on Pub. L. 97–86, title IX, § 908(a)(1), Dec. 1, 1981, 95 Stat. 1117; amended Pub. L. 97–295, § 1(25), Oct. 12, 1982, 96 Stat. 1291; Pub. L. 104–106, div. E, title LVI, § 5601(c), Feb. 10, 1996, 110 Stat. 699; Pub. L. 104–201, div. A, title X, § 1074(b)(4)(B), Sept. 23, 1996, 110 Stat. 2660; Pub. L. 105–85, div. A, title X, § 1073(a)(49), Nov. 18, 1997, 111 Stat. 1903; Pub. L. 107–217, § 3(b)(5), Aug. 21, 2002, 116 Stat. 1295; Pub. L. 109–364, div. A, title IX, § 906(c), Oct. 17, 2006, 120 Stat. 2354; Pub. L. 113–283, § 2(e)(5)(C), Dec. 18, 2014, 128 Stat. 3087; Pub. L. 114–92, div. A, title X, § 1081(a)(7), Nov. 25, 2015, 129 Stat. 1001.

PRIOR PROVISIONS

A prior section 3068 was renumbered section 7068 of this title.

Another prior section 3068, acts Aug. 10, 1956, ch. 1041, 70A Stat. 168; Sept. 7, 1962, Pub. L. 87–649, § 6(a)(1), 76 Stat. 494, contained substantially the same provisions as section 7068, which formerly was numbered as section 3068, but placed the upper limit for the rank of officers of the Medical Service Corps at colonel, prior to repeal by Pub. L. 89–603.

AMENDMENTS

2021—Subsec. (a). Pub. L. 116–283, § 1807(e)(2), transferred text of section 2314 of this title to this section, designated it as subsec. (a), inserted heading, and substituted ''section 3063 of this title'' for ''section 2303''.

Subsec. (b). Pub. L. 116–283, § 1807(e)(3), transferred text of section 2315 of this title to this section, designated it as subsec. (b), and inserted heading. Amendment directing insertion of heading before ''Sections'' was executed by inserting it before ''For purposes of'' to reflect the probable intent of Congress.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 3069. Buy-to-budget acquisition: end items

(a) AUTHORITY TO ACQUIRE ADDITIONAL END ITEMS.—Using funds available to the Department of Defense for the acquisition of an end item, the head of an agency making the acquisition may acquire a higher quantity of the end item than the quantity specified for the end item in a law providing for the funding of that acquisition if that head of an agency makes each of the following findings:

(1) The agency has an established requirement for the end item that is expected to remain substantially unchanged throughout the period of the acquisition.

(2) It is possible to acquire the higher quantity of the end item without additional funding because of production efficiencies or other cost reductions.

(3) The amount of the funds used for the acquisition of the higher quantity of the end item will not exceed the amount provided under that law for the acquisition of the end item.

(4) The amount so provided is sufficient to ensure that each unit of the end item acquired within the higher quantity is fully funded as a complete end item.

(b) REGULATIONS.—The Secretary of Defense shall prescribe regulations for the administration of this section. The regulations shall include, at a minimum, the following:

(1) The level of approval within the Department of Defense that is required for a decision to acquire a higher quantity of an end item under subsection (a).

(2) Authority (subject to subsection (a)) to acquire up to 10 percent more than the quantity of an end item approved in a justification and approval of the use of procedures other than competitive procedures for the acquisition of the end item under sections 3201 through 3205 of this title.

(c) NOTIFICATION OF CONGRESS.—(1) The head of an agency is not required to notify Congress in advance regarding a decision under the authority of this section to acquire a higher quantity of an end item than is specified in a law described in subsection (a), but, except as provided in paragraph (2), shall notify the congressional defense committees of the decision not later than 30 days after the date of the decision.

(2) A notification is not required under paragraph (1) if the end item being acquired in a higher quantity is an end item under a tactical missile program or a munitions program.

[1] So in original.

(d) WAIVER BY OTHER LAW.—A provision of law may not be construed as prohibiting the acquisition of a higher quantity of an end item under this section unless that provision of law—

(1) specifically refers to this section; and

(2) specifically states that the acquisition of the higher quantity of the end item is prohibited notwithstanding the authority provided in this section.

(e) DEFINITIONS.—(1) For the purposes of this section, a quantity of an end item shall be considered specified in a law if the quantity is specified either in a provision of that law or in any related representation that is set forth separately in a table, chart, or explanatory text included in a joint explanatory statement or governing committee report accompanying the law.

(2) In this section:

(A) The term ''end item'' means a production product assembled, completed, and ready for issue or deployment.

(B) The term ''head of an agency'' means the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, and the Secretary of the Air Force.

(Added Pub. L. 107–314, div. A, title VIII, §801(a)(1), Dec. 2, 2002, 116 Stat. 2600, §2308; amended Pub. L. 108–136, div. A, title X, §1043(b)(11), Nov. 24, 2003, 117 Stat. 1611; Pub. L. 114–328, div. A, title VIII, §852, Dec. 23, 2016, 130 Stat. 2296; renumbered §3069 and amended Pub. L. 116–283, div. A, title XVIII, §1807(f), Jan. 1, 2021, 134 Stat. 4159.)

PRIOR PROVISIONS

A prior section 3069 was renumbered section 7069 of this title.

AMENDMENTS

2021—Pub. L. 116–283 renumbered section 2308 of this title as this section.

Subsec. (b)(2). Pub. L. 116–283 substituted ''sections 3201 through 3205'' for ''section 2304''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 3070. Limitation on acquisition of excess supplies

(a) TWO-YEAR SUPPLY.—The Secretary of Defense may not incur any obligation against a stock fund of the Department of Defense for the acquisition of any item of supply if that acquisition is likely to result in an on-hand inventory (excluding war reserves) of that item of supply in excess of two years of operating stocks.

(b) EXCEPTIONS.—The head of a procuring activity may authorize the acquisition of an item of supply in excess of the limitation contained in subsection (a) if that activity head determines in writing—

(1) that the acquisition is necessary to achieve an economical order quantity and will not result in an on-hand inventory (excluding war reserves) in excess of three years of operating stocks and that the need for the item is unlikely to decline during the period for which the acquisition is made; or

(2) that the acquisition is necessary for purposes of maintaining the industrial base or for other reasons of national security.

(Added Pub. L. 102–190, div. A, title III, §317(a), Dec. 5, 1991, 105 Stat. 1338, §2213; renumbered §3070, Pub. L. 116–283, div. A, title XVIII, §1807(g)(1), Jan. 1, 2021, 134 Stat. 4159.)

PRIOR PROVISIONS

A prior section 3070 was renumbered section 7070 of this title.

A prior section 3071, acts Aug. 10, 1956, ch. 1041, 70A Stat. 169; Sept. 7, 1962, Pub. L. 87–649, §6(a)(2), (3), 76 Stat. 494; Nov. 8, 1967, Pub. L. 90–130, §1(8)(C), 81 Stat. 374, prescribed composition of Women's Army Corps and provided for a Director, a Deputy Director, and other positions for Women's Army Corps, prior to repeal by Pub. L. 95–485, title VIII, §820(b), Oct. 20, 1978, 92 Stat. 1627.

AMENDMENTS

2021—Pub. L. 116–283 renumbered section 2213 of this title as this section.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 3072. Comptroller General assessment of acquisition programs and initiatives

(a) ASSESSMENT REQUIRED.—The Comptroller General of the United States shall submit to the congressional defense committees an annual assessment of selected acquisition programs and initiatives of the Department of Defense by March 30th of each year from 2020 through 2023.

(b) ANALYSES TO BE INCLUDED.—The assessment required under subsection (a) shall include—

(1) a macro analysis of how well acquisition programs and initiatives are performing and reasons for that performance;

(2) a discussion of selected organizational, policy, and legislative changes, as determined appropriate by the Comptroller General, and the potential implications for execution and oversight of programs and initiatives; and

(3) specific analyses of individual acquisition programs and initiatives.

(c) ACQUISITION PROGRAMS AND INITIATIVES TO BE CONSIDERED.—The assessment required under subsection (a) shall consider the following programs and initiatives:

(1) Selected weapon systems, as determined appropriate by the Comptroller General.

(2) Selected information technology systems and initiatives, including defense business systems, networks, and software-intensive systems, as determined appropriate by the Comptroller General.

(3) Selected prototyping and rapid fielding activities and initiatives, as determined appropriate by the Comptroller General.

(Added Pub. L. 115–232, div. A, title VIII, §833(a), Aug. 13, 2018, 132 Stat. 1858, §2229b; renumbered §3072 and amended Pub. L. 116–283, div. A, title VIII, §813, title XVIII, §1807(g)(1), Jan. 1, 2021, 134 Stat. 3749, 4159.)

PRIOR PROVISIONS

Prior sections 3072 to 3075 were renumbered sections 7072 to 7075 of this title, respectively.

Prior sections 3076 to 3080 were repealed by Pub. L. 103–337, div. A, title XVI, §§ 1661(a)(3)(A), 1691, Oct. 5, 1994, 108 Stat. 2980, 3026, effective Dec. 1, 1994, except as otherwise provided.

Section 3076, act Aug. 10, 1956, ch. 1041, 70A Stat. 170, related to composition of Army Reserve. See section 10104 of this title.

Section 3077, act Aug. 10, 1956, ch. 1041, 70A Stat. 170, related to composition of Army National Guard of United States. See section 10105 of this title.

Section 3078, act Aug. 10, 1956, ch. 1041, 70A Stat. 171, provided that Army National Guard is a component of Army while in service of United States. See section 10106 of this title.

Section 3079, act Aug. 10, 1956, ch. 1041, 70A Stat. 171, related to status of Army National Guard of United States when not in Federal service. See section 10107 of this title.

Section 3080, added Pub. L. 86–603, § 1(2)(A), July 7, 1960, 74 Stat. 357, related to authority of officers of Army National Guard of United States with respect to Federal status. See section 10215 of this title.

Prior sections 3081, 3082, 3083, and 3084 were renumbered sections 7081, 10542, 7083, and 7084 of this title, respectively.

AMENDMENTS

2021—Pub. L. 116–283, § 1807(g)(1), renumbered section 2229b of this title as this section.

Subsec. (b)(2). Pub. L. 116–283, § 813, substituted ''a discussion of selected organizational, policy, and legislative changes, as determined appropriate by the Comptroller General, and the potential'' for ''a summary of organizational and legislative changes and emerging assessment methodologies since the last assessment, and a discussion of the''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by section 1807(g)(1) of Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

CHAPTER 205—DEFENSE ACQUISITION SYSTEM

Sec.	
3101.	Definitions.
3102.	Customer-oriented acquisition system.
3103.	Civilian management of the defense acquisition system.
3104.	Acquisition-related functions of chiefs of the armed forces.
3105.	Elements of the defense acquisition system: performance assessments.
3106.	Elements of the defense acquisition system: performance goals[1]

PRIOR PROVISIONS

A prior chapter 205 ''DEFENSE ACQUISITION SYSTEM'', as added by Pub. L. 115–232, div. A, title VIII, § 801(a), Aug. 13, 2018, 132 Stat. 1826, and consisting of reserved section 3051, was repealed by Pub. L. 116–283, div. A, title XVIII, § 1808(a)(1), Jan. 1, 2021, 134 Stat. 4159.

AMENDMENTS

2021—Pub. L. 116–283, div. A, title XVIII, §§ 1808(a)(1), (3)(B), (c)(3), Jan. 1, 2021, 134 Stat. 4159, 4160, transferred chapter 149 of this title to this chapter, renumbered items 2545, 2546, 2546a, 2547, and 2548 as 3101, 3103, 3102, 3104, and 3105, respectively, moved item 3102 so as to follow item 3101, added items 3105 and 3106, and struck out former item 3105 (as renumbered from 2548) ''Performance assessments of the defense acquisition system''.

[1] So in original. Probably should be followed by a period.

§ 3101. Definitions

In this chapter, the term ''acquisition'' has the meaning provided in section 131 of title 41.

(Added Pub. L. 111–383, div. A, title VIII, § 861(a), Jan. 7, 2011, 124 Stat. 4288, § 2545; amended Pub. L. 113–291, div. A, title X, § 1071(a)(11), Dec. 19, 2014, 128 Stat. 3505; renumbered § 3101 and amended Pub. L. 116–283, div. A, title XVIII, § 1808(a)(2), (b)(1), Jan. 1, 2021, 134 Stat. 4159, 4160.)

CODIFICATION

Section 2545 of this title, which was transferred to this section by Pub. L. 116–283, § 1808(a)(2), was also transferred in large part to section 3001 of this title by Pub. L. 116–283, § 1806(a)(2)–(4).

AMENDMENTS

2021—Pub. L. 116–283, § 1808(b)(1), substituted ''In this chapter, the term'' for ''In this chapter:'', par. (1) designation, and ''The term'' and struck out pars. (2) to (4) which defined ''defense acquisition system'', ''element of the defense acquisition system'', and ''acquisition workforce''.

Pub. L. 116–283, § 1808(a)(2), renumbered section 2545 of this title as this section.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

DIGITAL MODERNIZATION OF ANALYTICAL AND DECISION-SUPPORT PROCESSES FOR MANAGING AND OVERSEEING DEPARTMENT OF DEFENSE ACQUISITION PROGRAMS

Pub. L. 116–283, div. A, title VIII, § 836, Jan. 1, 2021, 134 Stat. 3756, provided that:

''(a) DIGITAL DATA MANAGEMENT AND ANALYTICS CAPABILITIES.—

''(1) IN GENERAL.—The Secretary of Defense shall iteratively develop and integrate advanced digital data management and analytics capabilities, consistent with private sector best practices, that—

''(A) integrate all aspects of the defense acquisition system, including the development of capability requirements, research, design, development, testing, evaluation, acquisition, management, operations, and sustainment of systems;

''(B) facilitate the management and analysis of all relevant data generated during the development of capability requirements, research, design, development, testing, evaluation, acquisition, operations, and sustainment of systems;

''(C) enable the use of such data to inform further development, acquisition, management and oversight of such systems, including portfolio management; and

''(D) include software capabilities to collect, transport, organize, manage, make available, and analyze relevant data throughout the life cycle of defense acquisition programs, including any data needed to support individual and portfolio management of acquisition programs.

''(2) REQUIREMENTS.—The capabilities developed under paragraph (1) shall—

''(A) be accessible to, and useable by, individuals throughout the Department of Defense who have responsibilities relating to activities described in clauses (A) through (C) of paragraph (1);

''(B) enable the development, use, curation, and maintenance of original form and real-time digital systems by—

''(i) ensuring shared access to data within the Department;

''(ii) supplying data to digital engineering models for use in the defense acquisition, sustainment, and portfolio management processes; and

''(iii) supplying data to testing infrastructure and software to support automated approaches for testing, evaluation, and deployment throughout the defense acquisition, sustainment, and portfolio management processes; and

''(C) feature—

''(i) improved data management and sharing processes;

''(ii) timely, high-quality, transparent, and actionable analyses; and

''(iii) analytical models and simulations.

''(3) ENABLING DATA INFRASTRUCTURE, TOOLS, AND PROCESSES.—In developing the capability required under paragraph (1), the Secretary of Defense shall—

''(A) move supporting processes and the data associated with such processes from analog to digital format, including planning and reporting processes;

''(B) make new and legacy data more accessible to, and usable by, appropriate employees and contractors (at any tier) of the Department of Defense and members of the Armed Forces, including through migration of program and other documentation into digital formats;

''(C) modernize the query, collection, storage, retrieval, reporting, and analysis capabilities for stakeholders within the Department, including research entities, Program Management Offices, analytic organizations, oversight staff, and decision makers;

''(D) automate data collection and storage to minimize or eliminate manual data entry or manual reporting;

''(E) enable employees and other appropriate users to access data from all relevant data sources, including through—

''(i) streamlining data access privileges;

''(ii) sharing of appropriate data between and among Federal Government and contractor information systems; and

''(iii) enabling timely and continuous data collection and sharing from all appropriate personnel, including contractors;

''(F) modernize existing enterprise information systems to enable interoperability consistent with technical best practices; and

''(G) provide capabilities and platforms to enable continuous development and integration of software using public and private sector best practices.

''(b) PORTFOLIO MANAGEMENT.—The Secretary of Defense shall establish capabilities for robust, effective, and data-driven portfolio management described in subsection (a)(1)(C), using the capability established in this section, to improve the Department of Defense-wide assessment, management, and optimization of the investments in weapon systems of the Department, including through consolidation of duplicate or similar weapon system programs.

''(c) DEMONSTRATION ACTIVITIES.—

''(1) IN GENERAL.—The Secretary of Defense shall carry out activities to demonstrate the capability required under subsection (a).

''(2) ACTIVITY SELECTION.—Not later than July 15, 2021, the Secretary of Defense shall select decision support processes and individual acquisition programs to participate in the demonstration activities under paragraph (1), including—

''(A) decision support processes, including—

''(i) portfolio management as described in subsection (b);

''(ii) one or more acquisition data management test cases; and

''(iii) one or more development and test modeling and simulation test cases to demonstrate the ability to collect data from tests and operations in the field, and feed the data back into models and simulations for better software development and testing;

''(B) individual acquisition programs representing—

''(i) one or more defense business systems;

''(ii) one or more command and control systems;

''(iii) one or more middle tier of acquisition programs;

''(iv) programs featuring a cost-plus contract type, and a fixed-price contract type, and a transaction authorized under section 2371 or 2371b of title 10, United States Code; and

''(v) at least one program in each military department.

''(3) EXECUTION OF DEMONSTRATION ACTIVITIES.—As part of the demonstration activities under paragraph (1), the Secretary shall—

''(A) conduct a comparative analysis that assesses the risks and benefits of the digital management and analytics capability used in each of the programs participating in the demonstration activities relative to the traditional data collection, reporting, exposing, and analysis approaches of the Department;

''(B) ensure that the intellectual property strategy for each of the programs participating in the demonstration activities is best aligned to meet the goals of the program; and

''(C) develop a workforce and infrastructure plan to support any new policies and guidance implemented in connection with the demonstration activities, including any policies and guidance implemented after the completion of such activities.

''(d) POLICIES AND GUIDANCE REQUIRED.—Not later than March 15, 2022, based on the results of the demonstration activities carried out under subsection (c), the Secretary of Defense shall issue or modify policies and guidance to—

''(1) promote the use of digital data management and analytics capabilities; and

''(2) address roles, responsibilities, and procedures relating to such capabilities.

''(e) STEERING COMMITTEE.—

''(1) IN GENERAL.—The Secretary of Defense shall establish a steering committee to assist the Secretary in carrying out subsections (a) through (c).

''(2) MEMBERSHIP.—The steering committee shall be composed of the following members or their designees:

''(A) The Deputy Secretary of Defense.

''(B) The Chief Information Officer.

''(C) The Director of Cost Assessment and Program Evaluation.

''(D) The Under Secretary of Defense for Research and Engineering.

''(E) The Under Secretary of Defense for Acquisition and Sustainment.

''(F) The Director of Operational Test and Evaluation.

''(G) The Service Acquisition Executives.

''(H) The Director for Force Structure, Resources, and Assessment of the Joint Staff.

''(I) The Director of the Defense Digital Service.

''(J) Such other officials of the Department of Defense as the Secretary determines appropriate.

''(f) INDEPENDENT ASSESSMENTS.—

''(1) INITIAL ASSESSMENT.—

''(A) IN GENERAL.—The Defense Innovation Board, in consultation with the Defense Digital Service, shall conduct an independent assessment and cost-benefits analysis to identify recommended approaches for the implementation of subsections (a) through (c).

''(B) ELEMENTS.—The assessment under subparagraph (A) shall include the following:

''(i) A plan for the development and implementation of the capabilities required under subsection (a), including a plan for any procurement

that may be required as part of such development and implementation.

''(ii) An independent cost assessment of the total estimated cost of developing and implementing the capability, as well as an assessment of any potential cost savings.

''(iii) An independent estimate of the schedule for the development approach, and order of priorities for implementation of the capability, including a reasonable estimate of the dates on which the capability can be expected to achieve initial operational capability and full operational capability, respectively.

''(iv) A recommendation identifying the office or other organization of the Department of Defense that would be most appropriate to manage and execute the capability.

''(C) REPORT.—Not later than July 15, 2021, the Defense Innovation Board, in consultation with the Defense Digital Service, shall submit to the Secretary of Defense and the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the findings of the assessment under subparagraph (A), including the findings of the assessment with respect to each element specified in subparagraph (B).

''(2) SECOND ASSESSMENT.—

''(A) IN GENERAL.—Not later than March 15, 2023, the Defense Innovation Board and the Defense Science Board shall jointly complete an independent assessment of the progress of the Secretary in implementing subsections (a) through (c). The Secretary of Defense shall ensure that the Defense Innovation Board and the Defense Science Board have access to the resources, data, and information necessary to complete the assessment.

''(B) INFORMATION TO CONGRESS.—Not later than 30 days after the date on which the assessment under subparagraph (A) is completed, the Defense Innovation Board and the Defense Science Board shall jointly provide to the congressional defense committees—

''(i) a report summarizing the assessment; and

''(ii) a briefing on the findings of the assessment.

''(g) DEMONSTRATIONS AND BRIEFING.—

''(1) DEMONSTRATION OF IMPLEMENTATION.—Not later than October 20, 2021, the Secretary of Defense shall submit to the congressional defense committees a demonstration and briefing on the progress of the Secretary in implementing subsections (a) through (c). The briefing shall include an explanation of how the results of the demonstration activities carried out under subsection (c) will be incorporated into the policy and guidance required under subsection (d), particularly the policy and guidance of the members of the steering committee established under subsection (e).

''(2) BRIEFING ON LEGISLATIVE RECOMMENDATIONS.—Not later than February 1, 2022, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and of the House of Representatives a briefing that identifies any changes to existing law that may be necessary to facilitate the implementation of subsections (a) through (c).

''(3) DEMONSTRATION OF PORTFOLIO MANAGEMENT.—In conjunction with the budget of the President for fiscal year 2023 (as submitted to Congress under section 1105(a) of title 21 [probably should be title ''31''], United States Code), the Deputy Secretary of Defense shall schedule a demonstration of the portfolio management capability developed under subsection (b) with the congressional defense committees.''

§ 3102. Customer-oriented acquisition system

(a) OBJECTIVE.—It shall be the objective of the defense acquisition system to meet the needs of its customers in the most cost-effective manner practicable. The acquisition policies, directives, and regulations of the Department of Defense shall be modified as necessary to ensure the development and implementation of a customer-oriented acquisition system.

(b) CUSTOMER.—The customer of the defense acquisition system is the armed force that will have primary responsibility for fielding the system or systems acquired. The customer is represented with regard to a major defense acquisition program by the Secretary of the military department concerned and the Chief of the armed force concerned.

(c) ROLE OF CUSTOMER.—The customer of a major defense acquisition program shall be responsible for balancing resources against priorities on the acquisition program and ensuring that appropriate trade-offs are made among cost, schedule, technical feasibility, and performance on a continuing basis throughout the life of the acquisition program.

(Added Pub. L. 114–92, div. A, title VIII, § 802(a)(1), Nov. 25, 2015, 129 Stat. 878, § 2546a; renumbered § 3102 and amended Pub. L. 116–283, div. A, title XVIII, § 1808(a)(2), (3)(A), Jan. 1, 2021, 134 Stat. 4159.)

AMENDMENTS

2021—Pub. L. 116–283 renumbered section 2546a of this title as this section and transferred it so as to appear after section 3101 of this title. Directory language transferring this section ''within such section'' was executed as if it had read ''within such chapter'', meaning chapter 205 of this title, to reflect the probable intent of Congress.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 3103. Civilian management of the defense acquisition system

(a) RESPONSIBILITY OF THE UNDER SECRETARY OF DEFENSE FOR ACQUISITION AND SUSTAINMENT.—Subject to the authority, direction and control of the Secretary of Defense, the Under Secretary of Defense for Acquisition and Sustainment shall be responsible for the management of the defense acquisition system and shall exercise such control of the system and perform such duties as are necessary to ensure the successful and efficient operation of the defense acquisition system, including the duties enumerated and assigned to the Under Secretary elsewhere in this title.

(b) RESPONSIBILITY OF THE SERVICE ACQUISITION EXECUTIVES.—Subject to the direction of the Under Secretary of Defense for Acquisition and Sustainment on matters pertaining to acquisition, and subject to the authority, direction, and control of the Secretary of the military department concerned, a service acquisition executive of a military department shall be responsible for the management of elements of the defense acquisition system in that military department and shall exercise such control of the system and perform such duties as are necessary to ensure the successful and efficient operation of such elements of the defense acquisition system.

(Added Pub. L. 111–383, div. A, title VIII, §861(a), Jan. 7, 2011, 124 Stat. 4288, §2546; amended Pub. L. 116–92, div. A, title IX, §902(78), Dec. 20, 2019, 133 Stat. 1552; renumbered §3103, Pub. L. 116–283, div. A, title XVIII, §1808(a)(2), Jan. 1, 2021, 134 Stat. 4159.)

AMENDMENTS

2021—Pub. L. 116–283 renumbered section 2546 of this title as this section.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§3104. Acquisition-related functions of chiefs of the armed forces

(a) PERFORMANCE OF CERTAIN ACQUISITION-RELATED FUNCTIONS.—The Secretary of Defense shall ensure that the Chief of Staff of the Army, the Chief of Naval Operations, the Chief of Staff of the Air Force, the Commandant of the Marine Corps, and the Chief of Space Operations assist the Secretary of the military department concerned in the performance of the following acquisition-related functions of such department:

(1) The development of requirements for equipping the armed force concerned (subject, where appropriate, to validation by the Joint Requirements Oversight Council pursuant to section 181 of this title).

(2) Decisions regarding the balancing of resources and priorities, and associated trade-offs among cost, schedule, technical feasibility, and performance on major defense acquisition programs.

(3) The coordination of measures to control requirements creep in the defense acquisition system.

(4) The recommendation of trade-offs among life-cycle cost, schedule, and performance objectives, and procurement quantity objectives, to ensure acquisition programs deliver best value in meeting the approved military requirements.

(5) Termination of development or procurement programs for which life-cycle cost, schedule, and performance expectations are no longer consistent with approved military requirements and levels of priority, or which no longer have approved military requirements.

(6) The development and management of career paths in acquisition for military personnel (as required by section 1722a of this title).

(7) The assignment and training of contracting officer representatives when such representatives are required to be members of the armed forces because of the nature of the contract concerned.

(b) ADHERENCE TO REQUIREMENTS IN MAJOR DEFENSE ACQUISITION PROGRAMS.—(1) The Secretary of the military department concerned shall ensure that the program capability document supporting a Milestone B or subsequent decision for a major defense acquisition program may not be approved until the chief of the armed force concerned determines in writing that the requirements in the document are necessary and realistic in relation to the program cost and fielding targets established under section 4271(a) of this title.

(2) Consistent with the performance of duties under subsection (a), the Chief of the armed force concerned, or in the case of a joint program the chiefs of the armed forces concerned, with respect to major defense acquisition programs, shall—

(A) concur with the need for a materiel solution as identified in the Materiel Development Decision Review prior to entry into the Materiel Solution Analysis Phase under Department of Defense Instruction 5000.02;

(B) concur with the cost, schedule, technical feasibility, and performance trade-offs that have been made with regard to the program before Milestone A approval is granted under section 4251 of this title;

(C) concur that appropriate trade-offs among cost, schedule, technical feasibility, and performance objectives have been made to ensure that the program is affordable when considering the per unit cost and the total life-cycle cost before Milestone B approval is granted under section 4252 of this title; and

(D) concur that the requirements in the program capability document are necessary and realistic in relation to program cost and fielding targets as required by paragraph (1) before Milestone C approval is granted.

(c) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to affect the assignment of functions under section 7014(c)(1)(A), section 8014(c)(1)(A), or section 9014(c)(1)(A) of this title, except as explicitly provided in this section.

(d) DEFINITIONS.—In this section:

(1) The term ''requirements creep'' means the addition of new technical or operational specifications after a requirements document is approved by the appropriate validation authority for the requirements document.

(2) The term ''requirements document'' means a document produced in the requirements process that is provided for an acquisition program to guide the subsequent development, production, and testing of the program and that—

(A) justifies the need for a materiel approach, or an approach that is a combination of materiel and non-materiel, to satisfy one or more specific capability gaps;

(B) details the information necessary to develop an increment of militarily useful, logistically supportable, and technically mature capability, including key performance parameters; or

(C) identifies production attributes required for a single increment of a program.

(3) The term ''program capability document'' has the meaning provided in section 4401(b)(5) of this title.

(Added Pub. L. 111–383, div. A, title VIII, §861(a), Jan. 7, 2011, 124 Stat. 4289, §2547; amended Pub. L. 112–239, div. A, title IX, §951(c), Jan. 2, 2013, 126 Stat. 1891; Pub. L. 114–92, div. A, title VIII, §802(b), Nov. 25, 2015, 129 Stat. 879; Pub. L. 114–328, div. A, title VIII, §807(c), Dec. 23, 2016,

130 Stat. 2261; Pub. L. 115–91, div. A, title VIII, § 833, Dec. 12, 2017, 131 Stat. 1468; Pub. L. 115–232, div. A, title VIII, § 809(a), Aug. 13, 2018, 132 Stat. 1840; Pub. L. 116–92, div. A, title XVII, § 1731(a)(52), Dec. 20, 2019, 133 Stat. 1815; renumbered § 3104 and amended Pub. L. 116–283, div. A, title IX, § 924(b)(32), title XVIII, § 1808(a)(2), (b)(2), Jan. 1, 2021, 134 Stat. 3825, 4159, 4160.)

CODIFICATION

In addition to being transferred to this section as part of section 2547 of this title, subsec. (b) of section 2547 of this title was also transferred to section 4274 of this title and redesignated as subsec. (a) of such section 4274 by Pub. L. 116–283, div. A, title XVIII, § 1847(e)(4)(B), Jan. 1, 2021, 134 Stat. 4257.

AMENDMENTS

2021—Pub. L. 116–283, § 1808(a)(2), renumbered section 2547 of this title as this section.

Subsec. (a). Pub. L. 116–283, § 924(b)(32), substituted ''the Commandant of the Marine Corps, and the Chief of Space Operations'' for ''and the Commandant of the Marine Corps''.

Subsec. (b)(1). Pub. L. 116–283, § 1808(b)(2)(A), substituted ''section 4271(a)'' for ''section 2448a(a)''.

Subsec. (b)(2)(B). Pub. L. 116–283, § 1808(b)(2)(B), substituted ''section 4251'' for ''section 2366a''.

Subsec. (b)(2)(C). Pub. L. 116–283, § 1808(b)(2)(C), substituted ''section 4252'' for ''section 2366b''.

Subsec. (d)(3). Pub. L. 116–283, § 1808(b)(2)(D), substituted ''section 4401(b)(5)'' for ''section 2446a(b)(5)''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by section 1808(a)(2), (b)(2) of Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 3105. Elements of the defense acquisition system: performance assessments

(a) PERFORMANCE ASSESSMENTS REQUIRED.—The Secretary of Defense, acting through the Under Secretary of Defense for Acquisition and Sustainment, the Director of Procurement and Acquisition Policy, and the Director of the Office of Performance Assessment and Root Cause Analysis, shall issue guidance, with detailed implementation instructions, for the Department of Defense to provide for periodic independent performance assessments of elements of the defense acquisition system for the purpose of—

(1) determining the extent to which such elements of the defense acquisition system deliver value to the Department of Defense, taking into consideration the performance elements identified in subsection (b);

(2) assisting senior officials of the Department of Defense in identifying and developing lessons learned from best practices and shortcomings in the performance of such elements of the defense acquisition system; and

(3) assisting senior officials of the Department of Defense in developing acquisition workforce excellence under section 1701a of this title.

(b) AREAS CONSIDERED IN PERFORMANCE ASSESSMENTS.—(1) Each performance assessment conducted pursuant to subsection (a) shall consider, at a minimum—

(A) the extent to which acquisitions conducted by the element of the defense acquisition system under review meet applicable cost, schedule, and performance objectives; and

(B) the staffing and quality of the acquisition workforce and the effectiveness of the management of the acquisition workforce, including workforce incentives and career paths.

(2) The Secretary of Defense shall ensure that the performance assessments required by this section are appropriately tailored to reflect the diverse nature of the work performed by each element of the defense acquisition system. In addition to the mandatory areas under paragraph (1), a performance assessment may consider, as appropriate, specific areas of acquisition concern, such as—

(A) the selection of contractors, including—

(i) the extent of competition and the use of exceptions to competition requirements;

(ii) compliance with Department of Defense policies regarding the participation of small business concerns and various categories of small business concerns, including the use of contract bundling and the availability of non-bundled contract vehicles;

(iii) the quality of market research;

(iv) the effective consideration of contractor past performance; and

(v) the number of bid protests, the extent to which such bid protests have been successful, and the reasons for such success;

(B) the negotiation of contracts, including—

(i) the appropriate application of sections 3701 through 3708 of this title (relating to truth in negotiations);

(ii) the appropriate use of contract types appropriate to specific procurements;

(iii) the appropriate use of performance requirements;

(iv) the appropriate acquisition of technical data and other rights and assets necessary to support long-term sustainment and follow-on procurement; and

(v) the timely definitization of any undefinitized contract actions; and

(C) the management of contractor performance, including—

(i) the assignment of appropriately qualified contracting officer representatives and other contract management personnel;

(ii) the extent of contract disputes, the reasons for such disputes, and the extent to which they have been successfully addressed;

(iii) the appropriate consideration of long-term sustainment and energy efficiency objectives; and

(iv) the appropriate use of integrated testing.

(c) CONTENTS OF GUIDANCE.—The guidance issued pursuant to subsection (a) shall ensure that each element of the defense acquisition system is subject to a performance assessment under this section not less often than once every four years, and shall address, at a minimum—

(1) the designation of elements of the defense acquisition system that are subject to performance assessment at an organizational level that ensures such assessments can be performed in an efficient and integrated manner;

(2) the frequency with which such performance assessments should be conducted;

(3) goals, standards, tools, and metrics for use in conducting performance assessments;

(4) the composition of the teams designated to perform performance assessments;

(5) any phase-in requirements needed to ensure that qualified staff are available to perform performance assessments;

(6) procedures for tracking the implementation of recommendations made pursuant to performance assessments;

(7) procedures for developing and disseminating lessons learned from performance assessments; and

(8) procedures for ensuring that information from performance assessments are retained electronically and are provided in a timely manner to the Under Secretary of Defense for Acquisition and Sustainment and the Director of the Office of Performance Assessment and Root Cause Analysis as needed to assist them in performing their responsibilities under this section.

(Added Pub. L. 111–383, div. A, title VIII, § 861(a), Jan. 7, 2011, 124 Stat. 4289, § 2548; amended Pub. L. 112–239, div. A, title X, § 1076(d)(5), (f)(30), Jan. 2, 2013, 126 Stat. 1951, 1953; Pub. L. 115–91, div. A, title X, § 1081(a)(41), Dec. 12, 2017, 131 Stat. 1596; Pub. L. 116–92, div. A, title IX, § 902(79), Dec. 20, 2019, 133 Stat. 1553; renumbered § 3105 and amended Pub. L. 116–283, div. A, title XVIII, § 1808(a)(2), (b)(3), (c)(1)(A), (2), Jan. 1, 2021, 134 Stat. 4159, 4160.)

AMENDMENTS

2021—Pub. L. 116–283, § 1808(a)(2), (c)(2), renumbered section 2548 of this title as this section and substituted ''Elements of the defense acquisition system: performance assessments'' for ''Performance assessments of the defense acquisition system'' in section catchline.

Subsec. (b)(2)(B)(i). Pub. L. 116–283, § 1808(b)(3), substituted ''sections 3701 through 3708'' for ''section 2306a''.

Subsecs. (d), (e). Pub. L. 116–283, § 1808(c)(1)(A), transferred subsecs. (d) and (e) of this section to section 3106 of this title.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 3106. Elements of the defense acquisition system: performance goals

(a) PERFORMANCE GOALS UNDER GOVERNMENT PERFORMANCE AND RESULTS ACT OF 1993.—The annual performance plan prepared by the Department of Defense pursuant to section 1115 of title 31 shall include appropriate performance goals for elements of the defense acquisition system.

(b) REPORTING REQUIREMENT.—The annual report prepared by the Secretary of Defense pursuant to section 1116 of title 31 shall address the Department's success in achieving performance goals established pursuant to such section for elements of the defense acquisition system.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1808(c)(1), Jan. 1, 2021, 134 Stat. 4160.)

CODIFICATION

The text of subsecs. (d) and (e) of section 2548 of this title, which were transferred first to section 3105(d) and (e) of this title and then to this section, redesignated as subsecs. (a) and (b), respectively, and amended by Pub. L. 116–283, § 1808(a)(2), (c)(1), was based on Pub. L. 111–383, div. A, title VIII, § 861(a), Jan. 7, 2011, 124 Stat. 4289; amended Pub. L. 112–239, div. A, title X, § 1076(d)(5), (f)(30)(B), (C), Jan. 2, 2013, 126 Stat. 1951, 1953; Pub. L. 115–91, div. A, title X, § 1081(a)(41), Dec. 12, 2017, 131 Stat. 1596.

AMENDMENTS

2021—Pub. L. 116–283, § 1808(c)(1)(B), redesignated subsecs. (d) and (e) of section 3105 of this title as subsecs. (a) and (b), respectively, of this section.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

CHAPTER 207—BUDGETING AND APPROPRIATIONS

Sec.
3131. Availability of appropriations.
3132. Availability of appropriations for procurement of technical military equipment and supplies.
3133. Contracts for periods crossing fiscal years: severable service contracts; leases of real or personal property.
3134. Allocation of appropriations.
3135. Comparable budgeting for common procurement weapon systems.
3136. Defense Modernization Account.
3137. Procurement of contract services: specification of amounts requested in budget.
3138. Obligations for contract services: reporting in budget object classes.

PRIOR PROVISIONS

A prior chapter 207 ''BUDGETING AND APPROPRIATIONS MATTERS'', as added by Pub. L. 115–232, div. A, title VIII, § 801(a), Aug. 13, 2018, 132 Stat. 1826, and consisting of reserved section 3101, was repealed by Pub. L. 116–283, div. A, title XVIII, § 1809(a), Jan. 1, 2021, 134 Stat. 4160.

§ 3131. Availability of appropriations

(a) Funds appropriated to the Department of Defense for research and development remain available for obligation for a period of two consecutive years.

(b) Funds appropriated to the Department of Defense for research and development may be used—

(1) for the purposes of section 4141 [1] of this title; and

(2) for purposes related to research and development for which expenditures are specifically authorized in other appropriations of the Department of Defense.

(Added Pub. L. 97–258, § 2(b)(3)(B), Sept. 13, 1982, 96 Stat. 1052, § 2361; renumbered § 2351 and amended Pub. L. 100–370, § 1(g)(1), July 19, 1988, 102 Stat. 846; renumbered § 3131 and amended Pub. L. 116–283, div. A, title XVIII, §§ 1809(b), 1883(b)(2), Jan. 1, 2021, 134 Stat. 4161, 4294.)

[1] Reference reflects amendment made by section 1883(b)(2) of Pub. L. 116–283.

AMENDMENTS

2021—Pub. L. 116–283, § 1809(b), renumbered section 2351 of this title as this section.

Subsec. (b)(1). Pub. L. 116–283, § 1883(b)(2), substituted "section 4141" for "section 2353".

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 3132. Availability of appropriations for procurement of technical military equipment and supplies

Funds appropriated to the Department of Defense for the procurement of technical military equipment and supplies remain available until spent.

(Added Pub. L. 97–258, § 2(b)(4)(B), Sept. 13, 1982, 96 Stat. 1052, § 2394; renumbered § 2395 and amended Pub. L. 97–295, § 1(28)(A), Oct. 12, 1982, 96 Stat. 1291; renumbered § 3132, Pub. L. 116–283, div. A, title XVIII, § 1809(c), Jan. 1, 2021, 134 Stat. 4161.)

AMENDMENTS

2021—Pub. L. 116–283 renumbered section 2395 of this title as this section.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 3133. Contracts for periods crossing fiscal years: severable service contracts; leases of real or personal property

(a) AUTHORITY.—(1) The Secretary of Defense, the Secretary of a military department, or the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, may enter into a contract for a purpose described in paragraph (2) for a period that begins in one fiscal year and ends in the next fiscal year if (without regard to any option to extend the period of the contract) the contract period does not exceed one year.

(2) The purpose of a contract described in this paragraph is as follows:

(A) The procurement of severable services.

(B) The lease of real or personal property, including the maintenance of such property when contracted for as part of the lease agreement.

(b) OBLIGATION OF FUNDS.—Funds made available for a fiscal year may be obligated for the total amount of a contract entered into under the authority of subsection (a).

(Added Pub. L. 100–370, § 1(h)(2), July 19, 1988, 102 Stat. 847, § 2410a; amended Pub. L. 102–190, div. A, title III, § 342, Dec. 5, 1991, 105 Stat. 1343; Pub. L. 104–324, title II, § 214(b), Oct. 19, 1996, 110 Stat. 3915; Pub. L. 105–85, div. A, title VIII, § 801(a), Nov. 18, 1997, 111 Stat. 1831; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 108–136, div. A, title X, § 1005(a), (b)(1), Nov. 24, 2003, 117 Stat. 1584; renumbered § 3133, Pub. L. 116–283, div. A, title XVIII, § 1809(d), Jan. 1, 2021, 134 Stat. 4161.)

AMENDMENTS

2021—Pub. L. 116–283 renumbered section 2410a of this title as this section.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 3134. Allocation of appropriations

(a) Appropriations available for procurement by an agency named in section 3063 of this title may, through administrative allotment, be made available for obligation for procurement by any other agency in amounts authorized by the head of the allotting agency and without transfer of funds on the books of the Department of the Treasury.

(b) A disbursing official of the allotting agency may make any disbursement chargeable to an allotment under subsection (a) upon a voucher certified by an officer or civilian employee of the procuring agency.

(c) For purposes of sections 3064 and 3066 of this title, this section shall be deemed to be a section of chapter 137 of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 132, § 2309; Pub. L. 97–258, § 2(b)(1)(B), Sept. 13, 1982, 96 Stat. 1052; renumbered § 3134 and amended Pub. L. 116–283, div. A, title XVIII, § 1809(e), Jan. 1, 2021, 134 Stat. 4161.)

AMENDMENTS

2021—Pub. L. 116–283, § 1809(e)(1), renumbered section 2309 of this title as this section.

Subsec. (a). Pub. L. 116–283, § 1809(e)(2)(A), substituted "named in section 3063" for "named in section 2303".

Subsec. (c). Pub. L. 116–283, § 1809(e)(2)(B), added subsec. (c).

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 3135. Comparable budgeting for common procurement weapon systems

(a) MATTERS TO BE INCLUDED IN ANNUAL DEFENSE BUDGETS.—In preparing the defense budget for any fiscal year, the Secretary of Defense shall—

(1) specifically identify each common procurement weapon system included in the budget;

(2) take all feasible steps to minimize variations in procurement unit costs for any such system as shown in the budget requests of the different armed forces requesting procurement funds for the system; and

(3) identify and justify in the budget all such variations in procurement unit costs for common procurement weapon systems.

(b) COMPTROLLER.—The Secretary shall carry out this section through the Under Secretary of Defense (Comptroller).

(c) DEFINITIONS.—In this section:

(1) The term ''defense budget'' means the budget of the Department of Defense included in the President's budget submitted to Congress under section 1105 of title 31 for a fiscal year.

(2) The term ''common procurement weapon system'' means a weapon system for which two or more of the Army, Navy, Air Force, Marine Corps, and Space Force request procurement funds in a defense budget.

(Added Pub. L. 100–370, § 1(d)(3)(A), July 19, 1988, 102 Stat. 843, § 2217; amended Pub. L. 104–106, div. A, title XV, § 1503(a)(20), Feb. 10, 1996, 110 Stat. 512; renumbered § 3135 and amended Pub. L. 116–283, div. A, title IX, § 924(b)(1)(N), title XVIII, § 1809(f)(1), Jan. 1, 2021, 134 Stat. 3820, 4161.)

AMENDMENTS

2021—Pub. L. 116–283, § 1809(f)(1), renumbered section 2217 of this title as this section.

Subsec. (c)(2). Pub. L. 116–283, § 924(b)(1)(N), substituted ''Marine Corps, and Space Force'' for ''and Marine Corps''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by section 1809(f)(1) of Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 3136. Defense Modernization Account

(a) ESTABLISHMENT.—There is established in the Treasury an account to be known as the ''Defense Modernization Account''.

(b) FUNDS AVAILABLE FOR ACCOUNT.—The Defense Modernization Account shall consist of the following:

(1) Amounts appropriated to the Defense Modernization Account for the costs of projects described in subsection (d)(1), and amounts reimbursed to the Defense Modernization Account under subsection (c)(1)(B)(ii) out of savings derived from such projects.

(2) Amounts transferred to the Defense Modernization Account under subsection (c).

(c) TRANSFERS TO ACCOUNT.—(1)(A) Upon a determination by the Secretary of a military department, or the Secretary of Defense with respect to Defense-wide appropriations accounts, of the availability and source of funds described in subparagraph (B), the Secretary concerned may transfer to the Defense Modernization Account during any fiscal year any amount of funds available to the Secretary described in that subparagraph. Such funds may be transferred to that account only after the Secretary concerned notifies the congressional defense committees in writing of the amount and source of the proposed transfer.

(B) This subsection applies to the following funds that have been appropriated for fiscal years after fiscal year 2016 and are available to the Secretary concerned:

(i) Unexpired funds in appropriations accounts that are available for new obligations and that, as a result of economies, efficiencies, and other savings achieved in carrying out an acquisition program, are excess to the requirements of that program.

(ii) Unexpired funds in appropriations accounts that are available for procurement or operation and maintenance of a system, if and to the extent that savings are achieved for such accounts through reductions in life cycle costs of such system that result from one or more projects undertaken with respect to such systems with funds made available from the Defense Modernization Account under subsection (b)(1).

(C) Any transfer under subparagraph (A) shall be made under regulations prescribed by the Secretary of Defense.

(2) Funds referred to in paragraph (1) may not be transferred to the Defense Modernization Account if the balance of funds in the account, after transfer of funds to the account, would exceed $1,000,000,000.

(3) Amounts deposited in the Defense Modernization Account shall remain available for transfer and obligation until the end of the third fiscal year that follows the fiscal year in which the amounts are deposited in the account.

(d) AUTHORIZED USE OF FUNDS.—Funds in the Defense Modernization Account may be used for the following purposes:

(1) For paying the costs of any project that, in accordance with criteria prescribed by the Secretary concerned, is undertaken by the Secretary of a military department or the head of a Defense Agency or other element of the Department of Defense to reduce the life cycle cost of a new or existing system.

(2) For increasing, subject to subsection (e), the quantity of items and services procured under an acquisition program in order to achieve a more efficient production or delivery rate.

(3) For research, development, test, and evaluation, for procurement, and for sustainment activities necessary for paying costs of unforeseen contingencies that are approved by the milestone decision authority concerned, that could prevent an ongoing acquisition program from meeting critical schedule or performance requirements.

(4) For paying costs of changes to program requirements or system configuration that are approved by the configuration steering board for a major defense acquisition program.

(e) LIMITATIONS.—(1) Funds in the Defense Modernization Account may not be used to increase the quantity of an item or services procured under a particular acquisition program to the extent that doing so would—

(A) result in procurement of a total quantity of items or services in excess of—

(i) a specific limitation provided by law on the quantity of the items or services that may be procured; or

(ii) the requirement for the items or services as approved by the Joint Requirements Oversight Council and reported to Congress by the Secretary of Defense; or

(B) result in an obligation or expenditure of funds in excess of a specific limitation provided by law on the amount that may be obligated or expended, respectively, for that acquisition program.

(2) Funds in the Defense Modernization Account may not be used for a purpose or program

for which Congress has not authorized appropriations, unless the procedures for initiating a new start program are complied with.

(3) Funds may not be transferred from the Defense Modernization Account in any year for the purpose of—

(A) making an expenditure for which there is no corresponding obligation; or

(B) making an expenditure that would satisfy an unliquidated or unrecorded obligation arising in a prior fiscal year.

(f) TRANSFER OF FUNDS.—(1) The Secretary of a military department, or the Secretary of Defense with respect to Defense-wide appropriations accounts, may transfer funds in the Defense Modernization Account to appropriations available for purposes set forth in subsection (d).

(2) Funds in the Defense Modernization Account may not be transferred under paragraph (1) until 30 days after the date on which the Secretary concerned notifies the congressional defense committees in writing of the amount and purpose of the proposed transfer.

(3) The total amount of transfers from the Defense Modernization Account during any fiscal year under this subsection may not exceed $500,000,000.

(g) AVAILABILITY OF FUNDS BY APPROPRIATION.—In addition to transfers under subsection (f), funds in the Defense Modernization Account may be made available for purposes set forth in subsection (d), but only to the extent authorized in an Act other than an appropriations Act. Funds deposited in the Defense Modernization Account shall remain available for obligation until the end of the third fiscal year that follows the fiscal year in which the amounts are deposited in the account.

(h) SECRETARY TO ACT THROUGH COMPTROLLER.—(1) The Secretary of Defense shall carry out this section through the Under Secretary of Defense (Comptroller), who shall be authorized to implement this section through the issuance of any necessary regulations, policies, and procedures after consultation with the General Counsel and Inspector General of the Department of Defense.

(2) The regulations prescribed under paragraph (1) shall, at a minimum, provide for—

(A) the establishment and management of subaccounts for each of the military departments and Defense Agencies concerned for the use of funds in the Defense Modernization Account, consistent with each military department's or Defense Agency's deposits in the Account;

(B) the submission of proposals by the Secretaries concerned or heads of Defense Agencies or other elements of the Department of Defense to the Comptroller for the use of Defense Modernization Account funds for purposes set forth in subsection (d);

(C) the use of a competitive process for the evaluation of such proposals and the selection of programs, projects, and activities to be funded out of the Defense Modernization Account and subaccounts from among those proposed for such funding; and

(D) the calculation of—

(i) the savings to be derived from projects described in subsection (d)(1) that are to be funded out of the Defense Modernization Account; and

(ii) the amounts to be reimbursed to the Defense Modernization Account out of such savings pursuant to subsection (c)(1)(B)(ii).

(i) DEFINITIONS.—In this section:

(1) The term ''major defense acquisition program'' has the meaning given the term in section 4201 of this title.

(2) The term ''unexpired funds'' means funds appropriated for a definite period that remain available for obligation.

(j) EXPIRATION OF AUTHORITY AND ACCOUNT.—(1) The authority under subsection (c) to transfer funds into the Defense Modernization Account terminates at the close of September 30, 2022.

(2) Three years after the termination date specified in paragraph (1), the Defense Modernization Account shall be closed and any remaining balance in the account shall be canceled and thereafter shall not be available for any purpose.

(Added Pub. L. 104–106, div. A, title IX, § 912(a)(1), Feb. 10, 1996, 110 Stat. 407, § 2216; amended Pub. L. 106–65, div. A, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 108–136, div. A, title X, §§ 1008(a)–(f)(1), 1043(b)(8), Nov. 24, 2003, 117 Stat. 1586, 1587, 1611; Pub. L. 109–364, div. A, title X, § 1071(a)(16), Oct. 17, 2006, 120 Stat. 2399; Pub. L. 113–66, div. A, title X, § 1084(a)(2), Dec. 26, 2013, 127 Stat. 871; Pub. L. 114–328, div. A, title VIII, § 804, Dec. 23, 2016, 130 Stat. 2250; Pub. L. 116–92, div. A, title XVII, § 1731(a)(30), Dec. 20, 2019, 133 Stat. 1814; renumbered § 3136 and amended Pub. L. 116–283, div. A, title XVIII, §§ 1809(g)(1), 1883(b)(2), Jan. 1, 2021, 134 Stat. 4161, 4294.)

AMENDMENTS

2021—Pub. L. 116–283, § 1809(g)(1), renumbered section 2216 of this title as this section.

Subsec. (i)(1). Pub. L. 116–283, § 1883(b)(2), substituted ''section 4201 of this title'' for ''section 2430(a) of this title''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 3137. Procurement of contract services: specification of amounts requested in budget

(a) SUBMISSION WITH ANNUAL BUDGET JUSTIFICATION MATERIALS.—In the budget justification materials submitted to Congress in support of the Department of Defense budget for any fiscal year (as submitted with the budget of the President under section 1105(a) of title 31), the Secretary of Defense shall include the information described in subsection (b) with respect to the procurement of contract services.

(b) INFORMATION PROVIDED.—For each budget account, the materials submitted shall clearly and separately identify—

(1) the amount requested for the procurement of contract services for each Department of Defense component, installation, or activity; and

(2) the number of full-time contractor employees (or the equivalent of full-time in the case of part-time contractor employees) projected and justified for each Department of Defense component, installation, or activity based on the inventory of contracts for services required by subsection (c) of section 4505 of this title and the review required by subsection (e) of such section.

(c) CONTRACT SERVICES DEFINED.—In this section, the term ''contract services''—

(1) means services from contractors; but

(2) excludes services relating to research and development and services relating to military construction.

(Added Pub. L. 111–84, div. A, title VIII, § 803(a)(1), Oct. 28, 2009, 123 Stat. 2401, § 235; renumbered § 3137 and amended Pub. L. 116–283, div. A, title XVIII, §§ 1809(h)(1), 1883(b)(2), Jan. 1, 2021, 134 Stat. 4162, 4294.)

AMENDMENTS

2021—Pub. L. 116–283, § 1809(h)(1), renumbered section 235 of this title as this section.

Subsec. (b)(2). Pub. L. 116–283, § 1883(b)(2), substituted ''section 4505 of this title'' for ''section 2330a of this title''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 3138. Obligations for contract services: reporting in budget object classes

(a) LIMITATION ON REPORTING IN MISCELLANEOUS SERVICES OBJECT CLASS.—The Secretary of Defense shall ensure that, in reporting to the Office of Management and Budget (pursuant to OMB Circular A–11 (relating to preparation and submission of budget estimates)) obligations of the Department of Defense for any period of time for contract services, no more than 15 percent of the total amount of obligations so reported is reported in the miscellaneous services object class.

(b) DEFINITION OF REPORTING CATEGORIES FOR ADVISORY AND ASSISTANCE SERVICES.—In carrying out section 1105(g) of title 31 for the Department of Defense (and in determining what services are to be reported to the Office of Management and Budget in the advisory and assistance services object class), the Secretary of Defense shall apply to the terms used for the definition of ''advisory and assistance services'' in paragraph (2)(A) of that section the following meanings (subject to the authorized exemptions):

(1) MANAGEMENT AND PROFESSIONAL SUPPORT SERVICES.—The term ''management and professional support services'' (used in clause (i) of section 1105(g)(2)(A) of title 31) means services that provide engineering or technical support, assistance, advice, or training for the efficient and effective management and operation of organizations, activities, or systems. Those services—

(A) are closely related to the basic responsibilities and mission of the using organization; and

(B) include efforts that support or contribute to improved organization or program management, logistics management, project monitoring and reporting, data collection, budgeting, accounting, auditing, and administrative or technical support for conferences and training programs.

(2) STUDIES, ANALYSES, AND EVALUATIONS.—The term ''studies, analyses, and evaluations'' (used in clause (ii) of section 1105(g)(2)(A) of title 31) means services that provide organized, analytic assessments to understand or evaluate complex issues to improve policy development, decisionmaking, management, or administration and that result in documents containing data or leading to conclusions or recommendations. Those services may include databases, models, methodologies, and related software created in support of a study, analysis, or evaluation.

(3) ENGINEERING AND TECHNICAL SERVICES.—The term ''engineering and technical services'' (used in clause (iii) of section 1105(g)(2)(A) of title 31) means services that take the form of advice, assistance, training, or hands-on training necessary to maintain and operate fielded weapon systems, equipment, and components (including software when applicable) at design or required levels of effectiveness.

(c) PROPER CLASSIFICATION OF ADVISORY AND ASSISTANCE SERVICES.—Before the submission to the Office of Management and Budget of the proposed Department of Defense budget for inclusion in the President's budget for a fiscal year pursuant to section 1105 of title 31, the Secretary of Defense, acting through the Under Secretary of Defense (Comptroller), shall conduct a review of Department of Defense services expected to be performed as contract services during the fiscal year for which that budget is to be submitted in order to ensure that those services that are advisory and assistance services (as defined in accordance with subsection (b)) are in fact properly classified, in accordance with that subsection, in the advisory and assistance services object class.

(d) REPORT TO CONGRESS.—The Secretary shall submit to Congress each year, not later than 30 days after the date on which the budget for the next fiscal year is submitted pursuant to section 1105 of title 31, a report containing the information derived from the review under subsection (c).

(e) ASSESSMENT BY COMPTROLLER GENERAL.—(1) The Comptroller General shall conduct a review of the report of the Secretary of Defense under subsection (d) each year and shall—

(A) assess the methodology used by the Secretary in obtaining the information submitted to Congress in that report; and

(B) assess the information submitted to Congress in that report.

(2) Not later than 120 days after the date on which the Secretary submits to Congress the report required under subsection (d) for any year, the Comptroller General shall submit to Congress the Comptroller General's report containing the results of the review for that year under paragraph (1).

(f) DEFINITIONS.—In this section:

(1) The term ''contract services'' means all services that are reported to the Office of Management and Budget pursuant to OMB Circular A–11 (relating to preparation and submission of budget estimates) in budget object classes that are designated in the Object Class 25 series.

(2) The term ''advisory and assistance services object class'' means those contract services constituting the budget object class that is denominated ''Advisory and Assistance Service'' and designated (as of October 17, 1998) as Object Class 25.1 (or any similar object class established after October 17, 1998, for the reporting of obligations for advisory and assistance contract services).

(3) The term ''miscellaneous services object class'' means those contract services constituting the budget object class that is denominated ''Other Services (services not otherwise specified in the 25 series)'' and designated (as of October 17, 1998) as Object Class 25.2 (or any similar object class established after October 17, 1998, for the reporting of obligations for miscellaneous or unspecified contract services).

(4) The term ''authorized exemptions'' means those exemptions authorized (as of October 17, 1998) under Department of Defense Directive 4205.2, captioned ''Acquiring and Managing Contracted Advisory and Assistance Services (CAAS)'' and issued by the Under Secretary of Defense for Acquisition and Technology on February 10, 1992, such exemptions being set forth in Enclosure 3 to that directive (captioned ''CAAS Exemptions'').

(Added Pub. L. 105–261, div. A, title IX, § 911(a)(1), Oct. 17, 1998, 112 Stat. 2097, § 2212; amended Pub. L. 106–65, div. A, title X, § 1066(a)(17), Oct. 5, 1999, 113 Stat. 771; renumbered § 3138, Pub. L. 116–283, div. A, title XVIII, § 1809(i)(1), Jan. 1, 2021, 134 Stat. 4162.)

AMENDMENTS

2021—Pub. L. 116–283 renumbered section 2212 of this title as this section.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

CHAPTER 209—OPERATIONAL CONTRACT SUPPORT

Subchapter		Sec.
I.	Joint Policies on Requirements Definition, Contingency Program Management, and Contingency Contracting ..	3151
II.	Other Provisions Relating to Operational Contract Support	3171

PRIOR PROVISIONS

A prior chapter 209 ''OPERATIONAL CONTRACT SUPPORT'', as added by Pub. L. 115–232, div. A, title VIII, § 801(a), Aug. 13, 2018, 132 Stat. 1827, and consisting of reserved section 3151, was repealed by Pub. L. 116–283, div. A, title XVIII, § 1810(a), Jan. 1, 2021, 134 Stat. 4162.

SUBCHAPTER I—JOINT POLICIES ON REQUIREMENTS DEFINITION, CONTINGENCY PROGRAM MANAGEMENT, AND CONTINGENCY CONTRACTING

Sec.
3151. Joint policy requirement.
3152. Requirements definition matters covered.
3153. Contingency program management matters covered.
3154. Contingency contracting matters covered.
3155. Training for personnel outside acquisition workforce.
3156. Mission readiness exercises.
3157. Definitions; applicability.

§ 3151. Joint policy requirement

The Secretary of Defense, in consultation with the Chairman of the Joint Chiefs of Staff, shall develop joint policies for requirements definition, contingency program management, and contingency contracting during combat operations and post-conflict operations.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1810(a), (b)(1), Jan. 1, 2021, 134 Stat. 4162, 4163.)

CODIFICATION

The text of subsec. (a) of section 2333 of this title, which was transferred to this section and amended by Pub. L. 116–283, § 1810(b)(1), was based on Pub. L. 109–364, div. A, title VIII, § 854(a)(1), Oct. 17, 2006, 120 Stat. 2343.

AMENDMENTS

2021—Pub. L. 116–283, § 1810(b)(1), transferred subsec. (a) of section 2333 of this title to this section and struck out subsec. (a) designation and heading ''Joint Policy Requirement'' at beginning.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 3152. Requirements definition matters covered

The joint policy for requirements definition required by section 3151 of this title shall, at a minimum, provide for the following:

(1) The assignment of a senior commissioned officer or civilian member of the senior executive service, with appropriate experience and qualifications related to the definition of requirements to be satisfied through acquisition contracts (such as for delivery of products or services, performance of work, or accomplishment of a project), to act as head of requirements definition and coordination during combat operations, post-conflict operations, and contingency operations, if required, including leading a requirements review board involving all organizations concerned.

(2) An organizational approach to requirements definition and coordination during combat operations, post-conflict operations, and contingency operations that is designed to ensure that requirements are defined in a way that effectively implements United States Government and Department of Defense objectives, policies, and decisions regarding the allocation of resources, coordination of inter-

agency efforts in the theater of operations, and alignment of requirements with the proper use of funds.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1810(a), (b)(2), Jan. 1, 2021, 134 Stat. 4162, 4163.)

CODIFICATION

The text of subsec. (b) of section 2333 of this title, which was transferred to this section and amended by Pub. L. 116–283, § 1810(b)(2), was based on Pub. L. 109–364, div. A, title VIII, § 854(a)(1), Oct. 17, 2006, 120 Stat. 2343.

AMENDMENTS

2021—Pub. L. 116–283, § 1810(b)(2), transferred subsec. (b) of section 2333 of this title to this section and, in introductory provisions, struck out subsec. (b) designation and heading ''Requirements Definition Matters Covered'' at beginning and substituted ''section 3151 of this title'' for ''subsection (a)''.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 3153. Contingency program management matters covered

The joint policy for contingency program management required by section 3151 of this title shall, at a minimum, provide for the following:

(1) The assignment of a senior commissioned officer or civilian member of the senior executive service, with appropriate program management experience and qualifications, to act as head of program management during combat operations, post-conflict operations, and contingency operations, including stabilization and reconstruction operations involving multiple United States Government agencies and international organizations, if required.

(2) A preplanned organizational approach to program management during combat operations, post-conflict operations, and contingency operations that is designed to ensure that the Department of Defense is prepared to conduct such program management.

(3) Identification of a deployable cadre of experts, with the appropriate tools and authority, and trained in processes under paragraph (6).

(4) Utilization of the hiring and appointment authorities necessary for the rapid deployment of personnel to ensure the availability of key personnel for sufficient lengths of time to provide for continuing program and project management.

(5) A requirement to provide training (including training under a program to be created by the Defense Acquisition University) to program management personnel in—

(A) the use of laws, regulations, policies, and directives related to program management in combat or contingency environments;

(B) the integration of cost, schedule, and performance objectives into practical acquisition strategies aligned with available resources and subject to effective oversight; and

(C) procedures of the Department of Defense related to funding mechanisms and contingency contract management.

(6) Appropriate steps to ensure that training is maintained for such personnel even when they are not deployed in a contingency operation.

(7) Such steps as may be needed to ensure jointness and cross-service coordination in the area of program management during contingency operations.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1810(a), (b)(3), Jan. 1, 2021, 134 Stat. 4162, 4163.)

CODIFICATION

The text of subsec. (c) of section 2333 of this title, which was transferred to this section and amended by Pub. L. 116–283, § 1810(b)(3), was based on Pub. L. 109–364, div. A, title VIII, § 854(a)(1), Oct. 17, 2006, 120 Stat. 2343.

AMENDMENTS

2021—Pub. L. 116–283, § 1810(b)(3), transferred subsec. (c) of section 2333 of this title to this section and, in introductory provisions, struck out subsec. (c) designation and heading ''Contingency Program Management Matters Covered'' at beginning and substituted ''section 3151 of this title'' for ''subsection (a)''.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 3154. Contingency contracting matters covered

(a) IN GENERAL.—The joint policy for contingency contracting required by section 3151 of this title shall, at a minimum, provide for the following:

(1) The designation of a senior commissioned officer or civilian member of the senior executive service in each military department with the responsibility for administering the policy.

(2) The assignment of a senior commissioned officer with appropriate acquisition experience and qualifications to act as head of contingency contracting during combat operations, post-conflict operations, and contingency operations, who shall report directly to the commander of the combatant command in whose area of responsibility the operations occur.

(3) A sourcing approach to contingency contracting that is designed to ensure that each military department is prepared to conduct contingency contracting during combat operations, post-conflict operations, and contingency operations, including stabilization and reconstruction operations involving interagency organizations, if required.

(4) A requirement to provide training (including training under a program to be created by the Defense Acquisition University) to contingency contracting personnel in—

(A) the use of law, regulations, policies, and directives related to contingency contracting operations;

(B) the appropriate use of rapid acquisition methods, including the use of exceptions to competition requirements under sections 3201 through 3205 of this title, sealed bidding, letter contracts, indefinite delivery-indefinite quantity task orders, set asides under section 8(a) of the Small Business Act (15 U.S.C. 637(a)), undefinitized contract actions, and other tools available to expedite the delivery of goods and services during combat operations or post-conflict operations;

(C) the appropriate use of rapid acquisition authority, commanders' emergency response program funds, and other tools unique to contingency contracting; and

(D) instruction on the necessity for the prompt transition from the use of rapid acquisition authority to the use of full and open competition and other methods of contracting that maximize transparency in the acquisition process.

(5) Appropriate steps to ensure that training is maintained for such personnel even when they are not deployed in a contingency operation.

(6) Such steps as may be needed to ensure jointness and cross-service coordination in the area of contingency contracting.

(b) INTERAGENCY PLANS.—To the extent practicable, the joint policy for contingency contracting required by section 3151 of this title should be taken into account in the development of interagency plans for stabilization and reconstruction operations, consistent with the report submitted by the President under section 1035 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109–364; 120 Stat. 2388) on interagency operating procedures for the planning and conduct of stabilization and reconstruction operations.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1810(a), (b)(4), (c), Jan. 1, 2021, 134 Stat. 4162–4164.)

REFERENCES IN TEXT

Section 1035 of the John Warner National Defense Authorization Act for Fiscal Year 2007, referred to in subsec. (b), is section 1035 of Pub. L. 109–364, div. A, title X, Oct. 17, 2006, 120 Stat. 2388, which is not classified to the Code.

CODIFICATION

The text of subsec. (d) of section 2333 of this title, which was transferred to this section and amended by Pub. L. 116–283, § 1810(b)(4), (c), was based on Pub. L. 109–364, div. A, title VIII, § 854(a)(1), Oct. 17, 2006, 120 Stat. 2343Pub. L. 111–84, div. A, title X, § 1073(a)(23)(A), (B), Oct. 28, 2009, 123 Stat. 2473.

AMENDMENTS

2021—Subsec. (a). Pub. L. 116–283, § 1810(b)(4)(A), (C), (D), substituted "In General" for "Contingency Contracting Matters Covered" in heading and "section 3151 of this title" for "subsection (a)" in introductory provisions, struck out par. (1) designation at beginning, redesignated subpars. (A) to (F) as pars. (1) to (6), respectively, and, in par. (4), redesignated cls. (i) to (iv) as subpars. (A) to (D), respectively. Former par. (2) redesignated subsec. (b).

Pub. L. 116–283, § 1810(b)(4), redesignated subsec. (d) of section 2333 of this title as subsec. (a) of this section.

Subsec. (a)(4)(B). Pub. L. 116–283, § 1810(c), substituted "sections 3201 through 3205" for "section 2304".

Subsec. (b). Pub. L. 116–283, § 1810(b)(4)(B), (C), redesignated par. (2) of subsec. (a) as subsec. (b), inserted heading, and substituted "section 3151 of this title" for "subsection (a)".

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 3155. Training for personnel outside acquisition workforce

(a) REQUIRED TRAINING.—The joint policy for requirements definition, contingency program management, and contingency contracting required by section 3151 of this title shall provide for training of military personnel outside the acquisition workforce (including operational field commanders and officers performing key staff functions for operational field commanders) who are expected to have acquisition responsibility, including oversight duties associated with contracts or contractors, during combat operations, post-conflict operations, and contingency operations.

(b) SCOPE OF TRAINING.—Training under subsection (a) shall be sufficient to ensure that the military personnel referred to in that subsection—

(1) understand the scope and scale of contractor support they will experience in contingency operations; and

(2) are prepared for their roles and responsibilities with regard to—

(A) requirements definition;

(B) program management (including contractor oversight); and

(C) contingency contracting.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1810(a), (b)(5), Jan. 1, 2021, 134 Stat. 4162, 4163.)

CODIFICATION

The text of subsec. (e)(1) and (2) of section 2333 of this title, which was transferred to this section and amended by Pub. L. 116–283, § 1810(b)(5), was based on Pub. L. 110–181, div. A, title VIII, § 849(a), Jan. 28, 2008, 122 Stat. 245.

AMENDMENTS

2021—Subsec. (a). Pub. L. 116–283, § 1810(b)(5)(A), (B), redesignated subsec. (e)(1) and (2) of section 2333 of this title as subsec. (a) of this section, in heading, substituted "Required Training" for "Training for Personnel Outside Acquisition Workforce", and, in text, struck out par. (1) designation at beginning and substituted "section 3151 of this title" for "subsection (a)". Par. (2) subsequently redesignated subsec. (b).

Subsec. (b). Pub. L. 116–283, § 1810(b)(5)(C), redesignated subsec. (a)(2) as (b), inserted heading, and substituted "Training under subsection (a)" for "Training under paragraph (1)" and "referred to in that subsection—" and pars. (1) and (2) for "referred to in that paragraph understand the scope and scale of contractor support they will experience in contingency operations and are prepared for their roles and responsibilities with regard to requirements definition, program management (including contractor oversight), and contingency contracting."

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 3156. Mission readiness exercises

The joint policy required by section 3151 of this title shall also provide for the incorporation of contractors and contract operations in mission readiness exercises for operations that will include contracting and contractor support.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1810(a), (b)(6), Jan. 1, 2021, 134 Stat. 4162, 4164.)

CODIFICATION

The text of subsec. (e)(3) of section 2333 of this title, which was transferred to this section and amended by Pub. L. 116–283, § 1810(b)(6), was based on Pub. L. 110–181, div. A, title VIII, § 849(a), Jan. 28, 2008, 122 Stat. 245.

AMENDMENTS

2021—Pub. L. 116–283, § 1810(b)(6), transferred subsec. (e)(3) of section 2333 of this title to this section, struck out par. (3) designation at beginning, and inserted ''required by section 3151 of this title'' after ''The joint policy''.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 3157. Definitions; applicability

In this subchapter:

(1) REQUIREMENTS DEFINITION.—The term ''requirements definition'' means the process of translating policy objectives and mission needs into specific requirements, the description of which will be the basis for awarding acquisition contracts for projects to be accomplished, work to be performed, or products to be delivered.

(2) CONTINGENCY PROGRAM MANAGEMENT.—The term ''contingency program management'' means the process of planning, organizing, staffing, controlling, and leading the combined efforts of participating civilian and military personnel and organizations for the management of a specific defense acquisition program or programs during combat operations, post-conflict operations, and contingency operations.

(3) CONTINGENCY CONTRACTING.—The term ''contingency contracting'' means all stages of the process of acquiring property or services by the Department of Defense during a contingency operation.

(4) CONTINGENCY CONTRACTING PERSONNEL.—The term ''contingency contracting personnel'' means members of the armed forces and civilian employees of the Department of Defense who are members of the defense acquisition workforce and, as part of their duties, are assigned to provide support to contingency operations (whether deployed or not).

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1810(a), (b)(7), Jan. 1, 2021, 134 Stat. 4162, 4164.)

CODIFICATION

The text of subsec. (f)(1), (2), (5), and (6) of section 2333 of this title, which was transferred to this section and amended by Pub. L. 116–283, § 1810(b)(7), was based on Pub. L. 109–364, div. A, title VIII, § 854(a)(1), Oct. 17, 2006, 120 Stat. 2343; Pub. L. 110–181, div. A, title VIII, § 849(a), Jan. 28, 2008, 122 Stat. 245.

AMENDMENTS

2021—Pub. L. 116–283, § 1810(b)(7), redesignated pars. (6), (5), (2), and (1) of subsec. (f) of section 2333 of this title as pars. (1) to (4), respectively, of this section.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

SUBCHAPTER II—OTHER PROVISIONS RELATING TO OPERATIONAL CONTRACT SUPPORT

Sec.
3171. Contracts for property or services in support of a contingency operation: competition and review.
3172. Operational contract support: chain of authority and responsibility within Department of Defense.

§ 3171. Contracts for property or services in support of a contingency operation: competition and review

[Reserved].

(Added Pub. L. 116–283, div. A, title XVIII, § 1810(d), Jan. 1, 2021, 134 Stat. 4164.)

EFFECTIVE DATE

Section effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 3172. Operational contract support: chain of authority and responsibility within Department of Defense

[Reserved].

(Added Pub. L. 116–283, div. A, title XVIII, § 1810(d), Jan. 1, 2021, 134 Stat. 4164.)

EFFECTIVE DATE

Section effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

Subpart B—Acquisition Planning

AMENDMENTS

2018—Pub. L. 115–232, div. A, title VIII, § 801(a), Aug. 13, 2018, 132 Stat. 1827, added subpart heading.

CHAPTER 221—PLANNING AND SOLICITATION GENERALLY

Sec.
3201. Full and open competition.

Sec.
3202. [Reserved].
3203. Exclusion of particular source or restriction of solicitation to small business concerns.
3204. Use of procedures other than competitive procedures.
3205. Simplified procedures for small purchases.
3206. Planning and solicitation requirements.
3207. Assessment before contract for acquisition of supplies is entered into.
3208. Planning for future competition in contracts for major systems.

PRIOR PROVISIONS

A prior chapter 221 "PLANNING AND SOLICITATION GENERALLY", as added by Pub. L. 115–232, div. A, title VIII, § 801(a), Aug. 13, 2018, 132 Stat. 1827, and consisting of reserved section 3201, was repealed by Pub. L. 116–283, div. A, title XVIII, § 1811(b), Jan. 1, 2021, 134 Stat. 4164.

§ 3201. Full and open competition

(a) IN GENERAL.—Except as provided in sections 3203, 3204(a), and 3205 of this title, and except in the case of procurement procedures otherwise expressly authorized by statute, the head of an agency in conducting a procurement for property or services—

(1) shall obtain full and open competition through the use of competitive procedures in accordance with the requirements of this section and sections 3069, 3203, 3204, 3205, 3403, 3405, 3406, 3901[1] 4501, and 4502 of this title and the Federal Acquisition Regulation; and

(2) shall use the competitive procedure or combination of competitive procedures that is best suited under the circumstances of the procurement.

(b) DETERMINATION OF APPROPRIATE COMPETITIVE PROCEDURES.—In determining the competitive procedure appropriate under the circumstances, the head of an agency—

(1) shall solicit sealed bids if—

(A) time permits the solicitation, submission, and evaluation of sealed bids;

(B) the award will be made on the basis of price and other price-related factors;

(C) it is not necessary to conduct discussions with the responding sources about their bids; and

(D) there is a reasonable expectation of receiving more than one sealed bid; and

(2) shall request competitive proposals if sealed bids are not appropriate under paragraph (1).

(c) EFFICIENT FULFILLMENT OF GOVERNMENT REQUIREMENTS.—The Federal Acquisition Regulation shall ensure that the requirement to obtain full and open competition is implemented in a manner that is consistent with the need to efficiently fulfill the Government's requirements.

(d) CERTAIN PURCHASES OR CONTRACTS TO BE TREATED AS IF MADE WITH SEALED-BID PROCEDURES.—For the purposes of the following, purchases or contracts awarded after using procedures other than sealed-bid procedures shall be treated as if they were made with sealed-bid procedures:

(1) Chapter 65 of title 41.

(2) Sections 3141–3144, 3146, and 3147 of title 40.

(e) NEW CONTRACTS AND MERIT-BASED SELECTION PROCEDURES.—

(1) CONGRESSIONAL POLICY.—It is the policy of Congress that an agency named in section 3063 of this title should not be required by legislation to award a new contract to a specific non-Federal Government entity. It is further the policy of Congress that any program, project, or technology identified in legislation be procured through merit-based selection procedures.

(2) NEW CONTRACT DESCRIBED.—For purposes of this subsection, a contract is a new contract unless the work provided for in the contract is a continuation of the work performed by the specified entity under a preceding contract.

(3) PROVISION OF LAW DESCRIBED.—A provision of law may not be construed as requiring a new contract to be awarded to a specified non-Federal Government entity unless that provision of law—

(A) specifically refers to this subsection;

(B) specifically identifies the particular non-Federal Government entity involved; and

(C) specifically states that the award to that entity is required by such provision of law in contravention of the policy set forth in paragraph (1).

(4) EXCEPTION.—This subsection shall not apply with respect to any contract that calls upon the National Academy of Sciences to investigate, examine, or experiment upon any subject of science or art of significance to an agency named in section 3063 of this title and to report on such matters to the Congress or any agency of the Federal Government.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1811(c), Jan. 1, 2021, 134 Stat. 4165.)

CODIFICATION

The text of subsec. (a) of section 2304 of this title, which was transferred to this section, redesignated as subsecs. (a) and (b), and amended by Pub. L. 116–283, § 1811(c)(2), was based on Pub. L. 98–369, div. B, title VII, § 2723(a)(1)(C), July 18, 1984, 98 Stat. 1187; Pub. L. 99–145, title XIII, § 1303(a)(13), Nov. 8, 1985, 99 Stat. 739; Pub. L. 100–26, § 7(d)(3)(A), Apr. 21, 1987, 101 Stat. 281; Pub. L. 103–355, title I, § 1001(1), Oct. 13, 1994, 108 Stat. 3249.

The text of subsec. (j) of section 2304 of this title, which was transferred to this section, redesignated as subsec. (c), and amended by Pub. L. 116–283, § 1811(c)(3), was based on Pub. L. 104–106, div. D, title XLI, § 4101(a)(2), Feb. 10, 1996, 110 Stat. 642.

The text of subsec. (h) of section 2304 of this title, which was transferred to this section, redesignated as subsec. (d), and amended by Pub. L. 116–283, § 1811(c)(4), was based on act Aug. 10, 1956, ch. 1041, 70A Stat. 128; Pub. L. 96–513, title V, § 511(76), Dec. 12, 1980, 94 Stat. 2926; Pub. L. 97–295, § 1(24)(B), Oct. 12, 1982, 96 Stat. 1291; Pub. L. 98–369, div. B, title VII, §§ 2723(a)(1)(B), 2727(b), July 18, 1984, 98 Stat. 1187, 1194; Pub. L. 98–577, title V, § 504(b)(2), Oct. 30, 1984, 98 Stat. 3086; Pub. L. 104–106, div. D, title XLIII, § 4321(b)(5), Feb. 10, 1996, 110 Stat. 672; Pub. L. 107–217, § 3(b)(3), Aug. 21, 2002, 116 Stat. 1295; Pub. L. 111–350, § 5(b)(12)(E), Jan. 4, 2011, 124 Stat. 3843.

The text of subsec. (k) of section 2304 of this title, which was transferred to this section, redesignated as subsec. (e), and amended by Pub. L. 116–283, § 1811(c)(5), was based on Pub. L. 103–355, title VII, § 7203(a)(1)(B),

[1] So in original. Probably should be followed by a comma.

Oct. 13, 1994, 108 Stat. 3379; Pub. L. 104–106, div. D, title XLI, §4101(a)(1), Feb. 10, 1996, 110 Stat. 642.

PRIOR PROVISIONS

A prior section 3201 was renumbered section 7101 of this title.

Another prior section 3201, act Aug. 10, 1956, ch. 1041, 70A Stat. 172; Pub. L. 85–861, §1(62), Sept. 2, 1958, 72 Stat. 1462; Pub. L. 88–647, title III, §301(4), Oct. 13, 1964, 78 Stat. 1071, prescribed the authorized strength of the Army in members on active duty, exclusive of certain categories, and the authorized daily average strength of the Army in members on active duty during the fiscal year, exclusive of certain categories, prior to repeal by Pub. L. 96–513, title II, §202, title VII, §701, Dec. 12, 1980, 94 Stat. 2878, 2955, effective Sept. 15, 1981.

A prior section 3202, act Aug. 10, 1956, ch. 1041, 70A Stat. 172; Pub. L. 85–861, §1(63), Sept. 2, 1958, 72 Stat. 1463; Pub. L. 90–228, §1(1), (2), Dec. 28, 1967, 81 Stat. 745; Pub. L. 96–513, title II, §203(a), Dec. 12, 1980, 94 Stat. 2878, related to authorized strength of Army in general officers on active duty, prior to repeal by Pub. L. 101–510, div. A, title IV, §403(b)(1)(A), Nov. 5, 1990, 104 Stat. 1545.

AMENDMENTS

2021—Subsec. (a). Pub. L. 116–283, §1811(c)(2)(B), (C), inserted heading, struck out par. (1) designation at beginning and substituted ‘‘Except as provided in sections 3203, 3204(a), and 3205 of this title,’’ for ‘‘Except as provided in subsections (b), (c), and (g)’’ in introductory provisions, and redesignated subpars. (A) and (B) as pars. (1) and (2), respectively. Substitution was executed to reflect the probable intent of Congress because quoted text directed to be stricken contained a comma after ‘‘(g)’’ but no comma was present. Par. (2) subsequently redesignated subsec. (b).

Pub. L. 116–283, §1811(c)(2), transferred subsec. (a) of section 2304 of this title to this section.

Subsec. (a)(1). Pub. L. 116–283, §1811(c)(2)(D), substituted ‘‘this section and sections 3069, 3203, 3204, 3205, 3403, 3405, 3406, 3901 4501, and 4502 of this title’’ for ‘‘this chapter’’.

Subsec. (b). Pub. L. 116–283, §1811(c)(2)(A), (E), redesignated subsec. (a)(2) as (b) and inserted heading, redesignated subpar. (A) and cls. (i) to (iv) as par. (1) and subpars. (A) to (D), respectively, and redesignated subpar. (B) as par. (2) and substituted ‘‘paragraph (1)’’ for ‘‘clause (A)’’.

Subsec. (c). Pub. L. 116–283, §1811(c)(3), redesignated subsec. (j) of section 2304 of this title as subsec. (c) of this section and inserted heading.

Subsec. (d). Pub. L. 116–283, §1811(c)(4), redesignated subsec. (h) of section 2304 of this title as subsec. (d) of this section and inserted heading.

Subsec. (e). Pub. L. 116–283, §1811(c)(5), redesignated subsec. (k) of section 2304 of this title as subsec. (e) of this section, inserted subsec. and par. headings, switched order and designations of pars. (2) and (3), realigned margins of pars. (2) to (4), and substituted ‘‘section 3063’’ for ‘‘section 2303(a)’’ in pars. (1) and (4).

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§3203. Exclusion of particular source or restriction of solicitation to small business concerns

(a) EXCLUSION OF PARTICULAR SOURCE.—

(1) CRITERIA FOR EXCLUSION.—The head of an agency may provide for the procurement of property or services covered by chapter 137 legacy provisions using competitive procedures but excluding a particular source in order to establish or maintain an alternative source or sources of supply for that property or service if the head of the agency determines that to do so—

(A) would increase or maintain competition and would likely result in reduced overall costs for such procurement, or for any anticipated procurement, of property or services;

(B) would be in the interest of national defense in having a facility (or a producer, manufacturer, or other supplier) available for furnishing the property or service in case of a national emergency or industrial mobilization;

(C) would be in the interest of national defense in establishing or maintaining an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center;

(D) would ensure the continuous availability of a reliable source of supply of such property or service;

(E) would satisfy projected needs for such property or service determined on the basis of a history of high demand for the property or service; or

(F) in the case of medical supplies, safety supplies, or emergency supplies, would satisfy a critical need for such supplies.

(2) DETERMINATION FOR CLASS DISALLOWED.—A determination under paragraph (1) may not be made for a class of purchases or contracts.

(b) EXCLUSION OF OTHER THAN SMALL BUSINESS CONCERNS.—The head of an agency may provide for the procurement of property or services covered by chapter 137 legacy provisions using competitive procedures, but excluding concerns other than small business concerns in furtherance of sections 9 and 15 of the Small Business Act (15 U.S.C. 638, 644).

(c) INAPPLICABILITY OF JUSTIFICATION AND APPROVAL REQUIREMENTS.—A contract awarded pursuant to the competitive procedures referred to in paragraphs (1) and (2) shall not be subject to the justification and approval required by section 3204(e)(1) of this title.

(Added and amended Pub. L. 116–283, div. A, title XVIII, §1811(d)(1), (2), Jan. 1, 2021, 134 Stat. 4166.)

CODIFICATION

The text of subsec. (b) of section 2304 of this title, which was transferred to this section and amended by Pub. L. 116–283, §1811(d)(2), was based on Pub. L. 98–369, div. B, title VII, §2723(a)(1)(C), July 18, 1984, 98 Stat. 1187; Pub. L. 98–577, title V, §504(b)(1), Oct. 30, 1984, 98 Stat. 3086; Pub. L. 99–661, div. A, title XIII, §1343(a)(14), Nov. 14, 1986, 100 Stat. 3993; Pub. L. 101–189, div. A, title VIII, 853(d), Nov. 29, 1989, 103 Stat. 1519; Pub. L. 102–484, div. A, title VIII, §801(h)(2), Oct. 23, 1992, 106 Stat. 2445; Pub. L. 103–355, title I, §1002, Oct. 13, 1994, 108 Stat. 3249; Pub. L. 115–232, div. A, title VIII, §812(a)(2)(C)(v), Aug. 13, 2018, 132 Stat. 1847.

PRIOR PROVISIONS

A prior section 3203, act Aug. 10, 1956, ch. 1041, 70A Stat. 173; Pub. L. 85–861, §1(64), Sept. 2, 1958, 72 Stat. 1463, prescribed authorized strength of Regular Army in

members on active duty, exclusive of officers candidates, prior to repeal by Pub. L. 96–513, title II, § 202, title VII, § 701, Dec. 12, 1980, 94 Stat. 2878, 2955, effective Sept. 15, 1981.

AMENDMENTS

2021—Subsec. (a). Pub. L. 116–283, § 1811(d)(2)(A), redesignated subsec. (b) of section 2304 of this title as subsec. (a) of this section and inserted heading.

Subsec. (a)(1). Pub. L. 116–283, § 1811(d)(2)(A)–(C), inserted heading, substituted ''covered by chapter 137 legacy provisions'' for ''covered by this chapter'' in introductory provisions, and realigned margins of subpars. (A) to (F).

Subsec. (a)(2). Pub. L. 116–283, § 1811(d)(2)(F), redesignated par. (4) as (2), inserted heading, and realigned margin. Former pars. (2) and (3) redesignated subsecs. (b) and (c), respectively.

Subsec. (b). Pub. L. 116–283, § 1811(d)(2)(D), redesignated subsec. (a)(2) as (b), inserted heading, and substituted ''chapter 137 legacy provisions'' for ''this section''.

Subsec. (c). Pub. L. 116–283, § 1811(d)(2)(E), redesignated subsec. (a)(3) as (c), inserted heading, and substituted ''section 3204(e)(1) of this title'' for ''subsection (f)(1)''.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 3204. Use of procedures other than competitive procedures

(a) WHEN PROCEDURES OTHER THAN COMPETITIVE PROCEDURES MAY BE USED.—The head of an agency may use procedures other than competitive procedures only when—

(1) the property or services needed by the agency are available from only one responsible source or only from a limited number of responsible sources and no other type of property or services will satisfy the needs of the agency;

(2) the agency's need for the property or services is of such an unusual and compelling urgency that the United States would be seriously injured unless the agency is permitted to limit the number of sources from which it solicits bids or proposals;

(3) it is necessary to award the contract to a particular source or sources in order—

(A) to maintain a facility, producer, manufacturer, or other supplier available for furnishing property or services in case of a national emergency or to achieve industrial mobilization—[1]

(B) to establish or maintain an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center—[2]

(C) to procure the services of an expert for use, in any litigation or dispute (including any reasonably foreseeable litigation or dispute) involving the Federal Government, in any trial, hearing, or proceeding before any court, administrative tribunal, or agency, or to procure the services of an expert or neutral for use in any part of an alternative dispute resolution or negotiated rulemaking process, whether or not the expert is expected to testify;

(4) the terms of an international agreement or a treaty between the United States and a foreign government or international organization, or the written directions of a foreign government reimbursing the agency for the cost of the procurement of the property or services for such government, have the effect of requiring the use of procedures other than competitive procedures;

(5) subject to section 3201(e) of this title, a statute expressly authorizes or requires that the procurement be made through another agency or from a specified source, or the agency's need is for a brand-name commercial product for authorized resale;

(6) the disclosure of the agency's needs would compromise the national security unless the agency is permitted to limit the number of sources from which it solicits bids or proposals; or

(7) the head of the agency (who may not delegate the authority under this paragraph)—

(A) determines that it is necessary in the public interest to use procedures other than competitive procedures in the particular procurement concerned, and

(B) notifies the Congress in writing of such determination not less than 30 days before the award of the contract.

(b) PROPERTY OR SERVICES CONSIDERED TO BE AVAILABLE FROM ONLY ONE SOURCE.—For the purposes of applying subsection (a)(1)—

(A) in the case of a contract for property or services to be awarded on the basis of acceptance of an unsolicited research proposal, the property or services shall be considered to be available from only one source if the source has submitted an unsolicited research proposal that demonstrates a concept—

(i) that is unique and innovative or, in the case of a service, for which the source demonstrates a unique capability of the source to provide the service; and

(ii) the substance of which is not otherwise available to the United States, and does not resemble the substance of a pending competitive procurement; and

(B) in the case of a follow-on contract for the continued development or production of a major system or highly specialized equipment, or the continued provision of highly specialized services, such property or services may be deemed to be available only from the original source and may be procured through procedures other than competitive procedures when it is likely that award to a source other than the original source would result in—

(i) substantial duplication of cost to the United States which is not expected to be recovered through competition; or

(ii) unacceptable delays in fulfilling the agency's needs.

(c) PROPERTY OR SERVICES NEEDED WITH UNUSUAL AND COMPELLING URGENCY.—

[1] So in original. The dash probably should be a semicolon.

[2] So in original. The dash probably should be ''; or''.

(1) ALLOWABLE CONTRACT PERIOD.—The contract period of a contract described in paragraph (2) that is entered into by an agency pursuant to the authority provided under subsection (a)(2)—

(A) may not exceed the time necessary—

(i) to meet the unusual and compelling requirements of the work to be performed under the contract; and

(ii) for the agency to enter into another contract for the required goods or services through the use of competitive procedures; and

(B) may not exceed one year unless the head of the agency entering into such contract determines that exceptional circumstances apply.

(2) APPLICABILITY OF ALLOWABLE CONTRACT PERIOD.—This subsection applies to any contract in an amount greater than the simplified acquisition threshold.

(d) OFFER REQUESTS TO POTENTIAL SOURCES.—The head of an agency using procedures other than competitive procedures to procure property or services by reason of the application of paragraph (2) or (6) of subsection (a) shall request offers from as many potential sources as is practicable under the circumstances.

(e) JUSTIFICATION FOR USE OF PROCEDURES OTHER THAN COMPETITIVE PROCEDURES.—

(1) PREREQUISITES FOR AWARDING CONTRACT.—Except as provided in paragraphs (3), (4), and (7),,[3] the head of an agency may not award a contract using procedures other than competitive procedures unless—

(A) the contracting officer for the contract justifies the use of such procedures in writing and certifies the accuracy and completeness of the justification;

(B) the justification is approved—

(i) in the case of a contract for an amount exceeding $500,000 (but equal to or less than $10,000,000), by the competition advocate for the procuring activity (without further delegation) or by an official referred to in clause (ii) or (iii);

(ii) in the case of a contract for an amount exceeding $10,000,000 (but equal to or less than $75,000,000), by the head of the procuring activity (or the head of the procuring activity's delegate designated pursuant to paragraph (5)(A)); or

(iii) in the case of a contract for an amount exceeding $75,000,000, by the senior procurement executive of the agency designated pursuant to section 1702(c) of title 41 (without further delegation) or in the case of the Under Secretary of Defense for Acquisition and Sustainment, acting in his capacity as the senior procurement executive for the Department of Defense, the Under Secretary's delegate designated pursuant to paragraph (5)(B); and

(C) any required notice has been published with respect to such contract pursuant to section 1708 of title 41 and all bids or proposals received in response to that notice have been considered by the head of the agency.

(2) ELEMENTS OF JUSTIFICATION.—The justification required by paragraph (1)(A) shall include—

(A) a description of the agency's needs;

(B) an identification of the statutory exception from the requirement to use competitive procedures and a demonstration, based on the proposed contractor's qualifications or the nature of the procurement, of the reasons for using that exception;

(C) a determination that the anticipated cost will be fair and reasonable;

(D) a description of the market survey conducted or a statement of the reasons a market survey was not conducted;

(E) a listing of the sources, if any, that expressed in writing an interest in the procurement; and

(F) a statement of the actions, if any, the agency may take to remove or overcome any barrier to competition before a subsequent procurement for such needs.

(3) JUSTIFICATION AND APPROVAL ALLOWED AFTER CONTRACT AWARDED.—In the case of a procurement permitted by subsection (a)(2), the justification and approval required by paragraph (1) may be made after the contract is awarded.

(4) JUSTIFICATION AND APPROVAL NOT REQUIRED.—The justification and approval required by paragraph (1) is not required—

(A) when a statute expressly requires that the procurement be made from a specified source;

(B) when the agency's need is for a brand-name commercial product for authorized resale;

(C) in the case of a procurement permitted by subsection (a)(7);

(D) in the case of a procurement conducted under (i) chapter 85 of title 41, or (ii) section 8(a) of the Small Business Act (15 U.S.C. 637(a)); or

(E) in the case of a procurement permitted by subsection (a)(4), but only if the head of the contracting activity prepares a document in connection with such procurement that describes the terms of an agreement or treaty, or the written directions, referred to in that subsection that have the effect of requiring the use of procedures other than competitive procedures.

(5) RESTRICTIONS ON AGENCIES.—

(A) In no case may the head of an agency—

(i) enter into a contract for property or services using procedures other than competitive procedures on the basis of the lack of advance planning or concerns related to the amount of funds available to the agency for procurement functions; or

(ii) procure property or services from another agency unless such other agency complies fully with the requirements of chapter 137 legacy provisions in its procurement of such property or services.

(B) The restriction contained in subparagraph (A)(ii) is in addition to, and not in lieu of, any other restriction provided by law.

[3] So in original.

(6) LIMITATION ON DELEGATIONS OF AUTHORITY UNDER PARAGRAPH (1)(B).—(A) The authority of the head of a procuring activity under paragraph (1)(B)(ii) may be delegated only to an officer or employee who—

(i) if a member of the armed forces, is a general or flag officer; or

(ii) if a civilian, is serving in a position with a grade under the General Schedule (or any other schedule for civilian officers or employees) that is comparable to or higher than the grade of brigadier general or rear admiral (lower half).

(B) The authority of the Under Secretary of Defense for Acquisition and Sustainment under paragraph (1)(B)(iii) may be delegated only to—

(i) an Assistant Secretary of Defense; or

(ii) with respect to the element of the Department of Defense (as specified in section 111(b) of this title), other than a military department, carrying out the procurement action concerned, an officer or employee serving in or assigned or detailed to that element who—

(I) if a member of the armed forces, is serving in a grade above brigadier general or rear admiral (lower half); or

(II) if a civilian, is serving in a position with a grade under the General Schedule (or any other schedule for civilian officers or employees) that is comparable to or higher than the grade of major general or rear admiral.

(7) JUSTIFICATION AND APPROVAL NOT REQUIRED FOR PHASE III SBIR AWARD.—The justification and approval required by paragraph (1) is not required in the case of a Phase III award made pursuant to section 9(r)(4) of the Small Business Act (15 U.S.C. 638(r)(4)).

(f) PUBLIC AVAILABILITY OF JUSTIFICATION AND APPROVAL REQUIRED FOR USING PROCEDURES OTHER THAN COMPETITIVE PROCEDURES.—

(1) TIME REQUIREMENT.—

(A) WITHIN 14 DAYS AFTER CONTRACT AWARD.—Except as provided in subparagraph (B), in the case of a procurement permitted by subsection (a), the head of an agency shall make publicly available, within 14 days after the award of the contract, the documents containing the justification and approval required by subsection (e)(1) with respect to the procurement.

(B) WITHIN 30 DAYS AFTER CONTRACT AWARD.—In the case of a procurement permitted by subsection (a)(2), subparagraph (A) shall be applied by substituting ''30 days'' for ''14 days''.

(2) AVAILABILITY ON WEBSITES.—The documents shall be made available on the website of the agency and through a government-wide website selected by the Administrator for Federal Procurement Policy.

(3) EXCEPTION.—This subsection does not require the public availability of information that is exempt from public disclosure under section 552(b) of title 5.

(g) REGULATIONS WITH RESPECT TO NEGOTIATION OF PRICES.—

(1) The Secretary of Defense shall prescribe by regulation the manner in which the Department of Defense negotiates prices for supplies to be obtained through the use of procedures other than competitive procedures.

(2) The regulations required by paragraph (1) shall—

(A) specify the incurred overhead a contractor may appropriately allocate to supplies referred to in that paragraph; and

(B) require the contractor to identify those supplies which it did not manufacture or to which it did not contribute significant value.

(3) Such regulations shall not apply to an item of supply included in a contract or subcontract for which the price is based on established catalog or market prices of commercial products sold in substantial quantities to the general public.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1811(d)(1), (3)–(8), Jan. 1, 2021, 134 Stat. 4166–4169.)

CODIFICATION

The text of subsec. (c) of section 2304 of this title, which was transferred to this section, redesignated as subsec. (a), and amended by Pub. L. 116–283, § 1811(d)(3), was based on Pub. L. 98–369, div. B, title VII, § 2723(a)(1)(C), July 18, 1984, 98 Stat. 1187; Pub. L. 99–500, § 101(c) [title X, § 923(a)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–152, and Pub. L. 99–591, § 101(c) [title X, § 923(a)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–152; Pub. L. 99–661, div. A, title IX, formerly title IV, § 923(a), Nov. 14, 1986, 100 Stat. 3932, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; Pub. L. 103–355, title I, § 1005, title VII, § 7203(a)(1)(A), Oct. 13, 1994, 108 Stat. 3254, 3379; Pub. L. 104–320, §§ 7(a)(1), 11(c)(1), Oct. 19, 1996, 110 Stat. 3871, 3873; Pub. L. 105–85, div. A, title X, § 1073(a)(42), Nov. 18, 1997, 111 Stat. 1902; Pub. L. 115–232, div. A, title VIII, 836(c)(2)(A), Aug. 13, 2018, 132 Stat. 1864.

The text of subsec. (d) of section 2304 of this title, which was transferred to this section, redesignated as subsecs. (b) and (c), and amended by Pub. L. 116–283, § 1811(d)(4), was based on Pub. L. 98–369, div. B, title VII, § 2723(a)(1)(C), July 18, 1984, 98 Stat. 1187; Pub. L. 99–500, § 101(c) [title X, § 923(b), (c)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–152, and Pub. L. 99–591, § 101(c) [title X, § 923(b), (c)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–152,Pub. L. 99–661, div. A, title IX, formerly title IV, § 923(b), (c), Nov. 14, 1986, 100 Stat. 3932, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; Pub. L. 110–417, [div. A], title VIII, § 862(b), Oct. 14, 2008, 122 Stat. 4546.

The text of subsec. (e) of section 2304 of this title, which was transferred to this section, redesignated as subsec. (d), and amended by Pub. L. 116–283, § 1811(d)(5), was based on Pub. L. 98–369, div. B, title VII, § 2723(a)(1)(C), July 18, 1984, 98 Stat. 1187.

The text of subsec. (f) of section 2304 of this title, which was transferred to this section, redesignated as subsec. (e), and amended by Pub. L. 116–283, § 1811(d)(6), was based on Pub. L. 98–369, div. B, title VII, § 2723(a)(1)(C), July 18, 1984, 98 Stat. 1187; Pub. L. 98–577, title V, § 504(b)(2), Oct. 30, 1984, 98 Stat. 3086; Pub. L. 99–145, title IX, § 961(a)(1), Nov. 8, 1985, 99 Stat. 703; Pub. L. 100–26, § 7(d)(3)(A), Apr. 21, 1987, 101 Stat. 281; Pub. L. 100–456, div. A, title VIII, § 803, Sept. 29, 1988, 102 Stat. 2008; Pub. L. 101–189, div. A, title VIII, §§ 817, 818, Nov. 29, 1989, 103 Stat. 1501, 1502; Pub. L. 103–160, div. A, title IX, § 904(d)(1), Nov. 30, 1993, 107 Stat. 1728; Pub. L. 103–355, title I, § 1003, Oct. 13, 1994, 108 Stat. 3249; Pub. L. 104–106, div. D, title XLI, §§ 4102(a), title XLIII, § 4321(b)(4), Feb. 10, 1996, 110 Stat. 643, 672; Pub. L. 105–85, div. A, title VIII, § 841(b), title X, § 1073(a)(43), Nov. 18, 1997, 111 Stat. 1843, 1902; Pub. L. 107–107, div. A, title X,

§ 1048(b)(2), Dec. 28, 2001, 115 Stat. 1225; Pub. L. 108–375, div. A, title VIII, § 815, Oct. 28, 2004, 118 Stat. 2015; Pub. L. 109–364, div. A, title X, § 1071(a)(2), Oct. 17, 2006, 120 Stat. 2398; Pub. L. 110–181, div. A, title VIII, § 844(b)(2), Jan. 28, 2008, 122 Stat. 239; Pub. L. 111–350, § 5(b)(12)(A)–(C), Jan. 4, 2011, 124 Stat. 3843; Pub. L. 115–91, div. A, title XVII, § 1709(b)(2), Dec. 12, 2017, 131 Stat. 1809; Pub. L. 115–232, div. A, title VIII, § 836(c)(2)(A), Aug. 13, 2018, 132 Stat. 1864; Pub. L. 116–92, div. A, title IX, § 902(39), title XVII, § 1731(a)(37), Dec. 20, 2019, 133 Stat. 1547, 1814.

The text of subsec. (*l*) of section 2304 of this title, which was transferred to this section, redesignated as subsec. (f), and amended by Pub. L. 116–283, § 1811(d)(7), was based on Pub. L. 110–181, div. A, title VIII, § 844(b)(1), Jan. 28, 2008, 122 Stat. 239.

The text of subsec. (i) of section 2304 of this title, which was transferred to this section, redesignated as subsec. (g), and amended by Pub. L. 116–283, § 1811(d)(8), was based on Pub. L. 99–500, § 101(c) [title X, § 927(a)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–155, and Pub. L. 99–591, § 101(c) [title X, § 927(a)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–155; Pub. L. 99–661, div. A, title IX, formerly title IV, § 927(a), Nov. 14, 1986, 100 Stat. 3935, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; Pub. L. 115–232, div. A, title VIII, § 836(c)(2)(C), Aug. 13, 2018, 132 Stat. 1864.

PRIOR PROVISIONS

A prior section 3204, act Aug. 10, 1956, ch. 1041, 70A Stat. 173, Pub. L. 85–600, § 1(2), Aug. 6, 1958, 72 Stat. 522; Pub. L. 95–551, § 2, Oct. 30, 1978, 92 Stat. 2069, prescribed authorized strength of Regular Army in commissioned officers of active list, prior to repeal by Pub. L. 96–513, title II, § 202, title VII, § 701, Dec. 12, 1980, 94 Stat. 2878, 2955, effective Sept. 15, 1981.

AMENDMENTS

2021—Subsec. (a). Pub. L. 116–283, § 1811(d)(3)(A), inserted heading.

Pub. L. 116–283, § 1811(d)(3), redesignated subsec. (c) of section 2304 of this title as subsec. (a) of this section.

Subsec. (a)(3). Pub. L. 116–283, § 1811(d)(3)(B), substituted ''in order—
(A) to maintain'' for ''in order (A) to maintain'', ''industrial mobilization—
(B) to establish'' for ''industrial mobilization, (B) to establish'', and ''development center—
(C) to procure'' for ''development center, or (C) to procure''.

Subsec. (a)(5). Pub. L. 116–283, § 1811(d)(3)(C), substituted ''section 3201(e) of this title'' for ''subsection (k)''.

Subsec. (a)(7). Pub. L. 116–283, § 1811(d)(3)(D), inserted ''(who may not delegate the authority under this paragraph)'' after ''the head of the agency'' in introductory provisions.

Subsec. (b). Pub. L. 116–283, § 1811(d)(4)(A), (B), inserted heading, struck out par. (1) designation at beginning, and substituted ''subsection (a)(1)'' for ''subsection (c)(1)'' in introductory provisions.

Pub. L. 116–283, § 1811(d)(4), redesignated subsec. (d) of section 2304 of this title as subsec. (b) of this section.

Subsec. (b)(2). Pub. L. 116–283, § 1811(d)(4)(C), struck out par. (2) which read as follows: ''The authority of the head of an agency under subsection (c)(7) may not be delegated.''

Subsec. (c). Pub. L. 116–283, § 1811(d)(4)(D), redesignated subsec. (b)(3) as (c) and inserted heading; redesignated subpars. (A) and (B) as pars. (1) and (2), respectively, inserted headings, and realigned margins; in par. (1) as redesignated, substituted ''paragraph (2)'' for ''subparagraph (B)'' and ''subsection (a)(2)'' for ''subsection (c)(2)'' in introductory provisions, redesignated cl. (i) and subcls. (I) and (II) as subpar. (A) and cls. (i) and (ii), respectively, redesignated cl. (ii) as subpar. (B), and realigned margins; and, in par. (2) as redesignated, substituted ''This subsection'' for ''This paragraph''. Substitution in par. (2) was executed by making the substitution for ''This paragraph'' instead of ''this paragraph'' as quoted in the directory language, to reflect the probable intent of Congress.

Subsec. (d). Pub. L. 116–283, § 1811(d)(5), redesignated subsec. (e) of section 2304 of this title as subsec. (d) of this section, inserted heading, and substituted ''paragraph (2) or (6) of subsection (a)'' for ''subsection (c)(2) or (c)(6)''. Directory language inserting ''OFFER REQUESTS TO POTENTIAL SOURCES.—The head of'', without specifying where insertion was to take place, was executed by striking out ''The head of'' at beginning and inserting quoted text in its place, to reflect the probable intent of Congress.

Subsec. (e). Pub. L. 116–283, § 1811(d)(6)(A), inserted heading.

Pub. L. 116–283, § 1811(d)(6), redesignated subsec. (f) of section 2304 of this title as subsec. (e) of this section.

Subsec. (e)(1). Pub. L. 116–283, § 1811(d)(6)(A), (B), inserted heading, substituted ''Except as provided in paragraphs (3), (4), and (7),'' for ''Except as provided in paragraph (2) and paragraph (6)'', and realigned margins of subpars. (A) to (C).

Subsec. (e)(2). Pub. L. 116–283, § 1811(d)(6)(C), (D), (K), redesignated par. (3) as (2), inserted heading, and realigned margin. Former par. (2) redesignated (3).

Subsec. (e)(3). Pub. L. 116–283, § 1811(d)(6)(C), (E), (K), redesignated par. (2) as (3), inserted heading, substituted ''subsection (a)(2)'' for ''subsection (c)(2)'', and realigned margin. Former par. (3) redesignated (2).

Subsec. (e)(4). Pub. L. 116–283, § 1811(d)(6)(G), (K), designated second sentence of par. (3) as (4), inserted heading, realigned margin, and substituted ''subsection (a)(7)'' for ''subsection (c)(7)'' in subpar. (C) and ''subsection (a)(4)'' for ''subsection (c)(4)'' in subpar. (E). Former par. (4) redesignated (5).

Subsec. (e)(5). Pub. L. 116–283, § 1811(d)(6)(F), (H), (K), redesignated par. (4) as (5), inserted heading, and realigned margin; inserted subpar. (A) designation before ''In no case'', redesignated former subpars. (A) and (B) as cls. (i) and (ii), respectively, and, in cl. (ii), substituted ''chapter 137 legacy provisions'' for ''this chapter''; and designated concluding provisions as subpar. (B) and substituted ''subparagraph (A)(ii)'' for ''clause (B)''. Former par. (5) redesignated (6).

Subsec. (e)(6). Pub. L. 116–283, § 1811(d)(6)(I), (K), redesignated par. (5) as (6), inserted heading, and realigned margin. Former par. (6) redesignated (7).

Subsec. (e)(7). Pub. L. 116–283, § 1811(d)(6)(J), (K), redesignated par. (6) as (7), inserted heading, and realigned margin.

Subsec. (f). Pub. L. 116–283, § 1811(d)(7)(A), inserted heading.

Pub. L. 116–283, § 1811(d)(7), redesignated subsec. (*l*) of section 2304 of this title as subsec. (f) of this section.

Subsec. (f)(1). Pub. L. 116–283, § 1811(d)(7)(A)–(C), inserted par. and subpar. headings, substituted ''subsection (a)'' for ''subsection (c)'' and ''subsection (e)(1)'' for ''subsection (f)(1)'' in subpar. (A) and ''subsection (a)(2)'' for ''subsection (c)(2)'' in subpar. (B).

Subsec. (f)(2), (3). Pub. L. 116–283, § 1811(d)(7)(D)–(F), inserted headings and realigned margins.

Subsec. (g). Pub. L. 116–283, § 1811(d)(8)(A), inserted heading.

Pub. L. 116–283, § 1811(d)(8), redesignated subsec. (i) of section 2304 of this title as subsec. (g) of this section.

Subsec. (g)(1). Pub. L. 116–283, § 1811(d)(8)(B), struck out '', as defined in section 2302(2) of this title'' before period at end.

Subsec. (g)(2), (3). Pub. L. 116–283, § 1811(d)(8)(C), realigned margins.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 3205. Simplified procedures for small purchases

(a) AUTHORIZATION.—In order to promote efficiency and economy in contracting and to avoid

unnecessary burdens for agencies and contractors, the Federal Acquisition Regulation shall provide for—

(1) special simplified procedures for purchases of property and services for amounts not greater than the simplified acquisition threshold; and

(2) special simplified procedures for purchases of property and services for amounts greater than the simplified acquisition threshold but not greater than $5,000,000 with respect to which the contracting officer reasonably expects, based on the nature of the property or services sought and on market research, that offers will include only commercial products or commercial services.

(b) PROHIBITION ON DIVIDING CONTRACTS.—A proposed purchase or contract for an amount above the simplified acquisition threshold may not be divided into several purchases or contracts for lesser amounts in order to use the simplified procedures required by subsection (a).

(c) PROMOTION OF COMPETITION.—In using simplified procedures, the head of an agency shall promote competition to the maximum extent practicable.

(d) COMPLIANCE WITH SPECIAL REQUIREMENTS OF FEDERAL ACQUISITION REGULATION.—The head of an agency shall comply with the Federal Acquisition Regulation provisions referred to in section 1901(e) of title 41.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1811(d)(1), (9), Jan. 1, 2021, 134 Stat. 4166, 4170.)

CODIFICATION

The text of subsec. (g) of section 2304 of this title, which was transferred to this section and amended by Pub. L. 116–283, § 1811(d)(9), was based on Pub. L. 98–369, div. B, title VII, § 2723(a)(1)(C), July 18, 1984, 98 Stat. 1187; Pub. L. 100–26, § 7(d)(3)(A), Apr. 21, 1987, 101 Stat. 281; Pub. L. 101–510, div. A, title VIII, § 806(b), Nov. 5, 1990, 104 Stat. 1592; Pub. L. 102–25, title VII, § 701(d)(2)(A), Apr. 6, 1991, 105 Stat. 114; Pub. L. 103–355, title I, § 1001(2), title IV, § 4401(a), Oct. 13, 1994, 108 Stat. 3249, 3347; Pub. L. 104–106, div. D, title XLII, § 4202(a)(1), Feb. 10, 1996, 110 Stat. 652; Pub. L. 105–85, div. A, title VIII, § 850(f)(3)(B), Nov. 18, 1997, 111 Stat. 1850; Pub. L. 111–350, § 5(b)(12)(D), Jan. 4, 2011, 124 Stat. 3843; Pub. L. 115–232, div. A, title VIII, § 836(c)(2), Aug. 13, 2018, 132 Stat. 1864.

PRIOR PROVISIONS

A prior section 3205, act Aug. 10, 1956, ch. 1041, 70A Stat. 173; Pub. L. 85–600, § 1(3), Aug. 6, 1958, 72 Stat. 522; Pub. L. 85–861, § 1(60), (65), Sept. 2, 1958, 72 Stat. 1462, 1463; Pub. L. 95–551, § 2, Oct. 30, 1978, 92 Stat. 2069, prescribed authorized strength of Regular Army in commissioned officers on active list, exclusive of certain categories, prior to repeal by Pub. L. 96–513, title II, § 202, title VII, § 701, Dec. 12, 1980, 94 Stat. 2878, 2955, effective Sept. 15, 1981.

AMENDMENTS

2021—Subsec. (a). Pub. L. 116–283, § 1811(d)(9)(A), (C), inserted heading, struck out par. (1) designation before ''In order to'', and redesignated subpars. (A) and (B) as pars. (1) and (2), respectively. Former pars. (2) to (4) redesignated subsecs. (b) to (d), respectively.

Pub. L. 116–283, § 1811(d)(9), redesignated subsec. (g) of section 2304 of this title as subsec. (a) of this section.

Subsec. (b). Pub. L. 116–283, § 1811(d)(9)(B), (D), redesignated subsec. (a)(2) as (b), inserted heading, and substituted ''subsection (a)'' for ''paragraph (1)''.

Subsec. (c). Pub. L. 116–283, § 1811(d)(9)(B), (E), redesignated subsec. (a)(3) as (c) and inserted heading.

Subsec. (d). Pub. L. 116–283, § 1811(d)(9)(B), (F), redesignated subsec. (a)(4) as (d) and inserted heading.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 3206. Planning and solicitation requirements

(a) PLANNING AND SPECIFICATIONS.—

(1) PREPARING FOR PROCUREMENT.—In preparing for the procurement of property or services, the head of an agency shall—

(A) specify the agency's needs and solicit bids or proposals in a manner designed to achieve full and open competition for the procurement;

(B) use advance procurement planning and market research; and

(C) develop specifications in such manner as is necessary to obtain full and open competition with due regard to the nature of the property or services to be acquired.

(2) REQUIREMENTS OF SPECIFICATIONS.—Each solicitation under chapter 137 legacy provisions shall include specifications which—

(A) consistent with the provisions of chapter 137 legacy provisions, permit full and open competition; and

(B) include restrictive provisions or conditions only to the extent necessary to satisfy the needs of the agency or as authorized by law.

(3) TYPES OF SPECIFICATIONS.—For the purposes of subparagraphs (A) and (B), the type of specification included in a solicitation shall depend on the nature of the needs of the agency and the market available to satisfy such needs. Subject to such needs, specifications may be stated in terms of—

(A) function, so that a variety of products or services may qualify;

(B) performance, including specifications of the range of acceptable characteristics or of the minimum acceptable standards; or

(C) design requirements.

(b) CONTENTS OF SOLICITATION.—In addition to the specifications described in subsection (a), a solicitation for sealed bids or competitive proposals (other than for a procurement for commercial products or commercial services using special simplified procedures or a purchase for an amount not greater than the simplified acquisition threshold) shall at a minimum include—

(1) a statement of—

(A) all significant factors and significant subfactors which the head of the agency reasonably expects to consider in evaluating sealed bids (including price) or competitive proposals (including cost or price, cost-related or price-related factors and subfactors, and noncost-related or nonprice-related factors and subfactors); and

(B) the relative importance assigned to each of those factors and subfactors; and

(2)(A) in the case of sealed bids—

(i) a statement that sealed bids will be evaluated without discussions with the bidders; and

(ii) the time and place for the opening of the sealed bids; or

(B) in the case of competitive proposals—

(i) either a statement that the proposals are intended to be evaluated with, and award made after, discussions with the offerors, or a statement that the proposals are intended to be evaluated, and award made, without discussions with the offerors (other than discussions conducted for the purpose of minor clarification) unless discussions are determined to be necessary; and

(ii) the time and place for submission of proposals.

(c) EVALUATION FACTORS.—

(1) IN GENERAL.—In prescribing the evaluation factors to be included in each solicitation for competitive proposals, the head of an agency—

(A) shall (except as provided in paragraph (3)) clearly establish the relative importance assigned to the evaluation factors and subfactors, including the quality of the product or services to be provided (including technical capability, management capability, prior experience, and past performance of the offeror);

(B) shall (except as provided in paragraph (3)) include cost or price to the Federal Government as an evaluation factor that must be considered in the evaluation of proposals; and

(C) shall disclose to offerors whether all evaluation factors other than cost or price, when combined, are—

(i) significantly more important than cost or price;

(ii) approximately equal in importance to cost or price; or

(iii) significantly less important than cost or price.

(2) RESTRICTION ON IMPLEMENTING REGULATIONS.—The regulations implementing paragraph (1)(C) may not define the terms ''significantly more important'' and ''significantly less important'' as specific numeric weights that would be applied uniformly to all solicitations or a class of solicitations.

(3) EXCEPTIONS FOR CERTAIN MULTIPLE TASK OR DELIVERY ORDER CONTRACTS.—If the head of an agency issues a solicitation for multiple task or delivery order contracts under section 3403(d)(1)(B) of this title for the same or similar services and intends to make a contract award to each qualifying offeror—

(A) cost or price to the Federal Government need not, at the Government's discretion, be considered under paragraph (1)(B) as an evaluation factor for the contract award; and

(B) if, pursuant to subparagraph (A), cost or price to the Federal Government is not considered as an evaluation factor for the contract award—

(i) the disclosure requirement of paragraph (1)(C) shall not apply; and

(ii) cost or price to the Federal Government shall be considered in conjunction with the issuance pursuant to section 3406(c) of this title of a task or delivery order under any contract resulting from the solicitation.

(4) DEFINITION.—In paragraph (3), the term ''qualifying offeror'' means an offeror that—

(A) is determined to be a responsible source;

(B) submits a proposal that conforms to the requirements of the solicitation; and

(C) the contracting officer has no reason to believe would likely offer other than fair and reasonable pricing.

(5) EXCLUSION OF APPLICABILITY TO CERTAIN CONTRACTS.—Paragraph (3) shall not apply to multiple task or delivery order contracts if the solicitation provides for sole source task or delivery order contracts pursuant to section 8(a) of the Small Business Act (15 U.S.C. 637(a)).

(d) ADDITIONAL INFORMATION IN SOLICITATION.—Nothing in this section prohibits an agency from—

(1) providing additional information in a solicitation, including numeric weights for all evaluation factors and subfactors on a case-by-case basis; or

(2) stating in a solicitation that award will be made to the offeror that meets the solicitation's mandatory requirements at the lowest cost or price.

(e) LIMITATION ON EVALUATION OF PURCHASE OPTIONS.—The head of an agency, in issuing a solicitation for a contract to be awarded using sealed bid procedures, may not include in such solicitation a clause providing for the evaluation of prices for options to purchase additional property or services under the contract unless the head of the agency has determined that there is a reasonable likelihood that the options will be exercised.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1811(e), Jan. 1, 2021, 134 Stat. 4170.)

CODIFICATION

The text of subsec. (a) of section 2305 of this title, which was transferred to this section and amended by Pub. L. 116–283, § 1811(e)(2)–(7), was based on Pub. L. 98–369, div. B, title VII, § 2723(b), July 18, 1984, 98 Stat. 1191; Pub. L. 99–500, § 101(c) [title X, § 924(a)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–153, and Pub. L. 99–591, § 101(c) [title X, § 924(a)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–153; Pub. L. 99–661, div. A, title IX, formerly title IV, § 924(a), Nov. 14, 1986, 100 Stat. 3932, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; Pub. L. 101–510, div. A, title VIII, § 802(a)–(c), Nov. 5, 1990, 104 Stat. 1588, 1589; Pub. L. 103–355, title I, § 1011, 1012, title IV, § 4401(b), Oct. 13, 1994, 108 Stat. 3254, 3255, 3347; Pub. L. 104–106, div. D, title XLII, § 4202(a)(2), Feb. 10, 1996, 110 Stat. 653; Pub. L. 114–328, div. A, title VIII, § 825(a), Dec. 23, 2016, 130 Stat. 2279; Pub. L. 115–232, div. A, title VIII, § 836(c)(3)(A), Aug. 13, 2018, 132 Stat. 1864.

PRIOR PROVISIONS

A prior section 3206, act Aug. 10, 1956, ch. 1041, 70A Stat. 173; Pub. L. 85–155, title I, § 101(4), Aug. 21, 1957, 71 Stat. 376; Pub. L. 90–130, § 1(9)(A), (B), Nov. 8, 1967, 81 Stat. 375, prescribed authorized strength of Regular Army Nurse Corps in commissioned officers on active

list of Regular Army, prior to repeal by Pub. L. 96–513, title II, § 202, title VII, § 701, Dec. 12, 1980, 94 Stat. 2878, 2955, effective Sept. 15, 1981.

AMENDMENTS

2021—Pub. L. 116–283, § 1811(e)(2), transferred subsec. (a) of section 2305 of this title to this section and redesignated pars. (2) to (5) thereof as subsecs. (b) to (e), respectively.

Subsec. (a). Pub. L. 116–283, § 1811(e)(3)(A), (E)(i), inserted heading and redesignated subpars. (A) to (C) of par. (1) as pars. (1) to (3), respectively.

Subsec. (a)(1). Pub. L. 116–283, § 1811(e)(3)(E), redesignated par. (1)(A) as (1), inserted heading, redesignated cls. (i) to (iii) as subpars. (A) to (C), respectively, and realigned margins. Amendment directing redesignation of cls. ''(i), (ii), and (ii)'' as subpars. (A) to (C) was executed as if it had read ''(i), (ii), and (iii)'', to reflect the probable intent of Congress.

Subsec. (a)(2). Pub. L. 116–283, § 1811(e)(3)(A), (B), (D), redesignated par. (1)(B) as (2), inserted heading, and realigned margin, redesignated cls. (i) and (ii) as subpars. (A) and (B), respectively, and substituted ''chapter 137 legacy provisions'' for ''this chapter'' in introductory provisions and in subpar. (A). Former par. (2) redesignated subsec. (b).

Subsec. (a)(3). Pub. L. 116–283, § 1811(e)(3)(A), (C), (D), redesignated par. (1)(C) as (3), inserted heading, and realigned margin and redesignated cls. (i) to (iii) as subpars. (A) to (C), respectively. Amendment directing redesignation of cls. ''(i), (ii), and (ii)'' as subpars. (A) to (C) was executed as if it had read ''(i), (ii), and (iii)'', to reflect the probable intent of Congress. Former par. (3) redesignated subsec. (c).

Subsec. (b). Pub. L. 116–283, § 1811(e)(2), (4), redesignated subsec. (a)(2) as (b), inserted heading, and substituted ''subsection (a)'' for ''paragraph (1)'' in introductory provisions, redesignated subpar. (A) and its cls. (i) and (ii) as par. (1) and subpars. (A) and (B), respectively, and redesignated subpar. (B), its cls. (i) and (ii), and each of their subcls. (I) and (II) as par. (2), subpars. (A) and (B), and cls. (i) and (ii), respectively.

Subsec. (c). Pub. L. 116–283, § 1811(e)(2), (5)(A), (B), redesignated subsec. (a)(3) as (c), inserted heading, redesignated subpars. (A) to (E) as pars. (1) to (5), respectively, and realigned margins.

Subsec. (c)(1). Pub. L. 116–283, § 1811(e)(5)(A), (C), inserted heading, substituted ''paragraph (3)'' for ''subparagraph (C)'' in two places, redesignated cls. (i) to (iii) as subpars. (A) to (C), respectively, and, in subpar. (C) as redesignated, redesignated subcls. (I) to (III) as cls. (i) to (iii), respectively.

Subsec. (c)(2). Pub. L. 116–283, § 1811(e)(5)(B), (D), redesignated par. (3)(B) as (2), inserted heading, and substituted ''paragraph (1)(C)'' for ''clause (iii) of subparagraph (A)''.

Subsec. (c)(3). Pub. L. 116–283, § 1811(e)(5)(B), (E), redesignated par. (3)(C) as (3), inserted heading, and substituted ''section 3403(d)(1)(B)'' for ''section 2304a(d)(1)(B)'' in introductory provisions; redesignated cl. (i) as subpar. (A) and substituted ''paragraph (1)(B)'' for ''clause (ii) of subparagraph (A)''; and redesignated cl. (ii) and its subcls. (I) and (II) as subpar. (B) and cls. (i) and (ii), respectively, and substituted ''subparagraph (A)'' for ''clause (i)'' in introductory provisions, ''paragraph (1)(C)'' for ''clause (iii) of subparagraph (A)'' in cl. (i), and ''section 3406(c)'' for ''section 2304c(b)'' in cl. (ii).

Subsec. (c)(4). Pub. L. 116–283, § 1811(e)(5)(B), (F), redesignated par. (3)(D) as (4), inserted heading, substituted ''paragraph (3)'' for ''subparagraph (C)'' in introductory provisions, and redesignated cls. (i) to (iii) as subpars. (A) to (C), respectively.

Subsec. (c)(5). Pub. L. 116–283, § 1811(e)(5)(B), (G), redesignated par. (3)(E) as (5), inserted heading, and substituted ''Paragraph (3)'' for ''Subparagraph (C)''.

Subsec. (d). Pub. L. 116–283, § 1811(e)(2), (6), redesignated subsec. (a)(4) as (d), inserted heading, substituted ''this section'' for ''this subsection'' in introductory provisions, and redesignated subpars. (A) and (B) as pars. (1) and (2), respectively.

Subsec. (e). Pub. L. 116–283, § 1811(e)(2), (7), redesignated subsec. (a)(5) as (e) and inserted heading.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 3207. Assessment before contract for acquisition of supplies is entered into

The Secretary of Defense shall ensure that before a contract for the delivery of supplies to the Department of Defense is entered into—

(1) when the appropriate officials of the Department are making an assessment of the most advantageous source for acquisition of the supplies (considering quality, price, delivery, and other factors), there is a review of the availability and cost of each item of supply—

(A) through the supply system of the Department of Defense; and

(B) under standard Government supply contracts, if the item is in a category of supplies defined under regulations of the Secretary of Defense as being potentially available under a standard Government supply contract; and

(2) there is a review of both the procurement history of the item and a description of the item, including, when necessary for an adequate description of the item, a picture, drawing, diagram, or other graphic representation of the item.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1811(f), Jan. 1, 2021, 134 Stat. 4173.)

CODIFICATION

The text of subsec. (c) of section 2305 of this title, which was transferred to this section and amended by Pub. L. 116–283, § 1811(f)(2), was based on Pub. L. 98–525, title XII, § 1213(a), Oct. 19, 1984, 98 Stat. 2591.

PRIOR PROVISIONS

A prior section 3207, act Aug. 10, 1956, ch. 1041, 70A Stat. 173; Pub. L. 85–155, title I, § 101(5), Aug. 21, 1957, 71 Stat. 376; Pub. L. 90–130, § 1(9)(C), (D), Nov. 8, 1967, 81 Stat. 375, prescribed authorized strength of Army Medical Specialist Corps in commissioned officers on active list of Regular Army, prior to repeal by Pub. L. 96–513, title II, § 202, title VII, § 701, Dec. 12, 1980, 94 Stat. 2878, 2955, effective Sept. 15, 1981.

AMENDMENTS

2021—Pub. L. 116–283, § 1811(f)(2), transferred subsec. (c) of section 2305 of this title to this section and struck out subsec. (c) designation at beginning.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 3208. Planning for future competition in contracts for major systems

(a) DEVELOPMENT CONTRACT.—

(1) DETERMINING WHETHER PROPOSALS ARE NECESSARY.—The Secretary of Defense shall

ensure that, in preparing a solicitation for the award of a development contract for a major system, the head of an agency consider requiring in the solicitation that an offeror include in its offer proposals described in paragraph (2). In determining whether to require such proposals, the head of the agency shall give due consideration to the purposes for which the system is being procured and the technology necessary to meet the system's required capabilities. If such proposals are required, the head of the agency shall consider them in evaluating the offeror's price.

(2) CONTENTS OF PROPOSALS.—Proposals referred to in the first sentence of paragraph (1) are the following:

(A) Proposals to incorporate in the design of the major system items which are currently available within the supply system of the Federal agency responsible for the major system, available elsewhere in the national supply system, or commercially available from more than one source.

(B) With respect to items that are likely to be required in substantial quantities during the system's service life, proposals to incorporate in the design of the major system items which the United States will be able to acquire competitively in the future.

(b) PRODUCTION CONTRACT.—

(1) DETERMINING WHETHER PROPOSALS ARE NECESSARY.—The Secretary of Defense shall ensure that, in preparing a solicitation for the award of a production contract for a major system, the head of an agency consider requiring in the solicitation that an offeror include in its offer proposals described in paragraph (2). In determining whether to require such proposals, the head of the agency shall give due consideration to the purposes for which the system is being procured and the technology necessary to meet the system's required capabilities. If such proposals are required, the head of the agency shall consider them in evaluating the offeror's price.

(2) CONTENTS OF PROPOSALS.—Proposals referred to in the first sentence of paragraph (1) are proposals identifying opportunities to ensure that the United States will be able to obtain on a competitive basis items procured in connection with the system that are likely to be reprocured in substantial quantities during the service life of the system. Proposals submitted in response to such requirement may include the following:

(A) Proposals to provide to the United States the right to use technical data to be provided under the contract for competitive reprocurement of the item, together with the cost to the United States, if any, of acquiring such technical data and the right to use such data.

(B) Proposals for the qualification or development of multiple sources of supply for the item.

(c) CONSIDERATION OF FACTORS AS OBJECTIVES IN NEGOTIATIONS.—If the head of an agency is making a noncompetitive award of a development contract or a production contract for a major system, the factors specified in subsections (a) and (b) to be considered in evaluating an offer for a contract may be considered as objectives in negotiating the contract to be awarded. Such objectives may not impair the rights of prospective contractors or subcontractors otherwise provided by law.

(d) ITEMS DEVELOPED EXCLUSIVELY AT PRIVATE EXPENSE.—

(1) LIMITATION.—Whenever the head of an agency requires that proposals described in subsection (a)(2) or (b)(2) be submitted by an offeror in its offer, the offeror shall not be required to provide a proposal that enables the United States to acquire competitively in the future an identical item if the item was developed exclusively at private expense unless the head of the agency determines that—

(A) the original supplier of such item will be unable to satisfy program schedule or delivery requirements; or

(B) proposals by the original supplier of such item to meet the mobilization requirements are insufficient to meet the agency's mobilization needs.

(2) EVALUATION.—In considering offers in response to a solicitation requiring proposals described in subsection (a)(2) or (b)(2), the head of an agency shall base any evaluation of items developed exclusively at private expense on an analysis of the total value, in terms of innovative design, life-cycle costs, and other pertinent factors, of incorporating such items in the system.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1811(g), Jan. 1, 2021, 134 Stat. 4173.)

CODIFICATION

The text of subsec. (d) of section 2305 of this title, which was transferred to this section and amended by Pub. L. 116–283, § 1811(g)(2)–(6) was based on Pub. L. 98–525, title XII, § 1213(a), Oct. 19, 1984, 98 Stat. 2591; Pub. L. 100–456, div. A, title VIII, § 806, Sept. 29, 1988, 102 Stat. 2010.

PRIOR PROVISIONS

A prior section 3209, act Aug. 10, 1956, ch. 1041, 70A Stat. 174; Pub. L. 85–861, § 1(60), Sept. 2, 1958, 72 Stat. 1462; Pub. L. 90–130, § 1(9)(E), Nov. 8, 1967, 81 Stat. 375; Pub. L. 95–485, title VIII, § 820(c)(1), (2), Oct. 20, 1978, 92 Stat. 1627, prescribed, with exception of Army Nurse Corps and Army Medical Specialist Corps, the authorized strength of each branch in commissioned officers on active list of Regular Army, prior to repeal by Pub. L. 96–513, title II, § 202, title VII, § 701, Dec. 12, 1980, 94 Stat. 2878, 2955, effective Sept. 15, 1981.

A prior section 3210 was renumbered section 7110 of this title.

A prior section 3211, acts Aug. 10, 1956, ch. 1041, 70A Stat. 175; Sept. 2, 1958, Pub. L. 85–861, § 1(67), 72 Stat. 1463; Nov. 8, 1967, Pub. L. 90–130, § 1(9)(F), 81 Stat. 375, prescribed authorized strength of Regular Army in officers in each regular grade on promotion lists set forth in section 3296 of this title, prior to repeal by Pub. L. 96–513, title II, § 202, title VII, § 701, Dec. 12, 1980, 94 Stat. 2878, 2955, effective Sept. 15, 1981. See section 521 et seq. of this title.

A prior section 3212, acts Aug. 10, 1956, ch. 1041, 70A Stat. 175; Sept. 2, 1958, Pub. L. 85–861, § 1(68), 72 Stat. 1463; June 30, 1960, Pub. L. 86–559, § 1(6), 74 Stat. 265; Nov. 8, 1967, Pub. L. 90–130, § 1(9)(G), 81 Stat. 375; Dec. 12, 1980, Pub. L. 96–513, title V, § 502(6), 94 Stat. 2909, related to temporary increases in authorized strength in grades of Army Reserve and Army National Guard of United States, prior to repeal by Pub. L. 103–337, div. A, title

XVI, §§ 1662(a)(3), 1691, Oct. 5, 1994, 108 Stat. 2988, 3026, effective Dec. 1, 1994. See section 12009 of this title.

Prior sections 3213 and 3214 were repealed by Pub. L. 96–513, title II, § 202, title VII, § 701, Dec. 12, 1980, 94 Stat. 2878, 2955, effective Sept. 15, 1981.

Section 3213, act Aug. 10, 1956, ch. 1041, 70A Stat. 176, prescribed authorized strength of Regular Army in warrant officers on active list.

Section 3214, acts Aug. 10, 1956, ch. 1041, 70A Stat. 176; Sept. 2, 1958, Pub. L. 85–861, § 1(64), 72 Stat. 1463, prescribed authorized strength of Regular Army in enlisted members on active duty, exclusive of officer candidates.

A prior section 3215, acts Aug. 10, 1956, ch. 1041, 70A Stat. 176; Nov. 8, 1967, Pub. L. 90–130, § 1(9)(H), 81 Stat. 375, authorized strength of Women's Army Corps of Regular Army in warrant officers on active list and in enlisted members on active duty to be prescribed by Secretary, prior to repeal by Pub. L. 95–485, title VIII, § 820(c)(3), Oct. 20, 1978, 92 Stat. 1627.

A prior section 3216, act Aug. 10, 1956, ch. 1041, 70A Stat. 176, prescribed authorized strength of Corps of Engineers in enlisted members on active duty, prior to repeal by Pub. L. 96–513, title II, § 202, title VII, § 701, Dec. 12, 1980, 94 Stat. 2878, 2955, effective Sept. 15, 1981.

Prior sections 3217 to 3220 were repealed by Pub. L. 103–337, div. A, title XVI, §§ 1662(a)(3), 1691, Oct. 5, 1994, 108 Stat. 2988, 3026, effective Dec. 1, 1994.

Section 3217, added Pub. L. 85–861, § 1(69)(A), Sept. 2, 1958, 72 Stat. 1463, related to authorized strength of Army in reserve commissioned officers in active status. See section 12003 of this title.

Section 3218, added Pub. L. 85–861, § 1(69)(A), Sept. 2, 1958, 72 Stat. 1463; amended Pub. L. 96–107, title III, § 302(a), Nov. 9, 1979, 93 Stat. 806; Pub. L. 100–456, div. A, title XII, § 1234(a)(1), Sept. 29, 1988, 102 Stat. 2059; Pub. L. 102–190, div. A, title X, § 1061(a)(20)(B), Dec. 5, 1991, 105 Stat. 1473, related to authorized strength of Army in reserve general officers in active status. See section 12004 of this title.

Section 3219, added Pub. L. 85–861, § 1(69)(A), Sept. 2, 1958, 72 Stat. 1464, related to authorized strength of Army in reserve commissioned officers in active status in grades below brigadier general. See section 12005(a) of this title.

Section 3220, added Pub. L. 85–861, § 1(69)(A), Sept. 2, 1958, 72 Stat. 1464; amended Pub. L. 95–485, title VIII, § 820(c)(4), Oct. 20, 1978, 92 Stat. 1627, related to distribution of reserve commissioned officers by Secretary of the Army. See section 12007 of this title.

AMENDMENTS

2021—Pub. L. 116–283, § 1811(g)(2), redesignated subsec. (d) of section 2305 of this title as subsec. (a) of this section and redesignated pars. (2) to (4) thereof as subsecs. (b) to (d), respectively.

Subsec. (a). Pub. L. 116–283, § 1811(g)(3), inserted subsec. heading, redesignated par. (1)(A) as (1), inserted par. heading, and substituted "paragraph (2)" for "subparagraph (B)", and redesignated par. (1)(B) and its cls. (i) and (ii) as par. (2) and subpars. (A) and (B), respectively, inserted par. heading, and substituted "paragraph (1)" for "subparagraph (A)" in introductory provisions.

Subsec. (b). Pub. L. 116–283, § 1811(g)(2), (4), redesignated subsec. (a)(2) as (b), inserted subsec. heading, redesignated subpar. (A) as par. (1), inserted par. heading, and substituted "paragraph (2)" for "subparagraph (B)", and redesignated subpar. (B) and its cls. (i) and (ii) as par. (2) and subpars. (A) and (B), respectively, inserted par. heading, and substituted "paragraph (1)" for "subparagraph (A)" in introductory provisions.

Subsec. (c). Pub. L. 116–283, § 1811(g)(2), (5), redesignated subsec. (a)(3) as (c), inserted heading, and substituted "subsections (a) and (b)" for "paragraphs (1) and (2)".

Subsec. (d). Pub. L. 116–283, § 1811(g)(2), (6), redesignated subsec. (a)(4) as (d), inserted subsec. heading, and substituted "subsection (a)(2) or (b)(2)" for "paragraph (1)(B) or (2)(B)" in introductory provisions; redesignated subpar. (A) and its cls. (i) and (ii) as par. (1) and subpars. (A) and (B), respectively, inserted par. heading, and realigned margins; and redesignated subpar. (B) as par. (2), inserted heading, realigned margin, and substituted "subsection (a)(2) or (b)(2)" for "paragraph (1)(B) or (2)(B)".

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

CHAPTER 222—INDEPENDENT COST ESTIMATION AND COST ANALYSIS

Sec.[1]

3221. Director of Cost Assessment and Program Evaluation.
3222. Independent cost estimate required before approval.
3223. Director: review of cost estimates, cost analyses, and records of the military departments and Defense Agencies.
3224. Director: participation, concurrence, and approval in cost estimation.
3225. Discussion of risk in cost estimates.
3226. Estimates for program baseline and analyses and targets for contract negotiation purposes.
3227. Guidelines and collection method for acquisition of cost data.

§ 3221. Director of Cost Assessment and Program Evaluation

(a) IN GENERAL.—The Director of Cost Assessment and Program Evaluation shall ensure that the cost estimation and cost analysis processes of the Department of Defense provide accurate information and realistic estimates of cost for the acquisition programs of the Department of Defense.

(b) FUNCTIONS.—In carrying out the responsibility of the Director under subsection (a), the Director shall—

(1) prescribe, by authority of the Secretary of Defense, policies and procedures for the conduct of cost estimation and cost analysis for the acquisition programs of the Department of Defense;

(2) with respect to cost estimation in the Department of Defense in general and with respect to specific cost estimates and cost analyses to be conducted in connection with a major defense acquisition program or major subprogram under chapter 144 of this title, provide guidance to and consult with—

(A) the Secretary of Defense;

(B) the Under Secretary of Defense for Acquisition and Sustainment;

(C) the Under Secretary of Defense (Comptroller);

(D) the Secretaries of the military departments; and

(E) the heads of the Defense Agencies;

(3) issue guidance relating to the proper discussion of risk in cost estimates generally, and specifically, for the proper discussion of risk in cost estimates for major defense acquisition programs and major subprograms;

[1] Editorially supplied.

(4) issue guidance relating to full consideration of life-cycle management and sustainability costs in major defense acquisition programs and major subprograms;

(5) review all cost estimates and cost analyses conducted in connection with major defense acquisition programs and major subprograms;

(6) conduct or approve independent cost estimates and cost analyses for all major defense acquisition programs and major subprograms—

(A) in advance of—

(i) any decision to grant milestone approval pursuant to section 4251 or 4252 of this title;

(ii) any decision to enter into low-rate initial production or full-rate production;

(iii) any certification under section 4376 of this title; and

(iv) any report under section 2445c(f) [1] of this title; and

(B) at any other time considered appropriate by the Director, upon the request of the Under Secretary of Defense for Acquisition and Sustainment, or upon the request of the milestone decision authority;

(7) periodically assess and update the cost indexes used by the Department to ensure that such indexes have a sound basis and meet the Department's needs for realistic cost estimation; and

(8) annually review the cost and associated information required to be included, by section 4353(a) of this title, in the Selected Acquisition Reports required by that section.

(c) STAFF.—The Secretary of Defense shall ensure that the Director of Cost Assessment and Program Evaluation has sufficient professional staff of military and civilian personnel to enable the Director to carry out the duties and responsibilities of the Director under this section.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1812(a), (b), Jan. 1, 2021, 134 Stat. 4174.)

REFERENCES IN TEXT

Section 2445c of this title, referred to in subsec. (b)(6)(A)(iv), was repealed by Pub. L. 114–328, div. A, title VIII, § 846(1), Dec. 23, 2016, 130 Stat. 2292.

CODIFICATION

The text of subsec. (a) of section 2334 of this title, which was transferred to this section, redesignated as subsecs. (a) and (b), and amended by Pub. L. 116–283, § 1812(b)(1), (2), was based on Pub. L. 111–23, title I, § 101(b)(1), May 22, 2009, 123 Stat. 1706; Pub. L. 113–66, div. A, title VIII, § 812(c)(1), Dec. 26, 2013, 127 Stat. 808; Pub. L. 114–92, div. A, title VIII, § 824(b), Nov. 25, 2015, 129 Stat. 907; Pub. L. 114–328, div. A, title VIII, §§ 842(a)(1), (2), (b)(1), (2), 846(3), Dec. 23, 2016, 130 Stat. 2288, 2289, 2292; Pub. L. 115–91, div. A, title X, § 1081(a)(31), Dec. 12, 2017, 131 Stat. 1596; Pub. L. 116–92, div. A, title IX, § 902(53), Dec. 20, 2019, 133 Stat. 1549.

The text of subsec. (h) of section 2334 of this title, which was transferred to this section, redesignated as subsec. (c), and amended by Pub. L. 116–283, § 1812(b)(3), was based on Pub. L. 111–23, title I, § 101(b)(1), May 22, 2009, 123 Stat. 1706; Pub. L. 114–92, div. A, title X, § 1077(a), Nov. 25, 2015, 129 Stat. 998; Pub. L. 114–328, div. A, title VIII, § 842(a)(3), Dec. 23, 2016, 130 Stat. 2288.

[1] See References in Text note below.

PRIOR PROVISIONS

A prior section 3221, act Aug. 10, 1956, ch. 1041, 70A Stat. 176, related to authorized strength of Army Reserve, prior to repeal by Pub. L. 103–337, div. A, title XVI, §§ 1662(a)(3), 1691, Oct. 5, 1994, 108 Stat. 2988, 3026, effective Dec. 1, 1994. See section 12001 of this title.

AMENDMENTS

2021—Subsec. (a). Pub. L. 116–283, § 1812(b)(1), transferred subsec. (a) of section 2334 of this title to this section.

Subsec. (b). Pub. L. 116–283, § 1812(b)(1), (2)(A), designated second sentence of subsec. (a) as (b), inserted heading, and substituted ''In carrying out the responsibility of the Director under subsection (a),'' for ''In carrying out that responsibility,'' in introductory provisions.

Subsec. (b)(2). Pub. L. 116–283, § 1812(b)(2)(B), struck out ''provide guidance to and consult with the Secretary of Defense, the Under Secretary of Defense for Acquisition and Sustainment, the Under Secretary of Defense (Comptroller), the Secretaries of the military departments, and the heads of the Defense Agencies'' before ''with respect to cost estimation'' and substituted ''of this title, provide guidance to and consult with—'' and subpars. (A) to (E) for ''of this title;''.

Subsec. (b)(6)(A)(i). Pub. L. 116–283, § 1812(b)(2)(C)(i), substituted ''section 4251 or 4252'' for ''section 2366a or 2366b''.

Subsec. (b)(6)(A)(iii). Pub. L. 116–283, § 1812(b)(2)(C)(ii), substituted ''section 4376'' for ''section 2433a''.

Subsec. (b)(8). Pub. L. 116–283, § 1812(b)(2)(D), substituted ''section 4353(a)'' for ''section 2432(c)(1)''.

Subsec. (c). Pub. L. 116–283, § 1812(b)(3), redesignated subsec. (h) of section 2334 of this title as subsec. (c) of this section.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 3222. Independent cost estimate required before approval

(a) REQUIREMENT.— A milestone decision authority may not approve entering a milestone phase of a major defense acquisition program or major subprogram unless an independent cost estimate has been conducted or approved by the Director of Cost Assessment and Program Evaluation and considered by the milestone decision authority that—

(1) for the technology maturation and risk reduction phase, includes the identification and sensitivity analysis of key cost drivers that may affect life-cycle costs of the program or subprogram; and

(2) for the engineering and manufacturing development phase, or production and deployment phase, includes a cost estimate of the full life-cycle cost of the program or subprogram.

(b) REGULATIONS.—The regulations governing the content and submission of independent cost estimates required by section 3221 of this title shall require that the independent cost estimate of the full life-cycle cost of a program or subprogram include—

(1) all costs of development, procurement, military construction, operations and support, and trained manpower to operate, maintain,

and support the program or subprogram upon full operational deployment, without regard to funding source or management control; and

(2) an analysis to support decisionmaking that identifies and evaluates alternative courses of action that may reduce cost and risk, and result in more affordable programs and less costly systems.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1812(a), (c), Jan. 1, 2021, 134 Stat. 4174, 4175.)

CODIFICATION

The text of subsec. (b) of section 2334 of this title, which was transferred to this section and amended by Pub. L. 116–283, § 1812(c), was based on Pub. L. 114–328, div. A, title VIII, § 842(a)(4), Dec. 23, 2016, 130 Stat. 2288.

PRIOR PROVISIONS

A prior section 3222, act Aug. 10, 1956, ch. 1041, 70A Stat. 176; Pub. L. 96–513, title V, § 502(7), Dec. 12, 1980, 94 Stat. 2909, related to authorized strength of Army Reserve, exclusive of members on active duty, prior to repeal by Pub. L. 103–337, div. A, title XVI, §§ 1662(a)(3), 1691, Oct. 5, 1994, 108 Stat. 2988, 3026, effective Dec. 1, 1994. See section 12002(a) of this title.

AMENDMENTS

2021—Subsec. (a). Pub. L. 116–283, § 1812(c)(1), (2)(A), (D), redesignated subsec. (b) of section 2334 of this title as subsec. (a) of this section, substituted ''Requirement'' for ''Independent Cost Estimate Required Before Approval'' in heading, struck out par. (1) designation before ''A milestone'', and redesignated subpars. (A) and (B) as pars. (1) and (2), respectively.

Subsec. (b). Pub. L. 116–283, § 1812(c)(2)(B)–(D), redesignated subsec. (a)(2) as (b), inserted heading, substituted ''section 3221 of this title'' for ''subsection (a)'' in introductory provisions, and redesignated subpars. (A) and (B) as pars. (1) and (2), respectively.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 3223. Director: review of cost estimates, cost analyses, and records of the military departments and Defense Agencies

The Secretary of Defense shall ensure that the Director of Cost Assessment and Program Evaluation—

(1) promptly receives the results of all cost estimates and cost analyses conducted by the military departments and Defense Agencies, and all studies conducted by the military departments and Defense Agencies in connection with such cost estimates and cost analyses, for major defense acquisition programs and major subprograms of the military departments and Defense Agencies; and

(2) has timely access to any records and data in the Department of Defense (including the records and data of each military department and Defense Agency and including classified and proprietary information) that the Director considers necessary to review in order to carry out any duties under this section.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1812(a), (d), Jan. 1, 2021, 134 Stat. 4174, 4175.)

CODIFICATION

The text of subsec. (c) of section 2334 of this title, which was transferred to this section and amended by Pub. L. 116–283, § 1812(d), was based on Pub. L. 111–23, title I, § 101(b)(1), May 22, 2009, 123 Stat. 1706; Pub. L. 114–328, div. A, title VIII, § 842(a)(3), (b)(2), Dec. 23, 2016, 130 Stat. 2288, 2289.

PRIOR PROVISIONS

A prior section 3223, act Aug. 10, 1956, ch. 1041, 70A Stat. 176, related to authorized strength of Army Reserve in warrant officers, prior to repeal by Pub. L. 103–337, div. A, title XVI, §§ 1662(a)(3), 1691, Oct. 5, 1994, 108 Stat. 2988, 3026, effective Dec. 1, 1994. See section 12008 of this title.

AMENDMENTS

2021—Pub. L. 116–283, § 1812(d), transferred subsec. (c) of section 2334 of this title to this section and struck out subsec. (c) designation and heading ''Review of Cost Estimates, Cost Analyses, and Records of the Military Departments and Defense Agencies'' at beginning.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 3224. Director: participation, concurrence, and approval in cost estimation

The Director of Cost Assessment and Program Evaluation may—

(1) participate in the discussion of any discrepancies between an independent cost estimate and the cost estimate of a military department or Defense Agency for a major defense acquisition program or major subprogram of the Department of Defense;

(2) comment on deficiencies in the methodology or execution of any cost estimate or cost analysis developed by a military department or Defense Agency for a major defense acquisition program or major subprogram;

(3) concur in the choice of a cost estimate within the baseline description or any other cost estimate (including the discussion of risk for any such cost estimate) for use at any event specified in section 3221(b)(6) of this title; and

(4) participate in the consideration of any decision to request authorization of a multiyear procurement contract for a major defense acquisition program or major subprogram.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1812(a), (e), Jan. 1, 2021, 134 Stat. 4174, 4175.)

CODIFICATION

The text of subsec. (d) of section 2334 of this title, which was transferred to this section and amended by Pub. L. 116–283, § 1812(e), was based on Pub. L. 111–23, title I, § 101(b)(1), May 22, 2009, 123 Stat. 1706; Pub. L. 114–328, div. A, title VIII, § 842(a)(3), (5), (b)(3), (4), Dec. 23, 2016, 130 Stat. 2288–2290.

PRIOR PROVISIONS

A prior section 3224, act Aug. 10, 1956, ch. 1041, 70A Stat. 177, related to authorized strength of Army National Guard of United States, prior to repeal by Pub.

L. 103–337, div. A, title XVI, §§ 1662(a)(3), 1691, Oct. 5, 1994, 108 Stat. 2988, 3026, effective Dec. 1, 1994. See section 12001 of this title.

AMENDMENTS

2021—Pub. L. 116–283, § 1812(e)(1), (2)(A), transferred subsec. (d) of section 2334 of this title to this section and struck out subsec. (d) designation and heading "Participation, Concurrence, and Approval in Cost Estimation" at beginning.

Par. (3). Pub. L. 116–283, § 1812(e)(2)(B), substituted "section 3221(b)(6) of this title" for "subsection (a)(6)".

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 3225. Discussion of risk in cost estimates

The Director of Cost Assessment and Program Evaluation, and the Secretary of the military department concerned or the head of the Defense Agency concerned (as applicable), shall each—

(1) issue guidance requiring a discussion of risk, the potential impacts of risk on program costs, and approaches to mitigate risk in cost estimates for major defense acquisition programs and major subprograms;

(2) ensure that cost estimates are developed, to the extent practicable, based on historical actual cost information that is based on demonstrated contractor and Government performance and that such estimates provide a high degree of confidence that the program or subprogram can be completed without the need for significant adjustment to program budgets; and

(3) include the information required in the guidance under paragraph (1)—

(A) in any decision documentation approving a cost estimate within the baseline description or any other cost estimate for use at any event specified in section 3221(b)(6) of this title; and

(B) in the next Selected Acquisition Report pursuant to sections 4351 through 4358 of this title in the case of a major defense acquisition program or major subprogram, or the next quarterly report pursuant to section 2445c[1] of this title in the case of a major automated information system program.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1812(a), (f), Jan. 1, 2021, 134 Stat. 4174, 4176.)

REFERENCES IN TEXT

Section 2445c of this title, referred to in par. (3)(B), was repealed by Pub. L. 114–328, div. A, title VIII, § 846(1), Dec. 23, 2016, 130 Stat. 2292.

CODIFICATION

The text of subsec. (e) of section 2334 of this title, which was transferred to this section and amended by Pub. L. 116–283, § 1812(f), was based on Pub. L. 111–23, title I, § 101(b)(1), May 22, 2009, 123 Stat. 1706; Pub. L. 111–383, div. A, title VIII, § 811(1), Jan. 7, 2011, 124 Stat. 4263; Pub. L. 114–328, div. A, title VIII, § 842(a)(3), (6), (b)(5), Dec. 23, 2016, 130 Stat. 2288–2290.

[1] See References in Text note below.

PRIOR PROVISIONS

A prior section 3225, act Aug. 10, 1956, ch. 1041, 70A Stat. 177; Pub. L. 96–513, title V, § 502(7), Dec. 12, 1980, 94 Stat. 2909; Pub. L. 100–456, div. A, title XII, § 1234(a)(1), Sept. 29, 1988, 102 Stat. 2059, related to authorized strength of Army National Guard and Army National Guard of United States, exclusive of members on active duty, prior to repeal by Pub. L. 103–337, div. A, title XVI, §§ 1662(a)(3), 1691, Oct. 5, 1994, 108 Stat. 2988, 3026, effective Dec. 1, 1994. See section 12002 of this title.

AMENDMENTS

2021—Pub. L. 116–283, § 1812(f)(1), (2)(A), transferred subsec. (e) of section 2334 of this title to this section and struck out subsec. (e) designation and heading "Discussion of Risk in Cost Estimates" at beginning.

Par. (3)(A). Pub. L. 116–283, § 1812(f)(2)(B), substituted "section 3221(b)(6) of this title" for "subsection (a)(6)".

Par. (3)(B). Pub. L. 116–283, § 1812(f)(2)(C), substituted "sections 4351 through 4358" for "section 2432".

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 3226. Estimates for program baseline and analyses and targets for contract negotiation purposes

(a) COST ESTIMATES DEVELOPED FOR SPECIFIED PURPOSES NOT TO BE USED FOR CONTRACT NEGOTIATIONS OR OBLIGATION OF FUNDS.—The policies, procedures, and guidance issued by the Director of Cost Assessment and Program Evaluation in accordance with the requirements of section 3221 of this title shall provide that cost estimates developed for baseline descriptions and other program purposes conducted pursuant to subsection (b)(6) of such section are not to be used for the purpose of contract negotiations or the obligation of funds.

(b) COST ESTIMATES DEVELOPED FOR SPECIFIED PURPOSES NOT TO BE USED FOR CONTRACT NEGOTIATIONS OR OBLIGATION OF FUNDS.—The Under Secretary of Defense for Acquisition and Sustainment shall, in consultation with the Director of Cost Assessment and Program Evaluation, develop policies, procedures, and guidance to ensure that cost analyses and targets developed for the purpose of contract negotiations and the obligation of funds are based on the Government's reasonable expectation of successful contractor performance in accordance with the contractor's proposal and previous experience.

(c) PROGRAM MANAGER AND CONTRACTING OFFICER.—The program manager and contracting officer for each major defense acquisition program and major subprogram shall ensure that cost analyses and targets developed for the purpose of contract negotiations and the obligation of funds are carried out in accordance with the requirements of subsection (a) and the policies, procedures, and guidance issued by the Under Secretary of Defense for Acquisition and Sustainment under subsection (b).

(d) AVAILABILITY OF EXCESS FUNDS.—

(1) Funds that are made available for a major defense acquisition program or major subprogram in accordance with a cost esti-

mate conducted pursuant to section 3221(b)(6) of this title, but are excess to a cost analysis or target developed pursuant to subsection (b), shall remain available for obligation in accordance with the terms of applicable authorization and appropriations Acts.

(2) Funds described in paragraph (1)—

(A) may be used—

(i) to cover any increased program costs identified by a revised cost analysis or target developed pursuant to subsection (b);

(ii) to acquire additional end items in accordance with the requirements of section 3069 of this title; or

(iii) to cover the cost of risk reduction and process improvements; and

(B) may be reprogrammed, in accordance with established procedures, only if determined to be excess to program needs on the basis of a cost estimate developed with the concurrence of the Director of Cost Assessment and Program Evaluation.

(Added and amended Pub. L. 116–283, div. A, title XVIII, §1812(a), (g), Jan. 1, 2021, 134 Stat. 4174, 4176.)

CODIFICATION

The text of subsec. (f) of section 2334 of this title, which was transferred to this section and amended by Pub. L. 116–283, §1812(g), was based on Pub. L. 111–383, div. A, title VIII, §811(3), Jan. 7, 2011, 124 Stat. 4263; Pub. L. 112–81, div. A, title VIII, §833, Dec. 31, 2011, 125 Stat. 1506; Pub. L. 114–328, div. A, title VIII, §842(a)(3), (b)(3), (6), Dec. 23, 2016, 130 Stat. 2288–2290; Pub. L. 116–92, div. A, title IX, §902(53), Dec. 20, 2019, 133 Stat. 1549.

AMENDMENTS

2021—Subsec. (a). Pub. L. 116–283, §1812(g)(1), (2)(A), (B), redesignated subsec. (f) of section 2334 of this title as subsec. (a) of this section, substituted ''Cost Estimates Developed for Specified Purposes Not to Be Used for Contract Negotiations or Obligation of Funds'' for ''Estimates for Program Baseline and Analyses and Targets for Contract Negotiation Purposes'' in heading, struck out par. (1) designation before ''The policies,'', and substituted ''section 3221 of this title'' for ''subsection (a)'' and ''subsection (b)(6) of such section'' for ''subsection (a)(6)''. Pars. (2), (3), (4), and (5) of subsec. (a) redesignated subsecs. (b), (c), (d)(1), and (d)(2), respectively.

Subsec. (b). Pub. L. 116–283, §1812(g)(2)(C), redesignated subsec. (a)(2) as (b) and inserted heading.

Subsec. (c). Pub. L. 116–283, §1812(g)(2)(D), redesignated subsec. (a)(3) as (c), inserted heading, and substituted ''The program manager'' for ''The Program Manager'', ''subsection (a)'' for ''paragraph (1)'', and ''subsection (b)'' for ''paragraph (2)''.

Subsec. (d). Pub. L. 116–283, §1812(g)(2)(E)(i), (iii), redesignated subsec. (a)(4) and (5) as (d)(1) and (2), respectively, inserted subsec. heading, and realigned margin of par. (2).

Subsec. (d)(1). Pub. L. 116–283, §1812(g)(2)(E)(ii), substituted ''section 3221(b)(6) of this title'' for ''subsection (a)(6)'' and ''subsection (b)'' for ''paragraph (2)''.

Subsec. (d)(2). Pub. L. 116–283, §1812(g)(2)(E)(iv), substituted ''paragraph (1)'' for ''paragraph (4)'' in introductory provisions, ''subsection (b)'' for ''paragraph (2)'' in subpar. (A)(i), and ''section 3069'' for ''section 2308'' in subpar. (A)(ii).

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 3227. Guidelines and collection method for acquisition of cost data

(a) DIRECTOR OF CAPE TO DEVELOP GUIDELINES AND COLLECTION METHOD.—The Director of Cost Assessment and Program Evaluation shall, in consultation with the Under Secretary of Defense for Acquisition and Sustainment, develop policies, procedures, guidance, and a collection method to ensure that quality acquisition cost data are collected to facilitate cost estimation and comparison across acquisition programs.

(b) APPLICABILITY TO ACQUISITION PROGRAMS IN AMOUNT GREATER THAN SPECIFIED THRESHOLD.—The program manager and contracting officer for each acquisition program in an amount greater than $100,000,000, in consultation with the cost estimating component of the relevant military department or Defense Agency, shall ensure that cost data are collected in accordance with the requirements of subsection (a).

(c) LIMITATION ON WAIVER AUTHORITY.—The requirement under subsection (a) may be waived only by the Director of Cost Assessment and Program Evaluation.

(Added and amended Pub. L. 116–283, div. A, title XVIII, §1812(a), (h), Jan. 1, 2021, 134 Stat. 4174, 4177.)

CODIFICATION

The text of subsec. (g) of section 2334 of this title, which was transferred to this section and amended by Pub. L. 116–283, §1812(h), was based on Pub. L. 114–328, div. A, title VIII, §842(a)(7), Dec. 23, 2016, 130 Stat. 2289; Pub. L. 116–92, div. A, title IX, §902(53), Dec. 20, 2019, 133 Stat. 1549.

PRIOR PROVISIONS

A prior section 3230, added Pub. L. 85–861, §1(69)(B), Sept. 2, 1958, 72 Stat. 1464, provided that members of Army who are detailed for duty with agencies of United States outside Department of Defense on a reimbursable basis not be counted in computing strengths under any law, prior to repeal by Pub. L. 96–513, title II, §202, title VII, §701, Dec. 12, 1980, 94 Stat. 2878, 2955, effective Sept. 15, 1981.

AMENDMENTS

2021—Subsec. (a). Pub. L. 116–283, §1812(h)(1), (2)(A), redesignated subsec. (g) of section 2334 of this title as subsec. (a) of this section, substituted ''DIRECTOR OF CAPE TO DEVELOP GUIDELINES AND COLLECTION METHOD'' for ''GUIDELINES AND COLLECTION OF COST DATA'' in heading, and struck out par. (1) designation before ''The Director''. Amendment striking heading was executed to reflect the probable intent of Congress notwithstanding error in formatting of text. Pars. (2) and (3) of subsec. (a) redesignated subsecs. (b) and (c), respectively.

Subsec. (b). Pub. L. 116–283, §1812(h)(2)(B), redesignated subsec. (a)(2) as (b), inserted heading, and substituted ''subsection (a)'' for ''paragraph (1)''.

Subsec. (c). Pub. L. 116–283, §1812(h)(2)(C), redesignated subsec. (a)(3) as (c), inserted heading, and substituted ''subsection (a)'' for ''paragraph (1)''.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective

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Date of 2021 Amendment note preceding section 3001 of this title.

CHAPTER 223—OTHER PROVISIONS RELATING TO PLANNING AND SOLICITATION GENERALLY

Sec.
3241. Design-build selection procedures.
3242. Supplies: economic order quantities.
3243. Encouragement of new competitors: qualification requirement.
3244. [Reserved].
3245. [Reserved].
3246. [Reserved].
3247. Contracts: regulations for bids.
3248. Matters relating to reverse auctions.[1]
3249. Advocates for competition.
3250. [Reserved].
3251. [Reserved].
3252. Requirements for information relating to supply chain risk.

PRIOR PROVISIONS

A prior chapter 223 ''PLANNING AND SOLICITATION RELATING TO PARTICULAR ITEMS OR SERVICES'', as added by Pub. L. 115–232, div. A, title VIII, §801(a), Aug. 13, 2018, 132 Stat. 1827, and consisting of reserved section 3251, was repealed by Pub. L. 116–283, div. A, title XVIII, §1811(b), Jan. 1, 2021, 134 Stat. 4164.

§ 3241. Design-build selection procedures

(a) AUTHORIZATION.—Unless the traditional acquisition approach of design-bid-build established under chapter 11 of title 40 is used or another acquisition procedure authorized by law is used, the head of an agency shall use the two-phase selection procedures authorized in this section for entering into a contract for the design and construction of a public building, facility, or work when a determination is made under subsection (b) that the procedures are appropriate for use.

(b) CRITERIA FOR USE.—A contracting officer shall make a determination whether two-phase selection procedures are appropriate for use for entering into a contract for the design and construction of a public building, facility, or work when—

(1) the contracting officer anticipates that three or more offers will be received for such contract;

(2) design work must be performed before an offeror can develop a price or cost proposal for such contract;

(3) the offeror will incur a substantial amount of expense in preparing the offer; and

(4) the contracting officer has considered information such as the following:

(A) The extent to which the project requirements have been adequately defined.

(B) The time constraints for delivery of the project.

(C) The capability and experience of potential contractors.

(D) The suitability of the project for use of the two-phase selection procedures.

(E) The capability of the agency to manage the two-phase selection process.

(F) Other criteria established by the agency.

(c) PROCEDURES DESCRIBED.—Two-phase selection procedures consist of the following:

(1) DEVELOPMENT OF SCOPE OF WORK STATEMENT.—The agency develops, either in-house or by contract, a scope of work statement for inclusion in the solicitation that defines the project and provides prospective offerors with sufficient information regarding the Government's requirements (which may include criteria and preliminary design, budget parameters, and schedule or delivery requirements) to enable the offerors to submit proposals which meet the Government's needs. If the agency contracts for development of the scope of work statement, the agency shall contract for architectural and engineering services as defined by and in accordance with chapter 11 of title 40.

(2) SOLICITATION OF PHASE-ONE PROPOSALS.—The contracting officer solicits phase-one proposals that—

(A) include information on the offeror's—

(i) technical approach; and

(ii) technical qualifications; and

(B) do not include—

(i) detailed design information; or

(ii) cost or price information.

(3) EVALUATION FACTORS.—

(A) EVALUATION FACTORS TO BE USED.—The evaluation factors to be used in evaluating phase-one proposals are stated in the solicitation and include—

(i) specialized experience and technical competence;

(ii) capability to perform;

(iii) past performance of the offeror's team (including the architect-engineer and construction members of the team); and

(iv) other appropriate factors, except that cost-related or price-related evaluation factors are not permitted.

(B) RELATIVE IMPORTANCE OF EVALUATION FACTORS AND SUBFACTORS.—Each solicitation establishes the relative importance assigned to the evaluation factors and subfactors that must be considered in the evaluation of phase-one proposals.

(C) EVALUATION OF PROPOSALS.—The agency evaluates phase-one proposals on the basis of the phase-one evaluation factors set forth in the solicitation.

(4) SELECTION BY CONTRACTING OFFICER.—

(A) NUMBER OF OFFERORS SELECTED AND WHAT IS TO BE EVALUATED.—The contracting officer selects as the most highly qualified the number of offerors specified in the solicitation to provide the property or services under the contract and requests the selected offerors to submit phase-two competitive proposals that include technical proposals and cost or price information. Each solicitation establishes with respect to phase two—

(i) the technical submission for the proposal, including design concepts or proposed solutions to requirements addressed within the scope of work (or both), and

(ii) the evaluation factors and subfactors, including cost or price, that must be considered in the evaluations of proposals in accordance with subsections (b), (c), and (d) of section 3206 of this title.

[1] So in original. There is no section 3248.

(B) The contracting officer separately evaluates the submissions described in clauses (i) and (ii) of subparagraph (A).

(5) AWARDING OF CONTRACT.—The agency awards the contract in accordance with section 3303 of this title.

(d) SOLICITATION TO STATE NUMBER OF OFFERORS TO BE SELECTED FOR PHASE TWO REQUESTS FOR COMPETITIVE PROPOSALS.—A solicitation issued pursuant to the procedures described in subsection (c) shall state the maximum number of offerors that are to be selected to submit competitive proposals pursuant to subsection (c)(4). If the contract value exceeds $4,000,000, the maximum number specified in the solicitation shall not exceed 5 unless—

(1) the solicitation is issued pursuant to an indefinite delivery-indefinite quantity contract for design-build construction; or

(2)(A) the head of the contracting activity, delegable to a level no lower than the senior contracting official within the contracting activity, approves the contracting officer's justification with respect to an individual solicitation that a maximum number greater than 5 is in the interest of the Federal Government; and

(B) the contracting officer provides written documentation of how a maximum number greater than 5 is consistent with the purposes and objectives of the two-phase selection procedures.

(e) REQUIREMENT FOR GUIDANCE AND REGULATIONS.—The Federal Acquisition Regulation shall include guidance—

(1) regarding the factors that may be considered in determining whether the two-phase contracting procedures authorized by subsection (a) are appropriate for use in individual contracting situations;

(2) regarding the factors that may be used in selecting contractors; and

(3) providing for a uniform approach to be used Government-wide.

(f) SPECIAL AUTHORITY FOR MILITARY CONSTRUCTION PROJECTS.—(1) The Secretary of a military department may use funds available to the Secretary under section 2807(a) or 18233(e) of this title to accelerate the design effort in connection with a military construction project for which the two-phase selection procedures described in subsection (c) are used to select the contractor for both the design and construction portion of the project before the project is specifically authorized by law and before funds are appropriated for the construction portion of the project. Notwithstanding the limitations contained in such sections, use of such funds for the design portion of a military construction project may continue despite the subsequent authorization of the project. The advance notice requirement of section 2807(b) of this title shall continue to apply whenever the estimated cost of the design portion of the project exceeds the amount specified in such section.

(2) Any military construction contract that provides for an accelerated design effort, as authorized by paragraph (1), shall include as a condition of the contract that the liability of the United States in a termination for convenience before funds are first made available for construction may not exceed an amount attributable to the final design of the project.

(3) For each fiscal year during which the authority provided by this subsection is in effect, the Secretary of a military department may select not more than two military construction projects to include the accelerated design effort authorized by paragraph (1) for each armed force under the jurisdiction of the Secretary. To be eligible for selection under this subsection, a request for the authorization of the project, and for the authorization of appropriations for the project, must have been included in the annual budget of the President for a fiscal year submitted to Congress under section 1105(a) of title 31.

(4) Not later than March 1, 2008, the Secretary of Defense shall submit to the congressional defense committees a report evaluating the usefulness of the authority provided by this subsection in expediting the design and construction of military construction projects. The authority provided by this subsection expires September 30, 2008, except that, if the report required by this paragraph is not submitted by March 1, 2008, the authority shall expire on that date.

(Added Pub. L. 104–106, div. D, title XLI, §4105(a)(1), Feb. 10, 1996, 110 Stat. 645, §2305a; amended Pub. L. 105–85, div. A, title X, §1073(a)(44), Nov. 18, 1997, 111 Stat. 1902; Pub. L. 107–217, §3(b)(4), Aug. 21, 2002, 116 Stat. 1295; Pub. L. 108–178, §4(b)(3), Dec. 15, 2003, 117 Stat. 2641; Pub. L. 108–375, div. B, title XXVIII, §2807, Oct. 28, 2004, 118 Stat. 2123; Pub. L. 109–163, div. B, title XXVIII, §2807, Jan. 6, 2006, 119 Stat. 3508; Pub. L. 113–291, div. A, title VIII, §814, Dec. 19, 2014, 128 Stat. 3430; Pub. L. 115–91, div. A, title VIII, §823, Dec. 12, 2017, 131 Stat. 1465; Pub. L. 116–92, div. A, title XVII, §1731(a)(38), Dec. 20, 2019, 133 Stat. 1814; renumbered §3241 and amended Pub. L. 116–283, div. A, title XVIII, §1813(b), Jan. 1, 2021, 134 Stat. 4177.)

AMENDMENTS

2021—Pub. L. 116–283, §1813(b), renumbered section 2305a of this title as this section.

Subsec. (b). Pub. L. 116–283, §1813(b)(1), inserted dash after "or work when", reorganized remainder of former introductory provisions of subsec. (b) into designated pars. (1) to (4), and redesignated former pars. (1) to (6) as subpars. (A) to (F), respectively, of par. (4) and realigned margins.

Subsec. (c)(1), (2). Pub. L. 116–283, §1813(b)(2)(A), (B), inserted headings.

Subsec. (c)(3). Pub. L. 116–283, §1813(b)(2)(C)(i), (ii), inserted par. heading, designated first, second, and third sentences of existing provisions as subpars. (A), (B), and (C), respectively, and inserted subpar. headings.

Subsec. (c)(3)(A). Pub. L. 116–283, §1813(b)(2)(C)(iii), inserted dash after "and include—" and reorganized remainder of subpar. (A) into designated cls. (i) to (iv).

Subsec. (c)(4). Pub. L. 116–283, §1813(b)(2)(D)(i), (ii), (iv), inserted par. heading, designated first sentence as subpar. (A), inserted subpar. heading, and redesignated former subpars. (A) and (B) as cls. (i) and (ii), respectively, and designated concluding provisions as subpar. (B) and realigned margin.

Subsec. (c)(4)(A)(ii). Pub. L. 116–283, §1813(b)(2)(D)(iii), substituted "subsections (b), (c), and (d) of section 3206" for "paragraphs (2), (3), and (4) of section 2305(a)".

Subsec. (c)(4)(B). Pub. L. 116–283, §1813(b)(2)(D)(v), substituted "clauses (i) and (ii) of subparagraph (A)" for "subparagraphs (A) and (B)".

Subsec. (c)(5). Pub. L. 116–283, §1813(b)(2)(E), inserted heading and substituted ''section 3303'' for ''section 2305(b)(4)''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 3242. Supplies: economic order quantities

(a) QUANTITY TO PROCURE.—

(1) An agency referred to in section 3063 of this title shall procure supplies in such quantity as—

(A) will result in the total cost and unit cost most advantageous to the United States, where practicable; and

(B) does not exceed the quantity reasonably expected to be required by the agency.

(2) The Secretary of Defense shall take paragraph (1) into account in approving rates of obligation of appropriations under section 2204 of this title.

(b) OPINION OF OFFEROR WITH RESPECT TO QUANTITY TO BE PROCURED.—Each solicitation for a contract for supplies shall, if practicable, include a provision inviting each offeror responding to the solicitation to state an opinion on whether the quantity of the supplies proposed to be procured is economically advantageous to the United States and, if applicable, to recommend a quantity or quantities which would be more economically advantageous to the United States. Each such recommendation shall include a quotation of the total price and the unit price for supplies procured in each recommended quantity.

(Added Pub. L. 98–525, title XII, §1233(a), Oct. 19, 1984, 98 Stat. 2600, §2384a; renumbered §3242 and amended Pub. L. 116–283, div. A, title XVIII, §1813(c), Jan. 1, 2021, 134 Stat. 4179.)

AMENDMENTS

2021—Pub. L. 116–283, §1813(c), renumbered section 2384a of this title as this section.

Subsec. (a). Pub. L. 116–283, §1813(c)(1), inserted heading, in par. (1), substituted ''section 3063'' for ''section 2303(a)'' and reformatted subpars. (A) and (B) to add line breaks before each subpar. designation, and, in par. (2), realigned margin.

Subsec. (b). Pub. L. 116–283, §1813(c)(2), inserted heading.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 3243. Encouragement of new competitors: qualification requirement

(a) QUALIFICATION REQUIREMENT DEFINED.—In this section, the term ''qualification requirement'' means a requirement for testing or other quality assurance demonstration that must be completed by an offeror before award of a contract.

(b) ACTIONS BEFORE ESTABLISHING QUALIFICATION REQUIREMENT.—Except as provided in subsection (c), the head of the agency shall, before establishing a qualification requirement—

(1) prepare a written justification stating the necessity for establishing the qualification requirement and specify why the qualification requirement must be demonstrated before contract award;

(2) specify in writing and make available to a potential offeror upon request all requirements which a prospective offeror, or its product, must satisfy in order to become qualified, such requirements to be limited to those least restrictive to meet the purposes necessitating the establishment of the qualification requirement;

(3) specify an estimate of the costs of testing and evaluation likely to be incurred by a potential offeror in order to become qualified;

(4) ensure that a potential offeror is provided, upon request and on a reimbursable basis, a prompt opportunity to demonstrate its ability to meet the standards specified for qualification using qualified personnel and facilities of the agency concerned or of another agency obtained through interagency agreement, or under contract, or other methods approved by the agency (including use of approved testing and evaluation services not provided under contract to the agency);

(5) if testing and evaluation services are provided under contract to the agency for the purposes of paragraph (4), provide to the extent possible that such services be provided by a contractor who is not expected to benefit from an absence of additional qualified sources and who shall be required in such contract to adhere to any restriction on technical data asserted by the potential offeror seeking qualification; and

(6) ensure that a potential offeror seeking qualification is promptly informed as to whether qualification is attained and, in the event qualification is not attained, is promptly furnished specific information why qualification was not attained.

(c) APPLICABILITY, WAIVER AUTHORITY, AND REFERRAL OF OFFERS.—

(1) APPLICABILITY.—Subsection (b) does not apply with respect to a qualification requirement established by statute or administrative action before October 19, 1984, unless such requirement is a qualified products list.

(2) WAIVER AUTHORITY.—

(A) SUBMISSION OF DETERMINATION OF UNREASONABLENESS.—Except as provided in subparagraph (C), if it is unreasonable to specify the standards for qualification which a prospective offeror or its product must satisfy, a determination to that effect shall be submitted to the advocate for competition of the procuring activity responsible for the purchase of the item subject to the qualification requirement.

(B) AUTHORITY TO GRANT WAIVER.—After considering any comments of the advocate for competition reviewing such determination, the head of the purchasing office may waive the requirements of clauses (2) through (6) of subsection (b) for up to two years with respect to the item subject to the qualification requirement.

(C) INAPPLICABILITY TO QUALIFIED PRODUCTS LIST.—The waiver authority provided in this paragraph does not apply with respect to a qualified products list.

(3) SUBMISSION AND CONSIDERATION OF OFFER NOT TO BE DENIED IN CERTAIN CASES.—A potential offeror may not be denied the opportunity to submit and have considered an offer for a contract solely because the potential offeror (A) is not on a qualified bidders list, qualified manufacturers list, or qualified products list, or (B) has not been identified as meeting a qualification requirement established after October 19, 1984, if the potential offeror can demonstrate to the satisfaction of the contracting officer (or, in the case of a contract for the procurement of an aviation critical safety item or ship critical safety item, the head of the design control activity for such item) that the potential offeror or its product meets the standards established for qualification or can meet such standards before the date specified for award of the contract.

(4) REFERRAL TO SMALL BUSINESS ADMINISTRATION.—Nothing contained in this subsection requires the referral of an offer to the Small Business Administration pursuant to section 8(b)(7) of the Small Business Act (15 U.S.C. 637(b)(7)) if the basis for the referral is a challenge by the offeror to either the validity of the qualification requirement or the offeror's compliance with such requirement.

(5) DELAY OF PROCUREMENT NOT REQUIRED.—The head of an agency need not delay a proposed procurement in order to comply with subsection (b) or in order to provide a potential offeror with an opportunity to demonstrate its ability to meet the standards specified for qualification.

(6) REQUIREMENTS BEFORE ENFORCEMENT OF CERTAIN LISTS.—The requirements of subsection (b) also apply before enforcement of any qualified products list, qualified manufacturers list, or qualified bidders list.

(d) FEWER THAN 2 ACTUAL MANUFACTURERS.—

(1) SOLICITATION AND TESTING OF ADDITIONAL SOURCES OR PRODUCTS.—If the number of qualified sources or qualified products available to compete actively for an anticipated future requirement is fewer than two actual manufacturers or the products of two actual manufacturers, respectively, the head of the agency concerned shall—

(A) periodically publish notice in the Commerce Business Daily soliciting additional sources or products to seek qualification, unless the contracting officer determines that such publication would compromise national security; and

(B) subject to paragraph (2), bear the cost of conducting the specified testing and evaluation (excluding the costs associated with producing the item or establishing the production, quality control, or other system to be tested and evaluated) for a small business concern or a product manufactured by a small business concern which has met the standards specified for qualification and which could reasonably be expected to compete for a contract for that requirement.

(2) CERTIFICATION WHEN AGENCY MAY BEAR COST.—Costs may be borne under paragraph (1)(B) only if the head of the agency determines that such additional qualified sources or products are likely to result in cost savings from increased competition for future requirements sufficient to amortize the costs incurred by the agency within a reasonable period of time considering the duration and dollar value of anticipated future requirements.

(3) CERTIFICATION REQUIRED.—The head of an agency shall require a prospective contractor requesting the United States to bear testing and evaluation costs under paragraph (1)(B) to certify as to its status as a small business concern under section 3 of the Small Business Act (15 U.S.C. 632).

(e) EXAMINATION AND REVALIDATION OF QUALIFICATION REQUIREMENT.—Within seven years after the establishment of a qualification requirement under subsection (b) or within seven years following an agency's enforcement of a qualified products list, qualified manufacturers list, or qualified bidders list, any such qualification requirement shall be examined and revalidated in accordance with the requirements of subsection (b). The preceding sentence does not apply in the case of a qualification requirement for which a waiver is in effect under subsection (c)(2).

(f) RESTRICTION ON ENFORCEMENT.—Except in an emergency as determined by the head of the agency, whenever the head of the agency determines not to enforce a qualification requirement for a solicitation, the agency may not thereafter enforce that qualification requirement unless the agency complies with the requirements of subsection (b).

(g) DEFINITIONS.—In this section:

(1) The term ''aviation critical safety item'' means a part, an assembly, installation equipment, launch equipment, recovery equipment, or support equipment for an aircraft or aviation weapon system if the part, assembly, or equipment contains a characteristic any failure, malfunction, or absence of which could cause a catastrophic or critical failure resulting in the loss of or serious damage to the aircraft or weapon system, an unacceptable risk of personal injury or loss of life, or an uncommanded engine shutdown that jeopardizes safety.

(2) The term ''ship critical safety item'' means any ship part, assembly, or support equipment containing a characteristic the failure, malfunction, or absence of which could cause a catastrophic or critical failure resulting in loss of or serious damage to the ship or unacceptable risk of personal injury or loss of life.

(3) The term ''design control activity'', with respect to an aviation critical safety item or ship critical safety item, means the systems command of a military department that is specifically responsible for ensuring the airworthiness of an aviation system or equipment, or the seaworthiness of a ship or ship equipment, in which such item is to be used.

(Added Pub. L. 98–525, title XII, § 1216(a), Oct. 19, 1984, 98 Stat. 2593, § 2319; amended Pub. L. 100–26,

§ 7(d)(5), (i)(4), (k)(3), Apr. 21, 1987, 101 Stat. 281, 282, 284; Pub. L. 108–136, div. A, title VIII, § 802(d), Nov. 24, 2003, 117 Stat. 1541; Pub. L. 109–364, div. A, title I, § 130(d), Oct. 17, 2006, 120 Stat. 2110; renumbered § 3243 and amended Pub. L. 116–283, div. A, title XVIII, § 1813(d), Jan. 1, 2021, 134 Stat. 4179.)

AMENDMENTS

2021—Pub. L. 116–283, § 1813(d)(1), substituted ''Encouragement of new competitors: qualification requirement'' for ''Encouragement of new competitors'' in section catchline.

Pub. L. 116–283, § 1813(d), renumbered section 2319 of this title as this section.

Subsec. (a). Pub. L. 116–283, § 1813(d)(2), inserted heading.

Subsec. (b). Pub. L. 116–283, § 1813(d)(3)(A), inserted heading.

Subsec. (b)(5). Pub. L. 116–283, § 1813(d)(3)(B), substituted ''paragraph (4)'' for ''clause (4)''.

Subsec. (c). Pub. L. 116–283, § 1813(d)(4)(A), inserted heading.

Subsec. (c)(1). Pub. L. 116–283, § 1813(d)(4)(A), inserted heading and struck out ''of this section'' after ''Subsection (b)''.

Subsec. (c)(2). Pub. L. 116–283, § 1813(d)(4)(C)(i), inserted heading and realigned margin.

Subsec. (c)(2)(A). Pub. L. 116–283, § 1813(d)(4)(C)(i), inserted heading and substituted ''Except as provided in subparagraph (C),'' for ''Except as provided in subparagraph (B),''.

Subsec. (c)(2)(B). Pub. L. 116–283, § 1813(d)(4)(C)(iii), (iv), redesignated second sentence of subsec. (c)(2)(A) as (B) and inserted heading. Former subpar. (B) redesignated (C).

Subsec. (c)(2)(B), (C). Pub. L. 116–283, § 1813(d)(4)(C)(ii), (v), redesignated subpar. (B) as (C) and inserted heading.

Subsec. (c)(3) to (6). Pub. L. 116–283, § 1813(d)(4)(B), (D)–(G), inserted headings and realigned margins.

Subsec. (d). Pub. L. 116–283, § 1813(d)(5)(A), inserted heading.

Subsec. (d)(1). Pub. L. 116–283, § 1813(d)(5)(A), (F), inserted heading and realigned margins of subpars. (A) and (B).

Subsec. (d)(1)(B). Pub. L. 116–283, § 1813(d)(5)(C), inserted ''subject to paragraph (2),'' before ''bear the cost of'' and substituted ''that requirement.'' for ''that requirement, but such costs may be borne''. Remainder of subpar. (B) redesignated par. (2).

Subsec. (d)(2). Pub. L. 116–283, § 1813(d)(5)(D), (E), designated text of par. (1)(B) beginning with ''only if the head'' as (2), inserted heading, and inserted ''Costs may be borne under paragraph (1)(B)'' at beginning. Former par. (2) redesignated (3).

Subsec. (d)(3). Pub. L. 116–283, § 1813(d)(5)(B), redesignated par. (2) as (3), inserted heading, and realigned margin.

Subsecs. (e), (f). Pub. L. 116–283, § 1813(d)(6), (7), inserted headings.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 3247. Contracts: regulations for bids

(a) The Secretary of Defense may—

(1) prescribe regulations for the preparation, submission, and opening of bids for contracts; and

(2) require that a bid be accompanied by a written guaranty, signed by one or more responsible persons, undertaking that the bidder, if his bid is accepted, will, within the time prescribed by the Secretary or other officer authorized to make the contract, make a contract and furnish a bond with good and sufficient sureties for the performance of the contract.

(b) If a bidder, after being notified of the acceptance of his bid, fails within the time prescribed under subsection (a)(2) to enter into a contract and furnish the prescribed bond, the Secretary concerned or other authorized officer shall—

(1) contract with another person; and

(2) charge against the defaulting bidder and his guarantors the difference between the amount specified by the bidder in his bid and the amount for which a contract is made with the other person, this difference being immediately recoverable by the United States for the use of the military department concerned in an action against the bidder and his guarantors, jointly or severally.

(c) Proceedings under this section are subject to regulations under section 121 of title 40, unless exempted therefrom under section 501(a)(2) of title 40.

(Aug. 10, 1956, ch. 1041, 70A Stat. 136, § 2381; Pub. L. 98–525, title XIV, § 1405(35), Oct. 19, 1984, 98 Stat. 2624; Pub. L. 103–355, title I, § 1507, Oct. 13, 1994, 108 Stat. 3298; Pub. L. 107–217, § 3(b)(6), Aug. 21, 2002, 116 Stat. 1295; renumbered § 3247, Pub. L. 116–283, div. A, title XVIII, § 1813(e), Jan. 1, 2021, 134 Stat. 4181.)

AMENDMENTS

2021—Pub. L. 116–283 renumbered section 2381 of this title as this section.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 3249. Advocates for competition

Each advocate for competition designated pursuant to section 1705(a) of title 41 for an agency named in section 3063 of this title shall be a general or flag officer if a member of the armed forces or in a position classified above GS–15 pursuant to section 5108 of title 5, if a civilian employee and shall be designated to serve for a minimum of two years.

(Added Pub. L. 98–525, title XII, § 1216(a), Oct. 19, 1984, 98 Stat. 2593, § 2318; amended Pub. L. 100–26, § 7(d)(4), Apr. 21, 1987, 101 Stat. 281; Pub. L. 102–25, title VII, § 701(f)(1), Apr. 6, 1991, 105 Stat. 115; Pub. L. 103–355, title I, § 1031, Oct. 13, 1994, 108 Stat. 3260; Pub. L. 111–350, § 5(b)(17), Jan. 4, 2011, 124 Stat. 3843; Pub. L. 112–239, div. A, title X, § 1076(f)(24), Jan. 2, 2013, 126 Stat. 1953; Pub. L. 115–232, div. A, title VIII, § 811(d), Aug. 13, 2018, 132 Stat. 1845; renumbered § 3249 and amended Pub. L. 116–283, div. A, title XVIII, § 1813(f), Jan. 1, 2021, 134 Stat. 4181.)

PRIOR PROVISIONS

A prior section 3251 was renumbered section 7131 of this title.

AMENDMENTS

2021—Pub. L. 116–283, § 1813(f), renumbered section 2318 of this title as this section and substituted "section 3063" for "section 2303(a)".

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 3252. Requirements for information relating to supply chain risk

(a) AUTHORITY.—Subject to subsection (b), the head of a covered agency may—

(1) carry out a covered procurement action; and

(2) limit, notwithstanding any other provision of law, in whole or in part, the disclosure of information relating to the basis for carrying out a covered procurement action.

(b) DETERMINATION AND NOTIFICATION.—The head of a covered agency may exercise the authority provided in subsection (a) only after—

(1) obtaining a joint recommendation by the Under Secretary of Defense for Acquisition and Sustainment and the Chief Information Officer of the Department of Defense, on the basis of a risk assessment by the Under Secretary of Defense for Intelligence and Security, that there is a significant supply chain risk to a covered system;

(2) making a determination in writing, in unclassified or classified form, with the concurrence of the Under Secretary of Defense for Acquisition and Sustainment, that—

(A) use of the authority in subsection (a)(1) is necessary to protect national security by reducing supply chain risk;

(B) less intrusive measures are not reasonably available to reduce such supply chain risk; and

(C) in a case where the head of the covered agency plans to limit disclosure of information under subsection (a)(2), the risk to national security due to the disclosure of such information outweighs the risk due to not disclosing such information; and

(3) providing a classified or unclassified notice of the determination made under paragraph (2) to the appropriate congressional committees, which notice shall include—

(A) the information required by section 3204(e)(2) of this title;

(B) the joint recommendation by the Under Secretary of Defense for Acquisition and Sustainment and the Chief Information Officer of the Department of Defense as specified in paragraph (1);

(C) a summary of the risk assessment by the Under Secretary of Defense for Intelligence[1] that serves as the basis for the joint recommendation specified in paragraph (1); and

(D) a summary of the basis for the determination, including a discussion of less intrusive measures that were considered and why they were not reasonably available to reduce supply chain risk.

(c) DELEGATION.—The head of a covered agency may not delegate the authority provided in subsection (a) or the responsibility to make a determination under subsection (b) to an official below the level of the service acquisition executive for the agency concerned.

(d) LIMITATION ON DISCLOSURE.—If the head of a covered agency has exercised the authority provided in subsection (a)(2) to limit disclosure of information—

(1) no action undertaken by the agency head under such authority shall be subject to review in a bid protest before the Government Accountability Office or in any Federal court; and

(2) the agency head shall—

(A) notify appropriate parties of a covered procurement action and the basis for such action only to the extent necessary to effectuate the covered procurement action;

(B) notify other Department of Defense components or other Federal agencies responsible for procurements that may be subject to the same or similar supply chain risk, in a manner and to the extent consistent with the requirements of national security; and

(C) ensure the confidentiality of any such notifications.

(e) DEFINITIONS.—In this section:

(1) HEAD OF A COVERED AGENCY.—The term "head of a covered agency" means each of the following:

(A) The Secretary of Defense.

(B) The Secretary of the Army.

(C) The Secretary of the Navy.

(D) The Secretary of the Air Force.

(2) COVERED PROCUREMENT ACTION.—The term "covered procurement action" means any of the following actions, if the action takes place in the course of conducting a covered procurement:

(A) The exclusion of a source that fails to meet qualification standards established in accordance with the requirements of section 3243 of this title for the purpose of reducing supply chain risk in the acquisition of covered systems.

(B) The exclusion of a source that fails to achieve an acceptable rating with regard to an evaluation factor providing for the consideration of supply chain risk in the evaluation of proposals for the award of a contract or the issuance of a task or delivery order.

(C) The decision to withhold consent for a contractor to subcontract with a particular source or to direct a contractor for a covered system to exclude a particular source from consideration for a subcontract under the contract.

(3) COVERED PROCUREMENT.—The term "covered procurement" means—

(A) a source selection for a covered system or a covered item of supply involving either a performance specification, as provided in section 3206(a)(3)(B) of this title, or an evaluation factor, as provided in section

[1] See Change of Name note below.

3206(b)(1) of this title, relating to supply chain risk;

(B) the consideration of proposals for and issuance of a task or delivery order for a covered system or a covered item of supply, as provided in section 3406(d)(3) of this title, where the task or delivery order contract concerned includes a contract clause establishing a requirement relating to supply chain risk; or

(C) any contract action involving a contract for a covered system or a covered item of supply where such contract includes a clause establishing requirements relating to supply chain risk.

(4) SUPPLY CHAIN RISK.—The term ''supply chain risk'' means the risk that an adversary may sabotage, maliciously introduce unwanted function, or otherwise subvert the design, integrity, manufacturing, production, distribution, installation, operation, or maintenance of a covered system so as to surveil, deny, disrupt, or otherwise degrade the function, use, or operation of such system.

(5) COVERED SYSTEM.—The term ''covered system'' means a national security system, as that term is defined in section 3552(b)(6) of title 44.

(6) COVERED ITEM OF SUPPLY.—The term ''covered item of supply'' means an item of information technology (as that term is defined in section 11101 of title 40) that is purchased for inclusion in a covered system, and the loss of integrity of which could result in a supply chain risk for a covered system.

(7) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term ''appropriate congressional committees'' means—

(A) in the case of a covered system included in the National Intelligence Program or the Military Intelligence Program, the Select Committee on Intelligence of the Senate, the Permanent Select Committee on Intelligence of the House of Representatives, and the congressional defense committees; and

(B) in the case of a covered system not otherwise included in subparagraph (A), the congressional defense committees.

(Added Pub. L. 115–232, div. A, title VIII, § 881(a)(1), Aug. 13, 2018, 132 Stat. 1910, § 2339a; amended Pub. L. 116–92, div. A, title XVII, § 1731(a)(43), Dec. 20, 2019, 133 Stat. 1814; renumbered § 3252 and amended Pub. L. 116–283, div. A, title X, § 1081(a)(36), title XVIII, § 1813(g), Jan. 1, 2021, 134 Stat. 3872, 4181.)

PRIOR PROVISIONS

A prior section 3252, added Pub. L. 110–181, div. A, title VI, § 671(a)(1), Jan. 28, 2008, 122 Stat. 181; amended Pub. L. 110–417, [div. A], title VI, § 615(b), Oct. 14, 2008, 122 Stat. 4485; Pub. L. 111–84, div. A, title VI, § 616(2), Oct. 28, 2009, 123 Stat. 2354; Pub. L. 111–383, div. A, title VI, § 616(2), Jan. 7, 2011, 124 Stat. 4238, related to bonus to encourage Army personnel to refer persons for enlistment in the Army, prior to repeal by Pub. L. 114–92, div. A, title VI, § 618(a), Nov. 25, 2015, 129 Stat. 840.

Another prior section 3252, act Aug. 10, 1956, ch. 1041, 70A Stat. 177, provided that temporary enlistments could be made only in the Army without specification of component, prior to repeal by Pub. L. 90–235, § 2(a)(2)(B), Jan. 2, 1968, 81 Stat. 756.

A prior section 3253, acts Aug. 10, 1956, ch. 1041, 70A Stat. 177; Pub. L. 87–143, § 1(1), Aug. 17, 1961, 75 Stat. 364; Pub. L. 90–235, § 2(a)(2)(A), Jan. 2, 1968, 81 Stat. 756; Pub. L. 96–513, title V, § 512(3), Dec. 12, 1980, 94 Stat. 2929, provided that, in peace time, Army enlistment was available only to citizens and persons lawfully admitted to the United States for permanent residence, prior to repeal by Pub. L. 109–163, div. A, title V, § 542(b)(1), Jan. 6, 2006, 119 Stat. 3253.

Prior sections 3254 to 3256 were repealed by Pub. L. 90–235, § 2(a)(2)(B), Jan. 2, 1968, 81 Stat. 756.

Section 3254, act Aug. 10, 1956, ch. 1041, 70A Stat. 178, provided for temporary enlistments in the Army during war or emergency.

Section 3255, act Aug. 10, 1956, ch. 1041, 70A Stat. 178, provided for recruiting campaigns to obtain enlistments in the Regular Army.

Section 3256, act Aug. 10, 1956, ch. 1041, 70A Stat. 178, set forth qualifications for and term of enlistments in the Regular Army and the grade in which such enlistments were made.

A prior section 3258 was renumbered section 7138 of this title.

Prior sections 3259 to 3261 were repealed by Pub. L. 103–337, div. A, title XVI, §§ 1662(b)(3), 1691, Oct. 5, 1994, 108 Stat. 2990, 3026, effective Dec. 1, 1994.

Section 3259, acts Aug. 10, 1956, ch. 1041, 70A Stat. 179; Sept. 29, 1988, Pub. L. 100–456, div. A, title XII, § 1234(a)(1), 102 Stat. 2059, related to transfers in grade of enlisted members of Army National Guard of United States to Army Reserve. See section 12105 of this title.

Section 3260, act Aug. 10, 1956, ch. 1041, 70A Stat. 179, provided that enlisted members of Army National Guard of United States are transferred to Army Reserve upon withdrawal as members of Army National Guard. See section 12106 of this title.

Section 3261, acts Aug. 10, 1956, ch. 1041, 70A Stat. 179; Sept. 2, 1958, Pub. L. 85–861, § 33(a)(20), 72 Stat. 1565; Oct. 4, 1961, Pub. L. 87–378, § 3, 75 Stat. 808, related to enlistment in Army National Guard of United States. See section 12107 of this title.

A prior section 3262 was renumbered section 7142 of this title.

Another prior section 3262, acts Aug. 10, 1956, ch. 1041, 70A Stat. 180; Sept. 2, 1958, Pub. L. 85–861, § 1(71), 72 Stat. 1464, provided for extension of enlistment of members of the Army needing medical care or hospitalization, prior to repeal by Pub. L. 90–235, § 2(a)(2)(B), Jan. 2, 1968, 81 Stat. 756.

A prior section 3263, Pub. L. 85–861, § 1(71)(B), Sept. 2, 1958, 72 Stat. 1465; Pub. L. 87–649, § 14c(4), Sept. 7, 1962, 76 Stat. 501, provided for voluntary extension of enlistments in the Army, prior to repeal by Pub. L. 90–235, § 2(a)(2)(B), Jan. 2, 1968, 81 Stat. 756.

A prior section 3264, added Pub. L. 107–107, div. A, title V, § 541(a)(1), Dec. 28, 2001, 115 Stat. 1109, related to an 18-month enlistment pilot program to increase participation of prior service persons in Selected Reserve and to provide assistance in building pool of participants in Individual Ready Reserve, prior to repeal by Pub. L. 107–314, div. A, title V, § 531(c), Dec. 2, 2002, 116 Stat. 2544.

Prior sections 3281 to 3283 were renumbered sections 7151 to 7153 of this title, respectively.

Prior sections 3284 to 3300 were repealed by Pub. L. 96–513, title II, § 204, title VII, § 701, Dec. 12, 1980, 94 Stat. 2880, 2955, effective Sept. 15, 1981.

Section 3284, act Aug. 10, 1956, ch. 1041, 70A Stat. 181, provided that appointments in commissioned grades in Regular Army be made by President, by and with the advice and consent of Senate. See section 531 of this title.

Section 3285, acts Aug. 10, 1956, ch. 1041, 70A Stat. 181; Sept. 2, 1958, Pub. L. 85–861, § 1(72), 72 Stat. 1465, prescribed eligibility requirements for original appointment in a commissioned grade in Regular Army, except in Medical Corps or Dental Corps and except a graduating cadet. See section 532 of this title.

Section 3286, acts Aug. 10, 1956, ch. 1041, 70A Stat. 181; Sept. 2, 1958, Pub. L. 85–861, § 1(73), 72 Stat. 1465, pre-

scribed age limitations for original appointment in a commissioned grade in Regular Army, except in Medical Corps, Dental Corps, Army Nurse Corps, or Army Medical Specialist Corps. See section 532 of this title.

Section 3287, acts Aug. 10, 1956, ch. 1041, 70A Stat. 182; Sept. 2, 1958, Pub. L. 85–861, §1(74), 72 Stat. 1466, provided service credit, in the discretion of the Secretary of the Army, for a person originally appointed in a commissioned grade in the Regular Army, except the Medical Corps, Dental Corps, Army Nurse Corps, or Army Medical Specialist Corps, for the purpose of determining grade, position on a promotion list, seniority in his grade in the Regular Army, and eligibility for promotion, with appointment and service credit restrictions on persons who were cadets at the United States Military, Naval, or Air Force Academies but were not graduated, and a disallowance of service credits under this section for persons who graduated from one of these Academies. See section 533 of this title.

Section 3288, acts Aug. 10, 1956, ch. 1041, 70A Stat. 183; Aug. 21, 1957, Pub. L. 85–155, title I, §101(7), 71 Stat. 376; Sept. 2, 1958, Pub. L. 85–861, §1(75), 72 Stat. 1466, provided for determination of grade of a person originally appointed as a commissioned officer in Regular Army, except in Medical Corps, Dental Corps, Army Nurse Corps, or Army Medical Specialist Corps. See section 533 of this title.

Section 3289, act Aug. 10, 1956, ch. 1041, 70A Stat. 183, provided that no person be originally appointed as a first lieutenant in Regular Army in Medical Corps until he passes an examination of his professional fitness before an examining board composed of at least three officers of Medical Corps designated by Secretary of the Army. See section 532 of this title.

Section 3290, act Aug. 10, 1956, ch. 1041, 70A Stat. 183, provided that an original appointment in Regular Army in Medical Service Corps be made only in grade of second lieutenant and from members of Regular Army, reserves not in an inactive status, or graduates of an accredited school of pharmacy or optometry, or of a school or college who hold a degree in a science allied to medicine or any other degree approved by Surgeon General. See section 532 of this title.

Section 3291, acts Aug. 10, 1956, ch. 1041, 70A Stat. 183; Aug. 21, 1957, Pub. L. 85–155, title I, §101(8), 71 Stat. 376; Sept. 30, 1966, Pub. L. 89–609, §1(4), 80 Stat. 852, prescribed eligibility requirements for an original appointment in Regular Army in Army Nurse Corps or Army Medical Specialist Corps in grade of second lieutenant, first lieutenant, and captain and provided for determination of years of service creditable for promotion. See section 532 of this title.

Section 3292, act Aug. 10, 1956, ch. 1041, 70A Stat. 184, provided that original appointments in commissioned grades in Regular Army in Judge Advocate General's Corps be made from officers of Regular Army in other branches, reserve commissioned officers assigned to Judge Advocate General's Corps, or qualified civilian graduates of accredited law schools. See section 532 of this title.

Section 3293, act Aug. 10, 1956, ch. 1041, 70A Stat. 184, provided that no person in civil life be originally appointed as a chaplain in Regular Army unless he has passed an examination prescribed by President as to his morale, mental, and physical qualifications. See section 532 of this title.

Section 3294, acts Aug. 10, 1956, ch. 1041, 70A Stat. 184; Sept. 2, 1958, Pub. L. 85–861, §1(77), 72 Stat. 1467, provided that original appointments in Regular Army be made in grades of first lieutenant through colonel in Medical Corps or Dental Corps as the Army requires, from qualified doctors of medicine, osteopathy, or dentistry who are citizens of the United States and have such other qualifications as the Secretary of the Army prescribes, with specific additional eligibility requirements for a doctor of osteopathy, and that officers so appointed receive service credit for determining grade, position on a promotion list, seniority in grade in Regular Army, and eligibility for promotion. See section 532 of this title.

Section 3295, acts Aug. 10, 1956, ch. 1041, 70A Stat. 184; Sept. 2, 1958, Pub. L. 85–861, §1(78), 72 Stat. 1467, provided for determination of the place on a promotion list of name of each person who is originally appointed in a commissioned grade in Regular Army and whose name is to be carried on a promotion list, other than persons appointed in Medical Corps, Dental Corps, Army Nurse Corps, or Army Medical Specialist Corps. See section 624 of this title.

Section 3296, acts Aug. 10, 1956, ch. 1041, 70A Stat. 184; Aug. 21, 1957, Pub. L. 85–155, title I, §101(10), 71 Stat. 377; Aug. 6, 1958, Pub. L. 85–600, §1(5), 72 Stat. 522; June 4, 1968, Pub. L. 90–329, 82 Stat. 170; Oct. 20, 1978, Pub. L. 95–485, title VIII, §820(d)(2), 92 Stat. 1627; Oct. 30, 1978, Pub. L. 95–551, §2, 92 Stat. 2069, provided for promotion lists in Regular Army for all commissioned officers in grades below brigadier general on active list, with exceptions, which officers are known as ''promotion-list officers'', a separate list for Chaplains and each of the several branches of Army Medical Department, and determination of place on list upon transfer or promotion. See section 624 of this title.

Section 3297, acts Aug. 10, 1956, ch. 1041, 70A Stat. 185; Aug. 21, 1957, Pub. L. 85–155, title I, §101(11), 71 Stat. 377; July 12, 1960, Pub. L. 86–616, §1(1), 74 Stat. 386; Oct. 20, 1978, Pub. L. 95–485, title VIII, §820(d)(3), 92 Stat. 1627, provided for selection boards to recommend promotion-list officers and brigadier generals of Regular Army for promotion in Regular Army. See section 611 et seq. of this title.

Section 3298, acts Aug. 10, 1956, ch. 1041, 70A Stat. 185; Aug. 21, 1957, Pub. L. 85–155, title I, §101(12), 71 Stat. 377; Nov. 8, 1967, Pub. L. 90–130, §1(10)(A), 81 Stat. 375, provided for promotion from grade of second lieutenant to first lieutenant after 3 years of service, discharge under section 3814 of this title upon failure of promotion, and filling vacancies for first lieutenants with second lieutenants prior to completion of 3 years of service. See section 630 of this title.

Section 3299, acts Aug. 10, 1956, ch. 1041, 70A Stat. 186; Aug. 21, 1957, Pub. L. 85–155, title I, §101(13), 71 Stat. 377; Sept. 2, 1958, Pub. L. 85–861, §33(a)(21), 72 Stat. 1565; Nov. 8, 1967, Pub. L. 90–130, §1(10)(B), 81 Stat. 375, provided that promotion-list officers be promoted to regular grades of captain, major, and lieutenant colonel, after specified length of service or without regard to length of service in view of actual or anticipated vacancies if Secretary of the Army so directs, or be eliminated from active list under section 3303 of this title and a promotion-list officer who has twice been considered and not recommended for promotion to any one regular grade not be again considered for promotion under this section. See sections 631 and 632 of this title.

Section 3300, acts Aug. 10, 1956, ch. 1041, 70A Stat. 186; July 12, 1960, Pub. L. 86–616, §1(2), 74 Stat. 386, provided for selection board procedure when promotion-list officers in regular grade of first lieutenant, captain, or major are to be considered for promotion under section 3299 of this title. See section 611 et seq. of this title.

AMENDMENTS

2021—Pub. L. 116–283, §1813(g), renumbered section 2339a of this title as this section.

Subsec. (b)(1). Pub. L. 116–283, §1081(a)(36), inserted ''and Security'' after ''for Intelligence''.

Subsec. (b)(3)(A). Pub. L. 116–283, §1813(g)(1), substituted ''section 3204(e)(2)'' for ''section 2304(f)(3)''.

Subsec. (e)(2)(A). Pub. L. 116–283, §1813(g)(2), substituted ''section 3243'' for ''section 2319''.

Subsec. (e)(3)(A). Pub. L. 116–283, §1813(g)(3)(A), substituted ''section 3206(a)(3)(B)'' for ''section 2305(a)(1)(C)(ii)'' and ''section 3206(b)(1)'' for ''section 2305(a)(2)(A)''.

Subsec. (e)(3)(B). Pub. L. 116–283, §1813(g)(3)(B), substituted ''section 3406(d)(3)'' for ''section 2304c(d)(3)''.

CHANGE OF NAME

Under Secretary of Defense for Intelligence redesignated and references deemed to refer to Under Sec-

retary of Defense for Intelligence and Security, see section 1621(a) of Pub. L. 116–92, set out as a note under section 137 of this title.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by section 1813(g) of Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

CHAPTER 225—PLANNING AND SOLICITATION RELATING TO PARTICULAR ITEMS OR SERVICES

Sec.
3271. [Reserved].

AMENDMENTS

2021—Pub. L. 116–283, div. A, title XVIII, § 1813(h), Jan. 1, 2021, 134 Stat. 4181, added chapter heading and item 3271.

Subpart C—Contracting Methods and Contract Types

AMENDMENTS

2018—Pub. L. 115–232, div. A, title VIII, § 801(a), Aug. 13, 2018, 132 Stat. 1827, added subpart heading.

CHAPTER 241—AWARDING OF CONTRACTS

Sec.
3301. Basis of award and rejection.
3302. Sealed bids.
3303. Competitive proposals.
3304. Post-award debriefings.
3305. Pre-award debriefings.
3306. Encouragement of alternative dispute resolution.
3307. Antitrust violations.
3308. Protests.
3309. Prohibition on release of contractor proposals.

PRIOR PROVISIONS

A prior chapter 241 ''AWARDING OF CONTRACTS'', as added by Pub. L. 115–232, div. A, title VIII, § 801(a), Aug. 13, 2018, 132 Stat. 1827, and consisting of reserved section 3301, was repealed by Pub. L. 116–283, div. A, title XVIII, § 1816(b), Jan. 1, 2021, 134 Stat. 4182.

§ 3301. Basis of award and rejection

(a) AWARD.—The head of an agency shall evaluate sealed bids and competitive proposals and make an award based solely on the factors specified in the solicitation.

(b) REJECTION.—All sealed bids or competitive proposals received in response to a solicitation may be rejected if the head of the agency determines that such action is in the public interest.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1816(c)(2)(A), (3), Jan. 1, 2021, 134 Stat. 4182.)

CODIFICATION

The text of subsec. (b)(1), (2) of section 2305 of this title, which was transferred to this section and amended by Pub. L. 116–283, § 1816(c)(1), (2)(A), (3), was based on Pub. L. 98–369, div. B, title VII, § 2723(b), July 18, 1984, 98 Stat. 1191, 1192; Pub. L. 101–510, div. A, title VIII, § 802(d)(1), Nov. 5, 1990, 104 Stat. 1589.

AMENDMENTS

2021—Pub. L. 116–283, § 1816(c)(3), redesignated subsec. (b)(1) and (2) of section 2305 of this title as subsecs. (a) and (b), respectively, of this section and inserted headings.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 3302. Sealed bids

(a) OPENING OF BIDS.—Sealed bids shall be opened publicly at the time and place stated in the solicitation.

(b) CRITERIA FOR AWARDING CONTRACT.—The head of the agency shall evaluate the bids in accordance with section 3301(a) of this title without discussions with the bidders and, except as provided in section 3301(b) of this title, shall award a contract with reasonable promptness to the responsible bidder whose bid conforms to the solicitation and is most advantageous to the United States, considering only price and the other price-related factors included in the solicitation.

(c) NOTICE OF AWARD.—The award of a contract shall be made by transmitting, in writing or by electronic means, notice of the award to the successful bidder. Within three days after the date of contract award, the head of the agency shall notify, in writing or by electronic means, each bidder not awarded the contract that the contract has been awarded.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1816(c)(2)(B), (4), Jan. 1, 2021, 134 Stat. 4182.)

CODIFICATION

The text of subsec. (b)(3) of section 2305 of this title, which was transferred to this section and amended by Pub. L. 116–283, § 1816(c)(1), (2)(B), (4) was based on Pub. L. 98–369, div. B, title VII, § 2723(b), July 18, 1984, 98 Stat. 1192; Pub. L. 101–510, div. A, title VIII, § 802(d)(2), Nov. 5, 1990, 104 Stat. 1589; Pub. L. 103–355, title I, § 1013(a), Oct. 13, 1994, 108 Stat. 3255.

PRIOR PROVISIONS

A prior section 3302, act Aug. 10, 1956, ch. 1041, 70A Stat. 187, related to promotion to captain, major, or lieutenant colonel of commissioned officers of Medical Corps, Dental Corps, and Veterinary Corps upon examination of professional fitness and effect upon failure of promotion, prior to repeal by Pub. L. 96–513, title II, § 204, title VII, § 701, Dec. 12, 1980, 94 Stat. 2880, 2955, effective Sept. 15, 1981. See sections 631 and 632 of this title.

AMENDMENTS

2021—Subsec. (a). Pub. L. 116–283, § 1816(c)(4)(A), (C), redesignated subsec. (b)(3) of section 2305 of this title as subsec. (a) of this section and inserted heading. Former second and third sentences of subsec. (a) designated subsecs. (b) and (c), respectively.

Subsec (b). Pub. L. 116–283, § 1816(c)(4)(B), (D), designated second sentence of subsec. (a) as subsec. (b) of this section, inserted heading, and substituted ''section 3301(a) of this title'' for ''paragraph (1)'' and ''section 3301(b) of this title'' for ''paragraph (2)''.

Subsec. (c). Pub. L. 116–283, § 1816(c)(4)(B), (E), designated third sentence of subsec. (a) as subsec. (c) of this section and inserted heading.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed im-

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plementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 3303. Competitive proposals

(a) EVALUATION AND AWARD.—The head of an agency shall evaluate competitive proposals in accordance with section 3301(a) of this title and may award a contract—

(1) after discussions with the offerors, provided that written or oral discussions have been conducted with all responsible offerors who submit proposals within the competitive range; or

(2) based on the proposals received, without discussions with the offerors (other than discussions conducted for the purpose of minor clarification) provided that the solicitation included a statement that proposals are intended to be evaluated, and award made, without discussions, unless discussions are determined to be necessary.

(b) LIMIT ON NUMBER OF PROPOSALS.—If the contracting officer determines that the number of offerors that would otherwise be included in the competitive range under subsection (a)(1) exceeds the number at which an efficient competition can be conducted, the contracting officer may limit the number of proposals in the competitive range, in accordance with the criteria specified in the solicitation, to the greatest number that will permit an efficient competition among the offerors rated most highly in accordance with such criteria.

(c) CRITERIA FOR AWARDING CONTRACT.—Except as provided in section 3301(b) of this title, the head of the agency shall award a contract with reasonable promptness to the responsible source whose proposal is most advantageous to the United States, considering only cost or price and the other factors included in the solicitation.

(d) NOTICE OF AWARD.—The head of the agency shall award the contract by transmitting, in writing or by electronic means, notice of the award to such source and, within three days after the date of contract award, shall notify, in writing or by electronic means, all other offerors of the rejection of their proposals. This subsection does not apply with respect to the award of a contract for the acquisition of perishable subsistence items.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1816(c)(2)(C), (5), Jan. 1, 2021, 134 Stat. 4182, 4183.)

CODIFICATION

The text of subsec. (b)(4) of section 2305 of this title, which was transferred to this section and amended by Pub. L. 116–283, § 1816(c)(1), (2)(C), (5) was based on Pub. L. 98–369, div. B, title VII, § 2723(b), July 18, 1984, 98 Stat. 1192; Pub. L. 99–500, § 101(c) [title X, § 924(b)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–153, and Pub. L. 99–591, § 101(c) [title X, § 924(b)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–153; Pub. L. 99–661, div. A, title III, § 313(b), title IX, formerly title IV, § 924(b), Nov. 14, 1986, 100 Stat. 3853, 3933, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; Pub. L. 101–189, div. A, title VIII, § 853(f), Nov. 29, 1989, 103 Stat. 1519; Pub. L. 101–510, div. A, title VIII, § 802(d), Nov. 5, 1990, 104 Stat. 1589; Pub. L. 103–355, title I, § 1013(b), Oct. 13, 1994, 108 Stat. 3255; Pub. L. 104–106, div. D, title XLI, § 4103(a), Feb. 10, 1996, 110 Stat. 643.

PRIOR PROVISIONS

A prior section 3303, act Aug. 10, 1956, ch. 1041, 70A Stat. 188; Pub. L. 86–616, § 1(3), July 12, 1960, 74 Stat. 386; Pub. L. 87–509, § 4(a), June 28, 1962, 76 Stat. 121, related to effect of failure of a promotion-list officer considered for promotion to grade of captain, major, or lieutenant colonel under section 3299 of this title to be recommended for promotion, which officer was to be known as a ''deferred officer'', prior to repeal by Pub. L. 96–513, title II, § 204, title VII, § 701, Dec. 12, 1980, 94 Stat. 2880, 2955, effective Sept. 15, 1981. See sections 631 and 632 of this title.

AMENDMENTS

2021—Pub. L. 116–283, § 1816(c)(5)(A), transferred subsec. (b)(4) of section 2305 of this title to this section and struck out par. (4) designation at beginning.

Subsec. (a). Pub. L. 116–283, § 1816(c)(5)(B), (D), redesignated subpar. (A) of former section 2305(b)(4) of this title as subsec. (a) of this section, inserted heading, substituted ''section 3301(a) of this title'' for ''paragraph (1)'' in introductory provisions, and redesignated cls. (i) and (ii) as pars. (1) and (2), respectively.

Subsec. (b). Pub. L. 116–283, § 1816(c)(5)(B), (E), redesignated subpar. (B) of former section 2305(b)(4) of this title as subsec. (b) of this section, inserted heading, and substituted ''subsection (a)(1)'' for ''subparagraph (A)(i)''.

Subsec. (c). Pub. L. 116–283, § 1816(c)(5)(B), (F), redesignated subpar. (C) of former section 2305(b)(4) of this title as subsec. (c) of this section, inserted heading, and substituted ''section 3301(b) of this title'' for ''paragraph (2)''. Former second and third sentences designated subsec. (d).

Subsec. (d). Pub. L. 116–283, § 1816(c)(5)(G), inserted heading and substituted ''This subsection'' for ''This subparagraph''.

Pub. L. 116–283, § 1816(c)(5)(C), which directed designation of the ''second sentence of subsection (c)'' as (d), was executed by designating the second and third sentences of subsec. (c) as subsec. (d) of this section to reflect the probable intent of Congress and the subsequent amendment made by section 1816(c)(5)(G), which was directed to ''subsection (d), as so designated'' and could only be executed in what had been the third sentence. See note above.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 3304. Post-award debriefings

(a) REQUEST FOR DEBRIEFING.—When a contract is awarded by the head of an agency on the basis of competitive proposals, an unsuccessful offeror, upon written request received by the agency within 3 days after the date on which the unsuccessful offeror receives the notification of the contract award, shall be debriefed and furnished the basis for the selection decision and contract award.

(b) WHEN DEBRIEFING TO BE CONDUCTED.—The head of the agency shall debrief the offeror within, to the maximum extent practicable, five days after receipt of the request by the agency.

(c) INFORMATION TO BE PROVIDED.—(1) The debriefing shall include, at a minimum—

(A) the agency's evaluation of the significant weak or deficient factors in the offeror's offer;

(B) the overall evaluated cost and technical rating of the offer of the contractor awarded the contract and the overall evaluated cost and technical rating of the offer of the debriefed offeror;

(C) the overall ranking of all offers;

(D) a summary of the rationale for the award;

(E) in the case of a proposal that includes a commercial product that is an end item under the contract, the make and model of the item being provided in accordance with the offer of the contractor awarded the contract;

(F) reasonable responses to relevant questions posed by the debriefed offeror as to whether source selection procedures set forth in the solicitation, applicable regulations, and other applicable authorities were followed by the agency; and

(G) an opportunity for a disappointed offeror to submit, within two business days after receiving a post-award debriefing, additional questions related to the debriefing.

(2) The agency shall respond in writing to any additional question submitted under paragraph (1)(G) within five business days after receipt of the question. The agency shall not consider the debriefing to be concluded until the agency delivers its written responses to the disappointed offeror.

(d) INFORMATION NOT TO BE INCLUDED.—The debriefing may not include point-by-point comparisons of the debriefed offeror's offer with other offers and may not disclose any information that is exempt from disclosure under section 552(b) of title 5.

(e) INCLUSION OF STATEMENT IN SOLICITATION.—Each solicitation for competitive proposals shall include a statement that information described in subsection (c) may be disclosed in post-award debriefings.

(f) AFTER SUCCESSFUL PROTEST.—If, within one year after the date of the contract award and as a result of a successful procurement protest, the agency seeks to fulfill the requirement under the protested contract either on the basis of a new solicitation of offers or on the basis of new best and final offers requested for that contract, the agency shall make available to all offerors—

(1) the information provided in debriefings under this paragraph regarding the offer of the contractor awarded the contract; and

(2) the same information that would have been provided to the original offerors.

(g) SUMMARY TO BE INCLUDED IN FILE.—The contracting officer shall include a summary of any debriefing conducted this section[1] in the contract file.

(Added and amended Pub. L. 116–283, div. A, title XVIII, §1816(c)(2)(D), (6), Jan. 1, 2021, 134 Stat. 4182, 4183.)

CODIFICATION

The text of subsec. (b)(5) of section 2305 of this title, which was transferred to this section, redesignated as subsecs. (a) to (f), and amended by Pub. L. 116–283, §1816(c)(1), (2)(D), (6)(A)–(J), was based on Pub. L. 103–355, title I, §1014(2), Oct. 13, 1994, 108 Stat. 3256; Pub. L. 104–106, div. D, title XLI, §4104(a)(1), Feb. 10, 1996, 110 Stat. 644; Pub. L. 115–91, div. A, title VIII, §818(b), Dec. 12, 2017, 131 Stat. 1463; Pub. L. 115–232, div. A, title VIII, §836(c)(3), Aug. 13, 2018, 132 Stat. 1864.

For derivation of subsec. (g) of this section, see Codification note related to subsec. (f) set out under section 3305 of this title.

PRIOR PROVISIONS

A prior section 3304, act Aug. 10, 1956, ch. 1041, 70A Stat. 189; Pub. L. 85–155, title I, §101(14), Aug. 21, 1957, 71 Stat. 378, covered promotion of officers in the Army Nurse Corps and the Army Medical Specialists Corps to colonel and lieutenant colonel, set out the requirements of officers on the promotion lists, and provided for the procedure to be followed in determining the order of promotion, prior to repeal by Pub. L. 90–130, §1(10)(C), Nov. 8, 1967, 81 Stat 375.

AMENDMENTS

2021—Pub. L. 116–283, §1816(c)(6)(A), transferred subsec. (b)(5) of section 2305 of this title to this section and struck out par. (5) designation at beginning.

Subsec. (a). Pub. L. 116–283, §1816(c)(6)(B), (E), redesignated subpar. (A) of former section 2305(b)(5) of this title as subsec. (a) of this section and inserted heading. Former second sentence of subsec. (a) designated subsec. (b).

Subsec. (b). Pub. L. 116–283, §1816(c)(6)(C), (F), designated second sentence of subsec. (a) as subsec. (b) of this section and inserted heading.

Subsec. (c)(1). Pub. L. 116–283, §1816(c)(6)(B), (G)(i), (ii), redesignated subpar. (B) of former section 2305(b)(5) of this title and its cls. (i) to (vii) as subsec. (c)(1) of this section and subpars. (A) to (G), respectively, and inserted subsec. heading.

Subsec. (c)(2). Pub. L. 116–283, §1816(c)(6)(D), (G)(iii), redesignated subpar. (C) of former section 2305(b)(5) of this title as subsec. (c)(2) of this section and substituted ''paragraph (1)(G)'' for ''subparagraph (B)(vii)''.

Subsec. (d). Pub. L. 116–283, §1816(c)(6)(B), (H), redesignated subpar. (D) of former section 2305(b)(5) of this title as subsec. (d) of this section and inserted heading.

Subsec. (e). Pub. L. 116–283, §1816(c)(6)(B), (I), redesignated subpar. (E) of former section 2305(b)(5) of this title as subsec. (e) of this section, inserted heading, and substituted ''subsection (c)'' for ''subparagraph (B)''.

Subsec. (f). Pub. L. 116–283, §1816(c)(6)(B), (J), redesignated subpar. (F) of former section 2305(b)(5) of this title as subsec. (f) of this section, inserted heading, and redesignated cls. (i) and (ii) as pars. (1) and (2), respectively.

Subsec. (g). Pub. L. 116–283, §1816(c)(6)(K), added subsec. (g) identical to subsec. (f) of section 3305 of this title.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 3305. Pre-award debriefings

(a) REQUEST FOR DEBRIEFING.—When the contracting officer excludes an offeror submitting a competitive proposal from the competitive range (or otherwise excludes such an offeror from further consideration prior to the final source selection decision), the excluded offeror may request in writing, within three days after the date on which the excluded offeror receives notice of its exclusion, a debriefing prior to award.

(b) WHEN DEBRIEFING TO BE CONDUCTED.—The contracting officer shall make every effort to

[1] So in original. Probably should be ''under this section''.

debrief the unsuccessful offeror as soon as practicable but may refuse the request for a debriefing if it is not in the best interests of the Government to conduct a debriefing at that time.

(c) PRECONDITION FOR POST-AWARD DEBRIEFING.—The contracting officer is required to debrief an excluded offeror in accordance with section 3304 of this title only if that offeror requested and was refused a preaward debriefing under subsections (a) and (b).

(d) INFORMATION TO BE PROVIDED.—The debriefing conducted under subsections (a) and (b) shall include—

(1) the executive agency's evaluation of the significant elements in the offeror's offer;

(2) a summary of the rationale for the offeror's exclusion; and

(3) reasonable responses to relevant questions posed by the debriefed offeror as to whether source selection procedures set forth in the solicitation, applicable regulations, and other applicable authorities were followed by the executive agency.

(e) INFORMATION NOT TO BE DISCLOSED.—The debriefing conducted under subsections (a) and (b) may not disclose the number or identity of other offerors and shall not disclose information about the content, ranking, or evaluation of other offerors' proposals.

(f) SUMMARY TO BE INCLUDED IN FILE.—The contracting officer shall include a summary of any debriefing conducted this section[1] in the contract file.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1816(c)(2)(E), (7), Jan. 1, 2021, 134 Stat. 4182, 4183.)

CODIFICATION

The text of subsec. (b)(6) of section 2305 of this title, which was transferred to this section, redesignated as subsecs. (a) to (e), and amended by Pub. L. 116–283, § 1816(c)(1), (2)(E), (7)(A), (C)–(I), was based on Pub. L. 104–106, div. D, title XLI, § 4104(a)(3), Feb. 10, 1996, 110 Stat. 644; Pub. L. 104–201, div. A, title X, § 1074(a)(11), Sept. 23, 1996, 110 Stat. 2659.

The text of subsec. (b)(7) of section 2305 of this title, which was transferred to this section, redesignated as subsec. (f), and amended by Pub. L. 116–283, § 1816(c)(1), (2)(E), (7)(B), (J), was based on Pub. L. 104–106, div. D, title XLI, § 4104(a)(3), Feb. 10, 1996, 110 Stat. 644.

PRIOR PROVISIONS

A prior section 3305, act Aug. 10, 1956, ch. 1041, 70A Stat. 189; Pub. L. 85–155, title I, § 101(16), Aug. 21, 1957, 71 Stat. 379; Pub. L. 90–130, § 1(10)(D), (E), Nov. 8, 1967, 81 Stat. 375, related to promotion of officers in regular grade of lieutenant colonel to grade of colonel, prior to repeal by Pub. L. 96–513, title II, § 204, title VII, § 701, Dec. 12, 1980, 94 Stat. 2880, 2955, effective Sept. 15, 1981. See section 619 et seq. of this title.

AMENDMENTS

2021—Pub. L. 116–283, § 1816(c)(7)(A), transferred subsec. (b)(6) of section 2305 of this title to this section and struck out par. (6) designation at beginning.

Subsec. (a). Pub. L. 116–283, § 1816(c)(7)(C), (E), redesignated subpar. (A) of former section 2305(b)(6) of this title as subsec. (a) of this section and inserted heading. Former second sentence of subsec. (a) designated subsec. (b).

Subsec. (b). Pub. L. 116–283, § 1816(c)(7)(D), (F), designated second sentence of subsec. (a) as subsec. (b) of this section and inserted heading.

[1] So in original. Probably should be ''under this section''.

Subsec. (c). Pub. L. 116–283, § 1816(c)(7)(B), (G), redesignated subpar. (B) of former section 2305(b)(6) of this title as subsec. (c) of this section, inserted heading, and substituted ''section 3304 of this title'' for ''paragraph (5)'' and ''subsections (a) and (b)'' for ''subparagraph (A)''.

Subsec. (d). Pub. L. 116–283, § 1816(c)(7)(B), (H), redesignated subpar. (C) of former section 2305(b)(6) of this title and its cls. (i) to (iii) as subsec. (d) of this section and pars. (1) to (3), respectively, inserted heading, and substituted ''subsections (a) and (b)'' for ''subparagraph (A)'' in introductory provisions.

Subsec. (e). Pub. L. 116–283, § 1816(c)(7)(B), (I), redesignated subpar. (D) of former section 2305(b)(6) of this title as subsec. (e) of this section, inserted heading, and substituted ''subsections (a) and (b)'' for ''subparagraph (A)''.

Subsec. (f). Pub. L. 116–283, § 1816(c)(7)(B), (J), redesignated subsec. (b)(7) of section 2305 of this title as subsec. (f) of this section, inserted heading, and substituted ''this section'' for ''under paragraph (5) or (6)''.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 3306. Encouragement of alternative dispute resolution

The Federal Acquisition Regulation shall include a provision encouraging the use of alternative dispute resolution techniques to provide informal, expeditious, and inexpensive procedures for an offeror to consider using before filing a protest, prior to the award of a contract, of the exclusion of the offeror from the competitive range (or otherwise from further consideration) for that contract.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1816(c)(2)(F), (8), Jan. 1, 2021, 134 Stat. 4182, 4185.)

CODIFICATION

The text of subsec. (b)(8) of this title, which was transferred to this section and amended by Pub. L. 116–283, § 1816(c)(1), (2)(F), (8), was based on Pub. L. 104–106, div. D, title XLI, § 4104(a)(3), Feb. 10, 1996, 110 Stat. 644.

PRIOR PROVISIONS

A prior section 3306, act Aug. 10, 1956, ch. 1041, 70A Stat. 190, related to promotion of officers in regular grade of colonel to grade of brigadier general, prior to repeal by Pub. L. 96–513, title II, § 204, title VII, § 701, Dec. 12, 1980, 94 Stat. 2880, 2955, effective Sept. 15, 1981. See section 619 et seq. of this title.

AMENDMENTS

2021—Pub. L. 116–283, § 1816(c)(8), transferred subsec. (b)(8) of section 2305 of this title to this section and struck out par. (8) designation at beginning.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 3307. Antitrust violations

If the head of an agency considers that a bid or proposal evidences a violation of the anti-

trust laws, he shall refer the bid or proposal to the Attorney General for appropriate action.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1816(c)(2)(G), (9), Jan. 1, 2021, 134 Stat. 4182, 4185.)

CODIFICATION

The text of subsec. (b)(9) of section 2305 of this title, which was transferred to this section and amended by Pub. L. 116–283, § 1816(c)(1), (2)(G), (9), was based on Pub. L. 98–369, div. B, title VII, § 2723(b), July 18, 1984, 98 Stat. 1192; Pub. L. 99–145, title XIII, § 1303(a)(14), Nov. 8, 1985, 99 Stat. 739; Pub. L. 103–355, title I, § 1014(1), Oct. 13, 1994, 108 Stat. 3255; Pub. L. 104–106, div. D, title XLI, § 4104(a), Feb. 10, 1996, 110 Stat. 644.

PRIOR PROVISIONS

A prior section 3307, act Aug. 10, 1956, ch. 1041, 70A Stat. 191, related to promotion of officers in regular grade of brigadier general to grade of major general, prior to repeal by Pub. L. 96–513, title II, § 204, title VII, § 701, Dec. 12, 1980, 94 Stat. 2880, 2955, effective Sept. 15, 1981. See section 619 et seq. of this title.

AMENDMENTS

2021—Pub. L. 116–283, § 1816(c)(9), transferred subsec. (b)(9) of section 2305 of this title to this section and struck out par. (9) designation at beginning.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 3308. Protests

(a) PROTEST FILE.—

(1) ESTABLISHMENT AND ACCESS.—If, in the case of a solicitation for a contract issued by, or an award or proposed award of a contract by, the head of an agency, a protest is filed pursuant to the procedures in subchapter V of chapter 35 of title 31 and an actual or prospective offeror so requests, a file of the protest shall be established by the procuring activity and reasonable access shall be provided to actual or prospective offerors.

(2) REDACTED INFORMATION.—Information exempt from disclosure under section 552 of title 5 may be redacted in a file established pursuant to paragraph (1) unless an applicable protective order provides otherwise.

(b) AGENCY ACTIONS ON PROTESTS.—If, in connection with a protest, the head of an agency determines that a solicitation, proposed award, or award does not comply with the requirements of law or regulation, the head of the agency—

(1) may take any action set out in subparagraphs (A) through (F) of subsection (b)(1) of section 3554 of title 31; and

(2) may pay costs described in paragraph (1) of section 3554(c) of title 31 within the limits referred to in paragraph (2) of such section.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1816(d), (e), Jan. 1, 2021, 134 Stat. 4185.)

CODIFICATION

The text of subsec. (e) of section 2305 of this title, which was transferred to this section, redesignated as subsec. (a), and amended by Pub. L. 116–283, § 1816(e), was based on Pub. L. 103–355, title I, § 1015, Oct. 13, 1994, 108 Stat. 3256; Pub. L. 104–106, div. E, title LVI, § 5601(a), Feb. 10, 1996, 110 Stat. 699; Pub. L. 104–201, div. A, title X, § 1074(b)(4)(A), Sept. 23, 1996, 110 Stat. 2660.

The text of subsec. (f) of section 2305 of this title, which was transferred to this section, redesignated as subsec. (b), and amended by Pub. L. 116–283, § 1816(e)(1), was based on Pub. L. 103–355, title I, § 1016, Oct. 13, 1994, 108 Stat. 3257.

PRIOR PROVISIONS

A prior section 3308, act Aug. 10, 1956, ch. 1041, 70A Stat. 192, related to effect of removal from recommended list by President of name of any promotion-list officer or brigadier general of Regular Army who in President's opinion is not qualified for promotion or who is not confirmed by Senate, prior to repeal by Pub. L. 96–513, title II, § 204, title VII, § 701, Dec. 12, 1980, 94 Stat. 2880, 2955, effective Sept. 15, 1981. See section 629 of this title.

AMENDMENTS

2021—Subsec. (a). Pub. L. 116–283, § 1816(e), redesignated subsec. (e) of section 2305 of this title as subsec. (a) of this section and, in pars. (1) and (2), inserted headings and realigned margins.

Subsec. (b). Pub. L. 116–283, § 1816(e)(1), redesignated subsec. (f) of section 2305 of this title as subsec. (b) of this section.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 3309. Prohibition on release of contractor proposals

(a) DEFINITION.—In this section, the term ''proposal'' means any proposal, including a technical, management, or cost proposal, submitted by a contractor in response to the requirements of a solicitation for a competitive proposal.

(b) PROHIBITION.—Except as provided in subsection (c), a proposal in the possession or control of an agency named in section 3063 of this title may not be made available to any person under section 552 of title 5.

(c) INAPPLICABILITY.—Subsection (b) does not apply to any proposal that is set forth or incorporated by reference in a contract entered into between the Department and the contractor that submitted the proposal.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1816(d), (f), Jan. 1, 2021, 134 Stat. 4185.)

CODIFICATION

The text of subsec. (g) of section 2305 of this title, which was transferred to this section and amended by Pub. L. 116–283, § 1816(f), was based on Pub. L. 104–201, div. A, title VIII, § 821(a), Sept. 23, 1996, 110 Stat. 2609; Pub. L. 106–65, div. A, title VIII, § 821, Oct. 5, 1999, 113 Stat. 714.

PRIOR PROVISIONS

A prior section 3309, act Aug. 10, 1956, ch. 1041, 70A Stat. 192, provided that President prescribe a system of physical examination for all commissioned officers of Regular Army in grades below brigadier general to determine their fitness for promotion in Regular Army, prior to repeal by Pub. L. 96–513, title II, § 204, title VII, § 701, Dec. 12, 1980, 94 Stat. 2880, 2955, effective Sept. 15, 1981. See section 624 of this title.

A prior section 3310, act Aug. 10, 1956, ch. 1041, 70A Stat. 192, provided that original appointments as warrant officers in the Regular Army were to be made from persons who have served on active duty at least one year in the Army, prior to repeal by Pub. L. 115–232, div. A, title V, § 511(a), Aug. 13, 2018, 132 Stat. 1751.

A prior section 3311, acts Aug. 10, 1956, ch. 1041, 70A Stat. 192; Sept. 2, 1958, Pub. L. 85–861, § 1(60), 72 Stat. 1462, provided that with the exception of those appointed as commissioned officers in Medical Corps, Dental Corps, Medical Service Corps, Veterinary Corps, Army Nurse Corps, or Army Medical Specialist Corps, women be appointed as commissioned officers in Regular Army only in Women's Army Corps, prior to repeal by Pub. L. 95–485, title VIII, § 820(d)(4), Oct. 20, 1978, 92 Stat. 1627.

Prior sections 3312 to 3314 were repealed by Pub. L. 96–513, title II, § 204, title VII, § 701, Dec. 12, 1980, 94 Stat. 2880, 2955, effective Sept. 15, 1981.

Section 3312, act Aug. 10, 1956, ch. 1041, 70A Stat. 193, provided that an officer who is promoted in Regular Army is considered to have accepted his promotion on date of the order announcing it, unless he expressly declines it, without the need to take oath of office upon promotion if his service since last taking it has been continuous. See section 626 of this title.

Section 3313, act Aug. 10, 1956, ch. 1041, 70A Stat. 193, provided that in time of war or national emergency declared by Congress or President, President may suspend operation of provision of law relating to promotion, mandatory retirement, or separation of commissioned officers of the Regular Army. See section 123(a) and (b) of this title.

Section 3314, added Pub. L. 85–861, § 1(79)(A), Sept. 2, 1958, 72 Stat. 1467, provided that promotion to a higher grade of a commissioned officer of Regular Army who is on a recommendation list awaiting promotion not be withheld or delayed because of original appointment of any other person to a commissioned grade in Regular Army and that this section does not apply to appointments in Medical Corps, Dental Corps, Army Nurse Corps, or Army Medical Specialist Corps. See section 624 of this title.

AMENDMENTS

2021—Pub. L. 116–283, § 1816(f)(1)(A), transferred subsec. (g) of section 2305 of this title to this section and struck out subsec. (g) designation and heading "Prohibition on Release of Contractor Proposals" at beginning.

Subsec. (a). Pub. L. 116–283, § 1816(f)(1)(B), (C), (2), redesignated par. (3) of former section 2305(g) of this title as subsec. (a) of this section, moved it to the beginning, inserted heading, and substituted "In this section," for "In this subsection,".

Subsec. (b). Pub. L. 116–283, § 1816(f)(1)(B), (3), redesignated par. (1) of former section 2305(g) of this title as subsec. (b) of this section, inserted heading, and substituted "subsection (c)," for "paragraph (2)," and "section 3063" for "section 2303".

Subsec. (c). Pub. L. 116–283, § 1816(f)(1)(B), (4), redesignated par. (2) of former section 2305(g) of this title as subsec. (c) of this section, inserted heading, and substituted "Subsection (b)" for "Paragraph (1)".

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

CHAPTER 242—SPECIFIC TYPES OF CONTRACTS

Sec.
3321. Contracts awarded using procedures other than sealed-bid procedures.
3322. Cost contracts.
3323. Cost-plus contracting prohibited for military construction and military family housing projects.
3324. Preference for fixed-price contracts.

§ 3321. Contracts awarded using procedures other than sealed-bid procedures

(a) AUTHORIZED TYPES.—Subject to the limitation in section 3322(a) of this title, the other provisions of this chapter, and other applicable provisions of law, the head of an agency, in awarding contracts under chapter 137 legacy provisions after using procedures other than sealed-bid procedures, may enter into any kind of contract that he considers will promote the best interests of the United States.

(b) REQUIRED WARRANTY.—

(1) CONTENT.—Each contract awarded under chapter 137 legacy provisions after using procedures other than sealed-bid procedures shall contain a warranty, determined to be suitable by the head of the agency, that the contractor has employed or retained no person or selling agency to solicit or obtain the contract under an understanding or agreement for a commission, percentage, brokerage, or contingent fee, except a bona fide employee or established commercial or selling agency maintained by the contractor to obtain business.

(2) REMEDY FOR BREAKING WARRANTY.—If a contractor breaks such a warranty the United States—

(A) may annul the contract without liability; or

(B) may deduct the commission, percentage, brokerage, or contingent fee from the contract price or consideration.

(3) INAPPLICABILITY TO CERTAIN CONTRACTS.—This subsection does not apply—

(A) to a contract that is for an amount not greater than the simplified acquisition threshold; or

(B) to a contract for the acquisition of commercial products or commercial services.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1817(a), (b), (d), Jan. 1, 2021, 134 Stat. 4186.)

CODIFICATION

The text of subsec. (a) of section 2306 of this title, which was transferred to this section and amended by Pub. L. 116–283, § 1817(b), (d)(1), was based on act Aug. 10, 1956, ch. 1041, 70A Stat. 130; Pub. L. 87–653, § 1(d), Sept. 10, 1962, 76 Stat. 528; Pub. L. 98–369, div. B, title VII, § 2724(a), July 18, 1984, 98 Stat. 1192; Pub. L. 99–145, title XIII, § 1303(a)(15), Nov. 8, 1985, 99 Stat. 739.

The text of subsec. (b) of section 2306 of this title, which was transferred to this section and amended by Pub. L. 116–283, § 1817(b), (d)(2), was based on act Aug. 10, 1956, ch. 1041, 70A Stat. 130; Pub. L. 98–369, div. B, title VII, § 2724(b), July 18, 1984, 98 Stat. 1193; Pub. L. 103–355, title IV, § 4102(b), Oct. 13, 1994, 108 Stat. 3340; Pub. L. 115–232, div. A, title VIII, § 836(c)(4), Aug. 13, 2018, 132 Stat. 1865.

AMENDMENTS

2021—Subsec. (a). Pub. L. 116–283, § 1817(b), (d)(1), transferred subsec. (a) of section 2306 of this title to this section, inserted heading before second sentence, and substituted "section 3322(a) of this title" for "the

preceding sentence'', ''provisions of this chapter'' for ''provisions of this section'', and ''under chapter 137 legacy provisions'' for ''under this chapter''. Former first sentence of subsec. (a) designated section 3322(a) of this title.

Subsec. (b). Pub. L. 116–283, §1817(b), (d)(2), transferred subsec. (b) of section 2306 of this title to this section, inserted heading, and designated first, second, and third sentences as pars. (1) to (3), respectively.

Subsec. (b)(1). Pub. L. 116–283, §1817(d)(2)(A)–(C), inserted heading and substituted ''under chapter 137 legacy provisions'' for ''under this chapter'' and ''maintained by the contractor'' for ''maintained by him''.

Subsec. (b)(2). Pub. L. 116–283, §1817(d)(2)(E), inserted heading, inserted dash after ''the United States'' and subpar. (A) designation before ''may annul'', substituted ''liability; or'' for ''liability or'', and inserted subpar. (B) designation before ''may deduct''.

Subsec. (b)(3). Pub. L. 116–283, §1817(d)(2)(F), inserted heading, inserted dash after ''does not apply'' and subpar. (A) designation before ''to a contract that is'', substituted ''threshold; or'' for ''threshold or'', and inserted subpar. (B) designation before ''to a contract for the acquisition''.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 3322. Cost contracts

(a) COST-PLUS-A-PERCENTAGE-OF-COST SYSTEM OF CONTRACTING PROHIBITED.—The cost-plus-a-percentage-of-cost system of contracting may not be used.

(b) COST-PLUS-A-FIXED-FEE CONTRACTS.—The fee for performing a cost-plus-a-fixed-fee contract for experimental, developmental, or research work may not be more than 15 percent of the estimated cost of the contract, not including the fee. The fee for performing a cost-plus-a-fixed-fee contract for architectural or engineering services for a public work or utility plus the cost of those services to the contractor may not be more than 6 percent of the estimated cost of that work or project, not including fees. The fee for performing any other cost-plus-a-fixed-fee contract may not be more than 10 percent of the estimated cost of the contract, not including the fee. Determinations under this subsection of the estimated costs of a contract or project shall be made by the head of the agency at the time the contract is made.

(c) ADVANCE NOTICE OF CERTAIN SUBCONTRACTS.—

(1) IN GENERAL.—Except as provided in paragraph (2), each cost contract and each cost-plus-a-fixed-fee contract shall provide for notice to the agency by the contractor before the making, under the prime contract, of—

(A) a cost-plus-a-fixed-fee subcontract; or

(B) a fixed-price subcontract or purchase order involving more than the greater of (i) the simplified acquisition threshold, or (ii) 5 percent of the estimated cost of the prime contract.

(2) EXCEPTION.—Paragraph (1) shall not apply to a prime contract with a contractor that maintains a purchasing system approved by the contracting officer for the contract.

(Added and amended Pub. L. 116–283, div. A, title XVIII, §1817(a), (c), (e), (f), Jan. 1, 2021, 134 Stat. 4186, 4187.)

CODIFICATION

For derivation of subsec. (a) of this section, see Codification note related to subsec. (a) of section 2306 of this title set out under section 3321 of this title.

The text of subsec. (d) of section 2306 of this title, which was transferred to this section, redesignated as subsec. (b), and amended by Pub. L. 116–283, §1817(e), (f)(2), was based on act Aug. 10, 1956, ch. 1041, 70A Stat. 131.

The text of subsec. (e) of section 2306 of this title, which was transferred to this section, redesignated as subsec. (c), and amended by Pub. L. 116–283, §1817(e), (f)(3), was based on act Aug. 10, 1956, ch. 1041, 70A Stat. 131; Pub. L. 98–369, div. B, title VII, §2724, July 18, 1984, 98 Stat. 1193; Pub. L. 102–25, title VII, §701(d)(3), Apr. 6, 1991, 105 Stat. 114; Pub. L. 103–355, title IV, 4401(c), Oct. 13, 1994, 108 Stat. 3348; Pub. L. 108–136, div. A, title VIII, §842, Nov. 24, 2003, 117 Stat. 1552.

AMENDMENTS

2021—Subsec. (a). Pub. L. 116–283, §1817(c), (f)(1), transferred first sentence of subsec. (a) of section 3321 of this title to this section, designated it as subsec. (a), and inserted heading.

Subsec. (b). Pub. L. 116–283, §1817(e), (f)(2), redesignated subsec. (d) of section 2306 of this title as subsec. (b) of this section and inserted heading.

Subsec. (c). Pub. L. 116–283, §1817(e), (f)(3), redesignated subsec. (e) of section 2306 of this title as subsec. (c) of this section, inserted subsec. and par. headings, and realigned margin of par. (2).

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 3323. Cost-plus contracting prohibited for military construction and military family housing projects

(a) PROHIBITION.—A contract entered into by the United States in connection with a military construction project or a military family housing project may not use any form of cost-plus contracting.

(b) APPLICABILITY.—The prohibition specified in subsection (a)—

(1) is in addition to the prohibition specified in section 3322(a) of this title on the use of the cost-plus-a-percentage-of-cost system of contracting; and

(2) applies notwithstanding.[1] a declaration of war or the declaration by the President of a national emergency under section 201 of the National Emergencies Act (50 U.S.C. 1621) that includes the use of the armed forces.

(Added and amended Pub. L. 116–283, div. A, title XVIII, §1817(a), (g), Jan. 1, 2021, 134 Stat. 4186, 4187.)

CODIFICATION

The text of subsec. (c) of section 2306 of this title, which was transferred to this section and amended by Pub. L. 116–283, §1817(g), was based on Pub. L. 112–81, div. B, title XXVIII, §2801(a), Dec. 31, 2011, 125 Stat. 1684.

[1] So in original. The period probably should not appear.

AMENDMENTS

2021—Subsec. (a). Pub. L. 116–283, §1817(g)(1), (2), redesignated subsec. (c) of section 2306 of this title as subsec. (a) of this section and inserted heading. Former second sentence of subsec. (a) designated subsec. (b).

Subsec. (b). Pub. L. 116–283, §1817(g)(1), (3), designated second sentence of subsec. (a) as subsec. (b), inserted heading, and substituted ''The prohibition specified in subsection (a)—

''(1) is in addition to the prohibition specified in section 3322(a) of this title on the use of the cost-plus-a-percentage-of-cost system of contracting; and

''(2) applies notwithstanding. a declaration''

for ''This prohibition is in addition to the prohibition specified in subsection (a) on the use of the cost-plus-a-percentage-of-cost system of contracting and applies notwithstanding a declaration''.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 3324. Preference for fixed-price contracts

[Reserved].

(Added Pub. L. 116–283, div. A, title XVIII, §1817(a), Jan. 1, 2021, 134 Stat. 4186.)

EFFECTIVE DATE

Section effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

CHAPTER 243—OTHER MATTERS RELATING TO AWARDING OF CONTRACTS

Sec.
3341. [Reserved].
3342. [Reserved].
3343. [Reserved].
3344. Disclosure of identity of contractor.
3345. Contract authority for advanced development of initial or additional prototype units.

PRIOR PROVISIONS

A prior chapter 243 ''SPECIFIC TYPES OF CONTRACTS'', as added by Pub. L. 115–232, div. A, title VIII, §801(a), Aug. 13, 2018, 132 Stat. 1827, and consisting of reserved section 3351, was repealed by Pub. L. 116–283, div. A, title XVIII, §1816(b), Jan. 1, 2021, 134 Stat. 4182.

§ 3344. Disclosure of identity of contractor

The Secretary of Defense may disclose the identity or location of a person awarded a contract by the Department of Defense to any individual, including a Member of Congress, only after the Secretary makes a public announcement identifying the contractor. When the identity of a contractor is to be made public, the Secretary shall announce publicly that the contract has been awarded and the identity of the contractor.

(Added Pub. L. 97–295, §1(26)(A), Oct. 12, 1982, 96 Stat. 1291, §2316; renumbered §3344, Pub. L. 116–283, div. A, title XVIII, §1818(b), Jan. 1, 2021, 134 Stat. 4188.)

AMENDMENTS

2021—Pub. L. 116–283 renumbered section 2316 of this title as this section.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 3345. Contract authority for development and demonstration of initial or additional prototype units

(a) AUTHORITY.—A contract initially awarded from the competitive selection of a proposal resulting from a general solicitation referred to in section 3012(2) of this title may contain a contract line item or contract option for—

(1) the development and demonstration or initial production of technology developed under the contract; or

(2) the delivery of initial or additional items if the item or a prototype thereof is created as the result of work performed under the contract.

(b) LIMITATIONS.—

(1) MINIMAL AMOUNT.—A contract line item or contract option described in subsection (a)(2) shall require the delivery of the minimal amount of initial or additional items to allow for the timely competitive solicitation and award of a follow-on development or production contract for those items.

(2) TERM.—A contract line item or contract option described in subsection (a) shall be for a term of not more than 2 years.

(3) DOLLAR VALUE OF WORK.—The dollar value of the work to be performed pursuant to a contract line item or contract option described in subsection (a) may not exceed $100,000,000, in fiscal year 2017 constant dollars.

(4) APPLICABILITY.—The authority provided in subsection (a) applies only to the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, and the Secretary of the Air Force.

(c) PROCEDURES.—The Secretary of Defense shall establish procedures to collect and analyze information on the use and benefits of the authority under this section and related impacts on performance, affordability, and capability delivery.

(Added Pub. L. 115–91, div. A, title VIII, §861(a)(1), Dec. 12, 2017, 131 Stat. 1493, §2302e; renumbered §3345 and amended Pub. L. 116–283, div. A, title VIII, §831(a), title XVIII, §1818(c), Jan. 1, 2021, 134 Stat. 3753, 4188.)

PRIOR PROVISIONS

Prior sections 3351 and 3352 were renumbered sections 12211 and 12213 of this title, respectively.

Prior sections 3353 and 3354 were repealed by Pub. L. 103–337, div. A, title XVI, §§1629(a)(1), 1691(b)(1), Oct. 5, 1994, 108 Stat. 2963, 3026, effective Oct. 1, 1996.

Section 3353, added Pub. L. 85–861, §1(80)(B), Sept. 2, 1958, 72 Stat. 1468; amended Pub. L. 86–559, §1(8), June 30, 1960, 74 Stat. 265; Pub. L. 96–513, title II, §205(a), Dec. 12, 1980, 94 Stat. 2881; Pub. L. 97–22, §5(c), July 10, 1981, 95 Stat. 128; Pub. L. 98–94, title X, §1007(c)(3), Sept. 24, 1983, 97 Stat. 662; Pub. L. 100–180, div. A, title VII, §714(b), Dec. 4, 1987, 101 Stat. 1112; Pub. L. 103–160, div. A, title V, §509(b), Nov. 30, 1993, 107 Stat. 1647, related to service credit upon original appointment as reserve commissioned officer in Army. See section 12207 of this title.

Section 3354, acts Aug. 10, 1956, ch. 1041, 70A Stat. 194; Sept. 2, 1958, Pub. L. 85–861, § 1(80)(C), 72 Stat. 1468, related to appointment of warrant officers and enlisted members of Army National Guard of United States as reserve officers.

A prior section 3355, acts Aug. 10, 1956, ch. 1041, 70A Stat. 194; Sept. 2, 1958, Pub. L. 85–861, § 33(a)(22), 72 Stat. 1565, related to appointment of graduates of Reserve Officers' Training Corps as reserve commissioned officers, prior to repeal by Pub. L. 88–647, title III, § 301(5), Oct. 13, 1964, 78 Stat. 1071. See section 2106 of this title.

Prior sections 3357 to 3370 were repealed by Pub. L. 103–337, div. A, title XVI, §§ 1629(a)(1), 1691(b)(1), Oct. 5, 1994, 108 Stat. 2963, 3026, effective Oct. 1, 1996.

Section 3357, acts Aug. 10, 1956, ch. 1041, 70A Stat. 194; Sept. 2, 1958, Pub. L. 85–861, § 1(60), (80)(D), 72 Stat. 1462, 1468, related to eligibility for appointment as reserve officer for service in Army Reserve in Army Nurse Corps or Army Medical Specialist Corps.

Section 3359, added Pub. L. 85–861, § 1(80)(E), Sept. 2, 1958, 72 Stat. 1469; amended Pub. L. 98–94, title X, § 1014(a), Sept. 24, 1983, 97 Stat. 666; Pub. L. 98–525, title V, § 521(a), Oct. 19, 1984, 98 Stat. 2522; Pub. L. 99–145, title V, § 521(a), Nov. 8, 1985, 99 Stat. 631; Pub. L. 100–180, div. A, title V, § 502(a), Dec. 4, 1987, 101 Stat. 1085; Pub. L. 101–189, div. A, title V, § 503(a), Nov. 29, 1989, 103 Stat. 1437; Pub. L. 102–484, div. A, title V, § 519(a), Oct. 23, 1992, 106 Stat. 2408; Pub. L. 103–160, div. A, title V, § 514(a), Nov. 30, 1993, 107 Stat. 1649; Pub. L. 104–106, div. A, title V, § 511(a), Feb. 10, 1996, 110 Stat. 298, related to determination of grade upon original appointment as reserve officer of Army. See section 12201 et seq. of this title.

Section 3360, added Pub. L. 85–861, § 1(80)(E), Sept. 2, 1958, 72 Stat. 1469; amended Pub. L. 86–559, § 1(9), June 30, 1960, 74 Stat. 266; Pub. L. 96–513, title V, §§ 502(10), 512(4), Dec. 12, 1980, 94 Stat. 2910, 2929; Pub. L. 98–94, title X, § 1016(b), Sept. 24, 1983, 97 Stat. 668, related to service required for promotion of Reserve commissioned officers. See section 14001 et seq. of this title.

Section 3362, added Pub. L. 85–861, § 1(80)(E), Sept. 2, 1958, 72 Stat. 1470; amended Pub. L. 86–559, § 1(10), June 30, 1960, 74 Stat. 266, related to convening of selection boards to consider Reserve commissioned officers for promotion. See section 14101 et seq. of this title.

Section 3363, added Pub. L. 85–861, § 1(80)(E), Sept. 2, 1958, 72 Stat. 1470; amended Pub. L. 86–559, § 1(11), June 30, 1960, 74 Stat. 266; Pub. L. 95–485, title VIII, § 820(e)(1), Oct. 20, 1978, 92 Stat. 1627; Pub. L. 100–456, div. A, title XII, § 1234(a)(1), Sept. 29, 1988, 102 Stat. 2059, related to requirements and procedures for promotion of officers in reserve grades. See section 14301 et seq. of this title.

Section 3364, added Pub. L. 85–861, § 1(80)(E), Sept. 2, 1958, 72 Stat. 1471; amended Pub. L. 86–559, § 1(12), June 30, 1960, 74 Stat. 266; Pub. L. 95–485, title VIII, § 820(e)(2)–(4), Oct. 20, 1978, 92 Stat. 1627; Pub. L. 98–525, title V, § 512, Oct. 19, 1984, 98 Stat. 2521; Pub. L. 100–456, div. A, title XII, § 1234(a)(4), Sept. 29, 1988, 102 Stat. 2059, related to commissioned reserve officers' selection for promotion, order of promotion, zone of consideration lists, and declinations of promotion. See section 14301 et seq. of this title.

Section 3365, added Pub. L. 85–861, § 1(80)(E), Sept. 2, 1958, 72 Stat. 1472, related to promotion of second lieutenants of Army Reserve. See section 14301 et seq. of this title.

Section 3366, added Pub. L. 85–861, § 1(80)(E), Sept. 2, 1958, 72 Stat. 1472; amended Pub. L. 86–559, § 1(13), June 30, 1960, 74 Stat. 267; Pub. L. 90–130, § 1(11)(A), Nov. 8, 1967, 81 Stat. 375, related to promotion of first lieutenants, captains, and majors of Army Reserve or Army National Guard of United States. See section 14301 et seq. of this title.

Section 3367, added Pub. L. 85–861, § 1(80)(E), Sept. 2, 1958, 72 Stat. 1473; amended Pub. L. 86–559, § 1(14), June 30, 1960, 74 Stat. 268; Pub. L. 90–130, § 1(11)(B), Nov. 8, 1967, 81 Stat. 375, related to promotion of first lieutenants, captains, and majors of Army Reserve to fill vacancies. See section 14301 et seq. of this title.

Section 3368, added Pub. L. 85–861, § 1(80)(E), Sept. 2, 1958, 72 Stat. 1474, related to second consideration for promotion of first lieutenants, captains, and majors of Army Reserve. See section 14301 et seq. of this title.

Section 3369, added Pub. L. 85–861, § 1(80)(E), Sept. 2, 1958, 72 Stat. 1474, related to first promotion of reserve officers not assigned to unit after transfer from unit or from Army National Guard of United States.

Section 3370, added Pub. L. 85–861, § 1(80)(E), Sept. 2, 1958, 72 Stat. 1474; amended Pub. L. 86–559, § 1(15), June 30, 1960, 74 Stat. 269; Nov. 8, 1967, Pub. L. 90–130, § 1(11)(C), (D), 81 Stat. 375; Pub. L. 100–456, div. A, title XII, § 1234(a)(5), Sept. 29, 1988, 102 Stat. 2059, related to promotion of officers to grade of colonel to fill vacancies. See section 14301 et seq. of this title.

AMENDMENTS

2021—Pub. L. 116–283, § 1818(c), renumbered section 2302e of this title as this section.

Pub. L. 116–283, § 831(a)(1), substituted ''development and demonstration'' for ''advanced development'' in section catchline.

Subsec. (a). Pub. L. 116–283, § 1818(c), substituted ''section 3012(2)'' for ''section 2302(2)(B)'' in introductory provisions.

Subsec. (a)(1). Pub. L. 116–283, § 831(a)(2), substituted ''development and demonstration'' for ''provision of advanced component development, prototype,''.

Subsec. (c). Pub. L. 116–283, § 831(a)(3), added subsec. (c).

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by section 1818(c) of Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

CHAPTER 244—UNDEFINITIZED CONTRACTUAL ACTIONS

Sec.

3371. Undefinitized contractual actions: required description of anticipated effect on military department requirements if use of undefinitized contractual action results in delay.
3372. Undefinitized contractual actions: requirements and limitations relating to definitization of contractual terms, specifications, and price.
3373. Undefinitized contractual actions: limitation on inclusion of non-urgent requirements and on modification of scope.
3374. Undefinitized contractual actions: allowable profit.
3375. Undefinitized contractual actions: time limit.
3376. [Reserved].
3377. Inapplicability to Coast Guard and National Aeronautics and Space Administration; definitions.

§ 3371. Undefinitized contractual actions: required description of anticipated effect on military department requirements if use of undefinitized contractual action results in delay

The head of an agency may not enter into an undefinitized contractual action unless the request to the head of the agency for authorization of the contractual action includes a description of the anticipated effect on requirements of the military department concerned if a delay is incurred for purposes of determining contractual terms, specifications, and price before performance is begun under the contractual action.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1819(a), (b), Jan. 1, 2021, 134 Stat. 4189.)

CODIFICATION

The text of subsec. (a) of section 2326 of this title, which was transferred to this section and amended by Pub. L. 116–283, § 1819(b), was based on Pub. L. 99–500, § 101(c) [title X, § 908(d)(1)(A)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–140, and Pub. L. 99–591, § 101(c) [title X, § 908(d)(1)(A)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–140; Pub. L. 99–661, div. A, title IX, formerly title IV, § 908(d)(1)(A), Nov. 14, 1986, 100 Stat. 3920, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273. Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661 added identical subsections.

PRIOR PROVISIONS

A prior section 3371, added Pub. L. 85–861, § 1(80)(E), Sept. 2, 1958, 72 Stat. 1475, related to promotion of brigadier generals and colonels not assigned to units, prior to repeal by Pub. L. 103–337, div. A, title XVI, §§ 1629(a)(1), 1691(b)(1), Oct. 5, 1994, 108 Stat. 2963, 3026, effective Oct. 1, 1996. See section 14301 et seq. of this title.

AMENDMENTS

2021—Pub. L. 116–283, § 1819(b), transferred subsec. (a) of section 2326 of this title to this section and struck out subsec. (a) designation and heading ''In General'' at beginning.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 3372. Undefinitized contractual actions: requirements and limitations relating to definitization of contractual terms, specifications, and price

(a) CONTRACTUAL ACTION TO PROVIDE TIME FOR DEFINITIZATION OF CONTRACTUAL TERMS, SPECIFICATIONS, AND PRICE; LIMITATIONS ON OBLIGATION OF FUNDS.—

(1) TERMS FOR TIME FOR DEFINITIZATION TO BE INCLUDED IN CONTRACTUAL ACTION.—A contracting officer of the Department of Defense may not enter into an undefinitized contractual action unless the contractual action provides for agreement upon contractual terms, specifications, and price by the earlier of—

(A) the end of the 180-day period beginning on the date on which the contractor submits a qualifying proposal to definitize the contractual terms, specifications, and price; or

(B) the date on which the amount of funds obligated under the contractual action is equal to more than 50 percent of the negotiated overall ceiling price for the contractual action.

(2) LIMITATION ON OBLIGATION OF FUNDS BEFORE DEFINITIZATION.—

(A) 50 PERCENT LIMITATION.—Except as provided in subparagraph (B), the contracting officer for an undefinitized contractual action may not obligate with respect to such contractual action an amount that is equal to more than 50 percent of the negotiated overall ceiling price until the contractual terms, specifications, and price are definitized for such contractual action.

(B) 75 PERCENT LIMITATION WHEN CONTRACTOR SUBMITS QUALIFYING PROPOSAL.—If a contractor submits a qualifying proposal (as defined in section 3377(b) of this title) to definitize an undefinitized contractual action before an amount equal to more than 50 percent of the negotiated overall ceiling price is obligated on such action, the contracting officer for such action may not obligate with respect to such contractual action an amount that is equal to more than 75 percent of the negotiated overall ceiling price until the contractual terms, specifications, and price are definitized for such contractual action.

(3) WAIVER AUTHORITY.—The head of an agency may waive the provisions of this subsection with respect to a contract of that agency if that head of an agency determines that the waiver is necessary in order to support any of the following operations:

(A) A contingency operation.

(B) A humanitarian or peacekeeping operation.

(4) INAPPLICABILITY WITH RESPECT TO PURCHASE OF INITIAL SPARES.—This subsection does not apply to an undefinitized contractual action for the purchase of initial spares.

(b) LIMITATION ON UNILATERAL DEFINITIZATION BY CONTRACTING OFFICER.—With respect to any undefinitized contractual action with a value greater than $50,000,000, if agreement is not reached on contractual terms, specifications, and price within the period or by the date provided in subsection (a)(1), the contracting officer may not unilaterally definitize those terms, specifications, or price over the objection of the contractor until—

(1) the service acquisition executive for the military department that awarded the contract, or the Under Secretary of Defense for Acquisition and Sustainment if the contract was awarded by a Defense Agency or other component of the Department of Defense, approves the definitization in writing;

(2) the contracting officer provides a copy of the written approval to the contractor; and

(3) a period of 30 calendar days has elapsed after the written approval is provided to the contractor.

(c) FOREIGN MILITARY CONTRACTS.—

(1) 180-DAY REQUIREMENT.—Except as provided in paragraph (2), a contracting officer of the Department of Defense may not enter into an undefinitized contractual action for a foreign military sale unless the contractual action provides for agreement upon contractual terms, specifications, and price by the end of the 180-day period described in subsection (a)(1)(A).

(2) WAIVER AUTHORITY.—The requirement under paragraph (1) may be waived in accordance with subsection (a)(3).

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1819(a), (c), Jan. 1, 2021, 134 Stat. 4189.)

CODIFICATION

The text of subsec. (b) of section 2326 of this title, which was transferred to this section, redesignated as subsec. (a), and amended by Pub. L. 116–283, § 1819(c)(1), (2), was based on Pub. L. 99–500, § 101(c) [title X,

§ 908(d)(1)(A)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–140, and Pub. L. 99–591, § 101(c) [title X, § 908(d)(1)(A)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–140; Pub. L. 99–661, div. A, title IX, formerly title IV, § 908(d)(1)(A), Nov. 14, 1986, 100 Stat. 3920, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; Pub. L. 103–355, title I, § 1505(a), (b), Oct. 13, 1994, 108 Stat. 3298; Pub. L. 105–85, div. A, title VIII, § 803(a), Nov. 18, 1997, 111 Stat. 1831; Pub. L. 115–91, div. A, title VIII, § 815(b), Dec. 12, 2017, 131 Stat. 1462. Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661 added identical subsections.

The text of subsec. (c) of section 2326 of this title, which was transferred to this section, redesignated as subsec. (b), and amended by Pub. L. 116–283, § 1819(c)(1), (3), was based on Pub. L. 115–91, div. A, title VIII, § 815(a)(2), Dec. 12, 2017, 131 Stat. 1462.

The text of subsec. (h) of section 2326 of this title, which was transferred to this section, redesignated as subsec. (c), and amended by Pub. L. 116–283, § 1819(c)(1), (4), was based on Pub. L. 114–328, div. A, title VIII, § 811(3), Dec. 23, 2016, 130 Stat. 2268; Pub. L. 115–91, div. A, title VIII, § 815(a)(1), Dec. 12, 2017, 131 Stat. 1462.

AMENDMENTS

2021—Subsec. (a). Pub. L. 116–283, § 1819(c)(1), (2)(A), redesignated subsec. (b) of section 2326 of this title as subsec. (a) of this section and substituted ''Contractual Action to Provide Time for Definitization of Contractual Terms, Specifications, and Price; Limitations on Obligation of Funds'' for ''Limitations on Obligation of Funds'' in heading.

Subsec. (a)(1). Pub. L. 116–283, § 1819(c)(2)(A), inserted heading.

Subsec. (a)(2). Pub. L. 116–283, § 1819(c)(2)(C), inserted par. (2) designation and heading. Former par. (2) redesignated subpar. (A) of par. (2).

Subsec. (a)(2)(A). Pub. L. 116–283, § 1819(c)(2)(B), (D), redesignated subsec. (a)(2) as (a)(2)(A), inserted heading, realigned margin, and substituted ''Except as provided in subparagraph (B),'' for ''Except as provided in paragraph (3),''.

Subsec. (a)(2)(B). Pub. L. 116–283, § 1819(c)(2)(B), (E), redesignated subsec. (a)(3) as (a)(2)(B), inserted heading, realigned margin, and substituted ''section 3377(b) of this title'' for ''subsection (h)''.

Subsec. (a)(3). Pub. L. 116–283, § 1819(c)(2)(F), redesignated par. (4) as (3) and inserted heading. Former par. (3) redesignated subpar. (B) of par. (2).

Subsec. (a)(4), (5). Pub. L. 116–283, § 1819(c)(2)(G), redesignated par. (5) as (4) and inserted heading. Former par. (4) redesignated (3).

Subsec. (b). Pub. L. 116–283, § 1819(c)(1), (3), redesignated subsec. (c) of section 2326 of this title as subsec. (b) of this section and substituted ''subsection (a)(1)'' for ''subsection (b)(1)'' in introductory provisions.

Subsec. (c). Pub. L. 116–283, § 1819(c)(1), redesignated subsec. (h) of section 2326 of this title as subsec. (c) of this section.

Subsec. (c)(1). Pub. L. 116–283, § 1819(c)(4)(A), (B), inserted heading and substituted ''subsection (a)(1)(A)'' for ''subsection (b)(1)(A)''.

Subsec. (c)(2). Pub. L. 116–283, § 1819(c)(4)(C), (D), inserted heading and substituted ''subsection (a)(3)'' for ''subsection (b)(4)''.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 3373. Undefinitized contractual actions: limitation on inclusion of non-urgent requirements and on modification of scope

(a) INCLUSION OF NON-URGENT REQUIREMENTS.—Requirements for spare parts and support equipment that are not needed on an urgent basis may not be included in an undefinitized contractual action for spare parts and support equipment that are needed on an urgent basis unless the head of the agency approves such inclusion as being—

(1) good business practice; and

(2) in the best interests of the United States.

(b) MODIFICATION OF SCOPE.—The scope of an undefinitized contractual action under which performance has begun may not be modified unless the head of the agency approves such modification as being—

(1) good business practice; and

(2) in the best interests of the United States.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1819(a), (d), Jan. 1, 2021, 134 Stat. 4189, 4190.)

CODIFICATION

The text of subsecs. (d) and (e) of section 2326 of this title, which were transferred to this section, redesignated as subsecs. (a) and (b), respectively, and amended by Pub. L. 116–283, § 1819(d), was based on Pub. L. 99–500, § 101(c) [title X, § 908(d)(1)(A)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–141, and Pub. L. 99–591, § 101(c) [title X, § 908(d)(1)(A)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–141; Pub. L. 99–661, div. A, title IX, formerly title IV, § 908(d)(1)(A), Nov. 14, 1986, 100 Stat. 3920, 3921, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; Pub. L. 115–91, div. A, title VIII, § 815(a)(1), Dec. 12, 2017, 131 Stat. 1462. Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661 added identical subsections.

AMENDMENTS

2021—Pub. L. 116–283, § 1819(d), redesignated subsecs. (d) and (e) of section 2326 of this title as subsecs. (a) and (b), respectively, of this section.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 3374. Undefinitized contractual actions: allowable profit

(a) ALLOWED PROFIT TO REFLECT CERTAIN REDUCED COST RISKS OF CONTRACTOR.—The head of an agency shall ensure that the profit allowed on an undefinitized contractual action for which the final price is negotiated after a substantial portion of the performance required is completed reflects—

(1) the possible reduced cost risk of the contractor with respect to costs incurred during performance of the contract before the final price is negotiated; and

(2) the reduced cost risk of the contractor with respect to costs incurred during performance of the remaining portion of the contract.

(b) DATE AS OF WHICH CONTRACTOR COST RISK TO BE DETERMINED.—If a contractor submits a qualifying proposal to definitize an undefinitized contractual action and the contracting officer for such action definitizes the contract after the end of the 180-day period beginning on the date on which the contractor submitted the qualifying proposal, the head of the agency concerned shall ensure that the profit allowed on the con-

tract accurately reflects the cost risk of the contractor as such risk existed on the date the contractor submitted the qualifying proposal.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1819(a), (e), Jan. 1, 2021, 134 Stat. 4189, 4190.)

CODIFICATION

The text of subsec. (f) of section 2326 of this title, which was transferred to this section and amended by Pub. L. 116–283, § 1819(e), was based on Pub. L. 99–500, § 101(c) [title X, § 908(d)(1)(A)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–141, and Pub. L. 99–591, § 101(c) [title X, § 908(d)(1)(A)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–141; Pub. L. 99–661, div. A, title IX, formerly title IV, § 908(d)(1)(A), Nov. 14, 1986, 100 Stat. 3921, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; Pub. L. 114–328, div. A, title VIII, § 811(1), Dec. 23, 2016, 130 Stat. 2268; Pub. L. 115–91, div. A, title VIII, § 815(a)(1), Dec. 12, 2017, 131 Stat. 1462. Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661 added identical subsections.

AMENDMENTS

2021—Pub. L. 116–283, § 1819(e)(1)(A), transferred subsec. (f) of section 2326 of this title to this section and struck out subsec. (f) designation and heading ''Allowable Profit'' at beginning.

Subsec. (a). Pub. L. 116–283, § 1819(e)(1)(B), (2), redesignated par. (1) of former section 2326(f) of this title as subsec. (a) of this section, inserted heading, and redesignated subpars. (A) and (B) as pars. (1) and (2), respectively.

Subsec. (b). Pub. L. 116–283, § 1819(e)(1)(B), (3), redesignated par. (2) of former section 2326(f) of this title as subsec. (b) of this section and inserted heading.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 3375. Undefinitized contractual actions: time limit

No undefinitized contractual action may extend beyond 90 days without a written determination by the Secretary of the military department concerned, the head of the Defense Agency concerned, the commander of the combatant command concerned, or the Under Secretary of Defense for Acquisition and Sustainment (as applicable) that it is in the best interests of the military department, the Defense Agency, the combatant command, or the Department of Defense, respectively, to continue the action.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1819(a), (f), Jan. 1, 2021, 134 Stat. 4189, 4190.)

CODIFICATION

The text of subsec. (g) of section 2326 of this title, which was transferred to this section and amended by Pub. L. 116–283, § 1819(f), was based on Pub. L. 114–328, div. A, title VIII, § 811(3), Dec. 23, 2016, 130 Stat. 2268; Pub. L. 115–91, div. A, title VIII, § 815(a)(1), Dec. 12, 2017, 131 Stat. 1462; Pub. L. 116–92, div. A, title IX, § 902(50), Dec. 20, 2019, 133 Stat. 1548.

PRIOR PROVISIONS

A prior section 3375, added Pub. L. 85–861, § 1(80)(E), Sept. 2, 1958, 72 Stat. 1475, related to transfer or discharge of reserve generals ceasing to occupy commensurate positions, prior to repeal by Pub. L. 103–337, div. A, title XVI, §§ 1629(a)(1), 1691(b)(1), Oct. 5, 1994, 108 Stat. 2963, 3026, effective Oct. 1, 1996. See section 14314(a) of this title.

AMENDMENTS

2021—Pub. L. 116–283, § 1819(f), transferred subsec. (g) of section 2326 of this title to this section and struck out subsec. (g) designation and heading ''Time Limit'' at beginning.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 3377. Inapplicability to Coast Guard and National Aeronautics and Space Administration; definitions

(a) APPLICABILITY.—This chapter does not apply to the Coast Guard or the National Aeronautics and Space Administration.

(b) DEFINITIONS.—In this chapter:

(1) The term ''undefinitized contractual action'' means a new procurement action entered into by the head of an agency for which the contractual terms, specifications, or price are not agreed upon before performance is begun under the action. Such term does not include contractual actions with respect to the following:

(A) Purchases in an amount not in excess of the amount of the simplified acquisition threshold.

(B) Special access programs.

(C) Congressionally mandated long-lead procurement contracts.

(2) The term ''qualifying proposal'' means a proposal that contains sufficient information to enable the Department of Defense to conduct a meaningful audit of the information contained in the proposal.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1819(a), (g), Jan. 1, 2021, 134 Stat. 4189, 4191.)

CODIFICATION

The text of subsec. (i) of section 2326 of this title, which was transferred to this section, redesignated as subsec. (a), and amended by Pub. L. 116–283, § 1819(g), was based on Pub. L. 99–500, § 101(c) [title X, § 908(d)(1)(A)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–141, and Pub. L. 99–591, § 101(c) [title X, § 908(d)(1)(A)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–141; Pub. L. 99–661, div. A, title IX, formerly title IV, § 908(d)(1)(A), Nov. 14, 1986, 100 Stat. 3921, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273. Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661 added identical subsections.

The text of subsec. (j) of section 2326 of this title, which was transferred to this section, redesignated as subsec. (b), and amended by Pub. L. 116–283, § 1819(g), was based on Pub. L. 99–500, § 101(c) [title X, § 908(d)(1)(A)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–141, and Pub. L. 99–591, § 101(c) [title X, § 908(d)(1)(A)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–141; Pub. L. 99–661, div. A, title IX, formerly title IV, § 908(d)(1)(A), Nov. 14, 1986, 100 Stat. 3921, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; Pub. L. 101–189, div. A, title XVI, § 1622(c)(6), Nov. 29, 1989, 103 Stat. 1604; Pub. L. 102–25, title VII, § 701(d)(5), Apr. 6, 1991, 105 Stat. 114;

Pub. L. 103–355, title I, § 1505, Oct. 13, 1994, 108 Stat. 3298; Pub. L. 114–328, div. A, title VIII, § 811(2), (4), Dec. 23, 2016, 130 Stat. 2268, 2269; Pub. L. 115–91, div. A, title VIII, § 815(a)(1), Dec. 12, 2017, 131 Stat. 1462. Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661 added identical subsections.

PRIOR PROVISIONS

Prior sections 3378 to 3390 were repealed by Pub. L. 103–337, div. A, title XVI, §§ 1629(a)(1), 1691(b)(1), Oct. 5, 1994, 108 Stat. 2963, 3026, effective Oct. 1, 1996.

Section 3378, added Pub. L. 85–861, § 1(80)(E), Sept. 2, 1958, 72 Stat. 1476, related to promotion of reserve commissioned officers removed from active status. See section 14317(a) of this title.

Section 3380, added Pub. L. 85–861, § 1(80)(E), Sept. 2, 1958, 72 Stat. 1476; amended Pub. L. 98–94, title X, § 1015(a)(1), Sept. 24, 1983, 97 Stat. 667; Pub. L. 99–145, title V, § 521(b), Nov. 8, 1985, 99 Stat. 631; Pub. L. 100–180, div. A, title V, § 502(b)(1), Dec. 4, 1987, 101 Stat. 1085; Pub. L. 101–189, div. A, title V, § 503(b)(1), Nov. 29, 1989, 103 Stat. 1437; Pub. L. 102–484, div. A, title V, § 519(b), Oct. 23, 1992, 106 Stat. 2408; Pub. L. 103–160, div. A, title V, § 514(b), Nov. 30, 1993, 107 Stat. 1649; Pub. L. 104–106, div. A, title V, § 511(b), Feb. 10, 1996, 110 Stat. 298, related to promotion of reserve commissioned officers on active duty and not on the active duty list. See section 14311(e) of this title.

Section 3382, added Pub. L. 85–861, § 1(80)(E), Sept. 2, 1958, 72 Stat. 1476, related to promotion of second lieutenants of Army Reserve assigned to units. See section 14301 et seq. of this title.

Section 3383, added Pub. L. 85–861, § 1(80)(E), Sept. 2, 1958, 72 Stat. 1477; amended Pub. L. 86–559, § 1(16), June 30, 1960, 74 Stat. 270; Pub. L. 88–620, § 2, Oct. 3, 1964, 78 Stat. 999; Pub. L. 90–130, § 1(11)(E), Nov. 8, 1967, 81 Stat. 376; Pub. L. 95–485, title VIII, § 820(e)(5), Oct. 20, 1978, 92 Stat. 1627, related to promotion of officers of Army Reserve to grades of first lieutenant, captain, major, lieutenant colonel, and colonel to fill vacancies. See section 14301 et seq. of this title.

Section 3384, added Pub. L. 85–861, § 1(80)(E), Sept. 2, 1958, 72 Stat. 1477, related to promotion of officers of Army Reserve to grades of brigadier general or major general to fill vacancies. See section 14315 of this title.

Section 3385, added Pub. L. 85–861, § 1(80)(E), Sept. 2, 1958, 72 Stat. 1477, related to promotion of officers of Army National Guard of United States upon Federal recognition. See section 14308(f) of this title.

Section 3386, added Pub. L. 85–861, § 1(80)(E), Sept. 2, 1958, 72 Stat. 1478, related to promotion of reserve commissioned officers upon release from active duty. See section 14301 et seq. of this title.

Section 3388, added Pub. L. 85–861, § 1(80)(E), Sept. 2, 1958, 72 Stat. 1478, related to effect of commissioned officer of Army Reserve entering upon active duty while eligible for promotion. See section 14301 et seq. of this title.

Section 3389, added Pub. L. 85–861, § 1(80)(E), Sept. 2, 1958, 72 Stat. 1478; amended Pub. L. 86–559, § 1(17), June 30, 1960, 74 Stat. 270, related to promotion of commissioned officers of Army Reserve or Army National Guard of United States to higher reserve grades after temporary appointments. See section 14301 et seq. of this title.

Section 3390, added Pub. L. 85–861, § 1(80)(E), Sept. 2, 1958, 72 Stat. 1478; amended Pub. L. 100–456, div. A, title XII, § 1234(a)(1), Sept. 29, 1988, 102 Stat. 2059, related to procedure for promotion to higher reserve grade of officer of Army National Guard of United States after temporary appointment. See section 14301 et seq. of this title.

A prior section 3391, added Pub. L. 85–861, § 1(80)(E), Sept. 2, 1958, 72 Stat. 1479; Pub. L. 86–559, § 1(18), June 30, 1960, 74 Stat. 270, prohibited promotion of reserve officers of Army Nurse Corps or Army Medical Specialist Corps to reserve grades above colonel and prohibited promotion of reserve officers of Women's Army Corps to reserve grades above lieutenant colonel, prior to repeal by Pub. L. 90–130, § 1(11)(F), Nov. 8, 1967, 81 Stat. 376.

Prior sections 3392 to 3396 were repealed by Pub. L. 103–337, div. A, title XVI, §§ 1629(a)(1), 1691(b)(1), Oct. 5, 1994, 108 Stat. 2963, 3026, effective Oct. 1, 1996.

Section 3392, added Pub. L. 85–861, § 1(80)(E), Sept. 2, 1958, 72 Stat. 1479; amended Pub. L. 100–456, div. A, title XII, § 1234(a)(1), Sept. 29, 1988, 102 Stat. 2059, related to appointment of adjutants general or assistant adjutants general as reserve officers of Army. See section 12215(a) of this title.

Section 3393, added Pub. L. 85–861, § 1(80)(E), Sept. 2, 1958, 72 Stat. 1479, provided that sea or foreign service not be made condition for promotion of reserve commissioned officers in reserve grades.

Section 3394, act Aug. 10, 1956, ch. 1041, 70A Stat. 195, related to acceptance of promotion by officers of Army National Guard of United States or Army Reserve. See section 14309 of this title.

Section 3395, act Aug. 10, 1956, ch. 1041, 70A Stat. 195, related to appointment of reserve officers in time of war. See section 14301 et seq. of this title.

Section 3396, added Pub. L. 96–513, title II, § 206(a), Dec. 12, 1980, 94 Stat. 2884, provided that chapter, except section 3353, did not apply to reserve officers on active-duty list.

AMENDMENTS

2021—Pub. L. 116–283, § 1819(g), redesignated subsecs. (i) and (j) of section 2326 of this title as subsecs. (a) and (b), respectively, of this section and substituted ''chapter'' for ''section'' in subsec. (a) and in introductory provisions of subsec. (b).

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

CHAPTER 245—TASK AND DELIVERY ORDER CONTRACTS (MULTIPLE AWARD CONTRACTS)

Sec.
3401. Task and delivery order contracts: definitions.
3402. [Reserved].
3403. Task and delivery order contracts: general authority.
3404. Guidance on use of task and delivery order contracts.[1]
3405. Task order contracts: advisory and assistance services.
3406. Task and delivery order contracts: orders.

PRIOR PROVISIONS

A prior chapter 245 ''TASK AND DELIVERY ORDER CONTRACTS (MULTIPLE AWARD CONTRACTS)'', as added by Pub. L. 115–232, div. A, title VIII, § 801(a), Aug. 13, 2018, 132 Stat. 1827, and consisting of reserved section 3401, was repealed by Pub. L. 116–283, div. A, title XVIII, § 1820(a), Jan. 1, 2021, 134 Stat. 4191.

§ 3401. Task and delivery order contracts: definitions

In this chapter:

(1) DELIVERY ORDER CONTRACT.—The term ''delivery order contract'' means a contract for property—

(A) that does not procure or specify a firm quantity of property (other than a minimum or maximum quantity); and

(B) that provides for the issuance of orders for the delivery of property during the period of the contract.

[1] So in original. There is no section 3404.

(2) TASK ORDER CONTRACT.—The term ''task order contract'' means a contract for services—

(A) that does not procure or specify a firm quantity of services (other than a minimum or maximum quantity); and

(B) that provides for the issuance of orders for the performance of tasks during the period of the contract.

(Added Pub. L. 103–355, title I, § 1004(a)(1), Oct. 13, 1994, 108 Stat. 3253, § 2304d; renumbered § 3401 and amended Pub. L. 116–283, div. A, title XVIII, § 1820(b), Jan. 1, 2021, 134 Stat. 4191.)

AMENDMENTS

2021—Pub. L. 116–283, § 1820(b)(1), (2), renumbered section 2304d of this title as this section and reversed order and designations of pars. (1) and (2).

Par. (1). Pub. L. 116–283, § 1820(b)(3), inserted heading, inserted dash after ''for property'', and reorganized remainder of text of par. (1) into designated subpars. (A) and (B).

Par. (2). Pub. L. 116–283, § 1820(b)(4), inserted heading, inserted dash after ''for services'', and reorganized remainder of text of par. (2) into designated subpars. (A) and (B).

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 3403. Task and delivery order contracts: general authority

(a) AUTHORITY TO AWARD.—Subject to the requirements of this section, section 3406 of this title, and other applicable law, the head of an agency may enter into a task or delivery order contract (as defined in section 3401 of this title) for procurement of services or property.

(b) SOLICITATION.—The solicitation for a task or delivery order contract shall include the following:

(1) The period of the contract, including the number of options to extend the contract and the period for which the contract may be extended under each option, if any.

(2) The maximum quantity or dollar value of the services or property to be procured under the contract.

(3) A statement of work, specifications, or other description that reasonably describes the general scope, nature, complexity, and purposes of the services or property to be procured under the contract.

(c) APPLICABILITY OF RESTRICTION ON USE OF NONCOMPETITIVE PROCEDURES.—The head of an agency may use procedures other than competitive procedures to enter into a task or delivery order contract under this[1] only if—

(1) an exception in subsection (a) of section 3204 of this title applies to the contract; and

(2) the use of such procedures is approved in accordance with subsection (e) of such section.

(d) SINGLE AND MULTIPLE CONTRACT AWARDS.—

(1) EXERCISE OF AUTHORITY.—The head of an agency may exercise the authority provided in this section—

(A) to award a single task or delivery order contract; or

(B) if the solicitation states that the head of the agency has the option to do so, to award separate task or delivery order contracts for the same or similar services or property to two or more sources.

(2) DETERMINATION NOT REQUIRED.—No determination under section 3203 of this title is required for award of multiple task or delivery order contracts under paragraph (1)(B).

(3) WHEN SINGLE SOURCE AWARDS FOR TASK OR DELIVERY ORDER CONTRACTS EXCEEDING $100,000,000 ARE ALLOWED.—(A) Except as provided under subparagraph (B), no task or delivery order contract in an amount estimated to exceed $100,000,000 (including all options) may be awarded to a single source unless the head of the agency determines in writing that—

(i) the task or delivery orders expected under the contract are so integrally related that only a single source can efficiently perform the work;

(ii) the contract provides only for firm, fixed price task orders or delivery orders for—

(I) products for which unit prices are established in the contract; or

(II) services for which prices are established in the contract for the specific tasks to be performed;

(iii) only one source is qualified and capable of performing the work at a reasonable price to the government; or

(iv) because of exceptional circumstances, it is necessary in the public interest to award the contract to a single source.

(B) A task or delivery order contract in an amount estimated to exceed $100,000,000 (including all options) may be awarded to a single source without the written determination otherwise required under subparagraph (A) if the head of the agency has made a written determination pursuant to section 3204(a) of this title that procedures other than competitive procedures may be used for the awarding of such contract.

(4) REGULATIONS.—The regulations implementing this subsection shall—

(A) establish a preference for awarding, to the maximum extent practicable, multiple task or delivery order contracts for the same or similar services or property under the authority of paragraph (1)(B); and

(B) establish criteria for determining when award of multiple task or delivery order contracts would not be in the best interest of the Federal Government.

(e) CONTRACT MODIFICATIONS.—A task or delivery order may not increase the scope, period, or maximum value of the task or delivery order contract under which the order is issued. The scope, period, or maximum value of the contract may be increased only by modification of the contract.

(f) CONTRACT PERIOD.—The head of an agency entering into a task or delivery order contract under this section may provide for the contract

[1] So in original. Probably should be followed by ''section''.

to cover any period up to five years and may extend the contract period for one or more successive periods pursuant to an option provided in the contract or a modification of the contract. The total contract period as extended may not exceed 10 years unless such head of an agency determines in writing that exceptional circumstances necessitate a longer contract period.

(g) INAPPLICABILITY TO CONTRACTS FOR ADVISORY AND ASSISTANCE SERVICES.—Except as otherwise specifically provided in section 3405 of this title, this section does not apply to a task or delivery order contract for the procurement of advisory and assistance services (as defined in section 1105(g) of title 31).

(h) RELATIONSHIP TO OTHER CONTRACTING AUTHORITY.—Nothing in this section may be construed to limit or expand any authority of the head of an agency or the Administrator of General Services to enter into schedule, multiple award, or task or delivery order contracts under any other provision of law.

(Added Pub. L. 103–355, title I, § 1004(a)(1), Oct. 13, 1994, 108 Stat. 3249, § 2304a; amended Pub. L. 108–136, div. A, title VIII, § 843(b), Nov. 24, 2003, 117 Stat. 1553; Pub. L. 108–375, div. A, title VIII, § 813(a), Oct. 28, 2004, 118 Stat. 2014; Pub. L. 110–181, div. A, title VIII, § 843(a)(1), Jan. 28, 2008, 122 Stat. 236; Pub. L. 111–84, div. A, title VIII, § 814(a), Oct. 28, 2009, 123 Stat. 2407; Pub. L. 112–81, div. A, title VIII, § 809(b), Dec. 31, 2011, 125 Stat. 1490; Pub. L. 115–232, div. A, title VIII, § 816, Aug. 13, 2018, 132 Stat. 1852; Pub. L. 116–92, div. A, title VIII, § 816, Dec. 20, 2019, 133 Stat. 1487; renumbered § 3403 and amended Pub. L. 116–283, div. A, title XVIII, § 1820(c), Jan. 1, 2021, 134 Stat. 4191.)

AMENDMENTS

2021—Pub. L. 116–283, § 1820(c)(1), renumbered section 2304a of this title as this section.

Subsec. (a). Pub. L. 116–283, § 1820(c)(2), substituted ''section 3406'' for ''section 2304c'' and ''section 3401'' for ''section 2304d''.

Subsec. (c). Pub. L. 116–283, § 1820(c)(3), inserted dash after ''only if'', reorganized remainder of text of subsec. (c) into designated pars. (1) and (2), and substituted ''subsection (a) of section 3204'' for ''subsection (c) of section 2304'' and ''subsection (e)'' for ''subsection (f)''.

Subsec. (d)(1). Pub. L. 116–283, § 1820(c)(4)(A), inserted heading.

Subsec. (d)(2). Pub. L. 116–283, § 1820(c)(4)(B), inserted heading and substituted ''section 3203'' for ''section 2304(b)''.

Subsec. (d)(3). Pub. L. 116–283, § 1820(c)(4)(C), inserted heading and substituted ''section 3204(a)'' for ''section 2304(c)'' in subpar. (B).

Subsec. (d)(4). Pub. L. 116–283, § 1820(c)(4)(D), inserted heading.

Subsec. (g). Pub. L. 116–283, § 1820(c)(5), substituted ''section 3405'' for ''section 2304b''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 3405. Task order contracts: advisory and assistance services

(a) ADVISORY AND ASSISTANCE SERVICES DEFINED.—In this section, the term ''advisory and assistance services'' has the meaning given such term in section 1105(g) of title 31.

(b) AUTHORITY TO AWARD.—(1) Subject to the requirements of this section, section 3406 of this title, and other applicable law, the head of an agency may enter into a task order contract (as defined in section 3401 of this title) for procurement of advisory and assistance services.

(2) The head of an agency may enter into a task order contract for procurement of advisory and assistance services only under the authority of this section.

(c) LIMITATION ON CONTRACT PERIOD.—The period of a task order contract entered into under this section, including all periods of extensions of the contract under options, modifications, or otherwise, may not exceed five years unless a longer period is specifically authorized in a law that is applicable to such contract.

(d) CONTENT OF NOTICE.—The notice required by section 1708 of title 41 and section 8(e) of the Small Business Act (15 U.S.C. 637(e)) shall reasonably and fairly describe the general scope, magnitude, and duration of the proposed task order contract in a manner that would reasonably enable a potential offeror to decide whether to request the solicitation and consider submitting an offer.

(e) REQUIRED CONTENT OF SOLICITATION AND CONTRACT.—

(1) SOLICITATION.—The solicitation for the proposed task order contract shall include the information (regarding services) described in 3403(b)[1] of this title.

(2) CONTRACT.—A task order contract entered into under this section shall contain the same information that is required by paragraph (1) to be included in the solicitation of offers for that contract.

(f) MULTIPLE AWARDS.—

(1) AUTHORITY TO MAKE MULTIPLE AWARDS.—The head of an agency may, on the basis of one solicitation, award separate task order contracts under this section for the same or similar services to two or more sources if the solicitation states that the head of the agency has the option to do so.

(2) CONTENT OF SOLICITATION.—If, in the case of a task order contract for advisory and assistance services to be entered into under this section, the contract period is to exceed three years and the contract amount is estimated to exceed $10,000,000 (including all options), the solicitation shall—

(A) provide for a multiple award authorized under paragraph (1); and

(B) include a statement that the head of the agency may also elect to award only one task order contract if the head of the agency determines in writing that only one of the offerers is capable of providing the services required at the level of quality required.

(3) NONAPPLICATION.—Paragraph (2) does not apply in the case of a solicitation for which the head of the agency concerned determines in writing that, because the services required under the task order contract are unique or highly specialized, it is not practicable to award more than one contract.

[1] So in original. Probably should be preceded by ''section''.

(g) CONTRACT MODIFICATIONS.—

(1) INCREASE IN SCOPE, PERIOD, OR MAXIMUM VALUE OF CONTRACT ONLY BY MODIFICATION OF CONTRACT.—A task order may not increase the scope, period, or maximum value of the task order contract under which the order is issued. The scope, period, or maximum value of the contract may be increased only by modification of the contract.

(2) USE OF COMPETITIVE PROCEDURES.—Unless use of procedures other than competitive procedures is authorized by an exception in subsection (a) of section 3204 of this title and approved in accordance with subsection (e) of such section, competitive procedures shall be used for making such a modification.

(3) NOTICE.—Notice regarding the modification shall be provided in accordance with section 1708 of title 41 and section 8(e) of the Small Business Act (15 U.S.C. 637(e)).

(h) CONTRACT EXTENSIONS.—

(1) WHEN CONTRACT MAY BE EXTENDED.—Notwithstanding the limitation on the contract period set forth in subsection (c) or in a solicitation or contract pursuant to subsection (f), a task order contract entered into by the head of an agency under this section may be extended on a sole-source basis for a period not exceeding six months if the head of such agency determines that—

(A) the award of a follow-on contract has been delayed by circumstances that were not reasonably foreseeable at the time the initial contract was entered into; and

(B) the extension is necessary in order to ensure continuity of the receipt of services pending the award of, and commencement of performance under, the follow-on contract.

(2) LIMIT OF ONE EXTENSION.—A task order contract may be extended under the authority of paragraph (1) only once and only in accordance with the limitations and requirements of this subsection.

(i) INAPPLICABILITY TO CERTAIN CONTRACTS.—This section does not apply to a contract for the acquisition of property or services that includes acquisition of advisory and assistance services if the head of an agency entering into such contract determines that, under the contract, advisory and assistance services are necessarily incident to, and not a significant component of, the contract.

(Added Pub. L. 103–355, title I, § 1004(a)(1), Oct. 13, 1994, 108 Stat. 3251, § 2304b; amended Pub. L. 111–350, § 5(b)(13), Jan. 4, 2011, 124 Stat. 3843; renumbered § 3405 and amended Pub. L. 116–283, div. A, title XVIII, § 1820(d), Jan. 1, 2021, 134 Stat. 4192.)

AMENDMENTS

2021—Pub. L. 116–283, § 1820(d)(1), (2), renumbered section 2304b of this title as this section, moved subsec. (i) to the beginning of the section and redesignated it as (a), and redesignated former subsecs. (a) to (h) as (b) to (i), respectively.

Subsec. (b)(1). Pub. L. 116–283, § 1820(d)(3), substituted ''section 3406'' for ''section 2304c'' and ''section 3401'' for ''section 2304d''.

Subsec. (e). Pub. L. 116–283, § 1820(d)(4)(A), (B), inserted par. headings, substituted ''3403(b)'' for ''section 2304a(b)'' in par. (1), and realigned margin of par. (2).

Subsec. (f). Pub. L. 116–283, § 1820(d)(5), inserted par. headings and realigned margins of pars. (2) and (3).

Subsec. (g)(1). Pub. L. 116–283, § 1820(d)(6)(A), inserted heading.

Subsec. (g)(2). Pub. L. 116–283, § 1820(d)(6)(B), (C), inserted heading, realigned margin, and substituted ''subsection (a) of section 3204'' for ''subsection (c) of section 2304'' and ''subsection (e)'' for ''subsection (f)''.

Subsec. (g)(3). Pub. L. 116–283, § 1820(d)(6)(B), (D), inserted heading and realigned margin.

Subsec. (h)(1). Pub. L. 116–283, § 1820(d)(7)(A), (B), inserted heading, and substituted ''subsection (c)'' for ''subsection (b)'' and ''subsection (f)'' for ''subsection (e)''.

Subsec. (h)(2). Pub. L. 116–283, § 1820(d)(7)(C), inserted heading and realigned margin.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 3406. Task and delivery order contracts: orders

(a) APPLICABILITY.—This section applies to task and delivery order contracts entered into under sections 3403 and 3405 of this title.

(b) ISSUANCE OF ORDERS.—The following actions are not required for issuance of a task or delivery order under a task or delivery order contract:

(1) A separate notice for such order under section 1708 of title 41 or section 8(e) of the Small Business Act (15 U.S.C. 637(e)).

(2) Except as provided in subsection (c), a competition (or a waiver of competition approved in accordance with section 3204(e) of this title) that is separate from that used for entering into the contract.

(c) MULTIPLE AWARD CONTRACTS.—When multiple task or delivery order contracts are awarded under section 3403(d)(1)(B) or 3405(f) of this title, all contractors awarded such contracts shall be provided a fair opportunity to be considered, pursuant to procedures set forth in the contracts, for each task or delivery order in excess of $2,500 that is to be issued under any of the contracts unless—

(1) the agency's need for the services or property ordered is of such unusual urgency that providing such opportunity to all such contractors would result in unacceptable delays in fulfilling that need;

(2) only one such contractor is capable of providing the services or property required at the level of quality required because the services or property ordered are unique or highly specialized;

(3) the task or delivery order should be issued on a sole-source basis in the interest of economy and efficiency because it is a logical follow-on to a task or delivery order already issued on a competitive basis;

(4) it is necessary to place the order with a particular contractor in order to satisfy a minimum guarantee; or

(5) the task or delivery order satisfies one of the exceptions in section 3204(a) of this title to the requirement to use competitive procedures.

(d) ENHANCED COMPETITION FOR ORDERS IN EXCESS OF $5,000,000.—In the case of a task or deliv-

ery order in excess of $5,000,000, the requirement to provide all contractors a fair opportunity to be considered under subsection (c) is not met unless all such contractors are provided, at a minimum—

(1) a notice of the task or delivery order that includes a clear statement of the agency's requirements;

(2) a reasonable period of time to provide a proposal in response to the notice;

(3) disclosure of the significant factors and subfactors, including cost or price, that the agency expects to consider in evaluating such proposals, and their relative importance;

(4) in the case of an award that is to be made on a best value basis, a written statement documenting the basis for the award and the relative importance of quality and price or cost factors; and

(5) an opportunity for a post-award debriefing consistent with the requirements of section 3304 of this title.

(e) STATEMENT OF WORK.—A task or delivery order shall include a statement of work that clearly specifies all tasks to be performed or property to be delivered under the order.

(f) PROTESTS.—(1) A protest is not authorized in connection with the issuance or proposed issuance of a task or delivery order except for—

(A) a protest on the ground that the order increases the scope, period, or maximum value of the contract under which the order is issued; or

(B) a protest of an order valued in excess of $25,000,000.

(2) Notwithstanding section 3556 of title 31, the Comptroller General of the United States shall have exclusive jurisdiction of a protest authorized under paragraph (1)(B).

(g) TASK AND DELIVERY ORDER OMBUDSMAN.—

(1) APPOINTMENT OR DESIGNATION AND RESPONSIBILITIES.—Each head of an agency who awards multiple task or delivery order contracts pursuant to section 3403(d)(1)(B) or 3405(f) of this title shall appoint or designate a task and delivery order ombudsman who shall be responsible for reviewing complaints from the contractors on such contracts and ensuring that all of the contractors are afforded a fair opportunity to be considered for task or delivery orders when required under subsection (c).

(2) WHO IS ELIGIBLE.—The task and delivery order ombudsman shall be a senior agency official who is independent of the contracting officer for the contracts and may be the agency's competition advocate.

(Added Pub. L. 103–355, title I, § 1004(a)(1), Oct. 13, 1994, 108 Stat. 3252, § 2304c; amended Pub. L. 110–181, div. A, title VIII, § 843(a)(2), Jan. 28, 2008, 122 Stat. 237; Pub. L. 111–350, § 5(b)(14), Jan. 4, 2011, 124 Stat. 3843; Pub. L. 111–383, div. A, title VIII, § 825, title X, § 1075(f)(5)(A), Jan. 7, 2011, 124 Stat. 4270, 4376; Pub. L. 112–239, div. A, title VIII, § 830, Jan. 2, 2013, 126 Stat. 1842; Pub. L. 114–328, div. A, title VIII, §§ 825(b), 835(a), Dec. 23, 2016, 130 Stat. 2280, 2285; renumbered § 3406 and amended Pub. L. 116–283, div. A, title XVIII, § 1820(e), Jan. 1, 2021, 134 Stat. 4194.)

PRIOR PROVISIONS

Prior sections 3441 and 3442 were repealed by Pub. L. 96–513, title II, § 207, title VII, § 701, Dec. 12, 1980, 94 Stat. 2884, 2955, effective Sept. 15, 1981.

Section 3441, act Aug. 10, 1956, ch. 1041, 70A Stat. 195, provided that temporary appointments be made only in the Army without specification of component.

Section 3442, act Aug. 10, 1056, ch. 1041, 70A Stat. 195, provided that a regular commissioned officer, or a reserve commissioned officer who is serving on active duty, may be appointed, based upon ability and efficiency with regard being given to seniority and age, in a temporary grade that is equal to or higher than his regular or reserve grade, without vacating any other grade held by him. See section 601 of this title.

A prior section 3443, act Aug. 10, 1956, ch. 1041, 70A Stat. 196, related to grade of appointment of reserve commissioned officers on active duty, prior to repeal by Pub. L. 85–861, § 36B(6), Sept. 2, 1958, 72 Stat. 1570.

Prior sections 3444 and 3445 were repealed by Pub. L. 96–513, title II, § 207, title VII, § 701, Dec. 12, 1980, 94 Stat. 2884, 2955, effective Sept. 15, 1981.

Section 3444, acts Aug. 10, 1956, ch. 1041, 70A Stat. 196; Sept. 2, 1958, Pub. L. 85–861, § 1(81)(A), 72 Stat. 1480, authorized the President, in time of war or national emergency, to appoint any qualified person, including a person who is not a Regular or Reserve, in any temporary grade, provided for vacation of the appointment, and permitted, for purposes of determining grade, position on a promotion list, seniority in temporary grade, and eligibility for promotion, an officer of the Medical Corps or Dental Corps who is appointed in a temporary grade to be credited, when he enters active duty, with constructive service authorized by section 3294(b) of this title. See section 603 of this title.

Section 3445, acts Aug. 10, 1956, ch. 1041, 70A Stat. 196; Sept. 2, 1958, Pub. L. 85–861, § 1(81)(B), 72 Stat. 1480, provided that in addition to the temporary appointments authorized, in time of war or national emergency, a regular officer or a reserve warrant officer may be appointed in any temporary grade higher than his regular or reserve grade, without vacating that grade, or a person who holds no commissioned grade in the Regular Army be appointed in any temporary commissioned grade. See section 603 of this title.

A prior section 3446 was renumbered section 7176 of this title.

Prior sections 3447 to 3449 were repealed by Pub. L. 96–513, title II, §§ 207, 208, title VII, § 701, Dec. 12, 1980, 94 Stat. 2884, 2955, effective Sept. 15, 1981.

Section 3447, acts Aug. 10, 1956, ch. 1041, 70A Stat. 196; Sept. 2, 1958, Pub. L. 85–861, § 1(81)(D), 72 Stat. 1480; Sept. 28, 1971, Pub. L. 92–129, title VI, § 602, 85 Stat. 361, provided that temporary appointment of a person be made without reference to any other appointment that he may hold in the Army, temporary appointments of commissioned officers in the Regular Army be made by the President alone in grades below lieutenant colonel and by the President, by and with the consent of the Senate, in grades of lieutenant colonel and above, temporary appointments of commissioned officers in the reserve components of the Army be made by the President alone in grades below lieutenant colonel and by the President, by and with the consent of the Senate, in grades above major, and that the President may vacate at any time a temporary appointment in a commissioned grade. See section 601 of this title.

Section 3448, acts Aug. 10, 1956, ch. 1041, 70A Stat. 197; Aug. 8, 1958, Pub. L. 85–603, § 1(2), 72 Stat. 526, authorized the Secretary of the Army, upon his determination of need, to appoint qualified persons as warrant officers, with such appointments to continue at the pleasure of the Secretary, and such warrant officers entitled to count all periods of active duty under the appointment as warrant or enlisted service for all purposes and to the benefits of all laws and regulations applicable to the retirement, pensions, and disability of members of the Army on active duty. See section 602 of this title.

Section 3449, act Aug. 10, 1956, ch. 1041, 70A Stat. 197, provided that temporary promotions in warrant officer

grades be governed by such regulations as the Secretary of the Army prescribe. See section 602 of this title.

A prior section 3450, act Aug. 10, 1956, ch. 1041, 70A Stat. 197, provided for suspension of laws for promotion or mandatory retirement or separation during war or emergency of temporary warrant officers of the Army, prior to repeal by Pub. L. 90–235, §3(b)(1), Jan. 2, 1968, 81 Stat. 758.

AMENDMENTS

2021—Pub. L. 116–283, §1820(e)(1), (2), renumbered section 2304c of this title as this section, redesignated subsecs. (g), (a), (b), (c), (e), and (f) as (a), (b), (c), (e), (f), and (g), respectively, and reordered subsecs. accordingly.

Subsec. (a). Pub. L. 116–283, §1820(e)(3), substituted ''sections 3403 and 3405'' for ''sections 2304a and 2304b''.

Subsec. (b)(2). Pub. L. 116–283, §1820(e)(4), substituted ''subsection (c)'' for ''subsection (b)'' and ''section 3204(e)'' for ''section 2304(f)''.

Subsec. (c). Pub. L. 116–283, §1820(e)(5)(A), which directed substitution of ''section 3403(d)(1)(B) or 3405(f)'' for ''section 2304a(d)(1) or 2304b(c)'', was executed by making the substitution for ''section 2304a(d)(1)(B) or 2304b(e)'' in introductory provisions, to reflect the probable intent of Congress.

Subsec. (c)(5). Pub. L. 116–283, §1820(e)(5)(B), substituted ''section 3204(a)'' for ''section 2304(c)''.

Subsec. (d). Pub. L. 116–283, §1820(e)(6)(A), substituted ''subsection (c)'' for ''subsection (b)'' in introductory provisions.

Subsec. (d)(5). Pub. L. 116–283, §1820(e)(6)(B), substituted ''section 3304'' for ''section 2305(b)(5)''.

Subsec. (g). Pub. L. 116–283, §1820(e)(7), designated first and second sentences as pars. (1) and (2), respectively, and inserted headings and, in par. (1), substituted ''section 3403(d)(1)(B) or 3405(f)'' for ''section 2304a(d)(1)(B) or 2304b(e)'' and ''subsection (c)'' for ''subsection (b)''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

CHAPTER 247—PROCUREMENT OF COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES

Sec.
3451. Definitions.
3452. Relationship of other provisions of law to procurement of commercial products and commercial services.
3453. Preference for commercial products and commercial services.
3455. Procurement of a major weapon system as a commercial product: requirement for prior determination by Secretary of Defense and notification to Congress.
3456. Commercial product and commercial service determinations by Department of Defense.
3457. Treatment of certain products and services as commercial products and commercial services.

PRIOR PROVISIONS

A prior chapter 247 ''ACQUISITION OF COMMERCIAL ITEMS'', as added by Pub. L. 115–232, div. A, title VIII, §801(a), Aug. 13, 2018, 132 Stat. 1827, and consisting of reserved section 3451, was repealed by Pub. L. 116–283, div. A, title XVIII, §1821(a)(1), Jan. 1, 2021, 134 Stat. 4194.

AMENDMENTS

2021—Pub. L. 116–283, div. A, title XVIII, §1821(a)(1), (3), (b)(1)(B), (7)(C), Jan. 1, 2021, 134 Stat. 4194–4196, transferred chapter 140 of this title to this chapter, renumbered items 2375, 2376, 2377, 2379, 2380, and 2380a as 3452, 3451, 3453, 3455, 3456, and 3457, respectively, moved item 3451 so as to precede item 3452, and struck out item 2380b ''Treatment of commingled items purchased by contractors as commercial products''.

§3451. Definitions

In this chapter:

(1) The terms ''commercial product'', ''commercial service'', ''nondevelopmental item'', ''component'', and ''commercial component'' have the meanings provided in sections 103, 103a, 110, 105, and 102, respectively, of title 41.

(2) The term ''head of an agency'' means the Secretary of Defense, the Secretary of Homeland Security, and the Administrator of the National Aeronautics and Space Administration.

(3) The term ''agency'' means the Department of Defense, the Coast Guard, and the National Aeronautics and Space Administration.

(Added Pub. L. 103–355, title VIII, §8103, Oct. 13, 1994, 108 Stat. 3390, §2376; amended Pub. L. 107–107, div. A, title X, §1048(a)(19), Dec. 28, 2001, 115 Stat. 1223; Pub. L. 107–296, title XVII, §1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 111–350, §5(b)(22), Jan. 4, 2011, 124 Stat. 3844; Pub. L. 115–232, div. A, title VIII, §836(d)(2), Aug. 13, 2018, 132 Stat. 1866; renumbered §3451 and amended Pub. L. 116–283, div. A, title XVIII, §1821(a)(2), (b)(1)(A), Jan. 1, 2021, 134 Stat. 4195.)

PRIOR PROVISIONS

A prior section 3451, act Aug. 10, 1956, ch. 1041, 70A Stat. 197, provided that an officer who is promoted to a temporary grade is considered to have accepted his promotion on the date of the order announcing it, unless he expressly declines the promotion, prior to repeal by Pub. L. 96–513, title II, §207, title VII, §701, Dec. 12, 1980, 94 Stat. 2884, 2955, effective Sept. 15, 1981.

AMENDMENTS

2021—Pub. L. 116–283, §1821(b)(1)(A), transferred this section so as to precede section 3452 and appear at the beginning of this chapter.

Pub. L. 116–283, §1821(a)(2), renumbered section 2376 of this title as this section.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§3452. Relationship of other provisions of law to procurement of commercial products and commercial services

(a) APPLICABILITY OF GOVERNMENT-WIDE STATUTES.—(1) No contract for the procurement of a commercial product or commercial service entered into by the head of an agency shall be subject to any law properly listed in the Federal Acquisition Regulation pursuant to section 1906(b) of title 41.

(2) No subcontract under a contract for the procurement of a commercial product or commercial service entered into by the head of an agency shall be subject to any law properly listed in the Federal Acquisition Regulation pursuant to section 1906(c) of title 41.

(3) No contract for the procurement of a commercially available off-the-shelf item entered into by the head of an agency shall be subject to any law properly listed in the Federal Acquisition Regulation pursuant to section 1907 of title 41.

(b) APPLICABILITY OF DEFENSE-UNIQUE STATUTES TO CONTRACTS FOR COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES.—(1) The Defense Federal Acquisition Regulation Supplement shall include a list of defense-unique provisions of law and of contract clause requirements based on government-wide acquisition regulations, policies, or executive orders not expressly authorized in law that are inapplicable to contracts for the procurement of commercial products and commercial services. A provision of law or contract clause requirement properly included on the list pursuant to paragraph (2) does not apply to purchases of commercial products and commercial services by the Department of Defense. This section does not render a provision of law or contract clause requirement not included on the list inapplicable to contracts for the procurement of commercial products and commercial services.

(2) A provision of law or contract clause requirement described in subsection (e) that is enacted after October 13, 1994, shall be included on the list of inapplicable provisions of law and contract clause requirements required by paragraph (1) unless the Under Secretary of Defense for Acquisition and Sustainment makes a written determination that it would not be in the best interest of the Department of Defense to exempt contracts for the procurement of commercial products and commercial services from the applicability of the provision or contract clause requirement.

(c) APPLICABILITY OF DEFENSE-UNIQUE STATUTES TO SUBCONTRACTS FOR COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES.—(1) The Defense Federal Acquisition Regulation Supplement shall include a list of provisions of law and of contract clause requirements based on government-wide acquisition regulations, policies, or executive orders not expressly authorized in law that are inapplicable to subcontracts under a Department of Defense contract or subcontract for the procurement of commercial products and commercial services. A provision of law or contract clause requirement properly included on the list pursuant to paragraph (2) does not apply to those subcontracts. This section does not render a provision of law or contract clause requirement not included on the list inapplicable to subcontracts under a contract for the procurement of commercial products and commercial services.

(2) A provision of law or contract clause requirement described in subsection (e) shall be included on the list of inapplicable provisions of law and contract clause requirements required by paragraph (1) unless the Under Secretary of Defense for Acquisition and Sustainment makes a written determination that it would not be in the best interest of the Department of Defense to exempt subcontracts under a contract for the procurement of commercial products and commercial services from the applicability of the provision or contract clause requirement.

(3) In this subsection, the term ''subcontract'' includes a transfer of commercial products and commercial services between divisions, subsidiaries, or affiliates of a contractor or subcontractor. The term does not include agreements entered into by a contractor for the supply of commodities that are intended for use in the performance of multiple contracts with the Department of Defense and other parties and are not identifiable to any particular contract.

(4) This subsection does not authorize the waiver of the applicability of any provision of law or contract clause requirement with respect to any first-tier subcontract under a contract with a prime contractor reselling or distributing commercial products and commercial services of another contractor without adding value.

(d) APPLICABILITY OF DEFENSE-UNIQUE STATUTES TO CONTRACTS FOR COMMERCIALLY AVAILABLE, OFF-THE-SHELF ITEMS.—(1) The Defense Federal Acquisition Regulation Supplement shall include a list of provisions of law and of contract clause requirements based on government-wide acquisition regulations, policies, or executive orders not expressly authorized in law that are inapplicable to contracts for the procurement of commercially available off-the-shelf items. A provision of law or contract clause requirement properly included on the list pursuant to paragraph (2) does not apply to Department of Defense contracts for the procurement of commercially available off-the-shelf items. This section does not render a provision of law or contract clause requirement not included on the list inapplicable to contracts for the procurement of commercially available off-the-shelf items.

(2) A provision of law or contract clause requirement described in subsection (e) shall be included on the list of inapplicable provisions of law and contract clause requirements required by paragraph (1) unless the Under Secretary of Defense for Acquisition and Sustainment makes a written determination that it would not be in the best interest of the Department of Defense to exempt contracts for the procurement of commercially available off-the-shelf items from the applicability of the provision or contract clause requirement.

(e) COVERED PROVISION OF LAW OR CONTRACT CLAUSE REQUIREMENT.—A provision of law or contract clause requirement referred to in subsections (b)(2), (c)(2), and (d)(2) is a provision of law or contract clause requirement that the Under Secretary of Defense for Acquisition and Sustainment determines sets forth policies, procedures, requirements, or restrictions for the procurement of property or services by the Federal Government, except for a provision of law or contract clause requirement that—

(1) provides for criminal or civil penalties;

(2) requires that certain articles be bought from American sources pursuant to section 4862 of this title, or requires that strategic materials critical to national security be bought from American sources pursuant to section 4863 of this title; or

(3) specifically refers to this section and provides that, notwithstanding this section, it shall be applicable to contracts for the procurement of commercial products and commercial services.

(Added Pub. L. 103–355, title VIII, § 8102, Oct. 13, 1994, 108 Stat. 3390, § 2375; amended Pub. L. 105–85, div. A, title X, § 1073(a)(51), Nov. 18, 1997, 111 Stat. 1903; Pub. L. 107–107, div. A, title X, § 1048(a)(18), Dec. 28, 2001, 115 Stat. 1223; Pub. L. 111–350, § 5(b)(21), Jan. 4, 2011, 124 Stat. 3844; Pub. L. 114–328, div. A, title VIII, § 874(a), Dec. 23, 2016, 130 Stat. 2308; Pub. L. 115–232, div. A, title VIII, §§ 836(d)(1), (8)(B), 837(a), Aug. 13, 2018, 132 Stat. 1866, 1868, 1875; Pub. L. 116–92, div. A, title IX, § 902(57), Dec. 20, 2019, 133 Stat. 1549; renumbered § 3452 and amended Pub. L. 116–283, div. A, title XVIII, § 1821(a)(2), (b)(2), Jan. 1, 2021, 134 Stat. 4195.)

PRIOR PROVISIONS

A prior section 3452, added Pub. L. 85–861, § 1(81)(E), Sept. 2, 1958, 72 Stat. 1480, provided that, notwithstanding any other provision of law, an officer of Medical Corps or Dental Corps may be promoted to temporary grade of captain at any time after first anniversary of date upon which he graduated from a medical, osteopathic, or dental school, prior to repeal by Pub. L. 96–513, title II, § 207, title VII, § 701, Dec. 12, 1980, 94 Stat. 2884, 2955, effective Sept. 15, 1981.

AMENDMENTS

2021—Pub. L. 116–283, § 1821(a)(2), renumbered section 2375 of this title as this section.

Subsec. (e)(2). Pub. L. 116–283, § 1821(b)(2), substituted "section 4862" for "section 2533a" and "section 4863" for "section 2533b".

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 3453. Preference for commercial products and commercial services

(a) PREFERENCE.—The head of an agency shall ensure that, to the maximum extent practicable—

(1) requirements of the agency with respect to a procurement of supplies or services are stated in terms of—

(A) functions to be performed;

(B) performance required; or

(C) essential physical characteristics;

(2) such requirements are defined so that commercial services or commercial products or, to the extent that commercial products suitable to meet the agency's needs are not available, nondevelopmental items other than commercial products, may be procured to fulfill such requirements; and

(3) offerors of commercial services, commercial products, and nondevelopmental items other than commercial products are provided an opportunity to compete in any procurement to fill such requirements.

(b) IMPLEMENTATION.—The head of an agency shall ensure that procurement officials in that agency, to the maximum extent practicable—

(1) acquire commercial services, commercial products, or nondevelopmental items other than commercial products to meet the needs of the agency;

(2) require prime contractors and subcontractors at all levels under the agency contracts to incorporate commercial services, commercial products, or nondevelopmental items other than commercial products as components of items supplied to the agency;

(3) modify requirements in appropriate cases to ensure that the requirements can be met by commercial services or commercial products or, to the extent that commercial products suitable to meet the agency's needs are not available, nondevelopmental items other than commercial products;

(4) state specifications in terms that enable and encourage bidders and offerors to supply commercial services or commercial products or, to the extent that commercial products suitable to meet the agency's needs are not available, nondevelopmental items other than commercial products in response to the agency solicitations;

(5) revise the agency's procurement policies, practices, and procedures not required by law to reduce any impediments in those policies, practices, and procedures to the acquisition of commercial products and commercial services; and

(6) require training of appropriate personnel in the acquisition of commercial products and commercial services.

(c) PRELIMINARY MARKET RESEARCH.—(1) The head of an agency shall conduct market research appropriate to the circumstances—

(A) before developing new specifications for a procurement by that agency;

(B) before soliciting bids or proposals for a contract in excess of the simplified acquisition threshold; and

(C) before awarding a task order or delivery order in excess of the simplified acquisition threshold.

(2) The head of an agency shall use the results of market research to determine whether there are commercial services or commercial products or, to the extent that commercial products suitable to meet the agency's needs are not available, nondevelopmental items other than commercial products available that—

(A) meet the agency's requirements;

(B) could be modified to meet the agency's requirements; or

(C) could meet the agency's requirements if those requirements were modified to a reasonable extent.

(3) In conducting market research, the head of an agency should not require potential sources to submit more than the minimum information that is necessary to make the determinations required in paragraph (2).

(4) The head of an agency shall document the results of market research in a manner appropriate to the size and complexity of the acquisition.

(5) The head of an agency shall take appropriate steps to ensure that any prime contractor of a contract (or task order or delivery order) in an amount in excess of $5,000,000 for the procurement of products other than commercial products or services other than commercial services engages in such market research as may be necessary to carry out the requirements of subsection (b)(2) before making purchases for or on behalf of the Department of Defense.

(d) MARKET RESEARCH FOR PRICE ANALYSIS.—The Secretary of Defense shall ensure that procurement officials in the Department of Defense conduct or obtain market research to support the determination of the reasonableness of price for commercial products or commercial services contained in any bid or offer submitted in response to an agency solicitation. To the extent necessary to support such market research, the procurement official for the solicitation—

(1) in the case of products or services acquired under section 3455 of this title, shall use information submitted under subsection (d) of that section; and

(2) in the case of other products or services, may require the offeror to submit relevant information.

(e) MARKET RESEARCH TRAINING REQUIRED.—The Secretary of Defense shall provide mandatory training for members of the armed forces and employees of the Department of Defense responsible for the conduct of market research required under subsections (c) and (d). Such mandatory training shall, at a minimum—

(1) provide comprehensive information on the subject of market research and the function of market research in the acquisition of commercial products and commercial services;

(2) teach best practices for conducting and documenting market research; and

(3) provide methodologies for establishing standard processes and reports for collecting and sharing market research across the Department.

(Added Pub. L. 103–355, title VIII, § 8104(a), Oct. 13, 1994, 108 Stat. 3390, § 2377; amended Pub. L. 110–181, div. A, title VIII, § 826(a), Jan. 28, 2008, 122 Stat. 227; Pub. L. 114–92, div. A, title VIII, § 844(a), Nov. 25, 2015, 129 Stat. 915; Pub. L. 114–328, div. A, title VIII, § 871, Dec. 23, 2016, 130 Stat. 2307; Pub. L. 115–232, div. A, title VIII, § 836(d)(3), (8)(C), Aug. 13, 2018, 132 Stat. 1866, 1868; Pub. L. 116–92, div. A, title VIII, § 818(a), Dec. 20, 2019, 133 Stat. 1488; renumbered § 3453 and amended Pub. L. 116–283, div. A, title XVIII, § 1821(a)(2), (b)(3), Jan. 1, 2021, 134 Stat. 4195.)

AMENDMENTS

2021—Pub. L. 116–283, § 1821(a)(2), renumbered section 2377 of this title as this section.

Subsec. (d)(1). Pub. L. 116–283, § 1821(b)(3), substituted ''section 3455'' for ''section 2379''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 3455. Procurement of a major weapon system as a commercial product: requirement for prior determination by Secretary of Defense and notification to Congress

(a) REQUIREMENT FOR DETERMINATION AND NOTIFICATION.—A major weapon system of the Department of Defense may be treated as a commercial product, or purchased under procedures established for the procurement of commercial products, only if—

(1) the Secretary of Defense determines that—

(A) the major weapon system is a commercial product; and

(B) such treatment is necessary to meet national security objectives; and

(2) the congressional defense committees are notified at least 30 days before such treatment or purchase occurs.

(b) TREATMENT OF SUBSYSTEMS AS COMMERCIAL PRODUCTS.—A subsystem of a major weapon system (other than a commercially available off-the-shelf item as defined in section 104 of title 41) shall be treated as a commercial product and purchased under procedures established for the procurement of commercial products if either—

(1) the subsystem is intended for a major weapon system that is being purchased, or has been purchased, under procedures established for the procurement of commercial products in accordance with the requirements of subsection (a); or

(2) the contracting officer determines in writing that the subsystem is a commercial product.

(c) TREATMENT OF COMPONENTS AND SPARE PARTS AS COMMERCIAL PRODUCTS.—(1) A component or spare part for a major weapon system (other than a commercially available off-the-shelf item as defined in section 104 of title 41) may be treated as a commercial product for the purposes of chapter 271 of this title if either—

(A) the component or spare part is intended for—

(i) a major weapon system that is being purchased, or has been purchased, under procedures established for the procurement of commercial products in accordance with the requirements of subsection (a); or

(ii) a subsystem of a major weapon system that is being purchased, or has been purchased, under procedures established for the procurement of commercial products in accordance with the requirements of subsection (b); or

(B) the contracting officer determines in writing that the component or spare part is a commercial product.

(2) This subsection shall apply only to components and spare parts that are acquired by the Department of Defense through a prime contract or a modification to a prime contract (or through a subcontract under a prime contract or modification to a prime contract on which the prime contractor adds no, or negligible, value).

(d) INFORMATION SUBMITTED.—(1) To the extent necessary to determine the reasonableness of the price for items acquired under this section, the contracting officer shall require the offeror to submit—

(A) prices paid for the same or similar commercial products under comparable terms and conditions by both Government and commercial customers;

(B) if the contracting officer determines that the offeror does not have access to and cannot provide sufficient information described in subparagraph (A) to determine the reasonableness of price, information on—

(i) prices for the same or similar items sold under different terms and conditions;

(ii) prices for similar levels of work or effort on related products or services;

(iii) prices for alternative solutions or approaches; and

(iv) other relevant information that can serve as the basis for a price assessment; and

(C) if the contracting officer determines that the information submitted pursuant to subparagraphs (A) and (B) is not sufficient to determine the reasonableness of price, other relevant information regarding the basis for price or cost, including information on labor costs, material costs, and overhead rates.

(2) An offeror may submit information or analysis relating to the value of a commercial product to aid in the determination of the reasonableness of the price of such item. A contracting officer may consider such information or analysis in addition to the information submitted pursuant to paragraphs (1)(A) and (1)(B).

(3) An offeror may not be required to submit information described in paragraph (1)(C) with regard to a commercially available off-the-shelf item and may be required to submit such information with regard to any other item that was developed exclusively at private expense only after the head of the contracting activity determines in writing that the information submitted pursuant to paragraphs (1)(A) and (1)(B) is not sufficient to determine the reasonableness of price.

(e) DELEGATION.—The authority of the Secretary of Defense to make a determination under subsection (a) may be delegated only to the Deputy Secretary of Defense, without further redelegation.

(f) MAJOR WEAPON SYSTEM DEFINED.—In this section, the term ''major weapon system'' means a weapon system acquired pursuant to a major defense acquisition program (as that term is defined in section 2430[1] of this title).

(Added Pub. L. 109–163, div. A, title VIII, § 803(a)(1), Jan. 6, 2006, 119 Stat. 3370, § 2379; amended Pub. L. 110–181, div. A, title VIII, § 815(a)(1), Jan. 28, 2008, 122 Stat. 222; Pub. L. 113–291, div. A, title X, § 1071(a)(7), Dec. 19, 2014, 128 Stat. 3504; Pub. L. 114–92, div. A, title VIII, § 852(a)–(d), Nov. 25, 2015, 129 Stat. 917, 918; Pub. L. 114–328, div. A, title VIII, § 872, Dec. 23, 2016, 130 Stat. 2307; Pub. L. 115–232, div. A, title VIII, § 836(d)(4), (8)(D), Aug. 13, 2018, 132 Stat. 1868, 1869; renumbered § 3455 and amended Pub. L. 116–283, div. A, title XVIII, §§ 1821(a)(2), (b)(4), 1831(j)(4), 1883(b)(2), Jan. 1, 2021, 134 Stat. 4195, 4217, 4294.)

[1] See References in Text note below.

REFERENCES IN TEXT

Section 2430 of this title, referred to in subsec. (f), was transferred to sections 4201, 4202, and 4204 of this title by Pub. L. 116–283, div. A, title XVIII, § 1846(c)(1), (d)(1), (f)(1), Jan. 1, 2021, 134 Stat. 4248–4250. Section 4201 of this title defines ''major defense acquisition program''.

AMENDMENTS

2021—Pub. L. 116–283, § 1821(a)(2), renumbered section 2379 of this title as this section.

Subsec. (c)(1). Pub. L. 116–283, § 1831(j)(4), which directed amendment of this section, effective Jan. 1, 2022, by substituting ''sections 3701–3708'' for ''section 2306a'', could not be executed in introductory provisions due to the intervening amendments by section 1821(a)(2) and (b)(4) of Pub. L. 116–283, which renumbered this section as section 3455 of this title and had already struck out the phrase ''section 2306a'', effective Jan. 1, 2022. See Amendment notes above and below.

Pub. L. 116–283, § 1821(b)(4), substituted ''chapter 271'' for ''section 2306a'' in introductory provisions.

Subsec. (f). Pub. L. 116–283, § 1883(b)(2), which directed that each reference in the text of title 10 to a section that was redesignated by title XVIII of Pub. L. 116–283, as such section was in effect before the redesignation, be amended by striking such reference and inserting a reference to the appropriate redesignated section, was not executed with respect to ''section 2430'', which was redesignated as multiple sections.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 3456. Commercial product and commercial service determinations by Department of Defense

(a) IN GENERAL.—The Secretary of Defense shall—

(1) establish and maintain a centralized capability with necessary expertise and resources to provide assistance to the military departments and Defense Agencies in making commercial product and commercial service determinations, conducting market research, and performing analysis of price reasonableness for the purposes of procurements by the Department of Defense; and

(2) provide to officials of the Department of Defense access to previous Department of Defense commercial product and commercial service determinations, market research, and analysis used to determine the reasonableness of price for the purposes of procurements by the Department of Defense.

(b) DETERMINATIONS REGARDING THE COMMERCIAL NATURE OF PRODUCTS OR SERVICES.—

(1) IN GENERAL.—In making a determination whether a particular product or service offered by a contractor meets the definition of a commercial product or commercial service, a contracting officer of the Department of Defense may—

(A) request support from the Director of the Defense Contract Management Agency, the Director of the Defense Contract Audit Agency, or other appropriate experts in the Department to make a determination whether a product or service is a commercial product or commercial service; and

(B) consider the views of appropriate public and private sector entities.

(2) MEMORANDUM.—Within 30 days after a contract award, the contracting officer shall, consistent with the policies and regulations of the Department, submit a written memorandum summarizing the determination referred to in paragraph (1), including a detailed justification for such determination.

(c) ITEMS PREVIOUSLY ACQUIRED USING COMMERCIAL ACQUISITION PROCEDURES.—

(1) DETERMINATIONS.—A contract for a product or service acquired using commercial acquisition procedures under part 12 of the Federal Acquisition Regulation shall serve as a prior commercial product or service determination with respect to such product or service for purposes of this chapter unless the senior procurement executive of the military department or the Department of Defense as designated for purposes of section 1702(c) of title 41 determines in writing that it is no longer appropriate to acquire the product or service using commercial acquisition procedures.

(2) LIMITATION.—(A) Except as provided under subparagraph (B), funds appropriated or otherwise made available to the Department of Defense may not be used for the procurement under part 15 of the Federal Acquisition Regulation of a product or service that was previously acquired under a contract using commercial acquisition procedures under part 12 of the Federal Acquisition Regulation.

(B) The limitation under subparagraph (A) does not apply to the procurement of a product or service that was previously acquired using commercial acquisition procedures under part 12 of the Federal Acquisition Regulation following—

(i) a written determination by the head of contracting activity pursuant to section 3703(d)(2) of this title that the use of such procedures was improper; or

(ii) a written determination by the senior procurement executive of the military department or the Department of Defense as designated for purposes of section 1702(c) of title 41 that it is no longer appropriate to acquire the product or service using such procedures.

(Added Pub. L. 114–92, div. A, title VIII, § 851(a)(1), Nov. 25, 2015, 129 Stat. 916, § 2380; amended Pub. L. 114–328, div. A, title VIII, § 873, Dec. 23, 2016, 130 Stat. 2307; Pub. L. 115–91, div. A, title VIII, § 848, Dec. 12, 2017, 131 Stat. 1487; Pub. L. 115–232, div. A, title VIII, § 836(d)(5), (8)(E), Aug. 13, 2018, 132 Stat. 1868, 1869; renumbered § 3456 and amended Pub. L. 116–283, div. A, title VIII, § 816, title XVIII, §§ 1821(a)(2), (b)(5), 1831(j)(5), Jan. 1, 2021, 134 Stat. 3750, 4195, 4217.)

AMENDMENTS

2021—Pub. L. 116–283, § 1821(a)(2), renumbered section 2380 of this title as this section.

Subsec. (b). Pub. L. 116–283, § 816(2), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 116–283, § 816(1), redesignated subsec. (b) as (c).

Subsec. (c)(2)(B)(i). Pub. L. 116–283, §§ 1821(b)(5), 1831(j)(5), made identical amendments, substituting ''section 3703(d)(2)'' for ''section 2306a(b)(4)(B)''. Amendment by section 1831(j)(5) to section 2380(b)(2)(B)(i) of this title and by section 1821(b)(5) to subsec. (b)(2)(B)(i) of this section were both executed to reflect the probable intent of Congress and the intervening amendments made by sections 1821(a)(2) and 816(1) of Pub. L. 116–283, which had renumbered section 2380 of this title as this section and redesignated subsec. (b) as (c). See Amendment notes above.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by sections 1821(a)(2), (b)(5) and 1831(j)(5) of Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 3457. Treatment of certain products and services as commercial products and commercial services

(a) GOODS AND SERVICES PROVIDED BY NONTRADITIONAL DEFENSE CONTRACTORS.—Notwithstanding section 3451(1) of this title, products and services provided by nontraditional defense contractors (as that term is defined in section 3014 of this title) may be treated by the head of an agency as commercial products and commercial services, respectively, for purposes of this chapter.

(b) SERVICES PROVIDED BY CERTAIN NONTRADITIONAL CONTRACTORS.—Notwithstanding section 3451(1) of this title, services provided by a business unit that is a nontraditional defense contractor (as that term is defined in section 3014 of this title) shall be treated as commercial serv-

ices for purposes of this chapter, to the extent that such services use the same pool of employees as used for commercial customers and are priced using methodology similar to methodology used for commercial pricing.

(c) COMMINGLED ITEMS PURCHASED BY CONTRACTORS.—Notwithstanding section 3451(1) of this title, items valued at less than $10,000 that are purchased by a contractor for use in the performance of multiple contracts with the Department of Defense and other parties and are not identifiable to any particular contract shall be treated as a commercial product for purposes of this chapter.

(Added Pub. L. 114–92, div. A, title VIII, § 857(a), Nov. 25, 2015, 129 Stat. 921, § 2380A; renumbered § 2380a and amended Pub. L. 114–328, div. A, title VIII, § 878(a), (b)(1), Dec. 23, 2016, 130 Stat. 2312; Pub. L. 115–232, div. A, title VIII, § 836(d)(6), (8)(F), Aug. 13, 2018, 132 Stat. 1868, 1869; renumbered § 3457 and amended Pub. L. 116–283, div. A, title XVIII, § 1821(a)(2), (b)(6), (7)(A), (B), Jan. 1, 2021, 134 Stat. 4195, 4196.)

CODIFICATION

Section 1821(a)(1), (2) of Pub. L. 116–260 transferred chapter 140 of this title (§§ 2375 to 2380b) to this chapter and renumbered all the sections within it, except for final section 2380b. At that point, the last two sections of this chapter were this section (renumbered from section 2380a) followed by section 2380b. Section 1821(b)(7)(A) subsequently struck out ''the heading of the final section of'' this chapter, which was executed by incorporating the text of former section 2380b at the end of this section. The text of section 2380b of this title was based on Pub. L. 114–328, div. A, title VIII, § 877(a), Dec. 23, 2016, 130 Stat. 2311; Pub. L. 115–232, div. A, title VIII, § 836(d)(7), (8)(G), Aug. 13, 2018, 132 Stat. 1868, 1869; Pub. L. 116–92, div. A, title XVII, § 1731(a)(47), Dec. 20, 2019, 133 Stat. 1815.

PRIOR PROVISIONS

A prior section 3491 was renumbered section 7191 of this title.

Prior sections 3492 and 3493 were repealed by Pub. L. 90–235, § 1(a)(2), (b), Jan. 2, 1968, 81 Stat. 753.

Section 3492, act Aug. 10, 1956, ch. 1041, 70A Stat. 198, provided for extension of active service of Army members during war. See section 671a of this title.

Section 3493, act Aug. 10, 1956, ch. 1041, 70A Stat. 198, empowered the President to order commissioned officers of the Army Reserve to active duty with the Corps of Engineers.

A prior section 3494, added Pub. L. 85–861, § 1(82)(A), Sept. 2, 1958, 72 Stat. 1481; amended Pub. L. 86–559, § 1(20), June 30, 1960, 74 Stat. 271, provided that a reserve commissioned officer who is ordered to active duty be ordered to that duty in his reserve grade unless the Secretary of the Army orders him to active duty, other than for training, in a higher temporary grade and authorized a reserve commissioned officer who is selected for participation in a program under which he will be ordered to active duty for at least one academic year at a civilian school or college to be ordered, upon his request, to that duty in a temporary grade that is lower than his reserve grade, without affecting his reserve grade, prior to repeal by Pub. L. 96–513, title II, § 209(a), title VII, § 701, Dec. 12, 1980, 94 Stat. 2884, 2955, effective Sept. 15, 1981. See section 12320 of this title.

Prior sections 3495 to 3500 were repealed by Pub. L. 103–337, div. A, title XVI, §§ 1662(f)(2), 1691, Oct. 5, 1994, 108 Stat. 2994, 3026, effective Dec. 1, 1994.

Section 3495, act Aug. 10, 1956, ch. 1041, 70A Stat. 198, provided that members of Army National Guard of United States were not in active Federal service except when ordered thereto under law. See section 12401 of this title.

Section 3496, act Aug. 10, 1956, ch. 1041, 70A Stat. 198, authorized President to order commissioned officers of Army National Guard of United States to active duty in National Guard Bureau. See section 12402(a), (b)(1) of this title.

Section 3497, act Aug. 10, 1956, ch. 1041, 70A Stat. 199, provided that members of Army National Guard of United States ordered to active duty were to be ordered to duty as Reserves of Army. See section 12403 of this title.

Section 3498, act Aug. 10, 1956, ch. 1041, 70A Stat. 199, related to organization during initial mobilization of units of Army National Guard of United States ordered into active Federal service. See section 12404 of this title.

Section 3499, act Aug. 10, 1956, ch. 1041, 70A Stat. 199, related to application of laws governing Army to members of Army National Guard called into Federal service. See section 12405 of this title.

Section 3500, acts Aug. 10, 1956, ch. 1041, 70A Stat. 199; Sept. 29, 1988, Pub. L. 100–456, div. A, title XII, § 1234(a)(1), (3), 102 Stat. 2059, authorized President to call Army National Guard units and members into Federal service. See section 12406 of this title.

AMENDMENTS

2021—Pub. L. 116–283, § 1821(a)(2), renumbered section 2380a of this title as this section.

Subsecs. (a), (b). Pub. L. 116–283, § 1821(b)(6), substituted ''section 3451(1)'' for ''section 2376(1)'' and ''section 3014'' for ''section 2302(9)''.

Subsec. (c). Pub. L. 116–283, § 1821(b)(7)(A), (B), transferred section 2380b of this title to this section and struck out section designation and catchline, designated text as subsec. (c) and inserted heading, and substituted ''Notwithstanding section 3451(1)'' for ''Notwithstanding section 2376(1)''. See Codification note above.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

CHAPTER 249—MULTIYEAR CONTRACTS

Subchapter		Sec.
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PRIOR PROVISIONS

A prior chapter 249 ''MULTIYEAR CONTRACTS'', as added by Pub. L. 115–232, div. A, title VIII, § 801(a), Aug. 13, 2018, 132 Stat. 1827, and consisting of reserved section 3501, was repealed by Pub. L. 116–283, div. A, title XVIII, § 1822(a), Jan. 1, 2021, 134 Stat. 4196.

SUBCHAPTER I—MULTIYEAR CONTRACTS FOR ACQUISITION OF PROPERTY

Sec.	
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§ 3501. Multiyear contracts for acquisition of property: authority; definitions

(a) IN GENERAL.—To the extent that funds are otherwise available for obligation, the head of an agency may enter into multiyear contracts for the purchase of property whenever the head of that agency finds each of the following:

(1) That the use of such a contract will result in significant savings of the total anticipated costs of carrying out the program through annual contracts.

(2) That the minimum need for the property to be purchased is expected to remain substantially unchanged during the contemplated contract period in terms of production rate, procurement rate, and total quantities.

(3) That there is a reasonable expectation that throughout the contemplated contract period the head of the agency will request funding for the contract at the level required to avoid contract cancellation.

(4) That there is a stable design for the property to be acquired and that the technical risks associated with such property are not excessive.

(5) That the estimates of both the cost of the contract and the anticipated cost avoidance through the use of a multiyear contract are realistic.

(6) In the case of a purchase by the Department of Defense, that the use of such a contract will promote the national security of the United States.

(7) In the case of a contract in an amount equal to or greater than $500,000,000, that the conditions required by paragraphs (3) through (6) of section 3507(c) of this title will be met, in accordance with the Secretary's certification and determination under such subsection, by such contract.

(b) MULTIYEAR CONTRACT DEFINED.—For the purposes of this subchapter, a multiyear contract is a contract for the purchase of property for more than one, but not more than five, program years. Such a contract may provide that performance under the contract during the second and subsequent years of the contract is contingent upon the appropriation of funds and (if it does so provide) may provide for a cancellation payment to be made to the contractor if such appropriations are not made.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1822(a)–(c), Jan. 1, 2021, 134 Stat. 4197.)

CODIFICATION

The text of subsec. (a) of section 2306b of this title, which was transferred to this section and amended by Pub. L. 116–283, § 1822(b), was based on Pub. L. 103–355, title I, § 1022(a)(1), Oct. 13, 1994, 108 Stat. 3257; Pub. L. 105–85, div. A, title VIII, § 806(c)(1), Nov. 18, 1997, 111 Stat. 1835; Pub. L. 110–181, div. A, title VIII, § 811(a)(1), Jan. 28, 2008, 122 Stat. 217; Pub. L. 113–291, div. A, title VIII, § 816(b), Dec. 19, 2014, 128 Stat. 3432; Pub. L. 114–92, div. A, title VIII, § 811, Nov. 25, 2015, 129 Stat. 891.

The text of subsec. (k) of section 2306b of this title, which was transferred to this section, redesignated as subsec. (b), and amended by Pub. L. 116–283, § 1822(c), was based on Pub. L. 103–355, title I, § 1022(a)(1), Oct. 13, 1994, 108 Stat. 3257; Pub. L. 104–106, div. E, title LVI, § 5601(b), Feb. 10, 1996, 110 Stat. 699; Pub. L. 105–85, div. A, title X, § 1073(a)(47), Nov. 18, 1997, 111 Stat. 1903; Pub. L. 106–398, § 1 [[div. A], title VIII, §§ 802(c)], Oct. 30, 2000, 114 Stat. 1654, 1654A–205.

PRIOR PROVISIONS

A prior section 3501, act Aug. 10, 1956, ch. 1041, 70A Stat. 199; Pub. L. 100–456, div. A, title XII, § 1234(a)(1), Sept. 29, 1988, 102 Stat. 2059, related to period of service and apportionment of members and units of Army National Guard called into Federal service, prior to repeal by Pub. L. 103–337, div. A, title XVI, §§ 1662(f)(2), 1691, Oct. 5, 1994, 108 Stat. 2994, 3026, effective Dec. 1, 1994. See section 12407 of this title.

AMENDMENTS

2021—Subsec. (a). Pub. L. 116–283, § 1822(b)(1), transferred subsec. (a) of section 2306b of this title to this section.

Subsec. (a)(7). Pub. L. 116–283, § 1822(b)(2), substituted "paragraphs (3) through (6) of section 3507(c) of this title" for "subparagraphs (C) through (F) of subsection (i)(3)".

Subsec. (b). Pub. L. 116–283, § 1822(c), redesignated subsec. (k) of section 2306b of this title as subsec. (b) of this section and substituted "this subchapter" for "this section".

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 3502. Multiyear contracts for acquisition of property: regulations

(a) REQUIREMENT.—Each official named in subsection (b) shall prescribe acquisition regulations for the agency or agencies under the jurisdiction of such official to promote the use of multiyear contracting as authorized by section 3501 of this title in a manner that will allow the most efficient use of multiyear contracting.

(b) OFFICIALS SPECIFIED TO PRESCRIBE REGULATIONS.—

(1) DEPARTMENT OF DEFENSE.—The Secretary of Defense shall prescribe the regulations applicable to the Department of Defense.

(2) COAST GUARD.—The Secretary of Homeland Security shall prescribe the regulations applicable to the Coast Guard, except that the regulations prescribed by the Secretary of Defense shall apply to the Coast Guard when it is operating as a service in the Navy.

(3) NASA.—The Administrator of the National Aeronautics and Space Administration shall prescribe the regulations applicable to the National Aeronautics and Space Administration.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1822(a), (d), Jan. 1, 2021, 134 Stat. 4197.)

CODIFICATION

The text of subsec. (b) of section 2306b of this title, which was transferred to this section and amended by Pub. L. 116–283, § 1822(d), was based on Pub. L. 103–355, title I, § 1022(a)(1), Oct. 13, 1994, 108 Stat. 3257; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.

PRIOR PROVISIONS

A prior section 3502, act Aug. 10, 1956, ch. 1041, 70A Stat. 200, related to physical examinations of members of Army National Guard called into Federal service, prior to repeal by Pub. L. 103–337, div. A, title XVI, §§ 1662(f)(2), 1691, Oct. 5, 1994, 108 Stat. 2994, 3026, effective Dec. 1, 1994. See section 12408 of this title.

AMENDMENTS

2021—Pub. L. 116–283, § 1822(d)(1), transferred subsec. (b) of section 2306b of this title to this section, struck out subsec. (b) designation and heading ''Regulations'' at beginning, and redesignated pars. (1) and (2) as subsecs. (a) and (b), respectively.

Subsec. (a). Pub. L. 116–283, § 1822(d)(2), inserted heading and substituted ''subsection (b)'' for ''paragraph (2)'' and ''section 3501 of this title'' for ''subsection (a)''.

Subsec. (b). Pub. L. 116–283, § 1822(d)(3), inserted subsec. heading, redesignated subpars. (A) to (C) as pars. (1) to (3), respectively, inserted par. headings, and realigned margins.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 3503. Multiyear contracts for acquisition of property: contract cancellation or termination

(a) CONTRACT CANCELLATIONS.—The regulations under section 3502 of this title may provide for cancellation provisions in multiyear contracts to the extent that such provisions are necessary and in the best interests of the United States. The cancellation provisions may include consideration of both recurring and nonrecurring costs of the contractor associated with the production of the items to be delivered under the contract.

(b) CANCELLATION OR TERMINATION FOR INSUFFICIENT FUNDING.—In the event funds are not made available for the continuation of a contract made under this subchapter into a subsequent fiscal year, the contract shall be canceled or terminated. The costs of cancellation or termination may be paid from—

(1) appropriations originally available for the performance of the contract concerned;

(2) appropriations currently available for procurement of the type of property concerned, and not otherwise obligated; or

(3) funds appropriated for those payments.

(c) CONTRACT CANCELLATION CEILINGS EXCEEDING $100,000,000.—

(1) Before any contract described in section 3501(a) of this title that contains a clause setting forth a cancellation ceiling in excess of $100,000,000 may be awarded, the head of the agency concerned shall give written notification of the proposed contract and of the proposed cancellation ceiling for that contract to the congressional defense committees, and such contract may not then be awarded until the end of a period of 30 days beginning on the date of such notification.

(2) In the case of a contract described in section 3501(a) of this title with a cancellation ceiling described in paragraph (1), if the budget for the contract does not include proposed funding for the costs of contract cancellation up to the cancellation ceiling established in the contract, the head of the agency concerned shall, as part of the certification required by section 3507(c) of this title, give written notification to the congressional defense committees of—

(A) the cancellation ceiling amounts planned for each program year in the proposed multiyear procurement contract, together with the reasons for the amounts planned;

(B) the extent to which costs of contract cancellation are not included in the budget for the contract; and

(C) a financial risk assessment of not including budgeting for costs of contract cancellation.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1822(a), (e), Jan. 1, 2021, 134 Stat. 4197, 4198.)

CODIFICATION

The text of subsec. (c) of section 2306b of this title, which was transferred to this section, redesignated as subsec. (a), and amended by Pub. L. 116–283, § 1822(e)(1), (2), was based on Pub. L. 103–355, title I, § 1022(a)(1), Oct. 13, 1994, 108 Stat. 3257.

The text of subsec. (f) of section 2306b of this title, which was transferred to this section, redesignated as subsec. (b), and amended by Pub. L. 116–283, § 1822(e)(1), (3), was based on Pub. L. 103–355, title I, § 1022(a)(1), Oct. 13, 1994, 108 Stat. 3257.

The text of subsec. (g) of section 2306b of this title, which was transferred to this section, redesignated as subsec. (c), and amended by Pub. L. 116–283, § 1822(e)(1), (4), was based on Pub. L. 103–355, title I, § 1022(a)(1), Oct. 13, 1994, 108 Stat. 3257; Pub. L. 104–106, div. A, title XV, § 1502(a)(10), Feb. 10, 1996, 110 Stat. 503; Pub. L. 106–65, div. A, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 108–375, div. A, title VIII, § 814(a), title X, § 1084(b)(2), Oct. 28, 2004, 118 Stat. 2014, 2060.

PRIOR PROVISIONS

A prior section 3503 was renumbered section 7203 of this title.

AMENDMENTS

2021—Subsec. (a). Pub. L. 116–283, § 1822(e)(1), (2), redesignated subsec. (c) of section 2306b of this title as subsec. (a) of this section and inserted ''under section 3502 of this title'' after ''The regulations''.

Subsec. (b). Pub. L. 116–283, § 1822(e)(1), (3), redesignated subsec. (f) of section 2306b of this title as subsec. (b) of this section and substituted ''under this subchapter'' for ''under this section'' in introductory provisions.

Subsec. (c). Pub. L. 116–283, § 1822(e)(1), (4)(A), (B), redesignated subsec. (g) of section 2306b of this title as subsec. (c) of this section and realigned margins of pars. (1) and (2).

Subsec. (c)(1). Pub. L. 116–283, § 1822(e)(4)(C), substituted ''section 3501(a) of this title'' for ''subsection (a)''.

Subsec. (c)(2). Pub. L. 116–283, § 1822(e)(4)(C), (D), in introductory provisions, substituted ''section 3501(a) of this title'' for ''subsection (a)'' and ''required by sec-

tion 3507(c) of this title, give written'' for ''required by subsection (i)(1)(A), give written''.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 3504. Multiyear contracts for acquisition of property: participation by subcontractors, vendors, and suppliers

In order to broaden the defense industrial base, the regulations under section 3502 of this title shall provide that, to the extent practicable—

(1) multiyear contracting under section 3501(a) of this title shall be used in such a manner as to seek, retain, and promote the use under such contracts of companies that are subcontractors, vendors, or suppliers; and

(2) upon accrual of any payment or other benefit under such a multiyear contract to any subcontractor, vendor, or supplier company participating in such contract, such payment or benefit shall be delivered to such company in the most expeditious manner practicable.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1822(a), (f), Jan. 1, 2021, 134 Stat. 4197, 4198.)

CODIFICATION

The text of subsec. (d) of section 2306b of this title, which was transferred to this section and amended by Pub. L. 116–283, § 1822(f), was based on Pub. L. 103–355, title I, § 1022(a)(1), Oct. 13, 1994, 108 Stat. 3257; Pub. L. 105–85, div. A, title VIII, § 806(c)(2), Nov. 18, 1997, 111 Stat. 1835.

PRIOR PROVISIONS

A prior section 3504, act Aug. 10, 1956, ch. 1041, 70A Stat. 200; Pub. L. 85–861, § 1(83), Sept. 2, 1958, 72 Stat. 1481, authorized the President to order any retired member of the Regular Army to active duty, prior to repeal by Pub. L. 96–513, title II, §§ 210, 233(a), 234, title VII, § 701, Dec. 12, 1980, 94 Stat. 2884, 2887, 2955, effective Sept. 15, 1981.

AMENDMENTS

2021—Pub. L. 116–283, § 1822(f)(1), (2)(A), transferred subsec. (d) of section 2306b of this title to this section, struck out subsec. (d) designation and heading ''Participation by Subcontractors, Vendors, and Suppliers'' at beginning, and inserted ''under section 3502 of this title'' after ''the regulations'' in introductory provisions.

Par. (1). Pub. L. 116–283, § 1822(f)(2)(B), substituted ''section 3501(a) of this title'' for ''subsection (a)''.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 3505. Multiyear contracts for acquisition of property: protection of existing authority

The regulations under section 3502 of this title shall provide that, to the extent practicable, the administration of this subchapter, and of the regulations prescribed under this subchapter, shall not be carried out in a manner to preclude or curtail the existing ability of an agency—

(1) to provide for competition in the production of items to be delivered under a contract under section 3501(a) of this title; or

(2) to provide for termination of a prime contract the performance of which is deficient with respect to cost, quality, or schedule.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1822(a), (g), Jan. 1, 2021, 134 Stat. 4197, 4199.)

CODIFICATION

The text of subsec. (e) of section 2306b of this title, which was transferred to this section and amended by Pub. L. 116–283, § 1822(g), was based on Pub. L. 103–355, title I, § 1022(a)(1), Oct. 13, 1994, 108 Stat. 3257.

AMENDMENTS

2021—Pub. L. 116–283, § 1822(g)(1), (2)(A), (B), transferred subsec. (e) of section 2306b of this title to this section, struck out subsec. (e) designation and heading ''Protection of Existing Authority'' at beginning, and, in introductory provisions, inserted ''under section 3502 of this title'' after ''The regulations'' and substituted ''this subchapter'' for ''this section'' in two places.

Par. (1). Pub. L. 116–283, § 1822(g)(2)(C), substituted ''a contract under section 3501(a) of this title'' for ''such a contract''.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 3506. Department of defense contracts: acquisition of weapon systems

In the case of the Department of Defense, the authority under section 3501(a) of this title includes authority to enter into the following multiyear contracts in accordance with this subchapter:

(1) A multiyear contract for the purchase of a weapon system, items and services associated with a weapon system, and logistics support for a weapon system.

(2) A multiyear contract for advance procurement of components, parts, and materials necessary to the manufacture of a weapon system, including a multiyear contract for such advance procurement that is entered into in order to achieve economic-lot purchases and more efficient production rates.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1822(a), (h), Jan. 1, 2021, 134 Stat. 4197, 4199.)

CODIFICATION

The text of subsec. (h) of section 2306b of this title, which was transferred to this section and amended by Pub. L. 116–283, § 1822(h), was based on Pub. L. 103–355, title I, § 1022(a)(1), Oct. 13, 1994, 108 Stat. 3257.

AMENDMENTS

2021—Pub. L. 116–283, § 1822(h), transferred subsec. (h) of section 2306b of this title to this section, struck out subsec. (h) designation and heading ''Defense Acquisitions of Weapon Systems'' at beginning, and sub-

stituted ''section 3501(a) of this title'' for ''subsection (a)'' and ''this subchapter'' for ''this section'' in introductory provisions.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§3507. Department of defense contracts: defense acquisitions specifically authorized by law

(a) LIMITATION.—In the case of the Department of Defense, a multiyear contract in an amount equal to or greater than $500,000,000 may not be entered into under this subchapter unless the contract is specifically authorized by law in an Act other than an appropriations Act.

(b) MATTERS TO BE INCLUDED IN REQUEST FOR AUTHORIZATION.—In submitting a request for a specific authorization by law to carry out a defense acquisition program using multiyear contract authority under this subchapter, the Secretary of Defense shall include in the request the following:

(1) A report containing preliminary findings of the agency head required in paragraphs (1) through (6) of section 3501(a) of this title, together with the basis for such findings.

(2) Confirmation that the preliminary findings of the agency head under paragraph (1) were supported by a preliminary cost analysis performed by the Director of Cost Assessment and Program Evaluation.

(c) REQUIRED CERTIFICATION.—A multiyear contract may not be entered into under this subchapter for a defense acquisition program that has been specifically authorized by law to be carried out using multiyear contract authority unless the Secretary of Defense certifies in writing, not later than 30 days before entry into the contract, that each of the following conditions is satisfied:

(1) The Secretary has determined that each of the requirements in paragraphs (1) through (6) of section 3501(a) of this title will be met by such contract and has provided the basis for such determination to the congressional defense committees.

(2) The Secretary's determination under subparagraph (A)[1] was made after completion of a cost analysis conducted on the basis of section 3226(b) of this title, and the analysis supports the determination.

(3) The system being acquired pursuant to such contract has not been determined to have experienced cost growth in excess of the critical cost growth threshold pursuant to section 4374 of this title within 5 years prior to the date the Secretary anticipates such contract (or a contract for advance procurement entered into consistent with the authorization for such contract) will be awarded.

(4) A sufficient number of end items of the system being acquired under such contract have been delivered at or within the most current estimates of the program acquisition unit cost or procurement unit cost for such system to determine that current estimates of such unit costs are realistic.

(5) During the fiscal year in which such contract is to be awarded, sufficient funds will be available to perform the contract in such fiscal year, and the future-years defense program for such fiscal year will include the funding required to execute the program without cancellation.

(6) The contract is a fixed price type contract.

(7) The proposed multiyear contract provides for production at not less than minimum economic rates given the existing tooling and facilities.

(d) AUTHORITY WHEN ONE OR MORE CONDITIONS NOT MET.—The Secretary may make the certification under subsection (c) notwithstanding the fact that one or more of the conditions of such certification are not met, if—

(1) the Secretary determines that, due to exceptional circumstances, proceeding with a multiyear contract under this section is in the best interest of the Department of Defense; and

(2) the Secretary provides the basis for such determination with the certification.

(e) LIMITATION ON DELEGATION.—The Secretary may not delegate the authority to make the certification under subsection (c) or the determination under subsection (d) to an official below the level of Under Secretary of Defense for Acquisition and Sustainment.

(f) REQUESTS FOR RELIEF FROM SPECIFIED COST SAVINGS.—If for any fiscal year a multiyear contract to be entered into under this subchapter is authorized by law for a particular procurement program and that authorization is subject to certain conditions established by law (including a condition as to cost savings to be achieved under the multiyear contract in comparison to specified other contracts) and if it appears (after negotiations with contractors) that such savings cannot be achieved, but that significant savings could nevertheless be achieved through the use of a multiyear contract rather than specified other contracts, the President may submit to Congress a request for relief from the specified cost savings that must be achieved through multiyear contracting for that program. Any such request by the President shall include details about the request for a multiyear contract, including details about the negotiated contract terms and conditions.

(g) PROCUREMENT OF COMPLETE AND USABLE END ITEMS.—

(1) IN GENERAL.—The Secretary may obligate funds for procurement of an end item under a multiyear contract for the purchase of property only for procurement of a complete and usable end item.

(2) LONG-LEAD ITEMS.—The Secretary may obligate funds appropriated for any fiscal year for advance procurement under a contract for the purchase of property only for the procurement of those long-lead items necessary in order to meet a planned delivery schedule for complete major end items that are programmed under the contract to be acquired

[1] See References in Text note below.

with funds appropriated for a subsequent fiscal year (including an economic order quantity of such long-lead items when authorized by law).

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1822(a), (i), Jan. 1, 2021, 134 Stat. 4197, 4199.)

REFERENCES IN TEXT

Subparagraph (A), referred to in subsec. (c)(2), is a reference to subpar. (A) of former section 2306b(i)(3) of this title, which was redesignated as subsec. (c)(1) of this section by Pub. L. 116–283, § 1822(i)(1), (2), (5)(C). See 2021 Amendment notes below.

CODIFICATION

The text of subsec. (i) of section 2306b of this title, which was transferred to this section and amended by Pub. L. 116–283, § 1822(i), was based on Pub. L. 103–355, title I, § 1022(a)(1), Oct. 13, 1994, 108 Stat. 3257; Pub. L. 105–85, div. A, title VIII, § 806(a)(1), (c)(3), Nov. 18, 1997, 111 Stat. 1834, 1835; Pub. L. 107–314, div. A, title VIII, § 820(a), Dec. 2, 2002, 116 Stat. 2613;Pub. L. 110–181, div. A, title VIII, § 811(a)(2)–(4), Jan. 28, 2008, 122 Stat. 218; Pub. L. 111–23, title I, § 101(d)(2), May 22, 2009, 123 Stat. 1709; Pub. L. 113–291, div. A, title VIII, § 816(a), Dec. 19, 2014, 128 Stat. 3430; Pub. L. 114–92, div. A, title VIII, § 811, Nov. 25, 2015, 129 Stat. 891; Pub. L. 115–232, div. A, title VIII, § 817, Aug. 13, 2018, 132 Stat. 1852; Pub. L. 116–92, div. A, title IX, § 902(48), Dec. 20, 2019, 133 Stat. 1548.

AMENDMENTS

2021—Pub. L. 116–283, § 1822(i)(1), (2), transferred subsec. (i) of section 2306b of this title to this section, struck out subsec. (i) designation and heading ''Defense Acquisitions Specifically Authorized by Law'' at beginning, and redesignated pars. (1), (2), (3), (6), (7), (4), and (5) as subsecs. (a) to (g), respectively.

Subsec. (a). Pub. L. 116–283, § 1822(i)(3), inserted heading and substituted ''this subchapter'' for ''this section''.

Subsec. (b). Pub. L. 116–283, § 1822(i)(4)(A)–(C), inserted heading, substituted ''this subchapter'' for ''this section'' in introductory provisions, and redesignated subpars. (A) and (B) as pars. (1) and (2), respectively.

Subsec. (b)(1). Pub. L. 116–283, § 1822(i)(4)(D), substituted ''section 3501(a) of this title'' for ''subsection (a)''.

Subsec. (b)(2). Pub. L. 116–283, § 1822(i)(4)(E), substituted ''paragraph (1)'' for ''subparagraph (A)''.

Subsec. (c). Pub. L. 116–283, § 1822(i)(5)(A)–(C), inserted heading, substituted ''this subchapter'' for ''this section'' in introductory provisions, and redesignated subpars. (A) to (G) as pars. (1) to (7), respectively.

Subsec. (c)(1). Pub. L. 116–283, § 1822(i)(5)(D), substituted ''section 3501(a) of this title'' for ''subsection (a)''.

Subsec. (c)(2). Pub. L. 116–283, § 1822(i)(5)(E), substituted ''section 3226(b) of this title'' for ''section 2334(e)(2) of this title''.

Subsec. (c)(3). Pub. L. 116–283, § 1822(i)(5)(F), substituted ''section 4374'' for ''section 2433(d)''.

Subsec. (d). Pub. L. 116–283, § 1822(i)(6), inserted heading, substituted ''subsection (c)'' for ''paragraph (3)'', inserted dash after ''not met, if'', and reorganized remainder of existing text into designated pars. (1) and (2).

Subsec. (e). Pub. L. 116–283, § 1822(i)(7), inserted heading and substituted ''subsection (c)'' for ''paragraph (3)'' and ''subsection (d)'' for ''paragraph (6)''.

Subsec. (f). Pub. L. 116–283, § 1822(i)(8), inserted heading and substituted ''this subchapter'' for ''this section''.

Subsec. (g). Pub. L. 116–283, § 1822(i)(9), inserted subsec. heading and redesignated subpars. (A) and (B) as pars. (1) and (2), respectively, inserted par. headings, and realigned margins.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 3508. Department of defense contracts: notice to congressional committees before taking certain actions

(a) NOTICE BEFORE AWARD OF CERTAIN CONTRACTS.—

(1) REQUIRED NOTICE.—The head of an agency may not initiate a contract described in paragraph (2) unless the congressional defense committees are notified of the proposed contract at least 30 days in advance of the award of the proposed contract.

(2) COVERED CONTRACTS.—Paragraph (1) applies to the following contracts:

(A) A multiyear contract—

(i) that employs economic order quantity procurement in excess of $20,000,000 in any one year of the contract; or

(ii) that includes an unfunded contingent liability in excess of $20,000,000.

(B) Any contract for advance procurement leading to a multiyear contract that employs economic order quantity procurement in excess of $20,000,000 in any one year.

(b) NOTICE BEFORE TERMINATING MULTIYEAR PROCUREMENT CONTRACT.—The head of an agency may not terminate a multiyear procurement contract until 10 days after the date on which notice of the proposed termination is provided to the congressional defense committees.

(c) INAPPLICABILITY TO NOAA AND COAST GUARD.—This section and sections 3509 and 3510 of this title do not apply to the National Aeronautics and Space Administration or to the Coast Guard.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1822(a), (j)(1)(C), (2)–(4), Jan. 1, 2021, 134 Stat. 4197, 4201, 4202.)

CODIFICATION

The text of pars. (1), (6), and (8) of subsec. (*l*) of section 2306b of this title, which were transferred to this section and amended by Pub. L. 116–283, § 1822(j)(1)(C), (2)–(4), was based on Pub. L. 105–85, div. A, title VIII, § 806(b)(1), Nov. 18, 1997, 111 Stat. 1834; Pub. L. 106–65, div. A, title VIII, § 809(1), Oct. 5, 1999, 113 Stat. 705; Pub. L. 106–398, § 1 [[div. A], title VIII, § 806(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–207.

AMENDMENTS

2021—Pub. L. 116–283, § 1822(j)(1)(C)(i), after transfers of certain pars. of section 2306b(*l*) of this title to sections 3509 and 3510 of this title, transferred remainder of section 2306b(*l*) to this section and struck out subsec. (*l*) designation and heading ''Various Additional Requirements With Respect to Multiyear Defense Contracts'' at beginning.

Subsec. (a). Pub. L. 116–283, § 1822(j)(1)(C)(ii), (2)(A), (C), (D), after transfer of section 2306b(*l*) of this title to this section, redesignated par. (1) and its subpars. (A) and (B) as subsec. (a) and pars. (1) and (2), respectively, inserted subsec. and par. headings and realigned margins, and further redesignated cls. (i) and (ii) of former subpar. (B) and subcls. (I) and (II) of cl. (i) as subpars. (A) and (B) of par. (2) and cls. (i) and (ii) of subpar. (A), respectively.

Subsec. (a)(1). Pub. L. 116–283, § 1822(j)(2)(B), substituted ''paragraph (2)'' for ''subparagraph (B)''.

Subsec. (a)(2). Pub. L. 116–283, § 1822(j)(2)(D)(i), which directed substitution of ''Paragraph (1)'' for ''subpara-

graph (A)'' following par. (2) heading, was executed by making the substitution for ''Subparagraph (A)'', to reflect the probable intent of Congress.

Subsec. (b). Pub. L. 116–283, § 1822(j)(1)(C)(ii), (3), after transfer of section 2306b(*l*) of this title to this section, redesignated par. (6) as subsec. (b) and inserted heading.

Subsec. (c). Pub. L. 116–283, § 1822(j)(1)(C)(ii), (4), after transfer of section 2306b(*l*) of this title to this section, redesignated par. (8) as subsec. (c), inserted heading, and substituted ''This section and sections 3509 and 3510 of this title do not'' for ''This subsection does not''.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 3509. Department of defense contracts: multiyear contracts with value in excess of $500,000,000

(a) LIMITATION.—The head of an agency may not initiate a multiyear procurement contract for any system (or component thereof) if the value of the multiyear contract would exceed $500,000,000 unless authority for the contract is specifically provided in an appropriations Act.

(b) REPORT REQUIRED BEFORE ENTERING INTO CONTRACT ABOVE THRESHOLD.—

(1) IN GENERAL.—The head of an agency may not enter into a multiyear contract (or extend an existing multiyear contract), the value of which would exceed $500,000,000 (when entered into or when extended, as the case may be), until the Secretary of Defense submits to the congressional defense committees a report containing the information described in paragraph (2) with respect to the contract (or contract extension).

(2) MATTER TO BE INCLUDED IN REPORT.—Each report required by paragraph (1) with respect to a contract (or contract extension) shall contain the following:

(A) The amount of total obligational authority under the contract (or contract extension) and the percentage that such amount represents of—

(i) the applicable procurement account; and

(ii) the agency procurement total.

(B) The amount of total obligational authority under all multiyear procurements of the agency concerned (determined without regard to the amount of the multiyear contract (or contract extension)) under multiyear contracts in effect at the time the report is submitted and the percentage that such amount represents of—

(i) the applicable procurement account; and

(ii) the agency procurement total.

(C) The amount equal to the sum of the amounts under subparagraphs (A) and (B), and the percentage that such amount represents of—

(i) the applicable procurement account; and

(ii) the agency procurement total.

(D) The amount of total obligational authority under all Department of Defense multiyear procurements (determined without regard to the amount of the multiyear contract (or contract extension)), including any multiyear contract (or contract extension) that has been authorized by the Congress but not yet entered into, and the percentage that such amount represents of the procurement accounts of the Department of Defense treated in the aggregate.

(3) DEFINITIONS.—In this subsection:

(A) The term ''applicable procurement account'' means, with respect to a multiyear procurement contract (or contract extension), the appropriation account from which payments to execute the contract will be made.

(B) The term ''agency procurement total'' means the procurement accounts of the agency entering into a multiyear procurement contract (or contract extension) treated in the aggregate.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1822(a), (j)(1)(A), (5), (6), Jan. 1, 2021, 134 Stat. 4197, 4201, 4202.)

CODIFICATION

The text of pars. (3), (4), (5), and (9) of subsec. (*l*) of section 2306b of this title, which were transferred to this section and amended by Pub. L. 116–283, § 1822(j)(1)(A), (5), (6), was based on Pub. L. 105–85, div. A, title VIII, § 806(b)(1), Nov. 18, 1997, 111 Stat. 1834; Pub. L. 106–65, div. A, title VIII, § 809, Oct. 5, 1999, 113 Stat. 705; Pub. L. 106–398, § 1 [[div. A], title VIII, § 806], Oct. 30, 2000, 114 Stat. 1654, 1654A–207; Pub. L. 108–136, div. A, title X, § 1043(b)(10), Nov. 24, 2003, 117 Stat. 1611; Pub. L. 115–91, div. A, title X, § 1051(a)(14), Dec. 12, 2017, 131 Stat. 1561.

AMENDMENTS

2021—Subsec. (a). Pub. L. 116–283, § 1822(j)(1)(A)(i), (5), redesignated subsec. (*l*)(3) of section 2306b of this title as subsec. (a) of this section and inserted heading.

Subsec. (b). Pub. L. 116–283, § 1822(j)(1)(A)(ii), inserted subsec. (b) designation and heading.

Subsec. (b)(1). Pub. L. 116–283, § 1822(j)(1)(A)(iii), (6)(A), redesignated par. (5) of section 2306b(*l*) of this title as par. (1) of subsec. (b) of this section, inserted heading, and substituted ''paragraph (2)'' for ''paragraph (4)''.

Subsec. (b)(2). Pub. L. 116–283, § 1822(j)(1)(A)(iv), (6)(B), redesignated par. (4) of section 2306b(*l*) of this title as par. (2) of subsec. (b) of this section, inserted heading, and substituted ''Each report required by paragraph (1)'' for ''Each report required by paragraph (5)'' in introductory provisions.

Subsec. (b)(3). Pub. L. 116–283, § 1822(j)(1)(A)(iv), (6)(C), redesignated par. (9) of section 2306b(*l*) of this title as par. (3) of subsec. (b) of this section and inserted heading.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 3510. Department of defense contracts: additional matters with respect to multiyear defense contracts

(a) CONTRACT OPTIONS FOR VARYING QUANTITIES.—The Secretary of Defense may instruct the Secretary of the military department con-

cerned to incorporate into a proposed multiyear contract negotiated priced options for varying the quantities of end items to be procured over the period of the contract.

(b) FUNDING FOR ECONOMIC ORDER QUANTITY ADVANCE PROCUREMENT.—The head of an agency may not initiate a multiyear contract for which the economic order quantity advance procurement is not funded at least to the limits of the Government's liability.

(c) USE OF PRESENT VALUE ANALYSIS.—The execution of multiyear contracting authority shall require the use of a present value analysis to determine lowest cost compared to an annual procurement.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1822(a), (j)(1)(B), (7), (8), (k), Jan. 1, 2021, 134 Stat. 4197, 4201, 4202.)

CODIFICATION

The text of subsec. (j) of section 2306b of this title, which was transferred to this section, redesignated as subsec. (a), and amended by Pub. L. 116–283, § 1822(k), was based on Pub. L. 103–355, title I, § 1022(a)(1), Oct. 13, 1994, 108 Stat. 3257.

The text of pars. (2) and (7) of subsec. (*l*) of section 2306b of this title, which were transferred to this section, redesignated as subsecs. (b) and (c), respectively, and amended by Pub. L. 116–283, § 1822(j)(1)(B), (7), (8), was based on Pub. L. 105–85, div. A, title VIII, § 806(b)(1), Nov. 18, 1997, 111 Stat. 1834; Pub. L. 106–65, div. A, title VIII, § 809(1), Oct. 5, 1999, 113 Stat. 705; Pub. L. 106–398, § 1 [[div. A], title VIII, § 806(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–207.

AMENDMENTS

2021—Subsec. (a). Pub. L. 116–283, § 1822(k), redesignated subsec. (j) of section 2306b of this title as subsec. (a) of this section and struck out "Defense" before "Contract" in heading.

Subsec. (b). Pub. L. 116–283, § 1822(j)(1)(B), (7), redesignated par. (2) of section 2306b(*l*) of this title as subsec. (b) of this section and inserted heading.

Subsec. (c). Pub. L. 116–283, § 1822(j)(1)(B), (8), redesignated par. (7) of section 2306b(*l*) of this title as subsec. (c) of this section and inserted heading.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 3511. Increased funding and reprogramming requests

Any request for increased funding for the procurement of a major system under a multiyear contract authorized under this subchapter shall be accompanied by an explanation of how the request for increased funding affects the determinations made by the Secretary under section 3507 of this title.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1822(a), (*l*), Jan. 1, 2021, 134 Stat. 4197, 4202.)

CODIFICATION

The text of subsec. (m) of section 2306b of this title, which was transferred to this section and amended by Pub. L. 116–283, § 1822(*l*), was based on Pub. L. 110–181, div. A, title VIII, § 811(a)(5), Jan. 28, 2008, 122 Stat. 219.

AMENDMENTS

2021—Pub. L. 116–283, § 1822(*l*), transferred subsec. (m) of section 2306b of this title to this section, struck out subsec. (m) designation and heading "Increased Funding and Reprogramming Requests" at beginning, and substituted "this subchapter" for "this section" and "section 3507 of this title" for "subsection (i)".

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

SUBCHAPTER II—MULTIYEAR CONTRACTS FOR ACQUISITION OF SERVICES

Sec.
3531. Multiyear contracts for acquisition of services: authority; definitions.
3532. Multiyear contracts for acquisition of services: applicable principles.
3533. Multiyear contracts for acquisition of services: contract cancellation or termination.
3534. Multiyear contracts for acquisition of services: contracts with value above $500,000,000 to be specifically authorized by law.
3535. Multiyear contracts for acquisition of services: notice to congressional committees before taking certain actions.

§ 3531. Multiyear contracts for acquisition of services: authority; definitions

(a) AUTHORITY.—Subject to sections 3533 and 3534 of this title, the head of an agency may enter into contracts for periods of not more than five years for services described in subsection (b), and for items of supply related to such services, for which funds would otherwise be available for obligation only within the fiscal year for which appropriated whenever the head of the agency finds that—

(1) there will be a continuing requirement for the services consonant with current plans for the proposed contract period;

(2) the furnishing of such services will require a substantial initial investment in plant or equipment, or the incurrence of substantial contingent liabilities for the assembly, training, or transportation of a specialized work force; and

(3) the use of such a contract will promote the best interests of the United States by encouraging effective competition and promoting economies in operation.

(b) COVERED SERVICES.—The authority under subsection (a) applies to the following types of services:

(1) Operation, maintenance, and support of facilities and installations.

(2) Maintenance or modification of aircraft, ships, vehicles, and other highly complex military equipment.

(3) Specialized training necessitating high quality instructor skills (for example, pilot and air crew members; foreign language training).

(4) Base services (for example, ground maintenance; in-plane refueling; bus transportation; refuse collection and disposal).

(5) Environmental remediation services for—

(A) an active military installation;

(B) a military installation being closed or realigned under a base closure law; or

(C) a site formerly used by the Department of Defense.

(c) MULTIYEAR CONTRACT DEFINED.—For the purposes of this subchapter, a multiyear contract is a contract for the purchase of services for more than one, but not more than five, program years. Such a contract may provide that performance under the contract during the second and subsequent years of the contract is contingent upon the appropriation of funds and (if it does so provide) may provide for a cancellation payment to be made to the contractor if such appropriations are not made.

(d) MILITARY INSTALLATION DEFINED.—In this subchapter, the term ''military installation'' has the meaning given such term in section 2801(c)(4) of this title.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1822(m), (n), Jan. 1, 2021, 134 Stat. 4203.)

CODIFICATION

Subsec. (m) of section 1822 of Pub. L. 116–283 added the section designation and catchline of this section. Section 1822(n)(1) of Pub. L. 116–283, which directed the transfer of subsecs. (a), (b), (f), and (h) of section 2306c of this title to this section, ''as added by subsection (n)'' of section 1822, was executed as if the directory language had referred to subsec. (m) of section 1822 instead of subsec. (n), to reflect the probable intent of Congress.

The text of subsecs. (a) and (b) of section 2306c of this title, which were transferred to this section and amended by Pub. L. 116–283, 1822(n)(1), (2), was based on Pub. L. 106–398, § 1 [[div. A], title VIII, § 802(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–203.

The text of subsec. (f) of section 2306c of this title, which was transferred to this section, redesignated as subsec. (c), and amended by Pub. L. 116–283, § 1822(n)(1), (3), was based on Pub. L. 106–398, § 1 [[div. A], title VIII, § 802(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–203.

The text of subsec. (h) of section 2306c of this title, which was transferred to this section, redesignated as subsec. (d), and amended by Pub. L. 116–283, § 1822(n)(1), (3), was based on Pub. L. 107–314, div. A, title VIII, § 827(b), Dec. 2, 2002, 116 Stat. 2617; Pub. L. 108–136, div. A, title X, § 1043(c)(1), Nov. 24, 2003, 117 Stat. 1611; Pub. L. 111–84, div. A, title X, § 1073(a)(22), Oct. 28, 2009, 123 Stat. 2473.

PRIOR PROVISIONS

A prior section 3531, act Aug. 10, 1956, ch. 1041, 70A Stat. 201, related to appointment of a general officer of the Army as the Chief of Staff to the President, prior to repeal by Pub. L. 96–513, title II, §§ 210, 233(a), 234, title VII, § 701, Dec. 12, 1980, 94 Stat. 2884, 2887, 2955, effective Sept. 15, 1981.

AMENDMENTS

2021—Subsec. (a). Pub. L. 116–283, § 1822(n)(1), (2), transferred subsec. (a) of section 2306c of this title to this section and substituted ''sections 3533 and 3534 of this title'' for ''subsections (d) and (e)'' in introductory provisions.

Subsec. (b). Pub. L. 116–283, § 1822(n)(1), transferred subsec. (b) of section 2306c of this title to this section.

Subsecs. (c), (d). Pub. L. 116–283, § 1822(n)(1), (3), redesignated subsecs. (f) and (h) of section 2306c of this title as subsecs. (c) and (d), respectively, of this section and substituted ''this subchapter'' for ''this section''.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 3532. Multiyear contracts for acquisition of services: applicable principles

In entering into multiyear contracts for services under the authority of this subchapter, the head of the agency shall be guided by the following principles:

(1) The portion of the cost of any plant or equipment amortized as a cost of contract performance should not exceed the ratio between the period of contract performance and the anticipated useful commercial life of such plant or equipment. Useful commercial life, for this purpose, means the commercial utility of the facilities rather than the physical life thereof, with due consideration given to such factors as location of facilities, specialized nature thereof, and obsolescence.

(2) Consideration shall be given to the desirability of obtaining an option to renew the contract for a reasonable period not to exceed three years, at prices not to include charges for plant, equipment and other nonrecurring costs, already amortized.

(3) Consideration shall be given to the desirability of reserving in the agency the right, upon payment of the unamortized portion of the cost of the plant or equipment, to take title thereto under appropriate circumstances.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1822(m), (*o*), Jan. 1, 2021, 134 Stat. 4203.)

CODIFICATION

The text of subsec. (c) of section 2306c of this title, which was transferred to this section and amended by Pub. L. 116–283, § 1822(*o*), was based on Pub. L. 106–398, § 1 [[div. A], title VIII, § 802(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–203.

PRIOR PROVISIONS

Section 3532, act Aug. 10, 1956, ch. 1041, 70A Stat. 201, provided that a colonel on the active list of the Regular Army who is detailed as special assistant to the Comptroller of the Department of Defense, has the grade of brigadier general while so serving, unless he is entitled to a higher grade, prior to repeal by Pub. L. 96–513, title II, §§ 210, 233(a), 234, title VII, § 701, Dec. 12, 1980, 94 Stat. 2884, 2887, 2955, effective Sept. 15, 1981.

AMENDMENTS

2021—Pub. L. 116–283, § 1822(*o*), transferred subsec. (c) of section 2306c of this title to this section, struck out subsec. (c) designation and heading ''Applicable Principles'' at beginning, and substituted ''this subchapter'' for ''this section'' in introductory provisions.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 3533. Multiyear contracts for acquisition of services: contract cancellation or termination

(a) CANCELLATION OR TERMINATION FOR INSUFFICIENT FUNDING AFTER FIRST YEAR.—In the

event that funds are not made available for the continuation of a multiyear contract for services into a subsequent fiscal year, the contract shall be canceled or terminated, and the costs of cancellation or termination may be paid from—

(1) appropriations originally available for the performance of the contract concerned;

(2) appropriations currently available for procurement of the type of services concerned, and not otherwise obligated; or

(3) funds appropriated for those payments.

(b) CONTRACT CANCELLATION CEILINGS EXCEEDING $100,000,000.—(1) Before any contract described in sections[1] 3531(a) of this title that contains a clause setting forth a cancellation ceiling in excess of $100,000,000 may be awarded, the head of the agency concerned shall give written notification of the proposed contract and of the proposed cancellation ceiling for that contract to the congressional defense committees, and such contract may not then be awarded until the end of a period of 30 days beginning on the date of such notification.

(2) In the case of a contract described in sections[1] 3531(a) of this title with a cancellation ceiling described in paragraph (1), if the budget for the contract does not include proposed funding for the costs of contract cancellation up to the cancellation ceiling established in the contract, the head of the agency concerned shall give written notification to the congressional defense committees of—

(A) the cancellation ceiling amounts planned for each program year in the proposed multiyear procurement contract, together with the reasons for the amounts planned;

(B) the extent to which costs of contract cancellation are not included in the budget for the contract; and

(C) a financial risk assessment of not including budgeting for costs of contract cancellation.

(Added and amended Pub. L. 116–283, div. A, title XVIII, §1822(m), (p), (q), Jan. 1, 2021, 134 Stat. 4203, 4204.)

CODIFICATION

The text of subsec. (e) of section 2306c of this title, which was transferred to this section, redesignated as subsec. (a), and amended by Pub. L. 116–283, §1822(p), was based on Pub. L. 106–398, §1 [[div. A], title VIII, §802(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–203.

The text of pars. (4) and (5) of subsec. (d) of section 2306c of this title, which were transferred to this section, redesignated as pars. (1) and (2), respectively, of subsec. (b), and amended by Pub. L. 116–283, §1822(q), was based on Pub. L. 106–398, §1 [[div. A], title VIII, §802(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–203; Pub. L. 108–375, div. A, title VIII, §814(b), Oct. 28, 2004, 118 Stat. 2014.

PRIOR PROVISIONS

A prior section 3533 was renumbered section 7213 of this title.

AMENDMENTS

2021—Subsec. (a). Pub. L. 116–283, §1822(p), redesignated subsec. (e) of section 2306c of this title as subsec. (a) of this section.

Subsec. (b). Pub. L. 116–283, §1822(q)(1), inserted subsec. (b) designation and heading.

Subsec. (b)(1). Pub. L. 116–283, §1822(q)(2), (3), redesignated par. (4) of section 2306c(d) of this title as par. (1) of subsec. (b) of this section and substituted "sections 3531(a) of this title" for "subsection (a)".

Subsec. (b)(2). Pub. L. 116–283, §1822(q)(2), (4), redesignated par. (5) of section 2306c(d) of this title as par. (2) of subsec. (b) of this section and substituted "sections 3531(a) of this title" for "subsection (a)" and "paragraph (1)" for "paragraph (4)" in introductory provisions.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 3534. Multiyear contracts for acquisition of services: contracts with value above $500,000,000 to be specifically authorized by law

The head of an agency may not initiate a multiyear contract for services under this subchapter if the value of the multiyear contract would exceed $500,000,000 unless authority for the contract is specifically provided by law.

(Added and amended Pub. L. 116–283, div. A, title XVIII, §1822(m), (r), Jan. 1, 2021, 134 Stat. 4203, 4204.)

CODIFICATION

The text of par. (2) of subsec. (d) of section 2306c of this title, which was transferred to this section and amended by Pub. L. 116–283, §1822(r), was based on Pub. L. 106–398, §1 [[div. A], title VIII, §802(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–203.

PRIOR PROVISIONS

A prior section 3534 was renumbered section 7214 of this title.

AMENDMENTS

2021—Pub. L. 116–283, §1822(r), transferred par. (2) of section 2306c(d) of this title to this section, struck out par. (2) designation at beginning, and substituted "this subchapter" for "this section".

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 3535. Multiyear contracts for acquisition of services: notice to congressional committees before taking certain actions

(a) NOTICE BEFORE AWARD OF CERTAIN CONTRACTS.—The head of an agency may not initiate under this subchapter a contract for services that includes an unfunded contingent liability in excess of $20,000,000 unless the congressional defense committees are notified of the proposed contract at least 30 days in advance of the award of the proposed contract.

(b) NOTICE BEFORE TERMINATING MULTIYEAR PROCUREMENT CONTRACT FOR SERVICES.—The head of an agency may not terminate a multiyear procurement contract for services until 10 days after the date on which notice of the proposed termination is provided to the congressional defense committees.

[1] So in original. Probably should be "section".

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1822(m), (s), Jan. 1, 2021, 134 Stat. 4203, 4204.)

CODIFICATION

Subsecs. (q) and (r) of section 1822 of Pub. L. 116–283 transferred pars. (2), (4), and (5) of subsec. (d) of section 2306c of this title to sections 3533 and 3534 of this title. Section 1822(s)(1) of Pub. L. 116–283, which directed the transfer of subsec. (d) of section 2306c ''as amended by subsections (r) and (s)'' of section 1822 of Pub. L. 116–283, was executed as if the directory language had referred to subsecs. (q) and (r) of section 1822 instead of subsecs. (r) and (s), to reflect the probable intent of Congress.

The text of pars. (1) and (3) of subsec. (d) of section 2306c of this title, which were transferred to this section and amended by Pub. L. 116–283, § 1822(s), was based on Pub. L. 106–398, § 1 [[div. A], title VIII, § 802(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–203; Pub. L. 108–375, div. A, title VIII, § 814(b)(1), Oct. 28, 2004, 118 Stat. 2014.

PRIOR PROVISIONS

A prior section 3535, act Aug. 10, 1956, ch. 1041, 70A Stat. 201, provided that an officer assigned as Assistant to the Chief of Engineers in charge of civil works, including river and harbor and flood control improvements, be entitled to the rank, pay, and allowances of a brigadier general while so serving, prior to repeal by Pub. L. 96–513, title II, § 235, title VII, § 701, Dec. 12, 1980, 94 Stat. 2887, 2955, effective Sept. 15, 1981.

A prior section 3536 was renumbered section 7216 of this title.

Prior sections 3538 and 3539 were repealed by Pub. L. 90–235, § 4(a)(2), (b)(1), Jan. 2, 1968, 81 Stat. 759, 760.

Section 3538, act Aug. 10, 1956, ch. 1041, 70A Stat. 202, provided for detail of officers of Ordinance Corps of the Army to serve with the Geological Survey.

Section 3539, act Aug. 10, 1956, ch. 1041, 70A Stat. 202, provided for detail of officers of Army Medical Service for duty with the Service to Armed Forces Division of American National Red Cross and for detail of an officer of Medical Corps of the Army to be in charge of first-aid department of American National Red Cross. See section 711a of this title.

A prior section 3540, act Aug. 10, 1956, ch. 1041, 70A Stat. 202, related to detail of members of regular or reserve components as professors and instructors in military science and tactics to educational institutions, prior to repeal by Pub. L. 88–647, title III, § 301(7), Oct. 13, 1964, 78 Stat. 1071. See section 2111 of this title.

Prior sections 3541 and 3542 were repealed by Pub. L. 103–337, div. A, title XVI, §§ 1661(c)(2), 1662(g)(2), 1691, Oct. 5, 1994, 108 Stat. 2982, 2996, 3026, effective Dec. 1, 1994.

Section 3541, act Aug. 10, 1956, ch. 1041, 70A Stat. 202, authorized President to assign regular and reserve Army officers to National Guard Bureau. See section 10507 of this title.

Section 3542, act Aug. 10, 1956, ch. 1041, 70A Stat. 202, authorized President to detail certain officers as chief and assistant chief of staff of divisions of Army National Guard in Federal service. See section 12502(a) of this title.

A prior section 3543, act Aug. 10, 1956, ch. 1041, 70A Stat. 202, related to number of authorized aides, prior to repeal by Pub. L. 114–328, div. A, title V, § 502(s)(1), Dec. 23, 2016, 130 Stat. 2104.

Prior sections 3544 and 3545 were repealed by Pub. L. 90–235, § 4(a)(6), (b)(1), Jan. 2, 1968, 81 Stat. 759, 760.

Section 3544, act Aug. 10, 1956, ch. 1041, 70A Stat. 203, restricted performance of civil functions by commissioned officers of Regular Army. See section 973 of this title.

Section 3545, act Aug. 10, 1956, ch. 1041, 70A Stat. 203, provided that cooking for enlisted members of Army should be superintended by officers of organizations to which members belonged.

A prior section 3546, act Aug. 10, 1956, ch. 1041, 70A Stat. 203, required officers of the Medical Corps and contract surgeons to attend families of members of the Army, prior to repeal by Pub. L. 85–861, § 36B(7), Sept. 2, 1958, 72 Stat. 1570.

Prior sections 3547 and 3548 were renumbered sections 7217 and 7218 of this title, respectively.

AMENDMENTS

2021—Pub. L. 116–283, § 1822(s)(1)(A), after transfers of pars. (2), (4), and (5) of section 2306c(d) of this title to sections 3533 and 3534 of this title, transferred remainder of section 2306c(d) to this section and struck out subsec. (d) designation and heading ''Restrictions Applicable Generally'' at beginning. See Codification note above.

Subsec. (a). Pub. L. 116–283, § 1822(s)(1)(B), (2), after transfer of section 2306c(d) of this title to this section, redesignated par. (1) as subsec. (a), inserted heading, and substituted ''this subchapter'' for ''this section''.

Subsec. (b). Pub. L. 116–283, § 1822(s)(1)(B), (3), after transfer of section 2306c(d) of this title to this section, redesignated par. (3) as subsec. (b) and inserted heading.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

SUBCHAPTER III—OTHER AUTHORITIES RELATING TO MULTIYEAR CONTRACTS

Sec.
3551. Multiyear procurement authority: purchase of dinitrogen tetroxide, hydrazine, and hydrazine-related products.

§ 3551. Multiyear procurement authority: purchase of dinitrogen tetroxide, hydrazine, and hydrazine-related products

(a) TEN-YEAR CONTRACT PERIOD.—The Secretary of Defense may enter into a contract for a period of up to 10 years for the purchase of dinitrogen tetroxide, hydrazine, and hydrazine-related products for the support of a United States national security program or a United States space program.

(b) EXTENSIONS.—A contract entered into for more than one year under the authority of subsection (a) may be extended for a total of not more than 10 years pursuant to any option or options set forth in the contract.

(Added Pub. L. 107–314, div. A, title VIII, § 826(a), Dec. 2, 2002, 116 Stat. 2617, § 2410*o*; renumbered § 3551, Pub. L. 116–283, div. A, title XVIII, § 1822(t)(2), Jan. 1, 2021, 134 Stat. 4205.)

AMENDMENTS

2021—Pub. L. 116–283 renumbered section 2410*o* of this title as this section.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

CHAPTER 251—SIMPLIFIED ACQUISITION PROCEDURES

Sec.
3571. Simplified acquisition threshold.
3572. Implementation of simplified acquisition procedures.

Sec.
3573. Micro-purchase threshold.

PRIOR PROVISIONS

A prior chapter 251 ''SIMPLIFIED ACQUISITION PROCEDURES'', consisting of reserved section 3551, was repealed by Pub. L. 116–283, div. A, title XVIII, §1823(a), Jan. 1, 2021, 134 Stat. 4205.

§ 3571. Simplified acquisition threshold

(a) SIMPLIFIED ACQUISITION THRESHOLD.—For purposes of acquisitions by agencies named in section 3063 of this title, the simplified acquisition threshold is as specified in section 134 of title 41.

(b) INAPPLICABLE LAWS.—No law properly listed in the Federal Acquisition Regulation pursuant to section 1905 of title 41 shall apply to or with respect to a contract or subcontract that is not greater than the simplified acquisition threshold.

(Added and amended Pub. L. 103–355, title IV, §§4002(a), 4102(a), Oct. 13, 1994, 108 Stat. 3338, 3340, §2302a; Pub. L. 111–350, §5(b)(9), Jan. 4, 2011, 124 Stat. 3843; renumbered §3571 and amended Pub. L. 116–283, div. A, title XVIII, §1823(b), (c)(1), Jan. 1, 2021, 134 Stat. 4205.)

PRIOR PROVISIONS

A prior section 3571, act Aug. 10, 1956, ch. 1041, 70A Stat. 204; Pub. L. 85–861, §1(85), Sept. 2, 1958, 72 Stat. 1481; Pub. L. 86–559, §1(21), June 30, 1960, 74 Stat. 271, provided that commissioned officers of the Army on active duty in the same grade rank among themselves according to date of rank and specified procedures for determining date of rank, prior to repeal by Pub. L. 96–513, title II, §211, title VII, §701, Dec. 12, 1980, 94 Stat. 2885, 2955, effective Sept. 15, 1981. See section 741 of this title.

AMENDMENTS

2021—Pub. L. 116–283, §1823(b), renumbered section 2302a of this title as this section.

Subsec. (a). Pub. L. 116–283, §1823(c)(1), substituted ''section 3063'' for ''section 2303''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 3572. Implementation of simplified acquisition procedures

The simplified acquisition procedures contained in the Federal Acquisition Regulation pursuant to section 1901 of title 41 shall apply as provided in such section to the agencies named in section 3063 of this title.

(Added Pub. L. 103–355, title IV, §4203(a)(1), Oct. 13, 1994, 108 Stat. 3345, §2302b; amended Pub. L. 111–350, §5(b)(10), Jan. 4, 2011, 124 Stat. 3843; renumbered §3572 and amended Pub. L. 116–283, div. A, title XVIII, §1823(b), (c)(2), Jan. 1, 2021, 134 Stat. 4205.)

PRIOR PROVISIONS

A prior section 3572 was renumbered section 7222 of this title.

AMENDMENTS

2021—Pub. L. 116–283 renumbered section 2302b of this title as this section and substituted ''section 3063'' for ''section 2303(a)''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 3573. Micro-purchase threshold

The micro-purchase threshold for the Department of Defense is $10,000.

(Added Pub. L. 114–328, div. A, title VIII, §821(a), Dec. 23, 2016, 130 Stat. 2276, §2338; amended Pub. L. 115–232, div. A, title VIII, §821(a), Aug. 13, 2018, 132 Stat. 1853; renumbered §3573, Pub. L. 116–283, div. A, title XVIII, §1823(b), Jan. 1, 2021, 134 Stat. 4205.)

PRIOR PROVISIONS

Prior sections 3573 and 3574 were repealed by Pub. L. 96–513, title II, §211, title VII, §701, Dec. 12, 1980, 94 Stat. 2885, 2955, effective Sept. 15, 1981.

Section 3573, act Aug. 10, 1956, ch. 1041, 70A Stat. 204, specified the date of rank of an officer whose regular grade is brigadier general and the date of rank of an officer whose regular grade is major general and provided that the names of general officers of the Regular Army be carried on a seniority list in the order of seniority in both regular grade and date of rank. See section 741 of this title.

Section 3574, acts Aug. 10, 1956, ch. 1041, 70A Stat. 205; Sept. 2, 1958, Pub. L. 85–861, §§1(86), 33(a)(24), 72 Stat. 1481, 1565, provided for determination of rank of commissioned officers of the same grade in the Regular Army who are on the same promotion list, rank of commissioned officers of the same grade in the Regular Army who are not on the same promotion list or not on a promotion list, and rank among graduates of each class at the United States Military, Naval, or Air Force Academies who, upon graduation, are appointed to the Regular Army. See section 741 of this title.

A prior section 3575 was renumbered section 7225 of this title.

Prior sections 3576 and 3578 were repealed by Pub. L. 90–235, §5(a)(2), Jan. 2, 1968, 81 Stat. 761.

Section 3576, act Aug. 10, 1956, ch. 1041, 70A Stat. 205, provided for command when different commands of the Army and Marine Corps joined or served together. See section 747 of this title.

Section 3578, act Aug. 10, 1956, ch. 1041, 70A Stat. 205, provided for command when two or more commissioned officers of the Army in the same grade were on duty at the same place. See section 749 of this title.

A prior section 3579 was renumbered section 7229 of this title.

A prior section 3580, act Aug. 10, 1956, ch. 1041, 70A Stat. 206, provided that the Secretary of the Army prescribe the military authority that commissioned officers of the Women's Army Corps may exercise, prior to repeal by Pub. L. 95–485, title VIII, §820(f), Oct. 20, 1978, 92 Stat. 1627.

A prior section 3581 was renumbered section 7231 of this title.

A prior section 3582, act Aug. 10, 1956, ch. 1041, 70A Stat. 206, provided that a retired officer has no right to command except when on active duty, prior to repeal by Pub. L. 96–513, title II, §211, title VII, §701, Dec. 12, 1980, 94 Stat. 2885, 2955, effective Sept. 15, 1981. See section 750 of this title.

A prior section 3583 was renumbered section 7233 of this title.

Prior sections 3611 and 3612 were repealed by Pub. L. 90–235, §8(2), Jan. 2, 1968, 81 Stat. 764.

Section 3611, act Aug. 10, 1956, ch. 1041, 70A Stat. 206, provided that the President could prescribe the uniform of the Army.

Section 3612, act Aug. 10, 1956, ch. 1041, 70A Stat. 206, provided for disposition of uniforms of enlisted mem-

bers of Army who were discharged and for disposition of uniforms of and issuance of civilian clothing to enlisted members of Army who were discharged otherwise than honorably.

A prior section 3631, act Aug. 10, 1956, ch. 1041, 70A Stat. 207, prohibited officers of the Quartermaster Corps of the Army and officers performing duties of officers of that branch from dealing in quartermaster supplies, prior to repeal by Pub. L. 90–235, § 7(b)(1), Jan. 2, 1968, 81 Stat. 763.

Prior sections 3632 and 3633 were repealed by Pub. L. 87–649, §§ 14c(6), (7), 15, Sept. 7, 1962, 76 Stat. 501, 502, effective Nov. 1, 1962.

Section 3632, act Aug. 10, 1956, ch. 1041, 70A Stat. 207, provided for forfeiture of pay during absence from duty due to disease from intemperate use of alcohol or drugs. See section 802 of Title 37, Pay and Allowances of the Uniformed Services.

Section 3633, act Aug. 10, 1956, ch. 1041, 70A Stat. 207, provided for forfeiture of pay of commissioned officers when dropped from rolls. See section 803 of Title 37.

A prior section 3634, act Aug. 10, 1956, ch. 1041, 70A Stat. 207; Pub. L. 101–510, div. A, title III, § 327(a), Nov. 5, 1990, 104 Stat. 1531, generally prohibited Army band from being paid for performance outside Army post, prior to repeal by Pub. L. 110–181, div. A, title V, § 590(b)(1), Jan. 28, 2008, 122 Stat. 138. See section 974 of this title.

A prior section 3635, act Aug. 10, 1956, ch. 1041, 70A Stat. 207, set forth restrictions on civilian employment for enlisted members of Army on active duty, prior to repeal by Pub. L. 90–235, § 6(a)(7), Jan. 2, 1968, 81 Stat. 762.

A prior section 3636, act Aug. 10, 1956, ch. 1041, 70A Stat. 208, provided that pay and allowances do not accrue to an enlisted member of Army who is in confinement under sentence of dishonorable discharge, while execution of sentence to discharge is suspended, prior to repeal by Pub. L. 87–649, §§ 14c(8), 15, Sept. 7, 1962, 76 Stat. 501, 502, effective Nov. 1, 1962. See section 858b of this title.

A prior section 3637, act Aug. 10, 1956, ch. 1041, 70A Stat. 208, provided that an enlisted member of the Army who deserted forfeited all right to a pension, prior to repeal by Pub. L. 90–235, § 7(b)(1), Jan. 2, 1968, 81 Stat. 763.

A prior section 3638, act Aug. 10, 1956, ch. 1041, 70A Stat. 208, required enlisted members to make up time lost, prior to repeal by Pub. L. 85–861, § 36B(8), Sept. 2, 1958, 72 Stat. 1570. See section 972(a) of this title.

A prior section 3639 was renumbered section 7239 of this title.

Amendments

2021—Pub. L. 116–283 renumbered section 2338 of this title as this section.

Effective Date of 2021 Amendment

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

CHAPTER 253—RAPID ACQUISITION PROCEDURES

Subchapter		Sec.
I.	[Reserved]	3601
II.	[Reserved]	3611

Prior Provisions

A prior chapter 253 ''EMERGENCY AND RAPID ACQUISITIONS'', as added by Pub. L. 115–232, div. A, title VIII, § 801(a), Aug. 13, 2018, 132 Stat. 1828, and consisting of reserved section 3601, was repealed by Pub. L. 116–283, div. A, title XVIII, § 1824(a), Jan. 1, 2021, 134 Stat. 4205.

CHAPTER 255—CONTRACTING WITH OR THROUGH OTHER AGENCIES

Amendments

2018—Pub. L. 115–232, div. A, title VIII, § 801(a), Aug. 13, 2018, 132 Stat. 1828, added chapter heading.

§ 3651. [Reserved]

[Reserved]

Prior Provisions

Prior sections 3661 to 3663 were repealed by Pub. L. 90–377, § 6(1), July 5, 1968, 82 Stat. 288.

Section 3661, act Aug. 10, 1956, ch. 1041, 70A Stat. 208, provided for organization and administration of United States Disciplinary Barracks.

Section 3662, act Aug. 10, 1956, ch. 1041, 70A Stat. 209, provided for military training, organization, and equipping of prisoners who have been sent to United States Disciplinary Barracks.

Section 3663, act Aug. 10, 1956, ch. 1041, 70A Stat. 209, authorized Secretary of the Army to parole or remit sentence and restore to duty offenders who are confined in United States Disciplinary Barracks.

CHAPTER 257—CONTRACTS FOR LONG-TERM LEASE OR CHARTER OF VESSELS, AIRCRAFT, AND COMBAT VEHICLES

Sec.

3671. Requirement for authorization by law of certain contracts relating to vessels, aircraft, and combat vehicles.
3672. Requirement of specific authorization by law for appropriation, and for obligation and expenditure, of funds for certain contracts relating to aircraft, naval vessels, and combat vehicles.
3673. Limitation on indemnification.
3674. Long-term lease or charter defined; substantial termination liability.
3675. Capital lease or lease-purchase treated as an acquisition.
3676. Guidelines.
3677. Contracts for lease or use of vessels for a term of greater than two years but less than five years: prior notice to congressional committees.
3678. Contracts with terms of 18 months or more: limitation.

§ 3671. Requirement for authorization by law of certain contracts relating to vessels, aircraft, and combat vehicles

(a)(1) The Secretary of a military department may make a contract for the lease of a vessel, aircraft, or combat vehicle or for the provision of a service through use by a contractor of a vessel, aircraft, or combat vehicle only as provided in subsection (b) if—

(A) the contract will be a long-term lease or charter; or

(B) the terms of the contract provide for a substantial termination liability on the part of the United States.

(2) The Secretary of a military department may make a contract that is an agreement to lease or charter or an agreement to provide services and that is (or will be) accompanied by a contract for the actual lease, charter, or provision of services only as provided in subsection (b) if the contract for the actual lease, charter, or provision of services is (or will be) a contract described in paragraph (1).

(b)(1) The Secretary may make a contract described in subsection (a)(1) if—

(A) the Secretary has been specifically authorized by law to make the contract;

(B) before a solicitation for proposals for the contract was issued the Secretary notified the congressional defense committees of the Secretary's intention to issue such a solicitation;

(C) the Secretary has notified those committees of the proposed contract and provided a detailed description of the terms of the proposed contract and a justification for entering into the proposed contract rather than providing for the lease, charter, or services involved through purchase of the vessel, aircraft, or combat vehicle to be used under the contract, and a period of 30 days of continuous session of Congress has expired following the date on which notice was received by such committees; and

(D) the Secretary has certified to those committees—

(i) that entering into the proposed contract as a means of obtaining the vessel, aircraft, or combat vehicle is the most cost-effective means of obtaining such vessel, aircraft, or combat vehicle; and

(ii) that the Secretary has determined that the lease complies with all applicable laws, Office of Management and Budget circulars, and Department of Defense regulations.

(2) For purposes of paragraph (1)(C), the continuity of a session of Congress is broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in a computation of such 30-day period.

(3) Upon receipt of a notice under paragraph (1)(C), a committee identified in paragraph (1)(B) may request the Inspector General of the Department of Defense or the Comptroller General of the United States to conduct a review of the proposed contract to determine whether or not such contract meets the requirements of this section.

(4) If a review is requested under paragraph (3), the Inspector General of the Department of Defense or the Comptroller General of the United States, as the case may be, shall submit to the Secretary and the congressional defense committees a report on such review before the expiration of the period specified in paragraph (1)(C).

(5) In the case of a contract described in subsection (a)(1)(B), the commander of the special operations command may make a contract without regard to this subsection if—

(A) funds are available and obligated for the full cost of the contract (including termination costs) on or before the date the contract is awarded;

(B) the Secretary of Defense submits to the congressional defense committees a certification that there is no alternative for meeting urgent operational requirements other than making the contract; and

(C) a period of 30 days of continuous session of Congress has expired following the date on which the certification was received by such committees.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1825(a), (b), Jan. 1, 2021, 134 Stat. 4206.)

CODIFICATION

The text of subsec. (a) of section 2401 of this title, which was transferred to this section by Pub. L. 116–283, § 1825(b), was based on Pub. L. 98–94, title XII, § 1202(a)(1), Sept. 24, 1983, 97 Stat. 679; Pub. L. 109–163, div. A, title VIII, § 815(a)(1), Jan. 6, 2006, 119 Stat. 3381.

The text of subsec. (b) of section 2401 of this title, which was transferred to this section by Pub. L. 116–283, § 1825(b), was based on Pub. L. 98–94, title XII, § 1202(a)(1), Sept. 24, 1983, 97 Stat. 679; Pub. L. 104–106, div. A, title XV, §§ 1502(a)(20), Feb. 10, 1996, 110 Stat. 504; Pub. L. 106–65, div. A, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 106–398, § 1 [[div. A], title X, § 1087(a)(13)], Oct. 30, 2000, 114 Stat. 1654, 1654A–291; Pub. L. 109–163, div. A, title VIII, § 815(a)(1), (b), Jan. 6, 2006, 119 Stat. 3381; Pub. L. 110–181, div. A, title VIII, § 824, Jan. 28, 2008, 122 Stat. 227; Pub. L. 112–239, div. A, title X, § 1076(f)(26), Jan. 2, 2013, 126 Stat. 1953.

AMENDMENTS

2021—Pub. L. 116–283, § 1825(b), transferred subsecs. (a) and (b) of section 2401 of this title to this section.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 3672. Requirement of specific authorization by law for appropriation, and for obligation and expenditure, of funds for certain contracts relating to aircraft, naval vessels, and combat vehicles

(a) LIMITATION.—Funds may not be appropriated for any fiscal year to or for any armed force or obligated or expended for—

(1) the long-term lease or charter of any aircraft, naval vessel, or combat vehicle; or

(2) for the lease or charter of any aircraft, naval vessel, or combat vehicle the terms of which provide for a substantial termination liability on the part of the United States,

unless funds for that purpose have been specifically authorized by law.

(b) MATTER TO BE SUBMITTED TO CONGRESS.—(1) Whenever a request is submitted to Congress for the authorization of the long-term lease or charter of aircraft, naval vessels, or combat vehicles or for the authorization of a lease or charter of aircraft, naval vessels, or combat vehicles which provides for a substantial termination liability on the part of the United States, the Secretary of Defense shall submit with that request an analysis of the cost to the United States (including lost tax revenues) of any such lease or charter arrangement compared with the cost to the United States of direct procurement of the aircraft, naval vessels, or combat vehicles by the United States.

(2) Any such analysis shall be reviewed and evaluated by the Director of the Office of Management and Budget and the Secretary of the Treasury within 30 days after the date on which the request and analysis are submitted to Congress. The Director and Secretary shall conduct such review and evaluation on the basis of the guidelines issued pursuant to section 3676 of this title and shall report to Congress in writing on the results of their review and evaluation at the earliest practicable date, but in no event more

than 45 days after the date on which the request and analysis are submitted to the Congress.

(3) Whenever a request is submitted to Congress for the authorization of funds for the Department of Defense for the long-term lease or charter of aircraft, naval vessels, or combat vehicles authorized under this chapter, the Secretary of Defense—

(A) shall indicate in the request what portion of the requested funds is attributable to capital-hire; and

(B) shall reflect such portion in the appropriate procurement account in the request.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1825(a), (d), (e), Jan. 1, 2021, 134 Stat. 4206, 4207.)

CODIFICATION

The text of par. (1) of subsec. (c) of section 2401 of this title, which was transferred to this section, redesignated as subsec. (a), and amended by Pub. L. 116–283, § 1825(d), was based on Pub. L. 98–94, title XII, § 1202(a)(1), Sept. 24, 1983, 97 Stat. 679; Pub. L. 98–525, title XII, § 1232(a)(1), Oct. 19, 1984, 98 Stat. 2600; Pub. L. 109–163, div. A, title VIII, § 815(a)(2), Jan. 6, 2006, 119 Stat. 3381.

The text of subsec. (e) of section 2401 of this title, which was transferred to this section, redesignated as subsec. (b), and amended by Pub. L. 116–283, § 1825(e), was based on Pub. L. 98–94, title XII, § 1202(a)(1), Sept. 24, 1983, 97 Stat. 679; Pub. L. 109–163, div. A, title VIII, § 815(a)(3), Jan. 6, 2006, 119 Stat. 3381; Pub. L. 116–92, div. A, title XVII, § 1731(a)(48), Dec. 20, 2019, 133 Stat. 1815.

AMENDMENTS

2021—Subsec. (a). Pub. L. 116–283, § 1825(d), after transfer of par. (2) of section 2401(c) of this title to section 3673 of this title, redesignated remainder of subsec. (c) of section 2401 of this title as subsec. (a) of this section, inserted heading, struck out par. (1) designation before ''Funds may not'', and redesignated subpars. (A) and (B) of such former par. (1) as pars. (1) and (2), respectively.

Subsec. (b). Pub. L. 116–283, § 1825(e), redesignated subsec. (e) of section 2401 of this title as subsec. (b) of this section, inserted heading, and substituted ''section 3676 of this title'' for ''subsection (g)'' in par. (2) and ''this chapter'' for ''this section'' in introductory provisions of par. (3).

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 3673. Limitation on indemnification

Funds appropriated to the Department of Defense may not be used to indemnify any person under the terms of a contract entered into under this chapter—

(1) for any amount paid or due by any person to the United States for any liability arising under the Internal Revenue Code of 1986; or

(2) to pay any attorneys' fees in connection with such contract.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1825(a), (c), Jan. 1, 2021, 134 Stat. 4206.)

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in par. (1), is classified generally to Title 26, Internal Revenue Code.

CODIFICATION

The text of par. (2) of subsec. (c) of section 2401 of this title, which was transferred to this section and amended by Pub. L. 116–283, § 1825(c), was based on Pub. L. 98–525, title XII, § 1232(a)(1)(C), Oct. 19, 1984, 98 Stat. 2600; Pub. L. 103–35, title II, § 201(c)(6), May 31, 1993, 107 Stat. 98; Pub. L. 104–106, div. A, title XV, § 1503(a)(21), Feb. 10, 1996, 110 Stat. 512.

AMENDMENTS

2021—Pub. L. 116–283, § 1825(c), transferred par. (2) of section 2401(c) of this title to this section, struck out par. (2) designation at beginning, substituted ''this chapter'' for ''this section'' in introductory provisions, and redesignated subpars. (A) and (B) of such former par. (2) as pars. (1) and (2), respectively.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 3674. Long-term lease or charter defined; substantial termination liability

(a) LONG-TERM LEASE OR CHARTER.—

(1) GENERAL RULE.—

(A) In this chapter, the term ''long-term lease or charter'' (except as provided in paragraph (2)) means a lease, charter, service contract, or conditional sale agreement—

(i) the term of which is for a period of five years or longer or more than one-half the useful life of the vessel, aircraft, or combat vehicle; or

(ii) the initial term of which is for a period of less than five years but which contains an option to renew or extend the agreement for a period which, when added to the initial term (or any previous renewal or extension), is five years or longer.

(B) Such term includes the extension or renewal of a lease or charter agreement if the term of the extension or renewal thereof is for a period of five years or longer or if the term of the lease or charter agreement being extended or renewed was for a period of five years or longer.

(2) SPECIAL RULE.—

(A) In the case of an agreement under which the lessor first places the property in service under the agreement or the property has been in service for less than one year and there is allowable to the lessor or charterer an investment tax credit or depreciation for the property leased, chartered, or otherwise provided under the agreement under section 168 of the Internal Revenue Code of 1986 (unless the lessor or charterer has elected depreciation on a straightline method for such property), the term ''long-term lease or charter'' means a lease, charter, service contract, or conditional sale agreement—

(i) the term of which is for a period of three years or longer; or

(ii) the initial term of which is for a period of less than three years but which contains an option to renew or extend the agreement for a period which, when added

to the initial term (or any previous renewal or extension), is three years or longer.

(B) Such term includes the extension or renewal of a lease or charter agreement if the term of the extension or renewal thereof is for a period of three years or longer or if the term of the lease or charter agreement being extended or renewed was for a period of three years or longer.

(b) SUBSTANTIAL TERMINATION LIABILITY.—For the purposes of this chapter, the United States shall be considered to have a substantial termination liability under a contract—

(1) if there is an agreement by the United States under the contract to pay an amount not less than the amount equal to 25 percent of the value of the vessel, aircraft, or combat vehicle under lease or charter, calculated on the basis of the present value of the termination liability of the United States under such charter or lease (as determined under regulations prescribed by the Secretary of Defense); or

(2) if (as determined under regulations prescribed by the Secretary of Defense) the sum of—

(A) the present value of the amount of the termination liability of the United States under the contract as of the end of the term of the contract (exclusive of any option to extend the contract); and

(B) the present value of the total of the payments to be made by the United States under the contract (excluding any option to extend the contract) attributable to capital-hire,

is more than one-half the price of the vessel, aircraft, or combat vehicle involved.

(Added and amended Pub. L. 116–283, div. A, title XVIII, §1825(a), (f), Jan. 1, 2021, 134 Stat. 4206, 4207.)

REFERENCES IN TEXT

Section 168 of the Internal Revenue Code of 1986, referred to in subsec. (a)(2)(A), is classified to section 168 of Title 26, Internal Revenue Code.

CODIFICATION

The text of subsec. (d) of section 2401 of this title, which was transferred to this section and amended by Pub. L. 116–283, §1825(f), was based on Pub. L. 98–94, title XII, §1202(a)(1), Sept. 24, 1983, 97 Stat. 679; Pub. L. 100–26, §7(h)(1), Apr. 21, 1987, 101 Stat. 282; Pub. L. 109–163, div. A, title VIII, §815(a)(1), Jan. 6, 2006, 119 Stat. 3381.

AMENDMENTS

2021—Pub. L. 116–283, §1825(f)(1), transferred subsec. (d) of section 2401 of this title to this section, struck out subsec. (d) designation at beginning, and redesignated pars. (1) and (2) of such former subsec. (d) as subsecs. (a) and (b), respectively.

Subsec. (a). Pub. L. 116–283, §1825(f)(2)(A), (C), (D), (E), after redesignation of section 2401(d)(1) of this title as subsec. (a) of this section, inserted subsec. heading, redesignated subpar. (A)(i) and (ii) and its concluding provisions as par. (1)(A)(i) and (ii) and (B), respectively, redesignated subpar. (B)(i) and (ii) and its concluding provisions as par. (2)(A)(i) and (ii) and (B), respectively, and inserted par. headings.

Subsec. (a)(1)(A). Pub. L. 116–283, §1825(f)(2)(A), (B), substituted ''In this chapter'' for ''In this section'' and ''paragraph (2)'' for ''subparagraph (B)'' in introductory provisions.

Subsec. (b). Pub. L. 116–283, §1825(f)(3), after redesignation of section 2401(d)(2) of this title as subsec. (b) of this section, inserted heading, substituted ''this chapter'' for ''this section'' in introductory provisions, and redesignated subpar. (A) as par. (1) and subpar. (B) and its cls. (i) and (ii) as par. (2) and subpars. (A) and (B), respectively.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 3675. Capital lease or lease-purchase treated as an acquisition

(a) IN GENERAL.—If a lease or charter covered by this chapter is a capital lease or a lease-purchase—

(1) the lease or charter shall be treated as an acquisition and shall be subject to all applicable statutory and regulatory requirements for the acquisition of aircraft, naval vessels, or combat vehicles; and

(2) funds appropriated to the Department of Defense for operation and maintenance may not be obligated or expended for the lease or charter.

(b) DEFINITIONS.—In this section, the terms ''capital lease'' and ''lease-purchase'' have the meanings given those terms in Appendix B to Office of Management and Budget Circular A–11, as in effect on January 6, 2006.

(Added and amended Pub. L. 116–283, div. A, title XVIII, §1825(a), (g), Jan. 1, 2021, 134 Stat. 4206, 4208.)

CODIFICATION

The text of subsec. (f) of section 2401 of this title, which was transferred to this section and amended by Pub. L. 116–283, §1825(g), was based on Pub. L. 109–163, div. A, title VIII, §815(c)(2), Jan. 6, 2006, 119 Stat. 3382; Pub. L. 111–84, div. A, title X, §1073(a)(24), Oct. 28, 2009, 123 Stat. 2473.

AMENDMENTS

2021—Pub. L. 116–283, §1825(g)(1)(A), transferred subsec. (f) of section 2401 of this title to this section, struck out subsec. (f) designation at beginning, and redesignated pars. (1) and (2) of such former subsec. (f) as subsecs. (a) and (b), respectively.

Subsec. (a). Pub. L. 116–283, §1825(g)(2), after redesignation of section 2401(f)(1) of this title as subsec. (a) of this section, inserted heading, substituted ''this chapter'' for ''this section'' in introductory provisions, and redesignated subpars. (A) and (B) as pars. (1) and (2), respectively.

Subsec. (b). Pub. L. 116–283, §1825(g)(3), after redesignation of section 2401(d)(2) of this title as subsec. (b) of this section, inserted heading and substituted ''In this section'' for ''In this subsection''.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 3676. Guidelines

The Director of the Office of Management and Budget and the Secretary of the Treasury shall

jointly issue guidelines for determining under what circumstances the Department of Defense may use lease or charter arrangements for aircraft, naval vessels, and combat vehicles rather than directly procuring such aircraft, vessels, and combat vehicles.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1825(a), (h), Jan. 1, 2021, 134 Stat. 4206, 4208.)

CODIFICATION

The text of subsec. (g) of section 2401 of this title, which was transferred to this section and amended by Pub. L. 116–283, § 1825(h), was based on Pub. L. 98–94, title XII, § 1202(a)(1), Sept. 24, 1983, 97 Stat. 679; Pub. L. 98–525, title XII, § 1232(a)(2), Oct. 19, 1984, 98 Stat. 2600; Pub. L. 109–163, div. A, title VIII, § 815(c)(1), Jan. 6, 2006, 119 Stat. 3382.

AMENDMENTS

2021—Pub. L. 116–283, § 1825(h), transferred subsec. (g) of section 2401 of this title to this section and struck out subsec. (g) designation at beginning.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 3677. Contracts for lease or use of vessels for a term of greater than two years but less than five years: prior notice to congressional committees

The Secretary of a military department may make a contract for the lease of a vessel or for the provision of a service through use by a contractor of a vessel, the term of which is for a period of greater than two years, but less than five years, only if—

(1) the Secretary has notified the congressional defense committees of the proposed contract and included in such notification—

(A) a detailed description of the terms of the proposed contract and a justification for entering into the proposed contract rather than obtaining the capability provided for by the lease, charter, or services involved through purchase of the vessel;

(B) a determination that entering into the proposed contract as a means of obtaining the vessel is the most cost-effective means of obtaining such vessel; and

(C) a plan for meeting the requirement provided by the proposed contract upon completion of the term of the lease contract; and

(2) a period of 60 days has expired following the date on which notice was received by such committees.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1825(a), (i), Jan. 1, 2021, 134 Stat. 4206, 4208.)

CODIFICATION

The text of subsec. (h) of section 2401 of this title, which was transferred to this section and amended by Pub. L. 116–283, § 1825(i), was based on Pub. L. 110–181, div. A, title X, § 1011, Jan. 28, 2008, 122 Stat. 303; Pub. L. 112–239, div. A, title VIII, § 821, title X, § 1076(f)(26), Jan. 2, 2013, 126 Stat. 1830, 1953.

AMENDMENTS

2021—Pub. L. 116–283, § 1825(i), transferred subsec. (h) of section 2401 of this title to this section and struck out subsec. (h) designation at beginning.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 3678. Contracts with terms of 18 months or more: limitation

The Secretary of Defense or the Secretary of a military department may not enter into any contract with a term of 18 months or more, or extend or renew any contract for a term of 18 months or more, for any vessel, aircraft, or vehicle, through a lease, charter, or similar agreement, unless the Secretary has considered all costs of such contract (including estimated termination liability) and has determined in writing that the contract is in the best interest of the Government.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1825(a), (j), Jan. 1, 2021, 134 Stat. 4206, 4208.)

CODIFICATION

The text of subsec. (b) of section 2401a of this title, which was transferred to this section and amended by Pub. L. 116–283, § 1825(j), was based on Pub. L. 103–355, title III, § 3065(a)(1), Oct. 13, 1994, 108 Stat. 3337; Pub. L. 104–106, div. A, title VIII, § 807(a)(1)(A), Feb. 10, 1996, 110 Stat. 391.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in Pub. L. 101–165, title IX, § 9081, Nov. 21, 1989, 103 Stat. 1147, which was set out as a note under section 2401 of this title, prior to repeal by Pub. L. 103–355, § 3065(b).

AMENDMENTS

2021—Pub. L. 116–283, § 1825(j), transferred subsec. (b) of section 2401a of this title to this section and struck out subsec. (b) designation and heading ''Limitation on Contracts With Terms of 18 Months or More'' at beginning.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

CHAPTER 258—OTHER TYPES OF CONTRACTS USED FOR PROCUREMENTS FOR PARTICULAR PURPOSES

Sec.
3681. Leasing of commercial vehicles and equipment.

§ 3681. Leasing of commercial vehicles and equipment

The Secretary of Defense may use leasing in the acquisition of commercial vehicles and equipment whenever the Secretary determines that such leasing is practicable and efficient.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1825(a), (k), Jan. 1, 2021, 134 Stat. 4206, 4208.)

CODIFICATION

The text of subsec. (a) of section 2401a of this title, which was transferred to this section and amended by Pub. L. 116–283, § 1825(k), was based on Pub. L. 104–106, div. A, title VIII, § 807(a)(1)(B), Feb. 10, 1996, 110 Stat. 391; Pub. L. 105–85, div. A, title X, § 1073(a)(52), Nov. 18, 1997, 111 Stat. 1903.

PRIOR PROVISIONS

A prior section 3681 was renumbered section 7251 of this title.

Another prior section 3681, act Aug. 10, 1956, ch. 1041, 70A Stat. 210, related to service listed in the official Army Register, prior to repeal by Pub. L. 85–861, § 36B(9), Sept. 2, 1958, 72 Stat. 1570. See section 122 of this title.

A prior section 3682, act Aug. 10, 1956, ch. 1041, 70A Stat. 210, provided that in computing length of service, no commissioned officer of the Army could be credited with service as a cadet at the Military Academy or as a midshipman at the Naval Academy, if he was appointed as a cadet or midshipman after Aug. 24, 1912, prior to repeal by Pub. L. 90–235, § 6(a)(2), Jan. 2, 1968, 81 Stat. 761. See section 971 of this title.

A prior section 3683, acts Aug. 10, 1956, ch. 1041, 70A Stat. 210; Aug. 25, 1959, Pub. L. 86–197, § 1(4), 73 Stat. 426, related to service credit for certain service as a nurse, woman medical specialist, or civilian employee of Army Medical Department, prior to repeal by Pub. L. 99–145, title XIII, § 1301(b)(1)(A), Nov. 8, 1985, 99 Stat. 735. Pub. L. 99–145, title XIII, § 1301(b)(1)(C), Nov. 8, 1985, 99 Stat. 735, provided that such repeal would not apply in the case of a person who performed active service described in section 3683 of this title as that section was in effect on the day before Nov. 8, 1985.

A prior section 3684 was renumbered section 7252 of this title.

A prior section 3685, acts Aug. 10, 1956, ch. 1041, 70A Stat. 211; Sept. 2, 1958, Pub. L. 85–861, § 1(89), 72 Stat. 1482, set forth restrictions on the consideration of a husband or child as the dependent of a female member of the Regular Army, Army National Guard of the United States or Army Reserve, prior to repeal by Pub. L. 90–235, § 7(a)(3), Jan. 2, 1968, 81 Stat. 763.

A prior section 3686, acts Aug. 10, 1956, ch. 1041, 70A Stat. 211; Sept. 24, 1980, Pub. L. 96–357, § 5(a), 94 Stat. 1182; Oct. 19, 1984, Pub. L. 98–525, title IV, § 414(a)(7)(A), 98 Stat. 2519, related to credit to members of Army National Guard of United States for service as members of Army National Guard, prior to repeal by Pub. L. 103–337, div. A, title XVI, §§ 1662(g)(2), 1691, Oct. 5, 1994, 108 Stat. 2996, 3026, effective Dec. 1, 1994. See section 12602 of this title.

A prior section 3687, acts Aug. 10, 1956, ch. 1041, 70A Stat. 212; Sept. 2, 1958, Pub. L. 85–861, § 1(90), 72 Stat. 1482; Sept. 7, 1962, Pub. L. 87–649, § 6(d), 76 Stat. 494, related to compensation for members of Army other than of Regular Army, prior to repeal by Pub. L. 99–661, div. A, title VI, § 604(f)(1)(A), (g), Nov. 14, 1986, 100 Stat. 3877, 3878, applicable with respect to persons who, after Nov. 14, 1986, incur or aggravate an injury, illness, or disease or die.

A prior section 3688, act Aug. 10, 1956, ch. 1041, 70A Stat. 212, related to payment of death gratuity to survivors of members of the Army, prior to repeal by Pub. L. 85–861, § 36B(10), Sept. 2, 1958, 72 Stat. 1570. See section 1475 et seq. of this title.

A prior section 3689, acts Aug. 10, 1956, ch. 1041, 70A Stat. 213; Sept. 26, 1961, Pub. L. 87–304, § 9(c), 75 Stat. 665, related to assignments and allotments of pay, prior to repeal by Pub. L. 87–649, §§ 14c(9), 15, Sept. 7, 1962, 76 Stat. 501, 502, effective Nov. 1, 1962. See section 701 of Title 37, Pay and Allowances of the Uniformed Services.

A prior section 3690, act Aug. 10, 1956, ch. 1041, 70A Stat. 213, exempted enlisted members of the Army, while on active duty, from arrest for any debt, unless it was contracted before enlistment and amounted to at least $20 when first contracted, prior to repeal by Pub. L. 90–235, § 7(b)(1), Jan. 2, 1968, 81 Stat. 763.

Prior section 3691 was renumbered section 7253 of this title.

A prior section 3692, act Aug. 10, 1956, ch. 1041, 70A Stat. 213, provided qualifications to receive a rating as a pilot in time of peace, prior to repeal by Pub. L. 92–168, § 1(1), Nov. 24, 1971, 85 Stat. 489. See section 2003 of this title.

A prior section 3693, act Aug. 10, 1956, ch. 1041, 70A Stat. 214, provided for replacement of a lost or destroyed certificate of discharge from Army, prior to repeal by Pub. L. 90–235, § 7(a)(3), Jan. 2, 1968, 81 Stat. 763. See section 1041 of this title.

AMENDMENTS

2021—Pub. L. 116–283, § 1825(k), transferred subsec. (a) of section 2401a of this title to this section and struck out subsec. (a) designation and heading ''Leasing of Commercial Vehicles and Equipment'' at beginning.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

Subpart D—General Contracting Requirements

AMENDMENTS

2018—Pub. L. 115–232, div. A, title VIII, § 801(a), Aug. 13, 2018, 132 Stat. 1828, added subpart heading.

CHAPTER 271—TRUTHFUL COST OR PRICING DATA (TRUTH IN NEGOTIATIONS)

Sec.

3701. Definitions.
3702. Required cost or pricing data and certification.
3703. Exceptions.
3704. Cost or pricing data on below-threshold contracts.
3705. Submission of other information.
3706. Price reductions for defective cost or pricing data.
3707. Interest and penalties for certain overpayments.
3708. Right to examine contractor records.

PRIOR PROVISIONS

A prior chapter 271, ''TRUTHFUL COST OR PRICING DATA'', as added by Pub. L. 115–232, div. A, title VIII, § 801(a), Aug. 13, 2018, 132 Stat. 1828, and consisting of reserved section 3701, was repealed by Pub. L. 116–283, div. A, title XVIII, § 1831(a), Jan. 1, 2021, 134 Stat. 4208.

§ 3701. Definitions

(a)[1] DEFINITIONS.—In this chapter:

(1) COST OR PRICING DATA.—The term ''cost or pricing data'' means all facts that, as of the date of agreement on the price of a contract (or the price of a contract modification), or, if applicable consistent with section 3706(a)(2) of this title, another date agreed upon between the parties, a prudent buyer or seller would reasonably expect to affect price negotiations significantly. Such term does not include information that is judgmental, but does include

[1] So in original. There is no subsec. (b).

the factual information from which a judgment was derived.

(2) SUBCONTRACT.—The term ''subcontract'' includes a transfer of commercial products or commercial services between divisions, subsidiaries, or affiliates of a contractor or a subcontractor.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1831(a), (b), Jan. 1, 2021, 134 Stat. 4209.)

AMENDMENTS

2021—Pub. L. 116–283, § 1831(b), redesignated subsec. (h) of section 2306a of this title as subsec. (a) of this section and substituted ''this chapter'' for ''this section'' in introductory provisions and ''section 3706(a)(2) of this title'' for ''subsection (e)(1)(B)'' in par. (1).

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 3702. Required cost or pricing data and certification

(a) WHEN REQUIRED.—The head of an agency shall require offerors, contractors, and subcontractors to make cost or pricing data available as follows:

(1) OFFEROR FOR PRIME CONTRACT.—An offeror for a prime contract under a chapter 137 legacy provision to be entered into using procedures other than sealed-bid procedures that is only expected to receive one bid shall be required to submit cost or pricing data before the award of a contract if—

(A) in the case of a prime contract entered into after June 30, 2018, the price of the contract to the United States is expected to exceed $2,000,000; and

(B) in the case of a prime contract entered into on or before June 30, 2018, the price of the contract to the United States is expected to exceed $750,000.

(2) CONTRACTOR.—The contractor for a prime contract under a chapter 137 legacy provision shall be required to submit cost or pricing data before the pricing of a change or modification to the contract if the price adjustment is expected to exceed $2,000,000.

(3) OFFEROR FOR SUBCONTRACT.—An offeror for a subcontract (at any tier) of a contract under this chapter shall be required to submit cost or pricing data before the award of the subcontract if the prime contractor and each higher-tier subcontractor have been required to make available cost or pricing data under this section and the price of the subcontract is expected to exceed $2,000,000.

(4) SUBCONTRACTOR.—The subcontractor for a subcontract covered by paragraph (3) shall be required to submit cost or pricing data before the pricing of a change or modification to the subcontract if the price adjustment is expected to exceed $2,000,000.

(b) CERTFICATION [1].—A person required, as an offeror, contractor, or subcontractor, to submit cost or pricing data under subsection (a) (or required by the head of the agency concerned to submit such data under section 3704 of this title) shall be required to certify that, to the best of the person's knowledge and belief, the cost or pricing data submitted are accurate, complete, and current.

(c) TO WHOM SUBMITTED.—Cost or pricing data required to be submitted under subsection (a) (or under section 3704 of this title), and a certification required to be submitted under subsection (b), shall be submitted—

(1) in the case of a submission by a prime contractor (or an offeror for a prime contract), to the contracting officer for the contract (or to a designated representative of the contracting officer); or

(2) in the case of a submission by a subcontractor (or an offeror for a subcontract), to the prime contractor.

(d) APPLICABILITY OF CHAPTER.—Except as provided under section 3703 of this title, this section applies to contracts entered into by the head of an agency on behalf of a foreign government.

(e) SUBCONTRACTS NOT AFFECTED BY WAIVER.—A waiver of requirements for submission of certified cost or pricing data that is granted under section 3703(a)(3) of this title in the case of a contract or subcontract does not waive the requirement under subsection (a)(3) for submission of cost or pricing data in the case of subcontracts under that contract or subcontract unless the head of the procuring activity granting the waiver determines that the requirement under that subsection should be waived in the case of such subcontracts and justifies in writing the reasons for the determination.

(f) MODIFICATIONS TO PRIOR CONTRACTS.—Upon the request of a contractor that was required to submit cost or pricing data under subsection (a) in connection with a prime contract entered into on or before June 30, 2018, the head of the agency that entered into such contract shall modify the contract to reflect paragraphs (2)(B) and (3)(B) of subsection (a). All such modifications shall be made without requiring consideration.

(g) ADJUSTMENT OF AMOUNTS.—Effective on October 1 of each year that is divisible by 5, each amount set forth in subsection (a) shall be adjusted in accordance with section 1908 of title 41.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1831(a), (c), Jan. 1, 2021, 134 Stat. 4209.)

CODIFICATION

The text of subsec. (a) of section 2306a of this title, which was transferred to this section and amended by Pub. L. 116–283, § 1831(c), was based on Pub. L. 99–500, § 101(c) [title X, § 952(a)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–166, and Pub. L. 99–591, § 101(c) [title X, § 952(a)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–166; Pub. L. 99–661, div. A, title IX, formerly title IV, § 952(a), Nov. 14, 1986, 100 Stat. 3945, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; Pub. L. 100–180, div. A, title VIII, § 804(b)(1), Dec. 4, 1987, 101 Stat. 1125; Pub. L. 101–510, div. A, title VIII, § 803(a)(1), Nov. 5, 1990, 104 Stat. 1589; Pub. L. 102–25, title VII, § 701(b), Apr. 6, 1991, 105 Stat. 113; Pub. L. 102–190, div. A, title VIII, § 804(a)–(c)(1), Dec. 5, 1991, 105 Stat. 1415, 1416; Pub. L. 103–355, title I, §§ 1201, 1202(b), Oct. 13, 1994, 108 Stat. 3273, 3274; Pub. L. 105–85, div. A, title X, § 1073(a)(46),

[1] So in original. Probably should be ''CERTIFICATION''.

Nov. 18, 1997, 111 Stat. 1902; Pub. L. 105–261, div. A, title VIII, § 805(a), Oct. 17, 1998, 112 Stat. 2083; Pub. L. 114–328, div. A, title VIII, § 822(1), Dec. 23, 2016, 130 Stat. 2276; Pub. L. 115–91, div. A, title VIII, § 811(a)(1), Dec. 12, 2017, 131 Stat. 1459; Pub. L. 116–283, div. A, § 814(a)(1), Jan. 1, 2021, 134 Stat. 3479. Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661 added identical sections. Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

AMENDMENTS

2021—Pub. L. 116–283, § 1831(c)(1), (2)(A), transferred subsec. (a) of section 2306a of this title to this section and redesignated pars. (1) to (7) of such former subsec. (a) as subsecs. (a) to (g), respectively.

Subsec. (a). Pub. L. 116–283, § 1831(c)(2)(A), (B), (3), after redesignation of section 2306a(a)(1) of this title as subsec. (a) of this section, substituted ''When Required'' for ''Required Cost or Pricing Data and Certification'' in heading, redesignated subpars. (A) to (D) as pars. (1) to (4), respectively, and substituted ''a prime contract under a chapter 137 legacy provision'' for ''a prime contract under this chapter'' in introductory provisions of pars. (1) and (2).

Subsec. (a)(1). Pub. L. 116–283, § 1831(c)(2)(C), inserted heading and redesignated cls. (i) and (ii) as subpars. (A) and (B), respectively.

Subsec. (a)(2). Pub. L. 116–283, § 1831(c)(2)(D)(ii)–(v), after redesignation of section 2306a(a)(1)(B) of this title as subsec. (a)(2) of this section, directed amendment of par. (2) by redesignating cls. (i) to (iii) as subpars. (A) to (C), respectively, and then by substituting ''paragraph (1)(A)'' for ''subparagraph (A)(i)'' in subpar. (A), ''subsection (f)'' for ''paragraph (6)'' in subpar. (B), and ''subparagraph (A) or (B)'' for ''clause (i) or (ii)'' in subpar. (C), effective Jan. 1, 2022. Amendment could not be executed after the intervening amendment made to section 2306a(a)(1)(B) of this title by section 814(a)(1)(A) of Pub. L. 116–283, which struck out cls. (i) to (iii) and was effective Jan. 1, 2021.

Pub. L. 116–283, § 1831(c)(2)(D)(i), inserted heading.

Subsec. (a)(3). Pub. L. 116–283, § 1831(c)(2)(E)(ii)–(v), after redesignation of section 2306a(a)(1)(C) of this title as subsec. (a)(3) of this section, directed amendment of par. (3) by redesignating cls. (i) to (iii) as subpars. (A) to (C), respectively, and then by substituting ''paragraph (1)(A)'' for ''subparagraph (A)(i)'' in subpar. (A), ''subsection (f)'' for ''paragraph (6)'' in subpar. (B), and ''subparagraph (A) or (B)'' for ''clause (i) or (ii)'' in subpar. (C), effective Jan. 1, 2022. Amendment could not be executed after the intervening amendment made to section 2306a(a)(1)(C) of this title by section 814(a)(1)(B) of Pub. L. 116–283, which struck out cls. (i) to (iii) and was effective Jan. 1, 2021.

Pub. L. 116–283, § 1831(c)(2)(E)(i), inserted heading.

Subsec. (a)(4). Pub. L. 116–283, § 1831(c)(2)(F)(ii), (iv), (v), after redesignation of section 2306a(a)(1)(D) of this title as subsec. (a)(4) of this section, directed amendment of par. (4) by redesignating cls. (i) and (ii) as subpars. (A) and (B), respectively, and then by substituting ''paragraph (3)(A)'' for ''subparagraph (C)(i)'' in subpar. (A) and ''paragraph (3)(C)'' for ''subparagraph (C)(iii)'' in subpar. (B), effective Jan. 1, 2022. Amendment could not be executed after the intervening amendment made to section 2306a(a)(1)(D) of this title by section 814(a)(1)(C) of Pub. L. 116–283, which struck out cls. (i) and (ii) and was effective Jan. 1, 2021.

Pub. L. 116–283, § 1831(c)(2)(F)(iii), which directed substitution of ''paragraph (3)'' for ''subparagraph (C)'' in introductory provisions of par. (4), effective Jan. 1, 2022, was executed by making the substitution in text of par. (4) to reflect the probable intent of Congress and the intervening amendment made by section 814(a)(1)(C) of Pub. L. 116–283 to section 2306a(a)(1)(D) of this title prior to its redesignation as subsec. (a)(4) of this section, which was effective Jan. 1, 2021, and struck out cls. (i) and (ii), thereby eliminating the presence of introductory provisions.

Pub. L. 116–283, § 1831(c)(2)(F)(i), inserted heading.

Subsec. (b). Pub. L. 116–283, § 1831(c)(4), after redesignation of section 2306a(a)(2) of this title as subsec. (b) of this section, inserted heading and substituted ''subsection (a)'' for ''paragraph (1)'' and ''section 3704 of this title'' for ''subsection (c)''.

Subsec. (c). Pub. L. 116–283, § 1831(c)(5), after redesignation of section 2306a(a)(3) of this title as subsec. (c) of this section, inserted heading, redesignated subpars. (A) and (B) as pars. (1) and (2), respectively, and, in introductory provisions, substituted ''subsection (a) (or under section 3704 of this title)'' for ''paragraph (1) (or under subsection (c))'' and ''subsection (b)'' for ''paragraph (2)''.

Subsec. (d). Pub. L. 116–283, § 1831(c)(6), after redesignation of section 2306a(a)(4) of this title as subsec. (d) of this section, inserted heading and substituted ''section 3703 of this title'' for ''subsection (b)''.

Subsec. (e). Pub. L. 116–283, § 1831(c)(7), after redesignation of section 2306a(a)(5) of this title as subsec. (e) of this section, inserted heading and substituted ''section 3703(a)(3) of this title'' for ''subsection (b)(1)(C)'', ''subsection (a)(3)'' for ''paragraph (1)(C)'', and ''that subsection'' for ''that paragraph''.

Subsec. (f). Pub. L. 116–283, § 1831(c)(8), after redesignation of section 2306a(a)(6) of this title as subsec. (f) of this section, inserted heading, substituted ''under subsection (a)'' for ''under paragraph (1)'' and ''paragraphs (2)(B) and (3)(B) of subsection (a)'' for ''subparagraphs (B)(ii) and (C)(ii) of paragraph (1)'' and directed substitution of ''that subsection'' for ''that paragraph'', which could not be executed because the words ''that paragraph'' did not appear.

Subsec. (g). Pub. L. 116–283, § 1831(c)(9), after redesignation of section 2306a(a)(7) of this title as subsec. (g) of this section, inserted heading and substituted ''subsection (a)'' for ''paragraph (1)''.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 3703. Exceptions

(a) IN GENERAL.—Submission of certified cost or pricing data shall not be required under section 3702 of this title in the case of a contract, a subcontract, or modification of a contract or subcontract—

(1) for which the price agreed upon is based on—

(A) adequate competition that results in at least two or more responsive and viable competing bids; or

(B) prices set by law or regulation;

(2) for the acquisition of a commercial product or a commercial service;

(3) in an exceptional case when the head of the procuring activity, without delegation, determines that the requirements of this chapter may be waived and justifies in writing the reasons for such determination; or

(4) to the extent such data—

(A) relates to an offset agreement in connection with a contract for the sale of a weapon system or defense-related item to a foreign country or foreign firm; and

(B) does not relate to a contract or subcontract under the offset agreement for work performed in such foreign country or by such foreign firm that is directly related to the weapon system or defense-related item being purchased under the contract.

(b) MODIFICATIONS OF CONTRACTS AND SUBCONTRACTS FOR COMMERCIAL PRODUCTS OR COM-

MERCIAL SERVICES.—In the case of a modification of a contract or subcontract for a commercial product or commercial services that is not covered by the exception to the submission of certified cost or pricing data in paragraph (1) or (2) of subsection (a), submission of certified cost or pricing data shall not be required under section 3702 of this title if—

(1) the contract or subcontract being modified is a contract or subcontract for which submission of certified cost or pricing data may not be required by reason of paragraph (1) or (2) of subsection (a); and

(2) the modification would not change the contract or subcontract, as the case may be, from a contract or subcontract for the acquisition of a commercial product or commercial services to a contract or subcontract for the acquisition of an item other than a commercial product or commercial services.

(c) NONCOMMERCIAL MODIFICATIONS OF COMMERCIAL PRODUCTS.—(1) The exception in subsection (a)(2) does not apply to cost or pricing data on noncommercial modifications of a commercial product that are expected to cost, in the aggregate, more than the amount specified in section 3702(a)(1)(A) of this title, as adjusted from time to time under section 3702(g) of this title, or 5 percent of the total price of the contract (at the time of contract award), whichever is greater.

(2) In this subsection, the term ''noncommercial modification'', with respect to a commercial product, means a modification of such product that is not a modification described in section 103(3)(A) of title 41.

(3) Nothing in paragraph (1) shall be construed—

(A) to limit the applicability of the exception in paragraph (1) or (3) of subsection (a) to cost or pricing data on a noncommercial modification of a commercial product; or

(B) to require the submission of cost or pricing data on any aspect of an acquisition of a commercial product other than the cost and pricing of noncommercial modifications of such product.

(d) COMMERCIAL PRODUCT OR COMMERCIAL SERVICE DETERMINATION.—(1) For purposes of applying the exception under subsection (a)(2) to the required submission of certified cost or pricing data, the contracting officer may presume that a prior commercial product or commercial service determination made by a military department, a Defense Agency, or another component of the Department of Defense shall serve as a determination for subsequent procurements of such product or service.

(2) If the contracting officer does not make the presumption described in paragraph (1) and instead chooses to proceed with a procurement of a product or service previously determined to be a commercial product or a commercial service using procedures other than the procedures authorized for the procurement of a commercial product or a commercial service, as the case may be, the contracting officer shall request a review of the commercial product or commercial service determination by the head of the contracting activity.

(3) Not later than 30 days after receiving a request for review of a determination under paragraph (2), the head of a contracting activity shall—

(A) confirm that the prior determination was appropriate and still applicable; or

(B) issue a revised determination with a written explanation of the basis for the revision.

(e) A contracting officer shall consider evidence provided by an offeror of recent purchase prices paid by the Government for the same or similar commercial products or commercial services in establishing price reasonableness on a subsequent purchase if the contracting officer is satisfied that the prices previously paid remain a valid reference for comparison after considering the totality of other relevant factors such as the time elapsed since the prior purchase and any differences in the quantities purchased or applicable terms and conditions.

(f) DETERMINATION BY PRIME CONTRACTOR.—A prime contractor required to submit certified cost or pricing data under section 3702 of this title with respect to a prime contract shall be responsible for determining whether a subcontract under such contract qualifies for an exception under subsection (a)(1) from such requirement.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1831(a), (d), Jan. 1, 2021, 134 Stat. 4209, 4211.)

CODIFICATION

The text of subsec. (b) of section 2306a of this title, which was transferred to this section and amended by Pub. L. 116–283, § 1831(d), was based on Pub. L. 99–500, § 101(c) [title X, § 952(a)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–166, and Pub. L. 99–591, § 101(c) [title X, § 952(a)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–166; Pub. L. 99–661, div. A, title IX, formerly title IV, § 952(a), Nov. 14, 1986, 100 Stat. 3945, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; Pub. L. 103–355, title I, § 1202(a), Oct. 13, 1994, 108 Stat. 3274, as amended by Pub. L. 104–106, div. D, title XLIII, § 4321(a)(2), Feb. 10, 1996, 110 Stat. 671; Pub. L. 104–106, div. D, title XLII, § 4201(a)(1), Feb. 10, 1996, 110 Stat. 649; Pub. L. 108–375, div. A, title VIII, § 818(a), Oct. 28, 2004, 118 Stat. 2015; Pub. L. 110–181, div. A, title VIII, § 814, Jan. 28, 2008, 122 Stat. 222; Pub. L. 113–291, div. A, title X, § 1071(a)(3), Dec. 19, 2014, 128 Stat. 3504; Pub. L. 114–92, div. A, title VIII, §§ 812, 851(b), 853, Nov. 25, 2015, 129 Stat. 891, 916, 919; Pub. L. 114–328, div. A, title VIII, § 822(2), Dec. 23, 2016, 130 Stat. 2276; Pub. L. 115–232, div. A, title VIII, § 836(c)(5)(A), Aug. 13, 2018, 132 Stat. 1865. Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661 added identical sections. Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

AMENDMENTS

2021—Pub. L. 116–283, § 1831(d)(1), transferred subsec. (b) of section 2306a of this title to this section, struck out subsec. (b) designation and heading ''Exceptions'' at beginning, and redesignated pars. (1) to (6) as subsecs. (a) to (f), respectively, and realigned margins.

Subsec. (a). Pub. L. 116–283, § 1831(d)(2)(A), (B), (C), (E), after redesignation of section 2306a(b)(1) of this title as subsec. (a) of this section, substituted ''under section 3702 of this title'' for ''under subsection (a)'' in introductory provisions, redesignated subpar. (A) and its cls. (i) and (ii) as par. (1) and subpars. (A) and (B), respectively, redesignated subpars. (B) and (C) as pars. (2) and (3), respectively, and redesignated subpar. (D) and its cls. (i) and (ii) as par. (4) and subpars. (A) and (B), respectively.

Subsec. (a)(3). Pub. L. 116–283, § 1831(d)(2)(D), substituted ''this chapter'' for ''this section''.

Subsec. (b). Pub. L. 116–283, §1831(d)(3)(A), (B), after redesignation of section 2306a(b)(2) of this title as subsec. (b) of this section, in introductory provisions, substituted ''paragraph (1) or (2) of subsection (a)'' for ''paragraph (1)(A) or (1)(B)'' and ''under section 3702 of this title'' for ''under subsection (a)'' and redesignated subpars. (A) and (B) as pars. (1) and (2), respectively.

Subsec. (b)(1). Pub. L. 116–283, §1831(d)(3)(C), substituted ''paragraph (1) or (2) of subsection (a)'' for ''paragraph (1)(A) or (1)(B)''.

Subsec. (c). Pub. L. 116–283, §1831(d)(4)(A), (D)(i), after redesignation of section 2306a(b)(3) of this title as subsec. (c) of this section, redesignated subpars. (A), (B), and (C) and its cls. (i) and (ii) as pars. (1), (2), and (3) and subpars. (A) and (B), respectively.

Subsec. (c)(1). Pub. L. 116–283, §1831(d)(4)(B), substituted ''subsection (a)(2)'' for ''paragraph (1)(B)'', ''section 3702(a)(1)(A) of this title'' for ''subsection (a)(1)(A)(i)'', and ''section 3702(g) of this title'' for ''subsection (a)(7)''.

Subsec. (c)(2). Pub. L. 116–283, §1831(d)(4)(C), substituted ''this subsection'' for ''this paragraph''.

Subsec. (c)(3). Pub. L. 116–283, §1831(d)(4)(D)(ii), (ii) [(iii)], substituted ''paragraph (1)'' for ''subparagraph (A)'' in introductory provisions and ''paragraph (1) or (3) of subsection (a)'' for ''subparagraph (A) or (C) of paragraph (1)'' in subpar. (A).

Subsec. (d). Pub. L. 116–283, §1831(d)(5)(A), (D)(i), after redesignation of section 2306a(b)(4) of this title as subsec. (d) of this section, redesignated subpars. (A), (B), and (C) and its cls. (i) and (ii) as pars. (1), (2), and (3) and subpars. (A) and (B), respectively.

Subsec. (d)(1). Pub. L. 116–283, §1831(d)(5)(B), substituted ''subsection (a)(2)'' for ''paragraph (1)(B)''.

Subsec. (d)(2). Pub. L. 116–283, §1831(d)(5)(C), substituted ''paragraph (1)'' for ''subparagraph (A)''.

Subsec. (d)(3). Pub. L. 116–283, §1831(d)(5)(D)(ii), substituted ''paragraph (2)'' for ''subparagraph (B)'' in introductory provisions.

Subsec. (f). Pub. L. 116–283, §1831(d)(6), after redesignation of section 2306a(b)(6) of this title as subsec. (f) of this section, substituted ''section 3702 of this title'' for ''subsection (a)'' and ''subsection (a)(1)'' for ''paragraph (1)(A)''.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§3704. Cost or pricing data on below-threshold contracts

(a) AUTHORITY TO REQUIRE SUBMISSION.—Subject to subsection (b), when certified cost or pricing data are not required to be submitted by section 3702 of this title for a contract, subcontract, or modification of a contract or subcontract, such data may nevertheless be required to be submitted by the head of the procuring activity, but only if the head of the procuring activity determines that such data are necessary for the evaluation by the agency of the reasonableness of the price of the contract, subcontract, or modification of a contract or subcontract. In any case in which the head of the procuring activity requires such data to be submitted under this section, the head of the procuring activity shall justify in writing the reason for such requirement.

(b) EXCEPTION.—The head of the procuring activity may not require certified cost or pricing data to be submitted under this subsection for any contract or subcontract, or modification of a contract or subcontract, covered by the exceptions in paragraph (1) or (2) of section 3703(a) of this title.

(c) DELEGATION OF AUTHORITY PROHIBITED.—The head of a procuring activity may not delegate functions under this subsection.

(Added and amended Pub. L. 116–283, div. A, title XVIII, §1831(a), (e), Jan. 1, 2021, 134 Stat. 4209, 4213.)

CODIFICATION

The text of subsec. (c) of section 2306a of this title, which was transferred to this section and amended by Pub. L. 116–283, §1831(e), was based on Pub. L. 99–500, §101(c) [title X, §952(a)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–166, and Pub. L. 99–591, §101(c) [title X, §952(a)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–166; Pub. L. 99–661, div. A, title IX, formerly title IV, §952(a), Nov. 14, 1986, 100 Stat. 3945, renumbered title IX, Pub. L. 100–26, §3(5), Apr. 21, 1987, 101 Stat. 273; Pub. L. 101–510, div. A, title VIII, §803(d), Nov. 5, 1990, 104 Stat. 1590; Pub. L. 103–355, title I, §1203, Oct. 13, 1994, 108 Stat. 3274; Pub. L. 104–106, div. D, title XLII, §4201(a)(1), Feb. 10, 1996, 110 Stat. 650. Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661 added identical sections. Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

AMENDMENTS

2021—Pub. L. 116–283, §1831(e)(1)(A), transferred subsec. (c) of section 2306a of this title to this section and struck out subsec. (c) designation and heading ''Cost or Pricing Data on Below-Threshold Contracts'' at beginning.

Subsec. (a). Pub. L. 116–283, §1831(e)(1)(B), (2), redesignated par. (1) of section 2306a(c) of this title as subsec. (a) of this section, realigned margin, and substituted ''subsection (b)'' for ''paragraph (2)'', ''section 3702 of this title'' for ''subsection (a)'', and ''under this section'' for ''under this subsection''.

Subsec. (b). Pub. L. 116–283, §1831(e)(1)(B), (3), redesignated par. (2) of section 2306a(c) of this title as subsec. (b) of this section, realigned margin, and substituted ''under this subsection'' for ''under this paragraph'' and ''paragraph (1) or (2) of section 3703(a) of this title'' for ''subparagraph (A) or (B) of subsection (b)(1)''.

Subsec. (c). Pub. L. 116–283, §1831(e)(1)(B), (4), redesignated par. (3) of section 2306a(c) of this title as subsec. (c) of this section, realigned margin, and substituted ''under this subsection'' for ''under this paragraph''.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§3705. Submission of other information

(a) AUTHORITY TO REQUIRE SUBMISSION.—When certified cost or pricing data are not required to be submitted under this chapter for a contract, subcontract, or modification of a contract or subcontract, the offeror shall be required to submit to the contracting officer data other than certified cost or pricing data (if requested by the contracting officer), to the extent necessary to determine the reasonableness of the price of the contract, subcontract, or modification of the contract or subcontract. Except in the case of a contract or subcontract covered by the exceptions in section 3703(a)(1) of this title, the contracting officer shall require that the data submitted include, at a minimum, appropriate information on the prices at which the same item

or similar items have previously been sold that is adequate for evaluating the reasonableness of the price for the procurement. If the contracting officer determines that the offeror does not have access to and cannot provide sufficient information on prices for the same or similar items to determine the reasonableness of price, the contracting officer shall require the submission of information on prices for similar levels of work or effort on related products or services, prices for alternative solutions or approaches, and other information that is relevant to the determination of a fair and reasonable price. Contracting officers shall not determine the price of a contract or subcontract to be fair and reasonable based solely on historical prices paid by the Government.

(b) INELIGIBILITY FOR AWARD.—(1) In the event the contracting officer is unable to determine proposed prices are fair and reasonable by any other means, an offeror who fails to make a good faith effort to comply with a reasonable request to submit data in accordance with subsection (a) is ineligible for award unless the head of the contracting activity, or the designee of the head of contracting activity, determines that it is in the best interest of the Government to make the award to that offeror, based on consideration of pertinent factors, including the following:

(A) The effort to obtain the data.

(B) Availability of other sources of supply of the item or service.

(C) The urgency or criticality of the Government's need for the item or service.

(D) Reasonableness of the price of the contract, subcontract, or modification of the contract or subcontract based on information available to the contracting officer.

(E) Rationale or justification made by the offeror for not providing the requested data.

(F) Risk to the Government if award is not made.

(2)(A) Any new determination made by the head of the contracting activity under paragraph (1) shall be reported to the Principal Director, Defense Pricing and Contracting on a quarterly basis.

(B) The Under Secretary of Defense for Acquisition and Sustainment, or a designee, shall produce an annual report identifying offerors that have denied multiple requests for submission of uncertified cost or pricing data over the preceding three-year period, but nevertheless received an award. The report shall identify products or services offered by such offerors that should undergo should-cost analysis. The Secretary of Defense may include a notation on such offerors in the system used by the Federal Government to monitor or record contractor past performance. The Under Secretary shall assess the extent to which these offerors are sole source providers within the defense industrial base and shall develop strategies to incentivize new entrants into the industrial base to increase the availability of other sources of supply for the product or service.

(c) LIMITATIONS ON AUTHORITY.—The Federal Acquisition Regulation shall include the following provisions regarding the types of information that contracting officers may require under subsection (a):

(1) Reasonable limitations on requests for sales data relating to commercial products or commercial services.

(2) A requirement that a contracting officer limit, to the maximum extent practicable, the scope of any request for information relating to commercial products or commercial services from an offeror to only that information that is in the form regularly maintained by the offeror in commercial operations.

(3) A statement that any information received relating to commercial products or commercial services that is exempt from disclosure under section 552(b) of title 5 shall not be disclosed by the Federal Government.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1831(a), (f), Jan. 1, 2021, 134 Stat. 4209, 4213.)

CODIFICATION

The text of subsec. (d) of section 2306a of this title, which was transferred to this section and amended by Pub. L. 116–283, § 1831(f), was based on Pub. L. 103–355, title I, § 1204, Oct. 13, 1994, 108 Stat. 3275; Pub. L. 104–106, div. D, title XLII, § 4201(a)(1) ,Feb. 10, 1996, 110 Stat. 650; Pub. L. 105–261, div. A, title VIII, § 808(a), Oct. 17, 1998, 112 Stat. 2085; Pub. L. 114–92, div. A, title VIII, § 852(e), 853, Nov. 25, 2015, 129 Stat. 918; Pub. L. 115–91, div. A, title VIII, § 811(b), Dec. 12, 2017, 131 Stat. 1459; Pub. L. 115–232, div. A, title VIII, § 836(c)(5)(B), Aug. 13, 2018, 132 Stat. 1865, as amended by Pub. L. 116–283, div. A, title X, § 1081(d)(4)(B)(i), Jan. 1, 2021, 134 Stat. 3874; Pub. L. 116–92, div. A, title VIII, § 803, Dec. 20, 2019, 133 Stat. 1483.

AMENDMENTS

2021—Pub. L. 116–283, § 1831(f)(1), transferred subsec. (d) of section 2306a of this title to this section, struck out subsec. (d) designation and heading ''Submission of Other Information'' at beginning, and redesignated pars. (1) to (3) as subsecs. (a) to (c), respectively, and realigned margins.

Subsec. (a). Pub. L. 116–283, § 1831(f)(2), after redesignation of section 2306a(d)(1) of this title as subsec. (a) of this section, substituted ''under this chapter'' for ''under this section'' and ''section 3703(a)(1) of this title'' for ''subsection (b)(1)(A)''.

Subsec. (b). Pub. L. 116–283, § 1831(f)(3)(A), (B)(i), (C)(i), after redesignation of section 2306a(d)(2) of this title as subsec. (b) of this section, redesignated subpar. (A) and its cls. (i) to (vi) as par. (1) and subpars. (A) to (F), respectively, and redesignated subpar. (B) and its cls. (i) and (ii) as par. (2) and subpars. (A) and (B), respectively.

Subsec. (b)(1). Pub. L. 116–283, § 1831(f)(3)(B)(ii), substituted ''subsection (a)'' for ''paragraph (1)'' in introductory provisions.

Subsec. (b)(2)(A). Pub. L. 116–283, § 1831(f)(3)(C)(ii), substituted ''paragraph (1)'' for ''subparagraph (A)''.

Subsec. (c). Pub. L. 116–283, § 1831(f)(4), after redesignation of section 2306a(d)(3) of this title as subsec. (c) of this section, redesignated subpars. (A) to (C) as pars. (1) to (3), respectively, and substituted ''under subsection (a)'' for ''under paragraph (1)'' in introductory provisions.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 3706. Price reductions for defective cost or pricing data

(a) PROVISION REQUIRING ADJUSTMENT.—

(1) IN GENERAL.—A prime contract (or change or modification to a prime contract) under which a certificate under section 3702(b) of this title is required shall contain a provision that the price of the contract to the United States, including profit or fee, shall be adjusted to exclude any significant amount by which it may be determined by the head of the agency that such price was increased because the contractor (or any subcontractor required to make available such a certificate) submitted defective cost or pricing data.

(2) WHAT CONSTITUTES DEFECTIVE COST OR PRICING DATA.—For the purposes of this chapter, defective cost or pricing data are cost or pricing data which, as of the date of agreement on the price of the contract (or another date agreed upon between the parties), were inaccurate, incomplete, or noncurrent. If for purposes of the preceding sentence the parties agree upon a date other than the date of agreement on the price of the contract, the date agreed upon by the parties shall be as close to the date of agreement on the price of the contract as is practicable.

(b) VALID DEFENSE.—In determining for purposes of a contract price adjustment under a contract provision required by subsection (a) whether, and to what extent, a contract price was increased because the contractor (or a subcontractor) submitted defective cost or pricing data, it shall be a defense that the United States did not rely on the defective data submitted by the contractor or subcontractor.

(c) INVALID DEFENSES.—It is not a defense to an adjustment of the price of a contract under a contract provision required by subsection (a) that—

(1) the price of the contract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted by the contractor or subcontractor because the contractor or subcontractor—

(A) was the sole source of the property or services procured; or

(B) otherwise was in a superior bargaining position with respect to the property or services procured;

(2) the contracting officer should have known that the cost and pricing data in issue were defective even though the contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the contracting officer;

(3) the contract was based on an agreement between the contractor and the United States about the total cost of the contract and there was no agreement about the cost of each item procured under such contract; or

(4) the prime contractor or subcontractor did not submit a certification of cost and pricing data relating to the contract as required under section 3702(b) of this title.

(d) OFFSETS.—

(1) WHEN ALLOWED.—A contractor shall be allowed to offset an amount against the amount of a contract price adjustment under a contract provision required by subsection (a) if—

(A) the contractor certifies to the contracting officer (or to a designated representative of the contracting officer) that, to the best of the contractor's knowledge and belief, the contractor is entitled to the offset; and

(B) the contractor proves that the cost or pricing data were available before the date of agreement on the price of the contract (or price of the modification) or, if applicable consistent with subsection (a)(2), another date agreed upon between the parties, and that the data were not submitted as specified in section 3702(c) of this title before such date.

(2) A contractor shall not be allowed to offset an amount otherwise authorized to be offset under paragraph (1) if—

(A) the certification under section 3702(b) of this title with respect to the cost or pricing data involved was known to be false when signed; or

(B) the United States proves that, had the cost or pricing data referred to in paragraph (1)(B) been submitted to the United States before the date of agreement on the price of the contract (or price of the modification) or, if applicable consistent with subsection (a)(2), another date agreed upon between the parties, the submission of such cost or pricing data would not have resulted in an increase in that price in the amount to be offset.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1831(a), (g), Jan. 1, 2021, 134 Stat. 4209, 4214.)

CODIFICATION

The text of subsec. (e) of section 2306a of this title, which was transferred to this section and amended by Pub. L. 116–283, § 1831(g), was based on Pub. L. 99–500, § 101(c) [title X, § 952(a)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–166, and Pub. L. 99–591, § 101(c) [title X, § 952(a)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–166; Pub. L. 99–661, div. A, title IX, formerly title IV, § 952(a), Nov. 14, 1986, 100 Stat. 3945, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; Pub. L. 103–355, title I, § 1204(1), Oct. 13, 1994, 108 Stat. 3275; Pub. L. 104–106, div. D, title XLIII, § 4321(b)(7)(B), Feb. 10, 1996, 110 Stat. 672. Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661 added identical sections. Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

AMENDMENTS

2021—Pub. L. 116–283, § 1831(g)(1), transferred subsec. (e) of section 2306a of this title to this section, struck out subsec. (e) designation and heading ''Price Reductions for Defective Cost or Pricing Data'' at beginning, and redesignated pars. (1) to (4) as subsecs. (a) to (d), resepectively.

Subsec. (a). Pub. L. 116–283, § 1831(g)(2), after redesignation of section 2306a(e)(1) of this title as subsec. (a) of this section, inserted subsec. heading, redesignated subpar. (A) as par. (1), inserted heading, and substituted ''section 3702(b) of this title'' for ''subsection (a)(2)'', and redesignated subpar. (B) as par. (2), inserted heading, and substituted ''of this chapter'' for ''of this section''.

Subsec. (b). Pub. L. 116–283, § 1831(g)(3), after redesignation of section 2306a(e)(2) of this title as subsec. (b) of this section, inserted heading and substituted ''subsection (a)'' for ''paragraph (1)''.

Subsec. (c). Pub. L. 116–283, § 1831(g)(4)(A)–(D), after redesignation of section 2306a(e)(3) of this title as subsec. (c) of this section, inserted heading, redesignated subpar. (A), and its cls. (i) and (ii), and subpars. (B) to

(D) as par. (1), subpars. (A) and (B), and pars. (2) to (4), respectively, and substituted ''subsection (a)'' for ''paragraph (1)'' in introductory provisions.

Subsec. (c)(4). Pub. L. 116–283, § 1831(g)(4)(E), substituted ''section 3702(b) of this title'' for ''subsection (a)(2)''.

Subsec. (d). Pub. L. 116–283, § 1831(g)(5)(A)–(C), after redesignation of section 2306a(e)(4) of this title as subsec. (d) of this section, inserted heading, substituted ''subsection (a)'' for ''paragraph (1)'' in introductory provisions, and redesignated subpars. (A) and (B) as pars. (1) and (2), respectively.

Subsec. (d)(1). Pub. L. 116–283, § 1831(g)(5)(A), (B), (D), inserted heading, substituted ''subsection (a)'' for ''paragraph (1)'' in introductory provisions, and redesignated cls. (i) and (ii) of former section 2306a(e)(4)(A) as subpars. (A) and (B), respectively.

Subsec. (d)(1)(B). Pub. L. 116–283, § 1831(g)(5)(E), substituted ''subsection (a)(2)'' for ''paragraph (1)(B)'' and ''section 3702(c) of this title'' for ''subsection (a)(3)''.

Subsec. (d)(2). Pub. L. 116–283, § 1831(g)(5)(F)(i), (ii), substituted ''paragraph (1)'' for ''subparagraph (A)'' in introductory provisions and redesignated cls. (i) and (ii) of former section 2306a(e)(4)(B) as subpars. (A) and (B), respectively.

Subsec. (d)(2)(A). Pub. L. 116–283, § 1831(g)(5)(F)(iii), substituted ''section 3702(b) of this title'' for ''subsection (a)(2)''.

Subsec. (d)(2)(B). Pub. L. 116–283, § 1831(g)(5)(F)(iv), substituted ''in paragraph (1)(B)'' for ''in subparagraph (A)(ii)'' and ''with subsection (a)(2)'' for ''with paragraph (1)(B)''.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 3707. Interest and penalties for certain overpayments

(a) IN GENERAL.—If the United States makes an overpayment to a contractor under a contract subject to this chapter and the overpayment was due to the submission by the contractor of defective cost or pricing data, the contractor shall be liable to the United States—

(1) for interest on the amount of such overpayment, to be computed—

(A) for the period beginning on the date the overpayment was made to the contractor and ending on the date the contractor repays the amount of such overpayment to the United States; and

(B) at the current rate prescribed by the Secretary of the Treasury under section 6621 of the Internal Revenue Code of 1986; and

(2) if the submission of such defective data was a knowing submission, for an additional amount equal to the amount of the overpayment.

(b) LIABILITY NOT AFFECTED BY REFUSAL TO SUBMIT CERTIFICATION.—Any liability under this section of a contractor that submits cost or pricing data but refuses to submit the certification required by section 3702(b) of this title with respect to the cost or pricing data shall not be affected by the refusal to submit such certification.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1831(a), (h), Jan. 1, 2021, 134 Stat. 4209, 4216.)

REFERENCES IN TEXT

Section 6621 of the Internal Revenue Code of 1986, referred to in subsec. (a)(1)(B), is classified to section 6621 of Title 26, Internal Revenue Code.

CODIFICATION

The text of subsec. (f) of section 2306a of this title, which was transferred to this section and amended by Pub. L. 116–283, § 1831(h), was based on Pub. L. 99–500, § 101(c) [title X, § 952(a)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–166, and Pub. L. 99–591, § 101(c) [title X, § 952(a)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–166; Pub. L. 99–661, div. A, title IX, formerly title IV, § 952(a), Nov. 14, 1986, 100 Stat. 3945, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; Pub. L. 100–180, div. A, title VIII, § 804(b)(2), Dec. 4, 1987, 101 Stat. 1125; Pub. L. 102–190, div. A, title X, § 1061(a)(9), Dec. 5, 1991, 105 Stat. 1472; Pub. L. 103–355, title I, §§ 1204(1), 1209, Oct. 13, 1994, 108 Stat. 3275, 3277. Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661 added identical sections. Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

AMENDMENTS

2021—Pub. L. 116–283, § 1832(h)(1), transferred subsec. (f) of section 2306a of this title to this section, redesignated it as subsec. (a), and redesignated par. (2) as subsec. (b).

Subsec. (a). Pub. L. 116–283, § 1831(h)(2), after redesignation of section 2306a(f) of this title as subsec. (a) of this section, in heading, substituted ''In General'' for ''Interest and Penalties for Certain Overpayments'', in introductory provisions, struck out par. (1) designation at beginning and substituted ''this chapter'' for ''this section'', and redesignated subpar. (A), its cls. (i) and (ii), and subpar. (B) as par. (1), subpars. (A) and (B), and par. (2), respectively. Amendment was executed to this section, which is section 3707, to reflect the probable intent of Congress, notwithstanding directory language amending ''such section 3706''.

Subsec. (b). Pub. L. 116–283, § 1831(h)(3), after redesignation of section 2306a(f)(2) of this title as subsec. (b) of this section, inserted heading and substituted ''this section'' for ''this subsection'' and ''section 3702(b) of this title'' for ''subsection (a)(2)''. Amendment was executed to this section, which is section 3707, to reflect the probable intent of Congress, notwithstanding directory language amending ''such section 3706''.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 3708. Right to examine contractor records

For the purpose of evaluating the accuracy, completeness, and currency of cost or pricing data required to be submitted by this chapter, the head of an agency shall have the authority provided by section 3841(b)(2) of this title.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1831(a), (i), Jan. 1, 2021, 134 Stat. 4209, 4216.)

CODIFICATION

The text of subsec. (g) of section 2306a of this title, which was transferred to this section and amended by Pub. L. 116–283, § 1831(i), was based on Pub. L. 103–355, title I, § 1205, Oct. 13, 1994, 108 Stat. 3276.

AMENDMENTS

2021—Pub. L. 116–283, § 1831(i), transferred subsec. (g) of section 2306a of this title to this section, struck out subsec. (g) designation and heading ''Right of United

States To Examine Contractor Records'' at beginning, and substituted ''this chapter'' for ''this section'' and ''section 3841(b)(2)'' for ''section 2313(a)(2)''.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

CHAPTER 272—OTHER PROVISIONS RELATING TO COST OR PRICING DATA

Sec.
3721. Evaluating the reasonableness of price: guidance and training.
3722. Grants of exceptions to cost or pricing data certification requirements and waivers of cost accounting standards.
3723. Streamlining awards for innovative technology projects: pilot program.
3724. Risk-based contracting for smaller contract actions under Truth in Negotiations Act: pilot program.[1]

§ 3721. Evaluating the reasonableness of price: guidance and training

[Reserved].

(Added Pub. L. 116–283, div. A, title XVIII, § 1831(k), Jan. 1, 2021, 134 Stat. 4217.)

PRIOR PROVISIONS

A prior section 3721, act Aug. 10, 1956, ch. 1041, 70A Stat. 214; Pub. L. 85–861, § 1(92)(A), Sept. 2, 1958, 72 Stat. 1482, related to hospital benefits for members of Army, other than of Regular Army, prior to repeal by Pub. L. 99–661, div. A, title VI, § 604(f)(1)(A), (g), Nov. 14, 1986, 100 Stat. 3877, 3878, applicable with respect to persons who, after Nov. 14, 1986, incur or aggravate an injury, illness, or disease or die.

EFFECTIVE DATE

Section effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 3722. Grants of exceptions to cost or pricing data certification requirements and waivers of cost accounting standards

[Reserved].

(Added Pub. L. 116–283, div. A, title XVIII, § 1831(k), Jan. 1, 2021, 134 Stat. 4217.)

PRIOR PROVISIONS

A prior section 3722, acts Aug. 10, 1956, ch. 1041, 70A Stat. 214; Sept. 2, 1958, Pub. L. 85–861, § 1(92)(B), (C), 72 Stat. 1482, related to hospital and related benefits for members of a Citizens' Military Training Camp and for members of Army not covered by section 3721 of this title, prior to repeal by Pub. L. 99–661, div. A, title VI, § 604(f)(1)(A), (g), Nov. 14, 1986, 100 Stat. 3877, 3878, applicable with respect to persons who, after Nov. 14, 1986, incur or aggravate an injury, illness, or disease or die.

EFFECTIVE DATE

Section effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

[1] So in original. Does not conform to section catchline.

§ 3723. Streamlining awards for innovative technology projects: pilot program

[Reserved].

(Added Pub. L. 116–283, div. A, title XVIII, § 1831(k), Jan. 1, 2021, 134 Stat. 4217.)

PRIOR PROVISIONS

A prior section 3723 was renumbered section 7263 of this title.

EFFECTIVE DATE

Section effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 3724. Risk-based contracting for smaller contract actions under truth in negotiations act:[1] pilot program

[Reserved].

(Added Pub. L. 116–283, div. A, title XVIII, § 1831(k), Jan. 1, 2021, 134 Stat. 4217.)

EFFECTIVE DATE

Section effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

CHAPTER 273—ALLOWABLE COSTS

Subchapter		Sec.
I.	General	3741
II.	Other Allowable Cost Provisions	3761

PRIOR PROVISIONS

A prior chapter 273 ''ALLOWABLE COSTS'', as added by Pub. L. 115–232, div. A, title VIII, § 801(a), Aug. 13, 2018, 132 Stat. 1828, and consisting of reserved section 3741, was repealed by Pub. L. 116–283, div. A, title XVIII, § 1832(a), Jan. 1, 2021, 134 Stat. 4217.

SUBCHAPTER I—GENERAL

Sec.
3741. Definitions.
3742. Adjustment of threshold amount of covered contract.
3743. Effect of submission of unallowable costs.
3744. Specific costs not allowable.
3745. Required regulations.
3746. Applicability of regulations to subcontractors.
3747. Contractor certification.
3748. Penalties for submission of cost known as not allowable.
3749. Burden of proof on contractor.
3750. Proceeding costs not allowable.

§ 3741. Definitions

In this subchapter:

(1) COMPENSATION.—The term ''compensation'', for a year, means the total amount of wages, salary, bonuses and deferred compensation for the year, whether paid, earned, or otherwise accruing, as recorded in an employer's cost accounting records for the year.

(2) COVERED CONTRACT.—The term ''covered contract'' means a contract for an amount in

[1] So in original. Probably should be ''Truth in Negotiations Act:''.

excess of $500,000 that is entered into by the head of an agency, except that such term does not include a fixed-price contract without cost incentives or any firm fixed-price contract for the purchase of commercial products or commercial services.

(3) FISCAL YEAR.—The term ''fiscal year'' means a fiscal year established by a contractor for accounting purposes.

(4) HEAD OF THE AGENCY.—The term ''head of the agency'' or ''agency head'' does not include the Secretary of a military department.

(5) AGENCY.—The term ''agency'' means the Department of Defense, the Coast Guard, and the National Aeronautics and Space Administration.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1832(a), (b)(1)–(3), Jan. 1, 2021, 134 Stat. 4218.)

CODIFICATION

The text of pars. (1)(A), (2)–(4), and (6) of subsec. (*l*) of section 2324 of this title, which were transferred to this section and amended by Pub. L. 116–283, § 1832(b)(1)–(3), was based on Pub. L. 103–355, title II, § 2101(d), Oct. 13, 1994, 108 Stat. 3308; Pub. L. 105–85, div. A, title VIII, § 808(a)(2), Nov. 18, 1997, 111 Stat. 1836; Pub. L. 115–232, div. A, title VIII, § 836(c)(9), Aug. 13, 2018, 132 Stat. 1866.

PRIOR PROVISIONS

A prior section 3741 was renumbered section 7271 of this title.

AMENDMENTS

2021—Pub. L. 116–283, § 1832(b)(1)–(3), redesignated pars. (4), (1)(A), (6), (2), and (3) of section 2324(*l*) of this title as pars. (1) to (5), respectively, of this section and inserted headings.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 3742. Adjustment of threshold amount of covered contract

Effective on October 1 of each year that is divisible by five, the amount set forth in section 3741(2) of this title shall be adjusted in accordance with section 1908 of title 41.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1832(a), (b)(4), Jan. 1, 2021, 134 Stat. 4218, 4219.)

CODIFICATION

The text of par. (1)(B) of subsec. (*l*) of section 2324 of this title, which was transferred to this section and amended by Pub. L. 116–283, § 1832(b)(4), was based on Pub. L. 103–355, title II, § 2101(d), Oct. 13, 1994, 108 Stat. 3308; Pub. L. 115–91, div. A, title VIII, § 811(e), Dec. 12, 2017, 131 Stat. 1460.

PRIOR PROVISIONS

A prior section 3742 was renumbered section 7272 of this title.

AMENDMENTS

2021—Pub. L. 116–283, § 1832(b)(4), transferred subpar. (B) of section 2324(*l*)(1) of this title to this section, struck out subpar. (B) designation at beginning, and substituted ''section 3741(2) of this title'' for ''subparagraph (A)''.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 3743. Effect of submission of unallowable costs

(a) INDIRECT COST THAT VIOLATES A FAR COST PRINCIPLE.—The head of an agency shall require that a covered contract provide that if the contractor submits to the agency a proposal for settlement of indirect costs incurred by the contractor for any period after such costs have been accrued and if that proposal includes the submission of a cost which is unallowable because the cost violates a cost principle in the Federal Acquisition Regulation or applicable agency supplement to the Federal Acquisition Regulation, the cost shall be disallowed.

(b) PENALTY FOR VIOLATION OF COST PRINCIPLE.—

(1) If the head of the agency determines that a cost submitted by a contractor in its proposal for settlement is expressly unallowable under a cost principle referred to in subsection (a) that defines the allowability of specific selected costs, the head of the agency shall assess a penalty against the contractor in an amount equal to—

(A) the amount of the disallowed cost allocated to covered contracts for which a proposal for settlement of indirect costs has been submitted; plus

(B) interest (to be computed based on provisions in the Federal Acquisition Regulation) to compensate the United States for the use of any funds which a contractor has been paid in excess of the amount to which the contractor was entitled.

(2) COST DETERMINED TO BE UNALLOWABLE BEFORE PROPOSAL SUBMITTED.—If the head of the agency determines that a proposal for settlement of indirect costs submitted by a contractor includes a cost determined to be unallowable in the case of such contractor before the submission of such proposal, the head of the agency shall assess a penalty against the contractor in an amount equal to two times the amount of the disallowed cost allocated to covered contracts for which a proposal for settlement of indirect costs has been submitted.

(c) WAIVER OF PENALTY.—The Federal Acquisition Regulation shall provide for a penalty under subsection (b) to be waived in the case of a contractor's proposal for settlement of indirect costs when—

(1) the contractor withdraws the proposal before the formal initiation of an audit of the proposal by the Federal Government and resubmits a revised proposal;

(2) the amount of unallowable costs subject to the penalty is insignificant; or

(3) the contractor demonstrates, to the contracting officer's satisfaction, that—

(A) it has established appropriate policies and personnel training and an internal con-

trol and review system that provide assurances that unallowable costs subject to penalties are precluded from being included in the contractor's proposal for settlement of indirect costs; and

(B) the unallowable costs subject to the penalty were inadvertently incorporated into the proposal.

(d) APPLICABILITY OF CONTRACT DISPUTES PROCEDURE TO DISALLOWANCE OF COST AND ASSESSMENT OF PENALTY.—An action of the head of an agency under subsection (a) or (b)—

(1) shall be considered a final decision for the purposes of section 7103 of title 41; and

(2) is appealable in the manner provided in section 7104(a) of title 41.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1832(a), (c), Jan. 1, 2021, 134 Stat. 4218, 4219.)

CODIFICATION

The text of subsec. (a) of section 2324 of this title, which was transferred to this section by Pub. L. 116–283, § 1832(c)(1), was based on Pub. L. 99–145, title IX, § 911(a)(1), Nov. 8, 1985, 99 Stat. 682; Pub. L. 102–484, div. A, title VIII, § 818(a)(1)(A), Oct. 23, 1992, 106 Stat. 2457; Pub. L. 103–355, title II, § 2101(a), Oct. 13, 1994, 108 Stat. 3306.

The text of subsec. (b) of section 2324 of this title, which was transferred to this section and amended by Pub. L. 116–283, § 1832(c), was based on Pub. L. 99–145, title IX, § 911(a)(1), Nov. 8, 1985, 99 Stat. 682; Pub. L. 102–484, div. A, title VIII, § 818(a)(1)(B), (2), Oct. 23, 1992, 106 Stat. 2457, 2458; Pub. L. 103–355, title II, § 2101(a)(2), Oct. 13, 1994, 108 Stat. 3306.

The text of subsec. (c) of section 2324 of this title, which was transferred to this section by Pub. L. 116–283, § 1832(c)(1), was based on Pub. L. 102–484, div. A, title VIII, § 818(a)(5), Oct. 23, 1992, 106 Stat. 2458; Pub. L. 103–355, title II, § 2101(a)(3), Oct. 13, 1994, 108 Stat. 3307.

The text of subsec. (d) of section 2324 of this title, which was transferred to this section by Pub. L. 116–283, § 1832(c)(1), was based on Pub. L. 99–145, title IX, § 911(a)(1), Nov. 8, 1985, 99 Stat. 683; Pub. L. 102–484, div. A, title VIII, § 818(a)(4), Oct. 23, 1992, 106 Stat. 2458; Pub. L. 103–355, title II, § 2101(a)(4), Oct. 13, 1994, 108 Stat. 3307; Pub. L. 111–350, § 5(b)(19)(A), (B), Jan. 4, 2011, 124 Stat. 3844.

PRIOR PROVISIONS

A prior section 3743 was renumbered section 7273 of this title.

AMENDMENTS

2021—Pub. L. 116–283, § 1832(c)(1), transferred subsecs. (a) to (d) of section 2324 of this title to this section.

Subsec. (b). Pub. L. 116–283, § 1832(c)(2), realigned margins of pars. (1) and (2) and inserted par. (2) heading.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 3744. Specific costs not allowable

(a) SPECIFIC COSTS.—The following costs are not allowable under a covered contract:

(1) Costs of entertainment, including amusement, diversion, and social activities and any costs directly associated with such costs (such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities).

(2) Costs incurred to influence (directly or indirectly) legislative action on any matter pending before Congress, a State legislature, or a legislative body of a political subdivision of a State.

(3) Costs incurred in defense of any civil or criminal fraud proceeding or similar proceeding (including filing of any false certification) brought by the United States where the contractor is found liable or has pleaded nolo contendere to a charge of fraud or similar proceeding (including filing of a false certification).

(4) Payments of fines and penalties resulting from violations of, or failure to comply with, Federal, State, local, or foreign laws and regulations, except when incurred as a result of compliance with specific terms and conditions of the contract or specific written instructions from the contracting officer authorizing in advance such payments in accordance with applicable provisions of the Federal Acquisition Regulation.

(5) Costs of membership in any social, dining, or country club or organization.

(6) Costs of alcoholic beverages.

(7) Contributions or donations, regardless of the recipient.

(8) Costs of advertising designed to promote the contractor or its products.

(9) Costs of promotional items and memorabilia, including models, gifts, and souvenirs.

(10) Costs for travel by commercial aircraft which exceed the amount of the standard commercial fare.

(11) Costs incurred in making any payment (commonly known as a ''golden parachute payment'') which is—

(i) in an amount in excess of the normal severance pay paid by the contractor to an employee upon termination of employment; and

(ii) is paid to the employee contingent upon, and following, a change in management control over, or ownership of, the contractor or a substantial portion of the contractor's assets.

(12) Costs of commercial insurance that protects against the costs of the contractor for correction of the contractor's own defects in materials or workmanship.

(13) Costs of severance pay paid by the contractor to foreign nationals employed by the contractor under a service contract performed outside the United States, to the extent that the amount of severance pay paid in any case exceeds the amount paid in the industry involved under the customary or prevailing practice for firms in that industry providing similar services in the United States, as determined under the Federal Acquisition Regulation.

(14) Costs of severance pay paid by the contractor to a foreign national employed by the contractor under a service contract performed in a foreign country if the termination of the employment of the foreign national is the result of the closing of, or the curtailment of activities at, a United States military facility in

that country at the request of the government of that country.

(15) Costs incurred by a contractor in connection with any criminal, civil, or administrative proceeding commenced by the United States or a State, to the extent provided in section 3750 of this title.

(16)[1] Costs of compensation of any contractor employee for a fiscal year, regardless of the contract funding source, to the extent that such compensation exceeds $625,000 adjusted annually for the U.S. Bureau of Labor Statistics Employment Cost Index for total compensation for private industry workers, by occupational and industry group not seasonally adjusted, except that the Secretary of Defense may establish exceptions for positions in the science, technology, engineering, mathematics, medical, and cybersecurity fields and other fields requiring unique areas of expertise upon a determination that such exceptions are needed to ensure that the Department of Defense has continued access to needed skills and capabilities.

(16)[1] Costs of compensation of contractor and subcontractor employees for a fiscal year, regardless of the contract funding source, to the extent that such compensation exceeds $487,000 per year, adjusted annually to reflect the change in the Employment Cost Index for all workers, as calculated by the Bureau of Labor Statistics, except that the head of an executive agency may establish one or more narrowly targeted exceptions for scientists, engineers, or other specialists upon a determination that such exceptions are needed to ensure that the executive agency has continued access to needed skills and capabilities.

(17) Costs incurred by a contractor in connection with a congressional investigation or inquiry into an issue that is the subject matter of a proceeding resulting in a disposition as described in section 3750(c) of this title.

(b) WAIVER OF SEVERANCE PAY RESTRICTIONS FOR FOREIGN NATIONALS.—

(1) HEAD OF AN AGENCY DETERMINATION.—Pursuant to the Federal Acquisition Regulation and subject to the availability of appropriations, the head of an agency awarding a covered contract (other than a contract to which subsection (d) applies) may waive the application of the provisions of subsections (a)(13) and (a)(14) to that contract if the head of the agency determines that—

(A) the application of such provisions to the contract would adversely affect the continuation of a program, project, or activity that provides significant support services for members of the armed forces stationed or deployed outside the United States;

(B) the contractor has taken (or has established plans to take) appropriate actions within the contractor's control to minimize the amount and number of incidents of the payment of severance pay by the contractor to employees under the contract who are foreign nationals; and

(C) the payment of severance pay is necessary in order to comply with a law that is generally applicable to a significant number of businesses in the country in which the foreign national receiving the payment performed services under the contract or is necessary to comply with a collective bargaining agreement.

(2) SOLICITATION TO INCLUDE STATEMENT ABOUT WAIVER.—The head of an agency shall include in the solicitation for a covered contract a statement indicating—

(A) that a waiver has been granted under paragraph (1) for the contract; or

(B) whether the head of the agency will consider granting such a waiver, and, if the agency head will consider granting a waiver, the criteria to be used in granting the waiver.

(3) DETERMINATION TO BE MADE BEFORE CONTRACT AWARDED.—The head of an agency shall make the final determination regarding whether to grant a waiver under paragraph (1) with respect to a covered contract before award of the contract.

(c) ESTABLISHMENT OF DEFINITIONS, EXCLUSIONS, LIMITATIONS, AND QUALIFICATIONS.—The provisions of the Federal Acquisition Regulation implementing this subchapter may establish appropriate definitions, exclusions, limitations, and qualifications.

(d) SPECIFIC COSTS UNDER MILITARY BANKING CONTRACTS RELATING TO FOREIGN NATIONALS.—

(1) AUTHORITY.—The Secretary of Defense may provide in a military banking contract that the provisions of subsections (a)(13) and (a)(14) shall not apply to costs incurred under the contract by the contractor for payment of mandated foreign national severance pay. The Secretary may include such a provision in a military banking contract only if the Secretary determines, with respect to that contract, that the contractor has taken (or has established plans to take) appropriate actions within the contractor's control to minimize the amount and number of incidents of the payment of severance pay by the contractor to employees under the contract who are foreign nationals.

(2) DEFINITIONS.—In paragraph (1):

(A) MILITARY BANKING CONTRACT.—The term ''military banking contract'' means a contract between the Secretary and a financial institution under which the financial institution operates a military banking facility outside the United States for use by members of the armed forces stationed or deployed outside the United States and other authorized personnel.

(B) MANDATED FOREIGN NATIONAL SEVERANCE PAY.—The term ''mandated foreign national severance pay'' means severance pay paid by a contractor to a foreign national employee the payment of which by the contractor is required in order to comply with a law that is generally applicable to a significant number of businesses in the country in which the foreign national receiving the payment performed services under the contract.

(3) EXCEPTION FOR FOREIGN-OWNED FINANCIAL INSTITUTIONS.—Paragraph (1) does not apply to

[1] So in original. There are two pars. (16).

a contract with a financial institution that is owned or controlled by citizens or nationals of a foreign country, as determined by the Secretary of Defense. Such a determination shall be made in accordance with the criteria set out in paragraph (1) of section 4(g) of the Buy American Act (as added by section 7002(2) of the Omnibus Trade and Competitiveness Act of 1988) and the policy guidance referred to in paragraph (2)(A) of that section.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1832(a), (d), Jan. 1, 2021, 134 Stat. 4218, 4219.)

REFERENCES IN TEXT

Section 4 of the Buy American Act (as added by section 7002(2) of the Omnibus Trade and Competitiveness Act of 1988), referred to in subsec. (d)(3), was section 4 of act Mar. 3, 1933, ch. 212, title III, as added Pub. L. 100–418, title VII, § 7002(2), Aug. 23, 1988, 102 Stat. 1545. Section 4, which was classified to section 10b–1 of former Title 41, Public Contracts, was omitted from the Code in view of section 7004 of Pub. L. 100–418 which provided that the amendment by Pub. L. 100–418 which enacted section 4 ceased to be effective on Apr. 30, 1996. Section 4 was subsequently repealed by Pub. L. 111–350, § 7(b), Jan. 4, 2011, 124 Stat. 3855, which Act enacted Title 41, Public Contracts.

CODIFICATION

The text of subsec. (e) of section 2324 of this title, which was transferred to this section and amended by Pub. L. 116–283, § 1832(d), was based on Pub. L. 99–145, title IX, § 911(a)(1), Nov. 8, 1985, 99 Stat. 683; Pub. L. 99–190, § 101(b) [title VIII, § 8112(a)(1)], Dec. 19, 1985, 99 Stat. 1185, 1223; Pub. L. 100–180, div. A, title VIII, § 805(a), Dec. 4, 1987, 101 Stat. 1126; Pub. L. 100–370, § 1(f)(2)(A), July 19, 1988, 102 Stat. 846; Pub. L. 100–456, div. A, title III, § 322(a), title VIII, § 832(a), Sept. 29, 1988, 102 Stat. 1952, 2023; Pub. L. 100–700, § 8(b)(1), Nov. 19, 1988, 102 Stat. 4636; Pub. L. 101–189, div. A, title III, § 311(a)(1), Nov. 29, 1989, 103 Stat. 1411; Pub. L. 101–510, div. A, title XIII, § 1301(10), Nov. 5, 1990, 104 Stat. 1668; Pub. L. 102–190, div. A, title III, § 346(a), Dec. 5, 1991, 105 Stat. 1346; Pub. L. 102–484, div. A, title XIII, § 1352(b), Oct. 23, 1992, 106 Stat. 2559; Pub. L. 103–355, title II, § 2101(a)(5), (b), Oct. 13, 1994, 108 Stat. 3307, 3308; Pub. L. 104–106, div. D, title XLIII, § 4321(b)(9)(A), Feb. 10, 1996, 110 Stat. 672; Pub. L. 105–85, div. A, title VIII, § 808(a)(1), Nov. 18, 1997, 111 Stat. 1836; Pub. L. 111–350, § 5(b)(19)(C), (D), Jan. 4, 2011, 124 Stat. 3844; Pub. L. 112–81, div. A, title VIII, § 803(a), Dec. 31, 2011, 125 Stat. 1485; Pub. L. 113–66, div. A, title VIII, § 811(a), Dec. 26, 2013, 127 Stat. 806; Pub. L. 113–67, div. A, title VII, § 702(a)(2), Dec. 26, 2013, 127 Stat. 1189; Pub. L. 113–291, div. A, title VIII, § 857, Dec. 19, 2014, 128 Stat. 3460.

PRIOR PROVISIONS

A prior section 3744 was renumbered section 7274 of this title.

AMENDMENTS

2021—Pub. L. 116–283, § 1832(d)(1), transferred subsec. (e) of section 2324 of this title to this section, struck out subsec. (e) designation and heading ''Specific Costs Not Allowable'' at beginning, and redesignated pars. (1), (3), (4), and (2) as subsecs. (a) to (d), respectively.

Subsec. (a). Pub. L. 116–283, § 1832(d)(2)(A), (B), after redesignation of par. (1) of section 2324(e) of this title as subsec. (a) of this section, inserted heading and redesignated subpars. (A) to (Q) as pars. (1) to (17), respectively, including two subpars. (P) both redesignated par. (16).

Subsec. (a)(15). Pub. L. 116–283, § 1832(d)(2)(C), substituted ''section 3750 of this title'' for ''subsection (k)''.

Subsec. (a)(17). Pub. L. 116–283, § 1832(d)(2)(D), substituted ''section 3750(c) of this title'' for ''subsection (k)(2)''.

Subsec. (b). Pub. L. 116–283, § 1832(d)(3)(A), (B), after redesignation of par. (3) of section 2324(e) of this title as subsec. (b) of this section, inserted heading and redesignated subpars. (A) to (C) as pars. (1) to (3), respectively.

Subsec. (b)(1). Pub. L. 116–283, § 1832(d)(3)(A), (C), inserted heading, substituted ''subsection (d)'' for ''paragraph (2)'' and ''subsections (a)(13) and (a)(14)'' for ''paragraphs (1)(M) and (1)(N)'' in introductory provisions, and redesignated cls. (i) to (iii) of former section 2324(e)(3)(A) as subpars. (A) to (C), respectively.

Subsec. (b)(2). Pub. L. 116–283, § 1832(d)(3)(D), inserted heading, realigned margin, redesignated cls. (i) and (ii) of former section 2324(e)(3)(B) as subpars. (A) and (B), respectively, and, in subpar. (A), substituted ''paragraph (1)'' for ''subparagraph (A)''.

Subsec. (b)(3). Pub. L. 116–283, § 1832(d)(3)(E), inserted heading, realigned margin, and substituted ''paragraph (1)'' for ''subparagraph (A)''.

Subsec. (c). Pub. L. 116–283, § 1832(d)(4), after redesignation of par. (4) of section 2324(e)(3) of this title as subsec. (c) of this section, inserted heading and substituted ''this subchapter'' for ''this section''.

Subsec. (d). Pub. L. 116–283, § 1832(d)(5)(A), (B), after redesignation of par. (2) of section 2324(e)(3) of this title as subsec. (d) of this section, inserted heading, redesignated subpars. (A) to (C) as pars. (1) to (3), respectively, and realigned margins.

Subsec. (d)(1). Pub. L. 116–283, § 1832(d)(5)(A), (C), inserted heading and substituted ''subsections (a)(13) and (a)(14)'' for ''paragraphs (1)(M) and (1)(N)''.

Subsec. (d)(2). Pub. L. 116–283, § 1832(d)(5)(D), inserted par. heading, substituted ''paragraph (1)'' for ''subparagraph (A)'' in introductory provisions, redesignated cls. (i) and (ii) of former section 2324(e)(2)(B) as subpars. (A) and (B), respectively, and inserted subpar. headings.

Subsec. (d)(3). Pub. L. 116–283, § 1832(d)(5)(E), inserted heading and substituted ''Paragraph (1)'' for ''Subparagraph (A)''.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 3745. Required regulations

(a) IN GENERAL.—The Federal Acquisition Regulation shall contain provisions on the allowability of contractor costs. Such provisions shall define in detail and in specific terms those costs which are unallowable, in whole or in part, under covered contracts.

(b) SPECIFIC ITEMS.—The regulations shall, at a minimum, clarify the cost principles applicable to contractor costs of the following:

(1) Air shows.

(2) Membership in civic, community, and professional organizations.

(3) Recruitment.

(4) Employee morale and welfare.

(5) Actions to influence (directly or indirectly) executive branch action on regulatory and contract matters (other than costs incurred in regard to contract proposals pursuant to solicited or unsolicited bids).

(6) Community relations.

(7) Dining facilities.

(8) Professional and consulting services, including legal services.

(9) Compensation.

(10) Selling and marketing.

(11) Travel.

(12) Public relations.

(13) Hotel and meal expenses.

(14) Expense of corporate aircraft.

(15) Company-furnished automobiles.

(16) Advertising.

(17) Conventions.

(c) ADDITIONAL REQUIREMENTS.—

(1) WHEN QUESTIONED COSTS MAY BE RESOLVED.—The Federal Acquisition Regulation shall require that a contracting officer not resolve any questioned costs until he has obtained—

(A) adequate documentation with respect to such costs; and

(B) the opinion of the contract auditor on the allowability of such costs.

(2) PRESENCE OF CONTRACT AUDITOR.—The Federal Acquisition Regulation shall provide that, to the maximum extent practicable, the contract auditor be present at any negotiation or meeting with the contractor regarding a determination of the allowability of indirect costs of the contractor.

(3) SETTLEMENT TO REFLECT AMOUNT OF INDIVIDUAL QUESTIONED COSTS.—The Federal Acquisition Regulation shall require that all categories of costs designated in the report of the contract auditor as questioned with respect to a proposal for settlement be resolved in such a manner that the amount of the individual questioned costs that are paid will be reflected in the settlement.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1832(a), (e), Jan. 1, 2021, 134 Stat. 4218, 4221.)

CODIFICATION

The text of subsec. (f) of section 2324 of this title, which was transferred to this section and amended by Pub. L. 116–283, § 1832(e), was based on Pub. L. 99–145, title IX, § 911(a)(1), Nov. 8, 1985, 99 Stat. 683; Pub. L. 100–456, div. A, title VIII, § 826(a), Sept. 29, 1988, 102 Stat. 1952; Pub. L. 100–463, title VIII, § 8105(a), Oct. 1, 1988, 102 Stat. 2270–36; Pub. L. 100–526, title I, § 106(a)(2), Oct. 24, 1988, 102 Stat. 2625; Pub. L. 102–484, div. A, title X, § 1052(26)(A), Oct. 23, 1992, 106 Stat. 2500; Pub. L. 103–355, title II, § 2101(a)(6), (c), Oct. 13, 1994, 108 Stat. 3307, 3308, as amended by Pub. L. 104–106, div. D, title XLIII, § 4321(a)(5), Feb. 10, 1996, 110 Stat. 671.

Another section 1832(e) of Pub. L. 116–283 amended section 3746 of this title.

PRIOR PROVISIONS

A prior section 3745 was renumbered section 7275 of this title.

AMENDMENTS

2021—Pub. L. 116–283, § 1832(e)(1)(A), transferred subsec. (f) of section 2324 of this title to this section and struck out subsec. (f) designation and heading ''Required Regulations'' at beginning.

Subsec. (a). Pub. L. 116–283, § 1832(e)(1)(B), (2), redesignated first two sentences of par. (1) of section 2324(f) of this title as subsec. (a) of this section and inserted heading. Third sentence designated subsec. (b).

Subsec. (b). Pub. L. 116–283, § 1832(e)(1)(C), (3), designated third sentence of subsec. (a) as subsec. (b), inserted heading, and redesignated subpars. (A) to (Q) as pars. (1) to (17), respectively.

Subsec. (c). Pub. L. 116–283, § 1832(e)(1)(D), (E), (4), redesignated pars. (2) to (4) of section 2324(f) of this title collectively as subsec. (c) of this section and individually as pars. (1) to (3), respectively, thereof, inserted subsec. and par. headings, and realigned margins.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 3746. Applicability of regulations to subcontractors

The regulations referred to in sections 3744 and 3745(a) and (b) of this title shall require prime contractors of a covered contract, to the maximum extent practicable, to apply the provisions of such regulations to all subcontractors of the covered contract.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1832(a), (e), Jan. 1, 2021, 134 Stat. 4218, 4221.)

CODIFICATION

The text of subsec. (g) of section 2324 of this title, which was transferred to this section and amended by Pub. L. 116–283, § 1832(e), was based on Pub. L. 99–145, title IX, § 911(a)(1), Nov. 8, 1985, 99 Stat. 684; Pub. L. 103–355, title II, § 2101(a)(7), Oct. 13, 1994, 108 Stat. 3308.

Another section 1832(e) of Pub. L. 116–283 amended section 3745 of this title.

PRIOR PROVISIONS

A prior section 3746 was renumbered section 7276 of this title.

AMENDMENTS

2021—Pub. L. 116–283, § 1832(e), transferred subsec. (g) of section 2324 of this title to this section, struck out subsec. (g) designation and heading ''Applicability of Regulations to Subcontractors'' at beginning, and substituted ''sections 3744 and 3745(a) and (b) of this title'' for ''subsections (e) and (f)(1)''.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 3747. Contractor certification

(a) CONTENT AND FORM.—A proposal for settlement of indirect costs applicable to a covered contract shall include a certification by an official of the contractor that, to the best of the certifying official's knowledge and belief, all indirect costs included in the proposal are allowable. Any such certification shall be in a form prescribed in the Federal Acquisition Regulation.

(b) WAIVER.—The head of the agency or the Secretary of the military department concerned may, in an exceptional case, waive the requirement for certification under subsection (a) in the case of any contract if the head of the agency or the Secretary—

(1) determines in such case that it would be in the interest of the United States to waive such certification; and

(2) states in writing the reasons for that determination and makes such determination available to the public.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1832(a), (f), Jan. 1, 2021, 134 Stat. 4218, 4221.)

CODIFICATION

The text of subsec. (h) of section 2324 of this title, which was transferred to this section and amended by Pub. L. 116–283, §1832(f), was based on Pub. L. 99–145, title IX, §911(a)(1), Nov. 8, 1985, 99 Stat. 684; Pub. L. 99–190, §101(b) [title VIII, §8112(a)(2)], Dec. 19, 1985, 99 Stat. 1185, 1223; Pub. L. 103–355, title II, §2101(a)(8), Oct. 13, 1994, 108 Stat. 3308; Pub. L. 104–106, div. D, title XLIII, §4321(b)(9)(B), Feb. 10, 1996, 110 Stat. 672.

PRIOR PROVISIONS

A prior section 3746 was renumbered section 7276 of this title.

AMENDMENTS

2021—Pub. L. 116–283, §1832(f)(1)(A), transferred subsec. (h) of section 2324 of this title to this section and struck out subsec. (h) designation and heading ''Contractor Certification Required'' at beginning.

Subsec. (a). Pub. L. 116–283, §1832(f)(1)(B), (2), redesignated par. (1) of section 2324(h) of this title as subsec. (a) of this section and inserted heading.

Subsec. (b). Pub. L. 116–283, §1832(f)(1)(B), (3), redesignated par. (2) of section 2324(h) of this title as subsec. (b) of this section, inserted heading, substituted ''subsection (a)'' for ''paragraph (1)'' in introductory provisions, and redesignated subpars. (A) and (B) as pars. (1) and (2), respectively.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 3748. Penalties for submission of cost known as not allowable

The submission to an agency of a proposal for settlement of costs for any period after such costs have been accrued that includes a cost that is expressly specified by statute or regulation as being unallowable, with the knowledge that such cost is unallowable, shall be subject to the provisions of section 287 of title 18 and section 3729 of title 31.

(Added and amended Pub. L. 116–283, div. A, title XVIII, §1832(a), (g), Jan. 1, 2021, 134 Stat. 4218, 4222.)

CODIFICATION

The text of subsec. (i) of section 2324 of this title, which was transferred to this section and amended by Pub. L. 116–283, §1832(g), was based on Pub. L. 99–145, title IX, §911(a)(1), Nov. 8, 1985, 99 Stat. 684; Pub. L. 103–355, title II, §2101(a)(9), Oct. 13, 1994, 108 Stat. 3308.

PRIOR PROVISIONS

A prior section 3748 was renumbered section 7278 of this title.

AMENDMENTS

2021—Pub. L. 116–283, §1832(g), transferred subsec. (i) of section 2324 of this title to this section and struck out subsec. (i) designation and heading ''Penalties for Submission of Cost Known as Not Allowable'' at beginning.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 3749. Burden of proof on contractor

In a proceeding before the Armed Services Board of Contract Appeals, the United States Court of Federal Claims, or any other Federal court in which the reasonableness of indirect costs for which a contractor seeks reimbursement from the Department of Defense is in issue, the burden of proof shall be upon the contractor to establish that those costs are reasonable.

(Added and amended Pub. L. 116–283, div. A, title XVIII, §1832(a), (h), Jan. 1, 2021, 134 Stat. 4218, 4222.)

CODIFICATION

The text of subsec. (j) of section 2324 of this title, which was transferred to this section and amended by Pub. L. 116–283, §1832(h), was based on Pub. L. 100–370, §1(f)(3)(A), July 19, 1988, 102 Stat. 846; Pub. L. 103–355, title II, §2101(a)(10), Oct. 13, 1994, 108 Stat. 3308.

PRIOR PROVISIONS

A prior section 3749 was renumbered section 7279 of this title.

AMENDMENTS

2021—Pub. L. 116–283, §1832(h), transferred subsec. (j) of section 2324 of this title to this section and struck out subsec. (j) designation and heading ''Contractor To Have Burden of Proof'' at beginning.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 3750. Proceeding costs not allowable

(a) DEFINITIONS.—In this section:

(1) COSTS.—The term ''costs'', with respect to a proceeding—

(A) means all costs incurred by a contractor or subcontractor, or personal services contractor, whether before or after the commencement of any such proceeding; and

(B) includes—

(i) administrative and clerical expenses;

(ii) the cost of legal services, including legal services performed by an employee of the contractor or subcontractor, or personal services contractor;

(iii) the cost of the services of accountants and consultants retained by the contractor or subcontractor, or personal services contractor; and

(iv) the pay of directors, officers, and employees of the contractor or subcontractor, or personal services contractor for time devoted by such directors, officers, and employees to such proceeding.

(2) PENALTY.—The term ''penalty'' does not include restitution, reimbursement, or compensatory damages.

(3) PROCEEDINGS.—The term ''proceeding'' includes an investigation.

(b) IN GENERAL.—Except as otherwise provided in this section, costs incurred by a contractor or subcontractor, or personal services contractor in connection with any criminal, civil, or ad-

ministrative proceeding commenced by the United States, by a State, or by a contractor or subcontractor, or personal services contractor employee submitting a complaint under section 4701 of this title are not allowable as reimbursable costs under a covered contract, subcontract, or personal services contract if the proceeding—

(1) relates to a violation of, or failure to comply with, a Federal or State statute or regulation or to any other activity described in section 4701(a)(1) of this title; and

(2) results in a disposition described in subsection (c).

(c) COVERED DISPOSITIONS.—A disposition referred to in subsection (b)(2) is any of the following:

(1) In the case of a criminal proceeding, a conviction (including a conviction pursuant to a plea of nolo contendere) by reason of the violation or failure referred to in subsection (b).

(2) In the case of a civil or administrative proceeding involving an allegation of fraud or similar misconduct, a determination of contractor or subcontractor, or personal services contractor liability on the basis of the violation or failure referred to in subsection (b).

(3) In the case of any civil or administrative proceeding, the imposition of a monetary penalty or an order to take corrective action under section 4701 of this title by reason of the violation or failure referred to in subsection (b).

(4) A final decision—

(A) to debar or suspend the contractor or subcontractor, or personal services contractor;

(B) to rescind or void the contract, subcontract, or personal services contract; or

(C) to terminate the contract, subcontract, or personal services contract for default;

by reason of the violation or failure referred to in subsection (b).

(5) A disposition of the proceeding by consent or compromise if such action could have resulted in a disposition described in paragraphs (1), (2), (3), or (4).

(d) COSTS ALLOWED BY SETTLEMENT AGREEMENT IN PROCEEDING COMMENCED BY UNITED STATES.—In the case of a proceeding referred to in subsection (b) that is commenced by the United States and is resolved by consent or compromise pursuant to an agreement entered into by a contractor or subcontractor, or personal services contractor and the United States, the costs incurred by the contractor or subcontractor, or personal services contractor in connection with such proceeding that are otherwise not allowable as reimbursable costs under such subsection may be allowed to the extent specifically provided in such agreement.

(e) COSTS SPECIFICALLY AUTHORIZED IN PROCEEDING COMMENCED BY STATE.—In the case of a proceeding referred to in subsection (b) that is commenced by a State, the head of the agency or Secretary of the military department concerned that awarded the covered contract, subcontract, or personal services contract involved in the proceeding may allow the costs incurred by the contractor or subcontractor, or personal services contractor in connection with such proceeding as reimbursable costs if the agency head or Secretary determines, in accordance with the Federal Acquisition Regulation, that the costs were incurred as a result of (1) a specific term or condition of the contract, subcontract, or personal services contract, or (2) specific written instructions of the agency or military department.

(f) OTHER ALLOWABLE COSTS.—

(1) IN GENERAL.—Except as provided in paragraph (3), costs incurred by a contractor or subcontractor, or personal services contractor in connection with a criminal, civil, or administrative proceeding commenced by the United States or a State in connection with a covered contract, subcontract, or personal services contract may be allowed as reimbursable costs under the contract, subcontract, or personal services contract if such costs are not disallowable under subsection (b), but only to the extent provided in paragraph (2).

(2) AMOUNT OF ALLOWABLE COSTS.—

(A) MAXIMUM AMOUNT ALLOWED.—The amount of the costs allowable under paragraph (1) in any case may not exceed the amount equal to 80 percent of the amount of the costs incurred, to the extent that such costs are determined to be otherwise allowable and allocable under the Federal Acquisition Regulation.

(B) CONTENT OF REGULATIONS.—Regulations issued for the purpose of subparagraph (A) shall provide for appropriate consideration of—

(i) the complexity of procurement litigation;

(ii) generally accepted principles governing the award of legal fees in civil actions involving the United States as a party; and

(iii) such other factors as may be appropriate.

(3) WHEN OTHERWISE ALLOWABLE COSTS ARE NOT ALLOWABLE.—In the case of a proceeding referred to in paragraph (1), contractor or subcontractor, or personal services contractor costs otherwise allowable as reimbursable costs under this subsection are not allowable if—

(A) such proceeding involves the same contractor or subcontractor, or personal services contractor misconduct alleged as the basis of another criminal, civil, or administrative proceeding; and

(B) the costs of such other proceeding are not allowable under paragraph (1).[1]

(Added and amended Pub. L. 116–283, div. A, title XVIII, §1832(a), (i), Jan. 1, 2021, 134 Stat. 4218, 4222.)

REFERENCES IN TEXT

Paragraph (1), referred to in subsec. (f)(3)(B), probably should be a reference to subsec. (b) of this section, which had formerly been par. (1) of section 2324(k) of this title prior to transfer to this section and redesignation as subsec. (b) by Pub. L. 116–283. For amendments substituting other similar references throughout this section, see 2021 Amendment notes below.

[1] See References in Text note below.

CODIFICATION

The text of subsec. (k) of section 2324 of this title, which was transferred to this section and amended by Pub. L. 116–283, §1832(i), was based on Pub. L. 100–700, §8(b), Nov. 19, 1988, 102 Stat. 4636; Pub. L. 101–189, div. A, title VIII, §853(a)(1)(A), (b)(3), Nov. 29, 1989, 103 Stat. 1518; Pub. L. 103–355, title II, §2101(a)(11), Oct. 13, 1994, 108 Stat. 3308; Pub. L. 112–239, div. A, title VIII, §827(g), Jan. 2, 2013, 126 Stat. 1836; Pub. L. 114–261, §1(b)(1), Dec. 14, 2016, 130 Stat. 1362.

PRIOR PROVISIONS

Prior sections 3750 to 3756 were renumbered sections 7280 to 7286 of this title, respectively.

AMENDMENTS

2021—Subsec. (a). Pub. L. 116–283, §1832(i)(1)(A), (B), redesignated par. (6) of section 2324(k) of this title as subsec. (a) of this section, inserted heading, substituted ''In this section'' for ''In this subsection'' in introductory provisions, and redesignated subpars. (B), (C), and (A) as pars. (1) to (3), respectively.

Subsec. (a)(1). Pub. L. 116–283, §1832(i)(1)(C), inserted heading and redesignated cls. (i) and (ii) and its subcls. (I) to (IV) as subpars. (A) and (B) and cls. (i) to (iv), respectively.

Subsec. (a)(2), (3). Pub. L. 116–283, §1832(i)(1)(D), (E), inserted heading.

Subsec. (b). Pub. L. 116–283, §1832(i)(2), (3), redesignated par. (1) of subsec. (k) of section 2324 of this title as subsec. (b) of this section, inserted heading, substituted ''this section'' for ''this subsection'' and ''section 4701'' for ''section 2409'', redesignated inline subpars. (A) and (B) as pars. (1) and (2), respectively, and reformatted text, and substituted ''in section 4701(a)(1)'' for ''in subparagraphs (A) through (C) of section 2409(a)(1)'' in par. (1) and ''subsection (c)'' for ''paragraph (2)''in par. (2).

Subsec. (c). Pub. L. 116–283, §1832(i)(2), (4)(A)–(D), redesignated par. (2) of section 2324(k) of this title as subsec. (c) of this section, inserted heading, substituted ''subsection (b)(2)'' for ''paragraph (1)(B)'' in introductory provisions, and ''subsection (b)'' for ''paragraph (1)'' wherever appearing, and redesignated subpars. (A) to (E) as pars. (1) to (5), respectively.

Subsec. (c)(3). Pub. L. 116–283, §1832(i)(4)(E), substituted ''section 4701'' for ''section 2409''.

Subsec. (c)(4). Pub. L. 116–283, §1832(i)(4)(F), redesignated cls. (i) to (iii) as subpars. (A) to (C), respectively.

Subsec. (c)(5). Pub. L. 116–283, §1832(i)(4)(G), substituted ''paragraphs (1), (2), (3), or (4)'' for ''subparagraph (A), (B), (C), or (D)''.

Subsec. (d). Pub. L. 116–283, §1832(i)(2), (5), redesignated par. (3) of section 2324(k) of this title as subsec. (d) of this section, inserted heading, and substituted ''subsection (b)'' for ''paragraph (1)'' and ''such subsection'' for ''such paragraph''.

Subsec. (e). Pub. L. 116–283, §1832(i)(2), (6), redesignated par. (4) of section 2324(k) of this title as subsec. (e) of this section, inserted heading, and substituted ''subsection (b)'' for ''paragraph (1)'', ''(1)'' for ''(A)'', and ''(2)'' for ''(B)''.

Subsec. (f). Pub. L. 116–283, §1832(i)(2), (7)(A), (B), redesignated par. (5) of section 2324(k) of this title as subsec. (f) of this section, inserted heading, and redesignated subpars. (A) to (C) as pars. (1) to (3), respectively, and realigned margins.

Subsec. (f)(1). Pub. L. 116–283, §1832(i)(7)(A), (C), inserted heading and substituted ''paragraph (3)'' for ''subparagraph (C)'', ''subsection (b)'' for ''paragraph (1)'', and ''paragraph (2)'' for ''subparagraph (B)''.

Subsec. (f)(2). Pub. L. 116–283, §1832(i)(7)(D)(i), (ii), inserted heading and redesignated cls. (i) and (ii) as subpars. (A) and (B), respectively.

Subsec. (f)(2)(A). Pub. L. 116–283, §1832(i)(7)(D)(i), (iii), inserted heading and substituted ''paragraph (1)'' for ''subparagraph (A)''.

Subsec. (f)(2)(B). Pub. L. 116–283, §1832(i)(7)(D)(iv), (E), inserted heading, substituted ''subparagraph (A)'' for ''clause (i)'', inserted dash after ''consideration of'', and reorganized remainder of existing text into designated cls. (i) to (iii).

Subsec. (f)(3). Pub. L. 116–283, §1832(i)(7)(F), inserted heading, substituted ''paragraph (1)'' for ''subparagraph (A)'' and ''under this subsection'' for ''under this paragraph'', inserted dash after ''not allowable if'', and redesignated inline cls. (i) and (ii) as subpars. (A) and (B), respectively, and reformatted text.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

SUBCHAPTER II—OTHER ALLOWABLE COST PROVISIONS

Sec.
3761. Restructuring costs.
3762. Independent research and development costs: allowable costs.
3763. Bid and proposal costs: allowable costs.
3764. Excessive pass-through charges.[1]
3765. Institutions of higher education: reimbursement of indirect costs under Department of Defense contracts.[1]

§ 3761. Restructuring costs

(a) LIMITATION ON PAYMENT OF RESTRUCTURING COSTS.—The Secretary of Defense may not pay, under subchapter I, a defense contractor for restructuring costs associated with a business combination of the contractor that occurs after November 18, 1997, unless the Secretary determines in writing either—

(1) that the amount of projected savings for the Department of Defense associated with the restructuring will be at least twice the amount of the costs allowed; or

(2) that the amount of projected savings for the Department of Defense associated with the restructuring will exceed the amount of the costs allowed and that the business combination will result in the preservation of a critical capability that otherwise might be lost to the Department.

(b) LIMITATION ON DELEGATION.—The Secretary may not delegate the authority to make a determination under subsection (a), with respect to a business combination, to an official of the Department of Defense—

(1) below the level of an Assistant Secretary of Defense for cases in which the amount of restructuring costs is expected to exceed $25,000,000 over a 5-year period; or

(2) below the level of the Director of the Defense Contract Management Agency for all other cases.

(c) DEFINITION.—In this section, the term ''business combination'' includes a merger or acquisition.

(Added Pub. L. 105–85, div. A, title VIII, §804(a)(1), Nov. 18, 1997, 111 Stat. 1832, §2325; amended Pub. L. 106–65, div. A, title X, §1066(a)(19), Oct. 5, 1999, 113 Stat. 771; Pub. L. 108–375, div. A, title VIII, §819, Oct. 28, 2004, 118

[1] So in original. There is no section 3764 or 3765.

Stat. 2016; Pub. L. 112–239, div. A, title X, § 1076(g)(2), Jan. 2, 2013, 126 Stat. 1955; renumbered § 3761 and amended Pub. L. 116–283, div. A, title XVIII, § 1832(j)(2), (3), Jan. 1, 2021, 134 Stat. 4225.)

AMENDMENTS

2021—Pub. L. 116–283, § 1832(j)(2), renumbered section 2325 of this title as this section.

Subsec. (a). Pub. L. 116–283, § 1832(j)(3)(B), (E), in introductory provisions, struck out par. (1) designation before ''The Secretary'' and substituted ''subchapter I'' for ''section 2324 of this title'' and redesignated subpars. (A) and (B) as pars. (1) and (2), respectively. Former par. (2) of subsec. (a) redesignated subsec. (b).

Subsec. (b). Pub. L. 116–283, § 1832(j)(3)(C)–(E), redesignated par. (2) of subsec. (a) as subsec. (b), inserted heading, substituted ''subsection (a)'' for ''paragraph (1)'' in introductory provisions, and redesignated subpars. (A) and (B) as pars. (1) and (2), respectively. Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 116–283, § 1832(j)(3)(A), redesignated subsec. (b) as (c).

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 3762. Independent research and development costs: allowable costs

(a) REGULATIONS.—The Secretary of Defense shall prescribe regulations governing the payment by the Department of Defense of expenses incurred by contractors for independent research and development costs. Such regulations shall provide that expenses incurred for independent research and development shall be reported independently from other allowable indirect costs.

(b) COSTS TREATED AS FAIR AND REASONABLE, AND ALLOWABLE, EXPENSES.—The regulations prescribed under subsection (a) shall provide that independent research and development costs shall be considered a fair and reasonable, and allowable, indirect expense on Department of Defense contracts.

(c) ADDITIONAL CONTROLS.—Subject to subsection (d), the regulations prescribed under subsection (a) may include the following provisions:

(1) Controls on the reimbursement of costs to the contractor for expenses incurred for independent research and development to ensure that such costs were incurred for independent research and development.

(2) Implementation of regular methods for transmission—

(A) from the Department of Defense to contractors, in a reasonable manner, of timely and comprehensive information regarding planned or expected needs of the Department of Defense for future technology and advanced capability; and

(B) from contractors to the Department of Defense, in a reasonable manner, of information regarding progress by the contractor on the independent research and development programs of the contractor.

(d) LIMITATIONS ON REGULATIONS.—Regulations prescribed under subsection (a) may not include provisions that would infringe on the independence of a contractor to choose which technologies to pursue in its independent research and development program if the chief executive officer of the contractor determines that expenditures will advance the needs of the Department of Defense for future technology and advanced capability as transmitted pursuant to subsection (c)(2)(A).

(e) EFFECTIVE DATE.—The regulations prescribed under subsection (a) shall apply to indirect costs incurred on or after October 1, 2017.

(Added Pub. L. 101–510, div. A, title VIII, § 824(a)(1), Nov. 5, 1990, 104 Stat. 1603, § 2372; amended Pub. L. 102–25, title VII, § 701(c), Apr. 6, 1991, 105 Stat. 113; Pub. L. 102–190, div. A, title VIII, § 802(a)(1), Dec. 5, 1991, 105 Stat. 1412; Pub. L. 102–484, div. A, title X, § 1052(27), Oct. 23, 1992, 106 Stat. 2500; Pub. L. 103–35, title II, § 201(c)(5), May 31, 1993, 107 Stat. 98; Pub. L. 104–106, div. D, title XLIII, § 4321(b)(11), Feb. 10, 1996, 110 Stat. 672; Pub. L. 114–328, div. A, title VIII, § 824(a)(1), Dec. 23, 2016, 130 Stat. 2277; Pub. L. 115–91, div. A, title X, § 1081(a)(35), Dec. 12, 2017, 131 Stat. 1596; renumbered § 3762, Pub. L. 116–283, div. A, title XVIII, § 1832(j)(2), Jan. 1, 2021, 134 Stat. 4225.)

AMENDMENTS

2021—Pub. L. 116–283 renumbered section 2372 of this title as this section.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 3763. Bid and proposal costs: allowable costs

(a) REGULATIONS.—The Secretary of Defense shall prescribe regulations governing the payment by the Department of Defense of expenses incurred by contractors for bid and proposal costs. Such regulations shall provide that expenses incurred for bid and proposal costs shall be reported independently from other allowable indirect costs.

(b) COSTS ALLOWABLE AS INDIRECT EXPENSES.—The regulations prescribed under subsection (a) shall provide that bid and proposal costs shall be allowable as indirect expenses on covered contracts, as defined in section 3741 of this title, to the extent that those costs are allocable, reasonable, and not otherwise unallowable by law or under the Federal Acquisition Regulation.

(c) GOAL FOR REIMBURSABLE BID AND PROPOSAL COSTS.—The Secretary shall establish a goal each fiscal year limiting the amount of reimbursable bid and proposal costs paid by the Department of Defense to an amount equal to not more than one percent of the total aggregate industry sales to the Department of Defense. To achieve such goal, the Secretary may not limit the payment of allowable bid and proposal costs for the covered year.

(d) PANEL.—(1) If the Department of Defense exceeds the goal established under subsection (c) for a fiscal year, within 180 days after exceeding the goal, the Secretary shall establish an advisory panel. The panel shall be supported by the Defense Acquisition University and the National

Defense University, including administrative support.

(2) The panel shall be composed of nine individuals who are recognized experts in acquisition and procurement policy appointed by the Secretary. In making such appointments, the Secretary shall ensure that the members of the panel reflect diverse experiences in the public and private sector.

(3) The panel shall review laws, regulations, and practices that contribute to the expenses incurred by contractors for bids and proposals in the fiscal year concerned and recommend changes to such laws, regulations, and practices that may reduce expenses incurred by contractors for bids and proposals.

(4)(A) Not later than six months after the establishment of the panel, the panel shall submit to the Secretary and the congressional defense committees an interim report on the findings of the panel.

(B) Not later than one year after the establishment of the panel, the panel shall submit to the Secretary and the congressional defense committees a final report on the findings of the panel.

(5) The panel shall terminate on the day the panel submits the final report under paragraph (4)(B).

(6) The Secretary of Defense may use amounts available in the Department of Defense Acquisition Workforce Development Fund established under section 1705 of this title to support the activities of the panel established under this subsection.

(e) EFFECTIVE DATE.—The regulations prescribed under subsection (a) shall apply to indirect costs incurred on or after October 1, 2017.

(Added Pub. L. 114–328, div. A, title VIII, § 824(b)(1), Dec. 23, 2016, 130 Stat. 2278, § 2372a; renumbered § 3763 and amended Pub. L. 116–283, div. A, title XVIII, § 1832(j)(2), (4), Jan. 1, 2021, 134 Stat. 4225.)

AMENDMENTS

2021—Pub. L. 116–283, § 1832(j)(2), renumbered section 2372a of this title as this section.

Subsec. (b). Pub. L. 116–283, § 1832(j)(4), substituted ''section 3741'' for ''section 2324(*l*)''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

CHAPTER 275—PROPRIETARY CONTRACTOR DATA AND RIGHTS IN TECHNICAL DATA

Subchapter		Sec.
I.	Rights in Technical Data	3771
II.	Validation of Proprietary Data Restrictions	3781
III.	Other Provisions Relating to Proprietary Contractor Data and Rights in Technical Data	3791

PRIOR PROVISIONS

A prior chapter 275 ''PROPRIETARY CONTRACTOR DATA AND TECHNICAL DATA'', as added by Pub. L. 115–232, div. A, title VIII, § 801(a), Aug. 13, 2018, 132 Stat. 1828, and consisting of reserved section 3771, was repealed by Pub. L. 116–283, div. A, title XVIII, § 1833(a)(1), Jan. 1, 2021, 134 Stat. 4225.

SUBCHAPTER I—RIGHTS IN TECHNICAL DATA

Sec.	
3771.	Rights in technical data: regulations.
3772.	Rights in technical data: provisions required in contracts.
3773.	Domestic business concerns: programs for replenishment parts.
3774.	Major weapon systems and subsystems: long-term technical data needs.
3775.	Definitions.

§ 3771. Rights in technical data: regulations

(a) REGULATIONS REQUIRED.—

(1) IN GENERAL.—The Secretary of Defense shall prescribe regulations to define the legitimate interest of the United States and of a contractor or subcontractor in technical data pertaining to an item or process. Such regulations shall be included in regulations of the Department of Defense prescribed as part of the Federal Acquisition Regulation.

(2) OTHER RIGHTS NOT IMPAIRED.—Regulations prescribed under paragraph (1) may not impair—

(A) any right of the United States or of any contractor or subcontractor with respect to patents or copyrights or any other right in technical data otherwise established by law; or

(B) the right of a contractor or subcontractor to receive from a third party a fee or royalty for the use of technical data pertaining to an item or process developed exclusively at private expense by the contractor or subcontractor, except as otherwise specifically provided by law.

(b) REQUIRED PROVISIONS.—Regulations prescribed under subsection (a) shall include the following provisions:

(1) DEVELOPMENT EXCLUSIVELY WITH FEDERAL FUNDS.—In the case of an item or process that is developed by a contractor or subcontractor exclusively with Federal funds (other than an item or process developed under a contract or subcontract to which regulations under section 9(j)(2) of the Small Business Act (15 U.S.C. 638(j)(2)) apply), the United States shall have the unlimited right to—

(A) use technical data pertaining to the item or process; or

(B) release or disclose the technical data to persons outside the government or permit the use of the technical data by such persons.

(2) DEVELOPMENT EXCLUSIVELY AT PRIVATE EXPENSE.—Except as provided in paragraphs (3), (4), and (7), in the case of an item or process that is developed by a contractor or subcontractor exclusively at private expense, the contractor or subcontractor may restrict the right of the United States to release or disclose technical data pertaining to the item or process to persons outside the government or permit the use of the technical data by such persons.

(3) EXCEPTION TO PARAGRAPH (2).—Paragraph (2) does not apply to technical data that—

(A) constitutes a correction or change to data furnished by the United States;

(B) relates to form, fit, or function;

(C) is necessary for operation, maintenance, installation, or training (other than detailed manufacturing or process data, including such data pertaining to a major system component); or

(D) is otherwise publicly available or has been released or disclosed by the contractor or subcontractor without restriction on further release or disclosure.

(4) EXCEPTION TO PARAGRAPH (2).—Notwithstanding paragraph (2), the United States may release or disclose technical data to persons outside the Government, or permit the use of technical data by such persons, if—

(A) such release, disclosure, or use—

(i) is necessary for emergency repair and overhaul;

(ii) is a release, disclosure, or use of technical data pertaining to an interface between an item or process and other items or processes necessary for the segregation of an item or process from, or the reintegration of that item or process (or a physically or functionally equivalent item or process) with, other items or processes; or

(iii) is a release or disclosure of technical data (other than detailed manufacturing or process data) to, or use of such data by, a foreign government that is in the interest of the United States and is required for evaluational or informational purposes;

(B) such release, disclosure, or use is made subject to a prohibition that the person to whom the data is released or disclosed may not further release, disclose, or use such data; and

(C) the contractor or subcontractor asserting the restriction is notified of such release, disclosure, or use.

(5) DEVELOPMENT WITH MIXED FUNDING.—

(A) IN GENERAL.—Except as provided in paragraphs (6) and (7), in the case of an item or process that is developed in part with Federal funds and in part at private expense, the respective rights of the United States and of the contractor or subcontractor in technical data pertaining to such item or process shall be established as early in the acquisition process as practicable (preferably during contract negotiations) and shall be based on negotiations between the United States and the contractor, except in any case in which the Secretary of Defense determines, on the basis of criteria established in the regulations, that negotiations would not be practicable.

(B) FACTORS TO BE CONSIDERED.—The establishment of such rights shall be based upon consideration of all of the following factors:

(i) The statement of congressional policy and objectives in section 200 of title 35, the statement of purposes in section 2(b) of the Small Business Innovation Development Act of 1982 (15 U.S.C. 638 note), and the declaration of policy in section 2 of the Small Business Act (15 U.S.C. 631).

(ii) The interest of the United States in increasing competition and lowering costs by developing and locating alternative sources of supply and manufacture.

(iii) The interest of the United States in encouraging contractors to develop at private expense items for use by the Government.

(iv) Such other factors as the Secretary of Defense may prescribe.

(6) INTERFACES DEVELOPED WITH MIXED FUNDING.—Notwithstanding paragraph (5), the United States shall have government purpose rights in technical data pertaining to an interface between an item or process and other items or processes that was developed in part with Federal funds and in part at private expense, except in any case in which the Secretary of Defense determines, on the basis of criteria established in the regulations, that negotiation of different rights in such technical data would be in the best interest of the United States.

(7) MODULAR SYSTEM INTERFACES DEVELOPED EXCLUSIVELY AT PRIVATE EXPENSE OR WITH MIXED FUNDING.—

(A) Notwithstanding paragraphs (2) and (5), the United States shall have government purpose rights in technical data pertaining to a modular system interface developed exclusively at private expense or in part with Federal funds and in part at private expense and used in a modular open system approach pursuant to section 4401 of this title, except in any case in which the Secretary of Defense determines that negotiation of different rights in such technical data would be in the best interest of the United States.

(B) Such modular system interface shall be identified in the contract solicitation and the contract.

(C) For technical data pertaining to a modular system interface developed exclusively at private expense for which the United States asserts government purpose rights, the Secretary of Defense shall negotiate with the contractor the appropriate and reasonable compensation for such technical data.

(8) LIMITATIONS ON REQUIREMENTS RELATED TO CONTRACTOR OR SUBCONTRACTOR RIGHTS IN TECHNICAL DATA.—A contractor or subcontractor (or a prospective contractor or subcontractor) may not be required, as a condition of being responsive to a solicitation or as a condition for the award of a contract—

(A) to sell or otherwise relinquish to the United States any rights in technical data except—

(i) rights in technical data described in paragraph (1) for which a use or release restriction has been erroneously asserted by a contractor or subcontractor;

(ii) rights in technical data described in paragraph (3); or

(iii) under the conditions described in paragraph (4); or

(B) to refrain from offering to use, or from using, an item or process to which the contractor is entitled to restrict rights in data under paragraph (2).

(9) ACTIONS AUTHORIZED IF NECESSARY TO DEVELOP ALTERNATIVE SOURCES OF SUPPLY AND MANUFACTURE.—The Secretary of Defense may—

(A) negotiate and enter into a contract with a contractor or subcontractor for the acquisition of rights in technical data not otherwise provided under paragraph (3) or (4), if necessary to develop alternative sources of supply and manufacture;

(B) agree to restrict rights in technical data otherwise accorded to the United States under this subchapter if the United States receives a royalty-free license to use, release, or disclose the data for purposes of the United States (including purposes of competitive procurement); or

(C) permit a contractor or subcontractor to license directly to a third party the use of technical data which the contractor is otherwise allowed to restrict, if necessary to develop alternative sources of supply and manufacture.

(c) SECRETARY OF DEFENSE TO DEFINE TERMS.—The Secretary of Defense shall define the terms ''developed'', ''exclusively with Federal funds'', and ''exclusively at private expense'' in regulations prescribed under subsection (a). In defining such terms, the Secretary—

(1) shall specify the manner in which indirect costs shall be treated; and

(2) shall specify that amounts spent for independent research and development and bid and proposal costs shall not be considered to be Federal funds for the purposes of the definitions under this subsection.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1833(a)(1), (b), Jan. 1, 2021, 134 Stat. 4226.)

CODIFICATION

The text of subsec. (a) of section 2320 of this title, which was transferred to this section and amended by Pub. L. 116–283, § 1833(b), was based on Pub. L. 98–525, title XII, § 1216(a), Oct. 19, 1984, 98 Stat. 2595; Pub. L. 98–577, title III, § 301(b), Oct. 30, 1984, 98 Stat. 3076; Pub. L. 99–145, title IX, § 961(d)(1), Nov. 8, 1985, 99 Stat. 703; Pub. L. 99–500, § 101(c) [title X, § 953(a)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–169, and Pub. L. 99–591, § 101(c) [title X, § 953(a)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–169; Pub. L. 99–661, div. A, title IX, formerly title IV, § 953(a), Nov. 14, 1986, 100 Stat. 3949, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; Pub. L. 100–26, § 7(a)(4), Apr. 21, 1987, 101 Stat. 275; Pub. L. 100–180, div. A, title VIII, § 808(a), Dec. 4, 1987, 101 Stat. 1128; Pub. L. 101–189, div. A, title VIII, § 853(b)(2), Nov. 29, 1989, 103 Stat. 1518; Pub. L. 111–383, div. A, title VIII, § 824(b), Jan. 7, 2011, 124 Stat. 4269; Pub. L. 112–81, div. A, title VIII, § 815(a)(1), Dec. 31, 2011, 125 Stat. 1491; Pub. L. 114–328, div. A, title VIII, § 809(a), (b), (e), Dec. 23, 2016, 130 Stat. 2266, 2267; Pub. L. 116–283, div. A, title VIII, § 804(b)(2)(A)(i), Jan. 1, 2021, 134 Stat. 3738. Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661 generally amended section 2320(a) substantially identically; as executed, text reflected amendment by Pub. L. 99–661.

AMENDMENTS

2021—Pub. L. 116–283, § 1833(b)(1), (2)(A), transferred subsec. (a) of section 2320 of this title to this section, effectively redesignated par. (1) as subsec. (a), and redesignated pars. (2) and (3) as subsecs. (b) and (c), respectively.

Subsec. (a). Pub. L. 116–283, § 1833(b)(2)(A), (B)(i), after redesignation of par. (1) of section 2320(a) of this title as subsec. (a) of this section, inserted subsec. heading and, in existing provisions, designated first two sentences as par. (1) and the remainder as par. (2) and inserted par. headings. Amendment designating ''the third sentence as paragraph (2)'' was executed by including the fourth sentence within par. (2) as well, to reflect the probable intent of Congress.

Subsec. (a)(2). Pub. L. 116–283, § 1833(b)(2)(B), substituted ''Regulations prescribed under paragraph (1) may not'' for ''Such regulations may not'', inserted dash after ''impair'', reorganized remainder of text into designated subpars. (A) and (B), and, at end of subpar. (A), substituted ''by law; or'' for ''by law. Such regulations also may not impair''.

Subsec. (b). Pub. L. 116–283, § 1833(b)(3)(A), (B), after redesignation of par. (2) of section 2320(a) of this title as subsec. (b) of this section, inserted heading, substituted ''Regulations prescribed under subsection (a)'' for ''Such regulations'' in introductory provisions, and redesignated subpars. (A) to (I) as pars. (1) to (9), respectively.

Subsec. (b)(1). Pub. L. 116–283, § 1833(b)(3)(C), redesignated cls. (i) and (ii) as subpars. (A) and (B), respectively.

Subsec. (b)(2). Pub. L. 116–283, § 1833(b)(3)(D), substituted ''paragraphs (3), (4), and (7)'' for ''subparagraphs (C), (D), and (G)''.

Subsec. (b)(3). Pub. L. 116–283, § 1833(b)(3)(E), substituted ''paragraph (2)'' for ''subparagraph (b)'' in heading and ''Paragraph (2) does not'' for ''Subparagraph (B) does not'' in introductory provisions and redesignated cls. (i) to (iv) as subpars. (A) to (D), respectively.

Subsec. (b)(4). Pub. L. 116–283, § 1833(b)(3)(F), substituted ''paragraph (2)'' for ''subparagraph (b)'' in heading and ''Notwithstanding paragraph (2)'' for ''Notwithstanding subparagraph (B)'' in introductory provisions and redesignated cl. (i), its subcls. (I) to (III), cl. (ii), and cl. (iii) as subpar. (A), cls. (i) to (iii), subpar. (B), and subpar. (C), respectively.

Subsec. (b)(5). Pub. L. 116–283, § 1833(b)(3)(G), in existing provisions, designated first sentence as subpar. (A), inserted heading, and substituted ''Except as provided in paragraphs (6) and (7),'' for ''Except as provided in subparagraphs (F) and (G),'' and designated second sentence as subpar. (B), inserted heading, and realigned margin.

Subsec. (b)(6). Pub. L. 116–283, § 1833(b)(3)(H), substituted ''paragraph (5)'' for ''subparagraph (E)''.

Subsec. (b)(7). Pub. L. 116–283, § 1833(b)(3)(I), in existing provisions, designated first sentence as subpar. (A) and substituted ''Notwithstanding paragraphs (2) and (5)'' for ''Notwithstanding subparagraphs (B) and (E)'' and ''section 4401'' for ''section 2446a'' and designated second and third sentences as subpars. (B) and (C), respectively.

Subsec. (b)(8). Pub. L. 116–283, § 1833(b)(3)(J)(i), (ii), inserted heading and redesignated cls. (i) and (ii) as subpars. (A) and (B), respectively.

Subsec. (b)(8)(A). Pub. L. 116–283, § 1833(b)(3)(J)(iii)–(vi), redesignated subcl. (I) as cl. (i) and substituted ''paragraph (1)'' for ''subparagraph (A)'', redesignated subcl. (II) as cl. (ii) and substituted ''paragraph (3)'' for ''subparagraph (C)'', and redesignated subcl. (III) as cl. (iii) and substituted ''paragraph (4)'' for ''subparagraph (D)''.

Subsec. (b)(8)(B). Pub. L. 116–283, § 1833(b)(3)(J)(vii), substituted ''paragraph (2)'' for ''subparagraph (B)''.

Subsec. (b)(9). Pub. L. 116–283, § 1833(b)(3)(K), inserted heading, redesignated cl. (i) as subpar. (A) and substituted ''paragraph (3) or (4)'' for ''subparagraph (C) or (D)'', redesignated cl. (ii) as subpar. (B) and substituted ''this subchapter'' for ''this section'', and redesignated cl. (iii) as subpar. (C).

Subsec. (c). Pub. L. 116–283, § 1833(b)(4), inserted heading, substituted ''subsection (a)'' for ''paragraph (1)'' and ''this subsection'' for ''this paragraph'', inserted dash after ''terms, the Secretary'', and reorganized remainder of text into designated pars. (1) and (2).

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed im-

plementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 3772. Rights in technical data: provisions required in contracts

(a) CONTRACT PROVISIONS RELATING TO TECHNICAL DATA.—Regulations prescribed under section 3771 of this title shall require that, whenever practicable, a contract for supplies or services entered into by an agency named in section 3063 of this title contain appropriate provisions relating to technical data, including provisions—

(1) defining the respective rights of the United States and the contractor or subcontractor (at any tier) regarding any technical data to be delivered under the contract and providing that, in the case of a contract for a commercial product, the product shall be presumed to be developed at private expense unless shown otherwise in accordance with section 3784;

(2) specifying the technical data, if any, to be delivered under the contract and delivery schedules for such delivery;

(3) establishing or referencing procedures for determining the acceptability of technical data to be delivered under the contract;

(4) establishing separate contract line items for the technical data, if any, to be delivered under the contract;

(5) to the maximum practicable extent, identifying, in advance of delivery, technical data which is to be delivered with restrictions on the right of the United States to use such data;

(6) requiring the contractor—

(A) to revise any technical data delivered under the contract to reflect engineering design changes made during the performance of the contract and affecting the form, fit, and function of the items specified in the contract; and

(B) to deliver such revised technical data to an agency within a time specified in the contract;

(7) establishing remedies to be available to the United States when technical data required to be delivered or made available under the contract is found—

(A) to be incomplete or inadequate; or

(B) to not satisfy the requirements of the contract concerning technical data;

(8) authorizing the head of the agency to withhold payments under the contract (or exercise such other remedies as the head of the agency considers appropriate) during any period if the contractor does not meet the requirements of the contract pertaining to the delivery of technical data;

(9) providing that, in addition to technical data that is already subject to a contract delivery requirement, the United States may require, until the date occurring six years after acceptance of the last item (other than technical data) under a contract or the date of contract termination, whichever is later, the delivery of technical data that has been generated in the performance of the contract, and compensate the contractor only for reasonable costs incurred for having converted and delivered the data in the required form, upon a determination that—

(A) the technical data is needed for the purpose of reprocurement, sustainment, modification, or upgrade (including through competitive means) of a major system or subsystem thereof, a weapon system or subsystem thereof, or any noncommercial product or process; and

(B) the technical data—

(i) pertains to an item or process developed in whole or in part with Federal funds; or

(ii) is described in paragraphs (4)(A)(ii), (6), and (7) of section 3771(b) of this title; and

(10) providing that the United States is not foreclosed from requiring the delivery of the technical data by a failure to challenge, in accordance with the requirements of section 3782 of this title, the contractor's assertion of a use or release restriction on the technical data.

(b) Nothing in this subchapter or in section 3208 of this title prohibits the Secretary of Defense from—

(1) prescribing standards for determining whether a contract entered into by the Department of Defense shall provide for a time to be specified in the contract after which the United States shall have the right to use (or have used) for any purpose of the United States all technical data required to be delivered to the United States under the contract or providing for such a period of time (not to exceed 7 years) as a negotiation objective;

(2) notwithstanding any limitation upon the license rights conveyed under section 3771 of this title, allowing a covered Government support contractor access to and use of any technical data delivered under a contract for the sole purpose of furnishing independent and impartial advice or technical assistance directly to the Government in support of the Government's management and oversight of the program or effort to which such technical data relates; or

(3) prescribing reasonable and flexible guidelines, including negotiation objectives, for the conduct of negotiations regarding the respective rights in technical data of the United States and the contractor.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1833(a)(1), (c), Jan. 1, 2021, 134 Stat. 4226, 4228.)

CODIFICATION

The text of subsec. (b) of section 2320 of this title, which was transferred to this section, redesignated as subsec. (a), and amended by Pub. L. 116–283, § 1833(c)(1), (2), was based on Pub. L. 98–525, title XII, § 1216(a), Oct. 19, 1984, 98 Stat. 2596; Pub. L. 103–355, title VIII, § 8106(a), Oct. 13, 1994, 108 Stat. 3393; Pub. L. 108–136, div. A, title VIII, § 844, Nov. 24, 2003, 117 Stat. 1553; Pub. L. 112–81, div. A, title VIII, 815(a), Dec. 31, 2011, 125 Stat. 1492; Pub. L. 114–328, div. A, title VIII, § 809(c), Dec. 23, 2016, 130 Stat. 2267; Pub. L. 115–232, div. A, title VIII, § 836(c)(7), Aug. 13, 2018, 132 Stat. 1866.

The text of subsec. (c) of section 2320 of this title, which was transferred to this section, redesignated as

subsec. (b), and amended by Pub. L. 116–283, § 1833(c)(1), (3), was based on Pub. L. 98–525, title XII, § 1216(a), Oct. 19, 1984, 98 Stat. 2596; Pub. L. 100–180, div. A, title VIII, § 808(b), Dec. 4, 1987, 101 Stat. 1130; Pub. L. 111–84, div. A, title VIII, § 821(a), Oct. 28, 2009, 123 Stat. 2411; Pub. L. 111–383, div. A, title VIII, § 801(a)(1), Jan. 7, 2011, 124 Stat. 4253; Pub. L. 112–81, div. A, title VIII, § 802(b)(1), Dec. 31, 2011, 125 Stat. 1485.

AMENDMENTS

2021—Subsec. (a). Pub. L. 116–283, § 1833(c)(1), (2)(A)–(C), redesignated subsec. (b) of section 2320 of this title as subsec. (a) of this section, inserted heading, and substituted ''section 3771 of this title'' for ''subsection (a)'' and ''section 3063'' for ''section 2303'' in introductory provisions.

Subsec. (a)(1). Pub. L. 116–283, § 1833(c)(2)(D), substituted ''section 3784'' for ''section 2321(f)''.

Subsec. (a)(6). Pub. L. 116–283, § 1833(c)(2)(E), inserted dash after ''the contractor'' and reorganized remainder of text into designated subpars. (A) and (B).

Subsec. (a)(7). Pub. L. 116–283, § 1833(c)(2)(F), inserted dash after ''is found'' and reorganized remainder of text into designated subpars. (A) and (B).

Subsec. (a)(9)(B)(ii). Pub. L. 116–283, § 1833(c)(2)(G), substituted ''paragraphs (4)(A)(ii), (6), and (7) of section 3771(b) of this title'' for ''subparagraphs (D)(i)(II), (F), and (G) of subsection (a)(2)''.

Subsec. (a)(10). Pub. L. 116–283, § 1833(c)(2)(H), substituted ''section 3782'' for ''section 2321(d)''.

Subsec. (b). Pub. L. 116–283, § 1833(c)(3)(A), which directed substitution of ''in this subchapter or in section 3208'' for ''in this section or in section 2305(a)'', was executed by making the substitution for ''in this section or in section 2305(d)'' in introductory provisions to reflect the probable intent of Congress.

Pub. L. 116–283, § 1833(c)(1) redesignated subsec. (c) of section 2320 of this title as subsec. (b) of this section.

Subsec. (b)(2). Pub. L. 116–283, § 1833(c)(3)(B), substituted ''section 3771 of this title'' for ''subsection (a)''.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 3773. Domestic business concerns: programs for replenishment parts

The Secretary of Defense shall by regulation establish programs which provide domestic business concerns an opportunity to purchase or borrow replenishment parts from the United States for the purpose of design replication or modification, to be used by such concerns in the submission of subsequent offers to sell the same or like parts to the United States. Nothing in this section limits the authority of the head of an agency to impose restrictions on such a program related to national security considerations, inventory needs of the United States, the improbability of future purchases of the same or like parts, or any additional restriction otherwise required by law.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1833(a)(1), (d), Jan. 1, 2021, 134 Stat. 4226, 4229.)

CODIFICATION

The text of subsec. (d) of section 2320 of this title, which was transferred to this section and amended by Pub. L. 116–283, § 1833(d), was based on Pub. L. 98–525, title XII, § 1216(a), Oct. 19, 1984, 98 Stat. 2597.

AMENDMENTS

2021—Pub. L. 116–283, § 1833(d), transferred subsec. (d) of section 2320 of this title to this section, struck out subsec. (d) designation at beginning, and substituted ''this section'' for ''this subsection''.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 3774. Major weapon systems and subsystems: long-term technical data needs

(a) ASSESSMENTS AND ACQUISITIONS STRATEGIES.—

(1) The Secretary of Defense shall require program managers for major weapon systems and subsystems of major weapon systems to—

(A) assess the long-term technical data needs of such systems and subsystems; and

(B) establish corresponding acquisition strategies that provide for technical data rights needed to sustain such systems and subsystems over their life cycle.

(2) Such strategies may include—

(A) the development of maintenance capabilities within the Department of Defense; or

(B) competition for contracts for sustainment of such systems or subsystems.

(b) REQUIREMENTS RELATING TO ASSESSMENTS AND ACQUISITION STRATEGIES.—Assessments and corresponding acquisition strategies developed under subsection (a) with respect to a weapon system or subsystem shall—

(1) be developed before issuance of a contract solicitation for the weapon system or subsystem;

(2) address the merits of including a priced contract option for the future delivery of technical data that were not acquired upon initial contract award;

(3) address the potential for changes in the sustainment plan over the life cycle of the weapon system or subsystem; and

(4) apply to weapon systems and subsystems that are to be supported by performance-based logistics arrangements as well as to weapons systems and subsystems that are to be supported by other sustainment approaches.

(c) PREFERENCE FOR SPECIALLY NEGOTIATED LICENSES.—

(1) The Secretary of Defense shall, to the maximum extent practicable, negotiate and enter into a contract with a contractor for a specially negotiated license for technical data to support the product support strategy of a major weapon system or subsystem of a major weapon system.

(2) In performing the assessment and developing the corresponding strategy required under subsection (a) for such a system or subsystem, a program manager shall consider the use of specially negotiated licenses to acquire customized technical data appropriate for the particular elements of the product support strategy.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1833(a)(1), (e), Jan. 1, 2021, 134 Stat. 4226, 4229.)

CODIFICATION

The text of subsec. (e) of section 2320 of this title, which was transferred to this section, redesignated as subsecs. (a) and (b), and amended by Pub. L. 116–283, § 1833(e)(1)–(4), was based on Pub. L. 109–364, div. A, title VIII, § 802(a), Oct. 17, 2006, 120 Stat. 2312.

The text of subsec. (f) of section 2320 of this title, which was transferred to this section, redesignated as subsec. (c), and amended by Pub. L. 116–283, § 1833(e)(1), (5), was based on Pub. L. 115–91, div. A, title VIII, § 835(c)(2), Dec. 12, 2017, 131 Stat. 1471.

AMENDMENTS

2021—Subsec. (a). Pub. L. 116–283, § 1833(e)(1), (3)(A), (B), redesignated subsec. (e) of section 2320 of this title as subsec. (a) of this section, inserted heading, and designated first and second sentences of existing provisions as pars. (1) and (2), respectively. Third sentence of subsec. (a) designated subsec. (b).

Subsec. (a)(1). Pub. L. 116–283, § 1833(e)(3)(C), inserted dash after ''major weapon systems to'' and reorganized remainder of text into designated subpars. (A) and (B).

Subsec. (a)(2). Pub. L. 116–283, § 1833(e)(3)(D), inserted dash after ''may include'' and reorganized remainder of text into designated subpars. (A) and (B).

Subsec. (b). Pub. L. 116–283, § 1833(e)(2), (4), designated third sentence of subsec. (a) as subsec. (b), inserted heading, and substituted ''developed under subsection (a) with respect to'' for ''developed under this section with respect to'' in introductory provisions.

Subsec. (c). Pub. L. 116–283, § 1833(e)(1), (5), redesignated subsec. (f) of section 2320 of this title as subsec. (c) of this section, designated first and second sentences of existing provisions as pars. (1) and (2), respectively, and, in par. (2), substituted ''subsection (a)'' for ''subsection (e)''.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 3775. Definitions

(a) COVERED GOVERNMENT SUPPORT CONTRACTOR DEFINED.—In this subchapter, the term ''covered Government support contractor'' means a contractor under a contract the primary purpose of which is to furnish independent and impartial advice or technical assistance directly to the Government in support of the Government's management and oversight of a program or effort (rather than to directly furnish an end item or service to accomplish a program or effort), which contractor—

(1) is not affiliated with the prime contractor or a first-tier subcontractor on the program or effort, or with any direct competitor of such prime contractor or any such first-tier subcontractor in furnishing end items or services of the type developed or produced on the program or effort; and

(2) executes a contract with the Government agreeing to and acknowledging—

(A) that proprietary or nonpublic technical data furnished will be accessed and used only for the purposes stated in that contract;

(B) that the covered Government support contractor will enter into a non-disclosure agreement with the contractor to whom the rights to the technical data belong;

(C) that the covered Government support contractor will take all reasonable steps to protect the proprietary and nonpublic nature of the technical data furnished to the covered Government support contractor during the program or effort for the period of time in which the Government is restricted from disclosing the technical data outside of the Government;

(D) that a breach of that contract by the covered Government support contractor with regard to a third party's ownership or rights in such technical data may subject the covered Government support contractor—

(i) to criminal, civil, administrative, and contractual actions in law and equity for penalties, damages, and other appropriate remedies by the United States; and

(ii) to civil actions for damages and other appropriate remedies by the contractor or subcontractor whose technical data is affected by the breach; and

(E) that such technical data provided to the covered Government support contractor under the authority of this section shall not be used by the covered Government support contractor to compete against the third party for Government or non-Government contracts.

(b) ADDITIONAL DEFINITIONS.—In this subchapter, the terms ''major system component'', ''modular system interface'', and ''modular open system approach'' have the meanings provided in section 4401 of this title.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1833(a)(1), (f), Jan. 1, 2021, 134 Stat. 4226, 4230.)

CODIFICATION

The text of subsec. (g) of section 2320 of this title, which was transferred to this section, redesignated as subsec. (a), and amended by Pub. L. 116–283, § 1833(f)(1), (2)(A), was based on Pub. L. 111–84, div. A, title VIII, § 821(b), Oct. 28, 2009, 123 Stat. 2411; Pub. L. 114–328, div. A, title VIII, § 809(d)(1), Dec. 23, 2016, 130 Stat. 2267; Pub. L. 115–91, div. A, title VIII, § 835(c)(1), Dec. 12, 2017, 131 Stat. 1471.

The text of subsec. (h) of section 2320 of this title, which was transferred to this section, redesignated as subsec. (b), and amended by Pub. L. 116–283, § 1833(f), was based on Pub. L. 114–328, div. A, title VIII, § 809(d)(2), Dec. 23, 2016, 130 Stat. 2267; Pub. L. 115–91, div. A, title VIII, § 835(c)(1), Dec. 12, 2017, 131 Stat. 1471; Pub. L. 116–283, div. A, title VIII, § 804(b)(2)(A)(ii), Jan. 1, 2021, 134 Stat. 3739.

AMENDMENTS

2021—Subsec. (a). Pub. L. 116–283, § 1833(f)(1), (2)(A), redesignated subsec. (g) of section 2320 of this title as subsec. (a) of this section and substituted ''In this subchapter,'' for ''In this section,'' in introductory provisions.

Subsec. (b). Pub. L. 116–283, § 1833(f), redesignated subsec. (h) of section 2320 of this title as subsec. (b) of this section and substituted ''In this subchapter,'' for ''In this section,'' and ''section 4401'' for ''section 2446a''.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

SUBCHAPTER II—VALIDATION OF PROPRIETARY DATA RESTRICTIONS

Sec.
3781. Technical data: contractor justification for restrictions; review of restrictions.
3782. Technical data: challenges to contractor restrictions.
3783. Technical data: time for contractors to submit justifications.
3784. Technical data under contracts for commercial items: presumption of development exclusively at private expense.
3785. Technical data: decision by contracting officer; claims; rights and liability upon final disposition.
3786. Use or release restriction: definition.

§ 3781. Technical data: contractor justification for restrictions; review of restrictions

(a) CONTRACTS COVERED BY SUBCHAPTER.—This subchapter applies to any contract for supplies or services entered into by the Department of Defense that includes provisions for the delivery of technical data.

(b) CONTRACTOR JUSTIFICATION FOR RESTRICTIONS.—A contract subject to this subchapter shall provide that a contractor under the contract and any subcontractor under the contract at any tier shall be prepared to furnish to the contracting officer a written justification for any use or release restriction (as defined in section 3786 of this title) asserted by the contractor or subcontractor.

(c) REVIEW OF RESTRICTIONS.—

(1) The Secretary of Defense shall ensure that there is a thorough review of the appropriateness of any use or release restriction asserted with respect to technical data by a contractor or subcontractor at any tier under a contract subject to this subchapter.

(2) The review of an asserted use or release restriction under paragraph (1) shall be conducted before the end of the three-year period beginning on the later of—

(A) the date on which final payment is made on the contract under which the technical data is required to be delivered; or

(B) the date on which the technical data is delivered under the contract.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1833(g), (h), Jan. 1, 2021, 134 Stat. 4231.)

CODIFICATION

The text of subsecs. (a), (b), and (c) of section 2321 of this title, which were transferred to this section and amended by Pub. L. 116–283, § 1833(h), was based on Pub. L. 100–26, § 7(a)(5)(A)(ii), Apr. 21, 1987, 101 Stat. 276.

PRIOR PROVISIONS

A prior section 3781, act Aug. 10, 1956, ch. 1041, 70A Stat. 218; Pub. L. 86–616, § 2(a), July 12, 1960, 74 Stat. 386, authorized Secretary of the Army to convene at any time a board of officers to review record of any commissioned officer on active list of Regular Army to determine whether he should be required, because of substandard performance of duty, to show cause for his retention on active list, prior to repeal by Pub. L. 96–513, title II, § 213, title VII, § 701, Dec. 12, 1980, 94 Stat. 2885, 2955, effective Sept. 15, 1981. See section 1181(a) of this title.

AMENDMENTS

2021—Subsec. (a). Pub. L. 116–283, § 1833(h)(1), (2), transferred subsec. (a) of section 2321 of this title to this section and substituted ''by Subchapter'' for ''by Section'' in heading and ''This subchapter'' for ''This section'' in text.

Subsec. (b). Pub. L. 116–283, § 1833(h)(1), (3), transferred subsec. (b) of section 2321 of this title to this section and substituted ''this subchapter'' for ''this section'' and ''(as defined in section 3786 of this title) asserted'' for ''(as defined in subsection (i)) asserted''.

Subsec. (c). Pub. L. 116–283, § 1833(h)(1), (4)(A), (C), transferred subsec. (c) of section 2321 of this title to this section and realigned margins of pars. (1) and (2).

Subsec. (c)(1). Pub. L. 116–283, § 1833(h)(4)(B), substituted ''this subchapter'' for ''this section''.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 3782. Technical data: challenges to contractor restrictions

(a) CHALLENGES BY SECRETARY OF DEFENSE.—The Secretary of Defense may challenge a use or release restriction asserted with respect to technical data by a contractor or subcontractor at any tier under a contract subject to this subchapter if the Secretary finds that—

(1) reasonable grounds exist to question the current validity of the asserted restriction; and

(2) the continued adherence by the United States to the asserted restriction would make it impracticable to procure the item to which the technical data pertain competitively at a later time.

(b) TIME LIMIT FOR CHALLENGES; EXCEPTIONS.—

(1) A challenge to a use or release restriction asserted by the contractor in accordance with applicable regulations may not be made under subsection (a) after the end of the six-year period described in paragraph (2) unless the technical data involved—

(A) are publicly available;

(B) have been furnished to the United States without restriction;

(C) have been otherwise made available without restriction; or

(D) are the subject of a fraudulently asserted use or release restriction.

(2) The six-year period referred to in paragraph (1) is the six-year period beginning on the later of—

(A) the date on which final payment is made on the contract under which the technical data are required to be delivered; or

(B) the date on which the technical data are delivered under the contract.

(c) WRITTEN NOTICE TO CONTRACTOR OR SUBCONTRACTOR.—If the Secretary challenges an asserted use or release restriction under subsection (a), the Secretary shall provide written notice of the challenge to the contractor or subcontractor asserting the restriction. Any such notice shall—

(1) state the specific grounds for challenging the asserted restriction;

(2) require a response within 60 days justifying the current validity of the asserted restriction; and

(3) state that evidence of a justification described in subsection (d) may be submitted.

(d) JUSTIFICATION.—It is a justification of an asserted use or release restriction challenged under subsection (a) that, within the three-year period preceding the challenge to the restriction, the Department of Defense validated a restriction identical to the asserted restriction if—

(1) such validation occurred after a challenge to the validated restriction under this section; and

(2) the validated restriction was asserted by the same contractor or subcontractor (or a licensee of such contractor or subcontractor).

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1833(g), (i), Jan. 1, 2021, 134 Stat. 4231.)

CODIFICATION

The text of subsec. (d) of section 2321 of this title, which was transferred to this section and amended by Pub. L. 116–283, § 1833(i), was based on Pub. L. 100–26, § 7(a)(5)(A)(ii), Apr. 21, 1987, 101 Stat. 276; Pub. L. 100–180, div. A, title XII, § 1231(6)(A), Dec. 4, 1987, 101 Stat. 1160; Pub. L. 103–35, title II, § 201(g)(4), May 31, 1993, 107 Stat. 100; Pub. L. 111–383, div. A, title VIII, § 824(c), Jan. 7, 2011, 124 Stat. 4269; Pub. L. 112–81, div. A, title VIII, § 815(b), Dec. 31, 2011, 125 Stat. 1492.

PRIOR PROVISIONS

A prior section 3782, act Aug. 10, 1956, ch. 1041, 70A Stat. 218; Pub. L. 86–616, § 2(a), July 12, 1960, 74 Stat. 387, provided for boards of inquiry, composed of three or more officers, to be convened at such places as Secretary of the Army prescribes, to receive evidence and make findings and recommendations whether an officer, required to show cause under section 3781 of this title, should be retained on active list of Regular Army, prior to repeal by Pub. L. 96–513, title II, § 213, title VII, § 701, Dec. 12, 1980, 94 Stat. 2885, 2955, effective Sept. 15, 1981. See section 1182 of this title.

AMENDMENTS

2021—Pub. L. 116–283, § 1833(i)(1)(A), transferred subsec. (d) of section 2321 of this title to this section and struck out subsec. (d) designation and heading ''Challenges to Restrictions'' at beginning.

Subsec. (a). Pub. L. 116–283, § 1833(i)(1)(B), (2), redesignated par. (1) of section 2321(d) of this title as subsec. (a) of this section, inserted heading, substituted ''this subchapter'' for ''this section'' in introductory provisions, and redesignated subpars. (A) and (B) as pars. (1) and (2), respectively.

Subsec. (b). Pub. L. 116–283, § 1833(i)(1)(B), (3)(A), (B), redesignated par. (2) of section 2321(d) of this title as subsec. (b) of this section, inserted heading, and redesignated subpars. (A) and (B) as pars. (1) and (2), respectively, and realigned margins.

Subsec. (b)(1). Pub. L. 116–283, § 1833(i)(3)(C), substituted ''subsection (a)'' for ''paragraph (1)'' and ''paragraph (2)'' for ''subparagraph (B)'' in introductory provisions and redesignated cls. (i) to (iv) as subpars. (A) to (D), respectively.

Subsec. (b)(2). Pub. L. 116–283, § 1833(i)(3)(D), substituted ''paragraph (1)'' for ''subparagraph (A)'' in introductory provisions and redesignated cls. (i) and (ii) as subpars. (A) and (B), respectively.

Subsec. (c). Pub. L. 116–283, § 1833(i)(1)(B), (4)(A)–(C), redesignated par. (3) of section 2321(d) of this title as subsec. (c) of this section, inserted heading, substituted ''subsection (a)'' for ''paragraph (1)'' in introductory provisions, and redesignated subpars. (A) to (C) as pars. (1) to (3), respectively.

Subsec. (c)(3). Pub. L. 116–283, § 1833(i)(4)(D), substituted ''subsection (d)'' for ''paragraph (4)''.

Subsec. (d). Pub. L. 116–283, § 1833(i)(1)(B), (5)(A)–(C), redesignated par. (4) of section 2321(d) of this title as subsec. (d) of this section, inserted heading, substituted ''subsection (a)'' for ''paragraph (1)'' in introductory provisions, and redesignated subparagraphs (A) and (B) as pars. (1) and (2), respectively.

Subsec. (d)(1). Pub. L. 116–283, § 1833(i)(5)(D), substituted ''this section'' for ''this subsection''.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 3783. Technical data: time for contractors to submit justifications

(a) ADDITIONAL TIME TO SUBMIT JUSTIFICATIONS.—If a contractor or subcontractor asserting a use or release restriction submits to the contracting officer a written request, showing the need for additional time to comply with the requirement to justify the current validity of the asserted restriction, additional time to adequately permit the submission of such justification shall be provided by the contracting officer as appropriate.

(b) MULTIPLE CHALLENGES; SCHEDULE OF RESPONSES.—If a party asserting a restriction receives notices of challenges to restrictions on technical data from more than one contracting officer, and notifies each contracting officer of the existence of more than one challenge, the contracting officer initiating the first in time challenge, after consultation with the party asserting the restriction and the other contracting officers, shall formulate a schedule of responses to each of the challenges that will afford the party asserting the restriction with an equitable opportunity to respond to each such challenge.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1833(g), (j), Jan. 1, 2021, 134 Stat. 4231, 4232.)

CODIFICATION

The text of subsec. (e) of section 2321 of this title, which was transferred to this section and amended by Pub. L. 116–283, § 1833(j), was based on Pub. L. 98–525, title XII, § 1216(a), Oct. 19, 1984, 98 Stat. 2597; Pub. L. 100–26, § 7(a)(5)(A)(i), (B), Apr. 21, 1987, 101 Stat. 276, 277.

PRIOR PROVISIONS

A prior section 3783, act Aug. 10, 1956, ch. 1041, 70A Stat. 218; Pub. L. 86–616, § 2(a), July 12, 1960, 74 Stat. 387, provided for boards of review, composed of three or more officers, to be convened by Secretary of the Army, at such places as he prescribes, to review records of cases of officers recommended by boards of inquiry for removal from active list of Regular Army, prior to repeal by Pub. L. 96–513, title II, § 213, title VII, § 701, Dec. 12, 1980, 94 Stat. 2885, 2955, effective Sept. 15, 1981.

AMENDMENTS

2021—Pub. L. 116–283, § 1833(j), transferred subsec. (e) of section 2321 of this title to this section, struck out subsec. (e) designation and heading ''Time for Contractors to Submit Justifications'' at beginning, and designated first and second sentences of existing provisions as subsecs. (a) and (b), respectively, and inserted headings.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed im-

plementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 3784. Technical data under contracts for commercial items: presumption of development exclusively at private expense

In the case of a challenge to a use or release restriction that is asserted with respect to technical data of a contractor or subcontractor under a contract for commercial products, the contracting officer shall presume that the contractor or subcontractor has justified the restriction on the basis that the item[1] was developed exclusively at private expense, whether or not the contractor or subcontractor submits a justification in response to the notice provided pursuant to section 3782(c) of this title. In such a case, the challenge to the use or release restriction may be sustained only if information provided by the Department of Defense demonstrates that the item[1] was not developed exclusively at private expense.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1833(g), (k), Jan. 1, 2021, 134 Stat. 4231, 4233.)

CODIFICATION

The text of subsec. (f) of section 2321 of this title, which was transferred to this section and amended by Pub. L. 116–283, § 1833(k), was based on Pub. L. 103–355, title VIII, § 8106(b)(2), Oct. 13, 1994, 108 Stat. 3394; Pub. L. 109–364, div. A, title VIII, § 802(b), Oct. 17, 2006, 120 Stat. 2313; Pub. L. 110–181, div. A, title VIII, § 815(a)(2), Jan. 28, 2008, 122 Stat. 223; Pub. L. 113–291, div. A, title X, § 1071(a)(5), Dec. 19, 2014, 128 Stat. 3504; Pub. L. 114–92, div. A, title VIII, § 813(a), Nov. 25, 2015, 129 Stat. 891; Pub. L. 115–232, div. A, title VIII, §§ 836(c)(8), 865, Aug. 13, 2018, 132 Stat. 1866, 1901, as amended by Pub. L. 116–283, div. A, title X, § 1081(d)(4)(B)(ii), Jan. 1, 2021, 134 Stat. 3874.

Prior to transfer of section 2321(f) of this title to this section, Pub. L. 115–232, § 836(c)(8)(A)(ii), amended such section 2321(f) by substituting ''commercial products'' for ''the item'' in two places. Subsequently, Pub. L. 116–283, § 1081(d)(4)(B)(ii), generally amended section 836(c)(8) of Pub. L. 115–232, and in so doing, omitted that substitution. As a result, this section reflects the text as it reads had that substitution not occurred.

PRIOR PROVISIONS

A prior section 3784, act Aug. 10, 1956, ch. 1041, 70A Stat. 219; Pub. L. 86–616, § 2(a), July 12, 1960, 74 Stat. 387, authorized Secretary of the Army to remove an officer from active list of Regular Army if his removal is recommended by a board of review and provided that decision of Secretary in such a case is final and conclusive, prior to repeal by Pub. L. 96–513, title II, § 213, title VII, § 701, Dec. 12, 1980, 94 Stat. 2885, 2955, effective Sept. 15, 1981. See section 1184 of this title.

AMENDMENTS

2021—Pub. L. 116–283, § 1833(k), transferred subsec. (f) of section 2321 of this title to this section, struck out subsec. (f) designation and heading ''Presumption of Development Exclusively at Private Expense'' at beginning, and substituted ''section 3782(c) of this title'' for ''subsection (d)(3)''.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

[1] See Codification note below.

§ 3785. Technical data: decision by contracting officer; claims; rights and liability upon final disposition

(a) DECISION BY CONTRACTING OFFICER.—

(1) Upon failure by the contractor or subcontractor to submit any response under section 3782(c) of this title, the contracting officer shall issue a decision pertaining to the validity of the asserted restriction.

(2) After review of any justification submitted in response to the notice provided pursuant to section 3782(c) of this title, the contracting officer shall, within 60 days of receipt of any justification submitted, issue a decision or notify the party asserting the restriction of the time within which a decision will be issued.

(b) CLAIMS.—If a claim pertaining to the validity of the asserted restriction is submitted in writing to a contracting officer by a contractor or subcontractor at any tier, such claim shall be considered a claim within the meaning of chapter 71 of title 41.

(c) RIGHTS AND LIABILITY UPON FINAL DISPOSITION.—

(1) If, upon final disposition, the contracting officer's challenge to the use or release restriction is sustained—

(A) the restriction shall be cancelled; and

(B) if the asserted restriction is found not to be substantially justified, the contractor or subcontractor asserting the restriction shall be liable to the United States for payment of the cost to the United States of reviewing the asserted restriction and the fees and other expenses (as defined in section 2412(d)(2)(A) of title 28) incurred by the United States in challenging the asserted restriction, unless special circumstances would make such payment unjust.

(2) If, upon final disposition, the contracting officer's challenge to the use or release restriction is not sustained—

(A) the United States shall continue to be bound by the restriction; and

(B) the United States shall be liable for payment to the party asserting the restriction for fees and other expenses (as defined in section 2412(d)(2)(A) of title 28) incurred by the party asserting the restriction in defending the asserted restriction if the challenge by the United States is found not to be made in good faith.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1833(g), (*l*), Jan. 1, 2021, 134 Stat. 4231, 4233.)

CODIFICATION

The text of subsec. (g) of section 2321 of this title, which was transferred to this section, redesignated as subsec. (a), and amended by Pub. L. 116–283, § 1833(*l*)(1), (2), was based on Pub. L. 98–525, title XII, § 1216(a), Oct. 19, 1984, 98 Stat. 2597; Pub. L. 100–26, § 7(a)(5)(A)(i), (C), Apr. 21, 1987, 101 Stat. 276, 277; Pub. L. 103–355, title VIII, § 8106(b)(1), Oct. 13, 1994, 108 Stat. 3393.

The text of subsec. (h) of section 2321 of this title, which was transferred to this section, redesignated as

subsec. (b), and amended by Pub. L. 116–283, §1833(*l*)(1), was based on Pub. L. 98–525, title XII, §1216(a), Oct. 19, 1984, 98 Stat. 2598; Pub. L. 100–26, §7(a)(5)(A)(i), (D), Apr. 21, 1987, 101 Stat. 276, 277; Pub. L. 103–355, title VIII, §8106(b)(1), Oct. 13, 1994, 108 Stat. 3393; Pub. L. 111–350, §5(b)(18), Jan. 4, 2011, 124 Stat. 3844.

The text of subsec. (i) of section 2321 of this title, which was transferred to this section, redesignated as subsec. (c), and amended by Pub. L. 116–283, §1833(*l*)(1), (3), was based on Pub. L. 98–525, title XII, §1216(a), Oct. 19, 1984, 98 Stat. 2598; Pub. L. 100–26, §7(a)(5)(A)(i), (E), Apr. 21, 1987, 101 Stat. 276, 277; Pub. L. 103–355, title VIII, §8106(b)(1), Oct. 13, 1994, 108 Stat. 3393; Pub. L. 115–232, div. A, title VIII, 866(a), Aug. 13, 2018, 132 Stat. 1901; Pub. L. 116–92, div. A, title VIII, §808(b), Dec. 20, 2019, 133 Stat. 1486.

PRIOR PROVISIONS

A prior section 3785, act Aug. 10, 1956, ch. 1041, 70A Stat. 219; Pub. L. 86–616, §2(a), July 12, 1960, 74 Stat. 387, provided that each officer under consideration for removal from active list of Regular Army under this chapter be given written notification, at least 30 days prior to a board of inquiry hearing, that he is being required to show cause for retention on active list, be allowed reasonable time to prepare a defense, be allowed to appear in person and by counsel at proceedings before a board of inquiry, and be allowed full access to, and furnished copies of, records relevant to his case at all stages of proceeding, prior to repeal by Pub. L. 96–513, title II, §213, title VII, §701, Dec. 12, 1980, 94 Stat. 2885, 2955, effective Sept. 15, 1981. See section 1185 of this title.

AMENDMENTS

2021—Subsec. (a). Pub. L. 116–283, §1833(*l*)(1), (2), redesignated subsec. (g) of section 2321 of this title as subsec. (a) of this section, substituted ''section 3782(c) of this title'' for ''subsection (d)(3)'' in two places, and realigned margins of pars. (1) and (2). Amendment directing substitution of ''(1) Upon failure'' for ''(1) Upon failure'' as part of margin realignment was executed by substituting ''(1) Upon failure'' for ''(1) Upon a failure'' to reflect the probable intent of Congress.

Subsec. (b). Pub. L. 116–283, §1833(*l*)(1), redesignated subsec. (h) of section 2321 of this title as subsec. (b) of this section.

Subsec. (c). Pub. L. 116–283, §1833(*l*)(3), which directed amendment of subsec. (c) of section 3786 of this title by realigning the margins of pars. (1) and (2), was executed to subsec. (c) of this section to reflect the probable intent of Congress.

Pub. L. 116–283, §1833(*l*)(1), redesignated subsec. (i) of section 2321 of this title as subsec. (c) of this section.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 3786. Use or release restriction: definition

In this subchapter, the term ''use or release restriction'', with respect to technical data delivered to the United States under a contract subject to this section, means a restriction by the contractor or subcontractor on the right of the United States—

(1) to use such technical data; or

(2) to release or disclose such technical data to persons outside the Government or permit the use of such technical data by persons outside the Government.

(Added and amended Pub. L. 116–283, div. A, title XVIII, §1833(g), (m), Jan. 1, 2021, 134 Stat. 4231, 4233.)

CODIFICATION

The text of subsec. (j) of section 2321 of this title, which was transferred to this section and amended by Pub. L. 116–283, §1833(m), was based on Pub. L. 100–26, §7(a)(5), Apr. 21, 1987, 101 Stat. 277; Pub. L. 100–180, div. A, title XII, §1231(6), Dec. 4, 1987, 101 Stat. 1160; Pub. L. 103–355, title VIII, §8106(b)(1), Oct. 13, 1994, 108 Stat. 3393.

PRIOR PROVISIONS

Prior sections 3786 and 3787 were repealed by Pub. L. 96–513, title II, §213, title VII, §701, Dec. 12, 1980, 94 Stat. 2885, 2955, effective Sept. 15, 1981.

Section 3786, acts Aug. 10, 1956, ch. 1041, 70A Stat. 219; July 12, 1960, Pub. L. 86–616, §2(a), 74 Stat. 387, authorized Secretary of the Army, at any time during proceedings under this chapter and before removal of an officer from active list of Regular Army, to grant that officer's request for voluntary retirement, if he is otherwise qualified therefor, or for honorable discharge with severance benefits. See section 1186 of this title.

Section 3787, added Pub. L. 86–616, §2(a), July 12, 1960, 74 Stat. 388, provided that no officer serve on a board under this chapter unless he holds a regular or temporary grade above lieutenant colonel, and is senior in regular grade to, and outranks, any officer considered by board and that no person be a member of more than one board convened under this chapter for same officer. See section 1187 of this title.

AMENDMENTS

2021—Pub. L. 116–283, §1833(m), transferred subsec. (j) of section 2321 of this title to this section, struck out subsec. (j) designation and heading ''Use or Release Restriction Defined'' at beginning, and substituted ''In this subchapter'' for ''In this section'' in introductory provisions.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

SUBCHAPTER III—OTHER PROVISIONS RELATING TO PROPRIETARY CONTRACTOR DATA AND RIGHTS IN TECHNICAL DATA

Sec.
3791. Management of intellectual property matters within the Department of Defense.[1]
3792. Technical data rights: non-FAR agreements.[2]
3793. Copyrights, patents, designs, etc.; acquisition.
3794. Release of technical data under Freedom of Information Act: recovery of costs.

§ 3791. Management of intellectual property matters within the department of defense[1]

(a) POLICY REQUIRED.—The Secretary of Defense, acting through the Under Secretary of Defense for Acquisition and Sustainment, shall develop policy on the acquisition or licensing of intellectual property—

(1) to enable coordination and consistency across the military departments and the Department of Defense in strategies for acquiring or licensing intellectual property and communicating with industry;

(2) to ensure that program managers are aware of the rights afforded the Federal Gov-

[1] So in original. Does not conform to section catchline.
[2] So in original. There is no section 3792.
[1] So in original. Probably should be ''Department of Defense''.

ernment and contractors in intellectual property and that program managers fully consider and use all available techniques and best practices for acquiring or licensing intellectual property early in the acquisition process; and

(3) to encourage customized intellectual property strategies for each system based on, at a minimum, the unique characteristics of the system and its components, the product support strategy for the system, the organic industrial base strategy of the military department concerned, and the commercial market.

(b) CADRE OF INTELLECTUAL PROPERTY EXPERTS.—For a provision requiring establishment of a cadre of personnel who are experts in intellectual property matters, see section 1707 of this title.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1833(n), (*o*)(1), Jan. 1, 2021, 134 Stat. 4234.)

CODIFICATION

The text of subsec. (a) of section 2322 of this title, which was transferred to this section by Pub. L. 116–283, § 1833(*o*)(1), was based on Pub. L. 115–91, div. A, title VIII, § 802(a)(1), Dec. 12, 2017, 131 Stat. 1450.

PRIOR PROVISIONS

Prior sections 3791 and 3792 were repealed by Pub. L. 96–513, title II, § 213, title VII, § 701, Dec. 12, 1980, 94 Stat. 2885, 2955, effective Sept. 15, 1981.

Section 3791, added Pub. L. 86–616, § 3(a), July 12, 1960, 74 Stat. 388, authorized Secretary of the Army to convene at any time a board of general officers to review record of any commissioned officer on active list of Regular Army to determine whether he should be required, because of moral dereliction, professional dereliction, or because his retention is not clearly consistent with interests of national security, to show cause for his retention on active list. See section 1181(b) of this title.

Section 3792, added Pub. L. 86–616, § 3(a), July 12, 1960, 74 Stat. 388, provided for boards of inquiry, composed of three or more general officers, to be convened at such places as Secretary of the Army prescribes, to receive evidence and make findings and recommendations whether an officer, required to show cause under section 3791 of this title, should be retained on active list of Regular Army. See section 1182 of this title.

AMENDMENTS

2021—Subsec. (a). Pub. L. 116–283, § 1833(*o*)(1), transferred subsec. (a) of section 2322 of this title to this section.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 3793. Copyrights, patents, designs, etc.; acquisition

Funds appropriated for a military department available for making or procuring supplies may be used to acquire any of the following if the acquisition relates to supplies or processes produced or used by or for, or useful to, that department:

(1) Copyrights, patents, and applications for patents.

(2) Licenses under copyrights, patents, and applications for patents.

(3) Design and process data, technical data, and computer software.

(4) Releases for past infringement of patents or copyrights or for unauthorized use of technical data or computer software.

(Aug. 10, 1956, ch. 1041, 70A Stat. 137, § 2386; Pub. L. 86–726, § 3, Sept. 8, 1960, 74 Stat. 855; Pub. L. 103–355, title III, § 3063, Oct. 13, 1994, 108 Stat. 3337; Pub. L. 104–106, div. A, title VIII, § 813, Feb. 10, 1996, 110 Stat. 395; renumbered § 3793, Pub. L. 116–283, div. A, title XVIII, § 1833(*o*)(2), Jan. 1, 2021, 134 Stat. 4234.)

PRIOR PROVISIONS

A prior section 3793, added Pub. L. 86–616, § 3(a), July 12, 1960, 74 Stat. 389, provided for boards of review, composed of three or more general officers, to be convened by Secretary of the Army, at such places as he prescribes, to review records of cases of officers recommended by boards of inquiry for removal from active list of Regular Army, prior to repeal by Pub. L. 96–513, title II, § 213, title VII, § 701, Dec. 12, 1980, 94 Stat. 2885, 2955, effective Sept. 15, 1981.

AMENDMENTS

2021—Pub. L. 116–283, § 1833(*o*)(2), renumbered section 2386 of this title as this section.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 3794. Release of technical data under Freedom of Information Act: recovery of costs

(a) IN GENERAL.—(1) The Secretary of Defense shall, if required to release technical data under section 552 of title 5 (relating to the Freedom of Information Act), release such technical data to the person requesting the release if the person pays all reasonable costs attributable to search, duplication, and review.

(2) The Secretary of Defense shall prescribe regulations, pursuant to notice and receipt of public comment, specifying a uniform schedule of fees under this section.

(b) CREDITING OF RECEIPTS.—An amount received under this section—

(1) shall be retained by the Department of Defense or the element of the Department of Defense receiving the amount; and

(2) shall be merged with and available for the same purpose and the same time period as the appropriation from which the costs incurred in complying with requests for technical data were paid.

(c) WAIVER.—The Secretary of Defense shall waive the payment of costs required by subsection (a) which are in an amount greater than the costs that would be required for such a release of information under section 552 of title 5 if—

(1) the request is made by a citizen of the United States or a United States corporation, and such citizen or corporation certifies that the technical data requested is required to enable such citizen or corporation to submit an offer or determine whether it is capable of sub-

mitting an offer to provide the product to which the technical data relates to the United States or a contractor with the United States (except that the Secretary may require the citizen or corporation to pay a deposit in an amount equal to not more than the cost of complying with the request, to be refunded upon submission of an offer by the citizen or corporation);

(2) the release of technical data is requested in order to comply with the terms of an international agreement; or

(3) the Secretary determines, in accordance with section 552(a)(4)(A)(iii) of title 5, that such a waiver is in the interests of the United States.

(Added Pub. L. 99–500, § 101(c) [title X, § 954(a)(1)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–172, and Pub. L. 99–591, § 101(c) [title X, § 954(a)(1)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–172, § 2328; Pub. L. 99–661, div. A, title IX, formerly title IV, § 954(a)(1), Nov. 14, 1986, 100 Stat. 3952, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; amended Pub. L. 100–26, § 7(a)(7)(A), (B)(i), Apr. 21, 1987, 101 Stat. 278; renumbered § 3794, Pub. L. 116–283, div. A, title XVIII, § 1833(*o*)(2), Jan. 1, 2021, 134 Stat. 4234.)

PRIOR PROVISIONS

Prior sections 3794 to 3797 were repealed by Pub. L. 96–513, title II, § 213, title VII, § 701, Dec. 12, 1980, 94 Stat. 2885, 2955, effective Sept. 15, 1981.

Section 3794, added Pub. L. 86–616, § 3(a), July 12, 1960, 74 Stat. 389, authorized Secretary of the Army to remove an officer from active list of Regular Army if his removal is recommended by a board of review and provided that decision of Secretary in such a case is final and conclusive. See section 1184 of this title.

Section 3795, added Pub. L. 86–616, § 3(a), July 12, 1960, 74 Stat. 389, provided that each officer under consideration for removal from active list of Regular Army under this chapter be given written notification, at least 30 days prior to a board of inquiry hearing, that he is being required to show cause for retention on active list, be allowed reasonable time to prepare a defense, be allowed to appear in person and by counsel at proceedings before board of inquiry, and be allowed full access to, and furnished copies of, records relevant to his case at all stages of proceedings, except records that Secretary determines be withheld in interests of national security, in which case, a summary, to extent national security permits, be furnished. See section 1185 of this title.

Section 3796, added Pub. L. 86–616, § 3(a), July 12, 1960, 74 Stat. 389, authorized Secretary of the Army, at any time during proceedings under this chapter and before removal of an officer from active list of Regular Army, to grant that officer's request for voluntary retirement, if he is otherwise qualified therefor, or for honorable discharge with severance benefits. See section 1186 of this title.

Section 3797, added Pub. L. 86–616, § 3(a), July 12, 1960, 74 Stat. 390, provided that no officer serve on a board under this chapter unless he holds a regular or temporary grade above lieutenant colonel, and is senior in regular grade to, and outranks, any officer considered by that board and that no person be a member of more than one board convened under this chapter for same officer. See section 1187 of this title.

AMENDMENTS

2021—Pub. L. 116–283, § 1833(*o*)(2), renumbered section 2328 of this title as this section.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

CHAPTER 277—CONTRACT FINANCING

Sec.
3801. Authority of agency.
3802. Payment.
3803. Security for advance payments.
3804. Conditions for progress payments.
3805. Payments for commercial products and commercial services.
3806. Action in case of fraud.
3807. Vesting of title in the United States.

PRIOR PROVISIONS

A prior chapter 277 "CONTRACT FINANCING", as added by Pub. L. 115–232, div. A, title VIII, § 801(a), Aug. 13, 2018, 132 Stat. 1828, and consisting of reserved section 3801, was repealed by Pub. L. 116–283, div. A, title XVIII, § 1834(a), Jan. 1, 2021, 134 Stat. 4234.

§ 3801. Authority of agency

(a) PAYMENT AUTHORITY.—The head of any agency may—

(1) make advance, partial, progress, or other payments under contracts for property or services made by the agency; and

(2) insert in solicitations for procurement of property or services a provision limiting to small business concerns advance or progress payments.

(b) PAYMENT DATES FOR CONTRACTORS THAT ARE SMALL BUSINESS CONCERNS.—

(1) PRIME CONTRACTORS.—For a prime contractor (as defined in section 8701 of title 41) that is a small business concern (as defined in section 3 of the Small Business Act (15 U.S.C. 632)), the Secretary of Defense shall, to the fullest extent permitted by law, establish an accelerated payment date with a goal of 15 days after receipt of a proper invoice for the amount due.

(2) SUBCONTRACTORS.—For a prime contractor that subcontracts with a small business concern, the Secretary of Defense shall, to the fullest extent permitted by law, establish an accelerated payment date with a goal of 15 days after receipt of a proper invoice for the amount due if the prime contractor agrees or proposes to make payments to the subcontractor in accordance with the accelerated payment date, to the maximum extent practicable, without any further consideration from or fees charged to the subcontractor.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1834(a), (b), Jan. 1, 2021, 134 Stat. 4234.)

CODIFICATION

The text of subsec. (a) of section 2307 of this title, which was transferred to this section and amended by Pub. L. 116–283, § 1834(b), was based on act Aug. 10, 1956, ch. 1041, 70A Stat. 131; Pub. L. 85–800, § 9, Aug. 28, 1958, 72 Stat. 967; Pub. L. 103–355, title II, § 2001(a)(2), (c), Oct. 13, 1994, 108 Stat. 3301, 3302; Pub. L. 115–232, div. A, title VIII, § 852, Aug. 13, 2018, 132 Stat. 1884; Pub. L. 116–92, div. A, title XVII, § 1731(a)(40), Dec. 20, 2019, 133 Stat. 1814; Pub. L. 116–283, div. A, title VIII, § 815, Jan. 1, 2021, 134 Stat. 3750.

AMENDMENTS

2021—Subsec. (a). Pub. L. 116–283, § 1834(b)(1)(A), (2), transferred subsec. (a) of section 2307 of this title to

this section, struck out par. (1) designation before ''The head of'', and redesignated subpars. (A) and (B) as pars. (1) and (2), respectively. Former par. (2) of subsec. (a) redesignated subsec. (b).

Subsec. (b). Pub. L. 116–283, §1834(b)(1)(B), (3)(A)–(C)(i), redesignated par. (2) of subsec. (a) as subsec. (b), inserted subsec. heading, and redesignated subpars. (A) and (B) as pars. (1) and (2), respectively, and inserted par. headings.

Subsec. (b)(2). Pub. L. 116–283, §1834(b)(3)(C)(ii), which directed amendment of par. (2) by redesignating cls. (i) and (ii) as subpars. (A) and (B), respectively, could not be executed because of the amendment made by section 815(2) of Pub. L. 116–283, which struck out cls. (i) and (ii) in section 2307(a)(2)(B) of this title prior to its transfer and redesignation as subsec. (b)(2) of this section.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 3802. Payment

(a) PREFERENCE FOR PERFORMANCE-BASED PAYMENTS.—Whenever practicable, payments under section 3801 of this title shall be made using performance-based payments on any of the following bases:

(1) Performance measured by objective, quantifiable methods such as delivery of acceptable items, work measurement, or statistical process controls.

(2) Accomplishment of events defined in the program management plan.

(3) Other quantifiable measures of results.

(b) BASIS FOR PERFORMANCE-BASED PAYMENTS.—Performance-based payments shall not be conditioned upon costs incurred in contract performance but on the achievement of performance outcomes listed in subsection (a).

(c) CONTRACTOR ACCOUNTING SYSTEMS.—

(1) In order to receive performance-based payments, a contractor's accounting system shall be in compliance with Generally Accepted Accounting Principles, and there shall be no requirement for a contractor to develop Government-unique accounting systems or practices as a prerequisite for agreeing to receive performance-based payments.

(2) Nothing in this chapter shall be construed to grant the Defense Contract Audit Agency the authority to audit compliance with Generally Accepted Accounting Principles.

(d) PAYMENT AMOUNT.—Payments made under section 3801 of this title may not exceed the unpaid contract price.

(e) ELIGIBILITY OF NONTRADITIONAL DEFENSE CONTRACTORS.—The Secretary of Defense shall ensure that nontraditional defense contractors and other private sector companies are eligible for performance-based payments, consistent with best commercial practices.

(Added and amended Pub. L. 116–283, div. A, title XVIII, §1834(a), (c), Jan. 1, 2021, 134 Stat. 4234, 4235.)

CODIFICATION

The text of subsec. (b) of section 2307 of this title, which was transferred to this section, redesignated as subsecs. (a), (b), (c), and (e), and amended by Pub. L. 116–283, §1834(c)(1)–(5), (7), was based on Pub. L. 103–355, title II, §2001(b), Oct. 13, 1994, 108 Stat. 3302; Pub. L. 114–328, div. A, title VIII, §831(a), Dec. 23, 2016, 130 Stat. 2282.

The text of subsec. (c) of section 2307 of this title, which was transferred to this section, redesignated as subsec. (d), and amended by Pub. L. 116–283, §1834(c)(1), (6), was based on act Aug. 10, 1956, ch. 1041, 70A Stat. 131; Pub. L. 85–800, §9, Aug. 28, 1958, 72 Stat. 967; Pub. L. 103–355, title II, §2001(a)(3), (7), Oct. 13, 1994, 108 Stat. 3301.

AMENDMENTS

2021—Subsec. (a). Pub. L. 116–283, §1834(c)(1)–(3), redesignated subsec. (b) of section 2307 of this title as subsec. (a) of this section, struck out par. (1) designation before ''Whenever practicable'', substituted ''section 3801 of this title'' for ''subsection (a)'' in introductory provisions, and redesignated subpars. (A) to (C) as pars. (1) to (3), respectively. Amendment directing striking out par. (1) designation before ''Whenever possible'' was executed by striking it out before ''Whenever practicable'' to reflect the probable intent of Congress. Former pars. (2) to (4) of subsec. (a) redesignated subsecs. (b), (e), and (c), respectively.

Subsec. (b). Pub. L. 116–283, §1834(c)(2)(B), (4), after redesignation of section 2307(b) of this title as subsec. (a) of this section, redesignated par. (2) of subsec. (a) as subsec. (b), inserted heading, and substituted ''subsection (a)'' for ''paragraph (1)''.

Subsec. (c). Pub. L. 116–283, §1834(c)(2)(D), (5), after redesignation of section 2307(b) of this title as subsec. (a) of this section, redesignated par. (4) of subsec. (a) as subsec. (c), inserted heading, redesignated subpars. (A) and (B) as pars. (1) and (2), respectively, and realigned margins, and, in par. (2), substituted ''this chapter'' for ''this section''.

Subsec. (d). Pub. L. 116–283, §1834(c)(1), (6), redesignated subsec. (c) of section 2307 of this title as subsec. (d) of this section and substituted ''section 3801 of this title'' for ''subsection (a)''.

Subsec. (e). Pub. L. 116–283, §1834(c)(2)(C), (7), after redesignation of section 2307(b) of this title as subsec. (a) of this section, redesignated par. (3) of subsec. (a) as subsec. (e), moved it to the end of the section, and inserted heading.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 3803. Security for advance payments

Advance payments made under section 3801 of this title may be made only if the contractor gives adequate security and after a determination by the head of the agency that to do so would be in the public interest. Such security may be in the form of a lien in favor of the United States on the property contracted for, on the balance in an account in which such payments are deposited, and on such of the property acquired for performance of the contract as the parties may agree. This lien is paramount to any other liens and is effective immediately upon the first advancement of funds without filing, notice, or any other action by the United States.

(Added and amended Pub. L. 116–283, div. A, title XVIII, §1834(a), (d), Jan. 1, 2021, 134 Stat. 4234, 4236.)

CODIFICATION

The text of subsec. (d) of section 2307 of this title, which was transferred to this section and amended by Pub. L. 116–283, § 1834(d), was based on act Aug. 10, 1956, ch. 1041, 70A Stat. 131; Pub. L. 85–800, § 9, Aug. 28, 1958, 72 Stat. 967; Pub. L. 103–355, title II, § 2001(a)(4), (7), (d), Oct. 13, 1994, 108 Stat. 3301, 3302.

AMENDMENTS

2021—Pub. L. 116–283, § 1834(d), transferred subsec. (d) of section 2307 of this title to this section, struck out subsec. (d) designation and heading ''Security for Advance Payments'' at beginning, and substituted ''section 3801 of this title'' for ''subsection (a)''.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 3804. Conditions for progress payments

(a) PAYMENT COMMENSURATE WITH WORK.—The Secretary of Defense shall ensure that any payment for work in progress (including materials, labor, and other items) under a defense contract that provides for such payments is commensurate with the work accomplished that meets standards established under the contract. The contractor shall provide such information and evidence as the Secretary of Defense determines necessary to permit the Secretary to carry out the preceding sentence.

(b) LIMITATION.—The Secretary shall ensure that progress payments referred to in subsection (a) are not made for more than 80 percent of the work accomplished under a defense contract so long as the Secretary has not made the contractual terms, specifications, and price definite.

(c) APPLICABILITY.—This section applies to any contract in an amount greater than $25,000.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1834(a), (e), Jan. 1, 2021, 134 Stat. 4234, 4236.)

CODIFICATION

The text of subsec. (e) of section 2307 of this title, which was transferred to this section and amended by Pub. L. 116–283, § 1834(e), was based on Pub. L. 100–370, § 1(f)(1)(A), July 19, 1988, 102 Stat. 846; Pub. L. 101–510, div. A, title XIII, § 1322(a)(4)(B), Nov. 5, 1990, 104 Stat. 1671; Pub. L. 102–25, title VII, § 701(d)(4), Apr. 6, 1991, 105 Stat. 114; Pub. L. 103–355, title II, § 2001(a)(5), (7), (e), Oct. 13, 1994, 108 Stat. 3301, 3302.

AMENDMENTS

2021—Pub. L. 116–283, § 1834(e)(1), transferred subsec. (e) of section 2307 of this title to this section and struck out subsec. (e) designation and heading ''Conditions for Progress Payments'' at beginning.

Subsec. (a). Pub. L. 116–283, § 1834(e)(1)(B), (2), after transfer of section 2307(e) of this title to this section, redesignated par. (1) as subsec. (a) and inserted heading.

Subsec. (b). Pub. L. 116–283, § 1834(e)(1)(B), (3), after transfer of section 2307(e) of this title to this section, redesignated par. (2) as subsec. (b), inserted heading, and substituted ''subsection (a)'' for ''paragraph (1)''.

Subsec. (c). Pub. L. 116–283, § 1834(e)(1)(B), (4), after transfer of section 2307(e) of this title to this section, redesignated par. (3) as subsec. (c), inserted heading, and substituted ''This section'' for ''This subsection''.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

WAIVERS OF CERTAIN CONDITIONS FOR PROGRESS PAYMENTS UNDER CERTAIN CONTRACTS DURING THE COVID–19 NATIONAL EMERGENCY

Pub. L. 116–283, div. A, title VIII, § 891, Jan. 1, 2021, 134 Stat. 3793, provided that:

''(a) WAIVER OF PROGRESS PAYMENTS REQUIREMENTS.—The Secretary of Defense may waive the requirements of section 2307(e)(2) [now 3804(b)] of title 10, United States Code, with respect to progress payments for any undefinitized contractual action (as defined in section 2326 of title 10, United States Code [see 10 U.S.C. 3377(b)]; in this section referred to as 'UCA') if the Secretary determines that the waiver is necessary due to the national emergency for the Coronavirus Disease 2019 (COVID–19) and—

''(1) a contractor performing the contract for which a UCA is entered into has not already received increased progress payments from the Secretary of Defense on contractual actions other than UCAs; or

''(2) a contractor performing the contract for which a UCA is entered into, and that has received increased progress payments from the Secretary of Defense on contractual actions other than UCAs, can demonstrate that the contractor has promptly provided the amount of the increase to any subcontractors (at any tier), small business concerns (as defined under section 3 of the Small Business Act (15 U.S.C. 632)), or suppliers of the contractor.

''(b) DEFINITIZATION.—With respect to a UCA that not been definitized for a period of 180 days beginning on the date on which such UCA was entered into, the Secretary of Defense may only use the waiver authority described in subsection (a) if the Secretary (or a designee at a level not below the head of a contracting activity) provides a certification to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] that such UCA will be definitized within 60 days after the date on which the waiver is issued.

''(c) SUBMISSION.—For each use of the waiver authority under subsection (a), the Secretary of Defense shall submit to the congressional defense committees an estimate of the amounts to be provided to subcontractors (at any tier), small business concerns, and suppliers, including an identification of the specific entities receiving an amount from an increased progress payment described under such subsection (a).''

§ 3805. Payments for commercial products and commercial services

(a) TERMS AND CONDITIONS FOR PAYMENTS.—Payments under section 3801 of this title for commercial products and commercial services may be made under such terms and conditions as the head of the agency determines are appropriate or customary in the commercial marketplace and are in the best interests of the United States.

(b) SECURITY FOR PAYMENTS.—The head of the agency shall obtain adequate security for such payments. If the security is in the form of a lien in favor of the United States, such lien is paramount to all other liens and is effective immediately upon the first payment, without filing, notice, or other action by the United States.

(c) LIMITATION ON ADVANCE PAYMENTS.—Advance payments made under section 3801 of this title for commercial products and commercial

services may include payments, in a total amount of not more than 15 percent of the contract price, in advance of any performance of work under the contract.

(d) NONAPPLICATION OF CERTAIN CONDITIONS.—The conditions of sections 3803 and 3804 of this title need not be applied if they would be inconsistent, as determined by the head of the agency, with commercial terms and conditions pursuant to this section.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1834(a), (f), Jan. 1, 2021, 134 Stat. 4234, 4236.)

CODIFICATION

The text of subsec. (f) of section 2307 of this title, which was transferred to this section and amended by Pub. L. 116–283, § 1834(f), was based on Pub. L. 103–355, title II, § 2001(f), Oct. 13, 1994, 108 Stat. 3302; Pub. L. 115–232, div. A, title VIII, § 836(c)(6), Aug. 13, 2018, 132 Stat. 1866.

AMENDMENTS

2021—Pub. L. 116–283, § 1834(f)(1)(A), transferred subsec. (f) of section 2307 of this title to this section and struck out subsec. (f) designation and heading ''Conditions for Payments for Commercial Products and Commercial Services'' at beginning.

Subsec. (a). Pub. L. 116–283, § 1834(f)(1)(B), (4), after transfer of section 2307(f) of this title to this section, redesignated par. (1) as subsec. (a), inserted heading, and substituted ''section 3801 of this title'' for ''subsection (a)''.

Subsec. (b). Pub. L. 116–283, § 1834(f)(4), inserted heading.

Pub. L. 116–283, § 1834(f)(2), which directed the designation of ''the second sentence of subsection (a) as subsection (b)'', was executed by designating the second and third sentences of subsec. (a) as (b), to reflect the probable intent of Congress.

Subsec. (c). Pub. L. 116–283, § 1834(f)(1)(B), (5), after transfer of section 2307(f) of this title to this section, redesignated par. (2) as subsec. (c), inserted heading, and substituted ''section 3801 of this title'' for ''subsection (a)''.

Subsec. (d). Pub. L. 116–283, § 1834(f)(1)(B), (6), after transfer of section 2307(f) of this title to this section, redesignated par. (3) as subsec. (d), inserted heading, and substituted ''sections 3803 and 3804 of this title'' for ''subsections (d) and (e)'' and ''this section'' for ''paragraphs (1) and (2)''.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 3806. Action in case of fraud

(a) REMEDY COORDINATION OFFICIAL DEFINED.—In this section, the term ''remedy coordination official'', with respect to an agency, means the person or entity in that agency who coordinates within that agency the administration of criminal, civil, administrative, and contractual remedies resulting from investigations of fraud or corruption related to procurement activities.

(b) RECOMMENDATION TO REDUCE OR SUSPEND PAYMENTS.—In any case in which the remedy coordination official of an agency finds that there is substantial evidence that the request of a contractor for advance, partial, or progress payment under a contract awarded by that agency is based on fraud, the remedy coordination official shall recommend that the head of the agency reduce or suspend further payments to such contractor.

(c) REDUCTION OR SUSPENSION OF PAYMENTS.—The head of an agency receiving a recommendation under subsection (b) in the case of a contractor's request for payment under a contract shall determine whether there is substantial evidence that the request is based on fraud. Upon making such a determination, the agency head may reduce or suspend further payments to the contractor under such contract.

(d) EXTENT OF REDUCTION OR SUSPENSION.—The extent of any reduction or suspension of payments by the head of an agency under subsection (c) on the basis of fraud shall be reasonably commensurate with the anticipated loss to the United States resulting from the fraud.

(e) WRITTEN JUSTIFICATION.—A written justification for each decision of the head of an agency whether to reduce or suspend payments under subsection (c) and for each recommendation received by such agency head in connection with such decision shall be prepared and be retained in the files of such agency.

(f) NOTICE.—The head of an agency shall prescribe procedures to ensure that, before such agency head decides to reduce or suspend payments in the case of a contractor under subsection (c), the contractor is afforded notice of the proposed reduction or suspension and an opportunity to submit matters to the head of the agency in response to such proposed reduction or suspension.

(g) REVIEW.—Not later than 180 days after the date on which the head of an agency reduces or suspends payments to a contractor under subsection (c), the remedy coordination official of such agency shall—

(1) review the determination of fraud on which the reduction or suspension is based; and

(2) transmit a recommendation to the head of such agency whether the suspension or reduction should continue.

(h) ANNUAL REPORT.—The head of an agency shall prepare for each year a report containing the recommendations made by the remedy coordination official of that agency to reduce or suspend payments under subsection (c), the actions taken on the recommendations and the reasons for such actions, and an assessment of the effects of such actions on the Federal Government. The Secretary of each military department shall transmit the annual report of such department to the Secretary of Defense. Each such report shall be available to any member of Congress upon request.

(i) RESTRICTION ON DELEGATION.—The head of an agency may not delegate responsibilities under this section to any person in a position below level IV of the Executive Schedule.

(j) INAPPLICABILITY TO COAST GUARD.—This section applies to the agencies named in paragraphs (1), (2), (3), (4), and (6) of section 3063 of this title.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1834(a), (g), Jan. 1, 2021, 134 Stat. 4234, 4237.)

REFERENCES IN TEXT

Level IV of the Executive Schedule, referred to in subsec. (i), is set out in section 5315 of Title 5, Government Organization and Employees.

CODIFICATION

The text of subsec. (i) of section 2307 of this title, which was transferred to this section and amended by Pub. L. 116–283, § 1834(g), was based on Pub. L. 101–510, div. A, title VIII, § 836(a), Nov. 5, 1990, 104 Stat. 1615; Pub. L. 102–25, title VII, § 701(j)(2)(A), Apr. 6, 1991, 105 Stat. 116; Pub. L. 102–484, div. A, title X, § 1052(24), Oct. 23, 1992, 106 Stat. 2500; Pub. L. 103–355, title II, § 2001(a)(7), Oct. 13, 1994, 108 Stat. 3301; Pub. L. 105–85, div. A, title VIII, § 802(1), Nov. 18, 1997, 111 Stat. 1831; Pub. L. 106–391, title III, § 306, Oct. 30, 2000, 114 Stat. 1592.

AMENDMENTS

2021—Pub. L. 116–283, § 1834(g)(1), (2), (11), transferred subsec. (i) of section 2307 of this title to this section, struck out subsec. (i) designation and heading ''Action in Case of Fraud'' at beginning, and redesignated par. (10) as subsec. (a), pars. (1) to (7) as subsecs. (b) to (h), respectively, and pars. (9) and (8) as subsecs. (i) and (j), respectively.

Subsec. (a). Pub. L. 116–283, § 1834(g)(3), inserted heading and substituted ''this section'' for ''this subsection''.

Subsec. (b). Pub. L. 116–283, § 1834(g)(4), inserted heading.

Subsec. (c). Pub. L. 116–283, § 1834(g)(5), inserted heading and substituted ''subsection (b)'' for ''paragraph (1)''.

Subsec. (d). Pub. L. 116–283, § 1834(g)(6), inserted heading and substituted ''subsection (c)'' for ''paragraph (2)''.

Subsec. (e). Pub. L. 116–283, § 1834(g)(7), inserted heading and substituted ''subsection (c)'' for ''paragraph (2)''.

Subsec. (f). Pub. L. 116–283, § 1834(g)(8), inserted heading and substituted ''subsection (c)'' for ''paragraph (2)''.

Subsec. (g). Pub. L. 116–283, § 1834(g)(9), inserted heading, substituted ''subsection (c)'' for ''paragraph (2)'' in introductory provisions, and redesignated subpars. (A) and (B) as pars. (1) and (2), respectively.

Subsec. (h). Pub. L. 116–283, § 1834(g)(10), inserted heading and substituted ''subsection (c)'' for ''paragraph (2)''.

Subsec. (i). Pub. L. 116–283, § 1834(g)(12), inserted heading and substituted ''this section'' for ''this subsection''.

Subsec. (j). Pub. L. 116–283, § 1834(g)(13), inserted heading and substituted ''section applies'' for ''subsection applies'' and ''section 3063'' for ''section 2303(a)''.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 3807. Vesting of title in the United States

If a contract paid by a method authorized under section 3801(1) of this title provides for title to property to vest in the United States, the title to the property shall vest in accordance with the terms of the contract, regardless of any security interest in the property that is asserted before or after the contract is entered into.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1834(a), (h), Jan. 1, 2021, 134 Stat. 4234, 4239.)

CODIFICATION

The text of subsec. (h) of section 2307 of this title, which was transferred to this section and amended by Pub. L. 116–283, § 1834(h), was based on Pub. L. 105–85, div. A, title VIII, § 802(2), Nov. 18, 1997, 111 Stat. 1831.

PRIOR PROVISIONS

Prior sections 3811 to 3813 were repealed by Pub. L. 90–235, § 3(a)(2), (b)(1), Jan. 2, 1968, 81 Stat. 757, 758.

Section 3811, act Aug. 10, 1956, ch. 1041, 70A Stat. 220, provided for discharge of enlisted members of Army and limitations thereon, and for issuance of discharge certificates. See section 1169 of this title.

Section 3812, act Aug. 1956, ch. 1041, 70A Stat. 220, provided for the discharge of members of the Army enlisted during war or emergency. See section 1172 of this title.

Section 3813, act Aug. 10, 1956, ch. 1041, 70A Stat. 220, provided for dependency discharges for enlisted members of the Army.

A prior section 3814, act Aug. 10, 1956, ch. 1041, 70A Stat. 220, authorized Secretary of the Army to discharge a regular commissioned officer who has less than three years of continuous service as a commissioned officer therein, provided that such officer not be dismissed because of his marriage, unless marriage occurred within one year after date of his original appointment, prior to repeal by Pub. L. 96–513, title II, § 214, title VII, § 701, Dec. 12, 1980, 94 Stat. 2885, 2955, effective Sept. 15, 1981. See section 630 of this title.

A prior section 3814a, added Pub. L. 93–558, § 1, Dec. 30, 1974, 88 Stat. 1793, related to discharge, during a reduction in force, of regular commissioned officers, second lieutenants, first lieutenants, and captains, expired three years after its effective date, Dec. 30, 1974, in accordance with section 2 of Pub. L. 93–558, and was repealed by Pub. L. 103–337, div. A, title XVI, §§ 1629(a)(2), 1691(b)(1), Oct. 5, 1994, 108 Stat. 2963, 3026, effective Oct. 1, 1996.

Prior sections 3815 and 3816 were repealed by Pub. L. 90–235, § 3(a)(2), (b)(1), Jan. 2, 1968, 81 Stat. 757, 758.

Section 3815, act Aug. 10, 1956, ch. 1041, 70A Stat. 220, provided for resignation of regular enlisted members of Army enlisted on a career basis and limitations thereon.

Section 3816, act Aug. 10, 1956, ch. 1041, 70A Stat. 221, provided for minority discharges for regular enlisted members of Army. See section 1170 of this title.

A prior section 3818, acts Aug. 10, 1956, ch. 1041, 70A Stat. 221; Oct. 20, 1978, Pub. L. 95–485, title VIII, § 820(g), 92 Stat. 1627, authorized the Secretary of the Army to terminate appointment of a female commissioned officer of Regular Army, other than by dismissal, under regulations prescribed by President, or to terminate the appointment of a female warrant officer or enlistment of a female member of Regular Army by discharge from the Army, prior to repeal by Pub. L. 96–513, title II, § 236, title VII, § 701, Dec. 12, 1980, 94 Stat. 2887, 2955, effective Sept. 15, 1981.

Prior sections 3819 and 3820 were repealed by Pub. L. 103–337, div. A, title XVI, §§ 1629(a)(2), 1691(b)(1), Oct. 5, 1994, 108 Stat. 2963, 3026, effective Oct. 1, 1996.

Section 3819, added Pub. L. 85–861, § 1(93)(A), Sept. 2, 1958, 72 Stat. 1482; amended Pub. L. 98–525, title V, § 528(b), Oct. 19, 1984, 98 Stat. 2526, related to discharge of Army Reserve officers for failure of promotion to first lieutenant. See section 14503 of this title.

Section 3820, acts Aug. 10, 1956, ch. 1041, 70A Stat. 221; Sept. 2, 1958, Pub. L. 85–861, § 1(93)(B), 72 Stat. 1482, related to discharge and withdrawal of Federal recognition of officers of Army National Guard of United States absent without leave. See section 14907 of this title.

AMENDMENTS

2021—Pub. L. 116–283, § 1834(h), transferred subsec. (h) of section 2307 of this title to this section, struck out subsec. (h) designation and heading ''Vesting of Title in the United States'' at beginning, and substituted ''section 3801(1) of this title'' for ''subsection (a)(1)''.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

CHAPTER 279—CONTRACTOR AUDITS AND ACCOUNTING

Sec.
3841. Examination of records of contractor.
3842. Performance of incurred cost audits.
3843. Contractor internal audit reports: Department of Defense access to, use of, and safeguards and protections for.
3844. Contractor business systems.
3845. Contractor inventory accounting systems: standards.
3846. Defense Contract Audit Agency: legal resources and expertise.
3847. Defense Contract Audit Agency: annual report.
3848. Defense audit agencies: Small Business Ombudsmen.

PRIOR PROVISIONS

A prior chapter 279 ''CONTRACTOR AUDITS AND ACCOUNTING'', as added by Pub. L. 115–232, div. A, title VIII, § 801(a), Aug. 13, 2018, 132 Stat. 1828, and consisting of reserved section 3841, was repealed by Pub. L. 116–283, div. A, title XVIII, § 1835(a), Jan. 1, 2021, 134 Stat. 4239.

§ 3841. Examination of records of contractor

(a) RECORDS DEFINED.—In this section, the term ''records'' includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.

(b) AGENCY AUTHORITY.—

(1) The head of an agency, acting through an authorized representative, is authorized to inspect the plant and audit the records of—

(A) a contractor performing a cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable contract, or any combination of such contracts, made by that agency under a chapter 137 legacy provision; and

(B) a subcontractor performing any cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable subcontract or any combination of such subcontracts under a contract referred to in subparagraph (A).

(2) The head of an agency, acting through an authorized representative, is authorized, for the purpose of evaluating the accuracy, completeness, and currency of certified cost or pricing data required to be submitted pursuant to chapter 271 of this title with respect to a contract or subcontract, to examine all records of the contractor or subcontractor related to—

(A) the proposal for the contract or subcontract;

(B) the discussions conducted on the proposal;

(C) pricing of the contract or subcontract; or

(D) performance of the contract or subcontract.

(c) DCAA SUBPOENA AUTHORITY.—

(1) AUTHORITY TO REQUIRE THE PRODUCTION OF RECORDS.—The Director of the Defense Contract Audit Agency (or any successor agency) may require by subpoena the production of any records of a contractor that the Secretary of Defense is authorized to audit or examine under subsection (b).

(2) ENFORCEMENT OF SUBPOENA.—Any such subpoena, in the case of contumacy or refusal to obey, shall be enforceable by order of an appropriate United States district court.

(3) AUTHORITY NOT DELEGABLE.—The authority provided by paragraph (1) may not be redelegated.

(d) COMPTROLLER GENERAL AUTHORITY.—

(1) IN GENERAL.—Except as provided in paragraph (2), each contract awarded after using procedures other than sealed bid procedures shall provide that the Comptroller General and his representatives are authorized to examine any records of the contractor, or any of its subcontractors, that directly pertain to, and involve transactions relating to, the contract or subcontract and to interview any current employee regarding such transactions.

(2) EXCEPTION FOR FOREIGN CONTRACTOR OR SUBCONTRACTOR.—Paragraph (1) does not apply to a contract or subcontract with a foreign contractor or foreign subcontractor if the head of the agency concerned determines, with the concurrence of the Comptroller General or his designee, that the application of that paragraph to the contract or subcontract would not be in the public interest. However, the concurrence of the Comptroller General or his designee is not required—

(A) where the contractor or subcontractor is a foreign government or agency thereof or is precluded by the laws of the country involved from making its records available for examination; and

(B) where the head of the agency determines, after taking into account the price and availability of the property and services from United States sources, that the public interest would be best served by not applying paragraph (1).

(3) ADDITIONAL RECORDS NOT REQUIRED.—Paragraph (1) may not be construed to require a contractor or subcontractor to create or maintain any record that the contractor or subcontractor does not maintain in the ordinary course of business or pursuant to another provision of law.

(e) LIMITATION ON AUDITS RELATING TO INDIRECT COSTS.—The head of an agency may not perform an audit of indirect costs under a contract, subcontract, or modification before or after entering into the contract, subcontract, or modification in any case in which the contracting officer determines that the objectives of the audit can reasonably be met by accepting the results of an audit that was conducted by any other department or agency of the Federal Government within one year preceding the date of the contracting officer's determination.

(f) LIMITATION.—The authority of the head of an agency under subsection (b), and the authority of the Comptroller General under subsection (d), with respect to a contract or subcontract shall expire three years after final payment under such contract or subcontract.

(g) INAPPLICABILITY TO CERTAIN CONTRACTS.—This section does not apply to the following contracts:

(1) Contracts for utility services at rates not exceeding those established to apply uniformly to the public, plus any applicable reasonable connection charge.

(2) A contract or subcontract that is for an amount not greater than the simplified acquisition threshold.

(h) FORMS OF ORIGINAL RECORD STORAGE.—Nothing in this section shall be construed to preclude a contractor from duplicating or storing original records in electronic form.

(i) USE OF IMAGES OF ORIGINAL RECORDS.—The head of an agency shall not require a contractor or subcontractor to provide original records in an audit carried out pursuant to this section if the contractor or subcontractor provides photographic or electronic images of the original records and meets the following requirements:

(1) The contractor or subcontractor has established procedures to ensure that the imaging process preserves the integrity, reliability, and security of the original records.

(2) The contractor or subcontractor maintains an effective indexing system to permit timely and convenient access to the imaged records.

(3) The contractor or subcontractor retains the original records for a minimum of one year after imaging to permit periodic validation of the imaging systems.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1835(a), (b), Jan. 1, 2021, 134 Stat. 4239.)

CODIFICATION

The text of subsecs. (a), (e), (g), (h), and (i) of section 2313 of this title, which were transferred to this section, redesignated as subsecs. (b), (f), (h), (i), and (j), respectively, and amended by Pub. L. 116–283, § 1835(b)(1)–(3), (6), was based on Pub. L. 103–355, title II, § 2201(a)(1), Oct. 13, 1994, 108 Stat. 3316, which amended section 2313 generally.

The text of subsec. (b) of section 2313 of this title, which was transferred to this section, redesignated as subsec. (c), and amended by Pub. L. 116–283, § 1835(b)(1), (4), was based on Pub. L. 103–355, title II, § 2201(a)(1), Oct. 13, 1994, 108 Stat. 3316; Pub. L. 104–106, div. A, title XV, § 1502(a)(1), Feb. 10, 1996, 110 Stat. 502; Pub. L. 106–65, div. A, title X, § 1032(a)(2), Oct. 5, 1999, 113 Stat. 751.

The text of subsec. (c) of section 2313 of this title, which was transferred to this section, redesignated as subsec. (d), and amended by Pub. L. 116–283, § 1835(b)(1), (5), was based on Pub. L. 103–355, title II, § 2201(a)(1), Oct. 13, 1994, 108 Stat. 3317; Pub. L. 110–417, [div. A], title VIII, § 871(b), Oct. 14, 2008, 122 Stat. 4555.

The text of subsec. (d) of section 2313 of this title, which was transferred to this section and redesignated as subsec. (e) by Pub. L. 116–283, § 1835(b)(1), was based on Pub. L. 104–201, div. A, title VIII, § 808(a), Sept. 23, 1996, 110 Stat. 2607, which amended subsec. (d) generally.

The text of subsec. (f) of section 2313 of this title, which was transferred to this section and redesignated as subsec. (e) by Pub. L. 116–283, § 1835(b)(1), was based on Pub. L. 103–355, title II, § 2201(a)(1), title IV, § 4102(c), Oct. 13, 1994, 108 Stat. 3317, 3340.

PRIOR PROVISIONS

A prior section 3841, added Pub. L. 85–861, § 1(94), Sept. 2, 1958, 72 Stat. 1483, related to separation or transfer to retired reserve of reserve nurses and medical specialists at age 50 if in a reserve grade below major, prior to repeal by Pub. L. 86–559, § 1(22), June 30, 1960, 74 Stat. 271.

AMENDMENTS

2021—Subsec. (a). Pub. L. 116–283, § 1835(b)(2), redesignated subsec. (i) of section 2313 of this title as subsec. (a) of this section.

Subsec. (b). Pub. L. 116–283, § 1835(b)(1), (3), redesignated subsec. (a) of section 2313 of this title as subsec. (b) of this section, realigned margins of pars. (1) and (2), and substituted ''made by that agency under a chapter 137 legacy provision'' for ''made by that agency under this chapter'' in par. (1)(A) and ''chapter 271'' for ''section 2306a'' in par. (2).

Subsec. (c). Pub. L. 116–283, § 1835(b)(1), (4), redesignated subsec. (b) of section 2313 of this title as subsec. (c) of this section, inserted heading and substituted ''subsection (b)'' for ''subsection (a)'' in par. (1), and inserted headings and realigned margins of pars. (2) and (3).

Subsec. (d). Pub. L. 116–283, § 1835(b)(1), (5), redesignated subsec. (c) of section 2313 of this title as subsec. (d) of this section and inserted headings and realigned margins of pars. (1) to (3).

Subsec. (e). Pub. L. 116–283, § 1835(b)(1), redesignated subsec. (d) of section 2313 of this title as subsec. (e) of this section.

Subsec. (f). Pub. L. 116–283, § 1835(b)(1), (6), redesignated subsec. (e) of section 2313 of this title as subsec. (f) of this section and substituted ''subsection (b)'' for ''subsection (a)'' and ''subsection (d)'' for ''subsection (c)''.

Subsecs. (g) to (i). Pub. L. 116–283, § 1835(b)(1), redesignated subsecs. (f) to (h) of section 2313 of this title as subsecs. (g) to (i), respectively, of this section.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 3842. Performance of incurred cost audits

(a) COMPLIANCE WITH STANDARDS OF RISK AND MATERIALITY.—Not later than October 1, 2020, the Secretary of Defense shall comply with commercially accepted standards of risk and materiality in the performance of each incurred cost audit of costs associated with a contract of the Department of Defense.

(b) CONDITIONS FOR THE USE OF QUALIFIED AUDITORS TO PERFORM INCURRED COST AUDITS.—(1) To support the need of the Department of Defense for timely and effective incurred cost audits, and to ensure that the Defense Contract Audit Agency is able to allocate resources to higher-risk and more complex audits, the Secretary of Defense shall use qualified private auditors to perform a sufficient number of incurred cost audits of contracts of the Department of Defense to—

(A) eliminate, by October 1, 2020, any backlog of incurred cost audits of the Defense Contract Audit Agency;

(B) ensure that incurred cost audits are completed not later than one year after the date of receipt of a qualified incurred cost submission;

(C) maintain an appropriate mix of Government and private sector capacity to meet the current and future needs of the Department of Defense for the performance of incurred cost audits;

(D) ensure that qualified private auditors perform incurred cost audits on an ongoing basis to improve the efficiency and effectiveness of the performance of incurred cost audits; and

(E) limit multiyear auditing to ensure that multiyear auditing is conducted only—

(i) to address outstanding incurred cost audits for which a qualified incurred cost submission was submitted to the Defense Contract Audit Agency more than 12 months before the date of the enactment of this section; or

(ii) when the contractor being audited submits a written request, including a justification for the use of multiyear auditing, to the Under Secretary of Defense (Comptroller).

(2) The Secretary of Defense shall consult with Federal agencies that have awarded contracts or task orders to qualified private auditors to ensure that the Department of Defense is using, as appropriate, best practices relating to contracting with qualified private auditors.

(3) The Secretary of Defense shall ensure that a qualified private auditor performing an incurred cost audit under this section—

(A) has no conflict of interest in performing such an audit, as defined by generally accepted government auditing standards;

(B) possesses the necessary independence to perform such an audit, as defined by generally accepted government auditing standards;

(C) signs a nondisclosure agreement, as appropriate, to protect proprietary or nonpublic data;

(D) accesses and uses proprietary or nonpublic data furnished to the qualified private auditor only for the purposes stated in the contract;

(E) takes all reasonable steps to protect proprietary and nonpublic data furnished during the audit; and

(F) does not use proprietary or nonpublic data provided to the qualified private auditor under the authority of this section to compete for Government or nongovernment contracts.

(c) PROCEDURES FOR THE USE OF QUALIFIED PRIVATE AUDITORS.—(1) Not later than October 1, 2018, the Secretary of Defense shall submit to the congressional defense committees a plan to implement the requirements of subsection (b). Such plan shall include, at a minimum—

(A) a description of the incurred cost audits that the Secretary determines are appropriate to be conducted by qualified private auditors, including the approximate number and dollar value of such incurred cost audits;

(B) an estimate of the number and dollar value of incurred cost audits to be conducted by qualified private auditors for each of the fiscal years 2019 through 2025 necessary to meet the requirements of subsection (b); and

(C) all other elements of an acquisition plan as required by the Federal Acquisition Regulation.

(2) Not later than April 1, 2019, the Secretary of Defense or a Federal department or agency authorized by the Secretary shall award a contract or issue a task order under an existing contract to two or more qualified private auditors to perform incurred cost audits of costs associated with contracts of the Department of Defense. The Defense Contract Management Agency or a contract administration office of a military department shall use a contract or a task order awarded or issued pursuant to this paragraph for the performance of an incurred cost audit, if doing so will assist the Secretary in meeting the requirements in subsection (b).

(3) To improve the quality of incurred cost audits and reduce duplication of performance of such audits, the Secretary of Defense may provide a qualified private auditor with information on past or ongoing audit results or other relevant information on the entities the qualified private auditor is auditing.

(4) The Secretary of Defense shall consider the results of an incurred cost audit performed under this section without regard to whether the Defense Contract Audit Agency or a qualified private auditor performed the audit.

(5) The contracting officer for a contract that is the subject of an incurred cost audit shall have the sole discretion to determine what action should be taken based on an audit finding on direct costs of the contract.

(d) QUALIFIED PRIVATE AUDITOR REQUIREMENTS.—(1) A qualified private auditor awarded a contract or issued a task order under subsection (c)(2) shall conduct an incurred cost audit in accordance with the generally accepted government auditing standards.

(2) A qualified private auditor awarded a contract or issued a task order under subsection (c)(2) shall develop and maintain complete and accurate working papers on each incurred cost audit. All working papers and reports on the incurred cost audit prepared by such qualified private auditor shall be the property of the Department of Defense, except that the qualified private auditor may retain a complete copy of all working papers to support such reports made pursuant to this section.

(3) A breach of contract by a qualified private auditor with respect to use of proprietary or nonpublic data may subject the qualified private auditor to—

(A) criminal, civil, administrative, and contractual actions for penalties, damages, and other appropriate remedies by the United States; and

(B) civil actions for damages and other appropriate remedies by the contractor or subcontractor whose data are affected by the breach.

(e) PEER REVIEW.—(1) Effective October 1, 2022, the Defense Contract Audit Agency may issue unqualified audit findings for an incurred cost audit only if the Defense Contract Audit Agency is peer reviewed by a commercial auditor and passes such peer review. Such peer review shall be conducted in accordance with the peer review requirements of generally accepted government auditing standards, including the requirements related to frequency of peer reviews, and shall be deemed to meet the requirements of the De-

fense Contract Audit Agency for a peer review under such standards.

(2) Not later than October 1, 2019, the Secretary of Defense shall provide to the Committees on Armed Services of the Senate and the House of Representatives an update on the process of securing a commercial auditor to perform the peer review referred to in paragraph (1).

(f) NUMERIC MATERIALITY STANDARDS FOR INCURRED COST AUDITS.—(1) Not later than October 1, 2020, the Department of Defense shall implement numeric materiality standards for incurred cost audits to be used by auditors that are consistent with commercially accepted standards of risk and materiality.

(2) Not later than October 1, 2019, the Secretary of Defense shall submit to the congressional defense committees a report containing proposed numeric materiality standards required under paragraph (1). In developing such standards, the Secretary shall consult with commercial auditors that conduct incurred cost audits, the advisory panel authorized under section 809 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114–92; 129 Stat. 889), and other governmental and nongovernmental entities with relevant expertise.

(g) TIMELINESS OF INCURRED COST AUDITS.—(1) The Secretary of Defense shall ensure that all incurred cost audits performed by qualified private auditors or the Defense Contract Audit Agency are performed in a timely manner.

(2) The Secretary of Defense shall notify a contractor of the Department of Defense within 60 days after receipt of an incurred cost submission from the contractor whether the submission is a qualified incurred cost submission.

(3) With respect to qualified incurred cost submissions received on or after the date of the enactment of this section, audit findings shall be issued for an incurred cost audit not later than one year after the date of receipt of such qualified incurred cost submission.

(4) Not later than October 1, 2020, and subject to paragraph (5), if audit findings are not issued within one year after the date of receipt of a qualified incurred cost submission, the audit shall be considered to be complete and no additional audit work shall be conducted.

(5) The Under Secretary of Defense (Comptroller) may waive the requirements of paragraph (4) on a case-by-case basis if the Director of the Defense Contract Audit Agency submits a written request. The Director of the Defense Contract Audit Agency shall include in the report required under section 3847 of this title the total number of waivers issued and the reasons for issuing each such waiver.

(h) REVIEW OF AUDIT PERFORMANCE.—Not later than April 1, 2025, the Comptroller General of the United States shall submit to the congressional defense committees a report that evaluates for the period beginning on October 1, 2019, and ending on August 31, 2023—

(1) the timeliness, individual cost, and quality of incurred cost audits, set forth separately by incurred cost audits performed by the Defense Contract Audit Agency and by qualified private auditors;

(2) the cost to contractors of the Department of Defense for incurred cost audits, set forth separately by incurred cost audits performed by the Defense Contract Audit Agency and by qualified private auditors;

(3) the effect, if any, on other types of audits conducted by the Defense Contract Audit Agency that results from incurred cost audits conducted by qualified private auditors; and

(4) the capability and capacity of qualified private auditors to conduct incurred cost audits for the Department of Defense.

(i) DEFINITIONS.—In this section:

(1) The term ''commercial auditor'' means a private entity engaged in the business of performing audits.

(2) The term ''incurred cost audit'' means an audit of charges to the Government by a contractor under a flexibly priced contract.

(3) The term ''flexibly priced contract'' has the meaning given the term ''flexibly-priced contracts and subcontracts'' in part 30 of the Federal Acquisition Regulation (section 30.001 of title 48, Code of Federal Regulations).

(4) The term ''generally accepted government auditing standards'' means the generally accepted government auditing standards of the Comptroller General of the United States.

(5) The term ''numeric materiality standard'' means a dollar amount of misstatements, including omissions, contained in an incurred cost audit that would be material if the misstatements, individually or in the aggregate, could reasonably be expected to influence the economic decisions of the Government made on the basis of the incurred cost audit.

(6) The term ''qualified incurred cost submission'' means a submission by a contractor of costs incurred under a flexibly priced contract that has been qualified by the Department of Defense as sufficient to conduct an incurred cost audit.

(7) The term ''qualified private auditor'' means a commercial auditor—

(A) that performs audits in accordance with generally accepted government auditing standards; and

(B) that has received a passing peer review rating, as defined by generally accepted government auditing standards.

(Added Pub. L. 115–91, div. A, title VIII, § 803(a), Dec. 12, 2017, 131 Stat. 1451, § 2313b; amended Pub. L. 115–232, div. A, title X, § 1081(a)(19), Aug. 13, 2018, 132 Stat. 1984; Pub. L. 116–92, div. A, title XVII, § 1731(a)(41), Dec. 20, 2019, 133 Stat. 1814; renumbered § 3842 and amended Pub. L. 116–283, div. A, title XVIII, § 1835(c), (d)(1), Jan. 1, 2021, 134 Stat. 4240.)

REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsecs. (b)(1)(E)(i) and (g)(3), is the date of enactment of Pub. L. 115–91, which was approved Dec. 12, 2017.

Section 809 of the National Defense Authorization Act for Fiscal Year 2016, referred to in subsec. (f)(2), is section 809 of Pub. L. 114–92, div. A, title VIII, Nov. 25, 2015, 129 Stat. 889, which relates to the establishment of an advisory panel on streamlining acquisition regulations and is not classified to the Code.

PRIOR PROVISIONS

A prior section 3842, added Pub. L. 85–861, § 1(94), Sept. 2, 1958, 72 Stat. 1483, related to separation or transfer to

Retired Reserve of Reserve nurses and medical specialists at age 55 if in a reserve grade above captain, prior to repeal by Pub. L. 86–559, § 1(22), June 30, 1960, 74 Stat. 271.

AMENDMENTS

2021—Pub. L. 116–283, § 1835(c), renumbered section 2313b of this title as this section.

Subsec. (g)(5). Pub. L. 116–283, § 1835(d)(1), substituted ''section 3847'' for ''section 2313a''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 3843. Contractor internal audit reports: Department of Defense access to, use of, and safeguards and protections for

[Reserved.]

(Added Pub. L. 116–283, div. A, title XVIII, § 1835(e)(1), Jan. 1, 2021, 134 Stat. 4241.)

PRIOR PROVISIONS

A prior section 3843, added Pub. L. 85–861, § 1(94), Sept. 2, 1958, 72 Stat. 1483; amended Pub. L. 86–559, § 1(23), June 30, 1960, 74 Stat. 271; Pub. L. 99–145, title XIII, § 1303(a)(20)(A), Nov. 8, 1985, 99 Stat. 739, related to transfer or discharge of reserve commissioned officers below grade of major general, prior to repeal by Pub. L. 103–337, div. A, title XVI, §§ 1629(a)(3), 1691(b)(1), Oct. 5, 1994, 108 Stat. 2963, 3026, effective Oct. 1, 1996. See sections 14509 and 14510 of this title.

EFFECTIVE DATE

Section effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 3844. Contractor business systems

[Reserved.]

(Added Pub. L. 116–283, div. A, title XVIII, § 1835(e)(1), Jan. 1, 2021, 134 Stat. 4241.)

PRIOR PROVISIONS

A prior section 3844, added Pub. L. 85–861, § 1(94), Sept. 2, 1958, 72 Stat. 1484; amended Pub. L. 86–559, § 1(24), June 30, 1960, 74 Stat. 271, related to transfer or discharge of certain reserve major generals and brigadier generals who are 62 years old, prior to repeal by Pub. L. 103–337, div. A, title XVI, §§ 1629(a)(3), 1691(b)(1), Oct. 5, 1994, 108 Stat. 2963, 3026, effective Oct. 1, 1996. See section 14511 of this title.

EFFECTIVE DATE

Section effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 3845. Contractor inventory accounting systems: standards

(a) The Secretary of Defense shall prescribe in regulations—

(1) standards for inventory accounting systems used by contractors under contract with the Department of Defense; and

(2) appropriate enforcement requirements with respect to such standards.

(b) The regulations prescribed pursuant to subsection (a) shall not apply to a contract that is for an amount not greater than the simplified acquisition threshold.

(c) The regulations prescribed pursuant to subsection (a) shall not apply to a contract for the purchase of commercial products.

(Added Pub. L. 100–456, div. A, title VIII, § 834(a)(1), Sept. 29, 1988, 102 Stat. 2024, § 2410b; amended Pub. L. 103–355, title IV, § 4102(h), title VIII, § 8105(i), Oct. 13, 1994, 108 Stat. 3341, 3393; Pub. L. 104–106, div. D, title XLIII, § 4301(a)(1), Feb. 10, 1996, 110 Stat. 656; Pub. L. 104–201, div. A, title X, § 1074(b)(3), Sept. 23, 1996, 110 Stat. 2660; Pub. L. 111–350, § 5(b)(28), Jan. 4, 2011, 124 Stat. 3845; Pub. L. 115–232, div. A, title VIII, § 836(e)(6), Aug. 13, 2018, 132 Stat. 1870; renumbered § 3845 and amended Pub. L. 116–283, div. A, title XVIII, § 1835(c), (d)(2), Jan. 1, 2021, 134 Stat. 4240.)

PRIOR PROVISIONS

A prior section 3845, added Pub. L. 85–861, § 1(94), Sept. 2, 1958, 72 Stat. 1484; amended Pub. L. 100–456, div. A, title XII, § 1234(a)(1), Sept. 29, 1988, 102 Stat. 2059, related to transfer or discharge of certain officers of Army National Guard of United States who are 64 years of age, prior to repeal Pub. L. 103–337, div. A, title XVI, §§ 1629(a)(3), 1691(b)(1), Oct. 5, 1994, 108 Stat. 2963, 3026, effective Oct. 1, 1996. See section 14512(a) of this title.

AMENDMENTS

2021—Pub. L. 116–283, § 1835(c), renumbered section 2410b of this title as this section.

Subsec. (c). Pub. L. 116–283, § 1835(d)(2), struck out ''(as defined in section 103 of title 41)'' after ''commercial products''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 3846. Defense Contract Audit Agency: legal resources and expertise

[Reserved.]

(Added Pub. L. 116–283, div. A, title XVIII, § 1835(e)(2), Jan. 1, 2021, 134 Stat. 4241.)

PRIOR PROVISIONS

A prior section 3846, added Pub. L. 85–861, § 1(94), Sept. 2, 1958, 72 Stat. 1484, related to transfer or discharge of reserve first lieutenants, captains, and majors not recommended for promotion by two selection boards, prior to repeal by Pub. L. 103–337, div. A, title XVI, §§ 1629(a)(3), 1691(b)(1), Oct. 5, 1994, 108 Stat. 2963, 3026, effective Oct. 1, 1996. See section 14501 et seq. of this title.

EFFECTIVE DATE

Section effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 3847. Defense Contract Audit Agency: annual report

(a) REQUIRED REPORT.—The Director of the Defense Contract Audit Agency shall prepare an annual report of the activities of the Agency during the previous fiscal year. The report shall include, at a minimum—

(1) a description of significant problems, abuses, and deficiencies encountered during the conduct of contractor audits;

(2) statistical tables showing—

(A) the total number and dollar value of audit reports completed and pending, set forth separately by type of audit;

(B) the priority given to each type of audit;

(C) the length of time taken for each type of audit, both from the date of receipt of a qualified incurred cost submission and from the date the audit begins;

(D) the sustained questioned costs, set forth separately by type of audit, both as a total value and as a percentage of the total questioned costs for the audit;

(E) the total number and dollar value of incurred cost audits completed, and the method by which such incurred cost audits were completed;

(F) the aggregate cost of performing audits, set forth separately by type of audit;

(G) the ratio of sustained questioned costs to the aggregate costs of performing audits, set forth separately by type of audit; and

(H) the total number and dollar value of audits that are pending for a period longer than one year as of the end of the fiscal year covered by the report, and the fiscal year in which the qualified submission was received, set forth separately by type of audit;

(3) a summary of any recommendations of actions or resources needed to improve the audit process;

(4) a summary, set forth separately by dollar amount and percentage, of indirect costs for independent research and development incurred by contractors in the previous fiscal year;

(5) a summary, set forth separately by dollar amount and percentage, of indirect costs for bid and proposal costs incurred by contractors in the previous fiscal year;

(6) a description of outreach actions toward industry to promote more effective use of audit resources; and

(7) any other matters the Director considers appropriate.

(b) SUBMISSION OF ANNUAL REPORT.—Not later than March 30 of each year, the Director shall submit to the congressional defense committees the report required by subsection (a).

(c) PUBLIC AVAILABILITY.—Not later than 60 days after the submission of an annual report to the congressional defense committees under subsection (b), the Director shall make the report available on the publicly available website of the Agency or such other publicly available website as the Director considers appropriate.

(d) DEFINITIONS.—

(1) The terms ''incurred cost audit'' and ''qualified incurred cost submission'' have the meaning given those terms in section 3842 of this title.

(2) The term ''sustained questioned costs'' means questioned costs that were recovered by the Federal Government as a result of contract negotiations related to such questioned costs.

(Added Pub. L. 112–81, div. A, title VIII, § 805(a), Dec. 31, 2011, 125 Stat. 1486, § 2313a; amended Pub. L. 114–92, div. A, title VIII, § 893(b), Nov. 25, 2015, 129 Stat. 952; Pub. L. 114–328, div. A, title VIII, § 824(d)(1), Dec. 23, 2016, 130 Stat. 2279; Pub. L. 115–91, div. A, title VIII, § 811(d)(1), title X, § 1081(d)(5), Dec. 12, 2017, 131 Stat. 1460, 1600; renumbered § 3847 and amended Pub. L. 116–283, div. A, title XVIII, § 1835(c), (d)(3), Jan. 1, 2021, 134 Stat. 4240.)

PRIOR PROVISIONS

A prior section 3847, added Pub. L. 85–861, § 1(94), Sept. 2, 1958, 72 Stat. 1484; Pub. L. 86–559, § 1(25), June 30, 1960, 74 Stat. 272, provided for transfer to Retired Reserve or discharge from his reserve appointment, after July 1, 1960, of each officer in a reserve grade below lieutenant colonel with 25 years service assigned to Army Nurse Corps, Army Medical Specialist Corps, or Women's Army Corps who had not been recommended for promotion to reserve grade of lieutenant colonel or who has not remained on active duty since such a recommendation, prior to repeal by Pub. L. 90–130, § 1(12)(A), Nov. 8, 1967, 81 Stat. 376.

AMENDMENTS

2021—Pub. L. 116–283, § 1835(c), renumbered section 2313a of this title as this section.

Subsec. (d)(1). Pub. L. 116–283, § 1835(d)(3), substituted ''section 3842'' for ''section 2313b''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 3848. Defense audit agencies: Small Business Ombudsmen

(a) SMALL BUSINESS OMBUDSMAN.—The Secretary of Defense shall designate within each defense audit agency an official as the Small Business Ombudsman to have the duties described in subsection (b) and such other responsibilities as may be determined by the Secretary.

(b) DUTIES.—The Small Business Ombudsman of a defense audit agency shall—

(1) advise the Director of the defense audit agency on policy issues related to small business concerns;

(2) serve as the defense audit agency's primary point of contact and source of information for small business concerns;

(3) collect and monitor relevant data regarding the defense audit agency's conduct of audits of small business concerns, including—

(A) data regarding the timeliness of audit closeouts for small business concerns; and

(B) data regarding the responsiveness of the defense audit agency to issues or other matters raised by small business concerns; and

(4) make recommendations to the Director regarding policies, processes, and procedures related to the timeliness of audits of small business concerns and the responsiveness of the defense audit agency to issues or other matters raised by small business concerns.

(c) AUDIT INDEPENDENCE.—The Small Business Ombudsman of a defense audit agency shall be segregated from ongoing audits in the field and

shall not engage in activities with regard to particular audits that could compromise the independence of the defense audit agency or undermine compliance with applicable audit standards.

(d) DEFENSE AUDIT AGENCY DEFINED.—In this section, the term ''defense audit agency'' means the Defense Contract Audit Agency and the Defense Contract Management Agency.

(Added Pub. L. 112–239, div. A, title XVI, § 1612(a), Jan. 2, 2013, 126 Stat. 2064, § 204; renumbered § 3848 and amended Pub. L. 116–283, div. A, title XVIII, § 1835(c), (d)(4), Jan. 1, 2021, 134 Stat. 4240.)

PRIOR PROVISIONS

A prior section 3848, added Pub. L. 85–861, § 1(94), Sept. 2, 1958, 72 Stat. 1485; amended Pub. L. 86–559, § 1(26), June 30, 1960, 74 Stat. 272; Pub. L. 90–130, § 1(12)(B), Nov. 8, 1967, 81 Stat. 376; Pub. L. 90–486, § 9(1), Aug. 13, 1968, 82 Stat. 760; Pub. L. 95–485, title VIII, § 820(h), Oct. 20, 1978, 92 Stat. 1627; Pub. L. 96–513, title V, § 512(8), Dec. 12, 1980, 94 Stat. 2929; Pub. L. 99–145, title V, § 522(a)(1), title XIII, § 1303(a)(20)(B), Nov. 8, 1985, 99 Stat. 631, 739; Pub. L. 100–456, div. A, title XII, § 1234(a)(1), Sept. 29, 1988, 102 Stat. 2059, related to transfer or discharge of reserve first lieutenants, captains, majors, and lieutenant colonels with 28 years of service, prior to repeal by Pub. L. 103–337, div. A, title XVI, §§ 1629(a)(3), 1691(b)(1), Oct. 5, 1994, 108 Stat. 2963, 3026, effective Oct. 1, 1996. See section 14501 et seq. of this title.

A prior section 3849, added Pub. L. 85–861, § 1(94), Sept. 2, 1958, 72 Stat. 1485, related to separation or transfer to retired reserve of officers in the reserve grade of lieutenant colonel assigned to the Women's Army Corps upon completion of 28 years of service, prior to repeal by Pub. L. 86–559, § 1(27), June 30, 1960, 74 Stat. 272.

Prior sections 3850 to 3855 were repealed by Pub. L. 103–337, div. A, title XVI, §§ 1629(a)(3), 1691(b)(1), Oct. 5, 1994, 108 Stat. 2963, 3026, effective Oct. 1, 1996.

Section 3850, added Pub. L. 85–861, § 1(94), Sept. 2, 1958, 72 Stat. 1485; amended Pub. L. 104–106, div. A, title XV, § 1501(c)(25), Feb. 10, 1996, 110 Stat. 499, related to transfer or discharge of excessive reserve commissioned officers in active status with thirty or more years of service. See sections 14514 and 14704 of this title.

Section 3851, added Pub. L. 85–861, § 1(94), Sept. 2, 1958, 72 Stat. 1486; amended Pub. L. 86–559, § 1(28), June 30, 1960, 74 Stat. 272; Pub. L. 90–486, § 9(1), Aug. 13, 1968, 82 Stat. 760; Pub. L. 96–513, title V, § 512(8), Dec. 12, 1980, 94 Stat. 2929; Pub. L. 98–525, title V, § 513, Oct. 19, 1984, 98 Stat. 2522; Pub. L. 99–145, title V, § 522(a)(2), title XIII, § 1303(a)(20)(B), Nov. 8, 1985, 99 Stat. 631, 739; Pub. L. 99–661, div. A, title XIII, § 1342(g), Nov. 14, 1986, 100 Stat. 3992; Pub. L. 100–456, div. A, title XII, § 1234(a)(1), Sept. 29, 1988, 102 Stat. 2059, related to transfer or discharge of reserve colonels and brigadier generals with 30 years of service or five years in grade. See section 14508(a), (e) of this title.

Section 3852, added Pub. L. 85–861, § 1(94), Sept. 2, 1958, 72 Stat. 1486; amended Pub. L. 86–559, § 1(29), June 30, 1960, 74 Stat. 272; Pub. L. 99–145, title V, § 523, title XIII, § 1303(a)(20)(B), Nov. 8, 1985, 99 Stat. 632, 739; Pub. L. 100–456, div. A, title XII, § 1234(a)(1), Sept. 29, 1988, 102 Stat. 2059, related to transfer or discharge of reserve major generals with 35 years of service or five years in grade. See section 14508(b), (f) of this title.

Section 3853, added Pub. L. 85–861, § 1(94), Sept. 2, 1958, 72 Stat. 1486; amended Pub. L. 86–559, § 1(30), June 30, 1960, 74 Stat. 273; Pub. L. 86–651, title I, § 115, Sept. 7, 1962, 76 Stat. 513; Pub. L. 96–513, title V, § 512(9), Dec. 12, 1980, 94 Stat. 2929; Pub. L. 98–94, title X, § 1016(a), Sept. 24, 1983, 97 Stat. 668; Pub. L. 103–337, div. A, title XVI, § 1635(a), Oct. 5, 1994, 108 Stat. 2968, related to computation of years of service. See section 14706 of this title.

Section 3854, added Pub. L. 85–861, § 1(94), Sept. 2, 1958, 72 Stat. 1486, authorized Secretary of the Army to prescribe regulations to carry out this chapter.

Section 3855, added Pub. L. 86–559, § 1(31), June 30, 1960, 74 Stat. 273; amended Pub. L. 96–107, title IV, § 403(a), Nov. 9, 1979, 93 Stat. 808; Pub. L. 96–513, title II, § 215(a), Dec. 12, 1980, 94 Stat. 2885; Pub. L. 100–180, div. A, title VII, § 717(a), (d)(1)(A), Dec. 4, 1987, 101 Stat. 1113, 1114; Pub. L. 101–189, div. A, title VII, §§ 710(a), 711(a), Nov. 29, 1989, 103 Stat. 1476, 1477, related to retention in active status of certain reserve officers. See section 14703(a)(1), (b) of this title.

AMENDMENTS

2021—Pub. L. 116–283 renumbered section 204 of this title as this section and substituted ''Defense audit agencies: Small Business Ombudsmen'' for ''Small Business Ombudsman for defense audit agencies'' in section catchline.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

CHAPTER 281—CLAIMS AND DISPUTES

Sec.
3861. Research and development contracts: indemnification provisions.
3862. Requests for equitable adjustment or other relief: certification.
3863. Retention of amounts collected from contractor during the pendency of contract dispute.

PRIOR PROVISIONS

A prior chapter 281 ''CLAIMS AND DISPUTES'', as added by Pub. L. 115–232, div. A, title VIII, § 801(a), Aug. 13, 2018, 132 Stat. 1828, and consisting of reserved section 3861, was repealed by Pub. L. 116–283, div. A, title XVIII, § 1836(a), Jan. 1, 2021, 134 Stat. 4241.

§ 3861. Research and development contracts: indemnification provisions

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

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

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

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

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

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

(c) No payment may be made under subsection (a) unless the Secretary of the department con-

cerned, or an officer or official of his department designated by him, certifies that the amount is just and reasonable.

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

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

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

(3) funds appropriated for those payments.

(Aug. 10, 1956, ch. 1041, 70A Stat. 134, § 2354; renumbered § 3861 and amended Pub. L. 116–283, div. A, title XVIII, § 1836(b), (c), Jan. 1, 2021, 134 Stat. 4241.)

AMENDMENTS

2021—Pub. L. 116–283 renumbered section 2354 of this title as this section and substituted ''Research and development contracts: indemnification provisions'' for ''Contracts: indemnification provisions'' in section catchline.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 3862. Requests for equitable adjustment or other relief: certification

(a) CERTIFICATION REQUIREMENT.—A request for equitable adjustment to contract terms or request for relief under Public Law 85–804 (50 U.S.C. 1431 et seq.) that exceeds the simplified acquisition threshold may not be paid unless a person authorized to certify the request on behalf of the contractor certifies, at the time the request is submitted, that—

(1) the request is made in good faith, and

(2) the supporting data are accurate and complete to the best of that person's knowledge and belief.

(b) RESTRICTION ON LEGISLATIVE PAYMENT OF CLAIMS.—In the case of a contract of an agency named in section 2303(a)[1] of this title, no provision of a law enacted after September 30, 1994, that directs the payment of a particular claim under such contract, a particular request for equitable adjustment to any term of such contract, or a particular request for relief under Public Law 85–804 (50 U.S.C. 1431 et seq.) regarding such contract may be implemented unless such provision of law—

(1) specifically refers to this subsection; and

(2) specifically states that this subsection does not apply with respect to the payment directed by that provision of law.

(c) DEFINITION.—In this section, the term ''simplified acquisition threshold'' has the meaning given that term in section 134 of title 41.

(Added Pub. L. 103–355, title II, § 2301(a), Oct. 13, 1994, 108 Stat. 3320, § 2410; amended Pub. L. 111–350, § 5(b)(27), Jan. 4, 2011, 124 Stat. 3845; renumbered § 3862 and amended Pub. L. 116–283, div. A, title XVIII, §§ 1836(b), 1883(b)(2), Jan. 1, 2021, 134 Stat. 4241, 4294.)

[1] See References in Text note below.

REFERENCES IN TEXT

Public Law 85–804, referred to in subsecs. (a) and (b), is Pub. L. 85–804, Aug. 28, 1958, 72 Stat. 972, which is classified generally to chapter 29 (§ 1431 et seq.) of Title 50, War and National Defense. For complete classification of this Act to the Code, see Tables.

Section 2303(a) of this title, referred to in subsec. (b), was transferred to sections 3063 and 3064(a) of this title by Pub. L. 116–283, div. A, title XVIII, § 1807(c)(2), (3), Jan. 1, 2021, 134 Stat. 4157. Section 3063 of this title sets out a list of covered agencies.

AMENDMENTS

2021—Pub. L. 116–283, § 1836(b), renumbered section 2410 of this title as this section.

Subsec. (b). Pub. L. 116–283, § 1883(b)(2), which directed that each reference in the text of title 10 to a section that was redesignated by title XVIII of Pub. L. 116–283, as such section was in effect before the redesignation, be amended by striking such reference and inserting a reference to the appropriate redesignated section, was not executed with respect to ''section 2303(a)'', which was redesignated as multiple sections.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 3863. Retention of amounts collected from contractor during the pendency of contract dispute

(a) RETENTION OF FUNDS.—Notwithstanding sections 1552(a) and 3302(b) of title 31, any amount, including interest, collected from a contractor as a result of a claim made by a military department or Defense Agency under chapter 71 of title 41, shall remain available in accordance with this section to pay—

(1) any settlement of the claim by the parties;

(2) any judgment rendered in the contractor's favor on an appeal of the decision on that claim to the Armed Services Board of Contract Appeals under section 7104(a) of title 41; or

(3) any judgment rendered in the contractor's favor in an action on that claim in a court of the United States.

(b) PERIOD OF AVAILABILITY.—(1) The period of availability of an amount under subsection (a), in connection with a claim—

(A) expires 180 days after the expiration of the period for bringing an action on that claim in the United States Court of Federal Claims under section 7104(b) of title 41 if, within that 180-day period—

(i) no appeal on the claim is commenced at the Armed Services Board of Contract Appeals under section 7104(a) of such title; and

(ii) no action on the claim is commenced in a court of the United States; or

(B) if not expiring under subparagraph (A), expires—

(i) in the case of a settlement of the claim, 180 days after the date of the settlement; or

(ii) in the case of a judgment rendered on the claim in an appeal to the Armed Services Board of Contract Appeals under section 7104(a) of title 41 or an action in a court of

the United States, 180 days after the date on which the judgment becomes final and not appealable.

(2) While available under this section, an amount may be obligated or expended only for a purpose described in subsection (a).

(3) Upon the expiration of the period of availability of an amount under paragraph (1), the amount shall be covered into the Treasury as miscellaneous receipts.

(Added Pub. L. 105–85, div. A, title VIII, § 831(a), Nov. 18, 1997, 111 Stat. 1841, § 2410m; amended Pub. L. 108–136, div. A, title X, § 1031(a)(21), Nov. 24, 2003, 117 Stat. 1598; Pub. L. 111–350, § 5(b)(32), Jan. 4, 2011, 124 Stat. 3845; Pub. L. 112–81, div. A, title X, § 1061(15), Dec. 31, 2011, 125 Stat. 1583; Pub. L. 113–291, div. A, title X, § 1071(a)(8), Dec. 19, 2014, 128 Stat. 3504; renumbered § 3863, Pub. L. 116–283, div. A, title XVIII, § 1836(b), Jan. 1, 2021, 134 Stat. 4241.)

AMENDMENTS

2021—Pub. L. 116–283 renumbered section 2410m of this title as this section.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

CHAPTER 283—FOREIGN ACQUISITIONS

Subchapter		Sec.
I.	General	3881
II.	Prohibition on Contracting with the Enemy	3891

PRIOR PROVISIONS

A prior chapter 283 ''FOREIGN ACQUISITIONS'', as added by Pub. L. 115–232, div. A, title VIII, § 801(a), Aug. 13, 2018, 132 Stat. 1828, and consisting of reserved section 3881, was repealed by Pub. L. 116–283, div. A, title XVIII, § 1837(a), Jan. 1, 2021, 134 Stat. 4241.

SUBCHAPTER I—GENERAL

Sec.
3881. Contracts: consideration of national security objectives.

§ 3881. Contracts: consideration of national security objectives

(a) DISCLOSURE OF OWNERSHIP OR CONTROL BY A FOREIGN GOVERNMENT.—The head of an agency shall require a firm or a subsidiary of a firm that submits a bid or proposal in response to a solicitation issued by the Department of Defense to disclose in that bid or proposal any significant interest in such firm or subsidiary (or, in the case of a subsidiary, in the firm that owns the subsidiary) that is owned or controlled (whether directly or indirectly) by a foreign government or an agent or instrumentality of a foreign government, if such foreign government is the government of a country that the Secretary of State determines under section 6(j)(1)(A)[1] of the Export Administration Act of 1979 (50 U.S.C. 4605(j)(1)(A)) has repeatedly provided support for acts of international terrorism.

(b) PROHIBITION ON ENTERING INTO CONTRACTS AGAINST THE INTERESTS OF THE UNITED STATES.—Except as provided in subsection (c), the head of an agency may not enter into a contract with a firm or a subsidiary of a firm if—

(1) a foreign government owns or controls (whether directly or indirectly) a significant interest in such firm or subsidiary (or, in the case of a subsidiary, in the firm that owns the subsidiary); and

(2) such foreign government is the government of a country that the Secretary of State determines under section 6(j)(1)(A)[1] of the Export Administration Act of 1979 (50 U.S.C. 4605(j)(1)(A)) has repeatedly provided support for acts of international terrorism.

(c) WAIVER.—(1)(A) If the Secretary of Defense determines under paragraph (2) that entering into a contract with a firm or a subsidiary of a firm described in subsection (b) is not inconsistent with the national security objectives of the United States, the head of an agency may enter into a contract with such firm or subsidiary if in the best interests of the Government.

(B) The Secretary shall maintain records of each contract entered into by reason of subparagraph (A). Such records shall include the following:

(i) The identity of the foreign government concerned.

(ii) The nature of the contract.

(iii) The extent of ownership or control of the firm or subsidiary concerned (or, if appropriate in the case of a subsidiary, of the firm that owns the subsidiary) by the foreign government concerned or the agency or instrumentality of such foreign government.

(iv) The reasons for entering into the contract.

(2) Upon the request of the head of an agency, the Secretary of Defense shall determine whether entering into a contract with a firm or subsidiary described in subsection (b) is inconsistent with the national security objectives of the United States. In making such a determination, the Secretary of Defense shall consider the following:

(A) The relationship of the United States with the foreign government concerned.

(B) The obligations of the United States under international agreements.

(C) The extent of the ownership or control of the firm or subsidiary (or, if appropriate in the case of a subsidiary, of the firm that owns the subsidiary) by the foreign government or an agent or instrumentality of the foreign government.

(D) Whether payments made, or information made available, to the firm or subsidiary under the contract could be used for purposes hostile to the interests of the United States.

(d) LIST OF FIRMS SUBJECT TO PROHIBITION.—(1) The Secretary of Defense shall develop and maintain a list of all firms and subsidiaries of firms that the Secretary has identified as being subject to the prohibition in subsection (b).

(2)(A) A person may request the Secretary to include on the list maintained under paragraph (1) any firm or subsidiary of a firm that the person believes to be owned or controlled by a foreign government described in subsection (b)(2).

[1] See References in Text note below.

Upon receipt of such a request, the Secretary shall determine whether the conditions in paragraphs (1) and (2) of subsection (b) exist in the case of that firm or subsidiary. If the Secretary determines that such conditions do exist, the Secretary shall include the firm or subsidiary on the list.

(B) A firm or subsidiary of a firm included on the list may request the Secretary to remove such firm or subsidiary from the list on the basis that it has been erroneously included on the list or its ownership circumstances have significantly changed. Upon receipt of such a request, the Secretary shall determine whether the conditions in paragraphs (1) and (2) of subsection (b) exist in the case of that firm or subsidiary. If the Secretary determines that such conditions do not exist, the Secretary shall remove the firm or subsidiary from the list.

(C) The Secretary shall establish procedures to carry out this paragraph.

(3) The head of an agency shall prohibit each firm or subsidiary of a firm awarded a contract by the agency from entering into a subcontract under that contract in an amount in excess of $25,000 with a firm or subsidiary included on the list maintained under paragraph (1) unless there is a compelling reason to do so. In the case of any subcontract requiring consent by the head of an agency, the head of the agency shall not consent to the award of the subcontract to a firm or subsidiary included on such list unless there is a compelling reason for such approval.

(e) DISTRIBUTION OF LIST.—The Administrator of General Services shall ensure that the list developed and maintained under subsection (d) is made available to Federal agencies and the public in the same manner and to the same extent as the list of suspended and debarred contractors compiled pursuant to subpart 9.4 of the Federal Acquisition Regulation.

(f) APPLICABILITY.—(1) This section does not apply to a contract for an amount less than $100,000.

(2) The provisions of section 3011 of this title apply in this section, except that this section does not apply to the Coast Guard or the National Aeronautics and Space Administration.

(g) REGULATIONS.—The Secretary of Defense, after consultation with the Secretary of State, shall prescribe regulations to carry out this section. Such regulations shall include a definition of the term ''significant interest''.

(Added Pub. L. 99–500, § 101(c) [title X, § 951(a)(1)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–164, and Pub. L. 99–591, § 101(c) [title X, § 951(a)(1)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–164, § 2327; Pub. L. 99–661, div. A, title IX, formerly title IV, § 951(a)(1), Nov. 14, 1986, 100 Stat. 3944, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; amended Pub. L. 100–180, div. A, title XII, § 1231(8), Dec. 4, 1987, 101 Stat. 1160; Pub. L. 100–224, § 5(b)(2), Dec. 30, 1987, 101 Stat. 1538; Pub. L. 105–85, div. A, title VIII, § 843, Nov. 18, 1997, 111 Stat. 1844; Pub. L. 108–136, div. A, title X, § 1031(a)(16), Nov. 24, 2003, 117 Stat. 1597; Pub. L. 114–328, div. A, title X, § 1081(b)(3)(C), Dec. 23, 2016, 130 Stat. 2418; renumbered § 3881 and amended Pub. L. 116–283, div. A, title XVIII, § 1837(b), Jan. 1, 2021, 134 Stat. 4241.)

REFERENCES IN TEXT

Section 6(j)(1)(A) of the Export Administration Act of 1979 (50 U.S.C. 4605(j)(1)(A)), referred to in subsecs. (a) and (b)(2), was repealed by Pub. L. 115–232, div. A, title XVII, § 1766(a), Aug. 13, 2018, 132 Stat. 2232. For similar provisions, see section 4813(c)(1)(A)(i) of Title 50, War and National Defense, as enacted by Pub. L. 115–232.

PRIOR PROVISIONS

Prior sections 3881 and 3882 were repealed by Pub. L. 85–155, title IV, § 401(1), Aug. 21, 1957, 71 Stat. 390.

Section 3881, act Aug. 10, 1956, ch. 1041, 70A Stat. 222, authorized Secretary of the Army to retire regular commissioned officers of Army Nurse Corps or Women's Medical Specialist Corps whose regular grade is below major.

Section 3882, act Aug. 10, 1956, ch. 1041, 70A Stat. 222, authorized Secretary of the Army to retire regular commissioned officers of Army Nurse Corps or Women's Medical Specialist Corps whose regular grade is above captain.

Prior sections 3883 to 3886 were repealed by Pub. L. 96–513, title II, § 216, title VII, § 701, Dec. 12, 1980, 94 Stat. 2886, 2955, effective Sept. 15, 1981.

Section 3883, acts Aug. 10, 1956, ch. 1041, 70A Stat. 222; Aug. 6, 1958, Pub. L. 85–600, § 1(6), 72 Stat. 522; Nov. 2, 1966, Pub. L. 89–718, § 3, 80 Stat. 1115; Oct. 30, 1978, Pub. L. 95–551, § 2, 92 Stat. 2069, provided that, unless retired or separated at an earlier date, each commissioned officer whose regular grade is below major general, other than a professor or the director of admissions of the United States Military Academy, be retired when he becomes 60 years of age, except as provided by section 8301 of title 5. See section 1251 of this title.

Section 3884, acts Aug. 10, 1956, ch. 1041, 70A Stat. 222; Nov. 2, 1966, Pub. L. 89–718, § 3, 80 Stat. 1115, provided that, unless retired or separated at an earlier date, each commissioned officer whose regular grade is major general, and whose retirement under section 3923 of this title has been deferred under cl. (1) of that section, be retired when he becomes 60 years of age, except as provided by section 8301 of title 5. See section 1251 of this title.

Section 3885, acts Aug. 10, 1956, ch. 1041, 70A Stat. 222; Nov. 2, 1966, Pub. L. 89–718, § 3, 80 Stat. 1115, provided that, unless retired or separated at an earlier date or unless retained under section 3923(2) of this title, each commissioned officer whose regular grade is major general be retired when he becomes 62 years of age, except as provided by section 8301 of title 5. See section 1251 of this title.

Section 3886, acts Aug. 10, 1956, ch. 1041, 70A Stat. 222; Aug. 6, 1958, Pub. L. 85–600, § 1(7), 72 Stat. 522; Nov. 2, 1966, Pub. L. 89–718, § 3, 80 Stat. 1115; Oct. 30, 1978, Pub. L. 95–551, § 2, 92 Stat. 2069, provided that, unless retired or separated at an earlier date, each commissioned officer whose regular grade is major general, and whose retirement under section 3923 of this title has been deferred under cl. (2) of that section, and each permanent professor and the director of admissions of the United States Military Academy, be retired when he becomes 64 years of age, except as provided by section 8301 of title 5. See section 1251 of this title.

A prior section 3887, act Aug. 10, 1956, ch. 1041, 70A Stat. 223, related to computation of years of service of commissioned officers of Army Nurse Corps or Women's Medical Specialist Corps for purposes of retirement under former sections 3881 or 3882 of this title, or retirement pay under section 3991 of this title, prior to repeal by Pub. L. 85–155, title IV, § 401(1), Aug. 21, 1957, 71 Stat. 390.

Prior sections 3888 and 3889 were repealed by Pub. L. 96–513, title II, § 216, title VII, § 701, Dec. 12, 1980, 94 Stat. 2886, 2955, effective Sept. 15, 1981.

Section 3888, acts Aug. 10, 1956, ch. 1041, 70A Stat. 223; Aug. 21, 1957, Pub. L. 85–155, title I, § 101(18), 71 Stat. 379; May 20, 1958, Pub. L. 85–422, § 11(a)(3), 72 Stat. 131; Sept. 2, 1958, Pub. L. 85–861, § 1(96), 72 Stat. 1487, related to computation of service for determining retired pay of a

commissioned officer of Regular Army retired under former section 3883, 3884, 3885, or 3886 of this title.

Section 3889, act Aug. 10, 1956, ch. 1041, 70A Stat. 224, provided that a member of Army retired under this chapter be entitled to retired pay computed under chapter 745 of this title.

AMENDMENTS

2021—Pub. L. 116–283, § 1837(b)(1), renumbered section 2327 of this title as this section.

Subsec. (f)(2). Pub. L. 116–283, § 1837(b)(2), substituted ''The provisions of section 3011 of this title apply in this section, except that this section does not'' for ''This section does not''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

SUBCHAPTER II—PROHIBITION ON CONTRACTING WITH THE ENEMY

Sec.
3891. [Reserved].
3892. [Reserved].
3893. [Reserved].

CHAPTER 287—SOCIOECONOMIC PROGRAMS

Sec.
3901. Contracts: prohibition on competition between Department of Defense and small businesses.
3902. Credit for Indian contracting in meeting certain subcontracting goals for small disadvantaged businesses.
3903. Subcontracting plans: credit for certain purchases.
3904. Research and educational programs and activities: historically black colleges and universities and minority-serving institutions of higher education.
3905. Products of Federal Prison Industries: procedural requirements.

PRIOR PROVISIONS

A prior chapter 285 ''SMALL BUSINESS PROGRAMS'', as added by Pub. L. 115–232, div. A, title VIII, § 801(a), Aug. 13, 2018, 132 Stat. 1828, and consisting of reserved section 3901, was repealed by Pub. L. 116–283, div. A, title XVIII, § 1871(a)(1), Jan. 1, 2021, 134 Stat. 4287.

A prior chapter 287 ''SOCIOECONOMIC PROGRAMS'', as added by Pub. L. 115–232, div. A, title VIII, § 801(a), Aug. 13, 2018, 132 Stat. 1829, and consisting of reserved section 3961, was repealed by Pub. L. 116–283, div. A, title XVIII, § 1838(a), Jan. 1, 2021, 134 Stat. 4242.

§ 3901. Contracts: prohibition on competition between Department of Defense and small businesses

(a) EXCLUSION.—In any case in which the Secretary of Defense plans to use competitive procedures for a procurement, if the procurement is to be conducted as described in subsection (b), then the Secretary shall exclude the Department of Defense from competing in the procurement.

(b) PROCUREMENT DESCRIPTION.—The requirement to exclude the Department of Defense under subsection (a) applies in the case of a procurement to be conducted by excluding from competition entities in the private sector other than small business concerns in furtherance of section 8 or 15 of the Small Business Act (15 U.S.C. 637 or 644).

(Added Pub. L. 103–160, div. A, title VIII, § 848(a)(1), Nov. 30, 1993, 107 Stat. 1724, § 2304a; renumbered § 2304e, Pub. L. 104–106, div. D, title XLIII, § 4321(b)(6)(A), Feb. 10, 1996, 110 Stat. 672; amended Pub. L. 115–232, div. A, title VIII, § 812(a)(2)(C)(vi), Aug. 13, 2018, 132 Stat. 1847; Pub. L. 116–92, div. A, title XVII, § 1731(a)(39)(A), Dec. 20, 2019, 133 Stat. 1814; renumbered § 3901, Pub. L. 116–283, div. A, title XVIII, § 1838(b), Jan. 1, 2021, 134 Stat. 4242.)

AMENDMENTS

2021—Pub. L. 116–283 renumbered section 2304e of this title as this section.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 3902. Credit for Indian contracting in meeting certain subcontracting goals for small disadvantaged businesses

(a) REGULATIONS.—Subject to subsections (b) and (c), in any case in which a subcontracting goal is specified in a Department of Defense contract in the implementation of section 8(d) of the Small Business Act (15 U.S.C. 637(d)), credit toward meeting that subcontracting goal shall be given for—

(1) work performed in connection with that Department of Defense contract, and work performed in connection with any subcontract awarded under that Department of Defense contract, if such work is performed on any Indian lands and meets the requirements of paragraph (1) of subsection (b); or

(2) work performed in connection with that Department of Defense contract, and work performed in connection with any subcontract awarded under that Department of Defense contract, if the performance of such contract or subcontract is undertaken as a joint venture that meets the requirements of paragraph (2) of that subsection.

(b) ELIGIBLE WORK.—(1) Work performed on Indian lands meets the requirements of this paragraph if—

(A) not less than 40 percent of the workers directly engaged in the performance of the work are Indians; or

(B) the contractor or subcontractor has an agreement with the tribal government having jurisdiction over such Indian lands that provides goals for training and development of the Indian workforce and Indian management.

(2) A joint venture undertaking to perform a contract or subcontract meets the requirements of this paragraph if—

(A) an Indian tribe or tribally owned corporation owns at least 50 percent of the joint venture;

(B) the activities of the joint venture under the contract or subcontract provide employment opportunities for Indians either directly or through the purchase of products or services for the performance of such contract or subcontract; and

(C) the Indian tribe or tribally owned corporation manages the performance of such contract or subcontract.

(c) EXTENT OF CREDIT.—The amount of the credit given toward the attainment of any subcontracting goal under subsection (a) shall be—

(1) in the case of work performed as described in subsection (a)(1), the value of the work performed; and

(2) in the case of a contract or subcontract undertaken to be performed by a joint venture as described in subsection (a)(2), an amount equal to the amount of the contract or subcontract multiplied by the percentage of the tribe's or tribally owned corporation's ownership interest in the joint venture.

(d) REGULATIONS.—The Secretary of Defense shall prescribe regulations for the implementation of this section.

(e) DEFINITIONS.—In this section:

(1) The term ''Indian lands'' has the meaning given that term by section 4(4) of the Indian Gaming Regulatory Act (25 U.S.C. 2703(4)).

(2) The term ''Indian'' has the meaning given that term by section 4(d) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304(d)).

(3) The term ''Indian tribe'' has the meaning given that term by section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304(e)).

(4) The term ''tribally owned corporation'' means a corporation owned entirely by an Indian tribe.

(Added Pub. L. 102–484, div. A, title VIII, §801(g)(1), Oct. 23, 1992, 106 Stat. 2445, §2323a; amended Pub. L. 104–201, div. A, title X, §1074(a)(13), Sept. 23, 1996, 110 Stat. 2659; Pub. L. 115–232, div. A, title VIII, §812(a)(2)(C)(vii), Aug. 13, 2018, 132 Stat. 1847; Pub. L. 116–92, div. A, title XVII, §1731(a)(39)(B), Dec. 20, 2019, 133 Stat. 1814; renumbered §3902, Pub. L. 116–283, div. A, title XVIII, §1838(b), Jan. 1, 2021, 134 Stat. 4242.)

AMENDMENTS

2021—Pub. L. 116–283 renumbered section 2323a of this title as this section.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 3903. Subcontracting plans: credit for certain purchases

(a) PURCHASES BENEFITING SEVERELY HANDICAPPED PERSONS.—In the case of a business concern that has negotiated a small business subcontracting plan with a military department or a Defense Agency, purchases made by that business concern from qualified nonprofit agencies for the blind or other severely handicapped shall count toward meeting the subcontracting goal provided in that plan.

(b) DEFINITIONS.—In this section:

(1) The term ''small business subcontracting plan'' means a plan negotiated pursuant to section 8(d) of the Small Business Act (15 U.S.C. 637(d)) that establishes a goal for the participation of small business concerns as subcontractors under a contract.

(2) The term ''qualified nonprofit agency for the blind or other severely handicapped'' means—

(A) a qualified nonprofit agency for the blind, as defined in section 8501(7) of title 41;

(B) a qualified nonprofit agency for other severely disabled, as defined in section 8501(6) of title 41; and

(C) a central nonprofit agency designated by the Committee for Purchase from People Who Are Blind or Severely Disabled under section 8503(c) of title 41.

(Added Pub. L. 102–484, div. A, title VIII, §808(b)(1), Oct. 23, 1992, 106 Stat. 2449, §2410d; amended Pub. L. 103–337, div. A, title VIII, §804, Oct. 5, 1994, 108 Stat. 2815; Pub. L. 104–106, div. D, title XLIII, §4321(b)(15), Feb. 10, 1996, 110 Stat. 673; Pub. L. 105–85, div. A, title VIII, §835, Nov. 18, 1997, 111 Stat. 1843; Pub. L. 106–65, div. A, title VIII, §807, Oct. 5, 1999, 113 Stat. 705; Pub. L. 111–350, §5(b)(29), Jan. 4, 2011, 124 Stat. 3845; renumbered §3903, Pub. L. 116–283, div. A, title XVIII, §1838(b), Jan. 1, 2021, 134 Stat. 4242.)

AMENDMENTS

2021—Pub. L. 116–283 renumbered section 2410d of this title as this section.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 3904. Research and educational programs and activities: historically black colleges and universities and minority-serving institutions of higher education

(a) PROGRAM ESTABLISHED.—(1) The Secretary of Defense, acting through the Assistant Secretary of Defense for Research and Engineering and the Secretary of each military department, shall carry out a program to provide assistance to covered educational institutions to assist the Department in defense-related research, development, testing, and evaluation activities.

(2) The Secretary of Defense may not delegate or transfer to an individual outside the Office of the Secretary of Defense the authority regarding the programming or budgeting of the program established by this section that is carried out by the Assistant Secretary of Defense for Research and Engineering.

(b) PROGRAM OBJECTIVE.—The objective of the program established by subsection (a)(1) is to enhance defense-related research and education at covered educational institutions. Such objective shall be accomplished through initiatives designed to—

(1) enhance the research and educational capabilities of such institutions in areas of importance to national defense, as determined by the Secretary;

(2) encourage the participation of such institutions in the research, development, testing, and evaluation programs and activities of the Department of Defense;

(3) increase the number of graduates from such institutions engaged in disciplines important to the national security functions of the Department of Defense, as determined by the Secretary; and

(4) encourage research and educational collaborations between such institutions and other institutions of higher education, Government defense organizations, and the defense industry.

(c) ASSISTANCE PROVIDED.—Under the program established by subsection (a)(1), the Secretary of Defense may provide covered educational institutions with funding or technical assistance, including any of the following:

(1) Support for research, development, testing, evaluation, or educational enhancements in areas important to national defense through the competitive awarding of grants, cooperative agreements, contracts, scholarships, fellowships, or the acquisition of research equipment or instrumentation.

(2) Support to assist in the attraction and retention of faculty in scientific disciplines important to the national security functions of the Department of Defense.

(3) Establishing partnerships between such institutions and defense laboratories, Government defense organizations, the defense industry, and other institutions of higher education in research, development, testing, and evaluation in areas important to the national security functions of the Department of Defense.

(4) Other such non-monetary assistance as the Secretary finds appropriate to enhance defense-related research, development, testing, and evaluation activities at such institutions.

(d) INCENTIVES.—The Secretary of Defense may develop incentives to encourage research and educational collaborations between covered educational institutions and other institutions of higher education.

(e) CRITERIA FOR FUNDING.—The Secretary of Defense may establish procedures under which the Secretary may limit funding under this section to institutions that have not otherwise received a significant amount of funding from the Department of Defense for research, development, testing, and evaluation programs supporting the national security functions of the Department.

(f) DEFINITION OF COVERED EDUCATIONAL INSTITUTION.—In this section the term ''covered educational institution'' means—

(1) an institution of higher education eligible for assistance under title III or V of the Higher Education Act of 1965 (20 U.S.C. 1051 et seq.); or

(2) an accredited postsecondary minority institution.

(Added Pub. L. 111–84, div. A, title II, § 252(a), Oct. 28, 2009, 123 Stat. 2242, § 2362; amended Pub. L. 111–383, div. A, title X, § 1075(b)(32), Jan. 7, 2011, 124 Stat. 4370; Pub. L. 112–81, div. A, title II, § 219, Dec. 31, 2011, 125 Stat. 1335; Pub. L. 112–239, div. A, title X, § 1076(c)(2)(A)(i), Jan. 2, 2013, 126 Stat. 1949; Pub. L. 115–232, div. A, title II, § 245, Aug. 13, 2018, 132 Stat. 1700; Pub. L. 116–92, div. A, title II, § 214, Dec. 20, 2019, 133 Stat. 1257; renumbered § 3904, Pub. L. 116–283, div. A, title XVIII, § 1838(b), Jan. 1, 2021, 134 Stat. 4242.)

REFERENCES IN TEXT

The Higher Education Act of 1965, referred to in subsec. (f)(1), is Pub. L. 89–329, Nov. 8, 1965, 79 Stat. 1219. Titles III and V of the Act are classified generally to subchapters III (§ 1051 et seq.) and V (§ 1101 et seq.), respectively, of chapter 28 of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20 and Tables.

AMENDMENTS

2021—Pub. L. 116–283 renumbered section 2362 of this title as this section.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 3905. Products of Federal Prison Industries: procedural requirements

(a) PRODUCTS FOR WHICH FEDERAL PRISON INDUSTRIES DOES NOT HAVE SIGNIFICANT MARKET SHARE.—(1) Before purchasing a product listed in the latest edition of the Federal Prison Industries catalog under section 4124(d) of title 18 for which Federal Prison Industries does not have a significant market share, the Secretary of Defense shall conduct market research to determine whether the product is comparable to products available from the private sector that best meet the needs of the Department in terms of price, quality, and time of delivery.

(2) If the Secretary determines that a Federal Prison Industries product described in paragraph (1) is not comparable in price, quality, or time of delivery to products of the private sector that best meets the needs of the Department in terms of price, quality, and time of delivery, the Secretary shall use competitive procedures for the procurement of the product, or shall make an individual purchase under a multiple award contract in accordance with the competition requirements applicable to such contract. In conducting such a competition, the Secretary shall consider a timely offer from Federal Prison Industries.

(b) PRODUCTS FOR WHICH FEDERAL PRISON INDUSTRIES HAS SIGNIFICANT MARKET SHARE.—(1) The Secretary of Defense may purchase a product listed in the latest edition of the Federal Prison Industries catalog for which Federal Prison Industries has a significant market share only if the Secretary uses competitive procedures for the procurement of the product or makes an individual purchase under a multiple award contract in accordance with the competition requirements applicable to such contract. In conducting such a competition, the Secretary shall consider a timely offer from Federal Prison Industries.

(2) For purposes of this subsection, Federal Prison Industries shall be treated as having a significant share of the market for a product if the Secretary, in consultation with the Administrator of Federal Procurement Policy, determines that the Federal Prison Industries share of the Department of Defense market for the category of products including such product is greater than 5 percent.

(c) IMPLEMENTATION BY SECRETARY OF DEFENSE.—The Secretary of Defense shall ensure that—

(1) the Department of Defense does not purchase a Federal Prison Industries product or service unless a contracting officer of the Department determines that the product or service is comparable to products or services available from the private sector that best meet the Department's needs in terms of price, quality, and time of delivery; and

(2) Federal Prison Industries performs its contractual obligations to the same extent as any other contractor for the Department of Defense.

(d) MARKET RESEARCH DETERMINATION NOT SUBJECT TO REVIEW.—A determination by a contracting officer regarding whether a product or service offered by Federal Prison Industries is comparable to products or services available from the private sector that best meet the Department's needs in terms of price, quality, and time of delivery shall not be subject to review pursuant to section 4124(b) of title 18.

(e) PERFORMANCE AS A SUBCONTRACTOR.—(1) A contractor or potential contractor of the Department of Defense may not be required to use Federal Prison Industries as a subcontractor or supplier of products or provider of services for the performance of a Department of Defense contract by any means, including means such as—

(A) a contract solicitation provision requiring a contractor to offer to make use of products or services of Federal Prison Industries in the performance of the contract;

(B) a contract specification requiring the contractor to use specific products or services (or classes of products or services) offered by Federal Prison Industries in the performance of the contract; or

(C) any contract modification directing the use of products or services of Federal Prison Industries in the performance of the contract.

(2) In this subsection, the term ''contractor'', with respect to a contract, includes a subcontractor at any tier under the contract.

(f) PROTECTION OF CLASSIFIED AND SENSITIVE INFORMATION.—The Secretary of Defense may not enter into any contract with Federal Prison Industries under which an inmate worker would have access to—

(1) any data that is classified;

(2) any geographic data regarding the location of—

(A) surface and subsurface infrastructure providing communications or water or electrical power distribution;

(B) pipelines for the distribution of natural gas, bulk petroleum products, or other commodities; or

(C) other utilities; or

(3) any personal or financial information about any individual private citizen, including information relating to such person's real property however described, without the prior consent of the individual.

(g) DEFINITIONS.—In this section:

(1) The term ''competitive procedures'' has the meaning given such term in section 3012 of this title.

(2) The term ''market research'' means obtaining specific information about the price, quality, and time of delivery of products available in the private sector through a variety of means, which may include—

(A) contacting knowledgeable individuals in government and industry;

(B) interactive communication among industry, acquisition personnel, and customers; and

(C) interchange meetings or pre-solicitation conferences with potential offerors.

(Added Pub. L. 107–107, div. A, title VIII, § 811(a)(1), Dec. 28, 2001, 115 Stat. 1180, § 2410n; amended Pub. L. 107–314, div. A, title VIII, § 819(a)(1), Dec. 2, 2002, 116 Stat. 2612; Pub. L. 109–163, div. A, title X, § 1056(c)(4), Jan. 6, 2006, 119 Stat. 3439; Pub. L. 110–181, div. A, title VIII, § 827(a)(1), Jan. 28, 2008, 122 Stat. 228; renumbered § 3905 and amended Pub. L. 116–283, div. A, title XVIII, §§ 1838(b), 1883(b)(2), Jan. 1, 2021, 134 Stat. 4242, 4294.)

PRIOR PROVISIONS

A prior section 3911 was renumbered section 7311 of this title.

A prior section 3912, act Aug. 10, 1956, ch. 1041, 70A Stat. 225, permitted the Secretary of the Army, upon the officer's request, to retire a commissioned officer of the Regular Army in the Army Nurse Corps or Women's Medical Specialist Corps who has at least 20 years of service computed under former section 3928 of this title, prior to repeal by Pub. L. 85–155, title IV, § 401(1), Aug. 21, 1957, 71 Stat. 390.

A prior section 3913, acts Aug. 10, 1956, ch. 1041, 70A Stat. 225; July 12, 1960, Pub. L. 86–616, § 4, 74 Stat. 390; Nov. 2, 1966, Pub. L. 89–718, § 3, 80 Stat. 1115, provided for retirement of deferred officers not recommended for promotion after twenty years or more of service, except as provided in section 8301 of title 5, prior to repeal by Pub. L. 96–513, title II, § 217(a), title VII, § 701, Dec. 12, 1980, 94 Stat. 2886, 2955, effective Sept. 15, 1981. See section 627 et seq. of this title.

A prior section 3914 was renumbered section 7314 of this title.

A prior section 3915, acts Aug. 10, 1956, ch. 1041, 70A Stat. 225; Aug. 21, 1967, Pub. L. 85–155, title I, § 101(19), 71 Stat. 379; Sept. 30, 1966, Pub. L. 89–609, § 1(5), 80 Stat. 852; Nov. 2, 1966, Pub. L. 89–718, § 3, 80 Stat. 1115, provided for retirement after 25 years' service of regular majors in Women's Army Corps, Army Nurse Corps, and Army Medical Specialist Corps, prior to repeal by Pub. L. 90–130, § 1(13), Nov. 8, 1967, 81 Stat. 376.

A prior section 3916, acts Aug. 10, 1956, ch. 1041, 70A Stat. 226; Aug. 21, 1957, Pub. L. 85–155, title I, § 101(21), 71 Stat. 380; Nov. 2, 1966, Pub. L. 89–718, § 3, 80 Stat. 1115; Oct. 20, 1978, Pub. L. 95–485, title VIII, § 820(i), 92 Stat. 1628, provided for retirement of a promotion-list lieutenant colonel, except as provided by section 8301 of title 5, on 30th day after he completes 28 years of service, with authority for Secretary of the Army to defer retirement in certain cases, prior to repeal by Pub. L. 96–513, title II, § 217(a), title VII, § 701, Dec. 12, 1980, 94 Stat. 2886, 2955, effective Sept. 15, 1981. See section 633 of this title.

Prior sections 3917 and 3918 were renumbered sections 7317 and 7318 of this title, respectively.

A prior section 3919, act Aug. 10, 1956, ch. 1041, 70A Stat. 226, authorized Secretary of the Army, when he determined that there were too many commissioned officers on active list of Regular Army in any grade who have at least 30 years of service, to convene a board of at least five general officers of Regular Army to make recommendations for retirement and to retire any officer so recommended, prior to repeal by Pub. L. 96–513, title II, § 217(a), title VII, § 701, Dec. 12, 1980, 94 Stat. 2886, 2955, effective Sept. 15, 1981.

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A prior section 3920 was renumbered section 7320 of this title.

A prior section 3921 was renumbered section 7321 of this title.

Another prior section 3921, acts Aug. 10, 1956, ch. 1041, 70A Stat. 226; Nov. 2, 1966, Pub. L. 89–718, § 3, 80 Stat. 1115, provided for retirement of a promotion-list colonel, except as provided by section 8301 of title 5, on the 30th day after he completes 30 years of service or the 5th anniversary of the date of his appointment in that regular grade, whichever is later, with authority for the Secretary of the Army to defer retirement in certain cases, prior to repeal by Pub. L. 96–513, title II, § 217(a), title VII, § 701, Dec. 12, 1980, 94 Stat. 2886, 2955, effective Sept. 15, 1981. See section 634 of this title.

Prior sections 3922 and 3923 were repealed by Pub. L. 96–513, title II, § 217(a), title VII, § 701, Dec. 12, 1980, 94 Stat. 2886, 2955, effective Sept. 15, 1981.

Section 3922, acts Aug. 10, 1956, ch. 1041, 70A Stat. 227; Nov. 2, 1966, Pub. L. 89–718, § 3, 80 Stat. 1115, provided for retirement of a regular grade brigadier general, other than a professor of the United States Military Academy, except as provided by section 8301 of title 5, on the 30th day after he completes 30 years of service or the 5th anniversary of the date of his appointment in that regular grade, whichever is later, with authority for the Secretary of the Army to defer retirement in certain cases. See section 635 of this title.

Section 3923, acts Aug. 10, 1956, ch. 1041, 70A Stat. 227; Nov. 2, 1966, Pub. L. 89–718, § 3, 80 Stat. 1115, provided for retirement of a regular grade major general, except as provided by section 8301 of title 5, on the 30th day after he completes 35 years of service or the 5th anniversary of his appointment in that regular grade, whichever is later, with authority for the Secretary of the Army to defer retirement in certain cases. See section 636 of this title.

Prior sections 3924 to 3926 were renumbered sections 7324 to 7326 of this title, respectively.

A prior section 3927, acts Aug. 10, 1956, ch. 1041, 70A Stat. 228; Aug. 21, 1957, Pub. L. 85–155, title I, § 101(22), 71 Stat. 380; May 20, 1958, Pub. L. 85–422, § 11(a)(4), 72 Stat. 131; Sept. 2, 1958, Pub. L. 85–861, § 1(98), 72 Stat. 1488, related to computation of years of service for determining whether a regular commissioned officer should be retired under section 3913, 3915, 3916, 3919, 3921, 3922, or 3923 of this title and for determining the retired pay of officers of the Regular Army retired under section 3913, 3915, 3916, 3919, 3921, 3922, or 3923 of this title, prior to repeal by Pub. L. 96–513, title II, § 217(a), title VII, § 701, Dec. 12, 1980, 94 Stat. 2886, 2955, effective Sept. 15, 1981. See section 1405 of this title.

A prior section 3928, act Aug. 10, 1956, ch. 1041, 70A Stat. 229, related to computation of years of service of commissioned officers of the Army Nurse Corps or Women's Medical Specialist Corps for the purposes of retirement under former section 3912 of this title, or retirement pay under section 3991 of this title, prior to repeal by Pub. L. 85–155, title IV, § 401(1), Aug. 21, 1957, 71 Stat. 390.

A prior section 3929 was renumbered section 7329 of this title.

Prior sections 3961 and 3962 were renumbered sections 7341 and 7342 of this title, respectively.

A prior section 3963 was renumbered section 7343 of this title.

Another prior section 3963, acts Aug. 10, 1956, ch. 1041, 70A Stat. 230; Sept. 2, 1958, Pub. L. 85–861, § 1(60), (100), 72 Stat. 1462, 1489; Dec. 12, 1980, Pub. L. 96–513, title V, § 502(20), 94 Stat. 2910, related to higher grade for service during certain periods for regular and reserve commissioned officers, prior to repeal by Pub. L. 99–145, title XIII, § 1301(b)(2)(A), (C), Nov. 8, 1985, 99 Stat. 735, with such repeal not applicable in the case of a member of the Regular Army described in section 3963 of this title, as such section was in effect on the day before Nov. 8, 1985.

Prior sections 3964 to 3966, 3991, and 3992 were renumbered sections 7344 to 7346, 7361, and 7362 of this title, respectively.

AMENDMENTS

2021—Pub. L. 116–283, § 1838(b), renumbered section 2410n of this title as this section.

Subsec. (g)(1). Pub. L. 116–283, § 1883(b)(2), substituted ''section 3012'' for ''section 2302(2)''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

Subpart E—Research and Engineering

PRIOR PROVISIONS

A prior subpart E ''Special Categories of Contracting: Major Defense Acquisition Programs and Major Systems'', consisting of chapters 301 to 305, was repealed by Pub. L. 116–283, div. A, title XVIII, § 1841(a)(1)(A), Jan. 1, 2021, 134 Stat. 4242.

CHAPTER 301—RESEARCH AND ENGINEERING GENERALLY

Sec.

4001. Research and development projects.
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4011. [Reserved].
4012. [Reserved].
4013. [Reserved].
4014. Coordination and communication of defense research activities and technology domain awareness.
4015. Award of grants and contracts to colleges and universities: requirement of competition.

PRIOR PROVISIONS

A prior chapter 301 ''MAJOR DEFENSE ACQUISITION PROGRAMS'', consisting of reserved section 4001, was repealed by Pub. L. 116–283, div. A, title XVIII, § 1841(a)(1)(A), Jan. 1, 2021, 134 Stat. 4242.

A prior chapter 301 was renumbered chapter 701 of this title.

§ 4001. Research and development projects

(a) AUTHORITY.—The Secretary of Defense or the Secretary of a military department may engage in basic research, applied research, advanced research, and development projects that—

(1) are necessary to the responsibilities of such Secretary's department in the field of research and development; and

(2) either—

(A) relate to weapon systems and other military needs; or

(B) are of potential interest to the Department of Defense.

(b) AUTHORIZED MEANS.—The Secretary of Defense or the Secretary of a military department

may perform research and development projects—

(1) by contract, cooperative agreement, or grant, in accordance with chapter 63 of title 31;

(2) through one or more military departments;

(3) by using employees and consultants of the Department of Defense;

(4) by mutual agreement with the head of any other department or agency of the Federal Government;

(5) by transactions (other than contracts, cooperative agreements, and grants) entered into pursuant to sections[1] 4002 or 4003 of this title; or

(6) by purchases through procurement for experimental purposes pursuant to sections[1] 4004 of this title.

(c) REQUIREMENT OF POTENTIAL DEPARTMENT OF DEFENSE INTEREST.—Funds appropriated to the Department of Defense or to a military department may not be used to finance any research project or study unless the project or study is, in the opinion of the Secretary of Defense or the Secretary of that military department, respectively, of potential interest to the Department of Defense or to such military department, respectively.

(d) ADDITIONAL PROVISIONS APPLICABLE TO COOPERATIVE AGREEMENTS.—Additional authorities, conditions, and requirements relating to certain cooperative agreements authorized by this section are provided in sections 4002 and 4143 of this title.

(Added Pub. L. 87–651, title II, § 208(a), Sept. 7, 1962, 76 Stat. 523, § 2358; amended Pub. L. 97–86, title IX, § 910, Dec. 1, 1981, 95 Stat. 1120; Pub. L. 100–370, § 1(g)(3), July 19, 1988, 102 Stat. 846; Pub. L. 103–160, div. A, title VIII, § 827(a), Nov. 30, 1993, 107 Stat. 1712; Pub. L. 103–355, title I, § 1301(a), Oct. 13, 1994, 108 Stat. 3284; Pub. L. 104–201, div. A, title II, § 267(c)(2), Sept. 23, 1996, 110 Stat. 2468; Pub. L. 115–91, div. A, title VIII, § 862, Dec. 12, 2017, 131 Stat. 1494; renumbered § 4001 and amended Pub. L. 116–283, div. A, title XVIII, § 1841(b)(1), (2)(A), Jan. 1, 2021, 134 Stat. 4243.)

AMENDMENTS

2021—Pub. L. 116–283, § 1841(b)(1), renumbered section 2358 of this title as this section.

Subsec. (b)(5). Pub. L. 116–283, § 1841(b)(2)(A)(i), which directed substitution of "sections 4002 or 4003" for "sections 2371 or 2371b", was executed by making the substitution for "section 2371 or 2371b" to reflect the probable intent of Congress.

Subsec. (b)(6). Pub. L. 116–283, § 1841(b)(2)(A)(ii), substituted "sections 4004" for "section 2373".

Subsec. (d). Pub. L. 116–283, § 1841(b)(2)(A)(iii), substituted "sections 4002 and 4143" for "sections 2371 and 2371a".

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

DESIGNATION OF SENIOR OFFICIALS FOR CRITICAL TECHNOLOGY AREAS SUPPORTIVE OF THE NATIONAL DEFENSE STRATEGY

Pub. L. 116–283, div. A, title II, § 217(a)–(d), Jan. 1, 2021, 134 Stat. 3460, 3461, provided that:

"(a) DESIGNATION OF SENIOR OFFICIALS.—The Under Secretary of Defense for Research and Engineering shall—

"(1) identify technology areas that the Under Secretary considers critical for the support of the National Defense Strategy; and

"(2) for each such technology area, designate a senior official of the Department of Defense to coordinate research and engineering activities in that area.

"(b) DUTIES.—The duties of each senior official designated under subsection (a) shall include, with respect to the technology area overseen by such official—

"(1) developing and continuously updating research and technology development roadmaps, funding strategies, and technology transition strategies to ensure—

"(A) the effective and efficient development of new capabilities in the area; and

"(B) the operational use of appropriate technologies;

"(2) conducting annual assessments of workforce, infrastructure, and industrial base capabilities and capacity to support—

"(A) the roadmaps developed under paragraph (1); and

"(B) the goals of the National Defense Strategy;

"(3) reviewing the relevant research and engineering budgets of appropriate organizations within the Department of Defense, including the Armed Forces, and advising the Under Secretary on—

"(A) the consistency of the budgets with the roadmaps developed under paragraph (1);

"(B) any technical and programmatic risks to the achievement of the research and technology development goals of the National Defense Strategy;

"(C) programs, projects, and activities that demonstrate—

"(i) unwanted or inefficient duplication, including duplication with activities of other government agencies and the commercial sector;

"(ii) lack of appropriate coordination with other organizations; or

"(iii) inappropriate alignment with organizational missions and capabilities;

"(4) coordinating the research and engineering activities of the Department with appropriate international, interagency, and private sector organizations; and

"(5) tasking appropriate intelligence agencies of the Department to develop a direct comparison between the capabilities of the United States in the technology area concerned and the capabilities of adversaries of the United States in that area.

"(c) ANNUAL REPORTS.—

"(1) IN GENERAL.—Not later than December 1, 2021, and not later than December 1 of each year thereafter through December 1, 2025, the Under Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on research and engineering activities and on the status of the technology areas identified under subsection (a)(1), including a description of any programs, projects, or activities in such areas, that have, in the year preceding the date of the report—

"(A) achieved significant technical progress;

"(B) transitioned from the research and development phase to formal acquisition programs;

"(C) transitioned from the research and development phase into operational use; or

"(D) been transferred from the Department of Defense to private sector organizations for further commercial development or commercial sales.

[1] So in original. Probably should be "section".

"(2) FORM.—Each report under paragraph (1) shall [sic] submitted in unclassified form that can be made available to the public, but may include a classified annex.

"(d) COORDINATION OF RESEARCH AND ENGINEERING ACTIVITIES.—The Service Acquisition Executive for each military department and the Director of the Defense Advanced Research Projects Agency shall each identify senior officials to ensure coordination of appropriate research and engineering activities with each of the senior officials designated under subsection (a)."

SOCIAL SCIENCE, MANAGEMENT SCIENCE, AND INFORMATION SCIENCE RESEARCH ACTIVITIES

Pub. L. 116–283, div. A, title II, § 220, Jan. 1, 2021, 134 Stat. 3464, provided that:

"(a) ESTABLISHMENT.—The Secretary of Defense, acting through the Under Secretary of Defense for Research and Engineering, shall carry out a program of research and development in social science, management science, and information science.

"(b) PURPOSES.—The purposes of the program under subsection (a) are as follows:

"(1) To ensure that the Department of Defense has access to innovation and expertise in social science, management science, and information science to enable the Department to improve the effectiveness, efficiency, and agility of the Department's operational and management activities.

"(2) To develop and manage a portfolio of research initiatives in fundamental and applied social science, management science, and information science that is stable, consistent, and balanced across relevant disciplines.

"(3) To enhance cooperation and collaboration on research and development in the fields of social science, management science, and information science between the Department of Defense and appropriate private sector and international entities that are involved in research and development in such fields.

"(4) To accelerate the development of a research community and industry to support Department of Defense missions in the fields of social science, management science, and information science, including the development of facilities, a workforce, infrastructure, and partnerships in support of such missions.

"(5) To coordinate all research and development within the Department of Defense in the fields of social science, management science, and information science.

"(6) To collect, synthesize, and disseminate critical information on research and development in the fields of social science, management science, and information science.

"(7) To assess and appropriately share, with other departments and agencies of the Federal Government and appropriate entities in the private sector—

"(A) challenges within the Department of Defense that may be addressed through the application of advances in social science, management science, and information science; and

"(B) datasets related to such challenges.

"(8) To support the identification of organizational and institutional barriers to the implementation of management and organizational enhancements and best practices.

"(9) To accelerate efforts—

"(A) to transition, and deploy within the Department of Defense, technologies and concepts derived from research and development in the fields of social science, management science, and information science; and

"(B) to establish policies, procedures, and standards for measuring the success of such efforts.

"(10) To integrate knowledge from cross-disciplinary research on—

"(A) how factors relating to social science, management science, and information science affect the global security environment; and

"(B) best practices for management in the public and private sectors.

"(11) To apply principles, tools, and methods from social science, management science, and information science—

"(A) to ensure the Department of Defense is more agile, efficient, and effective in organizational management and in deterring and countering current and emerging threats; and

"(B) to support the National Defense Strategy.

"(c) ADMINISTRATION.—The Under Secretary of Defense for Research and Engineering shall supervise the planning, management, and coordination of the program under subsection (a).

"(d) ACTIVITIES.—The Under Secretary of Defense for Research and Engineering, in consultation with the Under Secretary of Defense for Policy, the Secretaries of the military departments, and the heads of relevant Defense Agencies, shall—

"(1) prescribe a set of long-term challenges and a set of specific technical goals for the program, including—

"(A) optimization of analysis of national security data sets;

"(B) development of innovative defense-related management activities;

"(C) improving the operational use of social science, management science, and information science innovations by military commanders and civilian leaders;

"(D) improving understanding of the fundamental social, cultural, and behavioral forces that shape the strategic interests of the United States; and

"(E) developing a Department of Defense workforce capable of developing and leveraging innovations and best practices in the fields of social science, management science, and information science to support defense missions;

"(2) develop a coordinated and integrated research and investment plan for meeting near-term, mid-term, and long-term national security, defense-related, and Departmental management challenges that—

"(A) includes definitive milestones;

"(B) provides for achieving specific technical goals;

"(C) establishes pathways to address the operational and management missions of the Department through—

"(i) the evaluation of innovations and advances in social science, management science, and information science for potential implementation within the Department; and

"(ii) implementation of such innovations and advances within the Department, as appropriate; and

"(C) [(D)] builds upon the investments of the Department, other departments and agencies of the Federal Government, and the commercial sector in the fields of social science, management science, and information science;

"(3) develop plans for—

"(A) the development of the Department's workforce in social science, management science, and information science; and

"(B) improving awareness of—

"(i) the fields of social science, management science, and information science;

"(ii) advances and innovations in such fields; and

"(iii) and the ability of such advances and innovations to enhance the efficiency and effectiveness of the Department; and

"(4) develop memoranda of agreement, joint funding agreements, and such other cooperative arrangements as the Under Secretary determines necessary—

"(A) to carry out the program under subsection (a); and

"(B) to transition appropriate products, services, and innovations relating social science, manage-

ment science, and information science into use within the Department.

''(e) GUIDANCE REQUIRED.—

''(1) IN GENERAL.—Not later than one year after the date of the enactment of this Act [Jan. 1, 2021], the Under Secretary of Defense for Research and Engineering shall develop and issue guidance for defense-related social science, management science, and information science activities, including—

''(A) classification and data management plans for such activities;

''(B) policies for control of personnel participating in such activities to protect national security interests; and

''(C) ensuring that research findings and innovations in the fields of social science, management science, and information science are incorporated into the activities and strategic documents of the Department.

''(2) UPDATES.—The Under Secretary of Defense for Research and Engineering shall regularly update the guidance issued under paragraph (1).

''(f) DESIGNATION OF ENTITY.—The Secretary of each military department may establish or designate an entity or activity under the jurisdiction of such Secretary, which may include a Department of Defense Laboratory, an academic institution, or another appropriate organization, to support interdisciplinary research and development activities in the fields of social science, management science, and information science, and engage with appropriate public and private sector organizations, including academic institutions, to enhance and accelerate the research, development, and deployment of social science, management science, and information science within the Department.

''(g) USE OF OTHER AUTHORITY.—The Secretary of Defense shall use the authority provided under section 217 of the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115–91; 10 U.S.C. 2358 note) to enhance the ability of the Department of Defense to access technical talent and expertise at academic institutions in support of the purposes of this section.

''(h) REPORT.—

''(1) IN GENERAL.—Not later than December 31, 2022, the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the program under subsection (a).

''(2) FORM OF REPORT.—The report required under paragraph (1) shall be submitted in unclassified form, but may include a classified annex.''

ACTIVITIES TO IMPROVE FIELDING OF AIR FORCE HYPERSONIC CAPABILITIES

Pub. L. 116–283, div. A, title II, §222, Jan. 1, 2021, 134 Stat. 3469, provided that:

''(a) IMPROVEMENT OF GROUND-BASED TEST FACILITIES.—The Secretary of Defense shall take such actions as may be necessary to improve ground-based test facilities used for the research, development, test, and evaluation of hypersonic capabilities.

''(b) INCREASING FLIGHT TEST RATE.—The Secretary of Defense shall increase the rate at which hypersonic capabilities are flight tested to expedite the maturation and fielding of such capabilities.

''(c) STRATEGY AND PLAN.—Not later than 60 days after the date of the enactment of this Act [Jan. 1, 2021], the Chief of Staff of the Air Force, in consultation with the Under Secretary of Defense for Research and Engineering, shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a strategy and plan for fielding air-launched and air-breathing hypersonic weapons capabilities within the period of three years following such date of enactment.

''(d) REPORT.—In addition to the strategy and plan required under subsection (c), not later than 60 days after the date of the enactment of this Act, the Under Secretary of Defense for Research and Engineering, in consultation with the Director of Operational Test and Evaluation, shall submit to the congressional defense committees a report on the testing capabilities and infrastructure used for hypersonic weapons development. The report shall include—

''(1) an assessment of the sufficiency of the testing capabilities and infrastructure used for fielding hypersonic weapons; and

''(2) a description of any investments in testing capabilities and infrastructure that may be required to support in-flight and ground-based testing for such weapons.''

RESEARCH, DEVELOPMENT, AND DEPLOYMENT OF TECHNOLOGIES TO SUPPORT WATER SUSTAINMENT

Pub. L. 116–283, div. A, title II, §226, Jan. 1, 2021, 134 Stat. 3476, provided that:

''(a) IN GENERAL.—The Secretary of Defense shall research, develop, and deploy advanced water harvesting technologies to support and improve water sustainment within the Department of Defense and in geographic regions where the Department operates.

''(b) REQUIRED ACTIVITIES.—In carrying out subsection (a), the Secretary shall—

''(1) develop advanced water harvesting systems that reduce weight and logistics support needs compared to conventional water supply systems, including—

''(A) modular water harvesting systems that are easily transportable; and

''(B) trailer mounted water harvesting systems that reduce resupply needs;

''(2) develop and implement storage requirements for water harvesting systems at forward operating bases; and

''(3) establish cross functional teams to identify geographic regions where the deployment of water harvesting systems could reduce conflict and potentially eliminate the need for the presence of the Armed Forces.

''(c) ADDITIONAL ACTIVITIES.—In addition to the activities required under subsection (b), the Secretary shall—

''(1) seek to leverage existing water harvesting techniques and technologies and apply such techniques and technologies to military operations carried out by the United States;

''(2) consider using commercially available off-the-shelf items (as defined in section 104 of title 41, United States Code) and near-ready deployment technologies to achieve cost savings and improve the self sufficiency of warfighters; and

''(3) seek to enter into information sharing arrangements with foreign militaries and other organizations that have the proven ability to operate in water constrained areas for the purpose of sharing lessons learned and best practices relating to water harvesting.

''(d) IMPLEMENTATION.—The Secretary shall deploy technologies developed under subsection (b)(1) for use by expeditionary forces not later than January 1, 2025.

''(e) WATER HARVESTING DEFINED.—In this section, the term 'water harvesting', when used with respect to a system or technology, means a system or technology that is capable of creating useable water by—

''(1) harvesting water from underutilized environmental sources, such as by capturing water from ambient humidity; or

''(2) recycling or otherwise reclaiming water that has previously been used.''

BOARD OF ADVISORS FOR THE JOINT ARTIFICIAL INTELLIGENCE CENTER

Pub. L. 116–283, div. A, title II, §233, Jan. 1, 2021, 134 Stat. 3483, provided that:

''(a) ESTABLISHMENT.—The Secretary of Defense shall establish a board of advisors for the Joint Artificial Intelligence Center.

''(b) DUTIES.—The duties of the board of advisors shall include the following:

''(1) Provide independent strategic advice and technical expertise to the Secretary and the Director on matters relating to the development and use of artificial intelligence by the Department of Defense.

''(2) Evaluate and advise the Secretary and the Director on ethical matters relating to the development and use of artificial intelligence by the Department.

''(3) Conduct long-term and long-range studies on matters relating to artificial intelligence, as required.

''(4) Evaluate and provide recommendations to the Secretary and the Director regarding the Department's development of a robust workforce proficient in artificial intelligence.

''(5) Assist the Secretary and the Director in developing strategic level guidance on artificial intelligence-related hardware procurement, supply-chain matters, and other technical matters relating to artificial intelligence.

''(c) MEMBERSHIP.—The board of advisors shall be composed of appropriate experts from academic or private sector organizations outside the Department of Defense, who shall be appointed by the Secretary.

''(d) CHAIRPERSON.—The chairperson of the board of advisors shall be selected by the Secretary.

''(e) MEETINGS.—The board of advisors shall meet not less than once each fiscal quarter and may meet at other times at the call of the chairperson or a majority of its members.

''(f) REPORTS.—Not later than September 30 of each year through September 30, 2024, the board of advisors shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report that summarizes the activities of the board over the preceding year.

''(g) DEFINITIONS.—In this section:

''(1) The term 'artificial intelligence' has the meaning given that term in section 238(g) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232; 10 U.S.C. 2358 note).

''(2) The term 'Director' means the Director of the Joint Artificial Intelligence Center.

''(3) The term 'Joint Artificial Intelligence Center' means the Joint Artificial Intelligence Center of the Department of Defense established pursuant to the memorandum of the Secretary of Defense dated June 27, 2018, and titled 'Establishment of the Joint Artificial Intelligence Center', or any successor to such Center.

''(4) The term 'Secretary' means the Secretary of Defense.''

STEERING COMMITTEE ON EMERGING TECHNOLOGY

Pub. L. 116–283, div. A, title II, § 236, Jan. 1, 2021, 134 Stat. 3485, provided that:

''(a) ESTABLISHMENT.—The Secretary of Defense may establish a steering committee on emerging technology and national security threats (referred to in this section as the 'Steering Committee').

''(b) MEMBERSHIP.—The Steering Committee shall be composed of the following:

''(1) The Deputy Secretary of Defense.

''(2) The Vice Chairman of the Joint Chiefs of Staff.

''(3) The Under Secretary of Defense for Intelligence and Security.

''(4) The Under Secretary of Defense for Research and Engineering.

''(5) The Under Secretary of Defense for Personnel and Readiness.

''(6) The Under Secretary of Defense for Acquisition and Sustainment.

''(7) The Chief Information Officer.

''(8) Such other officials of the Department of Defense as the Secretary of Defense determines appropriate.

''(c) RESPONSIBILITIES.—The Steering Committee shall be responsible for—

''(1) developing a strategy for the organizational change, concept and capability development, and technology investments in emerging technologies that are needed to maintain the technological superiority of the United States military as outlined in the National Defense Strategy;

''(2) providing assessments of emerging threats and identifying investments and advances in emerging technology areas undertaken by adversaries of the United States;

''(3) making recommendations to the Secretary of Defense on—

''(A) the implementation of the strategy developed under paragraph (1);

''(B) steps that may be taken to address the threats identified under paragraph (2);

''(C) any changes to a program of record that may be required to achieve the strategy under paragraph (1);

''(D) any changes to the Defense Planning Guidance required by section 113(g)(2)(A) of title 10, United States Code, that may be required to achieve the strategy under paragraph (1); and

''(E) whether sufficient resources are available for the research activities, workforce, and infrastructure of the Department of Defense to support the development of capabilities to defeat emerging threats to the United States; and

''(4) carrying out such other activities as are assigned to the Steering Committee by the Secretary of Defense.

''(d) EMERGING TECHNOLOGY DEFINED.—In this section, the term 'emerging technology' means technology determined to be in an emerging phase of development by the Secretary, including quantum information science and technology, data analytics, artificial intelligence, autonomous technology, advanced materials, software, high performance computing, robotics, directed energy, hypersonics, biotechnology, medical technologies, and such other technology as may be identified by the Secretary.

''(e) SUNSET.—This section shall terminate on October 1, 2024.''

PART-TIME AND TERM EMPLOYMENT OF UNIVERSITY FACULTY AND STUDENTS IN THE DEFENSE SCIENCE AND TECHNOLOGY ENTERPRISE

Pub. L. 116–283, div. A, title II, § 249, Jan. 1, 2021, 134 Stat. 3493, provided that:

''(a) PROGRAM REQUIRED.—Not later than 180 days after the date of the enactment of this Act [Jan. 1, 2021], the Secretary of Defense shall establish a program under which opportunities for part-time and term employment are made available in the Defense science and technology enterprise for faculty and students of institutions of higher education for the purpose of enabling such faculty and students to carry out research projects in accordance with subsection (b).

''(b) RESEARCH PROJECTS.—

''(1) FACULTY.—A faculty member who is employed in position made available under subsection (a) shall, in the course of such employment, carry out a research project that—

''(A) relates to a topic in the field of science, technology, engineering, or mathematics; and

''(B) contributes to the objectives of the Department of Defense, as determined by the Secretary of Defense.

''(2) STUDENTS.—A student employed in position made available under subsection (a) shall assist a faculty member with a research project described in paragraph (1).

''(c) SELECTION OF PARTICIPANTS.—The Secretary of Defense, acting through the heads of participating organizations in the Defense science and technology enterprise, shall select individuals for participation in the program under subsection (a) as follows:

''(1) Faculty members shall be selected for participation on the basis of—

''(A) the academic credentials and research experience of the faculty member; and

''(B) the extent to which the research proposed to be carried out by the faculty member will contribute to the objectives of the Department of Defense.

''(2) Students shall be selected to assist with a research project under the program on the basis of—

''(A) the academic credentials and other qualifications of the student; and

''(B) the student's ability to fulfill the responsibilities assigned to the student as part of the project.

''(d) MINIMUM NUMBER OF POSITIONS.—

''(1) IN GENERAL.—During the first year of the program under subsection (a), the Secretary of Defense shall establish not fewer than 10 part-time or term positions for faculty.

''(2) ARTIFICIAL INTELLIGENCE AND MACHINE LEARNING.—Of the positions established under paragraph (1), not fewer than five such positions shall be reserved for faculty who will conduct research in the area of artificial intelligence and machine learning.

''(e) AUTHORITIES.—In carrying out the program under subsection (a), the Secretary of Defense, or the head of an organization in the Defense science and technology enterprise, as applicable, may—

''(1) use any hiring authority available to the Secretary or the head of such organization, including—

''(A) any hiring authority available under a laboratory demonstration program, including the hiring authority provided under section 2358a of title 10, United States Code;

''(B) direct hiring authority under section 1599h of title 10, United States Code; and

''(C) expert hiring authority under section 3109 of title 5, United States Code;

''(2) enter into cooperative research and development agreements under section 12 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a) to enable the sharing of research and expertise with institutions of higher education and the private sector; and

''(3) pay referral bonuses to faculty or students participating in the program who identify—

''(A) students to assist in a research project under the program; or

''(B) students or recent graduates to participate in other programs in the Defense science and technology enterprise, including internships at Department of Defense laboratories and in the Pathways Program of the Department.

''(f) ANNUAL REPORTS.—

''(1) INITIAL REPORT.—Not later than 30 days after the conclusion of the first year of the program under subsection (a), the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the status of the program. The report shall include—

''(A) identification of the number of faculty and students employed under the program;

''(B) identification of the organizations in the Defense science and technology enterprise that employed such individuals; and

''(C) a description of the types of research conducted by such individuals.

''(2) SUBSEQUENT REPORTS.—Not later than 30 days after the conclusion of the second and third years of the program under subsection (a), the Secretary of Defense shall submit to the congressional defense committees a report on the progress of the program. Each report shall include—

''(A) the information described in subparagraphs (A) through (C) of paragraph (1);

''(B) the results of any research projects conducted under the program; and

''(C) the number of students and recent graduates who, pursuant to a reference from a faculty member or student participating in the program as described in subsection (e)(3), were hired by the Department of Defense or selected for participation in another program in the Defense science and technology enterprise.

''(g) DEFINITIONS.—In this section:

''(1) The term 'Defense science and technology enterprise' means—

''(A) the research organizations of the military departments;

''(B) the science and technology reinvention laboratories (as designated under section 1105 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84; 10 U.S.C. 2358 note));

''(C) the facilities of the Major Range and Test Facility Base (as defined in section 2358a(f)(3) of title 10, United States Code); and

''(D) the Defense Advanced Research Projects Agency.

''(2) The term 'faculty' means an individual who serves as a professor, researcher, or instructor at an institution of higher education.

''(3) The term 'institution of higher education' has the meaning given that term in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001).''

ACQUISITION AUTHORITY OF THE DIRECTOR OF THE JOINT ARTIFICIAL INTELLIGENCE CENTER

Pub. L. 116–283, div. A, title VIII, § 808, Jan. 1, 2021, 134 Stat. 3745, provided that:

''(a) AUTHORITY.—The Secretary of Defense shall delegate to the Director of the Joint Artificial Intelligence Center the acquisition authority to exercise the functions of a head of an agency (as defined in section 2302 of title 10, United States Code) with respect to appropriate acquisition activities of the Center.

''(b) JAIC ACQUISITION EXECUTIVE.—

''(1) IN GENERAL.—The staff of the Director shall include an acquisition executive who shall be responsible for the supervision of appropriate acquisition activities under subsection (a). Subject to the authority, direction, and control of the Director of the Center, the acquisition executive shall have the authority—

''(A) to negotiate memoranda of agreement with any element of the Department of Defense to carry out the acquisition of technologies, services, and capabilities developed or identified by the Center;

''(B) to supervise the acquisition of technologies, services, and capabilities to support the mission of the Center;

''(C) to represent the Center in discussions with the Secretaries concerned regarding acquisition programs relating to such appropriate acquisition activities for which the Center is involved; and

''(D) to work with the Secretaries concerned to ensure that the Center is appropriately represented in any joint working group or integrated product team regarding acquisition programs relating to such appropriate activities for which the Center is involved.

''(2) DELIVERY OF ACQUISITION SOLUTIONS.—The acquisition executive of the Center shall be—

''(A) responsible to the Director for rapidly delivering capabilities to meet validated requirements;

''(B) subordinate to the Under Secretary of Defense for Acquisition and Sustainment in matters of acquisition; and

''(C) included on the distribution list for acquisition directives and instructions of the Department of Defense.

''(c) ACQUISITION PERSONNEL.—

''(1) IN GENERAL.—The Secretary of Defense shall provide the Center with at least 10 full-time employees to support the Director in carrying out the requirements of this section, including personnel with experience in—

''(A) acquisition practices and processes;

''(B) the Joint Capabilities Integration and Development System process;

''(C) program management;

''(D) software development and systems engineering; and

''(E) cost analysis.

''(2) EXISTING PERSONNEL.—The personnel provided under this subsection shall be provided from among the existing personnel of the Department of Defense.

''(d) FUNDING.—In exercising the acquisition authority granted in subsection (a), the Director may not obligate or expend more than $75,000,000 out of the funds made available in each of fiscal years 2021, 2022, 2023, 2024, and 2025 to enter into new contracts to support appropriate acquisition activities carried out under this section.

''(e) IMPLEMENTATION PLAN AND DEMONSTRATION REQUIRED.—

''(1) IN GENERAL.—The Secretary of Defense—

''(A) may use the acquisition authority granted under subsection (a) on or after 30 days after the date on which the Secretary provides to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a plan for implementation of such authority; and

''(B) by March 15, 2022, shall provide a demonstration of operational capability delivered under such authority.

''(2) IMPLEMENTATION PLAN.—The plan shall include the following:

''(A) Description of the types of activities to be undertaken using the acquisition authority provided under subsection (a).

''(B) Plan for the negotiation and approval of any such memorandum of agreement with an element of the Department of Defense to support Center missions and transition of artificial intelligence capabilities into appropriate acquisition programs or into operational use.

''(C) Plan for oversight of the position of acquisition executive established in subsection (b).

''(D) Assessment of the acquisition workforce, tools, and infrastructure needs of the Center to support the authority under subsection (a) until September 30, 2025.

''(E) Other matters as appropriate.

''(3) DEMONSTRATION.—The capability demonstration shall include a description of how the acquisition authority enabled the capability, how requirements were established and agreed upon, how testing was conducted, and how the capability was transitioned to the user, as well as any other matters deemed appropriate by the Center.

''(4) RELATIONSHIP TO OTHER AUTHORITIES.—The requirement to submit a plan under this subsection is in addition to the requirements under section 260 of the National Defense Authorization Act for Fiscal Year 2020 (Public Law 116–92; 133 Stat. 1293).

''(f) SUNSET.—Effective October 1, 2025, the Director may not exercise the authority under subsection (a) and may not enter into any new contracts under this section. The performance on any contract entered into before such date may continue according to the terms of such contract.

''(g) DEFINITIONS.—In this section:

''(1) CENTER.—The term 'Center' has the meaning given the term 'Joint Artificial Intelligence Center' in section 260(c) of National Defense Authorization Act for Fiscal Year 2020 (Public Law 116–92; 133 Stat. 1294).

''(3) [sic] DIRECTOR.—The term 'Director' means the Director of the Center.

''(4) ELEMENT.—The term 'element' means an element described under section 111(b) of title 10, United States Code.

''(5) SECRETARY CONCERNED.—The term 'Secretary concerned' has the meaning given in section 101[(a)](9) of title 10, United States Code.''

§ 4002. Research projects: transactions other than contracts and grants

(a) ADDITIONAL FORMS OF TRANSACTIONS AUTHORIZED.—The Secretary of Defense and the Secretary of each military department may enter into transactions (other than contracts, cooperative agreements, and grants) under the authority of this subsection in carrying out basic, applied, and advanced research projects. The authority under this subsection is in addition to the authority provided in section 4001 of this title to use contracts, cooperative agreements, and grants in carrying out such projects.

(b) EXERCISE OF AUTHORITY BY SECRETARY OF DEFENSE.—In any exercise of the authority in subsection (a), the Secretary of Defense shall act through the Defense Advanced Research Projects Agency or any other element of the Department of Defense that the Secretary may designate.

(c) ADVANCE PAYMENTS.—The authority provided under subsection (a) may be exercised without regard to section 3324 of title 31.

(d) RECOVERY OF FUNDS.—(1) A cooperative agreement for performance of basic, applied, or advanced research authorized by section 4001 of this title and a transaction authorized by subsection (a) may include a clause that requires a person or other entity to make payments to the Department of Defense or any other department or agency of the Federal Government as a condition for receiving support under the agreement or other transaction.

(2) The amount of any payment received by the Federal Government pursuant to a requirement imposed under paragraph (1) may be credited, to the extent authorized by the Secretary of Defense, to the appropriate account established under subsection (f). Amounts so credited shall be merged with other funds in the account and shall be available for the same purposes and the same period for which other funds in such account are available.

(e) CONDITIONS.—(1) The Secretary of Defense shall ensure that—

(A) to the maximum extent practicable, no cooperative agreement containing a clause under subsection (d) and no transaction entered into under subsection (a) provides for research that duplicates research being conducted under existing programs carried out by the Department of Defense; and

(B) to the extent that the Secretary determines practicable, the funds provided by the Government under a cooperative agreement containing a clause under subsection (d) or a transaction authorized by subsection (a) do not exceed the total amount provided by other parties to the cooperative agreement or other transaction.

(2) A cooperative agreement containing a clause under subsection (d) or a transaction authorized by subsection (a) may be used for a research project when the use of a standard contract, grant, or cooperative agreement for such project is not feasible or appropriate.

(f) SUPPORT ACCOUNTS.—There is hereby established on the books of the Treasury separate accounts for each of the military departments and the Defense Advanced Research Projects Agency for support of research projects and development projects provided for in cooperative agreements containing a clause under subsection (d) and research projects provided for in transactions entered into under subsection (a). Funds in those

accounts shall be available for the payment of such support.

(g) EDUCATION AND TRAINING.—The Secretary of Defense shall—

(1) ensure that management, technical, and contracting personnel of the Department of Defense involved in the award or administration of transactions under this section or other innovative forms of contracting are afforded opportunities for adequate education and training; and

(2) establish minimum levels and requirements for continuous and experiential learning for such personnel, including levels and requirements for acquisition certification programs.

(h) REGULATIONS.—The Secretary of Defense shall prescribe regulations to carry out this section.

(i) PROTECTION OF CERTAIN INFORMATION FROM DISCLOSURE.—(1) Disclosure of information described in paragraph (2) is not required, and may not be compelled, under section 552 of title 5 for five years after the date on which the information is received by the Department of Defense.

(2)(A) Paragraph (1) applies to information described in subparagraph (B) that is in the records of the Department of Defense if the information was submitted to the Department in a competitive or noncompetitive process having the potential for resulting in an award, to the party submitting the information, of a cooperative agreement for performance of basic, applied, or advanced research authorized by section 4001 of this title or another transaction authorized by subsection (a).

(B) The information referred to in subparagraph (A) is the following:

(i) A proposal, proposal abstract, and supporting documents.

(ii) A business plan submitted on a confidential basis.

(iii) Technical information submitted on a confidential basis.

(Added Pub. L. 101–189, div. A, title II, § 251(a)(1), Nov. 29, 1989, 103 Stat. 1403, § 2371; amended Pub. L. 101–510, div. A, title XIV, § 1484(k)(9), Nov. 5, 1990, 104 Stat. 1719; Pub. L. 102–190, div. A, title VIII, § 826, Dec. 5, 1991, 105 Stat. 1442; Pub. L. 102–484, div. A, title II, § 217, Oct. 23, 1992, 106 Stat. 2352; Pub. L. 103–35, title II, § 201(c)(4), May 31, 1993, 107 Stat. 98; Pub. L. 103–160, div. A, title VIII, § 827(b), title XI, § 1182(a)(6), Nov. 30, 1993, 107 Stat. 1712, 1771; Pub. L. 103–355, title I, § 1301(b), Oct. 13, 1994, 108 Stat. 3285; Pub. L. 104–106, div. A, title XV, § 1502(a)(1), Feb. 10, 1996, 110 Stat. 502; Pub. L. 104–201, div. A, title II, § 267(a)–(c)(1)(A), title X, § 1073(e)(1)(B), Sept. 23, 1996, 110 Stat. 2467, 2468, 2658; Pub. L. 105–85, div. A, title VIII, § 832, Nov. 18, 1997, 111 Stat. 1842; Pub. L. 105–261, div. A, title VIII, § 817, Oct. 17, 1998, 112 Stat. 2089; Pub. L. 106–65, div. A, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 108–136, div. A, title X, § 1031(a)(19), Nov. 24, 2003, 117 Stat. 1597; Pub. L. 113–291, div. A, title X, § 1071(f)(20), Dec. 19, 2014, 128 Stat. 3511; Pub. L. 115–91, div. A, title VIII, § 863, Dec. 12, 2017, 131 Stat. 1494; renumbered § 4002 and amended Pub. L. 116–283, div. A, title XVIII, § 1841(b)(1), (2)(B), Jan. 1, 2021, 134 Stat. 4243.)

AMENDMENTS

2021—Pub. L. 116–283, § 1841(b)(2)(B), substituted ''section 4001'' for ''section 2358'' wherever appearing.

Pub. L. 116–283, § 1841(b)(1), renumbered section 2371 of this title as this section.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

LISTING OF OTHER TRANSACTION AUTHORITY CONSORTIA

Pub. L. 116–283, div. A, title VIII, § 833, Jan. 1, 2021, 134 Stat. 3753, provided that: ''Not later than 90 days after the date of the enactment of this Act [Jan. 1, 2021], the Secretary of Defense shall maintain on the single Government-wide point of entry described under section 1708 of title 41, United States Code, a list of the consortia used by the Secretary to announce or otherwise make available opportunities to enter into a transaction under the authority of section 2371 of title 10, United States Code, or a transaction for a prototype project under section 2371b of such title.''

§ 4003. Authority of the Department of Defense to carry out certain prototype projects

(a) AUTHORITY.—(1) Subject to paragraph (2), the Director of the Defense Advanced Research Projects Agency, the Secretary of a military department, or any other official designated by the Secretary of Defense may, under the authority of section 4002 of this title, carry out prototype projects that are directly relevant to enhancing the mission effectiveness of military personnel and the supporting platforms, systems, components, or materials proposed to be acquired or developed by the Department of Defense, or to improvement of platforms, systems, components, or materials in use by the armed forces.

(2) The authority of this section—

(A) may be exercised for a transaction for a prototype project, and any follow-on production contract or transaction that is awarded pursuant to subsection (f), that is expected to cost the Department of Defense in excess of $100,000,000 but not in excess of $500,000,000 (including all options) only upon a written determination by the senior procurement executive for the agency as designated for the purpose of section 1702(c) of title 41, or, for the Defense Advanced Research Projects Agency or the Missile Defense Agency, the director of the agency that—

(i) the requirements of subsection (d) will be met; and

(ii) the use of the authority of this section is essential to promoting the success of the prototype project; and

(B) may be exercised for a transaction for a prototype project, and any follow-on production contract or transaction that is awarded pursuant to subsection (f), that is expected to cost the Department of Defense in excess of $500,000,000 (including all options) only if—

(i) the Under Secretary of Defense for Research and Engineering or the Under Secretary of Defense for Acquisition and Sustainment determines in writing that—

(I) the requirements of subsection (d) will be met; and

(II) the use of the authority of this section is essential to meet critical national security objectives; and

(ii) the congressional defense committees are notified in writing at least 30 days before such authority is exercised.

(3) The authority of a senior procurement executive or director of the Defense Advanced Research Projects Agency or Missile Defense Agency under paragraph (2)(A), and the authority of the Under Secretaries of Defense under paragraph (2)(B), may not be delegated.

(b) EXERCISE OF AUTHORITY.—

(1) Subsections (e)(1)(B) and (e)(2) of such section 4002 shall not apply to projects carried out under subsection (a).

(2) To the maximum extent practicable, competitive procedures shall be used when entering into agreements to carry out the prototype projects under subsection (a).

(c) COMPTROLLER GENERAL ACCESS TO INFORMATION.—(1) Each agreement entered into by an official referred to in subsection (a) to carry out a project under that subsection that provides for payments in a total amount in excess of $5,000,000 shall include a clause that provides for the Comptroller General, in the discretion of the Comptroller General, to examine the records of any party to the agreement or any entity that participates in the performance of the agreement.

(2) The requirement in paragraph (1) shall not apply with respect to a party or entity, or a subordinate element of a party or entity, that has not entered into any other agreement that provides for audit access by a Government entity in the year prior to the date of the agreement.

(3)(A) The right provided to the Comptroller General in a clause of an agreement under paragraph (1) is limited as provided in subparagraph (B) in the case of a party to the agreement, an entity that participates in the performance of the agreement, or a subordinate element of that party or entity if the only agreements or other transactions that the party, entity, or subordinate element entered into with Government entities in the year prior to the date of that agreement are cooperative agreements or transactions that were entered into under this section or section 4002 of this title.

(B) The only records of a party, other entity, or subordinate element referred to in subparagraph (A) that the Comptroller General may examine in the exercise of the right referred to in that subparagraph are records of the same type as the records that the Government has had the right to examine under the audit access clauses of the previous agreements or transactions referred to in such subparagraph that were entered into by that particular party, entity, or subordinate element.

(4) The head of the contracting activity that is carrying out the agreement may waive the applicability of the requirement in paragraph (1) to the agreement if the head of the contracting activity determines that it would not be in the public interest to apply the requirement to the agreement. The waiver shall be effective with respect to the agreement only if the head of the contracting activity transmits a notification of the waiver to Congress and the Comptroller General before entering into the agreement. The notification shall include the rationale for the determination.

(5) The Comptroller General may not examine records pursuant to a clause included in an agreement under paragraph (1) more than three years after the final payment is made by the United States under the agreement.

(d) APPROPRIATE USE OF AUTHORITY.—(1) The Secretary of Defense shall ensure that no official of an agency enters into a transaction (other than a contract, grant, or cooperative agreement) for a prototype project under the authority of this section unless one of the following conditions is met:

(A) There is at least one nontraditional defense contractor or nonprofit research institution participating to a significant extent in the prototype project.

(B) All significant participants in the transaction other than the Federal Government are small businesses (including small businesses participating in a program described under section 9 of the Small Business Act (15 U.S.C. 638)) or nontraditional defense contractors.

(C) At least one third of the total cost of the prototype project is to be paid out of funds provided by sources other than the Federal Government.

(D) The senior procurement executive for the agency determines in writing that exceptional circumstances justify the use of a transaction that provides for innovative business arrangements or structures that would not be feasible or appropriate under a contract, or would provide an opportunity to expand the defense supply base in a manner that would not be practical or feasible under a contract.

(2)(A) Except as provided in subparagraph (B), the amounts counted for the purposes of this subsection as being provided, or to be provided, by a party to a transaction with respect to a prototype project that is entered into under this section other than the Federal Government do not include costs that were incurred before the date on which the transaction becomes effective.

(B) Costs that were incurred for a prototype project by a party after the beginning of negotiations resulting in a transaction (other than a contract, grant, or cooperative agreement) with respect to the project before the date on which the transaction becomes effective may be counted for purposes of this subsection as being provided, or to be provided, by the party to the transaction if and to the extent that the official responsible for entering into the transaction determines in writing that—

(i) the party incurred the costs in anticipation of entering into the transaction; and

(ii) it was appropriate for the party to incur the costs before the transaction became effective in order to ensure the successful implementation of the transaction.

(e) DEFINITIONS.—In this section:

(1) The term ''nontraditional defense contractor'' has the meaning given the term under section 3014 of this title.

(2) The term ''small business'' means a small business concern as defined under section 3 of the Small Business Act (15 U.S.C. 632).

(f) FOLLOW-ON PRODUCTION CONTRACTS OR TRANSACTIONS.—(1) A transaction entered into under this section for a prototype project may provide for the award of a follow-on production contract or transaction to the participants in the transaction. A transaction includes all individual prototype subprojects awarded under the transaction to a consortium of United States industry and academic institutions.

(2) A follow-on production contract or transaction provided for in a transaction under paragraph (1) may be awarded to the participants in the transaction without the use of competitive procedures, notwithstanding the requirements of section 2304 of this title, if—

(A) competitive procedures were used for the selection of parties for participation in the transaction; and

(B) the participants in the transaction successfully completed the prototype project provided for in the transaction.

(3) A follow-on production contract or transaction may be awarded, pursuant to this subsection, when the Department determines that an individual prototype or prototype subproject as part of a consortium is successfully completed by the participants.

(4) Award of a follow-on production contract or transaction pursuant to the terms under this subsection is not contingent upon the successful completion of all activities within a consortium as a condition for an award for follow-on production of a successfully completed prototype or prototype subproject within that consortium.

(5) Contracts and transactions entered into pursuant to this subsection may be awarded using the authority in subsection (a), under the authority of chapter 137 of this title, or under such procedures, terms, and conditions as the Secretary of Defense may establish by regulation.

(g) AUTHORITY TO PROVIDE PROTOTYPES AND FOLLOW-ON PRODUCTION ITEMS AS GOVERNMENT-FURNISHED EQUIPMENT.—An agreement entered into pursuant to the authority of subsection (a) or a follow-on contract or transaction entered into pursuant to the authority of subsection (f) may provide for prototypes or follow-on production items to be provided to another contractor as Government-furnished equipment.

(h) APPLICABILITY OF PROCUREMENT ETHICS REQUIREMENTS.—An agreement entered into under the authority of this section shall be treated as a Federal agency procurement for the purposes of chapter 21 of title 41.

(Added Pub. L. 114–92, div. A, title VIII, § 815(a)(1), Nov. 25, 2015, 129 Stat. 893, § 2371b; amended Pub. L. 115–91, div. A, title II, § 216, title VIII, § 864, Dec. 12, 2017, 131 Stat. 1328, 1494; Pub. L. 115–232, div. A, title II, § 211, Aug. 13, 2018, 132 Stat. 1674; Pub. L. 116–92, div. A, title XVII, § 1731(a)(46), Dec. 20, 2019, 133 Stat. 1814; renumbered § 4003 and amended Pub. L. 116–283, div. A, title XVIII, §§ 1841(b)(1), (2)(C), 1883(b)(2), Jan. 1, 2021, 134 Stat. 4243, 4294.)

AMENDMENTS

2021—Pub. L. 116–283, § 1841(b)(1), renumbered section 2371b of this title as this section.

Subsecs. (a)(1), (b)(1), (c)(3)(A). Pub. L. 116–283, § 1841(b)(2)(C), substituted ''section 4002'' for ''section 2371''.

Subsec. (e)(1). Pub. L. 116–283, § 1883(b)(2), substituted ''section 3014'' for ''section 2302(9)''.

Subsec. (f)(2). Pub. L. 116–283, § 1883(b)(2), which directed that each reference in the text of title 10 to a section that was redesignated by title XVIII of Pub. L. 116–283, as such section was in effect before the redesignation, be amended by striking such reference and inserting a reference to the appropriate redesignated section, was not executed with respect to ''section 2304'', which was redesignated as multiple sections.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 4004. Procurement for experimental purposes

(a) AUTHORITY.—The Secretary of Defense and the Secretaries of the military departments may each buy ordnance, signal, chemical activity, transportation, energy, medical, space-flight, telecommunications, and aeronautical supplies, including parts and accessories, and designs thereof, that the Secretary of Defense or the Secretary concerned considers necessary for experimental or test purposes in the development of the best supplies that are needed for the national defense.

(b) PROCEDURES.—Purchases under this section may be made inside or outside the United States and by contract or otherwise. Chapter 137 of this title applies only when such purchases are made in quantities greater than necessary for experimentation, technical evaluation, assessment of operational utility, or safety or to provide a residual operational capability.

(Added Pub. L. 103–160, div. A, title VIII, § 822(c)(1), Nov. 30, 1993, 107 Stat. 1706, § 2373; amended Pub. L. 103–337, div. A, title X, § 1070(g), Oct. 5, 1994, 108 Stat. 2859; Pub. L. 104–106, div. A, title VIII, § 812, Feb. 10, 1996, 110 Stat. 395; Pub. L. 114–92, div. A, title VIII, § 814, Nov. 25, 2015, 129 Stat. 893; Pub. L. 115–232, div. A, title VIII, § 886, Aug. 13, 2018, 132 Stat. 1916; renumbered § 4004, Pub. L. 116–283, div. A, title XVIII, § 1841(b)(1), Jan. 1, 2021, 134 Stat. 4243.)

AMENDMENTS

2021—Pub. L. 116–283 renumbered section 2373 of this title as this section.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 4007. Science and technology programs to be conducted so as to foster the transition of science and technology to higher levels of research, development, test, and evaluation

(a) POLICY.—Each official specified in subsection (b) shall ensure that the management and conduct of the science and technology programs under the authority of that official are carried out in a manner that will foster the transition of science and technology to higher levels of research, development, test, and evaluation.

(b) COVERED OFFICIALS.—Subsection (a) applies to the following officials of the Department of Defense:

(1) The Under Secretary of Defense for Research and Engineering.

(2) The Secretary of each military department.

(3) The Director of the Defense Advanced Research Projects Agency.

(4) The directors and heads of other offices and agencies of the Department of Defense with assigned research, development, test, and evaluation responsibilities.

(Added Pub. L. 106–398, §1 [[div. A], title IX, §904(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–225, §2359; amended Pub. L. 116–92, div. A, title IX, §902(55), Dec. 20, 2019, 133 Stat. 1549; renumbered §4007, Pub. L. 116–283, div. A, title XVIII, §1841(c), Jan. 1, 2021, 134 Stat. 4243.)

AMENDMENTS

2021—Pub. L. 116–283 renumbered section 2359 of this title as this section.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 4008. Merit-based award of grants for research and development

(a) It is the policy of Congress that an agency named in section 2303(a)[1] of this title should not be required by legislation to award a new grant for research, development, test, or evaluation to a non-Federal Government entity. It is further the policy of Congress that any program, project, or technology identified in legislation be awarded through merit-based selection procedures.

(b) A provision of law may not be construed as requiring a new grant to be awarded to a specified non-Federal Government entity unless that provision of law—

(1) specifically refers to this subsection;

(2) specifically identifies the particular non-Federal Government entity involved; and

(3) specifically states that the award to that entity is required by such provision of law in contravention of the policy set forth in subsection (a).

(c) For purposes of this section, a grant is a new grant unless the work provided for in the grant is a continuation of the work performed by the specified entity under a preceding grant.

(d) This section shall not apply with respect to any grant that calls upon the National Academy of Sciences to investigate, examine, or experiment upon any subject of science or art of significance to an agency named in section 2303(a)[1] of this title and to report on such matters to the Congress or any agency of the Federal Government.

(Added Pub. L. 103–355, title VII, §7203(a)(2), Oct. 13, 1994, 108 Stat. 3380, §2374; renumbered §4008 and amended Pub. L. 116–283, div. A, title XVIII, §§1841(c), 1883(b)(2), Jan. 1, 2021, 134 Stat. 4243, 4294.)

AMENDMENTS

2021—Pub. L. 116–283, §1841(c), renumbered section 2374 of this title as this section.

Subsecs. (a), (d). Pub. L. 116–283, §1883(b)(2), which directed that each reference in the text of title 10 to a section that was redesignated by title XVIII of Pub. L. 116–283, as such section was in effect before the redesignation, be amended by striking such reference and inserting a reference to the appropriate redesignated section, was not executed with respect to ''section 2303(a)'', which was redesignated as multiple sections.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 4009. Technology protection features activities

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

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

(c) DEFINITIONS.—In this section:

(1) The term ''designated system'' means any system (including a major system, as defined in section 3041 of title 10, United States Code) that the Under Secretary of Defense for Acquisition and Sustainment designates for purposes of this section.

(2) The term ''technology protection features'' means the technical modifications necessary to protect critical program information, including anti-tamper technologies and other systems engineering activities intended to prevent or delay exploitation of critical technologies in a designated system.

(Added Pub. L. 115–232, div. A, title II, §223(a), Aug. 13, 2018, 132 Stat. 1682, §2357; renumbered §4009 and amended Pub. L. 116–283, div. A, title XVIII, §§1841(c), 1883(b)(2), Jan. 1, 2021, 134 Stat. 4243, 4294.)

AMENDMENTS

2021—Pub. L. 116–283, §1841(c), renumbered section 2357 of this title as this section.

Subsec. (c)(1). Pub. L. 116–283, §1883(b)(2), substituted ''section 3041'' for ''section 2302(5)''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

[1] Probably refers to section 3063 of this title, but amendment by section 1883(b)(2) of Pub. L. 116–283 was not executed as section 2303(a) was transferred to two different sections.

§ 4014. Coordination and communication of defense research activities and technology domain awareness

(a) COORDINATION OF DEPARTMENT OF DEFENSE RESEARCH, DEVELOPMENT, AND TECHNOLOGICAL DATA.—The Secretary of Defense shall promote, monitor, and evaluate programs for the communication and exchange of research, development, and technological data—

(1) among the Defense research facilities, combatant commands, and other organizations that are involved in developing for the Department of Defense the technological requirements for new items for use by combat forces;

(2) among Defense research facilities and other offices, agencies, and bureaus in the Department that are engaged in related technological matters;

(3) among other research facilities and other departments or agencies of the Federal Government that are engaged in research, development, and technological matters;

(4) among private commercial, research institution, and university entities engaged in research, development, and technological matters potentially relevant to defense on a voluntary basis;

(5) to the extent practicable, to achieve full awareness of scientific and technological advancement and innovation wherever it may occur, whether funded by the Department of Defense, another element of the Federal Government, or other entities; and

(6) through development and distribution of clear technical communications to the public, military operators, acquisition organizations, and civilian and military decision-makers that convey successes of research and engineering activities supported by the Department and the contributions of such activities to support national needs.

(b) DEFENSE RESEARCH FACILITY DEFINED.—In this section, the term ''Defense research facility'' has the meaning given that term by section 4142(b) of this title.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1841(d), Jan. 1, 2021, 134 Stat. 4243.)

CODIFICATION

The section catchline and text of subsec. (a) of section 2364 of this title, which were transferred to this section by Pub. L. 116–283, § 1841(d)(1), were based on Pub. L. 99–661, div. A, title II, § 234(c)(1), Nov. 14, 1986, 100 Stat. 3848; Pub. L. 100–26, § 3(1)(A), Apr. 21, 1987, 101 Stat. 273; Pub. L. 100–180, div. A, title XII, § 1231(10)(B), Dec. 4, 1987, 101 Stat. 1160; Pub. L. 114–92, div. A, title II, § 214(a)(1), (3), Nov. 25, 2015, 129 Stat. 767, 768; Pub. L. 115–91, div. A, title X, § 1081(a)(34), Dec. 12, 2017, 131 Stat. 1596.

AMENDMENTS

2021—Pub. L. 116–283, § 1841(d)(1), transferred section catchline and subsec. (a) of section 2364 of this title to this section.

Subsec. (b). Pub. L. 116–283, § 1841(d)(2), added subsec. (b).

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 4015. Award of grants and contracts to colleges and universities: requirement of competition

(a) The Secretary of Defense may not make a grant or award a contract to a college or university for the performance of research and development, or for the construction of any research or other facility, unless—

(1) in the case of a grant, the grant is made using competitive procedures; and

(2) in the case of a contract, the contract is awarded in accordance with section 2304[1] of this title (other than pursuant to subsection (c)(5)[1] of that section).

(b)(1) A provision of law may not be construed as modifying or superseding the provisions of subsection (a), or as requiring funds to be made available by the Secretary of Defense to a particular college or university by grant or contract, unless that provision of law—

(A) specifically refers to this section;

(B) specifically states that such provision of law modifies or supersedes the provisions of this section; and

(C) specifically identifies the particular college or university involved and states that the grant to be made or the contract to be awarded, as the case may be, pursuant to such provision of law is being made or awarded in contravention of subsection (a).

(2) A grant may not be made, or a contract awarded, pursuant to a provision of law that authorizes or requires the making of the grant, or the awarding of the contract, in a manner that is inconsistent with subsection (a) until—

(A) the Secretary of Defense submits to Congress a notice in writing of the intent to make the grant or award the contract; and

(B) a period of 180 days has elapsed after the date on which the notice is received by Congress.

(Added Pub. L. 100–456, div. A, title II, § 220(a), Sept. 29, 1988, 102 Stat. 1940, § 2361; amended Pub. L. 101–189, div. A, title II, § 252(a), (b)(1), (c)(1), Nov. 29, 1989, 103 Stat. 1404, 1405; Pub. L. 101–510, div. A, title XIII, § 1311(4), Nov. 5, 1990, 104 Stat. 1669; Pub. L. 103–35, title II, § 201(g)(5), May 31, 1993, 107 Stat. 100; Pub. L. 103–160, div. A, title VIII, § 821(b), Nov. 30, 1993, 107 Stat. 1704; Pub. L. 103–337, div. A, title VIII, § 813, Oct. 5, 1994, 108 Stat. 2816; Pub. L. 104–106, div. A, title II, § 264, title XV, § 1502(a)(1), Feb. 10, 1996, 110 Stat. 237, 502; Pub. L. 104–201, div. A, title II, § 265, Sept. 23, 1996, 110 Stat. 2466; renumbered § 4015 and amended Pub. L. 116–283, div. A, title XVIII, §§ 1841(c), 1883(b)(2), Jan. 1, 2021, 134 Stat. 4243, 4294.)

PRIOR PROVISIONS

A prior section 4021 was renumbered section 7371 of this title.

Another prior section 4021, act Aug. 10, 1956, ch. 1041, 70A Stat. 233, related to appointments in professional and scientific service, prior to repeal by Pub. L. 85–861, § 36B(11), Sept. 2, 1958, 72 Stat. 1570.

[1] Amendment by section 1883(b)(2) of Pub. L. 116–283 was not executed as section 2304 was transferred to multiple sections. Section 2304(c)(5) was transferred to section 3204(5) of this title.

A prior section 4022, act Aug. 10, 1956, ch. 1041, 70A Stat. 233, related to employment of contract surgeons in an emergency, prior to repeal by Pub. L. 98–94, title IX, § 932(b)(1), (f) Sept. 24, 1983, 97 Stat. 650, effective Oct. 1, 1983, with continuation provision for existing contracts.

A prior section 4023, act Aug. 10, 1956, ch. 1041, 70A Stat. 233, related to employment of civilians in service club and library services, prior to repeal by Pub. L. 87–651, title I, § 116(1), Sept. 7, 1962, 76 Stat. 513.

Prior sections 4024, 4025, and 4027 were renumbered sections 7374, 7375, and 7377 of this title, respectively.

AMENDMENTS

2021—Pub. L. 116–283, § 1841(c), renumbered section 2361 of this title as this section.

Subsec. (a)(2). Pub. L. 116–283, § 1883(b)(2), which directed that each reference in the text of title 10 to a section that was redesignated by title XVIII of Pub. L. 116–283, as such section was in effect before the redesignation, be amended by striking such reference and inserting a reference to the appropriate redesignated section, was not executed with respect to ''section 2304'', which was redesignated as multiple sections.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

CHAPTER 303—INNOVATION

Sec.
4061. Defense Research and Development Rapid Innovation Program.
4062. Defense Acquisition Challenge Program.
4063. Extramural acquisition innovation and research activities.
4064. Joint reserve detachment of the Defense Innovation Unit.
4065. Prizes for advanced technology achievements.
4066. Global Research Watch Program.

PRIOR PROVISIONS

A prior chapter 303 ''WEAPON SYSTEMS DEVELOPMENT AND RELATED MATTERS'', consisting of reserved section 4071, was repealed by Pub. L. 116–283, div. A, title XVIII, § 1841(a)(1)(A), Jan. 1, 2021, 134 Stat. 4242.

A prior chapter 303 was renumbered chapter 703 of this title.

§ 4061. Defense Research and Development Rapid Innovation Program

(a) PROGRAM ESTABLISHED.—(1) The Secretary of Defense shall establish a competitive, merit-based program to accelerate the fielding of technologies developed pursuant to phase II Small Business Innovation Research Program projects, phase II Small Business Technology Transfer Program projects, technologies developed by the defense laboratories, and other innovative technologies (including dual use technologies).

(2) The purpose of this program is to stimulate innovative technologies and reduce acquisition or lifecycle costs, address technical risks, improve the timeliness and thoroughness of test and evaluation outcomes, and rapidly insert such products directly in support of primarily major defense acquisition programs, but also other defense acquisition programs that meet critical national security needs.

(b) GUIDELINES.—The Secretary shall issue guidelines for the operation of the program. At a minimum such guidance shall provide for the following:

(1) The issuance of one or more broad agency announcements or the use of any other competitive or merit-based processes by the Department of Defense for candidate proposals in support of defense acquisition programs as described in subsection (a).

(2) The review of candidate proposals by the Department of Defense and by each military department and the merit-based selection of the most promising cost-effective proposals for funding through contracts, cooperative agreements, and other transactions for the purposes of carrying out the program.

(3) The total amount of funding provided to any project under the program from funding provided under subsection (d) shall not exceed $6,000,000.

(4) No project shall receive more than a total of two years of funding under the program from funding provided under subsection (d), unless the Secretary, or the Secretary's designee, approves funding for any additional year.

(5) Mechanisms to facilitate transition of follow-on or current projects carried out under the program into defense acquisition programs, through the use of the authorities of section 3345 of this title or such other authorities as may be appropriate to conduct further testing, low rate production, or full rate production of technologies developed under the program.

(6) Projects are selected using merit-based selection procedures and the selection of projects is not subject to undue influence by Congress or other Federal agencies.

(7) A preference under the program for funding small business concerns.

(c) TREATMENT PURSUANT TO CERTAIN CONGRESSIONAL RULES.—Nothing in this section shall be interpreted to require or enable any official of the Department of Defense to provide funding under this section to any earmark as defined pursuant to House Rule XXI, clause 9, or any congressionally directed spending item as defined pursuant to Senate Rule XLIV, paragraph 5.

(d) FUNDING.—(1) Subject to the availability of appropriations for such purpose and to the limitation under paragraph (2), the amounts authorized to be appropriated for research, development, test, and evaluation for a fiscal year may be used for such fiscal year for the program established under subsection (a).

(2) During any fiscal year, the total amount of awards in an amount greater than $3,000,000 made under the program established under subsection (a) may not exceed 25 percent of the amount made available to carry out such program during such fiscal year.

(e) TRANSFER AUTHORITY.—(1) The Secretary may transfer funds available for the program to the research, development, test, and evaluation accounts of a military department, defense agency, or the unified combatant command for special operations forces pursuant to a proposal, or any part of a proposal, that the Secretary determines would directly support the purposes of the program.

(2) The transfer authority provided in this subsection is in addition to any other transfer authority available to the Department of Defense.

(Added Pub. L. 115–232, div. A, title II, § 224(a)(1), Aug. 13, 2018, 132 Stat. 1683, § 2359a; amended Pub. L. 116–92, div. A, title VIII, § 878(a), Dec. 20, 2019, 133 Stat. 1530; renumbered § 4061 and amended Pub. L. 116–283, div. A, title XVIII, §§ 1842(b), 1883(b)(2), Jan. 1, 2021, 134 Stat. 4244, 4294.)

PRIOR PROVISIONS

Prior section 4061 was renumbered section 7381 of this title.

AMENDMENTS

2021—Pub. L. 116–283, § 1842(b), renumbered section 2359a of this title as this section.

Subsec. (b)(5). Pub. L. 116–283, § 1883(b)(2), substituted "section 3345" for "section 2302e".

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 4062. Defense Acquisition Challenge Program

(a) PROGRAM REQUIRED.—(1) The Secretary of Defense, acting through the Under Secretary of Defense for Research and Engineering, shall carry out a program to provide opportunities for the increased introduction of innovative and cost-saving technology in acquisition programs of the Department of Defense.

(2) The program, to be known as the Defense Acquisition Challenge Program (hereinafter in this section referred to as the "Challenge Program"), shall provide any person or activity within or outside the Department of Defense with the opportunity to propose alternatives, to be known as challenge proposals, at the component, subsystem, system, or system-of-systems level of an existing Department of Defense acquisition program, or to address any broader functional challenge to Department of Defense missions that may not fall within an acquisition program, that would result in improvements in performance, affordability, manufacturability, or operational capability of that acquisition program or function.

(b) PANELS.—The Under Secretary shall establish one or more panels of highly qualified scientists and engineers (hereinafter in this section referred to as "Panels") to provide preliminary evaluations of challenge proposals under subsection (c).

(c) PRELIMINARY EVALUATION BY PANELS.—(1) Under procedures prescribed by the Under Secretary, a person or activity within or outside the Department of Defense may submit challenge proposals to a Panel, through the unsolicited proposal process or in response to a broad agency announcement.

(2) The Under Secretary shall establish procedures pursuant to which appropriate officials of the Department of Defense may identify proposals submitted through the unsolicited proposal process as challenge proposals. The procedures shall provide for the expeditious referral of such proposals to a Panel for preliminary evaluation under this subsection.

(3) The Under Secretary shall issue on an annual basis not less than one such broad agency announcement inviting interested parties to submit challenge proposals. Such announcements may also identify particular technology areas and acquisition programs or functions that will be given priority in the evaluation of challenge proposals.

(4)(A) The Under Secretary shall establish procedures for the prompt issuance of a solicitation for challenge proposals addressing—

(i) any acquisition program for which, since the last such announcement, the Secretary concerned has determined under section 4374 of this title that the program's acquisition unit cost or procurement unit cost has increased by a percentage equal to or greater than the critical cost growth threshold for the program (in this section referred to as a "critical cost growth threshold breach");

(ii) any design, engineering, manufacturing, or technology integration issues, in accordance with the assessment required by section 2433(e)(2)(A)[1] of this title, that have contributed significantly to the cost growth of such program; and

(iii) any functional challenges of importance to Department of Defense missions.

(B) A solicitation under this paragraph may be included in a broad agency announcement issued pursuant to paragraph (3) as long as the broad agency announcement is released in an expeditious manner following the determination of the Secretary concerned that a critical cost growth threshold breach has occurred with respect to a major defense acquisition program.

(5) Under procedures established by the Under Secretary, a Panel shall carry out a preliminary evaluation of each challenge proposal submitted in response to a broad agency announcement, or submitted through the unsolicited proposal process and identified as a challenge proposal in accordance with paragraph (2), to determine each of the following:

(A) Whether the challenge proposal has merit.

(B) Whether the challenge proposal is likely to result in improvements in performance, affordability, manufacturability, or operational capability at the component, subsystem, system, or system-of-systems level of an acquisition program.

(C) Whether the challenge proposal could be implemented in the acquisition program rapidly, at an acceptable cost, and without unacceptable disruption to the acquisition program.

(D) Whether the challenge proposal is likely to result in improvements to any functional challenges of importance to Department of Defense missions, and whether the proposal could be implemented rapidly, at an acceptable cost, and without unacceptable disruption to such missions.

(6) The Under Secretary—

(A) may establish procedures to ensure that the Challenge Program does not become an avenue for the repetitive submission of proposals that have been previously reviewed and found not to have merit; and

[1] Amendment by section 1883(b)(2) of Pub. L. 116–283 was not executed as there was no section 2433(e)(2)(A) of this title after amendment by Pub. L. 111–23. Section 2433(e)(2) was transferred to section 4375(b) by Pub. L. 116–283.

(B) may establish procedures to ensure that the Challenge Program establishes appropriate priorities for proposals from businesses that are not major contractors with the Department of Defense.

(7) If a Panel determines that a challenge proposal satisfies each of the criteria specified in paragraph (5), the person or activity submitting that challenge proposal shall be provided an opportunity to submit such challenge proposal for a full review and evaluation under subsection (d).

(d) FULL REVIEW AND EVALUATION.—(1) Under procedures prescribed by the Under Secretary, for each challenge proposal submitted for a full review and evaluation as provided in subsection (c)(7), the office carrying out the acquisition program to which the proposal relates shall, in consultation with the prime system contractor carrying out such program, conduct a full review and evaluation of the proposal.

(2) The full review and evaluation shall, independent of the determination of a Panel under subsection (c)(5), determine each of the matters specified in subparagraphs (A), (B), and (C) of such subsection. The full review and evaluation shall also include—

(A) an assessment of the cost of adopting the challenge proposal and implementing it in the acquisition program; and

(B) consideration of any intellectual property issues associated with the challenge proposal.

(e) ACTION UPON FAVORABLE FULL REVIEW AND EVALUATION.—(1) Under procedures prescribed by the Under Secretary, each challenge proposal determined under a full review and evaluation to satisfy each of the criteria specified in subsection (c)(5) with respect to an acquisition program shall be considered by the office carrying out the applicable acquisition program and the prime system contractor for incorporation into the acquisition program as a new technology insertion at the component, subsystem, system, or system-of-systems level.

(2) The Under Secretary shall encourage the adoption of each challenge proposal referred to in paragraph (1) by providing suitable incentives to the office carrying out the acquisition program and the prime system contractor carrying out such program.

(3) In the case of a challenge proposal submitted in response to a solicitation issued as a result of a critical cost growth threshold breach that is determined under full review and evaluation to satisfy each of the criteria specified in subsection (c)(5), the Under Secretary shall establish guidelines for covering the costs of the challenge proposal. If appropriate, such guidelines shall not be restricted to funding provided by the Defense Acquisition Challenge Program, but shall also consider alternative funding sources, such as the acquisition program with respect to which the breach occurred.

(f) ACTION UPON UNFAVORABLE FULL REVIEW AND EVALUATION.—Under procedures prescribed by the Under Secretary, if a challenge proposal is determined by a Panel to satisfy each of the criteria specified in subsection (c)(5), but is not determined under a full review and evaluation to satisfy such criteria, the following provisions apply:

(1) The office carrying out the full review and evaluation shall provide to the Panel that conducted the preliminary evaluation a statement containing a summary of the rationale for the unfavorable evaluation.

(2) If the Panel disagrees with the rationale provided under paragraph (1), the Panel may return the challenge proposal to the office for further consideration.

(g) ACCESS TO TECHNICAL RESOURCES.—(1) Under procedures established by the Under Secretary, the technical resources of the laboratories, research, development, and engineering centers, test and evaluation activities, and other elements of the Department may be called upon to support the activities of the Challenge Program.

(2) Funds available to carry out this program may be used to compensate such laboratories, centers, activities, and elements for technical assistance provided to a Panel pursuant to paragraph (1).

(h) CONFLICTS OF INTEREST AND CONFIDENTIALITY.—In carrying out each preliminary evaluation under subsection (c) and full review under subsection (d), the Under Secretary shall ensure the elimination of conflicts of interest and that the identity of any person or activity submitting a challenge proposal is not disclosed outside the Federal Government, prior to contract award, without the consent of the person or activity. For purposes of the proceeding sentence, the term ''Federal Government'' includes both employees of the Federal Government and employees of Federal Government contractors providing advisory and assistance services as described in part 37 of the Federal Acquisition Regulation.

(i) LIMITATION ON USE OF FUNDS.—Funds made available for the Challenge Program may be used only for activities authorized by this section, and not for implementation of challenge proposals.

(j) TREATMENT OF USE OF CERTAIN PROCEDURES AS USE OF COMPETITIVE PROCEDURES.—The use of general solicitation competitive procedures established under subsection (c) shall be considered to be the use of competitive procedures for purposes of chapter 137 of this title.

(k) SYSTEM DEFINED.—In this section, the term ''system''—

(1) means—

(A) the organization of hardware, software, material, facilities, personnel, data, and services needed to perform a designated function with specified results (such as the gathering of specified data, its processing, and its delivery to users); or

(B) a combination of two or more interrelated pieces (or sets) of equipment arranged in a functional package to perform an operational function or to satisfy a requirement; and

(2) includes a major system (as defined in section 3041 of this title).

(*l*) PILOT PROGRAM FOR PROGRAMS OTHER THAN MAJOR DEFENSE ACQUISITION PROGRAMS.—

(1) IN GENERAL.—The Under Secretary of Defense for Research and Engineering shall carry

out a pilot program to expand the use of the authority provided in this section to provide opportunities for the introduction of innovative and cost-saving approaches to programs other than major defense acquisition programs through the submission, review, and implementation, where appropriate, of qualifying proposals.

(2) QUALIFYING PROPOSALS.—For purposes of this subsection, a qualifying proposal is an offer to supply a nondevelopmental item that—

(A) is evaluated as achieving a level of performance that is at least equal to the level of performance of an item being procured under a covered acquisition program and as providing savings in excess of 15 percent after considering all costs to the Government of implementing such proposal; or

(B) is evaluated as achieving a level of performance that is significantly better than the level of performance of an item being procured under a covered acquisition program without any increase in cost to the Government.

(3) REVIEW PROCEDURES.—The Under Secretary shall adopt modifications as may be needed to the procedures applicable to the Challenge Program to provide for Department of Defense review of, and action on, qualifying proposals. Such procedures shall include, at a minimum, the issuance of a broad agency announcement inviting interested parties to submit qualifying proposals in areas of interest to the Department.

(4) DEFINITIONS.—In this subsection:

(A) NONDEVELOPMENTAL ITEM.—The term ''nondevelopmental item'' has the meaning given that term in section 110 of title 41.

(B) COVERED ACQUISITION PROGRAM.—The term ''covered acquisition program'' means any acquisition program of the Department of Defense other than a major defense acquisition program, but does not include any contract awarded under an exception to competitive acquisition authorized by the Small Business Act (15 U.S.C. 631 et seq.).

(C) LEVEL OF PERFORMANCE.—The term ''level of performance'', with respect to a nondevelopmental item, means the extent to which the item demonstrates required item functional characteristics.

(5) SUNSET.—The authority to carry out the pilot program under this subsection shall terminate on January 7, 2021.

(Added Pub. L. 107–314, div. A, title II, § 243(a), Dec. 2, 2002, 116 Stat. 2495, § 2359b; amended Pub. L. 109–364, div. A, title II, § 213(b), (d)–(g), Oct. 17, 2006, 120 Stat. 2121–2123; Pub. L. 110–417, [div. A], title VIII, § 821, Oct. 14, 2008, 122 Stat. 4531; Pub. L. 111–383, div. A, title VIII, § 827, Jan. 7, 2011, 124 Stat. 4270; Pub. L. 112–239, div. A, title X, § 1076(e)(3), Jan. 2, 2013, 126 Stat. 1951; Pub. L. 113–66, div. A, title X, § 1091(a)(10), Dec. 26, 2013, 127 Stat. 876; Pub. L. 113–291, div. A, title X, § 1071(a)(6), Dec. 19, 2014, 128 Stat. 3504; Pub. L. 114–328, div. A, title VIII, § 828, Dec. 23, 2016, 130 Stat. 2281; Pub. L. 116–92, div. A, title IX, § 902(56), Dec. 20, 2019, 133 Stat. 1549; renumbered § 4062 and amended Pub. L. 116–283, div. A, title XVIII, §§ 1842(b), 1883(b)(2), Jan. 1, 2021, 134 Stat. 4244, 4294.)

AMENDMENTS

2021—Pub. L. 116–283, § 1842(b), renumbered section 2359b of this title as this section.

Subsec. (c)(4)(A)(i). Pub. L. 116–283, § 1883(b)(2), substituted ''section 4374'' for ''section 2433(d)''.

Subsec. (c)(4)(A)(ii). Pub. L. 116–283, § 1883(b)(2), which directed that each reference in the text of title 10 to a section that was redesignated by title XVIII of Pub. L. 116–283, as such section was in effect before the redesignation, be amended by striking such reference and inserting a reference to the appropriate redesignated section, could not be executed for ''section 2433(e)(2)(A)'' as there were no subparagraphs in subsec. (e)(2) of former section 2433 of this title after general amendment by Pub. L. 111–23, title II, § 206(a)(3), May 22, 2009, 123 Stat. 1728. Section 2433(e)(2) was transferred to section 4375(b) of this title by Pub. L. 116–283.

Subsec. (k)(2). Pub. L. 116–283, § 1883(b)(2), substituted ''section 3041'' for ''section 2302(5)''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 4063. Extramural acquisition innovation and research activities

(a) ESTABLISHMENT.—The Secretary of Defense, acting through the Under Secretary of Defense for Acquisition and Sustainment and in coordination with the Under Secretary of Defense for Research and Engineering, shall establish and maintain extramural acquisition innovation and research activities as described in subsection (d), which shall include an acquisition research organization within a civilian college or university that is not owned or operated by the Federal Government that is established to provide and maintain essential research and development capabilities through a long-term strategic relationship with the Department of Defense.

(b) GOALS.—The goal of any activity conducted pursuant to this section shall be to provide academic analyses and policy alternatives for innovation in defense acquisition policies and practices to policymakers in the Federal Government by using a variety of means intended to widely disseminate research findings from such an activity, in addition to executing demonstration and pilot programs of innovative acquisition policies and practices.

(c) DIRECTOR.—

(1) APPOINTMENT.—Not later than June 1, 2020, the Secretary of Defense shall appoint an individual from civilian life to serve as the director for the extramural acquisition innovation and research activities required by this section (referred to in this section as the ''Director'').

(2) TERM.—The Director shall serve a term of five years.

(d) ACTIVITIES.—The activities described in this subsection are as follows:

(1) Research on past and current defense acquisition policies and practices, commercial and international best practices, and the application of new technologies and analytical

capabilities to improve acquisition policies and practices.

(2) Pilot programs to prototype and demonstrate new acquisition practices for potential transition to wider use in the Department of Defense.

(3) Establishment of data repositories and development of analytical capabilities, in coordination with the Chief Data Officer of the Department of Defense, to enable researchers and acquisition professionals to access and analyze historical data sets to support research and new policy and practice development.

(4) Executive education to—

(A) support acquisition workforce development, including for early career, mid-career, and senior leaders; and

(B) provide appropriate education on acquisition issues to non-acquisition professionals.

(5) On an ongoing basis, a review of the implementation of recommendations contained in relevant Department of Defense and private sector studies on acquisition policies and practices, including—

(A) for recommendations for the enactment of legislation, identify the extent to which the recommendations have been enacted into law by Congress;

(B) for recommendations for the issuance of regulations, identify the extent to which the recommendations have been adopted through the issuance or revision of regulations;

(C) for recommendations for revisions to policies and procedures in the executive branch, identify the extent to which the recommendations have been adopted through issuance of an appropriate implementing directive or other form of guidance; and

(D) for recommendations for the resources required to implement recommendations contained in relevant Department of Defense and private sector studies on acquisition policies and practices.

(6) Engagement with researchers and acquisition professionals in the Department of Defense, as appropriate.

(e) FUNDING.—Subject to the availability of appropriations, the Secretary may use amounts available in the Defense Acquisition Workforce and Development Account to carry out the requirements of this section.

(f) ANNUAL REPORT.—Not later than September 30, 2021, and annually thereafter, the Director shall submit to the Secretary of Defense and the congressional defense committees a report describing the activities conducted under this section during the previous year.

(Added Pub. L. 116–92, div. A, title VIII, § 835(a)(1), Dec. 20, 2019, 133 Stat. 1494, § 2361a; renumbered § 4063, Pub. L. 116–283, div. A, title XVIII, § 1842(b), Jan. 1, 2021, 134 Stat. 4244.)

AMENDMENTS

2021—Pub. L. 116–283 renumbered section 2361a of this title as this section.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 4064. Joint reserve detachment of the Defense Innovation Unit

(a) ESTABLISHMENT.—The Secretary of Defense, in consultation with the Secretaries of the military departments, may establish a joint reserve detachment (referred to in this section as the ''Detachment'') composed of members of the reserve components described in subsection (b) to be assigned to each office of the Defense Innovation Unit to—

(1) support engagement and collaboration with private-sector industry and the community surrounding the location of such office; and

(2) accelerate the use and adoption of commercially-developed technologies for national security purposes.

(b) MEMBERS.—Each Secretary of a military department shall select for the Detachment, and make efforts to retain, members of the reserve components who possess relevant private-sector experience in the fields of business, acquisition, intelligence, engineering, technology transfer, science, mathematics, program management, logistics, cybersecurity, or such other fields as determined by the Under Secretary of Defense for Research and Engineering.

(c) DUTIES.—The Detachment shall have the following duties:

(1) Providing the Department of Defense with—

(A) expertise on and analysis of commercially-developed technologies;

(B) commercially-developed technologies to be used as alternatives for technologies in use by the Department; and

(C) opportunities for greater engagement and collaboration between the Department and private-sector industry on innovative technologies.

(2) On an ongoing basis—

(A) partnering with the military departments, the combatant commands, and other Department of Defense organizations to—

(i) identify and rapidly prototype commercially-developed technologies; and

(ii) use alternative contracting mechanisms to procure such technologies;

(B) increasing awareness of—

(i) the work of the Defense Innovation Unit; and

(ii) the technology requirements of the Department of Defense as identified in the National Defense Science and Technology Strategy developed under section 218 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232; 132 Stat. 1679); and

(C) using the investment in research and development made by private-sector industry in assessing and developing dual-use technologies.

(3) Carrying out other activities as directed by the Under Secretary of Defense for Research and Engineering.

(d) JOINT DUTY.—Assignment to a Detachment shall not qualify as a joint duty assignment, as defined in section 668(b)(1) of title 10, United States Code, unless approved by the Secretary of Defense.

(Added Pub. L. 116–92, div. A, title II, § 213(a)(1), Dec. 20, 2019, 133 Stat. 1256, § 2358b; renumbered § 4064 and amended Pub. L. 116–283, div. A, title X, § 1081(a)(37), title XVIII, § 1842(b), Jan. 1, 2021, 134 Stat. 3872, 4244.)

REFERENCES IN TEXT

Section 218 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, referred to in subsec. (c)(2)(B)(ii), is section 218 of Pub. L. 115–232, div. A, title II, Aug. 13, 2018, 132 Stat. 1679, which is not classified to the Code.

AMENDMENTS

2021—Pub. L. 116–283, § 1842(b), renumbered section 2358b of this title as this section.

Subsec. (a)(2). Pub. L. 116–283, § 1081(a)(37), substituted ''accelerate'' for ''to accelerate''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by section 1842(b) of Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 4065. Prizes for advanced technology achievements

(a) AUTHORITY.—The Secretary of Defense, acting through the Under Secretary of Defense for Research and Engineering, the Under Secretary of Defense for Acquisition and Sustainment, and the service acquisition executive for each military department, may carry out programs to award cash prizes and other types of prizes that the Secretary determines are appropriate to recognize outstanding achievements in basic, advanced, and applied research, technology development, and prototype development that have the potential for application to the performance of the military missions of the Department of Defense.

(b) COMPETITION REQUIREMENTS.—Each program under subsection (a) shall use a competitive process for the selection of recipients of cash prizes. The process shall include the widely-advertised solicitation of submissions of research results, technology developments, and prototypes.

(c) LIMITATIONS.—(1) No prize competition may result in the award of a prize with a fair market value of more than $10,000,000.

(2) No prize competition may result in the award of more than $1,000,000 in cash prizes without the approval of the Under Secretary of Defense for Research and Engineering.

(3) No prize competition may result in the award of a solely nonmonetary prize with a fair market value of more than $10,000 without the approval of the Under Secretary of Defense for Research and Engineering.

(d) RELATIONSHIP TO OTHER AUTHORITY.—A program under subsection (a) may be carried out in conjunction with or in addition to the exercise of any other authority of an official referred to in that subsection to acquire, support, or stimulate basic, advanced and applied research, technology development, or prototype projects.

(e) ACCEPTANCE OF FUNDS.—In addition to such sums as may be appropriated or otherwise made available to the Secretary to award prizes under this section, the Secretary may accept funds or nonmonetary items from other departments and agencies of the Federal Government, from State and local governments, and from the private sector, to award prizes under this section. The Secretary may not give any special consideration to any private sector entity in return for a donation.

(f) USE OF PRIZE AUTHORITY.—Use of prize authority under this section shall be considered the use of competitive procedures for the purposes of section 2304[1] of this title.

(Added Pub. L. 106–65, div. A, title II, § 244(a), Oct. 5, 1999, 113 Stat. 552, § 2374a; amended Pub. L. 107–314, div. A, title II, § 248(a), Dec. 2, 2002, 116 Stat. 2502; Pub. L. 108–136, div. A, title X, § 1031(a)(20), Nov. 24, 2003, 117 Stat. 1598; Pub. L. 109–163, div. A, title II, § 257, Jan. 6, 2006, 119 Stat. 3184; Pub. L. 109–364, div. A, title II, § 212, Oct. 17, 2006, 120 Stat. 2119; Pub. L. 111–84, div. A, title II, § 253, Oct. 28, 2009, 123 Stat. 2243; Pub. L. 111–383, div. A, title IX, § 901(j)(4), Jan. 7, 2011, 124 Stat. 4324; Pub. L. 113–66, div. A, title II, § 263, Dec. 26, 2013, 127 Stat. 726; Pub. L. 113–291, div. A, title II, § 211, Dec. 19, 2014, 128 Stat. 3324; Pub. L. 114–92, div. A, title X, § 1079(a), Nov. 25, 2015, 129 Stat. 999; Pub. L. 114–328, div. A, title X, § 1081(c)(6), Dec. 23, 2016, 130 Stat. 2420; Pub. L. 115–91, div. A, title II, § 213, Dec. 12, 2017, 131 Stat. 1324; Pub. L. 115–232, div. A, title X, § 1081(a)(21), Aug. 13, 2018, 132 Stat. 1984; Pub. L. 116–92, div. A, title II, § 215, Dec. 20, 2019, 133 Stat. 1257; renumbered § 4065 and amended Pub. L. 116–283, div. A, title XVIII, §§ 1842(b), 1883(b)(2), Jan. 1, 2021, 134 Stat. 4244, 4294.)

AMENDMENTS

2021—Pub. L. 116–283, § 1842(b), renumbered section 2374a of this title as this section.

Subsec. (f). Pub. L. 116–283, § 1883(b)(2), which directed that each reference in the text of title 10 to a section that was redesignated by title XVIII of Pub. L. 116–283, as such section was in effect before the redesignation, be amended by striking such reference and inserting a reference to the appropriate redesignated section, was not executed with respect to ''section 2304'', which was redesignated as multiple sections.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 4066. Global Research Watch Program

(a) PROGRAM.—The Under Secretary of Defense for Research and Engineering shall carry out a Global Research Watch program in accordance with this section.

(b) PROGRAM GOALS.—The goals of the program are as follows:

(1) To monitor and analyze the basic and applied research activities and capabilities of foreign nations and private sector persons in areas of military interest, including allies and competitors.

[1] Amendment by section 1883(b)(2) of Pub. L. 116–283 was not executed as section 2304 was transferred to multiple sections.

(2) To provide standards for comparison and comparative analysis of research capabilities of foreign nations and private sector persons in relation to the research capabilities of the United States.

(3) To assist Congress and Department of Defense officials in making investment decisions for research in technical areas where the United States may not be the global leader.

(4) To identify areas where significant opportunities for cooperative research may exist.

(5) To coordinate and promote the international cooperative research and analysis activities of each of the armed forces and Defense Agencies.

(6) To establish and maintain an electronic database on international research capabilities, comparative assessments of capabilities, cooperative research opportunities, and ongoing cooperative programs.

(c) FOCUS OF PROGRAM.—The program shall be focused on research and technologies at a technical maturity level equivalent to Department of Defense basic and applied research programs.

(d) COORDINATION.—(1) The Under Secretary shall coordinate the program with the international cooperation and analysis activities of the military departments and Defense Agencies.

(2) The Secretaries of the military departments and the directors of the Defense Agencies shall provide the Under Secretary of Defense for Research and Engineering such assistance as the Under Secretary may require for purposes of the program.

(3)(A) Funds available to a military department for a fiscal year for monitoring or analyzing the research activities and capabilities of foreign nations may not be obligated or expended until the Under Secretary of Defense for Research and Engineering certifies to the Under Secretary of Defense for Acquisition, Technology, and Logistics that the Secretary of such military department has provided the assistance required under paragraph (2).

(B) The limitation in subparagraph (A) shall not be construed to alter or effect the availability to a military department of funds for intelligence activities.

(e) CLASSIFICATION OF DATABASE INFORMATION.—Information in electronic databases of the Global Research Watch program shall be maintained in unclassified form and, as determined necessary by the Under Secretary of Defense for Research and Engineering, in classified form in such databases.

(f) TERMINATION.—The requirement to carry out the program under this section shall terminate on September 30, 2025.

(Added Pub. L. 108–136, div. A, title II, § 231(a), Nov. 24, 2003, 117 Stat. 1421, § 2365; amended Pub. L. 109–364, div. A, title II, § 232, Oct. 17, 2006, 120 Stat. 2134; Pub. L. 111–84, div. A, title II, § 211, Oct. 28, 2009, 123 Stat. 2225; Pub. L. 111–383, div. A, title IX, § 901(j)(3), Jan. 7, 2011, 124 Stat. 4324; Pub. L. 112–239, div. A, title X, § 1076(c)(2)(B), Jan. 2, 2013, 126 Stat. 1950; Pub. L. 114–92, div. A, title II, § 215, Nov. 25, 2015, 129 Stat. 769; Pub. L. 116–92, div. A, title II, § 266, Dec. 20, 2019, 133 Stat. 1301; renumbered § 4066, Pub. L. 116–283, div. A, title XVIII, § 1842(b), Jan. 1, 2021, 134 Stat. 4244.)

AMENDMENTS

2021—Pub. L. 116–283 renumbered section 2365 of this title as this section.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

CHAPTER 305—DEPARTMENT OF DEFENSE LABORATORIES

Subchapter		Sec.
I.	General Matters	4101
II.	Personnel-Related Matters	4111

PRIOR PROVISIONS

A prior chapter 305 ''OTHER MATTERS RELATING TO MAJOR SYSTEMS'', consisting of reserved section 4121, was repealed by Pub. L. 116–283, div. A, title XVIII, § 1841(a)(1)(A), Jan. 1, 2021, 134 Stat. 4242.

A prior chapter 305 was renumbered chapter 705 of this title.

SUBCHAPTER I—GENERAL MATTERS

Sec.
4101. [Reserved].
4102. [Reserved].
4103. Mechanisms to provide funds for defense laboratories for research and development of technologies for military missions.

§ 4103. Mechanisms to provide funds for defense laboratories for research and development of technologies for military missions

(a) MECHANISMS TO PROVIDE FUNDS.—(1) The Secretary of Defense, in consultation with the Secretaries of the military departments, shall establish mechanisms under which the director of a defense laboratory may use an amount of funds equal to not less than two percent and not more than four percent of all funds available to the defense laboratory for the following purposes:

(A) To fund innovative basic and applied research that is conducted at the defense laboratory and supports military missions.

(B) To fund development programs that support the transition of technologies developed by the defense laboratory into operational use.

(C) To fund workforce development activities that improve the capacity of the defense laboratory to recruit and retain personnel with necessary scientific and engineering expertise that support military missions.

(D) To fund the repair or minor military construction of the laboratory infrastructure and equipment, in accordance with subsection (b).

(2) The mechanisms established under paragraph (1) shall provide that funding shall be used under paragraph (1) at the discretion of the director of a defense laboratory in consultation with the science and technology executive of the military department concerned.

(3) The science and technology executive of a military department may develop policies and guidance to leverage funding and promote cross-laboratory collaboration, including with laboratories of other military departments.

(4) After consultation with the science and technology executive of the military department concerned, the director of a defense laboratory may charge customer activities a fixed percentage fee, in addition to normal costs of performance, in order to obtain funds to carry out activities authorized by this subsection. The fixed fee may not exceed four percent of costs.

(b) AVAILABILITY OF FUNDS FOR INFRASTRUCTURE PROJECTS.—Funds shall be available in accordance with subsection (a)(1)(D) only if—

(1) the Secretary notifies the congressional defense committees of the total cost of the project before the date on which the Secretary uses the mechanism under such subsection for such project; and

(2) the Secretary ensures that the project complies with the applicable cost limitations in—

(A) section 2805(d) of this title, with respect to revitalization and recapitalization projects; and

(B) section 2811 of this title, with respect to repair projects.

(c) RELEASE AND DISSEMINATION OF INFORMATION ON CONTRIBUTIONS FROM USE OF AUTHORITY TO MILITARY MISSIONS.—

(1) COLLECTION OF INFORMATION.—The Secretary shall establish and maintain mechanisms for the continuous collection of information on achievements, best practices identified, lessons learned, and challenges arising in the exercise of the authority in this section.

(2) RELEASE OF INFORMATION.—The Secretary shall establish and maintain mechanisms as follows:

(A) Mechanisms for the release to the public of information on achievements and best practices described in paragraph (1) in unclassified form.

(B) Mechanisms for dissemination to appropriate civilian and military officials of information on achievements and best practices described in paragraph (1) in classified form.

(Added Pub. L. 115–91, div. A, title II, §220(a), Dec. 12, 2017, 131 Stat. 1332, §2363; amended Pub. L. 115–232, div. A, title II, §250, Aug. 13, 2018, 132 Stat. 1702; renumbered §4103, Pub. L. 116–283, div. A, title XVIII, §1843(b)(1), Jan. 1, 2021, 134 Stat. 4245.)

AMENDMENTS

2021—Pub. L. 116–283 renumbered section 2363 of this title as this section.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

SUBCHAPTER II—PERSONNEL-RELATED MATTERS

Sec.
4111. Authorities for certain positions at science and technology reinvention laboratories.
4112. Research and development laboratories: contracts for services of university students.

§4111. Authorities for certain positions at science and technology reinvention laboratories

(a) AUTHORITY TO MAKE DIRECT APPOINTMENTS.—

(1) CANDIDATES FOR SCIENTIFIC AND ENGINEERING POSITIONS AT SCIENCE AND TECHNOLOGY REINVENTION LABORATORIES.—The director of any Science and Technology Reinvention Laboratory (hereinafter in this section referred to as an ''STRL'') may appoint qualified candidates possessing a bachelor's degree to positions described in paragraph (1) of subsection (b) as an employee in a laboratory described in that paragraph without regard to the provisions of subchapter I of chapter 33 of title 5 (other than sections 3303 and 3328 of such title).

(2) VETERAN CANDIDATES FOR SIMILAR POSITIONS AT RESEARCH AND ENGINEERING FACILITIES.—The director of any STRL may appoint qualified veteran candidates to positions described in paragraph (2) of subsection (b) as an employee at a laboratory, agency, or organization specified in that paragraph without regard to the provisions of subchapter I of chapter 33 of title 5.

(3) STUDENTS ENROLLED IN SCIENTIFIC AND ENGINEERING PROGRAMS.—The director of any STRL may appoint qualified candidates enrolled in a program of undergraduate or graduate instruction leading to a bachelor's or an advanced degree in a scientific, technical, engineering or mathematical course of study at an institution of higher education (as that term is defined in sections 101 and 102 of the Higher Education Act of 1965 (20 U.S.C. 1001, 1002)) to positions described in paragraph (3) of subsection (b) as an employee in a laboratory described in that paragraph without regard to the provisions of subchapter I of chapter 33 of title 5 (other than sections 3303 and 3328 of such title).

(4) NONCOMPETITIVE CONVERSION OF APPOINTMENTS.—With respect to any student appointed by the director of an STRL under paragraph (3) to a temporary or term appointment, upon graduation from the applicable institution of higher education (as defined in such paragraph), the director may noncompetitively convert such student to another temporary appointment or to a term or permanent appointment within the STRL without regard to the provisions of subchapter I of chapter 33 of title 5 (other than sections 3303 and 3328 of such title), provided the student meets all eligibility and Office of Personnel Management qualification requirements for the position.

(b) COVERED POSITIONS.—

(1) CANDIDATES FOR SCIENTIFIC AND ENGINEERING POSITIONS.—The positions described in this paragraph are scientific and engineering positions that may be temporary, term, or permanent in any laboratory designated by section 1105(a) of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84; 10 U.S.C. 2358 note) as a Department of Defense science and technology reinvention laboratory.

(2) QUALIFIED VETERAN CANDIDATES.—The positions described in this paragraph are sci-

entific, technical, engineering, and mathematics positions, including technicians, in the following:

(A) Any laboratory referred to in paragraph (1).

(B) Any other Department of Defense research and engineering agency or organization designated by the Secretary for purposes of subsection (a)(2).

(3) CANDIDATES ENROLLED IN SCIENTIFIC AND ENGINEERING PROGRAMS.—The positions described in this paragraph are scientific and engineering positions that may be temporary or term in any laboratory designated by section 1105(a) of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84; 10 U.S.C. 2358 note) as a Department of Defense science and technology reinvention laboratory.

(c) LIMITATION ON NUMBER OF APPOINTMENTS ALLOWABLE IN A CALENDAR YEAR.—The authority under subsection (a) may not, in any calendar year and with respect to any laboratory, agency, or organization described in subsection (b), be exercised with respect to a number of candidates greater than the following:

(1) In the case of a laboratory described in subsection (b)(1), with respect to appointment authority under subsection (a)(1), the number equal to 6 percent of the total number of scientific and engineering positions in such laboratory that are filled as of the close of the fiscal year last ending before the start of such calendar year.

(2) In the case of a laboratory, agency, or organization described in subsection (b)(2), with respect to appointment authority under subsection (a)(2), the number equal to 3 percent of the total number of scientific, technical, engineering, mathematics, and technician positions in such laboratory, agency, or organization that are filled as of the close of the fiscal year last ending before the start of such calendar year.

(3) In the case of a laboratory described in subsection (b)(3), with respect to appointment authority under subsection (a)(3), the number equal to 10 percent of the total number of scientific and engineering positions in such laboratory that are filled as of the close of the fiscal year last ending before the start of such calendar year.

(d) SENIOR SCIENTIFIC TECHNICAL MANAGERS.—

(1) ESTABLISHMENT.—There is hereby established in each STRL, each facility of the Major Range and Test Facility Base, and the Defense Test Resource Management Center a category of senior professional scientific and technical positions, the incumbents of which shall be designated as ''senior scientific technical managers'' and which shall be positions classified above GS–15 of the General Schedule, notwithstanding section 5108(a) of title 5. The primary functions of such positions shall be—

(A) to engage in research and development in the physical, biological, medical, or engineering sciences, or another field closely related to the mission of such STRL, of such facility of the Major Range and Test Facility Base, or the Defense Test Resource Management Center; and

(B) to carry out technical supervisory responsibilities.

(2) APPOINTMENTS.—(A) The laboratory positions described in paragraph (1) may be filled, and shall be managed, by the director of the STRL involved, under criteria established pursuant to section 342(b) of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337; 10 U.S.C. 2358 note), relating to personnel demonstration projects at laboratories of the Department of Defense, except that the director of the laboratory involved shall determine the number of such positions at such laboratory, not to exceed 2 percent of the number of scientists and engineers employed at such laboratory as of the close of the last fiscal year before the fiscal year in which any appointments subject to that numerical limitation are made.

(B) The test and evaluation positions described in paragraph (1) may be filled, and shall be managed, by the director of the Major Range and Test Facility Base, in the case of a position at a facility of the Major Range and Test Facility Base, and the director of the Defense Test Resource Management Center, in the case of a position at such center, under criteria established pursuant to section 342(b) of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337; 10 U.S.C. 2358 note), relating to personnel demonstration projects at laboratories of the Department of Defense, except that the director involved shall determine the number of such positions at each facility of the Major Range and Test Facility Base and the Defense Test Resource Management Center, not to exceed two percent of the number of scientists and engineers, but at least one position, employed at the Major Range and Test Facility Base or the Defense Test Resource Management Center, as the case may be, as of the close of the last fiscal year before the fiscal year in which any appointments subject to those numerical limitations are made.

(e) EXCLUSION FROM PERSONNEL LIMITATIONS.—

(1) IN GENERAL.—The director of an STRL shall manage the workforce strength, structure, positions, and compensation of such STRL—

(A) without regard to any limitation on appointments, positions, or funding with respect to such STRL, subject to subparagraph (B); and

(B) in a manner consistent with the budget available with respect to such STRL.

(2) EXCEPTIONS.—Paragraph (1) shall not apply to Senior Executive Service positions (as defined in section 3132(a) of title 5) or scientific and professional positions authorized under section 3104 of such title.

(f) DEFINITIONS.—In this section:

(1) The term ''Defense Test Resource Management Center'' means the Department of Defense Test Resource Management Center established under section 4173 of this title.

(2) The term ''employee'' has the meaning given that term in section 2105 of title 5.

(3) The term ''Major Range and Test Facility Base'' means the test and evaluation facilities and resources that are designated by the Secretary of Defense as facilities and resources comprising the Major Range and Test Facility Base.

(4) The term ''veteran'' has the meaning given that term in section 101 of title 38.

(Added Pub. L. 114–328, div. A, title XI, § 1122(a)(1), Dec. 23, 2016, 130 Stat. 2453, § 2358a; amended Pub. L. 115–91, div. A, title XI, § 1111, Dec. 12, 2017, 131 Stat. 1636; Pub. L. 115–232, div. A, title XI, § 1112(a), Aug. 13, 2018, 132 Stat. 2012; renumbered § 4111 and amended Pub. L. 116–283, div. A, title XVIII, §§ 1843(b)(2), 1845(c)(5), Jan. 1, 2021, 134 Stat. 4245, 4247.)

AMENDMENTS

2021—Pub. L. 116–283, § 1843(b)(2), renumbered section 2358a of this title as this section.

Subsec. (f)(1). Pub. L. 116–283, § 1845(c)(5), which directed amendment of this section, as transferred and redesignated by section 503(b)(2) of Pub. L. 116–283, by substituting ''section 4173'' for ''section 196'', was executed to this section, as transferred and redesignated by section 1843(b)(2) of Pub. L. 116–283, to reflect the probable intent of Congress.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 4112. Research and development laboratories: contracts for services of university students

(a) Subject to the availability of appropriations for such purpose, the Secretary of Defense may procure by contract under the authority of this section the temporary or intermittent services of students at institutions of higher learning for the purpose of providing technical support at defense research and development laboratories. Such contracts may be made directly with such students or with nonprofit organizations employing such students.

(b) Students providing services pursuant to a contract made under subsection (a) shall be considered to be employees for the purposes of chapter 81 of title 5, relating to compensation for work injuries, and to be employees of the government for the purposes of chapter 171 of title 28, relating to tort claims. Such students who are not otherwise employed by the Federal Government shall not be considered to be Federal employees for any other purpose.

(c) The Secretary of Defense shall prescribe regulations to carry out this section. Such regulations shall include definitions for the purposes of this section of the terms ''student'', ''institution of higher learning'', and ''nonprofit organization''.

(Added Pub. L. 97–86, title VI, § 603(a), Dec. 1, 1981, 95 Stat. 1110, § 2360; renumbered § 4112, Pub. L. 116–283, div. A, title XVIII, § 1843(b)(2), Jan. 1, 2021, 134 Stat. 4245.)

AMENDMENTS

2021—Pub. L. 116–283 renumbered section 2360 of this title as this section.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

CHAPTER 307—RESEARCH AND DEVELOPMENT CENTERS AND FACILITIES

Sec.
4141. Contracts: acquisition, construction, or furnishing of test facilities and equipment.
4142. Functions of Defense research facilities.
4143. Cooperative research and development agreements under Stevenson-Wydler Technology Innovation Act of 1980.
4144. Use of test and evaluation installations by commercial entities.
4145. Cooperative agreements for reciprocal use of test facilities: foreign countries and international organizations.
4146. Centers for Science, Technology, and Engineering Partnership.
4147. Use of federally funded research and development centers.

§ 4141. Contracts: acquisition, construction, or furnishing of test facilities and equipment

(a) A contract of a military department for research or development, or both, may provide for the acquisition or construction by, or furnishing to, the contractor, of research, developmental, or test facilities and equipment that the Secretary of the military department concerned determines to be necessary for the performance of the contract. The acquisition or construction of these research, developmental, or test facilities shall be subject to the cost principles applicable to allowable contract expenses. The facilities and equipment, and specialized housing for them, may be acquired or constructed at the expense of the United States, and may be lent or leased to the contractor with or without reimbursement, or may be sold to him at fair value. This subsection does not authorize new construction or improvements having general utility. The Secretary of Defense and the Secretaries of the military departments shall promulgate regulations necessary to give full force and effect to this section.

(b) Facilities that would not be readily removable or separable without unreasonable expense or unreasonable loss of value may not be installed or constructed under this section on property not owned by the United States, unless the contract contains—

(1) a provision for reimbursing the United States for the fair value of the facilities at the completion or termination of the contract or within a reasonable time thereafter;

(2) an option in the United States to acquire the underlying land; or

(3) an alternative provision that the Secretary concerned considers to be adequate to protect the interests of the United States in the facilities.

(c) Proceeds of sales or reimbursements under this section shall be paid into the Treasury as miscellaneous receipts, except to the extent otherwise authorized by law with respect to property acquired by the contractor.

(Aug. 10, 1956, ch. 1041, 70A Stat. 134, § 2353; Pub. L. 115–232, div. B, title XXVIII, § 2801, Aug. 13,

2018, 132 Stat. 2260; renumbered § 4141, Pub. L. 116–283, div. A, title XVIII, § 1844(b)(1), Jan. 1, 2021, 134 Stat. 4245.)

AMENDMENTS

2021—Pub. L. 116–283 renumbered section 2353 of this title as this section.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 4142. Functions of Defense research facilities

(a) FUNCTIONS OF DEFENSE RESEARCH FACILITIES.—The Secretary of Defense shall ensure, to the maximum extent practicable—

(1) that Defense research facilities are assigned broad mission requirements rather than specific hardware needs;

(2) that appropriate personnel of such facilities are assigned to serve as consultants on component and support system standardization;

(3) that the managers of such facilities have broad latitude to choose research and development projects based on awareness of activities throughout the technology domain, including within the Federal Government, the Department of Defense, public and private research institutions and universities, and the global commercial marketplace;

(4) that technology position and issue papers prepared by Defense research facilities are readily available to all components of the Department of Defense and to contractors who submit bids or proposals for Department of Defense contracts;

(5) that, in order to promote increased consideration of technological issues early in the development process, any technological assessment made by a Defense research facility shall be provided to the Defense Technical Information Center repository to support acquisition decisions; and

(6) that, in light of Defense research facilities being funded by the public, Defense research facilities are broadly authorized and encouraged to support national technological development goals and support technological missions of other departments and agencies of the Federal Government, when such support is determined by the Secretary of Defense to be in the best interests of the Federal Government.

(b) DEFINITIONS.—In this section, the term ''Defense research facility'' means a Department of Defense facility which performs or contracts for the performance of—

(1) basic research; or

(2) applied research known as exploratory development.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1844(d), Jan. 1, 2021, 134 Stat. 4246.)

CODIFICATION

The text of subsecs. (b) and (c) of section 2364 of this title, which were transferred to this section and redesignated as subsecs. (a) and (b), respectively, by Pub. L. 116–283, § 1844(d)(2), was based on Pub. L. 99–661, div. A, title II, § 234(c)(1), Nov. 14, 1986, 100 Stat. 3848; Pub. L. 100–26, §§ 3(1)(A), 7(a)(9), Apr. 21, 1987, 101 Stat. 273, 278; Pub. L. 100–180, div. A, title XII, § 1231(10)(A), Dec. 4, 1987, 101 Stat. 1160; Pub. L. 104–106, div. A, title VIII, § 805, Feb. 10, 1996, 110 Stat. 390; Pub. L. 113–291, div. A, title II, § 213, Dec. 19, 2014, 128 Stat. 3325; Pub. L. 114–92, div. A, title II, § 214(a)(2), Nov. 25, 2015, 129 Stat. 768.

AMENDMENTS

2021—Subsecs. (a), (b). Pub. L. 116–283, § 1844(d)(2), transferred subsecs. (b) and (c) of section 2364 of this title to this section and redesignated them as subsecs. (a) and (b), respectively.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 4143. Cooperative research and development agreements under Stevenson-Wydler Technology Innovation Act of 1980

The Secretary of Defense, in carrying out research projects through the Defense Advanced Research Projects Agency, and the Secretary of each military department, in carrying out research projects, may permit the director of any federally funded research and development center to enter into cooperative research and development agreements with any person, any agency or instrumentality of the United States, any unit of State or local government, and any other entity under the authority granted by section 12 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a). Technology may be transferred to a non-Federal party to such an agreement consistent with the provisions of sections 11 and 12 of such Act (15 U.S.C. 3710, 3710a).

(Added and amended Pub. L. 104–201, div. A, title II, § 267(c)(1)(A), (B), Sept. 23, 1996, 110 Stat. 2468, § 2371a; Pub. L. 105–85, div. A, title X, § 1073(a)(50), Nov. 18, 1997, 111 Stat. 1903; renumbered § 4143, Pub. L. 116–283, div. A, title XVIII, § 1844(b)(1), Jan. 1, 2021, 134 Stat. 4245.)

AMENDMENTS

2021—Pub. L. 116–283 renumbered section 2371a of this title as this section.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 4144. Use of test and evaluation installations by commercial entities

(a) CONTRACT AUTHORITY.—The Secretary of Defense may enter into contracts with commercial entities that desire to conduct commercial test and evaluation activities at a Major Range and Test Facility Installation.

(b) TERMINATION OR LIMITATION OF CONTRACT UNDER CERTAIN CIRCUMSTANCES.—A contract entered into under subsection (a) shall contain a provision that the Secretary of Defense may terminate, prohibit, or suspend immediately any commercial test or evaluation activity to be

conducted at the Major Range and Test Facility Installation under the contract if the Secretary of Defense certifies in writing that the test or evaluation activity is or would be detrimental—

(1) to the public health and safety;

(2) to property (either public or private); or

(3) to any national security interest or foreign policy interest of the United States.

(c) CONTRACT PRICE.—A contract entered into under subsection (a) shall include a provision that requires a commercial entity using a Major Range and Test Facility Installation under the contract to reimburse the Department of Defense for all direct costs to the United States that are associated with the test and evaluation activities conducted by the commercial entity under the contract. In addition, the contract may include a provision that requires the commercial entity to reimburse the Department of Defense for such indirect costs related to the use of the installation as the Secretary of Defense considers to be appropriate. The Secretary may delegate to the commander of the Major Range and Test Facility Installation the authority to determine the appropriateness of the amount of indirect costs included in such a contract provision.

(d) RETENTION OF FUNDS COLLECTED FROM COMMERCIAL USERS.—Amounts collected under subsection (c) from a commercial entity conducting test and evaluation activities at a Major Range and Test Facility Installation shall be credited to the appropriation accounts under which the costs associated with the test and evaluation activities of the commercial entity were incurred.

(e) REGULATIONS AND LIMITATIONS.—The Secretary of Defense shall prescribe regulations to carry out this section.

(f) DEFINITIONS.—In this section:

(1) The term ''Major Range and Test Facility Installation'' means a test and evaluation installation under the jurisdiction of the Department of Defense and designated as a Major Range and Test Facility Installation by the Secretary.

(2) The term ''direct costs'' includes the cost of—

(A) labor, material, facilities, utilities, equipment, supplies, and any other resources damaged or consumed during test or evaluation activities or maintained for a particular commercial entity; and

(B) construction specifically performed for a commercial entity to conduct test and evaluation activities.

(Added Pub. L. 103–160, div. A, title VIII, § 846(a), Nov. 30, 1993, 107 Stat. 1722, § 2681; amended Pub. L. 105–85, div. A, title VIII, § 842, Nov. 18, 1997, 111 Stat. 1844; Pub. L. 105–261, div. A, title VIII, § 820, Oct. 17, 1998, 112 Stat. 2090; renumbered § 4144, Pub. L. 116–283, div. A, title XVIII, § 1844(b)(1), Jan. 1, 2021, 134 Stat. 4245.)

AMENDMENTS

2021—Pub. L. 116–283 renumbered section 2681 of this title as this section.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 4145. Cooperative agreements for reciprocal use of test facilities: foreign countries and international organizations

(a) AUTHORITY.—The Secretary of Defense, with the concurrence of the Secretary of State, may enter into a memorandum of understanding (or other formal agreement) with a foreign country or international organization to provide for the testing, on a reciprocal basis, of defense equipment (1) by the United States using test facilities of that country or organization, and (2) by that country or organization using test facilities of the United States.

(b) PAYMENT OF COSTS.—A memorandum or other agreement under subsection (a) shall provide that, when a party to the agreement uses a test facility of another party to the agreement, the party using the test facility is charged by the party providing the test facility in accordance with the following principles:

(1) The user party shall be charged the amount equal to the direct costs incurred by the provider party in furnishing test and evaluation services by the providing party's officers, employees, or governmental agencies.

(2) The user party may also be charged indirect costs relating to the use of the test facility, but only to the extent specified in the memorandum or other agreement.

(c) DETERMINATION OF INDIRECT COSTS; DELEGATION OF AUTHORITY.—(1) The Secretary of Defense shall determine the appropriateness of the amount of indirect costs charged by the United States pursuant to subsection (b)(2).

(2) The Secretary may delegate the authority under paragraph (1) only to the Deputy Secretary of Defense and to one other official of the Department of Defense.

(d) RETENTION OF FUNDS COLLECTED BY THE UNITED STATES.—Amounts collected by the United States from a party using a test facility of the United States pursuant to a memorandum or other agreement under this section shall be credited to the appropriation accounts from which the costs incurred by the United States in providing such test facility were paid.

(e) DEFINITIONS.—In this section:

(1) The term ''direct cost'', with respect to the use of a test facility pursuant to a memorandum or other agreement under subsection (a)—

(A) means any item of cost that is easily and readily identified to a specific unit of work or output within the test facility where the use occurred, that would not have been incurred if such use had not occurred; and

(B) may include costs of labor, materials, facilities, utilities, equipment, supplies, and any other resources of the test facility that are consumed or damaged in connection with—

(i) the use; or

(ii) the maintenance of the test facility for purposes of the use.

(2) The term ''indirect cost'', with respect to the use of a test facility pursuant to a memo-

randum or other agreement under subsection (a)—

(A) means any item of cost that is not easily and readily identified to a specific unit of work or output within the test facility where the use occurred; and

(B) may include general and administrative expenses for such activities as supporting base operations, manufacturing, supervision, procurement of office supplies, and utilities that are accumulated costs allocated among several users.

(3) The term ''test facility'' means a range or other facility at which testing of defense equipment may be carried out.

(Added Pub. L. 107–107, div. A, title XII, §1213(a), Dec. 28, 2001, 115 Stat. 1250, §2350*l*; renumbered §4145, Pub. L. 116–283, div. A, title XVIII, §1844(b)(1), Jan. 1, 2021, 134 Stat. 4245.)

AMENDMENTS

2021—Pub. L. 116–283 renumbered section 2350*l* of this title as this section.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§4146. Centers for Science, Technology, and Engineering Partnership

(a) DESIGNATION.—(1) The Secretary of Defense, in coordination with the Secretaries of the military departments, shall designate each science and technology reinvention laboratory as a Center for Science, Technology, and Engineering Partnership (in this section referred to as ''Centers'') in the recognized core competencies of the designee.

(2) The Secretary of Defense shall establish a policy to encourage the Secretary of each military department to reengineer management and business processes and adopt best-business and personnel practices at the Centers of the Secretary concerned in connection with the capability requirements of the Centers, so as to serve as recognized leaders in such capabilities throughout the Department of Defense and in the national technology and industrial base.

(3) The Secretary of Defense, acting through the directors of the Centers, may conduct one or more pilot programs, consistent with applicable requirements of law, to test any practices referred to in paragraph (2) that the Directors determine could—

(A) improve the efficiency and effectiveness of operations at Centers;

(B) improve the support provided by the Centers for the elements of the Department of Defense who use the services of the Centers; and

(C) enhance capabilities by reducing the cost and improving the performance and efficiency of executing laboratory missions.

(b) PUBLIC-PRIVATE PARTNERSHIPS.—(1) To achieve one or more objectives set forth in paragraph (2), the Secretary may authorize and establish incentives for the Director of a Center to enter into public-private cooperative arrangements (in this section referred to as a ''public-private partnership'') to provide for any of the following:

(A) For employees of the Center, academia, private industry, State and local governments, or other entities outside the Department of Defense to perform (under contract, subcontract, or otherwise) work related to the capabilities of the Center, including any work that—

(i) involves one or more capabilities of the Center; and

(ii) may be applicable to both the Department and commercial entities.

(B) For private industry or other entities outside the Department of Defense to use for either Government or commercial purposes any capabilities of the Center that are not fully used for Department of Defense activities for any period determined to be consistent with the needs of the Department of Defense.

(2) The objectives for exercising the authority provided in paragraph (1) are as follows:

(A) To maximize the use of the capacity of a Center.

(B) To reduce or eliminate the cost of ownership of a Center by the Department of Defense.

(C) To reduce the cost of science, technology, and engineering activities of the Department of Defense.

(D) To leverage private sector investment in—

(i) such efforts as research and equipment recapitalization for a Center; and

(ii) the promotion of the undertaking of commercial business ventures based on the capabilities of a Center, as determined by the director of the Center.

(E) To foster cooperation and technology transfer between the armed forces, academia, private industry, and State and local governments.

(F) To increase access by a Center to a skilled technical workforce that can contribute to the effective and efficient execution of the missions of the Department of Defense.

(G) To increase the ability of a Center to access and use non-Department of Defense methods to develop and innovate and access capabilities that contribute to the effective and efficient execution of the missions of the Department of Defense.

(3)(A) Public-private partnerships entered into under paragraph (1) may be used for purposes relating to technology transfer and other authorities described in subparagraph (B).

(B) The authorities described in this subparagraph are provisions of law that provide for cooperation and partnership by the Department of Defense with academia, private industry, and State and local governments, including the following:

(i) Sections 3371 through 3375 of title 5.

(ii) Sections 2194, 4001, 4002, 4831, 4892, and 2563 of this title.

(iii) Section 209 of title 35.

(iv) Sections 8, 12, and 23 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3706, 3710a, and 3715).

(c) PRIVATE SECTOR USE OF EXCESS CAPACITY.—Any capability of a Center made available to the private sector may be used to perform research and testing activities in order to make more efficient and economical use of Government-owned capabilities and encourage the creation and preservation of jobs to ensure the availability of a workforce with the necessary research and technical skills to meet the needs of the armed forces.

(d) CREDITING OF AMOUNTS FOR PERFORMANCE.—Amounts received by a Center for work performed under a public-private partnership may—

(1) be credited to the appropriation or fund, including a working-capital or revolving fund, that incurs the cost of performing the work; or

(2) be used by the Director of the Center as the Director considers appropriate and consistent with section 4103 of this title.

(e) AVAILABILITY OF EXCESS CAPACITIES TO PRIVATE-SECTOR PARTNERS.—Capacities of a Center may be made available for use by a private-sector entity under this section only if—

(1) the use of the capacities will not have a significant adverse effect on the performance of the Center or the ability of the Center to achieve the mission of the Center, as determined by the Director of the Center; and

(2) the private-sector entity agrees—

(A) to reimburse the Department of Defense when required in accordance with the guidance of the Department for the direct and indirect costs (including any rental costs) that are attributable to the use of the capabilities by the private-sector entity, as determined by the Secretary of the military departments; and

(B) to hold harmless and indemnify the United States from—

(i) any claim for damages or injury to any person or property arising out of the use of the capabilities, except under the circumstances described in section 2563(c)(3) of this title; and

(ii) any liability or claim for damages or injury to any person or property arising out of a decision by the Secretary to suspend or terminate that use of capabilities during a war or national emergency.

(f) USE OF PARTNERSHIP INTERMEDIARIES TO PROMOTE DEFENSE RESEARCH AND EDUCATION.—(1) Subject to the approval of the Secretary or the head of the another department or agency of the Federal Government concerned, the Director of a Center may enter into a contract, memorandum of understanding or other transaction with a partnership intermediary that provides for the partnership intermediary to perform services for the Department of Defense that increase the likelihood of success in the conduct of cooperative or joint activities of the Center with industry or academic institutions.

(2) In this subsection, the term ''partnership intermediary'' means an agency of a State or local government, or a nonprofit entity owned in whole or in part by, chartered by, funded in whole or in part by, or operated in whole or in part by or on behalf of a State or local government, that assists, counsels, advises, evaluates, or otherwise cooperates with industry or academic institutions that need or can make demonstrably productive use of technology-related assistance from a Center.

(g) CONSTRUCTION OF PROVISION.—Nothing in this section may be construed to authorize a change, otherwise prohibited by law, from the performance of work at a Center by personnel of the Department of Defense to performance by a contractor.

(h) DEFINITIONS.—In this section:

(1) The term ''capabilities'', with respect to a Center for Science, Technology, and Engineering Partnership, means the facilities, equipment, personnel, intellectual property, and other assets that support the core competencies of the Center.

(2) The term ''national technology and industrial base'' has the meaning given that term in section 4801 of this title.

(3) The term ''science and technology reinvention laboratory'' means a science and technology reinvention laboratory designated under section 1105 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84; 10 U.S.C. 2358 note).

(Added Pub. L. 114–92, div. A, title II, § 211(a), Nov. 25, 2015, 129 Stat. 764, § 2368; amended Pub. L. 115–232, div. A, title II, § 231, Aug. 13, 2018, 132 Stat. 1690; Pub. L. 116–92, div. A, title XVII, § 1731(a)(45), Dec. 20, 2019, 133 Stat. 1814; renumbered § 4146 and amended Pub. L. 116–283, div. A, title XVIII, §§ 1844(b)(1), (c), 1883(b)(2), Jan. 1, 2021, 134 Stat. 4245, 4246, 4294.)

AMENDMENTS

2021—Pub. L. 116–283, § 1844(b)(1), renumbered section 2368 of this title as this section.

Subsec. (b)(3)(B)(ii). Pub. L. 116–283, § 1844(c)(1), substituted ''4001, 4002, 4831, 4892,'' for ''2358, 2371, 2511, 2539b,''.

Subsec. (d)(2). Pub. L. 116–283, § 1844(c)(2), substituted ''section 4103 of this title.'' for ''section 219 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110–417; 10 U.S.C. 2358 note).''.

Subsec. (h)(2). Pub. L. 116–283, § 1883(b)(2), substituted ''section 4801'' for ''section 2500''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 4147. Use of federally funded research and development centers

(a) LIMITATION ON USE OF CENTERS.—Except as provided in subsection (b), the Secretary of Defense may not place work with a federally funded research and development center unless such work is within the purpose, mission, and general scope of effort of such center as established in the sponsoring agreement of the Department of Defense with such center.

(b) EXCEPTION FOR APPLIED SCIENTIFIC RESEARCH.—This section does not apply to a federally funded research and development center that performs applied scientific research under laboratory conditions.

(c) LIMITATION ON CREATION OF NEW CENTERS.—(1) The head of an agency may not obligate or

expend amounts appropriated to the Department of Defense for purposes of operating a federally funded research center that was not in existence before June 2, 1986, until—

(A) the head of the agency submits to Congress a report with respect to such center that describes the purpose, mission, and general scope of effort of the center; and

(B) a period of 60 days beginning on the date such report is received by Congress has elapsed.

(2) In this subsection, the term ''head of an agency'' has the meaning given such term in section 3004 of this title.

(d) IDENTIFICATION TO CONGRESS OF FFRDC WORKLOAD EFFORT.—After the close of a fiscal year, and not later than January 1 of the next year, the Secretary shall submit to the Committee on Armed Services and the Committee on Appropriations of the Senate and the Committee on Armed Services and the Committee on Appropriations of the House of Representatives a report setting forth the actual obligations and the actual man-years of effort expended at each federally funded research and development center during that fiscal year.

(Added Pub. L. 99–500, § 101(c) [title X, § 912(a)(1)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–146, and Pub. L. 99–591, § 101(c) [title X, § 912(a)(1)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–146, § 2367; Pub. L. 99–661, div. A, title IX, formerly title IV, § 912(a)(1), Nov. 14, 1986, 100 Stat. 3925, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; amended Pub. L. 102–190, div. A, title II, § 256(a)(1), Dec. 5, 1991, 105 Stat. 1330; Pub. L. 104–106, div. A, title XV, § 1502(a)(9), Feb. 10, 1996, 110 Stat. 503; Pub. L. 106–65, div. A, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 107–314, div. A, title X, § 1041(a)(12), Dec. 2, 2002, 116 Stat. 2645; renumbered § 4147 and amended Pub. L. 116–283, div. A, title XVIII, §§ 1844(b)(1), 1883(b)(2), Jan. 1, 2021, 134 Stat. 4245, 4294.)

AMENDMENTS

2021—Pub. L. 116–283, § 1844(b)(1), renumbered section 2367 of this title as this section.

Subsec. (c)(2). Pub. L. 116–283, § 1883(b)(2), substituted ''section 3004'' for ''section 2302(1)''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

CHAPTER 309—TEST AND EVALUATION

Sec.
4171. Operational test and evaluation of defense acquisition programs.
4172. Major systems and munitions programs: survivability testing and lethality testing required before full-scale production.
4173. Department of Defense Test Resource Management Center.

§ 4171. Operational test and evaluation of defense acquisition programs

(a) CONDITION FOR PROCEEDING BEYOND LOW-RATE INITIAL PRODUCTION.—(1) The Secretary of Defense shall provide that a covered major defense acquisition program, a covered designated major subprogram, or an element of the ballistic missile defense system may not proceed beyond low-rate initial production until initial operational test and evaluation of the program, subprogram, or element is completed.

(2) In this subsection:

(A) The term ''covered major defense acquisition program'' means a major defense acquisition program that involves the acquisition of a weapon system that is a major system within the meaning of that term in section 3041 of this title.

(B) The term ''covered designated major subprogram'' means a major subprogram designated under section 4203(a)(1) of this title that is a major subprogram of a covered major defense acquisition program.

(b) OPERATIONAL TEST AND EVALUATION.—(1) Operational testing of a major defense acquisition program may not be conducted until the Director of Operational Test and Evaluation of the Department of Defense approves (in writing) the adequacy of the plans (including the projected level of funding) for operational test and evaluation to be conducted in connection with that program.

(2) The Director shall analyze the results of the operational test and evaluation conducted for each major defense acquisition program. At the conclusion of such testing, the Director shall prepare a report stating—

(A) the opinion of the Director as to—

(i) whether the test and evaluation performed were adequate; and

(ii) whether the results of such test and evaluation confirm that the items or components actually tested are effective and suitable for combat; and

(B) additional information on the operational capabilities of the items or components that the Director considers appropriate based on the testing conducted.

(3) The Director shall submit each report under paragraph (2) to the Secretary of Defense, the Under Secretary of Defense for Acquisition and Sustainment, the Under Secretary of Defense for Research and Engineering, and the congressional defense committees. Each such report shall be submitted to those committees in precisely the same form and with precisely the same content as the report originally was submitted to the Secretary and Under Secretary and shall be accompanied by such comments as the Secretary may wish to make on the report.

(4) A final decision within the Department of Defense to proceed with a major defense acquisition program beyond low-rate initial production may not be made until the Director has submitted to the Secretary of Defense the report with respect to that program under paragraph (2) and the congressional defense committees have received that report.

(5) If, before a final decision described in paragraph (4) is made for a major defense acquisition program, a decision is made within the Department of Defense to proceed to operational use of that program or to make procurement funds available for that program, the Director shall submit to the Secretary of Defense and the con-

gressional defense committees the report with respect to that program under paragraph (2) as soon as practicable after the decision described in this paragraph is made.

(6) In this subsection, the term ''major defense acquisition program'' has the meaning given that term in section 139(a)(2)(B) of this title.

(c) DETERMINATION OF QUANTITY OF ARTICLES REQUIRED FOR OPERATIONAL TESTING.—The quantity of articles of a new system that are to be procured for operational testing shall be determined by—

(1) the Director of Operational Test and Evaluation of the Department of Defense, in the case of a new system that is a major defense acquisition program (as defined in section 139(a)(2)(B) of this title); or

(2) the operational test and evaluation agency of the military department concerned, in the case of a new system that is not a major defense acquisition program.

(d) IMPARTIALITY OF CONTRACTOR TESTING PERSONNEL.—In the case of a major defense acquisition program (as defined in subsection (a)(2)), no person employed by the contractor for the system being tested may be involved in the conduct of the operational test and evaluation required under subsection (a). The limitation in the preceding sentence does not apply to the extent that the Secretary of Defense plans for persons employed by that contractor to be involved in the operation, maintenance, and support of the system being tested when the system is deployed in combat.

(e) IMPARTIAL CONTRACTED ADVISORY AND ASSISTANCE SERVICES.—(1) The Director may not contract with any person for advisory and assistance services with regard to the test and evaluation of a system if that person participated in (or is participating in) the development, production, or testing of such system for a military department or Defense Agency (or for another contractor of the Department of Defense).

(2) The Director may waive the limitation under paragraph (1) in any case if the Director determines in writing that sufficient steps have been taken to ensure the impartiality of the contractor in providing the services. The Inspector General of the Department of Defense shall review each such waiver and shall include in the Inspector General's semi-annual report an assessment of those waivers made since the last such report.

(3)(A) A contractor that has participated in (or is participating in) the development, production, or testing of a system for a military department or Defense Agency (or for another contractor of the Department of Defense) may not be involved (in any way) in the establishment of criteria for data collection, performance assessment, or evaluation activities for the operational test and evaluation.

(B) The limitation in subparagraph (A) does not apply to a contractor that has participated in such development, production, or testing solely in testing for the Federal Government.

(f) SOURCE OF FUNDS FOR TESTING.—The costs for all tests required under subsection (a) shall be paid from funds available for the system being tested.

(g) DIRECTOR'S ANNUAL REPORT.—As part of the annual report of the Director under section 139 of this title, the Director shall describe for each program covered in the report the status of test and evaluation activities in comparison with the test and evaluation master plan for that program, as approved by the Director. The Director shall include in such annual report a description of each waiver granted under subsection (e)(2) since the last such report.

(h) OPERATIONAL TEST AND EVALUATION DEFINED.—In this section, the term ''operational test and evaluation'' has the meaning given that term in section 139(a)(2)(A) of this title. For purposes of subsection (a), that term does not include an operational assessment based exclusively on—

(1) computer modeling;

(2) simulation; or

(3) an analysis of system requirements, engineering proposals, design specifications, or any other information contained in program documents.

(Added Pub. L. 101–189, div. A, title VIII, §802(a)(1), Nov. 29, 1989, 103 Stat. 1484, §2399; amended Pub. L. 102–484, div. A, title VIII, §819, Oct. 23, 1992, 106 Stat. 2458; Pub. L. 103–160, div. A, title IX, §904(d)(1), Nov. 30, 1993, 107 Stat. 1728; Pub. L. 103–337, div. A, title X, §1070(a)(11), (f), Oct. 5, 1994, 108 Stat. 2856, 2859; Pub. L. 104–106, div. A, title XV, §1502(a)(19), Feb. 10, 1996, 110 Stat. 504; Pub. L. 106–65, div. A, title X, §1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 107–107, div. A, title X, §1048(b)(2), Dec. 28, 2001, 115 Stat. 1225; Pub. L. 107–314, div. A, title X, §1062(a)(9), Dec. 2, 2002, 116 Stat. 2650; Pub. L. 108–136, div. A, title X, §1043(b)(14), Nov. 24, 2003, 117 Stat. 1611; Pub. L. 109–364, div. A, title II, §231(a), Oct. 17, 2006, 120 Stat. 2131; Pub. L. 111–383, div. A, title VIII, §814(d), Jan. 7, 2011, 124 Stat. 4267; Pub. L. 115–91, div. A, title XVI, §1677(a), Dec. 12, 2017, 131 Stat. 1774; Pub. L. 116–92, div. A, title IX, §902(62), Dec. 20, 2019, 133 Stat. 1550; renumbered §4171 and amended Pub. L. 116–283, div. A, title XVIII, §§1845(b), 1883(b)(2), Jan. 1, 2021, 134 Stat. 4247, 4294.)

AMENDMENTS

2021—Pub. L. 116–283, §1845(b), renumbered section 2399 of this title as this section.

Subsec. (a)(2)(A). Pub. L. 116–283, §1883(b)(2), substituted ''section 3041'' for ''section 2302(5)''.

Subsec. (a)(2)(B). Pub. L. 116–283, §1883(b)(2), substituted ''section 4203(a)(1)'' for ''section 2430a(a)(1)''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§4172. Major systems and munitions programs: survivability testing and lethality testing required before full-scale production

(a) REQUIREMENTS.—(1) The Secretary of Defense shall provide that—

(A) a covered system may not proceed beyond low-rate initial production until realistic survivability testing of the system is completed in accordance with this section and the

report required by subsection (d) with respect to that testing is submitted in accordance with that subsection; and

(B) a major munition program or a missile program may not proceed beyond low-rate initial production until realistic lethality testing of the program is completed in accordance with this section and the report required by subsection (d) with respect to that testing is submitted in accordance with that subsection.

(2) The Secretary of Defense shall provide that a covered product improvement program may not proceed beyond low-rate initial production until—

(A) in the case of a product improvement to a covered system, realistic survivability testing is completed in accordance with this section; and

(B) in the case of a product improvement to a major munitions program or a missile program, realistic lethality testing is completed in accordance with this section.

(b) TEST GUIDELINES.—(1) Survivability and lethality tests required under subsection (a) shall be carried out sufficiently early in the development phase of the system or program (including a covered product improvement program) to allow any design deficiency demonstrated by the testing to be corrected in the design of the system, munition, or missile (or in the product modification or upgrade to the system, munition, or missile) before proceeding beyond low-rate initial production.

(2) The costs of all tests required under that subsection shall be paid from funds available for the system being tested.

(c) WAIVER AUTHORITY.—(1) The Secretary of Defense may waive the application of the survivability and lethality tests of this section to a covered system, munitions program, missile program, or covered product improvement program if the Secretary determines that live-fire testing of such system or program would be unreasonably expensive and impractical and submits a certification of that determination to Congress—

(A) before Milestone B approval for the system or program; or

(B) in the case of a system or program initiated at—

(i) Milestone B, as soon as is practicable after the Milestone B approval; or

(ii) Milestone C, as soon as is practicable after the Milestone C approval.

(2) In the case of a covered system (or covered product improvement program for a covered system), the Secretary may waive the application of the survivability and lethality tests of this section to such system or program and instead allow testing of the system or program in combat by firing munitions likely to be encountered in combat at components, subsystems, and subassemblies, together with performing design analyses, modeling and simulation, and analysis of combat data. Such alternative testing may not be carried out in the case of any covered system (or covered product improvement program for a covered system) unless the Secretary certifies to Congress, before the system or program enters system development and demonstration, that the survivability and lethality testing of such system or program otherwise required by this section would be unreasonably expensive and impracticable.

(3) The Secretary shall include with any certification under paragraph (1) or (2) a report explaining how the Secretary plans to evaluate the survivability or the lethality of the system or program and assessing possible alternatives to realistic survivability testing of the system or program.

(4) In time of war or mobilization, the President may suspend the operation of any provision of this section.

(d) REPORTING TO CONGRESS.—(1) At the conclusion of survivability or lethality testing under subsection (a), the Secretary of Defense shall submit a report on the testing to the congressional defense committees. Each such report shall describe the results of the survivability or lethality testing and shall give the Secretary's overall assessment of the testing.

(2) If a decision is made within the Department of Defense to proceed to operational use of a system, or to make procurement funds available for a system, before Milestone C approval of that system, the Secretary of Defense shall submit to the congressional defense committees, as soon as practicable after such decision, the following:

(A) A report describing the status of survivability and live fire testing of that system.

(B) The report required under paragraph (1).

(e) DEFINITIONS.—In this section:

(1) The term ''covered system'' means—

(A) a vehicle, weapon platform, or conventional weapon system that—

(i) includes features designed to provide some degree of protection to users in combat; and

(ii) is a major system as defined in section 3041 of this title; or

(B) any other system or program designated by the Secretary of Defense for purposes of this section.

(2) The term ''major munitions program'' means—

(A) a munition program for which more than 1,000,000 rounds are planned to be acquired; or

(B) a conventional munitions program that is a major system within the meaning of that term in section 3041 of this title.

(3) The term ''realistic survivability testing'' means, in the case of a covered system (or a covered product improvement program for a covered system), testing for vulnerability of the system in combat by firing munitions likely to be encountered in combat (or munitions with a capability similar to such munitions) at the system configured for combat, with the primary emphasis on testing vulnerability with respect to potential user casualties and taking into equal consideration the susceptibility to attack and combat performance of the system.

(4) The term ''realistic lethality testing'' means, in the case of a major munitions program or a missile program (or a covered prod-

uct improvement program for such a program), testing for lethality by firing the munition or missile concerned at appropriate targets configured for combat.

(5) The term ''configured for combat'', with respect to a weapon system, platform, or vehicle, means loaded or equipped with all dangerous materials (including all flammables and explosives) that would normally be on board in combat.

(6) The term ''covered product improvement program'' means a program under which—

(A) a modification or upgrade will be made to a covered system which (as determined by the Secretary of Defense) is likely to affect significantly the survivability of such system; or

(B) a modification or upgrade will be made to a major munitions program or a missile program which (as determined by the Secretary of Defense) is likely to affect significantly the lethality of the munition or missile produced under the program.

(7) The term ''Milestone B approval'' means a decision to enter into system development and demonstration pursuant to guidance prescribed by the Secretary of Defense for the management of Department of Defense acquisition programs.

(8) The term ''Milestone C approval'' means a decision to enter into production and deployment pursuant to guidance prescribed by the Secretary of Defense for the management of Department of Defense acquisition programs.

(Added Pub. L. 99–500, § 101(c) [title X, § 910(a)(1)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–143, and Pub. L. 99–591, § 101(c) [title X, § 910(a)(1)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–143, § 2366; Pub. L. 99–661, div. A, title IX, formerly title IV, § 910(a)(1), Nov. 14, 1986, 100 Stat. 3923, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; amended Pub. L. 100–180, div. A, title VIII, § 802, title XII, § 1231(11), Dec. 4, 1987, 101 Stat. 1123, 1160; Pub. L. 100–456, div. A, title XII, § 1233(*l*)(3), Sept. 29, 1988, 102 Stat. 2058; Pub. L. 101–189, div. A, title VIII, §§ 802(c)(1)–(4)(A), 804, Nov. 29, 1989, 103 Stat. 1486, 1488; Pub. L. 101–510, div. A, title XIV, § 1484(h)(7), Nov. 5, 1990, 104 Stat. 1718; Pub. L. 103–160, div. A, title VIII, § 828(d)(2), Nov. 30, 1993, 107 Stat. 1715; Pub. L. 103–355, title III, § 3014, Oct. 13, 1994, 108 Stat. 3332; Pub. L. 104–106, div. A, title XV, § 1502(a)(18), Feb. 10, 1996, 110 Stat. 504; Pub. L. 106–65, div. A, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 107–107, div. A, title VIII, § 821(a), Dec. 28, 2001, 115 Stat. 1181; Pub. L. 107–314, div. A, title VIII, § 818, Dec. 2, 2002, 116 Stat. 2611; Pub. L. 108–136, div. A, title X, § 1043(b)(13), Nov. 24, 2003, 117 Stat. 1611; Pub. L. 110–417, [div. A], title II, § 251(a), (b), Oct. 14, 2008, 122 Stat. 4400; renumbered § 4172 and amended Pub. L. 116–283, div. A, title XVIII, §§ 1845(b), 1883(b)(2), Jan. 1, 2021, 134 Stat. 4247, 4294.)

AMENDMENTS

2021—Pub. L. 116–283, § 1845(b), renumbered section 2366 of this title as this section.

Subsec. (e)(1)(A)(ii), (2)(B). Pub. L. 116–283, § 1883(b)(2), substituted ''section 3041'' for ''section 2302(5)''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 4173. Department of Defense Test Resource Management Center

(a) ESTABLISHMENT AS DEPARTMENT OF DEFENSE FIELD ACTIVITY.—The Secretary of Defense shall establish within the Department of Defense under section 191 of this title a Department of Defense Test Resource Management Center (hereinafter in this section referred to as the ''Center''). The Secretary shall designate the Center as a Department of Defense Field Activity.

(b) DIRECTOR AND DEPUTY DIRECTOR.—(1) At the head of the Center shall be a Director, selected by the Secretary from among individuals who have substantial experience in the field of test and evaluation.

(2) There shall be a Deputy Director of the Center, selected by the Secretary from among individuals who have substantial experience in the field of test and evaluation. The Deputy Director shall act for, and exercise the powers of, the Director when the Director is disabled or the position of Director is vacant.

(c) DUTIES OF DIRECTOR.—(1) The Director shall have the following duties:

(A) To review and provide oversight of proposed Department of Defense budgets and expenditures for—

(i) the test and evaluation facilities and resources of the Major Range and Test Facility Base of the Department of Defense; and

(ii) all other test and evaluation facilities and resources within and outside of the Department of Defense, other than budgets and expenditures for activities described in section 139(j) of this title.

(B) To review proposed significant changes to the test and evaluation facilities and resources of the Major Range and Test Facility Base, including with respect to the expansion, divestment, consolidation, or curtailment of activities, before they are implemented by the Secretaries of the military departments or the heads of the Defense Agencies with test and evaluation responsibilities and advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering of the impact of such changes on the adequacy of such test and evaluation facilities and resources to meet the test and evaluation requirements of the Department.

(C) To complete and maintain the quadrennial strategic plan required by subsection (d).

(D) To review proposed budgets under subsection (e) and submit reports and certifications required by such subsection.

(E) To administer the Central Test and Evaluation Investment Program and the program of the Department of Defense for test and evaluation science and technology.

(2) The Director shall have access to such records and data of the Department of Defense (including the appropriate records and data of each military department and Defense Agency) that are necessary in order to carry out the duties of the Director under this section.

(d) QUADRENNIAL STRATEGIC PLAN FOR DEPARTMENT OF DEFENSE TEST AND EVALUATION RESOURCES.—(1) Not less often than once every four fiscal years, and within one year after release of the National Defense Strategy,,[1] the Under Secretary of Defense for Research and Engineering, in coordination with the Director of the Department of Defense Test Resource Management Center, the Director of Operational Test and Evaluation, the Director of the Defense Intelligence Agency, the Secretaries of the military departments, and the heads of Defense Agencies with test and evaluation responsibilities, shall complete a quadrennial strategic plan reflecting the future needs of the Department of Defense with respect to test and evaluation facilities and resources. Each quadrennial strategic plan shall cover the period of thirty fiscal years beginning with the fiscal year in which the plan is submitted under paragraph (3). The quadrennial strategic plan shall be based on a comprehensive review of both funded and unfunded test and evaluation requirements of the Department, future threats to national security, and the adequacy of the test and evaluation facilities and resources of the Department to meet those future requirements and threats.

(2) The quadrennial strategic plan shall include the following:

(A) An assessment of the test and evaluation requirements of the Department for the period covered by the plan.

(B) An identification of performance measures associated with the successful achievement of test and evaluation objectives for the period covered by the plan.

(C) An assessment of the test and evaluation facilities and resources that will be needed to meet current and future requirements for test and evaluation of the Department of Defense major weapon systems based on current and emerging threats.

(D) An assessment of the current state of the test and evaluation facilities and resources of the Department.

(E) An assessment of plans and business case analyses supporting any significant modification of the test and evaluation facilities and resources of the Department projected, proposed, or recommended by the Secretary of a military department or the head of a Defense Agency for such period, including with respect to the expansion, divestment, consolidation, or curtailment of activities.

(F) An itemization of acquisitions, upgrades, and improvements necessary to ensure that the test and evaluation facilities and resources of the Department are adequate to meet such requirements and satisfy such performance measures.

(G) An assessment of the budgetary resources necessary to implement such acquisitions, upgrades, and improvements.

(3) Upon completing a quadrennial strategic plan under paragraph (1), the Director shall submit to the Secretary of Defense a report on that plan. The report shall include the plan and a description of the review on which the plan is based.

[1] So in original.

(4) Not later than 60 days after the date on which the report is submitted under paragraph (3), the Secretary of Defense shall transmit to the Committee on Armed Services and Committee on Appropriations of the Senate and the Committee on Armed Services and Committee on Appropriations of the House of Representatives the report, together with any comments with respect to the report that the Secretary considers appropriate.

(5)(A) In addition to the quadrennial strategic plan completed under paragraph (1), the Director of the Department of Defense Test Resource Management Center shall also complete an annual update to the quadrennial strategic plan.

(B) Each annual update completed under subparagraph (A) shall include the following:

(i) A summary of changes to the assessment provided in the most recent quadrennial strategic plan.

(ii) Comments and recommendations the Director considers appropriate.

(iii) Test and evaluation challenges raised since the completion of the most recent quadrennial strategic plan.

(iv) Actions taken or planned to address such challenges.

(e) CERTIFICATION OF BUDGETS.—(1) The Secretary of Defense, acting through the Under Secretary of Defense (Comptroller), shall require that the Secretary of each military department and the head of each Defense Agency with test and evaluation responsibilities transmit such Secretary's or Defense Agency head's proposed budget for test and evaluation activities, including modeling and simulation activities, for a fiscal year and for the period covered by the future-years defense program submitted to Congress under section 221 of this title for that fiscal year to the Director of the Center for review under paragraph (2) before submitting such proposed budget to the Under Secretary of Defense (Comptroller).

(2)(A) The Director of the Center shall review each proposed budget transmitted under paragraph (1) and shall, not later than January 31 of the year preceding the fiscal year for which such budgets are proposed, submit to the Secretary of Defense a report containing the comments of the Director with respect to all such proposed budgets, together with the certification of the Director as to whether such proposed budgets are adequate.

(B) The Director shall also submit, together with such report and such certification, an additional certification as to whether such proposed budgets provide balanced support for such quadrennial strategic plan.

(3) The Secretary of Defense shall, not later than March 31 of the year preceding the fiscal year for which such budgets are proposed, submit to Congress a report on those proposed budgets which the Director has not certified under paragraph (2)(A) to be adequate. The report shall include the following matters:

(A) A discussion of the actions that the Secretary proposes to take, together with any recommended legislation that the Secretary considers appropriate, to address the inadequacy of the proposed budgets.

(B) Any additional comments that the Secretary considers appropriate regarding the inadequacy of the proposed budgets.

(f) APPROVAL OF CERTAIN MODIFICATIONS.—(1) The Secretary of a military department or the head of a Defense Agency with test and evaluation responsibilities may not implement a projected, proposed, or recommended significant modification of the test and evaluation facilities and resources of the Department, including with respect to the expansion, divestment, consolidation, or curtailment of activities, until—

(A) the Secretary or the head, as the case may be, submits to the Director a business case analysis for such modification; and

(B) the Director reviews such analysis and approves such modification.

(2) The Director shall submit to the Secretary of Defense an annual report containing the comments of the Director with respect to each business case analysis reviewed under paragraph (1)(B) during the year covered by the report.

(g) SUPERVISION OF DIRECTOR BY UNDER SECRETARY.—The Director of the Center shall be subject to the supervision of the Under Secretary of Defense for Research and Engineering. The Director shall report directly to the Under Secretary, without the interposition of any other supervising official.

(h) ADMINISTRATIVE SUPPORT OF CENTER.—The Secretary of Defense shall provide the Director with administrative support adequate for carrying out the Director's responsibilities under this section. The Secretary shall provide the support out of the headquarters activities of the Department or any other activities that the Secretary considers appropriate.

(i) DEFINITION.—In this section, the term ''Major Range and Test Facility Base'' means the test and evaluation facilities and resources that are designated by the Secretary of Defense as facilities and resources comprising the Major Range and Test Facility Base.

(Added Pub. L. 107–314, div. A, title II, § 231(a)(1), Dec. 2, 2002, 116 Stat. 2487, § 196; amended Pub. L. 108–136, div. A, title II, § 212, Nov. 24, 2003, 117 Stat. 1416; Pub. L. 109–163, div. A, title II, § 258(a), title IX, § 902, Jan. 6, 2006, 119 Stat. 3185, 3397; Pub. L. 111–84, div. A, title II, § 251, Oct. 28, 2009, 123 Stat. 2241; Pub. L. 113–291, div. A, title II, § 214, Dec. 19, 2014, 128 Stat. 3326; Pub. L. 114–328, div. A, title V, § 502(c), title X, § 1081(a)(3), Dec. 23, 2016, 130 Stat. 2102, 2417; Pub. L. 115–91, div. A, title II, § 222, Dec. 12, 2017, 131 Stat. 1333; Pub. L. 115–232, div. A, title II, § 221, title IX, § 904, Aug. 13, 2018, 132 Stat. 1681, 1922; renumbered § 4173 and amended Pub. L. 116–283, div. A, title II, § 272, title XVIII, § 1845(b), Jan. 1, 2021, 134 Stat. 3502, 4247.)

AMENDMENTS

2021—Pub. L. 116–283, § 1845(b), renumbered section 196 of this title as this section.

Subsec. (c)(1)(C). Pub. L. 116–283, § 272(a)(1), inserted ''quadrennial'' before ''strategic plan''.

Subsec. (d). Pub. L. 116–283, § 272(a)(2), inserted ''Quadrennial'' before ''Strategic Plan'' in heading and ''quadrennial'' before ''strategic plan'' wherever appearing in text.

Subsec. (d)(1). Pub. L. 116–283, § 272(e), which directed substitution of ''Test Resource Management Center'' for ''Test Resources Management Center'' in subsec. (d)(1) ''of such'', was executed by making substitution to ''such section'', meaning subsec. (d)(1) of this section, to reflect the probable intent of Congress.

Pub. L. 116–283, § 272(b), substituted ''four fiscal years, and within one year after release of the National Defense Strategy,'' for ''two fiscal years'' in first sentence.

Subsec. (d)(2)(C). Pub. L. 116–283, § 272(c), substituted ''for test and evaluation of the Department of Defense major weapon systems based on current and emerging threats.'' for ''based on current and emerging threats and satisfy such performance measures.''

Subsec. (d)(5). Pub. L. 116–283, § 272(d), added par. (5).

Subsec. (e)(2)(B). Pub. L. 116–283, § 272(a)(1), inserted ''quadrennial'' before ''strategic plan''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by section 1845(b) of Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

Subpart F—Major Systems, Major Defense Acquisition Programs, and Weapon Systems Development

PRIOR PROVISIONS

A prior subpart F ''Special Categories of Contracting: Research, Development, Test, and Evaluation'', consisting of chapters 321 to 329, was repealed by Pub. L. 116–283, div. A, title XVIII, § 1841(a)(1)(A), Jan. 1, 2021, 134 Stat. 4242.

CHAPTER 321—GENERAL MATTERS

Sec.
4201. Major defense acquisition programs: definition; exceptions.
4202. Authority to increase definitional threshold amounts: major defense acquisition programs; major systems.
4203. Major subprograms.
4204. Milestone decision authority.
4205. Weapon systems for which procurement funding requested in budget: development and procurement schedules.

PRIOR PROVISIONS

A prior chapter 321 ''RESEARCH AND DEVELOPMENT GENERALLY'', consisting of reserved section 4201, was repealed by Pub. L. 116–283, div. A, title XVIII, § 1841(a)(1)(A), Jan. 1, 2021, 134 Stat. 4242.

§ 4201. Major defense acquisition programs: definition; exceptions

(a) DEFINITION.—Except as provided under subsection (b), in this part, the term ''major defense acquisition program'' means a Department of Defense acquisition program that is not a highly sensitive classified program (as determined by the Secretary of Defense) and—

(1) that is designated by the Secretary of Defense as a major defense acquisition program; or

(2) in the case of a program that is not a program for the acquisition of an automated information system (either a product or a service), that is estimated by the Secretary of Defense to require—

(A) an eventual total expenditure for research, development, test, and evaluation of more than $300,000,000 (based on fiscal year 1990 constant dollars); or

(B) an eventual total expenditure for procurement, including all planned increments or spirals, of more than $1,800,000,000 (based on fiscal year 1990 constant dollars).

(b) EXCEPTIONS.—In this part, the term ''major defense acquisition program'' does not include the following:

(1) An acquisition program or project that is carried out using the rapid fielding or rapid prototyping acquisition pathway under section 804 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114–92; 10 U.S.C. 2302 note).

(2) An acquisition program for a defense business system (as defined in section 2222(i)(1) of this title) carried out using the acquisition guidance issued pursuant to section 883(e) of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114–92; 10 U.S.C. 2223a note).

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1846(b), (c), Jan. 1, 2021, 134 Stat. 4248.)

CODIFICATION

The text of subsec. (a) of section 2430 of this title, which was transferred to this section and amended by Pub. L. 116–283, § 1846(c)(1), was based on Pub. L. 100–26, § 7(b)(2)(A), Apr. 21, 1987, 101 Stat. 279; Pub. L. 102–484, div. A, title VIII, § 817(b)(1), (2), Oct. 23, 1992, 106 Stat. 2455; Pub. L. 111–23, title II, § 206(b)(1), May 22, 2009, 123 Stat. 1728; Pub. L. 114–328, div. A, title VIII, § 847(a), Dec. 23, 2016, 130 Stat. 2292; Pub. L. 115–91, div. A, title VIII, § 831, Dec. 12, 2017, 131 Stat. 1467.

AMENDMENTS

2021—Pub. L. 116–283, § 1846(c)(1), transferred subsec. (a) of section 2430 of this title to this section, struck out par. (1) designation, inserted subsec. (a) heading, substituted ''under subsection (b), in this part'' for ''under paragraph (2), in this chapter'', redesignated par. (2) as subsec. (b) and subpars. (A) and (B) of subsecs. (a) and (b) as pars. (1) and (2) of subsecs. (a) and (b), respectively, inserted subsec. (b) heading, and substituted ''In this part'' for ''In this chapter'' in introductory provisions of subsec. (b).

Subsec. (a)(2). Pub. L. 116–283, § 1846(c)(2), substituted ''to require—'' for ''to require'', inserted subpar. (A) designation before ''an eventual total expenditure for research'' and subpar. (B) designation before ''an eventual total expenditure for procurement'' and substituted ''dollars); or'' for ''dollars) or''.

Subsec. (b). Pub. L. 116–283, § 1846(c)(3), in introductory provisions, substituted ''include the following:'' for ''include—'', in par. (1), substituted ''An'' for ''an'' and period at end for ''; or'' and in par. (2), substituted ''An'' for ''an''.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 4202. Authority to increase definitional threshold amounts: major defense acquisition programs; major systems

(a) ADJUSTMENTS TO THRESHOLDS FOR MAJOR DEFENSE ACQUISITION PROGRAMS.—

(1) AUTHORITY.—The Secretary of Defense may adjust the amounts (and the base fiscal year) provided in section 4201(a)(2) of this title on the basis of Department of Defense escalation rates.

(2) MATTERS TO BE CONSIDERED.—For purposes of section 4201(a)(2) of this title, the Secretary shall consider, as applicable, the following:

(A) The estimated level of resources required to fulfill the relevant joint military requirement, as determined by the Joint Requirements Oversight Council pursuant to section 181 of this title.

(B) The cost estimate referred to in section 4251(a)(6) of this title.

(C) The cost estimate referred to in section 4252(a)(1)(C) of this title.

(D) The cost estimate within a baseline description as required by section 4214 of this title.

(b) ADJUSTMENT AUTHORITY FOR MAJOR SYSTEMS.—

(1) AUTHORITY.—The Secretary of Defense may adjust the amounts and the base fiscal year provided in section 3041(c)(1) of this title on the basis of Department of Defense escalation rates.

(2) ROUNDING.—An amount, as adjusted under paragraph (1), that is not evenly divisible by $5,000,000 shall be rounded to the nearest multiple of $5,000,000. In the case of an amount that is evenly divisible by $2,500,000 but not evenly divisible by $5,000,000, the amount shall be rounded to the next higher multiple of $5,000,000.

(c) NOTIFICATION TO CONGRESSIONAL COMMITTEES.—An adjustment under subsection (a) or (b) shall be effective after the Secretary transmits to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a written notification of the adjustment.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1846(b), (d), (e), Jan. 1, 2021, 134 Stat. 4248, 4249.)

CODIFICATION

The text of subsecs. (b) and (c) of section 2430 of this title, which was transferred to this section, redesignated as pars. (1) and (2) of subsec. (a), respectively, and amended by Pub. L. 116–283, § 1846(d)(1), (2)(A), was based on Pub. L. 102–484, div. A, title VIII, § 817(b)(3), Oct. 23, 1992, 106 Stat. 2455; Pub. L. 104–106, div. A, title XV, § 1502(a)(1), Feb. 10, 1996, 110 Stat. 502; Pub. L. 106–65, div. A, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 111–23, title II, § 206(b)(2), May 22, 2009, 123 Stat. 1728; Pub. L. 113–291, div. A, title X, § 1071(f)(18), Dec. 19, 2014, 128 Stat. 3511; Pub. L. 115–91, div. A, title X, § 1081(a)(38), Dec. 12, 2017, 131 Stat. 1596.

The text of subsec. (c) of section 2302d of this title, which was transferred to this section and redesignated as subsecs. (b) and (c) by Pub. L. 116–283, § 1846(e)(1), was based on Pub. L. 104–201, div. A, title VIII, § 805(a)(2), Sept. 23, 1996, 110 Stat. 2605; Pub. L. 106–65, div. A, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 774.

AMENDMENTS

2021—Subsec. (a). Pub. L. 116–283, § 1846(d)(2)(A), (B), inserted subsec. heading and par. (1) designation and heading before ''The Secretary'' and substituted ''in section 4201(a)(2) of this title'' for ''in subsection (a)(1)(B)''.

Pub. L. 116–283, § 1846(d)(1), transferred subsecs. (b) and (c) of section 2430 of this title to this section, redesignated subsec. (b) and subsec. (c) and its pars. (1) to (4) as subsec. (a) and subsec. (a)(2) and its subpars. (A) to (D), respectively, realigned margin of subsec. (a)(2), and

struck out second sentence of subsec. (a)(1) as redesignated which read as follows: ''An adjustment under this subsection shall be effective after the Secretary transmits a written notification of the adjustment to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives.''

Subsec. (a)(2). Pub. L. 116–283, § 1846(d)(2)(C)(i), (ii), inserted par. heading before ''For purposes of'' and substituted ''section 4201(a)(2) of this title'' for ''subsection (a)(1)(B)''.

Subsec. (a)(2)(B). Pub. L. 116–283, § 1846(d)(2)(C)(iii), substituted ''section 4251(a)(6)'' for ''section 2366a(a)(6)''.

Subsec. (a)(2)(C). Pub. L. 116–283, § 1846(d)(2)(C)(iv), substituted ''section 4252(a)(1)(C)'' for ''section 2366b(a)(1)(C)''.

Subsec. (a)(2)(D). Pub. L. 116–283, § 1846(d)(2)(C)(v), substituted ''section 4214'' for ''section 2435''.

Subsec. (b). Pub. L. 116–283, § 1846(e)(2), substituted ''Adjustment Authority for Major Systems'' for ''Adjustment Authority'' in subsec. heading, inserted par. headings, substituted ''section 3041(c)(1) of this title'' for ''subsection (a)'' in par. (1), and realigned margins of par. (2).

Pub. L. 116–283, § 1846(e)(1), transferred subsec. (c) of section 2302d of this title to subsec. (b) of this section and redesignated par. (3) as subsec. (c).

Subsec. (c). Pub. L. 116–283, § 1846(e)(3), inserted heading and substituted ''under subsection (a) or (b)'' for ''under this subsection'' in text.

Pub. L. 116–283, § 1846(e)(1)(B), redesignated par. (3) of subsec. (b) as subsec. (c).

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 4203. Major subprograms

(a) AUTHORITY TO DESIGNATE MAJOR SUBPROGRAMS AS SUBJECT TO ACQUISITION REPORTING REQUIREMENTS.—(1)(A) If the Secretary of Defense determines that a major defense acquisition program requires the delivery of two or more categories of end items which differ significantly from each other in form and function, the Secretary may designate each such category of end items as a major subprogram for the purposes of acquisition reporting under this subpart.

(B) If the Secretary of Defense determines that a major defense acquisition program requires the delivery of two or more increments or blocks, the Secretary may designate each such increment or block as a major subprogram for the purposes of acquisition reporting under this subpart.

(2) The Secretary shall notify the congressional defense committees in writing of any proposed designation pursuant to paragraph (1) not less than 30 days before the date such designation takes effect.

(b) REPORTING REQUIREMENTS.—(1) If the Secretary designates a major subprogram of a major defense acquisition program in accordance with subsection (a), Selected Acquisition Reports, unit cost reports, and program baselines under this subpart shall reflect cost, schedule, and performance information—

(A) for the major defense acquisition program as a whole (other than as provided in paragraph (2)); and

(B) for each major subprogram of the major defense acquisition program so designated.

(2) For a major defense acquisition program for which a designation of a major subprogram has been made under subsection (a), unit costs under this subpart shall be submitted in accordance with the definitions in subsection (d).

(c) REQUIREMENT TO COVER ENTIRE MAJOR DEFENSE ACQUISITION PROGRAM.—If a subprogram of a major defense acquisition program is designated as a major subprogram under subsection (a), all other elements of the major defense acquisition program shall be appropriately organized into one or more subprograms under the major defense acquisition program, each of which subprograms, as so organized, shall be treated as a major subprogram under subsection (a).

(d) DEFINITIONS.—Notwithstanding paragraphs (1) and (2) of section 4351 of this title, in the case of a major defense acquisition program for which the Secretary has designated one or more major subprograms under this section for the purposes of this subpart—

(1) the term ''program acquisition unit cost'' applies at the level of the subprogram and means the total cost for the development and procurement of, and specific military construction for, the major defense acquisition program that is reasonably allocable to each such major subprogram, divided by the relevant number of fully-configured end items to be produced under such major subprogram;

(2) the term ''procurement unit cost'' applies at the level of the subprogram and means the total of all funds programmed to be available for obligation for procurement for each such major subprogram, divided by the number of fully-configured end items to be procured under such major subprogram;

(3) the term ''major contract'', with respect to a designated major subprogram, means each of the six largest prime, associate, or Government furnished equipment contracts under the subprogram that is in excess of $40,000,000 and that is not a firm-fixed price contract; and

(4) the term ''life cycle cost'', with respect to a designated major subprogram, means all costs of development, procurement, military construction, and operations and support, without regard to funding source or management control.

(Added Pub. L. 110–417, [div. A], title VIII, § 811(a)(1), Oct. 14, 2008, 122 Stat. 4520, § 2430a; amended Pub. L. 111–383, div. A, title VIII, § 814(a), Jan. 7, 2011, 124 Stat. 4266; Pub. L. 112–81, div. A, title IX, § 912, Dec. 31, 2011, 125 Stat. 1536; Pub. L. 114–328, div. A, title VIII, § 850, Dec. 23, 2016, 130 Stat. 2295; renumbered § 4203 and amended Pub. L. 116–283, div. A, title XVIII, § 1846(g), Jan. 1, 2021, 134 Stat. 4251.)

AMENDMENTS

2021—Pub. L. 116–283, § 1846(g)(2), substituted ''this subpart'' for ''this chapter'' wherever appearing.

Pub. L. 116–283, § 1846(g), renumbered section 2430a of this title as this section.

Subsec. (d). Pub. L. 116–283, § 1846(g)(1), substituted ''section 4351'' for ''section 2432(a)'' in introductory provisions.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 4204. Milestone decision authority

(a) SERVICE ACQUISITION EXECUTIVE.—The milestone decision authority for a major defense acquisition program reaching Milestone A after October 1, 2016, shall be the service acquisition executive of the military department that is managing the program, unless the Secretary of Defense designates, under subsection (b), another official to serve as the milestone decision authority.

(b) DESIGNATION OF ALTERNATE MILESTONE DECISION AUTHORITY.—The Secretary of Defense may designate an alternate milestone decision authority for a program with respect to which any of the following applies:

(1) Subject to subsection (f), the Secretary determines that the program is addressing a joint requirement.

(2) The Secretary determines that the program is best managed by a Defense Agency.

(3) The program has incurred a unit cost increase greater than the significant cost threshold or critical cost threshold under sections 4371 through 4375 of this title.

(4) The program is critical to a major interagency requirement or technology development effort, or has significant international partner involvement.

(5) The Secretary determines that an alternate official serving as the milestone decision authority will best provide for the program to achieve desired cost, schedule, and performance outcomes.

(c) REVERSION TO SERVICE ACQUISITION EXECUTIVE.—

(1) After designating an alternate milestone decision authority under subsection (b) for a program, the Secretary of Defense may revert the position of milestone decision authority for the program back to the service acquisition executive upon request of the Secretary of the military department concerned. A decision on the request shall be made within 180 days after receipt of the request from the Secretary of the military department concerned.

(2) If the Secretary of Defense denies the request for reversion of the milestone decision authority back to the service acquisition executive, the Secretary shall report to the congressional defense committees on the basis of the Secretary's decision that an alternate official serving as milestone decision authority will best provide for the program to achieve desired cost, schedule, and performance outcomes. No such reversion is authorized after a program has incurred a unit cost increase greater than the significant cost threshold or critical cost threshold under sections 4371 through 4375 of this title, except in exceptional circumstances.

(d) CERTIFICATIONS RELATING TO PROGRAM REQUIREMENTS AND FUNDING.—For each major defense acquisition program, the Secretary of the military department concerned and the Chief of the armed force concerned shall, in each Selected Acquisition Report required under sections 4351 through 4358 of this title—

(1) certify that program requirements are stable and funding is adequate to meet cost, schedule, and performance objectives for the program; and

(2) identify and report to the congressional defense committees on any increased risk to the program since the last report.

(e) DOCUMENTATION AND OVERSIGHT[1]—The Secretary of Defense shall review the acquisition oversight process for major defense acquisition programs and shall—

(1) limit outside requirements for documentation to an absolute minimum on those programs where the service acquisition executive of the military department that is managing the program is the milestone decision authority; and

(2) ensure that any policies, procedures, and activities related to oversight efforts conducted outside of the military departments with regard to major defense acquisition programs shall be implemented in a manner that does not unnecessarily increase program costs or impede program schedules.

(f) LIMITATION ON AUTHORITY TO DESIGNATE ALTERNATIVE MDA FOR PROGRAMS ADDRESSING JOINT REQUIREMENTS.—The authority of the Secretary of Defense to designate an alternative milestone decision authority for a program with respect to which the Secretary determines that the program is addressing a joint requirement, as set forth in subsection (b)(1), shall apply only for a major defense acquisition program that reaches Milestone A after October 1, 2016, and before October 1, 2019.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1846(b), (f)(1)–(7), Jan. 1, 2021, 134 Stat. 4248, 4250, 4251.)

CODIFICATION

The text of subsec. (d) of section 2430 of this title, which was transferred to this section, redesignated as subsecs. (a) to (f) and amended by Pub. L. 116–283, § 1846(f)(1), (5)(B), was based on Pub. L. 114–92, div. A, title VIII, § 825(a), Nov. 25, 2015, 129 Stat. 907; Pub. L. 114–328, div. A, title VIII, § 807(b), Dec. 23, 2016, 130 Stat. 2261.

AMENDMENTS

2021—Pub. L. 116–283, § 1846(f)(1), transferred subsec. (d) of section 2430 of this title to this section, struck out subsec. designation, and redesignated pars. (1) to (5) as subsecs. (a) to (d), and (f), respectively.

Subsec. (a). Pub. L. 116–283, § 1846(f)(2), inserted subsec. heading and substituted ''under subsection (b)'' for ''under paragraph (2)''.

Subsec. (b). Pub. L. 116–283, § 1846(f)(3)(A)–(C), inserted subsec. heading, substituted ''to which any of the following applies:'' for ''to which—'' in introductory provisions, and redesignated subpars. (A) to (E) as pars. (1) to (5), respectively.

Subsec. (b)(1). Pub. L. 116–283, § 1846(f)(3)(D), (G), substituted ''Subject to subsection (f)'' for ''subject to paragraph (5)'' and period for semimcolon at end.

Subsec. (b)(2). Pub. L. 116–283, § 1846(f)(3)(F), (G), substituted ''The Secretary'' for ''the Secretary'' and period for semicolon at end.

[1] So in original. A period probably should appear.

Subsec. (b)(3). Pub. L. 116–283, § 1846(f)(3)(E)–(G), substituted ''The program'' for ''the program'', ''sections 4371 through 4375'' for ''section 2433'' and period for semicolon at end.

Subsec. (b)(4). Pub. L. 116–283, § 1846(f)(3)(F), (H), substituted ''The program'' for ''the program'' and period at end for ''; or''.

Subsec. (b)(5). Pub. L. 116–283, § 1846(f)(3)(F), substituted ''The Secretary'' for ''the Secretary''.

Subsec. (c). Pub. L. 116–283, § 1846(f)(4), inserted subsec. heading, redesignated subpars. (A) and (B) as pars. (1) and (2), respectively, realigned margins, and substituted ''under subsection (b)'' for ''under paragraph (2)'' in par. (1) and ''sections 4371 through 4375'' for ''section 2433'' in par. (2).

Subsec. (d). Pub. L. 116–283, § 1846(f)(5), inserted subsec. heading, struck out subpar. (A) designation before ''For each'', substituted ''under sections 4351 through 4358 of this title—'' for ''under section 2432 of this title,'', inserted par. (1) designation before ''certify that'', substituted ''the program; and'' for ''the program and'', inserted par. (2) designation before ''identify and report'', and redesignated subpar. (B) as subsec. (e).

Subsec. (e). Pub. L. 116–283, § 1846(f)(6), inserted subsec. heading, substituted ''programs and shall—'' for ''programs and shall'', inserted par. (1) designation before ''limit outside requirements'', substituted ''decision authority; and'' for ''decision authority and'', and inserted par. (2) designation before ''ensure that''.

Pub. L. 116–283, § 1846(f)(5)(B), redesignated subpar. (B) of subsec. (d) as subsec. (e).

Subsec. (f). Pub. L. 116–283, § 1846(f)(7), inserted subsec. heading and substituted ''in subsection (b)(1)'' for ''in paragraph (2)(A)''.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 note preceding section 3001 of this title.

§ 4205. Weapon systems for which procurement funding requested in budget: development and procurement schedules

(a) The Secretary of Defense shall submit to Congress each calendar year, not later than 45 days after the President submits the budget to Congress under section 1105 of title 31, budget justification documents regarding development and procurement schedules for each weapon system for which fund authorization is required by section 114(a) of this title, and for which any funds for procurement are requested in that budget. The documents shall include data on operational testing and evaluation for each weapon system for which funds for procurement are requested (other than funds requested only for the procurement of units for operational testing and evaluation, or long lead-time items, or both). A weapon system shall also be included in the annual documents required under this subsection in each year thereafter until procurement of that system has been completed or terminated, or the Secretary of Defense certifies, in writing, that such inclusion would not serve any useful purpose and gives his reasons therefor.

(b) Any documents required to be submitted under subsection (a) shall include detailed and summarized information with respect to each weapon system covered and shall specifically include each of the following:

(1) The development schedule, including estimated annual costs until development is completed.

(2) The planned procurement schedule, including the best estimate of the Secretary of Defense of the annual costs and units to be procured until procurement is completed.

(3) To the extent required by the second sentence of subsection (a), the result of all operational testing and evaluation up to the time of the submission of the documents, or, if operational testing and evaluation has not been conducted, a statement of the reasons therefor and the results of such other testing and evaluation as has been conducted.

(4)(A) The most efficient production rate, the most efficient acquisition rate, and the minimum sustaining rate, consistent with the program priority established for such weapon system by the Secretary concerned.

(B) In this paragraph:

(i) The term ''most efficient production rate'' means the maximum rate for each budget year at which the weapon system can be produced with existing or planned plant capacity and tooling, with one shift a day running for eight hours a day and five days a week.

(ii) The term ''minimum sustaining rate'' means the production rate for each budget year that is necessary to keep production lines open while maintaining a base of responsive vendors and suppliers.

(c) In the case of any weapon system for which procurement funds have not been previously requested and for which funds are first requested by the President in any fiscal year after the Budget for that fiscal year has been submitted to Congress, the same documentation requirements shall be applicable to that system in the same manner and to the same extent as if funds had been requested for that system in that budget.

(Added Pub. L. 93–155, title VIII, § 803(a), Nov. 16, 1973, 87 Stat. 614, § 139, § 2431; amended Pub. L. 94–106, title VIII, § 805, Oct. 7, 1975, 89 Stat. 538; Pub. L. 96–513, title V, § 511(5), Dec. 12, 1980, 94 Stat. 2920; Pub. L. 97–86, title IX, § 909(c), Dec. 1, 1981, 95 Stat. 1120; Pub. L. 97–258, § 3(b)(1), Sept. 13, 1982, 96 Stat. 1063; Pub. L. 98–525, title XIV, § 1405(3), Oct. 19, 1984, 98 Stat. 2621; renumbered § 2431 and amended Pub. L. 99–433, title I, §§ 101(a)(5), 110(d)(12), (g)(6), Oct. 1, 1986, 100 Stat. 995, 1003, 1004; Pub. L. 100–180, div. A, title XIII, § 1314(a)(1), Dec. 4, 1987, 101 Stat. 1175; Pub. L. 101–510, div. A, title XIII, § 1301(13), title XIV, § 1484(f)(3), Nov. 5, 1990, 104 Stat. 1668, 1717; Pub. L. 103–355, title III, § 3001, Oct. 13, 1994, 108 Stat. 3327; Pub. L. 104–106, div. D, title XLIII, § 4321(b)(18), Feb. 10, 1996, 110 Stat. 673; renumbered § 4205 and amended Pub. L. 116–283, div. A, title XVIII, § 1846(h), Jan. 1, 2021, 134 Stat. 4251.)

AMENDMENTS

2021—Pub. L. 116–283, § 1846(h)(2), amended section catchline generally. Prior to amendment, section catchline read as follows: ''Weapons development and procurement schedules''.

Pub. L. 116–283, § 1846(h)(1), renumbered section 2431 of this title as this section.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation

and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

CHAPTER 322—MAJOR SYSTEMS AND MAJOR DEFENSE ACQUISITION PROGRAMS GENERALLY

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SUBCHAPTER I—MANAGEMENT

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4216.	[Reserved].
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4218.	[Reserved].

§ 4211. Acquisition strategy

(a) ACQUISITION STRATEGY REQUIRED.—There shall be an acquisition strategy for each major defense acquisition program, each major automated information system, and each major system approved by a milestone decision authority.

(b) RESPONSIBLE OFFICIAL.—For each acquisition strategy required by subsection (a), the Under Secretary of Defense for Acquisition and Sustainment, or the milestone decision authority, when the milestone decision authority is the service acquisition executive of the military department that is managing the program, is responsible for issuing and maintaining the requirements for—

(1) the content of the strategy; and

(2) the review and approval process for the strategy.

(c) CONSIDERATIONS.—(1) In issuing requirements for the content of an acquisition strategy for a major defense acquisition program, major automated information system, or major system, the Under Secretary, or the milestone decision authority, when the milestone decision authority is the service acquisition executive of the military department that is managing the program, shall ensure that—

(A) the strategy clearly describes the proposed top-level business and technical management approach for the program or system, in sufficient detail to allow the milestone decision authority to assess the viability of the proposed approach, the method of implementing laws and policies, and program objectives;

(B) the strategy contains a clear explanation of how the strategy is designed to be implemented with available resources, such as time, funding, and management capacity;

(C) the strategy is tailored to address program requirements and constraints; and

(D) the strategy considers the items listed in paragraph (2).

(2) Each strategy shall, where appropriate, consider the following:

(A) An approach that delivers required capability in increments, each depending on available mature technology, and that recognizes up front the need for future capability improvements.

(B) Acquisition approach, including industrial base considerations in accordance with paragraph (3).

(C) Risk management, including such methods as competitive prototyping at the system, subsystem, or component level.

(D) Business strategy, including measures to ensure competition at the system and subsystem level throughout the life-cycle of the program or system in accordance with section 4324 of this title.

(E) Contracting strategy, including—

(i) contract type and how the type selected relates to level of program risk in each acquisition phase;

(ii) how the plans for the program or system to reduce risk enable the use of fixed-price elements in subsequent contracts and the timing of the use of those fixed price elements;

(iii) market research; and

(iv) consideration of small business participation.

(F) Intellectual property strategy in accordance with sections 3771 through 3775 of this title.

(G) International involvement, including foreign military sales and cooperative opportunities, in accordance with section 2350a of this title.

(H) Multiyear procurement in accordance with sections 3501 through 3511 of this title.

(I) Integration of current intelligence assessments into the acquisition process.

(J) Requirements related to logistics, maintenance, and sustainment in accordance with sections 2464 and 2466 of this title.

(3)(a)[1] IN GENERAL.—The Secretary of Defense shall prescribe regulations requiring consideration of the national technology and industrial base, in accordance with the strategy required by section 4811 of this title, in the development and implementation of acquisition plans for each major defense acquisition program.

(b)[1] ACQUISITION POLICY AND GUIDANCE.—The Secretary of Defense shall develop and promulgate acquisition policy and guidance to the service acquisition executives, the heads of the appropriate Defense Agencies and Department of Defense Field Activities, and relevant program managers. Such policy and guidance shall be germane to the use of the research and development, manufacturing, and production capabilities identified pursuant to chapter 148 of this title and the technologies, companies, laboratories, and factories in specific Department of Defense research and development, international cooperative research, procurement, and sustainment activities.

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[1] So in original. Probably should be "V."

[1] So in original. Does not conform to section catchline.

[1] So in original.

(d) REVIEW.—(1) The milestone decision authority shall review and approve, as appropriate, the acquisition strategy for a major defense acquisition program, major automated information system, or major system at each of the following times:

(A) Milestone A approval.

(B) The decision to release the request for proposals for development of the program or system.

(C) Milestone B approval.

(D) Each subsequent milestone.

(E) Review of any decision to enter into full-rate production.

(F) When there has been—

(i) a significant change to the cost of the program or system;

(ii) a critical change to the cost of the program or system;

(iii) a significant change to the schedule of the program or system; or

(iv) a significant change to the performance of the program or system.

(G) Any other time considered relevant by the milestone decision authority.

(2) If the milestone decision authority revises an acquisition strategy for a program or system because of a change described in paragraph (1)(F), the milestone decision authority shall provide notice of the revision to the congressional defense committees.

(e) DEFINITIONS.—In this section:

(1) The term ''Milestone A approval'' means a decision to enter into technology maturation and risk reduction pursuant to guidance prescribed by the Secretary of Defense for the management of Department of Defense acquisition programs.

(2) The term ''Milestone B approval'' has the meaning provided in section 4172(e)(7) of this title.

(3) The term ''milestone decision authority'', with respect to a major defense acquisition program, major automated information system, or major system, means the official within the Department of Defense designated with the overall responsibility and authority for acquisition decisions for the program or system, including authority to approve entry of the program or system into the next phase of the acquisition process.

(4) The term ''management capacity'', with respect to a major defense acquisition program, major automated information system, or major system, means the capacity to manage the program or system through the use of highly qualified organizations and personnel with appropriate experience, knowledge, and skills.

(5) The term ''significant change to the cost'', with respect to a major defense acquisition program or major system, means a significant cost growth threshold, as that term is defined in section 4371(a)(2) of this title.

(6) The term ''critical change to the cost'', with respect to a major defense acquisition program or major system, means a critical cost growth threshold, as that term is defined in section 4371(a)(3) of this title.

(7) The term ''significant change to the schedule'', with respect to a major defense acquisition program, major automated information system, or major system, means any schedule delay greater than six months in a reported event.

(Added Pub. L. 114–92, div. A, title VIII, § 821(a)(1), Nov. 25, 2015, 129 Stat. 897, § 2431a; amended Pub. L. 114–328, div. A, title VIII, § 848, Dec. 23, 2016, 130 Stat. 2292; Pub. L. 115–91, div. A, title X, § 1081(a)(39), Dec. 12, 2017, 131 Stat. 1596; Pub. L. 116–92, div. A, title IX, § 902(70), Dec. 20, 2019, 133 Stat. 1551; renumbered § 4211 and amended Pub. L. 116–283, div. A, title XVIII, § 1847(b)(1), (2), Jan. 1, 2021, 134 Stat. 4253.)

CODIFICATION

The text of section 2440 of this title, which was transferred to this section, redesignated as par. (3) of subsec. (c), and amended by Pub. L. 116–283, § 1847(b)(2)(A), was based on Pub. L. 102–484, div. D, title XLII, § 4216(b)(1), Oct. 23, 1992, 106 Stat. 2669; Pub. L. 109–364, div. A, title X, § 1071(a)(17), Oct. 17, 2006, 120 Stat. 2399; Pub. L. 112–239, div. A, title XVI, § 1603(c), Jan. 2, 2013, 126 Stat. 2063; Pub. L. 116–283, div. A, title VIII, § 846(b)(1), Jan. 1, 2021, 134 Stat. 3768.

AMENDMENTS

2021—Pub. L. 116–283, § 1847(b)(1)(A), renumbered section 2431a of this title as this section.

Subsec. (c)(2)(B). Pub. L. 116–283, § 1847(b)(2)(B), substituted ''paragraph (3)'' for ''section 2440 of this title''.

Subsec. (c)(2)(D). Pub. L. 116–283, § 1847(b)(1)(B)(i)(I), substituted ''section 4324'' for ''section 2337''.

Subsec. (c)(2)(F). Pub. L. 116–283, § 1847(b)(1)(B)(i)(II), substituted ''sections 3771 through 3775'' for ''section 2320''.

Subsec. (c)(2)(H). Pub. L. 116–283, § 1847(b)(1)(B)(i)(III), substituted ''sections 3501 through 3511'' for ''section 2306b''.

Subsec. (c)(3). Pub. L. 116–283, § 1847(b)(2)(A), transferred section 2440 of this title, containing subsecs. (a) and (b), to this section, redesignated it as subsec. (c)(3), and substituted ''section 4811'' for ''section 2501'' in subsec. (c)(3)(a). See Codification note above.

Subsec. (e). Pub. L. 116–283, § 1847(b)(1)(C), which directed amendment of subsec. (e) by striking pars. (1) and (2) and redesignating pars. (3) to (10) as (1) to (8), respectively, was executed by striking pars. (1) and (2) and redesignating former pars. (3) to (9) as (1) to (7), respectively, to reflect the probable intent of Congress, as no par. (10) had been enacted. Prior to amendment, pars. (1) and (2) defined ''major defense acquisition program'' and ''major system'', respectively.

Subsec. (e)(4). Pub. L. 116–283, § 1847(b)(1)(B)(ii)(I), substituted ''section 4172(e)(7)'' for ''section 2366(e)(7)''.

Subsec. (e)(7). Pub. L. 116–283, § 1847(b)(1)(B)(ii)(II), substituted ''section 4371(a)(2)'' for ''section 2433(a)(4)''.

Subsec. (e)(8). Pub. L. 116–283, § 1847(b)(1)(B)(ii)(III), substituted ''section 4371(a)(3)'' for ''section 2433(a)(5)''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 4212. Risk management and mitigation in major defense acquisition programs and major systems

(a) REQUIREMENT.—The Secretary of Defense shall ensure that the initial acquisition strategy (required under section 4211 of this title) approved by the milestone decision authority and any subsequent revisions include the following:

(1) A comprehensive approach for managing and mitigating risk (including technical, cost,

and schedule risk) during each of the following periods or when determined appropriate by the milestone decision authority:

(A) The period preceding engineering manufacturing development, or its equivalent.

(B) The period preceding initial production.

(C) The period preceding full-rate production.

(2) An identification of the major sources of risk in each of the periods listed in paragraph (1) to improve programmatic decisionmaking and appropriately minimize and manage program concurrency.

(b) APPROACH TO MANAGE AND MITIGATE RISKS.—The comprehensive approach to manage and mitigate risk included in the acquisition strategy for purposes of subsection (a)(1) shall, at a minimum, include consideration of risk mitigation techniques such as the following:

(1) Prototyping (including prototyping at the system, subsystem, or component level and competitive prototyping, where appropriate) and, if prototyping at either the system, subsystem, or component level is not used, an explanation of why it is not appropriate.

(2) Modeling and simulation, the areas that modeling and simulation will assess, and identification of the need for development of any new modeling and simulation tools in order to support the comprehensive strategy.

(3) Technology demonstrations and decision points for disciplined transition of planned technologies into programs or the selection of alternative technologies.

(4) Multiple design approaches.

(5) Alternative designs, including any designs that meet requirements but do so with reduced performance.

(6) Phasing of program activities or related technology development efforts in order to address high-risk areas as early as feasible.

(7) Manufacturability and industrial base availability.

(8) Independent risk element assessments by outside subject matter experts.

(9) Schedule and funding margins for identified risks.

(c) PREFERENCE FOR PROTOTYPING.—To the maximum extent practicable and consistent with the economical use of available financial resources, the milestone decision authority for each major defense acquisition program shall ensure that the acquisition strategy for the program provides for—

(1) the production of competitive prototypes at the system or subsystem level before Milestone B approval; or

(2) if the production of competitive prototypes is not practicable, the production of single prototypes at the system or subsystem level.

(d) CONCURRENCY DEFINED.—In this section, the term ''concurrency'' means, with respect to an acquisition strategy, the combination or overlap of program phases or activities.

(Added Pub. L. 114–92, div. A, title VIII, § 822(a)(1), Nov. 25, 2015, 129 Stat. 900, § 2431b; amended Pub. L. 114–328, div. A, title X, § 1081(a)(7), Dec. 23, 2016, 130 Stat. 2417; renumbered § 4212 and amended Pub. L. 116–283, div. A, title XVIII, § 1847(b)(3), Jan. 1, 2021, 134 Stat. 4254.)

AMENDMENTS

2021—Pub. L. 116–283, § 1847(b)(3), renumbered section 2431b of this title as this section.

Subsec. (a). Pub. L. 116–283, § 1847(b)(3)(A), substituted ''section 4211'' for ''section 2431a''.

Subsec. (d). Pub. L. 116–283, § 1847(b)(3)(B), substituted ''Concurrency Defined'' for ''Definitions'' in subsec. heading, struck out par. (1) designation and heading, substituted ''In this section, the term'' for ''The term'', and struck out par. (2) which defined ''major defense acquisition program'' and ''major system''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 4214. Baseline description

(a) BASELINE DESCRIPTION REQUIREMENT.—(1) The Secretary of a military department shall establish a baseline description for each major defense acquisition program and for each designated major subprogram under the program under the jurisdiction of such Secretary.

(2) The baseline shall include sufficient parameters to describe the cost estimate (referred to as the ''Baseline Estimate'' in sections 4371 through 4375 of this title), schedule, performance, supportability, and any other factor of such major defense acquisition program or designated major subprogram.

(b) FUNDING LIMIT.—No amount appropriated or otherwise made available to the Department of Defense for carrying out a major defense acquisition program or any designated major subprogram under the program may be obligated after the program or subprogram enters system development and demonstration without an approved baseline description unless such obligation is specifically approved by the Under Secretary of Defense for Acquisition and Sustainment.

(c) SCHEDULE.—A baseline description for a major defense acquisition program or any designated major subprogram under the program shall be prepared under this section—

(1) before the program or subprogram enters system development and demonstration;

(2) before the program or subprogram enters production and deployment; and

(3) before the program or subprogram enters full rate production.

(d) ORIGINAL BASELINE ESTIMATE.—(1) In this subpart, the term ''original Baseline Estimate'', with respect to a major defense acquisition program or any designated major subprogram under the program, means the baseline description established with respect to the program or subprogram under subsection (a) prepared before the program or subprogram enters system development and demonstration, or at program or subprogram initiation, whichever occurs later, without adjustment or revision (except as provided in paragraph (2)).

(2) An adjustment or revision of the original baseline description of a major defense acquisition program or any designated major subprogram under the program may be treated as the original Baseline Estimate for the program or subprogram for purposes of this chapter only if the percentage increase in the program acquisition unit cost or procurement unit cost under such adjustment or revision exceeds the critical cost growth threshold for the program or subprogram under sections 4371 through 4375 of this title, as determined by the Secretary of the military department concerned under section 4374 of this title.

(3) In the event of an adjustment or revision of the original baseline description of a major defense acquisition program or any designated major subprogram under the program, the Secretary of Defense shall include in the next Selected Acquisition Report to be submitted under sections 4351 through 4358 of this title after such adjustment or revision a notification to the congressional defense committees of such adjustment or revision, together with the reasons for such adjustment or revision.

(e) REGULATIONS.—The Secretary of Defense shall prescribe regulations governing the following:

(1) The content of baseline descriptions under this section.

(2) The submission to the Secretary of the military department concerned and the Under Secretary of Defense for Acquisition and Sustainment by the program manager for a program for which there is an approved baseline description (or in the case of a major defense acquisition program with one or more designated major subprograms, approved baseline descriptions for such subprograms) under this section of reports of deviations from any such baseline description of the cost, schedule, performance, supportability, or any other factor of the program or subprogram.

(3) Procedures for review of such deviation reports within the Department of Defense.

(4) Procedures for submission to, and approval by, the Secretary of Defense of revised baseline descriptions.

(Added Pub. L. 99–500, § 101(c) [title X, § 904(a)(1)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–133, and Pub. L. 99–591, § 101(c) [title X, § 904(a)(1)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–133, § 2435; Pub. L. 99–661, div. A, title IX, formerly title IV, § 904(a)(1), Nov. 14, 1986, 100 Stat. 3912, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; amended Pub. L. 100–26, § 7(b)(6), Apr. 21, 1987, 101 Stat. 280; Pub. L. 100–180, div. A, title VIII, § 803(a), Dec. 4, 1987, 101 Stat. 1125; Pub. L. 100–370, § 1(i)(1), July 19, 1988, 102 Stat. 848; Pub. L. 100–456, div. A, title XII, § 1233(*l*)(4), Sept. 29, 1988, 102 Stat. 2058; Pub. L. 101–189, div. A, title VIII, § 811(b), Nov. 29, 1989, 103 Stat. 1493; Pub. L. 101–510, div. A, title XII, § 1207(b), title XIV, § 1484(k)(11), Nov. 5, 1990, 104 Stat. 1665, 1719; Pub. L. 103–160, div. A, title IX, § 904(d)(1), Nov. 30, 1993, 107 Stat. 1728; Pub. L. 103–355, title III, § 3005(a), Oct. 13, 1994, 108 Stat. 3330; Pub. L. 107–107, div. A, title VIII, § 821(d), title X, § 1048(b)(2), Dec. 28, 2001, 115 Stat. 1182, 1225; Pub. L. 109–163, div. A, title VIII, § 802(d)(1), Jan. 6, 2006, 119 Stat. 3369; Pub. L. 109–364, div. A, title VIII, § 806, Oct. 17, 2006, 120 Stat. 2315; Pub. L. 110–417, [div. A], title VIII, § 811(d), Oct. 14, 2008, 122 Stat. 4524; Pub. L. 116–92, div. A, title IX, § 902(71), Dec. 20, 2019, 133 Stat. 1551; renumbered § 4214 and amended Pub. L. 116–283, div. A, title XVIII, § 1847(b)(4), Jan. 1, 2021, 134 Stat. 4254.)

AMENDMENTS

2021—Pub. L. 116–283, § 1847(b)(4), renumbered section 2435 of this title as this section.

Subsec. (a)(2). Pub. L. 116–283, § 1847(b)(4)(A), substituted ''sections 4371 through 4375'' for ''section 2433''.

Subsec. (d)(1). Pub. L. 116–283, § 1847(b)(4)(B)(i), substituted ''In this subpart'' for ''In this chapter''.

Subsec. (d)(2). Pub. L. 116–283, § 1847(b)(4)(A), (B)(ii), substituted ''sections 4371 through 4375'' for ''section 2433'' and ''section 4374 of this title'' for ''subsection (d) of such section''.

Subsec. (d)(3). Pub. L. 116–283, § 1847(b)(4)(B)(iii), substituted ''sections 4351 through 4358'' for ''section 2432''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

SUBCHAPTER II—CONTRACTING

Sec.
4231. Major systems: determination of quantity for low-rate initial production.
4232. Use of lowest price technically acceptable source selection process: prohibition.[1]
4233. [Reserved].
4234. [Reserved].
4235. [Reserved].
4236. Negotiation of price for technical data before development, production, or sustainment of major weapon systems.

§ 4231. Major systems: determination of quantity for low-rate initial production

(a) DETERMINATION OF QUANTITIES TO BE PROCURED FOR LOW-RATE INITIAL PRODUCTION.—(1) In the course of the development of a major system, the determination of what quantity of articles of that system should be procured for low-rate initial production (including the quantity to be procured for preproduction verification articles) shall be made—

(A) when the milestone B decision with respect to that system is made; and

(B) by the official of the Department of Defense who makes that decision.

(2) In this section, the term ''milestone B decision'' means the decision to approve the system development and demonstration of a major system by the official of the Department of Defense designated to have the authority to make that decision.

(3) Any increase from a quantity determined under paragraph (1) may only be made with the approval of the official making the determination.

(4) The quantity of articles of a major system that may be procured for low-rate initial production may not be less than one operationally configured production unit unless another quantity is established at the milestone B decision.

(5) The Secretary of Defense shall include a statement of the quantity determined under

[1] So in original. Does not conform to section catchline.

paragraph (1) in the first SAR submitted with respect to the program concerned after that quantity is determined. If the quantity exceeds 10 percent of the total number of articles to be produced, as determined at the milestone B decision with respect to that system, the Secretary shall include in the statement the reasons for such quantity. For purposes of this paragraph, the term ''SAR'' means a Selected Acquisition Report submitted under sections 4351 through 4358 of this title.

(b) LOW-RATE INITIAL PRODUCTION OF WEAPON SYSTEMS.—Except as provided in subsection (c), low-rate initial production with respect to a new system is production of the system in the minimum quantity necessary—

(1) to provide production-configured or representative articles for operational tests pursuant to section 4171 of this title;

(2) to establish an initial production base for the system; and

(3) to permit an orderly increase in the production rate for the system sufficient to lead to full-rate production upon the successful completion of operational testing.

(c) LOW-RATE INITIAL PRODUCTION OF NAVAL VESSEL AND SATELLITE PROGRAMS.—With respect to naval vessel programs and military satellite programs, low-rate initial production is production of items at the minimum quantity and rate that (1) preserves the mobilization production base for that system, and (2) is feasible, as determined pursuant to regulations prescribed by the Secretary of Defense.

(Added Pub. L. 101–189, div. A, title VIII, § 803(a), Nov. 29, 1989, 103 Stat. 1487, § 2400; amended Pub. L. 103–355, title III, § 3015, Oct. 13, 1994, 108 Stat. 3332; Pub. L. 104–106, div. A, title X, § 1062(d), div. D, title XLIII, § 4321(b)(13), Feb. 10, 1996, 110 Stat. 444, 673; Pub. L. 107–107, div. A, title VIII, § 821(c), Dec. 28, 2001, 115 Stat. 1182; renumbered § 4231 and amended Pub. L. 116–283, div. A, title XVIII, § 1847(c)(1), Jan. 1, 2021, 134 Stat. 4254.)

AMENDMENTS

2021—Pub. L. 116–283, § 1847(c)(1)(B), amended section catchline generally. Prior to amendment, section catchline read as follows: ''Low-rate initial production of new systems''.

Pub. L. 116–283, § 1847(c)(1)(A), renumbered section 2400 of this title as this section.

Subsec. (a)(5). Pub. L. 116–283, § 1847(c)(1)(A)(i), substituted ''sections 4351 through 4358'' for ''section 2432''.

Subsec. (b)(1). Pub. L. 116–283, § 1847(c)(1)(A)(ii), substituted ''section 4171'' for ''section 2399''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 4232. Prohibition on use of lowest price technically acceptable source selection process

(a) IN GENERAL.—The Department of Defense shall not use a lowest price technically acceptable source selection process for the engineering and manufacturing development contract of a major defense acquisition program.

(b) DEFINITIONS.—In this section:

(1) LOWEST PRICE TECHNICALLY ACCEPTABLE SOURCE SELECTION PROCESS.—The term ''lowest price technically acceptable source selection process'' has the meaning given that term in part 15 of the Federal Acquisition Regulation.

(2) ENGINEERING AND MANUFACTURING DEVELOPMENT CONTRACT.—The term ''engineering and manufacturing development contract'' means a prime contract for the engineering and manufacturing development of a major defense acquisition program.

(Added Pub. L. 115–91, div. A, title VIII, § 832(a)(1), Dec. 12, 2017, 131 Stat. 1468, § 2442; renumbered § 4232 and amended Pub. L. 116–283, div. A, title XVIII, § 1847(c)(2), Jan. 1, 2021, 134 Stat. 4254.)

AMENDMENTS

2021—Pub. L. 116–283 renumbered section 2442 of this title as this section and, in subsec. (b), redesignated par. (3) as (2) and struck out former par. (2) which defined ''major defense acquisition program''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 4236. Negotiation of price for technical data before development, production, or sustainment of major weapon systems

The Secretary of Defense shall ensure, to the maximum extent practicable, that the Department of Defense, before selecting a contractor for the engineering and manufacturing development of a major weapon system, production of a major weapon system, or sustainment of a major weapon system, negotiates a price for technical data to be delivered under a contract for such development, production, or sustainment.

(Added Pub. L. 115–91, div. A, title VIII, § 835(a)(1), Dec. 12, 2017, 131 Stat. 1471, § 2439; amended Pub. L. 115–232, div. A, title VIII, § 867, Aug. 13, 2018, 132 Stat. 1901; renumbered § 4236, Pub. L. 116–283, div. A, title XVIII, § 1847(c)(3), Jan. 1, 2021, 134 Stat. 4254.)

AMENDMENTS

2021—Pub. L. 116–283 renumbered section 2439 of this title as this section.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

SUBCHAPTER III—MILESTONES FOR MAJOR DEFENSE ACQUISITION PROGRAMS

Sec.
4251. Major defense acquisition programs: determination required before Milestone A approval.
4252. Major defense acquisition programs: certification required before Milestone B approval.
4253. Major defense acquisition programs: submissions to Congress on Milestone C.
4254. [Reserved].

§ 4251. Major defense acquisition programs: determination required before Milestone A approval

(a) RESPONSIBILITIES.—Before granting Milestone A approval for a major defense acquisition program or a major subprogram, the milestone decision authority for the program or subprogram shall ensure that—

(1) information about the program or subprogram is sufficient to warrant entry of the program or subprogram into the risk reduction phase;

(2) the Secretary of the military department concerned and the Chief of the armed force concerned concur in the cost, schedule, technical feasibility, and performance trade-offs that have been made with regard to the program; and

(3) there are sound plans for progression of the program or subprogram to the development phase.

(b) WRITTEN DETERMINATION REQUIRED.—A major defense acquisition program or subprogram may not receive Milestone A approval or otherwise be initiated prior to Milestone B approval until the milestone decision authority determines in writing, after consultation with the Joint Requirements Oversight Council on matters related to program requirements and military needs—

(1) that the program fulfills an approved initial capabilities document;

(2) that the program has been developed in light of appropriate market research;

(3) if the program duplicates a capability already provided by an existing system, the duplication provided by such program is necessary and appropriate;

(4) that, with respect to any identified areas of risk, including risks determined by the identification of critical technologies required under section 4272(a)(1) of this title or any other risk assessment, there is a plan to reduce the risk;

(5) that planning for sustainment has been addressed and that a determination of applicability of core logistics capabilities requirements has been made;

(6) that an analysis of alternatives has been performed consistent with study guidance developed by the Director of Cost Assessment and Program Evaluation;

(7) that a cost estimate for the program has been submitted, with the concurrence of the Director of Cost Assessment and Program Evaluation, and that the level of resources required to develop, procure, and sustain the program is sufficient for successful program execution;

(8) that, with respect to a program initiated after January 1, 2019, technology shall be developed in the program (after Milestone A approval) only if the milestone decision authority determines with a high degree of confidence that such development will not delay the fielding target of the program, or, if the milestone decision authority does not make such determination for a major system component being developed under the program, the milestone decision authority ensures that the technology related to the major system component shall be sufficiently matured and demonstrated in a relevant environment (after Milestone A approval) separate from the program using the prototyping authorities in subchapter II of chapter 327 of this title or other authorities, as appropriate, and have an effective plan for adoption or insertion by the relevant program; and

(9) that the program or subprogram meets any other considerations the milestone decision authority considers relevant.

(c) SUBMISSIONS TO CONGRESS ON MILESTONE A.—

(1) BRIEF SUMMARY REPORT.—Not later than 15 days after granting Milestone A approval for a major defense acquisition program, the milestone decision authority for the program shall provide to the congressional defense committees and, in the case of intelligence or intelligence-related activities, the congressional intelligence committees a brief summary report that contains the following elements:

(A) The program cost and fielding targets established under section 4271(a) of this title.

(B) The estimated cost and schedule for the program established by the military department concerned, including—

(i) the dollar values estimated for the program acquisition unit cost and total life-cycle cost; and

(ii) the planned dates for each program milestone and initial operational capability.

(C) The independent estimated cost for the program established pursuant to section 3221(b)(6) of this title, and any independent estimated schedule for the program, including—

(i) as assessment of the major contributors to the program acquisition unit cost and total life-cycle cost; and

(ii) the planned dates for each program milestone and initial operational capability.

(D) A summary of the technical or manufacturing risks associated with the program, as determined by the military department concerned, including identification of any critical technologies or manufacturing processes that need to be matured.

(E) A summary of the independent technical risk assessment conducted or approved under section 4272 of this title, including identification of any critical technologies or manufacturing processes that need to be matured.

(F) A summary of any sufficiency review conducted by the Director of Cost Assessment and Program Evaluation of the analysis of alternatives performed for the program (as referred to in subsection (b)(6)).

(G) Any other information the milestone decision authority considers relevant.

(2) ADDITIONAL INFORMATION.—(A) At the request of any of the congressional defense committees or, in the case of intelligence or intel-

ligence-related activities, the congressional intelligence committees, the milestone decision authority shall submit to the committee an explanation of the basis for a determination made under subsection (b) with respect to a major defense acquisition program, together with a copy of the written determination, or further information or underlying documentation for the information in a brief summary report submitted under paragraph (1), including the independent cost and schedule estimates and the independent technical risk assessments referred to in that paragraph.

(B) The explanation or information shall be submitted in unclassified form, but may include a classified annex.

(d) DEFINITIONS.—In this section:

(1) The term ''initial capabilities document'' means any capabilities requirement document approved by the Joint Requirements Oversight Council that establishes the need for a materiel approach to resolve a capability gap.

(2) The term ''Milestone A approval'' means a decision to enter into technology maturation and risk reduction pursuant to guidance prescribed by the Secretary of Defense for the management of Department of Defense acquisition programs.

(3) The term ''Milestone B approval'' has the meaning provided that term in section 4172(e)(7) of this title.

(4) The term ''core logistics capabilities'' means the core logistics capabilities identified under section 2464(a) of this title.

(5) The term ''milestone decision authority'', with respect to a major defense acquisition program or a major subprogram, means the official within the Department of Defense designated with the overall responsibility and authority for acquisition decisions for the program or subprogram, including authority to approve entry of the program or subprogram into the next phase of the acquisition process.

(6) The term ''fielding target'' has the meaning given that term in section 4271(a) of this title.

(7) The term ''major system component'' has the meaning given that term in section 4401(b)(3) of this title.

(8) The term ''congressional intelligence committees'' has the meaning given that term in section 437(c) of this title.

(Added Pub. L. 110–181, div. A, title IX, § 943(a)(1), Jan. 28, 2008, 122 Stat. 288, § 2366b; renumbered § 2366a and amended Pub. L. 110–417, [div. A], title VIII, § 813(b), (e)(1), Oct. 14, 2008, 122 Stat. 4527; Pub. L. 111–23, title I, § 101(d)(3), title II, §§ 201(e), 204(a), (b), May 22, 2009, 123 Stat. 1710, 1720, 1723; Pub. L. 111–383, div. A, title VIII, § 814(b), title X, § 1075(b)(33), Jan. 7, 2011, 124 Stat. 4266, 4370; Pub. L. 112–81, div. A, title VIII, § 801(a), (e)(1), Dec. 31, 2011, 125 Stat. 1482, 1483; Pub. L. 112–239, div. A, title III, § 322(e)(1), title X, § 1076(a)(10), Jan. 2, 2013, 126 Stat. 1695, 1948; Pub. L. 114–92, div. A, title VIII, § 823(a), Nov. 25, 2015, 129 Stat. 902; Pub. L. 114–328, div. A, title VIII, §§ 806(b), 807(d), 808(a), Dec. 23, 2016, 130 Stat. 2259, 2262; Pub. L. 115–232, div. A, title VIII, § 831(b)(2), Aug. 13, 2018, 132 Stat. 1857; Pub. L. 116–92, div. A, title XVII, § 1731(a)(44), Dec. 20, 2019, 133 Stat. 1814; renumbered § 4251 and amended Pub. L. 116–283, div. A, title XVIII, § 1847(d)(1), Jan. 1, 2021, 134 Stat. 4254.)

AMENDMENTS

2021—Pub. L. 116–283, § 1847(d)(1)(A), renumbered section 2366a of this title as this section.

Subsec. (b)(4). Pub. L. 116–283, § 1847(d)(1)(B)(i), substituted ''section 4272(a)(1)'' for ''section 2448b(a)(1)''.

Subsec. (b)(8). Pub. L. 116–283, § 1847(d)(1)(B)(ii), substituted ''subchapter II of chapter 327'' for ''subchapter II of chapter 144B''.

Subsec. (c)(1)(A). Pub. L. 116–283, § 1847(d)(1)(C)(i), substituted ''section 4271(a)'' for ''section 2448a(a)''.

Subsec. (c)(1)(C). Pub. L. 116–283, § 1847(d)(1)(C)(ii), substituted ''section 3221(b)(6)'' for ''section 2334(a)(6)''.

Subsec. (c)(1)(E). Pub. L. 116–283, § 1847(d)(1)(C)(iii), substituted ''section 4272'' for ''section 2448b''.

Subsec. (d)(1), (2). Pub. L. 116–283, § 1847(d)(1)(D)(i), redesignated pars. (2) and (3) as (1) and (2), respectively, and struck out former par. (1) which defined ''major defense acquisition program''.

Subsec. (d)(3). Pub. L. 116–283, § 1847(d)(1)(D)(ii), substituted ''section 4172(e)(7)'' for ''section 2366(e)(7)''.

Pub. L. 116–283, § 1847(d)(1)(D)(i), redesignated par. (4) as (3). Former par. (3) redesignated (2).

Subsec. (d)(4), (5). Pub. L. 116–283, § 1847(d)(1)(D)(i), redesignated pars. (5) and (7) as (4) and (5), respectively. Former par. (4) redesignated (3).

Subsec. (d)(6). Pub. L. 116–283, § 1847(d)(1)(D)(iii), substituted ''section 4271(a)'' for ''section 2448a(a)''.

Pub. L. 116–283, § 1847(d)(1)(D)(i), redesignated par. (8) as (6) and struck out former par. (6) which defined ''major subprogram''.

Subsec. (d)(7). Pub. L. 116–283, § 1847(d)(1)(D)(iv), substituted ''section 4401(b)(3)'' for ''section 2446a(b)(3)''.

Pub. L. 116–283, § 1847(d)(1)(D)(i), redesignated par. (9) as (7). Former par. (7) redesignated (5).

Subsec. (d)(8) to (10). Pub. L. 116–283, § 1847(d)(1)(D)(i), redesignated pars. (8) to (10) as (6) to (8), respectively.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 4252. Major defense acquisition programs: certification required before Milestone B approval

(a) CERTIFICATIONS AND DETERMINATION REQUIRED.—A major defense acquisition program may not receive Milestone B approval until the milestone decision authority—

(1) has received a preliminary design review and conducted a formal post-preliminary design review assessment, and certifies on the basis of such assessment that the program demonstrates a high likelihood of accomplishing its intended mission;

(2) further certifies that the technology in the program has been demonstrated in a relevant environment, as determined by the milestone decision authority on the basis of an independent review and technical risk assessment conducted under section 4272 of this title;

(3) determines in writing that—

(A) the program is affordable when considering the ability of the Department of Defense to accomplish the program's mission using alternative systems;

(B) appropriate trade-offs among cost, schedule, technical feasibility, and perform-

ance objectives have been made to ensure that the program is affordable when considering the per unit cost and the total life-cycle cost;

(C) reasonable cost and schedule estimates have been developed to execute, with the concurrence of the Director of Cost Assessment and Program Evaluation, the product development and production plan under the program;

(D) the estimated procurement unit cost for the program and the estimated date for initial operational capability for the baseline description for the program (established under section 4214 of this title) do not exceed the program cost and fielding targets established under section 4271(a) of this title, or, if such estimated cost is higher than the program cost targets or if such estimated date is later than the fielding target, the program cost targets have been increased or the fielding target has been delayed by the milestone decision authority;

(E) funding is expected to be available to execute the product development and production plan for the program, consistent with the estimates described in subparagraph (C) for the program;

(F) appropriate market research has been conducted prior to technology development to reduce duplication of existing technology and products;

(G) the Department of Defense has completed an analysis of alternatives with respect to the program;

(H) the Joint Requirements Oversight Council has accomplished its duties with respect to the program pursuant to section 181(b) of this title, including an analysis of the operational requirements for the program;

(I) life-cycle sustainment planning, including corrosion prevention and mitigation planning, has identified and evaluated relevant sustainment costs throughout development, production, operation, sustainment, and disposal of the program, and any alternatives, and that such costs are reasonable and have been accurately estimated;

(J) an estimate has been made of the requirements for core logistics capabilities and the associated sustaining workloads required to support such requirements;

(K) there is a plan to mitigate and account for any costs in connection with any anticipated de-certification of cryptographic systems and components during the production and procurement of the major defense acquisition program to be acquired;

(L) the program complies with all relevant policies, regulations, and directives of the Department of Defense;

(M) the Secretary of the military department concerned and the Chief of the armed force concerned concur in the trade-offs made in accordance with subparagraph (B);

(N) the requirements of section 4402(e) of this title are met;

(O) appropriate actions have been taken to negotiate and enter into a contract or contract options for the technical data required to support the program; and

(P) has approved the life cycle sustainment plan required under section 4324(b) of this title.[1]

(4) in the case of a space system, performs a cost benefit analysis for any new or follow-on satellite system using a dedicated ground control system instead of a shared ground control system, except that no cost benefit analysis is required to be performed under this paragraph for any Milestone B approval of a space system after December 31, 2019; and

(5) in the case of a naval vessel program, certifies compliance with the requirements of section 8669b of this title.

(b) CHANGES TO CERTIFICATIONS OR DETERMINATION.—(1) The program manager for a major defense acquisition program that has received certifications or a determination under subsection (a) shall immediately notify the milestone decision authority of any changes to the program or a designated major subprogram of such program that—

(A) alter the substantive basis for the certifications or determination of the milestone decision authority relating to any component of such certifications or determination specified in paragraph (1), (2), or (3) of subsection (a); or

(B) otherwise cause the program or subprogram to deviate significantly from the material provided to the milestone decision authority in support of such certifications or determination.

(2) Upon receipt of information under paragraph (1), the milestone decision authority may withdraw the certifications or determination concerned or rescind Milestone B approval if the milestone decision authority determines that such certifications, determination, or approval are no longer valid.

(c) SUBMISSIONS TO CONGRESS ON MILESTONE B.—

(1) BRIEF SUMMARY REPORT.—Not later than 15 days after granting Milestone B approval for a major defense acquisition program, the milestone decision authority for the program shall provide to the congressional defense committees and, in the case of intelligence or intelligence-related activities, the congressional intelligence committees a brief summary report that contains the following elements:

(A) The program cost and fielding targets established under section 4271(a) of this title.

(B) The estimated cost and schedule for the program established by the military department concerned, including—

(i) the dollar values estimated for the program acquisition unit cost, average procurement unit cost, and total life-cycle cost; and

(ii) the planned dates for each program milestone, initial operational test and evaluation, and initial operational capability.

(C) The independent estimated cost for the program established pursuant to section

[1] So in original. Does not fit with par. (3) introductory provisions and period at end probably should be a semicolon.

3221(b)(6) of this title, and any independent estimated schedule for the program, including—

(i) the dollar values and ranges estimated for the program acquisition unit cost, average procurement unit cost, and total life-cycle cost; and

(ii) the planned dates for each program milestone, initial operational test and evaluation, and initial operational capability.

(D) A summary of the technical and manufacturing risks associated with the program, as determined by the military department concerned, including identification of any critical technologies or manufacturing processes that have not been successfully demonstrated in a relevant environment.

(E) A summary of the independent technical risk assessment conducted or approved under section 4272 of this title, including identification of any critical technologies or manufacturing processes that have not been successfully demonstrated in a relevant environment.

(F) A statement of whether a modular open system approach is being used for the program.

(G) An assessment of the sufficiency of developmental test and evaluation plans, including the use of automated data analytics or modeling and simulation tools and methodologies.

(H) A summary of the life cycle sustainment plan required under section 4324 of this title.

(I) Any other information the milestone decision authority considers relevant.

(2) CERTIFICATIONS AND DETERMINATIONS.—(A) The certifications and determination under subsection (a) with respect to a major defense acquisition program shall be submitted to the congressional defense committees with the first Selected Acquisition Report submitted under sections 4351 through 4358 of this title after completion of the certification.

(B) The milestone decision authority shall retain records of the basis for the certifications and determination under paragraphs (1), (2), and (3) of subsection (a).

(3) ADDITIONAL INFORMATION.—(A) At the request of any of the congressional defense committees or, in the case of intelligence or intelligence-related activities, the congressional intelligence committees, the milestone decision authority shall submit to the committee an explanation of the basis for the certifications and determination under paragraphs (1), (2), and (3) of subsection (a) with respect to a major defense acquisition program or further information or underlying documentation for the information in a brief summary report submitted under paragraph (1), including the independent cost and schedule estimates and the independent technical risk assessments referred to in that paragraph.

(B) The explanation or information shall be submitted in unclassified form, but may include a classified annex.

(d) WAIVER FOR NATIONAL SECURITY.—(1) The milestone decision authority may, at the time of Milestone B approval or at the time that such milestone decision authority withdraws a certification or rescinds Milestone B approval pursuant to subsection (b)(2), waive the applicability to a major defense acquisition program of one or more components (as specified in paragraph (1), (2), or (3) of subsection (a)) of the certification and determination requirements if the milestone decision authority determines that, but for such a waiver, the Department would be unable to meet critical national security objectives.

(2) Whenever the milestone decision authority makes such a determination and authorizes such a waiver—

(A) the waiver, the waiver determination, and the reasons for the waiver determination shall be submitted in writing to the congressional defense committees within 30 days after the waiver is authorized; and

(B) the milestone decision authority shall review the program not less often than annually to determine the extent to which such program currently satisfies the certification and determination components specified in paragraphs (1), (2), and (3) of subsection (a) until such time as the milestone decision authority determines that the program satisfies all such certification and determination components.

(3) The requirement in paragraph (2)(B) shall not apply to a program for which a certification was required pursuant to section 4377 of this title if the milestone decision authority—

(A) determines in writing that—

(i) the program has reached a stage in the acquisition process at which it would not be practicable to meet the certification component that was waived; and

(ii) the milestone decision authority has taken appropriate alternative actions to address the underlying purposes of such certification component; and

(B) submits the written determination, and an explanation of the basis for the determination, to the congressional defense committees.

(e) DESIGNATION OF CERTIFICATION STATUS IN BUDGET DOCUMENTATION.—Any budget request, budget justification material, budget display, reprogramming request, Selected Acquisition Report, or other budget documentation or performance report submitted by the Secretary of Defense to the President regarding a major defense acquisition program receiving a waiver pursuant to subsection (d) shall prominently and clearly indicate that such program has not fully satisfied the certification requirements of this section until such time as the milestone decision authority makes the determination that such program has satisfied all such certification requirements.

(f) NONDELEGATION.—The milestone decision authority may not delegate the certification requirement under subsection (a) or the authority to waive any component of such requirement under subsection (d).

(g) DEFINITIONS.—In this section:

(1) The term ''milestone decision authority'', with respect to a major defense acquisition program, means the official within the Depart-

ment of Defense designated with the overall responsibility and authority for acquisition decisions for the program, including authority to approve entry of the program into the next phase of the acquisition process.

(2) The term ''Milestone B approval'' has the meaning provided that term in section 4172(e)(7) of this title.

(3) The term ''core logistics capabilities'' means the core logistics capabilities identified under section 2464(a) of this title.

(4) The term ''fielding target'' has the meaning given that term in section 4271(a) of this title.

(5) The term ''major system component'' has the meaning given that term in section 4401(b)(3) of this title.

(6) The term ''congressional intelligence committees'' has the meaning given that term in section 437(c) of this title.

(Added Pub. L. 109–163, div. A, title VIII, § 801(a), Jan. 6, 2006, 119 Stat. 3366, § 2366a; amended Pub. L. 109–364, div. A, title VIII, § 805, Oct. 17, 2006, 120 Stat. 2314; Pub. L. 110–181, div. A, title VIII, § 812, Jan. 28, 2008, 122 Stat. 219; renumbered § 2366b, Pub. L. 110–417, [div. A], title VIII, § 813(a), (b), Oct. 14, 2008, 122 Stat. 4527; Pub. L. 111–23, title I, § 101(d)(4), title II, §§ 201(f), 205(a), May 22, 2009, 123 Stat. 1710, 1720, 1724; Pub. L. 111–383, div. A, title VIII, §§ 813(d)(1), 814(c), title IX, § 901(j)(4), title X, § 1075(k)(1), Jan. 7, 2011, 124 Stat. 4265, 4266, 4324, 4378; Pub. L. 112–81, div. A, title VIII, §§ 801(b), (e)(2), 819(b), Dec. 31, 2011, 125 Stat. 1483, 1484, 1501; Pub. L. 112–239, div. A, title III, § 322(e)(2), title IX, § 904(e)(2), Jan. 2, 2013, 126 Stat. 1695, 1867; Pub. L. 113–66, div. A, title VIII, §§ 821(a), 822(a), title X, § 1091(b)(1), Dec. 26, 2013, 127 Stat. 809, 876; Pub. L. 114–92, div. A, title VIII, § 824(a), Nov. 25, 2015, 129 Stat. 903; Pub. L. 114–328, div. A, title VIII, §§ 805(a)(3), 807(e), 808(b), 843, Dec. 23, 2016, 130 Stat. 2255, 2262, 2263, 2290; Pub. L. 115–91, div. A, title VIII, §§ 835(b)(1), 838(a)(1), Dec. 12, 2017, 131 Stat. 1471, 1474; Pub. L. 115–232, div. A, title VIII, § 831(b)(3), Aug. 13, 2018, 132 Stat. 1857; Pub. L. 116–92, div. A, title VIII, § 833, Dec. 20, 2019, 133 Stat. 1494; renumbered § 4252 and amended Pub. L. 116–283, div. A, title VIII, § 802(b), title XVIII, §§ 1847(d)(2), 1883(b)(2), Jan. 1, 2021, 134 Stat. 3732, 4255, 4294.)

AMENDMENTS

2021—Pub. L. 116–283, § 1847(d)(2)(A), renumbered section 2366b of this title as this section.

Subsec. (a)(2). Pub. L. 116–283, § 1847(d)(2)(B)(i), substituted ''section 4272'' for ''section 2448b''.

Subsec. (a)(3)(D). Pub. L. 116–283, § 1847(d)(2)(B)(ii)(I), substituted ''section 4214 of this title'' for ''section 2435'' and ''section 4271(a)'' for ''section 2448a(a)''.

Subsec. (a)(3)(N). Pub. L. 116–283, § 1847(d)(2)(B)(ii)(II), substituted ''section 4402(e)'' for ''section 2446b(e)''.

Pub. L. 116–283, § 802(b)(1)(A), struck out ''and'' after ''met;''.

Subsec. (a)(3)(O). Pub. L. 116–283, § 802(b)(1)(B), which directed amendment of subpar. (O) by substituting ''; and'' for period at the end, was executed by making the substitution for semicolon at end to reflect the probable intent of Congress.

Subsec. (a)(3)(P). Pub. L. 116–283, § 1883(b)(2), substituted ''section 4324(b)'' for ''section 2337(b)''.

Pub. L. 116–283, § 802(b)(1)(C), added subpar. (P).

Subsec. (c)(1)(A). Pub. L. 116–283, § 1847(d)(2)(C)(i)(I), substituted ''section 4271(a)'' for ''section 2448a(a)''.

Subsec. (c)(1)(C). Pub. L. 116–283, § 1847(d)(2)(C)(i)(II), substituted ''section 3221(b)(6)'' for ''section 2334(a)(6)'' in introductory provisions.

Subsec. (c)(1)(E). Pub. L. 116–283, § 1847(d)(2)(C)(i)(III), substituted ''section 4272'' for ''section 2448b''.

Subsec. (c)(1)(H). Pub. L. 116–283, § 1883(b)(2), substituted ''section 4324'' for ''section 2337''.Pub. L. 116–283, § 802(b)(2), added subpar. (H) and redesignated former subpar. (H) as (I).

Subsec. (c)(1)(I). Pub. L. 116–283, § 802(b)(2)(A), redesignated subpar. (H) as (I).

Subsec. (c)(2)(A). Pub. L. 116–283, § 1847(d)(2)(C)(ii), substituted ''sections 4351 through 4358'' for ''section 2432''.

Subsec. (d)(3). Pub. L. 116–283, § 1847(d)(2)(D), substituted ''section 4377'' for ''section 2433a(c)'' in introductory provisions.

Subsec. (g)(1). Pub. L. 116–283, § 1847(d)(2)(E)(i), redesignated par. (3) as (1) and struck out former par. (1) which defined ''major defense acquisition program''.

Subsec. (g)(2). Pub. L. 116–283, § 1847(d)(2)(E)(i), (ii), redesignated par. (4) as (2), substituted ''section 4172(e)(7)'' for ''section 2366(e)(7)'', and struck out former par. (2) which defined ''designated major subprogram''.

Subsec. (g)(3). Pub. L. 116–283, § 1847(d)(2)(E)(i), redesignated par. (5) as (3). Former par. (3) redesignated (1).

Subsec. (g)(4). Pub. L. 116–283, § 1847(d)(2)(E)(i), (iii), redesignated par. (6) as (4) and substituted ''section 4271(a)'' for ''section 2448a(a)''. Former par. (4) redesignated (2).

Subsec. (g)(5). Pub. L. 116–283, § 1847(d)(2)(E)(i), (iv), redesignated par. (7) as (5) and substituted ''section 4401(b)(3)'' for ''section 2446a(b)(3)''. Former par. (5) redesignated (3).

Subsec. (g)(6) to (8). Pub. L. 116–283, § 1847(d)(2)(E)(i), redesignated pars. (6) to (8) as (4) to (6), respectively.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by section 1847(d)(2) of Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 4253. Major defense acquisition programs: submissions to Congress on Milestone C

(a) BRIEF SUMMARY REPORT.—Not later than 15 days after granting Milestone C approval for a major defense acquisition program, the milestone decision authority for the program shall provide to the congressional defense committees and, in the case of intelligence or intelligence-related activities, the congressional intelligence committees a brief summary report that contains the following:

(1) The estimated cost and schedule for the program established by the military department concerned, including—

(A) the dollar values estimated for the program acquisition unit cost, average procurement unit cost, and total life-cycle cost; and

(B) the planned dates for initial operational test and evaluation and initial operational capability.

(2) The independent estimated cost for the program established pursuant to section 3221(b)(6) of this title, and any independent estimated schedule for the program, including—

(A) the dollar values estimated for the program acquisition unit cost, average procurement unit cost, and total life-cycle cost; and

(B) the planned dates for initial operational test and evaluation and initial operational capability.

(3) A summary of any production, manufacturing, and fielding risks associated with the program.

(4) An assessment of the sufficiency of the developmental test and evaluation completed, including the use of automated data analytics or modeling and simulation tools and methodologies.

(b) ADDITIONAL INFORMATION.—At the request of any of the congressional defense committees or, in the case of intelligence or intelligence-related activities, the congressional intelligence committees, the milestone decision authority shall submit to the committee further information or underlying documentation for the information in a brief summary report submitted under subsection (a), including the independent cost and schedule estimates and the independent technical risk assessments referred to in that subsection.

(c) CONGRESSIONAL INTELLIGENCE COMMITTEES DEFINED.—In this section, the term ''congressional intelligence committees'' has the meaning given that term in section 437(c) of this title.

(Added Pub. L. 114–328, div. A, title VIII, § 808(c)(1), Dec. 23, 2016, 130 Stat. 2265, § 2366c; amended Pub. L. 115–91, div. A, title VIII, § 838(a)(2), Dec. 12, 2017, 131 Stat. 1474; renumbered § 4253 and amended Pub. L. 116–283, div. A, title XVIII, § 1847(d)(3), Jan. 1, 2021, 134 Stat. 4256.)

AMENDMENTS

2021—Pub. L. 116–283 renumbered section 2366c of this title as this section and, in subsec. (a)(2), substituted ''section 3221(b)(6)'' for ''section 2334(a)(6)'' in introductory provisions. Section was inserted after section 4252 of this title, as renumbered by par. (2) of section 1847(d) of Pub. L. 116–283, to reflect the probable intent of Congress, notwithstanding language directing this section be inserted after section 4252 of this title ''as transferred and redesignated by paragraph (3)'' of section 1847(d).

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

SUBCHAPTER IV—ADDITIONAL PROVISIONS APPLICABLE SPECIFICALLY TO MAJOR DEFENSE ACQUISITION PROGRAMS

Sec.
4271. Program cost, fielding, and performance goals in planning major defense acquisition programs.
4272. Independent technical risk assessments.
4273. Performance assessments and root cause analyses.
4274. Acquisition-related functions of chiefs: adherence to requirements in major defense acquisition programs.[1]
4275. [Reserved].
4276. [Reserved].

§ 4271. Program cost, fielding, and performance goals in planning major defense acquisition programs

(a) PROGRAM COST AND FIELDING TARGETS.—(1) Before funds are obligated for technology development, systems development, or production of a major defense acquisition program, the designated milestone decision authority for the program shall ensure, by establishing the goals described in paragraph (2), that the program will—

(A) be affordable;

(B) incorporate program planning that anticipates the evolution of capabilities to meet changing threats, technology insertion, and interoperability; and

(C) be fielded when needed.

(2) The goals described in this paragraph are goals for—

(A) the procurement unit cost and sustainment cost (referred to in this section as the ''program cost targets'');

(B) the date for initial operational capability (referred to in this section as the ''fielding target''); and

(C) technology maturation, prototyping, and a modular open system approach to evolve system capabilities and improve interoperability.

(b) DEFINITIONS.—In this section:

(1) The term ''procurement unit cost'' has the meaning provided in section 4351(2) of this title.

(2) The term ''initial capabilities document'' has the meaning provided in section 4251(d)(1) of this title.

(Added Pub. L. 114–328, div. A, title VIII, § 807(a)(1), Dec. 23, 2016, 130 Stat. 2260, § 2448a; amended Pub. L. 115–232, div. A, title VIII, § 831(a), Aug. 13, 2018, 132 Stat. 1857; renumbered § 4271 and amended Pub. L. 116–283, div. A, title XVIII, § 1847(e)(1), Jan. 1, 2021, 134 Stat. 4256.)

AMENDMENTS

2021—Pub. L. 116–283, § 1847(e)(1), renumbered section 2448a of this title as the section.

Subsec. (b)(1). Pub. L. 116–283, § 1847(e)(1)(A), substituted ''section 4351(2)'' for ''section 2432(a)(2)''.

Subsec. (b)(2). Pub. L. 116–283, § 1847(e)(1)(B), substituted ''section 4251(d)(1)'' for ''section 2366a(d)(2)''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 4272. Independent technical risk assessments

(a) IN GENERAL.—With respect to a major defense acquisition program, the Secretary of Defense shall conduct or approve independent technical risk assessments—

(1) before any decision to grant Milestone A approval for the program pursuant to section 4251 of this title, that identifies critical technologies and manufacturing processes that need to be matured; and

(2) before any decision to grant Milestone B approval for the program pursuant to section 4252 of this title, any decision to enter into low-rate initial production or full-rate production, or at any other time considered appropriate by the Secretary, that includes the identification of any critical technologies or manufacturing processes that have not been successfully demonstrated in a relevant environment.

[1] So in original. Does not conform to section catchline.

(b) GUIDANCE.—The Secretary shall issue guidance and a framework for the conduct, execution, and approval of independent technical risk assessments.

(Added Pub. L. 114–328, div. A, title VIII, § 807(a)(1), Dec. 23, 2016, 130 Stat. 2261, § 2448b; amended Pub. L. 116–92, div. A, title IX, § 902(73), Dec. 20, 2019, 133 Stat. 1552; renumbered § 4272 and amended Pub. L. 116–283, div. A, title XVIII, § 1847(e)(2), Jan. 1, 2021, 134 Stat. 4256.)

AMENDMENTS

2021—Pub. L. 116–283, § 1847(e)(2), renumbered section 2448b of this title as this section.

Subsec. (a)(1). Pub. L. 116–283, § 1847(e)(2)(A), substituted ''section 4251'' for ''section 2366a''.

Subsec. (a)(2). Pub. L. 116–283, § 1847(e)(2)(B), substituted ''section 4252'' for ''section 2366b''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 4273. Performance assessments and root cause analyses

(a) DESIGNATION OF SENIOR OFFICIAL RESPONSIBILITY FOR PERFORMANCE ASSESSMENTS AND ROOT CAUSE ANALYSES.—

(1) IN GENERAL.—The Secretary of Defense shall designate a senior official in the Office of the Secretary of Defense as the principal official of the Department of Defense responsible for conducting and overseeing performance assessments and root cause analyses for major defense acquisition programs.

(2) NO PROGRAM EXECUTION RESPONSIBILITY.—The Secretary shall ensure that the senior official designated under paragraph (1) is not responsible for program execution.

(3) STAFF AND RESOURCES.—The Secretary shall assign to the senior official designated under paragraph (1) appropriate staff and resources necessary to carry out the senior official's function under this section.

(b) RESPONSIBILITIES.—The senior official designated under subsection (a) shall be responsible for the following:

(1) Carrying out performance assessments of major defense acquisition programs in accordance with the requirements of subsection (c) periodically or when requested by the Secretary of Defense, the Under Secretary of Defense for Acquisition and Sustainment, the Secretary of a military department, or the head of a Defense Agency.

(2) Conducting root cause analyses for major defense acquisition programs in accordance with the requirements of subsection (d) when required by 4376(a)(1)[1] of this title, or when requested by the Secretary of Defense, the Under Secretary of Defense for Acquisition and Sustainment, the Secretary of a military department, or the head of a Defense Agency.

(3) Issuing policies, procedures, and guidance governing the conduct of performance assessments and root cause analyses by the military departments and the Defense Agencies.

(4) Evaluating the utility of performance metrics used to measure the cost, schedule, and performance of major defense acquisition programs, and making such recommendations to the Secretary of Defense as the official considers appropriate to improve such metrics.

(5) Advising acquisition officials on performance issues regarding a major defense acquisition program that may arise—

(A) before certification under sections 4736[2] and 4377 of this title;

(B) before entry into full-rate production; or

(C) in the course of consideration of any decision to request authorization of a multiyear procurement contract for the program.

(c) PERFORMANCE ASSESSMENTS.—For purposes of this section, a performance assessment with respect to a major defense acquisition program is an evaluation of the following:

(1) The cost, schedule, and performance of the program, relative to current metrics, including performance requirements and baseline descriptions.

(2) The extent to which the level of program cost, schedule, and performance predicted relative to such metrics is likely to result in the timely delivery of a level of capability to the warfighter that is consistent with the level of resources to be expended and provides superior value to alternative approaches that may be available to meet the same military requirement.

(d) ROOT CAUSE ANALYSES.—For purposes of this section and sections 4736[2] and 4377 of this title, a root cause analysis with respect to a major defense acquisition program is an assessment of the underlying cause or causes of shortcomings in cost, schedule, or performance of the program, including the role, if any, of—

(1) unrealistic performance expectations;

(2) unrealistic baseline estimates for cost or schedule;

(3) immature technologies or excessive manufacturing or integration risk;

(4) unanticipated design, engineering, manufacturing, or technology integration issues arising during program performance;

(5) changes in procurement quantities;

(6) inadequate program funding or funding instability;

(7) poor performance by government or contractor personnel responsible for program management; or

(8) any other matters.

(e) SUPPORT OF APPLICABLE CAPABILITIES AND EXPERTISE.—The Secretary of Defense shall ensure that the senior official designated under subsection (a) has the support of other Department of Defense officials with relevant capabilities and expertise needed to carry out the requirements of this section.

(Added and amended Pub. L. 111–383, div. A, title IX, § 901(d), (k)(1)(F), Jan. 7, 2011, 124 Stat. 4321, 4325, § 2438; Pub. L. 112–239, div. A, title X, § 1076(f)(27), Jan. 2, 2013, 126 Stat. 1953; Pub. L.

[1] So in original. Probably should be preceded by ''section''.

[2] So in original. Probably should be ''4376''.

114–92, div. A, title X, § 1077(b), Nov. 25, 2015, 129 Stat. 998; Pub. L. 116–92, div. A, title IX, § 902(72), Dec. 20, 2019, 133 Stat. 1551; renumbered § 4273 and amended Pub. L. 116–283, div. A, title XVIII, § 1847(e)(3), Jan. 1, 2021, 134 Stat. 4256.)

AMENDMENTS

2021—Pub. L. 116–283, § 1847(e)(3), renumbered section 2438 of this title as this section.

Subsec. (b)(2). Pub. L. 116–283, § 1847(e)(3)(A), substituted ''4376(a)(1)'' for ''section 2433a(a)(1)''.

Subsec. (b)(5)(A). Pub. L. 116–283, § 1847(e)(3)(B), substituted ''sections 4736 and 4377'' for ''section 2433a''.

Subsec. (d). Pub. L. 116–283, § 1847(e)(3)(B), substituted ''sections 4736 and 4377'' for ''section 2433a'' in introductory provisions.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 4274. Acquisition-related functions of chiefs of the armed forces: adherence to requirements in major defense acquisition programs

(a) ROLE OF SERVICE CHIEFS IN PROGRAM CAPABILITY DOCUMENT APPROVAL.—The Secretary of the military department concerned shall ensure that the program capability document supporting a Milestone B or subsequent decision for a major defense acquisition program may not be approved until the chief of the armed force concerned determines in writing that the requirements in the document are necessary and realistic in relation to the program cost and fielding targets established under 4271(a)[1] of this title.

(b) ROLE OF SERVICE CHIEFS IN MATERIAL DEVELOPMENT DECISION AND ACQUISITION SYSTEM MILESTONES.—Consistent with the performance of duties under section 3053 of this title, the Chief of the armed force concerned, or in the case of a joint program the chiefs of the armed forces concerned, with respect to major defense acquisition programs, shall—

(1) concur with the need for a materiel solution as identified in the Materiel Development Decision Review prior to entry into the Materiel Solution Analysis Phase under Department of Defense Instruction 5000.02;

(2) concur with the cost, schedule, technical feasibility, and performance trade-offs that have been made with regard to the program before Milestone A approval is granted under section 4251 of this title;

(3) concur that appropriate trade-offs among cost, schedule, technical feasibility, and performance objectives have been made to ensure that the program is affordable when considering the per unit cost and the total life-cycle cost before Milestone B approval is granted under section 4252 of this title; and

(4) concur that the requirements in the program capability document are necessary and realistic in relation to program cost and fielding targets as required by paragraph (1) before Milestone C approval is granted.

(c) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to affect the assignment of functions under section 7014(c)(1)(A), section 8014(c)(1)(A), or section 9014(c)(1)(A) of this title, except as explicitly provided in this section.

(d) PROGRAM CAPABILITY DOCUMENT DEFINED.—In this section, the term ''program capability document'' has the meaning provided that term in section 4401(b)(5) of this title.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1847(e)(4), (5), Jan. 1, 2021, 134 Stat. 4256, 4257.)

CODIFICATION

The text of subsec. (b) of section 2547 of this title, which was transferred to this section and redesignated as subsec. (a) by Pub. L. 116–283, § 1847(e)(4)(B), was based on Pub. L. 114–328, div. A, title VIII, § 807(c)(2), Dec. 23, 2016, 130 Stat. 2261; Pub. L. 115–91, div. A, title VIII, § 833, Dec. 12, 2017, 131 Stat. 1468; Pub. L. 116–92, div. A, title XVII, § 1731(a)(52), Dec. 20, 2019, 133 Stat. 1815. Section 2547 of this title was also transferred to section 3104 of this title by Pub. L. 116–283, div. A, title XVIII, § 1808(a)(2), Jan. 1, 2021, 134 Stat. 4159.

AMENDMENTS

2021—Subsec. (a). Pub. L. 116–283, § 1847(e)(4)(C), substituted ''Role of Service Chiefs in Program Capability Document Approval'' for ''Adherence to Requirements in Major Defense Acquisition Programs'' in heading, struck out par. (1) designation before ''The Secretary'' and substituted ''4271(a)'' for ''section 2448a(a)''.

Pub. L. 116–283, § 1847(e)(4)(B), redesignated subsec. (b) of section 2547 of this title as subsec. (a) of this section and par. (2) of subsec. (a) as subsec. (b).

Subsec. (b). Pub. L. 116–283, § 1847(e)(4)(D)(i)–(iii), inserted heading, substituted ''under section 3053 of this title'' for ''under subsection (a)'' in introductory provisions, and redesignated subpars. (A) to (D) as pars. (1) to (4), respectively.

Pub. L. 116–283, § 1847(e)(4)(B)(ii), redesignated par. (2) of subsec. (a) as subsec. (b).

Subsec. (b)(2). Pub. L. 116–283, § 1847(e)(4)(D)(iv), substituted ''section 4251'' for ''section 2366a''.

Subsec. (b)(3). Pub. L. 116–283, § 1847(e)(4)(D)(v), substituted ''section 4252'' for ''section 2366b''.

Subsec. (c). Pub. L. 116–283, § 1847(e)(5)(A), added subsec. (c) consisting of text identical to subsec. (c) of section 2547 of this title as in effect on the day before the effective date of this section. See Effective Date note below.

Subsec. (d). Pub. L. 116–283, § 1847(e)(5)(B), added subsec. (d).

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

SUBCHAPTER V—CONTRACTORS

Sec.
4291. [Reserved].
4292. Contracts: limitations on lead system integrators.
4293. Major defense acquisition programs: incentive program for contractors to purchase capital assets manufactured in United States.

§ 4292. Contracts: limitations on lead system integrators

(a) IN GENERAL.—Except as provided in subsection (b), no entity performing lead system in-

[1] So in original. Probably should be preceded by ''section''.

tegrator functions in the acquisition of a major system by the Department of Defense may have any direct financial interest in the development or construction of any individual system or element of any system of systems.

(b) EXCEPTION.—An entity described in subsection (a) may have a direct financial interest in the development or construction of an individual system or element of a system of systems if—

(1) the Secretary of Defense certifies to the Committees on Armed Services of the Senate and the House of Representatives that—

(A) the entity was selected by the Department of Defense as a contractor to develop or construct the system or element concerned through the use of competitive procedures; and

(B) the Department took appropriate steps to prevent any organizational conflict of interest in the selection process; or

(2) the entity was selected by a subcontractor to serve as a lower-tier subcontractor, through a process over which the entity exercised no control.

(c) CONSTRUCTION.—Nothing in this section shall be construed to preclude an entity described in subsection (a) from performing work necessary to integrate two or more individual systems or elements of a system of systems with each other.

(Added Pub. L. 109–364, div. A, title VIII, § 807(a)(1), Oct. 17, 2006, 120 Stat. 2315, § 2410p; renumbered § 4292, Pub. L. 116–283, div. A, title XVIII, § 1847(f)(1), Jan. 1, 2021, 134 Stat. 4258.)

AMENDMENTS

2021—Pub. L. 116–283 renumbered section 2410p of this title as this section.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 4293. Major defense acquisition programs: incentive program for contractors to purchase capital assets manufactured in United States

(a) ESTABLISHMENT OF INCENTIVE PROGRAM.—The Secretary of Defense shall plan and establish an incentive program in accordance with this section for contractors to purchase capital assets manufactured in the United States in part with funds available to the Department of Defense.

(b) DEFENSE INDUSTRIAL CAPABILITIES FUND MAY BE USED.—The Secretary of Defense may use the Defense Industrial Capabilities Fund, established under section 814 of the National Defense Authorization Act for Fiscal Year 2004, for incentive payments under the program established under this section.

(c) APPLICABILITY TO MAJOR DEFENSE ACQUISITION PROGRAM CONTRACTS.—The incentive program shall apply to contracts for the procurement of a major defense acquisition program.

(d) CONSIDERATION.—The Secretary of Defense shall provide consideration in source selection in any request for proposals for a major defense acquisition program for offerors with eligible capital assets.

(Added Pub. L. 108–136, div. A, title VIII, § 822(a)(1), Nov. 24, 2003, 117 Stat. 1546, § 2436; renumbered § 4293, Pub. L. 116–283, div. A, title XVIII, § 1847(f)(2), Jan. 1, 2021, 134 Stat. 4258.)

REFERENCES IN TEXT

Section 814 of the National Defense Authorization Act for Fiscal Year 2004, referred to in subsec. (b), is section 814 of Pub. L. 108–136, which is set out in a note under section 2501 of this title.

PRIOR PROVISIONS

Prior sections 4301 to 4303 and 4306 were renumbered sections 7401 to 7403 and 7406 of this title, respectively.

Prior sections 4307 and 4308 were repealed by Pub. L. 104–106, div. A, title XVI, § 1624(a)(1), (c) Feb. 10, 1996, 110 Stat. 522, effective on the earlier of the date on which the Secretary of the Army submits a certification in accordance with section 5523 of former Title 36, Patriotic Societies and Observances, or Oct. 1, 1996.

Section 4307, act Aug. 10, 1956, ch. 1041, 70A Stat. 235, permitted President to detail commissioned officer of the Army or of the Marine Corps as director of civilian marksmanship.

Section 4308, acts Aug. 10, 1956, ch. 1041, 70A Stat. 236; Nov. 14, 1986, Pub. L. 99–661, div. A, title III, § 318(a), 100 Stat. 3855; Nov. 5, 1990, Pub. L. 101–510, div. A, title III, § 328(b)–(d), (g)(1), 104 Stat. 1533, 1534; Oct. 23, 1992, Pub. L. 102–484, div. A, title III, § 380(a)(1), 106 Stat. 2389; Nov. 30, 1993, Pub. L. 103–160, div. A, title III, § 372, 107 Stat. 1635, related to authority of Secretary of the Army to promote civilian marksmanship. See section 40701 et seq. of Title 36, Patriotic and National Observances, Ceremonies, and Organizations.

A prior section 4309 was renumbered section 7409 of this title.

Prior sections 4310 and 4311 were repealed by Pub. L. 104–106, div. A, title XVI, § 1624(a)(1), (c), Feb. 10, 1996, 110 Stat. 522, effective on the earlier of the date on which the Secretary of the Army submits a certification in accordance with section 5523 of former Title 36, Patriotic Societies and Observances, or Oct. 1, 1996.

Section 4310, act Aug. 10, 1956, ch. 1041, 70A Stat. 236, permitted President and Secretary of the Army to detail members of Army as rifle instructors for civilians.

Section 4311, acts Aug. 10, 1956, ch. 1041, 70A Stat. 237; Nov. 5, 1990, Pub. L. 101–510, div. A, title III, § 328(f), 104 Stat. 1534, permitted Secretary of the Army to provide for issue of military rifles and sale of ammunition for use in rifle instruction for civilians.

Prior sections 4312 and 4313 were repealed by Pub. L. 105–225, § 6(b), Aug. 12, 1998, 112 Stat. 1499.

Section 4312, act Aug. 10, 1956, ch. 1041, 70A Stat. 237, related to National rifle and pistol matches and small-arms firing school.

Section 4313, act Aug. 10, 1956, ch. 1041, 70A Stat. 237; Pub. L. 99–145, title XIII, § 1301(b)(3)(B), Nov. 8, 1985, 99 Stat. 735; Pub. L. 99–661, div. A, title III, § 318(b), Nov. 14, 1986, 100 Stat. 3855; Pub. L. 101–510, div. A, title III, § 328(a), Nov. 5, 1990, 104 Stat. 1533; Pub. L. 102–484, div. A, title III, § 380(c)(1), Oct. 23, 1992, 106 Stat. 2391; Pub. L. 103–35, title II, § 201(g)(10)(A), May 31, 1993, 107 Stat. 100; Pub. L. 104–106, div. A, title XVI, § 1624(b)(1), Feb. 10, 1996, 110 Stat. 522, related to expenses of National Matches and small-arms school.

Prior sections 4314 and 4315 were renumbered sections 7414 and 7415 of this title, respectively.

A prior section 4316, added Pub. L. 102–484, div. A, title III, § 380(d)(1), Oct. 23, 1992, 106 Stat. 2391; amended Pub. L. 104–106, div. A, title XVI, § 1624(b)(2), Feb. 10, 1996, 110 Stat. 522, related to reporting requirements of the Secretary of the Army, prior to repeal by Pub. L. 115–91, div. A, title X, § 1051(a)(27)(A), Dec. 12, 2017, 131 Stat. 1562.

Prior sections 4317 to 4320 were renumbered sections 7417 to 7420 of this title, respectively.

AMENDMENTS

2021—Pub. L. 116–283 renumbered section 2436 of this title as this section.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

CHAPTER 323—LIFE-CYCLE AND SUSTAINMENT

Sec.
4321. Development of major defense acquisition programs: sustainment of system to be replaced.
4322. [Reserved].
4323. Sustainment reviews.
4324. Major systems: life-cycle management and product support.[1]
4325. Major weapon systems: assessment, management, and control of operating and support costs.
4326. [Reserved].
4327. [Reserved].
4328. Weapon system design: sustainment factors.

PRIOR PROVISIONS

A prior chapter 323 ''INNOVATION'', consisting of reserved section 4301, was repealed by Pub. L. 116–283, div. A, title XVIII, §1841(a)(1)(A), Jan. 1, 2021, 134 Stat. 4242.

§ 4321. Development of major defense acquisition programs: sustainment of system to be replaced

(a) REQUIREMENT FOR SUSTAINING EXISTING FORCES.—(1) The Secretary of Defense shall require that, whenever a new major defense acquisition program begins development, the defense acquisition authority responsible for that program shall develop a plan (to be known as a ''sustainment plan'') for the existing system that the system under development is intended to replace. Any such sustainment plan shall provide for an appropriate level of budgeting for sustaining the existing system until the replacement system to be developed under the major defense acquisition program is fielded and assumes the majority of responsibility for the mission of the existing system. This section does not apply to a major defense acquisition that reaches initial operational capability before October 1, 2008.

(2) In this section, the term ''defense acquisition authority'' means the Secretary of a military department or the commander of the United States Special Operations Command.

(b) SUSTAINMENT PLAN.—The Secretary of Defense shall require that each sustainment plan under this section include, at a minimum, the following:

(1) The milestone schedule for the development of the major defense acquisition program, including the scheduled dates for low-rate initial production, initial operational capability, full-rate production, and full operational capability and the date as of when the replacement system is scheduled to assume the majority of responsibility for the mission of the existing system.

(2) An analysis of the existing system to assess the following:

(A) Anticipated funding levels necessary to—

(i) ensure acceptable reliability and availability rates for the existing system; and

(ii) maintain mission capability of the existing system against the relevant threats.

(B) The extent to which it is necessary and appropriate to—

(i) transfer mature technologies from the new system or other systems to enhance the mission capability of the existing system against relevant threats; and

(ii) provide interoperability with the new system during the period from initial fielding until the new system assumes the majority of responsibility for the mission of the existing system.

(c) EXCEPTIONS.—Subsection (a) shall not apply to a major defense acquisition program if the Secretary of Defense determines that—

(1) the existing system is no longer relevant to the mission;

(2) the mission has been eliminated;

(3) the mission has been consolidated with another mission in such a manner that another existing system can adequately meet the mission requirements; or

(4) the duration of time until the new system assumes the majority of responsibility for the existing system's mission is sufficiently short so that mission availability, capability, interoperability, and force protection requirements are maintained.

(d) WAIVER.—The Secretary of Defense may waive the applicability of subsection (a) to a major defense acquisition program if the Secretary determines that, but for such a waiver, the Department would be unable to meet national security objectives. Whenever the Secretary makes such a determination and authorizes such a waiver, the Secretary shall submit notice of such waiver and of the Secretary's determination and the reasons therefor in writing to the congressional defense committees.

(Added Pub. L. 108–375, div. A, title VIII, §805(a)(1), Oct. 28, 2004, 118 Stat. 2008, §2437; renumbered §4321, Pub. L. 116–283, div. A, title XVIII, §1848(b), Jan. 1, 2021, 134 Stat. 4258.)

PRIOR PROVISIONS

A prior section 4321 was renumbered section 7421 of this title.

AMENDMENTS

2021—Pub. L. 116–283 renumbered section 2437 of this title as this section.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 4323. Sustainment reviews

(a) IN GENERAL.—The Secretary of each military department shall conduct a sustainment re-

[1] So in original. Does not conform to section catchline.

view of each covered system not later than five years after declaration of initial operational capability of a major defense acquisition program, and every five years thereafter throughout the life cycle of the covered system, to assess the product support strategy, performance, and operation and support costs of the covered system. The results of the sustainment review shall be documented in a memorandum by the relevant decision authority. The Secretary concerned shall make the memorandum and supporting documentation for each sustainment review available to the Under Secretary of Defense for Acquisition and Sustainment within 30 days after the review is completed.

(b) ELEMENTS.—At a minimum, the review required under subsection (a) shall assess execution of the life cycle sustainment plan of the covered system and include the following elements:

(1) An independent cost estimate for the remainder of the life cycle of the program.

(2) A comparison of actual costs to the amount of funds budgeted and appropriated in the previous five years, and if funding shortfalls exist, an explanation of the implications on equipment availability.

(3) A comparison between the assumed and achieved system reliabilities.

(4) An analysis of the most cost-effective source of repairs and maintenance.

(5) An evaluation of the cost of consumables and depot-level repairables.

(6) An evaluation of the costs of information technology, networks, computer hardware, and software maintenance and upgrades.

(7) As applicable, an assessment of the actual fuel efficiencies compared to the projected fuel efficiencies as demonstrated in tests or operations.

(8) As applicable, a comparison of actual manpower requirements to previous estimates.

(9) An analysis of whether accurate and complete data are being reported in the cost systems of the military department concerned, and if deficiencies exist, a plan to update the data and ensure accurate and complete data are submitted in the future.

(10) As applicable, information regarding any decision to restructure the life cycle sustainment plan for a covered system or any other action that will lead to critical operating and support cost growth.

(c) COORDINATION.—The review required under subsection (a) shall be conducted in coordination with the requirements of sections 4324 and 4325 of this title.

(d) SUBMISSION TO CONGRESS.—(1) Not later than September 30 of each fiscal year, the Secretary of each military department shall annually submit to the congressional defense committees the sustainment reviews required by this section for such fiscal year.

(2) Each submission under paragraph (1) shall be submitted in unclassified form, but may include a classified annex.

(3) For a covered system with critical operating and support cost growth, such submission shall include a remediation plan to reduce operating and support costs or a certification by the Secretary concerned that such critical operating and support cost growth is necessary to meet national security requirements.

(e) DEFINITIONS.—In this section:

(1) COVERED SYSTEM.—The term ''covered system'' shall have the meaning given in section 4324 of this title.

(2) CRITICAL OPERATING AND SUPPORT COST GROWTH.—The term ''critical operating and support cost growth'' means operating and support cost growth—

(A) of at least 25 percent more than the estimate documented in the most recent independent cost estimate for the covered system; or

(B) of at least 50 percent more than the estimate documented in the original Baseline Estimate (as defined in section 4214(d) of this title) for the covered system.

(Added Pub. L. 114–328, div. A, title VIII, § 849(c)(1), Dec. 23, 2016, 130 Stat. 2293, § 2441; amended Pub. L. 115–91, div. A, title VIII, §§ 816, 836(b)(2), Dec. 12, 2017, 131 Stat. 1462, 1473; renumbered § 4323 and amended Pub. L. 116–283, div. A, title VIII, § 802(c), title XVIII, §§ 1848(c), 1883(b)(2), Jan. 1, 2021, 134 Stat. 3732, 4258, 4294.)

AMENDMENTS

2021—Pub. L. 116–283, § 1848(c), renumbered section 2441 of this title as this section.

Subsec. (a). Pub. L. 116–283, § 802(c)(1), in first sentence, substituted ''covered system'' for ''major weapon system'', '', and every five years thereafter throughout the life cycle of the covered system,'' for ''and throughout the life cycle of the weapon system'', and ''costs of the covered system'' for ''costs of the weapon system'' and struck out second sentence which read as follows: ''For any review after the first one, the Secretary concerned shall use availability and reliability thresholds and cost estimates as the basis for the circumstances that prompt such a review.''

Subsec. (b). Pub. L. 116–283, § 802(c)(2)(A), inserted ''assess execution of the life cycle sustainment plan of the covered system and'' before ''include the following elements:'' in introductory provisions.

Subsec. (b)(10). Pub. L. 116–283, § 802(c)(2)(B), added par. (10).

Subsec. (c). Pub. L. 116–283, § 1848(c), substituted ''sections 4324 and 4325'' for ''sections 2337 and 2337a''.

Subsec. (d). Pub. L. 116–283, § 802(c)(3), added subsec. (d).

Subsec. (e). Pub. L. 116–283, § 802(c)(3), added subsec. (e).

Subsec. (e)(1). Pub. L. 116–283, § 1883(b)(2), substituted ''section 4324'' for ''section 2337''.

Subsec. (e)(2)(B). Pub. L. 116–283, § 1883(b)(2), substituted ''section 4214(d)'' for ''section 2435(d)''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by sections 1848(c) and 1883(b)(2) of Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 4324. Life-cycle management and product support

(a) GUIDANCE ON LIFE-CYCLE MANAGEMENT.—The Secretary of Defense shall issue and maintain comprehensive guidance on life-cycle management and the development and implementation of product support strategies for covered systems. The guidance issued pursuant to this subsection shall—

(1) maximize competition and make the best possible use of available Department of De-

fense and industry resources at the system, subsystem, and component levels; and

(2) maximize value to the Department of Defense by providing the best possible product support outcomes at the lowest operations and support cost.

(b) LIFE CYCLE SUSTAINMENT PLAN.—Before granting Milestone B approval (or the equivalent), the milestone decision authority shall ensure that each covered system has an approved life cycle sustainment plan. The life cycle sustainment plan shall include—

(1) a comprehensive product support strategy;

(2) performance goals, including key performance parameters for sustainment, key system attributes of the covered system, and other appropriate metrics;

(3) an approved life-cycle cost estimate for the covered system;

(4) affordability constraints and key cost factors that could affect the operating and support costs of the covered system;

(5) sustainment risks and proposed mitigation plans for such risks;

(6) engineering and design considerations that support cost-effective sustainment of the covered system;

(7) a technical data and intellectual property management plan for product support; and

(8) major maintenance and overhaul requirements that will be required during the life cycle of the covered system.

(c) PRODUCT SUPPORT MANAGERS.—

(1) REQUIREMENT.—The Secretary of Defense shall require that each covered system be supported by a product support manager in accordance with this subsection.

(2) RESPONSIBILITIES.—A product support manager for a covered system shall—

(A) develop, update, and implement a life cycle sustainment plan described in subsection (b);

(B) ensure the life cycle sustainment plan is informed by appropriate predictive analysis and modeling tools that can improve material availability and reliability, increase operational availability rates, and reduce operation and sustainment costs;

(C) conduct appropriate cost analyses to validate the product support strategy and life cycle sustainment plan, including cost-benefit analyses as outlined in Office of Management and Budget Circular A–94;

(D) ensure achievement of desired product support outcomes through development and implementation of appropriate product support arrangements;

(E) adjust performance requirements and resource allocations across product support integrators and product support providers as necessary to optimize implementation of the product support strategy;

(F) periodically review product support arrangements between the product support integrators and product support providers to ensure the arrangements are consistent with the overall product support strategy;

(G) prior to each change in the product support strategy or every five years, whichever occurs first, revalidate any business-case analysis performed in support of the product support strategy;

(H) ensure that the product support strategy maximizes small business participation at the appropriate tiers; and

(I) ensure that product support arrangements for the covered system describe how such arrangements will ensure efficient procurement, management, and allocation of Government-owned parts inventories in order to prevent unnecessary procurements of such parts.

(d) DEFINITIONS.—In this section:

(1) PRODUCT SUPPORT.—The term ''product support'' means the package of support functions required to field and maintain the readiness and operational capability of covered systems, subsystems, and components, including all functions related to covered system readiness.

(2) PRODUCT SUPPORT ARRANGEMENT.—The term ''product support arrangement'' means a contract, task order, or any type of other contractual arrangement, or any type of agreement or non-contractual arrangement within the Federal Government, for the performance of sustainment or logistics support required for covered systems, subsystems, or components. The term includes arrangements for any of the following:

(A) Performance-based logistics.

(B) Sustainment support.

(C) Contractor logistics support.

(D) Life-cycle product support.

(E) Weapon systems product support.

(3) PRODUCT SUPPORT INTEGRATOR.—The term ''product support integrator'' means an entity within the Federal Government or outside the Federal Government charged with integrating all sources of product support, both private and public, defined within the scope of a product support arrangement.

(4) PRODUCT SUPPORT PROVIDER.—The term ''product support provider'' means an entity that provides product support functions. The term includes an entity within the Department of Defense, an entity within the private sector, or a partnership between such entities.

(5) COVERED SYSTEM.—The term ''covered system'' means—

(A) a major defense acquisition program as defined in section 2430 [1] of this title; or

(B) an acquisition program or project that is carried out using the rapid fielding or rapid prototyping acquisition pathway under section 804 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114–92; 10 U.S.C. 2302 note) that is estimated by the Secretary of Defense to require an eventual total expenditure described in section 4201(a)(2).

(6) MILESTONE B APPROVAL.—The term ''Milestone B approval'' has the meaning given that term in section 4172(e)(7) of this title.

(7) MILESTONE DECISION AUTHORITY.—The term ''milestone decision authority'' has the

[1] Probably refers to section 4201 of this title, but amendment by section 1883(b)(2) of Pub. L. 116–283 was not executed as section 2430 was transferred to multiple sections.

meaning given in section 4211(e)(3) of this title.

(Added Pub. L. 112–239, div. A, title VIII, § 823(a)(1), Jan. 2, 2013, 126 Stat. 1830, § 2337; amended Pub. L. 113–66, div. A, title VIII, § 823, Dec. 26, 2013, 127 Stat. 809; renumbered § 4324 and amended Pub. L. 116–283, div. A, title VIII, § 802(a), title XVIII, §§ 1848(d)(1), (2), 1883(b)(2), Jan. 1, 2021, 134 Stat. 3731, 4258, 4294.)

AMENDMENTS

2021—Pub. L. 116–283, § 1848(d)(1), renumbered section 2337 of this title as this section.

Pub. L. 116–283, § 802(a)(1)–(3), substituted ''covered system'' for ''major weapon system'' and ''weapon system'' and ''covered systems'' for ''major weapon systems'' wherever appearing.

Subsec. (b). Pub. L. 116–283, § 802(a)(5), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 116–283, § 802(a)(4), redesignated subsec. (b) as (c). Former subsec. (c) redesignated (d).

Subsec. (c)(2)(A). Pub. L. 116–283, § 802(a)(6)(A), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''develop and implement a comprehensive product support strategy for the weapon system;''.

Subsec. (c)(2)(B). Pub. L. 116–283, § 802(a)(6)(B), substituted ''ensure the life cycle sustainment plan is informed by'' for ''use''.

Subsec. (c)(2)(C). Pub. L. 116–283, § 802(a)(6)(C), inserted ''and life cycle sustainment plan'' after ''product support strategy''.

Subsec. (c)(5). Pub. L. 116–283, § 1848(d)(2), which directed amendment of subsec. (c)(5) by substituting ''section 3041(c)(1)'' for ''section 2302d(a)'', could not be executed because of the intervening amendments by Pub. L. 116–283, § 802(a)(4), (7)(A). See notes below.

Subsec. (d). Pub. L. 116–283, § 802(a)(4), redesignated subsec. (c) as (d).

Subsec. (d)(5). Pub. L. 116–283, § 802(a)(7)(A), amended par. (5) generally. Prior to amendment, par. (5) defined ''major weapon system''.

Subsec. (d)(5)(A). Pub. L. 116–283, § 1883(b)(2), which directed that each reference in the text of title 10 to a section that was redesignated by title XVIII of Pub. L. 116–283, as such section was in effect before the redesignation, be amended by striking such reference and inserting a reference to the appropriate redesignated section, was not executed with respect to ''section 2430'', which was redesignated as multiple sections.

Subsec. (d)(5)(B). Pub. L. 116–283, § 1883(b)(2), substituted ''section 4201(a)(2)'' for ''section 2430(a)(1)(B)''.

Subsec. (d)(6). Pub. L. 116–283, § 1883(b)(2), substituted ''section 4172(e)(7)'' for ''section 2366(e)(7)''.

Pub. L. 116–283, § 802(a)(7)(B), added par. (6).

Subsec. (d)(7). Pub. L. 116–283, § 1883(b)(2), substituted ''section 4211(e)(3)'' for ''section 2431a(e)(5)''.

Pub. L. 116–283, § 802(a)(7)(B), added par. (7).

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by sections 1848(d)(1), (2) and 1883(b)(2) of Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 4325. Major weapon systems: assessment, management, and control of operating and support costs

(a) GUIDANCE REQUIRED.—The Secretary of Defense shall issue and maintain guidance on actions to be taken to assess, manage, and control Department of Defense costs for the operation and support of major weapon systems.

(b) ELEMENTS.—The guidance required by subsection (a) shall, at a minimum—

(1) be issued in conjunction with the comprehensive guidance on life-cycle management and the development and implementation of product support strategies for major weapon systems required by section 4324 of this title;

(2) require the military departments to retain each estimate of operating and support costs that is developed at any time during the life cycle of a major weapon system, together with supporting documentation used to develop the estimate;

(3) require the military departments to update estimates of operating and support costs periodically throughout the life cycle of a major weapon system, to determine whether preliminary information and assumptions remain relevant and accurate, and identify and record reasons for variances;

(4) establish policies and procedures for the collection, organization, maintenance, and availability of standardized data on operating and support costs for major weapon systems in accordance with section 2222 of this title;

(5) establish standard requirements for the collection and reporting of data on operating and support costs for major weapon systems by contractors performing weapon system sustainment functions in an appropriate format, and develop contract clauses to ensure that contractors comply with such requirements;

(6) require the military departments—

(A) to collect and retain data from operational and developmental testing and evaluation on the reliability and maintainability of major weapon systems; and

(B) to use such data to inform system design decisions, provide insight into sustainment costs, and inform estimates of operating and support costs for such systems;

(7) require the military departments to ensure that sustainment factors are fully considered at key life-cycle management decision points and that appropriate measures are taken to reduce operating and support costs by influencing system design early in development, developing sound sustainment strategies, and addressing key drivers of costs;

(8) require the military departments to conduct an independent logistics assessment of each major weapon system prior to key acquisition decision points (including milestone decisions) to identify features that are likely to drive future operating and support costs, changes to system design that could reduce such costs, and effective strategies for managing such costs;

(9) include—

(A) reliability metrics for major weapon systems; and

(B) requirements on the use of metrics under subparagraph (A) as triggers—

(i) to conduct further investigation and analysis into drivers of those metrics; and

(ii) to develop strategies for improving reliability, availability, and maintainability of such systems at an affordable cost; and

(10) require the military departments to conduct periodic reviews of operating and support

costs of major weapon systems after such systems achieve initial operational capability to identify and address factors resulting in growth in operating and support costs and adapt support strategies to reduce such costs.

(c) RETENTION OF DATA ON OPERATING AND SUPPORT COSTS.—

(1) IN GENERAL.—The Director of Cost Assessment and Program Evaluation shall be responsible for developing and maintaining a database on operating and support estimates, supporting documentation, and actual operating and support costs for major weapon systems.

(2) SUPPORT.—The Secretary of Defense shall ensure that the Director, in carrying out such responsibility—

(A) promptly receives the results of all cost estimates and cost analyses conducted by the military departments with regard to operating and support costs of major weapon systems;

(B) has timely access to any records and data of the military departments (including classified and proprietary information) that the Director considers necessary to carry out such responsibility; and

(C) with the concurrence of the Under Secretary of Defense for Acquisition and Sustainment, may direct the military departments to collect and retain information necessary to support the database.

(d) MAJOR WEAPON SYSTEM DEFINED.—In this section, the term ''major weapon system'' has the meaning given that term in section 3455(f) of this title.

(Added Pub. L. 115–91, div. A, title VIII, § 836(a)(1), Dec. 12, 2017, 131 Stat. 1472, § 2337a; amended Pub. L. 115–232, div. A, title X, § 1081(a)(20), Aug. 13, 2018, 132 Stat. 1984; renumbered § 4325 and amended Pub. L. 116–283, div. A, title XVIII, § 1848(d)(1), (3), Jan. 1, 2021, 134 Stat. 4258.)

AMENDMENTS

2021—Pub. L. 116–283, § 1848(d)(3)(B), amended section catchline generally. Prior to amendment, section catchline read as follows: ''Assessment, management, and control of operating and support costs for major weapon systems''.

Pub. L. 116–283, § 1848(d)(1), renumbered section 2337a of this title as this section.

Subsec. (b)(1). Pub. L. 116–283, § 1848(d)(3)(A)(i), substituted ''section 4324'' for ''section 2337''.

Subsec. (d). Pub. L. 116–283, § 1848(d)(3)(A)(ii), substituted ''section 3455(f)'' for ''section 2379(f)''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 4328. Weapon system design: sustainment factors

(a) IN GENERAL.—The Secretary of Defense shall ensure that the defense acquisition system gives ample emphasis to sustainment factors, particularly those factors that are affected principally by the design of a weapon system, in the development of a weapon system.

(b) REQUIREMENTS PROCESS.—The Secretary shall ensure that reliability and maintainability are included in the performance attributes of the key performance parameter on sustainment during the development of capabilities requirements.

(c) SOLICITATION AND AWARD OF CONTRACTS.—

(1) REQUIREMENT.—The program manager of a weapon system shall include in the solicitation for and terms of a covered contract for the weapon system clearly defined and measurable requirements for engineering activities and design specifications for reliability and maintainability.

(2) EXCEPTION.—If the program manager determines that engineering activities and design specifications for reliability or maintainability should not be a requirement in a covered contract or a solicitation for such a contract, the program manager shall document in writing the justification for the decision.

(3) SOURCE SELECTION CRITERIA.—The Secretary shall ensure that sustainment factors, including reliability and maintainability, are given ample emphasis in the process for source selection. The Secretary shall encourage the use of objective reliability and maintainability criteria in the evaluation of competitive proposals.

(d) CONTRACT PERFORMANCE.—

(1) IN GENERAL.—The Secretary shall ensure that the Department of Defense uses best practices for responding to the positive or negative performance of a contractor in meeting the sustainment requirements of a covered contract for a weapon system. The Secretary shall encourage the use of incentive fees and penalties as appropriate and authorized in paragraph (2) in all covered contracts for weapons systems.

(2) AUTHORITY FOR INCENTIVE FEES AND PENALTIES.—The Secretary of Defense is authorized to include in any covered contract provisions for the payment of incentive fees to the contractor based on achievement of design specification requirements for reliability and maintainability of weapons systems under the contract, or the imposition of penalties to be paid by the contractor to the Government for failure to achieve such design specification requirements. Information about such fees or penalties shall be included in the solicitation for any covered contract that includes such fees or penalties.

(3) MEASUREMENT OF RELIABILITY AND MAINTAINABILITY.—In carrying out paragraph (2), the program manager shall base determinations of a contractor's performance on reliability and maintainability data collected during the program. Such data collection and associated evaluation metrics shall be described in detail in the covered contract. To the maximum extent practicable, such data shall be shared with appropriate contractor and government organizations.

(4) NOTIFICATION.—The Secretary of Defense shall notify the congressional defense committees upon entering into a covered contract that includes incentive fees or penalties authorized in paragraph (2).

(e) COVERED CONTRACT DEFINED.—In this section, the term ''covered contract'', with respect to a weapon system, means a contract—

(1) for the engineering and manufacturing development of a weapon system, including embedded software; or

(2) for the production of a weapon system, including embedded software.

(Added Pub. L. 115–91, div. A, title VIII, § 834(a)(1), Dec. 12, 2017, 131 Stat. 1469, § 2443; renumbered § 4328 and amended Pub. L. 116–283, div. A, title XVIII, § 1848(e), Jan. 1, 2021, 134 Stat. 4259.)

PRIOR PROVISIONS

Prior sections 4331 to 4338 were renumbered sections 7431 to 7438 of this title, respectively.

A prior section 4339, act Aug. 10, 1956, ch. 1041, 70A Stat. 240, authorized public quarters and fuel and light therefor for the organist and choirmaster of the Academy and for civilian instructors in the departments of foreign languages and tactics, prior to repeal by Pub. L. 89–716, § 1, Nov. 2, 1966, 80 Stat. 1114.

Prior sections 4340 to 4343 were renumbered sections 7440 to 7443 of this title, respectively.

Prior sections 4344 to 4345a were repealed by Pub. L. 114–328, div. A, title XII, § 1248(b)(1), Dec. 23, 2016, 130 Stat. 2525.

Section 4344, act Aug. 10, 1956, ch. 1041, 70A Stat. 242; Pub. L. 98–94, title X, § 1004(a)(1), Sept. 24, 1983, 97 Stat. 657; Pub. L. 105–85, div. A, title V, § 543(a), Nov. 18, 1997, 111 Stat. 1743; Pub. L. 106–65, div. A, title V, § 534(a), Oct. 5, 1999, 113 Stat. 605; Pub. L. 106–398, § 1 [[div. A], title V, § 532(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A-110; Pub. L. 107–107, div. A, title V, § 533(a)(1), (2), Dec. 28, 2001, 115 Stat. 1105, related to selection of persons from foreign countries to receive instruction at the United States Military Academy. See section 347 of this title.

Section 4345, added Pub. L. 105–85, div. A, title V, § 542(a)(1), Nov. 18, 1997, 111 Stat. 1740; amended Pub. L. 106–65, div. A, title V, § 535(a), Oct. 5, 1999, 113 Stat. 605; Pub. L. 109–364, div. A, title V, § 531(a), Oct. 17, 2006, 120 Stat. 2198, related to an exchange program with foreign military academies.

A prior section 4345, act Aug. 10, 1956, ch. 1041, 70A Stat. 242, related to selection of Filipinos for instruction at the Military Academy, prior to repeal by Pub. L. 98–94, title X, § 1004(a)(2), (d), Sept. 24, 1983, 97 Stat. 658, 660, effective one year after Sept. 24, 1983.

Section 4345a, added Pub. L. 110–417, [div. A], title V, § 541(a)(1), Oct. 14, 2008, 122 Stat. 4454; amended Pub. L. 113–291, div. A, title V, § 553(a), Dec. 19, 2014, 128 Stat. 3377, related to foreign and cultural exchange activities.

Prior sections 4346 to 4349 were renumbered sections 7446 to 7449 of this title, respectively.

AMENDMENTS

2021—Pub. L. 116–283, § 1848(e)(2), amended section catchline generally. Prior to amendment, section catchline read as follows: ''Sustainment factors in weapon system design''.

Pub. L. 116–283, § 1848(e)(1), renumbered section 2443 of this title as this section. Section was inserted after section 4325 of this title to reflect the probable intent of Congress, notwithstanding directory language inserting it after section ''4235''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

CHAPTER 324—PROGRAM STATUS–SELECTED ACQUISITION REPORTS

Sec.
4350. Selected acquisition reports: termination.
4351. Selected acquisition reports: definitions.
4352. Selected acquisition reports: requirement for quarterly reports.
4353. Selected acquisition reports for 1st quarter of a fiscal year: comprehensive annual report.
4354. Selected acquisition reports for 2d, 3d, and 4th quarters.
4355. Selected acquisition reports: quarterly SAR report content.
4356. Selected acquisition reports: time for submission to Congress; form of report.
4357. Selected acquisition reports: termination of requirements with respect to a program or subprogram.
4358. Selected acquisition reports: when total program reporting begins; limited reports before approval to proceed to system development and demonstration.

§ 4350. Selected acquisition reports: termination

The requirements under this chapter shall terminate after the final submission covering fiscal year 2021.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1849(a), (b), Jan. 1, 2021, 134 Stat. 4259.)

CODIFICATION

The text of subsec. (j) of section 2432 of this title, which was transferred to this section and amended by Pub. L. 116–283, § 1849(b), was based on Pub. L. 116–92, div. A, title VIII, § 830(a)(2), Dec. 20, 2019, 133 Stat. 1492.

PRIOR PROVISIONS

A prior section 4350 was renumbered section 7450 of this title.

AMENDMENTS

2021—Pub. L. 116–283, § 1849(b), transferred subsec. (j) of section 2432 of this title to this section, struck out the subsec. designation and heading, and substituted ''this chapter'' for ''this section''.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 4351. Selected acquisition reports: definitions

In this section:

(1) PROGRAM ACQUISITION UNIT COST.—The term ''program acquisition unit cost'', with respect to a major defense acquisition program, means the amount equal to (A) the total cost for development and procurement of, and system-specific military construction for, the acquisition program, divided by (B) the number of fully-configured end items to be produced for the acquisition program.

(2) PROCUREMENT UNIT COST.—The term ''procurement unit cost'', with respect to a major defense acquisition program, means the amount equal to (A) the total of all funds programmed to be available for obligation for procurement for the program, divided by (B) the number of fully-configured end items to be procured.

(3) MAJOR CONTRACT.—The term ''major contract'', with respect to a major defense acquisition program, means each of the six largest prime, associate, or Government-furnished

equipment contracts under the program that is in excess of $40,000,000 and that is not a firm, fixed price contract.

(4) FULL LIFE-CYCLE COST.—The term ''full life-cycle cost'', with respect to a major defense acquisition program, means all costs of development, procurement, military construction, and operations and support, without regard to funding source or management control.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1849(a), (c), Jan. 1, 2021, 134 Stat. 4259, 4260.)

CODIFICATION

The text of subsec. (a) of section 2432 of this title, which was transferred to this section and amended by Pub. L. 116–283, § 1849(c), was based on Pub. L. 97–252, title XI, § 1107(a)(1), Sept. 8, 1982, 96 Stat. 739, § 139a; Pub. L. 98–525, title XII, § 1242(a)(1), (2), Oct. 19, 1984, 98 Stat. 2606, 2607; renumbered § 2432, Pub. L. 99–433, title I, § 101(a)(5), Oct. 1, 1986, 100 Stat. 995; Pub. L. 99–500, § 101(c) [title X, § 961(a)(1), (2)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–175, and Pub. L. 99–591, § 101(c) [title X, § 961(a)(1), (2)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–175; Pub. L. 99–661, div. A, title IX, formerly title IV, § 961(a)(1), (2), Nov. 14, 1986, 100 Stat. 3955, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; Pub. L. 100–26, § 7(b)(3), (k)(2), Apr. 21, 1987, 101 Stat. 279, 284; Pub. L. 100–180, div. A, title XII, § 1233(a)(1), title XIII, § 1314(a)(1), Dec. 4, 1987, 101 Stat. 1161, 1175; Pub. L. 101–510, div. A, title XIV, § 1407(b), Nov. 5, 1990, 104 Stat. 1681; Pub. L. 102–190, div. A, title VIII, § 801(b)(2), Dec. 5, 1991, 105 Stat. 1412; Pub. L. 102–484, div. A, title VIII, § 817(c)(1), Oct. 23, 1992, 106 Stat. 2455; Pub. L. 103–355, title III, § 3002(a)(1), (b), (c), Oct. 13, 1994, 108 Stat. 3328.

PRIOR PROVISIONS

A prior section 4351 was renumbered section 7451 of this title.

AMENDMENTS

2021—Pub. L. 116–283, § 1849(c), transferred subsec. (a) of section 2432 of this title to this section, struck out subsec. designation, and inserted par. headings after designations for pars. (1) to (4).

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 4352. Selected acquisition reports: requirement for quarterly reports

(a) IN GENERAL.—

(1) The Secretary of Defense shall submit to Congress at the end of each fiscal-year quarter a report on—

(A) current major defense acquisition programs; and

(B) any program that is estimated by the Secretary of Defense to require—

(i) an eventual total expenditure for research, development, test, and evaluation of more than $300,000,000 (based on fiscal year 1990 constant dollars); or

(ii) an eventual total expenditure for procurement, including all planned increments or spirals, of more than $1,800,000,000 (based on fiscal year 1990 constant dollars).

(2) Except as provided in subsections (b) and (c), each such report shall include a status report on each defense acquisition program that at the end of such quarter is a major defense acquisition program.

(3) Reports under this chapter shall be known as Selected Acquisition Reports.

(b) REPORTS NOT REQUIRED FOR 2D, 3D, AND 4TH QUARTERS FOR CERTAIN PROGRAMS.—A status report on a major defense acquisition program need not be included in the Selected Acquisition Report for the second, third, or fourth quarter of a fiscal year if such a report was included in a previous Selected Acquisition Report for that fiscal year and during the period since that report there has been—

(1) less than a 15 percent increase in program acquisition unit cost and current procurement unit cost for the program (or for each designated subprogram under the program); and

(2) less than a six-month delay in any program schedule milestone shown in the Selected Acquisition Report.

(c) SECRETARY OF DEFENSE WAIVER AUTHORITY.—

(1) AUTHORITY.—The Secretary of Defense may waive the requirement for submission of Selected Acquisition Reports for a program for a fiscal year if—

(A) the program has not entered system development and demonstration;

(B) a reasonable cost estimate has not been established for such program; and

(C) the system configuration for such program is not well defined.

(2) NOTIFICATION TO CONGRESSIONAL COMMITTEES.—The Secretary shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a written notification of each waiver under paragraph (1) for a program for a fiscal year not later than 60 days before the President submits the budget to Congress pursuant to section 1105 of title 31 in that fiscal year.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1849(a), (d), Jan. 1, 2021, 134 Stat. 4259, 4260.)

CODIFICATION

The text of subsec. (b) of section 2432 of this title, which was transferred to this section and amended by Pub. L. 116–283, § 1849(d)(1), was based on Pub. L. 97–252, title XI, § 1107(a)(1), Sept. 8, 1982, 96 Stat. 739, § 139a; Pub. L. 98–525, title XII, § 1242(a)(3), Oct. 19, 1984, 98 Stat. 2607; renumbered § 2432, Pub. L. 99–433, title I, § 101(a)(5), Oct. 1, 1986, 100 Stat. 995; Pub. L. 99–500, § 101(c) [title X, § 961(a)(3)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–175, and Pub. L. 99–591, § 101(c) [title X, § 961(a)(3)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–175; Pub. L. 99–661, div. A, title IX, formerly title IV, § 961(a)(3), Nov. 14, 1986, 100 Stat. 3955, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; Pub. L. 100–180, div. A, title XIII, § 1314(a)(1), Dec. 4, 1987, 101 Stat. 1175; Pub. L. 101–189, div. A, title VIII, § 811(c), Nov. 29, 1989, 103 Stat. 1493; Pub. L. 102–484, div. A, title VIII, § 817(c)(2), Oct. 23, 1992, 106 Stat. 2455; Pub. L. 103–355, title III, § 3002(h)(1), Oct. 13, 1994, 108 Stat. 3329; Pub. L. 104–106, div. A, title XV, § 1502(a)(1), Feb. 10, 1996, 110 Stat. 502; Pub. L. 106–65, div. A, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 107–107, div. A, title VIII, § 821(a), Dec. 28, 2001, 115 Stat. 1181; Pub. L. 110–417, [div. A], title VIII, § 811(b), Oct. 14, 2008, 122 Stat. 4521; Pub. L. 116–92, div. A, title VIII, § 830(a), Dec. 20, 2019, 133 Stat. 1492.

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PRIOR PROVISIONS

A prior section 4352 was renumbered section 7452 of this title.

AMENDMENTS

2021—Pub. L. 116–283, § 1849(d)(1), transferred subsec. (b) of section 2432 of this title to this section, struck out subsec. designation, and redesignated pars. (1) to (3) as subsecs. (a) to (c), respectively.

Subsec. (a). Pub. L. 116–283, § 1849(d)(2)(A)–(C), inserted subsec. heading and par. (1) designation before "The Secretary", substituted "a report on—" and subpars. (A) and (B) for "a report on current major defense acquisition programs and any program that is estimated by the Secretary of Defense to require an eventual total expenditure for research, development, test, and evaluation of more than $300,000,000 (based on fiscal year 1990 constant dollars) or an eventual total expenditure for procurement, including all planned increments or spirals, of more than $1,800,000,000 (based on fiscal year 1990 constant dollars).", and redesignated second and third sentences as pars. (2) and (3), respectively.

Subsec. (a)(2). Pub. L. 116–283, § 1849(d)(2)(D), substituted "subsections (b) and (c)" for "paragraphs (2) and (3)".

Subsec. (a)(3). Pub. L. 116–283, § 1849(d)(2)(E), substituted "this chapter" for "this section".

Subsec. (b). Pub. L. 116–283, § 1849(d)(3), inserted heading before "A status report" and redesignated subpars. (A) and (B) as pars. (1) and (2), respectively.

Subsec. (c). Pub. L. 116–283, § 1849(d)(4)(A)–(C), inserted subsec. heading, redesignated subpars. (A) and (B) as pars. (1) and (2), respectively, inserted par. (1) heading, and redesignated cls. (i) to (iii) of par. (1) as subpars. (A) to (C) of par. (1), respectively, and realigned margins.

Subsec. (c)(2). Pub. L. 116–283, § 1849(d)(4)(D), inserted heading and substituted "paragraph (1)" for "subparagraph (A)".

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 4353. Selected acquisition reports for 1st quarter of a fiscal year: comprehensive annual report

(a) CONTENT OF SAR SUBMITTED FOR FIRST QUARTER.—Each Selected Acquisition Report for the first quarter for a fiscal year shall include the following:

(1) The same information, in detailed and summarized form, as is provided in reports submitted under section 4205 of this title.

(2) For each major defense acquisition program or designated major subprogram included in the report—

(A) the Baseline Estimate (as that term is defined in section 4371(a)(4) of this title), along with the associated risk and sensitivity analysis of that estimate;

(B) the original Baseline Estimate (as that term is defined in section 4214(d)(1) of this title), along with the associated risk and sensitivity analysis of that estimate;

(C) if the original Baseline Estimate was adjusted or revised pursuant to section 4214(d)(2) of this title, such adjusted or revised estimate, along with the associated risk and sensitivity analysis of that estimate; and

(D) the primary risk parameters associated with the current procurement cost for the program (as that term is used in section 4355(4) of this title).

(3) A summary of the history of significant developments from the date each major defense acquisition program or designated major subprogram included in the report was first included in a Selected Acquisition Report and program highlights since the last Selected Acquisition Report.

(4) The significant schedule and technical risks for each such program or subprogram, identified at each major milestone and as of the quarter for which the current report is submitted.

(5) The current program acquisition cost and program acquisition unit cost for each such program or subprogram included in the report and the history of those costs from the December 2001 reporting period to the end of the quarter for which the current report is submitted.

(6) The current procurement unit cost for each such program or subprogram included in the report and the history of that cost from the December 2001 reporting period to the end of the quarter for which the current report is submitted.

(7) For each major defense acquisition program that receives Milestone B approval after January 1, 2019, a brief summary description of the key elements of the modular open system approach as defined in section 4401 of this title or, if a modular open system approach was not used, the rationale for not using such an approach.

(8) Such other information as the Secretary of Defense considers appropriate.

(b) CONGRESSIONAL COMMITTEES.—

(1) INFORMATION NEEDED BY CONGRESSIONAL COMMITTEES.—Each Selected Acquisition Report for the first quarter of a fiscal year shall be designed to provide to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives the information such Committees need to perform their oversight functions.

(2) NOTIFICATION TO CONGRESSIONAL COMMITTEES OF PROPOSED CHANGES.—Whenever the Secretary of Defense proposes to make changes in the content of a Selected Acquisition Report, the Secretary shall submit a notice of the proposed changes to such committees. The changes shall be considered approved by the Secretary, and may be incorporated into the report, only after the end of the 60-day period beginning on the date on which the notice is received by those committees.

(c) LIFE-CYCLE COST ANALYSES.—In addition to the material required by subsections (a) and (b), each Selected Acquisition Report for the first quarter of a fiscal year shall include the following:

(1) A full life-cycle cost analysis for each major defense acquisition program and each designated major subprogram included in the report that is in the system development and demonstration stage or has completed that stage. The Secretary of Defense shall ensure

that this subparagraph is implemented in a uniform manner, to the extent practicable, throughout the Department of Defense.

(2) If the system that is included in that major defense acquisition program has an antecedent system, a full life-cycle cost analysis for that system.

(d) REFERENCE TO 1ST QUARTER SAR AS COMPREHENSIVE ANNUAL SAR.—Selected Acquisition Reports for the first quarter of a fiscal year shall be known as comprehensive annual Selected Acquisition Reports.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1849(a), (e), Jan. 1, 2021, 134 Stat. 4259, 4261.)

CODIFICATION

The text of subsec. (c) of section 2432 of this title, which was transferred to this section and amended by Pub. L. 116–283, § 1849(e)(1), was based on Pub. L. 97–252, title XI, § 1107(a)(1), Sept. 8, 1982, 96 Stat. 739, § 139a; Pub. L. 99–145, title XII, § 1201, Nov. 8, 1985, 99 Stat. 715; renumbered § 2432 and amended Pub. L. 99–433, title I, §§ 101(a)(5), 110(g)(7), Oct. 1, 1986, 100 Stat. 995, 1004; Pub. L. 99–500, § 101(c) [title X, § 961(a)(4), (5)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–175, and Pub. L. 99–591, § 101(c) [title X, § 961(a)(4), (5)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–175; Pub. L. 99–661, div. A, title IX, formerly title IV, § 961(a)(4), (5), Nov. 14, 1986, 100 Stat. 3955, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; Pub. L. 100–180, div. A, title XIII, § 1314(a)(1), Dec. 4, 1987, 101 Stat. 1175; Pub. L. 101–510, div. A, title XIV, §§ 1407(a), (c), 1484(f)(4), Nov. 5, 1990, 104 Stat. 1681, 1717; Pub. L. 102–25, title VII, § 701(f)(3), Apr. 6, 1991, 105 Stat. 115; Pub. L. 102–484, div. A, title VIII, § 817(c)(3), (4), Oct. 23, 1992, 106 Stat. 2455; Pub. L. 103–355, title III, § 3002(d)–(f), (h)(2), Oct. 13, 1994, 108 Stat. 3328, 3329; Pub. L. 104–106, div. A, title XV, § 1502(a)(1), Feb. 10, 1996, 110 Stat. 502; Pub. L. 104–201, div. A, title VIII, § 806(1), Sept. 23, 1996, 110 Stat. 2606; Pub. L. 110–417, [div. A], title VIII, § 811(b)(2), Oct. 14, 2008, 122 Stat. 4521; Pub. L. 113–66, div. A, title VIII, § 812(a), Dec. 26, 2013, 127 Stat. 807; Pub. L. 113–291, div. A, title X, § 1071(g)(2), Dec. 19, 2014, 128 Stat. 3511; Pub. L. 114–328, div. A, title VIII, §§ 805(b), Dec. 23, 2016, 130 Stat. 2255.

PRIOR PROVISIONS

A prior section 4353 was renumbered section 7453 of this title.

AMENDMENTS

2021—Pub. L. 116–283, § 1849(e)(1), transferred subsec. (c) of section 2432 of this title to this section, struck out subsec. designation, and redesignated pars. (1) to (4) as subsecs. (a) to (d), respectively.

Subsec. (a). Pub. L. 116–283, § 1849(e)(2)(C), substituted "for a fiscal year shall include the following:" for "for a fiscal year shall include—" in introductory provisions, capitalized first letter of first word in pars. (1) to (8), and substituted period for semicolon at end of pars. (1) to (6) and period for "; and" in par. (7).

Pub. L. 116–283, § 1849(e)(2)(A), (B), inserted heading and redesignated subpars. (A) to (H) as pars. (1) to (8), respectively, and, in par. (2), cls. (i) to (iv) as subpars. (A) to (D), respectively.

Subsec. (a)(1). Pub. L. 116–283, § 1849(e)(2)(D)(i), substituted "section 4205" for "section 2431".

Subsec. (a)(2)(A). Pub. L. 116–283, § 1849(e)(2)(D)(ii), substituted "section 4371(a)(4)" for "section 2433(a)(2)".

Subsec. (a)(2)(B). Pub. L. 116–283, § 1849(e)(2)(D)(iii), substituted "section 4214(d)(1)" for "section 2435(d)(1)".

Subsec. (a)(2)(C). Pub. L. 116–283, § 1849(e)(2)(D)(iv), substituted "section 4214(d)(2)" for "section 2435(d)(2)".

Subsec. (a)(2)(D). Pub. L. 116–283, § 1849(e)(2)(D)(v), substituted "section 4355(4)" for "section 2432(e)(4)".

Subsec. (a)(7). Pub. L. 116–283, § 1849(e)(2)(D)(vi), substituted "section 4401" for "section 2446a".

Subsec. (b). Pub. L. 116–283, § 1849(e)(3), inserted subsec. heading, designated first sentence as par. (1) and second and third sentences as par. (2), inserted par. headings, and realigned margin of par. (2).

Subsec. (c). Pub. L. 116–283, § 1849(e)(4), inserted heading, substituted "subsections (a) and (b)" for "paragraphs (1) and (2)" in introductory provisions, and redesignated subpars. (A) and (B) as pars. (1) and (2), respectively.

Subsec. (d). Pub. L. 116–283, § 1849(e)(5), inserted heading.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 4354. Selected acquisition reports for 2d, 3d, and 4th quarters

(a) CONTINGENT REQUIRED CONTENT.—Each Selected Acquisition Report for the second, third, and fourth quarters of a fiscal year shall include—

(1) with respect to each major defense acquisition program that was included in the most recent comprehensive annual Selected Acquisition Report, the information described in section 4355 of this title; and

(2) with respect to each major defense acquisition program that was not included in the most recent comprehensive annual Selected Acquisition Report, the information described in section 4353 of this title.

(b) REFERENCE TO 2D, 3D, AND 4TH QUARTERS SARS AS QUARTERLY SARS.—Selected Acquisition Reports for the second, third, and fourth quarters of a fiscal year shall be known as Quarterly Selected Acquisition Reports.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1849(a), (f), Jan. 1, 2021, 134 Stat. 4259, 4262.)

CODIFICATION

The text of subsec. (d) of section 2432 of this title, which was transferred to this section and amended by Pub. L. 116–283, § 1849(f)(1), was based on Pub. L. 97–252, title XI, § 1107(a)(1), Sept. 8, 1982, 96 Stat. 739, § 139a; renumbered § 2432, Pub. L. 99–433, title I, § 101(a)(5), Oct. 1, 1986, 100 Stat. 995; Pub. L. 100–180, div. A, title XIII, § 1314(a)(1), Dec. 4, 1987, 101 Stat. 1175.

PRIOR PROVISIONS

A prior section 4354 was renumbered section 7454 of this title.

AMENDMENTS

2021—Pub. L. 116–283, § 1849(f)(1), (2)(A), transferred subsec. (d) of section 2432 of this title to this section, struck out subsec. designation, and redesignated pars. (1) and (2) as subsecs. (a) and (b), respectively.

Subsec. (a). Pub. L. 116–283, § 1849(f)(2)(B)(i), (ii), inserted heading and redesignated subpars. (A) and (B) as pars. (1) and (2), respectively.

Subsec. (a)(1). Pub. L. 116–283, § 1849(f)(2)(B)(iii), substituted "section 4355 of this title" for "subsection (e)".

Subsec. (a)(2). Pub. L. 116–283, § 1849(f)(2)(B)(iv), substituted "section 4353 of this title" for "subsection (c)".

Subsec. (b). Pub. L. 116–283, § 1849(f)(2)(C), inserted heading.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed im-

plementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 4355. Selected acquisition reports: quarterly SAR report content

Information to be included under this subsection in a Quarterly Selected Acquisition Report with respect to a major defense acquisition program is as follows:

(1) The quantity of items to be purchased under the program.

(2) The program acquisition cost.

(3) The program acquisition unit cost for the program (or for each designated major subprogram under the program).

(4) The current procurement cost for the program.

(5) The current procurement unit cost for the program (or for each designated major subprogram under the program).

(6) The reasons for any change in program acquisition cost, program acquisition unit cost, procurement cost, or procurement unit cost or in program schedule from the previous Selected Acquisition Report.

(7) The reasons for any significant changes (from the previous Selected Acquisition Report) in the total program cost for development and procurement of the software component of the program or subprogram, schedule milestones for the software component of the program or subprogram, or expected performance for the software component of the program or subprogram that are known, expected, or anticipated by the program manager.

(8) The major contracts under the program and designated major subprograms under the program and the reasons for any cost or schedule variances under those contracts since the last Selected Acquisition Report.

(9) Program highlights since the last Selected Acquisition Report.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1849(a), (g), Jan. 1, 2021, 134 Stat. 4259, 4263.)

CODIFICATION

The text of subsec. (e) of section 2432 of this title, which was transferred to this section and amended by Pub. L. 116–283, § 1849(g), was based on Pub. L. 97–252, title XI, § 1107(a)(1), Sept. 8, 1982, 96 Stat. 739, § 139a; renumbered § 2432, Pub. L. 99–433, title I, § 101(a)(5), Oct. 1, 1986, 100 Stat. 995; Pub. L. 100–180, div. A, title XIII, § 1314(a)(1), Dec. 4, 1987, 101 Stat. 1175; Pub. L. 104–201, div. A, title VIII, § 806(2), Sept. 23, 1996, 110 Stat. 2606; Pub. L. 108–375, div. A, title VIII, § 801(b)(2), Oct. 28, 2004, 118 Stat. 2004; Pub. L. 109–364, div. A, title X, § 1071(g)(10), Oct. 17, 2006, 120 Stat. 2402; Pub. L. 110–417, [div. A], title VIII, § 811(b)(3), Oct. 14, 2008, 122 Stat. 4521.

PRIOR PROVISIONS

A prior section 4355 was renumbered section 7455 of this title.

AMENDMENTS

2021—Pub. L. 116–283, § 1849(g), transferred subsec. (e) of section 2432 of this title to this section and struck out subsec. designation.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 4356. Selected acquisition reports: time for submission to Congress; form of report

(a) TIME FOR SUBMISSION.—Each comprehensive annual Selected Acquisition Report shall be submitted within 30 days after the date on which the President transmits the Budget to Congress for the following fiscal year, and each Quarterly Selected Acquisition Report shall be submitted within 45 days after the end of the fiscal-year quarter.

(b) FORM OF REPORT.—A Selected Acquisition Report required under this chapter shall be submitted in unclassified form without any designation relating to dissemination control, but may contain a classified annex.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1849(a), (h), (i), Jan. 1, 2021, 134 Stat. 4259, 4263.)

CODIFICATION

The text of subsec. (f) of section 2432 of this title, which was transferred to this section and redesignated as subsec. (a) by Pub. L. 116–283, § 1849(h)(1), was based on Pub. L. 97–252, title XI, § 1107(a)(1), Sept. 8, 1982, 96 Stat. 739, § 139a; Pub. L. 98–525, title XII, § 1242(a)(4), Oct. 19, 1984, 98 Stat. 2607; renumbered § 2432, Pub. L. 99–433, title I, § 101(a)(5), Oct. 1, 1986, 100 Stat. 995; Pub. L. 100–180, div. A, title XIII, § 1314(a)(1), Dec. 4, 1987, 101 Stat. 1175; Pub. L. 103–355, title III, § 3002(g), Oct. 13, 1994, 108 Stat. 3329; Pub. L. 112–81, div. A, title VIII, § 812, Dec. 31, 2011, 125 Stat. 1491; Pub. L. 114–328, div. A, title VIII, § 841, Dec. 23, 2016, 130 Stat. 2288.

The text of subsec. (i) of section 2432 of this title, which was transferred to this section, redesignated as subsec. (b) and amended by Pub. L. 116–283, § 1849(i), was based on Pub. L. 116–92, div. A, title VIII, § 830(a)(2), Dec. 20, 2019, 133 Stat. 1492.

PRIOR PROVISIONS

A prior section 4356 was renumbered section 7456 of this title.

AMENDMENTS

2021—Subsec. (a). Pub. L. 116–283, § 1849(h), transferred subsec. (f) of section 2432 of this title to this section, redesignated it as subsec. (a), and inserted heading.

Subsec. (b). Pub. L. 116–283, § 1849(i), transferred subsec. (i) of section 2432 of this title to this section, redesignated it as subsec. (b), and substituted ''under this chapter'' for ''under this section''.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 4357. Selected acquisition reports: termination of requirements with respect to a program or subprogram

The requirements of this chapter with respect to a major defense acquisition program or designated major subprogram shall cease to apply after 90 percent of the items to be delivered to the United States under the program or subprogram (shown as the total quantity of items to be purchased under the program or subprogram in

the most recent Selected Acquisition Report) have been delivered or 90 percent of planned expenditures under the program or subprogram have been made.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1849(a), (j), Jan. 1, 2021, 134 Stat. 4259, 4263.)

CODIFICATION

The text of subsec. (g) of section 2432 of this title, which was transferred to this section and amended by Pub. L. 116–283, § 1849(j), was based on Pub. L. 98–525, title XII, § 1242(a)(5), Oct. 19, 1984, 98 Stat. 2607; Pub. L. 110–417, [div. A], title VIII, § 811(b)(4), Oct. 14, 2008, 122 Stat. 4522.

PRIOR PROVISIONS

A prior section 4357 was renumbered section 7457 of this title.

AMENDMENTS

2021—Pub. L. 116–283, § 1849(j), transferred subsec. (g) of section 2432 of this title to this section, struck out subsec. designation, and substituted ''of this chapter'' for ''of this section''.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 4358. Selected acquisition reports: when total program reporting begins; limited reports before approval to proceed to system development and demonstration

(a) IN GENERAL.—

(1) COMMENCEMENT OF TOTAL PROGRAM REPORTING.—Total program reporting under this chapter shall apply to a major defense acquisition program when funds have been appropriated for such program and the Secretary of Defense has decided to proceed to system development and demonstration of such program.

(2) LIMITED REPORTS.—Reporting may be limited to the development program as provided in subsection (b) before a decision is made by the Secretary of Defense to proceed to system development and demonstration if the Secretary notifies the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives of the intention to submit a limited report under this section not less than 15 days before a report is due under this chapter.

(b) CONTENT OF LIMITED REPORTS.—A limited report under this section shall include the following:

(1) The same information, in detail and summarized form, as is provided in reports submitted under subsections (b)(1) and (b)(3) of section 4205 of this title.

(2) Reasons for any change in the development cost and schedule.

(3) The major contracts under the development program and designated major subprograms under the program and the reasons for any cost or schedule variances under those contracts since the last Selected Acquisition Report.

(4) Program highlights since the last Selected Acquisition Report.

(5) Other information as the Secretary of Defense considers appropriate.

(c) SUBMISSION OF LIMITED REPORTS.—The submission requirements for a limited report under this section shall be the same as for quarterly Selected Acquisition Reports for total program reporting.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1849(a), (k), Jan. 1, 2021, 134 Stat. 4259, 4263.)

CODIFICATION

The text of subsec. (h) of section 2432 of this title, which was transferred to this section and amended by Pub. L. 116–283, § 1849(k)(1), was based on Pub. L. 99–500, § 101(c) [title X, § 961(a)(6)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–175, and Pub. L. 99–591, § 101(c) [title X, § 961(a)(6)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–175; Pub. L. 99–661, div. A, title IX, formerly title IV, § 961(a)(6), Nov. 14, 1986, 100 Stat. 3955, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; Pub. L. 102–190, div. A, title X, § 1061(a)(14), Dec. 5, 1991, 105 Stat. 1473; Pub. L. 103–355, title III, § 3002(h)(3), Oct. 13, 1994, 108 Stat. 3329; Pub. L. 104–106, div. A, title XV, § 1502(a)(1), Feb. 10, 1996, 110 Stat. 502; Pub. L. 105–85, div. A, title VIII, § 841(c), Nov. 18, 1997, 111 Stat. 1843; Pub. L. 108–136, div. A, title X, § 1045(a)(6), Nov. 24, 2003, 117 Stat. 1612; Pub. L. 110–417, [div. A], title VIII, § 811(b)(5), Oct. 14, 2008, 122 Stat. 4522.

PRIOR PROVISIONS

A prior section 4358 was renumbered section 7458 of this title.

Prior sections 4359 to 4362 were renumbered sections 7459 to 7462 of this title, respectively.

AMENDMENTS

2021—Pub. L. 116–283, § 1849(k)(1), transferred subsec. (h) of section 2432 of this title to this section, struck out subsec. designation, and redesignated pars. (1) to (3) as subsecs. (a) to (c), respectively.

Subsec. (a). Pub. L. 116–283, § 1849(k)(2), inserted subsec. heading, designated first and second sentences as pars. (1) and (2), respectively, inserted par. headings, in par. (1), substituted ''Total program reporting under this chapter'' for ''Total program reporting under this section'', and, in par. (2), substituted ''subsection (b)'' for ''paragraph (2)'', ''under this section'' for ''under this subsection'', and ''under this chapter.'' for ''under this section.''.

Subsec. (b). Pub. L. 116–283, § 1849(k)(3), inserted heading, redesignated subpars. (A) to (E) as pars. (1) to (5), respectively, and substituted ''under this section'' for ''under this subsection'' in introductory provisions and ''section 4205'' for ''section 2431'' in par. (1).

Subsec. (c). Pub. L. 116–283, § 1849(k)(4), inserted heading and substituted ''under this section'' for ''under this subsection''.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

CHAPTER 325—COST GROWTH—UNIT COST REPORTS (NUNN-MCCURDY)

Sec.
4371. Cost growth definitions; applicability of reporting requirements; constant base year dollars.

Sec.
4372. Unit cost reports: quarterly report from program manager to service acquisition executive.
4373. Unit cost reports: immediate report from program manager to service acquisition executive upon breach of significant cost growth threshold.
4374. Unit cost reports: determinations by service acquisition executive and secretary concerned of breach of significant cost growth threshold or critical cost growth threshold; reports to Congress.
4375. Breach of significant cost growth threshold or critical cost growth threshold: required action.
4376. Breach of critical cost growth threshold: reassessment of program; presumption of program termination.
4377. Breach of critical cost growth threshold: actions if program not terminated.

PRIOR PROVISIONS

A prior chapter 325 ''DEPARTMENT OF DEFENSE LABORATORIES'', consisting of reserved section 4351, was repealed by Pub. L. 116–283, div. A, title XVIII, § 1841(a)(1)(A), Jan. 1, 2021, 134 Stat. 4242.

§ 4371. Cost growth definitions; applicability of reporting requirements; constant base year dollars

(a) DEFINITIONS.—In this chapter:

(1) PROGRAM ACQUISITION UNIT COST; PROCUREMENT UNIT COST; MAJOR CONTRACT.—Except as provided in section 4203(d) of this title, the terms ''program acquisition unit cost'', ''procurement unit cost'', and ''major contract'' have the same meanings as provided in section 4351 of this title.

(2) SIGNIFICANT COST GROWTH THRESHOLD.—The term ''significant cost growth threshold'' means the following:

(A) In the case of a major defense acquisition program or designated major defense subprogram, a percentage increase in the program acquisition unit cost for the program or subprogram of—

(i) at least 15 percent over the program acquisition unit cost for the program or subprogram as shown in the current Baseline Estimate for the program or subprogram; or

(ii) at least 30 percent over the program acquisition unit cost for the program or subprogram as shown in the original Baseline Estimate for the program or subprogram.

(B) In the case of a major defense acquisition program or designated major defense subprogram that is a procurement program, a percentage increase in the procurement unit cost for the program or subprogram of—

(i) at least 15 percent over the procurement unit cost for the program or subprogram as shown in the current Baseline Estimate for the program or subprogram; or

(ii) at least 30 percent over the procurement unit cost for the program or subprogram as shown in the original Baseline Estimate for the program or subprogram.

(3) CRITICAL COST GROWTH THRESHOLD.—The term ''critical cost growth threshold'' means the following:

(A) In the case of a major defense acquisition program or designated major defense subprogram, a percentage increase in the program acquisition unit cost for the program or subprogram of—

(i) at least 25 percent over the program acquisition unit cost for the program or subprogram as shown in the current Baseline Estimate for the program or subprogram; or

(ii) at least 50 percent over the program acquisition unit cost for the program or subprogram as shown in the original Baseline Estimate for the program or subprogram.

(B) In the case of a major defense acquisition program or designated major defense subprogram that is a procurement program, a percentage increase in the procurement unit cost for the program or subprogram of—

(i) at least 25 percent over the procurement unit cost for the program or subprogram as shown in the current Baseline Estimate for the program or subprogram; or

(ii) at least 50 percent over the procurement unit cost for the program or subprogram as shown in the original Baseline Estimate for the program or subprogram.

(4) BASELINE ESTIMATE.—The term ''Baseline Estimate'', with respect to a unit cost report that is submitted under this chapter to the service acquisition executive designated by the Secretary concerned on a major defense acquisition program or designated major subprogram, means the cost estimate included in the baseline description for the program or subprogram under section 4214 of this title.

(5) ORIGINAL BASELINE ESTIMATE.—The term ''original Baseline Estimate'' has the same meaning as provided in section 4214(d) of this title.

(6) PROCUREMENT PROGRAM.—The term ''procurement program'' means a program for which funds for procurement are authorized to be appropriated in a fiscal year.

(b) Reporting under this chapter shall not apply if a program has received a limited reporting waiver under section 4358 of this title.

(c) Any determination of a percentage increase under this chapter shall be stated in terms of constant base year dollars (as described in section 4202 of this title).

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1850(a)–(d), Jan. 1, 2021, 134 Stat. 4265, 4266.)

CODIFICATION

The text of subsec. (a) of section 2433 of this title, which was transferred to this section and amended by Pub. L. 116–283, § 1850(b)(1), was based on Pub. L. 97–252, title XI, § 1107(a)(1), Sept. 8, 1982, 96 Stat. 741, § 139b; Pub. L. 98–525, title XII, § 1242(b)(1), Oct. 19, 1984, 98 Stat. 2607; renumbered § 2433 and amended Pub. L. 99–433, title I, §§ 101(a)(5), 110(g)(8)(A), Oct. 1, 1986, 100 Stat. 995, 1004; Pub. L. 100–26, § 7(b)(4), (k)(7), Apr. 21, 1987, 101 Stat. 279, 284; Pub. L. 100–180, div. A, title XIII, § 1314(a)(1), Dec. 4, 1987, 101 Stat. 1175; Pub. L. 101–189, div. A, title VIII, § 811(a)(1), Nov. 29, 1989, 103 Stat. 1490; Pub. L. 102–484, div. A, title VIII, § 817(d)(1), Oct. 23, 1992, 106 Stat. 2456; Pub. L. 103–355, title III, § 3003(a)(1), Oct. 13, 1994, 108 Stat. 3329; Pub. L. 109–163, div. A, title

VIII, § 802(a), (d)(2), Jan. 6, 2006, 119 Stat. 3367, 3370; Pub. L. 110–417, [div. A], title VIII, § 811(c)(1), Oct. 14, 2008, 122 Stat. 4522; Pub. L. 111–383, div. A, title X, § 1075(b)(34), Jan. 7, 2011, 124 Stat. 4371.

The text of subsec. (f) of section 2433 of this title, which was transferred to this section, redesignated subsec. (c) and amended by Pub. L. 116–283, § 1850(d), was based on Pub. L. 97–252, title XI, § 1107(a)(1), Sept. 8, 1982, 96 Stat. 741, § 139b; renumbered § 2433, Pub. L. 99–433, title I, § 101(a)(5), Oct. 1, 1986, 100 Stat. 995; Pub. L. 103–355, title III, § 3003(d), Oct. 13, 1994, 108 Stat. 3329.

The text of subsec. (h) of section 2433 of this title, which was transferred to this section, redesignated subsec. (b) and amended by Pub. L. 116–283, § 1850(c), was based on Pub. L. 99–500, § 101(c) [title X, § 961(b)(2)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–176, and Pub. L. 99–591, § 101(c) [title X, § 961(b)(2)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–176; Pub. L. 99–661, div. A, title IX, formerly title IV, § 961(b)(2), Nov. 14, 1986, 100 Stat. 3956, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273.

AMENDMENTS

2021—Subsec. (a). Pub. L. 116–283, § 1850(b)(2), inserted subsec. heading and headings in pars. (1) to (6).

Pub. L. 116–283, § 1850(b)(1), transferred subsec. (a) of section 2433 of this title to this section and substituted "this chapter" for "this section" in introductory provisions and par. (2).

Subsec. (a)(1). Pub. L. 116–283, § 1850(b)(3)(A), substituted "section 4203(d)" for "section 2430a(d)" and "section 4351" for "section 2432(a)".

Subsec. (a)(2). Pub. L. 116–283, § 1850(b)(4), redesignated par. (4) as (2) and transferred it to appear in numerical order. Former par. (2) redesignated (4).

Pub. L. 116–283, § 1850(b)(3)(B), substituted "section 4214" for "section 2435".

Subsec. (a)(3) to (5). Pub. L. 116–283, § 1850(b)(4), redesignated pars. (5), (2), and (6) as (3) to (5), respectively, and transferred them to appear in numerical order. Former pars. (3) and (4) redesignated pars. (6) and (2), respectively.

Subsec. (a)(6). Pub. L. 116–283, § 1850(b)(4), redesignated par. (3) as (6) and transferred it to appear in numerical order. Former par. (6) redesignated (5).

Pub. L. 116–283, § 1850(b)(3)(C), substituted "section 4214(d)" for "section 2435(d)".

Subsec. (b). Pub. L. 116–283, § 1850(c), transferred subsec. (h) of section 2433 of this title to this section, redesignated it as subsec. (b), and substituted "under this chapter" for "under this section" and "section 4358" for "section 2432(h)".

Subsec. (c). Pub. L. 116–283, § 1850(d), transferred subsec. (f) of section 2433 of this title to this section, redesignated it as subsec. (c), and substituted "under this chapter" for "under this section" and "section 4202" for "section 2430".

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 4372. Unit cost reports: quarterly report from program manager to service acquisition executive

(a) REQUIRED REPORTS.—

(1) REQUIREMENT.—The program manager for a major defense acquisition program (other than a program not required to be included in the Selected Acquisition Report for that quarter under section 4352(c) of this title) shall, on a quarterly basis, submit to the service acquisition executive designated by the Secretary concerned a written report on the unit costs of the program (or of each designated major subprogram under the program).

(2) TIME FOR SUBMITTAL.—Each report shall be submitted not more than 30 calendar days after the end of that quarter.

(b) MATTER TO BE INCLUDED IN UNIT COST REPORTS.—The program manager shall include in each such unit cost report the following information with respect to the program (as of the last day of the quarter for which the report is made):

(1) The program acquisition unit cost for the program (or for each designated major subprogram under the program).

(2) In the case of a procurement program, the procurement unit cost for the program (or for each designated major subprogram under the program).

(3) Any cost variance or schedule variance in a major contract under the program since the contract was entered into.

(4) Any changes from program schedule milestones or program performances reflected in the baseline description established under section 4214 of this title that are known, expected, or anticipated by the program manager.

(5) Any significant changes in the total program cost for development and procurement of the software component of the program or subprogram, schedule milestones for the software component of the program or subprogram, or expected performance for the software component of the program or subprogram that are known, expected, or anticipated by the program manager.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1850(a), (e), Jan. 1, 2021, 134 Stat. 4265, 4266.)

CODIFICATION

The text of subsec. (b) of section 2433 of this title, which was transferred to this section and redesignated as subsec. (a) by Pub. L. 116–283, § 1850(e)(1), was based on Pub. L. 97–252, title XI, § 1107(a)(1), Sept. 8, 1982, 96 Stat. 741, § 139b; Pub. L. 98–525, title XII, § 1242(b)(2), Oct. 19, 1984, 98 Stat. 2607; renumbered § 2433 and amended Pub. L. 99–433, title I, §§ 101(a)(5), 110(g)(8)(B), Oct. 1, 1986, 100 Stat. 995, 1004; Pub. L. 99–500, § 101(c) [title X, § 961(b)(1)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–176, and Pub. L. 99–591, § 101(c) [title X, § 961(b)(1)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–176; Pub. L. 99–661, div. A, title IX, formerly title IV, § 961(b)(1), Nov. 14, 1986, 100 Stat. 3956, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; Pub. L. 100–180, div. A, title XIII, § 1314(a)(1), Dec. 4, 1987, 101 Stat. 1175; Pub. L. 101–189, div. A, title VIII, § 811(a)(2), Nov. 29, 1989, 103 Stat. 1490; Pub. L. 102–484, div. A, title VIII, § 817(d)(2), Oct. 23, 1992, 106 Stat. 2456; Pub. L. 103–355, title III, § 3003(b), Oct. 13, 1994, 108 Stat. 3329; Pub. L. 108–375, div. A, title VIII, § 801(a), Oct. 28, 2004, 118 Stat. 2004; Pub. L. 110–417, [div. A], title VIII, § 811(c)(2), Oct. 14, 2008, 122 Stat. 4522.

AMENDMENTS

2021—Subsec. (a). Pub. L. 116–283, § 1850(e)(3), designated first and second sentences as pars. (1) and (2), respectively, and inserted subsec. and par. headings.

Pub. L. 116–283, § 1850(e)(2), designated third sentence of subsec. (a) as (b).

Pub. L. 116–283, § 1850(e)(1), transferred subsec. (b) of section 2433 of this title to this section and redesignated it as subsec. (a).

Subsec. (a)(1). Pub. L. 116–283, § 1850(e)(4)(A), substituted ''section 4352(c)'' for ''section 2432(b)(3)''.

Subsec. (b). Pub. L. 116–283, § 1850(e)(2), designated third sentence of subsec. (a) as (b) and inserted heading.

Subsec. (b)(4). Pub. L. 116–283, § 1850(e)(4)(B), substituted ''section 4214'' for ''section 2435''.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 4373. Unit cost reports: immediate report from program manager to service acquisition executive upon breach of significant cost growth threshold

If the program manager of a major defense acquisition program for which a unit cost report has previously been submitted under section 4372 of this title determines at any time during a quarter that there is reasonable cause to believe that the program acquisition unit cost for the program (or for a designated major subprogram under the program) or the procurement unit cost for the program (or for such a subprogram), as applicable, has increased by a percentage equal to or greater than the significant cost growth threshold; and if a unit cost report indicating an increase of such percentage or more has not previously been submitted to the service acquisition executive designated by the Secretary concerned, then the program manager shall immediately submit to such service acquisition executive a unit cost report containing the information, determined as of the date of the report, required under section 4372 of this title.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1850(a), (f), Jan. 1, 2021, 134 Stat. 4265, 4266.)

CODIFICATION

The text of subsec. (c) of section 2433 of this title, which was transferred to this section and amended by Pub. L. 116–283, § 1850(f), was based on Pub. L. 97–252, title XI, § 1107(a)(1), Sept. 8, 1982, 96 Stat. 741, § 139b; Pub. L. 98–525, title XII, § 1242(b)(3), Oct. 19, 1984, 98 Stat. 2608; renumbered § 2433, Pub. L. 99–433, title I, § 101(a)(5), Oct. 1, 1986, 100 Stat. 995; Pub. L. 100–180, div. A, title XIII, § 1314(a)(1), Dec. 4, 1987, 101 Stat. 1175; Pub. L. 101–189, div. A, title VIII, § 811(a)(3), Nov. 29, 1989, 103 Stat. 1490; Pub. L. 101–510, div. A, title XIV, § 1484(k)(10), Nov. 5, 1990, 104 Stat. 1719; Pub. L. 102–484, div. A, title VIII, § 817(d)(3), Oct. 23, 1992, 106 Stat. 2457; Pub. L. 103–355, title III, §§ 3002(a)(2)(A), 3003(a)(2)(A), (c), Oct. 13, 1994, 108 Stat. 3328, 3329; Pub. L. 105–85, div. A, title VIII, § 833(a), (b), Nov. 18, 1997, 111 Stat. 1842, 1843; Pub. L. 109–163, div. A, title VIII, § 802(b)(1), Jan. 6, 2006, 119 Stat. 3368; Pub. L. 110–417, [div. A], title VIII, § 811(c)(3), Oct. 14, 2008, 122 Stat. 4522.

AMENDMENTS

2021—Pub. L. 116–283, § 1850(f), transferred subsec. (c) of section 2433 of this title to this section, struck out subsec. designation, and substituted ''section 4372 of this title'' for ''subsection (b)'' in two places.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 4374. Unit cost reports: determinations by service acquisition executive and secretary concerned of breach of significant cost growth threshold or critical cost growth threshold; reports to Congress

(a) DETERMINATION OF BREACH BY SERVICE ACQUISITION EXECUTIVE.—When a unit cost report is submitted to the service acquisition executive designated by the Secretary concerned under this chapter with respect to a major defense acquisition program or any designated major subprogram under the program, the service acquisition executive shall determine whether the current program acquisition unit cost for the program or subprogram has increased by a percentage equal to or greater than the significant cost growth threshold, or the critical cost growth threshold, for the program or subprogram.

(b) ADDITIONAL DETERMINATION BY SERVICE ACQUISITION EXECUTIVE WHEN PROGRAM OR SUBPROGRAM IS A PROCUREMENT PROGRAM.—When a unit cost report is submitted to the service acquisition executive designated by the Secretary concerned under this chapter with respect to a major defense acquisition program or any designated major subprogram under the program that is a procurement program, the service acquisition executive, in addition to the determination under subsection (a), shall determine whether the procurement unit cost for the program or subprogram has increased by a percentage equal to or greater than the significant cost growth threshold, or the critical cost growth threshold, for the program or subprogram.

(c) DETERMINATION OF BREACH BY SECRETARY CONCERNED; NOTIFICATION TO CONGRESS.—

(1) IN GENERAL.—If, based upon the service acquisition executive's determination, the Secretary concerned determines that the current program acquisition unit cost has increased by a percentage equal to or greater than the significant cost growth threshold or critical cost growth threshold or that the procurement unit cost has increased by a percentage equal to or greater than the significant cost growth threshold or critical cost growth threshold, the Secretary shall notify Congress in writing of such determination and of the increase with respect to the program or subprogram concerned.

(2) TIME FOR SUBMISSION OF NOTIFICATION TO CONGRESS.—In the case of a determination based on a quarterly report submitted in accordance with section 4372 of this title, the Secretary shall submit the notification to Congress within 45 days after the end of the quarter. In the case of a determination based on a report submitted in accordance with section 4373 of this title, the Secretary shall submit the notification to Congress within 45 days after the date of that report.

(3) INCLUSION OF DATE OF DETERMINATION.—The Secretary shall include in the notification the date on which the determination was made.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1850(a), (g), Jan. 1, 2021, 134 Stat. 4265, 4267.)

CODIFICATION

The text of subsec. (d) of section 2433 of this title, which was transferred to this section and amended by Pub. L. 116–283, § 1850(g)(1), was based on Pub. L. 97–252, title XI, § 1107(a)(1), Sept. 8, 1982, 96 Stat. 741, § 139b; Pub. L. 98–525, title XII, § 1242(b)(4), Oct. 19, 1984, 98 Stat. 2608; Pub. L. 99–145, title XIII, § 1303(a)(2), Nov. 8, 1985, 99 Stat. 738; renumbered § 2433, Pub. L. 99–433, title I, § 101(a)(5), Oct. 1, 1986, 100 Stat. 995; Pub. L. 100–180, div. A, title XIII, § 1314(a)(1), Dec. 4, 1987, 101 Stat. 1175; Pub. L. 101–189, div. A, title VIII, § 811(a)(4), Nov. 29, 1989, 103 Stat. 1491; Pub. L. 102–484, div. A, title VIII, § 817(d)(4), Oct. 23, 1992, 106 Stat. 2457; Pub. L. 103–355, title III, §§ 3002(a)(2)(B), 3003(a)(2)(B), Oct. 13, 1994, 108 Stat. 3328, 3329; Pub. L. 105–85, div. A, title VIII, § 833(c), Nov. 18, 1997, 111 Stat. 1843; Pub. L. 109–163, div. A, title VIII, § 802(b)(2), Jan. 6, 2006, 119 Stat. 3368; Pub. L. 110–417, [div. A], title VIII, § 811(c)(4), Oct. 14, 2008, 122 Stat. 4523.

AMENDMENTS

2021—Pub. L. 116–283, § 1850(g)(1), transferred subsec. (d) of section 2433 of this title to this section, struck out subsec. designation, and redesignated pars. (1) to (3) as subsecs. (a) to (c), respectively.

Subsec. (a). Pub. L. 116–283, § 1850(g)(2), inserted heading and substituted ''under this chapter'' for ''under this section''.

Subsec. (b). Pub. L. 116–283, § 1850(g)(3), inserted heading and substituted ''under this chapter'' for ''under this section'' and ''subsection (a)'' for ''paragraph (1)''.

Subsec. (c). Pub. L. 116–283, § 1850(g)(4)(B), which directed amendment of subsec. (c) by designating second sentence as par. (2) and fourth sentence as par. (3), was executed by designating second and third sentences as par. (2) and fourth sentence as par. (3) to reflect the probable intent of Congress.

Pub. L. 116–283, § 1850(g)(4)(A), inserted subsec. heading, designated first sentence as par. (1) and inserted par. heading.

Subsec. (c)(2). Pub. L. 116–283, § 1850(g)(4)(C), inserted heading and substituted ''section 4372 of this title'' for ''subsection (b)'' and ''section 4373 of this title'' for ''subsection (c)''.

Subsec. (c)(3). Pub. L. 116–283, § 1850(g)(4)(D), inserted heading.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 4375. Breach of significant cost growth threshold or critical cost growth threshold: required action

(a) BREACH OF SIGNIFICANT COST GROWTH THRESHOLD; SUBMISSION OF A SELECTED ACQUISITION REPORT.—

(1) GENERAL RULE.—Except as provided in paragraph (2), whenever the Secretary concerned determines under section 4374 of this title that the program acquisition unit cost or the procurement unit cost of a major defense acquisition program or designated major subprogram has increased by a percentage equal to or greater than the significant cost growth threshold for the program or subprogram, a Selected Acquisition Report shall be submitted to Congress for the first fiscal-year quarter ending on or after the date of the determination or for the fiscal-year quarter which immediately precedes the first fiscal-year quarter ending on or after that date. The report shall include the information described in section 4355 of this title and shall be submitted in accordance with section 4356 of this title.

(2) Whenever the Secretary makes a determination referred to in paragraph (1) in the case of a major defense acquisition program or designated major subprogram during the second quarter of a fiscal year and before the date on which the President transmits the budget for the following fiscal year to Congress pursuant to section 1105 of title 31, the Secretary is not required to file a Selected Acquisition Report under paragraph (1) but shall include the information described in subsection (d) regarding that program or subprogram in the comprehensive annual Selected Acquisition Report submitted in that quarter.

(b) BREACH OF CRITICAL COST GROWTH THRESHOLD.—If the program acquisition unit cost or procurement unit cost of a major defense acquisition program or designated major subprogram (as determined by the Secretary under section 4374 of this title) increases by a percentage equal to or greater than the critical cost growth threshold for the program or subprogram, the Secretary of Defense shall take actions consistent with the requirements of sections 4376 and 4377 of this title.

(c) PROHIBITION ON OBLIGATION OF FUNDS FOR CERTAIN PURPOSES WHEN REQUIRED ACTION NOT TAKEN.—

(1) PROHIBITION.—If a determination of an increase by a percentage equal to or greater than the significant cost growth threshold is made by the Secretary under section 4374 of this title and a Selected Acquisition Report containing the information described in subsection (d) is not submitted to Congress under subsection (a), or if a determination of an increase by a percentage equal to or greater than the critical cost growth threshold is made by the Secretary under section 4374 of this title and the certification of the Secretary of Defense is not submitted to Congress under subsection (b), funds appropriated for military construction, for research, development, test, and evaluation, and for procurement may not be obligated for a major contract under the program.

(2) TERMINATION OF PROHIBITION.—The prohibition under paragraph (1) on the obligation of funds for a major defense acquisition program shall cease to apply at the end of a period of 30 days of continuous session of Congress (as determined under section 8677(b)(2) of this title) beginning on the date—

(A) on which Congress receives the Selected Acquisition Report under subsection (a) or (b)(2)[1] with respect to that program, in the case of a determination of an increase by a percentage equal to or greater than the significant cost growth threshold (as determined in section 4374 of this title); or

(B) on which Congress has received both the Selected Acquisition Report under subsection (a) or (b)(2)[1] and the certification of the Secretary of Defense under subsection

[1] See References in Text note below.

(b)(1)[1] with respect to that program, in the case of an increase by a percentage equal to or greater than the critical cost growth threshold (as determined under section 4374 of this title).

(d) MATTER TO BE INCLUDED IN REPORTS.—Except as provided in subsection (e), each report under this section with respect to a major defense acquisition program shall include the following:

(1) The name of the major defense acquisition program.

(2) The date of the preparation of the report.

(3) The program phase as of the date of the preparation of the report.

(4) The estimate of the program acquisition cost for the program (and for each designated major subprogram under the program) as shown in the Selected Acquisition Report in which the program or subprogram was first included, expressed in constant base-year dollars and in current dollars.

(5) The current program acquisition cost for the program (and for each designated major subprogram under the program) in constant base-year dollars and in current dollars.

(6) A statement of the reasons for any increase in program acquisition unit cost or procurement unit cost for the program (or for any designated major subprogram under the program).

(7) The completion status of the program and each designated major subprogram under the program (i) expressed as the percentage that the number of years for which funds have been appropriated for the program or subprogram is of the number of years for which it is planned that funds will be appropriated for the program or subprogram, and (ii) expressed as the percentage that the amount of funds that have been appropriated for the program or subprogram is of the total amount of funds which it is planned will be appropriated for the program or subprogram.

(8) The fiscal year in which information on the program and each designated major subprogram under the program was first included in a Selected Acquisition Report (referred to in this paragraph as the ''base year'') and the date of that Selected Acquisition Report in which information on the program or subprogram was first included.

(9) The type of the Baseline Estimate that was included in the baseline description under section 4214 of this title and the date of the Baseline Estimate.

(10) The current change and the total change, in dollars and expressed as a percentage, in the program acquisition unit cost for the program (or for each designated major subprogram under the program), stated both in constant base-year dollars and in current dollars.

(11) The current change and the total change, in dollars and expressed as a percentage, in the procurement unit cost for the program (or for each designated major subprogram under the program), stated both in constant base-year dollars and in current dollars and the procurement unit cost for the program (or for each designated major subprogram under the program) for the succeeding fiscal year expressed in constant base-year dollars and in current year dollars.

(12) The quantity of end items to be acquired under the program and the current change and total change, if any, in that quantity.

(13) The identities of the military and civilian officers responsible for program management and cost control of the program.

(14) The action taken and proposed to be taken to control future cost growth of the program.

(15) Any changes made in the performance or schedule milestones of the program and the extent to which such changes have contributed to the increase in program acquisition unit cost or procurement unit cost for the program (or for any designated major subprogram under the program).

(16) The following contract performance assessment information with respect to each major contract under the program or subprogram:

(A) The name of the contractor.

(B) The phase that the contract is in at the time of the preparation of the report.

(C) The percentage of work under the contract that has been completed.

(D) Any current change and the total change, in dollars and expressed as a percentage, in the contract cost.

(E) The percentage by which the contract is currently ahead of or behind schedule.

(F) A narrative providing a summary explanation of the most significant occurrences, including cost and schedule variances under major contracts of the program and any designated major subprogram under the program, contributing to the changes identified and a discussion of the effect these occurrences will have on future program costs and the program schedule.

(17) In any case in which one or more problems with the software component of the program or any designated major subprogram under the program significantly contributed to the increase in program unit costs, the action taken and proposed to be taken to solve such problems.

(e) BREACH DUE TO TERMINATION OR CANCELLATION OF PROGRAM OR SUBPROGRAM.—

(1) LIMITED REPORTING.—If a program acquisition unit cost increase or a procurement unit cost increase for a major defense acquisition program or designated major subprogram that results in a report under this subsection is due to termination or cancellation of the entire program or subprogram, only the information specified in paragraphs (1) through (6) of subsection (d) and the percentage change in program acquisition unit cost or procurement unit cost that resulted in the report need be included in the report.

(2) CERTIFICATION NOT REQUIRED.—The certification of the Secretary of Defense under subsection (b) is not required to be submitted for termination or cancellation of a program or subprogram.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1850(a), (h), (i), Jan. 1, 2021, 134 Stat. 4265, 4267, 4269.)

REFERENCES IN TEXT

Subsections (b)(1) and (b)(2), referred to in subsec. (c)(2), were, prior to transfer to this section and amendment by Pub. L. 116–283, references to pars. (2)(A) and (2)(B), respectively, of subsec. (e) of section 2433 of this title. Par. (2) of such subsec. (e) was first amended by Pub. L. 109–163, div. A, title VIII, § 802(c), Jan. 6, 2006, 119 Stat. 3369, by effectively redesignating subpars. (A) and (B) as (B) and (C), respectively, and was subsequently amended generally by Pub. L. 111–23, title II, § 206(a)(3), May 22, 2009, 123 Stat. 1728, after which par. (2) did not contain subparagraphs. As a result, the redesignation of subsec. (e)(2) of section 2433 as subsec. (b) of this section resulted in the corresponding absence of paragraphs in subsec. (b).

CODIFICATION

The text of subsec. (e) of section 2433 of this title, which was transferred to this section, redesignated subsecs. (a) to (c), and amended by Pub. L. 116–283, § 1850(h)(1), was based on Pub. L. 97–252, title XI, § 1107(a)(1), Sept. 8, 1982, 96 Stat. 741, § 139b; Pub. L. 98–525, title XII, § 1242(b)(5), Oct. 19, 1984, 98 Stat. 2608; renumbered § 2433, Pub. L. 99–433, title I, § 101(a)(5), Oct. 1, 1986, 100 Stat. 995; Pub. L. 100–180, div. A, title XIII, § 1314(a)(1), Dec. 4, 1987, 101 Stat. 1175; Pub. L. 101–189, div. A, title VIII, § 811(a)(5), Nov. 29, 1989, 103 Stat. 1491; Pub. L. 102–484, div. A, title VIII, § 817(d)(5), Oct. 23, 1992, 106 Stat. 2457; Pub. L. 103–35, title II, § 201(i)(2), May 31, 1993, 107 Stat. 100; Pub. L. 103–355, title III, § 3002(a)(2)(C), Oct. 13, 1994, 108 Stat. 3328; Pub. L. 109–163, div. A, title VIII, § 802(b)(3), (c), Jan. 6, 2006, 119 Stat. 3369; Pub. L. 109–364, div. A, title II, § 213(a), Oct. 17, 2006, 120 Stat. 2121; Pub. L. 110–181, div. A, title IX, § 942(e), Jan. 28, 2008, 122 Stat. 288; Pub. L. 110–417, [div. A], title VIII, § 811(c)(5), Oct. 14, 2008, 122 Stat. 4523; Pub. L. 111–23, title II, § 206(a)(3), May 22, 2009, 123 Stat. 1728; Pub. L. 115–232, div. A, title VIII, § 809(a), Aug. 13, 2018, 132 Stat. 1840.

The text of subsec. (g) of section 2433 of this title, which was transferred to this section, redesignated subsecs. (d) and (e), and amended by Pub. L. 116–283, § 1850(i)(1), was based on Pub. L. 97–252, title XI, § 1107(a)(1), Sept. 8, 1982, 96 Stat. 741, § 139b; Pub. L. 98–94, title XII, § 1268(1), Sept. 24, 1983, 97 Stat. 705; Pub. L. 98–525, title XII, § 1242(b)(6), Oct. 19, 1984, 98 Stat. 2608; renumbered § 2433, Pub. L. 99–433, title I, § 101(a)(5), Oct. 1, 1986, 100 Stat. 995; Pub. L. 100–180, div. A, title XIII, § 1314(a)(1), Dec. 4, 1987, 101 Stat. 1175; Pub. L. 101–189, div. A, title VIII, § 811(a)(6), Nov. 29, 1989, 103 Stat. 1493; Pub. L. 103–355, title III, § 3003(e), Oct. 13, 1994, 108 Stat. 3329; Pub. L. 108–375, div. A, title VIII, § 801(b)(1), Oct. 28, 2004, 118 Stat. 2004; Pub. L. 110–417, [div. A], title VIII, § 811(c)(6), Oct. 14, 2008, 122 Stat. 4523; Pub. L. 111–84, div. A, title X, § 1073(c)(4), Oct. 28, 2009, 123 Stat. 2474.

AMENDMENTS

2021—Pub. L. 116–283, § 1850(i)(1), transferred subsec. (g) of section 2433 of this title to this section, struck out subsec. designation, and redesignated pars. (1) and (2) as subsecs. (d) and (e), respectively.

Pub. L. 116–283, § 1850(h)(1), transferred subsec. (e) of section 2433 of this title to this section, struck out subsec. designation, and redesignated pars. (1) to (3) as subsecs. (a) to (c), respectively.

Subsec. (a). Pub. L. 116–283, § 1850(h)(2)(A), (B), inserted subsec. heading, redesignated subpars. (A) and (B) as pars. (1) and (2), respectively, inserted par. (1) heading, and substituted ''Except as provided in paragraph (2),'' for ''Except as provided in subparagraph (B),'' in par. (1).

Subsec. (a)(1). Pub. L. 116–283, § 1850(h)(2)(C), substituted ''under section 4374 of this title'' for ''under subsection (d)'', ''section 4355'' for ''section 2432(e)'', and ''section 4356'' for ''section 2432(f)''.

Subsec. (a)(2). Pub. L. 116–283, § 1850(h)(2)(D), substituted ''paragraph (1)'' for ''subparagraph (A)'' in two places and ''subsection (d)'' for ''subsection (g)''.

Subsec. (b). Pub. L. 116–283, § 1850(h)(3), inserted heading and substituted ''section 4374 of this title'' for ''subsection (d)'' and ''sections 4376 and 4377'' for ''section 2433a''.

Subsec. (c). Pub. L. 116–283, § 1850(h)(4)(A), (B), inserted subsec. heading, designated first and second sentences as pars. (1) and (2), respectively, and inserted par. (1) heading.

Subsec. (c)(1). Pub. L. 116–283, § 1850(h)(4)(C), substituted ''section 4374 of this title'' for ''subsection (d)'' in two places, ''subsection (d)'' for ''subsection (g)'', ''subsection (a)'' for ''paragraph (1)'', and ''subsection (b)'' for ''paragraph (2)''.

Subsec. (c)(2). Pub. L. 116–283, § 1850(h)(4)(D)(i), inserted heading and substituted ''The prohibition under paragraph (1)'' for ''The prohibition'' in introductory provisions.

Subsec. (c)(2)(A). Pub. L. 116–283, § 1850(h)(4)(D)(ii), substituted ''subsection (a) or (b)(2)'' for ''paragraph (1) or (2)(B)'' and ''section 4374 of this title'' for ''subsection (d)''.

Subsec. (c)(2)(B). Pub. L. 116–283, § 1850(h)(4)(D)(iii), substituted ''subsection (a) or (b)(2)'' for ''paragraph (1) or (2)(B)'', ''subsection (b)(1)'' for ''paragraph (2)(A)'', and ''section 4374 of this title'' for ''subsection (d)''.

Subsec. (d). Pub. L. 116–283, § 1850(i)(2)(A), (B), inserted heading, substituted ''Except as provided in subsection (e), each report under this section'' for ''Except as provided in paragraph (2), each report under subsection (e)'' in introductory provisions, and redesignated subpars. (A) to (Q) as pars. (1) to (17), respectively.

Subsec. (d)(9). Pub. L. 116–283, § 1850(i)(2)(C), substituted ''section 4214'' for ''section 2435''.

Subsec. (d)(16). Pub. L. 116–283, § 1850(i)(2)(D), redesignated cls. (i) to (vi) as subpars. (A) to (F), respectively.

Subsec. (e). Pub. L. 116–283, § 1850(i)(3)(A)–(C), inserted subsec. heading, designated first and second sentences as pars. (1) and (2), respectively, inserted par. (1) heading, and, in par. (1), substituted ''paragraphs (1) through (6) of subsection (d)'' for ''clauses (A) through (F) of paragraph (1)''.

Subsec. (e)(2). Pub. L. 116–283, § 1850(i)(3)(D), inserted heading and substituted ''subsection (b)'' for ''subsection (e)''.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 4376. Breach of critical cost growth threshold: reassessment of program; presumption of program termination

(a) REASSESSMENT OF PROGRAM.—If the program acquisition unit cost or procurement unit cost of a major defense acquisition program or designated subprogram (as determined by the Secretary under section 4374 of this title) increases by a percentage equal to or greater than the critical cost growth threshold for the program or subprogram, the Secretary of Defense, after consultation with the Joint Requirements Oversight Council regarding program requirements, shall—

(1) determine the root cause or causes of the critical cost growth in accordance with applicable statutory requirements and Department of Defense policies, procedures, and guidance; and

(2) in consultation with the Director of Cost Assessment and Program Evaluation, carry out an assessment of—

(A) the projected cost of completing the program if current requirements are not modified;

(B) the projected cost of completing the program based on reasonable modification of such requirements;

(C) the rough order of magnitude of the costs of any reasonable alternative system or capability; and

(D) the need to reduce funding for other programs due to the growth in cost of the program.

(b) PRESUMPTION OF TERMINATION.—

(1) TERMINATION UNLESS SECRETARY SUBMITS CERTIFICATION AND REPORT.—After conducting the reassessment required by subsection (a) with respect to a major defense acquisition program, the Secretary shall terminate the program unless the Secretary submits to Congress, before the end of the 60-day period beginning on the day the Selected Acquisition Report containing the information described in section 4375(d) and (e) of this title is required to be submitted under section 4356(a) of this title, a written certification in accordance with paragraph (2).

(2) CERTIFICATION.—A certification described by this paragraph with respect to a major defense acquisition program is a written certification that—

(A) the continuation of the program is essential to the national security;

(B) there are no alternatives to the program which will provide acceptable capability to meet the joint military requirement (as defined in section 181(g)(1) of this title) at less cost;

(C) the new estimates of the program acquisition unit cost or procurement unit cost have been determined by the Director of Cost Assessment and Program Evaluation to be reasonable;

(D) the program is a higher priority than programs whose funding must be reduced to accommodate the growth in cost of the program; and

(E) the management structure for the program is adequate to manage and control program acquisition unit cost or procurement unit cost.

(3) REPORT.—A written certification under paragraph (2) shall be accompanied by a report presenting the root cause analysis and assessment carried out pursuant to subsection (a) and the basis for each determination made in accordance with subparagraphs (A) through (E) of paragraph (2), together with supporting documentation.

(c) ACTIONS IF PROGRAM TERMINATED.—If a major defense acquisition program is terminated pursuant to subsection (b), the Secretary shall submit to Congress a written report setting forth—

(1) an explanation of the reasons for terminating the program;

(2) the alternatives considered to address any problems in the program; and

(3) the course the Department plans to pursue to meet any continuing joint military requirements otherwise intended to be met by the program.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1850(a), (j), Jan. 1, 2021, 134 Stat. 4265, 4269.)

CODIFICATION

The text of subsecs. (a) and (b) of section 2433a of this title, which was transferred to this section by Pub. L. 116–283, § 1850(j)(1), was based on Pub. L. 111–23, title II, § 206(a)(1), May 22, 2009, 123 Stat. 1726; Pub. L. 111–383, div. A, title X, § 1075(b)(35), Jan. 7, 2011, 124 Stat. 4371.

The text of subsec. (d) of section 2433a of this title, which was transferred to this section and redesignated subsec. (c) by Pub. L. 116–283, § 1850(j)(2), was based on Pub. L. 111–23, title II, § 206(a)(1), May 22, 2009, 123 Stat. 1726.

AMENDMENTS

2021—Pub. L. 116–283, § 1850(j)(1), (2), transferred subsecs. (a), (b), and (d) of section 2433a of this title to this section and redesignated subsec. (d) as (c).

Subsec. (a). Pub. L. 116–283, § 1850(j)(3)(A), substituted ''section 4374'' for ''section 2433(d)'' in introductory provisions.

Subsec. (b)(1). Pub. L. 116–283, § 1850(j)(4)(A), inserted heading.

Pub. L. 116–283, § 1850(j)(3)(B), substituted ''section 4375(d) and (e)'' for ''section 2433(g)'' and ''section 4356(a)'' for ''section 2432(f)''.

Subsec. (b)(2), (3). Pub. L. 116–283, § 1850(j)(4)(B)–(D), realigned margins and inserted headings.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 4377. Breach of critical cost growth threshold: actions if program not terminated

(a) ACTIONS IF PROGRAM NOT TERMINATED.—If the Secretary elects not to terminate a major defense acquisition program pursuant to subsection (b) of section 4376 of this title, the Secretary shall—

(1) restructure the program in a manner that addresses the root cause or causes of the critical cost growth, as identified pursuant to subsection (a) of that section, and ensures that the program has an appropriate management structure as set forth in the certification submitted pursuant to subsection (b)(2)(E) of that section;

(2) rescind the most recent Milestone approval for the program and withdraw any associated certification under section 4251 or 4252 of this title;

(3) require a new Milestone approval for the program before taking any contract action to enter a new contract, exercise an option under an existing contract, or otherwise extend the scope of an existing contract under the program, except to the extent determined necessary by the Milestone Decision Authority, on a non-delegable basis, to ensure that the program can be restructured as intended by the Secretary without unnecessarily wasting resources;

(4) include in the report specified in subsection (b) a description of all funding changes made as a result of the growth in cost of the program, including reductions made in funding for other programs to accommodate such cost growth; and

(5) conduct regular reviews of the program in accordance with the requirements of section 205 of the Weapon Systems Acquisition Reform Act of 2009.

(b) IDENTIFICATION OF REPORT FOR DESCRIPTION OF FUNDING CHANGES.—For purposes of subsection (a)(4), the report specified in this subsection is the first Selected Acquisition Report for the program submitted pursuant to section 4352 of this title after the President submits a budget pursuant to section 1105 of title 31, in the calendar year following the year in which the program was restructured.

(c) INAPPLICABILITY OF CERTAIN SUBSECTION (A) REQUIREMENTS.—

(1) CONDITIONS FOR INAPPLICABILITY.—The requirements of paragraphs (2), (3), and (5) of subsection (a) shall not apply to a program or subprogram if—

(A) the Milestone Decision Authority determines in writing, on the basis of a cost assessment and root cause analysis conducted pursuant to section 4376(a) of this title, that—

(i) but for a change in the quantity of items to be purchased under the program or subprogram, the program acquisition unit cost or procurement unit cost for the program or subprogram would not have increased by a percentage equal to or greater than the cost growth thresholds for the program or subprogram set forth in paragraph (2); and

(ii) the change in quantity of items described in clause (i) was not made as a result of an increase in program cost, a delay in the program, or a problem meeting program requirements;

(B) the Secretary determines in writing that the cost to the Department of Defense of complying with such requirements is likely to exceed the benefits to the Department of complying with such requirements; and

(C) the Secretary submits to Congress, before the end of the 60-day period beginning on the day the Selected Acquisition Report containing the information described in subsections (d) and (e) of section 4375 of this title is required to be submitted under section 4356 of this title—

(i) a copy of the written determination under subparagraph (A) and an explanation of the basis for the determination; and

(ii) a copy of the written determination under subparagraph (B) and an explanation of the basis for the determination.

(2) COST GROWTH THRESHOLDS.—The cost growth thresholds specified in this paragraph are as follows:

(A) In the case of a major defense acquisition program or designated major defense subprogram, a percentage increase in the program acquisition unit cost for the program or subprogram of—

(i) 5 percent over the program acquisition unit cost for the program or subprogram as shown in the current Baseline Estimate for the program or subprogram; and

(ii) 10 percent over the program acquisition unit cost for the program or subprogram as shown in the original Baseline Estimate for the program or subprogram.

(B) In the case of a major defense acquisition program or designated major defense subprogram that is a procurement program, a percentage increase in the procurement unit cost for the program or subprogram of—

(i) 5 percent over the procurement unit cost for the program or subprogram as shown in the current Baseline Estimate for the program or subprogram; and

(ii) 10 percent over the procurement unit cost for the program or subprogram as shown in the original Baseline Estimate for the program or subprogram.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1850(a), (k), Jan. 1, 2021, 134 Stat. 4265, 4270.)

CODIFICATION

The text of subsec. (c) of section 2433a of this title, which was transferred to this section and redesignated as subsec. (a) by Pub. L. 116–283, § 1850(k)(1), was based on Pub. L. 111–23, title II, § 206(a)(1), May 22, 2009, 123 Stat. 1726; Pub. L. 112–81, div. A, title VIII, §§ 801(e)(4), 831, Dec. 31, 2011, 125 Stat. 1484, 1503; Pub. L. 112–239, div. A, title VIII, § 813, Jan. 2, 2013, 126 Stat. 1829.

PRIOR PROVISIONS

Prior sections 4381 to 4387 were repealed by Pub. L. 88–647, title III, § 301(10), Oct. 13, 1964, 78 Stat. 1072.

Section 4381, act Aug. 10, 1956, ch. 1041, 70A Stat. 246, defined ''advanced training'' for purposes of chapter 405.

Section 4382, act Aug. 10, 1956, ch. 1041, 70A Stat. 246, provided for the establishment and composition of the Reserve Officers' Training Corps.

Section 4383, act Aug. 10, 1956, ch. 1041, 70A Stat. 247, related to admission and training of medical, dental, pharmacy, and veterinary students.

Section 4384, act Aug. 10, 1956, ch. 1041, 70A Stat. 247; Pub. L. 85–861, § 1(104), Sept. 2, 1958, 72 Stat. 1489, set out courses of training.

Section 4385, act Aug. 10, 1956, ch. 1041, 70A Stat. 247, authorized the operation and maintenance of training camps.

Section 4386, act Aug. 10, 1956, ch. 1041, 70A Stat. 248, provided for supplies and uniforms.

Section 4387, act Aug. 10, 1956, ch. 1041, 70A Stat. 248, provided for advanced training and compensation.

AMENDMENTS

2021—Pub. L. 116–283, § 1850(k)(2), redesignated pars. (2) and (3) of subsec. (a) as subsecs. (b) and (c), respectively.

Pub. L. 116–283, § 1850(k)(1), transferred subsec. (c) of section 2433a of this title to this section and redesignated it as subsec. (a).

Subsec. (a). Pub. L. 116–283, § 1850(k)(3)(A)–(C), struck out par. (1) designation before ''If the Secretary'', inserted ''of section 4376 of this title'' after ''subsection (b)'' in introductory provisions, and redesignated subpars. (A) to (E) as pars. (1) to (5), respectively.

Subsec. (a)(1). Pub. L. 116–283, § 1850(k)(3)(D), inserted ''of that section'' after ''subsection (a)'' and ''subsection (b)(2)(E)''.

Subsec. (a)(2). Pub. L. 116–283, § 1850(k)(3)(E), substituted ''section 4251 or 4252'' for ''section 2366a or 2366b''.

Subsec. (a)(4). Pub. L. 116–283, § 1850(k)(3)(F), substituted ''subsection (b)'' for ''paragraph (2)''.

Subsec. (b). Pub. L. 116–283, § 1850(k)(4), inserted heading and substituted ''subsection (a)(4)'' for ''paragraph (1)(D)'', ''in this subsection'' for ''in this paragraph'', and ''section 4352'' for ''section 2432''.

Subsec. (c). Pub. L. 116–283, § 1850(k)(5), inserted subsec. heading, redesignated subpars. (A) and (B) as pars.

(1) and (2), respectively, inserted par. headings, and substituted "The requirements of paragraphs (2), (3), and (5) of subsection (a)" for "The requirements of subparagraphs (B), (C), and (E) of paragraph (1)" in introductory provisions of par. (1).

Subsec. (c)(1). Pub. L. 116–283, § 1850(k)(6)(A), redesignated cls. (i) to (iii) as subpars. (A) to (C), respectively.

Subsec. (c)(1)(A). Pub. L. 116–283, § 1850(k)(6)(C)(i), substituted "pursuant to section 4376(a) of this title" for "pursuant to subsection (a)" in introductory provisions.

Pub. L. 116–283, § 1850(k)(6)(B), redesignated subcls. (I) and (II) as cls. (i) and (ii), respectively.

Subsec. (c)(1)(A)(i). Pub. L. 116–283, § 1850(k)(6)(C)(ii), substituted "paragraph (2)" for "subparagraph (B)".

Subsec. (c)(1)(A)(ii). Pub. L. 116–283, § 1850(k)(6)(C)(iii), substituted "clause (i)" for "subclause (I)".

Subsec. (c)(1)(C). Pub. L. 116–283, § 1850(k)(6)(D)(i), substituted "subsections (d) and (e) of section 4375" for "section 2433(g)" and "section 4356" for "section 2432(f)" in introductory provisions.

Pub. L. 116–283, § 1850(k)(6)(B), redesignated subcls. (I) and (II) as cls. (i) and (ii), respectively.

Subsec. (c)(1)(C)(i). Pub. L. 116–283, § 1850(k)(6)(D)(ii), substituted "subparagraph (A)" for "clause (i)".

Subsec. (c)(1)(C)(ii). Pub. L. 116–283, § 1850(k)(6)(D)(iii), substituted "subparagraph (B)" for "clause (ii)".

Subsec. (c)(2). Pub. L. 116–283, § 1850(k)(7)(A), (B), substituted "this paragraph" for "this subparagraph" in introductory provisions and redesignated cls. (i) and (ii) as subpars. (A) and (B), respectively.

Subsec. (c)(2)(A), (B). Pub. L. 116–283, § 1850(k)(7)(C), redesignated subcls. (I) and (II) as cls. (i) and (ii), respectively.

Effective Date

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

CHAPTER 327—WEAPON SYSTEMS DEVELOPMENT AND RELATED MATTERS

Subchapter		Sec.
I.	Modular Open System Approach in Development of Weapon Systems	4401
II.	Development, Prototyping, and Deployment of Weapon System Components or Technology	4421

Prior Provisions

A prior chapter 327 "RESEARCH AND DEVELOPMENT CENTERS AND FACILITIES", consisting of reserved section 4401, was repealed by Pub. L. 116–283, div. A, title XVIII, § 1841(a)(1)(A), Jan. 1, 2021, 134 Stat. 4242.

A prior chapter 329 "OPERATIONAL TEST AND EVALUATION; DEVELOPMENTAL TEST AND EVALUATION", consisting of reserved section 4451, was repealed by Pub. L. 116–283, div. A, title XVIII, § 1841(a)(1)(A), Jan. 1, 2021, 134 Stat. 4242.

SUBCHAPTER I—MODULAR OPEN SYSTEM APPROACH IN DEVELOPMENT OF WEAPON SYSTEMS

Sec.	
4401.	Requirement for modular open system approach in major defense acquisition programs; definitions.
4402.	Requirement to address modular open system approach in program capabilities development and acquisition weapon system design.
4403.	Requirements relating to availability of major system interfaces and support for modular open system approach.

§ 4401. Requirement for modular open system approach in major defense acquisition programs; definitions

(a) Modular Open System Approach Requirement.—A major defense acquisition program that receives Milestone A or Milestone B approval after January 1, 2019, shall be designed and developed, to the maximum extent practicable, with a modular open system approach to enable incremental development and enhance competition, innovation, and interoperability. Other defense acquisition programs shall also be designed and developed, to the maximum extent practicable, with a modular open system approach to enable incremental development and enhance competition, innovation, and interoperability.

(b) Definitions.—In this chapter:

(1) The term "modular open system approach" means, with respect to a major defense acquisition program, an integrated business and technical strategy that—

(A) employs a modular design that uses modular system interfaces between major systems, major system components and modular systems;

(B) is subjected to verification to ensure that relevant modular system interfaces—

(i) comply with, if available and suitable, widely supported and consensus-based standards; or

(ii) are delivered pursuant to the requirements established in subsection (a)(2)(B) of section 804 of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, including the delivery of—

(I) software-defined interface syntax and properties, specifically governing how values are validly passed and received between major subsystems and components, in machine-readable format;

(II) a machine-readable definition of the relationship between the delivered interface and existing common standards or interfaces available in Department interface repositories; and

(III) documentation with functional descriptions of software-defined interfaces, conveying semantic meaning of interface elements, such as the function of a given interface field;

(C) uses a system architecture that allows severable major system components and modular systems at the appropriate level to be incrementally added, removed, or replaced throughout the life cycle of a major system platform to afford opportunities for enhanced competition and innovation while yielding—

(i) significant cost savings or avoidance;

(ii) schedule reduction;

(iii) opportunities for technical upgrades;

(iv) increased interoperability, including system of systems interoperability and mission integration; or

(v) other benefits during the sustainment phase of a major weapon system; and

(D) complies with the technical data rights set forth in sections 3771 through 3775 of this title.

(2) The term ''major system platform'' means the highest level structure of a major weapon system that is not physically mounted or installed onto a higher level structure and on which a major system component can be physically mounted or installed.

(3) The term ''major system component''—

(A) means a high level subsystem or assembly, including hardware, software, or an integrated assembly of both, that can be mounted or installed on a major system platform through modular system interfaces; and

(B) includes a subsystem or assembly that is likely to have additional capability requirements, is likely to change because of evolving technology or threat, is needed for interoperability, facilitates incremental deployment of capabilities, or is expected to be replaced by another major system component.

(4) The term ''modular system interface'' means a shared boundary between major systems, major system components, or modular systems, defined by various physical, logical, and functional characteristics, such as electrical, mechanical, fluidic, optical, radio frequency, data, networking, or software elements.

(5) The term ''modular system'' refers to a weapon system or weapon system component that—

(A) is able to execute without requiring coincident execution of other specific weapon systems or components;

(B) can communicate across component boundaries and through interfaces; and

(C) functions as a module that can be separated, recombined, and connected with other weapon systems or weapon system components in order to achieve various effects, missions, or capabilities.

(6) The term ''program capability document'' means, with respect to a major defense acquisition program, a document that specifies capability requirements for the program, such as a capability development document or a capability production document.

(7) The terms ''program cost targets'' and ''fielding target'' have the meanings provided in section 4271(a) of this title.

(8) The term ''major defense acquisition program'' has the meaning provided in section 4201 of this title.

(9) The term ''major weapon system'' has the meaning provided in section 3455(f) of this title.

(Added Pub. L. 114–328, div. A, title VIII, § 805(a)(1), Dec. 23, 2016, 130 Stat. 2252, § 2446a; renumbered § 4401 and amended Pub. L. 116–283, div. A, title VIII, § 804(b)(1), title XVIII, § 1851(b)(1), (2), Jan. 1, 2021, 134 Stat. 3737, 4272.)

REFERENCES IN TEXT

Section 804 of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, referred to in subsec. (b)(1)(B)(ii), is section 804 of Pub. L. 116–283, which is set out as a note below.

AMENDMENTS

2021—Pub. L. 116–283, § 1851(b)(1), renumbered section 2446a of this title as this section.

Subsec. (a). Pub. L. 116–283, § 804(b)(1)(A), inserted at end ''Other defense acquisition programs shall also be designed and developed, to the maximum extent practicable, with a modular open system approach to enable incremental development and enhance competition, innovation, and interoperability.''

Subsec. (b)(1)(A). Pub. L. 116–283, § 804(b)(1)(B)(i)(I), substituted ''modular system interfaces between major systems, major system components and modular systems;'' for ''major system interfaces between a major system platform and a major system component, between major system components, or between major system platforms;''.

Subsec. (b)(1)(B). Pub. L. 116–283, § 804(b)(1)(B)(i)(II), substituted ''that relevant modular system interfaces—'' for ''major system interfaces comply with, if available and suitable, widely supported and consensus-based standards;'' and added cls. (i) and (ii).

Subsec. (b)(1)(C). Pub. L. 116–283, § 804(b)(1)(B)(i)(III), inserted ''and modular systems'' after ''severable major system components'' in introductory provisions.

Subsec. (b)(1)(D). Pub. L. 116–283, § 1851(b)(2)(A), substituted ''sections 3771 through 3775'' for ''section 2320''.

Subsec. (b)(3)(A). Pub. L. 116–283, § 804(b)(1)(B)(ii), substituted ''modular system interfaces'' for ''well-defined major system interfaces''.

Subsec. (b)(4). Pub. L. 116–283, § 804(b)(1)(B)(iii), amended par. (4) generally. Prior to amendment, par. (4) defined major system interface.

Subsec. (b)(5), (6). Pub. L. 116–283, § 804(b)(1)(B)(iv), (v), added par. (5) and redesignated former pars. (5) and (6) as (6) and (7), respectively.

Subsec. (b)(7). Pub. L. 116–283, § 1851(b)(2)(B), which directed amendment of par. (6) of subsec. (b) by substituting ''section 4271(a)'' for ''section 2448a(a)'', was executed by making the substitution in par. (7) to reflect the probable intent of Congress and the intervening amendment by section 804(b)(1)(B)(iv) of Pub. L. 116–283 which redesignated par. (6) as (7). See below.

Pub. L. 116–283, § 804(b)(1)(B)(iv), redesignated par. (6) as (7). Former par. (7) redesignated (8).

Subsec. (b)(8). Pub. L. 116–283, § 1851(b)(2)(C), which directed amendment of par. (7) of subsec. (b) by substituting ''section 4201'' for ''section 2430'', was executed by making the substitution in par. (8) to reflect the probable intent of Congress and the intervening amendment by section 804(b)(1)(B)(iv) of Pub. L. 116–283 which redesignated par. (7) as (8). See below.

Pub. L. 116–283, § 804(b)(1)(B)(iv), redesignated par. (7) as (8). Former par. (8) redesignated (9).

Subsec. (b)(9). Pub. L. 116–283, § 1851(b)(2)(D), which directed amendment of par. (8) of subsec. (b) by substituting ''section 3455(f)'' for ''section 2379(f)'', was executed by making the substitution in par. (9) to reflect the probable intent of Congress and the intervening amendment by section 804(b)(1)(B)(iv) of Pub. L. 116–283 which redesignated par. (8) as (9). See below.

Pub. L. 116–283, § 804(b)(1)(B)(iv), redesignated par. (8) as (9).

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by section 1851(b)(1), (2) of Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

IMPLEMENTATION OF MODULAR OPEN SYSTEMS APPROACHES

Pub. L. 116–283, div. A, title VIII, § 804, Jan. 1, 2021, 134 Stat. 3735, provided that:

''(a) REQUIREMENTS FOR INTERFACE DELIVERY.—

''(1) IN GENERAL.—Not later than one year after the date of the enactment of this Act [Jan. 1, 2021], the

Under Secretary of Defense for Acquisition and Sustainment, in coordination with the Joint All-Domain Command and Control cross-functional team and the Director for Command, Control, Communications, and Computers/Cyber, shall issue regulations and guidance applicable to the military departments, Defense Agencies, Department of Defense Field Activities (as such terms are defined, respectively, in section 101 of title 10, United States Code), and combatant commands, as appropriate, to—

''(A) facilitate the Department of Defense's access to and utilization of modular system interfaces;

''(B) fully realize the intent of chapter 144B of title 10, United States Code, by facilitating the implementation of modular open system approaches across major defense acquisition programs (as defined in section 2430 of title 10, United States Code) and other relevant acquisition programs, including in the acquisition and sustainment of weapon systems, platforms, and components for which no common interface standard has been established, to enable communication between such weapon systems, platforms, and components; and

''(C) advance the efforts of the Department to generate diverse and recomposable kill chains.

''(2) ELEMENTS.—The regulations and guidance required under paragraph (1) shall include requirements that—

''(A) the program officer for each weapon system characterizes, in the acquisition strategy required under section 2431a of title 10, United States Code or in other documentation, the desired modularity of the weapon system for which the program officer is responsible, including—

''(i) identification of—

''(I) the modular systems that comprise the weapon system;

''(II) the information that should be communicated between individual modular systems (such as tracking and targeting data or command and control instructions); and

''(III) the desired function of the communication between modular systems (such as fire control functions); and

''(ii) a default configuration specifying which modular systems should communicate with other modular systems, including modular systems of other weapon systems;

''(B) each relevant Department of Defense contract entered into after the date on which the regulations and guidance required under paragraph (1) are implemented includes requirements for the delivery of modular system interfaces for modular systems deemed relevant in the acquisition strategy or documentation referred to in subparagraph (A), including—

''(i) software-defined interface syntax and properties, specifically governing how values are validly passed and received between major subsystems and components, in machine-readable format;

''(ii) a machine-readable definition of the relationship between the delivered interface and existing common standards or interfaces available in the interface repositories established pursuant to subsection (c); and

''(iii) documentation with functional descriptions of software-defined interfaces, conveying semantic meaning of interface elements, such as the function of a given interface field;

''(C) the relevant program offices, including those responsible for maintaining and upgrading legacy systems—

''(i) that have not characterized the desired modularity of the systems nevertheless meet the requirements of paragraph (2)(A), if the program officers make an effort, to the extent practicable, to update the acquisition strategies required under section 2431a of title 10, United States Code, or to develop or update other relevant documentation; and

''(ii) that have awarded contracts that do not include the requirements specified in subparagraph (B) of paragraph (2) nevertheless acquire, to the extent practicable, the items specified in clauses (i) through (iii) of such subparagraph, either through contractual updates, separate negotiations or contracts, or program management mechanisms; and

''(D) the relevant program officers deliver modular system interfaces and the associated documentation to at least one of the repositories established pursuant to subsection (c).

''(3) APPLICABILITY OF REGULATIONS AND GUIDANCE.—

''(A) APPLICABILITY.—The regulations and guidance required under paragraph (1) shall apply to any program office responsible for the prototyping, acquisition, or sustainment of a new or existing weapon system.

''(B) EXTENSION OF SCOPE.—Not earlier than 1 year before, and not later than 2 years after the regulations and guidance required under paragraph (1) are issued for weapon systems, the Under Secretary of Defense for Acquisition and Sustainment may extend such regulations and guidance to apply to software-based non-weapon systems, including business systems and cybersecurity systems.

''(4) INCLUSION OF COMPONENTS.—For the purposes of paragraph (2)(A), each component that meets the following requirements shall be treated as a modular system:

''(A) A component that is able to execute without requiring coincident execution of other weapon systems or components and can communicate across component boundaries and through interfaces.

''(B) A component that can be separated from and recombined with other weapon systems or components to achieve various effects, missions, or capabilities.

''(C) A component that is covered by a unique contract line item.

''(5) MACHINE-READABLE DEFINITION.—Where appropriate and available, the requirement in paragraph (2)(B)(ii) for a machine-readable definition may be satisfied by using a covered technology.

''(b) EXTENSION OF MODULAR OPEN SYSTEMS APPROACH AND RIGHTS IN INTERFACE SOFTWARE.—

''(1) REQUIREMENT FOR MODULAR OPEN SYSTEM APPROACH.—[Amended section 2446a of this title.]

''(2) RIGHTS IN TECHNICAL DATA.—

''(A) IN GENERAL.—[Amended section 2320 of this title.]

''(B) REGULATIONS.—Not later than 180 days after the date of the enactment of this Act [Jan. 1, 2021], the Secretary of Defense shall update the regulations required by section 2320(a)(1) of title 10, United States Code, to reflect the amendments made by this paragraph.

''(c) INTERFACE REPOSITORIES.—

''(1) ESTABLISHMENT.—Not later than 90 days after the date of the enactment of this Act [Jan. 1, 2021], the Under Secretary of Defense for Acquisition and Sustainment shall—

''(A) direct the Secretaries concerned and the heads of other appropriate Department of Defense components to establish and maintain repositories for interfaces, syntax and properties, documentation, and communication implementations delivered pursuant to the requirements established under subsection (a)(2)(B);

''(B) establish and maintain a comprehensive index of interfaces, syntax and properties, documentation, and communication implementations delivered pursuant to the requirements established under subsection (a)(2)(B) and maintained in the repositories required under subparagraph (A); and

''(C) if practicable, establish and maintain an alternate reference repository of interfaces, syntax and properties, documentation, and communication implementations delivered pursuant to the requirements established under subsection (a)(2)(B).

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''(2) DISTRIBUTION OF INTERFACES.—

''(A) IN GENERAL.—Consistent with the requirements of section 2320 of title 10, United States Code, the Under Secretary of Defense for Acquisition and Sustainment shall, in coordination with the Director of the Defense Standardization Program Office, use the index and repositories established pursuant to paragraph (1) to provide access to interfaces and relevant documentation to authorized Federal Government and non-Governmental entities.

''(B) NON-GOVERNMENT RECIPIENT USE LIMITS.—A non-Governmental entity that receives access under subparagraph (A) may not further release, disclose, or use such data except as authorized.

''(d) SYSTEM OF SYSTEMS INTEGRATION TECHNOLOGY AND EXPERIMENTATION.—

''(1) DEMONSTRATION AND ASSESSMENT.—

''(A) IN GENERAL.—Not later than one year after the date of the enactment of this Act [Jan. 1, 2021], the Director for Command, Control, Communications, and Computers/Cyber and the Chief Information Officer of the Department of Defense, acting through the Joint All-Domain Command and Control cross-functional team, shall conduct demonstrations and complete an assessment of the technologies developed under the System of Systems Integration Technology and Experimentation program of the Defense Advanced Research Projects Agency, including a covered technology, and the applicability of any such technologies to the Joint All-Domain Command and Control architecture.

''(B) COVERAGE.—The demonstrations and assessment required under subparagraph (A) shall include—

''(i) at least three demonstrations of the use of a covered technology to create, under constrained schedules and budgets, novel kill chains involving previously incompatible weapon systems, sensors, and command, control, and communication systems from multiple military services in cooperation with United States Indo-Pacific Command or United States European Command;

''(ii) an evaluation as to whether the communications enabled via a covered technology are sufficient for military missions and whether such technology results in any substantial performance loss in communication between systems, major subsystems, and major components;

''(iii) an evaluation as to whether a covered technology obviates the need to develop, impose, and maintain strict adherence to common communication and interface standards for weapon systems;

''(iv) the appropriate roles and responsibilities of the Chief Information Officer of the Department of Defense, the Under Secretary of Defense for Acquisition and Sustainment, the heads of the combatant commands, the Secretaries concerned, the Defense Advanced Research Projects Agency, and the defense industrial base in using and maintaining a covered technology to generate diverse and recomposable kill chains as part of the Joint All-Domain Command and Control architecture;

''(v) for at least one of the demonstrations conducted under clause (i), demonstration of the use of technology developed under the High-Assurance Cyber Military Systems program of the Defense Advanced Research Projects Agency to secure legacy weapon systems and command and control capabilities while facilitating interoperability;

''(vi) an evaluation of how the technology referred to in clause (v) and covered technology should be used to improve cybersecurity and interoperability across critical weapon systems and command and control capabilities across the joint forces; and

''(vii) coordination with the program manager for the Time Sensitive Targeting Defeat program under the Under Secretary of Defense for Research and Engineering and the Under Secretary of Defense for Intelligence and Security.

''(2) CHIEF INFORMATION OFFICER ASSESSMENT.—

''(A) IN GENERAL.—The Chief Information Officer for the Department of Defense, in coordination with the Principal Cyber Advisor to the Secretary of Defense and the Director of the Cybersecurity Directorate of the National Security Agency, shall assess the technologies developed under the System of Systems Integration Technology and Experimentation program of the Defense Advanced Research Projects Agency, including the covered technology, and applicability of such technology to the business systems and cybersecurity tools of the Department.

''(B) COVERAGE.—The assessment required under subparagraph (A) shall include—

''(i) an evaluation as to how the technologies referred to in such subparagraph could be used in conjunction with or instead of existing cybersecurity standards, frameworks, and technologies designed to enable communication between, and coordination of, cybersecurity tools;

''(ii) as appropriate, demonstrations by the Chief Information Office of the use of such technologies in enabling communication between, and coordination of, previously incompatible cybersecurity tools; and

''(iii) as appropriate, demonstrations of the use of such technologies in enabling communication between previously incompatible business systems.

''(3) SUSTAINMENT OF CERTAIN ENGINEERING RESOURCES AND CAPABILITIES.—During the period the demonstrations and assessments required under this subsection are conducted, and thereafter to the extent required to execute the activities directed by the Joint All-Domain Command and Control cross-functional team, the Joint All-Domain Command and Control cross-functional team shall sustain the System of Systems Technology Integration Tool Chain for Heterogeneous Electronic Systems engineering resources and capabilities developed by the Defense Advanced Research Projects Agency.

''(4) TRANSFER OF RESPONSIBILITY.—Not earlier than 1 year before, and not later than 2 years after the date of the enactment of this Act, the Secretary of Defense may transfer responsibility for maintaining the engineering resources and capabilities described in paragraph (3) to a different organization within the Department.

''(e) OPEN STANDARDS.—Nothing in this section shall be construed as requiring, preventing, or interfering with the use or application of any given communication standard or interface. The communication described in subsection (a)(2)(A) may be accomplished by using existing open standards, by the creation and use of new open standards, or through other approaches, provided that such standards meet the requirements of subsection (a)(2)(B).

''(f) DEFINITIONS.—In this section:

''(1) The term 'covered technology' means the domain-specific programming language for interface field transformations and its associated compilation toolchain (commonly known as the 'System of Systems Technology Integration ToolChain for Heterogeneous Electronic Systems') developed under the Defense Advanced Research Projects Agency System of Systems Integration Technology and Experimentation program, or any other technology that is functionally equivalent.

''(2) The term 'desired modularity' means the desired degree to which weapon systems, components within a weapon system, and components across weapon systems can function as modules that can communicate across component boundaries and through interfaces and can be separated and recombined to achieve various effects, missions, or capabilities, as determined by the program officer for such weapon system.

''(3) The term 'machine-readable format' means a format that can be easily processed by a computer without human intervention.

''(4) The terms 'major system', 'major system component', 'modular open system approach', 'modular system', 'modular system interface', and 'weapon system' have the meanings given such terms, respectively, in section 2446a of title 10, United States Code.''

§ 4402. Requirement to address modular open system approach in program capabilities development and acquisition weapon system design

(a) PROGRAM CAPABILITY DOCUMENT.—A program capability document for a major defense acquisition program shall identify and characterize—

(1) the extent to which requirements for system performance are likely to evolve during the life cycle of the system because of evolving technology, threat, or interoperability needs; and

(2) for requirements that are expected to evolve, the minimum acceptable capability that is necessary for initial operating capability of the major defense acquisition program.

(b) ANALYSIS OF ALTERNATIVES.—The Director of Cost Assessment and Performance Evaluation, in formulating study guidance for analyses of alternatives for major defense acquisition programs and performing such analyses under section 139a(d)(4) of this title, shall ensure that any such analysis for a major defense acquisition program includes consideration of evolutionary acquisition, prototyping, and a modular open system approach.

(c) ACQUISITION STRATEGY.—In the case of a major defense acquisition program that uses a modular open system approach, the acquisition strategy required under section 4211 of this title shall—

(1) clearly describe the modular open system approach to be used for the program;

(2) differentiate between the major system platform and major system components being developed under the program, as well as major system components developed outside the program that will be integrated into the major defense acquisition program;

(3) clearly describe the evolution of major system components that are anticipated to be added, removed, or replaced in subsequent increments;

(4) identify additional major system components that may be added later in the life cycle of the major system platform;

(5) clearly describe how intellectual property and related issues, such as technical data deliverables, that are necessary to support a modular open system approach, will be addressed; and

(6) clearly describe the approach to systems integration and systems-level configuration management to ensure mission and information assurance.

(d) REQUEST FOR PROPOSALS.—The milestone decision authority for a major defense acquisition program that uses a modular open system approach shall ensure that a request for proposals for the development or production phases of the program shall describe the modular open system approach and the minimum set of major system components that must be included in the design of the major defense acquisition program.

(e) MILESTONE B.—A major defense acquisition program may not receive Milestone B approval under section 4252 of this title until the milestone decision authority determines in writing—

(1) in the case of a program that uses a modular open system approach, that—

(A) the program incorporates clearly defined major system interfaces between the major system platform and major system components, between major system components, and between major system platforms;

(B) such major system interfaces are consistent with the widely supported and consensus-based standards that exist at the time of the milestone decision, unless such standards are unavailable or unsuitable for particular major system interfaces; and

(C) the Government has arranged to obtain appropriate and necessary intellectual property rights with respect to such major system interfaces upon completion of the development of the major system platform; or

(2) in the case of a program that does not use a modular open system approach, that the use of a modular open system approach is not practicable.

(f) IMPLEMENTATION GUIDANCE.—The Secretaries of the military departments shall issue guidance to implement the requirements of this section.

(Added Pub. L. 114–328, div. A, title VIII, § 805(a)(1), Dec. 23, 2016, 130 Stat. 2253, § 2446b; amended Pub. L. 115–91, div. A, title X, § 1081(a)(40), Dec. 12, 2017, 131 Stat. 1596; Pub. L. 116–92, div. A, title VIII, § 840(a), Dec. 20, 2019, 133 Stat. 1499; renumbered § 4402 and amended Pub. L. 116–283, div. A, title XVIII, § 1851(b)(1), (3), Jan. 1, 2021, 134 Stat. 4272.)

AMENDMENTS

2021—Pub. L. 116–283, § 1851(b)(1), renumbered section 2446b of this title as this section.

Subsec. (c). Pub. L. 116–283, § 1851(b)(3)(A), substituted ''section 4211'' for ''section 2431a'' in introductory provisions.

Subsec. (e). Pub. L. 116–283, § 1851(b)(3)(B), substituted ''section 4252'' for ''section 2366b'' in introductory provisions.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 4403. Requirements relating to availability of major system interfaces and support for modular open system approach

The Secretary of each military department shall—

(1) coordinate with the other military departments, the defense agencies, defense and other private sector entities, national standards-setting organizations, and, when appropriate, with elements of the intelligence community with respect to the specification, identification, development, and maintenance of

major system interfaces and standards for use in major system platforms, where practicable;

(2) ensure that major system interfaces incorporate commercial standards and other widely supported consensus-based standards that are validated, published, and maintained by recognized standards organizations to the maximum extent practicable;

(3) ensure that sufficient systems engineering and development expertise and resources are available to support the use of a modular open system approach in requirements development and acquisition program planning;

(4) ensure that necessary planning, programming, and budgeting resources are provided to specify, identify, develop, and sustain the modular open system approach, associated major system interfaces, systems integration, and any additional program activities necessary to sustain innovation and interoperability;

(5) ensure that adequate training in the use of a modular open system approach is provided to members of the requirements and acquisition workforce; and

(6) issue guidance to implement the requirements of this section.

(Added Pub. L. 114–328, div. A, title VIII, § 805(a)(1), Dec. 23, 2016, 130 Stat. 2255, § 2446c; amended Pub. L. 116–92, div. A, title VIII, § 840(b), Dec. 20, 2019, 133 Stat. 1499; renumbered § 4403, Pub. L. 116–283, div. A, title XVIII, § 1851(b)(1), Jan. 1, 2021, 134 Stat. 4272.)

PRIOR PROVISIONS

Prior sections 4411 to 4414 were renumbered sections 7481 to 7484 of this title, respectively.

A prior section 4415, added Pub. L. 100–180, div. A, title III, § 319(a)(1), Dec. 4, 1987, 101 Stat. 1077; amended Pub. L. 100–526, title I, § 106(c), Oct. 24, 1988, 102 Stat. 2625, related to United States Army School of the Americas, prior to repeal by Pub. L. 106–398, § 1 [[div. A], title IX, § 911(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A-228.

Prior sections 4416 and 4417 were renumbered sections 7486 and 7487 of this title, respectively.

AMENDMENTS

2021—Pub. L. 116–283 renumbered section 2446c of this title as this section.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

SUBCHAPTER II—DEVELOPMENT, PROTOTYPING, AND DEPLOYMENT OF WEAPON SYSTEM COMPONENTS OR TECHNOLOGY

Sec.
4421. Weapon system component or technology prototype projects: display of budget information.
4422. Weapon system component or technology prototype projects: oversight.
4423. Requirements and limitations for weapon system component or technology prototype projects.
4424. Mechanisms to speed deployment of successful weapon system component or technology prototypes.
4425. Definition of weapon system component.

§ 4421. Weapon system component or technology prototype projects: display of budget information

(a) REQUIREMENTS FOR BUDGET DISPLAY.—In the defense budget materials for any fiscal year, the Secretary of Defense shall, with respect to advanced component development and prototype activities (within the research, development, test, and evaluation budget), set forth the amounts requested for each of the following:

(1) Acquisition programs of record.

(2) Development, prototyping, and experimentation of weapon system components or other technologies, including those based on commercial products and technologies, separate from acquisition programs of record.

(3) Other budget line items as determined by the Secretary of Defense.

(b) ADDITIONAL REQUIREMENTS.—For purposes of subsection (a)(2), the amounts requested for development, prototyping, and experimentation of weapon system components or other technologies shall be—

(1) structured into either capability, weapon system component, or technology portfolios that reflect the priority areas for prototype projects; and

(2) justified with general descriptions of the types of capability areas and technologies being funded or expected to be funded during the fiscal year concerned.

(c) DEFINITIONS.—In this section, the terms ''budget'' and ''defense budget materials'' have the meaning given those terms in section 234 of this title and the term ''commercial product'' has the meaning given that term in section 103 of title 41.

(Added Pub. L. 114–328, div. A, title VIII, § 806(a)(1), Dec. 23, 2016, 130 Stat. 2256, § 2447a; amended Pub. L. 115–232, div. A, title VIII, § 836(e)(8), Aug. 13, 2018, 132 Stat. 1870; Pub. L. 116–92, div. A, title XVII, § 1731(a)(51), Dec. 20, 2019, 133 Stat. 1815; renumbered § 4421, Pub. L. 116–283, div. A, title XVIII, § 1851(c)(1), Jan. 1, 2021, 134 Stat. 4272.)

AMENDMENTS

2021—Pub. L. 116–283 renumbered section 2447a of this title as this section.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 4422. Weapon system component or technology prototype projects: oversight

(a) ESTABLISHMENT.—The Secretary of each military department shall establish an oversight board or identify a similar existing group of senior advisors for managing prototype projects for weapon system components and other technologies and subsystems, including the use of funds for such projects, within the military department concerned.

(b) MEMBERSHIP.—Each oversight board shall be comprised of senior officials with—

(1) expertise in requirements; research, development, test, and evaluation; acquisition;

sustainment; or other relevant areas within the military department concerned;

(2) awareness of technology development activities and opportunities in the Department of Defense, industry, and other sources; and

(3) awareness of the component capability requirements of major weapon systems, including scheduling and fielding goals for such component capabilities.

(c) FUNCTIONS.—The functions of each oversight board are as follows:

(1) To issue a strategic plan every three years that prioritizes the capability and weapon system component portfolio areas for conducting prototype projects, based on assessments of—

(A) high priority warfighter needs;

(B) capability gaps or readiness issues with major weapon systems;

(C) opportunities to incrementally integrate new components into major weapon systems based on commercial technology or science and technology efforts that are expected to be sufficiently mature to prototype within three years; and

(D) opportunities to reduce operation and support costs of major weapon systems.

(2) To annually recommend funding levels for weapon system component or technology development and prototype projects across capability or weapon system component portfolios.

(3) To annually recommend to the service acquisition executive of the military department concerned specific weapon system component or technology development and prototype projects, subject to the requirements and limitations in section 4423 of this title.

(4) To ensure projects are managed by experts within the Department of Defense who are knowledgeable in research, development, test, and evaluation and who are aware of opportunities for incremental deployment of component capabilities and other technologies to major weapon systems or directly to support warfighting capabilities.

(5) To ensure projects are conducted in a manner that allows for appropriate experimentation and technology risk.

(6) To ensure projects have a plan for technology transition of the prototype into a fielded system, program of record, or operational use, as appropriate, upon successful achievement of technical and project goals.

(7) To ensure necessary technical, contracting, and financial management resources are available to support each project.

(8) To submit to the congressional defense committees a semiannual notification that includes the following:

(A) each weapon system component or technology prototype project initiated during the preceding six months, including an explanation of each project and its required funding.

(B) the results achieved from weapon system component prototype and technology projects completed and tested during the preceding six months.

(Added Pub. L. 114–328, div. A, title VIII, § 806(a)(1), Dec. 23, 2016, 130 Stat. 2257, § 2447b; renumbered § 4422 and amended Pub. L. 116–283, div. A, title XVIII, § 1851(c)(1), (2), Jan. 1, 2021, 134 Stat. 4272.)

AMENDMENTS

2021—Pub. L. 116–283, § 1851(c)(1), renumbered section 2447b of this title as this section.

Subsec. (c)(3). Pub. L. 116–283, § 1851(c)(2), substituted ''section 4423'' for ''section 2447c''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 4423. Requirements and limitations for weapon system component or technology prototype projects

(a) LIMITATION ON PROTOTYPE PROJECT DURATION.—A prototype project shall be completed within two years of its initiation.

(b) MERIT-BASED SELECTION PROCESS.—A prototype project shall be selected by the service acquisition executive of the military department concerned through a merit-based selection process that identifies the most promising, innovative, and cost-effective prototypes that address one or more of the elements set forth in subsection (c)(1) of section 4422 of this title and are expected to be successfully demonstrated in a relevant environment.

(c) TYPE OF TRANSACTION.—Prototype projects shall be funded through contracts, cooperative agreements, or other transactions.

(d) FUNDING LIMIT.—(1) Each prototype project may not exceed a total amount of $10,000,000 (based on fiscal year 2017 constant dollars), unless—

(A) the Secretary of the military department, or the Secretary's designee, approves a larger amount of funding for the project, not to exceed $50,000,000; and

(B) the Secretary, or the Secretary's designee, submits to the congressional defense committees, within 30 days after approval of such funding for the project, a notification that includes—

(i) the project;

(ii) expected funding for the project; and

(iii) a statement of the anticipated outcome of the project.

(2) The Secretary of Defense may adjust the amounts (and the base fiscal year) provided in paragraph (1) on the basis of Department of Defense escalation rates.

(e) RELATED PROTOTYPE AUTHORITIES.—Prototype projects that exceed the duration and funding limits established in this section shall be pursued under the rapid prototyping process established by section 804 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114–92; 10 U.S.C. 2302 note). In addition, nothing in this subchapter shall affect the authority to carry out prototype projects under section 4003 or any other section of this title related to prototyping.

(Added Pub. L. 114–328, div. A, title VIII, § 806(a)(1), Dec. 23, 2016, 130 Stat. 2258, § 2447c; renumbered § 4423 and amended Pub. L. 116–283,

div. A, title XVIII, §1851(c)(1), (3), Jan. 1, 2021, 134 Stat. 4272, 4273.)

AMENDMENTS

2021—Pub. L. 116–283, §1851(c)(1), renumbered section 2447c of this title as this section.

Subsec. (b). Pub. L. 116–283, §1851(c)(3)(A), substituted ''section 4422'' for ''section 2447b''.

Subsec. (e). Pub. L. 116–283, §1851(c)(3)(B), substituted ''section 4003'' for ''section 2371b''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§4424. Mechanisms to speed deployment of successful weapon system component or technology prototypes

(a) SELECTION OF PROTOTYPE PROJECT FOR PRODUCTION AND RAPID FIELDING.—A weapon system component or technology prototype project may be selected by the service acquisition executive of the military department concerned for a follow-on production contract or other transaction without the use of competitive procedures, notwithstanding the requirements of sections 3201 through 3205 of this title, if—

(1) the follow-on production project addresses a high priority warfighter need or reduces the costs of a weapon system;

(2) competitive procedures were used for the selection of parties for participation in the original prototype project;

(3) the participants in the original prototype project successfully completed the requirements of the project; and

(4) a prototype of the system to be procured was demonstrated in a relevant environment.

(b) SPECIAL TRANSFER AUTHORITY.—(1) The Secretary of a military department may, as specified in advance by appropriations Acts, transfer funds that remain available for obligation in procurement appropriation accounts of the military department to fund the low-rate initial production of the rapid fielding project until required funding for full-rate production can be submitted and approved through the regular budget process of the Department of Defense.

(2) The funds transferred under this subsection to fund the low-rate initial production of a rapid fielding project shall be for a period not to exceed two years, the amount for such period may not exceed $50,000,000, and the special transfer authority provided in this subsection may not be used more than once to fund procurement of a particular new or upgraded system.

(3) The special transfer authority provided in this subsection is in addition to any other transfer authority available to the Department of Defense.

(c) NOTIFICATION TO CONGRESS.—Within 30 days after the service acquisition executive of a military department selects a weapon system component or technology project for a follow-on production contract or other transaction, the service acquisition executive shall notify the congressional defense committees of the selection and provide a brief description of the rapid fielding project.

(Added Pub. L. 114–328, div. A, title VIII, §806(a)(1), Dec. 23, 2016, 130 Stat. 2259, §2447d; renumbered §4424 and amended Pub. L. 116–283, div. A, title XVIII, §1851(c)(1), (4), Jan. 1, 2021, 134 Stat. 4272, 4273.)

AMENDMENTS

2021—Pub. L. 116–283, §1851(c)(1), renumbered section 2447d of this title as this section.

Subsec. (a). Pub. L. 116–283, §1851(c)(4), substituted ''sections 3201 through 3205'' for ''section 2304'' in introductory provisions.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§4425. Definition of weapon system component

In this subchapter, the term ''weapon system component'' has the meaning given the term ''major system component'' in section 4401 of this title.

(Added Pub. L. 114–328, div. A, title VIII, §806(a)(1), Dec. 23, 2016, 130 Stat. 2259, §2447e; renumbered §4425 and amended Pub. L. 116–283, div. A, title XVIII, §1851(c)(1), (5), Jan. 1, 2021, 134 Stat. 4272, 4273.)

AMENDMENTS

2021—Pub. L. 116–283, §1851(c)(5), substituted ''section 4401'' for ''section 2446a''.

Pub. L. 116–283, §1851(c)(1), renumbered section 2447e of this title as this section.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

Subpart G—Other Special Categories Of Contracting

AMENDMENTS

2018—Pub. L. 115–232, div. A, title VIII, §801(a), Aug. 13, 2018, 132 Stat. 1830, added subpart heading.

CHAPTER 341—ACQUISITION OF SERVICES GENERALLY

Sec.

4501. Procurement of contract services: management structure.
4502. Procurement of contract services: senior officials responsible for management of acquisition of contract services.
4503. [Reserved].
4504. [Reserved].
4505. Procurement of services: tracking of purchases.
4506. Procurement of services: data analysis and requirements validation.
4507. Procurement of services: contracts for professional and technical services.
4508. Contractor performance of acquisition functions closely associated with inherently governmental functions.
4509. Contracts for advisory and assistance services: cost comparison studies.

Sec.

PRIOR PROVISIONS

A prior chapter 341 "CONTRACTING FOR PERFORMANCE OF CIVILIAN COMMERCIAL OR INDUSTRIAL TYPE FUNCTIONS", consisting of reserved section 4501, was repealed by Pub. L. 116–283, div. A, title XVIII, § 1856(b), Jan. 1, 2021, 134 Stat. 4273.

Another prior chapter 341 was renumbered chapter 721 of this title.

§ 4501. Procurement of contract services: management structure

(a) REQUIREMENT FOR MANAGEMENT STRUCTURE.—The Secretary of Defense shall establish and implement a management structure for the procurement of contract services for the Department of Defense. The management structure shall provide, at a minimum, for the matters specified in subsections (b), (c), (d), and (e).

(b) POLICIES, PROCEDURES, AND BEST PRACTICES GUIDELINES.—The management structure implemented pursuant to subsection (a) shall provide that the Under Secretary of Defense for Acquisition and Sustainment shall develop and maintain (in consultation with the service acquisition executives) policies, procedures, and best practices guidelines addressing the procurement of contract services, including policies, procedures, and best practices guidelines for—

(1) acquisition planning;

(2) solicitation and contract award;

(3) requirements development and management;

(4) contract tracking and oversight;

(5) performance evaluation; and

(6) risk management.

(c) PERSONNEL AND SUPPORT.—The management structure implemented pursuant to subsection (a) shall provide that the Under Secretary shall work with the service acquisition executives and other appropriate officials of the Department of Defense—

(1) to identify the critical skills and competencies needed to carry out the procurement of contract services on behalf of the Department of Defense;

(2) to develop a comprehensive strategy for recruiting, training, and deploying employees to meet the requirements for such skills and competencies; and

(3) to ensure that the military departments and Defense Agencies have staff and administrative support that are adequate to effectively perform their duties under this section and section 4502 of this title.

(d) CONTRACT SERVICES ACQUISITION CATEGORIES.—The management structure implemented pursuant to subsection (a) shall provide that the Under Secretary shall establish contract services acquisition categories, based on dollar thresholds, for the purpose of establishing the level of review, decision authority, and applicable procedures in such categories.

(e) OVERSIGHT OF IMPLEMENTATION.—The management structure implemented pursuant to subsection (a) shall provide that the Under Secretary shall oversee the implementation of the requirements of this section and section 4502 of this title and the policies, procedures, and best practices guidelines established pursuant to subsection (b).

(f) CONTRACT SERVICES.—In this section, the term "contract services" has the meaning given that term in section 4502(d)(2) of this title.

(Added Pub. L. 107–107, div. A, title VIII, § 801(b)(1), Dec. 28, 2001, 115 Stat. 1174, § 2330; amended Pub. L. 107–314, div. A, title X, § 1062(a)(8), Dec. 2, 2002, 116 Stat. 2650; Pub. L. 109–163, div. A, title VIII, § 812(a)(1), Jan. 6, 2006, 119 Stat. 3376; Pub. L. 112–239, div. A, title VIII, § 845(d), Jan. 2, 2013, 126 Stat. 1848; Pub. L. 116–92, div. A, title IX, § 902(51), Dec. 20, 2019, 133 Stat. 1548; renumbered § 4501 and amended Pub. L. 116–283, div. A, title XVIII, § 1856(c)–(e), Jan. 1, 2021, 134 Stat. 4274.)

PRIOR PROVISIONS

A prior section 4501, act Aug. 10, 1956, ch. 1041, 70A Stat. 251, which related to industrial mobilization by the President in time of war, was repealed by Pub. L. 103–160, div. A, title VIII, § 822(a)(2), Nov. 30, 1993, 107 Stat. 1705. See section 4882 of this title.

AMENDMENTS

2021—Pub. L. 116–283, § 1856(e)(2), redesignated par. (1) of subsec. (a) as subsec. (b) and subpars. (B) to (D) of former par. (1) as subsecs. (c) to (e), respectively.

Pub. L. 116–283, § 1856(d), transferred subsecs. (a)(2), (3), (b) and (c) to section 4502 of this title.

Pub. L. 116–283, § 1856(c), renumbered section 2330 of this title as this section.

Subsec. (a). Pub. L. 116–283, § 1856(e)(1), substituted "for the matters specified in subsections (b), (c), (d), and (e)." for "for the following:".

Subsec. (b). Pub. L. 116–283, § 1856(e)(3), inserted heading, substituted "The management structure implemented pursuant to subsection (a) shall provide that the Under Secretary of Defense for Acquisition and Sustainment shall develop and maintain" for "The Under Secretary of Defense for Acquisition and Sustainment shall—(A) develop and maintain", redesignated cls. (i) to (vi) as pars. (1) to (6), respectively, substituted period for semicolon at end of par. (6), and realigned margins.

Subsec. (c). Pub. L. 116–283, § 1856(e)(4)(A)–(C), inserted heading, substituted "The management structure implemented pursuant to subsection (a) shall provide that the Under Secretary shall work with" for "work with" in introductory provisions, redesignated cls. (i) to (iii) as pars. (1) to (3), respectively, and realigned margins.

Subsec. (c)(3). Pub. L. 116–283, § 1856(e)(4)(D), (E), substituted "under this section and section 4502 of this title." for "under this section;".

Subsec. (d). Pub. L. 116–283, § 1856(e)(5), inserted heading, substituted "The management structure implemented pursuant to subsection (a) shall provide that the Under Secretary shall establish contract" for "establish contract" and period for "; and", and realigned margins.

Subsec. (e). Pub. L. 116–283, § 1856(e)(6), inserted heading, substituted "The management structure implemented pursuant to subsection (a) shall provide that the Under Secretary shall oversee the" for "oversee the" and "subsection (b)" for "subparagraph (A)", inserted "and section 4502 of this title" after "of this section", and realigned margins.

Subsec. (f). Pub. L. 116–283, § 1856(e)(7), added subsec. (f).

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 4502. Procurement of contract services: senior officials responsible for management of acquisition of contract services

(a) SENIOR OFFICIALS.—The management structure implemented pursuant to section 4501 of this title shall provide for the following:

(1) The service acquisition executive of each military department shall be the senior official responsible for the management of acquisition of contract services for or on behalf of the military department.

(2) The Under Secretary of Defense for Acquisition and Sustainment shall be the senior official responsible for the management of acquisition of contract services for or on behalf of the Defense Agencies and other components of the Department of Defense outside the military departments.

(b) DUTIES AND RESPONSIBILITIES OF SENIOR OFFICIALS RESPONSIBLE FOR THE MANAGEMENT OF ACQUISITION OF CONTRACT SERVICES.—(1) Except as provided in paragraph (2), the senior officials responsible for the management of acquisition of contract services shall assign responsibility for the review and approval of procurements in each contract services acquisition category established under section 4501(d) of this title to specific Department of Defense officials, subject to the direction, supervision, and oversight of such senior officials.

(2) With respect to the acquisition of contract services by a component or command of the Department of Defense the primary mission of which is the acquisition of products and services, such acquisition shall be conducted in accordance with policies, procedures, and best practices guidelines developed and maintained by the Under Secretary of Defense for Acquisition and Sustainment pursuant to section 4501 of this title, subject to oversight by the senior officials referred to in paragraph (1).

(c) DUTIES AND RESPONSIBILITIES.—In carrying out subsection (b)(1),,[1] each senior official responsible for the management of acquisition of contract services shall—

(1) implement the requirements of this section and section 4501 of this title and the policies, procedures, and best practices guidelines developed by the Under Secretary of Defense for Acquisition and Sustainment pursuant to section 4501(b) of this title;

(2) authorize the procurement of contract services through contracts entered into by agencies outside the Department of Defense in appropriate circumstances, in accordance with the requirements of section 854 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (10 U.S.C. 2304 note), section 814 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (31 U.S.C. 1535 note), and the regulations implementing such sections;

(3) dedicate full-time commodity managers to coordinate the procurement of key categories of services;

(4) ensure that contract services are procured by means of procurement actions that are in the best interests of the Department of Defense and are entered into and managed in compliance with applicable laws, regulations, directives, and requirements;

(5) ensure that competitive procedures and performance-based contracting are used to the maximum extent practicable for the procurement of contract services; and

(6) monitor data collection under section 4505 of this title, and periodically conduct spending analyses, to ensure that funds expended for the procurement of contract services are being expended in the most rational and economical manner practicable.

(d) DEFINITIONS.—In this section:

(1) The term ''procurement action'' includes the following actions:

(A) Entry into a contract or any other form of agreement.

(B) Issuance of a task order, delivery order, or military interdepartmental purchase request.

(2) The term ''contract services'' includes all services acquired from private sector entities by or for the Department of Defense, including services in support of contingency operations. The term does not include services relating to research and development or military construction.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1856(d), (f), Jan. 1, 2021, 134 Stat. 4274, 4275.)

REFERENCES IN TEXT

Section 854 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, referred to in subsec. (c)(2), is section 854 of div. A of Pub. L. 108–375, which is set out as a note under section 2304 of this title.

Section 814 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999, referred to in subsec. (c)(2), is section 814 of div. A of Pub. L. 105–261, which was formerly set out as a note under section 1535 of Title 31, Money and Finance.

CODIFICATION

The text of subsecs. (a)(2), (3), (b) and (c) of section 4501 of this title, which was transferred to this section by Pub. L. 116–283, § 1856(d), was based on Pub. L. 107–107, div. A, title VIII, § 801(b)(1), Dec. 28, 2001, 115 Stat. 1174, § 2330; Pub. L. 107–314, div. A, title X, § 1062(a)(8), Dec. 2, 2002, 116 Stat. 2650; Pub. L. 109–163, div. A, title VIII, § 812(a)(1), Jan. 6, 2006, 119 Stat. 3376; Pub. L. 112–239, div. A, title VIII, § 845(d), Jan. 2, 2013, 126 Stat. 1848; Pub. L. 116–92, div. A, title IX, § 902(51)(B)–(D), Dec. 20, 2019, 133 Stat. 1549; renumbered § 4501, Pub. L. 116–283, div. A, title XVIII, § 1856(c), Jan. 1, 2021, 134 Stat. 4274.

PRIOR PROVISIONS

A prior section 4502, act Aug. 10, 1956, ch. 1041, 70A Stat. 252, which related to maintenance by Secretary of the Army of lists of plants equipped to manufacture arms or ammunition and of plants convertible into ammunition factories and provided for a Board on Mobilization of Industries Essential for Military Preparedness, was repealed by Pub. L. 103–160, div. A, title VIII, § 822(a)(2), Nov. 30, 1993, 107 Stat. 1705. See sections 4883 and 4884 of this title.

Prior sections 4503 and 4504 were repealed by Pub. L. 103–160, div. A, title VIII, §§ 822(c)(2), 827(c), Nov. 30, 1993, 107 Stat. 1707, 1713.

Section 4503, act Aug. 10, 1956, ch. 1041, 70A Stat. 252, related to research and development programs of the Army.

[1] So in original.

Section 4504, act Aug. 10, 1956, ch. 1041, 70A Stat. 252, related to procurement of ordnance, signal, and chemical warfare supplies for experimental purposes by Secretary of the Army. See section 4004 of this title.

AMENDMENTS

2021—Pub. L. 116–283, § 1856(d), transferred subsecs. (a)(2), (3), (b) and (c) of section 4501 of this title to this section and inserted subsec. (a) designation, heading, and introductory provisions.

Subsec. (a). Pub. L. 116–283, § 1856(f)(1), redesignated pars. (2) and (3) as (1) and (2), respectively.

Subsec. (b)(1). Pub. L. 116–283, § 1856(f)(2)(A), substituted "section 4501(d) of this title" for "subsection (a)(1)(C)".

Subsec. (b)(2). Pub. L. 116–283, § 1856(f)(2)(B), substituted "section 4501 of this title" for "subsection (a)(1)".

Subsec. (b)(3). Pub. L. 116–283, § 1856(f)(4), redesignated par. (3) as subsec. (c).

Subsec. (c). Pub. L. 116–283, § 1856(f)(5)(A), inserted heading and substituted "In carrying out subsection (b)(1)," for "In carrying out paragraph (1)" in introductory provisions.

Pub. L. 116–283, § 1856(f)(4), redesignated par. (3) of subsec. (b) as subsec. (c) and subpars. (A) to (F) as pars. (1) to (6), respectively.

Pub. L. 116–283, § 1856(f)(3), redesignated subsec. (c) as (d).

Subsec. (c)(1). Pub. L. 116–283, § 1856(f)(5)(B), inserted "and section 4501 of this title" after "of this section" and substituted "section 4501(b) of this title" for "subsection (a)(1)(A)".

Subsec. (c)(6). Pub. L. 116–283, § 1856(f)(5)(C), substituted "section 4505" for "section 2330a".

Subsec. (d). Pub. L. 116–283, § 1856(f)(3), redesignated subsec. (c) as (d).

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 note preceding section 3001 of this title.

§ 4505. Procurement of services: tracking of purchases

(a) DATA COLLECTION REQUIRED.—The Secretary of Defense shall establish a data collection system to provide management information with regard to each purchase of services by a military department or Defense Agency in excess of $3,000,000, regardless of whether such a purchase is made in the form of a contract, task order, delivery order, military interdepartmental purchase request, or any other form of interagency agreement, for services in the following service acquisition portfolio groups:

(1) Logistics management services.

(2) Equipment related services.

(3) Knowledge-based services.

(4) Electronics and communications services.

(b) DATA TO BE COLLECTED.—The data required to be collected under subsection (a) includes the following:

(1) The services purchased.

(2) The total dollar amount of the purchase.

(3) The form of contracting action used to make the purchase.

(4) Whether the purchase was made through—

(A) a performance-based contract, performance-based task order, or other performance-based arrangement that contains firm fixed prices for the specific tasks to be performed;

(B) any other performance-based contract, performance-based task order, or performance-based arrangement; or

(C) any contract, task order, or other arrangement that is not performance based.

(5) In the case of a purchase made through an agency other than the Department of Defense, the agency through which the purchase is made.

(6) The extent of competition provided in making the purchase and whether there was more than one offer.

(7) Whether the purchase was made from—

(A) a small business concern;

(B) a small business concern owned and controlled by socially and economically disadvantaged individuals; or

(C) a small business concern owned and controlled by women.

(c) INVENTORY SUMMARY.—(1) Not later than the end of the third quarter of each fiscal year, the Secretary of Defense shall prepare an annual inventory, and submit to Congress a summary of the inventory, of activities performed during the preceding fiscal year pursuant to staff augmentation contracts and contracts closely associated with inherently governmental functions on behalf of the Department of Defense. The guidance for compiling the inventory shall be issued by the Under Secretary of Defense for Personnel and Readiness, the Under Secretary of Defense (Comptroller), and the Under Secretary of Defense for Acquisition and Sustainment, as follows:

(A) The Under Secretary of Defense for Personnel and Readiness, as supported by the Under Secretary of Defense (Comptroller), shall be responsible for developing guidance for—

(i) the collection of data regarding functions and missions performed by contractors in a manner that is comparable to the manpower data elements used in inventories of functions performed by Department of Defense employees;

(ii) the calculation of contractor full-time equivalents for direct labor, using direct labor hours in a manner that is comparable to the calculation of Department of Defense civilian full-time employees; and

(iii) the conduct and completion of the annual review required under subsection (e)(1).

(B) The Under Secretary of Defense for Acquisition and Sustainment shall be responsible for developing guidance on other data elements and implementing procedures for requirements relating to acquisition.

(2) The entry for an activity on an inventory under this subsection shall include, for the fiscal year covered by such entry, the following:

(A) The functions and missions performed by the contractor.

(B) The contracting organization, the component of the Department of Defense administering the contract, and the organization whose requirements are being met through contractor performance of the function.

(C) The funding source for the contract under which the function is performed by appropriation and operating agency.

(D) The fiscal year for which the activity first appeared on an inventory under this section.

(E) The number of contractor employees, expressed as full-time equivalents for direct labor, using direct labor hours and associated cost data collected from contractors (except that estimates may be used where such data is not available and cannot reasonably be made available in a timely manner for the purpose of the inventory).

(F) A determination whether the contract pursuant to which the activity is performed is a personal services contract.

(G) A summary of the data required to be collected for the activity under subsection (a).

(3) The inventory required under this subsection shall be submitted in unclassified form, but may include a classified annex.

(d) REVIEW AND PLANNING REQUIREMENTS.—Within 90 days after the date on which an inventory is submitted under subsection (c), the Secretary of the military department or head of the Defense Agency responsible for activities in the inventory shall—

(1) review the contracts and activities in the inventory for which such Secretary or agency head is responsible, with particular focus and attention on the following categories of high-risk product service codes (also referred to as Federal supply codes):

(A) Special studies or analysis that is not research and development.

(B) Information technology and telecommunications.

(C) Support, including professional, administrative, and management;

(2) ensure that—

(A) each contract on the list that is a personal services contract has been entered into, and is being performed, in accordance with applicable statutory and regulatory requirements;

(B) the activities on the list do not include any inherently governmental functions; and

(C) to the maximum extent practicable, the activities on the list do not include any functions closely associated with inherently governmental functions; and

(3) identify activities that should be considered for conversion—

(A) to performance by civilian employees of the Department of Defense pursuant to section 2463 of this title; or

(B) to an acquisition approach that would be more advantageous to the Department of Defense.

(e) DEVELOPMENT OF PLAN AND ENFORCEMENT AND APPROVAL MECHANISMS.—The Secretary of the military department or head of the Defense Agency responsible for activities in the inventory shall develop a plan, including an enforcement mechanism and approval process, to—

(1) provide for the use of the inventory by the military department or Defense Agency to implement the requirements of section 129a of this title;

(2) ensure the inventory is used to inform strategic workforce planning;

(3) facilitate use of the inventory for compliance with section 3137 of this title; and

(4) provide for appropriate consideration of the conversion of activities identified under subsection (e)(3) within a reasonable period of time.

(f) COMPTROLLER GENERAL REPORT.—Not later than March 31, 2018, the Comptroller General of the United States shall submit to the congressional defense committees a report on the status of the data collection required in subsection (a) and an assessment of the efforts by the Department of Defense to implement subsection (e).

(g) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to authorize the performance of personal services by a contractor except where expressly authorized by a provision of law other than this section.

(h) DEFINITIONS.—In this section:

(1) PERFORMANCE-BASED.—The term ''performance-based'', with respect to a contract, task order, or arrangement, means that the contract, task order, or arrangement, respectively, includes the use of performance work statements that set forth contract requirements in clear, specific, and objective terms with measurable outcomes.

(2) FUNCTION CLOSELY ASSOCIATED WITH INHERENTLY GOVERNMENTAL FUNCTIONS.—The term ''function closely associated with inherently governmental functions'' has the meaning given that term in section 4508(b)(3) of this title.

(3) INHERENTLY GOVERNMENTAL FUNCTIONS.—The term ''inherently governmental functions'' has the meaning given that term in section 4508(b)(2) of this title.

(4) PERSONAL SERVICES CONTRACT.—The term ''personal services contract'' means a contract under which, as a result of its terms or conditions or the manner of its administration during performance, contractor personnel are subject to the relatively continuous supervision and control of one or more Government officers or employees, except that the giving of an order for a specific article or service, with the right to reject the finished product or result, is not the type of supervision or control that makes a contract a personal services contract.

(5) SERVICE ACQUISITION PORTFOLIO GROUPS.—The term ''service acquisition portfolio groups'' means the groups identified in Department of Defense Instruction 5000.74, Defense Acquisition of Services (January 5, 2016) or successor guidance.

(6) STAFF AUGMENTATION CONTRACTS.—The term ''staff augmentation contracts'' means services contracts for personnel who are physically present in a Government work space on a full-time or permanent part-time basis, for the purpose of advising on, providing support to, or assisting a Government agency in the performance of the agency's missions, including authorized personal services contracts (as that term is defined in section 4505(g)(5)[1] of this title).

(7) SIMPLIFIED ACQUISITION THRESHOLD.—The term ''simplified acquisition threshold'' has

[1] See References in Text note below.

the meaning given the term in section 134 of title 41.

(8) SMALL BUSINESS ACT DEFINITIONS.—

(A) The term ''small business concern'' has the meaning given such term under section 3 of the Small Business Act (15 U.S.C. 632).

(B) The terms ''small business concern owned and controlled by socially and economically disadvantaged individuals'' and ''small business concern owned and controlled by women'' have the meanings given such terms, respectively, in section 8(d)(3) of the Small Business Act (15 U.S.C. 637(d)(3)).

(Added Pub. L. 107–107, div. A, title VIII, § 801(c), Dec. 28, 2001, 115 Stat. 1176, § 2330a; amended Pub. L. 110–181, div. A, title VIII, § 807(a), Jan. 28, 2008, 122 Stat. 213; Pub. L. 111–84, div. A, title VIII, § 803(b), Oct. 28, 2009, 123 Stat. 2402; Pub. L. 111–383, div. A, title III, § 321, Jan. 7, 2011, 124 Stat. 4183; Pub. L. 112–81, div. A, title IX, § 936, Dec. 31, 2011, 125 Stat. 1545; Pub. L. 113–66, div. A, title IX, § 951(a), Dec. 26, 2013, 127 Stat. 839; Pub. L. 114–328, div. A, title VIII, §§ 812, 833(b)(2)(C)(ii), Dec. 23, 2016, 130 Stat. 2269, 2284; Pub. L. 115–91, div. A, title X, § 1081(a)(30), (d)(6)(A), Dec. 12, 2017, 131 Stat. 1595, 1600; Pub. L. 115–232, div. A, title VIII, § 819, Aug. 13, 2018, 132 Stat. 1853; renumbered § 4505 and amended Pub. L. 116–283, div. A, title XVIII, §§ 1856(g), (h), 1883(b)(2), Jan. 1, 2021, 134 Stat. 4275, 4294.)

REFERENCES IN TEXT

Section 4505(g)(5) of this title, referred to in subsec. (h)(6), meaning subsec. (g)(5) of this section, was redesignated through a series of amendments as subsec. (h)(4) of this section.

PRIOR PROVISIONS

A prior section 4505, act Aug. 10, 1956, ch. 1041, 70A Stat. 252, which related to procurement by Secretary of the Army of production equipment, was repealed by Pub. L. 103–160, div. A, title VIII, § 823(1), Nov. 30, 1993, 107 Stat. 1707.

AMENDMENTS

2021—Pub. L. 116–283, § 1856(g), renumbered section 2330a of this title as this section.

Subsec. (e)(3). Pub. L. 116–283, § 1883(b)(2), substituted ''section 3137'' for ''section 235''.

Subsec. (h)(2). Pub. L. 116–283, § 1883(b)(2), substituted ''section 4508(b)(3)'' for ''section 2383(b)(3)''.

Subsec. (h)(3). Pub. L. 116–283, § 1856(h), substituted ''section 4508(b)(2)'' for ''section 2383(b)(2)''.

Subsec. (h)(6). Pub. L. 116–283, § 1883(b)(2), substituted ''section 4505(g)(5)'' for ''section 2330a(g)(5)''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 4506. Procurement of services: data analysis and requirements validation

(a) IN GENERAL.—The Secretary of Defense, acting through the Under Secretary of Defense (Comptroller) and Director of Cost Assessment and Program Evaluation, shall ensure that—

(1) appropriate and sufficiently detailed data are collected and analyzed to support the validation of requirements for services contracts and inform the planning, programming, budgeting, and execution process of the Department of Defense;

(2) requirements for services contracts are evaluated appropriately and in a timely manner to inform decisions regarding the procurement of services; and

(3) decisions regarding the procurement of services consider available resources and total force management policies and procedures.

(b) SPECIFICATION OF AMOUNTS REQUESTED IN BUDGET.—Effective October 1, 2021, the Secretary of Defense, acting through the Under Secretary of Defense (Comptroller) and Director of Cost Assessment and Program Evaluation, shall annually submit to Congress information on services contracts that clearly and separately identifies the amount requested for each category of services to be procured for each Defense Agency, Department of Defense Field Activity, command, or military installation. Such information shall—

(1) be submitted at or before the time of the budget submission by the President under section 1105(a) of title 31 or on the date on which the future-years defense program is submitted to Congress under section 221 of this title;

(2) cover the fiscal year covered by such budget submission by the President;

(3) be consistent with total amounts of estimated expenditures and proposed appropriations necessary to support the programs, projects, and activities of the Department of Defense included in such budget submission by the President for that fiscal year;

(4) be organized using a common enterprise data structure developed under section 2222 of this title; and

(5) be included in the future-years defense program submitted to Congress under section 221 of this title.

(c) DATA ANALYSIS.—(1) Each Secretary of a military department shall regularly analyze past spending patterns and anticipated future requirements with respect to the procurement of services within such military department.

(2)(A) The Secretary of Defense, acting through the Under Secretary of Defense (Comptroller) and Director of Cost Assessment and Program Evaluation, shall regularly analyze past spending patterns and anticipated future requirements with respect to the procurement of services—

(i) within each Defense Agency and Department of Defense Field Activity; and

(ii) across military departments, Defense Agencies, and Department of Defense Field Activities.

(B) The Secretaries of the military departments shall make data on services contracts available to the Secretary of Defense for purposes of conducting the analysis required under subparagraph (A).

(3) The analyses conducted under this subsection shall—

(A) identify contracts for similar services that are procured for three or more consecutive years at each Defense Agency, Department of Defense Field Activity, command, or military installation;

(B) evaluate patterns in the procurement of services, to the extent practicable, at each De-

fense Agency, Department of Defense Field Activity, command, or military installation and by category of services procured;

(C) be used to validate requirements for services contracts entered into after the date of the enactment of this subsection; and

(D) be used to inform decisions on the award of and funding for such services contracts.

(d) REQUIREMENTS EVALUATION.—Each Services Requirements Review Board shall evaluate each requirement for a services contract, taking into consideration total force management policies and procedures, available resources, the analyses conducted under subsection (c), and contracting efficacy and efficiency. An evaluation of a services contract for compliance with contracting policies and procedures may not be considered to be an evaluation of a requirement for such services contract.

(e) TIMELY PLANNING TO AVOID BRIDGE CONTRACTS.—(1) Effective October 1, 2018, the Secretary of Defense shall ensure that a requirements owner shall, to the extent practicable, plan appropriately before the date of need of a service at a Defense Agency, Department of Defense Field Activity, command, or military installation to avoid the use of a bridge contract to provide for continuation of a service to be performed through a services contract. Such planning shall include allowing time for a requirement to be validated, a services contract to be entered into, and funding for the services contract to be secured.

(2)(A) Upon the first use, due to inadequate planning (as determined by the Secretary of Defense), of a bridge contract to provide for continuation of a service to be performed through a services contract, the requirements owner, along with the contracting officer or a designee of the contracting officer for the contract, shall—

(i) for a services contract in an amount less than $10,000,000, provide an update on the status of the bridge contract (including the rationale for using the bridge contract) to the commander or the senior civilian official of the Defense Agency concerned, Department of Defense Field Activity concerned, command concerned, or military installation concerned, as applicable; or

(ii) for a services contract in an amount equal to or greater than $10,000,000, provide an update on the status of the bridge contract (including the rationale for using the bridge contract) to the service acquisition executive for the military department concerned, the head of the Defense Agency concerned, the combatant commander concerned, or the Under Secretary of Defense for Acquisition and Sustainment, as applicable.

(B) Upon the second use, due to inadequate planning (as determined by the Secretary of Defense), of a bridge contract to provide for continuation of a service to be performed through a services contract in an amount less than $10,000,000, the commander or senior civilian official referred to in subparagraph (A)(i) shall provide notification of such second use to the Vice Chief of Staff of the armed force concerned and the service acquisition executive of the military department concerned, the head of the Defense Agency concerned, the combatant commander concerned, or the Under Secretary of Defense for Acquisition and Sustainment, as applicable.

(f) EXCEPTION.—Except with respect to the analyses required under subsection (c), this section shall not apply to—

(1) services contracts in support of contingency operations, humanitarian assistance, or disaster relief;

(2) services contracts in support of a national security emergency declared with respect to a named operation; or

(3) services contracts entered into pursuant to an international agreement.

(g) DEFINITIONS.—In this section:

(1) The term ''bridge contract'' means—

(A) an extension to an existing contract beyond the period of performance to avoid a lapse in service caused by a delay in awarding a subsequent contract; or

(B) a new short-term contract awarded on a sole-source basis to avoid a lapse in service caused by a delay in awarding a subsequent contract.

(2) The term ''requirements owner'' means a member of the armed forces (other than the Coast Guard) or a civilian employee of the Department of Defense responsible for a requirement for a service to be performed through a services contract.

(3) The term ''Services Requirements Review Board'' has the meaning given in Department of Defense Instruction 5000.74, titled ''Defense Acquisition of Services'' and dated January 5, 2016, or a successor instruction.

(Added Pub. L. 115–91, div. A, title VIII, § 851(a)(1), Dec. 12, 2017, 131 Stat. 1489, § 2329; amended Pub. L. 115–232, div. A, title VIII, § 818(a), Aug. 13, 2018, 132 Stat. 1852; Pub. L. 116–92, div. A, title VIII, § 817(a), title XVII, § 1731(a)(42), Dec. 20, 2019, 133 Stat. 1488, 1814; renumbered § 4506, Pub. L. 116–283, div. A, title XVIII, § 1856(g), Jan. 1, 2021, 134 Stat. 4275.)

REFERENCES IN TEXT

The date of the enactment of this subsection, referred to in subsec. (c)(3)(C), is the date of enactment of Pub. L. 115–91, which was approved Dec. 12, 2017.

PRIOR PROVISIONS

A prior section 4506, act Aug. 10, 1956, ch. 1041, 70A Stat. 253, which related to sale, loan, or gift of samples, drawings, and information to contractors, was repealed by Pub. L. 103–160, div. A, title VIII, § 822(b)(3), Nov. 30, 1993, 107 Stat. 1706.

AMENDMENTS

2021—Pub. L. 116–283 renumbered section 2329 of this title as this section.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 4507. Procurement of services: contracts for professional and technical services

(a) IN GENERAL.—The Secretary of Defense shall prescribe regulations to ensure, to the

maximum extent practicable, that professional and technical services are acquired on the basis of the task to be performed rather than on the basis of the number of hours of services provided.

(b) CONTENT OF REGULATIONS.—With respect to contracts to acquire services on the basis of the number of hours of services provided, the regulations described in subsection (a) shall—

(1) include standards and approval procedures to minimize the use of such contracts;

(2) establish criteria to ensure that proposals for contracts for technical and professional services are evaluated on a basis which does not encourage contractors to propose uncompensated overtime;

(3) ensure appropriate emphasis on technical and quality factors in the source selection process;

(4) require identification of any hours in excess of 40-hour weeks included in a proposal;

(5) ensure that offerors are notified that proposals which include unrealistically low labor rates or which do not otherwise demonstrate cost realism will be considered in a risk assessment and evaluated appropriately; and

(6) provide guidance to contracting officers to ensure that any use of uncompensated overtime will not degrade the level of technical expertise required to perform the contract.

(Added Pub. L. 101–510, div. A, title VIII, § 834(a)(1), Nov. 5, 1990, 104 Stat. 1613, § 2331; amended Pub. L. 102–25, title VII, § 701(a), Apr. 6, 1991, 105 Stat. 113; Pub. L. 103–355, title I, § 1004(c), Oct. 13, 1994, 108 Stat. 3253; Pub. L. 107–107, div. A, title VIII, § 801(g)(1), Dec. 28, 2001, 115 Stat. 1177; renumbered § 4507, Pub. L. 116–283, div. A, title XVIII, § 1856(g), Jan. 1, 2021, 134 Stat. 4275.)

PRIOR PROVISIONS

A prior section 4507, act Aug. 10, 1956, ch. 1041, 70A Stat. 253, which related to sale of ordnance and ordnance stores to designers, was repealed by Pub. L. 103–160, div. A, title VIII, § 822(b)(3), Nov. 30, 1993, 107 Stat. 1706.

AMENDMENTS

2021—Pub. L. 116–283 renumbered section 2331 of this title as this section.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 4508. Contractor performance of acquisition functions closely associated with inherently governmental functions

(a) LIMITATION.—The head of an agency may enter into a contract for the performance of acquisition functions closely associated with inherently governmental functions only if the contracting officer for the contract ensures that—

(1) appropriate military or civilian personnel of the Department of Defense cannot reasonably be made available to perform the functions;

(2) appropriate military or civilian personnel of the Department of Defense are—

(A) to supervise contractor performance of the contract; and

(B) to perform all inherently governmental functions associated with the functions to be performed under the contract; and

(3) the agency addresses any potential organizational conflict of interest of the contractor in the performance of the functions under the contract, consistent with subpart 9.5 of part 9 of the Federal Acquisition Regulation and the best interests of the Department of Defense.

(b) DEFINITIONS.—In this section:

(1) The term ''head of an agency'' does not include the Secretary of Homeland Security or the Administrator of the National Oceanic and Atmospheric Administration.

(2) The term ''inherently governmental functions'' has the meaning given such term in subpart 7.5 of part 7 of the Federal Acquisition Regulation.

(3) The term ''functions closely associated with inherently governmental functions'' means the functions described in section 7.503(d) of the Federal Acquisition Regulation.

(4) The term ''organizational conflict of interest'' has the meaning given such term in subpart 9.5 of part 9 of the Federal Acquisition Regulation.

(Added Pub. L. 108–375, div. A, title VIII, § 804(a)(1), Oct. 28, 2004, 118 Stat. 2007, § 2383; renumbered § 4508 and amended Pub. L. 116–283, div. A, title XVIII, § 1856(g), (i), Jan. 1, 2021, 134 Stat. 4275.)

PRIOR PROVISIONS

A prior section 4508, acts Aug. 10, 1956, ch. 1041, 70A Stat. 253; Nov. 2, 1966, Pub. L. 89–718, § 27, 80 Stat. 1119, which related tests of iron, steel, and other materials, was repealed by Pub. L. 103–160, div. A, title VIII, § 822(b)(3), Nov. 30, 1993, 107 Stat. 1706.

AMENDMENTS

2021—Pub. L. 116–283 renumbered section 2383 of this title as this section.

Subsec. (b)(1). Pub. L. 116–283, § 1856(i), which directed striking out ''has the meaning given in section 2302(1) of this title, except that such term'', was executed by striking out ''has the meaning given such term in section 2302(1) of this title, except that such term'' before ''does not include'', to reflect the probable intent of Congress.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 4509. Contracts for advisory and assistance services: cost comparison studies

(a) REQUIREMENT.—(1)(A) Before the Secretary of Defense enters into a contract described in subparagraph (B), the Secretary shall determine whether Department of Defense personnel have the capability to perform the services proposed to be covered by the contract.

(B) Subparagraph (A) applies to any contract of the Department of Defense for advisory and assistance services that is expected to have a value in excess of $100,000.

(2) If the Secretary determines that Department of Defense personnel have the capability to perform the services to be covered by the contract, the Secretary shall conduct a study comparing the cost of performing the services with Department of Defense personnel and the cost of performing the services with contractor personnel.

(b) WAIVER.—The Secretary of Defense may, pursuant to guidelines prescribed by the Secretary, waive the requirement to perform a cost comparison study under subsection (a)(2) based on factors that are not related to cost.

(Added Pub. L. 103–337, div. A, title III, § 363(a)(1), Oct. 5, 1994, 108 Stat. 2733, § 2410*l*; renumbered § 4509, Pub. L. 116–283, div. A, title XVIII, § 1856(g), Jan. 1, 2021, 134 Stat. 4275.)

PRIOR PROVISIONS

A prior section 4531, act Aug. 10, 1956, ch. 1041, 70A Stat. 253, authorized Secretary of the Army to procure materials and facilities necessary to maintain and support the Army, prior to repeal by Pub. L. 103–160, div. A, title VIII, § 823(2), Nov. 30, 1993, 107 Stat. 1707.

A prior section 4532 was renumbered section 7532 of this title.

Prior sections 4533 to 4535 were repealed by Pub. L. 103–160, div. A, title VIII, § 823(3)–(5), Nov. 30, 1993, 107 Stat. 1707.

Section 4533, act Aug. 10, 1956, ch. 1041, 70A Stat. 254, related to purchases of army rations.

Section 4534, act Aug. 10, 1956, ch. 1041, 70A Stat. 254, related to subsistence supplies, contract stipulations, and place of delivery on inspection.

Section 4535, act Aug. 10, 1956, ch. 1041, 70A Stat. 254, provided that exceptional subsistence supplies could be purchased without advertising.

A prior section 4536 was renumbered section 7536 of this title.

Prior sections 4537 and 4538 were repealed by Pub. L. 103–160, div. A, title VIII, § 823(6), (7), Nov. 30, 1993, 107 Stat. 1707.

Section 4537, acts Aug. 10, 1956, ch. 1041, 70A Stat. 254; Nov. 2, 1966, Pub. L. 89–718, § 8(a), 80 Stat. 1117; Dec. 12, 1980, Pub. L. 96–513, title V, § 512(14), 94 Stat. 2930, authorized Secretary of the Army to obtain assistance of United States mapping agencies in making and developing military surveys and maps.

Section 4538, acts Aug. 10, 1956, ch. 1041, 70A Stat. 255; Dec. 12, 1980, Pub. L. 96–513, title V, § 512(15), 94 Stat. 2930, related to exchange and reclamation of unserviceable ammunition.

A prior section 4539, act Aug. 10, 1956, ch. 1041, 70A Stat. 255, provided for purchase of horses and mules in open market at Army posts, within maximum prices prescribed by Secretary of the Army, prior to repeal by Pub. L. 91–482, § 1(a), Oct. 21, 1970, 84 Stat. 1082.

A prior section 4540 was renumbered section 7540 of this title.

Another prior section 4541 was renumbered section 7541 of this title.

Prior sections 4542 to 4544, 4551 to 4555, and 4561 to 4565 were renumbered sections 7542 to 7544, 7551 to 7555, and 7561 to 7565 of this title, respectively.

AMENDMENTS

2021—Pub. L. 116–283 renumbered section 2410*l* of this title as this section.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

CHAPTER 343—ACQUISITION OF SERVICES OF CONTRACTORS PERFORMING PRIVATE SECURITY FUNCTIONS

Subchapter		Sec.
I.	Contractors Performing Private Security Functions in Areas of Combat Operations or Other Significant Military Operations	4541
II.	Standards and Certification for Private Security	4551

PRIOR PROVISIONS

A prior chapter 343 ''ACQUISITION OF SERVICES'', consisting of reserved section 4541, was repealed by Pub. L. 116–283, div. A, title XVIII, § 1856(b), Jan. 1, 2021, 134 Stat. 4273.

Another prior chapter 343 was renumbered chapter 723 of this title.

SUBCHAPTER I—CONTRACTORS PERFORMING PRIVATE SECURITY FUNCTIONS IN AREAS OF COMBAT OPERATIONS OR OTHER SIGNIFICANT MILITARY OPERATIONS

Sec.
4541. [Reserved].

SUBCHAPTER II—STANDARDS AND CERTIFICATION FOR PRIVATE SECURITY CONTRACTORS

Sec.
4551. [Reserved].

CHAPTER 345—ACQUISITION OF INFORMATION TECHNOLOGY

Sec.
4571. Information technology acquisition: planning and oversight processes.
4572. [Reserved].
4573. [Reserved].
4574. [Reserved].
4575. [Reserved].
4576. Requirement for consideration of certain matters during acquisition of noncommercial computer software.

PRIOR PROVISIONS

A prior chapter 345 ''ACQUISITION OF INFORMATION TECHNOLOGY'', consisting of reserved section 4571, was repealed by Pub. L. 116–283, div. A, title XVIII, § 1857(a), Jan. 1, 2021, 134 Stat. 4276.

Another prior chapter 345 was renumbered chapter 725 of this title.

§ 4571. Information technology acquisition: planning and oversight processes

(a) ESTABLISHMENT OF PROGRAM.—The Secretary of Defense shall establish a program to improve the planning and oversight processes for the acquisition of major automated information systems by the Department of Defense.

(b) PROGRAM COMPONENTS.—The program established under subsection (a) shall include—

(1) a documented process for information technology acquisition planning, requirements development and management, project management and oversight, earned value management, and risk management;

(2) the development of appropriate metrics that can be implemented and monitored on a real-time basis for performance measurement of—

(A) processes and development status of investments in major automated information system programs;

(B) continuous process improvement of such programs; and

(C) achievement of program and investment outcomes;

(3) a process to ensure that key program personnel have an appropriate level of experience, training, and education in the planning, acquisition, execution, management, and oversight of information technology systems;

(4) a process to ensure sufficient resources and infrastructure capacity for test and evaluation of information technology systems;

(5) a process to ensure that military departments and Defense Agencies adhere to established processes and requirements relating to the planning, acquisition, execution, management, and oversight of information technology programs and developments; and

(6) a process under which an appropriate Department of Defense official may intervene or terminate the funding of an information technology investment if the investment is at risk of not achieving major project milestones.

(Added Pub. L. 111–383, div. A, title VIII, § 805(a)(1), Jan. 7, 2011, 124 Stat. 4259, § 2223a; renumbered § 4571 and amended Pub. L. 116–283, div. A, title XVIII, § 1857(b), Jan. 1, 2021, 134 Stat. 4276.)

AMENDMENTS

2021—Pub. L. 116–283, § 1857(b)(2), amended section catchline generally. Prior to amendment, section catchline read as follows: ''Information technology acquisition planning and oversight requirements''.

Pub. L. 116–283, § 1857(b)(1), renumbered section 2223a of this title as this section.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

GOVERNANCE OF FIFTH-GENERATION WIRELESS NETWORKING IN THE DEPARTMENT OF DEFENSE

Pub. L. 116–283, div. A, title II, § 224, Jan. 1, 2021, 134 Stat. 3472, provided that:

''(a) TRANSITION OF 5G WIRELESS NETWORKING TO OPERATIONAL USE.—

''(1) TRANSITION PLAN REQUIRED.—The Under Secretary of Defense for Research and Engineering, in consultation with the cross functional team established under subsection (c), shall develop a plan to transition fifth-generation (commonly known as '5G') wireless technology to operational use within the Department of Defense.

''(2) ELEMENTS.—The transition plan under paragraph (1) shall include the following:

''(A) A timeline for the transition of responsibility for 5G wireless networking to the Chief Information Officer, as required under subsection (b)(1).

''(B) A description of the roles and responsibilities of the organizations and elements of the Department of Defense with respect to the acquisition, sustainment, and operation of 5G wireless networking for the Department, as determined by the Secretary of Defense in accordance with subsection (d).

''(3) INTERIM BRIEFING.—Not later than March 31, 2021[,] the Secretary of Defense shall provide to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a briefing on the status of the plan required under paragraph (1).

''(4) FINAL REPORT.—Not later than September 30, 2021, the Secretary of Defense shall submit to the congressional defense committees a report that includes the plan developed under paragraph (1).

''(b) SENIOR OFFICIAL FOR 5G WIRELESS NETWORKING.—

''(1) DESIGNATION OF CHIEF INFORMATION OFFICER.—Not later than October 1, 2023, the Secretary of Defense shall designate the Chief Information Officer as the senior official within Department of Defense with primary responsibility for—

''(A) policy, oversight, guidance, research, and coordination on matters relating to 5G wireless networking; and

''(B) making proposals to the Secretary on governance, management, and organizational policy for 5G wireless networking.

''(2) ROLE OF UNDER SECRETARY OF DEFENSE FOR RESEARCH AND ENGINEERING.—The Under Secretary of Defense for Research and Engineering shall carry out the responsibilities specified in paragraph (1) until the date on which the Secretary of Defense designates the Chief Information Officer as the senior official responsible for 5G wireless networking under such paragraph.

''(c) CROSS-FUNCTIONAL TEAM FOR 5G WIRELESS NETWORKING.—

''(1) ESTABLISHMENT.—Using the authority provided under section 911(c) of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114–328; 10 U.S.C. 111 note), the Secretary of Defense shall establish a cross-functional team for 5G wireless networking.

''(2) DUTIES.—The duties of the cross-functional team established under paragraph (1) shall be—

''(A) to assist the Secretary of Defense in determining the roles and responsibilities of the organizations and elements of the Department of Defense with respect to the acquisition, sustainment, and operation of 5G wireless networking, as required under subsection (d);

''(B) to assist the senior official responsible for 5G wireless networking in carrying out the responsibilities assigned to such official under subsection (b);

''(C) to oversee the implementation of the strategy developed under section 254 of the National Defense Authorization Act for Fiscal Year 2020 (Public Law 116–92; 10 U.S.C. 2223a note) for harnessing 5G wireless networking technologies, coordinated across all relevant elements of the Department;

''(D) to advance the adoption of commercially available, next-generation wireless communication technologies, capabilities, security, and applications by the Department and the defense industrial base; and

''(E) to support public-private partnerships between the Department and industry on matters relating to 5G wireless networking;

''(F) to coordinate research and development, implementation and acquisition activities, warfighting concept development, spectrum policy, industrial policy and commercial outreach and partnership relating to 5G wireless networking in the Department, and interagency and international engagement;

''(G) to integrate the Department's 5G wireless networking programs and policies with major initiatives, programs, and policies of the Department relating to secure microelectronics and command and control; and

''(H) to oversee, coordinate, execute, and lead initiatives to advance 5G wireless network technologies and associated applications developed for the Department.

''(3) TEAM LEADER.—The Under Secretary of Defense for Research and Engineering shall lead the cross-functional team established under paragraph (1) until

the date on which the Secretary of Defense designates the Chief Information Officer as the senior official responsible for 5G wireless networking as required under subsection (b)(1). Beginning on the date of such designation, the Chief Information Officer shall lead the cross functional team.

''(d) DETERMINATION OF ORGANIZATIONAL ROLES AND RESPONSIBILITIES.—The Secretary of Defense, acting through the cross-functional team established under subsection (c), shall determine the roles and responsibilities of the organizations and elements of the Department of Defense with respect to the acquisition, sustainment, and operation of 5G wireless networking for the Department, including the roles and responsibilities of the Office of the Secretary of Defense, the intelligence components of the Department, Defense Agencies and Department of Defense Field Activities, the Armed Forces, combatant commands, and the Joint Staff.

''(e) BRIEFING.—Not later than 90 days after the date of the enactment of this Act [Jan. 1, 2021], the Secretary of Defense shall submit to the congressional defense committees a briefing on the progress of the Secretary in—

''(1) establishing the cross-functional team under subsection (c); and

''(2) determining the roles and responsibilities of the organizations and elements of the Department of Defense with respect to 5G wireless networking as required under subsection (d).

''(f) 5G PROCUREMENT DECISIONS.—Each Secretary of a military department shall be responsible for decisions relating to the procurement of 5G wireless technology for that department.

''(g) TELECOMMUNICATIONS SECURITY PROGRAM.—

''(1) PROGRAM REQUIRED.—The Secretary of Defense shall carry out a program to identify and mitigate vulnerabilities in the 5G telecommunications infrastructure of the Department of Defense.

''(2) ELEMENTS.—In carrying out the program under paragraph (1), the Secretary shall—

''(A) develop a capability to communicate clearly and authoritatively about threats by foreign adversaries;

''(B) conduct independent red-team security analysis of systems, subsystems, devices, and components of the Department of Defense including no-knowledge testing and testing with limited or full knowledge of expected functionalities;

''(C) verify the integrity of personnel who are tasked with design fabrication, integration, configuration, storage, test, and documentation of noncommercial 5G technology to be used by the Department;

''(D) verify the efficacy of the physical security measures used at Department locations where system design, fabrication, integration, configuration, storage, test, and documentation of 5G technology occurs;

''(E) direct the Chief Information Officer to assess, using existing government evaluation models and schema where applicable, 5G core service providers whose services will be used by the Department through the Department's provisional authorization process; and

''(F) direct the Defense Information Systems Agency and the United States Cyber Command to develop a capability for continuous, independent monitoring of non-commercial, government-transiting packet streams for 5G data on frequencies assigned to the Department to validate the availability, confidentiality, and integrity of the Department's communications systems.

''(3) IMPLEMENTATION PLAN.—Not later than 90 days after the date of the enactment of this Act [Jan. 1, 2021], the Secretary of Defense shall submit to Congress a plan for the implementation of the program under paragraph (1).

''(4) REPORT.—Not later than 270 days after submitting the plan under paragraph (3), the Secretary of Defense shall submit to Congress a report that includes—

''(A) a comprehensive assessment of the findings and conclusions of the program under paragraph (1);

''(B) recommendations on how to mitigate vulnerabilities in the telecommunications infrastructure of the Department of Defense; and

''(C) an explanation of how the Department plans to implement such recommendations.

''(h) RULE OF CONSTRUCTION.—

''(1) IN GENERAL.—Nothing in this section shall be construed as providing the Chief Information Officer immediate responsibility for the activities of the Department of Defense in fifth-generation wireless networking experimentation and science and technology development.

''(2) PURVIEW OF EXPERIMENTATION AND SCIENCE AND TECHNOLOGY DEVELOPMENT.—The activities described in paragraph (1) shall remain within the purview of the Under Secretary of Defense for Research and Engineering, but shall inform and be informed by the activities of the cross-functional team established pursuant to subsection (c).''

DEMONSTRATION PROJECT ON USE OF CERTAIN TECHNOLOGIES FOR FIFTH-GENERATION WIRELESS NETWORKING SERVICES

Pub. L. 116–283, div. A, title II, § 225, Jan. 1, 2021, 134 Stat. 3475, provided that:

''(a) DEMONSTRATION PROJECT.—The Secretary of Defense shall carry out a demonstration project to evaluate the maturity, performance, and cost of covered technologies to provide additional options for providers of fifth-generation wireless network services.

''(b) LOCATION.—The Secretary of Defense shall carry out the demonstration project under subsection (a) in at least one location where the Secretary plans to deploy a fifth-generation wireless network.

''(c) COORDINATION.—The Secretary shall carry out the demonstration project under subsection (a) in coordination with at least one major wireless network service provider based in the United States.

''(d) COVERED TECHNOLOGIES DEFINED.—In this section, the term 'covered technologies' means—

''(1) a disaggregated or virtualized radio access network and core in which components can be provided by different vendors and interoperate through open protocols and interfaces, including those protocols and interfaces utilizing the Open Radio Access Network (commonly known as 'Open RAN' or 'oRAN') approach; and

''(2) one or more massive multiple-input, multiple-output radio arrays, provided by one or more companies based in the United States, that have the potential to compete favorably with radios produced by foreign companies in terms of cost, performance, and efficiency.''

PILOT PROGRAM ON THE USE OF CONSUMPTION-BASED SOLUTIONS TO ADDRESS SOFTWARE-INTENSIVE WARFIGHTING CAPABILITY

Pub. L. 116–283, div. A, title VIII, § 834, Jan. 1, 2021, 134 Stat. 3754, provided that:

''(a) IN GENERAL.—Subject to the availability of appropriations, the Secretary of Defense is authorized to establish a pilot program to explore the use of consumption-based solutions to address software-intensive warfighting capability.

''(b) SELECTION OF INITIATIVES.—Each Secretary of a military department and each commander of a combatant command with acquisition authority shall propose for selection by the Secretary of Defense for the pilot program at least one and not more than three initiatives that are well-suited to explore consumption-based solutions, to include addressing software-intensive warfighting capability. The initiatives may be new or existing programs of record, and may include applications that—

''(1) rapidly analyze sensor data;

''(2) secure warfighter networks, including multilevel security;

''(3) swiftly transport information across various networks and network modalities;

''(4) enable joint all-domain operational concepts, including in a contested environment; or

''(5) advance military capabilities and effectiveness.

''(c) REQUIREMENTS.—A contract or other agreement for consumption-based solutions entered into under the pilot program shall require—

''(1) the effectiveness of the solution to be measurable at regular intervals customary for the type of solution provided under contract or other agreement; and

''(2) that the awardee notify the Secretary of Defense when consumption under the contract or other agreement reaches 75 percent and 90 percent of the funded amount, respectively, of the contract or other agreement.

''(d) EXEMPTION.—A modification to a contract or other agreement entered into under this section to add new features or capabilities in an amount less than or equal to 25 percent of the total value of such contract or other agreement shall be exempt from the requirements of full and open competition (as defined in section 2302 of title 10, United States Code).

''(e) DURATION.—The duration of a contract or other agreement entered into under this section may not exceed three years.

''(f) MONITORING AND EVALUATION OF PILOT PROGRAM.—The Director of Cost Assessment and Program Evaluation shall continuously monitor and evaluate the pilot program, including by collecting data on cost, schedule, and performance from the program office, the user community, and the awardees involved in the program.

''(g) REPORTS.—

''(1) INITIAL REPORT.—Not later than May 15, 2021, the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on initiatives selected for the pilot program, roles, and responsibilities for implementing the program, and the monitoring and evaluation approach that will be used for the program.

''(2) PROGRESS REPORT.—Not later than October 15, 2021, the Secretary of Defense shall submit to the congressional defense committees a report on the progress of the initiatives selected for the pilot program.

''(3) FINAL REPORT.—Not later than 3 years after the date of the enactment of this Act [Jan. 1, 2021], the Secretary of Defense shall submit to the congressional defense committees a report on the cost, schedule, and performance outcomes of the initiatives carried out under the pilot program. The report shall also include lessons learned about the use of consumption-based solutions for software-intensive capabilities and any recommendations for statutory or regulatory changes to facilitate the use of such solutions.

''(h) CONSUMPTION-BASED SOLUTION DEFINED.—In this section, the term 'consumption-based solution' means any combination of software, hardware or equipment, and labor or services that provides a seamless capability that is metered and billed based on actual usage and predetermined pricing per resource unit, and includes the ability to rapidly scale capacity up or down.''

BALANCING SECURITY AND INNOVATION IN SOFTWARE DEVELOPMENT AND ACQUISITION

Pub. L. 116–283, div. A, title VIII, § 835, Jan. 1, 2021, 134 Stat. 3755, provided that:

''(a) REQUIREMENTS FOR SOLICITATIONS OF COMMERCIAL AND DEVELOPMENTAL SOLUTIONS.—The Under Secretary of Defense for Acquisition and Sustainment, in coordination with the Chief Information Officer of the Department of Defense, shall develop requirements for appropriate software security criteria to be included in solicitations for commercial and developmental solutions and the evaluation of bids submitted in response to such solicitations, including a delineation of what processes were or will be used for a secure software development life cycle. Such requirements shall include—

''(1) establishment and enforcement of secure coding practices;

''(2) management of supply chain risks and third-party software sources and component risks;

''(3) security of the software development environment;

''(4) secure deployment, configuration, and installation processes; and

''(5) an associated vulnerability management plan and identification of tools that will be applied to achieve an appropriate level of security.

''(b) SECURITY REVIEW OF CODE.—The Under Secretary of Defense for Acquisition and Sustainment, in coordination with the Chief Information Officer of the Department of Defense, shall develop—

''(1) procedures for the security review of code; and

''(2) other procedures necessary to fully implement the pilot program required under section 875 of the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115–91; 10 U.S.C. 2223 note).

''(c) COORDINATION WITH CYBERSECURITY ACQUISITION POLICY EFFORTS.—The Under Secretary of Defense for Acquisition and Sustainment shall develop the requirements and procedures described under subsections (a) and (b) in coordination with the efforts of the Department of Defense to develop new cybersecurity and program protection policies and guidance that are focused on cybersecurity in the context of acquisition and program management and on safeguarding information.''

§ 4576. Requirement for consideration of certain matters during acquisition of noncommercial computer software

(a) CONSIDERATION REQUIRED.—As part of any negotiation for the acquisition of noncommercial computer software, the Secretary of Defense shall ensure that such negotiations consider, to the maximum extent practicable, acquisition, at the appropriate time in the life cycle of the noncommercial computer software, of all software and related materials necessary—

(1) to reproduce, build, or recompile the software from original source code and required libraries;

(2) to conduct required computer software testing; and

(3) to deploy working computer software system binary files on relevant system hardware.

(b) DELIVERY OF SOFTWARE AND RELATED MATERIALS.—Any noncommercial computer software or related materials required to be delivered as a result of considerations in subsection (a) shall, to the extent appropriate as determined by the Secretary—

(1) include computer software delivered in a useable, digital format;

(2) not rely on external or additional software code or data, unless such software code or data is included in the items to be delivered; and

(3) in the case of negotiated terms that do not allow for the inclusion of dependent software code or data, sufficient documentation to support maintenance and understanding of interfaces and software revision history.

(Added Pub. L. 115–91, div. A, title VIII, § 871(a)(1), Dec. 12, 2017, 131 Stat. 1496, § 2322a; renumbered § 4576, Pub. L. 116–283, div. A, title XVIII, § 1857(c), Jan. 1, 2021, 134 Stat. 4276.)

PRIOR PROVISIONS

Prior sections 4591 to 4595 were renumbered sections 7591 to 7595 of this title, respectively.

AMENDMENTS

2021—Pub. L. 116–283 renumbered section 2322a of this title as this section.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

Subpart H—Contract Management

AMENDMENTS

2018—Pub. L. 115–232, div. A, title VIII, § 801(a), Aug. 13, 2018, 132 Stat. 1830, added subpart heading.

CHAPTER 361—CONTRACT ADMINISTRATION

Sec.
4601. Electronic submission and processing of claims for contract payments.
4602. Contracted property and services: prompt payment of vouchers.
4603. Advance notification of contract performance outside the United States.

PRIOR PROVISIONS

A prior chapter 361 ''CONTRACT ADMINISTRATION'', consisting of reserved section 4601, was repealed by Pub. L. 116–283, div. A, title XVIII, § 1861(a), Jan. 1, 2021, 134 Stat. 4277.

Another prior chapter 361, consisting of sections 3811 to 3820 relating to separation for various reasons, some of which had previously been repealed, was repealed in its entirety by Pub. L. 103–337, div. A, title XVI, §§ 1629(a)(2), 1691(b)(1), Oct. 5, 1994, 108 Stat. 2963, 3026, effective Oct. 1, 1996.

§ 4601. Electronic submission and processing of claims for contract payments

(a) SUBMISSION OF CLAIMS.—The Secretary of Defense shall require that any claim for payment under a Department of Defense contract shall be submitted to the Department of Defense in electronic form.

(b) PROCESSING.—A contracting officer, contract administrator, certifying official, or other officer or employee of the Department of Defense who receives a claim for payment in electronic form in accordance with subsection (a) and is required to transmit the claim to any other officer or employee of the Department of Defense for processing under procedures of the department shall transmit the claim and any additional documentation necessary to support the determination and payment of the claim to such other officer or employee electronically.

(c) WAIVER AUTHORITY.—If the Secretary of Defense determines that the requirement for using electronic means for submitting claims under subsection (a), or for transmitting claims and supporting documentation under subsection (b), is unduly burdensome in any category of cases, the Secretary may exempt the cases in that category from the application of the requirement.

(d) IMPLEMENTATION OF REQUIREMENTS.—In implementing subsections (a) and (b), the Secretary of Defense shall provide for the following:

(1) Policies, requirements, and procedures for using electronic means for the submission of claims for payment to the Department of Defense and for the transmission, between Department of Defense officials, of claims for payment received in electronic form, together with supporting documentation (such as receiving reports, contracts and contract modifications, and required certifications).

(2) The format in which information can be accepted by the corporate database of the Defense Finance and Accounting Service.

(3) The requirements to be included in contracts regarding the electronic submission of claims for payment by contractors.

(e) CLAIM FOR PAYMENT DEFINED.—In this section, the term ''claim for payment'' means an invoice or any other demand or request for payment.

(Added Pub. L. 106–398, § 1 [[div. A], title X, § 1008(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–249, § 2227; renumbered § 4601, Pub. L. 116–283, div. A, title XVIII, § 1861(b), Jan. 1, 2021, 134 Stat. 4277.)

AMENDMENTS

2021—Pub. L. 116–283 renumbered section 2227 of this title as this section.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 4602. Contracted property and services: prompt payment of vouchers

(a) REQUIREMENT.—Of the contract vouchers that are received by the Defense Finance and Accounting Service by means of the mechanization of contract administration services system, the number of such vouchers that remain unpaid for more than 30 days as of the last day of each month may not exceed 5 percent of the total number of the contract vouchers so received that remain unpaid on that day.

(b) CONTRACT VOUCHER DEFINED.—In this section, the term ''contract voucher'' means a voucher or invoice for the payment to a contractor for services or deliverable items provided by the contractor under a contract funded by the Department of Defense.

(Added Pub. L. 106–398, § 1 [[div. A], title X, § 1006(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–247, § 2226; amended Pub. L. 111–350, § 5(b)(7), Jan. 4, 2011, 124 Stat. 3842; Pub. L. 115–232, div. A, title VIII, § 836(e)(1), Aug. 13, 2018, 132 Stat. 1869; renumbered § 4602, Pub. L. 116–283, div. A, title XVIII, § 1861(b), Jan. 1, 2021, 134 Stat. 4277.)

AMENDMENTS

2021—Pub. L. 116–283 renumbered section 2226 of this title as this section.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 4603. Advance notification of contract performance outside the United States

(a) NOTIFICATION.—(1) A firm that is performing a Department of Defense contract for an amount exceeding $10,000,000, or is submitting a bid or proposal for such a contract, shall notify the Department of Defense in advance of any intention of the firm or any first-tier subcontractor of the firm to perform outside the United States and Canada any part of the contract that exceeds $500,000 in value and could be performed inside the United States or Canada.

(2) If a firm submitting a bid or proposal for a Department of Defense contract is required to submit a notification under this subsection, and the firm is aware, at the time it submits its bid or proposal, that the firm intends to perform outside the United States and Canada any part of the contract that exceeds $500,000 in value and could be performed inside the United States or Canada, the firm shall include the notification in its bid or proposal.

(3) The notification by a firm under paragraph (1) with respect to a first-tier subcontractor shall be made, to the maximum extent practicable, at least 30 days before award of the subcontract.

(b) RECIPIENT OF NOTIFICATION.—The firm shall transmit the notification—

(1) in the case of a contract of a military department, to such officer or employee of that military department as the Secretary of the military department may direct; and

(2) in the case of any other Department of Defense contract, to such officer or employee of the Department of Defense as the Secretary of Defense may direct.

(c) AVAILABILITY OF NOTIFICATIONS.—The Secretary of Defense shall ensure that the notifications (or copies) are maintained in compiled form for a period of 5 years after the date of submission and are available for use in the preparation of the national defense technology and industrial base assessment carried out under section 4816 of this title.

(d) INAPPLICABILITY TO CERTAIN CONTRACTS.—This section shall not apply to contracts for any of the following:

(1) Commercial products or commercial services (as defined in sections 103 and 103a, respectively, of title 41).

(2) Military construction.

(3) Ores.

(4) Natural gas.

(5) Utilities.

(6) Petroleum products and crudes.

(7) Timber.

(8) Subsistence.

(Added Pub. L. 102–484, div. A, title VIII, § 840(a)(1), Oct. 23, 1992, 106 Stat. 2466, § 2410g; amended Pub. L. 104–106, div. D, title XLIII, § 4321(b)(16), Feb. 10, 1996, 110 Stat. 673; Pub. L. 111–350, § 5(b)(30), Jan. 4, 2011, 124 Stat. 3845; Pub. L. 115–232, div. A, title VIII, § 836(e)(7), Aug. 13, 2018, 132 Stat. 1870; renumbered § 4603 and amended Pub. L. 116–283, div. A, title XVIII, §§ 1861(b), 1883(b)(2), Jan. 1, 2021, 134 Stat. 4277, 4294.)

PRIOR PROVISIONS

Prior sections 4621 and 4622 were renumbered sections 7621 and 7622 of this title, respectively.

A prior section 4623, act Aug. 10, 1956, ch. 1041, 70A Stat. 258, provided that the Quartermaster Corps sell not more than 16 ounces of tobacco a month to an enlisted member of the Army on active duty who requests it, prior to repeal by Pub. L. 91–482, § 1(a), Oct. 21, 1970, 84 Stat. 1082.

Prior sections 4624 to 4629 were renumbered sections 7624 to 7629 of this title, respectively.

AMENDMENTS

2021—Pub. L. 116–283, § 1861(b), renumbered section 2410g of this title as this section.

Subsec. (c). Pub. L. 116–283, § 1883(b)(2), substituted ''section 4816'' for ''section 2505''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

CHAPTER 363—PROHIBITION AND PENALTIES

Sec.

4651. Expenditure of appropriations: limitation.
4652. Prohibition on use of funds for documenting economic or employment impact of certain acquisition programs.
4653. Prohibition on use of funds to relieve economic dislocations.
4654. Prohibition on doing business with certain offerors or contractors.
4655. Prohibition of contractors limiting subcontractor sales directly to the United States.
4656. Prohibition on persons convicted of defense-contract related felonies and related criminal penalty on defense contractors.
4657. Prohibition on criminal history inquiries by contractors prior to conditional offer.
4658. Debarment of persons convicted of fraudulent use of ''Made in America'' labels.
4659. Prohibition on contracting with entities that comply with the secondary Arab boycott of Israel.
4660. Prohibition on collection of political information.

PRIOR PROVISIONS

A prior chapter 363 ''PROHIBITIONS AND PENALTIES'', consisting of reserved section 4651, was repealed by Pub. L. 116–283, div. A, title XVIII, § 1862(a), Jan. 1, 2021, 134 Stat. 4277.

Another prior chapter 363, consisting of sections 3841 to 3855 relating to separation or transfer to the Retired Reserve, some of which had previously been repealed, was repealed in its entirety by Pub. L. 103–337, div. A, title XVI, §§ 1629(a)(3), 1691(b)(1), Oct. 5, 1994, 108 Stat. 2963, 3026, effective Oct. 1, 1996.

§ 4651. Expenditure of appropriations: limitation

(a) Money appropriated to the Department of Defense may not be spent under a contract other than a contract for personal services unless that contract provides that—

(1) the United States may, by written notice to the contractor, terminate the right of the contractor to proceed under the contract if the Secretary concerned or his designee finds, after notice and hearing, that the contractor, or his agent or other representative, offered or gave any gratuity, such as entertainment or a gift, to an officer, official, or employee of the United States to obtain a contract or favorable treatment in the awarding, amending, or making of determinations concerning the performance, of a contract; and

(2) if a contract is terminated under clause (1), the United States has the same remedies against the contractor that it would have had if the contractor had breached the contract and, in addition to other damages, is entitled to exemplary damages in an amount at least three, but not more than 10, as determined by the Secretary or his designee, times the cost incurred by the contractor in giving gratuities to the officer, official, or employee concerned.

The existence of facts upon which the Secretary makes findings under clause (1) may be reviewed by any competent court.

(b) This section does not apply to a contract that is for an amount not greater than the simplified acquisition threshold (as defined in section 134 of title 41).

(Added Pub. L. 87–651, title II, § 207(a), Sept. 7, 1962, 76 Stat. 520, § 2207; amended Pub. L. 104–106, div. A, title VIII, § 801, Feb. 10, 1996, 110 Stat. 389; Pub. L. 111–350, § 5(b)(5), Jan. 4, 2011, 124 Stat. 3842; renumbered § 4651, Pub. L. 116–283, div. A, title XVIII, § 1862(b), Jan. 1, 2021, 134 Stat. 4277.)

PRIOR PROVISIONS

A prior section 4651, Aug. 10, 1956, ch. 1041, 70A Stat. 260; Pub. L. 99–145, title XIII, § 1301(b(3)(C), Nov. 8, 1985, 99 Stat. 736, related to issuance of arms, tentage, and equipment necessary for proper military training to institutions not maintaining units of the Reserve Officers' Training Corps, prior to repeal by Pub. L. 112–239, div. A, title V, § 552(b), Jan. 2, 2013, 126 Stat. 1741.

AMENDMENTS

2021—Pub. L. 116–283 renumbered section 2207 of this title as this section.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 4652. Prohibition on use of funds for documenting economic or employment impact of certain acquisition programs

No funds appropriated by the Congress may be obligated or expended to assist any contractor of the Department of Defense in preparing any material, report, lists, or analysis with respect to the actual or projected economic or employment impact in a particular State or congressional district of an acquisition program for which all research, development, testing, and evaluation has not been completed.

(Added Pub. L. 103–355, title VII, § 7202(a)(1), Oct. 13, 1994, 108 Stat. 3379, § 2247; renumbered § 2249, Pub. L. 104–106, div. D, title XLIII, § 4321(b)(2)(A), Feb. 10, 1996, 110 Stat. 672; renumbered § 4652, Pub. L. 116–283, div. A, title XVIII, § 1862(b), Jan. 1, 2021, 134 Stat. 4277.)

PRIOR PROVISIONS

A prior section 4652 was renumbered section 7652 of this title.

AMENDMENTS

2021—Pub. L. 116–283 renumbered section 2249 of this title as this section.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 4653. Prohibition on use of funds to relieve economic dislocations

(a) In order to help avoid the uneconomic use of Department of Defense funds in the procurement of goods and services, the Congress finds that it is necessary to prohibit the use of such funds for certain purposes.

(b) No funds appropriated to or for the use of the Department of Defense may be used to pay, in connection with any contract awarded by the Department of Defense, a price differential for the purpose of relieving economic dislocations.

(Added Pub. L. 97–86, title IX, § 913(a)(1), Dec. 1, 1981, 95 Stat. 1123, § 2392; renumbered § 4653, Pub. L. 116–283, div. A, title XVIII, § 1862(b), Jan. 1, 2021, 134 Stat. 4277.)

PRIOR PROVISIONS

A prior section 4653 was renumbered section 7653 of this title.

AMENDMENTS

2021—Pub. L. 116–283 renumbered section 2392 of this title as this section.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 4654. Prohibition against doing business with certain offerors or contractors

(a)(1) Except as provided in paragraph (2), the Secretary of a military department may not solicit an offer from, award a contract to, extend an existing contract with, or, when approval by the Secretary of the award of a subcontract is required, approve the award of a subcontract to, an offeror or contractor which to the Secretary's knowledge has been debarred or suspended by another Federal agency unless—

(A) in the case of debarment, the debarment of the offeror or contractor by all other agencies has been terminated or the period of time specified for such debarment has expired; and

(B) in the case of a suspension, the period of time specified by all other agencies for the suspension of the offeror or contractor has expired.

(2) Paragraph (1) does not apply in any case in which the Secretary concerned determines that there is a compelling reason to solicit an offer from, award a contract to, extend a contract with, or approve a subcontract with such offeror or contractor.

(b) Whenever the Secretary concerned makes a determination described in subsection (a)(2), he shall, at the time of the determination, transmit a notice to the Administrator of General Services describing the determination. The Administrator of General Services shall maintain each such notice on a publicly accessible website to the maximum extent practicable.

(c) In this section:

(1) The term ''debar'' means to exclude, pursuant to established administrative proce-

dures, from Government contracting and subcontracting for a specified period of time commensurate with the seriousness of the failure or offense or the inadequacy of performance.

(2) The term ''suspend'' means to disqualify, pursuant to established administrative procedures, from Government contracting and subcontracting for a temporary period of time because a concern or individual is suspected of engaging in criminal, fraudulent, or seriously improper conduct.

(d) The Secretary of Defense shall prescribe in regulations a requirement that each contractor under contract with the Department of Defense shall require each contractor to whom it awards a contract (in this section referred to as a subcontractor) to disclose to the contractor whether the subcontractor is or is not, as of the time of the award of the subcontract, debarred or suspended by the Federal Government from Government contracting or subcontracting. The requirement shall apply to any subcontractor whose subcontract is in an amount greater than the simplified acquisition threshold (as defined in section 134 of title 41). The requirement shall not apply in the case of a subcontract for the acquisition of commercial products or commercial services (as defined in sections 103 and 103a, respectively, of title 41).

(Added Pub. L. 97–86, title IX, § 914(a), Dec. 1, 1981, 95 Stat. 1124, § 2393; amended Pub. L. 100–180, div. A, title XII, § 1231(17), Dec. 4, 1987, 101 Stat. 1161; Pub. L. 101–510, div. A, title VIII, § 813, Nov. 5, 1990, 104 Stat. 1596; Pub. L. 102–190, div. A, title X, § 1061(a)(11), Dec. 5, 1991, 105 Stat. 1473; Pub. L. 103–355, title IV, § 4102(e), title VIII, § 8105(c), Oct. 13, 1994, 108 Stat. 3340, 3392; Pub. L. 111–350, § 5(b)(24), Jan. 4, 2011, 124 Stat. 3844; Pub. L. 113–66, div. A, title VIII, § 813, Dec. 26, 2013, 127 Stat. 808; Pub. L. 115–232, div. A, title VIII, § 836(e)(3), Aug. 13, 2018, 132 Stat. 1869; renumbered § 4654, Pub. L. 116–283, div. A, title XVIII, § 1862(b), Jan. 1, 2021, 134 Stat. 4277.)

PRIOR PROVISIONS

A prior section 4654 was renumbered section 7654 of this title.

AMENDMENTS

2021—Pub. L. 116–283 renumbered section 2393 of this title as this section.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 4655. Prohibition of contractors limiting subcontractor sales directly to the United States

(a) Each contract for the purchase of supplies or services made by the Department of Defense shall provide that the contractor will not—

(1) enter into any agreement with a subcontractor under the contract that has the effect of unreasonably restricting sales by the subcontractor directly to the United States of any item or process (including computer software) made or furnished by the subcontractor under the contract (or any follow-on production contract); or

(2) otherwise act to restrict unreasonably the ability of a subcontractor to make sales to the United States described in clause (1).

(b) This section does not prohibit a contractor from asserting rights it otherwise has under law.

(c) This section does not apply to a contract that is for an amount not greater than the simplified acquisition threshold (as defined in section 134 of title 41).

(d)(1) An agreement between the contractor in a contract for the acquisition of commercial products or commercial services and a subcontractor under such contract that restricts sales by such subcontractor directly to persons other than the contractor may not be considered to unreasonably restrict sales by that subcontractor to the United States in violation of the provision included in such contract pursuant to subsection (a) if the agreement does not result in the United States being treated differently with regard to the restriction than any other prospective purchaser of such commercial products or commercial services from that subcontractor.

(2) In paragraph (1), the terms ''commercial product'' and ''commercial service'' have the meanings given those terms in sections 103 and 103a, respectively, of title 41.

(Added Pub. L. 98–525, title XII, § 1234(a), Oct. 19, 1984, 98 Stat. 2601, § 2402; amended Pub. L. 103–355, title IV, § 4102(f), title VIII, § 8105(g), Oct. 13, 1994, 108 Stat. 3340, 3392; Pub. L. 111–350, § 5(b)(25), Jan. 4, 2011, 124 Stat. 3844; Pub. L. 115–232, div. A, title VIII, § 836(e)(4), Aug. 13, 2018, 132 Stat. 1869; renumbered § 4655, Pub. L. 116–283, div. A, title XVIII, § 1862(b), Jan. 1, 2021, 134 Stat. 4277.)

PRIOR PROVISIONS

A prior section 4655 was renumbered section 7655 of this title.

AMENDMENTS

2021—Pub. L. 116–283 renumbered section 2402 of this title as this section.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 4656. Prohibition on persons convicted of defense-contract related felonies and related criminal penalty on defense contractors

(a) PROHIBITION.—(1) An individual who is convicted of fraud or any other felony arising out of a contract with the Department of Defense shall be prohibited from each of the following:

(A) Working in a management or supervisory capacity on any defense contract or any first tier subcontract of a defense contract.

(B) Serving on the board of directors of any defense contractor or any subcontractor awarded a contract directly by a defense contractor.

(C) Serving as a consultant to any defense contractor or any subcontractor awarded a contract directly by a defense contractor.

(D) Being involved in any other way, as determined under regulations prescribed by the

Secretary of Defense, with a defense contract or first tier subcontract of a defense contract.

(2) Except as provided in paragraph (3), the prohibition in paragraph (1) shall apply for a period, as determined by the Secretary of Defense, of not less than five years after the date of the conviction.

(3) The prohibition in paragraph (1) may apply with respect to an individual for a period of less than five years if the Secretary determines that the five-year period should be waived in the interests of national security.

(4) The prohibition in paragraph (1) does not apply with respect to the following:

(A) A contract referred to in subparagraph (A), (B), (C), or (D) of such paragraph that is not greater than the simplified acquisition threshold (as defined in section 134 of title 41).

(B) A contract referred to in such subparagraph that is for the acquisition of commercial products or commercial services (as defined in sections 103 and 103a, respectively, of title 41).

(C) A subcontract referred to in such subparagraph that is under a contract described in subparagraph (A) or (B).

(b) CRIMINAL PENALTY.—A defense contractor or subcontractor shall be subject to a criminal penalty of not more than $500,000 if such contractor or subcontractor is convicted of knowingly—

(1) employing a person under a prohibition under subsection (a); or

(2) allowing such a person to serve on the board of directors of such contractor or subcontractor.

(c) SINGLE POINT OF CONTACT FOR INFORMATION.—(1) The Attorney General shall ensure that a single point of contact is established to enable a defense contractor or subcontractor to promptly obtain information regarding whether a person that the contractor or subcontractor proposes to use for an activity covered by paragraph (1) of subsection (a) is under a prohibition under that subsection.

(2) The procedure for obtaining such information shall be specified in regulations prescribed by the Secretary of Defense under subsection (a).

(Added Pub. L. 99–500, § 101(c) [title X, § 941(a)(1)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–161, and Pub. L. 99–591, § 101(c) [title X, § 941(a)(1)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–161, § 2408; Pub. L. 99–661, div. A, title IX, formerly title IV, § 941(a)(1), Nov. 14, 1986, 100 Stat. 3941, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; amended Pub. L. 100–456, div. A, title VIII, § 831(a), Sept. 29, 1988, 102 Stat. 2023; Pub. L. 101–510, div. A, title VIII, § 812, Nov. 5, 1990, 104 Stat. 1596; Pub. L. 102–484, div. A, title VIII, § 815(a), Oct. 23, 1992, 106 Stat. 2454; Pub. L. 103–355, title IV, § 4102(g), title VIII, § 8105(h), Oct. 13, 1994, 108 Stat. 3340, 3393; Pub. L. 104–106, div. A, title X, § 1062(e), Feb. 10, 1996, 110 Stat. 444; Pub. L. 111–350, § 5(b)(26), Jan. 4, 2011, 124 Stat. 3844; Pub. L. 115–232, div. A, title VIII, § 836(e)(5), Aug. 13, 2018, 132 Stat. 1870; renumbered § 4656, Pub. L. 116–283, div. A, title XVIII, § 1862(b), Jan. 1, 2021, 134 Stat. 4277.)

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500. Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661 added identical sections.

PRIOR PROVISIONS

A prior section 4656 was renumbered section 7656 of this title.

AMENDMENTS

2021—Pub. L. 116–283 renumbered section 2408 of this title as this section.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 4657. Prohibition on criminal history inquiries by contractors prior to conditional offer

(a) LIMITATION ON CRIMINAL HISTORY INQUIRIES.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the head of an agency—

(A) may not require that an individual or sole proprietor who submits a bid for a contract to disclose criminal history record information regarding that individual or sole proprietor before determining the apparent awardee; and

(B) shall require as a condition of receiving a Federal contract and receiving payments under such contract that the contractor may not verbally or through written form request the disclosure of criminal history record information regarding an applicant for a position related to work under such contract before such contractor extends a conditional offer to the applicant.

(2) OTHERWISE REQUIRED BY LAW.—The prohibition under paragraph (1) does not apply with respect to a contract if consideration of criminal history record information prior to a conditional offer with respect to the position is otherwise required by law.

(3) EXCEPTION FOR CERTAIN POSITIONS.—

(A) IN GENERAL.—The prohibition under paragraph (1) does not apply with respect to—

(i) a contract that requires an individual hired under the contract to access classified information or to have sensitive law enforcement or national security duties; or

(ii) a position that the Secretary of Defense identifies under the regulations issued under subparagraph (B).

(B) REGULATIONS.—

(i) ISSUANCE.—Not later than 16 months after the date of enactment of the Fair Chance to Compete for Jobs Act of 2019, the Secretary of Defense, in consultation with the Administrator of General Services, shall issue regulations identifying additional positions with respect to which the prohibition under paragraph (1) shall not apply, giving due consideration to positions that involve interaction with minors, access to sensitive information, or managing financial transactions.

(ii) COMPLIANCE WITH CIVIL RIGHTS LAWS.—The regulations issued under clause (i) shall—

(I) be consistent with, and in no way supersede, restrict, or limit the application of title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.) or other relevant Federal civil rights laws; and

(II) ensure that all hiring activities conducted pursuant to the regulations are conducted in a manner consistent with relevant Federal civil rights laws.

(b) COMPLAINT PROCEDURES.—The Secretary of Defense shall establish and publish procedures under which an applicant for a position with a Department of Defense contractor may submit a complaint, or any other information, relating to compliance by the contractor with subsection (a)(1)(B).

(c) ACTION FOR VIOLATIONS OF PROHIBITION ON CRIMINAL HISTORY INQUIRIES.—

(1) FIRST VIOLATION.—If the Secretary of Defense determines that a contractor has violated subsection (a)(1)(B), the Secretary shall—

(A) notify the contractor;

(B) provide 30 days after such notification for the contractor to appeal the determination; and

(C) issue a written warning to the contractor that includes a description of the violation and the additional remedies that may apply for subsequent violations.

(2) SUBSEQUENT VIOLATIONS.—If the Secretary of Defense determines that a contractor that was subject to paragraph (1) has committed a subsequent violation of subsection (a)(1)(B), the Secretary shall notify the contractor, shall provide 30 days after such notification for the contractor to appeal the determination, and, in consultation with the relevant Federal agencies, may take actions, depending on the severity of the infraction and the contractor's history of violations, including—

(A) providing written guidance to the contractor that the contractor's eligibility for contracts requires compliance with this section;

(B) requiring that the contractor respond within 30 days affirming that the contractor is taking steps to comply with this section; and

(C) suspending payment under the contract for which the applicant was being considered until the contractor demonstrates compliance with this section.

(d) DEFINITIONS.—In this section:

(1) CONDITIONAL OFFER.—The term ''conditional offer'' means an offer of employment for a position related to work under a contract that is conditioned upon the results of a criminal history inquiry.

(2) CRIMINAL HISTORY RECORD INFORMATION.—The term ''criminal history record information'' has the meaning given that term in section 9201 of title 5.

(Added Pub. L. 116–92, div. A, title XI, §1123(b)(1), Dec. 20, 2019, 133 Stat. 1612, §2339; renumbered §4657, Pub. L. 116–283, div. A, title XVIII, §1862(b), Jan. 1, 2021, 134 Stat. 4277.)

REFERENCES IN TEXT

The date of enactment of the Fair Chance to Compete for Jobs Act of 2019, referred to in subsec. (a)(3)(B)(i), is the date of enactment of subtitle B of title XI of div. A of Pub. L. 116–92, which was approved Dec. 20, 2019.

The Civil Rights Act of 1964, referred to in subsec. (a)(3)(B)(ii)(I), is Pub. L. 88–352, July 2, 1964, 78 Stat. 241. Title VII of the Act is classified generally to subchapter VI (§2000e et seq.) of chapter 21 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of Title 42 and Tables.

PRIOR PROVISIONS

A prior section 4657 was renumbered section 7657 of this title.

AMENDMENTS

2021—Pub. L. 116–283 renumbered section 2339 of this title as this section.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 4658. Debarment of persons convicted of fraudulent use of "Made in America" labels

(a) If the Secretary of Defense determines that a person has been convicted of intentionally affixing a label bearing a ''Made in America'' inscription, or another inscription with the same meaning, to any product sold in or shipped to the United States that is not made in America, the Secretary shall determine, not later than 90 days after determining that the person has been so convicted, whether the person should be debarred from contracting with the Department of Defense.

(b) In this section, the term ''debar'' has the meaning given that term by section 4654(c) of this title.

(Added Pub. L. 102–484, div. A, title VIII, §834(a)(1), Oct. 23, 1992, 106 Stat. 2461, §2410f; amended Pub. L. 104–106, div. A, title X, §1062(f), title XV, §1503(a)(22), Feb. 10, 1996, 110 Stat. 444, 512; Pub. L. 107–107, div. A, title X, §1048(a)(20), Dec. 28, 2001, 115 Stat. 1223; renumbered §4658 and amended Pub. L. 116–283, div. A, title XVIII, §1862(b), (c)(2), Jan. 1, 2021, 134 Stat. 4277, 4278.)

AMENDMENTS

2021—Pub. L. 116–283, §1862(b), renumbered section 2410f of this title as this section.

Subsec. (b). Pub. L. 116–283, §1862(c)(2), which directed amendment of subsec. (b) of section 4657 of this title by substituting ''section 4654(c)'' for ''section 2393(c)'', was executed to subsec. (b) of this section to reflect the probable intent of Congress. The phrase ''section 2393(c)'' did not appear in section 4657(b).

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 4659. Prohibition on contracting with entities that comply with the secondary Arab boycott of Israel

(a) POLICY.—Under section 3(5)(A)[1] of the Export Administration Act of 1979 (50 U.S.C. 4602(5)(A)), it is the policy of the United States to oppose restrictive trade practices or boycotts fostered or imposed by foreign countries against other countries friendly to the United States or against any other United States person.

(b) PROHIBITION.—(1) Consistent with the policy referred to in subsection (a), the Department of Defense may not award a contract for an amount in excess of the simplified acquisition threshold (as defined in section 134 of title 41) to a foreign entity unless that entity certifies to the Secretary of Defense that it does not comply with the secondary Arab boycott of Israel.

(2) In paragraph (1), the term ''foreign entity'' means a foreign person, a foreign company, or any other foreign entity.

(c) WAIVER AUTHORITY.—The Secretary of Defense may waive the prohibition in subsection (b) in specific instances when the Secretary determines that the waiver is necessary in the national security interests of the United States.

(d) EXCEPTIONS.—Subsection (b) does not apply—

(1) to contracts for consumable supplies, provisions, or services that are intended to be used for the support of United States forces or of allied forces in a foreign country; or

(2) to contracts pertaining to the use of any equipment, technology, data, or services for intelligence or classified purposes by the United States Government in the interests of national security or to the acquisition or lease of any such equipment, technology, data, or services by the United States Government in the interests of national security.

(Added Pub. L. 102–484, div. A, title XIII, § 1332(a), Oct. 23, 1992, 106 Stat. 2555, § 2410i; amended Pub. L. 111–350, §§ 4, 5(b)(31), Jan. 4, 2011, 124 Stat. 3841, 3845; Pub. L. 114–328, div. A, title X, § 1081(b)(3)(D), Dec. 23, 2016, 130 Stat. 2419; Pub. L. 115–91, div. A, title X, § 1051(a)(16), Dec. 12, 2017, 131 Stat. 1561; renumbered § 4659, Pub. L. 116–283, div. A, title XVIII, § 1862(b), Jan. 1, 2021, 134 Stat. 4277.)

REFERENCES IN TEXT

Section 3(5)(A) of the Export Administration Act of 1979 (50 U.S.C. 4602(5)(A)), referred to in subsec. (a), was repealed by Pub. L. 115–232, div. A, title XVII, § 1766(a), Aug. 13, 2018, 132 Stat. 2232.

AMENDMENTS

2021—Pub. L. 116–283 renumbered section 2410i of this title as this section.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 4660. Prohibition on collection of political information

(a) PROHIBITION ON REQUIRING SUBMISSION OF POLITICAL INFORMATION.—The head of an agency may not require a contractor to submit political information related to the contractor or a subcontractor at any tier, or any partner, officer, director, or employee of the contractor or subcontractor—

(1) as part of a solicitation, request for bid, request for proposal, or any other form of communication designed to solicit offers in connection with the award of a contract for procurement of property or services; or

(2) during the course of contract performance as part of the process associated with modifying a contract or exercising a contract option.

(b) SCOPE.—The prohibition under this section applies to the procurement of commercial products and commercial services, the procurement of commercial-off-the-shelf-items, and the noncommercial procurement of supplies, property, services, and manufactured items, irrespective of contract vehicle, including contracts, purchase orders, task or deliver orders under indefinite delivery/indefinite quantity contracts, blanket purchase agreements, and basic ordering agreements.

(c) RULE OF CONSTRUCTION.—Nothing in this section shall be construed as—

(1) waiving, superseding, restricting, or limiting the application of the Federal Election Campaign Act of 1971 (52 U.S.C. 30101 et seq.) or preventing Federal regulatory or law enforcement agencies from collecting or receiving information authorized by law; or

(2) precluding the Defense Contract Audit Agency from accessing and reviewing certain information, including political information, for the purpose of identifying unallowable costs and administering cost principles established pursuant to section 2324[1] of this title.

(d) DEFINITIONS.—In this section:

(1) CONTRACTOR.—The term ''contractor'' includes contractors, bidders, and offerors, and individuals and legal entities who would reasonably be expected to submit offers or bids for Federal Government contracts.

(2) POLITICAL INFORMATION.—The term ''political information'' means information relating to political spending, including any payment consisting of a contribution, expenditure, independent expenditure, or disbursement for an electioneering communication that is made by the contractor, any of its partners, officers, directors or employees, or any of its affiliates or subsidiaries to a candidate or on behalf of a candidate for election for Federal office, to a political committee, to a political party, to a third party entity with the intention or reasonable expectation that it would use the payment to make independent expenditures or electioneering communications, or that is otherwise made with respect to any election for Federal office, party affiliation, and voting history.

(3) OTHER TERMS.—Each of the terms ''contribution'', ''expenditure'', ''independent expenditure'', ''candidate'', ''election'', ''electioneering communication'', and ''Federal office'' has the meaning given that term in the

[1] See References in Text note below.

[1] See References in Text note below.

Federal Election Campaign Act of 1971 (52 U.S.C. 30101 et seq.).

(Added Pub. L. 112–81, div. A, title VIII, §823(a), Dec. 31, 2011, 125 Stat. 1502, §2335; amended Pub. L. 113–291, div. A, title X, §1071(f)(17), Dec. 19, 2014, 128 Stat. 3511; Pub. L. 115–91, div. A, title X, §1081(a)(32), Dec. 12, 2017, 131 Stat. 1596; Pub. L. 115–232, div. A, title VIII, §836(c)(10), Aug. 13, 2018, 132 Stat. 1866; renumbered §4660 and amended Pub. L. 116–283, div. A, title XVIII, §§1862(b), 1883(b)(2), Jan. 1, 2021, 134 Stat. 4277, 4294.)

REFERENCES IN TEXT

The Federal Election Campaign Act of 1971, referred to in subsecs. (c)(1) and (d)(3), is Pub. L. 92–225, Feb. 7, 1972, 86 Stat. 3, which is classified principally to chapter 301 (§30101 et seq.) of Title 52, Voting and Elections. For complete classification of this Act to the Code, see Tables.

Section 2324 of this title, referred to in subsec. (c)(2), was transferred to sections 3741 to 3750 of this title by Pub. L. 116–283, div. A, title XVIII, §1832(b)–(i), Jan. 1, 2021, 134 Stat. 4218—4222.

PRIOR PROVISIONS

A prior section 4681, act Aug. 10, 1956, ch. 1041, 70A Stat. 262; Pub. L. 96–513, title V, §512(19), Dec. 12, 1980, 94 Stat. 2930; Pub. L. 107–217, §3(b)(24), Aug. 21, 2002, 116 Stat. 1297, related to sale to States and certain foreign governments of surplus war material, prior to repeal by Pub. L. 114–328, div. A, title XII, §1253(a)(1)(D), Dec. 23, 2016, 130 Stat. 2532.

Prior sections 4682 to 4690 were renumbered sections 7682 to 7690 of this title, respectively.

AMENDMENTS

2021—Pub. L. 116–283, §1862(b), renumbered section 2335 of this title as this section.

Subsec. (c)(2). Pub. L. 116–283, §1883(b)(2), which directed that each reference in the text of title 10 to a section that was redesignated by title XVIII of Pub. L. 116–283, as such section was in effect before the redesignation, be amended by striking such reference and inserting a reference to the appropriate redesignated section, was not executed with respect to ''section 2324'', which was redesignated as multiple sections.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

CHAPTER 365—CONTRACTOR WORKFORCE

Sec.
4701. Contractor employees: protection from reprisal for disclosure of certain information.
4702. Incentives and consideration for qualified training programs.
4703. Displaced contractor employees: assistance to obtain certification and employment as teachers or employment as teachers' aides.
4704. Defense contractors: listing of suitable employment openings with local employment service office.

PRIOR PROVISIONS

A prior chapter 365 ''CONTRACTOR WORKFORCE'', consisting of reserved section 4701, was repealed by Pub. L. 116–283, div. A, title XVIII, §1863(a), Jan. 1, 2021, 134 Stat. 4278.

Another prior chapter 365, consisting of sections 3881 to 3889 relating to retirement for age of certain commissioned officers, some of which had previously been repealed, was repealed in its entirety by Pub. L. 96–513, title II, §216, title VII, §701, Dec. 12, 1980, 94 Stat. 2886, 2955, effective Sept. 15, 1981.

§4701. Contractor employees: protection from reprisal for disclosure of certain information

(a) PROHIBITION OF REPRISALS.—(1) An employee of a contractor, subcontractor, grantee, or subgrantee or personal services contractor may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a person or body described in paragraph (2) information that the employee reasonably believes is evidence of the following:

(A) Gross mismanagement of a Department of Defense contract or grant, a gross waste of Department funds, an abuse of authority relating to a Department contract or grant, or a violation of law, rule, or regulation related to a Department contract (including the competition for or negotiation of a contract) or grant.

(B) Gross mismanagement of a National Aeronautics and Space Administration contract or grant, a gross waste of Administration funds, an abuse of authority relating to an Administration contract or grant, or a violation of law, rule, or regulation related to an Administration contract (including the competition for or negotiation of a contract) or grant.

(C) A substantial and specific danger to public health or safety.

(2) The persons and bodies described in this paragraph are the persons and bodies as follows:

(A) A Member of Congress or a representative of a committee of Congress.

(B) An Inspector General.

(C) The Government Accountability Office.

(D) An employee of the Department of Defense or the National Aeronautics and Space Administration, as applicable, responsible for contract oversight or management.

(E) An authorized official of the Department of Justice or other law enforcement agency.

(F) A court or grand jury.

(G) A management official or other employee of the contractor or subcontractor who has the responsibility to investigate, discover, or address misconduct.

(3) For the purposes of paragraph (1)—

(A) an employee who initiates or provides evidence of contractor or subcontractor misconduct in any judicial or administrative proceeding relating to waste, fraud, or abuse on a Department of Defense or National Aeronautics and Space Administration contract or grant shall be deemed to have made a disclosure covered by such paragraph; and

(B) a reprisal described in paragraph (1) is prohibited even if it is undertaken at the request of a Department or Administration official, unless the request takes the form of a nondiscretionary directive and is within the authority of the Department or Administration official making the request.

(b) INVESTIGATION OF COMPLAINTS.—(1) A person who believes that the person has been subjected to a reprisal prohibited by subsection (a) may submit a complaint to the Inspector General of the Department of Defense, or the Inspector General of the National Aeronautics and

Space Administration in the case of a complaint regarding the National Aeronautics and Space Administration. Unless the Inspector General determines that the complaint is frivolous, fails to allege a violation of the prohibition in subsection (a), or has previously been addressed in another Federal or State judicial or administrative proceeding initiated by the complainant, the Inspector General shall investigate the complaint and, upon completion of such investigation, submit a report of the findings of the investigation to the person, the contractor concerned, and the head of the agency.

(2)(A) Except as provided under subparagraph (B), the Inspector General shall make a determination that a complaint is frivolous, fails to allege a violation of the prohibition in subsection (a), or has previously been addressed in another Federal or State judicial or administrative proceeding initiated by the complainant or submit a report under paragraph (1) within 180 days after receiving the complaint.

(B) If the Inspector General is unable to complete an investigation in time to submit a report within the 180-day period specified in subparagraph (A) and the person submitting the complaint agrees to an extension of time, the Inspector General shall submit a report under paragraph (1) within such additional period of time, up to 180 days, as shall be agreed upon between the Inspector General and the person submitting the complaint.

(3) The Inspector General may not respond to any inquiry or disclose any information from or about any person alleging the reprisal, except to the extent that such response or disclosure is—

(A) made with the consent of the person alleging the reprisal;

(B) made in accordance with the provisions of section 552a of title 5 or as required by any other applicable Federal law; or

(C) necessary to conduct an investigation of the alleged reprisal.

(4) A complaint may not be brought under this subsection more than three years after the date on which the alleged reprisal took place.

(c) REMEDY AND ENFORCEMENT AUTHORITY.—(1) Not later than 30 days after receiving an Inspector General report pursuant to subsection (b), the head of the agency concerned shall determine whether there is sufficient basis to conclude that the contractor concerned has subjected the complainant to a reprisal prohibited by subsection (a) and shall either issue an order denying relief or shall take one or more of the following actions:

(A) Order the contractor to take affirmative action to abate the reprisal.

(B) Order the contractor to reinstate the person to the position that the person held before the reprisal, together with compensatory damages (including back pay), employment benefits, and other terms and conditions of employment that would apply to the person in that position if the reprisal had not been taken.

(C) Order the contractor to pay the complainant an amount equal to the aggregate amount of all costs and expenses (including attorneys' fees and expert witnesses' fees) that were reasonably incurred by the complainant for, or in connection with, bringing the complaint regarding the reprisal, as determined by the head of the agency.

(2) If the head of an executive agency issues an order denying relief under paragraph (1) or has not issued an order within 210 days after the submission of a complaint under subsection (b), or in the case of an extension of time under paragraph (b)(2)(B), not later than 30 days after the expiration of the extension of time, and there is no showing that such delay is due to the bad faith of the complainant, the complainant shall be deemed to have exhausted all administrative remedies with respect to the complaint, and the complainant may bring a de novo action at law or equity against the contractor to seek compensatory damages and other relief available under this section in the appropriate district court of the United States, which shall have jurisdiction over such an action without regard to the amount in controversy. Such an action shall, at the request of either party to the action, be tried by the court with a jury. An action under this paragraph may not be brought more than two years after the date on which remedies are deemed to have been exhausted.

(3) An Inspector General determination and an agency head order denying relief under paragraph (2) shall be admissible in evidence in any de novo action at law or equity brought pursuant to this subsection.

(4) Whenever a person fails to comply with an order issued under paragraph (1), the head of the agency shall file an action for enforcement of such order in the United States district court for a district in which the reprisal was found to have occurred. In any action brought under this paragraph, the court may grant appropriate relief, including injunctive relief, compensatory and exemplary damages, and reasonable attorney fees and costs. The person upon whose behalf an order was issued may also file such an action or join in an action filed by the head of the agency.

(5) Any person adversely affected or aggrieved by an order issued under paragraph (1) may obtain review of the order's conformance with this subsection, and any regulations issued to carry out this section, in the United States court of appeals for a circuit in which the reprisal is alleged in the order to have occurred. No petition seeking such review may be filed more than 60 days after issuance of the order by the head of the agency. Review shall conform to chapter 7 of title 5. Filing such an appeal shall not act to stay the enforcement of the order of the head of an agency, unless a stay is specifically entered by the court.

(6) The legal burdens of proof specified in section 1221(e) of title 5 shall be controlling for the purposes of any investigation conducted by an Inspector General, decision by the head of an agency, or judicial or administrative proceeding to determine whether discrimination prohibited under this section has occurred.

(7) The rights and remedies provided for in this section may not be waived by any agreement, policy, form, or condition of employment.

(d) NOTIFICATION OF EMPLOYEES.—The Secretary of Defense and the Administrator of the National Aeronautics and Space Administration

shall ensure that contractors and subcontractors of the Department of Defense and the National Aeronautics and Space Administration, as applicable, inform their employees in writing of the rights and remedies provided under this section, in the predominant native language of the workforce.

(e) EXCEPTIONS.—(1) This section shall not apply to any element of the intelligence community, as defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 3003(4)).

(2) This section shall not apply to any disclosure made by an employee of a contractor, subcontractor, or grantee of an element of the intelligence community if such disclosure—

(A) relates to an activity of an element of the intelligence community; or

(B) was discovered during contract, subcontract, or grantee services provided to an element of the intelligence community.

(f) CONSTRUCTION.—Nothing in this section may be construed to authorize the discharge of, demotion of, or discrimination against an employee for a disclosure other than a disclosure protected by subsection (a) or to modify or derogate from a right or remedy otherwise available to the employee.

(g) DEFINITIONS.—In this section:

(1) The term ''agency'' means an agency named in section 3063 of this title.

[(2) Repealed. Pub. L. 116–283, div. A, title XVIII, §1863(c)(2), Jan. 1, 2021, 134 Stat. 4278.]

(3) The term ''contract'' means a contract awarded by the head of an agency.

(4) The term ''contractor'' means a person awarded a contract with an agency.

(5) The term ''Inspector General'' means an Inspector General appointed under the Inspector General Act of 1978 and any Inspector General that receives funding from, or has oversight over contracts awarded for or on behalf of, the Secretary of Defense.

(6) The term ''abuse of authority'' means the following:

(A) An arbitrary and capricious exercise of authority that is inconsistent with the mission of the Department of Defense or the successful performance of a Department contract or grant.

(B) An arbitrary and capricious exercise of authority that is inconsistent with the mission of the National Aeronautics and Space Administration or the successful performance of an Administration contract or grant.

(7) The term ''grantee'' means a person awarded a grant with an agency.

(Added Pub. L. 99–500, §101(c) [title X, §942(a)(1)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–162, and Pub. L. 99–591, §101(c) [title X, §942(a)(1)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–162, §2409; Pub. L. 99–661, div. A, title IX, formerly title IV, §942(a)(1), Nov. 14, 1986, 100 Stat. 3942, renumbered title IX, Pub. L. 100–26, §3(5), Apr. 21, 1987, 101 Stat. 273; amended Pub. L. 102–25, title VII, §701(k)(1), Apr. 6, 1991, 105 Stat. 116; Pub. L. 102–484, div. A, title X, §1052(30)(A), Oct. 23, 1992, 106 Stat. 2500; Pub. L. 103–355, title VI, §6005(a), Oct. 13, 1994, 108 Stat. 3364; Pub. L. 104–106, div. D, title XLIII, §4321(a)(10), Feb. 10, 1996, 110 Stat. 671; Pub. L. 110–181, div. A, title VIII, §846, Jan. 28, 2008, 122 Stat. 241; Pub. L. 112–239, div. A, title VIII, §827(a)–(f), Jan. 2, 2013, 126 Stat. 1833–1836; Pub. L. 113–291, div. A, title VIII, §856, title X, §1071(c)(10), Dec. 19, 2014, 128 Stat. 3460, 3509; Pub. L. 114–261, §1(a)(1), Dec. 14, 2016, 130 Stat. 1362; renumbered §4701 and amended Pub. L. 116–283, div. A, title XVIII, §1863(b), (c), Jan. 1, 2021, 134 Stat. 4278.)

AMENDMENTS

2021—Pub. L. 116–283, §1863(b), renumbered section 2409 of this title as this section.

Subsec. (g)(1). Pub. L. 116–283, §1863(c)(1), substituted ''section 3063'' for ''section 2303''.

Subsec. (g)(2). Pub. L. 116–283, §1863(c)(2), struck out par. (2) which defined ''head of an agency''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

PROHIBITION ON AWARDING OF CONTRACTS TO CONTRACTORS THAT REQUIRE NONDISCLOSURE AGREEMENTS RELATING TO WASTE, FRAUD, OR ABUSE

Pub. L. 116–283, div. A, title VIII, §883, Jan. 1, 2021, 134 Stat. 3790, provided that:

''(a) IN GENERAL.—The Secretary of Defense may not award a contract for the procurement of goods or services to a contractor unless the contractor represents that—

''(1) it does not require its employees to sign internal confidentiality agreements or statements that would prohibit or otherwise restrict such employees from lawfully reporting waste, fraud, or abuse related to the performance of a Department of Defense contract to a designated investigative or law enforcement representative of the Department of Defense authorized to receive such information; and

''(2) it will inform its employees of the limitations on confidentiality agreements and other statements described in paragraph (1).

''(b) RELIANCE ON REPRESENTATION.—A contracting officer of the Department of Defense may rely on the representation of a contractor as to the requirements described under subsection (a) in awarding a contract unless the officer has reason to question the accuracy of the representation.''

§ 4702. Incentives and consideration for qualified training programs

(a) INCENTIVES.—The Secretary of Defense shall develop workforce development investment incentives for a contractor that implements a qualified training program to develop the workforce of the contractor in a manner consistent with the needs of the Department of Defense.

(b) CONSIDERATION OF QUALIFIED TRAINING PROGRAMS.—The Secretary of Defense shall revise the Department of Defense Supplement to the Federal Acquisition Regulation to require that the system used by the Federal Government to monitor or record contractor past performance includes an analysis of the availability, quality, and effectiveness of a qualified training program of an offeror as part of the past performance rating of such offeror.

(c) QUALIFIED TRAINING PROGRAM DEFINED.—The term ''qualified training program'' means any of the following:

(1) A program eligible to receive funds under the Workforce Innovation and Opportunity Act (29 U.S.C. 3101 et seq.).

(2) A program eligible to receive funds under the Carl D. Perkins Career and Technical Education Act of 2006 (20 U.S.C. 2301 et seq.).

(3) A program registered under the Act of August 16, 1937 (commonly known as the ''National Apprenticeship Act''; 50 Stat. 664; chapter 663; 29 U.S.C. 50 et seq.).

(4) Any other program determined to be a qualified training program for purposes of this section, and that meets the workforce needs of the Department of Defense, as determined by the Secretary of Defense.

(Added Pub. L. 116–92, div. A, title VIII, § 864(a), Dec. 20, 2019, 133 Stat. 1522, § 2409a; renumbered § 4702 and amended Pub. L. 116–283, div. A, title X, § 1081(a)(40), title XVIII, § 1863(b), Jan. 1, 2021, 134 Stat. 3873, 4278.)

REFERENCES IN TEXT

The Workforce Innovation and Opportunity Act, referred to in subsec. (c)(1), is Pub. L. 113–128, July 22, 2014, 128 Stat. 1425, which enacted chapter 32 (§ 3101 et seq.) of Title 29, Labor, repealed chapter 30 (§ 2801 et seq.) of Title 29 and chapter 73 (§ 9201 et seq.) of Title 20, Education, and made amendments to numerous other sections and notes in the Code. For complete classification of this Act to the Code, see Short Title note set out under section 3101 of Title 29 and Tables.

The Carl D. Perkins Career and Technical Education Act of 2006, referred to in subsec. (c)(2), is Pub. L. 88–210, Dec. 18, 1963, 77 Stat. 403, as amended generally by Pub. L. 109–270, § 1(b), Aug. 12, 2006, 120 Stat. 683, which is classified generally to chapter 44 (§ 2301 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 2301 of Title 20 and Tables.

The Act of August 16, 1937, referred to in subsec. (c)(3), is act Aug. 16, 1937, ch. 663, 50 Stat. 664, popularly known as the National Apprenticeship Act, which is classified generally to chapter 4C (§ 50 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 50 of Title 29 and Tables.

AMENDMENTS

2021—Pub. L. 116–283 renumbered section 2409a of this title as this section.

Subsec. (c)(3). Pub. L. 116–283, § 1081(a)(40), substituted ''50 Stat. 664;'' for ''Stat. 664,''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by section 1863(b) of Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 4703. Displaced contractor employees: assistance to obtain certification and employment as teachers or employment as teachers' aides

(a) ASSISTANCE PROGRAM.—The Secretary of Defense may enter into a cooperative agreement with a defense contractor in order—

(1) to assist an eligible scientist or engineer employed by the contractor whose employment is terminated to obtain—

(A) certification or licensure as an elementary or secondary school teacher; or

(B) the credentials necessary to serve as a teacher's aide; and

(2) to facilitate the employment of the scientist or engineer by a local educational agency that—

(A) is receiving a grant under title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.) as a result of having within its jurisdiction concentrations of children from low-income families; and

(B) is also experiencing a shortage of teachers or teachers' aides.

(b) ELIGIBLE DEFENSE CONTRACTORS.—(1) The Secretary of Defense shall establish an application and selection process for the participation of defense contractors in a cooperative agreement authorized under subsection (a).

(2) The Secretary shall determine which defense contractors are eligible to participate in the placement program on the basis of applications submitted under subsection (c). The Secretary shall limit participation to those defense contractors or subcontractors that—

(A) produce goods or services for the Department of Defense pursuant to a defense contract or operate nuclear weapons manufacturing facilities for the Department of Energy; and

(B) have recently reduced operations, or are likely to reduce operations, due to the completion or termination of a defense contract or program or by reductions in defense spending.

(3) The Secretary shall give special consideration to defense contractors who are located in areas that have been hit particularly hard by reductions in defense spending.

(c) DEFENSE CONTRACTOR APPLICATIONS.—(1) A defense contractor desiring to enter into a cooperative agreement with the Secretary of Defense under subsection (a) shall submit an application to the Secretary containing the following:

(A) Evidence that the contractor has been, or is expected to be, adversely affected by the completion or termination of a defense contract or program or by reductions in defense spending.

(B) An explanation that scientists and engineers employed by the contractor have been terminated, laid off, or retired, or are likely to be terminated, laid off, or retired, as a result of the completion or termination of a defense contract or program or reductions in defense spending.

(C) A description of programs implemented or proposed by the contractor to assist these scientists and engineers.

(D) A commitment to help fund the costs associated with the placement program by paying 50 percent of the stipend provided under subsection (g) to an employee or former employee of the contractor selected to receive assistance under this section.

(2) Once a cooperative agreement is entered into under subsection (a) between the Secretary and the defense contractor, the contractor shall publicize the program and distribute applications to prospective participants, and assist the prospective participants with the State screening process.

(d) ELIGIBLE SCIENTISTS AND ENGINEERS.—An individual shall be eligible for selection by the Secretary of Defense to receive assistance under this section if the individual—

(1) is employed or has been employed for not less than five years as a scientist or engineer

with a private defense contractor that has entered into an agreement under subsection (a);

(2) has received—

(A) in the case of an individual applying for assistance for placement as an elementary or secondary school teacher, a baccalaureate or advanced degree from an accredited institution of higher education; or

(B) in the case of an individual applying for assistance for placement as a teacher's aide in an elementary or secondary school, an associate, baccalaureate, or advanced degree from an accredited institution of higher education or a junior or community college; and

(3) has been terminated or laid off (or received notice of termination or lay off) as a result of the completion or termination of a defense contract or program or reductions in defense spending; and

(4) satisfies such other criteria for selection as the Secretary may prescribe.

(e) SELECTION OF PARTICIPANTS.—(1) In selecting participants to receive assistance for placement as elementary or secondary school teachers, the Secretary shall give priority to individuals who—

(A) have educational, military, or employment experience in science, mathematics, or engineering and agree to seek employment as science, mathematics, or engineering teachers in elementary or secondary schools; or

(B) have educational, military, or employment experience in another subject area identified by the Secretary, in consultation with the Secretary of Education, as important for national educational objectives and agree to seek employment in that subject area in elementary or secondary schools.

(2) The Secretary may not select an individual under this section unless the Secretary has sufficient appropriations to carry out this section available at the time of the selection to satisfy the obligations to be incurred by the United States under this section with respect to that individual.

(f) AGREEMENT.—An individual selected under this section shall be required to enter into an agreement with the Secretary in which the participant agrees—

(1) to obtain, within such time as the Secretary may require, certification or licensure as an elementary or secondary school teacher or the necessary credentials to serve as a teacher's aide in an elementary or secondary school; and

(2) to accept—

(A) in the case of an individual selected for assistance for placement as a teacher, an offer of full-time employment as an elementary or secondary school teacher for not less than two school years with a local educational agency identified under section 1151(b)(2) of this title, as in effect on October 4, 1999, to begin the school year after obtaining that certification or licensure; or

(B) in the case of an individual selected for assistance for placement as a teacher's aide, an offer of full-time employment as a teacher's aide in an elementary or secondary school for not less than two school years with a local educational agency identified under section 1151(b)(3) of this title, as in effect on October 4, 1999, to begin the school year after obtaining the necessary credentials.

(g) STIPEND FOR PARTICIPANTS.—(1) The Secretary of Defense shall pay to each participant in the placement program a stipend in an amount equal to the lesser of—

(A) $5,000; or

(B) the total costs of the type described in paragraphs (1), (2), (3), (8), and (9) of section 472 of the Higher Education Act of 1965 (20 U.S.C. 1087*ll*) incurred by the participant while obtaining teacher certification or licensure or the necessary credentials to serve as a teacher's aide and employment as an elementary or secondary school teacher or teacher aide.

(2) A stipend provided under this section shall be taken into account in determining the eligibility of the participant for Federal student financial assistance provided under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.).

(h) PLACEMENT OF PARTICIPANTS AS TEACHERS AND TEACHERS' AIDES.—Subsections (h) through (k) of section 1151 of this title, as in effect on October 4, 1999, shall apply with respect to the placement as teachers and teachers' aides of individuals selected under this section.

(Added Pub. L. 102–484, div. D, title XLIV, § 4443(a), Oct. 23, 1992, 106 Stat. 2732, § 2410c; renumbered § 2410j and amended Pub. L. 103–35, title II, § 201(b)(1)(A), (g)(6), May 31, 1993, 107 Stat. 97, 100; Pub. L. 103–160, div. A, title XIII, § 1331(c)(3), Nov. 30, 1993, 107 Stat. 1792; Pub. L. 103–382, title III, § 391(b)(5), Oct. 20, 1994, 108 Stat. 4022; Pub. L. 104–106, div. A, title XV, § 1503(a)(23), Feb. 10, 1996, 110 Stat. 512; Pub. L. 104–201, div. A, title V, § 576(c), Sept. 23, 1996, 110 Stat. 2535; Pub. L. 106–398, § 1 [[div. A], title X, § 1087(a)(14)], Oct. 30, 2000, 114 Stat. 1654, 1654A–291; renumbered § 4703, Pub. L. 116–283, div. A, title XVIII, § 1863(b), Jan. 1, 2021, 134 Stat. 4278.)

REFERENCES IN TEXT

The Elementary and Secondary Education Act of 1965, referred to in subsec. (a)(2)(A), is Pub. L. 89–10, Apr. 11, 1965, 79 Stat. 27. Title I of the Act is classified generally to subchapter I (§ 6301 et seq.) of chapter 70 of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 6301 of Title 20 and Tables.

Section 1151 of this title, referred to in subsecs. (f)(2)(A), (B) and (h), was repealed by Pub. L. 106–65, div. A, title XVII, § 1707(a)(1), Oct. 5, 1999, 113 Stat. 823, and a new section 1151 of this title was subsequently added by Pub. L. 109–364, § 561(a).

The Higher Education Act of 1965, referred to in subsec. (g)(2), is Pub. L. 89–329, Nov. 8, 1965, 79 Stat. 1219. Title IV of the Act is classified generally to subchapter IV (§ 1070 et seq.) of chapter 28 of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20 and Tables.

AMENDMENTS

2021—Pub. L. 116–283 renumbered section 2410j of this title as this section.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 4704. Defense contractors: listing of suitable employment openings with local employment service office

(a) REGULATIONS.—The Secretary of Defense shall promulgate regulations containing the requirement described in subsection (b) and such other provisions as the Secretary considers necessary to administer such requirement. Such regulations shall require that each contract described in subsection (c) shall contain a clause requiring the contractor to comply with such regulations.

(b) REQUIREMENT.—The regulations promulgated under this section shall require each contractor carrying out a contract described in subsection (c) to list immediately with the appropriate local employment service office, and where appropriate the Interstate Job Bank (established by the United States Employment Service), all of its suitable employment openings under such contract.

(c) COVERED CONTRACTS.—The regulations promulgated under this section shall apply to any contract entered into with the Department of Defense in an amount of $500,000 or more.

(Added Pub. L. 102–484, div. D, title XLIV, § 4470(a)(1), Oct. 23, 1992, 106 Stat. 2753, § 2410d; renumbered § 2410k and amended Pub. L. 103–35, title II, §§ 201(b)(1)(A), 202(a)(18)(A), May 31, 1993, 107 Stat. 97, 102; renumbered § 4704, Pub. L. 116–283, div. A, title XVIII, § 1863(b), Jan. 1, 2021, 134 Stat. 4278.)

PRIOR PROVISIONS

A prior section 4711, act Aug. 10, 1956, ch. 1041, 70A Stat. 263, related to inquests, prior to repeal by Pub. L. 106–65, div. A, title VII, § 721(b), Oct. 5, 1999, 113 Stat. 694.

A prior section 4712 was renumbered section 7712 of this title.

A prior section 4713, acts Aug. 10, 1956, ch. 1041, 70A Stat. 265; Dec. 12, 1980, Pub. L. 96–513, title V, § 512(21)(A), (B), 94 Stat. 2930; Nov. 8, 1985, Pub. L. 99–145, title XIII, § 1301(b)(4)(B), 99 Stat. 736; Nov. 29, 1989, Pub. L. 101–189, div. A, title XVI, § 1621(a)(1), 103 Stat. 1602, related to disposition of effects of deceased persons by Soldiers' and Airmen's Home, prior to repeal by Pub. L. 101–510, div. A, title XV, §§ 1533(a)(7)(A), 1541, Nov. 5, 1990, 104 Stat. 1734, 1736, effective one year after Nov. 5, 1990.

Prior sections 4714 and 4721 to 4727 were renumbered sections 7714 and 7721 to 7727 of this title, respectively.

A prior section 4741, act Aug. 10, 1956, ch. 1041, 70A Stat. 266, related to control and supervision of transportation of members, munitions of war, equipment, military property, and stores of the Army throughout the United States, prior to repeal by Pub. L. 108–375, div. A, title X, § 1072(c), Oct. 28, 2004, 118 Stat. 2058.

A prior section 4742 was renumbered section 2644 of this title.

A prior section 4743, act Aug. 10, 1956, ch. 1041, 70A Stat. 266, related to use of transportation by officers of the Army, prior to repeal by Pub. L. 108–375, div. A, title X, § 1072(c), Oct. 28, 2004, 118 Stat. 2058.

Prior sections 4744 to 4747 were renumbered sections 2648 to 2651 of this title, respectively.

A prior section 4748, act Aug. 10, 1956, ch. 1041, 70A Stat. 268, related to transportation of motor vehicles for members on permanent change of station, prior to repeal by Pub. L. 87–651, title I, § 119(1), Sept. 7, 1962, 76 Stat. 513.

A prior section 4749 was renumbered section 7749 of this title.

AMENDMENTS

2021—Pub. L. 116–283 renumbered section 2410k of this title as this section.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

CHAPTER 367—OTHER ADMINISTRATIVE MATTERS

Sec.
4751. Determinations and decisions.
4752. Remission of liquidated damages.
4753. Supplies: identification of supplier and sources.
4754. Management of purchase cards.

PRIOR PROVISIONS

A prior chapter 367 ''OTHER ADMINISTRATIVE AND MISCELLANEOUS PROVISIONS'', consisting of reserved section 4751, was repealed by Pub. L. 116–283, div. A, title XVIII, § 1864(a), Jan. 1, 2021, 134 Stat. 4279.

Another prior chapter 367 was renumbered chapter 741 of this title.

§ 4751. Determinations and decisions

(a) INDIVIDUAL OR CLASS DETERMINATIONS AND DECISIONS AUTHORIZED.—Determinations and decisions required to be made under any chapter 137 legacy provision by the head of an agency may be made for an individual purchase or contract or, except to the extent expressly prohibited by another provision of law, for a class of purchases or contracts. Such determinations and decisions are final.

(b) WRITTEN FINDINGS REQUIRED.—(1) Each determination or decision under section 3531(a), 3803, or 3841(c)(2)(B) of this title shall be based on a written finding by the person making the determination or decision. The finding shall set out facts and circumstances that support the determination or decision.

(2) Each finding referred to in paragraph (1) is final. The head of the agency making such finding shall maintain a copy of the finding for not less than 6 years after the date of the determination or decision.

(Aug. 10, 1956, ch. 1041, 70A Stat. 132, § 2310; Pub. L. 85–800, § 10, Aug. 28, 1958, 72 Stat. 967; Pub. L. 87–653, § 1(f), Sept. 10, 1962, 76 Stat. 529; Pub. L. 89–607, § 1(1), Sept. 27, 1966, 80 Stat. 850; Pub. L. 90–378, § 2, July 5, 1968, 82 Stat. 290; Pub. L. 98–369, div. B, title VII, § 2725, July 18, 1984, 98 Stat. 1193; Pub. L. 99–145, title XIII, § 1303(a)(16), Nov. 8, 1985, 99 Stat. 739; Pub. L. 103–355, title I, § 1504, Oct. 13, 1994, 108 Stat. 3297; renumbered § 4751 and amended Pub. L. 116–283, div. A, title XVIII, § 1864(b), (c), Jan. 1, 2021, 134 Stat. 4279.)

AMENDMENTS

2021—Pub. L. 116–283, § 1864(b), renumbered section 2310 of this title as this section.

Subsec. (a). Pub. L. 116–283, § 1864(c)(1), substituted ''made under any chapter 137 legacy provision'' for ''made under this chapter''.

Subsec. (b). Pub. L. 116–283, § 1864(c)(2), substituted "section 3531(a), 3803, or 3841(c)(2)(B)" for "section 2306(g)(1), 2307(d), or 2313(c)(2)(B)".

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 4752. Remission of liquidated damages

Upon the recommendation of the head of an agency, the Secretary of the Treasury may remit all or part, as he considers just and equitable, of any liquidated damages assessed for delay in performing a contract, made by that agency, that provides for such damages.

(Aug. 10, 1956, ch. 1041, 70A Stat. 132, § 2312; Pub. L. 104–316, title II, § 202(c), Oct. 19, 1996, 110 Stat. 3842; renumbered § 4752, Pub. L. 116–283, div. A, title XVIII, § 1864(b), Jan. 1, 2021, 134 Stat. 4279.)

AMENDMENTS

2021—Pub. L. 116–283 renumbered section 2312 of this title as this section.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 4753. Supplies: identification of supplier and sources

(a) The Secretary of Defense shall require that the contractor under a contract with the Department of Defense for the furnishing of supplies to the United States shall mark or otherwise identify supplies furnished under the contract with the identity of the contractor, the national stock number for the supplies furnished (if there is such a number), and the contractor's identification number for the supplies.

(b)(1) The Secretary of Defense shall prescribe regulations requiring that, whenever practicable, each contract requiring the delivery of supplies (other than a contract described in paragraph (2)) shall require that the contractor identify—

(A) the actual manufacturer or producer of the item or of all sources of supply of the contractor for that item;

(B) the national stock number of the item (if there is such a number) and the identification number of the actual manufacturer or producer of the item or of each source of supply of the contractor for the item; and

(C) the source of any technical data delivered under the contract.

(2) The regulations prescribed pursuant to paragraph (1) do not apply to a contract that requires the delivery of supplies that are commercial products (as defined in section 103 of title 41).

(3) The regulations prescribed pursuant to paragraph (1) do not apply to a contract for an amount not greater than the simplified acquisition threshold (as defined in section 134 of title 41).

(c) Identification of supplies and technical data under this section shall be made in the manner and with respect to the supplies prescribed by the Secretary of Defense.

(Aug. 10, 1956, ch. 1041, 70A Stat. 137, § 2384; Pub. L. 98–525, title XII, § 1231(a), Oct. 19, 1984, 98 Stat. 2599; Pub. L. 99–500, § 101(c) [title X, § 928(a)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–156, and Pub. L. 99–591, § 101(c) [title X, § 928(a)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–156; Pub. L. 99–661, div. A, title IX, formerly title IV, § 928(a), Nov. 14, 1986, 100 Stat. 3936, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; Pub. L. 103–355, title IV, § 4102(d), title VIII, § 8105(b), Oct. 13, 1994, 108 Stat. 3340, 3392; Pub. L. 104–106, div. D, title XLIII, § 4321(b)(12), Feb. 10, 1996, 110 Stat. 672; Pub. L. 111–350, § 5(b)(23), Jan. 4, 2011, 124 Stat. 3844; Pub. L. 115–232, div. A, title VIII, § 836(e)(2), Aug. 13, 2018, 132 Stat. 1869; renumbered § 4753, Pub. L. 116–283, div. A, title XVIII, § 1864(b), Jan. 1, 2021, 134 Stat. 4279.)

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

AMENDMENTS

2021—Pub. L. 116–283 renumbered section 2384 of this title as this section.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 4754. Management of purchase cards

(a) MANAGEMENT OF PURCHASE CARDS.—The Secretary of Defense shall prescribe regulations governing the use and control of all purchase cards and convenience checks that are issued to Department of Defense personnel for official use. Those regulations shall be consistent with regulations that apply Government-wide regarding use of purchase cards by Government personnel for official purposes.

(b) REQUIRED SAFEGUARDS AND INTERNAL CONTROLS.—Regulations under subsection (a) shall include safeguards and internal controls to ensure the following:

(1) That there is a record in the Department of Defense of each holder of a purchase card issued by the Department of Defense for official use, annotated with the limitations on amounts that are applicable to the use of each such card by that purchase card holder.

(2) That each purchase card holder and individual issued a convenience check is assigned an approving official other than the card holder with the authority to approve or disapprove transactions.

(3) That the holder of a purchase card and each official with authority to authorize expenditures charged to the purchase card are responsible for—

(A) reconciling the charges appearing on each statement of account for that purchase card with receipts and other supporting documentation; and

(B) forwarding that statement after being so reconciled to the designated disbursing office in a timely manner.

(4) That any disputed purchase card charge, and any discrepancy between a receipt and other supporting documentation and the purchase card statement of account, is resolved in the manner prescribed in the applicable Government-wide purchase card contract entered into by the Administrator of General Services.

(5) That payments on purchase card accounts are made promptly within prescribed deadlines to avoid interest penalties.

(6) That rebates and refunds based on prompt payment on purchase card accounts are properly recorded.

(7) That records of each purchase card transaction (including records on associated contracts, reports, accounts, and invoices) are retained in accordance with standard Government policies on the disposition of records.

(8) That periodic reviews are performed to determine whether each purchase card holder has a need for the purchase card.

(9) That appropriate training is provided to each purchase card holder and each official with responsibility for overseeing the use of purchase cards issued by the Department of Defense.

(10) That the Department of Defense has specific policies regarding the number of purchase cards issued by various organizations and categories of organizations, the credit limits authorized for various categories of card holders, and categories of employees eligible to be issued purchase cards, and that those policies are designed to minimize the financial risk to the Federal Government of the issuance of the purchase cards and to ensure the integrity of purchase card holders.

(11) That the Department of Defense uses effective systems, techniques, and technologies to prevent or identify potential fraudulent purchases.

(12) That the Department of Defense takes appropriate steps to invalidate the purchase card of each card holder who—

(A) in the case of an employee of the Department—

(i) ceases to be employed by the Department, immediately upon termination of the employment of the employee; or

(ii) transfers to another unit of the Department, immediately upon the transfer of the employee unless the Secretary of Defense determines that the units are covered by the same purchase card authority; and

(B) in the case of a member of the armed forces, is separated or released from active duty or full-time National Guard duty.

(13) That the Department of Defense takes steps to recover the cost of any illegal, improper, or erroneous purchase made with a purchase card or convenience check by an employee or member of the armed forces, including, as necessary, through salary offsets.

(14) That the Inspector General of the Department of Defense, the Inspector General of the Army, the Naval Inspector General, and the Inspector General of the Air Force perform periodic audits to identify—

(A) potentially fraudulent, improper, and abusive uses of purchase cards;

(B) any patterns of improper card holder transactions, such as purchases of prohibited items; and

(C) categories of purchases that should be made by means other than purchase cards in order to better aggregate purchases and obtain lower prices.

(15) That the Inspector General of the Department of Defense conducts periodic audits or reviews of purchase card or convenience check programs to identify and analyze risks of illegal, improper, or erroneous purchases and payments and that the findings of such audits or reviews, along with recommendations to prevent abuse of purchase cards or convenience checks, are reported to the Director of the Office of Management and Budget and Congress.

(c) PENALTIES FOR VIOLATIONS.—The regulations prescribed under subsection (a) shall—

(1) provide—

(A) for the reimbursement of charges for unauthorized or erroneous purchases, in appropriate cases; and

(B) for appropriate adverse personnel actions or other punishment to be imposed in cases in which employees of the Department of Defense violate such regulations or are negligent or engage in misuse, abuse, or fraud with respect to a purchase card, including removal in appropriate cases; and

(2) provide that a violation of such regulations by a person subject to chapter 47 of this title (the Uniform Code of Military Justice) is punishable as a violation of section 892 of this title (article 92 of the Uniform Code of Military Justice).

(Added Pub. L. 106–65, div. A, title IX, § 933(a)(1), Oct. 5, 1999, 113 Stat. 728, § 2784; amended Pub. L. 107–314, div. A, title X, § 1007(a), (b)(1), Dec. 2, 2002, 116 Stat. 2633, 2634; Pub. L. 110–417, [div. A], title X, § 1003(a), Oct. 14, 2008, 122 Stat. 4582; Pub. L. 112–194, § 2(b), Oct. 5, 2012, 126 Stat. 1447; renumbered § 4754, Pub. L. 116–283, div. A, title XVIII, § 1864(b), Jan. 1, 2021, 134 Stat. 4279.)

PRIOR PROVISIONS

Prior sections 4771 and 4772 were renumbered sections 7771 and 7772 of this title, respectively.

A prior section 4774, acts Aug. 10, 1956, ch. 1041, 70A Stat. 269; Aug. 30, 1957, Pub. L. 85–241, title IV, §404(a), 71 Stat. 555; Aug. 10, 1959, Pub. L. 86–149, title IV, §410(a), 73 Stat. 321; July 27, 1962, Pub. L. 87–554, title V, §504(a), (c), 76 Stat. 239; Nov. 7, 1963, Pub. L. 88–174, title V, § 503, 77 Stat. 325; Dec. 5, 1969, Pub. L. 91–142, title V, § 510(b), 83 Stat. 312; Oct. 27, 1971, Pub. L. 92–145, title V, § 508(a), (c), 85 Stat. 408; Nov. 29, 1973, Pub. L. 93–166, title V, § 509(c), 87 Stat. 677, related to limitations on construction, prior to repeal by Pub. L. 97–214, §§ 7(1), 12(a), July 12, 1982, 96 Stat. 173, 176, effective Oct. 1, 1982.

A prior section 4775, act Aug. 10, 1956, ch. 1041, 70A Stat. 269, authorized assignment of quarters belonging to United States at a post or station by post quartermaster to officers, grade lieutenant general down to second lieutenant, 10 to 2 rooms, respectively, and prohibited other assignment where quarters existed, prior to repeal by Pub. L. 92–145, title V, § 509(a), Oct. 27, 1971, 85 Stat. 408.

Prior sections 4776 to 4780 were renumbered sections 7776 to 7780 of this title, respectively.

A prior section 4781 was renumbered section 7781 of this title.

Another section 4781, added Pub. L. 115–31, div. N, title VI, § 602(a), May 5, 2017, 131 Stat. 828, was substantially identical to the prior section 4781, and related to Cyber Center for Education and Innovation-Home of the National Cryptologic Museum, prior to repeal by Pub. L. 115–91, div. A, title X, § 1081(a)(49)(A), Dec. 12, 2017, 131 Stat. 1597.

AMENDMENTS

2021—Pub. L. 116–283 renumbered section 2784 of this title as this section.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

Subpart I—Defense Industrial Base

AMENDMENTS

2018—Pub. L. 115–232, div. A, title VIII, § 801(a), Aug. 13, 2018, 132 Stat. 1831, added subpart heading.

CHAPTER 381—DEFENSE INDUSTRIAL BASE GENERALLY

Sec.
4801. Definitions.

PRIOR PROVISIONS

A prior chapter 381 ''DEFENSE INDUSTRIAL BASE GENERALLY'', consisting of reserved section 4801, was repealed by Pub. L. 116–283, div. A, title XVIII, § 1866(b), Jan. 1, 2021, 134 Stat. 4279.

§ 4801. Definitions

In this subpart:

(1) The term ''national technology and industrial base'' means the persons and organizations that are engaged in research, development, production, integration, services, or information technology activities conducted within the United States, the United Kingdom of Great Britain and Northern Ireland, Australia, and Canada.

(2) The term ''dual-use'' with respect to products, services, standards, processes, or acquisition practices, means products, services, standards, processes, or acquisition practices, respectively, that are capable of meeting requirements for military and nonmilitary applications.

(3) The term ''dual-use critical technology'' means a critical technology that has military applications and nonmilitary applications.

(4) The term ''technology and industrial base sector'' means a group of public or private persons and organizations that engage in, or are capable of engaging in, similar research, development, production, integration, services, or information technology activities.

(5) The terms ''Federal laboratory'' and ''laboratory'' have the meaning given the term ''laboratory'' in section 12(d)(2) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a(d)(2)), except that such terms include a federally funded research and development center sponsored by a Federal agency.

(6) The term ''critical technology'' means a technology that is—

(A) a national critical technology; or

(B) a defense critical technology.

(7) The term ''national critical technology'' means a technology that appears on the list of national critical technologies contained in the most recent biennial report on national critical technologies submitted to Congress by the President pursuant to section 603(d)[1] of the National Science and Technology Policy, Organization, and Priorities Act of 1976 (42 U.S.C. 6683(d)).

(8) The term ''defense critical technology'' means a technology that is identified under section 4816 of this title as critical for attaining the national security objectives set forth in section 4811(a) of this title.

(9) The term ''eligible firm'' means a company or other business entity that, as determined by the Secretary of Commerce—

(A) conducts a significant level of its research, development, engineering, manufacturing, integration, services, and information technology activities in the United States; and

(B) is a company or other business entity the majority ownership or control of which is by United States citizens or is a company or other business of a parent company that is incorporated in a country the government of which—

(i) encourages the participation of firms so owned or controlled in research and development consortia to which the government of that country provides funding directly or provides funding indirectly through international organizations or agreements; and

(ii) affords adequate and effective protection for the intellectual property rights of companies incorporated in the United States.

Such term includes a consortium of such companies or other business entities, as determined by the Secretary of Commerce.

(10) The term ''manufacturing technology'' means techniques and processes designed to improve manufacturing quality, productivity, and practices, including quality control, shop floor management, inventory management, and worker training, as well as manufacturing equipment and software.

(11) The term ''Small Business Innovation Research Program'' means the program established under the following provisions of section 9 of the Small Business Act (15 U.S.C. 638):

(A) Paragraphs (4) through (7) of subsection (b).

(B) Subsections (e) through (*l*).

(12) The term ''Small Business Technology Transfer Program'' means the program established under the following provisions of such section:

(A) Paragraphs (4) through (7) of subsection (b).

(B) Subsections (e) and (n) through (p).

(13) The term ''significant equity percentage'' means—

[1] See References in Text note below.

(A) a level of contribution and participation sufficient, when compared to the other non-Federal participants in the partnership or other cooperative arrangement involved, to demonstrate a comparable long-term financial commitment to the product or process development involved; and

(B) any other criteria the Secretary may consider necessary to ensure an appropriate equity mix among the participants.

(14) The term ''person of a foreign country'' has the meaning given such term in section 3502(d) of the Primary Dealers Act of 1988 (22 U.S.C. 5342(d)).

(15) The term ''integration'' means the process of providing systems engineering and technical direction for a system for the purpose of achieving capabilities that satisfy program requirements.

(16) The term ''chapter 148 legacy provision'' means any of the following provisions of this subpart: sections 4801, 4811–4819, 4831–4834, 4841–4843, 4851, 4852, 4861–4864, 4871, 4872, 4881–4884, 4891, and 4892, and chapter 389.

(Added Pub. L. 102–484, div. D, title XLII, § 4203(a), Oct. 23, 1992, 106 Stat. 2661, § 2491; amended Pub. L. 103–160, div. A, title XI, § 1182(a)(9), title XIII, § 1315(f), Nov. 30, 1993, 107 Stat. 1771, 1788; Pub. L. 103–337, div. A, title XI, §§ 1113(d), 1115(e), Oct. 5, 1994, 108 Stat. 2866, 2869; Pub. L. 104–106, div. A, title X, § 1081(h), Feb. 10, 1996, 110 Stat. 455; renumbered § 2500 and amended Pub. L. 105–85, div. A, title III, § 371(b)(3), title X, § 1073(a)(53), Nov. 18, 1997, 111 Stat. 1705, 1903; Pub. L. 111–383, div. A, title VIII, § 895(a), Jan. 7, 2011, 124 Stat. 4313; Pub. L. 114–328, div. A, title VIII, § 881(b), Dec. 23, 2016, 130 Stat. 2316; renumbered § 4801 and amended Pub. L. 116–283, div. A, title XVIII, § 1866(c), Jan. 1, 2021, 134 Stat. 4279.)

REFERENCES IN TEXT

Section 603 of the National Science and Technology Policy, Organization, and Priorities Act of 1976, referred to in par. (7), was classified to section 6683 of Title 42, The Public Health and Welfare, and was omitted from the Code.

PRIOR PROVISIONS

A prior section 4801 was renumbered section 7801 of this title.

Provisions similar to those in this section were contained in former sections 2511 and 2521 of this title prior to repeal by Pub. L. 102–484, § 4202(a).

Prior sections 4802 to 4804 were renumbered sections 7802 to 7804 of this title, respectively.

A prior section 4805, act Aug. 10, 1956, ch. 1041, 70A Stat. 271, related to reports to Congress with respect to claims under sections 4802, 4803, and 4804 of this title, prior to repeal by Pub. L. 86–533, § 1(8)(A), June 29, 1960, 74 Stat. 247.

A prior section 4806 was renumbered section 7806 of this title.

AMENDMENTS

2021—Pub. L. 116–283, § 1866(c)(1), substituted ''In this subpart'' for ''In this chapter'' in introductory provisions.

Pub. L. 116–283, § 1866(c), renumbered section 2500 of this title as this section.

Par. (8). Pub. L. 116–283, § 1866(c)(2), substituted ''section 4816'' for ''section 2505'' and ''section 4811(a)'' for ''section 2501(a)''.

Par. (16). Pub. L. 116–283, § 1866(c)(3), added par. (16).

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

CHAPTER 382—POLICIES AND PLANNING

Sec.
4811. National security strategy for national technology and industrial base.
4812. National Defense Technology and Industrial Base Council.
4813. National defense program for analysis of the technology and industrial base.
4814. Annual report to Congress.[1]
4815. Unfunded priorities of the national technology and industrial base: annual report.
4816. National technology and industrial base: periodic defense capability assessments.
4817. Industrial Base Fund.
4818. Data collection authority of President.
4819. Modernization of acquisition processes to ensure integrity of industrial base.

§ 4811. National security strategy for national technology and industrial base

(a) NATIONAL SECURITY STRATEGY FOR NATIONAL TECHNOLOGY AND INDUSTRIAL BASE.—The Secretary of Defense shall develop a national security strategy for the national technology and industrial base. The Secretary shall submit such strategy to Congress not later than 180 days after the date of submission of the national security strategy report required under section 108 of the National Security Act of 1947 (50 U.S.C. 3043). Such strategy shall be based on a prioritized assessment of risks and challenges to the defense supply chain and shall ensure that the national technology and industrial base is capable of achieving the following national security objectives:

(1) Supplying, equipping, and supporting the force structure of the armed forces that is necessary to achieve—

(A) the objectives set forth in the national security strategy report submitted to Congress by the President pursuant to section 108 of the National Security Act of 1947 (50 U.S.C. 3043);

(B) the policy guidance of the Secretary of Defense provided pursuant to section 113(g) of this title; and

(C) the future-years defense program submitted to Congress by the Secretary of Defense pursuant to section 221 of this title.

(2) Sustaining production, maintenance, repair, logistics, and other activities in support of military operations of various durations and intensity.

(3) Maintaining advanced research and development activities to provide the armed forces with systems capable of ensuring technological superiority over potential adversaries.

(4) Reconstituting within a reasonable period the capability to develop, produce, and support supplies and equipment, including technologically advanced systems, in sufficient quantities to prepare fully for a war, national emergency, or mobilization of the

[1] So in original. Does not conform to section catchline.

armed forces before the commencement of that war, national emergency, or mobilization.

(5) Providing for the development, manufacture, and supply of items and technologies critical to the production and sustainment of advanced military weapon systems within the national technology and industrial base.

(6) Providing for the generation of services capabilities that are not core functions of the armed forces and that are critical to military operations within the national technology and industrial base.

(7) Providing for the development, production, and integration of information technology within the national technology and industrial base.

(8) Maintaining critical design skills to ensure that the armed forces are provided with systems capable of ensuring technological superiority over potential adversaries.

(9) Ensuring reliable sources of materials that are critical to national security, such as specialty metals, essential minerals, armor plate, and rare earth elements.

(10) Reducing, to the maximum extent practicable, the presence of counterfeit parts in the supply chain and the risk associated with such parts.

(11) Providing for the provision of drugs, biological products, vaccines, and critical medical supplies required to enable combat readiness and protect the health of the armed forces.

(b) CIVIL-MILITARY INTEGRATION POLICY.—The Secretary of Defense shall ensure that the United States attains the national technology and industrial base objectives set forth in subsection (a) through acquisition policy reforms that have the following objectives:

(1) Relying, to the maximum extent practicable, upon the commercial national technology and industrial base that is required to meet the national security needs of the United States.

(2) Reducing the reliance of the Department of Defense on technology and industrial base sectors that are economically dependent on Department of Defense business.

(3) Reducing Federal Government barriers to the use of commercial products, processes, and standards.

(c) DEPARTMENT OF DEFENSE TECHNOLOGY AND INDUSTRIAL BASE POLICY GUIDANCE.—

(1) DEPARTMENTAL GUIDANCE.—The Secretary of Defense shall prescribe departmental guidance for the attainment of each of the national security objectives set forth in subsection (a).

(2) PURPOSE OF GUIDANCE.—The guidance prescribed pursuant to paragraph (1) shall provide for technological and industrial capability considerations to be integrated into the strategy, management, budget allocation, acquisition, and logistics support decision processes.

(Added Pub. L. 102–484, div. D, title XLII, § 4211, Oct. 23, 1992, 106 Stat. 2662, § 2501; amended Pub. L. 103–35, title II, § 201(c)(7), May 31, 1993, 107 Stat. 98; Pub. L. 103–160, div. A, title XI, § 1182(a)(10), title XIII, § 1313, Nov. 30, 1993, 107 Stat. 1771, 1786; Pub. L. 104–106, div. A, title X, § 1081(a), Feb. 10, 1996, 110 Stat. 452; Pub. L. 104–201, div. A, title VIII, § 829(a), Sept. 23, 1996, 110 Stat. 2612; Pub. L. 111–23, title III, § 303(a), May 22, 2009, 123 Stat. 1731; Pub. L. 111–383, div. A, title VIII, § 895(b), Jan. 7, 2011, 124 Stat. 4314; Pub. L. 112–239, div. A, title XVI, § 1603(a)(1), Jan. 2, 2013, 126 Stat. 2062; Pub. L. 113–291, div. A, title X, § 1071(c)(2), Dec. 19, 2014, 128 Stat. 3508; Pub. L. 114–328, div. A, title VIII, § 882, Dec. 23, 2016, 130 Stat. 2316; Pub. L. 116–92, div. A, title VIII, § 846(a), Dec. 20, 2019, 133 Stat. 1503; renumbered § 4811 and amended Pub. L. 116–283, div. A, title VII, § 713(a), title XVIII, § 1867(b), (c)(1), Jan. 1, 2021, 134 Stat. 3692, 4281.)

CODIFICATION

The text of subsecs. (a) and (b) of section 2506 of this title, which were transferred to this section and redesignated as pars. (1) and (2), respectively, of subsec. (c), by Pub. L. 116–283, § 1867(c)(1)(B), was based on Pub. L. 102–484, div. D, title XLII, § 4216(a), Oct. 23, 1992, 106 Stat. 2668; Pub. L. 104–201, div. A, title VIII, § 829(d), Sept. 23, 1996, 110 Stat. 2613; Pub. L. 111–383, div. A, title VIII, § 895(d), Jan. 7, 2011, 124 Stat. 4314; Pub. L. 115–91, div. A, title X, § 1051(a)(18), Dec. 12, 2017, 131 Stat. 1561; Pub. L. 116–283, div. A, title XVIII, § 1867(c)(1)(B), Jan. 1, 2021, 134 Stat. 4281.

AMENDMENTS

2021—Pub. L. 116–283, § 1867(b), renumbered section 2501 of this title as this section.

Subsec. (a)(11). Pub. L. 116–283, § 713(a), added par. (11).

Subsec. (c). Pub. L. 116–283, § 1867(c)(1)(B), transferred subsecs. (a) and (b) of section 2506 of this title to subsec. (c), redesignated such provisions as pars. (1) and (2), respectively, and realigned margins.

Pub. L. 116–283, § 1867(c)(1)(A), added subsec. (c).

Subsec. (c)(1). Pub. L. 116–283, § 1867(c)(1)(B)(i), substituted ''subsection (a)'' for ''section 2501(a) of this title''.

Subsec. (c)(2). Pub. L. 116–283, § 1867(c)(1)(B)(ii), substituted ''paragraph (1)'' for ''subsection (a)''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by section 1867(b), (c)(1) of Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

NATIONAL SECURITY INNOVATION PARTNERSHIPS

Pub. L. 116–283, div. A, title II, § 219, Jan. 1, 2021, 134 Stat. 3463, provided that:

''(a) ESTABLISHMENT.—The Secretary of Defense shall establish an activity—

''(1) to support partnerships between the Department of Defense and academic institutions, private sector firms in defense and commercial sectors, commercial accelerators and incubators, commercial innovation hubs, public sector organizations, and nonprofit entities with missions relating to national security innovation;

''(2) to expand the national security innovation base, including through engagement with academia, defense industry, commercial industry, government organizations, and the venture capital community;

''(3) to accelerate the transition of technologies and services into acquisition programs and operational use;

''(4) to work in coordination with the Under Secretary of Defense for Personnel and Readiness, other organizations within the Office of the Secretary, and the Armed Forces to create new pathways and models of national security service that facilitate employment within the Department;

''(5) to facilitate engagement with entities described in paragraph (1) for the purpose of developing solutions to national security and defense problems articulated by entities within the Department, including through programs such as the Hacking for Defense program;

''(6) to establish physical locations throughout the United States to support partnerships with academic, government, and private sector industry partners; and

''(7) to enhance the capabilities of the Department in market research, industrial and technology base awareness, source selection, partnerships with private sector capital, and access to commercial technologies.

''(b) AUTHORITIES.—In addition to the authorities provided under this section, in carrying out this section, the Secretary of Defense may use the following authorities:

''(1) Section 1599g of title 10, United States Code, relating to public-private talent exchanges.

''(2) Section 2368 of title 10, United States Code, relating to Centers for Science, Technology, and Engineering Partnerships.

''(3) Section 2374a of title 10, United States Code, relating to prizes for advanced technology achievements.

''(4) Section 2474 of title 10, United States Code, relating to Centers of Industrial and Technical Excellence.

''(5) Section 2521 of title 10, United States Code, relating to the Manufacturing Technology Program.

''(6) Subchapter VI of chapter 33 of title 5, United States Code, relating to assignments to and from States.

''(7) Chapter 47 of title 5, United States Code, relating to personnel research programs and demonstration projects.

''(8) Section 12 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a) and section 6305 of title 31, United States Code, relating to cooperative research and development agreements.

''(9) Such other authorities as the Secretary considers appropriate.

''(c) IMPLEMENTATION.—

''(1) SUPPORT FROM OTHER DEPARTMENT OF DEFENSE ORGANIZATIONS.—The Secretary of Defense may direct other organizations and elements of the Department of Defense to provide personnel, resources, and other support to the activity established under this section, as the Secretary determines appropriate.

''(2) IMPLEMENTATION PLAN.—

''(A) IN GENERAL.—Not later than one year after the date of the enactment of this Act [Jan. 1, 2021], the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a plan for implementing the activity established under this section.

''(B) ELEMENTS.—The plan required under subparagraph (A) shall include the following:

''(i) Plans that describe any support that will be provided for the activity by other organizations and elements of the Department of Defense under paragraph (1).

''(ii) Plans for the implementation of the activity, including plans for—

''(I) future funding and administrative support of the activity;

''(II) integration of the activity into the programming, planning, budgeting, and execution process of the Department of Defense;

''(III) integration of the activity with the other programs and initiatives within the Department that have missions relating to innovation and outreach to the academic and the private sector ; and

''(IV) performance indicators by which the activity will be assessed and evaluated.

''(iii) A description of any additional authorities the Secretary may require to effectively carry out the responsibilities under this section.''

ASSESSMENT OF RESEARCH AND DEVELOPMENT, MANUFACTURING, AND PRODUCTION CAPABILITIES

Pub. L. 116–283, div. A, title VIII, § 846(a), Jan. 1, 2021, 134 Stat. 3767, provided that:

''(1) IN GENERAL.—In developing the strategy required by section 2501 of title 10, United States Code, carrying out the program for analysis of the national technology and industrial base required by section 2503 of such title, and performing the assessments required under section 2505 of such title, the Secretary of Defense, in consultation with the Under Secretary of Defense for Acquisition and Sustainment and the Under Secretary of Research and Engineering, shall assess the research and development, manufacturing, and production capabilities of the national technology and industrial base (as defined in section 2500 of such title) and other allies and partner countries.

''(2) IDENTIFICATION OF SPECIFIC TECHNOLOGIES, COMPANIES, LABORATORIES, AND FACTORIES.—The map of the industrial base described in section 2504 of title 10, United States Code, shall highlight specific technologies, companies, laboratories, and factories of, or located in, the national technology and industrial base of potential value to current and future Department of Defense plans and programs.''

RECOMMENDATIONS FOR ADDITIONAL MEMBERS OF THE NATIONAL TECHNOLOGY AND INDUSTRIAL BASE

Pub. L. 116–283, div. A, title VIII, § 846(d), Jan. 1, 2021, 134 Stat. 3768, provided that:

''(1) IN GENERAL.—The Secretary of Defense, in consultation with the heads of any relevant Federal agencies, shall establish a process to consider the inclusion of additional member countries in the national technology and industrial base.

''(2) ELEMENTS.—The process developed under paragraph (1) shall include an analysis of—

''(A) the national security and foreign policy impacts, costs, and benefits to the United States and allied countries of the inclusion of any such additional member countries in the national technology and industrial base;

''(B) the economic impacts, costs, and benefits to entities within the United States and allied countries of the inclusion of any such additional member countries into the national technology and industrial base, including an assessment of—

''(i) specific shortfalls in the technological and industrial capacities of current member countries of the national technology and industrial base that would be addressed by inclusion of such additional member countries;

''(ii) specific areas in the industrial bases of current member countries of the national technology and industrial base that would likely be impacted by additional competition if such additional member countries were included in the national technology and industrial base; and

''(iii) costs to reconstitute capability should such capability be lost to competition; and

''(C) other factors as determined relevant by the Secretary.

''(3) CONCURRENCE.—For the purposes of the process developed under paragraph (1), the Secretary of Defense may recommend the inclusion of an additional member country in the national technology and industrial base only with the concurrence of the Secretary of State.''

SUPPLY OF STRATEGIC AND CRITICAL MATERIALS FOR THE DEPARTMENT OF DEFENSE

Pub. L. 116–283, div. A, title VIII, § 848, Jan. 1, 2021, 134 Stat. 3769, provided that:

''(a) PREFERENCE FOR SOURCING FROM THE NATIONAL TECHNOLOGY AND INDUSTRIAL BASE.—The Secretary of Defense shall, to the maximum extent practicable, acquire strategic and critical materials required to meet the defense, industrial, and essential civilian needs of the United States in the following order of preference:

''(1) From sources located within the United States.

''(2) From sources located within the national technology and industrial base (as defined in section 2500 of title 10, United States Code).

''(3) From other sources as appropriate.

''(b) STATEMENT OF POLICY.—

''(1) IN GENERAL.—The Secretary of Defense shall pursue the following goals:

''(A) Not later than January 1, 2035, ensuring access to secure sources of supply for strategic and critical materials that will—

''(i) fully meet the demands of the domestic defense industrial base;

''(ii) eliminate the dependence of the United States on potentially vulnerable sources of supply for strategic and critical materials; and

''(iii) ensure that the Department of Defense is not reliant upon potentially vulnerable sources of supply for the processing or manufacturing of any strategic and critical materials deemed essential to national security by the Secretary of Defense.

''(B) Provide incentives for the defense industrial base to develop robust processing and manufacturing capabilities in the United States to refine strategic and critical materials for Department of Defense purposes.

''(C) Maintain secure sources of supply for strategic and critical materials required to maintain current military requirements in the event that international supply chains are disrupted.

''(2) METHODS.—The Secretary of Defense shall achieve the goals described in paragraph (1) through—

''(A) the development of guidance in consultation with appropriate officials of the Department of State, the Joint Staff, and the Secretaries of the military departments;

''(B) the continued and expanded use of existing programs, such as the National Defense Stockpile;

''(C) the continued use of authorities under title III of the Defense Production Act of 1950 (50 U.S.C. 4531 et seq.); and

''(D) other methods, as the Secretary of Defense deems appropriate.''

ANALYSES OF CERTAIN ACTIVITIES FOR ACTION TO ADDRESS SOURCING AND INDUSTRIAL CAPACITY

Pub. L. 116–283, div. A, title VIII, § 849, Jan. 1, 2021, 134 Stat. 3770, provided that:

''(a) ANALYSIS REQUIRED.—

''(1) IN GENERAL.—The Secretary of Defense, acting through the Undersecretary of Defense for Acquisition and Sustainment and other appropriate officials, shall review the items under subsection (c) to determine and develop appropriate actions, consistent with the policies, programs, and activities required under chapter 148 of title 10, United States Code, chapter 83 of title 41, United States Code, and the Defense Production Act of 1950 (50 U.S.C. 4501 et seq.), including—

''(A) restricting procurement, with appropriate waivers for cost, emergency requirements, and non-availability of suppliers, including restricting procurement to—

''(i) suppliers in the United States;

''(ii) suppliers in the national technology and industrial base (as defined in section 2500 of title 10, United States Code);

''(iii) suppliers in other allied nations; or

''(iv) other suppliers;

''(B) increasing investment through use of research and development or procurement activities and acquisition authorities to—

''(i) expand production capacity;

''(ii) diversify sources of supply; or

''(iii) promote alternative approaches for addressing military requirements;

''(C) prohibiting procurement from selected sources or nations;

''(D) taking a combination of actions described under subparagraphs (A),(B), and (C); or

''(E) taking no action.

''(2) CONSIDERATIONS.—The analyses conducted pursuant to paragraph (1) shall consider national security, economic, and treaty implications, as well as impacts on current and potential suppliers of goods and services.

''(b) REPORTING ON ANALYSES, RECOMMENDATIONS, AND ACTIONS.—

''(1) INTERIM BRIEF.—Not later than January 15, 2022, the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives]—

''(A) a summary of the findings of the analyses undertaken for each item pursuant to subsection (a);

''(B) relevant recommendations resulting from the analyses; and

''(C) descriptions of specific activities undertaken as a result of the analyses, including schedule and resources allocated for any planned actions.

''(2) REPORTING.—The Secretary of Defense shall include the analyses conducted under subsection (a), and any relevant recommendations and descriptions of activities resulting from such analyses, as appropriate, in each of the following submitted during the 2022 calendar year:

''(A) The annual report to Congress required under section 2504 of title 10, United States Code.

''(B) The annual report on unfunded priorities of the national technology and industrial base required under section 2504a of such title.

''(C) Department of Defense technology and industrial base policy guidance prescribed under section 2506 of such title.

''(D) Activities to modernize acquisition processes to ensure integrity of industrial base pursuant to section 2509 of such title.

''(E) Defense memoranda of understanding and related agreements considered in accordance with section 2531 of such title.

''(F) Industrial base or acquisition policy changes.

''(G) Legislative proposals for changes to relevant statutes which the Department shall consider, develop, and submit to the Committees on Armed Services of the Senate and House of Representatives not less frequently than once per fiscal year.

''(H) Quarterly briefings on the national technology and industrial base required under section 2504 of such title, as amended by section 842 of this Act.

''(I) Other actions as the Secretary of Defense determines appropriate.

''(c) LIST OF HIGH PRIORITY GOODS AND SERVICES FOR ANALYSES, RECOMMENDATIONS, AND ACTIONS.—The items described in this subsection are the following:

''(1) Goods and services covered under existing restrictions, where a waiver, exception, or domestic non-availability determination has been applied.

''(2) Printed circuit boards and other electronics components, consistent with the requirements of other provisions of this Act.

''(3) Pharmaceuticals, including active pharmaceutical ingredients.

''(4) Medical devices.

''(5) Therapeutics.

''(6) Vaccines.

''(7) Diagnostic medical equipment and consumables, including reagents and swabs.

''(8) Ventilators and related products.

''(9) Personal protective equipment.

''(10) Strategic and critical materials, including rare earth materials.

''(11) Natural or synthetic graphite.

''(12) Coal-based rayon carbon fibers.

''(13) Aluminum and aluminum alloys.''

§ 4812. National Defense Technology and Industrial Base Council

(a) ESTABLISHMENT.—There is a National Defense Technology and Industrial Base Council.

(b) COMPOSITION.—The Council is composed of the following members:

(1) The Secretary of Defense, who shall serve as chairman.

(2) The Secretary of Energy.

(3) The Secretary of Commerce.

(4) The Secretary of Labor.

(5) Such other officials as may be determined by the President.

(c) RESPONSIBILITIES.—The Council shall have the responsibility to ensure effective cooperation among departments and agencies of the Federal Government, and to provide advice and recommendations to the President, the Secretary of Defense, the Secretary of Energy, the Secretary of Commerce, and the Secretary of Labor, concerning—

(1) the capabilities of the national technology and industrial base to meet the national security objectives set forth in section 4811(a) of this title;

(2) programs for achieving such national security objectives;

(3) changes in acquisition policy that strengthen the national technology and industrial base; and

(4) collaboration with government officials of member countries of the national technology and industrial base in order to strengthen the national technology and industrial base.

(d) ALTERNATIVE PERFORMANCE OF RESPONSIBILITIES.—Notwithstanding subsection (c), the President may assign the responsibilities of the Council to another interagency organization of the executive branch that includes among its members the officials specified in paragraphs (1) through (4) of subsection (b).

(Added Pub. L. 102–484, div. D, title XLII, § 4212(a), Oct. 23, 1992, 106 Stat. 2664, § 2502; amended Pub. L. 103–160, div. A, title XIII, § 1312(b), Nov. 30, 1993, 107 Stat. 1786; Pub. L. 103–337, div. A, title X, § 1070(a)(12), Oct. 5, 1994, 108 Stat. 2856; Pub. L. 104–106, div. A, title X, § 1081(b), Feb. 10, 1996, 110 Stat. 452; Pub. L. 104–201, div. A, title VIII, § 829(c)(2), formerly § 829(c)(2), (3), Sept. 23, 1996, 110 Stat. 2613, renumbered Pub. L. 105–85, div. A, title X, § 1073(c)(7)(B), Nov. 18, 1997, 111 Stat. 1904; Pub. L. 105–85, div. A, title X, § 1073(c)(7)(A), Nov. 18, 1997, 111 Stat. 1904; renumbered § 4812 and amended Pub. L. 116–283, div. A, title VIII, § 846(c), title XVIII, § 1867(b), (d)(1), Jan. 1, 2021, 134 Stat. 3768, 4281.)

AMENDMENTS

2021—Pub. L. 116–283, § 1867(b), renumbered section 2502 of this title as this section.

Subsec. (c)(1). Pub. L. 116–283, § 1867(d)(1), substituted ''section 4811(a)'' for ''section 2501(a)''.

Subsec. (c)(4). Pub. L. 116–283, § 846(c), added par. (4).

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by section 1867(b), (d)(1) of Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 4813. National defense program for analysis of the technology and industrial base

(a) ESTABLISHMENT.—The Secretary of Defense shall establish a program for analysis of the national technology and industrial base.

(b) SUPERVISION OF PROGRAM.—The Secretary of Defense shall carry out the program through the Under Secretary of Defense for Research and Engineering and the Under Secretary of Defense for Acquisition and Sustainment. In carrying out the program, the Under Secretaries shall consult with the Secretary of Energy, the Secretary of Commerce, and the Secretary of Labor.

(c) FUNCTIONS.—The functions of the program shall include, with respect to the national technology and industrial base, the following:

(1) The assembly of timely and authoritative information.

(2) Initiation of studies and analyses.

(3) Provision of technical support and assistance to—

(A) the Secretary of Defense for the preparation of the periodic assessments required by section 4816 of this title;

(B) the defense acquisition university structure and its elements; and

(C) other departments and agencies of the Federal Government in accordance with guidance established by the Council.

(4) Dissemination, through the National Technical Information Service of the Department of Commerce, of unclassified information and assessments for further dissemination within the Federal Government and to the private sector.

(Added Pub. L. 102–484, div. D, title XLII, § 4213(a), Oct. 23, 1992, 106 Stat. 2665, § 2503; amended Pub. L. 104–201, div. A, title VIII, § 829(b), Sept. 23, 1996, 110 Stat. 2612; Pub. L. 107–107, div. A, title X, § 1048(b)(4), Dec. 28, 2001, 115 Stat. 1225; Pub. L. 116–92, div. A, title IX, § 902(74), Dec. 20, 2019, 133 Stat. 1552; renumbered § 4813 and amended Pub. L. 116–283, div. A, title XVIII, § 1867(b), (d)(2), Jan. 1, 2021, 134 Stat. 4281.)

AMENDMENTS

2021—Pub. L. 116–283, § 1867(b), renumbered section 2503 of this title as this section.

Subsec. (c)(3)(A). Pub. L. 116–283, § 1867(d)(2), substituted ''section 4816'' for ''section 2505''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 4814. National technology and industrial base: annual report and quarterly briefings

(a) ANNUAL REPORT.—The Secretary of Defense shall transmit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives by March 1 of each year a report which shall include the following information:

(1) A description of the departmental guidance prepared pursuant to section 4811(c) of this title.

(2) A description of the assessments prepared pursuant to section 4816 of this title and other

analyses used in developing the budget submission of the Department of Defense for the next fiscal year.

(3) Based on the strategy required by section 4811 of this title and on the assessments prepared pursuant to Executive order or section 4816 of this title—

(A) a map of the industrial base;

(B) a prioritized list of gaps or vulnerabilities in the national technology and industrial base, including—

(i) a description of mitigation strategies necessary to address such gaps or vulnerabilities;

(ii) the identification of the Secretary concerned or the head of the Defense Agency responsible for addressing such gaps or vulnerabilities; and

(iii) a proposed timeline for action to address such gaps or vulnerabilities; and

(C) any other steps necessary to foster and safeguard the national technology and industrial base.

(4) Identification of each program designed to sustain specific essential technological and industrial capabilities and processes of the national technology and industrial base.

(5) A detailed description of any use by the Secretary of Defense or a Secretary concerned, as applicable, during the prior 12 months of a waiver or exception to the sourcing requirements or prohibitions established by chapter 83 of title 41 or subchapter V of chapter 148 of this title, including—

(A) the type of waiver or exception used; and

(B) the reasoning for the use of each such waiver or exception.

(b) QUARTERLY BRIEFINGS.—(1) The Secretary of Defense shall ensure that the congressional defense committees receive quarterly briefings on the industrial base supporting the Department of Defense, describing challenges, gaps, and vulnerabilities in the defense industrial base and commercial sector relevant to execution of defense missions, and describing initiatives to address such challenges.

(2) Each briefing under paragraph (1) shall include an update on the progress of addressing such gaps or vulnerabilities by the Secretary, the Secretary of the military department concerned, or the appropriate head of a Defense Agency, including an update on—

(A) actions taken to address such gaps or vulnerabilities;

(B) policy changes necessary to address such gaps or vulnerabilities; and

(C) the proposed timeline for action and resources required to address such gaps or vulnerabilities.

(Added Pub. L. 104–201, div. A, title VIII, §829(e), Sept. 23, 1996, 110 Stat. 2614, §2504; amended Pub. L. 106–65, div. A, title X, §1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 112–239, div. A, title XVI, §1603(b), Jan. 2, 2013, 126 Stat. 2063; Pub. L. 116–92, div. A, title VIII, §846(b), Dec. 20, 2019, 133 Stat. 1503; renumbered §4814 and amended Pub. L. 116–283, div. A, title VIII, §842(a), (b)(1), title XVIII, §1867(b), (d)(3), Jan. 1, 2021, 134 Stat. 3764, 3765, 4281.)

AMENDMENTS

2021—Pub. L. 116–283, §1867(b), renumbered section 2504 of this title as this section.

Pub. L. 116–283, §842(b)(1), amended section catchline generally, substituting ''National technology and industrial base: annual report and quarterly briefings'' for ''Annual report to Congress''.

Subsec. (a). Pub. L. 116–283, §842(a)(1), designated existing provisions as subsec. (a) and inserted heading.

Subsec. (a)(1). Pub. L. 116–283, §1867(d)(3)(A), which directed amendment of par. (1) by substituting ''section 4811(c)'' for ''section 2506'', was executed to subsec. (a)(1) to reflect the probable intent of Congress and the intervening amendment by Pub. L. 116–283, §842(a)(1). See note above.

Subsec. (a)(2). Pub. L. 116–283, §1867(d)(3)(B), which directed amendment of par. (2) by substituting ''section 4816'' for ''section 2505'', was executed to subsec. (a)(2) to reflect the probable intent of Congress and the intervening amendment by Pub. L. 116–283, §842(a)(1). See note above.

Subsec. (a)(3). Pub. L. 116–283, §1867(d)(3)(C), which directed amendment of par. (3) by substituting ''section 4811'' for ''section 2501'' and ''section 4816'' for ''section 2505'', was executed to subsec. (a)(3) to reflect the probable intent of Congress and the intervening amendment by Pub. L. 116–283, §842(a)(1). See note above.

Subsec. (a)(5). Pub. L. 116–283, §842(a)(2), added par. (5).

Subsec. (b). Pub. L. 116–283, §842(a)(3), added subsec. (b).

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by section 1867(b), (d)(3) of Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 4815. Unfunded priorities of the national technology and industrial base: annual report

(a) ANNUAL REPORT.—Not later than 10 days after the date on which the budget of the President for a fiscal year is submitted to Congress pursuant to section 1105 of title 31, the Under Secretary of Defense for Acquisition and Sustainment shall submit to the Secretary of Defense, the Chairman of the Joint Chiefs of Staff, and the congressional defense committees a report on the unfunded priorities to address gaps or vulnerabilities in the national technology and industrial base.

(b) ELEMENTS.—

(1) IN GENERAL.—Each report under subsection (a) shall specify, for each unfunded priority covered by such report, the following:

(A) A summary description of such priority, including the objectives to be achieved if such priority is funded (whether in whole or in part).

(B) The additional amount of funds recommended in connection with the objectives under subparagraph (A).

(C) Account information with respect to such priority, including the following (as applicable):

(i) Line Item Number (LIN) for applicable procurement accounts.

(ii) Program Element (PE) number for applicable research, development, test, and evaluation accounts.

(iii) Sub-activity group (SAG) for applicable operation and maintenance accounts.

(2) PRIORITIZATION OF PRIORITIES.—Each report shall present the unfunded priorities covered by such report in order of urgency of priority.

(c) UNFUNDED PRIORITY DEFINED.—In this section, the term ''unfunded priority'', in the case of a fiscal year, means a program, activity, or mission requirement of the national technology and industrial base that—

(1) is not funded in the budget of the President for the fiscal year as submitted to Congress pursuant to section 1105 of title 31;

(2) is necessary to address gaps or vulnerabilities in the national technology and industrial base; and

(3) would have been recommended for funding through the budget referred to in paragraph (1) if—

(A) additional resources had been available for the budget to fund the program, activity, or mission requirement; or

(B) the program, activity, or mission requirement had emerged before the budget was formulated.

(Added Pub. L. 116–92, div. A, title VIII, § 846(c)(1), Dec. 20, 2019, 133 Stat. 1504, § 2504a; renumbered § 4815, Pub. L. 116–283, div. A, title XVIII, § 1867(b), Jan. 1, 2021, 134 Stat. 4281.)

AMENDMENTS

2021—Pub. L. 116–283 renumbered section 2504a of this title as this section.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 4816. National technology and industrial base: periodic defense capability assessments

(a) PERIODIC ASSESSMENT.—Each fiscal year, the Secretary of Defense shall prepare selected assessments of the capability of the national technology and industrial base to attain the national security objectives set forth in section 4811(a) of this title. The Secretary of Defense shall prepare such assessments in consultation with the Secretary of Commerce and the Secretary of Energy.

(b) ASSESSMENT PROCESS.—The Secretary of Defense shall ensure that technology and industrial capability assessments—

(1) describe sectors or capabilities, their underlying infrastructure and processes;

(2) analyze present and projected financial performance of industries supporting the sectors or capabilities in the assessment;

(3) determine the extent to which the requirements associated with defense acquisition programs can be satisfied by the present and projected performance capacities of industries supporting the sectors or capabilities in the assessment, evaluate the reasons for any variance from applicable preceding determinations, and identify the extent to which those industries are comprised of only one potential source in the national technology and industrial base or have multiple potential sources;

(4) determine the extent to which the requirements associated with defense acquisition programs can be satisfied by the present and projected performance capacities of industries that do not actively support Department of Defense acquisition programs and identify the barriers to the participation of those industries;

(5) identify technological and industrial capabilities and processes for which there is potential for the national industrial and technology base not to be able to support the achievement of national security objectives; and

(6) consider the effects of the termination of major defense acquisition programs (as the term is defined in section 2430[1] of this title) or major automated information system programs (as defined in section 2445a[1] of this title) in the previous fiscal year on the sectors and capabilities in the assessment.

(c) ASSESSMENT OF EXTENT OF DEPENDENCY ON FOREIGN SOURCE ITEMS.—Each assessment under subsection (a) shall include a separate discussion and presentation regarding the extent to which the national technology and industrial base is dependent on items for which the source of supply, manufacture, or technology is outside of the United States and Canada and for which there is no immediately available source in the United States or Canada. The discussion and presentation regarding foreign dependency shall—

(1) identify cases that pose an unacceptable risk of foreign dependency, as determined by the Secretary; and

(2) present actions being taken or proposed to be taken to remedy the risk posed by the cases identified under paragraph (1), including efforts to develop a domestic source for the item in question.

(d) ASSESSMENT OF EXTENT OF EFFECTS OF FOREIGN BOYCOTTS.—Each assessment under subsection (a) shall include an examination of the extent to which the national technology and industrial base is affected by foreign boycotts. If it is determined that a foreign boycott (other than a boycott addressed in a previous assessment) is subjecting the national technology and industrial base to significant harm, the assessment shall include a separate discussion and presentation regarding that foreign boycott that shall, at a minimum—

(1) identify the sectors that are subject to such harm;

(2) describe the harm resulting from such boycott; and

(3) identify actions necessary to minimize the effects of such boycott on the national technology and industrial base.

(e) INTEGRATED PROCESS.—The Secretary of Defense shall ensure that consideration of the technology and industrial base assessments is integrated into the overall budget, acquisition, and logistics support decision processes of the Department of Defense.

(Added Pub. L. 102–484, div. D, title XLII, § 4215, Oct. 23, 1992, 106 Stat. 2667, § 2505; amended Pub. L. 103–35, title II, § 201(g)(7), May 31, 1993, 107

[1] See References in Text note below.

Stat. 100; Pub. L. 104–201, div. A, title VIII, § 829(c)(1), Sept. 23, 1996, 110 Stat. 2612; Pub. L. 111–23, title III, § 303(b), May 22, 2009, 123 Stat. 1731; Pub. L. 111–383, div. A, title VIII, § 895(c), Jan. 7, 2011, 124 Stat. 4314; Pub. L. 112–239, div. A, title XVI, § 1602, Jan. 2, 2013, 126 Stat. 2062; Pub. L. 114–92, div. A, title VIII, § 876, Nov. 25, 2015, 129 Stat. 941; renumbered § 4816 and amended Pub. L. 116–283, div. A, title XVIII, §§ 1867(b), (d)(4), 1883(b)(2), Jan. 1, 2021, 134 Stat. 4281, 4282, 4294.)

REFERENCES IN TEXT

Section 2430 of this title, referred to in subsec. (b)(6), was transferred to sections 4201, 4202, and 4204 of this title by Pub. L. 116–283, div. A, title XVIII, § 1846(c)(1), (d)(1), (f)(1), Jan. 1, 2021, 134 Stat. 4248–4250. Section 4201 of this title defines ''major defense acquisition program''.

Section 2445a of this title, referred to in subsec. (b)(6), was repealed by Pub. L. 114–328, div. A, title VIII, § 846(1), Dec. 23, 2016, 130 Stat. 2292, effective Sept. 30, 2017.

AMENDMENTS

2021—Pub. L. 116–283, § 1867(b), renumbered section 2505 of this title as this section.

Subsec. (a). Pub. L. 116–283, § 1867(d)(4), substituted ''section 4811(a)'' for ''section 2501(a)''.

Subsec. (b)(6). Pub. L. 116–283, § 1883(b)(2), which directed that each reference in the text of title 10 to a section that was redesignated by title XVIII of Pub. L. 116–283, as such section was in effect before the redesignation, be amended by striking such reference and inserting a reference to the appropriate redesignated section, was not executed with respect to ''section 2430'', which was redesignated as multiple sections.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 4817. Industrial Base Fund

(a) ESTABLISHMENT.—The Secretary of Defense shall establish an Industrial Base Fund (in this section referred to as the ''Fund'').

(b) CONTROL OF FUND.—The Fund shall be under the control of the Under Secretary of Defense for Acquisition and Sustainment, acting through the Deputy Assistant Secretary of Defense for Manufacturing and Industrial Base Policy.

(c) AMOUNTS IN FUND.—The Fund shall consist of amounts appropriated or otherwise made available to the Fund.

(d) USE OF FUND.—Subject to subsection (e), the Fund shall be used—

(1) to support the monitoring and assessment of the industrial base required by this chapter;

(2) to address critical issues in the industrial base relating to urgent operational needs;

(3) to support efforts to expand the industrial base; and

(4) to address supply chain vulnerabilities.

(e) USE OF FUND SUBJECT TO APPROPRIATIONS.—The authority of the Secretary of Defense to use the Fund under this section in any fiscal year is subject to the availability of appropriations for that purpose.

(f) EXPENDITURES.—The Secretary shall establish procedures for expending monies in the Fund in support of the uses identified in subsection (d), including the following:

(1) Direct obligations from the Fund.

(2) Transfers of monies from the Fund to relevant appropriations of the Department of Defense.

(Added Pub. L. 111–383, div. A, title VIII, § 896(b)(1), Jan. 7, 2011, 124 Stat. 4315, § 2508; amended Pub. L. 115–91, div. A, title X, § 1081(g)(1), Dec. 12, 2017, 131 Stat. 1601; Pub. L. 116–92, div. A, title IX, § 902(75), Dec. 20, 2019, 133 Stat. 1552; renumbered § 4817, Pub. L. 116–283, div. A, title XVIII, § 1867(b), Jan. 1, 2021, 134 Stat. 4281.)

AMENDMENTS

2021—Pub. L. 116–283 renumbered section 2508 of this title as this section.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 4818. Data collection authority of President

(a) AUTHORITY.—The President shall be entitled, by regulation, subpoena, or otherwise, to obtain such information from, require such reports and the keeping of such records by, make such inspection of the books, records, and other writings, premises or property of, and take the sworn testimony of, and administer oaths and affirmations to, any person as may be necessary or appropriate, in the President's discretion, to the enforcement or the administration of the chapter 148 legacy provisions and the regulations issued under those provisions.

(b) CONDITION FOR USE OF AUTHORITY.—The President shall issue regulations insuring that the authority of this section will be used only after the scope and purpose of the investigation, inspection, or inquiry to be made have been defined by competent authority and it is assured that no adequate and authoritative data are available from any Federal or other responsible agency.

(c) PENALTY FOR NONCOMPLIANCE.—Any person who willfully performs any act prohibited or willfully fails to perform any act required by the provisions of subsection (a), or any rule, regulation, or order thereunder, shall be fined under title 18 or imprisoned not more than one year, or both.

(d) LIMITATIONS ON DISCLOSURE OF INFORMATION.—Information obtained under subsection (a) which the President deems confidential or with reference to which a request for confidential treatment is made by the person furnishing such information shall not be published or disclosed unless the President determines that the withholding thereof is contrary to the interest of the national defense. Any person who willfully violates this subsection shall be fined under title 18 or imprisoned not more than one year, or both.

(e) REGULATIONS.—The President may make such rules, regulations, and orders as he considers necessary or appropriate to carry out the provisions of this section. Any regulation or

order under this section may be established in such form and manner, may contain such classification and differentiations, and may provide for such adjustments and reasonable exceptions as in the judgment of the President are necessary or proper to effectuate the purposes of this section, or to prevent circumvention or evasion, or to facilitate enforcement of this section, or any rule, regulation, or order issued under this section.

(f) DEFINITIONS.—In this section:

(1) The term ''person'' includes an individual, corporation, partnership, association, or any other organized group of persons, or legal successor or representative of the foregoing, and includes the United States or any agency thereof, or any other government, or any of its political subdivisions, or any agency of any of the foregoing, except that no punishment provided by this section shall apply to the United States, or to any such government, political subdivision, or government agency.

(2) The term ''national defense'' means programs for military and atomic energy production or construction, military assistance to any foreign nation, stockpiling, space, and directly related activity.

(Added Pub. L. 102–484, div. D, title XLII, § 4217, Oct. 23, 1992, 106 Stat. 2670, § 2507; amended Pub. L. 103–160, div. A, title XI, § 1182(b)(1), Nov. 30, 1993, 107 Stat. 1772; Pub. L. 109–163, div. A, title X, § 1056(c)(5), Jan. 6, 2006, 119 Stat. 3439; renumbered § 4818 and amended Pub. L. 116–283, div. A, title XVIII, § 1867(b), (d)(5), Jan. 1, 2021, 134 Stat. 4281, 4282.)

AMENDMENTS

2021—Pub. L. 116–283, § 1867(b), renumbered section 2507 of this title as this section.

Subsec. (a). Pub. L. 116–283, § 1867(d)(5), substituted ''of the chapter 148 legacy provisions'' for ''of this chapter'' and ''under those provisions'' for ''under this chapter''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 4819. Modernization of acquisition processes to ensure integrity of industrial base

(a) DIGITIZATION AND MODERNIZATION.—The Secretary of Defense shall streamline and digitize the existing Department of Defense approach for identifying and mitigating risks to the defense industrial base across the acquisition process, creating a continuous model that uses digital tools, technologies, and approaches designed to ensure the accessibility of data to key decision-makers in the Department.

(b) ANALYTICAL FRAMEWORK.—(1) The Under Secretary of Defense for Acquisition and Sustainment, in coordination with the Director of the Defense Counterintelligence and Security Agency and the heads of other elements of the Department of Defense as appropriate, shall develop an analytical framework for risk mitigation across the acquisition process.

(2) The analytical framework required under paragraph (1) shall include the following elements:

(A) Characterization and monitoring of supply chain risks, such as those identified through the supply chain risk management process of the Department and by the Federal Acquisition Security Council, and including—

(i) material sources and fragility, including the extent to which sources, items, materials, and articles are mined, produced, or manufactured within or outside the United States;

(ii) telecommunications services or equipment;

(iii) counterfeit parts;

(iv) cybersecurity of contractors;

(v) video surveillance services or equipment;

(vi) vendor vetting in contingency or operational environments;

(vii) other electronic or information technology products and services; and

(viii) other risk areas as determined appropriate.

(B) Characterization and monitoring of risks posed by contractor behavior that constitute violations of laws or regulations, including those relating to—

(i) fraud;

(ii) ownership structures;

(iii) trafficking in persons;

(iv) workers' health and safety;

(v) affiliation with the enemy;

(vi) foreign influence; and

(vii) other risk areas as deemed appropriate.

(C) Characterization and assessment of the acquisition processes and procedures of the Department of Defense, including—

(i) market research;

(ii) responsibility determinations, including consideration of the need for special standards of responsibility to address the risks described in subparagraphs (A) and (B);

(iii) facilities clearances;

(iv) the development of contract requirements;

(v) the technical evaluation of offers and contract awards;

(vi) contractor mobilization, including hiring, training, and establishing facilities;

(vii) contract administration, contract management, and oversight;

(viii) contract audit for closeout;

(ix) suspension and debarment activities and administrative appeals activities;

(x) contractor business system reviews;

(xi) processes and procedures related to supply chain risk management and processes and procedures implemented pursuant to section 3252 of this title; and

(xii) other relevant processes and procedures.

(D) Characterization and monitoring of the health and activities of the defense industrial base, including those relating to—

(i) balance sheets, revenues, profitability, and debt;

(ii) investment, innovation, and technological and manufacturing sophistication;

(iii) finances, access to capital markets, and cost of raising capital within those markets;

(iv) corporate governance, leadership, and culture of performance; and

(v) history of performance on past Department of Defense and government contracts.

(E) Characterization and assessment of industrial base support policies, programs, and procedures, including—

(i) limitations and acquisition guidance relevant to the national technology and industrial base (as defined in section 4801(1) of this title);

(ii) limitations and acquisition guidance relevant to section 4862 of this title;

(iii) the Industrial Base Analysis and Sustainment program of the Department, including direct support and common design activities;

(iv) the Small Business Innovation Research Program (as defined in section 9(e) of the Small Business Act (15 U.S.C. 638(e));

(v) the Manufacturing Technology Program established under section 4841 of this title;

(vi) programs relating to the Defense Production Act of 1950 (50 U.S.C. 4511 et seq.); and

(vii) programs operating in each military department.

(c) ROLES AND RESPONSIBILITIES.—The Secretary of Defense shall designate the roles and responsibilities of organizations and individuals to execute activities under this section, including—

(1) the Under Secretary of Defense for Acquisition and Sustainment, including the Office of Defense Pricing and Contracting and the Office of Industrial Policy;

(2) service acquisition executives;

(3) program offices and procuring contracting officers;

(4) administrative contracting officers within the Defense Contract Management Agency and the Supervisor of Shipbuilding;

(5) the Defense Counterintelligence and Security Agency;

(6) the Defense Contract Audit Agency;

(7) each element of the Department of Defense which own or operate systems containing data relevant to contractors of the Department;

(8) the Under Secretary of Defense for Research and Engineering;

(9) the suspension and debarment official of the Department;

(10) the Chief Information Officer; and

(11) other relevant organizations and individuals.

(d) ENABLING DATA, TOOLS, AND SYSTEMS.—(1)(A) The Under Secretary of Defense for Acquisition and Sustainment, in consultation with the Chief Data Officer of the Department of Defense and the Director of the Defense Counterintelligence and Security Agency, shall assess the extent to which existing systems of record relevant to risk assessments and contracting are producing, exposing, and timely maintaining valid and reliable data for the purposes of the Department's continuous assessment and mitigation of risks in the defense industrial base.

(B) The assessment required under subparagraph (A) shall include the following elements:

(i) Identification of the necessary source data, to include data from contractors, intelligence and security activities, program offices, and commercial research entities.

(ii) A description of the modern data infrastructure, tools, and applications and what changes would improve the effectiveness and efficiency of mitigating the risks described in subsection (b)(2).

(iii) An assessment of the following systems owned or operated outside of the Department of Defense that the Department depends upon or to which it provides data:

(I) The Federal Awardee Performance and Integrity Information System (FAPIIS).

(II) The System for Award Management (SAM).

(III) The Federal Procurement Data System–Next Generation (FPDS–NG).

(IV) The Electronic Data Management Information System.

(V) Other systems the Secretary of Defense determines appropriate.

(iv) An assessment of systems owned or operated by the Department of Defense, including the Defense Counterintelligence and Security Agency and other defense agencies and field activities used to capture and analyze the status and performance (including past performance) of vendors and contractors.

(2) Based on the findings pursuant to paragraph (1), the Secretary of Defense shall develop a unified set of activities to modernize the systems of record, data sources and collection methods, and data exposure mechanisms. The unified set of activities should feature—

(A) the ability to continuously collect data on, assess, and mitigate risks;

(B) data analytics and business intelligence tools and methods; and

(C) continuous development and continuous delivery of secure software to implement the activities.

(e) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to limit or modify any other procurement policy, procedure, requirement, or restriction provided by law.

(f) IMPLEMENTATION AND REPORTING REQUIREMENTS.—The Secretary of Defense shall carry out the implementation phases set forth in, and submit to the congressional defense committees the items of information required by, the following paragraphs:

(1) PHASE 1: IMPLEMENTATION PLAN.—Not later than 90 days after the date of the enactment of this section, an implementation plan and schedule for carrying out the framework established pursuant to subsection (b), including—

(A) a discussion and recommendations for any changes to, or exemptions from, laws necessary for effective implementation, including updating the definitions in section 3252(c) of this title relating to covered procurement, covered system, and covered item of supply, and any similar terms defined in other law or regulation; and

(B) a process for an entity to contact the Department after the entity has taken steps to remediate, mitigate, or otherwise address

the risks identified by the Department in conducting activities under subsection (b).

(2) PHASE 2: IMPLEMENTATION OF FRAMEWORK.—Not later than one year after the date of the submission of the implementation plan and schedule required under paragraph (1), a report on the actions taken to implement the framework established pursuant to subsection (b), and supporting policies, procedures, and guidance relating to such actions.

(g) COMPTROLLER GENERAL REVIEWS.—

(1) BRIEFING.—Not later than February 15, 2020, the Comptroller General of the United States shall brief the congressional defense committees on Department of Defense efforts over the previous 5 years to continuously assess and mitigate risks to the defense industrial base across the acquisition process, and a summary of current and planned efforts.

(2) PERIODIC ASSESSMENTS.—The Comptroller General shall submit to the congressional defense committees three periodic assessments of Department of Defense progress in implementing the framework required under subsection (b), to be provided not later than October 15, 2020, March 15, 2022, and March 15, 2024.

(Added Pub. L. 116–92, div. A, title VIII, § 845(a), Dec. 20, 2019, 133 Stat. 1500, § 2509; renumbered § 4819 and amended Pub. L. 116–283, div. A, title VIII, § 843(a), title XVIII, §§ 1867(b), (d)(6), 1883(b)(2), Jan. 1, 2021, 134 Stat. 3765, 4281, 4282, 4294.)

REFERENCES IN TEXT

The Defense Production Act of 1950 (50 U.S.C. 4511 et seq.), referred to in subsec. (b)(2)(E)(vi), probably means act Sept. 8, 1950, ch. 932, 64 Stat. 798, which is classified principally to chapter 55 (§ 4501 et seq.) of Title 50, War and National Defense. For complete classification of this Act to the Code, see section 4501 of Title 50 and Tables.

The date of the enactment of this section, referred to in subsec. (f)(1), is the date of enactment of Pub. L. 116–92, which was approved Dec. 20, 2019.

AMENDMENTS

2021—Pub. L. 116–283, § 1867(b), renumbered section 2509 of this title as this section.

Subsec. (b)(2)(A). Pub. L. 116–283, § 843(a)(1)(A)(i), inserted ''such as those identified through the supply chain risk management process of the Department and by the Federal Acquisition Security Council, and'' after ''supply chain risks,'' in introductory provisions.

Subsec. (b)(2)(A)(ii). Pub. L. 116–283, § 843(a)(1)(A)(ii), struck out ''(other than optical transmission components)'' after ''equipment''.

Subsec. (b)(2)(C)(xi). Pub. L. 116–283, § 1883(b)(2), substituted ''section 3252'' for ''section 2339a''.

Pub. L. 116–283, § 843(a)(1)(B), added cl. (xi) and redesignated former cl. (xi) as (xii).

Subsec. (b)(2)(C)(xii). Pub. L. 116–283, § 843(a)(1)(B)(ii), redesignated cl. (xi) as (xii).

Subsec. (b)(2)(E). Pub. L. 116–283, § 843(a)(1)(C), added subpar. (E).

Subsec. (b)(2)(E)(i). Pub. L. 116–283, § 1883(b)(2), substituted ''section 4801(1)'' for ''section 2500(1)''.

Subsec. (b)(2)(E)(ii). Pub. L. 116–283, § 1883(b)(2), substituted ''section 4862'' for ''section 2533a''.

Subsec. (b)(2)(E)(v). Pub. L. 116–283, § 1883(b)(2), substituted ''section 4841'' for ''section 2521''.

Subsec. (f)(1)(A). Pub. L. 116–283, § 1867(d)(6), substituted ''section 3252(c)'' for ''section 2339a(e)''.

Subsec. (f)(2). Pub. L. 116–283, § 843(a)(2), inserted '', and supporting policies, procedures, and guidance relating to such actions'' after ''subsection (b)''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by sections 1867(b), (d)(6) and 1883(b)(2) of Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

CHAPTER 383—DEVELOPMENT, APPLICATION, AND SUPPORT OF DUAL-USE TECHNOLOGIES

Sec.
4831. Defense dual-use critical technology program.
4832. Encouragement of technology transfer.
4833. Federal Defense Laboratory Diversification Program.
4834. Overseas foreign critical technology monitoring and assessment financial assistance program.

PRIOR PROVISIONS

A prior chapter 383 ''LOAN GUARANTEE PROGRAMS'', consisting of reserved section 4861, was repealed by Pub. L. 116–283, div. A, title XVIII, § 1873(a)(1), Jan. 1, 2021, 134 Stat. 4289.

§ 4831. Defense dual-use critical technology program

(a) ESTABLISHMENT OF PROGRAM.—The Secretary of Defense shall conduct a program to further the national security objectives set forth in section 4811(a) of this title by encouraging and providing for research, development, and application of dual-use critical technologies. The Secretary may make grants, enter into contracts, or enter into cooperative agreements and other transactions pursuant to section 4002 of this title in furtherance of the program. The Secretary shall identify projects to be conducted as part of the program.

(b) ASSISTANCE AUTHORIZED.—The Secretary of Defense may provide technical and other assistance to facilitate the achievement of the purposes of projects conducted under the program. In providing such assistance, the Secretary shall make available, as appropriate for the work to be performed, equipment and facilities of Department of Defense laboratories (including the scientists and engineers at those laboratories) for purposes of projects selected by the Secretary.

(c) FINANCIAL COMMITMENT OF NON-FEDERAL GOVERNMENT PARTICIPANTS.—(1) The total amount of funds provided by the Federal Government for a project conducted under the program may not exceed 50 percent of the total cost of the project. However, the Secretary of Defense may agree to a project in which the total amount of funds provided by the Federal Government exceeds 50 percent if the Secretary determines the project is particularly meritorious, but the project would not otherwise have sufficient non-Federal funding or in-kind contributions.

(2) The Secretary may prescribe regulations to provide for consideration of in-kind contributions by non-Federal Government participants in a project conducted under the program for the purpose of calculating the share of the project costs that has been or is being undertaken by such participants. In such regulations, the Secretary may authorize a participant that

is a small business concern to use funds received under the Small Business Innovation Research Program or the Small Business Technology Transfer Program to help pay the costs of project activities. Any such funds so used may be considered in calculating the amount of the financial commitment undertaken by the non-Federal Government participants unless the Secretary determines that the small business concern has not made a significant equity percentage contribution in the project from non-Federal sources.

(3) The Secretary shall consider a project proposal submitted by a small business concern without regard to the ability of the small business concern to immediately meet its share of the anticipated project costs. Upon the selection of a project proposal submitted by a small business concern, the small business concern shall have a period of not less than 120 days in which to arrange to meet its financial commitment requirements under the project from sources other than a person of a foreign country. If the Secretary determines upon the expiration of that period that the small business concern will be unable to meet its share of the anticipated project costs, the Secretary shall revoke the selection of the project proposal submitted by the small business concern.

(d) SELECTION PROCESS.—Competitive procedures shall be used in the conduct of the program.

(e) SELECTION CRITERIA.—The criteria for the selection of projects under the program shall include the following:

(1) The extent to which the proposed project advances and enhances the national security objectives set forth in section 4811(a) of this title.

(2) The technical excellence of the proposed project.

(3) The qualifications of the personnel proposed to participate in the research activities of the proposed project.

(4) An assessment of timely private sector investment in activities to achieve the goals and objectives of the proposed project other than through the project.

(5) The potential effectiveness of the project in the further development and application of each technology proposed to be developed by the project for the national technology and industrial base.

(6) The extent of the financial commitment of eligible firms to the proposed project.

(7) The extent to which the project does not unnecessarily duplicate projects undertaken by other agencies.

(f) REGULATIONS.—The Secretary of Defense shall prescribe regulations for the purposes of this section.

(Added Pub. L. 102–484, div. D, title XLII, § 4221(a), Oct. 23, 1992, 106 Stat. 2677, § 2511; amended Pub. L. 103–160, div. A, title XIII, §§ 1315(a), 1317(c), Nov. 30, 1993, 107 Stat. 1787, 1789; Pub. L. 103–337, div. A, title XI, § 1115(a), Oct. 5, 1994, 108 Stat. 2868; Pub. L. 104–106, div. A, title X, § 1081(c), Feb. 10, 1996, 110 Stat. 452; renumbered § 4831 and amended Pub. L. 116–283, div. A, title XVIII, § 1868(b), (c)(1), Jan. 1, 2021, 134 Stat. 4282, 4283.)

PRIOR PROVISIONS

A prior section 4831 was renumbered section 7831 of this title.

Provisions similar to those in this section were contained in section 2523 of this title, prior to repeal by Pub. L. 102–484, § 4202(a).

AMENDMENTS

2021—Pub. L. 116–283, § 1868(b), renumbered section 2511 of this title as this section.

Subsec. (a). Pub. L. 116–283, § 1868(c)(1)(A), substituted ''section 4811(a)'' for ''section 2501(a)'' and ''section 4002'' for ''section 2371''.

Subsec. (e)(1). Pub. L. 116–283, § 1868(c)(1)(B), substituted ''section 4811(a)'' for ''section 2501(a)''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 4832. Encouragement of technology transfer

(a) ENCOURAGEMENT OF TRANSFER REQUIRED.—The Secretary of Defense shall encourage, to the extent consistent with national security objectives, the transfer of technology between laboratories and research centers of the Department of Defense and other Federal agencies, State and local governments, colleges and universities, and private persons in cases that are likely to result in accomplishing the objectives set forth in section 4811(a) of this title.

(b) EXAMINATION AND IMPLEMENTATION OF METHODS TO ENCOURAGE TRANSFER.—The Secretary shall examine and implement methods, in addition to the encouragement referred to in subsection (a) and the program described in subsection (c), that are consistent with national security objectives and will enable Department of Defense personnel to promote technology transfer.

(c) PROGRAM TO ENCOURAGE DIVERSIFICATION OF DEFENSE LABORATORIES.—(1) The Secretary of Defense shall establish and implement a program to be known as the Federal Defense Laboratory Diversification Program (hereinafter in this subsection referred to as the ''Program''). The purpose of the Program shall be to encourage greater cooperation in research and production activities carried out by defense laboratories and by private industry of the United States in order to enhance and improve the products of such research and production activities.

(2) Under the Program, the defense laboratories, in coordination with the Office of Technology Transfer in the Office of the Secretary of Defense, shall carry out cooperative activities with private industry in order to promote (by the use or exchange of patents, licenses, cooperative research and development agreements and other cooperative agreements, and the use of symposia, meetings, and other similar mechanisms) the transfer of defense or dual-use technologies from the defense laboratories to private industry, and the development and application of such technologies by the defense laboratories and private industry, for the purpose of the commercial utilization of such technologies by private industry.

(3) The Secretary of Defense shall develop and annually update a plan for each defense laboratory that participates in the Program under which plan the laboratory shall carry out cooperative activities with private industry to promote the transfers described in subsection (b).

(4) In this subsection, the term ''defense laboratory'' means any laboratory owned or operated by the Department of Defense that carries out research in fiscal year 1993 in an amount in excess of $50,000,000.

(Added Pub. L. 102–484, div. D, title XLII, § 4224(a), Oct. 23, 1992, 106 Stat. 2682, § 2514; amended Pub. L. 104–201, div. A, title VIII, § 829(f), Sept. 23, 1996, 110 Stat. 2614; renumbered § 4832 and amended Pub. L. 116–283, div. A, title XVIII, § 1868(b), (c)(2), Jan. 1, 2021, 134 Stat. 4282, 4283.)

PRIOR PROVISIONS

A prior section 4832, act Aug. 10, 1956, ch. 1041, 70A Stat. 272, authorized Secretary of the Army to prescribe regulations for the accounting for Army property, prior to repeal by Pub. L. 110–181, div. A, title III, §375(c)(1)(A), Jan. 28, 2008, 122 Stat. 83.

Provisions similar to those in subsecs. (a) and (b) of this section were contained in section 2363 of this title prior to repeal by Pub. L. 102–484, §§4224(c), 4271(a)(2).

AMENDMENTS

2021—Pub. L. 116–283, § 1868(b), renumbered section 2514 of this title as this section.

Subsec. (a). Pub. L. 116–283, § 1868(c)(2), substituted ''section 4811(a)'' for ''section 2501(a)''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 4833. Federal Defense Laboratory Diversification Program

(a) ESTABLISHMENT OF PROGRAM.—The Secretary of Defense shall conduct a program in accordance with this section for the purpose of promoting cooperation between Department of Defense laboratories and industry on research and development of dual-use technologies in order to further the national security objectives set forth in section 4811(a) of this title.

(b) PARTNERSHIPS.—(1) The Secretary shall provide for the establishment under the program of cooperative arrangements (hereinafter in this section referred to as ''partnerships'') between a Department of Defense laboratory and eligible firms and nonprofit research corporations. A partnership may also include one or more additional Federal laboratories, institutions of higher education, agencies of State and local governments, and other entities, as determined appropriate by the Secretary.

(2) For purposes of this section, a federally funded research and development center shall be considered a Department of Defense laboratory if the center is sponsored by the Department of Defense.

(c) ASSISTANCE AUTHORIZED.—(1) The Secretary may make grants, enter into contracts, enter into cooperative agreements and other transactions pursuant to section 4002 of this title, and enter into cooperative research and development agreements under section 12 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a) in order to establish partnerships.

(2) Subject to subsection (d), the Secretary may provide a partnership with technical and other assistance in order to facilitate the achievement of the purpose of this section.

(d) FINANCIAL COMMITMENT OF NON-FEDERAL GOVERNMENT PARTICIPANTS.—(1) The Secretary shall ensure that the non-Federal Government participants in a partnership make a substantial contribution to the total cost of partnership activities. The amount of the contribution shall be commensurate with the risk undertaken by such participants and the potential benefits of the activities for such participants.

(2) The regulations prescribed pursuant to section 4831(c)(2) of this title shall apply to in-kind contributions made by non-Federal Government participants in a partnership.

(e) SELECTION PROCESS.—Competitive procedures shall be used in the establishment of partnerships.

(f) SELECTION CRITERIA.—The criteria for the selection of a proposed partnership for establishment under this section shall include the criteria set forth in section 4831(e) of this title.

(g) REGULATIONS.—The Secretary shall prescribe regulations for the purposes of this section.

(Added Pub. L. 103–337, div. A, title XI, § 1113(a), Oct. 5, 1994, 108 Stat. 2864, § 2519; amended Pub. L. 104–106, div. A, title X, § 1081(d), Feb. 10, 1996, 110 Stat. 454; renumbered § 4833 and amended Pub. L. 116–283, div. A, title XVIII, § 1868(b), (c)(3), Jan. 1, 2021, 134 Stat. 4282, 4283.)

PRIOR PROVISIONS

A prior section 4833, act Aug. 10, 1956, ch. 1041, 70A Stat. 272, related to accountability of Army officers for public money, prior to repeal by Pub. L. 87–480, §1(2), June 8, 1962, 76 Stat. 94. See section 2773 of this title.

AMENDMENTS

2021—Pub. L. 116–283, § 1868(b), renumbered section 2519 of this title as this section.

Subsec. (a). Pub. L. 116–283, § 1868(c)(3)(A), substituted ''section 4811(a)'' for ''section 2501(a)''.

Subsec. (c)(1). Pub. L. 116–283, § 1868(c)(3)(B), substituted ''section 4002'' for ''section 2371''.

Subsec. (d)(2). Pub. L. 116–283, § 1868(c)(3)(C), substituted ''section 4831(c)(2)'' for ''section 2511(c)(2)''.

Subsec. (f). Pub. L. 116–283, § 1868(c)(3)(D), substituted ''section 4831(e)'' for ''section 2511(e)''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 4834. Overseas foreign critical technology monitoring and assessment financial assistance program

(a) ESTABLISHMENT AND PURPOSE OF PROGRAM.—The Secretary of Defense may establish a foreign critical technology monitoring and assessment program. Under the program, the Secretary may enter into cooperative arrangements

with one or more eligible not-for-profit organizations in order to provide financial assistance for the establishment of foreign critical technology monitoring and assessment offices in Europe, Pacific Rim countries, and such other countries as the Secretary considers appropriate.

(b) ELIGIBLE ORGANIZATIONS.—Any not-for-profit industrial or professional organization that has economic and scientific interests in research, development, and applications of dual-use critical technologies is eligible to enter into a cooperative arrangement referred to in subsection (a).

(Added Pub. L. 102–190, div. A, title VIII, § 821(a), Dec. 5, 1991, 105 Stat. 1431, § 2526; renumbered § 2518, Pub. L. 102–484, div. D, title XLII, § 4228, Oct. 23, 1992, 106 Stat. 2685; renumbered § 4834, Pub. L. 116–283, div. A, title XVIII, § 1868(b), Jan. 1, 2021, 134 Stat. 4282.)

PRIOR PROVISIONS

A prior section 4834, acts Aug. 10, 1956, ch. 1041, 70A Stat. 272; Nov. 2, 1966, Pub. L. 89–718, § 31, 80 Stat. 1119, required commissioned officers of the Quartermaster Corps to give fidelity bonds, prior to repeal by Pub. L. 92–310, title II, § 204(a), June 6, 1972, 86 Stat. 202.

A prior section 4835, act Aug. 10, 1956, ch. 1041, 70A Stat. 273; Pub. L. 103–160, div. A, title III, § 362, Nov. 30, 1993, 107 Stat. 1628, related to actions taken upon reports of surveys and vouchers pertaining to the loss, spoilage, unserviceability, unsuitability, or destruction of or damage to property of the United States under the control of the Department of the Army, prior to repeal by Pub. L. 107–314, div. A, title X, § 1006(c)(1), (d), Dec. 2, 2002, 116 Stat. 2633, applicable with respect to property affected after the effective date of regulations prescribed pursuant to section 2787 of this title.

A prior section 4836, act Aug. 10, 1956, ch. 1041, 70A Stat. 273, prohibited unauthorized disposition of individual equipment by enlisted members of the Army, prior to repeal by Pub. L. 110–181, div. A, title III, § 375(c)(1)(B), Jan. 28, 2008, 122 Stat. 83.

Prior sections 4837 to 4840 were renumbered sections 7837 to 7840 of this title, respectively.

AMENDMENTS

2021—Pub. L. 116–283 renumbered section 2518 of this title as this section.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

CHAPTER 384—MANUFACTURING TECHNOLOGY

Sec.
4841. Manufacturing Technology Program.
4842. Joint Defense Manufacturing Technology Panel.
4843. Armament retooling and manufacturing.

§ 4841. Manufacturing Technology Program

(a) ESTABLISHMENT.—The Secretary of Defense shall establish a Manufacturing Technology Program to further the national security objectives of section 4811(a) of this title through the development and application of advanced manufacturing technologies and processes that will reduce the acquisition and supportability costs of defense weapon systems and reduce manufacturing and repair cycle times across the life cycles of such systems. The Secretary shall use the joint planning process of the directors of the Department of Defense laboratories in establishing the program. The Under Secretary of Defense for Research and Engineering shall administer the program.

(b) PURPOSE OF PROGRAM.—The Secretary of Defense shall use the program—

(1) to provide centralized guidance and direction (including goals, milestones, and priorities) to the military departments and the Defense Agencies on all matters relating to manufacturing technology;

(2) to direct the development and implementation of Department of Defense plans, programs, projects, activities, and policies that promote the development and application of advanced technologies to manufacturing processes, tools, and equipment;

(3) to improve the manufacturing quality, productivity, technology, and practices of businesses and workers providing goods and services to the Department of Defense;

(4) to focus Department of Defense support for the development and application of advanced manufacturing technologies and processes for use to meet manufacturing requirements that are essential to the national defense, as well as for repair and remanufacturing in support of the operations of systems commands, depots, air logistics centers, and shipyards;

(5) to disseminate information concerning improved manufacturing improvement concepts, including information on such matters as best manufacturing practices, product data exchange specifications, computer-aided acquisition and logistics support, and rapid acquisition of manufactured parts;

(6) to sustain and enhance the skills and capabilities of the manufacturing work force;

(7) to promote high-performance work systems (with development and dissemination of production technologies that build upon the skills and capabilities of the work force), high levels of worker education and training; and

(8) to ensure appropriate coordination between the manufacturing technology programs and industrial preparedness programs of the Department of Defense and similar programs undertaken by other departments and agencies of the Federal Government or by the private sector.

(c) EXECUTION.—(1) The Secretary may carry out projects under the program through the Secretaries of the military departments and the heads of the Defense Agencies.

(2) In the establishment and review of requirements for an advanced manufacturing technology or process, the Secretary shall ensure the participation of those prospective technology users that are expected to be the users of that technology or process.

(3) The Secretary shall ensure that each project under the program for the development of an advanced manufacturing technology or process includes an implementation plan for the transition of that technology or process to the prospective technology users that will be the users of that technology or process.

(4) In the periodic review of a project under the program, the Secretary shall ensure participation by those prospective technology users that are the expected users for the technology or process being developed under the project.

(5) In order to promote increased dissemination and use of manufacturing technology throughout the national defense technology and industrial base, the Secretary shall seek, to the maximum extent practicable, the participation of manufacturers of manufacturing equipment in the projects under the program.

(6) In this subsection, the term ''prospective technology users'' means the following officials and elements of the Department of Defense:

(A) Program and project managers for defense weapon systems.

(B) Systems commands.

(C) Depots.

(D) Air logistics centers.

(E) Shipyards.

(d) COMPETITION AND COST SHARING.—(1) In accordance with the policy stated in section 4008 of this title, competitive procedures shall be used for awarding all grants and entering into all contracts, cooperative agreements, and other transactions under the program.

(2) Under the competitive procedures used, the factors to be considered in the evaluation of each proposed grant, contract, cooperative agreement, or other transaction for a project under the program shall include the extent to which that proposed transaction provides for the proposed recipient to share in the cost of the project. For a project for which the Government receives an offer from only one offeror, the contracting officer shall negotiate the ratio of contract recipient cost to Government cost that represents the best value to the Government.

(e) FIVE-YEAR STRATEGIC PLAN.—(1) The Secretary shall develop a plan for the program that includes the following:

(A) The overall manufacturing technology goals, milestones, priorities, and investment strategy for the program.

(B) The objectives of, and funding for, the program for each military department and each Defense Agency that shall participate in the program during the period of the plan.

(2) The Secretary shall include in the plan mechanisms for assessing the effectiveness of the program under the plan.

(3) The Secretary shall update the plan not less frequently than once every four years.

(4) Each plan, and each update to the plan, shall cover a period of five fiscal years.

(Added Pub. L. 103–160, div. A, title VIII, § 801(a)(1), Nov. 30, 1993, 107 Stat. 1700, § 2525; amended Pub. L. 103–337, div. A, title II, § 256(a)(1), Oct. 5, 1994, 108 Stat. 2704; Pub. L. 104–106, div. A, title II, § 276(a), title X, § 1081(e), title XV, § 1503(a)(28), Feb. 10, 1996, 110 Stat. 241, 454, 512; Pub. L. 105–85, div. A, title II, § 211(a), (b), Nov. 18, 1997, 111 Stat. 1657; Pub. L. 105–261, div. A, title II, § 213, Oct. 17, 1998, 112 Stat. 1947; Pub. L. 106–65, div. A, title II, § 216, Oct. 5, 1999, 113 Stat. 543; renumbered § 2521, Pub. L. 106–398, § 1 [[div. A], title III, § 344(c)(1)(A)], Oct. 30, 2000, 114 Stat. 1654, 1654A–71; Pub. L. 107–107, div. A, title X, § 1048(b)(2), Dec. 28, 2001, 115 Stat. 1225; Pub. L. 107–314, div. A, title II, § 213, Dec. 2, 2002, 116 Stat. 2481; Pub. L. 108–136, div. A, title X, § 1031(a)(24), Nov. 24, 2003, 117 Stat. 1598; Pub. L. 110–181, div. A, title II, § 238(a), Jan. 28, 2008, 122 Stat. 48; Pub. L. 111–84, div. A, title II, § 212, Oct. 28, 2009, 123 Stat. 2225; Pub. L. 112–239, div. A, title X, § 1076(c)(2)(A)(i), Jan. 2, 2013, 126 Stat. 1949; Pub. L. 113–291, div. A, title II, § 212, Dec. 19, 2014, 128 Stat. 3325; Pub. L. 116–92, div. A, title IX, § 902(76), Dec. 20, 2019, 133 Stat. 1552; renumbered § 4841 and amended Pub. L. 116–283, div. A, title XVIII, § 1869(b), (c)(1), Jan. 1, 2021, 134 Stat. 4283.)

PRIOR PROVISIONS

A prior section 4841 was renumbered section 7841 of this title.

AMENDMENTS

2021—Pub. L. 116–283, § 1869(b)(1), renumbered section 2521 of this title as this section.

Subsec. (a). Pub. L. 116–283, § 1869(b)(2)(A), substituted ''section 4811(a)'' for ''section 2501(a)''.

Subsec. (d)(1). Pub. L. 116–283, § 1869(b)(2)(B), substituted ''section 4008'' for ''section 2374''.

Subsecs. (e), (f). Pub. L. 116–283, § 1869(c)(1), redesignated subsec. (f) as (e), transferred it to appear after subsec. (d) and transferred subsec. (e), related to Joint Defense Manufacturing Technology Panel, to section 4842 of this title.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 4842. Joint Defense Manufacturing Technology Panel

(a) There is in the Department of Defense the Joint Defense Manufacturing Technology Panel.

(b)(1) The Chair of the Joint Defense Manufacturing Technology Panel shall be the head of the Panel. The Chair shall be appointed, on a rotating basis, from among the appropriate personnel of the military departments and Defense Agencies with manufacturing technology programs.

(2) The Panel shall be composed of at least one individual from among appropriate personnel of each military department and Defense Agency with manufacturing technology programs. The Panel may include as ex-officio members such individuals from other government organizations, academia, and industry as the Chair considers appropriate.

(c) The purposes of the Panel shall be as follows:

(1) To identify and integrate requirements for the program.

(2) To conduct joint planning for the program.

(3) To develop joint strategies for the program.

(d) In carrying out the purposes specified in subsection (c), the Panel shall perform the functions as follows:

(1) Conduct comprehensive reviews and assessments of defense-related manufacturing issues being addressed by the manufacturing technology programs and related activities of the Department of Defense.

(2) Execute strategic planning to identify joint planning opportunities for increased cooperation in the development and implementation of technological products and the leveraging of funding for such purposes with the private sector and other government agencies.

(3) Ensure the integration and coordination of requirements and programs under the program with the Office of the Secretary of Defense and other national-level initiatives, including the establishment of information exchange processes with other government agencies, private industry, academia, and professional associations.

(4) Conduct such other functions as the Under Secretary of Defense for Research and Engineering shall specify.

(e) The Panel shall report to and receive direction from one or more individuals designated by the Under Secretary of Defense for Research and Engineering for purposes of this subsection on manufacturing technology issues of multi-service concern and application.

(f) The administrative expenses of the Panel shall be borne by each military department and Defense Agency with manufacturing technology programs in such manner as the Panel shall provide.

(Added and amended Pub. L. 116–283, div. A, title XVIII, § 1869(c)(1)(B), (2), Jan. 1, 2021, 134 Stat. 4283, 4284.)

CODIFICATION

The text of subsec. (e), related to Joint Defense Manufacturing Technology Panel, of section 4841 of this title, which was transferred to this section by Pub. L. 116–283, § 1869(c)(1)(B), was based on Pub. L. 111–84, div. A, title II, § 212(2), Oct. 28, 2009, 123 Stat. 2225; Pub. L. 112–239, div. A, title X, § 1076(c)(2)(A)(i), Jan. 2, 2013, 126 Stat. 1949; Pub. L. 113–291, div. A, title II, § 212(a), Dec. 19, 2014, 128 Stat. 3325; Pub. L. 116–92, div. A, title IX, § 902(76)(B), (C), Dec. 20, 2019, 133 Stat. 1552.

PRIOR PROVISIONS

A prior section 4842 was renumbered section 7842 of this title.

AMENDMENTS

2021—Pub. L. 116–283, § 1869(c)(2)(A), (B), struck out subsec. (e) designation and heading and redesignated pars. (1) to (6) as subsecs. (a) to (f), respectively.

Pub. L. 116–283, § 1869(c)(1)(B), transferred subsec. (e), related to Joint Defense Manufacturing Technology Panel, of section 4841 of this title to this section and added section catchline.

Subsec. (b). Pub. L. 116–283, § 1869(c)(2)(C), redesignated subpars. (A) and (B) as pars. (1) and (2), respectively.

Subsec. (c). Pub. L. 116–283, § 1869(c)(2)(D), redesignated subpars. (A) to (C) as pars. (1) to (3), respectively.

Subsec. (d). Pub. L. 116–283, § 1869(c)(2)(E), substituted ''subsection (c)'' for ''paragraph (3)'' in introductory provisions and redesignated subpars. (A) to (D) as pars. (1) to (4), respectively.

Subsec. (e). Pub. L. 116–283, § 1869(c)(2)(F), substituted ''this subsection'' for ''this paragraph''.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 4843. Armament retooling and manufacturing

The Secretary of the Army is authorized by chapter 764 of this title to carry out programs for the support of armaments retooling and manufacturing in the national defense industrial and technology base.

(Added Pub. L. 106–398, § 1 [[div. A], title III, § 344(c)(1)(B)], Oct. 30, 2000, 114 Stat. 1654, 1654A–71, § 2522; amended Pub. L. 115–232, div. A, title VIII, § 809(a), Aug. 13, 2018, 132 Stat. 1840; renumbered § 4843, Pub. L. 116–283, div. A, title XVIII, § 1869(d), Jan. 1, 2021, 134 Stat. 4284.)

AMENDMENTS

2021—Pub. L. 116–283 renumbered section 2522 of this title as this section.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

CHAPTER 385—OTHER TECHNOLOGY BASE POLICIES AND PROGRAMS

Subchapter		Sec.
I.	Defense Trade Reciprocity and Offset Policy	4851
II.	Limitations on Procurement of Certain Items from Foreign Sources	4861
III.	Limitations on Procurement from Certain Foreign Sources	4871
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PRIOR PROVISIONS

A prior chapter 385 ''PROCUREMENT TECHNICAL ASSISTANCE COOPERATIVE AGREEMENT PROGRAM'', consisting of reserved section 4881, was repealed by Pub. L. 116–283, div. A, title XVIII, § 1872(a)(1)(A), Jan. 1, 2021, 134 Stat. 4287.

SUBCHAPTER I—DEFENSE TRADE RECIPROCITY AND OFFSET POLICY

Sec.	
4851.	Defense memoranda of understanding and related agreements.
4852.	Offset policy; notification.

§ 4851. Defense memoranda of understanding and related agreements

(a) CONSIDERATIONS IN MAKING AND IMPLEMENTING MOUS AND RELATED AGREEMENTS.—In the negotiation, renegotiation, and implementation of any existing or proposed memorandum of understanding, or any existing or proposed agreement related to a memorandum of understanding, between the Secretary of Defense, acting on behalf of the United States, and one or more foreign countries (or any instrumentality of a foreign country) relating to research, development, or production of defense equipment, or to the reciprocal procurement of defense items, the Secretary of Defense shall—

(1) consider the effects of such existing or proposed memorandum of understanding or related agreement on the defense technology and industrial base of the United States; and

(2) regularly solicit and consider comments and recommendations from the Secretary of

Commerce with respect to the commercial implications of such memorandum of understanding or related agreement and the potential effects of such memorandum of understanding or related agreement on the international competitive position of United States industry.

(b) INTER-AGENCY REVIEW OF EFFECTS ON UNITED STATES INDUSTRY.—Whenever the Secretary of Commerce has reason to believe that an existing or proposed memorandum of understanding or related agreement has, or threatens to have, a significant adverse effect on the international competitive position of United States industry, the Secretary may request an interagency review of the memorandum of understanding or related agreement. If, as a result of the review, the Secretary determines that the commercial interests of the United States are not being served or would not be served by adhering to the terms of such existing memorandum or related agreement or agreeing to such proposed memorandum or related agreement, as the case may be, the Secretary shall recommend to the President the renegotiation of the existing memorandum or related agreement or any modification to the proposed memorandum of understanding or related agreement that he considers necessary to ensure an appropriate balance of interests.

(c) LIMITATION ON ENTERING INTO MOUS AND RELATED AGREEMENTS.—A memorandum of understanding or related agreement referred to in subsection (a) may not be entered into or implemented if the President, taking into consideration the results of the inter-agency review, determines that such memorandum of understanding or related agreement has or is likely to have a significant adverse effect on United States industry that outweighs the benefits of entering into or implementing such memorandum or agreement.

(Added Pub. L. 100–456, div. A, title VIII, § 824, Sept. 29, 1988, 102 Stat. 2019, § 2504; amended Pub. L. 101–189, div. A, title VIII, § 815(a), Nov. 29, 1989, 103 Stat. 1500; Pub. L. 101–510, div. A, title XIV, § 1453, Nov. 5, 1990, 104 Stat. 1694; renumbered § 2531 and amended Pub. L. 102–484, div. D, title XLII, §§ 4202(a), 4271(c), Oct. 23, 1992, 106 Stat. 2659, 2696; renumbered § 4851, Pub. L. 116–283, div. A, title XVIII, § 1870(b), Jan. 1, 2021, 134 Stat. 4284.)

AMENDMENTS

2021—Pub. L. 116–283 renumbered section 2531 of this title as this section.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 4852. Offset policy; notification

(a) ESTABLISHMENT OF OFFSET POLICY.—The President shall establish, consistent with the requirements of this section, a comprehensive policy with respect to contractual offset arrangements in connection with the purchase of defense equipment or supplies which addresses the following:

(1) Transfer of technology in connection with offset arrangements.

(2) Application of offset arrangements, including cases in which United States funds are used to finance the purchase by a foreign government.

(3) Effects of offset arrangements on specific subsectors of the industrial base of the United States and for preventing or ameliorating any serious adverse effects on such subsectors.

(b) TECHNOLOGY TRANSFER.—(1) No official of the United States may enter into a memorandum of understanding or other agreement with a foreign government that would require the transfer of United States defense technology to a foreign country or a foreign firm in connection with a contract that is subject to an offset arrangement if the implementation of such memorandum or agreement would significantly and adversely affect the defense industrial base of the United States and would result in a substantial financial loss to a United States firm.

(2) Paragraph (1) shall not apply in the case of a memorandum of understanding or agreement described in paragraph (1) if the Secretary of Defense, in consultation with the Secretary of Commerce and the Secretary of State, determines that a transfer of United States defense technology pursuant to such understanding or agreement will result in strengthening the national security of the United States and so certifies to Congress.

(3) If a United States firm is required under the terms of a memorandum of understanding, or other agreement entered into by the United States with a foreign country, to transfer defense technology to a foreign country, the United States firm may protest the determination to the Secretary of Defense on the grounds that the transfer of such technology would adversely affect the defense industrial base of the United States and would result in substantial financial loss to the protesting firm. The Secretary of Defense, in consultation with the Secretary of Commerce and the Secretary of State, shall make the final determination of the validity of the protesting firm's claim.

(c) NOTIFICATION REGARDING OFFSETS.—If at any time a United States firm enters into a contract for the sale of a weapon system or defense-related item to a foreign country or foreign firm and such contract is subject to an offset arrangement exceeding $50,000,000 in value, such firm shall notify the Secretary of Defense of the proposed sale. Notification shall be made under this subsection in accordance with regulations prescribed by the Secretary of Defense in consultation with the Secretary of Commerce.

(d) DEFINITIONS.—In this section:

(1) The term ''United States firm'' means a business entity that performs substantially all of its manufacturing, production, and research and development activities in the United States.

(2) The term ''foreign firm'' means a business entity other than a United States firm.

(Added Pub. L. 100–456, div. A, title VIII, § 825(b), Sept. 29, 1988, 102 Stat. 2020, § 2505; renumbered § 2532, Pub. L. 102–484, div. D, title XLII, § 4202(a), Oct. 23, 1992, 106 Stat. 2659; renumbered § 4852,

Pub. L. 116–283, div. A, title XVIII, § 1870(b), Jan. 1, 2021, 134 Stat. 4284.)

AMENDMENTS

2021—Pub. L. 116–283 renumbered section 2532 of this title as this section.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

SUBCHAPTER II—LIMITATIONS ON PROCUREMENT OF CERTAIN ITEMS FROM FOREIGN SOURCES

Sec.
4861. Determinations of public interest under chapter 83 of title 41.
4862. Requirement to buy certain articles from American sources; exceptions.
4863. Requirement to buy strategic materials critical to national security from American sources; exceptions.
4864. Miscellaneous limitations on the procurement of goods other than United States goods.

§ 4861. Determinations of public interest under chapter 83 of title 41

(a) In determining under section 8302 of title 41 whether application of chapter 83 of such title is inconsistent with the public interest, the Secretary of Defense shall consider the following:

(1) The bids or proposals of small business firms in the United States which have offered to furnish American goods.

(2) The bids or proposals of all other firms in the United States which have offered to furnish American goods.

(3) The United States balance of payments.

(4) The cost of shipping goods which are other than American goods.

(5) Any duty, tariff, or surcharge which may enter into the cost of using goods which are other than American goods.

(6) A need to ensure that the Department of Defense has access to advanced, state-of-the-art commercial technology.

(7) The need to protect the national technology and industrial base, to preserve and enhance the national technology employment base, and to provide for a defense mobilization base.

(8) A need to ensure that application of different rules of origin for United States end items and foreign end items does not result in an award to a firm other than a firm providing a product produced in the United States.

(9) Any need—

(A) to maintain the same source of supply for spare and replacement parts for an end item that qualifies as an American good; or

(B) to maintain the same source of supply for spare and replacement parts in order not to impair integration of the military and commercial industrial base.

(10) The national security interests of the United States.

(b) In this section, the term ''goods which are other than American goods'' means—

(1) an end product that is not mined, produced, or manufactured in the United States; or

(2) an end product that is manufactured in the United States but which includes components mined, produced, or manufactured outside the United States the aggregate cost of which exceeds the aggregate cost of the components of such end product that are mined, produced, or manufactured in the United States.

(Added Pub. L. 100–370, § 3(a)(1), July 19, 1988, 102 Stat. 855, § 2501; renumbered § 2506, Pub. L. 100–456, div. A, title VIII, § 821(b)(1)(A), Sept. 29, 1988, 102 Stat. 2014; renumbered § 2533, Pub. L. 102–484, div. D, title XLII, § 4202(a), Oct. 23, 1992, 106 Stat. 2659; amended Pub. L. 103–337, div. A, title VIII, § 812(a), (b)(1), Oct. 5, 1994, 108 Stat. 2815, 2816; Pub. L. 104–106, div. D, title XLIII, § 4321(b)(20), Feb. 10, 1996, 110 Stat. 673; Pub. L. 105–85, div. A, title X, § 1073(a)(54), Nov. 18, 1997, 111 Stat. 1903; Pub. L. 111–350, § 5(b)(37), Jan. 4, 2011, 124 Stat. 3845; Pub. L. 113–291, div. A, title X, § 1071(a)(9), Dec. 19, 2014, 128 Stat. 3505; renumbered § 4861, Pub. L. 116–283, div. A, title XVIII, § 1870(c)(2), Jan. 1, 2021, 134 Stat. 4285.)

AMENDMENTS

2021—Pub. L. 116–283 renumbered section 2533 of this title as this section.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 4862. Requirement to buy certain articles from American sources; exceptions

(a) REQUIREMENT.—Except as provided in subsections (c) through (h), funds appropriated or otherwise available to the Department of Defense may not be used for the procurement of an item described in subsection (b) if the item is not grown, reprocessed, reused, or produced in the United States.

(b) COVERED ITEMS.—An item referred to in subsection (a) is any of the following:

(1) An article or item of—

(A) food;

(B) clothing and the materials and components thereof, other than sensors, electronics, or other items added to, and not normally associated with, clothing (and the materials and components thereof);

(C) tents (and the structural components thereof), tarpaulins, or covers;

(D) cotton and other natural fiber products, woven silk or woven silk blends, spun silk yarn for cartridge cloth, synthetic fabric or coated synthetic fabric (including all textile fibers and yarns that are for use in such fabrics), canvas products, or wool (whether in the form of fiber or yarn or contained in fabrics, materials, or manufactured articles); or

(E) any item of individual equipment manufactured from or containing such fibers, yarns, fabrics, or materials.

(2) Hand or measuring tools.

(3)[1] Stainless steel flatware.

(4)[1] Dinnerware.

(c) AVAILABILITY EXCEPTION.—Subsection (a) does not apply to the extent that the Secretary of Defense or the Secretary of the military department concerned determines that satisfactory quality and sufficient quantity of any such article or item described in subsection (b) grown, reprocessed, reused, or produced in the United States cannot be procured as and when needed at United States market prices.

(d) EXCEPTION FOR CERTAIN PROCUREMENTS.—Subsection (a) does not apply to the following:

(1) Procurements outside the United States in support of combat operations or procurements of any item listed in subsection (b)(1)(A) or (b)(2) in support of contingency operations.

(2) Procurements by vessels in foreign waters.

(3) Emergency procurements or procurements of perishable foods by, or for, an establishment located outside the United States for the personnel attached to such establishment.

(4) Procurements of any item listed in subsection (b)(1)(A) or (b)(2) for which the use of procedures other than competitive procedures has been approved on the basis of section 2304(c)(2) of this title, relating to unusual and compelling urgency of need.

(e) EXCEPTION FOR CHEMICAL WARFARE PROTECTIVE CLOTHING.—Subsection (a) does not preclude the procurement of chemical warfare protective clothing produced outside the United States if—

(1) such procurement is necessary—

(A) to comply with agreements with foreign governments requiring the United States to purchase supplies from foreign sources for the purposes of offsetting sales made by the United States Government or United States firms under approved programs serving defense requirements; or

(B) in furtherance of agreements with foreign governments in which both such governments agree to remove barriers to purchases of supplies produced in the other country or services performed by sources of the other country; and

(2) any such agreement with a foreign government complies, where applicable, with the requirements of section 36 of the Arms Export Control Act (22 U.S.C. 2776) and with section 2457 of this title.

(f) EXCEPTIONS FOR CERTAIN OTHER COMMODITIES AND ITEMS.—Subsection (a) does not preclude the procurement of the following:

(1) Foods manufactured or processed in the United States.

(2) Waste and byproducts of cotton and wool fiber for use in the production of propellants and explosives.

(g) EXCEPTION FOR COMMISSARIES, EXCHANGES, AND OTHER NONAPPROPRIATED FUND INSTRUMENTALITIES.—Subsection (a) does not apply to items purchased for resale purposes in commissaries, exchanges, or nonappropriated fund instrumentalities operated by the Department of Defense.

(h) EXCEPTION FOR SMALL PURCHASES.—(1) Subsection (a) does not apply to purchases for amounts not greater than $150,000. A proposed procurement of an item in an amount greater than $150,000 may not be divided into several purchases or contracts for lesser amounts in order to qualify for this exception.

(2) On October 1 of each year that is evenly divisible by five, the Secretary of Defense may adjust the dollar threshold in this subsection based on changes in the Consumer Price Index. Any such adjustment shall take effect on the date on which the Secretary publishes notice of such adjustment in the Federal Register.

(i) APPLICABILITY TO CONTRACTS AND SUBCONTRACTS FOR PROCUREMENT OF COMMERCIAL PRODUCTS.—This section is applicable to contracts and subcontracts for the procurement of commercial products notwithstanding section 1906 of title 41.

(j) GEOGRAPHIC COVERAGE.—In this section, the term ''United States'' includes the possessions of the United States.

(k) NOTIFICATION REQUIRED WITHIN 7 DAYS AFTER CONTRACT AWARD IF CERTAIN EXCEPTIONS APPLIED.—In the case of any contract for the procurement of an item described in subparagraph (B), (C), (D), or (E) of subsection (b)(1), if the Secretary of Defense or of the military department concerned applies an exception set forth in subsection (c) or (e) with respect to that contract, the Secretary shall, not later than 7 days after the award of the contract, post a notification that the exception has been applied on the Internet site maintained by the General Services Administration known as FedBizOpps.gov (or any successor site).

(Added Pub. L. 107–107, div. A, title VIII, § 832(a)(1), Dec. 28, 2001, 115 Stat. 1189, § 2533a; amended Pub. L. 108–136, div. A, title VIII, §§ 826, 827, Nov. 24, 2003, 117 Stat. 1548; Pub. L. 109–163, div. A, title VIII, §§ 831, 833, Jan. 6, 2006, 119 Stat. 3388; Pub. L. 109–364, div. A, title VIII, § 842(a)(3), Oct. 17, 2006, 120 Stat. 2337; Pub. L. 111–350, § 5(b)(38), Jan. 4, 2011, 124 Stat. 3845; Pub. L. 111–383, div. A, title VIII, § 847, title X, § 1075(b)(38), Jan. 7, 2011, 124 Stat. 4286, 4371; Pub. L. 112–81, div. A, title VIII, § 821, Dec. 31, 2011, 125 Stat. 1502; Pub. L. 112–239, div. A, title X, § 1076(f)(29), Jan. 2, 2013, 126 Stat. 1953; Pub. L. 115–232, div. A, title VIII, § 837(b), Aug. 13, 2018, 132 Stat. 1875; Pub. L. 116–92, div. A, title VIII, § 854(a)(1), (3), Dec. 20, 2019, 133 Stat. 1512; renumbered § 4862 and amended Pub. L. 116–283, div. A, title VIII, § 817, title XVIII, § 1870(c)(2), Jan. 1, 2021, 134 Stat. 3751, 4285.)

REPEAL OF SUBSECTION (b)(3) AND (4)

Pub. L. 116–92, div. A, title VIII, § 854(a)(3), Dec. 20, 2019, 133 Stat. 1512, provided that, effective Sept. 30, 2023, paragraphs (3) and (4) of subsection (b) of this section are repealed.

AMENDMENTS

2021—Pub. L. 116–283, § 1870(c)(2), renumbered section 2533a of this title as this section.

Subsec. (h). Pub. L. 116–283, § 817, amended subsec. (h) generally. Prior to amendment, text read as follows: ''Subsection (a) does not apply to purchases for

[1] See Repeal of Subsection (b)(3) and (4) note below.

amounts not greater than the simplified acquisition threshold referred to in section 2304(g) of this title.''

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by section 1870(c)(2) of Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 4863. Requirement to buy strategic materials critical to national security from American sources; exceptions

(a) REQUIREMENT.—Except as provided in subsections (b) through (m), the acquisition by the Department of Defense of the following items is prohibited:

(1) The following types of end items, or components thereof, containing a specialty metal not melted or produced in the United States: aircraft, missile and space systems, ships, tank and automotive items, weapon systems, or ammunition.

(2) A specialty metal that is not melted or produced in the United States and that is to be purchased directly by the Department of Defense or a prime contractor of the Department.

(b) AVAILABILITY EXCEPTION.—(1) Subsection (a) does not apply to the extent that the Secretary of Defense or the Secretary of the military department concerned determines that compliant specialty metal of satisfactory quality and sufficient quantity, and in the required form, cannot be procured as and when needed. For purposes of the preceding sentence, the term ''compliant specialty metal'' means specialty metal melted or produced in the United States.

(2) This subsection applies to prime contracts and subcontracts at any tier under such contracts.

(c) EXCEPTION FOR CERTAIN ACQUISITIONS.—Subsection (a) does not apply to the following:

(1) Acquisitions outside the United States in support of combat operations or in support of contingency operations.

(2) Acquisitions for which the use of procedures other than competitive procedures has been approved on the basis of section 3204(a)(2) of this title, relating to unusual and compelling urgency of need.

(d) EXCEPTION RELATING TO AGREEMENTS WITH FOREIGN GOVERNMENTS.—Subsection (a)(1) does not preclude the acquisition of a specialty metal if—

(1) the acquisition is necessary—

(A) to comply with agreements with foreign governments requiring the United States to purchase supplies from foreign sources for the purposes of offsetting sales made by the United States Government or United States firms under approved programs serving defense requirements; or

(B) in furtherance of agreements with foreign governments in which both such governments agree to remove barriers to purchases of supplies produced in the other country or services performed by sources of the other country; and

(2) any such agreement with a foreign government complies, where applicable, with the requirements of section 36 of the Arms Export Control Act (22 U.S.C. 2776) and with section 2457 of this title.

(e) EXCEPTION FOR COMMISSARIES, EXCHANGES, AND OTHER NONAPPROPRIATED FUND INSTRUMENTALITIES.—Subsection (a) does not apply to items purchased for resale purposes in commissaries, exchanges, and nonappropriated fund instrumentalities operated by the Department of Defense.

(f) EXCEPTION FOR SMALL PURCHASES.—Subsection (a) does not apply to acquisitions in amounts not greater than the simplified acquisition threshold referred to in section 3205 of this title.

(g) EXCEPTION FOR PURCHASES OF ELECTRONIC COMPONENTS.—Subsection (a) does not apply to acquisitions of electronic components, unless the Secretary of Defense, upon the recommendation of the Strategic Materials Protection Board pursuant to section 187 of this title, determines that the domestic availability of a particular electronic component is critical to national security.

(h) APPLICABILITY TO ACQUISITIONS OF COMMERCIAL PRODUCTS.—(1) Except as provided in paragraphs (2) and (3), this section applies to acquisitions of commercial products, notwithstanding sections 1906 and 1907 of title 41.

(2) This section does not apply to contracts or subcontracts for the acquisition of commercially available off-the-shelf items, as defined in section 104 of title 41, other than—

(A) contracts or subcontracts for the acquisition of specialty metals, including mill products, such as bar, billet, slab, wire, plate and sheet, that have not been incorporated into end items, subsystems, assemblies, or components;

(B) contracts or subcontracts for the acquisition of forgings or castings of specialty metals, unless such forgings or castings are incorporated into commercially available off-the-shelf end items, subsystems, or assemblies;

(C) contracts or subcontracts for commercially available high performance magnets unless such high performance magnets are incorporated into commercially available off-the-shelf-end items or subsystems; and

(D) contracts or subcontracts for commercially available off-the-shelf fasteners, unless such fasteners are—

(i) incorporated into commercially available off-the-shelf end items, subsystems, assemblies, or components; or

(ii) purchased as provided in paragraph (3).

(3) This section does not apply to fasteners that are commercial products that are purchased under a contract or subcontract with a manufacturer of such fasteners, if the manufacturer has certified that it will purchase, during the relevant calendar year, an amount of domestically melted specialty metal, in the required form, for use in the production of such fasteners for sale to the Department of Defense and other customers, that is not less than 50 percent of the total amount of the specialty metal that it will purchase to carry out the production of such fasteners.

(i) EXCEPTIONS FOR PURCHASES OF SPECIALTY METALS BELOW MINIMUM THRESHOLD.—(1) Not-

withstanding subsection (a), the Secretary of Defense or the Secretary of a military department may accept delivery of an item containing specialty metals that were not melted in the United States if the total amount of noncompliant specialty metals in the item does not exceed 2 percent of the total weight of specialty metals in the item.

(2) This subsection does not apply to high performance magnets.

(j) STREAMLINED COMPLIANCE FOR COMMERCIAL DERIVATIVE MILITARY ARTICLES.—(1) Subsection (a) shall not apply to an item acquired under a prime contract if the Secretary of Defense or the Secretary of a military department determines that—

(A) the item is a commercial derivative military article; and

(B) the contractor certifies that the contractor and its subcontractors have entered into a contractual agreement, or agreements, to purchase an amount of domestically melted specialty metal in the required form, for use during the period of contract performance in the production of the commercial derivative military article and the related commercial article, that is not less than the greater of—

(i) an amount equivalent to 120 percent of the amount of specialty metal that is required to carry out the production of the commercial derivative military article (including the work performed under each subcontract); or

(ii) an amount equivalent to 50 percent of the amount of specialty metal that is purchased by the contractor and its subcontractors for use during such period in the production of the commercial derivative military article and the related commercial article.

(2) For the purposes of this subsection, the amount of specialty metal that is required to carry out the production of the commercial derivative military article includes specialty metal contained in any item, including commercially available off-the-shelf items, incorporated into such commercial derivative military article.

(k) NATIONAL SECURITY WAIVER.—(1) Notwithstanding subsection (a), the Secretary of Defense may accept the delivery of an end item containing noncompliant materials if the Secretary determines in writing that acceptance of such end item is necessary to the national security interests of the United States.

(2) A written determination under paragraph (1)—

(A) may not be delegated below the level of the Deputy Secretary of Defense or the Under Secretary of Defense for Acquisition and Sustainment;

(B) shall specify the quantity of end items to which the waiver applies and the time period over which the waiver applies; and

(C) shall be provided to the congressional defense committees prior to making such a determination (except that in the case of an urgent national security requirement, such certification may be provided to the defense committees up to 7 days after it is made).

(3)(A) In any case in which the Secretary makes a determination under paragraph (1), the Secretary shall determine whether or not the noncompliance was knowing and willful.

(B) If the Secretary determines that the noncompliance was not knowing or willful, the Secretary shall ensure that the contractor or subcontractor responsible for the noncompliance develops and implements an effective plan to ensure future compliance.

(C) If the Secretary determines that the noncompliance was knowing or willful, the Secretary shall—

(i) require the development and implementation of a plan to ensure future compliance; and

(ii) consider suspending or debarring the contractor or subcontractor until such time as the contractor or subcontractor has effectively addressed the issues that lead to such noncompliance.

(*l*) SPECIALTY METAL DEFINED.—In this section, the term ''specialty metal'' means any of the following:

(1) Steel—

(A) with a maximum alloy content exceeding one or more of the following limits: manganese, 1.65 percent; silicon, 0.60 percent; or copper, 0.60 percent; or

(B) containing more than 0.25 percent of any of the following elements: aluminum, chromium, cobalt, columbium, molybdenum, nickel, titanium, tungsten, or vanadium.

(2) Metal alloys consisting of nickel, iron-nickel, and cobalt base alloys containing a total of other alloying metals (except iron) in excess of 10 percent.

(3) Titanium and titanium alloys.

(4) Zirconium and zirconium base alloys.

(m) ADDITIONAL DEFINITIONS.—In this section:

(1) The term ''United States'' includes possessions of the United States.

(2) The term ''component'' has the meaning provided in section 105 of title 41.

(3) The term ''acquisition'' has the meaning provided in section 131 of title 41.

(4) The term ''required form'' shall not apply to end items or to their components at any tier. The term ''required form'' means in the form of mill product, such as bar, billet, wire, slab, plate or sheet, and in the grade appropriate for the production of—

(A) a finished end item delivered to the Department of Defense; or

(B) a finished component assembled into an end item delivered to the Department of Defense.

(5) The term ''commercially available off-the-shelf'', has the meaning provided in section 104 of title 41.

(6) The term ''assemblies'' means items forming a portion of a system or subsystem that can be provisioned and replaced as an entity and which incorporates multiple, replaceable parts.

(7) The term ''commercial derivative military article'' means an item procured by the Department of Defense that is or will be produced using the same production facilities, a common supply chain, and the same or similar production processes that are used for the production of articles predominantly used by the

general public or by nongovernmental entities for purposes other than governmental purposes.

(8) The term ''subsystem'' means a functional grouping of items that combine to perform a major function within an end item, such as electrical power, attitude control, and propulsion.

(9) The term ''end item'' means the final production product when assembled or completed, and ready for issue, delivery, or deployment.

(10) The term ''subcontract'' includes a subcontract at any tier.

(Added Pub. L. 109–364, div. A, title VIII, § 842(a)(1), Oct. 17, 2006, 120 Stat. 2335, § 2533b; amended Pub. L. 110–181, div. A, title VIII, § 804(a)–(f), Jan. 28, 2008, 122 Stat. 208–211; Pub. L. 111–350, § 5(b)(39), Jan. 4, 2011, 124 Stat. 3845; Pub. L. 111–383, div. A, title X, § 1075(f)(2), Jan. 7, 2011, 124 Stat. 4376; Pub. L. 113–291, div. A, title X, § 1071(a)(10), Dec. 19, 2014, 128 Stat. 3505; Pub. L. 115–232, div. A, title VIII, § 837(c), Aug. 13, 2018, 132 Stat. 1875; Pub. L. 116–92, div. A, title IX, § 902(77), Dec. 20, 2019, 133 Stat. 1552; renumbered § 4863 and amended Pub. L. 116–283, div. A, title XVIII, §§ 1870(c)(2), 1883(b)(2), Jan. 1, 2021, 134 Stat. 4285, 4294.)

AMENDMENTS

2021—Pub. L. 116–283, § 1870(c)(2), renumbered section 2533b of this title as this section.

Subsec. (c)(2). Pub. L. 116–283, § 1883(b)(2), substituted ''section 3204(a)(2)'' for ''section 2304(c)(2)''.

Subsec. (f). Pub. L. 116–283, § 1883(b)(2), substituted ''section 3205'' for ''section 2304(g)''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 4864. Miscellaneous limitations on the procurement of goods other than United States goods

(a) LIMITATION ON CERTAIN PROCUREMENTS.—The Secretary of Defense may procure any of the following items only if the manufacturer of the item satisfies the requirements of subsection (b):

(1) BUSES.—Multipassenger motor vehicles (buses).

(2) COMPONENTS FOR NAVAL VESSELS.—The following components of vessels, to the extent they are unique to marine applications:

(A) Gyrocompasses.

(B) Electronic navigation chart systems.

(C) Steering controls.

(D) Propulsion and machinery control systems.

(E) Totally enclosed lifeboats.

(3) COMPONENTS FOR AUXILIARY SHIPS.—Subject to subsection (j),[1] large medium-speed diesel engines.

(4) COMPONENTS FOR T–AO 205 CLASS VESSELS.—The following components of T–AO 205 class vessels:

(A) Auxiliary equipment, including pumps, for all shipboard services.

(B) Propulsion system components, including engines, reduction gears, and propellers.

(C) Shipboard cranes.

(D) Spreaders for shipboard cranes.

(5) STAR TRACKER.—A star tracker used in a satellite weighing more than 400 pounds whose principle purpose is to support the national security, defense, or intelligence needs of the United States Government.

(b) MANUFACTURER IN THE NATIONAL TECHNOLOGY AND INDUSTRIAL BASE.—A manufacturer meets the requirements of this subsection if the manufacturer is part of the national technology and industrial base.

(c) APPLICABILITY TO CERTAIN ITEMS.—Subsection (a) does not apply to a procurement of spare or repair parts needed to support components for naval vessels produced or manufactured outside the United States.

(d) WAIVER AUTHORITY.—The Secretary of Defense may waive the limitation in subsection (a) with respect to the procurement of an item listed in that subsection if the Secretary determines that any of the following apply:

(1) Application of the limitation would cause unreasonable costs or delays to be incurred.

(2) United States producers of the item would not be jeopardized by competition from a foreign country, and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country.

(3) Application of the limitation would impede cooperative programs entered into between the Department of Defense and a foreign country, or would impede the reciprocal procurement of defense items under a memorandum of understanding providing for reciprocal procurement of defense items that is entered into under section 4851 of this title, and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country.

(4) Satisfactory quality items manufactured by an entity that is part of the national technology and industrial base (as defined in section 4801(1) of this title) are not available.

(5) Application of the limitation would result in the existence of only one source for the item that is an entity that is part of the national technology and industrial base (as defined in section 4801(1) of this title).

(6) The procurement is for an amount less than the simplified acquisition threshold and simplified purchase procedures are being used.

(7) Application of the limitation is not in the national security interests of the United States.

(8) Application of the limitation would adversely affect a United States company.

(e) SONOBUOYS.—

(1) LIMITATION.—The Secretary of Defense may not procure a sonobuoy manufactured in a foreign country if United States firms that manufacture sonobuoys are not permitted to compete on an equal basis with foreign manufacturing firms for the sale of sonobuoys in that foreign country.

[1] See References in Text note below.

(2) WAIVER AUTHORITY.—The Secretary may waive the limitation in paragraph (1) with respect to a particular procurement of sonobuoys if the Secretary determines that such procurement is in the national security interests of the United States.

(3) DEFINITION.—In this subsection, the term ''United States firm'' has the meaning given such term in section 4852(d)(1) of this title.

(f) PRINCIPLE OF CONSTRUCTION WITH FUTURE LAWS.—A provision of law may not be construed as modifying or superseding the provisions of this section, or as requiring funds to be limited, or made available, by the Secretary of Defense to a particular domestic source by contract, unless that provision of law—

(1) specifically refers to this section;

(2) specifically states that such provision of law modifies or supersedes the provisions of this section; and

(3) specifically identifies the particular domestic source involved and states that the contract to be awarded pursuant to such provision of law is being awarded in contravention of this section.

(g) INAPPLICABILITY TO CONTRACTS UNDER SIMPLIFIED ACQUISITION THRESHOLD.—This section does not apply to a contract or subcontract for an amount that does not exceed the simplified acquisition threshold.

(h) IMPLEMENTATION OF NAVAL VESSEL COMPONENT LIMITATION.—In implementing subsection (a)(2), the Secretary of Defense—

(1) may not use contract clauses or certifications; and

(2) shall use management and oversight techniques that achieve the objective of the subsection without imposing a significant management burden on the Government or the contractor involved.

(i) IMPLEMENTATION OF CERTAIN WAIVER AUTHORITY.—(1) The Secretary of Defense may exercise the waiver authority described in paragraph (2) only if the waiver is made for a particular item listed in subsection (a) and for a particular foreign country.

(2) This subsection applies to the waiver authority provided by subsection (d) on the basis of the applicability of paragraph (2) or (3) of that subsection.

(3) The waiver authority described in paragraph (2) may not be delegated below the Under Secretary of Defense for Acquisition and Sustainment.

(4) At least 15 days before the effective date of any waiver made under the waiver authority described in paragraph (2), the Secretary shall publish in the Federal Register and submit to the congressional defense committees a notice of the determination to exercise the waiver authority.

(5) Any waiver made by the Secretary under the waiver authority described in paragraph (2) shall be in effect for a period not greater than one year, as determined by the Secretary.

(j) LIMITATION ON CERTAIN PROCUREMENTS APPLICATION PROCESS.—

(1) IN GENERAL.—The Secretary of Defense shall administer a process to analyze and assess potential items for consideration to be required to be procured from a manufacturer that is part of the national technology and industrial base.

(2) ELEMENTS.—The application process required under paragraph (1) shall include the following elements:

(A) The Secretary shall designate an official within the Office of the Secretary of Defense responsible for administration of the limitation on certain procurements application process and associated policy.

(B) A person or organization that meets the definition of national technology and industrial base under section 4801(1) of this title shall have the opportunity to apply for status as an item required to be procured from a manufacturer that is part of the national technology and industrial base. The application shall include, at a minimum, the following information:

(i) Information demonstrating the applicant meets the criteria of a manufacturer in the national technology and industrial base under section 4801(1) of this title.

(ii) For each item the applicant seeks to be required to be procured from a manufacturer that is part of the national technology and industrial base, the applicant shall include the following information:

(I) The extent to which such item has commercial applications.

(II) The number of such items to be procured by current programs of record.

(III) The criticality of such item to a military unit's mission accomplishment.

(IV) The estimated cost and other considerations of reconstituting the manufacturing capability of such item, if not maintained in the national technology and industrial base.

(V) National security regulations or restrictions imposed on such item that may not be imposed on a non-national technology and industrial base competitor.

(VI) Non-national security-related Federal, State, and local government regulations imposed on such item that may not be imposed on a non-national technology and industrial base competitor.

(VII) The extent to which such item is fielded in current programs of record.

(VIII) The extent to which cost and pricing data for such item has been deemed fair and reasonable.

(3) CONSIDERATION OF APPLICATIONS.—

(A) RESPONSIBILITY OF DESIGNATED OFFICIAL.—The official designated pursuant to paragraph (2)(A) shall be responsible for providing complete applications submitted pursuant to this subsection to the appropriate component acquisition executive for consideration not later than 15 days after receipt of such application.

(B) REVIEW.—Not later than 120 days after receiving a complete application, the component acquisition executive shall review such application, make a determination, and return the application to the official designated pursuant to paragraph (2)(A).

(C) ELEMENTS OF DETERMINATION.—The determination required under subparagraph (B) shall, for each item proposed pursuant to paragraph (2)(B)(ii)—

(i) recommend inclusion under this section;

(ii) recommend inclusion under this section with further modifications; or

(iii) not recommend inclusion under this section.

(D) JUSTIFICATION.—The determination required under subparagraph (B) shall also include the rationale and justification for the determination.

(4) RECOMMENDATIONS FOR LEGISLATION.—For applications recommended under subsection (3), the official designated pursuant to paragraph (2)(A) shall be responsible for preparing a legislative proposal for consideration by the Secretary.

(*l*)[2] IMPLEMENTATION OF AUXILIARY SHIP COMPONENT LIMITATION.—Subsection (a)(3) applies only with respect to contracts awarded by the Secretary of a military department for new construction of an auxiliary ship after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2020 using funds available for National Defense Sealift Fund programs or Shipbuilding and Conversion, Navy. For purposes of this subsection, the term ''auxiliary ship'' does not include an icebreaker or a special mission ship.

(Added Pub. L. 97–295, § 1(29)(A), Oct. 12, 1982, 96 Stat. 1294, § 2400; amended Pub. L. 100–180, div. A, title I, § 124(a), (b)(1), title VIII, § 824(a), Dec. 4, 1987, 101 Stat. 1042, 1043, 1134; renumbered § 2502 and amended Pub. L. 100–370, § 3(b)(1), July 19, 1988, 102 Stat. 855; renumbered § 2507 and amended Pub. L. 100–456, div. A, title VIII, §§ 821(b)(1)(A), 822, Sept. 29, 1988, 102 Stat. 2014, 2017; Pub. L. 101–510, div. A, title VIII, § 835(a), title XIV, § 1421, Nov. 5, 1990, 104 Stat. 1614, 1682; Pub. L. 102–190, div. A, title VIII, §§ 834, 835, Dec. 5, 1991, 105 Stat. 1447, 1448; renumbered § 2534 and amended Pub. L. 102–484, div. A, title VIII, §§ 831, 833(a), title X, § 1052(33), div. D, title XLII, §§ 4202(a), 4271(b)(4), Oct. 23, 1992, 106 Stat. 2460, 2461, 2501, 2659, 2696; Pub. L. 103–160, div. A, title IX, § 904(d)(1), Nov. 30, 1993, 107 Stat. 1728; Pub. L. 103–337, div. A, title VIII, § 814, Oct. 5, 1994, 108 Stat. 2817; Pub. L. 103–355, title IV, § 4102(i), Oct. 13, 1994, 108 Stat. 3341; Pub. L. 104–106, div. A, title VIII, § 806(a)(1)–(4), (b)–(d), title XV, § 1503(a)(30), Feb. 10, 1996, 110 Stat. 390, 391, 512; Pub. L. 104–201, div. A, title VIII, § 810, title X, § 1074(a)(14), Sept. 23, 1996, 110 Stat. 2608, 2659; Pub. L. 105–85, div. A, title III, § 371(d)(1), title VIII, § 811(a), title X, § 1073(a)(55), Nov. 18, 1997, 111 Stat. 1706, 1839, 1903; Pub. L. 106–398, § 1 [[div. A], title VIII, § 805], Oct. 30, 2000, 114 Stat. 1654, 1654A–207; Pub. L. 107–107, div. A, title VIII, § 835(a), title X, § 1048(b)(2), Dec. 28, 2001, 115 Stat. 1191, 1225; Pub. L. 108–136, div. A, title VIII, § 828, Nov. 24, 2003, 117 Stat. 1548; Pub. L. 111–350, § 5(b)(40), Jan. 4, 2011, 124 Stat. 3846; Pub. L. 115–91, div. A, title VIII, § 813(a), Dec. 12, 2017, 131 Stat. 1461; Pub. L. 115–232, div. A, title VIII, § 844(a), Aug. 13, 2018, 132 Stat. 1879; Pub. L. 116–92, div. A, title VIII, § 853, Dec. 20, 2019, 133 Stat. 1511; renumbered § 4864 and amended Pub. L. 116–283, div. A, title VIII, § 845(a), title XVI, § 1603(a), title XVIII, §§ 1870(c)(2)–(4), 1883(b)(2), Jan. 1, 2021, 134 Stat. 3766, 4043, 4285, 4294.)

[2] So in original. There is no subsec. (k).

REFERENCES IN TEXT

Subsection (j), referred to in subsec. (a)(3), probably should be a reference to subsec. (*l*). Prior to amendment by Pub. L. 116–283, such reference was to subsec. (k), and at that time, this section contained two subsecs. (k). Section 845(a)(8) of Pub. L. 116–283 redesignated the subsec. (k) relating to limitation on certain procurements application process as (j), but the reference in subsec. (a)(3) is probably to the subsec. (k) relating to implementation of auxiliary ship component limitation, which was redesignated as subsec. (*l*) by section 1870(c)(4) of Pub. L. 116–283.

The date of the enactment of the National Defense Authorization Act for Fiscal Year 2020, referred to in subsec. (*l*), is the date of enactment of Pub. L. 116–92, which was approved Dec. 20, 2019.

AMENDMENTS

2021—Pub. L. 116–283, § 1870(c)(2), renumbered section 2534 of this title as this section.

Subsec. (a)(2). Pub. L. 116–283, § 845(a)(1)(A),(B), added par. (2) and struck out former par. (2). Prior to amendment, text read as follows: ''Chemical weapons antidote contained in automatic injectors (and components for such injectors).''

Subsec. (a)(3). Pub. L. 116–283, § 845(a)(1)(A), (C), redesignated par. (6) as (3), substituted ''subsection (j)'' for ''subsection (k)'', and struck out former par. (3) which related to components for naval vessels.

Subsec. (a)(4). Pub. L. 116–283, § 845(a)(1)(A), (D), added par. (4) and struck out former par. (4) which related to valves and machine tools.

Subsec. (a)(5). Pub. L. 116–283, § 1603(a), added par. (5).

Pub. L. 116–283, § 845(a)(1)(A), struck out par. (5). Text read as follows: ''Ball bearings and roller bearings, in accordance with subpart 225.71 of part 225 of the Defense Federal Acquisition Regulation Supplement, as in effect on October 23, 1992, except ball bearings and roller bearings being procured for use in an end product manufactured by a manufacturer that does not satisfy the requirements of subsection (b) or in a component part manufactured by such a manufacturer.''

Subsec. (a)(6). Pub. L. 116–283, § 845(a)(1)(A), redesignated par. (6) as (3).

Subsec. (b). Pub. L. 116–283, § 845(a)(2), amended subsec. (b) generally. Prior to amendment, subsec. (b) related to manufacturer in the national technology and industrial base.

Subsec. (c). Pub. L. 116–283, § 845(a)(3), struck out par. (1) designation and heading and struck out pars. (2) to (5), which related to valves and machine tools, ball bearings and roller bearings, vessel propellers, and chemical weapons antidote, respectively.

Subsec. (d)(3). Pub. L. 116–283, § 1870(c)(3)(A), substituted ''section 4851'' for ''section 2531''.

Subsec. (d)(4), (5). Pub. L. 116–283, § 1883(b)(2), substituted ''section 4801(1)'' for ''section 2500(1)''.

Subsec. (e)(3). Pub. L. 116–283, § 1870(c)(3)(B), substituted ''section 4852(d)(1)'' for ''section 2532(d)(1)''.

Subsec. (g). Pub. L. 116–283, § 845(a)(4), struck out par. (1) designation and par. (2) which read as follows: ''Paragraph (1) does not apply to contracts for items described in subsection (a)(5) (relating to ball bearings and roller bearings), notwithstanding section 1905 of title 41.''

Subsec. (h). Pub. L. 116–283, § 845(a)(5), substituted ''subsection (a)(2)'' for ''subsection (a)(3)(B)'' in introductory provisions.

Subsec. (i)(3). Pub. L. 116–283, § 845(a)(6), substituted ''Under Secretary of Defense for Acquisition and Sustainment'' for ''Under Secretary of Defense for Acquisition, Technology, and Logistics''.

Subsec. (j). Pub. L. 116–283, § 845(a)(7), (8), redesignated subsec. (k) related to limitation on certain procurements application process as (j) and struck out former subsec. (j) which related to inapplicability to certain contracts to purchase ball bearings or roller bearings.

Subsec. (j)(2)(B). Pub. L. 116–283, § 1870(c)(3)(C), which directed amendment of par. (2)(B) of subsec. (k) related to limitation on certain procurements application process by substituting ''section 4801(1)'' for ''section 2500(1)'' in two places, was executed to subsec. (j)(2)(B) to reflect the probable intent of Congress and the intervening amendment by Pub. L. 116–283, § 845(a)(8). See note above.

Subsec. (k). Pub. L. 116–283, § 1870(c)(4), redesignated subsec. (k) as (*l*).

Pub. L. 116–283, § 845(a)(9), substituted ''Subsection (a)(3)'' for ''Subsection (a)(6)'' in subsec. (k) relating to implementation of auxiliary ship component limitation.

Pub. L. 116–283, § 845(a)(8), redesignated subsec. (k) related to limitation on certain procurements application process as (j).

Subsec. (*l*). Pub. L. 116–283, § 1870(c)(4), redesignated subsec. (k) as (*l*).

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by sections 1870(c)(2)–(4) and 1883(b)(2) of Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

SUBCHAPTER III—LIMITATIONS ON PROCUREMENT FROM CERTAIN FOREIGN SOURCES

Sec.
4871. Acquisition of sensitive materials from non-allied foreign nations: prohibition.
4872. Award of certain contracts to entities controlled by a foreign government: prohibition.

§ 4871. Acquisition of sensitive materials from non-allied foreign nations: prohibition

(a) IN GENERAL.—Except as provided in subsection (c), the Secretary of Defense may not—

(1) procure any covered material melted or produced in any covered nation, or any end item that contains a covered material manufactured in any covered nation, except as provided by subsection (c); or

(2) sell any material from the National Defense Stockpile, if the National Defense Stockpile Manager determines that such a sale is not in the national interests of the United States, to—

(A) any covered nation; or

(B) any third party that the Secretary reasonably believes is acting as a broker or agent for a covered nation or an entity in a covered nation.

(b) APPLICABILITY.—Subsection (a) shall apply to prime contracts and subcontracts at any tier.

(c) EXCEPTIONS.—Subsection (a) does not apply under the following circumstances:

(1) If the Secretary of Defense determines that covered materials of satisfactory quality and quantity, in the required form, cannot be procured as and when needed at a reasonable price.

(2) To the procurement of an end item described in subsection (a)(1) or the sale of any covered material described under subsection (a)(1) by the Secretary outside of the United States for use outside of the United States.

(3) To the purchase by the Secretary of an end item containing a covered material that is—

(A) a commercially available off-the-shelf item (as defined in section 104 of title 41), other than—

(i) a commercially available off-the-shelf item that is 50 percent or more tungsten by weight; or

(ii) a mill product, such as bar, billet, slab, wire, cube, sphere, block, blank, plate, or sheet, that has not been incorporated into an end item, subsystem, assembly, or component;

(B) an electronic device, unless the Secretary of Defense, upon the recommendation of the Strategic Materials Protection Board pursuant to section 187 of this title, determines that the domestic availability of a particular electronic device is critical to national security; or

(C) a neodymium-iron-boron magnet manufactured from recycled material if the milling of the recycled material and sintering of the final magnet takes place in the United States.

(d) DEFINITIONS.—In this section:

(1) COVERED MATERIAL.—The term ''covered material'' means—

(A) samarium-cobalt magnets;

(B) neodymium-iron-boron magnets;

(C) tungsten metal powder;

(D) tungsten heavy alloy or any finished or semi-finished component containing tungsten heavy alloy; and

(E) tantalum metals and alloys.

(2) COVERED NATION.—The term ''covered nation'' means—

(A) the Democratic People's Republic of North Korea;

(B) the People's Republic of China;

(C) the Russian Federation; and

(D) the Islamic Republic of Iran.

(3) END ITEM.—The term ''end item'' has the meaning given in section 4863(m) of this title.

(Added Pub. L. 115–232, div. A, title VIII, § 871(a), Aug. 13, 2018, 132 Stat. 1904, § 2533c; amended Pub. L. 116–92, div. A, title VIII, § 849, Dec. 20, 2019, 133 Stat. 1508; renumbered § 4871 and amended Pub. L. 116–283, div. A, title VIII, § 844(a), title XVIII, § 1870(d)(2), (3), Jan. 1, 2021, 134 Stat. 3766, 4286.)

AMENDMENT OF SUBSECTIONS (a)(1) AND (c)(3)(A)(i)

Pub. L. 116–283, div. A, title VIII, § 844, Jan. 1, 2021, 134 Stat. 3766, provided that, effective 5 years after Jan. 1, 2021, this section is amended as follows:

(1) in subsection (a)(1), by striking ''material melted'' and inserting ''material mined, refined, separated, melted,''; and

(2) in subsection (c)(3)(A)(i), by striking ''tungsten'' and inserting ''covered material''.

See 2021 Amendment notes below.

AMENDMENTS

2021—Pub. L. 116–283, § 1870(d)(3)(B), amended section catchline generally. Prior to amendment, section

catchline read as follows: ''Prohibition on acquisition of sensitive materials from non-allied foreign nations''.

Pub. L. 116–283, § 1870(d)(2), renumbered section 2533c of this title as this section.

Subsec. (a)(1). Pub. L. 116–283, § 844(a)(1), substituted ''material mined, refined, separated, melted,'' for ''material melted''.

Subsec. (c)(3)(A)(i). Pub. L. 116–283, § 844(a)(2), substituted ''covered material'' for ''tungsten''.

Subsec. (d)(3). Pub. L. 116–283, § 1870(d)(3)(A), substituted ''section 4863(m)'' for ''section 2533b(m)''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by section 1870(d)(2), (3) of Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 4872. Award of certain contracts to entities controlled by a foreign government: prohibition

(a) IN GENERAL.—A Department of Defense contract or Department of Energy contract under a national security program may not be awarded to an entity controlled by a foreign government if it is necessary for that entity to be given access to information in a proscribed category of information in order to perform the contract.

(b) WAIVER AUTHORITY.—(1) The Secretary concerned may waive the application of subsection (a) to a contract award if—

(A) the Secretary concerned determines that the waiver is essential to the national security interests of the United States; or

(B) in the case of a contract awarded for environmental restoration, remediation, or waste management at a Department of Defense or Department of Energy facility—

(i) the Secretary concerned determines that the waiver will advance the environmental restoration, remediation, or waste management objectives of the department concerned and will not harm the national security interests of the United States; and

(ii) the entity to which the contract is awarded is controlled by a foreign government with which the Secretary concerned is authorized to exchange Restricted Data under section 144 c. of the Atomic Energy Act of 1954 (42 U.S.C. 2164(c)).

(2) The Secretary concerned shall notify Congress of any decision to grant a waiver under paragraph (1)(B) with respect to a contract. The contract may be awarded only after the end of the 45-day period beginning on the date the notification is received by the committees.

(c) DEFINITIONS.—In this section:

(1) The term ''entity controlled by a foreign government'' includes—

(A) any domestic or foreign organization or corporation that is effectively owned or controlled by a foreign government; and

(B) any individual acting on behalf of a foreign government,

as determined by the Secretary concerned. Such term does not include an organization or corporation that is owned, but is not controlled, either directly or indirectly, by a foreign government if the ownership of that organization or corporation by that foreign government was effective before October 23, 1992.

(2) The term ''proscribed category of information'' means a category of information that—

(A) with respect to Department of Defense contracts—

(i) includes special access information;

(ii) is determined by the Secretary of Defense to include information the disclosure of which to an entity controlled by a foreign government is not in the national security interests of the United States; and

(iii) is defined in regulations prescribed by the Secretary of Defense for the purposes of this section; and

(B) with respect to Department of Energy contracts—

(i) is determined by the Secretary of Energy to include information described in subparagraph (A)(ii); and

(ii) is defined in regulations prescribed by the Secretary of Energy for the purposes of this section.

(3) The term ''Secretary concerned'' means—

(A) the Secretary of Defense, with respect to Department of Defense contracts; and

(B) the Secretary of Energy, with respect to Department of Energy contracts.

(Added Pub. L. 102–484, div. A, title VIII, § 836(a)(1), Oct. 23, 1992, 106 Stat. 2462, § 2536; amended Pub. L. 103–35, title II, § 201(d)(4), May 31, 1993, 107 Stat. 99; Pub. L. 103–160, div. A, title VIII, § 842(a)–(c)(1), Nov. 30, 1993, 107 Stat. 1719; Pub. L. 104–201, div. A, title VIII, § 828, Sept. 23, 1996, 110 Stat. 2611; renumbered § 4872, Pub. L. 116–283, div. A, title XVIII, § 1870(d)(2), Jan. 1, 2021, 134 Stat. 4286.)

AMENDMENTS

2021—Pub. L. 116–283 renumbered section 2536 of this title as this section.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

SUBCHAPTER IV—DEFENSE INDUSTRIAL RESERVE AND INDUSTRIAL MOBILIZATION

Sec.
4881. Defense Industrial Reserve.
4882. Industrial mobilization: orders; priorities; possession of manufacturing plants; violations.
4883. Industrial mobilization: plants; lists.
4884. Industrial mobilization: Board on Mobilization of Industries Essential for Military Preparedness.

§ 4881. Defense Industrial Reserve

(a) DECLARATION OF PURPOSE AND POLICY.—It is the intent of Congress—

(1) to provide a comprehensive and continuous program for the future safety and for the defense of the United States by providing adequate measures whereby an essential nucleus of Government-owned industrial plants and an industrial reserve of machine tools and other industrial manufacturing equipment may be assured for immediate use to supply the needs

of the armed forces in time of national emergency or in anticipation thereof;

(2) that such Government-owned plants and such reserve shall not exceed in number or kind the minimum requirements for immediate use in time of national emergency, and that any such items which shall become excess to such requirements shall be disposed of as expeditiously as possible;

(3) that to the maximum extent practicable, reliance will be placed upon private industry for support of defense production; and

(4) that machine tools and other industrial manufacturing equipment may be held in plant equipment packages or in a general reserve to maintain a high state of readiness for production of critical items of defense materiel, to provide production capacity not available in private industry for defense materiel, or to assist private industry in time of national disaster.

(b) POWERS AND DUTIES OF THE SECRETARY OF DEFENSE.—(1) To execute the policy set forth in subsection (a), the Secretary of Defense shall—

(A) determine which industrial plants and installations (including machine tools and other industrial manufacturing equipment) should become a part of the Defense Industrial Reserve;

(B) designate what excess industrial property shall be disposed of;

(C) establish general policies and provide for the transportation, handling, care, storage, protection, maintenance, repair, rebuilding, utilization, recording, leasing and security of such property;

(D) direct the transfer without reimbursement of such property to other Government agencies with the consent of such agencies;

(E) direct the leasing of any of such property to designated lessees;

(F) authorize the disposition in accordance with existing law of any of such property when in the opinion of the Secretary such property is no longer needed by the Department of Defense; and

(G) notwithstanding chapter 5 of title 40 and any other provision of law, authorize the transfer to a nonprofit educational institution or training school, on a nonreimbursable basis, of any such property already in the possession of such institution or school whenever the program proposed by such institution or school for the use of such property is in the public interest.

(2)(A) The Secretary of a military department to which equipment or other property is transferred from the Defense Industrial Reserve shall reimburse appropriations available for the purposes of the Defense Industrial Reserve for the full cost (including direct and indirect costs) of—

(i) storage of such property;

(ii) repair and maintenance of such property; and

(iii) overhead allocated to such property.

(B) The Secretary of Defense shall prescribe regulations establishing general policies and fee schedules for reimbursements under subparagraph (A).

(c) DEFINITIONS.—In this section:

(1) The term ''Defense Industrial Reserve'' means—

(A) a general reserve of industrial manufacturing equipment, including machine tools, selected by the Secretary of Defense for retention for national defense or for other emergency use;

(B) those industrial plants and installations held by and under the control of the Department of Defense in active or inactive status, including Government-owned/Government-operated plants and installations and Government-owned/contractor-operated plants and installations which are retained for use in their entirety, or in part, for production of military weapons systems, munitions, components, or supplies; and

(C) those industrial plants and installations under the control of the Secretary which are not required for the immediate need of any department or agency of the Government and which should be sold, leased, or otherwise disposed of.

(2) The term ''plant equipment package'' means a complement of active and idle machine tools and other industrial manufacturing equipment held by and under the control of the Department of Defense and approved by the Secretary for retention to produce particular defense materiel or defense supporting items at a specific level of output in the event of emergency.

(Added and amended Pub. L. 102–484, div. D, title XLII, § 4235, Oct. 23, 1992, 106 Stat. 2690, § 2535; Pub. L. 103–35, title II, § 201(c)(8), May 31, 1993, 107 Stat. 98; Pub. L. 103–337, div. A, title III, § 379(a), Oct. 5, 1994, 108 Stat. 2737; Pub. L. 107–107, div. A, title X, § 1048(a)(23), Dec. 28, 2001, 115 Stat. 1224; Pub. L. 107–217, § 3(b)(7), Aug. 21, 2002, 116 Stat. 1295; renumbered § 4881, Pub. L. 116–283, div. A, title XVIII, § 1870(e)(2)(A), Jan. 1, 2021, 134 Stat. 4286.)

AMENDMENTS

2021—Pub. L. 116–283 renumbered section 2535 of this title as this section.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 4882. Industrial mobilization: orders; priorities; possession of manufacturing plants; violations

(a) ORDERING AUTHORITY.—In time of war or when war is imminent, the President, through the head of any department, may order from any person or organized manufacturing industry necessary products or materials of the type usually produced or capable of being produced by that person or industry.

(b) COMPLIANCE WITH ORDER REQUIRED.—A person or industry with whom an order is placed under subsection (a), or the responsible head thereof, shall comply with that order and give it precedence over all orders not placed under that subsection.

(c) SEIZURE OF MANUFACTURING PLANTS UPON NONCOMPLIANCE.—In time of war or when war is imminent, the President, through the head of any department, may take immediate possession of any plant that is equipped to manufacture, or that in the opinion of the head of that department is capable of being readily transformed into a plant for manufacturing, arms or ammunition, parts thereof, or necessary supplies for the armed forces if the person or industry owning or operating the plant, or the responsible head thereof, refuses—

(1) to give precedence to the order as prescribed in subsection (b);

(2) to manufacture the kind, quantity, or quality of arms or ammunition, parts thereof, or necessary supplies, as ordered by the head of such department; or

(3) to furnish them at a reasonable price as determined by the head of such department.

(d) USE OF SEIZED PLANT.—The President, through the head of any department, may manufacture products that are needed in time of war or when war is imminent, in any plant that is seized under subsection (c).

(e) COMPENSATION REQUIRED.—Each person or industry from whom products or materials are ordered under subsection (a) is entitled to fair and just compensation. Each person or industry whose plant is seized under subsection (c) is entitled to a fair and just rental.

(f) CRIMINAL PENALTY.—Whoever fails to comply with this section shall be imprisoned for not more than three years and fined under title 18.

(Added Pub. L. 103–160, div. A, title VIII, §822(a)(1), Nov. 30, 1993, 107 Stat. 1704, §2538; amended Pub. L. 103–337, div. A, title VIII, §811, Oct. 5, 1994, 108 Stat. 2815; renumbered §4882, Pub. L. 116–283, div. A, title XVIII, §1870(e)(2)(A), Jan. 1, 2021, 134 Stat. 4286.)

AMENDMENTS

2021—Pub. L. 116–283 renumbered section 2538 of this title as this section.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§4883. Industrial mobilization: plants; lists

(a) LIST OF PLANTS EQUIPPED TO MANUFACTURE ARMS OR AMMUNITION.—The Secretary of Defense may maintain a list of all privately owned plants in the United States, and the territories, Commonwealths, and possessions of the United States, that are equipped to manufacture for the armed forces arms or ammunition, or parts thereof, and may obtain complete information of the kinds of those products manufactured or capable of being manufactured by each of those plants, and of the equipment and capacity of each of those plants.

(b) LIST OF PLANTS CONVERTIBLE INTO AMMUNITION FACTORIES.—The Secretary of Defense may maintain a list of privately owned plants in the United States, and the territories, Commonwealths, and possessions of the United States, that are capable of being readily transformed into factories for the manufacture of ammunition for the armed forces and that have a capacity sufficient to warrant conversion into ammunition plants in time of war or when war is imminent, and may obtain complete information as to the equipment of each of those plants.

(c) CONVERSION PLANS.—The Secretary of Defense may prepare comprehensive plans for converting each plant listed pursuant to subsection (b) into a factory for the manufacture of ammunition or parts thereof.

(Added Pub. L. 103–160, div. A, title VIII, §822(a)(1), Nov. 30, 1993, 107 Stat. 1705, §2539; renumbered §4883, Pub. L. 116–283, div. A, title XVIII, §1870(e)(2)(A), Jan. 1, 2021, 134 Stat. 4286.)

AMENDMENTS

2021—Pub. L. 116–283 renumbered section 2539 of this title as this section.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§4884. Industrial mobilization: Board on Mobilization of Industries Essential for Military Preparedness

The President may appoint a nonpartisan Board on Mobilization of Industries Essential for Military Preparedness, and may provide necessary clerical assistance, to organize and coordinate operations under sections 4882 and 4883 of this title.

(Added Pub. L. 103–160, div. A, title VIII, §822(a)(1), Nov. 30, 1993, 107 Stat. 1705, §2540; renumbered §2539a, Pub. L. 103–337, div. A, title X, §1070(a)(13)(A), Oct. 5, 1994, 108 Stat. 2856; renumbered §4884 and amended Pub. L. 116–283, div. A, title XVIII, §1870(e)(2), Jan. 1, 2021, 134 Stat. 4286.)

AMENDMENTS

2021—Pub. L. 116–283, §1870(e)(2)(B), substituted ''sections 4882 and 4883'' for ''sections 2538 and 2539''.

Pub. L. 116–283, §1870(e)(2)(A), renumbered section 2539a of this title as this section.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

SUBCHAPTER V—OTHER MATTERS

Sec.
4891. Improved national defense control of technology diversions overseas.
4892. Availability of samples, drawings, information, equipment, materials, and certain services.

§4891. Improved national defense control of technology diversions overseas

(a) COLLECTION OF INFORMATION ON FOREIGN-CONTROLLED CONTRACTORS.—The Secretary of Defense and the Secretary of Energy shall each collect and maintain a data base containing a

list of, and other pertinent information on, all contractors with the Department of Defense and the Department of Energy, respectively, that are controlled by foreign persons. The data base shall contain information on such contractors for 1988 and thereafter in all cases where they are awarded contracts exceeding $10,000,000 in any single year by the Department of Defense or the Department of Energy.

(b) TECHNOLOGY RISK ASSESSMENT REQUIREMENT.—(1) If the Secretary of Defense is acting as a designee of the President under section 721(a)[1] of the Defense Production Act of 1950 (50 U.S.C. 4565(a)) and if the Secretary determines that a proposed or pending merger, acquisition, or takeover may involve a firm engaged in the development of a defense critical technology or is otherwise important to the defense industrial and technology base, then the Secretary shall require the appropriate entity or entities from the list set forth in paragraph (2) to conduct an assessment of the risk of diversion of defense critical technology posed by such proposed or pending action.

(2) The entities referred to in paragraph (1) are the following:

(A) The Defense Intelligence Agency.

(B) The Army Foreign Technology Science Center.

(C) The Naval Maritime Intelligence Center.

(D) The Air Force Foreign Aerospace Science and Technology Center.

(Added Pub. L. 102–484, div. A, title VIII, § 838(a), Oct. 23, 1992, 106 Stat. 2465, § 2537; amended Pub. L. 103–35, title II, § 201(d)(5), (h)(2), May 31, 1993, 107 Stat. 99, 100; Pub. L. 107–314, div. A, title X, § 1041(a)(16), Dec. 2, 2002, 116 Stat. 2645; Pub. L. 114–328, div. A, title X, § 1081(b)(4)(B), Dec. 23, 2016, 130 Stat. 2419; Pub. L. 115–91, div. A, title X, § 1051(a)(19), Dec. 12, 2017, 131 Stat. 1561; renumbered § 4891, Pub. L. 116–283, div. A, title XVIII, § 1870(f)(2), Jan. 1, 2021, 134 Stat. 4287.)

REFERENCES IN TEXT

Section 721(a) of the Defense Production Act of 1950, referred to in subsec. (b), is section 721(a) of act Sept. 8, 1950, ch. 932, as added by Pub. L. 100–418, title V, § 5021, Aug. 23, 1988, 102 Stat. 1425, which is classified to section 4565(a) of Title 50, War and National Defense. Section 721(a) of the Act was struck out, and a new section 721(a) was added, by Pub. L. 110–49, § 2, July 26, 2007, 121 Stat. 246. As so added, section 721(a) does not refer to investigations by the President or the President's designee.

AMENDMENTS

2021—Pub. L. 116–283 renumbered section 2537 of this title as this section.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 4892. Availability of samples, drawings, information, equipment, materials, and certain services

(a) AUTHORITY.—The Secretary of Defense and the Secretaries of the military departments, under regulations prescribed by the Secretary of Defense and when determined by the Secretary of Defense or the Secretary concerned to be in the interest of national defense, may each—

(1) sell, rent, lend, or give samples, drawings, and manufacturing or other information (subject to the rights of third parties) to any person or entity;

(2) sell, rent, or lend government equipment or materials to any person or entity—

(A) for use in independent research and development programs, subject to the condition that the equipment or material be used exclusively for such research and development; or

(B) for use in demonstrations to a friendly foreign government;

(3) make available to any person or entity, at an appropriate fee, the services of any government laboratory, center, range, or other testing facility for the testing of materials, equipment, models, computer software, and other items; and

(4) make available to any person or entity, through leases, contracts, or other appropriate arrangements, facilities, services, and equipment of any government laboratory, research center, or range, if the facilities, services, and equipment provided will not be in direct competition with the domestic private sector.

(b) CONFIDENTIALITY OF TEST RESULTS.—The results of tests performed with services made available under subsection (a)(3) are confidential and may not be disclosed outside the Federal Government without the consent of the persons for whom the tests are performed.

(c) FEES.—Fees made available under subsections (a)(3) and (a)(4) shall be established in the regulations prescribed pursuant to subsection (a). Such fees may not exceed the amount necessary to recoup the direct and indirect costs involved, such as direct costs of utilities, contractor support, and salaries of personnel that are incurred by the United States to provide for the testing.

(d) USE OF FEES.—Fees received under subsections (a)(3) and (a)(4) may be credited to the appropriations or other funds of the activity making such services available.

(Added Pub. L. 103–160, div. A, title VIII, § 822(b)(1), Nov. 30, 1993, 107 Stat. 1705, § 2541; renumbered § 2539b, Pub. L. 103–337, div. A, title X, § 1070(a)(13)(A), Oct. 5, 1994, 108 Stat. 2856; amended Pub. L. 103–355, title III, § 3022, Oct. 13, 1994, 108 Stat. 3333; Pub. L. 104–106, div. A, title VIII, § 804, div. D, title XLIII, § 4321(a)(8), Feb. 10, 1996, 110 Stat. 390, 671; Pub. L. 106–65, div. A, title X, § 1066(a)(23), Oct. 5, 1999, 113 Stat. 771; Pub. L. 110–181, div. A, title II, § 232, Jan. 28, 2008, 122 Stat. 46; renumbered § 4892, Pub. L. 116–283, div. A, title XVIII, § 1870(f)(2), Jan. 1, 2021, 134 Stat. 4287.)

AMENDMENTS

2021—Pub. L. 116–283 renumbered section 2539b of this title as this section.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation

[1] See References in Text note below.

and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

CHAPTER 387—SMALL BUSINESS PROGRAMS

Subchapter		Sec.
I.[1]	General	4901

SUBCHAPTER I—GENERAL

Sec.
4901. Department of Defense small business strategy.

§ 4901. Department of Defense small business strategy

(a) IN GENERAL.—The Secretary of Defense shall implement a small business strategy for the Department of Defense that meets the requirements of this section.

(b) UNIFIED MANAGEMENT STRUCTURE.—As part of the small business strategy described in subsection (a), the Secretary shall ensure that there is a unified management structure within the Department for the functions of the Department relating to—

(1) programs and activities related to small business concerns (as defined in section 3 of the Small Business Act);

(2) manufacturing and industrial base policy; and

(3) any procurement technical assistance program established under chapter 388 of this title.

(c) PURPOSE OF SMALL BUSINESS PROGRAMS.—The Secretary shall ensure that programs and activities of the Department of Defense related to small business concerns are carried out so as to further national defense programs and priorities and the statements of purpose for Department of Defense acquisition set forth in section 801 of the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115–91; 131 Stat. 1449).

(d) POINTS OF ENTRY INTO DEFENSE MARKET.—The Secretary shall ensure—

(1) that opportunities for small business concerns to contract with the Department of Defense are identified clearly; and

(2) that small business concerns are able to have access to program managers, contracting officers, and other persons using the products or services of such concern to the extent necessary to inform such persons of emerging and existing capabilities of such concerns.

(e) ENHANCED OUTREACH UNDER PROCUREMENT TECHNICAL ASSISTANCE PROGRAM MARKET.—The Secretary shall enable and promote activities to provide coordinated outreach to small business concerns through any procurement technical assistance program established under chapter 388 of this title to facilitate small business contracting with the Department of Defense.

(Added Pub. L. 115–232, div. A, title VIII, § 851(a), Aug. 13, 2018, 132 Stat. 1883, § 2283; renumbered § 4901 and amended Pub. L. 116–283, div. A, title XVIII, § 1871(b), Jan. 1, 2021, 134 Stat. 4287.)

[1] So in original. There is no subchapter II.

REFERENCES IN TEXT

Section 3 of the Small Business Act, referred to in subsec. (b)(1), is classified to section 632 of Title 15, Commerce and Trade.

Section 801 of the National Defense Authorization Act for Fiscal Year 2018, referred to in subsec. (c), is section 801 of Pub. L. 115–91, which is set out as a note under section 2302 of this title.

AMENDMENTS

2021—Pub. L. 116–283 renumbered section 2283 of this title as this section and substituted ''chapter 388'' for ''chapter 142'' in subsecs. (b)(3) and (e).

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

INITIATIVES TO SUPPORT SMALL BUSINESSES IN THE NATIONAL TECHNOLOGY AND INDUSTRIAL BASE

Pub. L. 116–283, div. A, title VIII, § 861, Jan. 1, 2021, 134 Stat. 3775, provided that:

''(a) IN GENERAL.—The Secretary of Defense, acting through the Assistant Secretary of Defense for Industrial Base Policy (established under section 903 of this Act [amending section 138 of this title]) and other appropriate officials, in carrying out the activities described under subchapter II of chapter 148 of title 10, United States Code, shall establish initiatives to increase the effectiveness of the Department of Defense in specifically leveraging small businesses to eliminate gaps and vulnerabilities in the national technology and industrial base (as defined in section 2500 of title 10, United States Code) and expand the number of small businesses in the national technology and industrial base.

''(b) INITIATIVES.—

''(1) UPDATES FOR SMALL BUSINESS STRATEGY.—Not later than October 1, 2022, and biennially thereafter, [sic] shall update the small business strategy required under section 2283 of title 10, United States Code, and provide such updated strategy to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives].

''(2) IMPLEMENTATION PLAN.—

''(A) IN GENERAL.—Not later than March 1, 2023, and biennially thereafter, the Secretary of Defense shall develop an implementation plan consistent with the most recent small business strategy developed under such section 2283, and provide such plan to the congressional defense committees.

''(B) ELEMENTS.—The implementation plan described in subparagraph (A) shall include an identification of the following:

''(i) Organizations responsible for implementation activities.

''(ii) Metrics to evaluate progress of implementation activities.

''(iii) Resources to support implementation activities.

''(iv) Outcomes achieved as a result of executing the previous small business strategy developed under such section 2283.

''(3) MECHANISMS TO ASSESS AND SUPPORT SMALL BUSINESSES IN NATIONAL TECHNOLOGY AND INDUSTRIAL BASE.—The Secretary of Defense shall—

''(A) establish policies, procedures, and information repositories to identify small businesses in the defense supply chain, including—

''(i) small businesses participating in an acquisition program of a military department or Defense Agency (as defined in section 101(11) of title 10, United States Code);

''(ii) small businesses contracting with the Defense Logistics Agency; and

''(iii) other small businesses in the national technology and industrial base;

''(B) establish policies and procedures to assess the financial status of critical small businesses; and

''(C) enter into an agreement with the acquisition research organization within a civilian college or university that is described under section 2361a(a) of title 10, United States Code (commonly referred to as the 'Acquisition Innovation Research Center'), to analyze mechanisms that could be established to allow the Secretary of Defense to provide direct financial support to critical small businesses that require additional financial assistance, including critical small businesses that are—

''(i) contracting with the Defense Logistics Agency;

''(ii) subcontractors (at any tier); or

''(iii) in critical technology sectors.

''(c) REPORTS.—

''(1) REPORT ON ACTIVITIES.—Not later than October 1, 2021, the Assistant Secretary of Defense for Industrial Base Policy shall submit to the appropriate committees a report on activities undertaken pursuant to this section.

''(2) IMPLEMENTATION PLAN FOR 2019 SMALL BUSINESS STRATEGY.—Not later than June 1, 2021, the Secretary of Defense shall submit an implementation plan for the small business strategy required under section 2283 of title 10, United States Code, and dated October 1, 2019, including an identification of specific responsible individuals and organizations, milestones and metrics, and resources to support activities identified in the implementation plan.

''(d) SMALL BUSINESS DEFINED.—In this section, the term 'small business' has the meaning given by the Secretary of Defense, except that such term shall include prime contractors and subcontractors (at any tier).''

CHAPTER 388—PROCUREMENT TECHNICAL ASSISTANCE COOPERATIVE AGREEMENT PROGRAM

Sec.	
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§ 4951. Purposes; definitions; regulations

(a) PURPOSES.—The purposes of the program authorized by this chapter are—

(1) to increase assistance by the Department of Defense to eligible entities furnishing procurement technical assistance to business entities; and

(2) to assist eligible entities in the payment of the costs of establishing and carrying out new procurement technical assistance programs and maintaining existing procurement technical assistance programs.

(b) DEFINITIONS.—In this chapter:

(1) The term ''eligible entity'' means any of the following:

(A) A State.

(B) A local government.

(C) A private, nonprofit organization.

(D) A tribal organization, as defined in section 4(*l*) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304(*l*)), or an economic enterprise, as defined in section 3(e) of the Indian Financing Act of 1974 (Public Law 93–262; 25 U.S.C. 1452(e)), whether or not such economic enterprise is organized for profit purposes or nonprofit purposes.

(2) The term ''distressed area'' means—

(A) the area of a unit of local government (or such area excluding the area of any defined political jurisdiction within the area of such unit of local government) that—

(i) has a per capita income of 80 percent or less of the State average; or

(ii) has an unemployment rate that is one percent greater than the national average for the most recent 24-month period for which statistics are available; or

(B) a reservation, as defined in section 3(d) of the Indian Financing Act of 1974 (Public Law 93–262; 25 U.S.C. 1452(d)).

(3) The term ''Secretary'' means the Secretary of Defense acting through the Director of the Defense Logistics Agency.

(4) The terms ''State'' and ''local government'' have the meaning given those terms in section 6302 of title 31.

(c) REGULATIONS.—The Secretary of Defense shall prescribe regulations to carry out this chapter.

(Added and amended Pub. L. 116–283, div. A, title XVIII, §1872(a)(1)(B), (2), (3)(A), (4), Jan. 1, 2021, 134 Stat. 4287, 4288.)

CODIFICATION

The text of section 2412 of this title, which was transferred to this section, designated as subsec. (a), and amended by Pub. L. 116–283, §1872(a)(2), was based on Pub. L. 98–525, title XII, §1241(a)(1), Oct. 19, 1984, 98 Stat. 2605; Pub. L. 99–145, title IX, §919(a), Nov. 8, 1985, 99 Stat. 692; Pub. L. 116–283, div. A, title XVIII, §1872(a)(2), Jan. 1, 2021, 134 Stat. 4287.

The text of section 2411 of this title, which was transferred to this section, designated as subsec. (b), and amended by Pub. L. 116–283, §1872(a)(3)(A), was based on Pub. L. 98–525, title XII, §1241(a)(1), Oct. 19, 1984, 98 Stat. 2605; Pub. L. 99–145, title IX, §919(a), Nov. 8, 1985, 99 Stat. 691; Pub. L. 99–500, §101(c) [title X, §956(a)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–174, and Pub. L. 99–591, §101(c) [title X, §956(a)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–174; Pub. L. 99–661, div. A, title IX, formerly title IV, §956(a), Nov. 14, 1986, 100 Stat. 3954, renumbered title IX, Pub. L. 100–26, §3(5), Apr. 21, 1987, 101 Stat. 273; Pub. L. 100–180, div. A, title VIII, §807(b), Dec. 4, 1987, 101 Stat. 1128; Pub. L. 100–456, div. A, title VIII, §841(b)(2), Sept. 29, 1988, 102 Stat. 2025; Pub. L. 101–189, div. A, title VIII, §853(e), Nov. 29, 1989, 103 Stat. 1519; Pub. L. 102–25, title VII, §701(j)(5), Apr. 6, 1991, 105 Stat. 116; Pub. L. 102–484, div. A, title X, §1052(31), Oct. 23, 1992, 106 Stat. 2501; Pub. L. 115–91, div. A, title X, §1081(a)(36), Dec. 12, 2017, 131 Stat. 1596; Pub. L. 116–92, div. A, title VIII, §852(a), Dec. 20, 2019, 133 Stat. 1511; Pub. L. 116–283, div. A, title XVIII, §1872(a)(3)(A), Jan. 1, 2021, 134 Stat. 4288.

The text of section 2420 of this title, which was transferred to this section, designated as subsec. (c), and amended by Pub. L. 116–283, §1872(a)(4), was based on Pub. L. 98–525, title XII, §1241(a)(1), Oct. 19, 1984, 98 Stat. 2606, §2416; renumbered §2417, Pub. L. 99–500, §101(c) [title X, §957(a)(1)(A)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–174, and Pub. L. 99–591, §101(c) [title X, §957(a)(1)(A)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–174, and Pub. L. 99–661, div. A, title IX, formerly title IV, §957(a)(1)(A), Nov. 14, 1986, 100 Stat. 3954, renumbered

title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; renumbered § 2418, Pub. L. 101–510, div. A, title VIII, § 814(a)(1)(A), Nov. 5, 1990, 104 Stat. 1596; renumbered § 2419, Pub. L. 102–484, div. D, title XLII, § 4236(a)(1)(A), Oct. 23, 1992, 106 Stat. 2691; renumbered § 2420, Pub. L. 113–66, div. A, title XVI, § 1611(a)(1)(A), Dec. 26, 2013, 127 Stat. 946; Pub. L. 116–283, div. A, title XVIII, § 1872(a)(4), Jan. 1, 2021, 134 Stat. 4288.

AMENDMENTS

2021—Subsec. (a). Pub. L. 116–283, § 1872(a)(2), transferred the text of section 2412 of this title to this section, designated it as subsec. (a), and inserted heading.

Subsec. (b). Pub. L. 116–283, § 1872(a)(3)(A), transferred the text of section 2411 of this title to this section, designated it as subsec. (b), and inserted heading.

Subsec. (c). Pub. L. 116–283, § 1872(a)(4), transferred the text of section 2420 of this title to this section, designated it as subsec. (c), and inserted heading.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 4952. Cooperative agreements

(a) AUTHORITY.—The Secretary, in accordance with the provisions of this chapter, may enter into cooperative agreements with eligible entities to carry out the purposes of this chapter.

(b) AGREEMENTS.—Under any such cooperative agreement, the eligible entity shall agree to sponsor programs to furnish procurement technical assistance to business entities and the Secretary shall agree to defray not more than 75 percent of the eligible entity's cost of furnishing such assistance under such programs, except that—

(1) in the case of a program sponsored by such an entity that provides services solely in a distressed area, the Secretary may agree to furnish more than 75 percent, but not more than 85 percent, of such cost with respect to such program; and

(2) in the case of a program sponsored by such an entity that provides assistance for covered small businesses pursuant to section 4957(b) of this title, the Secretary may agree to furnish the full cost of such assistance.

(c) DISTRIBUTION OF PROGRAMS.—In entering into cooperative agreements under subsection (a), the Secretary shall assure that at least one procurement technical assistance program is carried out in each Department of Defense contract administration services district during each fiscal year.

(d) WEIGHT TO BE GIVEN SUCCESSFUL PAST PERFORMANCE.—In conducting a competition for the award of a cooperative agreement under subsection (a), the Secretary shall give significant weight to successful past performance of eligible entities under a cooperative agreement under this section.

(e) DETERMINATION OF LEVEL OF FUNDING.—In determining the level of funding to provide under an agreement under subsection (b), the Secretary shall consider the forecast by the eligible entity of demand for procurement technical assistance, and, in the case of an established program under this chapter, the outlays and receipts of such program during prior years of operation.

(Added Pub. L. 98–525, title XII, § 1241(a)(1), Oct. 19, 1984, 98 Stat. 2605, § 2413; amended Pub. L. 99–145, title IX, § 919(a), Nov. 8, 1985, 99 Stat. 692; Pub. L. 99–500, § 101(c) [title X, § 956(b)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–174, and Pub. L. 99–591, § 101(c) [title X, § 956(b)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–174; Pub. L. 99–661, div. A, title IX, formerly title IV, § 956(b), Nov. 14, 1986, 100 Stat. 3954, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273, and amended Pub. L. 100–180, div. A, title XII, § 1233(b), Dec. 4, 1987, 101 Stat. 1161; Pub. L. 105–261, div. A, title VIII, § 802(a)(1), Oct. 17, 1998, 112 Stat. 2081; Pub. L. 107–314, div. A, title VIII, § 814, Dec. 2, 2002, 116 Stat. 2610; Pub. L. 113–66, div. A, title XVI, §§ 1611(c), 1612(a), Dec. 26, 2013, 127 Stat. 947, 948; Pub. L. 115–232, div. A, title VIII, § 858(a), Aug. 13, 2018, 132 Stat. 1892; renumbered § 4952 and amended Pub. L. 116–283, div. A, title XVIII, § 1872(a)(5), Jan. 1, 2021, 134 Stat. 4288.)

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

AMENDMENTS

2021—Pub. L. 116–283, § 1872(a)(5), renumbered section 2413 of this title as this section. Directory language transferring this section to ''chapter 385'' was executed as if it had read ''chapter 388'' to reflect the probable intent of Congress.

Subsec. (a). Pub. L. 116–283, § 1872(a)(5)(A), inserted heading.

Subsec. (b). Pub. L. 116–283, § 1872(a)(5)(B), inserted heading and, in par. (2), substituted ''section 4957(b)'' for ''section 2419(b)''.

Subsecs. (c) to (e). Pub. L. 116–283, § 1872(a)(5)(C)–(E), inserted heading.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 4953. Funding

(a) IN GENERAL.—Except as provided in subsection (c), the value of the assistance furnished by the Secretary to any eligible entity to carry out a procurement technical assistance program under a cooperative agreement under this chapter during any fiscal year may not exceed—

(1) in the case of a program operating on a Statewide basis, other than a program referred to in paragraph (3) or (4), $1,000,000;

(2) in the case of a program operating on less than a Statewide basis, other than a program referred to in paragraph (3) or (4), $750,000;

(3) in the case of a program operated wholly within one service area of the Bureau of Indian Affairs by an eligible entity referred to in section 4951(b)(1)(D) of this title, $450,000; or

(4) in the case of a program operated wholly within more than one service area of the Bureau of Indian Affairs by an eligible entity referred to in section 4951(b)(1)(D) of this title, $1,000,000.

(b) DETERMINATIONS ON SCOPE OF OPERATIONS.—A determination of whether a procurement technical assistance program is operating

on a Statewide basis or on less than a Statewide basis or is operated wholly within one or more service areas of the Bureau of Indian Affairs by an eligible entity referred to in section 4951(b)(1)(D) of this title shall be made in accordance with regulations prescribed by the Secretary of Defense.

(c) EXCEPTION.—The value of the assistance provided in accordance with section 4957(b) of this title is not subject to the limitations in subsection (a).

(d) USE OF PROGRAM INCOME.—

(1) An eligible entity that earned income in a specified fiscal year from activities carried out pursuant to a procurement technical assistance program funded under this chapter may expend an amount of such income, not to exceed 25 percent of the cost of furnishing procurement technical assistance in such specified fiscal year, during the fiscal year following such specified fiscal year, to carry out a procurement technical assistance program funded under this chapter.

(2) An eligible entity that does not enter into a cooperative agreement with the Secretary for a fiscal year—

(A) shall notify the Secretary of the amount of any income the eligible entity carried over from the previous fiscal year; and

(B) may retain an amount of such income equal to 10 percent of the value of assistance furnished by the Secretary under this section during the previous fiscal year.

(3) In determining the value of assistance furnished by the Secretary under this section for any fiscal year, the Secretary shall account for the amount of any income the eligible entity carried over from the previous fiscal year.

(Added Pub. L. 98–525, title XII, § 1241(a)(1), Oct. 19, 1984, 98 Stat. 2606, § 2414; amended Pub. L. 99–145, title IX, § 919(a), Nov. 8, 1985, 99 Stat. 692; Pub. L. 100–456, div. A, title VIII, § 841(a), Sept. 29, 1988, 102 Stat. 2025; Pub. L. 101–189, div. A, title VIII, § 819(c), Nov. 29, 1989, 103 Stat. 1503; Pub. L. 102–25, title VII, § 701(f)(7), Apr. 6, 1991, 105 Stat. 115; Pub. L. 107–107, div. A, title VIII, § 813, Dec. 28, 2001, 115 Stat. 1181; Pub. L. 107–314, div. A, title VIII, § 815, Dec. 2, 2002, 116 Stat. 2610; Pub. L. 109–163, div. A, title VIII, § 824, Jan. 6, 2006, 119 Stat. 3387; Pub. L. 113–66, div. A, title XVI, §§ 1611(b), § 1612(b), Dec. 26, 2013, 127 Stat. 947, 948; Pub. L. 115–91, div. A, title VIII, § 817, Dec. 12, 2017, 131 Stat. 1462; Pub. L. 115–232, div. A, title VIII, § 858(b), title X, § 1081(a)(24)(A), Aug. 13, 2018, 132 Stat. 1892, 1984; renumbered § 4953 and amended Pub. L. 116–283, div. A, title XVIII, § 1872(a)(6), Jan. 1, 2021, 134 Stat. 4288.)

AMENDMENTS

2021—Pub. L. 116–283, § 1872(a)(6), renumbered section 2414 of this title as this section. Directory language transferring this section to ''chapter 385'' was executed as if it had read ''chapter 388'' to reflect the probable intent of Congress.

Subsec. (a)(1), (2). Pub. L. 116–283, § 1872(a)(6)(A), substituted ''paragraph'' for ''clause''.

Subsecs. (a)(3), (4), (b). Pub. L. 116–283, § 1872(a)(6)(B), substituted ''section 4951(b)(1)(D)'' for ''section 2411(1)(D)''.

Subsec. (c). Pub. L. 116–283, § 1872(a)(6)(C), substituted ''section 4957(b)'' for ''section 2419(b)''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 4954. Distribution

The Secretary shall allocate funds available for assistance under this chapter equally to each Department of Defense contract administrative services district. If in any such fiscal year there is an insufficient number of satisfactory proposals in a district for cooperative agreements to allow effective use of the funds allocated to that district, the funds remaining with respect to that district shall be reallocated among the remaining districts.

(Added Pub. L. 98–525, title XII, § 1241(a)(1), Oct. 19, 1984, 98 Stat. 2606, § 2415; amended Pub. L. 99–145, title IX, § 919(b), Nov. 8, 1985, 99 Stat. 692; Pub. L. 100–180, div. A, title VIII, § 807(c), Dec. 4, 1987, 101 Stat. 1128; Pub. L. 105–261, div. A, title VIII, § 802(a)(2), (b), Oct. 17, 1998, 112 Stat. 2081; Pub. L. 106–398, § 1 [[div. A], title X, § 1087(d)(5)], Oct. 30, 2000, 114 Stat. 1654, 1654A–293; renumbered § 4954, Pub. L. 116–283, div. A, title XVIII, § 1872(a)(7), Jan. 1, 2021, 134 Stat. 4288.)

AMENDMENTS

2021—Pub. L. 116–283 renumbered section 2415 of this title as this section. Directory language transferring this section to ''chapter 385'' was executed as if it had read ''chapter 388'' to reflect the probable intent of Congress.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 4955. Subcontractor information

(a) CONTRACTORS TO PROVIDE INFORMATION.—The Secretary of Defense shall require that any defense contractor in any year shall provide to an eligible entity with which the Secretary has entered into a cooperative agreement under this chapter, on the request of such entity, the information specified in subsection (b).

(b) INFORMATION TO BE PROVIDED.—Information to be provided under subsection (a) is a listing of the name of each appropriate employee of the contractor who has responsibilities with respect to entering into contracts on behalf of such contractor that constitute subcontracts of contracts being performed by such contractor, together with the business address and telephone number and area of responsibility of each such employee.

(c) FREQUENCY.—A defense contractor need not provide information under this section to a particular eligible entity more frequently than once a year.

(d) DEFINITION.—In this section, the term ''defense contractor'', for any year, means a person awarded a contract with the Department of Defense in that year for an amount in excess of $1,000,000.

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(Added Pub. L. 99–500, § 101(c) [title X, § 957(a)(1)(B)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–174, and Pub. L. 99–591, § 101(c) [title X, § 957(a)(1)(B)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–174, § 2416; Pub. L. 99–661, div. A, title IX, formerly title IV, § 957(a)(1)(B), Nov. 14, 1986, 100 Stat. 3954, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; Pub. L. 108–375, div. A, title VIII, § 816, Oct. 28, 2004, 118 Stat. 2015; renumbered § 4955 and amended Pub. L. 116–283, div. A, title XVIII, § 1872(a)(8), Jan. 1, 2021, 134 Stat. 4289.)

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661 added identical sections.

AMENDMENTS

2021—Pub. L. 116–283 renumbered section 2416 of this title as this section and inserted headings in subsecs. (a) to (d). Directory language transferring this section to ''chapter 385'' was executed as if it had read ''chapter 388'' to reflect the probable intent of Congress.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 4956. Authority to provide certain types of technical assistance

(a) ASSISTANCE RELATING TO CERTAIN NON-DEFENSE CONTRACTS.—The procurement technical assistance furnished by eligible entities assisted by the Department of Defense under this chapter may include technical assistance relating to contracts entered into with (1) Federal departments and agencies other than the Department of Defense, and (2) State and local governments.

(b) INFORMATION RELATING TO ASSISTANCE AND OTHER PROGRAMS AVAILABLE.—An eligible entity assisted by the Department of Defense under this chapter also may furnish information relating to assistance and other programs available pursuant to the Defense Conversion, Reinvestment, and Transition Assistance Act of 1992.

(c) EDUCATION ON REQUIREMENTS APPLICABLE TO SMALL BUSINESSES UNDER CERTAIN REGULATIONS.—An eligible entity assisted by the Department of Defense under this chapter also may furnish education on the requirements applicable to small businesses under the regulations issued—

(1) under section 38 of the Arms Export Control Act (22 U.S.C. 2778), and on compliance with those requirements; and

(2) under section 9 of the Small Business Act (15 U.S.C. 638), and on compliance with those requirements.

(Added Pub. L. 102–484, div. D, title XLII, § 4236(a)(1)(B), Oct. 23, 1992, 106 Stat. 2691, § 2418; amended Pub. L. 113–291, div. A, title VIII, § 823(b), Dec. 19, 2014, 128 Stat. 3436; Pub. L. 115–91, div. A, title XVII, § 1708, Dec. 12, 2017, 131 Stat. 1809; renumbered § 4956 and amended Pub. L. 116–283, div. A, title XVIII, § 1872(a)(9), Jan. 1, 2021, 134 Stat. 4289.)

REFERENCES IN TEXT

The Defense Conversion, Reinvestment, and Transition Assistance Act of 1992, referred to in subsec. (b), is division D of Pub. L. 102–484, Oct. 23, 1992, 106 Stat. 2658. For complete classification of division D to the Code, see Short Title note set out under section 2500 of this title and Tables.

AMENDMENTS

2021—Pub. L. 116–283 renumbered section 2418 of this title as this section and inserted headings in subsecs. (a) to (c). Directory language transferring this section to ''chapter 385'' was executed as if it had read ''chapter 388'' to reflect the probable intent of Congress.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 4957. Advancing small business growth

(a) CONTRACT CLAUSE REQUIRED.—(1) The Under Secretary of Defense for Acquisition and Sustainment shall require the clause described in paragraph (2) to be included in each covered contract awarded by the Department of Defense.

(2) The clause described in this paragraph is a clause that—

(A) requires the contractor to acknowledge that acceptance of the contract may cause the business to exceed the applicable small business size standards (established pursuant to section 3(a) of the Small Business Act) for the industry concerned and that the contractor may no longer qualify as a small business concern for that industry; and

(B) encourages the contractor to develop capabilities and characteristics typically desired in contractors that are competitive as an other-than-small business in that industry.

(b) AVAILABILITY OF ASSISTANCE.—Covered small businesses may be provided assistance as part of any procurement technical assistance furnished pursuant to this chapter.

(c) DEFINITIONS.—In this section:

(1) The term ''covered contract'' means a contract—

(A) awarded to a qualified small business concern as defined pursuant to section 3(a) of the Small Business Act; and

(B) with an estimated annual value—

(i) that will exceed the applicable receipt-based small business size standard; or

(ii) if the contract is in an industry with an employee-based size standard, that will exceed $70,000,000.

(2) The term ''covered small business'' means a qualified small business concern as defined pursuant to section 3(a) of the Small Business Act that has entered into a contract with the Department of Defense that includes a contract clause described in subsection (a)(2).

(Added Pub. L. 113–66, div. A, title XVI, § 1611(a)(1)(B), Dec. 26, 2013, 127 Stat. 946, § 2419; amended Pub. L. 116–92, div. A, title IX, § 902(63), Dec. 20, 2019, 133 Stat. 1550; renumbered § 4957, Pub. L. 116–283, div. A, title XVIII, § 1872(a)(10), Jan. 1, 2021, 134 Stat. 4289.)

REFERENCES IN TEXT

Section 3(a) of the Small Business Act, referred to in subsecs. (a)(2)(A) and (c)(1)(A), (2), is classified to section 632(a) of Title 15, Commerce and Trade.

AMENDMENTS

2021—Pub. L. 116–283 renumbered section 2419 of this title as this section. Directory language transferring this section to ''chapter 385'' was executed as if it had read ''chapter 388'' to reflect the probable intent of Congress.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 4959. Administrative and other costs

The Director of the Defense Logistics Agency may use, out of the amount appropriated for a fiscal year for operation and maintenance for the procurement technical assistance program authorized by this chapter—

(1) an amount not exceeding three percent of such amount to defray the expenses of administering the provisions of this chapter during such fiscal year; and

(2) an amount determined appropriate by the Director to assist eligible entities in payment of costs of eligible entities—

(A) for meetings to discuss best practices for the improvement of the operations of procurement technical assistance centers; and

(B) for membership dues for any association of such centers created by eligible entities, training fees and associated travel for training to carry out the purposes of this chapter, and voluntary participation on any committees or board of such an association.

(Added Pub. L. 101–510, div. A, title VIII, § 814(a)(1)(B), Nov. 5, 1990, 104 Stat. 1596, § 2417; amended Pub. L. 115–232, div. A, title VIII, § 859(a), Aug. 13, 2018, 132 Stat. 1892; renumbered § 4959 and amended Pub. L. 116–283, div. A, title X, § 1081(a)(41), title XVIII, § 1872(a)(11), Jan. 1, 2021, 134 Stat. 3873, 4289.)

AMENDMENTS

2021—Pub. L. 116–283, § 1872(a)(11), renumbered section 2417 of this title as this section. Directory language transferring this section to ''chapter 385'' was executed as if it had read ''chapter 388'' to reflect the probable intent of Congress.

Par. (2). Pub. L. 116–283, § 1081(a)(41), which directed amendment by substituting ''entities—'' for ''entities '', was executed by making the substitution for ''entities —'' to reflect the probable intent of Congress.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by section 1872(a)(11) of Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

CHAPTER 389—LOAN GUARANTEE PROGRAMS

Subchapter		Sec.
I.	Defense Export Loan Guarantees	4971
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SUBCHAPTER I—DEFENSE EXPORT LOAN GUARANTEES

Sec.	
4971.	Establishment of loan guarantee program.
4972.	Transferability.
4973.	Limitations.
4974.	Fees charged and collected.
4975.	Definitions.

§ 4971. Establishment of loan guarantee program

(a) ESTABLISHMENT.—In order to meet the national security objectives in section 4811(a) of this title, the Secretary of Defense shall establish a program under which the Secretary may issue guarantees assuring a lender against losses of principal or interest, or both principal and interest, arising out of the financing of the sale or long-term lease of defense articles, defense services, or design and construction services to a country referred to in subsection (b).

(b) COVERED COUNTRIES.—The authority under subsection (a) applies with respect to the following countries:

(1) A member nation of the North Atlantic Treaty Organization (NATO).

(2) A country designated as of March 31, 1995, as a major non-NATO ally pursuant to section 2350a(i)(3) of this title, as in effect on that date.

(3) A country in Central Europe that, as determined by the Secretary of State—

(A) has changed its form of national government from a nondemocratic form of government to a democratic form of government since October 1, 1989; or

(B) is in the process of changing its form of national government from a nondemocratic form of government to a democratic form of government.

(4) A noncommunist country that was a member nation of the Asia Pacific Economic Cooperation (APEC) as of October 31, 1993.

(c) AUTHORITY SUBJECT TO PROVISIONS OF APPROPRIATIONS.—The Secretary may guarantee a loan under this subchapter only to such extent or in such amounts as may be provided in advance in appropriations Acts.

(Added Pub. L. 104–106, div. A, title XIII, § 1321(a)(1), Feb. 10, 1996, 110 Stat. 475, § 2540; amended Pub. L. 108–375, div. A, title X, § 1084(d)(21), Oct. 28, 2004, 118 Stat. 2062; renumbered § 4971 and amended Pub. L. 116–283, div. A, title XVIII, §§ 1873(b), (c)(1), 1883(b)(2), Jan. 1, 2021, 134 Stat. 4290, 4294.)

AMENDMENTS

2021—Pub. L. 116–283, § 1873(b), (c)(1), renumbered section 2540 of this title as this section.

Subsec. (a). Pub. L. 116–283, § 1883(b)(2), substituted ''section 4811(a)'' for ''section 2501(a)''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 4972. Transferability

A guarantee issued under this subchapter shall be fully and freely transferable.

(Added Pub. L. 104–106, div. A, title XIII, § 1321(a)(1), Feb. 10, 1996, 110 Stat. 476, § 2540a; re-

numbered § 4972, Pub. L. 116–283, div. A, title XVIII, § 1873(b), (c)(1), Jan. 1, 2021, 134 Stat. 4290.)

AMENDMENTS

2021—Pub. L. 116–283 renumbered section 2540a of this title as this section.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 4973. Limitations

(a) TERMS AND CONDITIONS OF LOAN GUARANTEES.—In issuing a guarantee under this subchapter for a medium-term or long-term loan, the Secretary may not offer terms and conditions more beneficial than those that would be provided to the recipient by the Export-Import Bank of the United States under similar circumstances in conjunction with the provision of guarantees for nondefense articles and services.

(b) LOSSES ARISING FROM FRAUD OR MISREPRESENTATION.—No payment may be made under a guarantee issued under this subchapter for a loss arising out of fraud or misrepresentation for which the party seeking payment is responsible.

(c) NO RIGHT OF ACCELERATION.—The Secretary of Defense may not accelerate any guaranteed loan or increment, and may not pay any amount, in respect of a guarantee issued under this subchapter, other than in accordance with the original payment terms of the loan.

(Added Pub. L. 104–106, div. A, title XIII, § 1321(a)(1), Feb. 10, 1996, 110 Stat. 476, § 2540b; renumbered § 4973, Pub. L. 116–283, div. A, title XVIII, § 1873(b), (c)(1), Jan. 1, 2021, 134 Stat. 4290.)

AMENDMENTS

2021—Pub. L. 116–283 renumbered section 2540b of this title as this section.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 4974. Fees charged and collected

(a) EXPOSURE FEES.—The Secretary of Defense shall charge a fee (known as ''exposure fee'') for each guarantee issued under this subchapter.

(b) AMOUNT OF EXPOSURE FEE.—To the extent that the cost of the loan guarantees under this subchapter is not otherwise provided for in appropriations Acts, the fee imposed under subsection (a) with respect to a loan guarantee shall be fixed in an amount that is sufficient to meet potential liabilities of the United States under the loan guarantee.

(c) PAYMENT TERMS.—The fee under subsection (a) for each guarantee shall become due as the guarantee is issued. In the case of a guarantee for a loan which is disbursed incrementally, and for which the guarantee is correspondingly issued incrementally as portions of the loan are disbursed, the fee shall be paid incrementally in proportion to the amount of the guarantee that is issued.

(d) ADMINISTRATIVE FEES.—(1) The Secretary of Defense shall charge a fee for each guarantee issued under this subchapter to reflect the additional administrative costs of the Department of Defense that are directly attributable to the administration of the program under this subchapter. Such fees shall be credited to a special account in the Treasury. Amounts in the special account shall be available, to the extent and in amounts provided in appropriations Acts, for paying the costs of administrative expenses of the Department of Defense that are attributable to the loan guarantee program under this subchapter.

(2)(A) If for any fiscal year amounts in the special account established under paragraph (1) are not available (or are not anticipated to be available) in a sufficient amount for administrative expenses of the Department of Defense for that fiscal year that are directly attributable to the administration of the program under this subchapter, the Secretary may use amounts currently available for operations and maintenance for Defense-wide activities, not to exceed $500,000 in any fiscal year, for those expenses.

(B) The Secretary shall, from funds in the special account established under paragraph (1), replenish operations and maintenance accounts for amounts expended under subparagraph (A) as soon as the Secretary determines practicable.

(Added Pub. L. 104–106, div. A, title XIII, § 1321(a)(1), Feb. 10, 1996, 110 Stat. 476, § 2540c; amended Pub. L. 106–398, § 1 [[div. A], title X, § 1081(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–284; renumbered § 4974, Pub. L. 116–283, div. A, title XVIII, § 1873(b), (c)(1), Jan. 1, 2021, 134 Stat. 4290.)

AMENDMENTS

2021—Pub. L. 116–283 renumbered section 2540c of this title as this section.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 4975. Definitions

In this subchapter:

(1) The terms ''defense article'', ''defense services'', and ''design and construction services'' have the meanings given those terms in section 47 of the Arms Export Control Act (22 U.S.C. 2794).

(2) The term ''cost'', with respect to a loan guarantee, has the meaning given that term in section 502 of the Congressional Budget and Impoundment Control Act of 1974 (2 U.S.C. 661a).

(Added Pub. L. 104–106, div. A, title XIII, § 1321(a)(1), Feb. 10, 1996, 110 Stat. 477, § 2540d; renumbered § 4975, Pub. L. 116–283, div. A, title XVIII, § 1873(b), (c)(1), Jan. 1, 2021, 134 Stat. 4290.)

AMENDMENTS

2021—Pub. L. 116–283 renumbered section 2540d of this title as this section.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation

and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

SUBCHAPTER II—CRITICAL INFRASTRUCTURE PROTECTION LOAN GUARANTEES

Sec.
4981. Establishment of loan guarantee program.
4982. Fees charged and collected.
4983. Administration.
4984. Transferability, additional limitations, and definition.
4985. Reports.

§4981. Establishment of loan guarantee program

(a) ESTABLISHMENT.—In order to meet the national security objectives in section 4811(a) of this title, the Secretary of Defense shall establish a program under which the Secretary may issue guarantees assuring lenders against losses of principal or interest, or both principal and interest, for loans made to qualified commercial firms to fund, in whole or in part, any of the following activities:

(1) The improvement of the protection of the critical infrastructure of the commercial firms.

(2) The refinancing of improvements previously made to the protection of the critical infrastructure of the commercial firms.

(b) QUALIFIED COMMERCIAL FIRMS.—For purposes of this section, a qualified commercial firm is a company or other business entity (including a consortium of such companies or other business entities, as determined by the Secretary) that the Secretary determines—

(1) conducts a significant level of its research, development, engineering, and manufacturing activities in the United States;

(2) is a company or other business entity the majority ownership or control of which is by United States citizens or is a company or other business of a parent company that is incorporated in a country the government of which—

(A) encourages the participation of firms so owned or controlled in research and development consortia to which the government of that country provides funding directly or provides funding indirectly through international organizations or agreements; and

(B) affords adequate and effective protection for the intellectual property rights of companies incorporated in the United States;

(3) provides technology products or services critical to the operations of the Department of Defense;

(4) meets standards of prevention of cyberterrorism applicable to the Department of Defense; and

(5) agrees to submit the report required under section 4985 of this title.

(c) LOAN LIMITS.—The maximum amount of loan principal guaranteed during a fiscal year under this section may not exceed $10,000,000, with respect to all borrowers.

(d) GOALS AND STANDARDS.—The Secretary shall prescribe regulations setting forth goals for the use of the loan guarantees provided under this section and standards for evaluating whether those goals are met by each entity receiving such loan guarantees.

(e) AUTHORITY SUBJECT TO PROVISIONS OF APPROPRIATIONS.—The Secretary may guarantee a loan under this subchapter only to such extent or in such amounts as may be provided in advance in appropriations Acts.

(Added Pub. L. 106–398, §1 [[div. A], title X, §1033(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–258, §2541; renumbered §4981 and amended Pub. L. 116–283, div. A, title XVIII, §§1873(b), (c)(2), (e)(1), 1883(b)(2), Jan. 1, 2021, 134 Stat. 4290, 4294.)

AMENDMENTS

2021—Pub. L. 116–283, §1873(b), (c)(2), renumbered section 2541 of this title as this section.

Subsec. (a). Pub. L. 116–283, §1883(b)(2), substituted ''section 4811(a)'' for ''section 2501(a)'' in introductory provisions.

Subsec. (b)(5). Pub. L. 116–283, §1873(e)(1), substituted ''section 4985'' for ''section 2541d''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§4982. Fees charged and collected

(a) FEE REQUIRED.—The Secretary of Defense shall assess a fee for providing a loan guarantee under this subchapter.

(b) AMOUNT OF FEE.—The amount of the fee shall be not less than 75 percent of the amount incurred by the Secretary to provide the loan guarantee.

(c) SPECIAL ACCOUNT.—(1) Such fees shall be credited to a special account in the Treasury.

(2) Amounts in the special account shall be available, to the extent and in amounts provided in appropriations Acts, for paying the costs of administrative expenses of the Department of Defense that are attributable to the loan guarantee program under this subchapter.

(3)(A) If for any fiscal year amounts in the special account established under paragraph (1) are not available (or are not anticipated to be available) in a sufficient amount for administrative expenses of the Department of Defense for that fiscal year that are directly attributable to the administration of the program under this subchapter, the Secretary may use amounts currently available for operations and maintenance for Defense-wide activities, not to exceed $500,000 in any fiscal year, for those expenses.

(B) The Secretary shall, from funds in the special account established under paragraph (1), replenish operations and maintenance accounts for amounts expended under subparagraph (A).

(Added Pub. L. 106–398, §1 [[div. A], title X, §1033(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–259, §2541a; renumbered §4982, Pub. L. 116–283, div. A, title XVIII, §1873(b), (c)(2), Jan. 1, 2021, 134 Stat. 4290.)

AMENDMENTS

2021—Pub. L. 116–283 renumbered section 2541a of this title as this section.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation

and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 4983. Administration

(a) AGREEMENTS REQUIRED.—The Secretary of Defense may enter into one or more agreements, each with an appropriate Federal or private entity, under which such entity may, under this subchapter—

(1) process applications for loan guarantees;

(2) administer repayment of loans; and

(3) provide any other services to the Secretary to administer this subchapter.

(b) TREATMENT OF COSTS.—The costs of such agreements shall be considered, for purposes of the special account established under section 4982(c), to be costs of administrative expenses of the Department of Defense that are attributable to the loan guarantee program under this subchapter.

(Added Pub. L. 106–398, § 1 [[div. A], title X, § 1033(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–259, § 2541b; renumbered § 4983 and amended Pub. L. 116–283, div. A, title XVIII, § 1873(b), (c)(2), (e)(2), Jan. 1, 2021, 134 Stat. 4290.)

AMENDMENTS

2021—Pub. L. 116–283, § 1873(b), (c)(2), renumbered section 2541b of this title as this section.

Subsec. (b). Pub. L. 116–283, § 1873(e)(2), substituted ''section 4982(c)'' for ''section 2541a(c)''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 4984. Transferability, additional limitations, and definition

The following provisions of subchapter I of this chapter apply to guarantees issued under this subchapter:

(1) Section 4972, relating to transferability of guarantees.

(2) Subsections (b) and (c) of section 4973, providing limitations.

(3) Section 4975(2), providing a definition of the term ''cost''.

(Added Pub. L. 106–398, § 1 [[div. A], title X, § 1033(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–260, § 2541c; amended Pub. L. 107–107, div. A, title X, § 1048(a)(24), Dec. 28, 2001, 115 Stat. 1224; renumbered § 4984 and amended Pub. L. 116–283, div. A, title XVIII, § 1873(b), (c)(2), (e)(3), Jan. 1, 2021, 134 Stat. 4290.)

AMENDMENTS

2021—Pub. L. 116–283, § 1873(e)(3)(A), substituted ''subchapter I'' for ''subchapter VI'' in introductory provisions.

Pub. L. 116–283, § 1873(b), (c)(2), renumbered section 2541c of this title as this section.

Par. (1). Pub. L. 116–283, § 1873(e)(3)(B), substituted ''Section 4972'' for ''Section 2540a''.

Par. (2). Pub. L. 116–283, § 1873(e)(3)(C), substituted ''section 4973'' for ''section 2540b''.

Par. (3). Pub. L. 116–283, § 1873(e)(3)(D), substituted ''Section 4975(2)'' for ''Section 2540d(2)''.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 4985. Reports

The Secretary of Defense shall require each qualified commercial firm for which a loan is guaranteed under this subchapter to submit to the Secretary a report on the improvements financed or refinanced with the loan. The report shall include an assessment of the value of the improvements for the protection of the critical infrastructure of that commercial firm. The Secretary shall prescribe the time for submitting the report.

(Added Pub. L. 106–398, § 1 [[div. A], title X, § 1033(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–260, § 2541d; amended Pub. L. 108–136, div. A, title X, § 1031(a)(25), Nov. 24, 2003, 117 Stat. 1598; renumbered § 4985, Pub. L. 116–283, div. A, title XVIII, § 1873(b), (c)(2), Jan. 1, 2021, 134 Stat. 4290.)

PRIOR PROVISIONS

A prior section 5001 was renumbered section 8001 of this title.

A prior section 5011 was renumbered section 8011 of this title.

Prior sections 5012 and 5013 were renumbered sections 8012 and 8013 of this title, respectively.

Other prior sections 5012 and 5013 were renumbered sections 8062 and 8063 of this title, respectively.

A prior section 5013a was renumbered section 8013a of this title.

A prior section 5014 was renumbered section 8014 of this title.

Another prior section 5014, added Pub. L. 85–861, § 1(106)(A), Sept. 2, 1958, 72 Stat. 1490, prescribed compensation of General Counsel of Department of the Navy, prior to repeal by Pub. L. 88–426, title III, § 305(40)(A), Aug. 14, 1964, 78 Stat. 427, eff. first day of first pay period beginning on or after July 1, 1964. See section 5316 of Title 5, Government Organization and Employees.

Prior sections 5015 to 5020 were renumbered sections 8015 to 8020 of this title, respectively.

A prior section 5021, acts Aug. 10, 1956, ch. 1041, 70A Stat. 290, § 5150; Sept. 7, 1962, Pub. L. 87–649, § 14(c)(22), (23), 76 Stat. 501; Dec. 12, 1980, Pub. L. 96–513, title V, § 503(12), 94 Stat. 2912; renumbered § 5021, Oct. 1, 1986, Pub. L. 99–433, title V, § 511(d), 100 Stat. 1048, related to Office of Naval Research in Office of Secretary of the Navy headed by Chief of Naval Research, appointment to, term, and emoluments of such office, prerequisite for designation as Assistant Chief of Naval Research, and succession of duties of such office, prior to repeal by Pub. L. 101–510, div. A, title IX, § 910(a), Nov. 5, 1990, 104 Stat. 1625.

Prior sections 5022 to 5028 were renumbered sections 8022 to 8028 of this title, respectively.

A prior section 5031 was renumbered section 8031 of this title.

Another prior section 5031, acts Aug. 10, 1956, ch. 1041, 70A Stat. 278; Sept. 2, 1958, Pub. L. 85–861, § 1(107), 72 Stat. 1490; Sept. 7, 1962, Pub. L. 87–651, title II, § 211, 76 Stat. 524; Aug. 14, 1964, Pub. L. 88–426, title III, §§ 305(4), 306(j)(3), 78 Stat. 422, 431; Oct. 14, 1981, Pub. L. 97–60, title II, § 204(a)(1), 95 Stat. 1007, related to Secretary of the Navy and responsibilities of Secretary, prior to repeal by Pub. L. 99–433, title V, § 511(e), Oct. 1, 1986, 100 Stat. 1048. See section 8013 of this title.

A prior section 5032 was renumbered section 8032 of this title.

Another prior section 5032 was renumbered section 8013a of this title.

A prior section 5033 was renumbered section 8033 of this title.

Another prior section 5033, acts Aug. 10, 1956, ch. 1041, 70A Stat. 279; Sept. 2, 1958, Pub. L. 85–861, § 1(108), 72 Stat. 1490; Aug. 14, 1964, Pub. L. 88–426, title III, §§ 305(5), 306(j)(5), 78 Stat. 422, 432, related to appointment and duties of Under Secretary of the Navy, prior to repeal by Pub. L. 99–433, title V, § 511(e), Oct. 1, 1986, 100 Stat. 1048. See section 8015 of this title.

A prior section 5034, added Pub. L. 99–433, title V, § 512(b), Oct. 1, 1986, 100 Stat. 1050; amended Pub. L. 102–190, div. A, title V, § 505(a), Dec. 5, 1991, 105 Stat. 1358, related to retirement of Chief of Naval Operations, prior to repeal by Pub. L. 104–106, div. A, title V, § 502(c), Feb. 10, 1996, 110 Stat. 293.

Another prior section 5034, acts Aug. 10, 1956, ch. 1041, 70A Stat. 279; Aug. 6, 1958, Pub. L. 85–599, § 8(b)(1), 72 Stat. 519; Dec. 1, 1967, Pub. L. 90–168, § 2(13), (14), 81 Stat. 523; Nov. 9, 1979, Pub. L. 96–107, title VIII, § 820(c), 93 Stat. 819; Sept. 24, 1983, Pub. L. 98–94, title XII, § 1212(c)(2), 97 Stat. 687, related to appointment and duties of Assistant Secretaries of the Navy, prior to repeal by Pub. L. 99–433, title V, § 511(e), Oct. 1, 1986, 100 Stat. 1048. See section 8016 of this title.

A prior section 5035 was renumbered section 8035 of this title.

Another prior section 5035, act Aug. 10, 1956, ch. 1041, 70A Stat. 279, authorized an Assistant Secretary of the Navy for Air, provided for his appointment and duties, and prescribed his compensation, prior to repeal by Pub. L. 85–599, § 8(b)(2), Aug. 6, 1958, 72 Stat. 519, eff. six months after Aug. 6, 1958. Subsec. (c) was also repealed by Pub. L. 85–861, § 36B(12), Sept. 2, 1958, 72 Stat. 1571.

A prior section 5036 was renumbered section 8036 of this title.

Another prior section 5036, acts Aug. 10, 1956, ch. 1041, 70A Stat. 280; Nov. 2, 1966, Pub. L. 89–718, § 32, 80 Stat. 1119; Jan. 2, 1968, Pub. L. 90–235, § 4(a)(8), 81 Stat. 759; Dec. 12, 1980, Pub. L. 96–513, title V, § 513(4), 94 Stat. 2931, related to succession to duties of Secretary of the Navy, prior to repeal by Pub. L. 99–433, title V, § 511(e), Oct. 1, 1986, 100 Stat. 1048. See section 8017 of this title.

Prior sections 5037 and 5038 were renumbered sections 8037 and 8038 of this title, respectively.

Prior sections 5041 to 5047 were renumbered sections 8041 to 8047 of this title, respectively.

A prior section 5061 was renumbered section 8061 of this title.

Another prior section 5061, act Aug. 10, 1956, ch. 1041, 70A Stat. 280, related to appointment and functions of Comptroller of the Navy, prior to repeal by Pub. L. 99–433, title V, § 511(a), Oct. 1, 1986, 100 Stat. 1042.

A prior section 5062 was renumbered section 8062 of this title.

Another prior section 5062, act Aug. 10, 1956, ch. 1041, 70A Stat. 281, prescribed the pay and allowances of the Deputy Comptroller, prior to repeal by Pub. L. 87–649, § 14c(11), Sept. 7, 1962, 76 Stat. 501, eff. Nov. 1, 1962.

A prior section 5063 was renumbered section 8063 of this title.

Another prior section 5063 and a prior section 5064 were repealed by Pub. L. 99–433, title V, § 511(a), Oct. 1, 1986, 100 Stat. 1042.

Section 5063, act Aug. 10, 1956, ch. 1041, 70A Stat. 281, related to establishment and duties of Office of Budget and Reports.

Section 5064, acts Aug. 10, 1956, ch. 1041, 70A Stat. 281; Sept. 7, 1962, Pub. L. 87–649, § 14(c)(12), (13), 76 Stat. 501; Dec. 12, 1980, Pub. L. 96–513, title III, § 341, title V, § 503(3), 94 Stat. 2901, 2911, related to Director and Assistant of Office of Budget and Reports.

Prior sections 5081 to 5087 were repealed by Pub. L. 99–433, title V, § 512(a), Oct. 1, 1986, 100 Stat. 1048.

Section 5081, acts Aug. 10, 1956, ch. 1041, 70A Stat. 281; Aug. 6, 1958, Pub. L. 85–599, § 4(b), 72 Stat. 516; Sept. 7, 1962, Pub. L. 87–651, title I, §§ 114, 120, 76 Stat. 513; June 5, 1967, Pub. L. 90–22, title IV, § 402, 81 Stat. 53; Dec. 12, 1980, Pub. L. 96–513, title V, § 503(3), 94 Stat. 2911, related to appointment, term of office, rank, and functions of Chief of Naval Operations. See section 8033 of this title.

Section 5082, acts Aug. 10, 1956, ch. 1041, 70A Stat. 282; Sept. 7, 1962, Pub. L. 87–651, title I, § 121, 76 Stat. 513; Nov. 2, 1966, Pub. L. 89–718, § 33, 80 Stat. 1119, related to coordinating duties of Chief of Naval Operations. See section 8032 of this title.

Section 5083, acts Aug. 10, 1956, ch. 1041, 70A Stat. 282; May 20, 1958, Pub. L. 85–422, § 6(2), 72 Stat. 129; July 1, 1986, Pub. L. 99–348, title I, § 104(c)(1), 100 Stat. 691, related to retirement of Chief of Naval Operations.

Section 5084, act Aug. 10, 1956, ch. 1041, 70A Stat. 282, related to quarters for Chief of Naval Operations.

Section 5085, acts Aug. 10, 1956, ch. 1041, 70A Stat. 283; Aug. 6, 1958, Pub. L. 85–599, § 6(b), 72 Stat. 519; Dec. 12, 1980, Pub. L. 96–513, title V, § 503(4), 94 Stat. 2911, related to appointment, powers, and duties of Vice Chief of Naval Operations. See section 8035 of this title.

Section 5086, acts Aug. 10, 1956, ch. 1041, 70A Stat. 283; Dec. 12, 1980, Pub. L. 96–513, title V, § 503(5), 94 Stat. 2911, related to detail and duties of Deputy Chiefs of Naval Operations. See section 8036 of this title.

Section 5087, acts Aug. 10, 1956, ch. 1041, 70A Stat. 283; Dec. 12, 1980, Pub. L. 96–513, title V, § 503(6), 94 Stat. 2911, related to detail and duties of Assistant Chiefs of Naval Operations. See section 8037 of this title.

A prior section 5088 was renumbered section 8020 of this title.

Prior sections 5111 and 5112 were repealed by Pub. L. 89–718, § 34(a), Nov. 2, 1966, 80 Stat. 1119.

Section 5111, acts Aug. 10, 1956, ch. 1041, 70A Stat. 284; Sept. 7, 1962, Pub. L. 87–649, § 14(c)(14), 76 Stat. 501, created an Office of Naval Material, established position of Chief of Naval Material, and set out powers and duties of Chief of Naval Materials.

Section 5112, act Aug. 10, 1956, ch. 1041, 70A Stat. 284, provided for detailing of an officer as Vice Chief of Naval Material to serve in event of absence or disability of Chief of Naval Material.

Prior sections 5131 and 5132 were renumbered sections 8071 and 8072 of this title, respectively.

A prior section 5133, act Aug. 10, 1956, ch. 1041, 70A Stat. 285; Pub. L. 86–174, § 2(2), Aug. 18, 1959, 73 Stat. 396; Pub. L. 87–649, § 14c(15), Sept. 7, 1962, 76 Stat. 501; Pub. L. 89–288, § 3, Oct. 22, 1965, 79 Stat. 1050; Pub. L. 89–718, § 35(2)–(4), Nov. 2, 1966, 80 Stat. 1120; Pub. L. 96–513, title V, § 503(9), Dec. 12, 1980, 94 Stat. 2911; Pub. L. 103–337, div. A, title V, § 504(b)(3), (5), Oct. 5, 1994, 108 Stat. 2751, related to rank of, pay and allowances for, and retirement of Bureau Chiefs, prior to repeal by Pub. L. 114–328, div. A, title V, § 502(z)(1), Dec. 23, 2016, 130 Stat. 2104.

A prior section 5134, act Aug. 10, 1956, ch. 1041, 70A Stat. 286, prescribed pay of deputy chiefs of bureaus, prior to repeal by Pub. L. 87–649, §§ 14c(16), 15, Sept. 7, 1962, 76 Stat. 501, 502, effective Nov. 1, 1962.

A prior section 5135 was renumbered section 8075 of this title.

A prior section 5136, act Aug. 10, 1956, ch. 1041, 70A Stat. 286, related to appointment, qualifications and term of Chief of Bureau of Aeronautics, and authorized detail of an officer as Deputy Chief of Bureau, prior to repeal by Pub. L. 86–174, § 2(3), Aug. 18, 1959, 73 Stat. 396, conditionally effective July 1, 1960.

Prior sections 5137 and 5138 were renumbered sections 8077 and 8088 of this title, respectively.

A prior section 5139 was renumbered section 8079 of this title.

Another prior section 5139, acts Aug. 10, 1956, ch. 1041, 70A Stat. 287; Sept. 7, 1962, Pub. L. 87–649, § 6(c)(1), 76 Stat. 494, established position of Chief of Medical Service Corps within Bureau of Medicine and Surgery, prior to repeal by Pub. L. 96–513, title III, § 352(a), title VII, § 701, Dec. 12, 1980, 94 Stat. 2902, 2955, eff. Sept. 15, 1981.

A prior section 5140, acts Aug 10 1956, ch. 1041, 70A Stat. 287; Aug. 21, 1957, Pub. L. 85–155, title II, § 201(23), 71 Stat. 385; Sept. 7, 1962, Pub. L. 87–649, § 6(c)(2), 76 Stat. 494; Sept. 30, 1966, Pub. L. 89–609, § 1(6), 80 Stat. 853; Nov. 8, 1967, Pub. L. 90–130, § 1(14)(A), 81 Stat. 376, established position of Director of Nurse Corps within Bureau of Medicine and Surgery, prior to repeal by Pub. L. 96–513, title III, § 352(a), title VII, § 701, Dec. 12, 1980, 94 Stat. 2902, 2955, effective Sept. 15, 1981.

Prior sections 5141 and 5142 were renumbered sections 8081 and 8082 of this title, respectively.

Another prior section 5142, acts Aug. 10, 1956, ch. 1041, 70A Stat. 288; Sept. 7, 1962, Pub. L. 87–649, §14c(18), 76 Stat. 501, provided for a Chief of Chaplains in Bureau of Naval Personnel, detailed by Chief of Naval Personnel from officers on active list of the Navy in Chaplains Corps not below grade of rear admiral, prior to repeal by Pub. L. 96–343, §11(a), Sept. 8, 1980, 94 Stat. 1130.

Prior sections 5142a and 5143 were renumbered sections 8082a and 8083 of this title, respectively.

Another prior section 5143, acts Aug. 10, 1956, ch. 1041, 70A Stat. 288; Sept. 7, 1962, Pub. L. 87–649, §6(c)(3), 76 Stat. 494; Nov. 8, 1967, Pub. L. 90–130, §14(B), (C), 81 Stat. 376, established in Bureau of Naval Personnel the position of Assistant Chief of Naval Personnel for Women, prior to repeal by Pub. L. 96–513, title III, §344(a), title VII, §701, Dec. 12, 1980, 94 Stat. 2901, 2955, effective Sept. 15, 1981.

A prior section 5144 was renumbered section 8084 of this title.

Another prior section 5144, act Aug. 10, 1956, ch. 1041, 70A Stat. 289, related to appointment and term of Chief of Bureau of Ordnance, and authorized detail of an officer as Deputy Chief of Bureau, prior to repeal by Pub. L. 86–174, §2(3), Aug. 18, 1959, 73 Stat. 396, conditionally effective July 1, 1960.

Prior sections 5145 to 5147 were repealed by Pub. L. 89–718, §35(5), Nov. 2, 1966, 80 Stat. 1120.

Section 5145, acts Aug. 10, 1956, ch. 1041, 70A Stat. 289; May 13, 1960, Pub. L. 86–454, 74 Stat. 103; Sept. 7, 1962, Pub. L. 87–649, §14(c)(19), 76 Stat. 501, provided for appointment of Chief of Bureau of Ships, detailing and rank of Deputy Chief, and detailing of heads of major divisions of Bureau of Ships.

Section 5146, act Aug. 10, 1956, ch. 1041, 70A Stat. 289, provided for appointment of Chief of Bureau of Supplies and Accounts and detailing of Deputy Chief.

Section 5147, act Aug. 10, 1956, ch. 1041, 70A Stat. 289, provided for appointment of Chief of Bureau of Yards and Docks and detailing of Deputy Chief.

Prior sections 5148 to 5150 were renumbered sections 8088 to 8090 of this title, respectively.

Another prior section 5150 was renumbered section 5021 of this title and subsequently repealed.

Prior sections 5151 to 5153 were renumbered sections 8022 to 8024 of this title, respectively.

A prior section 5154, added Pub. L. 86–174, §1(2), Aug. 18, 1959, 73 Stat. 395, provided for appointment of Chief of the Bureau of Naval Weapons and detailing of Deputy Chief, prior to repeal by Pub. L. 89–718, §35(5), Nov. 2, 1966, 80 Stat. 1120.

A prior section 5155 was renumbered section 8090 of this title.

Prior sections 5201 to 5204 were repealed by Pub. L. 99–433, title V, §513(a), Oct. 1, 1986, 100 Stat. 1051.

Section 5201, acts Aug. 10, 1956, ch. 1041, 70A Stat. 292; May 20, 1958, Pub. L. 85–422, §6(3), 72 Stat. 129; Aug. 6, 1958, Pub. L. 85–599, §4(c), 72 Stat. 517; Sept. 7, 1962, Pub. L. 87–651, title I, §114, 76 Stat. 513; June 5, 1967, Pub. L. 90–22, title IV, §404, 81 Stat. 53; Dec. 12, 1980, Pub. L. 96–513, title V, §503(15), 94 Stat. 2912; July 1, 1986, Pub. L. 99–348, title I, §104(c)(1), 100 Stat. 691, related to appointment, term, etc., of the Commandant of the Marine Corps. See section 8043 of this title.

Section 5202, acts Aug. 10, 1956, ch. 1041, 70A Stat. 292; Aug. 6, 1958, Pub. L. 85–599, §6(c), 72 Stat. 519; Sept. 7, 1962, Pub. L. 87–649, §14c(24), 76 Stat. 501; May 2, 1969, Pub. L. 91–11, 83 Stat. 8; Mar. 4, 1976, Pub. L. 94–225, §1, 90 Stat. 202; Dec. 12, 1980, Pub. L. 96–513, title V, §§503(15), 513(7)(B), 94 Stat. 2912, 2931, related to detail and duties of the Assistant Commandant of the Marine Corps. See section 8044 of this title.

Section 5203, act Aug. 10, 1956, ch. 1041, 70A Stat. 292, related to detail of the Director of Personnel of the Marine Corps.

Section 5204, acts Aug. 10, 1956, ch. 1041, 70A Stat. 292; Aug. 3, 1961, Pub. L. 87–123, §5(2), 75 Stat. 264, related to detail of the Quartermaster General of the Marine Corps.

A prior section 5205, act Aug. 10, 1956, ch. 1041, 70A Stat. 293, related to retirement of heads of Marine Corps staff departments, their retired grade and pay, prior to repeal by Pub. L. 87–123, §5(3), Aug. 3, 1961, 75 Stat. 264.

A prior section 5206, acts Aug. 10, 1956, ch. 1041, 70A Stat. 293; Sept. 7, 1962, Pub. L. 87–649, §6(c)(4), 76 Stat. 494; Nov. 8, 1967, Pub. L. 90–130, §1(15), 81 Stat. 376, established in Office of Commandant of Marine Corps the position of Director of Women Marines, prior to repeal by Pub. L. 96–513, title III, §344(b), title VII, §701, Dec. 12, 1980, 94 Stat. 2901, 2955, effective Sept. 15, 1981.

Prior sections 5221 and 5222 were repealed by Pub. L. 95–82, title VI, §611(a), Aug. 1, 1977, 91 Stat. 378.

Section 5221, added Pub. L. 90–110, title X, §1001(1), Oct. 21, 1967, 81 Stat. 310, provided for inclusion of naval districts within organization of Department of the Navy.

Section 5222, added Pub. L. 90–110, title X, §1001(1), Oct. 21, 1967, 81 Stat. 310, provided for detailing of officers of the Navy not below the grade of rear admiral as commandants of each of naval districts.

Prior sections 5231 to 5234 were repealed by Pub. L. 96–513, title III, §331, title VII, §701, Dec. 12, 1980, 94 Stat. 2896, 2955, effective Sept. 15, 1981.

Section 5231, acts Aug. 10, 1956, ch. 1041, 70A Stat. 294; July 30, 1977, Pub. L. 95–79, title VIII, §811(b)(1), (2), 91 Stat. 336; Oct. 20, 1978, Pub. L. 95–485, title VIII, §818(a), 92 Stat. 1626, related to designation by President of officers on active list of Navy above the grade of captain and, in time of war or national emergency, above the grade of commander for fleet commands and other high positions. See section 601 of this title.

Section 5232, acts Aug. 10, 1956, ch. 1041, 70A Stat. 295; July 30, 1977, Pub. L. 95–79, title VIII, §811(b)(3), (4), 91 Stat. 336; Oct. 20, 1978, Pub. L. 95–485, title VIII, §818(b), 92 Stat. 1626, related to designation by President of officers on active list of Marine Corps above the grade of colonel and, in time of war or national emergency, above the grade of lieutenant colonel for appropriate higher commands or performance of duty of great importance and responsibility. See section 601 of this title.

Section 5233, acts Aug. 10, 1956, ch. 1041, 70A Stat. 295; May 20, 1958, Pub. L. 85–422, §6(4), 72 Stat. 129; related to retirement of an officer serving or having served in a grade to which appointed under former sections 5231 or 5232 of this title. See section 601 of this title.

Section 5234, acts Aug. 10, 1956, ch. 1041, 70A Stat. 295; Apr. 21, 1976, Pub. L. 94–273, §2(3), 90 Stat. 375, authorized President during time of war or national emergency to suspend any provision of former sections 5231 or 5232 of this title relating to distribution in grade.

Prior sections 5251 and 5252 were repealed by Pub. L. 103–337, div. A, title XVI, §§1661(a)(3)(A), 1691, Oct. 5, 1994, 108 Stat. 2980, 3026, effective Dec. 1, 1994.

Section 5251, act Aug. 10, 1956, ch. 1041, 70A Stat. 295, related to administration of Naval Reserve by Chief of Naval Operations and Naval Reserve Policy Board. See sections 10108 and 10303 of this title.

Section 5252, act Aug. 10, 1956, ch. 1041, 70A Stat. 296, related to administration of Marine Corps Reserve by Commandant of Marine Corps and Marine Corps Reserve Policy Board. See sections 10109 and 10304 of this title.

Prior sections 5401 to 5409 were repealed by Pub. L. 96–513, title III, §311(a), title VII, §701, Dec. 12, 1980, 94 Stat. 2889, 2955, effective Sept. 15, 1981. See section 521 et seq. of this title.

Section 5401, act Aug. 10, 1956, ch. 1041, 70A Stat. 297, prescribed authorized strength of Regular Navy in enlisted members.

Section 5402, act Aug. 10, 1956, ch. 1041, 70A Stat. 297, prescribed authorized strength of Regular Marine Corps.

Section 5403, act Aug. 10, 1956, ch. 1041, 70A Stat. 297, prescribed authorized strength of active list of the Navy in line officers.

Section 5404, acts Aug. 10, 1956, ch. 1041, 70A Stat. 297; Oct. 13, 1964, Pub. L. 88–647, title III, §301(12), 78 Stat. 1072; Dec. 8, 1967, Pub. L. 90–179, §3, 81 Stat. 547, prescribed authorized strength of active list of Navy in of-

ficers in Supply Corps and Civil Engineer Corps, directed Secretary of Navy to compute annually the authorized strength of active list of Navy in officers in Medical Corps, Dental Corps, Chaplain Corps, Medical Service Corps, and Nurse Corps, and to establish annually the authorized strength of active list of Navy in officers in Judge Advocate General's Corps.

Section 5405, act Aug. 10, 1956, ch. 1041, 70A Stat. 298, prescribed authorized strength of active list of Marine Corps.

Section 5406, acts Aug. 10, 1956, ch. 1041, 70A Stat. 298; July 5, 1968, Pub. L. 90–386, §1(1), 82 Stat. 293, limited actual number of officers on active list in line of Navy that could be designated for engineering duty.

Section 5407, acts Aug. 10, 1956, ch. 1041, 70A Stat. 298; July 5, 1968, Pub. L. 90–386, §1(2), 82 Stat. 293, limited actual number of officers on active list in line of Navy that could be designated for aeronautical engineering duty.

Section 5408, acts Aug. 10, 1956, ch. 1041, 70A Stat. 298; July 5, 1968, Pub. L. 90–386, §1(3), 82 Stat. 293, limited actual number of officers on the active list in line of Navy that could be designated for special duty.

Section 5409, acts Aug. 10, 1956, ch. 1041, 70A Stat. 298; Aug. 3, 1961, Pub. L. 87–123, §5(5), 75 Stat. 264, prescribed number of officers of actual number of officers on active lists in the line of Navy and of Marine Corps, that could be designated for limited duty.

Prior sections 5410 and 5411 were repealed by Pub. L. 90–130, §1(16), Nov. 8, 1967, 81 Stat. 376.

Section 5410, act Aug. 10, 1956, ch. 1041, 70A Stat. 928, placed upper limits, stated in terms of percentages of the authorized strength of the Regular Navy and Regular Marine Corps in enlisted members, on the authorized strength of enlisted women in each.

Section 5411, act Aug. 10, 1956, ch. 1041, 70A Stat. 299, placed upper limits, stated in terms of percentages of the authorized strength in enlisted women of the Regular Navy and Regular Marine Corps, on the authorized strength of the Regular Navy and Regular Marine Corps in women officers.

A prior section 5412, act Aug. 10, 1956, ch. 1041, 70A Stat. 299, prescribed authorized strength of Regular Navy in enlisted members in Hospital Corps, prior to repeal by Pub. L. 96–513, title III, §311(a), title VII, §701, Dec. 12, 1980, 94 Stat. 2889, 2955, effective Sept. 15, 1981. See section 521 et seq. of this title.

Prior sections 5413 and 5414 were repealed by Pub. L. 103–337, div. A, title XVI, §§1662(a)(3), 1691, Oct. 5, 1994, 108 Stat. 2988, 3026, effective Dec. 1, 1994.

Section 5413, act Aug. 10, 1956, ch. 1041, 70A Stat. 299, related to authorized strengths of Naval Reserve and Marine Corps Reserve. See section 12001(a) of this title.

Section 5414, added Pub. L. 85–861, §1(110)(A), Sept. 2, 1958, 72 Stat. 1490; amended Pub. L. 86–559, §1(33), (34), June 30, 1960, 74 Stat. 273; Pub. L. 96–513, title V, §513(8)(B), Dec. 12, 1980, 94 Stat. 2931; Pub. L. 102–190, div. A, title XI, §1131(8)(A), Dec. 5, 1991, 105 Stat. 1506, related to authorized strength of Naval Reserve and Marine Corps Reserve in officers in active status in grades above chief warrant officer, W–5. See section 12003 of this title.

Prior sections 5415 to 5417 were repealed by Pub. L. 96–513, title III, §§311(a), 312, Dec. 12, 1980, 94 Stat. 2889, 2955, effective Sept. 15, 1981. See section 521 et seq. of this title.

Section 5415, added Pub. L. 85–861, §1(110)(A), Sept. 2, 1958, 72 Stat. 1490, excluded enlisted members of the Navy or Marine Corps serving as midshipmen or cadets in any of the military academies from computations of authorized strengths.

Section 5416, added Pub. L. 85–861, §1(110)(A), Sept. 2, 1958, 72 Stat. 1490, excluded members of the Navy or the Marine Corps, or of the Coast Guard when it is operating as a service in the Navy, detailed for duty with United States agencies outside the Department of Defense on a reimbursable basis, from computations of authorized strengths or numbers in grade.

Section 5417, added Pub. L. 85–861, §1(110)(A), Sept. 2, 1958, 72 Stat. 1490, directed Secretary of Defense, with approval of President, to estimate annually, for each of five years following such estimate, the strengths of the Navy and the Marine Corps in officers on active lists exclusive of officers specifically authorized as additional numbers.

A prior section 5441 was renumbered section 8101 of this title.

Prior sections 5442 to 5444 were repealed by Pub. L. 101–510, div. A, title IV, §403(b)(2)(A), Nov. 5, 1990, 104 Stat. 1545.

Section 5442, acts Aug. 10, 1956, ch. 1041, 70A Stat. 300; Pub. L. 90–386, §1(4), July 5, 1968, 82 Stat. 293; Dec. 12, 1980, Pub. L. 96–513, title III, §313(b), 94 Stat. 2889; Dec. 1, 1981, Pub. L. 97–86, title IV, §405(b)(1), (3), (6)(A), 95 Stat. 1105, 1106; Nov. 8, 1985, Pub. L. 99–145, title V, §514(b)(1), (3), (6)(A), 99 Stat. 628; Nov. 14, 1986, Pub. L. 99–661, div. A, title XIII, §1343(a)(24), 100 Stat. 3994, set forth number of officers serving on active duty in Navy who may serve in grades of rear admiral (lower half) and rear admiral.

Section 5443, acts Aug. 10, 1956, ch. 1041, 70A Stat. 302; Aug. 3, 1961, Pub. L. 87–123, §5(6), 75 Stat. 265; Nov. 2, 1966, Pub. L. 89–731, §1, 80 Stat. 1160; Dec. 12, 1980, Pub. L. 96–513, title III, §313(c), 94 Stat. 2891, related to number of officers in Marine Corps on active duty who may serve in grades of brigadier general and major general.

Section 5444, acts Aug. 10, 1956, ch. 1041, 70A Stat. 304; Aug. 21, 1957, Pub. L. 85–155, title II, §201(1)–(3), 71 Stat. 381; Nov. 8, 1967, Pub. L. 90–130, §1(17)(A), (B), 81 Stat. 376; Dec. 12, 1980, Pub. L. 96–513, title III, §302, title V, §503(19), 94 Stat. 2888, 2912; July 10, 1981, Pub. L. 97–22, §§6(b), 10(a)(3), 95 Stat. 130, 136; Dec. 1, 1981, Pub. L. 97–86, title IV, §405(b)(1)–(3), (7)(A), 95 Stat. 1105, 1106; Nov. 8, 1985, Pub. L. 99–145, title V, §514(b)(1)–(3), (7)(A), 99 Stat. 628, 629, related to total number of officers who may serve on active duty in Navy in grades of rear admiral (lower half) and rear admiral in staff corps.

A prior section 5445, act Aug. 10, 1956, ch. 1041, 70A Stat. 306, related to suspension of sections 5442, 5443, and 5444 of this title, prior to repeal by Pub. L. 96–513, title III, §313(d)(1), title VII, §701, Dec. 12, 1980, 94 Stat. 2892, 2955, effective Sept. 15, 1981. See section 526 of this title.

A prior section 5446, acts Aug. 10, 1956, ch. 1041, 70A Stat. 306; Dec. 12, 1980, Pub. L. 96–513, title III, §373(a), title V, §503(20), 94 Stat. 2903, 2912, related to applicability of sections 5442, 5443, and 5444 of this title, prior to repeal by Pub. L. 101–510, div. A, title IV, §403(b)(2)(A), Nov. 5, 1990, 104 Stat. 1545.

Prior sections 5447 to 5449 were repealed by Pub. L. 96–513, title III, §313(d)(2)–(4), title VII, §701, Dec. 12, 1980, 94 Stat. 2892, 2955, effective Sept. 15, 1981.

Section 5447, acts Aug. 10, 1956, ch. 1041, 70A Stat. 307; July 5, 1968, Pub. L. 90–386, §1(4), 82 Stat. 293, related to permanent grade distribution of Navy line officers on active list. See section 521 et seq. of this title.

Section 5448, acts Aug. 10, 1956, ch. 1041, 70A Stat. 309; Aug. 3, 1961, Pub. L. 87–123, §5(7), 75 Stat. 265, related to permanent grade distribution of Marine Corps officers on active list. See section 521 et seq. of this title.

Section 5449, acts Aug. 10, 1956, ch. 1041, 70A Stat. 311; Aug. 21, 1957, Pub. L. 85–155, title II, §201(4), 71 Stat. 381; Nov. 8, 1967, Pub. L. 90–130, §1(17)(C), (D), 81 Stat. 376, related to number of Navy staff corps officers on active list in permanent grade of rear admiral. See section 525 of this title.

Prior sections 5450 and 5451 were renumbered sections 8102 and 8103 of this title, respectively.

A prior section 5452, acts Aug. 10, 1956, ch. 1041, 70A Stat. 312; Sept. 2, 1958, Pub. L. 85–861, §1(111), 72 Stat. 1491; Nov. 8, 1967, Pub. L. 90–130, §1(17)(E), 81 Stat. 376, authorized Secretary of the Navy to prescribe number of women officers in line of Navy eligible to hold appointments in each grade above lieutenant (junior grade) and a similar number in Marine Corps eligible to hold appointments in each grade above first lieutenant, prior to repeal by Pub. L. 96–513, title III, §373(b), title VII, §701, Dec. 12, 1980, 94 Stat. 2903, 2955, effective Sept. 15, 1981.

A prior section 5453, acts Aug. 10, 1956, ch. 1041, 70A Stat. 313; Sept. 2, 1958, Pub. L. 85–861, §1(112), 72 Stat.

1491, placed upper limits on number of women officers on active list of Marine Corps holding permanent appointments in grades of lieutenant colonel and major and required the Secretary to make computations at least once annually of numbers of women officers authorized under this section to hold permanent appointments in such grades, with authority to make prescribed temporary increases, prior to repeal by Pub. L. 90–130, §1(17)(F), Nov. 8, 1967, 81 Stat. 377.

A prior section 5454, act Aug. 10, 1956, ch. 1041, 70A Stat. 313, related to rule for computations under this chapter when fraction occurs in final result, prior to repeal by Pub. L. 103–337, div. A, title XVI, §§1662(a)(3), 1691, Oct. 5, 1994, 108 Stat. 2988, 3026, effective Dec. 1, 1994. See section 12010 of this title.

A prior section 5455, acts Aug. 10, 1956, ch. 1041, 70A Stat. 313; Nov. 8, 1967, Pub. L. 90–130, §1(17)(G), 81 Stat. 377; Dec. 12, 1980, Pub. L. 96–513, title V, §503(23), (24), 94 Stat. 2913 as amended July 10, 1981, Pub. L. 97–22, §10(a)(3), 95 Stat. 136, provided that no computation or determination under section 5447, 5448, 5449, or 5452 of this title could reduce the grade or pay of any officer or remove any officer from the active list, prior to repeal by Pub. L. 97–22, §10(b)(6)(A), July 10, 1981, 95 Stat. 137, effective Sept. 15, 1981.

Prior sections 5456 to 5458 were repealed by Pub. L. 103–337, div. A, title XVI, §§1662(a)(3), 1691, Oct. 5, 1994, 108 Stat. 2988, 3026, effective Dec. 1, 1994.

Section 5456, act Aug. 10, 1956, ch. 1041, 70A Stat. 313, related to authorized strengths of Naval Reserve and Marine Corps Reserve. See section 12001(b) of this title.

Section 5457, added Pub. L. 85–861, §1(113)(A), Sept. 2, 1958, 72 Stat. 1491; amended Pub. L. 86–559, §1(35), (36), June 30, 1960, 74 Stat. 273; Pub. L. 92–559, Oct. 25, 1972, 86 Stat. 1173; Pub. L. 96–107, title III, §302(b), Nov. 9, 1979, 93 Stat. 806; Pub. L. 96–513, title III, §313(e), title V, §513(9)(B), Dec. 12, 1980, 94 Stat. 2892, 2931; Pub. L. 97–86, title IV, §405(b)(1), Dec. 1, 1981, 95 Stat. 1105; Pub. L. 99–145, title V, §514(b)(1), Nov. 8, 1985, 99 Stat. 628; Pub. L. 101–189, div. A, title VII, §712, Nov. 29, 1989, 103 Stat. 1477; Pub. L. 102–190, div. A, title X, §1061(a)(22)(B), title XI, §1131(8)(A), Dec. 5, 1991, 105 Stat. 1473, 1506, related to authorized strength of Naval Reserve in officers in active status in grades above chief warrant officer, W–5. See sections 12004(a), (c), and (e)(2) and 12005(b) and (d)(2) of this title.

Section 5458, added Pub. L. 85–861, §1(113)(A), Sept. 2, 1958, 72 Stat. 1492; amended Pub. L. 86–559, §1(37)–(39), June 30, 1960, 74 Stat. 273; Pub. L. 96–107, title III, §302(c), Nov. 9, 1979, 93 Stat. 806; Pub. L. 96–513, title V, §513(9)(C), Dec. 12, 1980, 94 Stat. 2931; Pub. L. 102–190, div. A, title X, §1061(a)(22)(C), title XI, §1131(8)(A), Dec. 5, 1991, 105 Stat. 1473, 1506, related to authorized strength of Marine Corps Reserve in officers in active status in grades above chief warrant officer, W–5. See sections 12004(a), (d), (e)(2) and 12005(c), (d)(2) of this title.

Prior sections 5501 to 5503 were renumbered sections 8111 to 8113 of this title, respectively.

Prior sections 5504 and 5505 were repealed by Pub. L. 96–513, title III, §314, Dec. 12, 1980, 94 Stat. 2892, effective Sept. 15, 1981.

Section 5504, acts Aug. 10, 1956, ch. 1041, 70A Stat. 314; Oct. 13, 1964, Pub. L. 88–647, title III, §301(13), 78 Stat. 1072; Sept. 19, 1978, Pub. L. 95–377, §5, 92 Stat. 721, related to maintenance of lineal lists of officers in line of Navy.

Section 5505, acts Aug. 10, 1956, ch. 1041, 70A Stat. 316; June 30, 1960, Pub. L. 86–559, §1(40), 74 Stat. 273; Sept. 7, 1962, Pub. L. 87–649, §14c(25), 76 Stat. 501, related to changes of position on lineal list of reserve officers of Naval Reserve and Marine Corps Reserve.

A prior section 5506, added Pub. L. 85–861, §1(114)(A), Sept. 2, 1958, 72 Stat. 1492, and amended Pub. L. 96–513, title V, §503(26), Dec. 12, 1980, 94 Stat. 2913, related to ranking of officers in active status in Naval Reserve and Marine Corps Reserve, prior to repeal by Pub. L. 103–337, div. A, title XVI, §1673(d)(1), Oct. 5, 1994, 108 Stat. 3016, effective Dec. 1, 1994.

A prior section 5507, act Aug. 10, 1956, ch. 1041, 70A Stat. 316, related to pay and allowances of rear admirals. See section 202 of Title 37, Pay and Allowances of the Uniformed Services, prior to repeal by Pub. L. 87–649, §14c(26), Sept. 7, 1962, 76 Stat. 501, effective Nov. 1, 1962.

A prior section 5508 was renumbered section 8118 of this title.

Prior sections 5531 to 5535 were repealed by Pub. L. 90–235, §2(a)(3), (b), Jan. 2, 1968, 81 Stat. 756.

Section 5531, act Aug. 10, 1956, ch. 1041, 70A Stat. 318, provided for recruiting campaigns to obtain enlistments in the Regular Navy and the Regular Marine Corps.

Section 5532, act Aug. 10, 1956, ch. 1041, 70A Stat. 318, set forth classes of persons prohibited from enlisting in the naval service.

Section 5533, act Aug. 10, 1956, ch. 1041, 70A Stat. 318, provided for enlistment of minors in naval service.

Section 5534, act Aug. 10, 1956, ch. 1041, 70A Stat. 318, set forth term of enlistments in Regular Navy or Regular Marine Corps and provided that Secretary of Navy could prescribe grades or ratings in which such enlistments could be made.

Section 5535, act Aug. 10, 1956, ch. 1041, 70A Stat. 319, required evidence of age for enlistment of minors in Regular Navy as seamen, seamen apprentices or seamen recruits.

A prior section 5536, act Aug. 10, 1956, ch. 1041, 70A Stat. 319, related to extension of service by reason of time lost through misconduct or unauthorized absence, prior to repeal by Pub. L. 85–861, §36B(13), Sept. 2, 1958, 72 Stat. 1571. See section 972(a) of this title.

Prior sections 5537 to 5539 were repealed by Pub. L. 90–235, §2(a)(3), Jan. 2, 1968, 81 Stat. 756.

Section 5537, act Aug. 10, 1956, ch. 1041, 70A Stat. 319, provided for extension of naval service during disability incident to service.

Section 5538, act Aug. 10, 1956, ch. 1041, 70A Stat. 319, provided for extension of enlistments in Regular Navy or Regular Marine Corps during war or national emergency.

Section 5539, acts Aug. 10, 1956, ch. 1041, 70A Stat. 320; Sept. 2, 1958, Pub. L. 85–861, §1(116), 72 Stat. 1493; Sept. 7, 1962, Pub. L. 87–649, §14c(27), 76 Stat. 501, provided for voluntary extension or re-extension of enlistments in Regular Navy or Regular Marine Corps.

A prior section 5540 was renumbered section 8120 of this title.

Prior sections 5571 to 5580 were repealed by Pub. L. 96–513, title III, §§321, 322, Dec. 12, 1980, 94 Stat. 2892, effective Sept. 15, 1981.

Section 5571, act Aug. 10, 1956, ch. 1041, 70A Stat. 321, prescribed a citizenship requirement for appointment as an officer in the Regular Navy or the Regular Marine Corps. See section 532 of this title.

Section 5572, acts Aug. 10, 1956, ch. 1041, 70A Stat. 321; Sept. 2, 1958, Pub. L. 85–861, §1(117), 72 Stat. 1493, required that each appointment to the active list of the Navy or to the active list of the Marine Corps be made by the President, by and with the advice and consent of the Senate. See section 531 of this title.

Section 5573, act Aug. 10, 1956, ch. 1041, 70A Stat. 321, authorized appointment of graduates of the Naval Academy to the Regular Navy and the Regular Marine Corps.

Section 5573a, added Pub. L. 85–861, §1(118)(A), Sept. 2, 1958, 72 Stat. 1493, authorized appointments to the active list of the Navy in permanent grades not above lieutenant and to the active list of the Marine Corps in permanent grades not above captain from officers of the Naval Reserve or the Marine Corps Reserve and from officers of the Regular Navy or the Regular Marine Corps not holding permanent commissioned appointments therein.

Section 5574, acts Aug. 10, 1956, ch. 1041, 70A Stat. 321; Sept. 2, 1958, Pub. L. 85–861, §1(119), 72 Stat. 1493, prescribed requirements for original appointments to the active list of the Navy in the Medical Corps. See section 532 of this title.

Section 5575, act Aug. 10, 1956, ch. 1041, 70A Stat. 322, prescribed requirements for original appointments to

the active list of the Navy in the Supply Corps. See section 532 of this title.

Section 5576, act Aug. 10, 1956, ch. 1041, 70A Stat. 322, prescribed requirements for original appointments to the active list of the Navy in the Chaplain Corps. See section 532 of this title.

Section 5577, act Aug. 10, 1956, ch. 1041, 70A Stat. 322, prescribed requirements for original appointments to the active list of the Navy in the Civil Engineer Corps. See section 532 of this title.

Section 5578, acts Aug. 10, 1956, ch. 1041, 70A Stat 322; Sept. 2, 1958, Pub. L. 85–861, § 1(120), 72 Stat. 1494, prescribed requirements for original appointments to the active list of the Navy in the Dental Corps. See section 532 of this title.

Section 5578a, added Pub. L. 90–179, § 5(1), Dec. 8, 1967, 81 Stat. 547, prescribed requirements for original appointments to the active list of the Navy in the Judge Advocate General's Corps. See section 532 of this title.

Section 5579, act Aug. 10, 1956, ch. 1041, 70A Stat. 323, prescribed requirements for original appointments to the active list of the Navy in the Medical Service Corps. See section 532 of this title.

Section 5580, acts Aug. 10, 1956, ch 1041, 70A Stat. 323; Sept. 30, 1966, Pub. L. 89–609, § 1(7)–(9), 80 Stat. 853, prescribed requirements for original appointments to the active list of the Navy in the Nurse Corps. See section 532 of this title.

A prior section 5581, acts Aug. 10, 1956, ch. 1041, 70A Stat. 323; Dec. 8, 1967, Pub. L. 90–179, § 12, 81 Stat. 549, related to the appointment of women in the Naval Reserve to the Medical Corps, the Dental Corps, and the Medical Services Corps, prior to repeal by Pub. L. 96–513, title III, § 373(c), Dec. 12, 1980, 94 Stat. 2903, effective Sept. 15, 1981.

A prior section 5582 was renumbered section 8132 of this title.

Prior sections 5583 and 5584 were repealed by Pub. L. 96–513, title III, § 321, Dec. 12, 1980, 94 Stat. 2892, effective Sept. 15, 1981.

Section 5583, act Aug. 10, 1956, ch. 1041, 70A Stat. 324, prescribed requirements for original appointments to the active list of the Marine Corps from noncommissioned officers of the Regular Marine Corps. See section 532 of this title.

Section 5584, act Aug. 10, 1956, ch. 1041, 70A Stat. 324, prescribed requirements for original appointments to the active list of the Marine Corps from former officers of the Marine Corps. See section 532 of this title.

A prior section 5585 was renumbered section 8135 of this title.

A prior section 5586, act Aug. 10, 1956, ch. 1041, 70A Stat. 324, prescribed requirements for original appointments to the active list of the Navy in the line or in any staff corps, except the Medical Service Corps and the Nurse Corps, in grades not above lieutenant and to the active list of the Marine Corps in grades not above captain from warrant officers and enlisted members of the Regular Navy and Regular Marine Corps, prior to repeal by Pub. L. 96–513, title III, § 321, Dec. 12, 1980, 94 Stat. 2892, effective Sept. 15, 1981. See section 532 of this title.

Prior sections 5587 and 5587a were renumbered sections 8137 and 8138 of this title, respectively.

A prior section 5888, act Aug. 10, 1956, ch. 1041, 70A Stat. 326, related to designation of Marine Corps officers for supply duty, prior to repeal by Pub. L. 87–123, § 5(8), Aug. 3, 1961, 75 Stat. 265.

A prior section 5589 was renumbered section 8139 of this title.

A prior section 5590, act Aug. 10, 1956, ch. 1041, 70A Stat. 327, authorized appointments of women to the Regular Navy and Regular Marine Corps, prior to repeal by Pub. L. 96–513, title III, § 373(e), Dec. 12, 1980, 94 Stat. 2903, effective Sept. 15, 1981.

Prior sections 5591 to 5595 were repealed by Pub. L. 96–513, title III, § 323, Dec. 12, 1980, 94 Stat. 2893, effective Sept. 15, 1981.

Section 5591, act Aug. 10, 1956, ch. 1041, 70A Stat. 327, prescribed maximum number of appointments that could be made annually to active list of Navy in Supply Corps in grade of ensign.

Section 5592, act Aug. 10, 1956, ch. 1041, 70A Stat. 327, prescribed maximum number of appointments that could be made annually to active list of Navy in Civil Engineer Corps in grade of ensign.

Section 5593, act Aug. 10, 1956, ch. 1041, 70A Stat. 328, prescribed maximum number of appointments that could be made annually to active list of Navy in Medical Service Corps in grade of ensign.

Section 5594, act Aug. 10, 1956, ch. 1041, 70A Stat. 328, prescribed maximum number of appointments that could be made annually to active list of Navy in Nurse Corps in grade of ensign.

Section 5595, act Aug. 10, 1956, ch. 1041, 70A Stat. 328, restricted appointment of a former midshipman at Naval Academy or a former cadet at Military Academy to a commissioned grade in Regular Marine Corps until after graduation of class of which he was a member.

A prior section 5596 was renumbered section 8146 of this title.

Prior sections 5597 to 5599 were repealed by Pub. L. 96–513, title III, § 327, Dec. 12, 1980, 94 Stat. 2894, effective Sept. 15, 1981.

Section 5597, acts Aug. 10, 1956, ch. 1041, 70A Stat. 330; Sept. 7, 1962, Pub. L. 87–649, §§ 5(a), 14c(28), 76 Stat. 493, 501; Sept. 28, 1971, Pub. L. 92–129, title VI, § 603(a), 85 Stat. 362, authorized temporary appointments in Navy and Marine Corps in times of war or national emergency. See section 603 of this title.

Section 5598, act Aug. 10, 1956, ch. 1041, 70A Stat. 331, authorized temporary appointments in Naval Reserve and Marine Corps Reserve in times of war or national emergency. See section 603 of this title.

Section 5599, act Aug. 10, 1956, ch. 1041, 70A Stat. 331, provided that the President alone could make appointments for temporary service in Medical Corps in grade of lieutenant (junior grade). See section 603 of this title.

A prior section 5600, added Pub. L. 85–861, § 1(121)(A), Sept. 2, 1958, 72 Stat. 1494; amended Pub. L. 86–559, § 1(41), June 30, 1960, 74 Stat. 273; Pub. L. 90–179, § 5(4), Dec. 8, 1967, 81 Stat. 548; Pub. L. 96–513, title III, § 328, Dec. 12, 1980, 94 Stat. 2895; Pub. L. 97–22, § 6(c), July 10, 1981, 95 Stat. 130; Pub. L. 98–94, title X, § 1007(c)(4), Sept. 24, 1983, 97 Stat. 662; Pub. L. 100–180, div. A, title VII, § 714(c), Dec. 4, 1987, 101 Stat. 1113; Pub. L. 102–190, div. A, title XI, § 1131(8)(A), Dec. 5, 1991, 105 Stat. 1506; Pub. L. 103–160, div. A, title V, § 509(c), Nov. 30, 1993, 107 Stat. 1648, related to service credit upon original appointment as commissioned officer in Naval Reserve or Marine Corps Reserve, prior to repeal by Pub. L. 104–106, div. A, title XV, § 1501(c)(26), Feb. 10, 1996, 110 Stat. 499. See section 12207 of this title.

A prior section 5601, added Pub. L. 85–861, § 1(121)(A), Sept. 2, 1958, 72 Stat. 1495, authorized appointment of men in the Naval Reserve in the Nurse Corps, prior to repeal by Pub. L. 89–609, § 1(10), Sept. 30, 1966, 80 Stat. 853.

Prior sections 5651 to 5664 were repealed by Pub. L. 96–513, title III, § 332, Dec. 12, 1980, 94 Stat. 2897 effective Sept. 15, 1981.

Section 5651, act Aug. 10, 1956, ch. 1041, 70A Stat. 332, related to eligibility of officers to be running mates.

Section 5652, acts Aug. 10, 1956, ch. 1041, 70A Stat. 332; Sept. 2, 1958, Pub. L. 85–861, § 1(122), 72 Stat. 1495, related, except as provided in sections 5652a, 5652b, 5652c, 5653, and 5654 of this title, to assignment of running mates from among eligible line officers to staff corps officers serving in grade of lieutenant (junior grade) on active list of Navy.

Section 5652a, added Pub. L. 85–861, § 1(123)(A), Sept. 2, 1958, 72 Stat. 1495, and amended Pub. L. 90–179, § 12, Dec. 8, 1967, 81 Stat. 549, related to assignment of running mates to officers appointed to active list of Navy in grade of lieutenant (junior grade) in Medical Corps, Judge Advocate General's Corps, or Dental Corps.

Section 5652b, added Pub. L. 85–861, § 1(123)(A), Sept. 2, 1958, 72 Stat. 1495, and amended Pub. L. 88–647, title III, § 301(14)(B), Oct. 13, 1964, 78 Stat. 1072, related to assign-

ment of running mates to certain officers originally appointed as ensigns to active list of Navy and serving as staff corps officers at time of promotion to grade of lieutenant (junior grade).

Section 5652c, added Pub. L. 85–861, §1(123)(A), Sept. 2, 1958, 72 Stat. 1496, related to assignment of running mates to officers appointed to active list of Navy in a staff corps under section 5573a of this title.

Section 5653, acts Aug. 10, 1056, ch. 1041, 70A Stat. 333; Sept. 2, 1958, Pub. L. 85–861, §1(124), 72 Stat. 1496, related to assignment of running mates to officers originally appointed to active list of Navy in a staff corps in a grade of lieutenant or above.

Section 5654, act Aug. 10, 1956, ch. 1041, 70A Stat. 333, related to assignment of running mates to officers on active list in line of Navy transferred to a staff corps in grade of lieutenant (junior grade) or above.

Section 5655, act Aug. 10, 1956, ch. 1041, 70A Stat. 333, related to assignment of running mates to officers of Naval Reserve in a staff corps ordered to active duty and placed on a lineal list.

Section 5656, act Aug. 10, 1956, ch. 1041, 70A Stat. 334, related to reassignment of a running mate to a staff corps officer on active duty where originally assigned running mate was separated from active list, was released from active duty, or lost numbers.

Section 5657, act Aug. 10, 1956, ch. 1041, 70A Stat. 334, related to reassignment of a running mate to a staff corps officer on active duty where such staff corps officer was promoted after selection.

Section 5658, act Aug. 10, 1956, ch. 1041, 70A Stat. 334, related to reassignment of a running mate to a staff corps officer on active duty where running mate of staff corps officer was promoted to a higher grade without staff corps officer being so promoted.

Section 5659, act Aug. 10, 1956, ch. 1041, 70A Stat. 334, related to reassignment of a running mate to a staff corps officer where such staff corps officer was not restricted in performance of duty and was serving on active duty in grade of lieutenant (junior grade) or above and lost numbers in grade.

Section 5660, act Aug. 10, 1956, ch. 1041, 70A Stat. 335, related to reassignment of a running mate to a staff corps officer on active duty where running mate originally assigned to such staff corps officer was advanced in numbers or in grade.

Section 5661, act Aug. 10, 1956, ch. 1041, 70A Stat. 335, related to reassignment of a running mate to a staff corps officer where staff corps officer was not restricted in performance of duty, was serving on active duty in grade of lieutenant (junior grade) or above, and was advanced in numbers in his grade.

Section 5662, acts Aug. 10, 1956, ch. 1041, 70A Stat. 335; Apr. 21, 1976, Pub. L. 94–273, §2(3), 90 Stat. 375, authorized President to suspend any provisions of sections 5651 to 5661 of this title during times of war or national emergency or during certain other times when specified conditions were found to exist.

Section 5663, act Aug. 10, 1956, ch. 1041, 70A Stat. 335, excluded from application of sections 5651 to 5662 of this title certain women officers, women reserve officers, retired officers, and officers of Naval Reserve.

Section 5664, act Aug. 10, 1956, ch. 1041, 70A Stat. 336, related to assignment of running mates to women officers on active list of Navy appointed under section 5590 of this title in any staff corps.

A prior section 5665, added Pub. L. 85–861, §1(125)(A), Sept. 2, 1958, 72 Stat. 1496; amended Pub. L. 96–513, title III, §332, Dec. 12, 1980, 94 Stat. 2897; Pub. L. 102–190, div. A, title XI, §1131(8)(A), Dec. 5, 1991, 105 Stat. 1506, related to running mates for Naval Reserve and Marine Corps Reserve active status officers in permanent grades above chief warrant officer, W–5, prior to repeal by Pub. L. 103–337, div. A, title XVI, §1629(b)(1), Oct. 5, 1994, 108 Stat. 2963, effective Oct. 1, 1996. See section 14306 of this title.

A prior section 5666, act Aug. 10, 1956, ch. 1041, 70A Stat. 336, provided that appointments for limited duration would not be considered for purposes of the chapter, prior to repeal by Pub. L. 96–513, title III, §332, Dec. 12, 1980, 94 Stat. 2897, effective Sept. 15, 1981.

Prior sections 5701 to 5711 were repealed by Pub. L. 96–513, title III, §333, Dec. 12, 1980, 94 Stat. 2897, effective Sept. 15, 1981.

Section 5701, acts Aug. 10, 1956, ch. 1041, 70A Stat. 336; Feb. 26, 1970, Pub. L. 91–199, §1, 84 Stat. 16, related to convening by Secretary of Navy at least annually of selection boards to recommend male officers in line of Navy for promotion and continuation on active list. See section 611 of this title.

Section 5702, acts Aug. 10, 1956, ch. 1041, 70A Stat. 337; Aug. 21, 1957, Pub. L. 85–155, title II, §201(5), 71 Stat. 381; Nov. 8, 1967, Pub. L. 90–130, §1(18)(A)–(H), 81 Stat. 377; Dec. 8, 1967, Pub. L. 90–179, §12, 81 Stat. 549, related to convening of selection boards to recommend staff corps officers, other than women officers appointed under former section 5590 of this title, for promotion and continuation on active list. See section 611 of this title.

Section 5703, acts Aug. 10, 1956, ch. 1041, 70A Stat. 338; Aug. 3, 1961, Pub. L. 87–123, §5(11), 75 Stat. 265; Sept. 19, 1978, Pub. L. 95–377, §10(a), 92 Stat. 721; Sept. 8, 1980, Pub. L. 96–343, §10(d), 94 Stat. 1130, related to convening at least annually by Secretary of Navy of selection boards to recommend male officers of Marine Corps for promotion and for continuation on active list. See section 611 of this title.

Section 5704, acts Aug. 10, 1956, ch. 1041, 70A Stat. 339; Nov. 8, 1967, Pub. L. 90–130, §1(18)(I)–(K), 81 Stat. 377, relating to convening by Secretary of Navy at least annually of selection boards to recommend women officers in line of Navy for promotion to grades of captain, commander, lieutenant commander, and lieutenant. See section 611 of this title.

Section 5705, act Aug. 10, 1956, ch. 1041, 70A Stat. 340, related to oath of selection board members. See section 613 of this title.

Section 5706, acts Aug. 10, 1956, ch. 1041, 70A Stat. 340; Aug. 3, 1961, Pub. L. 87–123, §5(12), 75 Stat. 265, related to information furnished selection boards by Secretary of Navy. See section 615 of this title.

Section 5707, acts Aug. 10, 1956, ch. 1041, 70A Stat. 341; Aug. 21, 1957, Pub. L. 85–155, title II, §201(6), 71 Stat. 382; Aug. 3, 1961, Pub. L. 87–123, §5(13), 75 Stat. 265; Nov. 8, 1967, Pub. L. 90–130, §1(18)(L), 81 Stat. 377, related to officers to be recommended for promotion or continuation by selection boards. See section 616 of this title.

Section 5708, acts Aug. 10, 1956, ch. 1041, 70A Stat. 342; Aug. 21, 1957, Pub. L. 85–155, title II, §201(7), 71 Stat. 382; Dec. 8, 1967, Pub. L. 90–179, §12, 81 Stat. 549, related to required certification of selection board reports. See section 617 of this title.

Section 5709, acts Aug. 10, 1956, ch. 1041, 70A Stat. 344; Aug. 3, 1961, Pub. L. 87–123, §5(14), 75 Stat. 265, related to retention of rear admirals in Navy and major generals in Marine Corps on active list. See section 611 of this title.

Section 5710, act Aug. 10, 1956, ch. 1041, 70A Stat. 344, directed submission of selection board reports to either Secretary of Navy or President. See section 617 of this title.

Section 5711, acts Aug. 10, 1956, ch. 1041, 70A Stat. 345; Nov. 8, 1967, Pub. L. 90–130, §1(18)(M), 81 Stat. 377; Apr. 21, 1976, Pub. L. 94–273, §2(3), 90 Stat. 375, authorized suspension of specific provisions of sections 5701 to 5710 of this title under certain circumstances by President and excluded specific categories of officers from consideration by selection boards. See section 123(a), (b) of this title.

A prior section 5721, added Pub. L. 96–513, title III, §334, Dec. 12, 1980, 94 Stat. 2897; amended Pub. L. 98–94, title IV, §403, Sept. 24, 1983, 97 Stat. 629; Pub. L. 98–525, title V, §514, Oct. 19, 1984, 98 Stat. 2522; Pub. L. 99–661, div. A, title V, §503, Nov. 14, 1986, 100 Stat. 3864; Pub. L. 100–180, div. A, title V, §501(a), Dec. 4, 1987, 101 Stat. 1085; Pub. L. 101–189, div. A, title V, §512(a), Nov. 29, 1989, 103 Stat. 1439; Pub. L. 102–484, div. A, title V, §507, Oct. 23, 1992, 106 Stat. 2405; Pub. L. 103–160, div. A, title V, §508(a), Nov. 30, 1993, 107 Stat. 1647; Pub. L. 104–106, div. A, title V, §508(a), (b), (d), Feb. 10, 1996, 110 Stat. 296, 297; Pub. L. 104–201, div. A, title V, §503, Sept. 23, 1996, 110 Stat. 2511; Pub. L. 107–314, div. A, title X,

§ 1041(a)(20), Dec. 2, 2002, 116 Stat. 2645, related to temporary promotions of certain Navy lieutenants with critical skills, prior to repeal by Pub. L. 115–232, div. A, title V, § 503(b)(1), Aug. 13, 2018, 132 Stat. 1742.

Prior sections 5751 to 5758 were repealed by Pub. L. 96–513, title III, § 333, Dec. 12, 1980, 94 Stat. 2897, effective Sept. 15, 1981.

Section 5751, acts Aug. 10, 1956, ch. 1041, 70A Stat. 346; Aug. 3, 1961, Pub. L. 87–123, § 5(16), 75 Stat. 266, related to eligibility for consideration by a selection board for promotion of male officers in line of Navy and male officers in Marine Corps. See section 619 of this title.

Section 5752, acts Aug. 10, 1956, ch. 1041, 70A Stat. 347; Sept. 2, 1958, Pub. L. 85–861, § 1(126), 72 Stat. 1497; Nov. 8, 1967, Pub. L. 90–130, § 1(19)(A)–(C), 81 Stat. 378, related to eligibility for consideration by a selection board for promotion of women officers in line of Navy and women officers in Marine Corps. See section 619 of this title.

Section 5753, acts Aug. 10, 1956, ch. 1041, 70A Stat. 347; Aug. 21, 1957, Pub. L. 85–155, title II, § 201(8), 71 Stat. 382; Nov. 7, 1967, Pub. L. 90–130, § 1(19)(D), 81 Stat. 378; Dec. 8, 1967, Pub. L. 90–179, § 12, 81 Stat. 549, related to eligibility of Navy staff corps officers for consideration for promotion by a selection board. See section 619 of this title.

Section 5754, act Aug. 10, 1956, ch. 1041, 70A Stat. 348, prescribed general conditions for eligibility for consideration by a selection board for promotion. See section 619 of this title.

Section 5755, act Aug. 10, 1956, ch. 1041, 70A Stat. 348, related to communications between a selection board and an officer eligible for consideration for promotion by such board. See section 614 of this title.

Section 5756, act Aug. 10, 1956, ch. 1041, 70A Stat. 348, directed Secretary of Navy to furnish appropriate selection board with number of male officers in line of Navy or of Marine Corps that could be recommended for promotion to next highest grade and prescribed a formula for arriving at such number. See section 622 of this title.

Section 5757, act Aug. 10, 1956, ch. 1041, 70A Stat. 348, directed Secretary of Navy to furnish appropriate selection board with number of male officers in line of Navy or of Marine Corps designated for limited duty that could be recommended for promotion to next highest grade and prescribed a formula for arriving at such number. See section 622 of this title.

Section 5758, act Aug. 10, 1956, ch. 1041, 70A Stat. 349, directed Secretary of Navy to furnish appropriate selection board with numbers of officers designated for engineering, aeronautical engineering, and special duty that could be recommended for promotion to grade of rear admiral and numbers of male officers designated for such duty that could be recommended for promotion to a grade below rear admiral and prescribed formulas for arriving at such numbers. See section 622 of this title.

A prior section 5759, act Aug. 10, 1956, ch. 1041, 70A Stat. 349, required Secretary to furnish selection boards with number of Marine Corps officers designated for supply duty that could be recommended for promotion, prior to repeal by Pub. L. 87–123, § 5(17), Aug. 3, 1961, 75 Stat. 266.

Prior sections 5760 to 5773 were repealed by Pub. L. 96–513, title III, § 333, Dec. 12, 1980, 94 Stat. 2897, effective Sept. 15, 1981.

Section 5760, acts Aug. 10, 1056, ch. 1041, 70A Stat. 350; Nov. 8, 1967, Pub. L. 90–130, § 1(19)(E), (F), 81 Stat. 378, directed Secretary of Navy to furnish appropriate selection board with number of women officers in the line of Navy that could be recommended for promotion to grade of lieutenant, captain, commander, or lieutenant commander and number of women officers of Marine Corps that could be recommended for promotion to grade of captain, colonel, lieutenant colonel, or major. See section 622 of this title.

Section 5761, act Aug. 10, 1956, ch. 1041, 70A Stat. 350, directed Secretary of Navy to furnish appropriate selection board with number of officers in any staff corps that could be recommended for promotion to grade of rear admiral. See section 622 of this title.

Section 5762, acts Aug. 10, 1956, ch. 1041, 70A Stat. 351; Aug. 21, 1957, Pub. L. 85–155, title II, § 201(9), 71 Stat. 383; Nov. 8, 1967, Pub. L. 90–130, § 1(19)(G), (H), 81 Stat. 378; Dec. 8, 1967, Pub. L. 90–179, § 6, 81 Stat. 548, directed Secretary of Navy to furnish appropriate selection boards with number of staff corps officers that could be recommended for promotion to grades below rear admiral. See section 622 of this title.

Section 5763, acts Aug. 10, 1956, ch. 1041, 70A Stat. 352; Sept. 2, 1958, Pub. L. 85–861, § 1(127), 72 Stat. 1497; Nov. 8, 1967, Pub. L. 90–130, § 1(19)(I), 81 Stat. 378, directed Secretary of Navy to furnish appropriate selection boards with number of certain women officers in a staff corps of Navy that could be recommended for promotion to grade of captain, commander, or lieutenant commander. See section 622 of this title.

Section 5764, acts Aug. 10, 1956, ch. 1041, 70A Stat. 353; Nov. 8, 1967, Pub. L. 90–130, § 1(19)(J), (K), 81 Stat. 378, related to establishment of promotion zones in each grade in line of Navy. See section 623 of this title.

Section 5765, acts Aug. 10, 1956, ch. 1041, 70A Stat. 354; Aug. 3, 1961, Pub. L. 87–123, § 5(19), 75 Stat. 266; Nov. 8, 1967, Pub. L. 90–130, § 1(19)(J), (L), 81 Stat. 378, related to establishment of promotion zones in each grade of Marine Corps. See section 623 of this title.

Section 5766, acts Aug. 10, 1956, ch. 1041, 70A Stat. 355; Nov. 8, 1967, Pub. L. 90–130, § 1(19)(M), 81 Stat. 378, specified Navy staff corps officers considered to be in promotion zones for purposes of boards of selection.

Section 5767, acts Aug. 10, 1956, ch. 1041, 70A Stat. 355; Nov. 8, 1967, Pub. L. 90–130, § 1(19)(N), 81 Stat. 379, related to promotion to flag or general officer grade of officers in Navy or Marine Corps qualified for specific duties. See section 619 et seq. of this title.

Section 5768, act Aug. 10, 1956, ch. 1041, 70A Stat. 356, prescribed normal terms of service for male officers in line of Navy and of Marine Corps.

Section 5769, acts Aug. 10, 1956, ch. 1041, 70A Stat. 356; Aug. 3, 1961, Pub. L. 87–123, § 5(20), 75 Stat. 266; Oct. 22, 1970, Pub. L. 91–491, § 1, 84 Stat. 1089, related to eligibility for promotion of male line officers in Navy and male officers in Marine Corps. See section 619 of this title.

Section 5770, act Aug. 10, 1956, ch. 1041, 70A Stat. 357, prescribed a sea or foreign service requirement for promotion of male officers on the active list in line of Navy.

Section 5771, acts Aug. 10, 1956, ch. 1041, 70A Stat. 358; Nov. 8, 1967, Pub. L. 90–130, § 1(19)(O), (P), 81 Stat. 379, related to eligibility for promotion of women officers on active list in line of Navy and women officers on active list of Marine Corps. See section 619 of this title.

Section 5772, act Aug. 10, 1956, ch. 1041, 70A Stat. 358, related to eligibility of Navy staff corps officers for promotion to grade of rear admiral. See section 619 of this title.

Section 5773, acts Aug. 10, 1956, ch. 1041, 70A Stat. 359; Aug. 21, 1957, Pub. L. 85–155, title II, § 201(10), 71 Stat. 383; Sept. 30, 1966, Pub. L. 89–609, § 1(11), 80 Stat. 853; Nov. 8, 1967, Pub. L. 90–130, § 1(19)(Q)–(S), 81 Stat. 379, related to eligibility of Navy staff corps officers for promotion to grades below rear admiral. See section 619 of this title.

A prior section 5774, act Aug. 10, 1956, ch. 1041, 70A Stat. 359, made women officers on active list of Navy in staff corps, appointed under section 5590 of this title, who were recommended for promotion to a grade above lieutenant (junior grade) in approved report of a selection board convened under chapter 543 of this title eligible for promotion when line officer who was to be her running mate in higher grade became eligible for promotion to that grade, prior to repeal by Pub. L. 90–130, § 1(19)(T), Nov. 8, 1967, 81 Stat. 379.

A prior section 5775, acts Aug. 10, 1956, ch. 1041, 70A Stat. 359; Aug. 21, 1957, Pub. L. 85–155, title II, § 201(11), 71 Stat. 383; Aug. 3, 1961, Pub. L. 87–123, § 5(21), 75 Stat. 266, related to date of entitlement to pay and allowances of grade to which an officer is promoted. See section 904 of Title 37, Pay and Allowances of the Uniformed Services, prior to repeal by Pub. L. 87–649,

§14c(293), Sept. 7, 1962, 76 Stat. 501, effective Nov. 1, 1962.

Prior sections 5776 to 5793 were repealed by Pub. L. 96–513, title III, §333, Dec. 12, 1980, 94 Stat. 2897, effective Sept. 15, 1981.

Section 5776, acts Aug. 10, 1956, ch. 1041, 70A Stat. 361; Aug. 21, 1957, Pub. L. 85–155, title II, §201(12), 71 Stat. 383; Aug. 3, 1961, Pub. L. 87–123, §5(22), 75 Stat. 266; Sept. 30, 1966, Pub. L. 89–609, §1(12), 80 Stat. 853; Nov. 8, 1967, Pub. L. 90–130, §1(19)(U)–(W), 81 Stat. 379, related to failure of selection. See section 627 of this title.

Section 5777, act Aug. 10, 1956, ch. 1041, 70A Stat. 361, related to removal of an officer's name from a promotion list. See section 629 of this title.

Section 5778, acts Aug. 10, 1956, ch. 1041, 70A Stat. 362; Nov. 8, 1967, Pub. L. 90–130, §1(19)(X), 81 Stat. 379, related to temporary and permanent natures of appointments under certain of the provisions of former sections 5751 to 5777 of this title.

Section 5779, act Aug. 10, 1956, ch. 1041, 70A Stat. 362, authorized President to terminate temporary promotions at any time.

Section 5780, act Aug. 10, 1956, ch. 1041, 70A Stat. 362, related to permanent promotions of male line officers in Regular Navy and male officers in Regular Marine Corps. See section 619 et seq. of this title.

Section 5781, act Aug. 10, 1956, ch. 1041, 70A Stat. 363, related to permanent promotions of Regular Navy staff corps officers to grade of rear admiral. See section 619 et seq. of this title.

Section 5782, acts Aug. 10, 1956, ch. 1041, 70A Stat. 363; Aug. 21, 1957, Pub. L. 85–155, title II, §201(13), 71 Stat. 383; Sept. 30, 1966, Pub. L. 89–609, §1(13), 80 Stat. 853; Nov. 8, 1967, Pub. L. 90–130, §1(19)(Y), 81 Stat. 379, related to permanent promotions of Regular Navy staff corps officers to grades below rear admiral. See section 619 et seq. of this title.

Section 5783, act Aug. 10, 1956, ch. 1041, 70A Stat. 364, related to permanent promotions of Naval Reserve and Marine Corps Reserve officers. See section 619 et seq. of this title.

Section 5784, act Aug. 10, 1956, ch. 1041, 70A Stat. 365, related to temporary promotions of ensigns in Navy to grade of lieutenant (junior grade) and second lieutenants in Marine Corps to grade of first lieutenant. See section 603 of this title.

Section 5785, acts Aug. 10, 1956, ch. 1041, 70A Stat. 365; Sept. 2, 1958, Pub. L. 85–861, §33(a)(29), 72 Stat. 1566; Apr. 21, 1976, Pub. L. 94–273, §2(3), 90 Stat. 375, authorized President to suspend any of the provisions of former sections 5751 to 5784 of this title relating to officers in Navy or Marine Corps except women officers appointed under former section 5590 of this title. See section 123(a), (b) of this title.

Section 5786, acts Aug. 10, 1956, ch. 1041, 70A Stat. 366; Nov. 8, 1967, Pub. L. 90–130, §1(19)(Z), 81 Stat. 379; Sept. 19, 1978, Pub. L. 95–377, §6(a), 92 Stat. 721, specified certain categories of officers as ineligible for promotion and provided that officers serving in grades to which they were appointed for periods of limited duration or to which they were temporarily appointed were to be considered for purposes of former sections 5751 to 5785 of this title as serving in the grade they would have held were it not for such temporary appointments. See section 641 of this title.

Section 5787, acts Aug. 10, 1956, ch. 1041, 70A Stat. 366; Sept. 7, 1962, Pub. L. 87–649, §§5(b), 14c(30), 76 Stat. 493, 501; Sept. 28, 1971, Pub. L. 92–129, title VI, §603(b), 85 Stat. 362, related to temporary promotions in times of war or national emergency. See sections 602 and 603 of this title.

Section 5787a, added Pub. L. 85–861, §1(128)(A), Sept. 2, 1958, 72 Stat. 1497, authorized temporary promotion of an officer in Medical or Dental Corps to grade of lieutenant at any time after first anniversary of date upon which he graduated from medical, dental, or osteopathic school. See section 603 of this title.

Section 5787b, added Pub. L. 85–861, §1(128)(A), Sept. 2, 1958, 72 Stat. 1497; amended Pub. L. 87–649, §14c(31), Sept. 7, 1962, 76 Stat. 501, authorized temporary promotion of women officers serving on active duty in grade of ensign in Navy or second lieutenant in Marine Corps. See section 603 of this title.

Section 5787c, added Pub. L. 85–861, §33(a)(30)(A), Sept. 2, 1958, 72 Stat. 1566; amended Pub. L. 95–377, §11(a), Sept. 19, 1978, 92 Stat. 721; Pub. L. 96–343, §10(e), Sept. 8, 1980, 94 Stat. 1130, related to temporary promotion of warrant officers and officers designated for limited duty in Navy and Marine Corps. See section 602 of this title.

Section 5787d, added Pub. L. 95–377, §4(a), Sept. 19, 1978, 92 Stat. 720; amended Pub. L. 96–343, §10(e), Sept. 8, 1980, 94 Stat. 1130, authorized temporary promotion under certain circumstances of Navy lieutenants as lieutenant commanders. See section 603 of this title.

Section 5788, acts Aug. 10, 1956, ch. 1041, 70A Stat. 367; Sept. 7, 1962, Pub. L. 87–649, §14c(32), 76 Stat. 501, related to eligibility for promotion of Navy ensigns and Marine Corps second lieutenants. See section 619 of this title.

Section 5789, act Aug. 10, 1956, ch. 1041, 70A Stat. 367, authorized promotion of officers in the line of the Navy or of the Marine Corps upon receipt of the thanks of Congress. See section 619 et seq. of this title.

Section 5790, act Aug. 10, 1956, ch. 1041, 70A Stat. 368, authorized advancement in rank of officers of Navy or of Marine Corps by not more than 30 numbers on lineal list for conduct in battle or extraordinary heroism. See section 619 et seq. of this title.

Section 5791, acts Aug. 10, 1956, ch. 1041, 70A Stat. 368; Sept. 28, 1971, Pub. L. 92–129, title VI, §603(c), 85 Stat. 362; Sept. 19, 1978, Pub. L. 95–377, §6(b), 92 Stat. 721, vested power to make appointments under former sections 5751 to 5793, except for former sections 5787 and 5787d, of this title in President, by and with advice and consent of Senate. See section 624 of this title.

Section 5792, acts Aug. 10 1956, ch. 1041, 70A Stat. 368; Nov. 2, 1966, Pub. L. 89–718, §4, 80 Stat. 1115, dispensed with need for an oath of office upon promotion to a higher grade in the case of an officer of the naval service who had served continuously since subscribing to the oath of office prescribed in section 3331 of title 5. See section 626 of this title.

Section 5793, added Pub. L. 90–228, §1(3)(A), Dec. 28, 1967, 81 Stat. 745, related to authorized strengths in grade and promotions of Medical Corps and Dental Corps officers. See section 521 et seq. of this title.

Prior sections 5861 and 5862 were repealed by Pub. L. 96–513, title III, §333, Dec. 12, 1980, 94 Stat. 2897, effective Sept. 15, 1981.

Section 5861, acts Aug. 10, 1956, ch. 1041, 70A Stat. 368; Sept. 2, 1958, Pub. L. 85–861, §1(129), 72 Stat. 1497, required an officer of Regular Navy or of Regular Marine Corps to pass a physical examination as prescribed by Secretary of Navy in order to qualify for promotion to a grade above ensign in Navy or second lieutenant in Marine Corps. See section 624 of this title.

Section 5862, acts Aug. 10, 1956, ch. 1041, 70A Stat. 369; Sept. 2, 1958, Pub. L. 85–861, §1(131), 72 Stat. 1498, related to mental, moral, and professional qualifications required to be demonstrated by officers on active list of Navy or Marine Corps in order to be promoted to grades of lieutenant (junior grade) or above in Navy or first lieutenant or above in Marine Corps. See section 624 of this title.

A prior section 5863, act Aug. 10, 1956, ch. 1041, 70A Stat. 369, related to procedure before examining boards, prior to repeal by Pub. L. 85–861, §36B(14), Sept. 2, 1958, 72 Stat. 1571.

Prior sections 5864 and 5865 were repealed by Pub. L. 96–513, title III, §333, Dec. 12, 1980, 94 Stat. 2897, effective Sept. 15, 1981.

Section 5864, act Aug. 10, 1956, ch. 1041, 70A Stat. 370, related to discharge of officers not morally qualified. See section 630 of this title.

Section 5865, act Aug. 10, 1956, ch. 1041, 70A Stat. 370, related to effect of a failure to qualify professionally. See section 624 of this title.

A prior section 5866, act Aug. 10, 1956, ch. 1041, 70A Stat. 371, related to delegation of power by President to

Secretary of Navy, prior to repeal by Pub. L. 85–861, § 36B(15), Sept. 2, 1958, 72 Stat. 1571.

A prior section 5867, added Pub. L. 85–861, § 1(132)(A), Sept. 2, 1958, 72 Stat. 1498, required moral, professional, and physical examinations before officers of the Naval or Marine Corps Reserves could be promoted to the next higher grades, prior to repeal by Pub. L. 96–513, title III, § 333, Dec. 12, 1980, 94 Stat. 2897, effective Sept. 15, 1981. See section 624 of this title.

Prior sections 5891 to 5906 were repealed by Pub. L. 103–337, div. A, title XVI, § 1629(b)(2), Oct. 5, 1994, 108 Stat. 2963, effective Oct. 1, 1996.

Section 5891, added Pub. L. 85–861, § 1(133), Sept. 2, 1958, 72 Stat. 1499; amended Pub. L. 90–130, § 1(20)(A), Nov. 8, 1967, 81 Stat. 379; Pub. L. 96–513, title V, § 503(32), Dec. 12, 1980, 94 Stat. 2913; Pub. L. 98–525, title V, § 533(e), Oct. 19, 1984, 98 Stat. 2528, related to officers in active status in Naval Reserve and Marine Corps Reserve who could be promoted under this chapter. See section 14301 et seq. of this title.

Section 5892, added Pub. L. 85–861, § 1(133), Sept. 2, 1958, 72 Stat. 1500; amended Pub. L. 96–513, title V, § 503(33), Dec. 12, 1980, 94 Stat. 2914; Pub. L. 104–106, div. A, title XV, § 1501(c)(27), Feb. 10, 1996, 110 Stat. 500, related to numbers of officers in each grade in Naval Reserve and Marine Corps Reserve that could be promoted. See section 14001 et seq. of this title.

Section 5893, added Pub. L. 85–861, § 1(133), Sept. 2, 1958, 72 Stat. 1500; amended Pub. L. 91–199, § 2, Feb. 26, 1970, 84 Stat. 16, related to composition and procedures of selection boards. See sections 14102 and 14108(b) of this title.

Section 5894, added Pub. L. 85–861, § 1(133), Sept. 2, 1958, 72 Stat. 1501, required members of selection boards to take oaths. See section 14103 of this title.

Section 5895, added Pub. L. 85–861, § 1(133), Sept. 2, 1958, 72 Stat. 1501, related to information to be furnished to selection boards. See section 14107 of this title.

Section 5896, added Pub. L. 99–661, div. A, title V, § 507(a), Nov. 14, 1986, 100 Stat. 3865, related to recommendations for promotion by selection boards. See section 14108 of this title.

Another prior section 5896, added Pub. L. 85–861, § 1(133), Sept. 2, 1958, 72 Stat. 1501; amended Pub. L. 90–130, § 1(20)(B), Nov. 8, 1967, 81 Stat. 379; Pub. L. 90–179, § 12, Dec. 8, 1967, 81 Stat. 549; Pub. L. 96–513, title V, § 503(34), Dec. 12, 1980, 94 Stat. 2914; Pub. L. 97–22, § 10(b)(10)(B), July 10, 1981, 95 Stat. 137, related to officers recommended for promotion by selection boards, prior to repeal by Pub. L. 99–661, § 507(a).

Section 5897, added Pub. L. 99–661, div. A, title V, § 507(a), Nov. 14, 1986, 100 Stat. 3865, related to reports by selection boards listing officers recommended for promotion. See section 14109(a), (b) of this title.

Another prior section 5897, added Pub. L. 85–861, § 1(133), Sept. 2, 1958, 72 Stat. 1502; amended Pub. L. 90–179, § 12, Dec. 8, 1967, 81 Stat. 549; Pub. L. 96–513, title V, § 503(34), Dec. 12, 1980, 94 Stat. 2914; Pub. L. 97–22, § 10(b)(10)(B), July 10, 1981, 95 Stat. 137; Pub. L. 98–525, title XIV, § 1405(47), Oct. 19, 1984, 98 Stat. 2625, related to reports and certifications by selection boards, prior to repeal by Pub. L. 99–661, § 507(a).

Section 5898, added Pub. L. 99–661, div. A, title V, § 507(a), Nov. 14, 1986, 100 Stat. 3865, related to action on reports of selection boards. See sections 14104, 14110(b), 14111(a), (b), and 14112 of this title.

Another prior section 5898, added Pub. L. 85–861, § 1(133), Sept. 2, 1958, 72 Stat. 1503; amended Pub. L. 96–513, title V, § 503(34), Dec. 12, 1980, 94 Stat. 2914; Pub. L. 97–22, § 10(b)(10)(B), July 10, 1981, 95 Stat. 137, related to submission of reports of selection boards to the President, prior to repeal by Pub. L. 99–661, § 507(a).

Section 5899, added Pub. L. 99–661, div. A, title V, § 507(a), Nov. 14, 1986, 100 Stat. 3866, related to eligibility of running mates for consideration for promotion. See section 14306(b) of this title.

Another prior section 5899, added Pub. L. 85–861, § 1(133), Sept. 2, 1958, 72 Stat. 1503; amended Pub. L. 86–559, § 1(42), June 30, 1960, 74 Stat. 274; Pub. L. 89–275, §§ 1, 2, Oct. 20, 1965, 79 Stat. 1010; Pub. L. 89–609, § 1(14), Sept. 30, 1966, 80 Stat. 853; Pub. L. 90–130, § 1(20)(C), Nov. 8, 1967, 81 Stat. 379; Pub. L. 96–513, title V, § 503(35), Dec. 12, 1980, 94 Stat. 2914; Pub. L. 97–22, § 10(b)(10)(B), July 10, 1981, 95 Stat. 137, related to eligibility of officers in promotion zones for consideration by selection boards, prior to repeal by Pub. L. 99–661, § 507(a).

Section 5900, added Pub. L. 85–861, § 1(133), Sept. 2, 1958, 72 Stat. 1504, related to right of officer eligible for consideration for promotion to send communication to selection board. See section 14106 of this title.

Section 5901, added Pub. L. 85–861, § 1(133), Sept. 2, 1958, 72 Stat. 1504; amended Pub. L. 96–513, title V, § 503(36), Dec. 12, 1980, 94 Stat. 2914, related to numbers of officers that a selection board may recommend for promotion. See section 14307 of this title.

Section 5902, added Pub. L. 85–861, § 1(133), Sept. 2, 1958, 72 Stat. 1504; amended Pub. L. 86–559, § 1(43), June 30, 1960, 74 Stat. 274; Pub. L. 89–731, §§ 3–5, Nov. 2, 1966, 80 Stat. 1160; Pub. L. 96–513, title V, § 503(37), Dec. 12, 1980, 94 Stat. 2914, related to promotion lists, eligibility of officers of Naval Reserve and Marine Corps Reserve for promotion, and date of rank. See sections 14308(a), (d) and 14311(a) of this title.

Section 5903, added Pub. L. 85–861, § 1(133), Sept. 2, 1958, 72 Stat. 1505; amended Pub. L. 90–130, § 1(20)(D), Nov. 8, 1967, 81 Stat. 380; Pub. L. 99–661, div. A, title V, § 507(b)(2), Nov. 14, 1986, 100 Stat. 3866, related to failure of officers of Naval Reserve and Marine Corps Reserve of selection for promotion. See section 14501 et seq. of this title.

Section 5904, added Pub. L. 85–861, § 1(133), Sept. 2, 1958, 72 Stat. 1505, related to effect of erroneous omission of name from list furnished to selection board. See section 14502 of this title.

Section 5905, added Pub. L. 85–861, § 1(133), Sept. 2, 1958, 72 Stat. 1505; amended Pub. L. 96–513, title V, § 503(38), Dec. 12, 1980, 94 Stat. 2914; Pub. L. 99–661, div. A, title V, § 507(b)(3), Nov. 14, 1986, 100 Stat. 3866; Pub. L. 100–456, div. A, title V, § 502(a), Sept. 29, 1988, 102 Stat. 1966, related to removal of reserve officers from promotion list. See section 14310 of this title.

Section 5906, added Pub. L. 85–861, § 1(133), Sept. 2, 1958, 72 Stat. 1506; amended Pub. L. 96–513, title V, § 503(39), Dec. 12, 1980, 94 Stat. 2914, related to promotion of reserve officers transferred to inactive status list. See section 14317(a) of this title.

A prior section 5907, added Pub. L. 85–861, § 1(133), Sept. 2, 1958, 72 Stat. 1506; Pub. L. 86–559, § 1(44), June 30, 1960, 74 Stat. 274, related to pay and allowances of reserve officers promoted to a grade above lieutenant (junior grade) in the Naval Reserve or above first lieutenant in the Marine Corps Reserve, and is covered by section 905 of Title 37, Pay and Allowances of the Uniformed Services, prior to repeal by Pub. L. 87–649, § 14c(33), Sept. 7, 1962, 76 Stat. 501, repealed effective Nov. 1, 1962.

Prior sections 5908 to 5912 were repealed by Pub. L. 103–337, div. A, title XVI, § 1629(b)(2), Oct. 5, 1994, 108 Stat. 2963, effective Oct. 1, 1996.

Section 5908, added Pub. L. 85–861, § 1(133), Sept. 2, 1958, 72 Stat. 1506; amended Pub. L. 87–649, § 14c(34), Sept. 7, 1962, 76 Stat. 501, related to eligibility of ensigns in Naval Reserve and second lieutenants in Marine Corps Reserve for promotion. See section 14001 et seq. of this title.

Section 5909, added Pub. L. 85–861, § 1(133), Sept. 2, 1958, 72 Stat. 1506, provided that sea or foreign service not be required for promotion of reserve officers under this chapter.

Section 5910, added Pub. L. 85–861, § 1(133), Sept. 2, 1958, 72 Stat. 1506; amended Pub. L. 96–513, title V, § 503(40), Dec. 12, 1980, 94 Stat. 2914, provided that officers in Naval Reserve and Marine Corps Reserve could be promoted under regulations prescribed by Secretary of the Navy. See section 14301 et seq. of this title.

Section 5911, added Pub. L. 85–861, § 1(133), Sept. 2, 1958, 72 Stat. 1507; amended Pub. L. 86–559, § 1(45), June 30, 1960, 74 Stat. 274, related to promotions of reserve officers by temporary and permanent appointments. See section 14301 et seq. of this title.

Section 5912, added Pub. L. 85–861, §1(133), Sept. 2, 1958, 72 Stat. 1507; amended Pub. L. 92–129, title VI, §603(d), Sept. 28, 1971, 85 Stat. 362, related to President's power to make appointments under this chapter of officers in Naval Reserve and Marine Corps Reserve. See section 14301 et seq. of this title.

A prior section 5941, act Aug. 10, 1956, ch. 1041, 70A Stat. 371, authorized President to prescribe regulations governing the assignment of officers to command fleets, subdivisions of fleets, and vessels, prior to repeal by Pub. L. 90–235, §5(b)(1), Jan. 2, 1968, 81 Stat. 761.

Prior sections 5942 to 5949 were renumbered sections 8162 to 8169 of this title, respectively.

A prior section 5950, act Aug. 10, 1956, ch. 1041, 70A Stat. 372, provided that the commanding officer of a vessel could not be required to perform the duties of an officer in the Supply Corps, prior to repeal by Pub. L. 90–235, §5(b)(1), Jan. 2, 1968, 81 Stat. 761.

Prior sections 5951 and 5952 were renumbered sections 8171 and 8172 of this title, respectively.

Prior sections 5953 and 5954 were repealed by Pub. L. 90–235, §5(a)(2), (b)(1), Jan. 2, 1968, 81 Stat. 761.

Section 5953, act Aug. 10, 1956, ch. 1041, 70A Stat. 372, provided for the assignment and authority of executive officers of vessels or naval stations.

Section 5954, act Aug. 10, 1956, ch. 1041, 70A Stat. 373, provided for command when different commands of the Marine Corps and the Army or the Marine Corps and the Air Force joined or served together. See section 747 of this title.

A prior section 5955, act Aug. 10, 1956, ch. 1041, 70A Stat. 373, directed that retired officers of the Navy be withdrawn from command, prior to repeal by Pub. L. 96–513, title III, §361(a), Dec. 12, 1980, 94 Stat. 2902, effective Sept. 15, 1981. See section 750 of this title.

A prior section 5981, act Aug. 10, 1956, ch. 1041, 70A Stat. 373, provided that the President could select any officer on the active list of the Navy not below the grade of commander and assign him to the command of a squadron, with the rank and title of a flag officer, prior to repeal by Pub. L. 91–482, §1(a), Oct. 21, 1970, 84 Stat. 1082.

A prior section 5982, act Aug. 10, 1956, ch. 1041, 70A Stat. 373, authorized a detail of retired officers to command ships and squadrons in time of war, prior to repeal by Pub. L. 96–513, title III, §361(b), Dec. 12, 1980, 94 Stat. 2902, effective Sept. 15, 1981. See section 688 of this title.

A prior section 5983 was renumbered section 8183 of this title.

A prior section 5984, act Aug. 10, 1956, ch. 1041, 70A Stat. 374, provided for detail to military institutions and colleges that gave instruction and drill in military tactics of officers of the Navy as superintendents or professors and retired officers and petty officers of the Navy, with their consent, as instructors in military drill and tactics, prior to repeal by Pub. L. 90–235, §4(b)(1), Jan. 2, 1968, 81 Stat. 760.

Prior sections 5985 and 5986 were renumbered sections 8185 and 8186 of this title.

A prior section 5987, act Aug. 10, 1956, ch. 1041, 70A Stat. 374, provided for the detail of officers in the Medical Corps of the Navy for duty with the Services to the Armed Forces Division of the American National Red Cross, prior to repeal by Pub. L. 90–235, §4(a)(2), Jan. 2, 1968, 81 Stat. 759. See section 711a of this title.

Prior sections 6011 to 6014 were renumbered sections 8211 to 8214 of this title, respectively.

A prior section 6015, acts Aug. 10, 1956, ch. 1041, 70A Stat. 375; Oct. 20, 1978, Pub. L. 95–485, title VIII, §808, 92 Stat. 1623; Dec. 12, 1980, Pub. L. 96–513, title V, §503(44), 94 Stat. 2914; Dec. 5, 1991, Pub. L. 102–190, div. A, title V, §531(b), 105 Stat. 1365, related to women members, duties, qualifications, and restrictions, prior to repeal by Pub. L. 103–160, div. A, title V, §541(a), Nov. 30, 1993, 107 Stat. 1659.

A prior section 6016, act Aug. 10, 1956, ch. 1041, 70A Stat. 376, required names of retired officers to be carried on Navy Register, prior to repeal by Pub. L. 85–861, §36B(16), Sept. 2, 1958, 72 Stat. 1571.

A prior section 6017, act Aug. 10, 1956, ch. 1041, 70A Stat. 376, related to Naval Reserve Retired List for Reserve members entitled to retired pay. See section 12774(b) of this title, prior to repeal by Pub. L. 103–337, div. A, title XVI, §1662(k)(2), Oct. 5, 1994, 108 Stat. 3006, effective Dec. 1, 1994, except as otherwise provided.

A prior section 6018, acts Aug. 10, 1956, ch. 1041, 70A Stat. 376; Aug. 1, 1958, Pub. L. 85–588, 72 Stat. 488, related to assignment of Regular Navy officers to shore duty, prior to repeal by Pub. L. 96–513, title III, §372, Dec. 12, 1980, 94 Stat. 2903, effective Sept. 15, 1981.

A prior section 6019 was renumbered section 8215 of this title.

A prior section 6020, act Aug. 10, 1956, ch. 1041, 70A Stat. 376, provided for detail of Marine Corps officers for duty in supply department for a period of four years, prior to repeal by Pub. L. 87–123, §5(23), Aug. 3, 1961, 75 Stat. 266.

Prior sections 6021 and 6022 were renumbered sections 8216 and 8217 of this title.

A prior section 6023, acts Aug. 10, 1956, ch. 1041, 70A Stat. 376; Oct. 13, 1964, Pub. L. 88–647, title III, §301(15), 78 Stat. 1072, provided qualifications to receive aviation designation of naval aviator, prior to repeal by Pub. L. 92–168, §2(1), Nov. 24, 1971, 85 Stat. 489. See section 2003 of this title.

A prior section 6024 was renumbered section 8218 of this title.

A prior section 6025, act Aug. 10, 1956, ch. 1041, 70A Stat. 377, provided qualifications to receive aviation designation of aviation pilot, prior to repeal by Pub. L. 92–168, §2(2), Nov. 24, 1971, 85 Stat. 489. See section 2003 of this title.

A prior section 6026, act Aug. 10, 1956, ch. 1041, 70A Stat. 377, required officers in Supply Corps to give good and sufficient bonds to account for all public money and property that they receive, prior to repeal by Pub. L. 92–310, title II, §204(a), June 6, 1972, 86 Stat. 202.

A prior section 6027 was renumbered section 8219 of this title.

A prior section 6028, act Aug. 10, 1956, ch. 1041, 70A Stat. 377, related to the composition of the Medical Service Corps, prior to repeal by Pub. L. 96–513, title III, §352(b), Dec. 12, 1980, 94 Stat. 2902.

A prior section 6029 was renumbered section 8220 of this title.

A prior section 6030, act Aug. 10, 1956, ch. 1040, 70A Stat. 378, gave officers in the Nurse Corps authority in medical and sanitary matters and other work within the line of their professional duties in activities of the Medical Department after officers in the Medical Corps, Dental Corps, and Medical Service Corps and authorized officers in the Nurse Corps to exercise such military authority, other than command, as the Secretary of the Navy prescribed, prior to repeal by Pub. L. 90–130, §1(22), Nov. 8, 1967, 81 Stat. 380.

Prior sections 6031 and 6032 were renumbered sections 8221 and 8222 of this title.

A prior section 6033, acts Aug. 10, 1956, ch. 1041, 70A Stat. 378; Sept. 7, 1962, Pub. L. 87–649, §6(f)(5), 76 Stat. 494; Sept. 7, 1962, Pub. L. 87–651, title I, §122, 76 Stat. 513, set forth restrictions on the consideration of a husband or child as the dependent of a female member of the Regular Navy, Regular Marine Corps, Fleet Reserve, Fleet Marine Corps Reserve, Naval Reserve or Marine Corps Reserve, prior to repeal by Pub. L. 90–235, §7(a)(3), Jan. 2, 1968, 81 Stat. 763.

A prior section 6034, act Aug. 10, 1956, ch. 1041, 70A Stat. 379, authorized Secretary of Navy to prescribe regulations for Navy and Marine Corps relating to retired pay based on service in the Reserve, prior to repeal by Pub. L. 103–337, div. A, title XVI, §1662(j)(8), Oct. 5, 1994, 108 Stat. 3005, effective Dec. 1, 1994. See section 12731 et seq. of this title.

Prior sections 6035 and 6036 were renumbered sections 8225 and 8226 of this title.

Prior sections 6081 to 6087 were renumbered sections 8241 to 8247 of this title, respectively.

A prior section 6111, act Aug. 10, 1956, ch. 1041, 70A Stat. 381, related to withholding of pay during absence

due to use of alcohol or drugs, and is covered by section 802 of Title 37, Pay and Allowances of the Uniformed Services, prior to repeal by Pub. L. 87–649, § 14c(35), Sept. 7, 1962, 76 Stat. 501, effective Nov. 1, 1962.

A prior section 6112, acts Aug. 10, 1956, ch. 1041, 70A Stat. 381; Oct. 9, 1962, Pub. L. 87–777, § 1, 76 Stat. 777, prohibited employment of officers of the Regular Navy and Regular Marine Corps, other than a retired officer, from being employed by any person furnishing naval supplies or war materials to the United States under pain of loss of payment from the United States during that employment, prior to repeal by Pub. L. 87–649, § 14c(36), Sept. 7, 1962, 76 Stat. 501, and by Pub. L. 89–718, § 75(6), (7), Nov. 2, 1966, 80 Stat. 1124.

A prior section 6113 was renumbered section 8253 of this title.

A prior section 6114, act Aug. 10, 1956, ch. 1041, 70A Stat. 381, set forth restrictions on civilian employment for enlisted members of the naval service on active duty, prior to repeal by Pub. L. 90–235, § 6(a)(7), Jan. 2, 1968, 81 Stat. 762.

A prior section 6115, act Aug. 10, 1956, ch. 1041, 70A Stat. 382, prescribed a time limit for filing claims for drill pay and for the uniform gratuity. Section was also amended by Pub. L. 85–861, § 33(a)(31), which amended catchline by substituting ''uniform gratuity'' for ''unform gratuity'', prior to repeal by Pub. L. 85–861, § 36B(17), Sept. 2, 1958, 72 Stat. 1571.

A prior section 6116, act Aug. 10, 1956, ch. 1041, 70A Stat. 382, provided that in computing length of service, no officer of the Navy or Marine Corps could be credited with service as a midshipman at the Naval Academy or as a cadet at the Military Academy, if he was appointed as a midshipman or cadet after Mar. 4, 1913. See section 971 of this title, prior to repeal by Pub. L. 90–235, § 6(a)(2), Jan. 2, 1968, 81 Stat. 761.

A prior section 6141 was renumbered section 8261 of this title.

Prior sections 6142 to 6147 were repealed by Pub. L. 87–649, § 14c(38–43), Sept. 7, 1962, 76 Stat. 501, effective Nov. 1, 1962.

Section 6142, act Aug. 10, 1956, ch. 1041, 70A Stat. 382, provided for assignments of pay due to enlisted members. See section 705 of Title 37.

Section 6143, act Aug. 10, 1956, ch. 1041, 70A Stat. 383, related to discouragement of sale of pay. See section 805 of Title 37.

Section 6144, act Aug. 10, 1956, ch. 1041, 70A Stat. 383, provided for settlement of pay accounts when lost with vessel. See section 902 of Title 37.

Section 6145, act Aug. 10, 1956, ch. 1041, 70A Stat. 383, related to fixing date of loss of a vessel for purpose of settling accounts of persons aboard other than officers. See section 902 of Title 37.

Section 6146, act Aug. 10, 1956, ch. 1041, 70A Stat. 383, provided for allotments by officers. See section 702 of Title 37.

Section 6147, act Aug. 10, 1956, ch. 1041, 70A Stat. 383, related to allowances for prisoners. See section 426 of Title 37.

A prior section 6148, acts Aug. 10, 1956, ch. 1041, 70A Stat. 383; Sept. 2, 1958, Pub. L. 85–861, §§ 1(137), 36B(18), 72 Stat. 1507, 1571; Sept. 7, 1962, Pub. L. 87–649, § 6(e), 76 Stat. 494; Sept. 7, 1962, Pub. L. 87–651, title I, § 123(a), 76 Stat. 514; Oct. 19, 1984, Pub. L. 98–525, title VI, § 631(b), 98 Stat. 2543; Nov. 8, 1985, Pub. L. 99–145, title XIII, § 1303(a)(22), 99 Stat. 739, related to disability and death benefits for members of Naval Reserve and Marine Corps Reserve, prior to repeal by Pub. L. 99–661, div. A, title VI, § 604(f)(1)(A), Nov. 14, 1986, 100 Stat. 3877.

A prior section 6149, act Aug. 10, 1956, ch. 1041, 70A Stat. 385, related to computation of retired pay on basis of rates of pay for officers on the active list, prior to repeal by Pub. L. 88–132, § 5(h)(3), Oct. 2, 1963, 77 Stat. 214, effective Oct. 1, 1963.

A prior section 6150, acts Aug. 10, 1956, ch. 1041, 70A Stat. 385; Sept. 2, 1958, Pub. L. 85–861, § 33(a)(32), 72 Stat. 1566, authorized advancement to a higher retired grade for officers specially commended, prior to repeal by Pub. L. 86–155, § 9(a)(1), Aug. 11, 1959, 73 Stat. 337, effective Nov. 1, 1959.

Prior sections 6151 to 6156 were renumbered sections 8262 to 8267 of this title.

A prior section 6157, act Aug. 10, 1956, ch. 1041, 70A Stat. 387, related to transportation of motor vehicles on permanent change of station, prior to repeal by Pub. L. 87–651, title I, § 123(b), Sept. 7, 1962, 76 Stat. 514.

A prior section 6158, act Aug. 10, 1956, ch. 1041, 70A Stat. 387, exempted enlisted members of the Marine Corps, while on active duty, from personal arrest for debt or contract, prior to repeal by Pub. L. 90–235, § 7(b)(1), Jan. 2, 1968, 81 Stat. 763.

A prior section 6159, added Pub. L. 85–56, title XXII, § 2201(31)(C), June 17, 1957, 71 Stat. 161, provided for a pension to disabled naval enlisted personnel serving 20 years or more, equal to one-half the pay of enlisted man's rating at the time of his discharge, prior to repeal by Pub. L. 91–482, § 1(a), Oct. 21, 1970, 84 Stat. 1082.

Prior sections 6160 and 6161 were renumbered sections 8270 and 8271 of this title.

Prior sections 6201 to 6203 were renumbered sections 8281 to 8283 of this title.

Prior sections 6221 and 6222 were renumbered sections 8286 and 8287 of this title.

A prior section 6223, act Aug. 10, 1956, ch. 1041, 70A Stat. 388; Pub. L. 101–510, div. A, title III, § 327(b), Nov. 5, 1990, 104 Stat. 1532; Pub. L. 102–25, title VII, § 701(j)(7), Apr. 6, 1991, 105 Stat. 116, generally prohibited any Navy band or Marine Corps band from competing with civilian musicians, prior to repeal by Pub. L. 110–181, div. A, title V, § 590(b)(1), Jan. 28, 2008, 122 Stat. 138. See section 974 of this title.

A prior section 6224, act Aug. 10, 1956, ch. 1041, 70A Stat. 388, provided that members of the United States Navy Band and the United States Marine Corps Band shall lose no allowances while on concert tours approved by the President, prior to repeal by Pub. L. 87–649, § 14c(46), Sept. 7, 1962, 76 Stat. 501, effective Nov. 1, 1962. See section 425 of Title 37, Pay and Allowances of the Uniformed Services.

Prior sections 6241 to 6256 were renumbered sections 8291 to 8306 of this title, respectively.

A prior section 6257 was renumbered section 8307 of this title.

Another prior section 6257 was renumbered section 8308 of this title.

A prior section 6258 was renumbered section 8308 of this title.

A prior section 6291, act Aug. 10, 1956, ch. 1041, 70A Stat. 391, provided for honorable discharges for enlisted members of the naval service, prior to repeal by Pub. L. 90–235, § 3(b)(1), Jan. 2, 1968, 81 Stat. 758.

A prior section 6292 was renumbered section 8317 of this title.

A prior section 6293, act Aug. 10, 1956, ch. 1041, 70A Stat. 392, provided for discharges for minors enlisted in the naval service or in the Regular Navy as seamen, seamen apprentices or seamen recruits. See section 1170 of this title, prior to repeal by Pub. L. 90–235, § 3(a)(2), Jan. 2, 1968, 81 Stat. 757.

A prior section 6294, act Aug. 10, 1956, ch. 1041, 70A Stat. 392, authorized Secretary of Navy to terminate enlistment of and discharge any enlisted woman in Regular Navy or Regular Marine Corps, prior to repeal by Pub. L. 96–513, title III, § 373(g), Dec. 12, 1980, 94 Stat. 2903, effective Sept. 15, 1981.

Prior sections 6295 to 6298 were repealed by Pub. L. 90–235, §§ 3(a)(2), (b)(1), 8(3), Jan. 2, 1968, 81 Stat. 757, 758, 764.

Section 6295, act Aug. 10, 1956, ch. 1041, 70A Stat. 392, provided for early discharges from the Regular Navy. See section 1171 of this title.

Section 6296, act Aug. 10, 1956, ch. 1041, 70A Stat. 392, provided for furlough without pay for any enlisted member of the Regular Navy for the unexpired term of his enlistment.

Section 6297, act Aug. 10, 1956, ch. 1041, 70A Stat. 393, provided for disposition of uniforms of enlisted members of the naval service who were discharged and for disposition of uniforms of and clothing allowance and emergency funds for enlisted members of the naval service who were discharged other than honorably.

Section 6298, act Aug. 10, 1956, ch. 1041, 70A Stat. 393, authorized Secretary of Navy to permit any person honorably discharged from the naval service to live at any naval receiving station while he was eligible for a reenlistment bonus.

Prior sections 6321 to 6327 were renumbered sections 8321 to 8327 of this title, respectively.

A prior section 6328 was renumbered section 8328 of this title.

Another prior section 6328, acts Aug. 10, 1956, ch. 1041, 70A Stat. 396; Sept. 24, 1983, Pub. L. 98–94, title IX, §923(c)(2), 97 Stat. 643, related to treatment of fractions of years of service in computing retired pay, prior to repeal by Pub. L. 99–348, title II, §203(b)(5), July 1, 1986, 100 Stat. 696.

Prior sections 6329 to 6336 were renumbered sections 8329 to 8336 of this title, respectively.

A prior section 6371 was renumbered section 8371 of this title.

Another prior section 6371, act Aug. 10, 1956, ch. 1041, 70A Stat. 399, related to consideration for continuation on active list of Regular Navy line rear admirals not restricted in performance of duty, prior to repeal by Pub. L. 96–513, title III, §335, title VII, §701, Dec. 12, 1980, 94 Stat. 2898, 2955, effective Sept. 15, 1981.

Prior sections 6372 to 6374 were repealed by Pub. L. 96–513, title III, §335, Dec. 12, 1980, 94 Stat. 2898, effective Sept. 15, 1981.

Section 6372, act Aug. 10, 1956, ch. 1041, 70A Stat. 400, related to retirement and possible retention on active list of line rear admirals restricted in performance of duty and staff corps rear admirals in Regular Navy. See section 637 of this title.

Section 6373, act Aug. 10, 1956, ch. 1041, 70A Stat. 400, related to retirement and possible retention on active list of major generals in Regular Marine Corps. See section 637 of this title.

Section 6374, acts Aug. 10, 1956, ch. 1041, 70A Stat. 401; Aug. 3, 1961, Pub. L. 87–123, §5(25), 75 Stat. 266, related to retirement for failures of selection for promotion of brigadier generals in Regular Marine Corps.

A prior section 6375, act Aug. 10, 1956, ch. 1041, 70A Stat. 401, provided for retirement of Marine Corps brigadier generals designated for supply duty after specified years of service, their retention on active list with board approval and computation of their years of service in grade, prior to repeal by Pub. L. 87–123, §5(26), Aug. 3, 1961, 75 Stat. 266.

Prior sections 6376 to 6382 were repealed by Pub. L. 96–513, title III, §335, Dec. 12, 1980, 94 Stat. 2898, effective Sept. 15, 1981.

Section 6376, acts Aug. 10, 1956, ch. 1041, 70A Stat. 402; Aug. 3, 1961, Pub. L. 87–123, §5(27), 75 Stat. 266; Nov. 8, 1967, Pub. L. 90–130, §1(24)(A), 81 Stat. 380, related to retirement for length of service of Regular Navy line captains not restricted in performance duty and Regular Marine Corps colonels. See section 634 of this title.

Section 6377, acts Aug. 10, 1956, ch. 1041, 70A Stat. 402; Aug. 21, 1957, Pub. L. 85–155, title II, §201(15), 71 Stat. 384; Aug. 3, 1961, Pub. L. 87–123, §5(28), 75 Stat. 266; Sept. 30, 1966, Pub. L. 89–609, §1(16), (17), 80 Stat. 853; Nov. 8, 1967, Pub. L. 90–130, §1(24)(B), (C), 81 Stat. 380, related to retirement for length of service of Regular Navy line captains restricted in performance of duty, staff corps captains, and Nurse Corps commanders. See sections 633 and 634 of this title.

Section 6378, acts Aug. 10, 1956, ch. 1041, 70A Stat. 403; Aug. 21, 1957, Pub. L. 85–155, title II, §201(16), 71 Stat. 384; Aug. 3, 1961, Pub. L. 87–123, §5(29), 75 Stat. 267; Dec. 8, 1967, Pub. L. 90–179, §12, 81 Stat. 549, related to consideration for continuation on active list of Regular Navy line captains restricted in performance of duty, staff corps captains, and Nurse Corps commanders. See section 637 of this title.

Section 6379, acts Aug. 10, 1956, ch. 1041, 70A Stat. 404; Aug. 21, 1957, Pub. L. 85–155, title II, §201(17), 71 Stat. 384; Nov. 8, 1967, Pub. L. 90–130, §1(24)(D), 81 Stat. 380, related to retirement for length of service and for failures of selection for promotion of Regular Navy commanders and Regular Marine Corps lieutenant colonels. See section 633 of this title.

Section 6380, act Aug. 10, 1956, ch. 1041, 70A Stat. 404, related to retirement for length of service and for failures of selection for promotion of Regular Navy lieutenant commanders and Regular Marine Corps majors. See section 632 of this title.

Section 6381, acts Aug. 10, 1956, ch. 1041, 70A Stat. 404; Aug. 21, 1957, Pub. L. 85–155, title II, §201(18), 71 Stat. 384; May 20, 1958, Pub. L. 85–422, §11(a)(6)(C), 71 Stat. 131; Oct. 2, 1963, Pub. L. 88–132, §5(h)(4), 77 Stat. 214; Sept. 8, 1980, Pub. L. 96–342, title VIII, §813(d)(6), 94 Stat. 1106, related to retirement grade and pay of officers retired under former sections 6371 to 6380 of this title. See section 642 of this title.

Section 6382, acts Aug. 10, 1956, ch. 1041, 70A Stat. 405; Aug. 21, 1957, Pub. L. 85–155, title II, §201(19), 71 Stat. 384; July 12, 1960, Pub. L. 86–616, §5(1), 74 Stat. 390; June 28, 1962, Pub. L. 87–509; §4(b), 76 Stat. 121, related to discharge for failures of selection for promotion of Regular Navy lieutenant and lieutenants (junior grade) and Regular Marine Corps captains and first lieutenants. See section 631 and section 632 of this title.

A prior section 6383 was renumbered section 8372 of this title.

Prior sections 6384 to 6388 were repealed by Pub. L. 96–513, title III, §335, Dec. 12, 1980, 94 Stat. 2898, effective Sept. 15, 1981.

Section 6384, acts Aug. 10, 1956, ch. 1041, 70A Stat. 407; July 12, 1960, Pub. L. 86–616, §5(3), 74 Stat. 390; June 28, 1962, Pub. L. 87–509, §4(b), 76 Stat. 121; Sept. 30, 1966, Pub. L. 89–609, §1(18), (19), 80 Stat. 853; Sept. 19, 1978, Pub. L. 95–377, §8(a), 92 Stat. 721, related to discharge of Regular Navy and Regular Marine Corps officers having less than 20 years service for unsatisfactory performance of duty. See section 1181 et seq. of this title.

Section 6385, acts Aug. 10, 1956, ch. 1041, 70A Stat. 408; Sept. 19, 1978, Pub. L. 95–377, §8(b), (c), 92 Stat. 721, provided that for purposes of involuntary retirement, separation, or furlough, an officer serving in a grade to which he was appointed under former sections 5231, 5232, 5787 or 5787d of this title was to be considered as serving in a grade he would have held had it not been for such appointment. See section 627 et seq. of this title.

Section 6386, acts Aug. 10, 1956, ch. 1041, 70A Stat. 408; Apr. 21, 1976, Pub. L. 94–273, §2(3), 90 Stat. 375, authorized President to suspend certain provisions relating to officers serving in grades of lieutenant and lieutenant (junior grade) in Navy or in grades of captain and first lieutenant in Marine Corps. See section 123(a), (b) of this title.

Section 6387, acts Aug. 10, 1956, ch. 1041, 70A Stat. 408; Aug. 11, 1959, Pub. L. 86–155, §6, 73 Stat. 337; June 30, 1960, Pub. L. 86–558, 74 Stat. 263; Oct. 13, 1964, Pub. L. 88–647, title III, §301(16), 78 Stat. 1072, related to computation of total commissioned service for regular Navy male line officers and regular Marine Corps male officers.

Section 6388, acts Aug. 10, 1956, ch. 1041, 70A Stat. 409; Aug. 21, 1957, Pub. L. 85–155, title II, §201(20), 71 Stat. 385; Sept. 30, 1966, Pub. L. 89–609, §1(20), (21), 80 Stat. 853; Sept. 20, 1968, Pub. L. 90–502, §1, 82 Stat. 852; Dec. 24, 1970, Pub. L. 91–582, §1, 84 Stat. 1574, related to computation of total commissioned service for certain Regular Navy staff corps officers.

A prior section 6389 was renumbered section 8373 of this title.

A prior section 6390, acts Aug. 10, 1956, ch. 1041, 70A Stat. 410; May 20, 1958, Pub. L. 85–422, §11(a)(6)(E), 71 Stat. 131; Oct. 2, 1963, Pub. L. 88–132, §5(h)(4), 77 Stat. 214; Sept. 8, 1980, Pub. L. 96–342, title VIII, §813(d)(8), 94 Stat. 1107, related to the retirement at age 62 of officers on the active list of the Navy and officers of the Marine Corps, prior to repeal by Pub. L. 96–513, title III, §335, Dec. 12, 1980, 94 Stat. 2898, effective Sept. 15, 1981. See section 1251 of this title.

Prior section 6391 and 6392 were repealed by Pub. L. 103–337, div. A, title XVI, §1629(b)(3), Oct. 5, 1994, 108 Stat. 2963, effective Oct. 1, 1996.

Section 6391, added Pub. L. 85–861, §1(144)(B), Sept. 2, 1958, 72 Stat. 1510; amended Pub. L. 86–559, §1(47), June

30, 1960, 74 Stat. 275; Pub. L. 102–190, div. A, title XI, § 1131(8)(A), Dec. 5, 1991, 105 Stat. 1506; Pub. L. 104–106, div. A, title XV, § 1501(c)(25), Feb. 10, 1996, 110 Stat. 499, related to transfer to Retired Reserve of officers in Naval Reserve or Marine Corps Reserve above chief warrant officer, W–5, on becoming 62 years of age with provisions for deferral of retirement until age 64. See section 14512(b) of this title.

Section 6392, added Pub. L. 100–180, div. A, title VII, § 717(b)(1), Dec. 4, 1987, 101 Stat. 1114; amended Pub. L. 101–189, div. A, title VII, §§ 710(b), 711(b), Nov. 29, 1989, 103 Stat. 1476, 1477, related to retention in active status of certain reserve officers. See section 14703(a)(2), (b) of this title.

Another prior section 6392, act Aug. 10, 1956, ch. 1041, 70A Stat. 410, related to revocation of appointments of Regular Navy and Marine Corps officers with less than three years service, prior to repeal effective Sept. 15, 1981, by Pub. L. 96–513, title III, § 335, title VII, § 701, Dec. 12, 1980, 94 Stat. 2898, 2955.

A prior section 6393, act Aug. 10, 1956, ch. 1041, 70A Stat. 410, authorized Secretary of Navy to terminate appointment of any woman officer in Regular Navy or Regular Marine Corps, prior to repeal by Pub. L. 96–513, title III, § 373(h), Dec. 12, 1980, 94 Stat. 2903, effective Sept. 15, 1981.

Prior sections 6394 to 6396 were repealed by Pub. L. 96–513, title III, § 335, Dec. 12, 1980, 94 Stat. 2898, effective Sept. 15, 1981.

Section 6394, acts Aug. 10, 1956, ch. 1041, 70A Stat. 410; May 20, 1958, Pub. L. 85–422, § 11(a)(6)(F), 72 Stat. 131; Sept. 2, 1958, Pub. L. 85–861, § 1(144)(C), 72 Stat. 1511; Oct. 2, 1963, Pub. L. 88–132, § 5(h)(4), 77 Stat. 214; Sept. 8, 1980, Pub. L. 96–342, title VIII, § 813(d)(9), 94 Stat. 1107, related to the retirement upon board recommendation of Regular Navy rear admirals and commodores and Regular Marine Corps major generals and brigadier generals.

Section 6395, acts Aug. 10, 1956, ch. 1041, 70A Stat. 411; Aug. 21, 1957, Pub. L. 85–155, title II, § 201(21), 71 Stat. 385; Sept. 30, 1966, Pub. L. 89–609, § 1(22), 80 Stat. 853, related to discharge during time of war and national emergency of Regular Navy and Regular Marine Corps officers with less than 20 years of service for unsatisfactory performance of duty. See section 1181 et seq. of this title.

Section 6396, acts Aug. 10, 1956, ch. 1041, 70A Stat. 413; Aug. 21, 1957, Pub. L. 85–155, title II, § 201(22), 71 Stat. 385; May 20, 1958, Pub. L. 85–422, § 11(a)(6)(G), 72 Stat. 131; Oct. 2, 1963, Pub. L. 88–132, § 5(h)(6), 77 Stat. 214; Sept. 30, 1966, Pub. L. 89–609 § 1(23)–(26), 80 Stat. 853, 854; Nov. 8, 1967, Pub. L. 90–130, § 1(24)(E), 81 Stat. 380; Sept. 8, 1980, Pub. L. 96–342, title VIII, § 813(d)(10), 94 Stat. 1107, related to retirement or discharge of Regular Navy officers in Nurse Corps in grades below commander.

A prior section 6397, added Pub. L. 85–861, § 1(144)(D), Sept. 2, 1958, 72 Stat. 1511; amended Pub. L. 89–609, § 1(27), Sept. 30, 1966, 80 Stat. 854; Pub. L. 96–513, title III, § 338, Dec. 12, 1980, 94 Stat. 2901, related to elimination from active status of officers of Naval Reserve in Nurse Corps, prior to repeal by Pub. L. 103–337, div. A, title XVI, § 1629(b)(3), Oct. 5, 1994, 108 Stat. 2963, effective Oct. 1, 1996.

A prior section 6398, acts Aug. 10, 1956, ch. 1041, 70A Stat. 413; May 20, 1958, Pub. L. 85–422, § 11(a)(6)(H), 72 Stat. 131; Oct. 2, 1963, Pub. L. 88–132, § 5(h)(6), 77 Stat. 214; Nov. 8, 1967, Pub. L. 90–130, § 1(24)(F), 81 Stat. 381; Sept. 8, 1980, Pub. L. 96–342, title VIII, § 813(d)(11), 94 Stat. 1108, related to retirement for length of service of Regular Navy women captains and commanders and Regular Marine Corps women colonels and lieutenant colonels and their respective grades and pay, prior to repeal by Pub. L. 96–513, title III, § 335, Dec. 12, 1980, 94 Stat. 2898, effective Sept. 15, 1981. See sections 633 and 634 of this title.

A prior section 6399, acts Aug. 10, 1956, ch. 1041, 70A Stat. 414; May 20, 1958, Pub. L. 85–422, § 11(a)(6)(I), 72 Stat. 131; Oct. 2, 1963, Pub. L. 88–132, § 5(h)(6), 77 Stat. 214, provided for retirement of women lieutenant commanders and below of Regular Navy and women majors and below of Regular Marine Corps at age 50 and their retired grade and pay, prior to repeal by Pub. L. 90–130, § 1(24)(G), Nov. 8, 1967, 81 Stat. 382.

Prior sections 6400 to 6402 were repealed by Pub. L. 96–513, title III, § 335, Dec. 12, 1980, 94 Stat. 2898, effective Sept. 15, 1981.

Section 6400, acts Aug. 10, 1956, ch. 1041, 70A Stat. 414; May 20, 1958, Pub. L. 85–422, § 11(a)(6)(J), 72 Stat. 131; Oct. 2, 1963, Pub. L. 88–132, § 5(h)(6), 77 Stat. 214; Sept. 8, 1980, Pub. L. 96–342, title VIII, § 813(d)(12), 94 Stat. 1108, related to retirement for length of service of Regular Navy women lieutenant commanders and Regular Marine Corps women majors.

Section 6401, acts Aug. 10, 1956, ch. 1041, 70A Stat. 415; July 12, 1960, Pub. L. 86–616, § 5(4), 74 Stat. 390; June 28, 1962, Pub. L. 87–509, § 4(b), 76 Stat. 121, related to discharge for length of service of Regular Navy women lieutenants and Regular Marine Corps women captains.

Section 6402, acts Aug. 10, 1956, ch. 1041, 70A Stat. 415; July 12, 1960, Pub. L. 86–616, § 5(5), 74 Stat. 390, related to discharge for length of service of Regular Navy women lieutenants (junior grade) and Regular Marine Corps women first lieutenants.

A prior section 6403, added Pub. L. 85–861, § 1(144)(E), Sept. 2, 1958, 72 Stat. 1511; amended Pub. L. 96–513, title V, § 503(49), Dec. 12, 1980, 94 Stat. 2915; Pub. L. 97–22, § 10(b)(10)(B), July 10, 1981, 95 Stat. 137, related to elimination from active status of women officers in Naval Reserve and Marine Corps Reserve, prior to repeal by Pub. L. 103–337, div. A, title XVI, § 1629(b)(3), Oct. 5, 1994, 108 Stat. 2963, effective Oct. 1, 1996.

A prior section 6404 was renumbered section 8374 of this title.

A prior section 6405, act Aug. 10, 1956, ch. 1041, 70A Stat. 415, provided that an officer of Regular Navy, other than a retired officer, who accepted an appointment in the Foreign Service was considered as having resigned from the Navy, prior to repeal by Pub. L. 90–235, § 4(a)(12), Jan. 2, 1968, 81 Stat. 760. See section 973 of this title.

A prior section 6406, acts Aug. 10, 1956, ch. 1041, 70A Stat. 415; Pub. L. 87–649, § 14c(47), Sept. 6, 1962, 76 Stat. 501, authorized Secretary of Navy to furlough any officer of Regular Navy or Regular Marine Corps, other than a retired officer, prior to repeal by Pub. L. 91–482, § 1(a), Oct. 21, 1970, 84 Stat. 1082.

A prior section 6407, act Aug. 10, 1956, ch. 1041, 70A Stat. 416, related to communication with selection boards by officers eligible for consideration for continuation on active list, prior to repeal by Pub. L. 96–513, title III, § 335, Dec. 12, 1980, 94 Stat. 2898, effective Sept. 15, 1981. See section 614 of this title.

A prior section 6408 was renumbered section 8375 of this title.

A prior section 6409, act Aug. 10, 1956, ch. 1041, 70A Stat. 416, provided for suspension of laws for mandatory retirement or separation during war or emergency of temporary warrant officers of Navy and Marine Corps, prior to repeal by Pub. L. 90–235, § 3(b)(1), Jan. 2, 1968, 81 Stat. 758.

A prior section 6410, added Pub. L. 85–861, § 1(144)(F), Sept. 2, 1958, 72 Stat. 1512; amended Pub. L. 104–106, div. A, title XV, § 1501(c)(28), Feb. 10, 1996, 110 Stat. 500, related to elimination from active status of officers in Naval Reserve and Marine Corps Reserve to provide a flow of promotion, prior to repeal by Pub. L. 103–337, div. A, title XVI, § 1629(b)(3), Oct. 5, 1994, 108 Stat. 2963, effective Oct. 1, 1996.

A prior section 6481, act Aug. 10, 1956, ch. 1041, 70A Stat. 416, related to authority to recall retired officers of Regular Navy and Regular Marine Corps, prior to repeal by Pub. L. 96–513, title III, § 362(a), Dec. 12, 1980, 94 Stat. 2903, effective Sept. 15, 1981. See section 688 of this title.

A prior section 6482, act Aug. 10, 1956, ch. 1041, 70A Stat. 417, provided that in time of war or national emergency Secretary of Navy could order to active duty any retired enlisted member of Regular Navy or Regular Marine Corps, prior to repeal by Pub. L. 98–525, title V, § 533(f)(1), Oct. 19, 1984, 98 Stat. 2528.

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Prior sections 6483 to 6486 were renumbered sections 8383 to 8386 of this title, respectively.

Prior sections 6487 and 6488 were repealed by Pub. L. 96–513, title III, § 362(b), (c), Dec. 12, 1980, 94 Stat. 2903, effective Sept. 15, 1981.

Section 6487, act Aug. 10, 1956, ch. 1041, 70A Stat. 418, related to retirement pay of certain rear admirals who retire after serving two years on active duty in time of war or national emergency.

Section 6488, act Aug. 10, 1956, ch. 1041, 70A Stat. 418, related to retention of certain wartime appointments or promotions upon release from active duty. See section 1370 of this title.

A prior section 6521, act Aug. 10, 1956, ch. 1041, 70A Stat. 418, related to allowances to dependents, and to designation of beneficiary, prior to repeal by Pub. L. 85–861, § 36B(21), Sept. 2, 1958, 72 Stat. 1571. See sections 1475 et seq. of this title.

A prior section 6522 was renumbered section 8392 of this title.

Prior sections 6901 to 6906 were repealed by Pub. L. 88–647, title III, § 301(17), Oct. 13, 1964, 78 Stat. 1072.

Section 6901, acts Aug. 10, 1956, ch. 1041, 70A Stat. 420; Sept. 2, 1958, Pub. L. 85–861, § 1(146), 72 Stat. 1512, related to administration of Naval Reserve Officers' Training Corps.

Sections 6902 and 6903, act Aug. 10, 1956, ch. 1041, 70A Stat. 420, 421, related to transfer of graduates of Naval Reserve Officers' Training Corps to Regular Navy, administration of officer candidate training program, and to qualifications for enrollment. See sections 2104 and 2106 of this title.

Sections 6904 to 6906, acts Aug. 10, 1956, ch. 1041, 70A Stat. 421, 422, 423; Sept. 7, 1962, Pub. L. 87–649, § 14c(48)–(50), 76 Stat. 501, related to officer candidate training program and qualifications and training of members. See chapters 102 and 103 of this title.

A prior section 6907, act Aug. 10, 1956, ch. 1041, 70A Stat. 424, related to retention or transfer to Reserve of officers other than naval aviators under officer candidate training program, prior to repeal by Pub. L. 87–100, § 1(1), July 21, 1961, 75 Stat. 218.

A prior section 6908, act Aug. 10, 1956, 1041, 70A Stat. 424, related to selection of naval aviators for retention of transfer to the Reserve, prior to repeal by Pub. L. 88–647, title III, § 301(17), Oct. 13, 1964, 78 Stat. 1072.

A prior section 6909, act Aug. 10, 1956, ch. 1041, 70A Stat. 425, related to direct procurement of ensigns and second lieutenants, prior to repeal by Pub. L. 96–513, title III, § 329, Dec. 12, 1980, 94 Stat. 2896, effective Sept. 15, 1981.

A prior section 6910, act Aug. 10, 1956, ch. 1041, 70A Stat. 426, authorized payment of expenses of officer procurement program, prior to repeal by Pub. L. 88–647, title III, § 301(17), Oct. 13, 1964, 78 Stat. 1072.

Prior sections 6911 to 6913 were renumbered sections 8411 to 8413 of this title, respectively.

A prior section 6914, act Aug. 10, 1956, ch. 1041, 70A Stat. 427, authorized President to appoint Naval Reserve aviators to Regular Navy and Regular Marine Corps, prior to repeal by Pub. L. 96–513, title III, § 374, Dec. 12, 1980, 94 Stat. 2904, effective Sept. 15, 1981.

A prior section 6915 was renumbered section 8415 of this title.

Prior sections 6931 and 6932 were renumbered 8431 and 8432 of this title.

Prior sections 6951 to 6956 were renumbered sections 8451 to 8456 of this title.

Prior sections 6957 to 6957b were repealed by Pub. L. 114–328, div. A, title XII, § 1248(b)(1), Dec. 23, 2016, 130 Stat. 2525.

Section 6957, act Aug. 10, 1956, ch. 1041, 70A Stat. 431; Pub. L. 98–94, title X, § 1004(b)(1), Sept. 24, 1983, 97 Stat. 658; Pub. L. 105–85, div. A, title V, §§ 541(b), 543(b), Nov. 18, 1997, 111 Stat. 1740, 1743; Pub. L. 106–65, div. A, title V, § 534(b), Oct. 5, 1999, 113 Stat. 605; Pub. L. 106–398, § 1 [[div. A], title V, § 532(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–110; Pub. L. 107–107, div. A, title V, § 533(b)(1), (2), Dec. 28, 2001, 115 Stat. 1106, related to the selection of persons from foreign countries to receive instruction at the United States Naval Academy. See section 347 of this title.

Section 6957a, added Pub. L. 105–85, div. A, title V, § 542(b)(1), Nov. 18, 1997, 111 Stat. 1741; amended Pub. L. 106–65, div. A, title V, § 535(b), Oct. 5, 1999, 113 Stat. 605; Pub. L. 109–364, div. A, title V, § 531(b), Oct. 17, 2006, 120 Stat. 2199, related to an exchange program with foreign military academies.

Section 6957b, added Pub. L. 110–417, [div. A], title V, § 541(b)(1), Oct. 14, 2008, 122 Stat. 4455; amended Pub. L. 113–291, div. A, title V, § 553(b), Dec. 19, 2014, 128 Stat. 3377, related to foreign and cultural exchange activities.

Prior sections 6958 to 6969 were renumbered sections 8458 to 8469 of this title, respectively.

A prior section 6970 was renumbered section 8470 of this title.

Another prior section 6970 was renumbered section 8470a of this title.

Another prior section 6970, acts Aug. 10, 1956, ch. 1041, 70A Stat. 435; Nov. 2, 1966, Pub. L. 89–718, § 37, 80 Stat. 1120, related to detailing and duties of storekeeper at the Naval Academy, prior to repeal by Pub. L. 104–201, div. A, title III, § 370(c), (e), Sept. 23, 1996, 110 Stat. 2499, effective Oct. 1, 1996.

Prior sections 6970a to 6974 were renumbered sections 8470a to 8474 of this title, respectively.

A prior section 6975 was renumbered section 8475 of this title.

Another prior section 6975, added Pub. L. 103–337, div. A, title V, § 556(b)(1), Oct. 5, 1994, 108 Stat. 2774, related to position of athletic director of Naval Academy and to administration of nonappropriated fund account for athletics program of Naval Academy, prior to repeal by Pub. L. 104–106, div. A, title V, § 533(b), Feb. 10, 1996, 110 Stat. 315; Pub. L. 105–85, div. A, title X, § 1073(d)(1)(C), Nov. 18, 1997, 111 Stat. 1905, effective Oct. 5, 1994.

Prior sections 6976 to 6981 were renumbered sections 8476 to 8481 of this title, respectively.

AMENDMENTS

2021—Pub. L. 116–283 renumbered section 2541d of this title as this section.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

Subtitle B—Army

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